



**Agenda**  
**Work Study and Possible Executive Session**  
**Queen Creek Town Council**  
Queen Creek Town Hall, 22350 S. Ellsworth Road  
Council Chambers  
September 5, 2012  
5:30pm

**1. Call to Order**

**2. Roll Call** (one or more members of the Council may participate by telephone)

**3. Motion to adjourn to Executive Session (to be held in the Saguaro Conference Room of the Municipal Services Building) for the following purposes:**

A. Discussion and consultation with the Town Attorney for legal advice and to consider the Town's position and instruct the staff regarding acquisition of property. (A.R.S. 38-431.03(A)(3) & (7).

B. Discussion and consultation for legal advice with the Town Attorney and to consider the Town's position and instruct its staff regarding a possible land exchange. (ARS 38-431.03 (A)(3) and (7).

**ITEMS FOR DISCUSSION** These items are for Council discussion only and no action will be taken. In general, no public comment will be taken.

**4.** Presentation by Maricopa County Flood Control District and discussion on area flood control projects.

**5.** Presentation by Lynn Kusy, Executive Director of Phoenix-Mesa Gateway Airport on the Gateway 2030 Plan.

**6.** Overview and discussion on SB1598 "Regulatory Bill of Rights". **TAB N**

**7. Adjournment**



## **Agenda**

### **Regular and Possible Executive Session Queen Creek Town Council**

Queen Creek Town Hall, 22350 S. Ellsworth Road  
Council Chambers  
September 5, 2012  
7:00 p.m.

**1. Call to Order**

**2. Roll Call** (one or more members of the Council may participate by telephone)

**3. Pledge of Allegiance:**

**4. Invocation:** Pastor Ben Lee – Living Waters Bible Church

**5. Ceremonial Matters:** Presentations, Proclamations, Awards, Guest Introductions and Announcements.

- Proclamation – Boys & Girls Club Day for Kids

**6. Committee Reports**

A. Council summary reports on meetings and/or conferences attended. This may include but is not limited to Phoenix-Mesa Gateway Airport; MAG; East Valley Partnership; CAAG. The Council will not propose, discuss, deliberate or take legal action on any matter in the summary unless the specific matter is properly noticed for legal action.

B. Partner agencies quarterly or periodic updates to Council. This may include but is not limited to Queen Creek Chamber of Commerce; Queen Creek Performing Arts Center; Boys & Girls Club of East Valley; and Maricopa or Pinal County Board of Supervisors or other governmental agencies. The Council will not propose, discuss, deliberate or take legal action on any matter in the summary unless the specific matter is properly noticed for legal action.

1. Presentation by Maricopa County Flood Control District and discussion on area flood control projects. *(If not done at Work Study Session)*

2. Presentation by Lynn Kusy, Executive Director of Phoenix-Mesa Gateway Airport on the Gateway 2030 Plan. *(If not done at Work Study Session)*

3. Presentation by Tom Lindsey, Superintendent of Queen Creek Unified School District on the proposed Bond Override.

C. Parks & Recreation Advisory Committee – August 14, 2012

D. Economic Development Commission – August 22, 2012

**Agenda for the Regular and Possible Executive Session  
Queen Creek Town Council  
September 5, 2012  
Page 2**

**7. Public Comment:** Members of the public may address the Town Council on items not on the printed agenda and during Public Hearings. Please complete a “Request to Speak Card”, located on the table at the rear of the Council Chambers and turn it in to the Town Clerk prior to the beginning of the meeting. There is a time limit of three minutes for comments.

**8. Consent Calendar:** Matters listed under the Consent Calendar are considered to be routine and will be enacted by one motion and one vote. Public Hearing items are designated with an asterisk (\*). Prior to consideration of the Consent Agenda, the Mayor will ask whether any member of the public wishes to remove a Public Hearing item for separate consideration. Members of the Council and or staff may remove any item for separate consideration.

A. Consideration and possible approval of expenditures over \$25,000. **TAB A**

1. Horine Electrical - \$270,000
2. Pavement Marking, Inc. - \$60,000

B. Consideration and possible approval of a contract with Arizona Soccer Club to produce a Recreational Soccer League in the Town of Queen Creek and making the Arizona Soccer Club an official partner with the Town. **TAB B**

C. Consideration and possible approval of a lease with T-Mobile for cellular communications facilities at Founders Park. **TAB C**

D. Consideration and possible approval of a contract amendment with Eagle Lift Contracting (Contract # 2011-056) in the amount of \$50,000 for void fill and stabilization services. **TAB D**

E. Consideration and possible approval of a Job Order Contract with SDB Contracting in an amount not to exceed \$400,000 for construction services throughout Town including major/minor construction projects, renovations, repairs, additions and demolitions to Town Facilities. **TAB E**

F. Consideration and possible approval of a Temporary Extension of Premises/Patio Permit liquor license application submitted by Rebecca Dettler on behalf of Trophy’s Steakhouse, 7215 S. Power Rd., (Power Marketplace) for an event to be held October 26-28, 2012. (Trophy’s Steakhouse liquor license #06-070273). **TAB F**

G. Consideration and possible approval of a Permanent Extension of Premises/Patio Permit liquor license application submitted by Rebecca Dettler on behalf of Trophy’s Steakhouse, 7215 S. Power Rd., (Power Marketplace) for permanent patio seating. (Trophy’s Steakhouse liquor license #06-070273). **TAB G**

H. Consideration and possible approval of the FY12-13 Parks and Recreation Advisory Committee Work Plan. **TAB H**

**Agenda for the Regular and Possible Executive Session  
Queen Creek Town Council  
September 5, 2012  
Page 3**

I. Consideration and possible approval of the FY12-13 Town Center Committee Work Plan. **TAB I**

J. Consideration and possible approval of the FY12-13 Economic Development Commission Work Plan. **TAB J**

K. Consideration and possible approval of the reappointment of Jason Barney as the Town's representative on the Greater Phoenix Economic Council (GPEC) Board of Directors for FY12-13. **TAB K**

L. Consideration and possible approval of **Ordinance 517-12** annexing roadway alignments per the 2006 Intergovernmental Agreement between Maricopa County and the Town of Queen Creek for the Operation, Maintenance, Traffic Control and Permitting Responsibilities for Various Arterial Roadways. **TAB L**

\***M.** Public Hearing and possible approval of **RZ12-034/Ordinance 518-12 Victoria Estates Parcels 10, 11 and 11A** – a request by Ralph Pew of Pew & Lake, PLC, to repeal Ordinance 466-09 and Resolution 813-09; and to rezone the property from R1-4 and R1-5 to R1-7 PAD and R1-9 PAD. The property is located northeast of the intersection of Hawes and Ocotillo Roads. **TAB M**

**PUBLIC HEARINGS:** If you wish to speak to the Council on an item listed as a Public Hearing, please complete a Request to Speak Card and turn it in to the Town Clerk. Speakers will be called upon in the order in which their cards are received. Speakers are limited to three (3) minutes each.

*None.*

**FINAL ACTION:** If you wish to speak to the Council on an item listed under Final Action, please complete a Request to Speak Card and turn it in to the Town Clerk. Speakers will be called upon in the order in which their cards are received. Speakers are limited to three (3) minutes each.

*None.*

**ITEMS FOR DISCUSSION:** These items are for Council discussion only and no action will be taken. In general, no public comment will be taken.

**9.** Overview and discussion on SB1598 "Regulatory Bill of Rights". *(If not done at Work Study Session)* **TAB N**

**10. Motion to adjourn to Executive Session:** The Council may reconvene the Executive Session for any of the items listed on the Executive Session Agenda.

**11. Adjournment**



Requesting  
Department:  
Management Services

TAB A

**TO: HONORABLE MAYOR AND TOWN COUNCIL**

**THROUGH: JOHN KROSS, TOWN MANAGER**

**FROM: KIM CLARK, SR. FINANCIAL SERVICES ANALYST  
YOLANDA BRACAMONTE, CONTROLLER**

**RE: CONSIDERATION AND POSSIBLE APPROVAL OF  
EXPENDITURES \$25,000 AND OVER**

**DATE: September 5, 2012**

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**Staff Recommendation:**

Staff recommends approval of expenditures \$25,000 and over.

**Proposed Motion:**

Move to approve Town expenditures \$25,000 and over, pursuant to Town purchasing policy.

**Discussion:**

The following items being requested are:

- 1. Electrical Services as needed
- 2. Traffic stripping on Town roads

See attachment for additional explanation on the above expenditures.

**Fiscal Impact:**

The initial fiscal impact of the requested spending authority for the above expenditures is \$330,000 for FY13. Funds have been identified within the line item budget as approved in the 2012-2013 fiscal year budget. Remaining funds at FY13 year end will be identified during the FY14 budget process for the remaining term of the contracts.

**Alternatives:**

- 1) Council could choose not to approve. If the spending authority is not approved, staff would be required to obtain council approval periodically when reaching policy threshold. This could delay individual jobs at various water sites which in turn could delay water services provided to the public.

- 2) Council could choose to approve a lesser amount. Staff could present a request for additional funding at a later date.

**Attachments:**

- A detailed list of requested expenditures.

**Attachment: Expenditures \$25,000 and over**

**For Fiscal Year 2013  
September 5, 2012**

<b>Item #</b>	<b>Vendor</b>	<b>Description</b>	<b>Purpose</b>	<b>Requesting Dept</b>	<b>Fiscal Impact \$</b>	<b>Procurement Method</b>
1.	Horine Electrical	Electrical Services	Contract spending authority for as-needed and emergency electrical services to meet the needs of the Utility Services Department, as well as Public Works, Parks & Rec., Facilities, and Fire. Amount to be approved will be for the contract period, October 1, 2012 to September 30, 2013.	Utility Services	\$270,000	Town Contract 2011-059
2.	Pavement Marking, Inc.	Traffic stripping on Town roads	Spending authority to apply new and refreshed pavement striping town-wide, as needed, for fiscal year.	Development Services	\$60,000	Town Contract 2010-045



Recreation Services:

**TO: HONORABLE MAYOR AND TOWN COUNCIL**

**TAB B**

**THROUGH: PATRICK FLYNN, ASSISTANT TOWN MANAGER**

**FROM: ADAM ROBINSON, RECREATION SUPERINTENDENT**

**RE: CONSIDERATION AND POSSIBLE APPROVAL OF AN ANNUAL AGREEMENT BETWEEN ARIZONA SOCCER CLUB (AZSC) AND THE TOWN OF QUEEN CREEK MAKING AZSC AN OFFICIAL YOUTH SPORTS PARTNER.**

**DATE: SEPTEMBER 5, 2012**

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**Staff Recommendation:**

Staff recommends that the Council approve the annual agreement between Arizona Soccer Club (AZSC) and the Town of Queen Creek, making AZSC an official Youth Sports Partner.

**Proposed Motion:**

Move to approve the annual Agreement between AZSC and the Town of Queen Creek, making AZSC an official Youth Sports Partner.

**Discussion:**

The Corporate Strategic Plan KRA 2: Develop a comprehensive volunteer program and non-profit partnership strategy.

The Town has produced its own youth soccer league for many years, which ended with the 2011/12 Winter Season. Staff was directed to identify which services or programs the Town could shift to non-profit organizations to reduce the use of Town resources. The Youth Soccer program was designated a prime candidate for a potential partnership. As an official partner, AZSC would receive first choice for allocation of fields during the defined "in-season", a reduced field reservation fee, reduced light use fees, and marketing support via typical Town partner resources in exchange for producing recreational youth soccer in Queen Creek.

In an attempt to solicit partners, staff created and coordinated a Request For Proposal (RFP). The purpose of the RFP was to seek a partnership with an established youth soccer league to provide a quality recreational soccer league for youth ages 4-16. The RFP focused on finding a partner who shares Town values with respect to the important aspects of a successful youth soccer league: fun, recreational philosophy, equal play, an emphasis on skill development and sportsmanship, lack of emphasis on winning; a program that is affordable and balanced. Three (3) proposals were received.

The Review committee, made up of staff from multiple departments and a member of the Parks & Recreation Advisory Committee, selected AZSC as the best candidate after a thorough review of submitters' experience producing quality youth soccer programs, qualifications, references, and financial stability.

Staff then began negotiations with AZSC to ensure the partner program would match Town youth sports philosophies and safety standards, and that Queen Creek residents were being fully served without compromise. Some key contract requirements include:

- Background checks on all designated coaches and assistant coaches
- All games are to be played in Queen Creek
  - Exception: if an age group has too few participants to create a whole league, interplay games with nearby AZSC leagues may be necessary to keep the age group from being cancelled.
- Registration shall be managed in a manner in which no Queen Creek resident is refused if registering within the allotted registration period.
- Limited special placement requests for each team, helping ensure team equality
- All volunteer board with Queen Creek representation

In the past, selection of Youth Sports Partners was made by the Parks & Recreation Advisory Committee and an agreement was created outlining the partnership. Committee members and staff desires have lead to the creation of a comprehensive contract agreement to create an opportunity for a stronger partnership. (Beginning with the upcoming youth soccer season, staff will use this template to establish contract agreements for all youth sports partners.) The new improved agreement is specific, with a goal of creating an atmosphere of mutual support and success via clearly understanding expectations.

**Fiscal Impact:**

Revenue from field and light usage for a typical soccer season is estimated at \$3,800.

**Alternative:**

The Town Council could choose not to approve the Agreement between the Town and Arizona Soccer Club. The result would be that no designated recreational youth soccer league would occur in Queen Creek this year. This would cause a reduced revenue estimate and we would see an impact on staff moving in this direction. Games may or may not be recreational or played in Queen Creek.

The Town Council could choose to modify the services outlined in the agreement.

**Attachments:**

1. Proposed agreement between the Town of Queen Creek and Arizona Soccer Club.

**TOWN OF QUEEN CREEK**  
**YOUTH SOCCER LEAGUE SERVICES CONTRACT**

This Contract is made and entered into effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2012 (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Arizona Soccer Club, an Arizona non-profit organization ("Vendor"). Town and Vendor may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

**RECITALS**

The Town wishes to enter into a contract for a partnership program for youth soccer; and  
Vendor is qualified to perform the Services; and

The Town Mayor is authorized and empowered by the Town Code to execute contracts for services.

Now therefore, in consideration of the mutual promises and obligations set forth in this Contract the Parties agree as follows:

**AGREEMENTS**

**ARTICLE 1. SCOPE OF SERVICES**

Vendor shall provide the services described in the Scope of Services attached here to as Exhibit B (the "Services"). The Services may include providing and/or installing certain Goods, as either specified on Exhibit B or as necessary to properly provide the Services ("Goods"), in which case such Goods to be provided shall be included in the Services provided under this Contract. All Services will be reviewed and approved by the Contract Administrator to determine acceptable completion. Review and approval by the Contract Administrator shall not relieve Vendor of any liability for defective, non-complying, improper, negligent or inadequate Services rendered, and/or Goods provided, pursuant to this Contract.

**ARTICLE 2. TERM OF CONTRACT**

1. This Contract shall be in full force and effect when approved by the Mayor of Queen Creek, Arizona and signed by its Mayor and Town Manager as attested by the Town Clerk.

2. The term of the Contract shall commence on the date of award and shall continue for a period of one (1) year from the date of the award, the "Initial Term". The Town has the option, in the Town's sole discretion to renew the Contract for four (4) additional one year periods, "Renewal Terms". If the Contract is renewed, the total length of the Contract shall not exceed five (5) years. Any of the one (1) year contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

### **ARTICLE 3. TERMINATION OF CONTRACT**

1. The Town has the right to terminate this Contract for cause or convenience, or to terminate any portion of the Services which have not been performed by the Vendor.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Vendor in writing, and immediately upon receipt of such notice, the Vendor shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Vendor shall immediately deliver to the Town any and all documents or work product generated by the Vendor under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Vendor shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

### **ARTICLE 4. ALTERATIONS OR ADDITIONAL SERVICES**

The entire Scope of Services to be performed in accordance with this Contract is set forth in Exhibit B. Services and Goods which are not included or necessary to providing the Services set forth in Exhibit B will be considered Additional Services, only if approved in writing by the Contract Administrator prior to their performance. The Vendor shall not perform such Additional Services without prior written authorization in the form of an approved written change order or contract amendment from the Town. In the event the Vendor performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services.

### **ARTICLE 5. ASSIGNMENT AND SUBCONTRACTING**

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Vendor may engage such subvendors as Vendor may deem necessary or desirable for the timely and successful completion of this Contract. However, the use of such subvendors for the performance of any part of the Services specified in Exhibit B shall be subject to the prior written approval of the Town. Vendor will submit a complete list of subvendors on Exhibit E and will update the information on the list during the term of the Contract, should the status or identity of said subvendors change. The Vendor shall be responsible for and shall warrant all Services including work delegated to such subvendors.

## **ARTICLE 6. COMPLETENESS AND ACCURACY**

The Vendor shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all Services performed pursuant to the Contract including, but not limited to the Services, and any the reports, surveys, plans, supporting data and/or other documents prepared or compiled pursuant to Vendor's obligations under this Contract and shall correct at Vendor's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Vendor's Services shall in no way relieve the Vendor of any of Vendor's responsibilities hereunder.

## **ARTICLE 7. OWNERSHIP OF DOCUMENTS**

All documents including but not limited to data computation, studies, reports, notes, drawings, or other documents, which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator upon termination of this Contract for any reason. To the extent any such documents are deemed to be the property of Vendor, Vendor hereby assigns all of Vendor's right, title and interest (including any applicable copyright) in such documents and Work Product to the Town.

## **ARTICLE 8. INDEMNIFICATION**

1. To the fullest extent permitted by law, the Vendor shall defend, indemnify, save and hold harmless the Town and its officials, officers, employees and agents (collectively "Indemnitees") from and against any and all damages, claims, losses, liabilities, actions or expenses (including, but not limited to, attorneys' fees, court costs, and the cost of appellate proceedings) (collectively, "Claims") relating to, arising out of or alleged to have resulted from the performance of Services pursuant to this Contract including, but not limited to, any such performance by any subvendor. The Vendor's duty to defend, hold harmless and indemnify Indemnitees pursuant to this section shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, including death, or to injury to, impairment, or destruction of property including loss of use resulting therefrom, caused in whole or in part by the acts, errors, mistakes, omissions, work or services of the Vendor or anyone for whose acts the Vendor may be legally liable. It is the specific intention of the Parties that the Indemnitees shall be indemnified by Vendor from and against all Claims other than those arising from the Indemnitees' sole negligence. The Vendor will be responsible for primary loss investigation and defense and judgment costs where this Indemnification applies.

2. In the event that any action or proceeding shall at any time be brought against any of the Indemnitees by reason of any Claim referred to in this Article, the Vendor, at Vendor's sole cost and upon at least 10 day's written notice from Town, shall defend the same with counsel acceptable to Town, in Town's sole discretion.

3. The Vendor's obligations under this Article shall survive the expiration or earlier termination of this Contract.

4. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

#### **ARTICLE 9. INSURANCE**

Vendor shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit A.

#### **ARTICLE 10. WARRANTIES**

1. The Vendor shall be responsible for and shall and hereby does warrant that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed (where applicable) workers and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statues and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Vendor's warranties running in favor of the Town under this Contract.

2. Immediately upon notice from the Contract Administrator thereof, Vendor shall correct or replace as required by the Contract Administrator, at Vendor's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services and/or Goods provided under this Contract. The Town's acceptance or approval of the Services and/or Goods shall in no way relieve the Vendor of any of Vendor's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, the Vendor's or manufacturers' written warranties, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services and/or Goods.

#### **ARTICLE 11. ADDITIONAL DISCLOSURES BY VENDOR**

1. The Vendor shall reveal fully and in writing any financial or compensatory agreements which the Vendor has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Vendor hereby warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Vendor, to solicit or secure this contract, and that the Vendor has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Vendor any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Vendor shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

**ARTICLE 12. CONTRACT ADMINISTRATOR**

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

**ARTICLE 13. NOTICE**

All notices or demands required to be given, pursuant to the terms of this Contract, shall be given to the other Party in writing, delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town:                    John Kross, Town Manager  
                             22358 South Ellsworth Road  
                             Queen Creek, AZ 85142  
                             Facsimile: (480) 358-3189

With a copy to:        MARISCAL, WEEKS, MCINTYRE & FRIEDLANDER, P.A.  
                             2901 North Central Avenue, Suite 200  
                             Phoenix, Arizona 85012  
                             Att'n: Fredda J. Bisman, Esq.  
                             Facsimile: (602) 285-5100

Vendor:                Arizona Soccer Club  
                             116 South Gilbert Road  
                             Gilbert, Arizona 85296  
                             Att'n: Mike Briseno  
                             Facsimile: (480) 214-4789

With a copy to:        \_\_\_\_\_  
                             \_\_\_\_\_  
                             \_\_\_\_\_  
                             Facsimile: (    ) \_\_\_\_\_

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by facsimile transmission shall also be sent by regular mail to the recipient at the above address.

This requirement for duplicate notice is not intended to change the effective date of the notice sent by facsimile transmission. E-mail is not an acceptable means for meeting the requirements of this section unless otherwise agreed in writing.

## **ARTICLE 14. GENERAL PROVISIONS**

A. **RECORDS AND AUDIT RIGHTS.** Vendor's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the Services, and any invoices, change orders, payments, or claims submitted by the Vendor or any of his payees related to or arising out of the Contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Vendor's records and personnel throughout the term of this Contract and for a period of three (3) years after.

B. **INCORPORATION OF RECITALS AND EXHIBITS.** The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

C. **ATTORNEYS' FEES.** In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or an account of any breach or default hereof, the prevailing Party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses (including expert witness fees), determined by the arbitrator or court sitting without a jury, which fees shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

D. **ENTIRE AGREEMENT.** This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

E. **GOVERNING LAW.** This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

F. **INDEPENDENT CONTRACTOR.** The services Vendor provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Vendor shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide her/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

G. **TAXES.** Vendor shall be solely responsible for any and all tax obligations which may result out of the Vendors performance of this contract. The Town shall have no obligation to pay any amounts for taxes, of any type, incurred by the Vendor. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Vendor acknowledges that Vendor may be subject to I.R.S. provisions for payment of estimated income tax. Vendor is responsible for consulting the local I.R.S. office for current information on

estimated tax requirements. Sales tax for Goods received by the Town in relation to this Contract shall be indicated as a separate item on any notice of amount due.

H. AMENDMENTS. Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

I. COMPLIANCE WITH LAW. The Vendor specifically agrees and hereby warrants to the Town that in the performance of the Services, Vendor and anyone acting on Vendor's behalf, including but not limited to Vendor's subvendors, will comply with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

J. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

K. WAIVER. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party. None of the provisions of this Contract shall be deemed to have been waived by any act or knowledge of any Party or its agents or employees, but only by a specific written waiver signed by an authorized officer of such Party and delivered to the other Party.

L. COUNTERPARTS. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

M. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Vendor warrants to the Town that the Vendor and all its subvendors are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A). Vendor acknowledges that a breach of this warranty by the Vendor or any of its subvendors is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Vendor or any subvendor who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Vendor and any of its subvendors to ensure compliance with this warranty.

The Town will not consider Vendor or any of its subvendors in material breach of the foregoing warranty if Vendor and its subvendors establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Vendor enters into with any and all of its subvendors who provide services under this Contract or any subcontract. As used in this Section M "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

N. PROHIBITION OF DOING BUSINESS WITH SUDAN AND IRAN. Pursuant to A.R.S. §§35-391.06 and 35-393.06, Vendor hereby certifies to the Town that Vendor does not have "scrutinized" business operations, as defined in A.R.S. §§35-391 and 35-393, in either Sudan or Iran. Vendor acknowledges that, in the event either of the certifications to the Town by Vendor contained in this paragraph is determined by the Town to be false, the Town may terminate this Contract and exercise other remedies as provided by law, in accordance with A.R.S. §§35-391.06 and 35-393.06.

O. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a Vendor to any other party to the contract with respect the subject matter of the contract.

P. LICENSES. Vendor shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Vendor and the services to be performed under the resultant contract.

Q. PERMITS AND RESPONSIBILITIES. Vendor shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work, including those designated in Exhibit D.

R. LIENS. Vendor shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Vendor shall deliver appropriate written releases, in statutory form of all liens to the Town.

S. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Vendor or any other person except with the prior written permission of the Town.

T. WORKPLACE COMPLIANCE. Vendor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989.

U. KEY PERSONNEL. The Vendor agrees to utilize only experienced, responsible and capable employees in the performance of the Services. Town may require that the Vendor remove from providing Services pursuant to this Contract, employees or agents who endanger person or property or whose continued employment under this Contract is, in the sole opinion of Town, not justified due to unacceptable performance of duties, or is inconsistent with the interests of Town. Those individuals determined by Town to be key personnel required for the

success of this Contract shall not be removed from this Contract without prior notice to Town. In the event that any of the key personnel of the Vendor identified in Exhibit C becomes unavailable, the Vendor will notify Town and substitute other personnel to ensure proper performance and continuity.

V. TOWN APPROVAL OF CONCESSION AND PROMOTIONAL MATERIALS. The Town reserves the right to review and approve all logos, promotional material, promotional campaigns, product placement and appearance and any and all other materials that represent the Vendor's efforts to publicize and/or promote the rights and benefits granted to it under this Contract. The Town may reject any logos, promotional materials, promotional campaigns, product placement and appearances, and any and all other materials which would in the Town's sole opinion, violate the letter and/or spirit of Town's administrative regulations. No Vendor, or subvendor, may use the rights and benefits under this Contract to, in any way promote tobacco products, alcohol, medical marijuana, gambling, sexually related products or services, the sales or manufacturing of firearms or weapons, political or religious beliefs or organizations, businesses that are subject to regulation or monitoring by local, state or federal law enforcement agencies for regulatory compliance, or products or services that are contrary to the interests of the public health, safety or welfare. The Town shall have the sole and exclusive right to determine whether the Vendor has violated this provision and if the Town determines that Vendor has violated the provision, the Town may immediately terminate this Agreement in accordance with the provisions of this Section.

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In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract effective on the date first written above.

TOWN OF QUEEN CREEK:

Approval of Town Council:

Approval of Contract Administrator:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
John Kross, Town Manager

ATTEST:

\_\_\_\_\_  
Jennifer Robinson, Town Clerk

REVIEWED AS TO FORM:

\_\_\_\_\_  
Mariscal, Weeks, McIntyre & Friedlander, P.A.  
Town Attorneys

**VENDOR:**

\_\_\_\_\_  
Mike Briseno, Club President  
Arizona Soccer Club

**EXHIBIT A**  
**INSURANCE**

1. **Insurance Certificate:** The Town requires a complete and valid certificate of insurance prior to the award of any contract. Vendor shall submit a copy of the insurance certificate for coverage with minimum amounts stated below. The coverage shall be maintained in full force and effect during the term of the Contract and shall not serve to limit any liabilities or any other Vendor obligations. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the Town, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer.

2. **Deductible:** The amount of any deductible shall be stated on the face of the certificate. The Contract Administrator may require Vendor to furnish a financial statement establishing the ability of Vendor to fund the deductible. If in the sole judgment of the Contract Administrator the financial statement does not establish Vendor's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his/her sole discretion, terminate this Contract and the Town will have no further obligation to Vendor.

3. **General Liability:** Vendor shall secure and maintain, at his or her own expense, until completion of the contract, general liability as shall protect Vendor and the Town from claims for bodily injury, personal injury, and property damage which may arise because of the Goods and Services provided under this contract. Vendor shall provide general liability and excess general liability coverage in the following amounts, at a minimum:

- i. **Projects less than \$1,000,000:** Vendor shall have total limits of insurance to include primary and excess coverage in an amount not less than \$2,000,000. For example, coverage may include \$1,000,000 primary and \$1,000,000 excess, \$2,000,000 primary, or other equivalent combinations.
- ii. **Projects greater than \$1,000,000:** Vendor shall provide total limits of insurance to include primary and excess coverage in an amount of not less than \$5,000,000. For example, coverage may include \$1,000,000 primary and \$4,000,000 excess, \$2,000,000 primary and \$3,000,000 excess, or other equivalent combinations.

4. **Automobile Liability:** Vendor shall secure, and maintain at his or her own expense, until the completion of the Contract, coverage for any auto, including non-owned and hired autos, with a combined single limit of \$1,000,000 per occurrence. The Town shall be named as an Additional Insured.

5. **Worker's Compensation Insurance:** Before beginning work, Vendor shall furnish to the Town satisfactory proof that he or she has, for the period covered under the Contract, full Worker's Compensation coverage for all persons whom Vendor may employ directly, or indirectly, and shall hold the Town free and harmless for all personal injuries of

all persons whom Vendor may employ directly or indirectly.

6. **Additional Insured:** Vendor shall name the Town of Queen Creek as an “Additional Insured” on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate of Insurance.

7. **Rating of Insurance Company(ies):** Any and all insurance company(ies) supplying coverage to Vendor must have no less than an “A” rating in accordance with the A.M. Best rating guide.

8. **Waiver:** The Town Manager, in consultation with the Risk Manager and/or Town Attorney, reserves the right to waive, reduce, or increase insurance requirements should it be in the best interest of the Town.

9. **Additional Insurance Requirements:** The Vendor is primarily responsible for the risk management of its Services under this Contract, including but not limited to obtaining and maintaining the required insurance and establishing and maintaining a reasonable risk control and safety program. Town reserves the right to amend the requirements herein at any time during the Contract subject to at least 30 days written notice. The Vendor shall require any and all subvendors to maintain insurance as required herein naming Town and Vendor as “Additional Insured” on all insurance policies, except Worker’s Compensation, and this shall be reflected on the Certificate of Insurance. The Vendor’s insurance coverage shall be primary insurance with respect to all other available sources. Coverage provided by the Vendor shall not be limited to the liability assumed under the Indemnification provision of this Contract. To the extent permitted by law, Vendor waives all rights of subrogation or similar rights against Town, its representatives, agents, and employees.

## **EXHIBIT B**

### **SCOPE OF SERVICES**

1. **Purpose:** The Town of Queen Creek is seeking a partnership with an established youth soccer league to provide a quality recreational soccer league for youth ages 4-16. The Town's partnership program is designed to help ensure Queen Creek residents have the opportunity to participate in recreation programming in Town and close to home. Town support includes allocated field space for the dedicated season and discounted light and field fees. The selected organization shall have the capacity and proven experience to provide a well organized and successful program. The services shall include planning, organization, and implementation of a recreational youth soccer program.

In creating the design of the Youth Soccer Program, the Town is requiring the vendor to comply with following elements:

- Queen Creek residents must comprise at least forty percent of total league participants.
- Serve youth ages 4-16. Vendor shall determine age groupings based on ages where skill development is relatively equal.
- Serve Queen Creek residents. Vendor shall manage registration in a manner in which no Queen Creek resident is refused if registering within the allotted registration period. Overall registration numbers shall not be limited during allotted registration period.
- Produce a recreational youth soccer league.
  - League focus shall be fun, participation, skill development, and sportsmanship over winning.
  - League shall have equal playing time policies ensuring all participants play at least half of each game.
  - League shall form teams randomly using neighborhoods or local schools as the basis for team formation. Parent requests shall constitute no more than fifty percent of any given team in the first year of operation. If Vendor continues as a Town partner beyond the first year, parent requests shall be reduced to no more than twenty-five percent of any given team, with a goal of reducing to zero percent within four years.
- Games are to be held within the Town of Queen Creek boundaries. Sufficient field space for all Queen Creek league games is available within Town boundaries. If Vendor wishes to schedule interleague games with nearby leagues due to low registration numbers in a specific age group, written permission from the Contract Administrator is required.

- Vendor shall provide all financial records and documents pertaining to the Queen Creek league to the Town of Queen Creek within seven days of request.
- Background Checks:
  - Background checks shall be completed on one hundred percent of coaches and assistant coaches through *Backgroundcheck.com*.
  - Background checks shall be completed and reviewed prior to coaches' interactions with participants.
  - Vendor shall provide confirmation that background checks were completed on all coaches prior to the start of the season. Results of successfully completed background checks must be acceptable to the Town upon review.
  - Vendor shall submit its written policy on handling background checks returned with negative results within thirty days of contract signing.
- Vendor shall be responsible for the conduct and involvement of all staff, volunteers, referees, board members, etc that are contributors in any manner to the Town of Queen Creek youth soccer league.
- Vendor shall have an all-volunteer board in existence with roles and duties assigned. The Town of Queen Creek youth soccer league shall abide by the existing bylaws of the vendor's board.
- Scholarship Program:
  - Vendor shall submit a written scholarship program to help economically disadvantaged families within thirty days of contract signing.

2. **Town Contact Information:**

Contact Information during office hours (Mon-Thur 8am-7pm; Fri 8am-3pm)

Please use this order when calling for an issue:

**Library Recreation Annex      480-358-3700**

Marianne Fulton      Senior Admin Assistant  
 480-358-3702 – Office  
[marianne.fulton@queencreek.org](mailto:marianne.fulton@queencreek.org)

Tony Baumann      Recreation Coordinator  
 480-358-3709 – Office  
[anthony.baumann@queencreek.org](mailto:anthony.baumann@queencreek.org)

Adam Robinson                      Recreation Superintendent  
480-358-3715 – Office  
[adam.robinson@queencreek.org](mailto:adam.robinson@queencreek.org)

Marnie Schubert                      Public Information Officer  
480-358-3196 - Office  
480-797-8691 - Cell  
[marnie.schubert@queencreek.org](mailto:marnie.schubert@queencreek.org)

Contact Information after office hours (Mon-Fri 3-10pm; Sat-Sun 1-10pm)

Park Ranger On-Call                      480-358-3770

3. **Coordination Timeline:** The following timeline is a tentative plan for the 2012-2013 implementation of the partnership for youth soccer between the Town and the Vendor and shall apply to any Renewal Terms, unless otherwise modified by mutual agreement of the parties:

October 15                      Field allocation request due (field requests for try-outs, practices, league play, post tournament play, and opening ceremonies - please indicate anticipated start and end times in terms of dates and operational hours). Requests for concession stands including days, times, locations, and list of items for sale.

Within 10 days  
of contract signing                      League Information

- League Boundaries
- Existing League Bylaws or Certificate of Charter
- League Rules (2012 rule book)
- 501 C-3 Status Confirmations
- Board Members' names, titles, addresses, roles and responsibilities.
- Name, address, phone number of organization used for background checks.
- Division names and age groups
- Estimated number of teams
- Number roster participants for each division
- Number of games played for each division
- Estimated league fee
- Information regarding scholarships
- Field information for each division including field sizes
- Storage space needs for field equipment, such as chalk, rakes, etc.

Sept 20	Opening Day packet should be finalized including field layout plan, list of activities, list of food Vendors, and Health Certificate from Maricopa County
Oct 4	Concession Stand, fields usage and gate keys will be released
Nov 1-12	Light Codes will be issued to organizations
Nov	MC Health Department will be notified by Town of Vendor's intent to use concession stands.
Dec (2 <sup>nd</sup> Saturday)	Officer of the Day information is due (date, location/park, name and phone number)
Dec (1 <sup>st</sup> Saturday)	Coaches' background check confirmations are due to the Town
Dec (2 <sup>nd</sup> Saturday)	First day of official soccer season
Jan 12	Rosters are due to the Town
Feb 16	NO FIELD USE – TOWN SPECIAL EVENT DAY
Feb 23	Distribute RnB promo materials to all teams
Mar 14	Light Codes will be disconnected
April 17	Submit in the closeout paperwork
April 24	Closeout Meeting – Town and Vendor (including Vendor's entire board) review the past season; develop written report listing positives, deltas, improvements, ideas for the new year. All final payments to Town are due for the use of facilities.

These time periods apply to any Renewal Term.

**4. Fees:**

- a. The Town shall provide the following services to the Vendor at the rates shown below:
  - i. Field and Lights  
During "In-Season" time, defined as the second Saturday in December through the second Saturday in March, the fees are as follows:

Fields	
Desert Mountain Park MPF East	\$7 per hour
Desert Mountain Park MPF West	\$7 per hour
Founders' Park MPF	\$7 per hour

Lights	
Per field as listed above	\$15 per hour

ii. Field Maintenance

Normal soccer use of Town fields is included in the discounted rental fees, however, extraordinary wear and tear (ex – holes in turf, graffiti, broken equipment, etc) will be invoiced to Vendor. Immediate and thorough communication of any damage will help reduce the impact and cost to Vendor.

Repairs are invoiced at cost for equipment and supplies; and overtime rate for staff hours.

b. The Vendor shall be responsible for adhering to the following:

i. Facility Fees (includes Desert Mountain Park and Founders' Park)

Due at the beginning of each season, the Facility Fees collected help purchase materials such as, but not limited to, soap for the restrooms, trash liners, toilet paper, disinfectant, and turf supplies directly related to Vendor use of the facilities. Facility fee is due to the Town of Queen Creek on November 15, 2012, or not later than November 15<sup>th</sup> of any Renewal Term.

Facility Fees (2012-13 Youth Soccer Season)	\$475 per season
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ii. Concession Stands

Use of the concession stand is free as part of the partnership, however, Vendor must pay its share of the Maricopa County Health Department Use Permit in order to use the Concession Stand the second Saturday in December through the second Saturday in March. This applies only to the concession stand located at the Desert Mountain Park Multi-Purpose Fields.

Concession Stand Health Permit Fee	\$130
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iii. Payment of Fees

Field and light rental fees will be billed within ten days of the end of the season. Payment is due within 20 days of receipt of invoice.

Payment of any and all fees may be made in the form of credit card, check, or money order.

**5. Concessions:** Vendor may choose whether or not to use the Concession Stand building during the youth soccer season.

- a. The Vendor shall be responsible for adhering to the following:
  - i. If Vendor chooses not to use the Concession Stand building, concessions can operate as standalone booths at both parks with proper County Health permits. All food operations must obtain written permission from the Town to operate as an extension of Vendor and submit a completed permit from Maricopa County Health Services prior to service.
  - ii. The concession stands will be open at the discretion of Vendor. The concession stand may open the second Saturday of December and must close by the second Saturday of March.
  - iii. All assigned keys must be returned to the Recreation Services division at the Closeout Meeting.
  - iv. Approval from, and compliance with, Maricopa County Health Department and all of their regulations is mandatory. County requirements are the minimum standards. Town policies and requirements take precedence over and above County requirements.
  - v. Vendors or Concessionaires are responsible for breaking down all cardboard boxes and bagging them in trash bags for disposal. Boxes shall not be left in trash cans or piled outside concession stand areas.
  - vi. The sale of any items on Town property without authorization is prohibited by Town ordinance.
  - vii. Ice for the concession stands is the responsibility of Vendor.
  - viii. There should be no money left in the concession stand overnight.
  - ix. Certain items will not be sold at the concession stand, including, but not limited to the following: Any type of seeds, Slurpees™ or Icees™.
  - x. All receipts for the concession stand will be accounted for at the end of the season (this includes staff, food, etc.).
  - xi. All staff, volunteers or Vendor representatives/individuals that are inside the concession stand must have a food handler's card in their possession at all times.
  - xii. Vendor will clean the concession stand inside at the end of each night and at the end of the season (second Saturday of March). This includes all appliances, floors, walls, refrigerator and items within.
  - xiii. Cleanliness of the concession stands - The Town of Queen Creek will due random site checks throughout the season. If the concession

stand is not kept up to the standards of the Town, Vendor will be billed accordingly.

- xiv. The Pepsi machine inside the concession stands is the responsibility of the Little League Heat organization. The Pepsi machine is the Little League responsibility to maintain, take care and restock at their convenience. The Town is not responsible for any damage or maintenance to the machine. Vendor may request permission to use if desired.
- b. The Town shall be responsible for providing the following:
  - i. The concession stand permit at Desert Mountain Park will be obtained by Town of Queen Creek Staff. The permit will then be billed to Vendor. The permit fee is \$130 as described in Section D under *Fees*.
  - ii. One (1) Set of keys for the concession stand at Desert Mountain Park will be checked out to the Vendor no earlier than December 7. Duplication of keys is prohibited. Any additional keys needed must be requested in writing and submitted to the Recreation Services Division ten (10) working days prior to the date of possession.
  - iii. The Town of Queen Creek is not responsible for lost, stolen, or damaged items in concession stands.
- 6. **Trash:** The amount of trash accumulated by a youth sports league during a typical game/practice date is a lot more than a park's normal use.
  - a. Vendor will be responsible for trash produced at the park sites and shall adhere to the following:
    - i. The area must be left in an acceptable condition, clean and litter free. Please use garbage receptacles provided. Vendor shall empty all trash cans which are seventy five percent or more full.
    - ii. Vendor is responsible for cleaning the facilities every day/night during practices and games. The process is as follows:
    - iii. Desert Mountain Park:
      - a) Vendor will put all the trash (clean pile of **closed** trash bags) in a pile against the north-facing wall of the maintenance shop (located near the south east corner of the park) next to the gate which accesses the dumpster.

- iv. Founders' Park:
  - a) Vendor will put all the trash (**closed** trash bags) in the dumpster located in the south east corner of the facility.
  - v. Staffing for cleanup at the sites will be taken care of by Vendor. If the sites are not cleaned, Vendor will be billed \$20 per hour to clean up the facility the next morning.
  - vi. Vendor shall keep restroom areas (inside and outside of Men's and Women's) picked up and free of trash, debris or any other object not belonging in and around the restroom facility.
- b. Town responsibility includes Grounds Maintenance staff or Park Ranger staff picking-up garbage bags and placing them into the dumpster at Desert Mountain Park.

**7. Use of Fields/Parks:**

- a. The Town shall provide the following field allocations to the Vendor. The Town shall also adhere to the following:
  - i. "In-Season" Field Use

The youth soccer "in-season" is defined as beginning the second Saturday in December and ending the second Saturday in March. As an official Town partner, Vendor gets first allocation of fields during "in-season". For any out of season use, Vendor will follow regular rental procedures and pay regular rental rates.
  - ii. The following fields may be used for Vendor league games and practices:
    - Desert Mountain Park Multipurpose Field (2 available)  
22201 S. Hawes Road  
(Ocotillo and Hawes Roads)
    - Founders' Park Multipurpose Field  
22407 S. Ellsworth Rd  
(Ellsworth Rd ¼ south of Ocotillo)
  - iii. Town of Queen Creek park facilities are available to official Town partners Monday through Friday 5 p.m. to 10 p.m. and Saturdays 7 a.m. – 10 p.m.
  - iv. The Town reserves the right to close fields/facilities for maintenance as it deems necessary.

- v. The Town of Queen Creek is not responsible for lost, stolen, or damaged items in designated storage areas.
- b. The Vendor shall adhere to the following:
  - i. Schedule Changes / Cancellations  
It is the responsibility of each group to contact the Recreation Services Division in a timely manner (at least 24 hours in advance) to communicate any cancellations or changes in schedules.
  - ii. Field Conditions
    - a) Fields should be inspected prior to beginning play. Any damage or safety-related concerns should be noted. Report maintenance issues to the Recreation Services Division or Park Ranger (480-358-3770).
    - b) Vendor is responsible for monitoring weather conditions and evacuating playing fields of participants and spectators when the threat of lightning or dangerous conditions is imminent.
    - c) Vendor will cancel games when field or playing conditions could cause harm or damage to participants or to the facilities. Any damages caused to field facilities are subject to a monetary fine and park closure for repairs.
    - d) For weather issues prior to games/practices – User groups are expected to call the Queen Creek Recreation Services Division Administrative Office ( 480-358-3700) between 3 - 7 p.m. (Monday through Thursday) or between 1 – 3 p.m. (Fridays). The Recreation Division will contact the league presidents to notify of any cancellations outside of the weather. After 4 p.m. the Park Ranger may be contacted. Park personnel have final decision on determination of playable fields.
    - e) If Vendor or spectators utilize pop-ups on any the facilities that they are utilizing, they are responsible for any damage the pop-ups may occur and will be billed accordingly. Vendor and spectators should not be using stakes to hold their tents/canopies in the ground. This may cause problems to the irrigation system.
  - iii. Field Preparation
    - a) Vendor will paint the fields to their specifications. Only paint approved by the Contract Administrator may be used.
    - b) Any special requests for field prep must be submitted at least seven (7) days in advance.
    - c) All requests for field preparations, facility maintenance issues, or

complaints must be communicated to the Recreation Services Division in writing, who will then communicate with appropriate Town maintenance personnel.

iv. General Information

- a) Reporting: Any maintenance issues or general complaints are to be communicated to the Recreation Services Division in writing immediately.
- b) Individual calls by coaches regarding field maintenance requests will not be granted. All requests must be from the League President or designee.
- c) Emergency Matters, such as damages, water leaks, or any other issues deemed an emergency by Vendor should be immediately communicated to the Park Ranger on-call, or any other person on the Town's Personnel Contact Information List.
- d) Banners: Vendor is responsible for installing, securing and removing banners at both park sites. Vendor shall not alter any facility (such as drilling holes, installing anything permanent) or pound stakes into the ground without **written permission** from the Contract Administrator or designee.
- e) Banners for Registration: See *Marketing/Media* section.
- f) Use of valve boxes by youth sport organizations and their volunteers, parents, spectators at any site is prohibited.

v. Storage Areas

- a) Desert Mountain Park: A storage area for use by Vendor during "in-season" is available during "in-season". The storage area is located next to a cell phone tower to the south and east of the multipurpose field. Vendor is responsible for providing its own lock and keys to this storage. Vendor shall have the storage area completely emptied by the end of "in-season".
- b) If the storage area is not completely emptied by the end of "in-season", the Vendor will lose their storage use privileges for the following season.
- c) Founders' Park: There is no storage available.

vi. Parking

All parking shall be in designated parking lots only. No vehicles shall drive and/or park on turf areas at any time. Fire Lanes shall remain

open and accessible at all times. There shall be NO parking by Vendor staff, volunteers, and/or participants in the equestrian parking area at Desert Mountain Park.

8. **Marketing/Media:**

a. The Vendor shall adhere to the following:

i. Communicating Issues to the Town

If a problem or issue Vendor is having arises and is not remedied satisfactorily, please use the following chain-of-command to formally register the issue in writing:

- Tony Baumann, Recreation Specialist, 480-358-3709  
[anthony.baumann@queencreek.org](mailto:anthony.baumann@queencreek.org)
- Adam Robinson, Recreation Superintendent, 480-358-3715  
[adam.robinson@queencreek.org](mailto:adam.robinson@queencreek.org)
- Debbie Gomez, Special Projects Manager, 480-358-3706  
[debbie.gomez@queencreek.org](mailto:debbie.gomez@queencreek.org)
- Patrick Flynn, Assistant Town Manager, 480-358-3504  
[patrick.flynn@queencreek.org](mailto:patrick.flynn@queencreek.org)

ii. Media coverage

Anytime the media or marketing organizations (newspaper, magazines, etc.) come out to the facility, Town staff needs to be notified immediately. The primary contact person is Tony Baumann (cell) 516-476-9778. Secondary contact person is Adam Robinson (cell) 623-680-8088.

iii. Marketing costs

Any costs associated with marketing materials for the program shall be borne by the Vendor.

iv. Vendor Marketing Tools Available

There are multiple ways the Town is able to help market partners' programs. The Town's many outlets are highly valuable as their reach is unmatched by typical promotional activities. Please be cautious to meet all deadlines and specifications in order to fully realize the positive impact of Town resources.

- a) Coroplast sign locations: There are locations for four 6'w X 4'h and two 4'w X 4'h. If Vendor chooses to take advantage of this opportunity, they will need to contact Adam Robinson at 480-358-3715 (backup: Marnie Schubert at 480-358-3196) to schedule dates. Signs stay up for two weeks at a time; based on availability.

Sign locations are spread throughout QC. For further details, contact Adam Robinson.

- b) Press Releases: Submit completed (and edited) press releases to Tony Baumann at [anthony.baumann@queencreek.org](mailto:anthony.baumann@queencreek.org) with a Cc to Adam Robinson at [adam.robinson@queencreek.org](mailto:adam.robinson@queencreek.org) and Marnie Schubert at [marnie.schubert@queencreek.org](mailto:marnie.schubert@queencreek.org). Press releases should be submitted at least two weeks prior to release date.
  - c) Town Calendar: Submit milestone dates such as registration beginning and ending, start of games, picture day, etc to Adam Robinson at [adam.robinson@queencreek.org](mailto:adam.robinson@queencreek.org) (backup: [marnie.schubert@queencreek.org](mailto:marnie.schubert@queencreek.org)).
  - d) Town's website: Vendor will be featured as the "Official Youth Soccer Partner" of the Town. Vendor logo and contact information will be featured (logo linked to Vendor web page).
  - e) Physical locations: Vendor can submit (deliver to the Library Recreation Annex) flyers/posters/registration forms to be displayed at the following locations:
    - 1) Library Recreation Annex
    - 2) Municipal Services Building Lobby
    - 3) Boys & Girls Club – QC Branch
    - 4) QC Library Lobby
    - 5) Youth & Teen Center
  - f) Other: Vendor may be offered to participate in special events throughout the year. For example, Vendor may be able to have a booth at the Town's Trunk or Treat event to promote its upcoming season.
  - g) Vendor must distribute Town of Queen Creek program brochure and special event flyers to all participants.
- v. Marketing for the Town  
Vendor shall include the Town logo on all Queen Creek league related materials, banners, posters and signage. Vendor shall include the Town logo on Vendor's web page. The web page logo shall link to [www.queencreek.org](http://www.queencreek.org). All materials created and presented as representative of the Town must be approved by the Town prior to use or display.

10. **General Town Guidelines:**

- a. Vendor shall ensure total compliance with the following:
  - i. Board Member, league representative or designee by youth sport organization must be present at all times on any Town site being utilized

by organizations during game times to provide supervision of activity at all areas assigned. Vendor should verbally communicate with participants and spectators to ensure park regulations are followed.

- ii. Parents are responsible for supervising their children at all times.
- iii. Participants and spectators are to remain off fields that are not scheduled for use.
- iv. Sports facility areas must be left clean and free of litter.
- v. Gators, golf carts, and similar type vehicles shall only be driven by licensed drivers, and driven in a safe manner at all times.
- vi. Maintenance equipment is not for participant use.
- vii. Teams must remain in designated areas.
- viii. No digging or destroying turf. Players found destroying turf will be ejected from facility and could be suspended from further league/tournament play. This will be enforced by Vendor and the Town staff.
- ix. Disturbing of landscape materials is prohibited. (i.e., stripping tree bark, rock throwing, etc.)
- x. Park Rules within the parks shall be followed at all times.
- xi. Good sportsmanship is expected and is the responsibility of the youth sport organizations.
- xii. No alcohol is allowed in any Town park. Alcohol is prohibited per Town of Queen Creek Code. The rule includes both players and spectators and extends to adjacent locations beyond the field and spectator areas.
- xiii. Driving vehicles (excluding gators, golf carts, and similar type vehicles) on turf areas, sidewalks, service driveways, front gate entrance, or emergency zones while using sports facilities at parks is prohibited unless permission from Town staff is given.
- xiv. Glass containers of any kind are prohibited in all park areas.
- xv. Vehicles must use parking lots as available and parking regulations must be followed at all times.
- xvi. A separate permit for the sale of food and/or souvenir items is required.
- xvii. All leagues are responsible for having a league representative on-site during each day/night (one representative for all fields simultaneously).

- xviii. In the interest of maintaining positive community relations as well as in the best interest of the participants, all games must end no later than 10 p.m.
- xix. Lights will be turned off at all facilities by 10:30 p.m. unless a written letter of exception is received by the Recreation Specialist or its designee.
- xx. Users are responsible for providing all safety equipment, including all first aid supplies. Please ensure your league has adequate first-aid supplies on hand at all times.
- xxi. There shall be no additions, alterations, improvements or upgrades upon any Town facilities.
- xxii. No tobacco is allowed in any park.
- xxiii. If porta-johns are approved for use, they must be secured, locked, and serviced regularly.
- xxiv. The responsible party in charge of activities shall provide facility supplies.
- xxv. Vehicles shall **NOT** be driven or parked on outdoor basketball courts, athletic fields, grass areas, playgrounds, or sidewalks at any time.
- xxvi. All leagues/groups shall be responsible for cleaning the sites.
- xxvii. It shall be the responsibility of the user group to supply dumpsters as necessary for the type of activity or upon the request of the Town.
- xxviii. The cost to repair damage to the park or clean-up of vandalism to the Park during the hours of the Vendor practices and games will be charged to Vendor at the end of the season.
- xxix. Vendor will have lock boxes on the main gate to get into the ball park.
- xxx. Third party solicitations of any kind will need to be brought to the Town's attention to get approval.

## **EXHIBIT C**

### **Arizona Soccer Club – Key Personnel**

For any issues associated with the operation of the league and field maintenance related issues please contact:

Chris Hill

Arizona Soccer Club  
Director of Recreation Programs  
Cell: 480-254-0498  
[chrish@arizonasoccerclub.com](mailto:chrish@arizonasoccerclub.com)

Davey Lopez

Arizona Soccer Club  
Director of Recreational Programs – Soccer  
Cell: 602-561-7959  
[Davey.Lopez@arizonasoccerclub.com](mailto:Davey.Lopez@arizonasoccerclub.com)

Mike Briseno

Arizona Soccer Club  
Club President  
Cell: 480-612-7558  
[Mike@arizonasoccerclub.com](mailto:Mike@arizonasoccerclub.com)



Parks and Recreation

## **Queen Creek Parks and Trails**

### **Town of Queen Creek Public Park Regulations**

1. Trash Must Be Placed in Proper Receptacles.
2. No Glass Containers Allowed.
3. No Liquor Allowed in Parks, Parking Lots, Retention Basins or Washes.
4. Dogs Must Be On A Leash At All Times and Must Be Cleaned Up After.
5. No Golfing Allowed.
6. No Advertising or Solicitation of Goods or Services Except By Permit Only.
7. No Motorized Vehicles Allowed in Parks, Retention Basins or Washes Except on Designated Roadways.
8. No Vandalization or Removal of Park, Retention Basins or Wash Improvements or Natural Resources.
9. No Firearms Allowed in Parks, Retention Basins or Washes.
10. To Reserve Park Space Contact Queen Creek Parks and Recreation.

Violators Will Be Prosecuted.

Maximum Fine of \$2500 and/or Imprisonment up to 6 Months



Requesting Department:  
Real Estate

TAB C

**TO:** HONORABLE MAYOR AND TOWN COUNCIL

**THROUGH:** JOHN KROSS, AICP  
TOWN MANAGER

**FROM:** PATRICK FLYNN, ASSISTANT TOWN MANAGER  
SANDRA MCGEORGE, MANAGEMENT ASSISTANT II

**RE:** CONSIDERATION AND POSSIBLE APPROVAL OF A LEASE AGREEMENT WITH T-MOBILE WEST, LLC FOR A RENEWABLE FIVE YEAR LEASE OF PREMISES LOCATED AT FOUNDERS PARK FOR A CELLULAR TOWER AND EQUIPMENT COMPOUND

**DATE:** SEPTEMBER 5, 2012

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**Staff Recommendation:**

Staff recommends approval of the attached lease agreement with T-Mobile West, LLC for a renewable five-year lease of premises located at Founders Park for a cellular tower and equipment compound.

**Proposed Motion:**

Move to approve the attached lease agreement with T-Mobile West, LLC for a renewable five-year lease of premises located at Founders Park for a cellular tower and equipment compound.

**Discussion:**

T-Mobile has been leasing space at Founders Park since 1998 and their lease expires June 24, 2013. There are no more extension terms allowed under the current lease. A new lease has been prepared by our attorneys that strengthens certain terms. T-Mobile has agreed to this new lease, starting June 25, 2013.

A significant term of this new lease is the provision that T-Mobile will move its facilities at their cost upon notice from the Town that the facilities have to be moved. This gives the Town the flexibility to redesign or expand Founders Park in the future. Their compound is currently located between the softball field and the multi-purpose field.

There is one extension term of five years, for a total of ten years. If the move has not taken place in the ten years, a new lease with similar terms could be negotiated at that time.

**Fiscal Impact:**

This lease will provide revenue of \$1,500.00 per month for the first year and increase 3% per year over the ten year period (5 year term plus one lease extension for another five years).

**Alternatives:**

The Town Council could choose not to lease this property and forego the \$1,500.00 + per month revenue.

**Attachments:**

Lease Agreement

## SITE LEASE AGREEMENT FOR CELLULAR PROVIDERS

THIS SITE LEASE AGREEMENT (this "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Lessor"), whose address is 22350 South Ellsworth Road, Queen Creek, Arizona 85142-9311 and T-Mobile West LLC, a Delaware limited liability company ("Lessee"), whose address is 12920 S.E. 38th Street, Bellevue WA 98006.

### RECITALS

A. Lessor is the owner of certain real property and the improvements thereon as more particularly described in Exhibit "A" attached hereto and made a part hereof by this reference (the "Property").

B. Lessor deems the portion of the Property depicted in the diagram attached hereto as Exhibit "B" and made a part hereof by this reference (the "Premises"), suitable for the installation and operation of communication facilities, including, but not limited to, antennas for the transmission and reception of radio and other signals, support mounts, cables, equipment, utilities, utility conduits, equipment storage structures and other improvements thereto (collectively, "Communication Facilities"). The Premises are improved by a light tower or similar structure suitable for the placement of the Communications Facilities (the "Tower").

C. Lessee desires to lease the Premises from Lessor for the purpose of installing and operating Communication Facilities, and Lessor desires to lease the Premises to Lessee, on the terms, covenants and conditions set forth herein.

### AGREEMENTS

NOW THEREFORE, Lessor and Lessee (each, a "Party" and, collectively, the "Parties"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. OPTION. Intentionally Deleted

2. LEASE. Lessor shall lease the Premises to Lessee on the terms set forth in this Section 2 (the "Lease").

2.1 Lease Term. The effective term of the Lease (the "Lease Term") shall begin on June 25, 2013 (the "Commencement Date") and shall continue until June 24, 2018.

2.2 Extension of Lease Term. Lessee may extend the Lease Term for 1 separate 5-year period (the "Extension Term"), from the expiration of the initial Lease Term, provided Lessee delivers to Lessor written notice of each election to extend the Lease Term (the "Extension Notice") at least 90 days, but no more than 180 days prior to the expiration of the initial Lease Term and provided Lessee has not committed a breach that remains uncured at the

time of Lessor's receipt of the Extension Notice. The terms and conditions of the Lease during the Extension Term shall remain the same and in full force and effect, except that Lessee shall have no further right to extend the Lease Term beyond the expiration of the Extension Term.

2.3 Rent. Subject to adjustment as provided in Section 2.16(iii), Lessee shall, throughout the Lease Term, and Extension Term if applicable, pay to Lessor as rental, the applicable amounts below ("Rent"), commencing on Commencement Date, and on or before the first day of each month thereafter.

June 25, 2013, through June 30, 2013	\$300.00 total
July 1, 2013, through June 30, 2014	\$1,500.00 per month
July 1, 2014, through June 30, 2015	\$1,545.00 per month
July 1, 2015, through June 30, 2016	\$1,591.35 per month
July 1, 2016, through June 30, 2017	\$1,639.09 per month
July 1, 2017, through May 31, 2018	\$1,688.26 per month
June 1, 2018, through June 24, 2018	\$1,350.61 total
June 25, 2018, through June 30, 2018 *	\$337.65 total
July 1, 2018, through June 30, 2019*	\$1,738.91 per month
July 1, 2019, through June 30, 2020*	\$1,791.08 per month
July 1, 2020, through June 30, 2021*	\$1,844.81 per month
July 1, 2021, through June 30, 2022*	\$1,900.16 per month
July 1, 2022, through May 31, 2023*	\$1,957.16 per month
June 1, 2023, through June 24, 2023*	\$1,565.73 total

\*if applicable and subject to Lessee's exercise of its right to the Extension Term

2.4 Additional Rent. In addition to any payment of Rent, Lessee shall also pay to Lessor, as additional rent, within 30 days of Lessee's receipt of notice thereof: (i) any incremental additional utility charges to the Premises or the Property incurred as a result of Lessee's use of the Premises; (ii) any transaction privilege tax or use tax assessed against Lessor in connection with this Agreement or Lessee's use of the Premises; and (iii) any increase in real property taxes attributable to Lessee's use of the Premises. For each request of Additional Rent, Lessor shall provide to Lessee reasonable evidence that the Additional Rent is a result of Lessee's use of the Premises.

2.5 Late Charge. If any amount due to Lessor under this Lease is not received in full by Lessor on or before 15 days after the date any such payment is due, then Lessee shall pay to Lessor a late payment charge equal to the greater of: (i) 5% multiplied by the amount past due; or (ii) \$50.00.

2.6 Taxes. Lessee shall pay all personal property taxes, if applicable, on the Lessee Facilities.

2.7 Permitted Use. Lessee, at Lessee's sole cost, shall use the Premises only to install, construct, reconstruct and maintain, on the Premises, the Communication Facilities

described on Exhibit "C" attached hereto and made a part hereof by this reference (the "Lessee's Facilities") (the "Permitted Use"). Lessee shall have the right to modify, supplement, replace, or upgrade the Lessee's Facilities only with the written consent of Lessor, which shall not be unreasonably withheld so long as said relocation, replacement or upgrade is made for the purpose of improving the operation of the Lessee's Facilities. Lessee shall not use, or permit others to use, the Premises in any way that interferes with the use of the Property by Lessor or other tenants, invitees, licensees or guests of Lessor.

2.8 Access. Subject to the requirements of Section 2.10 and Section 6, Lessee may access the Premises at all times during the Lease Term and shall have all additional rights of access, ingress and egress to and from the Premises, provided that Lessee or Lessee's agents or employees may not drive any vehicle in any area not designated for vehicular traffic, unless prior written approval has been granted by Lessor. If Lessor grants permission for Lessee to drive a vehicle in any area not designated for vehicular traffic, Lessee, upon receipt of notice thereof, shall immediately reimburse Lessor for any expenses incurred by Lessor to repair damage to the Property caused thereby.

2.9 Installation. The Parties acknowledge that Lessee previously installed its current Lessee's Facilities with Lessor's approval pursuant to a prior lease agreement. Said Installation is as set forth on attached Exhibit "C". Prior to installing any replacement of, or addition to, the Lessee's Facilities or any equipment for the benefit of any Subtenant (as defined below) ("Installation"), Lessee shall provide Lessor with construction drawings, including color of paint, if any, to be used on the replacement or additional Lessee's Facilities. Lessee shall obtain Lessor's prior written consent, which shall not be unreasonably withheld or delayed, before proceeding with the Installation.

2.10 Maintenance. Lessee, at Lessee's sole cost, shall keep the Premises and the Lessee's Facilities in good order, and in a neat, clean and sanitary condition at all times during the Lease Term. Lessee may enter the Premises to improve, maintain, repair or replace the Lessee's Facilities (collectively, "Maintenance"), provided Lessee provides prior written notice of any such entry as follows: (i) if no Lessee vehicle will be driven on the turf at the Property, such notice must be received by Lessor 24 hours in advance; and (ii) if a Lessee vehicle will be driven on the turf at the Property, such notice must be received by Lessor 3 days in advance. Any provision of this Agreement to the contrary notwithstanding, in an emergency, Lessee may conduct Maintenance upon the Premises upon prior notice via telephone to the Lessor's Parks and Recreation Department at 480-358-3700.

2.11 Damage to Property. Lessee shall immediately notify Lessor of any damage to the Property, the Premises, or the property of any third party upon the Property caused by Lessee or Lessee's agents or employees ("Lessee's Damage"). Lessee, at Lessee's sole cost, shall begin making preparations for any necessary repairs within 48 hours of Lessee becoming aware of such Lessee's Damage and, provided that Lessee shall not unreasonably interfere with Lessor's use of the Property, Lessee shall complete such repairs with reasonable diligence to a condition similar prior to the damage.

2.12 Compliance with Laws. Lessee's use of the Premises, including, but not limited to, the Installation and any Maintenance, shall conform with all applicable Town of Queen Creek Codes and any other applicable laws, rules, codes and regulations, including any amendments or changes thereto.

2.13 Intentionally omitted.

2.14 Lighting. Lessee shall not install lighting at the base of the Lessee's Facilities unless such lighting is required by the Federal Aviation Administration, except for manual switch activated lighting for maintenance purposes.

2.15 Intentionally omitted.

2.16 Third-Party Co-Location. During the Lease Term, Lessee may sublet to third parties for third-party co-locations on the Tower (each, a "Third-Party Co-Location"), provided that:

(i) Lessee shall provide Lessor, at least 30 days prior to the effective date of the respective, proposed agreement for a Third-Party Co-Location (a "Co-Location Agreement"), an affidavit concerning such Co-Location Agreement, such affidavit substantially in the form attached hereto as Exhibit "D" (a "Co-Location Affidavit") and the respective Third-Party Co-Location shall be subject to the approval of Lessor, in Lessor's sole discretion. If the Town disapproves any Third-Party Co-Location for any reason, the Town shall provide to Lessee notice of such disapproval (the "Disapproval Notice") prior to the proposed effective date of the respective Co-Location Agreement and the proposed tenant under the respective Co-Location Agreement shall not be permitted to place any equipment on the Premises. If the Town fails timely to provide the Disapproval Notice, the Town shall be deemed to have approved the proposed Third-Party Co-Location;

(ii) any Co-Location Agreement shall be in writing and shall include the following:

(a) an agreement by the co-locating third party (a "Subtenant") to comply with the requirements substantially similar to the following sections of this Agreement: Section 2.7, Section 2.8, Section 2.10, Section 2.11, Section 2.12, Section 2.14, Section 4.2, Section 5, Section 6, Section 7, Section 8 (except that no Subtenant shall have the right to further sublease the Premises), Section 13.2, Section 13.6 and Section 13.9;

(b) an acknowledgment by the Subtenant that any Installation is subject to the prior approval of Lessor as provided herein;

(c) an agreement by the parties thereto that "the Town of Queen Creek, Arizona, an Arizona municipal corporation, is intended to be a third party beneficiary" of the Co-Location Agreement;

(d) an agreement that the effective term of the Third-Party Co-Location shall automatically terminate upon the expiration or termination of this Agreement or the Lease Term; and

(e) an agreement that no Communication Facilities for use by the Subtenant (the "Subtenant Facilities") may be installed on the Premises without the prior written consent of Lessor of the Subtenant's construction drawings, which consent shall not be unreasonably withheld or delayed;

(iii) for each Third Party Co-Location entered by Lessee during the Term, Lessee shall pay to Lessor, as additional Rent, \$300.00 per month for each month during the term of such Third Party Co-Location ("Co-Location Rent") whether or not Lessee is paid the corresponding rent by the respective Subtenant. In the event the term of such Third Party Co-Location shall commence in the middle of the month, the first month's installment of Co-Location Rent shall be prorated;

(iv) the Subtenant Facilities shall not unreasonably interfere with any Lessor's Equipment located on the Premises prior to the effective date of the respective Co-Location Agreement;

(v) the term of the Co-Location Agreement may terminate prior to the termination of the Agreement. Termination of a Co-Location Agreement, for any reason, shall terminate the Co-Location Rent. The Co-Location Agreement shall terminate automatically upon any termination or expiration of this Agreement or the Lease Term or Extension Term, as applicable; and

(vi) Lessee shall indemnify, defend and hold harmless Lessor and Lessor's officers, employees and officials, for, from and against all claims, damages, losses, costs, liens, encumbrances, liabilities and expenses, including reasonable attorneys', accountants' and investigators' fees and court costs (collectively "Claims"), however caused, arising in whole or in part from the incompleteness or falsity of any portion of any Co-Location Affidavit. In case any action or proceeding is brought to which this indemnification shall be applicable, Lessee shall pay all awards resulting therefrom and shall defend such action or proceeding, if Lessor shall so request, at Lessee's sole cost and expense, by counsel reasonably satisfactory to Lessor. The obligations of Lessee under this Section 2.16(vi) shall survive the expiration or earlier termination of this Agreement.

2.17 Installation of Additional Utilities. Lessee, at Lessee's sole cost and subject to the conditions set forth herein, may install utilities-related equipment on the Premises and improve the present utilities-related equipment on the Premises, provided that: (i) Lessee shall first submit to Lessor written plans for any such installation or improvement, such plans including a request for any license to use the Premises or Property required by Lessee; and (ii) Lessee shall not perform any portion of such installation or improvement without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Lessor, at no cost to Lessor, agrees to use reasonable efforts in assisting Tenant to acquire necessary utility

services to which it has consented as provided herein.

3. LIMITATIONS ON USE; DAMAGE TO PROPERTY. Any provision of this Agreement to the contrary notwithstanding, during the Lease Term and any extension thereof, Lessee shall not: (i) conduct any environmental, soil or other invasive study or inspection of the Property without the prior written consent of Lessor, which consent may be given or withheld in Lessor's sole discretion; or (ii) take any action or omit to take any action which may cause or permit any mechanic's liens, materialmen's liens, or other liens to be filed against the Property. Lessee, at Lessee's sole cost, shall promptly repair and restore any damage to the Property or the property of Lessor or any third party caused by Lessee or Lessee's employees, agents or contractors.

4. INTERFERENCE.

4.1 By Lessee. Lessee shall not use the Premises in any way that interferes with the use of the Property by: (i) Lessor; or (ii) tenants, licensees, invitees or guests of Lessor (collectively, "Existing Users").

4.2 By Lessor. So long as Lessee is not in breach of this Agreement, Lessor shall not interfere with Lessee's use and quiet enjoyment of the Premises, provided that continued use by Lessor or Existing Users in the same manner as existed as of the date Lessee installed its Communication Facilities shall not constitute interference with Lessee's use or quiet enjoyment of the Premises.

5. ENVIRONMENTAL MATTERS.

5.1 Indemnity. Lessee shall defend, indemnify and hold harmless Lessor, its agents, and employees for, from and against any and all Claims arising out of or in connection with the cleanup or restoration of the Property associated with the Lessee's use of Hazardous Materials.

5.2 Definitions.

5.2.1 "Hazardous Materials Laws" means any and all federal, state or local laws, ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common-law") relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Property, or soil and ground water conditions, including, but not limited to, 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., any amendments to the foregoing, and any similar federal, state or local laws, ordinances, rules, decrees, orders or regulations.

5.2.2 "Hazardous Materials" means any chemical, compound, material, substance or other matter that: (i) is a flammable explosive, asbestos, radioactive material, nuclear

medicine material, drug, vaccine, bacteria, virus, hazardous waste, toxic substance, petroleum product, or related injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; (ii) is controlled, designated in or governed by any applicable Hazardous Materials Law; (iii) gives rise to any reporting, notice or publication requirements under any Hazardous Materials Law; or (iv) gives rise to any liability, responsibility or duty on the part of Lessee or Lessor with respect to any third person under any Hazardous Materials Law.

5.3 Lessee's obligations under this Section 5 shall survive the expiration or other termination of this Agreement.

## 6. INSURANCE.

6.1 Liability Insurance. Prior to any entry upon the Property and at all times during the Lease Term, Lessee, at Lessee's sole expense, shall maintain commercial general liability insurance covering actions by Lessee providing for a limit of not less than \$2,000,000.00 single limits, bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of all persons and for damages to or destruction of property, including the loss of use thereof. Coverage shall include independent contractor's protection, premises-operations, and contractual liability. The liability policy or policies shall contain an endorsement naming Lessor as an additional insured.

6.2 Casualty Insurance. During the Lease Term, Lessee shall keep in full force and effect, a policy or policies of so called "All Risk" or "All Peril" insurance, including coverage for vandalism or malicious mischief, insuring Lessee's improvements to the Premises and Lessee's personal property, equipment and other items in the Premises, with coverage in an amount equal to the replacement cost.

6.3 Adequacy of Insurance. Lessor makes no representation or warranty to Lessee that the amount of insurance to be carried by Lessee under the terms of this Agreement is adequate to fully protect Lessee's interests. Lessee acknowledges that Lessor shall not, by the fact of approving, disapproving, waiving, accepting, or obtaining any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of such insurance, the solvency of any insurance companies or the payment or defense of any lawsuit in connection with such insurance coverage, and Lessee hereby expressly assumes full responsibility for and all liability, if any, with respect to, Lessee's insurance coverage.

6.4 Certificate. Prior to any entry upon the Property by Lessee or its employees, agents or contractors, Lessee shall deliver to Lessor a certificate of insurance evidencing the coverage required by this Section 6.

7. INDEMNITY. Lessee shall indemnify, defend and hold harmless Lessor and Lessor's officers, employees and officials, for, from and against all Claims, however caused, arising in whole or in part from: (i) Lessee's use of all or any part of the Premises and/or the Property or from any activity, work or thing done, permitted or suffered by Lessee or by any invitee, servant,

agent, contractor, employee, tenant or subtenant of Lessee in the Premises and/or the Property; (ii) any breach or default in the performance of any obligation to be performed under the terms of this Agreement; (iii) any act, neglect, fault or omission by Lessee or by any invitee, servant, agent, employee or subtenant of Lessee anywhere in the Premises and/or the Property. In case any action or proceeding is brought to which this indemnification shall be applicable, Lessee shall pay all awards resulting therefrom and shall defend such action or proceeding, if Lessor shall so request, at Lessee's sole cost and expense, by counsel reasonably satisfactory to Lessor. The obligations of Lessee under this Section 7 shall survive the expiration or earlier termination of this Agreement.

8. ASSIGNMENT. Tenant may, upon written notice to Landlord, assign or transfer (by sublease or otherwise) its rights arising under this Lease to any corporation, partnership or other entity which is (i) controlled by, controlling or under common control with Tenant, (ii) shall merge or consolidate with or into Tenant, (iii) shall succeed to all or substantially all the assets, property and business of Tenant, or (iv) any affiliate or subsidiary or other party as may be required in connection with any offering, merger, acquisition, recognized security exchange or financing. Under all other circumstances, such assignment or transfer shall require Landlord's written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Except as set forth in this Section 8 or in Section 2.16, Lessee shall not assign, transfer or sublet this Agreement, or any portion thereof or any of Lessee's other rights hereunder to any person or business entity without Lessor's consent, which consent may be withheld or granted in Lessor's sole discretion. Any attempted assignment, transfer or sublet in violation of this Section 8 shall be void ab initio.

9. TERMINATION. This Agreement may be terminated:

9.1 by Lessor if Lessee fails to cure a breach for payment of amounts due hereunder within 10 days after Lessee's receipt of written notice of such breach from Lessor;

9.2 by the non-breaching Party if the other Party breaches this Agreement (other than a breach described in section 9.1 above) and fails to cure such breach within 20 days after written notice of such breach is received by the breaching Party from the non-breaching Party; provided, however, that if such breach is capable of being cured, this Agreement may not be terminated so long as the breaching Party commences appropriate curative action within such 20 day period and thereafter diligently prosecutes such cure to completion as promptly as possible; and

9.3 by Lessee upon 90 days prior written notice.

10. SUCCESSORS AND ASSIGNS. This Agreement shall run with the Property and shall be binding upon and inure to the benefit of the Parties, their respective successors and assigns.

11. REPRESENTATIONS AND WARRANTIES. Each Party covenants and warrants to the other Party that: (i) such Party has full right, power and authority to execute this Agreement and has the power to grant all rights hereunder; (ii) such Party's execution and

performance of this Agreement will not violate any laws, ordinances, covenants, or ,the provisions of any mortgage, lease or other agreement binding on said Party; and (iii) the execution and delivery of this Agreement, and the performance of its obligations hereunder, have been duly authorized by all necessary personnel or corporate officers and do not violate any provisions of law or such Party's certificate of incorporation or bylaws or any other arrangement, provision of law or court order or decree.

12. NOTICES. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered, delivered by a nationally recognized courier, or mailed by certified mail, return receipt requested, to the following addresses:

If to Lessor, to:           Town of Queen Creek  
22350 South Ellsworth Road  
Queen Creek, Arizona 85142-9311  
Attn: Town Manager

With a copy to:           Mariscal, Weeks, McIntyre & Friedlander, P.A.  
Attn: Fredda J. Bisman, Esq.  
2901 N. Central Ave., Ste. 200  
Phoenix, Arizona 85012

If to Lessee, to:           T-Mobile USA, Inc.  
12920 S.E. 38<sup>th</sup> Street  
Bellevue, WA 98006  
Attn: Lease Administrator/PH12703A

13. MISCELLANEOUS.

13.1 Entire Agreement; Modifications. This Agreement shall constitute the entire agreement and understanding of the Parties with subject matter hereof and supersedes all offers, negotiations and other agreements with respect thereto. There are no representations or understandings of any kind not set forth herein. Any amendment to this Agreement must be in writing and executed by both Parties.

13.2 Governing Law; Jurisdiction and Venue. This Agreement shall be governed by and construed or enforced in accordance with the laws of the State of Arizona without reference to conflict of laws principles. With regard to any litigation which may arise in regard to this Agreement, each Party shall and does hereby submit exclusively to the jurisdiction of, and hereby agrees that the proper venue shall be exclusively in, the Superior Court of Maricopa County, Arizona. The provisions of this Section 13.2 shall survive any termination or expiration of this Agreement.

13.3 Broker. Either Party that is represented in this transaction by a broker, agent or commission salesperson (a "Representative") shall be fully and exclusively responsible for the payment of any fee, commission or other compensation owing to such Representative, and Lessee shall indemnify and hold Lessor harmless from and against any claim to a fee, commission or other compensation asserted by such Representative claiming through Lessee, including reasonable attorneys' fees and costs incurred in defending such claim. The provisions of this Section 13.3 shall survive any termination or expiration of this Agreement.

13.4 Severability. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

13.5 No Joint Venture. By executing this Agreement, the Parties are not establishing any Joint undertaking, joint venture or partnership. Each Party shall be deemed an independent contractor and shall act solely for its own account.

13.6 Restoration of the Premises. Lessee, at Lessee's sole cost, shall within 30 days after the expiration or termination of this Agreement, remove all Lessee's property from the Premises and restore the Premises to their original condition as of the Commencement Date, excepting reasonable wear, tear and casualty.

13.7 Conflict of Interest. Pursuant to the provisions of Arizona Revised Statutes § 38-511, Lessor may cancel this Agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of Lessor is, at any time while this Agreement or any extension hereof is in effect, an employee of Lessee in any capacity or a consultant to Lessee with respect the subject matter of the contract

13.8 Exhibits. The Parties understand and acknowledge that Exhibit A (the legal description of the Property), Exhibit B (the Premises location within the Property) and Exhibit C (the Lessee's Facilities) may be attached to this Agreement in preliminary form. Accordingly, the Parties agree that upon the preparation of final, more complete exhibits, Exhibits A, B and/or C, as the case may be, which may have been attached hereto in preliminary form, may be replaced by Lessor, with Lessee's approval, with such final, more complete exhibits(s).

13.9 No Liens. Lessee shall pay or cause to be paid all costs for work done by Lessee or caused to be done by Lessee on the Premises, and Lessee shall keep the Premises and the Property free and clear of all mechanics' liens and materialmen's liens, professional service liens and other liens on account of work done or materials supplied to Lessee or persons claiming under Lessee. Lessee shall keep Lessee's leasehold interest and any improvements which are or may become the property of Lessor pursuant to this Agreement free and clear of all liens of attachment or judgment liens.

13.10 Relocation of Communications Facilities; Improvements.

13.10.1 Relocation. At any time during the Lease Term or any Extension Term, as applicable, Lessor may deliver to Lessee a written request (the "Relocation Request") to relocate the Communications Facilities (the "Relocation") to a reasonable location chosen by Lessor (the "New Location"). If Lessor delivers to Lessee a Relocation Request, Lessee, at Lessee's sole cost, including but not limited to the cost of a new tower or pole suitable for the installation of Communications Facilities (the "New Tower"), shall: (i) within 60 days following Lessee's receipt of the Relocation Request, submit to Lessor reasonably detailed plans (the "Relocation Plans") for the Relocation, including a description of the New Tower and the Lessee's Wall (as defined below); (ii) thereafter amend the Relocation Plans as reasonably requested by Lessor; and (iii) within 180 days following Lessee's receipt of the Relocation Request, perform the Relocation in accordance with Relocation Plans approved by Lessor, which approval shall not be unreasonably withheld, conditioned or delayed. Lessor shall provide to Lessee reasonable rights of access to the New Location for the Relocation, if any.

13.10.2 Wall. Lessee shall include in the Relocation Plans and subsequent construction a wall of sufficient height and length to block from public view any ground-mounted Communications Facilities and other equipment of Lessee other than the New Tower (the "Lessee's Wall"). In constructing the Lessee's Wall, Lessee shall use materials of such quality and construction standards as are deemed appropriate and customary by Lessor, in Lessor's reasonable discretion.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

**LESSOR:**

**Town of Queen Creek:**

By: \_\_\_\_\_  
Gail Barney, Mayor

**Approval of Contract Administrator:**

By: \_\_\_\_\_  
John Kross, Town Manager

**Attest:**

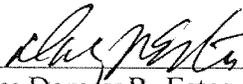
By: \_\_\_\_\_  
Jennifer Robinson, Town Clerk

**Reviewed as to form:**

By: \_\_\_\_\_  
Fredda J. Bisman, Esq.  
For Mariscal, Weeks, McIntyre & Friedlander, P.A.  
Attorneys for the Town

**LESSEE:**

**T-Mobile West LLC**, a Delaware limited liability company

By:  \_\_\_\_\_  
Name: Darcey R. Estes  
Title: Area Director, Network Eng & Oper.

**LEGAL DESCRIPTION OF THE PROPERTY**

**EXHIBIT A TO  
SITE LEASE AGREEMENT**

## EXHIBIT A

Real property located at: 22407 South Ellsworth Road, Queen Creek, Arizona 85242-9311.

That part of the Southwest quarter of the Northwest quarter of Section 22, Township 2 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Northwest corner of the Southwest quarter of the Northwest quarter of said Section 22;  
thence South  $0^{\circ} 14' 58''$  East along the West line of said Southwest quarter of the Northwest quarter, 50.0 feet to the POINT OF BEGINNING;  
thence North  $89^{\circ} 56' 46''$  East parallel with the North line of said Southwest quarter of the Northwest quarter, 660.0 feet;  
thence South  $0^{\circ} 14' 58''$  East, parallel with the West line of said Southwest quarter of the Northwest quarter, 390.0 feet;  
thence South  $89^{\circ} 56' 46''$  West parallel with the North line of said Southwest quarter of the Northwest quarter, 660.0 feet to a point, said point being on the West line of said Southwest quarter of the Northwest quarter;  
thence North  $0^{\circ} 14' 58''$  West along the West line of said Southwest quarter of the Northwest quarter, 390.0 feet to the POINT OF BEGINNING.

**DIAGRAM OF PREMISES**

**EXHIBIT B TO  
SITE LEASE AGREEMENT**





**LESSEE'S FACILITIES**

**EXHIBIT C TO  
SITE LEASE AGREEMENT**

# EXHIBIT C - 1

## Site Plan and Equipment

Approximately 400 square feet of that property described in Exhibit A to contain equipment including, but not limited to, the following:

- One sixty five (65) foot monopole to contain PCS antennae and microwave equipment (*This monopole will also serve as a light standard*)
- Three BTS Radio Equipment cabinets on a concrete pad.
- One power panel approximately 3' X 2' X 1'
- One telco box approximately 3' X 2' X 1'

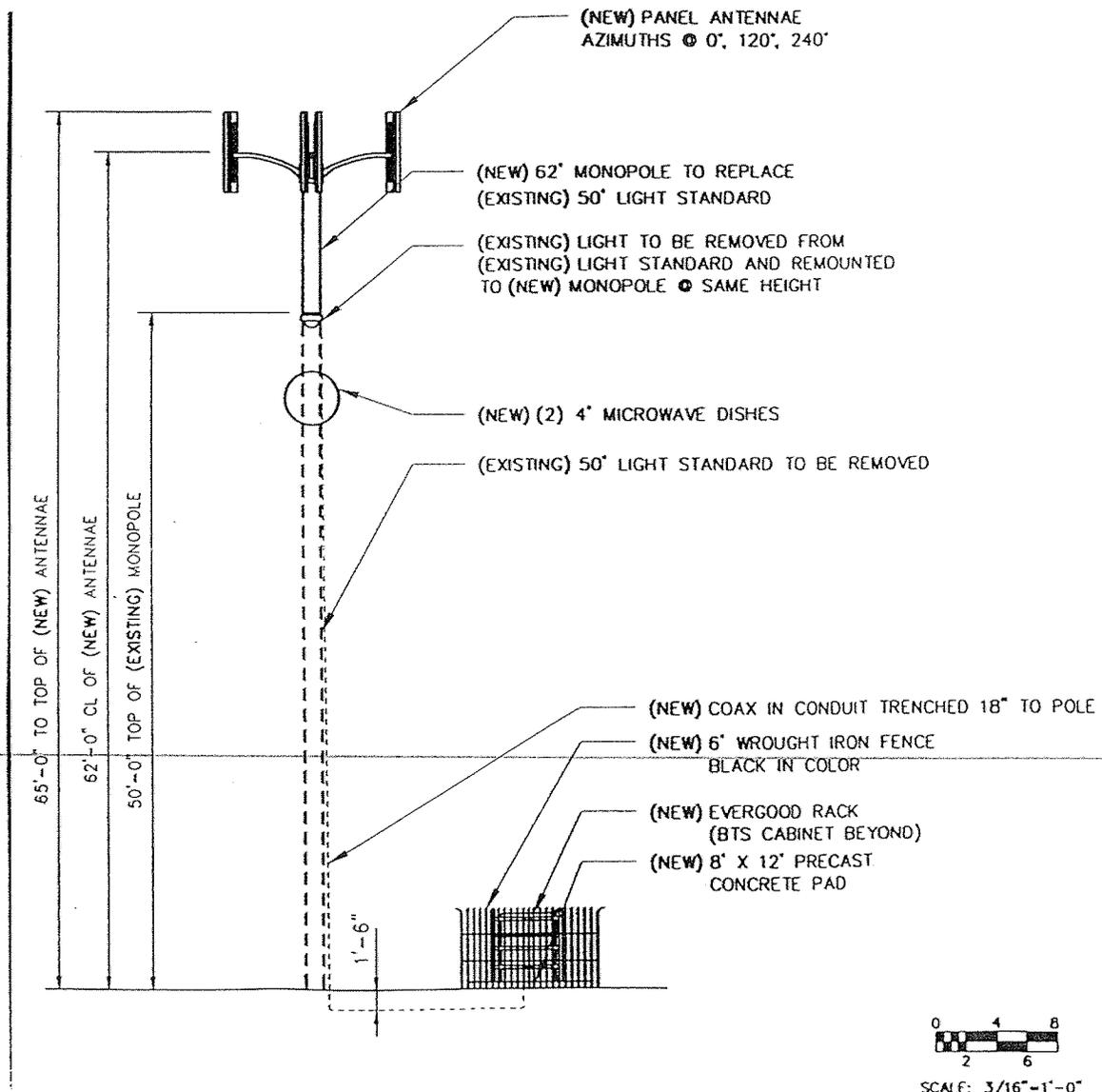
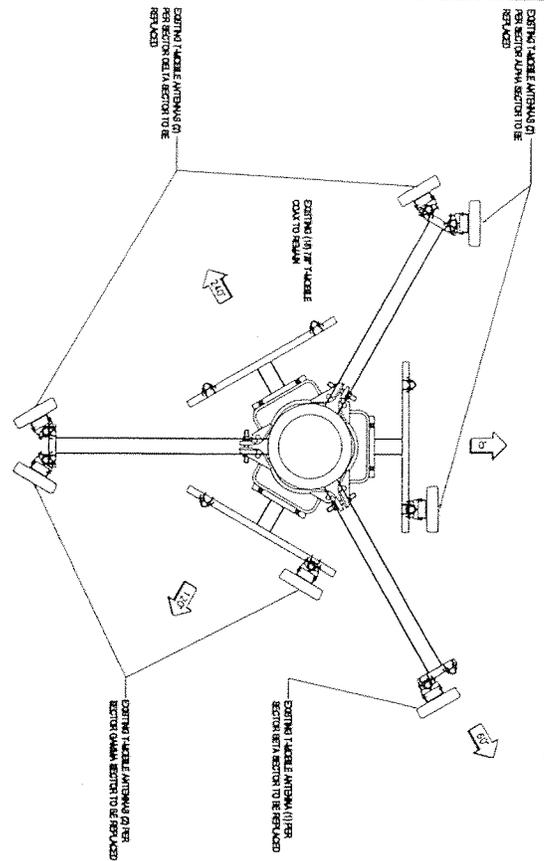
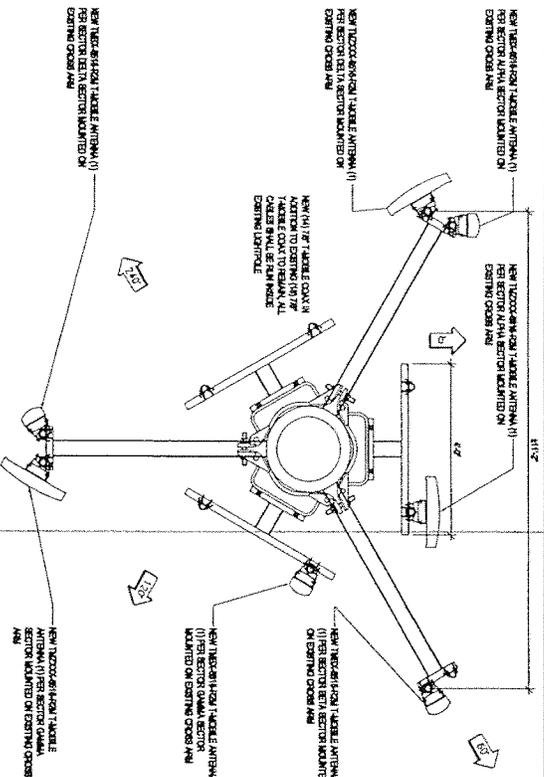




Exhibit C-3



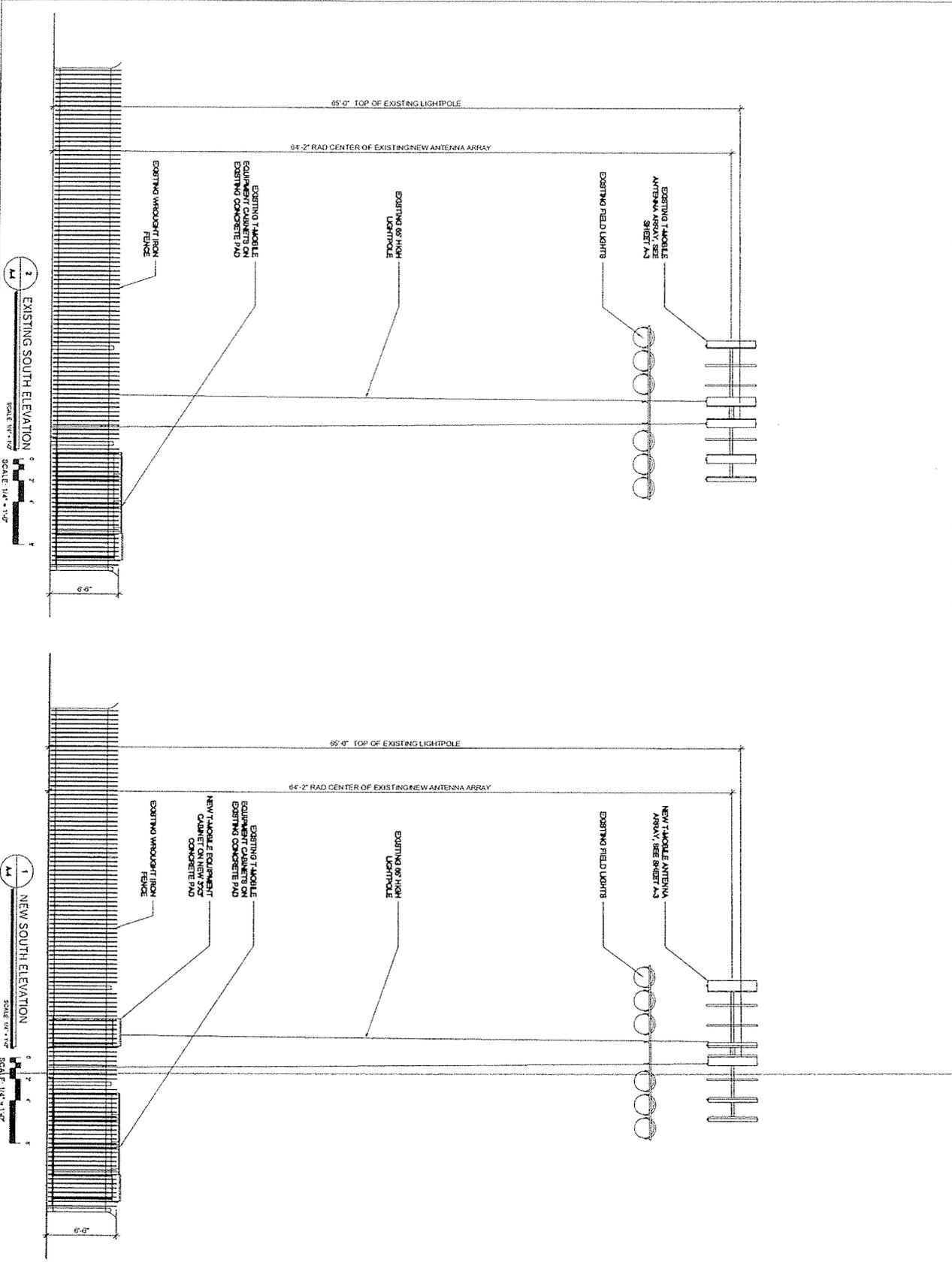
2 EXISTING ANTENNA LAYOUT  
SCALE 3/4" = 1'-0"



1 NEW ANTENNA LAYOUT  
SCALE 3/4" = 1'-0"

PINNACLE CONSULTING		
6518 S. ROAD 202, FORT TARRANT, TEXAS 76149 PHONE: (469) 588-2588 FAX: (469) 574-8859 PLANS PREPARED BY:		
architecture / project management 10245 E. Via Linda, Scottsdale, AZ 85258 PH: 480 351 8508 FAX: 480 351 3108		
NO.	DATE	DESCRIPTION
1	8/4/11	INITIAL ISSUE
2	3/24/11	FINAL
ARCHITECTS JOB NO.: PROJECT INFORMATION: YDC-20080		
PH12703A BOYS RANCH 3407 N. BLDINGHOPE ROAD QUEEN CREEK, AZ 85242		
SHEET TITLE: ANTENNA INFORMATION		
JURISDICTION APPROVAL:		
SHEET NUMBER:		C-3
PHASE:		A-3

Exhibit C.4



CLIENT  
**T-Mobile**  
 2513 S. PIMA DR. #100, TUCUMCARI, ARIZONA, 85327  
 PHONE: (480) 654-8200 FAX: (480) 654-2852

**PINNACLE CONSULTING**  
 6015 S. PIMA DR. #100, TUCUMCARI, ARIZONA, 85327  
 PHONE: (480) 654-6598 FAX: (480) 654-4630

DESIGNED & PREPARED BY  
**Young design corp**  
 10224 E. 19th Unit 4, Scottsdale, AZ 85238  
 PH: 480 451 9809 FAX: 480 451 9808



DATE: 9/4/11  
 DESCRIPTION: INITIAL ISSUE

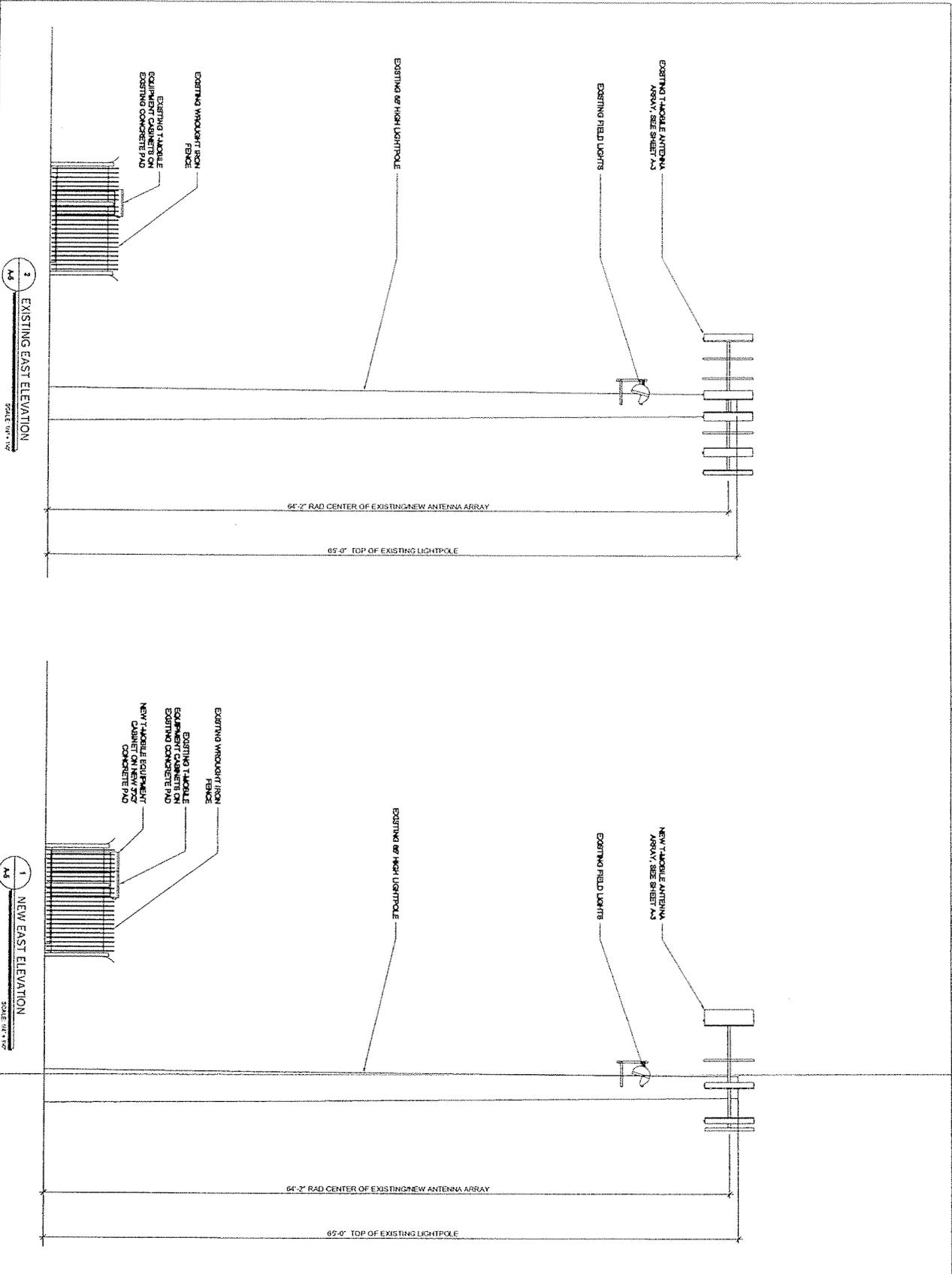
1	9/4/11	INITIAL ISSUE
2	5/18/11	FINAL

ARCHITECT'S JOB NO.  
**PH12703A**  
 PROJECT INFORMATION  
**BOYS RANCH**  
**2407 E. BLISSWORTH ROAD**  
**QUEEN CREEK, AZ 85242**

SHEET TITLE  
**ELEVATIONS**  
 JURISDICTION APPROVAL

SHEET NUMBER  
**A-4**

Exhibit C5



CLIENT  
**T-Mobile**  
 1000 S. RAYBURN BLVD. SUITE 1000, TULSA, OK 74119  
 PHONE: (918) 438-1600 FAX: (918) 438-2582

**PINNACLE**  
 CONSULTING  
 6116 S. RAYBURN BLVD. SUITE 1000, TULSA, OK 74119  
 PHONE: (918) 438-1600 FAX: (918) 438-2582

PLANS PROVIDED BY:  
**Ray Young**  
 design corp  
 1000 S. RAYBURN BLVD. SUITE 1000, TULSA, OK 74119  
 PHONE: (918) 438-1600 FAX: (918) 438-2582



DATE: 8/2/11  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]

ARCHITECTS JOB NO.: PH12703A  
 PROJECT INFORMATION:  
 BOYS RANCH  
 2407 E. BLISSMITH ROAD  
 QUEEN CREEK, AZ 85342

SHEET TITLE: ELEVATIONS  
 JURISDICTION APPROVAL:

SHEET NUMBER: A5  
 CJS

**CO-LOCATION AFFIDAVIT**

**EXHIBIT D TO  
SITE LEASE AGREEMENT**

AFFIDAVIT OF SITE LICENSE AGREEMENT

Exhibit D

Site Address:  
Site No.:  
Site Name:

Date: \_\_\_\_\_

The undersigned, being first duly sworn depose(s) and say(s) as follows:

- (1) That on T-Mobile West LLC ("T-Mobile") and entered into a Agreement (the "Site License") with regard to the site listed above.
- (2) That the above referenced Site License is subject to all terms and conditions as set forth in the Master Agreement ("Master Agreement") entered into between T-Mobile and dated .
- (3) That the purpose of said Site License is to allow to locate communications equipment upon T-Mobile's communication tower located at the site referenced above.
- (4) The term of the Site License is for an initial period of five (5) years with the option to renew for successive five (5) year periods.
- (5) The amount of rent to be paid by to T-Mobile is per month.
- (6) Per that certain Site Lease Agreement (the "Site Lease Agreement") between T-Mobile and the Town of Queen Creek, an Arizona municipal corporation ("Queen Creek"), dated \_\_\_\_\_, concerning the site listed above. T-Mobile shall pay, as additional rent under this Agreement, \$300.00 per month during the term of the Site License.
- (7) The payment of said rent by is contingent upon the completion of the necessary construction to locate and operate communications equipment upon T-Mobile's tower at said site.
- (8) The Site License contains, among other things, all of the provisions required by Section 2.16 of the Site Lease Agreement.

This Affidavit is made for the purpose of verifying to Queen Creek, owner of the real property upon which the site is located, the license amount, costs and other terms of any sublease between T-Mobile and any tenant of T-Mobile. This is done in compliance with the terms and conditions of the Site Lease Agreement between Queen Creek and T-Mobile dated .

SUBSCRIBED AND SWORN TO this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

T-MOBILE WEST LLC

BY: \_\_\_\_\_

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Printed Name



Requesting Department:

Utility Services

TAB D

**TO: HONORABLE MAYOR AND TOWN COUNCIL**

**THROUGH: JOHN KROSS, TOWN MANAGER**

**FROM: PAUL GARDNER, UTILITY SERVICES DIRECTOR  
GREG HOMOL, FIELD OPERATIONS SUPERINTENDENT  
GREG FLYNN, SR. FINANCIAL SERVICES ANALYST**

**RE: CONSIDERATION AND POSSIBLE APPROVAL OF A CONTRACT AMENDMENT  
WITH EAGLE LIFT CONTRACTING IN THE AMOUNT \$50,000 FOR VOID FILL AND  
STABLIZATION SERVICES**

**DATE: September 5, 2012**

---

**Staff Recommendation:**

Staff recommends the approval of a contract amendment with Eagle Lift Contracting in an amount of \$50,000 for void fill and stabilization services for contract period September 5, 2012 through September 4, 2013.

**Relevant Council Goal(s):**

KRA 5: FINANCIAL MANAGEMENT / INTERNAL SERVICES AND SUSTAINABILITY: Queen Creek will strive to achieve maximum operating efficiencies to ensure long-term fiscal sustainability, necessary services and a high quality of life for residents.

**Proposed Motion:**

Move to approve as recommended above.

**Discussion:**

Eagle Lift Contracting, LLC provides ground void fill and soil stabilization services. The Town utilizes these services when the compacted soil surrounding manholes, sewer pipelines, and water pipelines become unstable and has water infiltration that erodes the surrounding soil into the rock or "chips" that are utilized for bedding materials creating a void or 'sink hole'.

The erosion that has been occurring here is the result of Queen Creek's fine soil, which is easily washed away during storms. It is also sometimes a result of the type of bedding material that has been used in the past for installing utilities in this area.

Eagle Lift stabilizes the surrounding areas by injecting urethanes, a foam-like substance, into the ground by and around the manholes, sewer, or water line where the erosion has occurred. As the foam expands it hardens filling the void around the affected infrastructure stabilizing the soil and the foundation. The process improves the soils bearing capacity around the manholes and sewer lines thus preventing damage to the Town's infrastructure.

Eagle Lift, has for years been providing industry leading engineered solutions and utilizing cutting edge technology for soil stabilization and densification, foundation lifting and infrastructure leak-sealing. The injection process is Eco-friendly using materials that meet high environmental requirements.

The services provided by Eagle Lift offers a quick, long lasting and the non-intrusive repair solution to the Town about a quarter of the cost to repair in-house, which includes the cost of field staff to excavate around the affected infrastructure, rental of equipment and the procurement of replacement earthen materials to ensure proper compaction of the soil. The in-house method is costly, labor intensive and is considered highly intrusive for this type of repair running the risk of damage to the infrastructure in the ground.

Staff recommends the approval of the contract amendment with Eagle Lift Contracting.

**Fiscal Note:**

Staff estimates an amount of \$50,000 will cover the cost of the services provided by Eagle Lift Contracting for the term of the contract, September 5, 2012 through September 4, 2013. Funding has been allocated within the Water and Sewer Enterprise Fund budgets for the portion of the contract in FY13. Funding for the remaining term of the contract will be identified during the budget process for the FY2013-14 budget.

**Alternatives:**

If the Town Council chooses not to approve this contract amendment, Town staff would have to identify alternatives, including finding another vendor and/or re-evaluating other options.

**Attachments:**

- 1) Eagle Lift Contracting Amendment #2



IN WITNESS WHEREOF, the Parties have executed this Amendment effective as of the Effective Date set forth above.

**Town of Queen Creek, an Arizona Municipal Corporation**

**Approval of Town Council,**

By: \_\_\_\_\_  
Gail Barney, Mayor

**Approval of Contract Administrator,**

By: \_\_\_\_\_  
John Kross, Town Manager

**ATTEST:**

\_\_\_\_\_  
Jennifer Robinson, Town Clerk

**REVIEWED AS TO FORM BY:**

\_\_\_\_\_  
Attorney for the Town

EagleLIFT, Inc., an Arizona Corporation.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Its: President



Requesting Department:  
Development Services

TAB E

**TO: HONORABLE MAYOR AND TOWN COUNCIL**

**THROUGH: JOHN KROSS, TOWN MANAGER**

**FROM: TROY WHITE, PUBLIC WORKS DIVISION MANAGER**

**RE: CONSIDERATION AND POSSIBLE APPROVAL OF A JOC CONTRACT WITH SDB INC. IN AN AMOUNT NOT TO EXCEED \$400,000 FOR CONSTRUCTION SERVICES THROUGHOUT TOWN**

**DATE: September 5, 2012**

---

**Staff Recommendation:**

Staff recommends approval of a JOC contract with SDB Inc, in an amount not to exceed \$400,000 for construction services throughout Town.

**Relevant Council Goal(s):**

Town of Queen Creek Corporate Strategic Plan - Key Result Area 1 - Objective 1

- *Monitor, time and sequence of the Town's Capital Improvement Program (CIP) so that it is implemented when needed, but matched with available revenues to construct and maintain the assets over time.*

**Proposed Motion:**

Motion to approve a JOC contract with SDB Inc, in an amount not to exceed \$400,000 for construction services throughout Town.

**Discussion:**

The Town of Queen Creek's Public Works Division is responsible for maintaining approximately 25 Town buildings and facilities totaling more than 180,000 sq. ft. Throughout the year contracted services are needed for various construction services that include major and minor construction projects, renovations, repairs, additions, demolitions, re-constructions, and alterations to Town facilities.

This JOC contract was reviewed by purchasing and the Town Attorney and was found to be in accordance with procurement requirements.

Annual expenditures under this contract cannot be determined in advance since services will be placed on an as-needed basis. Approval of this JOC does not guarantee

the awarded vendor a contract amount. However, there is \$250,000 budgeted in this Fiscal Year for facility construction-related projects.

This contract will expire on March 20, 2013, unless granted an extension by the City of Chandler. If an extension is granted, the JOC would remain in place for the remainder of the Fiscal Year.

**Fiscal Impact:**

In the 2012-2013 approved budgets, funds for construction service needs have been identified in the General Fund, Capital improvement Program, and Enterprise Funds.

**Attachments:**

- A. Copy of JOC Contract

Attachment A  
JOC Contract



**Chandler + Arizona**  
*Where Values Make The Difference*

March 21, 2012

Fax 480-967-5810

Mr. Chris Larter  
SDB, Inc.  
810 W. 1<sup>st</sup> St.  
Tempe, AZ 85281

**Subject: NOTICE OF AWARD OF JOB ORDER CONTRACT SERVICES**

Project Name: Job Order Contract for Construction Services, Major Renovations, Repairs,  
Demolition and Re-construction  
Project Number: JOC1201-401  
Effective Date: March 21, 2012  
Expiration Date: March 20, 2013

It is our pleasure to inform you the City Council has approved engaging the services of SDB, Inc. in an amount not to exceed **\$2,000,000**.

The term of this Agreement is one year commencing on the date the Agreement is executed by the last party to sign, with CITY reserving the option to extend the Agreement for four additional terms one for each year.

**The project number must appear on all correspondence.** One (1) fully executed contract is enclosed. No work under this contract is to commence until the City has issued a fully executed Project Agreement and Notice to Proceed (NTP).

If you have any questions, please call Contract Administration at 782-3308.

Sincerely,

Paula Brown  
Contract Services Representative  
Enclosures

C: w/C. Memo Elisa Pursley / City Clerk / Purchasing / Project Manager / Project File



*Mailing Address*  
Mail Stop 407  
PO Box 4008  
Chandler, Arizona 85244-4008

**Transportation & Development  
Department**  
*Telephone* (480) 782-3307  
*Fax* (480) 782-3355  
*Web* www.chandleraz.gov

*Location*  
215 East Buffalo Street  
Chandler, Arizona 85225

**JOB ORDER CONTRACT FOR CONSTRUCTION SERVICES, MAJOR RENOVATIONS, REPAIRS,  
DEMOLITION AND RE-CONSTRUCTION**

**CONTRACT NO: JOC 1201-401**

**TABLE OF CONTENTS**

**ARTICLE 1 – DEFINITIONS..... 1**  
**ARTICLE 2 – OWNER’S REPRESENTATIVE..... 1**  
**ARTICLE 3 – DESCRIPTION OF WORK..... 1**  
**ARTICLE 4 - STANDARDS ..... 2**  
**ARTICLE 5 - CONTRACT TERM AND DELIVERY..... 2**  
**ARTICLE 6 - CONTRACT PRICE..... 3**  
**ARTICLE 7 - CONTRACTOR’S RESPONSIBILITIES ..... 3**  
**ARTICLE 8 - LIQUIDATED AND SPECIAL DAMAGES ..... 4**  
**ARTICLE 9 - BONDS AND INSURANCE..... 4**  
**ARTICLE 10 - INDEMNIFICATION..... 7**  
**ARTICLE 11 – PARTIAL INVALIDITY..... 8**  
**ARTICLE 12 - COOPERATIVE PURCHASING..... 8**  
**ARTICLE 13 – REQUIRED COMPLIANCE WITH ARIZONA PROCUREMENT LAW ..... 8**  
**CONTRACTOR IMMIGRATION WARRANTY .....10**  
**PERFORMANCE BOND .....11**  
**PAYMENT BOND.....12**  
**CERTIFICATE OF INSURABILITY .....13**  
**CITY OF CHANDLER PRIVILEGE TAX LICENSE.....14**

## JOB ORDER CONTRACT

**CONTRACT NO: JOC 1201-401**

This CONTRACT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the City of Chandler, a municipal corporation (hereinafter referred to as "CITY"), and **SDB, Inc. a Corporation of the State of Arizona**, (hereinafter referred to as "JOC").

CITY and JOC, in consideration of the mutual covenants hereinafter set forth, agree as follows:

### ARTICLE 1 – DEFINITIONS

1.1 The Contract Documents for each project shall include:

- This Job Order Contract,
- The JOC's Performance Bond and Payment Bond
- The City's Standard General Conditions for Construction Projects to the extent they do not conflict with this or the Project Agreement and are applicable to the project,
- Supplementary Conditions, if any,
- The Project Agreement for that job order,
- Work Change Directives or Change Orders, if any, and
- The project plans including project design and shop drawings for each project.

1.2. The following CITY standard forms are attached hereto and made a part hereof and shall be used as referenced herein:

- A. Application for Payment
- B. Certificate of Completion
- C. Contractor's Affidavit of Settlement of Claims
- D. Request for Change Order

1.3. The definitions contained in the City's Standard General Conditions for Construction Projects apply to this Agreement with the following clarifications:

1.3.2. Project Designer: When a Project Agreement requires JOC to provide design services for the Project, the those rights, duties and responsibilities assigned by the City's Standard General Conditions for Construction Projects to the Project Designer shall be performed by JOC except those which require final decisions on behalf of City, in which case City shall make the final determination.

1.3.3. Contract and Contract Documents: Include the documents listed in Section 1.1 and 1.2 hereinabove.

### ARTICLE 2 – OWNER'S REPRESENTATIVE

CITY has appointed an OWNER'S REPRESENTATIVE to manage this Contract and will appoint an OWNER'S REPRESENTATIVE to represent the CITY for each Project Agreement. The OWNER'S REPRESENTATIVE will assume all duties and responsibilities and will have all rights and authority assigned to the OWNER'S REPRESENTATIVE in the contract documents in connection with completion of the work. Any references to the Engineer or Project Engineer mean the OWNER'S REPRESENTATIVE. The OWNER'S REPRESENTATIVE does not have authority to verbally authorize any changes in the scope of work in any Project Agreement which would change the contract price or contract time as such changes must be by written Change Orders executed by appropriate CITY staff.

### ARTICLE 3 – DESCRIPTION OF WORK

3.1 This is an indefinite quantity and indefinite delivery Job Order Contract for general contracting construction services, together with architectural and engineering services as necessary, and includes major and minor construction projects, renovations, repairs, additions, demolition, re-constructions and alterations services to City facilities for CITY. For any project determined by CITY to be appropriate for this Job Order Contract, CITY will issue a delivery order to JOC, at which time the parties will execute a Project Agreement specifying the cost and completion schedule for that project. Although CITY

anticipates that JOC will be issued a substantial amount of work, the total cost of work issued to JOC by the City of Chandler in any one-year contract term will not exceed Two Million Dollars (\$2,000,000). JOC is not guaranteed any minimum amount of work nor any jobs at all. JOC is aware that there is more than one Contractor who has been awarded a Job Order Contract for this type of work. CITY reserves the right and will issue delivery orders based on ability of the contractor to meet CITY's work schedule and the availability of trades and expertise in relation to each project.

**3.2** JOC shall complete, provide and perform, or cause to be performed, all work in a proper and workmanlike manner, with appropriate consideration for public safety and convenience, consistent with the highest standards of professional and construction practices and in full compliance with, and as required by or pursuant to, this Contract and the Project Agreement, and with the greatest economy, efficiency, and expediency consistent therewith all as more particularly described in the Contract Documents.

**3.3** JOC shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. JOC shall be solely responsible for coordination of all of the work. JOC shall supervise, direct and cooperate fully with all subcontractors, manufacturers, fabricators, suppliers, distributors, installers, testing agencies and all others whose services, materials or equipment are required to ensure completion of the Work within the Contract Time. JOC shall also coordinate their Work with the work of others, including work to be done by CITY, to assure compliance with schedules.

#### **ARTICLE 4 - STANDARDS**

**4.1** Construction materials, methods and procedures of the Project shall be in accordance with the requirements of the latest edition of the following separate documents except as modified and supplemented by these Contract Documents:

A. Current City of Chandler City Code, including, but not limited to, Engineering Standard Specifications and Details and City of Chandler Traffic Barricade Manual and all applicable state and federal laws and regulations.

B. The portions of Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction (MAG Standard Specifications and Details) adopted by the City of Chandler.

C. IBC (2006 ed), Spec text, C-Spec or Master Spec as determined in each Project Agreement.

#### **ARTICLE 5 - CONTRACT TERM AND DELIVERY**

**5.1** The term of this Contract is one (1) year commencing on the date the Contract is executed by the last party to sign, with CITY reserving the option to extend the Contract for Four (4) additional terms of one (1) year each.

**5.2** Within ten (10) days of the date CITY issues a delivery order, JOC shall submit to CITY a construction progress schedule in Critical Path Method (CPM) format indicating the times for starting and completing the various stages of the work, including any Milestones specified in the Project Agreement and as more fully described herein. The construction progress schedule agreed upon by the parties shall be included as a part of the Project Agreement. Where applicable, such schedule shall include a schedule for project design and engineering, a schedule of shop drawings submission, and where applicable, a schedule of values of the work. These schedules shall be satisfactory in form and substance to OWNER'S REPRESENTATIVE. The schedule of values shall include quantities and unit prices aggregating the contract price, and shall subdivide the work into component parts in sufficient detail to serve as the basis for progress payments during construction. Upon acceptance of these schedules by CITY, they shall be incorporated into the Project Agreement.

**5.3 Time is of the essence.** All of the time limits for Milestones, if any, substantial completion, and completion and readiness for final payment as stated in the Project Agreement, are of the essence of both the Project Agreement and this Job Order Contract.

**5.4** Failure of JOC to perform any covenant or condition contained herein and in the Project Agreement within the time periods specified therein, shall constitute a material breach of both the Project Agreement and this Job Order Contract, entitling CITY to terminate either or both the Project Agreement and this Job Order Contract, unless JOC applies for and receives an extension of time in accordance with the procedures set forth herein. The amount of Liquidated and Special Damages, if appropriate, will be established in each Project Agreement.

**5.5** The CITY'S agreement to waive a specific time provision or to extend the time for performance shall not constitute a waiver of any other time provisions contained in this Job Order Contract or in the Project Agreement. Failure of JOC to complete performance promptly within the additional time authorized in the waiver or extension of time agreement shall constitute a material breach of this Job Order Contract and also of the Project Agreement, entitling CITY to all the remedies set forth herein or provided by law.

**ARTICLE 6 - CONTRACT PRICE**

**6.1** CITY shall pay JOC for completion of each project the amount specified in each Project Agreement, which amount will be determined as follows;

**6.1.1.** The actual cost of the project shall be those costs listed and described in the City of Chandler General Conditions for Construction, Section 12.4 A 1), 2), 3), 4), and 5) a., b., c., e., f., and g. but not those costs listed in Section 12.4 A 5) d. and h. (The costs listed in said d. and h. are included in JOC's overhead and profit as described below. The actual cost of the project shall not include those costs listed and described in the City of Chandler General Conditions for Construction, Section 12.4 B.)

**6.1.2.** Total amount payable to JOC for the project (actual cost, overhead, and profit) shall be determined by multiplying the total actual cost of the project by the appropriate coefficient from the table set forth herein below in section 6.2.

**6.2** The coefficients shown in the table below shall be used to determine the total amount payable to JOC for all projects. Overhead and profit shall include JOC's costs of premiums for Bonds, Insurance, Taxes, and all those expenses or costs listed in the City of Chandler General Conditions for Construction, Section 12.4 B and all other expenses or costs not included in the actual cost of the project and the General Contractor Fee.

	Actual Cost of the Project (Delivery Order) Value					
	\$0 - \$49,999	\$50,000 - \$99,999	\$100,000 - \$199,999	\$200,000 - \$499,999	\$500,000 - \$999,999	\$1,000,000 +
Coefficient	1.21	1.19	1.17	1.17	1.15	1.15

**6.3** Within ten (10) days of the date CITY issues a delivery order, JOC shall submit to CITY a cost estimate for such work together with supporting data as requested by CITY. Upon acceptance of the cost estimate this price shall be inserted into the Project Agreement. For more complex Projects CITY may specify a longer period of time for JOC to complete the price estimate.

**ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES**

**7.1 Permits, Engineering & Design**

**7.1.1** Unless otherwise specified in the Project Agreement, JOC shall obtain all construction permits and licenses. JOC shall pay all governmental charges and inspection fees necessary for the prosecution of the Work. JOC shall also pay all charges of utility service companies for connections to the Work, and CITY shall pay all charges of such companies for capital costs related thereto, such as plant investment fees and system development fees.

**7.1.2** JOC shall provide Architectural and Engineering design as necessary or required for construction and permitting purposes and as further provided in the Project Agreement.

**7.2 Plans, Shop Drawings and Samples**

7.2.1 CITY shall provide to JOC the Project Scope of Work and Project Program for each Project or Job Order issued to JOC.

7.2.2 For each Project or Job Order issued, JOC shall prepare or cause to be prepared and submit to CITY for approval, a Schematic Design and Design Development Package and the Construction Documents Package. Such documents shall be signed and/or stamped by such licensed professionals as deemed necessary by JOC.

7.2.3 After CITY review and approval of the Schematic Design and Design Development Package and Construction Documents Package, JOC shall submit to CITY for review and approval, in accordance with the accepted schedule of shop drawing submissions, copies of all shop drawings, which shall have been checked by and stamped with the approval of JOC.

A. CITY'S review and approval of shop drawings or samples shall not relieve JOC from responsibility for any deviations from the contract documents unless JOC has in writing called CITY'S attention to such deviation at the time of submission and CITY has given written concurrence and approval to the specific deviation, nor shall any concurrence and approval by CITY relieve JOC from responsibility for errors or omissions in the shop drawings or samples.

B. If JOC believes that any shop drawing or communication relative thereto justifies an increase in the contract price or contract time, JOC may make a claim therefore as provided in Article 11 or Article 12 of the City's General Conditions for Construction Contracts.

**7.3 Correction of Mistakes.** JOC shall be responsible for the completeness and accuracy of the work prepared or compiled under JOC's obligation for this project and shall correct, at JOC's expense, all errors or omissions therein which may be disclosed. Correction of errors disclosed and determined to exist during any construction of the project on architectural or engineering drawings and specifications shall be accomplished by JOC. The cost of the design necessary to correct those errors attributable to JOC and any damage incurred by CITY as a result of additional construction costs caused by such engineering or architectural errors shall be chargeable to JOC and shall not be considered a cost of the Work. The fact that CITY has reviewed or approved JOC's work shall in no way relieve JOC of any of its responsibilities.

## **ARTICLE 8 - LIQUIDATED AND SPECIAL DAMAGES**

8.1. Liquidated Damages: CITY and JOC recognize that time is of the essence of both this Job Order Contract and the Project Agreement and that CITY will suffer financial loss, in addition to and apart from the costs described herein above, if the work and/or portions of the work are not performed and completed within the times specified in the Project Agreement, plus any extensions thereof allowed in accordance with this Job Order Contract. CITY and JOC also recognize the delays, expense, and difficulties involved in proving, through legal or arbitration proceedings, the actual loss suffered by CITY if the work or portion of the work is not completed on time. Accordingly, instead of requiring any such proof, CITY and JOC agree that liquidated damages for delay (but not as a penalty) are appropriate and that the actual dollar amount per day shall be determined in each Project Agreement for each calendar day that expires after the time specified in the Project Agreement for substantial completion until the work is substantially complete. After substantial completion, if JOC shall neglect, refuse or fail to complete the remaining work within the contract time or any proper extension thereof granted by CITY, JOC shall pay CITY the amount set forth in the Project Agreement for each day that expires after the time specified in the Project Agreement for final completion and readiness for final payment.

8.2. Special Damages: In addition to the amount provided for liquidated damages, JOC shall pay CITY the actual costs reasonably incurred by CITY for the CITY'S REPRESENTATIVE, engineering and inspection forces employed on the work for each day that expires after the time specified in the Project Agreement for final completion, including any extensions thereof made in accordance with this Job Order Contract, until the work is finally complete.

## **ARTICLE 9 - BONDS AND INSURANCE**

### **Performance, Payment And Other Bonds**

JOC shall furnish Performance and Payment Bonds, each in the amount of **Seven Hundred Fifty Thousand (\$750,000)**, as security for the faithful performance and payment of all JOC'S obligations under this Job Order Contract and each of the Project Agreements, provided; however, in the event the total cost of projects concurrently in progress by JOC exceeds **Seven Hundred Fifty Thousand (\$750,000)**, then JOC shall increase each bond to an amount equal to that estimated by CITY as the cost of construction remaining to be done by JOC for that year of the Job Order Contract.

9.1.2. With the performance and payment bonds JOC, shall provide a copy of the surety company's Certificate of Authority, said copy to have been certified by the Arizona Department of Insurance. These Bonds shall remain in effect during the warranty period for all work performed under this contract after the date of final payment. All Bonds shall be in the form specified by A.R.S. §34-608 and be executed by such sureties as:

- A. Are licensed to conduct business in the State of Arizona and have an agent for service of process in Arizona;
- B. Are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department; and
- C. Are acceptable to the City of Chandler.

9.1.3 All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.

9.1.4 If the surety on any bond furnished by JOC is declared a bankrupt or becomes insolvent or it ceases to meet the requirements of Paragraph 18.1.2, JOC shall within five (5) days thereafter substitute another bond and surety, both of which shall be acceptable to CITY.

## **9.2 Contractor's Insurance**

9.2.1 The JOC, at JOC's own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of A-6, or above and licensed to do business in the State of Arizona with policies and forms satisfactory to CITY.

9.2.2 All insurance required herein shall be maintained in full force and effect until all work required to be performed under the terms of the contract is satisfactorily completed and formally accepted; failure to do so may, at the sole direction of CITY, constitute a material breach of this contract.

9.2.3 The JOC's insurance shall be primary insurance, and any insurance or self insurance maintained by CITY shall not contribute to it.

9.2.4 Any failure to comply with the claim reporting provisions of the policies or any breach of an insurance policy warranty shall not affect coverage afforded under the policy to protect CITY.

9.2.5 The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against CITY, its agents, representatives, directors, officers, and employees for any claims arising out of the JOC's work or service.

9.2.6 The insurance policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to CITY under such policies. The JOC shall be solely responsible for deductible and/or self-insured retention and CITY, at its option, may require the JOC to secure the payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

9.2.7 Upon execution by JOC of this Contract, JOC shall furnish to CITY copies of any or all of the herein required insurance policies and/or endorsements. CITY shall not be obligated, however, to review same or to advise JOC of any deficiencies in such policies and endorsements, and such receipt shall not relieve JOC from, or be deemed a waiver of the CITY'S right to insist on strict fulfillment of JOC's obligations under this contract.

9.2.8 The insurance policies, except Workers' Compensation, required by this contract shall name the CITY, its agents, representatives, officers, directors, officials and employees as additional insureds.

### **9.3 Required Coverage**

#### **General Liability**

9.3.1 JOC shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$1,000,000 Products and Completed Operations Aggregate and \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products/completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this contract, which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00011093 or any replacement thereof. The coverage shall not exclude X, C, U.

9.3.2 Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, nor any provision which would serve to limit third party action over claims.

9.3.3 The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s, Additional Insured, Form B, CG20101185, and shall include coverage for JOC's operations and products and completed operations.

#### **Automobile Liability**

9.3.4 JOC shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to the JOC's any owned, hired, and non-owned vehicles assigned to or used in performance of the JOC's work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damage shall apply.

#### **Workers' Compensation**

9.3.5 The JOC shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of JOC's employees engaged in the performance of the work; and, employer's liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.

9.3.6 In case any work is subcontracted, the JOC will require the subcontractor to provide Workers' Compensation and employer's Liability to at least the same extent as required of the JOC.

#### **Builders' Risk (Property) Insurance**

9.3.7 Prior to commencement of each specific project, the JOC shall purchase and maintain, on a replacement cost basis, Builders' Risk insurance in the amount of the Project Agreement amount as well as subsequent modifications thereto for the entire work at the site. Such Builders' Risk insurance shall be maintained until final payment has been made for that project, or until no person or entity other than CITY has an insurable interest in the property required to be covered, whichever is earlier. This insurance shall include interests of CITY, the JOC, and all subcontractors and sub-Subcontractors in the work during the life of the Project Agreement and course of construction, and shall continue until that project work is completed and accepted by CITY. For new construction projects, the JOC agrees to assume full responsibility for loss or damage to the work being performed and to the buildings under construction. For renovation construction projects, the JOC agrees to assume responsibility for loss or damage to the work being performed at least up to the full Project Agreement amount.

9.3.8 Builders' Risk insurance shall be on an all-risk policy form and shall also cover false work and temporary buildings and shall insure against risk of direct physical loss or damage from external causes

including debris removal, demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for architect's service and expenses required as a result of such insured loss.

9.3.9 Builders' Risk insurance must provide coverage from the time any covered property comes under JOC's control and/or responsibility, and continue without interruption during construction or renovation or installation, including any time during which the covered property is being transported to the construction installation site, and while on the construction or installation site awaiting installation. The policy will provide coverage while the covered premises or any part thereof are occupied. Builders' Risk insurance shall be primary and not contributory.

9.3.10 If the Project Agreement requires testing of equipment or other similar operations, at the option of CITY, the JOC will be responsible for providing property insurance for these exposures under a Boiler Machinery insurance policy.

#### **9.4 Cancellation and Expiration Notice**

9.4.1 Insurance evidenced by these certificates shall not expire, be canceled, or materially changed without fifteen (15) days prior written notice to CITY.

9.4.2 In the event any insurance policy(ies) required by this contract is(are) written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the JOC's work or services and as evidenced by annual Certificates of Insurance.

### **ARTICLE 10 - INDEMNIFICATION**

#### **(a) For Professional Liability:**

To the fullest extent permitted by law, JOC shall defend, indemnify and hold harmless the City of Chandler, its agents, representatives, officers, directors, officials and employees, individually and collectively, (hereinafter CoC) from and against all losses, claims, damages, suits, actions, payments, judgments, demands, expenses, and costs, including but not limited to, attorney's fees, defense costs, court costs, and the cost of appellate proceedings, or actions of any kind and nature related to, arising out of, or alleged to have resulted from the errors, mistakes or omissions relating to professional services by JOC, its employees, agents, or any tier of subcontractors in the performance of this Contract or of any other person for whose errors, mistakes or omissions JOC may be legally liable. This indemnity shall not be construed to include losses, claims, damages, suits, or actions of any kind and nature, to the extent arising from or alleged to have resulted from the errors, mistakes or omissions of CoC (other than JOC, its employees, agents, or any tier of subcontractors). The provisions of this paragraph shall survive termination of this Contract.

#### **(b) Correction of Mistakes:**

JOC shall be responsible for the completeness and accuracy of the work prepared or compiled under JOC's obligation for this project and shall correct, at JOC's expense, all errors or omissions therein which may be disclosed. Correction of errors disclosed and determined to exist during any construction of the project on architectural or engineering drawings and specifications shall be accomplished by JOC. The cost of the design necessary to correct those errors attributable to JOC and any damage incurred by CITY as a result of additional construction costs caused by such engineering or architectural errors shall be chargeable to JOC and shall not be considered a cost of the Work. The fact that CITY has reviewed or approved JOC's work shall in no way relieve JOC of any of its responsibilities.

#### **(c) For all Other Liabilities, Hazards and Exposures:**

To the fullest extent permitted by law, JOC shall defend, indemnify and hold harmless the City of Chandler, its agents, representatives, officers, directors, officials and employees, individually and collectively, (hereinafter CoC) from and against all losses, claims, damages, suits, actions, payments, judgments, demands, expenses, and costs, including but not limited to, attorney's fees, defense costs, court costs, and the cost of appellate proceedings, or actions of any kind and nature, wages or overtime compensation due employees in rendering service under this Contract and whether to any person or property, including natural

resources and any claim made under the Fair Labor Standards Act or any other federal or state laws, related to, arising out of, or alleged to have resulted from the actions of JOC and alleged to have been caused in whole or in part by any act or omission of JOC, anyone directly or indirectly employed by them or anyone for whose acts JOC may be legally liable, and from any claims or amounts arising or recovered under Workers' Compensation laws or any other law, bylaw, or ordinance, order or decree or any failure on the part of JOC, its agents, employees or representatives to fulfill JOC's obligations under this Contract. This indemnity shall not be construed to include losses, claims, damages, suits, or actions of any kind and nature, to the extent arising from or alleged to have resulted from the errors, mistakes or omissions of CoC, (other than JOC, its employees, agents, or any tier of subcontractors). The provisions of this paragraph shall survive termination of this Contract.

**(d) Consequential Damages:**

The parties intend that damages and/or costs and all other terms implying an amount tied to liability shall include consequential damages and loss of productivity limited to the total value of this contract in dollars as payable by the City of Chandler or twice the amount of aggregate insurance required by this Contract, whichever is greater.

**(e) Insurance does not limit liability:**

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

**ARTICLE 11 – PARTIAL INVALIDITY**

If any provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

**ARTICLE 12 - COOPERATIVE PURCHASING**

**Cooperative Use of Contract.** In addition to the City of Chandler and with approval of the CONTRACTOR, this Contract may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at [www.maricopa.gov/materials](http://www.maricopa.gov/materials) and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

**ARTICLE 13 – REQUIRED COMPLIANCE WITH ARIZONA PROCUREMENT LAW**

Compliance with A.R.S. § 41-4401. Pursuant to the provisions of A.R.S. § 41-4401, the Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify set forth in A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").

A breach of the Contractor Immigration Warranty (Exhibit A) shall constitute a material breach of this Contract that is subject to penalties up to and including termination of the contract.

The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.

The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verifications.

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined

as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

In accordance with A.R.S. §35-393.06, the Contractor hereby certifies that the offeror does not have scrutinized business operations in Iran.

In accordance with A.R.S. §35-391.06, the Contractor hereby certifies that the offeror does not have scrutinized business operations in Sudan.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day and year first written above.

This Contract will be effective on March 21, 2012.

FOR THE CITY OF CHANDLER

[Signature]  
MAYOR

3/20/12  
Date

FOR THE JOC

[Signature]  
Signature

ADDRESS FOR NOTICE

City of Chandler  
P.O. Box 4008, Mail Stop 407  
Chandler, AZ 85244-4008  
480-782-3307

ADDRESS FOR NOTICE

810 W. First St  
Tempe AZ 85281

Phone: 480 467 967 5810  
Fax: 480 967 3841

APPROVED AS TO FORM:

[Signature]  
City Attorney By:

ATTEST:  
[Signature]  
City Clerk

ATTEST: If Corporation

[Signature]  
Secretary



**EXHIBIT A**

**CONTRACTOR IMMIGRATION WARRANTY**

To Be Completed by Contractor Prior to Execution of Contract

A.R.S. § 41-4401 requires as a condition of your contract verification of compliance by the contractor and subcontractors with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of its employees.

By completing and signing this form the contractor shall attest that it and all subcontractors performing work under the cited contract meet all conditions contained herein.

<b>Project Number/Division:</b>	JOC1201-401	
<b>Name (as listed in the contract):</b>		
<b>Street Name and Number:</b>		
<b>City:</b>	<b>State:</b>	<b>Zip Code:</b>

I hereby attest that:

1. The contractor complies with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of those employees performing work under this contract;
2. All subcontractors performing work under this contract comply with the Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214 related to the immigration status of their employees; and
3. The contractor has identified all contractor and subcontractor employees who perform work under the contract and has verified compliance with Federal Immigration and Nationality Act (FINA), all other Federal immigration laws and regulations, and A.R.S. § 23-214.

**Signature of Contractor (Employer) or Authorized Designee:**



**Printed Name:** Chris Larter

**Title:** Project Manager

**Date (month/day/year):** 2-29-12

**PERFORMANCE BOND**

ARIZONA STATUTORY PERFORMANCE BOND  
PURSUANT TO TITLES 28, 34, AND 41, ARIZONA REVISED STATUTES  
(Penalty of this bond must be 100% of the Contract amount)

**KNOW ALL MEN BY THESE PRESENTS THAT:** \_\_\_\_\_

(hereinafter "Principal"), and \_\_\_\_\_ (hereinafter "Surety"), a corporation organized and existing under the laws of the State of \_\_\_\_\_ with its principal office in the City of \_\_\_\_\_, holding a certificate of authority to transact surety business in Arizona issued by the Director of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto \_\_\_\_\_ (hereinafter "Obligee") in the amount of \_\_\_\_\_ (Dollars) (\$ \_\_\_\_\_), for the payment whereof, Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ for construction of **Job Order Contracting General Construction Services CITY PROJECT NO. JOC 1201-401** which contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all the undertakings, covenants, terms, conditions and agreements of the contract during the original term of the contract and any extension of the contract, with or without notice of the Surety, and during the life of any guaranty required under the contract, and also performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
AGENT OF RECORD

\_\_\_\_\_  
PRINCIPAL SEAL

By \_\_\_\_\_

\_\_\_\_\_  
SURETY SEAL

\_\_\_\_\_  
AGENT ADDRESS

**PAYMENT BOND**

ARIZONA STATUTORY PAYMENT BOND  
PURSUANT TO TITLES 28, 34, AND 41, OF THE ARIZONA REVISED STATUTES  
(Penalty of this Bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS THAT: \_\_\_\_\_

(hereinafter "Principal"), as Principal, and \_\_\_\_\_ (hereinafter "Surety"), a corporation organized and existing under the laws of the State of \_\_\_\_\_ with its principal office in the City of \_\_\_\_\_, holding a certificate of authority to transact surety business in Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto \_\_\_\_\_ (hereinafter "Obligee") in the amount of \_\_\_\_\_ (Dollars) (\$ \_\_\_\_\_), for the payment whereof, the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ for construction of **Job Order Contracting General Construction Services CITY PROJECT NO. JOC 1201-401** which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all moneys due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in said contract, this obligation is void. Otherwise It remains in full force and effect.

PROVIDED, HOWEVER that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2 Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
AGENT OF RECORD

\_\_\_\_\_  
PRINCIPAL SEAL

By \_\_\_\_\_

\_\_\_\_\_  
SURETY SEAL

\_\_\_\_\_  
AGENT ADDRESS

**PERFORMANCE BOND**

BOND NO. 6420673

ARIZONA STATUTORY PERFORMANCE BOND  
PURSUANT TO TITLES 28, 34, AND 41, ARIZONA REVISED STATUTES  
(Penalty of this bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS THAT: SDB, Inc.

(hereinafter "Principal"), and Safeco Insurance Company of America (hereinafter "Surety"), a corporation organized and existing under the laws of the State of Washington with its principal office in the City of Seattle, Washington, holding a certificate of authority to transact surety business in Arizona issued by the Director of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto City of Chandler (hereinafter "Obligee") in the amount of Seven Hundred Fifty Thousand and No/100 (Dollars) (\$ 750,000.00), for the payment whereof, Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated

the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ for construction of Job Order Contract General Construction CITY PROJECT NO. JOC 07-04 which contract is hereby referred to and made a part hereof as fully and to the same extent as if copies at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all the undertakings, covenants, terms, conditions and agreements of the contract during the original term of the contract and any extension of the contract, with or without notice of the Surety, and during the life of any guaranty required under the contract, and also performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this 17th day of January, 2007.

Minard-Ames Insurance Group  
AGENT OF RECORD

SDB, Inc.  
PRINCIPAL SEAL  
By Edward W. Reiss, VP/CO

4646 E Van Buren # 200 Phoenix AZ 85008  
AGENT ADDRESS

Safeco Insurance Company of America  
SURETY SEAL  
By Carol A. Tabone  
Carol A. Tabone, Attorney-in-Fact

**PAYMENT BOND**

BOND NO. 6420673

ARIZONA STATUTORY PAYMENT BOND  
PURSUANT TO TITLES 28, 34, AND 41, OF THE ARIZONA REVISED STATUTES  
(Penalty of this Bond must be 100% of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS THAT: SDB, Inc.

(hereinafter "Principal"), as Principal, and Safeco Insurance Company of America (hereinafter "Surety"), a corporation organized and existing under the laws of the State of Washington with its principal office in the City of Seattle, WA, holding a certificate of authority to transact surety business in Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, as Surety, are held and firmly bound unto City of Chandler (hereinafter "Obligee") in the amount of Seven Hundred Fifty Thousand and No/100 (Dollars) (\$750,000.00), for the payment whereof, the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ for construction of Job Order Contract General Construction CITY PROJECT NO. JOC 07-04 which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all moneys due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in said contract, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2 Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

Witness our hands this 17th day of January, 2007.

Minard-Ames Insurance Group  
AGENT OF RECORD

SDB, Inc.  
PRINCIPAL SEAL  
By Christopher P. Reiser, VP/CFO

4646 E Van Buren # 200 Phoenix AZ 85008  
AGENT ADDRESS

Safeco Insurance Company of America  
SURETY SEAL  
By Carol A. Tabone  
Carol A. Tabone, Attorney-in-Fact

**CONTINUATION CERTIFICATE**

**IN CONSIDERATION of the PREMIUM CHARGED, Safeco Insurance Company of America, as surety, hereby continues in force Bond Number 6420673 dated the 17<sup>th</sup> day of January, 2008, in the amount of One Million, Seven Hundred Fifty Thousand and No/100----- (\$1,750,000.00 )Dollars, on behalf of SDB, Inc. , as principal, in favor of City of Chandler, as obligee, for the period beginning on the 17<sup>th</sup> day of January, 2012 and ending on the 17<sup>th</sup> day of January 2013. subject to all the terms and conditions of said bond;**

**PROVIDED that the liability of said Liberty Mutual Insurance Company , as surety shall not exceed in the aggregate the amount above written, whether the loss shall have occurred during the term of said bond or during any continuation or continuations thereof, or partly during said term and partly during any continuation or continuations thereof.**

**SIGNED, SEALED AND DATED THIS 23rd DAY OF February, 2012.**

**Safeco Insurance Company of America  
SURETY**

*Susan A. Toomey*

**BY: \_\_\_\_\_  
Susan A. Toomey, Attorney-In-Fact**

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

4799020

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

SAFECO INSURANCE COMPANY OF AMERICA  
SEATTLE, WASHINGTON  
POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS: That Safeco Insurance Company of America (the "Company"), a Washington stock insurance company, pursuant to and by authority of the By-law and Authorization hereinafter set forth, does hereby name, constitute and appoint BARRY R. FARR, ANDREW A. FARR, SUSAN A. TOOMEY, GREGORY P. GRIFFITH, DEBRA K. WILLIAMS, ALL OF THE CITY OF MESA, STATE OF ARIZONA .....

, each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations in the penal sum not exceeding TWO HUNDRED FIFTY MILLION AND 00/100\*\*\*\*\* DOLLARS (\$ 250,000,000.00\*\*\*\*\* ) each, and the execution of such undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company in their own proper persons.

That this power is made and executed pursuant to and by authority of the following By-law and Authorization:

ARTICLE IV - Officers: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitations as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and executed, such instruments shall be as binding as if signed by the president and attested by the secretary.

By the following instrument the chairman or the president has authorized the officer or other official named therein to appoint attorneys-in-fact:

Pursuant to Article IV, Section 12 of the By-laws, David M. Carey, Assistant Secretary of Safeco Insurance Company of America, is authorized to appoint such attorneys-in-fact as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

That the By-law and the Authorization set forth above are true copies thereof and are now in full force and effect.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of Safeco Insurance Company of America has been affixed thereto in Plymouth Meeting, Pennsylvania this 23rd day of August, 2011



SAFECO INSURANCE COMPANY OF AMERICA

By David M. Carey  
David M. Carey, Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA ss  
COUNTY OF MONTGOMERY

On this 23rd day of August, 2011, before me, a Notary Public, personally came David M. Carey, to me known, and acknowledged that he is an Assistant Secretary of Safeco Insurance Company of America; that he knows the seal of said corporation; and that he executed the above Power of Attorney and affixed the corporate seal of Safeco Insurance Company of America thereto with the authority and at the direction of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Notarial Seal  
Teresa Pastella, Notary Public  
Plymouth Twp., Montgomery County  
My Commission Expires Mar. 28, 2013  
Member, Pennsylvania Association of Notaries

By Teresa Pastella  
Teresa Pastella, Notary Public

CERTIFICATE

I, the undersigned, Vice President of Safeco Insurance Company of America, do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the officer or official who executed the said power of attorney is an Officer specially authorized by the chairman or the president to appoint attorneys-in-fact as provided in Article IV, Section 12 of the By-laws of Safeco Insurance Company of America.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of Safeco Insurance Company of America at a meeting duly called and held on the 18th day of September, 2009.

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said company; this 23rd day of February, 2012.

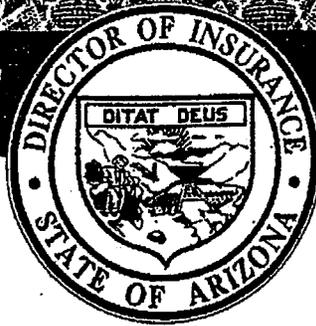


By Gregory W. Davenport  
Gregory W. Davenport, Vice President

Not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

STATE OF



ARIZONA

DEPARTMENT

OF INSURANCE

Phoenix, Arizona

CERTIFICATE OF AUTHORITY

IT IS HEREBY CERTIFIED, That

SAFECO INSURANCE COMPANY OF AMERICA  
Seattle, Washington

has complied with the requirements of the Arizona Revised Statutes and is hereby authorized, subject to the provisions thereof and the Charter Powers of said Company, to transact the following kinds of insurance, to-wit:

PROPERTY, VEHICLE, DISABILITY,  
MARINE AND TRANSPORTATION, SURETY,  
CASUALTY (INCLUDING WORKMEN'S COMPENSATION)

within the State of Arizona until terminated at the request of the insurer or suspended or revoked by the Director of Insurance.

Arizona Revised Statute 20-217 (C) states:

A Certificate of Authority remains the property of this state. Upon termination at the request of the insurer or revocation by the Director, the insurer shall immediately deliver the Certificate of Authority to the Director.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Director of Insurance at the City of Phoenix, this 21st day of July, 1979.



*[Handwritten Signature]*

Director of Insurance

E-146 7/79

277987

**CITY OF CHANDLER**  
**CERTIFICATE OF INSURABILITY**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
3/8/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Minard-Ames Insurance Services LLC 4646 E Van Buren Ste., #200 Phoenix AZ 85008	<b>CONTACT NAME:</b> Patty Dominguez <b>PHONE (A/C No. Ext):</b> 602-393-3586 <b>FAX (A/C No.):</b> 602-273-0212 <b>E-MAIL ADDRESS:</b> pdominguez@minardames.com
	<b>INSURER(S) AFFORDING COVERAGE</b>
<b>INSURED</b> SDB, Inc. 810 W. First Street Tempe AZ 85281	<b>INSURER A:</b> Old Republic Insurance Co. <b>NAIC #</b> 24147
	<b>INSURER B:</b> Great American Insurance Co. <b>NAIC #</b> 16691
	<b>INSURER C:</b>
	<b>INSURER D:</b>
	<b>INSURER E:</b>
<b>INSURER F:</b>	

**COVERAGES**                      **CERTIFICATE NUMBER: 1835033087**                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	Y	Y	A1CG37101105	7/1/2011	7/1/2012	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	Y	Y	A1CA37101105	7/1/2011	7/1/2012	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$0	Y		TUU357931711	7/1/2011	7/1/2012	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N	A1CW37101105	7/1/2011	7/1/2012	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$500,000 E.L. DISEASE - EA EMPLOYEE \$500,000 E.L. DISEASE - POLICY LIMIT \$500,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)**  
Certificate Holder and Owner (if applicable) are defined as additional insured on the general, auto and excess/umbrella liability if required in a written contract. General and Auto Liability coverage is primary and non-contributory in accordance with all policy terms and conditions, if required in a written contract. Waiver of subrogation applies in favor of the certificate holder on the general and auto liability and employers liability/workers compensation if required in a written contract and/or agreement. Per attached forms: CG2010 07/04; CG2037 07/04; CAENGN0020 03/07; CGENGN0029 09/06; CAENGN0019 09/06; CG2404 10/93; CAENGN0021 09/06; WC000313 4/84; CG2503 03/97. JOC 1201-401; Additional Insured: the City of Chandler, its agents, representatives, officers, directors, officials & emps; Umbrella policy is excess over the auto & work comp policies. Separation of Insured's clause part of policy.

<b>CERTIFICATE HOLDER</b> City of Chandler Transportation & Development Department Mail Stop 407, P.O. Box 4008 Chandler AZ 85244-4008	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – SCHEDULED PERSON OR  
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
<p>Blanket Those parties required to be named as an additional insured in a written contract with the Named insured entered into prior to the loss or occurrence</p>	<p>On File with Company</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

**B. With respect to the insurance afforded to those additional insureds, the following additional exclusions apply:**

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
Those parties required to be named as an additional insured in a written contract with the Named Insured entered into prior to the loss or occurrence	Those projects on file with the company
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**Section II – Who is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

# OLD REPUBLIC GENERAL INSURANCE CORPORATION

## ADDITIONAL INSURED WHERE REQUIRED UNDER CONTRACT OR AGREEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

### BUSINESS AUTO COVERAGE FORM

The following is added to Section II – Liability Coverage, A. – Coverage, 1. Who Is An Insured:

- d. Any person or organization to whom you become obligated to include as an additional insured under this policy, as a result of any contract or agreement you enter into which required you to furnish insurance to that person or organization of the type provided by this policy, but only with respect to liability arising out of your operations or premises owned by or rented to you. However, the insurance provided will not exceed the lessor of:
1. The coverage or limits of this policy, or
  2. The coverage or limits required by said contract or agreement.

Named Insured	SDB, Inc		
Policy Number	A1CA37101105	Endorsement No.	
Policy Period	7-1-11 to 7-11-12	to	Endorsement Effective Date: 7-1-11
Producer's Name:	Minard-Ames Insurance Services LLC		
Producer Number:			

\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

\_\_\_\_\_  
DATE

CA EN GN 0020 03 07

# OLD REPUBLIC GENERAL INSURANCE CORPORATION

## CHANGES ADDITIONAL INSURED PRIMARY WORDING SCHEDULE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Name of Additional Insured Person(s)  
Or Organization(s):

Location(s) of Covered Operations

As required by written contract:

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The insurance provided by this endorsement is primary insurance and we will not seek contribution from any other insurance of a like kind available to the person or organization shown in the schedule above unless the other insurance is provided by a contractor other than the person or organization shown in the schedule above for the same operation and job location. If so, we will share with that other insurance by the method described in paragraph 4.c. of Section IV – Commercial General Liability Conditions.

All other terms and conditions remain unchanged.

Named Insured	SDB, Inc		
Policy Number	A1CG37101105	Endorsement No.	
Policy Period	7-1-11 to 7-1-12	to	Endorsement Effective Date: 7-1-11
Producer's Name:	Minard-Ames Insurance Services LLC		
Producer Number:			

\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

\_\_\_\_\_  
DATE

CG EN GN 0029 09 06

# OLD REPUBLIC GENERAL INSURANCE CORPORATION

## AMENDMENT OF OTHER INSURANCE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

### BUSINESS AUTO COVERAGE FORM

Section IV – Business Auto Conditions, B. – General Conditions, 5. – Other Insurance, a. is replaced by the following:

- a. For any covered "auto" you own, this Coverage Form provides primary insurance. However, if there is other collectible insurance, the insurance provided by this Coverage Form with respect to such covered auto, is excess over such other collectible insurance. For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Liability Coverage this Coverage Form provides for the "trailer" is:
- (1) Excess while it is connected to a motor vehicle you do not own,
  - (2) Primary while it is connected to a covered "auto" you own. However, if there is other collectible insurance with respect to such "trailer," the insurance provided by this Coverage Form is excess over such other collectible insurance.

Named Insured	SDB, Inc		
Policy Number	A1CA37101005	Endorsement No.	
Policy Period	07-01-11 to 2012	to	Endorsement Effective Date: 07-01-11
Producer's Name:	Minard-Ames Insurance Services LLC		
Producer Number			

\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

\_\_\_\_\_  
DATE

CA EN GN 0019 09 06

**POLICY NUMBER:** A1CG37101105

**COMMERCIAL GENERAL LIABILITY**  
**CG 24 04 10 93**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

This endorsement modifies insurance provided under the following:  
**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

### **SCHEDULE**

**Name of Person or Organization:**

Any person or organization with whom the insured has agreed to waive rights of recovery, provided such agreement is made in writing & prior to the loss

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The **TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US** Condition (Section IV - **COMMERCIAL GENERAL LIABILITY CONDITIONS**) is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

# OLD REPUBLIC GENERAL INSURANCE CORPORATION

## WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

### BUSINESS AUTO COVERAGE FORM

The following is added to Section IV – Business Auto Conditions, A. – Loss Conditions, 5. – Transfer of Rights of Recovery Against Others to Us:

I however, we will waive any right of recovery we have against any person or organization with whom you have entered into a contract or agreement because of payments we make under this Coverage Form arising out of an "accident" or "loss" if:

- (1) The "accident" or "loss" is due to operations undertaken in accordance with a Written contract existing between you and such person or organization; and
- (2) The contract or agreement was entered into prior to any "accident" or "loss."

No waiver of the right of recovery will directly or indirectly apply to your employees or employees of the person or organization, and we reserve our rights of lien to be reimbursed for any recovery funds obtained by any injured employee.

Named Insured	SDB, Inc		
Policy Number	A1CA3710115	Endorsement No.	
Policy Period	7-1-11 to 7-1-12	to	Endorsement Effective Date: 7-1-11
Producer's Name:	Minard-Ames Insurance Services LLC		
Producer Number:			

\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

\_\_\_\_\_  
DATE

CA EN GN 0021 09 06

**WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT**

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

Any person or organization on whose behalf you are required to obtain this waiver of our rights to recover from under a written contract or agreement

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement  
insured SDB, Inc

Effective Policy No. A1CW37101105 Endorsement No.  
Premium

insurance Company

Countersigned by \_\_\_\_\_

Old Republic Insurance

WC 00 03 13  
(Ed. 4-84)

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**DESIGNATED CONSTRUCTION PROJECT(S)  
GENERAL AGGREGATE LIMIT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Designated Construction Projects:

Those as required by written contract

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

- A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under COVERAGE A (SECTION I), and for all medical expenses caused by accidents under COVERAGE C (SECTION I), which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
  - 1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
  - 2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under COVERAGE A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and for medical expenses under COVERAGE C regardless of the number of:
    - a. Insureds;
    - b. Claims made or "suits" brought; or
    - c. Persons or organizations making claims or bringing "suits".
  - 3. Any payments made under COVERAGE A for damages or under COVERAGE C for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
  - 4. The limits shown in the Declarations for Each Occurrence, Fire Damage and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable, Designated Construction Project General Aggregate Limit.
- B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under COVERAGE A (SECTION I), and for all medical expenses caused by accidents under COVERAGE C (SECTION I), which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
  - 1. Any payments made under COVERAGE A for damages or under COVERAGE C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
  - 2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- C. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.

D. If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.

E. The provisions of Limits Of Insurance (SECTION II) not otherwise modified by this endorsement shall continue to apply as stipulated.

**CITY OF CHANDLER**  
**CERTIFICATE OF INSURABILITY**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
3/19/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Minard-Ames Insurance Services LLC 4646 E Van Buren Ste., #200 Phoenix AZ 85008	CONTACT NAME: Patty Dominguez	FAX (A/C, No): 602-273-0212	
	PHONE (A/C, No, Ext): 602-393-3586	E-MAIL ADDRESS: pdominguez@minardames.com	
INSURED SDB, Inc. 810 W. First Street Tempe AZ 85281	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A :Old Republic Insurance Co.		24147
	INSURER B :Great American Insurance Co.		16691
	INSURER C :Travelers Property Casualty Co of A		25674
	INSURER D :		
INSURER E :			
INSURER F :			

**COVERAGES**                      **CERTIFICATE NUMBER: 311246080**                      **REVISION NUMBER:**

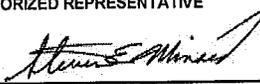
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR	WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	Y	Y	A1CG37101105	7/1/2011	7/1/2012	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS	Y	Y	A1CA37101105	7/1/2011	7/1/2012	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB DED <input checked="" type="checkbox"/> RETENTION \$0 OCCUR CLAIMS-MADE	Y		TUU357931711	7/1/2011	7/1/2012	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N N/A	A1CW37101105	7/1/2011	7/1/2012	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$500,000 E.L. DISEASE - EA EMPLOYEE \$500,000 E.L. DISEASE - POLICY LIMIT \$500,000
C	Builders Risk Replacement Cost SEE NOTES			6605830B362	7/1/2011	7/1/2012	Maximum \$45,000,000 Deductible \$1,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Certificate Holder and Owner (if applicable) are defined as additional insured on the general, auto and excess/umbrella liability if required in a written contract. General and Auto Liability coverage is primary and non-contributory in accordance with all policy terms and conditions, if required in a written contract. Waiver of subrogation applies in favor of the certificate holder on the general and auto liability and employers liability/workers compensation if required in a written contract and/or agreement. Per attached forms: CG2010 07/04; CG2037 07/04; CAENGN0020 03/07; CGENGN0029 09/06; CAENGN0019 09/06; CG2404 10/93; CAENGN0021 09/06; WC000313 4/84; CG2503 03/97.

See Attached...

<b>CERTIFICATE HOLDER</b>  City of Chandler Transportation & Development Department Mail Stop 407, P.O. Box 4008 Chandler AZ 85244-4008	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE  

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**ADDITIONAL REMARKS SCHEDULE**

AGENCY Minard-Ames Insurance Services LLC		NAMED INSURED SDB, Inc. 810 W. First Street Tempe AZ 85281	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

**ADDITIONAL REMARKS**

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
 FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

Blanket Builders' Risk:  
 Limit/Deductible  
 Maximum Amount of Payment \$45,000,000/\$1,000  
 Wood Frame Construction Any One Project \$2,000,000/\$1,000  
 Joisted Masonry Construction Any One Project \$5,000,000/\$1,000  
 Non-Combustible Any One Project \$10,000,000/\$1,000  
 Fire Resistive Construction Any One Project \$10,000,000/\$1,000  
 In Transit \$1,500,000/\$1,000  
 Temporary Storage \$1,500,000/\$1,000

Flood Sublimit \$5,000,000/\$25,000  
 Earthquake Sublimit \$5,000,000/\$25,000  
 JOC 1201-401; Additional Insured: the City of Chandler, its agents, representatives, officers, directors, officials & emps; Umbrella policy is excess over the auto & work comp policies. Separation of Insured's clause part of policy.

**CITY OF CHANDLER PRIVILEGE TAX LICENSE**

**PROJECT NAME: Job Order Contracting General Construction Services**

**PROJECT NUMBER: JOC 1201-401**



TAX & LICENSE DIVISION, CITY OF CHANDLER, ARIZONA

2012

A Privilege Tax License is required for everyone doing business in the City. However, issuance of a tax license DOES NOT indicate or imply approval by the City to engage in business, and is not evidence of compliance with any requirement of any other department or agency.

Business Name and Chandler Location Address:  
SDB INC  
810 W 1ST ST  
TEMPE AZ 85281

City License Number: 5663  
Type: Privilege Tax License

Name and Mailing Address:  
SDB INC  
810 W 1ST ST  
TEMPE AZ 85281-2676

Issue Date: December 22, 2011  
Expiration Date: December 31, 2012  
This license is non-transferable and must be posted in a conspicuous place at the business location.

The issuance of this license / permit shall not be construed as permission to operate in violation of any law or regulation.



(DETACH UPPER SECTION AND POST IN A CONSPICUOUS PLACE)

Thank you for doing business in Chandler. We realize that you had many options when considering where to operate your business and we are pleased that you chose Chandler.

If you have questions regarding Chandler's tax reporting requirements or need information regarding specialty licenses, please contact us by:

Phone: (480) 782-2280  
Fax: (480) 782-2343  
E-mail: [salestax@chandleraz.gov](mailto:salestax@chandleraz.gov)

We wish you success and prosperity in this year and in the years to come.

Tax & License Division  
City of Chandler

JAN 03 2012

Mailing Address  
Mail Stop 701  
PO Box 4008  
Chandler, AZ 85244-4008

Tax and License Division  
Telephone (480) 782-2280  
TDD (800) 367-8939  
Fax (480) 782-2343  
Website: [www.chandleraz.gov](http://www.chandleraz.gov)

Location  
175 South Arizona Avenue  
Suite A  
Chandler AZ 85225

**GENERAL CONDITIONS**

**ARTICLE 1 - DEFINITIONS ..... 1**

**ARTICLE 2 - PRELIMINARY MATTERS ..... 4**

    2.1 Delivery of Bonds, Insurance Certificates and Preliminary Schedule ..... 4

    2.2 Copies of Documents ..... 4

    2.3 Commencement of Contract Time/Notice to Proceed ..... 4

    2.4 Contractor Review of Contract Documents ..... 4

    2.5 Starting the Project ..... 5

    2.6 Construction Progress Schedule ..... 5

    2.7 Other Submittals ..... 6

    2.8 Pre-Construction Conference ..... 7

**ARTICLE 3 - CONTRACT DOCUMENTS: INTENT AND REUSE ..... 7**

    3.1 Contract Documents ..... 7

    3.2 Intent ..... 7

    3.3 Reference Standards ..... 8

    3.4 Reporting and Resolving Discrepancies ..... 8

    3.5 Re-Use of Documents ..... 9

**ARTICLE 4 - AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS ..... 9**

    4.1 Availability of Lands ..... 9

    4.2 Physical Conditions, Investigations and Reports ..... 9

    4.3 Differing Subsurface or Physical Conditions; Underground Facilities ..... 10

    4.4 Reference Points ..... 10

    4.5 Hazardous Environmental Conditions ..... 11

**ARTICLE 5 - PERFORMANCE AND PAYMENT BONDS ..... 11**

**ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES ..... 12**

    6.1 Supervision and Superintendence ..... 12

    6.2 Labor, Materials and Equipment ..... 12

    6.3 Substitutes and "Or-Equals" ..... 13

    6.4 Conformity with Contract Documents and Allowable Deviations ..... 14

    6.5 Concerning Subcontractors ..... 14

    6.6 Patent Fees And Royalties ..... 15

    6.7 Permits ..... 15

    6.8 Laws and Regulations, and Government Policies ..... 16

    6.9 Taxes ..... 16

    6.10 Use of Premises ..... 17

    6.11 Record Documents ..... 17

    6.12 Safety and Protection ..... 17

6.13	Emergencies.....	18
6.14	Shop Drawings and Samples .....	18
6.15	Continuing the Work.....	19
6.16	Progress Schedule .....	19
6.17	Errors or Discrepancies Noted by Contractor .....	19
6.18	Contractor's General Warranty and Guarantee .....	20
6.19	Reimbursement For Additional Project Designer Services .....	20
<b>ARTICLE 7 COOPERATION WITH OTHERS: .....</b>		<b>21</b>
7.1	Contractor Responsible to Resolve Conflicts.....	21
7.2	Notifications Requirement in the Event of Any Damage to or Dislocation of Underground Facilities.....	21
7.3	Cooperation Between Contractors.....	21
<b>ARTICLE 8 - STATUS OF CITY'S REP AND THE PROJECT DESIGNER DURING CONSTRUCTION.....</b>		<b>21</b>
8.1	City's Representative.....	21
8.2	The Project Designer.....	24
8.3	Contractor's Contact For All Communication.....	24
8.4	Rejecting Defective Work .....	25
8.5	Limitations on Responsibilities of the Project Designer and/or CITY REP.....	25
<b>ARTICLE 9 – CONDITIONS OF THE SITE.....</b>		<b>25</b>
9.1	Dust Control.....	25
9.2	Clean Up .....	25
9.3	Repair of landscaped areas and Re-Seeding of Seeded Areas .....	26
9.4	Traffic Control.....	26
9.5	Property, Rights in Materials.....	26
9.6	Access.....	27
9.7	Notification of Property Owners .....	27
9.8	Construction Signs .....	27
9.9	Water for Construction Purposes.....	27
9.10	Relocation of Existing Water Meters.....	27
9.11	Water Turn-On or Turn-Off.....	27
<b>ARTICLE 10 – CONSTRUCTION PHOTOGRAPHS .....</b>		<b>28</b>
10.1	Pre-construction Video .....	28
10.2	Ground Level Construction Photographs.....	28
10.3	Aerial Construction Photographs.....	28
10.4	Procedures .....	30
<b>ARTICLE 11 - CHANGES IN THE WORK.....</b>		<b>30</b>
11.1	Field Orders.....	30
11.2	Change Order at City's Request.....	30
11.3	No Payment Without Written Authorization .....	31

11.4 No Change Order for Adjusted Quantities .....	31
11.5 Notice on Bond .....	31
<b>ARTICLE 12 - CHANGE OF CONTRACT PRICE .....</b>	<b>31</b>
12.1 Written Document Required to Change .....	31
12.2 Value of Work .....	31
12.3 Work Verification .....	32
12.4 Cost of the Work .....	32
12.5 Contractor's Fee .....	35
12.6 Cash Allowances .....	35
12.7 Hindrances and delays .....	36
<b>ARTICLE 13 - CHANGE OF THE CONTRACT TIMES .....</b>	<b>36</b>
13.1 Written Document Required .....	36
13.2 Delays Beyond Contractor's Control .....	37
13.3 Delays Within Contractor's Control .....	37
13.4 Delays Beyond City's and Contractor's Control .....	37
13.5 Rain .....	37
<b>ARTICLE 14 - WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK...37</b>	
14.1 Notice of Defects .....	37
14.2 Access to Work .....	37
14.3 Tests and Inspections .....	37
14.4 Uncovering Work .....	38
14.5 City May Stop the Work .....	38
14.6 Correction or Removal of Defective Work .....	39
14.7 Correction Period - One Year Guarantee .....	39
14.8 Acceptance of Defective Work .....	40
14.9 City May Correct Defective Work .....	40
14.10 Correction or Removal of Unauthorized Work .....	40
<b>ARTICLE 15 - PAYMENTS TO CONTRACTOR AND COMPLETION .....</b>	<b>40</b>
15.1 Schedule of Values .....	40
15.2 Application for Progress Payment .....	41
15.3 Contractor's Warranty of Title .....	41
15.4 Review of Applications for Progress Payments .....	41
15.5 Substantial Completion .....	43
15.6 Partial Utilization .....	43
15.7 Final Inspection .....	43
15.8 Final Application for Payment .....	44
15.9 Final Payment and Acceptance .....	44
15.10 Contractor's Continuing Obligation .....	45
15.11 Waiver of Claims .....	45
15.12 City's Right to Withhold Certain Amounts and Make Application Thereof ...	45

<b>ARTICLE 16- SUSPENSION OF WORK AND TERMINATION.....</b>	<b>46</b>
16.1 City May Suspend Work.....	46
16.2 City May Terminate .....	46
16.3 Contractor May Stop Work or Terminate .....	47
<b>ARTICLE 17- ALTERNATE DISPUTE RESOLUTION.....</b>	<b>47</b>
17.1 Notice Required.....	47
17.2 Decision of Project Designer on Disagreements .....	48
17.3 Neutral Evaluator, Arbitrators .....	48
17.4 Neutral Evaluation Process .....	48
17.5 Binding Arbitration Procedure.....	49
<b>ARTICLE 18 - VALUE ENGINEERING.....</b>	<b>51</b>
18.1 General.....	51
18.2 Proposal Requirements .....	52
18.3 Review and Response.....	52
18.4 Acceptance.....	53
<b>ARTICLE 19 -- GENERAL PROVISIONS.....</b>	<b>53</b>
19.1 Partial Invalidity .....	53
19.2 Attorneys' Fees.....	54
19.3 Waiver of Rights .....	54
19.4 Giving Notice .....	54
19.5 Computation of Time .....	54
19.6 Conflict of Interest.....	54
19.7 Assignment.....	54
19.8 Notice of Injury.....	55

## ARTICLE 1 - DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

- 1.1 Addenda: Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change, the bidding Documents or the Contract Documents.
- 1.2 Agreement: same as Contract.
- 1.3 Application for Payment: The form prepared by and acceptable to CITY which must be used by CONTRACTOR to request progress or final payments and which must include supporting documentation such as updated Construction Progress Schedule as required by the Contract Documents.
- 1.4 Architect: The person, firm or corporation, including their representatives, retained by CITY to design and engineer the project, to draft specifications, plans and perform other project design functions. The Architect will generally be referred to as the Project Designer in these General Conditions.
- 1.5 Change Order: A written order to CONTRACTOR signed by CITY and agreed to in writing by CONTRACTOR, authorizing an addition, deletion or revision in the Work and/or a change in the Contract Price or the Contract Times, issued on or after the Effective Date of the Contract. A Change Order is the only mechanism for adjusting the Contract Price or the Contract Time of the Contract.
- 1.6 CITY: The City of Chandler, OWNER of the project.
- 1.7 City Engineer: The person named as such by the City of Chandler.
- 1.8 CITY REPRESENTATIVE: The person or firm authorized by the CITY to represent it during the performance of the Work by the CONTRACTOR; who is CONTRACTOR'S point of contact for the CITY. The CITY REPRESENTATIVE is also known as and may sometimes be referred to as CITY REP, the Engineer, Resident Engineer, or the Onsite Resident Project Representative.
- 1.9 Construction Progress Schedule: Sometimes referred to as the Work Schedule, is the schedule prepared and submitted by CONTRACTOR which tracks the progress of the Work as more fully explained and defined herein.
- 1.10 Contract: The entire and integrated written agreement, including all the Contract Documents, between the CITY and CONTRACTOR concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
- 1.11 Contract Documents: The Contract Documents are those documents listed in paragraph 3.1 herein.
- 1.12 Contract Price: The moneys payable by CITY to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Contract (subject to the provisions of Paragraph 1.41 in the case of Unit Price Work).
- 1.13 Contract Time: The number of days or the date stated in the Contract to: (i) achieve Substantial Completion; (ii) to complete the Work through any designated milestones; and (iii) to complete the Work so that it is ready for final payment as evidenced by the written recommendation of the CITY REP for final payment.

- 1.14 CONTRACTOR:** The person, firm or corporation with whom CITY has entered into the Contract. Whenever the Project is to be constructed under multiple direct contracts, the term "CONTRACTOR" shall mean the appropriate prime CONTRACTOR. Whenever a specific prime CONTRACTOR is referred to, terms such as "General CONTRACTOR", "Electrical CONTRACTOR", etc., will be used.
- 1.15 Day:** A calendar day of twenty-four hours measured from midnight to the next midnight.
- 1.16 Drawings:** That part of the Contract Documents prepared by the Project Designer which graphically shows the character, intent and scope of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.
- 1.17 Effective Date of the Contract:** The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.
- 1.18 Engineer:** The person, firm or corporation, including their representatives, retained by CITY to design and engineer the project, to draft specifications, plans and perform other project design functions. The engineer will generally be referred to as the Project Designer in these General Conditions.
- 1.19 Field Order:** A written order issued by CITY REP which requires CONTRACTOR to perform minor changes in the Work, but which does not involve a change in the Contract Price or the Contract Times.
- 1.20 General Requirements:** Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.
- 1.21 MAG Standard Specifications:** The Uniform Standard Specifications for Public Works Construction sponsored and distributed by the Maricopa Association of Governments (MAG), latest edition in effect at the time of Bid Opening.
- 1.22 MAG Standard Details:** The Uniform Standard Details for Public Works Construction sponsored and distributed by the Maricopa Association of Governments (MAG), latest edition in effect at the time of the Bid Opening.
- 1.23 Milestone:** A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
- 1.24 Modifications:**
- a) A written amendment of the Contract Documents signed by both parties.
  - b) A Change Order.
  - c) A Field Order.
- A Modification may only be issued after the Effective Date of the Contract.
- 1.25 Notice of Award:** The written notice by CITY to the apparent successful Bidder stating that upon compliance by the apparent successful Bidder with the conditions precedent enumerated therein, within the time specified, CITY will sign the Contract.
- 1.26 Notice to Proceed:** A written notice given by CITY to CONTRACTOR fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform their obligations under the Contract Documents.
- 1.27 Plans:** Same as Drawings.

- 1.28 Project:** The total construction of which the Work to be provided under the Contract Documents may be the whole or a part as indicated elsewhere in the Contract Documents.
- 1.29 Project Designer:** The person, firm or corporation retained by CITY to design and engineer the project, to draft specifications, plans and perform other project design functions. References in the Contract Documents to the Project Designer, Architect, Design Engineer or Engineer, all generally mean the Project Designer.
- 1.30 RFI:** Request for Information. Document submitted by the general contractor to the CITY REP requesting additional information regarding project plans and specifications..
- 1.31 Samples:** Physical examples furnished by the CONTRACTOR to illustrate materials, equipment or workmanship, and to establish standards by which some portions of the Work will be judged.
- 1.32 Schedule of Values:** A list prepared by CONTRACTOR showing the Work divided into component parts including quantities and unit prices aggregating the Contract Price and showing the anticipated monthly progress payment amounts that will become due.
- 1.33 Shop Drawings:** All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, fabricator, supplier or distributor and submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.
- 1.34 Special Provisions:** Same as Supplementary (Special) Conditions.
- 1.35 Specifications:** That part of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
- 1.36 Subcontractor:** An individual, firm or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the site.
- 1.37 Substantial Completion:** The time at which the Work (or specified part thereof) has progressed to the point where, in the opinion of the CITY REP, the Work (or specified part thereof) is sufficiently complete, in accordance with Contract Documents, so that the Work (or specified part thereof) can be utilized for the purposes for which it was intended. The terms "beneficial occupancy"/ "beneficial use" are sometimes used for Substantial Completion.
- 1.38 Supplementary Conditions:** That part of the Contract Documents which amends or supplements these General Conditions sometimes referred to as Special Conditions.
- 1.39 Supplier:** A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.
- 1.40 Underground Facilities:** All underground pipelines, conduits, ducts, cables, fiber optic facilities, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

**1.41 Unit Price Work:** Work to be paid for on the basis of unit prices.

**1.42 Warranty Period:** One year from date of Final Acceptance (not Substantial Completion).

**1.43 Work:** The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents including any and all obligations, duties and responsibilities necessary to complete the construction assigned to, or undertaken by, the CONTRACTOR pursuant to the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

**1.44 Work Change Directive:** Sometimes referred to as a Construction Change Directive. A written order to CONTRACTOR issued on or after the Effective date of the Contract and signed by CITY, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive may not change the Contract Price or the Contract Times, but is evidence that if appropriate, the change ordered or documented by a Work Change Directive may be converted to a Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

**1.45 Utility:** Same as underground facility.

## **ARTICLE 2 - PRELIMINARY MATTERS**

### **2.1 Delivery of Bonds, Insurance Certificates and Preliminary Schedule**

- A. Within ten days of Notice of Award, CONTRACTOR shall execute the Contract and deliver it together with those items listed below to CITY.
- B. When CONTRACTOR delivers the executed Contract to CITY, CONTRACTOR shall also deliver to CITY such Bonds and certificates of insurance with endorsements (and other evidence of insurance requested by CITY) as CONTRACTOR may be required to furnish.
- C. As evidence of Workmen's Compensation Insurance, CONTRACTOR shall provide a letter of certification from the Industrial Commission of Arizona that the CONTRACTOR is insured by the State Compensation Fund or is an authorized self-insurer or a certificate of insurance issued by an insurance company authorized by the Insurance Department of Arizona to write Workmen's Compensation and Occupational Disease Insurance in the State of Arizona.

### **2.2 Copies of Documents**

CITY shall furnish to CONTRACTOR up to five copies (unless otherwise provided in the Contract Documents) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

### **2.3 Commencement of Contract Time/Notice to Proceed**

Notice to Proceed may be given at any time within sixty days after the Notice of Award. The Contract Times will commence to run on the date indicated in the Notice to Proceed.

### **2.4 Contractor Review of Contract Documents.**

Before commencing any work, CONTRACTOR shall carefully study and compare all the Contract Documents, Plans and Specifications and shall check and verify pertinent figures therein and all applicable quantities to determine if there are any conflicts, errors, discrepancies or any other reasons why the project can or should not be constructed as shown therein. If CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, or between the Contract Documents and the physical conditions at the site of the Work or in any survey, or any other

reason why the project can or should not be constructed as shown, CONTRACTOR shall report it to CITY REP in writing at once and before proceeding with the Work. The CITY REP on receipt of any such notice, will promptly investigate the circumstances and give appropriate instructions to the CONTRACTOR or make appropriate modifications to the Contract Documents. In the event such conflicts, errors, discrepancies or other reasons why the project can or should not be constructed as shown on such Contract Document, are later found to exist which the CONTRACTOR should reasonably have learned from such study and CONTRACTOR failed to inform CITY REP, then CONTRACTOR shall bear all cost arising therefrom.

## **2.5 Starting the Project**

Work shall start on the date set forth in the "Notice to Proceed" as the date upon which Contract Times commence to run and shall be pursued diligently in accordance with the Construction Progress Schedule found acceptable by CITY REP or an acceptable revision/update. The work shall be completed within the time set forth in the Contract and as modified by subsequent Change Orders. No Work shall be done at the site prior to the date on which the Contract Times commence to run.

## **2.6 Construction Progress Schedule**

- A. Within ten (10) days of the date of execution of this Contract (unless otherwise specified in the Supplementary Conditions) CONTRACTOR shall submit to CITY REP for review for acceptability, a comprehensive Construction Progress Schedule in Critical Path Method (CPM) format, indicating the starting and completion dates of the various activities of the Work including any Milestones specified in the Contract Documents.
- 1) This Schedule shall contain a detailed representation of all activities for the project, both on-site construction and major procurement. All significant activities together with the resource loading requirements for each and all items appearing on the schedule of values or bid schedule for progress payments shall be shown on the Construction Progress Schedule or in attached reports to the Construction Progress Schedule.
  - 2) Dependencies between activities shall be indicated so that it may establish as to the effect the progress of any one activity would have on other activities and on the schedule.
  - 3) This schedule shall contain activities for submission, review and approval of all required submittals.
  - 4) An amount of time shall be established prior to the final completion date for "punch list and cleanup." No other activities shall be scheduled during this period. Punch list and cleanup must be shown on the Construction Progress Schedule and must be entirely completed prior to the expiration of the Contract Time.
  - 5) CITY has estimated an amount of time reasonably required to complete the Project and based the Contract Time on this estimation. In the event CONTRACTOR believes the Contract Time is too short, CONTRACTOR shall so advise CITY prior to submitting a bid on the project to allow CITY to reevaluate the Contract Time. CONTRACTOR'S Construction Progress Schedule shall not show a "CONTRACTOR contingency" or "CONTRACTOR float" at the end of the construction contract time. Damage claims are prohibited and will not be paid to CONTRACTOR by CITY based on CONTRACTOR'S failure to meet an early completion date shown on CONTRACTOR'S submitted Construction Progress Schedule. (i.e., float within the Contract Time is owned by CITY and while it may be used by CONTRACTOR it may not be claimed to CITY'S detriment.)
  - 6) For all items of materials and equipment that are critical or which may require long lead times to acquire, the Construction Progress Schedule shall show dates for submission, review and approval of submittals, ordering and delivery.

- 7) Computer generated reports detailing the early/late start dates, early/late finish dates and dependencies shall be submitted by CONTRACTOR together with the CPM schedule.
- B. Within ten (10) days of receipt of CITY REP comments, CONTRACTOR shall make all required corrections, adjustments and additions to complete the Construction Progress Schedule and resubmit it to CITY REP for review.
- C. The Comprehensive Construction Progress Schedule will be acceptable to CITY REP if it is in CPM format and if it complies with the requirements set forth herein and provides a realistic and orderly progression of the Work to completion within any specified Milestones and Contract Times. Such Acceptance by CITY REP or any revision or correction made at the request of CITY REP, does not impose on CITY responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve CONTRACTOR from CONTRACTOR'S full responsibility therefor. Acceptance of CONTRACTOR'S Work Progress Schedule by CITY, does not constitute approval of the times listed thereon nor constitute any extension of the Contract Time.
- D. The Construction Progress Schedule shall be prepared by CONTRACTOR and the scheduling of Construction shall be the responsibility of the CONTRACTOR. The requirement for the Schedule is included to assure adequate planning and execution of the Work and to assist CITY REP in evaluating progress of the Work.
- E. The Construction Progress Schedule submitted and signed by CONTRACTOR, when found acceptable by CITY REP, becomes a part of the Contract Documents and CONTRACTOR may not change, modify or deviate from such schedule without the consent of CITY REP.
- F. If, at any time after CONTRACTOR'S Construction Progress Schedule has been found acceptable, CONTRACTOR desires to or it becomes necessary to make any changes to such schedule, CONTRACTOR shall submit such changes to CITY REP for review. CONTRACTOR shall revise and submit for review an updated schedule whenever it is demonstrated that the time for completion of the Project or for any of the Milestones shown on the Contract Documents, has changed by ten (10) or more days.
- G. An updated Construction Progress Schedule must also be submitted by CONTRACTOR with each pay application. The updates shall include all past performance history and actual dates activities started and finished from the beginning of the project; and (2) the City reserves the right to accept or reject each update and, if rejected, the Contractor must revise and/or correct the update and resubmit within 7 days of Contractor's receipt of City comments. Failure to comply with this requirement may be cause for rejection of Contractor's next monthly progress payment application, as provided for in 15.2.
- H. CONTRACTOR shall complete the Project in accordance with the Construction Progress Schedule as it may be adjusted from time to time as provided herein.

## **2.7 Other Submittals**

- A. Within ten (10) days of the date of execution of this Contract (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to CITY REP for review and acceptance, a preliminary schedule of Shop Drawings submissions. Within ten (10) days after receipt of CITY REP'S comments, CONTRACTOR shall submit the corrected and completed schedule of Shop Drawings Submissions for approval. CONTRACTOR'S schedule of Shop Drawings and Sample submittals will be acceptable to CITY REP if it provides a workable arrangement for reviewing and processing the required submittals.
- B. Within ten (10) days of the date of execution of this Contract (unless otherwise specified in the Supplementary Conditions), CONTRACTOR shall submit to CITY REP for review and

acceptance, a preliminary schedule of values of the Work, and the anticipated amount of each monthly progress payment that will become due CONTRACTOR in accordance therewith. The Schedule of Values shall include quantities and unit prices aggregating the Contract Price, and for lump sum items shall subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Within ten days after receipt of CITY REP's comments, CONTRACTOR shall submit the corrected and completed Schedule of Values of the Work. CONTRACTOR'S schedule of values will be acceptable to CITY REP if it complies with the requirements herein and if it provides a reasonable allocation of the Contract Price to component parts of the Work.

- C. No application for payment on the Project will be accepted and no payment will be made until CONTRACTOR has submitted an acceptable and complete Construction Progress Schedule, Schedule of Shop Drawing Submissions and Schedule of Values of the Work.

### **2.8 Pre-Construction Conference**

Within sixty days after the Notice of Contract Award, and before CONTRACTOR starts the Work at the site, CITY will hold a Pre-Construction conference for discussion of the schedules referred to above, to establish lines of communication, procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, to establish a working understanding and communication system among the parties as to the Work, and coordination of work among the various utilities. CONTRACTOR, CONTRACTOR'S Resident Superintendent and CONTRACTOR'S designated safety officer shall attend this Pre-Construction conference which will also be attended by the Project Designer, CITY REP and representatives from any company whose facilities may be affected by the Project.

## **ARTICLE 3 - CONTRACT DOCUMENTS: INTENT AND REUSE**

### **3.1 Contract Documents**

- A. The Contract Documents establish the rights and obligations of the parties and include the Contract, Addenda (which pertain to the Contract Documents), CONTRACTOR'S Bid or Proposal (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Contract, the accepted Construction Progress Schedule, the Notice to Proceed, the Performance Bond, the Payment Bond, Project Design, Engineering and Specifications, these General Conditions, the Supplementary Conditions, Special Provisions, Specifications, Contract Drawings, as the same may be more specifically identified in the Contract, Change Orders, Work Change Directives, Field Orders and the written interpretations and clarifications of the Project Designer or CITY REP and Modifications issued after execution of the Contract. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text data, graphics, and the like that may be furnished by CITY to CONTRACTOR are not Contract Documents.
- B. The Contract Documents also include those parts of the Maricopa Association of Governments Uniform Standard Specifications and Details for Public Works Construction (MAG Standard Specifications and Details), which address matters not otherwise covered by or addressed in these General Conditions, the City Standard Specifications and Details, the Project Specifications or the Construction Contract and said MAG Standard Specifications and Details are incorporated herein only to the extent they do not conflict with or modify any of those documents named herein above in paragraph 3.1A.

### **3.2 Intent**

- A. The Contract Documents comprise the entire Contract between CITY and CONTRACTOR concerning the Work. They may be altered only by a written Modification.

- B. The Contract Documents are complementary and intended to be interpreted as a whole; what is called for by one plan note, drawing detail, contract provision, etc., is as binding as if called for by all.
- C. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result shall be provided by CONTRACTOR whether or not specifically called for at no additional cost to CITY.
- D. Clarifications and interpretations of the Contract Documents shall be issued by the Project Designer through the CITY REP.
- E. The Specifications may describe or the Drawings may show the general arrangement of an item of material or equipment when the actual details of said arrangement will vary with the source of the material or equipment. In such cases, CONTRACTOR shall bear all direct and indirect costs to accommodate the item of material or equipment furnished, whether the item of material or equipment is furnished by a manufacturer named in the Specifications or is furnished as an approved substitute "or equal" item of material or equipment.
- F. When words in the Specifications or on the Drawings, which have a well-known technical or trade meaning, are used to describe Work, materials or equipment, such words shall be interpreted in accordance with such meaning.

### **3.3 Reference Standards**

- A. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
- B. The provisions of any such standard, specification, manual or code, or any instruction of a Supplier shall not change the duties or responsibilities of CITY, CONTRACTOR, Project Designer or CITY REP, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction assign to CITY, CONTRACTOR, Project Designer, or any of their agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

### **3.4 Reporting and Resolving Discrepancies**

- A. If during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, or between the Contract Documents and any provision of any law or regulation applicable to the performance of the Work or of any standard, specification, manual or code, any survey, or of any instruction of any Supplier, CONTRACTOR shall report it to CITY REP in writing at once and before proceeding with the Work affected thereby (except in an emergency as required by paragraph 6.13). However, CONTRACTOR shall not be liable to CITY for failure to report any such conflict, error or discrepancy unless CONTRACTOR knew or should reasonably have known thereof. On receipt of any such notice, CITY REP will promptly investigate the circumstances and give appropriate instructions to the CONTRACTOR. Until such instructions are given, any Work done by the CONTRACTOR after discovery of such conflict, error or discrepancy which is directly or indirectly affected by such conflict, error or discrepancy will be at CONTRACTOR'S own risk and CONTRACTOR shall bear all cost arising therefrom.

- B. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
- 1) the provisions of any standard, specification, manual, code or instruction (whether or not specially incorporated by reference in the Contract Documents); or
  - 2) the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation);
  - 3) provided, however, when any of the Contracts Documents incorporate by reference standards, specifications or other documents, the printed provisions contained in the Contract Documents take precedence over any provisions incorporated by reference.
- C. In a case of a discrepancy or conflict, the order in which the various contract documents shall govern is as follows from highest to lowest: Technical Specifications; Plans; Supplementary Conditions (sometimes referred to as Special Conditions); General Conditions; City of Chandler standard specifications and standard details.
- D. Figured dimensions on Drawings shall govern, but work not dimensioned shall be as directed. Work not particularly shown or specified shall be the same as similar parts that are shown or specified. Large scale details shall take precedence over smaller scale drawings as to shape and details of construction. Specifications shall govern as to materials and workmanship. The specification calling for higher quality material or workmanship shall prevail.

### **3.5 Re-Use of Documents**

Neither CONTRACTOR nor any Subcontractor, manufacturer, fabricator, supplier or distributor shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of the Project Designer; and they shall not re-use any of them on extensions of the Project or any other project without written consent of CITY and the Project Designer and specific written verification or adaptation by the Project Designer.

## **ARTICLE 4 - AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS**

### **4.1 Availability of Lands**

CITY shall furnish, as indicated in the Contract Documents the lands upon which the Work is to be performed, rights-of-way for access thereto, and such other lands which are designated for the use of CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by CITY, unless otherwise provided in the Contract Documents. If CONTRACTOR believes that any delay in CITY'S furnishing these lands or easements entitles CONTRACTOR to an extension of the Contract Time, CONTRACTOR may make a claim therefore as provided in Article 13. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment (marshalling yard).

### **4.2 Physical Conditions, Investigations and Reports**

- A. CONTRACTOR is to protect all existing facilities during construction. Utility poles that may be affected by the construction activities shall be protected by the CONTRACTOR. CONTRACTOR shall notify the appropriate Utility Company or agency of any construction that may affect their facilities.

- B. The Supplementary Conditions identify any reports of investigations and tests of subsurface and latent physical conditions at the site, and any reports of conditions that otherwise may affect cost, progress or performance of the Work which have been utilized by Project Designer in preparation of the Drawings and Specifications. These reports are not intended to constitute any explicit or implicit representation as to the nature of the subsurface and latent physical conditions which may be encountered at the site or to constitute explicit or implicit representations as to any other matter contained in any report. Such reports are not guaranteed as to accuracy or completeness and are not part of the Contract Documents.

#### **4.3 Differing Subsurface or Physical Conditions; Underground Facilities**

##### **4.3.1. Underground Facilities**

- A. The existence and number of facilities as shown on the plans are estimated from information furnished by the particular utility. CONTRACTOR is responsible for field verification and location of all utilities prior to the start of construction. No field work shall be allowed to start until CONTRACTOR has arranged for and Blue Stake has located all affected utilities. In addition CONTRACTOR shall expose and physically locate all potentially conflicting utilities prior to construction. The actual locations of the utilities shall be compared to locations shown on the plans and any required changes in alignment and grade shall be made at the time of construction in consultation with CITY REP. It is generally recognized and CONTRACTOR should anticipate that information from Blue Stake or information from utility companies during project design, frequently fails to disclose all underground facilities. The fact that more utility lines or other underground facilities are located in the Project Site than shown on the Project Plans does not constitute an "unforeseen Condition" and such undisclosed underground facilities do not differ materially from the conditions which CONTRACTOR should expect. The provisions of Sections 105.4, 105.6, 107.11 and 109.8.1 of the MAG Uniform Standard Specifications for Public Works Construction apply and are incorporated herein by reference.
- B. The project requires considerable coordination with utility companies such as Arizona Public Service, Quest, Cox, SW Gas and Salt River Project. The provisions of Sections 105.4, 105.6, 107.11 and 109.8.1 of the MAG Uniform Standard Specifications for Public Works Construction strictly apply and no claims for delays due to utility work on the project will be allowed.

C. Utilities damaged shall be repaired at the CONTRACTOR'S expense.

##### **4.3.2 Unforeseen Conditions**

The provisions of Section 104.2.2 of the MAG Uniform Standard Specifications for Public Works Construction strictly apply.

#### **4.4 Reference Points**

CITY shall provide engineering surveys to establish reference points for construction which in CITY'S judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of CITY. CONTRACTOR shall report to CITY REP whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for replacement or relocation of such reference points by a licensed surveyor.

#### **4.5 Hazardous Environmental Conditions**

- A. CONTRACTOR shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Document to be within the scope of the Work. CONTRACTOR shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible.
- B. If CONTRACTOR encounters a Hazardous Environmental Condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous Environmental Condition. CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.13); and (iii) notify CITY and CITY REP (and promptly thereafter confirm such notice in writing.) CITY shall promptly consult with CITY REP concerning the necessity for CITY to retain a qualified expert to evaluate such condition or take corrective action, if any.
- C. CONTRACTOR shall be responsible for any and all civil or criminal penalties, fines, damages, or other charges imposed by any regulatory agency or court for sewage discharges that are in violation of applicable statutes and laws and that are a result, direct or indirect, of work performed under this Contract. CONTRACTOR shall also be responsible for reimbursement to CITY for administration, reporting, and tracking expenses required as a result of any spill event. In the event the regulatory agency or court imposes a probationary period, CONTRACTOR shall post bond for the probationary period to ensure that all such costs are reimbursed to CITY. This responsibility shall apply whether penalties are imposed directly on CONTRACTOR or any of its subcontractors, or the City of Chandler. CONTRACTOR shall defend and indemnify CITY against such penalties. Regulatory agencies may include, but are not limited to, the Arizona Department of Environmental Quality (ADEQ) and the United States Environmental Protection Agency (USEPA).

#### **ARTICLE 5 – PERFORMANCE AND PAYMENT BONDS**

- A. CONTRACTOR shall furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all CONTRACTOR'S obligations under the Contract Documents. With the performance and payment bonds CONTRACTOR shall provide a copy of the surety company's Certificate of Authority certified by the Arizona Department of Insurance. These Bonds shall remain in effect at least until one year after the date of final payment, except as otherwise provided by law. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions. All Bonds shall be in the forms prescribed by the Bidding Documents or Supplementary Conditions and be executed by such sureties as:
- 1) Are licensed to conduct business in the State of Arizona and have an agent for service of process in Arizona, and
  - 2) Are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department, and
  - 3) Are acceptable to the City of Chandler.

All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.

- B. If the surety on any Bond furnished by CONTRACTOR is declared a bankrupt or becomes insolvent, or CONTRACTOR'S right to do business is terminated in any state where any part of the Project is located, or it ceases to meet the requirements of paragraph A above, CONTRACTOR shall within five (5) days thereafter substitute another Bond and surety, both of which shall be acceptable to CITY.

## **ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES**

### **6.1 Supervision and Superintendence**

- A. CONTRACTOR shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be solely responsible for the negligence of others in the design or specification of a specific means, method, technique, sequence of procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.
- B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto, who shall not be replaced without written notice to CITY REP and the Project Designer except under extraordinary circumstances. The superintendent will be CONTRACTOR'S representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR. At the Pre-construction Conference CONTRACTOR shall provide to CITY REP the name of the person assigned as CONTRACTOR'S resident superintendent and said resident superintendent shall attend the Pre-Construction Conference with CONTRACTOR.
- C. Whenever the resident superintendent is not present at a particular part of the Work where the CITY REP or Project Designer may desire to inform the CONTRACTOR relative to interpretation of the Drawings and Specifications or to disapproval or rejection of materials or Work performed, the CITY REP or Project Designer may provide such information in writing to the foreman or other worker in charge of the particular part of the Work in reference to which the information is given. Information so given shall be as binding as if given to the superintendent.
- D. CONTRACTOR shall be solely responsible for coordination of all of the Work. CONTRACTOR shall supervise, direct and cooperate fully with all Subcontractors, manufacturers, fabricators, suppliers, distributors, installers, testing agencies and all others whose services, materials or equipment are required to ensure completion of the Work within the Contract Time.
- E. CONTRACTOR shall also coordinate their Work with the work of others to assure compliance with schedules.
- F. CONTRACTOR shall attend and participate in all project coordination or progress meetings and report on the progress of all Work and compliance with schedules.

### **6.2 Labor, Materials and Equipment**

- A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site.

- B. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Supplementary Conditions, all Work at the site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without CITY'S written consent given after prior written notice to CITY REP. If it shall become absolutely necessary to perform Work at night or on Saturdays, Sundays or legal holidays, the CITY REP shall be informed at least 24 hours in advance of the beginning of performance of such Work. Only such Work shall be done at night as can be done satisfactorily as determined by the CITY REP and in a first-class manner. Good lighting and all other necessary facilities for carrying out and inspecting the Work shall be provided and maintained at all points where such Work is being done. Further, unless such non-normal work hours are performed at CITY'S request or required by the Contract Documents, CONTRACTOR shall pay to CITY all additional costs incurred by CITY by reason of such non normal working hours. Expenses incurred by CITY for overtime compensation for City Staff, CITY REP and/or Project Designer and staff will be charged to CONTRACTOR at the rate of \$40.00 per hour for CITY on site inspection staff and at actual cost plus ten percent administrative overhead for all others. Such costs may be deducted by CITY from any payments due to CONTRACTOR. Provided, however, if overtime work or work during other than normal hours is at the request of CITY and not due to CONTRACTOR delay, CITY will pay the cost of CITY overtime expenses.
- C. CONTRACTOR shall provide and assume full responsibility for services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the execution, testing, start-up, and completion of the Work.
- D. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of CITY. If required by CITY REP, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. When the quality of material or equipment is not specifically set forth in the Contract Documents, the best available quality of material or equipment available within a reasonable distance of the project shall be provided.
- E. All materials and equipment shall be stored, applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the Contract Documents; but no provisions of any such instructions will be effective to impose on CITY or PROJECT DESIGNER responsibility for the means, methods, techniques, sequences or procedures of construction or for safety precautions incident thereto.
- F. CONTRACTOR shall maintain sufficient competent personnel, drafting equipment and supplies at their disposal for the purpose of preparing layout and coordination drawings. These drawings shall supplement the Contract Documents, and the work and Shop Drawings as necessary to correlate the work of various trades. Where such drawings are to be prepared by the mechanical, electrical, plumbing, or heating and ventilating Subcontractors, CONTRACTOR will ensure that each Subcontractor has the required personnel and facilities.

### **6.3 Substitutes and "Or-Equals"**

Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular manufacturer, fabricator, supplier, distributor or specific professional/building certifications or standards, the specification or description is intended to establish the type, function, appearance and quality required. Unless

the specification contains or is followed by words reading that no like, equivalent, or "or-equal" item or indicating that no substitution is permitted, other items of material or equipment or material or equipment of other manufacturers, fabricators, suppliers, distributors or certifications may be submitted to CITY REP for review as specified below.

- A. Requests for review of substitute items of material and equipment will not be accepted by CITY REP from anyone other than CONTRACTOR.
- B. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to CITY REP for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice CONTRACTOR'S timely achievement of final completion, whether or not acceptance of the substitute for use in the Work will require a change in the Drawings or Specifications to adapt the design to the substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified shall be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain a statement that CONTRACTOR agrees to pay all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change.
- C. CITY REP may require CONTRACTOR to furnish at CONTRACTOR'S expense additional data about the proposed substitute. CITY REP will be allowed a reasonable time within which to evaluate the proposed substitute and to obtain a recommendation from the Project Designer. CITY REP will be the sole judge of acceptability and no substitute will be ordered or installed without CITY REP'S prior written acceptance.
- D. CITY REP may require CONTRACTOR to furnish at CONTRACTOR'S expense a special performance guarantee or other surety with respect to any substitute.
- E. CITY REP will record time required by CITY REP, the Project Designer and CITY'S consultants in evaluating substitutions proposed by CONTRACTOR and in making changes in the Drawings or Specifications occasioned thereby. Whether or not CITY REP accepts a proposed substitute, CONTRACTOR shall reimburse CITY for the charges of CITY REP, the Project Designer and CITY'S consultants for evaluating any proposed substitute that does not meet the requirements of the Drawings and Specifications occasioned thereby. CITY may deduct any such charges from any payments due to CONTRACTOR.

#### **6.4 Conformity with Contract Documents and Allowable Deviations**

The Work shall conform to the lines, grades, dimensions, tolerances, and material and equipment requirements shown on the Drawings or set forth in the Specifications. Although measurement, sampling, and testing may be considered evidence as to such conformity, the CITY REP shall be the sole judge as to whether the Work or materials deviate from the Drawings and Specifications, and CITY REP's decision as to any allowable deviations therefrom shall be final.

#### **6.5 Concerning Subcontractors**

- A. CONTRACTOR shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom CITY or the Project Designer may have reasonable objection. A Subcontractor or other person or organization identified in writing to CITY and the Project Designer by CONTRACTOR prior to the Notice of Award and not objected to in writing by CITY or the Project Designer prior to the Notice of Award will be deemed

acceptable to CITY and the Project Designer. If CITY or the Project Designer after due investigation has reasonable objection to any Subcontractor, other person or organization proposed by CONTRACTOR after the Notice of Award, CONTRACTOR shall submit an acceptable substitute and the Contract Price shall be increased or decreased by the difference in cost occasioned by such substitution, and an appropriate Change Order shall be issued. CONTRACTOR shall not be required to employ any SUBCONTRACTOR, other person or organization against whom CONTRACTOR has reasonable objection. Acceptance of any Subcontractor, other person or organization by CITY or the Project Designer shall not constitute a waiver of any right of CITY or the Project Designer to reject defective work.

- B. CONTRACTOR shall be fully responsible for all acts and omissions of their Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that CONTRACTOR is responsible for the acts and omissions of persons directly employed by CONTRACTOR. Nothing in the Contract Documents shall create any contractual relationship between CITY or the Project Designer and any Subcontractor or other person or organization having a direct contract with CONTRACTOR, nor shall it create any obligation on the part of CITY to pay or to see to the payment of any moneys due any Subcontractor or other person or organization, except as may otherwise be required by law. CITY may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to CONTRACTOR or amount of specific Work done.
- C. The Divisions and Sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade.
- D. All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate Contract between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of CITY.

#### **6.6 Patent Fees And Royalties**

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of CITY or the Project Designer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by CITY in the Contract Documents. CONTRACTOR shall indemnify and hold harmless CITY and the Project Designer and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

#### **6.7 Permits**

- A. Unless otherwise specified in the Contract Documents, CITY will, upon appropriate cooperation from CONTRACTOR, obtain and provide to CONTRACTOR those permits issued by the City of Chandler. CONTRACTOR shall obtain all other construction permits and licenses. CONTRACTOR shall pay all other governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of bid opening. CONTRACTOR shall also pay all charges of utility service companies for connections to the Work, and CITY shall pay all charges of such companies for capital costs related thereto, such as plant investment fees and system development fees.

- B. Work in any public easement or right-of-way shall be done in accordance with the requirements of a permit issued by the public agency in whose easement or right-of-way the Work is located in addition to conforming to the Drawings and Specifications. If a permit is not required, the Work shall conform to the standards of the public agency involved in addition to conforming to the Drawings and Specifications.
- C. City of Chandler permits and permits from all applicable governing jurisdictions (i.e. Maricopa County and Arizona Department of Transportation) are required while performing work on City contracts. CONTRACTOR shall pay all permit fees as required by the other governing jurisdictions.
- D. Construction water and landfill fees will not be waived and must be paid for by the CONTRACTOR. The system development fees for water and sewer shall be paid for by the CITY unless shown in the Itemized Bid Schedule.

#### **6.8 Laws and Regulations, and Government Policies**

- A. CONTRACTOR shall give all notices and comply with all laws, ordinances, standard details and specifications, rules and regulations applicable to the Work whether adopted by a City, State or Federal governmental agency.
- B. If CONTRACTOR observes that the Specifications or Drawings are at variance with applicable laws or regulations, CONTRACTOR shall give CITY REP prompt written notice thereof, and any necessary changes shall be adjusted by an appropriate Modification. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to such laws, ordinances, rules and regulations, and without such notice to CITY REP, CONTRACTOR shall bear all costs arising therefrom; however, it shall not be CONTRACTOR'S primary responsibility to make certain that the Specifications and Drawings are in accordance with such laws, ordinances, rules and regulations.
- C. The CONTRACTOR shall comply with the Immigration Reform and Control Act of 1986 (IRCA). The CONTRACTOR understands and acknowledges the applicability of the IRCA activities. The CONTRACTOR agrees to comply with the IRCA while performing their work and to permit City inspection of CONTRACTOR personnel records to verify such compliance.
- D. The CONTRACTOR shall report immediately any discovery of archeological ruins or artifacts. Excavation must stop immediately so that the CITY can decide on the pertinent steps to follow such discovery.
- E. If the project is Federally or State funded, additional requirements are generally associated with the project implementation. CONTRACTOR'S attention is directed to the fact that the Contract may include those additional requirements.
- F. Spills of oil, gas, chemicals or any hazardous materials must be reported by the CONTRACTOR immediately. Approved mitigation measures shall be taken by the CONTRACTOR as expediently as possible. Hazardous wastes shall not be discharged into the City's sanitary or storm sewer systems. See also § 4.5.

#### **6.9 Taxes**

- A. CONTRACTOR shall pay all sales, consumer, use, and other similar taxes in effect at the time of bid submittal and required to be paid by CONTRACTOR, in accordance with the law of the state of Arizona. When equipment, materials or supplies generally taxable to CONTRACTOR are eligible for a tax exemption due to the nature of the Project, CONTRACTOR shall assist CITY in applying for and obtaining such tax credits and exemptions which shall be paid or credited to CITY.

- B. CONTRACTOR shall obtain a current City of Chandler privilege tax license before Notice to Proceed is issued.

#### **6.10 Use of Premises**

- A. CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workmen to areas permitted by law, ordinances, permits, or the requirements of the Contract Documents, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.
- B. CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the work or adjacent property to stresses or pressures that will endanger it.

#### **6.11 Record Documents**

- A. CONTRACTOR shall maintain one record copy of all Specifications, Drawings, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders, written interpretations, and clarifications, in good order, in a safe place at the construction site and shall annotate them to show all changes made during the construction process. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings shall be available to CITY REP and the Project Designer for examination and/or reference. Upon completion of the Work, these record documents, Samples and Shop Drawings will be delivered to CITY REP for CITY.
- B. CONTRACTOR shall also maintain, revise and provide accurate field data on a red-lined set of contract drawings, which are to be kept current and submitted as complete at the conclusion of the construction. These record drawings will be reviewed and used as documentation for periodic progress payments, and upon project completion, for the preparation of "as built" file drawings by the Project Designer. All record "as built" information shall be submitted on 4 mil photo mylar and shall be 24" x 36" in size. Final payment will not be issued until all record drawings and as built information are submitted by CONTRACTOR, and certified to be complete by the Project Designer and/or CITY REP.

#### **6.12 Safety and Protection**

- A. CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
- 1) All employees on the Work and other persons who may be affected thereby;
  - 2) All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site; and
  - 3) Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- B. CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property, utilities and other underground facilities when prosecution of the Work may affect them. CONTRACTOR shall cooperate with the owner in the protection, removal, relocation or

replacement of such property. All damage, injury or loss to any property referred to in Paragraph A above, caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of CITY or anyone employed by CITY or anyone for whose acts it may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR). CONTRACTOR'S duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and CITY REP has issued a notice to CITY and CONTRACTOR in accordance with Paragraph 14.9 that the Work is acceptable.

- C. CONTRACTOR shall designate in writing and submit at the Pre-construction Conference the name of a responsible member of their organization, the designated Safety at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR'S superintendent unless otherwise designated in writing by CONTRACTOR to CITY.
- D. The right of CITY REP to conduct construction review or observation of the CONTRACTOR'S performance will not include review or observation of the adequacy of the CONTRACTOR'S safety measures in, on, or near the construction site.

### **6.13 Emergencies**

In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from CITY REP, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give CITY REP prompt written notice of any significant changes in the Work or deviations from the Contract documents caused thereby.

### **6.14 Shop Drawings and Samples**

- A. CONTRACTOR shall submit Shop Drawings to CITY REP for review and approval in accordance with the acceptable schedule of Shop Drawing and Sample submittals (see Paragraphs 2.6 & 2.7) and the procedures specified in the Contract Documents. All Shop Drawings shall have been checked by and stamped with the approval of CONTRACTOR, after checking and verifying all field measurements, and marked with identification as CITY REP may require. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and the like to enable Project Designer to review the information as required.
- B. CONTRACTOR shall also submit Samples to CITY REP for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All Samples shall have been checked by and stamped with the approval of CONTRACTOR, identified clearly as to material, manufacturer, any pertinent catalog numbers and the use for which intended.
- C. At the time of each submission, CONTRACTOR shall in writing call to the attention of CITY REP and Project Designer, all deviations that the Shop Drawings or Samples may have from the requirements of the Contract Documents.
- D. CITY REP will review and approve or when applicable cause the Project Designer to review and approve, with reasonable promptness, but in no case more than twenty one (21) days, Shop Drawings and Samples. Provided, however, such review and approval shall be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents, and shall not extend to means, methods, sequences, techniques or procedures of construction or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make all corrections required by

CITY REP and Project Designer and shall return the required number of corrected copies of Shop Drawings and resubmit new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by Project Designer or CITY REP on previous submittals. CONTRACTOR'S stamp of approval on any Shop Drawing or Sample shall constitute a representation to CITY and the Project Designer that CONTRACTOR has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data or assumes full responsibility for doing so, and that CONTRACTOR has reviewed or coordinated each Shop Drawing or Sample with the requirements of the Work and the Contract Documents.

- E. Where a Shop Drawing or Sample is required by the Specifications, no related Work shall be commenced until the submittal has been reviewed and approved by CITY REP and/or Project Designer.
- F. Review and approval of Shop Drawings or Samples by CITY REP and/or the Project Designer shall not relieve CONTRACTOR from responsibility for any deviations from the Contract Documents unless CONTRACTOR has in writing called attention to such deviation at the time of submission and CITY REP or PROJECT DESIGNER has given written concurrence and approval to the specific deviation, nor shall any concurrence and approval by CITY REP or Project Designer relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or Samples.

#### **6.15 Continuing the Work**

CONTRACTOR shall carry on the Work and maintain the progress schedule during all disputes or disagreements with CITY. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as CONTRACTOR and CITY may otherwise agree in writing.

#### **6.16 Progress Schedule**

- A. CONTRACTOR shall adhere to the Construction Progress Schedule established in accordance with Paragraph 2.6, as it may be adjusted from time to time as provided below.
- B. CONTRACTOR shall submit to CITY REP for acceptance (to the extent indicated in Paragraph 2.6) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the Progress Schedule then in effect and additionally will comply with any applicable provisions of the Contract Documents.
- C. Proposed adjustments to the Progress Schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment.

#### **6.17 Errors or Discrepancies Noted by Contractor**

It is the duty of CONTRACTOR to promptly notify CITY REP in writing of any design, materials, or specified method that CONTRACTOR believes may prove defective or insufficient. If CONTRACTOR knows or should have known that a defect or insufficiency exists in design, materials, or specified method and fails to promptly notify CITY REP in writing of this belief, the CONTRACTOR waives any right to assert that defect or insufficiency in design, materials, or specified method at any later date in any legal or equitable proceeding against the CITY or in any subsequent arbitration or settlement conference between the CITY and the CONTRACTOR. CITY REP, on receipt of any such notice, will promptly investigate the circumstances and give appropriate instructions to the CONTRACTOR.

#### **6.18 Contractor's General Warranty and Guarantee**

- A. CONTRACTOR warrants and guarantees to CITY that all Work will be in accordance with the Contract Documents and will not be defective.

CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by CITY REP, nor the issuance of a letter of Substantial Completion, nor any payment or issuance of a certificate by CITY to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by CITY, nor any act of acceptance by CITY nor any failure to do so, nor the issuance of a notice of acceptability by CITY REP pursuant to Section 15.9, nor any correction of defective Work by CITY shall constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents.

- C. All representations, warranties and guarantees made in the contract documents shall survive final payment and termination or completion of this Contract.

#### **6.19 Reimbursement For Additional Project Designer Services**

- A. The Work to be accomplished under these Contract Documents has been designed for CITY by a registered Professional Engineer and/or licensed Architect (Project Designer) retained by CITY for this purpose. It is understood that normal Construction Administration for the purpose of interpretation of the Contract Documents is provided by CITY. Should any services of the Project Designer be required to assist in the corrections of errors or omissions by CONTRACTOR, or services of the Project Designer be required because of changes in structure or equipment where CONTRACTOR has requested approval of substitute methods or material, or any other items detailed herein below, those services will be provided by the Project Designer at the standard hourly rates previously negotiated with CITY and shall be paid for by the CONTRACTOR.
- B. The Project Designer shall be reimbursed by CONTRACTOR for the Project Designer's additional services to the Project through no fault of CITY or the Project Designer including, but not limited to, the following conditions:
- 1) Additional site visits, investigations, inspections, design work and/or reports by the Project Designer which are required due to damages to existing facilities or completed work caused by the CONTRACTOR in his performance, CONTRACTOR'S negligence, or CONTRACTOR'S work which is rejected as defective or as failing to conform to the Contract Documents
  - 3) Project Designer Construction Phase Services rendered on the project during the time the project remains incomplete after the Contract date of final completion will be charged to CONTRACTOR at a rate previously negotiated CITY.
  - 4) All retesting required due to the failure of CONTRACTOR'S work to meet the requirements of the Contract Documents shall be at CONTRACTOR'S expense. All standby and travel time by the CITY'S testing lab, the Project Designer or CITY'S REP due to CONTRACTOR'S inability to be prepared for testing at the agreed upon time shall be at the CONTRACTOR'S expense.
- C. City may withhold from any payment otherwise due to CONTRACTOR any amounts necessary to pay the Project Designer for such additional services as provided herein above.
- D. CONTRACTOR shall not be required to bear additional costs incurred by CITY due to errors by the Project Designer.

## **ARTICLE 7 COOPERATION WITH OTHERS:**

### **7.1 Contractor Responsible to Resolve Conflicts**

- A. The provisions of MAG Uniform Standard Specifications for Public Works Construction Sections 105.6, 105.6.1, 105.6.2, 107.11 and 109.8.1 strictly apply and shall be read together with Section 4.3.1 herein.
- B. It shall be the responsibility of CONTRACTOR to ascertain the need for bracing or shoring of utility poles during the construction of the Project and no additional compensation will be allowed for such bracing or shoring.
- C. In general, the contract will indicate various utility items, certain of which are to be relocated or adjusted by the utility owner and others, by the Contractor. Any work performed separate from this Contract by CONTRACTOR for any utility company, shall be paid for by the utility company and will not be a part of this Contract with CITY.

### **7.2 Notifications Requirement in the Event of Any Damage to or Dislocation of Underground Facilities**

In the event of any damage to or dislocation of any underground facility, CONTRACTOR shall immediately notify the owner of such facility and shall not attempt to repair any facility, except those intended for the conveyance or storage of water and sewage. The excavation shall be left open until the arrival of representatives of the owner. The owner of the damaged facility will dispatch its representative promptly to examine the underground facility and, if necessary, make repairs.

### **7.3 Cooperation Between Contractors**

CITY reserves the right at any time to contract for and perform other or additional work on or near the work covered by the contract. When separate contracts are let within the limits of any one project, each CONTRACTOR shall conduct his work so as not to interfere with or hinder the progress or completion of the work being performed by other Contractors. Contractors working on the same project shall cooperate with each other as directed by City. Each Contractor involved shall assume all liability, financial or otherwise, in connection with his contract and shall protect and save harmless the CITY from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced by such Contractor because of the presence and operations of other Contractors working within the limits of the same project. Each Contractor shall arrange their work and shall place and dispose of the materials being used so as not to interfere with the operations of the other Contractors within the limits of the same project. Each Contractor shall join their work with that of others in an acceptable manner and shall perform it in proper sequence to that of the others. CITY will not honor any claim for extra compensation due to delays, extra work, or extension of time caused by any other Contractors working within the limits of the same project.

## **ARTICLE 8 - STATUS OF CITY'S REP AND THE PROJECT DESIGNER DURING CONSTRUCTION**

### **8.1 City's Representative**

- A. The term CITY'S REPRESENTATIVE (CITY REP) refers to the person or firm appointed by CITY to be on the project site daily to oversee the construction on the CITY'S behalf. CITY REP performs those functions of the person sometimes referred to as the "owner's representative," "resident engineer," "resident project representative," "onsite construction manager," or the "construction administrator." Sometimes the CITY REP will be a City employee, sometimes the CITY REP will be the same person or firm that designed the project, i.e., the Project Designer, and sometimes a different architect or engineer, but in any

case, the CITY REP will represent the CITY and has only the authority granted by CITY, whether through an employment relationship or through a contract for professional services.

- B. CITY may also appoint one person or firm to be CITY REP for certain phases or portions of the Project and another different person or firm to be CITY REP for other phases or portions of the Project. Frequently the CITY REP for that portion of a Project known as the "offsite improvements" will be a City Offsite Inspector.
- C. The CITY REP may appoint persons to assist in observing the performance of the Work, and in the performance of the duties of CITY REP but in such case prior permission of CITY must be obtained and CITY shall provide written notice to CONTRACTOR. An assistant to the CITY REP may sometimes be referred to as the Owner's Field or Onsite Representative.
- D. The duties and responsibilities and the limitations of authority of CITY REP during construction are set forth in the Contract Documents. Generally, unless otherwise specifically stated in the Contract Documents the CITY REP may perform the following functions:
  - 1) Observe the performance of the Work, inform CITY of the progress of the Work and endeavor to guard CITY against defects and deficiencies in the Work.
  - 2) Arrange, schedule and attend pre-construction conferences, progress meetings and other job conferences as may be required, and notify in advance those who are expected to attend. Prepare and circulate minutes of project meetings including coordination meetings.
  - 3) Review the CONTRACTOR'S Progress Schedules, schedule of Shop Drawings, and other schedules prepared by the CONTRACTOR and determine their acceptability.
  - 4) Review Contractor's initial cost breakdown with Schedule of Values and/or Bid Schedule Unit Price List and with concurrence from the Project Designer recommend approval.
  - 5) Assist CITY in acquiring materials testing laboratory and inspection services.
  - 6) Receive and record the date of receipt, and monitor transmission of Shop Drawings, samples, and test data submitted by the CONTRACTOR, forward the Shop Drawings and other submittals requiring such review to the Project Designer and/or other agencies or persons, receive from the Project Designer such submittals after review and record the date of such receipt, and transmit them back to CONTRACTOR as necessary. All such transmittal dates shall be recorded in the Submittal log.
  - 7) Provide "on-site" observation regarding conformance of the work with the contract documents. Observe and document work and any delays and identify and reject defective or deficient work. Observe and approve or reject construction materials and equipment to determine their general compliance with the Contract Documents.
  - 8) Advise the Project Designer when it is believed Work should be corrected, rejected, uncovered for observations, or requires special tests or inspections.
  - 9) Arrange for CITY instigated inspections and tests (CONTRACTOR shall arrange for general inspections and materials testing.) Verify that tests, equipment and system start-up and operating and maintenance instructions are followed and conducted by the CONTRACTOR in the presence of the appropriate personnel, as required by the Contract Documents, and that the CONTRACTOR maintains adequate records thereof.
  - 10) Observe, record, and report to CITY and the Project Designer, information concerning CITY instigated test procedures and start-ups.

- 11) Schedule, assist and accompany other City staff, the Project Designer and inspectors representing other agencies having jurisdiction over the Project, visiting the Work Site and record and report the outcome of these inspections.
- 12) Prepare progress reports.
- 13) Issue Field Orders.
- 14) Issue Work Change Directives.
- 15) Prepare all Change Orders and supplemental agreements in the form and manner approved by the CITY, for authorized alterations to the Work as provided for under the Contract Documents. Recommend to and obtain from CITY approval or denial of Changes to Contract Times or Price.
- 16) Verify and approve quantities of work put in place during the preceding month as requested in Contractor's application for payment.
- 17) Verify Contractor reimbursable field costs, if any, for authorized overtime and time and material work and amount of construction "work in place" completed each month for purpose of Contractor's application for payment.
- 18) Investigate and furnish to CITY and the Project Designer information relating to the CONTRACTOR'S claims and furnish CITY with documents, calculations and other information relevant to such claims together with recommendations with regard to payment of such claims.
- 19) Furnish CITY and the Project Designer with monthly reports as required, of the progress of the Work and of the CONTRACTOR'S compliance with the approved Progress Schedule, schedule of Shop Drawing submissions and other schedules.
- 20) Review the CONTRACTOR'S Application for Payment and certify that the Work has progressed to the point indicated by the CONTRACTOR, that to the best of the knowledge, information and belief of CITY REP, based on observations and review, the Work is in accordance with the Contract Documents, and that the CONTRACTOR is entitled to the payment of the amount certified.
- 21) Respond to general RFI's for general clarification and interpretation and consult, when appropriate with Project Designer or refer RFI to Project Designer for response.
- 22) Review the Project Designer's interpretation of the Contract Documents for subsequent presentation to Contractor and resolve unanticipated field problems by "on-site" inspections.
- 23) Maintain orderly files for correspondence, reports or job conferences, Shop Drawing and sample submissions, reproductions of original Contract Documents including Addenda, authorized alterations to the Contract Documents, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, clarification letters, and other alterations to the Contract Documents, interpretations of the Contract Documents, progress reports, and other Project related documents.
- 24) Review Contractor's completion documents.
- 25) Prepare, with assistance from the Project Designer, punch list items.

- 26) Recommend to CITY substantial completion.
- 27) Perform Final Inspection with assistance from the Project Designer.
- 28) Recommend, with concurrence of the Project Designer, to CITY Final Completion.
- 29) Issue certificates of completion.

## **8.2 The Project Designer**

The duties and responsibilities and the limitations of authority of the Project Designer during construction are set forth in the Contract Documents and shall not be extended without written consent of CITY and the Project Designer. Generally, unless otherwise specifically provided in the Contract Documents, the Project Designer will perform the following functions:

- A. Design the Project and prepare all Projects Plans and Specifications.
- B. Assist in Bidding, respond to pre-bid questions and requests for clarifications.
- C. Attend Pre-bid Conference.
- D. Issue any necessary Addenda.
- E. Respond to RFI's and as determined necessary by CITY REP, issue such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or Contract Time, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.
- F. Correct Design defects.
- G. Review and approve Shop Drawings
- H. Review Contractor's initial schedule of values cost breakdown and with concurrence from CITY REP recommend approval.
- I. Review Construction Progress Schedule and comment on acceptability.
- J. Provide advice when requested regarding approval or denial of Changes to Contract Times or Price.
- K. In the event of a claim or dispute by CONTRACTOR, interpret the requirements of the Contract Documents and judge the acceptability of the Work thereunder.
- L. Assist CITY REP to prepare punch list items.
- M. Assist CITY REP with Final inspection.
- N. Recommend, with concurrence of CITY REP, to CITY Final Completion.

## **8.3 Contractor's Contact For All Communication**

All communication to CITY or to the Project Designer from CONTRACTOR shall be through CITY REP.

#### **8.4 Rejecting Defective Work**

Both CITY REP and the Project Designer have authority to disapprove or reject Work which they determine to be defective, and also have authority to require special inspection or testing of the Work as provided in Article 13, whether or not the Work is fabricated, installed or completed. Final authority regarding acceptance of Work rests with CITY, who will act after receiving the recommendations of CITY REP and the Project Designer.

#### **8.5 Limitations on Responsibilities of the Project Designer and/or CITY REP**

- A. Neither authority to act granted under this Article or elsewhere in the Contract Documents nor any decision made by CITY REP or the Project Designer in good faith, either to exercise or not exercise such authority, shall give rise to any duty or responsibility of CITY to CONTRACTOR, any Subcontractor, any manufacturer, fabricator, supplier or distributor or any of their agents or employees or any other person performing any of the Work.
- B. Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of CITY REP or the Project Designer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The word "provide" shall be understood to mean furnish and install. The use of any such term or adjective never indicates that either the Project Designer or CITY REP shall have authority to supervise or direct performance of the Work or authority to undertake responsibility contrary to the provisions of Paragraphs C and D below.
- C. Neither CITY REP nor the Project Designer will be responsible for CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and they will not be responsible for CONTRACTOR'S failure to perform the Work in accordance with the Contract documents.
- D. Neither CITY REP nor the Project Designer will be responsible for the acts or omissions of CONTRACTOR or of any Subcontractors, or of the agents or employees of any CONTRACTOR or Subcontractor, or of any other person at the site or otherwise performing any of the Work.

### **ARTICLE 9 – CONDITIONS OF THE SITE**

#### **9.1 Dust Control**

- A. CONTRACTOR shall keep suitable equipment on hand at the job site for maintaining dust control on the project and shall employ appropriate equipment for that purpose, in accordance with the requirements of the "Maricopa County Environmental Services Department Air Pollution Control Regulations".
- B. CONTRACTOR, especially if earth-moving operations are involved, shall be responsible for obtaining an Air Quality Permit from Maricopa County prior to starting the work. County permit fees shall be paid for by the CONTRACTOR.

#### **9.2 Clean Up**

- A. CONTRACTOR is responsible for keeping the sidewalks, streets, alleys, and adjacent areas around the Project site free from debris, obstacles, mud, dirt, etc. CONTRACTOR shall immediately and continuously clean up any and all mud or dirt tracked onto streets or sidewalks by construction traffic.

- B. During progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. Failure of the CONTRACTOR to comply with the CITY REP cleanup orders may result in an order to suspend Work until the condition is corrected. No additional compensation or time will be allowed as a result of such suspension.
- C. Excess or unsuitable material, broken asphaltic concrete, and broken portland cement concrete resulting from the construction shall be removed from the project and disposed of by the CONTRACTOR. Disposal of material within the Chandler City Limits or Planning Area must be approved by the CITY REP.
- D. Construction silt, mud, and/or debris resulting from construction operation shall be prevented by the CONTRACTOR from being discharged into City storm drains, retention basins or street right-of-way.
- E. Earthwork stockpiles are not to exceed 6 feet in height. Any earthwork stockpile, even less than 6 feet, must be removed within seven days of City notification if dust suppression efforts fail to maintain satisfactory airborne contaminant control.
- F. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises, as well as all tools, appliances, construction equipment and machinery, temporary construction facilities and surplus materials, and shall leave the site clean and ready for occupancy by CITY. CONTRACTOR shall restore to their original condition those portions of the site not designated for alteration by the Contract Documents. CONTRACTOR shall also leave the public right-of-way, all streets, sidewalks, utility easements and any affected private property in a neat and clean condition with all damages including landscaping repaired and restored.
- G. If CONTRACTOR is instructed by CITY REP to perform project clean up or street sweeping operations and fails to do so to CITY's satisfaction within two working days, CITY may procure project clean up services and/or commercial street sweeping services and charge such costs including City administrative time to CONTRACTOR.

### **9.3 Repair of landscaped areas and Re-Seeding of Seeded Areas**

Any seeded area that has been damaged as a result of construction shall be leveled, raked and re-seeded or re-sodded by the CONTRACTOR at CONTRACTOR'S expense.

### **9.4 Traffic Control**

Traffic Control shall be provided as required by the City of Chandler Traffic Barricade Design, Technical Design Manual #7. Any restriction to streets, sidewalks and alleys requires either a Street Closure Permit or permission to close or restrict from the City in accordance with said Technical Design Manual #7.

### **9.5 Property, Rights in Materials**

- A. Nothing in the Contract shall be construed as vesting in the CONTRACTOR any right of property in the materials used after they have been attached or affixed to the Work or the soil, or after payment has been made for materials delivered to the site of the Work, or stored subject to or under the control of the CITY. All such materials shall become the property of the CITY upon being so attached or affixed or upon payment for materials delivered to the site of the Work or stored subject to or under the control of the CITY.
- B. Soil, stone, gravel, and other materials found at the site of the Work and which conform to the Drawings and Specifications for incorporation into the Work may be used in the Work. No

other use shall be made of such materials except as may be otherwise described in the Drawings and Specifications.

#### **9.6 Access**

Access shall be maintained to adjacent properties at all times during construction. Where property has more than one point of access, no more than one access shall be restricted or closed at any one time. Access to adjacent private driveways shall be maintained during all non-working hours.

#### **9.7 Notification of Property Owners**

All property owners that may be affected by the proposed construction activities shall be notified of the scope, duration of the construction activities and possible interference with their day-to-day activities by CONTRACTOR prior to start of construction. In addition, individual residential or commercial interferences, such as driveway restrictions, water outages, and all other work adjacent to residence/business, require 48-hour notification in advance of specific adjoining work. Notification may be through door hangers or other procedures approved by the CITY.

#### **9.8 Construction Signs**

- A. It shall be the responsibility of CONTRACTOR to furnish and erect construction signs in accordance with Project Specifications. The signs shall be professionally prepared and subject to approval by the CITY REP, shall be maintained by CONTRACTOR for the duration of the project and shall be removed by CONTRACTOR during the final project clean up.
- B. The number of signs required, the size, shape, installation requirements and information to be included for construction signs is established on the detail sheet, provided, however, signs will be a minimum of 4 foot by 8 foot and will be installed so that the bottom of the sign is at least 4 foot above grade. No direct payment will be made for furnishing and erecting construction signs. The cost thereof shall be included in other items for which direct payment is made. Sign locations shall be determined by CITY REP.
- C. All required construction signs shall be installed by CONTRACTOR within seven days of Notice to Proceed.

#### **9.9 Water for Construction Purposes**

- A. If CONTRACTOR desires to use water from City mains, CONTRACTOR shall make application to the City Finance Department for a fire hydrant meter and pay the required deposit. CONTRACTOR may not take water from City mains until a meter is installed. Contractor shall pay for such water as billed by the City Utility Department. City will not directly reimburse Contractor for such construction water costs as Contractor's cost should have been included in other unit or lump sum bid prices..
- B. For conservation reasons, water flooding of trenches for backfilling purposes using potable water is discouraged.

#### **9.10 Relocation of Existing Water Meters**

When a service line has been extended and a line setter installed in a meter box, City forces will re-install meter. No compression fittings shall be utilized.

#### **9.11 Water Turn-On or Turn-Off**

- A. CONTRACTOR shall coordinate all water line turn-ons and turn-offs through the CITY REP. Application shall be made to the Municipal Utility Department and CONTRACTOR shall pay the established charges. The City will close existing valves, but will not guarantee a bone-dry Shutdown.

- B. CONTRACTOR shall notify all customers affected by the turn-off not less than forty-eight (48) hours in advance. Notification shall be in writing, shall give the reason for the turn-off and shall give the estimated time and duration that water service will be interrupted. CONTRACTOR is also notified that water turn-off will not be permitted on the day before and after Thanksgiving Day and Christmas Day.
- C. No direct payment will be made to CONTRACTOR for turn-ons or turn-offs. Costs associated therewith shall be included in other items for which direct payment is made.

## **ARTICLE 10 – CONSTRUCTION PHOTOGRAPHS**

### **10.1 Pre-construction Video**

The CONTRACTOR shall furnish a pre-construction video recording of the entire project site showing the existing conditions of all pavement, concrete, piping, equipment, structures, landscaping, building, and other site features. The pre-construction video shall be in color VHS format. Two (2) copies of the VHS tape(s) shall be submitted to the CITY REP and approved prior to mobilization or initiating any construction activities. The CONTRACTOR shall notify the CITY REP at least 48 hours prior to making the recording so that the CITY REP may accompany the recorder.

### **10.2 Ground Level Construction Photographs**

- A. The CONTRACTOR shall furnish progress photographs of the project. The photographer selected by the CONTRACTOR shall be approved by the CITY REP and shall be either a commercial photographer or an individual experienced and equipped for such photography. The CONTRACTOR shall submit to the CITY REP three (3) representative prints of photos taken by the selected photographer for approval of the photographer's qualifications prior to taking the first photographs.
- B. The CONTRACTOR shall deliver to the CITY REP all negatives and three 4" x 6" color glossy prints of each view of the photographs taking during that period with each application for payment. If the current photographs do not accompany the application, the application shall not be reviewed and shall be returned to the CONTRACTOR as incomplete. The number of photographs required to be taken per each application for payment shall be specified in the Supplementary Conditions for each Project but shall not be less than ten (10) photographs.
- C. Processing and reproduction work shall be accomplished in accordance with standard practice to ensure that the negatives and subsequent prints are clear and sharp in detail, of good tonal quality and uniform in range of density. Photos shall be taken by a 35 mm camera or a 2-1/4" x 2-1/4" format camera and shall be protected in appropriate professional enclosures. The photographs shall be taken at regular intervals which provide a step-by-step progress of each Project area.
- D. The negatives and photographs shall be identified by use of typewritten labels affixed to the negative enclosure and to the back of the photograph. The label shall provide a description of the view, the direction from which the photograph was taken, the name of the project, CITY'S project number, the name of CONTRACTOR and the date of the photography. The stationing shall also be included for all pipeline installations.
- E. CONTRACTOR shall furnish adjustable, hard-back photo album covers for each set for storage of the mounted photos. Photo albums shall be labeled as to Project title.

### **10.3 Aerial Construction Photographs**

- A. Unless otherwise specified in the Supplementary Conditions, CONTRACTOR shall engage a professional aerial photographer to photograph the site prior to construction

mobilization, at three-month intervals during construction, and following final inspection. The photos shall be taken from two elevations, 1:6400 and 1:3600. The 1:6400 shall center the Project in one 9-inch image. The 1:3600 shall center the Project in two 9-inch images. The 9" square negatives and the following prints shall be provided:

Interval	Prints	Total Prints
3 month intervals	3 of 9"x9" @ 1:6400	9 - 9" x 9"
	3 of each 9"x8" overlapping image @ 1:3600	Every 3 months

- B. The pilot must be well qualified, possessing a minimum of 250 hours of photographic map flying experience. The photographer shall possess a minimum of 250 hours of experience representing actual time spent in executing vertical aerial photography on photographic assignments. Oblique photography is also considered as qualifying experience.
- C. The airplane to be used shall be entirely capable of stable performance at the necessary altitude and air speeds, and shall be equipped with all essential navigational and photographic instruments and accessories, and all maintained in operational condition during the period of the contract. No windows shall be interposed between the camera lens system and the terrain. The camera lens system shall not be in the direct path of any gases or oil from the aircraft engines.
- D. All photography shall be made with a single lens precision aerial mapping camera equipped with a "high-resolution, distortion-free type lens," calibrated by the National Bureau of Standards. The calibrated focal length of the lens (the focal length at which the values of lens distortion, irrespective of sign, are held to the minimum within 45 degrees of the optical axis) shall be 153 millimeters, plus or minus 3 millimeters. The camera shall function properly at the necessary altitude and under the expected climatic conditions, and shall expose a 9-inch square negative. The lens-cone shall be so constructed that the lens, focal plane at calibrated focal length, fiducial markers and marginal data markers comprise an integral unit or are otherwise fixed in rigid orientation with one another. Dimensional changes brought about by variations of temperature or other conditions shall not be of such magnitude as would cause deviation from the calibrated focal length in excess of plus or minus 0.05 millimeter or would preclude determination of the principal point location to which plus or minus 0.003 millimeter.
- E. All prints shall be made on double weight, semi-matte paper stock. They shall be sharp and clear, shall contain all highlight and shadow detail, and shall be evenly tone. They shall be permanently fixed, thoroughly washed, processed through flattening solution and dried without pressing, rolling, or excessive heating and trimmed to image area.
- F. Aerial film will be of a quality that is equal or superior to 4 mil Kodak Aerocolor Negative film 2445 (Ester Base). Only fresh, fine-grained aerial film shall be used. The negatives shall be exposed and developed in such a manner that they shall be sharp and clear, and contain all highlights and shadow detail. They shall be free of any defects which, in the opinion of the CITY REP, render them unsuitable for their intended purpose.
- G. Negatives and 9"x9" prints shall be enclosed in plastic enclosures and labeled by use of typewritten labels affixed to the negative enclosure and to the back of the print. The label shall include the name of the Project, CITY'S Project number, the name of CONTRACTOR and the date of the photography. Labels shall also be affixed to the larger prints.

- H. CONTRACTOR shall furnish adjustable, hard-back photo album covers for each set of 9"x9" prints for storage. Photo albums shall be labeled as to Project title, CITY'S index number, and of CONTRACTOR.

#### **10.4 Procedures**

- A. Photographic exposures shall be taken during the construction period. CITY REP may vary the specified frequency so that significant progress or changes can be recorded on the photographs.
- B. The ground level construction photographs shall be of aesthetic composition and shall depict the progress of the work from the beginning of construction through and including the finished product.
- C. All buried piping of greater than four (4) inches in diameter shall be photographed prior to backfill. CITY REP will establish when increased photograph frequency is required, but in no case shall photographs represent sections of new piping installations greater in length than 200 linear feet.

### **ARTICLE 11 - CHANGES IN THE WORK**

#### **11.1 Field Orders**

CITY REP may authorize minor changes in the Work not involving an adjustment in the Contract Price or the Contract Times, which are consistent with the overall intent of the Contract Documents. These may be accomplished by a written Field Order on the standard form approved by CITY and executed by CITY REP. Such Field Orders shall be binding on CITY, and also on CONTRACTOR who shall perform the change promptly. If CONTRACTOR believes that a Field Order justifies an increase in the Contract Price or Contract Time, CONTRACTOR may make a claim therefor as provided in Article 12 or Article 13.

#### **11.2 Change Order at City's Request**

Without invalidating the Contract, CITY may, at any time or from time to time, order additions, deletions or revisions in the Work. If such addition, deletion or revision will cause a change in the Contract Price or Contract Times, (including to any Milestones), CITY REP using a standard form approved by CITY, will submit a Request for Proposal to CONTRACTOR requesting CONTRACTOR to respond within five (5) days by providing, in writing on the standard form approved by CITY to CITY REP, CONTRACTOR'S proposed time and price changes. Such Proposal shall contain a detailed cost breakdown substantiating all proposed charges and an explanation for any requested extension to the Contract Times and will also contain the number of days for which the proposal will remain valid.

- A. If CITY agrees to the proposal submitted by CONTRACTOR, CITY REP shall, within the time specified in the proposal, obtain the authorized signature of CITY on a Change Order using the standard form approved by CITY and return the executed Change Order to CONTRACTOR for signature by CONTRACTOR.
- B. If CITY and CONTRACTOR cannot agree on the changes to the Contract Price and/or Contract Times warranted by the proposed Change Order, CITY may perform any additional work itself, may contract with others to perform any additional work, may order CONTRACTOR to comply with the change to the work and determine the Change in Contract Price in accordance with Article 12 herein, or may determine not to proceed with the proposed Change Order. In such case, where the parties are unable to agree, and CITY desires CONTRACTOR to perform the Change, CITY will issue a Work Change Directive (Change Order executed only by CITY), but noting the appropriate method to determine Contract Price changes, i.e., unit prices, and cost of work based on time and materials as set forth in Article 12, or through alternate dispute resolution pursuant to Article 17 herein. If

CONTRACTOR disputes or disagrees with the method noted by CITY and/or if the method selected is through dispute resolution, CONTRACTOR should submit written notice of such dispute to CITY REP within two (2) days of receipt of the Change Order executed by CITY.

- C. Upon receipt of the executed Change Order or Work Change Directive, CONTRACTOR shall proceed with the change to the Work involved. All such Work shall be performed under the applicable conditions of the Contract Documents.

### **11.3 No Payment Without Written Authorization**

Additional Work performed without authorization of a written executed Change Order or a written executed Field Order will not entitle CONTRACTOR to an increase in the Contract Price or an extension of the Contract Time, except as otherwise specifically provided herein.

### **11.4 No Change Order for Adjusted Quantities**

CONTRACTOR is responsible for performing its own independent quantity takeoffs during the bid process. Actual field measured quantities and/or quantities verified by registered land surveyor stamped calculations upon request from the City will be paid to the contractor at the unit rates established in the bid schedule. No adjustment in unit prices will be made for quantities actually used that differs from that shown in the bid proposal. Sections 109.4.1, 109.4.2, and 109.4.3 of "MAG Uniform Standard specifications for Public Works Construction," as revised in the version adopted in the Chandler City Code, do not apply to this contract.

### **11.5 Notice on Bond**

If notice of any changes affecting the general scope of the Work or change in the Contract Price is required by the provisions of any Bond to be given to the surety, it will be CONTRACTOR'S responsibility to notify the surety, and the amount of each applicable Bond shall be adjusted accordingly. CONTRACTOR shall furnish proof of such adjustment to CITY.

## **ARTICLE 12 - CHANGE OF CONTRACT PRICE**

The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work.

### **12.1 Written Document Required to Change**

The Contract Price may only be changed by a written Change Order. Any claim for an increase in the Contract Price shall be based on written notice delivered to CITY REP within two (2) days of the occurrence of the event giving rise to the claim. Notice of the amount of the claim with supporting data shall be delivered as soon as CONTRACTOR can determine the cost but no later than within fifteen (15) days of completion of any additional work required due to such occurrence unless CITY REP allows an additional period of time to ascertain accurate cost data. However, MAG Standard Specifications Section 104.2.2 C) shall be strictly applied.

### **12.2 Value of Work**

The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the ways listed herein:

- A. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the units involved.
- B. By mutual written agreement to a lump sum amount, CONTRACTOR shall furnish an itemized cost breakdown together with supporting data including the quantities used in computing the lump sum.

- C. On the basis of the Cost of the Work (determined as provided in Paragraph 12.4) plus a Contractor's Fee for overhead and profit (determined as provided in Paragraph 12.5).
- D. Through the use of the alternate dispute resolution process set forth in Article 17 herein.

### **12.3 Work Verification**

- A. Whenever the cost of any Work is to be determined pursuant to Paragraph 12.4.A and 12.4.B, CONTRACTOR will submit in a form acceptable to CITY REP, daily work sheets showing an itemized labor, material and equipment cost breakdown together with supporting data. No payment will be made for Work not verified by CITY REP.
- B. Whenever it is necessary to determine the Cost of the Work because CITY and CONTRACTOR do not agree on an appropriate price for a change in the Work, CITY will incur additional costs to document the time, materials and equipment performed or used at the Site for such Work. CONTRACTOR shall reimburse CITY for all such additional costs to CITY in the event such documenting of time, materials and equipment charges result in a price equal to or less than the amount offered by CITY to CONTRACTOR for such work. CITY'S additional costs will include but not be limited to the cost to CITY for additional time of CITY REP and/or assistants to document CONTRACTOR'S time and materials.

### **12.4 Cost of the Work**

- A. The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by CITY, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in Paragraph 12.4.B.
  - 1) Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by CITY and CONTRACTOR. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays shall be included in the above only to the extent authorized in writing by CITY.
  - 2) Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless CITY deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to CITY. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue to CITY, and CONTRACTOR shall make provisions so that they may be obtained.
  - 3) Payment made by CONTRACTOR to the Subcontractors for Work performed by Subcontractors. If required by CITY, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to CONTRACTOR and shall deliver such bids to CITY who will then determine which bids will be accepted. If a Subcontractor provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a Fee, the Subcontractor's Cost of the Work shall be determined in the same manner as CONTRACTOR'S Cost of the Work except as modified herein. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

- 4) Costs of special consultants (including, but not limited to, engineers, architects, testing laboratories, surveyors, lawyers and accountants) employed for services specifically related to the Work.
- 5) Supplemental costs including the following:
- a. The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR'S employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workmen, and which are consumed in the performance of the Work, and cost less market value of each item used, but not consumed, which remain the property of CONTRACTOR.
  - c. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by CITY, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof -- all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work. The "Rental Rate Blue Book for Construction Equipment" published by Primedia Information, Inc., (Dataquest Blue Book) shall be used to determine hourly equipment rates (without operators) for Actual Cost Work (MAG 109.5.1 modification) in accordance with the following formula:

$$\text{HERR} = f \times [(\text{Monthly Rate}) / 176] + \text{HOC}$$

Where:

$$\text{Monthly rate} = \frac{\text{Blue Book Monthly Rate, Adjusted with Factor for Blue Book Equipment Year of Manufacture}}{\text{Equipment Year of Manufacture}}$$

HERR = The Hourly Equipment Rental Rate

F = Regional Climate Adjustment Factor = 0.9 (for all Equipment)

HOC = Blue Book Hourly Operating Cost

Overhead and profit are included in the above established equipment hourly rate that CITY will be compensating CONTRACTOR for actual cost work. Equipment hours will be recorded to the nearest one-half hour.

Standby equipment time for equipment not operating to perform change order work and when equipment cannot be used elsewhere for other contract work shall be calculated as follows:

$$\text{SBR} = F \times (\text{MERR}/176) \times \frac{1}{2}$$

Where

SBR = Standby Equipment Rate

F = Regional Climate Adjustment Factor = 0.9 (For All Equipment)

MERR = Blue Book Monthly Equipment Rental Rate, Adjusted With Factor for Blue Book Equipment Year of Manufacture

Overhead and profit are included in the above established equipment hourly rate that the City will be compensating the contractor for actual cost work. Equipment hours will be recorded to the nearest one-half hour.

When double or triple shifting is required, the following equipment rates shall apply:

**Double Shift (16 Hours/Day):** The first 8-Hour shift shall be at the rates established above. The second 8-Hour shift shall be at 50% of the hourly rate established for one 8-Hour shift.

**Triple Shift (24 Hours/Day):** The first two 8-Hour shifts shall be at the rates established above. The third 8-Hour shift shall be at 50% of the hourly rate established for the second 8-Hour shift.

For all actual cost work, payment for "stand-by" will be limited to not more than eight hours in a 24-hour day or 40 hours in a normal week. No compensation shall be allowed for equipment that is inoperable due to breakdown or with equipment utilization on work other than the actual cost work for which compensation is being tracked. In addition, no payment shall be allowed for equipment that is not operating because work has been suspended by the contractor for the contractor's reasons. Leased equipment expenses will be compensated as specified in ADOT Specifications, Section 109.04(D)(3)(c). Transportation, freight time and/or other costs including overhead and profit on leased equipment will not be included as part of the actual cost change order work compensation.

- d. Sales, user or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by any governmental authority.
- e. Deposits lost for causes other than CONTRACTOR'S negligence, royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by CONTRACTOR in connection with the execution of the Work, provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of CITY. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR'S Fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid for services a fee proportionate to that stated in Paragraph 12.5.
- g. The cost of utilities, fuel and sanitary facilities at the site associated with the additional work.
- h. Cost of premiums for additional Bonds and insurance required because of changes in the Work.

B. The term **Cost of the Work** shall not include any of the following:

- 1) Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR, whether at the site or in CONTRACTOR'S principal or a branch office for general administration of the Work, and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.4.A.1 -- all of which are to be considered administrative costs covered by the CONTRACTOR'S Fee.

- 2) Expenses of CONTRACTOR'S principal and branch offices other than CONTRACTOR'S office at the site.
- 3) Any part of CONTRACTOR'S capital expenses, including interest on CONTRACTOR'S capital employed for the Work and charges against CONTRACTOR for delinquent payments.
- 4) Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for additional Bonds and insurance required because of changes in the Work).
- 5) Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
- 6) Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 12.4.A.

### **12.5 Contractor's Fee**

The CONTRACTOR'S Fee allowed to CONTRACTOR for overhead and profit shall be determined in accordance with MAG Specifications Section 109.5 except as modified herein for "actual cost work" and as follows:

- A. A mutually acceptable fixed fee.
- B. If a mutually acceptable fixed fee cannot be agreed upon, the fee will be based on the following portions of the cost of work:
  - 1) For costs incurred under Paragraphs 12.4.A.1 and 12.4.A.2, the CONTRACTOR'S Fee shall not exceed a total of fifteen percent (ten percent for overhead and five percent for profit). CITY reserves the right to furnish materials and equipment as CITY deems advisable, and the CONTRACTOR will not be paid the CONTRACTOR'S Fee for such materials and equipment.
  - 2) For costs incurred under Paragraph 12.4.A.3, the CONTRACTOR'S Fee shall not exceed a total of five percent; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to the Subcontractor as a fee for overhead and profit shall not exceed a total of fifteen percent.
  - 3) No fee shall be payable on the basis of costs itemized under Paragraph 12.4.A.4, 12.4.A.5 and 12.4.B.
  - 4) The amount of credit to be allowed by CONTRACTOR to CITY for any such change which results in a net decrease in cost, will be the amount of the net decrease plus a deduction in CONTRACTOR'S Fee by an amount equal to ten percent of the net decrease.
  - 5) When both additions and credits are involved in any one change, the adjustment in CONTRACTOR'S Fee shall be computed on the basis of the net change in the Contract Price.

### **12.6 Cash Allowances**

It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such

Subcontractors, manufacturers, fabricators, suppliers or distributors and for such sums within the limit of the allowances as may be acceptable to CITY. Upon final payment, the Contract Price shall be adjusted as required and an appropriate Change Order issued. CONTRACTOR agrees that the original Contract Price includes such sums as CONTRACTOR deems proper for costs and profit on account of cash allowances. No demand for additional cost or profit in connection therewith will be allowed.

### **12.7 Hindrances and delays**

- A. Except as provided in Paragraph B, below, no increase in the contract price nor additional payment shall be paid nor due to CONTRACTOR for hindrances or delays from any cause during the progress of any portion of the work included in this Contract; but such delays may entitle CONTRACTOR to an extension of the Contract Time in accordance with the provisions of Article 13 hereof.
- B. The parties agree to negotiate for the recovery of damages related to expenses actually incurred by the Contractor for a delay under the following circumstances:
- 1) If the CITY is solely responsible for the delay which is unreasonable under the circumstances, and
  - 2) Which delay was not within the contemplation of the parties and was not foreseeable at the time the Contract was entered into, and
  - 3) The CONTRACTOR can show the impact of the delay on the critical path as indicated on the approved Construction Progress Schedule.

The maximum compensation for any delay meeting the above requirements shall not exceed the daily amount specified for liquidated damages by the then current version of "MAG Uniform Standard specifications for Public Works Construction."

## **ARTICLE 13 - CHANGE OF THE CONTRACT TIMES**

### **13.1 Written Document Required**

The Contract Times, including any Milestones, may only be changed by a written Change Order. Any claim for any extension in the Contract Time shall be based on written notice delivered to CITY within two (2) days of the occurrence or the event giving rise to the claim. Notice of the extent of the claim with supporting data shall be delivered within fifteen (15) days of the conclusion of such occurrence unless CITY REP allows, in writing, an additional period of time to ascertain more accurate data.

- A. Notice of the extent of the claim must state the amount of additional time requested, the cause of the delay and its impact on critical path work items, the date of the occurrence causing the delay, and must include all other evidence reasonably available or known to the CONTRACTOR which would support the extension of time requested. Minimum required supporting data/criteria will include CPM computer software print outs at acceptable time periods as required by City staff to show the true schedule impact during the delay period.
- B. Requests for extensions of time failing to include the information specified in this Article and requests for extensions of time which are not received within the time specified above, shall result in the forfeiture of the CONTRACTOR'S right to receive any extension of time requested.
- C. Acceptance of the daily reports by CITY REP shall not be deemed an admission of the CONTRACTOR'S right to receive an extension of time or a waiver of the CITY'S right to strictly enforce the time provisions contained in the Contract Documents.

D. If CONTRACTOR and CITY REP are unable to agree on CONTRACTOR'S request for an extension of time, the dispute shall be resolved through the alternate dispute resolution process provided herein.

### **13.2 Delays Beyond Contractor's Control**

Where CONTRACTOR is prevented from completing any critical path work items within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended if a claim is made therefor, as provided herein. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by CITY, fires, floods, labor strikes, epidemics, abnormal weather conditions, or acts of God.

### **13.3 Delays Within Contractor's Control**

The Contract Times (or Milestones) will not be extended due to delays within the control of CONTRACTOR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

### **13.4 Delays Beyond City's and Contractor's Control**

Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both CITY and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR'S sole and exclusive remedy for such delay. No change to the Contract Price for extended overhead nor any other costs will be granted for delays beyond CITY'S control.

### **13.5 Rain**

Time extensions for rain may be granted only for conditions in excess of normal rainfall, which impacts ongoing activities at the site that have successive following activities that must be accomplished in a required sequence for completion of the project within the specified period. These would be generally labeled as Critical Path Activities. For the purposes of this contract, normal weather conditions, such as average days of rain per month, will be determined by meteorological data obtained from the National Weather Service for station 021514, CHANDLER HEIGHTS, ARIZONA. When it is established that rain in excess of normal rainfall justifies a time extension, a no cost time extension will be granted by the City. The contractor is expected and may be directed to perform other work on the project not effected by heavy rains.

## **ARTICLE 14 - WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

### **14.1 Notice of Defects**

Prompt written notice of all defective Work of which CITY, CITY REP or the Project Designer have actual knowledge will be given to CONTRACTOR. All defective Work may be rejected, corrected, or accepted as provided herein.

### **14.2 Access to Work**

CITY, CITY REP and the Project Designer and agents of each of them, testing agencies and governmental agencies with jurisdictional interests shall be provided access to the Work at reasonable times for their observation, inspection and testing. CONTRACTOR shall provide proper and safe conditions for such access.

### **14.3 Tests and Inspections**

A. CONTRACTOR shall give CITY REP timely (at a minimum, twenty-four hours) notice of readiness of the Work for all required inspections, tests or approvals. CONTRACTOR shall give timely notice to CITY REP in advance of backfilling or otherwise covering any part of the

Work so that CITY REP may, if desired, observe such part of the Work before it is concealed. Whenever CONTRACTOR varies the normal period during which Work or any portion of it is carried on each day, CONTRACTOR shall give timely notice to CITY REP so that CITY REP may, if desired, be present to observe the Work in progress. If CONTRACTOR fails to give such timely notice, any Work done in the absence of CITY REP will be subject to rejection. If CONTRACTOR gives such notice to CITY REP, but then is not ready for such inspections, tests, approvals or observations at the time so noticed, CONTRACTOR shall reimburse CITY for all costs incurred by the attendance of CITY REP or other CITY representatives.

- B. If any law, ordinance, rule, regulation, code, or orders of any public body having jurisdiction requires any Work (or part thereof) to be inspected, tested or approved, CONTRACTOR (unless another party is specified in the Contract Documents) shall assume full responsibility therefor, pay all costs in connection therewith and furnish CITY REP the required certificates of inspection, testing, or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required by the Specifications in connection with CITY'S acceptance of a manufacturer, fabricator, supplier or distributor of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to CONTRACTOR'S purchase thereof for incorporation in the Work. The cost of all other inspections, tests and approvals required by the Contract Documents shall be paid by CITY (unless otherwise specified).
- C. All inspections, tests or approvals other than those required by law, ordinance, rule, regulation, code or order of any public body having jurisdiction shall be performed by organizations acceptable to CITY and by the Project Designer if so specified.
- D. Neither observations by CITY REP, the Project Designer nor inspections, tests or approvals by others shall relieve CONTRACTOR from their obligations to perform the Work in accordance with the Contract Documents.

#### **14.4 Uncovering Work**

- A. If any Work that is to be observed, inspected, tested or approved is covered without written concurrence of CITY REP, it must, if requested by CITY REP be uncovered for observation. Unless CONTRACTOR has given CITY REP timely notice of CONTRACTOR'S intention to cover such Work and CITY REP has not acted with reasonable promptness in response to such notice, CONTRACTOR shall furnish all necessary labor, material and bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, including compensation for additional professional services, and an appropriate deductive Change Order shall be issued.
- B. If CITY REP considers it necessary or advisable that Work covered with the concurrence of CITY REP or Work covered after CITY REP failed to act with reasonable promptness in response to a written notice from CONTRACTOR, be observed, inspected or tested by CITY REP or others, CONTRACTOR, at CITY REP'S request, shall uncover, expose or otherwise make available for observation, inspection or testing as CITY REP may require, that portion of the Work in question and CONTRACTOR shall bear all costs. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction if CONTRACTOR makes a claim therefor as provided in Articles 11 and 12.

#### **14.5 City May Stop the Work**

If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workmen or suitable materials or equipment, CITY may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of CITY to stop the Work

shall not give rise to any duty on the part of CITY to exercise this right for the benefit of CONTRACTOR or any other party.

#### **14.6 Correction or Removal of Defective Work**

- A. If required by CITY REP, CONTRACTOR shall promptly, without cost to CITY and as specified by CITY REP, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by CITY, remove it from the site and replace it with non-defective Work. CONTRACTOR shall correct any Work which may be displaced in correcting, removing or replacing defective Work. No compensation will be allowed CONTRACTOR for such removal, replacement or remedial Work. CONTRACTOR shall reimburse CITY for costs incurred by CITY due to such correction or removal including but not limited to additional expenses for inspection, testing or observation and/or for repeated reviews by the CITY REP or Project Designer.
- B. Upon failure on the part of the CONTRACTOR to comply within a reasonably prompt time with any written order of CITY REP to correct or remove defective Work, CITY REP shall have authority to cause nonconforming materials or rejected Work to be remedied, removed, or replaced at the CONTRACTOR'S expense and to deduct the costs from any moneys due or to become due the CONTRACTOR.

#### **14.7 Correction Period - One Year Guarantee**

- A. If, within one year after the date of the Certificate of Final Acceptance, or such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents, any Work is found to be defective, CONTRACTOR shall promptly, without cost to CITY and in accordance with CITY'S written instructions, either correct such defective Work, or, if it has been rejected by CITY, remove it from the site and replace it with non-defective Work. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, CITY may have the defective Work corrected or the rejected Work removed and replaced, and all direct and indirect costs of such removal and replacement, including compensation for additional professional services, shall be paid by CONTRACTOR. Such action by the CITY will not relieve the CONTRACTOR of the guarantees required by this Article or elsewhere in the Contract Documents.
- B. If, in the opinion of the CITY, defective Work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the CITY or to prevent interruption of operation of the CITY, the CITY will attempt to give the notice required by this Article. If the CONTRACTOR cannot be contacted or does not comply with the CITY'S request for correction within a reasonable time as determined by the CITY, the CITY may, notwithstanding the provisions of this Article, proceed to make such correction or provide such attention; and the costs of such correction or attention shall be charged against the CONTRACTOR. Such action by the CITY will not relieve the CONTRACTOR of the guarantees required by this Article or elsewhere in the Contract Documents.
- C. This Article does not in any way limit the guarantee on any items for which a longer guarantee is specified or on any items for which a manufacturer or supplier gives a guarantee for a longer period. The CONTRACTOR agrees to act as co-guarantor with such manufacturer or supplier and shall furnish the CITY all appropriate guarantee or warranty certificates upon completion of the Project. No guarantee period, whether provided for in this Article or elsewhere, shall in any way limit the liability of CONTRACTOR or their sureties or insurers under the indemnity or insurance provisions of these General Conditions and the Supplementary Conditions.

#### **14.8 Acceptance of Defective Work**

- A. If, instead of requiring correction or removal and replacement of defective Work, CITY prefers to accept it, CITY may do so. If any such acceptance occurs prior to final payment, a Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Contract Price; or, if the acceptance occurs after final payment, an appropriate amount shall be paid by CONTRACTOR to CITY.
- B. CITY may require CONTRACTOR to furnish at CONTRACTOR'S expense, a special performance guarantee or other surety prior to acceptance of defective work.

#### **14.9 City May Correct Defective Work**

If CONTRACTOR fails within a reasonable time after written notice of CITY REP to proceed to correct defective Work or to remove and replace rejected Work as required by CITY in accordance with Paragraph 14.6, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents (including any requirements of the progress schedule), CITY may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising CITY'S rights under this Paragraph, CITY shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, CITY may exclude CONTRACTOR from all or part of the Work, and suspend CONTRACTOR'S services related thereto, take possession of CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which CITY has paid CONTRACTOR, but which are stored elsewhere. CONTRACTOR shall allow CITY, CITY REP, agents and employees such access to the site as may be necessary to enable CITY to exercise CITY'S rights under this Paragraph. All direct and indirect costs of CITY in exercising such rights shall be charged against CONTRACTOR in an amount verified by CITY REP, and a Change Order shall be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Contract Price. Such direct and indirect costs shall include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of work or others destroyed or damaged by correction, removal or replacement of CONTRACTOR'S defective work. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in CONTRACTOR'S performance of the Work attributable to the exercise by CITY or CITY'S rights hereunder.

#### **14.10 Correction or Removal of Unauthorized Work**

- A. Any Work done beyond the lines and grades shown on the Drawings or established by the Project Designer or any changes in, additions to, or deductions from the Work done without written authority will be considered as unauthorized and will not be paid for. Work so done may be ordered remedied, removed, or replaced at the CONTRACTOR'S expense.
- B. Upon failure on the part of the CONTRACTOR to comply promptly with any order of the CITY REP, CITY shall have authority to cause unauthorized Work to be remedied, removed, or replaced at the CONTRACTOR'S expense and to deduct the costs from any moneys due or to become due the CONTRACTOR.

### **ARTICLE 15 - PAYMENTS TO CONTRACTOR AND COMPLETION**

#### **15.1 Schedule of Values**

The Schedule of Values established as provided in Paragraph 2.7 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to CITY REP. Progress payments on account of Unit Price Work will be based on the number of units completed.

## **15.2 Application for Progress Payment**

- A. On or before the first day of each calendar month after actual construction is started (but not more often than once a month), CONTRACTOR shall submit to CITY REP for review a completed Application for Payment signed by CONTRACTOR, covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents and also as CITY REP may reasonably require. An Application for Payment will not be considered complete unless it is accompanied by an updated Construction Progress Schedule and a certification that the on-site, red lined, as built drawings are up to date. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably, securely stored at the site or at another location (such as a bonded warehouse) agreed to in writing, the Application for Payment shall also be accompanied by such data, satisfactory to CITY, as will establish CITY'S title to the material and equipment and protect CITY'S interest therein, including applicable insurance. Each subsequent Application for Payment shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied to discharge in full all of CONTRACTOR'S obligations reflected in prior Applications for Payment.
- B. Applications for Payment may only be submitted to that specific person named in the Contract as the CITY REP, and not to any other agent or representative of CITY, nor to the Project Designer.
- C. The amount of retainage with respect to progress payments will be as stipulated in the Contract and will be in accordance with state law.

## **15.3 Contractor's Warranty of Title**

- A. CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to CITY at the time of payment, free and clear of all liens, claims, security interests and encumbrances (hereafter in these General Conditions referred to as "Liens"), provided that this shall not preclude the CONTRACTOR from installing metering devices or other equipment of utility companies or municipalities, the title of which is commonly retained by the utility company or municipality.
- B. No materials, supplies, or equipment for the Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest therein, or any part thereof, is retained by the seller or supplier.
- C. Nothing contained in this Article shall defeat or impair the right of such persons furnishing materials or labor under any bond given by the CONTRACTOR for their protection, or any right under any law permitting such persons to look to funds due the CONTRACTOR in the hands of the CITY. The provisions of this Article shall be inserted in all subcontracts and material contracts, and notices of its provision shall be given to all persons furnishing materials for the Work when no formal contract is entered into for such materials.

## **15.4 Review of Applications for Progress Payments**

- A. An Application for Payment will be deemed approved and certified for payment after seven (7) days from the date of submission by CONTRACTOR unless CITY REP, on or before the expiration of such seven days, prepares and issues to CONTRACTOR a specific written finding setting forth those items in detail in the Application for Payment that are not approved for payment under the Contract. CITY may withhold an amount from the progress payment sufficient to pay the expenses CITY reasonably expects to incur in correcting any deficiencies set forth in the written finding.

- B. Progress Payments shall be paid on or before fourteen (14) days after the Application for Payment is certified and approved.
- C. Within five (5) work days after receipt of each Application for Payment, CITY REP with advice and assistance from the Project Designer, shall either provide to CITY a written recommendation for payment, or return the Application to CONTRACTOR indicating in writing CITY REP'S reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.
- D. The recommendation of Project Designer and CITY REP for payment of any amounts requested in an Application for Payment will constitute a representation by them and each of them to CITY, based on on-site observations of the Work in progress as experienced and qualified design and construction professionals, and based on their review of the Application for Payment and the accompanying data and schedules, that the Work has progressed to the point indicated; that, to the best of their knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in the recommendation); and that CONTRACTOR is entitled to payment of the amount recommended. However, by recommending any such payment, neither CITY REP nor the Project Designer will thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work, or that the means, methods, techniques, sequences, and procedures of construction have been reviewed, or that any examination has been made to ascertain how or for what purpose CONTRACTOR has used the money's paid or to be paid to CONTRACTOR on account of the Contract Price, or that title to any Work, materials or equipment has passed to CITY free and clear of any Liens.
- E. The recommendation by the Project Designer and CITY REP for final payment will constitute an additional representation by them and each of them to CITY that the conditions precedent to CONTRACTOR'S being entitled to final payment as set forth in Paragraph 15.9 have been fulfilled.
- F. The Project Designer and CITY REP may refuse to recommend the whole or any part of any payment if, in either of their opinions, it would be incorrect to make such representations to CITY. They may also refuse to recommend any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in their opinion to protect CITY from loss because:
- 1) The Work is defective, or completed Work has been damaged requiring correction or replacement.
  - 2) Written claims have been made against CITY or Liens have been filed in connection with the Work.
  - 3) The Contract Price has been reduced because of Modifications.
  - 4) CITY has been required to correct defective Work or complete the Work in accordance with Paragraph 14.9.
  - 5) CONTRACTOR'S unsatisfactory prosecution of the Work in accordance with the Contract Documents.
  - 6) CONTRACTOR'S failure to make payment to Subcontractors for labor, materials or equipment.

### **15.5 Substantial Completion**

- A. When CONTRACTOR considers the entire Work ready for its intended use, CONTRACTOR shall notify CITY REP, in writing, that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that CITY REP issue a certificate of Substantial Completion. Promptly thereafter, CITY REP and the Project Designer shall make an inspection of the Work to determine the status of completion. If CITY does not consider the Work substantially complete, CITY REP will notify CONTRACTOR in writing giving reasons therefor. If CITY considers the Work substantially complete, CITY REP, with the concurrence of CITY and assistance from the Project Designer, will prepare a list (punch list) of items to be completed or corrected before final acceptance and a certificate of Substantial Completion and shall fix the date of Substantial Completion. The list of items to be completed or corrected shall be attached to the certificate of Substantial Completion when it is issued to CONTRACTOR. At the time of delivery of the certificate and list, CITY REP will also deliver to CONTRACTOR a written recommendation as to a division of responsibilities pending final payment between CITY and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities and insurance. Unless and until CONTRACTOR and CITY agree otherwise in writing, this recommendation shall be binding on CITY and CONTRACTOR.
- B. CITY shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but CITY shall allow CONTRACTOR reasonable access to complete or correct items on the punch list.

### **15.6 Partial Utilization**

- A. CITY at CITY'S option may use and occupy any substantially completed parts of the Work which has specifically been identified in the Contract Documents, or which CITY, the Project Designer and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by CITY for its intended purpose, without significant interference with CONTRACTOR'S performance of the remainder of the Work, provided, however, if the portion of the Work to be used or occupied has not been found to be substantially complete, CITY must do so in accordance with Paragraph 15.5 prior to such occupancy.
- B. In lieu of the issuance of a Certificate of Substantial Completion as to part of the Work, CITY may take over operation of a facility constituting part of the Work whether or not it is substantially complete if such facility is functionally and separately usable; provided that prior to any such takeover, CITY and CONTRACTOR agree in writing as to the division of responsibilities between CITY and CONTRACTOR for security, operation, safety, maintenance, correction period, heat, utilities and insurance with respect to such facility.
- C. Substantial completion of or CITY'S beneficial occupancy of a part of the project will not alter the fact that the one year warranty for the whole project starts at the date of Final Completion of the whole project.

### **15.7 Final Inspection**

- A. Upon written notice from CONTRACTOR that the Work is complete, CITY REP and the Project Designer will make a final inspection with CONTRACTOR and will provide written notice to CONTRACTOR of all items of Work which are incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.
- B. The release of the retention monies will be no earlier than the completion of all such deficiencies.

### **15.8 Final Application for Payment**

- A. After CONTRACTOR has corrected all such deficiencies and completed all such corrections to the satisfaction of CITY and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked up record documents, and other documents, all as required by the Contract Documents, and after the Project Designer has indicated that the Work is acceptable (subject to the provisions of Paragraph 15.9) CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents and such other data and schedules as CITY REP may reasonably require, together with complete and legally effective releases or waivers (satisfactory to CITY) of all Liens arising out of or filed in connection with the Work.
- B. The final Application for Payment must be accompanied by a completed Contractor's Affidavit Regarding Settlement of Claims, the form for which is included in the Contract Documents. The affidavit serves to indemnify and save harmless the CITY against any and all liens for labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which CITY or CITY'S property might in any way be responsible, have been paid or otherwise satisfied. If any Subcontractor, manufacturer, fabricator, supplier or distributor fails to furnish a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to CITY to indemnify CITY against any Lien.
- C. The final Application for Payment must also be accompanied by the completed on-site, red line, as-built drawings showing all construction as it was in actual fact constructed and installed.
- D. The final Application for Payment must also be accompanied by a completed Certificate of Completion, the form for which is included in the Contract Documents. This document certifies that all goods and/or services required by the Contract have been delivered in accordance with the Contract, and all activities required by the Contractor under the Contract have been completed.

### **15.9 Final Payment and Acceptance**

- A. If, on the basis of observation of the Work by CITY REP during construction and final inspection and review of the final Application for Payment and accompanying documentation by CITY REP and the Project Designer, all as required by the Contract Documents, CITY is satisfied that the Work has been completed and CONTRACTOR has fulfilled all of its obligations under the Contract Documents, CITY REP, with the concurrence and assistance of the Project Designer, shall within ten days after receipt of the final Application for Payment, indicate in writing a recommendation for payment and present the Application to CITY for payment. Thereupon, the Project Designer will give written notice to CITY and CONTRACTOR that the Work is acceptable subject to the provisions of Paragraph 15.8. Otherwise, CITY REP will return the Application to CONTRACTOR indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. If the Application and accompanying documentation are appropriate as to form and substance, and the CITY finds the Work has been completed according to the Contract, the CITY shall accept the Work, shall file a notice of completion, and shall pay the entire sum so found to be due as recommended by the CITY REP, after deducting therefrom all previous payments and all amounts to be retained under the provisions of the Contract. All prior progress estimates and payments shall be subject to correction in the final estimate and payment. The final payment shall be due and payable within sixty (60) days from the date of filing a notice of completion of the Work by the CITY.
- B. If, through no fault of CONTRACTOR, final completion is materially delayed and if CITY REP so confirms, CITY shall, upon receipt of CONTRACTOR'S final Application for Payment and

recommendation of the Project Designer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by CITY for Work not fully completed or corrected is less than the retainage stipulated in the Contract, and if bonds have been furnished as required in Paragraph 5 the written consent of the Surety to the payment of the balance due for the portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to CITY REP with CONTRACTOR'S Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

#### **15.10 Contractor's Continuing Obligation**

CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by the Project Designer, nor the issuance of a letter of Substantial Completion, nor any payment or issuance of a certificate by CITY to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by CITY, nor any act of acceptance by CITY nor any failure to do so, nor the issuance of a notice of acceptability by the Project Designer pursuant to Paragraph 15.9, nor any correction of defective Work by CITY shall constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents.

#### **15.11 Waiver of Claims**

The making and acceptance of final payment shall constitute a waiver of all claims by CONTRACTOR against CITY, CITY REP and the Project Designer, and their consultants, directors, officers, employees and agents other than those previously made in writing and still unsettled.

#### **15.12 City's Right to Withhold Certain Amounts and Make Application Thereof**

- A. In addition to the amount of retainage as stipulated in the Contract, the CITY may withhold a sufficient amount or amounts from any payment otherwise due to the CONTRACTOR as in CITY'S judgment may be necessary to cover:
- 1) Payments which may be past due and payable for properly filed claims against the CONTRACTOR or any Subcontractors for labor or materials furnished in or about the performance of the Work on the Project under this Contract.
  - 2) Estimated or actual costs for correcting defective Work not remedied.
  - 3) Amounts claimed by the CITY as liquidated damages, special damages, or other offsets, such as testing costs chargeable to the CONTRACTOR, reimbursement to CITY for costs incurred by reason of defective work and or repeated review of CONTRACTOR'S submittals.
  - 4) Estimated costs for an independent consultant to properly complete as-built drawings when not acceptably completed in accordance with all the requirements herein.
- B. CITY may apply such withheld amount or amounts to the payment of such claims at CITY'S discretion. In so doing, CITY shall be deemed the agent of CONTRACTOR and any payments so made by CITY shall be considered as a payment made under the Contract by the CITY to the CONTRACTOR, and CITY shall not be liable to the CONTRACTOR for such payment made in good faith. Such payments may be made without prior judicial determination of the claim or claims. CITY will render to CONTRACTOR a proper account of such funds disbursed on behalf of CONTRACTOR.

## **ARTICLE 16- SUSPENSION OF WORK AND TERMINATION**

### **16.1 City May Suspend Work**

CITY may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to CONTRACTOR and the Project Designer which shall fix the date on which Work shall be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR will be allowed an increase in the Contract Price or an extension of the Contract Time, or both for costs, directly attributable to any suspension but not lost profits if CONTRACTOR makes a claim therefore as provided in Articles 12 and 13.

### **16.2 City May Terminate**

A. Upon the occurrence of any one or more of the following events:

- 1) If CONTRACTOR is adjudged a bankrupt or insolvent;
- 2) If CONTRACTOR makes a general assignment for the benefit of creditors;
- 3) If a trustee or receiver is appointed for CONTRACTOR or for any of CONTRACTOR'S property;
- 4) If CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- 5) If CONTRACTOR repeatedly fails to perform the Work in accordance with the Contract Documents, including but not limited to, failure to supply sufficient skilled workmen or suitable materials or equipment or failure to adhere to the progress schedule established under Paragraph 2.6 as adjusted from time to time pursuant to Paragraph 6.16.
- 6) If CONTRACTOR repeatedly fails to comply with written directives from CITY REP.
- 7) If CONTRACTOR repeatedly fails to make prompt payments to Subcontractors or for labor, materials or equipment;
- 8) If CONTRACTOR disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;
- 9) If CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents.

CITY may without prejudice to any other right or remedy, serve written notice upon the CONTRACTOR and CONTRACTOR'S surety of CITY'S intention to terminate the Contract. Said notice to contain the reasons for such intention to terminate the Contract, and provide that unless within ten days after the service of such notice all such violations have been corrected and remedied, the Contract shall cease and terminate, and CONTRACTOR shall be excluded from the site. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished by others.

B. In the event of any such termination, CITY shall immediately serve written notice thereof upon the surety and CONTRACTOR, and the surety shall have the right to take over and perform the Contract, provided however, that if the surety, within fifteen (15) days after the serving upon it of a notice of termination, does not give the CITY written notice of their intention to take over and perform the Contract, or does not commence performance thereof within thirty (30) days from the date of serving said notice, CITY may take possession of the Work and of all CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without

liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which CITY has paid CONTRACTOR but which are stored elsewhere, and finish the Work as CITY may deem expedient for the account and at the expense of the CONTRACTOR. CONTRACTOR'S surety shall be liable to the CITY for any excess costs or other damage occasioned the CITY thereby. If the unpaid Balance of the Contract Price exceeds the direct and indirect costs of completing the Work, including but not limited to, compensation for additional professional services and all costs generated to insure or bond the Work of substituted contractors or subcontractors utilized to complete the Work, such excess shall be paid to CONTRACTOR. If such costs exceed the unpaid balance, CONTRACTOR shall pay the difference to the CITY promptly upon demand; on failure of CONTRACTOR to pay, the surety shall pay on demand by CITY. Any portion of such difference not paid by CONTRACTOR or surety within thirty (30) days following the mailing of a demand for such costs by CITY shall earn interest at the rate of fifteen (15%) percent per annum or the maximum rate authorized by Arizona law, whichever is lower. Such costs incurred by CITY shall be verified by CITY REP and incorporated in a Change Order, but in finishing the Work, CITY shall not be required to obtain the lowest figure for the Work performed.

- C. Where CONTRACTOR'S services have been so terminated by CITY, the termination shall not affect any rights of CITY against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by CITY will not release CONTRACTOR from liability.
- D. If funds are not appropriated to continue this Contract and for the payment of charges hereunder, CITY may terminate this Contract at the end of the fiscal period. CITY agrees to give written notice of termination to the CONTRACTOR at least thirty (30) days prior to the end of CITY'S current fiscal period and will pay to the CONTRACTOR all charges incurred through the end of such period.
- E. Upon seven (7) days written notice to CONTRACTOR and the Project Designer, CITY may, without cause and without prejudice to any other right or remedy, elect to abandon the Work and terminate the Contract. In such case, CONTRACTOR shall be paid for all Work executed and any expense sustained plus reasonable termination expenses.

### **16.3 Contractor May Stop Work or Terminate**

If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety (90) days by CITY or under an order of court or other public authority, or CITY fails to pay within (14) fourteen days to CONTRACTOR, any sum finally determined to be due, then CONTRACTOR may, upon seven (7) days written notice to CITY, terminate the Contract and recover from CITY payment for all Work executed and any expense sustained plus reasonable termination expenses. In addition and in lieu of terminating the Contract, if CITY has failed to make any payment as aforesaid, CONTRACTOR may, upon seven (7) days written notice to CITY, stop the Work until payment of all amounts then due. The provision of this paragraph shall not relieve CONTRACTOR of their obligations under Paragraph 6.15 to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with CITY.

## **ARTICLE 17- ALTERNATE DISPUTE RESOLUTION**

### **17.1 Notice Required**

- A. Notwithstanding anything to the contrary provided elsewhere in the Contract documents, the alternative dispute resolution (ADR) process provided herein shall be the exclusive means for resolution of claims or disputes arising under, relating to or touching upon this Contract, the interpretation thereof or the performance or breach by any party thereto, including, but not limited to, original claims or disputes asserted as cross claims, counterclaims, third party

claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to contracts containing this ADR provision.

- B. CONTRACTOR shall submit written notice of any claim or dispute to CITY REP within seven (7) days of the occurrence, event or disputed response from CITY for immediate resolution pursuant to these provisions. Each claim or dispute shall be submitted and resolved as they occur and not postponed until the Project is complete nor lumped together with other pending claims.
- C. Failure to submit a notice of any claim, dispute, request or other issue within the times set forth in Articles 11, 12, 13 or 17 shall constitute CONTRACTOR'S forfeiture of its right to dispute the issue, raise the claim or make the request and shall also constitute CONTRACTOR'S agreement and acceptance of the CITY'S position.

#### **17.2 Decision of Project Designer on Disagreements**

- A. CITY REP will provide to CONTRACTOR a written response to any claim, request or proposal for a Change Order on or before fifteen (15) days from receipt of CONTRACTOR'S written claim, request or proposal.
- B. The Project Designer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder.
- C. Written notice of any request for which an interpretation by the Project Designer is sought, together with written supporting data, shall be delivered by CONTRACTOR to CITY REP for presentation to the Project Designer within seven (7) days of the occurrence or the event giving rise thereto, within seven (7) days of CONTRACTOR becoming aware of the need for clarification or further information, or if the claim or dispute was first submitted for a response from CITY REP and CONTRACTOR disputes or disagrees with the response of CITY REP, within three (3) days of CONTRACTOR'S receipt of such response.
- D. CITY REP will immediately transmit any such CONTRACTOR requests, claims or disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Work to the Project Designer in writing with a request for written response within seven (7) days.
- E. The Project Designer will render a decision within seven (7) days of receipt of such transmittal.

#### **17.3 Neutral Evaluator, Arbitrators**

CITY will select a Neutral Evaluator to serve as set forth in this ADR process. CITY and CONTRACTOR shall each select an arbitrator of their choice within fifteen (15) days of the date of execution of this Contract to serve as set forth in this ADR process. Each arbitrator selected shall be a member of the State Bar of the State of Arizona, and shall be experienced in the field of construction law. Neither the arbitrator nor the arbitrator's firm shall have presently, or in the past, represented any party to the arbitration.

#### **17.4 Neutral Evaluation Process**

In the event either party disagrees with the response of the Project Designer or for disputes not appropriate for submittal to the Project Designer, if CONTRACTOR disagrees with the response of the CITY REP, the following neutral evaluation process shall be used to obtain resolution.

- A. Notification of Dispute: Within three (3) days of receipt of the disputed response, the disputing party shall notify the City Engineer of the unresolved dispute. The City Engineer shall promptly notify the Neutral Evaluator in writing of the existence of a dispute.
- B. Nonbinding Information Hearing: The Neutral Evaluator shall schedule a nonbinding informal hearing of the matter to be held within seven (7) days from receipt of notification of the existence of a dispute. The Neutral Evaluator may conduct the hearing in such manner as deems appropriate and shall notify each party to attend the hearing and present evidence they believe will resolve the dispute. The Neutral Evaluator is not bound by the rules of evidence in admitting evidence in the hearing and may limit the length of the hearing, witnesses or evidence introduced to the extent that he deems same to be relevant and efficient. Each party to the dispute shall be notified by the Neutral Evaluator that they shall submit a written outline of the issues and evidence intended to be introduced at the hearing and proposed resolution of the dispute to the Neutral Evaluator before the hearing commences. Arbitrators shall not participate in such informal hearing or proceeding process.
- C. Nonbinding Decision: The Neutral Evaluator shall render a nonbinding written decision as soon as possible, but not later than five (5) days after the hearing.

#### **17.5 Binding Arbitration Procedure**

If the neutral evaluation procedure is unsuccessful, the following binding arbitration procedure shall serve as the exclusive method to resolve all unresolved disputes. If any party chooses not to accept the decision of the Neutral Evaluator, such party shall notify the Neutral Evaluator in writing within three (3) business days of receipt of the Neutral Evaluator's decision of a request for arbitration. The party requesting arbitration shall post a cash bond with the Neutral Evaluator in the amount of \$5,000, or a greater amount as determined by the Neutral Evaluator, that will defray the cost of the arbitration as set forth in paragraph M, Fees and Costs, and proceeds from said bond shall be allocated in accordance with said paragraph by the Arbitration Panel.

- A. Arbitration Panel: The Arbitration Panel shall consist of the arbitrators previously selected by the parties involved in the dispute, (i.e., CITY'S arbitrator, CONTRACTOR'S arbitrator, or any other CONTRACTOR'S arbitrator who has a contract with the CITY which contains this ADR provision and is a party to the dispute), and the foregoing arbitrators shall select a neutral arbitrator as set forth herein. The Neutral Evaluator shall participate in the proceedings and in the deliberations, but shall not be entitled to vote.
- B. Selection of Neutral Arbitrator: The selected arbitrators shall choose additional arbitrator(s) (one additional arbitrator or two additional arbitrators as needed to ensure that the arbitration panel will consist of an odd number of arbitrators), within five (5) days of receipt of notification of a dispute from the Neutral Evaluator. The Neutral Arbitrator(s) shall have the same qualifications as those of the arbitrators set forth in the Neutral Evaluator, Arbitrators paragraph. In the event that the selected arbitrators cannot agree on additional Neutral Arbitrators as set forth above, the Neutral Evaluator shall select the additional arbitrator(s).
- C. Expedited Hearing: The parties have structured this procedure with the goal of providing for the prompt and efficient resolution of all disputes falling within the purview of this ADR process. To that end, any party can petition the Neutral Evaluator to set an expedited hearing if circumstances justify it. The Neutral Evaluator shall contact the selected Arbitration Panel and arrange for scheduling of the arbitration at the earliest possible date. In any event, the hearing of any dispute not expedited will commence as soon as practical, but in no event later than twenty (20) days after notification of request for arbitration having been submitted. This deadline can be extended only with the consent of all the parties to the dispute, or by decision of the Arbitration Panel upon a showing of emergency circumstances.

- D. Procedure: The Neutral Evaluator shall act as Chairman of the Arbitration Panel and will conduct the hearing that will resolve disputes in a prompt, cost efficient manner giving due regard to the rights of all parties. Each party shall supply to the Arbitration Panel a written pre-hearing statement, which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. The Arbitration Panel may review and consider the Neutral Evaluator's decision. The Chairman shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with the deadlines provided herein, and the parties' objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of privileged materials or information. The Chairman, upon proper application, shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary, or sensitive materials or information from public disclosure or other misuse. Any party may make application to the Maricopa County Superior Court to have a protective order entered as may be appropriate to conform to such orders of the Chairman.
- E. Hearing Days: To effectuate the parties' goals, the hearing once commenced, will proceed from business day to business day until concluded, absent a showing of emergency circumstances.
- F. Award: The Arbitration Panel shall within ten (10) days from the conclusion of any hearing issue its award. The award shall include an allocation of fees and costs pursuant to the Binding Arbitration Procedure paragraph herein. Any award providing for deferred payment shall include interest at the rate of ten (10%) percent per annum. The award is to be rendered in accordance with the Contract and the laws of the State of Arizona.
- G. Scope of Award: The Arbitration Panel shall be without authority to award punitive damages, and any such punitive damage award shall be void. The Arbitration Panel shall also be without authority to issue an award against any individual party in excess of \$500,000, exclusive of interest, arbitration fees, costs, and attorney's fees. If an award is made against any individual party in excess of \$50,000, exclusive of interest, arbitration fees, costs, and attorneys' fees, it must be supported by written findings of fact, conclusions of law and statement as to how damages were calculated.
- H. Jurisdiction: The Arbitration Panel shall not be bound for jurisdictional purposes by the amount asserted in any party's claim, but shall conduct a preliminary hearing into the question of jurisdiction upon application of any party at the earliest convenient time, but not later than the commencement of the arbitration hearing.
- I. Entry of Judgment: Any party can make application to the Maricopa County Superior Court for confirmation of any award and for entry of judgment on it.
- J. Severance and Joinder: To reduce the possibility of inconsistent adjudications, the Neutral Evaluator or the Arbitration Panel, may at the request of any party, join and/or sever parties, and/or claims arising under other contracts containing this ADR provision, and the Neutral Evaluator, (Chairman) may, on his own authority, join or sever parties and/or claims subject to this ADR process as they deem necessary for a just resolution of the dispute, consistent with the parties' goal of the prompt and efficient resolution of disputes. Nothing herein shall create the right by any party to assert claims against another party not recognized under the substantive law applicable to the dispute. Neither the Neutral Evaluator nor the Arbitration Panel is authorized to join to the proceeding parties not in privity with the CITY.
- K. Appeal: Any party may appeal errors of law by the Arbitration Panel if, but only if, the errors arise in an award in excess of \$100,000; the exercise by the Chairman or Arbitration Panel of any powers contrary to or inconsistent with the Contract; or any of the grounds provided in

A.R.S. 12-1512. Appeals shall be to the Maricopa County Superior Court within fifteen (15) days of entry of the award. The standard of review in such cases shall be that applicable to the consideration of a motion for judgment notwithstanding the verdict, and the Maricopa County Superior Court shall have the authority to confirm, vacate, modify or remand an award appealed under this section.

- L. Uniform Arbitration Act. Except as otherwise provided herein, binding arbitration pursued under this provision shall be governed by the Uniform Arbitration Act as enacted in Arizona in A.R.S. 12-1501, et. seq.
- M. Fees and Costs. Each party shall bear its own fees and costs in connection with any informal hearing before the Neutral Evaluator. All fees and costs associated with any arbitration before the Arbitration Panel, including without limitation, the Arbitration Panelists' fees, the prevailing party's attorneys' fees, expert witness fees and costs, will be paid by the nonprevailing party, except as provided for herein. The determination of prevailing and nonprevailing parties, and the appropriate allocation of fees and costs, will be included in the award by the Arbitration Panel. Fees for the Neutral Evaluator shall be a project cost.
- N. Equitable Litigation: Notwithstanding any other provision of ADR to the contrary, any party can petition the Maricopa County Superior Court for interim equitable relief as necessary to preserve the status quo and prevent immediate and irreparable harm to a party or to the Project pending resolution of a dispute pursuant to ADR provided for herein. No court may order any permanent injunctive relief except as may be necessary to enforce an order or award entered by the Arbitration Panel. The fees and costs incurred in connection with any such equitable proceeding shall be determined and assessed in ADR.
- O. Change Order: Any award in favor of the CONTRACTOR against the CITY or in favor of the CITY against the CONTRACTOR shall be reduced to a Change Order and executed by the parties in accordance with the award and the provisions of General and Supplementary Conditions to this Construction Contract.
- P. Merger and Bar: Any claim asserted pursuant to this ADR process shall be deemed to include all claims, demands, and requests for compensation for costs and losses or other relief, including the extension of Contract Time which reasonably should or could have been brought against any party that was or could have been brought into this ADR process. The Arbitration Panel shall apply legal principles commonly known as merger and bar to deny any claim or claims against any party regarding which claim or claims recovery has been sought or should have been sought in a previously adjudicated claim for an alleged cost, loss, breach, error, or omission.
- Q. Disputes of amounts greater than \$500,000: Disputes for which the Arbitration Panel has determined to warrant an award in an amount greater than Five Hundred Thousand Dollars (\$500,000) to any one party, may be brought in the appropriate Court. A party must obtain such a determination from the Arbitration Panel prior to filing any legal action.

## **ARTICLE 18 - VALUE ENGINEERING**

### **18.1 General**

- A. The CONTRACTOR may submit to CITY REP proposals for modifying the Plans, Specifications, or other requirements of the Contract for the sole purpose of reducing the total cost of the project without impairing in any manner the essential functions or characteristics of the project, including, but not limited to, service life, economy of operations, ease of maintenance, desired appearance, or design and safety standards.
- B. It shall not be inferred from this subsection that the CITY is required to consider any proposal submitted.

- C. Cost reductions contained in the proposal resulting from changes to contingency items, such as traffic control, dust palliative, etc., will not be considered.

### **18.2 Proposal Requirements**

Proposals submitted pursuant to this subsection shall be identified as Value Engineering Proposals. They shall be submitted in writing and, at a minimum, contain the following:

- A. A description of both the existing Contract requirements for performing the work and the proposed changes.
- B. All engineering drawings and computations necessary for a thorough and expeditious evaluations.
- C. An itemization of the existing Contract requirements that must be changed if the proposal is adopted and a recommendation as to the manner in which the change should be made.
- D. A detailed estimate of the cost of performing the work under the existing Contract and under the proposed changes, including the cost of developing and implementing the changes.
- E. The contract items affected by the proposed changes and any variations in quantities resulting from the changes.
- F. An objective estimate of any effects the proposal will have on collateral costs to the CITY, cost of related items, and costs of maintenance and operation.
- G. A statement as to the effect that the proposal will have on the time for the completion of the project.
- H. A statement as to the time by which a change order adopting the proposal must be executed or when the CITY must have given oral or written approval.
- I. A statement as to any time extension of time related to costs which will be required by the CONTRACTOR as a condition for implementing the proposed changes.

### **18.3 Review and Response**

Proposals will not be considered until all of the above requirements have been met. Once all of the required submittals have been received, CITY REP will respond within ten (10) working days in writing as to whether or not the proposal will be considered for detailed evaluation. If no such notice is issued within the time allotted, the proposal shall be deemed rejected.

- A. CITY will not be liable for any delay in acting upon any proposal nor for any failure to accept any proposal pursuant to this subsection.
- B. CITY will be the sole judge of the acceptability of a proposal and of the estimated net savings in construction costs from the adoption of all or any part of the proposal. CONTRACTOR will be notified in writing by the CITY REP as to whether the CONTRACTOR'S proposal has been accepted. The decision by the CITY is final.
- C. When CITY deems such action to be appropriate, it reserves the right to require the CONTRACTOR to share in the cost to the CITY of investigating, evaluating, and processing the proposal as a condition for the consideration of such proposal. Such cost shall be shared whether the proposal is accepted or rejected. When such a condition is imposed, the CONTRACTOR shall indicate their acceptance thereof in writing and such acceptance shall

authorize the CITY to deduct the CONTRACTOR'S share of the CITY'S costs from any monies due or that may become due to the CONTRACTOR under the Contract.

#### **18.4 Acceptance**

- A. If CONTRACTOR'S proposal is accepted in whole or in part, the necessary Contract modifications and Contract Price adjustments will be effected by the execution of a Change Order which will specifically state that it is executed pursuant to the provisions of this subsection.
- B. CONTRACTOR shall continue to perform the work in accordance with the requirements of the Contract until a Change Order incorporating the proposal has been executed or until the CONTRACTOR has been given oral or written approval by the CITY that the CONTRACTOR'S proposal has been accepted. If the Change Order has not been executed, or the CONTRACTOR has not been given oral or written approval on or before the mutually agreed upon date, or on or before such other date as the CONTRACTOR may have subsequently specified in writing, the proposal shall be deemed to be rejected.
- C. The executed Change Order shall incorporate the changes in the Plans, Specifications, or other requirements of the Contract Documents which are necessary to permit the proposal, or such part of it which has been accepted, to be put into effect, and shall include any conditions upon which the CITY'S approval thereof is based if such approval is conditional. The executed Change Order Contract shall also extend the time for the completion of the Contract if, and only if, the extension was required by the CONTRACTOR as a condition for implementing the proposal and such an extension has been deemed to be warranted by the CITY as a result of the CITY'S evaluation of the proposal.
- D. The executed Change Order shall also establish the estimated net savings in the cost of performing the Work attributable to the proposal effectuated by the Change Order. In determining the net savings, the right is reserved to the CITY to disregard the Contract bid prices if, in the CITY'S judgment, such prices do not represent a fair measure of the value of the Work to be performed or to be deleted. The net savings will be established by determining the CONTRACTOR'S cost of performing the Work, taking into account the CONTRACTOR'S cost of developing the proposal and implementing the change, and reducing this amount by any ascertainable collateral cost to the CITY. The executed Change Order shall provide the Contractor be paid forty (40%) percent of the estimated net savings amount.
- E. The executed Change Order shall also provide for the adjustment in Contract Prices. Contract Prices shall be adjusted by subtracting the CITY'S share of the accrued net savings.
- F. The amount specified to be paid to the CONTRACTOR in the executed Change Order which effectuates a value engineering proposal shall constitute full compensation to the CONTRACTOR for the value engineering proposal and the performance of the Work thereof pursuant to the said Change Order.

### **ARTICLE 19 -- GENERAL PROVISIONS**

#### **19.1 Partial Invalidity**

If any provision of the Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

## **19.2 Attorneys' Fees**

Should either party to the Contract bring an action to enforce any provision of the Contract, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs in connection therewith.

## **19.3 Waiver of Rights**

Except as otherwise specifically provided in the Contract Documents, no action or failure to act by the CITY, the Project Designer or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under the Contract Documents, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder.

## **19.4 Giving Notice**

- A. When any provisions of the Contract Documents requires CONTRACTOR or the Project Designer to give written notice to CITY, it shall be deemed to have been validly given if delivered in person to the person designated in the Contract Documents as CITY REP, or if delivered at or sent by registered or certified mail, postage prepaid, to the City Engineer addressed as follows:

City of Chandler  
Public Works Department  
Attn: City Engineer  
P.O. Box 4008, Mail Stop 405  
Chandler, AZ 85244-4008

- B. When any provisions of the Contract Documents requires CITY, CITY REP, or the Project Designer to give written notice to CONTRACTOR, it shall be deemed to have been validly given if delivered in person to the person designated in the Contract Documents as CONTRACTOR'S Resident Superintendent, or if delivered at or sent by registered or certified mail, postage prepaid, to CONTRACTOR at the last address in the Contract Documents or such substitute address which CONTRACTOR designates in writing, or to the business address known to the giver of notice.

## **19.5 Computation of Time**

When any period of time is referred to in the Contract Documents by days, it shall be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation. Unless otherwise specified any action required shall be accomplished within a reasonable time.

## **19.6 Conflict of Interest**

Pursuant to A.R.S. Sec. 38-511, a municipality may, within three (3) years after its execution, cancel any contract, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the municipality is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

## **19.7 Assignment**

- A. The performance of the Contract may not be assigned, except upon the written consent of the CITY. Consent will not be given to any proposed assignment which would relieve the original CONTRACTOR or their surety of their responsibilities under the Contract, nor will the CITY consent to any assignment of a part of the Work under the Contract.

- B. Upon obtaining a prior written consent of the CITY, the CONTRACTOR may assign moneys due or to become due them under the Contract, to the extent permitted by law, but any assignment of moneys shall be subject to all proper setoffs in favor of the CITY and to all deductions provided for in the Contract, and particularly all money withheld, whether assigned or not, shall be subject to being used by the CITY for the completion of the Work in the event that the CONTRACTOR should be in default therein.
- C. No assignment of the Contract will be approved unless it shall contain a provision that the funds to be paid to the assignee under the assignment are subject to a prior lien for services rendered or materials supplied for performance of the Work called for under the Contract in favor of all persons, firms, or corporations rendering such services or supplying such materials and that the CITY may withhold funds due until all Work required by the Contract Documents is completed to the CITY'S satisfaction.

**19.8 Notice of Injury**

Should CITY or CONTRACTOR suffer injury or damage to their person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim shall be made in writing to the other party within seven (7) days of the first observance of such injury or damage.

END OF GENERAL CONDITIONS  
ARTICLES 1 THROUGH 19



Requesting Department:

Town Clerk

TAB F

**TO: HONORABLE MAYOR AND TOWN COUNCIL**

**THROUGH: JOHN KROSS, TOWN MANAGER**

**FROM: Jennifer Robinson, Town Clerk**  
**Fredda J. Bisman, Town Attorney**

**RE: Temporary Extension of Premises/Patio Permit liquor license application submitted by Rebecca Dettler on behalf of Trophy's Steakhouse, 7215 S. Power Rd., (Power Marketplace) for an event to be held October 26-28, 2012. (Trophy's Steakhouse liquor license #06-070273).**

**DATE: September 5, 2012**

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**Staff Recommendation:**

Staff recommends consideration of approval based on the application and review comments from the Planning Division and MCSO.

**Proposed Motion:**

Motion to forward a recommendation of approval to the Arizona Department of Liquor License and Control of the Temporary Extension of Premises/Patio Permit application submitted by Trophy's Steakhouse – Rebecca Dettler.

**Discussion:**

This application is for an event to be held October 26-28, 2012. The purpose of the Extension of Premises/Patio Permit is to allow the sale/serving of alcohol in the additional area outside of the restaurant as shown on the application. The restaurant is currently licensed to serve alcohol within the premises of the restaurant.

The Planning Division has reviewed the application and issued a Temporary Use Permit (**TU12-072**). The application was also forwarded to MCSO for review. Based on the application and an interview with the applicant, there is no additional need for security or off-duty officers and was recommended for approval.

If Council recommends the Extension of Premises/Patio permit for approval, the application will then be submitted by the applicant to the Department of Liquor Licenses & Control for issuance.

**Fiscal Impact:**

Not applicable.

**Alternatives:**

Council could elect to forward a recommendation for denial or no recommendation to the Department of Liquor Licenses and Control for their consideration.

**Attachments:**

Application – Site Plan  
Planning recommendation  
MCSO recommendation

**ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL**

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
www.azliquor.gov  
(602) 542-5141

Date payment received \_\_\_\_\_  
CSR Initials \_\_\_\_\_

**APPLICATION FOR EXTENSION OF PREMISES/PATIO PERMIT**

**THIS APPLICATION MUST BE RETURNED TO THE DEPARTMENT OF LIQUOR**

Permanent change of area of service – List specific purpose for change: \_\_\_\_\_

Temporary change for date(s) of: 10/26/12 through 10/28/12 List specific purpose for change: Outdoor party and expo

- Licensee's Name: DETTLER REBECCA Ella  
Last First Middle
- Mailing Address: 4782 E Buckboard rd Gilbert AZ 85297  
City State Zip
- Business Name: TROPHY'S STEAKHOUSE LLC LICENSE #: 06070273
- Business Address: 7215 S Power Rd Queen Creek Maricopa Az 85142  
City COUNTY State Zip
- Business Phone: (480) 840-3981 Residence Phone: (605) 460-6499
- Do you understand Arizona Liquor Laws and Regulations?  YES  NO Fax #: ( ) \_\_\_\_\_
- Have you received approved Liquor Law Training?  NO  YES If so, when does your Certificate expire? 3/01/2014
- What security precautions will be taken to prevent liquor violations in the extended area? \_\_\_\_\_
- Does this extension bring your premises within 300 feet of a church or school?  YES  NO
- IMPORTANT: ATTACH THE REVISED FLOOR PLAN CLEARLY DEPICTING YOUR LICENSED PREMISES AND WHAT YOU PROPOSE TO ADD.**

Barrier Exemption: an exception to the requirement of barriers surrounding a patio/outdoor serving area may be requested. Barrier exemptions are granted based on public safety, pedestrian traffic, and other factors unique to a licensed premises. List specific reasons for exemption: \_\_\_\_\_

Investigation Recommendation  Approval  Disapproval by: \_\_\_\_\_ Date:  / /

\*\*\*\*After completing sections 1-10, please take this application to your local Board of Supervisors, City Council or Designate for their recommendation. This recommendation is not binding on the Department of Liquor.

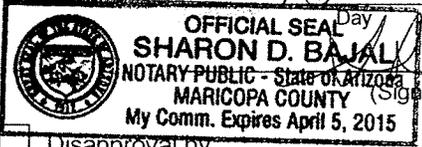
This change in premises is RECOMMENDED by the local Board of Supervisors, City Council or Designate:

\_\_\_\_\_  
(Authorized Signature) (Title) (Agency)

I, REBECCA ELLA DETTLER, being first duly sworn upon oath, hereby depose, swear and declare, (Print full name)  
under penalty of perjury, that I am the APPLICANT making the foregoing application. I have read this application and the contents and all statements are true, correct and complete.

X Rebecca Ella Dettler State of ARIZONA County of MARICOPA  
(Signature of Owner or Agent) SUBSCRIBED IN MY PRESENCE AND SWORN TO before me this date  
13 AUGUST 2012  
Day Month Year

My commission expires on: 4/5/2015

 \_\_\_\_\_  
(Signature of NOTARY PUBLIC)

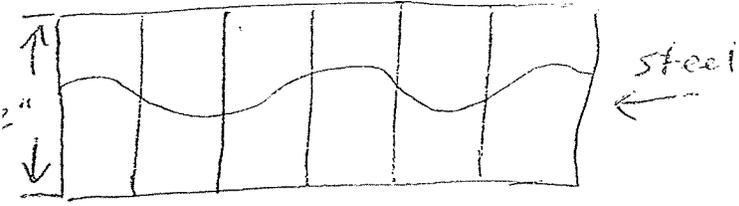
Investigation Recommendation  Approval  Disapproval by: \_\_\_\_\_ Date:  / /

Director Signature required for Disapprovals \_\_\_\_\_ Date:  / /

Fence Detail

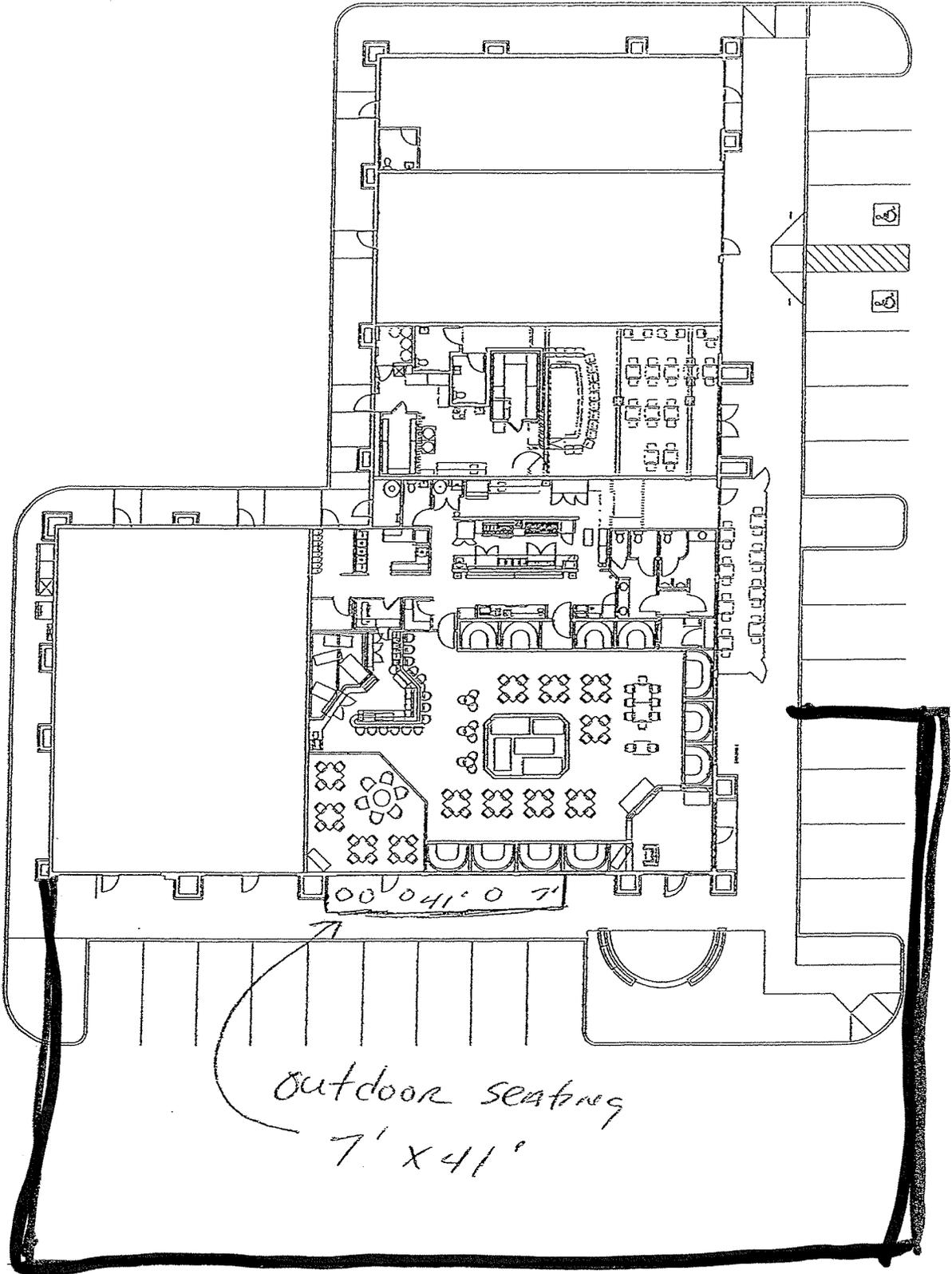
Shade

umbrellas over tables



Trophys

↑



outdoor seating  
7' x 41''

TU12-072 Trophy's Steakhouse  
Outdoor Seating Oct. 26-28, 2012



TOWN OF  
**QUEEN CREEK**  
ARIZONA

August 23, 2012

Jennifer Robinson, Town Clerk

Re: Trophy's Steakhouse Patio (Temporary Use)

Jennifer,

Planning and Building Safety have reviewed the request for a temporary extension of premise (TU12-072) for Trophy's Steakhouse on October 26-28, 2012 and have approved their request.

Please let me know if you have any questions.

Thank you,

A handwritten signature in black ink, appearing to read "Dave Williams", is written over a horizontal line.

Dave Williams  
Senior Planner



Requesting Department:  
Town Clerk

TAB G

**TO: HONORABLE MAYOR AND TOWN COUNCIL**

**THROUGH: JOHN KROSS, TOWN MANAGER**

**FROM: Jennifer Robinson, Town Clerk** *J. Robinson*  
**Fredda J. Bisman, Town Attorney**

**RE: Permanent Extension of Premises/Patio Permit liquor license application submitted by Rebecca Dettler on behalf of Trophy's Steakhouse, 7215 S. Power Rd., (Power Marketplace) for permanent patio seating. (Trophy's Steakhouse liquor license #06-070273).**

**DATE: September 5, 2012**

---

**Staff Recommendation:**

Staff recommends consideration of approval based on the application and review comments from the Planning Division and MCSO.

**Proposed Motion:**

Motion to forward a recommendation of approval to the Arizona Department of Liquor License and Control of the Permanent Extension of Premises/Patio Permit application submitted by Trophy's Steakhouse – Rebecca Dettler.

**Discussion:**

This application is a request for permanent patio seating located on the west side of the building. The purpose of the Extension of Premises/Patio Permit is to allow the sale/serving of alcohol in the additional area outside of the restaurant as shown on the application. The restaurant is currently licensed to serve alcohol within the premises of the restaurant.

The Planning Division has reviewed the application and approved the request for permanent patio seating as shown on the application and site plan. The application was also forwarded to MCSO for review. Based on the application and an interview with the applicant and has recommended approval.

**Fiscal Impact:**

Not applicable.

**Alternatives:**

Council could elect to forward a recommendation for denial or no recommendation to the Department of Liquor Licenses and Control for their consideration.

**Attachments:**

Application – Site Plan  
Planning recommendation  
MCSO recommendation

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
www.azliquor.gov
(602) 542-5141

Date payment received \_\_\_\_\_
CSR Initials \_\_\_\_\_

APPLICATION FOR EXTENSION OF PREMISES/PATIO PERMIT

THIS APPLICATION MUST BE RETURNED TO THE DEPARTMENT OF LIQUOR

Permanent change of area of service - List specific purpose for change: Outdoor seating on west side of building
Temporary change for date(s) of: \_\_\_/\_\_\_/\_\_\_ through \_\_\_/\_\_\_/\_\_\_ List specific purpose for change: \_\_\_\_\_

1. Licensee's Name: Dettler Rebecca Ella
2. Mailing Address: 4702 E. Buckboard Rd Gilbert AZ 85297
3. Business Name: TROPHY'S STEAKHOUSE LLC LICENSE #: 06070273
4. Business Address: 7215 S Power Rd. Queen Creek, Maricopa, AZ 85142
5. Business Phone: (480) 840-3981 Residence Phone: (602) 460-6499
6. Do you understand Arizona Liquor Laws and Regulations? [X] YES [ ] NO Fax #: ( )
7. Have you received approved Liquor Law Training? [ ] NO [X] YES If so, when does your Certificate expire? 3/0/2014
8. What security precautions will be taken to prevent liquor violations in the extended area? Fenced
9. Does this extension bring your premises within 300 feet of a church or school? [ ] YES [X] NO
10. IMPORTANT: ATTACH THE REVISED FLOOR PLAN CLEARLY DEPICTING YOUR LICENSED PREMISES AND WHAT YOU PROPOSE TO ADD.

[X] Barrier Exemption: an exception to the requirement of barriers surrounding a patio/outdoor serving area may be requested. Barrier exemptions are granted based on public safety, pedestrian traffic, and other factors unique to a licensed premises. List specific reasons for exemption: sidewalk is relatively narrow
Investigation Recommendation [ ] Approval [ ] Disapproval by: \_\_\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_

\*\*\*\*After completing sections 1-10, please take this application to your local Board of Supervisors, City Council or Designate for their recommendation. This recommendation is not binding on the Department of Liquor.

This change in premises is RECOMMENDED by the local Board of Supervisors, City Council or Designate:

(Authorized Signature) (Title) (Agency)

I, REBECCA ELLA DETTLER, being first duly sworn upon oath, hereby depose, swear and declare, under penalty of perjury, that I am the APPLICANT making the foregoing application. I have read this application and the contents and all statements are true, correct and complete.

X Rebecca Ella Dettler State of ARIZONA County of MARICOPA
SUBSCRIBED IN MY PRESENCE AND SWORN TO before me this date 13 AUGUST 2012

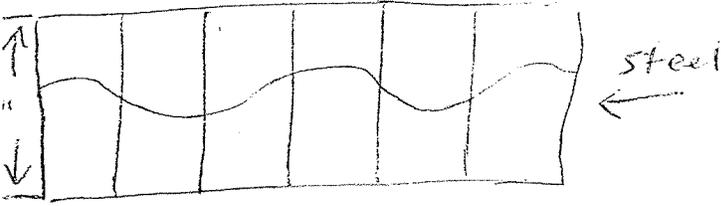
My commission expires on: 4/5/2015
OFFICIAL SEAL BY SHARON D. BAJAL NOTARY PUBLIC - State of Arizona MARICOPA COUNTY My Comm. Expires April 5, 2015

Investigation Recommendation [ ] Approval [ ] Disapproval by: \_\_\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_
Director Signature required for Disapprovals \_\_\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_

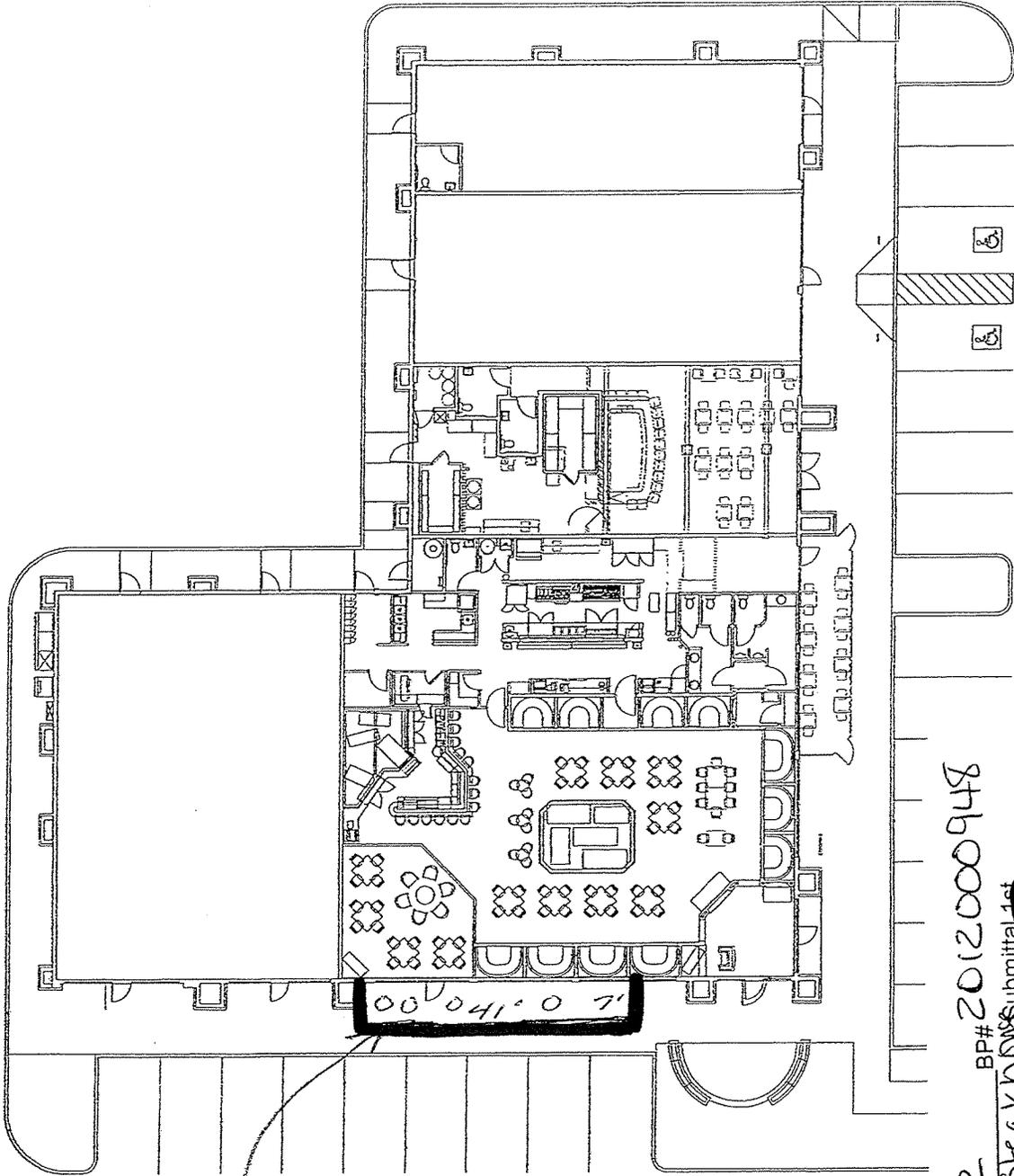
Fence Detail

Shade

umbrellas over tables



↑  
Trophys  
 ↑



Outdoor seating  
 7' x 41'

Date: 8.13.12 BP# 2012000948

Bldr: Trophys Steak Submittal 1st  
 Lot & Subdivision: PA Initials PA  
 Status: E \_\_\_ Initials \_\_\_ P A Initials PA  
 B \_\_\_ Initials \_\_\_ Z \_\_\_ Initials \_\_\_  
 F \_\_\_ Initials \_\_\_  
 Permanent ~~but~~ door seating



TOWN OF  
**QUEEN CREEK**  
ARIZONA

August 23, 2012

Jennifer Robinson, Town Clerk

Re: Trophy's Steakhouse Patio

Jennifer,

Planning and Building Safety have reviewed the request for permanent patio seating for Trophy's Steakhouse and have approved their request.

Please let me know if you have any questions.

Thank you,

A handwritten signature in black ink, appearing to read "Dave", with a long, sweeping underline that extends to the right.

Dave Williams  
Senior Planner



Requesting Department:  
Management Services  
Department

TAB H

**TO: HONORABLE MAYOR AND TOWN COUNCIL**

**THROUGH: PATRICK FLYNN, ASSISTANT TOWN MANAGER,**

**FROM: DEBBIE GOMEZ, PARKS SPECIAL PROJECTS COORDINATOR**

**RE: CONSIDERATION AND POSSIBLE APPROVAL OF THE FY 12/13  
PARKS AND RECREATION ADVISORY COMMITTEE (PRAC) WORK  
PLAN**

**DATE: SEPTEMBER 5, 2012**

---

**Staff Recommendation:**  
Staff recommends approval of the FY 12/13 Parks and Recreation Advisory Committee Work Plan.

**Relevant Council Goal(s):**  
Annual Review of Council Committee Work Plans

**Proposed Motion:**  
Move to approve the Fiscal Year 2012/2013 Parks and Recreation Advisory Committee Work Plan.

**Discussion:**  
A provision of the Council adopted bylaws for citizen advisory committees is that at the new fiscal year, each active committee shall submit a work program to the Council for consideration and approval.

Submitted herewith is the proposed FY 12/13 Parks and Recreation Advisory Committee Work Plan. The work plan is developed by including Town Council established or adopted goals and priorities, including the Town’s Corporate Strategic Plan, master plans, budget, department work priorities, Committee member knowledge, interest, and expertise.

The activities of PRAC may include study of critical issues, hearing public testimony, independent research, and reviewing staff reports and recommendations – all of which is intended so that the committee is prepared to discuss, formulate, and forward well-developed recommendations to the Town Council concerning recreation services, park, trails, and open space policies, development proposals, and citizen insight.

## **PROPOSED FY 12/13 Work Plan Items:**

Priority 1 - Develop, revise, and chart policies that will enhance efficiencies and generate revenue for recreational programs and facility operations including but not limited to:

- Youth sport organizations' partnership guidelines, field allocation processes, and fees.
- Non-Resident Fees
- Facility Use Policy for Desert Mountain Park, Founders' Park, and Library Annex
- Memorial and Monuments Donation Policy
- Concession Agreements in Recreation Areas
- Fees for use of facilities

Priority 2 - Develop, revise, and chart committee mission, goals, and responsibilities.

- Create a schedule of programs/activities that provide committee members an opportunity to volunteer, evaluate, and gain citizen input on the Town's recreation services.

Priority 3 - Develop, revise, and chart policies that will enhance volunteer opportunities including but not limited to:

- Adopt-a-Trail
- Adopt-a-Park

Priority 4 - Develop, revise, and chart policies that will enhance efficiencies and generate revenue for recreational programs and facility operations including but not limited to:

- Standard Code of Conduct for all parties utilizing Town facilities
- Procedure for Temporary Religious Displays

### **Fiscal Impact:**

No direct fiscal impact is identified.

### **Alternatives**

Council could remand the proposed work plan back to the committee with direction to amend.

### **Attachments**

N/A



Requesting Department:

Economic Development

TAB I

**TO: HONORABLE MAYOR AND TOWN COUNCIL**

**THROUGH: JOHN KROSS, AICP  
TOWN MANAGER**

**FROM: DOREEN COTT  
ECONOMIC DEVELOPMENT DIRECTOR**

**RE: CONSIDERATION AND POSSIBLE APPROVAL OF THE TOWN  
CENTER COMMITTEE WORK PLAN FOR FISCAL YEAR 2012-  
2013.**

**DATE: SEPTEMBER 5, 2012**

---

**Staff Recommendation:**

Staff recommends approval of the Fiscal Year 2012/2013 Town Center Committee Work Plan.

**Relevant Council Goal(s):**

Annual Review of Council Committee Work Plans

**Proposed Motion:**

Move to approve the Fiscal Year 2012-2013 Town Center Committee Work Plan.

**Discussion:**

A provision of the Council adopted bylaws for the Town Center Committee calls for the consideration and approval of the annual work plan by the Town Council.

The proposed FY12-13 Town Center Committee Work Plan was developed to ensure that key initiatives of the Town Center Plan and the Town's Corporate Strategic Plan are achieved.

**PROPOSED FY12-13 Work Plan:**

1. Continue to facilitate the façade improvement program, encouraging revitalization and beautification within the Town Center.
2. Parking – Research parking options for Town Center including utilizing Town owned property for shared/overflow parking and review existing parking standards.

3. Investigate a competitive analysis for the Town Center with emphasis on benchmarking and comparing the Queen Creek Town Center with surrounding city's Town Center development zones for the purpose of recommending types of businesses QC should attract and recommend changes to governmental policies (fees, approval efficiencies, new business permitting, etc) to ensure Queen Creek's Town Center area is among the most competitive in the east valley.
4. Research and develop a Revolving Loan Fund utilizing Town Center Municipal Funds.
5. Vision
  - a. Gateway Monuments – Explore locations, designs and pricing
  - b. Signage – Provide directional signage to help identify the Town Center; providing a unified wayfinding system throughout the Town Center (Phase II)
6. Work with the Old Town Queen Creek Alliance on initiatives to assist business attraction to the Town Center.

**Fiscal Impact:**

There is no fiscal impact associated with the work plan.

**Alternatives:**

The Town Council could direct staff to work with the Committee to amend the proposed work plan.

**Attachments:**

N/A



Requesting Department:  
Economic Development

TAB J

**TO: HONORABLE MAYOR AND TOWN COUNCIL**

**THROUGH: JOHN KROSS, AICP  
TOWN MANAGER**

**FROM: DOREEN COTT  
ECONOMIC DEVELOPMENT DIRECTOR**

**RE: CONSIDERATION AND POSSIBLE APPROVAL OF THE  
ECONOMIC DEVELOPMENT COMMISSION WORK PLAN FOR  
FISCAL YEAR 2012-2013.**

**DATE: SEPTEMBER 5, 2012**

---

**Staff Recommendation:**

Staff recommends approval of the Fiscal Year 2012-2013 Economic Development Commission Work Plan.

**Relevant Council Goal(s):**

Annual Review of Council Committee Work Plans

**Proposed Motion:**

Move to approve the Fiscal Year 2012-2013 Economic Development Commission Work Plan.

**Discussion:**

A provision of the Council adopted bylaws for the Economic Development Commission calls for the consideration and approval of the annual work plan by the Town Council.

The proposed FY12-13 Economic Development Commission Work Plan was developed to ensure that key initiatives of the Economic Development Strategic Plan and the Town's Corporate Strategic Plan are achieved.

**PROPOSED FY12-13 Work Plan:**

1. Work with staff to evolve the Queen Creek Incubator program and further enhance small business development opportunities in Queen Creek. Assist staff with research on different "specialized" incubators.

2. Assist staff with an economic development focused event promoting development opportunities, community success stories and the Town's pro-business climate.
3. Review the department's outreach activities and marketing program on a quarterly basis and identify areas where the Commission can assist.
4. Work with the Town staff (Planning Division/Economic Development) to develop new definitions for agritourism/agritainment to be added to the zoning ordinance.
5. Develop a clear action plan for the proactive recruitment of businesses within the new targeted sector – Clean and Renewable Energy and Water.
6. Provide input and recommendations on new economic development programs that may benefit Queen Creek.
7. Review Major General Plan Amendments as appropriate.
8. Schedule educational updates at the monthly meetings to keep Commission informed on different issues, programs and development.

**Fiscal Impact:**

There is no fiscal impact associated with the work plan.

**Alternatives:**

The Town Council could direct staff to work with the Commission to amend the proposed work plan.

**Attachments:**

N/A



Requesting Department:

Economic Development

TAB K

**TO: HONORABLE MAYOR AND TOWN COUNCIL**

**THROUGH: JOHN KROSS, AICP  
TOWN MANAGER**

**FROM: DOREEN COTT  
ECONOMIC DEVELOPMENT DIRECTOR**

**RE: CONSIDERATION AND POSSIBLE APPROVAL OF THE  
REAPPOINTMENT OF JASON BARNEY TO THE GPEC BOARD  
OF DIRECTORS FOR FISCAL YEAR 2012-2013.**

**DATE: SEPTEMBER 5, 2012**

---

**Staff Recommendation:**

Staff recommends approval of the re-appointment of Jason Barney to the Greater Phoenix Economic Council (GPEC) Board of Directors for FY12-13.

**Proposed Motion:**

Move to re-appoint Jason Barney to the GPEC Board of Directors for FY12-13.

**Discussion:**

As outlined in Section 2.3.2 of GPEC's revised bylaws, Queen Creek is entitled to one seat on the Board of Directors. The term for new and/or reappointed directors is one year, which will commence at the Annual Board meeting on September 27, 2012.

Representatives on the Board work to support and assess GPEC's CEO, ensure effective organizational strategic planning and assess GPEC's performance. Board members service in leadership positions, follow economic development trends, participate at Board meetings and special events and participate in fundraising.

The GPEC Board of Directors meet four times annually during the months of September, January, March and May at GPEC's offices located in downtown Phoenix. GPEC directors are also encouraged to participate on leadership councils, advisory teams and events in their areas of interest and expertise.

Jason Barney was originally appointed to the Board in 2009 and reappointed in 2010 and 2011 by the Town Council. Mr. Barney has been an active member of the Board and has done an excellent job keeping staff apprised of issues raised at the Board level. Barry Broome, President and CEO of GPEC strongly recommended Mr. Barney's consideration for reappointed. Jason Barney is willing to serve if reappointed.

**Fiscal Impact:**

There is no fiscal impact associated with making an appointment to the GPEC Board of Directors.

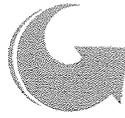
**Alternatives:**

The Town Council could choose nominate another individual to the GPEC Board of Directors. GPEC's bylaws call for a reasonable effort to nominate an individual that meets the following qualifications:

- Formal affiliation with a private-sector investor in GPEC
- Demonstrated commitment to economic development in Phoenix
- Demonstrated leadership in business and community initiatives
- Ability to make a valuable and unique contribution to the Board

**Attachments:**

- Copy of the letter sent from Barry Broome, President and CEO of GPEC



**Greater Phoenix**  
ECONOMIC COUNCIL

August 8, 2012

The Honorable Gail Barney  
Mayor  
Town of Queen Creek  
22350 S Ellsworth Rd  
Queen Creek, AZ 85142

Dear Mayor Barney,

I would like to thank you for your continued support of Greater Phoenix Economic Council. You and your community's commitment and championing of GPEC's role in advancing the economy are invaluable and greatly appreciated. We will continue to work hard to secure returns on behalf of our member communities.

With a new fiscal year upon us, it is time for you to nominate an individual to GPEC's Board of Directors for fiscal year 2012-13. As stated in Section 2.3.2 of GPEC's bylaws, your community is entitled to **one seat on the Board**, which may be an elected official. For prospective candidates other than elected officials, you may submit up to three candidates per allotted seat for the Nominating Committee to consider. The term for new and/or reappointed directors is one year, which will commence at the Annual Board Meeting on September 27, 2012.

If you choose to nominate a business-sector representative to fill a seat, Section 2.4 of GPEC's bylaws call for a reasonable effort to nominate an individual who meets the following qualifications, listed in order of preference:

1. Demonstrated commitment to the economic development of the Greater Phoenix Metropolitan Area;
2. Demonstrated leadership in business or community initiatives;
3. Commitment to lead resource development efforts on behalf of the Corporation;
4. Ability to make a multi-year financial contribution to the Corporation; and
5. Representation of a geographic area through work, residence or investment.

Jason Barney of Queen Creek/Landmark Companies has been an effective appointment for the Town of Queen Creek and GPEC. We strongly recommend that he be considered as your nominee for reappointment.

GPEC's Board of Directors meets four times annually during the months of September, January, March and May. GPEC directors are also encouraged to participate on leadership councils, Ambassadors program and events in their areas of interest and expertise.

Please indicate by letter, your nominations in order of preference for consideration of appointment to GPEC's Board of Directors no later than August 22, 2012. Should you need additional information to facilitate your decision, please contact me at 602.262.8614. Thank you for your continued support.

Sincerely,

Barry Broome  
President and CEO



Requesting Department:

Development Services

TAB L

**TO: HONORABLE MAYOR AND TOWN COUNCIL**

**THROUGH: JOHN KROSS, TOWN MANAGER**

**FROM: TROY WHITE, PUBLIC WORKS MANAGER  
JANET MARTIN, STREETS SUPERINTENDENT**

**RE: CONSIDERATION AND POSSIBLE APPROVAL ORDINANCE 517-12,  
ANNEXING ROADWAY ALIGNMENTS PER THE 2006  
*INTERGOVERNMENTAL AGREEMENT BETWEEN MARICOPA  
COUNTY AND THE TOWN OF QUEEN CREEK FOR THE OPERATION,  
MAINTENANCE, TRAFFIC CONTROL AND PERMITTING  
RESPONSIBILITIES FOR VARIOUS ARTERIAL ROADWAYS***

**DATE: SEPTEMBER 5, 2012**

---

**Staff Recommendation:**

Staff recommends approval of Ordinance 517-12.

**Relevant Council Goal(s):**

Regional Partnerships.

**Proposed Motion:**

Move to approve Ordinance 517-12.

**Discussion:**

In 2006, the Town of Queen Creek and Maricopa County adopted an intergovernmental agreement identifying and defining the responsibilities for various arterial roadways within the general confines of the Town, but not yet annexed. Previously, the Town had committed to annexing 35.14 miles of arterial roadways. As the annexation process was not to be immediately forthcoming, the intergovernmental agreement allowed the Town to take ownership of these roads, and be responsible for all permitting, maintenance, operation, and traffic control. In the ensuing years, the Town has moved forward with portions of the specified roadway annexations. This Ordinance will complete the process, and annex into the Town all remaining roads specified in the agreement.

Should this annexation be approved by Town Council, staff will forward documents for approval by the County Board of Supervisors at their next available meeting.

**Fiscal Impact:**

None.

**Attachments:**

Ordinance 517-12

**ORDINANCE NO. 517-12**

**AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF QUEEN CREEK EXTENDING AND INCREASING THE CORPORATE LIMITS OF THE TOWN OF QUEEN CREEK, MARICOPA COUNTY, STATE OF ARIZONA, PURSUANT TO THE PROVISIONS OF TITLE 9, CHAPTER 4, ARTICLE 7, ARIZONA REVISED STATUTES BY ANNEXING CERTAIN TERRITORY CONTIGUOUS TO THE EXISTING TOWN LIMITS.**

**WHEREAS**, pursuant to Maricopa County’s approval of the incorporation of the Town of Queen Creek, a legal description was prepared, submitted, and approved, in which certain existing right-of-way and roadway corridors were not included within the incorporated limits of the Town of Queen Creek; and

**WHEREAS**, Arizona state law (ARS Section 9-471(N)) provides that a county right-of-way or roadway may be annexed to an adjacent town by mutual consent of the governing bodies of the county and town if the property annexed is adjacent to the annexing town for the entire length of the annexation and if the town and county each approve the proposed annexation as a published agenda item at a regular public meeting of their governing bodies; and

**WHEREAS**, the territory legally described in Exhibit “A” and depicted in Exhibit “B” to this Ordinance is contiguous to the Town, is not now embraced within its limits, and is adjacent to the Town for the entire length of annexation; and

**WHEREAS**, the Mayor and Common Council of the Town of Queen Creek, Arizona, are desirous of extending and increasing the corporate limits of the Town to include said territory; and

**WHEREAS**, Exhibit “A” sets forth a true and correct description of all the exterior boundaries of the entire area proposed to be annexed to the Town of Queen Creek, and attached thereto are accurate maps of the territory desired to be annexed; and

**WHEREAS**, the provisions of Section 9-471, Arizona Revised Statutes, and amendments thereto, have been fully observed.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AS FOLLOWS:**

**SECTION 1.** That a copy of this Ordinance, together with an accurate map of the territory hereby annexed to the Town of Queen Creek, Arizona, certified by the Clerk of the

Town, be forthwith filed with the Maricopa County Clerk for publication as an agenda item at the next regular public meeting of Maricopa County governing body.

SECTION 2. That upon approval of the proposed annexation as a published agenda item at a regular public meeting of Maricopa County governing body, the following described territory is hereby annexed to the Town of Queen Creek, Arizona, and that the present corporate limits are hereby extended and increased to include the territory described in Exhibit "A" and depicted in Exhibit "B" contiguous to the present Town limits, to wit:

SEE EXHIBITS "A" AND "B" ATTACHED HERETO

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Queen Creek, Arizona, this 5<sup>th</sup> day of September, 2012.

FOR THE TOWN OF QUEEN CREEK:

ATTESTED TO:

\_\_\_\_\_

Gail Barney, Mayor

\_\_\_\_\_

Jennifer Robinson, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:

\_\_\_\_\_

John Kross, Town Manager

\_\_\_\_\_

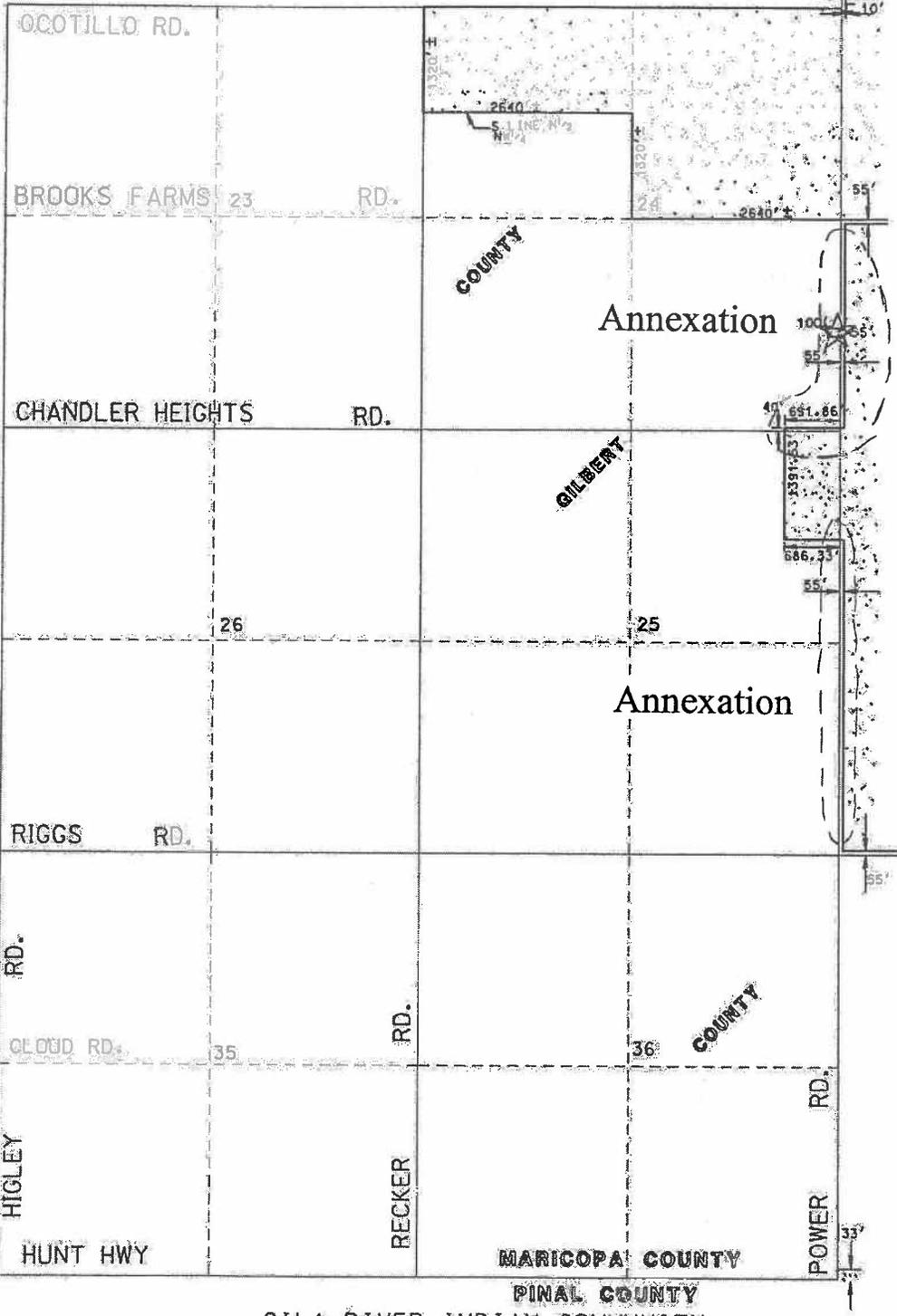
Mariscal, Weeks, McIntyre &  
Friedlander, Town Attorneys

SEE SHEET 0

SEE SHEET 0



SEE SHEET 2



T2S  
T3S

MARICOPA COUNTY  
PINAL COUNTY  
GILA RIVER INDIAN COMMUNITY

### Exhibit "B"

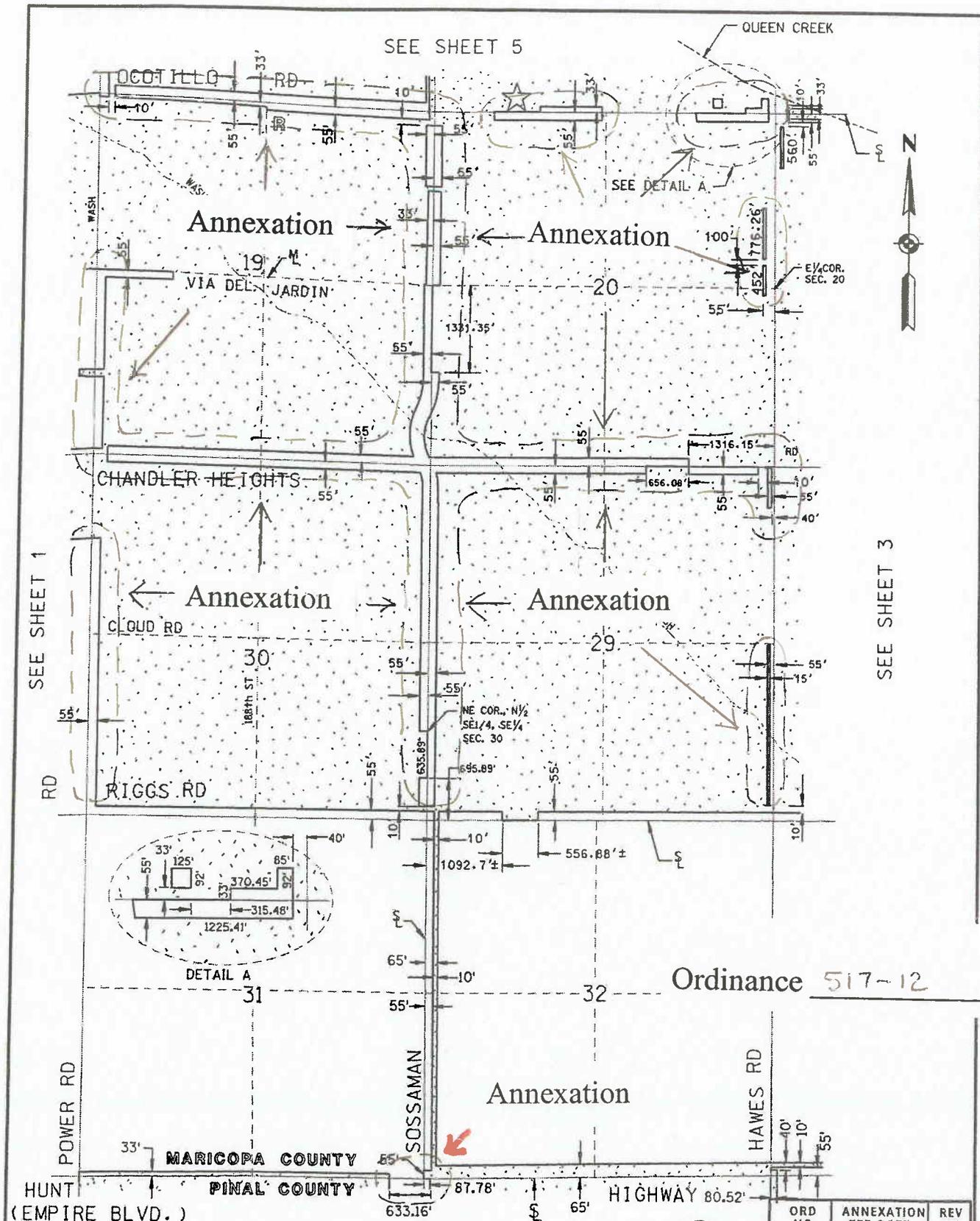
T2S- R6E  
QUEEN CREEK

1

THIS CITY LIMIT SHEET IS TO BE USED AS A GUIDE ONLY. MARICOPA COUNTY WILL NOT BE RESPONSIBLE FOR ERRORS OR OMISSIONS THAT MIGHT OCCUR.

 INCORPORATED AREA

ORD. NO.	ANNEXATION EFF. DATE	REV BY
104-97	05/07/97	C.L.
130-98	11/14/98	DKG
231-02	01/18/03	DKG
239-03	03/19/03	JWC



SEE SHEET 5

QUEEN CREEK



SEE SHEET 1

SEE SHEET 3

Annexation →

← Annexation

← Annexation →

← Annexation →

Annexation

Ordinance 517-12

MARICOPA COUNTY

PINAL COUNTY

SEE SHEET 0

2

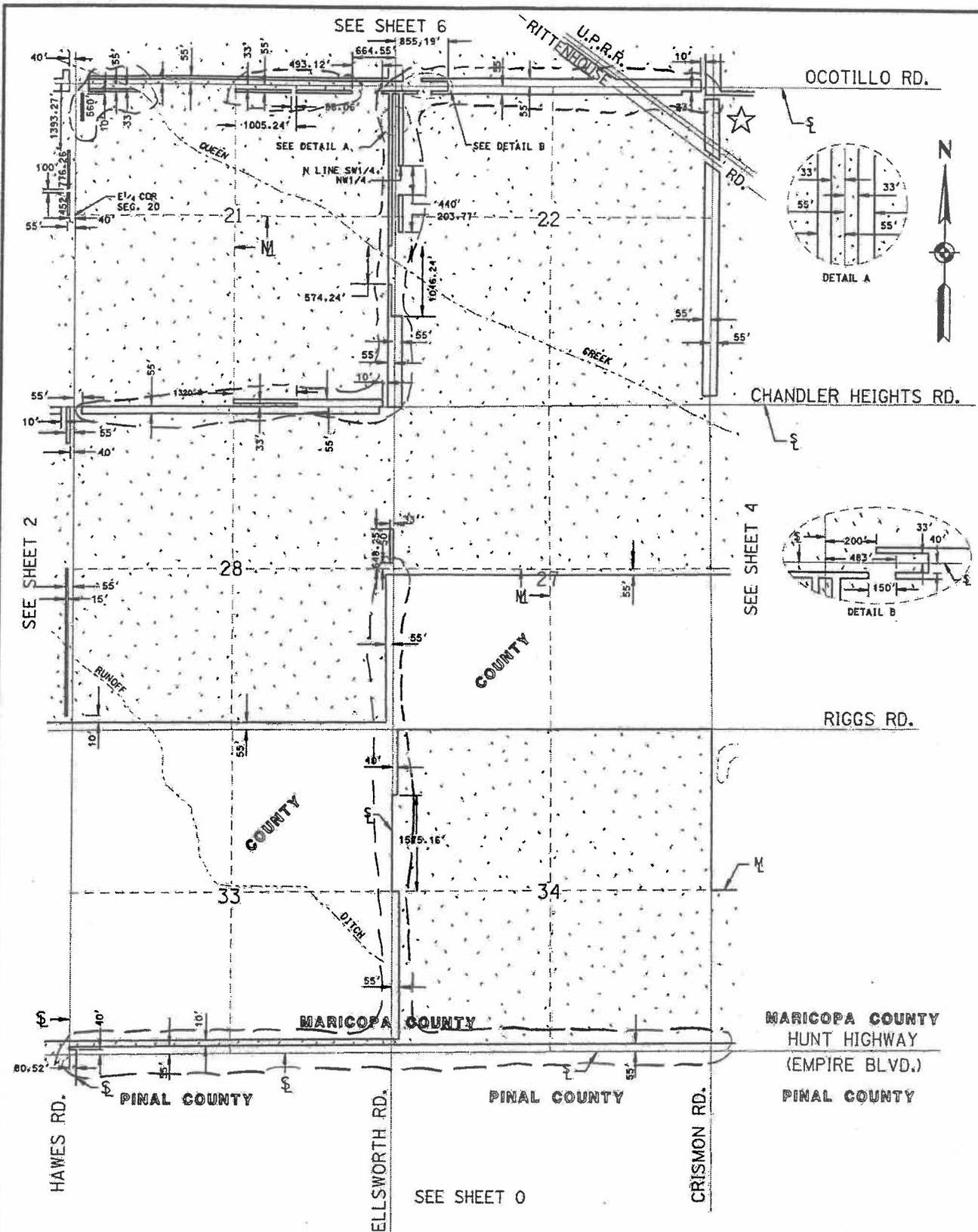
Exhibit "B"

THIS CITY LIMIT SHEET IS TO BE USED AS A GUIDE ONLY! MARICOPA COUNTY WILL NOT BE RESPONSIBLE FOR ERRORS OR OMISSIONS THAT MIGHT OCCUR.

INCORPORATED AREA

QUEEN CREEK

ORD NO	ANNEXATION EFF DATE	REV BY
332-06	02/18/06	JWC
corr dim's per incorp. 09/22/09		
239-03	03/19/03	JWC
Cor Mad 213-99	12/22/11	JWC



NOTE: DELINEATION REPRESENTS MUNICIPAL BOUNDARIES ONLY!  
 RIGHTS OF WAY ARE NOT DEPICTED, HOWEVER MAY BE  
 COINCIDENTAL WITH BOUNDARY LINES AND ARE SO LABE

This City Limit Sheet is to be used  
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 = Incorporated Area

Exhibit "B"

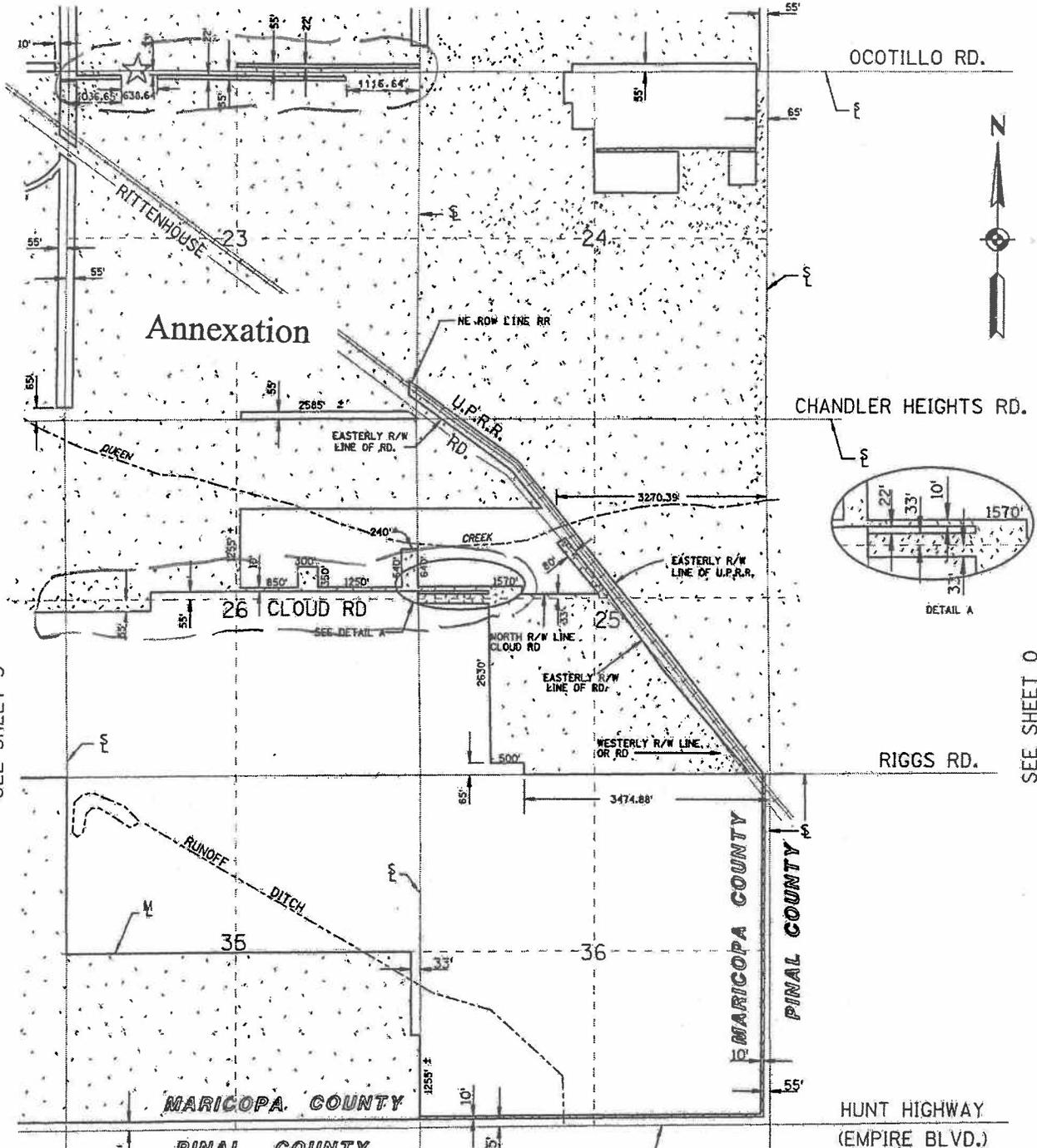
3

Ordinance 517-12

ORD NO	ANNEXATION EFF DATE	REV BY
309-05	05/04/05	DKG
311-05	06/08/05BOS	DKG
374-06	12/01/06	JWC
449-09	06/20/09	JWC
COT map	11/17/09	JWC
213-99	11/14/11	JWC



SEE SHEET 7



SEE SHEET 3

SEE SHEET 0

SEE SHEET 0

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Incorporated Area

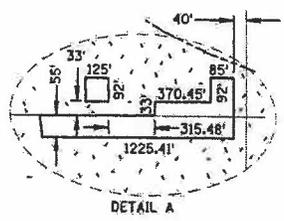
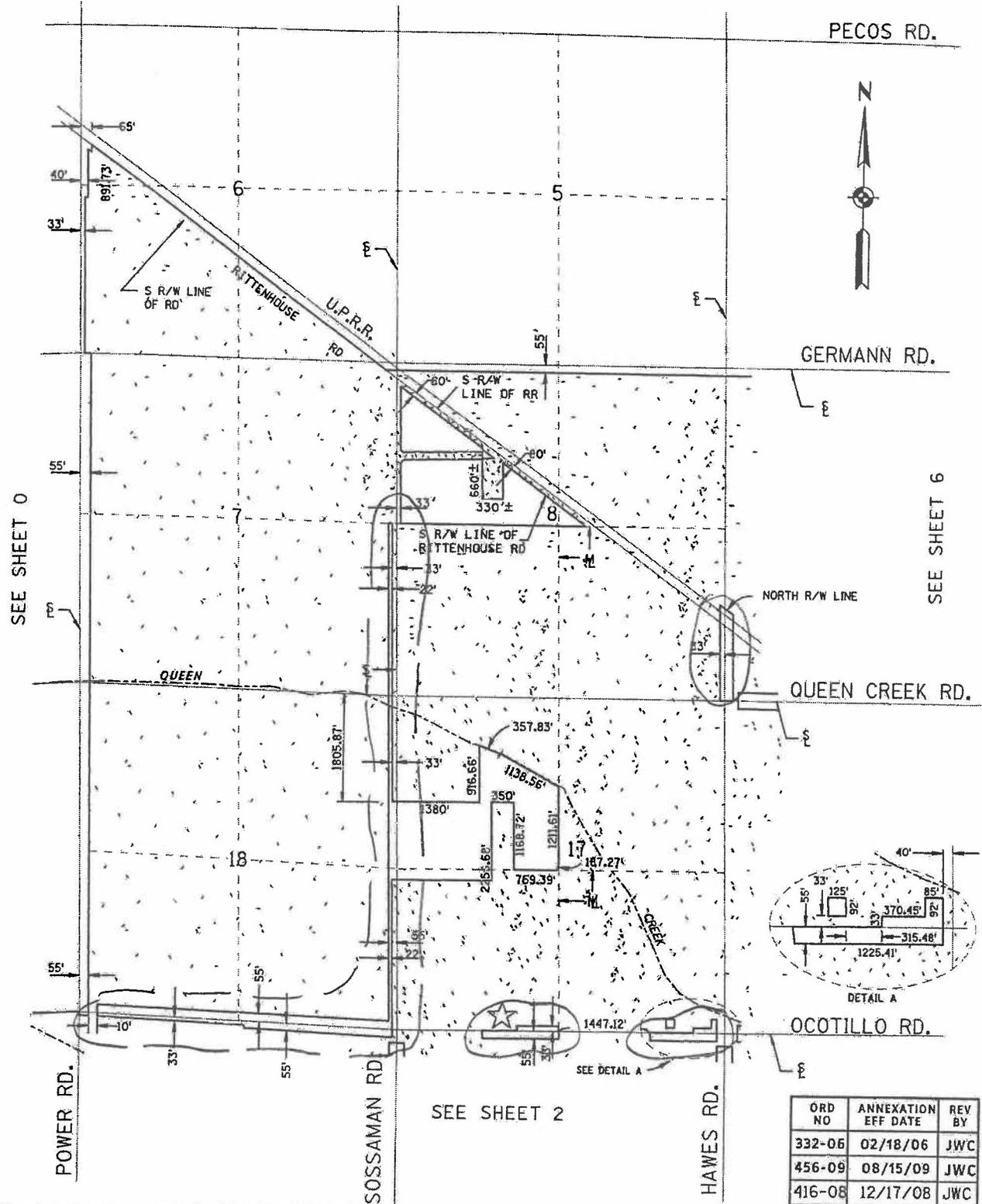
Exhibit "B"

Ordinance 517-12

4

ORD NO	ANNEXATION EFF DATE	REV BY
441-08	11/01/08	JWC
310-05	06/18/09	JWC
Updated map 6/30/09		JWC
449-09	06/20/09	JWC
450-09	06/20/09	JWC
468-09	4/29/10	ABG
310-05	11/14/11	JWC

SEE SHEET 0



ORD NO	ANNEXATION EFF DATE	REV BY
332-06	02/18/06	JWC
456-09	08/15/09	JWC
416-08	12/17/08	JWC
Corr Map	4/13/10	ABG
472-10	4/28/10	ABG
Corr Map	9/15/11	JWC
Corr Map	12/22/11	JWC

NOTE: DELINEATION REPRESENTS MUNICIPAL BOUNDARIES ONLY! RIGHTS OF WAY ARE NOT DEPICTED, HOWEVER MAY BE COINCIDENTAL WITH BOUNDARY LINES AND ARE SO LABEL

This City Limit Sheet is to be used as a **GUIDE ONLY!** Maricopa County will not be responsible for errors or omissions that might occur.

= Incorporated Area

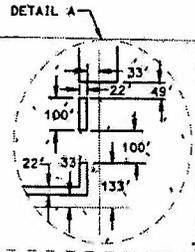
Exhibit "B"

5

Ordinance 517-12

SEE SHEET 0

PECOS RD.



MESA

MESA

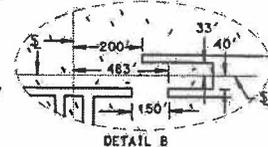
GERMANN RD.

SEE SHEET 7

SEE SHEET 5

QUEEN CREEK RD.

U.P.R.R.  
RITTENHOUSE  
RD.



OCOTILLO RD.

HAWES RD.

ELLSWORTH RD.

SEE SHEET 3

CRISMON RD.

6 ☆

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 = Incorporated Area

Exhibit "B"

Ordinance 517-12

ORD NO	ANNEXATION EFF DATE	REV BY
472-10	4/28/10	ABG
487-10	09/03/10	JWC



EXHIBIT A  
LEGAL DESCRIPTION

*Section 24 – T2S – R6E*

A portion of Section 24, Township 2 South, Range 6 East of the Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

The East 55 feet of the South East Quarter of said Section 24; *and* the North 15 feet of the South 55 feet of the East 691.86 feet of the South East Quarter of said Section 24;

*EXCEPT* any portion thereof lying within that part of the Town of Queen Creek described in Annexation No. 025-02 and adopted in Ordinance 231-02, and described in Annexation No. 024-02 and adopted in Ordinance 239-03, all archived in records of the Town Clerk of Queen Creek.

*Section 25 – T2S – R6E*

A portion of Section 25, Township 2 South, Range 6 East of the Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

The East 40 feet of the East Half of said Section 25, *EXCEPT* the South 65 feet;

*EXCEPT* any portion thereof lying within that part of the Town of Queen Creek described in Annexation No. 025-02 and adopted in Ordinance 231-02, all archived in records of the Town Clerk of Queen Creek.

*Section 19 – T2S – R7E*

Portions of Section 19, Township 2 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

The North 33 feet of the Northwest Quarter (NW1/4) of said Section 19, *EXCEPT* the West 65 feet; *and* the North 55 feet of the Northeast Quarter (NE1/4) of said Section 19, *EXCEPT* the East 33 feet; *and* the East 55 feet of said Section 19, together with that

portion of Sossaman Road as shown in Book 157 of Maps, page 17, Maricopa County Records; and, *EXCEPT* the North 65 feet; *and* the West 55 feet of the Southwest Quarter (SW1/4) of said Section 19, *EXCEPT* the South 40 feet; *and* the South 55 feet of said Section 19;

*EXCEPT* any portion thereof lying within that part of the Town of Queen Creek which was described and adopted in Ordinance Number 92-01 and in Ordinance 104-97; *and EXCEPT* any portion thereof lying within that part of the Town of Queen Creek described in Resolution Declaring the Incorporation of the Town of Queen Creek adopted by the Maricopa County Board of Supervisors on September 5, 1989; *and EXCEPT* any portion thereof lying within that part of Queen Creek described in Ordinance No. 024-02 and adopted in Ordinance 239-03; all archived in records of the Town Clerk of Queen Creek.

#### *Section 20 – T2S – R7E*

Being a portion of Section 20, Township 2 South, Range 7 East, Gila & Salt River Base & Meridian, Maricopa County, Arizona, more particularly described as follows:

The North 55 feet of the Northwest Quarter (NW1/4) of said Section 20, *EXCEPT* the West 884.73 feet; *and* the North 55 feet of the Northeast Quarter (NE1/4) of said Section 20, *EXCEPT* the West 1,225.41 feet and the East 40 feet, *and* the West 55 feet of the Northwest Quarter (NW1/4), *EXCEPT* the North 65 feet; *and* that part of Sossaman Road as shown in Book 157 of Maps, page 17, Maricopa County Records, lying within the Southwest Quarter (SW¼) of said Section 20; *and* the South 55 feet of said Section 20, *EXCEPT* the East 1,316.15 feet; *and* the West 22 feet of the East 55 feet of the East Half (E1/2), *EXCEPT* the North 1,328.32 feet, and *EXCEPT* the South 2,656.12 feet;

*EXCEPT*, any portion thereof, lying within that part of the Town of Queen Creek which was described and adopted in Ordinance No. 189-99, in Ordinance 56-95, and in Ordinance 104-97; *and EXCEPT*, any portion thereof lying within that part of the Town of Queen Creek described in Resolution Declaring the Incorporation of the Town of Queen Creek adopted by the Maricopa County Board of Supervisors on September 5, 1989, all archived in the records of the Town Clerk of Queen Creek.

*Section 30 – T2S – R7E*

Being a portion of Section 30, Township 2 South, Range 7 East of the Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

The North 55 feet of said Section 30, *EXCEPT* the West 65 feet; and the East 55 feet of said Section 30, *EXCEPT* that portion of Sossaman Road as shown in Book 168 of Maps, Page 08, Maricopa County Records and *EXCEPT* the South 65 feet; and the West 55 feet of said Section 30, *EXCEPT* the South 65 feet;

*EXCEPT* any portion thereof lying within that part of the Town of Queen Creek which was described and adopted in Annexation No. 025-02 and Ordinance Number 231-02; *and EXCEPT* any portion thereof, lying within that part of the Town of Queen Creek which was described and adopted in Ordinance Number 142-97; *and EXCEPT* any portion thereof lying within that part of the Town of Queen Creek described in Resolution Declaring the Incorporation of the Town of Queen Creek adopted by the Maricopa County Board of Supervisors on September 5, 1989, all archived in the records of the Town Clerk of Queen Creek.

*Section 29 – T2S – R7E*

Being a portion of Section 29, Township 2 South, Range 7 East, Gila & Salt River Base & Meridian, Maricopa County, Arizona, more particularly described as follows:

The North 55 feet of said Section 29, *EXCEPT* the East 65 feet; *and* the West 55 feet of said Section 29, together with that portion of Sossaman Road as shown in Book 192 of Maps, page 34, Maricopa County Records, *EXCEPT* the South 65 feet; *and* the West 15 feet of the East 55 feet of Section 29, *EXCEPT* the South 65 feet;

*EXCEPT* any portion thereof lying within that part of the Town of Queen Creek which was described and adopted in Resolution Number 198-99; *and EXCEPT* any portion thereof lying within that part of the Town of Queen Creek described in Resolution Declaring the Incorporation of the Town of Queen Creek adopted by the Maricopa County Board of Supervisors on September 5, 1989, all archived in the records of the Town Clerk of Queen Creek.

*Section 31 – T2S – R7E*

Being a portion of Section 31, Township 2 South, Range 7 East, Gila & Salt River Base & Meridian, Maricopa County, Arizona, more particularly described as follows:

The East 633.16 feet of the South 33 feet of said Section 31.

*Section 21 – T2S – R7E*

Being a portion of Section 21, Township 2 South, Range 7 East, Gila & Salt River Base & Meridian, Maricopa County, Arizona, more particularly described as follows:

The South 22 feet of the North 55 feet of the Northwest Quarter (NW1/4) of the Northwest Quarter (NW1/4) of said Section 21, exclusive of that portion lying within a subdivision of land recorded as Book 466 Page 22 Maricopa County; *and* the South 22 feet of the North 55 feet of the Northeast Quarter (NE1/4), exclusive of that portion lying within an area from 919.18 to 1005.24 East of the Mid-section line and 664.55 to 171.43 West of the East Section line; *and* that portion of the East 15 feet of the West 55 feet of the Northwest Quarter (NW1/4) extending from X; *and* the South 55 feet of the Southeast Quarter (SE1/4) of said Section 21, exclusive of the South 33 feet of the West 1,320 feet and the East 65 feet; *and* the East 55 feet of the Southeast Quarter (SE1/4) of the Southeast Quarter (SE1/4) of said Section 21; *and* the West 22 feet of the East 55 feet of the Northeast Quarter (NE1/4) and the Northeast Quarter (NE1/4) of the Southeast Quarter (SE1/4), exclusive of the North 33 feet;

*EXCEPT* any portion thereof lying within that part of the Town of Queen Creek which was described and adopted in Ordinance Number 309-05, and in Ordinance 53-94, and in Ordinance; *and EXCEPT* any portion thereof lying within that part of the Town of Queen Creek described in Resolution Declaring the Incorporation of the Town of Queen Creek adopted by the Maricopa County Board of Supervisors on September 5, 1989, all archived in the records of the Town Clerk of Queen Creek.

*Section 22 – T2S – R7E*

Being a portion of Section 22, Township 2 South, Range 7 East, Gila & Salt River Base & Meridian, Maricopa County, Arizona, more particularly described as follows:

The North 55 feet of said Section 22; *and*

The North 33 feet of the West 1,155 feet and the East 528 feet of said Section 22, and

The West 55 feet of the Southwest quarter (SW¼) said Section 22, lying south of North 1046.24 feet thereof;

*EXCEPT* any portion thereof lying within that part of the Town of Queen Creek which was described and adopted in Ordinance Number 141-97, and in Ordinance 53-94, and

in Ordinance; *and EXCEPT* any portion thereof lying within that part of the Town of Queen Creek described in Resolution Declaring the Incorporation of the Town of Queen Creek adopted by the Maricopa County Board of Supervisors on September 5, 1989, all archived in the records of the Town Clerk of Queen Creek.

*Section 28 – T2S – R7E*

Being a portion of Section 28, Township 2 South, Range 7 East, Gila & Salt River Base & Meridian, Maricopa County, Arizona, more particularly described as follows:

The North 55 feet of said Section 28, *except* the West 55 feet and *except* the East 80 feet; *and* the East 55 feet of the Southeast Quarter (SE1/4) of said Section 28, *except* the North 55 feet of said quarter; *and* that portion lying in the East 33 feet of the Northeast Quarter (NE1/4) of said Section 28 from 50 to 648.25 feet North of the mid-section line;

*EXCEPT* any portion thereof lying within that part of the Town of Queen Creek which was described and adopted in Ordinance 274-03; *and EXCEPT* any portion thereof lying within that part of the Town of Queen Creek which was described and adopted in Ordinance 449-09; *and EXCEPT* any portion thereof lying within that part of the Town of Queen Creek described in Resolution Declaring the Incorporation of the Town of Queen Creek adopted by the Maricopa County Board of Supervisors on September 5, 1989; all archived in the records of the Town Clerk of Queen Creek.

*Section 27 – T2S – R7E*

Being a portion of Section 27, Township 2 South, Range 7 East, Gila & Salt River Base & Meridian, Maricopa County, Arizona, more particularly described as follows:

The West 70 feet of the Southwest Quarter (SW1/4) of said Section 27, exclusive of the North 55 feet;

*EXCEPT* any portion thereof lying within that part of the Town of Queen Creek described in *Resolution Declaring the Incorporation of the Town of Queen Creek* adopted by the Maricopa County Board of Supervisors on September 5, 1989, as shown in the records of the Town Clerk of Queen Creek.

*Section 33 – T2S – R7E*

Being a portion of Section 33, Township 2 South, Range 7 East, Gila & Salt River Base & Meridian, Maricopa County, Arizona, more particularly described as follows:

The South 55 feet of said Section 33; *and* the East 70 feet of said Section 33;

*EXCEPT* any portion thereof lying within that part of the Town of Queen Creek described in Resolution Declaring the Incorporation of the Town of Queen Creek adopted by the Maricopa County Board of Supervisors on September 5, 1989, as shown in the records of the Town Clerk of Queen Creek.

*Section 34 – T2S – R7E*

Being a portion of Section 34, Township 2 South, Range 7 East, Gila & Salt River Base & Meridian, Maricopa County, Arizona, more particularly described as follows:

The West 40 feet of said Section 34, lying north of the northerly boundary of ORCHARD RANCHETTES II, Phase A, A Subdivision of A Portion Of The NW¼ of Section 34, Township 2 South, Range 7 East, per Book 517 of Maps, page 45, Maricopa County Records; *and* the West 55 feet of said Section 34, lying south of the southerly boundary of ORCHARD RANCHETTES , Phase I, A Subdivision of A Portion Of The NW¼ of Section 34, Township 2 South, Range 7 East, per Book 452 of Maps, page 41, Maricopa County Records; *and* the South 55 feet of said Section 34.

*Section 23 – T2S – R7E*

Being a portion of Section 23, Township 2 South, Range 7 East, Gila & Salt River Base & Meridian, Maricopa County, Arizona, more particularly described as follows:

The North 55 feet of said Section 23, *EXCEPT* any portion already lying within the boundaries, as described in Town of Queen Creek Ordinance 310-05;

*EXCEPT* any portion thereof lying within that part of the Town of Queen Creek described in *Resolution Declaring the Incorporation of the Town of Queen Creek* adopted by the Maricopa County Board of Supervisors on September 5, 1989, as shown in the records of the Town Clerk of Queen Creek.

*Section 26 – T2S – R7E*

Being a portion of Section 26, Township 2 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

The 55 feet north of the mid-section line and the 33 feet south of the mid-section line of said Section 26, exclusive of the Southwest Quarter (SW1/4) of the Northwest Quarter (NW1/4) of said Section 26; *and* the West 70 feet of the Southwest Quarter (SW1/4) of said Section 26, exclusive of the North 55 feet.

*Section 25 – T2S – R7E*

Being a portion of Section 25, Township 2 South, Range 7 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

The North 22 feet of the 55 feet North side of the mid-section line and lying within the Southwest Quarter (SW1/4) of the Northwest (NW1/4) of said Section 25.

*Section 35 – T2S – R7E*

Being a portion of Section 35, Township 2 South, Range 7 East, Gila & Salt River Base & Meridian, Maricopa County, Arizona, more particularly described as follows:

The South 55 feet of said Section 35;

*EXCEPT* any portion thereof, lying within that part of the Town of Queen Creek which was described and adopted in Ordinance Number 44-94, in the records of the Town Clerk of Queen Creek; *and EXCEPT* any portion thereof lying within that part of the Town of Queen Creek described in Resolution Declaring the Incorporation of the Town of Queen Creek adopted by the Maricopa County Board of Supervisors on September 5, 1989, as shown in the records of the Town Clerk of Queen Creek.

*Section 7 – T2S – R7E*

Being a portion of Section 7, Township 2 South, Range 7 East, Gila & Salt River Base & Meridian, Maricopa County, Arizona, more particularly described as follows:

The West 22 feet of the East 55 feet of the Southeast Quarter (SE1/4) of said Section 7;

*EXCEPT*, any portion thereof lying within that part of the Town of Queen Creek described in Resolution Declaring the Incorporation of the Town of Queen Creek adopted by the Maricopa County Board of Supervisors on September 5, 1989, as shown in the records of the Town Clerk of Queen Creek.

*Section 8 – T2S – R7E*

Being a portion of Section 8, Township 2 South, Range 7 East, Gila & Salt River Base & Meridian, Maricopa County, Arizona, more particularly described as follows:

The East 33 feet of the Southeast Quarter (SE1/4) of said Section 8, lying South of the North right-of-way of the Union Pacific Rail Road;

*EXCEPT*, any portion thereof lying within that part of the Town of Queen Creek described in Resolution Declaring the Incorporation of the Town of Queen Creek adopted by the Maricopa County Board of Supervisors on September 5, 1989, as shown in the records of the Town Clerk of Queen Creek.

*Section 18 – T2S – R7E*

Being a portion of Section 18, Township 2 South, Range 7 East, Gila & Salt River Base & Meridian, Maricopa County, Arizona, more particularly described as follows:

The East 55 feet of said Section 18, *EXCEPT* any portion described in Town of Queen Creek Ordinance and adopted by the Maricopa County Board of Supervisors, included in the records of the Town Clerk; *and* the South 55 feet of said Section 18, *EXCEPT* the West 65 feet;

*EXCEPT*, any portion thereof lying within that part of the Town of Queen Creek described in Resolution Declaring the Incorporation of the Town of Queen Creek adopted by the Maricopa County Board of Supervisors on September 5, 1989, as shown in the records of the Town Clerk of Queen Creek.

*Section 17 – T2S – R7E*

Being a portion of Section 17, Township 2 South, Range 7 East, Gila & Salt River Base & Meridian, Maricopa County, Arizona, more particularly described as follows:

The West 55 feet of said Section 17, exclusive of the portion lying within the boundaries described in Ordinance 332-06; *and* the South 33 feet of the Southeast Quarter (SE1/4)

of the Southeast Quarter (SE1/4) of said Section 17; *and* an area described as beginning at a point 40 West of the Southeast Corner of said Section 17, on the South section line, thence continuing along said section line a distance of 455.45 feet, thence North a distance of 33 feet, thence East a distance of 370.45 feet, thence North a distance of 92 feet, thence East a distance of 85 feet, the South a distance of 125 feet, returning to the point of beginning.

*EXCEPT*, any portion thereof lying within that part of the Town of Queen Creek described in Resolution Declaring the Incorporation of the Town of Queen Creek adopted by the Maricopa County Board of Supervisors on September 5, 1989, as shown in the records of the Town Clerk of Queen Creek.

#### *Section 9 – T2S – R7E*

Being a portion of Section 9, Township 2 South, Range 7 East, Gila & Salt River Base & Meridian, Maricopa County, Arizona, more particularly described as follows:

The West 55 feet of said Section 9, lying South of the North right-of-way line of the Union Pacific Rail Road; *and* the West 5 feet of the East 55 feet of the Southeast Quarter (SE1/4) of said Section 9;

*EXCEPT*, any portion thereof lying within that part of the Town of Queen Creek described in Resolution Declaring the Incorporation of the Town of Queen Creek adopted by the Maricopa County Board of Supervisors on September 5, 1989, as shown in the records of the Town Clerk of Queen Creek and in the Records of the Clerk of the Board, for the Maricopa County Board of Supervisors, record number 1989-0469049.

#### *Section 10 – T2S – R7E*

Being a portion of Section 10, Township 2 South, Range 7 East, Gila & Salt River Base & Meridian, Maricopa County, Arizona, more particularly described as follows:

The East 55 feet of said Section 10, *EXCEPT* the North 265 feet; *and* the North 22 feet of said South 55 feet of said Section 10, *EXCEPT* the West 55 feet;

*EXCEPT*, any portion thereof, lying within that part of the Town of Queen Creek described in Annexation No. 011-95 and adopted in Ordinance 77-96, all records of the Town Clerk of the Town of Queen Creek; and,

*EXCEPT*, any portion thereof, lying within the North 55 feet of said Section 10.

*Section 16 – T2S – R7E*

Being a portion of Section 16, Township 2 South, Range 7 East, Gila & Salt River Base & Meridian, Maricopa County, Arizona, more particularly described as follows:

The North 22 feet of the South 55 feet, exclusive of the West 65 feet and the East 33 feet; *and* the East 55 feet of said Section 16, excluding the previously annexed right-of-way of Rittenhouse Road;

EXCEPT, any portion thereof, lying within that part of the Town of Queen Creek which was described and adopted in Resolution Number 213-99, in the records of the Town Clerk of Queen Creek;

*EXCEPT* any portion thereof lying within that part of the Town of Queen Creek which was described and adopted in Resolution Number 351-06, in the records of the Town Clerk of Queen Creek; *and EXCEPT* any portion thereof lying within that part of the Town of Queen Creek described in a Resolution Declaring the Incorporation of the Town of Queen Creek adopted by the Maricopa County Board of Supervisors on September 5, 1989, as shown in the records of the Town Clerk of Queen Creek.

*Section 15 – T2S – R7E*

Being a portion of Section 15, Township 2 South, Range 7 East, Gila & Salt River Base & Meridian, Maricopa County, Arizona, more particularly described as follows:

The North 55 feet of said Section 15; *and* the West 55 feet of said Section 15, exclusive of the North 65 feet, the previously annexed right-of-way of Rittenhouse Road, and the South 382 feet; *and* the East 55 feet of said Section 15; *and* the North 22 feet of the South 55 feet of the West 855.19 feet of said Section 15; *and* the South 55 feet of said Section 15, exclusive of the previously annexed right-of-way of Rittenhouse Road and the East 65 feet;

*EXCEPT* any portion thereof lying within that part of the Town of Queen Creek which was described and adopted in Resolution Number 213-99, in the records of the Town Clerk of Queen Creek; *and EXCEPT* any portion thereof lying within Rittenhouse Road as shown and recorded in Book 3 of Road Maps, Page 8, Maricopa County Records; *and* lying within that part of the Town of Queen Creek which was described and adopted in Resolution Number 351-06, in the records of the Town Clerk of Queen Creek; *and EXCEPT* any portion thereof lying within that part of the Town of Queen Creek described in Resolution Declaring the Incorporation of the Town of Queen Creek

adopted by the Maricopa County Board of Supervisors on September 5, 1989, as shown in the records of the Town Clerk of Queen Creek.

*Section 11 – T2S – R7E*

Being a portion of Section 11, Township 2 South, Range 7 East, Gila & Salt River Base & Meridian, Maricopa County, Arizona, more particularly described as follows:

The West 55 feet of said Section 11, exclusive of the North 265 feet and the South 33 feet; *and* the North 22 feet of the South 55 of said Section 11; and the East 55 of said Section 11, exclusive of the North 265 feet and the South 55 feet;

EXCEPT any portion thereof, lying within that part of the Town of Queen Creek described in Annexation No. 011-95 and adopted in Ordinance 77-96, all records of the Town Clerk of the Town of Queen Creek.

*Section 12 – T2S – R7E*

Being a portion of Section 12, Township 2 South, Range 7 East, Gila & Salt River Base & Meridian, Maricopa County, Arizona, more particularly described as follows:

The West 55 feet of said Section 12, exclusive of the North 265 feet and the South 55 feet; *and* the North 22 feet of the South 55 feet, exclusive of the East 265 feet;

EXCEPT any portion thereof, lying within that part of the Town of Queen Creek described in Annexation No. 011-95 and adopted in Ordinance 77-96, all records of the Town Clerk of the Town of Queen Creek.

*Section 14 – T2S – R7E*

Being a portion of Section 14, Township 2 South, Range 7 East, Gila & Salt River Base & Meridian, Maricopa County, Arizona, more particularly described as follows:

The North 55 feet of said Section 14; *and* the East 55 feet of said Section 14; *and* the West 55 feet of said Section 14; *and* the North 22 feet of the South 55 feet of the Southeast Quarter (SE1/4) of said Section 14;

*EXCEPT* any portion thereof lying within that part of the Town of Queen Creek which was described in Annexation 011-95 and adopted in Ordinance Number 77-96, in records of the Clerk Town of Queen Creek; and *EXCEPT* any portion thereof lying

within that part of the Town of Queen Creek described in Resolution Declaring the Incorporation of the Town of Queen Creek adopted by the Maricopa County Board of Supervisors on September 5, 1989, in the records of the Town Clerk of Queen Creek.

*Section 13 – T2S – R7E*

Being a portion of Section 13, Township 2 South, Range 7 East, Gila & Salt River Base & Meridian, Maricopa County, Arizona, more particularly described as follows:

The West 55 feet of said Section 13; *and* the North 55 feet of said Section 13, exclusive of the West 55 feet and the East 265 feet; *and* the South 55 feet of said Section 13, exclusive of the West 2,164.31 feet and the East 65 feet;

EXCEPT any portion thereof lying within that part of the Town of Queen Creek described in Annexation No. 011-95 and was adopted in Ordinance Number 77-96, all records of the Town Clerk of Queen Creek; and EXCEPT any portion thereof lying within that part of the Town of Queen Creek described in Resolution Declaring the Incorporation of the Town of Queen Creek adopted by the Maricopa County Board of Supervisors on September 5, 1989, as shown in the records of the Town Clerk of Queen Creek and in the Records of the Clerk of the Board, for the Maricopa County Board of Supervisors.



Requesting Department:  
Development Services

TAB M

**TO: HONORABLE MAYOR AND TOWN COUNCIL**

**THROUGH: JOHN KROSS, ICMA-CM  
TOWN MANAGER**

**FROM: WAYNE BALMER, AICP  
PLANNING ADMINISTRATOR**

**DAVE WILLIAMS  
SENIOR PLANNER**

**RE: PUBLIC HEARING AND POSSIBLE ACTION ON ORDINANCE 518-12, ZONING CASE RZ12-034 , "VICTORIA PARCELS 10, 11 AND 11A"**, submitted by Ralph Pew of Pew and Lake PLC to repeal Ordinance 466-09 and Resolution 813-09 in conjunction with rezoning the property from R1-4 and R1-5 to R1-7 PAD and R1-9 PAD. The property is located northeast of the intersection of Hawes Road and Ocotillo Road.

**DATE: SEPTEMBER 5, 2012**

### **PLANNING & ZONING COMMISSION RECOMMENDATION**

The Planning Commission recommended approval of RZ12-034 Rezoning for Victoria Parcels 10, 11 and 11A, subject to the Conditions of Approval contained in this report.

### **STAFF RECOMMENDATION**

Staff concurs with the Planning Commission's recommendation.

### **RELEVANT COUNCIL GOALS**

General Plan Growth Areas Element, Goal 5, Policy 5b: Encourage the use of available infrastructure capacity to accommodate new development consistent with the land use goals and provisions of the General Plan.

## PROPOSED MOTION

Move to approve Ordinance 518-12, RZ12-034 Rezoning for Victoria Parcels 10, 11 and 11A, subject to the Conditions of Approval as provided in Ordinance 518-12.

## SUMMARY

The proposal consists of a request by Ralph Pew of Pew and Lake PLC to repeal Ordinance # 466-09 and Resolution 813-09 (both related to an active adult concept proposed by Taylor Morrison in 2009), and rezone from R1-4 and R1-5 to R1-7 PAD and R1-9 PAD.

If approved, this request would revert the Victoria Parcels 11 and 11A (Parcel 10 currently has a recorded Final Plat) subdivision back to the conditions and Preliminary Plats approved by prior Ordinances and Development Agreements.

## HISTORY

August 8, 2012	Planning Commission recommends approval RZ12-034.
December 2, 2009	Town Council Approved Ordinance 466-09 and Resolution 813-09 for Taylor Morrison at Victoria creating an active adult community in addition to Preliminary Plat Approval for Parcels 10, 11 and 11A.
April, 2004	Town Council approved Ordinance 284-04 Preliminary Plats for Victoria 10, 11 and 11A.

## DISCUSSION

The applicant is requesting repeal Ordinance # 466-09 and Resolution 813-09 (both related to an active adult concept proposed by Taylor Morrison in 2009) and terminate the related Development Agreement, in addition to proposing to rezone the property from R1-4 and R1-5 to R1-7 PAD and R1-9 PAD,

If approved, this request would revert the Victoria Parcels 11 and 11A (Parcel 10 currently has a recorded Final Plat) subdivision back to the original conditions and preliminary plats approved by prior Ordinances and Development Agreements. This change would eliminate the requirement for an active adult community.

In 2004 the Town Council approved preliminary plats for Victoria Parcels 10, 11 and 11A. Parcel 10 was approved and recorded as a Final Plat on November 27, 2007. Improvements Plans (Grading/Drainage, Landscaping, Paving, etc) for parcels 10, 11 and 11A were also approved and signed by Staff on November 27, 2007.

In 2009, Taylor Morrison proposed the Active Adult Concept and moved away from the plans approved in 2004 by requesting zoning of these properties to a higher density (R1-4 and R1-5). Town Council approved the concept, zoning and preliminary plats with Ordinance #466-09 and Resolution 813-09. Since that time, Taylor Morrison has taken no action to move forward with approval of Final Plats or construction to implement that concept.

No changes had been made to by Taylor Morrison to the preliminary plats approved in 2009, the Final Plat approved in 2007 for Parcel 10 also remained unchanged in its larger lot configuration.

If this request is approved, the zoning on these proposed changes would revert from the current R1-4 and R1-5 to the previous R1-7PAD and R1-9 PAD, the underlying zoning districts prior to the changes in 2009.

The applicant is also requesting a lot coverage increase from 40 to 45%. The code already provides for an additional 5% bonus in lot coverage for single family homes with a qualifying front porch of at least 120 square feet in size and a minimum of 8' in depth. Based on the provision already existing in the code for an increase based on qualifying designs, Staff does not support this request for further change, rather utilizing the the option already provided for in the Zoning Ordinance.

With the exception of the request for increase in lot coverage, no other development deviations have been proposed that were not previously approved in Ordinance 284-04. As a note, The Conditions of Approval were not updated to reflect name changes that have occurred since 2004 in the ordinance such as Mesa Gateway Airport becoming Phoenix Mesa Gateway Airport. Staff believes it was more accurate to retain the Conditions of Approval in their original unedited form.

<b>Project Information</b>	
Project Name	Victoria Parcels 10, 11 and 11A
Site Location	Ocotillo Road and Hawes, northeast corner
Current Zoning	R1-4 and R1-5
Proposed Zoning	R1-7 PAD (Parcels 10 and 11A) and R1-9 PAD (Parcel 11)
General Plan Designation	Medium Density Residential (MDR 0-3DU/AC)
Surrounding Zoning Designations:	
North	Public / Quasi Public (Canyon State Academy)
South	C-2 General Commercial (Offices), Desert Mountain Park
East	C-2 General Commercial (QC Marketplace)
West	R1-18 and R1-12 (Arroyo De La Reina and Victoria Phase 2, Parcel 1)
Gross Acreage	127 Acres
Total Lots/Units	475 Lots currently approved, (345 Lots proposed)
Proposed Density	(Parcel 10 – 2.76 DU/AC) Parcel 11 – 2.6 DU/AC)

<b>Project Information</b>	
	(Parcel 11A – 2.73 DU/AC) Overall 2.71 DU/AC
Minimum Lot Width	R1-7 65', R1-9 80'
Minimum Lot Area	R1-7 7,700 square feet, R1-9 9,800 square feet
Front Yard Setback	R1-7 and R1-9, 20' Livable, 15' Side Entry Garage
Rear Yard Setback	25'
Side Yard Setback	R1-7 and R1-9, 5' minimum, 15 feet between buildings
Lot Coverage	45% proposed (40% is standard for R1-7 and R1-9)

**ANALYSIS**

**General Plan Review:** The project is located in the Medium Density Residential designation on the General Plan Land Use Map. This project is consistent with the goals and policies set forth in the General Plan

**Zoning Review:** The zoning designation of the property is R1-4 and R1-5. The applicant is seeking to rezone the property to the previous R1-7 PAD and R1-9 PAD.

**Engineering Review:** Engineering will require complete final plat submittals and review for parcels 11 and 11A.

**Preliminary Plat Review:** The Preliminary Plat has already been approved by the Town Council in 2004. With this request, the Taylor Morrison Plan will be abolished and the site will revert back to the 2004 development plans.

**Building Elevation Review:** The applicant is proposing 6 floor plans with 3 elevations each. The elevations represent the Spanish Colonial, Ranch Territorial and Craftsman architectural styles and range in size from 2,457 to 4,436 square feet.

**Landscape / Open Space / Fence Plan Review:** The previously approved landscape and improvements plans for the 2004 project approval have already been approved by Town Staff and are on file.

**PUBLIC COMMENTS**

Staff has advertised the public hearing in the Arizona Republic – Gilbert Edition, posted 3 large public hearing signs on the property in conspicuous locations and mailed out property owner letters to all owners within 1200' of this proposal. Staff received one e-mail which supports the transition back to the larger sized lots.

Staff has sent out the project information via social media as well and has received positive comments from Facebook. All comments are attached.

**CONDITIONS OF APPROVAL**

1. Ordinance 466-09 and Resolution 813-09 are hereby repealed.
2. Development Agreement Recorded as Instrument No. 2011-0629172 with Maricopa County is hereby terminated.
3. Lot Coverage to remain at 40%, with a 5% increase available for homes demonstrating a qualifying front porch as outlined in the Zoning Ordinance.
4. Front yard setback may be reduced to 15' for side entry garages.
5. The Town Manager is authorized to execute any documents necessary to effectuate the terms of this ordinance.
6. All previous conditions from Ordinance 284-04 shall be reinstated and remain in full effect.

#### **Conditions of Approval from Ordinance 284-04**

1. Developer may enter into a Development Agreement with the Town along with approval of this Rezoning case as required by the PAD ordinance, Article 4.10 of the Zoning Ordinance.
2. Developer shall submit final Phasing plan, water, sewer, parks/trails and open space master plans along with the submittal of the first preliminary plat for this case. All plans shall be approved by the Town prior to approval of any plats with this case. Additionally, a revised master circulation plan shall be provided indicating the location of likely local street intersections with the residential and commercial parcels approved with this rezoning case.
3. Developer shall pay for and submit to the Town and State Historic Preservation Office (SHPO) an archaeological study, as may be required along with the first preliminary plat submittal for this project. Such study shall be completed by a state-approved archaeologist. If the report identifies archaeological remains or the likely hood of remains, then the developer shall enter into a memorandum of understanding with the State Museum for proper identification and preservation of remains.
4. All residential parcels shall be developed in accordance with the exhibits attached to this case, such that the total number of dwelling units and densities shall not be exceeded as represented in each land use parcel. Transfer of densities shall require an amendment to this PAD. The maximum number of permitted dwelling units for the corresponding parcels are designated below:

Parcel No.	Zoning District	Acreage	Maximum Number of Units
1	I-1	8.0	
2	C-2	3.4	
3	Town Center	20.4	
5	R-2 Town House	23.3	158
6	R1-7 SFR	49.4	164
7	RC (school site)	10.7	
8	RC (HOA park)	5.4	
8A	R1-35 SFR	.83	0 - FOR DAY CARE SITE
9	R-2 CLUSTER	28.8	172
10	R1-7 SFR	45.51	157
11	R1-9 SFR	31.09	77
11A	R1-7 SFR	42.17	111
12	RC (dedicated to pub)	4.0	
13	R1-18 SFR	25.24	45
14	RC wash	2.76	

All tracts, bufferyards, trails and open spaces are hereby zoned Recreation Conservation (RC)

5. The maximum total number of units shall be 720.
6. The developer shall dedicate in accordance with an approved phasing plan, parcel 7, 10.7 acres to the Queen Creek Unified School District.
7. The developer shall dedicate in accordance with an approved phasing plan, parcels 12 and 14, totaling 5.5 acres to the Town of Queen Creek for the purposes of developing Queen Creek Wash Trail System. If larger acreage is necessary to accommodate drainage for the wash, then this shall be reflected on the development plan at that time. A Queen Creek Wash Plan shall be submitted along with the first preliminary plat submitted with this case and the Planning Commission and Town Council shall approve said plan. Special design consideration shall be incorporated to accommodate multiple uses, seating areas and view fencing as may be appropriate. A Phase I Environmental Assessment for both parcels shall be completed prior to transfer of title to the Town of Queen Creek. The Town shall reserve the right not to accept the wash dedication should the Phase I identify environmental concerns not satisfactory to acceptance of the parcels. If this is the

case, the wash parcels shall remain under the ownership and maintenance of the Victoria Homeowners Association (HOA).

8. This project may be modified in accordance with the following lot area and setback modifications, subject to the requirements stated herein:

<b>Zoning District</b>	<b>Modifications Permitted</b>
R1-18 SFR:	110 feet lot widths; 20-foot front yard setback for porch designed dwellings only. Remaining parts of the building façade shall be setback minimum 25 feet.
R1-9 SFR:	Minimum lot area shall be 8,800 s.f. for all lots in this district; Minimum lot width shall be 80 feet for all lots in this district; 15-foot front yard setback for porch/entry featured designed dwellings only. Remaining parts of the building façade shall be setback minimum 20 feet;
R1-7 SFR	15-foot front yard setback for porch/entry featured designed dwellings only. Remaining parts of the building façade shall be setback minimum 20 feet;
Parcel 10:	65 foot lot width shall be permitted for all lots in this district.
Parcel 11a:	70 foot lot widths and minimum lot size of 8,000 square feet.
R-2 TH:	4,000 square feet per dwelling unit; minimum lot width of 40 feet for dwelling, 20 feet for garages; 5' minimum setback for rear yard with alleyway design.

9. In the event that the Town has not adopted a development fee that covers the proportionate cost for materials and installation, the Developer shall contribute financially the following proportionate amounts for the cost of traffic signalization:

- Ocotillo and Hawes Roads: 25% of the total cost for a traffic signal light;
- Ocotillo and the Main Collector Street: 100% of the total cost for the traffic signal light pursuant to APFO and County DOT requirements.
- Ocotillo and Ellsworth: 25%
- Ocotillo and Truck Route: 50%
- Main Collector Street and Ellsworth: 50%
- Rittenhouse Road and Truck Route: 100%
- Rittenhouse Road and Ellsworth Road: 50%
- Ellsworth Road (north end) and Truck Route: 25%

10. Developer shall designate a minimum of two (2) roundabouts and/or traffic circles or other town-approved traffic calming devices in the main collector street for this residential portion of the project and that complete design and location(s) shall be submitted with the first preliminary plat this project.
11. Prior to approval of any plat or site plan for this case for the explicit purpose of bringing this project into full compliance with Article 5, Section 5.1 Adequate Public Facilities, construction of all required off-site improvements (including landscaping up to the edge of the curb) shall be for the following: Ocotillo and Hawes Roads shall be completed at the same time as phase one of this Project or in accordance with a Council approved phasing schedule or Development Agreement. Phase one improvements shall include hawes road and ocotillo road from hawes to the ellsworth loop road. Improvements shall be include the full-section improvement requirements for said roads in order to achieve a minimum Level of Service (LOS) of "D" as required by the adequate public facilities ordinance. Dedications to the Town of said roadway portions, which are adjacent to the Project, shall extend fifty-five (55) feet from centerline. Dedications and assurance of off-site construction shall occur upon recordation of Final Plats per any Council approved phasing plan.
12. Construction of all required off-site improvements including landscaping for all adjacent arterial, collector and residential streets for the Project shall be completed at the same time as construction of any portion of the Project or in accordance with a Council adopted phasing plan. Said dedications and assurance of off-site construction shall occur upon recordation of Final Plat per any Council approved phasing plan.
13. Prior to approval of any plat or site plan for this case for the explicit purpose of bringing this project into full compliance with Article 5, Section 5.1 Adequate Public Facilities, the levels of service (LOS) standard for school facilities shall be met via the mechanism(s) required in the ordinance prior to approval of any preliminary plat for this case.
14. Developer shall create an HOA for the maintenance of all landscaping within all open spaces, tracts, trails and collector and arterial rights-of-way as shown on the Open Space Plan for this project, with the exception of Queen Creek Wash dedications to the Town of Queen Creek.
15. Developer shall pay for its proportionate share of the water and sewer mains (as required) prior to recordation of any Final Plats per any Council approved phasing plan.
16. Developer shall provide a 45-foot bufferyard tract adjacent to and on the east side of Hawes Road. An equestrian trail a minimum 15-feet in width shall be installed, unless amended by the Town Council in the future. A public use easement shall be designated over the entire width of this tract.

17. A note shall be added to the final plat indicating that No two-story dwelling units shall be permitted along any arterial street frontage. Building setbacks shall be 25 feet for one-story units.
18. All residential units shall be developed in accordance with the architectural design criteria of the Subdivision and Zoning Ordinances and in conjunction with the design guidelines attached to this case. All units shall incorporate 360-degree architecture, patios, ground mounted HVAC only, and window edgings such that long uninterrupted blank walls are avoided.
19. Developer shall provide a preliminary landscape plan consistent with all town ordinances. Phasing for construction of said landscape areas and open spaces shall be in accordance with a phasing plan adopted by the Town Council.
20. As required by Engineering and/or the fire department secondary emergency access shall be provided if the project develops into phases.
21. All main entrances to the project shall provide textured surfaces such as cultured stone, brick or other approved material. Details shall be provided along with construction documents and Final Plats and subject to approval by staff.
22. Developer shall provide notice by way of C, C and R's, separate notice/flyer/information booklet and plats to future residents that the project is within the Williams Gateway Airport Overflight Area 3" as defined by the Williams Regional Planning Study (WRPS) and as adopted by Queen Creek Council Resolution No. 115-96. Airport Overflight Area 3 requires the following:
  - a. Public Disclosure of Potential Noise Impacts – Constructive knowledge of potential aircraft noise impacts should be made to future purchasers, mortgagees, renters, occupiers and users of the property.
  - b. Notification on all Plats and Titles. It should be noted on the plat and the Title Report that there is a potential for objectionable aircraft noise. The plat and title shall note the following: "This property, due to its proximity to Williams Gateway Airport, is likely to experience aircraft overflights, which could generate noise levels which may be of concern to some individuals."
  - c. Noise/Sound attenuation measures shall be included in the construction of all residential units proposed consistent with the criteria and standards referenced in the letter provided by Williams Gateway Airport to the Town of Queen Creek and dated April 2, 1999, concerning this zoning case.
  - d. The public report shall disclose the location of the Airport and potential for aircraft overflights. This shall be required for the entire development. This following statement shall be included in all public reports for the property: "This property, due to its proximity to Williams Gateway Airport, is likely to

experience aircraft overflights, which could generate noise levels which may be of concern to some individuals. The mix of aircraft traffic consists of cargo, commercial, charter, corporate, general aviation and military aircraft.”

- e. An aviation easement shall be recorded over this entire property and duly noted on all plats, public reports and notices of title.
  - f. A minimum of three signs (2' X 3' in dimensions) shall be posted at each model home complex walkway areas stating this project is within the vicinity of Williams Gateway Airport. Staff prior to issuance of any building permits shall approve specific sign language, design and locations.
23. Developer shall receive staff approval of all perimeter and open space area fence types along with the submittal of the first preliminary plat. All perimeter fencing and walls in the residential and open space areas shall have view fencing as specified by Town ordinances. If Solid decorative fencing or walls are to be used, said walls shall be a supplemented by dense landscape berms and contouring to provide visual relief and walls shall not exceed 4 feet in height or 33% view fencing for the overall length of the fence. In no event shall solid fencing greater than 3 feet in height be used along the Queen Creek Wash edging. Fencing along the boundary with the Canyon State Academy may be 8 feet in height and view obscuring.
24. Developer shall dedicate 55 feet of right-of-way at the intersection of Ellsworth and Ocotillo for the purposes of needed improvements at this intersection.
25. Developer shall be required to screen its proportionate share of the SRP substation with a decorative screen wall/fence. The Planning Commission and Town Council shall approve fence along with submittal of the preliminary plat for parcel 5, but fencing shall be consistent with the overall thematic fencing approach of the Victoria PAD. Additionally, the developer shall work with SRP to maintain a continuous 30-foot buffer along Ocotillo and the Ellsworth loop road for landscaping and pedestrian trail purposes.
26. As required by the Town, the developer shall reserve a 1.2 million-gallon water storage tank at a location deemed appropriate by the Town to service the needs of this development. Storage tank shall be recessed in the ground and screened appropriately. Exact submersion and screening plans shall be submitted for approval along with the preliminary landscape plans for the preliminary plat submitted with Parcel 5.
27. The parcel 8 park shall be completed with the first parcel to be developed. Open space and park shall be developed such that at least one tot lot and ball court, tot lot and ramada are provided in each neighborhood and pocket park. All tot lots proposed in the development shall be designed so that they are shaded from sunlight.

28. All street names shall be reviewed and approved by the town as part of the final plat review to ensure that they are consistent with the town's street naming policy.
29. A note shall be placed on the final plat, the real estate report and the CC&R's stating that "this development is adjacent to the canyon state academy, an educational facility for at risk youth:"
  - A. This facility does conduct events such as sporting events that will provide outdoor lighting and event noise that may be noticeable from the Victoria development.
  - B. This facility has an approved conditional use permit that would allow construction of an equestrian facility in the future that could include arenas, pastures, and public event spaces for equestrian activities. For more information contact the town of queen creek regarding case # SU 01-99.
30. Developer shall provide notice by way of CC&R's, separate notice/flyer/information booklet and notes on the plats to future residents that the project is near a railroad and that this rail line experiences at least 10 trains per day. Further, that for all properties within 300 feet of the rail line, developer shall take a proactive effort to ensure that homebuilders use generally accepted noise/sound attenuation measures for construction of the buildings consistent with the noise attenuation measures adopted with this ordinance.
31. Construction of all roads to be built as part of the zoning for RZ 14-03 shall incorporate rubberized asphalt with final construction drawings as approved by the engineering department.

## ATTACHMENTS

1. Location Map
2. Ordinance 518-12
3. Narrative
4. 2004 Preliminary Plats
5. Public Comments



Victoria  
Parcels 10, 11 and 11A

Submitted by:  
Pew and Lake PLC

Case #  
RZ12-34



## ORDINANCE 518-12

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, DECLARING AS PUBLIC RECORDS THAT CERTAIN DOCUMENTS TITLED "VICTORIA PARCELS 10, 11 AND 11A – LEGAL DESCRIPTION", ATTACHED HERETO AS EXHIBIT "A", AND "VICTORIA PARCELS 10, 11 AND 11A DEVELOPMENT PLAN" ATTACHED HERETO AS EXHIBIT "B" AND ADOPTING EXHIBITS "A" AND "B", THEREBY AMENDING THE OFFICIAL ZONING DISTRICT MAP FOR THE TOWN OF QUEEN CREEK, ARIZONA, PURSUANT TO ARTICLE 3, SECTION 3.4 OF THE ZONING ORDINANCE FOR THE TOWN OF QUEEN CREEK TO CHANGE THE ZONING DISTRICT CLASSIFICATION FOR APPROXIMATELY 118.7 ACRES FROM A PLANNED AREA DEVELOPMENT WITH UNDERLYING R1-4 AND R1-5 ZONING TO A PLANNED AREA DEVELOPMENT WITH UNDERLYING ZONING OF R1-7 AND R1-9. THE PROPERTY IS LOCATED AT THE NORTHEAST CORNER OF HAWES ROAD AND OCOTILLO ROAD. THE ASSOCIATED ZONING CASE IS RZ12-034.

**WHEREAS**, Arizona Revised Statutes § 9-802 provides a procedure whereby a municipality may enact the provisions of a code or public record by reference, without setting forth such provisions, providing that the adopting ordinance is published in full; and

**WHEREAS**, Article 3, **ZONING PROCEDURES**, Section 3.4 **ZONING AMENDMENT**, establishes the authority and procedures for amending the Zoning Ordinance; and

**WHEREAS**, the development proposed is consistent and shall be developed in accordance with Article 4, Section 4.10 **PLANNED AREA DEVELOPMENTS**; and,

**WHEREAS**, Article 4, **ZONING**, Section 4.2 **Zoning District Maps**, establishes the Zoning District Maps and states that the Zoning District Maps, along with all the notations, references, and other information shown thereon, are a part of this Ordinance and have the same force and effect as if said maps and all the notations, references, and other information shown thereon were all fully set forth or described in the zoning ordinance text; and,

**WHEREAS**, a Public Hearing on this ordinance was heard before the Planning and Zoning Commission on August 8, 2012; and

**WHEREAS**, the Planning and Zoning Commission voted 6-0 in favor of this text amendment case;

**NOW THEREFORE BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AS FOLLOWS:**

- Section 1. The document attached hereto as Exhibit "A," titled Victoria Parcels 10, 11 and 11A – Legal Description and Exhibit "B", titled Victoria Parcels 10, 11 and 11A Development Plan are hereby declared to be public records;
- Section 2. Three (3) copies of Exhibit "A and B" are ordered to remain on file with the Town Clerk;
- Section 3. The document titled "Victoria Parcels 10, 11 and 11A – Development Plan," which has been made a public record, is hereby referred to, adopted, and made a part of Queen Creek Zoning Map as set forth in "Exhibit B";
- Section 4. If any section, subsection, clause, phrase or portion of this ordinance or any part of these amendments to the Queen Creek Zoning Map is for any reason held invalid or unconstitutional by the decision of any court or competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

**PASSED AND ADOPTED BY** the Mayor and Town Council of the Town of Queen Creek, Maricopa County, this 5th day of September, 2012.

FOR THE TOWN OF QUEEN CREEK:

ATTESTED TO:

\_\_\_\_\_  
Gail Barney, Mayor

\_\_\_\_\_  
Jennifer F. Robinson, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:

\_\_\_\_\_  
John Kross, Town Manager

\_\_\_\_\_  
Mariscal, Weeks, McIntyre &  
Friedlander, PA, Attorneys for the  
Town

**EXHIBIT A**  
**VICTORIA PARCELS 10, 11 AND 11A**  
**Legal Description**

**PARCEL 10**

**Legal Description**

A PORTION OF THE SOUTH HALF OF SECTION 16, TOWNSHIP 2 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP IN HAND HOLE FOUND AT THE WEST QUARTER CORNER OF SAID SECTION 16, FROM WHICH A BRASS CAP FOUND AT THE SOUTHWEST CORNER OF SAID SECTION 16 BEARS SOUTH S00°58'27"E (AN ASSUMED BEARING), 2655.12 FEET; THENCE S89°55'05"E, ALONG THE EAST-WEST MIDSECTION LINE OF SAID SECTION 16, 1156.46 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING S89°55'05"E, ALONG SAID EAST-WEST MIDSECTION LINE, 1,481.98 FEET; THENCE S00°00'29"E, 118.69 FEET TO A POINT ON A NON TANGENT CURVE TO THE RIGHT, FROM WHICH THE RADIUS POINT LIES S34°21'56"W, 50.00 FEET; THENCE SOUTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 92°29'47", AN ARC DISTANCE OF 80.72 FEET TO A POINT OF REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 36°52'12"; THENCE SOUTHERLY ALONG SAID CURVE, AN ARC DISTANCE OF 16.09 FEET; THENCE S00°00'29"E, 102.53 FEET TO A POINT OF CURVE TO THE LEFT HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 34°04'03"; THENCE SOUTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 14.86 FEET TO A POINT OF REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 55.00 FEET AND A CENTRAL ANGLE OF 75°26'44"; THENCE SOUTHERLY ALONG SAID CURVE, AN ARC DISTANCE OF 72.42 FEET; THENCE S00°00'29"E, 264.42 FEET; THENCE S11°37'27"E, 53.24 FEET; THENCE S00°00'29"E, 563.91 FEET; THENCE S89°59'20"W, 226.86 FEET TO A POINT OF CURVE TO THE LEFT HAVING A RADIUS OF 690.00 FEET AND A CENTRAL ANGLE OF 09°14'49"; THENCE WESTERLY ALONG SAID CURVE AN ARC DISTANCE OF 111.36 FEET; THENCE S00°00'29"E, 442.48 FEET; THENCE S89°59'06"W, 275.01 FEET; THENCE S00°00'40"E, 71.72 FEET TO A POINT ON A NON TANGENT CURVE TO THE LEFT, FROM WHICH THE RADIUS POINT LIES S40°01'12"W, 50.00 FEET; THENCE WESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 111°39'06", AN ARC DISTANCE OF 97.43 FEET TO A POINT OF REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 20.00 FEET AND A CENTRAL ANGLE OF 64°56'19"; THENCE SOUTHWESTERLY ALONG SAID CURVE, AN ARC DISTANCE OF 22.67 FEET TO A POINT OF COMPOUND CURVE TO THE RIGHT HAVING A RADIUS OF 325.00 FEET AND A CENTRAL ANGLE OF 06°40'55"; THENCE WESTERLY ALONG SAID CURVE, AN ARC DISTANCE OF 37.90 FEET; THENCE S89°59'20"W, 42.23 FEET TO A POINT OF CURVE TO THE RIGHT HAVING A RADIUS OF 175.00 FEET AND A CENTRAL ANGLE OF 20°23'45"; THENCE WESTERLY ALONG SAID CURVE AN ARC DISTANCE OF 62.30 FEET; THENCE N69°36'55"W, 109.25 FEET TO A POINT ON A NON TANGENT CURVE TO THE LEFT, FROM WHICH THE RADIUS POINT LIES S67°39'10"E, 730.00 FEET; THENCE SOUTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 03°55'30", AN ARC DISTANCE OF 50.01 FEET; THENCE S64°09'07"W, 20.75 FEET TO A POINT ON A NON TANGENT CURVE TO THE LEFT, FROM WHICH THE RADIUS POINT LIES S72°41'31"E, 745.00 FEET; THENCE SOUTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 17°18'58", AN ARC DISTANCE OF 225.16 FEET; THENCE S00°00'29"E, 196.34 FEET; THENCE S10°18'47"E, 55.90 FEET; THENCE S00°00'29"E, 235.00 FEET TO A POINT OF CURVE TO THE LEFT HAVING A RADIUS OF 50.00 FEET AND A CENTRAL ANGLE OF 90°00'00"; THENCE SOUTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 78.54 FEET; THENCE S89°59'31"W, 180.00 FEET; THENCE N00°00'29"W, 8.00 FEET TO A POINT ON A NON TANGENT CURVE TO THE LEFT, FROM WHICH THE RADIUS POINT LIES N00°00'29"W, 42.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC DISTANCE OF 65.97 FEET; THENCE N00°00'29"W, 235.72 FEET; THENCE N10°17'48"E, 55.90 FEET; THENCE N00°00'29"W, 87.89 FEET; THENCE N45°00'29"W, 14.59 FEET; THENCE S89°59'31"W, 2.20 FEET; THENCE N00°00'29"W, 66.00 FEET; THENCE N89°59'31"E, 2.20 FEET; THENCE N44°59'31"E, 14.59 FEET; THENCE N00°00'29"W, 21.10 FEET TO A POINT OF CURVE TO THE RIGHT HAVING A RADIUS OF 813.00 FEET AND A CENTRAL ANGLE OF 20°09'45"; THENCE NORTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 286.10 FEET; THENCE N69°50'44"W, 93.96 FEET; THENCE N27°08'36"W, 101.67 FEET; THENCE N63°16'48"W, 13.51 FEET TO A POINT OF CURVE TO THE RIGHT HAVING A RADIUS OF 58.00 FEET AND A CENTRAL ANGLE OF 178°56'30"; THENCE NORTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 181.14 FEET; THENCE N00°00'29"W, 86.37 FEET; THENCE S89°59'31"W, 142.00 FEET; THENCE N00°00'29"W, 124.44 FEET TO A POINT OF CURVE TO THE RIGHT HAVING A RADIUS OF 333.00 FEET AND A CENTRAL ANGLE OF 36°24'21"; THENCE NORTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 211.59 FEET; THENCE N36°24'50"W, 115.60 FEET TO A POINT OF CURVE TO THE LEFT HAVING A RADIUS OF 267.00 FEET AND A CENTRAL ANGLE OF 36°29'45"; THENCE NORTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 170.07 FEET; THENCE N00°04'55"E, 1.80 FEET; THENCE N45°04'55"E, 14.59 FEET; THENCE S89°55'05"E, 8.71 FEET; THENCE N00°04'55"E, 58.00 FEET TO A POINT ON A NON TANGENT CURVE TO THE LEFT, FROM WHICH THE RADIUS POINT LIES N00°04'55"E, 275.00 FEET; THENCE EASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 31°52'53", AN ARC DISTANCE OF 153.02 FEET; THENCE N36°43'34"W, 35.42 FEET; THENCE N33°42'22"W, 46.85 FEET; THENCE N00°04'55"E, 760.22 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 2,474,469 SQUARE FEET OR 56.81 ACRES, MORE OR LESS.

## Parcel 11

### Legal Description

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 2 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP IN HAND HOLE FOUND AT THE WEST QUARTER CORNER OF SAID SECTION 16, FROM WHICH A BRASS CAP, FLUSH FOUND AT THE SOUTHWEST CORNER OF SAID SECTION 16 BEARS S00°58'27"E, 2,655.12 FEET; THENCE S89°55'05"E, ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER, 55.01 FEET TO THE TRUE POINT OF BEGINNING;  
THENCE S89°55'05"E, ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER, 1,101.45 FEET;  
THENCE S00°04'55"W, 760.22 FEET;  
THENCE S33°42'22"E, 46.85 FEET;  
THENCE S36°43'34"E, 35.42 FEET TO A POINT ON A NON TANGENT CURVE TO THE RIGHT, FROM WHICH THE RADIUS POINT LIES N31°47'59"W, 275.00 FEET;  
THENCE WESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 31°52'54", AN ARC DISTANCE OF 153.02 FEET;  
THENCE S00°04'55"W, 58.00 FEET;  
THENCE N89°55'05"W, 8.71 FEET;  
THENCE S45°04'55"W, 14.59 FEET;  
THENCE S00°04'55"W, 1.80 FEET TO A POINT OF CURVE TO THE LEFT HAVING A RADIUS OF 267.00 FEET AND A CENTRAL ANGLE OF 36°29'45";  
THENCE SOUTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 170.07 FEET;  
THENCE S36°24'50"E, 57.80 FEET  
THENCE S53°35'10"W, 107.14 FEET;  
THENCE S89°59'31"W, 962.76 FEET TO A POINT ON THE EAST LINE OF THE WEST 55.00 FEET OF SAID SOUTHWEST QUARTER;  
THENCE N00°58'27"W, ALONG SAID EAST LINE, 1,209.82 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 1,289,144 SQUARE FEET OR 29.606 ACRES, MORE OR LESS.

## Parcel 11A

### Legal Description

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 2 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP, FLUSH, FOUND AT THE SOUTHWEST CORNER OF SAID SECTION 16, FROM WHICH A BRASS CAP IN A HAND HOLE FOUND AT THE WEST QUARTER CORNER OF SAID SECTION 16 BEARS  $N00^{\circ}58'27''W$ , 2,655.12 FEET; THENCE  $N00^{\circ}58'27''W$ , ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER, 1,445.21 FEET; THENCE  $N89^{\circ}59'31''E$ , 55.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE  $N89^{\circ}59'31''E$ , 962.76 FEET; THENCE  $N53^{\circ}35'10''E$ , 107.14 FEET; THENCE  $S36^{\circ}24'50''E$ , 57.80 FEET TO A POINT OF CURVE TO THE RIGHT HAVING A RADIUS OF 333.00 FEET AND A CENTRAL ANGLE OF  $36^{\circ}24'21''$ ; THENCE SOUTHERLY, ALONG SAID CURVE, AN ARC DISTANCE OF 211.59 FEET; THENCE  $S00^{\circ}00'29''E$ , 124.44 FEET; THENCE  $N89^{\circ}59'31''E$ , 142.00 FEET; THENCE  $S00^{\circ}00'29''E$ , 86.37 FEET TO A POINT ON A NON-TANGENT CURVE TO THE RIGHT, FROM WHICH THE RADIUS POINT LIES  $S62^{\circ}13'18''E$ , 58.00 FEET; THENCE NORTHERLY, EASTERLY AND SOUTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF  $178^{\circ}56'30''$ , AN ARC DISTANCE OF 181.14 FEET; THENCE  $S63^{\circ}16'48''E$ , 13.51 FEET; THENCE  $S27^{\circ}08'36''E$ , 101.67 FEET; THENCE  $S69^{\circ}50'44''E$ , 93.96 FEET TO A POINT ON A NON-TANGENT CURVE TO THE LEFT, FROM WHICH THE RADIUS POINT LIES  $S69^{\circ}50'44''E$ , 813.00 FEET; THENCE SOUTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF  $20^{\circ}09'45''$ , AN ARC DISTANCE OF 286.10 FEET; THENCE  $S00^{\circ}00'29''E$ , 21.10 FEET; THENCE  $S44^{\circ}59'31''W$ , 14.59 FEET; THENCE  $S89^{\circ}59'31''W$ , 2.20 FEET; THENCE  $S00^{\circ}00'29''E$ , 66.00 FEET; THENCE  $N89^{\circ}59'31''E$ , 2.20 FEET; THENCE  $S45^{\circ}00'29''E$ , 14.59 FEET; THENCE  $S00^{\circ}00'29''E$ , 87.89 FEET; THENCE  $S10^{\circ}17'48''W$ , 55.90 FEET; THENCE  $S00^{\circ}00'29''E$ , 235.72 FEET TO A POINT OF CURVE TO THE RIGHT HAVING A RADIUS OF 42.00 FEET AND A CENTRAL ANGLE OF  $90^{\circ}00'00''$ ; THENCE SOUTHWESTERLY, ALONG SAID CURVE, AN ARC DISTANCE OF 65.97 FEET; THENCE  $S00^{\circ}00'29''E$ , 8.00 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE FOR EAST OCOTILLO ROAD PER WARRANTY DEED RECORDED UNDER DOCUMENT NO. 03-1220189, RECORDS OF MARICOPA COUNTY, ARIZONA; THENCE  $S89^{\circ}59'31''W$ , ALONG LAST SAID NORTH RIGHT OF WAY LINE AND THE NORTH RIGHT OF WAY LINE FOR OCOTILLO ROAD PER WARRANTY DEED RECORDED UNDER DOCUMENT NO. 02-0854133, RECORDS OF MARICOPA COUNTY, ARIZONA, 714.77 FEET TO THE MOST EASTERLY CORNER OF THAT PROPERTY PER GIFT DEED RECORDED UNDER DOCUMENT 06-1056309, RECORDS OF MARICOPA COUNTY, ARIZONA; THENCE  $N57^{\circ}33'25''W$  ALONG THE NORTHEAST LINE OF SAID PROPERTY PER GIFT DEED RECORDED UNDER DOCUMENT 06-1056309, 838.52 FEET TO A POINT ON THE EAST LINE OF THE WEST 55.00 FEET OF THE SOUTHWEST QUARTER OF SAID SECTION 16; THENCE  $N00^{\circ}58'27''W$  ALONG LAST SAID LINE, 940.20 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 1,768,425 SQUARE FEET OR 40.59 ACRES, MORE OR LESS.

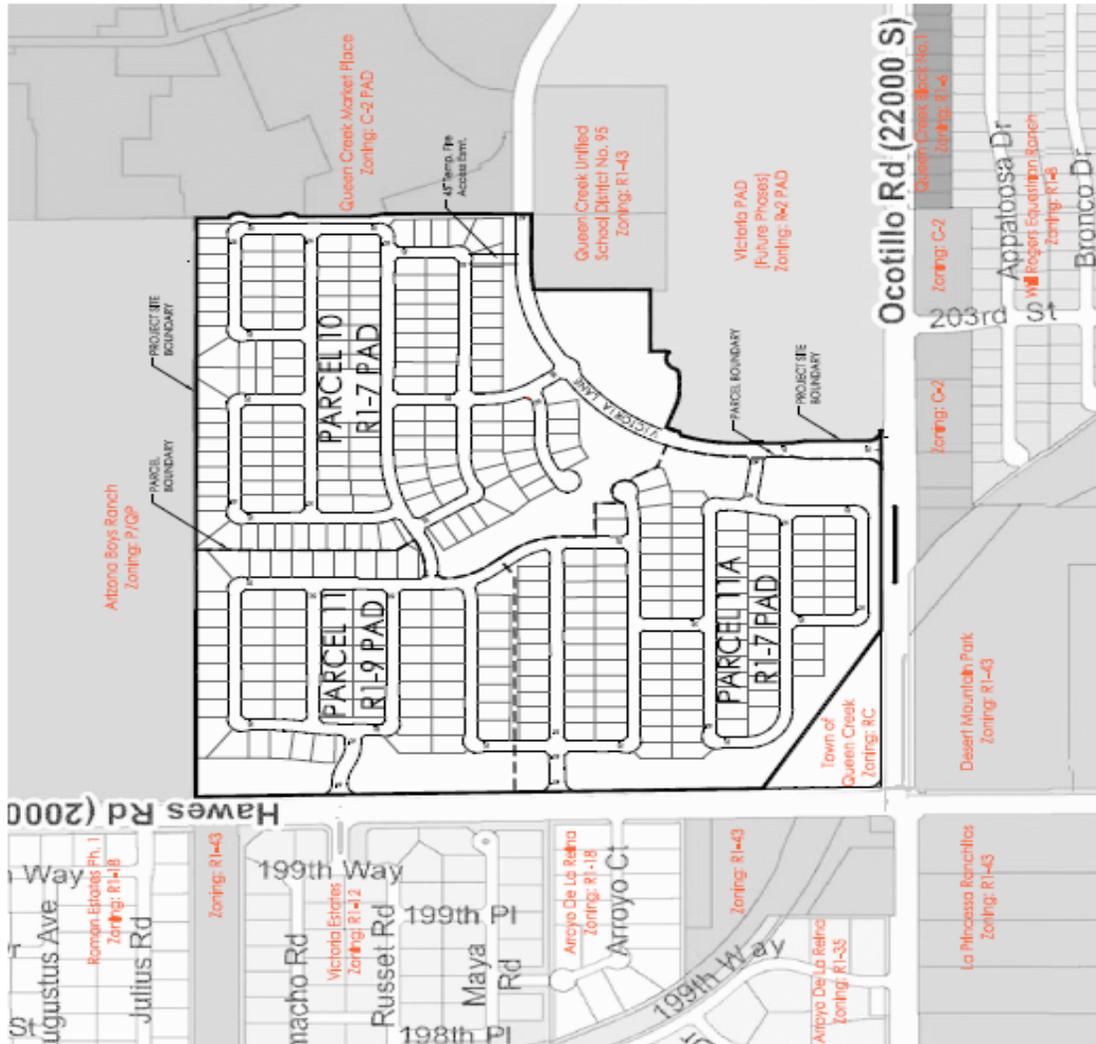
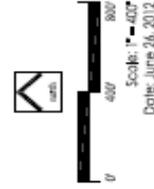
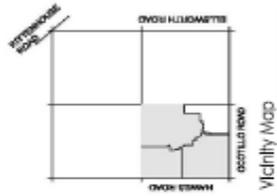
# EXHIBIT B

## Victoria Parcels 10, 11 and 11A – Development Plan

# Victoria Development Plan

Development Data:

	Parcel 10	Parcel 11	Parcel 11A
Gross Area	56.81 Ac	29.61 Ac	40.39 Ac
Existing Land Use	MHD R - A (1 - 5 Du / Ac)		
Existing Zoning	R1-4/R1-5	R1-4/R1-5	R1-4/R1-5
Proposed Zoning	R1-7 PAD	R1-7 PAD	R1-7 PAD
Total Units	157 Lots	77 Lots	111 Lots
Gross Density	2.76 Du/Ac	2.60 Du/Ac	2.73 Du/Ac
Open Space	12.22 Ac	5.55 Ac	10.15 Ac



## Conditions of Approval

1. Ordinance 466-09 and Resolution 813-09 are hereby repealed.
2. Development Agreement Recorded as Instrument No. 2011-0629172 with Maricopa County is hereby terminated.
3. Lot Coverage to remain at 40%, with a 5% increase available for homes demonstrating a qualifying front porch as outlined in the Zoning Ordinance.
4. Front yard setback may be reduced to 15' for side entry garages.
5. The Town Manager is authorized to execute any documents necessary to effectuate the terms of this ordinance.
6. All previous conditions from Ordinance 284-04 shall be reinstated and remain in full effect.

### Conditions of Approval from Ordinance 284-04

1. Developer may enter into a Development Agreement with the Town along with approval of this Rezoning case as required by the PAD ordinance, Article 4.10 of the Zoning Ordinance.
2. Developer shall submit final Phasing plan, water, sewer, parks/trails and open space master plans along with the submittal of the first preliminary plat for this case. All plans shall be approved by the Town prior to approval of any plats with this case. Additionally, a revised master circulation plan shall be provided indicating the location of likely local street intersections with the residential and commercial parcels approved with this rezoning case.
3. Developer shall pay for and submit to the Town and State Historic Preservation Office (SHPO) an archaeological study, as may be required along with the first preliminary plat submittal for this project. Such study shall be completed by a state-approved archaeologist. If the report identifies archaeological remains or the likely hood of remains, then the developer shall enter into a memorandum of understanding with the State Museum for proper identification and preservation of remains.
4. All residential parcels shall be developed in accordance with the exhibits attached to this case, such that the total number of dwelling units and densities shall not be exceeded as represented in each land use parcel. Transfer of densities shall require an amendment to this PAD. The

maximum number of permitted dwelling units for the corresponding parcels are designated below:

Parcel No.	Zoning District	Acreage	Maximum Number of Units
1	I-1	8.0	
2	C-2	3.4	
3	Town Center	20.4	
5	R-2 Town House	23.3	158
6	R1-7 SFR	49.4	164
7	RC (school site)	10.7	
8	RC (HOA park)	5.4	
8A	R1-35 SFR	.83	0 - FOR DAY CARE SITE
9	R-2 CLUSTER	28.8	172
10	R1-7 SFR	45.51	157
11	R1-9 SFR	31.09	77
11A	R1-7 SFR	42.17	111
12	RC (dedicated to pub)	4.0	
13	R1-18 SFR	25.24	45
14	RC wash	2.76	

All tracts, bufferyards, trails and open spaces are hereby zoned Recreation Conservation (RC)

5. The maximum total number of units shall be 720.
6. The developer shall dedicate in accordance with an approved phasing plan, parcel 7, 10.7 acres to the Queen Creek Unified School District.
7. The developer shall dedicate in accordance with an approved phasing plan, parcels 12 and 14, totaling 5.5 acres to the Town of Queen Creek for the purposes of developing Queen Creek Wash Trail System. If larger acreage is necessary to accommodate drainage for the wash, then this shall be reflected on the development plan at that time. A Queen Creek Wash Plan shall be submitted along with the first preliminary plat submitted with this case and the Planning Commission and Town Council shall approve said plan. Special design consideration shall be incorporated to accommodate multiple uses, seating areas and view fencing as may be appropriate. A Phase I Environmental Assessment for both parcels shall be completed prior to transfer of title to the Town of Queen

Creek. The Town shall reserve the right not to accept the wash dedication should the Phase I identify environmental concerns not satisfactory to acceptance of the parcels. If this is the case, the wash parcels shall remain under the ownership and maintenance of the Victoria Homeowners Association (HOA).

8. This project may be modified in accordance with the following lot area and setback modifications, subject to the requirements stated herein:

<b>Zoning District</b>	<b>Modifications Permitted</b>
R1-18 SFR:	110 feet lot widths; 20-foot front yard setback for porch designed dwellings only. Remaining parts of the building façade shall be setback minimum 25 feet.
R1-9 SFR:	Minimum lot area shall be 8,800 s.f. for all lots in this district; Minimum lot width shall be 80 feet for all lots in this district; 15-foot front yard setback for porch/entry featured designed dwellings only. Remaining parts of the building façade shall be setback minimum 20 feet;
R1-7 SFR	15-foot front yard setback for porch/entry featured designed dwellings only. Remaining parts of the building façade shall be setback minimum 20 feet;
Parcel 10:	65 foot lot width shall be permitted for all lots in this district.
Parcel 11a:	70 foot lot widths and minimum lot size of 8,000 square feet.
R-2 TH: for with	4,000 square feet per dwelling unit; minimum lot width of 40 feet dwelling, 20 feet for garages; 5' minimum setback for rear yard alleyway design.

9. In the event that the Town has not adopted a development fee that covers the proportionate cost for materials and installation, the Developer shall contribute financially the following proportionate amounts for the cost of traffic signalization:

- Ocotillo and Hawes Roads: 25% of the total cost for a traffic signal light;
- Ocotillo and the Main Collector Street: 100% of the total cost for the traffic signal light pursuant to APFO and County DOT requirements.
- Ocotillo and Ellsworth: 25%
- Ocotillo and Truck Route: 50%
- Main Collector Street and Ellsworth: 50%
- Rittenhouse Road and Truck Route: 100%
- Rittenhouse Road and Ellsworth Road: 50%

- Ellsworth Road (north end) and Truck Route: 25%
10. Developer shall designate a minimum of two (2) roundabouts and/or traffic circles or other town-approved traffic calming devices in the main collector street for this residential portion of the project and that complete design and location(s) shall be submitted with the first preliminary plat this project.
  11. Prior to approval of any plat or site plan for this case for the explicit purpose of bringing this project into full compliance with Article 5, Section 5.1 Adequate Public Facilities, construction of all required off-site improvements (including landscaping up to the edge of the curb) shall be for the following: Ocotillo and Hawes Roads shall be completed at the same time as phase one of this Project or in accordance with a Council approved phasing schedule or Development Agreement. Phase one improvements shall include hawes road and ocotillo road from hawes to the ellsworth loop road. Improvements shall be include the full-section improvement requirements for said roads in order to achieve a minimum Level of Service (LOS) of "D" as required by the adequate public facilities ordinance. Dedications to the Town of said roadway portions, which are adjacent to the Project, shall extend fifty-five (55) feet from centerline. Dedications and assurance of off-site construction shall occur upon recordation of Final Plats per any Council approved phasing plan.
  12. Construction of all required off-site improvements including landscaping for all adjacent arterial, collector and residential streets for the Project shall be completed at the same time as construction of any portion of the Project or in accordance with a Council adopted phasing plan. Said dedications and assurance of off-site construction shall occur upon recordation of Final Plat per any Council approved phasing plan.
  13. Prior to approval of any plat or site plan for this case for the explicit purpose of bringing this project into full compliance with Article 5, Section 5.1 Adequate Public Facilities, the levels of service (LOS) standard for school facilities shall be met via the mechanism(s) required in the ordinance prior to approval of any preliminary plat for this case.
  14. Developer shall create an HOA for the maintenance of all landscaping within all open spaces, tracts, trails and collector and arterial rights-of-way as shown on the Open Space Plan for this project, with the exception of Queen Creek Wash dedications to the Town of Queen Creek.
  15. Developer shall pay for its proportionate share of the water and sewer mains (as required) prior to recordation of any Final Plats per any Council approved phasing plan.
  16. Developer shall provide a 45-foot bufferyard tract adjacent to and on the east side of Hawes Road. An equestrian trail a minimum 15-feet in width shall be installed,

unless amended by the Town Council in the future. A public use easement shall be designated over the entire width of this tract.

17. A note shall be added to the final plat indicating that No two-story dwelling units shall be permitted along any arterial street frontage. Building setbacks shall be 25 feet for one-story units.
18. All residential units shall be developed in accordance with the architectural design criteria of the Subdivision and Zoning Ordinances and in conjunction with the design guidelines attached to this case. All units shall incorporate 360-degree architecture, patios, ground mounted HVAC only, and window edgings such that long uninterrupted blank walls are avoided.
19. Developer shall provide a preliminary landscape plan consistent with all town ordinances. Phasing for construction of said landscape areas and open spaces shall be in accordance with a phasing plan adopted by the Town Council.
20. As required by Engineering and/or the fire department secondary emergency access shall be provided if the project develops into phases.
21. All main entrances to the project shall provide textured surfaces such as cultured stone, brick or other approved material. Details shall be provided along with construction documents and Final Plats and subject to approval by staff.
22. Developer shall provide notice by way of C, C and R's, separate notice/flyer/information booklet and plats to future residents that the project is within the Williams Gateway Airport Overflight Area 3" as defined by the Williams Regional Planning Study (WRPS) and as adopted by Queen Creek Council Resolution No. 115-96. Airport Overflight Area 3 requires the following:
  - a. Public Disclosure of Potential Noise Impacts – Constructive knowledge of potential aircraft noise impacts should be made to future purchasers, mortgagees, renters, occupiers and users of the property.
  - b. Notification on all Plats and Titles. It should be noted on the plat and the Title Report that there is a potential for objectionable aircraft noise. The plat and title shall note the following: "This property, due to its proximity to Williams Gateway Airport, is likely to experience aircraft overflights, which could generate noise levels which may be of concern to some individuals."
  - c. Noise/Sound attenuation measures shall be included in the construction of all residential units proposed consistent with the criteria and standards referenced in the letter provided by Williams Gateway Airport to the Town of Queen Creek and dated April 2, 1999, concerning this zoning case.

- d. The public report shall disclose the location of the Airport and potential for aircraft overflights. This shall be required for the entire development. This following statement shall be included in all public reports for the property: "This property, due to its proximity to Williams Gateway Airport, is likely to experience aircraft overflights, which could generate noise levels which may be of concern to some individuals. The mix of aircraft traffic consists of cargo, commercial, charter, corporate, general aviation and military aircraft."
  - e. An aviation easement shall be recorded over this entire property and duly noted on all plats, public reports and notices of title.
  - f. A minimum of three signs (2' X 3' in dimensions) shall be posted at each model home complex walkway areas stating this project is within the vicinity of Williams Gateway Airport. Staff prior to issuance of any building permits shall approve specific sign language, design and locations.
23. Developer shall receive staff approval of all perimeter and open space area fence types along with the submittal of the first preliminary plat. All perimeter fencing and walls in the residential and open space areas shall have view fencing as specified by Town ordinances. If Solid decorative fencing or walls are to be used, said walls shall be a supplemented by dense landscape berms and contouring to provide visual relief and walls shall not exceed 4 feet in height or 33% view fencing for the overall length of the fence. In no event shall solid fencing greater than 3 feet in height be used along the Queen Creek Wash edging. Fencing along the boundary with the Canyon State Academy may be 8 feet in height and view obscuring.
24. Developer shall dedicate 55 feet of right-of-way at the intersection of Ellsworth and Ocotillo for the purposes of needed improvements at this intersection.
25. Developer shall be required to screen its proportionate share of the SRP substation with a decorative screen wall/fence. The Planning Commission and Town Council shall approve fence along with submittal of the preliminary plat for parcel 5, but fencing shall be consistent with the overall thematic fencing approach of the Victoria PAD. Additionally, the developer shall work with SRP to maintain a continuous 30-foot buffer along Ocotillo and the Ellsworth loop road for landscaping and pedestrian trail purposes.
26. As required by the Town, the developer shall reserve a 1.2 million-gallon water storage tank at a location deemed appropriate by the Town to service the needs of this development. Storage tank shall be recessed in the ground and screened appropriately. Exact submersion and screening plans shall be submitted for

approval along with the preliminary landscape plans for the preliminary plat submitted with Parcel 5.

27. The parcel 8 park shall be completed with the first parcel to be developed. Open space and park shall be developed such that at least one tot lot and ball court, tot lot and ramada are provided in each neighborhood and pocket park. All tot lots proposed in the development shall be designed so that they are shaded from sunlight.
28. All street names shall be reviewed and approved by the town as part of the final plat review to ensure that they are consistent with the town's street naming policy.
29. A note shall be placed on the final plat, the real estate report and the CC&R's stating that "this development is adjacent to the canyon state academy, an educational facility for at risk youth:"
  - A. This facility does conduct events such as sporting events that will provide outdoor lighting and event noise that may be noticeable from the Victoria development.
  - B. This facility has an approved conditional use permit that would allow construction of an equestrian facility in the future that could include arenas, pastures, and public event spaces for equestrian activities. For more information contact the town of queen creek regarding case # SU 01-99.
30. Developer shall provide notice by way of CC&R's, separate notice/flyer/information booklet and notes on the plats to future residents that the project is near a railroad and that this rail line experiences at least 10 trains per day. Further, that for all properties within 300 feet of the rail line, developer shall take a proactive effort to ensure that homebuilders use generally accepted noise/sound attenuation measures for construction of the buildings consistent with the noise attenuation measures adopted with this ordinance.
31. Construction of all roads to be built as part of the zoning for RZ 14-03 shall incorporate rubberized asphalt with final construction drawings as approved by the engineering department.

# VICTORIA PAD

## NEC HAWES ROAD AND OCOTILLO ROAD

### PROJECT NARRATIVE

#### JUNE 21, 2012

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#### Introduction

Pew & Lake, PLC, as applicant, on behalf of Taylor Morrison, the owner of Parcel 10, Victoria Lund Investment Group, LLC (“VLIG”), the owner of Parcels 11 & 11A, and Meritage Homes, the buyer of Parcels 11 & 11A, hereby applies for a rezoning for such parcels from R1-4 and R1-5 to R1-7 PAD and R1-9 PAD and the termination of the Development Agreement, as more specifically described on Page 2 of this narrative. For simplicity, VLIG, Meritage and Taylor Morrison are collectively hereinafter referred to as the “Owners.”

#### Background

These subject parcels are part of the larger Victoria PAD project, which was first approved in 2000. In 2009, the current zoning designations of R1-4 and R1-5 were approved for this property as part of RZ09-59 (and its companion general plan case: GP09-57), wherein an active adult community was approved by the Town Council. Part of this case included a Development Agreement that clarified Taylor Morrison’s commitment to utilize the higher density R1-4 and R1-5 for an active adult, age targeted community, which Development Agreement was recorded as Instrument No. 2011-0629172 in the official records of Maricopa County.

#### Request

The Owners’ desire is to change the zoning designations on Parcels 10, 11 & 11A to what they were prior to the recent, active adult zoning case. Despite the best intentions of Taylor Morrison, its reliance on professional prognostications and the convenient location of these parcels to the Town Center, current market conditions, and the economy overall, have decisively shown that an active adult community is not likely to be developed on these parcels. Given these circumstances, the Owners’ request is simply illustrated with the following chart:

PARCEL NO.	PRIOR ZONING DESIGNATION	CURRENT ACTIVE ADULT ZONING DESIGNATION	REQUESTED ZONING DESIGNATION
10	R1-7 PAD	R1-4 & R1-5	R1-7 PAD

11	R1-9 PAD	R1-4 & R1-5	R1-9 PAD
11A	R1-7 PAD	R1-4 & R1-5	R1-7 PAD

This application includes a request for a PAD. The PAD is proposed in order to modify a few of the development standards. Below are the proposed modifications to the development standards for the subdivision:

<b>R1-7 STANDARDS</b>	<b>REQUIRED</b>	<b>PROPOSED</b>
Minimum Width	70'	65'
Minimum Front Yard Setback (to side entry garage)	20'	15'
Maximum Lot Coverage (single-story)	40%	45%

<b>R1-9 STANDARDS</b>	<b>REQUIRED</b>	<b>PROPOSED</b>
Minimum Width	90'	80'
Minimum Front Yard Setback (to side entry garage)	20'	15'
Maximum Lot Coverage (single-story)	40%	45%

Termination of Development Agreement

As noted above, this request includes the termination of the Development Agreement regarding the active adult, age targeted community. The Development Agreement was originally proposed and approved so that the Town and neighborhood property owners could have the assurance that development on the property would only utilize the R1-4 and R1-5 higher density zoning for the development of the age-targeted project and not for a traditional single-family development. Because the zoning is being changed to conventional single-family densities R1-7 and R1-9, the Owners now petition the Town to terminate the Development Agreement.

Use of Prior Approved Site Plans & Plats

Regarding Parcel 10, Taylor Morrison desires to use the recorded final plat known as the VICTORIA PAD Plat (Book 961, Page 14) as the site plan to accompany its portion of the rezoning request. Regarding Parcels 11 and 11A, it is our understanding that final plats for these parcels were previously approved by the Town. We note that if they were approved, they were not recorded with the County Recorder's Office. In either case, Meritage proposes to use the approved plats for those parcels as the site

plans for the zoning application. (Copies of these previously approved plats are included with this application).

#### School Site

In 2007, VLIG transferred the school site to the Queen Creek School District with the requirement that the site be used as a public school. The District has determined based on enrollment numbers (which include the full development of these parcels as proposed) that a school at this site is no longer necessary and thus the District is transferring ownership of this site back to VLIG. This transfer was approved by the School Board on April 3, 2012. Given this change, VLIG will be making a voluntary cash contribution on behalf of the entire project to assist the School District with its needs, rather than donating a school site. In short, there is no concern of school overcrowding as a result of this proposed project.

#### Drainage

Regarding drainage, there was a concern that some of the drainage for Parcels 10, 11 & 11A drained into the park site on the south side of Victoria Lane. We have confirmed that they do not. To this end, please see the attached letter from Todd Farmer, PE, with AMEC, dated March 23, 2012.

**DEDICATION AND CONVEYANCE**  
STATE OF ARIZONA  
COUNTY OF MARICOPA

KNOW ALL MEN BY THESE PRESENTS, TAYLOR WOODROW/ARIZONA, INC., AN ARIZONA CORPORATION, THE OWNER OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 2 SOUTH, RANGE 7 EAST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, OF VICTORIA PAD PARCEL 10, AND HEREBY DECLARES THAT THIS PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF THE LOTS, TRACTS, STREETS, AND STREETS SHALL BE KNOWN BY THE NUMBERS, LETTERS OR NAME THAT IS GIVEN TO EACH SUCH LOT, TRACT AND STREET ON THIS PLAT, RESPECTIVELY. THE STREETS AS SHOWN HEREON ARE HEREBY DEDICATED TO THE PUBLIC USE AND ENJOYMENT OF THE TOWN OF QUEEN CREEK, THE EASEMENTS AS SHOWN HEREON ARE HEREBY DEDICATED TO THE TOWN OF QUEEN CREEK, THE EASEMENTS AS SHOWN HEREON ARE HEREBY DEDICATED TO THE PUBLIC.

IN WITNESS WHEREOF, TAYLOR WOODROW/ARIZONA, INC., AN ARIZONA CORPORATION, HAS CAUSED ITS COMPTROLLER TO SIGN AND SEAL THIS INSTRUMENT TO BE DATED AND RECORDED THIS 27th DAY OF July, 2007.  
THE TAYLOR WOODROW/ARIZONA, INC., AN ARIZONA CORPORATION, AS OWNER  
*Thomas R. Blake*  
BY THOMAS R. BLAKE  
ITS PRESIDENT  
**NOTARY ACKNOWLEDGMENT**  
STATE OF ARIZONA

BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, APPEARED *Thomas R. Blake* WHO ACKNOWLEDGED HIMSELF TO BE THE PRESIDENT OF TAYLOR WOODROW/ARIZONA, INC., AN ARIZONA CORPORATION, AND HE ACKNOWLEDGED THAT HE IS AN OFFICER AND AUTHORIZED SIGNATORY TO DO, EXECUTE THE FOREGOING INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED. IN WITNESS WHEREOF, I HEREBY SET MY HAND AND OFFICIAL SEAL.  
NOTARY PUBLIC: *Thomas R. Blake*  
MY COMMISSION EXPIRES: 2-2-2011  
COUNTY OF MARICOPA

APPROVED BY THE TOWN COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA  
THIS DAY OF \_\_\_\_\_ 2007

ATTEST:  
TOWN CLERK

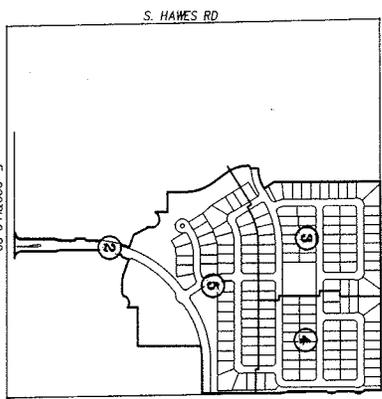
**DEPARTMENT APPROVALS**  
TOWN ENGINEERING MANAGER \_\_\_\_\_ DATE \_\_\_\_\_  
TOWN PLANNING MANAGER \_\_\_\_\_ DATE \_\_\_\_\_

**SITE DATA**  
TOTAL PARCEL AREA 56.61 ACRES  
OPEN SPACE 13.22 ACRES  
TOTAL LOTS 157  
DENSITY 2.76 DU/AC  
ZONING R1-7

**PARTICIPATION**  
BY THE SUBDIVISION, VICTORIA HOMEOWNERS ASSOCIATION, A NON-PROFIT CORPORATION, HAS CAUSED THE RESPONSIBILITIES DEDICATED HEREIN.

**ASSIGNED WATER SUPPLY**  
THIS SUBDIVISION IS LOCATED WITHIN THE QUEEN CREEK WATER COMPANY SERVICE AREA. A CERTIFICATE OF ASSIGNED WATER SUPPLY HAS BEEN GRANTED BY THE ARIZONA DEPARTMENT OF WATER RESOURCES, APPLICATION NO. 27-401531.0000.

A FINAL PLAT  
OF  
**VICTORIA PAD**  
PARCEL 10  
A PORTION THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 2 SOUTH, RANGE 7 EAST, GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA



**GENERAL NOTES**

- CONSTRUCTION WITHIN PUBLIC UTILITY EASEMENTS SHALL BE LIMITED TO UTILITIES, REMOVABLE FENCES & DRIVES. LOTS WITHIN THIS SUBDIVISION HAVE PUBLIC UTILITY EASEMENTS WITHIN THE SUBDIVISION. NO POOLS OR PERMANENT STRUCTURES MAY BE CONSTRUCTED WITHIN THE PUBLIC UTILITY EASEMENT.
- NO STRUCTURES OF ANY KIND MAY BE CONSTRUCTED, NOR ANY VEGETATION PLANTED OR BE ALLOWED TO GROW, WITHIN DRAINAGE EASEMENTS WHICH WOULD IMPDE THE FLOW OF WATER THROUGH THE EASEMENTS.
- THIS SITE IS NEAR WILLIAMS GATEWAY AIRPORT. DUE TO ITS PROXIMITY TO WILLIAMS GATEWAY AIRPORT, THE SITE IS LIKELY TO EXPERIENCE AIRCRAFT OVER FLIGHTS, WHICH COULD GENERATE NOISE LEVELS THAT MAY BE OF AN AVIATION AND MILITARY AIRCRAFT. IN AN AVIATION EASEMENT SHALL BE RECORDED, BY SEPARATE INSTRUMENT OVER THE ENTIRETY OF THIS PLAT.
- THIS SITE IS NEAR CROP DUSTING OPERATIONS, GENERAL AGRICULTURE OPERATIONS ALSO EXIST IN THE AREA AND OPERATIONS, ADDITIONALLY, THIS SITE IS LOCATED IN AN AREA WHERE THERE ARE AIRCRAFT OPERATIONS ASSOCIATED WITH AERONAUTICS.
- THIS SUBDIVISION LIES IN THE VICINITY OF THE SOUTHERN PACIFIC RAILWAY LINE. THIS RAILWAY LINE EXPERIENCES ATTENUATION MEASURES IN CONSTRUCTION OF ALL BUILDINGS WITHIN 300 FEET OF THE RAILWAY LINE.
- THIS SUBDIVISION IS SUBJECT TO DEDICATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VICTORIA COUNTY RECORDERS OFFICE, DOCUMENT NUMBER 2007-0778002.
- ALL RETENTION BASINS MUST BEAUN WITHIN 36 HOURS AFTER A STORM. THE OWNER OF ANY SUCH BASIN FAILING TO MEET THIS REQUIREMENT MUST TAKE CORRECTIVE ACTION TO BRING THE BASIN INTO COMPLIANCE.
- 8.00 FEET SHALL BE SET AT ALL LOT CORNERS, ANGLE POINTS AND POINTS OF CURVE FOR EACH LOT WITHIN THE SUBDIVISION WITHIN THE 15' SETBACK FROM THE VICTORIA COUNTY RECORDERS OFFICE. THIS FACILITY HAS AN APPROVED DESIGN WHICH MAY BE NOTICABLE FROM THE VICTORIA DEVELOPMENT. THIS FACILITY HAS AN APPROVED DESIGN WHICH MAY BE NOTICABLE FROM THE VICTORIA DEVELOPMENT. THIS FACILITY HAS AN APPROVED DESIGN WHICH MAY BE NOTICABLE FROM THE VICTORIA DEVELOPMENT. THIS FACILITY HAS AN APPROVED DESIGN WHICH MAY BE NOTICABLE FROM THE VICTORIA DEVELOPMENT.
- INCLUDE LANDSCAPE AREAS WITHIN OPEN SPACE TRACTS, ARTERIAL STREETS AND COLLECTOR RIGHT-OF-WAY MAINTAINED BY THE VICTORIA HOMEOWNERS ASSOCIATION, A NON-PROFIT CORPORATION.
- LANDSCAPING WITHIN THE MAJOR STREET AND PUBLIC RIGHT-OF-WAY TO THE BACK OF CURB SHALL BE MAINTAINED BY THE VICTORIA HOMEOWNERS ASSOCIATION, A NON-PROFIT CORPORATION.
- ALL UTILITIES SHALL BE CONSTRUCTED UNDERGROUND.
- THIS DEVELOPMENT IS ADJACENT TO THE CANYON STATE ACADEMY AN EDUCATIONAL FACILITY FOR AT RISK YOUTH. THIS FACILITY DOES CONDUCT EVENTS SUCH AS SPORTING EVENTS THAT WILL PROVIDE OUTDOOR LIGHTING AND EVENT NOISE THAT MAY BE NOTICABLE FROM THE VICTORIA DEVELOPMENT. THIS FACILITY HAS AN APPROVED DESIGN WHICH MAY BE NOTICABLE FROM THE VICTORIA DEVELOPMENT. THIS FACILITY HAS AN APPROVED DESIGN WHICH MAY BE NOTICABLE FROM THE VICTORIA DEVELOPMENT. THIS FACILITY HAS AN APPROVED DESIGN WHICH MAY BE NOTICABLE FROM THE VICTORIA DEVELOPMENT.
- IN EASEMENTS FOR THE EXCLUSIVE USE OF WATER, SANITARY SEWER OR A COMBINATION THEREOF, ONLY GROUND COVER AND BUSHES ARE ALLOWED TO BE PLANTED WITHIN THE EASEMENT AREA. NO TREES ARE ALLOWED.
- THE EMERGENCY ACCESS EASEMENT OVER LOT 230 SHALL BE MAINTAINED AT ALL TIMES. THE RIGHT OF WAY WITHIN THIS PLAT EXISTS. AMENDMENT OF THIS EASEMENT SHALL BE EFFECTIVE UPON A WRITTEN RELEASE OF EASEMENT LETTER SIGNED BY THE TOWN FIRE MARSHALL IS RECORDED.

**ZONING**

R1-7 LOTS 189 THROUGH 345

**ASSURANCE STATEMENT**

ASSURANCE IN THE FORM OF A \_\_\_\_\_ HAS BEEN DEPOSITED WITH THE TOWN ENGINEER TO GUARANTEE CONSTRUCTION OF THE REQUIRED OFFSITE IMPROVEMENTS.

**ASSURANCE STATEMENT**

ASSURANCE IN THE FORM OF A \_\_\_\_\_ HAS BEEN DEPOSITED WITH THE TOWN ENGINEER TO GUARANTEE CONSTRUCTION OF THE REQUIRED PARK IMPROVEMENTS.

**ASSURANCE STATEMENT**

ASSURANCE IN THE FORM OF A \_\_\_\_\_ HAS BEEN DEPOSITED WITH THE TOWN ENGINEER TO GUARANTEE CONSTRUCTION OF THE REQUIRED PARK IMPROVEMENTS.

**DEVELOPERS / OWNERS**

TAYLOR WOODROW/ARIZONA, INC.  
4435 EAST HOLMES AVENUE  
SCOTTSDALE, AZ, 85253  
PHONE (480) 830-3700  
CONTACT JUSTIN MANAWAOME  
PHONE (480) 544-7000

**ENGINEER**

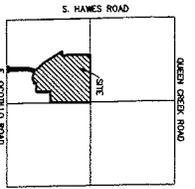
AMEC INFRASTRUCTURE, INC.  
4435 EAST HOLMES AVENUE  
SCOTTSDALE, AZ, 85253  
PHONE (480) 830-3700  
FAX (480) 830-3803

**SHEET INDEX**

COVER SHEET  
SHEET 1 LOT INFO, TRACT INFO, LEGAL DESCRIPTION & FINAL PLAT  
SHEET 2 FINAL PLAT  
SHEET 3 FINAL PLAT  
SHEET 4 FINAL PLAT  
SHEET 5 FINAL PLAT

**BASIS OF BEARING**

THE ASSUMED BEARING OF SOUTH 00°58'27" EAST, AS SHOWN ON THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 2 SOUTH, RANGE 7 EAST, OF THE GILA AND SALT RIVER MERIDIAN, WAS DETERMINED ON THE BASIS OF BEARING.



BRAYN L. CAMPBELL  
REGISTERED PROFESSIONAL ENGINEER  
4435 E. HOLMES AVE.  
SCOTTSDALE, ARIZONA 85206

COUNTY RECORDER

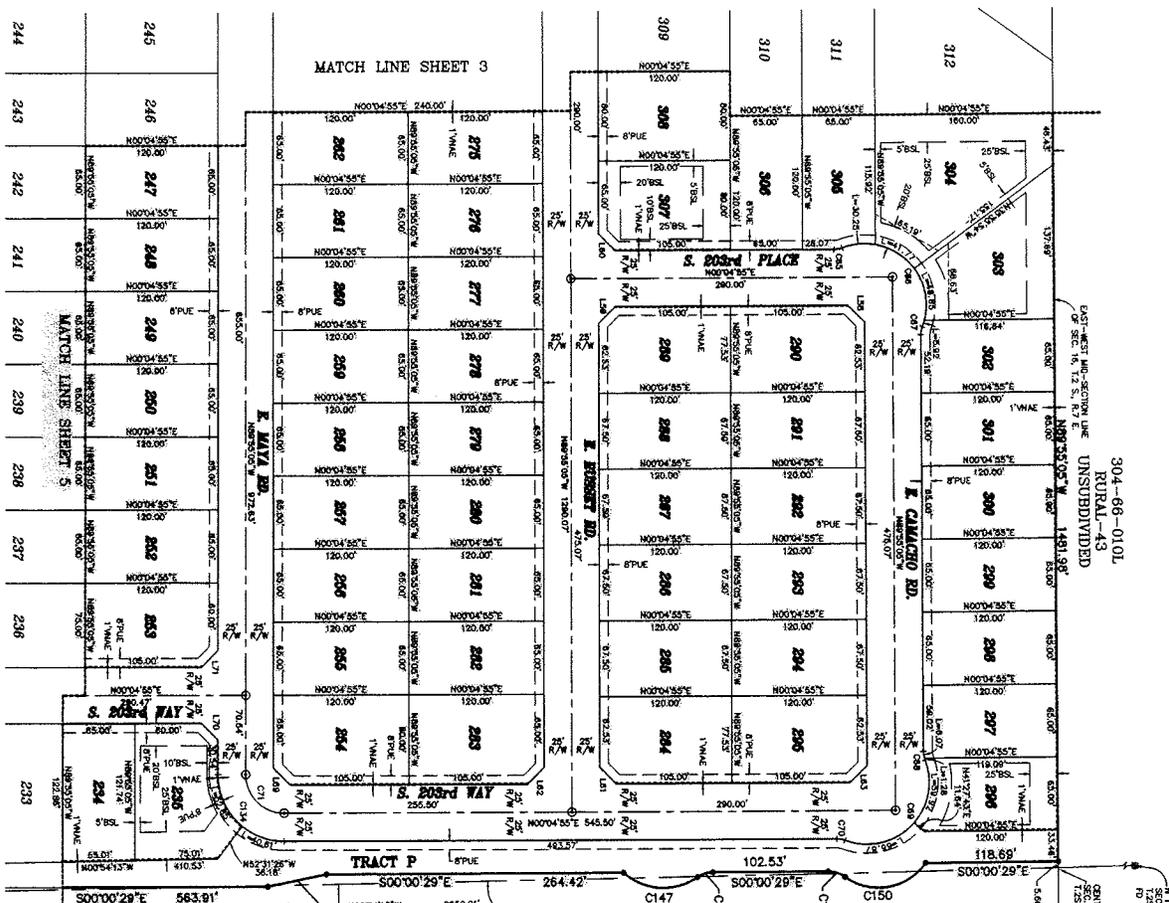
amc  
4435 EAST HOLMES AVENUE  
SCOTTSDALE, ARIZONA 85253  
PHONE (480) 830-3700  
FAX (480) 830-3803

FINAL PLAT  
PROJECT: VICTORIA PAD Parcel 10  
Town of Queen Creek

PROJECT NO. 01-2004-1038  
SHEET NO. 1 of 5

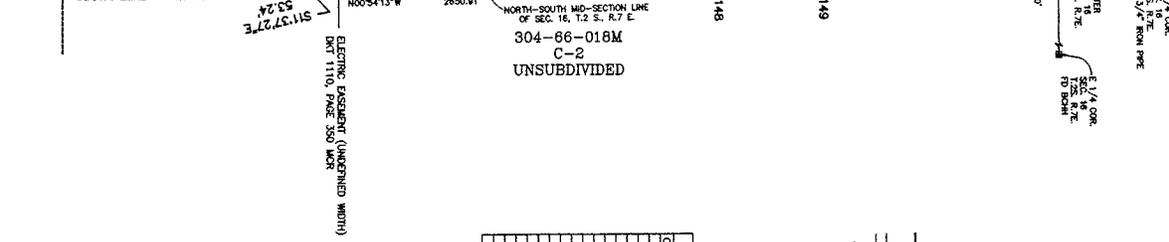






304-66-010L  
RURAL-43  
UNSUBDIVIDED

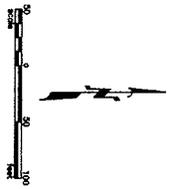
304-66-018M  
C-2  
UNSUBDIVIDED



CURVE	RADIUS	LENGTH	DELTA
C147	20.00'	7.34'	21.87°
C148	20.00'	7.34'	21.87°
C149	20.00'	7.34'	21.87°
C150	20.00'	7.34'	21.87°
C151	20.00'	7.34'	21.87°
C152	20.00'	7.34'	21.87°
C153	20.00'	7.34'	21.87°
C154	20.00'	7.34'	21.87°
C155	20.00'	7.34'	21.87°
C156	20.00'	7.34'	21.87°
C157	20.00'	7.34'	21.87°
C158	20.00'	7.34'	21.87°
C159	20.00'	7.34'	21.87°
C160	20.00'	7.34'	21.87°
C161	20.00'	7.34'	21.87°
C162	20.00'	7.34'	21.87°
C163	20.00'	7.34'	21.87°
C164	20.00'	7.34'	21.87°
C165	20.00'	7.34'	21.87°
C166	20.00'	7.34'	21.87°
C167	20.00'	7.34'	21.87°
C168	20.00'	7.34'	21.87°
C169	20.00'	7.34'	21.87°
C170	20.00'	7.34'	21.87°
C171	20.00'	7.34'	21.87°
C172	20.00'	7.34'	21.87°
C173	20.00'	7.34'	21.87°
C174	20.00'	7.34'	21.87°
C175	20.00'	7.34'	21.87°
C176	20.00'	7.34'	21.87°
C177	20.00'	7.34'	21.87°
C178	20.00'	7.34'	21.87°
C179	20.00'	7.34'	21.87°
C180	20.00'	7.34'	21.87°
C181	20.00'	7.34'	21.87°
C182	20.00'	7.34'	21.87°
C183	20.00'	7.34'	21.87°
C184	20.00'	7.34'	21.87°
C185	20.00'	7.34'	21.87°
C186	20.00'	7.34'	21.87°
C187	20.00'	7.34'	21.87°
C188	20.00'	7.34'	21.87°
C189	20.00'	7.34'	21.87°
C190	20.00'	7.34'	21.87°
C191	20.00'	7.34'	21.87°
C192	20.00'	7.34'	21.87°
C193	20.00'	7.34'	21.87°
C194	20.00'	7.34'	21.87°
C195	20.00'	7.34'	21.87°
C196	20.00'	7.34'	21.87°
C197	20.00'	7.34'	21.87°
C198	20.00'	7.34'	21.87°
C199	20.00'	7.34'	21.87°
C200	20.00'	7.34'	21.87°

LINE	LENGTH	BEARING
L1	21.21'	H89°04'52"E
L2	21.21'	H89°04'52"E
L3	21.21'	H89°04'52"E
L4	21.21'	H89°04'52"E
L5	21.21'	H89°04'52"E
L6	21.21'	H89°04'52"E
L7	21.21'	H89°04'52"E
L8	21.21'	H89°04'52"E
L9	21.21'	H89°04'52"E
L10	21.21'	H89°04'52"E
L11	21.21'	H89°04'52"E
L12	21.21'	H89°04'52"E
L13	21.21'	H89°04'52"E
L14	21.21'	H89°04'52"E
L15	21.21'	H89°04'52"E
L16	21.21'	H89°04'52"E
L17	21.21'	H89°04'52"E
L18	21.21'	H89°04'52"E
L19	21.21'	H89°04'52"E
L20	21.21'	H89°04'52"E
L21	21.21'	H89°04'52"E
L22	21.21'	H89°04'52"E
L23	21.21'	H89°04'52"E
L24	21.21'	H89°04'52"E
L25	21.21'	H89°04'52"E
L26	21.21'	H89°04'52"E
L27	21.21'	H89°04'52"E
L28	21.21'	H89°04'52"E
L29	21.21'	H89°04'52"E
L30	21.21'	H89°04'52"E

- LEGEND**
- Indicates Set Back Cop
  - Indicates Found Monument on noted
  - Indicates Corner of Subdivision
  - Indicates Boundary of the Subdivision
  - Indicates Right of Public Easement
  - Indicates Vehicle Easement
  - Indicates Boundary of Highway Purpose
  - Indicates Boundary of Section
  - Indicates County Department of Transportation
  - Indicates County Department of Highway
  - Right of Way
  - Multiple County Recorder Easement for Highway Purpose
  - Document
  - Parcel
  - Page
  - Book
  - Easement
  - Error
  - Blank
  - Sewer Easement
  - Stone Cop in Road Line
  - Corner
  - Section
  - Multiple County Department of Transportation
  - Multiple County Department of Highway
  - Right of Way
  - Multiple County Recorder Easement for Highway Purpose
  - Document
  - Parcel
  - Page
  - Book
  - Easement
  - Error
  - Blank



COUNTY RECORDER

PRODUCT NO. 01-204-038  
SHEET NO. 4 of 5

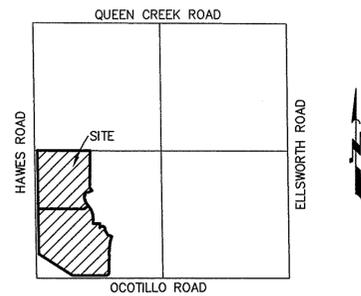


FINAL PLAT  
PROJECT: VICTORIA PAD PARCEL 10  
Town of Queen Creek

AMEC Infrastructure, Inc.  
4435 EAST HOLMES AVENUE  
SCOTTSDALE, AZ 85258  
PHONE (480) 830-3700  
FAX (480) 830-3903

REVISIONS



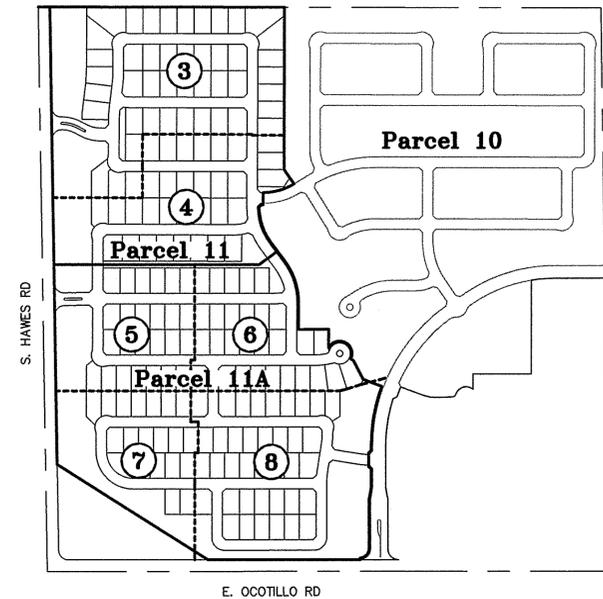


VICINITY MAP  
N.T.S.

# A FINAL PLAT OF VICTORIA PAD

PARCELS 11 & 11A

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 16,  
TOWNSHIP 2 SOUTH, RANGE 7 EAST OF THE GILA AND SALT  
RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA



KEY MAP  
N.T.S.

## DEDICATION AND CONVEYANCE

STATE OF ARIZONA }  
COUNTY OF MARICOPA } SS

KNOW ALL MEN BY THESE PRESENTS: TAYLOR WOODROW/ARIZONA, INC., AN ARIZONA CORPORATION, AS OWNERS, HAS SUBDIVIDED UNDER THE NAME OF VICTORIA PAD PARCELS 11 & 11A, A PORTION OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 2 SOUTH, RANGE 7 EAST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOWN PLATTED HEREON AND HEREBY PUBLISHES THIS PLAT AS AND FOR THE PLAT OF VICTORIA PAD PARCELS 11 & 11A, AND HEREBY DECLARES THAT THIS PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF THE LOTS, TRACTS, STREETS, AND EASEMENTS CONSTITUTING THE SAME, AND DECLARES THAT EACH LOT, TRACT, AND STREET SHALL BE KNOWN BY THE NUMBER, LETTER OR NAME THAT IS GIVEN TO EACH SUCH LOT, TRACT, AND STREET ON THIS PLAT, RESPECTIVELY. THE STREETS AS SHOWN HEREON ARE HEREBY DEDICATED TO THE PUBLIC. TRACTS B, K & M ARE HEREBY DEDICATED TO THE PUBLIC. TRACTS A, C, D, E, F, G, H, I, J, L, N, O & P ARE NOT DEDICATED TO THE PUBLIC, BUT ARE PLATTED AS COMMON PROPERTY FOR THE USE AND ENJOYMENT OF THE VICTORIA HOMEOWNERS ASSOCIATION AS MORE FULLY SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS. TRACTS A, C, D, E, F, G, H, I, J, L, N, O & P SHALL BE OWNED, LANDSCAPED AND MAINTAINED BY THE VICTORIA HOMEOWNERS ASSOCIATION. THE MAINTENANCE OF LANDSCAPING WITHIN THE PUBLIC RIGHT-OF-WAY TO BACK OF CURB SHALL BE THE RESPONSIBILITY OF THE HOMEOWNERS ASSOCIATION.

A DRAINAGE EASEMENT IS HEREBY GRANTED OVER THE ENTIRE AREA OF TRACTS A, D, F, H, J AND L. THE EASEMENTS AS SHOWN HEREON ARE HEREBY DEDICATED TO THE PUBLIC. ALL PROPERTY, AMENITIES AND FACILITIES PROPOSED TO BE MAINTAINED BY THE HOMEOWNERS ASSOCIATION ARE HEREWIT PLATTED AS COMMON PROPERTY WITH AN UNDIVIDED INTEREST OWNED IN COMMON BY EACH LOT OWNER.

IN WITNESS WHEREOF: TAYLOR WOODROW/ARIZONA, INC., AN ARIZONA CORPORATION, AS OWNER HAS CAUSED ITS COMPANY NAME TO BE AFFIXED AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF THE UNDERSIGNED REGIONAL PRESIDENT THEREUNTO DULY AUTHORIZED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_

THE TAYLOR WOODROW/ARIZONA, INC., AN ARIZONA CORPORATION, AS OWNER

BY: THOMAS R. BLAKE JR.  
ITS: PRESIDENT

## NOTARY ACKNOWLEDGMENT

STATE OF ARIZONA }  
COUNTY OF MARICOPA } SS

ON \_\_\_\_\_ DAY OF \_\_\_\_\_, BEFORE ME THE UNDERSIGNED NOTARY PUBLIC, APPEARED, \_\_\_\_\_ WHO ACKNOWLEDGED HIMSELF TO BE THE PRESIDENT OF TAYLOR WOODROW/ARIZONA, INC., AN ARIZONA CORPORATION AND ACKNOWLEDGED THAT HE, AS SUCH OFFICER, BEING DULY AUTHORIZED SO TO DO, EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF: I HEREUPTO SET MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC: \_\_\_\_\_

MY COMMISSION EXPIRES: \_\_\_\_\_

## TOWN APPROVALS

APPROVED BY THE TOWN COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA  
THIS DAY OF \_\_\_\_\_

MAYOR \_\_\_\_\_ ATTEST: \_\_\_\_\_  
TOWN CLERK

## DEPARTMENT APPROVALS

TOWN ENGINEER \_\_\_\_\_ DATE \_\_\_\_\_

TOWN PLANNING MANAGER \_\_\_\_\_ DATE \_\_\_\_\_

### SITE DATA PARCEL 11

GROSS AREA 29.61 ACRES  
OPEN SPACE 5.65 ACRES  
TOTAL LOTS 77  
DENSITY 2.60 DU/AC (GROSS)  
ZONING R1-9

### SITE DATA PARCEL 11A

GROSS AREA 40.59 ACRES  
OPEN SPACE 10.15 ACRES  
TOTAL LOTS 111  
DENSITY 2.73 DU/AC (GROSS)  
ZONING R1-7

## RATIFICATION

BY THIS RATIFICATION, \_\_\_\_\_, DULY ELECTED PRESIDENT OF THE VICTORIA HOMEOWNERS ASSOCIATION, A NON-PROFIT CORPORATION, ACKNOWLEDGES THE RESPONSIBILITIES DEDICATED HEREIN.

NAME \_\_\_\_\_ DATE \_\_\_\_\_

## ASSURED WATER SUPPLY

THIS SUBDIVISION IS LOCATED WITHIN THE QUEEN CREEK WATER COMPANY SERVICE AREA. A CERTIFICATE OF ASSURED WATER SUPPLY HAS BEEN GRANTED BY THE ARIZONA DEPARTMENT OF WATER RESOURCES, APPLICATION NO. 27-401531.0000.

## GENERAL NOTES

- CONSTRUCTION WITHIN PUBLIC UTILITY EASEMENTS SHALL BE LIMITED TO UTILITIES, REMOVABLE FENCES & DRIVES. LOTS WITHIN THIS SUBDIVISION HAVE PUBLIC UTILITY EASEMENTS WITHIN THE SIDEYARD. NO POOLS OR PERMANENT STRUCTURES MAY BE CONSTRUCTED WITHIN THE PUBLIC UTILITY EASEMENT.
- NO STRUCTURES OF ANY KIND MAY BE CONSTRUCTED, NOR ANY VEGETATION PLANTED OR BE ALLOWED TO GROW, WITHIN DRAINAGE EASEMENTS WHICH WOULD IMPEDE THE FLOW OF WATER THROUGH THE EASEMENTS.
- THIS SITE IS NEAR WILLIAMS GATEWAY AIRPORT. DUE TO ITS PROXIMITY TO WILLIAMS GATEWAY AIRPORT, THE SITE IS LIKELY TO EXPERIENCE AIRCRAFT OVER FLIGHTS, WHICH COULD GENERATE NOISE LEVELS THAT MAY BE OF CONCERN TO SOME INDIVIDUALS. THE MIX OF AIRCRAFT CONSISTS OF CARGO, COMMERCIAL, CORPORATE, GENERAL AVIATION AND MILITARY AIRCRAFT. AN AVIATION EASEMENT SHALL BE RECORDED, BY SEPARATE INSTRUMENT OVER THE ENTIRETY OF THIS PLAT.
- THIS SITE IS NEAR CROP DUSTING OPERATIONS. GENERAL AGRICULTURE OPERATIONS ALSO EXIST IN THE AREA AND THIS SITE MAY BE SUBJECT TO NOISE, DUST AND POSSIBLY ODORS NORMALLY ASSOCIATED WITH AGRICULTURAL OPERATIONS. ADDITIONALLY, THIS SITE IS LOCATED IN AN AREA WHERE THERE ARE AIRCRAFT OPERATIONS ASSOCIATED WITH AGRICULTURE.
- THIS SUBDIVISION LIES IN THE VICINITY OF THE SOUTHERN PACIFIC RAILWAY LINE. THIS RAILWAY LINE EXPERIENCES AT LEAST 10 TRAINS PER DAY. ALL BUILDERS ARE ENCOURAGED TO USE GENERALLY ACCEPTED NOISE/SOUND ATTENUATION MEASURES IN CONSTRUCTION OF ALL BUILDINGS WITHIN 300 FEET OF THE RAILWAY LINE.
- THIS SUBDIVISION IS SUBJECT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VICTORIA HOMEOWNERS ASSOCIATION, A NON-PROFIT CORPORATION. AS RECORDED IN THE RECORDS OF THE MARICOPA COUNTY RECORDERS OFFICE, DOCUMENT NUMBER \_\_\_\_\_
- ALL RETENTION BASINS MUST DRAIN WITHIN 36 HOURS AFTER A STORM. THE OWNER OF ANY SUCH BASIN FAILING TO MEET THIS REQUIREMENT MUST TAKE CORRECTIVE ACTION TO BRING THE BASIN INTO COMPLIANCE.
- IRON PIPES SHALL BE SET AT ALL LOT CORNERS, ANGLE POINTS AND POINTS OF CURVE FOR EACH LOT WITHIN THE SUBDIVISION WITHIN ONE YEAR OF FINAL PLAT APPROVAL, PRIOR TO ANY LOT SALES, AND BEFORE THE RECORDING OF THE PLAT. PERMANENT BRASS CAP IN CONCRETE MONUMENTS SHALL BE SET FOR ALL SUBDIVISION POINTS WHICH ARE LOCATED IN THE PUBLIC RIGHT OF WAY. THESE ARE TO BE PLACED ACCORDING TO MAG STANDARDS.
- THE HOMEOWNERS ASSOCIATION SHALL MAINTAIN AND MANAGE ALL COMMON AREAS, WHICH SHALL SPECIFICALLY INCLUDE LANDSCAPE AREAS WITHIN OPEN SPACE, TRACTS, ARTERIAL STREETS AND COLLECTOR RIGHT-OF-WAY CREATED OR DEDICATED SPECIFICALLY FOR THE BENEFIT OF VICTORIA.
- LANDSCAPING WITHIN THE MAJOR STREET AND PUBLIC RIGHT-OF-WAY TO THE BACK OF CURB SHALL BE MAINTAINED BY THE VICTORIA HOMEOWNERS ASSOCIATION, A NON-PROFIT CORPORATION.
- ALL UTILITIES SHALL BE CONSTRUCTED UNDERGROUND
- THIS DEVELOPMENT IS ADJACENT TO THE CANYON STATE ACADEMY, AN EDUCATIONAL FACILITY FOR AT RISK YOUTH. THIS FACILITY DOES CONDUCT EVENTS SUCH AS SPORTING EVENTS THAT WILL PROVIDE OUTDOOR LIGHTING AND EVENT NOISE THAT MAY BE NOTICEABLE FROM THE VICTORIA DEVELOPMENT. THIS FACILITY HAS AN APPROVED CONDITIONAL USE PERMIT THAT WOULD ALLOW CONSTRUCTION OF AN EQUESTRIAN FACILITY IN THE FUTURE THAT COULD INCLUDE ARENAS, PASTURES, AND PUBLIC EVENT SPACES FOR EQUESTRIAN ACTIVITIES. FOR MORE INFORMATION CONTACT THE TOWN OF QUEEN CREEK REGARDING CASE # SU 01-99.
- IN EASEMENTS FOR THE EXCLUSIVE USE OF WATER, SANITARY SEWER OR A COMBINATION THEREOF, ONLY GROUND COVER AND BUSHES ARE ALLOWED TO BE PLANTED WITHIN THE EASEMENT AREA. NO TREES ARE ALLOWED.
- THE HOA/POA SHALL BE RESPONSIBLE FOR MAINTENANCE OF ALL LANDSCAPED ISLANDS AND MEDIANS WITH THE EXCEPTION OF THOSE LOCATED WITHIN ARTERIAL ROADWAYS.
- ALL TRACTS THAT WILL NOT BE CONVEYED TO THE TOWN OF QUEEN CREEK AND ALL COMMON PROPERTY SHALL BE IMPROVED IN ACCORDANCE WITH PLANS APPROVED BY THE TOWN OF QUEEN CREEK AND SHALL BE CONVEYED BY WARRANTY (OR SPECIAL WARRANTY) DEED TO THE HOMEOWNERS ASSOCIATION. THE HOMEOWNERS ASSOCIATION SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE COMMON PROPERTY.
- THIS DEVELOPMENT IS IN CLOSE PROXIMITY TO DESERT MOUNTAIN PARK AND THE FUTURE WEST PARK SITE. BOTH LOCATIONS HOLD EVENTS THAT MAY GENERATE NOISE, DUST AND PROVIDE OUTDOOR LIGHTING. FOR MORE INFORMATION CONTACT TOWN OF QUEEN CREEK AT (480) 358-3000.

## ASSURANCE STATEMENT

ASSURANCE IN THE FORM OF A \_\_\_\_\_ ISSUED FROM \_\_\_\_\_ IN THE AMOUNT OF \$ \_\_\_\_\_ HAS BEEN DEPOSITED WITH THE TOWN ENGINEER TO GUARANTEE CONSTRUCTION OF THE REQUIRED, HAWES ROAD, OFFSITE IMPROVEMENTS.

## ASSURANCE STATEMENT

ASSURANCE IN THE FORM OF A \_\_\_\_\_ ISSUED FROM \_\_\_\_\_ IN THE AMOUNT OF \$ \_\_\_\_\_ HAS BEEN DEPOSITED WITH THE TOWN ENGINEER TO GUARANTEE CONSTRUCTION OF THE REQUIRED SUBDIVISION IMPROVEMENTS.

## DEVELOPERS / OWNERS

TAYLOR WOODROW/ARIZONA, INC.  
6720 N. SCOTTSDALE ROAD, SUITE 390  
SCOTTSDALE, AZ., 85253  
CONTACT: JUSTIN IANNACONE  
PHONE: (480) 344-7000

## ENGINEER

AMEC INFRASTRUCTURE, INC.  
4435 EAST HOLMES AVENUE  
MESA, ARIZONA 85206  
PHONE (480) 830-3700  
FAX (480) 830-3903

## SHEET INDEX

SHEET 1	COVER SHEET
SHEET 2	LOT & TRACT INFO & LEGAL DESCRIPTION
SHEET 3	FINAL PLAT
SHEET 4	FINAL PLAT
SHEET 5	FINAL PLAT
SHEET 6	FINAL PLAT
SHEET 7	FINAL PLAT
SHEET 8	FINAL PLAT

## BASIS OF BEARING

THE ASSUMED BEARING OF NORTH 00°58'27" WEST, AS SHOWN ON THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 2 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER MERIDIAN, WAS USED AS THE BASIS OF BEARING PER BOOK 614 PAGE 6, RECORDS OF MARICOPA COUNTY RECORDER

## SURVEYORS CERTIFICATION

I, BRYAN L. CAMPBELL HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR IN THE STATE OF ARIZONA; THAT THIS PLAT CORRECTLY REPRESENTS A SURVEY PERFORMED BY UNDER MY SUPERVISION DURING THE MONTH OF MAY, 2006; THAT THE SURVEY IS TRUE AND CORRECT AS SHOWN; THAT THE BOUNDARY MONUMENTS SHOWN ACTUALLY EXIST OR WILL BE SET AS SHOWN; THAT SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.



BRYAN L. CAMPBELL  
AMEC INFRASTRUCTURE  
4435 E. HOLMES AVE.  
MESA, ARIZONA 85206

COUNTY RECORDER

PROJECT NO.  
01-2004-038

SHEET NO.

1 of 8

ameco

AMEC Infrastructure, Inc.

4435 EAST HOLMES AVENUE  
MESA, ARIZONA 85206  
PHONE (480) 830-3700  
FAX (480) 830-3903

FINAL PLAT

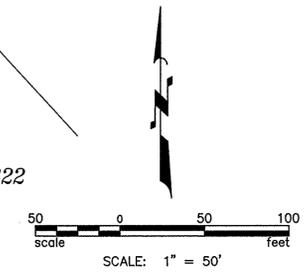
PROJECT: VICTORIA PAD PARCELS 11 & 11A  
Town of Queen Creek

DESIGNER: GH  
DRAWN BY: AG



304-66-010L  
RURAL-43  
UNSUBDIVIDED  
NORTH LINE OF THE SW QUARTER  
OF SEC. 16, T.2 S., R.7 E.  
S89°55'05"E 1101.45'

- LEGEND**
- ⊙ Indicates Set Brass Cap
  - ⊠ Indicates Found Monument, as noted
  - Indicates Corner of Subdivision
  - Indicates Boundary of this Subdivision
  - Indicates 8' Public Utilities Easement
  - Indicates vehicular non-access easement
  - FD Found
  - BC Brass Cap
  - BSL Building Setback Line
  - TEL Telephone
  - ESMT Easement
  - SE Sewer Easement
  - BCBH Brass Cap in Hand Hole
  - COR Corner
  - SEC Section
  - MCDOT Maricopa County Department of Transportation
  - R/W Right of Way
  - MCR Maricopa County Recorders
  - EHP Easement for Highway Purposes
  - DOC Document
  - Dkt Docket
  - Pg Page
  - Bk Book



**CURVE TABLE**

CURVE	RADIUS	LENGTH	DELTA
C16	45.00'	70.69'	90°00'00"
C17	45.00'	70.69'	90°00'00"
C43	20.00'	7.34'	21°02'22"
C44	55.00'	126.79'	132°04'44"
C45	20.00'	7.34'	21°02'22"
C46	20.00'	7.34'	21°02'22"
C47	55.00'	126.79'	132°04'44"
C48	20.00'	7.34'	21°02'22"
C49	20.00'	7.34'	21°02'22"
C50	55.00'	126.79'	132°04'44"
C51	20.00'	7.34'	21°02'22"
C52	600.00'	70.62'	6°44'36"
C53	150.00'	17.65'	6°44'36"
C54	600.00'	70.62'	6°44'36"
C55	150.00'	17.65'	6°44'36"
C56	150.00'	71.14'	27°10'30"
C89	4.50'	14.14'	180°00'00"
C90	4.50'	14.14'	180°00'00"
C96	145.50'	71.69'	28°13'52"
C97	154.50'	76.13'	28°13'52"
C98	120.00'	59.13'	28°13'52"
C99	180.00'	88.69'	28°13'52"
C100	120.00'	56.92'	27°10'30"
C101	180.00'	85.37'	27°10'30"
C102	575.00'	56.83'	5°39'47"
C103	625.00'	73.56'	6°44'36"
C104	625.00'	73.56'	6°44'36"
C105	575.00'	67.67'	6°44'36"

**LINE TABLE**

LINE	LENGTH	BEARING
L33	21.21'	N44°55'05"W
L34	21.14'	N51°37'48"E
L35	21.21'	N38°10'30"W
L36	21.21'	N45°04'55"E
L37	21.21'	N44°55'05"W
L38	21.21'	N44°55'05"W
L39	21.21'	N45°04'55"E
L40	21.21'	N44°55'05"W
L41	21.21'	N45°04'55"E

COUNTY RECORDER

PROJECT NO.  
01-2004-038

SHEET NO.  
**3 of 8**

amc

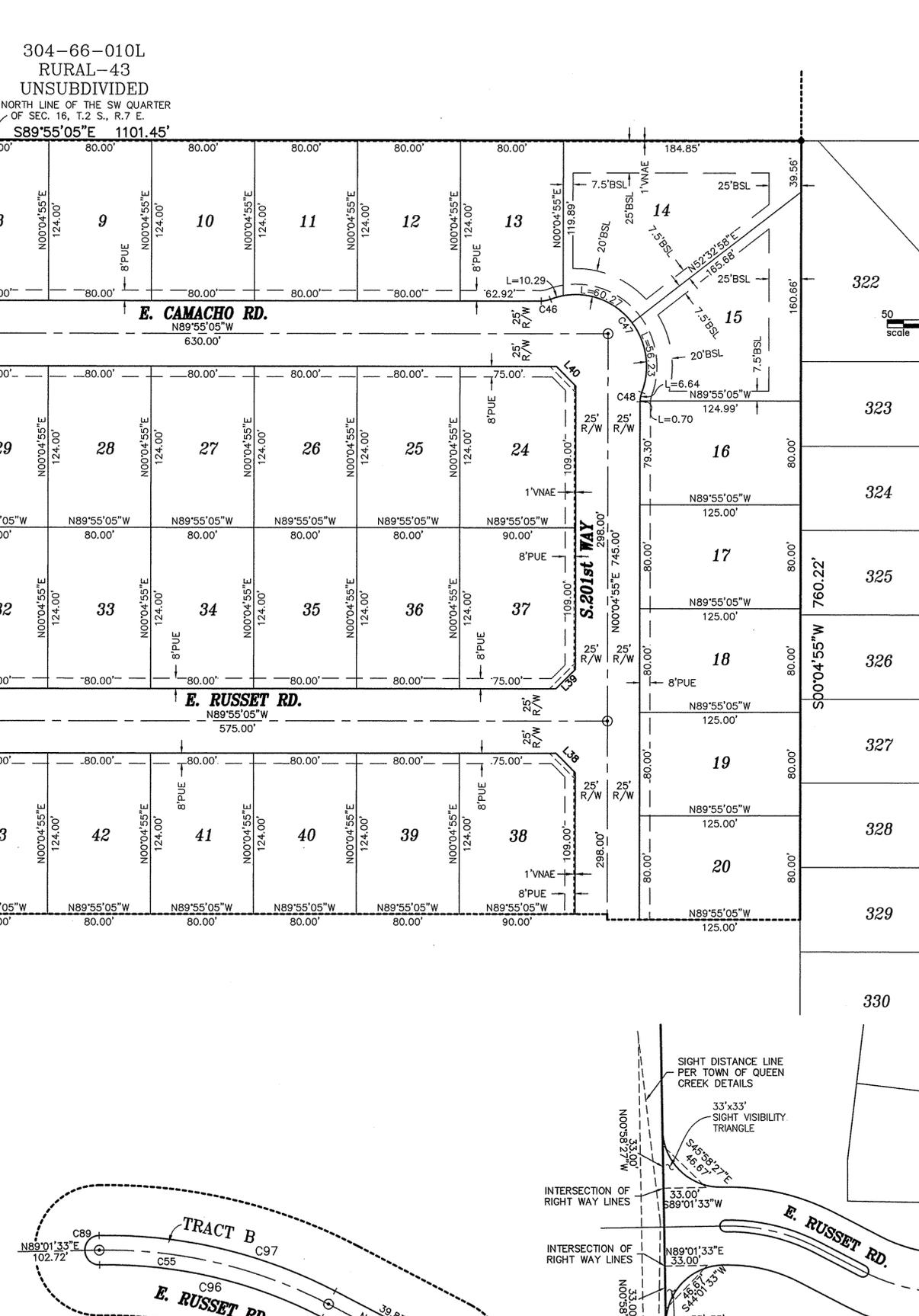
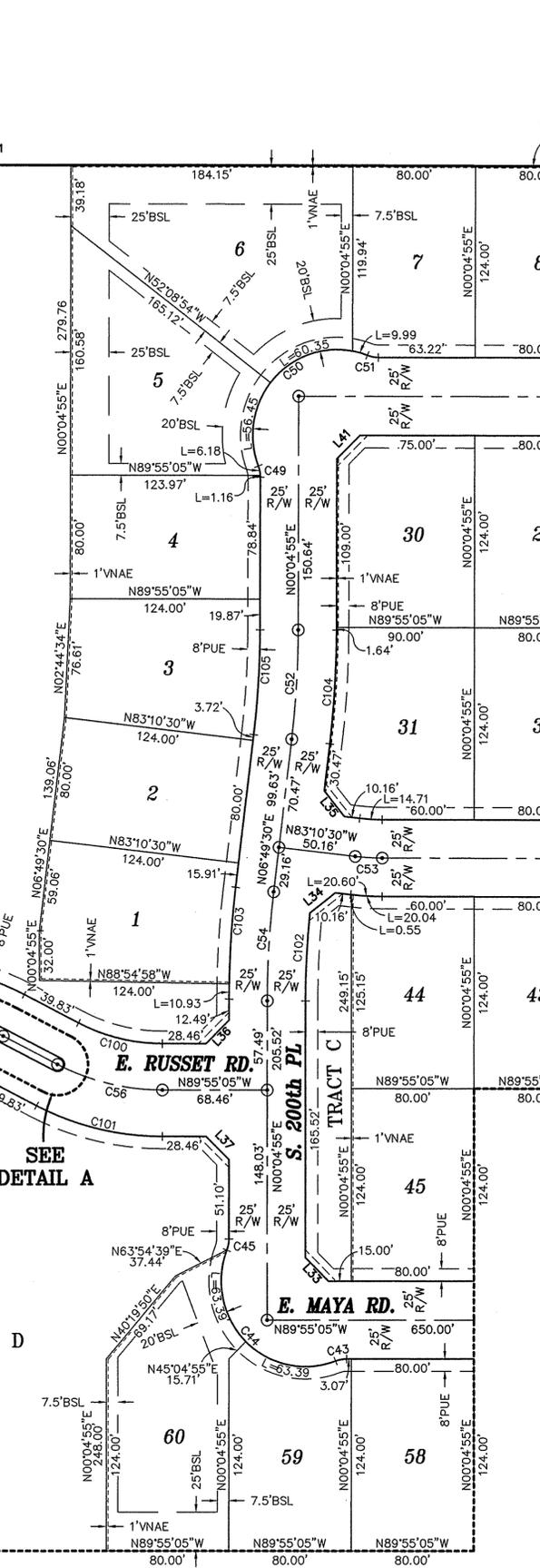
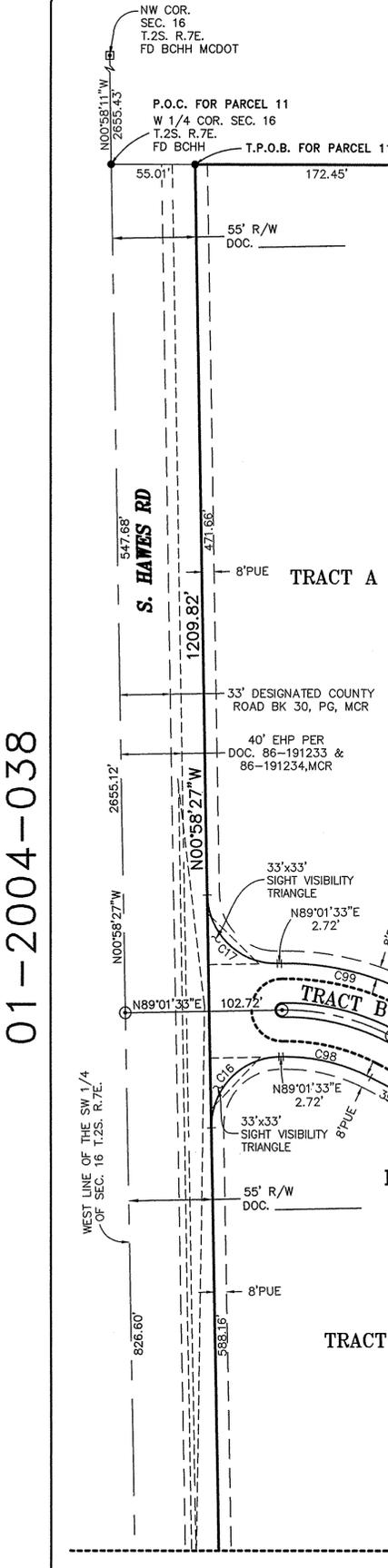
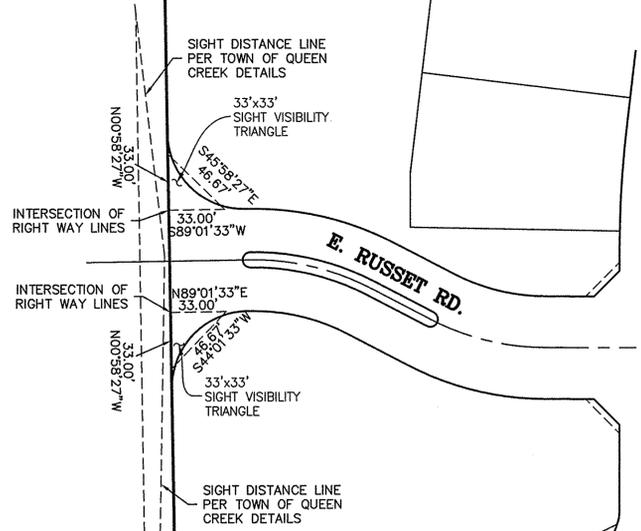
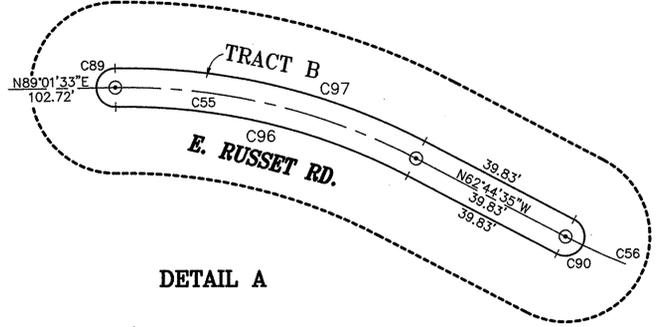
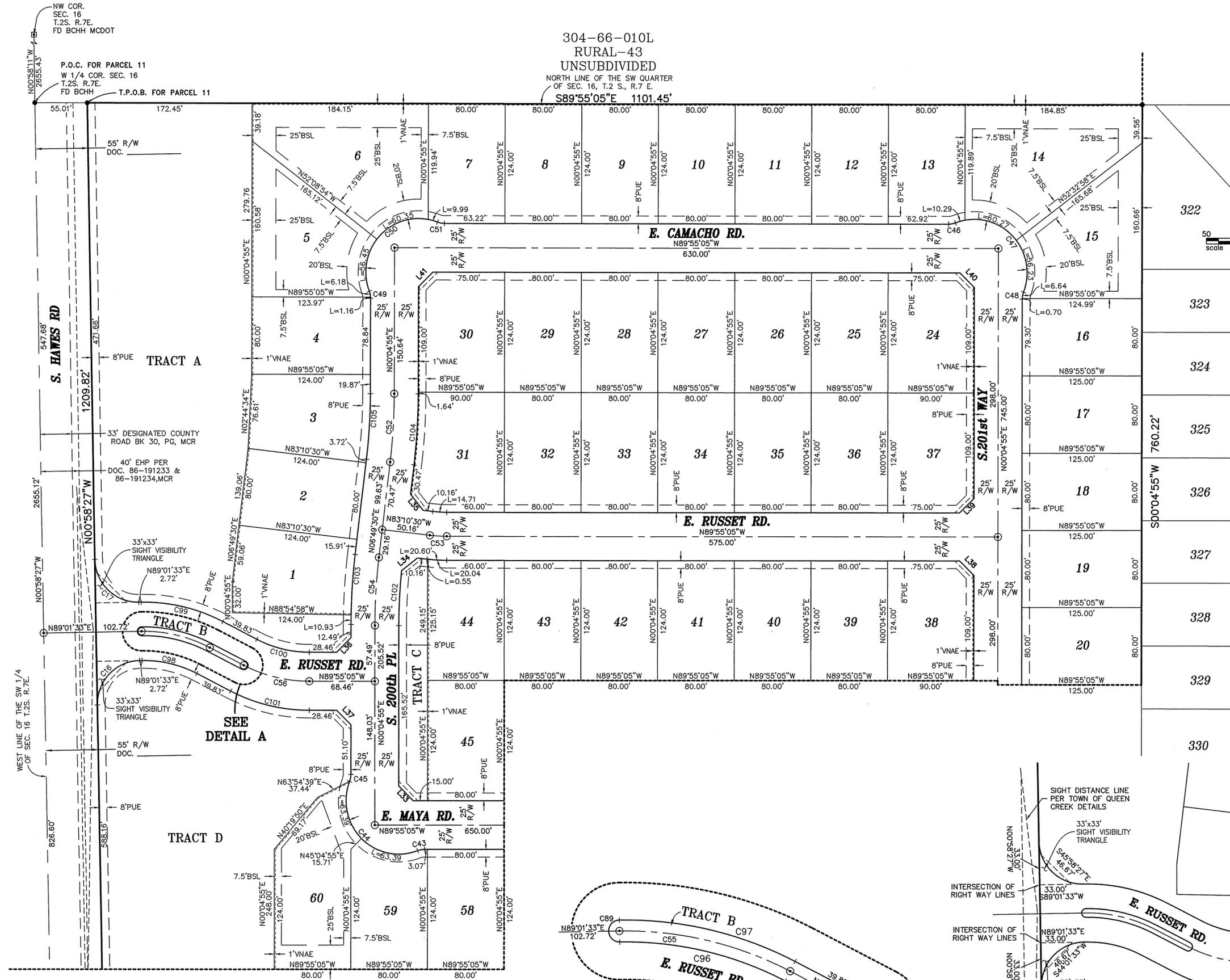
AMEC Infrastructure, Inc.  
4435 EAST HOLMES AVENUE  
MESA, ARIZONA 85206  
PHONE (480) 830-3700  
FAX (480) 830-3903

FINAL PLAT

PROJECT: VICTORIA PAD PARCELS 11 & 11A  
Town of Queen Creek

DESIGNER:  
DRAWN BY: A.G.

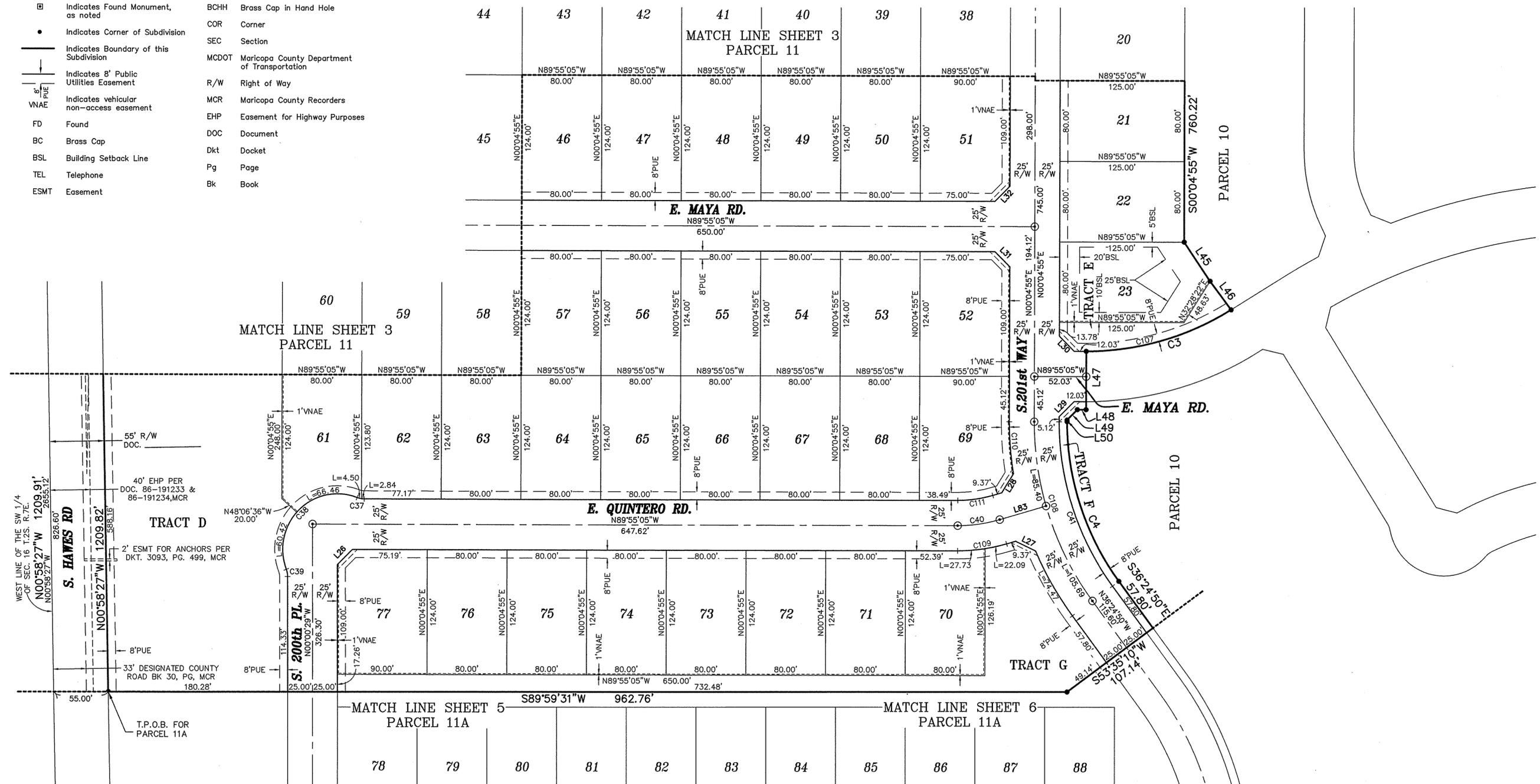
REGISTERED LAND SURVEYOR  
40622  
BRYAN L CAMPBELL  
0-7-07  
ARIZONA U.S.A.



01-2004-038

**LEGEND**

- ⊙ Indicates Set Brass Cap
- ⊠ Indicates Found Monument, as noted
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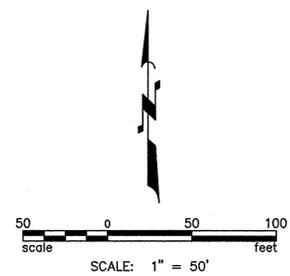


**CURVE TABLE**

CURVE	RADIUS	LENGTH	DELTA
C3	275.00'	153.02'	31°52'54"
C4	267.00'	170.07'	36°29'45"
C37	20.00'	7.34'	21°02'22"
C38	55.00'	126.87'	132°10'08"
C39	20.00'	7.34'	21°02'22"
C40	150.00'	42.70'	16°18'37"
C41	300.00'	191.09'	36°29'45"
C42	300.00'	186.93'	31°52'53"
C107	275.00'	153.02'	31°52'53"
C108	275.00'	175.17'	36°29'44"
C109	175.00'	49.82'	16°18'37"
C110	325.00'	52.49'	9°15'14"
C111	125.00'	35.58'	16°18'37"

**LINE TABLE**

LINE	LENGTH	BEARING
L26	21.20'	N45°02'13"E
L27	22.25'	N64°05'43"W
L28	22.25'	N31°38'20"E
L29	21.21'	N45°04'55"E
L30	21.21'	N44°55'05"W
L31	21.21'	N44°55'05"W
L32	21.21'	N45°04'55"E
L33	21.21'	N44°55'05"W
L45	46.85'	S33°42'22"E
L46	35.42'	S36°43'34"E
L47	58.00'	S00°04'55"W
L48	8.71'	N89°55'05"W
L49	14.59'	S45°04'55"W
L50	1.80'	S00°04'55"W
L83	48.41'	N73°46'18"E
L98	46.85'	N33°42'22"W
L99	35.42'	N36°43'34"W
L100	25.00'	N31°47'59"W
L101	25.00'	N00°04'55"E



COUNTY RECORDER

REVISIONS


**amec**  
**AMEC Infrastructure, Inc.**  
 4435 EAST HOLMES AVENUE  
 MESA, ARIZONA 85206  
 PHONE (480) 850-3700  
 FAX (480) 850-3903

**FINAL PLAT**  
**VICTORIA PAD PARCELS 11 & 11A**  
 Town of Queen Creek

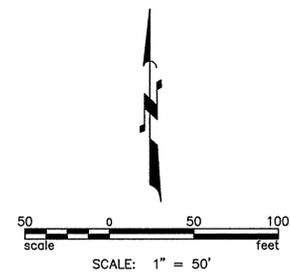
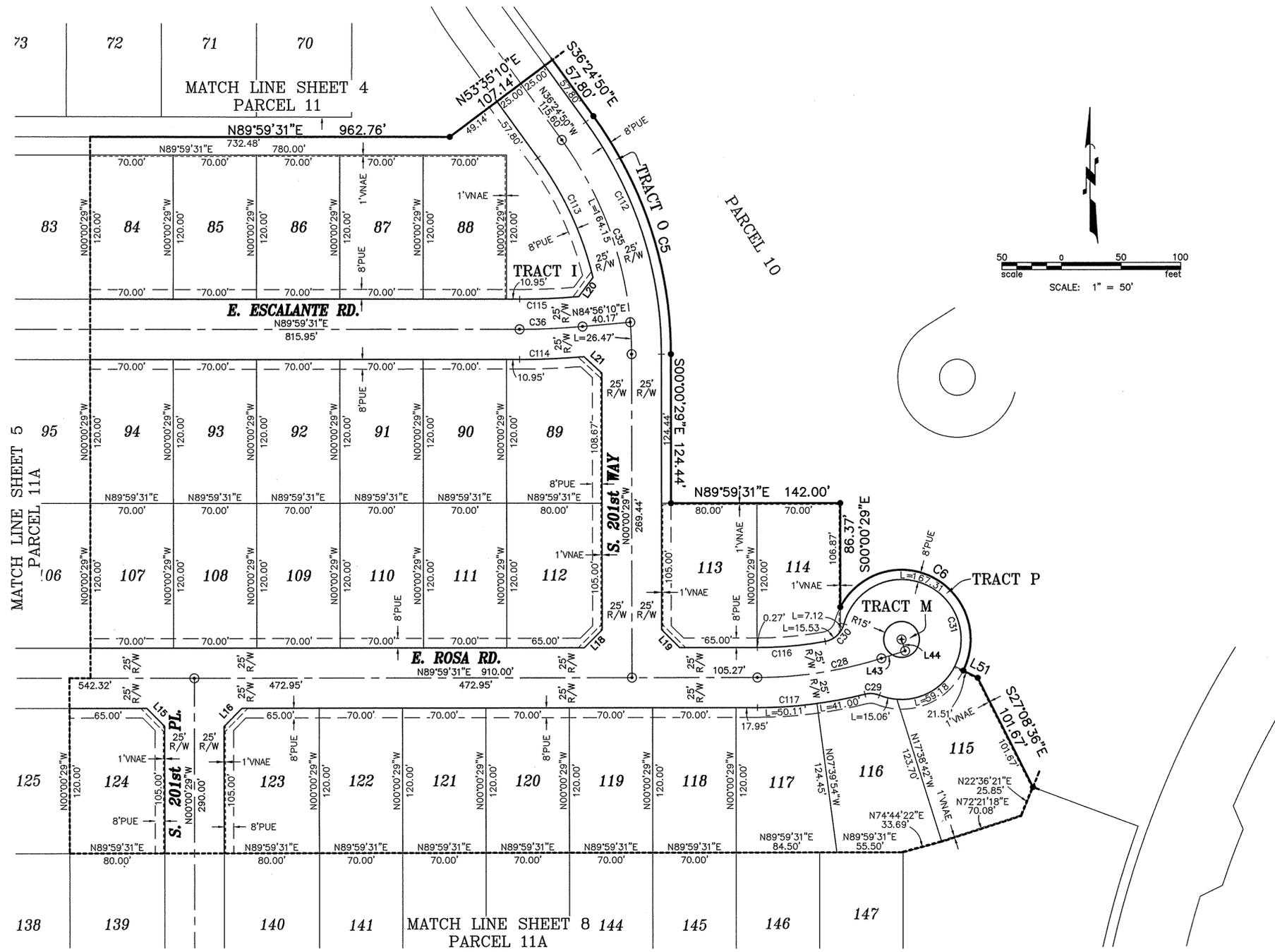
DESIGNER:  
 DRAWN BY: A.G.



PROJECT NO.  
 01-2004-038

SHEET NO.

**4 of 8**



**LEGEND**

- ⊙ Indicates Set Brass Cap
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CURVE TABLE			
CURVE	RADIUS	LENGTH	DELTA
C5	333.00'	211.59'	36°24'21"
C6	58.00'	181.14'	178°56'30"
C28	350.00'	105.73'	17°18'28"
C29	20.00'	12.47'	35°43'50"
C30	20.00'	22.66'	64°54'23"
C31	50.00'	241.56'	276°48'14"
C35	300.00'	190.62'	36°24'20"
C36	600.00'	52.94'	5°03'21"
C112	325.00'	206.50'	36°24'20"
C113	275.00'	110.43'	23°00'30"
C114	625.00'	54.18'	4°58'00"
C115	575.00'	49.77'	4°57'32"
C116	325.00'	57.23'	10°05'20"
C117	375.00'	91.12'	13°55'18"

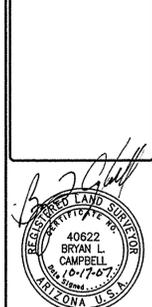
LINE TABLE		
LINE	LENGTH	BEARING
L15	21.21'	N45°00'29"W
L16	21.21'	N44°59'31"E
L18	21.21'	N44°59'31"E
L19	21.21'	N45°00'29"W
L20	19.92'	N36°32'54"E
L21	20.26'	N47°32'04"W
L43	20.83'	N72°41'03"E
L44	10.00'	N17°18'57"W
L51	13.51'	S63°16'48"E

REVISIONS:


**ameco**  
**AMEC Infrastructure, Inc.**  
 4435 EAST HOLMES AVENUE  
 MESA, ARIZONA 85206  
 PHONE (480) 830-3700  
 FAX (480) 830-3903

**FINAL PLAT**  
**VICTORIA PAD PARCELS 11 & 11A**  
 Town of Queen Creek

DESIGNER:  
 DRAWN BY: A.G.

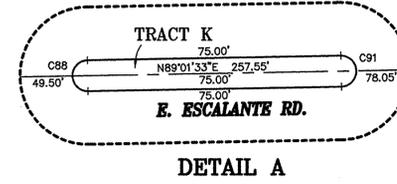
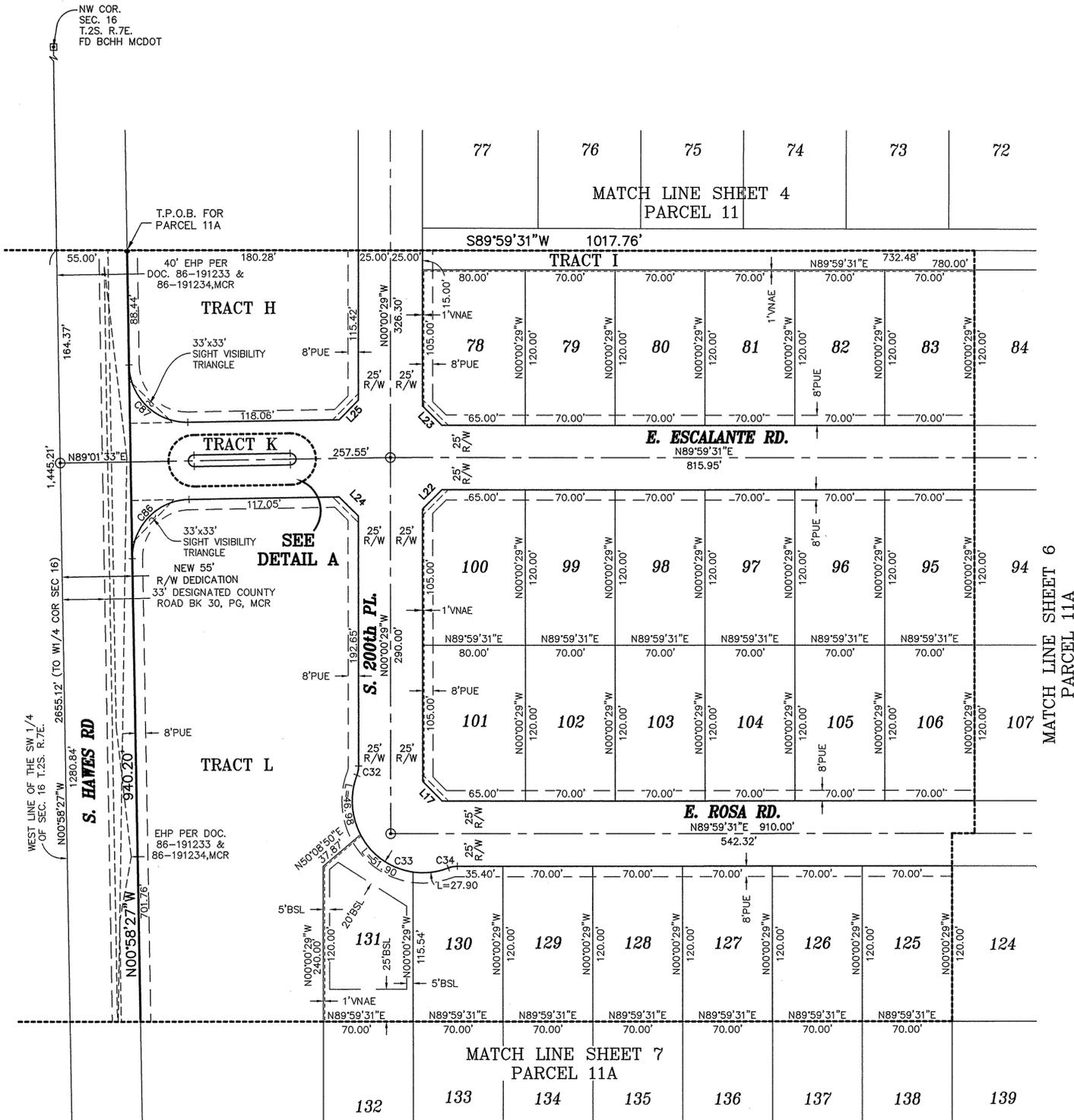


COUNTY RECORDER

PROJECT NO.  
01-2004-038

SHEET NO.  
**6 of 8**

01-2004-038

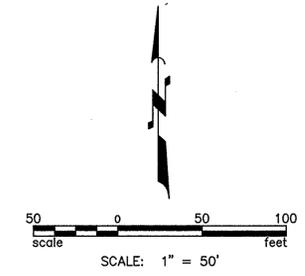
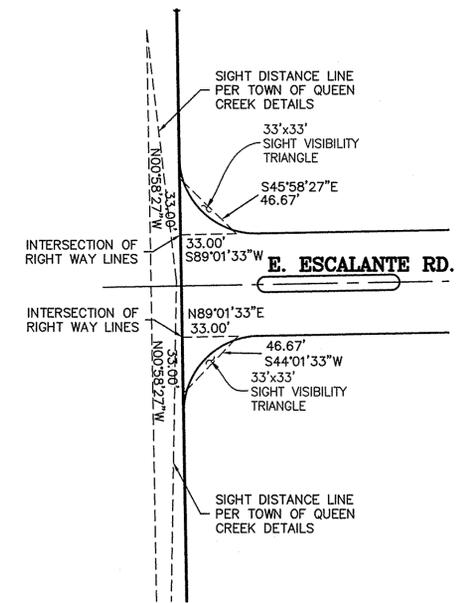


**CURVE TABLE**

CURVE	RADIUS	LENGTH	DELTA
C32	20.00'	7.34'	21°02'22"
C33	55.00'	126.79'	132°04'44"
C34	20.00'	7.34'	21°02'22"
C86	45.00'	70.69'	90°00'00"
C87	45.00'	70.69'	90°00'00"
C88	4.50'	14.14'	180°00'00"
C92	50.00'	97.43'	111°39'06"

**LINE TABLE**

LINE	LENGTH	BEARING
L17	21.21'	N45°00'29"W
L22	21.21'	N44°59'31"E
L23	21.21'	N45°00'29"W
L24	21.03'	N45°29'28"W
L25	21.39'	N44°30'32"E



**SIGHT VISIBILITY EASEMENTS**  
 © INTERSECTION OF S. HAWES RD AND E. ESCALANTE RD

**LEGEND**

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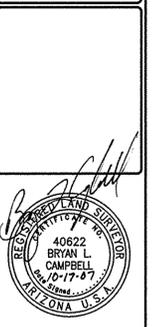
COUNTY RECORDER

REVISIONS


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**FINAL PLAT**  
 PROJECT: VICTORIA PAD PARCELS 11 & 11A  
 Town of Queen Creek

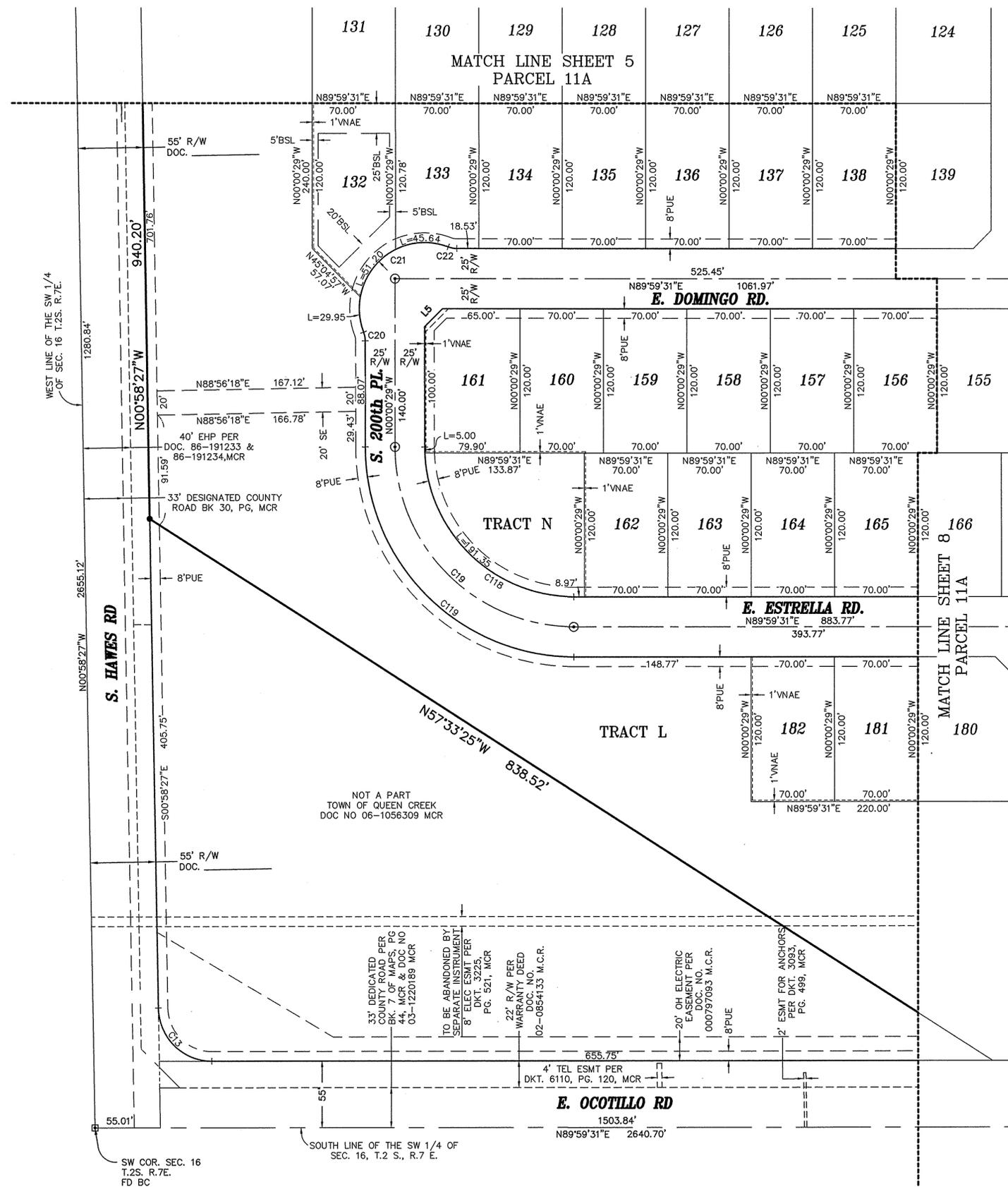
DESIGNER:  
 DRAWN BY: A.G.



PROJECT NO.  
 01-2004-038

SHEET NO.

5 of 8

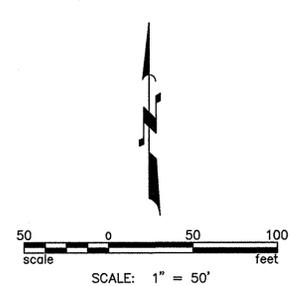


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CURVE	RADIUS	LENGTH	DELTA
C13	45.00'	69.93'	89°02'02"
C19	150.00'	235.62'	90°00'00"
C20	20.00'	7.34'	21°02'22"
C21	55.00'	126.79'	132°04'44"
C22	20.00'	7.34'	21°02'22"
C118	125.00'	196.35'	90°00'00"
C119	175.00'	274.89'	90°00'00"

LINE	LENGTH	BEARING
L5	21.21'	N44°59'31"E
L103	5.01'	N00°58'27"W
L104	24.24'	N45°29'28"W
L105	17.00'	N89°59'31"E
L106	33.00'	N00°58'27"W
L107	55.01'	N89°59'31"E



COUNTY RECORDER

REVISIONS:


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 4435 EAST HOLMES AVENUE  
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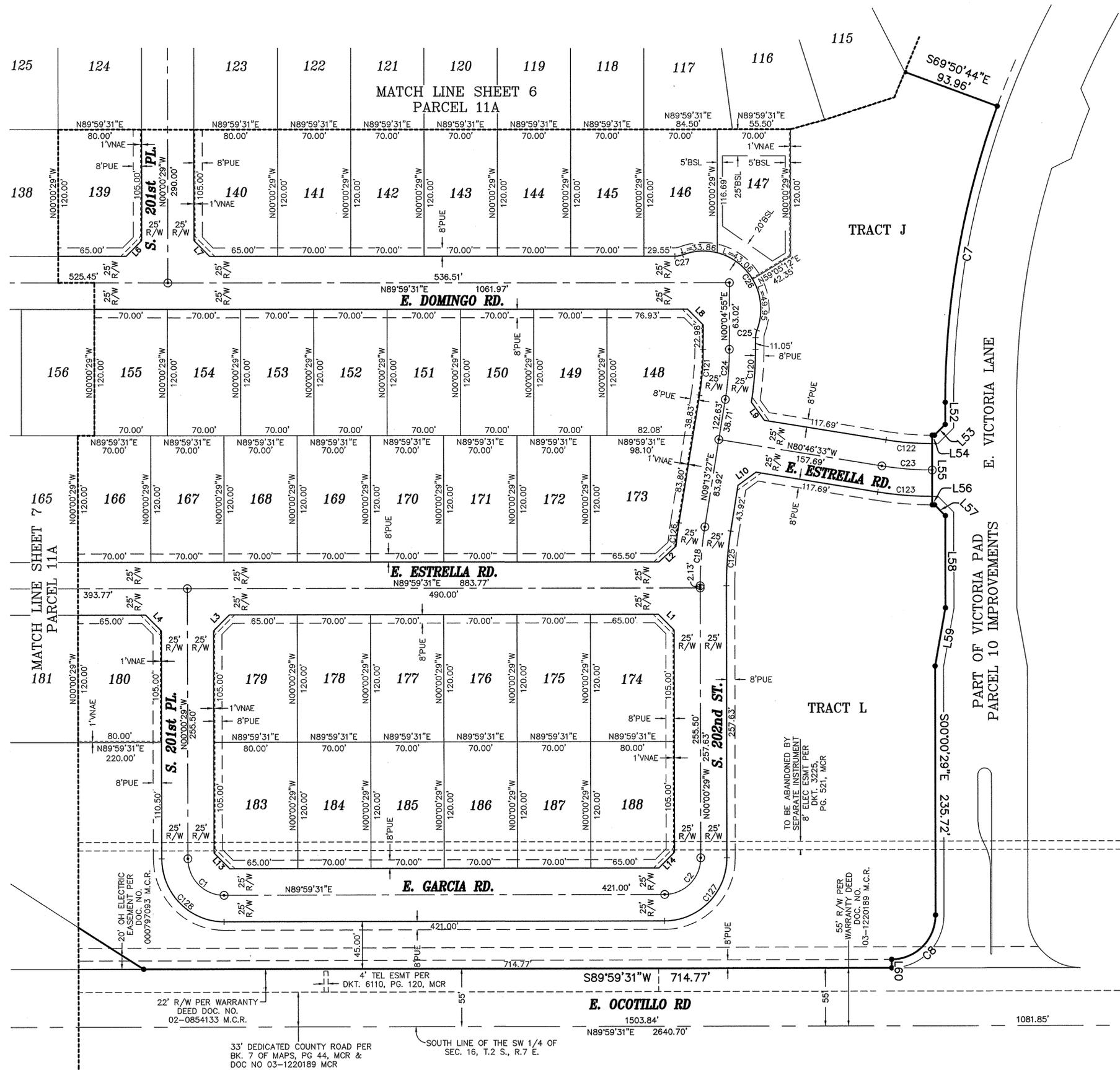
**FINAL PLAT**  
 PROJECT: **VICTORIA PAD PARCELS 11 & 11A**  
 Town of Queen Creek

DESIGNER:  
 DRAWN BY: A.G.



PROJECT NO.  
 01-2004-038

SHEET NO.  
**7 of 8**

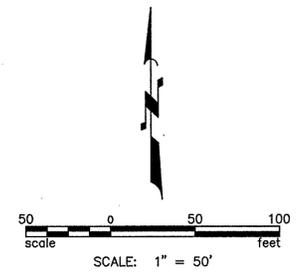


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CURVE TABLE			
CURVE	RADIUS	LENGTH	DELTA
C1	34.50'	54.19'	90°00'00"
C2	34.50'	54.19'	90°00'00"
C7	813.00'	286.10'	20°09'45"
C8	42.00'	65.97'	90°00'00"
C9	730.00'	50.01'	3°55'30"
C10	745.00'	225.16'	17°18'58"
C11	50.00'	78.54'	90°00'00"
C12	50.00'	78.54'	90°00'00"
C13	350.00'	56.40'	9°13'56"
C18	300.00'	48.34'	9°13'56"
C24	300.00'	47.87'	9°08'32"
C25	20.00'	7.34'	21°02'22"
C26	55.00'	126.87'	132°10'08"
C27	20.00'	7.34'	21°02'22"
C85	775.00'	759.29'	56°08'03"
C120	325.00'	50.57'	8°54'55"
C121	275.00'	43.88'	9°08'32"
C122	275.00'	44.31'	9°13'56"
C123	325.00'	52.37'	9°13'56"
C124	805.00'	329.74'	23°28'10"
C125	325.00'	52.37'	9°13'56"
C126	375.00'	22.54'	3°26'36"
C127	59.50'	93.46'	90°00'00"
C128	59.50'	93.46'	90°00'00"

LINE TABLE		
LINE	LENGTH	BEARING
L1	21.21'	N45°00'29"W
L2	22.06'	N47°18'48"E
L3	21.21'	N44°59'31"E
L4	21.21'	N45°00'29"W
L6	21.21'	N44°59'31"E
L7	21.21'	N45°00'29"W
L8	21.20'	N44°57'47"W
L9	21.22'	N35°46'50"W
L10	21.21'	N54°13'27"E
L11	21.21'	N45°00'29"W
L12	21.21'	N44°59'31"E
L13	21.21'	N45°00'29"W
L14	21.21'	N44°59'31"E
L42	50.52'	N89°59'31"E
L52	21.10'	S00°00'29"E
L53	14.59'	S44°59'31"W
L54	2.20'	S89°59'31"W
L55	66.00'	S00°00'29"E
L56	2.20'	S89°59'31"W
L57	14.59'	S45°00'29"E
L58	87.89'	S00°00'29"E
L59	55.90'	S10°17'48"W
L60	8.00'	S00°00'29"E
L81	20.75'	N23°22'59"E
L82	20.75'	N64°09'07"E
L102	60.00'	N66°32'19"W



REVISIONS


**ameco**  
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 MESA, ARIZONA 85206  
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 FAX (480) 830-3903

**FINAL PLAT**  
**VICTORIA PAD PARCELS 11 & 11A**  
 PROJECT: Victoria Pad  
 Town of Queen Creek

DESIGNER:  
 DRAWN BY: A.G.

**COUNTY RECORDER**

PROJECT NO.  
01-2004-038

SHEET NO.  
**8 of 8**

33' DEDICATED COUNTY ROAD PER BK. 7 OF MAPS, PG 44, MCR & DOC NO 03-1220189 MCR

SOUTH LINE OF THE SW 1/4 OF SEC. 16, T.2 S., R.7 E.

TO BE ABANDONED BY SEPARATE INSTRUMENT 8' ELEC ESMT PER DKT. 3225, PG. 521, MCR

55' R/W PER WARRANTY DEED 03-1220189 M.C.R.

S 1/4 COR. SEC. 16 T.2S. R.7E. FD COTTON SPINDLE



**MINUTES OF THE REGULAR SESSION MEETING OF THE QUEEN CREEK  
PLANNING AND ZONING COMMISSION**

**WHEN: WEDNESDAY, AUGUST 8, 2012**

**WHERE: TOWN HALL COUNCIL CHAMBERS**

**TIME: 7:00 p.m.**

Pursuant to A.R.S. 38-431.02, notice is hereby given to the members of the Queen Creek Planning and Zoning Commission and to the general public that the Queen Creek Planning and Zoning Commission will hold its Regular Meeting open to the general public on **WEDNESDAY, AUGUST 8, 2012 AT 7:00 P.M.** in the Town Hall Council Chambers located at 22350 South Ellsworth Road, Queen Creek, Arizona.

**AGENDA**

1. **Call to Order**
2. **Roll Call** (one or more members of the Commission may participate by telephone)

**PRESENT**

Chairman Steve Sossaman  
Vice-Chairman Steve Ingram  
Commissioner Debbie Reyes  
Commissioner Ryan Nichols  
Commissioner Kyle Robinson

**ABSENT**

Commissioner Alex Matheson

**TOWN STAFF PRESENT**

Wayne Balmer  
Dave Williams  
Laura Catanese

Planning Administrator  
Sr. Planner  
Sr. Administrative Assistant

3. **Public Comment:** There were no public comments.
4. **Consent Agenda:** Matters listed under the Consent Agenda are considered to be routine and will be enacted by one motion and one vote. Public Hearing items are designated with an asterisk (\*). Prior to consideration of the Consent Agenda, the Chairman will ask whether any member of the public wishes to remove a Public Hearing item for separate consideration. Members of the Commission and/or staff may remove any item for separate consideration.
  - a. Consideration and Possible Approval of the July 11, 2012 Work Study and Regular Session Minutes.

**Motion: Commissioner Ryan Nichols  
To approve the Consent Agenda, as presented.**

**2<sup>nd</sup> Vote:**     **Commissioner Debbie Reyes**  
**All ayes. Motion carried 5-0.**

## **PUBLIC HEARINGS AND POSSIBLE ACTION**

- 5. Public Hearing, Discussion and Possible Action on RZ12-034, Victoria Estates, Parcels 10, 11, and 11A,** a request by Ralph Pew of Pew and Lake, PLC to repeal Ordinance 466-09 and Resolution 813-09; and to rezone the property from R1-4 and R1-5 to R1-7 PAD and R1-9 PAD. The property is located at the intersection of Hawes and Ocotillo roads.

Dave Williams, Sr. Planner, began his presentation by stating that approval of this proposal essentially “rolls back time” to the 2004 zoning ordinance. The proposal consists of a request by Ralph Pew of Pew and Lake PLC to:

- Repeal Ordinance # 466-09 and Resolution 813-09
- Rezone property from R1-4 and R1-5 to R1-7 PAD and R1-9 PAD
- Terminate the existing recorded Development Agreement
- Revert Victoria Parcels 11 and 11A subdivision back to 2004 conditions/Preliminary Plats approved by prior Ordinances and Development Agreements.

In 2004 the Town Council approved preliminary plats for Victoria Parcels 10, 11 and 11A. Parcel 10 was approved and recorded as a Final Plat on November 27, 2007. Improvement Plans (Grading/Drainage, Landscaping, Paving, etc) for parcels 10, 11 and 11A were also approved and signed by Staff on November 27, 2007. Mr. Williams pointed out a typo in the commission presentation materials; the correct rezoning number is RZ12-034. In 2009, Taylor Morrison proposed the Active Adult Concept and moved away from the plans approved in 2004 by requesting zoning of these properties to a higher density (R1-4 and R1-5). Town Council approved the concept, zoning and preliminary plats with Ordinance #466-09 and Resolution 813-09. Since that time, Taylor Morrison has taken no action to move forward with approval of Final Plats or construction to implement that concept. No changes had been made by Taylor Morrison to the preliminary plats approved in 2009. The Final Plat approved in 2007 for Parcel 10 also remained unchanged in its larger lot configuration. Zoning on these proposed changes would revert from the current R1-4 and R1-5 to the previous R1-7PAD and R1-9 PAD, the underlying zoning districts prior to the changes in 2009.

The applicant is also requesting a lot coverage increase from 40 to 45%. The code already provides for an additional 5% bonus in lot coverage for single family homes with a qualifying front porch/courtyard of at least 120 square feet in size and a minimum of 8’ in depth. Staff does not support this request for further change, and would prefer the applicant utilize the option already provided for in the Zoning Ordinance.

### **QUESTIONS/COMMENTS FROM THE COMMISSION:**

There were no questions or comments from the Commission.

### **PUBLIC HEARING**

Chairman Sossaman opened the Public Hearing at 7:12 p.m.

Ralph Pew of Pew & Lake, PLC stated that this was a very simple, easy case that rolls back the zoning ordinance to 2004. Citizens concerned about higher density necessitated a Development Agreement in 2009. The request for the lot coverage increase will be withdrawn as it is provided for in the current Town Zoning Ordinance.

Chairman Sossaman closed the Public Hearing at 7:14 p.m.

**Motion:** Vice-Chairman Ingram  
To approve RZ12-034, Victoria Estates, Parcels 10, 11, and 11A, as proposed by staff.

**2<sup>nd</sup> Vote:** Commissioner Nichols  
All ayes. Motion carried 5-0.

**ADMINISTRATIVE ITEMS**

- 6. **Review** Of next month's agenda items.
- 7. **Report** of Town Council Action.
- 8. **Communication** from members of the Commission and Staff. *The Commission may not propose, discuss, deliberate or take action on any matter in the "summary" unless the specific matter is properly noticed on the Regular Session agenda.*
- 9. **Adjournment**

**Motion:** Commissioner Debbie Reyes  
To adjourn.

**2<sup>nd</sup> Vote:** Commissioner Kyle Robinson  
All ayes. Motion carried 5-0.

The meeting adjourned at 7:15 p.m.

**PLANNING AND ZONING COMMISSION**

By: \_\_\_\_\_  
Chairman Sossaman

ATTEST:

\_\_\_\_\_  
Laura Catanese, Sr. Administrative Assistant

\*\*\*\*\*

I, Laura Catanese, do hereby certify that, to the best of my knowledge and belief, the foregoing Minutes are a true and correct copy of the Minutes of the August 8, 2012 Regular Session Meeting of the Planning and Zoning Commission. I further certify that the meeting was duly called and that a quorum was present.

Dated this 9<sup>th</sup> day of August 2012.

These are DRAFT minutes, which have not yet been approved.

Passed and Approved this day of \_\_/\_\_/\_\_

Hi Dave;

I just received notice of rezoning of Victoria Estates. We live on Arroyo Court right across the street and already find it difficult to get out of our street, especially during peak traffic hours. I feel that rezoning the Victoria parcels to smaller lots would only make this situation worse and would greatly appreciate the zoning staying the same.

Thank you,

Wendy Davis  
19978 E. Arroyo Court  
Queen Creek, AZ 85142

Wendy,

Thank you very much for your comments. I will include them as part of the case file. What the developer is proposing is to revert back to the larger lots which were approved by the Town Council prior to the higher density adult living concept a few years ago. The standard lot sizes from the prior approval are 65 and 80 foot wide lots. Their request now is only to allow deviation from the prior plan for an increase in lot coverage in addition to deleting the requirement for adult living.

Please let me know if you have any more questions or comments.

Thank you,

**David Williams, MPA** | Senior Planner, Development Services Department | Town of Queen Creek | phone:480-358-3089 | fax: 480-358-3001 | e-mail: [dave.williams@queencreek.org](mailto:dave.williams@queencreek.org) | 22350 S. Ellsworth Road, Queen Creek, AZ 85142 | [www.queencreek.org](http://www.queencreek.org)

Thanks for the clarification! Sounds a lot better!  
Wendy

## **FACEBOOK PUBLIC COMMENTS**

[Town of Queen Creek \(Official\)](#) shared a [link](#).

[June 27](#)

We have another Planning & Zoning case we'd like your comments on: Meritage Homes is proposing revision to the previously approved Victoria Parcels 10/11/11A subdivision, located at Hawes & Ocotillo roads. The proposal requests to delete th...See More

<http://bit.ly/Mc5Sxi>

Like · · [Share](#)

- [2 people](#) like this.

- 



- 

[Robert Garduño](#) Perfect! I hope it changes back to larger lot sizes and the builder goes back to their original design. The town needs to stay focus on their vision they wanted the future of the town to look like back in the days.

[June 27 at 10:35am](#) via [mobile](#) · Like · [2](#)



- 

[David Coleman](#) Look like the town back in the days... Yea thats not going to happen do to the amount of people moving out to queen creek that dont like horses or the farm feeling.. I grew up out there and it will never be the same. No matter what the town tries to do.

[June 27 at 10:39am](#) · Like



- 

[Grande Papa](#) I can't tell by the .pdf if they are going to be larger lots like 1/2 acre or bigger. I hope so. Not cheapy houses like Remington Heights. More like Roman Estates or larger... Also, will they widen Hawes??

[June 27 at 10:56am](#) · [Edited](#) · Like



- 

[Kristy Dennison Fife](#) I'm all for bigger size lots (at least .25 or larger). The smaller cheapy looking subdivisions really brings down the community or town and makes house values go down. Bring the integrity of Queen Creek back by

improving the sizes of the community lots. We need to have more Roman Estates type subdivisions in Queen Creek. No more cookie cutter homes and require at least 1/2 of the lots to have grass in front.

[June 27 at 12:02pm](#) · Like



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[Linda Gauci Moyer](#) Meritage was voted by our HOA to complete Montelena and was told by Quern Creek that their plans would need to be modified for approval. They backed out because it was too costly to change their plans. Now they want to build on another spot. Did they modify their plans?

[June 27 at 12:33pm](#) via [mobile](#) · Like



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[Town of Queen Creek \(Official\)](#) Hello [Linda](#)! Thanks for your inquiry. The Victoria subdivision is different than Montelena in lot size and design. All standard plans go through intensive review to ensure that they meet the Town standards for architecture, design and community fit. The Meritage models will be undergoing a similar review for compliance as they go through the process with the Planning and Zoning Commission and then forwarded to the Town Council for their approval.

[June 27 at 5:12pm](#) · Like



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[Robert Garduño](#) I like how the zoning and planning committee posts information on this Facebook Page. Keep the information coming and keep up the good work.

[June 27 at 5:18pm](#) via [mobile](#) · Like · [1](#)



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[Grande Papa](#) @ Robert, I agree. I would like to see a little more details in layman's terms though...

Presenting Department:

Development Services



TAB N

**TO: HONORABLE MAYOR AND TOWN COUNCIL**

**THROUGH: JOHN KROSS, ICMA-CPM  
TOWN MANAGER**

**FROM: KEVIN JOHNSON  
SR MANAGEMENT ASSISTANT**

**RE: DISCUSSION AND POSSIBLE ACTION ON SENATE BILL 1598,  
"REGULATORY BILL OF RIGHTS" OVERVIEW**

**DATE: SEPTEMBER 5, 2012**

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**Discussion:**

During the 2011 Arizona Legislature session, Senate Bill 1598 established a series of procedures that municipalities and counties must perform while conducting inspections and processing applications for permits, plan reviews, and other forms of approval. Collectively, these new requirements are known as the "Regulatory Bill of Rights". In addition, the Bill contains a wide range of supplemental provisions that create additional requirements for General Plans, Public Works projects, and electronic directories of documents. The effective date of the Bill was July, 28, 2011, with certain key provisions taking effect on 7/1/2012 (i.e. Inspection requirements) and 1/1/2013 (i.e. application processing requirements).

The presentation to Council at the 9/5/2012 Regular Session will provide a brief overview of the key provisions of the Bill and staff's actions to comply. The presentation also addresses some of the Bill's unintended, potential, negative impacts to the development community, which include:

- Less flexibility to accommodate special needs for complex projects
- Reduced quality of customer service due to increased submittal and tracking requirements
- Additional bureaucracy in an already complex process

In addition, the Bill may be a catalyst for a number of potential positive impacts that staff is hoping to achieve, namely:

- Improved project tracking
- Improved clarity of project requirements

- Improved internal and external communication
- Better recognition for customer rights
- Better understanding of staff capacity and turnaround times.

While compliance to the Bill's requirements is a priority, staff is utilizing the examination of our processes as an opportunity to identify areas for improvement and to better evaluate and understand our capacity and resources constraints. As a consequence, staff will be developing a series of recommendations to improve service delivery.

**Fiscal Impact:**

Compliance to SB1598 is requiring a significant amount of staff time. In addition, the new requirements for processing applications for permits, plan reviews, and other forms of approval will add time to the review process. Staff hopes to mitigate this additional time with process improvements. However, if the end review time is determined to be unacceptable, investments in technology and supplementing staff capacity may be required.

**Attachments:**

None