



AMENDED AGENDA
Regular Session
Queen Creek Town Council
Community Chambers, 20727 E. Civic Parkway
November 3, 2021
6:30 PM

Following the recommendations from the Center for Diseases Control and Prevention (CDC), the Arizona Department of Health Services, and the Governor’s Executive Orders, to help slow the spread of COVID-19, attendance at Town meetings may be limited, including members of the Town Council and staff, to maintain appropriate physical distancing as determined by the Town. Some members of the Town Council and staff may attend electronically.

The public can continue to watch the meeting live streamed at [QueenCreekAZ.gov/Watch Meetings](https://www.queen-creek-az.gov/WatchMeetings) by selecting “video” next to the applicable meeting (once the meeting begins) or by visiting the Town’s Ustream account at <https://video.ibm.com/councilmeeting> .

Public comment: in addition to attending in-person, there are two options for residents to submit public comment for the November 3 Town Council meeting:

- *Email: submit a comment to PublicComment@QueenCreekAZ.gov. Every email received will be entered into the official record. Please include your name, address, comment and note if your comment is for call to the public.*
- *WebEx Online Meeting: Using a computer, tablet or smartphone, log into the meeting through WebEx (LINK) and provide a public comment. To participate, register with your name, address and comment. View detailed at [QueenCreekAZ.gov/Watch Meetings](https://www.queen-creek-az.gov/WatchMeetings).*

Comments without identifying name and address will not be read or submitted as part of the written record.

Pursuant to A.R.S. §§ 38-431.02 and 38-431.03, notice is hereby given to the members of the Town Council and the general public that, at this Regular Meeting, the Town Council may vote at any time during the Council Meeting to go into Executive Session, which will not be open to the public, for legal advice and discussion with the Town Attorney(s) for legal advice on any item listed on the following agenda, pursuant to A.R.S. § 38-431.03(A)(3).

The Mayor or other presiding officer at the meeting may change the order of Agenda Items and/or take items on the Agenda in an order they determine is appropriate.

1. Call to Order:

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2. Roll Call: (Members of the Town Council may attend electronically and/or telephonically)

3. Pledge of Allegiance:

4. Invocation/Moment of Silence:

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

A. American Council of Engineering Honor Award for the Rittenhouse Road Project

B. Proclamation: Small Business Saturday

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; CAG. 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. Committee and outside agency reports (only as scheduled)

1. None.

7. Public Comments: *Members of the public may address the Town Council on items not on the printed agenda and during Public Hearings. Please address the Town Council by completing a Request to Speak Card and turn it into the Town Clerk, sending an email to PublicComment@QueenCreekAZ.gov by 6:30 p.m. on November 3, 2021 (limited to 500 words – identify your name, address and whether you wish your comment to be read at the meeting or just submitted as part of the written record). The Town Council may not discuss or take action on any issue raised during public comment until a later meeting. Speakers are limited to three (3) minutes each. Only one comment (either by email or by WebEx) per person per Agenda Item will be allowed and comments without identifying name and address will not be read or submitted as part of the written record.*

8. Consent Agenda: *Matters listed under the Consent Agenda are considered to be routine and will be enacted by one motion and one vote. Members of the Town Council and or staff may comment on any item without removing it from the Consent Agenda or remove any item for separate discussion and consideration.*

A. Consideration and possible approval of the October 20, 2021 Regular Session Minutes. -
New Agenda Item

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- B. Consideration and possible approval of Expenditures over \$25,000. (FY 2021-22 Budgeted Items)
 - 1. Industrial Service and Supply - Water Treatment Equipment: \$100,000 (Utilities)
 - 2. Gammage & Burnham - Legal Services: \$50,000 (Utilities)
 - 3. CDWG - Annual Maintenance Agreement for Adobe and Microsoft License Agreements, Miscellaneous Minor Equipment Purchases: \$175,000 (Workforce & Technology)
 - 4. Compunet - Microsoft O360: \$75,000 (Workforce & Technology)
 - 5. Kustom Signals, Inc. - Radar, Lidar, Traffic Data Collection Kits, Feedback Trailers, Accessories and Related Equipment: \$50,000 (Police - Funds provided by a Federal Grant) - *Revised Agenda Language*
 - 6. GOAZ Motorcycles - BMW R 1250 RT-P Police Motorcycle: \$40,000 (Police - Funds provided by an Arizona State Grant) - *Revised Agenda Language*
- C. Consideration and possible approval of the appointment of Leah Gumm to the Board of Adjustment.
- D. Consideration and possible approval of FY 2021-22 budget amendments totaling a net amount of \$4,565,404 in expense reallocations including \$1,968,339 from contingencies.
- E. Consideration and possible approval of a Third Amendment to the Professional Services Contract with Southwest Groundwater, a Division of Matrix New World for Physical Availability Demonstration Services increasing the total contract amount by \$30,000 for a total amended contract not to exceed \$96,610. (FY 2021-22 Budgeted Item)
- F. Consideration and possible approval of a 3-year purchase agreement with Cartegraph Systems, LLC in an amount not to exceed \$370,750 for Cartegraph OMS and See Click Fix for license subscription fees and software support. (FY 2021-22 Budget Item)
- G. Consideration and possible approval of an Intergovernmental Agreement with the City of Mesa for Laboratory Services related to the Queen Creek Police Department not to exceed \$125,000. (FY 2021-22 Budgeted Item)
- H. Consideration and possible approval of Resolution 1427-21 modifying Assessment No. 20.01.01.01.03 for Improvement District No. 001 of the Town of Queen Creek, Arizona.

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- I. Consideration and possible approval of Resolution 1428-21, related to the financing of utility infrastructure projects, authorizing (1) The execution and delivery of a purchase agreement, a trust agreement and a continuing covenant agreement, as well as agreements with our financial advisor and special counsel; (2) Approving the sale, execution, and delivery of \$85M of subordinate lien excise tax and state shared revenue obligations, series 2021, evidencing a proportionate interest of the owners thereof in such purchase agreement; (3) Delegating the determination of certain terms of such obligations and matters related thereto to the Manager and Chief Financial Officer of the Town and authorizing the taking of all other actions necessary to the consummation of the transactions contemplated by this Resolution.
 - J. Consideration and possible approval of Annexation Ordinance 768-21 annexing certain real property to the Town of Queen Creek pursuant to A.R.S. §9-471(N) adding right-of-way to the existing Town limits, generally described as Ocotillo Road just west of 228th Street to Meridian Road, located in Section 24, Township 2 South, Range 7 East, Maricopa County.
 - K. Consideration and possible approval of Ordinance 769-21 accepting the dedication of certain real property from Queen Creek Unified School District No. 95 for use as a public right of way, generally described as Queen Creek Road from Ellsworth Road to Crismon Road.
- 9. Public Hearing Consent Agenda:** *Matters listed under the Public Hearing Consent Agenda are considered to be routine and will be enacted by one motion and one vote. Please address the Town Council on any items on the Public Hearing Consent Agenda by completing a Request to Speak Card and turn it into the Town Clerk, sending an email to PublicComment@QueenCreekAZ.gov (limited to 500 words – identify your name, address and whether you wish your comment to be read at the meeting or just submitted as part of the written record) or by WebEx (instructions at QueenCreekAZ.gov/WatchMeetings). Speakers are limited to three (3) minutes each. Only one comment (either by email or by WebEx) per person per Agenda Item will be allowed and comments without identifying name and address will not be read or submitted as part of the written record.*
- A. None.
- 10. Public Hearings:** *If you wish to speak to the Town Council on any of the items listed as a Public Hearing, please address the Town Council by sending an email to PublicComment@QueenCreekAZ.gov (limited to 500 words – identify your name, address and whether you wish your comment to be read at the meeting or just submitted as part of the written record) or by WebEx (instructions at QueenCreekAZ.gov/WatchMeetings). Speakers are limited to three (3) minutes each. Only one comment (either by email or by*

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WebEx) per person per Agenda Item will be allowed and comments without identifying name and address will not be read or submitted as part of the written record.

A. Public hearing for the Town's biennial development impact fee audit for fiscal years 2018-19 and 2019-20 and accept the audit report.

11. Items for Discussion: *These items are for Town Council discussion only and no action will be taken. In general, no public comment will be taken.*

A. Presentation: Smart Roadway Access Management: The Benefits and Impacts

12. Final Action: *If you wish to speak to the Town Council on any of the items listed under Final Action Please address the Town Council by completing a Request to Speak Card and turn it into the Town Clerk, sending an email to PublicComment@QueenCreekAZ.gov (limited to 500 words – identify your name, address and whether you wish your comment to be read at the meeting or just submitted as part of the written record) or by WebEx (instructions at QueenCreekAZ.gov/WatchMeetings). Speakers are limited to three (3) minutes each. Only one comment (either by email or by WebEx) per person per Agenda Item will be allowed and comments without identifying name and address will not be read or submitted as part of the written record.*

A. None.

13. Adjournment

Pursuant to ARS 38-431.02 notice is hereby given to the members of the Queen Creek Town Council and to general public that the Queen Creek Town Council will hold a meeting open to the public as set forth above.

I, Maria Gonzalez, do hereby certify that I caused to be posted this 2nd day of November the Agenda for the November 3, 2021 Regular and Possible Executive Session of the Queen Creek Town Council in the following places: 1) Queen Creek Town Hall; 2) Queen Creek Library; 3) Queen Creek Community Center bulletin board.

Maria E. Gonzalez, CMC

The Town of Queen Creek encourages the participation of disabled individuals in the services, activities, and programs provided by the Town. Individuals with disabilities who require reasonable accommodations in order to participate should contact the Town Clerk's office at (480) 358-3000.



Requesting Department

Town Clerk

TO: HONORABLE MAYOR AND TOWN COUNCIL
THROUGH: JOHN KROSS, ICMA-CM, TOWN MANAGER
FROM: MARIA GONZALEZ, TOWN CLERK
RE: CONSIDERATION AND POSSIBLE APPROVAL OF THE OCTOBER 20, 2021
REGULAR SESSION MINUTES.
DATE: November 3, 2021

Staff Recommendation:

Approve the draft minutes as presented.

Proposed Motion:

To approve the draft minutes as presented.

Alternatives:

Council can request revisions to be made to the draft minutes and approve with revisions or continue to a future meeting.

Attachment(s):

1. Minutes 10-20-21



Minutes
Regular Session
Queen Creek Town Council
Community Chambers, 20727 E. Civic Parkway
October 20, 2021
6:30 PM

1. Call to Order:

The meeting was called to order at 6:30 p.m.

2. Roll Call: (Members of the Town Council may attend electronically and/or telephonically)

| | | |
|----------------|----------------|---------|
| Gail Barney | Mayor | Present |
| Dawn Oliphant | Vice Mayor | Present |
| Robin Benning | Council Member | Present |
| Jeff Brown | Council Member | Present |
| Leah Martineau | Council Member | Present |
| Emilena Turley | Council Member | Present |
| Julia Wheatley | Council Member | Present |

3. Pledge of Allegiance:

Led by Mayor Barney.

4. Invocation/Moment of Silence:

A moment of silence was held for first responders and men and women in uniform that are keeping our country safe.

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

Town Manager John Kross formally introduced Dave Lipinski as the new CIP Director for the Town.

Amber Gough with the Communications, Marketing and Recreation Department presented the three awards received by the department for their community outreach efforts:

- 3CMA Silver Circle Award for the Contactless QC Recycles Drop-off Event
- The Public Relation Society of America (PRSA) Award of Merit for the Law Enforcement Study
- The PRSA Award of Merit for the Hay QC Campaign (Halloween themed activity)

Mayor Barney commended staff for their work on these projects and for all they do for the Town.

Attachment: Minutes 10-20-21 (Minutes)

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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; CAG. 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.

See attached.

- B. Committee and outside agency reports (only as scheduled)

1. Parks and Recreation Advisory Committee (PRAC) - October 12, 2021

Dru Alberti, Vice Chair of PRAC presented the report. The Committee discussed updates to the dog park policy; new recreation management software testing; and Queen Creek Little League baseball season highlights.

- 7. Public Comments:** *Members of the public may address the Town Council on items not on the printed agenda and during Public Hearings. Please address the Town Council by completing a Request to Speak Card and turn it into the Town Clerk, sending an email to PublicComment@QueenCreekAZ.gov by 6:30 p.m. on October 20, 2021 (limited to 500 words – identify your name, address and whether you wish your comment to be read at the meeting or just submitted as part of the written record). The Town Council may not discuss or take action on any issue raised during public comment until a later meeting. Speakers are limited to three (3) minutes each. Only one comment (either by email or by WebEx) per person per Agenda Item will be allowed and comments without identifying name and address will not be read or submitted as part of the written record.*

None.

- 8. Consent Agenda:** *Matters listed under the Consent Agenda are considered to be routine and will be enacted by one motion and one vote. Members of the Town Council and or staff may comment on any item without removing it from the Consent Agenda or remove any item for separate discussion and consideration.*

| | |
|------------------|---------------------------------------------------------------|
| MOTION: | To approve the consent Agenda |
| RESULT: | Approved unanimously (7-0) |
| MOVER: | Julia Wheatley, Council Member |
| SECONDER: | Dawn Oliphant, Vice Mayor |
| AYES: | Barney, Oliphant, Benning, Brown, Martineau, Turley, Wheatley |

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- A. Consideration and possible approval of the October 6, 2021 Regular Session Minutes.
 - B. Consideration and possible approval of Expenditures Over \$25,000. (FY 21/22 Budgeted Items)
 1. L.N. Curtis & Sons - Emergency Allied Equipment for Replacement Fire Apparatus E412: \$70,000 (Fire & Medical)
 2. Contractors West, Econolite, Wesco DBA Brown, Wesco - Traffic Signal Installation and all project related items: \$700,000 (Public Works-Traffic)
 3. Mallory Safety & Supply LLC - Gas Masks, Canisters, and related equipment: \$45,000 (Police)
 4. Universal Police Supply - Ballistic Shields and Blankets: \$30,000 (Police)
 - C. Consideration and possible approval of Annexation Ordinance 766-21, annexing certain real property to the Town of Queen Creek Pursuant to A.R.S. §9-471(O) adding right-of-way to the existing Town limits, generally described as Riggs Road from Power Road to Hawes Road located in Sections 29, 30, 31, and 32, Township 2 South, Range 7 East, Maricopa County.
- 9. Public Hearing Consent Agenda:** *Matters listed under the Public Hearing Consent Agenda are considered to be routine and will be enacted by one motion and one vote. Please address the Town Council on any items on the Public Hearing Consent Agenda by completing a Request to Speak Card and turn it into the Town Clerk, sending an email to PublicComment@QueenCreekAZ.gov (limited to 500 words – identify your name, address and whether you wish your comment to be read at the meeting or just submitted as part of the written record) or by WebEx (instructions at QueenCreekAZ.gov/WatchMeetings). Speakers are limited to three (3) minutes each. Only one comment (either by email or by WebEx) per person per Agenda Item will be allowed and comments without identifying name and address will not be read or submitted as part of the written record.*

| | |
|------------------|---------------------------------------------------------------|
| MOTION: | To approve the Public Hearing Consent Agenda |
| RESULT: | Approved unanimously (7-0) |
| MOVER: | Robin Benning, Council Member |
| SECONDER: | Julia Wheatley, Council Member |
| AYES: | Barney, Oliphant, Benning, Brown, Martineau, Turley, Wheatley |

Mayor Barney opened the Public Hearing. There were no comments from the public or Council and the Public Hearing was closed.

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- A. Public Hearing and possible action on Ordinance 767-21, Case P21-0162 Strategic Industrial Properties Rezone, a request by Daryl Mechem (Strategic Industrial Properties) to rezone a 10 acre (approx.) site from R1-43 to EMP-A, located at the southwest corner of Germann Road and 196th Street.
- B. Public Hearing and possible approval of a new Series 007 Beer & Wine Bar Liquor License application submitted by Randall Dean Waldref on behalf of BruCo, 7529 S. Power Road, Queen Creek, AZ 85142.
- C. Public Hearing and possible approval of a new Series 010 Beer & Wine Store Liquor License application submitted by Jeffrey Craig Miller on behalf of Aldi #153. 20229 S. Ellsworth Road, Queen Creek, AZ 85142.

10. Public Hearings: *If you wish to speak to the Town Council on any of the items listed as a Public Hearing, please address the Town Council by sending an email to PublicComment@QueenCreekAZ.gov (limited to 500 words – identify your name, address and whether you wish your comment to be read at the meeting or just submitted as part of the written record) or by WebEx (instructions at [QueenCreekAZ.gov/WatchMeetings](https://www.queen-creek.gov/WatchMeetings)). Speakers are limited to three (3) minutes each. Only one comment (either by email or by WebEx) per person per Agenda Item will be allowed and comments without identifying name and address will not be read or submitted as part of the written record.*

A. None.

11. Items for Discussion: *These items are for Town Council discussion only and no action will be taken. In general, no public comment will be taken.*

A. Recycling Presentation

Mohamed Youssef, Interim Public Works Director, introduced Environmental Programs Manager Ramona Simpson who delivered the Recycling Presentation.

Ms. Simpson showed the breakdown of residential curbside recycling by material and by level of contamination. She said we have a low contamination rate of 6%. She explained the audit process and said that residents are doing a good job of keeping our recycling material clean, which results in a higher market value for material for Queen Creek. She said the signage on the bins provided by the Town at the recycle center helps in this regard.

Ms. Simpson outlined recycling revenue share by fiscal year. Cardboard and paper make up a lot of the recycled material in Queen Creek, which are both a high commodity value at this time. We revenue share with Waste Connections and cost share to find the best market value for commodities to keep our rates low. She pointed out that Queen Creek is not in the negative and we do not have to pay for process recycling. She said this is very unusual for cities right now in the Phoenix area and it is attributed to our partnerships, outreach and our residents.

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Ms. Simpson outlined key recycling challenges:

- China Ban on international recycling disposal. Waste Connections has transitioned to mainly domestic markets (not China) therefore, these challenges have not negatively impacted Queen Creek.
- Increased contamination during Covid influenced the market nationwide.
- Glass makes up 18% of the material in Queen Creek and it is expensive to process and transport. Glass shards can also contaminate other material.

Council Member Brown asked about contamination rates and at what point would a load be rejected. Ms. Simpson explained that we are able to perform audits so they will not reject our loads and based on our contract we can keep the trash rate low.

Council had discussion as to why Queen Creek might have a higher amount of glass recycling than surrounding communities. Ms. Simpson said our residents may purchase more glass material, they may be switching from plastic to glass and they are also good at following the recycling rules. Ms. Simpson said that some communities have removed glass but Queen Creek has not made any changes at this time in the materials we accept. Ms. Simpson said we would review and research the glass issue closely with Waste Connections. She noted that tonight's presentation did not include commercial glass from bars or restaurants and said Waste Connections has commercial containers.

Town Manager John Kross asked what the national rate for glass is. Mr. Youseff said the US and North America percentage is 4.2% and said that Queen Creek is higher than the national average.

Council Member Benning asked what our waste diversion rate is. Ms. Simpson said it is based on the trash and recycling cart and how much we divert to recycling by weight. The Queen Creek rate is between 19-20% total by weight.

Council also discussed drop off options for plastic bags. They said they hope there will be a way to recycle and re-use glass in the future and keep it out of the landfill. Council was impressed with our low contamination rate and appreciated the wraps at the recycle center to inform residents.

B. Smart City Presentation

Assistant Town Manager Bruce Gardner outlined the Queen Creek vision for a smart city to improve efficiency and enhance the quality of life for residents with the use of technology. Mr. Gardner defined the three elements of a smart city: 1) connectivity; 2) generating and utilizing useful data; 3) public and private involvement. Mr. Gardner provided real time examples of smart city technology used in Queen Creek in regards to streetlights, water sensor meters and regional programs.

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Mohamed Youssef, Interim Public Works Director presented the ten benefits of smart cities and explained how technology can provide better service to residents. He addressed transportation problems in fast growing communities and said that smart technology using our Intelligent Transportation Software (ITS) traffic software specifically helped traffic flow in Queen Creek. The software uses data driven decision making that can make efficient real time adjustments to the signal timing.

Mr. Youssef discussed other options for software to make improvements in trails, street light sensors for pedestrians, bulk collection streamlining, LED lighting and improved infrastructure programs with the use of fiber management systems and 5G small cell deployment.

Mike Black, IT Division Manager, discussed increased digital access including cellular connectivity and capacity. He discussed economic development opportunities; regional partnerships; and programs that enhance citizen and government engagement in areas of safety, permitting and outreach. Mr. Black also addressed technology used by police, fire and emergency operations to increase safety.

Council asked Mr. Black to comment on security and collection of personal data. Mr. Black said that the Town does not save or collect personal data. Mr. Black said that security is paramount and we take it very seriously. We protect data with the use of firewalls and various tools to maintain security.

C. Update on Alternative Expenditure Limitation - Permanent Base Adjustment

Town Manager Kross said this is a follow up to the August meeting for direction and further discussion on the option for the Permanent Base Adjustment. He said the Home Rule Option is slated to expire next year.

Deputy Finance Director Dan Olsen provided background on local options that exist to override the expenditure limit. He said the Town has been operating under Home Rule since incorporation. Tonight's presentation will focus on the Permanent Base Adjustment, which establishes a new permanent expenditure base that increases annually based on population and inflation. It requires a one-time election, unlike Home Rule, which requires voter approval every four years.

Mr. Olsen said that staff has been working on preliminary budget estimates using a 30-year projection based on our current high growth needs and long-term operating needs. Other considerations include our water service area and the water rights strategies. Mr. Olsen provided estimates of the current budget and the budget at 30-year build out in regards to population, operating budget expenses, CIP expenses and debt service. He said staff looked at other cities that are already at build-out to help with estimates. Mr. Olsen addressed the allowed exclusions, which are spending that is not subject to the expenditure limits and how to apply exclusions to calculate the expenditure limits each year.

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Mr. Olsen gave a brief overview of the expenditure calculation that voters will see on the ballot. He explained the difference between the budget and the expenditure limit, and the need to educate the public on this without advocating for a ballot item. Staff must provide facts only and we are limited on what we can include in the publicity pamphlet that is mailed to voters. The publicity pamphlet does allow arguments “for” and “against” ballot items and he said that Council is allowed to submit an argument; but staff cannot do so.

Town Attorney Scott Holcomb provided further explanation and said that an elected official can voice their opinion but cannot use staff funds or resources. Council can do it on their own or individually and express positions for or against an item and they can use their title. Mr. Holcomb said that staff has to be completely neutral and provide facts only. He said that open meeting law must be adhered to at all times.

Mr. Olsen outlined the next steps involved in the process:

- Final decision on Home Rule vs Permanent Base by Town Council – December 1, 2021
- Call of Election by Resolution - Mar 16, 2022 (no public hearing required)
- Auditor General Review of the calculations and Summary Analysis
- Prepare Publicity Pamphlet with analysis and arguments for and against; receive final approval by Auditor General
- Send back to Auditor General for approval
- Send publicity pamphlets to printer; early ballots mailed to voters
- Primary Election – Aug 2, 2022

Mr. Olson said that staff would complete the estimates and present the final numbers to Town Council for a decision at an upcoming meeting.

Council asked who determines the population number for the Town. Mr. Olson said it comes from a state agency who does the population estimates each year using census information.

D. Police Department Update

Police Chief Randy Brice provided an update on monthly activities. He outlined ongoing progress regarding the hiring process of police officers and professional staff and the RMS system.

He reviewed the foundation of the QC Police Department and how it relates to the training programs and team building exercises being conducted. He discussed the vision, mission and values of the department, which focus on direction and perspective; community policing; and decision making models.

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12. Final Action: *If you wish to speak to the Town Council on any of the items listed under Final Action Please address the Town Council by completing a Request to Speak Card and turn it into the Town Clerk, sending an email to PublicComment@QueenCreekAZ.gov (limited to 500 words – identify your name, address and whether you wish your comment to be read at the meeting or just submitted as part of the written record) or by WebEx (instructions at QueenCreekAZ.gov/WatchMeetings). Speakers are limited to three (3) minutes each. Only one comment (either by email or by WebEx) per person per Agenda Item will be allowed and comments without identifying name and address will not be read or submitted as part of the written record.*

A. None.

13. Adjournment

The Regular Session adjourned at 8:19 p.m.

TOWN OF QUEEN CREEK

Gail Barney, Mayor

ATTEST:

Maria E. Gonzalez, Town Clerk

I, Maria E. Gonzalez, do hereby certify that to the best of my knowledge and belief, the foregoing Minutes are a true and correct copy of the Regular Session Minutes of the October 20, 2021 Regular Session of the Queen Creek Town Council. I further certify that the meeting was duly called and that a quorum was present.

Passed and approved on:

Attachment: Minutes 10-20-21 (Minutes)

Council Committee Reports

- 10/07 – PHX East Valley Partnership Board of Directors Meeting (Benning)
- 10/12 – Chamber Network QC Luncheon (Oliphant)
- 10/13 and 10/14 – 22nd Annual Rural Transportation Summit (Benning)
- 10/14 – Antique/Special Event Fire Truck Preview (Barney, Oliphant, Brown, Wheatley)
- 10/14 – Town Council Recreation Facilities Tour (Oliphant, Brown, Wheatley)
- 10/16 – Trunk or Treat 2021 (Barney, Oliphant, Benning, Martineau, Wheatley)
- 10/19 – Phoenix-Mesa Gateway Board of Directors Meeting (Barney)
- 10/20 – Maricopa Association of Governments Transportation Policy Committee Meeting (Barney)

Attachment: Minutes 10-20-21 (Minutes)



Requesting Department

Finance

TO: HONORABLE MAYOR AND TOWN COUNCIL
THROUGH: JOHN KROSS, ICMA-CM, TOWN MANAGER
FROM: MELISSA BAUER, PROCUREMENT MANAGER
RE: CONSIDERATION AND POSSIBLE APPROVAL OF EXPENDITURES OVER \$25,000. (FY 2021-22 BUDGETED ITEMS)
DATE: November 3, 2021

Staff Recommendation:

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

Relevant Council Goal(s):

N/A

Proposed Motion:

Move to approve Town expenditures \$25,000 and over, pursuant to Town Purchasing Policy.

Discussion:

The following items being requested are:

1. Industrial Service and Supply - Water Treatment Equipment: \$100,000 (Utilities)
2. Gammage & Burnham - Legal Services: \$50,000 (Utilities)
3. CDWG - Annual Maintenance Agreement for Adobe and Microsoft Annual License Agreements, Miscellaneous Minor Equipment Purchases: \$175,000 (Workforce Technology)
4. Compunet - Microsoft O360: \$75,000 (Workforce Technology)
5. Kustom Signals, Inc. - Radar, Lidar, Traffic Data Collection Kits, Feedback Trailers, Accessories, and Related Equipment: \$50,000 (Police - Funds provided by a Federal Grant)
6. GOAZ Motocycles - BMW R 1250 RT-P Police Motorcycle: \$40,000 (Police - Funds provided by an Arizona State Grant)

Fiscal Impact:

The fiscal impact of the requested spending authority for the above expenditures is \$490,000. Funds have been identified within the line item budget as approved in the FY22 budget or subsequently approved by Council.

Attachment(s):

1. November 3, 2021 Expenditures over \$25k

**Attachment: Expenditures \$25,000 and Over
Budgeted in Fiscal Year 21/22
November 3, 2021**

| Item # | Vendor(s) | Description | Purpose | Requesting Dept(s) | Fiscal Impact \$ | Procurement Method | Alternative |
|--------|-------------------------------|-------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|------------------|----------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Industrial Service and Supply | Water Treatment Equipment | Spending authority to purchase chlorinators for water treatment and distribution (FY21-22 budgeted item) | Utilities | \$100,000 | Sole Source | There is no alternative for this item. Industrial Services and Supply is currently the only distributor in the state that provides this type of chlorinator that is compatible with the Town's treatment equipment and processes. The Town is required under state and federal laws to procure the necessary chemicals and equipment used to treat the Town's potable water supply. |
| 2 | Gammage & Burnham | Legal Services | Contract spending authority for legal services (FY21-22 budgeted item) | Utilities | \$50,000 | Town Contract 2020-032 | Council could choose not to approve this item. If not approved, the Town would have to contract with another legal firm for these services. This could result in the delay of several Utilities Projects the firm is currently working on. |
| 3 | CDWG | Annual Maintenance Agreement for Adobe and Microsoft Annual License Agreements; Miscellaneous Minor Equipment Purchases | Spending authority was previously approved by Council on June 2, 2021 under vendor Sentinel Technologies as part of a cumulative spending authority. Unfortunately, Sentinel Technologies is unable to provide this specific service. The Department is asking for Spending Authority to Include Annual Support for Adobe and Microsoft Annual License Agreements; Minor Equipment Purchases (FY 21-22 budgeted item) | Workforce Technology | \$175,000 | ADSP017-149774; National IPA Technology Solutions (2018011-01) | Council could choose not to approve this expenditure. The impact of this action would void Microsoft support, and Adobe Services including document support and electronic docu-sign capabilities. |
| 4 | Compunet | Microsoft O360 | Spending authority for technical goods and consulting services. The Department is asking for spending authority to include consulting services for the implementation of a hosted Microsoft email system. (FY 21-22 budgeted item) | Workforce Technology | \$75,000 | NCPA #01-107 | Council could choose not to approve this expenditure. However, the police department would not be able to implement other needed technologies with dependencies on the Microsoft email platform. |
| 5 | Kustom Signals, Inc | Radar, Lidar, Traffic Data Collection Kits, Feedback Trailers, Accessories, and Related Equipment. | This is a budgeted item, but is being funded by a grant provided by the Governor's Office of Highway Safety. Radar, Lidar, and traffic collection equipment provides the necessary adjunct needed to better respond to the growing traffic needs, issues, and problems within the Town. This equipment is necessary to properly conduct speed related enforcement and investigations. (FY21-22 budgeted item) | Police | \$50,000 | Contract #CTR043213 | Council could choose not to approve the purchase of this equipment. However, the police department would not have the resources necessary to properly manage traffic related problems, complaints, and trends |

Attachment: November 3, 2021 Expenditures over \$25k (Expenditures Over \$25,000)

| | | | | | | | |
|---|------------------|-----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|----------|-------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6 | GOAZ Motorcycles | BMW R 1250 RT-P Police Motorcycle | <p>This is a budgeted item but is being funded by a grant provided the Governor's Office of Highway Safety. The police motorcycle allows officers/traffic investigators to better respond to the growing traffic needs, issues, and problems within the Town. A properly equipped police motorcycle allows personnel to conduct a variety of enforcement activities including red-light running, speed, distracted driving, and other behaviors that result in vehicle and pedestrian collisions. Motorcycles can be assigned at busy intersections to monitor traffic light violations. The police motorcycle's observation of the area can be overt to maximize the visible deterrent impact or covert to maximize tactical objectives. By their nature, high traffic areas can make it difficult to position a patrol car. Motorcycles, however, can be more effective at these locations due to the ease with which they can be positioned. Motorcycles can also assimilate into traffic for enforcement purposes easier than conventional patrol vehicles. Operations can be used in conjunction with public information and education campaigns. (FY21-22 budgeted item)</p> | Police | \$40,000 | State of Arizona Contract #ADSPO18-205712 | <p>Council could choose not to approve the purchase of this equipment. However, the police department would not have the resources necessary to properly manage traffic related problems, complaints, and trends</p> |
|---|------------------|-----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|----------|-------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Attachment: November 3, 2021 Expenditures over \$25k (Expenditures Over \$25,000)



Requesting Department

Development Services

TO: HONORABLE MAYOR AND TOWN COUNCIL
THROUGH: JOHN KROSS, ICMA-CM, TOWN MANAGER
FROM: BRETT BURNINGHAM, DEVELOPMENT SERVICES DIRECTOR
RE: CONSIDERATION AND POSSIBLE APPROVAL OF THE APPOINTMENT OF LEAH GUMM TO THE BOARD OF ADJUSTMENT.
DATE: November 3, 2021

Staff Recommendation:

Move to appoint Leah Gumm to the Board of Adjustment to fulfill the vacant position of Allison Brague.

Relevant Council Goal(s):



Effective Government

Proposed Motion:

Move to appoint Leah Gumm to the Board of Adjustment to fulfill the vacant position of Allison Brague.

Discussion:

The Board of Adjustment is composed of five members with staggered term expiration dates. The Board of Adjustment meets on an "as needed" basis to hear and decide appeals from the decisions of the Planning Administrator and for variances from the term of the Zoning Ordinance.

A seat on the Board of Adjustment has become available due to the unexpected passing of member Allison Brague. It is recommended that Leah Gumm be appointed on November 3, 2021 to this position. The term expires August 31, 2024.

Fiscal Impact:

There is no fiscal impact associated with making appointments to the Town's Board of Adjustment.

Alternatives:

The Town could choose to not appointment the recommended individual and request that Staff present alternative appointments at the next Town Council Meeting.

Attachment(s):

1. Notice of Interest - Leah Gumm



Town of Queen Creek Notice of Interest

The Town of Queen Creek depends on its citizens to help advance the community toward its goals. Residents can participate in local decision-making by serving on volunteer boards, commissions, committees and task forces. In most cases, volunteer members act in an advisory capacity making recommendations to the Town Council.

Appointments are made by approval of the Town Council. If you would like to be considered for an appointment, complete this form, attach a resume or letter about yourself and return all documents to:

Town of Queen Creek
Town Clerk's Office
22358 S. Ellsworth Rd
Queen Creek, AZ 85142
Fax: 480-358-3001

Please type or print

Application Date: 10/25/2021

Name: Leah Jennifer Gumm
First Middle Last

Home Address: 36439 N Crucillo Dr Queen Creek AZ 85140

Mailing Address (if different from home address): _____

Occupation: Business Owner

Home Telephone: 480-261-9898 Work Telephone: 480-907-7913, opt 4

Best Time to Call: _____ a.m. or p.m.

Home Fax: _____ Work Fax: _____

E-Mail Address: leahgumm@me.com

How long have you lived in Queen Creek? I have lived in Encanterra since July 2017. (Encanterra was annexed by QC in Dec)

Are you a registered voter? Yes No

Do you live within the Town's incorporated limits? Yes No

Have you participated in the Queen Creek Citizen Leadership Institute? Yes No

If yes, did you graduate? Yes No

Which boards, commissions, committees or task forces have you served on in the past, in Queen Creek or elsewhere?

Shortly after moving to Encanterra, I was the applicant for the Annexation for Encanterra to join QC. This proved to be very challenging due to opposition from proponents of a San Tan Valley Incorporation effort and Rural Metro.

We were ultimately successful and are thrilled to be part of the town now. I have also served on the HOA Board in a prior community I lived in located in Gilbert, AZ.

Attachment: Notice of Interest - Leah Gumm (Board of Adjustment Appointment)

I am interested in serving on: (Please rank the committees you are interested in, with 1 being your first choice.)

- Board of Adjustment
- 2 Economic Development Commission
- Parks and Recreation Advisory Board
- 3 Transportation Advisory Committee
- 1 Planning and Zoning Commission
- Municipal Arts Commission

*Note: Some citizen committees might be full at this time; indicated interest does not guarantee an appointment.

Please describe why you would like to serve on this board, committee, commission, etc.

As a local small business owner, I am very interested in new businesses and new home communities that are coming to the town.

I would like to be sure that the best interests of the residents of Encanterra are represented as decisions are made.

Please describe special knowledge or expertise you have that would benefit the Town.

As a local small business owner and a very involved member of Encanterra Golf & Country Club, I have unique

insight into what the residents of our community are looking forward to as the town develops and grows in the future.

Please list community, civic, professional, social, cultural or athletic organizations you have been affiliated with and in what capacity.

Prior Member of Mesa, Gilbert, Apache Junction, and Florence Chambers of Commerce, Prior Member of Queen Creek Kiwanis Club

Current Member of Queen Creek Chamber of Commerce, Current Admin of the Encanterra Annexation Group and Current Admin of Encanterra Social Group (Facebook)

Current owner of Affordable Pest Control, Prior Member of Weston Ranch HOA Board and Architectural Control Committee, Prior Soccer and Volleyball Coach

Are you available for evening meetings? Yes No

Are you available for morning meetings? Yes No

Are you available for lunch meetings? Yes No

Are there days of the week you are NOT available for meetings? (Check all that apply)

- Monday
- Tuesday
- Wednesday
- Thursday
- Friday

I hereby acknowledge that all information provided on this application is subject to disclosure pursuant to the Arizona Public Records Law. I understand that members of boards, commissions, committees and task forces are subject to disclosure of conflicts of interest. I certify that the information contained herein is true and accurate to the best of my knowledge.

Note: Notice of Interest forms will be kept on file for 12 months. After that, they will expire and applicant's will need to submit a new form.

Applicant's Signature LEAH GUMM

| | |
|----------------------------------------------------------------------------------|--|
| FOR OFFICE USE ONLY | |
| Committee/Commission _____ | |
| New Appointment <input type="checkbox"/> Re-Appointment <input type="checkbox"/> | |
| Date Appointed/Re-Appointed _____ | |
| Term Expiration _____ | |
| Date of Resignation (if applicable) _____ | |

Form updated Jan 19

Attachment: Notice of Interest - Leah Gumm (Board of Adjustment Appointment)



Requesting Department

Finance

TO: HONORABLE MAYOR AND TOWN COUNCIL
THROUGH: JOHN KROSS, ICMA-CM, TOWN MANAGER
FROM: SCOTT MCCARTY, FINANCE DIRECTOR
RE: CONSIDERATION AND POSSIBLE APPROVAL OF FY 2021-22 BUDGET AMENDMENTS TOTALING A NET AMOUNT OF \$4,565,404 IN EXPENSE REALLOCATIONS INCLUDING \$1,968,339 FROM CONTINGENCIES.
DATE: November 3, 2021

Staff Recommendation:

Staff recommends approval of FY 2021-22 budget amendments totaling a net amount of \$4,565,404 in expense reallocations including \$1,968,339 from contingencies.

Relevant Council Goal(s):



Effective Government: KRA Financial Stability

Proposed Motion:

Motion to approve FY 2021-22 budget amendments totaling a net amount of \$4,565,404 in expense reallocations including \$1,968,339 from contingencies.

Discussion:

Receiving Town Council approval of budget amendments on a regular basis is a best practice to address budget-to-actual variances throughout the year, rather than only at year-end. The Town's Financial Policies require Town Council approval of budget amendments in the following circumstances:

1. Appropriation transfers between Town funds;
2. Budget adjustments to increase Town estimated revenues in order to fund increasing appropriations;
3. Appropriation transfers greater than \$50,000 between capital project accounts; and
4. Appropriation transfers from contingency accounts.

The proposed amendments below do not include any amendments that have already been approved by the Town Council as part of another action, such as the award of a contract. Also, adjustments to expense budgets **do not increase or decrease the total adopted budget**; rather, these changes reallocate expenditure authority between line items and from Contingency in order to reduce year-end reporting variances.

Following is a summary of the proposed expense budget amendments. Not all of the Town's funds and contingency accounts are shown in this table, only those that are affected by the proposed budget amendments.

| EXPENSE CHANGES: | CURRENT BUDGET | INCREASE | DECREASE | NET CHANGE | REVISED BUDGET |
|------------------------------|--------------------|------------------|--------------------|------------|--------------------|
| Operating Budget | 78,046,296 | 768,426 | (517,058) | 251,368 | 78,297,664 |
| Water Operating Fund | 34,857,239 | 193,702 | (716,546) | (522,844) | 34,334,395 |
| Transportation CIP Fund | 162,249,399 | 3,005,073 | (1,363,461) | 1,641,612 | 163,891,011 |
| General CIP Fund | 67,138,066 | 500,000 | - | 500,000 | 67,638,066 |
| Lottery Allocation Fund | - | 98,203 | - | 98,203 | 98,203 |
| Operating Budget Contingency | 1,559,908 | - | (747,934) | (747,934) | 811,974 |
| General CIP Contingency | 6,908,588 | - | (500,000) | (500,000) | 6,408,588 |
| Water Operating Contingency | 322,359 | - | (193,702) | (193,702) | 128,657 |
| Grants Fund Contingency | 13,543,244 | - | (526,703) | (526,703) | 13,016,541 |
| Total | 364,625,099 | 4,565,404 | (4,565,404) | - | 364,625,099 |

Fiscal Impact:

The budget amendments reallocate \$2,597,065 of expenses from existing budgets of various departments and divisions to create funding for the new CIP Department. The amendments also reallocate \$1,968,339 of expenditure authority from contingency funds for various purposes as explained in the notes beginning on the next page.

| NOTE | DESCRIPTION | FUND | INCREASE BUDGET | DECREASE BUDGET |
|----------------------------------------------|----------------------------------------------------|-------------------------|--------------------|--------------------|
| CREATION OF CIP DEPARTMENT: | | | | |
| a | Personnel - CIP Department (17 positions) | Transportation CIP Fund | 2,013,210 | |
| | Supplies & Services- CIP Department | Transportation CIP Fund | 583,855 | |
| | Existing Budget - From Public Works CIP Division | Transportation CIP Fund | | 1,363,461 |
| | Existing Budget - From Public Works Admin | Operating Budget | | 104,991 |
| | Existing Budget - From Water Operations | Water Operating Fund | | 716,546 |
| | Existing Budget - From Finance | Operating Budget | | 367,180 |
| | Existing Budget - From Economic Development | Operating Budget | | 44,887 |
| | <i>Net Reallocation of Existing Budgets</i> | | <i>2,597,065</i> | <i>2,597,065</i> |
| b | New Position - Procurement Officer | Transportation CIP Fund | 105,130 | |
| | New Position - Division Manager | Transportation CIP Fund | 177,878 | |
| | Professional Services - Real Estate Services | Transportation CIP Fund | 25,000 | |
| | Operating Budget Contingency | Operating Budget | | 308,008 |
| c | CIP Expense - Design | General CIP Fund | 500,000 | |
| | General CIP Contingency | General CIP Fund | | 500,000 |
| GENERAL OPERATING BUDGET ADJUSTMENTS: | | | | |
| d | <i>Police Department Start-Up Costs:</i> | | | |
| | Migration to Microsoft Office 365 - IT | General Fund | 120,000 | |
| | IT Security Services - IT | General Fund | 80,000 | |
| | Additional AXON licensing - IT | General Fund | 35,000 | |
| | Safety Equipment - PD | EMS Fund | 168,500 | |
| | Modems, antennas, printers, scanners - PD | EMS Fund | 25,000 | |
| | Grants Fund Contingency | | | 428,500 |
| e | <i>Vehicles:</i> | | | |
| | Park Ranger | General Fund | 48,000 | |
| | Traffic Signal Technician | General Fund | 60,000 | |
| | CIP Department | Transportation CIP Fund | 100,000 | |
| | Operating Budget Contingency | | | 208,000 |
| f | <i>Summer Storm Damage:</i> | | | |
| | Facilities | General Fund | 60,600 | |
| | Traffic | General Fund | 24,800 | |
| | Grounds | General Fund | 19,900 | |
| | HPEC | HPEC Fund | 31,200 | |
| | Operating Budget Contingency | | | 136,500 |
| g | <i>Regional Transportation Study:</i> | | | |
| | Contracted Services - Park-n-Ride Study | Lottery Allocation Fund | 98,203 | |
| | Grants Fund Contingency | | | 98,203 |
| OTHER PERSONNEL BUDGET ADJUSTMENTS: | | | | |
| h | Temporary Customer Service Reps- Water CS/Finance | Water Operating Fund | 193,702 | |
| | Revenue Analyst - Finance | General Fund | 31,058 | |
| | Code Enforcement Specialist - Development Services | General Fund | 64,368 | |
| | Water Operating Contingency | | | 193,702 |
| | Operating Budget Contingency | | | 95,426 |
| Total Budget Reallocations | | | 4,565,404 | 4,565,404 |

- a) The new CIP Department was created after the budget for FY 2021-22 was adopted. Staff recommends moving 17 positions from other departments and divisions to the new CIP Department, as well as budgets for training, office supplies, and professional

services. A net amount of \$2,957,065 is recommended to be moved from existing budgets to the new department.

- b) To provide sufficient resources for the new CIP Department to fulfill its mission, staff recommends adding two new positions and funding for additional contract services:
1. Procurement Officer (1) - The Town currently has only one procurement position that is dedicated solely to CIP projects. With the number of utility projects expected to increase in the near future, and the Town's aggressive transportation master plan still under way, a second CIP procurement position will ensure the procurement and solicitations for infrastructure projects are not delayed.
 2. Division Manager (1) - This position will provide administrative support and direction to the director and staff of the new department, ensuring the staff have the tools and budget they need to succeed.
 3. Real Estate Services - Staff has recently seen an increase in requests for appraisals, title reports, and similar activities outside of budgeted CIP projects. In the past, these activities were less frequent and therefore handled through general supplies and services budgets as needed. With continued development in the Town and creation of the new CIP Department, staff recommends adding a dedicated budget for such real estate services to allow the Real Estate Manager to respond to these requests as needed.
- c) The Town's adopted 5-Year Capital Improvement Plan includes funding in FY 2022-23 to begin design and construction of new facilities for Public Works at the Town's Field Operations Facility (FOF). With the creation of the new CIP Department and consolidation of staff from several departments, staff recommends accelerating this project's timeline. Currently, the new CIP Department is sharing office space with Utilities staff in the Utilities warehouse and administration buildings. Funding of \$500,000 is recommended to begin design of the new facilities, with construction expected to begin in early FY 2022-23. Once built, the new facilities will accommodate the new CIP Department as well as several Public Works divisions such as Streets, Traffic, Solid Waste, Fleet, and Administration.
- d) As the Town makes progress on standing up a new police department, staff has identified several items that were either unknown, overlooked, or underfunded when preparing the FY 2021-22 budget. The adopted budget included approximately \$5 million in contingencies in the Grants Fund to accommodate budget adjustments related to unforeseen circumstances or unexpected grant opportunities, including items related to starting the new Police Department:
1. Staff recommends migrating the Police Department to Microsoft Office to allow the department's systems to more easily integrate with outside software systems. Staff has determined that the current Google platform is not adequate to manage the multiple databases and security requirements of a robust, modern police department over the long term. Switching software platforms now at the beginning of the department's operations will be significantly easier

than in future years once the Town's applications are fully integrated with those outside software systems.

2. Staff recommends enhancing the Town's Information Technology contract services to provide a dedicated security resource for the Police Department. These security services will enhance the Town's existing security protocols, ensuring the Police Department's networks and data are protected from outside threats.
 3. The Police Department has identified a need to add additional seat licenses for software related to mobile, fleet, drone, and body camera applications.
 4. The Police Department has identified a need for additional safety equipment for police officers including ballistic vests, tactical helmets, and small tools.
 5. The Police Department has identified a need for additional modems, antennas, printers, scanners, and other small equipment required to properly up-fit police vehicles and office spaces.
- e) The FY 2021-22 budget included funding for a new park ranger and a new traffic signal technician; however, the budget mistakenly left out funding for vehicles for these positions. Also, staff has identified a need for two additional vehicles for the new CIP Department that will be shared by the project managers and staff.
- f) During July and August, the Town experienced severe monsoon storms that caused damage to Town buildings, grounds, and traffic equipment. Although most of the damage costs will be recovered from insurance claims to the Town's risk insurance provider, the budget requires sufficient expenditure authority to pay for these unexpected repairs.
- g) In June 2020, the Town Council approved an IGA with the Regional Public Transportation Authority for a park-and-ride study. This project was not yet complete at the end of FY21 but was mistakenly left off the list of items that were carried forward from FY21 to FY22. Funding for the study comes from the Town's allocation of lottery funds from Valley Metro.
- h) Staff recommends adjustments to full-time equivalent (FTE) positions in three areas. **Staff notes that the amounts listed for each position represent a full year of salary and benefits even though the changes and hiring of these positions will happen several months into the fiscal year, therefore FY 2021-22 actual costs will be less than presented here:**
1. Water Customer Service, Finance (3) - staff recommends hiring three temporary full-time positions to handle customer service duties for the Town's utility customers while existing staff are being trained on the new utility billing system. Funding for these positions will expire at the end of the fiscal year.
 2. Finance (0.5) - staff recommends adding a part-time position to assist with ongoing sales tax analysis and reporting needs and with other special projects such as demographic & economic analysis. This position will be partially funded from the remaining balance of the former Budget Administrator position that

was recently reclassified to be a lower-level Financial Analyst. The adjustment shown here is the remaining amount required to fund the new part-time position.

3. Development Services (0.5) - with the Town's continued rapid growth, staff recommends reclassifying an existing part-time position to a full-time position to better assist Code Enforcement staff with managing calls for service and following up on code-related issues.

Alternatives:

The Town Council could choose to not approve some or all of these reallocations. However, this makes measuring budget-to-actual performance more difficult and would result in budget and financial reporting variances at year-end.



Requesting Department

Utilities

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS, ICMA-CM, TOWN MANAGER

FROM: PAUL GARDNER, UTILITIES DIRECTOR

RE: CONSIDERATION AND POSSIBLE APPROVAL OF A THIRD AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT WITH SOUTHWEST GROUNDWATER, A DIVISION OF MATRIX NEW WORLD FOR PHYSICAL AVAILABILITY DEMONSTRATION SERVICES INCREASING THE TOTAL CONTRACT AMOUNT BY \$30,000 FOR A TOTAL AMENDED CONTRACT NOT TO EXCEED \$96,610. (FY 2021-22 BUDGETED ITEM)

DATE: November 3, 2021

Staff Recommendation:

Staff recommends approval of a Third Amendment to the Professional Services Contract with Southwest Groundwater, a Division of Matrix New World for Physical Availability Demonstration Services increasing the total contract amount by \$30,000 for a total amended contract not to exceed \$96,610.

Relevant Council Goal(s):



Secure Future: KRA Environment

Proposed Motion:

Move to approve a Third Amendment to the Professional Services Contract with Southwest Groundwater, a Division of Matrix New World for Physical Availability Demonstration Services increasing the total contract amount by \$30,000 for a total amended contract not to exceed \$96,610.

Discussion:

In July of 2017 the Town entered into a professional services contract with Southwest Groundwater, a Division of Matrix New World ("Matrix") for physical groundwater availability demonstration services. The scope of the contract was to assist the Town's Utility Department by preparing an application for a Physical Availability Demonstration ("PAD") to the Arizona Department of Water Resources ("ADWR") on behalf of the Town. This PAD is being completed for the state lands located in the northeast portion of the Town's planning area and remaining parcel's within the Town's water service area. The hydrology study would support the Town's effort of further development of this land by providing evidence to indicate that there is enough ground water to supply development in this area for the next 100 years.

ADWR revised their previous review practices and requested additional groundwater flow modeling be conducted to demonstrate physical availability for the PAD submittal. Additional modeling requests included removing model agricultural recharge and agricultural pumping located within areas that have an issued Assured Water Supply. ADWR also indicated that they needed additional meeting times to discuss model updates. Council approved a change order in 2018 which increased the scope of work to include the required additional information and related meetings.

Following submitted changes to the groundwater model, in 2019 ADWR identified potential groundwater impacts to Arizona Water Company (“AWC”) regarding the potential redistribution of groundwater pumping wells. In 2020, Council approved a change order, which allowed for additional modeling, meetings, and coordination with AWC regarding amendments to their PAD including the Town’s PAD.

Since 2020, the Town has been working with AWC in coordinating its response to ADWR. In July of 2021, the Town received and is working to address comments provided in the most recent deficiency letter from ADWR.

The proposed change order includes additional support including revised groundwater modeling scenarios and coordination with both the Town and AWC representatives on additional submittals to ADWR in support of the Town’s PAD. The change order includes the modeling and documentation to respond to the most recent letter received by the Town from ADWR on July 22, 2021.

In addition, as part of this change order Matrix will also provide a groundwater model analysis related to the location of current and future groundwater pumping, and water rights associated with the current and future pumping. The information will be used to support the Town’s anticipated future Designation of Assured Water application.

Fiscal Impact:

On July 19, 2017 the Town entered into a Professional Services Contract with Matrix for Physical Availability Demonstration Services in an amount not to exceed \$18,810 (Town Contract #2017-094). On July 18, 2018, Council approved a First Amendment to the contract increasing the contract spending authority to not exceed \$26,610. On October 7, 2020, Council approved a Second Amendment to the contract increasing the contract spending authority to not exceed \$66,610. This Third Amendment will increase the contract by an additional \$30,000 for a total amended contract not to exceed \$96,610.

Once approved, the total not to exceed amount associated with this contract will increase from \$66,610 to \$96,610. Funding for these services has been identified within the FY 2021-22 Water operating budget.

Alternatives:

Council may choose to not approve the proposed contract amendment. However, failing to approve this amendment would impede the development on portions of State land as well as several additional parcels within the Town of Queen Creek’s service territory. ADWR will not

allow further development for properties outside of the current approved PAD until the study and revisions to the PAD have been completed and approved by ADWR.

Attachment(s):

1. Third Amendment - Matrix Southwest Groundwater

THIRD AMENDMENT TO AGREEMENT

THIS THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (this "THIRD" "Amendment") is made and entered into effective as of the ____ day of November, 2021 (the "Effective Date"), by and between the Town of Queen Creek, Arizona, an Arizona municipal corporation ("Town"), and Southwest Groundwater Consultants, a Division of Matrix New World Engineering, P.C., a New Jersey corporation ("Consultant"). Town and Consultant are sometimes referred to in this Second Amendment collectively as the "Parties" and each individually as a "Party."

RECITALS:

A. The Parties entered into an Agreement for Physical Availability Demonstration date July 19, 2017, which was thereafter amended: First Amendment, July 18, 2018; Second Amendment, October 7, 2020 (collectively the "Original Agreement"). All capitalized terms used without definition in this Amendment shall have the definitions ascribed to them in the Original Agreement, as modified by this Third Amendment.

B. The Parties now desire to amend the Original Agreement upon the terms and conditions contained in this Third Amendment.

AGREEMENTS:

NOW, THEREFORE, for and in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby amend the Original Agreement as follows:

1. Article 1. "Scope of Services"; to read as follows with deletions shown in ~~strike~~through, additions shown in **bold italics**:

- a. Consultant shall provide the services described in the Scope of Services attached here to ~~as~~ **include** Exhibit B, **Exhibit B-1, Exhibit B-2 and Exhibit B-3**, (the "Services").

2. Article 2. "Fees"; to read as follows with deletions shown in ~~strike~~through, additions shown in **bold italics**:

- a. The amount paid to Consultant under this Contract, including reimbursable expenses, shall not exceed ~~\$66,610~~ **\$96,610**.
- b. Consultant shall be paid according to the schedule set forth in ~~Exhibit B-2~~ **Exhibit B-3**

3. Article 3. "Term of Contract"; to read as follows with deletions shown in ~~strike~~through, additions shown in **bold italics**:

- a. 3. The Services shall be completed as set forth in the schedule included in ~~Exhibit B~~ **Exhibit B-3**.

3. Reaffirmation of Original Agreement. Except as amended by this Third Amendment, the Original Agreement shall remain in full force and effect. In the event of any

conflict between this Third Amendment and the Original Agreement, the terms of this Third Amendment shall prevail.

4. Counterparts. This Third Amendment 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 Amendment may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed agreement containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Third 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:

Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM BY:

Dickinson Wright, PLLC
Attorney for the Town

Southwest Groundwater Consultant, a Division of Matrix New World Engineering, P.C.

Date: 10/21/21

By: *Walter Miller*

Its: Arizona Operations Manager

Attachment: Third Amendment - Matrix Southwest Groundwater (Southwest Groundwater - Third Amendment for the PAD)



Requesting Department

Workforce & Technology

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS, ICMA-CM, TOWN MANAGER

FROM: MIKE BLACK, IT DIVISION MANAGER AND KIM CLARK, BUSINESS SYSTEMS ANALYST AND IT TRAINING SUPERVISOR

RE: CONSIDERATION AND POSSIBLE APPROVAL OF A 3-YEAR PURCHASE AGREEMENT WITH CARTEGRAPH SYSTEMS, LLC IN AN AMOUNT NOT TO EXCEED \$370,750 FOR CARTEGRAPH OMS AND SEE CLICK FIX FOR LICENSE SUBSCRIPTION FEES AND SOFTWARE SUPPORT. (FY 2021-22 BUDGET ITEM)

DATE: November 3, 2021

Staff Recommendation:

Staff recommends approval of a 3-year purchase agreement with Cartegraph Systems, LLC in an amount not to exceed \$370,750 for Cartegraph OMS and See Click Fix for license subscription fees and software support. (FY 2021/22 budget item)

Relevant Council Goal(s):

Secure Future



Effective Government

Proposed Motion:

Move to approve a 3-year purchase agreement with Cartegraph Systems, LLC in an amount not to exceed \$370,750 for Cartegraph OMS and See Click Fix for license subscription fees and software support. (FY 2021-22 budget item)

Discussion:

Cartegraph OMS is an asset, work order, and operation management system initially implemented in November 2015 by Public Works Street Division, and then expanded in early 2018 to include Utilities. The software tracks and documents asset conditions, maintenance activities and work orders as well as provides costs associated with maintaining the Town's assets and forecasting budget for future needs. See Click Fix includes additional functionality by routing citizen requests directly through Cartegraph, increasing efficiency and accountability. See Click Fix has seamless integration with Cartegraph OMS allowing staff to receive and respond to non-emergency issues such as repair of potholes, damaged sidewalks, and various

other issues.

In addition, See Click Fix offers a full mobile and desktop request management program that allows other departments to receive and respond to non-emergency issues as well as internal staff requests. The program serves as a request management tool for non-Cartegraph users allowing staff to manage citizen requests via auto-assignment, routing, and automatic escalation and deadline notifications.

Both Cartegraph and See Click Fix are provided as a Software as a Service. This request proposes continuing our annual subscriptions that provide technical support, training and educational support as well as regular upgrades or new releases to the systems. In accordance with the Town’s Purchasing Policy, on-going maintenance and support of existing software is exempt from the competitive bidding provisions.

Fiscal Impact:

The total not to exceed amount of \$370,750 includes the contract amount of \$337,045, and \$33,705 (10%) contingency for possible unanticipated, additional services.

A total of \$120,519 for the first year of the multi-year contract is budgeted in the FY 21-22 Information Technology budget. If approved, subsequent years will be budgeted accordingly during the annual budget process for the exact amount outlined in the chart below.

| CONTRACT TERM | FISCAL YEAR | RENEWAL AMOUNT | ESTIMATED TAX | TOTAL CONTRACT | 10% CONTINGENCY | TOTAL EXPENDITURE |
|-------------------------------|-------------|----------------|---------------|----------------|-----------------|-------------------|
| 1 | 21/22 | 101,635 | 7,928 | 109,563 | 10,956 | 120,519 |
| 2 | 22/23 | 104,193 | 8,127 | 112,320 | 11,232 | 123,552 |
| 3 | 23/24 | 106,830 | 8,333 | 115,163 | 11,516 | 126,679 |
| TOTAL CONTRACT AMOUNT: | | | | 337,045 | 33,705 | 370,750 |

Alternatives:

Council could choose to not approve the proposed Contract and discontinue use of the Cartegraph software; however, this would require staff to revert back to manual processes.

Attachment(s):

1. Cartegraph Solutions Purchase Agreement



Town of Queen Creek Cartegraph Solutions Purchase Agreement

PA#: PA-005451
Date Prepared: 10/12/2021
Date of Expiration: 11/29/2021

For any questions or assistance, please contact:

Mike Koenig
Senior Account Manager
Phone:
Mobile: +1 9186252083
Email: mikekoenig@cartegraph.com

Cartegraph Systems LLC
3600 Digital Dr
Dubuque, IA 52003-8962

<http://www.cartegraph.com>

Toll Free: (800) 688-2656
Phone: (563) 556-8120
Fax: (563) 556-8149

Purchase Agreement

Cartegraph Systems LLC is pleased to present this Purchase Agreement for the implementation of world class technology solutions. This Purchase Agreement is made and entered into between Town of Queen Creek (hereinafter referred to as "Town of Queen Creek", or "Customer") and Cartegraph Systems LLC (hereinafter referred to as Cartegraph). In the case that any terms or conditions provided in the Cartegraph Solutions Agreement differ from, are provided in more detail by, or are made irrelevant by the terms and conditions provided in this Purchase Agreement, the terms in this Purchase Agreement shall control. For all terms and conditions not addressed by this Purchase Agreement, the Cartegraph Solutions Agreement shall control.

CUSTOMER ADDRESS:

Town of Queen Creek
22350 South Ellsworth Road
Queen Creek, Arizona
85242

LICENSEE ADDRESS:

Town of Queen Creek
451 Third Street NW
Queen Creek, Arizona
85242

The following Addendums are attached to the Purchase Agreement and are incorporated by reference:

ADDENDUM A - SOLUTIONS SUPPORT

ADDENDUM B - **SERVICES SCOPE OF WORK**

ADDENDUM C - SOLUTIONS AGREEMENT can be found at <https://www.Cartegraph.com/solutions-agreement>

ADDENDUM D - Not Used

ADDENDUM E - CARTEGRAPH OMS EDITIONS

ADDENDUM F - Not Used

Investment Summary

The following section describes Purchase Agreement line items for Customer's Solution. Based on the core needs that have been identified and understanding the organization's budgeting and funding cycle, Cartegraph is providing the following Solution configuration.

Term 1 - 11/30/2021 - 11/29/2022 - Subscription

| No. | Product | Code | Quantity | Price |
|---------------------------------------------------------------|--------------------------------------------------|--------|----------|-----------------------|
| 1 | SCF City 40,000 - 59,999 (includes 40 SCF users) | SCC004 | 1 | USD 18,200.00 |
| 2 | SCF City or County additional user | SCFADD | 20 | USD 7,200.00 |
| 1 | Orange Advantage (96 Hours) | CGORNG | 1 | USD 16,200.00 |
| 1 | OMS Plus | OMSPLS | 1 | USD 25,985.00 |
| 2 | OMS User | OMSUSR | 100 | USD 24,000.00 |
| 3 | Integration Toolkit (option) | OMSAPI | 1 | USD 800.00 |
| 4 | Asset Builder (option) | OMSABD | 1 | USD 600.00 |
| 5 | Sanitary Sewer Domain | DOM005 | 1 | USD 3,000.00 |
| 6 | Water Distribution Domain | DOM010 | 1 | USD 3,000.00 |
| 7 | Stormwater Domain | DOM007 | 1 | USD 3,000.00 |
| 8 | Transportation Domain | DOM008 | 1 | USD 2,500.00 |
| 9 | Walkability Domain | DOM009 | 1 | USD 750.00 |
| Term 1 - 11/30/2021 - 11/29/2022 - Subscription TOTAL: | | | | USD 105,235.00 |

Term 2 - 11/30/2022 - 11/29/2023 - Subscription

| No. | Product | Code | Quantity | Price |
|---------------------------------------------------------------|--------------------------------------------------|--------|----------|-----------------------|
| 1 | SCF City 40,000 - 59,999 (includes 40 SCF users) | SCC004 | 1 | USD 18,746.00 |
| 2 | SCF City or County additional user | SCFADD | 20 | USD 7,416.00 |
| 1 | Orange Advantage (96 Hours) | CGORNG | 1 | USD 16,200.00 |
| 1 | OMS Plus | OMSPLS | 1 | USD 26,760.00 |
| 2 | OMS User | OMSUSR | 100 | USD 24,720.00 |
| 3 | Integration Toolkit (option) | OMSAPI | 1 | USD 824.00 |
| 4 | Asset Builder (option) | OMSABD | 1 | USD 618.00 |
| 5 | Sanitary Sewer Domain | DOM005 | 1 | USD 3,090.00 |
| 6 | Water Distribution Domain | DOM010 | 1 | USD 3,090.00 |
| 7 | Stormwater Domain | DOM007 | 1 | USD 3,090.00 |
| 8 | Transportation Domain | DOM008 | 1 | USD 2,575.00 |
| 9 | Walkability Domain | DOM009 | 1 | USD 772.00 |
| Term 2 - 11/30/2022 - 11/29/2023 - Subscription TOTAL: | | | | USD 107,901.00 |

Attachment: Cartegraph Solutions Purchase Agreement (Cartegraph and See Click Fix)

Term 3 - 11/30/2023 - 11/29/2024 -
Subscription

| No. | Product | Code | Quantity | Price |
|---------------------------------------------------------------|--------------------------------------------------|--------|----------|----------------|
| 1 | SCF City 40,000 - 59,999 (includes 40 SCF users) | SCC004 | 1 | USD 19,310.00 |
| 2 | SCF City or County additional user | SCFADD | 20 | USD 7,640.00 |
| 1 | Orange Advantage (96 Hours) | CGORNG | 1 | USD 16,200.00 |
| 1 | OMS Plus | OMSPLS | 1 | USD 27,560.00 |
| 2 | OMS User | OMSUSR | 100 | USD 25,462.00 |
| 3 | Integration Toolkit (option) | OMSAPI | 1 | USD 850.00 |
| 4 | Asset Builder (option) | OMSABD | 1 | USD 635.00 |
| 5 | Sanitary Sewer Domain | DOM005 | 1 | USD 3,182.00 |
| 6 | Water Distribution Domain | DOM010 | 1 | USD 3,182.00 |
| 7 | Stormwater Domain | DOM007 | 1 | USD 3,182.00 |
| 8 | Transportation Domain | DOM008 | 1 | USD 2,652.00 |
| 9 | Walkability Domain | DOM009 | 1 | USD 795.00 |
| Term 3 - 11/30/2023 - 11/29/2024 - Subscription TOTAL: | | | | USD 110,650.00 |

Summary By Term - Includes Services & Subscriptions

| | |
|--------------|----------------|
| Total Term 1 | USD 105,235.00 |
| Total Term 2 | USD 107,901.00 |
| Total Term 3 | USD 110,650.00 |

Attachment: Cartegraph Solutions Purchase Agreement (Cartegraph and See Click Fix)

Investment Notes:

- All pricing presented in this document is valid through the date of expiration. Any pricing concessions made are only applicable to this transaction and should not be assumed for future purchases.
- Purchasing the products presented in this document through any alternative procurement method other than that identified will require a revised price proposal which may include an associated price adjustment.
- Any applicable taxes are not included.
- Pricing does not include any applicable Esri ArcGIS licenses.
- Customer Purchase Order or Contract must reference the Cartegraph Purchase Agreement Number identified on the title page of this document for pricing to be valid.
- All pricing is in U.S. Dollars (\$USD).
- Pricing is valid through 11/29/2021.

Payment Terms and Conditions

In consideration for the Solutions provided by Cartegraph to Customer, Customer agrees to pay Cartegraph the Fees as described below:

DELIVERY

Upon execution of this Purchase Agreement, Cartegraph will provide the Solution Subscriptions and/or Services as detailed in the Investment Summary.

SOLUTION SERVICES SCHEDULING

Solution Services will be scheduled and delivered upon your acceptance of this Purchase Agreement, which will be considered your notification for Cartegraph to proceed. Customer agrees to work with Cartegraph to schedule Services in a timely manner. All undelivered Services shall expire 365 days from the signing of this Purchase Agreement unless indicated differently in the Investment Notes.

SOLUTION SUBSCRIPTION INVOICING

Customer shall be provided with the ability to access and use the Solution Subscriptions upon execution of this Purchase Agreement. The payment for the initial term is due upon execution of the Purchase Agreement. Payment for any subsequent renewal terms will be due in annual installments 15 days prior to the anniversary of the initial term in the amount(s) that follow:

- Term 1: \$105,235.00
- Term 2: \$107,901.00
- Term 3: \$110,650.00

SOLUTION SERVICES INVOICING

Invoicing for the Solutions Services shall occur upon the acceptance of this Purchase Agreement and be invoiced as follows:

- Invoicing shall occur upon the execution of this Agreement.

PAYMENT TERMS

- All payments are due Net 30 days from start date of invoice.
- All payments are to be in U.S. Dollars.

Acceptance

BY SIGNING BELOW, THE PARTIES AGREE THAT ALL USE AND ACCESS TO THE SOLUTIONS DESCRIBED IN THIS PURCHASE AGREEMENT SHALL BE GOVERNED BY THE CARTEGRAPH SOLUTIONS AGREEMENT. THE PARTIES AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS PURCHASE AGREEMENT, THE CARTEGRAPH SOLUTIONS AGREEMENT, AND ALL OTHER AGREEMENTS AND ADDENDUMS SPECIFICALLY REFERENCED HEREIN.

Cartegraph Systems LLC:

By: _____
(Signature)

(Type or Print Name)

Title: _____

Date: _____

Town of Queen Creek:

By: _____
(Signature)

(Type or Print Name)

Title: _____

Date: _____

Attachment: Cartegraph Solutions Purchase Agreement (Cartegraph and See Click Fix)

ADDENDUM A

Solutions Support

As part of the annual Solution Subscription fee identified in the above Investment Summary, Customer will receive the following support for the duration of the paid subscription Term.

TECHNICAL SUPPORT

1. **Campus – www.cartegraph.com/campus**
Our User Assistance area is a convenient and easily shareable resource designed to help you and your co-workers better understand the functions and capabilities of your Cartegraph Solutions. Instantly access user tips, step-by- step guides, videos, and more.
2. **Dedicated, Unlimited, Toll-free Phone Support - 877.647.3050 and Live Chat**
When questions need answers and difficulties arise, count on our industry- leading Support team to provide the guidance and assistance you need. Live Chat is available within the product or through Campus. Reach us as often as you need Monday-Friday, 7:00 am-7:00 pm CT.
3. **Secure, Live Remote Support**
If your challenge requires a more hands-on approach, we have the remote support tools to fix it. Let one of our Support Team members directly interact with your system to find a fast, effective solution.

TRAINING & EDUCATION SUPPORT

1. **Convenient Online Resources**
All the information you need, one click away. Take advantage of online training opportunities, tutorial videos, upcoming event information, and more.
2. **Customer Led User Groups**
Meet and network with similar Cartegraph users in your region. Customer led User Groups allow you to find out what other organizations are doing to get more from their Cartegraph solutions and services.

RELEASES & UPGRADES

1. **New Releases**
Be the first to know about all new Cartegraph releases, enhancements, and upgrades. Cartegraph is continuously innovating and enhancing the Cartegraph OMS collection of products and as a customer with an active subscription, you will receive each new release of the software.
 1. Your cloud-hosted site will be automatically upgraded by our System Consultants after the release is available. This way, you'll experience increased system performance while gaining timely access to the latest features and functionality.
 2. For your on-Premises Installation, our Technical Consultants will work with your organization's IT staff to receive the latest software release in a timely manner. This way, you'll experience increased system performance while gaining prompt access to the latest features and functionality
2. **Service Packs**
A Service Pack consists of lower-severity bug fixes and/or small platform updates.
 1. If required, cloud-hosted sites will receive Service Packs as needed. These Service Packs are installed by the Cartegraph System Consultants.
 2. On-premises customers that contacted Cartegraph Technical Support about an issue that is resolved with the Service Pack, will be provided the service pack for installation. These on-premises customers can then schedule a time to install the Service Pack with our Technical Support team

3. Hot Fixes

If an issue is determined to be a defect and falls outside the standard release cycle, Cartegraph will issue a hot fix and provide application specialists with detailed levels of product knowledge to work with you in achieving a timely and effective resolution.

Cartegraph will provide the Support Services only to Customer, provided that Cartegraph reserves the right to contact any third party as necessary to facilitate the delivery of Support Services or other services relating to the Solutions. Said support applies only to the most current version of the product and the previous version in succession.

All Support Services are dependent upon the use by Customer of the Solutions in accordance with Cartegraph's documentation and specifications. Cartegraph is under no obligation to modify the Solutions so that the modified Solutions would depart from Cartegraph's published documentation and specifications for such Solutions.

Addendum B

Services Scope of Work

The Solutions Services listed in the Investment Summary of the Purchase Agreement are specific Cartegraph services which will be delivered to the Customer based on the descriptions below, and are subject to the limitations and terms and conditions set for the in the Purchase Agreement, and its reverence Addendums. Cartegraph will coordinate with the Customer on service delivery expectations and timeframes.

Cartegraph – Scope of Work

The scope of work includes the following professional services:

Orange Advantage

- Cartegraph will provide the following services on an annual basis for the duration of the contract terms:
 - Up to ninety-six (96) hours of remote services for post-production system development. The deliverables will be defined, and agreed upon, by both your and Cartegraph's project managers. Topics may include any of the following:
 - Project or implementation consulting
 - System configuration for your current products
 - Training

Cartegraph will provide all services remotely via audio, video, and web conferences unless otherwise noted.

Exclusions

The following service items are not included in the scope of this project:

- Implementation or support of any custom modification or integration developed by Cartegraph, your internal staff, or any third-party is not included in the scope of this project unless specifically listed above.
- Data conversion services from other software system(s) or sources (including Cartegraph Navigator databases) are not included in the scope of this project unless specifically listed above.
- Any service items discussed during demonstrations, conference calls, or other events are not included in the scope of this project unless specifically listed above.
- Implementation of any asset builder templates if the Advanced User Tools extension is not owned.

Customer/Cartegraph Responsibilities

Project representatives from Customer and Cartegraph accepts responsibility for all aspects of project planning, management, and execution not specifically identified as the responsibility of Cartegraph in the Agreement or in the Purchase Agreement. Ongoing management of the day-to-day allocation of Customer and Cartegraph resources and management of project tasks is the responsibility of the Customer and Cartegraph project representatives. Customer and Cartegraph project representatives will provide overall guidance and direction for the project and will direct the project accordingly. Further, and with regard to the Cartegraph obligations listed in this Purchase Agreement, Customer understands that it is vital to the success of the project that Customer provides assistance in the following matters:

1. For those services listed under Field Services, Cartegraph personnel will conduct information gathering and evaluation sessions with various Customer Users and management. While Cartegraph respects the time and workload of Customer staff, dedicated time on the part of the appropriate Customer resources is necessary to complete these exercises.
2. The installation process requires the assistance of Customer personnel and suitable access to hardware and systems (e.g., security clearance). Customer is required to supervise the installation process while systems are accessible to Cartegraph. All hardware and software, for both personal computers and servers, is expected to be available, installed, and operating as specified in Cartegraph's system requirements documentation such that delivery and execution of Cartegraph Field Services will not be impeded.
3. Customer and Cartegraph understand that the successful performance of Field Services depends upon Customer fulfilling its responsibilities. The Project assumes that Customer will provide all personnel required to achieve a successful implementation, including a dedicated project manager responsible for reviewing the implementation scope of work, ensuring all attended meetings are attended by invited staff, and providing leadership and insight on all relevant internal issues such as policy/procedure, organizational structure, project stakeholders, technical architecture, data, and current systems. Customer responsibility also includes internal documentation, internal change management, task completion, staff coordination and schedule commitment.
4. Customer will provide Internet access and IT staff support as required. For those services that are web-based, Cartegraph utilizes WebEx Meeting (or similar) technology.
5. Customer shall ensure that their workstation platform and database meet Cartegraph system requirements as specified in the Cartegraph System Requirements documentation. Solutions will be supported within new versions of these workstation platforms and databases within a reasonable period of time from their release from their manufacturer. Cartegraph will discontinue support of its Solutions within older versions of these workstation platforms and databases as their support is discontinued by their manufacturers.
6. Customer agrees to work with Cartegraph to schedule Field Services in a timely manner. All undelivered Field Services shall expire 365 days from the execution of this Purchase Agreement, unless noted differently in Services Scope listed above. Upon expiration of services, the project may be cancelled at Cartegraph's discretion.

Not-to-Exceed Purchase Agreement

Cartegraph will not exceed the total included in this Purchase Agreement without written approval from Customer. In the event it becomes apparent to Cartegraph that additional Service will be needed due to any changes in the scope of this Purchase Agreement, Cartegraph will notify Customer prior to exceeding the approved efforts and obtain written approval if additional Services are required.

ADDENDUM E

Cartegraph OMS Editions

Cartegraph OMS supports customers in the operation, maintenance, and management of the following asset domains. By employing these features as applicable, customers can effectively manage and report on the assets that they care about. Indicated below are the capabilities and options available for each OMS Edition at the time this document was prepared, which are subject to change.

| | Essentials | Pro | Plus | Premium |
|-----------------------------------------|------------|----------|----------|----------|
| Dashboard / Home Screen | Included | Included | Included | Included |
| User Management | Included | Included | Included | Included |
| Role Management | | Included | Included | Included |
| Esri GIS Integration | Included | Included | Included | Included |
| Report Viewer | Included | Included | Included | Included |
| Library Management | Included | Included | Included | Included |
| Standard KPI / ROI gadgets | Included | Included | Included | Included |
| Esri Identity-Ready | Included | Included | Included | Included |
| Structure Manager | | Included | Included | Included |
| Layout Manager | | Included | Included | Included |
| Import / Export | | Included | Included | Included |
| Record Filter Administration | | Included | Included | Included |
| Container / Component | Included | Included | Included | Included |
| Embedded Maps | Included | Included | Included | Included |
| Report Designer | | Included | Included | Included |
| Integration Toolkit | | Option | Option | Included |
| Cartegraph for Zapier | Option | Option | Included | Included |
| Automation Manager | | | Included | Included |
| Notification Manager | | Included | Included | Included |
| Routing – Esri Identity Required | Included | Included | Included | Included |
| Geocode Options- Esri Identity Required | Included | Included | Included | Included |

Work

| | | | | |
|-----------------|----------|----------|----------|----------|
| Task Management | Included | Included | Included | Included |
|-----------------|----------|----------|----------|----------|

Attachment: Cartegraph Solutions Purchase Agreement (Cartegraph and See Click Fix)

| | | | | |
|------------------|----------|----------|----------|----------|
| Work Orders | | | Included | Included |
| Task Calendar | Included | Included | Included | Included |
| Scenario Builder | | | Option | Included |

Request

| | | | | |
|--------------------|-------------------------|----------|----------|----------|
| Request Management | Required w/ SeeClickFix | Included | Included | Included |
| SeeClickFix | Option | Option | Option | Option |
| Internal Requests | | Option | Included | Included |

Attachment: Cartegraph Solutions Purchase Agreement (Cartegraph and See Click Fix)

Resources

| | | | | |
|------------------------------|----------|----------|----------|----------|
| Resource Management (LEMV) | Included | Included | Included | Included |
| Advanced Material Management | | | Option | Included |
| Fleet Management | | Option | Included | Included |

Assets

| | | | | |
|------------------------------------------------|-----------------|-------------------------|-----------------|-----------------|
| Asset Inventory | By Domain/Asset | By Domain/Asset | By Domain/Asset | By Domain/Asset |
| Container / Component | Included | Included | Included | Included |
| Preventative Maintenance Plans | | Included | Included | Included |
| Asset Condition Manager / Advanced Inspections | | Required w/ Fleet Mgmt. | Included | Included |
| Asset Builder | | Option | Option | Included |

Attachment: Cartegraph Solutions Purchase Agreement (Cartegraph and See Click Fix)



Requesting Department

Police

TO: HONORABLE MAYOR AND TOWN COUNCIL
THROUGH: JOHN KROSS, ICMA-CM, TOWN MANAGER
FROM: RANDY BRICE, CHIEF OF POLICE
RE: CONSIDERATION AND POSSIBLE APPROVAL OF AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF MESA FOR LABORATORY SERVICES RELATED TO THE QUEEN CREEK POLICE DEPARTMENT NOT TO EXCEED \$125,000. (FY 21/22 BUDGETED ITEM)
DATE: November 3, 2021

Staff Recommendation:

Staff recommends approval of the Intergovernmental Agreement with the City of Mesa for Laboratory Services not to exceed \$125,000 (FY 2021-22 Budgeted Item).

Relevant Council Goal(s):



Effective Government (Intergovernmental Relations)



Safe Community (Public Safety)



Superior Infrastructure (Technology)

Proposed Motion:

Motion to approve the Intergovernmental Agreement with the City of Mesa for Laboratory Services not to exceed \$125,000

Discussion:

Since incorporation, the Town of Queen Creek has contracted law enforcement services with the Maricopa County Sheriff's Office (MCSO). During that period, MCSO has provided laboratory services through internal programs and the Arizona Department of Public Safety (Arizona State Laboratory). These services have included Biology (DNA & Serology), Controlled Substances, Toxicology, Firearms/Tool mark/Impressions, Fingerprint Identification, and Latent Prints. As we transition to the Queen Creek Police Department, these essential services are still required.

Based on a twelve (12) month review of data provided by the Arizona Department of Public

Safety, we found that at least six (6) categories or services had a turn-a-round time of more than 30 days. DNA analysis in particular required up to 274 days for results. As stated in the 2019 Law Enforcement study, a partnership with another municipality may reduce wait times and provide a higher level of technical service.

As we prepare to launch QCPD, we have the opportunity to partner with another municipality for these critical services. However, the number of available partners has been initially limited by a variety of circumstances or conditions including but not limited to the available storage facilities, laboratory staffing/capacity, equipment availability, system compatibility, and project timelines. Based on these conditions, an agreement with the City of Mesa is the best available option for these critical services.

According to a (12) twelve-month review of data provided by the City of Mesa, the Mesa laboratory consistently outperforms on turnaround times for at least (6) six categories or services. They also provide other support services not offered by other facilities/organizations.

This agreement provides:

1. Biology (Serology, DNA Analysis)
2. Controlled Substances
3. Firearms and Toolmarks Analysis
4. Toxicology (Blood & Urine Alcohol, Inhalants and Urine & Blood Drug Analysis)
5. Latent Print Development
6. Latent Print Analysis (AFIS & NGI database searches)
7. Bloodstain Pattern Interpretation
8. Fire Debris Analysis
9. National Integrated Ballistic Information Network (NIBIN)
10. Shoe and Tire Impressions
11. Hand Drawn Composites

Fiscal Impact:

This action authorizes an Intergovernmental Agreement (IGA) with the City of Mesa for Laboratory services in an amount not to exceed \$125,000 (for Year 1). This item is included as part of the adopted budget for FY 2021-22.

This Agreement shall be effective January 1, 2022 and shall expire on December 31, 2027. The first year of this agreement includes hiring costs for additional positions necessary for the increase in capacity. Subsequent years are expected to be no more than \$175,000 annually. However, additional cases or submission may result in an annual adjustment.

The agreement indicates that the Queen Creek Police Department may terminate this agreement at any time by providing a written notice one (1) year prior to the termination date. Mesa is required to provide at least five (5) years notice. The right to terminate may be for any reason or for no reason.

Alternatives:

Council could choose not to approve this agreement and direct staff to utilize the State Laboratory. However, based on the state lab's current capacity and turnaround times, this may inhibit our ability to properly respond to the public needs and complete investigations in a reasonable amount of time. It may also result in a loss of cases if evidence is not analyzed within the statute of limitations.

Attachment(s):

1. QC IGA Lab Services

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF MESA AND THE TOWN OF QUEEN CREEK
FOR LABORATORY SERVICES**

This Intergovernmental Agreement (Agreement) is entered into pursuant to A.R.S. §§ 11-951 et seq. between the City of Mesa (City), an Arizona municipal corporation, acting through its Forensic Services Laboratory, and the Town of Queen Creek, an Arizona municipal corporation on behalf of its Police Department (Queen Creek or QCPD), which shall collectively be referred to as the Parties and each individually as a Party.

1. TERM OF AGREEMENT

The term of this Agreement shall become effective upon signature and shall for a term of five (5) years unless otherwise terminated or cancelled by either Party in writing as provided herein but include an annual review and approval of the Agreement on or about the beginning of every fiscal year. A fiscal year is July 1 through June 30.

Acceptance of casework will begin upon signature of this Agreement by both City and QCPD.

2. TERMINATION

Each Party shall have the right to terminate this Agreement for any reason or for no reason, by mailing the other Party written notice of termination by certified mail, return receipt requested, as follows,

City shall provide written notice at least five (5) years prior to the termination date.

QCPD shall provide written notice at least one (1) year prior to termination date.

3. AMENDMENT

This Agreement may be amended or modified at any time as agreed upon in writing between the Parties.

4. CONFIDENTIALITY

Any information that may be exchanged through this Agreement shall not be used for purposes other than those covered in Exhibit A, Forensic Services Statement of Work (SOW), without prior approval of all the Parties to this Agreement except as may otherwise be required by law.

5. COST AND REIMBURSEMENT

Queen Creek will provide funding to Mesa in exchange for forensic laboratory services.

Queen Creek will provide funding of \$125,000 for Fiscal Year 2021-2022. These costs represent the entire financial obligation of Queen Creek for the Fiscal Year 2021-2022 based on the services provided herein including the hiring of personnel to perform the services herein.

Going forward, the base obligation will be \$175,000. Funding for each year thereafter will be adjusted each December following a review and evaluation of workload associated costs of services and agreed to in writing between the Parties.

At any time, Mesa or Queen Creek may evaluate the services provided hereunder and make any and all financial adjustments necessary based on demand for services. Any financial adjustments shall be agreed upon in writing between the Parties.

In the event forensic services are increased beyond that which is provided in Exhibit A, SOW, the Parties agree to negotiate in good faith an increase in the annual fee charged by Mesa to Queen Creek to compensate Mesa for the extra services provided, any agreement shall be in writing between the Parties within thirty (30) days.

6. PAYMENT

Mesa will invoice Queen Creek for forensic laboratory services on July 1 of each year this Agreement is in effect.

7. PURPOSE

This Agreement establishes the basis for Mesa Forensic Services to provide forensic services to Queen Creek for criminal investigations conducted by the Queen Creek Police Department.

The forensic services performed will be in accordance with the terms and conditions stated in this Agreement.

8. STATEMENT OF WORK – FORENSIC SERVICES PROVIDED

Unless otherwise agreed to in writing between the Parties, the Mesa Forensic Services shall only provide forensic services to Queen Creek within its capabilities and as set forth in Exhibit A, SOW, and incorporated herein by reference.

As capabilities and service needs change over time, the Parties shall amend this Agreement accordingly indicating services no longer provided as well as new services to be provided and the cost thereof.

Queen Creek will be subject to the Mesa Forensic Laboratory's standard operating procedures for analyzing priorities which is attached herein as Exhibit B (FSQA-M2-7.12).

Queen Creek will be subject to Mesa Forensic Laboratory's standard operating procedures for evidence preservation, which is attached herein as Exhibit C (FSQA-M2-7.40), Exhibit D (FSQA-M1-7.4), Exhibit E (Scope of Accreditation).

Mesa Forensic Services will be responsible for notifying Queen Creek of any revisions to Exhibits B, C, D, and E.

Any reports generated pertaining to services rendered under this Agreement, will be subject to Mesa Forensic Services standard operating procedures and Arizona's public records law.

Mesa Forensic Services staff, upon adequate notice, will be available to participate in legal proceedings (discovery hearings or court appearances) to testify as to any testing or certification services performed under this Agreement.

If Forensic Services staff is scheduled for simultaneous court appearances older case will take precedence. Irrespective, the staff member will notify the court with the newer case of the case conflict.

9. RECORDS

The Parties agree to maintain and furnish to each other records and documents pertaining to the forensic services provided under this Agreement as may be required by Federal, State, and local laws, regulations, and rules.

Queen Creek may request an audit related to the services provided under this Agreement for any reason or for no reason with thirty (30) days written notice to Mesa. If the audit reveals fees or billable items have been charged incorrectly, the appropriate corrections and adjustments will be made.

Mesa shall preserve all records related to services provided under this Agreement for the time period set forth in its statutory retention schedule. The Parties acknowledge that all records related to this Agreement may be subject to disclosure pursuant to Arizona law in response to a public records request or to a subpoena, court order, or other legal or judicial process.

10. EMPLOYMENT

This Agreement does not create an employee/employer relationship between Mesa and Queen Creek. Mesa personnel and Queen Creek personnel will be acting in their individual capacities and not as agents, associates, employees, partners, or joint ventures of the other.

The agents, associates, representative, employees, or subcontractors of one shall not be deemed or construed to be the agents, associates, employees or subcontractors of the other.

11. INDEMNIFICATION AND INSURANCE

To the extent permitted by law, each Party agrees to indemnify, defend, and hold harmless the other Party, their elected officials, appointees, officers, employees, authorized volunteers and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands or damages of any kind or nature relating to this Agreement which, are the result of any act or omission of the Party, its elected officials, appointees, officers, employees, authorized volunteers, agents, and anyone acting under its direction or control, whether intentional or negligent, in connection with or incident to this Agreement. Failure of a Party to comply with the terms of this Agreement shall not provide the basis of any third-party action against any of the Parties.

The Parties agree to secure and maintain insurance coverage for any and all risks that may arise out of the terms, obligations, operations, and actions as set forth in this Agreement including, but not limited to, public entity insurance. The acquisition of insurance or the maintenance and operation of a self-insured program may fulfill this insurance requirement; provided, however, that the unencumbered reserves available under any such self-insurance program shall be equal to or greater than the required minimum coverage amounts of Three Million Dollars. The Parties to this Agreement shall exchange certificates of insurance or self-insurance.

12. CONFLICT OF INTEREST

Pursuant to ARS §38-511, the State, its political subdivisions, or any department or agency of either may, within three (3) years after its execution, cancel any Agreement, without penalty or further obligation, made by the State, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the State, its political subdivisions, or any of the departments or agencies of either is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement. Cancellation of the Agreement shall be effective upon written notice as provided in ARS § 38-511.

13. ARBITRATION

Pursuant to A.R.S. § 12-1518, disputes under this Agreement that cannot be resolved among the Parties shall be resolved through the use of arbitration as follows,

- A. Cases under the Jurisdictional Limit. In all cases filed in superior court in which the court finds, or the Parties agree that the amount in controversy does not exceed the jurisdictional limit, arbitration shall be used, unless all

Parties file a written stipulation waiving the arbitration requirement, and the court waives the arbitration requirement with good cause shown.

14. COMPLIANCE WITH E-VERIFY

To the extent provisions of A.R.S. § 41-4401 are applicable, each Party warrants to the other that it will comply with all Federal Immigration laws and regulations that relate to its employees and that each now complies with the E-Verify Program under A.R.S. § 23-214(A).

A breach of this warranty will be considered a material breach of this Agreement and may subject the breaching Party to penalties up to and including termination of this Agreement.

All of the Parties retain the legal right to inspect the papers of any employee who works under this Agreement or any related subcontract to ensure compliance with the warranty given above.

Any Party may conduct a random verification of the employment records of any other Party to ensure compliance with this warranty.

A Party will not be considered in material breach of this Agreement if it establishes that it has 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 ARS § 23-214(A).

The provisions of this Section must be included in any contract either Party enters into with any and all of its contractors or subcontractors who provide services under this Agreement.

15. NON-DISCRIMINATION

The Parties agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, and nondiscrimination, including the American with Disabilities Act.

16. OTHER PROVISIONS

1. Entire Agreement. This Agreement including Attachments and Exhibits contains the entire understanding between the Parties. This Agreement replaces and supersedes any previous agreements, representations, understandings, and negotiations of the parties, oral or written, with respect to the subject matter of this Agreement.
2. Amendment or Modification. There are no representations or other provisions other than those contained herein, and any amendment or modification of this Agreement shall be made as provided herein at Section 3, Amendment.

- 3. Invalidity. The Parties agree that should any part of this Agreement be held to be invalid or void, the remainder of the Agreement shall remain in full force and effect and shall be binding upon both Mesa and Queen Creek.
- 4. Governing Law. This Agreement shall be construed under the laws of the State of Arizona and shall incorporate by reference all laws governing agreements and mandatory contract provisions required by statute or executive order.
- 5. Waiver. The waiver of any breach of this Agreement shall not be deemed to amend this Agreement and shall not constitute waiver of any subsequent breach.
- 6. Headings. Headings are for convenience and shall not affect interpretation.

17. NOTICE

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the date written below.

Town of Queen Creek

City of Mesa

This ____ day of _____, 2021

This ____ day of _____, 2021

By: _____

By: _____

Copies of appropriate action by ordinance, resolution, or otherwise authorizing the respective parties to enter into this Agreement are attached hereto.

In accordance with A.R.S. §11-952, this contract has been reviewed by the undersigned who have determined that this contract is in appropriate form and within the powers and authority granted to each respective public body.

This ____ day of _____, 2021

This ____ day of _____, 2021

By: _____
Attorney for Queen Creek

By: _____
Nancy Sorensen
Staff Attorney
Mesa City Attorney's Office

Attachment: QC IGA Lab Services (Mesa IGA Lab Services)

EXHIBIT A
STATEMENT OF WORK
2021-2022 Fiscal Year
Forensic Services Provided

The following services are provided under the terms of this Agreement,

1. Biology (Serology, DNA Analysis)
2. Controlled Substances
3. Firearms and Toolmarks Analysis
4. Toxicology (Blood & Urine Alcohol, Inhalants and Urine & Blood Drug Analysis)
5. Latent Print Development
6. Latent Print Analysis (AFIS & NGI database searches)
7. Bloodstain Pattern Interpretation
8. Fire Debris Analysis
9. NIBIN
10. Shoe and Tire Impressions
11. Hand Drawn Composites

The forensic services provided will be based on the standard working protocols and policies of the Mesa laboratory. Queen Creek will have control of their case priority and the ability to request cases be expedited to meet their public safety mission as stated in Exhibit B (Case acceptance policy, FSQA-M2-7.12).

Forensic Services under this Agreement does not include the following services:

1. Response to crime scenes.
2. Inked Print Analysis

The foregoing services are not included under this Agreement. In the event Queen Creek shall require any or all of the foregoing services, Queen Creek shall agree in writing to pay any and all associated costs in addition to what is provided under this Agreement.



Requesting Department

Finance

TO: HONORABLE MAYOR AND TOWN COUNCIL
THROUGH: JOHN KROSS, ICMA-CM, TOWN MANAGER
FROM: SCOTT MCCARTY, FINANCE DIRECTOR AND ROB SACHS, REAL ESTATE PROGRAM MANAGER
RE: CONSIDERATION AND POSSIBLE APPROVAL OF RESOLUTION 1427-21 MODIFYING ASSESSMENT NO. 20.01.01.01.03 FOR IMPROVEMENT DISTRICT NO. 001 OF THE TOWN OF QUEEN CREEK, ARIZONA.
DATE: November 3, 2021

Staff Recommendation:

Staff recommends approval of Resolution 1427-21 modifying Assessment No. 20.01.01.01.03 for Improvement District No. 001 of the Town of Queen Creek.

Relevant Council Goal(s):



Secure Future: KRA Land Use & Economic Development

Proposed Motion:

Move to approve Resolution 1427-21, modifying Assessment No. 20.01.01.01.03 for Improvement District No. 001 of the Town of Queen Creek

Discussion:

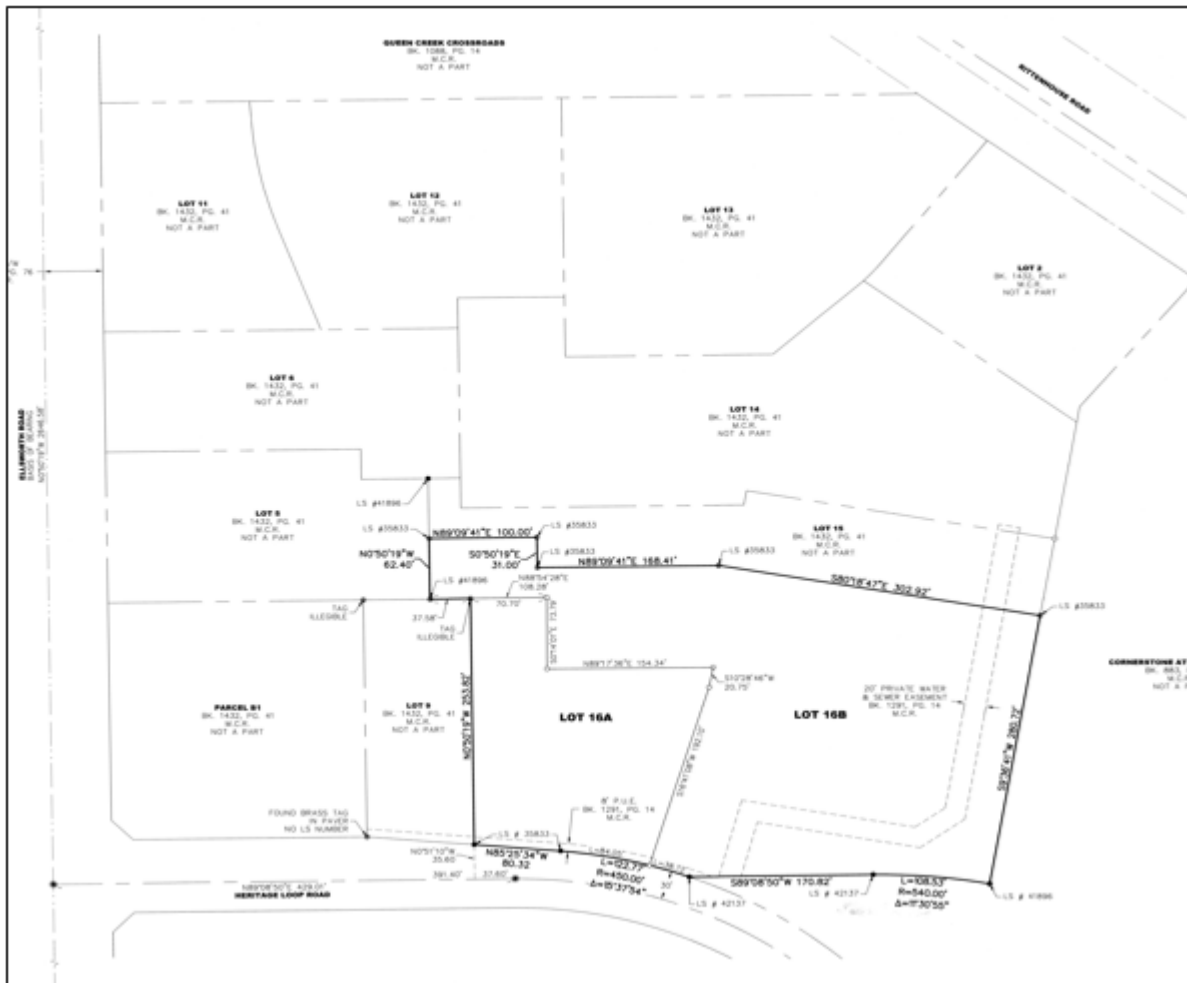
This modification of assessment is being requested by Wadsworth Queen Creek, LLC, JKG, LLC, and Triple B6 LLC, the owners of the parcels that comprise Assessment No. 20.01.01.01.03. The original Resolution 668-07 that created these parcels within Improvement District No. 001 created this portion of the parcel as Lot 16. The property owner has sold off a portion of Lot 16, creating Lot 16A and Lot 16B. As a result of this lot split, the assessment is being split so that each property owner is paying their pro-rata share of the assessment based on the square footage of their property ownership.

The proposed reallocation will not change the total amount of the assessment dollars being collected, but will reallocate the remaining debt for these two parcels based on the size of each parcel.

| Assessment | Principal Amount of Assessment Balance Before Modification | |
|-------------------|------------------------------------------------------------|-----------------------------------------|
| 20.01.01.01.03.01 | \$ 19,679.77 | Lot 16A, of Heritage Town Square Center |
| 20.01.01.01.03.02 | \$ <u>52,167.95</u> | Lot 16B, of Heritage Town Square Center |
| | \$ 71,847.72 | |

This reallocation between these two parcels aligns with the Town’s interests as parcels within the Improvement District are used as collateral in the instance of unpaid payments by a property owner.

Map of Assessment Nos. 20.01.01.01.03.01 and 20.01.01.01.03.02:



Fiscal Impact:

There is no cost to the reallocation. The property owners will be obligated to make their

assessment payments in accordance with the modified schedule.

Attachment(s):

1. Resolution 1427-21
2. Petition for Modification of Assessment No. 20.01.01.01.03

RESOLUTION NO. 1427-21

RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, APPROVING MODIFICATION OF ASSESSMENT NO. 20.01.01.01.03 FOR IMPROVEMENT DISTRICT NO. 001 OF THE TOWN OF QUEEN CREEK, ARIZONA.

WHEREAS, persons representing that they represent all of the individuals or entities who have an interest in certain lots lying within Improvement District No. 001 of the Town of Queen Creek, Arizona, described in Exhibit A, have petitioned this body for a modification of the principal amount of Assessment No. 20.01.01.01.03; and

WHEREAS, this body has considered the matter and has relied on the advice of its Superintendent of Streets and on the advice of its engineers with respect to the improvements constructed and the assessments levied for Improvement District No. 001 of the Town of Queen Creek, Arizona;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, that:

Pursuant to Section 48-594, Arizona Revised Statutes, as amended, and good cause appearing therefor, it is therefore ordered that the principal amount of Assessment No. 20.01.01.01.03 in Improvement District No. 001 of the Town of Queen Creek, Arizona, be modified and that the principal amounts of Assessment Nos. 20.01.01.01.03.01 and 20.01.01.01.03.02 shall be in the amounts set forth on the petition on file in the Office of the Superintendent of Streets of the Town of Queen Creek, Arizona.

PASSED, ADOPTED and APPROVED this 3rd day of November, 2021.

Mayor

ATTEST:

Clerk

APPROVED AS TO FORM:

Town Attorney

REVIEWED BY:

Town Manager

Attachment: Resolution 1427-21 (Wadsworth Lot Split)

I hereby certify that I have checked the principal amounts with respect to the modification of the assessment above-numbered and that the modification as set forth on the petition is acceptable to me.

Superintendent of Streets of the Town of Queen
Creek, Arizona

Attachment: Resolution 1427-21 (Wadsworth Lot Split)

C E R T I F I C A T I O N

I HEREBY CERTIFY that the above and foregoing Resolution No. 1427-21 was duly passed and adopted by the Mayor and Common Council of the Town of Queen Creek, Arizona, at a regular meeting held on the 3rd day of November, 2021, and that a quorum was present thereat.

Town Clerk

Attachment: Resolution 1427-21 (Wadsworth Lot Split)

EXHIBIT "A"

LEGAL DESCRIPTION OF ASSESSMENT NO. 20.01.01.01.03.01 and 20.01.01.01.03.02
TOWN OF QUEEN CREEK, ARIZONA IMPROVEMENT DISTRICT NO. 001

Assessment No. 20.01.01.01.03.01 = Lot 16A, of Heritage Town Square Center Lot 16, according to the plat of record in the office of County Recorder of Maricopa County, Arizona, Recorded in Book 1610 of Maps, Page 12.

Assessment No. 20.01.01.01.03.02 = Lot 16B, of Heritage Town Square Center Lot 16, according to the plat of record in the office of County Recorder of Maricopa County, Arizona, Recorded in Book 1610 of Maps, Page 12.

**PETITION FOR MODIFICATION OF ASSESSMENT NO. 20.01.01.01.03
TOWN OF QUEEN CREEK, ARIZONA IMPROVEMENT DISTRICT
NO. 001**

TO THE MAYOR AND COMMON COUNCIL OF THE TOWN OF QUEEN CREEK,
ARIZONA:

Pursuant to Section 48-594, Arizona Revised Statutes, as amended, the undersigned, Wadsworth Queen Creek LLC and JKG, LLC; and Triple B6 LLC, together "Owners" hereby represent and warrant that they are the only entities who have an interest in the lots subject to assessment within Improvement District No. 001 of the Town of Queen Creek, Arizona, described below as Assessment No. 20.01.01.01.03.

(1) The undersigned hereby requests that the principal amount of the following assessment number:

| Assessment | Principal Amount of Assessment Balance Before Modification | |
|----------------|---------------------------------------------------------------|---------------------------------------|
| 20.01.01.01.03 | \$ 71,847.72 | Lot 16 of Heritage Town Square Center |

(2) be modified in the following manner, to wit:

| Assessment | Principal Amount of Assessment Balance After Modification | |
|-------------------|--------------------------------------------------------------|-----------------------------------------|
| 20.01.01.01.03.01 | \$ 19,679.77 | Lot 16A, of Heritage Town Square Center |
| 20.01.01.01.03.02 | \$ <u>52,167.95</u> | Lot 16B, of Heritage Town Square Center |
| | \$ 71,847.72 | |

Attachment: Petition for Modification of Assessment No. 20.01.01.01.03 (Wadsworth Lot Split)

Attached to this petition and marked Exhibit "A" are the legal descriptions or the Maricopa County Assessor's Tax Parcel Identification Number of the property for the respective assessment set forth in (1) above.

Attached to this petition and marked Exhibit "B" are the legal descriptions or the Maricopa County Assessor's Tax Parcel Identification Numbers of the property for the respective assessments set forth in (2) above.

Attached to this petition and marked Exhibit "C" is a true copy of the amended portion of the assessment diagram with respect to the assessments set forth in (2) above.

The undersigned hereby acknowledges that, upon approval by the Mayor and Common Council of the Town of Queen Creek, Arizona, the modified assessment shall be binding on the undersigned as provided by Section 48-594, Arizona Revised Statutes, as amended.

WHEREFORE, the undersigned hereby requests that the Mayor and Common Council of the Town of Queen Creek, Arizona, modify the principal amount of the assessment number set forth in (1) to read in the manner set forth in (2) hereof and direct the Superintendent of Streets of the Town of Queen Creek, Arizona, to note this modification on his record of the assessment, together with the date such modification is made.

RECEIVED BY:

TOWN OF QUEEN CREEK, ARIZONA

Superintendent of Streets

Date

Attachment: Petition for Modification of Assessment No. 20.01.01.01.03 (Wadsworth Lot Split)

EXHIBIT "A"

LEGAL DESCRIPTION OF ASSESSMENT NO. 20.01.01.01.03 TOWN OF QUEEN CREEK,
ARIZONA IMPROVEMENT DISTRICT NO. 001

20.01.01.01.03

RE-PLAT OF LOT 16 OF HERITAGE TOWN SQUARE CENTER, AS RECORDED IN BOOK 1432, PAGE 41, MARICOPA COUNTY RECORDS, ARIZONA LOCATED IN THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 2 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AND RECORDED AT 2021-0848894.

Attachment: Petition for Modification of Assessment No. 20.01.01.01.03 (Wadsworth Lot Split)

EXHIBIT “B”

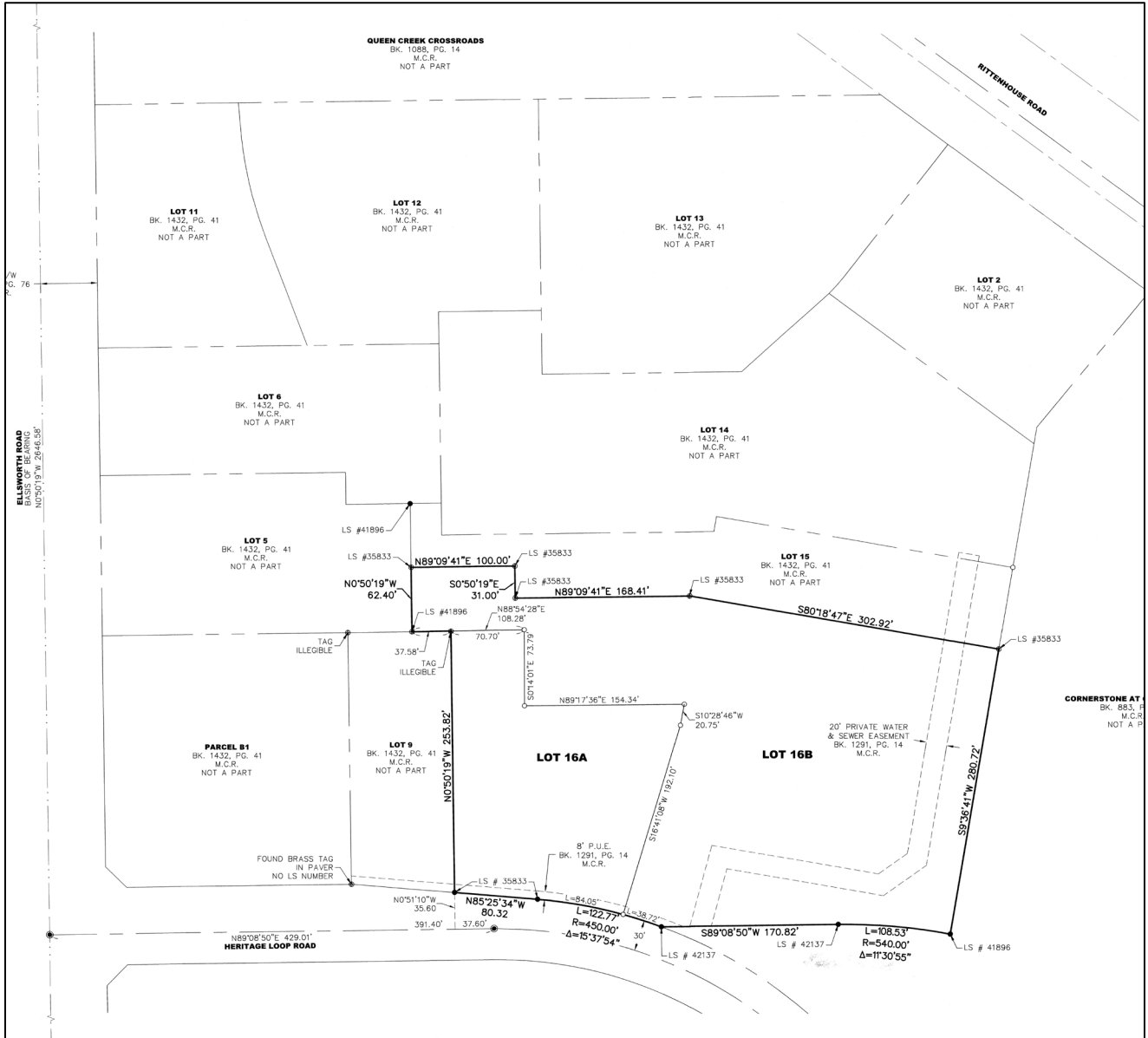
LEGAL DESCRIPTION OF ASSESSMENT NO. 20.01.01.01.03.01 and 20.01.01.01.03.02
TOWN OF QUEEN CREEK, ARIZONA IMPROVEMENT DISTRICT NO. 001

Assessment No. 20.01.01.01.03.01 = Lot 16A, of Heritage Town Square Center Lot 16, according to the plat of record in the office of County Recorder of Maricopa County, Arizona, Recorded in Book 1610 of Maps, Page 12.

Assessment No. 20.01.01.01.03.02 = Lot 16B, of Heritage Town Square Center Lot 16, according to the plat of record in the office of County Recorder of Maricopa County, Arizona, Recorded in Book 1610 of Maps, Page 12.

EXHIBIT "C"

MODIFIED ASSESSMENT DIAGRAM OF ASSESSMENT NO. 20.01.01.01.03.01 AND 20.01.01.01.03.02 TOWN OF QUEEN CREEK, ARIZONA IMPROVEMENT DISTRICT NO. 001



Attachment: Petition for Modification of Assessment No. 20.01.01.01.03 (Wadsworth Lot Split)



Requesting Department

Finance

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS, ICMA-CM, TOWN MANAGER

FROM: SCOTT MCCARTY, FINANCE DIRECTOR

RE: CONSIDERATION AND POSSIBLE APPROVAL OF RESOLUTION 1428-21, RELATED TO THE FINANCING OF UTILITY INFRASTRUCTURE PROJECTS, AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A PURCHASE AGREEMENT, A TRUST AGREEMENT AND A CONTINUING COVENANT AGREEMENT, AS WELL AS AGREEMENTS WITH OUR FINANCIAL ADVISOR AND SPECIAL COUNSEL; (2) APPROVING THE SALE, EXECUTION, AND DELIVERY OF \$85M OF SUBORDINATE LIEN EXCISE TAX AND STATE SHARED REVENUE OBLIGATIONS, SERIES 2021, EVIDENCING A PROPORTIONATE INTEREST OF THE OWNERS THEREOF IN SUCH PURCHASE AGREEMENT; (3) DELEGATING THE DETERMINATION OF CERTAIN TERMS OF SUCH OBLIGATIONS AND MATTERS RELATED THERETO TO THE MANAGER AND CHIEF FINANCIAL OFFICER OF THE TOWN AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION.

DATE: November 3, 2021

Staff Recommendation:

Staff recommends approval of Resolution 1428-21 authorizing a purchase agreement, a trust agreement, a continuing covenant agreement, and agreements with our financial advisor and special counsel; providing for the sale of \$85M of subordinate lien excise tax and state shared revenue obligations for utility infrastructure projects, evidencing proportionate interests pursuant to such purchase agreement; authorizing with respect thereto necessary agreements; and delegating certain authority.

Relevant Council Goal(s):



Effective Government: KRA Financial Management, Internal Services &

Sustainability



Superior Infrastructure - Capital Improvement Program

Proposed Motion:

Staff recommends approval of Resolution 1428-21 authorizing a trust agreement, a continuing covenant agreement, and agreements with our financial advisor and special counsel; providing for the sale of \$85M of subordinate lien excise tax and state shared revenue obligations for utility infrastructure projects, evidencing proportionate interests pursuant to such purchase agreement; authorizing with respect thereto necessary agreements; and delegating certain authority.

Discussion:

On March 3, 2021, staff delivered a presentation to the Town Council regarding the need to acquire financing for the construction of water and sewer infrastructure over the next three years due to the tremendous growth each system is experiencing. At the time, it was estimated \$130M would be needed to maintain the existing level of service for current customers and provide the infrastructure needed for new development.

Since then, the capital planning efforts associated with the Comprehensive Utility Master Plan update (being performed by Carollo Engineering) have progressed and the capital needs continue to be refined. As a result, Finance and Utility staff are now projecting \$140M will be needed over the next three years - \$100M for water and \$40M for sewer. Consistent with Finance's original recommendation, two types of debt issues are being recommended. One, interim bank financing totaling \$85M, which staff is recommending for approval at this time, and two, WIFA loan financing totaling \$55M, which will be brought to the Town Council later this fiscal year.

The utilization of an interim, bank financing will accomplish a number of the Town's financial objectives. First, because the Town does not yet have a utility bond rating, interim bank financing will serve as a bridge until the Town is in a position to seek a utility rating. Once we have a rated utility, this interim financing will be refinanced with long-term bond financing. Second, many of the projects are underway, nearly complete, or involve significant iron/steel components (which are not WIFA eligible) and thus they are not suitable for WIFA loan financing. Therefore, bank financing represents the Town's best and most cost-effective avenue to recoup capital costs that have already been incurred or are not otherwise eligible for WIFA.

The proposed \$85M bank financing will have two main applications. First, \$27M will be used to reimburse the Town for utility infrastructure costs incurred since January of 2020. These projects and costs were included in reimbursement resolutions 1329-20 and 1380-20 adopted by the Town Council in March 2020 and December of 2020 in anticipation of future debt issues. Subsequently, the remaining \$58M will be available to fund non-WIFA eligible construction activities over the next 24 months.

Working in conjunction with the Town staff, the Town's Financial Advisor (Wedbush Securities Inc.) secured proposals from five banks. The terms of the proposal submitted by US Bank (the "Bank") are considered by Town staff to be the most favorable of the proposals, and are summarized below.

- The overall issue size is \$85 million of subordinate lien excise tax and state shared revenue obligations (the "Obligations") (\$84.81 million for projects and \$190,000 for

issuance costs) and matures June 1, 2025;

- The issue is not rated and is being purchased directly by the Bank;
- The issue is a draw down financing which provides for an initial draw of \$27 million to reimburse previous expenditures and to pay cost of issuance;
- The remaining \$58 million unused portion of the obligations will be drawn down over a 24 month period according to a minimum draw schedule;
- There will be no interest cost on the undrawn/unused portion of the obligations;
- Interest on the portion of the obligations that has been drawn will be determined by a variable rate formula (SIFMA plus 0.37%) according to the parameters set forth within the Resolution;
- The interest rate index will be SIFMA which is reset weekly;
- The initial interest rate is estimated to be 0.42% (the current SIFMA rate of 0.05% plus 0.37%);
- The overall interest cost is estimated to be less than \$1.5 million through June 1, 2025;
- The Town will have the option to prepay the obligations at par on any weekly rest date; and
- If necessary, the Town and the Bank may agree to extend the maturity date of the obligations if Town's credit quality remains acceptable to the Bank and both parties mutually agree to the extended terms.

At this time, the Town Council is being asked to approve the documents necessary for the interim financing including:

1. The Authorizing Resolution. The Resolution authorizes the issuance of the Obligations within certain established parameters and delegates the authority to finalize the specifics to the Town Manager and Finance Director/Chief Financial Officer.
2. The form of the Third Subordinate Lien Purchase Agreement, the form of the Third Subordinate Lien Trust Agreement, and the form of the Continuing Covenant Agreement. These documents reflect the relationship between the Town, the Trustee Bank, and US Bank (the Bank) and provide, among other things, the security for the Obligations, and for the execution and delivery thereof.

Upon approval of these documents, no further Town Council action is required and the transaction is tentatively scheduled to close December 8, 2021.

This issue has involved many parties in addition to Town staff and their expertise has been key in getting this transaction completed. The Town's Financial Advisor (Wedbush Securities Inc.) has a fiduciary responsibility solely to the Town. Their responsibility is to advise the Town on all matters related to issuing debt including timing, market conditions, and financing structures. The Town's Special Counsel (Greenberg Traurig, LLP) also played an important role by preparing the associated resolution and legal documents.

Fiscal Impact:

The Obligations will be secured by a subordinate lien pledge of excise taxes and state shared revenues - one of the most secure revenue pledges available to the Town and results in a very attractive interest rate. Excise taxes and state shared revenues are essentially all Operating Budget revenues excluding dedicated revenues (e.g. the Town’s dedicated property tax and the gas tax).

The Town’s existing senior lien excise tax and state shared revenue obligations are rated ‘AA’. The initial interest rate on the Obligations is estimated to be under 0.5%. The overall interest cost, depending on the timing of the draws, is estimated to be between \$1.0 and \$1.5 million through June 1, 2025. The draw down loan structure is estimated to save \$300,000 in interest expense.

Although excise taxes and state shared revenues are pledged to repay the interim financing, they will not be the resource actually used to make the semi-annual interest payments. Water and wastewater operating revenues and capacity fees will be used to make the debt service payments, but will not be pledged to the payment thereof. The \$190,000 estimated issuance costs are summarized in the schedule below.

| Costs of Issuance | Amount |
|-------------------------------|------------------|
| Financial Advisor | \$100,000 |
| Special Counsel | 50,000 |
| Bank Counsel Fee | 35,000 |
| Miscellaneous (Trustee, etc.) | 5,000 |
| TOTAL | \$190,000 |

Alternatives:

None. The interim funding will allow the Town to be reimbursed \$27 million for previous capital expenditures and provide necessary funding to build projects necessary to meet the current and future customers.

Attachment(s):

1. Authorizing Resolution No. 1428-21
2. Form of Third Subordinate Lien Purchase Agreement
3. Form of Third Subordinate Lien Trust Agreement
4. Form of the Continuing Covenant Agreement

RESOLUTION NO. 1428-21

RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AGREEMENT, A TRUST AGREEMENT AND A CONTINUING COVENANT AGREEMENT, AS WELL AS AGREEMENTS WITH A FINANCIAL ADVISOR AND SPECIAL COUNSEL; APPROVING THE SALE AND EXECUTION AND DELIVERY OF SUBORDINATE LIEN EXCISE TAX AND STATE SHARED REVENUE OBLIGATIONS, SERIES 2021, EVIDENCING A PROPORTIONATE INTEREST OF THE OWNERS THEREOF IN SUCH PURCHASE AGREEMENT; DELEGATING THE DETERMINATION OF CERTAIN TERMS OF SUCH OBLIGATIONS AND MATTERS RELATED THERETO TO THE MANAGER AND CHIEF FINANCIAL OFFICER OF THE TOWN AND AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION

WHEREAS, the Mayor and Council of the Town of Queen Creek, Arizona (the "Town"), heretofore determined that it would be beneficial to its citizens to refinance the Loan Repayment Agreement, between the Town and the Greater Arizona Development Authority, a body corporate and politic constituting a governmental instrumentality duly organized and existing within the State of Arizona under the Constitution and laws of the State of Arizona ("GADA"); and

WHEREAS, in order to finance the costs thereof, the Town deemed it necessary and desirable to borrow \$3,845,000 from GADA; and

WHEREAS, in connection therewith, the Town and GADA entered into a Sixth Loan Repayment Agreement, dated as of March 1, 2014 (the "Sixth Loan Repayment Agreement"); and

WHEREAS, the Mayor and Council of the Town also heretofore determined that it would be beneficial to its citizens to refinance the Second Loan Repayment Agreement, the Third Loan Repayment Agreement, the Fourth Loan Repayment Agreement, and the Fifth Loan Repayment Agreement, each between the Town and GADA, the First Purchase Agreement, between the Town, as buyer, and a trustee, as seller, and to prepay assessments associated with Town property in a certain district, which assessments were levied pursuant to Title 4

8, Chapter 4, Article 2, Arizona Revised Statutes; and

WHEREAS, in order to finance and refinance the costs thereof, the Town deemed it necessary and desirable to cause the execution and delivery of obligations in the principal amount of \$47,990,000, representing interests in a Second Purchase Agreement, dated as of October 1, 2016 (the “Second Purchase Agreement”), between the Town, as buyer, and a trustee, as seller; and

WHEREAS, the Mayor and Council of the Town also heretofore determined that it would be beneficial to its citizens to finance the costs of street improvements and public safety facilities; and

WHEREAS, in order to finance the costs thereof, the Town deemed it necessary and desirable to cause the execution and delivery of obligations in two series in the total principal amount of \$65,960,000, representing interests in a Third Purchase Agreement, dated as of February 1, 2018 (the “Third Purchase Agreement”), between the Town, as buyer, and a trustee, as seller; and

WHEREAS, the Mayor and Council of the Town also heretofore determined that it would be beneficial to its citizens to finance the costs of additional street improvements and additional public safety facilities; and

WHEREAS, in order to finance the costs thereof, the Town deemed it necessary and desirable to cause the execution and delivery of obligations in the principal amount of \$78,605,000, representing interests in a Fourth Purchase Agreement, dated as of June 1, 2020 (the “Fourth Purchase Agreement”), between the Town, as buyer, and a trustee, as seller; and

WHEREAS, the Mayor and Council of the Town heretofore determined that it would be beneficial to its citizens to finance the costs of Phoenix Active Management Area Ground Water Extinguishment Credits for the Town’s water system;

WHEREAS, in order to finance the costs thereof, the Town deemed it necessary and desirable to cause the sale and execution and delivery of a series of obligations in the aggregate principal amount of \$49,450,000, representing interests in a First Subordinate Lien Purchase Agreement, dated as of February 1, 2019, between the Town and a trustee, in its separate capacity as seller; and

WHEREAS, the Mayor and Council of the Town heretofore determined that it would be beneficial to its citizens to finance the costs of additional Phoenix Active Management Area Ground Water Extinguishment Credits for the Town’s water system;

WHEREAS, in order to finance the costs thereof, the Town deemed it necessary and desirable to cause the sale and execution and delivery of a series of obligations in the aggregate principal amount of \$6,740,000, representing interests in a Second Subordinate Lien Purchase Agreement, dated as of January 1, 2020, between the Town and a trustee, in its separate capacity as seller; and

WHEREAS, pursuant to Section 3 of the Sixth Loan Repayment Agreement, the Town irrevocably pledged for the payment of the amounts due thereunder

the revenues from the Excise Taxes and the State Shared Revenues (each as defined in the hereinafter defined Trust Agreement), such pledge being a first lien pledge upon such amounts of the revenues from the Excise Taxes and the State Shared Revenues as will be sufficient to make the payments pursuant thereto when due; and

WHEREAS, pursuant to such Section of the Sixth Loan Repayment Agreement, except as limited by Section 10(a)(iii) of the Sixth Loan Repayment Agreement and by the corresponding sections in any agreement for any additional loan from GADA or for any loan from the Water Infrastructure Finance Authority of Arizona (“WIFA”), subject to Section 49-1225(F) or 49-1245(F), Arizona Revised Statutes, hereinafter consummated (collectively, “Additional Agency/Authority Loan Agreements”), the rights of GADA to payment from the revenues from the Excise Taxes and the State Shared Revenues are on a parity with the rights to payment from the revenues from the Excise Taxes and the State Shared Revenues of the Sixth Loan Repayment Agreement and of any obligations issued on a parity with the Sixth Loan Repayment Agreement, as permitted pursuant to Section 6 of the Sixth Loan Repayment Agreement (the “Parity Lien Obligations”), which includes Additional Agency/Authority Loan Agreements; and

WHEREAS, the Second Purchase Agreement, the Third Purchase Agreement and the Fourth Purchase Agreement were executed and delivered as Parity Lien Obligations (the Sixth Loan Repayment Agreement, the Second Purchase Agreement, the Third Purchase Agreement, the Fourth Purchase Agreement and any other Parity Lien Obligations hereafter incurred are referred to herein collectively as the “Senior Obligations”), and the hereinafter defined Purchase Agreement will be executed and delivered as an obligation to which the Town irrevocably pledges for the payment of the amounts due thereunder the revenues from the Excise Taxes and the State Shared Revenues, such pledge being a second lien pledge upon such amounts of the revenues from the Excise Taxes and the State Shared Revenues (including as diminished by Agency/Authority Loan Agreements) as will be sufficient to make the payments pursuant thereto when due, such pledge being subordinate to the pledge of the revenues from the Excise Taxes and the State Shared Revenues to the Senior Obligations; and

WHEREAS, after giving effect to the Purchase Agreement, pursuant to Section 5 of the Purchase Agreement, the Town shall not further encumber the revenues from the Excise Taxes and the State Shared Revenues on a basis equal to or senior to the pledge under the Purchase Agreement unless the revenues from the Excise Taxes plus the State Shared Revenues, when combined mathematically for such purpose only, in the most recently completed fiscal year of the Town, shall have amounted to at least two (2) times the highest combined interest and principal requirements for any succeeding fiscal year of the Town for the Senior Obligations, the Purchase Agreement and any obligations secured or so proposed to be secured by such pledge of the revenues from the Excise Taxes and the State Shared Revenues on a parity of lien with the Purchase Agreement; and

WHEREAS, Section 10(a) of the Sixth Loan Repayment Agreement provides that GADA may in the case of nonpayment, among other things, certify to the Treasurer of the State and notify the Mayor and Council of the Town that the Town has

failed to make a required payment and direct a withholding of the State Shared Revenues as provided in Sections 41-2257(L) and (M) and 41-2258(I), (J) and (K), Arizona Revised Statutes (the "State Intercept of Funds"), and Additional Agency/Authority Loan Agreements may provide that GADA or WIFA provide for enforcement with the State Intercept of Funds; and

WHEREAS, the Mayor and Council have now determined that it will be beneficial to its citizens to finance the costs of improvements to the Town's utility system; and

WHEREAS, in order to finance the costs thereof, the Mayor and Council of the Town hereby deem it necessary and desirable to cause the sale and execution and delivery of Subordinate Lien Excise Tax and State Shared Revenue Obligations, Series 2021, Evidencing a Proportionate Interest of the Owner Thereof in Purchase Price Payments to be Made by the Town to U.S. Bank National Association, as trustee (the "Trustee" and such Obligations, the "Obligations") provided for by this Resolution pursuant to the Third Subordinate Lien Trust Agreement, to be dated as of the first day of the month of the dated date of the Obligations established as provided herein (the "Trust Agreement"), between the Trustee and the Town, such purchase payments (the "Payments") to be made pursuant to the Third Subordinate Lien Purchase Agreement, to be dated as of the first day of the month of the dated date of the Obligations established as provided herein (the "Purchase Agreement"), between the Town and the Trustee, in its separate capacity as "Seller"; and

WHEREAS, there have been presented to the Mayor and Council of the Town at the meeting of the Mayor and Council of the Town at which this Resolution is being adopted the proposed forms of: (1) the Purchase Agreement; (2) the Trust Agreement; and (3) a Continuing Covenant Agreement with respect to the execution and delivery of the Obligations, to be dated as of the first day of the month of the dated date of the Obligations established as provided herein (the "Continuing Covenant Agreement"), between the Town and U.S. Bank National Association, as purchaser of the Obligations (the "Purchaser");

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, THAT:

Section 1. (a) The execution and delivery of the Obligations by the Trustee in one or more series is hereby approved. The Obligations shall be in the denominations and shall be fully registered without coupons, in each case as provided in the Trust Agreement.

(b) The Manager and the Chief Financial Officer of the Town or the designees of either of them (collectively, the "Authorized Representatives") are hereby authorized to determine on behalf of the Town: (1) the date the Obligations are to be sold to the Purchaser; (2) the aggregate principal amount of the Obligations which are to be issued (but not to exceed \$85,000,000 in aggregate principal amount); (3) the date the Obligations are to be dated; (4) the dates on which interest on the Obligations are to be

payable and the interest rates per annum the Obligations are to bear (but not to exceed 10.0% per annum except in the case of default or taxability), including whether the Obligations are to bear interest at a variable rate and, if so, the modes and rate setting mechanics therefor, and what the rate of interest should be in case of default or taxability; (5) the dates the Obligations are to mature (but, unless otherwise extended pursuant to the terms of the Purchase Agreement, the Trust Agreement and the Continuing Covenant Agreement, not later than June 1, 2025), the principal amounts to mature on such dates and the provisions for redemption thereof in advance of such dates; (6) the provisions for debt service coverage and incurrence of parity indebtedness; and (7) the terms upon which the Obligations are to be sold to the Purchaser (including for gross-ups caused by changes in laws or similar matters).

(c) The form and other terms of the Obligations, including the provisions for the signatures, authentication, payment, registration, transfer, exchange, redemption and number shall be as set forth in the Trust Agreement and are hereby approved.

Section 2. The Obligations are to be sold to the Purchaser pursuant to the terms of the Purchase Agreement, the Trust Agreement and the Continuing Covenant Agreement, as such terms are to be determined as provided hereinabove.

Section 3. The form, terms and provisions of the Purchase Agreement, the Trust Agreement and the Continuing Covenant Agreement, in substantially the forms of such documents (including the Obligations and other exhibits thereto) presented at the meeting of the Mayor and Council of the Town at which this Resolution is being adopted, are hereby approved, with such final provisions, insertions, deletions and changes as shall be approved by the Mayor or, in the absence thereof, Vice Mayor, the execution of each such document being conclusive evidence of such approval, and the Mayor or, in the absence thereof, Vice Mayor and the Clerk are hereby authorized and directed, for and on behalf of the Town, to execute and deliver and attest, where applicable, or approve the Purchase Agreement, the Trust Agreement and the Continuing Covenant Agreement and any other agreement or other document required by the Purchaser consistent with the terms thereof and hereof, and to take all action to carry out and comply with the terms of such documents.

Section 4. The Mayor and Council of the Town hereby request that the Trustee (including in its capacity as Seller) take any and all action necessary in connection with the execution and delivery of the Purchase Agreement and the Trust Agreement and the sale and execution and delivery of the Obligations and further authorizes and directs the Trustee to enter into such agreements as may be reasonable for the administration of the trusts so held by it.

Section 5. After any of the Obligations are delivered by the Trustee to the Purchaser upon receipt of payment therefor, this Resolution shall be and remain irrevocable until the Obligations and the interest and premium, if any, thereon shall have been fully paid, cancelled and discharged.

Section 6. The Authorized Representatives and the other officers of the Town, on behalf of the Town, are each hereby authorized and directed, without further order of the Mayor and Council of the Town, to do all such things and to execute and deliver such certificates, proceedings and agreements as may be necessary or convenient to be executed and delivered on behalf of the Town, to evidence compliance with, or further the purposes of, all the terms and conditions of this Resolution and the consummation of the transactions contemplated hereby, including, specifically but not by way of limitation, agreements with Wedbush Securities Inc. and Greenberg Traurig, LLP to act as financial advisor and special counsel, respectively, with respect to the execution and delivery of the Obligations.

Section 7. All actions of the officers and agents of the Town which conform to the purposes and intent of this Resolution and which further the sale and execution and delivery of the Obligations as contemplated by this Resolution whether heretofore or hereafter taken are hereby ratified, confirmed and approved.

Section 8. If any section, paragraph, clause or phrase of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or phrase shall not affect any of the remaining provisions of this Resolution. All orders, resolutions and ordinances or parts thereof inconsistent herewith are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any order, resolution or ordinance or any part thereof.

PASSED AND ADOPTED by the Mayor and Council of the Town of Queen Creek, Arizona, this 3rd day of November 2021.

.....
Mayor

ATTEST:

.....
Town Clerk

APPROVED AS TO FORM:

.....
Town Attorney

Attachment: Authorizing Resolution No. 1428-21 (\$85M Interim Financing Resolution)

THIRD SUBORDINATE LIEN PURCHASE AGREEMENT

by and between

U.S. BANK NATIONAL ASSOCIATION,
as Seller

and

THE TOWN OF QUEEN CREEK, ARIZONA,
as Buyer

Dated as of December 1, 2021

Attachment: Form of Third Subordinate Lien Purchase Agreement (\$85M Interim Financing Resolution)

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Attachment: Form of Third Subordinate Lien Purchase Agreement (\$85M Interim Financing Resolution)

THIRD SUBORDINATE LIEN PURCHASE AGREEMENT

THIS THIRD SUBORDINATE LIEN PURCHASE AGREEMENT, dated as of December 1, 2021 (this “Agreement”), by and between **THE TOWN OF QUEEN CREEK, ARIZONA**, a municipal corporation and a political subdivision under the laws of the State of Arizona (“Town”), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association (“Seller”), in its capacity as trustee (“Trustee”) under the Third Subordinate Lien Trust Agreement, dated as of even date herewith (the “Trust Agreement”), by and between Trustee and Town,

WITNESSETH:

WHEREAS, Town heretofore determined that it would be beneficial to its citizens to refinance the First Loan Repayment Agreement (as such term and all other capitalized terms used but not defined herein are defined in the Trust Agreement); and

WHEREAS, in order to finance the costs thereof, Town deemed it necessary and desirable to borrow \$3,845,000 from GADA; and

WHEREAS, in connection therewith, Town and GADA entered into the Sixth Loan Repayment Agreement; and

WHEREAS, Town also heretofore determined that it would be beneficial to its citizens to refinance the Second Loan Repayment Agreement, the Third Loan Repayment Agreement, the Fourth Loan Repayment Agreement, and the Fifth Loan Repayment Agreement, each between Town and GADA, the First Purchase Agreement, between Town, as buyer, and a trustee, as seller, and to prepay assessments associated with Town property in a certain district, which assessments were levied pursuant to Title 48, Chapter 4, Article 2, Arizona Revised Statutes; and

WHEREAS, in order to finance and refinance the costs thereof, Town deemed it necessary and desirable to cause the execution and delivery of obligations in the principal amount of \$47,990,000, representing interests in the Second Purchase Agreement; and

WHEREAS, Town also heretofore determined that it would be beneficial to its citizens to finance the costs of street improvements and public safety facilities in and for Town; and

WHEREAS, in order to finance the costs thereof, Town deemed it necessary and desirable to cause the execution and delivery of obligations in two series in the total principal amount of \$65,960,000, representing interests in the Third Purchase Agreement; and

WHEREAS, Town also heretofore determined that it would be beneficial to its citizens to finance the costs of additional street improvements and additional public safety facilities in and for Town; and

WHEREAS, in order to finance the costs thereof, Town deemed it necessary and desirable to cause the execution and delivery of obligations in the principal amount of \$78,605,000, representing interests in the Fourth Purchase Agreement; and

WHEREAS, Town also heretofore determined that it would be beneficial to its citizens to finance the costs of Phoenix Active Management Area Ground Water Extinguishment Credits for the water system of the Town; and

WHEREAS, in order to finance the costs thereof, Town deemed it necessary and desirable to cause the execution and delivery of obligations in the principal amount of \$49,450,000, representing interests in the First Subordinate Lien Purchase Agreement; and

WHEREAS, Town also heretofore determined that it would be beneficial to its citizens to finance the costs of additional Phoenix Active Management Area Ground Water Extinguishment Credits for the water system of the Town; and

WHEREAS, in order to finance the costs thereof, Town deemed it necessary and desirable to cause the execution and delivery of obligations in the principal amount of \$6,740,000, representing interests in the Second Subordinate Lien Purchase Agreement; and

WHEREAS, Town has now determined that it will be beneficial to its citizens to finance the costs of the Project; and

WHEREAS, pursuant to Section 3 of the Sixth Loan Repayment Agreement, Town has irrevocably pledged for the payment of the amounts due thereunder the revenues from the Excise Taxes and the State Shared Revenues, such pledge being a first lien pledge upon such amounts of the revenues from the Excise Taxes and the State Shared Revenues as will be sufficient to make the payments pursuant thereto when due; and

WHEREAS, pursuant to such Section of the Sixth Loan Repayment Agreement, except as limited by Section 10(a)(iii) of the Sixth Loan Repayment Agreement and by the corresponding sections in any Additional Agency/Authority Loan Agreements, the rights of GADA to payment from the revenues from the Excise Taxes and the State Shared Revenues will be on a parity with the rights to payment from the revenues from the Excise Taxes and the State Shared Revenues of any Parity Lien Obligations, which includes Additional Agency/Authority Loan Agreements; and

WHEREAS, the Second Purchase Agreement, the Third Purchase Agreement and the Fourth Purchase Agreement were executed and delivered as Parity Lien Obligations, and Town has irrevocably pledged for the payment of the amounts due under this Agreement the revenues from the Excise Taxes and the State Shared Revenues, such pledge being a second lien pledge upon such amounts of the revenues from the Excise Taxes and the State Shared Revenues (including as diminished by Agency/Authority Loan Agreements) as will be sufficient to make the payments pursuant hereto when due, such pledge being subordinate to the pledge of the revenues from the Excise Taxes and the State Shared Revenues to the Senior Obligations; and

WHEREAS, after giving effect to this Agreement, pursuant to Section 5 of this Agreement, Town shall not further encumber the revenues from the Excise Taxes and the State Shared Revenues on a basis equal to or senior to the pledge under this Agreement unless the revenues from the Excise Taxes plus the State Shared Revenues, when combined mathematically for such purpose only, in the most recently completed Fiscal Year of Town, shall have amounted to at least two (2) times the highest combined interest and principal requirements for any

succeeding Fiscal Year of Town for the Senior Obligations, this Agreement and any other of the Parity Subordinate Lien Obligations; and

WHEREAS, Section 10(a) of the Sixth Loan Repayment Agreement provides that GADA may in the case of nonpayment, among other things, certify to the Treasurer of the State and notify the Mayor and Council of Town that Town has failed to make a required payment and direct the State Intercept of Funds, and Additional Agency/Authority Loan Agreements may provide that GADA or WIFA provide for enforcement with the State Intercept of Funds; and

WHEREAS, Town is a political subdivision duly organized and validly existing under the laws of the State; the Constitution and the laws of the State authorize Town to enter into this Agreement and to enter into the agreements and transactions contemplated by, and to carry out its obligations under, said agreements; Town has duly authorized and executed all of the aforesaid agreements; this Agreement is a lawful, valid and binding obligation of Town, enforceable against Town in accordance with its terms, and has been duly authorized, executed and delivered by Town; all required procedures for execution and performance of this Agreement, including publication of notice, public hearing or competitive bidding, if applicable, have been or will be complied with in a timely manner; the hereinafter defined Payments will be paid when due out of funds which are legally available for such purposes; and neither the execution and delivery of this Agreement or the Trust Agreement, nor the fulfillment of or compliance with the terms and conditions hereof or thereof nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Town is now a party or by which Town is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Town; and

WHEREAS, Seller has full legal authority and is duly empowered to enter into this Agreement and has taken all actions necessary to the execution and delivery hereof;

NOW THEREFORE, PURSUANT TO LAW AND FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS HEREINAFTER CONTAINED, IT IS HEREBY AGREED AS FOLLOWS:

Section 1. Term and Payments.

(a) For the amounts payable pursuant hereto (including the Payments), Seller hereby sells and conveys to Town, without warranty, and Town hereby purchases from Seller, the Project. (In order to evidence such sale, Seller has executed and delivered to Town a bill of sale on the date of original execution and delivery of the Obligations.) Town shall be entitled to sole and exclusive possession of the Project.

(b) To provide the funds necessary for Seller to finance the Project, Seller, in its capacity as Trustee, shall execute and deliver the Obligations. (Seller shall have no further obligation to provide funds for the Project.)

(c) As the purchase price for the Project, Town shall pay the amounts set forth in Sections 2.3 and 2.4 of the Trust Agreement to Seller at the address specified pursuant to Section 18 hereof (or such other address as Seller may designate in writing), for the purpose of remitting

such amounts to the Trustee in trust for the benefit of the Owners (and, if applicable, former Owners, as the case may be).

Town shall also pay to Trustee its fees and expenses in accordance with the provisions of the Trust Agreement and to the United States of America any amounts required by Section 13(c).

Town shall pay the Gross-Up Amount in the event a Determination of Taxability occurs.

The obligation of Town to make the Payments shall be limited to amounts from the revenues from the Excise Taxes and the State Shared Revenues. Town shall receive a credit against amounts due equal to any amounts held in the Payment Fund and available for such purpose. If the balance available in the Payment Fund after a Payment is insufficient to make the next required payments of principal and interest due on the Obligations on the next date for payment thereof, Town shall pay any such deficiency in sufficient time to prevent default in the payment of principal or interest on the Obligations falling due on such date. This Agreement shall be deemed and construed to be a “*net purchase agreement*,” and the Payments shall be an absolute net return to Seller, free and clear of any expenses or charges whatsoever, except as otherwise specifically provided herein.

(d) The obligations of Town to make the Payments from the sources described herein and to comply with the other provisions hereof shall be absolute and unconditional and shall not be subject to any defense or any right of set-off, abatement, counterclaim, or recoupment arising out of any breach of Seller of any obligation to Town or otherwise, or out of indebtedness or liability at any time owing to Town by Seller. Until such time as all of the Payments shall have been fully paid or provided for, Town (i) shall not suspend or discontinue the Payments, (ii) shall comply with the other provisions hereof, and (iii) shall not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, failure of Seller or any other person to complete the Project, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Project, the taking by *eminent domain* of title to or temporary use of any or all of the Project, commercial frustration of purpose or abandonment of the Project by Town, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either or any failure of Seller to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Trust Agreement or this Agreement. Nothing contained in this Section shall be construed to release Seller from the performance of any of the agreements on its part herein or in the Trust Agreement contained and in the event Seller shall fail to perform any such agreements on its part, Town may institute such action against Seller as Town may deem necessary to compel performance so long as such action does not abrogate the obligations of Town contained in the first sentence of this paragraph (d).

(e) This Agreement shall not terminate so long as any payments are due and owing pursuant to the Obligations or the Continuing Covenant Agreement. Subject to Section 9, upon full payment or provision for payment and in consideration of the timely payment of all of the Payments and provided that Town has performed all the covenants and agreements required by Town to be performed, this Agreement shall cease and expire. Upon the expiration of this Agreement as provided in this Section, Town shall cause Trustee to release any interest which Trustee may have in the Project or the revenues thereof from the lien of the Trust Agreement.

Section 2. Pledge; Limited Obligations.

(a) Town hereby irrevocably pledges for the payment of the Payments and amounts due pursuant to the Continuing Covenant Agreement the revenues from the Excise Taxes and the State Shared Revenues. Town intends that this pledge shall be a second lien pledge upon such amounts of the revenues from the Excise Taxes and the State Shared Revenues (including as diminished by Agency/Authority Loan Agreements) as will be sufficient to make the Payments when due. Town agrees and covenants to make the Payments from the revenues from the Excise Taxes and the State Shared Revenues, except to the extent it chooses to make the Payments from other funds pursuant to Section 4. Said pledge of, and said lien on, the revenues from the Excise Taxes and the State Shared Revenues is hereby irrevocably made and created for the prompt and punctual payment of the amounts due hereunder according to the terms hereof and to maintain the funds as hereinafter specified in this Agreement and the Trust Agreement. All of the Payments are coequal as to the pledge of and lien on the revenues from the Excise Taxes and the State Shared Revenues pledged for the payment thereof and share ratably, without preference, priority or distinction, as to the source or method of payment from the revenues from the Excise Taxes and the State Shared Revenues or security therefor. The rights of the Owners to payment from the revenues from the Excise Taxes and the State Shared Revenues are (i) subordinate to the rights to payment from the revenues from the Excise Taxes and the State Shared Revenues of any Senior Obligations, and (ii) on a parity with the rights to payment from the revenues from the Excise Taxes and the State Shared Revenues of any other of the Parity Subordinate Lien Obligations.

(b) Town shall remit to Trustee from the revenues from the Excise Taxes and the State Shared Revenues all amounts due under this Agreement in the amounts and at the times and for the purposes as required herein. The obligation of Town to make payments of any amounts due under this Agreement, including amounts due after default or termination hereof, is limited to payment from the revenues from the Excise Taxes and the State Shared Revenues and shall in no circumstances constitute a general obligation or a pledge of the full faith and credit of Town, the State or any of its political subdivisions, or require the levy of, or be payable from the proceeds of, any *ad valorem* property taxes.

Section 3. Surplus and Deficiency of Revenues from Excise Taxes and State Shared Revenues. Subject to the senior rights with respect to the revenues from the Excise Taxes and the State Shared Revenues of the Senior Obligations and the parity rights with respect to the revenues from the Excise Taxes and the State Shared Revenues of any other of the Parity Subordinate Lien Obligations, the revenues from the Excise Taxes and State Shared Revenues in excess of amounts, if any, required to be deposited with or held by Trustee for payments due under this Agreement and the Trust Agreement shall constitute surplus revenues and may be used by Town for any lawful purpose for the benefit of Town, including the payment of obligations to which the revenues from the Excise Taxes and the State Shared Revenues may from time to time be pledged on a basis subordinate hereto. If at any time the moneys in the funds held for payment of amounts due under this Agreement or the Trust Agreement are not sufficient to make the deposits and transfers required, any such deficiency shall be made up from the first moneys thereafter received and available for such transfers under the terms of this Agreement and, with respect to payment from the revenues from the Excise Taxes and the State Shared Revenues, *pro rata*, as applicable, with amounts due with respect to obligations on a parity herewith with respect thereto, and the transfer of any such sum or sums to said fund as may be necessary to make up any

such deficiency shall be in addition to the then-current transfers required to be made pursuant hereto.

Section 4. Use of Other Funds at the Option of Town. Town may, at the sole option of Town, make payments due pursuant to Section 1 from its other funds as permitted by law and as Town shall determine from time to time, but Seller acknowledges that it has no claim hereunder to such other funds. No part of the purchase price payable pursuant to this Agreement shall be payable out of any *ad valorem* property taxes imposed by Town or from bonds or other obligations, the payment of which Town's general taxing authority is pledged, unless (i) the same shall have been duly budgeted by Town according to law, (ii) such payment or payments shall be within the budget limitations of the statutes of the State, and (iii) any such bonded indebtedness or other obligation is within the debt limitations of the Constitution of the State.

Section 5. Other Senior Obligations and Parity Subordinate Lien Obligations. So long as any of the Obligations remain outstanding and the principal and interest thereon shall be unpaid or unprovided for or any other amounts remain unpaid or unprovided for hereunder, Town shall not further encumber the revenues from the Excise Taxes or the State Shared Revenues on a basis equal to or senior to the pledge hereunder unless the revenues from the Excise Taxes plus the State Shared Revenues, when combined mathematically for such purpose only, in the most recently completed Fiscal Year, shall have amounted to at least two (2) times the highest combined interest and principal requirements for any succeeding Fiscal Year for the Senior Obligations, this Agreement and the other of the Parity Subordinate Lien Obligations, treating, for purposes of such calculation, any Parity Subordinate Lien Obligations that bear interest at a variable rate as bearing their maximum annual tax-exempt, non-default interest rate and being amortized over a thirty (30) year period in approximately equal annual installments of principal and interest such that the total annual debt service is equal in each Fiscal Year thereafter for such Parity Subordinate Lien Obligations, such thirty-year period beginning July 1, 2022, and ending July 1, 2052.

Section 6. Town Control over Revenue Collection.

(a) To the extent permitted by applicable law, the revenues from the Excise Taxes shall be retained and maintained so that the amounts received from the revenues from the Excise Taxes and the State Shared Revenues, when combined mathematically for such purpose only, all within and for the most recently completed Fiscal Year, shall have been equal to at least two (2) times the total of interest and principal requirements for the current Fiscal Year for the Senior Obligations, this Agreement and the other of the Parity Subordinate Lien Obligations, treating, for purposes of such calculation, any Parity Subordinate Lien Obligations that bear interest at a variable rate as bearing their maximum annual tax-exempt, non-default interest rate and being amortized over a 30-year period in approximately equal annual installments of principal and interest such that the total annual debt service is equal in each Fiscal Year thereafter for such Parity Subordinate Lien Obligations, such 30-year period beginning July 1, 2022, and ending July 1, 2052. If the revenues from the Excise Taxes and the State Shared Revenues for any such Fiscal Year shall not have been equal to at least one and one-quarter ($1\frac{1}{4}$) times the total of the interest and principal requirements for the current Fiscal Year for the Senior Obligations, this Agreement and the other of the Parity Subordinate Lien Obligations, treating, for purposes of such calculation, any Parity Subordinate Lien Obligations that bear interest at a variable rate as bearing their maximum annual tax-exempt, non-default interest rate and being amortized over a thirty (30)

year period in approximately equal annual installments of principal and interest such that the total annual debt service is equal in each Fiscal Year thereafter for such Parity Subordinate Lien Obligations, such thirty-year period beginning July 1, 2022, and ending July 1, 2052, or if at any time it appears that the revenues from the Excise Taxes and the State Shared Revenues will not be sufficient to meet such requirements, Town shall, to the extent permitted by applicable law, impose new exactions of the type of the Excise Taxes which will be part of the Excise Taxes or increase the rates for the Excise Taxes currently imposed fully sufficient at all times, after making allowance for contingencies and errors, in each Fiscal Year in order that (a) the revenues from the Excise Taxes and the State Shared Revenues will be sufficient to meet all current requirements hereunder, and (b) the revenues from the Excise Taxes and the State Shared Revenues will be reasonably calculated to attain the level as required by the first sentence of this subsection.

(b) (i) In order to secure payment of this Agreement and to create a separate and special fund which shall contain only the revenues from the Excise Taxes and shall not contain any other moneys of Town, Town shall continue to maintain the special fund known as the “Town of Queen Creek Excise Tax Revenue Fund” (the “Excise Tax Revenue Fund”) established by the First Loan Repayment Agreement. Upon receipt by Town, the revenues from the Excise Taxes shall be deposited in and to the Excise Tax Revenue Fund. The Excise Tax Revenue Fund shall be funded only from the revenues from the Excise Taxes received by Town and from no other source. After paying therefrom amounts of the revenues from the Excise Taxes for the purposes described herein, the Excise Tax Revenue Fund may be reduced to zero each December 16 and June 16 after the amount required to be paid as described hereinabove has been paid, including by transferring any such balance to the General Fund of Town.

(ii) In order to secure payment of this Agreement and to create a separate and special fund which shall contain only the State Shared Revenues and shall not contain any other moneys of Town, Town shall also continue to maintain the special fund known as the “Town of Queen Creek State Shared Revenue Fund” (the “State Shared Revenue Fund”) established by the First Loan Repayment Agreement. Upon receipt by Town, the State Shared Revenues shall be deposited in and to the State Shared Revenue Fund. The State Shared Revenue Fund shall be funded only from the State Shared Revenues received by Town and from no other source. After paying therefrom amounts of the State Shared Revenues for the purposes described herein, the State Shared Revenue Fund may be reduced to zero each December 16 and June 16 after the amount required to be paid as described hereinabove has been paid, including by transferring any such balance to the General Fund of Town.

Section 7. Certain Matters with Respect to Project.

(a) Except with respect to its power and authority to enter into this Agreement and to perform its covenants hereunder, Seller has made and makes no representation or warranty, express or implied, and assumes no obligation with respect to the title, merchantability, condition, quality or fitness of the Project for any particular purpose or the conformity of the Project to any plans, specifications, construction contract, purchase order, model or sample, or as to their design, construction, delivery, installation, construction oversight and operation or their suitability for use by Town after acquisition. All such risks shall be borne by Town without in any way excusing

Town from its obligations under this Agreement, and Seller shall not be liable to Town for any damages on account of such risks. Except with respect to any acts by Seller which are not undertaken at the request of Town or with the prior approval of Town, Town waives all claims against Seller growing out of the acquisition, construction, installation or otherwise of the Project. Seller shall have no liability to Town for any failure of any contractor to perform any contract or other undertaking with respect to the Project in any respect. Seller shall have no obligation to obtain or insure compliance with any required permits or approval procedures with respect to the Project. In the event of any defect in any item of the Project or other claim with respect to the Project, recourse of Town shall be against the contractors, manufacturers, suppliers, etc. of the Project and, where applicable, the person selling the property to Seller, and not against Seller. For such purpose, Seller hereby assigns and transfers to Town the right, title and interest of Seller in and to all representations, warranties, guarantees and service agreements relating to the Project made or entered into by Seller and by any contractor, manufacturers, suppliers, etc. of the Project. Seller further designates Town as its attorney-in-fact granting to Town the right to initiate and take all actions necessary to enforce any and all construction contracts and all such warranties and service agreements. Seller is entering into this Agreement solely as Trustee, shall not be personally liable hereunder and shall be afforded the same rights, protections, immunities and indemnities acting hereunder as afforded to it as Trustee under the Trust Agreement. Notwithstanding anything to the contrary herein, at no time shall Seller be listed in the chain of title to the Project.

(b) Town has the power to enter into this Agreement; this Agreement is a lawful, valid and binding obligation of Town, enforceable against Town in accordance with its terms, and has been duly authorized, executed and delivered by Town; all required procedures for execution and performance hereof, including publication of notice, public hearing or competitive bidding, if applicable, have been or will be complied with in a timely manner and all Payments hereunder will be paid when due out of funds which are legally available for such purposes.

(c) The Project complies with all applicable environmental laws, rules and regulations (including, without limitation, all federal, state and local laws) and with Title III of the Americans with Disabilities Act and the regulations issued thereunder by the United States Department of Justice concerning accessibility of places of public accommodation and commercial facilities if and to the extent such Act and regulations apply to the Project.

Section 8. Providing for Payment. Town may provide for the payment of any of the Payments in any one or more of the following ways:

(a) by paying such Payment as provided herein as and when the same becomes due and payable at its scheduled due date pursuant to Section 1 hereof or on a date on which it can be prepaid;

(b) by depositing with a Depository Trustee, in trust for such purposes, money which, together with the amounts then on deposit with Trustee and available for such Payment is fully sufficient to make, or cause to be made, such Payment at its scheduled due date or on a date on which it can be prepaid; or

(c) by depositing with a Depository Trustee, in trust for such purpose, any Government Obligations which are noncallable, in such amount as shall be certified to Seller and

Town, by a national firm of certified public accountants acceptable to both Seller and Town, as being fully sufficient, together with the interest to accrue thereon and moneys then on deposit with Seller and available for such Payment, to make, or cause to be made, such Payment at its scheduled due date or on a date on which it can be prepaid pursuant to Section 4.1 of the Trust Agreement.

Upon any partial payment of a Payment resulting in a redemption of Obligations, each installment of interest which shall thereafter be payable as a part of the subsequent Payments shall be reduced, taking into account the interest rate or rates on the Obligations remaining outstanding after the partial payment or redemption of Obligations from the proceeds of such payment so that the interest remaining payable as a part of the subsequent Payments shall be sufficient to pay the interest on such outstanding Obligations when due.

Section 9. Continuation of Agreement. The obligations of Town under this Agreement, including, without limitation, its obligation to pay the Payments, shall survive any action brought as provided in the next Section, and Town shall continue to pay the Payments and perform all other obligations provided in this Agreement; provided, however, that Town shall be credited with any amount received by Trustee pursuant to actions brought under the next Section.

Section 10. Default; Remedies Upon Default.

(a) (i) Upon (A) the nonpayment of the whole or any part of any of the Payments at the time when the same is to be paid as provided herein or in the Trust Agreement; (B) the violation by Town of any other covenant or provision of this Agreement or the Trust Agreement; (C) the occurrence of an event of default with respect to any of the Senior Obligations or the other of the Parity Subordinate Lien Obligations; or (D) the insolvency or bankruptcy of Town as the same may be defined under any law of the United States of America or the State, or any voluntary or involuntary action of Town or others to take advantage of, or to impose, as the case may be, any law for the relief of debtors or creditors, including a petition for reorganization, and

(ii) if such default has not been cured (A) in the case of nonpayment of any of the Payments as required hereunder or under the Trust Agreement on the due date or the nonpayment of payments on their due dates with respect to any of the Senior Obligations or the other of the Parity Subordinate Lien Obligations; (B) in the case of the breach of any other covenant or provision of the Trust Agreement or this Agreement not cured within sixty (60) days after notice in writing from Seller specifying such default; and (C) in the case of any other default under any of the Senior Obligations or the other of the Parity Subordinate Lien Obligations after any notice and passage of time provided for under the proceedings under which such obligations were issued then,

(iii) subject to the limitations of the Trust Agreement, Seller may take whatever action at law or in equity, including the remedy of specific performance, may appear necessary or desirable to collect the Payments and any other amounts payable by Town under the Trust Agreement or this Agreement then due (but not the Payments and such other amounts accruing), or to enforce performance and observance of any pledge, obligation, agreement or covenant of Town under the Trust Agreement or this Agreement, and with respect to the revenues from the Excise Taxes and the State Shared Revenues,

subject in each case to the senior rights with respect to the Senior Obligations (including as affected by Agency/Authority Loan Agreements), without notice and without giving any bond or surety to Town or anyone claiming under Town, may have a receiver appointed of the amounts of the revenues from the Excise Taxes and the State Shared Revenues, subject in each case to the senior rights with respect to the Senior Obligations (including as affected by Agency/Authority Loan Agreements), which are pledged to the payment of amounts due hereunder, with such powers as the court making such appointment shall confer (and Town does hereby irrevocably consent to such appointment); provided, however, that under no circumstances may the Payments be accelerated.

Each right, power and remedy of Seller provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for herein, or, unless prohibited by the terms hereof, now or hereafter existing at law or in equity or by statute or otherwise, in any jurisdiction where such rights, powers and remedies are sought to be enforced, and the exercise or beginning of the exercise by Seller of any one or more of the rights, powers or remedies provided for herein or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by either party of any or all of such other rights, powers or remedies. The failure to insist upon strict performance of any of the covenants or agreements herein set forth shall not be considered or taken as a waiver or relinquishment for the future of the rights of Seller to insist upon a strict compliance by Seller with all the covenants and conditions hereof. Town shall, upon not less than 10 days' prior request by Seller, execute, acknowledge and deliver to Trustee a statement in writing certifying that this Agreement is unmodified and in full force and effect (or, if this Agreement has been modified, that it is in full force and effect except as modified, and stating the modification), and the dates to which the amounts payable hereunder have been paid in advance, if any.

(b) Seller shall in no event be in default in the performance of any of its obligations hereunder unless and until Seller shall have failed to perform such obligation within 30 days or such additional time as is reasonably required to correct any such default after notice by Town properly specifying wherein Seller has failed to perform any such obligation. No default by Seller shall relieve Town of its obligations to make the various payments herein required, so long as any of the Obligations remain outstanding; however, Town may exercise any other remedy available at law or in equity to require Seller to remedy such default so long as such remedy does not interfere with or endanger the payments required to be made to Trustee under the Trust Agreement.

Section 11. Assignment.

(a) Except as otherwise provided herein, Town shall not assign, transfer, pledge or hypothecate or otherwise dispose of this Agreement or any interest therein.

(b) Subject to the terms of the Trust Agreement, all and every part of the right, title and interest of Town in and to this Agreement and all payments of any kind due or which become due to Seller hereunder are sold, pledged, assigned and transferred pursuant to the Trust Agreement.

Section 12. Federal Law Provisions.

(a) As described in further detail in the Tax Certificate, no direction for the making of any investment or other use of the proceeds of any of the Obligations or of the Project shall be made, permitted to be made or omitted from being made which would cause the Obligations to be “arbitrage bonds” as that term is defined in section 148 (or any successor provision thereto) of the Code or “private activity bonds” as that term is defined in section 141 (or any successor provision thereto) of the Code, and the requirements of such sections and related regulations of the Code shall be complied with throughout the term of the Obligations. (Particularly, Town shall be the owner of the Project for federal income tax purposes. Town shall not enter into any management or service contract with any entity other than a governmental entity for the operation of any portion of the Project unless the management or service contract complies with the requirements of such authority as may control at the time or any lease or other arrangement with any entity other than a governmental entity that gives such entity special legal entitlements with respect to any portion thereof.) Also, the payment of principal and interest with respect to the Obligations shall not be guaranteed (in whole or in part) by the United States or any agency or instrumentality of the United States. The proceeds of the Obligations, or amounts treated as proceeds of the Obligations, shall not be invested (directly or indirectly) in federally insured deposits or accounts, except to the extent such proceeds may be so invested for an initial temporary period until needed for the purpose for which the Obligations are being executed and delivered, may be so used in making investments in a *bona fide* debt service fund or may be invested in obligations issued by the United States Treasury. In consideration of the purchase and acceptance of the Obligations by the owners from time to time thereof and of retaining such exclusion and as authorized by Title 35, Chapter 3, Article 7, Arizona Revised Statutes, Town shall, and the appropriate officials of Town are hereby directed, to take all action required to retain such exclusion or to refrain from taking any action prohibited by the Code which would adversely affect in any respect such exclusion.

(b) (i) Town shall take all necessary and desirable steps, as determined by the Mayor and Council of Town, to comply with the requirements hereunder in order to ensure that the Interest Portion is excluded from gross income for federal income tax purposes under the Code; provided, however, compliance with any such requirement shall not be required in the event Town receives a Bond Counsel’s Opinion (as such term is defined in the next Section) that either compliance with such requirement is not required to maintain the exclusion from gross income of the Interest Portion or compliance with some other requirement will meet the requirements of the Code. In the event Town receives such a Bond Counsel’s Opinion, the parties agree to amend this Agreement to conform to the requirements set forth in such opinion.

(ii) If for any reason any requirement hereunder is not complied with, Town shall take all necessary and desirable steps, as determined by Town, to correct such noncompliance within a reasonable period of time after such noncompliance is discovered or should have been discovered with the exercise of reasonable diligence and Town shall pay any required interest or penalty under hereinafter described Regulations section 1.148-3(h) with respect to the Code.

(c) Written procedures have been established for Town to ensure that all nonqualified obligations are remediated according to the requirements under the Code and related Regulations and to monitor the requirements of section 148 of the Code relating to arbitrage, with which Town will comply.

(d) The procedures required by any arbitrage rebate provision or separate agreement executed in connection with the execution and delivery of the Obligations (initially, those in the next Section) shall be complied with for so long as compliance is necessary pursuant to the Code.

Section 13. Rebate Provisions.

(a) Terms not otherwise defined in Subsection (b) hereof shall have the meanings given to them in the Tax Certificate.

(b) The following terms shall have the following meanings:

Bond Counsel's Opinion shall mean an opinion signed by an attorney or firm of attorneys of nationally recognized standing in the field of law relating to municipal bonds selected by Town.

Bond Year shall mean each one-year period beginning on the day after the expiration of the preceding Bond Year. The first Bond Year shall begin on the date of execution and delivery of the Obligations and shall end on the date selected by Town, provided that the first Bond Year shall not exceed one calendar year. The last Bond Year shall end on the date of retirement of the last Obligation.

Bond Yield is as indicated in the Tax Certificate. Bond Yield shall be recomputed if required by Regulations section 1.148-4(b)(4) or 4(h)(3). Bond Yield shall mean the discount rate that produces a present value equal to the Issue Price of all unconditionally payable payments of principal, interest and fees for qualified guarantees within the meaning of Regulations section 1.148-4(f) and amounts reasonably expected to be paid as fees for qualified guarantees in connection with the Obligations as determined under Regulations section 1.148-4(b). The present value of all such payments shall be computed as of the date of execution and delivery of the Obligations and using semiannual compounding on the basis of a 360-day year.

Code shall mean the Internal Revenue Code of 1986, as amended, and any successor provisions thereto.

Gross Proceeds shall mean:

(i) any amounts actually or constructively received by Town from the sale of the Obligations but excluding amounts used to pay accrued interest on the Obligations within one year of the date of execution and delivery of the Obligations;

(ii) transferred proceeds of the Obligations under Regulations section 1.148-9;

(iii) any amounts actually or constructively received from investing amounts described in (i), (ii) or this (iii); and

(iv) replacement proceeds of the Obligations within the meaning of Regulations section 1.148-1(c). Replacement proceeds include amounts reasonably expected to be used directly or indirectly to pay debt service on the Obligations, pledged amounts where there is reasonable assurance that such amounts will be available to pay principal or interest on the Obligations in the event Town or Trustee encounters financial difficulties and other replacement proceeds within the meaning of Regulations section 1.148-1(c)(4). Whether an amount is Gross Proceeds is determined without regard to whether the amount is held in any fund or account established under the Trust Agreement.

Investment Property shall mean any security, obligation (other than a tax-exempt bond within the meaning of Code section 148(b)(3)(A)), annuity contract or investment-type property within the meaning of Regulations section 1.148-1(b).

Issue Price is as indicated in the Tax Certificate and shall be determined as provided in Regulations section 1.148-1(b).

Nonpurpose Investment shall mean any Investment Property acquired with Gross Proceeds and which is not acquired to carry out the governmental purposes of the Obligations.

Obligation Payment shall mean any payment within the meaning of Regulations section 1.148-3(d)(1) with respect to a Nonpurpose Investment.

Rebate Requirement shall mean at any time the excess of the future value of all Receipts over the future value of all Obligation Payments. For purposes of calculating the Rebate Requirement the Bond Yield shall be used to determine the future value of Receipts and Obligation Payments in accordance with Regulations section 1.148-3(c). The Rebate Requirement is zero for any Nonpurpose Investment meeting the requirements of a rebate exception under section 148(f)(4) of the Code or Regulations section 1.148-7.

Receipt shall mean any receipt within the meaning of Regulations section 1.148-3(d)(2) with respect to a Nonpurpose Investment.

Regulations shall mean the sections 1.148-1 through 1.148-11 and section 1.150-1 of the regulations of the United States Department of the Treasury promulgated under the Code, including and any amendments thereto or successor regulations.

(c) Within 60 days after the end of each Bond Year, unless an exception to the requirement to do is properly established, Town shall cause the Rebate Requirement to be calculated and shall pay to the United States of America:

(1) not later than 60 days after the end of the fifth Bond Year and every fifth Bond Year thereafter, an amount which, when added to the future value of all previous rebate payments with respect to the Obligations (determined as of such Computation Date), is equal to at least 90% of the sum of the Rebate Requirement (determined as of the last

day of such Bond Year) plus the future value of all previous rebate payments with respect to the Obligations (determined as of the last day of such Bond Year); and

(2) not later than 60 days after the retirement of the last Obligation, an amount equal to 100% of the Rebate Requirement (determined as of the date of retirement of the last Obligation).

Each payment required to be made under this Section shall be filed on or before the date such payment is due, with the Internal Revenue Service at the appropriate location and with required forms and other materials, currently by addressing it to IRS Service Center, Ogden, Utah 84201, and accompanying it with IRS Form 8038-T.

(d) No Nonpurpose Investment shall be acquired for an amount in excess of its fair market value. No Nonpurpose Investment shall be sold or otherwise disposed of for an amount less than its fair market value.

(e) For purposes of Subsection (d), whether a Nonpurpose Investment has been purchased or sold or disposed of for its fair market value shall be determined as follows:

(1) The fair market value of a Nonpurpose Investment generally shall be the price at which a willing buyer would purchase the Nonpurpose Investment from a willing seller in a bona fide arm's length transaction. Fair market value shall be determined on the date on which a contract to purchase or sell the Nonpurpose Investment becomes binding.

(2) Except as provided in Subsection (f) or (g), a Nonpurpose Investment that is not of a type traded on an established securities market, within the meaning of Code section 1273, is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value.

(3) If a United States Treasury obligation is acquired directly from or sold or disposed of directly to the United States Treasury, such acquisition or sale or disposition shall be treated as establishing the fair market value of the obligation.

(f) The purchase price of a certificate of deposit that has a fixed interest rate, a fixed payment schedule and a substantial penalty for early withdrawal is considered to be its fair market value if the yield on the certificate of deposit is not less than:

(1) the yield on reasonably comparable direct obligations of the United States; and

(2) the highest yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

(g) A guaranteed investment contract shall be considered acquired and disposed of for an amount equal to its fair market value if:

(1) A bona fide solicitation in writing for a specified guaranteed investment contract, including all material terms, is timely forwarded to all potential providers. The solicitation must include a statement that the submission of a bid is a representation that the potential provider did not consult with any other potential provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with Town or any other person (whether or not in connection with the Obligations), and that the bid is not being submitted solely as a courtesy to Town or any other person for purposes of satisfying the requirements in the Regulations that Town receive bids from at least one reasonably competitive provider and at least three providers that do not have a material financial interest in the Obligations.

(2) All potential providers have an equal opportunity to bid, with no potential provider having the opportunity to review other bids before providing a bid.

(3) At least three reasonably competitive providers (i.e. having an established industry reputation as a competitive provider of the type of investments being purchased) are solicited for bids. At least three bids must be received from providers that have no material financial interest in the Obligations (e.g., a lead underwriter within 15 days of the issue date of the Obligations or a financial advisor with respect to the investment) and at least one of such three bids must be from a reasonably competitive provider. If Town uses an agent to conduct the bidding, the agent may not bid.

(4) The highest-yielding guaranteed investment contract for which a qualifying bid is made (determined net of broker's fees) is purchased.

(5) The determination of the terms of the guaranteed investment contract takes into account as a significant factor the reasonably expected deposit and drawdown schedule for the amounts to be invested.

(6) The terms for the guaranteed investment contract are commercially reasonable (i.e. have a legitimate business purpose other than to increase the purchase price or reduce the yield of the guaranteed investment contract).

(7) The provider of the investment contract certifies the administrative costs (as defined in Regulations section 1.148-5(e)) that it pays (or expects to pay) to third parties in connection with the guaranteed investment contract.

(8) Town retains until three years after the last outstanding Obligation is retired, (i) a copy of the guaranteed investment contract, (ii) a receipt or other record of the amount actually paid for the guaranteed investment contract, including any administrative costs paid by Town and a copy of the provider's certification described in (7) above, (iii) the name of the person and entity submitting each bid, the time and date of the bid, and the bid results and (iv) the bid solicitation form and, if the terms of the guaranteed investment contract deviate from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose of the deviation.

(h) Such experts and consultants shall be employed by Town to make, as necessary, any calculations in respect of rebates to be made to the United States of America in accordance with section 148(f) of the Code with respect to the Obligations. Trustee has no duties or obligations under this Section 13 and no duty to monitor compliance by Town with this Section 13.

Section 14. Quiet Possession; Town’s Easement to Seller. Town, by keeping and performing the covenants and agreements herein contained, shall at all times during the term of this Agreement, peaceably and quietly, have, hold and enjoy the Project, without suit, trouble or hindrance from Seller. Town hereby grants and conveys to Seller, and all persons claiming by, through or under Seller, including its successors and assigns under the Trust Agreement and the Owners for whom it acts, a nonexclusive easement upon, in and to the Project for the purpose of permitting the Project to be maintained upon the premises.

Section 15. Covenant as to Conflict of Interest; Other Statutory Restrictions.

(a) To the extent applicable by provision of law, Seller acknowledges that this Agreement is subject to cancellation pursuant to Section 38-511, Arizona Revised Statutes, the provisions of which are incorporated herein and which provides that Town may within three (3) years after its execution cancel any contract (including this Agreement) without penalty or further obligation made by Town if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of Town is at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice is received by all other parties to the contract unless the notice specifies a later time.

(b) To the extent applicable under Section 41-4401, Arizona Revised Statutes, Trustee shall comply with all federal immigration laws and regulations that relate to its employees and its compliance with the “e-verify” requirements under Section 23-214(A), Arizona Revised Statutes. The breach by Seller of the foregoing shall be deemed a material breach of this Agreement and may result in the termination of the services of Seller by Town. Town retains the legal right to randomly inspect the papers and records of Seller to ensure that Seller is complying with the above-mentioned warranty. Seller shall keep such papers and records open for random inspection during normal business hours by Town. Seller shall cooperate with the random inspections by Town including granting Town entry rights onto its property to perform such random inspections and waiving its respective rights to keep such papers and records confidential. Town shall preserve the confidentiality of any information, records or papers Town views, accesses or otherwise obtains during any and every such random inspection, including, without limitation, such information.

(c) Pursuant to Section 35-393 et seq., Arizona Revised Statutes, Trustee hereby certifies it is not currently engaged in, and for the duration of this Agreement shall not engage in, a boycott of Israel. The term “boycott” has the meaning set forth in Section 35-393, Arizona Revised Statutes. If Town determines that Trustee’s certification above is false or that it has breached such agreement, Town may impose remedies as provided by law.

Section 16. Seller's Limited Authority. Notwithstanding any other terms or provisions of this Agreement, the interest of Seller in the Project, if any, is solely in its capacity as Trustee for the purpose of facilitating the financing of the Project, and Seller shall not have the power, authority or obligation to assume any responsibility for the overall management or maintenance of the Project, including, without limitation, any day-to-day decision-making or operational aspects of the Project. The elements of the Project and the sites therefor were selected by Town, and all design and engineering criteria and specifications for the Project were constructed or acquired or will be determined by Town.

Section 17. Seller as Trustee. Seller is acting hereunder in its capacity as Trustee under the Trust Agreement and the term "Seller", when used herein, shall mean Trustee as defined in the Trust Agreement.

Section 18. Notices; Mailing Addresses. All notices, consents or other communications required or permitted hereunder shall be deemed sufficient if given in writing addressed and mailed by registered or certified mail, or delivered to the party for which the same is intended or certified, as follows:

If to Seller: U.S. Bank National Association
101 North First Avenue, Suite 1600
Phoenix, Arizona 85003
Attention: Corporate Trust Services

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

Section 19. Miscellaneous.

(a) No covenant or obligation herein to be performed by Town may be waived except by the written consent of Seller, and a waiver of any such covenant or obligation or a forbearance to invoke any remedy on any occasion shall not constitute or be treated as a waiver of such covenant or obligation as to any other occasion and shall not preclude Seller from invoking such remedy at any later time prior to the cure by Town of the condition giving rise to such remedy.

(b) This Agreement shall be construed and governed in accordance with the laws of the State in effect from time to time.

(c) The recitals set forth at the beginning of this Agreement are incorporated in this Agreement by this reference. This Agreement constitutes the entire agreement between the parties and shall not be modified, waived, discharged, terminated, amended, supplemented, altered or changed in any respect except by a written document signed by both Seller and Town, subject to the restrictions with regard thereto provided by the Trust Agreement.

(d) Any term or provision of this Agreement found to be prohibited by law or unenforceable or which would cause this Agreement to be invalid, prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without, to

the extent reasonably possible, causing the remainder of this Agreement to be invalid, prohibited by law or unenforceable.

(e) Seller hereunder shall have the right at any time or times, by notice to Town, to designate or appoint any person or entity to act as agent or trustee for Seller for any purposes hereunder.

(f) The captions set forth herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

(g) Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, assigns and personal representatives, as the case may be. Any person or entity acquiring any interest in or to the right, title or interest of Seller herein shall be and have the rights of a third-party beneficiary hereunder.

(h) This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the first day of December 2021.

Seller:

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By.....
Authorized Representative

Town:

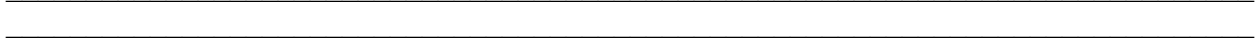
TOWN OF QUEEN CREEK, ARIZONA, a municipal corporation and political subdivision under the laws of the State of Arizona

By.....
Mayor

ATTEST:

.....
Town Clerk

Attachment: Form of Third Subordinate Lien Purchase Agreement (\$85M Interim Financing Resolution)



THIRD SUBORDINATE LIEN TRUST AGREEMENT

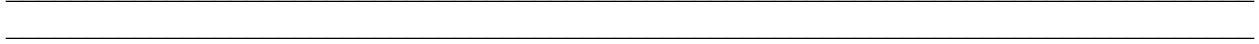
by and between

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

and

THE TOWN OF QUEEN CREEK, ARIZONA

Dated as of December 1, 2021



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THIRD SUBORDINATE LIEN TRUST AGREEMENT

THIS THIRD SUBORDINATE LIEN TRUST AGREEMENT, dated as of December 1, 2021 (together with any duly authorized, executed and delivered supplement thereto, this “Trust Agreement” or “Agreement”), by and between **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as trustee, or any successor thereto acting as trustee pursuant to this Trust Agreement (the “Trustee”), and in its capacity as “Seller” pursuant to the Third Subordinate Lien Purchase Agreement, dated as of December 1, 2021 (together with any duly authorized, executed and delivered amendment thereto, the “Purchase Agreement”) by and between the hereinafter defined Town and the Trustee, as “Seller”, and **THE TOWN OF QUEEN CREEK, ARIZONA**, a municipal corporation organized under the laws of the State of Arizona (the “Town”);

W I T N E S S E T H:

WHEREAS, the Town heretofore determined that it would be beneficial to its citizens to refinance the Loan Repayment Agreement, dated as of October 1, 2003, between the Town and the Greater Arizona Development Authority, a body corporate and politic constituting a governmental instrumentality duly organized and existing within the State of Arizona under the Constitution and laws of the State of Arizona (“GADA”); and

WHEREAS, in order to finance the costs thereof, the Town deemed it necessary and desirable to borrow \$3,845,000 from GADA; and

WHEREAS, in connection therewith, the Town and GADA entered into the Sixth Loan Repayment Agreement, dated as of March 1, 2014 (the “Sixth Loan Repayment Agreement”); and

WHEREAS, the Town also heretofore determined that it would be beneficial to its citizens to refinance the Second Loan Repayment Agreement, the Third Loan Repayment Agreement, the Fourth Loan Repayment Agreement, and the Fifth Loan Repayment Agreement, each between the Town and GADA, the First Purchase Agreement, between the Town, as buyer, and a trustee, as seller, and to prepay assessments associated with Town property in a certain district, which assessments were levied pursuant to Title 48, Chapter 4, Article 2, Arizona Revised Statutes; and

WHEREAS, in order to finance and refinance the costs thereof, the Town deemed it necessary and desirable to cause the execution and delivery of obligations in the principal amount of \$47,990,000, representing interests in a Second Purchase Agreement, dated as of October 1, 2016 (the “Second Purchase Agreement”), between the Town, as buyer, and a trustee, as seller; and

WHEREAS, the Town also heretofore determined that it would be beneficial to its citizens to finance the costs of street improvements and public safety facilities; and

WHEREAS, in order to finance the costs thereof, the Town deemed it necessary and desirable to cause the execution and delivery of obligations in two series in the aggregate principal amount of \$65,960,000, representing interests in a Third Purchase Agreement, dated as

of February 1, 2018 (the “Third Purchase Agreement”), between the Town, as buyer, and a trustee, as seller; and

WHEREAS, the Town also heretofore determined that it would be beneficial to its citizens to finance the costs of additional street improvements and additional public safety facilities; and

WHEREAS, in order to finance the costs thereof, the Town deemed it necessary and desirable to cause the execution and delivery of obligations in the principal amount of \$78,605,000, representing interests in a Fourth Purchase Agreement, dated as of June 1, 2020 (the “Fourth Purchase Agreement”), between the Town, as buyer, and a trustee, as seller; and

WHEREAS, the Town also heretofore determined it would be beneficial to its citizens to finance the costs of Phoenix Active Management Area Ground Water Extinguishment Credits for Town’s water system; and

WHEREAS, in order to finance the costs thereof, the Town deemed it necessary and desirable to cause the execution and delivery of obligations in the principal amount of \$49,450,000, representing interests in a First Subordinate Lien Purchase Agreement, dated as of February 1, 2019 (the “First Subordinate Lien Purchase Agreement”), between the Town, as buyer, and a trustee, as seller; and

WHEREAS, the Town also heretofore determined it would be beneficial to its citizens to finance the costs of additional Phoenix Active Management Area Ground Water Extinguishment Credits for Town’s water system; and

WHEREAS, in order to finance the costs thereof, the Town deemed it necessary and desirable to cause the execution and delivery of obligations in the principal amount of \$6,740,000, representing interests in a Second Subordinate Lien Purchase Agreement, dated as of January 1, 2020 (the “Second Subordinate Lien Purchase Agreement”), between the Town, as buyer, and a trustee, as seller; and

WHEREAS, the Town has now determined it will be beneficial to its citizens to finance the costs of improvements to the Town’s utility system (the “Project”); and

WHEREAS, for the purpose of financing the Project, the Town has heretofore agreed to make purchase payments to the Trustee, and the Trustee has agreed to provide for the Project pursuant to the Purchase Agreement, the payment of which shall be limited to amounts from the revenues from the Excise Taxes (as such term and all other terms not otherwise defined hereinabove are hereinafter defined) and the State Shared Revenues; and

WHEREAS, pursuant to Section 3 of the Sixth Loan Repayment Agreement, the Town has irrevocably pledged for the payment of the amounts due thereunder the revenues from the Excise Taxes and the State Shared Revenues, such pledge being a first lien pledge upon such amounts of the revenues from the Excise Taxes and the State Shared Revenues as will be sufficient to make the payments pursuant thereto when due; and

WHEREAS, pursuant to such Section of the Sixth Loan Repayment Agreement, except as limited by Section 10(a)(iii) of the Sixth Loan Repayment Agreement and by the corresponding sections in any agreement for any additional loan from GADA or for any loan from the Water Infrastructure Finance Authority of Arizona (“WIFA”) subject to Section 49-1225(F) or 49-1245(F), Arizona Revised Statutes, hereinafter consummated (collectively, “Additional Agency/Authority Loan Agreements” and, together with the Sixth Loan Repayment Agreement, “Agency/Authority Loan Agreements”), the rights of GADA to payment from the revenues from the Excise Taxes and the State Shared Revenues will be on a parity with the rights to payment from the revenues from the Excise Taxes and the State Shared Revenues of any obligations hereafter issued on a parity with the Sixth Loan Repayment Agreement, as permitted pursuant to Section 6 of the Sixth Loan Repayment Agreement (the “Parity Lien Obligations”), which includes Additional Agency/Authority Loan Agreements; and

WHEREAS, the Second Purchase Agreement, the Third Purchase Agreement and the Fourth Purchase Agreement were executed and delivered as Parity Lien Obligations (the Sixth Loan Repayment Agreement, the Second Purchase Agreement, the Third Purchase Agreement, the Fourth Purchase Agreement and any other Parity Lien Obligations hereafter incurred are referred to herein collectively as the “Senior Obligations”), and the Town has irrevocably pledged for the payment of the amounts due under this Agreement the revenues from the Excise Taxes and the State Shared Revenues, such pledge being a second lien pledge upon such amounts of the revenues from the Excise Taxes and the State Shared Revenues (including as diminished by Agency/Authority Loan Agreements) as will be sufficient to make the payments pursuant hereto when due, such pledge being subordinate to the pledge of the revenues from the Excise Taxes and the State Shared Revenues to the Senior Obligations; and

WHEREAS, after giving effect to the Purchase Agreement, the Town shall not further encumber the revenues from the Excise Taxes and the State Shared Revenues on a basis equal to or senior to the pledge under the First Subordinate Lien Purchase Agreement and the Purchase Agreement unless the revenues from the Excise Taxes plus the State Shared Revenues, when combined mathematically for such purpose only, in the most recently completed Fiscal Year of the Town, shall have amounted to at least two (2) times the highest combined interest and principal requirements for any succeeding Fiscal Year of the Town for the Senior Obligations, the First Subordinate Lien Purchase Agreement and the Purchase Agreement and any obligations secured or so proposed to be secured by such pledge of the revenues from the Excise Taxes and the State Shared Revenues on a parity of lien with the Purchase Agreement (with the First Subordinate Lien Purchase Agreement and the Purchase Agreement, the “Parity Subordinate Lien Obligations”); and

WHEREAS, Section 10(a) of the Sixth Loan Repayment Agreement provides that GADA may in the case of nonpayment, among other things, certify to the Treasurer of the State and notify the Mayor and Council of Town that Town has failed to make a required payment and direct a withholding of the State Shared Revenues as provided in Sections 41-2257(L) and (M) and 41-2258(I), (J) and (K), Arizona Revised Statutes (the “State Intercept of Funds”), and Additional Agency/Authority Loan Agreements may provide that GADA or WIFA provide for enforcement with the State Intercept of Funds; and

WHEREAS, the Town is a political subdivision duly organized and validly existing under the laws of the State; the Constitution and the laws of the State authorize the Town to enter into this Agreement and to enter into the agreements and transactions contemplated by, and to carry out its obligations under, said agreements; the Town has duly authorized and executed all of the aforesaid agreements; this Agreement is a lawful, valid and binding obligation of the Town, enforceable against the Town in accordance with its terms, and has been duly authorized, executed and delivered by the Town; all required procedures for execution and performance of this Agreement, including publication of notice, public hearing or competitive bidding, if applicable, have been or will be complied with in a timely manner; the Payments will be paid when due out of funds which are legally available for such purposes; and neither the execution and delivery of this Agreement or the Purchase Agreement, nor the fulfillment of or compliance with the terms and conditions hereof or thereof nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Town is now a party or by which the Town is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Town; and

WHEREAS, the Trustee has full legal authority and is duly empowered to enter into this Agreement and has taken all actions necessary to authorize the execution and delivery hereof; and

WHEREAS, the Town and the Trustee will enter into this Trust Agreement to facilitate the administration of the financing of the Project; and

WHEREAS, for the purpose of obtaining money to be deposited with the Trustee to finance the Project, the Trustee will execute and deliver Subordinate Lien Excise Tax and State Shared Revenue Obligations, Series 2021 (the "Obligations"), each evidencing a proportionate interest in the Purchase Agreement and the Payments made by the Town under the Purchase Agreement, in exchange for the moneys required herein to be deposited for the Project;

NOW, THEREFORE, in consideration for the Obligations executed, delivered and Outstanding under this Trust Agreement, the acceptance by the Trustee of the trusts created herein and the purchase and acceptance of the Obligations by the Owners, and to secure the payment of principal thereof and interest thereon (to the extent provided herein), the rights of the Owners of the Obligations and the performance and the observance of the covenants and conditions contained in the Obligations, the Purchase Agreement and herein, the Trustee hereby declares an irrevocable trust and acknowledges its acceptance of all right, title and interest in and to the following described trust estate, which shall be administered by the Trustee according to the provisions of this Trust Agreement and for the equal and proportionate benefit of the Owners of Obligations:

A. All right, title and interest of Seller in, under and pursuant to the Purchase Agreement, the Payments and any other amounts payable by the Town under the Purchase Agreement and the present and continuing right to (i) make claim for, collect or cause to be collected, receive or cause to be received all such revenues, receipts and other sums of money payable or receivable thereunder, (ii) bring actions and proceedings thereunder or for the

enforcement of such rights, and (iii) do any and all other things which the Seller is or may become entitled to do thereunder;

B. Amounts on deposit from time to time in the funds created pursuant hereto, subject to the provisions of this Trust Agreement permitting the application thereof for the purposes and on the terms and conditions set forth herein; and

C. Any and all other real or personal property of any kind from time to time hereafter by delivery or by writing of any kind specifically conveyed, pledged, assigned or transferred, as and for additional security hereunder for the Obligations, by Seller or by anyone on its behalf or with its written consent, in favor of the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof,

TO HAVE AND TO HOLD, all and singular, the trust estate, including all additional property which by the terms hereof has or may become subject to the encumbrance of this Trust Agreement, unto the Trustee and its successors and assigns, forever, subject, however, to the rights of the Town, its successors and assigns, under the Purchase Agreement;

IN TRUST, however, for the equal and proportionate benefit and security of the Owners from time to time of the Obligations executed and delivered hereunder and Outstanding; and conditioned, however, that if the Town shall well and truly pay or cause to be paid fully and promptly when due all indebtedness, liabilities, obligations and sums at any time secured hereby, including interest and attorneys' fees, and shall promptly, faithfully and strictly keep, perform and observe or cause to be kept, performed and observed all of its covenants, warranties and agreements contained herein, this Trust Agreement shall be and become void and of no further force and effect; otherwise, the same shall remain in full force and effect, and upon the trust and subject to the covenants and conditions hereinafter set forth. For such purposes, the Town and the Trustee hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1. Definitions. In addition to the terms defined in the Recitals hereto and unless the context otherwise requires, the terms defined in this Section 1.1 shall, for all purposes of this Trust Agreement, have the meanings herein specified.

“**Acquisition Fund**” means the fund of that name created pursuant to Article III hereof.

“**Advances**” has the meaning assigned to such term in the Continuing Covenant Agreement.

“**Applicable Spread**” means a rate per annum associated with the Level corresponding to the Ratings as specified below:

| Level | Moody's | Fitch | S&P | Applicable Spread |
|-------|---------------|---------------|---------------|-------------------|
| I | Aa2 or above | AA or above | AA or above | 0.37% |
| II | Aa3 | AA- | AA- | 0.47% |
| III | A1 | A+ | A+ | 0.57% |
| IV | A2 | A | A | 0.77% |
| V | A3 | A- | A- | 0.97% |
| VI | Baa1 or below | BBB+ or below | BBB+ or below | 1.27% |

In the event of a split Rating (i.e., the Rating of one or more of the foregoing Rating Agencies is in a different Level in the pricing grid set forth above than the Rating of any other Rating Agency), the Applicable Spread will be based upon the Level in which the lowest Rating appears in the pricing grid set forth above (for the avoidance of doubt, Level VI is the lowest Level and Level I is the highest Level). Any change in the Applicable Spread resulting from a change in a Rating shall be and become effective as of and on the date of the announcement of the change in such Rating. References to Ratings above are references to rating categories as presently determined by the Rating Agencies and, in the event of adoption of any new or changed rating system by any such Rating Agency, each of the Ratings from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new rating system which most closely approximates the applicable rating category as currently in effect. The Town and the Purchaser acknowledge that as of the Closing Date the Applicable Spread is that specified above for Level I.

“**Authorized Denominations**” means \$1,000,000 of principal and integral multiples of \$5,000 of principal in excess thereof; provided that, as a result of prepayment, an Obligation may be in a denomination of less than \$1,000,000 of principal.

“**Authorized Officers**” means any Town Representative and those officers of the Town listed in an incumbency certificate with the authority to provide Instructions and containing specimen signatures of such authorized officers, which incumbency certificate shall be amended by the Town, whenever a person is to be added or deleted from the listing.

“**Business Day**” means a day which is not (a) a Saturday, Sunday or legal holiday on which banking institutions in New York, New York or Queen Creek, Arizona or the principal corporate trust office of the Trustee is located are authorized by law to close, (b) a day on which the New York Stock Exchange or the Federal Reserve Bank is closed or (c) a day on which the principal office of the Purchaser is closed.

“**Certificate of Completion**” means the notice of completion, filed with the Trustee by a Town Representative, stating that the Project has been substantially completed.

“**Closing Date**” means December __, 2021.

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“**Code**” means the Internal Revenue Code of 1986, as amended. References to the Code and Sections thereof include applicable regulations and temporary regulations thereunder and any successor provisions to those Sections, regulations or temporary regulations and any applicable regulations or temporary regulations issued pursuant to the Internal Revenue Code of 1954.

“**Completion Date**” means the date on which the Certificate of Completion is filed with the Trustee by a Town Representative.

“**Computation Date**” means each Wednesday preceding the applicable SIFMA Index Reset Date.

“**Continuing Covenant Agreement**” means the Continuing Covenant Agreement, dated as of December 1, 2021, by and between the Town and the Purchaser, as the same may be amended, modified or supplemented from time to time.

“**Costs of Issuance Fund**” means the fund of that name created pursuant to Article III hereof.

“**Default Rate**” means, for any day, a fluctuating rate of interest per annum equal to the greatest of (i) the Prime Rate in effect at such time plus four percent (4.0%), (ii) the Federal Funds Rate in effect at such time plus five percent (5.0%), and (iii) the SIFMA Index in effect at such time plus four percent (4.0%); provided, however, that under no circumstances shall the Default Rate exceed the Maximum Interest Rate.

“**Defaulted Interest**” has the meaning provided in Section 2.9(d).

“**Delivery Costs**” means all items of expense directly or indirectly payable by or reimbursable to the Town or the Trustee relating to the execution, sale and delivery of the Purchase Agreement, this Trust Agreement and the Obligations, including but not limited to filing and recording costs, settlement costs, printing costs, reproduction and binding costs, initial fees and charges of the Trustee, financing discounts, legal fees and charges, insurance fees and charges, financial and other professional consultant fees, costs of rating agencies for credit ratings, fees for execution, transportation and safekeeping of the Obligations and charges and fees in connection with the foregoing.

“**Depository Trustee**” means any bank or trust company, which may include the Trustee, designated by the Town, with a combined capital and surplus of at least Fifty Million Dollars (\$50,000,000) and subject to supervision or examination by federal or State authority.

“**Designated Office**” means the office designated as such by the Trustee in writing to the Town.

“**Determination of Taxability**” means and shall be deemed to have occurred on the first to occur of the following:

(i) on the date when the Town files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability shall have in fact occurred;

(ii) on the date when the Owner or any former Owner notifies the Town that it has received a written opinion by a nationally recognized firm of attorneys of substantial expertise on the subject of tax exempt municipal finance to the effect that an Event of Taxability shall have occurred unless, within one hundred eighty (180) days after receipt by the Town of such notification from the Owner or any former Owner, the Town shall deliver to the Owner and any former Owner a ruling or determination letter issued to or on behalf of the Town by the Commissioner of the Internal Revenue Service or the Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other government official exercising the same or a substantially similar function from time to time) to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;

(iii) on the date when the Town shall be advised in writing by the Commissioner of the Internal Revenue Service or the Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other government official exercising the same or a substantially similar function from time to time, including an employee subordinate to one of these officers who has been authorized to provide such advice) that, based upon filings of the Town, or upon any review or audit of the Town or upon any other ground whatsoever, an Event of Taxability shall have occurred; or

(iv) on the date when the Town shall receive notice from the Owner or any former Owner that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of such Owner or such former Owner the Interest Portion (other than the portion increased by the Taxable Rate) due to the occurrence of an Event of Taxability;

provided, however, no Determination of Taxability shall occur under subparagraph (iii) or (iv) hereunder unless the Town has been afforded the opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; provided further, however, that upon demand from the Owner or former Owner, the Town shall, to the extent permitted by law, promptly reimburse such Owner or former Owner for any payments, including any taxes, interest, penalties or other charges, such Owner (or former Owner) shall be obligated to make as a result of the Determination of Taxability.

“**Electronic Means**” means the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes,

passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder.

“Electronically” means with respect to notice, one transmitted through a time-sharing terminal, computer network or facsimile machine, if operative as between any two parties, or if not operative, by telephone (promptly confirmed in writing).

“Event of Default” means an event of default under the Purchase Agreement as provided in Section 10 thereof or an event of default under the Continuing Covenant Agreement as provided in Section 7.01 thereof.

“Event of Taxability” means a (i) change in law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the Town, or the failure to take any action by the Town, or the making by the Town of any misrepresentation herein or in any certificate required to be given in connection with the issuance, sale or delivery of the Obligations) which has the effect of causing the Interest Portion (other than the portion increased by the Taxable Rate) to become includable, in whole or in part, in the gross income of the Owner or any former Owner for federal income tax purposes or (ii) the entry of any decree or judgment by a court of competent jurisdiction, or the taking of any official action by the Internal Revenue Service or the Department of the Treasury, which decree, judgment or action shall be final under applicable procedural Law, in either case, which has the effect of causing the Interest Portion (other than the portion increased by the Taxable Rate) to become includable, in whole or in part, in the gross income of such Owner or such former Owner for federal income tax purposes with respect to the Obligations.

“Excess Interest Amount” has the meaning set forth in Section 2.4(c).

“Excise Taxes” means the unrestricted transaction privilege (sales) tax, business license and franchise fees, parks and recreation fees and permits and fines and forfeitures which the Town imposes; provided that the Mayor and Council of the Town may impose other transaction privilege taxes in the future, the uses of revenue from which will be restricted, at the discretion of such Council.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that: (a) if such day is not a Business Day, then the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day; and (b) if no such rate is so published on such next succeeding Business Day, then the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of one hundredth of one percent) charged to the Purchaser on such day on such transactions as determined by the Purchaser. Notwithstanding anything herein to the contrary, if the Federal Funds Rate as determined as provided above would be less than zero percent (0.0%), then the Federal Funds Rate shall be deemed to be zero percent (0.0%).

“**Fiscal Year**” means the period commencing each July 1 and ending June 30 of the succeeding calendar year, unless otherwise determined and designated by the Town.

“**Fitch**” means Fitch Ratings, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Town by notice to the Trustee.

“**Government Obligations**” means direct general obligations of, or obligations the timely payment of principal and interest on which are fully and unconditionally guaranteed by, the United States of America (including, without limitation, the interest portion of obligations issued by the Resolution Funding Corporation in book entry form and stripped by request to the Federal Reserve Bank of New York), including Government Obligations which have been stripped of their unmatured interest coupons and interest coupons stripped from Government Obligations, provided any stripped Government Obligations have been stripped by the applicable U.S. Governmental Agency.

“**Gross-Up Amount**” means (A) an amount equal to the difference between (i) the amount of interest that would have been paid to the Purchaser or any other Owner on the Obligations during the Taxable Period, and (ii) the amount of interest on the Obligations actually paid to the Purchaser or any other Owner during the Taxable Period, and (B) to the extent permitted by law, an amount equal to any interest, penalties or charges owed by the Purchaser or any other Owner as a result of the Interest Portion (other than the portion increased by the Taxable Rate) becoming included in the gross income of the Purchaser or any other Owner, together with any and all attorneys’ fees, court costs, or other out of pocket costs incurred by the Purchaser or any other Owner in connection therewith.

“**Independent Counsel**” means an attorney duly admitted to the practice of law before the highest court of the state in which such attorney maintains an office and who is not an employee of the Town or the Trustee.

“**Instructions**” means instructions, including funds transfer instructions given pursuant to this Agreement and delivered using Electronic Means.

“**Interest Payment Date**” means each June 1 and December 1, commencing June 1, 2022, and upon final payment because of maturity or redemption while any Obligations are Outstanding; provided that, if any such day is not a Business Day, any payment due on such date may be made on the next Business Day, without additional interest and with the same force and effect as if made on the specified date for such payment.

“**Interest Portion**” means the amounts of each of the Payments to be received by any Owner denominated as and comprising interest for, in the case of the Interest Payment Dates which shall be computed by multiplying the portion of the Payments designated as principal with respect to the Obligations by the SIFMA Index Rate; provided that (i) during any Taxable Period, the rate used shall instead of the SIFMA Index Rate be the Taxable Rate, and (ii) during any period while an Event of Default exists, the rate used shall instead of the SIFMA Index Rate be the Default

Rate. All computations of interest and other amounts payable by the Town under this Agreement shall be made on the basis of a year of 360 days, as the case may be, and the actual number of days elapsed. Interest shall accrue during each period during which interest is computed from and including the first day thereof to but excluding the last day thereof.

“**Market Value**” means the indicated bid value of the investment or investments to be valued as shown in The Wall Street Journal or any publication having general acceptance as a source of valuation of the same or similar types of securities or any securities pricing service available to or used by the Trustee and generally accepted as a source of valuation.

“**Maximum Federal Corporate Tax Rate**” means, for any day, the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, as in effect as of such day (or, if as a result of a change in the Code, the rate of income taxation imposed on corporations generally shall not be applicable to the Purchaser, the maximum statutory rate of federal income taxation which could apply to the Purchaser as of such day).

“**Maximum Interest Rate**” means a per annum interest rate equal to ten percent (10.0%).

“**Moody’s**” means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Town by notice to the Trustee.

“**Notification**” shall have the meaning provided in Section 11.3.

“**Outstanding**”, when used with respect to the Obligations, refers to Obligations issued in accordance with this Agreement, excluding: (i) Obligations which have been exchanged or replaced, or delivered to the Trustee for credit against a mandatory redemption installment; (ii) Obligations which have been paid; (iii) Obligations which have become due and for the payment of which moneys have been duly provided to the Trustee; and (iv) Obligations for which there have been irrevocably set aside with a Depository Trustee sufficient moneys or obligations permitted by the Purchase Agreement bearing interest at such rates and with such maturities as will provide sufficient funds to pay the principal of and premium, if any, and interest on such Obligations, provided, however, that if any such Obligations are to be redeemed prior to maturity, the Town shall have taken all action necessary to redeem such Obligations and notice of such redemption shall have been duly mailed in accordance with the proceedings under which such Obligations were issued or irrevocable instructions so to mail shall have been given to the Trustee.

“**Owner**” or any similar term, when used with respect to an Obligation means the Purchaser or the entities described in Section 2.7.

“**Payment Fund**” means the fund of that name established and held by the Trustee pursuant to Article V hereof.

“**Payment Request Form**” means the form set forth in Exhibit B which is attached hereto and made a part hereof.

“**Payments**” means all payments required to be paid by the Town on any date pursuant to Section I of the Purchase Agreement.

“**Permitted Investments**” means any of the following:

- (a) Government Obligations;
- (b) CATS and TIGRS;
- (c) Advance-Refunded Municipal Obligations;
- (d) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself): U.S. Export-Import Bank (Eximbank) - direct obligations or fully guaranteed certificates of beneficial ownership; Farmers Home Administration (FmHA) - certificates of beneficial ownership; Federal Financing Bank; Federal Housing Administration Debentures (FHA); General Services Administration - participation certificates; Government National Mortgage Association (GNMA or “Ginnie Mae”) GNMA - guaranteed mortgage-backed bonds and GNMA - guaranteed pass-through obligations; U.S. Maritime Administration - guaranteed Title XI financing; U.S. Department of Housing and Urban Development (HUD) - project notes, local authority bonds, new communities debentures U.S. Government guaranteed debentures, U.S. Public Housing notes and bonds - U. S. Government guaranteed public housing notes and bonds;
- (e) bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself): Federal Home Loan Bank System - senior debt obligations; Federal Home Loan Mortgage Corporation (FHLMC or “Freddie Mac”) - participation certificates and senior debt obligations; Federal National Mortgage Association (FNMA or “Fannie Mae”) - mortgage-backed securities and senior debt obligations; Student Loan Marketing Association (SLMA or Sallie Mae) - senior debt obligations; Resolution Funding Corp. (REFCORP) obligations; and Farm Credit System - consolidated systemwide bonds and notes;
- (f) money market mutual funds registered under the Federal Investment Company Act of 1940, or whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of AAAM-G, AAA-m, or AA-m and if rated by Moody’s rated Aaa, Aa1 or Aa2 including, without limitation, any mutual fund for which the Trustee or an affiliate of the Trustee serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (i) the Trustee or an affiliate of the Trustee receives and retains fees from funds for services rendered to the fund, (ii) the Trustee collects fees for services rendered pursuant to this Agreement, which fees are separate from the fees received from such funds, and (iii) services performed for such funds and pursuant to this Agreement may at times duplicate those provided to such funds by the Trustee or an affiliate of the Trustee;
- (g) certificates of deposit (i) secured at all times by collateral described in (a), (b), (c) or (d) above, (ii) issued by commercial banks, savings and loan associations or mutual

savings banks and (iii) the collateral must be held by a third party and the Trustee must have a perfected first security interest in the collateral;

(h) bank deposit products, time deposits, overnight banking deposits, interest bearing money market account, certificates of deposit, savings accounts, deposit accounts or money market deposits (including those of the Trustee or any of its affiliates) which are fully insured by FDIC, including BIF and SAIF;

(i) investment agreements, including guaranteed investment contracts, which meet the following criteria:

(i) the investment agreement must be collateralized by the transfer of qualifying securities from a dealer bank or securities firm to the Trustee;

(ii) the investment agreement must be between the Trustee and a provider which is rated “A” or better by S&P and Moody’s;

(iii) the written investment agreement must include the following: (A) securities which are acceptable for collateral are Government Obligations, or Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC); (B) the collateral must be delivered to the Trustee (if Trustee is not supplying the collateral) or third party acting as agent for the Trustee (if the Trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities); (C) the securities must be valued weekly, marked-to-market at current market price plus accrued interest and the value of collateral must be equal to at least 103 percent of the amount invested by the Trustee under the investment agreement plus accrued interest and if the value of securities held as collateral slips below 103 percent of the required value, then additional cash and/or acceptable securities must be transferred, provided however, if the securities used as collateral are FNMA or FHLMC then the value of collateral must equal at least 104 percent; and

(iv) a legal opinion must be delivered to the Trustee that the investment agreement meets guidelines under state law for legal investment of public funds;

(j) commercial paper rated, at the time of purchase, Prime-1 by Moody’s and “A-1” or better by S&P;

(k) bonds or notes issued by any state or municipality which are rated by Moody’s and S&P in one of the two highest rating categories assigned by such agencies;

(l) federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of Prime-1 or “A3” or better by Moody’s and “A-1” or “A” or better by S&P;

(m) repurchase agreements (including those of the Trustee or any of its affiliates) which meet the following criteria:

(i) the repurchase agreement (the “repo”) must provide for the transfer of securities from a dealer bank or securities firm to the Trustee, and the transfer of cash from the Trustee to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the Trustee in exchange for the securities at a specified date;

(ii) repo must be between the Trustee and a dealer bank or securities firm which is either a primary dealer on the Federal Reserve reporting dealer list which is rated “A” or better by S&P and Moody’s, or a bank rated “A” or above by S&P and Moody’s;

(iii) the written repo contract must include the following: (A) securities which are acceptable for transfer are Government Obligations, or Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC); (B) the collateral must be delivered to the Trustee (if Trustee is not supplying the collateral) or third party acting as agent for the Trustee (if the Trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities); (C) the securities must be valued weekly, marked-to-market at current market price plus accrued interest and the value of collateral must be equal to 103% of the amount of cash transferred by the Trustee to the counter-party under the repo plus accrued interest and if the value of securities held as collateral slips below 103% of the value of the cash transferred by Trustee, then additional cash and/or acceptable securities must be transferred, provided however, if the securities used as collateral are FNMA or FHLMC then the value of collateral must equal 104%; and

(iv) legal opinion which must be delivered to the Trustee that the repo meets guidelines under state law for legal investment of public funds;

(n) any other investment that is permitted under applicable Arizona law.

Notwithstanding the foregoing, moneys derived from the sale of the Obligations shall be invested only in obligations described in (a), (b), (d) or (g) (other than certificates of deposit with a savings and loan association or mutual savings bank as described in (g)) or in (f), (i) or (n) (where such investment described in (f), (i) or (n) consists solely of, or are secured by, obligations described in (a), (b), (d) or (g) (other than certificates of deposit with a savings and loan association or mutual savings bank as described in (g))).

“**Prime Rate**” means on any day, the rate of interest per annum then most recently established by the Purchaser as its “prime rate.” Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by the Purchaser to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and that the Purchaser may make various business or other loans at rates of interest having no relationship to such rate. If the Purchaser ceases to establish or publish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in The Wall Street Journal (or the average prime rate if a

high and a low prime rate are therein reported), and the Prime Rate shall change without notice with each change in such prime rate as of the date such change is reported. Notwithstanding anything herein to the contrary, if the Prime Rate determined as provided above would be less than zero percent (0.0%), then the Prime Rate shall be deemed to be zero percent (0.0%).

“**Project Costs**” means, with respect to the Project, all architectural, engineering, soils, survey, archaeology, demolition, construction management fees, development fees, contingencies and other related costs of acquiring and constructing the Project and all costs incurred by the Trustee or the Town with respect to the transaction to which this Trust Agreement pertains.

“**Purchaser**” means, initially, U.S. Bank National Association, and its successors and assigns (including the entities described in Section 9.13 of the Continuing Covenant Agreement).

“**Rating**” means the long-term unenhanced rating assigned by each Rating Agency to the Senior Obligations.

“**Rating Agency**” means all or any of S&P, Moody’s and Fitch, as the context may require.

“**Regular Record Date**” means the close of business on the fifteenth day of the month preceding each Interest Payment Date.

“**Reimbursement Request Form**” means the form set forth in Exhibit C which is attached hereto and made a part hereof.

“**Responsible Officer**” means, when used with respect to the Trustee, any managing director, the president, any vice president, any assistant vice president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, senior associate, associate or any other officer of the Trustee within the office of the Trustee designated in Section 13.3 hereof (the “Corporate Trust Office”) (or any successor corporate trust office) customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred at the Corporate Trust Office because of such person’s knowledge of and familiarity with the particular subject and having direct responsibility for the administration of this Agreement.

“**S&P**” means Standard & Poor’s Financial Services, LLC, a limited liability company organized and existing under the laws of the State of New York, its successors and assigns, and, if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Town by notice to the Trustee.

“**SIFMA Index Rate**” means a per annum rate of interest established on each Computation Date equal to the sum of the Applicable Spread plus the SIFMA Index. The SIFMA Index Rate shall be rounded to the third decimal place.

“**SIFMA Index Reset Date**” means Thursday of each week.

“**SIFMA Index**” means, for any date of determination, the level of the index which is issued weekly and which is compiled from the weekly interest rate resets of tax-exempt variable rate issues included in a database maintained by Municipal Market Data which meet specific criteria established from time to time by the Securities Industry and Financial Markets Association and issued on Wednesday of each week, or if any Wednesday is not a Business Day, the immediately succeeding Business Day. If the SIFMA Index is no longer published, then “SIFMA Index” shall mean the S&P Weekly High Grade Index. If the S&P Weekly High Grade Index is no longer published, then “SIFMA Index” shall mean the prevailing rate determined by the Purchaser for tax-exempt state and local government bonds meeting criteria determined in good faith by the Purchaser to be comparable under the circumstances to the criteria used by the Securities Industry and Financial Markets Association to determine the SIFMA Index immediately prior to the date on which the Securities Industry and Financial Markets Association ceased publication of the SIFMA Index. Notwithstanding anything herein to the contrary, during any period of time while the SIFMA Index, determined as provided above, would be less than one hundredth of one percent (0.01%), the SIFMA Index shall be deemed to be one hundredth of one percent (0.01%).

“**Special Record Date**” has the meaning provided in Section 2.9(d).

“**State**” means the State of Arizona.

“**State Shared Revenues**” means any amounts of excise taxes, transaction privilege (sales) taxes and income taxes imposed by the State of Arizona or any agency thereof and returned, allocated or apportioned to the Town, except the Town’s share of any such taxes which by State law, rule or regulation must be expended for other purposes, such as motor vehicle fuel taxes.

“**Tax Certificate**” means the Certificate Relating To Federal Tax Matters delivered by the Town at the time of original execution and delivery of the Obligations.

“**Taxable Date**” means the date on which the Interest Portion (other than the portion increased by the Taxable Rate) is first includable in gross income of the Owner (including, without limitation, any previous Owner) thereof as a result of an Event of Taxability as such date is established pursuant to a Determination of Taxability.

“**Taxable Period**” means the period for which the Interest Portion (other than the portion increased by the Taxable Rate) is included in the gross income of the Owners of the Obligations for federal income tax purposes, beginning on the Taxable Date.

“**Taxable Rate**” means, for each day, a rate of interest per annum equal to the product of (i) the SIFMA Index Rate and (ii) the applicable Taxable Rate Factor.

“**Taxable Rate Factor**” means, for each day that the Taxable Rate is determined, the quotient of (i) one divided by (ii) one minus the Maximum Federal Corporate Tax Rate in effect as of such day.

“**Town Representative**” means the Manager, the Chief Financial Officer or any other person authorized by the Manager, the Chief Financial Officer or the Town Council of the Town to act on behalf of the Town with respect to this Agreement.

Words importing persons include firms, associations and corporations, and the singular and plural forms of words shall be deemed interchangeable wherever appropriate.

ARTICLE II SPECIAL REVENUE OBLIGATIONS

Section 2.1. Authorization of the Obligations. The Trustee is hereby authorized and directed to execute and deliver to the Purchaser the Obligations in the total principal amount of \$85,000,000, evidencing proportionate ownership interests in the Purchase Agreement and the Payments and certain amounts payable pursuant to the Continuing Covenant Agreement. The Obligations shall be in Authorized Denominations. In no event shall the Obligations be deemed liabilities, debts or obligations of the Trustee.

Section 2.2. Date; Interest Accrual. Each Obligation shall be dated the Closing Date, and interest with respect thereto shall be payable from such date or from the most recent Interest Payment Date to which interest has previously been paid or made available for payment with respect to the Outstanding Obligations.

Section 2.3. Maturity. The Obligations shall mature on June 1, 2025, in the principal amount of \$85,000,000. Such maturity date is subject to the provisions of Section 4.09 of the Continuing Covenant Agreement and Section 9.1 hereof.

Section 2.4. Interest on Obligations.

(a) The Interest Portion shall be payable on the Interest Payment Dates.

(b) If the amount of interest payable for any period in accordance with the terms of the Obligations exceeds the amount of interest that would be payable for such period had interest for such period been calculated at the Maximum Interest Rate, then interest for such period shall be payable in an amount calculated at the Maximum Interest Rate.

(c) Any interest that would have been due and payable for any period but for the operation of the immediately preceding paragraph (b) shall accrue and be payable as provided in this paragraph (c) and shall, less interest actually paid to each Owner for such period, constitute the “Excess Interest Amount.” If there is any accrued and unpaid Excess Interest Amount as of any date, then the principal amount with respect to which interest is payable shall bear interest at the Maximum Interest Rate until payment to each Owner of the entire Excess Interest Amount.

(d) Notwithstanding the foregoing, on the date on which no principal amount with respect to the Obligations remains unpaid, the Town shall pay to each Owner a fee equal to any accrued and unpaid Excess Interest Amount.

Section 2.5. Form. The Obligations shall be in fully registered, physically certificated form, registered in the name of the Owners. The Obligations shall be substantially in the form set forth in Exhibit A which is attached hereto and made a part hereof. The Obligations shall not be (i) assigned a rating by any rating agency, (ii) registered with The Depository Trust Company or any other securities depository, (iii) issued pursuant to any type of official statement, private placement memorandum or other offering document, or (iv) placed or offered by a broker-dealer in the capacity of an underwriter or placement agent.

Section 2.6. Execution. The Obligations shall be executed by and in the name of the Trustee by the manual signature of an authorized representative of the Trustee. If any representative whose signature appears on any Obligation ceases to be such representative before the Closing Date, such signature shall nevertheless be as effective as if the representative had remained in office until the Closing Date. Any Obligation may be executed on behalf of the Trustee by such person as at the actual date of the execution of such Obligation shall be the proper authorized representative of the Trustee although at the nominal date of such Obligation such person shall not have been such authorized representative of the Trustee. No Obligation shall be valid or become obligatory for any purpose or shall be entitled to any security or benefit under this Agreement unless and until executed and delivered by the Trustee. The execution by the Trustee of any Obligation shall be conclusive evidence that the Obligation so executed has been duly authorized and delivered hereunder and is entitled to the security and benefit of this Agreement.

Section 2.7. Transfer and Exchange.

(a) Subject to the requirements of Section 9.13 of the Continuing Covenant Agreement, any Obligation may be transferred upon the registration books for the Obligations required to be kept pursuant to the provisions of Section 2.11 hereof by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Obligation for cancellation, accompanied by delivery of a written instrument of transfer in a form approved by the Trustee, duly executed, to an entity described in Section 9.13 of the Continuing Covenant Agreement. Whenever the Obligation shall be surrendered for transfer, the Trustee shall execute and deliver a new Obligation in fully registered, physically certificated form for the remaining unpaid principal amount with respect to such Obligation.

(b) Obligations may be exchanged at the Designated Office for a like aggregate principal amount of Obligations of Authorized Denominations. In connection with any such exchange or transfer of Obligations, the Owner requesting such exchange or transfer shall, as a condition precedent to the exercise of the privilege of making such exchange or transfer, remit to the Trustee an amount sufficient to pay any tax or other governmental charge required to be paid, other than one imposed by the Town (which will not be payable by the Trustee), or any fee or expense of the Trustee or the Town with respect to such exchange or transfer.

(c) The Trustee may, but shall not be obligated to, exchange or register the transfer of an Obligation (i) if the Obligation is to be redeemed, in whole or in part, or (ii) during a period of 15 days preceding the giving of a notice of redemption. If an Obligation subject to redemption is to be transferred after having been selected for redemption, any notice of redemption which has been given to the transferor shall be binding on the transferee and a copy of the notice

of redemption shall be delivered by the Trustee to the transferee along with the duly registered Obligation or Obligations.

Section 2.8. Obligations Mutilated, Lost, Destroyed or Stolen. If any Obligation shall become mutilated, the Trustee, at the expense of the Owner of said Obligation, shall execute and deliver a new Obligation for the remaining unpaid principal amount in exchange and substitution for the Obligation so mutilated, but only upon surrender to the Trustee of the Obligation so mutilated. Any mutilated Obligation so surrendered to the Trustee shall be cancelled by it and redelivered to, or upon the order of, the Owner of such Obligation. If any Obligation shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee, and, if such evidence is satisfactory to the Trustee and, if an indemnity satisfactory to the Trustee shall be given, the Trustee, at the expense of the Owner of such Obligation, shall execute and deliver a new Obligation for the remaining unpaid principal amount as the Trustee shall determine in lieu of and in substitution for the Obligation so lost, destroyed or stolen. The Trustee may require payment of an appropriate fee for each new Obligation delivered under this Section and of the expenses which may be incurred by the Trustee in carrying out the duties under this Section. Any Obligation issued under the provisions of this Section in lieu of any Obligation alleged to be lost, destroyed or stolen shall be equally and proportionately entitled to the benefits of this Agreement with all other Obligations secured by this Agreement. The Trustee shall not be required to treat both the original Obligation and any replacement Obligation as being Outstanding for the purpose of determining the principal amount of Obligations which may be executed and delivered hereunder or for the purpose of determining any percentage of Obligations Outstanding hereunder, but both the original and replacement Obligation shall be treated as one and the same. Notwithstanding any other provision of this Section, in lieu of delivering a new Obligation for an Obligation which has been mutilated, lost, destroyed or stolen, and which has matured, the Trustee may make payment with respect to such Obligation upon receipt of the aforementioned indemnity.

Section 2.9. Payment.

(a) The principal and interest with respect to the Obligations shall be payable in lawful money of the United States of America.

(b) Payment of interest and other amounts not otherwise provided for herein due with respect to any Obligation shall be made to the person appearing on the registration books for the Obligation maintained by the Trustee as the Owner thereof as of the Regular Record Date.

(c) Except as otherwise provided in this subsection, interest and principal payable to the Owners shall be paid by wire transfer in immediately available funds to an account in the United States of America as directed on the Regular Record Date by the Owners specifying the account address without surrender of the Obligations except as set forth below. The notice may provide that it shall remain in effect for subsequent payments until otherwise requested in a subsequent written notice. Interest and principal payable to the Owners on the final date for payment of principal and interest shall be paid upon presentation of the Obligations by the persons appearing on the registration books for the Obligations maintained by the Trustee as the Owners thereof on such date at the Designated Office.

(d) Any interest on any Obligation which is payable on, but is not punctually paid or duly provided for on, any Interest Payment Date (“Defaulted Interest”) shall forthwith cease to be payable to the Owner on the relevant Regular Record Date solely by virtue of such Owner having been such Owner. Such Defaulted Interest shall thereupon be paid, together with interest thereon at the same rate per annum as such Defaulted Interest, by the Trustee (out of funds provided to it by the Town) to the persons in whose names such Obligations are registered at the close of business on a special record date for the payment of such portion of Defaulted Interest as may then be paid from the sources herein provided (the “Special Record Date”). When the Trustee has funds available to pay the Defaulted Interest and interest thereon, the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest and interest thereon which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment by the Trustee. The Trustee shall promptly cause notice of the proposed payment of such Defaulted Interest and interest thereon and the Special Record Date therefor to be mailed, first class postage prepaid, to each Owner of an Obligation at his address as it appears in the registration books by the Trustee for the Obligation not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and interest thereon and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest and interest thereon shall be paid to the persons in whose names the Obligations are registered on such Special Record Date.

(e) In the event the Obligations are not presented for payment at maturity, if moneys sufficient to pay the principal and interest related to the Obligations have been deposited pursuant hereto for such payment, all liability to the Owners thereof for the payment thereof will forthwith cease and be completely discharged, and thereupon it will be the duty of the Trustee to hold such moneys as provided herein, without liability for interest thereon, for the benefit of the Owners, who will thereafter be restricted exclusively to such moneys, for any claim of whatever nature on his part hereunder or on, or with respect to, the Obligations.

(f) In the event a Determination of Taxability occurs, the Trustee shall remit to each Owner (or former Owner, as the case may be), their applicable portion of the Gross-Up Amount received from the Town pursuant to Subsection 1(c) of the Purchase Agreement.

Section 2.10. Execution of Documents and Proof of Ownership. Any request, direction, consent, revocation of consent or other instrument in writing required or permitted by this Agreement to be signed or executed by Obligation Owners may be in any number of concurrent instruments of similar tenor, and may be signed or executed by such Owners in person or by their attorneys or agents appointed by an instrument in writing for that purpose, or by any bank, trust company or other depository for such Obligations. Proof of the execution of any such instrument, or of any instrument appointing any such attorney or agent, and of the ownership of Obligations shall be sufficient for any purpose of this Agreement (except as otherwise herein provided), if made in the following manner:

(a) The fact and date of the execution by any Owner or the attorney or agent thereof of any such instrument and of any instrument appointing any such attorney or agent, may be proved by a certificate, which need not be acknowledged or verified, of an officer of any bank or trust company located within the United States of America, or of any notary public, or other officer authorized to take acknowledgments of deeds to be recorded in such jurisdictions, that the persons signing such instruments acknowledged the execution thereof. Where any such instrument

is executed by an officer of a corporation or association or a member of a partnership on behalf of such corporation, association or partnership, such certificate shall also constitute sufficient proof of his authority.

(b) The fact of the ownership of Obligations by any person and the amount and the numbers of such Obligations and the date of his holding the same be proved on the registration books maintained pursuant to Section 2.11 hereof.

Nothing contained in this Article II shall be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which the Trustee may deem sufficient. Any request or consent of the Owner of any Obligation shall bind every future Owner of the same Obligation in respect of anything done or suffered to be done by the Trustee in pursuance of such request or consent.

Section 2.11. Obligation Register. The Trustee will keep or cause to be kept, at the Designated Office, sufficient books for the registration and transfer of the Obligations which shall at all times during regular business hours on any Business Day be open to inspection by the Town and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, the Obligations as hereinbefore provided.

ARTICLE III

APPLICATION OF PROCEEDS RECEIVED BY TRUSTEE; ACQUISITION FUND; COSTS OF ISSUANCE FUND

Section 3.1. Application of Proceeds.

(a) On the Closing Date, \$_____ of the proceeds received by the Trustee from the sale of the Obligations shall forthwith be set aside by the Trustee in the Costs of Issuance Fund and the balance of such proceeds (\$_____) shall forthwith be set aside by the Trustee in the Acquisition Fund.

(b) Thereafter, proceeds of the Obligations shall be disbursed in installments through the making of Advances by the Purchaser in accordance with the Continuing Covenant Agreement. The date and amount of each Advance shall be, when made, noted on the "Table of Advances" attached to the Obligation to which such Advance relates; provided that the failure to record any such Advance on the Table of Advances shall not affect the principal amount due with respect to any Obligation. In no event may the total amount of all Advances exceed the maximum principal amount of the Obligations (\$85,000,000). Notwithstanding anything to the contrary herein, interest payable on the Obligations shall be determined based on the principal amount of the Obligations having been advanced by way of Advances and then Outstanding hereunder.

Section 3.2. Establishment and Application of Acquisition Fund.

(a) The Trustee shall establish a special trust fund designated as the "Town of Queen Creek Subordinate Lien Acquisition Fund (2021)" (herein referred to as the "Acquisition

Fund”), shall keep such fund separate and apart from all other funds and moneys held by it and shall administer such fund as provided in this Agreement.

(b) Upon receipt of a duly executed Payment Request Form, the Trustee shall remit to the payee designated in the Payment Request Form for Project Costs, the amount requested to be paid in such Payment Request Form for Project Costs within three Business Days following submission of such Payment Request Form. Notwithstanding the foregoing, the Trustee shall apply moneys on deposit in the Acquisition Fund to reimburse the Town for any Project Costs incurred or advanced by the Town within three Business Days of receipt of a duly executed Reimbursement Request Form. The Trustee has no duty or obligation to confirm that any requested disbursement constitutes a Project Cost.

(c) On the Completion Date, the Trustee shall transfer any remaining amounts in the Acquisition Fund to the Payment Fund to be applied by the Trustee to the Payments due from the Town on the next succeeding Interest Payment Date, and the Acquisition Fund shall be closed.

(d) Any amount remaining in the Acquisition Fund upon the occurrence of an Event of Default shall not be disbursed as provided in this Section, but shall be immediately transferred to the Payment Fund and used to pay principal and interest represented by the Obligations.

Section 3.3. Establishment and Application of Costs of Issuance Fund.

(a) The Trustee shall establish a special trust fund designated as the “Town of Queen Creek Subordinate Lien Costs of Issuance Fund (2021)” (herein referred to as the “Costs of Issuance Fund”), shall keep such fund separate and apart from all other funds and moneys held by it and shall administer such fund as provided in this Agreement.

(b) Amounts in the Costs of Issuance Fund shall be disbursed for Delivery Costs. Disbursements from the Costs of Issuance Fund shall be made by the Trustee upon receipt of a requisition for disbursement on which the Trustee is entitled to conclusively rely, executed or approved by the Town Representative. Each such certificate shall set forth the amounts to be disbursed for payment, or reimbursement of previous payments, of Delivery Costs and the person or persons to whom said amounts are to be disbursed. The Trustee has no duty or obligation to confirm that such disbursements constitute Delivery Costs.

(c) On the earlier of April 1, 2022, or when all Delivery Costs associated with the Obligations have been paid (as shown by a certificate of a Town Representative, if requested by the Trustee), the Trustee shall transfer any amounts remaining in the Costs of Issuance Fund to the Payment Fund and the Costs of Issuance Fund shall be closed.

**ARTICLE IV
REDEMPTION OF OBLIGATIONS**

Section 4.1. Redemption Provisions. The Obligations are subject to redemption in whole or in part from prepayments made at the option of the Town pursuant to

Section 8 of the Purchase Agreement, on any SIFMA Index Reset Date, at a redemption price equal to the principal amount of Obligations or portions thereof to be redeemed, together with unpaid as of, and accrued interest to, the date fixed for redemption, but without premium.

Section 4.2. Selection of Obligations for Redemption. The Obligations shall be redeemed only in the principal amounts of \$5,000 each or integral multiples thereof. The Town shall, at least 15 Business Days prior to the redemption date, notify the Trustee of such redemption date of the Obligations and the principal amount of the Obligations to be redeemed on such date. For the purposes of any redemption of less than all of the Obligations, the particular Obligations or portions of Obligations to be redeemed shall be *pro-rata* based on principal amount.

Section 4.3. Notice of Redemption; Effect.

(a) The Trustee shall cause notice of any optional redemption of Obligations hereunder to be transmitted by Electronic Means to the Owners and to be mailed to such Owners at the addresses appearing in the Register kept for such purpose pursuant to Section 2.11 hereof. Each such notice shall be sent no less than 10 Business Days prior to the redemption date, and state the principal amount to be redeemed and that on the redemption date the Obligations to be redeemed will be payable as provided herein, and that from that date interest will cease to accrue. No defect affecting any Obligation, whether in the notice of redemption or the delivery thereof (including any failure to mail such notice), shall affect the validity of the redemption proceedings for any other Obligations.

(b) If at the time of providing of notice of an optional redemption of Obligations, there has not been deposited with the Trustee moneys or Government Obligations sufficient to redeem all Obligations subject to such redemption and the requirements of (d) below are not satisfied, then such notice shall state that the redemption is conditional upon the deposit of moneys or Government Obligations sufficient for the redemption with the Trustee and satisfaction of such requirements not later than the opening of business on the redemption date, and such notice will be of no effect and such Obligations shall not be redeemed unless such moneys or Government Obligations are so deposited and such requirements in (d) below are met.

(c) Notice having been provided in the manner provided in (a) above, the Obligations and portions thereof called for redemption shall become due and payable on the redemption date and shall be paid at the redemption price, plus interest unpaid as of, and accrued to, the redemption date, as provided herein.

(d) If the money or Governmental Obligations for the redemption of all of the Obligations and portions thereof to be redeemed, together with interest unpaid as of, and accrued thereon to, and any other amounts due hereunder with respect to, the redemption date, is held by the Trustee on the redemption date, so as to be available therefor on that date, then from and after the redemption date those Obligations and portions thereof to be redeemed shall cease to bear interest and no longer shall be considered to be Outstanding hereunder. If those moneys shall not be so available on the redemption date, those Obligations and portions thereof shall continue to bear interest, until they are paid, at the same rate as they would have borne had they not been called for redemption.

(e) All moneys deposited in the Payment Fund and held by the Trustee for the redemption of particular Obligations shall be held in trust for the account of the Owners thereof and shall be paid to them, as provided herein.

Section 4.4. Partial Redemption of Obligation. Upon surrender of any Obligation redeemed in part only, the Trustee shall, at the request of an affected Owner, execute and deliver to such registered Owner, at the expense of the Town, a new Obligation or Obligations of Authorized Denominations equal in aggregate principal amount to the unredeemed portion of the Obligation surrendered; provided, however, that so long as the Purchaser is the registered Owner of the Obligation, the Purchaser shall not be required to surrender the Obligation in connection with any partial redemption.

ARTICLE V PAYMENTS; PAYMENT FUND

Section 5.1. Trustee's Rights in Purchase Agreement. The Trustee holds in trust hereunder all of its rights and duties in the Purchase Agreement, including but not limited to all of the rights to receive and collect all of the Payments and all other amounts required to be deposited in the Payment Fund pursuant to the Continuing Covenant Agreement or the Purchase Agreement or pursuant hereto. All of the Payments and such other amounts to which the Seller may at any time be entitled shall be paid directly to the Trustee in trust, and all of the Payments collected or received by the Trustee shall be held by the Trustee in trust hereunder in the Payment Fund for the benefit of the Owners.

Section 5.2. Establishment of Payment Fund. The Trustee shall establish a special trust fund designated as the "Town of Queen Creek Subordinate Lien Payment Fund 2021" (herein referred to as the "Payment Fund"). All moneys at any time deposited by the Trustee in the Payment Fund shall be held by the Trustee in trust for the benefit of the Owners (or former Owners, as applicable). So long as any Obligations are Outstanding, the Town shall have no beneficial right or interest in the Payment Fund or the moneys deposited therein, except only as provided in this Agreement, and such moneys shall be used and applied by the Trustee as hereinafter set forth.

Section 5.3. Payments by Town; Deposits. Subject to the limitations pursuant to the Purchase Agreement with respect to the revenues from the Excise Taxes and the State Shared Revenues, the Town shall be required to make the Payments for deposit to the Payment Fund. The Town shall also be required to make payments due pursuant to the Continuing Covenant Agreement for deposit to the Payment Fund. In both cases, the Trustee shall take into account any funds on deposit in the Payment Fund as a credit towards any payment amount then due. The Trustee, not less than one Business Day prior to any date upon which amounts are to be paid hereunder, shall notify the Town of the amount required to be paid after taking into account earnings on investments which will be transferred to the Payment Fund in accordance herewith, on or before such date. All amounts received by the Trustee pursuant to the Continuing Covenant Agreement and the Purchase Agreement shall be deposited in the Payment Fund for such purposes.

Section 5.4. Application of Moneys. All amounts in the Payment Fund shall be used and withdrawn by the Trustee solely for the purpose of paying amounts with respect to the Obligations as the same shall become due and payable, in accordance with the provisions of Articles II and IV hereof, and also as provided in the Continuing Covenant Agreement.

Section 5.5. Surplus. Any surplus remaining in any of the funds created hereunder, after redemption and payment of all Obligations, including unpaid and accrued interest, if any, and payment of any applicable fees, expenses or indemnities to the Trustee, or provision for such redemption and payment having been made to the satisfaction of the Trustee, shall be withdrawn by the Trustee and remitted to the Town.

ARTICLE VI PLEDGE AND LIEN

Section 6.1. Pledge. None of the Obligations shall be entitled to priority or distinction one over the other in the application of the revenues from the Excise Taxes and the State Shared Revenues pledged by the Purchase Agreement to the payment thereof, regardless of the delivery of any of the Obligations prior to the delivery of any other of the Obligations. All of the Obligations are co-equal as to the pledge of and lien on the revenues from the Excise Taxes and the State Shared Revenues pledged for the payment thereof and share ratably, without preference, priority or distinction, as to the source or method of payment from revenues from the Excise Taxes or the State Shared Revenues or security therefor.

Section 6.2. Protection of Lien. Except for any Senior Obligations, no assignment or lien having priority or preference over the assignment and lien hereof upon the interests granted hereby or any part thereof shall be made or created or suffered to be made or created. No obligations the payment of which is secured by an equal claim on or interest in property or revenues pledged hereunder will be issued or delivered except in lieu of, or upon transfer of registration or exchange of, any Obligation as provided herein.

Section 6.3. Existing Senior Pledge. The pledge of the revenues from the Excise Taxes and the State Shared Revenues under the Purchase Agreement is subordinate to the pledge of the revenues from the Excise Taxes and the State Shared Revenues to payment due on or with respect to the Senior Obligations. Subject to Section 5 of the Purchase Agreement and Section 6.08 of the Continuing Covenant Agreement, nothing herein or in the Purchase Agreement limits the incurrence by the Town of obligations on parity with the Senior Obligations.

ARTICLE VII MONEYS IN FUNDS; INVESTMENT; CERTAIN TAX COVENANTS

Section 7.1. Held in Trust. The moneys and investments held by the Trustee under this Agreement are irrevocably held in trust for the benefit of the Owners of the Obligations and for the purposes herein specified, and such moneys, and any income or interest earned thereon, shall be expended only as provided in this Agreement and shall not be subject to levy or attachment or lien by or for the benefit of any creditor of the Town or any Owner of Obligations.

Section 7.2. Investments Authorized. Upon written order of the Town Representative, moneys held by the Trustee hereunder shall be invested and reinvested by the Trustee, to the maximum extent practicable in Permitted Investments. The Town Representative shall direct such investment in specific Permitted Investments. The Town Representative shall be solely responsible for ascertaining that all proposed investments and reinvestments are Permitted Investments and that they comply with federal, state and local laws, regulations and ordinances governing investment of such funds and for providing appropriate notice to the Trustee for the reinvestment of any maturing investment. Such investments, if registrable, shall be registered in the name of the Trustee and shall be held by the Trustee. The Trustee may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Section. Such investments and reinvestments shall be made giving full consideration to the time at which funds are required to be available. The Trustee may act as purchaser or agent in the making or disposing of any investment. Absent written direction of the Town, the Trustee shall hold such moneys held under this Trust Agreement uninvested in cash, without liability for interest. Ratings of Permitted Investments shall be determined at the time of purchase of such Permitted Investments and without regard to ratings subcategories. The Trustee shall have no responsibility to monitor the ratings of Permitted Investments after the initial purchase of such Permitted Investments, including at the time of reinvestment of earnings thereof. In no event shall the Trustee be liable for the selection of investments. The Trustee may conclusively rely upon such written direction from the Town Representative as to both the suitability and legality of the directed investments and the Trustee shall have no obligation to confirm that any such directed investment constitutes a Permitted Investment. The Town acknowledges that regulations of the Comptroller of the Currency grant the Town the right to receive brokerage confirmations of the security transactions as they occur, at no additional cost. To the extent permitted by law, the Town specifically waives compliance with 12 C.F.R. 12 and hereby notifies the Trustee that no brokerage confirmations need be sent relating to the security transactions as they occur. The Trustee may elect, but shall not be obligated, to credit the funds and accounts held by it with moneys representing income or principal payments due on, or sales proceeds due in respect of, Permitted Investments in such funds and accounts, or to credit to Permitted Investments intended to be purchased with such moneys, in each case before actually receiving the requisite moneys from the payment source, or to otherwise advance funds for account transactions. The Town acknowledges that the legal obligation to pay the purchase price of any Permitted Investments arises immediately at the time of the purchase. Notwithstanding anything else in this Trust Agreement, (i) any such crediting of funds or assets shall be provisional in nature, and the Trustee shall be authorized to reverse any such transactions or advances of funds in the event that it does not receive good funds with respect thereto, and (ii) nothing in this Trust Agreement shall constitute a waiver of any of Trustee's rights as a securities intermediary under Uniform Commercial Code Section 9-206.

Section 7.3. Accounting. The Trustee shall furnish to the Town, not less than semiannually, an accounting (which may be in the form of its customary statement) of all investments made by the Trustee. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with Section 7.2 hereof.

Section 7.4. Allocation of Earnings. Any income, profit or loss on such investments shall be deposited in or charged to the respective funds from which such investments were made, and any interest on any deposit of funds shall be deposited in the fund from which

such deposit was made, except as otherwise provided herein. At the direction of the Town Representative, any such income, profit or interest shall be transferred and applied if necessary to pay amounts due pursuant to Section 13(c) of the Purchase Agreement.

Section 7.5. Valuation and Disposition of Investments. For the purpose of determining the amount in any fund, all Permitted Investments credited to such fund shall be valued at Market Value. The Trustee may sell or present for redemption, any Permitted Investment so purchased by the Trustee whenever it shall be necessary in order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investment is credited, and the Trustee shall not be liable or responsible for any loss resulting from such investment. In determining the Market Value of Permitted Investments, the Trustee may use and rely conclusively and without liability upon any generally recognized pricing information service (including brokers and dealers in securities) available to it.

Section 7.6. Limitation of Investment Yield. In the event the Town (while it is directing investments) is of the opinion that it is necessary to restrict or limit the yield on the investment of any amounts paid to or held by the Trustee hereunder in order to avoid the Obligations, or any of them, being considered “arbitrage bonds” within the meaning of section 148 of the Code, the Town Representative may issue to the Trustee a written certificate to such effect (along with appropriate instructions), in which event the Trustee will take such action as is instructed so to restrict or limit the yield on such investment in accordance with the specific instructions contained in such certificate.

Section 7.7. Other Tax Covenants. In consideration of the acceptance and execution of the Purchase Agreement by the Trustee and the purchase by the Owners, from time to time, and in consideration of retaining the exclusion of interest income from gross income on the Purchase Agreement and the Obligations for federal income tax purposes, the Town shall, from time to time, neither take nor fail to take any action, which action or failure to act is within its power and authority and would result in interest income on the Purchase Agreement or the Obligations to become subject to inclusion in gross income for federal income tax purposes under either laws existing on the date of execution of the Purchase Agreement or such laws as they may be modified or amended or tax laws later adopted. The Town shall comply with such requirement(s) and will take any such action(s) as are necessary to prevent interest income on the Purchase Agreement or the Obligations from becoming subject to inclusion in gross income for federal income tax purposes. Such requirements may include but are not limited to making further specific covenants; making truthful certifications and representations and giving necessary assurances; complying with all representations, covenants and assurances contained in certificates or agreements to be prepared by special counsel; to pay to the United States of America any required amounts representing rebates of arbitrage profits relating to the Purchase Agreement or the Obligations; filing forms, statements and supporting documents as may be required under the federal tax laws; limiting the term of and yield on investments made with moneys relating to this Agreement and limiting the use of the proceeds of the Obligations and property financed thereby.

ARTICLE VIII THE TRUSTEE

Section 8.1. Appointment of Trustee. The Town hereby authorizes and directs the Trustee to, and the Trustee shall, execute and deliver the Purchase Agreement, as Seller, and receive all moneys required to be deposited with the Trustee hereunder and shall allocate, use and apply the same as provided in this Agreement. The Town shall maintain as the Trustee a bank or trust company with a combined capital and surplus of at least Fifty Million Dollars (\$50,000,000), and subject to supervision or examination by federal or State authority, so long as any of the Obligations are Outstanding. If such bank or trust company publishes a report of condition at least annually pursuant to law or to the requirements of any supervising or examining authority above referred to then for the purpose of this Section 8.1 the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

Section 8.2. Liability of Trustee; Standard of Care. Except with respect to its authority and power generally and authorization to execute this Trust Agreement, the recitals of facts, covenants and agreements herein, in the Purchase Agreement and in the Obligations shall be taken as statements, covenants and agreements of the Town, and the Trustee assumes no responsibility for the correctness of the same, or makes any representations as to the validity hereof or sufficiency of this Agreement, the Purchase Agreement or of the Obligations or shall incur any responsibility in respect hereof or thereof, other than in connection with the duties or obligations herein or in the Obligations assigned to or imposed upon them, respectively. Prior to the occurrence of an Event of Default, or after the timely cure of an Event of Default, the Trustee shall perform only such duties as are specifically set forth in this Trust Agreement and no implied obligations or covenants should be read into this Agreement against the Trustee. After the occurrence, and during the continuance, of an Event of Default, the Trustee shall exercise such of the rights and powers vested in it, and use the same degree of care and skill in such exercise, as a prudent person would exercise under the circumstances in the conduct of its own affairs.

Section 8.3. Merger or Consolidation. Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided that such company shall be eligible under Section 8.1 hereof, shall be the successor to the Trustee without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

Section 8.4. Protection and Rights of the Trustee. (a) The Trustee shall be protected and shall incur no liability in acting or proceeding in good faith upon any resolution, notice, telegram, request, consent, waiver, certificates, statements, affidavit, voucher, bond, requisition or other paper or document which it shall in good faith believe to be genuine and to have been passed or signed by the proper board or person or to have been prepared and furnished pursuant to any of the provisions of this Agreement, and the Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. The Trustee shall not be bound to take any action at the request of the Owners

unless the Obligations shall be deposited with the Trustee. The Trustee may consult with counsel with regard to legal questions, and the advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith in accordance therewith.

(b) Whenever in the administration of its duties under this Agreement, the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) shall be deemed to be conclusively proved and established by the certificate of the Town Representative and such certificate shall be full warranty to the Trustee for any action taken or suffered under the provisions of this Agreement upon the faith thereof, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

(c) The Trustee may acquire and dispose of other bonds or evidence of indebtedness of the Town with the same rights it would have if it were not the Trustee and may act as a depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners of Obligations, whether or not such committee shall represent the Owners of the Obligations.

(d) The recitals, statements and representations by the Town contained in this Agreement or in the Obligations shall be taken and construed as made by and on the part of the Town and not by the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.

(e) The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder, and the Trustee shall not be answerable for the default or misconduct of any such attorney, agent, or receiver selected by it with reasonable care. The Trustee shall not be answerable for the exercise of any discretion or power under this Agreement or for anything whatever in connection with the funds and accounts established hereunder, except only for its own willful misconduct or negligence.

(f) No provision in this Trust Agreement shall require the Trustee to risk or expend its own funds or otherwise incur any financial liability (including, without limitation, any and all environmental liability) in the performance of any of its duties hereunder or in the exercise of any of its rights or powers.

(g) The Trustee shall not be accountable for the use or application by the Town or any other party of any funds, including proceeds of the Obligations, which the Trustee has released in accordance with the terms of this Trust Agreement.

(h) The Trustee makes no representation or warranty, express or implied, as to the title, value, design, compliance with specifications or legal requirements, quality, durability, operation, condition, merchantability or fitness for any particular purpose or fitness for the use contemplated by the Town of the Project. In no event shall the Trustee be liable for incidental,

indirect, special or consequential damages in connection with or arising from the Purchase Agreement or this Trust Agreement for the acquisition of the Project.

(i) Notwithstanding any provision in this Trust Agreement or the Purchase Agreement to the contrary, the Trustee shall not be required to take notice or be deemed to have notice of an Event of Default, except an Event of Default under Section 10(a)(i)(A) of the Purchase Agreement, unless a Responsible Officer of the Trustee has actual notice thereof or is specifically notified in writing of such default by the Town or the Owners of the Obligations.

(j) The Trustee shall have the right to accept and act upon Instructions delivered using Electronic Means. If the Town elects to give the Trustee Instructions using Electronic Means, and the Trustee in its discretion elects to act upon such Instructions, the Trustee's understanding of such Instructions shall be deemed controlling. The Town understands and agrees that the Trustee cannot determine the identity of the actual sender of such Instructions and that the Trustee shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Trustee have been sent by such Authorized Officer. The Town shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Trustee and that the Town and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Town. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Town agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Town; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

(k) The Trustee shall not be liable to the parties hereto or deemed in breach or default hereunder if and to the extent its performance hereunder is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the Trustee and could not have been avoided by exercising due care. Force majeure shall include acts of God, terrorism, war, riots, strikes, fire, floods, earthquakes, epidemics or other similar occurrences. In acting or omitting to act pursuant to the Purchase Agreement or any other documents executed in connection herewith or therewith, the Trustee shall be entitled to all of the rights, immunities and indemnities accorded to it under this Trust Agreement, including, but not limited to, this Article VIII.

(l) The Trustee shall have no responsibility or liability with respect to any information, statements or recitals in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Obligations.

(m) The permissive right of the Trustee to do things enumerated in this Agreement shall not be construed as a duty and the Trustee shall not be answerable for other than its negligence or willful default. The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the Project.

(n) Before taking any action under this Agreement relating to an Event of Default or in connection with its duties under this Agreement other than making payments of principal and interest on the Obligations as they become due, the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, including, but not limited to, any liability arising directly or indirectly under any federal, state or local statute, rule, law or ordinance related to the protection of the environment or hazardous substances and except liability which is adjudicated, to have resulted from its negligence or willful misconduct in connection with any action so taken.

(o) The Trustee shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement.

(p) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of the Obligations relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Agreement.

Section 8.5. Compensation of Trustee. The Town shall from time to time, pursuant to a fee schedule as agreed upon between the Town and the Trustee (which fee schedule may be amended in writing), pay to the Trustee reasonable compensation for its services, including its fees, costs and expenses after an Event of Default and shall reimburse the Trustee for all its advances and expenditures, including but not limited to advances to, and reasonable fees and expenses of, independent appraisers, accountants, consultants, counsel, agents and attorneys-at-law or other experts employed by it in the exercise and performance of its powers and duties hereunder. When the Trustee incurs expenses or renders services after the occurrence of an Event of Default, such expenses, costs and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

Section 8.6. Removal of Trustee. (a) The Town (but only if no Event of Default has occurred and is continuing) or the Owners of the Obligations, at any time upon 30 days' prior written notice, and for any reason, may remove the Trustee and any successor thereto, but any such successor shall be a bank or trust company having a combined capital (exclusive of borrowed capital) and surplus of at least Fifty Million Dollars (\$50,000,000) and subject to supervision or examination by federal or State authority. If such bank or trust company publishes a report of condition at least annually, pursuant to law or the requirements of any supervising or examining authority above referred to, then, for the purposes of this Section, the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) The Trustee may at any time resign by giving written notice to the Town. Upon receiving such notice of resignation, the Town shall promptly appoint a successor trustee by an instrument in writing; provided, however, that in the event that the Town does not appoint a successor trustee within 30 days following receipt of such notice of resignation, or the giving of notice of removal, the retiring Trustee may petition the appropriate court having jurisdiction to appoint a successor trustee. Any resignation or removal of the Trustee and appointment of a successor trustee shall become effective upon acceptance of appointment by the successor trustee. The Trustee and the Town shall execute any documents reasonably required to effect the transfer of rights and obligations of the Trustee to the successor trustee subject, however, to the terms and conditions herein set forth, including, without limitation, the right of the predecessor Trustee to be paid and reimbursed in full for its reasonable charges and expenses (including reasonable fees and expenses of its counsel) and the indemnification under Sections 8.4 and 11.3 hereof. Upon such acceptance, the successor trustee shall mail notice thereof to the Owners of the Obligations at their addresses set forth on the registration books for the Obligations maintained pursuant to Section 2.11 hereof.

Section 8.7. Appointment of Agent. The Trustee may appoint an agent or agents to exercise any of the powers, rights or remedies granted to the Trustee under this Trust Agreement and to hold title to property or to take any other action which may be desirable or necessary.

Section 8.8. Commingling. The Trustee may commingle any of the funds held by it pursuant to this Trust Agreement in a separate fund or funds for investment purposes only; provided, however, that all funds or accounts held by the Trustee hereunder shall be accounted for separately notwithstanding such commingling by the Trustee.

Section 8.9. Records. The Trustee shall keep complete and accurate records of all moneys received and disbursed by the Trustee under this Trust Agreement, which shall be available for inspection by the Town, or any of its agents, at any time, upon reasonable prior notice, during regular business hours. The Trustee shall provide the Town Representative with monthly reports or statements of funds transactions and balances.

ARTICLE IX MODIFICATION OR AMENDMENT OF AGREEMENTS

Section 9.1. Amendments Permitted. (a) This Agreement and the rights and obligations of the Owners of the Obligations and the Purchase Agreement and the rights and obligations of the parties thereto, may be modified or amended at any time by a supplemental or amending agreement which shall become effective when the written consent of the Owners of a majority in aggregate principal amount of all Obligations then Outstanding shall have been filed with the Trustee. No such modification or amendment shall (1) extend or have the effect of extending the maturity of any Obligation or reducing the interest rate with respect thereto or extending the time of payment of interest, or reducing the amount of principal thereof or reducing any premium payable upon the redemption thereof, without the express written consent of the Owner of such Obligation, or (2) reduce or have the effect of reducing the percentage of Obligations required for the affirmative vote or written consent to an amendment or modification

of this Trust Agreement or the Purchase Agreement, or (3) modify any of the rights or obligations of the Trustee without its written assent thereto. Any such supplemental or amending agreement shall become effective as provided in Section 9.2 hereof.

(b) This Agreement and the rights and obligations of the Owners of the Obligations and the Purchase Agreement and the rights and obligations of the parties thereto, may be modified or amended at any time by a supplemental or amending agreement, without the consent of any such Owners, but only (1) to provide for additions or modifications to the Project, (2) to add to the covenants and agreements of any party, other covenants to be observed, or to surrender any right or power herein reserved to the Trustee (for its own behalf) or the Town, (3) to secure additional revenues or provide additional security or reserves for payment of the Obligations, (4) to comply with the requirements of any state or federal securities laws or the Trust Indenture Act of 1939, as from time to time amended, if required by law or regulation lawfully issued thereunder, (5) to provide for the appointment of a successor trustee pursuant to the terms hereof, (6) to preserve the exclusion of the interest on the Obligations from gross income for purposes of federal or State income taxes and to preserve the power of the Town to continue to issue or incur bonds or other obligations the interest on which is likewise exempt from federal and State income taxes, (7) to cure, correct or supplement any ambiguous or defective provision contained herein or therein, (8) with respect to rating matters, (9) to facilitate the issuance or incurrence of Senior Obligations or Parity Subordinate Lien Obligations or (10) in regard to questions arising hereunder or thereunder, as the parties hereto or thereto may deem necessary or desirable and which shall not materially, adversely affect the interests of the Owners of the Obligations as evidenced by an opinion of counsel delivered by the Town to the Trustee. Any such supplemental or amending agreement shall become effective upon execution and delivery by the parties hereto or thereto as the case may be. The Trustee may rely upon an opinion of counsel as conclusive evidence that any such supplemental or amending agreement is authorized or permitted under this Trust Agreement (and, if applicable, the Purchase Agreement), and complies with this Section or Section 9.2.

Section 9.2. Procedure for Amendment With Written Consent of Obligation

Owners. (a) This Agreement and the Purchase Agreement may be amended by supplemental or amending agreement as provided in this Section in the event the consent of the Owners of the Obligations is required pursuant to Section 9.1 hereof. A copy of such supplemental or amending agreement, together with a request to the Owners of the Obligations for their consent thereto, shall be mailed by the Trustee to each Owner of an Obligation at the address thereof as set forth on the registration books for the Obligations maintained pursuant to Section 2.11 hereof, but failure to mail copies of such supplemental or amending agreement and request shall not affect the validity of the supplemental or amending agreement when assented to as provided in this Section 9.2.

(b) Such supplemental or amending agreement shall not become effective unless there shall be filed with the Trustee the written consent of the Owners of a majority in principal amount of all Obligations then Outstanding and a notice shall have been mailed as hereinafter in this Section provided. The consent of an Owner of an Obligation shall be effective only if accompanied by proof of ownership of the Obligations for which such consent is given, which proof shall be such as is permitted by Section 2.10 hereof. Any such consent shall be binding upon the Owner of the Obligation giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof) unless such consent is revoked in

writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Trustee prior to the date when the notice hereinafter in this Section provided for has been mailed.

(c) After the Owners of the required percentage of Obligations shall have filed their consents to such supplemental or amending agreement, the Trustee shall mail a notice to the Owners of the Obligations in the manner hereinbefore provided in this Section for the mailing of such supplemental or amending agreement of the notice of adoption thereof, stating in substance that such supplemental or amending agreement has been consented to by the Owners of the required percentage of Obligations and will be effective as provided in this Section (but failure to mail copies of said notice shall not affect the validity of such supplemental agreement or consents thereto). A record, consisting of the papers required by this Section to be filed with the Trustee, shall be conclusive proof of the matters therein stated. Such supplemental or amending agreement shall become effective upon the mailing of such last-mentioned notice, and such supplemental or amending agreement shall be deemed conclusively binding upon the parties hereto and the Owners of all Obligations at the expiration of 60 days after such filing, except in the event of a final decree of a court of competent jurisdiction setting aside such consent in a legal action or equitable proceeding for such purpose commenced within such 60 day period.

Section 9.3. Effect of Supplemental Agreement. From and after the time any supplemental or amending agreement becomes effective pursuant to this Article IX, this Agreement or the Purchase Agreement, as the case may be, shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations of the parties hereto or thereto and all Owners of Obligations Outstanding, as the case may be, shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any supplemental or amending agreement shall be deemed to be part of the terms and conditions of this Agreement or the Purchase Agreement, as the case may be, for any and all purposes.

Section 9.4. Endorsement or Replacement of Obligations Delivered After Amendments. The Trustee or the Town may determine that Obligations delivered after the effective date of any action taken as provided in this Article shall bear a notation, by endorsement or otherwise, in form approved by the Trustee and the Town, as to such action. In that case, upon demand of the Owner of any Obligation Outstanding at such effective date and presentation of his Obligation for the purpose at the office of the Trustee, a suitable notation shall be made on such Obligation. The Trustee or the Town may determine that the delivery of substitute Obligations, so modified as in the opinion of the Trustee is necessary to conform to such Obligation Owners' action, which substitute Obligations shall thereupon be prepared, executed and delivered. In that case, upon demand of the Owner of any Obligation then Outstanding, such substitute Obligation shall be exchanged at the Designated Office of the Trustee, without cost to such Owner, for an Obligation of the same character then Outstanding, upon surrender of such Outstanding Obligation.

Section 9.5. Amendatory Endorsement of Obligations. The provisions of this Article shall not prevent any Obligation Owner from accepting any amendment or supplement as to the particular Obligations held thereby, provided that proper notation thereof is made on such Obligations.

**ARTICLE X
COVENANTS, NOTICES**

Section 10.1. Compliance With and Enforcement of Purchase Agreement.

The Town shall perform all obligations and duties imposed on it under the Purchase Agreement and shall not do or permit anything to be done, or omit or refrain from doing anything, in any case where any such act done or permitted to be done, or any such omission of or refraining from action, would or might be an Event of Default. The Town, immediately upon receiving or giving any notice, communication or other document in any way relating to or affecting any such action will deliver the same, or a copy thereof, to the Trustee.

Section 10.2. Observance of Laws and Regulations.

The Town shall well and truly keep, observe and perform all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States of America, or of the State, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired by the Town, including its right to exist and carry on business as a political subdivision, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

Section 10.3. Recordation and Filing.

The Town shall file this Agreement (or a memorandum thereof or a financing statement with respect thereto), and all such documents as may be required by law (and shall take all further actions which may be necessary or be reasonably required by the Trustee, the Trustee having no obligation to make such requirements), all in such manner, at such times and in such places as may be required by law in order fully to preserve, protect and perfect the security of the Trustee and the Owners.

Section 10.4. Further Assurances.

The Trustee (at the reasonable request, and at the expense, of the Town) and the Town shall make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Agreement and the Purchase Agreement and for the better assuring and confirming unto the Owners the rights and benefits provided herein.

Section 10.5. Notification to the Town of Failure to Make Payments.

The Trustee shall notify the Town and the Owners of any failure by the Town to make any Payment or other payment required under the Purchase Agreement to be made to the Trustee, in writing and within one Business Day of any such failure. Such notice shall not be a prerequisite for the occurrence of an Event of Default.

Section 10.6. Business Days.

Except as otherwise required herein, if this Agreement or the Purchase Agreement requires any party to act on a specific day and such day is not a Business Day, such party need not perform such act until the next succeeding Business Day, and such act shall be deemed to have been performed on the day required.

ARTICLE XI LIMITATION OF LIABILITY

Section 11.1. Limited Liability of the Town. Except for the payment of the Payments from revenues from the Excise Taxes and the State Shared Revenues when due in accordance with the Purchase Agreement and the performance of the other covenants and agreements of the Town contained in the Purchase Agreement and herein, the Town shall have no pecuniary obligation or liability to any of the other parties or to the Owners with respect to this Agreement or the terms, execution, delivery or transfer of the Obligations or the distribution of Payments to the Owners by the Trustee.

Section 11.2. No Liability of the Town for Trustee Performance. The Town shall have no obligation or liability to any of the other parties or to the Owners with respect to the performance by the Trustee of any duty imposed upon it under this Agreement.

Section 11.3. Indemnification of the Trustee. (a) To the extent permitted by law, the Town shall indemnify and save the Trustee and its officers, directors, agents and employees, harmless for, from and against all claims, losses, costs, expenses, liability and damages, including legal fees and expenses, arising out of: (i) the use, maintenance, condition or management of, or from any work or thing done on, the Project or the sites of the Project or any portion thereof or interest therein by the Town; (ii) any breach or default on the part of the Town in the performance of any of its obligations under this Agreement and any other agreement made and entered into for purposes of the Project or any interest therein; (iii) any act of negligence of the Town or of any of its agents, contractors, servants, employees or licensees with respect to the Project; (iv) any act of negligence of any assignee of, or purchaser from, the Town or of any of its or their agents, contractors, servants, employees or licensees with respect to the Project; (v) the construction or acquisition of the Project or any interest therein; (vi) the actions of any other party, including but not limited to the operation or use of the Project or the sites of the Project or interest therein by the Town; (vii) the ownership of the Project or the sites of the Project or interest therein, (viii) the exercise and performance by the Trustee of its powers and duties hereunder, under the Purchase Agreement or in connection with any document or transaction contemplated herewith or therewith, or (ix) any matters with respect to the Project, including the costs and expenses of defending itself against any claim of liability arising under this Trust Agreement. No indemnification will be made under this Section or elsewhere in this Agreement for willful misconduct or negligence under this Agreement by the Trustee, or by its officers, agents, employees, successors or assigns. As security for the payment of amounts under Section 8.5 and this Section 11.3, the Trustee shall be secured under this Agreement by a lien prior to the Obligations. The obligations of the Town hereunder for indemnification under this Section shall remain valid and binding notwithstanding, and shall survive, the maturity and payment or redemption of the Obligations or resignation or removal of the Trustee or the termination of this Agreement.

(b) Promptly after determining that any event or condition which requires or may require indemnification by the Town hereunder exists or may exist, or after receipt of notice of the commencement of any action in respect of which indemnity may be sought hereunder, shall notify the Town in writing of such circumstances or action (the "Notification"). Failure to give such notification shall not affect the right of the Trustee to receive the indemnification provided

for herewith. Upon giving of the Notification, the Trustee shall cooperate fully with the Town in order that the Town may defend, compromise or settle any such matters or actions which may result in payment by the Town hereunder. The Town shall give the Trustee notice of its election within 15 days after receiving the Notification whether the Town, at its sole cost and expense, shall represent and defend the Trustee in any claim or action which may result in a request for indemnification hereunder. If the Town timely gives the notice that it will represent and defend the Trustee thereafter, the Trustee shall not settle or compromise or otherwise interfere with the defense or undertakings of the Town hereunder; provided, however, the Trustee may retain its own counsel and still be indemnified against the cost of employing counsel and all other expenses despite an assumption of the defense by the Town if the Trustee believes in good faith that there are defenses available to it which are not available to the Town or which are adverse to or in conflict with those available to the Town and which the Trustee believes in good faith cannot be effectively asserted by common counsel. The Town shall not settle or compromise any claim or action against the Trustee without the written approval of the Trustee, except to the extent that the Town shall pay all losses and the Trustee shall be fully released from such claim or action. If the Town either fails to timely give its notice or notifies the Trustee that the Town will not represent and defend the Trustee, the Trustee may defend, settle, compromise or admit liability as it shall determine in the reasonable exercise of its discretion, at the expense of the Town. In the event the Town is required to and does indemnify the Trustee as herein provided, the rights of the Town shall be subrogated to the rights of the Trustee to recover such losses or damages from any other person or entity.

Section 11.4. Opinion of Counsel. Before being required to take any action, the Trustee may require an opinion of Independent Counsel acceptable to the Trustee, which opinion shall be made available to the other parties hereto upon request, which counsel may be counsel to any of the parties hereto, or a verified certificate of any party hereto, or both, concerning the proposed action. If it does so in good faith, the Trustee shall be absolutely protected in relying thereon.

ARTICLE XII EVENTS OF DEFAULT AND REMEDIES OF OBLIGATION OWNERS

Section 12.1. Seller's Rights Held in Trust. As provided herein, the Trustee holds in trust hereunder all of the Seller's rights in and to the Purchase Agreement, including without limitation all of the Seller's rights to exercise such rights and remedies conferred on the Seller pursuant to the Purchase Agreement as may be necessary or convenient to enforce payment of the Payments and any other amounts required to be deposited in the Payment Fund and enforcement of the pledge of the revenues from the Excise Taxes and the State Shared Revenues for the payment of the Obligations.

Section 12.2. Remedies Upon Default; No Acceleration. Upon an Event of Default and if such event has not been cured as provided in the Purchase Agreement, the Trustee may take whatever action at law or in equity, including the remedy of specific performance, may appear necessary or desirable to collect the Payments and any other amounts payable by the Town hereunder or under the Purchase Agreement, then due (but not the Payments and other such amounts accruing), or to enforce performance and observance of any pledge, obligation, agreement, or covenant of the Town under this Trust Agreement or the Purchase Agreement as

provided in the Purchase Agreement. Nothing herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Owner any plan of reorganization, arrangement, adjustment, or composition affecting the Obligations or the rights of any Owner thereof, or to authorize the Trustee to vote in respect of the claim of any Owner in any such proceeding without the approval of the Owners so affected. Neither the Trustee nor the Owners of the Obligations shall have any right under any circumstances to accelerate the payment dates of the Obligations or otherwise declare any of the Payments not then past due or in default to be immediately due and payable.

Section 12.3. Application of Funds. (a) Subject to Subsection (b), amounts held by the Trustee hereunder and proceeds from the exercise of any remedies hereunder or under the Purchase Agreement after payment or reimbursement of the reasonable fees, costs and expenses of the Trustee in connection therewith, including reasonable attorneys' fees and expenses and the creation of a reasonable reserve for anticipated fees, costs and expenses, shall be applied as follows:

First: To the payment to the persons entitled thereto of all installments of interest then due on, and other amounts with respect to, Obligations in the order of the maturity of such installments and other amounts, and, if the amount available shall not be sufficient to pay in full any installment or installments an amount or amounts coming due on the same date, then to the payment thereof ratably, according to the amounts due thereon to the persons entitled thereto, without any discrimination or preference; and

Second: To the payment to the persons entitled thereto of the unpaid principal installments of any Obligations which shall have become due, whether at maturity or because of selection for redemption, in the order of their due dates, and if the amounts available shall not be sufficient to pay in full all Obligations due on any date, then to the payment thereof ratably, according to the amounts of principal installments due on such date, to the persons entitled thereto, without any discrimination or preference; and

(b) Whenever moneys are to be applied pursuant to this section, the Trustee shall fix the date (which shall be the first of a month unless the Trustee shall deem another date more suitable) upon which such application is to be made, and upon such date interest on the amounts of principal paid on such date shall cease to accrue. The Trustee shall give or cause to be given notice of such payment, by first-class mail, to the Owners of Obligations at least eight days before such date. The Trustee shall not be required to make payment to the Owner of any Obligation until such Obligation shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid. Any surplus thereof shall be paid to the Town as directed by the Town Representative.

Section 12.4. Institution of Legal Proceedings. If one or more Events of Default shall happen and be continuing, the Trustee in its discretion may, and upon the written request of the Owners of a majority in aggregate principal amount of all Obligations then Outstanding, and upon being indemnified to its satisfaction therefor, shall, proceed to protect or enforce its rights or

the rights of the Owners of Obligations by a suit in equity or action at law for the specific performance of any covenant or agreement contained herein.

Section 12.5. Non-waiver. Except as otherwise provided in this Article, the Obligation Owners have the right to institute suit to enforce and collect the Payments as provided in the Purchase Agreement. No delay or omission of the Trustee or of any Owner of any of the Obligations to exercise any right or power arising upon the happening of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein, and every power and remedy given by this Article to the Trustee or the Owners of Obligations may be exercised from time to time and as often as shall be deemed expedient by the Trustee or the Obligation Owners.

Section 12.6. Power of Trustee to Control Proceedings. In the event that the Trustee, upon the happening of an Event of Default, shall have taken any action, by judicial proceedings or otherwise, pursuant to its duties hereunder, whether upon its own discretion or upon the request of the Owners of a majority in aggregate principal amount of the Obligations then Outstanding, it shall have full power, in the exercise of its discretion for the best interests of the Owners of the Obligations, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; provided, however, that the Trustee shall not discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, without the consent of the Owners of a majority in aggregate principal amount of the Obligations Outstanding.

Section 12.7. Limitation on Obligation Owners' Right to Sue. (a) No Owner of any Obligation issued hereunder shall have the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Agreement, unless (a) such Owner shall have previously given to the Trustee written notice of the occurrence of an Event of Default hereunder; (b) the Owners of at least a majority in aggregate principal amount of all Obligations then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) said Owners shall have tendered to the Trustee indemnity satisfactory to it against the costs, expenses, and liabilities to be incurred in compliance with such request and (d) the Trustee shall have refused or omitted to comply with such request for a period of 60 days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee.

(b) Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Obligations of any remedy hereunder; it being understood and intended that no one or more Owners of Obligations shall have any right in any manner whatever by his or their action to enforce any right under this Agreement, except in the manner herein provided, and that all proceedings at law or in equity with respect to an Event of Default shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners of the Outstanding Obligations.

(c) The right of any Owner of any Obligation to receive payment of said Owner's proportionate interest in the Payments as the same become due, or to institute suit for the enforcement of such payment, shall not be impaired or affected without the consent of such Owner, notwithstanding the foregoing provisions of this Section or any other provision of this Agreement.

**ARTICLE XIII
MISCELLANEOUS**

Section 13.1. Defeasance. (a) If and when any Outstanding Obligation or portion thereof shall be paid and discharged in any one or more of the following ways:

(i) By paying or causing to be paid the principal of, interest and other amounts due with respect to such Obligations Outstanding, as and when the same become due and payable;

(ii) By depositing with a Depository Trustee, in trust for such purpose, at or before maturity, money which, together with the amounts then on deposit in the Payment Fund is fully sufficient to pay or cause to be paid such Obligations Outstanding, including all principal, interest and other amounts due; or

(iii) By depositing with a Depository Trustee, in trust for such purpose, any Government Obligations which are noncallable in such amount as shall be certified to the Trustee and the Town by a national firm of certified public accountants acceptable to the Town, as being fully sufficient, together with the interest to accrue thereon and moneys then on deposit in the Payment Fund together with the interest to accrue thereon, to pay and discharge or cause to be paid and discharged such Obligations (including all principal, interest and other amounts due) at maturity or prior redemption dates, which deposit may be made in accordance with the provisions of Section 8 of the Purchase Agreement;

notwithstanding that any Obligations shall not have been surrendered for payment, all obligations of the Trustee and the Town with respect to such Outstanding Obligations shall cease and terminate, except only the obligation of the Trustee to pay or cause to be paid, from funds deposited pursuant to subsections (ii) or (iii) of this Section and paid to the Trustee by the Depository Trustee, to the Owners of the Obligations not so surrendered and paid all sums due with respect thereto, and in the event of deposits pursuant to subsections (ii) or (iii), the Obligations shall continue to represent direct and proportionate interests of the Owners thereof in such funds.

(b) Any funds held by the Trustee, at the time of one of the events described in paragraph (a) of this Section, which are not required for the payment to be made to Owners or for the payment of any other amounts due and payable by the Town hereunder or under the Purchase Agreement, shall be paid over to the Town.

(c) Any Obligation or portion thereof in Authorized Denominations may be paid and discharged as provided in this Section; provided however, that if any such Obligation or portion thereof is to be redeemed, notice of such redemption shall have been given in accordance with the provisions hereof or the Town shall have submitted to the Trustee instructions expressed to be irrevocable as to the date upon which such Obligation or portion thereof is to be redeemed and as to the giving of notice of such redemption; and provided further, that if any such Obligation or portion thereof will not mature within 60 days of the deposit referred to in subsections (ii) or (iii) of subsection (a) of this Section, the Trustee shall give notice of such deposit by first class mail to the Owners.

(d) No Obligation may be provided for as provided in this Section if, as a result thereof, or of any other action in connection with which the provisions for payment of such Obligation is made, the interest payable on any Obligation is thereby made includable in gross income for federal income tax purposes. The Trustee, the Depository Trustee, and the Town may rely upon an opinion of Independent Counsel which is nationally recognized bond counsel to the effect that the provisions of this subsection will not be breached by so providing for the payment of any Obligations.

Section 13.2. Records. The Trustee shall keep complete and accurate records of all moneys received and disbursed under this Agreement, which shall be available for inspection by the Town and any Owner, or the agent of any of them, upon reasonable prior notice, at any time during regular business hours.

Section 13.3. Notices. All written notices to be given under this Agreement shall be given by mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective upon email, deposit in the United States mail, postage prepaid or, in the case of personal delivery, upon delivery to the address or email address set forth below:

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

If to the Trustee: U.S. Bank National Association
LM-AZ-X16P
101 North First Avenue
Suite 1600
Phoenix, Arizona 85003
Attention: Global Corporate Trust

If to the Purchaser: U.S. Bank National Association
Attention: Dan Petersen
Telephone: (503) 464-4855
Email: daniel.petersen@usbank.com

and

U.S. Bank National Association
Attention: Ashley Martin
Telephone: (310) 717-5900
Email: ashley.martin1@usbank.com

Section 13.4. Incorporation of State Statutes. (a) Section 38-511, Arizona Revised Statutes, as amended, provides that the Town may, within three years after its execution, cancel any contract (including this Agreement), without penalty or further 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 of the contract is in effect, an employee or agent of any other party to the contract (including in the case of this Agreement, the Trustee) in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. In addition, the Town may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town from any other party to the contract arising as a result of the contract.

(b) To the extent applicable under Section 41-4401, Arizona Revised Statutes, the Trustee shall comply with all federal immigration laws and regulations that relate to its employees and its compliance with the “e-verify” requirements under Section 23-214(A), Arizona Revised Statutes. The breach by the Trustee of the foregoing shall be deemed a material breach of this Agreement and may result in the termination of the services of the Trustee by the Town. The Town retains the legal right to randomly inspect the papers and records of the Trustee to ensure that the Trustee is complying with the above-mentioned warranty. The Trustee shall keep such papers and records open for random inspection during normal business hours by the Town. The Trustee shall cooperate with the random inspections by the Town including granting the Town entry rights onto its property to perform such random inspections and waiving its respective rights to keep such papers and records confidential. To the extent permitted by applicable law, the Town shall preserve the confidentiality of any information, records, or papers the Town needs, accesses, or otherwise obtains during any and every such random inspection, including, without limitation, such information.

(c) Pursuant to Section 35-393 et seq., Arizona Revised Statutes, the Trustee hereby certifies it is not currently engaged in, and for the duration of this Agreement shall not engage in, a boycott of Israel. The term “boycott” has the meaning set forth in Section 35-393, Arizona Revised Statutes. If the Town determines that the Trustee’s certification above is false or that it has breached such agreement, the Town may impose remedies as provided by law.

Section 13.5. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State.

Section 13.6. Binding Effect and Successors. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Whenever in this Agreement either the Town or the Trustee is named or referred to, such reference shall be deemed to include successors or assigns thereof, and all the covenants and agreements in this Agreement contained by or on behalf of the Town or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 13.7. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.

Section 13.8. Destruction of Cancelled Obligations. Whenever in this Agreement provision is made for the surrender to or cancellation by the Trustee and the delivery to the Town of any Obligations, the Trustee may destroy such Obligations and, upon the Town’s request, deliver a certificate of such destruction to the Town.

Section 13.9. Headings. The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Agreement. All references herein to “Articles”, “Sections”, and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement; and the words “herein”, “hereof”, “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

Section 13.10. Parties Interested Herein. Nothing in this Trust Agreement or the Obligations, expressed or implied, is intended or shall be construed to confer upon, or to give or grant to, any person or entity, other than the Town, the Trustee and the Owners, any legal or equitable right, remedy or claim under or by reason of this Trust Agreement or any covenant, condition or stipulation hereof, and all covenants, stipulations, provisions and agreements in this Trust Agreement contained by and on behalf of the Town shall be for the sole and exclusive benefit of the Town, the Trustee and the Owners of the Obligations.

Section 13.11. Waiver of Notice. Whenever in this Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Section 13.12. Severability of Invalid Provisions. In case any one or more of the provisions contained in this Agreement or in the Obligations shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The parties hereto hereby declare that they would have entered into this Agreement and each and every other section, paragraph, sentence, clause or phrase hereof and authorized the delivery of the Obligations pursuant thereto irrespective of the fact that any one or more sections, paragraphs, sentences, clauses or phrases of this Agreement may be held illegal, invalid or unenforceable.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**U.S. BANK NATIONAL ASSOCIATION, as
Trustee**

By
Authorized Representative

THE TOWN OF QUEEN CREEK, ARIZONA

By
Mayor

ATTEST:

.....
Town Clerk

Attachment: Form of Third Subordinate Lien Trust Agreement (\$85M Interim Financing Resolution)

EXHIBIT A

(Form of Obligation)

**THIS OBLIGATION IS SUBJECT TO RESTRICTIONS
UPON TRANSFER AS PROVIDED IN THE WITHIN
DESCRIBED TRUST AGREEMENT**

Number:

Principal Amount: \$.....

**SUBORDINATE LIEN EXCISE TAX AND
STATE SHARED REVENUE OBLIGATION, SERIES 2021**

Evidencing a Proportionate Interest of the Owner
Hereof in Certain Payments to be Made by

THE TOWN OF QUEEN CREEK, ARIZONA

to

**U.S. BANK NATIONAL ASSOCIATION,
as Trustee**

| <u>Interest Rate</u> | <u>Maturity Date</u> | <u>Dated Date</u> |
|----------------------|----------------------|-------------------|
| VARIABLE RATE | June 1, 2025 | December __, 2021 |

Registered Owner:

Principal Amount: DOLLARS

THIS IS TO CERTIFY THAT the registered owner identified above, or registered assigns, as the registered owner of this Subordinate Lien Excise Tax and State Shared Revenue Obligation, Series 2021 (this "Obligation") is the owner of an undivided, participatory, proportionate interest in the right to receive the Payments (as such term and all other capitalized terms used but not otherwise defined herein are defined in the hereinafter defined Trust Agreement) under the Purchase Agreement as well as certain amounts to be paid pursuant to the Continuing Covenant Agreement. The Payments and other rights and interests under the Purchase Agreement and payments pursuant to the Continuing Covenant Agreement are held in trust under that certain Third Subordinate Lien Trust Agreement, dated as of December 1, 2021 (the "Trust Agreement"), by and between the Town of Queen Creek, Arizona, a municipal corporation and a political subdivision existing under the laws of the State of Arizona and U.S. Bank National Association.

The registered owner of this Obligation is entitled to receive, subject to the terms hereof, on the maturity date set forth above, the total principal amount set forth above, representing a portion of the Payments designated as principal, and to receive the Interest Portion on the Interest Payment Dates; provided, however, that the Interest Portion shall be calculated on the sum of the Advances made by the Purchaser as described in Section 3.1(b) of the Trust Agreement and as

Attachment: Form of Third Subordinate Lien Trust Agreement (\$85M Interim Financing Resolution)

reflected in the “Table of Advances” attached hereto. Said amounts representing the registered owner’s share of the Payments designated as interest and principal as well as other amounts payable pursuant to the Purchase Agreement and amounts payable pursuant to the Continuing Covenant Agreement are payable to the registered owner (or prior registered owner, as applicable) as provided in the Trust Agreement.

If the amount of interest payable for any period in accordance with the terms of this Obligation exceeds the amount of interest that would be payable for such period had interest for such period been calculated at the Maximum Interest Rate, then interest for such period shall be payable in an amount calculated at the Maximum Interest Rate.

Any interest that would have been due and payable for any period but for the operation of the immediately preceding paragraph shall accrue and be payable as provided in this paragraph and shall, less interest actually paid to each Owner for such period, constitute the “Excess Interest Amount.” If there is any accrued and unpaid Excess Interest Amount as of any date, then the principal amount with respect to which interest is payable shall bear interest at the Maximum Interest Rate until payment to each Owner of the entire Excess Interest Amount.

Notwithstanding the foregoing, on the date on which no principal amount with respect to this Obligation remains unpaid, the Town shall pay to each Owner a fee equal to any accrued and unpaid Excess Interest Amount.

In the event a Determination of Taxability occurs, the Gross-Up Amount shall be paid.

The Trustee has no obligation or liability to the registered owners of the Obligations for the payment of interest or principal pertaining to the Obligations. The Trustee’s sole obligations are to administer, for the benefit of the registered owners of the Obligations, the various funds and accounts established pursuant to the Trust Agreement.

This Obligation has been executed and delivered by the Trustee pursuant to the terms of the Trust Agreement. The Town is authorized to enter into the Purchase Agreement and the Trust Agreement under the laws of the State of Arizona and by resolution of the Mayor and Council of the Town adopted November 3, 2021. Reference is hereby made to the Purchase Agreement and the Trust Agreement (copies of which are on file at the Designated Office) for further definitions, a description of the terms on which the Obligations are delivered, the rights thereunder of the registered owners of the Obligations, the rights, duties and immunities of the Trustee and the rights and obligations of the Town under the Purchase Agreement (including with respect to certain obligations secured and to be secured senior to the security for the Payments and to be secured on a parity with the security for the Payments), to all of the provisions of which Purchase Agreement and Trust Agreement the registered owner of this Obligation, by acceptance hereof, assents and agrees. (The recitals, statements, covenants and representations made in this Obligation shall be taken and construed as made by and on the part of the Town, and not by the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.)

The Obligations are payable from payments to be made by the Town pursuant to the Purchase Agreement and the Continuing Covenant Agreement. The Town is required under the

Purchase Agreement to make such payments from the revenues from the Excise Taxes and the State Shared Revenues.

The Payments are payable from a pledge of, and secured by a lien on, the revenues from the Excise Taxes and the State Shared Revenues as are necessary for prompt and punctual payment, all as more fully described in, and provided by, the Purchase Agreement with respect to the pledge of the revenues from the Excise Taxes and the State Shared Revenues. All Obligations of the total authorized amount are co-equal as to such pledge of and lien on the revenues from the Excise Taxes and the State Shared Revenues securing the payment thereof, and share ratably without any preference, priority or distinction as to the source or method of payment from the revenues from the Excise Taxes and the State Shared Revenues and security thereof. The registered owner hereof shall never have the right to demand payment of this Obligation, the Payments or amounts due pursuant to the Continuing Covenant Agreement out of any funds other than the revenues from the Excise Taxes and the State Shared Revenues. The rights of the holder hereof to payment from the revenues from the Excise Taxes and the State Shared Revenues are (i) subordinate to the rights to payment from the revenues from the Excise Taxes and the State Shared Revenues for certain obligations which have been, and may in the future be, executed and delivered senior thereto pursuant to the documents associated with such senior obligations, and (ii) on a parity with the rights to payment from the revenues from the Excise Taxes and the State Shared Revenues for certain obligations which may in the future be executed and delivered on a parity with this Obligation pursuant to the Purchase Agreement.

The Obligations, the Purchase Agreement and the obligation of the Town to make the Payments thereunder and the Continuing Covenant Agreement and the obligation of the Town to make payments thereunder are not a liability, debt or obligation of the Trustee and do not represent or constitute a general obligation of the Town, the State of Arizona or any political subdivision thereof for which the Town or the State of Arizona or any political subdivision thereof is obligated to levy or pledge any form of taxation (other than the obligation of the Town to levy the Excise Taxes) nor do the Obligations, the Purchase Agreement or the obligation to make the Payments thereunder or the Continuing Covenant Agreement or the obligation of the Town to make payments thereunder constitute an indebtedness of the Town, the State of Arizona or any of its political subdivisions within the meaning of any constitutional or statutory debt limitation or restriction or otherwise. (This Obligation represents an interest in a limited obligation of the Town (as described herein), and no Council member, officer or agent, as such, past, present or future, of the Town shall be personally liable for the payment hereof.)

The Obligations are issuable only as fully registered obligations in the denominations authorized and fully registered, physically certificated form. The Obligations shall not be transferable or exchangeable, except as provided in the Trust Agreement.

This Obligation is transferable by the registered owner hereof, in person or by his attorney duly authorized in writing, at the Designated Office, but only in the manner, subject to the limitations and upon payment of the charges provided in the Trust Agreement and upon surrender and cancellation of this Obligation. Upon such transfer a new Obligation for the remaining unpaid principal amount will be delivered to the transferee in exchange therefor. The Town and the Trustee may treat the registered owner hereof as the absolute owner hereof for all purposes,

whether or not this Obligation shall be overdue, and the Town and the Trustee shall not be affected by any notice to the contrary.

The Trustee may require a registered owner, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes or governmental charges required by law in connection with the exchange or transfer.

The Trustee may, but shall not be obligated to, exchange or register the transfer of this Obligation (i) if this Obligation has been selected for redemption, in whole or in part, or (ii) during a period of 15 days preceding the giving of a notice of redemption. If this Obligation is transferred after having been selected for redemption, any notice of redemption which has been given to the transferor shall be binding on the transferee, and a copy of the notice of redemption shall be delivered by the Trustee to the transferee along with the duly registered Obligation or Obligations.

The registered owner of this Obligation shall have no right to enforce the provisions of the Trust Agreement or the Purchase Agreement or to institute any action to enforce the covenants thereof, or to take any action with respect to a default thereunder or hereunder, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Trust Agreement.

To the extent and in the manner permitted by the terms of the Trust Agreement, the provisions of the Trust Agreement and the Purchase Agreement may be amended by the parties thereto with the written consent of the owners of a majority in aggregate principal of all Obligations then outstanding, and may be amended without such consent under certain circumstances but in no event such that the interests of the owners of the Obligations are adversely affected, provided that no such amendment shall impair the right of any owner to receive in any case such owner's proportionate share of any Payment thereof in accordance with such owner's Obligation.

Obligations will be subject to redemption in whole or in part from prepayments made at the option of the Town on any SIFMA Index Reset Date, at a redemption price equal to the principal amount of the Obligation or portion thereof to be redeemed, together with unpaid and accrued interest to the date fixed for redemption, but without premium.

Redemption shall be in authorized denominations or any integral multiples of \$5,000 in excess thereof. So long as U.S. Bank National Association is the owner of this Obligation, U.S. Bank National Association shall not be required to surrender this Obligation in connection with any partial redemption.

The Trustee shall give notice of any redemption of this Obligation as provided above no less than 10 Business Days prior to the redemption date to the registered owner by Electronic Means and at its address shown on the registration books maintained by the Trustee. A certificate of the Trustee shall conclusively establish the transmission/ mailing of any such notice for all purposes.

If at the time of mailing of the notice of redemption there has not been deposited with the Trustee moneys or eligible securities sufficient to redeem all Obligations subject to redemption and other requirements set forth in the Trust Agreement are not met, such notice shall state that it is conditional, subject to the deposit of moneys sufficient for the redemption and satisfaction of

such conditions. If Obligations or portions thereof are subject to redemption and if on the redemption date moneys for the redemption thereof are held by the Trustee and those other conditions are met, thereafter those Obligations or portions thereof to be redeemed shall cease to bear interest, and shall cease to be secured by, and shall not be deemed to be outstanding under, the Trust Agreement. The failure to receive any notice of redemption, or any defect in such notice in respect of any Obligation, shall not affect the validity of redemption of any Obligation.

It is hereby certified, recited and declared that all conditions, acts and things required by the Constitution and laws of the State of Arizona to happen, to be done, to exist and to be performed precedent to and in the execution and delivery of this Obligation have happened, have been done, do exist and have been performed in regular and due form and time as required by law.

This Obligation shall not be entitled to any security or benefit under the Trust Agreement until executed by the Trustee.

IN WITNESS WHEREOF, this Obligation has been executed and delivered by the Trustee, acting pursuant to the Trust Agreement.

Date of Execution:

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By.....
Authorized Representative

Attachment: Form of Third Subordinate Lien Trust Agreement (\$85M Interim Financing Resolution)

The following abbreviations, when used in the inscription on the face of this Obligation, shall be construed as though they were written out in full according to applicable laws or regulations:

| | | |
|-----------|--------------------------------------------------------------------------|---------------------------------------------|
| TEN COM - | as tenants in common | UNIF GIFT/TRANS MIN ACT |
| TEN ENT - | as tenants by the entireties |Custodian..... |
| JT TEN - | as joint tenants with right of survivorship and not as tenants in common | (Cust) (Minor) |
| | | under Uniform Gifts/Transfers to Minors Act |
| | | |

Additional abbreviations may also be used though not in the above list.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

Insert Social Security or Other Identifying Number of Transferee

.....
.....

.....
(Please Print or Typewrite Name and Address of Transferee)

the within certificate and all rights thereunder, and hereby irrevocably constitutes and appoints

....., attorney to transfer the within certificate on the books kept for registration thereof, with full power of substitution in the premises.

Dated

.....

Note: The signature(s) on this assignment must correspond with the name(s) as written on the face of the within registered certificate in every particular without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

.....

The signature(s) should be guaranteed by an eligible guarantor institution pursuant to Securities and Exchange Commission

Rule 17Ad-15

Attachment: Form of Third Subordinate Lien Trust Agreement (\$85M Interim Financing Resolution)

TABLE OF ADVANCES

Upon receipt of any Advance described in Section 3.1(b) of the Trust Agreement, the Owner of this Obligation (or the Trustee, if the Trustee is holding this Obligation on behalf of the Owner) shall make the appropriate notation on the table below:

| Date of Advance | Amount of Advance | Total Principal Payments | Remaining Principal Balance | Signature of Owner or Trustee |
|-----------------|-------------------|--------------------------|-----------------------------|-------------------------------|
|-----------------|-------------------|--------------------------|-----------------------------|-------------------------------|

EXHIBIT B

Payment Request Form

Application No.

The Trustee is hereby requested to pay from the “Acquisition Fund” established by the Third Subordinate Lien Trust Agreement, dated as of December 1, 2021 (the “Trust Agreement”), between the Town of Queen Creek, Arizona (the “Town”) and U.S. Bank National Association, as trustee (the “Trustee”) to the person or corporation designated below as “Payee,” the sum set forth below such designation, in payment of the Project Costs (as such term is and other undefined terms used herein are defined in the Trust Agreement) described below. The amount shown below is due and payable under a purchase order or contract with respect to the Project Costs described below and has not formed the basis of any prior request for payment.

Payee:

Address:

Amount:

Description of Project Costs or portion thereof authorized to be paid to the Payee:

.....
.....
.....
.....
.....
.....
.....
.....

The Town acknowledges that it has received and inspected each item of the Project described above and has found each item of the Project so described to be in good condition, in conformity with the Town’s specifications and satisfactory for the Town’s purposes and in accordance with the applicable purchase order or contract and the plans for the Project. Notwithstanding anything herein to the contrary, the Town shall not be deemed to have waived or released the Payee from any liability or obligation to the Town in the event the Town’s acknowledgment herein is discovered to be inaccurate in any respect as to any item of the Project described above.

Attachment: Form of Third Subordinate Lien Trust Agreement (\$85M Interim Financing Resolution)

By execution of this Payment Request Form, the Town requests and approves the payment of the amount stated above to Payee set forth above.

DATED:, 20.....

.....
Town Representative

Please forward payment to Payee at the following address:

.....
.....
.....

Attachment: Form of Third Subordinate Lien Trust Agreement (\$85M Interim Financing Resolution)

EXHIBIT C

Reimbursement Request Form

Application No.

The Trustee is hereby requested to pay from the "Acquisition Fund" established by the Third Subordinate Lien Trust Agreement, dated as of December 1, 2021 (the "Trust Agreement"), between the Town of Queen Creek, Arizona (the "Town"), and U.S. Bank National Association, as trustee (the "Trustee"), to the Town, the sum set forth below as reimbursement of (all/a portion) of the Project Costs (as such term and all other undefined terms used herein are defined in the Trust Agreement) described below. The amount shown below was paid by the Town as Project Costs and has not formed the basis of any prior request for payment.

The Town acknowledges that it has received and has inspected each item of the Project to which the foregoing relates and has found each item of the Project so described to be in good condition, in conformity with the Town's specifications and satisfactory for the Town's purposes. Notwithstanding anything herein to the contrary, the Town shall not be deemed to have waived or released any entity named on the attached documentation, from any liability or obligation to the Town in the event the Town's acknowledgment herein is discovered to be inaccurate in any respect as to any item of the Project described below.

Amount:

Description of Project Costs or portion thereof for which reimbursement is hereby requested:

.....
.....
.....

DATED:, 20.....

.....
Town Representative

Dated Received:, 20.....

Attachment: Form of Third Subordinate Lien Trust Agreement (\$85M Interim Financing Resolution)

CONTINUING COVENANT AGREEMENT

dated as of December 1, 2021,

between

TOWN OF QUEEN CREEK, ARIZONA

and

U.S. BANK NATIONAL ASSOCIATION

Relating to

\$85,000,000

TOWN OF QUEEN CREEK, ARIZONA
SUBORDINATE LIEN EXCISE TAX AND STATE SHARED REVENUE OBLIGATIONS,
SERIES 2021

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CONTINUING COVENANT AGREEMENT

THIS CONTINUING COVENANT AGREEMENT, is dated as of December 1, 2021 (as amended, restated, supplemented or otherwise modified from time to time, this “*Agreement*”), between the TOWN OF QUEEN CREEK, ARIZONA, a municipal corporation and a political subdivision under the laws of the State of Arizona, and U.S. BANK NATIONAL ASSOCIATION, a national banking association.

RECITALS

WHEREAS, pursuant to [Resolution No. ___] of the Mayor and the Council of the Town of Queen Creek, Arizona adopted on November 3, 2021 (the “*Resolution*”), the Town (as defined herein) has approved the execution and delivery of the Obligations (as defined herein) and the execution and delivery of this Agreement;

WHEREAS, the Obligations are to be executed and delivered pursuant to a Third Subordinate Lien Trust Agreement dated as of December 1, 2021 (the “*Trust Agreement*”), between U.S. Bank National Association, as trustee (the “*Trustee*”), and the Town, and will evidence proportionate interests of the owners thereof in purchase payments to be made by the Town pursuant to a Third Subordinate Lien Purchase Agreement dated as of December 1, 2021 (the “*Purchase Agreement*”), between the Town and the Trustee, in its separate capacity as seller; and

WHEREAS, the Purchaser (as defined herein) has agreed to purchase the Obligations and to make Advances (as defined herein) in installments in accordance with the terms hereof, and as a condition to the purchase of Obligations and the making of Advances, the Purchaser has required the Town to enter into this Agreement;

NOW, THEREFORE, to induce the Purchaser to purchase the Obligations and to make Advances, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Town and the Purchaser hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Certain Defined Terms. In addition to the terms defined in the recitals and elsewhere in this Agreement, the Trust Agreement and the Purchase Agreement, the following terms shall have the following meanings:

“*Advances*” means, collectively, the Initial Advance and each subsequent advance made by the Purchaser pursuant to Section 2.02(b) hereof.

“*Affiliate*” means, with respect to any Person, any Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person. A Person shall be deemed to control another Person for the purposes of this definition if such first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person, whether through the ownership of voting securities, common directors, trustees or officers, by contract or otherwise.

“*Agreement*” has the meaning set forth in the introductory paragraph hereof.

“*Anti-Corruption Laws*” means all laws, rules, and regulations of any jurisdiction applicable to the Town from time to time concerning or relating to bribery or corruption.

“*Bank Agreement*” means any credit agreement, liquidity agreement, standby bond purchase agreement, reimbursement agreement, direct purchase agreement, bond purchase agreement, or other agreement or instrument (or any amendment, supplement or other modification thereof) under which, directly or indirectly, any Person or Persons undertake(s) to make or provide funds to make payment of, or to purchase or provide credit enhancement for bonds, notes or obligations of the Town secured by or payable from the Excise Taxes and the State Shared Revenues.

“*Business Day*” means a day which is not (a) a Saturday, Sunday or legal holiday on which banking institutions in New York, New York or Queen Creek, Arizona or the principal corporate trust office of the Trustee is located are authorized by law to close, (b) a day on which the New York Stock Exchange or the Federal Reserve Bank is closed or (c) a day on which the principal office of the Purchaser is closed.

“*Calculation Agent*” has the meaning assigned to such term in the Trust Agreement.

“*CCA Obligations*” means all amounts payable by the Town, and all other obligations to be performed by the Town, pursuant to this Agreement and the other Related Documents (including, without limitation, all obligations of the Town to pay principal of and interest on the Obligations when due and any amounts to reimburse the Purchaser for any advances or expenditures by it under any of such documents).

“*Change in Law*” means the adoption of or change in any law, governmental or quasi-governmental rule, regulation, policy, guideline, interpretation, or directive (whether or not having the force of law) or in the interpretation, promulgation, implementation or administration thereof by any Governmental or quasi-Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, including, notwithstanding the foregoing, all requests, rules, guidelines or directives (x) in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act or (y) promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States financial regulatory authorities, in each case of clauses (x) and (y), regardless of the date enacted, adopted, issued, promulgated or implemented, or compliance by the Purchaser with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency.

“*Code*” means the Internal Revenue Code of 1986, as amended, and, where appropriate any statutory predecessor or any successor thereto.

“*Commitment*” means the obligation of the Purchaser to extend Advances in an aggregate principal amount at any one time not to exceed the Commitment Amount.

“*Commitment Amount*” means Eighty-Five Million Dollars and No/100 (\$85,000,000).

“*Commitment Termination Date*” means the earliest to occur of (a) the Maturity Date, (b) the date that Advances in the aggregate principal amount of the Commitment Amount have been advanced by the Purchaser, and (c) the occurrence of an Event of Default.

“*Compliance Certificate*” means a certificate substantially in form of Exhibit A hereto.

“*Confidential Information*” means any sensitive or confidential information regarding the Town, the Purchaser or any Affiliate of the Purchaser including, without limitation, address and account information, e-mail addresses, telephone numbers, facsimile numbers, names and signatures of officers, employees.

“*Controlled Group*” means all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together with the Town, are treated as a single employer under Section 414 of the Code.

“*Credit Protection Provider*” means, collectively, (i) any party, including a Holder, who issues a letter of credit or provides other credit protection with respect to the Obligations and (ii) any party that participates in any such credit protection.

“*Date of Advance*” has the meaning set forth in Section 2.02(c) hereof.

“*Debt*” of any Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all obligations of such Person as lessee under capital leases, (e) all Debt of others secured by a lien on any asset of such Person, whether or not such Debt is assumed by such Person, (f) all Guarantees by such Person of Debt of other Persons and (g) all obligations of such Person under any Swap Agreement.

“*Default*” means any event or condition which, with notice, the passage of time or any combination of the foregoing, would constitute an Event of Default.

“*Default Rate*” means, for any day, a fluctuating rate of interest per annum equal to the greatest of (i) the Prime Rate in effect at such time *plus* four percent (4.0%), (ii) the Federal Funds Rate in effect at such time plus five percent (5.0%), (iii) the SIFMA Rate in effect at such time *plus* four percent (4.0%), and (iv) ten percent (10.0%).

“*Determination of Taxability*” means and shall be deemed to have occurred on the first to occur of the following:

(i) on the date when the Town files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability shall have in fact occurred;

(ii) on the date when the Holder or any former Holder notifies the Town that it has received a written opinion by a nationally recognized firm of attorneys of substantial expertise on the subject of tax exempt municipal finance to the effect that an Event of Taxability shall have occurred unless, within one hundred eighty (180) days after receipt by the Town of such notification from the Holder or any former Holder, the Town shall deliver to the Holder and any former Holder a ruling or determination letter issued to or on behalf of the Town by the Commissioner of the Internal Revenue Service or the Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other government official exercising the same or a substantially similar function from time to time) to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;

(iii) on the date when the Town shall be advised in writing by the Commissioner of the Internal Revenue Service or the Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other government official exercising the same or a substantially similar function from time

to time, including an employee subordinate to one of these officers who has been authorized to provide such advice) that, based upon filings of the Town, or upon any review or audit of the Town or upon any other ground whatsoever, an Event of Taxability shall have occurred; or

(iv) on the date when the Town shall receive notice from the Holder or any former Holder that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of such Holder or such former Holder the interest on the Obligations due to the occurrence of an Event of Taxability;

provided, however, no Determination of Taxability shall occur under subparagraph (iii) or (iv) hereunder unless the Town has been afforded the opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; *provided further, however*, that upon demand from the Holder or former Holder, the Town shall promptly reimburse such Holder or former Holder for any payments, including any taxes, interest, penalties or other charges, such Holder (or former Holder) shall be obligated to make as a result of the Determination of Taxability.

“*Effective Date*” means [December __, 2021], subject to the satisfaction or waiver by the Purchaser of the conditions precedent set forth in Section 3.01 hereof.

“*EMMA*” means Electronic Municipal Market Access as provided by the Municipal Securities Rulemaking Board.

“*Environmental Laws*” means any and all federal, state, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions relating to (a) the protection of the environment, (b) personal injury or property damage relating to the release or discharge of Hazardous Materials, (c) emissions, discharges or releases of pollutants, contaminants, hazardous substances or wastes into surface water, ground water or land, or (d) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, hazardous substances or wastes or the clean-up or other remediation thereof.

“*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time. References to Sections of ERISA shall be construed also to refer to any successor Sections.

“*Event of Default*” with respect to this Agreement has the meaning set forth in Section 7.01 of this Agreement and, with respect to any Related Document, has the meaning assigned therein.

“*Event of Taxability*” means a (i) change in Law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the Town, or the failure to take any action by the Town, or the making by the Town of any misrepresentation herein or in any certificate required to be given in connection with the issuance, sale or delivery of the Obligations) which has the effect of causing interest paid or payable on the Obligations to become includable, in whole or in part, in the gross income of the Holder or any former Holder for federal income tax purposes or (ii) the entry of any decree or judgment by a court of competent jurisdiction, or the taking of any official action by the Internal Revenue Service or the Department of the Treasury, which decree, judgment or action shall be final under applicable procedural Law, in either case, which has the

effect of causing interest paid or payable on the Obligations to become includable, in whole or in part, in the gross income of such Holder or such former Holder for federal income tax purposes with respect to the Obligations.

“*Excess Interest Amount*” has the meaning set forth in Section 4.05(b) hereof.

“*Excise Taxes*” has the meaning assigned to such term in the Trust Agreement.

“*Excluded Taxes*” means, with respect to a Holder, Taxes imposed on or measured by its overall net income (however denominated), and franchise Taxes and branch profit Taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which it is incorporated or is organized or in which its principal executive office is located.

“*Federal Funds Rate*” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided that*: (a) if such day is not a Business Day, then the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day; and (b) if no such rate is so published on such next succeeding Business Day, then the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of one hundredth of one percent) charged to the Purchaser on such day on such transactions as determined by the Purchaser. Notwithstanding anything herein to the contrary, if the Federal Funds Rate as determined as provided above would be less than zero percent (0.0%), then the Federal Funds Rate shall be deemed to be zero percent (0.0%).

“*Fiscal Year*” means the twelve-month period commencing each July 1 and ending June 30 of the succeeding calendar year, unless otherwise determined and designated by the Town.

“*Fitch*” means Fitch Ratings, Inc., and any successor rating agency.

“*FRB*” means the Board of Governors of the Federal Reserve System of the United States, together with any successors thereof.

“*GAAP*” means generally accepted accounting principles in effect from time to time in the United States and applicable to entities such as the Town.

“*Governmental Approval*” means an authorization, consent, approval, license, or exemption of, registration or filing with, or report to any Governmental Authority.

“*Governmental Authority*” means the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including, without limitation, any supra-national bodies such as the European Union or the European Central Bank) and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervisory Practices or any successor or similar authority to any of the foregoing).

“*Guarantee*” means, as to any Person, any (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Debt or other obligation payable or performable by another Person (the “*primary obligor*”) in any manner, whether directly or indirectly, and

including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Debt or other obligation of the payment or performance of such Debt or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Debt or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Debt or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Debt or other obligation of any other Person, whether or not such Debt or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Debt to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"*Hazardous Material*" means any explosive or radioactive substances or wastes, any hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and any other substances or wastes of any nature regulated pursuant to any Environmental Law.

"*Holder*" means the Purchaser and each Purchaser Transferee or Non-Purchaser Transferee pursuant to Section 9.13 hereof so long as such Purchaser Transferee or Non-Purchaser Transferee is an owner of Obligations.

"*Indemnified Taxes*" means Taxes imposed on or with respect to any payment made by or on account of any obligation of the Town under any Related Document, other than Excluded Taxes and Other Taxes.

"*Indemnitee*" has the meaning set forth in Section 8.01 hereof.

"*Initial Advance*" means the initial Advance made by the Purchaser on the Effective Date pursuant to Section 2.02(a) hereof.

"*Interest Reset Date*" means Thursday of each week.

"*Laws*" means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"*Liabilities*" has the meaning set forth in Section 8.01 hereof.

"*Lien*" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“*Majority Holder*” means the Holders with a majority of the aggregate principal amount of Obligations from time to time. As of the Effective Date, U.S. Bank National Association shall be the Majority Holder.

“*Margin Stock*” has the meaning ascribed to such term in Regulation U promulgated by the FRB, as now and hereafter from time to time in effect.

“*Material Adverse Effect*” means a material adverse effect on (a) the business, Property, liabilities (actual and contingent), operations or condition (financial or otherwise), results of operations, or prospects of the Town, (b) the ability of the Town to perform its obligations under any Related Documents to which it is a party, or (c) the legality, validity, binding effect or enforceability of any of the Related Documents or the rights or remedies of the Purchaser under the Related Documents.

“*Maturity Date*” means the date on which the Obligations are stated to mature which, for the avoidance of doubt, is June 1, 2025.

“*Maximum Federal Corporate Tax Rate*” means, for any day, the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, as in effect as of such day (or, if as a result of a change in the Code, the rate of income taxation imposed on corporations generally shall not be applicable to the Purchaser, the maximum statutory rate of federal income taxation which could apply to the Purchaser as of such day).

“*Maximum Interest Rate*” means a per annum rate of interest equal to the lesser of (i) ten percent (10.0%) and (ii) the maximum non-usurious rate of interest on the relevant obligation permitted by applicable Law.

“*Moody’s*” means Moody’s Investors Service, Inc., and any successor rating agency.

“*Non-Purchaser Transferee*” has the meaning set forth in Section 9.13(c) hereof.

“*Obligations*” means the Town of Queen Creek, Arizona Subordinate Lien Excise Tax and State Shared Revenue Obligations, Series 2021.

“*OFAC*” means the U.S. Department of the Treasury’s Office of Foreign Assets Control, and any successor thereto.

“*Other Taxes*” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Related Document.

“*Patriot Act*” means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), as amended from time to time, and any successor statute.

“*Payments*” has the meaning assigned to such term in the Purchase Agreement.

“*PBGC*” means the Pension Benefit Guaranty Corporation or any successor thereto.

“*Person*” means any individual, corporation, not for profit corporation, partnership, limited liability company, joint venture, association, professional association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other form of entity.

“*Plan*” means, with respect to the Town at any time, an employee pension benefit plan which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code and either (i) is maintained, or has within the preceding five plan years been maintained, by a member of the Controlled Group for employees of a member of the Controlled Group of which the Town is a part, (ii) is maintained pursuant to a collective bargaining agreement or any other arrangement under which more than one employer makes contributions and to which a member of the Controlled Group of which the Town is a part is then making or accruing an obligation to make contributions or has within the preceding five plan years made contributions.

“*Prime Rate*” means on any day, the rate of interest per annum then most recently established by the Purchaser as its “prime rate.” Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by the Purchaser to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and that the Purchaser may make various business or other loans at rates of interest having no relationship to such rate. If the Purchaser ceases to establish or publish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in The Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported), and the Prime Rate shall change without notice with each change in such prime rate as of the date such change is reported. Notwithstanding anything herein to the contrary, if the Prime Rate determined as provided above would be less than zero percent (0.0%), then the Prime Rate shall be deemed to be zero percent (0.0%).

“*Property*” means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed, and whether tangible or intangible, whether now owned or hereafter acquired.

“*Purchase Agreement*” has the meaning set forth in the recitals hereof.

“*Purchaser*” means, initially, U.S. Bank National Association, a national banking association, and its successors and assigns, and upon the receipt from time to time by the Trustee and the Town of a notice described in Section 9.13(a) from time to time means the Persons designated in such notice as the Purchaser, as more fully provided in Section 9.13(a) hereof.

“*Purchaser Letter*” has the meaning set forth in Section 9.13(c) hereof.

“*Purchaser Transferee*” has the meaning set forth in Section 9.13(b) hereof.

“*Rating Agency*” means any of S&P, Moody’s and Fitch, as applicable.

“*Related Documents*” means this Agreement, the Resolution, the Trust Agreement, the Purchase Agreement, the Obligations and any other documents related to any of the foregoing or executed in connection therewith, and any and all future renewals and extensions or restatements of, or amendments or supplements to, any of the foregoing.

“*Request for Advance*” means a certificate substantially in the form attached hereto as Exhibit B, properly completed and signed by a Town Representative, as such form may be amended, modified or updated from time to time by the Purchaser.

“*Resolution*” has the meaning set forth in the recitals hereof.

“*Revenue Secured Obligations*” means any Debt or other obligations issued or incurred by or on behalf of the Town and secured by a lien on Excise Taxes and State Shared Revenues.

“*Risk-Based Capital Guidelines*” means (i) the risk based capital guidelines in effect in the United States, including transition rules, and (ii) the corresponding capital regulations promulgated by regulatory authorities outside the United States including transition rules, and any amendments to such regulations adopted prior to the Effective Date.

“*S&P*” means S&P Global Ratings and its successors and assigns.

“*Sanctioned Country*” means, at any time, any country or territory which is itself the subject or target of any comprehensive Sanctions.

“*Sanctioned Person*” means, at any time, (a) any Person or group listed in any Sanctions related list of designated Persons maintained by OFAC or the U.S. Department of State, the United Nations Security Council, the European Union or any EU member state, (b) any Person or group operating, organized or resident in a Sanctioned Country, (c) any agency, political subdivision or instrumentality of the government of a Sanctioned Country, or (d) any Person 50% or more owned, directly or indirectly, by any of the above.

“*Sanctions*” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State or (b) the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom.

“*SIFMA*” means the Securities Industry and Financial Markets Association (formerly known as The Bond Market Association and the Public Securities Association), and any successor organization.

“*SIFMA Rate*” means, for any date of determination, the level of the index which is issued weekly and which is compiled from the weekly interest rate resets of tax-exempt variable rate issues included in a database maintained by Municipal Market Data which meet specific criteria established from time to time by the Securities Industry and Financial Markets Association and issued on Wednesday of each week, or if any Wednesday is not a Business Day, the immediately succeeding Business Day. If the SIFMA Index is no longer published, then “SIFMA Rate” shall mean the S&P Weekly High Grade Index. If the S&P Weekly High Grade Index is no longer published, then “SIFMA Rate” shall mean the prevailing rate determined by the Purchaser for tax-exempt state and local government bonds meeting criteria determined in good faith by the Purchaser to be comparable under the circumstances to the criteria used by the Securities Industry and Financial Markets Association to determine the SIFMA Rate immediately prior to the date on which the Securities Industry and Financial Markets Association ceased publication of the SIFMA Rate. Notwithstanding anything herein to the contrary, during any period of time while the SIFMA Rate, determined as provided above, would be less than one hundredth of one percent (0.01%), the SIFMA Rate shall be deemed to be one hundredth of one percent (0.01%).

“*Special Counsel*” means Greenburg Traurig, LLP, or any other firm of attorneys nationally recognized on the subject of tax-exempt municipal finance selected by the Town.

“*State*” means the State of Arizona.

“*State Shared Revenues*” has the meaning assigned to such term in the Trust Agreement.

“*Swap Agreement*” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward

foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “*Master Agreement*”), including any such obligations or liabilities under any Master Agreement.

“*Taxable Date*” means the date on which interest on the Obligations is first includable in gross income of the Holder (including, without limitation, any previous Holder) thereof as a result of an Event of Taxability as such date is established pursuant to a Determination of Taxability.

“*Taxable Period*” has the meaning set forth in Section 4.03(a) hereof.

“*Taxable Rate*” means, for each day, a rate of interest per annum equal to the product of (i) the interest rate on the Obligations for such day and (ii) the applicable Tax Rate Factor.

“*Taxable Rate Factor*” means for each day that the Taxable Rate is determined, the quotient of (i) one divided by (ii) one minus the Maximum Federal Corporate Tax Rate in effect as of such day.

“*Taxes*” means all present or future taxes, duties, levies, imposts, fees, assessments, charges or withholdings, and any and all liabilities with respect to the foregoing, including interest, additions to tax and penalties applicable thereto.

“*Town*” means the Town of Queen Creek, Arizona, a municipal corporation and a political subdivision under the laws of the State of Arizona.

“*Town Representative*” means any person authorized from time to time in writing by the Town, or its successors and assigns, to perform a designated act or execute a designated document.

“*Trust Agreement*” has the meaning set forth in the recitals hereof.

“*Trustee*” has the meaning set forth in the recitals hereof.

Section 1.02. Computation of Time Periods. In this Agreement, in the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each mean “to but excluding.”

Section 1.03. Construction. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, to the singular include the plural and to the part include the whole. The word “including” shall be deemed to mean “including but not limited to,” and “or” has the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereunder” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The Section headings contained in this Agreement and the table of contents preceding this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect. Section, subsection and exhibit references are to this Agreement unless otherwise specified.

Section 1.04. Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared, in accordance with GAAP. If, after the Effective Date, there shall occur any change in GAAP from those used in the preparation of the financial statements referred to in Section 6.03 hereof and such change shall result in a change in the method of calculation of any financial covenant, standard or term found in this Agreement including, without limitation, a recharacterization of operating leases to the effect that certain operating leases are to be treated as capital leases, either the Town or the Purchaser may by notice to the other party hereto, require that the Purchaser and the Town negotiate in good faith to amend such covenants, standards, and terms so as equitably to reflect such change in accounting principles, with the desired result being that the criteria for evaluating the financial condition of the Town shall be the same as if such change had not been made. No delay by the Town or the Purchaser in requiring such negotiation shall limit their right to so require such a negotiation at any time after such a change in accounting principles. Until any such covenant, standard, or term is amended in accordance with this Section 1.04, financial covenants shall be computed and determined in accordance with GAAP in effect prior to such change in accounting principles.

Section 1.05. Relation to Other Documents; Acknowledgment of Different Provisions of Related Documents; Incorporation by Reference. (a) Nothing in this Agreement shall be deemed to amend, or relieve the Town of its obligations under, any Related Document to which it is a party. Conversely, to the extent that the provisions of any Related Document allow the Town to take certain actions, or not to take certain actions, with regard for example to permitted liens, transfers of assets, maintenance of financial ratios and similar matters, the Town nevertheless shall be fully bound by the provisions of this Agreement.

(b) Except as provided in subsection (c) of this Section 1.05, all references to other documents shall be deemed to include all amendments, modifications and supplements thereto to the extent such amendment, modification or supplement is made in accordance with the provisions of such document and this Agreement.

(c) All provisions of this Agreement making reference to specific Sections of any Related Document shall be deemed to incorporate such Sections into this Agreement by reference as though specifically set forth herein (with such changes and modifications as may be herein provided) and shall continue in full force and effect with respect to this Agreement notwithstanding payment of all amounts due under or secured by the Related Documents, the termination or defeasance thereof or any amendment thereto or any waiver given in connection therewith, so long as this Agreement is in effect and until all CCA Obligations are paid in full. No amendment, modification, consent, waiver or termination with respect to any of such Sections shall be effective as to this Agreement until specifically agreed to in writing by the parties hereto with specific reference to this Agreement.

ARTICLE II

PURCHASE OF OBLIGATIONS AND ADVANCES

Section 2.01. Purchase of Obligations.

(a) *Purchase Price.* Upon the conditions set forth in Section 3.01 hereof and based on the representations, warranties and covenants of the Town set forth herein, the Purchaser hereby agrees to purchase from the Trustee, and the Town hereby agrees to cause the Trustee to sell to the

Purchaser the Obligations at par in an aggregate principal amount not to exceed the Commitment Amount.

(b) *Closing.* On the Effective Date, the Town shall deliver to the Purchaser the documents described in Section 3.01 hereof. Upon delivery of such documents and the satisfaction or waiver by the Purchaser of the other conditions precedent set forth in Section 3.01 hereof, the Purchaser will make the Initial Advance in immediately available federal funds payable to the Trustee on behalf of the Town. One fully registered Obligation shall be issued to and registered in the name of the Purchaser, or as otherwise directed by the Purchaser. The Obligations shall be so issued and registered to and held by the Purchaser, or as otherwise directed by the Purchaser.

Section 2.02. Advances.

(a) *Initial Advance.* Upon satisfaction of the conditions precedent set forth in Section 3.01 hereof, the Purchaser shall make the Initial Advance in the principal amount of [\$ _____] to the Trustee for the benefit of the Town.

(b) *Additional Advances.* Prior to the Commitment Termination Date and upon the satisfaction of the conditions precedent set forth in Section 3.02 of this Agreement, the Purchaser shall make one or more Advances to the Trustee for the benefit of the Town; *provided* that the aggregate principal amount of Advances shall not exceed the Commitment Amount. The Town acknowledges that the Purchaser shall not be obligated to make Advances except in accordance with the provisions of this Agreement. The Purchaser agrees, by its acceptance of the Obligations, that Advances shall be made in the manner and upon the terms and conditions set forth in this Agreement. The Town shall not use any Advance for any payment which is not permitted by the Code or the Related Documents.

(c) *Requests for Advance.* The Town shall give written notice to the Purchaser in the form of a Request for Advance no later 11:00 a.m. Pacific time on a Business Day which is not less than three (3) Business Days prior to the Business Day the related Advance is to be made (a “*Date of Advance*”); *provided* that the Town shall not deliver more than two (2) Request for Advance in any thirty (30) calendar day period. If the Purchaser receives a Request for Advance at or after 11:00 a.m. Pacific time on any Business Day, such Request for Advance shall be deemed to have been received on the following Business Day. Requests for Advances shall be delivered via email to the Purchaser’s email addresses set forth in Section 9.05 for receipt of Requests for Advances.

(d) *Minimum Amounts.* Each Advance, other than the Initial Advance and the final Advance, shall be in the principal amount requested by the Town pursuant to each Request for Advance but in any event in a minimum principal amount of \$1,000,000 or such greater amount which is an integral multiple of \$100,000; *provided* that the final Advance shall be in a minimum principal amount of \$1,000,000 or such greater amount equal to the remaining authorized principal amount of the Obligations to be issued pursuant to the Trust Agreement.

Section 2.03. Voluntary Reduction of Commitment Amount. The Town may request from time to time, upon at least three (3) Business Days’ written notice to the Purchaser, substantially in the form attached hereto as Exhibit D (a “*Request for Decrease in Commitment Amount*”), to reduce the Commitment Amount prior to the Maturity Date; *provided*, that each such reduction of the Commitment Amount shall be in an amount equal to \$1,000,000 or an integral multiple of \$100,000 thereof. Any such reduction in the

Commitment Amount shall be effective when the Purchaser shall have returned an acknowledged Request for Decrease in Commitment Amount to the Town with a copy to the Trustee.

ARTICLE III

CONDITIONS PRECEDENT TO PURCHASE OF OBLIGATIONS AND INITIAL ADVANCE

Section 3.01. Conditions Precedent to Effective Date and Initial Advance. The obligation of the Purchaser to purchase the Obligations and to make the Initial Advance is subject to the conditions precedent that the Purchaser shall have received, on or before the Effective Date, the items listed below in this Section, each dated and in form and substance as is satisfactory to the Purchaser.

(a) The following Town documents:

(i) a certificate dated the Effective Date and executed by a Town Representative certifying the names and signatures of the persons authorized to sign, on behalf of the Town, the Related Documents to which it is a party and the other documents to be delivered by it hereunder or thereunder;

(ii) a certificate dated the Effective Date and executed by a Town Representative certifying (A) that there has been no event or circumstance since June 30, 2021, that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, (B) that the representations and warranties contained in Article V hereof and the other Related Documents are true and correct in all material respects on the Effective Date and (C) no event has occurred and is continuing, or would result from entry into this Agreement, which would constitute a Default or Event of Default.

(b) The following financing documents:

(i) an executed original or certified copy, as applicable, of each of the Related Documents; and

(ii) one fully registered Obligation in physical form and registered in the name of the Purchaser.

(c) An opinion from Special Counsel, dated the Effective Date and addressed to the Purchaser or on which the Purchaser is otherwise expressly authorized to rely to the effect that the interest on each Advance evidenced by the Obligations is excludable from gross income for federal income tax purposes and as to the due authorization, execution, delivery and enforceability of the Related Documents, and such other customary matters as the Purchaser may reasonably request.

(d) The following documents and other information:

(i) the Town's **[financial projections for Fiscal Year 2021]**¹; and

¹ Drafting Note: Bank and Town to discuss what is reasonable and feasible for the Town to provide.

(ii) true and correct copies of all Governmental Approvals, if any, necessary for the Town to execute, deliver and perform the Related Documents to which it is a party.

(e) *Litigation.* The Purchaser shall have received a written description of all actions, suits or proceedings pending or threatened against the Town in any court or before any arbitrator of any kind or before or by any governmental or non-governmental body which could reasonably be expected to result in a Material Adverse Effect, if any, and such other statements, certificates, agreements, documents and information with respect thereto as the Purchaser may reasonably request.

(f) *Other Matters.* All other legal matters pertaining to the execution and delivery of this Agreement and the Related Documents shall be satisfactory to the Purchaser and its counsel, and the Purchaser shall have received such other statements, certificates, agreements, documents and information with respect to the Town and the other parties to the Related Documents and matters contemplated by this Agreement as the Purchaser may reasonably request.

(g) *Payment of Fees and Expenses.* (i) On or prior to the Effective Date, (A) the Purchaser shall have received reimbursement of the Purchaser's fees and expenses and any other fees incurred in connection with the transaction contemplated by the Related Documents and (B) Kutak Rock LLP, as counsel to the Purchaser, shall have received payment of its legal fees and expenses incurred in connection with the preparation, review, negotiation, execution and delivery of the Related Documents.

(h) *No Obligation Rating; DTC; Offering Document; CUSIP.* The Obligations shall not be (i) assigned a specific rating by any Rating Agency, (ii) registered with The Depository Trust Company or any other securities depository, (iii) issued pursuant to any type of official statement, private placement memorandum or other offering document, (iv) assigned a CUSIP number by Standard & Poor's CUSIP Service or (v) placed or offered by a broker-dealer in the capacity of an underwriter or a placement agent.

Section 3.02. Conditions Precedent to Additional Advances. The obligation of the Purchaser to make an Advance (other than the Initial Advance) is subject to the satisfaction of the following conditions precedent on the Date of Advance:

(a) the representations and warranties of the Town set forth in Article V of this Agreement shall be true and correct in all material respects on such Date of Advance (except to the extent any such representation or warranty expressly relates to an earlier date);

(b) no Default or Event of Default shall have occurred and be continuing on such Date of Advance;

(c) none of the Town or the Purchaser shall have received written notice from Special Counsel that the opinion delivered pursuant to Section 3.01(c) of the Agreement may no longer be relied upon; and

(d) the Purchaser shall have received a Request for Advance as required under, and in strict conformity with, Section 2.02(c) hereof.

ARTICLE IV

THE TOWN'S OBLIGATIONS

Section 4.01. Payment Obligations. (a) Subject to the Trust Agreement, the Town hereby unconditionally, irrevocably and absolutely agrees to make prompt and full payment of all payment obligations owed to the Purchaser under the Related Documents and to pay any other CCA Obligations owing to the Purchaser whether now existing or hereafter arising, with interest thereon at the rate or rates provided in such Related Documents and under such CCA Obligations.

(b) The principal of and interest on the Obligations shall be paid in full no later than the Maturity Date.

(c) The Town shall pay within thirty (30) days after demand:

(i) if an Event of Default shall have occurred, all costs and expenses of the Purchaser in connection with the enforcement (whether by means of legal proceedings or otherwise) of any of its rights under this Agreement, the other Related Documents and such other documents which may be delivered in connection therewith;

(ii) a fee for each amendment to this Agreement or any other Related Document or any consent or waiver by the Purchaser with respect to any Related Document, in each case, in a minimum amount of \$2,500 plus the reasonable fees and expenses of counsel to the Purchaser;

(iii) the reasonable fees and out of pocket expenses for counsel or other reasonably required consultants to the Purchaser in connection with advising the Purchaser as to its rights and responsibilities under this Agreement and the other Related Documents or in connection with responding to requests from the Town for approvals, consents and waivers; and

(iv) any amounts advanced by or on behalf of the Purchaser to the extent required to cure any Default, Event of Default or event of nonperformance hereunder or any Related Document, together with interest at the Default Rate.

Section 4.02. Increased Payments.

(a) *Increased Costs.* If, on or after the Effective Date, there occurs any Change in Law which:

(i) subjects the Purchaser, any other Holder, the Credit Protection Provider or the parent or holding company, if any, of any of the foregoing to any Taxes (other than Excluded Taxes), or changes the basis of taxation of payments (other than with respect to Excluded Taxes) to the Purchaser or any other Holder hereunder or with respect to the Obligations, or

(ii) imposes or increases or deems applicable any reserve, assessment, insurance charge, special deposit or similar requirement against assets of, deposits with or

for the account of, or credit extended by the Purchaser, any other Holder or the Credit Protection Provider, or

(iii) imposes any other condition the result of which is to increase the cost to the Purchaser, any other Holder, the Credit Protection Provider or the parent or holding company, if any, of any of the foregoing, with respect to this Agreement, the Obligations or its making, maintenance or funding of the Obligations or any security therefor, or reduces any amount receivable by the Purchaser, any other Holder or the Credit Protection Provider with respect to this Agreement, the Obligations, or the making, maintenance or funding of any loan, or requires the Purchaser or any other Holder to make any payment calculated by reference to any amount received with respect to this Agreement, the Obligations, or the making, maintenance or funding of any loan, by an amount deemed material by the Purchaser, other Holder or the Credit Protection Provider as the case may be, and the result of any of the foregoing is to increase the cost to such Purchaser, other Holder, the Credit Protection Provider or the parent or holding company, if any, with respect to this Agreement, the Obligations, or the making, maintenance or funding of the purchase of the Obligations or of participating the same or to reduce the amount received by the Purchaser, other Holder or the Credit Protection Provider, as the case may be, in connection with the same, then, within thirty (30) days of demand by the Purchaser, other Holder or the Credit Protection Provider, as the case may be, the Town shall, to the extent permitted by law, pay the Purchaser, other Holder or the Credit Protection Provider such additional amount or amounts as will compensate the Purchaser, other Holder, the Credit Protection Provider or the parent or holding company, if any, of any of the foregoing, for such increased cost or reduction in amount received.

(b) If the Purchaser, other Holder or the Credit Protection Provider determines the amount of capital or liquidity required or expected to be maintained by the Purchaser, other Holder, the Credit Protection Provider or any parent, holding company or entity controlling the Purchaser, other Holder or the Credit Protection Provider is increased as a result of (i) a Change in Law or (ii) any change on or after the Effective Date in the Risk-Based Capital Guidelines, then, within thirty (30) days of demand by the Purchaser, other Holder or the Credit Protection Provider, the Town shall, to the extent permitted by law, pay the Purchaser, other Holder or the Credit Protection Provider the amount necessary to compensate for any shortfall in the rate of return on the portion of such increased capital or liquidity which the Purchaser, other Holder or the Credit Protection Provider determines is attributable to this Agreement or the Obligations, as the case may be, hereunder (after taking into account the Purchaser, other Holder or the Credit Protection Provider's policies as to capital adequacy and liquidity).

(c) In connection with any costs imposed upon the Town by the Purchaser, other Holder, the Credit Protection Provider or any parent, holding company or entity controlling any of the foregoing, pursuant to this Section 4.02, the Purchaser, other Holder or the Credit Protection Provider shall (i) promptly notify the Town of such costs and (ii) provide the Town with a certificate as to such increased cost, increased capital, increased liquidity or reduction in return incurred by the Purchaser, other Holder or the Credit Protection Provider as a result of any event mentioned in paragraph (a) or (b) of this Section 4.02 setting forth, in reasonable detail, the basis for such calculation and the amount of such calculation submitted by the Purchaser, other Holder or the Credit Protection Provider to the Town which calculation shall be conclusive (absent manifest

error) as to the amount thereof. In making the determinations contemplated by the above referenced certificate, the Purchaser, other Holder or the Credit Protection Provider may make such reasonable estimates, assumptions, allocations and the like that the Purchaser, other Holder or the Credit Protection Provider in good faith determines to be appropriate.

(d) Failure or delay on the part of any Holder to demand compensation pursuant to this Section 4.02 shall not constitute a waiver of such Holders right to demand such compensation.

(e) Without prejudice to the survival of any other agreement of the Town hereunder, the agreements and obligations of the Town contained in this Section shall, to the extent permitted by law, survive the termination of this Agreement and the payment in full of the Obligations and the obligations of the Town thereunder and hereunder.

Section 4.03. Determination of Taxability. (a) In the event a Determination of Taxability occurs, to the extent not payable the Purchaser or any other Holder under the terms of the Trust Agreement and the Obligations, the Town hereby agrees to pay to the Purchaser or any other Holder on demand therefor (i) an amount equal to the difference between (A) the amount of interest that would have been paid to the Purchaser or any other Holder on the Obligations during the period for which interest on the Obligations is included in the gross income of the Purchaser or any other Holder if the Obligations had borne interest at the Taxable Rate, beginning on the Taxable Date (the “*Taxable Period*”), and (B) the amount of interest on the Obligations actually paid to the Purchaser or any other Holder during the Taxable Period, and (ii) an amount equal to any interest, penalties or charges owed by the Purchaser or any other Holder as a result of interest on the Obligations becoming included in the gross income of the Purchaser or any other Holder, together with any and all attorneys’ fees, court costs, or other out of pocket costs incurred by the Purchaser or any other Holder in connection therewith;

(b) Subject to the provisions of paragraph (c) below, the Purchaser or any other Holder shall afford the Town the opportunity, at the Town’s sole cost and expense, to contest (i) the validity of any amendment to the Code which causes the interest on the Obligations to be included in the gross income of the Purchaser or any other Holder or (ii) any challenge to the validity of the tax exemption with respect to the interest on the Obligations, including the right to direct the necessary litigation contesting such challenge (including administrative audit appeals); *provided* that, in no event shall a Holder be required to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Town or any other Person; and

(c) As a condition precedent to the exercise by the Town of its right to contest set forth in paragraph (b) above, the Town shall, on demand, immediately reimburse the Purchaser or any other Holder for any and all expenses (including attorneys’ fees for services that may be required or desirable, as determined by the Purchaser or any other Holder in its sole discretion) that may be incurred by the Purchaser or any other Holder in connection with any such contest, and shall, on demand, immediately reimburse the Purchaser or any other Holder for any payments, including any taxes, interest, penalties or other charges payable by the Purchaser or any other Holder for failure to include such interest on the Obligations in its gross income.

(d) *Survival.* Without prejudice to the survival of any other agreement of the Town hereunder, the agreements and obligations of the Town contained in this Section shall survive the termination of this Agreement and the payment in full of the Obligations and the obligations of the Town thereunder and hereunder.

Section 4.04. Default Rate. Upon the occurrence and during the continuance of an Event of Default, the Obligations and the CCA Obligations shall bear interest at the Default Rate, which shall be payable by the Town to each Holder (or, if applicable, the Purchaser) upon demand therefore and be calculated on the basis of a 360-day year and actual days elapsed.

Section 4.05. Maximum Interest Rate. (a) If the amount of interest payable for any period in accordance with the terms hereof or the Obligations exceeds the amount of interest that would be payable for such period had interest for such period been calculated at the Maximum Interest Rate, then interest for such period shall be payable in an amount calculated at the Maximum Interest Rate.

(b) Any interest that would have been due and payable for any period but for the operation of the immediately preceding paragraph (a) shall accrue and be payable as provided in this paragraph (b) and shall, less interest actually paid to each Holder for such period, constitute the “Excess Interest Amount.” If there is any accrued and unpaid Excess Interest Amount as of any date, then the principal amount with respect to which interest is payable shall bear interest at the Maximum Interest Rate until payment to each Holder of the entire Excess Interest Amount.

(c) Notwithstanding the foregoing, on the date on which no principal amount with respect to the Obligations remains unpaid, the Town shall pay to each Holder a fee equal to any accrued and unpaid Excess Interest Amount.

Section 4.06. Taxes. (a) Any and all payments by or on account of any obligation of the Town under any Related Document shall be made without deduction or withholding for any Taxes, except as required by applicable Law. If any applicable Law requires the deduction or withholding of any Tax from any such payment, then the Town shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law and, if such Tax is an Indemnified Tax or Other Tax, then the sum payable by the Town shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 4.06) the Holder receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) The Town shall timely pay to the relevant Governmental Authority in accordance with applicable Law or at the option of the applicable Holder timely reimburse it for the payment of, any Other Taxes.

(c) The Town shall, to the extent permitted by law, indemnify each Holder, within thirty (30) days after demand therefor, for the full amount of any Indemnified Taxes and Other Taxes (including Indemnified Taxes and Other Taxes imposed or asserted on or attributable to amounts payable under this Section 4.06) payable or paid by such Holder or required to be withheld or deducted from a payment to such Holder and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes and Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Town by a Holder shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Taxes by the Town to a Governmental Authority pursuant to this Section 4.06, the Town shall deliver to the applicable Holder the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment,

a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to such Holder.

(e) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 4.06 (including by the payment of additional amounts pursuant to this Section 4.06), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 4.06 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (e) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (e) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph (e) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(f) *Survival.* The obligations of the Town under this Section 4.06 shall survive the termination of this Agreement and the redemption, prepayment or other payment in full of the Obligations.

Section 4.07. Obligations Absolute. The payment obligations of the Town under this Agreement and the other Related Documents shall be unconditional and irrevocable, without setoff or counterclaim, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including without limitation the following:

- (a) any lack of validity or enforceability of this Agreement, the Obligations or any of the other Related Documents;
- (b) any amendment or waiver of or any consent to departure from all or any of the Related Documents;
- (c) the existence of any claim, set off, defense or other right which the Town may have at any time against the Purchaser, any other Holder or any other person or entity, whether in connection with this Agreement, the other Related Documents, the transactions contemplated herein or therein or any unrelated transaction; or
- (d) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

Notwithstanding this Section, the Purchaser acknowledges the Town may have the right to bring a collateral action with respect to one or more of the foregoing circumstances. The Town's payment obligations shall remain in full force and effect pending the final disposition of any such action. All fees

payable pursuant to this Agreement shall be deemed to be fully earned when due and non-refundable when paid.

Section 4.08. Funding Indemnity. In the event the Purchaser shall incur any loss, cost, or expense (including, without limitation, any loss, cost, or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired or contracted to be acquired by the Purchaser to purchase or hold the Obligations or the relending or reinvesting of such deposits or other funds or amounts paid or prepaid to the Purchaser) as a result of any redemption, acceleration, prepayment or conversion of the Obligations on a date other than an Interest Reset Date for any reason, whether before or after default, and whether or not such payment is required by any provision of this Agreement or any other Related Document, then upon the demand of the Purchaser, the Town shall, to the extent permitted by law, pay to the Purchaser a prepayment or conversion premium, as applicable in such amount as will reimburse the Purchaser for such loss, cost, or expense. If the Purchaser requests such prepayment or conversion premium, as applicable, it shall provide to the Town a certificate setting forth the computation of the loss, cost, or expense giving rise to the request for such redemption or conversion premium, as applicable in reasonable detail and such certificate shall be conclusive if reasonably determined. All of the Town's obligations under this Section 4.08 shall, to the extent permitted by law, survive the termination of this Agreement and the repayment, satisfaction or discharge of all other CCA Obligations.

Section 4.09. Purchaser Consent to Extension of Maturity Date. So long as the Purchaser is the Holder, on or before the date ninety (90) days prior to the end of the Maturity Date, the Town may provide written notice to the Purchaser of its desire to extend the Maturity Date. The Purchaser will make reasonable efforts to respond to such request within thirty (30) days after receipt of all information necessary, in the Purchaser's reasonable judgment, to permit the Purchaser to make an informed credit decision. The Purchaser may, in its sole and absolute discretion, decide to accept or reject any such request and no consent shall become effective unless the Purchaser shall have consented thereto in writing. In the event the Purchaser fails to definitively respond to such request within such thirty (30) day period, the Purchaser shall be deemed to have refused to grant such request. The consent of the Purchaser, if granted, shall be conditioned upon the preparation, execution and delivery of documentation in form and substance satisfactory to the Purchaser (which may include, but not be limited to the delivery of a "no adverse effect opinion" of Special Counsel to the Purchaser with respect to the tax-exempt status of the Obligations).

ARTICLE V

REPRESENTATIONS AND WARRANTIES

The Town makes the following representations and warranties to each Holder:

Section 5.01. Existence. The Town is a duly organized and validly existing municipal corporation and political subdivision of the State.

Section 5.02. Due Authorization. (a) The Town has the power, and has taken all necessary action to authorize the Related Documents to which it is a party, and to execute, deliver and perform its obligations under this Agreement and each of the other Related Documents to which it is a party in accordance with their respective terms.

(b) The Town is duly authorized and licensed to own its Property and to operate its business under the laws, rulings, regulations and ordinances of all Governmental Authorities having

the jurisdiction to license or regulate such Property or business activity and the departments, agencies and political subdivisions thereof, and the Town has obtained all requisite approvals of all such governing bodies required to be obtained for such purposes. All Governmental Approvals necessary for the Town to enter into this Agreement and the other Related Documents and to perform the transactions contemplated hereby and thereby and to conduct its business activities and own its property have been obtained and remain in full force and effect and are subject to no further administrative or judicial review. No other Governmental Approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by the Town of this Agreement or the due execution, delivery or performance by the Town of the Related Documents.

Section 5.03. Valid and Binding Obligations. This Agreement has been duly executed and delivered by one or more duly authorized officers of the Town, and each of the Related Documents, when executed and delivered by the Town will be, a legal, valid and binding obligation of the Town enforceable in accordance with its terms, except as such enforceability may be limited by (a) the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally, and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

Section 5.04. Noncontravention; Compliance with Law. (a) The execution, delivery and performance of this Agreement and each of the other Related Documents in accordance with their respective terms, to the extent permitted by law, do not and will not (i) require any consent or approval of any creditor of the Town, (ii) violate any Laws (including, without limitation, Regulations T, U or X of the FRB, or any successor regulations), (iii) conflict with, result in a breach of or constitute a default under any contract or by which it or any of its Property may be bound or (iv) result in or require the creation or imposition of any Lien upon or with respect to any Property now owned or hereafter acquired by the Town except such Liens, if any, expressly created by any Related Document.

(b) The Town is in compliance with all Laws, except for such noncompliance that, singly or in the aggregate, has not caused or is not reasonably expected to cause a Material Adverse Effect.

Section 5.05. Pending Litigation and Other Proceedings. There is no action, suit or proceeding pending in any court, any other governmental authority with jurisdiction over the Town or any arbitration in which service of process has been completed against the Town or, to the knowledge of the Town, any other action, suit or proceeding pending or threatened in any court, any other governmental authority with jurisdiction over the Town or any arbitrator, in either case against the Town or any of its properties or revenues, or any of the Related Documents to which it is a party, which if determined adversely to the Town would adversely affect the rights, security, interests or remedies of the Purchaser hereunder or under any of the other Related Documents or which is reasonably likely to result in a Material Adverse Effect, except any action, suit or proceeding which has been brought prior to the Effective Date as to which the Purchaser has received an opinion of counsel satisfactory to the Purchaser, in form and substance satisfactory to the Purchaser and the Purchaser's legal counsel, to the effect that such action, suit or proceeding is without substantial merit.

Section 5.06. Financial Statements. The audited financial statements of the Town as at June 30, 2020, and the related consolidated statement of activities and changes in net assets and the consolidated statement of cash flows for the Fiscal Year then ended, and accompanying notes thereto, which financial

statements, accompanied by the audit report of the Town's independent public accountants, heretofore furnished to the Purchaser, which are consistent in all material respects with the audited financial statements of the Town for the Fiscal Year ended June 30, 2019, fairly present the financial condition of the Town in all material respects as of such dates and the results of its operations for the periods then ended in conformity with GAAP. Since June 30, 2020, there has been no material adverse change in the financial condition or operations of the Town that could reasonably be expected to result in a Material Adverse Effect.

Section 5.07. Employee Benefit Plan Compliance. The Town has no funding liability or obligation currently due and payable with respect to any employee benefit plan which could reasonably be expected to result in a Material Adverse Effect. The Town and each employee benefit plan is in compliance in all material respects with the terms of any such plan and applicable law related thereto. Neither the Town nor a member of the Controlled Group is subject to ERISA or maintains a Plan.

Section 5.08. No Defaults. No default by the Town has occurred and is continuing in the payment of the principal of or premium, if any, or interest on any Revenue Secured Obligation including, without limitation, regularly scheduled payments on Swap Agreement which constitute Revenue Secured Obligations. No bankruptcy, insolvency or other similar proceedings pertaining to the Town or any agency or instrumentality of the Town are pending or presently contemplated. No Default or Event of Default has occurred and is continuing hereunder. No "default" or "event of default" under, and as defined in, any of the other Related Documents has occurred and is continuing. The Town is not presently in default under any material agreement to which it is a party which could reasonably be expected to have a Material Adverse Effect. The Town is not in violation of any material term of the organizational documents or authorizing legislation applicable to the Town or any material term of any bond indenture or agreement to which it is a party or by which any of its Property is bound which could reasonably be expected to result in a Material Adverse Effect.

Section 5.09. Correct Information. All information, reports and other papers and data with respect to the Town furnished by the Town to the Purchaser in connection with this Agreement were, at the time the same were so furnished, correct in all material respects. Any financial, budget and other projections furnished by the Town to the Purchaser in connection with this Agreement were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of conditions existing at the time of delivery of such financial, budget or other projections, and represented, and as of the date of this representation, represent (subject to the updating or supplementation of any such financial, budget or other projections by any additional information provided to the Purchaser in writing, the representations contained in this Agreement being limited to financial, budget or other projections as so updated or supplemented), in the judgment of the Town, a reasonable, good faith estimate of the information purported to be set forth, it being understood that uncertainty is inherent in any projections and that no assurance can be given that the results set forth in the projections will actually be obtained. No fact is known to the Town that materially and adversely affects or in the future may (as far as it can reasonably foresee) materially and adversely affect the security for any of the Obligations, or the ability of the Town to repay when due the CCA Obligations, that has not been set forth in the financial statements and other documents referred to in this Section or in such information, reports, papers and data or otherwise disclosed in writing to the Purchaser. The documents furnished and statements made by the Town in connection with the negotiation, preparation or execution of this Agreement and the Related Documents do not contain untrue statements of material facts or omit to state material facts necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

Section 5.10. Investment Company. The Town is not an “investment company” or a company “controlled” by an “investment company,” as such terms are defined in the Investment Company Act of 1940, as amended.

Section 5.11. Margin Stock. The Town is not engaged in the business of extending credit for the purpose of purchasing or carrying Margin Stock, and no part of the proceeds from the issuance of the Obligations will be used to purchase or carry any such Margin Stock or extend credit to others for the purpose of purchasing or carrying such Margin Stock.

Section 5.12. Usury. None of the Related Documents or the Obligations provide for any payments that would violate any applicable law regarding permissible maximum rates of interest.

Section 5.13. Security. The Obligations are payable from the payments to be made by the Town pursuant to the Purchase Agreement. To secure the Payments, the Trust Agreement creates, for the benefit of the owners of the Obligations, the legally valid, binding and irrevocable subordinate lien on and pledge of the revenues from the Excise Taxes and the State Shared Revenues. No filing, registration, recording or publication of the Trust Agreement, the Purchase Agreement or any other instrument is required to establish the pledge provided for thereunder or to perfect, protect or maintain the subordinate lien created thereby on the revenues from the Excise Taxes and the State Shared Revenues to secure the Obligations.

Section 5.14. Pending Legislation and Decisions. There is no amendment, or to the knowledge of the Town, proposed amendment to the Constitution of the State or any State law or any administrative interpretation of the Constitution of the State or any State law, or any legislation that has passed either house of the legislature of the State, or any judicial decision interpreting any of the foregoing, the effect of which will materially adversely affect the issuance of any of the Obligations, the security for any of the Obligations, or any CCA Obligation, the creation, organization, or existence of the Town or the titles to office of any officers executing this Agreement or any Related Documents or the Town’s ability to repay when due its obligations under this Agreement, any of the Obligations or any other CCA Obligation.

Section 5.15. Trustee. U.S. Bank National Association is the duly appointed and acting Trustee for the Obligations.

Section 5.16. No Immunity. The Town is not entitled to claim immunity on the grounds of sovereignty or other similar grounds (including, without limitation, governmental immunity) from any action, suit or other proceeding arising under or relating to this Agreement or any other Related Document.

Section 5.17. Anti-Corruption Laws; Sanctions. (a) To the knowledge of the Town, the Town and its officers, employees, directors and agents are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. To the knowledge of the Town, neither the Town, nor any of its directors, agents, officers or employees are a Sanctioned Person. Neither the Obligations, the use of the proceeds of the Obligations or the other transactions contemplated hereby will violate Anti-Corruption Laws or applicable Sanctions.

(b) Neither the purchase of the Obligations nor the use of the proceeds thereof will violate the Patriot Act, the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or successor statute thereto. The Town is in compliance in all material respects with the Patriot Act.

ARTICLE VI

COVENANTS OF THE TOWN

The Town covenants and agrees, until the full and final payment and satisfaction of all of the CCA Obligations, except in any instance in which the Purchaser specially agrees in writing to any performance or noncompliance, that:

Section 6.01. Existence. The Town shall maintain its existence as a municipal corporation and political subdivision of the State.

Section 6.02. Compliance with Laws; Taxes and Assessments. The Town shall comply with all Laws applicable to it and its Property (including all applicable Anti-Corruption Laws and applicable Sanctions), except where noncompliance could not reasonably be expected to result in a Material Adverse Effect, such compliance to include, without limitation, paying all taxes, assessments and governmental charges imposed upon it or its Property before the same become delinquent, unless and to the extent that the same are being contested in good faith and by appropriate proceedings and reserves are provided therefor that in the opinion of the Town are adequate.

Section 6.03. Reports. The Town shall furnish or provide notice that such information has been posted to the Town's website or EMMA and is publicly available to the Purchaser in form and detail satisfactory to the Purchaser:

(a) *Annual Report.* As soon as available, and in any event within two hundred seventy (270) days after the end of the Fiscal Year, the annual audited financial statements of the Town together with (1) the opinion of the Town's independent accountants and (2) a Compliance Certificate signed by the chief financial officer of the Town stating that no Event of Default or Default has occurred, or if such Event of Default or Default has occurred, specifying the nature of such Event of Default or Default, the period of its existence, the nature and status thereof and any remedial steps taken or proposed to correct such Event of Default or Default.

(b) *Unaudited Quarterly Financials.* As soon as available, and in any event within sixty (60) days after each of the first three quarters of each Fiscal Year, the unaudited financial statements of the Town, including the balance sheet as of the end of such quarter and a statement of income and expenses, all in reasonable detail and certified, subject to year-end adjustment, by a Town Representative.²

(c) *Budget.* As soon as available, and in any event within sixty (60) days following the approval thereof, the operating budget of the Town.

(d) *Trustee Notices.* As soon as available all notices, certificates, instruments, letters and written commitments in connection with the Obligations provided to the Trustee other than those notices, certificates, instruments, letters and written commitments that relate solely to the routine issuance and payment of the Obligations.

² Drafting Note: Interim financials to be discussed by Bank and Town.

(e) *Notices of Resignation of the Trustee.* As promptly as practicable, written notice to the Purchaser of any resignation of the Trustee immediately upon receiving notice of the same.

(f) *Notice of Default or Event of Default.* (i) Promptly upon obtaining knowledge of any Default or Event of Default, or notice thereof, and in any event within five (5) days thereafter, a certificate signed by a Town Representative specifying in reasonable detail the nature and period of existence thereof and what action the Town has taken or proposes to take with respect thereto; (ii) promptly following a written request of the Purchaser, a certificate of a Town Representative as to the existence or absence, as the case may be, of a Default or an Event of Default under this Agreement; and (iii) promptly upon obtaining knowledge of any “default” or “event of default” as defined under any Bank Agreement, notice specifying in reasonable detail the nature and period of existence thereof and what action the Town has taken or proposes to take with respect thereto.

(g) *Litigation.* As promptly as practicable, written notice to the Purchaser of all actions, suits or proceedings pending or threatened against the Town in any court or before any arbitrator of any kind or before any governmental authority which could reasonably be expected to result in a Material Adverse Effect.

(h) *Patriot Act.* The Town shall provide such information and take such actions as are reasonably requested by the Purchaser in order to assist the Purchaser in maintaining compliance with the Patriot Act.

(i) *Other Information.* Such other information regarding the business affairs, financial condition and/or operations of the Town as the Purchaser may from time to time reasonably request.

Section 6.04. Maintenance of Books and Records. The Town will keep proper books of record and account in which full, true and correct entries in accordance with GAAP. All financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the financial statements, except as otherwise specifically prescribed herein. Except as provided in the immediately preceding sentence, in preparing any financial data or statements contemplated or referred to in this Agreement, the Town shall not vary or modify the accounting methods or principles from the accounting standards employed in the preparation of its audited financial statements described in Section 5.06 hereof.

Section 6.05. Access to Books and Records. To the extent permitted by law, the Town will permit any Person designated by the Purchaser (at the expense of the Purchaser, unless and until a Default or Event of Default has occurred, at which time such expenses shall be borne by the Town) to visit any of the offices of the Town to examine the books and financial records (except books and financial records the examination of which by the Purchaser is prohibited by law or by attorney or client privilege), including minutes of meetings of any relevant governmental committees or agencies, and make copies thereof or extracts therefrom, and to discuss the affairs, finances and accounts of the Town with their principal officers, employees and independent public accountants, all at such reasonable times and as often as the Purchaser may reasonably request.

Section 6.06. Compliance With Documents. The Town agrees that it will perform and comply with each and every covenant and agreement required to be performed or observed by it in the Trust Agreement

and each of the other Related Documents to which it is a party, which provisions, as well as related defined terms contained therein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety all of which shall be deemed to be made for the benefit of the Purchaser and shall be enforceable against the Town. To the extent that any such incorporated provision permits the Town or any other party to waive compliance with such provision or requires that a document, opinion or other instrument or any event or condition be acceptable or satisfactory to the Town or any other party, for purposes of this Agreement, such provision shall be complied with unless it is specifically waived by the Purchaser in writing and such document, opinion or other instrument and such event or condition shall be acceptable or satisfactory only if it is acceptable or satisfactory to the Purchaser which shall only be evidenced by the written approval by the Purchaser of the same. Except as permitted by Section 6.14 hereof, no termination or amendment to such covenants and agreements or defined terms or release of the Town with respect thereto made pursuant to the Trust Agreement or any of the other Related Documents, shall be effective to terminate or amend such covenants and agreements and defined terms or release the Town with respect thereto in each case as incorporated by reference herein without the prior written consent of the Purchaser. Notwithstanding any termination or expiration of the Trust Agreement or any such other Related Document, the Town shall continue to observe the covenants therein contained for the benefit of the Purchaser until the termination of this Agreement and the payment in full of the Obligations and all other CCA Obligations. All such incorporated covenants shall be in addition to the express covenants contained herein and shall not be limited by the express covenants contained herein nor shall such incorporated covenants be a limitation on the express covenants contained herein.

Section 6.07. Rate Covenant. The Town covenants and agrees that it shall take any and all action necessary such that the revenues from the Excise Taxes and the State Shared Revenues in each Fiscal Year shall equal an amount of at least 1.25x the total of the interest and principal requirements for such Fiscal Year for all Revenue Secured Obligations.

Section 6.08. Additional Debt Test. The Town will not issue and/or incur any Revenue Secured Obligations, unless the revenues from the Excise Taxes and the State Shared Revenues, when combined mathematically for such purpose only, in the most recent completed Fiscal Year, shall be at least 2.0x the highest combined interest and principal requirements for any succeeding Fiscal Year for all currently outstanding Revenue Secured Obligations and the Revenue Secured Obligations to be issued.

Section 6.09. Draw Schedule. Subject to voluntary reductions of the Commitment Amount pursuant to Section 2.03 hereof, the cumulative Advances made hereunder shall not be less than (i) \$34,500,000, three months after the Effective Date; (ii) \$44,000,000, six months after the Effective Date; (iii) \$53,500,000, nine months after the Effective Date; (iv) \$61,375,000, twelve months after the Effective Date; (v) \$69,250,000, fifteen months after the Effective Date; (vi) \$77,125,000, eighteen months after the Effective Date and (vi) \$85,000,000, twenty-four months after the Effective Date.

Section 6.10. Preservation of Pledge; No Impairment. The Town shall take all necessary action to defend, maintain and preserve the pledge of the revenues from the Excise Taxes and the State Shared Revenues securing the Obligations and the payment and performance of the Town's obligations hereunder and under the Obligations and the Town will neither take any action, nor cause the Trustee to take any action, under the Trust Agreement or any other Related Document which would materially adversely affect the rights, interests, remedies or security of the Purchaser under this Agreement or any other Related Document or which could reasonably be expected to result in a Material Adverse Effect

Section 6.11. Trustee. The Town will not, without the prior written consent of the Purchaser (which consent shall not be unreasonably withheld) remove, or seek to remove, the Trustee. The Town shall at all times maintain a Trustee pursuant to the terms of the Trust Agreement that is acceptable to the Purchaser.

Section 6.12. Related Documents. Subject to or as otherwise set forth in Section 9.01(b), the Town shall not modify, amend or consent to any modification, amendment or waiver in any material respect of any Related Document without the prior written consent of the Purchaser.

Section 6.13. Notices of Redemptions. The Town shall provide thirty (30) days written notice to the Purchaser prior to the date of any proposed optional redemption or purchase in lieu of redemption of Obligations pursuant to the Trust Agreement.

Section 6.14. Other Agreements. In the event that the Town shall, directly or indirectly, enter into or otherwise consent to any Bank Agreement which such Bank Agreement provides such Person with different or more restrictive covenants, different or additional events of default and/or greater rights and remedies than are provided to the Purchaser in this Agreement, the Town shall provide the Purchaser with a copy of each such Bank Agreement and such different or more restrictive covenants, different or additional events of default and/or greater rights and remedies shall automatically be deemed to be incorporated into this Agreement and the Purchaser shall have the benefits of such different or more restrictive covenants, different or additional events of default and/or greater rights and remedies as if specifically set forth herein. The Town shall promptly enter into an amendment to this Agreement to include different or more restrictive covenants, different or additional events of default and/or greater rights and remedies; provided that the Purchaser shall have and maintain the benefit of such different or more restrictive covenants, different or additional events of default and/or greater rights and remedies even if the Town fails to provide such amendment.

Section 6.15. Immunity from Jurisdiction. To the fullest extent permitted by applicable law, the Town agrees that it will not assert or claim any immunity on the grounds of sovereignty or other similar grounds (including, without limitation, governmental immunity) from any action, suit or other proceeding arising under or relating to this Agreement or any other Related Document.

Section 6.16. Maintenance of Tax-Exempt Status of Obligations. The Town shall not take any action or omit to take any action which, if taken or omitted, would adversely affect the tax-exempt status of the Obligations.

Section 6.17. Use of Proceeds. The Town shall not use any portion of the proceeds of the Obligations for the purpose of carrying or purchasing any Margin Stock and shall not incur any Debt which is to be reduced, retired or purchased by the Town out of such proceeds. The Town shall not use or allow to be used, and its directors, officers, employees and agents shall not use or allow to be used, the proceeds of any of the Obligations (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or (ii) in any manner that would result in the violation of any applicable Sanctions.

Section 6.18. Underlying Rating. The Town shall at all times maintain a rating on its long-term unenhanced Revenue Secured Obligations from any of Moody's, S&P or Fitch.

Section 6.19. ERISA. The Town shall not be, and shall not permit a member of the Controlled Group to be, subject to ERISA and shall not maintain, nor permit a member of the Controlled Group to maintain, a Plan. The Town and each employee benefit plan shall remain in compliance in all material respects with the terms of any such plan and applicable law related thereto.

ARTICLE VII

EVENTS OF DEFAULT

Section 7.01. Events of Default. The occurrence of any of the following events (whatever the reason for such event and whether voluntary, involuntary, or effected by operation of Law) shall be an “Event of Default” hereunder, unless waived in writing by Purchaser:

- (a) the Town shall fail to pay the principal of or interest on the Obligations when due;
- (b) the Town shall fail to pay any CCA Obligation (other than the obligation to pay the principal of or interest on the Obligations) when due and such failure shall continue for three (3) Business Days;
- (c) any representation or warranty made by or on behalf of the Town in this Agreement or in any other Related Document or in any certificate or statement delivered hereunder or thereunder shall be incorrect or untrue in any material respect when made or deemed to have been made or delivered;
- (d) the Town shall default in the due performance or observance of any of the covenants set forth in Sections 6.01, 6.06, 6.07, 6.10, 6.11, 6.12, 6.15 and 6.17 hereof;
- (e) the Town shall default in the due performance or observance of any other term, covenant or agreement contained in this Agreement or any other Related Document and such default shall remain unremedied for a period of thirty (30) days after the occurrence thereof;
- (f) the Town shall (i) have entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) become insolvent or shall not pay, or be unable to pay, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (v) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshalling of assets, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) take any corporate action in furtherance of any matter described in parts (i) through (v) above, or (vii) fail to contest in good faith any appointment or proceeding described in Section 7.01(g) of this Agreement;
- (g) a custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for the Town or any substantial part of its Property, or a proceeding described in Section

7.01(f)(v) shall be instituted against the Town and such proceeding continues undischarged or any such proceeding continues undismissed or unstayed for a period of thirty (30) or more days;

(h) a debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal of or interest on any Debt of the Town by the Town or any Governmental Authority with appropriate jurisdiction;

(i) any material provision of this Agreement or any other Related Document shall at any time for any reason cease to be valid and binding on the Town as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction or shall be declared in a final non appealable judgment by any court with competent jurisdiction to be null and void, invalid, or unenforceable, or the validity or enforceability thereof shall be publicly contested by the Town;

(j) dissolution or termination of the existence of the Town;

(k) the Town shall (i) default on the payment of the principal of or interest on any indebtedness or obligations secured by Excise Taxes or State Shared Revenues including, without limitation, any regularly scheduled payments on Swap Agreements which are secured by Excise Taxes or State Shared Revenues, beyond the period of grace, if any, provided in the instrument or agreement under which such indebtedness or obligation was created or incurred; or (ii) default in the observance or performance of any agreement or condition relating to any indebtedness or obligations secured by Excise Taxes or State Shared Revenues or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event shall occur or condition exist, the effect of which default, event of default or similar event or condition is to cause (determined without regard to whether any notice is required and subject to the expiration of any applicable grace periods), the holders (or any trustee or other Person on their behalf) of such indebtedness or obligations to exercise remedies thereunder;

(l) any final, unappealable judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes, which are not covered in full by insurance, with written acknowledgement of such coverage having been provided by the provider of such insurance coverage to the Purchaser, in an aggregate amount in excess of \$10,000,000 shall be entered or filed against the Town or against any of its Property and remain unpaid, unvacated, unbonded or unstayed for a period of thirty (30) days;

(m) any “event of default” under any Related Document (as defined respectively therein) shall have occurred; or

(n) any of Fitch, Moody’s or S&P shall have downgraded its rating of any long term unenhanced Revenue Secured Obligations of the Town to below “BBB+” (or its equivalent), “Baa1” (or its equivalent), or “BBB+” (or its equivalent) respectively, or suspended or withdrawn its rating of the same.

Section 7.02. Consequences of an Event of Default. If an Event of Default specified in Section 7.01 hereof shall occur and be continuing, the Purchaser may take one or more of the following actions at any time and from time to time (regardless of whether the actions are taken at the same or different times):

- (a) the obligation of the Purchaser to make Advances under this Agreement shall automatically terminate;
- (b) deliver a written notice to the Trustee and the Town that an Event of Default has occurred and is continuing and direct the Trustee and the Town, as applicable, to take such remedial actions as are provided for in the Trust Agreement;
- (c) either personally or by attorney or agent without bringing any action or proceeding, or by a receiver to be appointed by a court in any appropriate action or proceeding, take whatever action at law or in equity may appear necessary or desirable to collect the amounts due and payable under the Related Documents or to enforce performance or observance of any obligation, agreement or covenant of the Town under the Related Documents, whether for specific performance of any agreement or covenant of the Town or in aid of the execution of any power granted to the Purchaser in the Related Documents;
- (d) cure any Default, Event of Default or event of nonperformance hereunder or under any Related Document; provided, however, that the Purchaser shall have no obligation to effect such a cure; and
- (e) exercise, or cause to be exercised, any and all remedies as it may have under the Related Documents and as otherwise available at law and at equity.

Section 7.03. Remedies Cumulative; Solely for the Benefit of Purchaser. To the extent permitted by, and subject to the mandatory requirements of, applicable Law, each and every right, power and remedy herein specifically given to the Purchaser in the Related Documents shall be cumulative, concurrent and nonexclusive and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy (whether specifically herein given or otherwise existing) may be exercised from time to time and as often and in such order as may be deemed expedient by the Purchaser, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy.

The rights and remedies of the Purchaser specified herein are for the sole and exclusive benefit, use and protection of the Purchaser, and the Purchaser is entitled, but shall have no duty or obligation to the Town, the Trustee or any other Person or otherwise, to exercise or to refrain from exercising any right or remedy reserved to the Purchaser hereunder or under any of the other Related Documents.

Section 7.04. Waivers or Omissions. No delay or omission by the Purchaser in the exercise of any right, remedy or power or in the pursuit of any remedy shall impair any such right remedy or power or be construed to be a waiver of any default on the part of the Purchaser or to be acquiescence therein. No express or implied waiver by the Purchaser of any Event of Default shall in any way be a waiver of any future or subsequent Event of Default.

Section 7.05. Discontinuance of Proceedings. In case the Purchaser shall proceed to invoke any right, remedy or recourse permitted hereunder or under the Related Documents and shall thereafter elect to discontinue or abandon the same for any reason, the Purchaser shall have the unqualified right so to do and, in such event, the Town and the Purchaser shall be restored to their former positions with respect to the

CCA Obligations, the Related Documents and otherwise, and the rights, remedies, recourse and powers of the Purchaser hereunder shall continue as if the same had never been invoked.

ARTICLE VIII

INDEMNIFICATION

Section 8.01. Indemnification. In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant hereto or under law or equity, the Town hereby agrees (to the extent permitted by law) to indemnify and hold harmless each Holder or Credit Protection Provider and its officers, directors and agents (each, an “*Indemnitee*”) from and against any and all claims, damages, losses, liabilities, reasonable costs or expenses whatsoever (including reasonable attorneys’ fees) which may incur or which may be claimed against an Indemnitee by any Person or entity whatsoever (collectively, the “*Liabilities*”) by reason of or in connection with (a) the execution and delivery or transfer of, or payment or failure to pay under, any Related Document; (b) the issuance and sale of the Obligations; (c) the use of the proceeds of the Obligations; or (d) any actual or alleged presence or release of Hazardous Materials on or from any Property owned or operated by the Town, any environmental liability related in any way to the Town; *provided* that the Town shall not be required to indemnify an Indemnitee for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the willful misconduct or negligence of such Indemnitee. Nothing under this Section 8.01 is intended to limit the Town’s payment of the CCA Obligations. The obligations of the Town under this Article VIII shall survive the payment of the Obligations and the termination of this Agreement.

ARTICLE IX

MISCELLANEOUS

Section 9.01. Patriot Act Notice. The Purchaser hereby notifies the Town that pursuant to the requirements of the Patriot Act it is required to obtain, verify and record information that identifies the Town, which information includes the name and address of the Town and other information that will allow the Purchaser to identify the Town in accordance with the Patriot Act. The Town hereby agrees that it shall promptly provide such information upon request by the Purchaser.

Section 9.02. Further Assurances. From time to time upon the request of either party hereto, the other shall promptly and duly execute, acknowledge and deliver any and all such further instruments and documents as the requesting party may in its reasonable discretion deem necessary or desirable to confirm this Agreement, and the other Related Documents, to carry out the purpose and intent hereof and thereof or to enable the requesting party to enforce any of its rights hereunder or thereunder. At any time, and from time to time, upon request by the Purchaser, the Town will, at the Town’s expense, correct any defect, error or omission which may be discovered in the form or content of any of the Related Documents. Upon any failure by the Town to do so, the Purchaser or the Trustee may make, execute and record any and all such instruments, certificates and other documents for and in the name of the Town, all at the sole expense of the Town, and the Town hereby appoints the Purchaser and the Trustee the agent and attorney-in-fact of the Town to do so, this appointment being coupled with an interest and being irrevocable. In addition, at any time, and from time to time, upon request by the Purchaser or the Trustee, the Town will, at the Town’s expense, provide any and all further instruments, certificates and other documents as may, in the opinion of the Purchaser or the Trustee, be necessary or desirable in order to verify the Town’s identity and background in a manner satisfactory to the Purchaser or the Trustee, as the case may be.

The Trustee: U.S. Bank National Association
 LM-AZ-X16P
 101 North First Avenue, Suite 1600
 Phoenix, Arizona 85003
 Attention: Global Corporate Trust
 Facsimile: () []
 Telephone: () []
 Email: []

The Purchaser may rely on any notice (including telephone communication) purportedly made by or on behalf of the other, and shall have no duty to verify the identity or authority of the Person giving such notice, unless such actions or omissions would amount to gross negligence or intentional misconduct.

Section 9.06. Right of Setoff. (a) Upon the occurrence of an Event of Default, a Holder may, at any time and from time to time, without notice to the Town or any other person (any such notice being expressly waived), set off and appropriate and apply against and on account of any CCA Obligations under this Agreement, without regard to whether or not such Holder shall have made any demand therefor, and although such CCA Obligations may be contingent or unmatured, any and all deposits (general or special, including but not limited to deposits made pursuant to this Agreement and Debt evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts, such as restricted donor accounts) and any other Debt at any time held or owing by such Holder to or for the credit or the account of any or all of the Town.

(b) Each Holder agrees promptly to notify the Town after any such set off and application referred to in subsection (a) above, provided that the failure to give such notice shall not affect the validity of such set off and application. Subject to the provisions of subsection (a) above, the rights of a Holder under this Section 9.06 are in addition to other rights and remedies (including, without limitation, other rights of set off) which such Holder may have.

Section 9.07. No Third-Party Rights. Nothing in this Agreement, whether express or implied, shall be construed to give to any Person other than the parties hereto and the Holders any legal or equitable right, remedy or claim under or in respect of this Agreement, which is intended for the sole and exclusive benefit of the parties hereto.

Section 9.08. Severability. The provisions of this Agreement are intended to be severable. If any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

Section 9.09. Governing Law; Consent to Jurisdiction and Venue; Waiver of Jury Trial. (a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS.

(b) EACH PARTY HERETO CONSENTS TO AND SUBMITS TO IN PERSONAM JURISDICTION AND VENUE IN THE STATE AND IN THE FEDERAL DISTRICT COURTS WHICH ARE LOCATED IN THE STATE. EACH PARTY ASSERTS THAT IT HAS PURPOSEFULLY AVAILED ITSELF OF THE BENEFITS OF THE LAWS OF THE STATE

AND WAIVES ANY OBJECTION TO IN PERSONAM JURISDICTION ON THE GROUNDS OF MINIMUM CONTACTS, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY PLEA OF FORUM NON CONVENIENS. THIS CONSENT TO AND SUBMISSION TO JURISDICTION IS WITH REGARD TO ANY ACTION RELATED TO THIS AGREEMENT. REGARDLESS OF WHETHER THE PARTY'S ACTIONS TOOK PLACE IN THE STATE OR ELSEWHERE IN THE UNITED STATES, THIS SUBMISSION TO JURISDICTION IS NONEXCLUSIVE, AND DOES NOT PRECLUDE EITHER PARTY FROM OBTAINING JURISDICTION OVER THE OTHER IN ANY COURT OTHERWISE HAVING JURISDICTION.

(c) TO THE EXTENT PERMITTED BY APPLICABLE LAWS, EACH OF THE PARTIES HERETO HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE RELATED DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.

(d) The covenants and waivers made pursuant to this Section 9.09 shall be irrevocable and unmodifiable, whether in writing or orally, and shall be applicable to any subsequent amendments, renewals, supplements or modifications of this Agreement. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

Section 9.10. Prior Understandings. This Agreement and the other Related Documents supersede all other prior understandings and agreements, whether written or oral, among the parties hereto relating to the transactions provided for herein and therein.

Section 9.11. Duration. All representations and warranties of the Town contained herein or made in connection herewith shall survive the making of and shall not be waived by the execution and delivery of this Agreement or the other Related Documents. All covenants and agreements of the Town contained herein shall continue in full force and effect from and after the date hereof until the CCA Obligations have been fully discharged.

Section 9.12. Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

Section 9.13. Successors and Assigns.

(a) *Successors and Assigns Generally.* This Agreement is a continuing obligation and shall be binding upon the Town, its successors, transferees and assigns and shall inure to the benefit of the Holders and their respective permitted successors, transferees and assigns. The Town may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Purchaser. Each Holder may, in its sole discretion and in accordance with applicable Law, from time to time assign, sell or transfer in whole or in part, this Agreement, its interest in the Obligations and the Related Documents in accordance with the provisions of paragraph (b) or (c) of this Section. Each Holder may at any time and from time to time enter into participation agreements in accordance with the provisions of paragraph (d) of this Section. Each Holder may at any time pledge or assign a security interest subject to the restrictions of paragraph (e) of this

Section. U.S. Bank National Association shall be the Purchaser hereunder until such time as the Majority Holder designates an alternate Person to serve as the Purchaser hereunder by delivery of written notice to the Town and the Trustee and such Person accepts and agrees to act as the Purchaser hereunder and under the Related Documents. The Majority Holder may so designate an alternate Person to act as the Purchaser from time to time. Upon acceptance and notification thereof to the Town and the Trustee, the successor to the Purchaser for such purposes shall thereupon succeed to and become vested with all of the rights, powers, privileges and responsibilities of the Purchaser, and U.S. Bank National Association or any other Person being replaced as the Purchaser shall be discharged from its duties and obligations as the Purchaser hereunder.

(b) *Sales and Transfers by Holder to a Purchaser Transferee.* Without limitation of the foregoing generality, a Holder may at any time sell or otherwise transfer to one or more transferees all or a portion of the Obligations to a Person that is (i) an Affiliate of the Purchaser or (ii) a trust or other custodial arrangement established by the Purchaser or an Affiliate of the Purchaser (each, a “*Purchaser Transferee*”). From and after the date of such sale or transfer, U.S. Bank National Association (and its successors) shall continue to have all of the rights of the Purchaser hereunder and under the other Related Documents as if no such transfer or sale had occurred; provided, however, that (A) no such sale or transfer referred to in clause (b)(i) or (b)(ii) hereof shall in any way affect the obligations of the Purchaser hereunder, (B) the Town and the Trustee shall be required to deal only with the Purchaser with respect to any matters under this Agreement and (C) in the case of a sale or transfer referred to in clause (b)(i) or (b)(ii) hereof, only the Purchaser shall be entitled to enforce the provisions of this Agreement against the Town.

(c) *Sales and Transfers by Holder to a Non-Purchaser Transferee.* Without limitation of the foregoing generality, a Holder may at any time sell or otherwise transfer all or any portion of the Obligations to one or more transferees which are not Purchaser Transferees but each of which constitutes a “qualified institutional buyer” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended, or an “accredited investor” as defined in Rule 501 of Regulation D under the Securities Act of 1933 Act, as amended (each a “*Non-Purchaser Transferee*”) if (A) written notice of such sale or transfer, including that such sale or transfer is to a Non Purchaser Transferee, together with addresses and related information with respect to the Non Purchaser Transferee, shall have been given to the Town, the Trustee and the Purchaser (if different than the Holder) by such selling Holder and Non-Purchaser Transferee, and (B) the Non Purchaser Transferee shall have delivered to the Town, the Trustee and the selling Holder, an investment letter in substantially the form attached as Exhibit C hereto (the “*Purchaser Letter*”).

From and after the date the Town, the Trustee and the selling Holder have received written notice and an executed Purchaser Letter, (A) the Non Purchaser Transferee thereunder shall be a party hereto and shall have the rights and obligations of a Holder hereunder and under the other Related Documents, and this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to effect the addition of the Non Purchaser Transferee, and any reference to the assigning Holder hereunder and under the other Related Documents shall thereafter refer to such transferring Holder and to the Non Purchaser Transferee to the extent of their respective interests, and (B) if the transferring Holder no longer owns any Obligations, then it shall relinquish its rights and be released from its obligations hereunder and under the Related Documents.

(d) *Participations.* The Purchaser shall have the right to grant participations in all or a portion of the Purchaser’s interest in the Obligations, this Agreement and the other Related

Documents to one or more other banking institutions; provided, however, that (i) no such participation by any such participant shall in any way affect the obligations of the Purchaser hereunder and (ii) the Town and the Trustee shall be required to deal only with the Purchaser, with respect to any matters under this Agreement, the Obligations and the other Related Documents and no such participant shall be entitled to enforce any provision hereunder against the Town.

(e) *Certain Pledges.* In addition to the rights of the Purchaser set forth above, the Purchaser may at any time pledge or grant a security interest in all or any portion of its rights or interests under the Obligations, this Agreement and/or the Related Documents to secure obligations of the Purchaser or an Affiliate of the Purchaser, including any pledge or assignment to secure obligations to a Federal Reserve Bank or to any state or local governmental entity or with respect to public deposits; provided that no such pledge or assignment shall release the Purchaser from any of its obligations hereunder or substitute any such pledgee or assignee for the Purchaser as a party hereto.

Section 9.14. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 9.15. Acknowledge and Appointment as the Calculation Agent. The Purchaser hereby acknowledges and accepts its appointment as Calculation Agent pursuant to the Trust Agreement and acknowledges, accepts and agrees to all the duties and obligations of the Calculation Agent set forth in the Trust Agreement.

Section 9.16. No Fiduciary Relationship. The Town acknowledges and agrees that its dealing with the Purchaser are solely in the nature of a debtor/creditor relationship and that in no event shall the Purchaser be considered to be a partner or joint venturer of the Town. Also, the Town represents and warrants that it has independently evaluated the business transaction and has not relied upon, nor will it rely upon, the expertise, advice or other comments or statements of the Purchaser (including agents of the Purchaser), if any, in deciding to pursue such undertaking. As the Town is experienced in business, in no event shall the Purchaser owe any fiduciary or similar obligations to it in connection with the subject transaction.

Section 9.17. Electronic Signatures. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties agree that any electronically signed document (including this Agreement) shall be deemed (i) to be “written” or “in writing,” (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or “printouts,” if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, “electronic signature” means a manually signed original signature that is then transmitted by electronic means; “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a “pdf” (portable document format) or other replicating image attached to an e mail message; and, “electronically signed document” means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

Section 9.18. EMMA Postings. In the event the Town files with EMMA this Agreement, any Related Documents or any description of the material terms thereof or notice of any agreement to covenants, events of default, remedies, priority rights or other similar terms, either voluntarily or as required pursuant to a continuing disclosure agreement or Rule 15c2-12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the “Rule”) (each such posting, an “EMMA Posting”), the Town shall (i) provide the Purchaser with a copy of each EMMA Posting prior to submitting or posting on EMMA and (ii) shall, to the extent permitted by law, not file or permit the filing of any EMMA Posting that includes Confidential Information. The Town acknowledges and agrees that although the Purchaser may request review, edits or redactions of such materials prior to filing, the Purchaser is not responsible for the Town’s or any other entity’s (including, but not limited to, any broker-dealer’s) compliance or noncompliance (or any claims, losses or liabilities arising therefrom) with any continuing disclosure agreement or any applicable securities or other laws, including, but not limited to, those relating to the Rule.

Section 9.19. Notice of A.R.S. Section 38-511 – Cancellation of Contracts. As required by the provisions of A.R.S. Section 38-511, as amended, notice is hereby given that the Town may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the State of Arizona, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State of Arizona, its political subdivisions, or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other 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. The State of Arizona, its political subdivisions or any department or agency of either may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State of Arizona, its political subdivisions or any department or agency of either from any other party to the contract arising as the result of the contract. No basis exists for the Town to cancel this Agreement pursuant to A.R.S. Section 38-511 as of the Effective Date.

Section 9.20. Legal Arizona Workers Act Compliance Arizona A.R.S. Section 41-4401. The parties warrant that at all times during the term of this Agreement they will comply with all state and federal immigration laws applicable to the parties and their employees, and with the requirements of Arizona Revised Statutes Section 23-214 (A). The parties shall further ensure that each subcontractor who performs work under this Agreement will likewise comply with all applicable state and federal immigration laws. Failure to comply with this provision shall constitute a material breach of this Agreement. The Town retains the right to inspect the paperwork of any contractor or subcontractor that is employed within the United States of America to ensure compliance with such laws. To the extent the Town may agree to do so, such inspection shall require the execution of a confidentiality agreement in form and substance provided by the Purchaser.

Section 9.21. No Boycott of Israel. The Purchaser certifies it is not currently engaged in, and agrees for the duration of this Agreement to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the Effective Date.

U.S. BANK NATIONAL ASSOCIATION

By _____
Name: Ashley Martin
Title: Senior Vice President

Attachment: Form of the Continuing Covenant Agreement (\$85M Interim Financing Resolution)

TOWN OF QUEEN CREEK, ARIZONA

By _____
Name: _____
Title: _____

ATTEST:

By _____
Town Clerk

Attachment: Form of the Continuing Covenant Agreement (\$85M Interim Financing Resolution)

EXHIBIT A

FORM OF COMPLIANCE CERTIFICATE

This Compliance Certificate (this "Certificate") is furnished to U.S. Bank National Association (the "Purchaser") pursuant to that certain Continuing Covenant Agreement dated as of December 1, 2021 (the "Agreement"), between the Town of Queen Creek, Arizona (the "Town") and Purchaser. Unless otherwise defined herein, the terms used in this Certificate shall have the meanings assigned thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

- 1. I am the duly elected chief financial officer of the Town;
- 2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the Town during the accounting period covered by the attached financial statements;
- 3. The examinations described in paragraph 2 did not disclose, and I have no knowledge of, the existence of any condition or the occurrence of any event which constitutes a Default or Event of Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate, except as set forth below; and
- 4. The financial statements required by Section 6.03(a) of the Agreement and being furnished to you concurrently with this certificate fairly represent the consolidated financial condition of the Town in accordance with GAAP (subject to year-end adjustments) as of the dates and for the periods covered thereby.

The foregoing certifications and the financial statements delivered with this Certificate in support hereof, are made and delivered this _____ day of _____, 20__.

TOWN OF QUEEN CREEK, ARIZONA

By: _____
Name: _____
Title: _____

Attachment: Form of the Continuing Covenant Agreement (\$85M Interim Financing Resolution)

EXHIBIT B

FORM OF REQUEST FOR ADVANCE

[Date]

U.S. Bank National Association
Attention: Dan Petersen
Telephone: (503) 464-4855
Email: daniel.petersen@usbank.com

and

U.S. Bank National Association
Attention: Ashley Martin
Telephone: (310) 717-5900
Email: ashley.martin1@usbank.com

Ladies and Gentlemen:

The undersigned, [Insert Name of Undersigned] the [Insert Title of Undersigned] of the Town of Queen Creek, Arizona (the "Town"), refers to that certain Continuing Covenant Agreement dated as of December 1, 2021 (the "Agreement") between the Town and U.S. Bank National Association (the "Purchaser"), the terms defined therein being used herein as therein defined, and hereby gives the Purchaser notice irrevocably, pursuant to Section 2.02(c) of the Agreement, of the Advance specified below:

1. The Business Day of the proposed Advance is _____, 20__.
2. The principal amount of the proposed Advance is \$ _____.
3. The Town hereby irrevocably authorizes the Purchaser to disburse the proceeds of the Advance in immediately available funds to the Trustee in accordance with the following wire instructions:

Bank Name: _____

ABA Routing Number: _____

Account Number: _____

The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the Date of Advance, before and after giving effect thereto:

- (a) the representations and warranties of the Town set forth in Article V of the Agreement shall be true and correct in all material respects on such Date of Advance (except to the extent any such representation or warranty expressly relates to an earlier date);

(b) no Default or Event of Default shall have occurred and be continuing on such Date of Advance; and

(c) none of the Town or the Purchaser shall have received written notice from Special Counsel that the opinion delivered pursuant to [Section 3.01(c)(__)] of the Agreement may no longer be relied upon.

TOWN OF QUEEN CREEK, ARIZONA

By: _____

Name: _____

Title: _____

Attachment: Form of the Continuing Covenant Agreement (\$85M Interim Financing Resolution)

EXHIBIT C

FORM OF INVESTOR LETTER

[Date]

Town of Queen Creek, Arizona
 22350 South Ellsworth Road
 Queen Creek, Arizona 85142-9311

U.S. Bank National Association
 101 North First Avenue, Suite 1600
 Phoenix, Arizona 85003

Re: TOWN OF QUEEN CREEK, ARIZONA
 SUBORDINATE LIEN EXCISE TAX AND STATE SHARED REVENUE
 OBLIGATIONS, SERIES 2021

Ladies and Gentlemen:

This letter is to provide you with certain representations and agreements with respect to our purchase of all of the above-referenced obligations (the “*Obligations*”), dated their date of issuance. The Obligations were issued under and secured in the manner set forth pursuant to the Third Subordinate Lien Trust Agreement dated as of December 1, 2021 (the “*Trust Agreement*”), between U.S. Bank National Association, as trustee, and the Town of Queen Creek, Arizona (the “*Town*”). U.S. Bank National Association (the “*Purchaser*,” the “*undersigned*,” “*us*” or “*we*,” as applicable) is purchasing the Obligations pursuant to a Continuing Covenant agreement dated as of December 1, 2021 (the “*Agreement*”), between the Town and the Purchaser. Unless otherwise defined herein, the terms used in this letter shall have the meanings assigned thereto in the Agreement. We hereby represent and warrant to you and agree with you as follows:

(1) We understand that the Obligations have not been registered pursuant to the Securities Act of 1933, as amended (the “*1933 Act*”), the securities laws of any state nor has the Indenture been qualified pursuant to the Trust Indenture Act of 1939, as amended, in reliance upon certain exemptions set forth therein. We acknowledge that the Obligations (i) are not being registered or otherwise qualified for sale under the “blue sky” laws and regulations of any state, (ii) will not be listed on any securities exchange, and (iii) will not carry a rating from any rating service.

(2) We have not offered, offered to sell, offered for sale or sold any of the Obligations by means of any form of general solicitation or general advertising, and we are not an underwriter of the Obligations within the meaning of Section 2(11) of the 1933 Act.

(3) We have sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the Obligations.

(4) We have authority to purchase the Obligations and to execute this letter and any other instruments and documents required to be executed by the purchaser in connection with the purchase of the Obligations.

(5) The undersigned is a duly appointed, qualified and acting representative of the Purchaser and is authorized to cause the Purchaser to make the certifications, representations and warranties contained herein by execution of this letter on behalf of the Purchaser.

(6) The Purchaser is either a “qualified institutional buyer” as defined in Rule 144A promulgated under the 1933 Act, or an “accredited investor” as defined in Rule 501 of Regulation D under the 1933 Act and is able to bear the economic risks of such investment.

(7) The Purchaser understands that no official statement, prospectus, offering circular, or other comprehensive offering statement is being provided with respect to the Obligations. The Purchaser has made its own inquiry and analysis with respect to the Town, the Obligations and the security therefor, and other material factors affecting the security for and payment of the Obligations.

(8) The Purchaser acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, regarding the Town, to which a reasonable investor would attach significance in making investment decisions, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Town, the Obligations and the security therefor, so that as a reasonable investor, it has been able to make its decision to purchase the Obligations.

(9) The Obligations are being acquired by the Purchaser for investment for its own account and not with a present view toward resale or distribution; *provided, however*, that the Purchaser reserves the right to sell, transfer or redistribute the Obligations, but agrees that any such sale, transfer or distribution by the Purchaser shall be to a Person:

- (a) that is an affiliate of the Purchaser;
- (b) that is a trust or other custodial arrangement established by the Purchaser or one of its affiliates, the owners of any beneficial interest in which are limited to qualified institutional buyers or accredited investors;
- (c) that is a secured party, custodian or other entity in connection with a pledge by the Purchaser to secure public deposits or other obligations of the Purchaser or one of its affiliates to state or local governmental entities; or
- (d) that the Purchaser reasonably believes to be a qualified institutional buyer or accredited investor and who executes an investor letter substantially in the form of this letter.

Very truly yours,

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

Attachment: Form of the Continuing Covenant Agreement (\$85M Interim Financing Resolution)

EXHIBIT D

FORM OF REQUEST FOR DECREASE IN COMMITMENT AMOUNT

[Date]

U.S. Bank National Association
Attention: Dan Petersen
Telephone: (503) 464-4855
Email: daniel.petersen@usbank.com

and

U.S. Bank National Association
Attention: Ashley Martin
Telephone: (310) 717-5900
Email: ashley.martin1@usbank.com

Ladies and Gentlemen:

The undersigned, [Insert Name of Undersigned] the [Insert Title of Undersigned] of the Town of Queen Creek, Arizona (the "Town"), refers to that certain Continuing Covenant Agreement dated as of December 1, 2021 (the "Agreement") between the Town and U.S. Bank National Association (the "Purchaser"), the terms defined therein being used herein as therein defined, and hereby gives the Purchaser notice irrevocably, pursuant to Section 2.03 of the Agreement, of its election to reduce the Commitment Amount in the amount of \$_____. Such reduction in the Commitment Amount shall be effective when the Purchaser shall have returned an acknowledged Request for Decrease in Commitment Amount to the Town with a copy to the Trustee.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Request as of the _____ day of _____, 202__.

TOWN OF QUEEN CREEK, ARIZONA

By: _____
Name: _____
Title: _____

Acknowledged and Agreed as to Section 2.03
of the Continuing Covenant Agreement

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

[cc: U.S. Bank National Association, as Trustee]

Attachment: Form of the Continuing Covenant Agreement (\$85M Interim Financing Resolution)



Requesting Department

Public Works

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS, ICMA-CM, TOWN MANAGER

FROM: TROY WHITE, PUBLIC WORKS DIRECTOR

RE: CONSIDERATION AND POSSIBLE APPROVAL OF ANNEXATION ORDINANCE 768-21 ANNEXING CERTAIN REAL PROPERTY TO THE TOWN OF QUEEN CREEK PURSUANT TO A.R.S. §9-471(N) ADDING RIGHT-OF-WAY TO THE EXISTING TOWN LIMITS, GENERALLY DESCRIBED AS OCOTILLO ROAD JUST WEST OF 228TH STREET TO MERIDIAN ROAD, LOCATED IN SECTION 24, TOWNSHIP 2 SOUTH, RANGE 7 EAST, MARICOPA COUNTY.

DATE: November 3, 2021

Staff Recommendation:

Staff recommends approval of Ordinance 768-21, annexing certain real property to the Town of Queen Creek Pursuant to A.R.S. §9-471(N) adding right-of-way to the existing Town limits, generally described as Ocotillo Road just west of 228th Street to Meridian Road, located in section 24, Township 2 South, Range 7 East, Maricopa County.

Relevant Council Goal(s):



Superior Infrastructure - Capital Improvement Program

Proposed Motion:

Move to approve Ordinance 768-21, annexing certain real property to the Town of Queen Creek Pursuant to A.R.S. §9-471(N) adding right-of-way to the existing Town limits, generally described as Ocotillo Road just west of 228th Street to Meridian Road, located in section 24, Township 2 South, Range 7 East, Maricopa County

Discussion:

The Town entered into an Intergovernmental Agreement (IGA) C-64-19-202-M-00 with Maricopa County wherein the Town agreed to annex any unincorporated area within the project limits upon completion of the project. Approximately 50% of the project is adjacent to unincorporated Maricopa County Jurisdiction and as such Maricopa County's cost share shall not exceed \$1,002,596.

The IGA was approved by the Town Council on March 6, 2019. This resolution adopts an annexation ordinance, authorizing the annexation of the previously un-annexed portion of Ocotillo Road that lies in Section 24.

The annexation includes only Maricopa County roadway right-of-way and appurtenances with no taxable real property. Pursuant to A.R.S. Article 9-471(N), such rights-of-way may be annexed into the Town by mutual consent of the Town Council and the Maricopa County Board of Supervisors if the property is adjacent to the town for the entire length and both the Town and the County approve of the proposed annexation as a published agenda item at a regular public meeting of their governing bodies.

Fiscal Impact:

There is no fiscal impact to the annexation. Maintenance obligations are included in the IGA as Town's responsibility.

Alternatives:

None as the Town Council agreed to the IGA and the annexation obligation.

Attachment(s):

1. Ord 768-21 Ocotillo Rd Annexation
2. IGA with MCDOT
3. Map of Annexation Area

ORDINANCE NO. 768-21

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 COUNTY RIGHT OF WAY CONTIGUOUS TO THE EXISTING TOWN LIMITS IN SECTIONS 24 TOWNSHIP 2 SOUTH, RANGE 7 EAST.

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 and depicted in Exhibit “A” to this Ordinance is contiguous to the Town, is not now embraced within its limits, is adjacent to the Town for the entire length of annexation, and consists of county right of way; 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, The Town of Queen Creek and Maricopa County entered into an Intergovernmental Agreement whereby the Town of Queen Creek agreed to annex any previously unannexed portion of Riggs Road from Ellsworth Road to Meridian Road; 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 and depicted in Exhibit "A" contiguous to the present Town limits, to wit:

SEE EXHIBIT "A"

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Queen Creek, Arizona, this 3rd day of November, 2021.

FOR THE TOWN OF QUEEN CREEK:

ATTESTED TO:

Gail Barney, Mayor

Maria Gonzalez, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:

John Kross, Town Manager

**Dickinson-Wright PLLC
Town Attorneys**

Attachment: Ord 768-21 Ocotillo Rd Annexation (Annexation of Ocotillo Road)

EXHIBIT A
ANNEXATION ORDINANCE 768-21
Right of Way to Be Annexed

Attachment: Ord 768-21 Ocotillo Rd Annexation (Annexation of Ocotillo Road)



Exhibit "A"
Ocotillo Road Annexation

Job No. 12-042-13

September 28, 2021

A portion of the Northwest Quarter of Section 24, Township 2 South, Range 7 East of the Gila and Salt River Meridian, Maricopa County, Arizona, and more particularly described as follows:

COMMENCING at a 3-inch Maricopa County Department of Transportation brass cap in hand hole at the north quarter corner of Section 24, from which a 3-inch Town of Queen Creek brass cap in hand hole at the northwest corner of said Section 24, bears North 89 degrees 57 minutes 52 seconds West (basis of bearing), 2,622.19 feet;

thence along the north line of said Northwest Quarter, North 89 degrees 57 minutes 52 seconds West, 330.00 feet to the **POINT OF BEGINNING**;

thence South 0 degrees 27 minutes 45 seconds East, 55.00 feet to a point on the south line of the north 55.00 feet of said Northwest Quarter;

thence along said south line, North 89 degrees 57 minutes 52 seconds West, 127.72 feet;

thence North 0 degrees 35 minutes 44 seconds West, 55.00 feet to a point on the north line of said Northwest Quarter;

thence along said north line, South 89 degrees 57 minutes 52 seconds East, 127.85 feet to the **POINT OF BEGINNING**.

Containing an area of 7,028 square feet or 0.1613 acres, more or less.



EPS Group, Inc. • 1130 N Alma School Road, Suite 120 • Mesa, AZ 85201
Tel (480) 503-2250 • Fax (480) 503-2258

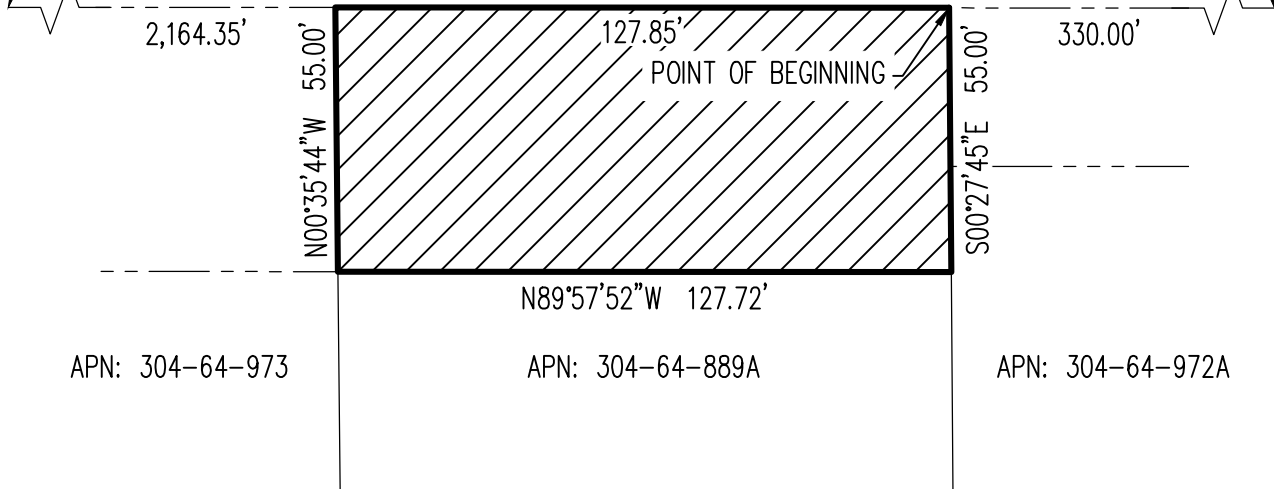
Sep 28, 2021 2:46pm S:\Projects\2012\12-042\13 Ocotillo - Signal Butte to Ironwood\Legal Survey\Drawings\Annex Legal\12-042-13 - Annexation Legal - 01.dwg

NORTHWEST QUARTER
SECTION 24, T2S R7E
FOUND 3" BCHH STAMPED
"TOWN OF QUEEN CREEK"
SECTION CORNER FOR
S13 S14 S23 S24 T2S R7E

POINT OF COMMENCEMENT
NORTH QUARTER QUARTER
SECTION 24, T2S R7E
FOUND 3" BCHH STAMPED
"MARICOPA COUNTY D.O.T."
T2S R7E 1/4 S13 S24 26411 2008"

OCOTILLO ROAD

N89°57'52"W 2,622.19' (BASIS OF BEARING)



Michael D. Pollock



N.T.S.

12-042-13

Ocotillo Road
Annexation

EXHIBIT "A"



1130 N. Alma School Rd.
Ste. 120 Mesa, AZ 85201
T:480.503.2250 | F:480.503.2258
www.epsgroupinc.com

Attachment: Ord 768-21 Ocotillo Rd Annexation (Annexation of Ocotillo Road)



Exhibit "A"
Ocotillo Road Annexation

Job No. 12-042-13

September 28, 2021

A portion of the Northeast Quarter of Section 24, Township 2 South, Range 7 East of the Gila and Salt River Meridian, Maricopa County, Arizona, and more particularly described as follows:

COMMENCING at a 3-inch US General Land Office Survey brass cap in hand hole at the northeast corner of Section 24, from which a 3-inch Maricopa County Department of Transportation brass cap in hand hole at the north quarter corner of Section 24, bears South 89 degrees 44 minutes 39 seconds West (basis of bearing), 2,620.63 feet;

thence along the north line of said Northeast Quarter, South 89 degrees 44 minutes 39 seconds West, 65.00 feet to the **POINT OF BEGINNING**;

thence South 0 degrees 32 minutes 35 seconds East, 33.00 feet to a point on the south line of the north 33.00 feet of said Northeast Quarter;

thence along said south line, South 89 degrees 44 minutes 39 seconds West, 1,129.26 feet to the beginning of a non-tangent curve, concave northerly, from which the radius point bears North 8 degrees 45 minutes 43 seconds West a distance of 2,000.00 feet;

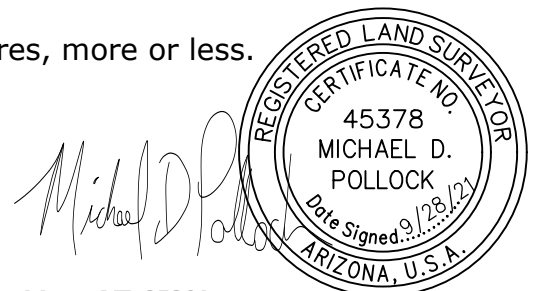
thence westerly 296.92 feet along the arc of said curve to the right through a central angle of 8 degrees 30 minutes 22 seconds to a point on the south line of the north 55.00 feet of said Northeast Quarter;

thence along said south line, South 89 degrees 44 minutes 39 seconds West, 1,130.53 feet to a point on the west line of said Northeast Quarter;

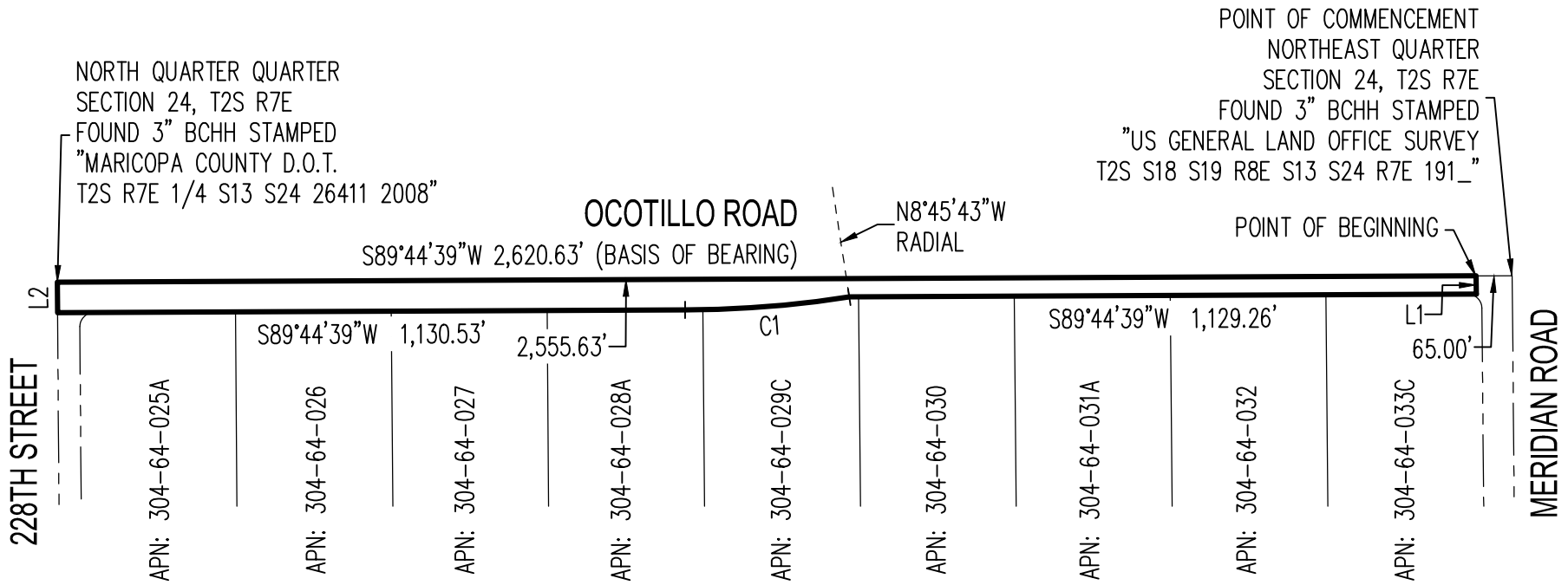
thence along said west line, North 0 degrees 26 minutes 21 seconds West, 55.00 feet to the north quarter corner of said Section 24;

thence along the north line of said Northeast Quarter, North 89 degrees 44 minutes 39 seconds East, 2,555.63 feet to the **POINT OF BEGINNING**.

Containing an area of 113,553 square feet or 2.6068 acres, more or less.



EPS Group, Inc. • 1130 N Alma School Road, Suite 120 • Mesa, AZ 85201
Tel (480) 503-2250 • Fax (480) 503-2258

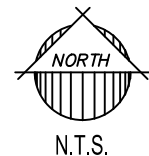


LINE TABLE

| LINE | BEARING | LENGTH |
|------|-------------|--------|
| L1 | S00°32'35"E | 33.00' |
| L2 | N00°26'21"W | 55.00' |

CURVE TABLE

| CURVE | LENGTH | RADIUS | DELTA | CHORD | CHORD BRG |
|-------|---------|----------|----------|---------|-------------|
| C1 | 296.92' | 2000.00' | 8°30'22" | 296.65' | S85°29'28"W |



12-042-13

Ocotillo Road
Annexation

EXHIBIT "A"

1130 N. Alma School Rd.
Ste. 120 Mesa, AZ 85201
T:480.503.2250 | F:480.503.2258
www.epsgroupinc.com

Attachment: Ord 768-21 Ocotillo Rd Annexation (Annexation of Ocotillo Road)

Proj ID # 1000
Agr. ID # 2100
12 pages

8.J.b

**INTERGOVERNMENTAL AGREEMENT BETWEEN MARICOPA COUNTY
AND THE TOWN OF QUEEN CREEK FOR THE IMPROVEMENTS
OF OCOTILLO ROAD FROM 228TH STREET AND MERIDIAN ROAD**

(TT0614)

(C-64-19-202-M-00)

This Intergovernmental Agreement (**Agreement**) is between the County of Maricopa, a political subdivision of the State of Arizona (**County**) and the Town of Queen Creek, an Arizona municipal corporation (**Town**). The County and Town are collectively referred to as the **Parties** or individually as a **Party**.

This Agreement shall become effective as of the date it is approved by the Maricopa County Board of Supervisors.

STATUTORY AUTHORIZATION

1. A.R.S. Section §11-251 and Sections 28-6701 *et. seq.* authorize each County to lay out, maintain, control and manage public roads within its respective County to acquire and condemn property necessary for such purposes, and to enter into this Agreement.
2. A.R.S. Sections §§11-951 *et. seq.* authorize public agencies to enter into Intergovernmental Agreements for the provision of services or for joint or cooperative action.
3. A.R.S. Section 9-240 and Sections 9-276 *et. seq.* authorize Town to lay out and establish, regulate and improve streets within Town and to enter into this Agreement.

BACKGROUND

4. Ocotillo Road from Signal Butte Road to Meridian Road is a two-lane undivided road owned and is partly under the jurisdiction of the County and partly under the jurisdiction of the Town.
5. In a collaborative effort between the County and the Town, Ocotillo Road will be widened to five (5) through lanes with raised landscape median, curb, gutter, bike lanes, sidewalk, drainage; traffic signal, traffic signal interconnect, street lights, private utility coordination and relocation; and right-of-way and easement acquisition (**Project**).
6. The Town is currently developing design plans to improve Ocotillo Road to Town standards and anticipates to begin construction in fiscal year 2020.
7. Approximately 50% of the Project is adjacent to unincorporated County jurisdiction. The County's total Project Costs minus the cost of Enhancements, shall not exceed \$1,002,596.

Attachment: IGA with MCDOT (Annexation of Ocotillo Road)

8. The County financial participation shall be limited to aspects of the Project that are essential for the establishment of a safe roadway. The County will not financially participate in Project enhancements such as landscaping, irrigation, street lighting, visual mitigation, decorative pavers, or street furniture unless there is a benefit to the County that can be demonstrated by a benefit/cost analysis.

PURPOSE OF THE AGREEMENT

9. The purpose of this Agreement is to identify and define the respective roles and responsibilities of the County and Town for the Project, including but not limited to cost sharing, design, permitting, right-of-way acquisition, utility relocation, construction and construction management of the roadway.

TERMS OF THE AGREEMENT

10. Responsibilities of the County:

- 10.1 The County shall not review Project plans for compliance with the Town's design standards and shall not be liable for design deficiencies.
- 10.2 The County shall provide no-cost permits for construction and traffic control, as applicable, to the Town for any Project-related work that lies within unincorporated County boundaries. The County shall not be responsible for plan review and approval, traffic control, nor inspection and construction approval.
- 10.3 The County shall contribute \$1,002,596 of the estimated cost of the Project Costs, not including any Town requested Enhancements.
- 10.4 The County shall be financially responsible for dedicated time by their staff as it relates to this Project. The cost shall not be credited toward the County's Project Cost share obligation.
- 10.5 Not before July 1, 2020, upon completion of construction and receipt of an invoice from the Town, the County shall remit payment to Town within thirty (30) working days for the County's Project Cost contribution of \$1,002,596. The County shall retain sole discretion to notify the Town of any advanced availability of funds and may remit payment to the Town prior to fiscal year 2021.
- 10.6 The County shall perform the duties of assisting the Town in obtaining the required right of way for this Project as described in Paragraph B of Exhibit A, which is attached to this Agreement and incorporated into this Agreement by reference.

11. Responsibilities of the Town:

- 11.1 The Town shall act as the lead agency for the design and construction of the Project, including, cost-sharing, permitting, environmental clearance, right-of-way acquisition, utility relocation, and construction management, and annexation of the roadway.

- 11.2 The Town shall design and construct the Project to Town standards in compliance with the approved plans and specifications. The Town shall be responsible for review and approval of all plans and be responsible for construction inspection and approval.
- 11.3 The Town shall consult and coordinate with the County throughout the various phases of the Project and provide them the opportunity to review the documents and submit comments.
- 11.4 The Town shall provide the County with a project schedule and at least quarterly project status reports for the Project.
- 11.5 The Town shall apply for no-cost permits, as applicable, for any Project related work that lies within unincorporated County boundaries.
- 11.6 The Town shall ensure contractor liability insurance and will have the contractor list Maricopa County as Additional Insured.
- 11.7 Town shall be responsible for all Project Costs, beyond the County's contribution of \$1,002,596.
- 11.8 The Town shall be financially responsible for dedicated time by their staff as it relates to this Project. The cost shall not be credited toward the Town's Project Cost share obligation
- 11.9 Not before July 1, 2020 and upon completion of construction the Town shall invoice the County for the County's cost contribution.
- 11.10 The Town shall perform the duties of attempting to acquire the required right of way for this Project as described in Paragraph A of Exhibit A, which is attached to this Agreement and incorporated into this Agreement by reference.
- 11.11 Upon execution of the Agreement, the Town shall:
 - 11.10.1 Accept all maintenance and operation responsibility for all components of the Project; and
 - 11.10.2 Begin the annexation of all of the unincorporated areas within the Project, specifically any and all County right-of-way on Ocotillo between 228th and Meridian limits and complete the annexation within ninety (90) days subject to the requirements of A.R.S. Section 9-471.

GENERAL TERMS AND CONDITIONS

- 12. By entering into this Agreement, the Parties agree that to the extent permitted by law, each Party will indemnify, defend and save the other Party harmless, including any of the Parties' departments, agencies, officers, employees, elected officials, or agents, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition, or event arising out of the negligent performance or nonperformance by the indemnifying Party of any of the provisions of this Agreement. By entering into this Agreement, each Party indemnifies the other against all liability, losses and damages of any nature for or on account of any injuries or death of persons or damages to or destruction of property arising out of or in any way

connected with the performance or nonperformance of this Agreement, except such injury or damage as shall have been caused or contributed to by the negligence of the other Party. The damages which are the subject of this indemnity shall include but not be limited to the damages incurred by any Party, its departments, agencies, officers, employees, elected officials or agents. In the event of an action, the damages which are the subject of this indemnity shall include costs, expenses of litigation, and reasonable attorney's fees.

13. This Agreement shall become effective as of the date it is approved by the Maricopa County Board of Supervisors and remain in full force and effect until all stipulations previously indicated have been satisfied except that it may be amended upon written Agreement by all Parties. Any Party may terminate this Agreement upon furnishing the other Party with a written notice at least thirty (30) days prior to the effective termination date.
14. This Agreement shall be subject to the provisions of A.R.S. § 38-511.
15. The Parties warrant that they are in compliance with A.R.S. § 41-4401 and further acknowledge that:
 - 16.1 Any contractor or subcontractor who is contracted by a Party to perform work on the Project shall warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214(A), and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer.
 - 16.2 Any breach of the warranty shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.
 - 16.3 The Parties retain the legal right to inspect the papers of any contractor or subcontractor employee who works on the Project to ensure that the contractor or subcontractor is complying with the warranty above and that the contractor agrees to make all papers and employment records of said employee available during normal working hours in order to facilitate such an inspection.
 - 16.4 Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.
16. Each Party to this Agreement warrants that neither it nor any contractor or vendor under contract with the Party to provide goods or services toward the accomplishment of the objectives of this Agreement is suspended or debarred by any federal agency which has provided funding that will be used in the Project described in this Agreement.
17. The following shall constitute a material breach of this Agreement and an event of default ("Default"): a Party's failure to observe or perform any of the material covenants, conditions or provisions of this Agreement to be observed or performed by that Party ("Defaulting Party"), where such failure shall continue for a period of thirty (30) days after the Defaulting Party receives written notice of such failure from the non-defaulting Party provided, however, that such failure shall not be a Default if the Defaulting Party has commenced to cure the Default within such thirty (30) day period and thereafter is diligently pursuing such cure to completion, but the total aggregate cure period shall not exceed ninety (90) days unless the Parties agree in writing that additional time is reasonably necessary under such circumstances to cure such default. In the event a Defaulting Party fails to perform any of its material obligations under this Agreement and is in Default pursuant to this Section, the non-defaulting Party, at its option, may terminate this Agreement. Further, upon the occurrence of any Default and at any time thereafter, the non-defaulting party may, but shall not be required to, exercise any remedies now or hereafter available to it at law or in equity.

18. All notices required under this Agreement to be given in writing shall be sent to:

Maricopa County Department of Transportation
 Attn: Intergovernmental Relations
 2901 W. Durango Street
 Phoenix, Arizona 85009

Town of Queen Creek
 Attn: Public Works Director
 22358 South Ellsworth Road
 Queen Creek, Arizona 85142

All notices required or permitted by this Agreement or applicable law shall be in writing and may be delivered in person (by hand or courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, and shall be deemed sufficiently given if served in a manner specified in this paragraph. Either Party may by written notice to the other specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail, the notice shall be deemed given 72 hours after the notice is addressed as required in this paragraph and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the notice to the Postal Service or courier.

19. This Agreement does not imply authority to perform any tasks, or accept any responsibility, not expressly stated in this Agreement.
20. This Agreement does not create a duty or responsibility unless the intention to do so is clearly and unambiguously stated in this Agreement.
21. This Agreement does not grant authority to control the subject roadway, except to the extent necessary to perform the tasks expressly undertaken pursuant to this Agreement.
22. Any funding provided for in this Agreement, other than in the current fiscal year, is contingent upon being budgeted and appropriated by the Maricopa County Board of Supervisors and the Queen Creek Town Council in such fiscal year. This Agreement may be terminated by any Party at the end of any fiscal year due to non-appropriation of funds.
23. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assignees. Neither Party shall assign its interest in this Agreement without the prior written consent of the other Party.
24. This Agreement and all Exhibits attached to this Agreement set forth all of the covenants, promises, agreements, conditions, and understandings between the Parties to this Agreement, and there are no covenants, promises, agreements, conditions, or understandings, either oral or written, between the Parties other than as set forth in this Agreement, and those agreements which are executed contemporaneously with this Agreement. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the Party drafting this Agreement. This Agreement cannot be modified or changed except by a written instrument executed by all of the Parties hereto. Each Party has reviewed this Agreement and has had the opportunity to have it reviewed by legal counsel.

25. The waiver by any Party of any right granted to it under this Agreement is not a waiver of any other right granted under this Agreement, nor may any waiver be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.
26. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision shall be invalid or prohibited under the law, such provision shall be ineffective to the extent of such prohibition or invalidation but shall not invalidate the remainder of such provision or the remaining provisions.
27. Except as otherwise provided in this Agreement, all covenants, agreements, representations, and warranties set forth in this Agreement or in any certificate or instrument executed or delivered pursuant to this Agreement shall survive the expiration or earlier termination of this Agreement for a period of one (1) year.
28. Nothing contained in this Agreement shall create any partnership, joint venture, or other agreement between the Parties hereto. Except as expressly provided in this Agreement, no term or provision of this Agreement is intended or shall be for the benefit of any person or entity not a party to this Agreement, and no such other person or entity shall have any right or cause of action under this Agreement.
29. Time is of the essence concerning this Agreement. Unless otherwise specified in this Agreement, the term "day" as used in this Agreement means calendar day. If the date for performance of any obligation under this Agreement or the last day of any time period provided in this Agreement falls on a Saturday, Sunday, or legal holiday, then the date for performance or time period shall expire at the close of business on the first day thereafter which is not a Saturday, Sunday, or legal holiday.
30. Sections and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
31. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument.
32. The Parties agree to execute and/or deliver to each other such other instruments and documents as may be reasonably necessary to fulfill the covenants and obligations to be performed by such Party pursuant to this Agreement.
33. The Parties hereby agree that the venue for any claim arising out of or in any way related to this Agreement shall be Maricopa County, Arizona.
34. This Agreement shall be governed by the laws of the State of Arizona.


End of Agreement - Signature Page Follows

C-04-19-202-M-00

IN WITNESS WHEREOF, the Parties have executed this Agreement.

MARICOPA COUNTY

Recommended by:

 02/06/2019
Jennifer Toth, P.E. Date
Transportation Director

Approved and Accepted by:


 JUN 18 2019
Chairman Date
Board of Supervisors

Attest by:

 JUN 18 2019
Clerk of the Board Date

APPROVAL OF DEPUTY COUNTY ATTORNEY

I hereby state that I have reviewed the proposed Intergovernmental Agreement and declare the Agreement to be in proper form and within the powers and authority granted to the Party by their respective governing bodies under the laws of the State of Arizona.

 6.12.19
Deputy County Attorney Date

Attachment: IGA with MCDOT (Annexation of Ocotillo Road)

EXHIBIT A

RIGHT-OF-WAY (ROW) ASSISTANCE

In an effort to streamline the process for appraising and acquiring land rights for the Project in unincorporated County and reduce duplicative effort and cost to Town and County taxpayers,

A. The Town shall:

- I. Extend invitations, via e-mail, to Project kick-off and status meetings to the Maricopa County Real Estate Department (**MCRED**) Real Property Manager, and/or designee, throughout project scoping and design in an effort to better understand and coordinate the following:
 - a. Project need, objectives, and goals.
 - b. Project funding sources, scope, schedule, and budget.
 - c. Maximum scope, and proposed timing, of Right of Way (**ROW**) assistance that may be required from the County which includes a spreadsheet of the land rights that are anticipated to be acquired from each larger parcel to build the proposed Project (new ROW; permanent easements, including, but not limited to, utility, slope, and drainage; and temporary easements). The spreadsheet shall, at a minimum, include Assessor Parcel Numbers (**APNs**), full names of ownership entities, larger parcel square footage, zoning, information on whether the property is vacant or improved, and the proposed improvements within the acquisition area and impacts of the ROW acquisition on the remainder.

- II. Periodically provide design plans submittals at major milestones as well as identify and refine the spreadsheet referenced above for all Project acquisition parcels and proposed relocations (if any) that are located in unincorporated County. At a minimum, design submittals will be required at 30%, 60%, 95% and 100%, or per the Town's in-house or contracted design schedule milestones.

- III. Facilitate a focused ROW phase meeting between appropriate representatives from the Town's Project team and the MCRED Real Property Manager, and/or designee, prior to initiating the appraisal process. The goal of this meeting is to identify best practices for the coordination between the Town and the County's acquisition teams to include discussing:
 - a. The Project acquisition schedule.
 - b. Prioritization of the appraisal assignment and acquisitions based on information obtained in the title reports, the complexity of the appraisal, acquisition, and/or the need for relocation. Parcels within unincorporated County shall be considered for the first priority appraisals and acquisitions to allow additional time should the file need to be transferred to the County for offer and/or eminent domain filing.
 - c. Collaborate on the drafting of the appraisal scope of work, discuss if contracting with multiple appraisers should be considered, and discuss whether review appraisers will also be required.
 - d. Discuss appropriate appraisal products and required elements of the appraisal which include adding the County as an intended user, offering the owner and acquisition/relocation agents (Town and County) a reasonable opportunity to attend the appraisal inspection, a determination of the larger parcel for the purposes of the appraisal, a well-supported highest and best use analysis, conducting before and after analyses for partial acquisitions, and accounting for the acquisition and/or movement of all improvements within the acquisition area and providing applicable cost-to-cure estimates based on bids. See 49 Code of Federal Regulations (**CFR**) Part 24.103 and 24.104 for additional guidance.

- IV. Be responsible for:
- a. Ordering and paying for appraisal services.
 - b. Making every effort to contact the property owner impacted by the Project to obtain current/correct mailing addresses and names of the points of contact or representatives for the offers.
 - c. Preparing and presenting a purchase offer to the identified property owner(s) for the acquisition of the required land rights. The purchase offer shall, at a minimum, include the items required by Arizona State Law and 49 CFR 24.102 as applicable and every effort shall be made to present the offer in person to those property owners that reside or maintain a place of business within 50 miles of the Project.
 - d. Negotiating in good faith with the property owner to reach an agreement for the purchase in accordance with 49 CFR Part 24.102, Arizona State Law, and Town Code.
 - e. Providing relocation assistance to occupants that need to be relocated out of the acquired ROW and/or for movement of personal property out of the acquired ROW in accordance with 49 CFR 24.201 through 24.503.
 - f. Compensating the property owner for the land rights acquired, any severance damages, cost-to-cure, all cost incidentals to the transfer of title to the agency (i.e. escrow fees and related costs), and paying approved reasonable and necessary relocation benefits based on an approved determination.
 - g. Maintaining typed communication logs of the ongoing negotiations, relocation activities, and concerns raised by the owners, and any responses/resolutions offered by the Town.
- V. Provide all required documentation for County assistance to proceed as well as agree and acknowledge that:
- a. If, after a good faith effort and reasonable time for a property owner to consider the offer, the Town believes it will be unsuccessful in reaching an agreement to acquire the required land rights from property located within unincorporated County, all actions to resolve concerns have been exhausted, and Town's management approves; the Town shall contact the MCRED Real Property Manager, or designee, without delay, to set up a meeting/teleconference with MCRED to discuss the acquisition, proposed Project schedule, and, if appropriate, transfer of the file to MCRED for preparation and presentation of an offer. At a minimum, the following items shall be included in the file that is transferred to MCRED before MCRED will be able to mobilize staff to assist the Town:
 1. A transmittal e-mail or letter requesting that the County initiate proceedings to acquire the parcel on the Town's behalf.
 2. Recordable legal descriptions, maps, and exhibits.
 3. Title Report.
 4. Appraisal and appraisal review (if applicable) with Town approval for use in negotiation.
 5. Offer letter with all attachments.
 6. Typed communication logs.
 7. Relocation determinations (if applicable).
 8. All Correspondence.

- b. Once the requested file components have been transmitted, and County receipt is confirmed, Town staff shall cease and desist all contact with the property owner and/or their representative, and all responsibility for the acquisition of the land rights located within unincorporated County jurisdiction necessary for the Project shall pass to the County. Any and all questions and concerns regarding the transmitted acquisition and/or relocation files shall be sent to the assigned MCRED ROW Agent.
 - c. The Town will provide any information requested by the County on the proposed construction or related Project issues in order to assist in the County's acquisition of the acquisitions and/or relocations.
 - d. Acknowledge that, due to statutory timeframes required to complete the County's Open and Declare process, and for owner review of offer(s), as well as potential workload/staffing constraints, the County's time needed to close escrow on, or obtain possession of, the required land rights may require ten (10) months or more. The Town further acknowledges that work on County projects has priority for County staff.
- VI. Reimburse the County, or pay the County's vendor directly, (at the County's discretion) for all expenses incurred by the County for ROW Assistance, including, but not limited to:
- a. Title Reports (i.e. Commitments for Title Insurance, Litigation Guarantees, updates).
 - b. Appraisals & Appraisal Reviews.
 - c. Compensation paid for the acquisition of any and all land rights to include any non-stipulated amount (i.e. a court ordered amount); however, stipulated costs of acquisition in excess of 30% of the County's most current appraised fair market value shall require authorization by the Town Council.
 - d. Escrow and closing costs.
 - e. All Maricopa County Attorney's Office (MCAO) fees and costs related to condemnation proceedings.

Responsibilities of the County:

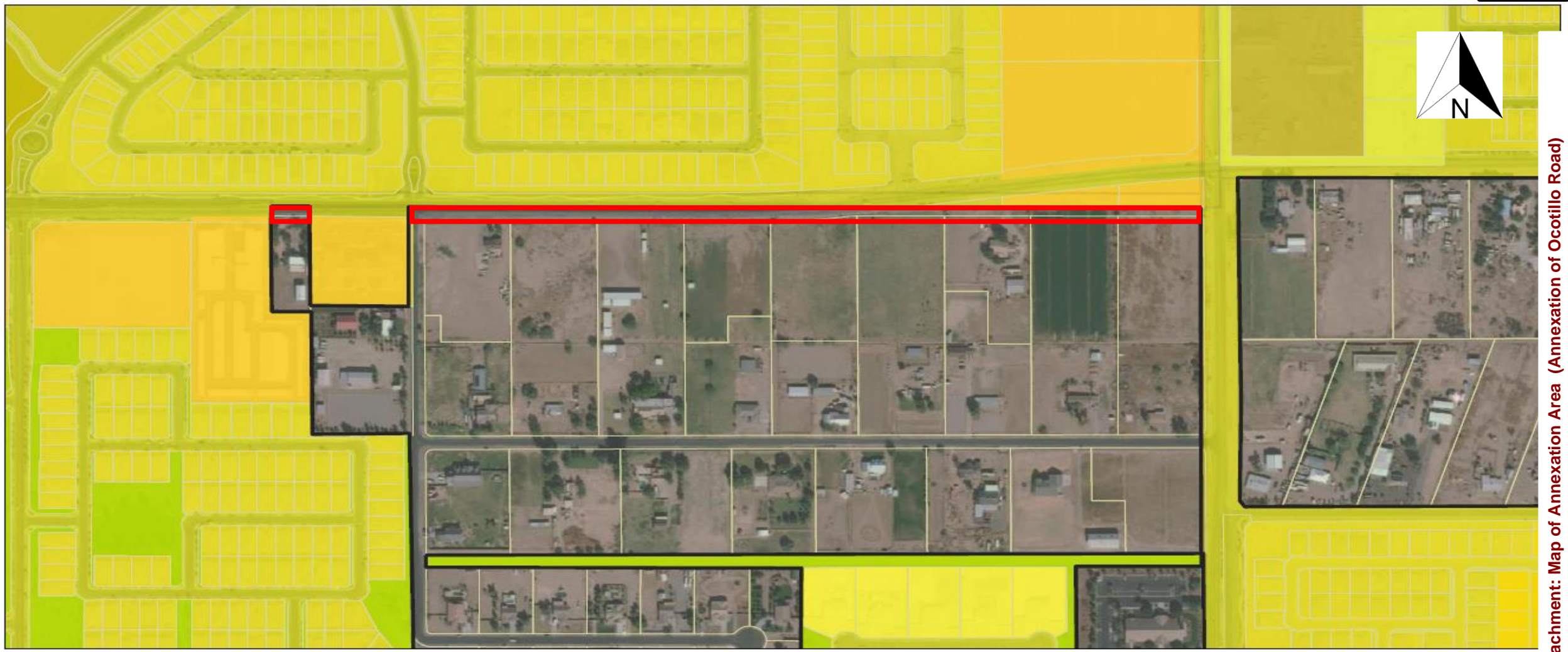
B. The County shall:

- I. Collaborate and communicate with the Town's Project team on a regular basis to ensure the MCRED staff understands the Project's proposed scope, schedule, and budget to properly plan for potential future work. A MCRED representative will attend Project meetings as necessary and attend appraisal inspections and offer presentation for the parcels located in unincorporated County if possible.
- II. Provide ROW phase best practice guidance, training, and sample forms upon request.
- III. Attend a focused ROW phase meeting with the Town's Project acquisition and design team prior to initiating the appraisal process.
- IV. If the Town has followed the appraisal, acquisition, and relocation steps/guidance set forth above, has negotiated in good faith to address and/or resolve property owners' concerns, and is unsuccessful at acquiring the required land rights from properties within unincorporated County, the County (MCRED staff or outside consultant depending on availability of resources) will assist with the acquisition of the land rights required for the Project upon the Town's request (**ROW Assistance**). When a property to be acquired extends into both municipal and county jurisdiction, the County and the Town shall confer and attempt to develop a plan whereby all the needed

property can be acquired in a single action, rather than have two litigations proceed at the same time against an owner. Upon receipt of the items set forth in Paragraph A (V)(a) of this Exhibit A, the County will:

- a. Assume all responsibility for the management of the acquisition and proceed in accordance with the statutes, policies, and procedures that govern the County's ability to acquire the land rights.
 - b. Initiate the Open and Declare process.
 - c. Request an updated Title Commitment with the County as the proposed insured.
 - d. Review the submitted products for statutory and policy compliance.
 - e. Determine, in the County's sole discretion, if the submitted appraisal and/or appraisal review of the areas to be acquired can be used as the basis for the County's offer and/or an eminent domain filing. If a new appraisal and/or appraisal review is required, the County will order the appraisal.
 - f. Present an offer to the property owner based on the Town's appraisal or obtain new appraisals and present a revised offer.
 - g. Negotiate in good faith to try and address/resolve the property owner's concerns and obtain agreement to the purchase.
 - h. If the County is unsuccessful in acquiring the required land rights by agreement from an owner, the MCRED Director will review the file for next steps and, if approved to proceed to eminent domain action, MCRED staff will forward the file to the MCAO, or outside counsel if directed due to workload, for condemnation action.
 - i. The County will keep the Town Project team apprised of the status of each acquisition via periodic status updates.
 - j. The County shall, within no less than ten (10) days prior to concluding any administrative settlement to purchase property rights required for the Project, seek and duly consider the Town Engineer's written comments with regards to such proposed settlement; provided, however, that the County shall retain final decision-making authority with regard to same.
- V. Provide the ROW Assistance outlined above within a realistic timeframe as determined by the accessibility of available agents and timely delivery by the Town of the items set forth in Paragraph A (V)(a) of this Exhibit A.
- VI. Determine whether the method of compensation by the Town for the costs that are set forth in Paragraph A (VI.) of this Exhibit A shall be direct payment by the Town to the County or Town's vendor or shall be a reimbursement to the County.
- VII. Invoice the Town on a monthly basis for any ROW Assistance expenses that are not subject to direct payment. The County shall provide an invoice that includes an itemization of expenses being requested for payment.

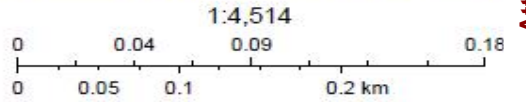
Area for Annexation



Attachment: Map of Annexation Area (Annexation of Ocotillo Road)

9/21/2021, 7:56:41 AM

- Planning Area
- Town Limits
- Parcels
- Annexation Area
- Annexations
 - Incorporation
 - Ordinance
- Zoning
 - C-2
 - EMP A
 - PRC
 - MDR
 - R1-4
 - R1-5
 - R1-7
 - R1-9
 - R1-54



Maxar



Requesting Department

CIP Administration

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS, ICMA-CM, TOWN MANAGER

FROM: DAVE LIPINSKI, CIP DIRECTOR , ROB SACHS, REAL ESTATE PROGRAM MANAGER

RE: CONSIDERATION AND POSSIBLE APPROVAL OF ORDINANCE 769-21 ACCEPTING THE DEDICATION OF CERTAIN REAL PROPERTY FROM QUEEN CREEK UNIFIED SCHOOL DISTRICT NO. 95 FOR USE AS A PUBLIC RIGHT OF WAY, GENERALLY DESCRIBED AS QUEEN CREEK ROAD FROM ELLSWORTH ROAD TO CRISMON ROAD.

DATE: November 3, 2021

Staff Recommendation:

Staff recommends approval of Ordinance 769-21, accepting the dedication of property from Queen Creek Unified School District No. 95 for use as a public right of way, generally described as Queen Creek Road from Ellsworth Road to Crismon Road, located in Section 15, Township 2 South, Range 7 East of the Gila and Salt River Meridian, Maricopa County.

Relevant Council Goal(s):



Superior Infrastructure - Capital Improvement Program

Proposed Motion:

Move to approve Ordinance 769-21, accepting the dedication of property from Queen Creek Unified School District No. 95 for use as a public right of way, generally described as Queen Creek Road from Ellsworth Road to Crismon Road, located in Section 15, Township 2 South, Range 7 East of the Gila and Salt River Meridian, Maricopa County.

Discussion:

This ordinance is required pursuant to A.R.S. § 15-342(16), which allows Queen Creek Unified School District to dedicate school property to the Town for use as a public right-of-way only if the Town adopts an ordinance conferring certain “privileges and benefits on the District, and if “[t]he dedication will not affect the normal operation of any school within the district.”

The required right of way will be utilized by the Town of Queen Creek in order to complete the roadway widening improvements associated with project A1001 Queen Creek Road: Ellsworth Road to Crismon Road.

Fiscal Impact:

There is no fiscal impact to the annexation. The Town accepts all responsibility for the liability and maintenance of the dedicated right-of-way.

Alternatives:

None.

Attachment(s):

1. Ordinance 769-21
2. QCUUSD Special Warranty Deed

ORDINANCE NO. 769-21

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, ACCEPTING THE DEDICATION OF CERTAIN PROPERTY FROM QUEEN CREEK UNIFIED SCHOOL DISTRICT NO. 95 FOR USE AS A PUBLIC RIGHT-OF-WAY, GENERALLY DESCRIBED AS QUEEN CREEK ROAD FROM ELLSWORTH ROAD TO CRISMON ROAD.

WHEREAS, the Town of Queen Creek has determined it is necessary to widen Queen Creek Road to accommodate increased development and improve traffic flow around Queen Creek Junior High School; and

WHEREAS, this project requires acquisition of certain portions of parcels owned by Queen Creek Unified School District No. 95; and

WHEREAS, Queen Creek Unified School District No. 95 has determined that dedicating the portions of the parcels necessary for the widening of Queen Creek Road to the Town of Queen Creek will not affect the normal operation of any school within the District; and

WHEREAS, the Queen Creek Unified School District No. 95 has determined that such dedication will confer benefits and privileges on the District through the Town of Queen Creek’s acceptance of responsibility for the liability and maintenance of the right-of-way and by improving traffic flow into and around Queen Creek Junior High School; and

WHEREAS, the Queen Creek Unified School District No. 95 has executed a Quit Claim Deed, attached here as **Exhibit “A”** and incorporated herein by reference, to dedicate the property identified therein to the Town for use as a public right-of-way and that the Town desires to accept the same.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Common Council of the Town of Queen Creek as follows:

Section 1. The Town accepts the dedication of property identified in Exhibit A from the Queen Creek Unified School District No. 95 for use as public right-of-way for the widening, construction, and maintenance of Queen Creek Road.

Section 2. The Town accepts all responsibility for the liability and maintenance of the dedicated right-of-way as set forth in Exhibit A.

Section 3. The Mayor, Town Manager, Town Clerk, and Town Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this Ordinance.

Attachment: Ordinance 769-21 (QCUSD ROW Dedication)

PASSED AND ADOPTED BY the Mayor and Common Council of the Town of Queen Creek this __ day of _____, 2021.

FOR THE TOWN OF QUEEN CREEK:

ATTESTED TO:

Gail Barney, Mayor

Maria Gonzalez, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:

John Kross, ICMA-CM
Town Manager

Dickinson Wright PLLC
Town Attorneys

Attachment: Ordinance 769-21 (QCUSD ROW Dedication)

**EXHIBIT A
TO
ORDINANCE NO. 769-21**

[Special Warranty Deed]

See following pages.

Attachment: Ordinance 769-21 (QCUSD ROW Dedication)

Parcel No.: 304-66-003A, 003B, 003C, 004P, 004Q, 004R, 004W (a portion of)
Project Name: Phase II Queen Creek Road: Ellsworth Road to Crismon Road
Project Number: A1002

Accepted this _____ day of _____, 2021.

GRANTOR: QUEEN CREEK UNIFIED SCHOOL DISTRICT NO. 95, a political subdivision of the State of Arizona

Dr. Perry Berry, Superintendent

STATE OF ARIZONA)
) §
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Dr. Perry Berry as Superintendent of Schools on behalf of the **QUEEN CREEK UNIFIED SCHOOL DISTRICT NO. 95**, a political subdivision of the State of Arizona.

My Commission Expires _____

Notary Public (signature)



Notary Stamp Seal

Approved as to Form:

Kristin Mackin, Sims Mackin, LTD.
Attorneys for the **QUEEN CREEK UNIFIED SCHOOL DISTRICT**
PHOENIX 53749-2 420975v1

Attachment: QCUSD Special Warranty Deed (QCUSD ROW Dedication)

EXHIBIT “A”

Attachment: QCUSD Special Warranty Deed (QCUSD ROW Dedication)

EXHIBIT "A"
 LEGAL DESCRIPTION
 FOR
 RIGHT OF WAY
 A1001
 QUEEN CREEK ROAD
 APN 304-66-003A, APN 304-66-004P & APN 304-66-004W

A PARCEL OF LAND SITUATED IN A PART OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 2 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 15, FROM WHICH THE NORTH QUARTER CORNER OF SAID SECTION 15, BEARS SOUTH 89 DEGREES 42 MINUTES 50 SECONDS EAST, A DISTANCE OF 2627.75 FEET;

THENCE UPON AND WITH THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 15, SOUTH 89 DEGREES 42 MINUTES 50 SECONDS EAST, A DISTANCE OF 258.09 FEET;

THENCE DEPARTING SAID NORTH LINE, SOUTH 00 DEGREES 17 MINUTES 10 SECONDS WEST, A DISTANCE OF 33.00 FEET TO THE EXISTING SOUTH RIGHT OF WAY LINE OF QUEEN CREEK ROAD AND THE POINT OF BEGINNING;

THENCE UPON AND WITH SAID SOUTH RIGHT OF WAY LINE, SOUTH 89 DEGREES 42 MINUTES 50 SECONDS EAST, A DISTANCE OF 1907.51 FEET TO THE NORTHEAST CORNER OF THAT CERTAIN PARCEL DESCRIBED IN APN 304-66-004W, QUEEN CREEK SCHOOL DISTRICT #95, DOCUMENT NO. 1987-0412523, MARICOPA COUNTY RECORDS, ARIZONA;

THENCE DEPARTING SAID SOUTH RIGHT OF WAY LINE, UPON AND WITH THE EAST LINE OF SAID PARCEL, SOUTH 00 DEGREES 50 MINUTES 05 SECONDS EAST, A DISTANCE OF 22.00 FEET TO THE SOUTHEAST CORNER OF SAID APN 304-66-004W;

THENCE UPON AND WITH THE SOUTH LINE OF SAID APN 304-66-004W, NORTH 89 DEGREES 42 MINUTES 50 SECONDS WEST, A DISTANCE OF 1246.78 FEET;

THENCE NORTH 00 DEGREES 17 MINUTES 10 SECONDS EAST, A DISTANCE OF 8.00 FEET;

THENCE SOUTH 89 DEGREES 30 MINUTES 02 SECONDS WEST, A DISTANCE OF 328.26 FEET;

THENCE NORTH 00 DEGREES 17 MINUTES 10 SECONDS EAST, A DISTANCE OF 8.74 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS POINT THAT BEARS NORTH 02 DEGREES 40 MINUTES 55 SECONDS EAST, A DISTANCE OF 5997.99 FEET;

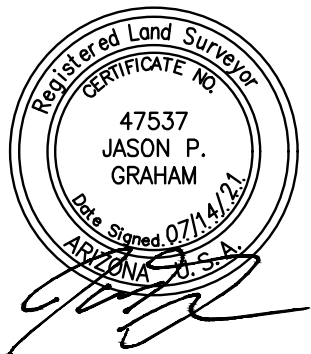
Attachment: QCUUSD Special Warranty Deed (QCUUSD ROW Dedication)

THENCE CONTINUING ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 00 DEGREES 22 MINUTES 20 SECONDS, AN ARC LENGTH OF 38.98 FEET;

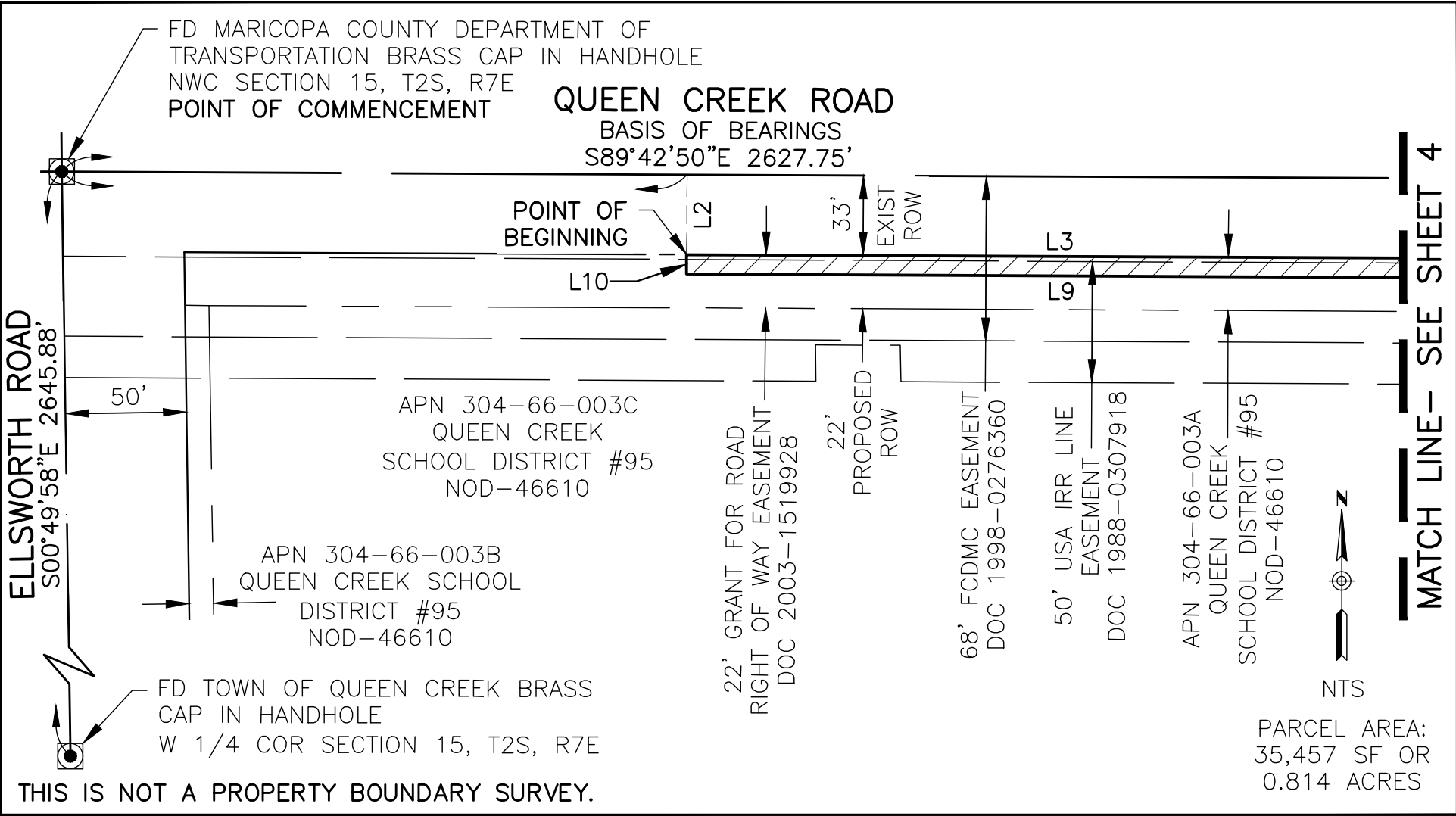
THENCE NORTH 89 DEGREES 42 MINUTES 50 SECONDS WEST, A DISTANCE OF 294.00 FEET;

THENCE NORTH 00 DEGREES 17 MINUTES 10 SECONDS EAST, A DISTANCE OF 8.00 FEET TO THE POINT OF BEGINNING AND CONTAINING A COMPUTED AREA OF 35,457 SQUARE FEET OR 0.814 ACRES OF LAND, MORE OR LESS.

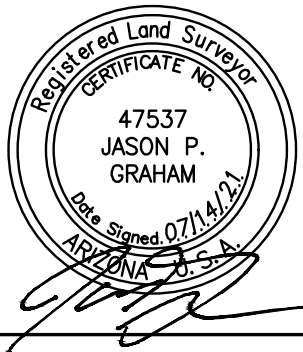
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DIBBLE



Dibble Engineering
Project No 1017023.01

EXHIBIT "A"
RIGHT OF WAY

A1001
QUEEN CREEK ROAD
A PART OF NORTHWEST SECTION 15,
T2S, R7E, GILA & SALT RIVER MERIDIAN,
MARICOPA COUNTY, ARIZONA

DATE: JUL 2021
DRN: BAR CHK: CSD

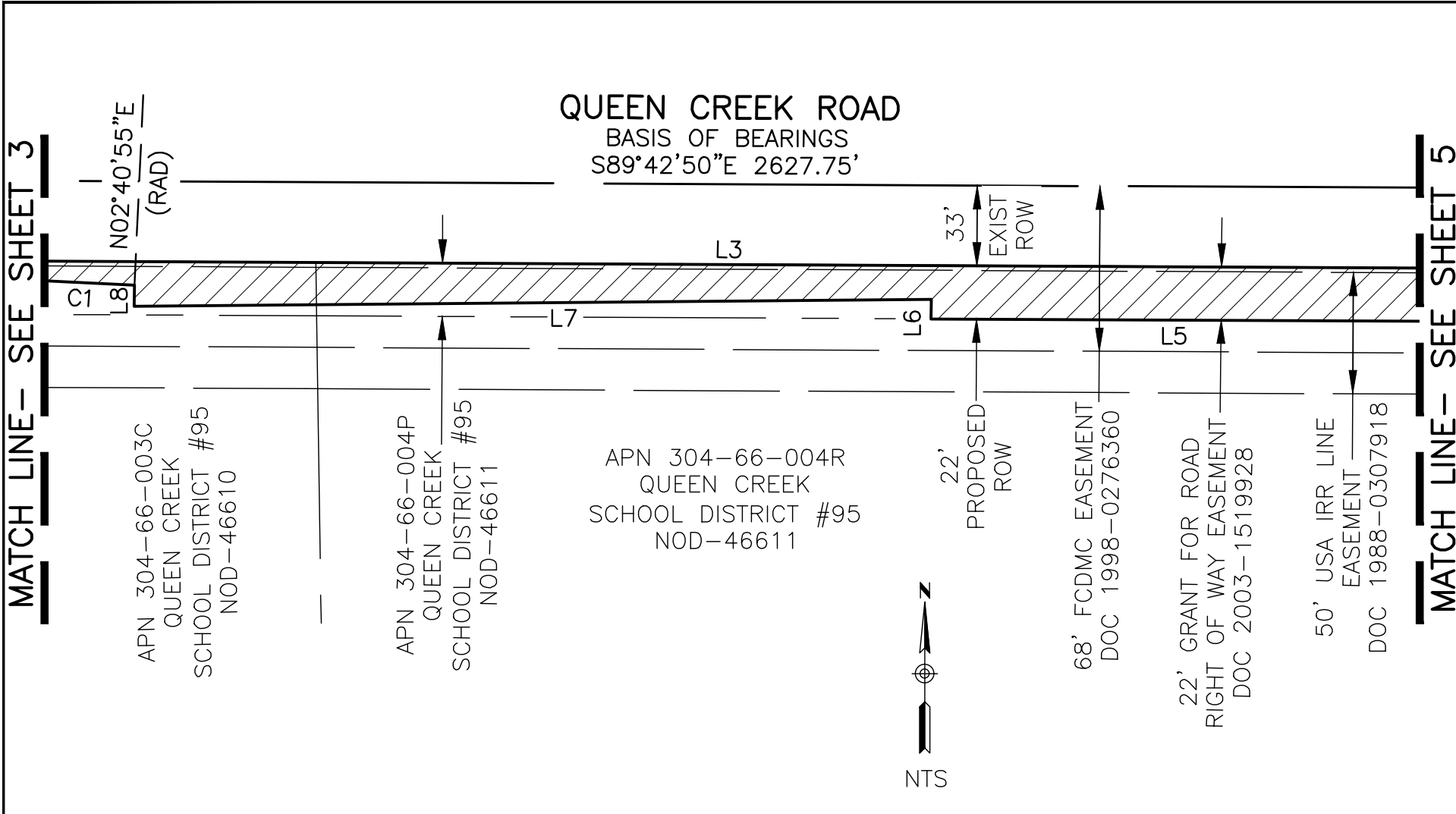
PAGE 3

Attachment: QCUSD Special Warranty Deed (QCUSD ROW Dedication)

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MATCH LINE— SEE SHEET 3

MATCH LINE— SEE SHEET 5



Dibble Engineering
Project No 1017023.01

EXHIBIT "A"
 RIGHT OF WAY
 A1001
 QUEEN CREEK ROAD
 A PART OF NORTHWEST SECTION 15,
 T2S, R7E, GILA & SALT RIVER MERIDIAN,
 MARICOPA COUNTY, ARIZONA

DATE: JUL 2021
 DRN: BAR CHK: CSD

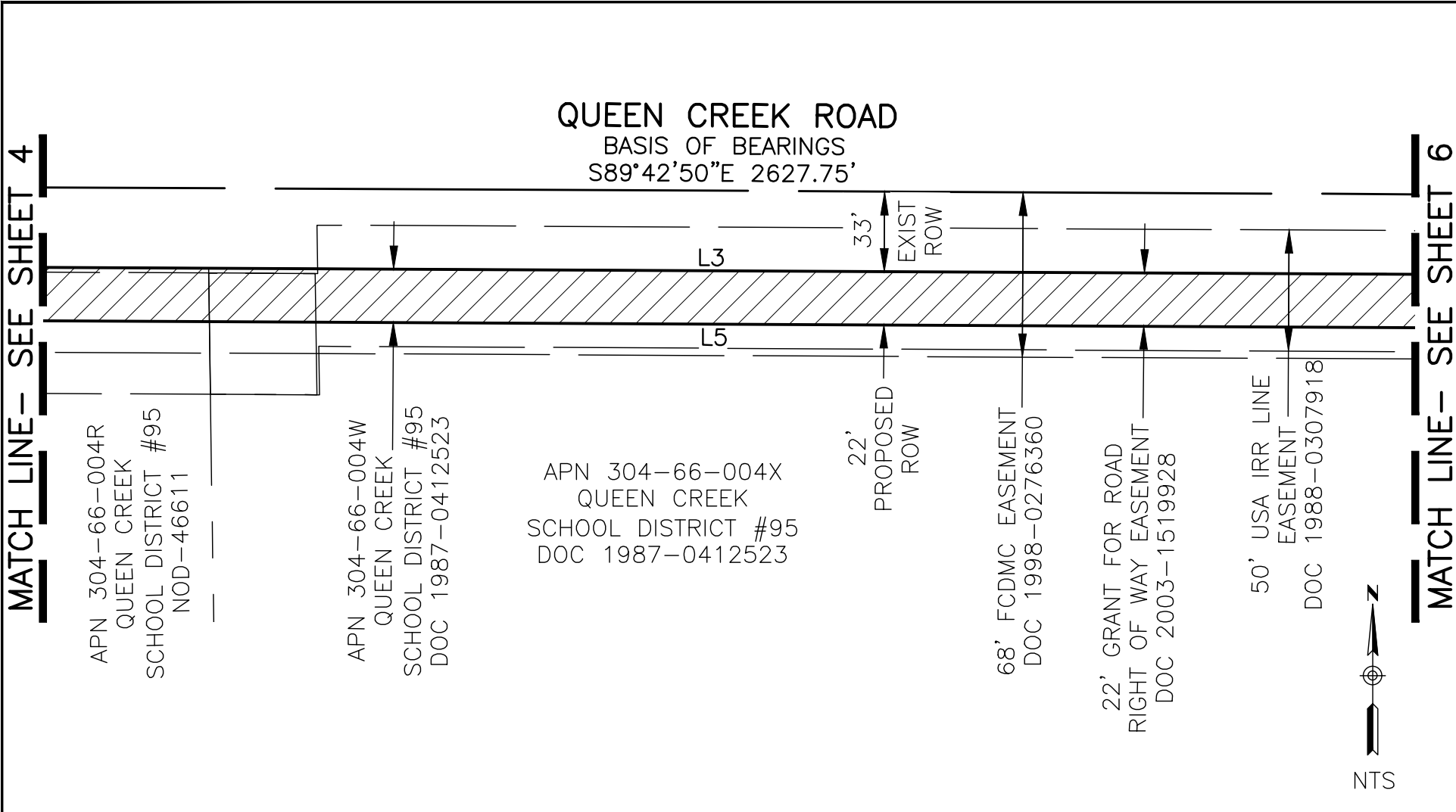
PAGE 4

Attachment: QCUSD Special Warranty Deed (QCUSD ROW Dedication)

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MATCH LINE-- SEE SHEET 4

MATCH LINE-- SEE SHEET 6



DIBBLE



Dibble Engineering
Project No 1017023.01

EXHIBIT "A"
 RIGHT OF WAY
 A1001
 QUEEN CREEK ROAD
 A PART OF NORTHWEST SECTION 15,
 T2S, R7E, GILA & SALT RIVER MERIDIAN,
 MARICOPA COUNTY, ARIZONA

DATE: JUL 2021
 DRN: BAR CHK: CSD

PAGE 5

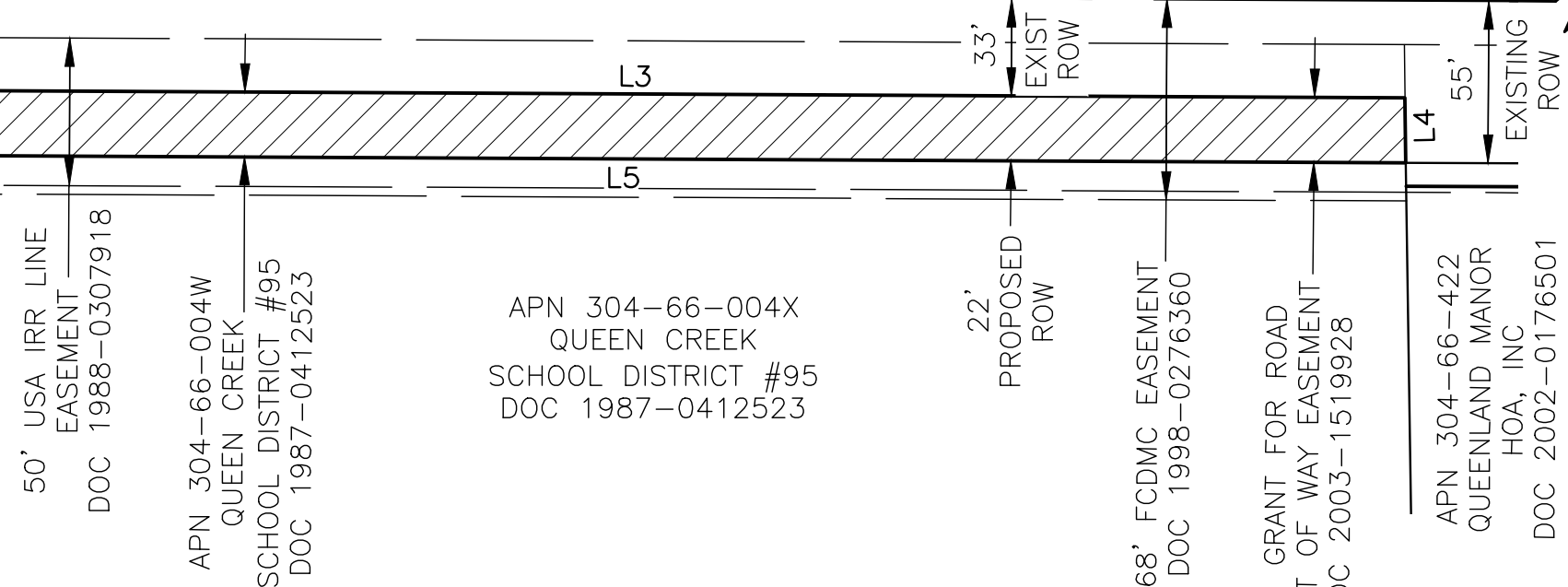
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MATCH LINE— SEE SHEET 5

FD COTTON PICKER SPINDLE
N 1/4 COR SECTION 15, T2S, R7E

QUEEN CREEK ROAD
BASIS OF BEARINGS
S89°42'50"E 2627.75'



Dibble Engineering
Project No 1017023.01



EXHIBIT "A"
RIGHT OF WAY
A1001
QUEEN CREEK ROAD
A PART OF NORTHWEST SECTION 15,
T2S, R7E, GILA & SALT RIVER MERIDIAN,
MARICOPA COUNTY, ARIZONA

DATE: JUL 2021
DRN: BAR CHK: CSD

PAGE 6

Attachment: QCUSD Special Warranty Deed (QCUSD ROW Dedication)

FILE:C:\Users\beverly.rossi\AppData\Local\Temp\AcPublish_2982B\APN_304--66--003A--004W--ROW.dwg DATE:Jul, 14 2021 TIME: 02:50 pm

| CURVE DATA TABLE | | | |
|------------------|--------|----------|----------|
| CURVE | LENGTH | RADIUS | DELTA |
| C1 | 38.98' | 5997.99' | 0°22'20" |

| LINE DATA TABLE | | |
|-----------------|-------------|----------|
| LINE | BEARING | DISTANCE |
| L1 | S89°42'50"E | 258.09' |
| L2 | S00°17'10"W | 33.00' |
| L3 | S89°42'50"E | 1907.51' |
| L4 | S00°50'05"E | 22.00' |
| L5 | N89°42'50"W | 1246.78' |
| L6 | N00°17'10"E | 8.00' |
| L7 | S89°30'02"W | 328.26' |
| L8 | N00°17'10"E | 8.74' |
| L9 | N89°42'50"W | 294.00' |
| L10 | N00°17'10"E | 8.00' |

DIBBLE

Dibble Engineering
Project No 1017023.01

Registered Land Surveyor
CERTIFICATE NO.
47537
JASON P. GRAHAM
Date Signed 07/14/21
ARIZONA, U.S.A.

EXHIBIT "A"
RIGHT OF WAY
A1001
QUEEN CREEK ROAD
A PART OF NORTHWEST SECTION 15,
T2S, R7E, GILA & SALT RIVER MERIDIAN,
MARICOPA COUNTY, ARIZONA

| | |
|------------------------|--------|
| DATE: JUL 2021 | PAGE 7 |
| DRN: BAR CHK: CSD | |

Attachment: QCUSD Special Warranty Deed (QCUSD ROW Dedication)

EXHIBIT "A"
LEGAL DESCRIPTION
FOR
RIGHT OF WAY
A1001
ELLSWORTH ROAD
APN 304-66-003B, APN 304-66-003C, APN 304-66-004Q & APN 304-66-004R

A PARCEL OF LAND SITUATED IN A PART OF THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 2 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 15, FROM WHICH THE WEST QUARTER CORNER OF SAID SECTION 15, BEARS SOUTH 00 DEGREES 49 MINUTES 58 SECONDS EAST, A DISTANCE OF 2645.88 FEET;

THENCE UPON AND WITH THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 15, SOUTH 00 DEGREES 49 MINUTES 58 SECONDS EAST, A DISTANCE OF 247.20 FEET;

THENCE DEPARTING SAID WEST LINE, NORTH 89 DEGREES 10 MINUTES 02 SECONDS EAST, A DISTANCE OF 50.00 FEET TO THE WEST LINE OF THAT CERTAIN PARCEL DESCRIBED IN APN 304-66-003B, QUEEN CREEK SCHOOL DISTRICT #95, NOD-46610, RECORDS OF MARICOPA COUNTY, ARIZONA (MCR), SAID POINT ALSO BEING THE POINT OF BEGINNING;

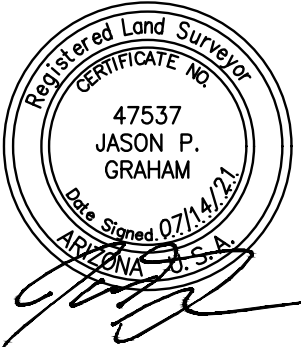
THENCE DEPARTING SAID WEST LINE, CONTINUING NORTH 89 DEGREES 10 MINUTES 02 SECONDS EAST, A DISTANCE OF 24.00 FEET;

THENCE SOUTH 00 DEGREES 49 MINUTES 58 SECONDS EAST, A DISTANCE OF 68.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS POINT THAT BEARS SOUTH 70 DEGREES 49 MINUTES 29 SECONDS WEST, A DISTANCE OF 59.00 FEET;

THENCE CONTINUING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 75 DEGREES 30 MINUTES 16 SECONDS, AN ARC LENGTH OF 77.75 FEET TO THE WEST LINE OF THAT CERTAIN PARCEL DESCRIBED IN APN 304-66-004Q, QUEEN CREEK SCHOOL DISTRICT #95, NOD-46611, MCR;

THENCE UPON AND WITH SAID WEST LINE, NORTH 00 DEGREES 49 MINUTES 58 SECONDS WEST, A DISTANCE OF 136.14 FEET TO THE POINT OF BEGINNING AND CONTAINING A COMPUTED AREA OF 3,058 SQUARE FEET OR 0.070 ACRES OF LAND, MORE OR LESS.

Attachment: QCUSD Special Warranty Deed (QCUSD ROW Dedication)



JUL 2021
PAGE 1

DIBBLE PROJECT NO 1017023.01

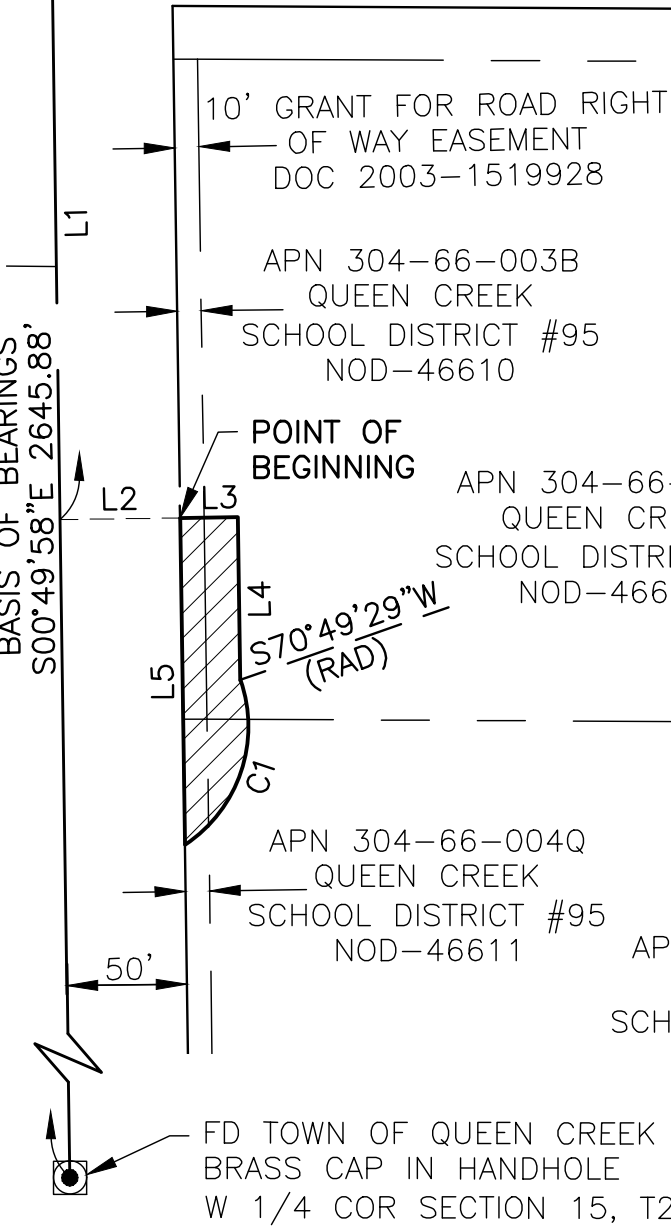
ROW-ELLSWORTH

FD MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION BRASS CAP IN HANDHOLE
 NWC SECTION 15, T2S, R7E
 POINT OF COMMENCEMENT

FD COTTON PICKER SPINDLE
 N 1/4 COR SECTION 15, T2S, R7E
 S89°42'50"E 2627.75'

QUEEN CREEK ROAD

ELLSWORTH ROAD
 BASIS OF BEARINGS
 S00°49'58"E 2645.88'



| CURVE | LENGTH | RADIUS | DELTA |
|-------|--------|--------|-----------|
| C1 | 77.75' | 59.00' | 75°30'16" |

| LINE | BEARING | DISTANCE |
|------|-------------|----------|
| L1 | S00°49'58"E | 247.20' |
| L2 | N89°10'02"E | 50.00' |
| L3 | N89°10'02"E | 24.00' |
| L4 | S00°49'58"E | 68.00' |
| L5 | N00°49'58"W | 136.14' |

APN 304-66-003B
 QUEEN CREEK
 SCHOOL DISTRICT #95
 NOD-46610

APN 304-66-003C
 QUEEN CREEK
 SCHOOL DISTRICT #95
 NOD-46610

APN 304-66-004Q
 QUEEN CREEK
 SCHOOL DISTRICT #95
 NOD-46611

APN 304-66-004R
 QUEEN CREEK
 SCHOOL DISTRICT #95
 NOD-46611

FD TOWN OF QUEEN CREEK
 BRASS CAP IN HANDHOLE
 W 1/4 COR SECTION 15, T2S, R7E



PARCEL AREA:
 3,058 SF OR
 0.070 ACRES

THIS IS NOT A PROPERTY BOUNDARY SURVEY.

DIBBLE

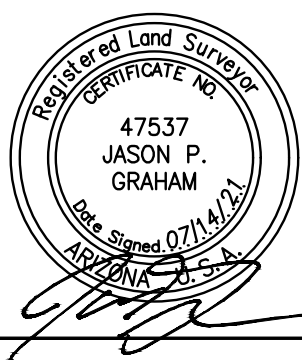


EXHIBIT "B"
 RIGHT OF WAY
 A1001
 ELLSWORTH ROAD
 A PART OF NORTHWEST SECTION 15,
 T2S, R7E, GILA & SALT RIVER MERIDIAN,
 MARICOPA COUNTY, ARIZONA

Dibble Project No
 1017023.01

DATE: JUL 2021
 DRN: BAR CHK: CSD

PAGE 2

Attachment: QCUSD Special Warranty Deed (QCUSD ROW Dedication)

FILE:C:\Users\beverly.rossi\AppData\Local\Temp\AcPublish_29828\APN_304-66-003B-003C-004Q-004R-ROW.dwg DATE:Jul, 14 2021 TIME: 03:08 pm



Requesting Department

Finance

TO: HONORABLE MAYOR AND TOWN COUNCIL
THROUGH: JOHN KROSS, ICMA-CM, TOWN MANAGER
FROM: SCOTT MCCARTY, FINANCE DIRECTOR
RE: PUBLIC HEARING FOR THE TOWN'S BIENNIAL DEVELOPMENT IMPACT FEE AUDIT FOR FISCAL YEARS 2018-19 AND 2019-20 AND ACCEPT THE AUDIT REPORT.
DATE: November 3, 2021

Staff Recommendation:

Conduct a public hearing for the Town's biennial audit for fiscal years 2018-19 and 2019-20 and accept the audit report.

Proposed Motion:

Two actions are proposed. First, conduct a public hearing for the Town's biennial audit for fiscal years 2018-19 and 2019-20. Second, at the conclusion of the public hearing, accept the audit report.

Discussion:

Development impact fees are subject to statutory requirements on how they are assessed, collected, used, and reported. ARS §9-463.05 states that development impact fees may be assessed to offset the cost of providing necessary public services to a development; however, those fees must be based on Land Use Assumptions (LUA) and an Infrastructure Improvement Plan (IIP) that are formally adopted by the Town.

State law also requires a biennial audit. In the Town's case, an audit is due for fiscal years 2018-19 and FY 2019-20. The biennial audit must be performed by an outside entity that was not involved in developing the Town's IIP or LUA. The audit evaluates the Town's actual growth compared to projected development as outlined in the adopted LUA and IIP. The audit also reviews the Town's assessment of impact fees to determine that the correct fees were charged for each development type. Finally, the audit reviews the Town's expenditures of impact fees to verify that costs paid with impact fees are allowed per the IIP.

On October 6, 2021, the Town Council received a presentation from Town staff and the auditors (Heinfeld Meech) regarding the audit. The results of the audit are summarized below.

Results of the Audit

The auditor's report found that the Town's impact fee program and practices comply with ARS §9-463.05 in the following areas:

- The Town's progress and pattern of actual development is consistent with the LUA and IIP assumptions included in the May 2014 and November 2019 reports.
- The Town's progress on infrastructure projects is consistent with Town's IIP.
- Expenditures of impact fees are consistent with projects identified in the IIP.
- Impact fees were assessed appropriately based on the size and type of development.

The audit did include one exception related to the variances for growth projections for population, number of housing units and nonresidential square footage as reported in the Infrastructure Improvement Plan, Land Use Assumptions, and Development Fees report when compared to actual results.

In the audit report, Town staff provided the following response to this exception.

The development impact fee reports that were subject to this audit were dated May 2014 and November 2019 and reflected growth projections that were made based on the Land Use Assumptions at that time. During the audit period, population growth (i.e. new, single-family home construction) in the Town was significant and, not surprisingly, exceeded projections. In February 2020, as a result of the November 2019 impact fee report, new development impact fees took effect and the Land Use Assumptions to calculate those new fees were updated to reflect significant population growth and other growth such as the development of new commercial property.

Public Hearing and Acceptance of the Audit Report

At the October 6 Town Council meeting, the Town Council set November 3 as the date for the public hearing required under state law. After that, the audit was posted on the Town's website. As of the writing of this staff report, no comments regarding the audit have been received. A public hearing on the audit is required within 60 days of its posting hence why we are holding the public hearing on November 3.

Town staff would like to express its appreciation to Heinfeld Meech for its work in completing the audit.

Fiscal Impact:

None.

Alternatives:

None. The Town is required to complete a biennial audit for these two fiscal years under statelaw, conduct a public hearing, and accept the audit report.

Attachment(s):

1. Town of Queen Creek Biennial Impact Fee Audit Report for the periods FY 2018-19 and FY 2019-20
2. Town Staff Presentation



Town of Queen Creek, Arizona
Report on Applying Agreed-Upon Procedures
Biennial Certification of Land Use Assumptions,
Infrastructure Improvement Plan
and Development Impact Fees
For the Period July 1, 2018 through June 30, 2020

Attachment: Town of Queen Creek Biennial Impact Fee Audit Report for the periods FY 2018-19 and FY 2019-20 (Biennial impact fee audit)

**TOWN OF QUEEN CREEK, ARIZONA
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| Independent Accountant’s Report on Applying Agreed-Upon Procedures | 1 |
| Results of Procedures | 3 |
| Appendix A – Progress of Infrastructure Improvement Plan Projects | 4 |

Attachment: Town of Queen Creek Biennial Impact Fee Audit Report for the periods FY 2018-19 and FY 2019-20 (Biennial impact fee audit)

**INDEPENDENT ACCOUNTANT’S REPORT ON
APPLYING AGREED-UPON PROCEDURES**

Honorable Mayor and Members of the Town Council

We have performed this agreed-upon procedures engagement to assist management of the Town of Queen Creek, Arizona (Town), with the requirement set forth in Arizona Revised Statutes (A.R.S.) 9-463.05.G.2 “to provide for a biennial certified audit of the municipality’s land use assumptions, infrastructure improvements plan and development fees”. As such, we have performed the procedures identified below, solely to assist users in evaluating the Town’s compliance with the progress reporting requirements of the infrastructure improvement plan for the period from July 1, 2018 through June 30, 2020, as specified in A.R.S. 9-463.05.G.2. Town of Queen Creek, Arizona’s management is responsible for its compliance with those requirements.

Town of Queen Creek, Arizona’s management has agreed to and acknowledged that the procedures performed are appropriate to meet the intended purpose of assisting users in determining whether the Town complied with the specified requirements. This report may not be suitable for any other purpose. The procedures performed may not address all the items of interest to a user of this report and may not meet the needs of all users of this report and, as such, users are responsible for determining whether the procedures performed are appropriate for their purposes.

We have applied the following procedures:

The progress of the infrastructure improvements plan.

- 1) Compared growth projections for 2019 and 2020 related to population, number of housing units (single family homes and multi-family units), and nonresidential square footage (industrial, commercial, office/other), as reported in the Infrastructure Improvements Plan (IIP) to actual results. A list of all variances are reported in the Results of Procedures.
- 2) Obtained Town-prepared report (see Appendix A) documenting the progress of each project identified in the Infrastructure Improvements Plan, Land Use Assumptions, and Development Fees report (dated May 7, 2014, and the updated report dated November 2019), and agreed expenditures as of June 30, 2020 to the underlying accounting records.

The collection and expenditures of development impact fees for each project in the plan.

- 3) Selected a sample of 40 building permits issued and determined fees were charged in accordance with authorized fee schedules and that each permit holder was charged the same rate as another equivalent permit holder. Any inequities in the imposition of development fees are reported in the Results of Procedures.
- 4) Selected a sample of 20 building permits issued after February 10, 2020 and determined the rates charged were in accordance with A.R.S. 9-463.05.F (when applicable).
- 5) Selected a sample of 40 expenditures and determined that the expenditures were associated with an approved project in the Town's Infrastructure Improvements Plan, Land Use Assumptions, and Development Fees report (dated May 7, 2014, and the updated report dated November 2019).

Evaluating any inequities in implementing the plan or imposing the development impact fee.

- 6) Determined each developer/unit was charged the same rate as another equivalent developer/unit by recalculating impact fees at the transaction level for the sample mentioned in Step 3 above.
- 7) Determined that there were no instances in which the Town waived development impact fees, except as allowed for under A.R.S. 9-499.10.B and A.R.S. 9-500.18.

The accompanying Results of Procedures describes the items we noted.

We were engaged by Town of Queen Creek, Arizona's management to perform this agreed-upon procedures engagement and conducted our engagement in accordance with attestation standards established by the American Institute of Certified Public Accountants. We were not engaged to and did not conduct an examination or review engagement, the objective of which would be the expression of an opinion or conclusion, respectively, on compliance with the specified requirements. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

We are required to be independent of Town of Queen Creek, Arizona's management and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements related to our agreed-upon procedures engagement.

This report is intended solely for the information and use of the management of Town of Queen Creek, Arizona, and is not intended to be and should not be used by anyone other than these specified parties.

Heinfeld Meech & Co. PC

Heinfeld, Meech & Co., P.C.
Tucson, Arizona
September 4, 2021

**TOWN OF QUEEN CREEK, ARIZONA
RESULTS OF PROCEDURES**

EXCEPTION NO. 1

Variations were noted for growth projections for population, number of housing units and nonresidential square footage as reported in the Infrastructure Improvement Plan, Land Use Assumptions, and Development Fees report when compared to actual results. All variations are reported in the tables below.

| | | 2019 | | | |
|--|--------------------------------------------|------------------|---------------|-----------------|-------------------|
| | | <u>Projected</u> | <u>Actual</u> | <u>Variance</u> | <u>Variance %</u> |
| | Population | 45,898 | 53,138 | 7,240 | 16% |
| | Housing Units | 14,516 | 16,262 | 1,746 | 12% |
| | Nonresidential Sq. Ft. (in 1,000's) | | | | |
| | Industrial | 75 | - | (75) | -100% |
| | Commercial | 307 | 110 | (197) | -64% |
| | Office/Other Services | 195 | 243 | 48 | 25% |

| | | 2020 | | | |
|--|--------------------------------------------|------------------|---------------|-----------------|-------------------|
| | | <u>Projected</u> | <u>Actual</u> | <u>Variance</u> | <u>Variance %</u> |
| | Population | 50,511 | 61,727 | 11,216 | 22% |
| | Housing Units | 16,080 | 19,499 | 3,419 | 21% |
| | Nonresidential Sq. Ft. (in 1,000's) | | | | |
| | Industrial | 77 | - | (77) | -100% |
| | Commercial | 134 | 184 | 50 | 37% |
| | Office/Other Services | 340 | 65 | (275) | -81% |

Note: Due to the nature of growth data available, the nonresidential square footage for the 2019 and 2020 tables are presented as a comparison of incremental growth by year rather than cumulative totals.

Management Response:

The development impact fee reports that were subject to this audit were dated May 2014 and November 2019 and reflected growth projections that were made based on the Land Use Assumptions at that time. During the audit period, population growth (i.e. new, single-family home construction) in the Town was significant and, not surprisingly, exceeded projections. In February 2020, as a result of the November 2019 impact fee report, new development impact fees took effect and the Land Use Assumptions to calculate those new fees were updated to reflect significant population growth and other growth such as the development of new commercial property.

TOWN OF QUEEN CREEK, ARIZONA
APPENDIX A
PROGRESS OF INFRASTRUCTURE IMPROVEMENT PLAN PROJECTS

| <u>Project</u> | <u>Project Description</u> | <u>FY 18-19</u> | <u>FY 19-20</u> |
|----------------------------------------------------------------|-------------------------------------|---------------------|---------------------|
| <u>Fire Facilities Development Impact Fee</u> | | | |
| MF007 | Fire Station #4 | \$ 193,636 | \$ 1,040,378 |
| MF008 | Fire Ladder Truck | 532,670 | 68,280 |
| MF009 | Fire Station #5 | 1,402 | 361,230 |
| MF010 | Fire Station #2 Permanent Facility | - | 7,674 |
| MF011 | Fire Resource Center | - | 9,029 |
| | Total | \$ 727,708 | \$ 1,486,591 |
| <u>Parks and Recreation Development Impact Fee</u> | | | |
| P0620 | East Park | \$ - | \$ 68,755 |
| TE100 | QC Wash Trail: Crismon-Rittenhouse | - | 37,833 |
| TE200 | Sonoqui Wash: Hawes To Ellsworth | - | 47,633 |
| TE210 | Sonoqui Wash: Ellsworth To Crismon | - | 30,146 |
| | Total | \$ - | \$ 184,367 |
| <u>Police Facilities Development Impact Fee</u> | | | |
| MF007 | Fire Station #4 | \$ 59,120 | \$ 273,784 |
| MF009 | Fire Station #5 | 428 | 2,275 |
| MF010 | Fire Station #2 Permanent Facility | - | 2,020 |
| | Total | \$ 59,548 | \$ 278,079 |
| <u>Transportation Facilities Development Impact Fee</u> | | | |
| A0107 | Ocotillo Rd-Recker To Power | \$ 196,146 | \$ - |
| A0115 | Ocotillo: 226th To Ironwood | 64,265 | 68,891 |
| A0116 | Ocotillo: Sossaman To Hawes | 92,014 | 150,339 |
| A0306 | Rittenhouse: Village Lp To Alliance | 1,058,010 | 2,424,284 |
| A0307 | Rittenhouse Bridge At Qc Wash | - | 1,662,242 |
| A0510 | Riggs: Ellworth To Meridian | 3,086,742 | 674,640 |
| A0520 | Riggs Rd: Power To Hawes | 264,440 | 484,653 |
| A0603 | Chandler Hts: Sossaman To Power | 44,923 | 177,150 |
| A1002 | QC Rd-Ellsworth To Signal Butte | 441,864 | 1,219,409 |
| A1403 | Power: Ocotillo To Brooks Farm | 272,364 | 16,583 |
| A1404 | Power: Brooks Farm To Chand Hgts | 22,121 | 36,064 |
| A1505 | Meridian: Combs To Qc Wash | 7,015 | 187,279 |
| A1802 | 196Th: Ocotillo To Appleby2 | 377,152 | 26,086 |
| A1803 | Appleby2: Sossaman To 196Th | 400,298 | 25,064 |
| A2001 | Ryan: Crismon To 220Th | - | 2,598 |
| I0028 | Riggs @ Hawes (T.S.) | 159,466 | - |
| I0060 | Ellsworth @ Via De Palmas (Ts) | 54,440 | - |
| I0061 | Ocotillo @ Victoria (Ts) | - | 215,267 |
| | Total | \$ 6,541,260 | \$ 7,370,549 |

Attachment: Town of Queen Creek Biennial Impact Fee Audit Report for the periods FY 2018-19 and FY 2019-20 (Biennial impact fee audit)

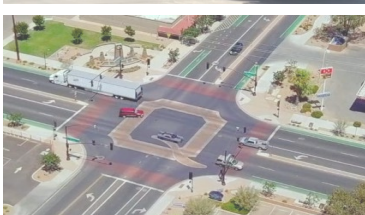


IMPACT FEE BIENNIAL AUDIT FOR FISCAL YEARS 2018-19 AND 2019-20

PUBLIC HEARING AND ACCEPTANCE OF THE AUDIT REPORT

Town Council Meeting

November 3, 2021



STATE LAW REQUIREMENTS

| Requirements | Date Completed |
|----------------------------------------|----------------|
| Biennial Audit | September 4 |
| Review Audit Results with Town Council | October 6 |
| Post Audit to Town's Website | October 11 |
| Conduct a Public Hearing | November 3 |
| Accept Biennial Audit Report | November 3 |

Attachment: Town Staff Presentation (Biennial impact fee

TONIGHT'S ACTIONS

1. Conduct a Public Hearing
2. Motion to Accept the Biennial Audit for Fiscal Years 2018-19 and 2019-20

