AMENDED AGENDA

Queen Creek Town Council Regular Session

Community Chambers, 20727 E Civic Parkway

December 7, 2022

6:30 PM

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 public can continue to watch the meeting live streamed at QueenCreek.org/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.

In addition to attending in-person, residents may submit public comment for this Town Council meeting by submitting their comments via email to PublicComment@QueenCreekAZ.gov. Every email, if received by the deadline of 5:00 p.m., the day of the meeting will be entered into the official record. Please include your name, address, comment and note if your comment is for call to the public. Comments without identifying name and address will not become part of the written record.

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. Some members of the Town Council and staff may attend electronically.

1. **Call to Order:**
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. None.
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. Parks and Recreation Advisory Committee (November 29, 2022)
      2. Economic Development Commission (November 30, 2022)

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 returning it to the Town Clerk (limited to three (3) minutes each), or by emailing your comment for this Town Council meeting to PublicComment@QueenCreekAZ.gov (limited to 500 words). Every email, if received by the deadline of 5:00 p.m., the day of the meeting, will be entered into the official record. Only one comment per person, per Agenda Item will be allowed. Comments without identifying name and address will not be entered into the official record. The Town Council may not discuss or take action on any issue raised during public comment until a later meeting.*

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 November 16, 2022 Regular Session minutes.

   B. Consideration and possible approval of the re-appointment of Anita Lopez to the Downtown Core Arts & Placemaking Advisory Sub-Committee.

   C. Consideration and possible approval of the Town of Queen Creek's 2023 Legislative Guiding Principles.

   D. Consideration and possible approval of the "Final Plat" for the Germann Commerce Center - Phase 1, a request by TTRG AZ Queen Creek Germann Road Land LLC.

   E. Consideration and possible approval of Expenditures $25,000 and over, pursuant to Town Purchasing Policy. (FY 22/23 Budgeted Items)

      1. Courtesy Chevrolet - 2023 Chevrolet Silverado 1500: $50,000 (Fire)

      2. Interim Public Management, LLC - Temporary Personnel Services: $180,000 (Town Manager)

      3. West Coast Arborist - Tree Trimming and Clearing: $73,418 (CIP)

   F. Consideration and possible approval of FY 2022-23 budget amendments totaling $2,042,668 in revenue adjustments and $414,962 in expense reallocations including $405,644 from contingencies.

   G. Consideration and possible approval of Amendment No. 1 to the Groundwater Savings Facility Storage Intergovernmental Agreement with Queen Creek Irrigation District and authorize the Town Manager and Town Attorney to modify, negotiate, finalize and sign all documents necessary to effectuate the transaction.

   H. Consideration and possible approval of a Job Order 32 with MGC Contractors, Inc., Contract #2019-134 in an amount not to exceed $421,373 for the construction of electrical room enclosures for Ironwood Crossings North and Shea North Well Sites Electrical Rooms. (FY 22/23 Budgeted Item)

   I. Consideration and possible approval of Resolution # 1507-22, a Resolution of the Common Council of the Town of Queen Creek, Arizona, declaring, for purposes of Section 1.150-2 of the Federal Treasury Regulations, official intent to be reimbursed in connection with certain capital expenditures relating to public safety projects.

J. Consideration and possible approval of: (i) the Purchase and Sale Agreement and Escrow Instructions for the acquisition of the Barney Sports Complex to be redeveloped into a public safety complex accommodating various uses for the Town's police and fire departments; and (ii) delegating authority to the Town Manager and the Town Attorney to negotiate, finalize and execute such an agreement and ancillary documents and agreements to effectuate the closing of the transaction.

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 by completing a Request to Speak Card and returning it to the Town Clerk (limited to three (3) minutes each), or by emailing your comment for this Town Council meeting to PublicComment@QueenCreekAZ.gov (limited to 500 words). Every email, if received by the deadline of 5:00 p.m., the day of the meeting, will be entered into the official record. Only one comment per person, per Agenda Item will be allowed. Comments without identifying name and address will not be entered into the official record.

A. Public Hearing and possible action on Ordinance 803-22, P22-0223 Reasonable Accommodation Text Amendment, a staff initiated text amendment to Article 6.3 Group Residential Facilities of the Zoning Ordinance adding language regarding the reasonable accommodation waiver process. *Staff is requesting a continuance to the February 15, 2023 Council Meeting.*

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 completing a Request to Speak Card and returning it to the Town Clerk (limited to three (3) minutes each), or by emailing your comment for this Town Council meeting to PublicComment@QueenCreekAZ.gov (limited to 500 words). Every email, if received by the deadline of 5:00 p.m., the day of the meeting, will be entered into the official record. Only one comment per person, per Agenda Item will be allowed. Comments without identifying name and address will not be entered into the official 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. Public Right of Way Improvement Projects CIP, Development Services and Public Works

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 returning it to the Town Clerk (limited to three (3) minutes each), or by emailing your comment for this Town Council meeting to PublicComment@QueenCreekAZ.gov *(limited to 500 words). Every email, if received by the deadline of 5:00 p.m., the day of the meeting, will be entered into the official record. Only one comment per person, per Agenda Item will be allowed. Comments without identifying name and address will not be entered into the official record.*

A. Consideration and possible approval of Resolution No. 1511-22 authorizing the Town Manager to execute: (1) Contract with the Town of Queen Creek for Delivery of Colorado River Water; (2) Partial Assignment and Transfer of Colorado River Water Under Contract with GSC Farm, LLC to the Town of Queen Creek; and (3) Reclamation Wheeling Contract between the United States and the Town of Queen Creek to transport non-project water; authorizing the finalization and implementation thereof; and providing for repeal of

conflicting resolutions.

B. Consideration and possible approval of Resolution 1508-22 authorizing a Drinking Water State Revolving Fund Program Loan ("DWSRF") through the Water Infrastructure Finance Authority of Arizona ("WIFA") for costs related to the acquisition of surface water rights (Cibola) in an amount not to exceed $27 million and declaring an emergency to avoid delay in an economic environment in which interest rates are anticipated to increase.

C. Consideration and possible approval of Resolution 1506-22 allowing for the evaluation of additional infrastructure uses for the 2% construction sales tax.

D. Consideration and possible approval of a $7M payment to fully fund the Town's Police Pension Plan in the Arizona Public Safety Personnel Retirement System and a $7M budget adjustment from the contingency account.

13. Adjournment:

I, Maria Gonzalez, do hereby certify that I caused to be posted this 6th day of December, the Agenda for the December 7, 2022 Regular and Possible Executive Session of the Queen Creek Town Council at Town Hall and on the Town's website at www.QueenCreekAZ.gov.

_____

Maria E. Gonzalez, MMC
Town Clerk

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.

8.A

TOWN OF QUEEN CREEK ARIZONA

TO:	**HONORABLE MAYOR AND TOWN COUNCIL**
THROUGH:	**JOHN KROSS ICMA-CM, TOWN MANAGER**
FROM:	**MARIA GONZALEZ MMC, TOWN CLERK**
RE:	**CONSIDERATION AND POSSIBLE APPROVAL OF THE NOVEMBER 16, 2022 REGULAR SESSION MINUTES.**
DATE:	**December 7, 2022**

Suggested Action:

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. 11-16-22 Minutes

Minutes
Town Council Regular Session
Community Chambers, 20727 E. Civic Parkway
Wednesday, November 16, 2022
6:30 PM

1) Call to Order:

The meeting was called to order at 6:37 p.m.

2) Roll Call:

PRESENT:
Jeff Brown, Vice Mayor
Robin Benning, Council Member
Leah Martineau, Council Member
Dawn Oliphant, Council Member
Emilena Turley, Council Member
Julia Wheatley, Mayor-Elect

3) Pledge of Allegiance:

Led by Council Member Turley.

4) Invocation/Moment of Silence:

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

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

None.

6) Committee Reports:

6.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.

Committee Reports

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

Transportation Advisory Committee (November 10, 2022)
Downtown Arts & Placemaking Advisory Sub-Committee

Transportation Advisory Committee Vice Chair Bob Adelfson provided the report. The committee heard the following updates from staff: Marissa Garnett presented on Economic Development in Queen Creek; Erik Swanson provided a community development update; Brad Novacek provided an update on road projects and the Capital Improvement Program; and Mohamed Youssef provided an update on the Small Area Transportation Study, State Route 24 extension and the Pinal Parkway. The next meeting is scheduled for February 9, 2023.

Council Member Robin Benning provided the Downtown Arts & Placemaking Advisory Sub-Committee report. The committee discussed the Work Plan priorities and selected Chair and Vice Chair positions. The committee discussed the proposals received for the Downtown Arts Master Plan and holiday lighting for the Town Center. The next meeting is on January 12, 2023.

7) Public Comments:

None.

8) Consent Agenda:

8.A) Consideration and possible approval of the November 2, 2022 Regular Session minutes.

Department: Town Clerk's Office

Staff Report

11-02-22 Minutes.pdf

8.B) Consideration and possible approval of Expenditures $25,000 and over, pursuant to Town Purchasing Policy. (FY 22/23 Budgeted Items)

Department: Finance

Staff Report

11_16_2022 Expenditures over $25k - Google Sheets.pdf

8.C) Consideration and possible approval of the "Map of Dedication" for Crismon Road & Sonoqui Wash, a request by Jorde Farms 1 LLC.

Department: Development Services

Staff Report

Aerial Exhibit - Crismon Road & Sonoqui Wash Map of Dedication.pdf

Map of Dedication - Crismon Road and Sonoqui Wash.pdf

8.D) Consideration and possible approval of renewal of a professional services agreement with CapitalEdge (Contract #2021-114) in the amount of $36,000, for government relations services for the monitoring of federal funding opportunities to support the Town's initiatives relative to public safety, transportation, water sustainability and wastewater strategies, and the necessary budget adjustments

Department: Town Manager's Office

Staff Report

Professional Services Contract #2021-114

Council Member Martineau removed Item 8(D) for a separate vote.

8.E) Consideration and possible approval of a contract with Union Pacific Railroad (UPRR) for Preliminary Engineering Review of the Sossaman Road and Germann Road Intersection Improvement Project (CIP Project No. A0904) in the amount of $82,500 and the necessary budget adjustments.

Department: Capital Improvement Projects

Staff Report

A0904 Project Location Exhibit

A0904 Project Site Exhibit

UPPR A0904 Agreement

IGA With Town of Queen Creek and City of Mesa- Germann Rd.

WSP USA Environment & Infrastructure Design Contract

8.F) Consideration and possible approval of a contract with Westwood Professional Services, Inc. for design services of the Ellsworth Road and Cloud Road offsite improvements (CIP Project No. A1006) in the amount of $178,800. (This is a FY 2022/23 Budgeted Item)

Department: Capital Improvement Projects

Staff Report

A1006 Project Location Exhibit

A1006 Project Site Exhibit

Westwood Professional Services Contract

8.G) Consideration and possible approval of the Intergovernmental Agreement (IGA) with the Town of Gilbert for fire support services, in an amount not to exceed $150,000. (FY 22/23 Budgeted Item)

Department: Fire & Medical

Staff Report

IGA Between the Town of Gilbert and Queen Creek for Fire Resource Services 2022.pdf

8.H) Consideration and possible approval of a Contract Project Order #2 with Ardurra for professional engineering and land surveying services for Crismon Road improvements from Cloud Road to Riggs Road (CIP Project No. A1005) in the amount of $387,814.30. This price includes additional funding needed to capture the full scope of design with the traditional 10% contingency added. (This is a FY 22/23 Budgeted Item)

Department: Capital Improvement Projects

Staff Report

A1005 Project Location Exhibit

A1005 Project Site Exhibit

Ardurra Project Order #2

8.I) Consideration and possible approval of Delegation Resolution #1501-22 authorizing and directing the Town Manager and/or Capital Improvement Projects Department Director to take any and all action necessary; and to sign any and all documents, contracts, and/or agreements related to construction and completion of the Recreational and Aquatic Center (CIP Project No. RQ030) within Frontier Family Park in an amount not to exceed $64,285,432. (This is a FY 22/23 Budgeted Item)

Department: Capital Improvement Projects

Staff Report

RQ030 Project Location Exhibit

RQ030 Project Site Exhibit

Delegation Resolution #1501-22 Exhibit 1

Council Member Martineau removed Item 8(I) for a separate vote.

8.J) Consideration and possible approval of Resolution 1504-22 authorizing $10.2M of interfund loans and $23.2M of interfund transfers related to corrections of the use of development impact fees and capacity fees, providing for the financing of various capital projects, and providing for the loan repayments thereof.

Department: Finance

Staff Report

Appendix A - Corrections by Project

Resolution 1504-22

Staff Report

MOTION:	**To approve Consent Agenda less Items 8(D) & 8 (I)**
RESULT:	**Approved unanimously (6-0)**
MOVER:	Julia Wheatley, Mayor-Elect
SECONDER:	Robin Benning, Council Member
AYES:	Jeff Brown, Vice Mayor, Robin Benning, Council Member, Leah Martineau, Council Member, Dawn Oliphant, Council Member, Emilena Turley, Council Member, Julia Wheatley, Mayor-Elect

MOTION:	**To approve the renewal of professional services agreement with CapitalEdge (Contract #2021-114) in the amount of $36,000, for government relations services for the monitoring of federal funding opportunities to support the Town's initiatives relative to public safety, transportation, water sustainability and wastewater strategies, and the necessary budget adjustments.**
RESULT:	**Approved (4-2)**
MOVER:	Robin Benning, Council Member
SECONDER:	Julia Wheatley, Mayor-Elect
AYES:	Jeff Brown, Vice Mayor, Robin Benning, Council Member, Dawn Oliphant, Council Member, Julia Wheatley, Mayor-Elect
NAYS:	Leah Martineau, Council Member, Emilena Turley, Council Member

MOTION:	**To approve Delegation Resolution #1501-22 authorizing and directing the Town Manager and/or Capital Improvement Projects Department Director to take any and all action necessary; and to sign any and all documents, contracts, and/or agreements related to construction and completion of the Recreational and Aquatic Center (CIP Project No.RQ030) within the Frontier Family Park in an amount not to exceed $64,285,432. (This is a FY 22/23 Budgeted Item)**

RESULT:	**Approved (4-2)**
MOVER:	Robin Benning, Council Member
SECONDER:	Julia Wheatley, Mayor-Elect
AYES:	Jeff Brown, Vice Mayor, Robin Benning, Council Member, Dawn Oliphant, Council Member, Julia Wheatley, Mayor-Elect
NAYS:	Leah Martineau, Council Member, Emilena Turley, Council Member

9) Public Hearing Consent Agenda:

9.A) Consideration and possible recommendation of approval on a new Series 006 Bar Liquor License application submitted by Andrea Dahlman Lewkowitz on behalf of Dave & Buster's located at 21000 S Ellsworth Loop Road, Queen Creek.

Department: Town Clerk's Office

Staff Report

LGB Report_Dave & Buster's

QCPD Report_Dave & Buster's

9.B) Public Hearing and possible action on Ordinance 802-22, P22-0206 Signage Located in Roadway Medians Text Amendment, a staff initiated text amendment to Article 7 Signage Regulations of the Zoning Ordinance prohibiting signage from being located within roadway medians.

Department: Development Services

Staff Report

Zoning Ordinance - Redline.pdf

Zoning Ordinance - Clean.pdf

Ordinance 802-22.pdf

9.C) Public Hearing and possible action on Ordinance 804-22, P22-0124 and P22-0125 Phelan PAD Rezone and Site Plan, a request by Adam Baugh, Withey Morris, PLC for Rezoning and Site Plan approval for a rezoning of approximately 47 acres from R1-54 (Rural Estate District) to EMP-A/PAD (General Office/Business Park) for the development of a business park, located north of the northeast corner of Germann and Meridian Roads.

Department: Development Services

Staff Report

1. Phelan Rezone and Site Plan Aerial.pdf

2. Phelan Rezone and Site Plan General Plan Exhibi.pdf

3. Phelan Rezone and Site Plan Zoning Exhibit.pdf

4. Phelan PAD Rezone and Site Plan Proposed Zoning Exhibit.mxd.pdf

Phelan Meridian Road - Site Plan_2.pdf

Phelan Meridian Road - Landscape Plan_2.pdf

Phelan Meridian Road - Floors Plans and Elevations_2.pdf

Phelan Meridian Road - Project Narrative_2.pdf

TC STAFF Phelan Rezone and Site Plan.pdf

Ordinance 804-22.pdf

9.D) Public hearing and possible action on Queen Creek Veterinary Clinic Building Expansion Conditional Use Permit and Site Plan (Cases P22-0118 and P22-0204), a request from Cain Garcia, SPS+ Architects, for a CUP and Site Plan approval for the construction of an approximately 4,400sq.ft. Building addition at the existing veterinary clinic, located east of the southeast corner of Ocotillo and Hawes roads.

Department: Development Services

Staff Rpt TC QC Vet Bldg Expansion P22-0118 & P22-0204.pdf

Aerial Exhibit

Zoning Exhibit

Site Plan

Landscape Plan

Elevations

Project Narrative

Public Comment

Staff Presentation QC Vet Bldg Expansion CUP and Site Plan (P22-0118 and P22-0204).pdf

Vice Mayor Brown opened the public hearing. There were no comments and the public hearing was closed.

MOTION: To approve the Public Hearing Consent Agenda

RESULT:	**Approved unanimously (6-0)**
MOVER:	Emilena Turley, Council Member
SECONDER:	Leah Martineau, Council Member
AYES:	Jeff Brown, Vice Mayor, Robin Benning, Council Member, Leah Martineau, Council Member, Dawn Oliphant, Council Member, Emilena Turley, Council Member, Julia Wheatley, Mayor-Elect

10) Public Hearings:

None.

11) Items for Discussion:

Vice Mayor Brown used his discretion and re-ordered the agenda items as follows: Item for Discussion 11A; Final Action Item 12A; Items for Discussion 11B; and Final Action 12B.

11.A) Workforce Development Services Available in Queen Creek

Department: Community Services

Workforce Development Services Available in Queen Creek

Community Services Director Marnie Schubert introduced Maricopa County Workforce Development Program Manager Tina Russo to share information on a new program that will be offered at the Queen Creek Library.

Ms. Russo presented an overview of the Workforce Services Department which provides services in the East Valley through a partnership with regional libraries. She outlined career services that are available to job seekers and employers and provided contact information for Queen Creek residents. Ms. Russo discussed the process to match jobs to job seekers and outlined the outreach process. Ms. Russo said that a representative from the Human Services Department will also be at the Queen Creek Library once a month to provide other services such as rental and utility assistance.

Amy Altschul, Workforce Development Coordinator for Queen Creek, said she works out of the Queen Creek Library and is available by appointment or drop-in at the library to assist residents.

Council said they are eager to promote this program to the residents and share success stories. Ms. Schubert said she will work with the county and library partners to spread the word about all the resources now available.

11.B) Follow up from February, 2022 Town Council Strategic Planning Session - Recommendation to Evaluate the Expanded the Use of the Town's 2% Dedication Construction Sales Tax and Status Update on the Comprehensive Review of the Town's Key Financial Policies.

Department: Finance

Staff Report

Presentation: Recommendation to Expand the Use of the 2% Dedicated Construction Sales Tax

Finance Director Scott McCarty provided an overview of the 2% dedicated construction sales tax in regards to infrastructure costs in different categories. He said this is part of an ongoing comprehensive review of the Town's financial policies to help reduce costs and improve our bond rating to achieve the highest possible AAA rating.

Mr. McCarty said the 2% sales tax used to fund general infrastructure has historically been used to fund new roads. He said now is a good time to look at our infrastructure needs since much progress has been made on roads and possibly re-direct funds to other areas. He addressed the costs and projects needed over the next ten years and at build-out.

Mr. McCarty said tonight we are asking Council for feedback to allow staff to identify and evaluate the re-direction of funds in other needed areas such as water acquisition and public safety and provide options at a future meeting. He pointed out that this does not mean that we will stop building and funding roads. He said this will be for any funds that are left over after we finish out the adopted Transportation Plan.

Mayor-Elect Wheatley commented on the bond rating and said roads are a priority and reiterated that it will not affect the transportation plan. She said she is open to more flexibility in regards to the construction sales tax.

Vice Mayor Brown provided feedback and recommended that staff come back with options and more detail at a future meeting for excess funds after transportation costs are complete.

Council Member Turley commented that she appreciates putting the funds where most needed and working in collaboration with the stakeholders that it may impact.

12) Final Action:

12.A) Consideration and possible approval to adopt the Comprehensive Utility Master Plan.

Department: Utilities

Staff Report

Comprehensive Utility Master Plan 2022 - Council Presentation

Comprehensive Utility Master Plan

Utilities Director Paul Gardner presented the Comprehensive Utility Master Plan (CUMP) which included updates to a series of master plans. He outlined the current master plan components and our water portfolio. He summarized future goals to diversify, cut costs and other impacts that could affect the Capital Improvement Program (CIP). Mr. Gardner said the CUMP will define our water and sewer services area; identify funding needed for CIP projects to prevent overbuilding; identify water resource needs and expansion; and will be used for the upcoming capacity fee and utility rates study updates.

Mr. Gardner concluded with a timeline for the process and said approval of the CUMP will allow us to perform the necessary studies.

Council appreciated the forward thinking and effort that went into developing the master plan.

MOTION:	**To approve the adoption of the 2022 Comprehensive Utility Master Plan (CUMP).**
RESULT:	**Approved unanimously (6-0)**
MOVER:	Dawn Oliphant, Council Member
SECONDER:	Julia Wheatley, Mayor-Elect
AYES:	Jeff Brown, Vice Mayor, Robin Benning, Council Member, Leah Martineau, Council Member, Dawn Oliphant, Council Member, Emilena Turley, Council Member, Julia Wheatley, Mayor-Elect

12.B) Consideration and possible approval of appointment of, and the Agreement to employ, Bruce Gardner as the Queen Creek Town Manager.

Department: Town Council

Staff Report

Draft Employment Agreement

Vice Mayor Brown discussed the Town's accomplishments and future goals and said it is critical to maintain momentum. He thanked John Kross for his service and said Mr. Gardner will provide stability, continuity and momentum to the organization in his new role as Town Manager.

Council voiced their appreciation to Mr. Kross and shared unanimous support and confidence for Mr. Gardner as the next Town Manager.

Bruce Gardner thanked Council, Mr. Kross and staff and shared comments on working in Queen Creek for the last 15 years. He said he is grateful for the opportunity to serve as Town Manager as the Town continues to make progress on future goals.

MOTION:	**To approve the appointment of, and the Agreement to, employ Bruce Gardner, the current Town of Queen Creek Assistant Town Manager,**

	as the Town Manager effective January 23, 2023, the effective date of the resignation of the current Town Manager, John Kross.
RESULT:	**Approved unanimously (6-0)**
MOVER:	Jeff Brown, Vice Mayor
SECONDER:	Julia Wheatley, Mayor-Elect
AYES:	Jeff Brown, Vice Mayor, Robin Benning, Council Member, Leah Martineau, Council Member, Dawn Oliphant, Council Member, Emilena Turley, Council Member, Julia Wheatley, Mayor-Elect

13) <u>Adjournment:</u>

The meeting adjourned at 8:03 p.m.

TOWN OF QUEEN CREEK

_____
Jeff Brown, Vice 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 Town Council Regular Session Minutes of the November 16, 2022 Town Council 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:_____

TOWN OF QUEEN CREEK ARIZONA

TO: **HONORABLE MAYOR AND TOWN COUNCIL**

THROUGH: **JOHN KROSS ICMA-CM, TOWN MANAGER**

FROM: **JENNIFER LINDLEY, DOWNTOWN DEVELOPMENT MANAGER**

RE: **CONSIDERATION AND POSSIBLE APPROVAL OF THE RE-APPOINTMENT OF ANITA LOPEZ TO THE DOWNTOWN CORE ARTS & PLACEMAKING ADVISORY SUB-COMMITTEE.**

DATE: **December 7, 2022**

Suggested Action:

To re-appoint the members (as listed) to the Downtown Arts & Placemaking Advisory Committee.

Relevant Council Goal(s):

Image & Identity 5.3- Activate the Town's Arts Commission to develop and implement a master plan consistent with Town Council goals. A master plan should consider a phased approach to implementation with the downtown core identified as a key area to create an environment or creativity and placemaking (as part of a larger initiative to activate the downtown core).

Discussion:

On February 19, 2020 the Town Council approved the formation of the new Downtown Arts & Placemaking Advisory Committee. The advisory committee has continued to meet over the last two-years. Most recently, the advisory committee issued a Request for Proposal's for a consultant to prepare an Arts & Placemaking Master Plan that will assist the Town in establishing an approach to public art & placemaking, identify resources for the support of public art & placemaking throughout Queen Creek and to set priorities for public art with the Town. This project is anticipated to begin in early 2023.

The recommended composition of the Advisory Sub-Committee is seven (7) members, appointed for one-year and two-year terms. This Advisory Committee reports to the Economic Development Commission (EDC); since the EDC is officially established under the Town Council, it will fall under the Open Meeting Law. A minimum of seven (7) members with experience in the creation, exhibition, curation, or management of art works, public or private. Experience may include and is not limited to the following: practicing artists; art professionals such as arts and culture teachers, art history, historian/art historian, architect or landscape architect; or, representative from an organization that supports arts and culture. Preference may be given to applicants with experience related to visual arts.

If re-appointed, the following individual will represent the advisory committee:

Anita Lopez

Anita Lopez owns Wine & Design which was located in Queen Creek. She was active helping organize a CLI downtown mural project.

Staff recommends the re-appointment of this individual based on their interest in serving the community and their commitment to furthering the arts, placemaking and economic development initiatives of Queen Creek.

Fiscal Impact:

Alternatives:

The Town Council could choose not to appoint the recommended individuals and request that staff present alternative appointments at the next Town Council meeting.

Attachment(s):

1. Notice of Interest Application - Lopez, Anita 2022.pdf

Submitter DB ID	46616
IP Address	64.112.108.5
Submission Recorded On	11/29/2022 2:13 pm
Time to Take the Survey	8 minutes, 32 secs.

Page 1

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
22350 S. Ellsworth Road
Queen Creek, AZ 85142
Fax: 480-358-3001

1. Date

11/29/2022

2. Name

First Anita

Middle M

Last Lopez

3. Home Address

6299 E Pony Track Ln

4. Mailing Address (if different than home address)

Not answered

5. Occupation

Artist, Sip & Paint Business Owner

6. Phone

Home Phone (602) 510-0742

Work Phone Not answered

Best time to call (a.m. or p.m.) 10 AM

Fax number Not answered

7. Email Address

queencreek.az@wineanddesign.com

8. How long have you been a resident of Queen Creek?

0

9. Are you a registered voter?

Yes

10. Do you live within the Town's incorporated limits?

No

11. Have you participated in the Queen Creek Citizen Leadership Institute?

No

12. If yes, did you graduate?

No

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

I have served on the Town of Queen Creek Downtown Arts & Placemaking Advisory Committee since it was first formed. I would like to be reappointed and retain my membership on this committee.

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

Board of Adjustment Not answered

Economic Development Commission Not answered

Downtown Arts & Placemaking Advisory Committee 1

Parks and Recreation Advisory Board Not answered

Planning and Zoning Commission Not answered

Transportation Advisory Committee Not answered

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

I have served on the Town of Queen Creek Downtown Arts & Placemaking Advisory Committee since it was first formed. I would like to be reappointed and retain my membership on this committee. I appreciate the opportunity to help contribute to the art scene in the Town of Queen Creek.

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

I have lead a mural project with a group of volunteers from the CLI that is currently displayed on the north side of the Gangplank wall. I have been an artist for over 30 years and own an art instruction business that works with local businesses in the Town of Queen Creek.

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

ONE Community Church, Queen Creek, AZ
2014-2020 Advisory Council Chair, Board of Servant Leaders Secetary

Wine & Design Franchisee Advisory Council Member, National Franchise
2020-2022

18. Are you available for evening meetings?

Yes

19. Are you available for morning meetings?

Yes

20. Are you available for lunch meetings?

Yes

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

Tuesday

22. Resume

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.

23. Signature

Anita M Lopez

This question is marked as sensitive.

TOWN OF QUEEN CREEK ARIZONA

TO: **HONORABLE MAYOR AND TOWN COUNCIL**

THROUGH: **JOHN KROSS ICMA-CM, TOWN MANAGER**

FROM: **HEATHER WILKEY, INTERGOVERNMENTAL RELATIONS MANAGER**

RE: **CONSIDERATION AND POSSIBLE APPROVAL OF THE TOWN OF QUEEN CREEK'S 2023 LEGISLATIVE GUIDING PRINCIPLES.**

DATE: **December 7, 2022**

Suggested Action:

To approve the Town of Queen Creek's 2023 Legislative Guiding Principles.

Relevant Council Goal(s):

- Effective Government
- Safe Community
- Secure Future
- Superior Infrastructure
- Quality Lifestyle

Discussion:

The goals and objectives of the Legislative Guiding Principles, in conjunction with the Council-adopted Corporate Strategic Plan, provide direction to the Town's government relations team in advocating for the needs of the community at the Arizona State Legislature. These principles are modified annually and presented to the Town Council for approval prior to the start of the following year's Legislative Session in January.

Throughout the legislative process, intergovernmental relations staff will track relevant legislation, communicate directly with legislators, register in support or opposition on bills of interest to the Town, offer testimony in committee hearings as key votes are scheduled and keep Council informed of critical updates and action. Staff may collaborate with local governments, municipal organizations, business entities or other key partners on legislation of shared interest in alignment with the proposed guiding principles and/or corporate strategic plan.

The proposed 2023 Legislative Guiding Principles includes additions, changes and clarifications to the 2022 Legislative agenda. Those changes are summarized as follows:

- Adds language relative to the model city tax code and its options into the objective of protecting local funding;
- Includes a new policy section relative to the lack of affordable housing ensuring solutions honor

the voter approved General Plan (not usurped with mandatory bi-right housing options), retain the right of residents to voice their support/opposition on proposed zoning changes regarding their properties and the Town's current zoning authority;
- Adds language that permits adjustments in consultation with the Arizona Department of Revenue that enhances the advanced manufacturing public infrastructure reimbursement program;
- Creates new language in the transportation improvement/funding objective that emphasizes the Town's partnership with Maricopa and Pinal Counties and supports the efforts of the Pinal Regional Transportation Authority to seek funding opportunities for implementation of a regional transportation plan and obtain unclaimed tax refunds as a result of the Supreme Court decision on the prior funding mechanism for transportation purposes within the County; and
- Prepared language updates to modernize legislative terminology and reflect the current state of affairs of issues.

Fiscal Impact:

There is no fiscal impact associated with adoption of the 2023 Legislative Guiding Principles.

Alternatives:

The Town Council may choose to:

1. modify the attached 2023 Legislative Guiding Principles; or
2. choose not to adopt the 2023 Legislative Guiding Principles; although if not adopted prior to the start of the Legislative Session in January, would not offer staff any parameters in which to support or oppose legislation.

Attachment(s):

1. 2023 Legislative Guiding Principles Clean.pdf
2. 2023 Legislative Guiding Principles Tracked Changes.pdf

2023 Town of Queen Creek
Legislative Guiding Principles

The following goals and objectives have been established by the Queen Creek Town Council for 2023 as it relates to the Town's guiding principles for the legislative session. The goals and objectives, in conjunction with the Council-adopted Corporate Strategic Plan, provide direction to the Town's government relations team in advocating for the needs of the community at the Arizona State Legislature.

Overarching Goals:

- Represent the Town's vision, mission and values.
- Encourage other levels of government to work collaboratively with cities and towns on issues of mutual interest.
- Protect local funding and self-determination, as well as enhance opportunities to improve the Town's economic sustainability and provide for necessary infrastructure development.
- Advocate for access to availability of secure, long-term sustainable and fiscally responsible water resources for the current and future growth of the community.
- Promote economic development opportunities in partnership with the State.

Objective: **Protect local funding.**

The Town of Queen Creek continues to maintain a balanced, fiscally sound budget. We have taxed ourselves to pay for critical infrastructure and services, adopted a primary property tax to offset some of the costs of public safety and diversified revenues to ensure fiscal sustainability in the coming years.

As part of these efforts, the Town receives a share of several funding streams based upon taxes that our residents have already paid, known as, state shared revenue. It is imperative to the fiscal health of our municipality that the distribution of those funds be maintained and protected. Any cuts to funding, the elimination of the model city tax code or its local options could limit our ability to continue to provide essential services to a rapidly growing and dynamic community.

Objective: **Ensure adequate funding of state agencies as to not shift funding obligations for state services onto local government.**

During times in which state revenues have not met budgeted forecasts, the Arizona Legislature has reduced funding to critical agencies such as the Arizona Department of Environmental Quality and the Arizona Department of Water Resources. In order to continue essential state services, the Legislature has allowed state agencies to significantly raise fees to cover the cost of the loss of general fund dollars.

Many of these fees remain in place today. While the Town acknowledges the need to pay our fair share of services from these agencies in the course of conducting business, disproportionate cost sharing should not be shifted from the State's general funds to those of local governments.

Objective: **Maintain local self-determination and oppose unfunded mandates**.

The Town of Queen Creek is a publicly accountable entity that is governed by a duly elected body of Council members, according to the State of Arizona Constitution and laws.

It is important that the laws defining the space in which cities and towns were created to govern are clear, consistent and allow for self-determination on local issues. Queen Creek continues to ensure it is operating within the bounds of the proper role for local government. In recent years, disagreement with local decisions at the State level has subjected cities and towns to punitive action, the withholding of state shared revenues and the re-allocation of local self-determination to oversight by the State. With the geographical diversity of municipalities across Arizona, the Town believes implementing voters' vision for the community by establishing policy on issues best left to local decision makers should be maintained.

Recently, the Arizona Legislature has taken an interest in addressing the lack of affordable housing. While the merits of this effort are noble, voter-adopted General Plans, including the land use element required by state statute, must be honored and not usurped with mandatory, by-right housing options. It is critical that residents retain their right to voice their support or opposition for proposed zoning changes that may impact their property, through local Planning & Zoning and Council hearings. Additionally, the ability for the Town Council to implement the General Plan through

its Zoning and Subdivision Ordinance and consider amendments to these at the local level, must be maintained.

As the Town continues to build out our community, we must prioritize infrastructure and public safety for our residents. Mandates from the State to cities and towns without appropriate funding to implement them has the potential to threaten core necessary community services, especially at a time when the Town recently began providing its own law enforcement services through our new Police Department in 2022.

Objective: **Ensure that any changes made to the construction sales tax system adhere to the principles established by the League of Arizona Cities and Towns' 2018 Construction Sales Tax Task Force final recommendations.**

Changes to the calculation of construction sales tax could have significant impacts to Queen Creek. The adopted Fiscal Year 2022-2023 budget included an estimate of $27.8 million in sales tax revenue from construction-related activity, of which $13.1 million is from the Town's additional 2% surcharge on construction activities exclusively dedicated to the construction and improvement of transportation infrastructure.

In recent years, there has been a desire to make reforms to the current system. The Town agrees with the following principles as established by the League of Arizona Cities and Towns Task Force:

- Ensure tax revenues are remitted to the jurisdiction in which the activity occurs.
- Maintain the integrity of other tax systems and policies.
- Provide fairness for all similarly situated taxpayers.
- Ease in determining tax obligation and compliance with remittance.
- Prevent tax avoidance by relocating or restructuring businesses.

Finally, any reform should not result in a significant reduction in revenues for the State or local governments.

Objective: **Promote sound fiscal policies that reduce unfunded pension liabilities resulting in the health of the system and for policies that appropriately balance fiscal constraints with benefits provided to employees.**

The Town has taken action to completely eliminate the unfunded liability for all employees including our firefighters and members of the public safety personnel retirement system. At the conclusion of Fiscal Year 2022-2023, the Town will have met our portion of all unfunded liabilities of both pension systems, effectively zeroing out our pension obligations. Queen Creek's budget policies require the Town to set aside reserves on an annual basis in an amount equal to the unfunded liability portion of all employees, including our police and fire personnel.

Objective: **Promote economic development opportunities in partnership with the State.**

Innovative land use and economic development strategies are critical to strengthening the well-being of our community and meeting the needs of our current and future residents, businesses, and visitors. The State is a vital partner in attracting and retaining economic development opportunities, particularly as it relates to infrastructure, tourism and the tools available to cities and towns to attract new and expand existing opportunities.

In August of 2019, the Town, in partnership with the Arizona State Land Department, annexed approximately 4,150 acres of State Trust Land in the northeastern portion of the community adjacent to State Route 24. While it was originally envisioned this land would be developed largely for residential purposes, the Town has received significant interest from several high-profile advanced manufacturing businesses that combined could bring thousands of strong wage jobs to this portion of Town. The Town supports continued partnerships with the Arizona Commerce Authority, the State Land Department and the Arizona Department of Transportation, to attract, secure water resources and build the necessary infrastructure to support these large-scale users, including the acceleration of the extension of State Route 24.

The Town further supports the removal of the total dollar cap for counties and municipalities to receive partial reimbursement from construction sales tax for the building of necessary infrastructure for advanced manufacturers who meet the required statutory qualifications and necessary adjustments to the program in consultation with the Arizona Department of Revenue.

Objective: **Preserve the current funding distribution for the Maricopa County Library District.**

Currently, all Maricopa County residents are part of the Maricopa County Library District. Residents pay an annual property tax that goes toward the operation of libraries throughout the county. The Town of Queen Creek's library is one of the libraries operated by the Library District.

The partnership with the Library District provided Queen Creek with an opportunity to offer the community this vital resource. Through the intergovernmental agreement between the Town and the Library District, the library was constructed by the Town and the District provides staffing, materials and programming.

It is an excellent example of an effective intergovernmental partnership that was created to meet the needs of the community, where without it, the Town would have been unable to offer these services. Any changes to property taxes, resulting in amending the current structure of the intergovernmental agreement could threaten these services to our residents.

Objective: **Support transportation improvements and funding that benefit the Town, region and the State.**

Transportation infrastructure is a critical issue for the Town of Queen Creek. The Town's neighboring unincorporated areas use our streets to access the valley freeway system. The current traffic volume through Queen Creek exceeds capacity and the Town's ability to accommodate it is limited given current available funding. The Town has invested approximately $143 million in transportation improvement projects over the last five years and earmarked an additional $247 million in our forecast for the next five years. Despite this, more transportation needs remain to be funded so that Queen Creek is not disproportionately funding demand outside of our community boundaries.

A high functioning transportation system is vital to economic development, safety and well-being. Connecting markets and communities allows for greater economic opportunity and mobility. The Town remains committed to working with the region, Maricopa and Pinal Counties and neighboring jurisdictions to ensure the full build out of State Route 24 to the proposed North-South freeway corridor, corresponding interchanges and connecting arterial access that promotes safe travel and reduces congestion. The movement of people and goods to Phoenix-Mesa Gateway Airport,

Arizona State University Polytechnic Campus and the State trust lands is critical as an educational, job and activity hub.

Strong transportation systems locally, regionally and statewide remain a top priority. It is of critical importance for not only local governments, but the State, to ensure an effective roadway network is designed and improved for the efficient and effective flow of the region's traffic and commerce. The Town will continue its coordination and partnership with both Maricopa and Pinal Counties in building out the Town's arterial network.

Queen Creek previously did not receive direct benefits from the existing Proposition 400, a ½ cent sales tax dedicated to transportation projects in Maricopa County which expires in 2025, with the exception of the partial building of State Route 24. The Town supports efforts to provide Maricopa County voters with the choice to extend the tax beyond its expiration date of 2025 for purposes of projects identified in the new regional transportation plan, Momentum, developed by the Maricopa Association of Governments. If approved by the voters, Queen Creek would benefit from this funding stream for the permanent construction of State Route 24 to Ironwood with corresponding interchanges at Signal Butte, Meridian and Ironwood and 14 Town arterials projects totaling $223 million, with a regional funding commitment of $156 million (70% of project cost).

Due to the Town's partial geographical location in Pinal County, the Town supports efforts by the Pinal Regional Transportation Authority to seek funding opportunities for the implementation of a regional transportation plan. These efforts may include legislative support for options associated with unclaimed tax refunds as a result of the Supreme Court ruling on the corresponding voter approved transportation excise tax, to be retained in Pinal County for transportation purposes. Additionally, the Town supports the work of the Rural Transportation Advocacy Council to seek funding for roads of regional significance located in rural areas which provide key access in and out of communities or connect to major freeways, such as Ironwood.

Objective: **Support policies that provide access to secure, long-term sustainable and fiscally responsible water resources that contribute to an assured water supply and reduce groundwater dependence.**

The Town recognizes its long-term fiscal responsibility is inexplicably linked to an adequate, safe and stable water supply for

the current and future build out of Queen Creek. Unlike our fellow Valley municipalities, the Town relies on the Central Arizona Groundwater Replenishment District. Queen Creek, being a newly established town in the late 1980's, was only awarded a small portion of Central Arizona Project subcontract water which forced the community to seek other supplies of surface water for future growth. These factors place the Town at a competitive disadvantage to certification of renewable sources.

In an effort to be responsible stewards of the Groundwater Management Act and diversify our sources consistent with long standing Arizona water policy, the Town is exploring additional water resource options that would ultimately reduce our reliance on groundwater pumping, while maintaining reasonable costs for ratepayers. The Town supports policies that provide enhanced access to these sources and opposes efforts that would circumvent existing public processes in place to evaluate the merits of obtaining alternative sources.

20233 Town of Queen Creek
Legislative Guiding Principles

The following goals and objectives have been established by the Queen Creek Town Council for 20233 as it relates to the Town's guiding principles for the legislative session. The goals and objectives, in conjunction with the Council-adopted Corporate Strategic Plan, provide direction to the Town's government relations team in advocating for the needs of the community at the Arizona State Legislature.

Overarching Goals:

- Represent the Town's vision, mission and values.
- Encourage other levels of government to work collaboratively with cities and towns on issues of mutual interest.
- Protect local funding and self-determination, as well as enhance opportunities to improve the Town's economic sustainability and provide for necessary infrastructure development.
- Advocate for access to availability of secure, long-term sustainable and fiscally responsible water resources for the current and future growth of the community.
- Promote economic development opportunities in partnership with the State.

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Many of these fees remain in place today. While the Town acknowledges the need to pay our fair share of services from these agencies in the course of conducting business, disproportionate cost sharing should not be shifted from the State's general funds to those of local governments.

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its Zoning and Subdivision Ordinance and consider amendments to these at the local level, must be maintained.

As the Town continues to build out our community, we must prioritize infrastructure and public safety for our residents. Mandates from the State to cities and towns without appropriate funding to implement them has the potential to threaten core necessary community services, especially at a time when the Town recently began providing its own ~~is transitioning~~ law enforcement services through ~~to~~ our ~~own~~ new Police Department ~~functional~~ in ~~early~~ 2022.

Objective: **Ensure that any changes made to the construction sales tax system adhere to the principles established by the League of Arizona Cities and Towns' 2018 Construction Sales Tax Task Force final recommendations.**

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In recent years, there has been a desire to make reforms to the current system. The Town agrees with the following principles as established by the League of Arizona Cities and Towns Task Force:

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movement of people and goods to Phoenix-Mesa Gateway Airport, Arizona State University Polytechnic Campus and the State trust lands is critical as an educational, job and activity hub.

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Queen Creek previously did not receive direct benefits from the existing Proposition 400, a ½ cent sales tax dedicated to transportation projects in Maricopa County which expires in 2025, with the exception of the partial building of State Route 24. ~~During the 2022 Legislative Session,~~ The Town supports efforts to provide Maricopa County ~~must be given authorization from the State Legislature~~ voters with the choice to extend the tax beyond its expiration date of 2025 for purposes of projects identified in the new regional transportation plan, Momentum, developed by the Maricopa Association of Governments. If approved by the voters, Queen Creek would benefit from this funding stream for the permanent construction of State Route 24 to Ironwood with corresponding interchanges at Signal Butte, Meridian and Ironwood and 14 Town arterials projects totaling $223 million, with a regional funding commitment of $156 million (70% of project cost).

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Objective: **Support policies that provide access to secure, long-term sustainable and fiscally responsible water resources that contribute to an assured water supply and reduce groundwater dependence.**

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TOWN OF QUEEN CREEK ARIZONA

TO: **HONORABLE MAYOR AND TOWN COUNCIL**

THROUGH: **JOHN KROSS ICMA-CM, TOWN MANAGER**

FROM: **BRETT BURNINGHAM, DEVELOPMENT SERVICES DIRECTOR, CHRIS DOVEL, TOWN ENGINEER, MARC PALICHUK, PRINCIPAL ENGINEER**

RE: **CONSIDERATION AND POSSIBLE APPROVAL OF THE "FINAL PLAT" FOR THE GERMANN COMMERCE CENTER - PHASE 1, A REQUEST BY TTRG AZ QUEEN CREEK GERMANN ROAD LAND LLC.**

DATE: **December 7, 2022**

Suggested Action:

To approve the "Final Plat" for the Germann Commerce Center - Phase 1, a request by TTRG AZ Queen Creek Germann Road Land LLC.

Relevant Council Goal(s):

Superior Infrastructure

Discussion:

History:

April 6, 1996
- The Town annexed the property from Maricopa County.

September 16, 2015
- Town Council approved the North Specific Area Plan.

December 16, 2015
- The Town Council approved the North Specific Area Plan Major General Plan Amendment (Resolution 1076-15) and Rezone (Ordinance 582-15).

July 27, 2022
- Planning and Zoning Commission approved P22-0077 and P22--0129 Germann and Meridian Industrial Site Plan and Preliminary Plat.

Discussion:

TTRG AZ Queen Creek Germann Rd Land LLC is requesting approval of a Final Plat for a 5 lot industrial subdivision encompassing approximately 27.2 acres located at the southeast corner of Signal Butte

Road and Germann Road. The subdivision has underlying EMP-A zoning that is consistent with the General Plan Land Use Map.

This project will have direct access from four driveways onto Germann Road. The project's offsite improvements will be completed simultaneously with the onsite improvements.

Fiscal Impact:

The Town will collect building permit fees for the Industrial buildings that develop on the 5 lots. Also, the Town will incur future maintenance costs for the Germann Road offsite improvements.

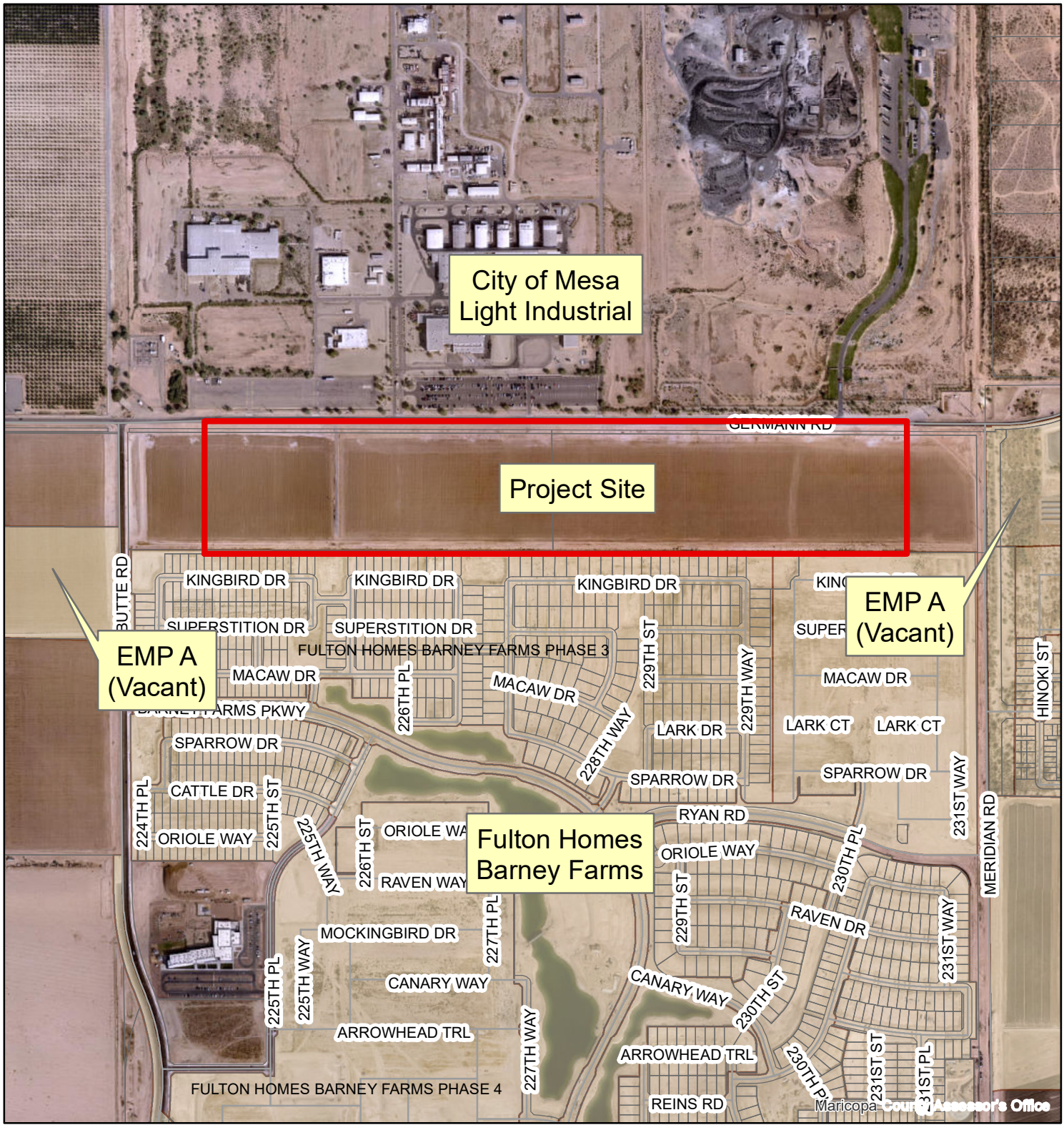
Alternatives:

Not to accept the Final Plat of Germann Commerce Center - Phase 1. If the Town does not accept the Final Plat, the land will not develop and the Town will not collect building permit fees.

Attachment(s):

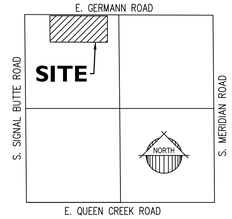
1. Aerial Exhibit - Germann Commerce Center.pdf
2. Final Plat - Germann Commerce Center - Phase 1.pdf

Project Name: Germann & Meridian Industrial Site Plan & Pre-Plat Aerial Exhibit
Case Numbers: P22-0077 & P22-00129
Hearing Date: July 27, 2022 (Planning Commission)



Final Plat
"Germann Commerce Center - Phase 1"

A PORTION OF THE NORTHWEST QUARTER OF SECTION 12,
TOWNSHIP 2 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER MERIDIAN,
TOWN OF QUEEN CREEK, MARICOPA COUNTY, ARIZONA



SECTION 12
T. 2S., R. 7E.

VICINITY MAP

NOT TO SCALE

DEDICATION

KNOW ALL MEN BY THESE PRESENTS: THAT TTRG AZ QUEEN CREEK GERMANN RD LAND, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS OWNER, HAS SUBDIVIDED UNDER THE NAME OF "GERMANN COMMERCE CENTER – PHASE 1", BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 2 SOUTH, RANGE 7 EAST OF THE GILA AND SALT RIVER MERIDIAN, TOWN OF QUEEN CREEK, MARICOPA COUNTY, ARIZONA, AS SHOWN PLATTED HEREON AND HEREBY PUBLISH THIS PLAT AS AND FOR THE PLAT OF SAID "GERMANN COMMERCE CENTER – PHASE 1" AND HEREBY DECLARE THAT SAID PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF THE LOTS, EASEMENTS AND STREETS CONSTITUTING SAME AND THAT EACH LOT, AND STREET SHALL BE KNOWN BY THE NUMBER, LETTER OR NAME GIVEN TO EACH RESPECTIVELY ON SAID PLAT.

STREET RIGHT–OF–WAY AS SHOWN ON SAID PLAT IS HEREBY DEDICATED TO THE TOWN OF QUEEN CREEK FOR USE AS PUBLIC RIGHT–OF–WAY.

A BLANKET CROSS UTILITY EASEMENT, BLANKET CROSS ACCESS EASEMENT, AND A BLANKET CROSS DRAINAGE EASEMENT ARE DEDICATED HEREON ACROSS SITE.

EASEMENTS ARE DEDICATED FOR PURPOSES SHOWN ON SAID PLAT.

THE MAINTENANCE OF LANDSCAPING WITHIN THE PUBLIC RIGHT–OF–WAY TO BACK OF CURB SHALL BE THE RESPONSIBILITY OF THE ADJACENT PROPERTY OWNER. LANDSCAPE MAINTENANCE WITHIN MEDIANS SHALL BE THE RESPONSIBILITY OF THE TOWN OF QUEEN CREEK.

IN WITNESS WHEREOF: TTRG AZ QUEEN CREEK GERMANN RD LAND, LLC, A DELAWARE LIMITED LIABILITY COMPANY; HAS HEREUNTO CAUSED ITS NAME TO BE AFFIXED AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF THE OFFICER LISTED BELOW, THEREUNTO DULY AUTHORIZED.

BY: TTRG AZ QUEEN CREEK GERMANN RD LAND, LLC, A DELAWARE LIMITED LIABILITY COMPANY

BY: _____

ITS: _____

ACKNOWLEDGMENTS

STATE OF ARIZONA }
} S.S.
COUNTY OF MARICOPA }

ON THIS _____ DAY OF _____, 2022 BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, PERSONALLY APPEARED _____, WHO ACKNOWLEDGED HIMSELF TO BE _____ OF TTRG AZ QUEEN CREEK GERMANN RD LAND, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND BEING DULY AUTHORIZED SO TO DO, EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF, I HEREUNTO SET MY HAND AND OFFICIAL SEAL.

_____ _____
NOTARY PUBLIC DATE

MY COMMISSION EXPIRES: _____

LEGAL DESCRIPTION:

A PORTION OF THE NORTHWEST QUARTER OF SECTION 12, 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 BRASS CAP FLUSH AT THE NORTH QUARTER CORNER OF SAID SECTION 12, FROM WHICH A 3–INCH MCDOT BRASS CAP IN HAND HOLE AT THE NORTHWEST QUARTER QUARTER CORNER OF SAID SECTION 12, BEARS NORTH 89 DEGREES 47 MINUTES 13 SECONDS WEST, 2,630.92 FEET;

THENCE ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER, NORTH 89 DEGREES 47 MINUTES 13 SECONDS WEST, 317.52 FEET;

THENCE SOUTH 0 DEGREES 12 MINUTES 47 SECONDS WEST, 33.00 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 0 DEGREES 12 MINUTES 47 SECONDS WEST, 737.00 FEET;

THENCE ALONG THE NORTH BOUNDARY LINE OF FULTON HOMES BARNEY FARMS PHASE 3, BOOK 1580 OF MAPS, PAGE 26, OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA, NORTH 89 DEGREES 47 MINUTES 13 SECONDS WEST, 1,601.04 FEET;

THENCE NORTH 0 DEGREES 33 MINUTES 11 SECONDS WEST, 737.07 FEET;

THENCE ALONG THE SOUTH LINE OF THE NORTH 33.0 FEET OF SAID NORTHWEST QUARTER, SOUTH 89 DEGREES 47 MINUTES 13 SECONDS EAST, 1,610.90 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 1,183,605 SQUARE FEET OR 27.1718 ACRES, MORE OR LESS.

BASIS OF BEARINGS

THE WEST LINE OF THE NORTHWEST 1/4 OF SECTION 12, TOWNSHIP 2 SOUTH, RANGE 7 EAST, G&SRM, MARKED BETWEEN THE FOUND MCDOT 3" BRASS CAP IN HANDHOLE AT THE NORTHWEST CORNER AND THE FOUND TOWN OF QUEEN CREEK 3" BRASS CAP FLUSH AT THE WEST 1/4 CORNER, AS SHOWN ON FINAL PLAT "FULTON HOMES BARNEY FARMS PHASE 3", BOOK 1580, PAGE 26, MARICOPA COUNTY RECORDS, THE BEARING OF WHICH IS:

SOUTH 0 DEGREES 33 MINUTES 11 SECONDS EAST

BENCHMARK

BRASS CAP IN HAND HOLE AT THE INTERSECTION OF GERMANN ROAD AND SIGNAL BUTTE ROAD ALSO BEING THE NORTHEAST CORNER OF SECTION 12, T2S, R7E.

ELEVATION = 1424.62'

NOTES

1. THE IMPROVEMENTS ASSOCIATED WITH THIS PLAT WILL NOT BE FULLY APPROVED BY THE TOWN AND THE CERTIFICATE OF OCCUPANCY OR ACCEPTANCE WILL NOT BE ISSUED UNTIL THE UTILITY LINE UNDERGROUND REQUIREMENTS HAVE BEEN SATISFIED.
2. DEVELOPMENT AND USE OF THIS SITE WILL CONFORM TO ALL APPLICABLE TOWN OF QUEEN CREEK CODES AND ORDINANCES AND ANY VARIANCES GRANTED THERETO.
3. ALL RETENTION BASINS MUST BE MAINTAINED TO DRAIN WITHIN THIRTY–SIX (36) HOURS AFTER A STORM. THE OWNERS OF ANY SUCH BASINS FAILING TO MEET THIS REQUIREMENT MUST TAKE CORRECTIVE ACTION TO BRING THE BASINS INTO COMPLIANCE.
4. CONSTRUCTION WITHIN UTILITY EASEMENTS SHALL BE LIMITED TO UTILITIES, UTILITY SERVICES, SIDEWALKS, LANDSCAPE, DRAINAGE FACILITIES, IRRIGATION FACILITIES AND DRIVEWAYS.
5. NO STRUCTURE OF ANY KIND SHALL BE CONSTRUCTED ON, OVER, OR PLACED WITHIN THE PUBLIC UTILITY EASEMENTS EXCEPT UTILITY INSTALLATIONS, WOODEN, WIRE OR REMOVABLE SECTION TYPE FENCING, OR PAVING. NO VEGETATION SHALL BE PLANTED WITHIN THE EASEMENT EXCEPT GRASS AND/OR LANDSCAPING AS APPROVED BY THE TOWN OF QUEEN CREEK. IT SHALL BE FURTHER UNDERSTOOD THAT THE TOWN OF QUEEN CREEK SHALL NOT BE REQUIRED TO REPAIR OR REPLACE ANY OBSTRUCTIONS, PAVING OR VEGETATION THAT BECOMES DAMAGED OR MUST BE REMOVED DURING THE COURSE OF REQUIRED CONSTRUCTION, RECONSTRUCTION, MAINTENANCE OR REPAIR.
6. IN EASEMENTS FOR THE EXCLUSIVE USE OF WATER, SANITARY SEWER, OR A COMBINATION THEREOF, ONLY GROUND COVER AND BUSHES ARE ALLOWED TO BE PLANTED WITHIN THE EASEMENT AREA, NO TREES ARE ALLOWED.
7. IRRIGATION PIPELINES, DITCHES AND FLOW CONTROL STRUCTURES AS WELL AS DRAINAGE CONVEYANCE STRUCTURES, CHANNELS, DITCHES, CULVERTS AND PIPELINES MAY BE PLACED WITHIN OR ACROSS UTILITY EASEMENTS WITH THE CONSENT OF THE CROSSING UTILITY.
8. THIS PROPERTY, DUE TO ITS PROXIMITY TO PHOENIX–MESA GATEWAY AIRPORT, IS LIKELY TO EXPERIENCE AIRCRAFT OVERFLIGHTS, WHICH COULD GENERATE NOISE LEVELS WHICH MAY BE OF CONCERN TO SOME INDIVIDUALS. THE MIX OF AIRCRAFT CONSISTS OF CARGO, COMMERCIAL, CHARTER, CORPORATE, GENERAL AVIATION AND MILITARY AIRCRAFT.
9. THIS PROPERTY IS LOCATED IN PROXIMITY TO LAND DESIGNATED FOR DEVELOPMENT AS INDUSTRIAL, COMMERCIAL, AND/OR MULTI FAMILY USES AND MAY BE SUBJECT TO POTENTIAL NOISE INTRUSION, VIBRATIONS, DUST, AND OTHET AFFECTS THAT MAY BE ASSOCIATED WITHSUCH USES. THIS WOULD APPLY TO ALL TRANSFORMERS VISIBLE TO THE PUBLIC. CONTACT STAFF IF THERE ARE QUESTIONS.

SHEET INDEX

SITE DATA

ZONING	EMP–A
NUMBER OF LOTS	5
LOTS AREA	26.3583
RIGHT OF WAY AREA	0.8135 ACRES
TOTAL AREA:	27.1718 ACRES

ENGINEER

EPS GROUP INC.
1130 N. ALMA SCHOOL RD, SUITE 120
MESA, ARIZONA 85201
PHONE: (480) 503–2250
FAX: (480) 503–2258
CONTACT: DANIEL "OX" AUXIER, P.E.
EMAIL: dan.auxier@epsgroupinc.com

OWNER

TTRG AZ QUEEN CREEK GERMANN RD LAND, LLC
901 WABASH AVENUE, SUITE 300
TERRE HAUTE, INDIANA 47807

ASSURANCE STATEMENT

ASSURANCE IN THE FORM OF A CASH, PERFORMANCE OR SUBDIVISION BOND. IRREVOCABLE LETTER OF CREDIT, OR SIGNED CERTIFICATE OF OCCUPANCY HOLD AGREEMENT HAS BEEN DEPOSITED WITH THE TOWN ENGINEER TO GUARANTEE CONSTRUCTION OF THE REQUIRED SUBDIVISION IMPROVEMENTS

ASSURED WATER SUPPLY

THE ARIZONA DEPARTMENT OF WATER RESOURCES HAS GRANTED A CERTIFICATE OF ASSURED WATER SUPPLY, DWR FILE NO. 27–701035.0000.

SURVEYOR'S CERTIFICATION:

THIS IS TO CERTIFY THAT THIS PLAT IS CORRECT AND ACCURATE AND THE MONUMENTS DESCRIBED HEREIN HAVE EITHER BEEN SET OR LOCATED AS DESCRIBED TO THE BEST OF MY KNOWLEDGE AND BELIEF.

MICHAEL D. POLLOCK R.L.S.# 45378 11/03/2022
MICHAEL D. POLLOCK R.L.S.# 45378 DATE

DEPARTMENT APPROVALS

BY: _____ _____
TOWN ENGINEER DATE

BY: _____ _____
TOWN PLANNING ADMINISTRATOR DATE

TOWN APPROVAL

APPROVED BY THE TOWN COUNCIL OF QUEEN CREEK, ARIZONA, ON THIS _____ DAY OF _____, 2022.

BY: _____
MAYOR

BY: _____
TOWN CLERK

1130 N. Alma School Rd, Suite 120
Mesa, AZ 85201
T:480.503.2250 | F:480.835.1799
www.epsgroupinc.com

EPS GROUP

"Germann Commerce Center - Phase 1"
QUEEN CREEK, ARIZONA

Project:

Final Plat

Revisions:

Call at least two full working days before you begin excavation.
ARIZONA811
Arizona Blue Stake, Inc.
Dial 8-1-1 or 1-800-STAKE-IT (782-5348)
In Maricopa County: (602)263-1100

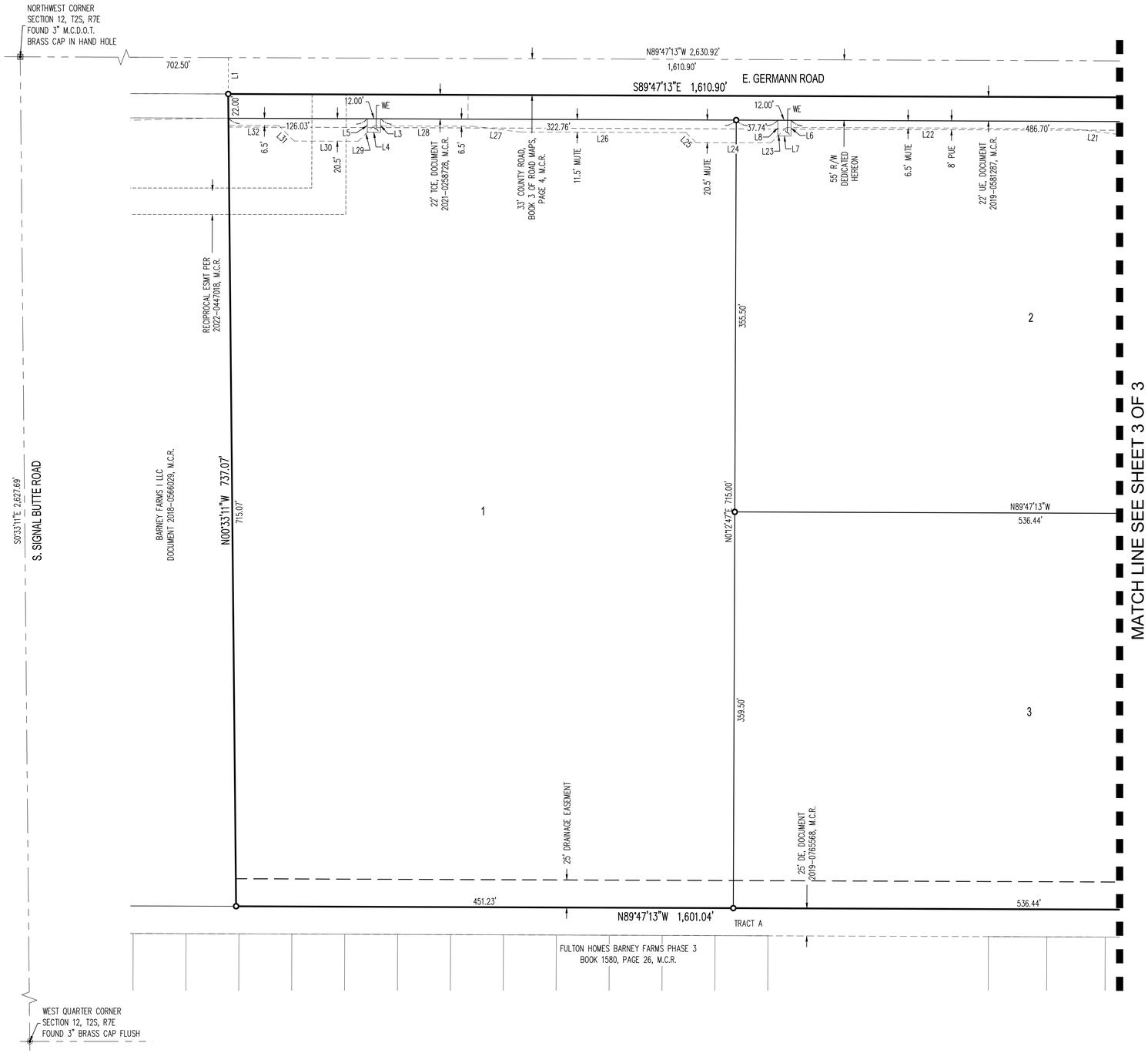
Drawn by: A.G.
Reviewed by: M.P.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
45378
MICHAEL D.
POLLOCK
Date Signed
ARIZONA U.S.A.

Job No.
22-0104

FP01

Sheet No.
1
of 3



NORTH

50 0 50 100
scale feet

SCALE: 1" = 50'

LINE TABLE		
LINE	BEARING	LENGTH
L1	S00°12'47"W	33.00'
L2	S00°12'47"W	33.00'
L3	S00°12'47"W	12.26'
L4	N89°47'13"W	12.00'
L5	N00°12'47"E	12.26'
L6	S00°12'47"W	14.26'
L7	N89°47'13"W	12.00'
L8	N00°12'47"E	14.26'
L9	S00°12'47"W	14.26'
L10	N89°47'13"W	12.00'
L11	N00°12'47"E	14.26'
L12	N89°47'13"W	31.50'
L13	N44°47'13"W	12.73'
L14	N89°47'13"W	150.99'
L15	N82°56'39"W	41.97'
L16	N89°47'13"W	339.72'

LINE TABLE		
LINE	BEARING	LENGTH
L17	S45°12'47"W	19.80'
L18	N89°47'13"W	58.00'
L19	N44°47'13"W	12.73'
L20	N89°47'13"W	150.99'
L21	N82°56'39"W	41.97'
L22	N89°47'13"W	257.79'
L23	S45°12'47"W	19.80'
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L32	N89°47'13"W	45.64'

LOT AREA TABLE		
LOT #	AREA (SF)	AREA (AC)
1	326,050	7.4851
2	190,706	4.3780
3	192,849	4.4272
4	218,056	5.0059
5	220,508	5.0622

LEGEND

◙	FOUND BRASS CAP IN HAND HOLE AS NOTED
◉	FOUND BRASS CAP FLUSH AS NOTED
○	CORNER OF SUBDIVISION, SET 1/2" REBAR W/CAP "EPS GROUP RLS 45378", UNLESS OTHERWISE NOTED
M.C.D.O.T.	MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION
M.C.R.	MARICOPA COUNTY RECORDS
RLS	REGISTERED LAND SURVEYOR
DE	DRAINAGE EASEMENT
PUE	PUBLIC UTILITY EASEMENT
R/W	RIGHT-OF-WAY
TCE	TEMPORARY CONSTRUCTION EASEMENT
UE	UTILITY EASEMENT
WE	WATER EASEMENT
MUTE	MULTI-USE TRAIL EASEMENT

EPS GROUP
1130 N. Alma School Rd, Suite 120
Mesa, AZ 85201
T:480.503.2250 | F:480.835.1799
w w w . e p s g r o u p i n c . c o m

Project: "Germann Commerce Center - Phase 1"
QUEEN CREEK, ARIZONA
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Job No.
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FP01

Sheet No.
2
of 3

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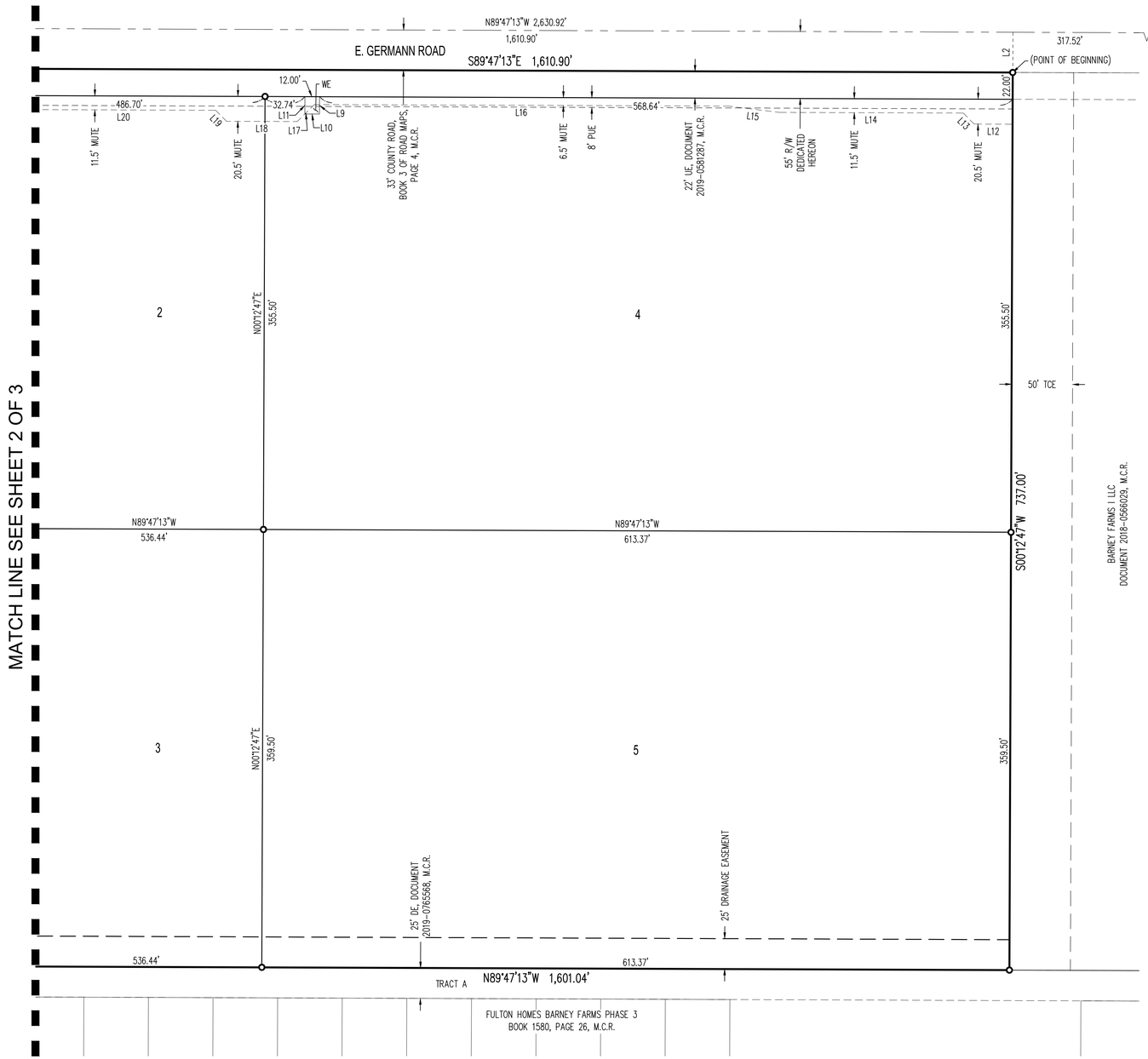

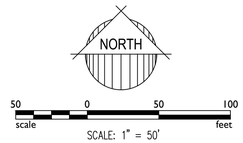

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Drawn by: A.G.
Reviewed by: M.P.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
45378
MICHAEL D.
POLLOCK
Expires
ARIZONA, U.S.A.

Job No.
22-0104
FP01
Sheet No.
3
of 3

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TOWN OF QUEEN CREEK ARIZONA

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 $25,000 AND OVER, PURSUANT TO TOWN PURCHASING POLICY. (FY 22/23 BUDGETED ITEMS)**

DATE: **December 7, 2022**

Suggested Action:

To approve the Expenditures $25,000 and over, pursuant to Town Purchasing Policy.

Discussion:

The following items being requested are:

1. Courtesy Chevrolet - 2023 Chevrolet Silverado 1500: $50,000 (Fire)
2. Interim Public Management, LLC - Temporary Personnel Services: $180,000 (Town Manager)
3. West Coast Arborist - Tree Trimming and Clearing: $73,418 (CIP)

Fiscal Impact:

The fiscal impact of the requested spending authority for the above expenditures is: $303,418.00. Funds have been identified within the line item budget as approved in the FY22/23 budget or subsequently approved by Council.

Attachment(s):

1. Expenditures over $25,000.pdf

Attachment: Expenditures $25,000 and Over
Budgeted in Fiscal Year 22/23
December 7, 2022

Item #	Vendor(s)	Description	Purpose	Requesting Dept(s)	Fiscal Impact $	Procurement Method	Alternative
1	Courtesy Chevrolet	2023 Chevrolet Silverado 1500	Additional contract spending authority for FY23 for purchasing a new vehicle for Fire.	Fire	$50,000	State Contract #CTR059315 Staff may purchase from another approved vendor/contract based on availability and price	Town Procurement Policies for purchases over 25K is to either utilize an existing Regional/National Cooperative or the Town would have to initiate our own Request for Proposal and bid process. Using a cooperative that already exists provides the Town with better economies of scale to receive lower pricing than we could receive on our own; therefore, staff recommends using the cooperative under this contract. Council could choose not to approve the expenditure request. However, this would result in the department having to go out for RFP for this purchase. This would delay the program with no guarantee for the same low pricing.
2	Interim Public Management, LLC	Temporary Personnel Services	Contract spending authority for temporary personnel services for an Interim Assistant Town Manager and to authorize the Town Manager to sign all necessary agreements.	Town Manager	$180,000	Town Contract #2014-119	Council could choose not to approve this contract amendment. However, due to the retirement of the Town Manager and the Assistant Town Manager being appointed as the new Town Manager, this leaves the Assistant Town Manager position vacant. If not approved, the Assistant Town Manager position would remain vacant until the recruitment of the Assistant Town Manager position is filled which could take up to a year.
3	West Coast Arborist	Tree Trimming and Clearing	Contract Spending authority for tree trimming and clearing along the Queen Creek Wash.	CIP	$73,418 this includes a 10% contingency.	City of Mesa Cooperative Contract #2019033	Council could choose not to approve this purchase and instruct staff to go out for bid. However, this would require procurement to issue a bid taking a minimum of six (6) weeks to complete. In doing so, the Town runs into the possibility of losing MAG funding as the project needs to get started quickly. With issuing a bid around the holiday season, procurement cannot guarantee a quick turnaround, to meet the MAG project start deadline. By utilizing the City of Mesa Cooperative, it will allow the Town to use a qualified firm that has been properly evaluated and vetted. Along with providing the Town with low pricing.

TOWN OF QUEEN CREEK ARIZONA

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 2022-23 BUDGET AMENDMENTS TOTALING $2,042,668 IN REVENUE ADJUSTMENTS AND $414,962 IN EXPENSE REALLOCATIONS INCLUDING $405,644 FROM CONTINGENCIES.

DATE: December 7, 2022

Suggested Action:

Motion to approve FY 2022-23 budget amendments totaling $2,042,668 in revenue adjustments and $414,962 in expense reallocations including $405,644 from contingencies.

Relevant Council Goal(s):

Effective Government: KRA Financial Stability.

Discussion:

Please see attachment.

Fiscal Impact:

Please see attachment.

Alternatives:

The Town Council could choose to not approve some or all of these reallocations. However, this would result in budget and financial reporting variances at the end of the fiscal year.

Attachment(s):

1. Staff Report with Discussion & Fiscal Impact Sections

Requesting Department

Finance

TO: **HONORABLE MAYOR AND TOWN COUNCIL**

FROM: **SCOTT MCCARTY, FINANCE DIRECTOR**

THROUGH: **JOHN KROSS, TOWN MANAGER**

RE: **Consideration and possible approval of FY 2022-23 budget amendments totaling $2,042,668 in revenue adjustments and $414,962 in expense reallocations including $405,644 from contingencies.**

DATE: **December 7, 2022**

Proposed Motion:

Motion to approve FY 2022-23 budget amendments totaling $2,042,668 in revenue adjustments and $414,962 in expense reallocations including $405,644 from contingencies.

Relevant Council Goal(s):

Effective Government: KRA Financial Stability

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. Also, as we prepare for the FY 23-24 budget process we desire to establish a correct current-year budget so that our analysis and comparison of budgets year-to-year are more accurate.

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;
3. Appropriation transfers greater than $50,000 between capital project accounts;
4. Appropriation transfers from contingency accounts; and
5. Requests to add new full-time equivalent (FTE) positions.

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 accounts in order to reduce year-end reporting variances.

Fiscal Impact

Revenues and Other Sources: The proposed budget adjustments increase revenue in various funds by a total of $2,042,668, explained in the notes below this schedule:

NOTE	DESCRIPTION	FUND	FY 22-23 CURRENT BUDGET	FY 22-23 REVISED ESTIMATE	INCREASE (DECREASE)
a	QC County Island Fire District Contract Revenue	EMS Fund	1,500,000	1,787,668	287,668
b	PD Off-Duty Vehicle Reimbursements	EMS Fund	-	15,000	15,000
c	PD Public Records Requests	EMS Fund	-	15,000	15,000
d	Miscellaneous - AMRRP Dividend	General Fund	-	275,000	275,000
e	Investment Income	Drainage & Transportation CIP Fund	150,000	460,000	310,000
f	Investment Income	General CIP Fund	-	1,140,000	1,140,000
	Total Revenue Adjustments		**1,650,000**	**3,692,668**	**2,042,668**

a) The annual contract with the Queen Creek County Island Fire District was finalized after the FY 22-23 budget was adopted. The contract amount is higher than the amount originally estimated because the size of and population served within the District has grown since last year.
b) The Police Department contracts with private companies to provide traffic control services for road construction projects. These companies reimburse the Town for the cost of using the officer's Town-owned police vehicle. This revenue source was not included in the adopted FY 22-23 budget.
c) The Police Department charges nominal fees for certain public records requests. This revenue source was not included in the adopted FY 22-23 budget.
d) In July 2022, the Arizona Municipal Risk and Retention Pool (AMRRP) paid dividends to all municipalities in the Pool, including Queen Creek. Since these dividends are never guaranteed, the Town does not include an estimate for this revenue in the initial adopted budget.
e) The Federal Reserve has been aggressively raising short-term interest rates, which has directly increased the investment income the Town is earning on its cash balances in the CIP Fund above that which was expected when the budget was adopted. This investment income comes from bond proceeds that have not yet been spent on road projects.
f) Similar to Item (e), the Town has invested $114 million of proceeds from the 2022 excise tax bonds that were issued in June for parks and recreation facilities. Investment income for these bond proceeds was not included in the adopted FY 22-23 budget.

Expense Budget Adjustments: The proposed budget amendments reallocate $414,962 of expenses from existing budgets of various departments and divisions including $405,644 of expenditure authority from contingency funds as explained in the notes following this table:

NOTE	DESCRIPTION	FUND	INCREASE BUDGET	DECREASE BUDGET
a	Salaries & Fringes - Customer Service	Water Operating Fund	9,318	
	Salaries & Fringes - Finance	General Fund		9,318
b	Salaries & Fringes - Recreation	General Fund	106,864	
c	Professional Services - Town Manager	General Fund	180,000	
d	General Services - ADOR Assessment	General Fund	44,008	
e	Professional Services - Finance	General Fund	40,000	
f	Repairs & Maintenance - Grounds	General Fund	34,772	
	Operating Budget Contingency			405,644
	Total Budget Reallocations		**414,962**	**414,962**

a) The Finance Department moved a part-time position from Purchasing, which is budgeted in the General Fund, to Customer Service, which is budgeted in the Water Operating Fund. Budget adjustments between funds require Town Council approval.
b) The Community Services Department is requesting to add a new full-time Recreation Coordinator position and hire the new employee as soon as possible. This new position was expected to be included in next year's staffing plan for opening Frontier Family Park and the new Recreation & Aquatics Center. However, the department desires to hire the position now to help prepare for a significant recruitment and training effort that will begin in July 2023. Similar to how we hired positions in advance of opening a Police Department, having additional staff now will provide much-needed support to existing staff in preparing for these new facilities and the related staffing levels and programming that will be required next year. Staff notes that the amount listed for this position represents a full year of salary and benefits even though filling this position will happen several months into the fiscal year. Therefore, FY 2022-23 actual costs will be less than shown here.
c) With recent changes in the Town Manager's Office, the Town will require professional services to fill a vacancy in the Assistant Town Manager position. This budget adjustment accommodates estimated salary, fees and expenses for using a third-party service to fill this position.
d) New legislation passed in 2022 requires the Arizona Department of Revenue (ADOR) to update its tax collection and administration software system. Because ADOR collects and administers sales taxes statewide, and because that service directly benefits local governments, the legislature is requiring municipalities to share in the cost of the tax system upgrade. This assessment was not included in the adopted FY 22-23 budget as Town staff expected the assessments would not begin until FY 23-24; however, the legislation requires assessments to begin this fiscal year.
e) The Town has invested the proceeds of the 2022 excise tax bonds that were issued in June 2022 for parks and recreation projects. The Town's investment advisor, Public Trust Advisors, charges a fee of 0.04% of the invested balance for this service, currently running at about $3,900 per month. This amount will go down over time as bond funds are spent on the projects.
f) Three Town facilities require significant lighting repairs to maintain health and safety for the parks' patrons: Desert Mountain Park, HPEC, and Founder's Park. These repairs were not anticipated when the FY 22-23 budget was adopted, and the Grounds Division does not have sufficient budget elsewhere that could be tapped to handle these repairs.

Alternative

The Town Council could choose to not approve some or all of these reallocations. However, this would result in budget and financial reporting variances at the end of the fiscal year.

TOWN OF QUEEN CREEK ARIZONA

TO: **HONORABLE MAYOR AND TOWN COUNCIL**

THROUGH: **JOHN KROSS ICMA-CM, TOWN MANAGER**

FROM: **PAUL GARDNER, UTILITIES DIRECTOR**

RE: **CONSIDERATION AND POSSIBLE APPROVAL OF AMENDMENT NO. 1 TO THE GROUNDWATER SAVINGS FACILITY STORAGE INTERGOVERNMENTAL AGREEMENT WITH QUEEN CREEK IRRIGATION DISTRICT AND AUTHORIZE THE TOWN MANAGER AND TOWN ATTORNEY TO MODIFY, NEGOTIATE, FINALIZE AND SIGN ALL DOCUMENTS NECESSARY TO EFFECTUATE THE TRANSACTION.**

DATE: **December 7, 2022**

Suggested Action:

To approve Amendment No. 1 to the Groundwater Savings Facility Storage Intergovernmental Agreement with Queen Creek Irrigation District and authorize the Town Manager and Town Attorney to modify, negotiate, finalize and sign all documents necessary to effectuate the transaction.

Relevant Council Goal(s):

Secure Future: KRA Environment

Discussion:

In September of 2021, the Council approved an Intergovernmental Agreement for Water Wheeling and Water Storage/Groundwater Savings Facility (GSF) with the Queen Creek Irrigation District (QCID). The agreement, when combined with the Town's other groundwater recharge option, Roosevelt Water Conservation District (RWCD), significantly expanded the Town's ability to effectively recharge any surface water that is allocated and received by the Town.

To date, the RWCD GSF has been used for a significant amount of the Town's share of treated effluent generated by the Greenfield Water Recovery Plant and the QCID GSF has been used to both transfer the Town's current surface water allocation of 495-acre feet (AF) for direct use by the Town's irrigation customers and recharge the Town's NIA water allocation of approximately 4,100 AF in 2022. In addition, both the RWCD and QCID GSFs have been identified as one of the potential options to make immediate beneficial use of the pending Cibola water transfer with GSC Farms, an additional 2,033 AF.

The current agreement with QCID, not only includes provisions for a GSF but also sets forth terms for the Town to utilize the QCID system to wheel/transfer water for other purposes, including the delivery of water to anticipated recharge basins, currently included in the Town's CIP (Capital Improvement Plan), as well as the direct delivery of water as part of the Town's large untreated

water provider designation.

In discussions with QCID, it has been determined that, given current inflationary pressures, the current pricing agreement that has been established for the wheeling/transfer of water through the QCID system is almost at a breakeven point and will soon cost QCID more to transport water than they will be receiving in charges to the Town. The current agreement does not include an escalator or other reset provisions to allow QCID to recover its costs.

In the spirit of good faith, the Town staff and QCID staff have agreed that an amendment to the agreement is in the best interest of both parties. The amendment as proposed would amend the agreement as follows:

- Any water wheeled/transferred through the system (other than water directly used by QCID through the GSF Agreement) would be subject to a QCID charge of $15/AF ($10/AF currently) and a US Bureau of Reclamation charge of $10/AF ($10/AF currently)
- Establish a recurring 5-year reset provision for the term of the agreement where the Town and QCID would negotiate in good faith to reset the rates and charges in the agreement to cover any necessary increase in costs.
- All other provisions of the original agreement would remain unchanged and be in effect until December 31, 2041, unless mutually terminated or revised by the Parties by written agreement.

Fiscal Impact:

The amendment to the current agreement, increases QCID's current charge to the Town from $20/AF to $25/AF for water wheeled/transported through their system but not utilized by QCID ($15/AF QCID and $10/AF Bureau of Reclamation). This charge is currently levied on the 495 AF of CAP water the Town uses directly for its urban irrigation customers, which amounts to an annual increase of $2,475 ($9,900 to $12,375). Sufficient funding has been identified in the FY22/23 Water Resource budget to cover these additional costs.

This increase would also be in place for any other future water, yet to be identified, that would be wheeled/transferred by, but not utilized by the QCID GSF. This could, in the future, possibly include the Town's current NIA allocation of 4,100 AF and currently pending Cibola water transfer of 2,033 AF. At the new proposed rate ($25/AF), this would amount to approximately $153,000 in additional wheeling/transfer costs. Currently there are no future plans to wheel/transfer the NIA or Cibola water, but instead the Town will utilize the QCID or the RWCD GSF for this water. Sufficient funding has been included in the FY22/23 Water Resource budget to cover these types of costs, as well as funding will be included in future budget years as needed.

Alternatives:

Council could choose not to approve the agreement; however, this could impact the Town's future ability to utilize the QCID GSF and its infrastructure to transport water to the benefit of the Town. Should there be issues of concern regarding the proposed agreement, staff would work to address those concerns and revisit the Council's consideration of the agreement at a future date.

Attachment(s):

1. Amendment No 1 to QCID Wheeling and GSF Storage Agreement
2. QCID Wheeling and GSF Storage Agreement

AMENDMENT No. 1
INTERGOVERNMENTAL AGREEMENT
FOR WATER WHEELING AND WATER STORAGE
Between
Town of Queen Creek
And
Queen Creek Irrigation District

1. PARTIES:

1.1 This Amendment No. 1 to Intergovernmental Agreement for Water Wheeling and Water Storage ("Amendment") is made and entered into as of this ____ day of _____, 2022, between the Town of Queen Creek, an Arizona municipal corporation ("**Town**") and Queen Creek Irrigation District, a political subdivision of the State of Arizona ("**District**"). Town and District are referred to individually as "Party" and collectively as "Parties."

2. RECITALS:

2.1 Town and District entered into the original Intergovernmental Agreement for Wheeling Water and Water Storage dated _____, 2021 ("**Original Agreement**"). Since the Original Agreement was executed, costs have increased requiring an adjustment to the cost related provisions of the Original Agreement. This Amendment addresses those cost related increases.

3. AMENDMENT:

3.1 NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

4. INCORPORATION OF RECITALS AND EXHIBITS:

4.1 The Recitals listed above and the Original Agreement, and the Exhibits attached thereto, are hereby incorporated into and expressly made a part of this Amendment.

5. EFFECTIVE DATE AND TERM:

5.1 This Amendment will become effective upon execution by the Parties and the resulting date entered in Paragraph 1 above. This Amendment shall remain in effect through December 31, 2041, unless mutually terminated or revised by the Parties by written agreement. The changes in cost described in this Amendment shall commence on January 1, 2023.

6. Wheeling Costs:

6.1 Paragraph 8.2 of the original agreement is amended to read:

8.2 For wheeling service, Town shall pay District the rate of $15.00 per acre-foot of water received by District at the CAP Turnout.

Town shall also pay to District the charges imposed by Reclamation for the non-District use of Reclamation facilities. Reclamation currently charges $10.00 per acre-foot for this service, which amount may change in the future. Town shall pay the amount charged by Reclamation to District and District shall pay Reclamation.

7. GSF Water

7.1 The wheeling service rate charge of $15.00 per acre foot and the Reclamation Charge described in this Amendment shall not apply to any water delivered to the District GSF. District shall pay Town for receipt of GSF water as provided in Paragraph 9.7 of the Original Agreement, which charge may be offset by Town against the wheeling charge as provided in the Original Agreement.

8. PERIODIC COST ADJUSTMENT

8.1 In July of 2027 and in each July in five year intervals thereafter, the Parties shall meet and confer on cost adjustments for the wheeling charge and the GSF cost to District. The Parties shall negotiate in good faith based on objective cost analysis to set a new rate for the next succeeding five year period until termination of this Amendment. Consent to newly adjusted costs will be based on commercially reasonable standards and such consent shall not be unreasonably withheld, delayed, or conditioned by either Party.

9. REMAINING TERMS UNAFFECTED:

9.1 All remaining terms of the Original Agreement, not expressly affected by this Amendment, shall remain in full force and effect between the Parties.

///Signatures on Following Page///

IN WITNESS WHEREOF, this Amendment was mutually executed by the Parties on the date first hereinabove written.

QUEEN CREEK IRRIGATION DISTRICT

By: _____
Name:
Title:

APPROVED AS TO FORM AND WITHIN THE POWERS AND AUTHORITY OF THE QUEEN CREEK IRRIGATION DISTRICT

By: _____
Name:
Title: Attorney for the Queen Creek Irrigation District

TOWN OF QUEEN CREEK

By: _____
Name:
Title:

APPROVED AS TO FORM AND WITHIN THE POWERS AND AUTHORITY OF THE QUEEN CREEK IRRIGATION DISTRICT

By: _____
Name: Scott A. Holcomb
Title: Queen Creek Town Attorney

INTERGOVERNMENTAL AGREEMENT
FOR WATER WHEELING AND WATER STORAGE
Between
Town of Queen Creek
And
Queen Creek Irrigation District

1. PARTIES:

1.1 This Agreement for Water Wheeling and Water Storage ("Agreement") is made and entered into as of this 15th day of September, 2021, between the Town of Queen Creek, an Arizona municipal corporation ("**Town**") and Queen Creek Irrigation District, a political subdivision of the State of Arizona ("**District**"). Town and District are referred to individually as "Party" and collectively as "Parties."

2. RECITALS:

2.1 District is an irrigation district located in the Phoenix Active Management Area ("Phoenix AMA") in Maricopa and Pinal Counties, Arizona. Town is an Arizona Municipal corporation that provides water, wastewater, and reclaimed water service to customers within its service area. District and Town (as successor in interest) have an existing Wheeling Agreement Between Queen Creek Irrigation District and Queen Creek Water Company dated March 1, 1996. This Agreement is intended to update and entirely replace that former agreement.

2.2 District has the infrastructure and necessary agreements with the Central Arizona Water Conservation District ("**CAWCD**") and the United States Bureau of Reclamation ("**Reclamation**") to divert water from the Central Arizona Project ("**CAP**") canal and deliver that water within the District, and also to deliver that water to the Town water service area. Town currently uses District's ability to "wheel" water from the CAP canal to Town and would like to continue and expand that service.

2.3 Members of the District hold valid irrigation grandfathered groundwater withdrawal rights that authorize members to withdraw groundwater on an annual basis. District members withdraw and use groundwater produced from wells within the District for irrigation.

2.4 Pursuant to Arizona Revised Statutes ("**A.R.S.**") Title 45, Ch. 3.1, District holds a Groundwater Savings Facility ("**GSF**") Permit, issued by the Arizona Department of Water Resources (ADWR No. 72-534550.0006) for the Queen Creek Irrigation District Groundwater Savings Facility (the "**District GSF**"), which allows the District to receive Central Arizona Project ("**CAP**") water from other parties for delivery to its members for use on member lands instead of groundwater that otherwise would have been used to irrigate those lands, and which groundwater savings may create Annual Storage and

Recovery rights or Long-Term Storage Credits for the other party in accordance with A.R.S. §§ 45-851.01 and 45-852.01. A copy of the District's GSF Permit is attached hereto as **Exhibit A**.

2.5 Town holds an existing Central Arizona Project Municipal and Industrial Priority Subcontract for 495 acre feet per year of ("**M&I**") CAP water. Town also holds an expectancy of 4,162 acre feet of Non-Indian Agricultural Priority ("**NIA**") CAP water, to be taken under contract when federal processes are complete. Town is also under contract to acquire 2,033 acre feet of mainstream Colorado River 4th Priority ("**4th Priority**") water to be wheeled through the CAP canal. This water is subject to ongoing state and federal review. Town is also pursuing necessary contractual arrangements and approvals to import groundwater from the Harquahala Irrigation Non-Expansion Area ("**Harquahala**"), to be delivered by CAWCD through the CAP Canal. This importation is also subject to ongoing state and federal review. If all Town water allocations and entitlements are approved, Town will hold a total of 18,290 acre feet of water deliverable through the CAP canal.

2.6 District is willing to accept CAP water from Town into the District GSF and deliver it for its members' use in lieu of groundwater that District's members would otherwise use for agricultural irrigation on their lands. Town will own and retain all Long-Term Storage Credits and Annual Storage and Recovery rights generated from and associated with any CAP Water delivered by Town to District.

2.7 District is also willing to continue to perform CAP water wheeling services to Town, to wheel Town's CAP water to Town under the modified terms of this Agreement.

2.8 District and Town are authorized to enter into this Agreement pursuant to A.R.S. § 11-952.

3. AGREEMENT:

3.1 NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

4. INCORPORATION OF RECITALS AND EXHIBITS:

4.1 The Recitals listed above and all Exhibits listed in and attached to this Agreement are hereby incorporated into and expressly made a part of this Agreement, and this Agreement supersedes and replaces the March 1, 1996 agreement noted in the Recitals above.

5. DEFINITIONS: Terms capitalized herein but defined in A.R.S. § 45-802.01 or elsewhere in A.R.S. Title 45 shall have the same meanings in this Agreement as defined in the statutes. If the definitions differ between the A.R.S. definition and this Agreement's definition, this

Agreement's definition shall be used. In addition to those, and other defined terms in this Agreement, the following principal terms have the following meanings for purposes of this Agreement:

5.1 "ADWR" means the Arizona Department of Water Resources or its duly authorized successor state agency.

5.2. "CAP Water" means any water delivered through the Central Arizona Project canal and delivery system that Town is entitled to order through the Central Arizona Water Conservation District on an annual basis, whether Project or Non-Project water as those terms are defined by CAWCD and Reclamation.

5.3 "CAP Turnout(s)" means facilities used by District to accept CAP Water from the CAP canal into District's distribution system.

5.4 "CAWCD" means the Central Arizona Water Conservation District.

5.5 "Delivery" or "Delivered" means CAP Water made available by Town to District at designated CAP Turnouts specified by District for use in District's GSF or for Town wheeling purposes as provided for in this Agreement. Delivered water shall be metered at the CAP Turnouts by measuring devices meeting the standards of Arizona Administrative Code Section R12-15-901 *et seq.* installed and operated by the Parties in accordance with this Agreement.

5.6 "Point(s) of Discharge" means the point in the District water delivery system where wheeled water is discharged back to the Town.

5.7 "Reclamation" means the United States Bureau of Reclamation, Lower Colorado River Region 8.

6. SCOPE OF SERVICE:

6.1 The scope of this Agreement is: (i) Wheeling. Town ordering CAP Water for Delivery at District's CAP Turnouts and District wheeling the CAP water to Points of Discharge within Town's service area; (ii) Ordering and Scheduling Water. Town arranging for Delivery of CAP Water to District at its CAP Turnouts and District receiving that CAP in accordance with pre-determined schedules; (iii) Groundwater Savings. District's provision of CAP Water to its members in lieu of groundwater that its members otherwise would use for irrigation; and (iv) Accounting. Proper accounting with ADWR for water wheeled, Delivered, received, and stored under the District GSF.

7. **EFFECTIVE DATE AND TERM:**

7.1 This Agreement will become effective upon execution by the Parties and the resulting date entered in Paragraph 1 above. This Agreement shall remain in effect through December 31, 2041, unless mutually terminated or revised by the Parties by written agreement.

7.2 Termination of this Agreement does not relieve either Party of its obligations to make payments due or perform obligations accrued pursuant to this Agreement but not yet paid or completed as of termination.

8. **Wheeling:**

8.1 Wheeling services under this Agreement shall consist of Town properly placing an order with CAWCD for water to be delivered to District at District's CAP Turnouts. District shall wheel the water through its system to designated Points of Discharge within Town's service area, as identified on the diagram attached here as **Exhibit B**.

8.2 For wheeling service, Town shall pay District the rate of $10.00 per acre-foot of water received by District at the CAP Turnout. Town shall also pay to District the charges imposed by Reclamation for the non-District use of Reclamation facilities. Reclamation currently charges $10.00 per acre-foot for this service, which amount may change in the future. Town shall pay the amount charged by Reclamation to District and District shall pay Reclamation.

8.3 Town shall meter the wheeled water received at the Points of Discharge (or approximate) and shall report to District all water received through the wheeling process on a monthly basis, no later than the 15th day of the month following the wheeling service. Town shall pay District the wheeling charges as specified in this paragraph no later than the end of the month following the wheeling service. Payments not timely made shall accrue a late fee of 1% per month, or portion of a month, past due.

8.4 All wheeling of water under this Agreement shall be subject to the scheduling provisions of Section 14 below.

8.5 All wheeling of water under this Agreement shall be subject to the availability of capacity in the District's distribution system in excess of the capacity required for the District to deliver irrigation water to its members.

9. **DUTIES OF DISTRICT FOR GSF:**

9.1 District will maintain the effectiveness of and renew District GSF Permit No. 72-534550 at all times. Town has no obligation to Deliver CAP Water to District for storage at District's GSF at any time that District GSF is not in effect. District will have the sole responsibility to pay for all application, renewal, and any other administrative fees or costs applicable to the maintenance or renewal of the GSF Permit. District will be responsible for filing

any and all reports required under the GSF Permit. The District will notify Town as soon as practicable if: (1) the District receives a notice that ADWR intends to amend the GSF permit; (2) the District elects to submit an application to amend the GSF Permit; (3) the District elects not to renew the GSF Permit; or (4) the District receives notice from ADWR that ADWR has determined that the volume of water proposed to be stored at the GSF under this Agreement is ineligible for annual storage or for Long-Term Storage Credits.

9.2 District will provide for its members' use for agricultural irrigation any CAP Water Delivered to District's GSF pursuant to this Agreement, to replace, on a gallon-for-gallon basis, pumped groundwater.

9.3 District will comply with A.R.S. §§ 45-801.01 *et. seq.* and take all steps reasonably necessary for Town's CAP Water storage at District's groundwater savings facility to accrue annual storage and recovery rights or Long-Term Storage Credits.

9.4 Upon request by Town, District will complete a Facility Consent Transfer Form, or other similar document, granting consent to Town to store water at District GSF up to the maximum amounts identified in this Agreement and shall otherwise cooperate with Town in obtaining a Water Storage Permit associated with District's GSF.

9.5 District will accept from Town, at the CAP Turnouts specified by District, up to the maximum amount of CAP Water that Town desires to Deliver to the District GSF for storage as defined in Section 14 below, absent extraordinary circumstances as set forth in Section 14. If District has reason to believe that circumstances beyond District's control may cause any portion of the CAP Water accepted from Town to fail to accrue annual storage and recovery rights or long-term storage credits under A.R.S. §§ 45-801.01 *et seq.*, District will notify Town as soon as practicable of the amount that may be ineligible, the reasons why, and the dates on which such deliveries occurred or will occur. If feasible, Town may elect to divert CAP Water away from District CAP Turnouts to another storage facility or for wheeling to an alternative use during the days when Delivery to District may make the Delivery ineligible for annual storage and recovery or Long-Term Storage Credits as stated in the District notice.

9.6 District shall cooperate with Town to re-direct CAP Water scheduled to be Delivered to the District GSF to be Delivered by Town to other CAP Turnouts, giving due consideration for the time involved in directing CAP Water from one CAP Turnout to another. District shall be solely responsible for the control and delivery of CAP Water Delivered to the District GSF after it reaches the CAP Turnouts.

9.7 District shall pay to Town the amount of $20.00 per acre-foot for each acre foot of CAP Water Delivered to the District GSF. District shall remit to Town the fee associated with the previous month's water Delivery by the end of the month following the month during which the water was Delivered. Payments not timely made shall accrue a late fee of 1% per month, or portion of a month, past due. District's cost obligation to pay for District

GSF water may be offset against District's charges to Town for wheeling costs, as specified above, in a single accounting for the month's receipt of District GSF water and Town wheeling services.

9.8 By the fifteenth (15^{th}) day of each month, District shall provide Town a report that specifies the total amount of CAP Water received by District for the District GSF and the total amount of water stored by District at District's GSF pursuant to this Agreement during (i) the prior calendar month and (ii) the calendar year to date, inclusive of the prior calendar month. The report shall also calculate the total price to be paid to Town at the end of that month, as provided above.

9.9 District acknowledges the interruptible nature of CAP Water provided under this Agreement. Town shall not be liable under any circumstance for any damages to District resulting from any curtailment, interruption of, discontinuance or reduction of CAP Water to District under this Agreement, except in cases of willful misconduct or gross negligence on the part of Town.

9.10 All annual storage and recovery rights and any Long-Term Storage Credit associated with CAP Water Delivered to District GSF by Town in accordance with this Agreement remains the property of Town. District acknowledges that it has no claim or right to any Long-Term Storage Credit accrued pursuant to this Agreement. District further acknowledges that Town, in its sole discretion, may recover, sell, transfer, gift, lease, exchange or assign any such Long-Term Storage Credits in accordance with Arizona law.

9.11 District shall be solely responsible for the use of the CAP Water Delivered to District GSF under applicable laws or regulations of the Arizona Department of Water Resources.

10. DUTIES OF TOWN FOR GSF:

10.1 Town will forthwith apply for and use all reasonable efforts to obtain and maintain a Water Storage Permit from ADWR for storage of the maximum amount of CAP Water allowed under this Agreement at the District GSF. Town will bear all expenses of obtaining and maintaining a Water Storage Permit.

10.2 Upon obtaining the necessary Water Storage Permit from ADWR, Town shall Deliver CAP Water to District for use in District GSF in accordance with the provisions of Section 14 of this Agreement.

10.3 Town acknowledges that ADWR may determine that certain water losses occur after the Delivery of CAP Water to CAP Turnouts within District's delivery system. These losses may reduce the amount of water available for annual storage and recovery or any Long-Term Storage Credits accrued by Town. Town agrees to bear these losses as the same may be determined by ADWR.

10.4 Town acknowledges that District's agreement to accept CAP Water may, from time to time, result in District accepting Delivery of CAP Water that cannot be used as a gallon-for-gallon substitute for pumped groundwater for purposes of accruing annual storage and recovery rights or Long-Term Storage Credits. Town agrees that, if District is unable to deliver to its members any CAP Water Delivered to District GSF under this Agreement, District shall not be in breach of any provision of this Agreement if District complies with its obligations in Subsection 9.5 herein.

11. RECOVERY OF WATER:

11.1 The Parties acknowledge that the recovery of any water stored underground pursuant to this Agreement is beyond the scope of this Agreement, and recovery of such water will be the sole responsibility of Town.

12. WATER QUALITY:

12.1 CAP Water Delivered to District pursuant to this Agreement shall not bear any warranty, express or implied, regarding the quality of the water. District shall accept Town's CAP Water as Delivered so long as it is delivered to the District's CAP Turnouts in accordance with the usual practices of CAWCD.

13. **TURNOUTS**

13.1 Town shall deliver the CAP Water to District at the CAP Turnouts depicted in the diagram attached hereto as **Exhibit B.** District hereby grants Town a non-exclusive license to Deliver CAP Water to the CAP Turnouts in accordance with the terms of this Agreement, and District shall accept such CAP Water at the CAP Turnouts. The Parties agree that in the future, Town may, at its sole cost, undertake to construct additional infrastructure to better facilitate delivery of CAP Water under the terms of this Agreement. The Parties agree to cooperate in good faith in the design, engineering and mutual acceptance of such infrastructure, and to designate such as additional CAP Turnouts as defined in this Agreement. In the event that additional CAP Turnouts are constructed, those shall be added to Exhibit B and shall become CAP Turnouts for all purposes of this Agreement.

13.2 District shall be solely responsible for maintaining and operating all infrastructure necessary to transport the CAP Water from the CAP Turnout to District GSF or Point(s) of Discharge. The measuring devices installed at the CAP Turnouts shall be the point of Delivery for the CAP Turnout, at which point District shall assume full responsibility for the water Delivered. For wheeled water, the responsibilities of this Section shall shift from District to Town once the water reaches the Point(s) of Discharge.

13.4 For purposes of this Agreement, the responsibility to maintain and operate infrastructure shall mean the responsibility to maintain and operate in accordance with all federal, state and local laws, and to maintain and operate in good and workmanlike manner consistent with good commercial practices prevalent for water utilities and irrigation districts in the

Phoenix AMA.

13.5 The Parties acknowledge that construction and use of any additional CAP Turnouts as contemplated by this Agreement will require the consent of the United States Bureau of Reclamation. The Parties agree that they shall work cooperatively, in good faith and with all reasonable diligence to secure such approval as expeditiously as possible.

14. SCHEDULING OF WATER DELIVERIES; TOWN PRIORITY

14.1 In July of each year during this Agreement, or as soon as practicable after the Effective Date, Town and District shall meet and confer on the water delivery schedule for the upcoming year. Town shall estimate the total volume of CAP Water Town desires to wheel through the District system and the total volume Town desires to Deliver to District GSF for storage in that upcoming year. With this information, the Parties shall develop a schedule of anticipated monthly and daily flows that does not exceed the maximum available from Town and the distribution of those flows to the CAP Turnouts. Such schedule shall control the daily flows at the CAP Turnouts for both wheeling and storage, subject to adjustment as provided in this Agreement.

14.2 In the event that the schedule of daily or monthly flows needs adjustment, the Party requesting such adjustment shall notify the other Party as soon as is reasonably practicable and by means intended in good faith to reach the other Party as soon as practicable, including by telephone as may be possible. If change in schedule is inconvenient for either Party, the Parties shall confer and attempt to find a reasonable solution, subject to District's obligation to accept all scheduled CAP Water, except in extraordinary conditions as provided in this Agreement.

14.4 For purposes of this Section of this Agreement, "extraordinary conditions" shall mean circumstances beyond District's control. Beyond control shall not include inconvenience or matters that could have been avoided by prudent and reasonable planning by District to accept the flows agreed to hereunder, nor shall it include negligence or carelessness in the operation of District facilities. The Parties acknowledge that interruption in flow as scheduled requires redirection of the CAP Water to other locations or users, and should only occur only in the most unforeseen circumstances. District currently has capacity to receive all CAP Water available to Town (up to 18,290 acre feet per year) and such capacity is not expected to diminish during the Term of this Agreement.

14.5 District hereby grants to Town the first priority right to Deliver to District for wheeling and storage up to 18,290 acre-feet per year, or such lesser amount of CAP Water as Town may be entitled to receive if Town does not obtain rights to any portion of the NIA, 4th Priority, and Harquahala water supplies described in Section 2.5 of this Agreement. District will not enter into agreements with any other third parties proposing to make water available to District for wheeling or storage that would preclude District from accepting Delivery of up to 18,290 acre-feet per year of CAP Water from Town. In the event that District is not

able to receive all water available to District, Town's water shall be the last to be reduced. Notwithstanding anything herein to the contrary, all wheeling of water shall be subject to available capacity in District's distribution system in excess of the capacity required for District to deliver water for use by its members. In any year in which Town Delivers to District's GSF less water than required to meet all irrigation needs of District's members, District shall be entitled to schedule other water for delivery to District and use by its members, which deliveries shall have priority as against water scheduled for wheeling for the year at issue. In the event that District cannot receive all of Town's water due to extraordinary conditions, District shall not be liable to Town for any reduction in the amount Delivered.

14.6 The Parties agree that Town may not Deliver its maximum CAP Water in any year. Attached hereto as **Exhibit C** is Town's anticipated schedule for CAP Water to be Delivered to District in calendar years 2022 through 2025. Each year during the Term of this Agreement, when the Parties meet to determine the schedule for the upcoming year, Town shall provide District with an updated annual schedule for the next succeeding four years. Town and District agree to cooperate reasonably and in good faith to allow Town time to complete the processes required for Town to finally secure rights to receive the NIA, 4th Priority, and Harquahala water supplies described in Section 2.5 of this Agreement and to make such water available for Delivery to District. In the event Town elects to send some of its maximum CAP Water to other uses, not involving District, Town shall in good faith timely notify District.

15. UNCONTROLLABLE FORCES:

15.1 Neither Party will be considered to be in default in the performance of any of its obligations hereunder (other than obligations to make payments) when a failure of performance is due to uncontrollable forces. The term "uncontrollable forces" shall mean any cause beyond the control of the Party unable to perform such obligation, including, but not limited to, failure of or threat of failure of facilities, flood, earthquake, storm, fire, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strike, labor dispute, labor or material shortage, sabotage, terrorism, or restraint by court order or public authority, and action or non-action by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require either Party to settle any strike or labor dispute in which it is involved. Uncontrollable forces preventing one Party from performing its obligations shall also excuse performance by the other Party to the extent made necessary by, and for the duration of, such uncontrollable force.

16. NOTICES:

16.1 Any notice, demand or request provided for in this Agreement shall be in writing and delivered in person, or sent by registered or certified mail, postage prepaid, to:

DISTRICT:
General Manager
Queen Creek Irrigation District
P.O. Box 690
Queen Creek, AZ 85142
Reference: Queen Creek Agreement for Water Wheeling and Storage

Town
Utilities Director
Town of Queen Creek
22358 S Ellsworth Road
Queen Creek, AZ 85142

Reference: Queen Creek Agreement for Water Wheeling and Storage

17. GENERAL LIABILITY:

17.1 Each Party shall assume liability for its own negligent or wrongful action or inaction and shall indemnify the other against any and all damages the non-negligent Party incurs as a result of the negligent Party's action or inaction.

18. HEADINGS:

18.1 Title and paragraph headings herein are for reference only and are not part of this Agreement.

19. NO THIRD PARTY BENEFICIARIES:

19.1 This Agreement is solely for the benefit of the Parties and does not create, nor shall it be construed to create, rights in any third party. No third party may enforce the terms and conditions of this Agreement.

20. NO PARTNERSHIP AND NO JOINT VENTURE:

20.1 Nothing contained in this Agreement shall be construed as creating a partnership or joint venture between the Parties hereto. The covenants, obligations, and liabilities contained in this Agreement are intended to be several and not joint or collective, and nothing contained herein shall be construed to create an association, joint venture, agency, trust, or partnership, or to impose a trust or partnership covenant, obligation, fiduciary duty, or

liability between the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities as provided herein.

21. WAIVER:

21.1 The waiver by either Party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition contained herein.

22. DEFAULT AND OPPORTUNITY TO CURE:

22.1 No Party shall be in default of any of its obligations under this Agreement if it cures the default within a commercially reasonable time after receiving written notice thereof from the other Party served pursuant to Section 16 hereof.

23. ENTIRE AGREEMENT; MODIFICATION; COUNTERPARTS:

23.1 The terms, covenants and conditions of this Agreement constitute the entire Agreement between the Parties, and no understandings or obligations not herein expressly set forth shall be binding upon them. This Agreement may not be modified or amended in any manner unless in writing and signed by the Parties. 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 one and the same instrument.

24. BINDING EFFECT:

24.1 All of the provisions of this Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, legal representatives, successors and permitted assigns. Neither Party shall voluntarily assign its rights and obligations under this Agreement to another entity without the written consent of the other Party. Such consent to assignment shall not, however, be unreasonably withheld, conditioned, or delayed.

25. SEVERABILITY:

25.1 Should any part of this Agreement be declared, in a final decision by a court or tribunal of competent jurisdiction, to be unconstitutional, invalid, or beyond the authority of either Party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the excised portion, can be reasonably interpreted to give effect to the intentions of the Parties.

26. AUTHORITY:

26.1 The undersigned representative of each Party certifies that he or she is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this Agreement and to legally bind the Party to it.

IN WITNESS WHEREOF, this Agreement was executed by the Parties on the date first hereinabove written.

QUEEN CREEK IRRIGATION DISTRICT

By: _____
Name:
Title:

APPROVED AS TO FORM AND WITHIN THE POWERS AND AUTHORITY OF THE QUEEN CREEK IRRIGATION DISTRICT

By: _____
Name:
Title: Attorney for the Queen Creek Irrigation District

TOWN OF QUEEN CREEK

By: _____ John Kross (Nov 21, 2022 12:56 MST)
Name: John Kross
Title: Town Manager

APPROVED AS TO FORM AND WITHIN THE POWERS AND AUTHORITY OF THE QUEEN CREEK IRRIGATION DISTRICT

By: _____
Name: Scott A. Holcomb
Title: Queen Creek Town Attorney

EXHIBIT A

QUEEN CREEK IRRIGATION DISTRICT
GROUNDWATER SAVINGS FACILITY PERMIT

ARIZONA DEPARTMENT OF WATER RESOURCES

GROUNDWATER SAVINGS FACILITY PERMIT

MODIFIED

PERMIT NO. 72-534550.0006

STATE OF ARIZONA)ss.
)
COUNTY OF MARICOPA)

Pursuant to A.R.S. § 45-814.01(G), the Director hereby issues this sixth amended Groundwater Savings Facility Permit No. 72-534550.0006. This permit modifies and replaces Groundwater Savings Facility Permit No. 72-534550.0005 and grants authority to Queen Creek Irrigation District to operate a groundwater savings facility, subject to the following limitations and conditions:

Permit Limitations

Permittee: Queen Creek Irrigation District
P.O. Box 690
Queen Creek, AZ 85142

Recipients:	The irrigation grandfathered rightholders located within the Queen Creek Irrigation District boundaries and as listed in the supplemental documents submitted with the Plan of Operation dated November 10, 2015
Active Management Area:	Phoenix AMA
Sub-basin:	East Salt River Valley
Grandfathered Groundwater Rights within the External Boundaries of the Permittee under which Groundwater Withdrawals will be curtailed:	See Attachment A of this permit
Wells operated by the Permittee from which Groundwater Withdrawals will be Curtailed:	See Attachment A of this permit
Facility boundaries:	The Queen Creek Irrigation District boundaries as described in the Plan of Operation
Maximum Savings at Facility:	22,000 acre-feet per annum, subject to increase to 25,000 acre-feet per annum pursuant to condition 8 of this permit
Effective Date:	November 17, 2016
Permit Expiration:	November 17, 2021

Permit Conditions

1) The Permittee shall deliver in lieu water to the Recipients, who have agreed to use the water delivered to the facility directly in-lieu of groundwater on a gallon-for-gallon substitute basis.

2) The facility shall be operated pursuant to the documents comprising the Queen Creek Irrigation District Plan of Operation for a Groundwater Savings Facility, dated November 10, 2015, which are attached to and incorporated into this permit; however, to the extent that the Plan of Operation is inconsistent with the limitations

and conditions of this permit. the limitations and conditions supersede the Plan of Operation.

3) The in-lieu water delivered to the facility shall be measured in a manner consistent with the requirements and specifications for water measuring devices adopted pursuant to A.R.S. § 45-604.

4) The facility shall continue to meet the requirements of A.R.S. § 45-812.01 during operation of the facility.

5) The Permittee shall submit an annual report no later than March 31 following the end of each completed annual reporting period. The first annual reporting period shall be from the effective date of this permit through December 31, 2016. Subsequent annual reporting periods shall be January 1 through December 31. The annual report shall include:

   a) a copy of the Permittee's Irrigation District Annual Water Withdrawal and Use Report (57-002515.0000) indicating the Permittee's total groundwater pumping for the year and the amount of groundwater pumped by each well operated by the Permittee,

   b) information required in the Plan of Operation incorporated into this permit,

   c) the amount of Non-Indian Agricultural pool water as described in the Central Arizona Water Conservation District ("CAWCD") *Supplemental Policy for marketing of Excess Water for Non-Indian Agricultural Use – 2004 through 2030 and the Program for Allocation of the Ag Pool and Associated Conditions for Participation as a Groundwater Savings Facility*, adopted by the CAWCD Board of Directors on December 5, 2002 ("NIA pool water") delivered to the Permittee during the calendar year and the cost per acre-foot of that water,

   d) the amount of the reduction of the Permittee's NIA pool water order pursuant to forbearance or conservation agreements entered into with the CAWCD, and

   e) a copy of any new or amended forbearance or conservation agreement entered into between the Permittee and CAWCD which provides for a reduction in the Permittee's NIA pool water order.

6) The Plan of Operation incorporated into this permit may be subject to modification, depending upon the water storage permits that become affiliated with this storage facility permit and upon other circumstances.

7) Prior to the delivery of in-lieu water to a Recipient pursuant to this permit, the Permittee shall submit a copy of an executed agreement from that Recipient stating that the Recipient agrees to use the in-lieu water instead of groundwater on a gallon-for-gallon substitute basis.

8) For any year in which the Permittee has entered into a forbearance or conservation agreement with CAWCD which provides for a reduction in the Permittee's NIA pool water order, the maximum savings at the facility shall increase from 22,000 acre-feet per year to 25,000 acre-feet per year.

9) Except as provided in paragraphs 10, and 11, so long as the combined total annual use of in-lieu water (up to 22,000 or 25,000 acre-feet, whichever is applicable) and groundwater does not exceed 30,000 acre-feet, each acre-foot of in-lieu water received and used by the Recipients shall be presumed to have replaced an acre-foot of groundwater use and to have accrued a storage credit. If the combined total annual use of in-lieu water and groundwater exceeds 30,000 acre-feet, an amount of in-lieu water received that is equal to the total use of in-lieu water and groundwater less 30,000 acre-feet ("excess in-lieu water") shall be presumed not to have replaced groundwater use and shall be presumed to be ineligible for storage credits. However, the Director of the Arizona Department of Water Resources may issue storage credits for all or a portion of the excess in-lieu water upon a clear and convincing demonstration by the Permittee or Recipient that the cost of producing groundwater in this amount is less than the cost of any alternative source of surface water. This provision applies only to in-lieu water received and used by a Recipient and not to any in-lieu water that is lost and unaccounted for prior to delivery to and use by a Recipient.

10) If a Recipient exceeds the maximum excess amount of groundwater (including in-lieu water) that may be used pursuant to A.R.S. § 45-467(I) in any year beginning with calendar year 2013, the amount of in-lieu water received by the Permittee in that year, up to the amount of the excess, shall be ineligible for storage credits. In that event, the amount of in-lieu water for which storage credits will not be issued shall be apportioned pro rata to all water storage permit holders associated with the facility.

11) In determining the volume of non-groundwater supplies used at the facility during a year that is eligible for storage, NIA pool water, in the volume defined below shall be considered reasonably available. The reasonably available volume is defined as that amount of the NIA pool water allocated to the Permittee or Recipients by CAWCD for the year, not to exceed the volume set forth in CAWCD's *Supplemental Policy for marketing of Excess Water for Non-Indian Agricultural Use – 2004 through 2030 and the Program for Allocation of the Ag Pool and Associated Conditions for Participation as a Groundwater Savings Facility*, adopted by the CAWCD Board of Directors on December 5, 2002 less the amount of the reduction in the Permittee's NIA pool water order pursuant to a forbearance or conservation agreement. Additional NIA pool water made available by CAWCD through an annual reallocation process and used by the Recipients shall not increase the combined total annual use of in-lieu water and groundwater.

If, during the year, all or a portion of the reasonably available NIA pool water is declined by the Permittee, a volume of in-lieu water equal to the declined portion of

the reasonably available NIA pool water shall be deemed ineligible for storage. In-lieu water delivered to the Permittee during the year in excess of the declined portion shall be eligible for storage so long as it replaced groundwater that otherwise would have been pumped, and meets all other requirements and limitations set forth in this permit.

Witness my hand and seal of office this 17th day of November, 2016.

Gerry L. Walker, Deputy Assistant Director
Water Planning & Permitting Division

Attachment A
Wells Owned and Operated by Rightholders from which Groundwater Withdrawals will be Curtailed

2015 Curtailment Letters (Exhibit 5)	IGFRs	Rightholder Name	Irrigation Acres	Wells from Exhibit 3 (Groundwater Pumping) & Exhibit 5 (Curtailment Letters)	Well Owner
A&P Investment Co.	58-105566.0007	A&P Investment Co.	20.00	55-621356 55-593545	Newell Barney Trust A&P Investment Co.
Barney Farms	58-107908.0001	Foothills Plaza IV LLC	309.52		
	58-107908.0004	Zions First National Bank	127.00		
	58-107908.0005	Alyn & Brenda McClure	5.88		
	58-107908.0006	Jay & Janet Strebeck	8.16		
	58-107908.0008	Newell A Barney & Katherine M Barney Trust Agreement Et Al	711.93	55-607979 55-607980 55-607982	Newell A Barney & Katherine M Barney Trust Agreement Et Al
	58-107908.0011	Pecos-Merrill 20 LLC	20.00	55-607981 55-607983	Barney Farms Barney Farms
Brandon Nichols	58-102668.0007	INACTIVE			
	58-102668.0008	QCEL 160 LLC	155.30	55-607838	QCEL 160 LLC
	58-110669.0005	La Jara Farms	126.08		
	58-111120.0011	Ernest F. Johnson Jr.	36.74		
	58-111120.0012	Commercial Vistoso LLC	98.85	55-625010	Ellsworth Road 160 LLC
	58-111120.0013	Ellsworth Road 160 LLC	37.70		
	58-111120.0014	Queen Creek Ten Inc	158.00		
	58-111120.0022	Buckeye-Casa Grande LP	71.72		
Canyon State Academy	58-100867.0001	Queen Creek Summit LLC	119.00	55-803069	Rite of Passage Inc
David a MacDougall	58-111189.0001	David & Julia MacDougall	10.57	none 55-605837	 J M Schnepf
Earnhardt Ranches	58-110748.0001	Hal J & Patricia R Earnhardt III	20.76	55-514326	Hal Earnhardt III
	58-114223.0001	Hal J & Patricia R Earnhardt III	11.90	55-508331	cancelled
	58-114230.0002	Lawyers Title of Arizona (Hal Earnhardt = Reporting Party)	32.89		
Euell Barnes	58-100089.0008	The Miller Partnership	76.40	55-605482	Euell Lyle Barnes
	58-105566.0011	Sandimus LLC	33.35		
	58-105566.0012	Sandimus Queen Creek LLC	8.36		
	58-100089.0002	Tony B Williams, Trustee Wes Gro Empl Profit Share	39.39	55-605482	Euell Lyle Barnes
	58-100089.0004	Michael & Connie Miller	78.78	55-605482 & 55-605483	Euell Lyle Barnes & Miller, M P
	58-100089.0005	Euell Barnes	39.39	55-605482 & 55-605483	Euell Lyle Barnes & Miller, M P
	58-100089.0010	Euell Barnes	4.12	55-605482	Euell Lyle Barnes
Fred Mortensen	58-130354.0003	Fred & Shauna Mortensen	31.20		
	58-130354.0052	Mortensen Construction Co Inc	37.80		
	58-130354.0087	Gary T Haydon Family Trust	13.20		
	58-130354.0088	NPR Phoenix LLC	38.80		
	58-130354.0089	Fort Thomas Farms Inc	21.11		
	58-130354.0090	Portco LLC	9.70		
	58-130354.0092	Mortensen Construction Co Inc	7.85		
	58-130354.0093	Fred & Shauna Mortensen	2.15	55-801386 & 55-801387	Sun Valley Farms Unit VII
Jan Ole Farms	58-111126.0008	Vanderbilt Farms LLC	77.00		
	58-111126.0009	Ellsworth Road 160 LLC	78.00		
	58-111126.0019	Nevitt Malone 120 LLC	113.48	55-625028	Nevit Malone 120 LLC
	58-111126.0020	KittyHawk, LLC	228.95		
	58-111126.0023	Meridian 40 LLC			
	58-111126.0024	MCP Southwest Holdings LTS Partnership	37.61		

2015 Curtailment Letters (Exhibit 5)	IGFRs	Rightholder Name	Irrigation Acres	Wells from Exhibit 3 (Groundwater Pumping) & Exhibit 5 (Curtailment Letters)	Well Owner
Kirby Farms	58-104527.0000	Steve Yang (Family Trust)	13.95	none	
	58-105341.0005	Gordon Bluth	10.93	none	
	58-105341.0006	Corp of Presiding Bishop, LDS Church	9.75	none	
	58-105341.0007	Margo Investments LLLP	19.65	none	
	58-104982.0009	Kelly & Megan Freeman	9.94	none	
				55-801578	Mikhail Putrus
La Princessa Ranchitos	57-002762.0000	Sun Valley Farms Co-Op III		55-801577	Clifford Johnson
	58-104170.0005	Mikhail Putrus	7.02	55-801577	Clifford Johnson
	58-104982.0003	W.S. & C.L. Craft, Trustees	3.91	55-801577	Clifford Johnson
	58-111749.0000	William Lawrence McDaniel	15.60	55-801577	Clifford Johnson
				55-502457	cancelled
				55-500120	Skousen et al, J
Lamoreaux Farms	58-130352.0012	INACTIVE			
	58-130352.0013	INACTIVE			
	58-130352.0014	INACTIVE			
	58-130352.0015	INACTIVE			
				55-804111	William Lyon Homes Inc
				55-086645	Queen Creek Farms
LDS Church Farm	58-104369.0001	Corp of Presiding Bishop, LDS Church	376.80	55-619741	
				55-619742	Corp Pres Bishop LDS Church
Pace Farms	58-100001.0003	Flagstaff Meadows LLC	34.80		
	58-106853.0001	Ellsworth Enterprises LP	143.40		
	58-106853.0002	Duane Ellsworth	38.00	55-627084	Duane & Etta Mae Ellsworth
	58-107192.0000	State of Arizona	106.60	55-615228	Arizona State Land Dept
	58-109052.0012	Marjeans' 40 Limited Partnership	22.24		
	58-109052.0014	Phillip & Susan Barnes	42.54		
	58-110261.0008	Arnette Family Inc	44.24		
	58-110261.0015	Gerald Rick	98.44	55-600448	Hastings Farms LP
Pinto Creek	58-102306.0012	Germann Investments No. 1	77.68		
	58-102306.0020	Pecos Sossaman Partnership	58.15		
	58-102306.0021	Denni & Ingeborg Armstrong	19.53		
	58-102306.0022	WHHC	11.76	55-613579, 55-613580	Pecos Sossaman Partnership
	58-102306.0025	Sossaman & Germann Investments	78.00		
	58-102306.0028	Germann Road Associates	19.75		
	58-102306.0033	Pecos 2005 LLC	16.20		
				55-613580	Pecos Sossaman Partnership, LLP
	58-106866.0001	Germann & Hawes Investments LP	66.73		
				55-625013	Jorde Farms Inc
	58-111119.0023	Jorde Farms Inc	158.00	55-625014	Jorde Farms Inc
				55-625023	Jorde Farms Inc
	58-111120.0015	Jorde Farms Inc	312.61	55-625011	Vlachos Enterprises LLC
				55-625023	Jorde Farms Inc
Queen Creek Pecans	58-114231.0002	Queen Creek Pecans I	69.42		
	58-114232.0003	Queen Creek Pecans II	35.96		
	58-114238.0002	Lawyers Title of Arizona	53.44		
				55-625818	Queen Creek Heights
Queen Creek Ranchos	58-100267.0002	GERALD T. & SANDRIA BROUGH	5.11		
	58-101149.0001	ROBERT M & NANCY E. DAVIS	4.20		
	58-102121.0002	REYNALDO S & SILVIA G FLORES	3.70		
	58-102122.0000	WILLIAM H SANDERS	4.60		
	58-102778.0002	KENNETH C HOWARD	5.33		
	58-102778.0003	DAVID & KIM M MYERS	4.73		
	58-102778.0005	JOEL THALHEIMER	4.63		
	58-102778.0006	HAROLD L & GLENDA M WISE	4.65		
	58-102779.0002	ERIK T & MARTHA GOMEZ WALLEEN	9.31		
	58-102779.0005	MARK W & SANDEE A MCKINLAY	7.00		
	58-102779.0006	MONTY E & SHERRY L WHITE	3.46		
	58-102779.0007	LAWRENCE & DOLLY MCMURTREY	6.75		
	58-102779.0008	LU ANN SUMMERS	3.25		
	58-102780.0003	HAROLD & JOHNNIE WARD	5.21		
	58-102780.0004	KIMBERLY HAMILTON	5.19		
	58-102780.0007	WILLIAM L & ROSE C WRIGHT	5.20		
	58-102782.0002	DONALD L SCHNEPF, SUCCESSOR	5.43		
	58-102782.0003	RALPH G & SUZANNE M EDBERG	10.67		
	58-102782.0004	DAVID FERRAZZI	10.50		
	58-104119.0002	JOHN A. & CAROL L. KUSMIT	4.50		

2015 Curtailment Letters (Exhibit 5)	IGFRs	Rightholder Name	Irrigation Acres	Wells from Exhibit 3 (Groundwater Pumping) & Exhibit 5 (Curtailment Letters)	Well Owner
	58-104232.0001	MICHAEL B RODRIGUEZ	3.50		
	58-104232.0003	BALTAZAR & JUANA OJEDA	5.00		
	58-104232.0004	LAVEEN KINT RUNNELS	5.00		
	58-104232.0006	GARY FISHER	5.00		
	58-104232.0007	RICHARD PAUL WEILAND	6.49		
	58-104232.0008	RONALD & KELLY M RODRIGUEZ	5.00		
	58-104297.0001	CHARLES & WADE & WILLIAMS	5.40		
	58-105045.0001	ROY W SKOWRON	4.14		
	58-105065.0000	KAREN V WALLIN	5.40		
	58-105275.0000	ARMANDO ARCINIEGA	4.63		
	58-105464.0000	XAVIER SIERRA GONZALES	5.04		
	58-105601.0002	FRANK A DUPREY	5.39		
	58-105954.0000	DENNIS DE WITT	5.40		
	58-106519.0001	LUPE & FRANCES ACOSTA	5.34		
	58-108181.0000	TOMAS MARTINEZ	4.57		
	58-108380.0001	MERLE N & MAMMIE CAIN	3.35		
	58-108380.0002	ROBERT J & MAMMIE C THOMPSON	3.34		
	58-108380.0003	CONTENIA H DIXON	4.44		
	58-108380.0005	CLARKE & SUSAN FURLONG	3.35		
	58-108380.0006	RON & SHARON MATSON	3.35		
	58-108380.0008	KRISTINA MORGAN	3.34		
	58-108380.0009	RATTLESNAKE & OCOTILLO LLC	10.07		
	58-108821.0000	KENNETH C HOWARD	5.44		
	58-109204.0000	MILLAS ARLETTE AUGUSTA	6.65		
	58-109282.0000	RICHARD J LUCAS	5.00		
	58-109383.0000	DAVE D LONG	4.50		
	58-109473.0000	JAMES B WINKLE	4.57		
	58-109521.0004	STEVEN P MEDFORD	4.70		
	58-109521.0006	ANNA MARIE CORDOVA	4.70		
	58-110016.0001	KWEI CHUNG & MAY YAN TONG	4.63		
	58-110132.0000	TERRY LEE ABBOTT	3.22		
Queen Creek Ranchos	58-110215.0000	WILLIAM J POWERS	5.40		
	58-110321.0001	CHRISTINE L LYTLE	5.25		
	58-111112.0000	LAWRENCE A GRAVES	4.10		
	58-111180.0000	SANDRA A STUART	5.40		
	58-111213.0000	ROGER L O'DONNELL	4.63		
	58-112241.0000	LINDA MAE CARRICK	5.40		
	58-112650.0000	WADE & RUTH WILLIAMS	5.13		
	58-113276.0001	JACINTO T RODRIGUEZ	5.00		
	58-113425.0000	ODIS B HARRIS	5.40		
	58-113663.0000	ROBERT H. MASTERS	5.40		
	58-113944.0001	JULIAN & MARYLOU HERNANDEZ	4.60		
	58-114053.0000	BEN A HATCH	5.00		
	58-115532.0001	GENE & JANICE CALVERT	3.87		
	58-116120.0000	ROLAN A PERKES	4.74		
	58-116121.0000	ROLAN A PERKES	4.22		
	58-117358.0001	MILLIGAN DULCE	4.29		
	58-117363.0000	VIVIAN JOSEPHINE JACOBSEN	5.50		
	58-117372.0002	JOSEPH BENSON AND RHONDA JO CLEMANS	4.70		
	58-117378.0001	CHRISTINE SICHLER	4.58		
	58-117379.0000	GEORGE & HENRY SWINDLEHURST	4.58		
	58-117380.0000	ALDEN M. & MARY ELLEN PAGE	4.58		
	58-117384.0001	WES AND JAYLENE SUTTON	4.60		
	58-117434.0000	JAMES E & BARBARA K RICKER	4.10		
	58-130267.0001	ADRIAN A & MARION CHANNELLE	6.00		
	58-130269.0000	LAWYERS TITLE OF AZ TR #1129	3.22		
	58-130331.0005	JAMES AND ALLEN STOBAUGH	4.03		
	58-130331.0006	PAUL & VIRGINIA LOWERY	3.32		
	58-130333.0003	THE GARDENS PROFIT SHARING	5.44		
	58-130334.0000	JAMES E SCOTT	5.40		
	58-130335.0003	WILLIAM W & PAMELA J JOHNSON	5.44		
	58-130336.0001	RICHARD D & BARBARA M HALES	2.50		
	58-130337.0000	VERNON M WRIGHT	3.72		
	58-130338.0000	LAVHONA R STELLE	4.20		
	58-130339.0005	SANDY M & CYNTHIA D DAVIS	3.84		
	58-130340.0001	WILLIAM & GLORIA FRAME	5.40		
	58-130342.0000	PATRICIA A NEIBICH	5.40		
	58-130406.0001	KATHOUM & JAMEELA MUTAB	5.03		
	58-130407.0000	HARVEY C JORDON	5.13		
	58-130408.0001	JOSEPH & ARLENE R SOLDEVERE	4.48		
	58-130408.0002	RICHARD AND MICHELLE GEPHART	5.00		
	58-130410.0002	CHARLES & BLONDELL HOLDER	4.56		
	58-130411.0000	WAYNE TAYLOR	4.74		
	58-130412.0002	DAVID AND KIM M MYERS	4.74		

2015 Curtailment Letters (Exhibit 5)	IGFRs	Rightholder Name	Irrigation Acres	Wells from Exhibit 3 (Groundwater Pumping) & Exhibit 5 (Curtailment Letters)	Well Owner
Queen Creek Ranchos	58-130423.0000	SAMUEL HARPER	5.04		
	58-130426.0001	NEIL VALENTINE	5.20		
	58-130428.0000	ALVIN J WILLES	5.20		
	58-130429.0000	JACK A TREMBLAY	5.20		
	58-130431.0001	ROBERT JOHNSON AND THERESA O'NEILL	5.20		
	58-130817.0002	RAMSEY L RIDDELL	3.25		
	58-130818.0002	RIDDELL, RAMSEY LEE	3.25		
	58-130819.0003	CROWSON, ELIZABETH A	3.25		
	58-130824.0000	MICKEY M. GARNER	5.54		
	58-160084.0000	JACQUELINE DENNIS	5.08		
	58-130343.0000	JESUS S MACIAS	5.40		
				55-605836	H2O Inc
Red Fern	57-002763.0000	Sun Valley Farms IV LLC		55-609298	SUN VLY FARMS ASSOC,
Sossaman Farms	58-110238.0004	James & Carolyn Sossaman	4.25		
	58-110238.0005	Sossaman Land Co.	734.73	55-602787	Sossaman land Co.
				55-602786	Sossaman, J. J.
	58-110238.0006	Michael & Julie Nebl	17.69		
Tres Points	58-106368.0000	Wayne Faulkner	43.42		
	58-106369.0002	BADC LLC	84.69		
	58-106852.0003	Daniel Thelander Trust	60.76		
	58-108242.0004	William Barnes	298.42	55-628854	Carl Barnes ETAL
				55-612287	R&T Investments LLC
				55-625029	Meridian 40 LLC
V&P Nursary	58-107908.0009	Vlachos Enterprises LLC	78.98	55-625011	VLACHOS ENTERPRISES LLC
	58-111120.0017	Vlachos Enterprises LLC	40.47		
	58-111120.0018	Vlachos Enterprises LLC	38.49		
	58-111120.0020	Vlachos Enterprises LLC	58.95	55-625012	Jorde Farms Inc

EXHIBIT B

DIAGRAM OF CAP TURNOUTS AND POINTS OF DISCHARGE

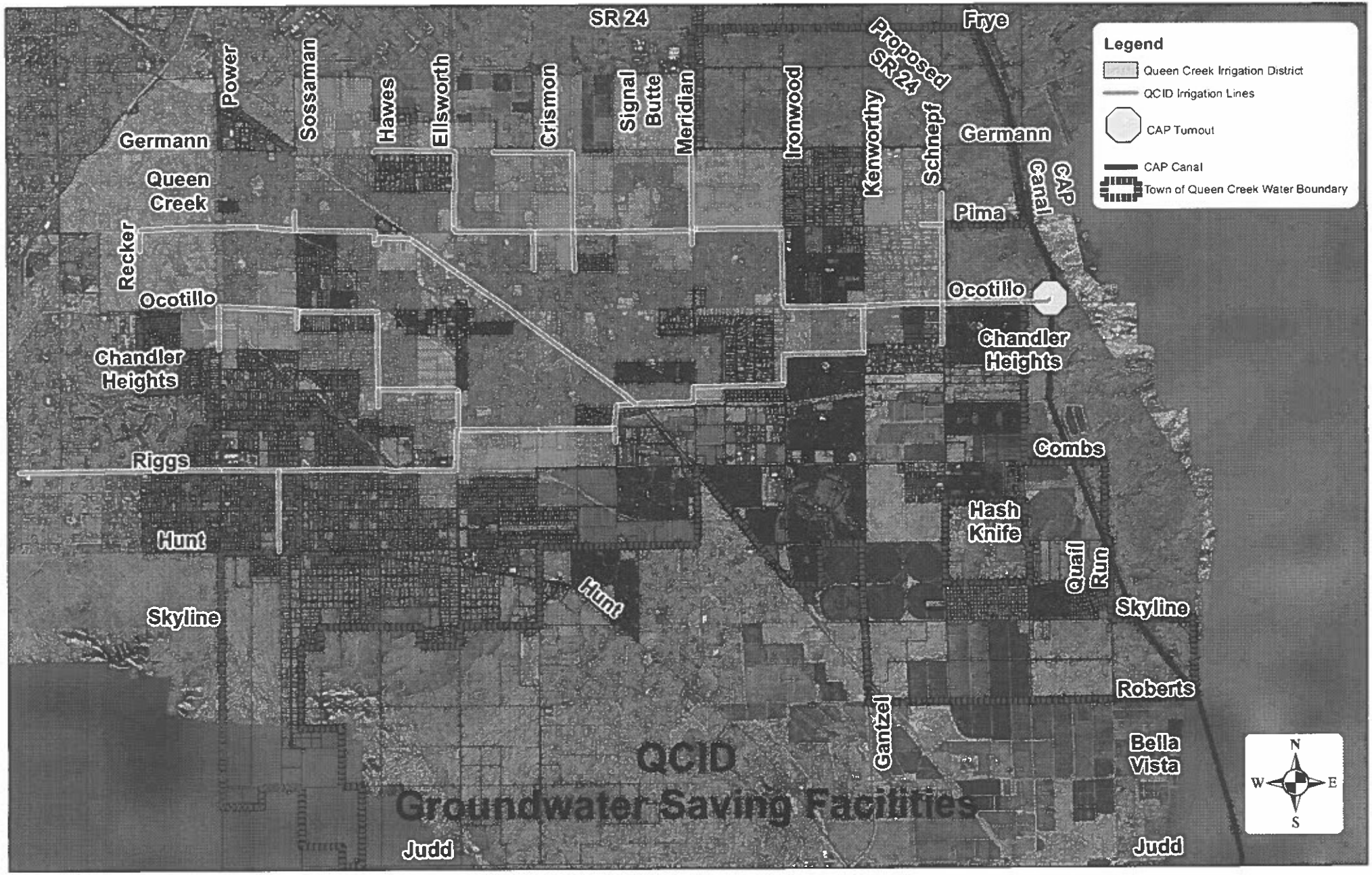

SR 24
Frye
Proposed SR 24
Power
Sossaman
Hawes
Ellsworth
Crismon
Signal Butte
Meridian
Ironwood
Kenworthy
Schnepf
Germann
CAP Canal
Germann
Queen Creek
Pima
Recker
Ocotillo
Ocotillo
Chandler Heights
Chandler Heights
Riggs
Combs
Hash Knife
Hunt
Quail Run
Hunt
Skyline
Skyline
Roberts
Gantzel
Bella Vista
QCID
Groundwater Saving Facilities
Judd
Judd
Legend
Queen Creek Irrigation District
QCID Irrigation Lines
CAP Turnout
CAP Canal
Town of Queen Creek Water Boundary
N
W
E
S

EXHIBIT C

TENTATIVE ANNUAL CAP WATER DELIVERIES

2022-2025

2022
495 Acre feet Current CAP
4162 Acre feet NIA CAP
Total 4657 acre feet

2023
495 acre feet Current CAP
3121 acre feet NIA CAP (assuming 25%reduction)
2033 acre feet Cibola
Total. 5649 acre feet

2024
495 acre feet Current CAP
3121 acre feet NIA CAP (assuming 25% reduction)
2033 acre feet Cibola
Total 5649 acre feet

2025
495 acre feet Current CAP
3121 acre feet NIA CAP (assuming 25% reduction)
2033 acre feet Cibola
5000 acre feet Harquahala
2500 acre feet Harquahala Firming
Total 13,149 acre feet

4826-0220-7994 v1 [53749-1]

Certificate of Completion

Ford Driving Skills for Life Recognizes

FORD DSFL SAFE DRIVER

Bentley Hatch

Phoenix, AZ / November 10, 2022

For Completing the Ford Driving Skills for Life
Hands-on Advanced Driver Training Course

FORD DSFL HANDS ON DRIVING PROGRAM
FORD DSFL CERTIFIED
CERTIFICATE OF COMPLETION

James M. Graham

Jim Graham,
Ford Driving Skills for Life Manager

Ford Driving Skills FOR LIFE

Ford FORD FUND

GHSA

www.DrivingSkillsforLife.com

Signature: 

Email: maria.gonzalez@queencreek.org

TOWN OF QUEEN CREEK ARIZONA

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 JOB ORDER 32 WITH MGC CONTRACTORS, INC., CONTRACT #2019-134 IN AN AMOUNT NOT TO EXCEED $421,373 FOR THE CONSTRUCTION OF ELECTRICAL ROOM ENCLOSURES FOR IRONWOOD CROSSINGS NORTH AND SHEA NORTH WELL SITES ELECTRICAL ROOMS. (FY 22/23 BUDGETED ITEM)**

DATE: **December 7, 2022**

Suggested Action:

To approve a Job Order 32 with MGC Contractors, Inc., Contract #2019-134 in an amount not to exceed $421,373 for the construction of electrical room enclosures for Ironwood Crossings North and Shea North Well Sites Electrical Rooms.

Relevant Council Goal(s):

Secure Future: KRA Environment

Discussion:

Town well sites contain electrical rooms which consist of delicate equipment and instrumentation that serve as the main controls for the well site. Electrical rooms contain electrical cabinets that hold printed circuit boards that operate the wells. Because of the importance and delicacy of this equipment, it is vital that it is protected from the elements in a temperature-controlled enclosure.

The Town acquired the H2O, Inc. water system in 2013. The electrical rooms at those well sites were not completely enclosed and are only covered by a shade structure with a chain link fence around the outside. This exposes sensitive equipment, such as printed circuit boards, to dust, dirt, heat, and rain. This results in equipment having to regularly be repaired or replaced. Currently, department staff spend many hours every week cleaning equipment and blowing out dirt and dust with large air compressors to attempt to prevent any issues.

In the past year, the department has completed the enclosure of electrical rooms at Pecan North, Links Main, Gantzel, Shea and Pecan South, Ironwood Crossings and Castlegate well sites. This job order covers the cost to enclose the electrical rooms and install air conditioning units at both the Ironwood Crossings North and Shea North well sites.

Fiscal Impact:

The not to exceed amount associated with this Job Order totals $421,373. This includes the contract amount of $383,067 as well as 10% contingency totaling $38,306. Funding for this project was included within the Water Distribution FY 22/23 operating budget.

Alternatives:

Council may choose not to approve this Job Order. If not approved, the Department will work with Council to understand their concerns. The option to not move forward with the job order is not recommended at this time as this would cause additional repair and maintenance costs at these well sites.

Attachment(s):

1. Job Order #32 - Electrical Enclosures Ironwood Crossing North and Shea North

JOB ORDER	**CONTRACT NUMBER: 2019-134**	**November 10, 2022**
	JOB ORDER NUMBER: 32	

TO: MGC Contractors, Inc
Job Order Contracting Contractor ("Contractor")

FROM: Brian Quill
Utility Services Manager
Town of Queen Creek

RE: Well Site Electrical Enclosures
Ironwood Crossings North and Shea North

This Job Order is issued pursuant to the Agreement between the Town of Queen Creek and **Contractor** dated **November 19, 2019**, and the other documents that were made part of and referenced in the Agreement. This Job Order is the Notice to Proceed with the subject Job Order Project on the below Job Order Beginning Date. The terms of this Job Order are as follows:

Part I - Scope of Job Order Work

1. Description of the Scope of Job Order Work:
The Scope includes the cost proposal for the construction of exterior sheet-metal walls to enclose both the Ironwood Crossings North and Shea North Well Site Electrical Rooms per the proposal dated 08/17/2022.

2. A list of Specifications for the Project is attached as "**Attachment 1**".

Part II - Specific Information

1. Job Order Price		$383,067.00
2. Schedule	Job Order Beginning Date: (Date project must start)	Upon Approval
	Job Order Final Completion Date: i.e.Date project is complete, including, without limitation, all deficiency, incomplete or correction items (Job Order Punch List)	TBD

If there are more than sixty (60) calendar days between the Beginning Date and the Final Completion Date, or if the Town of Queen Creek has requested a Job Order Progress Schedule, a Job Order Progress Schedule should be attached as "**Attachment 2**".

Part II - Approvals

Brian Quill — 11/10/2022
Brian Quill, Utility Services Manager — Date

Paul T. Gardner — 11/10/2022
Paul Gardner, Utilities Director — Date

Jeff Brown, Vice Mayor — Date

MGC Contractors, Inc. — 11/10/2022
Date

Employee Owned

QUALITY · PERFORMANCE · VALUE

Job Order Contract - PO: 2019-134

Budgetary Cost Proposal

Project Name:

Ironwood Crossing North and Shea North Electrical Enclosures

Employee Owned

MGC

QUALITY · PERFORMANCE · VALUE

August 17, 2022

Town of Queen Creek
22358 S Ellsworth Road
Queen Creek, AZ 85142

Attn: Brian Quill

Re: **Budgetary Cost Proposal**
Electrical Enclosures Ironwood Crossing North and Shea North

Dear Brian:

In accordance with the information provided, we are pleased to offer a budgetary cost proposal for the installation of a new fully enclosed electrical buildings at both the Ironwood Crossing North and Shea North sites. The total price of work is ($383,067.00) Three Hundred Eighty-Three Thousand Sixty-Seven dollars and No Cents. A further breakdown of the proposal and quotations are attached. We have included bond and sales tax. Please note the following clarifications:

Included scope:

- Pricing for the construction of the electrical enclosures is based on discussions between MGC and Town of Queen Creek.
- Third party inspection. This includes soil compaction, concrete cylinder testing.
- CADD drawings and as-builts for building layout and dimensions.
- Stamped engineering drawings of the new 10-foot x21-foot steel buildings for both sites. New buildings will include 8-foot double doors and two (2) fixed blade louvers.
- New HVAC systems for each site.
- Insulation for both site enclosures.
- Unwiring, relocation and rewiring of onsite SES and electrical gear.
- New interior lighting for each electrical enclosure.
- Each new metal structure will require an equipment pad extension to the existing pad. We have included a price to excavate, prepare subgrade, form, pour and strip the pad extensions.

Clarifications and exclusions:

- This proposal is being provided for budgetary purposes only. A formal proposal will be provided by the request of the Town of Queen Creek.
- We assume that the well pumps associated to the electrical gear can be taken down for the duration of the electrical relocation work.
- We have not included public outreach.

Employee Owned

QUALITY · PERFORMANCE · VALUE

Thank you for the opportunity to be of service, if you have any questions please do not hesitate to call.

Sincerely,

Wesley Forster
Project Manager

ELECTRICAL ENCLOSURES IRONWOOD CROSSING NORTH & SHEA NORTH BUDGETARY TOTAL PROJECT BREAKDOWN

Project Number:	19389
Contractor:	MGC Contractors Inc.
Date:	15-Aug-22

Division	Description	% of Total	Cost	Comments
	Construction Indirect Costs Summary			
00000	**Division 0 - Bidding and Contract Requirements**			
	Sales Tax	6.93%	$26,530	
	Sales Tax Deduct	0.00%	$0	
	Fee	8.00%	$30,640	
	Insurance (GL, IF, PL)	2.00%	$7,660	
	Bond	1.00%	$3,830	
00000	***Sub-Total***	***17.9%***	**$68,660**	
01000	**Division 1 - General Requirements**			
	Project Staff	8.19%	$31,369	
	Project Site Temporary Facilities	3.82%	$14,650	
01000	***Sub-Total***	***12.0%***	**$46,019**	
	Sub-Total Indirect Costs	**29.9%**	**$114,679**	
	SUBCONTRACTORS & SUPPLIERS			
	Ironwood Crossing North Site - New Metal Building	19.41%	$74,349	Keller Mechanical
	Ironwood Crossing South Site - HVAC Subcontractor	3.33%	$12,738	Axis Mechanical
	Ironwood Crossing South Site - Electrical Subcontractor	4.10%	$15,694	Swain Electric
	Ironwood Crossing South Site - Insulation	1.43%	$5,485	Rice Construction
	Ironwood Crossing South Site - Purchase Concrete (12CY x $185)	0.58%	$2,220	
	Ironwood Crossing South Site - Purchase Rebar	0.39%	$1,500	Tyler Reinforcing
	Shea North Site - New Metal Building	19.41%	$74,349	Keller Mechanical
	Shea North Site - HVAC Subcontractor	3.33%	$12,738	Axis Mechanical
	Shea North Site - Electrical Subcontractor	4.10%	$15,694	Swain Electric
	Shea North Site - Insulation	1.43%	$5,485	Rice Construction
	Shea North Site - Purchase Concrete (12CY x $185)	0.58%	$2,220	
	Shea North Site - Purchase Rebar	0.39%	$1,500	Tyler Reinforcing
	Sub-Total	***58.5%***	**$223,971**	
	ELECTRICAL ROOM ENCLOSURE WORK			
	Ironwood Crossing South - Install New Enclosure w/ Doors	5.80%	$22,208	
	Castlegate - Install New Enclosure w/ Doors	5.80%	$22,208	
	Sub-Total	***11.6%***	**$44,417**	
	Sub-Total Direct Costs	**70.1%**	**$268,388**	
	Overall Total		**$383,067**	

Division 01 BY: BJF & WF

#	DESCRIPTION	QUANT	UNIT	UNIT COST	AMOUNT	Comments
1.	**Mobilization/Demobilization:**				-	
	- Company Equipment	0	Ea	$ 500	$ -	
		0	Ea	$ 600	$ -	
	- Rental Equipment	0	Ea	$ 650	$ -	
	- Equipment Delivery	4	Ea	$ 400	$ 1,600	Mini Track-Hoe
	- Other	0	Ea	$ 400	$ -	
2.	**Permits**				$ -	
	- Local	0	Ea		$ -	
	- County	0	Ea	$ 1,100	$ -	Dust Control Permit
	- Railroad	0	Ea		$ -	
	- Other	0	Ea		$ -	
3.	**Trailers:**				$ -	
	- MGC - storage	2	Mo	$ 250	$ 500	
	- MGC - office	0	Mo	$ 450	$ -	
	- Engineer's office	0			$ -	
4.	**Temporary/Cellular Phone**	2	Mo	$ 150	$ 300	
5.	**Temporary Power:**				$ -	
	- Set-up	2	Ea	$ 200	$ 400	
	- Construction - monthly	2	Mo	$ 75	$ 150	
	- Trailer - construction mo.	0	Mo	$ 50	$ -	
	- Trailer - Engineer mo.	0			$ -	
6.	**J-Jon/Sanitation Facilities**	2	Mo	$ 600	$ 1,200	
7.	**Water - drinking/ice**	2	Mo	$ 150	$ 300	
8.	**Water - construction**	2	Mo	$ 600	$ 1,200	Backflow w/ Certs
9.	**Temporary Fencing:**				$ -	
	- Set-up	0	LS	$ 50	$ -	
	- Monthly Charges	0	Mo	$ 300	$ -	
10.	**Surveying/Construction Staking**	0	LS	$ 550	$ -	
11.	**Subcontractor Bonds**	0			$ -	
12.	**Construction Testing**	2	Ea	$ 650	$ 1,300	Compaction & Cylinders Ea Pad
13.	**Design/P.E. Stamp**	0			$ -	
14.	**Dumpster - monthly**	2	Ea	$ 500	$ 1,000	
	Dump Fees	2	Ea	$ 200	$ 400	
15.	**Clean-up**	2	Ea	$ 500	$ 1,000	2ea Site Grading/Surface Cleanup
16.	**AGC Fees**	0	LS		$ -	
17.	**Site Signage**	0	LS	$ 950	$ -	
18.	**Liquidated Damages**	0			$ -	
19.	**Traffic Control:**	0	Dy	$ 150	$ -	
	Traffic plates	0	Mo	$ 2,500	$ -	
	Traffic officer	0	Hr	$ 75	$ -	
20.	**Subsistence**	0			$ -	
21.	**Courier Fees**	0			$ -	
22.	**Reprographics**	0	LS	$ 350	$ -	
23.	**O&M Costs**	0	LS	$ 225	$ -	Time & Binder Materials
	OCR Recognition	0			$ -	
24.	**Security Costs**	0	Mo		$ -	Capture Cam
25.	**Insurance - Builders Risk**	0	Mo	$ 576	$ -	
26.	**Dust Control - Materials**	0	LS	$ 300	$ -	
27.	**Other**	0	Mo	$ 260	$ -	Sweeper Once/Month
28.	**SWPPP Permit**	0	LS	$ 1,100	$ -	
	SWPPP Materials	0	LS	$ 350	$ -	
27.	**Per Diem**	0	Dy		$ -	
28.	**Hotel / Subsistence**	0	Rm		$ -	
29.	**Engineering -**	2	Ea	$ 2,500	$ 5,000	Sturctural Slab Design.
					$ -	
30.	**Communications**	2	MO	$ 150	$ 300	
					-	
	TOTAL				**$ 14,650**	

Project Staff & Temporary Facilities

Labor

Position	Unit	Quantity	Labor Cost	
			Unit	Total
Project Executive	HR	32.0	$110.60	$3,539
Sr. Project Manager	HR	0.0	$100.80	$0
Project Manager	HR	80.0	$94.05	$7,524
Project Engineer	HR	160.0	$65.16	$10,426
General Superintendent	HR	16.0	$90.00	$1,440
CAD Engineer	HR	32.0	$60.00	$1,920
Administration	HR	4.0	$50.00	$200
Estimator	HR	0.0	$65.16	$0
QA/QC Manager	HR	16.0	$90.00	$1,440
	HR	0.0		$0
			Total Labor Cost:	**$26,489**

Equipment

Item	Unit	Quantity	Equipment Cost	
			Unit	Total
Pickup Truck	HR	272.0	$15	$4,080
Supervisor Truck	HR	32.0	$25	$800
22 Ton Boom Truck	HR	0.0	$96	$0
L120 Front End Loader	HR	0.0	$81	$0
420 IT Backhoe	HR	0.0	$56	$0
Mini Excavator	HR	0.0	$56	$0
			Total Equipment Cost:	**$4,880**

Material

Item	Unit	Quantity	Material Cost	
			Unit	Total
Field Office Supplies	LS	1.00	$500.00	$500
				$0
				$0
				$0
			Total Material Cost:	**$500**

Town of Queen Creek

H20 Sites Electrical Room Enclosure - Inronwood Crossings and Castelgate Sites
Labor and Equipment Breakdown

Job Name: Electrical Enclosures Ironwood Crossing North & Shea North
Work Order Breakdown
By: BF, WF

			LABOR						EQUIPMENT				
#	Water & Wastewater Facilities Projects	Info	HRS Craft Supt	HRS Forman	HRS Carpenter	HRS Equipment Operator	HRS Skilled Laborer	HRS Laborer	HRS Sup't Truck	HRS Scissor Lift	HRS Mini-Excavator	HRS Boom Truck	$ Total For Line
1	**Well Sites Electrical Room Enclosures**												$ -
2	**Ironwood Crossing North Site Enclosure Work**												$ -
3	Demo existing structure		12.0	12.0	12.0	8.0		24.0	12.0	8.0		8.0	$ 4,319
4	Excavate to Subgrade of SES Pad Extension		8.0	8.0	8.0	8.0		8.0	8.0	0.0	8.0		$ 3,171
5	F/R/P/S New Enclosure Structural Pedestals		16.0	24.0	24.0	0.0	24.0	24.0	16.0	0.0			$ 5,630
6	F/R/P/S SES Pad Extension		16.0	24.0	24.0	0.0	24.0	24.0	16.0	0.0			$ 5,630
7	Assist Building Fabricator Subcontractor		16.0	0.0	8.0	0.0		8.0	16.0	0.0			$ 2,347
8	Assist HVAC unit Subcontractor & seal penetrations		8.0	0.0	0.0	0.0		8.0	8.0	0.0			$ 1,111
9	**Shea North Site Enclosure Work**												$ -
10	Demo existing structure		12.0	12.0	12.0	8.0		24.0	12.0	8.0		8.0	$ 4,319
11	Excavate to Subgrade of SES Pad Extension		8.0	8.0	8.0	8.0		8.0	8.0	0.0	8.0		$ 3,171
12	F/R/P/S New Enclosure Structural Pedestals		16.0	24.0	24.0	0.0	24.0	24.0	16.0	0.0			$ 5,630
13	F/R/P/S SES Pad Extension		16.0	24.0	24.0	0.0	24.0	24.0	16.0	0.0			$ 5,630
14	Assist Building Fabricator Subcontractor		16.0	0.0	8.0	0.0		8.0	16.0	0.0			$ 2,347
15	Assist HVAC unit Subcontractor & seal penetrations		8.0	0.0	0.0	0.0		8.0	8.0	0.0			$ 1,111
16													$ -
17	**Total Column**		152.0	136.0	152.0	32.0	96.0	192.0	152.0	16.0	16.0	16.0	$ 44,417
18	**Unit Cost**		$ 86.82	$ 57.27	$ 42.66	$ 37.86	$ 33.06	$ 27.05	$ 25.00	$ 11.25	$ 119.75	$ 92.00	
19	**Total Cost $**		$ 13,197	$ 7,789	$ 6,484	$ 1,212	$ 3,174	$ 5,194	$ 3,800	$ 180	$ 1,916	$ 1,472	**$ 44,417**

Keller Mechanical
INDUSTRIAL SERVICES | FABRICATION

March 11, 2022

Wesley Forster
MGC Contracting
4110 East Elwood St
Phoenix, AZ 85040
(775) 315-6971 wforster@mgccontractors.com

RE: Queen Creek Ironwood Crossing

Proposal: 226745

Dear Sir:
Keller Mechanical (KM) proposes the following scope and budget for completion of the work outlined in this proposal

Scope of Work

1 Project Management

a. Provide material, labor reports and invoicing on a timely basis

2 Engineering

a. Per site visit and existing conditions
b. Sealed submittal package for new building

3 Manufacturing and Supply of Equipment

a. Structural steel materials provided by KM
b. Metal building purlins and sheeting provided by KM
c. Fasteners and AB provided by KM
d. Any and all electrical by others
e. Any and all civil or concrete work by others
f. Any and all HVAC by others

4 Scope of Work

a. Field measure, inspect and prep Castlegate location
b. Mob in, label, mark and identify existing building components prior to disassembly at Ironwood Crossing location
c. Disassemble and prep for transport to Castlegate location
d. Erect the electrical housing, add wall panels and corner trim to close up building. Furnish and install (1) 8' wide pre hung metal door
e. Fabricate and install (1) new electrical building 10'x21' at the Ironwood Crossing location. Building will include 8' double doors and (2) fixed blade louvers on the backside
f. Rollback, cleanup and demob

5 Safety

a. LOTO as required
b. Complete site-specific training as required
c. Complete daily JSA and safety meetings prior to start of each shift
d. Participate in customer Safety protocol, risk prediction, work method statements and tool box talks as required

6 Contract Closeout

a. As build drawings provided upon completion

7 Spare Parts

a. NA

8 Schedule

a. TBD

9 Exclusions and Clarifications

a. Third party inspection
b. NDE testing
c. Only work, equipment, and materials explicitly stated in this document are part of this proposal. KM accepts the responsibility for the coordination and furnishing of small and incidental equipment and services normally associated with this type of work and for coordination with other disciplines. Any additional significant equipment, materials, or services will be furnished only upon execution of a change order.
d. All other equipment and services not specifically mentioned in this scope of work nor defined above shall be the responsibility of others.
e. This proposal is based upon KM executing their work in reasonable coordination with other disciplines and entities. Additional KM costs due to significant or extraordinary delays by others will be grounds for change orders.
f. KM reserves the right to withhold shipment of equipment and materials until payment has been received for all outstanding invoices.
g. KM will not supply personnel for startup or commissioning until payment has been received for all outstanding invoices.
h. A bid bond is not included in this proposal but KMS will provide one for additional cost.
i. KM has bid this work on a merit shop basis; no allowance has been made for union or prevailing wages.
j. KM has excluded all liquidated damages.
k. KM has made no allowance for any performance guarantees.
l. KM has excluded the cost of any Performance or Payment Bonds.
m. KM has excluded the cost of Builder's Risk Insurance including any possible deductible amounts. All Builder's Risk Insurance shall be provided by the Owner.
n. Price is based on having uninterrupted access to work areas.
o. Price is based on craft parking within ¼ mile of work areas.
p. Price is based on lay-down area within ½ mile of the work area.

10 MRRA &Freight

a. We have identified the scope of work to be performed under this proposal as maintenance, repair, replacement or alteration ("MRRA") activities, in accordance with Arizona Revised Statutes (A.R.S.) Section 42-5075. As a result, transaction privilege taxes are the responsibilities of KM.

b. Unless noted differently, this proposal includes freight cost for delivery of KM manufactured products to the project site.
c. Unless noted differently, freight cost for equipment shipped FOB manufacturer's facility or FOB port-of-entry is not included in this proposal.

11 Warranty

a. Unless noted differently, KM will honor a manufacturer's warranty for all purchased equipment and will coordinate with the manufacturer to repair or replace the equipment in accordance with the manufacturer's warranty.
b. The KM warranty covers only KM furnished equipment and explicitly excludes all costs of lost production, loss of facility availability, and any and all other incidental costs.
c. KM will make every effort to honor the warranty in a timely manner. Delays in getting parts or equipment from manufacturers may affect the time to implement repairs or replacement.

12 Base Bid: $98,124.53

~~**Teardown and Reassemble at Castlegate: $35,827.42**~~

Fab and Install New at Ironwood: $62,297.11

13 Attachment:

a. Schedule of Values spreadsheet included

14 Payment Terms and Conditions

a. KEI will submit invoices in accordance with an approved AIA format schedule of values and in accordance with the terms and conditions of the project specifications.

KM appreciates the opportunity to furnish this proposal. We have made every effort to assure that the proposed equipment and services will satisfy your requirements. Should you have any questions, comments, concerns or require further clarification, please feel free to contact me at your convenience.

Bradley S. Blackwell

Bradley S Blackwell

Mechanical Services Division Manager
Keller Electrical Industries,
1881 E. University Dr.
Phoenix, AZ 85034
O: (602) 437-3015
F: (602) 437-8163
C: (602) 290-0183

TOWN OF QUEEN CREEK ARIZONA

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 # 1507-22, A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, DECLARING, FOR PURPOSES OF SECTION 1.150-2 OF THE FEDERAL TREASURY REGULATIONS, OFFICIAL INTENT TO BE REIMBURSED IN CONNECTION WITH CERTAIN CAPITAL EXPENDITURES RELATING TO PUBLIC SAFETY PROJECTS.**

DATE: **December 7, 2022**

Suggested Action:

To approve Resolution # 1507-22, a Resolution of the Common Council of the Town of Queen Creek, Arizona, declaring, for purposes of Section 1.150-2 of the Federal Treasury Regulations, official intent to be reimbursed in connection with certain capital expenditures relating to public safety projects.

Relevant Council Goal(s):

Effective Government: KRA Financial Stability.

Discussion:

The proposed resolution is a companion to the Purchase and Sale Agreement for the Barney Sports Complex, which is being considered at the same time as this resolution. Should the Town Council approve that agreement, staff recommends approval of a reimbursement resolution to preserve the Town's ability to include the acquisition and renovation costs in a future debt issue.

Under federal tax law, the Town cannot use proceeds from a tax-exempt debt issuance to reimburse itself for costs that were incurred prior to issuing debt unless the Town adopts a resolution stating its intent to do so. By approving this resolution, the Town Council is not authorizing a debt issue - that will come at a later date. Instead, the Town Council is preserving the ability to be reimbursed for these costs via future debt financing.

Staff does not yet have a timeline for when such a debt issue might come to the Town Council for approval; however, the reimbursement resolution is valid for 18 months and the amount allowed to be reimbursed is not to exceed $60 million. The amount is based on an acquisition price of $11.1 million and an estimated renovation cost of $45 million, plus an allowance for inflation and unexpected costs.

Staff will analyze the timing, size, and purposes of debt for public safety facilities in conjunction with the Police Master Plan study that is currently underway. Once the analysis is complete, staff will bring a financing recommendation to the Town Council for consideration.

Fiscal Impact:

None. The resolution does not authorize the issuance of any debt; it merely preserves the Town's ability to include these one-time costs in a future debt issuance.

Alternatives:

The Town Council could choose to not approve the reimbursement resolution. Doing so would mean that the costs of acquiring the Barney Sports Complex and any design and renovation costs incurred prior to a debt issuance would not be able to be reimbursed from proceeds of that debt issue. Resources for these costs would have to come from existing Town resources such as General Fund reserves.

Attachment(s):

1. Resolution # 1507-22

RESOLUTION NO. 1507-22

RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, DECLARING, FOR PURPOSES OF SECTION 1.150-2 OF THE FEDERAL TREASURY REGULATIONS, OFFICIAL INTENT TO BE REIMBURSED IN CONNECTION WITH CERTAIN CAPITAL EXPENDITURES RELATING TO PUBLIC SAFETY PROJECTS

WHEREAS, the Town of Queen Creek, Arizona, a municipal corporation of the State of Arizona (the "Town"), is authorized and empowered pursuant to law to issue or cause to be issued obligations to finance the costs of various capital facilities (or capital expenditures related thereto) owned or to be owned by the Town; and

WHEREAS, it is contemplated that certain expenditures made by the Town with regard to capital facilities owned or to be owned by the Town with regard to public safety projects (the "Project") will be reimbursed from the proceeds of the sale of obligations to be issued in the future by or on behalf of the Town;

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

Section 1. Definitions. The following terms shall have the meanings assigned thereto as follows:

"official intent" means a declaration of intent of the Town to reimburse an original expenditure with proceeds of an obligation;

"original expenditure" means an expenditure for a governmental purpose that is originally paid from a source other than a reimbursement bond; and

"reimbursement bond" means the portion of an issue of obligations allocated to reimburse an original expenditure that was paid before the issue date of such issue.

Section 2. Official Intent. This Resolution is official intent relating to reimbursement for the original expenditures for the Project which are capital expenditures (being any cost of a type that is properly chargeable to a capital account (or would be so chargeable with a proper election) under general federal income tax principles) made within sixty (60) days before and any time after the date of this Resolution. The maximum principal amount of obligations (including the reimbursement bonds for such purposes) to be issued for the Project is expected not to exceed $60,000,000.

Section 3. Reasonableness of Official Intent. On the date of this Resolution, the Common Council of the Town has a reasonable expectation (being that a prudent person in the same circumstances would have based on all the objective facts and circumstances) that it will

reimburse such original expenditures with proceeds of such obligations. Official intents have not been declared by the Town as a matter of course or in amounts substantially in excess of the amounts expected to be necessary for such projects. Moreover, the Town does not have a pattern (other than in extraordinary circumstances) of failure to reimburse actual original expenditures covered by official intents.

Section 4. Reimbursement Period. With certain exceptions, an allocation in writing that evidences use of proceeds of the reimbursement bonds to reimburse the original expenditures shall be made not later than 18 months after the later of (i) the date that the original expenditure is paid, or (ii) the date the project is placed in service or abandoned, but in no event more than 3 years after the original expenditure is paid.

Section 5. Public Record. This Resolution shall be included as of the date hereof in the publicly available official records of the Town, such records being maintained and supervised by the Clerk of the Town, being the main administrative office of the Town, and shall remain available for public inspection on a reasonable basis.

PASSED AND ADOPTED by the Common Council of the Town of Queen Creek, Arizona, this 7th day of December 2022.

.....
Vice Mayor, Town of Queen Creek, Arizona

ATTESTED TO:

.....
Town Clerk, Town of Queen Creek, Arizona

REVIEWED BY:

.....
Town Manager, Town of Queen Creek, Arizona

APPROVED AS TO FORM:

.....
Town Attorney, Town of Queen Creek, Arizona

TOWN OF QUEEN CREEK ARIZONA

TO: **HONORABLE MAYOR AND TOWN COUNCIL**

THROUGH: **JOHN KROSS ICMA-CM, TOWN MANAGER**

FROM: **ROBERT SACHS, PROGRAM MANAGER - REAL ESTATE**

RE: **CONSIDERATION AND POSSIBLE APPROVAL OF: (I) THE PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS FOR THE ACQUISITION OF THE BARNEY SPORTS COMPLEX TO BE REDEVELOPED INTO A PUBLIC SAFETY COMPLEX ACCOMMODATING VARIOUS USES FOR THE TOWN&RSQUO;S POLICE AND FIRE DEPARTMENTS; AND (II) DELEGATING AUTHORITY TO THE TOWN MANAGER AND THE TOWN ATTORNEY TO NEGOTIATE, FINALIZE AND EXECUTE SUCH AN AGREEMENT AND ANCILLARY DOCUMENTS AND AGREEMENTS TO EFFECTUATE THE CLOSING OF THE TRANSACTION.**

DATE: **December 7, 2022**

Suggested Action:

To approve (i) the Purchase and Sale Agreement and Escrow Instructions for the acquisition of the Barney Sports Complex to be redeveloped into a public safety complex accommodating various uses for the Town's police and fire departments; and (ii) delegating authority to the Town Manager and the Town Attorney to negotiate, finalize and execute such an agreement and ancillary documents and agreements to effectuate the closing of the transaction.

Relevant Council Goal(s):

Strategic Priority: Safe Community. Queen Creek has low crime rates and strives to meet adopted standards for police and fire services. Residents continue to rate their interactions with public safety personnel highly in community surveys. As our Town grows, ensuring the safety of the public continues to be among our highest priorities; this means hiring and training quality first responders, and finding innovative ways to maintain and improve delivery of emergency services.

2.7 Establish a master plan for the Police Department and support efforts toward the completion of the prescribed elements

Discussion:

The Town of Queen Creek has sustained significant growth, which is expected to continue until build-out of the Town. Such growth has resulted in the establishment of the Queen Creek Police Department and expansion of the Queen Creek Fire Department. Town staff has been investigating the development of a public safety complex to support various uses necessary for the continued operation of these departments. Staff has identified an improved property capable of redevelopment to suit the Town's needs.

The Barney Sports Complex is located at 22050 E. Queen Creek Road (Maricopa County APN 304-63-010T). The property comprises an existing 64,682 square foot structure situated on approximately 10.38 acres. While the property is currently operated as a recreational facility, the Town's studies show that the property is suitable for redevelopment into a public safety complex accommodating uses needed by the Town's Police and Fire Departments.

The Town's 2019 Police Services Study identified property and evidence storage as an immediate need for the new police department. The study identified possible options in the near term to meet department needs such as partnering with Gilbert, leasing available industrial space or expanding the existing Public Safety Building. The Town has approved an intergovernmental agreement (IGA) with Gilbert that expires in 2026, however the Gilbert Police Chief has expressed an interest to exit that agreement by the end of 2024 due to Gilbert PD's space needs. This change in timeline and other issues affecting the QCPD has accelerated the need for addressing property and evidence storage sooner than anticipated. At the present time there is not available industrial space that meets the security requirements established by the State. Additionally, the 2019 Town Study also anticipated expansion of the existing Public Safety Building as an option as well. Due to staffing and ramp up needs within the first year and community needs for the following five years, expansion of the existing building is not recommended for property and evidence but for staffing needs. The obligations of local police agencies for strict compliance with evidence handling standards, chain of custody requirements and overall security of the facility has compelled staff to evaluate the acquisition and renovation of an existing facility within the community.

The Town's Queen Creek Fire and Medical Department Master Plan also identifies the need for an apparatus maintenance, property storage and skills center. This facility has been approved and is currently in the Town's Capital Improvement Program budget to commence design this fiscal year. However, the original and amended budgets established are far lower than current cost estimates to construct. Due to inflationary pressures, the original scope of that facility would need to be significantly altered making the functionality of a new facility not recommended at this time. Evaluating the needs of both the Queen Creek Fire and Medical and Police Departments in a renovation of an existing facility was determined a financially feasible and program feasible path forward and is now recommended. Additionally, when evaluating the pace of growth of the community and needs of a changing community and its impact on public safety, the renovation of the Barney Sports Complex was determined to meet the full build-out needs in these critical areas for both departments. The location of the facility was also a contributing criterion. Its proximity to the Town's maintenance operations yard and near other non-residential land uses addressed important compatibility and logistical needs with siting a new facility. Lastly, a consideration of the staff was its adjacency to Frontier Family Park which is currently under construction. This new approximately 90-acre park, with ballfields, a new aquatic and recreation center, provides an important security presence as well. Based on the Town's studies, acquisition and redevelopment of the property is expected to cost the Town significantly less (approximately 35% to 40% less) than the cost of buying unimproved land and constructed a new facility from the ground up. Properties of this size are not readily available on the market, and smaller parcels generally cost more on a dollar per square foot basis than larger parcels. Furthermore, due to the significant increases in construction costs (including both labor and material costs) over the last several years, ground up construction of a new facility is expected to greatly exceed the cost of redevelopment of the existing facilities on the proposed property.

After review of several appraisals, the needs of the Town's Police and Fire Departments, and studies concerning the redevelopment of the property, the Town and seller of the property have negotiated the attached proposed purchase and sale agreement. The purchase price is to be Eleven Million One Hundred Fifty Thousand Dollars ($11,150,000.00), and the transaction is expected to close on or before December 23, 2022. The proposed agreement also deals with the following points:

1. Town's agreement to name the public safety complex developed on the property the "Gail A Barney Public Safety Complex" or a similar name agreed upon by the parties.
2. Dedication to the Town of a certain sculpture currently located upon the property, to be displayed by the Town in a public space to be agreed upon by the parties.
3. Post-closing possession and operation of the facility by the seller until no later than August 31, 2023 to allow the sports leagues that utilize the facilities to complete their current seasons.
4. Title review by the Town's attorneys and negotiation by Town staff and Town attorneys to mitigate any encumbrances, including a cell tower lease.
5. Negotiation and execution of an escrow holdback agreement as a requirement of closing the transaction to provide the Town security for the items mentioned above.

If Council approves staff to proceed with execution of the Purchase and Sale Agreement and Escrow Instructions for the acquisition of the Barney Sports Complex, the parties will open escrow immediately with the anticipation of closing the transaction in the first week of January 2023.

Fiscal Impact:

The Town will pay the seller Eleven Million One Hundred Fifty Thousand Dollars ($11,150,000.00). Prior to the close of escrow, the parties will negotiate and execute an escrow holdback agreement to provide the Town security for the post-closing possession period and cell tower mitigation. Aside from standard closing costs (i.e., escrow charges, title policy, survey, etc.), there are no additional financial commitments the Town expects to be responsible for as it relates to the acquisition of the property.

Once the renovation is programmed into the Town's Capital Improvement Program, the cost of facility renovations is estimated to be about $45 million, for a total estimated project cost of about $56.1 million. The specific funding sources for this project have not yet been identified but will likely include long-term financing that will be repaid with a combination of impact fees and operating budget resources. Staff will develop a financing plan and bring a recommendation to the Town Council sometime in calendar year 2023.

Alternatives:

Council may choose to decline entering into the Purchase and Sale Agreement and Escrow Instructions. If not approved, staff will work with Council to identify alternatives for the development of a public safety complex.

Attachment(s):

1. Purchase and Sale Agreement and Escrow Instructions

PURCHASE AND SALE AGREEMENT
AND ESCROW INSTRUCTIONS

between

BARNEY FAMILY SPORTS COMPLEX LLLP, an Arizona limited liability partnership

"Seller"

and

TOWN OF QUEEN CREEK, an Arizona municipal corporation

"Purchaser"

PURCHASE AND SALE AGREEMENT
AND ESCROW INSTRUCTIONS

REFERENCE DATE OF AGREEMENT: December __, 2022

SELLER: BARNEY FAMILY SPORTS COMPLEX LLLP, an Arizona limited liability partnership

Address: 12520 Via De Palmas
Chandler, Arizona 85249
Attn:
Telephone:
Email:

PURCHASER: TOWN OF QUEEN CREEK, an Arizona municipal corporation

Address: 22350 S. Ellsworth Road
Queen Creek, AZ 85142
Attn: Rob Sachs
Telephone: (480) 358-3142
Email: robert.sachs@queencreekaz.gov

ESCROW AGENT: Security Title Agency, Inc

Address: 4722 N 24th St, Suite 200
Phoenix AZ 85016
Attn: Jason Bryant
Telephone: (602) 230-6297
Email: jbryant@SecurityTitle.com

PROPERTY: The improved real property located in Queen Creek, Arizona, within the property having an APN 304-63-010T, consisting of approximately 10.37 acres, depicted and/or to be legally described on **Exhibit "A"** together with all rights, easements, and appurtenances pertaining thereto (the "**Property**") including (i) all water and mineral rights, if any; (ii) all interest, if any, in any adjoining roads; (iii) all interest, if any, in any award or settlement arising by reason of any condemnation; (iv) all interest in buildings and site improvements on the Property (the "**Improvements**"); and (vi) all fixtures and appurtenances to the Improvements ("**Personal Property**"), with the exception of the (a) soccer field turf; (b) office furniture; (c) concession stand appurtenances and related equipment (including the ice machine); and (d) those items listed in **Exhibit "B"** attached

hereto (collectively "**Excluded Property**").

OPENING DATE: _____
[To be completed by Escrow Agent]

R E C I T A L S:

A. Seller is the owner of the Property.

B. Seller allows certain sports leagues to use the Property in connection with Seller's operation of the Property.

C. Seller desires to sell the Property subject to the terms and conditions set forth herein, including post-closing possession by Seller to allow the sports leagues to complete their current seasons.

D. Purchaser desires to purchase the Property from Seller upon the terms and conditions set forth herein.

A G R E E M E N T:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Purchase and Sale; Purchase Price; Terms of Payment.

1.1. Purchase and Sale. Seller agrees to sell, and Purchaser agrees to purchase, the Property on the terms and conditions set forth in this Agreement.

1.2. Purchase Price. The price to be paid by Purchaser to Seller for the Property is Eleven Million One Hundred Fifty Thousand and 00/100 ($11,150,000.00) (the "Purchase Price").

1.3. Terms of Payment. The Purchase Price shall be payable as follows:

1.3.1. Deposit. Ten Thousand and no/100 Dollars ($10,000.00) in immediately available funds shall be deposited by Purchaser with Escrow Agent, as partial payment and as an earnest money deposit (the "**Deposit**") on or before 4:00 p.m., Arizona time, on the date three (3) business days following the execution of this Agreement by both Seller and Purchaser and delivery of the same to Escrow Agent. Upon deposit of the Deposit with Escrow Agent, the Deposit shall be non-refundable to Purchaser, except if: (i) this Agreement terminates pursuant to any provision of this Agreement specifically allowing a refund of the Deposit, (ii) this Agreement automatically terminates as specifically described herein, (iii) an express condition to Purchaser's performance hereunder fails to occur and all applicable cure periods, if any, have expired, or (iv) Seller

fails to perform when due any act required by this Agreement to be performed by Seller and all applicable cure periods, if any, have expired.

Upon receipt of the Deposit, Escrow Agent shall immediately deposit it in a federally insured, interest bearing account of Purchaser's choice. All resulting accrued interest on the Deposit shall become part of the Deposit and shall be paid to whichever party becomes entitled to the Deposit under any provision of this Agreement, whether or not the provision specifically refers to interest on the Deposit.

1.3.2. Cash Payment. An amount equal to the difference between the Purchase Price and the Deposit shall be paid by Purchaser in immediately available funds on or before the date one (1) business day prior to the Closing (the "**Cash Payment**").

2. Closing; Conditions to Closing.

2.1. Closing. The closing of this transaction (the "**Closing**") shall occur on January 5, 2023 or on any other date mutually agreed upon by the parties, at the offices of Escrow Agent, unless some other location is mutually agreed to by the parties (the date upon which the Closing occurs, the "**Closing Date**").

2.2. Conditions to Seller's Obligation to Close. Seller's obligation to close escrow hereunder is conditioned upon the following:

2.2.1. Purchaser's payment of the Deposit;

2.2.2. Purchaser's payment of the Cash Payment;

2.2.3. Purchaser's execution, acknowledgment and delivery of an Affidavit of Property Value as required by Arizona law (the "**Affidavit of Value**");

2.2.4. Purchaser's execution of an escrow closing settlement statement reflecting the financial terms of this Agreement, which shall be reviewed and approved by each of Escrow Agent, Seller and Purchaser (the **"Closing Settlement Statement**") and executed and delivered by Purchaser to Escrow Agent on or prior to Closing;

2.2.5. Purchaser's execution and delivery of the Escrow Holdback Agreement, as described in **Article 6**;

2.2.6. Purchaser's execution and delivery of the Post-Closing Possession Agreement as described in **Article 10**;

2.2.7. Purchaser's payment of all closing costs, proratable items and other charges, costs and expenses to be borne by Purchaser pursuant to **Article 8** and **Article 9**;

2.2.8. Each representation and warranty of Purchaser set forth in **Section 14.6** and **Article 14** being true and correct in all material respects as of the Closing Date; and

2.2.9. Purchaser's agreement to name the facility developed on the Property as the "Gail A Barney Public Safety Complex" or such similar name agreed upon by Purchaser and Seller. The Parties acknowledge that any such naming request is subject to the approval by the Town Council as evidenced by approval of this Agreement. Purchaser's obligation to name the facility as provided in this Section 2.2.8 shall survive the Closing (unless this transaction is otherwise terminated for any reason by either party).

2.2.10. Purchaser's agreement to accept, as public art, the dedication of that certain sculpture of Newell and Katherine Barney that is currently located at the entrance to the facilities on the Property, which shall be displayed by Purchaser in a public location agreed upon by Purchaser and Seller. A public art donation agreement, if deemed necessary by the Purchaser, shall be executed and delivered as a condition of Closing in the form attached here as **Exhibit "C"**. In the event Purchaser determines that a public art donation agreement is not necessary and in the event the Town no longer desires to display the sculpture, Purchaser shall make a good faith effort to notify a member of the Barney family so that the family may, at its discretion and cost, come pick up the sculpture and have all rights to possession and ownership of the sculpture thereafter. Unless there is a separate public art donation agreement, this Section 2.2.10 shall survive Closing.

2.2.11. Purchaser's compliance with all of its other obligations under this Agreement.

2.3. Conditions to Purchaser's Obligation to Close. Purchaser's obligation to close escrow hereunder is conditioned upon the following:

2.3.1. Purchaser's approval or deemed approval of the status of title to the Property pursuant to **Article 4**;

2.3.2. The irrevocable commitment of Security Title Agency (the "**Title Insurer**"), as of the Closing Date to issue the Owner's Title Policy, as described in **Section 4.4**, to Purchaser;

2.3.3. Purchaser having timely and properly given the Feasibility Waiver Notice, as described in **Section 5.2**;

2.3.4. Seller's execution, acknowledgement (where necessary), and delivery of the Affidavit of Value, and the Deed and Bill of Sale, as those latter two terms are defined in **Article 3**, and Seller's execution and delivery to the Escrow Agent of the Closing Settlement Statement on or prior to Closing;

2.3.5. Seller's execution, acknowledgement, and delivery of the Non-Foreign Certification, as described in **Section 14.1.5**;

2.3.6. Seller's execution and delivery of the Escrow Holdback Agreement, as described in **Article 6**;

2.3.7. Seller's execution and delivery of the Post-Closing Possession Agreement as described in **Article 10**;

2.3.8. Seller's payment of all closing costs, proratable items and other charges, costs and expenses to be borne by Seller pursuant to **Article 8** and **Article 9**;

2.3.9. Each representation and warranty of Seller set forth in **Article 14** and **Section 14.1** being true and correct in all material respects as of the Closing Date; and

2.3.10. Seller's compliance with all of its other obligations under this Agreement.

2.4. Failure of Condition. If any of the conditions described above have not been satisfied within the applicable time periods, the applicable party for whose benefit the condition exists may:

2.4.1. Waive the unsatisfied condition and close escrow in accordance with this Agreement, without adjustment or abatement of the Purchase Price; or

2.4.2. Terminate this Agreement by written notice to the other party and Escrow Agent, in which event (a) to the extent that the failure of the applicable closing condition is not caused by Purchaser's default, the Deposit shall be immediately returned to Purchaser, or (b) to the extent that the failure of any applicable closing condition is caused by the other party's default, the non-defaulting party shall be entitled to pursue its rights and remedies pursuant to the terms of **Article 12**.

3. Conveyance Documents. At the Closing, Seller shall deliver the following documents to Purchaser:

3.1. Deed. A duly executed Special Warranty Deed in the form attached hereto as **Exhibit "D"** (the "**Deed**"); and

3.2. Bill of Sale. A duly executed Bill of Sale in the form attached hereto as **Exhibit "E"** (the "**Bill of Sale**").

4. Title and Title Insurance.

4.1. Title Report. Within five (5) calendar days following the Opening Date, Escrow Agent shall deliver a current Commitment for Title Insurance (the "**Title Report**") on the Property from the Title Insurer to Purchaser and Seller. The Title Report shall show the status of title to the Property as of the date of the Title Report and shall be accompanied by copies of all documents referred to as title exceptions in the Title Report.

4.2. Title Review Period. Purchaser shall have until the tenth (10th) day after the Opening Date (the "**Title Review Period**") to review the Title Report and to give Seller and Escrow Agent notice of any title exception which is unacceptable to Purchaser (the "**Title Disapproval Notice**"). Purchaser shall have an additional five (5) days after receipt of any amended Title Report and any underlying documents relating to such amendment, but in no event beyond 4:00 p.m., Arizona time, on the Closing Date, to give Seller and Escrow Agent a Title Disapproval Notice with respect to any title exception not previously listed which is unacceptable to Purchaser and which, as reasonably determined, will materially and adversely affect the ability of Purchaser to operate the Property in substantially the same manner as operated by Seller during its period of ownership. If Purchaser timely gives a Title Disapproval Notice as to any exception to title, Seller may, but shall not be required to, attempt to eliminate the disapproved exception from the Title Report prior to the Closing Date. If Seller fails to notify Purchaser within five (5) days after receipt of a Title Disapproval Notice that Seller has elected to eliminate the disapproved exception(s) from the Title Report or amended Title Report prior to the Closing, such failure shall be deemed Seller's election not to eliminate the disapproved exception(s). If Seller notified Purchaser in writing of its election not to eliminate a disapproved exceptions(s) from the Title Report or amended Title Report, or is deemed to have elected not to eliminate a disapproved exception(s), Purchaser shall have until the earlier of the Closing or five (5) days after receipt of such notice (or, if applicable, five (5) days after the date on which Seller is deemed to have elected not to eliminate a disapproved exception(s)) to either terminate this Agreement or to agree to close this transaction subject to such previously disapproved exception(s). Purchaser's failure to timely give any such notice shall be deemed Purchaser's election to close this transaction subject to such previously disapproved exception(s). If Seller attempts to eliminate a disapproved exception from the Title Report or amended Title Report, but Seller is unsuccessful in eliminating the disapproved exception from the Title Report or amended Title Report prior to the Closing Date, Purchaser's sole and exclusive remedies shall be to either terminate this Agreement by giving Seller and Escrow Agent written notice of termination, or to agree in writing to close this transaction subject to such exception. Notwithstanding the foregoing to the contrary, Seller shall be required prior to the Closing to eliminate any financing lien created or assumed by Seller shown as an exception to title in the Title Report or any amended Title Report, and Purchaser shall not be required to object thereto.

4.3. Approval or Disapproval of Status of Title. Purchaser's failure to timely disapprove any title exception shall be deemed Purchaser's approval of such title exception. Upon any termination in accordance with this Article, Escrow Agent shall return the Deposit to Purchaser, and this Agreement and the escrow shall terminate as provided for in **Section 7.3**.

4.4. Owner's Title Policy. The Title Insurer shall issue to Purchaser a standard coverage owner's policy of title insurance (the "**Owner's Title Policy**") at the Closing or as soon thereafter as is reasonably possible. The Owner's Title Policy shall be issued by the Title Insurer in the full amount of the Purchase Price, be effective as of the Closing Date, and shall insure Purchaser that fee simple title to the Property is vested in Purchaser, subject only to: (i) the usual printed exceptions and exclusions contained in such title insurance policies; (ii) the exceptions to title approved (or deemed approved) by Purchaser as provided for in **Sections 4.2 and 4.3** of this Agreement; and (iii) any other matter approved in writing by Purchaser or resulting from the acts of Purchaser or Purchaser's agents. Purchaser shall have the right to request that the Owner's

Title Policy be issued as an extended coverage policy of title insurance; provided, however: (i) the issuance of such policy as an extended coverage policy shall not be a condition to Purchaser's obligation to close escrow; and (ii) such request shall in no event delay the Closing. Purchaser shall be responsible for that portion of the cost of the Owner's Title Policy which exceeds the cost of a standard coverage policy. Seller shall be responsible for that portion of the cost of the Owner's Title Policy attributable to standard coverage. Seller shall have no obligation to obtain for Purchaser any title insurance endorsements, and any such endorsements desired by Purchaser shall be requested by Purchaser of the Title Insurer during the Title Review Period and included within the Title Disapproval Notice. Any such endorsements issued by the Title Insurer shall be at Purchaser's sole cost and expense.

5. Property Condition.

5.1. Property Review Period. For a period of time beginning upon the Opening Date (as defined below) and ending on the Closing Date (the "**Property Review Period**"), Purchaser shall have the right to enter upon the Property with Purchaser's representatives and agents for the purpose of testing, examining and investigating the physical condition of the Property. Subject to the limitations contained in this Section, Purchaser and its representatives, including Purchaser's engineers, contractors and environmental consultants (collectively, the "**Purchaser's Representatives**") shall have the right during the Property Review Period to conduct all examinations and investigations Purchaser deems necessary to assess the physical condition of the Property and to determine the feasibility of the Property for Purchaser's purposes (collectively, the "**Inspections**"). Purchaser shall have the right during the Property Review Period to terminate this Agreement if Purchaser is dissatisfied, in Purchaser's sole and absolute discretion, with the physical condition of the Property, with the results of the Inspections or for any other reason affecting the feasibility of the Property for Purchaser's purposes. Prior to Purchaser or Purchaser's Representatives conducting any Inspections involving physical disturbance of any portion of the Property ("**Invasive Inspections**"), Purchaser shall obtain Seller's written consent thereto, such consent not to be unreasonably withheld. In applying for such consent to conduct Invasive Inspections, Purchaser shall provide Seller with a detailed proposed scope of work for the proposed Invasive Inspections. Before and during any Inspections, including Invasive Inspections, Purchaser shall maintain: (a) the following insurance coverage which shall cover Purchaser and its Purchaser's Representatives conducting the Inspections: (i) commercial general liability insurance, on a per occurrence basis, with limits of at least Two Million Dollars ($2,000,000.00) for bodily or personal injury or death, (ii) property damage insurance in the amount of at least One Million Dollars ($1,000,000.00), and (iii) contractual liability insurance, on a per occurrence basis, with respect to Purchaser's obligations under **Section 5.3**; and (b) worker's compensation insurance in accordance with applicable law covering Purchaser's employees. Purchaser shall deliver to Seller a certificate evidencing the commercial general liability, property damage and contractual liability insurance before conducting any Inspections on the Property. Each such insurance policy shall be written by a reputable insurance company having a rating of at least "A-:VII" by Best's Rating Guide (or a comparable rating by a successor rating service), and shall otherwise be subject to Seller's prior approval. Such insurance policies shall name as additional insureds Seller and such other parties holding insurable interests as Seller may designate. Such insurance shall be primary to any insurance maintained by Seller. The provision of such insurance shall not, however, in any way affect Purchaser's obligations under **Section 5.3**. Further notwithstanding the foregoing, before

Purchaser or any Purchaser Representative enters upon the Property to conduct any Inspections, Purchaser will first provide Seller a written request (email will suffice) at least one (1) business days in advance of the proposed date and time of entry, which request shall specify the intended date and time of entry and, if requested, shall provide a reasonably detailed description of the proposed Inspections, including, without limitation, a list of contractors who will be performing the proposed Inspections, a copy, if applicable of the scope of work previously approved by Seller, as described above, with regard to any Invasive Inspections, and such other information as Seller reasonably requires in connection with such proposed Inspections. Neither Purchaser nor any Purchaser Representative shall enter the Property until Seller has given written approval of both the request and, in the case of any Invasive Inspections, the scope of work therefor. Seller shall have the right, but not the obligation, to have Seller's representatives, including, without limitation, and, at Seller's option, Seller's engineers, contractors and environmental consultants, present at any of the Inspections. At Seller's written request, Purchaser agrees to cause each Inspection report or study of the Property which is obtained from a third party to be delivered to Seller, at Purchaser's expense, if Purchaser does not proceed to Closing for any reason other than a Seller default. The obligation of Purchaser under the immediately preceding sentence shall survive the termination of this Agreement.

5.2. Approval or Disapproval of Feasibility. On or before the expiration of the Property Review Period, Purchaser shall have the right to give written notice to Seller and Escrow Agent of its election to either terminate this Agreement as described in **Section 5.1** (the "**Feasibility Termination Notice**") or waive its right to terminate this Agreement in accordance with the terms of this **Article 5** (the "**Feasibility Waiver Notice**"). Purchaser's failure to timely give the Feasibility Waiver Notice shall be deemed Purchaser's waiving of the Feasibility Termination Notice and an election by Purchaser to closing with the Closing. If Purchaser gives the Feasibility Termination Notice, Escrow Agent shall return the Deposit to Purchaser as provided in **Section 7.3** and this Agreement and the escrow shall terminate. If Purchaser timely gives, or is deemed to give, the Feasibility Waiver Notice, the Deposit shall become nonrefundable to Purchaser except as otherwise expressly provided in the Agreement.

5.3. Restoration of Property; Indemnification. Purchaser shall, at its sole expense, repair any damage caused to the Property by any entry thereon by Purchaser, Purchaser's Representatives, their agents or contractors, including, without limitation, any Inspections. Purchaser shall indemnify, defend and hold Seller, and Seller's affiliates, partners, members, shareholders, officers, managers, directors, agents and employees (collectively, the "**Seller Indemnified Parties**") harmless from any and all losses, costs, liens, claims, causes of action, liability, damages and expenses (including, without limitation, court costs and reasonable attorneys' fees) incurred in connection with or arising in any way from (a) any Inspections conducted by Purchaser and/or any Purchaser Representative, or (b) the exercise of Purchaser's rights under **Section 5.1** of this Agreement, except in each case to the extent (and only to the extent) any such loss is caused by the gross negligence or willful misconduct of any Seller Indemnified Party or any pre-existing condition at the Property, so long as Purchaser's actions do not exacerbate any such pre-existing condition (and then to the extent (and only to the extent) of such exacerbation). Notwithstanding the foregoing, in no event shall Purchaser's indemnity obligations hereunder extend to any claim by Seller arising by reason of the mere discovery of any adverse condition or legal non-compliance on the Property (as opposed to causing or to the extent of the disturbance or exacerbation of any such adverse conditions or non-compliance) by

Purchaser or any Purchaser Representative during any Inspections. This indemnity provision shall survive termination or expiration of this Agreement.

5.4. Transfer of Documentation. Promptly after the Opening Date, Seller shall provide Purchaser with all of the following information and documentation relating to the Property which are then owned by, or in the possession of, Seller or its agents (collectively, the "**Property Documents**"): any existing surveys; copies of real estate tax bills and statements of special assessments, if any, relating to the period of Seller's ownership or for the three (3) calendar years prior to the date of this Agreement, whichever is shorter; and copies of any warranties from contractors currently in effect. Seller shall be deemed to have delivered the Property Documents to Purchaser when it has made the Property Documents available to Purchaser by providing Purchaser with electronic access to the Property Documents and/or provided hard copies of the Property Documents to Purchaser and/or otherwise allowed Purchaser access to its files containing the Property Documents. Purchaser acknowledges that it shall have no right to rely on the accuracy of any of the Property Documents obtained from Seller, or Seller's agents, that such information is being made available solely as a courtesy and that Seller has not, and shall not be deemed to have, made any representations or warranties whatsoever, express or implied, with respect to the completeness, content or accuracy of the Property Documents or with respect to any of the matters disclosed thereby.

5.5. No Financing Contingency. Purchaser agrees that its obligations under this Agreement are not contingent upon its ability to obtain acquisition financing for the purchase of the Property.

5.6. Survey. Purchaser, at its sole discretion, cost, and expense, may cause an Arizona registered land surveyor to prepare an ALTA/ACSM Land Title Survey of the Property (the "**Survey**"). If deemed necessary by the Purchaser, Purchaser shall cause the Survey to be completed as soon as reasonably possible, but in all events no later than the Closing Date. In the event the Survey has been obtained by Purchaser, and Purchaser fails to Close this transaction for any reason, except a Seller default, Purchaser shall deliver a copy of the Survey to the Seller, which shall be for informational purposes only and without any representation or warranty as to the accuracy or completeness of the Survey.

6. Escrow Holdback Agreement. Purchaser is aware of the existence of a cell tower located on the developable portion of the Property, erected pursuant to a long-term leasehold interest granted by Seller ("**Cell Tower Lease**"). Development of the Property for Purchaser's intended use will require the relocation of the cell tower, where such relocation is subject to the approval of the tenant and sub-tenants under the Cell Tower Lease. Seller agrees to deposit funds from the sale proceeds payable to Seller at Closing (the "**Holdback Funds**") into an escrow account to (i) cover the cost of the cell tower relocation and site restoration, and (ii) as security for Seller's post-closing possession of the Property (as further described in **Article 10** below). The Holdback Funds shall be held in an escrow account established with Escrow Agent and governed by the terms of the Escrow Holdback Agreement. As used herein, the "**Escrow Holdback Agreement**" means an agreement between Purchaser and Seller related to the use of the Holdback Funds, which shall be negotiated in good faith and agreed upon by Purchaser and Seller prior to Closing and shall provide for (a) the ability of Purchaser to draw upon the Holdback Funds as and when needed to compensate the lessee under the Cell Tower Lease (or other appropriate parties) for the relocation and/or remediation of the cell tower and related equipment and infrastructure (or to complete such work), (b) the ability of Purchaser to draw upon the Holdback

Funds as and when needed to repair damage, if any, to the Property at the end of the post-closing possession period or reimburse Purchaser for any liability incurred by Purchaser arising from Seller's operation of the Property; and (c) the release to Seller of any Holdback Funds remaining after the cell tower relocation is complete and Seller has turned possession of the Property over to Purchaser. The amount of Holdback Funds shall be agreed upon by the Parties and set forth in the Escrow Holdback Agreement. The agreement of the Parties to the form of the Escrow Holdback Agreement shall be a condition precedent to the Closing. If the Parties have not agreed upon the form of the Escrow Holdback Agreement by the Closing Date, then (i) either Party may terminate this agreement without penalty and the Deposit shall be returned to the Purchaser without further instructions to the Escrow Agent; or (ii) the Parties may waive the requirement of the Escrow Holdback Agreement in written notice to the Escrow Agent and proceed with the Closing.

7. Escrow.

7.1. Establishment of Escrow. An escrow for this transaction shall be established with Escrow Agent and Escrow Agent is hereby employed by the parties to handle the escrow. This Agreement shall constitute escrow instructions, and a fully executed copy or counterpart copies shall be deposited with Escrow Agent for this purpose. Should Escrow Agent require the execution of its standard form printed escrow instructions, Purchaser and Seller agree to execute the same to the extent the same are not inconsistent with the terms of this Agreement and do not require the parties to release or indemnify the Escrow Agent for its negligence, willful misconduct or failure to abide by the terms of any escrow instructions; however, such instructions shall be construed as applying only to Escrow Agent's employment, and if there are conflicts between the terms of this Agreement and the terms of the printed escrow instructions, the terms of this Agreement shall control. In no event shall the parties be required to execute any printed escrow instructions that purport to exculpate Escrow Agent or Title Insurer from their own negligent conduct, willful misconduct, breach of written instructions, or bad faith acts.

7.2. Cancellation of Escrow. If the escrow fails to close because of Seller's default, Seller shall be liable for all customary escrow cancellation charges. If the escrow fails to close because of Purchaser's default, Purchaser shall be liable for all customary escrow cancellation charges. If the escrow fails to close for any other reason, Seller and Purchaser shall each be liable for one-half (1/2) of all customary escrow cancellation charges.

7.3. Termination. Upon any termination by either of the parties hereto as expressly allowed under this Agreement, (i) Purchaser shall deliver to Seller all Inspection studies and reports prepared by third parties relating to the Property, including the Survey, if obtained by Purchaser; (ii) Purchaser shall return to Seller or destroy the Property Documents and any materials concerning the Property previously delivered by Seller to Purchaser, if any; (iii) the Deposit shall be delivered by Escrow Agent to the party which this Agreement specifies is entitled thereto; and (iv) the parties shall thereafter be relieved from further liability hereunder, except with respect to any obligations under this Agreement, including, without limitation, indemnity obligations of Purchaser, which are expressly stated to survive any termination of this Agreement. A copy of any notice of termination allowed under this Agreement shall be sent to Escrow Agent by the party electing to terminate.

8. Closing Costs.

8.1. Seller's Closing Costs. Upon the Closing, Seller agrees to pay all recording costs relating to the Deed, one-half (1/2) of the escrow charges and that part of the cost of the Owner's Title Policy to be paid by Seller pursuant to **Section 4.4**.

8.2. Purchaser's Closing Costs. Upon the Closing, Purchaser agrees to pay one-half (1/2) of the escrow charges and the title insurance costs to be paid by Purchaser pursuant to **Section 4.4**.

9. Prorations and Apportionments.

9.1. General. All revenues and all expenses of the Property shall be prorated and apportioned as of 12:01 a.m. on the Closing Date, so that Seller shall bear all expenses with respect to the Property and shall have the benefit of all income with respect to the Property for the period preceding the Closing Date. Any revenue or expense amount which cannot be ascertained with certainty as of the Closing Date shall be prorated on the basis of the parties' reasonable estimates of such amount and shall be the subject of a final proration outside of escrow ninety (90) days after the Closing Date or as soon thereafter as the precise amounts can be ascertained.

9.2. Prorations. Items to be prorated shall include, without limitation, real estate taxes, improvement district and other types of assessments, and personal property taxes with respect to the Property, based on the latest available information; and utility charges payable by the owner of the Property.

9.3. Utilities. If possible, in lieu of prorating utility charges, utility readings will be taken on the day prior to the Closing Date, Seller shall pay the charges for utility services based on such reading, and Purchaser shall contract for such utilities and pay all utility expenses incurred on and after the Closing Date (except as otherwise provided for in the Lease).

9.4. Payment. At the Closing, the net adjustment by reason of the closing costs incurred by the parties and by the foregoing prorations and apportionments, if in favor of Seller, shall be paid in immediately available funds to Escrow Agent, or, if in favor of Purchaser, shall be paid by set off against the Cash Payment.

9.5. Real Property Tax Appeal. If Seller has undertaken, or prior to the Closing undertakes, an appeal of the real property taxes applicable to the Property and if such tax appeal is not finalized prior to the Closing, Purchaser agrees that after the Closing it shall continue the services of Seller's attorney or tax appeal consultant for such tax appeal until the same is completed. If the Closing occurs, upon the completion of such appeal, any reduction in taxes and such attorney or tax appeal consultant's fees shall be prorated between Seller and Purchaser based on their respective periods of ownership during the relevant tax year(s).

10. Possession. Possession of the Property shall be delivered to Purchaser no later than 11:59 PM on August 31, 2023. Possession shall be deemed to have been delivered when Seller has vacated the Property and delivered the keys to the Property to Purchaser, or Purchaser's agent, provided that the Property is in substantially the same condition, ordinary

wear and tear excepted, as of the date of the Agreement. Seller shall be responsible for payment of all utilities and any maintenance to the Property during said period of post-closing possession. Post-closing possession by Seller shall be subject to a post-closing possession agreement to be negotiated by the parties, executed and delivered as a condition of Closing, which shall include, without limitation, requirements for Seller's insurance coverage, indemnification of Purchaser by Seller, and access and inspection rights of Purchaser (the "**Post-Closing Possession Agreement**"). The escrow holdback provided for in **Article 6** shall also serve as security for Seller's performance of its obligations under the Post-Closing Possession Agreement, and any funds that are to be returned to Seller shall only be released to Seller when Seller has turned possession of the Property to Purchaser, subject to possible reduction for repair costs as provided in the Post-Closing Possession Agreement and Escrow Holdback Agreement. The agreement of the Parties to the form of the Post-Closing Possession Agreement shall be a condition precedent to the Closing. If the Parties have not agreed upon the form of the Post-Closing Possession Agreement by the Closing Date, then (i) either Party may terminate this agreement without penalty and the Deposit shall be returned to the Purchaser without further instructions to the Escrow Agent; or (ii) the Parties may waive the requirement of the Post-Closing Possession Agreement in written notice to the Escrow Agent and proceed with the Closing.

11. Brokerage. Purchaser and Seller warrant and represent to each other that neither has dealt with any real estate broker or salesperson in connection with this transaction. If any person shall assert a claim to a finder's fee, brokerage commission, or any other compensation on account of alleged employment as a finder or broker or performance of services as a finder or broker in connection with this transaction, the party under whom the finder or broker is claiming shall indemnify and hold the other party harmless from and against any such claim and all costs, expenses and liabilities incurred in connection with such claim or any action or proceeding brought on such claim, including, but not limited to, counsel and witness fees and court costs in defending against such claim. This indemnity shall survive the Closing or termination of this Agreement and the escrow. Each party hereby discloses to the other party that its members, managers, employees, agents and affiliates are, or may be, licensed real estate salespersons or brokers.

12. Remedies.

12.1. Seller's Remedies. Subject to the remaining terms of this **Section 12.1**, if Purchaser fails to perform as required by this Agreement on or prior to the Closing Date, in the time and manner set forth in this Agreement, and provided Seller is not then in default, Seller may terminate this Agreement and the escrow if such failure is not cured after five (5) days written notice to Purchaser and the Escrow Agent, in which event Seller shall be entitled to all of the Deposit (and Escrow Agent shall deliver to Seller the Deposit), as consideration for acceptance of this Agreement, for taking the Property off the market, and as the parties' best estimate of Seller's damages resulting from Purchaser's default, but not as a penalty. The Deposit released to Seller upon such termination shall be Seller's sole and exclusive remedy against Purchaser in all respects, except for any indemnification obligations of Purchaser contained in this Agreement and except as provided in the immediately following sentence. Notwithstanding the foregoing to the contrary, if Purchaser wrongfully refuses to cause Escrow Agent to terminate the escrow created hereby, if Purchaser wrongfully claims that this Agreement has not been terminated, or if Purchaser wrongfully refuses to allow the termination

of this Agreement following a default by Purchaser, Seller shall also be entitled to recover (a) all costs and expenses, including actual attorneys' fees, incurred by Seller in seeking specific performance of this liquidated damages provision, and (b) all costs and expenses, including actual attorneys' fees and consequential damages, if any, which may be incurred by Seller by reason of the cloud on title to the Property which may result from Purchaser's wrongful failure to allow the termination of the escrow created hereby and the Agreement. Notwithstanding the foregoing to the contrary, Purchaser shall be entitled to no cure period if: (i) Purchaser fails to close escrow on the Closing Date due to Purchaser's failure to have immediately available funds in escrow sufficient in amount to close the transaction described herein in accordance with the terms of this Agreement, (ii) Purchaser fails to timely pay any portion of the Deposit into escrow, or (iii) any of Purchaser's representations and warranties set forth in **Article 14** or **Section 14.6** are incorrect in any material respect at or before Closing. Except as expressly provided otherwise in this Section, neither Seller nor Purchaser shall have the right to pursue any punitive or consequential damages from the other. Except as provided in this Section, in no other event shall Seller be entitled to seek or obtain money damages against Purchaser based on Purchaser's alleged failure to perform when due any act required by this Agreement to be performed by Purchaser on or prior to the Closing Date.

12.2. Purchaser's Remedies. If Seller fails to perform when due any act required by this Agreement to be performed by Seller on or prior to the Closing Date, and provided Purchaser is not then in default, then Purchaser, as its sole and exclusive remedies, may, if such default is not cured after five (5) days' notice to Seller and Escrow Agent, either: (i) terminate this Agreement and the escrow, such termination to be effective upon Purchaser giving written notice of termination to Seller and Escrow Agent, and upon such termination, Purchaser shall be entitled to a return of, and Escrow Agent shall deliver to Purchaser, the Deposit (as described in **Section 1.3.1**); or (ii) bring an action to compel specific performance of Seller's obligations hereunder, thereby waiving any other legal and equitable remedies against Seller; provided, however, that any action for specific performance must be filed and served upon Seller within thirty (30) days after Seller's alleged failure to perform, otherwise Purchaser shall be deemed to have elected to proceed in accordance with clause (i) above. In no event shall Purchaser be entitled to seek or obtain money damages against Seller based on Seller's alleged failure to perform when due any act required by this Agreement to be performed by Seller on or prior to the Closing Date.

12.3. Post-Closing Breaches. Notwithstanding the foregoing, Purchaser shall be entitled to bring an action for actual damages in the event Seller fails to perform when due any act required by this Agreement to be performed by Seller after the Closing or in the event Purchaser first discovers after the Closing and within the period of survival, as set forth in **Section 14.8**, that a representation and warranty made by Seller set forth in **Article 14** or **Section 14.1** was not correct in any material respect at the Closing (collectively, the "**Post-Closing Breaches**"). In no event shall Purchaser be entitled to punitive or consequential damages in any such action. The provisions of this Section shall survive the Closing.

13. Opening Date. The "**Opening Date**" shall be the date on which a fully executed copy or counterpart copies hereof, together with the Deposit, is delivered to, and accepted by, Escrow Agent. Escrow Agent is hereby instructed to enter the Opening Date on **page 2** of this Agreement.

14. Representations and Warranties.

14.1. Seller's Representations and Warranties. Seller represents and warrants to Purchaser, as of the Opening Date, as follows:

14.1.1. Full Power and Authority. Seller is a limited liability partnership duly organized and validly existing under the laws of the state of Arizona, and has the full power and authority to execute and deliver this Agreement, and to perform and carry out all covenants and obligations to be performed and carried out by it hereunder.

14.1.2. Legal, Valid and Binding. This Agreement and all other instruments or documents executed or delivered in connection with this transaction each constitute legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms.

14.1.3. No Approval by Governmental Authority. No consent, approval, authorization, registration, qualification, designation, declaration or filing with any governmental authority is required in connection with the execution and delivery of this Agreement by Seller.

14.1.4. No Lawsuits Affecting Title or Enforceability. To the actual knowledge of Seller, there are no actions, suits, proceedings or investigations pending or threatened which will become a cloud on the title to the Property or question the validity or enforceability of the transaction contemplated herein.

14.1.5. Non-Foreign Certification. Seller is not, and as of the Closing Date will not be, a "foreign person" within the meaning of Internal Revenue Code Section 1445, and Seller shall deliver to Purchaser at Closing a Non-Foreign Certification pursuant to Section 1445(b)(2) of the Internal Revenue Code.

14.1.6. No Violation. Execution of this Agreement and all documents executed pursuant to this Agreement, and performance by Seller of its obligations hereunder, will not breach or violate any other agreement, court order or other arrangement by which Seller is bound.

14.1.7. Violations of Law. To the actual knowledge of Seller, Seller has received no written notice from any governmental agency, entity, or official that, and Seller has no actual knowledge that, the Property is in violation of any applicable laws or regulations (including, but not limited to, zoning regulations, building and fire codes, and environmental laws and regulations), except as otherwise disclosed in the Property Documents, or as either have not had a material and adverse effect on the Property or have been cured prior to the Opening Date.

14.1.8. Patriot Act Compliance. Seller (i) is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, group, entity, nation, or transaction pursuant to any law, order, rule or regulation that is enforced or administered by

the Office of Foreign Assets Control; and (ii) is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Seller shall provide to Purchaser, upon request, identifying information and other information reasonably requested by Purchaser in its efforts to comply with such laws, orders, rules or regulations.

14.2. As Is, Where Is. Other than the representations and warranties expressly stated above in **Article 14** and **Section 14.1** or set forth in the documents to be delivered by Seller on the Closing Date (the "**Express Representations and Warranties**"), Seller makes no other or further representations and/or warranties of any sort whatsoever. Except for the Express Representations and Warranties, Purchaser is relying entirely on Purchaser's own investigations and examinations as to the physical condition and every other aspect of the Property, including without limitation, the structural integrity of any improvements, the conformity of any improvements to any plans or specifications for the Property, conformity to past, current or future zoning or building code requirements, the real property tax assessment history of the Property and the possibility and scope of future re-assessments thereof, the existence of soil instability, soil repairs, and any other soil conditions, sufficiency of undershoring and drainage, the existence of any flood plains or flood hazards or similar conditions, every other matter affecting the stability or integrity of the Land or any improvements, the environmental condition of the Property and the income and expenses generated by the Property. Except for the Express Representations and Warranties, Purchaser acknowledges that it has performed, or during the Property Review Period will have the right to perform, the Inspections, that any information provided or made available or to be provided or made available to Purchaser by Seller, or its agents, brokers, members, managers, partners, representatives, or others, including, without limitation, the Property Documents was provided or made available or will be provided or made available solely as a courtesy, and that Purchaser has the sole responsibility for determining the existence or nonexistence of any fact material to Purchaser's decision to purchase the Property. Purchaser acknowledges that Purchaser is purchasing the Property on an **"AS-IS, WHERE-IS"** basis, except as specifically set forth in the Express Representations and Warranties, without any implied warranties, and Purchaser is completely at risk with respect to all attributes and conditions, latent or otherwise, of the Property. Except for the Express Representations and Warranties, Seller does not warrant the Property to be free from defects and Purchaser expressly acknowledges the possibility of such defects, subject only to Purchaser's ability to terminate this Agreement as expressly set forth in this Agreement, including during the Property Review Period as described above in **Section 5.1**. By executing this Agreement, Purchaser hereby gives Seller, as a material inducement for Seller to enter into this Agreement, a full release of any and all claims or causes of action Purchaser may have now or in the future based upon the condition of the Property and all other matters pertaining to the Property, except as expressly set forth in the Express Representations and Warranties. Such release applies to claims or causes or action arising at common law, under statute, or otherwise, whether sounding in contract or in tort, including, without limitation, claims or causes of action for misrepresentation or nondisclosure.

14.3. Actual Knowledge of Seller. When used in this Agreement, the term "**actual knowledge of Seller**" shall mean and be limited to the actual (and not imputed, implied or constructive) current knowledge of Kenny Barney obtained by having received written notice of the fact or matter at issue. Notwithstanding anything herein to the contrary, Kenny Barney shall not have any personal liability or liability whatsoever with respect to any matters set forth

in this Agreement or Seller's representations and/or warranties herein being or becoming untrue, inaccurate or incomplete in any respect.

14.4. Conflicting Information. Notwithstanding anything to the contrary contained herein, to the extent that any documents or information regarding Seller or the Property (including, without limitation, the Property Documents) are disclosed to Purchaser or brought to Purchaser's attention prior to the Closing, either orally or in writing, and Purchaser nevertheless closes on the purchase of the Property, Purchaser shall be deemed to have accepted and to have waived any objection to or claim based on such documents or information.

14.5. Conditions to Purchaser's Closing. The continued accuracy in all material respects of the representations and warranties set forth in **Article 14** and **Section 14.1** above shall be a condition precedent to the Purchaser's obligation to close escrow on the Property. Notwithstanding the provisions of **Article 14** and **Section 14.1**, (i) if Purchaser learns of any material inaccuracy in Seller's representations or warranties after the date hereof and prior to the Closing Date, Purchaser shall promptly notify Seller thereof, and (ii) if Seller learns of any material inaccuracy in such representations or warranties, Seller shall promptly notify Purchaser thereof. Seller shall have the right, but not the obligation, on or before the earlier of the then-scheduled Closing Date or the date ten (10) days after receiving such written notice from Purchaser or of learning of such material inaccuracy, to cure such inaccuracy. Failing such cure by Seller, Purchaser's exclusive remedy in such event shall be to elect, on or before the earlier of the then-scheduled Closing Date or the date that is five (5) days after the expiration of the 10-day period referenced in the preceding sentence, to either (a) waive such inaccuracy and proceed to consummate the transaction contemplated by this Agreement without reduction in the Purchase Price or (b) terminate this Agreement, whereupon Escrow Agent shall return to Purchaser the Deposit, and neither party will have any further rights or obligations regarding this Agreement or the Property except for any obligations which are expressly stated herein to survive the termination of this Agreement.

14.6. Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller (and on the Closing Date shall be deemed to represent and warrant) as follows:

14.6.1. Full Power and Authority. Purchaser is a municipal corporation duly organized and validly existing under the laws of the state of Arizona and has the full power and authority to execute and deliver this Agreement, and to perform and carry out all covenants and obligations to be performed and carried out by Purchaser hereunder.

14.6.2. Legal, Valid and Binding. This Agreement constitutes the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its respective terms.

14.6.3. No Approval by Governmental Authority. Except for the approval of the Town Council of the Town of Queen Creek, which shall be obtained prior to the execution and delivery of this Agreement by Purchaser, no consent, approval, authorization, registration, qualification, designation, declaration or filing with any

governmental authority is required in connection with the execution and delivery of this Agreement by Purchaser.

14.6.4. No Violation. Execution of this Agreement and all documents executed pursuant to this Agreement, and performance by Purchaser of its obligations hereunder, will not breach or violate any other agreement, court order or other arrangement by which Purchaser is bound.

14.6.5. No Lawsuits. To the actual knowledge of Purchaser, there are no actions, suits, proceedings or investigations pending or threatened against Purchaser which question the validity or enforceability of the transaction contemplated herein.

14.6.6. Patriot Act Compliance. Purchaser: (i) is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by an Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or any other banned or blocked person, group, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) is not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of, any such person, group, entity or nation. Purchaser hereby agrees to provide Seller, upon request, identifying information and other information reasonably requested by Seller in its efforts to comply with such laws, orders, rules or regulations.

14.7. Condition to Seller's Obligation to Close. The continued accuracy in all material respects of the representations and warranties of Purchaser set forth in **Article 14** and **Section 14.6** and shall be a condition precedent to Seller's obligation to close escrow on the Property. If any representation or warranty of Purchaser set forth in **Article 14** or **Section 14.6** shall not be correct in any material respect at or before Closing, the same shall constitute an incurable default by Purchaser as described in **Section 12.1**.

14.8. Survival. Any cause of action of a party (the "**Benefiting Party**") for a breach of any representations or warranties set forth in this Agreement or in any other document delivered in connection herewith by the other party (the "**Obligated Party**") shall survive until the date that is six (6) months after the Closing Date (the period beginning on the Closing Date and ending on such date being herein called the "**Survival Period**"), at which time such representations and warranties (and any cause of action resulting from a breach thereof) shall terminate except to the extent the Benefiting Party files and serves litigation against the Obligated Party in a court of competent jurisdiction on or before the last day of the Survival Period claiming a breach of such representation or warranty. Notwithstanding the foregoing, if a Benefiting Party shall have knowledge as of the Closing Date that any of the representations or warranties of the Obligated Party contained herein or in any other document delivered in connection herewith are false or inaccurate, then the Obligated Party shall not have any liability or obligation respecting such false or inaccurate representations or warranties (and any cause of action resulting therefrom shall terminate upon the Closing). Except with respect to any covenants which are expressly stated in this Agreement to survive the Closing, any and all

covenants by Seller contained in this Agreement shall merge in the Deed delivered at the Closing and shall not survive the Closing.

15. Condemnation. If prior to the Closing all of the Property shall be taken by eminent domain, this Agreement shall be automatically terminated and the Deposit shall be returned to Purchaser as provided in **Section 7.3**. If, prior to the Closing, ten percent (10%) or more of the parking spaces serving the Property, or if any portion of any improvements constituting all or a part of the buildings on the Property shall be taken by eminent domain, then Purchaser may, at its option, either: (i) terminate this Agreement, in which event the Deposit shall be returned to Purchaser as provided in **Section 7.3**, or (ii) Purchaser may accept title to the Property subject to the taking, with no decrease in the Purchase Price, in which event at the Closing the proceeds of the condemnation award or payment shall be assigned by Seller to Purchaser and any monies theretofore received by Seller in connection with such taking shall be paid over to Purchaser. If prior to the Closing a portion of the Property is taken by eminent domain, but such portion constitutes less than ten percent (10%) of the parking spaces serving the Property and if no portion of any improvements constituting all or a part of the buildings on the Property has been taken, then Purchaser shall accept title to the Property remaining after the taking with no decrease in the Purchase Price and at the Closing the proceeds of the condemnation award or payment shall be assigned by Seller to Purchaser and any moneys theretofore received by Seller in connection with such taking shall be paid over to Purchaser. All elections required under this **Article 15** to be made by either Seller or Purchaser shall be made in writing within five (5) days following receipt of actual notice that all or a portion of the Property has been taken by eminent domain. The failure of Purchaser to make a timely election under this **Article 15** shall be deemed its election to proceed to the Closing in accordance with the terms of this Article.

16. Casualty Loss. If prior to the Closing the Property is damaged as the result of fire or other casualty in an amount equal to or exceeding $500,000 and is not entirely restored by the Closing Date, Purchaser shall have the option prior to the Closing to (a) accept title to the Property without any abatement of the Purchase Price whatsoever, in which event at the Closing all of the insurance proceeds shall be assigned by Seller to Purchaser, any monies theretofore received by Seller in connection with such fire or other casualty shall be paid over to Purchaser and Purchaser shall receive a credit in the amount of the deductible or other co-payment required under Seller's insurance policy, or (b) terminate this Agreement, in which event the Deposit shall be returned to Purchaser in accordance with **Section 7.3** and thereupon neither party shall have any further liability or obligation to the other. If prior to the Closing, the Property is damaged as a result of fire or other casualty in an amount less than $500,000 and provided Purchaser has not previously terminated this transaction in accordance with any other provision of this Agreement, Purchaser shall accept title to the Property without any abatement of the Purchase Price whatsoever, provided Seller is fully insured for the replacement cost of any damage (other than footings and foundations and subject to a deductible amount determined by Seller), in which event at the Closing all of the insurance proceeds shall be assigned by Seller to Purchaser and any monies theretofore received by Seller in connection with such fire or other casualty shall be paid over to Purchaser. Seller shall maintain adequate insurance on the Property to cover the replacement value of any improvements (exclusive of footings and foundations) in case of any fire or other casualty occurring before the Closing.

17. Risk of Loss. Except as expressly set forth in **Articles 15 and 16**, the risk of loss or damage to the Property until the Closing shall be borne by Seller.

18. Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be given by email, personal delivery, recognized overnight courier service, or by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, addressed to Seller, Purchaser and Escrow Agent at the addresses set forth on the first page of this Agreement or at such other address as a party may designate by notice similarly given. Notice given by email shall be followed on or prior to the next business day by notice given by an alternate means of permitted notice. Notice shall be deemed given and received on the date on which the notice is actually received, whether notice is given by email, personal delivery, overnight courier or by mail, so long as such notice is received between 8:00 a.m. and 5:00 p.m. Arizona time, and if not so received during such business hours, then on the next business day. Copies of any notice given to Purchaser shall also be given to:

Dickinson Wright PLLC
1850 N. Central Avenue Suite 1400
Phoenix, Arizona 85004
Attn: Scott A. Holcomb
Facsimile: (602) 285-5028
Email: SHolcomb@dickinsonwright.com

Copies of any notice given to Seller shall also be given to:

Brent D. Ellsworth, P.C.
4445 E Holmes Avenue, Suite 106
Mesa, AZ 85206
Attn: Brent Ellsworth
Facsimile: (480)654-3669
Email: brent@brentellsworthlaw.com

and

Huber Barney PLLC
4915 E Baseline Rd., Suite 105
Gilbert, AZ 85234
Attn: Aaron Huber
Email: ahuber@huberbarney.com

19. Miscellaneous.

19.1. Incorporation of Recitals. The recitals to this Agreement are hereby affirmed by the parties as true and correct and are incorporated herein by this reference.

19.2. Waivers. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding

unless executed in writing by the party making the waiver. Either party may waive any provision of this Agreement intended for its sole benefit; however, unless otherwise provided for herein, such waiver shall in no way excuse the other party from the performance of any of its other obligations under this Agreement.

19.3. Construction; Choice of Forum; Waiver of Jury Trial. This Agreement shall be interpreted according to Arizona law, and shall be construed as a whole and in accordance with its fair meaning and without regard to, or taking into account, any presumption or other rule of law requiring construction against the party preparing this Agreement or any part hereof. Purchaser and Seller each acknowledges and agrees that the Superior Court of the State of Arizona in and for the County of Maricopa and the associated Arizona federal and appellate courts shall have exclusive jurisdiction to hear and decide any dispute, controversy or litigation regarding the enforceability or validity of this Agreement or any portion thereof. The parties to this Agreement hereby knowingly and voluntarily waive their right to have any suit, claim or dispute, arising directly or indirectly under this Agreement, decided by a jury, and consent to have any such matter decided solely and exclusively by the Court, sitting without a jury.

19.4. Time. Time is of the essence of this Agreement.

19.5. Attorneys' Fees. If any action is brought by either party in respect to its rights under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and courts costs as determined by the court.

19.6. Assignment. Purchaser may not assign its rights under this Agreement prior to Closing except with the prior written consent of Seller, to be granted or withheld in Seller's sole and absolute discretion. In any event: (i) no assignment of Purchaser's rights hereunder shall be effective unless and until Purchaser has delivered to Seller a written assignment and assumption agreement signed by Purchaser and assignee not later than ten (10) days prior to the then-scheduled Closing Date, whereby the assignee expressly assumes all obligations of Purchaser hereunder and whereby an address for notices to the assignee is provided, and (ii) no such assignment and assumption shall be deemed to release Purchaser from any of its obligations and liabilities hereunder. Any assignment made by Purchaser in violation of the provisions of this **Section 19.6** shall be void and shall vest no rights whatsoever in the purported assignee.

19.7. Binding Effect. This Agreement and all instruments or documents entered into pursuant hereto are binding upon and, except as set forth in **Section 19.6**, shall inure to the benefit of the parties and their respective successors and assigns.

19.8. Further Assurances and Documentation. Each party agrees in good faith to take such further actions and execute such further documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

19.9. Time Periods. If the time for the performance of any obligation under this Agreement expires on a Saturday, Sunday or legal holiday (as recognized by the laws of the state of Arizona), the time for performance shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday.

19.10. Headings. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement.

19.11. Entire Agreement. This Agreement, together with all exhibits referred to herein, which are incorporated herein and made a part hereof by this reference, constitute the entire agreement between the parties pertaining to the subject matter contained in this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by Purchaser and Seller.

19.12. Counterparts. This Agreement may be executed by the exchange of faxed or e-mailed signatures and in any number of counterparts, all of which shall constitute one and the same instrument.

19.13. Tax Deferred Exchange. If either or both Seller or Purchaser so requests, the other party shall cooperate with the requesting party to the extent reasonably necessary for the requesting party to qualify all or a portion of the sale or purchase of the Property as a tax deferred exchange within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended; provided, however, that the non-requesting party shall not be obligated to incur any additional expense (including attorneys' fees) or liability on account of its accommodation of the requesting party nor shall such tax deferred exchange delay the Closing Date.

19.14. Timing. The phrase "**business days**" as used herein shall mean the days of Monday through Friday, excepting only holidays recognized under the laws of the state of Arizona. The phrase "**calendar days**" as used herein shall mean all days of the week, including all holidays. The term "days" without reference to calendar or business days shall mean calendar days.

19.15. Confidentiality. Purchaser acknowledges that all information with respect to the Property furnished or to be furnished to Purchaser is, has been and will be so furnished on the condition that Purchaser maintain the confidentiality thereof. Accordingly, as a material inducement for Seller to enter into this Agreement, Purchaser covenants that it shall, and shall cause its representatives to, hold in strict confidence, and not disclose to any other party without the prior written consent of the Seller and unless the Closing occurs: (i) any of the information with respect to the Property delivered to Purchaser by Seller or any of its agents, representatives or employees, or (ii) the existence of this Agreement or any term or condition hereof, or (iii) the results of any Inspections undertaken in connection herewith. Notwithstanding the above, each party may disclose such information to individuals or entities necessary for such party to consummate the transaction contemplated herein (such as Escrow Agent, Title Insurer, surveyors, lenders, engineers, property management companies, environmental consultants, accountants and tax advisors, such being referred to herein as "**Disclosure Parties**"), but in such event, Purchaser shall instruct the applicable Disclosure Parties to abide by the confidentiality provisions of this Agreement and will be liable for the breach of the Disclosure Parties. The provisions of this Section shall survive the termination of this Agreement, but shall be of no force or effect if the Closing occurs hereunder.

19.16. Severability. If any provision of this Agreement or any portion of any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, such

invalidity, illegality or unenforceability shall not alter the remaining portion of such provision, or any other provision hereof, as each provision of this Agreement shall be deemed severable from all other provisions hereof.

19.17. Independent Consideration. Contemporaneously with the execution and delivery of this Agreement, Purchaser has delivered to Seller and Seller hereby acknowledges the receipt of the amount of One Hundred Dollars ($100.00) ("**Independent Consideration**"), which amount the parties bargained for and agreed to as consideration for Purchaser's right to inspect and purchase the Property pursuant to this Agreement, and for Seller's execution of this Agreement. The Independent Consideration is in addition to and independent of any other consideration or payment provided in this Agreement, is nonrefundable, and is fully earned and shall be retained by Seller notwithstanding any other provision of this Agreement. The Independent Consideration shall not be applicable to the Purchase Price upon Closing.

19.18. Exculpated Parties. Notwithstanding anything to the contrary contained in this Agreement, none of the shareholders, directors, officers, trustees, members, managers, partners, employees, or agents of Purchaser, Seller, or their constituent parties nor any other person, partnership, corporation, company, or trust, as principal of Purchaser or Seller, whether disclosed or undisclosed (collectively, the "**Exculpated Parties**") shall have any personal obligation or liability hereunder, and neither Purchaser nor Seller shall seek to assert any claim or enforce any of its rights hereunder against any Exculpated Party. The provisions of this Section shall survive the termination of this Agreement or the Closing.

{Signatures appear on following page}

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SELLER:

BARNEY FAMILY SPORTS COMPLEX LLLP, an Arizona limited liability partnership

By:_____
Name:_____
Title:_____

PURCHASER:

TOWN OF QUEEN CREEK, an Arizona municipal corporation

By:_____
Name:_____
Title:_____

ACCEPTANCE BY ESCROW AGENT

Escrow Agent hereby (a) acknowledges receipt of the Deposit and a fully executed copy or counterpart copies of this Agreement on this _____ day of _____, 2022 and has inserted said date on page 2 of this Agreement as the Opening Date, and (b) agrees to establish an escrow (Escrow No. _____) and to administer the same in accordance with the provisions hereof. Escrow Agent further agrees to immediately deliver to Purchaser and Seller copies or counterpart copies of this fully executed Agreement.

Security Title Agency, Inc.

By:_____
Name:_____
Title:_____

EXHIBIT "A"

LEGAL DESCRIPTION

[NEED TO INSERT]

EXHIBIT "B"

(Excluded Property)

EXHIBIT "C"

(Form of Public Art Agreement)

EXHIBIT "D"

(Form of Deed)

When recorded, return to:

_____
_____
_____
_____

SPECIAL WARRANTY DEED

For the consideration of the sum of Ten Dollars ($10.00) and other valuable consideration, _____, a(n) _____ ("**Grantor**"), does hereby grant, sell and convey unto _____, a(n) _____ ("**Grantee**"), the following described real property located in _____:

> See **Exhibit "A"** attached hereto and by this reference made a part hereof (the "**Property**") together with all of the rights and appurtenances thereto.

SUBJECT TO: All taxes and assessments; patent reservations; all covenants, conditions, restrictions, servitudes, liens, reservations, easements, declarations or other matters of record or to which reference is made in the public records; any and all matters which an accurate survey and physical inspection of the Property would reveal; the rights of the tenants under recorded or unrecorded leases affecting all or any portion of the Property as of the date hereof; zoning and other restrictions, reservations, prohibitions, regulations and requirements imposed by governmental authorities; and any matters created by or with the written consent of Grantee or arising as a result of work performed by or other activities of the Grantee regarding the Property.

Notwithstanding any warranty which may be implied from the use of any word, phrase or clause herein, Grantor does not warrant title to the Property other than to warrant and defend the title against all acts of Grantor and no other, except for the matters above set forth.

{Signatures appear on following page}

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed this ____ day of _____, 20___.

GRANTOR:

_____,
a(n)_____

By:_____ *EXHIBIT ONLY – DO NOT SIGN*
Name:_____
Title:_____

STATE of _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20___, by _____, _____ of _____, a(n) _____, on behalf of _____.

____*EXHIBIT ONLY – DO NOT SIGN*_____
Notary Public

My Commission Expires:

_____

Exhibit "A" To Special Warranty Deed

[INSERT LEGAL DESCRIPTION FOR PROPERTY]

EXHIBIT "E"

BILL OF SALE

For Ten Dollars and other good and valuable consideration paid to _____ ("**Seller**"), the receipt and sufficiency of which are acknowledged, Seller sells, transfers, conveys and assigns to _____ ("**Purchaser**"), all of Seller's right, title and interest in and to that certain tangible personal property listed on **Exhibit A** attached hereto and incorporated herein by this reference (the "**Personal Property**").

The Personal Property is sold in a used and an "AS IS, WHERE IS" condition, with all faults. SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND (INCLUDING, BUT NOT LIMITED TO: TITLE; MERCHANTABILITY; FITNESS FOR ANY PARTICULAR PURPOSE; DESIGN; CONDITION; QUALITY; CAPACITY; WORKMANSHIP; CONFORMITY WITH APPLICABLE LAWS, ORDINANCES, RULES OR REGULATIONS; PATENT INFRINGEMENT; OR LATENT DEFECTS) TO PURCHASER REGARDING THE PERSONAL PROPERTY.

This is a final and exclusive expression of the agreement of Seller and Purchaser regarding the Personal Property, and no course of dealing or usage of trade or course of performance shall be relevant to explain or supplement any term expressed in this Bill of Sale.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale to be effective _____, 20___.

SELLER:

_____,
a(n)_____

By: *EXHIBIT ONLY – DO NOT SIGN*
Name:_____
Title:_____

Exhibit "A" To Bill Of Sale

All tangible personal property owned by Seller and utilized by Seller in connection with the operation, management or maintenance of that certain real property commonly known as _____, including, without limitation, the following: _____; and excluding the following: _____.

4889-2865-7730 v2 [53749-35]

TOWN OF QUEEN CREEK ARIZONA

TO: **HONORABLE MAYOR AND TOWN COUNCIL**

THROUGH: **JOHN KROSS ICMA-CM, TOWN MANAGER**

FROM: **BRETT BURNINGHAM, DEVELOPMENT SERVICES DIRECTOR, ERIK SWANSON, PLANNING ADMINISTRATOR, SARAH CLARK, SENIOR PLANNER/PROJECT MANAGER**

RE: **PUBLIC HEARING AND POSSIBLE ACTION ON ORDINANCE 803-22, P22-0223 REASONABLE ACCOMMODATION TEXT AMENDMENT, A STAFF INITIATED TEXT AMENDMENT TO ARTICLE 6.3 GROUP RESIDENTIAL FACILITIES OF THE ZONING ORDINANCE ADDING LANGUAGE REGARDING THE REASONABLE ACCOMMODATION WAIVER PROCESS. *STAFF IS REQUESTING A CONTINUANCE TO THE FEBRUARY 15, 2023 COUNCIL MEETING.***

DATE: **December 7, 2022**

Suggested Action:

a continuance to the February 15, 2023 Council Meeting.

Planning Commission Recommendation:

At their November 9, 2022 meeting, the Planning and Zoning Commission approved case P22-0223 Reasonable Accommodation Text Amendment, with a 5-0-2 vote.

Relevant Council Goal(s):

Effective Government

Discussion:

The request is for a staff initiated text amendment to 6.3 Group Residential Facilities of the Zoning Ordinance adding language regarding the reasonable accommodation waiver process. The process allows applicants for a group residential facility, which is defined as a "facility licensed or authorized by the State of Arizona for 10 or fewer clients/persons who reside together as a single housekeeping unit and who receive common support, care, training, supervision, or counseling from one (1) or more staff persons on a twenty-four hour per day basis" to request a reasonable accommodation waiver to the required 1,200-foot buffer requirement for a group residential facilities (State statute prohibits residential facilities from operating within 1,200 feet of another). The purpose of the buffer requirement is to permit persons requiring common support, care, training, supervision, or counseling the opportunity to reside in single-family residential neighborhoods, while preserving the residential character of the neighborhood.

The Federal Fair Housing Act prohibits local government from refusing to make reasonable

accommodations when these accommodations are necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling. Per State Law, if a municipality has a Zoning Ordinance that implements a distance requirement between group care homes, the municipality shall have an administrative procedure in place in which a deviation from the separation requirement may be requested as a reasonable accommodation under the Federal Fair Housing Act. The proposed text amendment documents the process for requesting the reasonable accommodation waiver and the required findings to consider the request as required by State Law.

Examples of a reasonable accommodation waiver request may include a home that is closer than 1,200-feet of another group home, however an arterial road separates the neighborhoods, the subdivisions are not connected, and/or the home holds less than the maximum 10 persons permitted in a group home facility. Each request for a reasonable accommodation will be reviewed on a case-by-case basis and on its own merits.

Attachment(s):

1. Proposed Zoning Ordinance - Redlined.pdf
2. Proposed Zoning Ordinance - Clean.pdf
3. Ordinance 803-22.pdf
4. Presentation.pptx

d. A permanent and adequate water supply must be available on the property at all times within thirty feet of the hive, colony or apiary.

e. All hives, colonies and apiaries shall be located no closer than thirty feet to any exterior property line.

3. *Prohibited Acts.* The following are prohibited:

a. The keeping of bees whether or not for commercial purposes without first having obtained a permit.

b. Failure to provide adequate water supply as set forth subsection d above.

c. Any act or omission the result of which is to allow bees to be kept in such a manner so that they present a hazard to the public health, safety and welfare of the residents.

4. *Exceptions.* The provisions of this section do not apply to any property owner upon whose property a swarm of transient bees are attempting to or have established a domicile.

5. *Penalty.* Upon conviction of a violation of any provision of this Section, the first offense shall be punished as a petty offense and all subsequent convictions within a two-year period shall be treated as class I misdemeanors.

6. *Abandoned Hives, Colonies and Apiaries.* Any hive, colony or apiary which does not contain the marking requirements, the water supply requirement of Section 6.2.F and for which no permit has been issued shall be presumed to be abandoned. The town upon a complaint may take all action necessary to remove the abandoned hive, colony or apiary from the property.

6.3 Group Residential Facilities

A. *Purpose*.

1. Group Residential Facilities are defined as set forth in Article 1 of this document.

2. The purpose of these regulations is to permit persons requiring common support, care, training, supervision, or counseling to reside in single family residential neighborhoods, while preserving the residential character of the neighborhood.

3. A complete application shall be submitted to the Development Services Department on a form established by the Department.

4. Prior to registration, a request for zoning confirmation may be submitted to the Development Services Department to confirm that the proposed location of the Group care home is permitted under Article 4 of this document.

5. Group Residential Facilities are permitted in all residential zoning districts as specified in this Ordinance (see table 4.6-1), subject to final approval by the Development Services Department. The Development Services Department shall review all applications for Group Residential Facilities submitted pursuant to this section. Group Residential Facilities shall be located, developed, and operated in compliance with the following standards:

a. The Group Residential Facility provides twenty-four-hour assistance to no more than ten (10) persons. In determining the number of persons served by a Group Residential Facility, the following individuals shall not be counted: the operator of the facility, members of the operator's family, and persons employed at the facility as staff.

b. No signs, graphics, displays, or other visual means of identifying Group Residential Facilities shall be visible from a public street.

c. Large and/or multiple trash receptacles not usually found in the residential area in which the Group Residential Facility is located shall be completely screened from public view.

d. The Group Residential Facility shall comply with all applicable Building and Fire Safety regulations.

e. Group Residential Facilities shall not be located within one-thousand two hundred (1,200) feet from any existing Group Residential Facility. For the purposes of this Section, all distances shall be measured from the property lines of the Group Residential Facility, including any rights-of-way.

f. All Group Residential Facilities shall be subject to an annual inspection by the Town of Queen Creek to ensure compliance with applicable law, including the standards set forth in this Section.

6. *Reasonable Accommodation Waiver.* The purpose of this Section is to establish a procedure for persons with a disability to make a request for reasonable accommodation in the application of the Town of Queen Creek's zoning rules, policies, practices and procedures pursuant to Section 3604(f)(3)(b) of Title 42 of the Fair Housing Act which prohibits local government from refusing to make reasonable accommodations when these accommodations are necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling. A reasonable accommodation for a group home will be granted or denied, in accordance with the requirements stated herein. A request for such a reasonable accommodation waiver must be in writing and filed with the Development Services Director or designee. In all cases, the Development Services Director or designee, shall make findings of fact in support of their determination and shall render a decision in writing. The Development Services Director or designee may meet with the person making the request for additional information or discuss an alternative accommodation, in order to ascertain or clarify information sufficiently to make the required findings. To grant a reasonable accommodation waiver, the Development Services Director or designee shall find affirmatively all of the following:

a. The requesting party or future occupants of the housing for which the reasonable accommodation has been made are protected under the Fair Housing Act and/or the Americans with Disabilities Act;

b. The request is reasonable and necessary to afford an individual with a disability an equal opportunity to use and enjoy a dwelling;

c. The request will be in compliance with all applicable building and fire codes;

d. The request will allow for the maintenance and preservation of the residential characteristics of the neighborhood and will not create a substantial detriment to neighboring properties by creating traffic impacts, parking impacts, impacts on water or sewer system, or other similar adverse impacts; and

e. Profitability or financial hardship of the owner/service provider of a facility shall not be considered by the Zoning Administrator in determining to grant a reasonable accommodation waiver.

7. An appeal of the decision regarding the reasonable accommodation request may be made to the Board of Adjustment pursuant to Section 2.5 of the Zoning Ordinance.

~~6.~~8. Any applicable requirements or provisions of State law, including but not limited to any applicable requirements set forth in Title 36 of the Arizona Revised Statutes, shall apply in addition to the provisions set forth in this Section. To the extent that applicable State law conflicts with the provisions of this Section, such laws shall preempt any conflicting term, but shall not affect the remaining provisions of this Section.

6.4 Home-Based Occupations

A. *Purpose.* A home based occupation is permitted as an accessory use in all residential districts. The purpose of the home based occupation regulations and performance standards are:

d. A permanent and adequate water supply must be available on the property at all times within thirty feet of the hive, colony or apiary.

e. All hives, colonies and apiaries shall be located no closer than thirty feet to any exterior property line.

3. *Prohibited Acts.* The following are prohibited:

a. The keeping of bees whether or not for commercial purposes without first having obtained a permit.

b. Failure to provide adequate water supply as set forth subsection d above.

c. Any act or omission the result of which is to allow bees to be kept in such a manner so that they present a hazard to the public health, safety and welfare of the residents.

4. *Exceptions.* The provisions of this section do not apply to any property owner upon whose property a swarm of transient bees are attempting to or have established a domicile.

5. *Penalty.* Upon conviction of a violation of any provision of this Section, the first offense shall be punished as a petty offense and all subsequent convictions within a two-year period shall be treated as class I misdemeanors.

6. *Abandoned Hives, Colonies and Apiaries.* Any hive, colony or apiary which does not contain the marking requirements, the water supply requirement of Section 6.2.F and for which no permit has been issued shall be presumed to be abandoned. The town upon a complaint may take all action necessary to remove the abandoned hive, colony or apiary from the property.

6.3 Group Residential Facilities

A. *Purpose*.

1. Group Residential Facilities are defined as set forth in Article 1 of this document.

2. The purpose of these regulations is to permit persons requiring common support, care, training, supervision, or counseling to reside in single family residential neighborhoods, while preserving the residential character of the neighborhood.

3. A complete application shall be submitted to the Development Services Department on a form established by the Department.

4. Prior to registration, a request for zoning confirmation may be submitted to the Development Services Department to confirm that the proposed location of the Group care home is permitted under Article 4 of this document.

5. Group Residential Facilities are permitted in all residential zoning districts as specified in this Ordinance (see table 4.6-1), subject to final approval by the Development Services Department. The Development Services Department shall review all applications for Group Residential Facilities submitted pursuant to this section. Group Residential Facilities shall be located, developed, and operated in compliance with the following standards:

a. The Group Residential Facility provides twenty-four-hour assistance to no more than ten (10) persons. In determining the number of persons served by a Group Residential Facility, the following individuals shall not be counted: the operator of the facility, members of the operator's family, and persons employed at the facility as staff.

b. No signs, graphics, displays, or other visual means of identifying Group Residential Facilities shall be visible from a public street.

c. Large and/or multiple trash receptacles not usually found in the residential area in which the Group Residential Facility is located shall be completely screened from public view.

d. The Group Residential Facility shall comply with all applicable Building and Fire Safety regulations.

e. Group Residential Facilities shall not be located within one-thousand two hundred (1,200) feet from any existing Group Residential Facility. For the purposes of this Section, all distances shall be measured from the property lines of the Group Residential Facility, including any rights-of-way.

f. All Group Residential Facilities shall be subject to an annual inspection by the Town of Queen Creek to ensure compliance with applicable law, including the standards set forth in this Section.

6. *Reasonable Accommodation Waiver.* The purpose of this Section is to establish a procedure for persons with a disability to make a request for reasonable accommodation in the application of the Town of Queen Creek's zoning rules, policies, practices and procedures pursuant to Section 3604(f)(3)(b) of Title 42 of the Fair Housing Act which prohibits local government from refusing to make reasonable accommodations when these accommodations are necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling. A reasonable accommodation for a group home will be granted or denied, in accordance with the requirements stated herein. A request for such a reasonable accommodation waiver must be in writing and filed with the Development Services Director or designee. In all cases, the Development Services Director or designee, shall make findings of fact in support of their determination and shall render a decision in writing. The Development Services Director or designee may meet with the person making the request for additional information or discuss an alternative accommodation, in order to ascertain or clarify information sufficiently to make the required findings. To grant a reasonable accommodation waiver, the Development Services Director or designee shall find affirmatively all of the following:

a. The requesting party or future occupants of the housing for which the reasonable accommodation has been made are protected under the Fair Housing Act and/or the Americans with Disabilities Act;

b. The request is reasonable and necessary to afford an individual with a disability an equal opportunity to use and enjoy a dwelling;

c. The request will be in compliance with all applicable building and fire codes;

d. The request will allow for the maintenance and preservation of the residential characteristics of the neighborhood and will not create a substantial detriment to neighboring properties by creating traffic impacts, parking impacts, impacts on water or sewer system, or other similar adverse impacts; and

e. Profitability or financial hardship of the owner/service provider of a facility shall not be considered by the Zoning Administrator in determining to grant a reasonable accommodation waiver.

7. An appeal of the decision regarding the reasonable accommodation request may be made to the Board of Adjustment pursuant to Section 2.5 of the Zoning Ordinance.

8. Any applicable requirements or provisions of State law, including but not limited to any applicable requirements set forth in Title 36 of the Arizona Revised Statutes, shall apply in addition to the provisions set forth in this Section. To the extent that applicable State law conflicts with the provisions of this Section, such laws shall preempt any conflicting term, but shall not affect the remaining provisions of this Section.

6.4 Home-Based Occupations

A. *Purpose.* A home based occupation is permitted as an accessory use in all residential districts. The purpose of the home based occupation regulations and performance standards are:

ORDINANCE 803-22

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AMENDING ARTICLE 6.3, GROUP RESIDENTIAL FACILITIES OF THE QUEEN CREEK ZONING ORDINANCE AS PROVIDED IN EXHIBIT A ATTACHED HERETO AND IN ACCORDANCE WITH PLANNING CASE P22-0223.

WHEREAS, Arizona Revised Statutes § 9-802 provides a procedure whereby a municipality may enact the provisions of a code or public record by reference, without setting forth such provisions, providing that the adopting ordinance is published in full; and

WHEREAS, Article 3, **ZONING PROCEDURES**, Section 3.4 **AMENDMENT AND REZONING**, establishes the authority and procedures for amending the Zoning Ordinance; and

WHEREAS, a Public Hearing on this ordinance was heard before the Planning and Zoning Commission on November 9, 2022; and

WHEREAS, the Planning and Zoning Commission voted 7-0 in favor of this text amendment case;

NOW THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AS FOLLOWS:

Section 1. The Queen Creek Zoning Ordinance – Article 6.3, Group Residential Facilities, is amended as set forth and referenced to as "Exhibit A", and incorporated herein;

Section 2. If any section, subsection, clause, phrase or portion of this ordinance or any part of these amendments to the Zoning Ordinance is for any reason held invalid or unconstitutional by the decision of any court or competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED BY the Common Council of the Town of Queen Creek, Arizona, this 7th day of December 2022.

FOR THE TOWN OF QUEEN CREEK: ATTESTED TO:

_____ _____

Jeff Brown, Vice Mayor Maria Gonzalez, Town Clerk

REVIEWED BY:

_____
John Kross, ICMA-CM Town Manager

APPROVED AS TO FORM:

_____
Dickinson Wright PLLC
Attorneys for the Town

d. A permanent and adequate water supply must be available on the property at all times within thirty feet of the hive, colony or apiary.

e. All hives, colonies and apiaries shall be located no closer than thirty feet to any exterior property line.

3. *Prohibited Acts*. The following are prohibited:

a. The keeping of bees whether or not for commercial purposes without first having obtained a permit.

b. Failure to provide adequate water supply as set forth subsection d above.

c. Any act or omission the result of which is to allow bees to be kept in such a manner so that they present a hazard to the public health, safety and welfare of the residents.

4. *Exceptions*. The provisions of this section do not apply to any property owner upon whose property a swarm of transient bees are attempting to or have established a domicile.

5. *Penalty*. Upon conviction of a violation of any provision of this Section, the first offense shall be punished as a petty offense and all subsequent convictions within a two-year period shall be treated as class I misdemeanors.

6. *Abandoned Hives, Colonies and Apiaries*. Any hive, colony or apiary which does not contain the marking requirements, the water supply requirement of Section 6.2.F and for which no permit has been issued shall be presumed to be abandoned. The town upon a complaint may take all action necessary to remove the abandoned hive, colony or apiary from the property.

6.3 Group Residential Facilities

A. *Purpose*.

1. Group Residential Facilities are defined as set forth in Article 1 of this document.

2. The purpose of these regulations is to permit persons requiring common support, care, training, supervision, or counseling to reside in single family residential neighborhoods, while preserving the residential character of the neighborhood.

3. A complete application shall be submitted to the Development Services Department on a form established by the Department.

4. Prior to registration, a request for zoning confirmation may be submitted to the Development Services Department to confirm that the proposed location of the Group care home is permitted under Article 4 of this document.

5. Group Residential Facilities are permitted in all residential zoning districts as specified in this Ordinance (see table 4.6-1), subject to final approval by the Development Services Department. The Development Services Department shall review all applications for Group Residential Facilities submitted pursuant to this section. Group Residential Facilities shall be located, developed, and operated in compliance with the following standards:

a. The Group Residential Facility provides twenty-four-hour assistance to no more than ten (10) persons. In determining the number of persons served by a Group Residential Facility, the following individuals shall not be counted: the operator of the facility, members of the operator's family, and persons employed at the facility as staff.

b. No signs, graphics, displays, or other visual means of identifying Group Residential Facilities shall be visible from a public street.

c. Large and/or multiple trash receptacles not usually found in the residential area in which the Group Residential Facility is located shall be completely screened from public view.

d. The Group Residential Facility shall comply with all applicable Building and Fire Safety regulations.

e. Group Residential Facilities shall not be located within one-thousand two hundred (1,200) feet from any existing Group Residential Facility. For the purposes of this Section, all distances shall be measured from the property lines of the Group Residential Facility, including any rights-of-way.

f. All Group Residential Facilities shall be subject to an annual inspection by the Town of Queen Creek to ensure compliance with applicable law, including the standards set forth in this Section.

6. *Reasonable Accommodation Waiver.* The purpose of this Section is to establish a procedure for persons with a disability to make a request for reasonable accommodation in the application of the Town of Queen Creek's zoning rules, policies, practices and procedures pursuant to Section 3604(f)(3)(b) of Title 42 of the Fair Housing Act which prohibits local government from refusing to make reasonable accommodations when these accommodations are necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling. A reasonable accommodation for a group home will be granted or denied, in accordance with the requirements stated herein. A request for such a reasonable accommodation waiver must be in writing and filed with the Development Services Director or designee. In all cases, the Development Services Director or designee, shall make findings of fact in support of their determination and shall render a decision in writing. The Development Services Director or designee may meet with the person making the request for additional information or discuss an alternative accommodation, in order to ascertain or clarify information sufficiently to make the required findings. To grant a reasonable accommodation waiver, the Development Services Director or designee shall find affirmatively all of the following:

a. The requesting party or future occupants of the housing for which the reasonable accommodation has been made are protected under the Fair Housing Act and/or the Americans with Disabilities Act;

b. The request is reasonable and necessary to afford an individual with a disability an equal opportunity to use and enjoy a dwelling;

c. The request will be in compliance with all applicable building and fire codes;

d. The request will allow for the maintenance and preservation of the residential characteristics of the neighborhood and will not create a substantial detriment to neighboring properties by creating traffic impacts, parking impacts, impacts on water or sewer system, or other similar adverse impacts; and

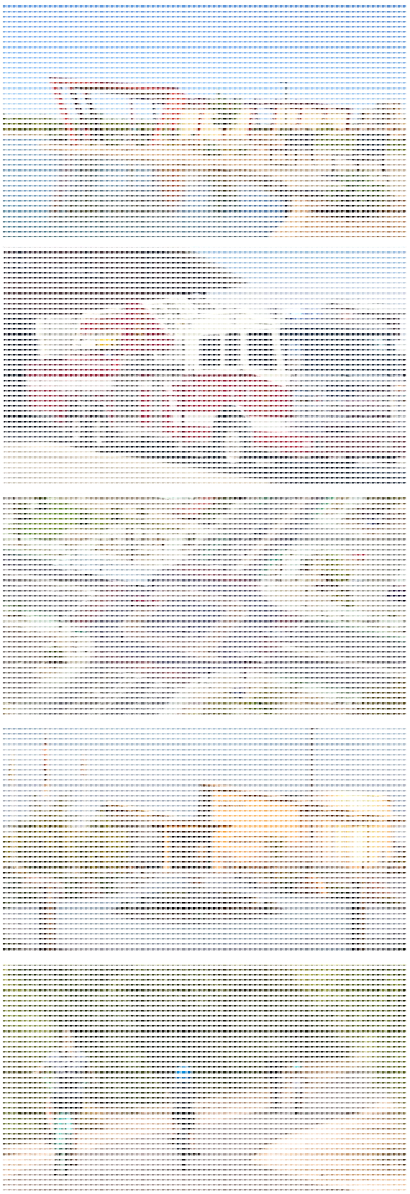
e. Profitability or financial hardship of the owner/service provider of a facility shall not be considered by the Zoning Administrator in determining to grant a reasonable accommodation waiver.

7. An appeal of the decision regarding the reasonable accommodation request may be made to the Board of Adjustment pursuant to Section 2.5 of the Zoning Ordinance.

~~6.~~8. Any applicable requirements or provisions of State law, including but not limited to any applicable requirements set forth in Title 36 of the Arizona Revised Statutes, shall apply in addition to the provisions set forth in this Section. To the extent that applicable State law conflicts with the provisions of this Section, such laws shall preempt any conflicting term, but shall not affect the remaining provisions of this Section.

6.4 Home-Based Occupations

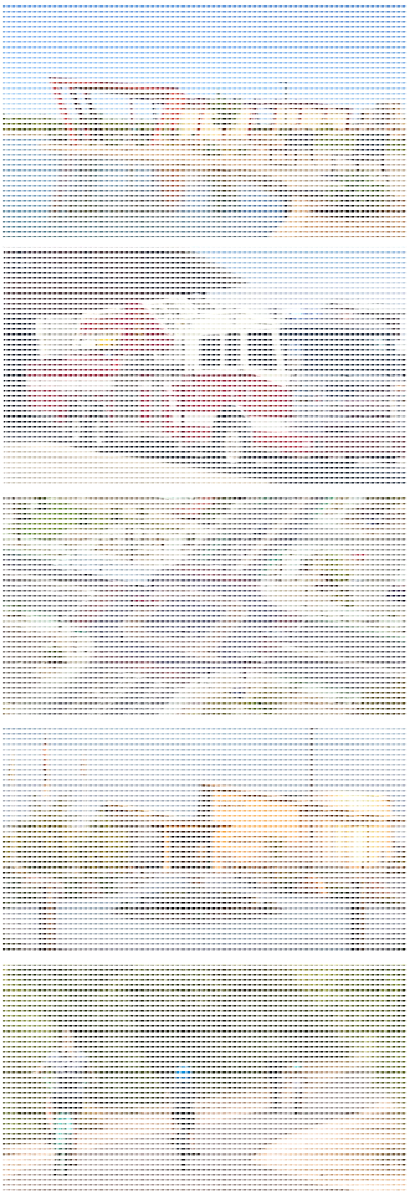
A. *Purpose.* A home based occupation is permitted as an accessory use in all residential districts. The purpose of the home based occupation regulations and performance standards are:



Reasonable Accommodation Text Amendment P22-0223

Town Council

December 7, 2022



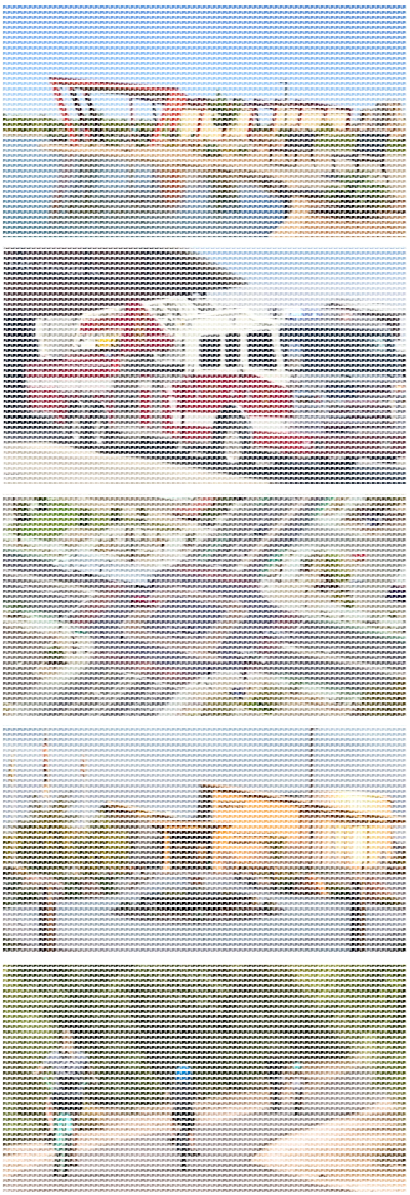
Background

Per State statute a reasonable accommodation waiver is required to be available for group residential facilities to request a waiver to the required 1,200 foot buffer requirement from other group residential facilities.

Proposed: Text amendment to the Zoning Ordinance to document the process for requesting the reasonable accommodation waiver and the required findings to consider the request as required by state law.

Planning Commission Vote Report

5-0-2



Proposed (Generally, complete language in staff report)

A reasonable accommodation waiver can be requested with the group care home application. To grant a reasonable accommodation waiver, the Development Services Director or designee shall find affirmatively all of the following:

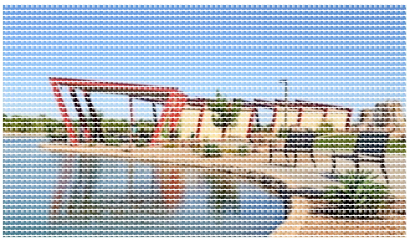
1. The requesting party or future occupants of the housing for which the reasonable accommodation has been made are protected under the Fair Housing Act and/or the Americans with Disabilities Act;

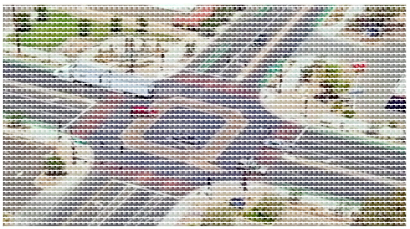
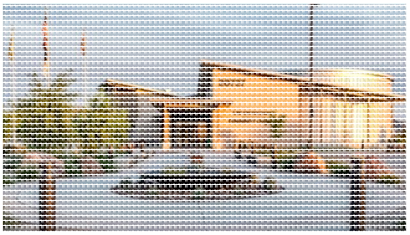
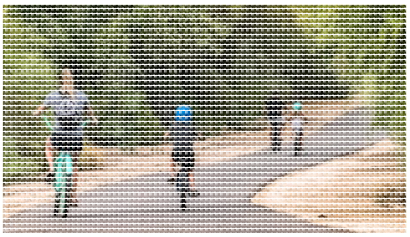
2. The request is reasonable and necessary to afford an individual with a disability an equal opportunity to use and enjoy a dwelling;

3. The request will be in compliance with all applicable building and fire codes;

4. The request will allow for the maintenance and preservation of the residential characteristics of the neighborhood and will not create a substantial detriment to neighboring properties by creating traffic impacts, parking impacts, impacts on water or sewer system, or other similar adverse impacts; and

5. Profitability or financial hardship of the owner/service provider of a facility shall not be considered by the Zoning Administrator in determining to grant a reasonable accommodation waiver.

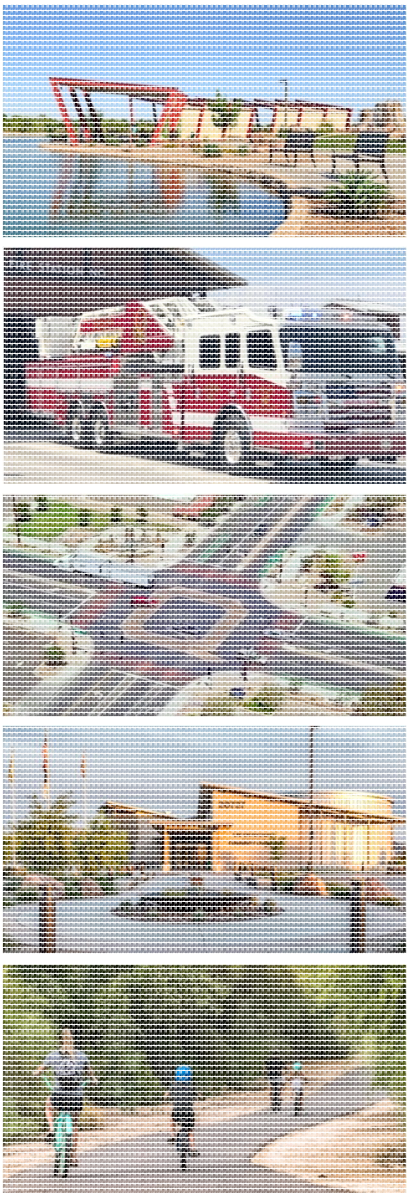


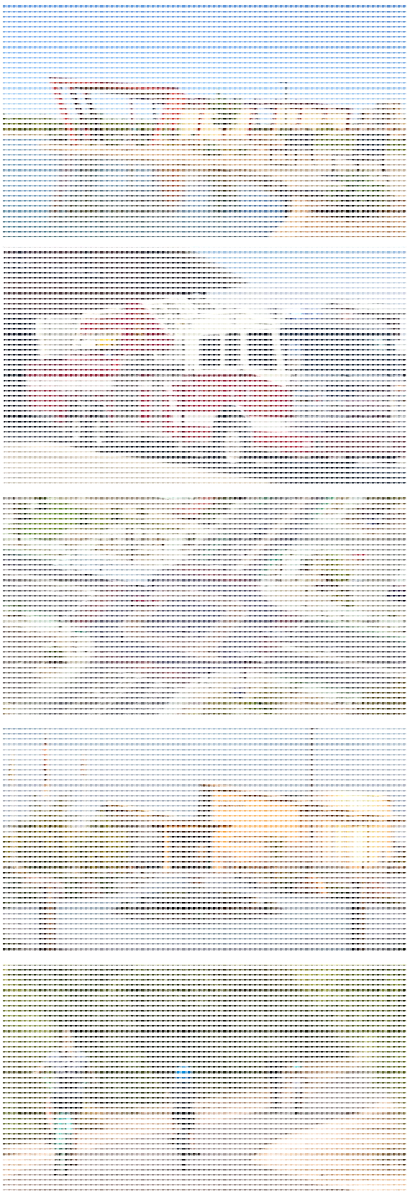
Example Reasonable Accommodation Requests

Home that is closer than 1,200-feet to another group home, however an arterial road separates the neighborhoods, the subdivisions are not connected, and/or the home holds less than the maximum 10 persons permitted in a group home facility.

Each request reviewed on a case-by-case basis



Thank you.

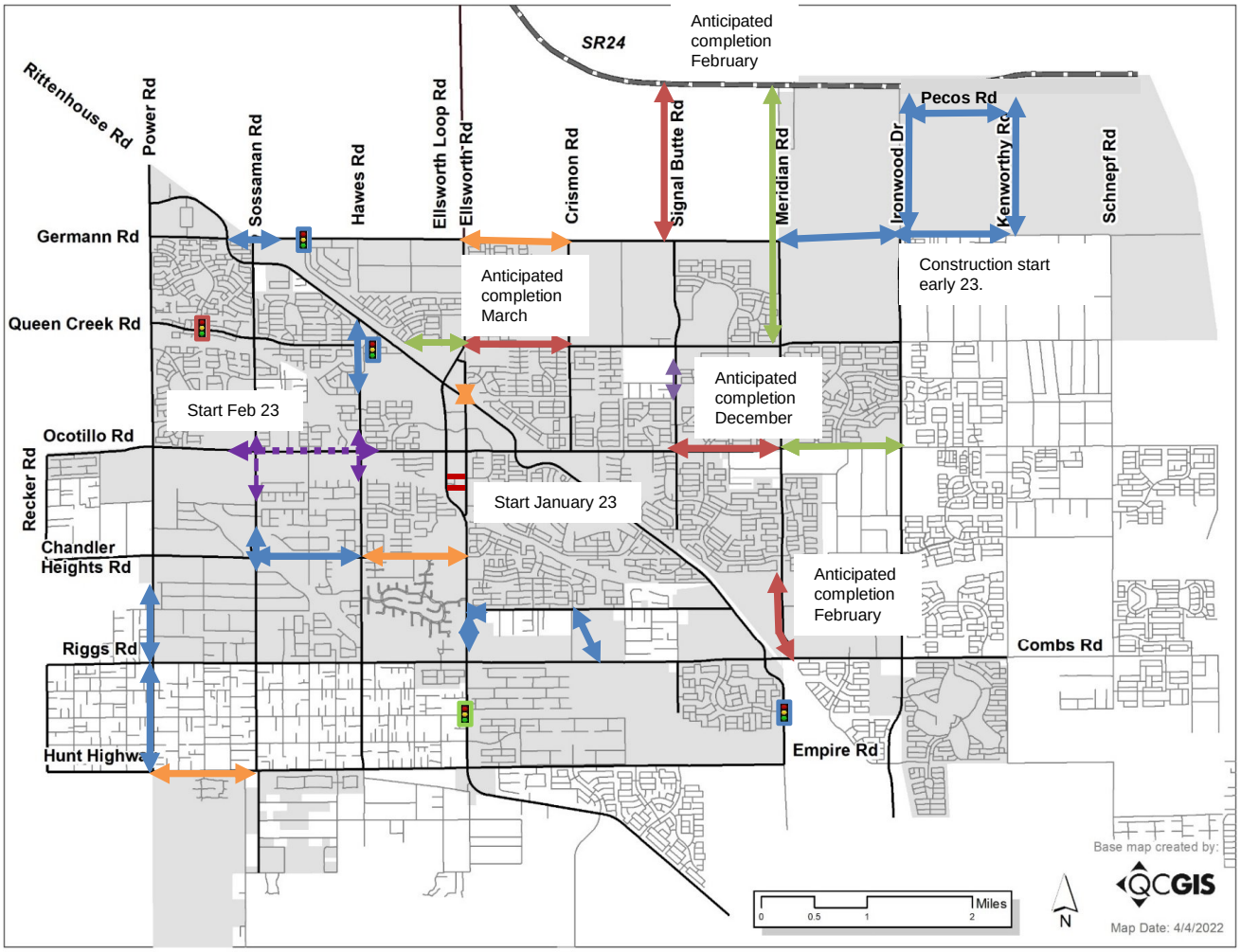


Town of Queen Creek

Public Right of Way Improvement Projects CIP, Development Services and Public Works

Town Council 12.7.22

CIP Projects – Transportation

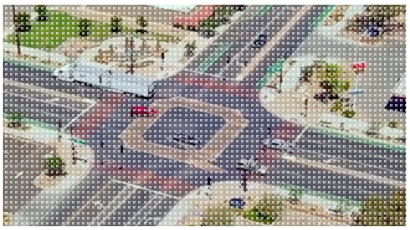


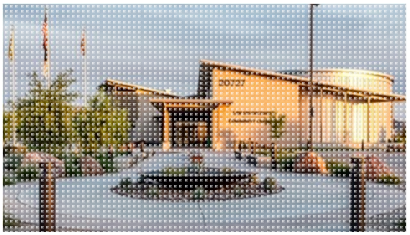
Key

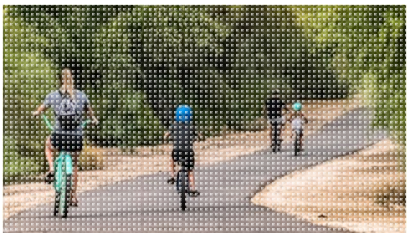
- In Design
- Bidding Soon
- Under Construction
- Complete
- Future

- Traffic Signal in Design
- Traffic Signal Under Construction
- Traffic Signal Completed

Rev. 11.29.22

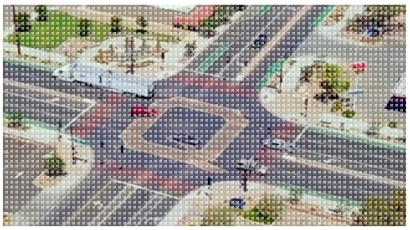


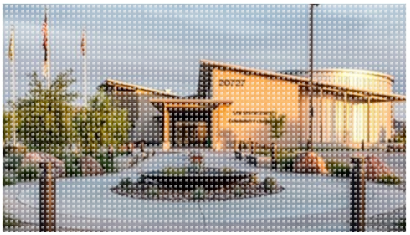


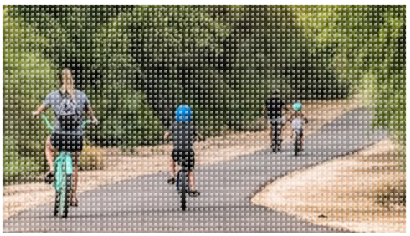


Queen Creek Road: 206th Road to Ellsworth Rd

- Finalizing signal timing adjustments, signage and striping to open the full roadway and intersection in mid-December.

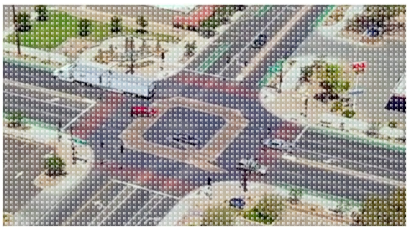


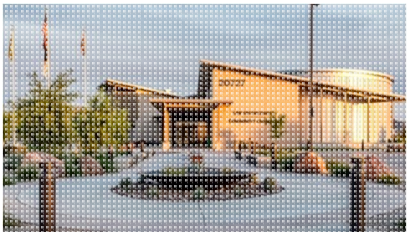


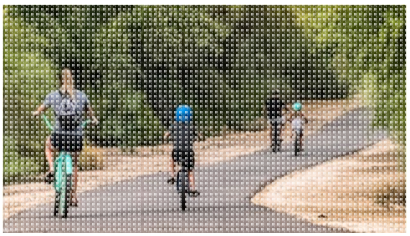


Ocotillo Road:
228th Street to Ironwood Road

- Finishing landscape work.
- Traffic control has been removed east of Meridian.
- Contractor is scheduled to complete landscape and remaining work at the end of December.



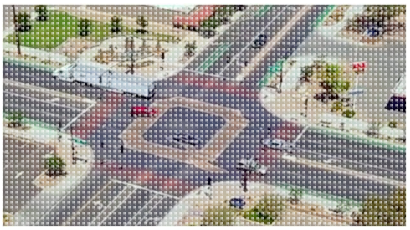
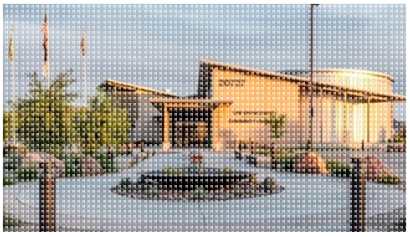
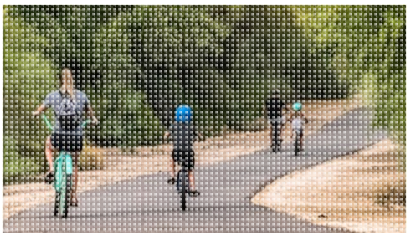




Meridian Road:
Cherrywood Drive to Combs Road

- There will be WB lane restrictions on Combs from 12/12-12/23 to complete culvert and paving operations in the intersection.
- Completion in late February.

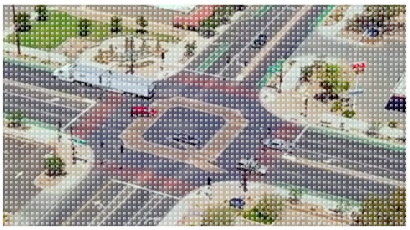
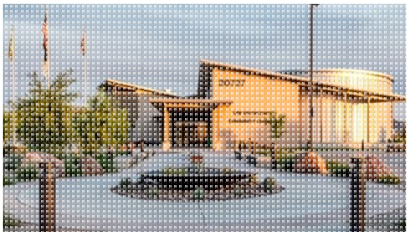
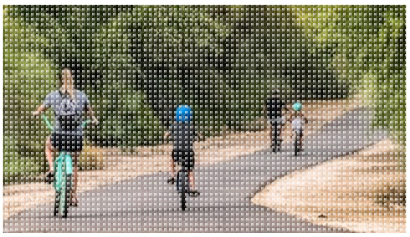


Queen Creek Road:
Ellsworth Rd to Crismon Rd

- Working to compete the intersection work at Crismon Road.
- There will be a closure of Crismon from Queen Creek south from 12/10 – 12/19.
- Completion in March.

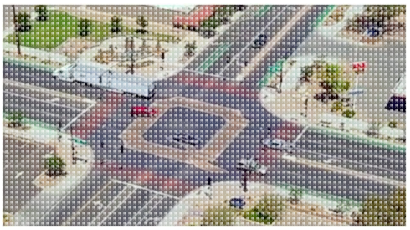
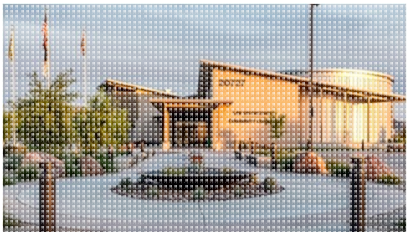
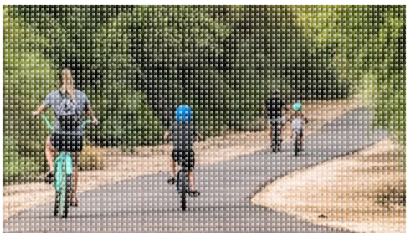


Traffic Signals

- Queen Creek & 188th Street.
- Gary Road & Grange Parkway – construction of the permanent signal started 12/5, anticipate completion in February.
- Germann & 196th, final design is underway, anticipate construction summer 2023.

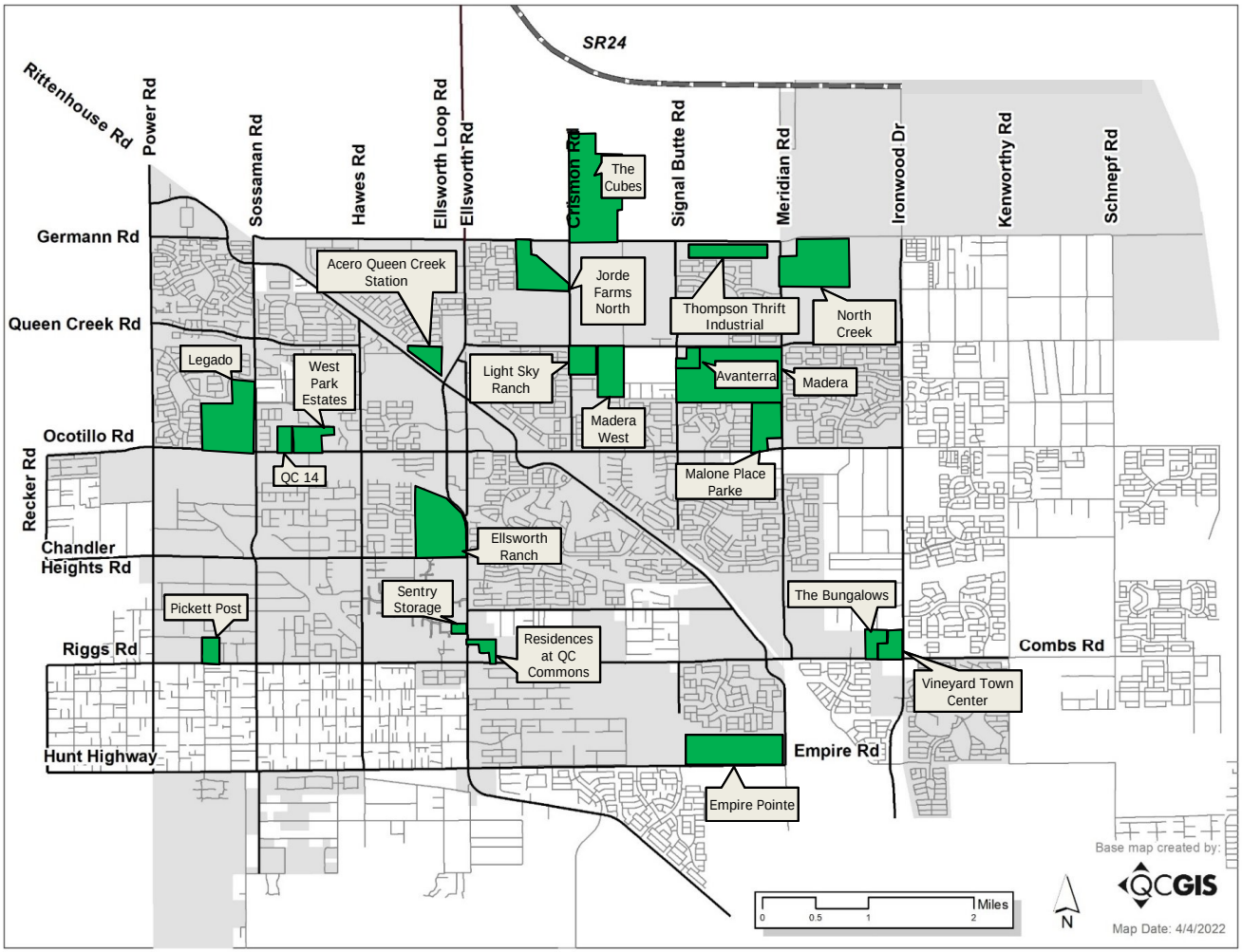


Upcoming Projects:

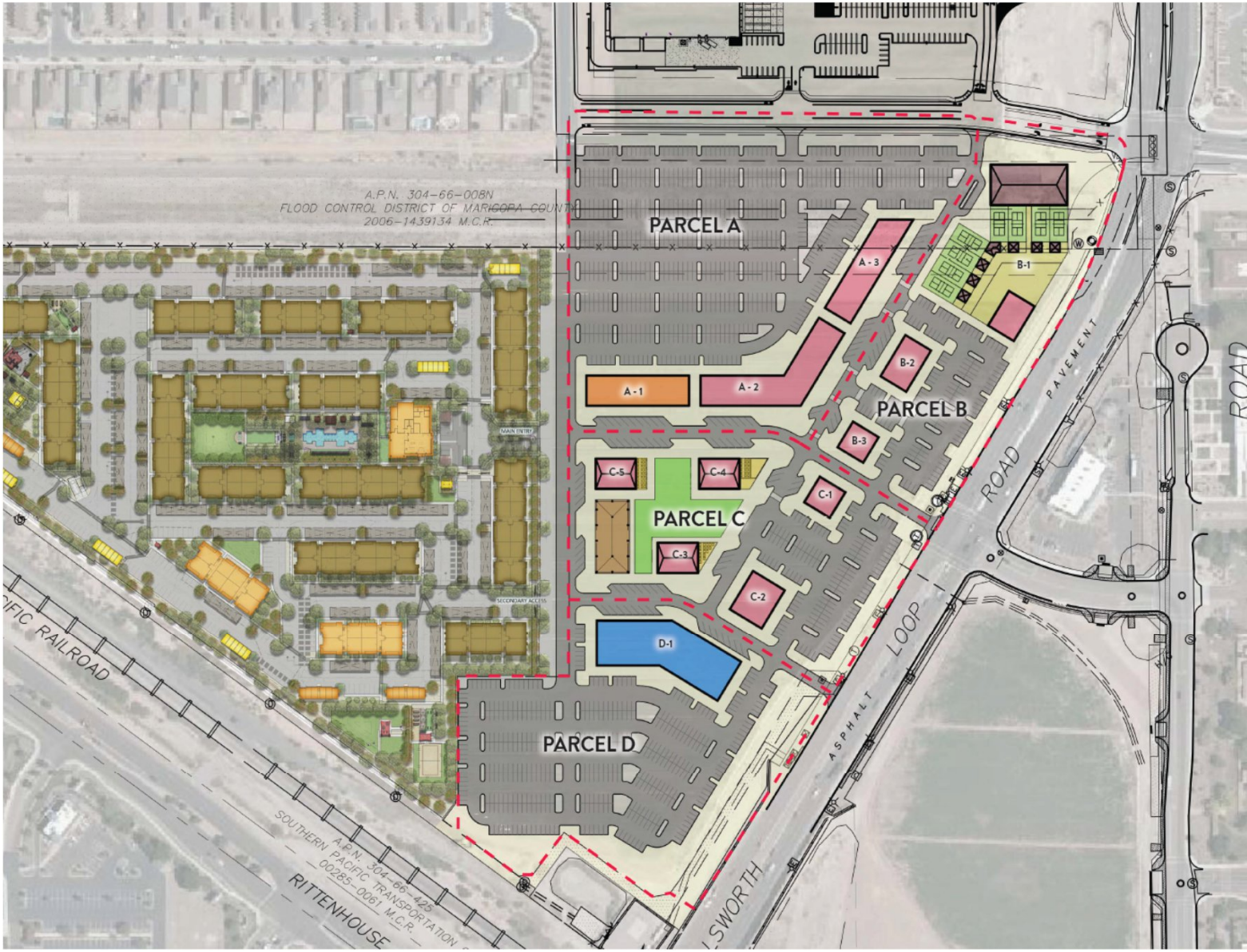
- Town Center Roadways, Aldecoa and Munoz from Ellsworth Loop to Old Ellsworth Road.
- Ocotillo Road from Sossaman Road to Hawes Road.
- Signal Butte Road from Ocotillo Road to Queen Creek Road.

Active Development Projects (Dec. 2022)



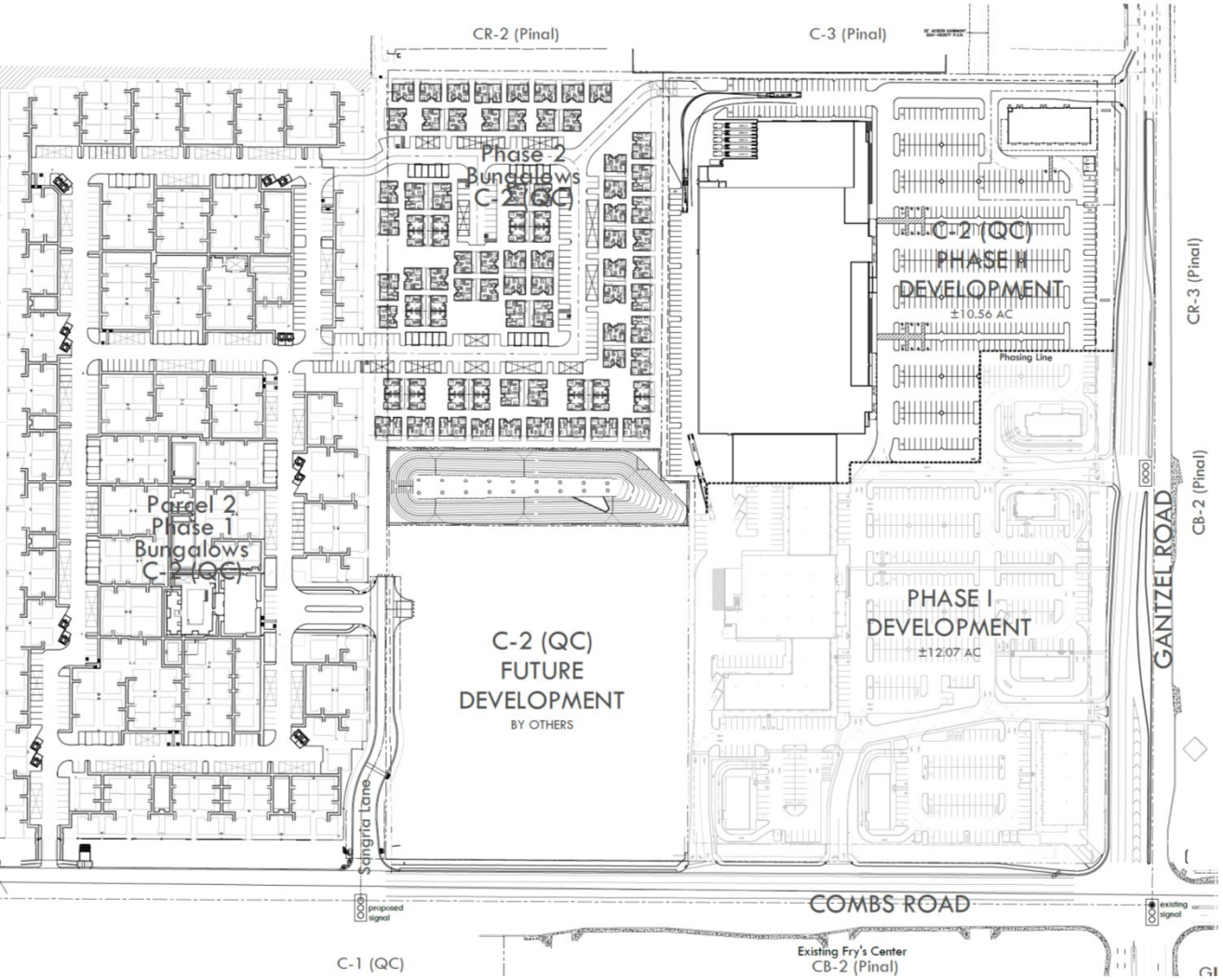
Acero Site Work

- Lane Restriction: Ellsworth Loop Rd.
- Road construction completion = Dec.*
- Onsite work = June 2023



Ellsworth Ranch Site Work

- No current lane restrictions
- ROW construction for Chandler Heights Rd. not started; est. completion = ~Q2/Q3 2023
- Onsite work = 2023-2025

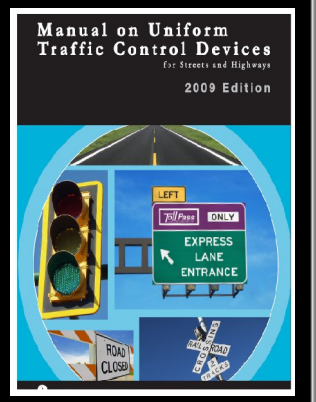


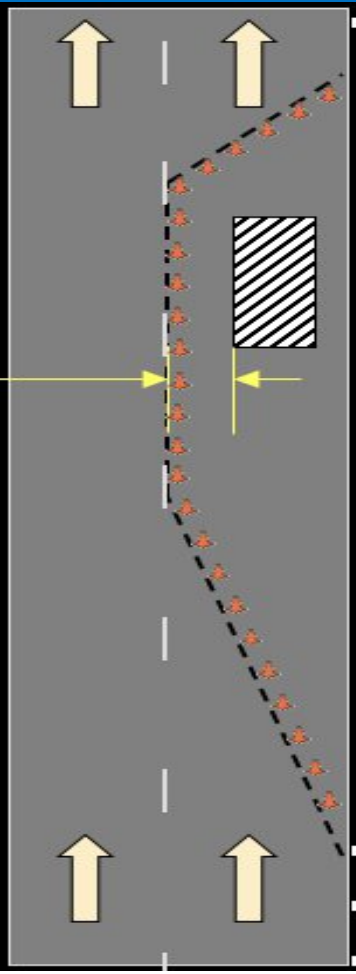
Vineyard Town Center Site Work

- No current lane restrictions
- ROW construction not started; est. completion = ~2023; Ironwood decel lane/Combs = Q1/Q2 2023
- Onsite work = 2023-2024

Work Zone Safety

Buffer Space
(lateral)





100' Taper

Termination Area

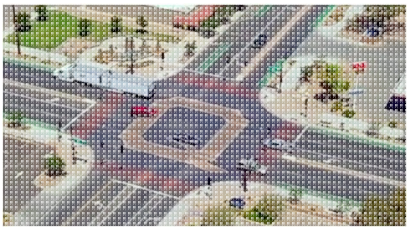
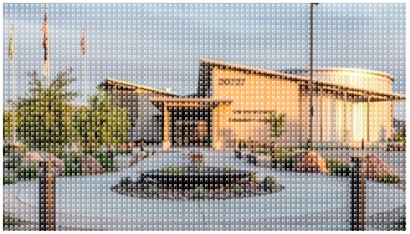
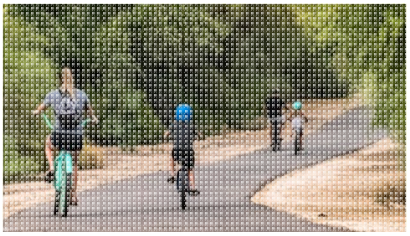
Activity Area

Buffer Space
(longitudinal)

Transition Area

Advanced Warning Area



Questions?

TOWN OF QUEEN CREEK ARIZONA

TO: **HONORABLE MAYOR AND TOWN COUNCIL**

THROUGH: **JOHN KROSS ICMA-CM, TOWN MANAGER**

FROM: **PAUL GARDNER, UTILITIES DIRECTOR, SCOTT MCCARTY, FINANCE DIRECTOR**

RE: **CONSIDERATION AND POSSIBLE APPROVAL OF RESOLUTION NO. 1511-22 AUTHORIZING THE TOWN MANAGER TO EXECUTE: (1) CONTRACT WITH THE TOWN OF QUEEN CREEK FOR DELIVERY OF COLORADO RIVER WATER; (2) PARTIAL ASSIGNMENT AND TRANSFER OF COLORADO RIVER WATER UNDER CONTRACT WITH GSC FARM, LLC TO THE TOWN OF QUEEN CREEK; AND (3) RECLAMATION WHEELING CONTRACT BETWEEN THE UNITED STATES AND THE TOWN OF QUEEN CREEK TO TRANSPORT NON-PROJECT WATER; AUTHORIZING THE FINALIZATION AND IMPLEMENTATION THEREOF; AND PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS.**

DATE: **December 7, 2022**

Suggested Action:

Staff recommends approval of Resolution No.1511-22 as presented.

Relevant Council Goal(s):

- Effective Government: KRA Financial Management, Financial Sustainability
- Superior Infrastructure: KRA Capital Improvement Program

Discussion:

The Town Council has identified strategic objectives that Queen Creek's Water System acquire long-term water resources and be designated as having an assured or adequate water supply. In achieving those objectives, the Town seeks to reduce its reliance on the Central Arizona Groundwater Replenishment District ("CAGRD") to meet the groundwater replenishment requirements as established in the Arizona Groundwater Management Act ("AZGMA") and build a more resilient water resource portfolio that is less reliant on groundwater.

In December of 2018, the Town Council approved a purchase agreement between the Town and GSC Farm, LLC, ("GSC") for the transfer of up to 2,088 AF of Colorado River surface water rights. On December 15, 2021, Town Council approved Amendment No. 1 to the purchase agreement to extend the purchase and sale timeline by 2 years, through December 16, 2023 and to acknowledge changes to certain elements of the transaction that have evolved during the consultation process.

The initial cost to purchase the surface water was $10,000 / AF, for the first calendar year, escalated at 5% per annum thereafter. December 2022, will mark the end of the 4th calendar year. Assuming the transfer will be completed by December 2022, the final purchase price should not exceed $11,576 / AF.

On September 21, 2022, Council approved Resolution No. 1495-22 authorizing the execution of three related agreements; an agreement between the Town and the US Bureau of Reclamation establishing a subcontract for the delivery of Colorado River Water to the Town of Queen Creek; an agreement regarding the partial assignment of Colorado River Water under contract with GSC Farm LLC to the Town of Queen Creek; and an agreement regarding system use between the US Bureau of Reclamation and the Town of Queen Creek, related to the transfer of water to the Town. All of these agreements are required in order to complete the transfer of Cibola water to the Town.

At the September 21, 2022 Town Council meeting, Council also approved Resolution 1496-22 authorizing the application for a Drinking Water State Revolving Fund Program Loan through the Water Infrastructure Finance Authority (WIFA) for costs related to the acquisition of surface water rights (Cibola) in an amount not to exceed $27 million. WIFA is the most cost-effective source of financing for eligible public utilities. Resolution No. 1508-22 is being brought to Town Council under Final Action on December 7, 2022 for consideration of WIFA financing.

In the September 21, 2022 staff report, staff told Council the contracts would be provided once they were available. The final draft contracts have been prepared for publication by Reclamation and are attached to this staff report. At this time, the Town Council is being asked to approve Resolution No. 1511-22 authorizing the Town Manager to Execute: (1) Contract With the Town of Queen Creek for Delivery of Colorado River Water; (2) Partial Assignment and Transfer of Colorado River Water Under Contract with GSC Farm, LLC to the Town of Queen Creek; and (3) Reclamation Wheeling Contract Between the United States and the Town of Queen Creek to Transport Non-Project Water. The current contracts provided by Reclamation are attached to this staff report and have been reviewed by the Town Attorney and the Town's water counsel.

In addition, the resolution includes language authorizing the Mayor, Vice Mayor, Town Manager, Assistant Town Manager, Town Clerk, and the Town Attorney to take all actions necessary to carry out the final negotiation, drafting, and implementation execution and implementation of the three contracts identified above in accordance with their terms and intent. This additional language and authorization is necessary in order to address any final edits or non-substantive changes that are required as part of the finalization of the agreements.

Fiscal Impact:

Based upon the currently identified transferrable quantity of 2,033 AF, the estimated final purchase price is $23.6 million for the water and $3 million for CAP wheeling capacity (plus associated bond attorney and financial advisor costs related to the WIFA transaction) for a total obligation of approximately $27 million. The loan is anticipated to be paid over 30 years at an estimated interest rate of 4%. By maintaining a AAA credit rating and leveraging the Environmental Protection Agency's low-cost federal funding, WIFA is able to offer the lowest cost financing available. The annual debt service cost is estimated to be $1.6 million. Payment of the loan will be made from water rates.

Repayment of this loan will be secured by a lien on a pledge of the net utility system revenues (water and wastewater), which refers to the portion of the revenues remaining after deducting the expenses needed to operate and maintain the Town's water and wastewater systems. Actual payment of the loan will be made from water rates.

Alternatives:

Without approval, the Town would not be able to complete the transfer of the Cibola Water to the Town. Should Council have issues of concern regarding specific language or terms of the related agreements, staff would work to amend the agreements, where possible, and seek Council consideration or ratification of the revised agreements at a future meeting.

Attachment(s):

1. Resolution No. 1511-22
2. Contract with the Town of Queen Creek for Delivery of Colorado River Water
3. Partial Assignment and Transfer of Colorado River Water Under Contract with GSC Farm, LLC to the Town of Queen Creek
4. Reclamation Wheeling Contract Agreement Between the United States and the Town of Queen Creek to Transport Non-Project Water
5. Cibola Water Rights Acquisition and WIFA Financing

RESOLUTION NO. 1511-22

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN COUNCIL OF QUEEN CREEK, ARIZONA, AUTHORIZING THE TOWN MANAGER TO EXECUTE: (1) CONTRACT WITH THE TOWN OF QUEEN CREEK FOR DELIVERY OF COLORADO RIVER WATER; (2) PARTIAL ASSIGNMENT AND TRANSFER OF COLORADO RIVER WATER UNDER CONTRACT WITH GSC FARM, LLC TO THE TOWN OF QUEEN CREEK; AND (3) RECLAMATION WHEELING CONTRACT BETWEEN THE UNITED STATES AND THE TOWN OF QUEEN CREEK TO TRANSPORT NON-PROJECT WATER; AUTHORIZING THE FINALIZATION AND IMPLIMENTATION THEREOF; AND PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS

WHEREAS, the Town of Queen Creek ("Queen Creek") has identified sustainable renewable water supplies as essential to reduce Queen Creek's reliance on groundwater and has established a strategic priority of the same; and

WHEREAS, Queen Creek and GSC Farm, LLC ("GSC") entered into that certain Purchase and Transfer Agreement for Mainstream Colorado River Water Entitlement dated December 17, 2018, as amended by Amendment No. 1 thereto dated December 15, 2021, wherein Queen Creek agreed to purchase the transferrable quantity of Arizona 4th Priority Colorado River Entitlement from GSC, as that transferrable quantity may be determined by the State of Arizona, acting through the Arizona Department of Water Resources ("ADWR") and the United States Department of the Interior, acting through the Bureau of Reclamation ("Reclamation").

WHEREAS, on January 20, 2021, Queen Creek received a recommendation from ADWR to Reclamation to proceed to transfer 2,033.01 acre feet of Colorado River water from GSC to Queen Creek; and

WHEREAS, Queen Creek has cooperated with Reclamation to prepare an Environmental Assessment under the National Environmental Policy Act for the proposed transfer of 2,033.01 acre feet of Colorado River water from GSC to Queen creek; and

WHEREAS, on September 2, 2022, Reclamation issued a final Environmental Assessment of the proposed transfer, and a Finding of No Significant Impact, which documents concluded that the proposed transfer of 2,033.01 acre feet of Colorado River water from GSC to Queen Creek would not have a significant impact on the human environment, all in accordance with the National Environmental Policy Act; and

WHEREAS, Reclamation has indicated that it has prepared, and is prepared to enter into, contracts with Queen Creek and GSC to effect the proposed transfer; and

WHEREAS, on September 21, 2022 the Common Council approved Resolution No. 1495-22 authorizing the Vice Mayor to Execute three related agreements (1) a Partial Assignment and Transfer of Colorado River Water from GSC Farm, LLC to the Town of Queen Creek, Arizona,

wherein GSC agrees to assign to Queen Creek 2,033.01 acre feet of transferrable water to Queen Creek, while retaining 69.93 acre feet of diversionary quantity on the GSC land; (2) a Contract for Delivery of Colorado River Water to the Town of Queen Creek, Arizona, wherein Reclamation agrees to deliver, subject to the terms and conditions of that contract, 2.033.01 acre feet of Colorado River water to the Queen Creek authorized point of diversion at the Mark Wilmer Pumping Plant on the mainstream Colorado River; and (3) a Reclamation Wheeling Contract between the United States and the Town of Queen Creek, Arizona, wherein Reclamation agrees to provide system capacity in the Central Arizona Project canal to transport (wheel) the 2,033.01 acre feet of Queen Creek water through the canal to the authorized points of delivery in Queen Creek for the use and benefit of Queen Creek; and

WHEREAS, Reclamation has prepared the contracts for execution by the Town of Queen Creek; and

WHEREAS, the Town Council finds that is appropriate, proper, and in the best interests of the residents, businesses, and water customers of Queen Creek for the Town Council to authorize execution of the three contracts enumerated above as between Queen Creek, GSC and Reclamation as appropriate.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA as follows:

Section 1: That:

A. The Partial Assignment of Colorado River Water between the United States Bureau of Reclamation, Town of Queen Creek, Arizona, and GSC Farm, LLC, wherein GSC Farm, LLC agrees to assign to Queen Creek 2,033.01 acre feet of transferrable water to Queen Creek, while retaining 69.93 acre feet of diversionary quantity on the GSC Farm, LLC land, all as approved by Reclamation;

B. The Contract for Delivery of Colorado River Water to the Town of Queen Creek, Arizona, wherein Reclamation agrees to deliver, subject to the terms and conditions of that contract, 2.033.01 acre feet of Colorado River water to the Queen Creek authorized point of diversion at the Mark Wilmer Pumping Plant on the mainstream Colorado River; and

C. The Reclamation Wheeling Contract between the United States and the Town of Queen Creek, Arizona, wherein Reclamation agrees to provide system capacity in the Central Arizona Project canal to transport (wheel) the 2,033.01 acre feet of Queen Creek water through the canal to the authorized points of delivery in Queen Creek for the use and benefit of Queen Creek.

are hereby approved and the Town Manager is authorized to execute the contracts once finalized.

Section 2: That the Mayor, Vice Mayor, the Town Manager, Assistant Town Manager, the Town Clerk, and the Town Attorney are hereby authorized to take all actions necessary to carry out the final negotiation, drafting, execution and implementation of the three contracts identified herein in accordance with their terms and intent.

Section 3: That all ordinances and resolutions and parts of resolutions in conflict with this Resolution are hereby repealed.

PASSED AND ADOPTED by the Common Council of the Town of Queen Creek this 7th day of December, 2022.

FOR THE TOWN OF QUEEN CREEK: **ATTESTED TO:**

_____ _____

Jeff Brown, Vice Mayor Maria Gonzalez,

REVIEWED BY: APPROVED AS TO FORM

_____ _____

John Kross, ICMA-CM Dickinson Wright PLC

Town Manager Attorneys for the Town

Contract No. 20-XX-30-W0689

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

BOULDER CANYON PROJECT

CONTRACT WITH TOWN OF QUEEN CREEK
FOR DELIVERY OF COLORADO RIVER WATER

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

BOULDER CANYON PROJECT

CONTRACT WITH TOWN OF QUEEN CREEK
FOR DELIVERY OF COLORADO RIVER WATER

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Contract No. 20-XX-30-W0689

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

BOULDER CANYON PROJECT

CONTRACT WITH THE TOWN OF QUEEN CREEK
FOR DELIVERY OF COLORADO RIVER WATER

1. PREAMBLE: THIS CONTRACT NO. 20-XX-30-W0689 hereinafter called "Contract," made this_____day of_____, 2023, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act enacted December 21, 1928 (43 U.S.C. § 617 et seq.), all of which are commonly known and referred to as Federal Reclamation law, between the UNITED STATES OF AMERICA, hereinafter called the "United States," and the TOWN OF QUEEN CREEK, an Arizona municipal corporation, with its principal place of business at Queen Creek, Arizona, hereinafter called "Queen Creek"; the United States and Queen Creek are each individually sometimes hereinafter called "Party" and sometimes collectively called "Parties";

WITNESSETH THAT:

2. EXPLANATORY RECITALS:

2.1 WHEREAS, for the purpose of controlling floods, improving navigation, regulating the flow of the Colorado River, and providing for storage and for the delivery of stored water for the reclamation of public lands and other beneficial uses exclusively within the United States, the United States has constructed and is now operating and maintaining facilities in the mainstream of the Colorado River at Black Canyon, specifically that certain structure known as and designated Hoover Dam, creating thereby a reservoir known as Lake Mead;

2.2 WHEREAS, the Boulder Canyon Project Act provides, among other things, that the Secretary of the Interior is authorized, under such general regulations as he or she may

prescribe, to contract for the storage of water in Lake Mead and for the delivery of such Mainstream Water at such points as may be agreed upon for Irrigation use and Domestic Use;

2.3 WHEREAS, the Boulder Canyon Project Act provides further that no person shall have or be entitled to have the use, for any purpose, of the stored water in Lake Mead, except by contract with the Secretary of the Interior;

2.4 WHEREAS, by the 1944 Contract, the United States agreed to deliver Colorado River water for use in the State of Arizona (i) to individuals, irrigation districts, corporations, or political subdivisions in the State of Arizona which qualify to contract with the United States pursuant to Federal Reclamation law or other Federal statutes, and which enter into contracts with the Secretary, or (ii) to Federal lands within the State of Arizona;

2.5 WHEREAS, pursuant to the 1944 Contract, the United States agreed to deliver as much Colorado River water as may be necessary for the beneficial Consumptive Use for Irrigation and Domestic Use in the State of Arizona not to exceed an annual maximum amount of 2,800,000 acre-feet;

2.6 WHEREAS, the Consolidated Decree directs that Colorado River water shall be released or delivered to water users in the Lower Division States only pursuant to valid contracts with the Secretary;

2.7 WHEREAS, GSC Farm, LLC (GSC) and the United States entered into Contract No. 13-XX-30-W0571, dated December 23, 2013 (GSC Contract) for the annual diversion of up to 2,673.3 acre-feet of Arizona fourth-priority Colorado River water for Irrigation Use within the GSC Contract Service Area, as shown in Exhibit A of the GSC Contract;

2.8 WHEREAS, on December 3, 2014, in accordance with Contract No. 2-07-30-W0028, Partial Assignment and Transfer No. 4, Cibola Valley Irrigation and Drainage District assigned 240 acre-feet per year of its Arizona fourth-priority Colorado River water Entitlement to GSC;

2.9 WHEREAS, in conjunction with Partial Assignment and Transfer No. 4, the GSC

Contract was amended and, among other things, provided an Entitlement for the annual diversion of up to 2,913.3 acre-feet of Arizona fourth-priority Colorado River water for Irrigation Use within the GSC Contract Service Area as shown in Exhibit A of the GSC Contract;

2.10 WHEREAS, GSC and Queen Creek have consulted with ADWR pursuant to A.R.S. § 45-107(D) on a proposed transfer of a portion of GSC's Arizona fourth-priority Colorado River water Entitlement under the GSC Contract to Queen Creek, and ADWR, in accordance with its Substantive Policy Statement No. CR11, entitled, "Policy and Procedure for Transferring an Entitlement of Colorado River Water", recommended by letter dated September 4, 2020, that the partial assignment and transfer be approved;

2.11 WHEREAS, by letter dated January 20, 2021, ADWR recommended that 2,033.01 acre-feet per year of GSC's historical Consumptive Use of 2,083.01 acre-feet per year, based on an unmeasured return flow factor of 0.285 (calculated as 2,913.30 acre-feet per year of diversions * 0.715), be assigned and transferred to Queen Creek;

2.12 WHEREAS, ADWR also recommended on January 20, 2021, based on the GSC Development Plan submitted by GSC to ADWR in November 2020, that GSC retain 50 acre-feet per year for future Consumptive Use (69.93 acre-feet per year on a diversion basis) on the GSC lands;

2.13 WHEREAS, concurrently with the execution of this Contract, the GSC Contract is being amended to reduce GSC's authorized diversion from 2,913.30 acre-feet per year for Irrigation use to 69.93 acre-feet per year for Domestic Use;

2.14 WHEREAS, Queen Creek desires to contract for the diversion and consumptive use of 2,033.01 acre-feet per year of Arizona fourth-priority Colorado River water Entitlement assigned to it by Contract No. 13-XX-30-W0571, Partial Assignment and Transfer No. 1 for use within Queen Creek (Queen Creek Contract Service Area), as shown in Exhibit D attached hereto;

2.15 WHEREAS, Contract No. 13-XX-30-W0571, Partial Assignment and Transfer No. 1, by and between GSC and Queen Creek, was approved by the United States on _____, 2022;

2.16 WHEREAS, Queen Creek and the United States are entering into this Contract (a novation agreement) for the annual diversion and consumptive use of 2,033.01 acre-feet of Arizona fourth-priority Colorado River water Entitlement;

2.17 WHEREAS, to effectuate delivery of the Arizona fourth-priority Colorado River water Entitlement to Queen Creek's place of use, Queen Creek is concurrently entering a Reclamation Wheeling Contract with the United States for the transportation of non-project water through the CAP System, which in the future may be replaced with a Central Arizona Water Conservation District (CAWCD) Wheeling Contract, all pursuant to the Central Arizona Project System Use Agreement Between the United States and the Central Arizona Water Conservation District, dated February 2, 2017, Agreement No. 17-XX-30-W0622, as it may be amended and supplemented; the Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, Contract No. 14-06-W-245, Amendment No. 1, dated December 1, 1988, as it may be amended and supplemented; and Federal reclamation law including the Arizona Water Settlements Act, Pub. L. 108-451, 118 Stat. 3478 (Dec. 10, 2004);

2.18 WHEREAS, the standard Colorado River water delivery contract provisions relating to the point of diversion, points of delivery used to convey Mainstream Water to Queen Creek, measurement of Mainstream water, Scheduling of Mainstream water, quality of Mainstream Water, and Water and Air Pollution Control are not applicable herein because Queen Creek's use of its Mainstream Water Entitlement will not occur adjacent to the mainstream and the delivery of Mainstream Water on behalf of Queen Creek will be made to the Mark Wilmer Pumping Plant on Lake Havasu for conveyance through the CAP System by CAWCD pursuant to the Reclamation Wheeling Contract;

2.19 WHEREAS, in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 et seq., the United States completed the Final Environmental Assessment and Finding of No Significant Impact No. PXAO 22-01, dated August 24, 2022, for this action;

2.20 WHEREAS, pursuant to the laws of the State of Arizona, Queen Creek is authorized to contract with the United States;

2.21 WHEREAS, the United States, acting by and through its Contracting Officer, is willing to issue to Queen Creek, and Queen Creek desires to accept from the United States, the contractual right to divert or withdraw, or cause to be diverted or withdrawn, Mainstream Water for Domestic Use within the Queen Creek Contract Service Area, up to the entire amount of its 2,033.01 acre-feet per year Entitlement as set forth in Exhibit B hereto;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

3. DEFINITIONS: For the purpose of this Contract, the following definitions shall apply:

3.1 1944 Contract is the contract dated February 9, 1944, between the United States and the State of Arizona.

3.2 ADWR means the Arizona Department of Water Resources, or its successor, which represents the State of Arizona on issues related to the use of the State of Arizona's Colorado River apportionment.

3.3 A.R.S. means State of Arizona Revised Statutes.

3.4 CAP means the Central Arizona Project.

3.5 CAP System means all of the Transferred Works of the CAP including but not limited to: (A) the Mark Wilmer Pumping Plant; (B) the Hayden-Rhodes Aqueduct; (C) the Fannin-McFarland Aqueduct; (E) the New Waddell Dam; (F) any pumping plant or appurtenant works of a feature described in any of (A) through (E); and (G) any extension of addition to, or replacement for a feature described in any of (A) through (E); and (G) any extension of, addition to, or replacement for a feature described in any of (A) through (F).

3.6 CAWCD means the Central Arizona Water Conservation District, a multi-county water conservation district organized under the laws of Arizona, or any successor operating agency for the CAP.

3.7 Consolidated Decree means the Consolidated Decree of the Supreme Court of the United States in the case of *Arizona* v. *California, et al*., entered March 27, 2006, (547 U.S. 150 (2006)), or as it may be further modified.

3.8 Consumptive Use means diversion from the mainstream of the Colorado River less such Return Flow Water thereto as is available for consumptive use in the United States or in satisfaction of the Mexican Treaty Obligation. Consumptive use from the mainstream within a state shall include all consumptive uses of water from the mainstream, including water drawn from the mainstream by underground pumping, and including, but not limited to, consumptive uses made by persons, by agencies of the state, and by the United States for the benefit of Indian reservations and other Federal establishments within the state.

3.9 Contracting Officer means the Secretary or a duly authorized representative. Unless otherwise directed by the Secretary, the Regional Director, Bureau of Reclamation, Boulder City, Nevada, shall be the Contracting Officer.

3.10 Domestic Use means the use of Mainstream Water for household, stock, municipal, mining, milling, industrial and other like purposes, but excludes the release of water solely for generation of hydroelectric power.

3.11 Entitlement means authorization to beneficially use Mainstream Water pursuant to (i) a decreed right, (ii) a contract with the United States through the Secretary, or (iii) a Secretarial Reservation of Mainstream Water.

3.12 Exchange means the exchange of Mainstream Water for an agreed-upon amount of other Mainstream Water or non-Mainstream Water.

3.13 Exhibit A is a map of the CAWCD point of diversion for the CAP at the Mark Wilmer Pumping Plant located in Lake Havasu, Arizona. Exhibit A is attached hereto and by this reference made a part hereof.

3.14 Exhibit B sets forth Queen Creek's type of water use pursuant to the Contract, contract dates, priority within the State of Arizona, and the maximum annual diversion and

Consumptive Use Entitlement amount in acre-feet. Exhibit B is attached hereto and by this reference made a part hereof.

3.15 Exhibit C sets forth the Reclamation Wheeling Contract.

3.16 Exhibit D is a map of the Queen Creek Contract Service Area. Exhibit D is attached hereto and by this reference made a part hereof.

3.17 Irrigation Use means the use of Mainstream water for the production of agriculture crops or livestock, including use of water for other purposes incidental thereto, on tracks of lands operated in units of more than five (5) acres.

3.18 Lease means the temporary conveyance of use of an Entitlement from an Entitlement holder to another person or entity.

3.19 Lower Basin means those parts of the States of Arizona, California, Nevada, New Mexico, and Utah within and from which waters naturally drain into the Colorado River below Lee Ferry and also parts of those states located outside the drainage area which are or shall hereafter be beneficially served by water diverted from the Colorado River below Lee Ferry.

3.20 Lower Division States means the States of Arizona, California, and Nevada.

3.21 Mainstream Water means the water of the Colorado River within the United States downstream of Lee Ferry, including reservoirs thereon, and the water withdrawn from the Colorado River Aquifer which originated from the Colorado River or would be replaced by water from the Colorado River upon withdrawal, as determined by the Contracting Officer.

3.22 Master Repayment Contract means the Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, Contract No. 14-06-W-245, Amendment No. 1, dated December 1, 1988, as amended and supplemented.

3.23 Mexican Treaty Obligation means the United States obligation under the Mexican Water Treaty, Executive A, Seventy-eighth Congress, second session, a treaty between the United States of America and the United Mexican States, signed at Washington, D.C., on

February 3, 1944, relating to the utilization of the waters of the Colorado and Tijuana rivers and of the Rio Grande from Fort Quitman, Texas, to the Gulf of Mexico; Executive H, Seventy-eighth Congress, second session, a protocol signed at Washington, D.C., on November 14, 1944, supplementary to the Mexican Water Treaty; and obligations associated with Minutes of the International Boundary and Water Commission adopted pursuant to the Mexican Water Treaty.

3.24 Non-Project Water means water other than Project Water.

3.25 Operating Criteria means Criteria for Coordinated Long-Range Operation of Colorado River Reservoirs Pursuant to the Colorado River Basin Project Act of September 30, 1968 (Public Law 90-537), as amended, promulgated by the Secretary, and Section 1804(c)(3) of the Grand Canyon Protection Act of 1992 (Public Law 102-515).

3.26 Perfected Right means a water right acquired in accordance with State of Arizona law, which right has been exercised by the actual diversion of a specific quantity of water for beneficial use that has been applied to a defined area of land or to definite municipal or industrial works, and includes water rights created by the reservation of Mainstream Water for the use of Federal establishments under Federal law whether or not the water has been applied to beneficial use or used continuously.

3.27 Present Perfected Right(s) means a perfected right(s) defined by the Consolidated Decree, existing as of June 25, 1929 (the effective date of the Boulder Canyon Project Act). Present Perfected Rights are listed in the Consolidated Decree.

3.28 Project Water means that water defined as Project Water in the Repayment Stipulation.

3.29 Queen Creek Contract Service Area is the Town of Queen Creek, which boundaries at the time of execution of this Contract are entitled to use Mainstream Water delivered on its behalf at the Mark Wilmer Pumping Plant and transported through the CAP System to Queen Creek's points of delivery pursuant to the Reclamation Wheeling Contract, as shown in Exhibit D and attached hereto.

3.30 Reclamation Wheeling Contract means the Reclamation Wheeling Contract To Transport Non-Project Water, Contract No. 20-XX-30-W0691, dated _____, between the United States and Queen Creek for the delivery of Queen Creek's Arizona fourth-priority Colorado River water through the CAP System to the points of delivery specified in the Reclamation Wheeling Contract.

3.31 Repayment Stipulation means the Stipulated Judgment and the Stipulation for Judgment (including any exhibits to those documents) entered on November 21, 2007, in the United States District Court for the District of Arizona in the consolidated civil action styled *Central Arizona Water Conservation District v. United States*, *et al*., and numbered CIV 95-625-TUC-WDB (EHC) and CIV 95-1720-PHX-EHC.

3.32 Return Flow Water means Mainstream Water that has been diverted or pumped and which flows or percolates back to the Colorado River or to the Colorado River Aquifer and is available for use in the United States or in satisfaction of the Mexican Treaty Obligation in a manner approved by the Contracting Officer.

3.33 Secretarial Reservation means water rights created by the Secretary, by the reservation of Mainstream Water for the use of Federal establishments under Federal law.

3.34 Secretary means the Secretary of the Interior or a duly authorized representative.

3.35 Transfer means a permanent change in the place of use of all or part of an Entitlement and may result in a change in the type of use of an Entitlement.

3.36 Transferred Works shall mean such facilities of the water supply or other construction stages as to which OM&R responsibility of transferred from the United States to the Operating Agency.

3.37 Uncontrollable Force is any cause beyond the control of the Party affected. Uncontrollable forces shall include, but are not necessarily limited to, drought, facilities failure, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority which by exercise of due diligence and foresight

such Party could not have been reasonably expected to avoid.

3.38 Year means calendar year.

4. TERM OF CONTRACT: Subject to the terms, conditions, and provisions set forth herein, this Contract is effective the date first written above and is for permanent service.

5. COMPLIANCE WITH THE 1944 CONTRACT AND A.R.S.:

5.1 This Contract is subject to the terms and conditions of the 1944 Contract, wherein the United States agreed, subject to the provisions of said contract, to deliver Mainstream Water for use in the State of Arizona to individuals, irrigation districts, corporations, or political subdivisions which may contract for Colorado River water with the Secretary, or to Federal lands within the State of Arizona.

5.2 The Consumptive Use of Mainstream Water by Queen Creek shall discharge a portion of the United States obligation to deliver Mainstream Water pursuant to the 1944 Contract.

5.3 The use of Mainstream Water by Queen Creek shall be consistent with applicable Arizona water law to the extent that State of Arizona laws are not inconsistent with the laws and regulations of the United States. In the event that State of Arizona water law conflicts with Federal law and regulations, Federal law and regulations shall control.

6. PRIORITY OF MAINSTREAM WATER WITHIN THE STATE OF ARIZONA:

6.1 Within the State of Arizona, the following priorities shall apply to the administration of the State of Arizona's 2,800,000 acre-foot annual apportionment of Mainstream Water. The second and third priorities are coequal.

6.1.1 First Priority:	Satisfaction of Present Perfected Rights as defined and provided for in the Consolidated Decree.
6.1.2 Second Priority:	Satisfaction of Secretarial Reservations and Perfected Rights established or effective prior to September 30, 1968.
6.1.3 Third Priority:	Satisfaction of Entitlements pursuant to contracts between the United States and water users in the State of Arizona executed on or before September 30, 1968.

6.1.4 Fourth Priority: Satisfaction of Entitlements pursuant to: (i) contracts, Secretarial Reservations, Perfected Rights, and other arrangements between the United States and water users in the State of Arizona entered into or established subsequent to September 30, 1968, for use on Federal, State, or privately-owned lands in the State of Arizona (for a total quantity of not to exceed 164,652 acre-feet of diversions annually); and (ii) Contract No. 14-06-W-245 dated December 15, 1972, as amended, between the United States and the Central Arizona Water Conservation District for the delivery of Mainstream Water for the Central Arizona Project, including use of Mainstream Water on Indian lands.

Entitlements having a fourth priority as defined in (i) and (ii) herein are coequal. Reductions in Entitlements having a fourth priority shall be borne by each Entitlement holder in the same proportion as its Entitlement, or as required by law, regulation, or Secretarial determination. If, however, a reduction-sharing agreement is entered into between two or more authorized users, then the reduction shall be shared among the parties as provided in the agreement, subject to approval by the Contracting Officer after consultation with ADWR.

6.2 If the Contracting Officer determines it is necessary to enforce a system of priorities for the use of Mainstream Water within the State of Arizona, water deliveries made pursuant to this Contract shall be in accordance with the Annual Operating Plan for Colorado River Reservoirs adopted by the Secretary pursuant to the Operating Criteria.

6.2.1 The Secretary's determination concerning reduction from the maximum Contract amount in any year in which shortage is declared, shall be in accordance with the priority system set forth in Section 6.1.

6.3 This Contract retains the priority of an Arizona fourth-priority contract entered into or established subsequent to September 30, 1968, for use on Federal, State, or privately-owned lands in the State of Arizona (for a total quantity not to exceed 164,652 acre-feet of diversions annually), as described in subsection 6.1.4 (i) herein. The Contracting Officer will administer this Entitlement in such a way as to prevent the transfer of water from GSC to Queen Creek from impairing the Boulder Canyon Project's purposes and operations, the Secretary's trust obligations

to Native Americans, and Reclamation's contractual obligations to others.

7. SCHEDULING AND REPORTING OF MAINSTREAM WATER DELIVERIES:

7.1 On or before the 1st day of October, Queen Creek shall provide an annual written schedule for the amount of Mainstream Water to be diverted for the upcoming calendar year at the Mark Wilmer Pumping Plant to CAWCD, with a copy to Reclamation and ADWR.

7.2 On or before the 20th day of January, Queen Creek shall submit to the Contracting Officer, with a copy to CAWCD and ADWR, a complete written report showing the amount of Mainstream Water delivered to the Mark Wilmer Pumping Plant on Lake Havasu on behalf of Queen Creek, by month during the previous calendar year, or as otherwise determined by the Contracting Officer.

8. DIVERSION AND USE OF MAINSTREAM WATER:

8.1 The amount of Mainstream Water delivered to the Mark Wilmer Pumping Plant on behalf of Queen Creek pursuant to this Contract shall not exceed Queen Creek's diversion and consumptive use Entitlement to 2,033.01 acre-feet per year of Mainstream Water as set forth in Exhibit B of this Contract.

8.2 Mainstream Water will be delivered on behalf of Queen Creek at the Mark Wilmer Pumping Plant shown in Exhibit A, attached hereto.

8.3 Queen Creek's Arizona fourth-priority Colorado River Water Entitlement, in accordance with this Contract, is authorized for Domestic Use.

8.4 Any change in water diversion or water delivery points require prior written approval by the Contracting Officer.

8.5 The priority dates of Queen Creek's Mainstream Water Entitlement pursuant to this Contract are as specified in Exhibit B.

8.6 Queen Creek agrees that all Mainstream Water diverted for or on behalf of Queen Creek under this Contract shall be charged against Queen Creek's Entitlement in accordance with this Contract.

8.7 The obligation of the United States to deliver Mainstream Water pursuant to this Contract is subject to the following conditions:

8.7.1 The availability of Mainstream Water for use in the State of Arizona pursuant to the provisions of the Colorado River Compact, the Boulder Canyon Project Act, the Colorado River Basin Project Act, the 1944 Contract, and the Consolidated Decree;

8.7.2 The availability of Mainstream Water pursuant to the Mexican Treaty Obligation;

8.7.3 Section 6 of the Boulder Canyon Project Act which provides that Hoover Dam and Lake Mead will be used: first, for river regulation, improvement of navigation, and flood control; second, for Irrigation Use and Domestic Use and satisfaction of Present Perfected Rights pursuant to Article VIII of the Colorado River Compact; and third, for power; and

8.7.4 The condition that the management and operation of Hoover Dam, Lake Mead, and other works, for the storage, diversion, delivery, and use of Mainstream Water to be delivered to Queen Creek, shall be pursuant to the Colorado River Compact, the Boulder Canyon Project Act, and the Colorado River Basin Project Act.

8.7.5 Delivery of Mainstream Water is subject to reduction from the maximum Contract amount in any year in which the Secretary declares a shortage, in accordance with the priority system set forth in Section 6 herein.

8.7.6 All water diverted for or on behalf of Queen Creek under this Contract shall be considered Mainstream Water, unless the Contracting Officer makes a determination, based upon information provided by Queen Creek, that a diversion is not Mainstream Water.

8.7.7 A determination that the diversion is not Mainstream Water shall be made in consultation with Queen Creek and ADWR.

8.7.8 The Contracting Officer's determination that the diversion is not Mainstream Water shall be in writing.

8.8 The United States reserves the right to temporarily discontinue or reduce the

amount of Mainstream Water made available for diversion pursuant to this Contract whenever the Contracting Officer determines that such discontinuance or reduction is necessary to investigate, inspect, replace, maintain, or repair any works which affect or utilize or are necessary to divert or convey Mainstream Water pursuant to this Contract. If feasible, the Contracting Officer will give notice in advance of such temporary discontinuance or reduction.

8.9 Mainstream Water will not be made available to Queen Creek during any period in which Queen Creek may be in arrears for more than six (6) months in the payment of any fees and charges due the United States pursuant to this Contract.

8.10 If this Contract is terminated or Queen Creek is in arrears for more than six (6) months in the payment of any fee or charge due the United States pursuant to this Contract, the United States may reallocate the authorized use of Mainstream Water according to applicable regulations or policy.

9. CHARGES PAYABLE TO THE UNITED STATES: Queen Creek shall make the following payments to the United States.

9.1 Annual Administration Fee: Upon execution of this Contract and annually thereafter, Queen Creek shall pay the United States costs to administer this Contract and Queen Creek's allocated share of the United States costs to provide services to users of Mainstream Water in the Lower Basin, all as determined by the Contracting Officer after consultation with Queen Creek. The current annual fee is one thousand five hundred dollars ($1,500.00) which shall be the minimum annual fee.

9.1.1 The initial annual administration fee shall be prorated on the basis of one hundred twenty-five dollars ($125.00) per month for the first year. Thereafter, the fee for each subsequent year shall be due in full on January 1st.

9.1.2 The annual administration fee includes the anticipated United States costs to routinely perform the tasks necessary to administer this Contract and maintain waterways and diversion facilities, prepare operating plans, schedule water deliveries, monitor and forecast

Mainstream Water demand and use, prepare and maintain complete records of Mainstream Water use in accordance with Article V of the Consolidated Decree, carry out Reclamation's program to eliminate unauthorized use, ensure environmental compliance, and perform other associated activities.

9.1.3 The Contracting Officer may revise the annual administration fee, but only after three (3) months' advance written notice, if the Contracting Officer determines that a different fee is necessary to cover the United States costs to perform the activities listed in subsection 9.1.2 herein.

9.1.4 Upon Queen Creek's written request, the Contracting Officer will provide Queen Creek with a detailed cost analysis supporting the administration fee adjustment.

9.2 Mainstream Water Diversion Fee: During the Hoover Dam cost-repayment period, Queen Creek is obligated to pay to the United States the sum of $0.25 for each acre-foot of water pumped from the Colorado River by Queen Creek or on its behalf for Domestic Use, pursuant to a payment schedule established by written notice to Queen Creek from the Contracting Officer; provided, however, CAWCD's payment of said fee to the United States on behalf of Queen Creek shall relieve Queen Creek of this obligation. Upon the conclusion of the Hoover Dam cost-repayment period, charges shall be on such basis as may be prescribed by Congress.

9.3 Other Fees and Charges: Queen Creek may be assessed additional fees to compensate the United States for other expenses to be reasonably incurred by the United States for non-routine, non-recurring activities related to this Contract.

9.3.1 The United States shall not undertake any activities requested by Queen Creek which would obligate Queen Creek to pay additional fees or other charges without first consulting Queen Creek about the scope of the work and providing a cost estimate to perform those activities.

9.3.2 For activities performed for the benefit of Lower Basin Mainstream Water users, Queen Creek's fee or charge shall be based upon Queen Creek's allocated share of the

Federal costs associated with the activities; as such fees are determined by the Contracting Officer after consultation with Queen Creek.

10. MEDIUM FOR TRANSMITTING PAYMENTS:

10.1 All payments from Queen Creek to the United States under this Contract shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

10.2 Upon execution of the Contract, Queen Creek shall furnish the Contracting Officer with Queen Creek's taxpayer's identification number (TIN). The purpose for requiring Queen Creek's TIN is for collecting and reporting any delinquent amounts arising out of Queen Creek's relationship with the United States.

11. CHARGES FOR DELINQUENT PAYMENTS:

11.1 Queen Creek shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, Queen Creek shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes sixty (60) days delinquent, in addition to the interest charge, Queen Creek shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent ninety (90) days or more, in addition to the interest and administrative charges, Queen Creek shall pay a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of 6 percent (6%) per year. Queen Creek shall also pay any fees incurred for debt collection services associated with a delinquent payment.

11.2 The interest charge rate shall be the greater of either the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments or the interest rate of 1/2 percent (0.5%) per month. The interest charge rate will be determined as of the due date and remain fixed for the duration of the delinquent period.

11.3 When a partial payment on a delinquent account is received, the amount received shall be applied first to the penalty charges, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

12. GENERAL OBLIGATION - BENEFITS CONDITIONED UPON PAYMENT:

12.1 The obligation of Queen Creek to pay the United States as provided in this Contract is a general obligation of Queen Creek notwithstanding the manner in which the obligation may be distributed among Queen Creek's water users and notwithstanding the default of individual water users in their obligation to Queen Creek.

12.2 The payment of charges becoming due pursuant to this Contract is a condition precedent to receiving benefits under this Contract.

12.3 The termination of this Contract shall not relieve Queen Creek of any obligation then owed to the United States.

13. PRIORITY OF CLAIMS OF THE UNITED STATES: Fiscal claims of the United States arising out of this Contract shall have priority over all others, secured or unsecured, to the extent provided by applicable law.

14. EXCHANGE, LEASE, OR TRANSFER OF USE OF MAINSTREAM WATER: Any Exchange, Lease, or Transfer of use of Queen Creek's Entitlement must be approved in writing by the Contracting Officer before such Exchange, Lease, or Transfer can become effective.

15. EFFECT OF WAIVER OF BREACH OF CONTRACT: All rights of action for breach of any of the provisions of this Contract are reserved to each Party as provided by appropriate law. The waiver of a breach of any of the provisions of this Contract shall not be deemed to be a waiver of any other provision hereof, or any other subsequent breach of any provisions hereof.

16. FIVE- (5-) YEAR REVIEWS: The Contracting Officer reserves the right to reexamine at five- (5-) year intervals beginning five (5) years after the effective date of this Contract, the existing and potential water uses and needs of Queen Creek for the beneficial use of Queen Creek's Entitlement.

16.1 If the Contracting Officer determines that Queen Creek's entire Entitlement has not been or may not be beneficially used, a revision of the amount of Mainstream Water Queen Creek is entitled to have delivered pursuant to this Contract may be necessary, and the Contracting Officer shall revise this Contract accordingly. Prior to such revision, a ninety- (90-) day notice will be given to Queen Creek and ADWR, and Queen Creek shall be given an opportunity to be heard in accordance with applicable regulations. The Contracting Officer shall consult with and take into consideration any recommendation of ADWR prior to making a final determination. In determining the needs or uses of Queen Creek, the Contracting Officer shall consider the factors which include, but are not necessarily limited to, the following:

16.1.1 The amount and nature of the Mainstream Water;

16.1.2 The average unused portion of Queen Creek's Entitlement over the past five (5) years or other appropriate period;

16.1.3 The Queen Creek Contract Service Area future growth projections, build-up schedules, per capita consumption, and economic conditions;

16.1.4 Facts and circumstances unique to the State of Arizona.

16.2 If it is determined by the Contracting Officer that Mainstream Water has not been or may not be beneficially used, the Contracting Officer may reduce the maximum amount of Mainstream Water delivered at the Mark Wilmer Pumping Plant on Lake Havasu on behalf of Queen Creek to an amount the Contracting Officer determines to be reasonably required for beneficial use. Queen Creek will be provided an opportunity to appeal the Contracting Officer's decision pursuant to applicable appeal procedures.

17. BOOKS, RECORDS, AND REPORTS:

17.1 Queen Creek shall make full and complete annual written reports on forms to be designated, supplied, or otherwise approved by the Contracting Officer concerning all Mainstream Water.

17.1.1 Such reports shall include accurate and complete monthly data on all

matters pertaining to this Contract for the preceding calendar year, including, but not necessarily limited to, the volume of Mainstream Water delivered on Queen Creek's behalf at the Mark Wilmer Pumping Plant on Lake Havasu, financial transactions, and other relevant matters that the Contracting Officer may require.

17.1.2 The annual report specified in subsection 7.2 herein shall be submitted to the Contracting Officer and ADWR on or before the 20th day of January or on such date as the Contracting Officer may otherwise request in writing.

17.2 Subject to applicable Federal laws and regulations, each Party shall have the right during normal office hours to examine and make copies of the other Party's books and records relating to matters covered by this Contract.

18. RULES, REGULATIONS, AND DETERMINATIONS:

18.1 The Parties agree that the delivery of Mainstream Water or the use of Federal facilities pursuant to this Contract is subject to applicable Federal law and regulations, Federal Reclamation law, and the rules and regulations promulgated by the Secretary under Reclamation law.

18.2 The Contracting Officer shall have the right to make determinations necessary to administer this Contract which are consistent with the expressed and implied provisions of this Contract and the laws and regulations of the United States and the State of Arizona, to the extent that State of Arizona laws are not inconsistent with the laws and regulations of the United States. Such determinations shall be made in consultation with Queen Creek and ADWR.

18.3 If the Secretary adopts any regulations for the administration of Entitlements in the Lower Basin or for the assessment and collection of fees to cover the United States costs of providing service to those who use Mainstream Water, the terms, definitions, and provisions of said regulations for assessments shall automatically apply to this Contract without any need to renegotiate this Contract.

19. CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS: The

expenditure or advance of any money or the performance of any obligation of the United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve Queen Creek from any obligations under this Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

20. ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED: The provisions of this Contract shall apply to and bind the successors and assigns of the Parties hereto, but no assignment or transfer of this Contract or any right or interest therein by either Party shall be valid until approved in writing by the other Party.

21. NOTICES: Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given on behalf of each Party, when mailed, postage prepaid, or delivered to the other Party at the following addresses:

21.1 Regional Director
Interior Region 8: Lower Colorado Basin
Bureau of Reclamation
Attention: LCB-4400
P.O. Box 61470
Boulder City, NV 89006

21.2 Manager
Town of Queen Creek
22358 South Ellsworth Road
Queen Creek, AZ 85142

21.3 The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Section for other notices.

22. OFFICIALS NOT TO BENEFIT: No member of or Delegate to the Congress, Resident Commissioner, or official of Queen Creek shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

23. UNCONTROLLABLE FORCES: Neither Party shall be considered to be in default in respect to any obligation hereunder, if prevented from fulfilling such obligation by reason of an

Uncontrollable Force. Any Party rendered unable to fulfill any obligation by reason of an Uncontrollable Force shall exercise due diligence to remove such inability with all reasonable dispatch.

24. EQUAL EMPLOYMENT OPPORTUNITY: During the performance of this Contract, agrees as follows:

24.1 Queen Creek will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Queen Creek will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Queen Creek agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

24.1 Queen Creek will, in all solicitations or advertisements for employees placed by or on behalf of Queen Creek, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

24.2 Queen Creek will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal

complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Queen Creek's legal duty to furnish information.

24.3 Queen Creek will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the labor union or workers' representative of Queen Creek's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

24.4 Queen Creek will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

24.5 Queen Creek will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

24.6 In the event of Queen Creek's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and Queen Creek may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

24.7 Queen Creek will include provisions of Subsections 24.1 through 24.7 in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Queen Creek will take such

action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event Queen Creek becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Queen Creek may request the United States to enter into such litigation to protect the interests of the United States.

25. COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS:

25.1 Queen Creek shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), Title II of the Americans with Disabilities Act of 1990, and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

25.2 These statutes require that no person in the United States shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By executing this Contract, Queen Creek agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

25.3 Queen Creek makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to Queen Creek by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. Queen Creek recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this Section, and that the United States reserves the right to seek judicial enforcement thereof.

25.4 Complaints of discrimination against Queen Creek shall be investigated by the

Contracting Officer.

26. COMPLIANCE WITH ENVIRONMENTAL LAWS: Queen Creek, in carrying out the provisions of this Contract, shall comply with all applicable environmental laws and regulations of the United States and the State of Arizona and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

27. APPLICABILITY OF THE RECLAMATION REFORM ACT: This Contract does not subject Queen Creek to either the acreage ownership limitations or the full cost pricing provisions of the Reclamation Reform Act of 1982 (Public Law 97-293, 96 Stat. 1261) enacted October 12, 1982. Provided, however, That other provisions of the act shall apply if deemed to be applicable by the Secretary.

28. QUALITY OF MAINSTREAM WATER:

28.1 The United States does not warrant the quality of Mainstream Water diverted at the Mark Wilmer Pumping Plant and delivered to the Queen Creek Contract Service Area and is under no obligation to construct or finish water treatment facilities to maintain or improve the quality of Mainstream Water, except as otherwise provided in relevant Federal public laws.

28.2 Mainstream Water shall be delivered without treatment of any kind and without any warranty whatsoever by the United States as to the quality or fitness of such water for Domestic Use within the Queen Creek Contract Service Area.

29. RELEASE AND INDEMNITY:

29.1 Insofar as permitted by law, Queen Creek agrees to indemnify and hold harmless the United States, its employees, agents, subcontractors, successors, or assigns, from every loss or claim for damages and from liability to persons or property, direct or indirect, and of any nature whatsoever arising by reason of the delivery of Mainstream Water pursuant to this Contract.

29.2 Insofar as permitted by law, Queen Creek releases and agrees to hold harmless the United States, its employees, agents, subcontractors, successors, or assigns from any liability or responsibility whatsoever for the following:

29.2.1 The ground-water level associated with the diversion of Mainstream Water or the maintenance thereof;

29.2.2 The surface elevation of the Colorado River;

29.2.3. The quality, composition, or contents of Mainstream Water diverted or for any lack of fitness of such water for any use thereof, either at the point of delivery or at the place of use;

29.2.4 The damages when suspensions or reduction in delivery of Mainstream Water occur for any reason; and

29.2.5 The claims, damages, or alleged causes of action claimed to have resulted from the termination of this Contract.

30. REMEDIES UNDER CONTRACT NOT EXCLUSIVE: Nothing in this Contract shall be construed in any manner to abridge, limit, or deprive either Party of any means to enforce any remedy either at law or in equity for the breach of any of the provisions hereof, or of any other remedy which it would otherwise have.

31. EXHIBITS MADE PART OF CONTRACT: The Queen Creek Contract Service Area, points of delivery, and/or Queen Creek's Entitlement to Mainstream Water may be modified by mutual written agreement of the Parties and such modifications will be set forth in the exhibits. Exhibits A through C are attached hereto and made a part hereof, and each shall be in full force and effect in accordance with its respective provisions until superseded by a subsequent exhibit executed by the Parties.

32. CONTRACT DRAFTING CONSIDERATIONS: Sections 1 through 32 of this Contract have been drafted, negotiated, and reviewed by the Parties hereto, each of whom is sophisticated in the matters to which this Contract pertains, and no one Party shall be considered to have drafted the stated Sections.

33. COUNTERPARTS:

33.1 This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single, executed Contract.

IN WITNESS WHEREOF, the Parties have executed this Contract No. 20-XX-30-W0689, including Exhibits A through C, the day and year first above written.

THE UNITED STATES OF AMERICA

By: _____
Jacklynn L. Gould, P.E.
Regional Director
Interior Region 8: Lower Colorado Basin
Bureau of Reclamation

Signatures continue on next page.

Signatures continue from previous page.

Attest:

TOWN OF QUEEN CREEK

By: _____

By: _____
Mr. John Kross
Manager

Title: _____

MAP OF THE MARK WILMER PUMPING PLANT

1. This Exhibit A, made this _____ day of _____, 2023, to be effective under and as a part of Contract No. 20-XX-30-W0689, hereinafter called "Contract," shall become effective on the date of the Contract's execution and shall remain in effect until superseded by another Exhibit A executed by the Parties; Provided, That this Exhibit A or any superseding Exhibit A shall terminate with termination of the Contract.

2. The following map depicts the Mark Wilmer Pumping Plant located in Lake Havasu, Arizona to which the United States will deliver Colorado River water on behalf of Queen Creek.


Lake Havasu
Parker Dam Rd
Bill Williams Nat'l Wildlife Ref
Parker Dam Rd
CALIFORNIA
ARIZONA
Parker Dam Rd
Mohave
La Paz
Havasu Springs Resort
95
95
N Highway 95
Parker Dam
Mark Wilmer Pumping Plant
Central Arizona Project Canal
N Highway 95
Parker Dam
Mark Wilmer Pumping Plant
Central Arizona Project Canal
N
0
0.55
1.1 Miles

MAINSTREAM WATER ENTITLEMENT FOR THE TOWN OF QUEEN CREEK (QUEEN CREEK)

1. This Exhibit B, made this _____day of _____, 2023, to be effective under and as a part of Contract No. 20-XX-30-W0689, hereinafter called "Contract," shall become effective on the date of the Contract's execution and shall remain in effect until superseded by another Exhibit B executed by the Parties; Provided, That this Exhibit B or any superseding Exhibit B shall terminate with termination of the Contract.

2. Queen Creek has the following Entitlement to the diversion of Mainstream Water for beneficial Domestic Use within the Queen Creek Contract Service Area. The following table lists the type of water use, contract date, priority within the State of Arizona, and the annual Entitlement diversion and Consumptive Use amount in acre-feet.

TYPE OF WATER USE	PRIORITY DATE	STATE OF ARIZONA PRIORITY	ANNUAL DIVERSION AND CONSUMPTIVE USE
Domestic	January 31, 1983	Fourth-Priority	2,033.01 acre-feet
Total Annual Diversion and Consumptive Use:			**2,033.01 acre-feet**

RECLAMATION WHEELING CONTRACT TO TRANSPORT NON-PROJECT WATER (RECLAMATION WHEELING CONTRACT)

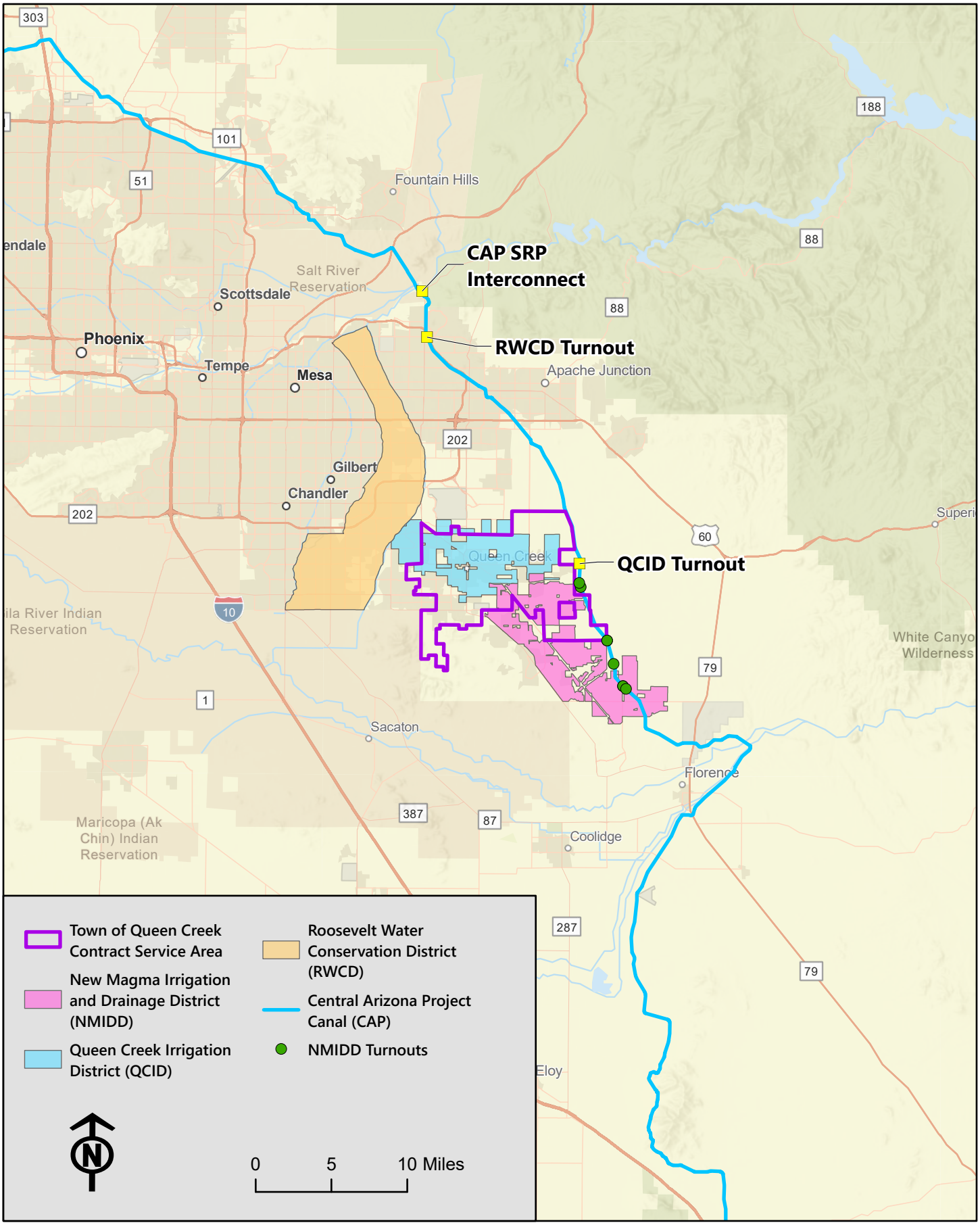
1. This Exhibit C, made this _____day of _____, 2023, to be effective under and as a part of Contract No. 20-XX-30-W0689, hereinafter called "Reclamation Wheeling Contract," shall become effective on the date of the Reclamation Wheeling Contract's execution and shall remain in effect until superseded by another Exhibit C executed by the Parties; Provided, That this Exhibit C or any superseding Exhibit C shall terminate with termination of the Contract.

2. A copy of the Reclamation Wheeling Contract No. 20-XX-30-W0691, between the United States and the Town of Queen Creek dated _____, 2023, is attached.

**MAP OF THE TOWN OF QUEEN CREEK (QUEEN CREEK)
CONTRACT SERVICE AREA**

1. This Exhibit D, made this _____ day of _____, 2023, to be effective under and as a part of Contract No. 20-XX-30-W0689, hereinafter called "Contract," shall become effective on the date of the Contract's execution and shall remain in effect until superseded by another Exhibit D executed by the Parties; Provided, That this Exhibit D or any superseding Exhibit D shall terminate with termination of the Contract.

2. The following map depicts the Queen Creek Contract Service Area and points of delivery, where the United States will deliver Colorado River water on behalf of Queen Creek.


CAP SRP Interconnect
RWCD Turnout
QCID Turnout
Fountain Hills
Salt River Reservation
Scottsdale
Phoenix
Tempe
Mesa
Apache Junction
Gilbert
Chandler
Queen Creek
Sacaton
Florence
Coolidge
Eloy
Maricopa (Ak Chin) Indian Reservation
White Canyon Wilderness
303
101
51
188
88
202
60
10
1
79
387
87
287
Town of Queen Creek Contract Service Area
New Magma Irrigation and Drainage District (NMIDD)
Queen Creek Irrigation District (QCID)
Roosevelt Water Conservation District (RWCD)
Central Arizona Project Canal (CAP)
NMIDD Turnouts
N
0
5
10 Miles

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

BOULDER CANYON PROJECT

PARTIAL ASSIGNMENT AND TRANSFER OF COLORADO RIVER WATER UNDER CONTRACT WITH GSC FARM, LLC TO THE TOWN OF QUEEN CREEK

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

BOULDER CANYON PROJECT

PARTIAL ASSIGNMENT AND TRANSFER OF COLORADO RIVER WATER UNDER CONTRACT WITH GSC FARM, LLC TO THE TOWN OF QUEEN CREEK

1. PREAMBLE: THIS PARTIAL ASSIGNMENT AND TRANSFER NO. 1 of Colorado River water under Contract No. 13-XX-30-W0571, as amended, made this ____ day of _____, 2023, by and between GSC Farm, LLC, a Delaware limited liability company, hereinafter called "GSC," and the Town of Queen Creek, an Arizona municipal corporation, with its principal place of business in Queen Creek, Arizona, hereinafter called "Queen Creek," hereinafter collectively called "Parties";

WITNESSETH THAT:

2. EXPLANATORY RECITALS:

2.1 WHEREAS, under Contract No. 13-XX-30-W0571, as amended, between GSC and the United States of America (United States) dated December 23, 2013 (GSC Contract), GSC has an entitlement to an annual diversion of up to 2,913.3 acre-feet of Arizona fourth-priority Colorado River water for Irrigation Use within the GSC Contract Service Area;

2.2 WHEREAS, GSC desires to partially assign the GSC Contract and to transfer the assigned portion of its Arizona fourth-priority Colorado River water entitlement under the GSC Contract to Queen Creek. GSC also desires to change the type of use for the portion of its Arizona fourth-priority Colorado River water entitlement it desires to retain;

2.3 WHEREAS, as approved by the Mayor and Council in Queen Creek Resolution Nos. 1246-15 and 1246-18, on December 17, 2018, Queen Creek entered into a Purchase and Transfer Agreement for Mainstream Colorado River Water Entitlement with GSC to acquire the

GSC Arizona fourth-priority Colorado River water entitlement held by GSC under the GSC Contract;

2.4 WHEREAS, Queen Creek desires to accept the partial assignment of the GSC Contract and the transfer of Arizona fourth-priority Colorado River water;

2.5 WHEREAS, Queen Creek desires to change the place of use, type of use, and point of diversion of the Arizona fourth-priority Colorado River water entitlement it is accepting;

2.6 WHEREAS, to effectuate delivery of the Arizona fourth-priority Colorado River water entitlement to Queen Creek's place of use, Queen Creek desires to enter a Reclamation Wheeling Contract with the United States or a Wheeling Contract with the Central Arizona Water Conservation District (CAWCD) for the transportation of non-project water through the Central Arizona Project (CAP) System, pursuant to the Central Arizona Project System Use Agreement Between the United States and the Central Arizona Water Conservation District, dated February 2, 2017, Agreement No. 17-XX-30-W0622, as it may be amended and supplemented; the Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project, Contract No. 14-06-W-245, Amendment No. 1, dated December 1, 1988, as it may be amended and supplemented; and Federal reclamation law including the Arizona Water Settlements Act, Pub. L. 108-451, 118 Stat. 3478 (Dec. 10, 2004);

2.6 WHEREAS, pursuant to the provisions of Arizona Revised Statutes §§ 48-3701, et seq., Queen Creek has been organized with the power to enter into a contract or contracts with the Secretary of the Interior (Secretary) to accomplish the purposes of Arizona Revised Statutes, §§ 48-3701, et seq.;

2.7 WHEREAS, on or about November 2, 2009, Queen Creek, the United States, acting through the Secretary, and CAWCD, entered into a subcontract for the delivery of CAP municipal and industrial (M&I) water titled, "Subcontract Among the United States, the Central Arizona Water Conservation District, and the Town of Queen Creek, Providing for Water Service, Central Arizona Project," Subcontract No. 09-XX-30-W0542, as amended;

2.8 WHEREAS, on or about September 20, 2021, Queen Creek, the United States, acting through the Secretary, and the CAWCD, entered into a subcontract for the delivery of CAP Non-Indian Agricultural water, titled "Subcontract Among the United States, the Central Arizona Water Conservation District, and the Town of Queen Creek, Providing for Water Service, Central Arizona Project," Subcontract No. 21-XX-30-W0696;

2.9 WHEREAS, Queen Creek, upon execution of the Arizona fourth-priority Colorado River Contract No. 20-XX-30-W0689 (Queen Creek Contract) between the United States and Queen Creek, will take delivery of up to 2,033.01 acre-feet per year of the Arizona fourth-priority Colorado River in accordance with the Queen Creek Contract and the Reclamation Wheeling Contract To Transport Non-Project Water No. 20-XX-30-W0691 (Reclamation Wheeling Contract);

2.10 WHEREAS, GSC will retain 50 acre-feet per year of Arizona fourth-priority Colorado River water for future Consumptive Use (69.93 acre-feet per year on a diversion basis) for residential development within the GSC Contract Service Area as defined in the GSC Contract, as amended;

2.11 WHEREAS, the GSC Contract will be amended to: (1) decrease GSC's Arizona fourth-priority Colorado River water entitlement from an annual diversion of up to 2,913.3 acre-feet to an annual diversion of up to 69.93 acre-feet for use within GSC's Contract Service Area and (2) change the type of use from Irrigation Use to Domestic Use;

2.12 WHEREAS, the Queen Creek Contract, when executed, will provide an entitlement for the annual diversion and Consumptive Use of up to 2,033.01 acre-feet of Arizona fourth-priority Colorado River water for Domestic Use within the Queen Creek Contract Service Area and will retain the priority date of the Colorado River water entitlement under the GSC Contract;

2.13 WHEREAS, the Arizona State legislature has enacted A.R.S. § 45-107.D which states that certain entities are to cooperate, confer with and obtain the advice of the director of the Arizona Department of Water Resources (ADWR) in connection with certain contracts relating to Colorado River water;

2.14 WHEREAS, ADWR adopted its Substantive Policy Statement No. CR11, entitled, "Policy and Procedure for Transferring an Entitlement of Colorado River Water" on September 4, 2020, which supersedes Substantive Policy Statement No. CR10, dated January 16, 2019;

2.15 WHEREAS, ADWR, in accordance with its Substantive Policy Statement No. CR11, entitled, "Policy and Procedure for Transferring an Entitlement of Colorado River Water", recommended by letter dated September 4, 2020, that the partial assignment and transfer be approved;

2.16 WHEREAS, by letter dated January 20, 2021, ADWR recommended that 2,033.01 acre-feet per year of GSC's historical Consumptive Use of 2,083.01 acre-feet per year, based on an unmeasured return flow factor of 0.285 (calculated as 2,913.30 acre-feet per year of diversions * 0.715), be assigned and transferred to Queen Creek;

2.17 WHEREAS, ADWR also recommended on January 20, 2021, based on the GSC Development Plan submitted by GSC to ADWR in November 2020, that GSC retain 50 acre-feet per year for future Consumptive Use (69.93 acre-feet per year on a diversion basis) on the GSC lands;

2.18 WHEREAS, in accordance with the Central Arizona Project System Use Agreement Between the United States and the Central Arizona Water Conservation District, dated February 2, 2017, Agreement No. 17-XX-30-W0622, Reclamation has coordinated and consulted with the CAWCD regarding the Reclamation Wheeling Contract No. 20-XX-30-W0691;

2.19 WHEREAS, in accordance with the National Environmental Policy Act, 43 U.S.C. 4321 et seq., the United States completed the Final Environmental Assessment and a Finding of No Significant Impact for this Contract No. 13-XX-30-W0571, Partial Assignment and Transfer No. 1; the Amendment No. 2 to the GSC Contract; the Queen Creek Contract; and the Reclamation Wheeling Contract No. 20-XX-30-W0691;

2.20 WHEREAS, Article 34 of GSC's Contract requires that any assignment of the contract binds the successor of the contract to the full terms of the contract and that the assignment shall not be valid until approved by the Contracting Officer.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

3. PARTIAL ASSIGNMENT AND TRANSFER OF COLORADO RIVER WATER FROM GSC TO QUEEN CREEK:

3.1 GSC hereby assigns its entitlement to divert up to 2,033.01 acre-feet per year of Arizona fourth-priority Colorado River water for Irrigation Use to Queen Creek, including its rights, interests, and obligations in the GSC Contract.

3.2 Queen Creek hereby accepts and assumes the assignment from GSC in Subsection 3.1.

4. CONTRACT NO. 13-XX-30-W0571, AS AMENDED: GSC's Arizona fourth-priority Colorado River water entitlement to divert up to 2,913.3 acre-feet per year under the GSC Contract will be reduced to a diversion of up to 69.93 acre-feet per year (approximately 50 acre-feet per year for future Consumptive Use), and the type of use will be changed from Irrigation Use to Domestic Use within the GSC Contract Service Area.

5. DEVELOPMENT OF AMENDED CONTRACTS: This Contract No. 13-XX-30-W0571, Partial Assignment and Transfer No. 1 is approved contingent upon GSC entering into an amended Colorado River water delivery contract with the United States, Queen Creek entering into a Colorado River water delivery contract with the United States, and Queen Creek entering into a Reclamation Wheeling Contract, all within 1 year from the date of this Partial Assignment and Transfer No. 1, unless an extension is agreed to by the Contracting Officer.

6. COUNTERPARTS

6.1 This Contract No. 13-XX-30-W0571, Partial Assignment and Transfer No. 1 may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single executed Partial Assignment and Transfer No. 1.

IN WITNESS WHEREOF, the Parties have executed this Contract 13-XX-30-W0571, Partial Assignment and Transfer No. 1 on the day first written above.

GSC FARM, LLC

Attest: _____ By: _____
Mr. Michael Malano Mr. Michael Schlehuber

Signatures continue on next page.

Signatures continue from previous page.

TOWN OF QUEEN CREEK

Attest: _____

By: _____
Manager

Signatures continue on next page.

Pursuant to Section 34 of Contract No. 13-XX-30-W0571, dated December 23, 2013, as amended, this Contract No. 13-XX-30-W0571, Partial Assignment and Transfer No. 1 by GSC to Queen Creek is hereby approved.

THE UNITED STATES OF AMERICA

By: _____

Jacklynn L. Gould, P.E.
Regional Director
Interior Region 8: Lower Colorado Basin
Bureau of Reclamation

RECLAMATION WHEELING CONTRACT
BETWEEN
THE UNITED STATES
AND THE TOWN OF QUEEN CREEK
TO TRANSPORT NON-PROJECT WATER

CENTRAL ARIZONA PROJECT

1. PREAMBLE: THIS RECLAMATION WHEELING CONTRACT TO TRANSPORT NON-PROJECT WATER (Reclamation Wheeling Contract) No. 20-XX-30-W0691, made this ____ day of _____, 20_____, pursuant to the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including but not limited to the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), as amended, the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), and particularly the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885), as amended, and the Arizona Water Settlements Act (118 Stat. 3478) ("AWSA"), all collectively hereinafter referred to as the "Federal Reclamation Laws," among the UNITED STATES OF AMERICA, acting through the Secretary of the Interior, hereinafter referred to as the "United States" or "Contracting Officer" and the TOWN OF QUEEN CREEK, an Arizona municipal corporation, with its principal place of business in Queen Creek, Arizona, hereinafter referred to as "Queen Creek";

WITHNESSETH THAT:

2. EXPLANATORY RECITALS

2.1 WHEREAS, Article 8.17 of the Contract Between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the

Central Arizona Project, Contract No. 14-06-W-245, Amendment No. 1, dated December 1, 1988, as it may be amended and supplemented ("Master Repayment Contract") authorizes Reclamation to deliver Non-Project Water under Reclamation Wheeling Contracts and Federal Arrangements using the Central Arizona Project (CAP) System;

2.2 WHEREAS, Section 103 of the AWSA provides that, "In accordance with the CAP Master Repayment Contract, the CAP may be used to transport non-project water for: (1) domestic, municipal, fish and wildlife, and industrial purposes; and (2) any purpose authorized under the Colorado River Basin Project Act;"

2.3 WHEREAS, the United States and CAWCD have entered into an agreement entitled, "Central Arizona Project System Use Agreement between the United States and the Central Arizona Water Conservation District" ("CAP System Use Agreement"), Agreement No. 17-XX-30-W0622, dated February 2, 2017, which clarifies the administration of Reclamation Wheeling Contracts and Federal Arrangements;

2.4 WHEREAS, Queen Creek is entering into a Colorado River Water Delivery Contract with the United States, Contract No. 20-XX-30-W0689, which will entitle it to the annual delivery at the Mark Wilmer Pumping Plant of up to 2,033.01 acre-feet of Arizona fourth-priority Colorado River water;

2.5 WHEREAS, Queen Creek desires to annually wheel the up to 2,033.01 acre-feet of Arizona fourth-priority Colorado River water, which is Non-Project Water, through the CAP System from the Colorado River at the Point(s) of Receipt to the Point(s) of Delivery;

2.6 WHEREAS, the United States is willing to enter a Reclamation Wheeling Contract with Queen Creek to wheel Queen Creek's Non-Project Water until this Reclamation Wheeling Contract is terminated in accordance with Article 4 herein;

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, the United States and Queen Creek agree as follows:

3. DEFINITIONS: Definitions included in the CAP System Use Agreement are applicable to this Reclamation Wheeling Contract. The first letters of terms so defined are capitalized herein. In addition, the following terms, when capitalized, have the meanings indicated:

3.1 Capital Equivalency Charge means an amount equal to the M&I water service capital charge, as published in CAWCD's annual rate schedule for a particular Year, multiplied by 1,931.26 acre-feet, the maximum number of acre-feet per year of Wheeled Water that is not Firming Water, that may be delivered through the CAP System under this Reclamation Wheeling Contract, regardless of the amount to be transported in any given Year.

3.2 Colorado River Water Delivery Contract means Contract No. 20-XX-30-W0689, dated _____, 2022, between the United States and Queen Creek providing for the annual diversion and consumptive use of Queen Creek's Arizona fourth-priority Colorado River water entitlement for delivery at the Mark Wilmer Pumping Plant at Lake Havasu.

3.3 Place(s) of Use means the service area and Point(s) of Delivery depicted on the map in Exhibit A, attached hereto.

3.4 Point(s) of Delivery means the location(s) designated in Exhibit A, attached hereto, where Wheeled Water is diverted from the CAP System for delivery to or on behalf of Queen Creek.

3.5 Point(s) of Receipt means the location designated in Exhibit B, attached hereto, where Wheeled Water will enter the CAP System.

3.6 Wheeled Water means the Non-Project Water, of the type or source available to Queen Creek under the Colorado River Water Delivery Contract, to be transported through the CAP System pursuant to this Reclamation Wheeling Contract.

4. TERM OF AGREEMENT:

4.1 This Reclamation Wheeling Contract shall become effective on the date first written above and shall remain in effect until the termination of Queen Creek's Colorado River Water Delivery Contract unless otherwise terminated in accordance with the provisions of this Reclamation Wheeling Contract.

4.2 Queen Creek acknowledges that this Reclamation Wheeling Contract is being made available as an interim measure until a CAWCD Wheeling Contract, as defined in the CAP System Use Agreement, including in paragraphs 3.11 and 6 of the CAP System Use Agreement, is prepared and ready to be entered into by Queen Creek and CAWCD. This Reclamation Wheeling Contract shall terminate upon execution of the CAWCD Wheeling Contract. Reclamation maintains discretion to terminate this Reclamation Wheeling Contract upon written notice to Queen Creek, if Queen Creek fails to enter into a wheeling contract with CAWCD pursuant to the CAP System Use Agreement.

5. ENVIRONMENTAL CLEARANCE: Notwithstanding any other provision of this Reclamation Wheeling Contract, Wheeled Water shall not be delivered to Queen Creek unless and until Queen Creek has obtained final environmental clearance from the United States for the transportation of Wheeled Water through the CAP System, and for the system or systems through

which Wheeled Water is to be conveyed to the Point(s) of Receipt, and for the system or systems through which Wheeled Water is to be conveyed from the Point(s) of Delivery to the Place of Use. Such system(s) shall include all pipelines, canals, distribution systems, treatment, storage, and other facilities through or in which Wheeled Water is conveyed. Wheeled Water shall only be transported for Queen Creek in a manner consistent with the final environmental clearances granted by the United States. Queen Creek must obtain the United States' approval and environmental clearance for any additional Point(s) of Delivery and Place(s) of Use for Wheeled Water, at the expense of Queen Creek. At the time of execution of this Reclamation Wheeling Contract, the approved Point of Receipt is shown in Exhibit B and those approved Point(s) of Delivery are shown in Exhibit A.

6. PROCEDURE FOR SCHEDULING WATER:

6.1 On or before October 1 of each Year, Queen Creek shall submit in writing to CAWCD, with copies provided to Reclamation and ADWR, a Water Delivery Schedule indicating the amounts of Wheeled Water Queen Creek desires to be delivered at the Point(s) of Delivery during each month of the following Year, taking into account applicable losses.

6.2 Each year, after receipt of Queen Creek's Water Delivery-Schedule, CAWCD shall review it together with all other Water Delivery Schedules, and shall make only such adjustments to Queen Creek's Water Delivery Schedule as are necessary to accommodate the CAP System Operational Capability and scheduling priorities identified in Subsection 10.2.1 and Section 11 of the CAP System Use Agreement, respectively.

6.3 On or before December 15 of each Year, CAWCD shall provide Queen Creek with a copy of the final Water Delivery Schedule for the following Year, which shall show the amount of Wheeled Water to be delivered to the Point(s) of Delivery during each month of that Year.

6.4 The monthly Water Delivery Schedule may be amended upon Queen Creek's written request to CAWCD. Proposed amendments shall be submitted by Queen Creek to CAWCD no later than fifteen (15) days before the desired change is to become effective. CAWCD may modify proposed amendments to Queen Creek's monthly Water Delivery Schedule as necessary to conform to previously approved Water Delivery Schedules and CAP System Operational Capability. CAWCD shall notify Queen Creek of its action on Queen Creek's requested schedule modification within ten (10) days of CAWCD's receipt of such request.

6.5 In any one month during the Year, Queen Creek shall not be entitled to the delivery of greater than eleven percent (11%) of the maximum volume in acre-feet per year of Wheeled Water to be delivered through the CAP System under this Reclamation Wheeling Contract, after applicable losses, as shown in Article 3.1 herein. If requested by Queen Creek, CAWCD may, at its sole discretion, deliver more than eleven percent (11%) of the Wheeled Water in a month only after satisfying all Water Delivery Schedules with the same CAP System scheduling priority as set forth in Section 11 of the CAP System Use Agreement.

6.6 Queen Creek shall indemnify and hold CAWCD, its officers, agents and employees, and the United States, its officers, agents and employees, harmless from all damages and any claims of damage of any nature whatsoever arising out of or connected with the actions of CAWCD regarding water transportation schedules furnished by or to Queen Creek.

7. POINT(S) OF DELIVERY, POINT(S) OF RECEIPT, MEASUREMENT, AND RESPONSIBILITY:

7.1 The United States will coordinate with the CAWCD to schedule transportation of Wheeled Water from the Point(s) of Receipt to the Point(s) of Delivery for delivery to or for the benefit of Queen Creek. As long as CAWCD is able to deliver Wheeled Water as scheduled by Queen Creek, CAWCD may schedule delivery of Queen Creek's Arizona fourth-priority Colorado River water entitlement at the Mark Wilmer Pumping Plant at Lake Havasu in its discretion, in the same manner as its Colorado River water order for Project Water, and consistent with Federal Reclamation Laws and contracts.

7.2 Queen Creek shall secure from CAWCD all necessary land use permits, as provided under Article 7.2.8 of the Operating Agreement, for facilities to be located within the CAP System right-of-way for the purpose of conveying Wheeled Water to the CAP System Point(s) of Receipt and from the Point(s) of Delivery to the Place of Use. Unless CAWCD and Queen Creek agree in writing to the contrary, Queen Creek shall construct and install, at its sole cost and expense all facilities required to transport Wheeled Water from the Point(s) of Delivery to the Place of Use. Queen Creek shall furnish to CAWCD drawings and specifications showing all such facilities to be constructed or installed within the CAP System right-of-way and shall obtain CAWCD's written approval before commencing construction or installation of such facilities. All facilities constructed, installed, operated or maintained on the CAP System right-of-way by or for Queen Creek shall be subject to such further agreements and to such restrictions and regulations as to type, location, method of installation, operation, and maintenance as may be prescribed by CAWCD.

7.3 Upon termination of this Reclamation Wheeling Contract and written notice from CAWCD, and except as may be provided in a future CAWCD Wheeling Contract, Queen Creek shall promptly remove, at its sole cost and expense, all facilities constructed or installed on the CAP System right-of-way under this Reclamation Wheeling Contract and restore said right-of-way and all Project facilities affected to their condition immediately prior to the construction or installation of such connection facilities. If Queen Creek fails to remove said facilities and restore said right-of-way and Project facilities within thirty (30) days after receiving any written notice from CAWCD to do so, CAWCD may remove said facilities and restore said right-of-way and Project facilities at Queen Creek's cost and expense. Within thirty (30) days after receiving written demand from CAWCD to do so, Queen Creek shall pay CAWCD, as specified in such written demand, for all costs and expenses incurred by CAWCD in removing said facilities and restoring said right-of-way and Project facilities.

7.4 When making or considering modifications to the CAP System, CAWCD shall comply with the terms of Article 12 of the Operating Agreement. If modification of the CAP System is required to allow for the interconnection between the CAP System and Queen Creek's facilities constructed on the CAP System right-of-way, including construction of one or more additional CAP turnouts, CAWCD shall make such interconnection modifications at the sole expense of Queen Creek which shall advance fund CAWCD's costs.

7.5 All Wheeled Water shall be measured with equipment that complies with CAWCD and United States standards and shall be operated and maintained by CAWCD. Upon request of Queen Creek, the accuracy of such measurements shall be investigated by CAWCD and Queen Creek, and any errors which are mutually determined to have occurred shall be adjusted; Provided,

however, if CAWCD and Queen Creek cannot agree on the required adjustment, CAWCD's determination shall be conclusive, subject to review and revision by the Secretary.

7.6 If Queen Creek intends to transport Wheeled Water through facilities on the CAP System right-of-way that are owned or operated by entities other than the United States or CAWCD, the use by Queen Creek of such facilities shall be the subject of written agreement(s) between Queen Creek and the owner(s) or operator(s) of such facilities.

7.7 Pursuant to this Reclamation Wheeling Contract, neither the United States nor CAWCD shall be responsible for the control, carriage, handling, use, disposal, or distribution of water up to the Point(s) of Receipt or beyond the Point(s) of Delivery. Except for such claims, costs or damages arising from acts of negligence and committed by the United States or its employees, agents, or contractors for which the United States is found liable under the Federal Tort Claims Act, Queen Creek shall indemnify and hold the United States and CAWCD harmless on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of water up to the Point(s) of Receipt or beyond the Point(s) of Delivery.

8. TEMPORARY REDUCTIONS: The United States and/or CAWCD may discontinue or reduce the quantity of Wheeled Water to be transported as herein provided for the purposes of investigation, inspection, construction, testing, maintenance, repair, or replacement of any of the Project facilities or any part thereof. CAWCD shall attempt to coordinate any such discontinuance or reduction with Queen Creek and give Queen Creek due notice in advance of such discontinuance or reduction. In case of emergency, no notice need be given. The United States, its officers, agents, and employees, and CAWCD, its officers, agents, and employees, shall not be liable for

damages when, for any reason whatsoever, any interruption, discontinuance, or reduction in transportation of Wheeled Water occurs. If any such discontinuance or temporary reduction results in transportation for Queen Creek of less water than what has been paid for in advance, Queen Creek shall be reimbursed or given credit for the appropriate proportion of Fixed OM&R Charges and Pumping Energy Charges prior to the date of Queen Creek's next payment.

9. COMPLIANCE WITH ENVIRONMENTAL LAWS: Queen Creek shall comply with all applicable environmental laws and regulations of the United States and the State of Arizona and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

10. WATER QUALITY:

10.1 Neither the United States nor CAWCD warrants the quality of water transported through the CAP System to Queen Creek pursuant to this Reclamation Wheeling Contract and the United States and CAWCD are under no obligation to construct or furnish water treatment facilities to maintain or better the quality of any water transported through the CAP System. Queen Creek assumes all responsibility for purifying or otherwise treating Wheeled Water received at the Point(s) of Delivery to meet applicable water quality standards established by Federal, state, or local authorities. Queen Creek waives its rights to make a claim against the United States, CAWCD, any Long-Term Contractor, or contractor for Excess Water service on account of the quality of Wheeled Water or any changes in water quality caused by the commingling of Wheeled Water with Project Water and/or Non-Project Water.

10.2 Queen Creek shall comply with and pay for all water quality monitoring, water quality reporting, and water quality compliance and treatment requirements prescribed by CAWCD or the United States applicable to the transportation of Wheeled Water under this

Reclamation Wheeling Contract, which requirements may be amended by CAWCD and/or the United States from time to time.

10.3 Queen Creek shall comply with all applicable state and Federal laws, rules, and regulations governing the transportation of Wheeled Water under this Reclamation Wheeling Contract. All references in this Reclamation Wheeling Contract to laws, rules, and regulations include all amendments and successor laws, rules, and regulations to such laws, rules and regulations.

10.4 Nothing in this Reclamation Wheeling Contract shall be construed to require CAWCD or the United States to receive or transport Wheeled Water if such water fails to meet water quality standards established by CAWCD and the United States under Subsection 12.1 of the CAP System Use Agreement, which water quality standards may be amended by CAWCD and the United States from time to time. Further, nothing in this Reclamation Wheeling Contract shall be construed so as to require that CAWCD or the United States receive or transport Wheeled Water from any source when such receipt or transportation is likely to result in a violation of then existing Federal and state laws or regulations regarding water quality. CAWCD or the United States shall have the right, without liability of any kind, to refuse to transport Wheeled Water if such water fails to meet water quality standards established by CAWCD and the United States and/or if such transportation is likely to result in a violation of then existing Federal and state laws or regulations regarding water quality.

10.5 Queen Creek shall defend, indemnify, protect and save the United States and CAWCD harmless from and against any costs, expenses, claims, damages, demands, or other liability arising from or relating to water quality degradation due to Queen Creek's introduction of Wheeled Water into the CAP System, whether or not asserted by a third party, and, at CAWCD's

election, defend CAWCD against any such losses, claims, damages or other liabilities asserted by a third party.

10.6 CAWCD shall cooperate fully with Queen Creek in the defense of any and all claims, damages, costs and other liabilities asserted by a third party under this Section 10 and shall provide Queen Creek with all information and records necessary for Queen Creek to defend against such claims, damages, costs and other liabilities.

11. LOSSES: Except for any volume of water transported under this Reclamation Wheeling Contract that is Firming Water, as that term is defined in the CAP System Use Agreement, Queen Creek shall be assessed uniform losses of five percent (5%) against all Wheeled Water transported through the CAP System under this Reclamation Wheeling Contract such that the amount of Wheeled Water delivered at Point(s) of Delivery under this Reclamation Wheeling Contract will be five percent (5%) less than the amount of Wheeled Water entering the CAP System at the Point(s) of Receipt. Water transported under this Reclamation Wheeling Contract that is Firming Water shall bear no losses.

12. PAYMENTS:

12.1 Annual Charges:

12.1.1 Fixed OM&R Charge: Queen Creek shall pay in advance the same Fixed OM&R Charge established annually by CAWCD for the delivery of Project Water in the CAP System. On or before the date of execution of this Reclamation Wheeling Contract, or as soon thereafter as is practicable, CAWCD shall notify Queen Creek of the Fixed OM&R Charge for the initial Year of water transportation ("initial Year"). Within a reasonable time of receipt of such notice, but prior to the transportation of Wheeled Water, Queen Creek shall advance to CAWCD,

in monthly installments payable on or before the first day of each month of the initial Year, the Fixed OM&R Charge due for transportation of Wheeled Water scheduled for transportation in the initial Year. Fixed OM&R charges shall be based on the quantities scheduled to be delivered to Queen Creek pursuant to Section 6 herein. For each subsequent Year, CAWCD will establish the Fixed OM&R Charge and shall notify Queen Creek of the Fixed OM&R Charge for such subsequent Year on or before December 15 preceding each subsequent Year. Queen Creek shall advance to CAWCD, in equal monthly installments payable on or before the first day of each month of said subsequent Year, the Fixed OM&R Charge due for transportation of Wheeled Water scheduled for transportation in said subsequent Year.

12.1.2 Pumping Energy Charge: Queen Creek shall pay in advance the same Pumping Energy Charge established annually by CAWCD for the delivery of Project Water in the CAP System. On or before the date of execution of this Reclamation Wheeling Contract, or as soon thereafter as is practicable, CAWCD shall notify Queen Creek of the Pumping Energy Charge for the initial Year of water transportation. Within a reasonable time of receipt of such notice, but prior to the transportation of Wheeled Water, Queen Creek shall advance to CAWCD, in equal monthly installments payable on or before the first day of each month of the initial Year, the Pumping Energy Charge due for transportation of Wheeled Water scheduled for transportation in the initial Year. For each subsequent Year, CAWCD will establish the Pumping Energy Charge and shall notify Queen Creek of the Pumping Energy Charge for such subsequent Year on or before December 15 preceding each subsequent Year. Queen Creek shall advance to CAWCD, in equal monthly installments payable on or before the first day of each month of said subsequent Year the Pumping Energy Charge due for transportation of Wheeled Water scheduled for transportation in said subsequent Year. Queen Creek shall receive credit for the Pumping Energy Charges

associated with any Wheeled Water scheduled for transportation that is not transported through the CAP System to the Point(s) of Delivery.

12.1.3 Capital Equivalency Charge: In addition to the Fixed OM&R Charges and the Pumping Energy Charges required in Articles 12.1.1 and 12.1.2 of this Reclamation Wheeling Contract, each Year Queen Creek shall make payment to CAWCD in equal semiannual installments of a Capital Equivalency Charge. Until fulfillment of CAWCD's repayment obligation the amount of this charge in any Year shall be equal to the M&I water service capital charge, as published in CAWCD's annual rate schedule for that Year, multiplied by the maximum number of acre-feet per year of Wheeled Water that may be delivered (1,931.36 acre-feet) through the CAP System under this Reclamation Wheeling Contract in any given Year, except that the amount of the Capital Equivalency Charge will be reduced for each acre-foot of Wheeled Water that Queen Creek schedules to be delivered for Firming in that Year. CAWCD and the United States will coordinate and consult regarding any appropriate charge for transportation of Wheeled Water following fulfillment of CAWCD's repayment obligation in addition to the charges set forth under Subsections 12.1.1 and 12.1.2. The Capital Equivalency Charge payment for the initial Year shall be advanced to CAWCD in equal semiannual installments on or before December 1 preceding the initial Year and June 1 of said initial Year. Thereafter, for each subsequent Year, payments by the Queen Creek in accordance with the foregoing provisions shall be made in equal semiannual installments on or before the December 1 preceding said subsequent Year and the June 1 of said subsequent Year as may be specified by CAWCD in written notices to the Queen Creek. CAWCD shall deposit the Capital Equivalency Charge revenues to the Lower Colorado River Basin Development Fund.

12.2 The payment of all water transportation charges as required in subarticles 12.1.1, 12.1.2, and 12.1.3 of this Reclamation Wheeling Contract is a condition precedent to the transportation of Wheeled Water through the CAP System.

12.3 The obligation of Queen Creek to pay CAWCD as provided in this Reclamation Wheeling Contract is a general obligation of Queen Creek notwithstanding the manner in which the obligation may be distributed among Queen Creek's water users and notwithstanding the default of individual water users in their obligations to Queen Creek.

13. CHARGES FOR DELINQUENT PAYMENTS AND REMEDIES FOR FAILURE TO PAY:

13.1 Queen Creek shall be subject to interest, administrative charges, and penalty charges on delinquent installments or payments. Queen Creek shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes sixty (60) days delinquent, Queen Creek shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or more, Queen Creek shall pay an additional penalty charge of six percent (6%) per year for each day the payment is delinquent beyond the due date. Further, Queen Creek shall pay any fees incurred for debt collection services associated with a delinquent payment.

13.2 The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the United States Department of the Treasury for application to overdue payments, or the interest rate of one-half percent (0.5%) per month. The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

14. SCHEDULING PRIORITIES: The scheduling and delivery of Wheeled Water pursuant to this Reclamation Wheeling Contract shall be subject to the CAP System Use Scheduling Priorities as set forth in the CAP System Use Agreement.

15. GENERAL PROVISIONS:

15.1 Notices. Any notice, demand or request authorized or required by this Reclamation Wheeling Contract shall be deemed to have been given when mailed, postage prepaid, or delivered to the Regional Director, Interior Region 8: Lower Colorado Basin, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89006-1470, on behalf of Queen Creek and to Town Manager, Town of Queen Creek, 22358 South Ellsworth Road, Queen Creek, Arizona 85142 on behalf of the United States or CAWCD. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

15.2 Rules, Regulations, and Determinations.

15.2.1 CAWCD and Queen Creek agree that the transportation of Wheeled Water pursuant to this Reclamation Wheeling Contract is subject to Federal Reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary under Federal Reclamation law.

15.2.2 The Contracting Officer shall have the right to make determinations necessary to administer this Reclamation Wheeling Contract that are consistent with its express and implied provisions, the laws of the United States and the State of Arizona, and the rules and regulations promulgated by the Secretary. Such determinations shall be made in consultation with CAWCD and Queen Creek.

15.3 Officials Not to Benefit. No Member of or Delegate to the Congress, Resident Commissioner, or official of Queen Creek shall benefit from this Reclamation Wheeling Contract other than as a water user or landowner in the same manner as other water users or landowners.

15.4 Assignment Limited -- Successors and Assigns Obligated. The provisions of this Reclamation Wheeling Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Reclamation Wheeling Contract or any part or interest therein shall be valid until approved by the Contracting Officer.

15.5 Judicial Remedies Not Foreclosed. Nothing herein shall be construed: (a) as depriving any party from pursuing and prosecuting any remedy in any appropriate court of the United States or the State of Arizona which would otherwise be available to such parties even though provisions herein may declare that determinations or decisions of the Secretary or other persons are conclusive or (b) as depriving any party of any defense thereto which would otherwise be available.

15.6 Books, Records, and Reports. Queen Creek shall establish and maintain accounts and other books and records pertaining to the administration of the terms and conditions of this Reclamation Wheeling Contract, including its financial transactions, land use, water supply data, water use, changes of CAP Project works, and to other matters as the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party shall have the right during office hours to examine and make copies of each other's books and records relating to matters covered by this Reclamation Wheeling Contract.

15.7 Equal Opportunity.

During the performance of this Reclamation Wheeling Contract, Queen Creek agrees as follows:

15.7.1 Queen Creek will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Queen Creek will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Queen Creek agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

15.7.2. Queen Creek will, in all solicitations or advancements for employees placed by or on behalf of the Queen Creek, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

15.7.3 Queen Creek will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including

an investigation conducted by the employer, or is consistent with Queen Creek's legal duty to furnish information.

15.7.4 Queen Creek will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of Queen Creek's commitments under section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

15.7.5 Queen Creek will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

15.7.6 Queen Creek will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to Queen Creek's books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

15.7.7 In the event of Queen Creek's noncompliance with the nondiscrimination clauses of this Reclamation Wheeling Contract or with any of such rules, regulations, or orders, this Reclamation Wheeling Contract may be canceled, terminated or suspended in whole or in part and Queen Creek may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

15.7.8 Queen Creek will include the provisions of paragraphs 15.7.1 through 15.7.7 in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each Queen Creek subcontractor or vendor. Queen Creek will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event Queen Creek becomes involved in, or is threatened with, litigation with a Queen Creek subcontractor or vendor as a result of such direction, Queen Creek may request the United States to enter into such litigation to protect the interests of the United States.

15.8 Compliance With Civil Rights Laws and Regulations.

15.8.1 Queen Creek shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

15.8.2 These statutes prohibit any person in the United States from being excluded from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By executing this Reclamation

Wheeling Contract, Queen Creek agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

15.8.3 Queen Creek makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof of the Reclamation Wheeling Contract by Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. Queen Creek recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article and that the United States reserves the right to seek judicial enforcement thereof.

15.8.4 Complaints of discrimination against Queen Creek shall be investigated by the Contracting Officer's Office of Civil Rights.

15.9 Contingent on Appropriation or Allotment of Funds. The expenditure or advance of any money or the performance of any obligation of the United States under this Reclamation Wheeling Contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve Queen Creek from any obligations under this Reclamation Wheeling Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

15.10 Applicability of the Reclamation Reform Act. This Contract does not subject Queen Creek to either the acreage ownership limitations or the full cost pricing provisions of the Reclamation Reform Act of 1982 (Public Law 97-293, 96 Stat. 1261) enacted October 12, 1982.

16. **COUNTERPARTS**:

16.1 This Reclamation Wheeling Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single, executed Reclamation Wheeling Contract.

IN WITNESS WHEREOF, the Parties have executed this Reclamation Wheeling Contract No. 20-XX-30-W0691, including Exhibits, the day and year first above written.

THE UNITED STATES OF AMERICA

By:_____
Jacklynn L. Gould, P.E.
Regional Director
Interior Region 8: Lower Colorado Basin
Bureau of Reclamation

Signatures continued on next page.

Signatures continued from previous page.

TOWN OF QUEEN CREEK

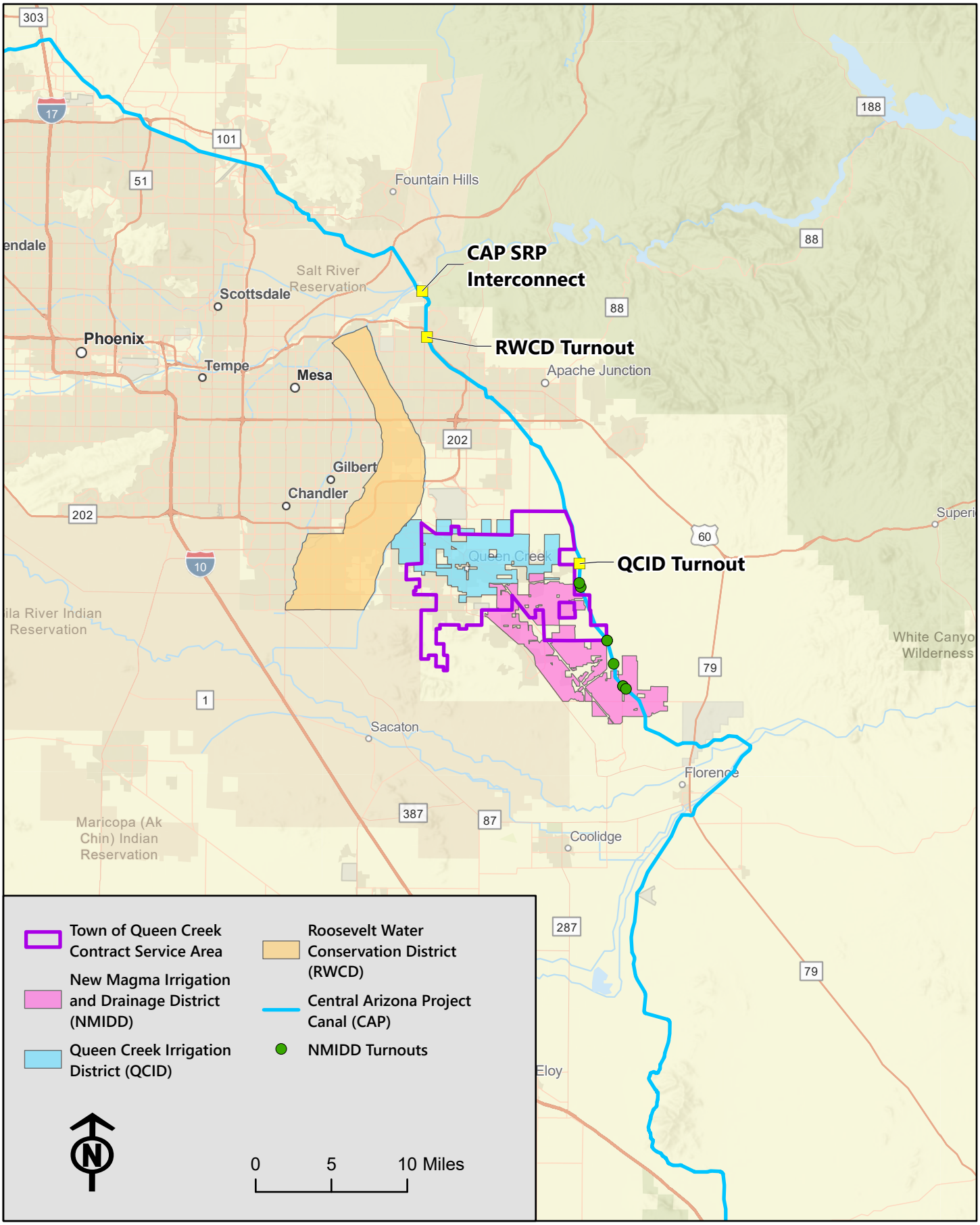
Attest:_____ By: _____

Title:_____ Title:_____

**MAP OF THE TOWN OF QUEEN CREEK'S (QUEEN CREEK)
PLACE(S) OF USE AND POINT(S) OF DELIVERY**

1. This Exhibit A, made this _____ day of _____, 2023, to be effective under and as a part of the Contract No. 20-XX-30-W0691, hereinafter called "Reclamation Wheeling Contract," shall become effective on the date of the Reclamation Wheeling Contract's execution and shall remain in effect until superseded by another Exhibit A executed by the Parties; Provided, That this Exhibit A or any superseding Exhibit A shall terminate with termination of the Reclamation Wheeling Contract.

2. The following map depicts Queen Creek's Place(s) of Use and Point(s) of Delivery.

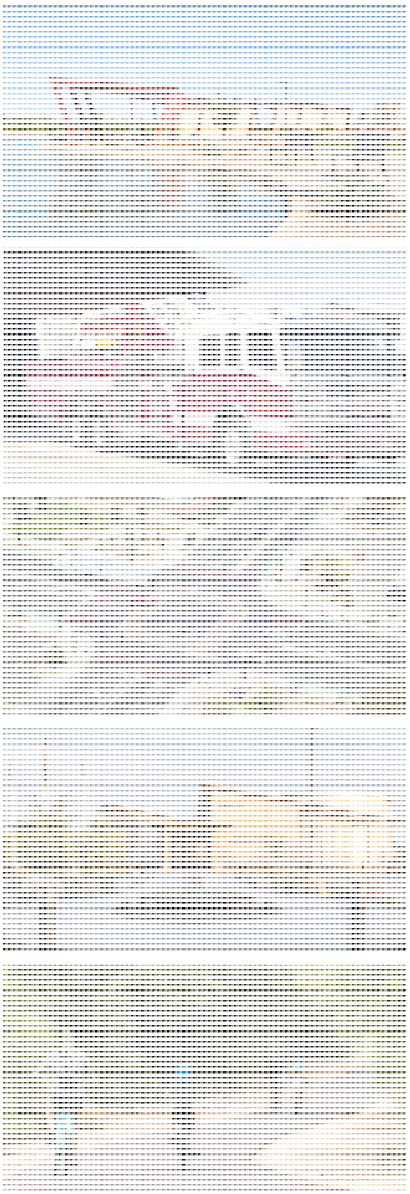

CAP SRP Interconnect
RWCD Turnout
QCID Turnout
Fountain Hills
Salt River Reservation
Scottsdale
Phoenix
Tempe
Mesa
Apache Junction
Gilbert
Chandler
Queen Creek
Sacaton
Florence
Coolidge
Eloy
Maricopa (Ak Chin) Indian Reservation
Ila River Indian Reservation
White Canyon Wilderness
303
17
101
51
188
88
202
10
60
79
387
87
287
Town of Queen Creek Contract Service Area
New Magma Irrigation and Drainage District (NMIDD)
Queen Creek Irrigation District (QCID)
Roosevelt Water Conservation District (RWCD)
Central Arizona Project Canal (CAP)
NMIDD Turnouts
N
0
5
10 Miles

MAP OF THE MARK WILMER PUMPING PLANT

1. This Exhibit B, made this _____ day of _____, 20___, to be effective under and as a part of Contract No. 20-XX-30-W0691, hereinafter called "Reclamation Wheeling Contract," shall become effective on the date of the Reclamation Wheeling Contract's execution and shall remain in effect until superseded by another Exhibit B executed by the Parties; Provided, That this Exhibit B or any superseding Exhibit B shall terminate with termination of the Reclamation Wheeling Contract.

2. The following map depicts the Mark Wilmer Pumping Plant located in Lake Havasu, Arizona to which the United States will deliver Colorado River water on behalf of Queen Creek.

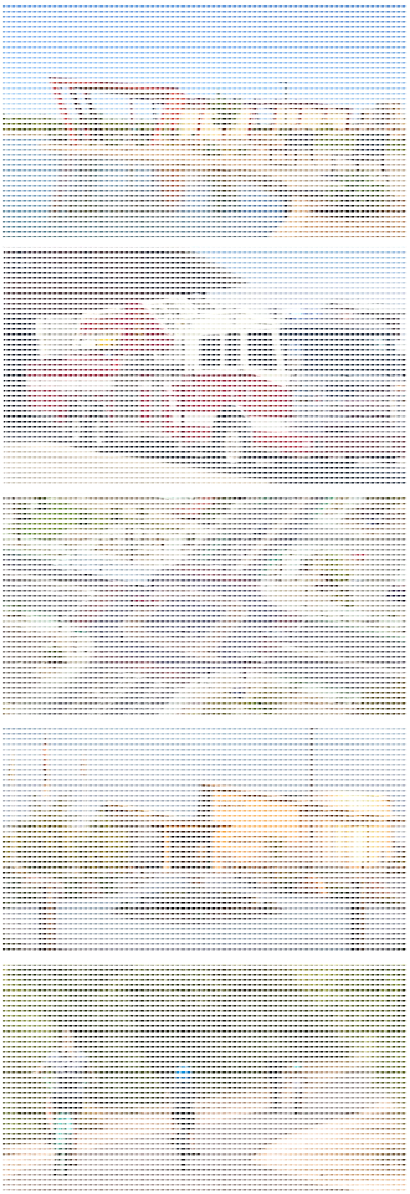

Lake Havasu
Parker Dam Rd
Bill Williams Nat'l Wildlife Ref
Parker Dam Rd
CALIFORNIA
ARIZONA
Parker Dam Rd
Mohave
La Paz
Havasu Springs Resort
95
95
N Highway 95
Parker Dam
Mark Wilmer Pumping Plant
Central Arizona Project Canal
N Highway 95
Parker Dam
Mark Wilmer Pumping Plant
Central Arizona Project Canal
N
0
0.55
1.1 Miles



Cibola Water Rights Acquisition and WIFA Financing

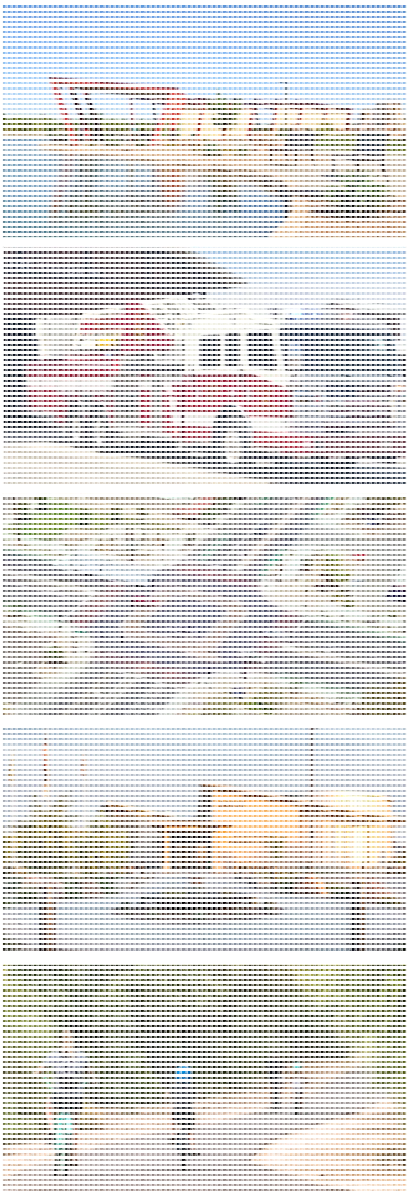
Town Council Meeting

December 7, 2022



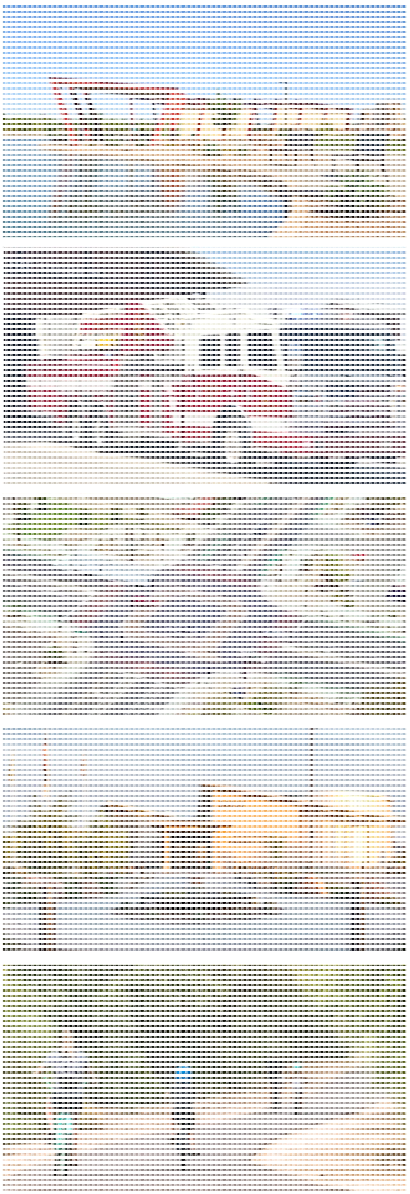
Purpose of Presentation

1. Review Staff Recommendation to Authorize Execution of the Final Draft Contracts Prepared by Reclamation Associated with the Cibola Acquisition (Resolution No. 1511-22)
2. Review Expected Financing Terms Associated with Water Infrastructure Finance Authority (WIFA) Loan to Finance Acquisition of 2,033 AF of Cibola Water Rights in the Amount of $27M (Resolution No. 1508-22)

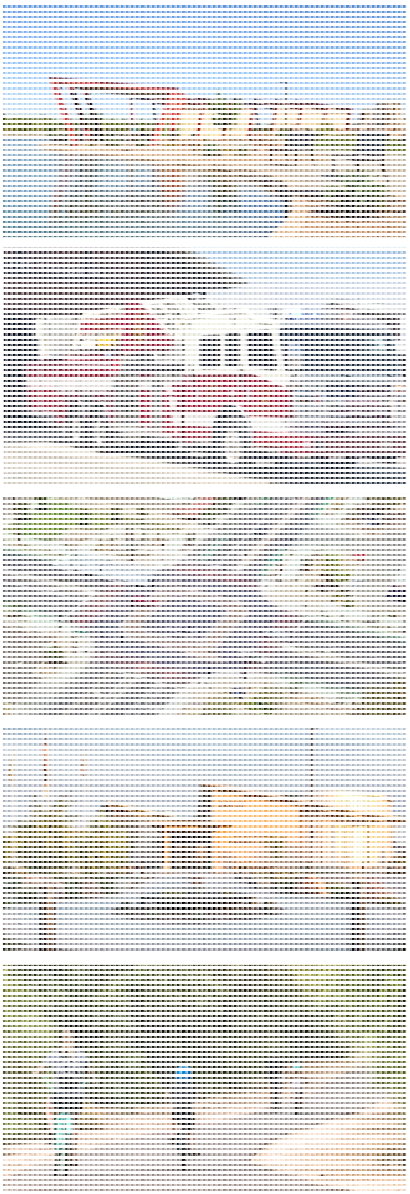


Background

- September 21, 2022 Town Council Meeting
  - Approved Resolution No. 1495-22 Authorizing Execution of the Three Contracts Associated with the Cibola Acquisition.
  - Staff Informed Council the Final Draft Contracts Would be Provided Once They were Available.
  - Approved Resolution No. 1496-22 Authorizing the Application for a WIFA Loan to Fund Costs Related to the Cibola Acquisition.

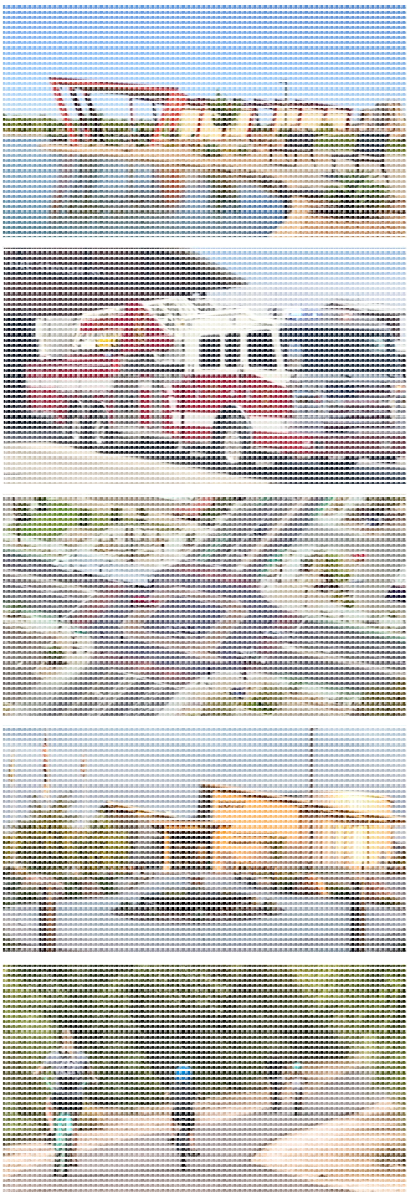


1. Review Staff Recommendation to Authorize Execution of the Final Draft Contracts Prepared by Reclamation Associated with the Cibola Acquisition

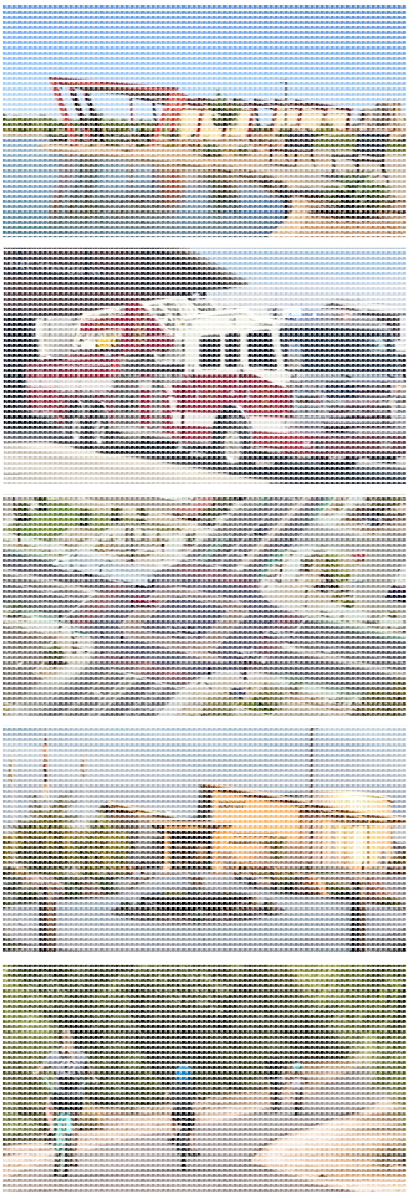


Agreements Related to the Transfer of Cibola Water

- Three Contracts are Required in Order to Complete the Transfer of Cibola Water to the Town
  1. Contract with the Town of Queen Creek for Delivery of Colorado River Water
  2. Partial Assignment and Transfer of Colorado River Water Under Contract with GSC Farm, LLC to the Town of Queen Creek
  3. Reclamation Wheeling Contract between the United States and the Town of Queen Creek to Transport Non-Project Water



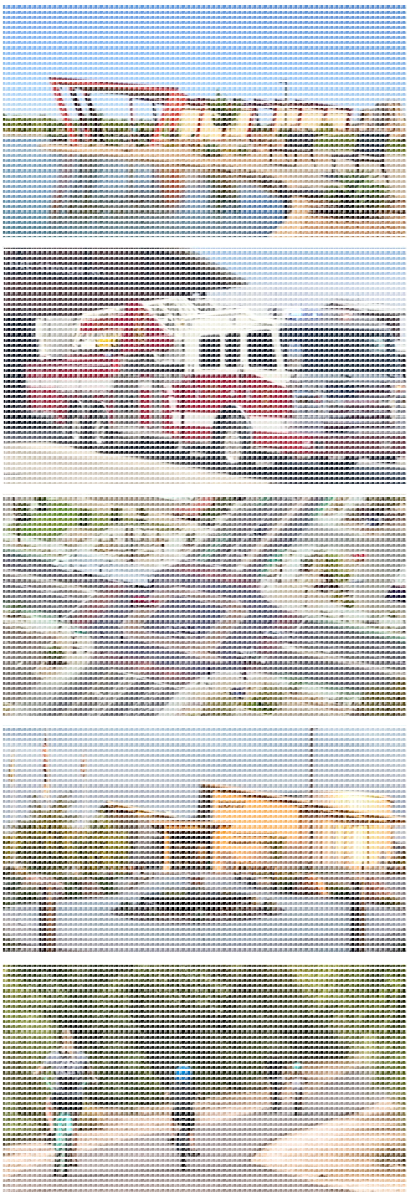
2. Review Staff Recommendation to Approve Authorizing a WIFA Loan to Finance Acquisition of 2,033 AF of Cibola Water Rights in the Amount of $27M



WIFA Loan: $27M

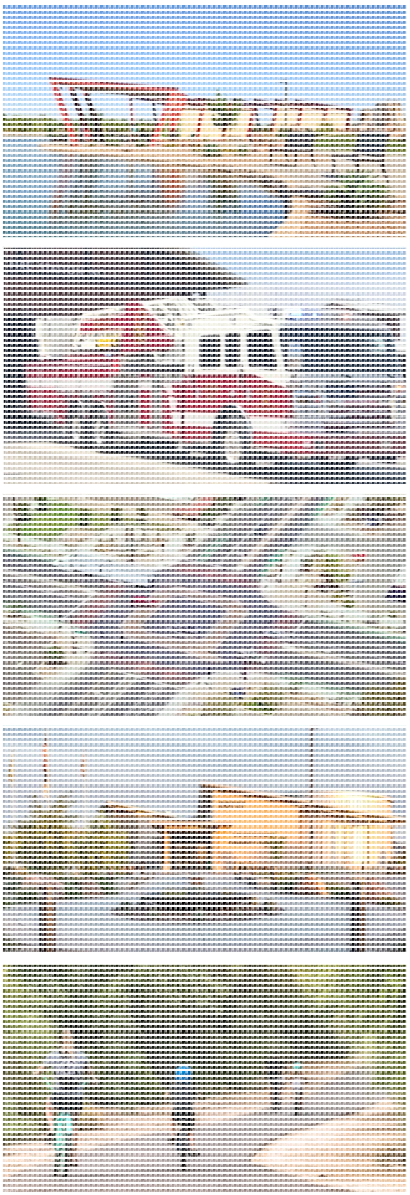
Purpose	Amount
WATER	
Perpetual Water Rights	$24M
CAP Wheeling Capacity	$3M
Total	$27M

Note: WIFA funds will not be drawn until the Town has ownership of the water



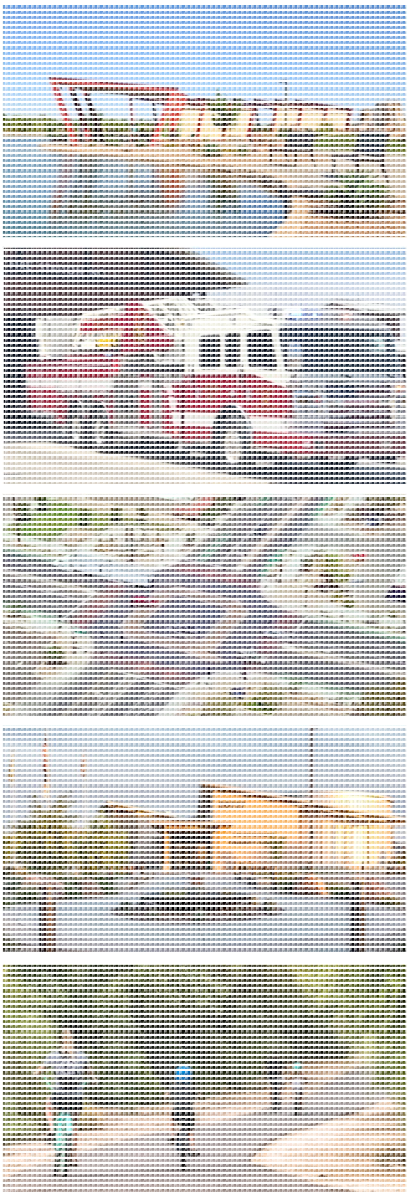
Why WIFA for $27M?

- WIFA Has the Lowest Possible Interest Rate
  - Federal Government Loan Program
  - Estimated Interest Savings Compared to Open Market: $6M
    - 4% WIFA (vs. 5% Loan)



Drinking Water WIFA Loan: $27M

- Estimated Interest Rate: 4%
- Term: 30 Years
- Annual Principal and Interest Costs: $1.6M
- Repayment Pledge: Net, Combined Utility Revenues (Water and Wastewater)
- Repayment Source: Water Rates



Drinking Water WIFA Loan: $27M

December 7 Council Meeting	• Adopt Authorizing Resolution
December 9, 2022	• Loan Closing
January / February	• Report Final WIFA Terms to Council

Recommended Motions

1. Move to Approve Resolution No. 1511-22 as presented.
2. Move to Approve Resolution No. 1508-22 as presented.

Resolution No. 1508-22 requires five affirmative votes to pass with the emergency clause. This is being recommended to avoid delay in an economic environment in which interest rates are anticipated to increase.

TOWN OF QUEEN CREEK ARIZONA

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 1508-22 AUTHORIZING A DRINKING WATER STATE REVOLVING FUND PROGRAM LOAN ("DWSRF") THROUGH THE WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA ("WIFA") FOR COSTS RELATED TO THE ACQUISITION OF SURFACE WATER RIGHTS (CIBOLA) IN AN AMOUNT NOT TO EXCEED $27 MILLION AND DECLARING AN EMERGENCY TO AVOID DELAY IN AN ECONOMIC ENVIRONMENT IN WHICH INTEREST RATES ARE ANTICIPATED TO INCREASE.**

DATE: **December 7, 2022**

Suggested Action:

Approve Resolution 1508-22 as presented.

NOTE: This resolution requires five affirmative votes to pass with the emergency clause. This is being recommended to provide the most flexibility in dealing with volatile economic markets and achieving the maximum cost savings.

Relevant Council Goal(s):

- Effective Government: KRA Financial Management, Financial Sustainability.
- Superior Infrastructure: Capital Improvement Program.

Discussion:

The Town Council has identified strategic objectives that Queen Creek's Water System acquire long-term water resources and be designated as having an assured or adequate water supply. In achieving those objectives, the Town seeks to reduce its reliance on the Central Arizona Groundwater Replenishment District ("CAGRD") to meet the groundwater replenishment requirements as established in the Arizona Groundwater Management Act ("AZGMA") and build a more resilient water resource portfolio that is less reliant on groundwater.

In December of 2018, the Town Council approved a purchase agreement between the Town and GSC Farm, LLC, ("GSC") for the transfer of up to 2,088 AF of Colorado River surface water rights. On December 15, 2021, Town Council approved Amendment No. 1 to the purchase agreement to extend the purchase and sale timeline by 2 years, through December 16, 2023 and to acknowledge changes to certain elements of the transaction that have evolved during the consultation process.

The initial cost to purchase the surface water was $10,000 / AF, for the first calendar year, escalated at 5% per annum thereafter. December 2022, will mark the end of the 4th calendar year. Assuming the transfer will be completed by December 2022, the final purchase price should not exceed $11,576 / AF.

On September 21, 2022, Town Council approved Resolution 1496-22 authorizing the application for a Drinking Water State Revolving Fund Program Loan through WIFA for costs related to the acquisition of surface water rights (Cibola) in an amount not to exceed $27 million. On October 13, 2022, the WIFA Advisory Board approved recommendation of the Town's WIFA loan to the Arizona Finance Authority. On October 20, 2022, the Arizona Finance Authority approved the Town's WIFA loan request.

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

1. The Authorizing Resolution. The Resolution authorizes the execution and delivery of the WIFA Loan within certain established parameters and delegates the authority to finalize the specifics to the Town Manager, Assistant Town Manager, and Finance Director/Chief Financial Officer.
2. The substantially final form of the WIFA Loan agreement.

Upon approval of these documents, no further Town Council action is required and the transaction is tentatively scheduled to close on December 9th. Following the close of the transaction, staff will report the final terms to Town Council.

The funds will not be drawn until the Town has ownership of the water. Town staff is in the process of finalizing the contracts associated with the Cibola water rights acquisition with the Bureau of Reclamation. Staff anticipates bringing a resolution and the final contracts for Town Council approval in December 2022.

Staff is recommending an emergency clause for the WIFA loan resolution due to the volatile economic markets and to mitigate the risk that interest rates continue to move higher. The Federal Open Market Committee (FOMC) is scheduled to meet December 13 and 14 and they may approve another interest rate increase. With the approval of the emergency clause, the loan may close prior to when the FOMC meets. The resolution requires five affirmative votes to pass the emergency clause.

Fiscal Impact:

Based upon the currently identified transferrable quantity of 2,033 AF, the estimated final purchase price is $23.6 million for the water and $3 million for CAP wheeling capacity (plus associated bond attorney and financial advisor costs related to the WIFA transaction) for a total obligation of approximately $27 million. The loan is anticipated to be paid over 30 years at an estimated interest rate of 4%. Staff is recommending an emergency clause to avoid delay in an economic environment in which interest rates are anticipated to increase. The loan is anticipated to close December 9th. By maintaining a AAA credit rating and leveraging the Environmental Protection Agency's low-cost federal funding, WIFA is able to offer the lowest cost financing available. The annual debt service cost is estimated to be $1.6 million. Payment of the loan will be made from water rates.

Repayment of this loan will be secured by a lien on a pledge of the net utility system revenues (water and wastewater), which refers to the portion of the revenues remaining after deducting the expenses needed to operate and maintain the Town's water and wastewater systems. Actual payment of the loan will be made from water rates.

Alternatives:

Without approval of the Resolution No. 1508-22, another funding source would need to be identified to pay for the costs associated with acquisition of surface water rights. Further delays in a rising interest rate environment may also increase the cost of the acquisition. As explained above, WIFA is the most cost-effective source of financing and thus represents the best value for the Town and our ratepayers.

Attachment(s):

1. Resolution 1508-22
2. WIFA Drinking Water Loan Agreement
3. Cibola Water Rights Acquisition and WIFA Financing Presentation

RESOLUTION NO. 1508-22

A RESOLUTION OF THE COMMON COUNCIL OF TOWN OF QUEEN CREEK APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT WITH THE WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA FROM ITS DRINKING WATER STATE REVOLVING FUND PROGRAM; DELEGATING THE DETERMINATION OF CERTAIN MATTERS RELATING TO SUCH LOAN AGREEMENT TO THE MANAGER, ASSISTANT TOWN MANAGER AND THE CHIEF FINANCIAL OFFICER OF THE TOWN; PROVIDING FOR THE TRANSFER OF CERTAIN MONEYS AND MAKING CERTAIN COVENANTS AND AGREEMENTS WITH RESPECT TO SUCH LOAN AGREEMENT; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY SUCH LOAN AGREEMENT AND THIS RESOLUTION AND DECLARING AN EMERGENCY

WHEREAS, Town of Queen Creek (the "Town") has heretofore applied to the Water Infrastructure Finance Authority of Arizona (the "Authority") for a loan (the "Loan") from the Authority's Drinking Water Revolving Fund Program (the " Program") to provide funds related to the acquisition of Water Rights; and

WHEREAS, the terms and conditions under which the Loan will be made and the obligations of the Town with respect to the Loan will be set forth in a loan agreement to be executed and delivered by the Town and the Authority (the "Loan Agreement"); and

WHEREAS, the Loan and the loan repayments payable by the Town pursuant to the Loan Agreement (the "Loan Repayments") will be secured by a pledge of net revenues of the complete sewer and waterworks plant and system of the Town (collectively, the "Source of Repayment"); and

WHEREAS, the Town has determined that it will be beneficial to the citizens of the Town to enter into and to perform the Loan Agreement, whereby the Town will borrow not to exceed $27,000,000 from the Authority, and the Loan shall be repaid on or before thirty (30) years from the date of the execution and delivery of the Loan Agreement and shall bear interest at a rate not to exceed four and one-half percent (4.50%) per annum; and

WHEREAS, there has been placed on file with the Clerk of the Town and presented at the meeting at which this Resolution was adopted the proposed form of the Loan Agreement;

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF TOWN OF QUEEN CREEK, as follows:

Section 1. The form, terms and provisions of the Loan Agreement, in the form of such document (including the exhibits thereto) presented at the meeting at which this Resolution was adopted, are hereby approved, with such insertions,

omissions and changes, not inconsistent with the Town's application to the Authority or the requirements of the federal government or the Authority, as shall be approved by the Manager of the Town, Assistant Town Manager, or the Chief Financial Officer of the Town, the execution of such document being conclusive evidence of such approval, and the Mayor, Vice Mayor, Town Manager, Assistant Town Manager, or the Chief Financial Officer of the Town are hereby authorized and directed, as applicable, for and on behalf of the Town, to execute and attest and deliver, the Loan Agreement.

Section 2. For the payment of the principal of and interest on the Loan, the Town shall pay the Loan Repayments provided for in the Loan Agreement. The Town shall also pay all other amounts required to be paid by the Town pursuant to the provisions of the Loan Agreement.

Section 3. The obligation of the Town to pay the Loan Repayments provided for in the Loan Agreement and to make the other payments provided for in the Loan Agreement is limited to payment from the Source of Repayment, and the obligations of the Town under the Loan Agreement shall not constitute nor give rise to a general obligation of the Town or any claim against its *ad valorem* taxing powers, or constitute an indebtedness within the meaning of any statutory or constitutional debt limitation applicable to the Town.

Section 4. The appropriate officials and officers of the Town are hereby authorized and directed to take all action necessary or reasonably required to carry out, give effect to and to consummate the transactions contemplated by the Loan Agreement, and by this Resolution, including, without limitation, the execution and delivery of any closing and other documents reasonably required to be delivered in connection therewith.

Section 5. If any section, paragraph, subdivision, sentence, clause or phrase of this Resolution is for any reason held to be illegal or unenforceable, such decision will not affect the validity of the remaining portions of this Resolution. The Common Council of the Town hereby declare that it would have adopted this Resolution and each and every other section, paragraph, subdivision, sentence, clause or phrase hereof and authorized the execution and delivery of the Loan Agreement pursuant hereto irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases of this Resolution may be held illegal, invalid or unenforceable.

Section 6. All actions of the officers and agents of the Town including the Common Council of the Town which conform to the purposes and intent of this Resolution and which further the execution and delivery of the Loan Agreement as contemplated by this Resolution, whether heretofore or hereafter taken, are hereby ratified, confirmed and approved. The proper officers and agents of the Town are hereby authorized and directed to do all such acts and things and to execute and deliver all such documents on

behalf of the Town as may be necessary to carry out the terms and intent of this Resolution.

Section 7. All acts and conditions necessary to be performed by the Town or to have been met precedent to and in the execution and delivery of the Loan Agreement in order to make it a legal, valid and binding obligation of the Town will at the time of delivery of the Loan Agreement have been performed and have been met, in regular and due form as required by law, and no statutory, charter or constitutional limitation of indebtedness or taxation will have been exceeded in the execution and delivery of the Loan Agreement.

Section 8. All formal actions of the Common Council of the Town concerning and relating to the passage of this Resolution were taken in an open meeting of the Common Council of the Town, and all deliberations of the Common Council of the Town and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

Section 9. After the execution and delivery of the Loan Agreement and upon receipt of the Loan from the Authority, this Resolution shall be and remain irrepealable until the Loan and the Loan Agreement and the interest thereon shall have been fully paid, cancelled and discharged.

Section 10. Declaration of Emergency: The immediate operation of the provisions of this Resolution is necessary for the preservation of the public health and welfare and for the further reason that the execution and delivery at the earliest possible date of the Loan Agreement is urgently needed to attempt to secure the lowest possible interest cost to the Town; therefore, an emergency is hereby declared to exist and this Resolution is enacted as an emergency measure and shall be in full force and effect from and after the passage and adoption by the Common Council of the Town, as required by law, and this Resolution is hereby exempt from the referendum provisions of the Constitution and laws of the State of Arizona.

PASSED AND ADOPTED by the Common Council of the Town of Queen Creek, Arizona this 7th day of December 2022.

FOR THE TOWN OF QUEEN CREEK, ARIZONA:

Jeff Brown, Vice Mayor

ATTESTED TO:

Maria Gonzalez, Town Clerk

REVIEWED BY:

John Kross, Town Manager

APPROVED AS TO FORM:

Dickinson Wright, PLLC
Attorneys for the Town

CERTIFICATION

I hereby certify that the foregoing Resolution No. 1508-22 was duly passed and adopted by the Common Council of the Town of Queen Creek, Arizona at a regular meeting held on the 7th day of December 2022, and the vote was ……. ayes and ……. nays.

_____

Maria Gonzalez, Town Clerk
Town of Queen Creek, Arizona

Town of Queen Creek and

Water Infrastructure Finance Authority of Arizona

Borrower – Table of Contents

Town of Queen Creek's Borrowing Resolution

TO BE PROVIDED BY BORROWER PRIOR TO CREATION OF LOAN CLOSING DOCUMENTS

Loan Resolution 2023-023 – Town of Queen Creek

Water Infrastructure Finance Authority of Arizona

Section 1: Resolution

WHEREAS, the Water Infrastructure Finance Authority of Arizona (the "*Authority*") has received from Town of Queen Creek (the *"Local Borrower"*) a request for a loan (the "*Loan*"); and

WHEREAS, the Authority has determined that the Local Borrower has met the requirements of Arizona Revised Statutes §49-1201 et seq. (the "*Act*") and the rules promulgated thereunder (the *"Rules"*); and

WHEREAS, the terms and conditions under which a Loan will be made and the obligations of the Local Borrower will be set forth in a loan agreement or bond purchase agreement (the "*Loan Agreement*") to be executed by the Local Borrower and the Authority.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE AUTHORITY AS FOLLOWS:

The Executive Director of the Authority is hereby authorized and directed to execute a Loan Agreement with the Local Borrower to evidence a Loan in accordance with the Act, the Rules, the Local Borrower's applications to the Authority, and the Project Summary detailed in Section 2 of this Loan Resolution.

The Executive Director and other Authority officials, as appropriate, are authorized and directed to sign any document and take such actions as necessary and appropriate to consummate the transactions contemplated by this Resolution and the Loan Agreement and to ensure that the Local Borrower has completed all requirements of the Authority as detailed in Section 3, Section 4, and Section 5 of this Loan Resolution.

This Resolution shall take effect immediately and shall terminate one year from the date of Board Action.

Dated: October 20, 2022

By:_____
Chairman

Attest:_____
Executive Director

Section 2: Project Summary

2.1 Project Number(s)

DW 047-2023

2.2 Project Priority Data

PPL Rank	Funding Cycle	Population Served	Subsidy Rate
48	DW 2023	102,355	90%

2.3 Project Description(s)

This loan will fund the purchase of up to 2,033.01 acre-feet per year (AFY) of Arizona fourth priority Colorado River surface water from a willing seller located in La Paz County, through the Central Arizona Project (CAP). The water transported in the CAP to Queen Creek would be directed to suitable Groundwater Savings Facilities in or in the vicinity of the Queen Creek service area, for Queen Creek to recover and use the water on an annual basis under existing, permitted recovery wells.

Multiple agencies were involved in the review and approval of this water entitlement transfer including the United States Bureau of Reclamation (USBR) and the Arizona Department of Water Resources (ADWR). Eligibility to fund this project is based upon EPA's recent class deviation from the regulatory prohibition on the use of DWSRF to purchase water rights that was approved on November 26, 2019.

2.4 Previous Board or Committee Actions

April 21, 2022 – Board adopted Loan Resolution No. 2022-016 for $10,098,396 (Loan No. 910197-22) to the Town of Queen Creek for their sewer line project.

April 21, 2022 – Board adopted Loan Resolution No. 2022-015 for $45,518,694 (Loan No. 920346-22) to the Town of Queen Creek for their water system comprehensive construction plan project.

October 28, 2021 – Board adopted Loan Resolution No. 2022-006 for $8,275,000 (Loan No. 920339-22) to the Town of Queen Creek to fund the allocation of 4,162 acre-feet NIA Priority CAP water to the Town.

August 26, 2020 – Board adopted Loan Resolution No. 2021-003 for $13,300,000 (Loan No. 920310-21) to the Town of Queen Creek to acquire Diversified Water Utilities, Inc, and install an interconnection to its water system.

March 25, 2020 – Board adopted Loan Resolution No. 2020-021 for $57,981,000 (Loan No. 920304-20) to the Town of Queen Creek to reimburse the Town for its purchase of Groundwater Extinguishment Credits.

February 26, 2020 – Board adopted Loan Resolution No. 2020-022 for NTE $10,000,000 (Loan No. 910184-20 issued for $8,600,000) to the Town of Queen Creek to purchase reclaimed water from the Trilogy at Encanterra community for aquifer recharge, in exchange for delivering recovered effluent to Trilogy.

February 19, 2020 – Board tabled Resolution No. 2020-021; resolution rescheduled for further consideration and action.

December 20, 2018 – Board adopted Resolution Addendum No. A2019-014 to release the 120% debt service reserve requirement and add a springing debt service reserve requirement on Loan No. 920243-14.

December 20, 2018 – Board adopted Resolution Addendum No. A2019-013 to release the 120% debt service reserve requirement and add a springing debt service reserve requirement on Loan No. 920132-08.

December 20, 2018 – Board adopted Resolution Addendum No. A2019-012 to release the 120% debt service reserve requirement and add a springing debt service reserve requirement on Loan No. 910072-05.

June 9, 2013 – Board adopted Loan Resolution No. 2013-020 for $16,000,000 (Loan No. 920243-14) to the Town of Queen Creek for the acquisition of H20, Inc. Water Utility.

April 20, 2011 – Board adopted Resolution Addendum No. A2011-021 to extend the loan term from 20 years to 23 years and waive the Repair and Replacement Fund requirement (Loan No. 910072-05).

2010 Technical Assistance Funding Cycle - Board awarded the Town of Queen Creek $35,000 for clean water technical assistance for a Preliminary Engineering Report for a reuse and recharge line.

December 19, 2007 – Board adopted Loan Resolution No. 2007-045 for $40,000,000 (Loan No. 920132-08) to the Town of Queen Creek for a water company acquisition.

February 16, 2005 – Board adopted Loan Resolution No. 2005-001 for $34,000,000 (Loan No. 910072-05) to the Town of Queen Creek for the Greenfield Water Reclamation Plant project.

July 23, 2003 - Board adopted Resolution Addendum No. A2003-012 to change the Source of Repayment of Loan No. 910090-99.

February 10, 1998 - Board adopted Loan Resolution No. 1998-006 to award $4,400,000 (Loan No. 910090-99) for a wastewater project.

2.5 Project Finance Committee Recommendations

Not Reviewed by the Project Finance Committee

Section 3: Financial Assistance Terms & Conditions (Section 7.1 of Due Diligence)

Financial Assistance Amount: $27,000,000

Primary Repayment Source: System Revenues (combined DW and CW)

Secondary Repayment Source: None

Loan Term: 30 years

Frequency of Repayment: Semi-Annual

Loan Structure: Standard Governmental – Modified Level 1

Debt Service Reserve Fund Requirements: Springing DSR*

*A DSR would not be funded unless, in a given fiscal year, Net Revenues fail to equal 150% of the aggregate of the debt service or comparable payments payable on any outstanding parity obligations in the current or any future fiscal year.

Repair and Replacement Fund Requirements: Local - Not Separate Account

Requirements Prior to Loan Execution:

Require Legal Opinion: Yes

Other: In accordance with WIFA Policy II.6 – Water Rights Acquisition Policy, WIFA reserves the right of consent to any transfer of these water rights, within the subsequent financial assistance agreement.

Requirements Prior to Construction: Not Applicable

Requirement During Construction: Not Applicable

Requirements Prior to Final Disbursements: No Requirement

Loan Category: Qualified, Not Pledged

Policy Exceptions: None

Section 4: Technical Terms & Conditions (Section 7.2 of Due Diligence)

Observation Schedule C (Other):

None, no construction of infrastructure associated with this loan.

Withholding Percentage: None; no construction of infrastructure associated with this loan

Requirements Prior to Loan Execution: No Requirement

Requirements Prior to Disbursement of Loan Funds:

Project Publicity/Signage: Yes

The Local Borrower shall display information online via community website detailing the Project and the funding sources

Other: No Requirement

Requirements during Project Loan Term

Prior Review of Changes in Project Scope: Yes

The Local Borrower shall submit to the Authority, for review and approval prior to any change to the project description, eligible project costs, or any other change which will effect the performance standards or purpose of the Project.

Other: No Requirement

Policy Exceptions: None

Section 5: Additional Notice & Reporting Requirements (Section 7.3 of Due Diligence)

Other: None

Loan Agreement

Water Infrastructure Finance Authority of Arizona
(the "Authority")

and

Town of Queen Creek
(the "Local Borrower")

Evidencing a Loan from the
Authority to the Local Borrower

Dated as of TBD

Table of Contents

Loan Agreement

This Loan Agreement (this "*Loan Agreement*") is made and entered into as of TBD by and between the Water Infrastructure Finance Authority of Arizona (the "*Authority*"), and Town of Queen Creek (the "*Local Borrower*"), a political subdivision of the State of Arizona.

This Loan Agreement includes the attached Exhibits and the attached Standard Terms and Conditions. Any capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Exhibits and the Standard Terms and Conditions.

The Authority and the Local Borrower agree as follows:

Article 1 Description of the Loan

Section 1.1 Name and Address of Local Borrower.

Town of Queen Creek
Attention: Jessica Platt, Enterprise Finance Manager
22358 S Ellsworth Road
Queen Creek, Arizona 85142
Telephone: (480) 358-3185
Fax: (480) 358-3189

Section 1.2 Authorized Officer(s) of Local Borrower.

Town of Queen Creek
Attention: Scott McCarty, Chief Financial Officer
22358 S Ellsworth Road
Queen Creek, Arizona 85142
Telephone: (480) 358-3170
Fax: (480) 358-3189

Section 1.3 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the Local Borrower at the address specified in Section 1.1 and to the Authority at the following address:

Executive Director
Water Infrastructure Finance Authority of Arizona
100 North 7th Avenue, Suite 130
Phoenix, Arizona 85007
Telephone: (602) 364-1310
Fax: (602) 364-1327

Any of the parties may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent, by notice in writing given to the others.

Section 1.4 Loan Information. The terms of the Loan include the terms set forth in the Exhibits, which are part of this Loan Agreement:

Exhibit A Financial Assistance Terms and Conditions; Borrower Payment Instructions; and Loan Repayment Schedule

Exhibit B Technical Assistance Terms and Conditions

Exhibit C Reporting Requirements

Exhibit D Source of Repayment

Exhibit E Debt Service Reserve Requirements

Exhibit F Replacement Reserve Requirements

Exhibit G Opinion of Counsel to Borrower

Exhibit H Tax Compliance Certificate of Local Borrower

Prior to Loan Closing, the Local Borrower must deliver to the Authority the Opinion of Local Borrower Counsel in the form of Exhibit G and the Tax Compliance Certificate of Local Borrower in the form of Exhibit H, signed and dated the date of Loan Closing.

Article 2 Description Of The Project

Section 2.1 Description of Project. The Project is described in Project Summary attached to the Loan Resolution of the Authority, and in Exhibit B of this Loan Agreement.

Section 2.2 Description of System. The term "System" means and includes all of the properties and facilities of the complete Sewer and Waterworks plant and system of the Local Borrower, whether lying within or without the boundaries of the Local Borrower, as now existing and as they may hereafter be improved or extended, all improvements, additions and extensions thereto or replacements thereof hereafter constructed or acquired by purchase, contract or otherwise and all contracts, rights, agreements, leases and franchises of every nature owned by the Local Borrower and used or useful or held for use in the operation of said plant and system or any part or portion thereof.

Article 3 Loan to Local Borrower; Amounts Payable

Section 3.1 The Loan. The Authority shall loan and disburse to the Local Borrower in accordance with this Article 3 an amount listed in Exhibit A (the "Loan"), and the Local Borrower shall borrow and accept from the Authority, the Loan in the principal amount determined pursuant to this Article 3; provided, however, that (i) the Authority shall be under no obligation to disburse any amount of the Loan if an Event of Default has occurred and is continuing under this Loan Agreement, and (ii) the amount to be disbursed shall be lawfully

available for disbursement. The Local Borrower shall use the proceeds of the Loan strictly in accordance with the requirements of this Loan Agreement.

Section 3.2 Disbursements of Loan Proceeds. The Authority may disburse funds by check, by electronic means or by means of magnetic tape or other transfer medium. Except as hereinafter provided, disbursements shall be made only when (i) the request for disbursements is in substantially the form provided by the Authority and is accompanied by the necessary certifications and documentation and (ii) an Authorized Officer of the Authority has determined that such disbursement is proper. An Authorized Officer of the Authority shall approve disbursements directly to the persons or entities entitled to payment or to the Local Borrower in the case of reimbursement for costs of services already paid, and shall provide the Local Borrower with a copy of the approval and the date approved. Disbursements may be made only for Eligible Project Costs.

Section 3.3 Amounts Payable. The Local Borrower shall pay to the Authority the amounts shown in Exhibit A on or before the dates shown in Exhibit A, as the same may be adjusted as provided in the Standard Terms and Conditions, to reflect any revisions to the principal repayment schedule of the Loan. Such payments shall be made by electronic funds transfer or by direct debit to the Authority.

Section 3.4 Tax Covenants.

(a) General. The Local Borrower acknowledges that, in connection with its state revolving fund programs, the Authority issues its bonds ("Authority Bonds") from time to time to finance loans and the Authority also pledges certain loans to secure and to serve as the source of payment for the Authority Bonds. As a result, and under the provisions of federal tax law applicable to the Authority Bonds, it is in the Authority's interest for the Loan to qualify and be an obligation that bears interest that is excludable from gross income for federal income tax purposes and is not an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Internal Revenue Code. Therefore, the Local Borrower represents and covenants as follows with respect to the Loan and the Authority Bonds. The Local Borrower covenants that it will not take any action, or fail to take any action, if any such action or failure to take such action would adversely affect the exclusion from gross income of the interest on the Loan or the Authority Bonds under Section 103(a) of the Internal Revenue Code or cause the interest on the Loan or the Authority Bonds to become an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Internal Revenue Code, and in the event of such action or omission, it will, promptly upon having such brought to its attention, take such reasonable actions based upon a bond counsel opinion as may rescind or otherwise negate such action or omission. The Local Borrower will not directly or indirectly use or permit the use of any proceeds of the Loan or any other funds of the Local Borrower or take or omit to take any action that would cause the Loan or the Authority Bonds to be or become "arbitrage bonds" within the meaning of Section 148(a) of the Internal Revenue Code or to fail to meet any other applicable requirement of Sections 103, 141, 148, 149 and 150 of the Internal Revenue Code or cause the interest on the Loan or the Authority Bonds to become an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Internal Revenue Code. To that

end, the Local Borrower will comply with all applicable requirements of Sections 103, 141, 148, 149 and 150 of the Code to the extent applicable to the Loan.

(b) Modification Based on Bond Counsel Opinion. Notwithstanding any provision of this Section, if the Local Borrower provides to the Authority a bond counsel opinion to the effect that any action required under this Section is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of interest on the Loan or the Authority Bonds pursuant to Section 103(a) of the Internal Revenue Code, the provisions of this Section and the covenants in this Section shall be deemed to be modified to that extent.

(c) Bond Counsel Opinion. For purposes of this Section, "bond counsel opinion" means an opinion letter of a firm of attorneys of national reputation experienced in the field of municipal bonds whose opinions are generally accepted by purchasers of municipal bonds, and who is acceptable to the Authority.

IN WITNESS WHEREOF, the Authority and the Local Borrower have caused this Loan Agreement to be executed and delivered as of the date of execution hereof.

Water Infrastructure Finance Authority of Arizona

By: _____
Dan Dialessi, Executive Director

Town of Queen Creek

By:_____
Scott McCarty, Chief Financial Officer

Attest:

By: _____
Clerk

LOAN AGREEMENT ADDENDUM

Wage Rate Requirements for Compliance with P.L. 111-88

Water Infrastructure Finance Authority of Arizona

This document (this "Wage Rate Addendum") sets forth additional requirements applicable to state revolving fund Loans made by the Water Infrastructure Finance Authority of Arizona ("WIFA") that are subject to the requirements of federal Public Law 111-88, "Making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes," enacted October 30, 2009 ("P.L. 111- 88"). The provisions in this Wage Rate Addendum are a part of the Loan Agreement. Capitalized terms not otherwise defined herein shall have the meanings given them in the Loan Agreement.

The parties acknowledge and agree that funds disbursed by WIFA to the Local Borrower will include funds made available to WIFA by the federal government under P.L. 111-88, and that the requirements of P.L. 111-88 include those set forth in this Wage Rate Addendum. The Local Borrower agrees to comply with all of those requirements and agrees that failure to do so is a breach of the provisions of the Loan Agreement which may result in a default under the Loan Agreement, termination of WIFA's obligation to make disbursements on the Loan and the Local Borrower being required to repay all amounts that have been disbursed by WIFA on the Loan, together with interest and fees as provided in the Loan Agreement.

Additional Requirement for Subrecipients that are not Governmental Entities:

Obtaining Wage Determinations - Under this Wage Rate Addendum, the non-governmental borrower must submit its proposed Davis Bacon wage determinations to WIFA for approval prior to including the wage determination in any solicitation, contract task orders, work assignments, or similar instruments to existing contractors. **THIS PARAGRAPH DOES NOT APPLY TO GOVERNMENTAL ENTITIES.**

Section 1. Wage Rate Requirements

The following language must be included in all Davis Bacon covered construction contracts and subcontracts. (29 CFR Part 5.5)

(a) The Local Borrower shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the

DWSRF, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in Sec. 5.1, or the FFY 2010 appropriation, the following clauses:

(1) **Minimum wages**. (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in Sec. 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. Local Borrowers may obtain wage determinations from the U. S. Department of Labor's web site, www.wdol.gov.

(ii)(A) The Local Borrower, on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The WIFA award official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Local Borrower agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Local Borrower to the WIFA award official. The WIFA award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA Davis Bacon Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the WIFA award official or will notify the WIFA award official within the 30-day period that additional time is necessary.
(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Local Borrower do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the questions, including the views of all interested parties and the recommendation of the WIFA award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) **Withholding**. The Local Borrower shall upon its own action or upon written request of WIFA, EPA award official or an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or

any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records**. (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Local Borrower. Such documentation shall be available on request of WIFA or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5 (a)(1) based on the most recent payroll copies for the specified week. **The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number).** The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/whd/forms/wh347.pdf or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Local Borrower for transmission to WIFA or EPA, if requested by EPA, WIFA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of

compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the Local Borrower.
(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
(1) That the payroll for the payroll period contains the information required to be provided under Sec. 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under Sec. 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of WIFA. EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or WIFA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship

Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the

ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements**. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts**. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment**. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements**. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards**. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the Local Borrower, WIFA, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility**. (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) **Contract Work Hours and Safety Standards Act**. The Local Borrower shall insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Sec. 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Local Borrower, upon its own action or upon written request of the EPA Award Official or an authorized representative of the Department of Labor shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR Sec. 5.1, the Local Borrower shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all

laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Local Borrower shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of WIFA, EPA and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

Section 2. General Provisions.

(a) Binding Effect. This Wage Rate Addendum shall inure to the benefit of and shall be binding upon WIFA and the Local Borrower and their respective successors and assigns.

(b) Severability. In the event any provision of this Wage Rate Addendum shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

(c) Amendments, Supplements and Modifications. This Wage Rate Addendum may not be amended, supplemented or modified without the prior written consent of WIFA and the Local Borrower.

(d) Execution in Counterparts. This Wage Rate Addendum may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(e) Applicable Law. This Wage Rate Addendum shall be governed by and construed in accordance with the laws of the State of Arizona.

(f) Captions. The captions or headings in this Wage Rate Addendum are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions of this Wage Rate Addendum.

(g) Further Assurances. The Local Borrower shall, at the request of WIFA, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights and agreements granted or intended to be granted by this Wage Rate Addendum.

(h) Arbitration. The parties hereto agree to use arbitration to the extent required by Section 12-1518 of the Arizona Revised Statutes.

(i) Notice Regarding A.R.S. § 38 511. To the extent applicable by provision of law, the parties acknowledge that this Wage Rate Addendum is subject to cancellation pursuant to A.R.S. § 38-511, the provisions of which are hereby incorporated herein.

WIFA and the Local Borrower are signing this Wage Rate Addendum to be effective as part of the Loan Agreement.

Water Infrastructure Finance Authority of Arizona

By: _____

Dan Dialessi, Executive Director

Town of Queen Creek

By: _____

Scott McCarty, Chief Financial Officer

[Signature page to Wage Rate Addendum to Loan Agreement]

LOAN AGREEMENT ADDENDUM

American Iron and Steel Requirements for Compliance with Federal Law

Water Infrastructure Finance Authority of Arizona

This document (this "American Iron and Steel Addendum") sets forth additional requirements made applicable to state revolving fund Loans made by the Water Infrastructure Finance Authority of Arizona ("WIFA") by federal law. The provisions in this American Iron and Steel Addendum are a part of the Loan Agreement. Capitalized terms not otherwise defined herein shall have the meanings given them in the Loan Agreement.

The parties acknowledge and agree that funds disbursed by WIFA to the Local Borrower will include funds made available to WIFA by the federal government under federal law, and that the requirements of federal law include those set forth in this American Iron and Steel Addendum. The Local Borrower agrees to comply with all of those requirements and agrees that failure to do so is a breach of the provisions of the Loan Agreement which may result in a default under the Loan Agreement, termination of WIFA's obligation to make disbursements on the Loan and the Local Borrower being required to repay all amounts that have been disbursed by WIFA on the Loan, together with interest and fees as provided in the Loan Agreement.

Federal law requires that WIFA include in all assistance agreements, including the Loan Agreement, for the construction, alteration, maintenance, or repair of treatment works under the Clean Water State Revolving Fund and for the construction, alteration, maintenance, or repair of a public water system under the Drinking Water State Revolving Fund, a provision requiring the application of American Iron and Steel requirements for the entirety of the construction activities financed by the assistance agreement through completion of construction, no matter when construction commences. Whether or not the project has multiple sources of funding, the American Iron and Steel requirements apply to the entire project and not just to the activities funded by the money made available to WIFA by the federal government.

Section 1. **American Iron and Steel Requirements.** In accordance with federal law:

(a)(1) None of the funds made available to WIFA as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States.

(2) In this section, the term "iron and steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the "Administrator") finds that—

(1) applying subsection (a) would be inconsistent with the public interest;

(2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet Web site of the Environmental Protection Agency.

Section 2. General Provisions.

(a) Binding Effect. This American Iron and Steel Addendum shall inure to the benefit of and shall be binding upon WIFA and the Local Borrower and their respective successors and assigns.

(b) Severability. In the event any provision of this American Iron and Steel Addendum shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

(c) Amendments, Supplements and Modifications. This American Iron and Steel Addendum may not be amended, supplemented or modified without the prior written consent of WIFA and the Local Borrower.

(d) Execution in Counterparts. This American Iron and Steel Addendum may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

(e) Applicable Law. This American Iron and Steel Addendum shall be governed by and construed in accordance with the laws of the State of Arizona and applicable federal law.

(f) Captions. The captions or headings in this American Iron and Steel Addendum are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions of this American Iron and Steel Addendum.

(g) Further Assurances. The Local Borrower shall, at the request of WIFA , authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights and agreements granted or intended to be granted by this American Iron and Steel Addendum.

(h) Prohibition Against Discrimination. In the event that it applies, the parties agree to comply with the Arizona Governor's Executive Order 2009-9, entitled "Prohibition of Discrimination in State Contracts Non-Discrimination in Employment by Government Contractors and Subcontractors," which mandates that all persons, regardless of race, color, religion, sex, age, or national origin shall have equal access to employment opportunities, and all other applicable state and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. The Local Borrower shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

(i) Arbitration. In the event of a dispute, the parties agree to use arbitration, after exhausting applicable administrative review, to the extent required by Arizona Revised Statutes Section 12-1518, and the prevailing party shall be entitled to attorney's fees and costs with respect thereto.

(j) Notice of Arizona Revised Statutes Section 38-511 - Cancellation. Notice is hereby given of the provisions of Arizona Revised Statutes Section 38-511, as amended. By this reference, the provisions of said statute are incorporated herein to the extent of their applicability to this American Iron and Steel Addendum under the law of the State of Arizona.

[SIGNATURE PAGE FOLLOWS]

WIFA and the Local Borrower are signing this American Iron and Steel Addendum to be effective as part of the Loan Agreement.

Water Infrastructure Finance Authority of Arizona

By: _____

Dan Dialessi, Executive Director

Town of Queen Creek

By: _____

Scott McCarty, Chief Financial Officer

[Signature page to American Iron and Steel Addendum to Loan Agreement]

Exhibit A of Loan Agreement

Section 1: Financial Assistance Terms and Conditions
Town of Queen Creek
TBD

Loan Number		920355-23
Closing Date		12/09/22 TBD
First Payment Period		01/01/23
Financial Assistance Terms and Conditions		
Original Loan Amount as of the Closing Date	$	27,000,000.00
Loan Amount	$	27,000,000.00
Loan Term		30
Combined Interest & Fee Rate		4.500% TBD

** Combined Interest and Fee Rate (CIFR) allocation: Fee = 1.5% (150 basis points); Interest = CIFR minus Fee.*

Principal Repayments		
Period Principal Repayments Begin		6
First Principal Repayment Date		07/01/25
Final Principal Repayment Date		07/01/52
Combined Interest and Fee Payment Dates		
First Combined Interest and Fee Payment Date*		07/01/23
Final Combined Interest and Fee Payment Date		07/01/52

** Actual initial Combined Interest and Fee payment calculated only on dollar amount drawn against loan as of initial payment date*

Debt Service Reserve Fund Requirements		
Total Reserve Amount	$	1,715,061.74
Annual Amount	$	343,012.35
Reserve Funded by (Date)**		

*** A DSR would not be funded unless, in a given fiscal year, Net Revenues fail to equal 150% of the aggregate of the debt service or comparable payments payable on any outstanding parity obligations in the current or any future fiscal year*

Repair and Replacement Fund Requirement		
Begin Funding on (Date)		01/01/28
Annual Amount	$	343,012.35
Semi-Annual Deposit	$	171,506.18

Annual Payment		
Years 1 through 5	$	1,715,061.74
Years 6 through 10	$	1,715,061.74
Years 11 through 15	$	1,715,061.74
Years 16 through 20	$	1,715,061.74
Years 21 through 25	$	1,715,061.74
Years 26 through 30	$	1,715,061.74

Section 2: Loan Repayment Schedule
Town of Queen Creek
TBD

Year	Period	Semi-Annual Payment Dates	Combined Interest and Fee Rate	Semi-Annual Combined Interest and Fee Payment	Annual Principal Repayment	Total Annual Payment
1	1	01/01/23	4.500%	0.00		
1	2	07/01/23	4.500%	681,750.00	0.00	681,750.00
2	3	01/01/24	4.500%	607,500.00		
2	4	07/01/24	4.500%	607,500.00	0.00	1,215,000.00
3	5	01/01/25	4.500%	607,500.00		
3	6	07/01/25	4.500%	607,500.00	500,061.74	1,715,061.74
4	7	01/01/26	4.500%	596,248.61		
4	8	07/01/26	4.500%	596,248.61	522,564.52	1,715,061.74
5	9	01/01/27	4.500%	584,490.91		
5	10	07/01/27	4.500%	584,490.91	546,079.92	1,715,061.74
6	11	01/01/28	4.500%	572,204.11		
6	12	07/01/28	4.500%	572,204.11	570,653.52	1,715,061.74
7	13	01/01/29	4.500%	559,364.40		
7	14	07/01/29	4.500%	559,364.40	596,332.94	1,715,061.74
8	15	01/01/30	4.500%	545,946.92		
8	16	07/01/30	4.500%	545,946.92	623,167.90	1,715,061.74
9	17	01/01/31	4.500%	531,925.64		
9	18	07/01/31	4.500%	531,925.64	651,210.46	1,715,061.74
10	19	01/01/32	4.500%	517,273.41		
10	20	07/01/32	4.500%	517,273.41	680,514.92	1,715,061.74
11	21	01/01/33	4.500%	501,961.82		
11	22	07/01/33	4.500%	501,961.82	711,138.10	1,715,061.74
12	23	01/01/34	4.500%	485,961.21		
12	24	07/01/34	4.500%	485,961.21	743,139.32	1,715,061.74
13	25	01/01/35	4.500%	469,240.57		
13	26	07/01/35	4.500%	469,240.57	776,580.60	1,715,061.74
14	27	01/01/36	4.500%	451,767.51		
14	28	07/01/36	4.500%	451,767.51	811,526.72	1,715,061.74
15	29	01/01/37	4.500%	433,508.16		
15	30	07/01/37	4.500%	433,508.16	848,045.42	1,715,061.74
16	31	01/01/38	4.500%	414,427.14		
16	32	07/01/38	4.500%	414,427.14	886,207.46	1,715,061.74
17	33	01/01/39	4.500%	394,487.47		
17	34	07/01/39	4.500%	394,487.47	926,086.80	1,715,061.74
18	35	01/01/40	4.500%	373,650.51		
18	36	07/01/40	4.500%	373,650.51	967,760.72	1,715,061.74
19	37	01/01/41	4.500%	351,875.90		
19	38	07/01/41	4.500%	351,875.90	1,011,309.94	1,715,061.74
20	39	01/01/42	4.500%	329,121.43		
20	40	07/01/42	4.500%	329,121.43	1,056,818.88	1,715,061.74
21	41	01/01/43	4.500%	305,343.00		
21	42	07/01/43	4.500%	305,343.00	1,104,375.74	1,715,061.74
22	43	01/01/44	4.500%	280,494.55		
22	44	07/01/44	4.500%	280,494.55	1,154,072.64	1,715,061.74
23	45	01/01/45	4.500%	254,527.92		
23	46	07/01/45	4.500%	254,527.92	1,206,005.90	1,715,061.74
24	47	01/01/46	4.500%	227,392.78		
24	48	07/01/46	4.500%	227,392.78	1,260,276.18	1,715,061.74
25	49	01/01/47	4.500%	199,036.56		
25	50	07/01/47	4.500%	199,036.56	1,316,988.62	1,715,061.74

Section 2: Loan Repayment Schedule
Town of Queen Creek
TBD

Year	Period	Semi-Annual Payment Dates	Combined Interest and Fee Rate	Semi-Annual Combined Interest and Fee Payment	Annual Principal Repayment	Total Annual Payment
26	51	01/01/48	4.500%	169,404.33		
26	52	07/01/48	4.500%	169,404.33	1,376,253.08	1,715,061.74
27	53	01/01/49	4.500%	138,438.63		
27	54	07/01/49	4.500%	138,438.63	1,438,184.48	1,715,061.74
28	55	01/01/50	4.500%	106,079.48		
28	56	07/01/50	4.500%	106,079.48	1,502,902.78	1,715,061.74
29	57	01/01/51	4.500%	72,264.17		
29	58	07/01/51	4.500%	72,264.17	1,570,533.40	1,715,061.74
30	59	01/01/52	4.500%	36,927.16		
30	60	07/01/52	4.500%	36,927.16	1,641,207.30	1,715,061.62
				22,918,478.60	27,000,000.00	49,918,478.60

Exhibit B

Technical Terms and Conditions

Section 1
Budget

Uses by Budget Item	**Amount Budgeted**
Planning……...	$0.00
Design & Engineering…….	$0.00
Legal/Debt Authorization……	$50,000.00
Financial Advisor……	$100,000.00
Land/System Acquisition……	$26,850,000.00
Equipment/Materials……...	$0.00
Construction/Installation/Improvement……...	$0.00
Inspection & Construction Management…….	$0.00
Project Officer…….	$0.00
Administration…….	$0.00
Staff Training……..	$0.00
Capitalized Interest……..	$0.00
Refinance Loan……..	$0.00
Other……	$0.00
Total Budget……...	$27,000,000.00

Section 2
Project Description

This loan will fund the purchase of up to 2,033.01 acre-feet per year (AFY) of Arizona fourth priority Colorado River surface water from a willing seller located in La Paz County, through the Central Arizona Project (CAP). The water transported in the CAP to Queen Creek would be directed to suitable Groundwater Savings Facilities in or in the vicinity of the Queen Creek service area, for Queen Creek to recover and use the water on an annual basis under existing, permitted recovery wells.

Multiple agencies were involved in the review and approval of this water entitlement transfer including the United States Bureau of Reclamation (USBR) and the Arizona Department of Water Resources (ADWR). Eligibility to fund this project is based upon EPA's recent class deviation from the regulatory prohibition on the use of DWSRF to purchase water rights that was approved on November 26, 2019.

Section 3
Estimated Observation and Disbursement Schedule

Observation Schedule C (Other): No observations are required as there are no construction or infrastructure improvements associated with this loan.

Additional Observations – A WIFA representative may perform additional observations based on information provided in the project's status reports included in each Local Borrower disbursement requisition form.

Withholding Percentage: Not required; there is no construction of infrastructure associated with this loan.

Section 4
Requirements Prior To Construction

Section 4.1 Construction Bids. No Requirement.

Section 4.2 **User Charges**. The Local Borrower has established (or, if the System is not yet in operation, the Local Borrower will, at or before the time the System commences operation, establish) a system of user charges which, with other funds lawfully available, will at all times be sufficient to pay the costs of operation and maintenance of the System, including renewals and replacements of the System. The Local Borrower also agrees that such system of user charges will be established and maintained in compliance with any applicable requirements of state and federal law as long as the Local Borrower owes amounts under this Loan Agreement. The Local Borrower at its sole option may pay the costs of operation, maintenance, repair, replacement, extensions and additions to the System from any funds lawfully available to it for such purpose.

Section 4.3 **Interest in Project Site**. As a condition of the Loan, the Local Borrower will demonstrate to the satisfaction of the Authority that the Local Borrower has or will have a fee simple or such other estate or interest in the site of the Project, including necessary easements and rights-of-way, as the Authority finds sufficient to assure undisturbed use and possession for the purpose of construction and operation of the Project for the estimated life of the Project.

Section 4.4 **Federal Clean Water Act**. The Local Borrower covenants that, to the extent legally applicable, the Project will meet the requirements of the Federal Clean Water Act in effect on the date of Loan Closing and any amendments thereto that may retroactively apply to the Loan, and the Local Borrower agrees that the Project will comply with applicable provisions of those federal laws and authorities listed in Article 9 of the Standard Terms and Conditions.

Section 4.5 **Federal Safe Drinking Water Act**. The Local Borrower covenants that, to the extent legally applicable, the Project will meet the requirements of the Federal Safe Drinking Water Act in effect on the date of Loan Closing and any amendments thereto that may retroactively apply to the Loan, and the Local Borrower agrees that the Project will comply with applicable provisions of those federal laws and authorities listed in Article 9 of the Standard Terms and Conditions.

Section 4.6 **Publicity/Signage**. The Local Borrower shall display information online via community website detailing the Project and the funding sources.

Section 5
Requirements During Loan Term

Section 5.1 **Changes in Project Scope.** The Local Borrower shall submit to the Authority, for review and approval prior to any change to the project description, eligible project costs, or any other change which will affect the performance standards or purpose of the Project.

Section 5.2 **Completion of Project and Provision of Moneys Therefor**. The Local Borrower covenants and agrees (a) to exercise its best efforts in accordance with prudent utility construction practice to complete the Project and (b) to the extent permitted by law, to provide from its own fiscal resources all moneys, in excess of the total amount of loan proceeds it receives hereunder and under any subsequent loan from the Authority, required to complete the Project.

Section 5.3 **Inspections; Information**. The Local Borrower shall permit the Authority and any party designated by the Authority to examine, visit and inspect, at any and all reasonable times, the property, if any, constituting the Project, and to inspect and make copies of any accounts, books and records, including (without limitation) its records regarding receipts, disbursements, contracts, investments and any other matters relating thereto and to its financial standing, and shall supply such reports and information as the Authority may reasonably require in connection therewith.

Section 5.4 **Adjustments for Ineligible Costs**. The Local Borrower shall promptly reimburse the Authority for any portion of the Loan which is determined to have been used for costs that are not eligible for funding under the Authority Act, the Federal Clean Water Act, as amended, or the Federal Safe Drinking Water Act, as amended, unless such matter is curable in some other manner by the Local Borrower to the satisfaction of the Authority. Such reimbursement shall be promptly repaid to the Authority upon written request of the Authority. Any such reimbursed principal amount will be applied to reduce the outstanding principal amount of the Loan.

Section 5.5 **Archaeological Artifacts**. In the event that archaeological artifacts or historical resources are discovered during construction excavation of the Project, the Local Borrower shall stop or cause to be stopped construction activities and will notify the State Historic Preservation Office and the Authority of such discovery.

Section 6
Requirements Prior To Final Disbursements

Section 6.1 **Plan of Operation**. No Requirement.

Section 6.2 **Final Approval**. No Requirement.

Exhibit C

Reporting Requirements

Section 1. **Annual Loan Review**. The Authority's Annual Loan Review Form and annual financial statements in a format approved by the Authority, including the report of any annual audit(s) and all audit reports required by governmental auditing standards and any applicable Arizona rules, shall be provided by the Local Borrower to the Authority within one-hundred and eighty (180) days after the end of each fiscal year of the Local Borrower. The Local Borrower shall complete all audits and submit all reports required by the federal Single Audit Act within the time limits under that federal law, currently within the earlier of 30 days after receipt of the auditor's reports or nine months after the end of the audit period, unless a longer period is agreed to in advance by the federal agency that provided the funding or a different period is specified in a program-specific audit guide.

Section 2. **Records and Accounts**. The Local Borrower shall keep accurate records and accounts for the System, including records and accounts for the Project (the "*System Records*"), separate and distinct from its other records and accounts (the "*General Records*"). The Local Borrower must maintain the System Records in accordance with generally accepted accounting principles (GAAP), including standards relating to the reporting of infrastructure assets, as issued by the Governmental Accounting Standards Board (GASB) or by the Financial Accounting Standards Board (FASB), as applicable to the Local Borrower. If required by law, the Local Borrower must have the System Records audited annually by an independent accountant, which audit may be part of the annual audit of the General Records of the Local Borrower. The Local Borrower must make all System Records and General Records available for inspection by the Authority at any reasonable time.

Section 3. **Notice of Change In Key Personnel**. Promptly after becoming aware thereof, the Local Borrower shall provide notice in writing to the Authority of any change to the information in Section 1 of the Loan Agreement and any other change in key personnel connected to the Project and Loan.

Section 4. **Notice of Material Adverse Change**. The Local Borrower shall promptly notify the Authority of any material adverse change in the activities, prospects or condition (financial or otherwise), of the Local Borrower relating to the System, or in the ability of the Local Borrower to make all Loan Repayments from the Source of Repayment described in this Loan Agreement and otherwise to observe and perform its duties, covenants, obligations and agreements hereunder.

Section 5. **Disadvantaged Business Enterprise (DBE) Program.** The Local Borrower must report DBE participation to the Authority based on guidance from the Authority.

Section 6. **Notice of Default**. Promptly after becoming aware thereof, Local Borrower shall give notice to the Authority of (i) the occurrence of any Event of Default under the Loan Agreement or (ii) the occurrence of any breach, default, Event of Default, or event which with the giving of notice or lapse of time, or both, could become a material breach, default, or Event of Default (a "Future Breach") under any agreement, indenture, mortgage, or other instrument

(other than the Loan Agreement) to which the Local Borrower is a party or by which it or any of its property is bound or affected. Local Borrower shall provide written notice to the Authority if the effect of such breach, default, Event of Default or Future Breach is to accelerate, or to permit the acceleration of, the maturity of any indebtedness under such agreement, indenture, mortgage, or other instrument; provided, however, that the failure of the Local Borrower to give such notice shall not affect the right and power of the Authority to exercise any and all of the remedies specified herein.

Section 7**.** **Notice of Construction Commencement**. No requirement; there is no construction of infrastructure associated with this loan.

Section 8**.** **Notice of Non-Environmental Litigation**. Promptly after the commencement or overt threat thereof, Local Borrower shall provide the Authority with written notice of the commencement of all actions, suits, or proceedings before any court, arbitrator, or governmental department, commission, board, bureau, agency, or instrumentality affecting Local Borrower which, if adversely determined, could have a material adverse effect on the condition (financial or otherwise), operations, properties, or business of Local Borrower, or on the ability of Local Borrower to perform its obligations under the Loan Agreement.

Section 9. **Notice of Environmental Litigation**. Without limiting the provisions of Section 8 above, promptly after receipt thereof, Local Borrower shall provide the Authority with written notice of the receipt of all pleadings, orders, complaints, indictments, or other communication alleging a condition that may require Local Borrower to undertake or to contribute to a cleanup or other response under laws relating to environmental protection, or which seek penalties, damages, injunctive relief, or criminal sanctions related to alleged violations of such laws, or which claim personal injury to any person or property damage as a result of environmental factors or conditions or which, if adversely determined, could have a material adverse effect on the condition (financial or otherwise), operations, properties, or business of Local Borrower, or on the ability of Local Borrower to perform its obligations under the Loan Agreement.

Section 10. **Regulatory and Other Notices**. Promptly after receipt or submission thereof, Local Borrower shall provide the Authority with copies of any notices or other communications received from or directed to any governmental authority with respect to any matter or proceeding which could have a material adverse effect on the condition (financial or otherwise), operations, properties, or business of Local Borrower, or the ability of Local Borrower to perform its obligations under the Loan Agreement, or which reveals a substantial non compliance with any applicable law, regulation or rule.

Section 11. **Other Information**. The Local Borrower shall submit to the Authority other information regarding the condition (financial or otherwise), or operation of the Local Borrower as the Authority may, from time to time, reasonably request.

Section 12. **Additional Reporting Requirements.** None.

Exhibit D Source of Repayment: System Revenues

Section 1 Certain Definitions

As used in this Loan Agreement, the following terms shall have the meanings set forth below unless the context clearly requires otherwise:

"Additional Parity Obligations" shall mean any additional obligations having a lien payable from Net Revenues of the System on a parity with the Loan Agreement which may hereafter be issued by the Local Borrower (or any financing conduit acting on behalf of the Local Borrower) in compliance with the terms in Section 3.

"Administrative Expenses" shall mean the reasonable cost or value of all services rendered by the Local Borrower and its various departments with respect to the System.

"Fund" shall mean the fund or funds into which the Local Borrower shall deposit the Revenues of the System.

"Net Revenues" shall mean that portion of the Revenues remaining after deducting sufficient funds for the Operation and Maintenance Expenses of the System.

"Operation and Maintenance Expenses" shall mean all costs reasonably incurred in connection with the operation, use and maintenance of the System, including (i) repairs necessary to keep the System in efficient and economical operating condition, (ii) the payments of premiums for insurance hereinafter required to be carried on the System, (iii) payments of reasonable Administrative Expenses and (iv) generally all expenses of the System except depreciation, interest expense related to the Loan Agreement, any Outstanding Parity Obligations, any Additional Parity Obligations, and interest expenses on any obligations subordinate to such obligations.

"Outstanding Parity Obligations" shall mean obligations issued and outstanding having a lien payable from Net Revenues of the System on a parity with the Loan Agreement.

"System Revenues" shall mean and include all income, moneys and receipts to be received by the Local Borrower, directly or indirectly, from the ownership, use or operation of the System including any waste material or by-products of the System, and also including investment income.

Section 2 Source of Repayment and Rate Covenant Requirements

1. It is understood and agreed that all payments with respect to the Loan shall be made only from the Source of Repayment, which is hereby pledged to the payment of all amounts due under the Loan. The "Source of Repayment" is the Net Revenues of the System as hereinafter provided. The Net Revenues are hereby pledged by the Local Borrower to the payment of all amounts due under the Loan and the repayment of such amounts shall be secured by a lien on and pledge of the Net Revenues on parity with the pledge and lien granted by the Local

Borrower for the payment and security of Outstanding Parity Obligations and Additional Parity Obligations. The amounts due under this Loan Agreement and any Outstanding Parity Obligations and Additional Parity Obligations (exclusive of the Local Borrower's repayment obligations with respect to those reserve fund credit instruments in connection with this Loan and any Additional Parity Obligations which shall be secured on a subordinate basis), shall be equally and ratably secured by said pledge and lien without one having priority over the other. The Local Borrower intends that this pledge shall be a prior and paramount lien on and a first pledge of the Net Revenues, as will be sufficient to make all payments on the Loan, and the Local Borrower covenants to make the payments under the Loan from the Net Revenues, except to the extent that it chooses to make such payments from other legally available funds at its sole option. In no event shall the Local Borrower be required to make the payments on the Loan from any revenues, receipts or sources not derived from the Net Revenues of the System.

2. The Local Borrower covenants and agrees that it will establish and maintain schedules of rates, fees and charges for all services supplied by the System which, after making reasonable allowance for contingencies and errors in estimates, shall produce Revenues in each fiscal year that are sufficient, (a) to pay the Operation and Maintenance Expenses of the System, (b) to produce an aggregate amount of Net Revenues equal the sum of (i) one hundred twenty percent (120%) of the aggregate of the debt service or comparable payments payable on the Loan, the Outstanding Parity Obligations, and any Additional Parity Obligations in such fiscal year, and (ii) one hundred percent (100%) of the aggregate of the debt service on comparable payments, separately payable and secured on a basis subordinate to the Loan by Net Revenues, and (c) to maintain all necessary fund balances required under the resolutions or agreements of the Local Borrower authorizing the Loan, the Outstanding Parity Obligations, and Additional Parity Obligations.

Section 3 Additional Parity Obligations

The Local Borrower covenants and agrees that no other obligations of any kind will be issued that are payable from or enjoy a pledge of the Net Revenues having priority over the Loan.

It is understood and agreed that Additional Parity Obligations having a lien upon and payable from the Net Revenues may be issued on parity with the Loan, but only as provided herein and only to provide funds to make improvements and expansions to the existing System, to purchase capacity rights in sewage treatment plant facilities owned by other political subdivisions of the State, to purchase capacity rights in water treatment plant facilities owned by other political subdivisions of the State, to acquire land, rights in land or water rights for the System, to provide reasonable reserves for Outstanding Parity Obligations and Additional Parity Obligations, to refund Outstanding Parity Obligations and Additional Parity Obligations or the Loan or to refund other bonds of the Local Borrower, if any, whether revenue bonds, general obligation bonds or other bonds or obligations, issued to provide funds to construct or acquire additions, extensions, improvements, expansions or replacements to the System, subject to the following conditions:

(a) The Local Borrower will not, at the time of the issuance of such Additional Parity Obligations, be in default under any Outstanding Parity Obligations, Additional Parity

Obligations, the Loan or under any resolution related thereto or providing for the issuance of Additional Parity Obligations or any related credit or reserve fund credit instrument;

(b) The issuance of Additional Parity Obligations will be duly authorized at an election, if required by law, except as to any bonds or obligations to be issued exclusively for the purpose of refunding any Outstanding Parity Obligations and Additional Parity Obligations or the Loan;

(c) The issuance of Additional Parity Obligations will be provided for by a resolution duly adopted by the Local Borrower's governing body and such Additional Parity Obligations will mature and interest will be paid on the same days of the year as Outstanding Parity Obligations and Additional Parity Obligations; and

(e) The aggregate amount of the Net Revenues of the System for the last full fiscal year immediately preceding the issuance of such Additional Parity Obligation, as shown in a certificate or report of an independent public accountant or firm of such accountants presented to the Authority, has been at least equal to the sum of the following: (i) not less than one hundred twenty percent (120%) of the highest year's debt service or comparable payments on all of the Outstanding Parity Obligations, the Loan, and the Additional Parity Obligations then to be issued, and (ii) not less than one hundred percent (100%) of the aggregate of amounts payable in such fiscal year and secured on a subordinate basis by such Net Revenues and (iii) not less than one hundred percent (100%) of any additional amounts required to maintain or fund necessary fund balances under the resolutions or agreements of the Local Borrower relating to the obligations described in (i).

For the purposes of the subparagraph (e), additional amounts may be added to the Net Revenues as shown on the accountant's certificate or report in the following circumstances:

(1) If the Revenues have been increased as a result of construction of additions or acquisitions to the System made prior to the issuance of such Additional Parity Obligations but during either the fiscal year in which the Additional Parity Obligations are to be issued or in the preceding fiscal year, such increased Revenues may be treated as if such additions to the System were completed on the first day of the fiscal year used for purposes of computation. The Revenues derived from such additions and acquisitions to the System may be converted for purposes of computation to estimated Net Revenues which would have been derived therefrom if said additions and acquisitions had actually been completed on the first day of the year used for computation purposes, such estimates to be made by a professional firm experienced in estimating future revenues and expenses of water and sewer systems and having a recognized reputation for that work.

(2) If all or part of the proceeds of the Additional Parity Obligations are to be expended for the acquisition of existing water properties or facilities, there may be added to the Net Revenues of such preceding fiscal year the Net Revenues which would have been derived from the operation of such properties or facilities if such properties or facilities had been acquired and operated by the Local Borrower under the Local Borrower's applicable rate schedule during the entire preceding fiscal year, such Net Revenues to be estimated by a

professional firm experienced in estimating future revenues and expenses of water and sewer systems and having a recognized reputation for that work.

(3) If prior to the issuance of the Additional Parity Obligations and subsequent to the first day of such preceding fiscal year, the Local Borrower shall have increased its rates or charges imposed for water services, there may be added to the Net Revenues of such fiscal year the additional Net Revenues which would have been received from the operation of the System during such fiscal year had such increase been in effect throughout such fiscal year, such additional Net Revenues to be estimated by a professional firm experienced in estimating future revenues and expenses of water and sewer systems and having a recognized reputation for that work.

For purposes of calculations under this subparagraph (d), if Additional Parity Obligations are to be issued for the purpose of refunding or retiring a portion of Outstanding Parity Obligations or this Loan, for the purpose of the calculation required under this subparagraph (d), the percentage requirement on such obligations will be taken into consideration only in any future fiscal year in which any fractional part of such obligations will remain outstanding after the issuance of such Additional Parity Obligations; provided that nothing herein contained shall be construed to limit or restrict the issuance of any Additional Parity Obligations if, before or as a result of the issuance and delivery of such Additional Parity Obligations, any other obligations theretofore issued will no longer be outstanding, or full payment for any such obligations will be provided for by funds from the bond or obligation proceeds.

Exhibit E Debt Service Reserve Requirement

Held by Local Borrower – No Separate Account

No debt service reserve fund shall be required to be funded unless in a given fiscal year Net Revenues as established in Exhibit D of this loan agreement fail to equal one hundred fifty percent (150%) of the aggregate of the debt service or comparable payments payable on the Outstanding Parity Obligations in the current or any future fiscal year. If the Local Borrower does not meet this coverage requirement, the Local Borrower covenants and agrees to fund a Reserve Fund (as hereinafter defined) in cash in accordance with this Exhibit commencing on the July 15 following the fiscal year in which the Net Revenues are less than 150 percent of the aggregate debt service or comparable payments payable on the Outstanding Parity Obligations in the current or any future fiscal year, by paying (1) on such July 15 and each January 15 and July 15 thereafter, an amount equal to one-tenth (1/10) of the amount required to fund and maintain the Reserve Fund in an amount equal to the Reserve Requirement (as hereinafter defined) until such time as the amount on deposit in the Reserve Fund shall equal the Reserve Requirement and (2) on the fifteenth (15) day of each month, commencing on the first (1st) day of the month following a payment made on the Loan from the Reserve Fund, an amount equal to one-twelfth (1/12) of the amount which, when added to the balance then in the Reserve Fund, shall be equal to the Reserve Requirement. "Reserve Requirement" shall mean at the time of deposit to the Reserve Fund, an amount equal to the highest amount of Loan Repayments to be paid by the Local Borrower in any subsequent fiscal year as shown in the Loan Repayment Schedule in Exhibit A; provided, however, that such amount shall not exceed the least of (a) ten percent (10%) of the net proceeds of the Loan as originally negotiated, (b) the greatest amount to be paid in any subsequent fiscal year of the Town with respect to the Loan as originally negotiated or (c) one hundred twenty-five percent (125%) of the average annual debt service as originally negotiated. The amount of the Reserve Requirement, and the amount of the required monthly build-up of cash in the Reserve Fund, will be adjusted to reflect any adjustment of the Loan Repayment Schedule in Exhibit A upon and after the delivery of Authority Bonds to finance the Loan or any other adjustment to the Loan Repayment Schedule in Exhibit A.

The Local Borrower shall maintain a balance which shall be, at a minimum, an amount equivalent to the Reserve Requirement (the "Minimum Balance"). The Local Borrower shall cause to be deposited in the account holding the Reserve Fund on or before the first Business Day of each month that monthly deposit as set forth in Exhibit A to cause the Reserve Requirement to be fully funded (the "Reserve Fund"); provided, however, that once the Minimum Balance is achieved such deposits shall no longer be required so long as the Minimum Balance is maintained. For so long as the Loan is outstanding, if, on any date payment is due, the Local Borrower has not paid to the Authority an amount equal to the amount of principal and interest due on the Loan pursuant to Section 3.3 of the Loan Agreement, the Local Borrower shall on dates noted above, make such payment from the Minimum Balance and shall then deposit the first Net Revenues available (after provision is made for payment of any amounts which have become due under the Loan) an amount sufficient to cause the Minimum Balance to be at least equal to the amount then required.

Notwithstanding anything herein to the contrary, if, after the Local Borrower has been required to make deposits to the Reserve Fund as provided in the first paragraph, the Net Revenues for two consecutive fiscal years equal or exceed 150 percent of the aggregate of the debt service or comparable payments payable on the Outstanding Parity Obligations in the current or any future fiscal year for such fiscal years, any moneys held in the Reserve Fund may be released and used by the Local Borrower for any lawful purpose, and the Local Borrower's obligation to maintain the Reserve Requirement in the Reserve Fund shall terminate, subject to the first paragraph for funding the Reserve Fund if the circumstances described in the first paragraph occur.

The Local Borrower shall keep adequate and accurate records of moneys, investments and investment earnings on the Reserve Fund and the Authority shall have the right to audit the records of the Local Borrower insofar as they pertain to the Minimum Balance.

When all amounts payable by the Local Borrower under the Loan have become due, and all such amounts have been paid Local Borrower shall no longer be required to maintain the Minimum Balance.

The Local Borrower covenants and agrees that the investment of the Minimum Balance for the Loan Repayments shall at all times after the issuance of Authority Bonds to fund the Loan be restricted to a yield not greater than the yield on the Authority's Bonds, which shall be certified at the date of such Bond issuance to the Local Borrower by the Authority based upon certification to the Authority by the underwriters of the Authority's Bonds. The Local Borrower shall maintain adequate records of investment to reflect compliance with this covenant.

Exhibit F Replacement Reserve Requirements

Held By Local Borrower – No Separate Account

The Local Borrower shall either spend or maintain a replacement reserve (the "Replacement Reserve") in accordance with Exhibit A. The Replacement Reserve shall be used for one or more of the following purposes: (i) the acquisition of new, or the replacement of obsolete or worn out, machinery, equipment, furniture, fixtures or other personal property for the System provided that the property is depreciable; (ii) the performance of repairs with respect to the System which are of an extraordinary and non-recurring nature provided that the property is depreciable; and/or (iii) the acquisition or construction of additions to or improvements, extensions or enlargements to, or remodeling of, the System provided that the property is depreciable (collectively, the "*Permitted Uses*").

For so long as the Loan is outstanding, if on any interest payment date or principal repayment date the Local Borrower has not paid to the Authority an amount equal to the amount of principal and interest due on the Loan pursuant to the Loan Agreement, and the Reserve Fund does not hold sufficient moneys to cover the deficiency, the Local Borrower shall transfer amounts, if any, set aside for the Replacement Reserve to the Authority to cover the deficiency.

When all amounts payable by the Local Borrower under the Loan have become due, and all such amounts have been paid, and after any Outstanding Parity Obligations have been paid, any amounts set aside for the Replacement Reserve will become available to the Local Borrower for general use.

Exhibit G Form of Opinion of Local Borrower Counsel

Enter Date of Opinion

Water Infrastructure Finance Authority of Arizona
Phoenix, Arizona

Ladies and Gentlemen:

I am an attorney admitted to practice in the State of Arizona and I have acted as counsel to the Town of Queen Creek (the "*Local Borrower*"), which has entered into a Loan Agreement (as hereinafter defined) with the Water Infrastructure Finance Authority of Arizona (the "*Authority*"), and have acted as such in connection with the authorization, execution and delivery by the Local Borrower of the Loan Agreement (as hereinafter defined). Terms used and not otherwise defined herein have the meanings given to them in the Loan Agreement.

In so acting I have examined the Constitution and laws of the State of Arizona. I have also examined originals, or copies certified or otherwise identified to my satisfaction, of the following:

(a) the Loan Agreement, dated as of TBD (the "*Loan Agreement*") by and between the Authority and the Local Borrower; and

(b) proceedings of the governing board of the Local Borrower relating to the approval of the Loan Agreement and the Local Borrower Bond and the execution, issuance and delivery thereof on behalf of the Local Borrower, and the authorization of the undertaking and completion of the Project, including the proceedings relating to the election held on Enter Election Date on the question of authorizing the Local Borrower to enter into loan agreements with the Authority and/or issue the Local Borrower Bond, of which there is authorized but unissued capacity at least equal to the principal amount of the Loan.

I have also examined and relied upon originals, or copies certified or otherwise authenticated to my satisfaction, of such other records, documents, certificates and other instruments, and made such investigation of law as in my judgment I have deemed necessary or appropriate to enable me to render the opinions expressed below.

Based upon the foregoing, I am of the opinion that:

1. The Local Borrower is a political subdivison of the State of Arizona with the legal right to carry on the business of the System as currently being conducted and as proposed to be conducted.

2. The Local Borrower has full legal right and authority to pledge the Source of Repayment for the Loan Repayments and to execute and deliver the Loan Agreement, and to observe and perform its duties, covenants, obligations and agreements thereunder and to undertake and complete the Project; subject, however, to the effect of restrictions and limitations imposed by or

resulting from, bankruptcy, insolvency, moratorium, reorganization, debt adjustment or other similar laws affecting creditors rights generally ("*Creditor's Rights Limitations*") heretofore or hereafter enacted.

3. The Local Borrower has duly and validly pledged the Source of Repayment for the punctual payment of the principal of and interest on the Loan and all other amounts due under the Loan Agreement and the Local Borrower Bond according to their respective terms.

4. All additional debt tests and reserve and other requirements applicable to the Local Borrower with respect to the pledge of the Source of Repayment have been satisfied.

5. The authorizing proceedings of the Local Borrower's governing body approving the Loan Agreement and authorizing its execution, issuance and delivery on behalf of the Local Borrower, and authorizing the Local Borrower to undertake and complete the Project (hereinafter collectively called the "*Authorizing Resolutions*") have been duly and lawfully adopted and authorized in accordance with applicable Arizona law, at a meeting or meetings which were duly called pursuant to necessary public notice and held in accordance with applicable Arizona law, and at which quorums were present and acting throughout.

6. The Loan Agreement has been duly authorized, executed and delivered by the authorized officers of the Local Borrower; and, assuming that the Authority has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered the Loan Agreement, the Loan Agreement constitutes the legal, valid and binding obligation of the Local Borrower enforceable in accordance with its terms; subject, however, to the effect of and to restrictions and limitations imposed by or resulting from Creditor's Rights Limitations or other laws, judicial decisions and principles of equity relating to the enforcement of contractual obligations generally.

7. To the best of my knowledge, after such investigation as I have deemed appropriate, the authorization, execution and delivery of the Loan Agreement by the Local Borrower, the observance and performance by the Local Borrower of its duties, covenants, obligations and agreements thereunder and the consummation of the transactions contemplated therein and the undertaking and completion of the Project do not and will not contravene any existing law or any existing order, injunction, judgment, decree, rule or regulation of any court or governmental or administrative agency, authority or person having jurisdiction over the Local Borrower or its property or assets or result in a breach or violation of any of the terms and provisions of, or constitute a default under, any existing bond resolution, trust agreement, indenture, mortgage, deed of trust or other agreement to which the Local Borrower is a party or by which it, the System or its property or assets is bound.

8. To the best of my knowledge, after such investigation as I have deemed appropriate, all approvals, consents or authorizations of, or registrations of or filings with, any governmental or public agency, authority or person required to date on the part of the Local Borrower in connection with the authorization, execution, delivery and performance of the Loan Agreement, and the undertaking and completion of the Project have been obtained or made.

9. To the best of my knowledge, after such investigation as I have deemed appropriate, there is no litigation or other proceeding pending or threatened in any Court or other tribunal of competent jurisdiction (either State or Federal) questioning the creation, organization or existence of the Local Borrower or the validity, legality or enforceability of the Loan Agreement, or the undertaking or completion of the Project.

This opinion is rendered on the basis of Federal law and the laws of the State of Arizona as enacted and construed on the date hereof. I express no opinion as to any matter not set forth in the numbered paragraphs herein.

Very truly yours,

Exhibit H Tax Compliance Certificate of Local Borrower

Water Infrastructure Finance Authority of Arizona

$27,000,000.00 Loan to Town of Queen Creek

The Water Infrastructure Finance Authority of Arizona (the "Authority") and Town of Queen Creek (the "Local Borrower") are entering into a Loan Agreement (the "Loan Agreement") in the maximum principal amount stated above pursuant to which the Authority will make a loan (the "Loan") to the Local Borrower. In connection with its state revolving fund programs, the Authority issues its bonds ("Authority Bonds") from time to time to finance loans and the Authority also pledges certain loans to secure and to serve as the source of payment for the Authority Bonds. As a result, and under the provisions of federal tax law applicable to the Authority Bonds, it is in the Authority's interest for the Loan to qualify and be a Tax-Exempt Obligation that is not an AMT Obligation. Therefore, in order to establish certain facts necessary for the Loan to qualify and be treated as a Tax-Exempt Obligation that is not an AMT Obligation, and as required by the provisions of the Loan Agreement, the Local Borrower by its officer signing this Certificate, certifies, represents, and covenants as follows with respect to the Loan. All statements in this Certificate are of facts or, as to events to occur in the future, reasonable expectations.

I. DEFINITIONS

1.10. Attachment A. The definitions and cross-references set forth in Attachment A apply to this Certificate and its Attachments. All terms relating to a particular issue, such as Sale Proceeds, relate to the Loan, unless indicated otherwise. (For example, "Sale Proceeds" refers to Sale Proceeds of the Loan, unless indicated otherwise.)

1.20. Special Definitions. Terms used herein, to the extent not defined in Attachment A or below, have the same meaning as defined in the Loan Agreement. In addition, the following definitions apply to this Certificate and its Attachments:

"Instructions" means the Rebate Instructions attached hereto as Attachment A-1.

"Issue" means the Loan.

"Issuer" means the Local Borrower.

"Project" means the financing of a portion of the costs of acquisition, construction and improvement of facilities to be financed by the Loan and includes Issuance Costs and interest on the Loan for up to three years from the Issuance Date or, if later, one year after the date the Project is placed in service, all of which are governmental purposes for purposes of the Code.

"Reserve Fund" is defined in 3.40(a).

1.30. References. Reference to a Section means a section of the Code. Reference by number only (for example, "2.10") means that numbered paragraph of this Certificate. Reference to an Attachment means an attachment to this Certificate.

II. ISSUE DATA

2.10. Issuer. The Issuer is a Governmental Unit.

2.20. Purpose of Issue. The Issue is being issued to provide funds to pay costs of the Project.

2.30. Dates. The Sale Date of the Issue is the date on which the Loan Agreement is executed and delivered by the Authority and the Local Borrower, and the Issuance Date of the Issue is the first date on which the aggregate draws under the Loan exceed the lesser of $50,000 or 5% of the principal amount of the Loan.

2.40. Issue Price. The Issue Price of the Issue is the principal amount actually advanced by the Authority to the Issuer as the Loan.

2.50. Sale Proceeds, Net Proceeds, and Net Sale Proceeds. The amount of Sale Proceeds equals the Issue Price. The amount of Net Proceeds equals the Issue Price minus the amount of Proceeds (if any) deposited in the Reserve Fund (if any). The amount of Net Sale Proceeds equals the amount of Net Proceeds minus the Minor Portion.

2.60. Disposition of Sale Proceeds. There will be no Pre-Issuance Accrued Interest with respect to the Issue. The Sale Proceeds will be used to pay costs of the Project and, if applicable, to fund the Reserve Fund (if any).

2.70. Higher Yielding Investments. Gross Proceeds will not be invested in Higher Yielding Investments except for (A) the Minor Portion to the extent provided in 3.80, (B) those Gross Proceeds identified in 3.10, 3.20, and 3.30, but only during the applicable Temporary Periods there described for those Gross Proceeds, and (C) Gross Proceeds held in the Reserve Fund (if any) to the extent set forth in 3.40(a).

2.80. Single Issue. No other obligations have been or will be sold less than 15 days before or after the Sale Date pursuant to the same plan of financing with the Issue that are expected to be paid from substantially the same source of funds as the Issue, determined without regard to guarantees from a person who is not a Related Party to the Issuer. Accordingly, no obligations other than those of the Issue are a part of a single issue with the Issue.

III. ARBITRAGE (NONREBATE) MATTERS

3.10. Use of Net Sale Proceeds and Pre-Issuance Accrued Interest; Temporary Periods.

(A) Pre-Issuance Accrued Interest. There will be no Pre-Issuance Accrued Interest with respect to the Issue.

(B) Payment of Costs of the Project.

(1) All of the Net Sale Proceeds will be used to pay costs of the Project. Such Sale Proceeds may be used to acquire or hold Higher Yielding Investments for a period ending on the third anniversary of the Issuance Date (such period being the Temporary Period for such amount) because the following three tests are reasonably expected to be satisfied:

(i) At least 85% of the Net Sale Proceeds will be allocated to expenditures on the Project by the end of the Temporary Period;

(ii) Within 6 months of the Issuance Date, the Issuer will incur substantial binding obligations to third parties to expend at least 5% of the Net Sale Proceeds on the Project; and

(iii) Completion of the Project and allocation of the Net Sale Proceeds to expenditures will proceed with due diligence.

Any Sale Proceeds that remain unspent on the third anniversary of the Issuance Date, which is the expiration date of the Temporary Period for such Proceeds, shall not be invested in Higher Yielding Investments with respect to the Issue after that date except as part of the Minor Portion. In complying with the foregoing sentence, the Issuer may take into account "yield reduction payments" (within the meaning of Regulations §1.148-5(c)) paid to the United States.

(2) Any Reimbursement Allocation will qualify as a Reimbursement of Prior Capital Expenditures and will be made by an entry in the financial records of the Issuer kept with respect to the Issue showing that Sale Proceeds of the Issue have been returned to the fund or account of the Issuer from which such amount was originally and temporarily advanced to finance Capital Expenditures paid before this date by not more than (A) 18 months after the later of the date such Capital Expenditures were paid or the date on which the property resulting from such Capital Expenditures and comprising part of the Project was placed in service or (B) three years after the original expenditures were paid.

3.20. Investment Proceeds. Any Investment Proceeds will be used to pay costs of the Project and may be invested in Higher Yielding Investments during the Temporary Period identified in 3.10(B)(1) or, if longer, one year from the date of receipt, such period being the Temporary Period for such Proceeds.

3.30. Payment Fund. Amounts deposited from time to time in the fund of the Issuer from which payments will be made on the Issue, which is a Bona Fide Debt Service Fund, will be used to pay Debt Service on the Issue within 13 months after the amounts are so deposited, such period being the Temporary Period for such amounts.

3.40. Reserve Funds.

(A) Debt Service Reserve Fund. If (and only if) the Loan Agreement requires the funding of a debt service reserve fund ("Reserve Fund") in cash: The amount of Proceeds of the Loan deposited in the Reserve Fund shall not exceed

10% of the stated principal amount of the Loan. Amounts in the portion of the Reserve Fund allocable to the Issue may be invested in Higher Yielding Investments with respect to the Issue to the extent that such amounts do not exceed the least of (i) 10% of the principal amount of the Issue; (ii) maximum annual Debt Service; and (iii) 125% of average annual Debt Service. Any amounts in the portion of the Reserve Fund allocable to the Issue in excess of the least of these amounts will not be invested in Higher Yielding Investments with respect to the Issue. In complying with the yield restriction set forth in this Section, the Issuer may take into account "yield reduction payments" (within the meaning of Regulations § 1.148-5(c)) timely paid or to be timely paid to the United States because amounts in the Reserve Fund (other than investment earnings) are not reasonably expected to be used to pay Debt Service other than in connection with reductions in the amount required to be in the Reserve Account. The establishing and funding of the Reserve Fund was reasonably required by the Authority as a condition of making the Loan.

(B) Replacement Reserve Fund. If (and only if) the Loan Agreement requires the funding of a replacement reserve fund ("Replacement Reserve Fund") in cash: The Replacement Reserve Fund may be used for one or more of the following purposes: (i) the acquisition of new, or the replacement of obsolete or worn out, machinery, equipment, furniture, fixtures or other personal property for the Issuer's utility system, provided that the property is depreciable; (ii) the performance of repairs with respect to the Issuer's utility system that are of an extraordinary and non-recurring nature, provided that the property is depreciable; (iii) the acquisition or construction of additions to or improvements, extensions or enlargements to, or remodeling of, the Issuer's utility system, provided that the property is depreciable (collectively, the "Permitted Uses"). The Issuer reasonably expects to use amounts in the Replacement Reserve Fund for Permitted Uses other than to make Debt Service payments to the Authority on the Issue, and therefore there is no reasonable assurance of the availability of those amounts to make Debt Service payments to the Authority on the Issue if the Issuer encounters financial difficulties

3.50. No Other Replacement Fund or Assured Available Funds. Except as described in 3.30 and, if and to the extent applicable, 3.40(A), , the Issuer has not established and does not expect to establish or use any sinking fund, debt service fund, redemption fund, reserve or replacement fund, or similar fund, or any other fund to pay Debt Service on the Issue. Except for money referred to in 3.30 and Proceeds of a Refunding Issue, if any, no other money or Investment Property is or will be pledged as collateral or used for the payment of Debt Service on the Issue (or for the reimbursement of any others who may provide money to pay that Debt Service), or is or will be restricted, dedicated, encumbered, or set aside in any way as to afford the holders of the Issue reasonable assurance of the availability of such money or Investment Property to pay Debt Service on the Issue.

3.60. No Overissuance. The Proceeds of the Issue are not reasonably expected to exceed the amount needed for the governmental purposes of the Issue as set forth in 2.20.

3.70. Other Uses of Proceeds Negated. Except as stated otherwise in this Certificate, none of the Proceeds of the Issue will be used:

(A) to pay principal of or interest on, refund, renew, roll over, retire, or replace any other obligations issued by or on behalf of the Issuer or any other Governmental Unit,

(B) to replace any Proceeds of another issue that were not expended on the project for which such other issue was issued,

(C) to replace any money that was or will be used directly or indirectly to acquire Higher Yielding Investments,

(D) to make a loan to any person or other Governmental Unit,

(E) to pay any Working Capital Expenditure other than expenditures identified in Regulations §1.148-6(d)(3)(ii)(A) and (B) (i.e., Issuance Costs of the Issue, Qualified Administrative Costs, reasonable charges for a Qualified Guarantee or for a Qualified Hedge, interest on the Issue for a period commencing on the Issuance Date of the Issue and ending on the date that is the later of three years from such Issuance Date or one year after the date on which the project financed or refinanced by the Issue was or will be placed in service, payments of the Rebate Amount, and costs, other than those already described, that do not exceed 5% of the Sale Proceeds and that are directly related to Capital Expenditures financed or deemed financed by the Issue, principal or interest on an issue paid from unexpected excess Sale Proceeds or Investment Proceeds, and principal or interest on an issue paid from investment earnings on a reserve or replacement fund that are deposited in a Bona Fide Debt Service Fund), or

(F) to reimburse any expenditures made prior to the Issuance Date except those that qualify as a Reimbursement of Prior Capital Expenditures.

No portion of the Issue is being issued solely for the purpose of investing Proceeds in Higher Yielding Investments.

3.80. Minor Portion. The Minor Portion is equal to the lesser of 5% of the Sale Proceeds of the Issue and $100,000. Such Minor Portion may be invested in Higher Yielding Investments with respect to the Issue.

3.90. No Other Replacement Proceeds. That portion of the Issue that is to be used to finance Capital Expenditures has a weighted average maturity that does not exceed 120% of the weighted average reasonably expected economic life of the property resulting from such Capital Expenditures.

IV. REBATE MATTERS

4.10. Issuer Obligation Regarding Rebate. Consistently with its covenants contained in the Loan Agreement, the Issuer will calculate and make, or cause to be calculated and made,

payments of the Rebate Amount in the amounts and at the times and in the manner provided in Section 148(f) with respect to Gross Proceeds to the extent not exempted under Section 148(f)(4) and the Instructions.

4.20. No Avoidance of Rebate Amount. No amounts that are required to be paid to the United States will be used to make any payment to a party other than the United States through a transaction or a series of transactions that reduces the amount earned on any Investment Property or that results in a smaller profit or a larger loss on any Investment Property than would have resulted in an arm's length transaction in which the Yield on the Issue was not relevant to either party to the transaction.

4.30. Exceptions.

(A) Small Issuer Exception. The Issue is exempt under Section 148(f)(4)(D) from the rebate requirement **if all** of the following requirements are satisfied:

(1) The Issuer is a Governmental Unit with general taxing powers within the meaning of Section 148(f)(4)(D), and

(2) No part of the Issue is a Private Activity Bond, and

(3) All of the Net Proceeds will be used for "local governmental activities" of the Issuer within the meaning of Section 148(f)(4)(D) and none of the Net Proceeds will be used for any Private Business Use, and

(4) The aggregate principal amount of all Tax-Exempt Obligations, including the Issue, issued or to be issued by the Issuer, its subordinate entities and entities that issue any such obligations on behalf of the Issuer, or on behalf of which the Issuer issues any such obligations, during the current calendar year does not, and is not reasonably expected to, exceed $5,000,000. The Tax-Exempt Obligations taken into account for this purpose exclude any Private Activity Bonds and any Current Refunding Portion and Current Refunding Issue to the extent that the amount of such Current Refunding Portion or Current Refunding Issue does not exceed the outstanding amount of the obligations refunded by such Current Refunding Portion or Current Refunding Issue. No entity has been or will be formed or availed of to avoid the purposes of Section 148(f)(4)(D)(i)(IV).

If, but only if, all of the above requirements are satisfied, check here: [____]

and sign here: _____

(B) General Exception. Notwithstanding the foregoing, the computations and payments of amounts to the United States referred to in IV need not be made to the extent that the Issuer will not thereby fail to comply with any requirements of Section 148(f) and the Instructions based on an opinion of bond counsel.

4.40. Election. The Issue is a Construction Issue. The Issuer hereby elects to apply the 2-year spending exception to the rebate requirements on the basis of actual facts instead of the Issuer's reasonable expectations.

V. OTHER TAX MATTERS

5.10. Not Private Activity Bonds or Pool Bonds. No obligation of the Issue will be a Private Activity Bond or a pooled financing bond (within the meaning of Section 149(f)), based on the following:

(A) Not more than 5% of the Proceeds, if any, directly or indirectly, will be used for a Private Business Use and not more than 5%, if any, of the Debt Service on the Issue, directly or indirectly, will be secured by any interest in property used or to be used for a Private Business Use or payments in respect of such property, or will be derived from payments (whether or not to the Issuer) in respect of property, or borrowed money, used or to be used for a Private Business Use.

(B) Less than 5% of the Proceeds, if any, will be used to make or finance loans to any Private Person or Governmental Unit other than the Issuer.

(C) The lesser of the Proceeds that are being or will be used for any Private Business Use or the Proceeds with respect to which there are payments or (borrowed money) that are being or will be used for any Private Business Use does not exceed $15,000,000 and none of the Proceeds will be used with respect to an "output facility" (other than a facility for the furnishing of water) within the meaning of Section 141(b)(4).

(D) The Issuer does not expect to sell or otherwise dispose of the Project or any portion thereof during the term of the Issue except for dispositions of property in the normal course at the end of such property's useful life to the Issuer. With respect to tangible personal property, if any, that is part of the Project, the Issuer reasonably expects that:

(1) Dispositions of such tangible personal property, if any, will be in the ordinary course of an established governmental program;

(2) The weighted average maturity of the obligations of the Issue financing such property (treating the obligations of the Issue properly allocable to such personal property as a separate issue for this purpose) will not be greater than 120% of the reasonably expected actual use of such property for governmental purposes;

(3) The fair market value of such property on the date of disposition will not be greater than 25% of its cost;

(4) The property will no longer be suitable for its governmental purposes on the date of disposition; and

(5) The amounts received from any disposition of such property are required to be, and will be, commingled with substantial tax or other governmental revenues and will be spent on governmental programs within 6 months from the date of such deposit and commingling.

5.20. Issue Not Federally Guaranteed. The Issue is not Federally Guaranteed.

5.30. Not Hedge Bonds. At least 85% of the Spendable Proceeds will be used to carry out the governmental purposes of the Issue within three years from the Issuance Date. Not more than 50%, if any, of the Proceeds will be invested in Nonpurpose Investments having a substantially guaranteed Yield for four years or more (including but not limited to any investment contract or fixed yield investment having a maturity of four years or more). The reasonable expectations stated above are not based on and do not take into account (A) any expectations or assumptions as to the occurrence of changes in market interest rates or changes of federal tax law or regulations or rulings thereunder or (B) any prepayments of items other than items that are customarily prepaid.

5.40. Hedge Contracts. The Issuer has not entered into, and does not reasonably expect to enter into, any Hedge with respect to the Issue, or any portion thereof. The Issuer acknowledges that entering into a Hedge with respect to the Issue, or any portion thereof, may change the Yield and that Bond Counsel should be contacted prior to entering into any Hedge with respect to the Issue in order to determine whether payments/receipts pursuant to the Hedge will be taken into account in computing the Yield.

5.50. Internal Revenue Service Information Return. Within the time and on the form prescribed by the Internal Revenue Service under Section 149(e), the Issuer will file with the Internal Revenue Service an Information Return setting forth the required information relating to the Issue. The information reported on that Information Return will be true, correct, and complete to the best of the knowledge and belief of the undersigned.

5.60. Responsibility of Officer.

(A) The officer signing this Certificate is one of the officers of the Issuer responsible for issuing the Issue.

(B) To the best of the knowledge, information, and belief of the undersigned, all expectations stated in this Certificate are the expectations of the Issuer and are reasonable, all facts stated are true, and there are no other existing facts, estimates, or circumstances that would or could materially change the statements made in this Certificate. The certifications and representations made in this Certificate are intended to be relied upon as certifications described in Regulations § 1.148-2(b). The Issuer acknowledges that any change in the facts or expectations from those set forth in this Certificate may result in different requirements or a change in status of the Issue or interest thereon under the Code, and that bond counsel should be contacted if such changes are to occur or have occurred.

Town of Queen Creek

By:_____

Name:_____

Title:_____

List of Attachments

Attachment A -- Definitions for Tax Compliance Certificate

Attachment A-1 -- Rebate Instructions

Attachment A

Definitions for Tax Compliance Certificate of Local Borrower

The following terms, as used in Attachment A and in the Tax Compliance Certificate to which it is attached and in the other Attachments to the Tax Compliance Certificate, have the following meanings unless therein otherwise defined or unless a different meaning is indicated by the context in which the term is used. Capitalized terms used within these definitions that are not defined in Attachment A have the meanings ascribed to them in the Tax Compliance Certificate to which this Attachment A is attached. The word "Issue," in lower case, refers either to the Issue or to another issue of obligations or portion thereof treated as a separate issue for the applicable purposes of Section 148, as the context requires. The word "obligation" or "obligations," in lower case, includes any obligation, whether in the form of bonds, notes, certificates, or any other obligation that is a "bond" within the meaning of Section 150(a)(1). All capitalized terms used in this Certificate include either the singular or the plural. All terms used in this Attachment A or in the Tax Compliance Certificate to which this Attachment A is attached, including terms specifically defined, shall be interpreted in a manner consistent with Sections 103 and 141-150 and the applicable Regulations thereunder except as otherwise specified. All references to Section, unless otherwise noted, refer to the Code.

"Advance Refunding Issue" means any Refunding Issue that is not a Current Refunding Issue.

"Advance Refunding Portion" means that portion of a Multipurpose Issue that constitutes a separate governmental purpose and that would be treated as an Advance Refunding Issue if it had been issued as a separate issue.

"AMT Obligation" means a Tax-Exempt Obligation the interest on which is an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Internal Revenue Code.

"Available Construction Proceeds" means an amount equal to (a) the sum of (i) the Issue Price of an issue, (ii) Investment Proceeds on that Issue Price, (iii) earnings on any reasonably required reserve or replacement fund allocable to the issue not funded from the Issue Price, and (iv) Investment Proceeds and earnings on (ii) and (iii), (b) reduced by the portions, if any, of the Issue Price of the issue (i) attributable to Pre-Issuance Accrued Interest and earnings thereon, (ii) allocable to the underwriter's discount, (iii) used to pay other Issuance Costs of the issue, and (iv) deposited in a reasonably required reserve or replacement fund allocable to the issue. "Available Construction Proceeds" does not include Investment Proceeds or earnings on a reasonably required reserve or replacement fund allocable to the issue for any period after the earlier of (a) the close of the 2-year period that begins on the Issuance Date or (b) the date the construction of the project financed by the issue is substantially completed, provided, however, that such Investment Proceeds or earnings shall be excluded from "Available Construction Proceeds" if the Issuer has timely elected such exclusion. If an issue is a Multipurpose Issue that includes a New Money Portion that is a Construction Issue, this definition shall be applied by substituting "New Money Portion" for "issue" each place the latter term appears. If an issue or the New Money Portion of a Multipurpose Issue, as applicable, is

not a Construction Issue, and the Issuer makes the bifurcation election under Regulations §1.148-7(j)(1) and Section 148(f)(4)(C)(v) to treat the issue or the New Money Portion as two separate issues consisting of the Construction Portion and the Nonconstruction Portion, this definition shall be applied by substituting "Construction Portion" for "issue" each place the latter term appears.

"Bona Fide Debt Service Fund" means a fund, including a portion of or an account in that fund (or in the case of a fund established for two or more issues, the portion of that fund properly allocable to an issue), or a combination of such funds, accounts or portions that is used primarily to achieve a proper matching of revenues with Debt Service on an issue within each Bond Year and that is depleted at least once each year except for a reasonable carryover amount not to exceed the greater of the earnings thereon for the immediately preceding Bond Year or one-twelfth of the annual Debt Service on the issue for the immediately preceding Bond Year.

"Bond Year" means the annual period relevant to the application of Section 148(f) to an issue, except that the first and last Bond Years may be less than 12 months long. The last day of a Bond Year shall be the close of business on the day preceding the anniversary of the Issuance Date of an issue unless the Issuer selects another date on which to end a Bond Year in the manner permitted by the Code.

"Capital Expenditures" means costs of a type that are properly chargeable to a capital account (or would be so chargeable with a proper election or with the application of the definition of Placed in Service) under general federal income tax principles.

"Code" means the Internal Revenue Code of 1986, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section includes any applicable successor section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

"Commingled Fund" means any fund or account of the Issuer that contains both Gross Proceeds of an issue and amounts in excess of $25,000 that are not Gross Proceeds of the issue if the amounts in the fund or account are invested and accounted for collectively, without regard to the source of funds deposited in the fund or account.

"Commingled Investment Proceeds" means Investment Proceeds of an issue (other than Investment Proceeds held in a Refunding Escrow) that are deposited in a Commingled Fund with substantial tax or other revenues from governmental operations of the Issuer and that are reasonably expected to be spent for governmental purposes within 6 months from the date of deposit in the Commingled Fund, using any reasonable accounting assumptions.

"Conduit Borrower" means the obligor on a purpose investment.

"Conduit Financing Issue" means an issue the Proceeds of which are reasonably expected to be used to finance one or more Conduit Loans.

"Conduit Loan" means a purpose investment acquired by the Issuer with Proceeds of a Conduit Financing Issue, thereby effecting a loan to the Conduit Borrower.

"Construction Expenditures" means Capital Expenditures allocable to the cost of real property (including the construction or making of improvements to real property, but excluding acquisitions of interests in land or other existing real property) or constructed personal property within the meaning of Regulations §1.148-7(g).

"Construction Issue" means an issue at least 75% of the Available Construction Proceeds of which are to be used for Construction Expenditures with respect to property that is, or upon completion will be, owned by a Governmental Unit or a 501(c)(3) Organization. If an issue is a Multipurpose Issue that includes a New Money Portion, this definition shall be applied by substituting "New Money Portion" for "Construction Issue" each place the latter term appears. If an election under Section 148(f)(4)(C)(v) and Regulations §1.148-7(j) is made to bifurcate an issue or the New Money Portion of a Multipurpose Issue, this definition shall be applied by substituting "Construction Portion" for "Construction Issue" each place the latter term appears.

"Construction Portion" means that portion of an issue or the New Money Portion of a Multipurpose Issue at least 75% of the Available Construction Proceeds of which are to be used for Construction Expenditures with respect to property that is, or upon completion will be, owned by a Governmental Unit or a 501(c)(3) Organization and that finances 100% of the Construction Expenditures.

"Controlled Group" means a group of entities controlled directly or indirectly by the same entity or group of entities within the meaning of Regulations §1.150-1(e).

"Current Refunding Issue" means a Refunding Issue that is issued not more than 90 days before the last expenditure of any Proceeds of the Refunding Issue for the payment of Debt Service on the Refunded Bonds.

"Current Refunding Portion" means that portion of a Multipurpose Issue that constitutes a separate governmental purpose and that would be treated as a Current Refunding Issue if it had been issued as a separate issue.

"Debt Service" means principal of and interest and any redemption premium on an issue.

"Excess Gross Proceeds" means all Gross Proceeds of an Advance Refunding Issue that exceed an amount equal to 1% of the Sale Proceeds of such Advance Refunding Issue, other than Gross Proceeds allocable to: (a) payment of Debt Service on the Refunded Bonds; (b) payment of Pre-Issuance Accrued Interest on the Advance Refunding Issue and interest on the Advance Refunding Issue that accrues for a period up to the completion date of any capital project financed by the Prior Issue, plus one year; (c) a reasonably required reserve or replacement fund for the

Advance Refunding Issue or Investment Proceeds of such fund; (d) payment of Issuance Costs of the Advance Refunding Issue; (e) payment of administrative costs allocable to repaying the Refunded Bonds, carrying and repaying the Advance Refunding Issue, or investments of the Advance Refunding Issue; (f) Transferred Proceeds allocable to expenditures for the governmental purpose of the Prior Issue (treating for this purpose all unspent Proceeds of the Prior Issue properly allocable to the Refunded Bonds as of the Issuance Date of the Advance Refunding Issue as Transferred Proceeds); (g) interest on purpose investments; (h) Replacement Proceeds in a sinking fund for the Advance Refunding Issue; and (i) fees for a Qualified Guarantee for the Advance Refunding Issue or the Prior Issue. If an Issue is a Multipurpose Issue that includes an Advance Refunding Portion, this definition shall be applied by substituting "Advance Refunding Portion" for "Advance Refunding Issue" each place the latter term appears.

"Federally Guaranteed" means that (a) the payment of Debt Service on an issue, or the payment of principal or interest with respect to any loans made from the Proceeds of the issue, is directly or indirectly guaranteed in whole or in part by the United States or by an agency or instrumentality of the United States, within the meaning of Section 149(b) of the Code, or (b) more than 5% of the Proceeds of an issue will be invested directly or indirectly in federally insured deposits or accounts. The preceding sentence does not apply to (a) Proceeds invested during an initial Temporary Period until such Proceeds are needed to pay costs of the project, (b) investments of a Bona Fide Debt Service Fund, (c) direct purchases from the United States of obligations issued by the United States Treasury, or (d) other investments permitted by Section 149(b) or Regulations §1.149(b)-1(b).

"501(c)(3) Organization" means an organization described in Section 501(c)(3) and exempt from tax under Section 501(a).

"Fixed Yield Issue" means an issue of obligations the Yield on which is fixed and determinable on the Issuance Date.

"Governmental Unit" means a state, territory or possession of the United States, the District of Columbia, or any political subdivision thereof referred to as a "State or local governmental unit" in Regulations §1.103-1(a). "Governmental Unit" does not include the United States or any agency or instrumentality of the United States.

"Gross Proceeds" means Proceeds and Replacement Proceeds of an issue.

"Hedge" means a contract entered into by the Issuer or the Conduit Borrower primarily to modify the Issuer's or the Conduit Borrower's risk of interest rate changes with respect to an obligation (e.g., an interest rate swap, an interest rate cap, a futures contract, a forward contract or an option).

"Higher Yielding Investments" means any Investment Property that produces a Yield that (a) in the case of Investment Property allocable to Replacement Proceeds of an issue and Investment Property in a Refunding Escrow, is more than one thousandth of one percentage point (.00001) higher than the Yield on the applicable issue, and (b) for all other purposes is more than one-eighth of one percentage point (.00125) higher than the Yield on the issue.

"Investment Proceeds" means any amounts actually or constructively received from investing Proceeds of an issue in Investment Property.

"Investment Property" means investment property within the meaning of Sections 148(b)(2) and 148(b)(3), including any security (within the meaning of Section 165(g)(2)(A) or (B)), any obligation, any annuity contract and any other investment-type property (including certain residential rental property for family units as described in Section 148(b)(2)(E) in the case of any bond other than a Private Activity Bond). Investment Property includes a Tax-Exempt Obligation that is a "specified private activity bond" as defined in Section 57(a)(5)(C), but does not include other Tax-Exempt Obligations.

"Issuance Costs" means costs to the extent incurred in connection with, and allocable to, the issuance of an issue, and includes underwriter's compensation withheld from the Issue Price, counsel fees, financial advisory fees, rating agency fees, trustee fees, paying agent fees, bond registrar, certification and authentication fees, accounting fees, printing costs for bonds and offering documents, public approval process costs, engineering and feasibility study costs, guarantee fees other than for a Qualified Guarantee and similar costs, but does not include fees charged by the Issuer.

"Issuance Date" means the date of physical delivery of an issue by the Issuer in exchange for the purchase price of the issue.

"Issue Price" means in the circumstances applicable to an issue:

(1) Public Offering. In the case of obligations actually offered to the general public in a bona fide public offering at the initial offering price for each maturity set forth in the certificate of the underwriter or placement agent attached to the Tax Compliance Certificate of the Issuer, the aggregate of the initial offering price for each maturity (including any Pre-Issuance Accrued Interest and original issue premium, but excluding any original issue discount), which price is not more than the fair market value thereof as of the Sale Date, and at which initial offering price not less than 10% of the principal amount of each maturity, as of the Sale Date, was sold or reasonably expected to be sold (other than to bond houses, brokers or other intermediaries). In the case of publicly offered obligations that are not described in the preceding sentence, Issue Price means the aggregate of the initial offering price to the public of each maturity set forth in the certificate of the underwriter or placement agent attached to the Tax Compliance Certificate of the Issuer, which price is not more than the fair market value thereof as of the Sale Date, and at which initial offering price not less than 10% of the principal amount of each maturity was sold to the public.

(2) Private Placement. In the case of obligations sold by private placement, the aggregate of the prices (including any Pre-Issuance Accrued Interest and original issue premium, but excluding any original issue discount) paid to the

Issuer by the first purchaser(s) (other than bond houses, brokers or other intermediaries).

"Minor Portion" means an amount equal to the lesser of $100,000 or 5% of the Sale Proceeds of an issue.

"Multipurpose Issue" means an issue the bonds of which are allocable to two or more separate governmental purposes within the meaning of Regulations §1.148-9(h).

"Net Proceeds" means the Sale Proceeds of an issue less the portion thereof, if any, deposited in a reasonably required reserve or replacement fund for the issue.

"Net Sale Proceeds" means the Sale Proceeds of an issue less the portion thereof, if any, deposited in a reasonably required reserve or replacement fund for the issue and the portion invested as a part of a Minor Portion for the issue.

"New Money Issue" means an issue that is not a Refunding Issue.

"New Money Portion" means that portion of a Multipurpose Issue other than the Refunding Portion.

"Nonpurpose Investments" means any Investment Property that is acquired with Gross Proceeds as an investment and not in carrying out any governmental purpose of an issue. "Nonpurpose Investments" does not include any investment that is not regarded as "investment property" or a "nonpurpose investment" for the particular purposes of Section 148 (such as certain investments in U.S. Treasury obligations in the State and Local Government Series and certain temporary investments), but does include any other investment that is a "nonpurpose investment" within the applicable meaning of Section 148.

"Placed in Service" means the date on which, based on all the facts and circumstances, a facility has reached a degree of completion that would permit its operation at substantially its design level and the facility is, in fact, in operation at such level.

"Pre-Issuance Accrued Interest" means interest on an obligation that accrued for a period not greater than one year before its Issuance Date and that will be paid within one year after such Issuance Date.

"Preliminary Expenditures" means any Capital Expenditures that are "preliminary expenditures" within the meaning of Regulations §1.150-2(f)(2), i.e., architectural, engineering, surveying, soil testing, reimbursement bond issuance, and similar costs that are incurred prior to commencement of acquisition, construction, or rehabilitation of a project other than land acquisition, site preparation, and similar costs incident to commencement of construction. The aggregate amount of Preliminary Expenditures may not exceed 20% of the aggregate Issue Price of the issue or issues that financed or are reasonably expected to finance the project for which such Preliminary Expenditures are or were incurred.

"Prior Issue" means an issue of obligations all or a portion of the Debt Service on which is paid or provided for with Proceeds of a Refunding Issue. The Prior Issue may be a Refunding Issue.

"Private Activity Bond" means (a) obligations of an issue more than 10% of the Proceeds of which, directly or indirectly, are or are to be used for a Private Business Use and more than 10% of the Debt Service on which, directly or indirectly, is or is to be paid from or secured by payments with respect to property, or secured by property, used for a Private Business Use, or (b) obligations of an issue, the Proceeds of which are or are to be used to make or finance loans to any Private Person that, in the aggregate, exceed the lesser of 5% of such Proceeds or $5,000,000. In the event of Unrelated or Disproportionate Use, the tests in (a) shall be applied by substituting 5% for 10% each place the latter term is used.

"Private Business Use" means use (directly or indirectly) in a trade or business carried on by any Private Person other than use as a member of, and on the same basis as, the general public. Any activity carried on by a Private Person (other than a natural person) shall be treated as a trade or business. In the case of a Qualified 501(c)(3) Bond, Private Business Use excludes use by a 501(c)(3) Organization that is not an unrelated trade or business activity by such 501(c)(3) Organization within the meaning of Section 513(a).

"Private Person" means any natural person or any artificial person, including a corporation, partnership, trust or other entity, other than a Governmental Unit. "Private Person" includes the United States and any agency or instrumentality of the United States.

"Proceeds" means any Sale Proceeds, Investment Proceeds, and Transferred Proceeds of an issue. "Proceeds" does not include Replacement Proceeds.

"Qualified Administrative Costs" means reasonable direct administrative costs (other than carrying costs) such as separately stated brokerage or selling commissions, but not legal and accounting fees, recordkeeping, custody and similar costs. General overhead costs and similar indirect costs of the Issuer such as employee salaries and office expenses and costs associated with computing the Rebate Amount are not Qualified Administrative Costs.

"Qualified 501(c)(3) Bonds" means an issue of obligations that satisfies the requirements of Section 145(a).

"Qualified Guarantee" means any guarantee of an obligation that constitutes a "qualified guarantee" within the meaning of Regulations §1.148-4(f).

"Qualified Hedge" means a Hedge that is a "qualified hedge" within the meaning of Regulations §1.148-4(h)(2).

"Rebate Amount" means the excess of the future value, as of any date, of all receipts on Nonpurpose Investments acquired with Gross Proceeds of an issue over the future value, as of that date, of all payments on those Nonpurpose Investments, computed in accordance with Section 148(f) and Regulations §1.148-3.

"Refunded Bonds" means obligations of a Prior Issue the Debt Service on which is or is to be paid from Proceeds of a Refunding Issue.

"Refunding Bonds" means obligations of a Refunding Issue.

"Refunding Issue" means an issue the Proceeds of which are or are to be used to pay Debt Service on Refunded Bonds and includes Issuance Costs, Pre-Issuance Accrued Interest or permitted capitalized interest, a reasonably required reserve or replacement fund and similar costs of the Refunding Issue.

"Refunding Escrow" means one or more funds established as part of a single transaction, or a series of related transactions, containing Proceeds of a Refunding Issue and any other amounts to be used to pay Debt Service on Refunded Bonds of one or more issues.

"Refunding Portion" means that portion of a Multipurpose Issue the Proceeds of which are, or are to be, used to pay Debt Service on Refunded Bonds and includes Issuance Costs, Pre-Issuance Accrued Interest or permitted capitalized interest, a reasonably required reserve or replacement fund and similar costs properly allocable to the Refunding Portion.

"Regulations" or "Reg." means Treasury Regulations.

"Reimbursement Allocation" means an allocation of the Proceeds of an issue for the Reimbursement of Prior Capital Expenditures, other than Preliminary Expenditures, that meets each of the following requirements: (a) is evidenced on the books or records of the Issuer maintained with respect to the issue, (b) the allocation entry identifies either actual prior Capital Expenditures, or the fund or account from which the prior Capital Expenditures were paid, and (c) evidences the Issuer's use of Proceeds of the issue to reimburse a Capital Expenditure for a governmental purpose that was originally paid from a source other than the Proceeds of the issue.

"Reimbursement of Prior Capital Expenditures" means a Reimbursement Allocation of Proceeds of the Issue to a Capital Expenditure paid prior to the Issuance Date of such Issue, that satisfies the following requirements: (a) the Capital Expenditure was paid after March 1, 1992; (b) prior to, or within 60 days after, payment of the Capital Expenditure (except Preliminary Expenditures), the Issuer adopted an official intent for the Capital Expenditure that satisfies Regulations §1.150-2(e); and (c) except for Preliminary Expenditures, the Reimbursement Allocation occurs or will occur within 18 months after the later of the date the Capital Expenditure was paid or the date the project resulting from such Capital Expenditure was Placed in Service or abandoned, but in no event more than 3 years after the Capital Expenditure was paid.

"Related Party" means, in reference to a Governmental Unit or 501(c)(3) Organization, any member of the same Controlled Group and, in reference to any person that is not a Governmental Unit or 501(c)(3) Organization, a "related person" as defined in Section 144(a)(3) of the Code.

"Replacement Proceeds" means, with respect to an issue, amounts (including any investment income, but excluding any Proceeds of any issue) replaced by Proceeds of that issue within the meaning of Section 148(a)(2). "Replacement Proceeds" includes amounts, other than Proceeds, held in a sinking fund, pledged fund or reserve or replacement fund for an issue.

"Sale Date" means, with respect to an issue, the first date on which there is a binding contract in writing with the Issuer for the sale and purchase of an issue (or of respective obligations of the issue if sold by the Issuer on different dates) on specific terms that are not later modified or adjusted in any material respect.

"Sale Proceeds" means that portion of the Issue Price actually or constructively received by the Issuer upon the sale or other disposition of an issue, including any underwriter's compensation withheld from the Issue Price, but excluding Pre-Issuance Accrued Interest.

"Spendable Proceeds" means the Net Sale Proceeds of an issue.

"Tax-Exempt Obligation" means any obligation or issue of obligations (including bonds, notes and lease obligations treated for federal income tax purposes as evidences of indebtedness) the interest on which is excluded from gross income for federal income tax purposes within the meaning of Section 150, and includes any obligation or any investment treated as a "tax-exempt bond" for the applicable purpose of Section 148.

"Tax-Exempt Organization" means a Governmental Unit or a 501(c)(3) Organization.

"Temporary Period" means the period of time, as set forth in the Tax Compliance Certificate, applicable to particular categories of Proceeds of an issue during which such category of Proceeds may be invested in Higher Yielding Investments without the issue being treated as arbitrage bonds under Section 148.

"Transferred Proceeds" means that portion of the Proceeds of an issue (including any Transferred Proceeds of that issue) that remains unexpended at the time that any portion of the principal of the Refunded Bonds of that issue is discharged with the Proceeds of a Refunding Issue and that thereupon becomes Proceeds of the Refunding Issue as provided in Regulations §1.148-9(b). "Transferred Proceeds" does not include any Replacement Proceeds.

"Unrelated or Disproportionate Use" means Private Business Use that is not related to or is disproportionate to use by a Governmental Unit within the meaning of Section 141(b)(3) and Regulations §1.141-9.

"Variable Yield Issue" means any Issue that is not a Fixed Yield Issue.

"Working Capital Expenditures" means any costs of a type that do not constitute Capital Expenditures, including current operating expenses.

"Yield" has the meaning assigned to it for purposes of Section 148 of the Code, and means that discount rate (stated as an annual percentage) that, when used in computing the present worth of all applicable unconditionally payable payments of Debt Service, all payments for a Qualified Guarantee, if any, and all payments and receipts with respect to a Qualified Hedge, if any, paid and to be paid with respect to an obligation (paid and to be paid during and attributable to the Yield Period in the case of a Variable Yield Issue), produces an amount equal to (a) the Issue Price in the case of a Fixed Yield Issue or the present value of the Issue Price at the commencement of the applicable Yield Period in the case of a Variable Yield Issue, or (b) the purchase price for yield purposes in the case of Investment Property, all subject to the applicable methods of computation provided for under Section 148, including variations from the foregoing. The Yield on Investment Property in which Proceeds or Replacement Proceeds of an issue are invested is computed on a basis consistent with the computation of Yield on that issue, including the same compounding interval of not more than one year selected by the Issuer.

"Yield Period" means, in the case of the first Yield Period, the period that commences on the Issuance Date and ends at the close of business on the first Computation Date and, in the case of each succeeding Yield Period, the period that begins immediately after the end of the immediately preceding Yield Period and ends at the close of business on the next succeeding Computation Date.

The terms "bond", "obligation", "reasonably required reserve or replacement fund", "reserve or replacement fund", "loan", "sinking fund", "purpose investment", "same plan of financing", "other replacement proceeds", and other terms relating to Code provisions used but not defined in this Certificate shall have the meanings given to them for purposes of Sections 103 and 141 to 150 unless the context indicates another meaning.

(End of Attachment A)

ATTACHMENT A-1
to
Tax Compliance Certificate of Local Borrower

INSTRUCTIONS FOR COMPLIANCE WITH REBATE REQUIREMENTS OF SECTION 148(f) OF THE CODE.

The Issuer covenanted in the Loan Agreement and Tax Compliance Certificate to comply with the arbitrage rebate requirement of Section 148(f) of the Code. These Instructions provide guidance for that compliance, including the spending exceptions that free the Issue from all or part of the rebate requirements.

PART I: GENERAL

SECTION 1.01. REBATE GENERALLY.

The Rebate Amount[1] with respect to the Issue must be paid (rebated) to the United States to prevent the bonds of the Issue from being arbitrage bonds, the interest on which is subject to federal income tax. In general, the Rebate Amount is the amount by which the actual earnings on Nonpurpose Investments purchased (or deemed to have been purchased) with Gross Proceeds of the Issue exceed the amount of earnings that would have been received if those Nonpurpose Investments had a Yield equal to the Yield on the Issue.[2]

Stated differently, the Rebate Amount for the Issue as of any date is the excess of the Future Value, as of that date, of all Receipts on Nonpurpose Investments over the Future Value, as of that date, of all Payments on Nonpurpose Investments, computed using the Yield on the Issue as the Future Value rate.[3]

If the Issue is a Fixed Yield Issue, the Yield on the Issue generally is the Yield to maturity, taking into account mandatory redemptions prior to maturity. If the Issue is a Variable Yield Issue, the Yield on the Issue is computed separately for each Yield Period selected by the Issuer.

SECTION 1.02. SPECIAL DEFINITIONS.

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1. Capitalized terms that are not defined in these Instructions are defined in Attachment A to the Tax Compliance Certificate of the Issuer.

2. Amounts earned on the Bona Fide Debt Service Fund for the Issue are not taken into account in determining the Rebate Amount since none of the obligations of the Issue are Private Activity Bonds, the rates of interest on the Issue do not vary and the average maturity of the Issue is at least 5 years.

3. The scope of these Instructions does not permit a detailed description of the computation of the Rebate Amount with respect to the Issue. If you need assistance in computing the Rebate Amount on the Issue, please contact your bond counsel.

For purposes of these Instructions, the following terms shall have the following meanings.

"Available Construction Proceeds" means an amount equal to (a) the sum of (i) the Issue Price of the issue, (ii) Investment Proceeds on that Issue Price, (iii) earnings on any reasonably required reserve or replacement fund allocated to the issue not funded from the Issue Price, and (iv) Investment Proceeds and earnings on (ii) and (iii), (b) reduced by the portions, if any, of the Issue Price of the issue (i) attributable to Pre-Issuance Accrued Interest and earnings thereon, (ii) allocated to the Underwriter's discount, (iii) used to pay other Issuance Costs of the issue, and (iv) deposited in a reasonably required reserve or replacement fund allocated to the issue. Available Construction Proceeds do not include Investment Proceeds or earnings on a reasonably required reserve or replacement fund allocated to the issue for any period after the earlier of (a) the close of the 2-year period that begins on the Issuance Date or (b) the date the construction of the Projects financed by the issue is substantially completed. If the issue consists of a New Money Portion and a Refunding Portion and the New Money Portion is a Construction Issue, this definition shall be applied by substituting "New Money Portion" for "issue" each place the latter term appears. If the issue or the New Money Portion, as applicable, is not a Construction Issue, and the Issuer makes the election under Regulations §1.148-7(j)(1) and Section 148(f)(4)(C)(v) to treat the issue or the New Money Portion as two separate issues consisting of the Construction Portion and the Nonconstruction Portion, this definition shall be applied by substituting "Construction Portion" for "issue" each place the latter term appears.

"Bifurcated Issue" means a New Money Issue or the New Money Portion of a Multipurpose Issue that the Issuer, pursuant to Section 148(f)(4)(C)(v) and Regulations §1.148-7(j), has elected in its Tax Compliance Certificate to bifurcate into a Construction Portion and a Nonconstruction Portion.

"Bond Counsel's Opinion" means an opinion or opinions of a nationally recognized bond counsel firm whose opinion is given with respect to the Issue when issued, or its successors or other nationally recognized bond counsel appointed by the Issuer.

"Bond Year" means the annual period relevant to the application of Section 148(f) to the issue, except that the first and last Bond Years may be less than 12 months long. The last day of a Bond Year shall be the close of business on the day preceding the anniversary of the Issuance Date of the issue unless the Issuer selects another date on which to end a Bond Year in the manner permitted by the Code.

"Computation Date" means each date on which the Rebate Amount for an issue is required to be computed under Regulations §1.148-3(e). In the case of a Fixed Yield Issue, the first Computation Date shall not be later than 5 years after the Issuance Date of the issue. Subsequent Computation Dates shall be not later than 5 years after the immediately preceding Computation Date for which an installment payment of the Rebate Amount was paid. In the case of a Variable Yield Issue, the first Computation Date shall be the last day of any Bond Year irrevocably selected by the Issuer ending on or before the fifth anniversary of the Issuance Date of such issue and

subsequent Computation Dates shall be the last day of each Bond Year thereafter or each fifth Bond Year thereafter, whichever is irrevocably selected by the Issuer after the first date on which any portion of the Rebate Amount is required to be paid to the United States. The final Computation Date is the date an issue is retired.

"Construction Expenditures" means Capital Expenditures allocable to the cost of real property (including the construction or making of improvements to real property, but excluding acquisitions of interests in land or other existing real property) or constructed personal property within the meaning of Regulations §1.148-7(g).

"Construction Issue" means an issue at least 75 percent of the Available Construction Proceeds of which are to be used for Construction Expenditures with respect to property which is or is to be owned by a Governmental Unit or a 501(c)(3) Organization. If an election has been made in the Issuer's Tax Compliance Certificate to bifurcate an issue or the New Money Portion, the Construction Portion (i.e., that portion of the issue or the New Money Portion which satisfies the 75 percent test stated in the preceding sentence and which finances 100% of the Construction Expenditures) is treated as the Construction Issue and the balance of the issue or the New Money Portion is treated as the Nonconstruction Portion.

"Fixed Yield Issue" means an issue of obligations the Yield on which is fixed and determinable on the Issuance Date.

"Future Value" means the value of a Payment or Receipt at the end of a period determined using the economic accrual method as the value of that Payment or Receipt when it is paid or received (or treated as paid or received), plus interest assumed to be earned and compounded over the period at a rate equal to the Yield on the Issue, using the same compounding interval and financial conventions that were used to compute that Yield.

"Guaranteed Investment Contract" means any Nonpurpose Investment that has specifically negotiated withdrawal or retirement provisions and a specifically negotiated interest rate and any agreement to supply investments on two or more future dates (e.g., a forward supply contract).

"Multipurpose Issue" means an issue that consists of a Refunding Portion and a New Money Portion.

"Payment" means payments actually or constructively made to acquire Nonpurpose Investments, as specified in Regulations §1.148-3(d)(1)i) through (v).

"Qualified Administrative Costs" means the reasonable, direct administrative costs, other than carrying costs, of purchasing or selling Nonpurpose Investments such as separately stated brokerage or selling commissions. Qualified Administrative Costs do not include legal and accounting fees, recordkeeping, custody, and similar costs, general overhead costs and similar indirect costs of the Issuer such as employee salaries and office expenses and costs associated with computing the Rebate Amount. In general, Qualified Administrative Costs are not reasonable unless they are comparable to administrative costs that would be charged for the same investment or

a reasonably comparable investment if acquired with a source of funds other than Gross Proceeds of Tax-Exempt Obligations.

"Reasonable Retainage" means an amount, not to exceed 5% of the Net Sale Proceeds of the Issue, that is retained for reasonable business purposes relating to the property financed with Proceeds of the Issue. For example, Reasonable Retainage may include a retention to ensure or promote compliance with a construction contract in circumstances in which the retained amount is not yet payable, or in which the Issuer reasonably determines that a dispute exists regarding completion or payment.

"Rebate Analyst" means an independent individual, firm or entity experienced in the computation of the Rebate Amount pursuant to Section 148(f) of the Code.

"Receipt" means amounts actually or constructively received from Nonpurpose Investments as specified in Regulations §1.148-3(d)(2)(i) through (iii).

"Variable Yield Issue" means any issue that is not a Fixed Yield Issue.

"Yield Period" means, in the case of the first Yield Period, the period that commences on the Issuance Date and ends at the close of business on the first Computation Date and, in the case of each succeeding Yield Period, the period that begins immediately after the end of the immediately preceding Yield Period and ends at the close of business on the next succeeding Computation Date.

PART II: EXCEPTIONS TO REBATE

SECTION 2.01. SPENDING EXCEPTIONS.

The rebate requirements with respect to the Issue are deemed to have been satisfied if any one of three spending exceptions (the 6-Month, the 18-Month, or the 2-Year Spending Exception, collectively, the "Spending Exceptions") is satisfied. The Spending Exceptions are each independent exceptions. The Issue need not meet the requirements of any other exception in order to use any one of the three exceptions. For example, a Construction Issue may qualify for the 6-Month Spending Exception or the 18-Month Spending Exception even though the Issuer makes one or more elections under the 2-Year Exception with respect to the Issue.

The following rules apply for purposes of all of the Spending Exceptions except as otherwise noted.

Refunding Issues. The only spending exception available for a Refunding Issue[4] is the 6-Month Spending Exception.

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4. For purposes of these Instructions, references to "Refunding Issue" include the Refunding Portion of a Multipurpose Issue.

Special Transferred Proceeds Rules. In applying the Spending Exceptions to a Refunding Issue, unspent Proceeds of the Prior Issue that become Transferred Proceeds of the Refunding Issue are ignored. If the Prior Issue satisfies one of the rebate Spending Exceptions, the Proceeds of the Prior Issue that are excepted from rebate under that exception are not subject to rebate either as Proceeds of the Prior Issue or as Transferred Proceeds of the Refunding Issue.

However, if the Prior Issue does not satisfy any of the Spending Exceptions and is not otherwise exempt from rebate, the Transferred Proceeds from the Prior Issue will be subject to rebate, even if the Refunding Issue satisfies the 6-Month Spending Exception. The Rebate Amount will be calculated on the Transferred Proceeds on the basis of the Yield of the Prior Issue up to each transfer date and on the basis of the Yield of the Refunding Issue after each transfer date.

Application of Spending Exceptions to a Multipurpose Issue. If the Issue is a Multipurpose Issue, the Refunding Portion and the New Money Portion are treated for purposes of the rebate Spending Exceptions as separate issues. Thus, the Refunding Portion is eligible to use only the 6-Month Spending Exception. The New Money Portion is eligible to use any of the three Spending Exceptions.

Expenditures for Governmental Purposes of the Issue. Each of the spending exceptions requires that expenditures of Gross Proceeds be for the governmental purposes of the Issue. These purposes include payment of interest (but not principal) on the Issue.

SECTION 2.02. 6-MONTH SPENDING EXCEPTION.

The Issue will be treated as satisfying the rebate requirements if all of the Gross Proceeds of the Issue are allocated to expenditures for the governmental purposes of the Issue within the 6-month period beginning on the Issuance Date and the Rebate Amount, if any, with respect to earnings on amounts deposited in a reasonably required reserve or replacement fund or a Bona Fide Debt Service Fund if and to the extent that such Fund is subject to rebate (see footnote 3) is timely paid to the United States. If no bond of the Issue is a Private Activity Bond (other than a Qualified 501(c)(3) Bond) or a tax or revenue anticipation bond, the 6-month period is extended for an additional 6 months if the unexpended Gross Proceeds of the Issue at the end of the 6-month period do not exceed the lesser of 5% of the Proceeds of the Issue or $100,000.

For purposes of the 6-Month Spending Exception, Gross Proceeds required to be spent within 6 months do not include amounts in a reasonably required reserve or replacement fund for the Issue or in a Bona Fide Debt Service Fund for the Issue.

SECTION 2.03. 18-MONTH SPENDING EXCEPTION.

The Issue (or the New Money Portion if the Issue is a Multipurpose Issue) is treated as satisfying the rebate requirement if the conditions set forth in (A), (B) and (C) are satisfied.

(A) All of the Gross Proceeds of the Issue (excluding amounts in a reasonably required reserve or replacement fund for the Issue or in a Bona Fide Debt Service Fund for the Issue) are allocated to expenditures for the governmental purposes of the Issue in accordance with the following schedule, measured from the Issuance Date:

(1) at least 15% within 6 months;

(2) at least 60% within 12 months; and

(3) 100% within 18 months, subject to the Reasonable Retainage exception described below.

(B) The Rebate Amount, if any, with respect to earnings on amounts deposited in a reasonably required reserve or replacement fund or in a Bona Fide Debt Service Fund for the Issue, to the extent such Fund is subject to rebate (see footnote 3), is timely paid to the United States. And,

(C) The Gross Proceeds of the Issue qualify for the initial 3-year Temporary Period.

If the only unspent Gross Proceeds at the end of the 18th month are Reasonable Retainage, the requirement that 100% of the Gross Proceeds be spent by the end of the 18th month is treated as met if the Reasonable Retainage, and all earnings thereon, are spent for the governmental purposes of the Issue within 30 months of the Issuance Date.

For purposes of determining whether the spend-down requirements have been met as of the end of each of the first two spending periods, the amount of Investment Proceeds that the Issuer reasonably expects as of the Issuance Date to earn on the Sale Proceeds and Investment Proceeds of the Issue during the 18-month period are included in Gross Proceeds of the Issue. The final spend-down requirement includes actual Investment Proceeds for the entire 18 months.

The 18-Month Spending Exception does not apply to the Issue (or the New Money Portion, as applicable) if any portion of the Issue (or New Money Portion) is treated as meeting the rebate requirement under the 2-Year Spending Exception discussed below. This rule prohibits use of the 18-Month Spending Exception for the Nonconstruction Portion of a Bifurcated Issue. The only Spending Exception available for the Nonconstruction Portion of a Bifurcated Issue is the 6-Month Spending Exception.

SECTION 2.04. 2-YEAR SPENDING EXCEPTION FOR CERTAIN CONSTRUCTION ISSUES.

(A) In general. A Construction Issue no bond of which is a Private Activity Bond (other than a Qualified 501(c)(3) Bond or a Bond that finances property to be owned by a Governmental Unit or a 501(c)(3) Organization) is treated as satisfying the rebate requirement if the Available Construction Proceeds of the Issue are allocated to expenditures for the governmental purposes of the Issue in accordance with the following schedule, measured from the Issuance Date:

(1) at least 10% within 6 months;

(2) at least 45% within 1 year;

(3) at least 75% within 18 months; and

(4) 100% within 2 years, subject to the Reasonable Retainage exception described below.

Amounts in a Bona Fide Debt Service Fund or a reasonably required reserve or replacement fund for the Issue are not treated as Gross Proceeds for purposes of the expenditure requirements. However, unless the Issuer has elected otherwise in the Tax Compliance Certificate, earnings on amounts in a reasonably required reserve or replacement fund for the Issue are treated as Available Construction Funds during the 2-year period and therefore must be allocated to expenditures for the governmental purposes of the Issue.

If the Issuer elected in the Tax Compliance Certificate to exclude from Available Construction Proceeds the Investment Proceeds or earnings on a reasonably required reserve or replacement fund for the Issue during the 2-year spend-down period, the Rebate Amount, if any, with respect to such Investment Proceeds or earnings from the Issuance Date must be timely paid to the United States. If the election is not made, the Rebate Amount, if any, with respect to such Investment Proceeds or earnings after the earlier of the date construction is substantially completed or 2 years after the Issuance Date must be timely paid to the United States. The Rebate Amount, if any, with respect to earnings on amounts in a Bona Fide Debt Service Fund must be timely paid to the extent such Fund is subject to the rebate requirements (see footnote 3).

The Issue does not fail to satisfy the spending requirement for the fourth spend-down period (i.e., 100% within 2 years of the Issuance Date) if the only unspent Available Construction Proceeds are amounts for Reasonable Retainage if such amounts (together with all earnings on such amounts) are allocated to expenditures within 3 years of the Issuance Date.

For purposes of determining whether the spend-down requirements have been met as of the end of each of the first 3 spend-down periods, Available Construction Proceeds include the amount of Investment Proceeds or earnings that the Issuer reasonably expected as of the Issuance Date to earn during the 2-year period. For purposes of satisfying the final spend-down requirement,

Available Construction Proceeds include actual Investment Proceeds or earnings from the Issuance Date through the end of the 2-year period.

Available Construction Proceeds do not include Gross Proceeds used to pay Issuance Costs financed by the Issue, but do include earnings on such Proceeds. Thus, an expenditure of Gross Proceeds to pay Issuance Costs does not count toward meeting the spend-down requirements, but expenditures of earnings on such Gross Proceeds to pay Issuance Costs do count.

(B) 1½% penalty in lieu of rebate for Construction Issues. If the Issuer elected in the Tax Compliance Certificate for a Construction Issue, or for the Construction Portion of a Bifurcated Issue, to pay a 1½% penalty in lieu of the Rebate Amount on Available Construction Proceeds in the event that the Construction Issue fails to satisfy any of the spend-down requirements, the 1½% penalty is calculated separately for each spend-down period, including each semi-annual period after the end of the fourth spend-down period until all Available Construction Proceeds have been spent. The penalty is equal to 0.015 times the underexpended Proceeds as of the end of the applicable spend-down period. The fact that no arbitrage is in fact earned during such spend-down period is not relevant. The Rebate Amount with respect to Gross Proceeds other than Available Construction Proceeds (e.g., amounts in a reasonably required reserve or replacement fund or in a Bona Fide Debt Service Fund, to the extent subject to rebate (see footnote 3)) must be timely paid.

PART III: COMPUTATION AND PAYMENT.

SECTION 3.01. COMPUTATION AND PAYMENT OF REBATE AMOUNT.

If none of the Spending Exceptions described above is satisfied (and if the 1-1/2% penalty election for a Construction Issue or the Construction Portion of a Bifurcated Issue has not been made), then within 45 days after each Computation Date, the Issuer shall compute, or cause to be computed, the Rebate Amount as of such Computation Date. The first Computation Date is a date selected by the Issuer, but shall be not later than 5 years after the Issuance Date. Each subsequent Computation Date shall end 5 years after the previous Computation Date except that, in a Variable Yield Issue, the Issuer may select annual Yield Periods. The final Computation Date shall be the date the last obligation of the Issue matures or is finally discharged.

Within 60 days after each Computation Date (except the final Computation Date), the Issuer shall pay to the United States not less than 90% of the Rebate Amount, if any, computed as of such Computation Date. Within 60 days after the final Computation Date, the Issuer shall pay to the United States 100% of the Rebate Amount, if any, computed as of the final Computation Date. In computing the Rebate Amount, a computation credit of $1,000 may be taken into account on the last day of each Bond Year to the Computation Date during which there are unspent Gross Proceeds that are subject to the rebate requirement, and on the final maturity date.

If the operative documents pertaining to the Issue establish a Rebate Fund and require the computation of the Rebate Amount at the end of each Bond Year, the Issuer shall calculate, or cause to be calculated, within 45 days after the end of each Bond Year the Rebate Amount, taking into account the computation credit of $1,000 for each Bond Year. Within 50 days after the end of

each Bond Year, if the Rebate Amount is positive, the Issuer shall deposit in the Rebate Fund such amount as will cause the amount on deposit therein to equal the Rebate Amount, and may withdraw any amount on deposit in the Rebate Fund in excess of the Rebate Amount. Payments of the Rebate Amount to the Internal Revenue Service on a Computation Date shall be made first from amounts on deposit in the Rebate Fund and second from other amounts specified in the operative documents.

Each payment of the Rebate Amount or portion thereof shall be payable to the Internal Revenue Service and shall be made to the Internal Revenue Service Center, Ogden, UT 84201 by certified mail. Each payment shall be accompanied by Internal Revenue Service Form 8038-T and any other form or forms required to be submitted with such remittance.

SECTION 3.02. BOOKS AND RECORDS.

(A) The Issuer or Trustee, as applicable, shall keep proper books of record and accounts containing complete and correct entries of all transactions relating to the receipt, investment, disbursement, allocation and application of the Gross Proceeds of the Issue. Such records shall specify the account or fund to which each Nonpurpose Investment (or portion thereof) held by the Issuer or Trustee is to be allocated and shall set forth as to each Nonpurpose Investment (1) its purchase price, (2) identifying information, including par amount, interest rate, and payments dates, (3) the amount received at maturity or its sales price, as the case may be, including accrued interest, (4) the amounts and dates of any payments made with respect thereto, and (5) the dates of acquisition and disposition or maturity.

The Issuer, Trustee, or Rebate Analyst, as applicable, shall retain the records of all calculations and payments of the Rebate Amount until six years after the retirement of the last obligation that is a part of the Issue.

SECTION 3.03. FAIR MARKET VALUE.

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.

The fair market value of any Nonpurpose Investment shall be the price at which a willing buyer would purchase the Nonpurpose Investment from a willing seller in an arms-length transaction. Fair market value generally is determined on the date on which a contract to purchase or sell the Nonpurpose Investment becomes binding (i.e., the trade date rather than the settlement date). Except as otherwise provided in this Section, a Nonpurpose Investment that is not of a type traded on an established securities market (within the meaning of Section 1273 of the Code) is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value.

(A) Obligations purchased directly from the Treasury. The fair market value of a United States Treasury obligation that is purchased directly from the United States Treasury is its purchase price.

(B) Safe harbor for Guaranteed Investment Contracts. The purchase price of a Guaranteed Investment Contract shall be treated as its fair market value on the purchase date if all the following conditions are met:

(1) The Issuer or broker makes a bona fide solicitation for a specified Guaranteed Investment Contract and receives at least three bona fide bids from reasonably competitive providers (of Guaranteed Investment Contracts) that have no material financial interest in the Issue.

(2) The Issuer purchases the highest-yielding Guaranteed Investment Contract for which a qualifying bid is made (determined net of broker's fees);

(3) The Yield on the Guaranteed Investment Contract (determined net of broker's fees) is not less than the Yield then available from the provider on reasonably comparable Guaranteed Investment Contracts, if any, offered to other persons from a source of funds other than Gross Proceeds of Tax-Exempt Obligations;

(4) The determination of the terms of the Guaranteed Investment Contract takes into account as a significant factor the Issuer's reasonably expected drawdown schedule for the amounts to be invested, exclusive of amounts deposited in a Bona Fide Debt Service Fund and a reasonably required reserve or replacement fund;

(5) The terms of the Guaranteed Investment Contract, including collateral security requirements, are reasonable; and

(6) The obligor on the Guaranteed Investment Contract certifies the administrative costs that it is paying (or expects to pay) to third parties in connection with the Guaranteed Investment Contract.

(C) Safe harbor for certificates of deposit. The purchase price of a certificate of deposit shall be treated as its fair market value on the purchase date if all of the following requirements are met:

(1) The certificate of deposit has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal; and

(2) The Yield on the certificate of deposit is not less than (a) the Yield on reasonably comparable direct obligations of the United States, or (b) 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.

Certificates evidencing the foregoing requirements should be obtained before purchasing any Guaranteed Investment Contract or certificate of deposit.

SECTION 3.04. CONSTRUCTIVE SALE/PURCHASE.

(A) Nonpurpose Investments that are held by the Issuer or Trustee as of any Computation Date (or Bond Year if the computations are required to be done annually) shall be treated for purposes of computing the Rebate Amount as of such date as having been sold for their fair market value as of such date. Investment Property which becomes allocated to Gross Proceeds of the Issue on a date after such Investment Property has actually been purchased shall be treated for purposes of the rebate requirements as having been purchased by the Issuer on such date of allocation at its fair market value on such date.

(B) For purposes of constructive or deemed sales or purchases of Investment Property (other than Investment Property in the Escrow Fund or that is otherwise not invested for a Temporary Period or is not part of a reasonably required reserve or replacement fund for the Issue) must be valued at its fair market value on the date of constructive or deemed sale or purchase

(C) Except as set forth in (B), fixed rate Investment Property that is (1) issued with not more than 2% of original issue discount or original issue premium, (2) issued with original issue premium that is attributable exclusively to reasonable underwriters' compensation or (3) acquired with not more than 2% of market discount or market premium, may be treated as having a fair market value equal to its outstanding stated principal amount, plus accrued interest. Fixed rate Investment Property also may be treated as having a fair market value equal to its present value.

SECTION 3.05. ADMINISTRATIVE COSTS.

(A) Administrative costs shall not be taken into account in determining the payments for or receipts from a Nonpurpose Investment unless such administrative costs are Qualified Administrative Costs. Thus, administrative costs or expenses paid, directly or indirectly, to purchase, carry, sell, or retire Nonpurpose Investments generally do not increase the Payments for, or reduce the Receipts from, Nonpurpose Investments.

(B) Qualified Administrative Costs are taken into account in determining the Payments and Receipts on Nonpurpose Investments and thus increase the Payments for, or decrease the Receipts from, Nonpurpose Investments. In the case of a Guaranteed Investment Contract, a broker's commission or similar fee paid on behalf of either the Issuer or the provider is an administrative cost that is not a Qualified Administrative Cost to the extent that the present value (computed using the taxable discount rate used by the parties to compute the commission or, if not readily ascertainable, a reasonable taxable discount rate) of the commission, as of the date the contract is purchased, exceeds the present value of annual payments equal to 0.05 percent of the weighted average amount reasonably expected to be invested each year during the term of such contract.

PART IV: COMPLIANCE AND AMENDMENT

SECTION 4.01. COMPLIANCE.

The Issuer, Trustee or Rebate Analyst, as applicable, shall take all necessary steps to comply with the requirements of these Instructions in order to ensure that interest on the Issue is excluded from gross income for federal income tax purposes under Section 103(a) of the Code. However, compliance shall not be required in the event and to the extent stated therein the Issuer and the Trustee receive a Bond Counsel's Opinion that either (A) compliance with such requirement is not required to maintain the exclusion from gross income for federal income tax purposes of interest on the Issue, or (B) compliance with some other requirement in lieu of such requirement will comply with Section 148(f) of the Code, in which case compliance with the other requirement specified in the Bond Counsel's Opinion shall constitute compliance with such requirement.

SECTION 4.02. LIABILITY.

If for any reason any requirement of these Instructions is not complied with, the Issuer and the Trustee, if applicable, shall take all necessary and desirable steps 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. The Trustee shall have no duty or responsibility to independently verify any of the Issuer's, or the Rebate Analyst's, calculations with respect to the payments of the Rebate Amount due and owing to the United States. Under no circumstances whatsoever shall the Trustee be liable to the Issuer, any bondholder or any other person for any inclusion of the interest on the Issue in gross income for federal income tax purposes, or any claims, demands, damages, liabilities, losses, costs or expenses resulting therefrom or in any way connected therewith, so long as the Trustee acts only in accordance with these Instructions and the operative documents pertaining to the Issue.

(End of Attachment A-1)

The 8038G will be prepared when $50,000 of loan funds have been disbursed

LOAN AGREEMENT STANDARD TERMS AND CONDITIONS

Water Infrastructure Finance Authority of Arizona

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This document sets forth Standard Terms and Conditions applicable to the Loan made by the WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA (the "*Authority*") to the Local Borrower. These Standard Terms and Conditions are a part of the Loan Agreement to which this document is attached. Certain terms used herein are defined in Article 8.

Article 1 Covenants of the Local Borrower Relating to the System and the Project.

Section 1.1 **Operation and Maintenance of System**. The Local Borrower covenants and agrees that it shall, in accordance with prudent utility practice, (a) at all times operate the properties of the System and any business in connection therewith in an efficient manner, (b) maintain the System in good repair, working order and operating condition, and (c) from time to time make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements with respect to the System so that at all times the operations carried on in connection therewith shall be properly and advantageously conducted from revenues of the System or, if the Local Borrower so elects, from any other source of funds lawfully available.

Section 1.2 **Additions and Modifications**. The Local Borrower may make any additions, renewals, replacements, modifications or improvements to the System which it deems desirable and which do not materially reduce the operational integrity of any part of the System. All such renewals, replacements, additions, modifications and improvements shall become a part of the System.

Section 1.3 **Disposition of Project and System**.

(a) The Local Borrower shall not sell, lease, abandon or otherwise dispose of all or substantially all or any substantial portion of the Project or the System except upon compliance with the provisions of this Section; provided, however that the requirements of this Section shall not apply to transactions which are capital leases within the meaning of generally accepted accounting principles to finance expansion or improvement of the System and under which the Local Borrower maintains a purchaser's interest or other beneficial ownership, use, possession and control of the System so long as no default exists.

(b) The Local Borrower may sell, lease, abandon or otherwise dispose of all or substantially all or any substantial portion of the Project or the System if the Local Borrower shall give at least ninety (90) days' prior written notice to the Authority of the proposed transaction, and the Authority gives its written consent which shall not be unreasonably withheld. The Local Borrower understands that the Authority, in determining whether or not to give its consent, must determine that the proposed transaction will not adversely affect the Authority's ability to meet its duties, covenants, obligations and agreements or conditions of any grant received by the Authority or the State from the United States of America, which is related to the Capital Grant Facility or any capitalization grants received by the Authority or the State under the Federal Water Pollution Control Act, as amended, and the Federal Safe Drinking Water Act, as amended.

(c) Notwithstanding the provisions of subsection (b) above, the Local Borrower may sell, lease or otherwise dispose of, any of the property comprising part of the System without prior notice to or the consent of the Authority, other than the Project, in either of the following circumstances:

(i) If the Local Borrower determines that such property is not necessary, useful or profitable to the operation of the System; or

(ii) If the value of such property sold, leased or otherwise disposed of in any one year is equal to not more than 5% of the value of the fixed assets of the System.

Section 1.4 **Cost of Project**. The Local Borrower certifies that the estimated Eligible Project Costs as listed in Section 1 of Exhibit B is a reasonable and accurate estimation of the Eligible Project Costs and, upon the direction of the Authority the Local Borrower will supply the Authority with a certificate from its engineer stating that such estimated Eligible Project Costs is a reasonable and accurate estimation.

Article 2 Additional Covenants of the Local Borrower

Section 2.1 **Unconditional Obligations**. The obligation of the Local Borrower to make the Loan Repayments and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part described herein are payable solely from the Source of Repayment described in this Loan Agreement and shall be absolute and unconditional and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner or to any extent whatsoever, while any payments hereunder remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project or the System, commercial frustration of the purpose, any change in the laws of the United States of America or of the State or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the Authority to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Project or this Loan Agreement, or any rights of set-off, recoupment, abatement or counterclaim that the Local Borrower might otherwise have against the Authority or any other party or parties; provided, however, that payments under this Loan Agreement shall not constitute a waiver of any such rights. The Local Borrower shall not be obligated to make any payments required to be made by any other local borrowers under separate loan agreements or local borrower bonds. Notwithstanding any other provision of this Section 2.1, or this Loan Agreement, neither the Authority, nor any assignee of the Authority shall have the right or ability to compel the repayment of this Loan Agreement from any source other than the Source of Repayment.

Section 2.2 **Performance Under Loan Agreement**. The Local Borrower covenants and agrees (a) to maintain the System in good repair and operating condition; (b) to cooperate with the Authority to the extent it may lawfully do so, in the observance and performance of the respective duties, covenants, obligations and agreements of such Local Borrower and the Authority under this Loan Agreement; and (c) to comply with the covenants set forth in this Loan Agreement.

Section 2.3 **Disclaimer of Warranties**. The Local Borrower acknowledges and agrees that (i) the Authority makes no warranty or representation, either express or implied as to the value, design, condition, merchantability or fitness for particular purpose or fitness for any use of the System or the Project or any portions thereof or any other warranty or representation with respect thereto; (ii) in no event shall the Authority or its respective agents be liable or responsible for any direct, incidental, indirect, special or consequential damages in connection with or arising out of this Loan Agreement or the Project or the existence, furnishing, functioning or use of the System or the Project; and (iii) are not intended to and shall not be construed as a waiver of any defense or limitation on damages provided for under and pursuant to the laws of the United States or of the State.

Section 2.4 **Loan Repayments; Prepayments; Providing for Payment of the Loan**.

(a) Loan Repayments.

(i) The Local Borrower shall pay to the Authority the amounts set forth in the Loan Repayment Schedule contained in Exhibit A on or before the due dates shown in Exhibit A.

(ii) Each payment made as a Loan Repayment as described in subsection (i) shall be applied first to the combined interest and fee payment then due and payable on the Loan and then to the principal amount of the Loan.

(iii) In addition to the other payments required by this Section, the Local Borrower shall pay a late charge for any payment that is received by the Authority later than the tenth day following its due date, in an amount equal to six percent per annum of the amount of the late payment from its due date to the date it is actually paid; provided, however, that the combined interest and fee rate payable on the Loan including such late charge shall not be in excess of the maximum rate permitted by law or any proceedings or resolution authorizing the execution of this Loan Agreement.

(iv) Upon the final disbursement, if the Loan amount is less than the estimated Eligible Project Costs, the amount of each Principal Installment due as set forth in the Loan Repayment Schedule contained in Exhibit A shall be adjusted to achieve substantially level debt service, and the Authority shall compute the adjusted combined interest and fee amounts to reflect the adjusted principal amounts and shall enter the results in a revised Loan Repayment Schedule delivered to the Local Borrower.

(b) Prepayments. The Loan is not subject to prepayment prior to the tenth anniversary of the final loan draw. The Local Borrower may prepay the Principal Repayment Amount of the Loan in whole or in part in advance of the due dates on or after the tenth anniversary of the final loan draw without penalty upon written notice delivered to the Authority at least 60 days prior to the prepayment date. If the Local Borrower prepays the Repayment Principal Amount in part, the amount of each Principal Installment due as set forth in the Loan Repayment Schedule contained in Exhibit A shall be adjusted to achieve substantially level debt service. Upon such adjustment, the Authority shall compute the adjusted combined interest and fees amounts to reflect the adjusted principal amounts and shall enter the results in the Loan Repayment Schedule with notice to the Local Borrower.

(c) Providing for Payment of the Loan. The Local Borrower may at any time provide for the payment and discharge of the Loan, as provided in this subsection. The Loan shall be deemed to have been paid and discharged if:

(i) the Local Borrower has delivered to the Authority proof satisfactory to the Authority that the Local Borrower has deposited with a financial institution acceptable to the Authority, in trust for and irrevocably committed to payments on the Loan, cash or non-callable direct obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of Treasury of the United States of America) and obligations of any agency or instrumentality of the United States of America the timely payment of the principal of and interest on which are unconditionally guaranteed by the United States of America, which are of such maturities and interest payment dates, and bear such interest, as will be sufficient together with any moneys also deposited, without further investment or reinvestment of either the principal amount or the interest earnings (which earnings are to be held likewise in trust and so committed), to pay all the amounts due under the Loan, as set forth in the Loan Repayment Schedule contained in Exhibit A, as evidenced in a report of an independent firm of nationally recognized certified public accountants addressed to and delivered to the Authority; and

(ii) the Authority has received a bond counsel opinion (as described in Section 6.2(b) and (c) below) to the effect that the deposit of funds and the investment of such deposit, as described in the preceding paragraph, will not, by itself, adversely affect the exclusion from gross income of interest on the Loan or any Authority Bonds for federal income tax purposes.

Section 2.5 **Source of Repayment of Local Borrower's Obligations and Pledge**. The Local Borrower irrevocably pledges the Source of Repayment described in this Loan Agreement for the punctual payment of all amounts due under the Loan Agreement. The Authority and the Local Borrower agree that the amounts payable by the Local Borrower under this Loan Agreement are payable solely from the Source of Repayment described in this Loan Agreement and are not payable from any other source whatsoever, unless the Local Borrower chooses to pay, and pays, any amount due hereunder from any other source lawfully available to it.

Section 2.6 **Insurance**. The Local Borrower shall maintain or cause to be maintained in force, insurance policies with responsible insurers or self-insurance programs or through membership in a risk retention pool, including, but not limited to, the Arizona Municipal Risk Retention Pool (in accordance with the Local Borrower's customary practices) providing against risk of direct physical loss, damage or destruction of the Project and the System, at least to the extent that similar insurance is usually carried by utilities constructing, operating and maintaining system facilities of the nature of the System, including liability coverage, all to the extent available at reasonable cost.

Section 2.7 **No Liens**. Except for:

(a) the debt service on any future bonds, notes or other evidence of indebtedness of the Local Borrower issued or contractual obligations incurred in accordance with this Loan Agreement payable from the funds pledged to the payment of this Loan Agreement which are on parity with the lien and charge on the funds so pledged to pay this Loan Agreement and

(b) as provided in Exhibit D of this Loan Agreement, the debt service on currently outstanding bonds, notes or evidences of indebtedness or contractual obligations of the Local Borrower, if any, payable from the Source of Repayment described in Exhibit D of this Loan Agreement which the Local Borrower has disclosed to the Authority in writing,

the funds so pledged as described in this Loan Agreement after the payment of all costs of operating and maintaining the System, are and will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto which are prior to, or of equal rank with, the obligation of the Local Borrower to pay this Loan Agreement, and all corporate or other action on the part of the Local Borrower to that end has been and will be duly and validly taken.

Section 2.8 **Disadvantaged Business Enterprises**. As applicable, the Local Borrower shall comply with 40 C.F.R Part 33[1] including but not limited to:

Local Borrowers and their prime contractors must follow, document, and maintain documentation of their good faith efforts as listed below to ensure that Disadvantage Business Enterprises (DBEs) have the opportunity to participate in the project by increasing DBE awareness of procurement efforts and outreach.

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities; including placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitation for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could be subcontracted with DBEs. This will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U. S. Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in sections (a) through (e) above.

These conditions must be included in all procurement contracts entered into by the Local Borrower for all DWRF and CWRF projects:

(a) The prime contractor must pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the owner.

(b) The prime contractor must notify the owner in writing prior to the termination of any Disadvantage Business Enterprise subcontractor for convenience by the prime contractor.

(c) If a Disadvantage Business Enterprise contractor fails to complete work under the subcontract for any reason, the prime contractor must employ the six good faith efforts if soliciting a replacement contractor.

[1] See Article 9 for a full list of applicable federal laws and authorities relating to Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA) Financial Assistance Agreements.

(d) The prime contractor must continue to employ the six good faith efforts even if the prime contractor has achieved its fair share objectives.

(e) The prime contractor must provide EPA Form 6100-2 DBE Program Subcontractor Participation Form to all of its Disadvantaged Business Enterprise subcontractors. Disadvantaged Business Enterprise subcontractors may send completed Form 6100-2 directly to the Region 9 DBE Coordinator listed below.

Joe Ochab, EPA Region 9, 75 Hawthorne St. (P-22), San Francisco, CA 94105

(f) The prime contractor must have its Disadvantaged Business Enterprise subcontractors complete EPA Form 6100-3 – DBE Program Subcontractor Performance Form. The prime contractor must include all completed forms as part of the prime contractor's bid or proposal package to the Local Borrower.

(g) The prime contractor must complete and submit EPA 6100-4 DBE Program Subcontractor Utilization Form as part of the prime contractor's bid or proposal package to the Local Borrower.

(h) A Local Borrower must ensure that each procurement contract it awards contains the following terms and conditions:

> The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

Article 3 Representations of Local Borrower

The Local Borrower represents for the benefit of the Authority that the representations contained in this Loan Agreement are true at the time of execution and delivery of this Loan Agreement and, other than with respect to events outside of Local Borrower's control, will be true in all material respects at all times during the term of this Loan Agreement.

Section 3.1 **Organization and Authority**.

(a) The Local Borrower is a Political Subdivision or Indian Tribe as defined in the Authority Act.

(b) The Local Borrower has full legal right and authority and has, or will obtain as and when required, all necessary licenses and permits required to acquire, own, operate and maintain the Project and the System, to carry on its activities relating thereto, to execute and deliver this Loan Agreement, to undertake and complete the Project, to pledge the Source of Repayment, and to carry out and consummate all transactions contemplated by this Loan Agreement. The Project is a project which the Local Borrower may undertake pursuant to State law and for which the Local Borrower is authorized by law to borrow money.

(c) The proceedings of the Local Borrower's governing body approving this Loan Agreement and authorizing its execution, issuance and delivery on behalf of the Local Borrower, and authorizing the Local Borrower to undertake and complete the Project have been duly and lawfully adopted in accordance with the laws of the State.

(d) This Loan Agreement has been duly authorized, executed and delivered by an Authorized Officer of the Local Borrower; and, assuming that the Authority has all the requisite power and authority to authorize, execute and deliver, and has duly authorized, executed and delivered this Loan Agreement, this Loan Agreement constitutes a legal and valid obligation of the Local Borrower enforceable in accordance with its terms, and the information contained under "Description of the Loan" in this Loan Agreement is true and accurate in all material respects.

Section 3.2 **Full Disclosure**.

(a) To the best of the Local Borrower's knowledge, there is no fact that the Local Borrower has not disclosed to the Authority in writing that materially adversely affects the properties, activities, prospects or condition (financial or otherwise) of the Local Borrower or the System, or the ability of the Local Borrower to make all Loan Repayments due hereunder and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

(b) The information relating to the Local Borrower (including without limitation the financial and statistical data contained therein) submitted to the Authority by the Local Borrower in connection with the Authority's approval of the Loan was at the time of the Authority's approval of the Loan and at all times subsequent thereto up to and including the Loan Closing, will be (if necessary by amendment provided by the Local Borrower) true and correct and will not contain an untrue statement of material fact or omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading in any adverse respect. To the extent permitted by law, and notwithstanding any other provision of this Loan Agreement, the Local Borrower will indemnify, save and hold harmless the Authority, and each of the Authority's agents, for, from and against any and all claims, damages, liability and court awards including costs, expenses and reasonable attorneys' fees incurred as a result of any omission or misstatement of material fact in the information submitted to the Authority by the Local Borrower in connection with the Authority's approval of the Loan, as it may have been supplemented and amended by the Local Borrower.

Section 3.3 **Pending Litigation**. There are no proceedings pending, or to the knowledge of the Local Borrower, threatened, against or affecting the Local Borrower, in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially adversely affect the properties, activities, prospects or condition (financial or otherwise) of the Local Borrower or the System, or the ability of the Local Borrower to make all Loan Repayments and otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement that have not been disclosed in writing to the Authority in the Local Borrower's application for the Loan or otherwise.

Section 3.4 **Compliance with Existing Laws and Agreements**. The authorization, execution and delivery of this Loan Agreement by the Local Borrower, the observance and performance by the Local Borrower of its duties, covenants, obligations and agreements hereunder and the consummation of the transactions provided for in this Loan Agreement, the compliance by the Local Borrower with the provisions of this Loan Agreement and the undertaking and completion of the Project will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Local Borrower pursuant to any existing ordinance or resolution, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument (other than the lien and charge of this Loan Agreement and any ordinance or resolution or indenture which authorized outstanding obligations of the Local Borrower which are on a parity with this Loan Agreement as to a lien on, or a source and security for, payment thereon from the source of payment that is pledged to the Loan Repayments) to which the Local Borrower is a party or by which the Local Borrower, the System or any of its property or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Local Borrower was established or any laws, ordinances, resolutions, governmental rules, regulations or court orders to which the Local Borrower, the System or its properties or operations are subject.

Section 3.5 **No Defaults**. No event has occurred and no condition exists that, upon authorization, execution and delivery of this Loan Agreement or receipt of the amount of the Loan, would constitute an Event of Default hereunder. The Local Borrower is not in violation of, and has not received notice of any claimed violation of, any term of any agreement or other instrument to which it is a party or by which it may be bound, which violation would materially adversely affect the properties, activities, prospects or condition (financial or otherwise) of the Local Borrower or the ability of the Local Borrower to make all Loan Repayments or otherwise observe and perform its duties, covenants, obligations and agreements under this Loan Agreement.

Section 3.6 **Governmental Consent**. The Local Borrower will obtain all permits and approvals required by any governmental body or officer (and reasonably expects to receive all permits required in the future by any governmental agency) for the making, observance and performance by the Local Borrower of its duties, obligations

and agreements under this Loan Agreement or for the undertaking or completion of the Project and the financing thereof, and the Local Borrower has complied with all applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body or officer in connection with the making, observance and performance by the Local Borrower of its duties, covenants, obligations and agreements under this Loan Agreement or with the undertaking or completion of the Project and the financing thereof; and the Local Borrower has complied with all applicable provisions of law requiring any notification, declaration, filing or registration with any governmental body or officer in connection with the making, observance and performance by the Local Borrower of its duties, covenants, obligations and agreements under this Loan Agreement or with the undertaking or completion of the Project and the financing thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental body or officer, other than those already obtained or reasonably expected to be obtained, is required on the part of the Local Borrower as a condition to the authorization, execution and delivery of this Loan Agreement, the undertaking or completion of the Project or the consummation of any transaction herein contemplated.

Section 3.7 **Compliance with Law**. The Local Borrower:

(a) is in compliance with all laws, ordinances, governmental rules and regulations to which it is subject and the failure to comply with which would materially adversely affect the ability of the Local Borrower to conduct its activities or undertake or complete the Project or the condition (financial or otherwise) of the Local Borrower or the System; and

(b) has obtained, or will obtain as and when required, all licenses, permits, franchises or other governmental authorizations necessary for the ownership of its property or for the conduct of its activities which, if not obtained, would materially adversely affect the ability of the Local Borrower to undertake or complete the Project or the condition (financial or otherwise) of the Local Borrower or the System.

Article 4 Assignment

Section 4.1 **Assignment and Transfer by Authority**. The Local Borrower hereby approves and consents to any assignment or transfer of this Loan Agreement that the Authority deems to be necessary in connection with the Clean Water Revolving Fund and Drinking Water Revolving Fund programs of the Authority.

Section 4.2 **Assignment by Local Borrower**. This Loan Agreement may not be assigned by the Local Borrower for any reason, unless the following conditions shall be satisfied: (i) the assignee shall be a governmental unit within the meaning of Section 141(c) of the Code or another entity acceptable to the Authority and the assignee shall have expressly assumed in writing the full and faithful observance and performance of the Local Borrower's duties, covenants, agreements and obligations hereunder; (ii) immediately after such assignment, the assignee shall not be in default in the performance or observance of any duties, covenants, obligations or agreements of the Local Borrower hereunder; and (iii) the Authority shall receive an opinion of counsel to the effect that such assignment will not violate the provisions of any agreement entered into by the Authority with, or condition of any grant received by the Authority from the United States of America relating to the Capital Grant Facility or any capitalization grants received by the Authority or the State under the Federal Water Pollution Control Act and the Federal Safe Drinking Water Act.

No assignment shall relieve the Local Borrower from primary liability for any of its obligations under this Loan Agreement and in the event of such assignment, the Local Borrower shall continue to remain primarily liable for the performance and observance of its obligations to be performed and observed under this Loan Agreement.

Article 5 Defaults and Remedies

Section 5.1 **Events of Default**. If any of the following events occurs, it is hereby defined as and declared to be and to constitute an "*Event of Default*":

(a) failure by the Local Borrower to pay, or cause to be paid, when due any Loan Repayment;

(b) failure by the Local Borrower to make, or cause to be made, any required payments of principal, redemption premium, if any, and interest on any bonds, notes or other obligations of the Local Borrower for borrowed money (other than the Loan), after giving effect to the applicable grace period, the payments of which are secured by the Source of Repayment described in this Loan Agreement;

(c) failure by the Local Borrower to perform any duty, covenant, obligation or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraphs (a) and (b) of this Section, which failure shall continue for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Local Borrower by the Authority, unless the Authority agrees in writing to an extension of such time prior to its expiration, provided, however, that if the failure stated in such notice is correctable but cannot be corrected within the applicable period the Authority may not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Local Borrower and diligently pursued until the Event of Default is corrected;

(d) the institution of any proceeding, with the acquiescence of the Local Borrower, for the purpose of effecting a composition between the Local Borrower and its creditors or for the purpose of adjusting the claims of such creditors, pursuant to any federal or state statute now or hereafter enacted, if the claims of such creditors are payable from the Source of Repayment described in this Loan Agreement;

(e) a determination by the Authority that any material representation made by or on behalf of the Local Borrower contained in this Loan Agreement, or in any instrument furnished in compliance with or with reference to this Loan Agreement, is false or misleading in any material respect; and

(f) the filing of a petition by or against the Local Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Loan Agreement or thereafter enacted, unless in the case of any such petition filed against the Local Borrower such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal; or the Local Borrower becoming insolvent or bankrupt or making an assignment for the benefit of its creditors; or the appointment of a custodian (including, without limitation, a receiver, liquidator or trustee of the Local Borrower or any of its property including the System) by court order, or possession of the Local Borrower or its property or assets is taken if such order remains in effect or such possession continues for more than thirty (30) days.

Section 5.2 **Notice of Default**. The Local Borrower shall give the Authority prompt telephone notice of the occurrence of any Event of Default referred to in Section 5.1 paragraph (c) hereof, and of the occurrence of any other event or condition that constitutes an Event of Default, at such time as any senior administrative or financial officer of the Local Borrower becomes aware of the existence thereof. Any telephone notice pursuant to this Section shall be confirmed in writing by the end of the next Business Day.

Section 5.3 **Remedies on Default.**

(a) Whenever an Event of Default referred to in Section 5.1 hereof shall have occurred and be continuing, the Authority shall have the right to take any action permitted or required pursuant to this Loan Agreement and to take whatever other action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due on their scheduled payment dates or to enforce the performance and observance of any duty, covenant, obligation or agreement of the Local Borrower hereunder, including, without limitation, appointment of a receiver of the System.

(b) Nothing in this Loan Agreement shall be construed to affect the Attorney General taking action to enforce this Loan Agreement in accordance with the Authority Act.

Section 5.4 **Attorney's Fees and Other Expenses**. In the event of a default hereunder by the Local Borrower, the Local Borrower shall on demand and to the extent not prohibited by applicable law pay to the Authority the reasonable fees and expenses of attorneys and other reasonable expenses (including without limitation the reasonably allocated costs of in-house counsel and legal staff) incurred by the Authority in the collection of Loan

Repayments or any other sum due hereunder or in the enforcement of performance or observance of any other duties, covenants, obligations or agreements of the Local Borrower to the extent permitted by law.

Section 5.5 **Application of Moneys**. The parties acknowledge that: (a) all amounts coming due hereunder as Loan Repayments shall be treated as principal and combined interest and fees with respect to the Loan which amounts are secured by a pledge of the Source of Repayment in accordance with Exhibit D of this Loan Agreement; and (b) amounts coming due under Section 5.4 hereof shall be secured by the Source of Repayment on a basis subordinate to the Loan Repayments, but on a parity with comparable expenses relating to such Outstanding Parity Obligations and Additional Parity Obligations.

However, any moneys collected by the Authority pursuant to Section 5.3 in the exercise of remedies with respect to amounts due or to become due hereunder shall be applied: (a) first, to pay any attorney's fees or other fees and expenses owed by the Local Borrower pursuant to Section 5.4 hereof, (b) second, to pay delinquent combined interest fees and late charges on the Loan; (c) third, to pay combined interest and fees then due and payable on the Loan; (d) fourth, to pay delinquent principal on the Loan in order of scheduled maturity; (e) fifth, to pay principal then due and payable on the Loan; and (f) sixth, to pay any other amounts due and payable pursuant to this Loan Agreement.

Section 5.6 **No Remedy Exclusive; Waiver; Notice**. No remedy conferred upon or reserved to the Authority hereunder is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy or power accruing upon any Event of Default shall impair any such right, remedy or power or shall be construed to be a waiver thereof, but any such right, remedy or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it as described in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article.

Section 5.7 **Retention of Authority's Rights**. Notwithstanding any assignment or transfer of this Agreement pursuant to the provisions hereof, or anything else to the contrary contained herein, the Authority shall have the right upon the occurrence of an Event of Default to take any action, including (without limitation) bringing an action against the Local Borrower at law or in equity, as the Authority may, in its discretion, deem necessary to enforce the obligations of the Local Borrower to the Authority.

Section 5.8 **Default by the Authority**. In the event of any default by the Authority in any duty, covenant, agreement or obligation described in this Agreement, the Local Borrower's remedy for such default shall be limited to injunction, special action, action for specific performance or any other available equitable remedy designed to enforce the performance or observance of any duty, covenant, obligation or agreement of the Authority described herein as may be necessary or appropriate. The Authority shall on demand pay to the Local Borrower the reasonable fees and expenses of attorneys and other reasonable expenses in the enforcement of such performance or observance.

Article 6 Provisions Applicable to Loans Financed by or Pledged to Secure Authority Bonds

Section 6.1 **General.** The Local Borrower acknowledges that the Authority is entering into this Loan Agreement and agreeing to make the Loan at this time for the benefit of the Local Borrower, and that the Authority may finance the Loan, along with other loans to other local borrowers, through the issuance of Authority Bonds and may pledge the Loan to secure Authority Bonds. If and for so long as the Authority's source of funds to make disbursements on, or to carry, the Loan represented by this Loan Agreement is, or becomes, the proceeds of Authority Bonds, or this Loan Agreement is assigned by the Authority as security for payment of amounts due or to become due on Authority Bonds, the Local Borrower agrees to cooperate with the Authority with respect to the issuance of Authority Bonds by furnishing and certifying information concerning the Local Borrower, the Project, the System and the Source of Repayment, and by agreeing to reasonable modifications and additions to this Loan Agreement necessary or convenient for the Authority Bond transaction. Without limiting the generality of the foregoing, the Local Borrower agrees that if the Authority at any time determines, in its discretion, that it is necessary in connection with the

issuance of Authority Bonds or the maintenance of the Authority's bond program, then the provisions set forth in this Article shall be in effect.

Section 6.2 **Tax Covenants**.

(a) General. The Local Borrower acknowledges that, in connection with its state revolving fund programs, the Authority issues its Authority Bonds from time to time to finance loans and the Authority also pledges certain loans to secure and to serve as the source of payment for the Authority Bonds. As a result, and under the provisions of federal tax law applicable to the Authority Bonds, it is in the Authority's interest for the Loan to qualify and be a Tax-Exempt Obligation that is not an AMT Obligation. Therefore, the Local Borrower represents and covenants as follows with respect to the Loan and the Authority Bonds. The Local Borrower covenants that it will not take any action, or fail to take any action, if any such action or failure to take such action would adversely affect the exclusion from gross income of the interest on the Loan or the Authority Bonds under Section 103(a) of the Internal Revenue Code or cause the interest on the Loan or the Authority Bonds to become an AMT Obligation, and in the event of such action or omission, it will, promptly upon having such brought to its attention, take such reasonable actions based upon a bond counsel opinion as may rescind or otherwise negate such action or omission. The Local Borrower will not directly or indirectly use or permit the use of any proceeds of the Loan or any other funds of the Local Borrower or take or omit to take any action that would cause the Loan or the Authority Bonds to be or become "arbitrage bonds" within the meaning of Section 148(a) of the Internal Revenue Code or to fail to meet any other applicable requirement of Sections 103, 141, 148, 149 and 150 of the Internal Revenue Code or cause the interest on the Loan or the Authority Bonds to become an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Internal Revenue Code. To that end, the Local Borrower will comply with all applicable requirements of Sections 103, 141, 148, 149 and 150 of the Code to the extent applicable to the Loan.

(b) Modification Based on Bond Counsel Opinion. Notwithstanding any provision of this Section, if the Local Borrower provides to the Authority a bond counsel opinion to the effect that any action required under this Section is no longer required, or to the effect that some further action is required, to maintain the exclusion from gross income of interest on the Loan or the Authority Bonds pursuant to Section 103(a) of the Internal Revenue Code, the provisions of this Section and the covenants in this Section shall be deemed to be modified to that extent.

(c) Bond Counsel Opinion. For purposes of this Article, "bond counsel opinion" means an opinion letter of a firm of attorneys of national reputation experienced in the field of municipal bonds whose opinions are generally accepted by purchasers of municipal bonds, and who is acceptable to the Authority.

Section 6.3 **Third Party Beneficiaries**. The Trustee, the owners from time to time of the Authority Bonds, any Credit Enhancer from time to time of the Authority Bonds and any underwriter of the Authority Bonds are each expressly acknowledged to be third party beneficiaries of this Loan Agreement and each representation, agreement, duty, obligation and provision of this Loan Agreement.

Section 6.4 **Additional Documents Relating to Authority Bonds**. The Local Borrower will furnish to the Authority and certify to such information and execute and deliver and cause to be executed and delivered such documents as the Authority, the underwriter or other parties to any Authority Bond transaction may reasonably require, including, without limitation:

(a) a certificate of an Authorized Officer of the Local Borrower to the effect that the information contained in the Final Official Statement (defined in Section 6.5, paragraph (a)) for the Authority Bonds concerning the Local Borrower is correct in all material respects and is an accurate summary of the information which it purports to summarize, and that nothing has come to the Authorized Officer's attention that would lead the Authorized Officer to believe that the information in the Final Official Statement relating to the Local Borrower contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and

(b) subject to the continuing disclosure requirements of Securities and Exchange Commission Rule 15c2-12 (the "*Disclosure Rule*"), a continuing disclosure undertaking of the Local Borrower meeting the requirements of the Disclosure Rule , and a statement of the Local Borrower as to whether it has failed to provide any information and

notices required by the provisions of previous continuing disclosure undertakings, if any, of the Local Borrower under the Disclosure Rule, and if it has not, describing the circumstances and status of such failure; and

(c) an appropriate certificate executed by Authorized Officer of the Local Borrower concerning the reasonable expectations of the Local Borrower as to the use of the proceeds of the Loan and such other matters as may be required on the part of the Local Borrower in order to ensure that the Authority Bonds are and will remain Tax-Exempt Obligations that are not AMT Obligations, and the Local Borrower covenants to comply with the provisions of such certificate; and

(d) such other certificates, documents and information, and supplemental opinions of Local Borrower's counsel, as the Authority, the underwriters of the Authority Bonds or other parties to the Authority Bonds transaction may reasonably require and as are necessary to confirm the continued truth and accuracy of information supplied by or on behalf of the Local Borrower.

Section 6.5 **Disclosure Regarding Authority Bonds**.

(a) The information, if any, relating to the Local Borrower (including without limitation the financial and statistical data contained therein) which has been furnished by the Local Borrower to be included in, and which is included in, a Preliminary Official Statement of the Authority (the "*Preliminary Official Statement*"), or a final Official Statement (the "*Final Official Statement*") of the Authority concerning any Authority Bonds, as of the respective dates of each such document and at all times subsequent thereto up to and including the Bond Closing, will be (if necessary by amendment provided by the Local Borrower) true and correct and will not contain an untrue statement of material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. To the extent permitted by law, and notwithstanding any other provision of this Loan Agreement, the Local Borrower will indemnify, save and hold harmless the Authority and each other local borrower, if any, included in the Final Official Statement, and each of such parties' respective agents, for, from and against any and all claims, damages, liability and court awards including costs, expenses and attorneys fees incurred as a result of any omission or misstatement of a material fact in the Local Borrower's information in the Final Official Statement, as it may have been supplemented or amended by the Local Borrower.

(b) The Local Borrower agrees that from the date of the Final Official Statement and for a period until not later than 25 days after the date of the Bond Closing if and so long as the offering of the Authority Bonds continues (i) the Local Borrower will furnish such information with respect to itself as the Authority (for itself or at the request of the underwriters of the Authority Bonds) may from time to time reasonably request and (ii) if any event shall occur as a result of which it is necessary, in the opinion of Bond Counsel to the Authority, or counsel for the underwriters of the Authority Bonds, to amend or supplement the information in the Final Official Statement relating to the Local Borrower in order to make such information not misleading in light of the circumstances then existing, the Local Borrower will forthwith prepare, and furnish to the Authority and the underwriters such information relating to the Local Borrower as may be necessary to permit the preparation of an amendment of or supplement to the Final Official Statement (in form and substance satisfactory to the Bond Counsel to the Authority and counsel for the underwriters) which will amend or supplement the Final Official Statement so that it will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances then existing, not misleading.

(c) The Local Borrower agrees that if prior to the 25th day following the end of the underwriting period of the Authority Bonds, as defined for purposes of the Disclosure Rule, any event shall occur which causes the representations contained in Section 6.4, paragraph (a) to be false in any material respect, the Local Borrower shall promptly notify the Authority of such development, and if in the opinion of the Authority and the underwriters of the Authority Bonds such development requires the preparation of a supplement or an amendment to the Preliminary Official Statement or the Final Official Statement, the Local Borrower agrees to cooperate with the Authority and the underwriters for the Authority Bonds in preparing any such supplement or amendment in a form acceptable to such parties and to pay all reasonable expenses incurred by such parties in connection with the preparation thereof.

Section 6.6 **Assignment and Transfer by Authority to Trustee**.

(a) The Local Borrower expressly acknowledges that, other than the right of the Authority to be indemnified by the Local Borrower, all right, title and interest of the Authority in, to and under this Loan Agreement will be assigned to the Trustee as security for the Authority Bonds, as applicable, as provided in the Authority's Master Trust Indenture, and that if any Event of Default shall occur the Trustee, pursuant to the Authority's Master Trust Indenture, shall be entitled to act hereunder in the place and stead of the Authority. The Local Borrower hereby acknowledges the requirements of the Authority's Master Trust Indenture applicable to the Authority Bonds and consents to such assignment and appointment. The Authority shall retain the right to compel or otherwise enforce observance and performance by the Local Borrower of its duties, covenants, obligations and to be indemnified by the Local Borrower; provided, however, that in no event shall the Authority or the Trustee have the right to accelerate the payments under this Loan Agreement.

(b) The Local Borrower hereby approves and consents to any assignment or transfer of this Loan Agreement that the Authority deems to be necessary in connection with any refunding of the Authority Bonds or otherwise in connection with the Clean Water Revolving Fund and Drinking Water Revolving Fund programs of the Authority.

Section 6.7 **Conditions to Assignment by Local Borrower**. Notwithstanding Section 4.2, this Loan Agreement may not be assigned by the Local Borrower for any reason, unless the following conditions shall be satisfied: (i) the Authority, the Trustee and the Credit Enhancer, if any, of the Authority Bonds shall have approved said assignment in writing; (ii) the assignee shall be a governmental unit within the meaning of Section 141(c) of the Internal Revenue Code or another entity acceptable to the Authority and the assignee shall have expressly assumed in writing the full and faithful observance and performance of the Local Borrower's duties, covenants, agreements and obligations hereunder; (iii) immediately after such assignment, the assignee shall not be in default in the performance or observance of any duties, covenants, obligations or agreements of the Local Borrower hereunder; (iv) the Authority and the Trustee shall have received an opinion of bond counsel to the effect that such assignment will not adversely affect the exclusion of interest on the Authority Bonds from gross income for purposes of Federal income taxation under Section 103(a) of the Code or make the Authority Bonds or the Loan AMT Obligations; and (v) the Authority and the Trustee shall receive an opinion of counsel to the effect that such assignment will not violate the provisions of the Master Trust Indenture or any agreement entered into by the Authority with, or condition of any grant received by the Authority from, the United States of America relating to the Capital Grant Facility or any capitalization grants received by the Authority or the State under the Federal Water Pollution Control Act and the Federal Safe Drinking Water Act.

No assignment shall relieve the Local Borrower from primary liability for any of its obligations under this Loan Agreement and in the event of such assignment, the Local Borrower shall continue to remain primarily liable for the performance and observance of its obligations to be performed and observed under this Loan Agreement.

Section 6.8 **Sale or Other Disposition of Project or System**. The Local Borrower agrees that it will not sell, lease, abandon or otherwise dispose of all or substantially all or any substantial portion of the Project or the System unless (i) the transferee assumes the Local Borrower's obligations under this Loan Agreement in accordance with Section 6.6, (ii) the Authority shall by appropriate action determine, in its sole discretion, that such sale, lease, abandonment or other disposition will not adversely affect the Authority's ability to meet its duties, covenants, obligations and agreements under the Bond Documents, and will not adversely affect the eligibility of interest on Authority Bonds then outstanding or which could be issued in the future for exclusion from gross income for purposes of federal income taxation or cause such Authority Bonds to be AMT Obligations, and (iii) the Credit Enhancer, if any, of the Authority Bonds shall have given its prior written consent to such disposition.

Section 6.9 **Deficiencies Under Bond Documents Caused by Failure to Make Loan Repayment**. The Local Borrower acknowledges that payment of the Authority Bonds by the Authority, including payment from moneys drawn by the Trustee from the Bond Reserves or the CWRF Financial Assistance Account and DWRF Financial Assistance Account~~s~~ established under the Bond Documents, does not constitute payment of the amounts due under this Loan Agreement. If at any time the amounts on deposit in the Bond Reserves or the CWRF Financial Assistance Account and DWRF Financial Assistance Account~~s~~ shall be less than the amounts required by the Bond Documents as the result of any transfer of moneys from the Bond Reserves or the CWRF Financial Assistance Account and DWRF Financial Assistance Account~~s~~ which in turn is the result of a failure by the Local Borrower to make any Loan Repayments required hereunder, the Local Borrower agrees to (i) replenish such moneys so transferred, and (ii) replenish any deficiency arising from losses incurred in making such transfer as the result of the

liquidation by the Authority of investment securities acquired as an investment of moneys in the Bond Reserves or the CWRF Financial Assistance Account and DWRF Financial Assistance Account~~s~~, by making payments to the Authority in equal monthly installments for the lesser of six (6) months or the remaining term of the Loan at a combined interest and fee rate to be determined by the Authority necessary to make up any loss caused by such deficiency, provided that the combined interest and fee rate payable on the Loan including such make-up combined interest and fees shall not exceed the maximum rate permitted by the Authorizing Proceedings which authorized this Loan Agreement.

Section 6.10 **Indemnification**. To the extent permitted by law, the Local Borrower shall indemnify, save and hold harmless the Authority against any and all claims, damages, liability and court awards including costs, expenses and attorney fees to the extent incurred as a result of any gross negligence or willful misconduct by the Local Borrower, or its employees, agents or subcontractors pursuant to the terms of this Loan Agreement.

Section 6.11 **Compliance with Master Trust Indenture**. The Local Borrower covenants and agrees to take such action as it may lawfully take and as the Authority shall reasonably request so as to enable the Authority to observe and comply with, all duties, covenants, obligations and agreements contained in the Master Trust Indenture insofar as such duties, covenants, obligations and agreements relate to the obligations of the Local Borrower under this Loan Agreement.

Section 6.12 **Provisions Relating to Default**.

(a) Any notice or information which the Local Borrower is to give to the Authority pursuant to the provisions of Article 5 shall also be given by the Local Borrower to the Trustee and to any Credit Enhancer at the same time.

(b) Notwithstanding the provisions of Section 5.3, paragraph (a) and Section 5.7, so long as a Credit Enhancer is not in default of its obligations with respect to its payment guarantee of the Authority Bonds and such guarantee is in effect, the Credit Enhancer shall have the right to direct the exercise of remedies provided for herein and the Trustee and the Authority shall not pursue any remedy except with the prior written consent of the Credit Enhancer.

(c) In the event of a default hereunder by the Local Borrower, the Local Borrower shall also pay the expenses of the Trustee and of any Credit Enhancer in the same manner as provided in Section 5.4 with respect to the expenses of the Authority.

Section 6.13 **Tax Compliance Certificate**. If the Authority Bonds are issued and sold on the basis that they are Tax-Exempt Obligations, an Authorized Officer of the Local Borrower shall deliver an appropriate certificate concerning the reasonable expectations of the Local Borrower as to the use of the proceeds of the Loan and such other matters as may be required on the part of the Local Borrower in order to ensure that the Authority Bonds are and will remain Tax-Exempt Obligations that are not AMT Obligations, and the Local Borrower covenants to comply with the provisions of such certificate.

Article 7 Miscellaneous

Section 7.1 **Binding Effect**. This Loan Agreement shall inure to the benefit of and shall be binding upon the Authority and the Local Borrower and their respective successors and assigns.

Section 7.2 **Severability**. In the event any provision of this Loan Agreement shall be held illegal, invalid or unenforceable by any Court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

Section 7.3 **Amendments, Supplements and Modifications**. This Loan Agreement may not be amended, supplemented or modified without the prior written consent of the Authority and the Local Borrower.

Section 7.4 **Execution in Counterparts**. This Loan 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 instrument.

Section 7.5 **Captions**. The captions or headings in this Loan Agreement are for convenience only and shall not in any way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

Section 7.6 **Further Assurances**. The Local Borrower shall, at the request of the Authority, authorize, execute, acknowledge and deliver such further resolutions, conveyances, transfers, assurances, financing statements and other instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights and agreements granted or intended to be granted by this Loan Agreement.

Section 7.7 **State of Arizona Contract Provisions**.

(a) Books and Records. As required by the provisions of Arizona Revised Statutes Section 35-214, the Local Borrower agrees that all books, accounts, reports, files and other records relating to this Loan Agreement shall be retained and shall be subject at all reasonable times to inspection and audits by the Authority for five years after completion of this Loan Agreement, and that upon request by the Authority such records shall be produced at any of the Authority offices designated herein as the place at which notices to the Authority are to be given.

(b) Prohibition Against Discrimination. In the event that it applies, the parties agree to comply with the Arizona Governor's Executive Order 2009-9, entitled "Prohibition of Discrimination in State Contracts Non-Discrimination in Employment by Government Contractors and Subcontractors," which mandates that all persons, regardless of race, color, religion, sex, age, or national origin shall have equal access to employment opportunities, and all other applicable state and Federal employment laws, rules, and regulations, including the Americans with Disabilities Act. The Local Borrower shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

(c) Governing Law and Forum. This Loan Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State of Arizona, except as such laws may be preempted by any federal rules or regulations. The parties hereto expressly acknowledge and agree and all Local Borrowers by their acceptance thereof shall be deemed to have acknowledged and agreed that any judicial action to interpret or enforce the terms of this Loan Agreement against the Authority shall be brought and maintained in the Superior Court of the State of Arizona in and for Maricopa County or in the United States District Court in and for the District of Arizona.

(d) Arbitration. In the event of a dispute, the parties agree to use arbitration, after exhausting applicable administrative review, to the extent required by Arizona Revised Statutes Section 12-1518, and the prevailing party shall be entitled to attorney's fees and costs with respect thereto.

(e) Notice of Arizona Revised Statutes Section 38-511 – Cancellation. Notice is hereby given of the provisions of Arizona Revised Statutes Section 38-511, as amended. By this reference, the provisions of said statute are incorporated herein to the extent of their applicability to this Loan Agreement under the law of the State of Arizona.

(f) Additional Warranties and Certifications from the Local Borrower. In compliance with Section 23-214(B) of the Arizona Revised Statutes, the Local Borrower warrants to the Authority that either (i) it is not an "employer" (within the meaning of Arizona Revised Statutes Section 23-214(B)) or (ii) it is registered with and is participating in the employment verification pilot program as jointly administered by the United States department of homeland security and the social security administration or any of its successor programs (the "E-Verify Program") and that the proof submitted to the Authority of that registration and participation is true and correct. The Local Borrower agrees that, until the Loan is fully paid, at all times during which it is an "employer" (within the meaning of Arizona Revised Statutes Section 23-214(B)) it will be registered with and will participate in the E-Verify Program. The breach by the Local Borrower of the foregoing shall be deemed a material breach by the Local Borrower of this Loan Agreement and may result in penalties up to and including the termination of this Loan Agreement. If the Authority determines that the Local Borrower is not so registered and participating when required, the Authority will notify the Local Borrower by certified mail of the determination of noncompliance and the Local Borrower's right to appeal the determination. On a final determination of noncompliance, the Local Borrower shall repay all monies received as an economic development incentive (within the meaning of Arizona Revised Statutes Section 23-214(B)) to the Authority within thirty days of the final determination.

Article 8 Definitions

Section 8.1 **Definitions**. The following terms as used in this Loan Agreement shall, unless the context clearly requires otherwise, have the following meaning:

"*AMT Obligation*" means a Tax-Exempt Obligation the interest on which is an item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Internal Revenue Code.

"*Annual Loan Review Form*" means the loan compliance questionnaire circulated by the Authority to all borrowers as part of the Authority's annual loan portfolio review.

"*Authority*" means the Water Infrastructure Finance Authority of Arizona, a body corporate and politic of the State of Arizona duly created and validly existing under and by virtue of the Authority Act.

"*Authority Act*" means Title 49, Chapter 8 (Section 49-1201 et seq.) of the Arizona Revised Statutes ("A.R.S.").

"*Authority Bonds*" means any bonds of the Authority issued to finance the State's revolving fund established pursuant to the Water Pollution Control Act, as amended, and the Safe Drinking Water Act, as amended.

"*Authorized Officer*" means, (i) with respect to the Local Borrower, the person whose name is set forth in this Loan Agreement or such other person or persons authorized by the Local Borrower to act as an authorized officer of the Local Borrower to perform any act or execute any document relating to the Loan or this Loan Agreement whose name is furnished in writing to the Authority and the Trustee; and (ii) with respect to the Authority, the Chairman, Vice Chairman, Executive Director, or any other person or persons designated by the Board to act on behalf of the Authority with respect to this Loan Agreement; the designation of such person or persons shall be evidenced by a written certificate containing a specimen signature of such person or persons and signed on behalf of the Authority by its Chairman or Vice Chairman.

"*Bond Closing*" means the date of initial delivery of and payment for the Authority Bonds.

"*Bond Documents*" means and includes the Master Trust Indenture, any supplemental indenture and any comparable or related document pursuant to which the Authority Bonds are issued, and all further amendments and supplements thereto adopted in accordance with the provisions thereof.

"Bond Reserves" means reserves established by the Bond Documents for the Authority Bonds to secure timely payment of amounts due on the Authority Bonds even if one or more local borrowers do not make timely payments on their loans.

"*Business Day*" means any day other than a Saturday, Sunday or legal holiday or a day on which banking institutions, in the city in which the designated office of the Authority (being Phoenix, Arizona) is located, are closed.

"*Capital Grant Facility*" means the contractual arrangement established with the Authority by the United States of America Environmental Protection Agency to make capitalization grant payments pursuant to Title VI of the Federal Water Pollution Control Act, as amended (33 U.S.C. § 125 et seq.) and the Federal Safe Drinking Water Act, as amended (particularly 42 U.S.C. § 300j-12 et seq.).

"*Clean Water Act*" means the Federal Water Pollution Control Act amendments of 1972 (P.L. 92-500; 86 Stat. 816), as amended by the Water Quality Act of 1987 (P.L. 100-4; 101 Stat. 7) and the Water Resources Reform and Development Act of 2014 (P.L. 113-21, 128 Stat. 1193).

"*Clean Water Revolving Fund*" means the fund established by A.R.S. § 49-1221.

"*Code*" means the Internal Revenue Code of 1986, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any

official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section includes any applicable successor section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

"*Combined Interest and Fee Rate*" means periodic interest and fee payments made by the Borrower, see Exhibit A to this Loan Agreement.

"*Construction Period"* means the period from the date of the Loan Closing until the date of the final disbursement of proceeds of the Loan pursuant to this Loan Agreement, but in no event later than the third anniversary of the Loan Closing.

"*Cost*" means those costs that are eligible to be funded from draws under the Capital Grant Facility and are reasonable, necessary and allocable to the Project and are permitted by generally accepted government auditing standards to be costs of the Project.

"*Credit Enhancer*" means the entity so designated in the Bond Documents, if any, or any successor thereto, that from time to time has issued and outstanding a municipal bond insurance policy or similar payment guarantee relating to the Authority Bonds.

"*CWRF Financial Assistance Account*" means the account so designated in the Master Trust Indenture to which loans funded by the Clean Water Revolving Fund shall be credited.

"*Debt Management Fee*" means the fee component of the combined interest and fee payments made by the Borrower, see Exhibit A to this Loan Agreement.

"*Department*" means the Department of Environmental Quality of the State of Arizona.

"*Drinking Water Facility*" has the meaning given that term in the Authority Act, currently: a community water system or a non-profit noncommunity water system as defined in the Federal Safe Drinking Water Act (P.L. 93-523; 88 Stat. 1660l; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613) that is located in the State. The term does not include water systems owned by federal agencies.

"*Drinking Water Revolving Fund*" means the fund established by A.R.S. § 49-1241.

"*DWRF Financial Assistance Account*" means the account so designated in the Master Trust Indenture to which loans funded by the Drinking Water Revolving Fund shall be credited.

"*Eligible Project Costs*" means, whether incurred before or after the date of this Loan Agreement, such portion of the Costs as is disbursed by the Authority for the benefit of the Local Borrower. The Local Borrower and the Authority acknowledge that the actual Eligible Project Costs for the Project have not been determined as of the effective date of this Loan Agreement. The final Eligible Project Costs shall be established after all disbursements have been made.

"*Event of Default*" means any occurrence or event specified in Section 5.1 hereof.

"*Indian Tribe*" has the meaning given that term by the Authority Act, currently: any Indian tribe, band, group or community that is recognized by the United States Secretary of the Interior and that exercises governmental authority within the limits of any Indian reservation under the Jurisdiction of the United States government notwithstanding the issuance of any patent and including rights-of-way running through the reservation.

"*Loan*" means (a) during the Construction Period, the commitment to lend to the Local Borrower the Estimated Eligible Project Costs set forth in this Loan Agreement (as it may be amended or revised from time to time), and (b) thereafter, the amount of money equal to the Eligible Project Costs which is actually loaned to the Local Borrower pursuant to this Loan Agreement.

"*Loan Agreement*" or "*Agreement*" means this Loan Agreement, including the Exhibits and these Standard Terms and Conditions attached to this Loan Agreement, as it may be supplemented, modified or amended from time to time in accordance with the terms hereof.

"*Loan Closing*" means the date of execution and delivery of this Loan Agreement.

"*Loan Repayment Date*" means the payment dates commencing and ending on the dates set forth in this Loan Agreement.

"*Loan Repayments*" means the payments payable by the Local Borrower pursuant to this Loan Agreement.

"*Local Borrower*" means the Political Subdivision or Indian Tribe that is a party to and is described in the first paragraph of this Loan Agreement.

"*Master Trust Indenture*" means and includes the Master Trust Indenture dated as of August 1, 1999, as supplemented, and any comparable or related document, pursuant to which the Authority issues Authority Bonds.

"*Political Subdivision*" has the meaning given that term by the Authority Act, currently: a county, city, town or special taxing district authorized by law to construct wastewater treatment facilities.

"*Project*" is the project described in Section 2.1 of the Loan Agreement, all or a portion of the Cost of which is financed from the proceeds of the Loan.

"*Repayment Period*" means the period over which the principal amount of the Loan will be repaid which period begins and ends on the dates set forth in this Loan Agreement.

"*Repayment Principal Amount*" means the amount the Authority agrees to loan to the Local Borrower pursuant to this Loan Agreement or such lesser amount of actual Eligible Project Costs as represents the aggregate amount of the Loan actually made pursuant to this Loan Agreement.

"Reserve Fund Surety" means a surety bond, insurance policy, letter of credit or similar arrangement representing the irrevocable obligation of the issuer thereof to pay to or at the direction of the Local Borrower an amount up to the Reserve Requirement as set forth in Exhibit A.

"*Safe Drinking Water Act*" means the Federal Safe Drinking Water Act (P.L. 93-523; 88 Stat. 1660; P.L. 96-190; 91 Stat . 1393; P.L. 104-182; 110 Stat. 1613), as amended in 1996.

"*Source of Repayment*" means the "source of repayment" set forth in this Loan Agreement as defined in Exhibit D.

"*State*" means the State of Arizona.

"*System*" means the "System" as defined in Section 2.2 of the Loan Agreement.

"*Tax-Exempt Obligation*" means any obligation or issue of obligations (including bonds, notes and lease obligations treated for federal income tax purposes as evidences of indebtedness) the interest on which is excluded from gross income for federal income tax purposes within the meaning of Section 150 of the Code, and includes any obligation or any investment treated as a "tax-exempt bond" for the applicable purpose of Section 148 of the Code

"*Trustee*" means the Trustee appointed by the Authority pursuant to the Bond Documents and its successor or successors and any other corporation which may at any time be substituted in its place as Trustee pursuant to the Bond Documents.

Terms not otherwise defined herein shall have the meanings ascribed to them in Exhibit D to the Loan Agreement.

Section 8.2 **Rules of Interpretation**. For all purposes of this Loan Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) Words of one gender include the corresponding words of other genders; words of neuter include both genders; and words in the singular include words in the plural and vice versa.

(b) Words indicating persons, parties, or entities (and the like) include firms, associations, partnerships (including limited partnerships), limited liability companies (and the like), corporations, trusts and other legal entities, including public and governmental bodies, as well as natural persons.

(c) References to a statute refer to the statute, as amended, and any successor statute, and to all regulations promulgated under or implementing the statute or successor statute, as in effect at the relevant time.

(d) References to a governmental or quasi-governmental entity or representatives thereof also refer to an entity that succeeds to the functions of the governmental or quasi-governmental entity and representatives thereof.

(e) Headings preceding sections of text and any table of contents are solely for convenience of reference and are not part of this Loan Agreement and are not to affect its meaning, interpretation or effect.

(f) Actions permitted under this Loan Agreement may be taken at any time and from time to time in the actor's sole discretion.

(g) The word "including" means "including, but not limited to" and the word "include" means "include, among others."

(h) The terms "hereby," "hereof," "herein," and "hereunder" (and the like) refer to this Loan Agreement.

(i) Indications of time of day mean local time in Phoenix, Arizona.

(j) This Loan Agreement shall be governed by and construed in accordance with the applicable law of the State of Arizona, except for its conflict of law rules and except as preempted by federal.

Article 9 List of Federal Laws and Authorities

By Section 5.4 and Section 5.5 of Exhibit B to the Loan Agreement, the Local Borrower agrees that the Project will comply with applicable provisions of the following federal laws and authorities:

Environmental:

1. Archaeological and Historical Preservation Act of 1974, Pub. L. 93-291; 16 U.S.C. § 469a-1.

2. Clean Air Act, Pub. L. 95-95, as amended; 42 U.S.C. § 7401 et. seq.

3. Clean Water Act, Titles II, IV, and V, Pub. L. 92-500, as amended.

4. Coastal Barrier Resources Act, Pub. L. 97-348; 16 U.S.C. § 3501 et. seq.

5. Coastal Zone Management Act, Pub. L. 92-583, as amended; 16 U.S.C. § 1451 et. seq.

6. Endangered Species Act, Pub. L. 93-205, as amended; 16 U.S.C. § 1531 et seq.

7. Environmental Justice, Executive Order 12898.

8. Farmland Protection Policy Act, Pub. L. 97-98; 7 U.S.C. § 4201 et seq.

9. Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended.

10. Floodplain Management, Executive Order 11988, as amended by Executive Order 12148.

11. Magnunson-Stevens Fishery Conservation and Management Act, Pub L. 94-265, as amended; 16 U.S.C. § 1801 et. seq.

12. National Historic Preservation Act of 1966, Pub. L. 89-665, as amended; 16 U.S.C. § 470 et. seq.

13. Protection and Enhancement of the Cultural Environment, Executive Order 11593.

14. Protection of Wetlands, Executive Order 11990, as amended by Executive Order 12608; Pub. L. 99-645, as codified at 16 U.S.C. § 3901 et. seq.

15. Safe Drinking Water Act, Section 1424(e), Pub. L. 92-523, as amended; 42 U.S.C. § 300f et. seq.

16. Wild and Scenic Rivers Act, Pub. L. 90-542, as amended; 16 U.S.C. § 1271 et. seq.

17. Migratory Bird Treaty Act of 1918, 16 U.S.C. § 703 et. seq.

Social Legislation:

1. Age Discrimination Act, Pub. L. 94-135; 42 U.S.C. § 6102.

2. Civil Rights Act of 1964, Pub. L. 88-352, Title VI; 42 U.S.C. § 2000d.

3. Equal Employment Opportunity, Executive Order 11246, as amended.

4. Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA) Financial Assistance Agreements.

    a. Promoting the use of Small, Minority, and Women-owned Businesses, Executive Orders 11625, 12138 and 12432.

    b. Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590.

    c. Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993, Pub. L. 102-389; 42 U.S.C. § 4370d.

    d. Title X Clean Air Act, Pub. L. 101-549; 42 U.S.C. § 7601 note.

5. Rehabilitation Act of 1973, Pub. L. 93-112; 29 U.S.C. § 794 (including Executive Order 11914 and 11250).

6. Section 13 of the Federal Water Pollution Control Act, Pub. L. 92-500; 33 U.S.C. § 1251.

7. The Drug Free Workplace Act Of 1988, Pub. L. 100-690.

Economic and Miscellaneous Authority:

1. Anti-Lobbying Provision (40 CFR Part 34) and New Restrictions on Lobbying, Section 319 of Pub. L. 101-121.

2. Debarment and Suspension, Executive Order 12549.

3. Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended; 42 U.S.C. § 3331 et. seq.

4. Preservation of Open Competition and Government Neutrality, Executive Order 13502.

5. Prohibitions relating to violators of the Clean Air Act, Section 306 of the Clean Air Act, 42 U.S.C. § 7505; Section 508 of the Clean Water Act, 33 U.S.C. § 1368; Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans.

6. Uniform Relocation and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, as amended; 42 U.S.C. §§ 4601-4655.

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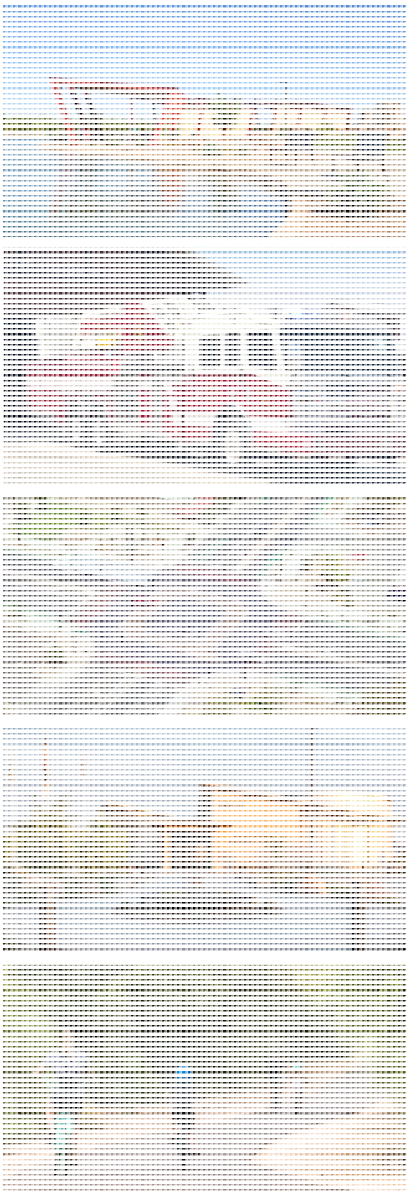
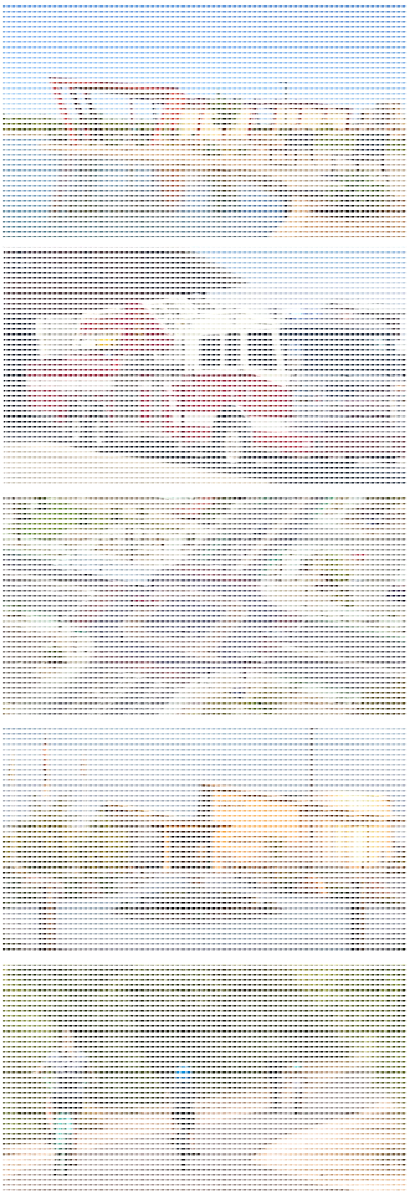


Cibola Water Rights Acquisition and WIFA Financing

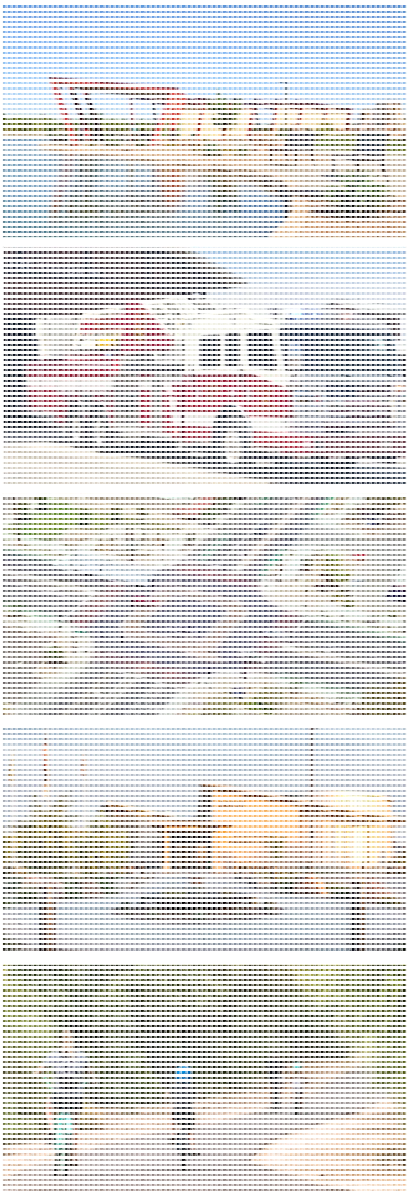
Town Council Meeting

December 7, 2022



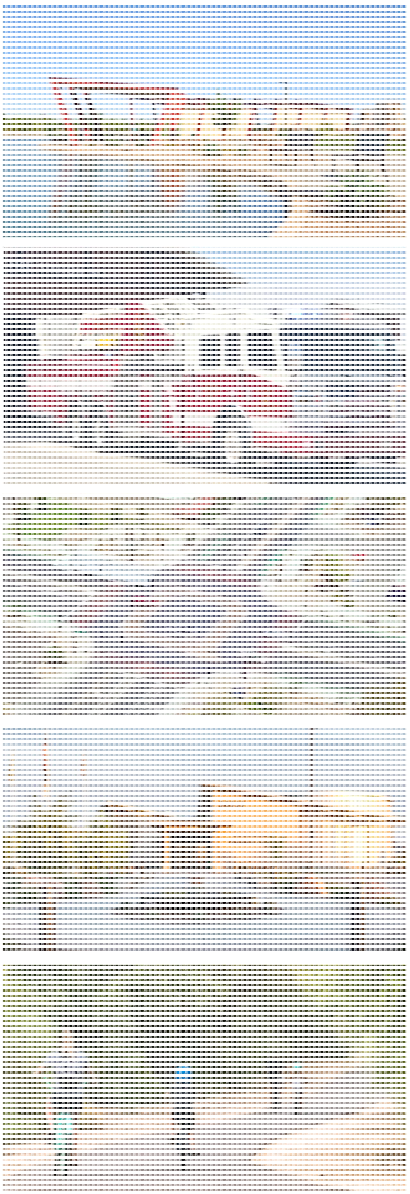
Purpose of Presentation

1. Review Staff Recommendation to Authorize Execution of the Final Draft Contracts Prepared by Reclamation Associated with the Cibola Acquisition (Resolution No. 1511-22)
2. Review Expected Financing Terms Associated with Water Infrastructure Finance Authority (WIFA) Loan to Finance Acquisition of 2,033 AF of Cibola Water Rights in the Amount of $27M (Resolution No. 1508-22)

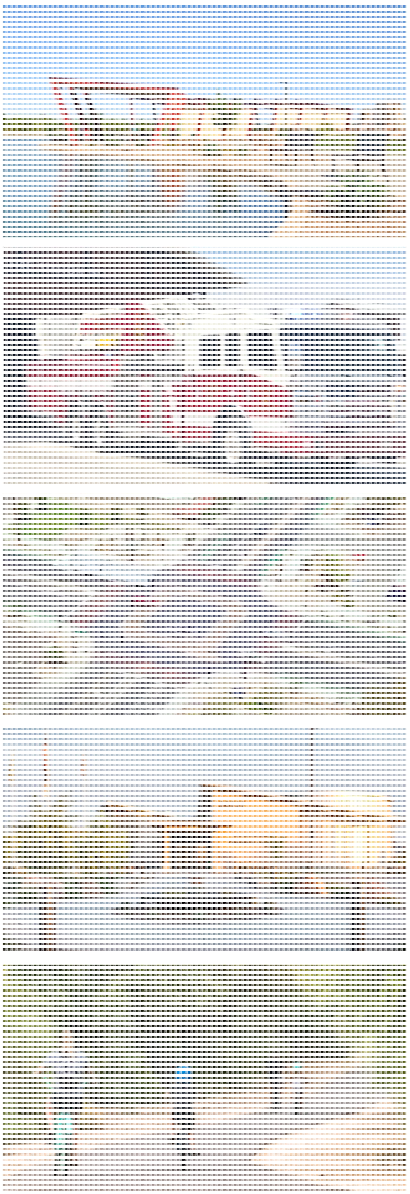


Background

- September 21, 2022 Town Council Meeting
  - Approved Resolution No. 1495-22 Authorizing Execution of the Three Contracts Associated with the Cibola Acquisition.
  - Staff Informed Council the Final Draft Contracts Would be Provided Once They were Available.
  - Approved Resolution No. 1496-22 Authorizing the Application for a WIFA Loan to Fund Costs Related to the Cibola Acquisition.

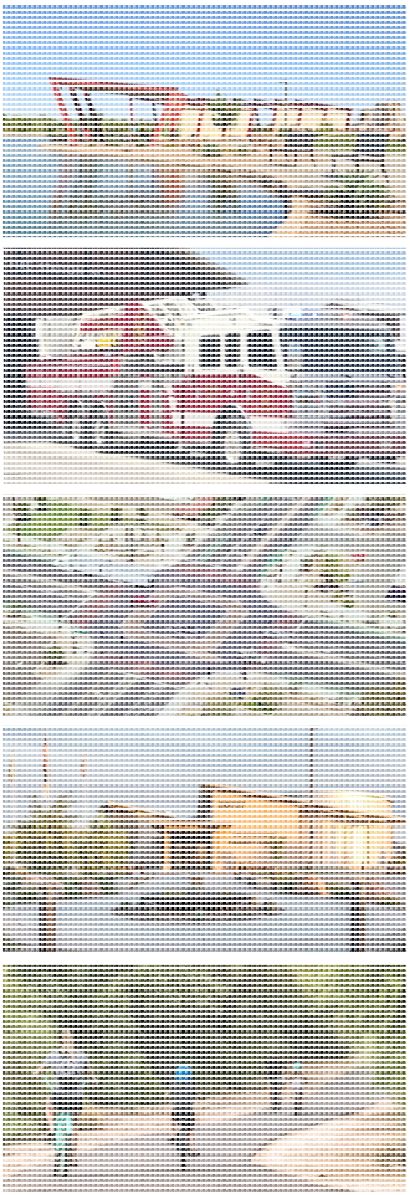


1. Review Staff Recommendation to Authorize Execution of the Final Draft Contracts Prepared by Reclamation Associated with the Cibola Acquisition

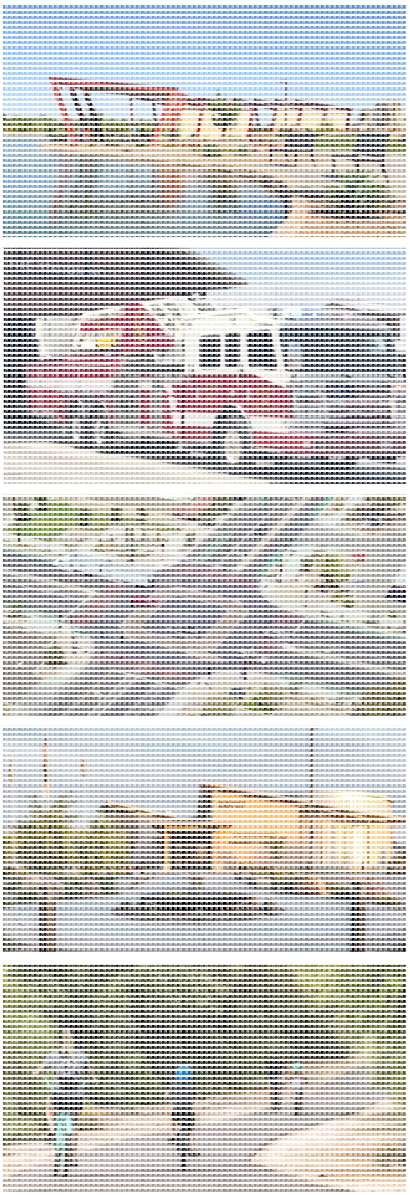


Agreements Related to the Transfer of Cibola Water

- Three Contracts are Required in Order to Complete the Transfer of Cibola Water to the Town
  1. Contract with the Town of Queen Creek for Delivery of Colorado River Water
  2. Partial Assignment and Transfer of Colorado River Water Under Contract with GSC Farm, LLC to the Town of Queen Creek
  3. Reclamation Wheeling Contract between the United States and the Town of Queen Creek to Transport Non-Project Water



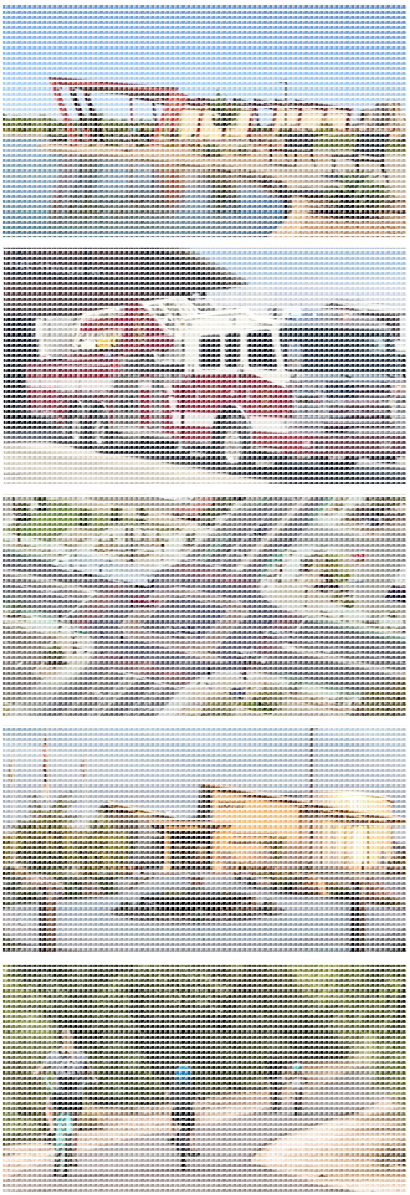
2. Review Staff Recommendation to Approve Authorizing a WIFA Loan to Finance Acquisition of 2,033 AF of Cibola Water Rights in the Amount of $27M



WIFA Loan: $27M

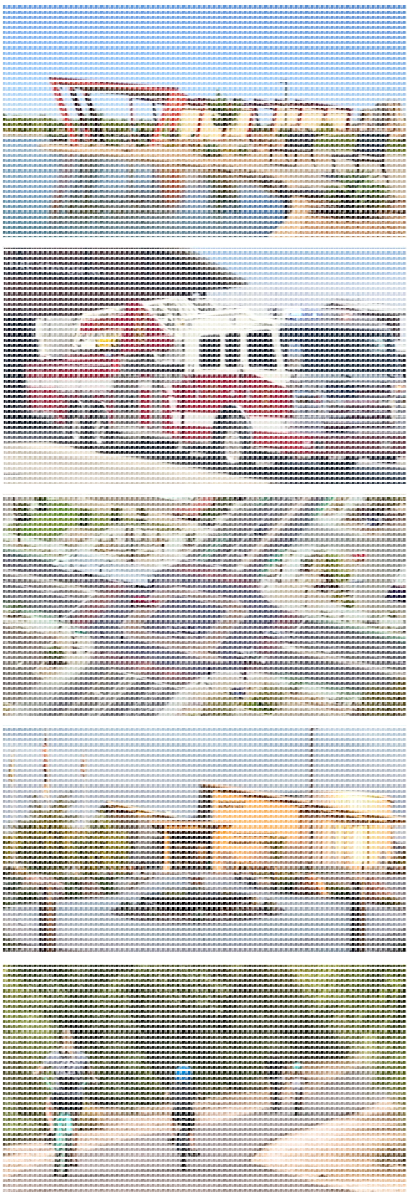
Purpose	Amount
WATER	
Perpetual Water Rights	$24M
CAP Wheeling Capacity	$3M
Total	$27M

Note: WIFA funds will not be drawn until the Town has ownership of the water



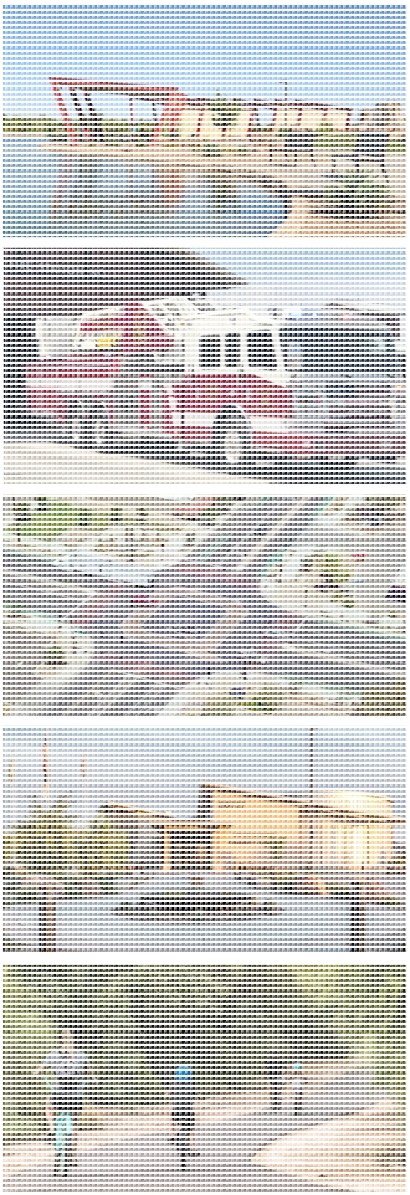
Why WIFA for $27M?

- WIFA Has the Lowest Possible Interest Rate
  - Federal Government Loan Program
  - Estimated Interest Savings Compared to Open Market: $6M
    - 4% WIFA (vs. 5% Loan)



Drinking Water WIFA Loan: $27M

- Estimated Interest Rate: 4%
- Term: 30 Years
- Annual Principal and Interest Costs: $1.6M
- Repayment Pledge: Net, Combined Utility Revenues (Water and Wastewater)
- Repayment Source: Water Rates



Drinking Water WIFA Loan: $27M

December 7 Council Meeting	• Adopt Authorizing Resolution
December 9, 2022	• Loan Closing
January / February	• Report Final WIFA Terms to Council

Recommended Motions

1. Move to Approve Resolution No. 1511-22 as presented.
2. Move to Approve Resolution No. 1508-22 as presented.

Resolution No. 1508-22 requires five affirmative votes to pass with the emergency clause. This is being recommended to avoid delay in an economic environment in which interest rates are anticipated to increase.

TOWN OF QUEEN CREEK ARIZONA

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 1506-22 ALLOWING FOR THE EVALUATION OF ADDITIONAL INFRASTRUCTURE USES FOR THE 2% CONSTRUCTION SALES TAX.**

DATE: **December 7, 2022**

Suggested Action:

Approve Resolution 1506-22 as presented.

Relevant Council Goal(s):

Effective Government: KRA Financial Stability.

Discussion:

This issue was discussed at the November 16, 2022 Town Council meeting. It is a component of a larger initiative to review three of the Town's key financial policies associated with receiving an 'AAA' bond rating.

Town staff has identified three specific financial policies with the expectation that, when combined with future strong financial performance, will put us in a better position to receive a bond rating upgrade to the highest possible rating, 'AAA'. Currently, the Town's bond rating is 'AA+', one notch below the highest rating of 'AAA'.

Using our most recent bond rating agency evaluation reports as a roadmap (when we received an upgrade to 'AA+' in March, 2022), Town staff feels the following three areas need to be addressed in our quest for our 'AAA' rating:

1. Increase the Operating Budget Reserve;
2. Updated Pension Funding Policy; and
3. Updated Debt Management Policy (including recommendations to pay off certain debt early)

Identifying and evaluating changes to these policies is complex and very much inter-related. A key element to addressing these three issues relates to the funding of Town's infrastructure. The Town is responsible for construction of the following types of infrastructure: roads, parks and trails, water, wastewater, police, fire, library and general government purposes.

A key source of revenue used to pay for this infrastructure is the Town's 4.25% construction sales tax. The amount originally started at 2% to pay for the Town's general government infrastructure. In 2005, it was increased by 2% and this increase has been used to pay for new roads since the Town's arterial roads were not funded in partnership with MAG as part of Proposition 400 / Regional Transportation Plan. In 2007, it was increased by 0.25% for public safety infrastructure.

The estimated amount of new, total infrastructure for the entire Town to buildout is $2 billion. The use of construction sales tax is critical to funding this cost. As such, now is an opportune time to re-evaluate the use of this 2% portion solely for new roads. The Town has made significant progress on the construction of new roads since 2015 and modeling the use of a portion of this tax for other infrastructure is recommended by Town staff.

Over the next 10 years, the 4.25% tax is estimated to generate $265M and the tax portion for new roads would be $125M, assuming the historical use remained in place. This is a significant amount of revenue. Additionally, based on our most recent information, buildout for new roads is about $250M in future costs. Currently, we have about $500M of completed roads, buildout is estimated to be about $750M, so we are 67% complete today.

In the discussion with the Town Council at the November 16 th meeting, reference was made to evaluating the use of some of this tax for our critical, upcoming infrastructure needs – specifically public safety facilities and the acquisition of water supply.

This evaluation will take time as it will involve creating multiple scenarios of how the 2% could be allocated and the implications thereof.

By way of example to illustrate the current thought process, consider the following scenario. If a portion of the tax were to be used to pay for a portion of a new water supply purchase, it would (all other things being equal) reduce the financial burden on the water customer rate base.

Town staff's ultimate recommendation on the use of the tax will come together with several other financial issues including updating impact fees, capacity fees, and monthly water, wastewater, refuse / recycling rates. Completing all of this work and evaluating the results together will take time. The deliverable will be recommendations regarding the three financial policies targeting at upgrading our bond rating to 'AAA' and the use of the construction sales tax. We do not have a date of delivery for all of this but plan to provide the next update on our progress at the Town Council's Strategic Planning Session in February, 2023.

Fiscal Impact:

No fiscal impact.

Alternatives:

Approving the resolution only directs staff to explore alternative uses of the tax. A separate action at a later would be needed to actually change the use of the tax. Not approving this resolution would maintain the status quo regarding the use of the tax.

Attachment(s):

1. Resolution 1506-22

RESOLUTION NO. 1506-22

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, ALLOWING FOR THE EVALUATION OF ADDITIONAL INFRASTRUCUTRE USES FOR THE 2% PORTION OF THE EXISTING 4.25% CONSTRUCTION SALES TAX

WHEREAS, the Town is responsible for building the following infrastructure: roads, water, wastewater, police, fire, parks and trails, library, and general government purposes; and

WHEREAS, the Town uses infrastructure master plans to identify the buildout needs of each type of infrastructure;

WHEREAS, the estimated costs to buildout the Town's total infrastructure is a $2 billion; and

WHEREAS, Town staff is in the process of developing an individual funding recommendation to buildout for each of the Town's infrastructure master plans; and

WHEREAS, a key source of payment for construction this infrastructure is the 4.25% construction sales tax charged on contracting activity within the Town; and

WHEREAS, the construction sales tax rate was created at 2% to be used for general government infrastructure;

WHEREAS, the construction sales tax rate was increased by 2% with the approval of Ordinance 316-05 in June, 2005 and has been used to build new roads; and

WHEREAS, the construction sales tax rate was increased by 0.25% with the approval of Ordinance 390-07 in June, 2007.

NOW, THEREFORE BE IT RESOLVED, by the Common Council of Queen Creek, Arizona as follows:

Section 1: Town staff will evaluate alternative uses of the 2% construction sales tax.

Section 2. The preference of the Town Council is that this evaluation will focus on using the 2% construction sales to pay for roads, water supply acquisition and police and fire infrastructure.

Section 3: If any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the

remaining portions thereof.

Section 4: Any policies, resolutions, or parts thereof in conflict with the provisions of this Resolution are hereby repealed.

Section 5: The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to take all act and steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Common Council of the Town of Queen Creek, this 7th day of December, 2022.

FOR THE TOWN OF QUEEN CREEK:

_____
Jeff Brown, Vice Mayor

ATTESTED TO:

_____
Maria Gonzalez, Town Clerk

REVIEW BY:

_____
John Kross, Town Manager

APPROVED AS TO FORM:

_____
Scott A. Holcomb, Town Attorney

TOWN OF QUEEN CREEK ARIZONA

TO: **HONORABLE MAYOR AND TOWN COUNCIL**

THROUGH: **JOHN KROSS ICMA-CM, TOWN MANAGER**

FROM: **SCOTT MCCARTY, FINANCE DIRECTOR**

RE: **CONSIDERATION AND POSSIBLE APPROVAL OF A $7M PAYMENT TO FULLY FUND THE TOWN'S POLICE PENSION PLAN IN THE ARIZONA PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM AND A $7M BUDGET ADJUSTMENT FROM THE CONTINGENCY ACCOUNT.**

DATE: **December 7, 2022**

Suggested Action:

Approve a $7M payment to fully fund the Town's Police Pension Plan in the Arizona Public Safety Personnel Retirement System and a $7M budget adjustment from the contingency account.

Relevant Council Goal(s):

Effective Government: KRA Financial Stability.

Discussion:

The Arizona Public Safety Personnel Retirement System (PSPRS) provides a defined-benefit pension for all public safety employees in Arizona. PSPRS is an agent, multiple-employer system that acts as a common investment and administrative agent to provide retirement and death/disability benefits for public safety personnel who are regularly assigned hazardous duty in the state of Arizona, or a political subdivision thereof. A separate pension plan exists within PSPRS for QC Fire and QC Police. There are ~250 police and fire plans in PSPRS representing all public safety departments and organizations in the entire state.

PSPRS retirement plans are separated into three tiers depending on when an employee is hired:

- Tier 1 – Hired into PSPRS position before January 1, 2012
- Tier 2 – Hired into PSPRS position on/after January 1, 2012
- Tier 3 – Hired into PSPRS position on/after July 1, 2017

The retirement benefits an employee receives are determined by tier. The PSPRS Board sets the employee and employer contribution rates for each tier annually.

With approval of this motion, the Town Council will fully fund our new Police Pension Plan in PSPRS and reduce our Police Tier 2 employee contribution amounts to PSPRS. This opportunity stems from changes made this summer by the PSPRS Board of Directors regarding how contribution rates for Tier

2 employees are set. As a reminder, I serve as the PSPRS Board chair. I was involved in identifying this error and very active in bringing this issue to the Board for correction and resolution.

This issue was first communicated to the Town Council in a Weekly Packet in August, 2022 when we implemented the change for our Tier 2 Fire employees. Now, we have the opportunity to do the same for our Police Tier 2 employees.

The correction of the error involves the employee contribution rates for Tier 2 employees. The employee contribution rates were historically higher than they should have been for plans that are well / fully funded – such as the Town's.

Historically, PSPRS incorrectly set the rate for the Town's Fire Tier 2 employee contributions at 11.65%. In accordance with state law, the rate should have been set at 7.65%, if the individual pension plan was fully fund. This error dates back to an incorrect interpretation of the Tier 2 contribution rate statute by the prior PSPRS Board and staff.

Across all ~250 pension plans in PSPRS, the annual reduction in Tier 2 employee contributions as a result of the this change is about $3.6M and about 9K employees received one-time refunds totaling $11.2M.

Tier 2 Fire Employees

Under the correct interpretation of statute, the Tier 2 employee contribution rate varies between 7.65% and 11.65%, based on the funded status of the plan. The better the plan's funded status, the lower the employee contribution rate. In our case, because our Fire Pension Plan had been fully funded since 2015, our Tier 2 Fire employees should have paid the lowest possible contribution rate of 7.65% since then.

As a result of the PSPRS Board change, effective July 1, 2022, our Fire Tier 2 employee contributions were reduced by 4 percentage points, from 11.65% to 7.65% of their pay. This represents a 34% contribution reduction. The actual contribution reduction varied by an employee's salary. We estimate the annual reduction to these 23 employees to be about $87K. The average annual reduction is $3,778 per employee, with a low of $2,800 and a high of $4,977. The reduced contribution does not impact the employee's pension amount at retirement so, as a result of the correction, they are paying less for the same pension amount at retirement.

Additionally, because the Town's Fire Pension Plan has been fully funded since adoption of the Town's Pension Funding Policy in June, 2015, these employees were entitled to refunds for overpayments back to that date. Our Fire employees received refunds for their contribution overpayments as well as interest on the refunds owed. Refunds totaled about $447K to 25 employees. The range of refunds was as follows:

Number of Employees	Range of Refund
4	Less than $12K
14	$15K to $20K
7	$20K to $38K

Tier 2 Police Employees

The impact to the Fire Tier 2 employees was immediate because that plan had been fully funded since 2015. However, because the Town has recently created our new Police department, Police Tier 2 employees were caught in limbo because of the fact our PSPRS Police Pension Plan is still developing with the maturation of the department itself. We currently have 23 Tier 2 Police employees that would be impacted by this recommendation. The actual contribution reduction will vary by an employee's salary. The annual reduction to these 23 employees is estimated to be about $80K. The average annual reduction is $3,463 per employee, with a low of $2,772 and a high of $4,360.

In 2018, in an update to the Town's Pension Funding Policy, the Town Council created an internal Police Pension Reserve. At the time, this amount was set aside internally because we were under contract with the Maricopa County Sheriff's Office (MCSO) and did not have our own Police Pension Plan with PSPRS. The amount used to create the reserve at that time represented our best estimate of the Town's share of MCSO's unfunded pension liability in PSPRS.

Because we are still transitioning to our PSPRS Police Pension Plan, our internal reserve remains in use until that transition is complete over the next several years. At June 30, 2022, this reserve amount is $26.3M.

Recently, PSPRS informed the Town that, based on the most recent actuarial valuation as of June 30, 2022, about $4.5M is needed to fully fund the PSPRS Police Plan. As such, consistent with the objective of the Town's Pension Funding Policy of fully funding our pensions, Town staff recommends transferring the amount from our internal Police pension reserve to our PSPRS Police Pension Plan. In doing so, we would reduce our Police Tier 2 employee contribution rate by 4 percentage points, from 11.65% to 7.65% (the lowest possible amount). Again, this represents a 34% contribution reduction and employees will now pay less for the same pension amount at retirement.

Furthermore, in order to ensure that funding of our PSPRS Police Pension Plan does not fall below the amount that would increase our employee contribution above the 7.65% in the near future, Town staff is recommending paying an additional $2.5M, for a total payment of $7M.

Under normal circumstances, PSPRS employee contribution changes occur on July 1 annually. However, because of our unique situation regarding the recent creation of the Police department and the timing of the correction of this error, the PSPRS Board has authorized the Town's Police Tier 2 employee contribution reduction to take effect when our $7M payment is made. As such, our employees will realize this contribution reduction on the pay period beginning December 10, over six months sooner than if we did not receive the special dispensation from the PSPRS Board. I greatly appreciated the Board's support of my request for this earlier effective date.

Finally, as a part of our 'AAA' Bond Rating Initiative, Town staff will be making other updates to the Town's Pension Funding Policy over the upcoming months. The objective of our Tier 2 Police and Fire employees paying the lowest possible contribution rate will be included in that update.

Fiscal Impact:

Aggressively and actively managing all of the Town's pension costs is critical to our long-term financial sustainability. This is an effort we have been committed to since we first adopted our Pension

Funding Policy in 2015. To the best of the Town staff's knowledge, the Town has among the most comprehensive and aggressive Pension Funding Policy of any government entity in Arizona and, perhaps, the country.

The $7M payment fully funds our PSPRS Police Pension Plan. A budget adjustment is required to allow for this payment as it was not contemplated with the adoption of the current year budget. Again, we are in the midst of transitioning from our internal Police pension reserve to our PSPRS Police Pension Plan. This will take several years but we believe the existing $26.3M internal reserve will be sufficient to fully fund our PSPRS plan as the department continues to hire new employees.

There are several, positive impacts with this recommendation, benefiting both the Town and the Tier 2 employees.

One, to the Town, Town staff expects that the $7M held by PSPRS will earn a higher investment return as compared to if it remained with the Town. This is estimated to be about $250K more annually. We expect PSPRS would earn more investment income because they are able to invest in a more (all) investment types, including private credit and equity, which the Town cannot under state law. The Town is also restricted to investments that have maturities 5 years or less. PSPRS does not have such a restriction. PSPRS invests assets totaling about $18B and has a very robust investment program and strategy.

Two, to the Town, our annual contribution will decrease by an estimated $450K, based on the budgeted payroll for these 23 Tier 2 employees.

Three, as stated earlier above, Tier 2 Police employee contribution rates will decrease. The annual reduction to these 23 employees is estimated to be about $80K. The average annual reduction is $3,463 per employee, with a low of $2,772 and a high of $4,360.

If the Town were not to accept the staff recommendation, these employees would pay an estimated $80K more annually in contributions and not receive any corresponding increase in their pensions at retirement. Additionally, our Tier 2 Police employees would be paying higher contributions than our Fire Tier 2 employees for the same relative pension.

Finally, although difficult to determine how much this would impact recruiting and retaining both police and fire employees, having the lowest possible Tier 2 employee contribution rate is an advantage.

Alternatives:

If the Town Council does not approve the recommendation, the existing $26.3M Police internal reserve would remain with the Town and neither the Town nor the employees would benefit financially as discussed in the "Fiscal Impact" section.

Attachment(s):

1. Reduction of Tier 2 Public Safety Pension Costs Presentation





Reduction of Tier 2 Public Safety Pension Costs

Town Council Meeting
December 7, 2022





Public Safety Pension Plans

- Administered by the Arizona Public Safety Personnel Retirement System (PSPRS)
- Each Employer Member Has Their Own Plan and Unique Financial Condition and Funded Status
- Town of Queen Creek Has Two Plans
  1. Fire
  2. Police
- Employees Are In One of Three Tiers Based on Hire Date
  - Tier 2: Employees Hired Between 1/1/12 and 7/1/17





Tier 2 Overview

- Employee Contribution is Based on the Funded Status of Plan (Ranges from 7.65% to 11.65%)
- Fire Plan
  - Employee Contribution Rate: 7.65% (Lowest Possible)
  - Pension Plan is Fully Funded
- Police Plan
  - Employee Contribution Rate: 11.65% (Highest Possible)
  - New Pension Plan Is In Transition to Full Funding From $26.3M Internal Reserve





Tier 2 Overview

- Prior to July 1, 2022, Employee Contribution Rates Were Incorrect
- Employee Contribution Rates Should Have Based on the Funded Status of the Individual Plan
  - Error was Based on the Contribution Rates of the Entire System, Not the Individual Plan
- Financial Impact of Correction
  - Annual Employee Contribution Reduction: $3.6M
  - Retroactive Refunds: $11.2M to 9K employees





QC Fire Plan – Tier 2 (Fully Funded)

1. Employee Contribution Rates
   - Decreased July 1, 2022
   - Amount of Decrease: 4 Percentage Points (34% from 11.65% of pay to 7.65% of pay)
   - Number of Employees: 23
   - Annual Employee Contribution Decrease: $87K
   - Per Employee Annual Contribution Decrease (Based on Salary)
     - Low: $2,772
     - High: $4,360





QC Fire Plan – Tier 2 (Fully Funded)

2. Overpayments Refunded
   - Number of Employees: 25
   - Amount Refunded: $447K
   - Per Employee Refunds Varied Based on Employee Salaries (Summarized Below)

Number of Employees	Range of Refund
4	Less than $12K
14	$15K to $20K
7	$20K to $38K





QC Police Plan – Tier 2

- Internal Reserve of $26.3M to Fully Fund Estimated Unfunded Pensions (Our Portion of MCSO) Created in 2018
- PSPRS Police Pension Plan
  - New and Developing with New Hires
  - Transitioning from QC Internal Reserve
  - $7M Payment Required to Fully Fund (Based on Most Recent Actuary Report)





Staff Recommendation

1. Fully Fund PSPRS Police Pension Plan Consistent with Adopted Pension Funding Policy
2. Transition from $26.3M Internal Police Pension Reserve to Full Funding of PSPRS Police Plan
   - $7M Payment Required
3. Police Tier 2 Employee Contributions Will Decrease
   - Decrease by 4 Percentage Points (34%)
   - Contribution Rate Will Decrease from 11.65% (Highest) to 7.65% (Lowest) of Pay
4. Police and Fire Tier 2 Employee Contribution Rates Will Now be at the Same 7.65% of Pay Contribution Rate





Staff Recommendation (concluded)

- Financial Impacts
  1. Increased Investment Income on $7M Held by PSPRS
     - Annual Estimate: $250K Increase
  2. Town's Portion of PD Pension Costs Will Decrease
     - Annual Decrease: $450K Because Fully Funded
  3. Tier 3 Police Employee Contribution Decrease
     - Number of Employees: 23
     - Annual Decrease: $80K
     - Per Employee Annual Decrease (Based on Salary)
       - Low: $2,772
       - High: $4,360





Recommended Motion

Approve a $7M payment to Fully Fund the Town's Police Pension Plan in the Arizona PSPRS and a $7M budget adjustment from contingency

Note: This Change Will be Included in the Next Update to the Town's Pension Funding Policy