

When recorded return to:

City of El Mirage  
City Clerk  
10000 N. El Mirage Road  
El Mirage, AZ 85335

**DEVELOPMENT AGREEMENT FOR TI COLD DEVELOPMENT  
OFFSITE IMPROVEMENTS  
EL MIRAGE, ARIZONA**

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) is entered into this 7<sup>th</sup> day of December, 2021 (“**Effective Date**”) by BGO-TI-PHOENIX LLC, a Delaware limited liability corporation (“**Owner**”) and the CITY OF EL MIRAGE, an Arizona municipal corporation (“**City**”).

**RECITALS**

**WHEREAS**, Owner has a real property interest in or is the owner of that certain property located in the City of El Mirage, Arizona, consisting of approximately 23 acres, legally described as prepared by Owner in **Exhibit A** attached hereto and incorporated herein by reference (the “**Property**”);

**WHEREAS**, Owner intends to develop the Property in phases and when fully developed, may consist of multiple buildings;

**WHEREAS**, the first phase of the development of the Property will consist of the construction of a 320,160 square foot cold storage building located on the Property (“**Phase 1**”);

**WHEREAS**, Owner and City desire to facilitate the development of the Property as a part of the City’s growth and development. In furtherance of this aim, Owner and City have cooperated in the preparation of this Agreement;

**WHEREAS**, the City desires to re-construct Dysart Road between Northern Avenue and Peoria Avenue to a five-lane roadway and to add curb and gutter, bike lanes and related appurtenances (collectively, the “**City’s Dysart Road Improvements**”);

**WHEREAS**, pursuant to that Major Site Plan Approval evidenced by that Memorandum from City to Owner dated April 21<sup>st</sup>, 2021 and that Letter from City to Owner dated June 8<sup>th</sup>, 2021 (collectively known as the “**Site Plan Approval**”), the Owner is responsible, as a condition of issuance of any Certificate of Occupancy for its Phase 1 Site Plan improvements, for contributing the funds reasonably estimated by the City for construction of certain roadway improvements

consisting of: (i) The Owner's portion (twenty-five percent) of the traffic signal and related appurtenances at Dysart Road and Ramirez Road, (ii) an eight-foot-wide meandering sidewalk, streetlights, ITS conduit, and landscaping/irrigation along the Property's Dysart Road frontage, and (iii) the southbound deceleration lane at the intersection of Dysart Road and Ramirez Road and any associated drainage features (the first party to pull the permit is responsible for the deceleration lane. If/when the second party pulls permits they are responsible to pay, or reimburse, for ½ of the deceleration lane). Collectively, these improvements in numerals (i), (ii), and (iii) above are known as the "**Owner's Dysart Road Improvements**" or "**Owner's Responsibilities**";

**WHEREAS**, City desires to complete the design and construction of the City's Dysart Road Improvements, except for the Owner's Responsibilities as set forth herein and as more specifically set forth in the Site Plan Approval, at City's sole cost and expense;

**WHEREAS**, Owner anticipates that the construction of Phase 1 will be complete or substantially complete prior to the estimated start date of the City's Dysart Road Improvements;

**WHEREAS**, Owner desires for the City to complete the design and construction of the Owner's Responsibilities at the same time as the design and construction of the City's Dysart Road Improvements, but at Owner's costs and expense;

**WHEREAS**, Owner is willing to pay costs for the design of the Owner's Responsibilities in the amount set forth in the estimates attached hereto as **Exhibit B**;

**WHEREAS**, Owner and City desire to establish an estimate for the construction costs of the Owner's Responsibilities pursuant to the terms and conditions of this Agreement, and for Owner to pay such estimated costs as its obligation with respect to the construction of the Owner's Responsibilities;

**WHEREAS**, Owner and City desire to enter into this Agreement in order to set forth the rights and obligations of each party with respect to the City's Dysart Road Improvements and the Owner's Responsibilities and the costs for the same;

**WHEREAS**, pursuant to the provisions of Arizona Revised Statutes Annotated ("**A.R.S.**") §§ 9-500.05, et seq., Owner and City are authorized to enter into this Agreement;

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants, terms and conditions, it is agreed as follows:

**1. INCORPORATION OF DOCUMENTS AND RECITALS.** All documents and exhibits referred to in this Agreement are hereby incorporated by this reference into this Agreement, and the Recitals stated above are hereby incorporated by reference into this Agreement and made a part hereof.

2. **COMPLIANCE.** The determinations of the City in this Agreement and the assurances provided to Owner in this Agreement are provided pursuant to and as contemplated by A.R.S. § 9-500.05 and other applicable law, bargained for and in consideration for the undertakings of Owner set forth herein and contemplated by this Agreement and are intended to be and have been relied upon by Owner in undertaking the obligations of development of the Property.

3. **RIGHTS RUN WITH THE LAND.** The rights and obligations established under this Agreement are attached to and run with the Property. Upon the Effective Date of this Agreement, Owner and any successors or assigns are entitled to exercise the rights granted pursuant to this Agreement.

4. **CITY CONSTRUCTION OF THE CITY'S DYSART ROAD IMPROVEMENTS.**

a. The City, at its sole cost and expense, shall design, engineer, permit, construct and install the City's Dysart Road Improvements.

b. City agrees and acknowledges that Owner shall not have any responsibility or obligation whatsoever with respect to the City's Dysart Road Improvements, or the design, engineering, construction, installation, or operation thereof.

5. **CITY DESIGN OF OWNER'S RESPONSIBILITIES.**

a. Design of Owner's Responsibilities. The City shall design and engineer the Owner's Responsibilities. If Owner Elects Construction of Owner's Responsibilities, Owner will, reimburse the City the amount of the actual design costs, at the time of and as a condition to the issuance of a certificate of occupancy at the Property.

6. **CITY CONSTRUCTION OF TRAFFIC SIGNAL**

a. Construction Cost Estimate. Based upon preliminary design documents available at the time of this Agreement, City's Engineer prepared the City's third-party engineering estimate for Owners required contribution for offsite improvements attached as Exhibit C. The City's third-party estimate limits Owners required contribution to \$179,690.50 (including Estimated Design Costs) for 25% of the four-way traffic signal (the "Traffic Signal Payment") at the intersection of Dysart Road and Ramirez Road.

b. Traffic Signal Payment. The Owner shall pay the amount of the Traffic Signal Payment to the City at the time of, and as a condition to, the issuance of a certificate of occupancy at the Property. Owner's payment of the Traffic Signal Payment shall constitute Owner's sole obligation with respect to the Traffic Signal. The Owner's payment may be in the form of an evergreen Letter of Credit from an A.M. Best "A", or higher, rated company that is in a form reasonably acceptable to the City.

i. The Traffic Signal Payment will be refunded not later than 90 days from the earlier of: i) the date the City states the Traffic Signal has been abandoned, or ii) the improvements contemplated by the

Traffic Signal Payment have not been commenced ten (10) years from the execution of this agreement.

**7. CITY CONSTRUCTION OR OWNER CONSTRUCTION OF OWNER'S DYSART ROAD IMPROVEMENTS.**

a. Construction Cost Estimate. Based upon preliminary design documents available at the time of this Agreement, City's Engineer prepared the City's third-party engineering estimate for Owners required contribution for offsite improvements attached as Exhibit C. The City's third-party estimate limits Owners required contribution to \$288,027.50 (including Estimated Design Costs) for Owner's Dysart Road Improvements (the "Dysart Road Payment"). City shall provide to Owner complete and final design documents for Owners required contribution for offsite improvements (the "Final Design Documents"). Owner shall have the right to elect one of the following in its sole discretion at any time, but not later than the date that is sixty (60) business days after written, or electronic, acknowledgement of receipt of the Final Design Documents (the "Election Date"):

i. Owner Elects Payment of Dysart Road Payment. Owner will, as its obligation with respect to the Owner's Responsibilities, pay the amount of the Dysart Road Payment to City at the time of and as a condition to the issuance of a certificate of occupancy at the Property. Upon receipt of the payment for the Dysart Road Payment, the full amount of the Dysart Road Payment shall be deposited by the City in the appropriate fund and must be used for paying the costs for the construction and related expenses associated with the Owner's Dysart Road Improvements attached as Exhibit C including design costs. Any unused funds will be returned to the Owner within 90 days after the One Year Warranty for the construction expires.

a. In the event that Owner accepts the Dysart Road Payment, Owner's Dysart Road Payment will be refunded not later than 90 days from the earlier of: i) the date the City states the project for which the Estimated Design Costs are appropriated has been abandoned, or ii) the improvements contemplated by the Estimated Design Costs have not been commenced by January 1, 2025.

ii. Owner Elects Construction of Owner's Responsibilities. Owner may elect to construct the Owner's Dysart Road Improvements itself, whereupon the City's obligation to construct the Owner's Responsibilities will terminate. Owner will, as its obligation with respect to the Owner's Responsibilities, pay the amount of the actual design costs, identified in section 5.a., at the time of and as a condition to the issuance of a certificate of occupancy at the Property.

b. Estimate Funding; Sole Obligation. If Owner elects payment of Dysart Road Payment described in this Section 7(a)(i), Owner's payment of such cost estimate shall constitute Owner's sole obligation with respect to the construction of the Owner's Dysart Road Improvements, other than potential easements or right of way dedications, any items listed in the

Site Plan Approval, and any items that arise during the construction plan review. Any costs and expenses in excess of such cost estimate shall be borne solely by the City.

c. Temporary Construction Easements. The City may request that Owner grant reasonable additional temporary construction easements, at no cost to the City, to facilitate the construction of the Owner's Responsibilities, the approval of which Owner shall not unreasonably withhold.

d. Termination. Notwithstanding anything to the contrary herein, if Owner elects to construct the Owner's Responsibilities itself in accordance with the terms of this Section 7 or the Owner's project is delayed to a point that the City's Dysart Road Improvements starts first, the Owner may, with prior notice or the City's consent, terminate this Agreement and record an instrument effectuating such termination in the official records of the Maricopa County Recorder, whereupon this Agreement shall terminate except for those provisions which expressly survive termination.

e. Upon payment of applicable cost estimate for the construction of the Owner's Responsibilities, the City will be solely responsible to cause the construction of the Owner's Responsibilities, which construction shall occur contemporaneously with the City's construction of the City's Dysart Road Improvements.

## **8. SATISFACTION OF SITE PLAN STIPULATIONS; FUTURE APPROVALS AND PERMITS.**

a. City agrees and acknowledges that all of Owner's obligations to construct and dedicate the City's Dysart Road Improvements is deemed satisfied as of the Effective Date, and that Owner will not have any responsibility or obligation to design or construct any additional improvements related to the City's Dysart Road Improvements. Further, City agrees and acknowledges that the Owner's obligation to design the Owner's Responsibilities is deemed satisfied upon payment of the Estimated Design Cost to City by Owner. Further, City agrees and acknowledges that the Owner's obligation to construct the Owner's Responsibilities is deemed satisfied upon payment for the construction of the Owner's Responsibilities to the City by Owner.

b. City further agrees and acknowledges that the timing and completion by the City of the design and construction of the City's Dysart Road Improvements and the Owner's Responsibilities will not affect the review, processing, approval, or issuance of any future Owner site plan, entitlement, plat, permit, or certificate of occupancy for Phase 1 or any future phase of development of the Property.

9. **TERM.** This Agreement is effective as of the date first set forth above and, except as otherwise set forth herein, shall remain effective until such time as the Owner's Responsibilities have been satisfied and/or the Dysart Road Payment has been fully expended or returned to the Owner.

**10. NOTICES.** All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be in writing and shall be given by personal delivery, overnight courier or facsimile transmission, or sent by registered or certified mail, postage prepaid, correctly addressed to the intended recipient at the address set forth below:

City: City of El Mirage  
10000 N El Mirage Road  
El Mirage, AZ 85335  
Attn: City Manager

Owner: TI Cold Development  
4218 Hobson Court, Suite B  
Fort Wayne, IN 46815  
Attn: Sam Tippmann

**11. WAIVER.** No delay in exercising any right or remedy by either City or Owner shall constitute a waiver thereof. Waiver of any of the terms of this Agreement shall not be valid unless in writing and signed by all parties hereto. The failure of any party to enforce the provisions of this Agreement or require performance of any of the provisions, shall not be construed as a waiver of such provisions or affect the right of the party to enforce all of the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach thereof.

**12. BINDING EFFECT.** The rights, benefits and obligations in this Agreement, shall be binding upon City and its successors and assigns. The rights, benefits and obligations in this Agreement shall be binding upon Owner and its successors and assigns.

**13. GOVERNING LAW.** This Agreement and all terms and conditions hereof, and any dispute, controversy, claim or cause of action arising out of or related to this Agreement is governed by the laws of the State of Arizona.

**14. CHOICE OF FORUM.** Notwithstanding A.R.S. § 12-406, any suit or action brought under this Agreement shall be commenced only in state or federal courts in the State of Arizona, Maricopa County.

**15. EXERCISE OF AUTHORITY.** It is understood and agreed that Owner shall not in any way exercise any portion of the authority or sovereign powers of City and shall not make or contract or commit or in any way represent itself as an agent for City. Nor shall anything in this Agreement be construed to create any partnership, joint venture or principal agency relationship between the parties.

**16. RECORDATION.** In order to provide notice to third parties, the City shall record this Agreement in the official records of the Maricopa County Recorder within ten (10) days after the full execution of this Agreement.

**17. CONFLICT OF INTEREST.** This Agreement is subject to the provisions of A.R.S. § 38-511.

**18. SEVERABILITY OF PROVISIONS.** Each term and provision of this Agreement shall be considered severable and if, for any reason, any term or provision of this Agreement be declared or be determined to be illegal or invalid, the validity of the remaining terms and provisions shall not be affected thereby, and said illegal or invalid term or provision shall not be deemed a part of this Agreement, notwithstanding any other provision of this Agreement to the contrary.

**19. ADDITIONAL ACTS AND DOCUMENTS.** Each party hereto agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments, as shall be reasonably requested to carry out the provisions, intent and purpose of this Agreement. If any action or approval is required of any party in furtherance of the rights under this Agreement, such approval shall not be unreasonably withheld.

**20. AMENDMENTS.** No amendment shall be made to this Agreement except by written document executed by City and Owner. Within ten (10) days after the execution of any amendment by both parties, the amendment shall be recorded with the Maricopa County Recorder, Maricopa County, Arizona.

**21. ENTIRE AGREEMENT.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter of the Agreement and contains all the covenants and agreements between the parties with respect to said matter.

**22. HEADINGS.** The headings for the paragraphs of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraphs nor in any way affect this Agreement.

**23. ATTORNEYS FEES.** In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement, or an account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury or arbitrator or arbitration board, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment or by arbitration award. As an alternative to filing a lawsuit to resolve the dispute, the parties may mutually agree to arbitrate the dispute.

**24. ASSIGNMENT.** Owner shall have the right to sell, transfer or assign part or all of the Property to any person or entity at any time during the duration of this Agreement.

**25. COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

**26. DEFAULT.** Failure or unreasonable delay by either party to perform or otherwise act in accordance with any term or provision hereof shall constitute a breach of this Agreement and, if the breach is not cured within 10 days after written notice thereof from the other party (the “**Cure Period**”), the breach constitutes a default under this Agreement; provided, however, that if the failure is such that more than 10 days would reasonably be required to perform such action or comply with any term or provision thereof, then the party shall have such additional time as may be necessary to perform or comply so long as the party commences performance or compliance within said 10 day period and diligently proceeds to complete such performance or fulfill such obligation. In the event a breach is not cured within the Cure Period, the non-defaulting party shall have all the rights and remedies that may be available at law or in equity.

**27. REPRESENTATIONS AND WARRANTIES OF OWNER.** As of the Effective Date, Owner represents, warrants and covenants to City as follows:

**a. Ownership.** Owner is a Delaware corporation and has the full right and authority to submit its interest in the Property to the provisions of this Agreement.

**b. Authorization.** Owner is in good standing and is qualified to do business in Arizona. The person signing this Agreement on Owner’s behalf has the authority and right to enter into this Agreement on Owner’s behalf, without any further act or authorization. Owner is not prohibited from executing this Agreement by any law, rule, regulation, instrument, agreement, order or judgment.

**28. REPRESENTATIONS, WARRANTIES AND COVENANTS OF CITY.** As of the Effective Date, City represents, warrants and covenants to Owner as follows, with the understanding that each of the following are material to Owner’s willingness to enter in this Agreement, that Owner is relying on each of the following, and that Owner would not have agreed to enter into this Agreement but for each and every one of the following:

**a. Approval.** City has approved this Agreement at a duly held and noticed public meeting by its Mayor and City Council, at which a quorum was duly present, and has authorized the execution hereof.

**b. Authorization.** City is an Arizona municipal corporation, is in good standing and is qualified to do business in Arizona. The person signing this Agreement on City’s behalf has the authority and right to enter into this Agreement on City’s behalf, without any further act or authorization by City. City is not prohibited from executing this Agreement by any law, rule, regulation, instrument, agreement, order or judgment.

**c. Owner’s Responsibilities.** From the Effective Date and through the date of completion of the Owner’s Responsibilities, the City will exercise, and the City will cause any of its officials, employees, agents, representatives, contractors and subcontractors to exercise, diligent efforts to commence and pursue completion of the Owner’s Responsibilities.

d. Use of Estimated Design Cost. The City will use the Estimated Design Cost and any portion thereof only for expenditures compatible with the applicable fund's purpose, including for paying the costs for the design and construction of the Owner's Responsibilities.

**29. FORCE MAJEURE.** If the City's completion of the Owner's Responsibilities contemplated in this Agreement is prevented or delayed, despite the City's best efforts to perform, by causes beyond the City's reasonable control, including strikes, riots, fires, floods, lightning, rain, earthquake, extraordinary wind or other weather events, war, invasion, insurrection, civil commotion, unavailability of resources due to national defense priorities or natural disaster recovery, any act of God, binding orders, actions or inactions of any court or governmental authority, legislative, executive, administrative, judicial agency or body, state or federal laws, regulations or ordinances, technological impossibility, changes in law or applicable regulations subsequent to the date hereof or any other similar or dissimilar cause beyond its reasonable control and not attributable to its neglect (each, a "**Force Majeure Event**"), upon the City providing written notice in reasonable detail to the Owner the requirement of completion of such Owner's Responsibilities shall be postponed by a period equal to the period of time such party's performance under this Agreement is prevented or delayed by such Force Majeure Event. Notwithstanding the foregoing, no City act, undertaking, action, inaction, law, regulation or ordinance, whether legislative, administrative, executive, or judicial in nature, shall constitute a Force Majeure Event.

**30. EXCULPATION.** In no event shall the Owner, its directors, officers, employees, agents and representatives, or any owner successors or assigns, be liable to the city or to any third party for any consequential, incidental, indirect, exemplary, special, or punitive damages whether arising out of breach of contract, tort (including negligence), or otherwise, regardless of whether such damage was foreseeable and whether or not the Owner has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose. The City hereby irrevocably and unconditionally waives any right to claim any damages described in this section.

**31. INDEMNIFICATION.**

a. Owner, or Owner's successors and assigns, agrees to defend, indemnify and hold harmless City, its officers, officials and employees from and against claims, damages, losses and expenses of any nature whatsoever (including but not limited to reasonable attorney fees, court costs, the costs of appellate proceedings, and all claim adjusting and handling expense) (collectively, "**Claims**"), relating to or arising out of Owner's or its successors' and assigns' default under this Agreement; provided, however, the foregoing indemnity does not apply to any Claims relating to or arising out of City's or City's officers, officials, employees, agents, representatives or contractors gross negligence or willful misconduct. The indemnity provisions of this Agreement shall survive the termination of this Agreement.

b. The City agrees to defend, indemnify and hold harmless Owner, its directors, officers, employees, agents and representatives from and against any Claims relating to or arising out of (i) any act or omission by any party to this Agreement with respect to the terms and conditions of this Agreement, or (ii) the City's design, engineering, and construction of the

City's Dysart Road Improvements and design of the Owner's Responsibilities, regardless of the source of any such Claim; provided, however, the foregoing indemnity does not apply to any Claims relating to or arising out of Owner's or Owners' directors, officers or employees gross negligence or willful misconduct. The indemnity provisions of this Agreement shall survive the termination of this Agreement.

**32. BOYCOTT OF ISRAEL.** Owner certifies that it is not currently engaged in and agrees for the duration of this Agreement that it will not engage in a boycott of Israel set forth in ARIZ. REV. STAT. § 35-393 and § 35-393.01.

**[Signature pages follow]**

**IN WITNESS WHEREOF**, the Mayor and Council of El Mirage, Arizona, by its Mayor and its Clerk, duly authorized, have affixed hereunto their hand and caused its official seal to be affixed on this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

CITY OF EL MIRAGE, an Arizona municipal corporation

\_\_\_\_\_  
Alexis A. Hermosillo, Mayor

STATE OF ARIZONA        )  
  ) SS.  
COUNTY OF MARICOPA )

The foregoing Development Agreement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me by Alexis A. Hermosillo, Mayor of the City of El Mirage, an Arizona municipal corporation, and being authorized to do so, executed the foregoing instrument on behalf of the City for the purposes therein stated.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Sharon Antes, City Clerk

Dated: \_\_\_\_\_

Approval as to Form

By: \_\_\_\_\_  
Justin Pierce, City Attorney



**EXHIBIT A**  
**Legal Description**

## LOT 6 LEGAL DESCRIPTION

A PORTION OF LOT 1 OF MINOR LAND DIVISION FOR COPPERWING LOGISTICS CENTER—CRI, RECORDED AS BOOK 1498 OF MAPS, PAGE 47, SITUATED IN THE EAST HALF OF SECTION 27, TOWNSHIP 3 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A CITY OF EL MIRAGE BRASS CAP IN HAND HOLE AT THE EAST QUARTER CORNER OF SAID SECTION 27, FROM WHICH A CITY OF EL MIRAGE BRASS CAP IN HAND HOLE AT THE NORTHEAST CORNER OF SAID SECTION 27 BEARS NORTH 0 DEGREES 06 MINUTES 02 SECONDS EAST (BASIS OF BEARING), 2650.76 FEET;

THENCE NORTH 89 DEGREES 00 MINUTES 03 SECONDS WEST, 70.51 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 0 DEGREES 06 MINUTES 29 SECONDS WEST, 15.96 FEET;

THENCE SOUTH 45 DEGREES 28 MINUTES 56 SECONDS WEST, 28.10 FEET;

THENCE NORTH 89 DEGREES 08 MINUTES 44 SECONDS WEST, 1107.44 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHERLY, FROM WHICH THE RADIUS POINT BEARS NORTH 0 DEGREES 51 MINUTES 22 SECONDS EAST A DISTANCE OF 1970.00 FEET;

THENCE WESTERLY 188.45 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 5 DEGREES 28 MINUTES 51 SECONDS;

THENCE NORTH 83 DEGREES 39 MINUTES 46 SECONDS WEST, 69.28 FEET;

THENCE NORTH 0 DEGREES 32 MINUTES 22 SECONDS EAST, 662.65 FEET;

THENCE SOUTH 89 DEGREES 27 MINUTES 38 SECONDS EAST, 1389.21 FEET;

THENCE SOUTH 0 DEGREES 06 MINUTES 02 SECONDS WEST, 371.94 FEET;

THENCE NORTH 89 DEGREES 53 MINUTES 58 SECONDS WEST, 10.00 FEET;

THENCE SOUTH 0 DEGREES 06 MINUTES 02 SECONDS WEST, 277.94 FEET TO THE POINT OF BEGINNING.

**EXHIBIT B**  
**Estimated Design Cost of Owner's Responsibilities**



June 16, 2021

Mr. Bryce Christo  
10000 N. El Mirage Road  
El Mirage, AZ 85335

**RE: Dysart Road: Contract Modification for Tippmann Parcel Support Services**

Dear Mr. Christo,

As requested, we have expanded our scope of services to include the following items:

- **The design of all features required to be installed by the Tippmann development along its Dysart Road frontage to include:**
  - Street lighting (in the median). This was originally provided at 60% plans and can just be added back in as part of the original scope of services.
  - Landscape and irrigation (west side of Dysart only – no median landscape). Plantings will follow the palette established for the data center frontage south of Olive Avenue.
  - Its conduit and pull boxes (no fiber)
  - Sidewalks
  - Drainage features.
  - It is noted that the roadway features along the Tippmann Frontage (i.e. half street and decel lane) have already been designed as part of the Dysart Road project.
  
- **A cost estimate for the construction of the southbound decel lane on Dysart at Ramirez.** This will include the cost of that decel lane but not those items that the City would have had to install if Tippmann was not constructing a project (i.e. the scupper, curb, etc.). The estimate will include a 20% contingency. The decel lane, as previously designed, will be included with the plans set for Dysart Road.
  
- **A proposal for design and construction cost estimate for a 4 way traffic signal at the Dysart/Ramirez intersection.** It is anticipated that a traffic signal will not be warranted until 2027 (assuming no other businesses break ground on Ramirez). EPS will develop a fee proposal for construction plans and a cost estimate for the signal construction. No construction documents will be prepared. This cost estimate will include an escalation factor for both the design cost and construction cost that we can apply through 2027 to account for inflation. The rate and extent of inflation over the next 6 years is not predicible at this time and EPS cannot guarantee that its prediction will hold over that time. However, EPS will do some research into economist's trends to determine a potential inflation rate.



We appreciate the opportunity to assist the City with this addition to the Dysart Road project. If you have any questions concerning the proposed scope and fixed fee, please let me know.

Sincerely,

A handwritten signature in black ink that reads 'Elijah E. Williams'.

Elijah E. Williams, P.E.  
Project Manager

**Fee Estimation Worksheet**

Date: 6-16-21

PROJECT: City of El Mirage Dysart Road - Tippmann Parcel additions

Job No.: 18-081.1

DESCRIPTION	Labor Class Rate														Task Cost
	\$220.00	\$185.00	\$150.00	\$145.00	\$110.00	\$105.00	\$60.00	\$140.00	\$100.00	\$80.00	\$140.00	\$125.00	\$90.00		
	Principal	Project Manager	Project Engineer	Sr. Engineer	Engineer	CAD Technician	Clerical	Landscape Architect	Senior Landscape Designer	Landscape Designer	Survey 2-man	Project Surveyor	Survey Tech		
Tippmann Parcel Roadway Additions		1	8		12	20									\$4,805.00
Tippmann Parcel Landscape Plans								10	42	60					\$10,400.00
Tippmann Parcel Cost Estimate		1	3		4										\$1,075.00
Tippmann Parcel Signal Cost Estimate			1	3	3										\$915.00
															\$0.00
															\$0.00
															\$0.00
															\$0.00
															\$0.00
															\$0.00
															\$0.00
															\$0.00
															\$0.00
<b>TOTAL HOURS</b>	0	2	12	3	19	20	0	10	42	60	0	0	0	0	168
<b>SUBTOTAL FEES</b>	\$0.00	\$370.00	\$1,800.00	\$435.00	\$2,090.00	\$2,100.00	\$0.00	\$1,400.00	\$4,200.00	\$4,800.00	\$0.00	\$0.00	\$0.00	\$0.00	\$17,195.00

Reimbursables \$0.00

Subconsultants  
Wright Engineering \$0.00

<b>TOTAL FIXED FEE</b>	<b>\$17,195.00</b>
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**EXHIBIT C**

**Estimated Dysart Road Improvements, Traffic Signal Cost  
And  
Owner Responsibility**

**Engineer's Construction Cost Estimate**

City of El Mirage  
 Dysart Road - Northern Parkway to Peoria Avenue  
 Project No. EM20-ST02  
 Tippman Frontage

Item Number	Description	Unit	Quantity	Unit Price	Cost
1	Mobilization & Demobilization	LSUM	1	\$ 6,500.00	\$ 6,500.00
2	Storm Water Pollution Prevention Plan	LSUM	1	\$ 1,500.00	\$ 1,500.00
3	Construction Staking & Record Drawings	LSUM	1	\$ 1,000.00	\$ 1,000.00
4	Quality Control & Material Testing	LSUM	1	\$ 1,500.00	\$ 1,500.00
5	Construction Water	LSUM	1	\$ 1,000.00	\$ 1,000.00
6	Dust Control	LSUM	1	\$ 1,000.00	\$ 1,000.00
7	Traffic Control	LSUM	1	\$ 5,000.00	\$ 5,000.00
8	Community Relations	LSUM	1	\$ 1,000.00	\$ 1,000.00
<b>Subtotal =</b>					<b>\$ 18,500.00</b>
9	Prepare Subgrade and Install 6" AC Pavement over 12" ABC	SY	363	\$ 65.00	\$ 23,595.00
10	Sidewalk per MAG Detail 230 (8' Width)	SF	5445	\$ 8.00	\$ 43,560.00
<b>Subtotal Roadway and Concrete =</b>					<b>\$ 67,155.00</b>
11	Street Light Pole, Luminaire & Foundation, and Pull Box	EA	3	\$ 8,000.00	\$ 24,000.00
12	Street Light Conduit (2")	LF	670	\$ 8.00	\$ 5,360.00
13	No. 7 Pull Box With Extension (ITS)	EA	2	\$ 850.00	\$ 1,700.00
14	PVC Electrical Conduit, (4) 1-1/4" (Trench) (ITS)	LF	670	\$ 20.00	\$ 13,400.00
<b>Subtotal Lighting &amp; Signals =</b>					<b>\$ 44,460.00</b>
15	Decomposed Granite, Planting and Irrigation	SF	13300	\$ 5.00	\$ 66,500.00
<b>Subtotal Landscaping Features =</b>					<b>\$ 66,500.00</b>
16	6" Ductile Iron Pipe (Fire Hydrant Extension)	LF	12	\$ 120.00	\$ 1,440.00
17	1" Water Service per COEM Detail EM-325 (Irrigation)	EA	1	\$ 3,500.00	\$ 3,500.00
18	Potholing (3 Total)	LSUM	1	\$ 2,500.00	\$ 2,500.00
<b>Subtotal Water Features =</b>					<b>\$ 7,440.00</b>
19	Aluminum Sign Panel	SF	22.5	\$ 25.00	\$ 562.50
20	Sign Post and Foundation per COEM Detail EM-132	EA	3	\$ 300.00	\$ 900.00
21	4" White Striping (Equivalent)	LF	405	\$ 1.50	\$ 607.50
22	Arrow Symbol	EA	2	\$ 450.00	\$ 900.00
23	Bike Lane Symbol (Including Green Paint)(Type 2 and 3)	EA	1	\$ 800.00	\$ 800.00
<b>Subtotal Signing &amp; Striping =</b>					<b>\$ 3,770.00</b>
<b>Construction Total =</b>					<b>\$ 207,825.00</b>
24	Contingency	%	1	20%	\$ 41,565.00
25	Construction Administration	%	1	10%	\$ 20,782.50
26	Engineering Design				\$ 17,855.00
<b>Project Total =</b>					<b>\$ 288,027.50</b>

- Notes:
- 1) The scupper will be installed by the City at the length and width shown on the original design plans. Any modifications needed by the Tippmann site shall be constructed by the developer or the design shall be provided to the City in order to update the estimate accordingly.
  - 2) Any Temporary Construction Easements (TCE) required to construct these improvements will be dedicated to the City by the property owner at no cost.
  - 3) This estimate assumes that all work associated with these improvements will take place during the City's Dysart Road project.
  - 4) This is an estimate of probable costs and the engineer can make no guarantee as to the accuracy of this data when formal bidding occurs.



**Engineer's Construction Cost Estimate**

**EI Mirage**

**Dysart Road & Ramirez Road**

(Assumes all new signal equipment to meet new standards)

Item Number	Description	Unit	Quantity	Unit Price	Cost
	Mobilization & Demobilization	LSUM	1	\$ 6,500.00	\$ 6,500.00
	Storm Water Pollution Prevention Plan	LSUM	1	\$ 1,500.00	\$ 1,500.00
	Construction Staking & Record Drawings	LSUM	1	\$ 500.00	\$ 500.00
	Quality Control & Material Testing	LSUM	1	\$ 500.00	\$ 500.00
	Construction Water	LSUM	1	\$ 500.00	\$ 500.00
	Dust Control	LSUM	1	\$ 500.00	\$ 500.00
	Traffic Control	LSUM	1	\$ 3,000.00	\$ 3,000.00
	Community Relations	LSUM	1	\$ 1,000.00	\$ 1,000.00
	Potholing	LSUM	1	\$ 7,000.00	\$ 7,000.00
	Remove and Restore Landscaping	LSUM	1	\$ 4,000.00	\$ 4,000.00
	Modify Striping and Signing	LSUM	1	\$ 2,000.00	\$ 2,000.00
	Modify Sidewalk and curb ramps	LSUM	1	\$ 5,000.00	\$ 5,000.00
	Control Cabinet Courtesy Pad	SF	25	\$ 10.00	\$ 250.00
	Control Cabinet Courtesy Pad Curb	LF	20	\$ 15.00	\$ 300.00
	No. 7 Pull Box	EA	3	\$ 750.00	\$ 2,250.00
	No. 7 Pull Box With Extension	EA	1	\$ 850.00	\$ 850.00
	SCH PVC Electrical Conduit, 2-1/2" (directional bore)	LF		\$ 10.00	
	SCH PVC Electrical Conduit, 2" (directional bore)	LF		\$ 12.00	\$ 40,000.00
	SCH PVC Electrical Conduit, 3" (directional bore)	LF		\$ 12.00	
	Pole Foundation, Type PPB	EA	8	\$ 650.00	\$ 5,200.00
	Pole Foundation, Type Q	EA	2	\$ 3,500.00	\$ 7,000.00
	Pole Foundation, Type R	EA	2	\$ 4,500.00	\$ 9,000.00
	Control Cabinet Foundation	EA	1	\$ 2,500.00	\$ 2,500.00
	Meter Pedestal Foundation	EA	1	\$ 1,500.00	\$ 1,500.00
	Video Detection System	LS	1	\$ 75,000.00	\$ 75,000.00
	Type Q Signal Pole	EA	2	\$ 10,000.00	\$ 20,000.00
	Type R Signal Pole	EA	2	\$ 14,000.00	\$ 28,000.00
	Type PB Signal Pole	EA	8	\$ 800.00	\$ 6,400.00
	ADA Pedestrian Push Button with Sign	EA	8	\$ 650.00	\$ 5,200.00
	Signal Mast Arm (30') (Tapered)	EA	2	\$ 4,500.00	\$ 9,000.00
	Signal Mast Arm (45') (Tapered)	EA	2	\$ 8,000.00	\$ 16,000.00
	Control Cabinet	EA	1	\$ 45,000.00	\$ 45,000.00
	UPS and Battery Back-up	EA	1	\$ 6,500.00	\$ 6,500.00
	Meter Pedestal	EA	1	\$ 8,500.00	\$ 8,500.00
	Emergency Pre-Emption Devices	LS	1	\$ 12,000.00	\$ 12,000.00
	Traffic Signal Head (Type F)	EA	10	\$ 850.00	\$ 8,500.00
	Traffic Signal Head (Type Q)	EA	6	\$ 900.00	\$ 5,400.00
	Traffic Signal Mounting Assembly (Type II)	EA	9	\$ 250.00	\$ 2,250.00
	Traffic Signal Mounting Assembly (Type XI)	EA	9	\$ 450.00	\$ 4,050.00
	Luminaire Mast Arm (20')	EA	4	\$ 2,500.00	\$ 10,000.00
	Luminaire	EA	4	\$ 1,200.00	\$ 4,800.00
	Illuminated Street Name Signs	EA	4	\$ 5,500.00	\$ 22,000.00
	Electrical Conductors	LS	1	\$ 45,000.00	\$ 45,000.00
	CCTV Camera Assembly	LS	1	\$ 6,000.00	\$ 6,000.00
	<b>Subtotal Traffic Signals =</b>				<b>\$ 440,450.00</b>

Construction Total = \$ 440,450.00

Engineering = \$ 30,700.00

Constuction Admin (7%) = \$ 30,831.50

Contingency (15%) = \$ 66,067.50

**Total Cost = \$ 568,049.00**

**Total Cost in 2027\* = \$ 718,763.20**

\* Notes: 1) Assumes 4% average annual construction cost increases for next 6 years.

2) This is an estimate of probable costs and the engineer can make no guarantee as to the accuracy of this data when formal bidding occurs.

