When Recorded Return to: Terri Roth, City Clerk City of Litchfield Park 214 W. Wigwam Boulevard Litchfield Park, AZ 85340

Exempt under A.R.S. § 11-1134(A)(2)

TEMPORARY CONSTRUCTION EASEMENTS

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (this "Agreement") is made and entered into as of this ____ day of _____, 2023, by WIGWAM JOINT VENTURE, LP, an Arizona limited partnership, 2400 E. Arizona Biltmore Circle, Phoenix, Arizona 85016 ("Grantor"), in favor of CITY OF LITCHFIELD PARK, an Arizona municipal corporation, 214 W. Wigwam Blvd., Litchfield Park, Arizona 85340 ("Grantee"). Grantee and Grantor are hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Grantor owns certain real property located in the City of Litchfield Park, Maricopa County, Arizona, as more particularly described on <u>Exhibit "A"</u> attached hereto and incorporated herein by this reference (the "<u>Grantor Property</u>"); and,

WHEREAS, Grantee intends to construct, install, maintain, use, operate, inspect, repair, replace and remove storm water catch basins, a trench drain, asphalt pavement replacement, landscape restoration and other associated improvements (collectively, "Improvements") in, on, and through the Grantor Property, as more particularly described on Exhibit "B" attached hereto and incorporated herein (the "Easement Property"), all in accordance with detailed construction plans Grantee will provide Grantor prior to commencing any work ("Construction Plans"); and,

WHEREAS, Grantee desires to utilize currently available grant funding for installation of the Improvements that require incidental construction on Grantor Property.

AGREEMENT

NOW, THEREFORE, in consideration of the premises above and the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee, intending to be legally bound, covenants and agrees for itself, its successors and assigns, as follows:

- 1. <u>Effective Date</u>. This Agreement will be effective as of the date that it is recorded in the Official Records of Maricopa County, Arizona (the "<u>Official Records</u>").
- 2. <u>Grant of Temporary Construction Easement</u>. Grantor hereby grants to Grantee and its contractors, and their employees, agents, subcontractors, and suppliers ("<u>Grantee's Permittees</u>"), a non-exclusive temporary construction easement, and license to access the Easement Property, as

necessary to construct the Improvements, over, above, on, under, in, across, along, and through the Easement Property for all purposes relating to completion of Improvements, (the "Construction Easement").

3. <u>Construction of Improvements.</u>

- 3.1. The Easement Property contains existing improvements that are the property of Grantor ("<u>Grantor's Improvements</u>"). During its use of the Construction Easement, Grantee shall use commercially reasonable efforts to avoid damaging Grantor's Improvements and, to the extent Grantee damages or destroys any of Grantor's Improvements or the Easement Property, shall promptly repair, replace or restore Grantor's Improvements or the Easement Property to the condition in which it existed prior to the Effective Date of the Construction Easement.
- 3.2. Grantee, at Grantee's sole cost and expense, may clear or grade the Easement Property in connection with the construction of the Improvements.
- 3.3. Grantee's use of the Easement Property shall comply with all applicable laws, rules, regulations and ordinances. Grantor retains the right to use the Easement Property for any purpose that does not unreasonably interfere with the rights granted to Grantee herein.
- 4. <u>Indemnification</u>. Grantee shall indemnify, defend, and hold harmless Grantor, and its successors and assigns, for, from, and against any and all claims, demands, suits, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees and other litigation related expenses) relating to or arising out of accidents, injuries, liens, loss, or damage of or to any person or property arising from Grantee or any of Grantee's Permittees use of the Easement Property, except to the extent arising from the negligence or willful misconduct of Grantor or its contractors, employees, agents, invitees, licensees, and designees. The foregoing obligations under this <u>Section 4</u> shall survive termination of this Agreement.
- 5. <u>Insurance</u>. At all times during Grantee's construction of the Improvements, Grantee agrees to provide and maintain, and cause Grantee's Permittees to provide and maintain, one or more policies of commercial general liability insurance and property damage insurance (including contractual liability arising under the indemnities contained in <u>Section 4</u> above), occurring on or about the Easement Property, with combined single limit coverage of not less than \$2,000,000 ("<u>Insurance Policy</u>"). The Insurance Policy must be primary and not contributing with any Grantor policy or policies of insurance and shall name the owner of the Easement Property as an additional insured. The Insurance Policy must be issued by insurance companies authorized to do business in the State of Arizona having a rating in the then most current edition of Best's Key Rating Guide (or equivalent) of A-/VII or better, must be written on an occurrence basis, and must include coverage for contractual liability and broad form property damage. Grantee and Grantee's Permittee's shall furnish Grantor with certificates of insurance (or, in the case of Grantee, evidence of self-insurance) indicating that insurance meeting the requirements hereof has been obtained and is in full force and effect within 10 days after written request by Grantor.
- 6. <u>Covenants Running with the Land</u>. The Construction Easement granted herein shall inure to the benefit of Grantee and its successors and assigns and shall be binding on Grantor and its successors and assigns, including, but not limited to, all subsequent owners of the Easement

Property and all persons claiming under them. From and after the date of conveyance of all or any portion of the Easement Property, the prior owner shall have no obligations or liabilities under this Agreement for matters occurring after such date with respect to such portion of the Easement Property.

- 7. <u>Amendment</u>. This Agreement may only be amended pursuant to a written agreement signed by both Grantor and Grantee and recorded in the Official Records.
- 8. <u>Term.</u> The Construction Easement shall automatically terminate on the later of the date that the Improvements are complete in accordance with the Construction Plans or six (6) months from the date that this Agreement is recorded ("<u>Term</u>"). Notwithstanding that the foregoing termination shall be effective without the need for further action by any Party, upon request by either Party on or after the date of such termination, the other Party shall execute, acknowledge, and deliver to the requesting Party for recording a termination of Construction Easement in a form reasonably requested by the requesting Party.
- 9. <u>Term Expiration</u>. Prior to the expiration of the Term, Grantee shall pay Grantor an amount equal to the number of full calendar months that elapsed between the Effective Date and the expiration of the Term multiplied by \$169.00 per month. At or prior to the expiration of the Term, Grantee shall remove all its property, supplies and equipment from the Easement Property and return the Easement Property to the condition it was in prior to the Effective Date, reasonable wear and tear excepted.
- 10. <u>Non-Waiver</u>. No delay or failure by either Party to exercise any right under this Agreement and no partial or single exercise of that right shall constitute a waiver of that or any other right.
- 11. <u>Entire Agreement</u>. This Agreement supersedes all agreements previously made between the Parties relating to its subject matter. There are no other understandings or agreements between the Parties with respect to the subject matter hereof.
- 12. <u>Severability</u>. Every provision of this Agreement is hereby declared to be independent of, and severable from, every other provision. If any provision is held to be invalid or unenforceable, that holding will be without effect upon the validity or enforceability of any other provision of this Agreement.
- 13. <u>Applicable Laws</u>. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.
- 14. <u>Attorney's Fees</u>. In the event of any litigation or arbitration arising out of or related to this Agreement, the prevailing Party shall be entitled to recover from the other Party its costs and expenses, including, without limitation, reasonable attorneys' fees incurred in connection with such action, to be determined by the court and not a jury in any such litigation or the arbitrator.
- 15. <u>Estoppel Certificate</u>. Within 30 days after either Party's written request therefor, the other Party agrees to execute and deliver to the requesting Party a certificate (an "<u>Estoppel Certificate</u>") stating: (a) that the terms and provisions of this Agreement are unmodified and are in full force and effect or, if modified, identifying any such modifications; (b) whether there is any

existing default hereunder with regard to such Party and, if so, specifying the nature and extent thereof; and (c) any unpaid amounts with regard to such Party.

16. <u>Counterparts</u>. This Agreement may be executed in two or more counterparts, each of which may contain fewer than all signatures but all of which, combined, shall constitute a single instrument. The Parties are authorized to attach the separate signature pages to a single Agreement.

CAUTION: The above-described easement may contain underground facilities the location of which must be verified as required by Arizona Revised Statutes, Section 40-360.21 *et seq*. (Arizona Blue Stake Law) *prior to* excavation.

[SIGNATURES ON FOLLOWING PAGES]

GRANTOR:

		an Arizona partnership	
	By:	JDM Wigwam GP, LLC, an Arizona limited liability company	
	Its:	General Partner	
	By:		
	Title:	Authorized Representative	
ACKNOWLEDGEMENT			
STATE OF ARIZONA)) ss.			
County of Maricopa)			
Partner of Wigwam Joint Venture, LP, an A	Arizona ne perso	23, before me, the undersigned Notary Public, and Authorized rizona limited liability company, the General partnership, whose identity was proven to me n who he/she claims to be, and acknowledged ement on behalf of the Grantor.	
IN WITNESS WHEREOF, I hereum	to set m	y hand and official seal.	
My Commission Expires:		Notary Public	

	GRANTEE:	
	ACCEPTED BY THE CITY OF LITCHFIELD PARK	
	Thomas L. Schoaf, Mayor Date	
<u>ACKNOWLEDGEMENT</u>		
STATE OF ARIZONA)		
County of Maricopa) ss.		
personally appeared Thomas L Schoaf, the was proven to me on the basis of satisfactor	, 2023, before me, the undersigned Notary Public, Mayor of the City of Litchfield Park, whose identity ry evidence to be the person who he/she claims to be, Temporary Construction Easement on behalf of the	
IN WITNESS WHEREOF, I hereun	to set my hand and official seal.	
	Notary Public	
My Commission Expires:		

EXHIBIT "A"

Grantor Property Legal Description

Parcel 1:

LOT 221, LITCHFIELD PARK SUBDIVISION NO. 9, ACCORDING TO BOOK 101 OF MAPS, PAGE 21, RECORDS OF MARICOPA COUNTY, ARIZONA, AND THAT PART OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 2 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 22;

THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS, 2185.04 FEET ALONG THE WEST LINE OF SAID SECTION 22;

THENCE NORTH 66 DEGREES 01 MINUTE 45 SECONDS EAST, 43.78 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 66 DEGREES 01 MINUTE 45 SECONDS EAST, 54.60 FEET TO THE SOUTHWEST CORNER OF SAID LOT 221;

THENCE SOUTH 89 DEGREES 46 MINUTES 45 SECONDS EAST, 147.58 FEET TO THE SOUTHEAST CORNER OF SAID LOT 221;

THENCE SOUTH 16 DEGREES 36 MINUTES 34 SECONDS WEST, 235.78 FEET;

THENCE SOUTH 74 DEGREES 52 MINUTES 34 SECONDS EAST, 153.31 FEET;

THENCE SOUTH 19 DEGREES 44 MINUTES 50 SECONDS EAST, 109.51 FEET;

THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, 351.96 FEET;

THENCE SOUTH 89 DEGREES 45 MINUTES 21 SECONDS EAST, 890.05 FEET TO THE WEST LINE OF LITCHFIELD PARK SUBDIVISION NO. 6 ACCORDING TO BOOK 66 OF MAPS, PAGE 2, RECORDS OF MARICOPA COUNTY ARIZONA;

THENCE SOUTH 00 DEGREES 14 MINUTES 37 SECONDS WEST, 1461.39 FEET (1461.32 FEET, RECORD) TO A POINT ON THE NORTH RIGHT OF WAY LINE OF INDIAN SCHOOL ROAD WHICH LIES 43.50 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 22 AND ON THE WEST LINE OF SAID LITCHFIELD PARK SUBDIVISION NO. 6;

THENCE NORTH 89 DEGREES 45 MINUTES 34 SECONDS WEST, 1188.91 FEET (1185.63 FEET, RECORD) TO A POINT ON THE EAST RIGHT OF WAY LINE OF LITCHFIELD PARK ROAD, WHICH LIES 50.00 FEET EAST OF THE WEST LINE OF SAID SECTION 22;

THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 1387.20 FEET (1387.06 FEET, RECORD) ALONG SAID EAST RIGHT OF WAY LINE;

THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, 10.00 FEET ALONG SAID EAST RIGHT OF WAY LINE;

THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 772.34 FEET ALONG SAID RIGHT OF WAY LINE TO THE POINT OF BEGINNING.

Parcel 2:

(On following pages)

EXHIBIT "A" GRANTOR PROPERTY

A portion of the South half of Section 21, Township 2 North, Range 1 West, Gila and Salt River Meridian, Maricopa County, Arizona, being more particularly described as follows:

COMMENCING at a point marking the Southeasterly corner of Tract C-4 as shown on the Final Plat THE VILLAGE AT LITCHFIELD PARK PHASE 1 recorded in Book 575 of Maps, Page 33 Maricopa County records, said point lying on the west 55.00 foot right-of-way line of N. Litchfield Road, as shown on said Plat;

THENCE North 00 degrees 15 minutes 27 seconds East (North 00 degrees 32 minutes 30 seconds West record), along said right-of-way line, 193.37 feet to the POINT OF BEGINNING; THENCE North 89 degrees 44 minutes 33 seconds West, 62.37 feet to the beginning of a curve with a radius of 95.98 feet to the right;

THENCE westerly, along the arc of said curve, through a central angle of 115 degrees 54 minutes 19 seconds, for an arc distance of 194.16 feet;

THENCE North 10 degrees 18 minutes 28 seconds East, 129.74 feet;

THENCE North 22 degrees 06 minutes 24 seconds West, 74.56 feet;

THENCE North 75 degrees 27 minutes 34 seconds East, 92.61 feet;

THENCE North 30 degrees 27 minutes 34 seconds East, 28.28 feet;

THENCE North 14 degrees 32 minutes 26 seconds West, 68.76 feet;

THENCE North 01 degree 45 minutes 54 seconds West, 63.73 feet;

THENCE South 89 degrees 20 minutes 21 seconds East, 70.48 feet;

THENCE South 00 degrees 15 minutes 27 seconds West, 512.38 feet to the POINT OF BEGINNING, as shown on Exhibit "B" attached herewith as page 2 of 2. Subject parcel comprising 1.362 acres, more or less, and subject to all easements of record.



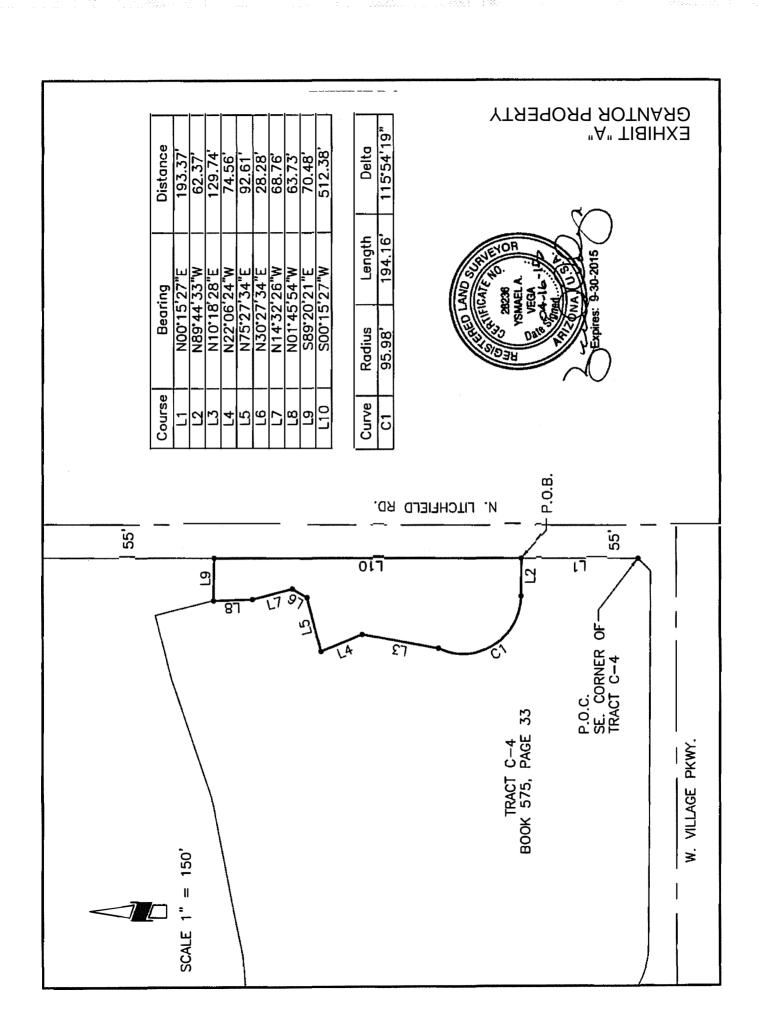


EXHIBIT "B"

Temporary Construction Easements Depiction

Consisting of:

Exhibit "B-1" – three TCEs on Old Litchfield Road for storm drain purposes and repaving.

Exhibit "B-2" – one TCE on the west side of Litchfield Road for the Trench Drain.

(included on following pages)

Exhibit "B-1" LEGAL DESCRIPTION APN 501-64-003A

TEMPORARY CONSTRUCTION EASEMENT #1 (TCE 1)

Those parcels of land located in the Southwest Quarter of Section 22, Township 2 North, Range 1 West, Gila and Salt River Meridian, also being a portion of that certain parcel of land described in Document 2009-1151528, records of Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Southwest corner of Section 22, T.2N., R.1W., from which the West quarter corner of said Section 22 bears North 00°16′18" East, a distance of 2710.59 feet;

THENCE along the West line of said Section 22, North 00°16'18" East, a distance of 496.59 feet, to **POINT "A"**, for later identification;

THENCE South 89°43'42" East, a distance of 50.00 feet to the East Right of Way line of Old Litchfield Road and the **POINT OF BEGINNING**;

THENCE along said Right of Way line, North 00°16'18" East, a distance of 36.00 feet;

THENCE South 89°43'42" East, a distance of 8.00 feet;

THENCE South 00°16'18" West, a distance of 36.00 feet;

THENCE North 89°43'42" West, a distance of 8.00 feet, to the **POINT OF BEGINNING**.

Said parcel contains 288 square feet (0.006 acre), more or less.

TEMPORARY CONSTRUCTION EASEMENT #2 (TCE 2)

COMMENCING at the aforementioned **POINT "A"**

THENCE along the West line of said Section 22, North 00°16'18" East, a distance of 401.13 feet, to **POINT "B"**, for later identification;

THENCE South 89°43'42" East, a distance of 50.00 feet to the East Right of Way line of Old Litchfield Road and the **POINT OF BEGINNING**;

THENCE along said Right of Way line, North 00°16'18" East, a distance of 36.00 feet;

THENCE South 89°43'42" East, a distance of 10.00 feet;

THENCE South 00°16'18" West, a distance of 36.00 feet;

THENCE North 89°43'42" West, a distance of 10.00 feet, to the **POINT OF BEGINNING**.

Said parcel contains 360 square feet (0.008 acre), more or less.

TEMPORARY CONSTRUCTION EASEMENT #3 (TCE 3)

COMMENCING at the aforementioned POINT "B"

THENCE along the West line of said Section 22, North 00°16'18" East, a distance of 139.55 feet;

THENCE South 89°43'42" East, a distance of 50.00 feet to the East Right of Way line of Old Litchfield Road and the **POINT OF BEGINNING**;

THENCE along said Right of Way line, North 00°16'18" East, a distance of 112.00 feet;

THENCE South 89°43'42" East, a distance of 20.00 feet;

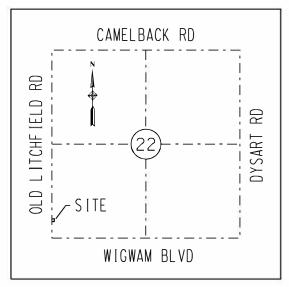
THENCE South 00°16'18" West, a distance of 112.00 feet;

THENCE North 89°43'42" West, a distance of 20.00 feet, to the **POINT OF BEGINNING**.

Said parcel contains 2,240 square feet (0.051 acre), more or less.







VICINITY MAP 2"=1 MILE SEC 22 T2N R1W G&SRM

LEGEND

SECTION AND CENTERLINE ROAD RIGHT OF WAY LIMITS OF EASEMENT PROPERTY LINE SECTION CORNER AS NOTED

ABBREVIATION TABLE

COR CORNER

G&SRM GILA AND SALT RIVER MERIDIAN

POB POINT OF BEGINNING

SEC **SECTION**

TCE TEMPORARY CONSTRUCTION EASEMENT

501 N 44th St. Suite 300

Phoenix, AZ 85008-4505 Tel (602) 454-0402

www.aztec.us

Fax (602) 454-0403

R/W RIGHT OF WAY



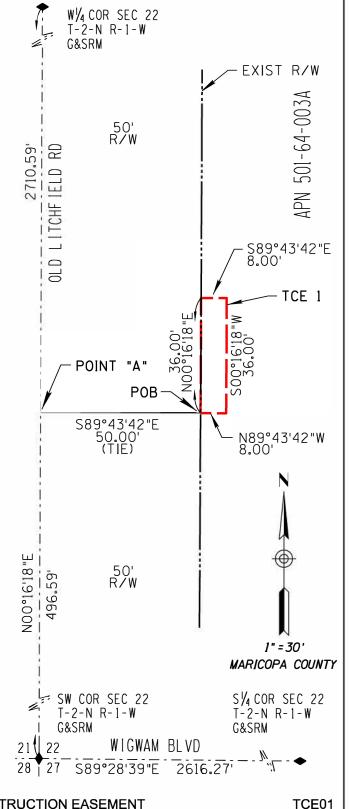


EXHIBIT: TEMPORARY CONSTRUCTION EASEMENT

OLD LITCHFIELD ROAD **NEOLIN AVENUE**

DOWNTOWN STORM DRAIN PROJECT PHASE IV/V

PROJECT NAME:

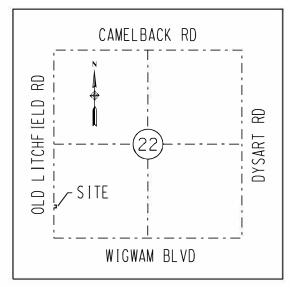


APN 501-64-003A

1 OF 3

SHEET NO.





VICINITY MAP 2"=1 MILE SEC 22 T2N R1W G&SRM

SECTION CORNER AS NOTED

LEGEND

SECTION AND CENTERLINE ROAD RIGHT OF WAY LIMITS OF EASEMENT PROPERTY LINE

ABBREVIATION TABLE

COR CORNER

G&SRM GILA AND SALT RIVER MERIDIAN

POB POINT OF BEGINNING

SEC **SECTION**

TCE TEMPORARY CONSTRUCTION EASEMENT

R/W RIGHT OF WAY



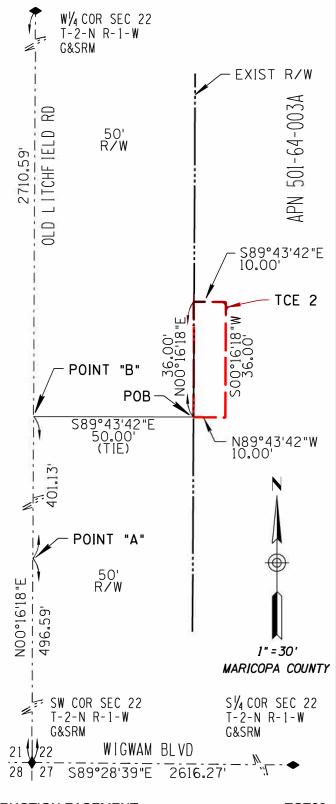


EXHIBIT: TEMPORARY CONSTRUCTION EASEMENT

TCE02

501 N 44th St. Suite 300

Phoenix, AZ 85008-4505 Tel (602) 454-0402 Fax (602) 454-0403 www.aztec.us PROJECT NAME:

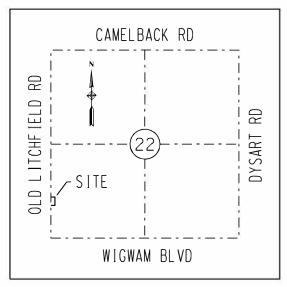
OLD LITCHFIELD ROAD **NEOLIN AVENUE** DOWNTOWN STORM DRAIN PROJECT PHASE IV/V

LOCATION:

APN 501-64-003A

SHEET NO. 2 OF 3





VICINITY MAP 2"=1 MILE SEC 22 T2N R1W G&SRM

LEGEND

SECTION AND CENTERLINE ROAD RIGHT OF WAY LIMITS OF EASEMENT PROPERTY LINE

SECTION CORNER AS NOTED

501 N 44th St. Suite 300

Phoenix, AZ 85008-4505 Tel (602) 454-0402

www.aztec.us

Fax (602) 454-0403

ABBREVIATION TABLE

COR CORNER

G&SRM GILA AND SALT RIVER MERIDIAN

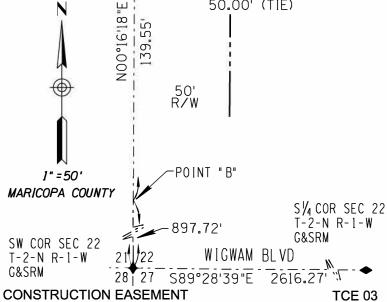
POB POINT OF BEGINNING

SEC SECTION

TCE TEMPORARY CONSTRUCTION EASEMENT

R/W RIGHT OF WAY





W¼ COR SEC 22 T-2-N R-1-W G&SRM

EXIST R/W

S89°43'42"E 20.00'

N89°43'42"W

20.00

112,00

S00°16'18"W

\$89°43'42"E 50.00' (TIE)

112,00

NO0°16'18"E

POB

TCE 3

50' R/W

R

OLD LITCHFIELD

673,32

EXHIBIT: TEMPORARY CONSTRUCTION EASEMENT

PROJECT NAME: OLD LITCHFIELD ROAD **NEOLIN AVENUE** DOWNTOWN STORM DRAIN PROJECT PHASE IV/V

LOCATION:

APN 501-64-003A

SHEET NO. 3 OF 3

Exhibit "B-2" LEGAL DESCRIPTION APN 501-73-960 TEMPORARY CONSTRUCTION EASEMENT

A parcel of land located in the Southeast Quarter of Section 21, Township 2 North, Range 1 West, Gila and Salt River Meridian, also being a portion of that certain parcel of land described in Document 2015-0365887, records of Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the South quarter corner of Section 21, T.2N., R.1W., from which the Southeast corner of said Section 21 bears South 89°24'24" East, a distance of 2618.62 feet;

THENCE along the South line of said Section 21, South 89°24'24" East, a distance of 1277.37 feet;

THENCE North 00°31'32" East, a distance of 1209.77 feet;

THENCE North 89°28'28" West, a distance of 55.00 feet to the West Right of Way line of Litchfield Road Bypass and the **POINT OF BEGINNING**;

THENCE continuing; North 89°28'28" West, a distance of 102.00 feet;

THENCE North 00°31'32" East, a distance of 30.00 feet;

THENCE South 89°28'28" East, a distance of 102.00 feet, to the West Right of Way line of Litchfield Road Bypass;

THENCE along said Right of Way line, South 00°31'32" West, a distance of 30.00 feet, to the **POINT OF BEGINNING.**

Said parcel contains 3,060 square feet (0.070 acre), more or less.



