



MARANA TOWN COUNCIL  
REGULAR COUNCIL MEETING  
NOTICE AND AGENDA  
11555 W. Civic Center Drive, Marana, Arizona 85653  
Council Chambers, March 5, 2019, at or after 7:00 PM

Ed Honea, Mayor  
Jon Post, Vice Mayor  
David Bowen, Council Member  
Patti Comerford, Council Member  
Herb Kai, Council Member  
John Officer, Council Member  
Roxanne Ziegler, Council Member

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Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Marana Town Council and to the general public that the Town Council will hold a meeting open to the public on March 5, 2019, at or after 7:00 PM located in the Council Chambers of the Marana Municipal Complex, 11555 W. Civic Center Drive, Marana, Arizona.

ACTION MAY BE TAKEN BY THE COUNCIL ON ANY ITEM LISTED ON THIS AGENDA. Revisions to the agenda can occur up to 24 hours prior to the meeting. Revised agenda items appear in *italics*.

**As a courtesy to others, please turn off or put in silent mode all electronic devices.**

**Meeting Times**

Welcome to this Marana Town Council meeting. Regular Council meetings are usually held the first and third Tuesday of each month at 7:00 PM at the Marana Municipal Complex, although the date or time may change and additional meetings may be called at other times and/or places. Contact the Town Clerk or watch for posted agendas for other meetings. This agenda may be revised up to 24 hours prior to the meeting. In such a case a new agenda will be posted in place of this agenda.

**Speaking at Meetings**

If you are interested in speaking to the Council during the Call to the Public or Public Hearings, you must fill out a speaker card (located in the lobby outside the Council Chambers) and deliver it to the Town Clerk prior to the convening of the meeting.

All persons attending the Council meeting, whether speaking to the Council or not, are expected to observe the Council rules, as well as the rules of politeness, propriety, decorum and good conduct. Any person interfering with the meeting in any way, or acting rudely or loudly will be removed from the meeting and will not be allowed to return.

### **Accessibility**

To better serve the citizens of Marana and others attending our meetings, the Council Chambers are wheelchair and handicapped accessible. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Town Clerk at (520) 382-1999. Requests should be made as early as possible to arrange the accommodation.

### **Agendas**

Copies of the agenda are available the day of the meeting in the lobby outside the Council Chambers or online at [www.maranaaz.gov](http://www.maranaaz.gov) under Agendas and Minutes. For questions about the Council meetings, special services or procedures, please contact the Town Clerk, at (520) 382-1999, Monday through Friday from 8:00 AM to 5:00 PM.

This Notice and Agenda Posted no later than 24 hours prior to the meeting, at the Marana Municipal Complex, 11555 W. Civic Center Drive, the Marana Operations Center, 5100 W. Ina Road, and at [www.maranaaz.gov](http://www.maranaaz.gov) under Agendas and Minutes.

## **REGULAR COUNCIL MEETING**

### **CALL TO ORDER AND ROLL CALL**

### **PLEDGE OF ALLEGIANCE/INVOCATION/MOMENT OF SILENCE**

### **APPROVAL OF AGENDA**

### **CALL TO THE PUBLIC**

At this time any member of the public is allowed to address the Town Council on any issue within the jurisdiction of the Town Council, except for items scheduled for a Public Hearing at this meeting. The speaker may have up to three minutes to speak. Any persons wishing to address the Council must complete a speaker card located outside the Council Chambers and deliver it to the Town Clerk prior to the commencement of the meeting. Individuals addressing a meeting at the Call to the Public will not be provided with electronic technology capabilities beyond the existing voice amplification and recording capabilities in the facilities. Pursuant to the Arizona Open Meeting Law, at the conclusion of Call to the Public, individual members of the Council may respond to criticism made by those who have addressed the Council, and may ask staff to review the matter, or may ask that the matter be placed on a future agenda.

### **PROCLAMATIONS**

P1 Proclaiming March 8, 2019 as St. Baldrick's Day in Marana (Cherry L. Lawson)

## MAYOR AND COUNCIL REPORTS: SUMMARY OF CURRENT EVENTS

### MANAGER'S REPORT: SUMMARY OF CURRENT EVENTS

#### PRESENTATIONS

#### CONSENT AGENDA

The Consent Agenda contains items requiring action by the Council which are generally routine items not requiring Council discussion. A single motion and affirmative vote will approve all items on the Consent Agenda, including any resolutions or ordinances. Prior to a motion to approve the Consent Agenda, any Council member may remove any item from the Consent Agenda and that item will be discussed and voted upon separately.

- C1 Resolution No. 2019-015: Relating to Utilities; approving and authorizing the Mayor to sign an Intergovernmental Agreement between Pima County and the Town of Marana for Cost Sharing Related to the Twin Peaks Utility Easement (John Kmiec)
- C2 Resolution No. 2019-016: Relating to Public Works; approving and authorizing the Mayor to sign an Intergovernmental Transportation Funding Agreement with the Regional Transportation Authority for the Regional Traffic Signal Program; equipment (Mo El-Ali)
- C3 Resolution No. 2019-017: Relating to Public Works; authorizing Town staff and representatives to acquire by negotiation or condemnation Pima County Assessor's Parcel No. 221-21-004E, located on the south side of Silverbell Road between its two Continental Reserve Loop intersections and consisting of the Picture Rocks Wash drainageway, for flood control purposes (Frank Cassidy)
- C4 Resolution No. 2019-018: Relating to Parks and Recreation; approving and authorizing the Mayor to execute an intergovernmental agreement for educational services and programming between the Town of Marana and Pima County (Corey Larriva)
- C5 Resolution No. 2019-019: Relating to Real Estate; approving and authorizing the Mayor to sign Purchase Agreements with Metropolitan Domestic Water Improvement District for the sale of two well sites on Town property in the vicinity of the Marana Regional Airport (Frank Cassidy)
- C6 Approval of Minutes from the Study Session Council Meeting of February 26, 2019 and the Regular Council Meeting of February 19, 2019 (Cherry L. Lawson)

#### LIQUOR LICENSES

- L1 Relating to Liquor Licenses; recommendation to the Arizona Department of Liquor Licenses and Control regarding a License Acquisition of Control series 10 Beer and Wine Store liquor license application submitted by Jodi L. Vurnovas on behalf of GOOD 2 GO, located at 8333 N. Cortaro Road, Marana, Arizona 85743 (Cherry L. Lawson)

## **BOARDS, COMMISSIONS AND COMMITTEES**

### **COUNCIL ACTION**

- A1 Resolution No. 2019-020: Relating to Development; approving and authorizing the Mayor to sign the development agreement among the Pima County Flood Control District, the Town of Marana, Alta Vista Communities RP LLC, and I.T. Investments Three, L.L.C. for CDO North Bank Improvements, I-10 to Thornydale (Frank Cassidy)

### **ITEMS FOR DISCUSSION / POSSIBLE ACTION**

- D1 Relating to Budget; discussion, direction and possible action regarding development of the fiscal year 2019-2020 budget, including proposed budget initiatives and expenditures (Jamsheed Mehta)
- D2 Relating to Legislation and Government Actions; discussion and possible action regarding all pending state, federal, and local legislation/ government actions and on recent and upcoming meetings of the other governmental bodies (Jamsheed Mehta)

### **EXECUTIVE SESSIONS**

Pursuant to A.R.S. § 38-431.03, the Town Council may vote to go into executive session, which will not be open to the public, to discuss certain matters.

- E1 Executive Session pursuant to A.R.S. §38-431.03 (A)(3), Council may ask for discussion or consultation for legal advice with the Town Attorney concerning any matter listed on this agenda.

### **FUTURE AGENDA ITEMS**

Notwithstanding the mayor's discretion regarding the items to be placed on the agenda, if three or more Council members request that an item be placed on the agenda, it must be placed on the agenda for the second regular Town Council meeting after the date of the request, pursuant to Marana Town Code Section 2-4-2(B).

### **ADJOURNMENT**



**Council-Regular Meeting**

**P1**

**Meeting Date:** 03/05/2019

**Submitted For:** Cherry L. Lawson, Town Clerk

**From:** Suzanne Sutherland, Executive Assistant to the Town Clerk

**Date:** March 5, 2019

**Subject:** Proclaiming March 8, 2019 as St. Baldrick's Day in Marana (Cherry L. Lawson)

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**Attachments**

Proclaiming March 8, 2019 as St. Baldrick's Day in Marana

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## PROCLAMATION

### St. Baldrick's "Rock the Bald" Campaign 2019

**WHEREAS**, cancer is the number one disease killer of children and young adults in the United States, with a child being diagnosed with cancer worldwide every two minutes; and

**WHEREAS**, through head-shaving events, partnerships and advocacy initiatives, the primary focus of the St. Baldrick's Foundation is to have the greatest impact for kids with cancer around the world; and

**WHEREAS**, as only four percent of federal cancer funding goes directly to childhood cancer research; and

**WHEREAS**, St. Baldrick's Foundation is the largest funder of childhood cancer research grants outside of the United States government; and

**WHEREAS**, shaving heads is a visible demonstration of solidarity with those who have lost their hair to cancer treatment; and

**WHEREAS**, a "Rock the Bald" fundraising event for St. Baldrick's is being held at Mountain View High School on Friday, March 8, 2019 from 5:00 – 9:00 p.m.

**NOW, THEREFORE be it resolved**, the Mayor and Council of the Town of Marana commend the efforts of the "Be Bold Go Bald" team and recognize

#### **"March 8, 2019 as St. Baldrick's Day in Marana"**

and urge citizens to familiarize themselves with this program and offer support for the activities associated with St. Baldrick's Foundation.

Dated this 5th day of March, 2019.

ATTEST:

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Cherry L. Lawson, Town Clerk

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Ed Honea, Mayor



## **Council-Regular Meeting**

**C1**

**Meeting Date:** 03/05/2019

**To:** Mayor and Council

**Submitted For:** John Kmiec, Water Director

**From:** Scott Schladweiler, Deputy Water Director

**Date:** March 5, 2019

**Strategic Plan Focus Area:**  
Community

**Subject:** Resolution No. 2019-015: Relating to Utilities; approving and authorizing the Mayor to sign an Intergovernmental Agreement between Pima County and the Town of Marana for Cost Sharing Related to the Twin Peaks Utility Easement (John Kmiec)

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### **Discussion:**

Pima County Regional Wastewater Reclamation Department is currently designing and constructing the Twin Peaks-Blue Bonnet Gravity Sewer project. The project includes approximately 4.5 miles of new gravity sewer main and is broken up into three segments:

- Segment 1: Tangerine Road to Blue Bonnet
- Segment 2: Blue Bonnet to Linda Vista
- Segment 3: Linda Vista to Cortaro Farms Road

Segment 2 is currently under construction and Segments 1 and 3 are scheduled to begin in May 2019.

In 2017, Marana Water completed construction of the Twin Peaks Reservoir and Booster Station located at the southeast corner of the intersection of Twin Peaks Road and Blue Bonnet Road. The reservoir will provide gravity storage to service area south of the reservoir and the booster station was designed to provide service north of the site along Twin Peaks Road. No pipeline projects are included in the current Water Infrastructure Improvement Plan, but the master plan identifies the need for a future transmission main north along Twin Peaks Road.

Due to the lack of adequate space for sewer infrastructure in the Twin Peaks right-of-way (Segment 1), PCRWRD has acquired a 40 foot wide easement along the

eastern boundary of the Twin Peaks Road right-of-way. Marana Water has been working with PCRWRD since the beginning of the sewer project to secure adequate space in the proposed easement for a future water main. Of the 40 foot easements acquired by PCRWRD, the proposed IGA provides for the allocation of 20 feet of the 40 feet to be dedicated for the installation of a water main.

There has been significant interest from developers along Twin Peaks since the reservoir and booster station was completed and the sewer project began, focusing on the need for water infrastructure to complement the sewer infrastructure.

Pima County is in the process of completing all property acquisitions along the alignment and associated engineering costs. Marana Water would pay a proportionate share of the acquisition and engineering costs totaling \$184,463.54 now to guarantee a location for a future pipeline. The costs associated with the IGA and easement acquisition would be fully reimbursed by those that benefit from its use.

**Financial Impact:**

|               |              |
|---------------|--------------|
| Fiscal Year:  | 2019         |
| Budgeted Y/N: | N            |
| Amount:       | \$184,463.54 |

The department projects that there is adequate unspent budget in other projects to cover these unanticipated costs. Additionally, the Water enterprise fund has adequate cash balances to cover these costs.

**Staff Recommendation:**

Town staff recommends adoption of Resolution No. 2019-015, approving and authorizing the Mayor to sign an Intergovernmental Agreement between Pima County and the Town of Marana for Cost Sharing Related to the Twin Peaks Utility Easement.

**Suggested Motion:**

I move to adopt Resolution No. 2019-015, approving and authorizing the Mayor to sign an Intergovernmental Agreement between Pima County and the Town of Marana for Cost Sharing Related to the Twin Peaks Utility Easement.

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**Attachments**

Resolution No. 2019.015  
Twin Peaks joint easement with exhibits

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## MARANA RESOLUTION NO. 2019-015

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RELATING TO UTILITIES; APPROVING AND AUTHORIZING THE MAYOR TO SIGN AN INTERGOVERNMENTAL AGREEMENT BETWEEN PIMA COUNTY AND THE TOWN OF MARANA FOR COST SHARING RELATED TO THE TWIN PEAKS UTILITY EASEMENT

WHEREAS Pima County operates and maintains a public sanitary sewerage system and is the designated public sewer system provider for the eastern and southern portions of the Town of Marana; and

WHEREAS Pima County is constructing a gravity sewer between Tangerine Road and West Cortaro Farms Road in a route that runs along the east side of and parallel to Twin Peaks Road and then continues southward in a route paralleling Blue Bonnet Road and north Hartman Lane; and

WHEREAS the Town's potable water utility serves or intends to serve lands located within the town limits of the Town along Twin Peaks Road that are not currently served or under contract to be served by Tucson Water; and

WHEREAS the Town is designing a water line that will parallel the Pima County sewer from the intersection of Tangerine Road and Twin Peaks Road to the point where Twin Peaks Road intersects with Blue Bonnet Road; and

WHEREAS the Town Council finds that Intergovernmental Agreement between Pima County and the Town of Marana for Cost Sharing Related to the Twin Peaks Utility Easement is in the best interests of the Town and its water customers.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, ARIZONA, AS FOLLOWS:

SECTION 1. The Intergovernmental Agreement between Pima County and the Town of Marana for Cost Sharing Related to the Twin Peaks Utility Easement in substantially the form set forth in the agenda materials accompanying this resolution is hereby approved, and the Mayor is hereby authorized to sign it for and on behalf of the Town of Marana.

SECTION 2. The Town's Manager and staff are hereby directed and authorized to undertake all other and further tasks required or beneficial to carry out the terms, obligations, and objectives of the intergovernmental agreement.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE TOWN  
OF MARANA, ARIZONA, this 5<sup>th</sup> day of March, 2019.

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Mayor Ed Honea

ATTEST:

APPROVED AS TO FORM:

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Cherry L. Lawson, Town Clerk

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Frank Cassidy, Town Attorney

**Intergovernmental Agreement  
between  
Pima County and the Town of Marana  
for  
Cost Sharing Related to the  
Twin Peaks Utility Easement**

This Intergovernmental Agreement (IGA) is entered into by and between Pima County, a body politic and corporate of the State of Arizona (“County”) and the Town of Marana, an Arizona municipal corporation (“Town”) pursuant to A.R.S. § 11-952.

**Recitals**

- A. County and Town may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-951, *et seq.*
- B. County is authorized by A.R.S. § 11-264 to construct and operate sewers.
- C. Town is authorized by A.R.S. § 9-511 to construct and operate a water utility.
- D. County is constructing a gravity sewer between Tangerine Road and West Cortaro Farms Road in a route paralleling West Twin Peaks Road/North Blue Bonnet Road/North Hartman Lane.
- E. Town is designing a water line that will parallel the County sewer from the intersection of Tangerine Road and West Twin Peaks Road to the point where West Twin Peaks Road intersects with North Blue Bonnet Road.
- F. The Parties have determined it is in their best interests to cooperatively acquire the necessary water and sewer easements for the above-referenced water line and sewer and to share certain costs associated with preparing those for utility installation.

NOW, THEREFORE, County and Town, pursuant to the above, and in consideration of the matters and things hereinafter set forth, do mutually agree as follows:

**Agreement**

**1. Scope**

1.1. Acquisition of Easements. County has, or will acquire, by purchase or through eminent domain, permanent easements sufficient in size for both the County sewer line and the Town water line (collectively the “Easements”) planned for installation along the route depicted in Exhibit A.

1.1.1. Form of Easements. The permanent easements acquired by County (the “Permanent Easements”) will be approximately forty (40) feet wide and evidenced through use of the grant of easement form attached hereto as Exhibit B, which provides that the County may grant or assign its rights under the Permanent

Easements, or portions thereof, to a public utility company or an Arizona municipal corporation.

1.1.2. Assignment of Easements. County will assign to Town permanent easements of approximately 20 foot width for Town's water lines (the "Permanent Water Easements") as depicted on Exhibit C, provided that:

1.1.2.1. Town has paid to County one-half of all costs associated with acquiring the Easements (the "Acquisition Costs"), including but not limited to the purchase price, due diligence costs including appraisal and environmental assessment, closing costs, and the actual cost of Pima County Real Property Services' staff time related to acquisition of the Easements. In the event condemnation is required, the Acquisition Costs will also include attorneys' fees and litigation costs. Attached as Exhibit D is an estimate of the Purchase Price for the Easements (excluding all other Acquisition Costs);

1.1.2.2. County will retain surface rights for any Permanent Easement conveyed to Town;

1.1.2.3. Town's use of the Easements must be consistent with the terms and conditions of the Easement grants;

1.1.2.4. The Permanent Water Easements will be in the form of Exhibit E.

1.1.3. Temporary Construction Easements. Town may use any of the County's portion of the Permanent Easements during construction of the water line provided no portion of the completed water line is located within the County's portion and provided Town is responsible for any damage to County's sewer resulting from such use. Town will be responsible for acquiring all additional temporary construction easements and all other non-permanent property rights associated with construction of the water line.

1.1.4. Payment for Easements. County will invoice the Town on a monthly basis as costs are incurred, provided, however, that for Easements acquired by County prior to the effective date of this Agreement, the Town Costs will be included in the initial invoice to Town. Town will pay said invoices within sixty (60) days of receipt. County will provide Town with detailed explanations of the costs incurred with each invoice.

1.2. Riparian Mitigation and Engineering. County and Town will consult on riparian mitigation and engineering prior to expenditure of funds, provided, however, County may proceed without Town's consent on riparian mitigation and engineering decisions if scheduling deadlines require expedited action.

1.2.1. Town agrees to pay one-half the costs of mitigating riparian issues, including permitting, and engineering review (collectively the "Engineering and Mitigation Costs"). County will provide an estimate of the Engineering and Mitigation Costs to

Town after the costs are available.

1.2.2. County will invoice the Town on a monthly basis for Engineering and Mitigation Costs as costs are incurred, provided, however, that such costs incurred prior to the effective date of this Agreement, the costs will be included in the initial invoice to Town. Town will pay said invoices within sixty (60) days of receipt. County will provide Town with detailed explanations of the costs incurred with each invoice.

2. **Term.** This IGA will be effective on the date it is fully executed by both parties and will continue for a period of two years unless it is, prior to the expiration of such period, extended or terminated by agreement of the parties.
3. **Indemnification.** Each party (as Indemnitor) agrees to indemnify, defend, and hold harmless the other party (as Indemnatee) from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") for bodily injury of any person (including death) or property damage, but only to the extent that such injury or damage is caused or alleged to be caused by a negligent or intentionally wrongful act or omission of the Indemnitor, or of any of its officers, officials, agents, employees, or volunteers.
4. **Insurance.** Each party will obtain and maintain at its own expense, during the entire term of this IGA the following type(s) and amounts of insurance:
  - a) Commercial General Liability in the amount of \$1,000,000.00 combined single limit Bodily Injury and Property Damage.
  - b) Commercial or Business automobile liability coverage for owned, non-owned and hired vehicles used in the performance of this Contract with limits in the amount of \$1,000,000.00 combined single limit or \$1,000,000.00 Bodily Injury, \$1,000,000.00 Property Damage.
  - c) If this Contract involves professional services, professional liability insurance in the amount of \$1,000,000.00.
  - d) If required by law, workers' compensation coverage including employees' liability coverage.

Each party will provide thirty (30) days written notice to the other party of cancellation, non-renewal or material change of coverage.

The above requirement may be alternatively met through self-insurance pursuant to A.R.S. §§ 11-261 and 11-981 (or if a school district, § 15-382) or participation in an insurance risk pool under A.R.S. § 11.952.01 (if a school district, § 15-382), at no less than the minimum coverage levels set forth in this article.

5. **Compliance with Laws.** The parties will comply with all federal, state, and local laws, rules, regulations, standards, and Executive Orders. The laws and regulations of the State of Arizona

will govern the rights of the parties, the performance of this IGA and any disputes. Any action relating to this IGA will be brought in a court in Pima County.

6. **Non-Discrimination.** The parties will not discriminate against any employee, client, or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability, or national origin in the course of carrying out their duties under this IGA. The parties will comply with the provisions of Executive Order 75-5, as amended by Executive Order 2009-09, which is incorporated into this IGA by reference.
7. **ADA.** The parties will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
8. **Severability.** If any provision of this IGA, or any application of a provision to the parties or any person or circumstance, is found by a court to be invalid, that invalidity will not affect other provisions or applications of this IGA that can be given effect without the invalid provision or application.
9. **Conflict of Interest.** This contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.
10. **Non-Appropriation.** Notwithstanding any other provision in this IGA, this IGA may be terminated if for any reason the Pima County Board of Supervisors or the Town's Council does not appropriate sufficient monies for the purpose of maintaining this IGA. In the event of such cancellation, the parties will have no further obligations under this IGA other than for payment for services rendered prior to cancellation.
11. **Legal Authority.** Neither party warrants to the other its legal authority to enter into this IGA. If a court, at the request of a third person, should declare that either party lacks authority to enter into this IGA, or any part of it, then the IGA, or parts of it affected by such order, will be null and void, and no recovery may be had by either party against the other for lack of performance or otherwise.
12. **Worker's Compensation.** Each party will comply with the notice of A.R.S. § 23-1022 (E). For purposes of A.R.S. § 23-1022, irrespective of the operations protocol in place, each party is solely responsible for the payment of Worker's Compensation benefits for its employees.
13. **No Joint Venture.** It is not intended by this IGA to, and nothing contained in this IGA will be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between a party and the employees of the other party. Neither party will be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.
14. **No Third Party Beneficiaries.** Nothing in this IGA is intended to create duties or obligations to or rights in third parties not parties to this IGA or affect the legal liability of either party to the IGA by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.

**15. Notice.** Any notice required or permitted to be given under this IGA must be in writing and served by delivery or by certified mail upon the other party as follows (or at such other address as may be identified by a party in writing to the other party) :

To County:

Director, RWRD  
201 N. Stone, 8<sup>th</sup> Floor  
Tucson, AZ 85701

*With copies to:*

County Administrator  
130 West Congress St., 10th Floor  
Tucson, Arizona 85701

Clerk of the Board  
130 West Congress, 5th Floor  
Tucson, Arizona 85701

To Town:

Director, Marana Water Department  
5100 West Ina Road  
Tucson AZ 85743

*With copies to:*

Town Manager  
11555 West Civic Center Dr.  
Marana AZ 85653

Town Attorney  
Marana Legal Department  
11555 West Civic Center Dr.  
Marana AZ 85653

**16. Entire Agreement.** This document, and any exhibits attached to it, constitutes the entire agreement between the parties pertaining to the subject matter addressed, and all prior or contemporaneous agreements and understandings, oral or written, are superseded and merged into this IGA. This IGA may not be modified, amended, altered or extended except through a written amendment signed by the parties.

*In Witness Whereof*, County has caused this IGA to be executed by the Chairman of its Board of Supervisors, upon resolution of the Board, and attested to by the Clerk of the Board, and the Town has caused this Intergovernmental Agreement to be executed by its Mayor upon resolution of the Town's Council and attested to by the Town Clerk.

**PIMA COUNTY:**

\_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST:

\_\_\_\_\_  
Clerk of the Board

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

**TOWN OF MARANA:**

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

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

## **Approval**

The foregoing Intergovernmental Agreement between Pima County and the Town of Marana has been reviewed by the undersigned, and is hereby approved as to content.

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Director, RWRD

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Marana Water Department Director

## **Intergovernmental Agreement Determination**

The foregoing Intergovernmental Agreement between Pima County and the Town of Marana has been reviewed by the undersigned, each of whom has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the party he or she represents.

**PIMA COUNTY:**

**TOWN OF MARANA:**

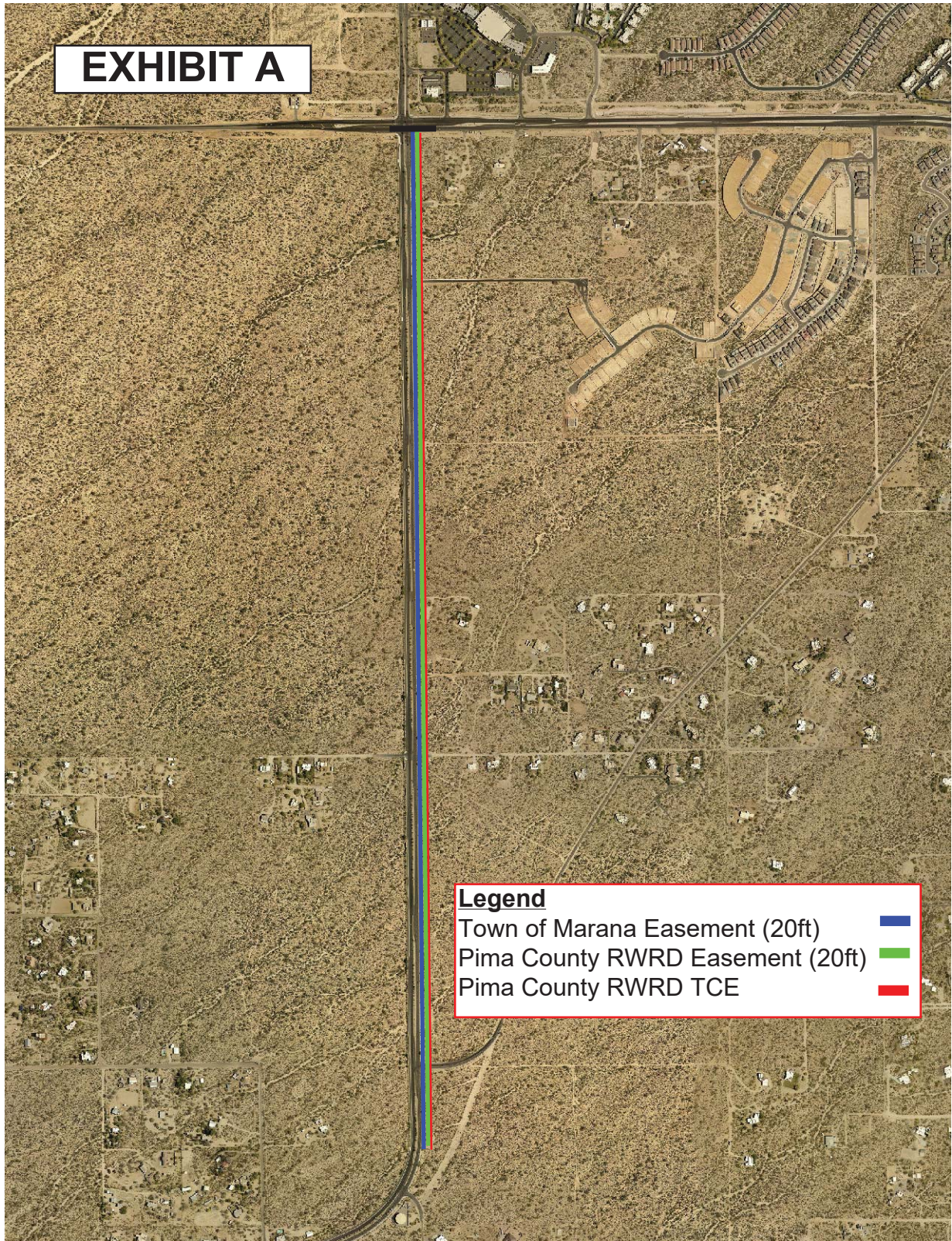
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Deputy County Attorney

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Town Attorney

# EXHIBIT A



## EASEMENT

For valuable consideration, \_\_\_\_\_, "Grantor", does hereby grant to Pima County, a political subdivision of the State of Arizona, "County", a permanent easement (the "Easement") for the construction, installation, maintenance, repair, operation, replacement, and removal of water lines, sewer lines, valves, manholes, and appurtenances (collectively, "Facilities") in, over, under, and across the real property described on the attached Attachments "A and A-1" (the "Property").

Grantor may use the Property for any purpose consistent with the exercise of the Easement by County. Grantor agrees to maintain the Easement free of any obstruction or encroachments at all times that would block or impede vehicle access to the Facilities or prevent County from constructing, installing, maintaining, repairing, operating, or removing the Facilities. Such obstructions or encroachments include, but are not limited to: fences, walls, boulders, stone rip-rap, paving, curbs, trees, large shrubs or cacti, special or elaborate plantings, storage sheds, swimming pools, parked vehicles, etc. County may, without notice and without prior institution of any suit or proceeding at law, remove any obstruction or encroachment from the Property that blocks or impedes vehicle access to the Facilities or limits County's ability to construct, maintain, repair, service, replace, and remove the Facilities. Should the removal of obstructions or encroachments from the Property be necessary to obtain adequate vehicular access or to construct, maintain, repair, service, replace, and remove the Facilities, Grantor will reimburse County for all associated removal activities.

County may, without notice and without prior institution of any suit or proceeding at law, enter on the Property at any time for the purpose of construction, maintenance, repair, service, replacement, and removal of the Facilities. Following any use of the Property for the above purposes, County will reasonably restore the Property to its general condition existing prior to County's use provided, however, County will not replace, repair, or restore obstructions or encroachments nor will County reimburse Grantor for losses associated with damage or removal of the obstructions or encroachments.

This Easement and the covenants, terms, and conditions contained herein are intended to and will run with the Property and will be binding upon County and Grantor and their respective successors, heirs, and assigns. Grantor warrants that Grantor has good title to the Property and warrants the County title to and quiet enjoyment of the Easement. Upon execution, the Easement will be recorded with the Pima County, Arizona, Recorder's Office.

The grants, covenants, and provisions herein will be binding on and inure to the benefit of the heirs, successors, and assigns of the parties hereto. County may grant or assign its rights under this

|                                |         |               |                           |
|--------------------------------|---------|---------------|---------------------------|
| Board of Supervisors Approval: |         | S____/T____/R |                           |
| Agent:                         | File #: | Activity #:   | P [ ] De [ ] Do [ ] E [ ] |

## EXHIBIT B

Easement, or portions thereof, to a public utility company or an Arizona municipal corporation. The landscaping within all public sewer easements will be in accordance with Pima County's "Landscaping and Planting Guidelines for Public Sewers", found in version of the Regional Wastewater Reclamation Department's "Engineering Design Standards", current at the time landscaping occurs.

THIS EASEMENT granted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

GRANTOR:

[NAME]

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

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(Title)

STATE OF \_\_\_\_\_ )  
\_\_\_\_\_) ss  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 , by  
\_\_\_\_\_ as \_\_\_\_\_ of [Grantor Name]

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

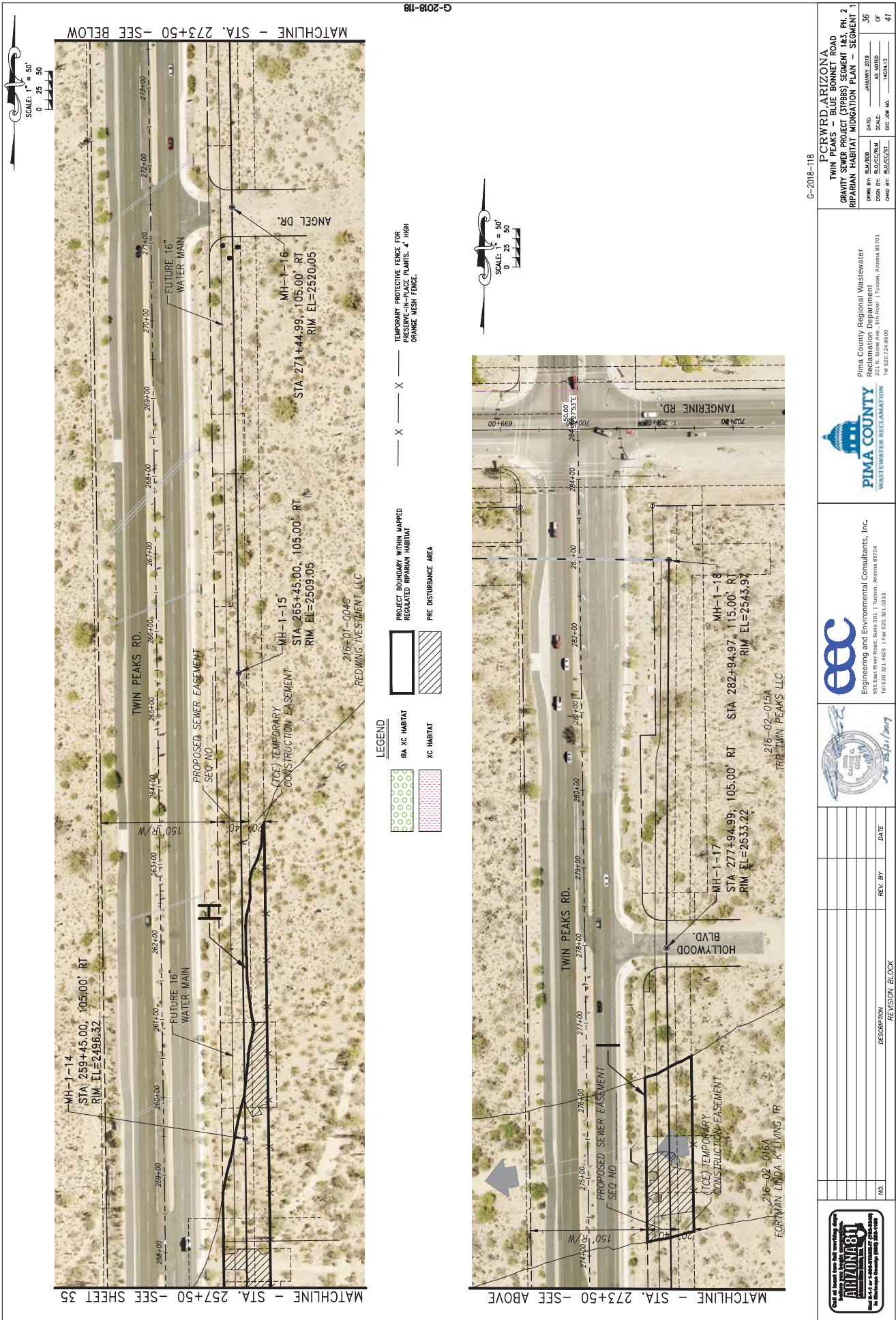
My Commission Expires:

\_\_\_\_\_

|                                |         |               |                           |
|--------------------------------|---------|---------------|---------------------------|
| Board of Supervisors Approval: |         | S____/T____/R |                           |
| Agent:                         | File #: | Activity #:   | P [ ] De [ ] Do [ ] E [ ] |

[illegible]





\\140413 - JTPBS - Twin Peaks Blue Bonnet Road Gravity Sewer (Preliminary Engineering)\550 CAD\0550 DWG\PLAN SHEETS\Plan Sheets - Seg1\01-140413-RF-03.dwg Plotfile Jan 18, 2019 - 8:11am mroth



# Twin Peaks Utility Easement IGA Cost Estimate

## Parcel Acquisition

### Legal Preparation EEC's

|                                       |             |
|---------------------------------------|-------------|
| Cost Incurred for Seg 1 (exhibits):   | \$22,898.65 |
| Cost Incurred for Seg 1 (field work): | \$3,647.53  |
| Less Cost for ASLD legal:             | (\$972.50)  |
| Total Cost for Seg 1:                 | \$25,573.68 |

## Easement Acquisition

| Owners                       | ACQ# | Parcel Numbers                                                | Easement Value |
|------------------------------|------|---------------------------------------------------------------|----------------|
| Redwing Investment           | 809  | 21601004C                                                     | \$35,745       |
| TRP                          | 810  | 21602015A                                                     | \$48,544       |
| Linda Fortman                | 811  | 21602016A                                                     | \$24,649       |
| Cramer                       | 812  | 21603002A                                                     | \$16,202       |
| Kapson                       | 813  | 21603004A                                                     | \$15,307       |
| Brooks                       | 814  | 21603005P                                                     | \$47,595       |
| TJ Bednar                    | 815  | 21603005Q<br>21603005R                                        | \$8,338        |
| Ringgold                     | 816  | 21603006L<br>21603006M                                        | \$8,417        |
| Copeland                     | 818  | 21625013H<br>21625014H                                        | \$11,051       |
| Lam                          | 819  | 21625015H<br>21625015M<br>21625019B<br>21625020C<br>21625020E | \$39,213       |
| MacMorran                    | 820  | 21625019E                                                     | \$559          |
| Marana Manana LLC (estimate) | 822  | 216-26-003C                                                   | \$20,000       |
| TOTAL                        |      | TOTAL                                                         | \$275,620      |

## Riparian Mitigation

\$ 67,733.40

|                                   |              |
|-----------------------------------|--------------|
| Total Easement Acquisition Amount | \$368,927.08 |
| Split Cost                        |              |
| Total Per Government Entity       | \$184,463.54 |

**ASSIGNMENT OF EASEMENT**

Pursuant to rights granted to it under that certain Easement, recorded at \_\_\_\_\_ of the official records of Pima County Recorder’s Office (the “Original Easement”), Pima County, a political subdivision of the State of Arizona ("Assignor"), does, for valuable consideration, hereby assign to the Town of Marana, a municipal corporation of the State of Arizona ("Assignee"), a permanent easement (the "Easement") for the construction, installation, maintenance, repair, operation, replacement, and removal of water lines, valves, manholes, and appurtenances (collectively, "Facilities") in, over, under, and across a portion of the Original Easement depicted and described on Attachments "A" and “A-1” hereto. The portion of the Original Easement assigned to Assignee by this instrument is depicted and described on Attachments “B” and “B-1” hereto.

Assignee releases Assignor from any and all obligations, responsibilities, and duties under the Original Easement from and after the date of execution by Assignor (the “Effective Date”); provided, Assignor shall indemnify, defend, and hold Assignee harmless from any and all penalties, liabilities, losses, claims, actions, judgments, liabilities, proceedings, and costs, including reasonable attorneys’ fees, arising directly or indirectly out of any damage or injury to persons or property by reason of the actions or omissions, intentional or otherwise, of Assignor in exercising any of the privileges granted or in consequence thereof under the Original Easement prior to the Effective Date.

This Easement and the covenants, terms, and conditions contained herein are intended to and will run with the Property and will be binding upon Assignee and Assignor and their respective successors, heirs, and assigns. Upon execution, the Easement will be recorded with the Pima County, Arizona, Recorder's Office.

The grants, covenants, and provisions herein will be binding on and inure to the benefit of the heirs, successors, and assigns of the parties hereto. Assignee may grant or assign its rights under this Easement, or portions thereof, to a public utility company or an Arizona municipal corporation.

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|                                |         |               |                           |
|--------------------------------|---------|---------------|---------------------------|
| Board of Supervisors Approval: |         | S____/T____/R |                           |
| Agent:                         | File #: | Activity #:   | P [ ] De [ ] Do [ ] E [ ] |

## EXHIBIT E

IN WITNESS WHEREOF this Assignment of Easement Deed has been executed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_.

ASSIGNOR:  
Pima County

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

---

(printed name)

---

(Title)

STATE OF ARIZONA )  
 ) ss  
COUNTY OF PIMA )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_

\_\_\_\_\_ as \_\_\_\_\_ of Pima County

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

My Commission Expires:

---

|                                |         |               |                           |
|--------------------------------|---------|---------------|---------------------------|
| Board of Supervisors Approval: |         | S____/T____/R |                           |
| Agent:                         | File #: | Activity #:   | P [ ] De [ ] Do [ ] E [ ] |



## **Council-Regular Meeting**

**C2**

**Meeting Date:** 03/05/2019

**To:** Mayor and Council

**Submitted For:** Mo El-Ali, Public Works Director

**From:** Fausto Burruel, Public Works Deputy Director

**Date:** March 5, 2019

**Strategic Plan Focus Area:**  
Commerce

### **Strategic Plan Focus Area Additional Info:**

Strategic Plan IV, The Commerce Focus Area, Principle Statement 2, Initiative 13 states, "Invest Town resources to ensure travel ways, public spaces, parks, public facilities, and other community spaces are clean, maintained, and showcase Marana's high standard of excellence."

**Subject:** Resolution No. 2019-016: Relating to Public Works; approving and authorizing the Mayor to sign an Intergovernmental Transportation Funding Agreement with the Regional Transportation Authority for the Regional Traffic Signal Program; equipment (Mo El-Ali)

---

### **Discussion:**

The Intergovernmental Transportation Funding Agreement between the Regional Transportation Authority (RTA) and the Town of Marana allows the RTA to purchase traffic signal equipment (traffic signal controllers) on behalf of the Town of Marana using RTA Regional Traffic Signal Program funding. The traffic signal controllers will become assets of the Town when received from the RTA and inserted into the Public Works Cartegraph inventory.

### **Staff Recommendation:**

Staff recommends adoption of Resolution No. 2019-016, approving and authorizing the Mayor to sign an Intergovernmental Transportation Funding Agreement with the Regional Transportation Authority for the Regional Traffic Signal Program; equipment.

**Suggested Motion:**

I move to adopt Resolution No. 2019-016, approving and authorizing the Mayor to sign an Intergovernmental Transportation Funding Agreement with the Regional Transportation Authority for the Regional Traffic Signal Program; equipment.

---

**Attachments**

Resolution No. 2019-016

RTA IGA

RTA Exhibit A

---

## **MARANA RESOLUTION NO. 2019-016**

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RELATING TO PUBLIC WORKS; APPROVING AND AUTHORIZING THE MAYOR TO SIGN AN INTERGOVERNMENTAL TRANSPORTATION FUNDING AGREEMENT WITH THE REGIONAL TRANSPORTATION AUTHORITY FOR THE REGIONAL TRAFFIC SIGNAL PROGRAM; EQUIPMENT

WHEREAS A.R.S. § 48 5301, et seq., authorizes the Regional Transportation Authority (RTA) to act as a regional taxing authority for the purpose of funding multi-modal transportation operations and improvements identified in the Regional Transportation Plan approved on May 6, 2006; and

WHEREAS the RTA is authorized by A.R.S. § 48-5304 (16) and § 48-5308 to administer and distribute the regional transportation funds to the members of the RTA and to sell bonds in furtherance of that purpose to fund those projects or programs identified in the Regional Transportation Plan; and

WHEREAS the regional traffic signal program; equipment is one of the transportation projects included in the Plan or is eligible for funding as part of a categorical program included in the Plan; and

WHEREAS the Mayor and Council of the Town of Marana feel it is in the best interests of the citizens of Marana to enter into the intergovernmental transportation funding agreement addressed by this resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, as follows:

Section 1. The intergovernmental transportation funding agreement between the Town of Marana and the RTA for the regional traffic signal program; equipment (the "IGA") is hereby approved in substantially the form set forth in the backup materials accompanying this agenda item, and the Mayor is authorized to execute it for and on behalf of the Town of Marana.

Section 2. The Town Manager and staff are hereby directed and authorized to undertake all other and further tasks required or beneficial to carry out the terms, obligations, conditions and objectives of the IGA.

PASSED AND ADOPTED by the Mayor and Council of the Town of Marana, Arizona, this 5<sup>th</sup> day of March, 2019.

---

Mayor Ed Honea

ATTEST:

APPROVED AS TO FORM:

---

Cherry L. Lawson, Town Clerk

---

Frank Cassidy, Town Attorney

**INTERGOVERNMENTAL TRANSPORTATION FUNDING AGREEMENT  
BETWEEN  
THE REGIONAL TRANSPORTATION AUTHORITY OF PIMA COUNTY  
AND  
THE TOWN OF MARANA  
FOR  
REGIONAL TRAFFIC SIGNAL PROGRAM; EQUIPMENT**

This Agreement (hereinafter “the Agreement”) is entered into by and between the Regional Transportation Authority of Pima County (“RTA” or “the Authority”), a special taxing district formed pursuant to Title 48 Chapter 30 of the Arizona Revised Statutes (A.R.S.), and the Town of Marana, a body politic and corporate of the State of Arizona (“the Lead Agency”) pursuant to A.R.S. § 11-952.

**RECITALS**

- A. A.R.S. § 48-5301, et seq., authorizes the Authority to act as a regional taxing authority for the purpose of funding multi-modal transportation operations and improvements identified in the Regional Transportation Plan (“the Plan”) approved by the voters at the special election held in Pima County, Arizona, on May 16, 2006.
- B. The governing board of the Authority is composed of representatives of each member of the regional council of governments in accordance with A.R.S. § 48-5303.
- C. Pursuant to A.R.S. § 48-5304 (12), the governing board of the Authority has sole authority to implement the elements of the Plan.
- D. Pursuant to A.R.S. § 48-5304 (13), the governing board of the Authority shall coordinate the implementation of the Plan among the local jurisdictions.
- E. A Regional Transportation Fund was established by the Arizona Legislature per A.R.S. § 48-5307 to be the repository for those funds collected for the purpose of funding the transportation projects identified in the Plan.
- F. The Authority is authorized by A.R.S. §§ 48-5304 (16) and 48-5308 to administer and distribute the regional transportation funds to the members of the Authority and to sell bonds in furtherance of that purpose to fund those projects or programs identified in the Plan.
- G. The Lead Agency is authorized by A.R.S. § 11-251 (4) or A.R.S. § 9-240 (A) (3) to design, maintain, control and manage public roads within the Lead Agency’s jurisdictional boundaries.
- H. The Lead Agency may have a legal contract with one or more jurisdictions within Pima County empowering the Lead Agency to perform roadway and other improvements outside the Lead Agency’s jurisdictional boundaries.
- I. The Lead Agency, with funding from the Authority, wishes to undertake the design and construction of improvements to the Regional Traffic Signal Program; Equipment (“the Project”).
- J. The Project is one of the transportation projects included in the Plan or is eligible for funding as part of a categorical program included in the Plan.

- K. The Authority intends to fund the Project under the terms and conditions contained in this Agreement and has entered into this Agreement for that purpose.
- L. It is the policy of the Authority to require that a lead agency be identified and an intergovernmental agreement (IGA) be approved and entered into by the Authority and the lead agency before requests for funding reimbursement or payment can be processed by the Authority.
- M. The Town of Marana has been identified as the Lead Agency for the Project and will be responsible for all aspects of project implementation including, but not limited to, planning, project management, risk management, design, right of way acquisition and construction, advertisement, award, execution and administration of the design and construction contracts for the Project. The Authority's role is limited to providing financial support to the Lead Agency for the Project, as described herein.
- N. The RTA's Administrative Code will control all payments and other procedures unless otherwise specified herein.
- O. O. The Authority and the Lead Agency may contract for services and enter into agreements with one another for joint and cooperative action pursuant to A.R.S. § 11-951, et seq.

NOW, THEREFORE, the Town of Marana and Authority, pursuant to the above and in consideration of the matters and things set forth herein, do mutually agree as follows:

#### **AGREEMENT**

- 1. Purpose.** The purpose of this Agreement is to set forth the responsibilities of the parties for the design, construction, maintenance and operation of the Project and to address the legal and administrative matters among the parties.
- 2. Project.** The Project consists of upgrades to traffic signal equipment, as more fully depicted in the attached Exhibit A, including the following:
  - a. Detailed project scope and schedule.
  - b. Project budget and cost breakdown of items eligible for reimbursement by the Authority including any proposed billing of staff time directly attributable to Project.
  - c. Total amount of RTA funding allowed for the Project plus a breakdown of any other regional, local, federal or state funding available.
  - d. Designation of Project phases, if applicable, and any additional related agreements.
  - e. Estimated construction start date and duration of construction.
  - f. Projected timeline.
  - g. Identification of the Lead Agency's duly authorized representative for signing and submitting payment requests.
- 3. Effective Date; Term.** This Agreement shall become effective upon its execution by both parties, and shall continue in effect until all improvements constructed pursuant to this Agreement are completed, all eligible reimbursement payments to the Lead Agency are concluded, and all warranties applicable to the Project have expired.

Due to the potential for changes in funding allocations, it is anticipated that this Agreement will need to be amended during the following time frames in order to coincide with the two-year Transportation Improvement Program (TIP) funding cycle:

- Spring 2021
- Spring 2023
- Spring 2025

#### **4. Responsibilities of the Lead Agency.**

- a. The Lead Agency shall be responsible for the design, construction and/or installation of the Project in accordance with this Agreement and all applicable public roadway, traffic signal, and street lighting design and construction standards. Design Standards are federal, state, county or municipal standards for engineering, traffic, safety or public works facilities design. Examples of Design Standards include the American Association of State Highway and Transportation Officials and Federal Highway Administration standards for highway engineering and construction, the Pima County/City of Tucson Standard Specifications for Public Improvements, the Pima County Roadway Design Manual, the Pima County Department of Transportation /City of Tucson Department of Transportation Pavement Marking Design Manual, and Pima County and municipal design guidelines for roadway lane widths and level of drainage protection.
- b. If consultants or contractors are employed to perform any portion of the Project, the Lead Agency shall be responsible for the contracts for design and construction of the Project and shall select the consultants and contractors to be used on the Project. The Lead Agency shall immediately provide to the Authority copies of any and all contract documents and related materials upon request by the Authority. The Lead Agency shall retain the usual rights of the owner of a public contract including the authority to approve changes and make payments. However, any changes to the Project which would result in the final project cost deviating, by ten or more percent, from the Authority's budget amount for the Project, must be approved by the Authority in advance of those changes being made, regardless of the fact that the Authority will not be paying for them.
- c. The Lead Agency shall be responsible for all traffic management and public safety, including public notification, during construction of the Project.
- d. The Lead Agency shall operate and maintain the improvements during and after completion of construction.
- e. The final cost of the Project shall be that amount necessary to complete the Project including any unanticipated work incorporated into the Project by change orders and amendments executed by the Lead Agency. The Lead Agency shall be responsible for all Project costs in excess of the RTA funds contributed to the Project.
- f. The Lead Agency shall exercise its power of eminent domain, if necessary, to acquire property needed for the Project.
- g. Inasmuch as the RTA's role is limited to Project funding, the Lead Agency agrees, to the fullest extent permitted by Arizona law, to indemnify, defend, and hold harmless the RTA and its Board and officers, from, for, and against, any and all claims, demands, damages, liabilities or penalties, brought by or on behalf of any persons or entities, arising out of the Lead Agency's activities in performance of its obligations under this Agreement or use of RTA's resources, as described herein, regardless of how such claims are worded or styled, and regardless of the specific cause of action or type of claim asserted. This subsection shall survive termination of this Agreement.
- h. The Lead Agency shall require its contractors performing any portion of the Project to name the Authority as additional insured and additional indemnitee with respect to insurance policies for general liability, automobile liability and defects in design in all of the Lead Agency's contracts for the Project. The Lead Agency shall also require its contractors to name the Authority as an additional beneficiary in any performance and payment related assurances posted for the Project.

- i. Monthly, the Lead Agency shall be responsible for preparing and submitting to the Authority reimbursement requests (invoices). Said requests shall be signed by a duly authorized representative of the Lead Agency and shall include sufficient background information documenting payments made to contractors, vendors or any other eligible costs identified in this Agreement or the RTA's Administrative Code. The Lead Agency must retain and certify all vendor receipts, invoices and any related Project records as needed and ensure that they are available for review for a minimum of five (5) years after final payment is made unless otherwise specified herein.
- j. The Lead Agency shall be responsible for submitting a status report describing its progress and adherence to the Project scope, schedule and budget. Progress reports shall be submitted to the RTA monthly.
- k. The Lead Agency shall adhere to the RTA Administrative Code, including the requirements for a Project Charter (where applicable), a Project Closeout Meeting (Roadway Element Projects) and reimbursement limits.
- l. Prior to any construction bid solicitation, the Lead Agency shall provide a complete set of Project documents to the RTA, including all plans and specifications, the engineer's cost estimate, and a listing of all funding sources. The Project may not be advertised prior to written confirmation from the RTA that the Project is compliant with RTA requirements, and that funding is available for the Project.
- m. All right of way remnants from properties acquired with Project funds shall be disposed of in accordance with RTA Policy. All proceeds from the disposal shall be returned to the RTA for expenditure on RTA eligible expenses. In the event the disposal of the property occurs after the Project is completed, the funds shall be returned to the RTA for reallocation to other projects. This subsection shall survive termination of this Agreement.

## **5. Responsibilities of Authority.**

- a. Upon receipt of reimbursement requests, the Authority shall convey to the Lead Agency RTA funds in the amount specified in the Exhibits, on a reimbursement basis, unless otherwise specified herein. All payments and reimbursements shall follow the policies outlined in the RTA's Administrative Code.
- b. Reimbursements will generally be based on the Project schedules established by the Lead Agency and contained in the Exhibits.
- c. The RTA staff will review all payment requests to confirm that the request is for reimbursement of costs incurred by the Lead Agency for the Project. If the Authority determines that additional information is needed, the Lead Agency will be notified of the request for additional information within five business days of the receipt of the invoice by RTA.
- d. Upon approval of the request by RTA, the invoice will be processed for payment within thirty days of the invoice being accepted as complete.
- e. RTA shall provide all necessary cooperation and assistance to its fiscal agent to process all payment requests from the Lead Agency.

**6. Termination.** Either party may terminate this Agreement for material breach of the Agreement by the other party. Prior to any termination under this paragraph, the party allegedly in default shall be given written notice by the other party of the nature of the alleged default. The party said to be in default shall have forty-five days to cure the default. If the default is not cured within that time, the other party may terminate this Agreement. Any such termination shall not relieve either party from liabilities or costs already incurred under this Agreement.

**7. Non-assignment.** Neither party to this Agreement shall assign its rights under this Agreement to any other party without written permission from the other party to this Agreement.

**8. Construction of Agreement.**

- a. Entire agreement. This instrument constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. Any exhibits and the Recitals to this Agreement are incorporated herein by this reference.
- b. Amendment. This Agreement may be modified, amended, altered or changed only by written agreement signed by both parties.
- c. Construction and interpretation. All provisions of this Agreement shall be construed to be consistent with the intention of the parties as expressed in the Recitals hereof.
- d. Captions and headings. The headings used in this Agreement are for convenience only and are not intended to affect the meaning of any provision of this Agreement.
- e. Severability. In the event that any provision of this Agreement or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on other provisions and their application, which can be given effect without the invalid or void provision or application, and to this extent the provisions of the Agreement are severable. In the event that any provision of this Agreement is declared invalid or void, the parties agree to meet promptly upon request of the other party in an attempt to reach an agreement on a substitute provision.
- f. This Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.

**9. Ownership of Improvements.** Ownership and title to all materials, equipment and appurtenances installed pursuant to this Agreement shall automatically vest in the Lead Agency upon completion of the Project.

**10. Legal Jurisdiction.** Nothing in this Agreement shall be construed as either limiting or extending the legal jurisdiction of the Lead Agency or the Authority.

**11. No Joint Venture.** It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between the Lead Agency and any Authority employees, or between Authority and any Lead Agency employees. Neither party shall be liable for any debts, accounts, obligations nor other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.

**12. No Third Party Beneficiaries.** Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care different from the standard of care imposed by law.

**13. Compliance with Laws.** The parties shall comply with all applicable federal, state and local laws, rules, regulations, standards and executive orders, without limitation to those designated within this Agreement.

- a. Anti-Discrimination. Neither party shall discriminate against any employee or client of either party or any other individual in any way because of that person's age, race, creed, color, religion, sex, sexual orientation, familial status, political affiliation, disability or national origin in the course of carrying out the duties pursuant to this IGA. Both parties shall comply with applicable provisions of Executive Order 75-5, as amended by Executive Order 2009-09 of the Governor of

Arizona, which are incorporated into this IGA by reference as if set forth in full herein, including the provisions of A.R.S. § 41-1463.

- b. Americans with Disabilities Act. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. §§ 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36, as well as the Genetic Information Nondiscrimination Act of 2008.
- c. Workers' Compensation. An employee of either party shall be deemed to be an "employee" of both public agencies, while performing pursuant to this Agreement, for purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue. Each party shall post a notice pursuant to the provisions of A.R.S. § 23-906 in substantially the following form:

All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of workers' compensation.

- 14. Waiver**Error! Bookmark not defined.. 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 herein contained.

- 15. Force Majeure.** A party shall not be in default under this Agreement if it does not fulfill any of its obligations under this Agreement because it is prevented or delayed in doing so by reason of uncontrollable forces. The term "uncontrollable forces" shall mean, for the purpose of this Agreement, any cause beyond the control of the party affected, including but not limited to failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, acts of God, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the parties, order of any government officer or court (excluding orders promulgated by the parties themselves), and declared local, state or national emergency, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

- 16. Notification**Error! Bookmark not defined.. All notices or demands upon any party to this Agreement shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

The Authority:

Mr. Farhad Moghimi, Executive Director  
Pima Association of Governments  
1 E. Broadway, Ste. 401  
Tucson, AZ 85701

Town of Marana:

Keith Brann, Town Engineer  
Town of Marana  
11555 W. Civic Center Drive  
Marana, AZ 85653

- 17. Remedies.** Either party may pursue any remedies provided by law for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this Agreement.

**18. Counterparts.** 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. The signature pages from one or more counterpart may be removed from such counterpart and attached to a single instrument.

In Witness Whereof, the Town of Marana has caused this Agreement to be executed by the \_\_\_\_\_, upon resolution of the \_\_\_\_\_ attested to by the \_\_\_\_\_, and the Authority has caused this Agreement to be executed by its Chair of the Board.

**REGIONAL TRANSPORTATION AUTHORITY OF PIMA COUNTY**

\_\_\_\_\_  
, Board Chair

\_\_\_\_\_  
Date

**TOWN OF MARANA:**

\_\_\_\_\_  
Ed Honea, Mayor

\_\_\_\_\_  
Date

**ATTEST:**

\_\_\_\_\_  
Cherry L. Lawson, Town Clerk

\_\_\_\_\_  
Date

The foregoing Agreement between the Town of Marana and the Authority has been approved as to content and is hereby recommended by the undersigned.

\_\_\_\_\_  
Mr. Farhad Moghimi, Executive Director

\_\_\_\_\_  
Keith Brann, Town Engineer

**ATTORNEY CERTIFICATION**

The foregoing Agreement by and between the Regional Transportation Authority of Pima County and the Town of Marana has been reviewed pursuant to A.R.S. § 11-952 by the undersigned who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Agreement.

**Regional Transportation Authority of Pima County:**

\_\_\_\_\_  
Thomas Benavidez, Attorney for the Authority

\_\_\_\_\_  
Date

**Town of Marana:**

\_\_\_\_\_  
Frank Cassidy, Town Attorney

\_\_\_\_\_  
Date

# Regional Transportation Authority of Pima County

Date: March 1, 2019

Exhibit: A

Item: 1

RTA Resolution: 2019 -

1. TIP Project Number: 24.15 RTA Ballot: 40 RTA Project ID: 40ar

2. Sponsor: City of Tucson

3. RTA Plan Element: II Safety Element

4. RTA Plan Sub-Element (If Applicable): Signal Tech. Upgrades to Improve Intersection Traffic Flow

5. Project Name: Regional Traffic Signal Program; Equipment

6. Work Phase(s) Covered by the Exhibit:

|                  |    |        |
|------------------|----|--------|
| Studies:         | \$ | -      |
| Planning/Design: | \$ | -      |
| Right of Way:    | \$ | -      |
| Construction:    | \$ | -      |
| Operations:      | \$ | 37,347 |
| Total:           | \$ | 37,347 |

7. Project Manager Information (person responsible for Status Reports):

|                   |                                                              |
|-------------------|--------------------------------------------------------------|
| Name:             | Scott Leska                                                  |
| Mailing Address   | 11555 W. Civic Center Drive                                  |
| City, ST Zipcode  | Marana AZ 85653                                              |
| Telephone Number: | (520) 382-2675                                               |
| Email Address:    | <a href="mailto:sleska@maranaaz.gov">sleska@maranaaz.gov</a> |

8. Authorized Representative(s) (will sign & submit pay requests):

|                   |                                                              |
|-------------------|--------------------------------------------------------------|
| Name:             | Keith Brann                                                  |
| Mailing Address   | 11555 W. Civic Center Drive                                  |
| City, ST Zipcode  | Marana AZ 85653                                              |
| Telephone Number: | (520) 382-2629                                               |
| Email Address:    | <a href="mailto:KBrann@Maranaaz.gov">KBrann@Maranaaz.gov</a> |

|                   |  |
|-------------------|--|
| Name:             |  |
| Mailing Address   |  |
| City, ST Zipcode  |  |
| Telephone Number: |  |
| Email Address:    |  |

9. Narrative Description of Project Scope, including improvements to be made and project intent (discuss how project will address problematic areas):

The project consists of upgrades to traffic signal equipment necessary to ensure maximized operations and traffic flow.

# Regional Transportation Authority of Pima County

Date: **March 1, 2019**

Exhibit:

**A**

Item:

**1**

RTA Resolution:

**2019 -**

10. Total maximum amount of Authority funding allowed for the Project or Project Component, under this Exhibit:

\$ 37,347

11. Total maximum Authorized RTA funding for the Project, or Project component to-date, including this exhibit. (If this is an amendment to an existing contract, please give the requested amended total.

\$ 37,347

12. Project Budget by Funding Source & Phase:  
Study (DCR/Wildlife Linkages/Value Analysis)=  
Planning/Design =  
Right of Way =  
Construction =  
Operations (Transit or Signal Systems) =  
Total =

| RTA              | Non-RTA     | Total            |
|------------------|-------------|------------------|
| \$ -             | \$ -        | \$ -             |
| \$ -             | \$ -        | \$ -             |
| \$ -             | \$ -        | \$ -             |
| \$ -             | \$ -        | \$ -             |
| \$ 37,347        | \$ -        | \$ 37,347        |
| <u>\$ 37,347</u> | <u>\$ -</u> | <u>\$ 37,347</u> |

13. Project Budget by Funding Source, this exhibit:  
Study (DCR/Wildlife Linkage/Value Analysis)=  
Planning/Design =  
Right of Way =  
Construction =  
Operations (Transit or Signal Systems) =  
Total =

| RTA              | Non-RTA     | Total            |
|------------------|-------------|------------------|
| \$ -             | \$ -        | \$ -             |
| \$ -             | \$ -        | \$ -             |
| \$ -             | \$ -        | \$ -             |
| \$ -             | \$ -        | \$ -             |
| \$ 37,347        | \$ -        | \$ 37,347        |
| <u>\$ 37,347</u> | <u>\$ -</u> | <u>\$ 37,347</u> |

14. Funding Sources (current year dollars):

RTA  
STP  
12.6% Funds  
2.6% Funds  
Impact Fees  
Pima County Local  
Town of Marana Local  
Fare Box Revenue  
FTA Funds  
Other (Specify)

| Project Resources as outlined in the Ballot/TIP | Resources Committed (Includes this request) | Remaining Resource Budget |
|-------------------------------------------------|---------------------------------------------|---------------------------|
| \$ 37,347                                       | \$ 37,347                                   | \$ -                      |
| \$ -                                            | \$ -                                        | \$ -                      |
| \$ -                                            | \$ -                                        | \$ -                      |
| \$ -                                            | \$ -                                        | \$ -                      |
| \$ -                                            | \$ -                                        | \$ -                      |
| \$ -                                            | \$ -                                        | \$ -                      |
| \$ -                                            | \$ -                                        | \$ -                      |
| \$ -                                            | \$ -                                        | \$ -                      |
| \$ -                                            | \$ -                                        | \$ -                      |
| <u>\$ 37,347</u>                                | <u>\$ 37,347</u>                            | <u>\$ -</u>               |

**Total Funding Sources:**

15. Estimated completion date of work funded by this IGA:  
Duration of work covered by this funding request:

06/30/26  
Approximately 24-30 months (through FY 2021)



## **Council-Regular Meeting**

**C3**

**Meeting Date:** 03/05/2019

**To:** Mayor and Council

**From:** Frank Cassidy, Town Attorney

**Date:** March 5, 2019

**Strategic Plan Focus Area:**  
Community

### **Strategic Plan Focus Area Additional Info:**

Principle Statement 1: We will maintain a safe and well-managed community

**Subject:** Resolution No. 2019-017: Relating to Public Works; authorizing Town staff and representatives to acquire by negotiation or condemnation Pima County Assessor's Parcel No. 221-21-004E, located on the south side of Silverbell Road between its two Continental Reserve Loop intersections and consisting of the Picture Rocks Wash drainageway, for flood control purposes (Frank Cassidy)

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### **Discussion:**

During the 2018 rainy season, flooding occurred in and near Picture Rocks Wash where it crosses Silverbell Road (just east of Home Plate restaurant). Picture Rocks Wash immediately south of Silverbell Road is located upon and takes up the entirety of Pima County Assessor's Parcel No. 221-21-004E, currently shown as being owned by CJR Investments LLC. As can be seen in the marked-up aerial photograph provided as part of the backup materials for this agenda item, Picture Rocks Wash at the CJR Investments property is narrower and has more vegetation than it is south and north of the CJR Investments property.

Town staff proposes to purchase the CJR Investments property by negotiation or condemnation, to enable the Town to undertake Picture Rocks Wash drainage and flood control maintenance and improvements. If approved, this resolution authorizes staff to complete the purchase of the property for the estimated cost of obtaining an appraisal (\$3,000), or for the appraised value of the property, without the need to return to Council. If staff is able to negotiate acquisition of the property for a price higher than appraised value, the deal will be brought to Council for approval. If negotiations to purchase the property fail, this proposed resolution will authorize Town staff to file a condemnation action to acquire the property by eminent domain.

Staff will evaluate and determine the nature and timing of physical improvements required to improve the flow of water through this property once the property is acquired. The Public Works department has traditionally maintained similar drainage property in the Continental Ranch and Continental Reserve areas. Staff may come back before Council if the ultimate scope, schedule and cost of required improvements exceed existing budgetary capacity within the Public Works budget.

**Financial Impact:**

Fiscal Year: 2019  
Budgeted Y/N: N  
Amount: \$50,000

Town staff anticipates that this acquisition will cost \$10,000 to \$50,000, including the purchase price and all survey, environmental investigation, title, escrow, recording, and filing fees and costs associated with this acquisition. Based upon the estimated range of cost, staff believes it can absorb the acquisition cost within the existing, general government budget.

**Staff Recommendation:**

Staff recommends adoption of Resolution No. 2019-017, authorizing Town staff and representatives to acquire by negotiation or condemnation Pima County Assessor's Parcel No. 221-21-004E.

**Suggested Motion:**

I move to adopt Resolution No. 2019-017, authorizing Town staff and representatives to acquire by negotiation or condemnation Pima County Assessor's Parcel No. 221-21-004E.

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**Attachments**

Resolution No. 2019-017  
Map CJR Investments

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## **MARANA RESOLUTION NO. 2019-017**

RELATING TO PUBLIC WORKS; AUTHORIZING TOWN STAFF AND REPRESENTATIVES TO ACQUIRE BY NEGOTIATION OR CONDEMNATION PIMA COUNTY ASSESSOR'S PARCEL NO. 221-21-004E, LOCATED ON THE SOUTH SIDE OF SILVERBELL ROAD BETWEEN ITS TWO CONTINENTAL RESERVE LOOP INTERSECTIONS AND CONSISTING OF THE PICTURE ROCKS WASH DRAINAGEWAY, FOR FLOOD CONTROL PURPOSES

WHEREAS the Town of Marana has experienced drainage and flood control issues on and near Silverbell Road at the Picture Rocks Wash crossing during periods of heavy local rainfall; and

WHEREAS the Picture Rocks Wash immediately south of Silverbell Road is located upon and takes up the entirety of Pima County Assessor's Parcel No. 221-21-004E, currently shown as being owned by CJR Investments LLC, an Arizona limited liability company, and is referred to in this resolution as the CJR Property; and

WHEREAS the Town of Marana has determined that it needs to acquire the CJR Property to undertake Picture Rocks Wash drainage and flood control maintenance and improvements; and

WHEREAS the Mayor and Council of the Town of Marana find that the acquisition or condemnation of the CJR Property is necessary for the public health, safety and welfare of the citizens of Marana.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Marana, Arizona, as follows:

Section 1. Town staff and representatives are hereby authorized and directed to negotiate the Town's acquisition of the CJR Property for the CJR Property's fair market value as determined based on an independent fee appraisal.

Section 2. Because the CJR Property consists entirely of the Picture Rocks Wash and is likely to have little fair market value, before procuring an appraisal, Town staff and representatives are authorized to offer the owner the Town staff's estimated cost of obtaining an appraisal.

Section 3. The Town Manager, Town Engineer, and Town staff and representatives are hereby authorized to execute on the Town's behalf any and all documents necessary to acquire the CJR Property on terms consistent with sections 1 or 2 of this resolution.

Section 4. If Town staff and representatives are unable to acquire the CJR Property by negotiation on terms consistent with sections 1 or 2 of this resolution, the Town Attorney is hereby authorized and directed to bring an action under the power of eminent domain to acquire the CJR Property for just compensation as determined by the Court or jury.

Section 5. Town staff and representatives are authorized to pay all survey, environmental investigation, title, escrow, recording, and filing fees and costs associated with this acquisition.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, ARIZONA, this 5<sup>th</sup> day of March, 2019.

---

Mayor Ed Honea

ATTEST:

APPROVED AS TO FORM:

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Cherry L. Lawson, Town Clerk

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Frank Cassidy, Town Attorney

## Picture Rocks Wash at Silverbell Road





## **Council-Regular Meeting**

**C4**

**Meeting Date:** 03/05/2019

**To:** Mayor and Council

**From:** Corey Larriva, Superintendent

**Date:** March 5, 2019

**Strategic Plan Focus Area:**  
Recreation

### **Strategic Plan Focus Area Additional Info:**

Recreation: Seek partnerships with public and private entities to provide programs and enhanced services.

Recreation: Develop strategies to engage the full spectrum of citizens in recreation programming and activities.

Recreation: Capitalize on the uniqueness and value of the Sonoran desert in our recreation programming and tourism attraction efforts.

**Subject:** Resolution No. 2019-018: Relating to Parks and Recreation; approving and authorizing the Mayor to execute an intergovernmental agreement for educational services and programming between the Town of Marana and Pima County (Corey Larriva)

---

### **Discussion:**

In October 2017, the Town of Marana council adopted the Town of Marana Strategic Plan Four, identifying Recreation as one of five focus areas with the principal statement: " We will promote healthy and active lifestyles through dynamic programming, community partnerships and high-quality recreational amenities for Marana residents and visitor," and the initiative statement of using recreation facilities and partnerships with recreation contractors to provide exceptional programming to achieve that goal.

Approval of the intergovernmental agreement provides for Pima County Natural Resources, Parks and Recreation and the Town of Marana Parks and Recreation Department to collaborate in delivering environmental education and interpretive programs in Marana. Under this agreement, Pima County staff will deliver programming and services at designated Town parks, trails, preserves and facilities. Due

to an increasing population and local demand for recreation services, staff sees a desire to expand desert environmental education programming in Marana. With limited resources, this partnership allows staff to collaborate and host County established curriculum, materials and instructors at Marana facilities, without increasing Town personnel. Programs established through this partnership will be represented as an expansion of the Town's Outdoor Recreation services and marketed to attract both resident and visitor participation. Additionally, this agreement allows the Town to share program revenues and retain 25% of paid registration fees.

The IGA has an initial term from March 1, 2019 through June 30, 2023.

**Staff Recommendation:**

Staff recommends approval of the intergovernmental agreement for educational services and programming between the Town of Marana and Pima County.

**Suggested Motion:**

I move to adopt Resolution No. 2019-018, approving and authorizing the Mayor to execute the intergovernmental agreement for educational services and programming between the Town of Marana and Pima County.

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**Attachments**

Resolution No. 2019-018  
Exhibit A - IGA

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## MARANA RESOLUTION NO. 2019-018

RELATING TO PARKS AND RECREATION; APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT FOR EDUCATIONAL SERVICES AND PROGRAMMING BETWEEN THE TOWN OF MARANA AND PIMA COUNTY

WHEREAS the Town of Marana and Pima County have negotiated an intergovernmental agreement to provide educational services and programming at designated Town parks, trails, preserves, and facilities; and

WHEREAS the Town and Pima County may contract for services and enter into agreements with one another for joint and cooperative action pursuant to A.R.S. § 11-951, *et seq.*; and

WHEREAS the Mayor and Council of the Town of Marana find that this resolution is in the best interests of the Town of Marana and its citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, that the Intergovernmental Agreement between the Town of Marana and Pima County for the delivery of educational services and programming at designated Town parks, trails, preserves, and facilities, attached to this resolution and incorporated by this reference as Exhibit A, is hereby approved, and the Mayor is authorized to execute it for and on behalf of the Town of Marana.

IT IS FURTHER RESOLVED that the Town Manager and staff are hereby directed and authorized to undertake all other and further tasks required or beneficial to carry out the terms, obligations, conditions and objectives of the agreement.

PASSED AND ADOPTED by the Mayor and Council of the Town of Marana, Arizona, this 5th day of March, 2019.

---

Mayor Ed Honea

ATTEST:

APPROVED AS TO FORM:

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Cherry L. Lawson, Town Clerk

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Frank Cassidy, Town Attorney

|                                                                                                             |  |  |
|-------------------------------------------------------------------------------------------------------------|--|--|
| <b>CONTRACT</b>                                                                                             |  |  |
| NO. <u>CTN-PR-19-127</u>                                                                                    |  |  |
| AMENDMENT NO. _____                                                                                         |  |  |
| This number must appear on all<br>invoices, correspondence and<br>documents pertaining to this<br>contract. |  |  |

## INTERGOVERNMENTAL AGREEMENT FOR EDUCATIONAL SERVICES AND PROGRAMMING BETWEEN THE TOWN OF MARANA AND PIMA COUNTY

This INTERGOVERNMENTAL AGREEMENT (this "Agreement") is entered into by and between the TOWN OF MARANA ("Town"), an Arizona municipal corporation, and PIMA COUNTY ("County"), a body politic and corporate of the State of Arizona. The Town and County may be collectively referred to as Parties ("Parties"), each of which may individually be referred to as Party ("Party") herein.

### RECITALS

A. In October 2017, the Town of Marana Council adopted the Town of Marana Strategic Plan Four, identifying Recreation as one of its five focus areas, with the principle statement: "We will promote healthy and active lifestyles through dynamic programming, community partnerships, and high-quality recreational amenities for Marana residents and visitors," and the initiative statement of using recreation facilities and partnerships with recreation contractors to provide exceptional programming to achieve that goal.

B. Pima County Natural Resources, Parks and Recreation offers environmental education and interpretive programs to citizens, adding a vital dimension to the lives of residents and visitors in the community.

C. The Parties desire to partner together to provide educational services and programming at various Town of Marana facilities and sites.

D. Town and County may contract for services and enter into agreements with one another for joint and cooperative action pursuant to A.R.S. § 11-951, *et seq.*

### AGREEMENT

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants, conditions and agreements set forth in this Agreement, the Parties agree as follows:

#### Article 1. Purpose

The purpose of this Agreement is to establish the rights and responsibilities of the Parties regarding the delivery of environmental education and interpretive programs by County at designated Town parks, trails, preserves, and facilities.

## **Article 2. Scope of Services**

2.1 County will provide environmental education classes and programming targeted at youth, teenagers, and adults at designated Town locations.

2.2 The Parties will mutually develop and agree upon a joint schedule of classes, which may be adjusted and amended by the Parties during the term of this Agreement without requiring amendment of this Agreement.

## **Article 3. County Responsibilities**

During the term of this Agreement, County will:

3.1 Provide curriculum and materials for each class.

3.2 Select, employ, train, place, and supervise qualified instructors.

3.3 Pay wages and benefits, if applicable, for instructors.

3.4 Hold classes published in the schedule of classes if minimum enrollment is met.

3.5 Create additional class selections based upon Town's curriculum selection from County's bank of courses, but only if there is such a demand that County, in its sole discretion, deems additional class selections as necessary and prudent.

3.6 Be responsible for the safety and well-being of students during the scheduled times and dates of instruction.

3.7 Ensure the condition of the instructional site is returned to the same condition in which it was received at the beginning of the class.

3.8 Ensure compliance with all Town rules and regulations related to the use of Town facilities.

## **Article 4. Town Responsibilities**

During the term of this Agreement Town will:

4.1 Promote the environmental education classes and programming throughout the Town.

4.2 Provide Town facilities appropriate for the topic and learning environment, which may include, without limitation, parks, trails, or preserves.

4.3 Accept registration and collect payment from students registering for classes.

4.4 Coordinate access and provide instructor entry to Town facilities as needed.

4.5 Provide Town personnel contacts for coordinating logistics.

4.6 Honor the published calendar of courses and prepare a calendar of courses for future publication in the schedule of classes.

4.7 Ensure safe maintenance of parking lots, driveway areas, landscaping, lighting and alarm systems as owner of the facilities used.

4.8 Collect feedback from students/parents on the learning experience of each student for each class, summarize this information, and provide it to County.

### **Article 5. Financing**

5.1 The environmental education classes and programming provided pursuant to this Agreement will be funded entirely through registration fees paid by program participants, as set forth in this Article.

5.2 County will establish registration fees for the classes and programming, including, without limitation, discounted fees for Pima County Environmental Education annual pass holders.

5.3 Town will publish and collect all registration fees, as those fees are determined and established by County, for the classes and programming.

5.4 Within seven days of the end of each class or program, Town will provide to County a roster of participants registered in each class or program.

5.5 County will invoice Town in an amount equal to 75% of each paid participant's base registration fee, not including any non-resident fees collected by the Town. County must submit invoices within the fiscal year when services were rendered. If a service crosses over from one fiscal year to another, the invoice will be submitted in the new fiscal year.

5.6 Town must pay all invoices submitted by County pursuant to this Agreement within 30 calendar days of receipt of the invoice.

5.7 Town will not charge County any fees for the use of Town's facilities.

### **Article 6. Term and Termination**

6.1 This Agreement commences March 1, 2019 ("Effective Date"), and expires on June 30, 2023, unless earlier terminated by either Party in accord with the terms of this Agreement. The term of this Agreement may be extended by written amendment signed by both Parties.

6.2 This Agreement may be terminated under the following circumstances:

6.2.1 This Agreement may be terminated by either Party without cause with 60 days' written notice to the other Party.

6.2.2 A Party may terminate this Agreement for material breach of the Agreement by the other Party. Prior to any termination under this paragraph, the Party allegedly in default shall be given written notice by the other Party of the nature of the alleged default. The Party said to be in default will have 45 days to cure such default. If the default is not cured within that time, the non-defaulting Party may terminate this Agreement. Any such termination will not relieve either Party from liabilities or costs already incurred under this Agreement.

6.2.3 This Agreement may be terminated for a conflict of interest as set forth in A.R.S. § 38-511, the relevant portions of which are hereby incorporated by reference.

6.2.4 Notwithstanding any other provision in this Agreement, this Agreement may be terminated if, for any reason, there are not sufficient appropriated and available funds for the purpose of maintaining this Agreement. In the event of such cancellation, the Parties shall have no further obligation to each other, other than for payment of services rendered prior to termination.

#### **Article 7. Access to Records**

7.1 The Parties will maintain books, records, documents, and other evidence directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles and practices consistently applied. Each Party will have access to such books, records, documents, and other evidence for inspection, audit and copying and will provide proper facilities for such access and inspections.

7.2 Audits conducted under this Article will be performed in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or auditing agency.

7.3 The Parties agree to disclose all information and reports described in Section 7.1 of this Article, to a Party's auditor, provided that (1) the audited Party is afforded the opportunity for an audit exit conference; (2) the audited Party has an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report; and (3) the final audit report will include written comments of reasonable length, if any, of the audited Party. Educational records provided pursuant to the Agreement will be used solely for the purposes of this Agreement and will not be disclosed except as provided by law, including, without limitation, the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g.

#### **Article 8. Compliance with Laws**

8.1 The Parties will comply with all applicable federal, state and local laws, rules, regulations, standards and executive orders, without limitation to those designated within this Agreement.

8.2 The Parties agree to comply with all provisions and requirements of Arizona Executive Order 2009-09, which supersedes Executive Order 99-4 and amends Executive Order 75-5, and which is hereby incorporated into this Agreement as if set forth in full herein. During the performance of this Agreement, the Parties will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

8.3 The Parties will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.

8.4 The Parties hereby certify that they will at all times during the term of this Agreement comply with all federal immigration laws applicable to the Parties' employment of its employees, and with the requirements of A.R.S. § 23-214 (A).

#### **Article 9. Indemnification**

To the fullest extent permitted by law, each Party (as "indemnitor") will defend, indemnify and hold harmless the other Party (as "indemnitee"), its officers, officials, employees, agents, volunteers, successors, and assigns (the "indemnified group") from and against any and all claims, damages, losses, liabilities and expenses of any nature whatsoever (including but not limited to reasonable attorneys' fees, court costs, the costs of appellate proceedings, and all claim adjusting and handling expense) relating to, arising out of, resulting from or alleged to have resulted from the indemnitor's omissions, negligence, or willful misconduct relating to any action or inaction of this Agreement (collectively, "claims") including but not limited to work, services, acts, errors, mistakes, or omissions in the performance of this Agreement by anyone directly or indirectly employed by or contracting with the indemnitor, or any person for whose acts and liabilities are the obligation of the indemnitor. If any claim, action or proceeding is brought against the indemnified group, indemnitor must, at its sole cost and expense, resist or defend such claim or action on behalf of the indemnified group, but only to the extent that such claims result in vicarious/derivative liability to the indemnitee and are caused by the omission, negligence, or willful misconduct of the indemnitor, its officers, officials, agents, employees or volunteers; provided, however, that the indemnitor shall have no obligation to indemnify the indemnified group for the indemnified group's negligence (passive or otherwise) or willful misconduct. The indemnity provisions of this Agreement survive the termination of this Agreement.

#### **Article 10. Insurance**

The Parties agree that they shall maintain for the duration of this Agreement policies of public liability insurance sufficient to cover all of their obligations undertaken in the implementation of this Agreement.

#### **Article 11. No Joint Venture**

It is not intended by this Agreement to, and nothing contained in this Agreement may be construed to create any partnership, joint venture, or employment relationship between the Parties or create any employer-employee relationship between the Parties. No Party hereto shall be liable for any debts, accounts, obligations, or other liabilities whatsoever of the other.

#### **Article 12. Workers' Compensation**

For purposes of Workers' Compensation, an employee of a Party to this Agreement who works under the jurisdiction or control of, or who works within the jurisdictional boundaries of, another Party pursuant to this specific Agreement, is deemed to be an employee of both Parties, as provided in A.R.S. § 23-1022(D). The primary employer of

such employee shall be solely liable for payment of Workers' Compensation benefits for the purposes of this paragraph. Each Party will comply with the notice provisions of A.R.S. § 23-1022(E).

### **Article 13. No Third Party Beneficiaries**

This Agreement is intended to govern the rights and duties of the contracting Parties only and is not intended to confer on any third party any rights or benefits which would not exist in the absence of this Agreement.

### **Article 14. Notices**

All notice requests and authorizations provided for in this Agreement must be in writing and delivered or mailed, addressed as follows:

Town: TOWN OF MARANA  
Attention: Town Manager  
Address: 11555 W. Civic Center Drive  
Marana, Arizona 85653

With a copy to: TOWN OF MARANA  
Attention: Parks and Recreation Director  
11555 W. Civic Center Drive  
Marana, Arizona 85653

County: PIMA COUNTY  
Attention: Natural Resources, Parks and Recreation Director's Office  
3500 W. River Road  
Address: Tucson, Arizona 85741

### **Article 15. Waiver**

Neither Party's waiver of the other's breach of any term or condition contained in this Agreement will be deemed a waiver of any subsequent breach of the same or any other term or condition of this Agreement.

### **Article 16. Remedies**

Either Party may pursue any remedies available to it for the breach of this Agreement, and no right or remedy is intended to be exclusive of any other right or remedy existing at law or at equity or by virtue of this Agreement.

### **Article 17. Force Majeure**

A Party will not be in default under this Agreement if it does not fulfill any of its obligations under this Agreement because it is prevented or delayed in doing so by reason of uncontrollable forces. The term "uncontrollable forces" shall mean, for the purpose of this Agreement, any cause beyond the control of the Party affected, including but not limited to failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material

or energy shortage, casualty loss, acts of God, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the Parties, order of any government officer or court (excluding orders promulgated by the Parties themselves), and declared local, state or national emergency, which, by exercise of due diligence and foresight, such Party could not reasonably have been expected to avoid. Either Party rendered unable to fulfill any obligations by reason of uncontrollable forces will exercise due diligence to remove such inability with all reasonable dispatch.

#### **Article 18. Construction of Agreement**

18.1 This Agreement is governed by and will be construed and enforced in accordance with the laws of the State of Arizona.

18.2 This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations or agreements, either written or oral.

18.3 This Agreement may not be changed or modified except by written agreement signed by all Parties

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date set forth below their representatives' respective signatures.

"TOWN":

THE TOWN OF MARANA, an Arizona  
municipal corporation

"COUNTY":

PIMA COUNTY, a body politic and corporate  
of the State of Arizona

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Chairman, Board of Supervisors

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

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

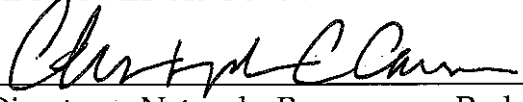
ATTEST:

ATTEST:

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Clerk of the Board

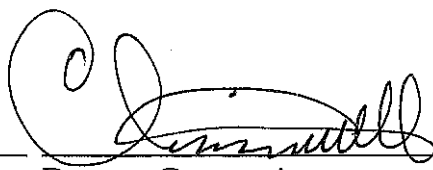
APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Director, Natural Resources, Parks &  
Recreation

**ATTORNEY CERTIFICATION**

Pursuant to A.R.S. § 11-952, the undersigned public agency attorneys have determined that the foregoing Intergovernmental Agreement between the Town of Marana and Pima County is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the Party represented by the respective undersigned attorney.

\_\_\_\_\_  
Town Attorney  
Town of Marana

  
\_\_\_\_\_  
Deputy County Attorney  
Pima County



## Council-Regular Meeting

C5

**Meeting Date:** 03/05/2019

**To:** Mayor and Council

**From:** Frank Cassidy, Town Attorney

**Date:** March 5, 2019

**Strategic Plan Focus Area:**

Not Applicable

**Subject:** Resolution No. 2019-019: Relating to Real Estate; approving and authorizing the Mayor to sign Purchase Agreements with Metropolitan Domestic Water Improvement District for the sale of two well sites on Town property in the vicinity of the Marana Regional Airport (Frank Cassidy)

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### Discussion:

The Metropolitan Domestic Water Improvement District (Metro Water), Marana, and Oro Valley store water underground or utilize groundwater savings facilities in the north Marana area. To use this water, the three entities have entered into an IGA to construct the Northwest Recharge, Recovery, and Delivery System (NWRRDS), to transport water from north Marana to meet current and future water demands in the north area of the Tucson Basin.

To recover and construct recovery wells for its recharged water resources, Metro Water is in the process of acquiring well sites in the vicinity of the Marana Regional Airport. To that end, Metro Water seeks to acquire two well sites on the Town's property immediately east of the Marana Regional Airport, and has presented Purchase Agreements and related documents for the acquisition of the two well sites. Metro Water has provided independent fee appraisal documentation showing that the property's fair market value is \$15,000 per acre.

- Well site 1, located just west of the CAP canal at the far east point of the Town's holdings and abutting the 55-foot strip of property Metro Water purchased from the Town in 2017, consists of 0.78 acres. Metro Water has offered \$11,700 for well site 1.
- Well site 2, located at the northeast point of the Town's holdings, just west of the existing constructed recharge facility, consists of 0.77 acres. Metro Water has offered \$11,565 for well site 2.

For both well sites, the purchase agreements require Metro Water to relocate the existing

airport boundary fencing so that the well sites are located outside of the airport boundary fencing. The purchase agreement for well site 2 prohibits Metro Water from taking access through the Town's remaining property, and requires the access to be taken northward through property owned by BKW Farms.

Both well sites are on the fringe of the Town's holdings east of the airport. The Town has no plans for either location, and neither well site appears to meaningfully affect any future Town development. A marked-up aerial photograph showing the locations of the well sites is included with the backup materials, along with the purchase agreements for the two well sites.

**Financial Impact:**

If approved, these two purchase agreements will generate \$23,265 in sales proceeds to the Town.

**Staff Recommendation:**

Town staff recommends adoption of Resolution No. 2019-019, approving and authorizing the Mayor to sign Purchase Agreements with Metro Water for the sale of two well sites on Town property in the vicinity of the Marana Regional Airport.

**Suggested Motion:**

I move to adopt Resolution No. 2019-019, approving and authorizing the Mayor to sign Purchase Agreements with Metro Water for the sale of two well sites on Town property in the vicinity of the Marana Regional Airport.

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**Attachments**

Resolution No. 2019-019  
Well Sites Aerial Mark-up  
Purchase Agt Well Site 1  
Purchase Agt Well Site 2

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## MARANA RESOLUTION NO. 2019-019

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RELATING TO REAL ESTATE; APPROVING AND AUTHORIZING THE MAYOR TO SIGN PURCHASE AGREEMENTS WITH METROPOLITAN DOMESTIC WATER IMPROVEMENT DISTRICT FOR THE SALE OF TWO WELL SITES ON TOWN PROPERTY IN THE VICINITY OF THE MARANA REGIONAL AIRPORT

WHEREAS the Metropolitan Domestic Water Improvement District (Metro Water), the Town of Marana, and the Town of Oro Valley currently store water underground or utilize groundwater savings facilities in the north Marana area; and

WHEREAS, to utilize this water, the three entities have entered into an intergovernmental agreement to facilitate the construction of the Northwest Recharge, Recovery, and Delivery System (NWRRDS), to transport water from north Marana to meet current and future water demands in the north area of the Tucson Basin; and

WHEREAS Metro Water is in the process of acquiring well sites in the vicinity of the Marana Regional Airport, to construct recovery wells for Metro Water's recharged water resources in the vicinity; and

WHEREAS Metro Water needs to acquire two well sites on the Town's property immediately east of the Marana Regional Airport; and

WHEREAS Metro Water has presented Purchase Agreements and related documents for the acquisition of the two well sites on the Town's land; and

WHEREAS the Town Council finds that the proposed Metro Water Purchase Agreements are in the best interests of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, ARIZONA, AS FOLLOWS:

SECTION 1. The two Purchase Agreements, addressing Metro Water's acquisition of two well sites on Town property east of the Marana Regional Airport, in substantially the form found in the agenda materials for this meeting, are hereby approved, and the Mayor is hereby authorized to sign them and any associated deeds and related sale documents for and on behalf of the Town of Marana.

SECTION 2. The Town's Manager and staff are hereby directed and authorized to undertake all other and further tasks required or beneficial to carry out the terms, obligations, and objectives of the Metro Water Purchase Agreements.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE TOWN  
OF MARANA, ARIZONA, this 5<sup>th</sup> day of March, 2019.

---

Mayor Ed Honea

ATTEST:

APPROVED AS TO FORM:

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Cherry L. Lawson, Town Clerk

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Frank Cassidy, Town Attorney



Well Site 2

Well Site 1

## **PURCHASE AGREEMENT**

This Agreement is made by and between **Town of Marana**, an Arizona municipal corporation, (“**Owner**”), and **Metropolitan Domestic Water Improvement District**, an Arizona Municipal Corporation, (“**Buyer**”).

**Property and Purchase Amount.** **Owner** owns the property described on **Exhibit “A”** and depicted on **Exhibit “A-1”** attached hereto (the “**Property**”). **Buyer** agrees to acquire from **Owner**, and **Owner** agrees to convey to **Buyer**, in Fee, the **Property**, for the sum of \$11,700.00, (the “**Purchase Amount**”), subject to the terms and conditions set forth herein. The **Buyer** also agrees to pay costs as set forth below.

**Non-monetary compensation provision:** Relocation of existing fencing: The Town of Marana and Metro Water District Improvement District (MDWID) agree that MDWID will be responsible, at MDWID’s expense, for the relocation of the existing airport fencing to the southwest and northwest sides of Well Site 1 parcel.

**Escrow and Prorations.** The **Purchase Amount** shall be payable in full at closing. The date of closing shall be used for proration of property taxes and other similar costs as agreed. Property taxes shall be prorated based upon both the date of closing and the size of the **Property**.

**Buyer and Owner** mutually agree to engage Stewart Title Company as Escrow Company for the purpose of satisfying all lienholders and securing any necessary releases of encumbrances. Costs associated with satisfying all lienholders and securing any necessary releases of encumbrances shall be the sole responsibility of the **Buyer** and shall be deducted from the purchase amount at closing. This contract shall serve as escrow instructions in the event an escrow is opened.

**Closing Costs.** Expenses incidental to transfer of title, including title reports, recording fees, escrow fees, releases and Owners Title Insurance Policy, shall be paid **by the Buyer**.

**Title.** A Title Report and Commitment of Title Insurance for the subject **Property** shall be obtained by the **Buyer**. **Buyer** reserves the right to terminate this agreement.

**Warranty Deed.** The **Owner** shall provide a Warranty Deed and the **Owner** shall execute said Warranty Deed granting to **Buyer** fee interest subject only to those matters identified as **exceptions in the title report**.

**Environmental Representations.** The **Buyer** and the **Owner** agree that neither party is assuming any obligation of the other party relating to any potential liability, if any, arising from the environmental condition of the Property, each party remaining responsible for its obligations as set forth by law. **Owner** hereby represents and warrants that, to the best of **Owner's** knowledge, no pollutants, contaminants, toxic or hazardous substances, wastes or materials have been stored, used or are located on the Property or within any surface or subsurface waters thereof; that no underground tanks have been located on the Property; that the Property is in compliance with all Federal, State and local environmental laws, regulations and ordinances; and that no legal action of any kind has been commenced or threatened with respect to the Property.

**Environmental Inspection Rights.** **Owner** shall permit **Buyer** to conduct such inspections of the Property as the **Buyer** deems necessary to determine the environmental condition of the Property. If environmental inspections do not specifically identify contamination but indicate a potential for contamination and recommend further testing or inspection, the parties hereby agree to extend the date of closing to 30 days after the report for such additional testing or inspection is completed on behalf of **Buyer**, but not later than an additional 180-day extension. If any environmental inspection reveals the presence of contamination or the need to conduct environmental clean up **Buyer** may terminate this agreement at no cost or penalty.

**Right of Entry.** The **Owner** hereby grants to **Buyer**, its agents and contractors, Right of Entry to the Property for inspections, tests, surveys, etc.

**No Personal Property.** The parties acknowledge that no personal property is being transferred pursuant to this Agreement.

**Security Interest.** Monies payable under this Agreement may be due holders (the "Lienholders") of certain notes secured by mortgages or deeds of trusts, up to and including the total amount of unpaid principal, interest and penalty on the notes, if any, and shall, upon demand by the Lienholders, be paid to the Lienholders. **Owner** shall obtain from the Lienholders releases associated with the transfer of this Property, and prior to close of escrow.

**Possession and Closing.** Possession of the Property shall be given to the **Buyer** on date of closing. Closing shall be on or before 60 days after the date this Agreement is approved by the **Buyer** or 30 days after receipt of all necessary releases or consents from Lienholders.

**No Leases.** **Owner** warrants that there are no oral or written leases on all or any portion of the Property.

**Broker's Commission.** No broker or finder has been used and **Buyer** owes no brokerage or finders fees related to this transaction. Owner has sole responsibility to pay all brokerage or finders fees to any agent employed.

**No Sale.** Owner shall not sell or encumber the Property in any way before closing.

**Survival of Representation and Warranties.** All representations and warranties contained herein shall survive the closing.

**Entire Agreement.** This signed document shall constitute the entire Agreement between the parties and no modification or amendment to this Agreement shall be binding unless in writing and signed by both parties.

Grantor: Town of Marana, an Arizona municipal corporation.

\_\_\_\_\_  
By: Ed Honea  
As: Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
By: Cherry L. Lawson  
As: Marana Town Clerk

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

By \_\_\_\_\_  
Frank Cassidy  
As: Town Attorney

\_\_\_\_\_  
Date

Approved and Accepted by Metropolitan Domestic Water Improvement District, an Arizona Municipal Corporation.

\_\_\_\_\_

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

***Purchase Agreement***

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## Exhibit "A"

**EXHIBIT "A"**  
LEGAL DESCRIPTION  
FOR  
WELL SITE 1  
TOWN OF MARANA

A PARCEL OF LAND SITUATED IN THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 12 SOUTH, RANGE 11 EAST OF THE GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 10, FROM WHICH THE WEST QUARTER CORNER BEARS SOUTH 89 DEGREES 24 MINUTES 15 SECONDS WEST, 5 279.48 FEET;

THENCE SOUTH 89 DEGREES 24 MINUTES 15 SECONDS WEST, ALONG AND WITH THE EAST-WEST MID-SECTION LINE OF SAID SECTION 10, 1432.98 FEET;

THENCE DEPARTING SAID EAST-WEST MID-SECTION LINE, NORTH 00 DEGREES 35 MINUTES 45 SECONDS WEST, 469.82 FEET TO AN ANGLE POINT IN THE EAST LINE OF THE TOWN OF MARANA AIRPORT;

THENCE ALONG AND WITH SAID EAST LINE, NORTH 31 DEGREES 34 MINUTES 19 SECONDS EAST, 1035.43 FEET TO A BRASS CAP FOR THE NORTHEAST CORNER OF SAID TOWN OF MARANA AIRPORT;

THENCE ALONG AND WITH A NORTHERLY LINE OF SAID TOWN OF MARANA AIRPORT, NORTH 50 DEGREES 05 MINUTES 35 SECONDS WEST, 55.59 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL;

THENCE SOUTH 31 DEGREES 34 MINUTES 19 SECONDS WEST, 212.24 FEET;

THENCE NORTH 50 DEGREES 05 MINUTES 35 SECONDS WEST, 161.71 FEET;

THENCE NORTH 31 DEGREES 34 MINUTES 19 SECONDS EAST, 212.24 FEET TO THE AFORESAID NORTHERLY LINE OF SAID TOWN OF MARANA AIRPORT;

THENCE ALONG AND WITH SAID NORTHERLY LINE, SOUTH 50 DEGREES 05 MINUTES 35 SECONDS EAST, 161.71 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL AND CONTAINING A COMPUTED AREA OF 33,959 SQUARE FEET OR 0.780 ACRES OF LAND, MORE OR LESS.

THE ATTACHED EXHIBIT 'A' IS TO BE INCLUDED AND MADE PART OF THIS DESCRIPTION.



MARANA-WELL SITE 1

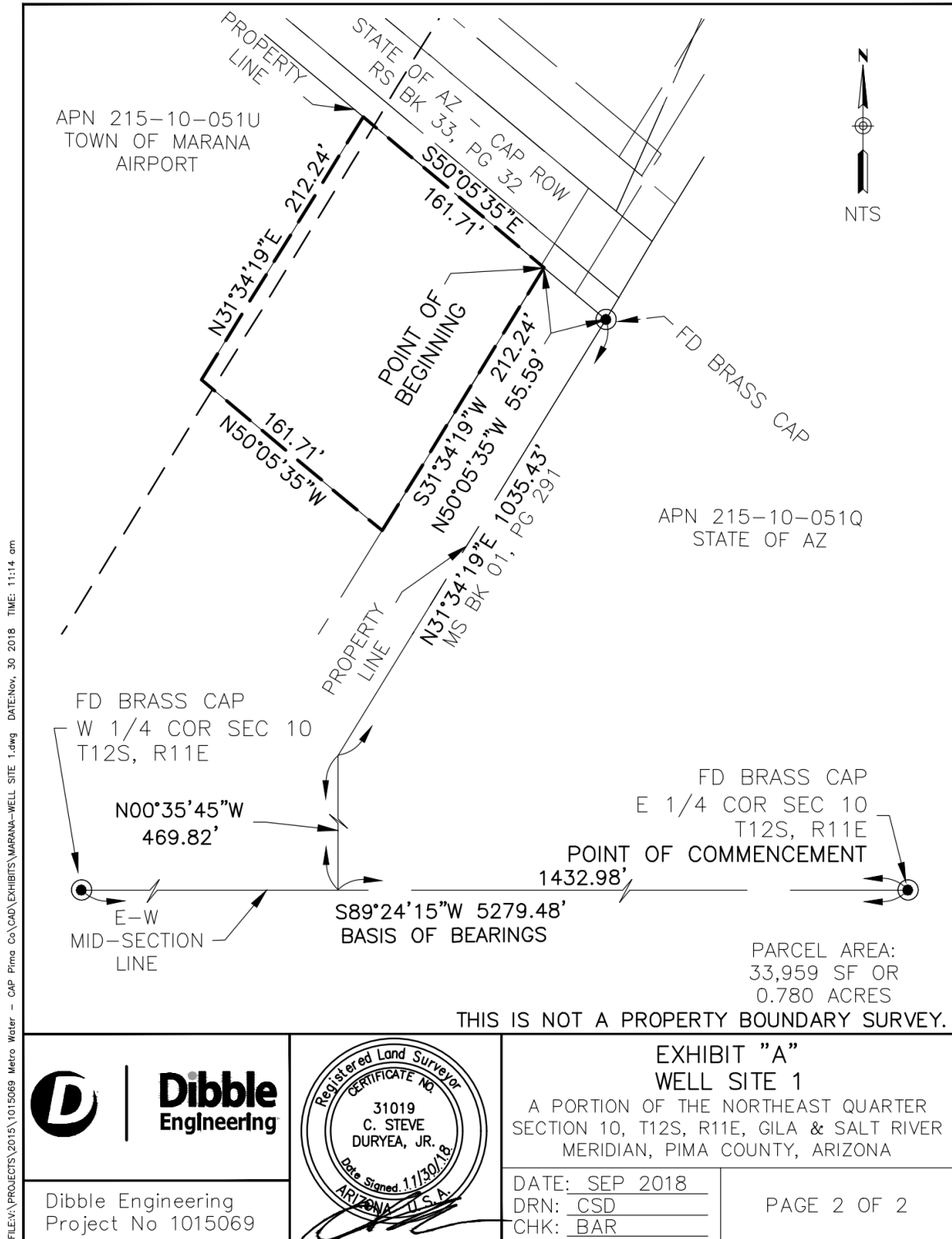
Page 1 of 2

DIBBLE ENGINEERING  
PROJECT NO. 1015069

**Purchase Agreement**

Page 4

# Exhibit "A-1"



**Purchase Agreement**

Page 5

## **PURCHASE AGREEMENT**

This Agreement is made by and between **Town of Marana**, an Arizona municipal corporation, (“**Owner**”), and **Metropolitan Domestic Water Improvement District**, an Arizona Municipal Corporation, (“**Buyer**”).

**Property and Purchase Amount.** **Owner** owns the property described on **Exhibit “A”** and depicted on **Exhibit “A-1”** attached hereto (the “**Property**”). **Buyer** agrees to acquire from **Owner**, and **Owner** agrees to convey to **Buyer**, in Fee, the **Property**, for the sum of \$11,565.00, (the “**Purchase Amount**”), subject to the terms and conditions set forth herein. The **Buyer** also agrees to pay costs as set forth below.

**Non-Monetary Compensation Provision:** Relocation of existing fencing; The Town of Marana and Metro Water District Improvement District (MDWID) agree that MDWID will be responsible, at MDWID’s expense, for the relocation of the existing airport fencing to the south and west sides of Well Site 2 parcel. MDWID agrees not to access Well Site 2 through the airport property.

**Escrow and Prorations.** The **Purchase Amount** shall be payable in full at closing. The date of closing shall be used for proration of property taxes and other similar costs as agreed. Property taxes shall be prorated based upon both the date of closing and the size of the **Property**.

**Buyer and Owner** mutually agree to engage Stewart Title Company as Escrow Company for the purpose of satisfying all lienholders and securing any necessary releases of encumbrances. Costs associated with satisfying all lienholders and securing any necessary releases of encumbrances shall be the sole responsibility of the **Buyer** and shall be deducted from the purchase amount at closing. This contract shall serve as escrow instructions in the event an escrow is opened.

**Closing Costs.** Expenses incidental to transfer of title, including title reports, recording fees, escrow fees, releases and Owners Title Insurance Policy, shall be paid **by the Buyer**.

**Title.** A Title Report and Commitment of Title Insurance for the subject **Property** shall be obtained by the **Buyer**. **Buyer** reserves the right to terminate this agreement.

**Warranty Deed.** The **Owner** shall provide a Warranty Deed and the **Owner** shall execute said Warranty Deed granting to **Buyer** an easement interest subject only to those matters identified in as **exceptions in the title report**.

**Environmental Representations.** The **Buyer** and the **Owner** agree that neither party is assuming any obligation of the other party relating to any potential liability, if any, arising from the environmental condition of the Property, each party remaining responsible for its obligations as set forth by law. **Owner** hereby represents and warrants that, to the best of **Owner's** knowledge, no pollutants, contaminants, toxic or hazardous substances, wastes or materials have been stored, used or are located on the Property or within any surface or subsurface waters thereof; that no underground tanks have been located on the Property; that the Property is in compliance with all Federal, State and local environmental laws, regulations and ordinances; and that no legal action of any kind has been commenced or threatened with respect to the Property.

**Environmental Inspection Rights.** **Owner** shall permit **Buyer** to conduct such inspections of the Property as the **Buyer** deems necessary to determine the environmental condition of the Property. If environmental inspections do not specifically identify contamination but indicate a potential for contamination and recommend further testing or inspection, the parties hereby agree to extend the date of closing to 30 days after the report for such additional testing or inspection is completed on behalf of **Buyer**, but not later than an additional 180-day extension. If any environmental inspection reveals the presence of contamination or the need to conduct environmental clean up **Buyer** may terminate this agreement at no cost or penalty.

**Right of Entry.** The **Owner** hereby grants to **Buyer**, its agents and contractors, Right of Entry to the Property for inspections, tests, surveys, etc.

**No Personal Property.** The parties acknowledge that no personal property is being transferred pursuant to this Agreement.

**Security Interest.** Monies payable under this Agreement may be due holders (the "Lienholders") of certain notes secured by mortgages or deeds of trusts, up to and including the total amount of unpaid principal, interest and penalty on the notes, if any, and shall, upon demand by the Lienholders, be paid to the Lienholders. **Owner** shall obtain from the Lienholders releases associated with the transfer of this Property, and prior to close of escrow.

**Possession and Closing.** Possession of the Property shall be given to the **Buyer** on date of closing. Closing shall be on or before 60 days after the date this Agreement is approved by the **Buyer** or 30 days after receipt of all necessary releases or consents from Lienholders.

**No Leases.** **Owner** warrants that there are no oral or written leases on all or any portion of the Property.

**Broker's Commission.** No broker or finder has been used and **Buyer** owes no brokerage or finders fees related to this transaction. Owner has sole responsibility to pay all brokerage or finders fees to any agent employed.

**No Sale.** Owner shall not sell or encumber the Property in any way before closing.

**Survival of Representation and Warranties.** All representations and warranties contained herein shall survive the closing.

**Entire Agreement.** This signed document shall constitute the entire Agreement between the parties and no modification or amendment to this Agreement shall be binding unless in writing and signed by both parties.

Grantor: Town of Marana, an Arizona municipal corporation.

\_\_\_\_\_  
By: Ed Honea  
As: Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
By Cherry L. Lawson  
As: Marana Town Clerk

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
By: Frank Cassidy  
As: Town Attorney

\_\_\_\_\_  
Date

Approved and Accepted by Metropolitan Domestic Water Improvement District, an Arizona Municipal Corporation.

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

***Purchase Agreement***

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## Exhibit "A"

LEGAL DESCRIPTION  
FOR  
WELL SITE 2  
TOWN OF MARANA

A PARCEL OF LAND SITUATED IN THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 12 SOUTH, RANGE 11 EAST OF THE GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST QUARTER CORNER OF SAID SECTION 4, FROM WHICH THE SOUTH SIXTEENTH CORNER BEARS SOUTH 00 DEGREES 33 MINUTES 28 SECONDS EAST, 1319.60 FEET, SAID POINT MONUMENTED BY A 1/2 INCH REBAR WITH CAP "RLS 39325";

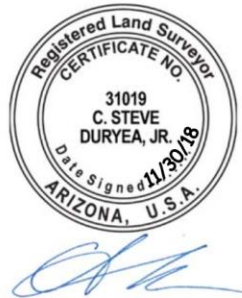
THENCE ALONG AND WITH THE EAST LINE OF SAID SECTION 4, SOUTH 00 DEGREES 33 MINUTES 28 SECONDS EAST, 210.00 FEET;

THENCE DEPARTING SAID EAST LINE, SOUTH 89 DEGREES 27 MINUTES 49 SECONDS WEST, 160.00 FEET;

THENCE NORTH 00 DEGREES 33 MINUTES 28 SECONDS WEST, 210.00 FEET TO THE EAST-WEST MID-SECTION LINE OF THE AFORESAID SECTION 4;

THENCE ALONG AND WITH SAID EAST-WEST MID-SECTION LINE, NORTH 89 DEGREES 27 MINUTES 49 SECONDS EAST, 160.00 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL AND CONTAINING A COMPUTED AREA OF 33,600 SQUARE FEET OR 0.771 ACRES OF LAND, MORE OR LESS.

THE ATTACHED EXHIBIT 'A' IS TO BE INCLUDED AND MADE PART OF THIS DESCRIPTION.



MARANA WELL SITE 2

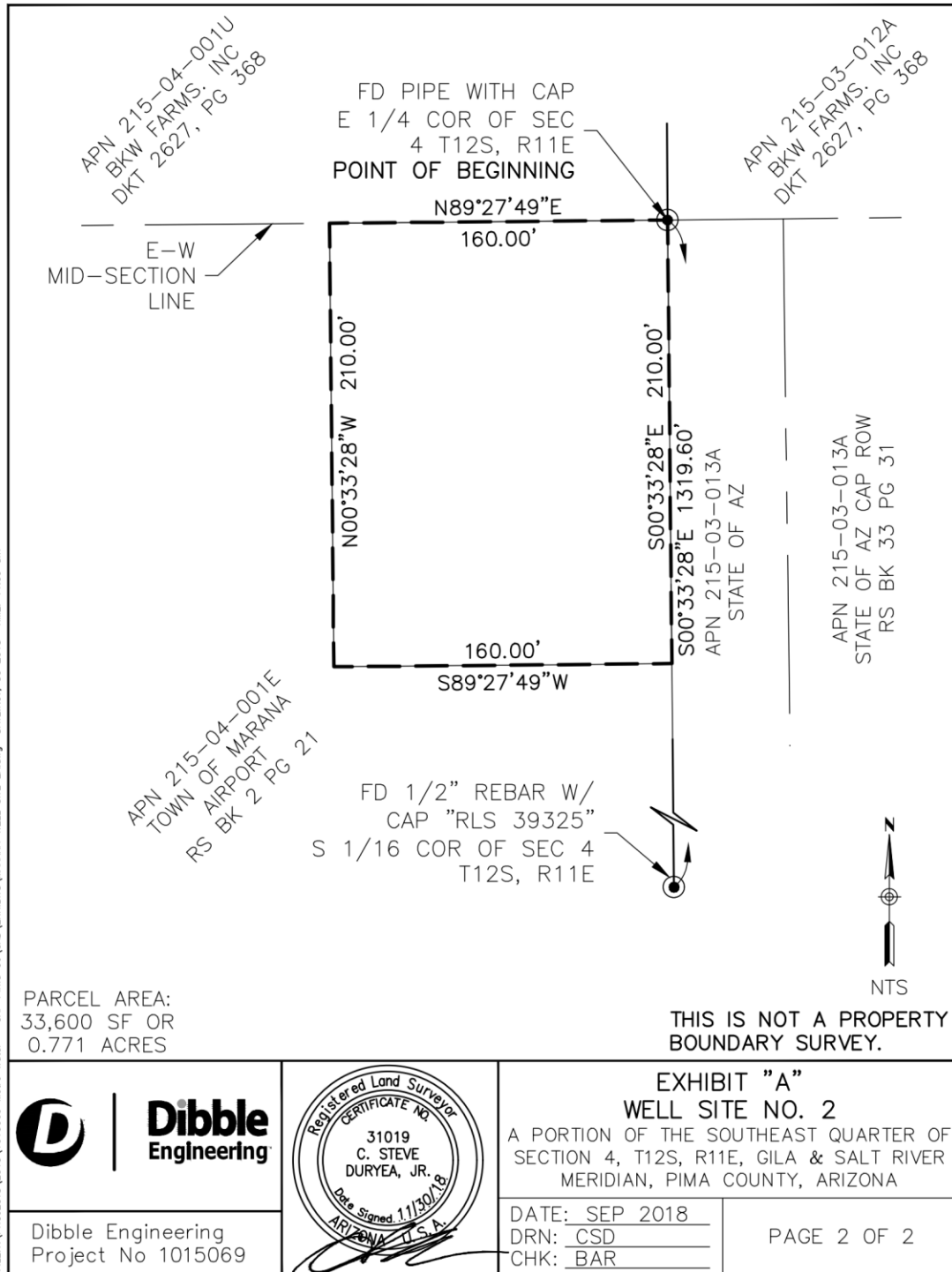
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DIBBLE ENGINEERING  
PROJECT NO. 1015069

**Purchase Agreement**

Page 4

# Exhibit "A-1"



Purchase Agreement

Page 5



**Council-Regular Meeting**

**C6**

**Meeting Date:** 03/05/2019

**To:** Mayor and Council

**Submitted For:** Cherry L. Lawson, Town Clerk

**From:** Suzanne Sutherland, Executive Assistant to the Town Clerk

**Date:** March 5, 2019

**Subject:** Approval of Minutes from the Study Session Council Meeting of February 26, 2019 and the Regular Council Meeting of February 19, 2019 (Cherry L. Lawson)

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**Attachments**

02/26/2019 Study Session Meeting Minutes DRAFT

02/19/2019 Regular Council Meeting Minutes DRAFT

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**MARANA TOWN COUNCIL  
STUDY SESSION**

**11555 W. Civic Center Drive, Marana, Arizona 85653  
Council Chambers, February 26, 2019, at or after 6:00 PM**

Ed Honea, Mayor  
Jon Post, Vice Mayor  
David Bowen, Council Member  
Patti Comerford, Council Member  
Herb Kai, Council Member  
John Officer, Council Member  
Roxanne Ziegler, Council Member

**SUMMARY MINUTES**

**CALL TO ORDER AND ROLL CALL:**

**Mayor Honea called the meeting to order and directed the Town Clerk to call the roll. Mayor Honea, Vice Mayor Post, Council Member Bowen, Council Member Comerford (Excused), Council Member Kai, Council Member Officer (Arrived: 6:09 PM), and Council Member Ziegler.**

**PLEDGE OF ALLEGIANCE/INVOCATION/MOMENT OF SILENCE**

**Mayor Honea led the Pledge of Allegiance followed by a moment of silence.**

**APPROVAL OF AGENDA:**

***Council Member Bowen motion to approve the agenda, and Council Member Kai seconded the motion. Motion passed: 5-0.***

**DISCUSSION/DIRECTION/POSSIBLE ACTION**

**D1** Relating to Public Works; presentation, discussion, and possible direction regarding the draft Marana 2020-2024 Capital Improvement Program (Keith Brann)

**Keith Brann, Town Engineer** provided a PowerPoint Presentation of the 2020-2025 Preliminary Capital Improvement Plan (*on file in the Town Clerk's Office*) and responded to questions posed by the Council related to the progress and timeline of those projects discussed. The areas of the presentation consisted of the following:

- Completed Construction Projects
- Completed Design Projects
- Long Term/ Continuing Projects
- CIP Development Process
  - CIP Project Detail Compilation
  - Project Evaluation
    - Contractual Obligation
    - Alignment with Town Goals
    - Effect on Ongoing Costs
    - Effect on Town Revenue
  - Engineering Department
    - Related Projects
  - Parks Department
    - Related Projects
  - Water Department, presented by **John Kmeic, Water Director**
    - Related Projects
  - Marana Airport
    - Related Projects
  - General Fund Requested Projects
    - Honea Heights Park
    - Marana Main Street Electrical Upgrade
    - Parks Department Ora Mae Maintenance Yard
    - El Rio Preserve Parking Lot

**Jamsheed Mehta, Town Manager**, stated most of these projects are subject to the Town having a good sense of what would be a one-time fund availability to Marana as part of the development budget process. The Town will know within a the next month or two a one-time dollar amount of availability in the General Fund that staff will be able to identify those General Fund Requested Projects to go forward with funding. As these four projects have been identified, he identified two other that are not included in this presentation as funding had not been determined in the next fiscal year budget, or in some following year. Those projects include the: Northwest Nature Park, the area surrounding the recharge facility off of Lockett Road (subject to the availability of funds at that time or finding another available source); another project that is related to safety – street lights. For some time Marana has taken the Dark Skies Ordinance in a literal manner. The ordinance does not mean to keep the Town dark, as we could have lights but installing the right type of fixtures to avoid light pollution.

In built out areas of the Marana community, he feels as though it is extremely dangerous without having some lighting in key intersections where residential streets come out onto arterial roadways or intersections. He proposed an extended program where the Town begin to install infill lighting programs and fund sufficient amounts each year so that we eventually have a program that will cover a significant portion of Marana. Staff would only bring this forward if there is sufficient funding within the General Fund.

**D2** Related to Development; presentation on the status of the Make Marana 2040 General Plan (Jason Angell)

**Jason Angell, Development Services Director** provided a PowerPoint Presentation on the 2010 General Plan Update (*on file in the Town Clerk office*) that focused on the below topic areas and responded to the discussion points of the Council.

- Planning Hierarchy of the 2040 General Plan
- Basic Content Requirements – General Plan Elements
- Scope of Work (reviewing Phases 1-3)
- Timeline
  - Summary: (7 Core Team Meetings; 2 Director Meetings; 28 Stakeholder Interviews; 2 Community Tours; 6 Citizens' Forum Meetings; 3 Advisory Committee Meetings; 6 Community Workshops, and 6 Focus Groups)
- Community Workshops were held on the following dates and addressed certain topic presented:
  - October 3-4, 2018: Interactive Polling and Issues and Opportunities
  - December 12-13, 2018: Transportation and Scenario Planning
  - January 23-24, 2018: Input on Policy Alternatives
- General Plan Update Schedules
- Reviewed the Next Steps in this process to include the following:
  - Future Council discussion to set final planning boundary
  - April 2019 – Community Open House - #1 (Review of DRAFT Plan)
  - June 2019 – Community Open House - #2 (2<sup>nd</sup> Review of the DRAFT Plan)
  - July – September 2019 – 60 Day Review Period (Public Notice)
  - October 30, 2019 – Plan Commission Public Hearing #1
  - November 20, 2019 – Plan Commission Public Hearing #2
  - December 10, 2019 – Special Town Council Meeting to Adopt
  - 2020 Date TBD – Voter Ratification
- MAP Atlas Review of the 2040 Marana General Plan was presented to include the following topics:
  - Description of the Map Atlas
  - Introduction
  - Built Environment
  - People and Community

- Resources and Sustainability
- Project Information (website information on the project availability)

**Mayor Honea** asked staff to keep Council abreast of any changes and/or communications that comes forward as well as requesting the Zoning Amendments somehow be incorporated within the General Plan. **Mr. Angell** stated the Development Services will certainly communicate those concerns with the Town Manager as well as with Council.

**Council Member Ziegler** complimented staff and the consultants' on the work that was put into the General Plan and acknowledged members of the public. She asked whether or not she can obtain the comments of the public that may have rated those issues discussed in the workshops. **Mr. Angell** stated the information is available on the Town's website.

## EXECUTIVE SESSIONS

Pursuant to A.R.S. § 38-431.03, the Town Council may vote to go into executive session, which will not be open to the public, to discuss certain matters.

**E1** Executive Session pursuant to A.R.S. §38-431.03 (A)(3), Council may ask for discussion or consultation for legal advice with the Town Attorney concerning any matter listed on this agenda.

## FUTURE AGENDA ITEMS

Notwithstanding the mayor's discretion regarding the items to be placed on the agenda, if three or more Council members request that an item be placed on the agenda, it must be placed on the agenda for the second regular Town Council meeting after the date of the request, pursuant to Marana Town Code Section 2-4-2(B).

## ADJOURNMENT

*Vice Mayor Post motioned to adjourn at 7:14 p.m., with a second provided by Council Member Kai. The motion passed, 6-0.*

## CERTIFICATION

I hereby certify that the foregoing are the true and correct minutes for the Special Meeting of the Marana Town Council meeting held on February 26, 2019. I further certify that a quorum was present.

---

Cherry L. Lawson, Town Clerk



MARANA TOWN COUNCIL  
REGULAR COUNCIL MEETING

11555 W. Civic Center Drive, Marana, Arizona 85653  
Council Chambers February 19, 2019, at or after 7:00 PM

Ed Honea, Mayor  
Jon Post, Vice Mayor  
David Bowen, Council Member  
Patti Comerford, Council Member  
Herb Kai, Council Member  
John Officer, Council Member  
Roxanne Ziegler, Council Member

**SUMMARY MINUTES**

**CALL TO ORDER AND ROLL CALL:** Mayor Honea called the meeting to order at 7:00 p.m. Town Clerk Cherry Lawson called roll. Council Members Officer, Bowen, and Ziegler, (Absent). A sufficient number of council members were present constituting a quorum.

**PLEDGE OF ALLEGIANCE/INVOCATION/MOMENT OF SILENCE:**

Mayor Honea led the Pledge of Allegiance followed by a moment of silence.

**APPROVAL OF AGENDA:**

*Vice Mayor Post motioned to approve, with a second provided by Council Member Kai. The motioned passed, 4-0.*

**CALL TO THE PUBLIC**

Jodie Dvorak stated she had been recently elected to serve as the president of the Continental Ranch Veterans Club. She is seeking Council's approval to change its current

name to the Marana Veterans Club, and use the Town of Marana logo for their promotional items and documents that will benefit the club. The purpose is to be able to reach more veterans beyond the Continental Ranch community.

**Chuck Martin** he is a frequent visitor to the area as a Planner for Saguaro Bloom and the Gladden Farms community, as well as being a cyclist. He commented on the agenda item D1 the extension of the loop to connect into the Town of Marana. He wished to offer his support as it is a great opportunity for the Marana community.

**H. James Tripp** commented on having attended meetings on the annexation of public lands at Thornydale and Tangerine in Oro Valley. He read the site-specific plan from September stating that the annexation is an Oro Valley annexation inside of the Marana School District. Marana had agreed to leave it in the Marana School District and take on the cost of the students in the K-12 grades, at approximately 1700 students at \$9,000/ year in Arizona, equally to tens of millions of dollars per year. He asked whether Council could provide a status update on the cost to the Town and its taxpayers.

**Jack Neubeck** stated he is on the board of MHC and one of its founders. He announced some 'good news' to Council stating they will host a major event on March 9 a Balloon Glow and Wine Tasting from 5pm to 7 pm at the old rodeo ground, south of Marana Middle School. He invited Council and the public to come out to attend the event. Mr. Neubeck also acknowledged El Stollmaker for his excellence in the community and wished him well in his retirement.

## **PROCLAMATIONS**

**PR1** Proclamation recognizing the dedicated service of Ed Stollmaker, retiring Marana Chamber of Commerce President & CEO, for his many years to the Marana community (Cherry L. Lawson)

## **MAYOR AND COUNCIL REPORTS: SUMMARY OF CURRENT EVENTS**

There were no reports offered by the Mayor Honea and Council Members.

## **MANAGER'S REPORT: SUMMARY OF CURRENT EVENTS**

**Jamsheed Mehta, Town Manager** announced, in October 2018 the Council chose to rescind the half cent sales tax that was dedicated to the Police Department building. He stated at the end of December, Marana exceeded \$80 million (\$80.3 million collected) that was the Council's target amount. He also congratulated those who worked to make that prediction for the Council, including **Deputy Town Manager Erik Montague** who was the Finance Director at that time.

He announced the upcoming events with the Parks Department MOVE Across Two Ranges between Marana and Oro Valley. It is scheduled for March 2 and the registration is already sold out, which is a success for the event. Cape Chase Fun Run is an Adaptive Fun Run that will be held on Saturday, March 9 from 8:00 am to 11:30 a.m. at Ora Mae Harn Park which is open to all persons especially persons with physical challenges.

## PRESENTATIONS

**P1** Relating to Budget; presentation of second quarter results (July-December) for the Town's General Fund and other selected major funds for the 2018-2019 fiscal year (Yiannis Kalaitzidis)

**Yiannis Kalaitzidis, Finance Director** provided a PowerPoint Presentation (*on file in the Town Clerk's Office*) on the second quarter results for the Town's General Fund and other major funds 2018-2019 fiscal year announcing that all of the Town's revenue funds were at or above the Town expectations.

**CONSENT AGENDA:** *Vice Mayor Post motioned to approve the Consent Agenda, and Council member Kai seconded the motion. The motion passed, 4-0.*

**C1** Resolution No. 2019-010: Relating to Development; approving a preliminary plat for Moonlight Canyon at Saguaro Ranch, Lots 1-43, Blocks 1-2, and Common Areas "A", "B", "C-1" and "C-2" generally located one mile north of the north terminus of Thornydale Road (Brian D. Varney)

**C2** Resolution No. 2019-011: Relating to Development; approving a final plat for Gladden Farms Blocks 40 & 41 Lots 1-119, Common Areas A-1 - A-11 and Common Areas B-1 - B-3 at the northeast corner of Midfield Road and Tangerine Road (Steven E. Vasquez)

**C3** Resolution No. 2019-012: Relating to Police Department; authorizing the Chief of Police to apply for grant funding from the Governor's Office of Highway Safety for the purchase of equipment and the funding of overtime for the Marana Police Department for fiscal year 2019-2020 (Starla Anderson)

**C4** Resolution No. 2019-013: Relating to the Marana Regional Airport; approving and authorizing the Town Manager to execute an Airport Development Reimbursable Grant Agreement for Grant Number E9M1G01C between the State of Arizona by and

through the Department of Transportation and the Town of Marana for the purpose of aiding in financing a Project entitled "Rehabilitate: Twy B; Terminal Apron; GA Apron; and Jet/Transient Apron" for construction of the Apron and Taxiway Rehabilitation project (Lisa Shafer)

**C5**    Resolution No. 2019-014: Relating to Utilities; approving and authorizing the Water Director to sign Agreement No. 18-DSR-12868 between the United States Department of Energy Western Area Power Administration Desert Southwest Region Parker-Davis Project Pacific Northwest-Pacific Southwest Intertie Project and Contractors for Joint Planning Agreement (John Kmiec)

**C6**    Approval of Regular Council Meeting Minutes from February 5, 2019 and Approval of Special Council Meeting - Council Connections Minutes from February 9, 2019 (Cherry L. Lawson)

## **LIQUOR LICENSES**

## **BOARDS, COMMISSIONS AND COMMITTEES**

## **COUNCIL ACTION**

## **ITEMS FOR DISCUSSION / POSSIBLE ACTION**

**D1**    Relating to Parks & Recreation: Discussion of the history and deal points associated with the acquisition of the CalPortland segment of the Santa Cruz River Shared Use Path (Jim Conroy)

**Jim Conroy, Parks & Recreation Director**, provided a PowerPoint Presentation (*on file in the Town Clerk's Office*) on the history and deal points associated with the CalPortland segment of the Santa Cruz River Shared Use Path. He introduced Alejandro Angel from Psomas who presented the design of the area. He outlined the context of the project to include the following Key Issues:

- Crossing Avra Valley Road
  - Reconfigure existing bridge to cross on south side of the road
  - Cross under Avra Valley using existing soil cement ramp
  - PCDOT Bridge Approved by Pima County COT Director 07/18
- Grade Separation from Haul Road & Conveyor
  - Preferred Alternative:

- Underpass at Haul Road for mining trucks
    - Underpass at Conveyor for mining materials
  - Least utility impacts
  - Least acquisition from CP
  - Limits visibility of CP plant
  - Able to drain underpasses without pumps
  - Preferred by CalPortland
- Site Security
  - Liability concerns
    - Indemnification requested
    - Marana to acquire property in fee except at Haul Road, conveyor (CalPortland to retain ownership, Marana to purchase easement)
  - Minimize visibility of plant
    - Initial request – wall for 1.2 mile frontage
    - Agreement – 1 mile fence, 0.2 mile wall
  - Access to conveyor and path closures when needed for maintenance
  - 8-ft fence with slats and razor
  - 8-ft wall with razor wire
- Construction Cost (*estimate*)
 

|                                               |               |
|-----------------------------------------------|---------------|
| ○ Fencing and Walls                           | \$ 500,000    |
| ○ Underpass, Path Avra Valley Bridge          | -\$ 1,200,000 |
| ○ Contingency                                 | -\$ 300,000   |
| ○ Construction Cost <i>Total</i>              | -\$ 2,000,000 |
| ○ Design                                      |               |
| ○ Land Acquisition ( <i>approx. 3 acres</i> ) |               |
- Next Steps in the Process
  - In advance to a formal acquisition agreement seeking Council direction on proposed acquisition due to the indemnity and construction elements that may exceed the deal points of a typical town right-of-way acquisition. If directed by Council to move forward, the Town would move forward in pursuing the formal acquisition agreement.
  - Staff would formally secure the \$500,000 commitment that Pima County has verbally obligated to this project

**Mayor Honea** asked if the Town receive the \$500,000 from the County Flood Control, would that fulfill the obligation to complete the project. **Mr. Conroy** stated they are projecting that the \$500,000 would allow them to accomplish the project.

**Mayor Honea** asked Mr. Cassidy whether the indemnity of the agreement, that is, the Town owns the right-of-way would the Town be the responsible party. **Mr. Cassidy** replied stating that is true. The basic foundational element with CalPortland was they wanted the Town to recognize that this is treated as a federally regulated purpose as an

act of mining area. Bringing the public to an active mining area creates potential hazards due to the proximity, for example: if there is a mining truck that drives by and a rock is stuck in its wheel and becomes free and lands on a pedestrian or bicyclist head, CalPortland want to ensure that Marana indemnify them for that. However, there are events that the Town would not indemnify CalPortland for such as intentional acts. Before CalPortland would actively engage with Marana, his office had research whether the Town could do that. His office did conclude that Marana does have authority to indemnify especially under circumstances like this; that is, only if Council wish to pursue this.

**Mayor Honea** asked whether the Town will need to clear authority with the risk pool in order to engage with CalPortland. **Mr. Cassidy** replied stating staff has made contact with the risk pool. Although they do not like deals of this type, any deals that impact our risk level, could potentially affect the cost to the Town. They have not indicated that this would occur just by entering into this deal.

**Council Member Kai** asked in the unfortunate event CalPortland mining trucks swerve and loses control of the truck and hurt someone around the tunnel area, would the Town waive that. **Mr. Cassidy** stated that would be determined by the level of fault of the activity (i.e. gross negligence or an intentional act), the indemnity would not cover that. **Council Member Kai** suggested the Town add some warning signage in that area to alert the public.

**Council Member Comerford** asked whether there are any limitations that the Town can place on CalPortland, such as in the area of the overpass – slow down, speed limit, or pedestrians in the area. **Mr. Cassidy** stated he believes Marana could; however also believes, that the federal mining regulation has severe restrictions on that as well.

**Mr. Conroy** reiterated the direction being sought by Council includes: (1) In advance to a formal acquisition agreement seeking Council direction on proposed acquisition due to the indemnity and construction elements that may exceed the deal points of a typical town right-of-way acquisition. (2) If directed by Council to move forward, the Town would move forward in pursuing the formal acquisition agreement. Staff would formally secure the \$500,000 commitment that Pima County has verbally obligated to this project

*Vice Mayor Post motioned directing staff to move forward on the preliminary issues as was discussed by Jim Conroy. Council Member Kai seconded the motion. The motion passed, 4-0.*

**D2** Relating to Development; presentation, discussion and direction regarding proposed amendments to the Town's Policy Guidelines and Application Procedures for the Establishment of Community Facilities Districts (Erik Montague)

**Mr. Montague** provided a presentation on the Community Facility District (CFD) as was previously discussed in January. The Town had considerable conversation and recall a significant amount of input in terms to those items that would come back to Council for follow-up discussion. Most of this presentation has been modified to deal with the elements of feedback staff received from the January presentation.

He provided a brief recap of previous study sessions and direction that was received from Council, along with optional policy amendments for Council consideration as well as the next steps. He would not speak on some of the required elements of state law as they are conforming. Then identify additional feedback that will later be brought back to Council in a presentation.

Community Facility District (CFD) has previously been defined; reasons why a CFD might be created; had discussion of the importance of a sound CFD policy as well as covered required and optional policy changes.

From that feedback, some general themes came from Council as provided below:

- Importance of homeowner education and acknowledgement when moving into a CFD
  - Education, disclosure and recordkeeping (*Optional Policy Amendments – Draft Language*)
    - A disclosure form which will be used to explain the existence of the CFD
    - NEW – Recordkeeping processes for retaining all signed homeowner CFD acknowledgment disclosure statements. Evidence of signed forms shall be filed with the Town
    - NEW – Increased information about CFD's included in promotional materials.
- CFD's with extraordinary infrastructure requirements versus routine infrastructure
  - Developer's equity in project (*Optional Policy Amendments – Draft Language*)
    - A description of the proposed equity contribution (enhanced infrastructure) from the applicant/landowner and a calendar showing the time of such equity contribution.
- Conservative approach served us well during economic cycles
  - Impact of debt obligation (*Optional Policy Amendments – Draft Language*)
    - An analysis which addresses the impact of projected property taxes and property tax rates, special assessments, fees charges and any other costs that would be borne by property owners in the CFD.
    - Discussion whether costs will impact the marketability of the development

- Comparison of proposed tax rates or charges within the proposed CFD contrasted with the tax rates and changes in adjoining and similar areas outside of the proposed CFD
- Avoid disproportionately burdening homeowners with CFD obligations
  - General Obligation (GO) Target Tax Rate and Protections (*Optional Policy Amendments – Draft Language*)
    - Applicant will be required to enter into a standby agreement where they will contribute an amount annually sufficient to pay the difference between the revenues produced by the target tax rate and the actual CFD debt service coming due in that fiscal year/
    - The security shall remain in full force and effect until such time as the CFD board of directors, exercising their sole discretion, determines the assessed value of real property in the CFD is sufficient to generate ad valorem taxes at the pre-established CFD tax rate sufficient to pay the actual CFD debt service.
- Homeowners may accept a slightly higher obligation if they see the value in parks and other infrastructure
  - Possible Policy Statement (*Optional Policy Amendments*)
    - We want parity between all CFD's for routine infrastructure. However, in circumstances in which CFD's have extraordinary infrastructure requirements, we would allow the extraordinary portion of the obligation to be higher than a CFD with only routine infrastructure.
      - The increase obligation from extraordinary infrastructure could be in the form of:
        - GO target tax rate, and
        - SA on a per lot basis

**Vice Mayor Post** asked whether Mr. Montague was going to set the range within the policy, or is this how the policy will look. **Mr. Montague** stated the Town will have a familiar chart with some figures that staff will pencil in and/or obtain direction from Council. Until the extent to include what is appropriate of those numbers from Council in terms of policy, staff will move in that direction.

**Mayor Honea** asked whether this policy change would need to be approved by the CFD Board for each project if they would try to increase for extenuating circumstances. **Mr. Montague** stated the Town's policy should be sufficient to be able differentiate between a routine CFD and an extraordinary CFD case, and the rules would apply to that extraordinary CFD. In this presentation, he would highlight some of the caps and limitations that Council would hopefully be comfortable with. One concept would be, the maximum annual contribution regardless of whether it is a GO or Special Assessment is acceptable to Marana community. Is that \$1,000 or \$1,100 per year for example, for a tier two extraordinary CFD circumstance? Or is it something different. The Town is seeking guidance from Council in terms of its comfort level in setting this rate.

**Mr. Montague** provided an overview of routine infrastructure and extraordinary infrastructure, possible rate and assessment structure.

- Routine Infrastructure either Tier 1 (*Routine*) or Tier 2 (*Routine and Extraordinary*)
  - GO emphasis for routine requirements
  - Provides parity between all CFD's
- Extraordinary or "Special" Infrastructure Requirements (*Tier 2*)
  - Minimum GO target tax rate the same as for CFD's with only routine infrastructure
  - Special Assessments (SA) offset some portion of the "special" infrastructure requirements.

He explained the impact of Proposition 117 as the legislation that passed impacted the value at which new homes appear on the tax roll.

- Previous home values placed on the tax roll at 80% of its estimated fair value
- Prop 117: actual limited values placed on tax roll appear to range from 60 -80% of estimated fair value
  - Homes in Marana are averaging close to 70%

**Vice Mayor Post** inquired of the CFD's the Town has being \$2.50 plus maintenance policy whether it was sufficient to make payments. **Mr. Montague** replied stating it was only recently enough to make the payments – narrowly to make the payments primarily due to the restructuring of Gladden Phase 1 CFD refinancing. The Town advanced the savings achieved over the first three years. Developers are very concern for the next tax year over its ability to generate tax benefits to make that debt service payment, based on the \$2.50 rate.

**Vice Mayor Post** asked whether the Town has to raise the amount in order to meet the Town's policy. **Mr. Montague** stated in this circumstance, it is particularly complicated as the Town needed to lower its tax rate this year, because no more debt had been issued. State law requires that governmental units cannot over the amount to service the debt to lower the rate. It will be a combination of increasing it to at least \$2.50 or higher in order for them to generate the tax revenue. **Vice Mayor Post** asked whether the target rate of \$2.50 needs to be set aside as it is not sufficient to pay down the debt service. Although the Council has set a target rate of \$3.00, that is what potentially needs to occur so that the debt can be serviced. **Mr. Montague** stated the \$2.50 rate was set as it was the amount that the Marana community was comfortable with in requiring a future homeowner to contribute towards the payment of the CFD.

**Mr. Montague** stated in previous discussions, he shared with Council the range of the CFD of \$2.00 to \$2.50 to \$3.50. Each jurisdiction has selected the range that is right for their communities. The decision establish the rate has to be what is acceptable for the Marana community. From a public policy standpoint, the \$2.50 is on the lower end; however, the \$3.50 is on the higher end of the spectrum. **Vice Mayor Post** commented

on the range as that is what is being targeted. **Mr. Montague** concurred stating, once the Town has issued that debt, the Town is obligated to levy an amount required to make that payment. Marana has taken great care to ensure the right structure is in place to protect the homeowner. In the case of Gladden 1, the Town had standby a contribution agreements, as well as letters of credit, and had funds deposited into an account that they had access to. **Vice Mayor Post** asked whether that was the reason why the Town had a hard-fast rate, as the Town had other people who were able to make up that difference; which may not be the case in the future. **Mr. Montague** concurred commenting on the recession, and how the developers met their obligations to make those payments thereby protecting the homeowner. That is the protection that Marana requires to protect the homeowner and have served its purpose, and the Town would look to maintain.

**Vice Mayor Post** asked whether it would be best to set a dollar amount rather than a tax rate. **Mr. Montague** stated in the case of the General Obligation it would not be an easy thing to do, as it is an Ad Valorem Tax. It is based upon the actual value of the levied price of the home. With a house built on vacant land of \$250,000 to \$500,000 there will not be an easy way to determine it with an Ad Valorem for a flat GO. **Vice Mayor Post** asked whether it would be best to proceed with a target tax rate versus a set dollar amount. **Mr. Montague** stated that he is not aware of any entity using other methods of determining a more meaningful way to set the cap of the amount to levy.

**Council Member Comerford** stated it limits the amount the developer has to take out a loan, as there will likely be a cap on the amount that can be borrowed. **Mr. Montague** concurred with Council Member Comerford comment stating. As part of the application process, developers are required to provide a cash flow of what their estimated absorption is for how they expect the development to occur of sales by year, the estimated value of the price point for homes built, their assumptions for assessed valuation – depending upon what that evaluation is dependent on how they will generate enough cash to issue bonds, and recoup the eligible portion of infrastructure. The higher the target tax is, the better they would be able to generate cash in a cash flow cycle.

**Council Member Kai** asked whether the estimated tax rate is set by the Assessor's Office annually for homes. **Mr. Montague** replied stating Pima County Assessor's Office establishes rates by its methodology according to state statute. He is not aware that those assessed rates would materially change according to the sampling that they had performed from 60 to 80%. The 80% was on a custom home lot in a track home development.

**Mayor Honea** stated Marana was one of the first communities in Arizona to set CFDs. One of the reasons Council set the \$2.50 tax rate was to prevent developers from borrowing extensively against the CFD as it would lead to financial trouble for the developers. He feels as though the Town needs to have a base to work from, as he prefers the dollar amount, such as \$1000 per year. Though you may not always get the exact amount, you will likely get close or go over the amount as the adjustments occur. He

expressed concern for leaving the amount open as homeowners may not be able to afford the overage charge on a monthly basis.

**Mr. Montague** provided within his presentation a slide of Comparison of Routine and Special Infrastructure of assumed rate (*available for viewing in the Clerk's Office*) example. The average fair market value of a home in Marana \$216,000 to \$218,000 according to work performed by Steve Fold. Staff believes they could likely frame this in a maximum amount. However, it would not be an absolute, it would be based upon information that they were provided at the lowest price point within a community – that being the worst case scenario that would be a starting point. As the value of homes increase over time, the homeowner would likely be above a \$1000 per year. Some communities try to set the rate as an overall percentage of taxes or of the home, but it becomes a problem in the long run.

**Mayor Honea** stated the \$1,000 fee can be established on a \$260,000 home, but when considering a home over \$300,000 those homeowners will pay much more than \$1,000 annually. **Mr. Montague**, if Council set the minimum payment based on the lowest estimate contribution of \$1000 of the price point amount in that community, a home that is valued at or above twice the average price of home on the Ad Valorem tax will pay significantly more, and would be above the \$1,000. He is not aware of a process to ensure that everyone in a community pay not more than \$1,000. It is not practical.

**Mr. Montague** presented a slide requesting feedback and direction from the Council (*available for viewing in the Clerk's Office*). **Vice Mayor Post** inquired policy and whether the development and whether the community would have all necessary infrastructure including interstate and sewer plants. **Mr. Montague** stated he is not sure whether there will be major sewer infrastructure at this time. **Vice Mayor Post** stated the Town is looking to rebate construction sales tax, and impact fees. **Mr. Montague** deferred to Town Attorney Frank Cassidy for clarification.

**Mr. Cassidy** stated the Marana interchange is in the current IIP. Under the Development Agreement the Town would also put the Tortillas Interchange into the IIP when its construction is imminent. The reimbursement from the impact fees would be to pay for half of the cost of the interchange that is not covered by the CFD. **Vice Mayor Post** asked for clarification of how that process would work. **Mr. Cassidy** stated he was not exactly sure; however believe that some form of reimbursement would cover the Town's portion of that interchange through collected impact fees from properties other than the Tortilla Village.

**Vice Mayor Post** stated he like the idea of setting a target annual rate although he appreciates there will be some level of difficulty in establishing it. It is a rate that can be budgeted within most families that they come to expect on a monthly basis. He asked how the rate be presented to the potential homebuyer. **Mr. Montague** stated the disclosure law covers some of the information being presented based on the rate and valuation of the home. He asked for clarification based on an annual maximum targeted

rate, for a CFD with an extraordinary infrastructure requirement to establish an annual cap. **Vice Mayor Post** stated he is referring to a target cap to provide staff, the developer and others room to work within. He asked whether there is some flexibility to vary between GO's and SA's, providing examples of a scenario between a requests for GO vs. SA.

**Mr. Montague** stated staff is seeking that type of feedback from the Council regarding this measure. **Vice Mayor Post**, would like see the Town offer some type of flexibility as he understands there is some advantages and disadvantages for funds with the developers as well as to the homeowners. He would like to see Special Assessments used as those assessments are immediately being paid with the sale of the home, as opposed to sometime later. He would like to see some flexibility offered to the developer so that they have access to funds of no more than \$100 per month. That would be his upper limit.

**Vice Mayor Post** referring to **Council Member Comerford** stated for clarification that rate is based on extraordinary CFD's where that dollar amount is appropriate. However on the non-extraordinary infrastructure properties, the rate is fine.

**Mr. Montague** commented on the Excel Spreadsheet that provides different scenarios of a target amount that is assessed based on different assumptions. He asked whether Council would be comfortable with a \$6.00 valuation based on the conversation in order to get to that \$1,000, and are okay with not having SA's, but have a GO tax rate of \$6.00 per \$100. **Vice Mayor Post** concurred with Mr. Montague explanation.

**Council Member Comerford**, there is a routine CFD and an extraordinary circumstance CFD – she asked whether there is a problem with the GO and the SA. There are persons who come to Marana to retire, who may decide to pay the special assessment at the time of the purchase of their home and prefer to not have a GO to pay. If an SA is offered, the potential buyer can pay that now rather than over time. **Mayor Honea** stated the SA are financed as well as the GO. The developer would get the funds upfront, and there would be a bond for the homeowner as well. **Mr. Montague** provided clarification of the two assessments that is placed on the lot. Once the debt has been issued, there is an obligation of an annual payment until it is paid off.

**Council Member Kai**, asked with homes being reduced in size, would that generate increase revenue with special assessments per lot. **Mr. Montague**, not necessarily. The limiter would consist of 1) maximum amount of assessment the Town would allow on a lot, and 2) value of the land and any improvements that are factored on that land that is allowed by the Town.

**Mr. Montague** clarifying the direction provided stated, there may be interest in the original concept of maintaining uniform GO tax rate for routine infrastructure CFD where there are special circumstances or regular routine. Council would be open to GO as long as the Town does not exceed the targeted maximum contribution. Council will

need to discuss is the significantly higher tax rate of \$6.00 in a community. **Vice Mayor Post** stated the amount may on the surface appear to be high; however, the amount is essentially the same. **Mr. Montague**, staff is seeking direction from Council on the basis of the policy, as the information presented has been to maintain consistency and parity between CFD for routine infrastructure at the same GO rate. Under Special Assessment Bonds it is intended for tier 2 only depending upon the direction of Council. Council may wish to establish a per lot cap, a not to exceed amount.

**Vice Mayor Post** proposed the following direction, for ordinary CFD, Go's. **Mr. Montague** stated in our policy we can say the preferred mechanism for routine infrastructure under GO scenario would be to maintain the actual overall target tax rate of a particular amount. **Vice Mayor Post** concurred. **Mr. Montague** stated GO's would be preferred.

**Council Member Kai** asked whether special assessments would still be available for large projects. **Mr. Montague**, if this will be carried forward, the policy could state under our preferred CFD the mechanism to finance that is through General Obligation debt with a target tax rate of some amount. This provides some form of flexibility there. Under extraordinary circumstances there could be a combination of GO and Special Assessment, Council would need to determine those limits. **Vice Mayor Post** asked how the Town would like to have the rate established. **Mr. Montague** stated it could be in any combination. However, an overall cap of an amount not greater than some dollar amount, or a maximum targeted established contribution of some dollar amount.

**Vice Mayor Post**, the preferred is not more than \$100 per month. **Mr. Montague**, asked about the value of the lien piece on the Value to Lien Ratio SA Bond. **Mayor Honea**, expressed concern over the ratio being offered as lesser valued properties for borrowing places the community in a riskier situation. The Town should try to keep the rate up to 4:1 so to assure developers has a vested financial interest. **Council Member Kai** concurred with Mayor Honea in keeping the ratio at 4:1, rather than a reduced ratio.

*Mayor Honea recommended directing the Town maintain the current rate of the CFD. Council Member Kai concurred.*

**Mr. Montague**, related to the GO authorization on the current policy, we have seven years from the date of authorization Council has a window of opportunity to issue that debt, by policy only. The intent of was to ensure the applicant is prepared and able to meet it obligation to advance the development in a reasonable period of time so to prevent GO's from lasting forever. The Town is suggesting that it be extended to a longer length of time to 15 years, a longer development cycle and up to 75% of the development. The Town has been in discussion with Gladden Farms 1 for a future bond as it is past its seven (7) years by policy.

**Vice Mayor Post** asked whether the Town wish to place some pressure on Gladden Farms 1 to pay the bond sooner rather than later. **Mr. Montague**, that was the intent;

however, the market will drive how soon those homes will sell, the valuation and the debt.

Related targeted tax rate is \$2.50 (going forward what is the direction of Council) **Vice Mayor Post** stated based on the new calculations we are currently at a rate of \$2.85 (\$2.50 to 2.85 for debt and plus \$.30 for maintenance) that would take the amount to \$3.15. **Mayor Honea** asked whether it would be the same amount of money. **Mr. Montague** stated it would be accounting for the same amount of loss for future properties as they come onto the rolls.

*Directions proposed by Mayor Honea and Council: for ordinary CFD, GO's to maintain the actual overall target tax rate of the current rate of the CFD amount. The preferred is not more than \$100 per month. Keeping the ratio at 4:1, rather than a reduced ratio. Based on the new calculations rate of \$2.85 (\$2.50 to 2.85 for debt and plus \$.30 for maintenance) that would take the amount to \$3.15.*

**D3** Relating to Budget; discussion, direction and possible action regarding development of the fiscal year 2019-2020 budget, including proposed budget initiatives and expenditures (Jamsheed Mehta)

**D4** Relating to Legislation and Government Actions; discussion and possible action regarding all pending state, federal, and local legislation/government actions and on recent and upcoming meetings of the other governmental bodies (Jamsheed Mehta)

**Mr. Mehta** stated there was a brief Legislative Meeting with Congressman O'Halleran. The Town had an opportunity to present a few of its items relating to infrastructure understanding that when Congress does pick-up the bill for National Infrastructure Planning, the Town may have an chance to inform them of our needs to the Congress, and others of the Arizona Delegation. Related to legislative bills, last week to hear the bills in Committee there is a good chance the House will extend the deadline as they have been busy during the first few weeks of the Legislative Session.

The Bill that Marana is focused on is House Bill 2109 County Transportation Excise Tax, sponsored by Representative Shook from Pinal County. There is a Committee Hearing on February 20, 2019 the House of Ways and Means and the Transportation Committees. This bill is moving forward without any limitation on how the full one cent could be used. If approved by the Legislature and the Governor's Office as it is an additional tax, it would be up to the individual jurisdictions (RTA in Pima County) would have to make the determination to allocate it to capital or some portion to operations and maintenance. There is an opportunity to suggest to the sponsor to place a cap to on a portion for operations and maintenance. If directed by Council, the Town would approach the group who are sponsoring the bill as they have had some conversations. The sponsors are

willing to work with us if we are working with the other stakeholders which includes Pima County.

***Council provided direction to do a 100% on the first half cent and 80/20 split the second half cent.***

## **EXECUTIVE SESSIONS**

Pursuant to A.R.S. § 38-431.03, the Town Council may vote to go into executive session, which will not be open to the public, to discuss certain matters.

**E1** Executive Session pursuant to A.R.S. §38-431.03 (A)(3), Council may ask for discussion or consultation for legal advice with the Town Attorney concerning any matter listed on this agenda.

**E2** Executive session pursuant to A.R.S. § 38-431.03(A)(7), discussions or consultations with designated representatives of the Town in order to consider the Town's position and instruct its representatives regarding negotiations for the possible sale of the Town's assets known as the Falstaff water system to the DeAnza Domestic Water Improvement District.

**Vice Mayor Post motioned to go into Executive Session. Council Member Kai seconded the motion. *The motion passed, 4-0.***

## **FUTURE AGENDA ITEMS**

Notwithstanding the mayor's discretion regarding the items to be placed on the agenda, if three or more Council members request that an item be placed on the agenda, it must be placed on the agenda for the second regular Town Council meeting after the date of the request, pursuant to Marana Town Code Section 2-4-2(B).

**ADJOURNMENT: Vice Mayor Post motioned to adjourn the meeting. Council Member Comerford seconded the motion. *The motion passed, 4-0.***

## **CERTIFICATION**

I hereby certify that the foregoing are the true and correct minutes of the Marana Town Council meeting held on February 19, 2019. I further certify that a quorum was present.

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Cherry L. Lawson, Town Clerk



## **Council-Regular Meeting**

**L1**

**Meeting Date:** 03/05/2019

**To:** Mayor and Council

**Submitted For:** Cherry L. Lawson, Town Clerk

**From:** Suzanne Sutherland, Executive Assistant to the Town Clerk

**Date:** March 5, 2019

**Subject:** Relating to Liquor Licenses; recommendation to the Arizona Department of Liquor Licenses and Control regarding a License Acquisition of Control series 10 Beer and Wine Store liquor license application submitted by Jodi L. Vurnovas on behalf of GOOD 2 GO, located at 8333 N. Cortaro Road, Marana, Arizona 85743 (Cherry L. Lawson)

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### **Discussion:**

This application is for a series 10 Beer and Wine Store liquor license at GOOD 2 GO located at 8333 N. Cortaro Road, Marana, Arizona 85743.

Town staff has reviewed this application to determine whether the applicant is in compliance with legal requirements for the business. Additionally, the Marana Police Department has conducted a local background check.

The Town Council must enter an order recommending approval or disapproval of the application within 60 days after mailing of the notice of acquisition of control to the Town. Pursuant to state statute, a license will only be issued after a satisfactory showing of the capability, qualifications and reliability of the applicant and "in all proceedings before the town council, the applicant bears the burden of showing that the public convenience requires and that the best interests of the community will be substantially served by the issuance of a license."

If the Council's recommendation is for disapproval, the order must include an attachment stating the specific reasons for the recommendation of disapproval and including a summary of the testimony or other evidence supporting the recommendation.

If the Council enters an order recommending approval of the application, or makes no recommendation, then no hearing before the Arizona state liquor board will take place, unless the director of the DLLC or the liquor board requests a hearing. If the Council enters an order recommending disapproval of the application, or if the director or liquor board requests a hearing, then the state board will hold a hearing regarding the application.

At the hearing, the state board will consider all evidence and testimony in favor of or opposed to the granting of the license. The decision of the board to either grant or deny an application will normally take place within 105 days after the application has been filed, unless the director of the DLLC deems it necessary to extend the time period.

**Staff Recommendation:**

Staff recommends that an order recommending approval be submitted to the DLLC for this liquor license application.

**Suggested Motion:**

OPTION 1: I move to adopt and submit to the DLLC an order recommending approval of a License Acquisition of Control series 10 Beer and Wine Store liquor license application submitted by Jodi L. Vurnovas on behalf of GOOD 2 GO, located at 8333 N. Cortaro Road, Marana, Arizona 85743.

OPTION 2: I move to adopt and submit to the DLLC an order recommending disapproval of a License Acquisition of Control series 10 Beer and Wine Store liquor license application submitted by Jodi L. Vurnovas on behalf of GOOD 2 GO, located at 8333 N. Cortaro Road, Marana, Arizona 85743.

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**Attachments**

Application  
Affidavit of Posting  
Local Governing Body Recommendation  
Common Types of Liquor Licenses

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**State of Arizona**  
**Department of Liquor Licenses and Control**

Created 01/29/2019 @ 08:39:21 AM

**Local Governing Body Report**

**LICENSE**

Number: 10103800      Type: 010 BEER AND WINE STORE

Name: GOOD 2 GO

State: Pending

Issue Date:      Expiration Date: 10/31/2019

Original Issue Date: 05/03/2016

Location: 8333 N CORTARO ROAD  
MARANA, AZ 85743  
USA

Mailing Address:

Phone: [REDACTED]

Alt. Phone:

Email:

Currently, this license has pending applications.

**AGENT**

Name: JODI L VURNOVAS

Gender: Female

Correspondence Address: 4007 N DALE DRIVE  
PRESCOTT VALLEY, AZ 86314  
USA

Phone: [REDACTED]

Alt. Phone:

Email: JODI.VURNOVAS@GOOD2STORES.COM

**OWNER**

Name: GOOD 2 GO STORES LLC

Contact Name: JODI VURNOVAS

Type: LIMITED LIABILITY COMPANY

AZ CC File Number: R20588663      State of Incorporation: ID

Incorporation Date: 01/22/2016

Correspondence Address: PO BOX 50430  
IDAHO FALLS, ID 83405  
USA

Phone: [REDACTED]

Alt. Phone:

Email: LICENSING@GOOD2GOSTORES.COM

**Officers / Stockholders**

| Name:                       | Title:              | % Interest: |
|-----------------------------|---------------------|-------------|
| HALL FAMILY INVESTMENTS LLC | Member, Stockholder | 100.00      |

**HALL FAMILY INVESTMENTS LLC - Member,  
Stockholder**

Name: BRAD H HALL  
Gender: Male  
Correspondence Address: PO BOX 50430  
IDAHO FALLS, ID 83405  
USA  
Phone: [REDACTED]  
Alt. Phone:  
Email: LOGANHALL@BRADHALLFUEL.COM

**HALL FAMILY INVESTMENTS LLC - Member,  
Stockholder**

Name: ANDREA PERKINS HALL  
Gender: Female  
Correspondence Address: PO BOX 50430  
IDAHO FALLS, ID 83405  
USA  
Phone: [REDACTED]  
Alt. Phone:  
Email: LOGANHALL@BRADHALLFUEL.COM

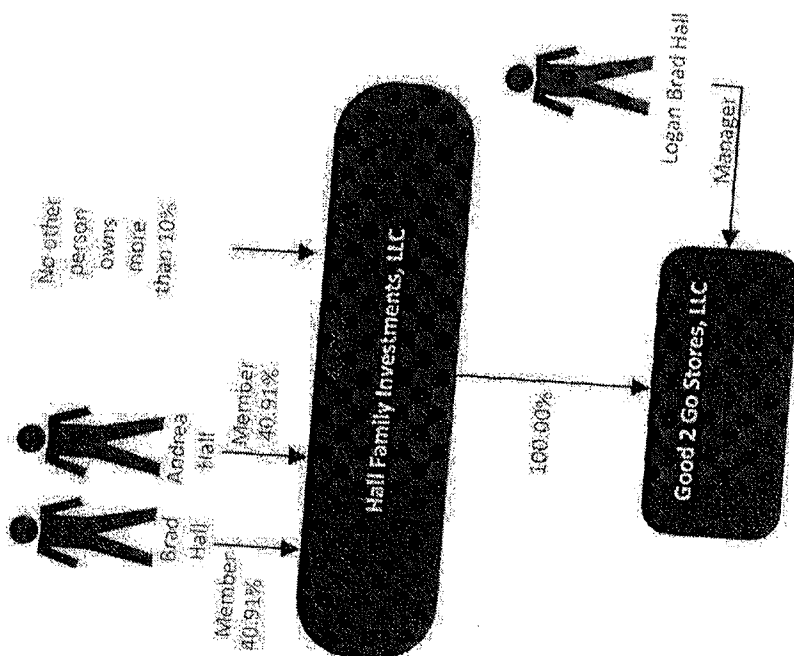
**GOOD 2 GO STORES LLC - Member, Stockholder**

Name: HALL FAMILY INVESTMENTS LLC  
Contact Name: JODI VURNOVAS  
Type: LIMITED LIABILITY COMPANY  
AZ CC File Number: State of Incorporation:  
Incorporation Date:  
Correspondence Address: PO BOX 50430  
IDAHO FALLS, ID 83405  
USA  
Phone: [REDACTED]  
Alt. Phone:  
Email: LICENSING@GOOD2GOSTORES.COM

**APPLICATION INFORMATION**

Application Number: 48839  
Application Type: Multi-License Acquisition of Control  
Created Date: 01/25/2019

Exhibit A



WRITTEN CONSENT OF THE SOLE MEMBER  
OF  
GOOD 2 GO STORES, LLC  
DECEMBER 18, 2018

AZ DLLC  
DEC 26 2018

The undersigned, being the sole member (the "Member") of Good 2 Go Stores, LLC, an Idaho limited liability company (the "Company"), does hereby consent and agree to the adoption of the following resolutions, such resolutions to have the same force and effect as a majority vote at a meeting regularly noticed and held.

RECITALS

A. David Gary Adams was previously removed as Manager and from all other positions with the Company.

B. Logan Brad Hall was previously appointed as the Manager of the Company, with the authority to operate the Company, including its day to day operations.

RESOLUTIONS

1. This consent ratifies and confirms the removal of David Gary Adams as the Manager and from all other positions with the Company.

2. This consent ratifies and confirms the appointment of Logan Brad Hall as the Manager of the Company, with the authority to operate the Company, including its day to day operations.

[Signature Page Follows]

G:\My Drive\Legal\2 - Other Entities\Good 2 Go Stores\ - Organizational Docs\Consents and Minutes\Member Consent\_Logan Hall as Manager.doc

IN WITNESS WHEREOF, the undersigned, being the sole member of the Company, has executed this Consent as of the date first above written.

Hall Family Investments, LLC  
(Sole Member)

Logan Hall  
Logan Hall, Manager

Cole Hall  
Cole Hall, Manager

SIGNATURE PAGE TO  
WRITTEN CONSENT OF THE MEMBER OF  
GOOD 2 GO STORES, LLC

CONSENT IN LIEU OF A MEETING  
OF THE BENEFICIAL OWNERS  
OF  
GOOD 2 GO STORES, LLC

AZ DLLC  
OCT 01 2018

September 4, 2018

The undersigned do by written consent hereby adopt the following resolutions in lieu of a meeting of the Beneficial Owners (as defined below) of Good 2 Go Stores, LLC, an Idaho limited liability company ("Good 2 Go"), to the actions set forth in the following resolutions, declare that such consent shall have the same force and effect as a unanimous vote at a meeting regularly noticed and held, adopt the same all as of the date hereof, and direct that this written consent (this "Consent") be filed with the minutes of proceedings of Good 2 Go.

RECITALS

- A. Brad H Hall and Andrea Hall are the only members of BAH Holdings, LLC, an Idaho limited liability company ("BAH Holdings").
- B. Heather Thompson, Sunny Harker, Logan Hall, and Cole Hall are the only members of HSLC Holdings, LLC, an Idaho limited liability company ("HSLC Holdings").
- C. BAH Holdings and HSLC Holdings were formerly the only members of Good 2 Go.
- D. Brad H Hall, Andrea Hall, Heather Thompson, Sunny Harker, Logan Hall, and Cole Hall (the "Beneficial Owners") entered into a series of entity restructuring transactions (the "Transactions") among themselves and various entities owned or controlled by the Beneficial Owners (including BAH, HSLC Holdings, and Good 2 Go), whereby the Beneficial Owners created Hall Family Investments, LLC, a Colorado limited liability company ("HFI"), and made HFI the sole member of Good 2 Go.
- E. Brad H Hall and Andrea Hall each own 40.91% (for a total of 81.82%) of HFI, and no other individual owns 10% or more of HFI (or Good 2 Go).
- F. Due to Transactions, Good 2 Go is required to submit an Acquisition of Control form to the Arizona Department of Liquor showing, among other things, the ownership of Good 2 Go and HFI, and ratifying the change in controlling persons of Good 2 Go.
- G. The Beneficial Owners desire to provide this Consent to the Arizona Department of Liquor to show the individuals who own 10% or more of Good 2 Go and document the change in control of Good 2 Go.

RESOLUTIONS

The following resolutions hereby are adopted:

1. The Beneficial Owners confirm that the Transactions have been carried out on the books and records of BAH Holdings, HSLC Holdings, HFI, and G2G. The Beneficial Owners execute this Consent for the purposes herein expressed and to confirm that other than Brad Hall and Andrea Hall (through their ownership of HFI), no other individual owns 10% or more of Good 2 Go.
2. This Consent may be executed by digital or electronic means using commercially available electronic software that results in confirmed signatures delivered electronically to each of the parties. This Consent may also be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, notwithstanding that all parties are not signatory to the original or the same counterpart.

[Signature Page Follows]



Arizona Department of Liquor Licenses and Control  
800 W Washington 5th Floor  
Phoenix, AZ 85007-2934  
www.azliquor.gov  
(602) 542-5141

AFFIDAVIT OF POSTING

Date of Posting: 2/4/19 Date of Posting Removal: 2-25-19

Applicant's Name: Vurnovas Jodi L.  
Last First Middle

Business Address: 8333 N. Cortaro Road Town of Marana 85743  
Street City Zip

License #: 1010380/48839

I hereby certify that pursuant to A.R.S. 4-201, I posted notice in a conspicuous place on the premises proposed to be licensed by the above applicant and said notice was posted for at least twenty (20) days.

ELTON E BURNS JR Housing Spec 520 990 2494  
Print Name of City/County Official Title Phone Number

Elton E Burns Jr 2/4/19  
Signature Date Signed

Return this affidavit with your recommendations (i.e., Minutes of Meeting, Verbatim, etc.) or any other related documents.  
If you have any questions please call (602) 542-5141 and ask for the Licensing Division.



Arizona Department of Liquor Licenses and Control  
800 W Washington 5th Floor  
Phoenix, AZ 85007-2934  
www.azliquor.gov  
(602) 542-5141

Local Governing Body Recommendation  
A.R.S. § 4-201(C)

1. City or Town of: Town of Marana Liquor License Application #: 10103800/48839  
(Circle one) (Arizona application #)
2. County of: Pima City/Town/County #: LL2019-004
3. If licensed establishment will operate within an "entertainment district" as described in A.R.S. §4-207(D)(2),  
\_\_\_\_\_  
(Name of entertainment district) (Date of resolution to create the entertainment district)
- A boundary map of entertainment district must be attached.
4. The Town of Marana Town Council at a Regular meeting held on the 5th of  
(Governing body) (Regular or special) (Day)  
March, 2019 considered the application of Jodi L. Vurnovas  
(Month) (Year) (Name of applicant)  
for a license to sell spirituous liquor at the premises described in application 10103800/48839,  
(Arizona liquor license application #)  
for the license series #: type Series #10 Beer and Wine Store as provided by A.R.S §4-201.  
(i.e.: series #10: beer & wine store)

ORDER OF APPROVAL/DISAPPROVAL

IT IS THEREFORE ORDERED that the license APPLICATION OF Jodi L. Vurnovas  
(Name of applicant)  
to sell spirituous liquor of the class and in the manner designated in the application, is hereby recommended  
for \_\_\_\_\_  
(Approval, disapproval, or no recommendation)

TRANSMISSION OF ORDER TO STATE

IT IS FURTHER ORDERED that a certified copy of this order be immediately transmitted to the State Department  
of Liquor, License Division, 800 W Washington, 5th Floor, Phoenix, Arizona.

Dated at \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
(Location) (Day) (Month) (Year)

\_\_\_\_\_  
(Printed name of city, town or county clerk)

\_\_\_\_\_  
(Signature of city, town or county clerk)

Department of Liquor Licenses and Control  
Descriptions of Common Types of Liquor Licenses

Series 6 Bar

The bar (series 6) liquor license is a "quota" license available only through the Liquor License Lottery or for purchase on the open market. Once issued, this liquor license is transferable from person to person and/or location to location within the same county and allows the holder both on- & off-sale retail privileges. This license allows a bar retailer to sell and serve all types of spirituous liquors, primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises. A retailer with off-sale ("To Go") privileges may deliver spirituous liquor off of the licensed premises in connection with a retail sale. A.R.S. § 4-206.01.F. states that after January 1, 2011, the off-sale privileges associated with a bar license shall be limited to no more than 30% of the total annual sales receipts of liquor by the licensee at that location. Payment must be made no later than the time of delivery. Off-sale ("To Go") package sales of spirituous liquor can be made on the bar premises as long as the area of off-sale operation does not utilize a separate entrance and exit from the ones provided for the bar. A hotel or motel with a Series 6 license may sell spirituous liquor in sealed containers in individual portions to its registered guests at any time by means of a minibar located in the guest rooms of registered guests. The registered guest must be at least twenty-one (21) years of age. Access to the minibar is by a key or magnetic card device and not furnished to a guest between the hours of 2:00 a.m. and 6:00 a.m.

Series 7 Beer and Wine Bar

The beer and wine bar (series 7) liquor license is a "quota" license available only through the Liquor License Lottery or for purchase on the open market. Once issued, this liquor license is transferable from person to person and/or location to location within the same county and allows the holder both on- & off-sale retail privileges. This license allows a beer and wine bar retailer to sell and serve beer and wine (no other spirituous liquors), primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises. A retailer with off-sale ("To Go") privileges may deliver spirituous liquor off of the licensed premises in connection with a retail sale. A.R.S. § 4-206.01.F. states that after January 1, 2011, the off-sale privileges associated with a bar license shall be limited to no more than 30% of the total annual sales receipts of liquor by the licensee at that location. Off-sale ("To Go") package sales can be made on the bar premises as long as the area of off-sale operation does not utilize a separate entrance and exit from the one provided for the bar. Payment must be made no later than the time of delivery.

Department of Liquor Licenses and Control  
Descriptions of Common Types of Liquor Licenses

Series 9 Liquor Store

The liquor store (series 9) license is a "quota" license available only through the Liquor License Lottery or for purchase on the open market. Once issued, this liquor license is transferable from person to person and/or location to location within the same county and allows a spirituous liquor store retailer to sell all types of spirituous liquors, only in the original unbroken package, to be taken away from the premises of the retailer and consumed off the premises. A retailer with off-sale privileges may deliver spirituous liquor off of the licensed premises in connection with a retail sale. Payment must be made no later than the time of delivery. Series 9 (liquor store) licensees and applicants may apply for unlimited sampling privileges by completing the Sampling Privileges form.

Series 10 Beer and Wine Store

This non-transferable, off-sale retail privileges liquor license allows a retail store to sell beer and wine (no other spirituous liquors), only in the original unbroken package, to be taken away from the premises of the retailer and consumed off the premises. A retailer with off-sale privileges may deliver spirituous liquor off of the licensed premises in connection with a retail sale. Payment must be made no later than the time of delivery. Series 10 (beer and wine store) licensees and applicants may apply for unlimited sampling privileges by completing the Sampling Privileges form.

Series 11 Hotel/Motel

This non-transferable, on-sale retail privileges liquor license allows the holder of a hotel/motel license to sell and serve all types of spirituous liquor solely for consumption on the premises of a hotel or motel that has a restaurant where food is served on the premises. The restaurant on the licensed premises must derive at least forty percent (40%) of its gross revenue from the sale of food. The holder of this license may sell spirituous liquor in sealed containers in individual portions to its registered guests at any time by means of a minibar located in the guest rooms of registered guests. The registered guest must be at least twenty-one (21) years of age. Access to the minibar is provided by a key or magnetic card device and may not be furnished to a guest between the hours of 2:00 a.m. and 6:00 a.m.

Series 12 Restaurant

This non-transferable, on-sale retail privileges liquor license allows the holder of a restaurant license to sell and serve all types of spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food. Failure to meet the 40% food requirement may result in revocation of the license.



## **Council-Regular Meeting**

**A1**

**Meeting Date:** 03/05/2019

**To:** Mayor and Council

**From:** Frank Cassidy, Town Attorney

**Date:** March 5, 2019

**Strategic Plan Focus Area:**  
Recreation

### **Strategic Plan Focus Area Additional Info:**

Principle Statement 1: We will promote healthy and active lifestyles through dynamic programming, community partnerships, and high-quality recreational amenities for Marana residents and visitors.

Goal 4: Continue creating path, greenway and trail linkage to parks, recreation facilities, schools, commercial development and other public infrastructure.

**Subject:** Resolution No. 2019-020: Relating to Development; approving and authorizing the Mayor to sign the development agreement among the Pima County Flood Control District, the Town of Marana, Alta Vista Communities RP LLC, and I.T. Investments Three, L.L.C. for CDO North Bank Improvements, I-10 to Thornydale (Frank Cassidy)

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### **Discussion:**

Alta Vista Communities RP LLC and I.T. Investments Three, L.L.C. (the "Landowners") own the land located between Aerie Drive and the CDO Wash just west of Thornydale Road. The Pima County Flood Control District ("PCFCD") has been negotiating with the Landowners to facilitate the dedication of land needed for the construction of bank protection and linear park improvements along the north bank of the CDO Wash. The negotiations resulted in the CDO North Bank Development Agreement among PCFCD, the Landowners, and the Town and now presented to the Council for approval by this agenda item.

Most of the terms and obligations of the CDO North Bank Development Agreement involve only PCFCD and the Landowners, and do not directly involve the Town. The Town of Marana is a party to the CDO North Bank Development Agreement for four key reasons:

1. The bank protection and linear park improvements to be constructed pursuant to

the agreement are located within the town limits of Marana.

2. The Town owns land and property rights in and along the CDO Wash and Carmack Wash that need to be quit-claimed to PCFCD so that the improvements can be construction and maintained as contemplated by the agreement.
3. The Landowners need assurance that their dedication of land to PCFCD for the bank protection and linear park improvements will not adversely affect the development of and the development entitlements associated with the lands the Landowners will retain between the CDO Wash and Aerie Drive.
4. Being a party to the agreement gives the Town standing to assure the construction and maintenance of the improvements as contemplated by the agreement.

**Financial Impact:**

If approved, this item will commit the Town to transfer CDO Wash land to the Pima County Flood Control District, thereby taking it off the Town's books. The financial impact is anticipated to be nominal.

**Staff Recommendation:**

Staff recommends adoption of Resolution No. 2019-020, approving and authorizing the Mayor to sign the development agreement for CDO North Bank Improvements, I-10 to Thornydale.

**Suggested Motion:**

I move to adopt Resolution No. 2019-020, approving and authorizing the Mayor to sign the development agreement for CDO North Bank Improvements, I-10 to Thornydale.

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**Attachments**

Resolution No. 2019-020  
CDO North Bank DA and Exhibits

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## MARANA RESOLUTION NO. 2019-020

RELATING TO DEVELOPMENT; APPROVING AND AUTHORIZING THE MAYOR TO SIGN THE DEVELOPMENT AGREEMENT AMONG THE PIMA COUNTY FLOOD CONTROL DISTRICT, THE TOWN OF MARANA, ALTA VISTA COMMUNITIES RP LLC, AND I.T. INVESTMENTS THREE, L.L.C. FOR CDO NORTH BANK IMPROVEMENTS, I-10 TO THORNYDALE

WHEREAS the Town, the Pima County Flood Control District, Alta Vista Communities RP LLC, and I.T. Investments Three, L.L.C. have negotiated the terms of an agreement to facilitate the construction of public flood control and linear park improvements along the north bank of the Cañana del Oro Wash between Interstate 10 and Thornydale Road; and

WHEREAS paragraph 4.3 of the agreement includes a provision requiring the Town to quit claim to the Pima County Flood Control District certain land and property rights located in and adjacent to the Cañana del Oro Wash and Carmack Wash and more particularly described in paragraph 1.1.4 of the agreement; and

WHEREAS paragraph 8 of the agreement provides among other things that the Town will deem the property conveyed by the landowners toward the CDO improvements to be included as part of the landowners' land holdings for all applicable development review purposes including calculating density and lot coverage ratios (such as maximum lot coverage), floor area ratios, and landscaped areas not covered by buildings, and for determining permitted land uses; and provides for certain Town landscaping and bufferyard requirements to be satisfied by the landscaping to be provided under the agreement; and

WHEREAS the Mayor and Council of the Town of Marana find that this resolution and the agreement it approves are in the best interests of the Town of Marana and its citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA as follows:

**Section 1.** The development agreement among the Pima County Flood Control District, the Town of Marana, Alta Vista Communities RP LLC, and I.T. Investments Three, L.L.C. for CDO North Bank Improvements, I-10 to Thornydale in substantially the form included with the agenda backup material accompanying this resolution is hereby approved and the Mayor is authorized to execute it for and on behalf of the Town of Marana.

**Section 2.** The Town Manager is hereby directed and authorized to sign the quit claim deed, quit-claiming to the Pima County Flood Control District the land and property rights described in paragraph 1.1.4 of the agreement.

**Section 3.** The Town Manager and staff are hereby directed and authorized to undertake all other and further tasks required or beneficial to carry out the terms, obligations, conditions, and objectives of this resolution and the agreement it approves.

PASSED AND ADOPTED by the Mayor and Council of the Town of Marana, Arizona, this 5<sup>th</sup> day of March, 2019.

---

Mayor Ed Honea

ATTEST:

APPROVED AS TO FORM:

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Cherry L. Lawson, Town Clerk

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Frank Cassidy, Town Attorney

## DEVELOPMENT AGREEMENT

### CDO NORTH BANK IMPROVEMENTS, I-10 TO THORNYDALE

This Development Agreement (“**Agreement**”) is entered into effective February 19, 2019 (“**Effective Date**”) by and among Pima County Flood Control District (“**RFCD**”), Town of Marana (the “**Town**”), Alta Vista Communities RP LLC, an Arizona limited liability company (“**Alta Vista**”), and I.T. Investments Three, L.L.C., an Arizona limited liability company (“**IT**” and, together with Alta Vista, “**Developers**”) with reference to the following recitals:

#### 1. Background & Purpose.

1.1. **Property.** The parties own the following real property, which is depicted on **Exhibit A** of this Agreement:

1.1.1. **Alta Vista.** Alta Vista owns three parcels of property adjacent to the north side of the Canada del Oro Wash (“**CDO Wash**”) (the “**Alta Vista Property**”).

1.1.2. **IT.** IT owns a parcel of property on the north side of CDO Wash, next to the Alta Vista Property (the “**IT Property**”).

1.1.3. **RFCD.** RFCD owns an easement for the construction, operation and maintenance of channel improvements and a river park under Interstate 10, which is recorded in Docket 11031, at Page 482, and RFCD or Pima County owns the Project Area (defined in Section 1.4 below) to the west of I-10 (together, the “**RFCD Property**”). The RFCD Property is located adjacent to the Alta Vista Property and CDO Wash.

1.1.4. **Town.** The Town owns (a) the north half of the Canada del Oro Drainageway, which is adjacent to the IT Property and Alta Vista Property, as shown on the plat for Thornydale Plaza, recorded in Book 26 of Maps and Plats, at Page 84 (the “**Thornydale Plaza Plat**”); (b) the south half of the Canada del Oro Drainageway, portions of Carmack Wash, and a 40’ alley on the south side of the Drainageway, all as shown on the plat for Orange Grove Industrial Park, recorded in Book 26 of Maps and Plats at Page 73; and (c) an existing 40’ public trail easement on the Alta Vista Property, as shown on the plat for Aerie Riverwalk, recorded at Sequence No. 20131090246 (together, the “**Town Property**”).

1.2. **RFCD Authority & Purpose.** RFCD was organized under Arizona Revised Statutes § 48-3601 and 48-3602 for flood protection within incorporated and unincorporated areas of Pima County. RFCD provides for flood and erosion control along major watercourses such the CDO Wash to protect public infrastructure including Interstate-10, sewer conveyance systems and other utilities, including through the construction of bank protection and river-park improvements. RFCD has authority under A.R.S. § 48-3603 to acquire, construct, maintain, and operate, and enter into contracts for acquiring, constructing, maintaining, and operating, flood-control and improvements and incidental improvements.

- 1.3. **Development Limitations; Project.** There are limitations on the development of portions of the Developers' respective properties until bank protection is installed. RFCD is willing to construct the necessary bank protection as part of a larger project (the "**Project**"), with the financial participation and cooperation of Developers as set forth in this Agreement.
- 1.4. **Project Description.** The Project will consist of the construction of bank improvements (the "**Bank Improvements**"), and linear park improvements and amenities, including landscaping, within a 50-foot wide linear park measured from the top front face of the bank protection (the "**Linear Park Improvements**" and, together with the Bank Improvements, sometimes collectively referred to as the "**Improvements**").
  - 1.4.1. **Project Area.** The area within which the Project will be built (the "**Project Area**") is depicted on **Exhibit A**. It includes an area over which Foodtown Development Company II, L.L.C. ("**Foodtown**"), and Clover Real Estate II, L.L.C. ("**Clover**"), previously granted an access easement (the "**Existing Access Easement**") to Alta Vista, which benefits Lot 3 of the Alta Vista Property. A copy of the Existing Access Easement, which is recorded in the Pima County Recorder's Office at Sequence No. 20180610427, is attached as **Exhibit B**.
  - 1.4.2. **Bank Improvements.** The Bank Improvements include soil cement bank protection along the entire length of the Project Area (including tying-in the existing bank protection along a portion of the IT Property), a soil cement pedestrian underpass for the I-10/UPRR underpass, a maintenance access ramp, and maintenance access road.
  - 1.4.3. **Linear Park Improvements.** The Linear Park Improvements include landscaping, irrigation, and other amenities consistent with other RFCD linear parks, including a paved multi-use path, barricade rail, and a pedestrian underpass canopy structure. Diagrams depicting the cross-section for each segment of the Project are attached as **Exhibit D**.
  - 1.4.4. **Required Permits.** Certain clearances and permits are needed for the Project, including a 404 Permit; a Federal Emergency Management Agency ("**FEMA**") Conditional Letter of Map Revision; and permits from Union Pacific Railroad and Arizona Department of Transportation for construction on their respective properties as part of the I-10/UPRR underpass portion of the Project (collectively, the "**Required Permits**").
  - 1.4.5. **LOMR.** Following completion of the project, the Parties intend to obtain a Letter of Map Revision ("**LOMR**") from FEMA in order to remove the floodplain designations on the Alta Vista Property and IT Property.
- 1.5. **Project Plans.** Developers have retained Cypress Engineering, which has drafted plans and specifications for the Project, as described in **Exhibit C** attached hereto (the "**Project Plans**"), which are being reviewed by RFCD. The Project Plans, when complete, will include all plan, profile, and construction details necessary to bid and construct the

Project as described in this Agreement, supporting engineering and technical documentation as required by RFCD, and construction documents and special provisions.

- 1.6. **Project Costs.** “**Project Costs**” means all costs for the Project, including the Bank Improvement Costs, Bank Improvement Additional Costs, and Linear Park Costs. Project Costs *do not* include the Developer Direct Costs, as defined below, or the internal administrative and staff overhead expenses of RFCD.

1.6.1. “**Bank Improvement Costs**” means the cost of constructing the Bank Improvements, including site clearing; earthwork; soil cement bank protection; construction of maintenance access roads and ramps; utility sleeves; safety rail; stormwater pollution prevention and hydroseeding necessary for the Bank Protection Improvements; pedestrian underpass soil cement; remediation of trash or hazardous materials within the Project Area, to the extent necessary to construct the Bank Improvements; and the costs paid to third parties for Project oversight, inspections and testing, including pass through expenses charged to the Project by Pima County Department of Transportation for materials testing. Bank Improvement Costs include (i) half the cost of the drainage culvert at (Station 163+55), and (ii) the entire cost of extending an existing 58”x 91” horizontal elliptical reinforced concrete storm drain on the IT Property (Station 183+66). Bank Improvement Costs do not include (i) Bank Improvement Additional Costs as defined below, (ii) Linear Park Costs as defined below, (iii) costs of remediation of trash or hazardous materials outside the Project Area, or (iv) other costs expressly excluded from the definition of Project Costs.

1.6.2. “**Bank Improvement Additional Costs**” means the cost of (i) drainage culverts, including headwalls, flapgates, and scuppers, and associated drainage features, except those specifically included as part of Bank Improvement Costs in the preceding paragraph ; (ii) grading and filling areas of Lot 3 of the Alta Vista Property; (iii) any additional excavation and filling of areas outside the Project Area if the presence of trash or hazardous material is discovered in the Project Area and correction of that condition impacts adjacent property owned by a party; (iv) constructing any betterments or amenities requested by one of the Parties during the construction of the Project. Bank Improvement Additional Costs do not include costs excluded from the definition of Project Costs.

1.6.3. “**Linear Park Costs**” means all costs for constructing the Linear Park Improvements, including paving, striping, landscaping, irrigation, irrigation utilities, stormwater pollution prevention, and hydroseeding as shown on the landscaping plans. Linear Park Costs do not include costs excluded from the definition of Project Costs.

1.6.4. “**Developer Direct Costs**” means all costs for obtaining rights-of-way for the Project, the Required Permits, the LOMR, and the Project Plans.

- 1.7. **Cost-Sharing and Allocations.** The parties agree to allocate Project Costs as follows:
- 1.7.1. **RFCD:** 50% of the Bank Improvement Costs for the Bank Improvements along the IT and Alta Vista Property; 100% of the Bank Improvement Costs for the Bank Improvements on the RFCD Property and the I-10/UPRR underpass; and 100% of the Bank Improvement Additional Costs for the RFCD Property and the Town Property, including but not limited to costs of remediation of trash or hazardous materials on RFCD or Town Property outside the Project Area.
  - 1.7.2. **IT:** The sum of Three Hundred Thousand Dollars (\$300,000), plus 100% of the Bank Improvement Additional Costs pertaining to the IT Property as described in clauses (i), (iii), or (iv) of Section 1.6.2.
  - 1.7.3. **Alta Vista:** 50% of the Bank Improvement Costs for the Bank Improvements along the Alta Vista Property and IT Property; 100% of the Bank Improvement Additional Costs for the Alta Vista Property; and 100% of the Linear Park Costs and Developer Direct Costs.
- 1.8. **Allocation Methodology:** The Project Plans include an engineer's estimate of probable costs, including a schedule of values (the "**Engineer's Estimate**"), and a spreadsheet allocating the Project Costs among the Developers and RFCD (the "**Cost Allocation Spreadsheet**"). RFCD and each of the Developers have reviewed the allocation methodology and agree that the Cost Allocation Spreadsheet properly allocates the Project Costs according to the above cost shares.
2. **Developers.** "Alta Vista" means Alta Vista, any successor entity, and any successor owner of any portion of the Alta Vista Property other than RFCD. "IT" means IT, any successor entity, and any successor owner of any portion of the IT Property other than RFCD.
- 2.1. **Liability.** Once IT has deposited \$300,000 with the Escrow Agent as described in Section 6.1, IT shall be responsible only for 100% of the Bank Improvement Additional Costs for the IT Property (including but not limited to costs of constructing drainage structures for the IT Property), and Alta Vista shall be responsible for all other obligations of the Developers hereunder.
  - 2.2. **Refund.** Upon Project Completion and once a Final Accounting of Project Costs has been completed as described in Section 6.4.1, any refund of amounts deposited in Escrow and due to Developers shall be paid and belong to Alta Vista.
3. **Platting and Building Permits.** Alta Vista acknowledges that no building permits will be authorized for the Alta Vista Property, other than for grading, until construction of the Project has been completed and paid for pursuant to the terms hereof ("**Project Completion**"). Until Project Completion, Developers must give RFCD copies of the development and grading plans, and any correspondence and approvals from the Town or associated utilities related to development and grading plans for their properties.
4. **Right of Way.** Within 30 days after this Agreement is approved by the Board of Directors of the District, Alta Vista, IT, and the Town will deliver to the Escrow Agent (as defined in

Section 6 below) fully executed conveyance documents for portions of their property, as described below. Conveyances of additional rights-of-way to RFCD are a condition precedent to RFCD's obligation to bid the Project, as set forth in Section 5.1 below.

**4.1. Alta Vista Conveyances.** Alta Vista will deliver to the Escrow Agent:

- 4.1.1. *Fee Conveyance.* A special warranty deed conveying to RFCD fee title to a strip of the Alta Vista Property, as legally described on **Exhibit E**. Title must be conveyed free of any monetary liens or encumbrances, and subject only to (i) those non-monetary title exceptions shown on that certain Commitment for Title Insurance issued by First American Title Insurance through Title Security Agency LLC dated June 21, 2018; (ii) at Alta Vista's option, a prohibition on commercial activities within the deeded area, and retention of a temporary construction easement for construction of a wall on Alta Vista's retained property adjacent to the Linear Park, in a form reasonably acceptable to RFCD, over a portion of the deeded property to enable construction of a wall on Alta Vista's retained property; and (iii) any other exceptions to which RFCD consents (not to be unreasonably withheld, conditioned or delayed). This property is encumbered by a 40' utility and access easement as shown on the Thornydale Plaza Plat. Alta Vista and RFCD will reasonably cooperate to obtain any necessary consents from impacted utilities, if applicable, and to obtain appropriate abandonments of any portions of these existing easements that encumber property retained by Alta Vista.
- 4.1.2. *Additional Access Easement.* An easement for ingress and egress by RFCD, in substantially the form attached as **Exhibit F**, over the portion of Lot 3 of the Alta Vista Property legally described and depicted in **Exhibit G**.
- 4.1.3. *Temporary Construction Easement.* A temporary construction easement, in the form of **Exhibit J**, over the property legally described and depicted in **Exhibit K**.

**4.2. IT Conveyances.** IT will deliver to the Escrow Agent:

- 4.2.1. *Fee Conveyance.* A special warranty deed conveying to RFCD fee title to a strip of the IT Property, as legally described in **Exhibit H**. Title must be conveyed free of any monetary liens or encumbrances, and subject only to (i) those non-monetary title exceptions shown on that certain Commitment for Title Insurance issued by First American Title Insurance through Title Security Agency LLC dated June 21, 2018; (ii) at IT's option, a prohibition on commercial activities within the deeded area, and retention of a temporary construction easement for construction of a wall on IT's retained property adjacent to the Linear Park, in a form reasonably acceptable to RFCD, over a portion of the deeded property to enable construction of a wall on IT's retained property; and (iii) any other exceptions to which RFCD consents (not to be unreasonably withheld, conditioned or delayed). This property is encumbered by (among other matters shown on the Commitment) a 40' utility and access easement as shown on the Thornydale Plaza Plat. IT and RFCD will reasonably cooperate to seek any

necessary consents from impacted utilities, if applicable, and to seek appropriate abandonments of any portions of these easements that encumber property retained by IT.

4.2.2. *Temporary Construction Easement.* A temporary construction easement, in the form of **Exhibit L**, over the property legally described and depicted in **Exhibit M**.

4.3. **Transfer of Town Property.** The Town of Marana will deliver to the Escrow Agent a quitclaim deed transferring the Town's interest in the Town Property to RFCD.

## 5. **Procurement and Construction.**

5.1. **Conditions Precedent for Project Commencement:** RFCD will not bid the Project until the conditions precedent listed below (the "**Conditions Precedent**") have, in RFCD's reasonable judgment, been satisfied. RFCD will cooperate with Developers in good faith, as required herein, and as reasonably necessary to allow Developers to satisfy the Conditions Precedent. If the Conditions Precedent have not been fully satisfied within 120 days of the Effective Date, then RFCD may give written notice of exactly what needs to occur to satisfy the condition and its intent to terminate this Agreement if a specified condition is not satisfied within 30 days (a "**Condition Precedent Notice**"). If the specified Condition Precedent is not satisfied within 30 days of receipt of the Condition Precedent Notice, then RFCD may, from and after that date until all Conditions Precedent have been fully satisfied, terminate this Agreement by written notice to the Developers. Similarly, if a Condition Precedent is not satisfied within one year of the Effective Date, then either Developer may terminate this agreement by written notice to RFCD and the other Developer.

5.1.1. *Plans.* RFCD has approved the Plans.

5.1.2. *Permits.* Developers have obtained, with RFCD's cooperation and in RFCD's name, the Required Permits.

5.1.3. *Right-of-way.* Conveyance documents have been deposited with the Escrow Agent as provided in Section 4 above, and Developers have deposited funds with the Escrow Agent as provided in Section 6.1.

5.1.4. *Utility Clearances.* Cypress Engineering has secured all necessary utility clearances and provided utility relocation plans and utility easements as necessary for the construction and maintenance of the Project, including electrical and water service to the Linear Park area for park maintenance.

5.1.5. *Design Professional Indemnity.* Developers have provided to RFCD indemnity and insurance certificates from Cypress Engineering and ARC Studios, with each entity agreeing to indemnify and defend RFCD from any and all claims based on that entity's design of the Improvements and agreeing to maintain insurance coverage reasonably acceptable to RFCD, and to list RFCD as an additional insured.

- 5.1.6. *Railroad Easement.* The Union Pacific Railroad has conveyed to RFCD an easement for the construction, operation, maintenance, and public use, of channel improvements and a river park, under the Union Pacific Railroad property.
- 5.1.7. *Existing Access Easement.* Alta Vista has obtained an executed amendment to the Existing Access Easement, substantially in the form attached hereto as **Exhibit I**, and has delivered it to either the Escrow Agent or RFCD.
- 5.1.8. *Lienholder Consents.* As a further condition, lienholder consents must be provided for any easement areas that are subject to liens.
- 5.1.9. *Special Conditions.* The completion of Special Conditions (if applicable) specified in the Project Plans as “Special Conditions” to be completed before Project commencement.
- 5.2. **Procurement.** RFCD will, in compliance with Title 34 requirements, award one contract for construction of the Bank Protection Improvements (the “**Bank Protection Contract**”) and, at a later time, a separate contract for construction and landscaping of the Linear Park (the “**Linear Park Contract**”). The Project will be phased, and bidding of the Linear Park Contract will be timed, so that construction of the Linear Park can begin as the Bank Protection Improvements are being completed.
- 5.2.1. *Bank Improvement Contract.* After bidding the Bank Protection Contract, but prior to awarding the contract, RFCD will, with the assistance of Cypress Engineering and ARC Studios, recalculate each Party’s share of Project Costs based upon the amount of the bid that RFCD staff intends to recommend for acceptance by the RFCD Board of Directors, the estimated Linear Park Costs, and the Cost Allocation Spreadsheet.
- If a Party’s recalculated share of Project Costs (the “Adjusted Share Estimate”) exceeds the Engineer’s Estimate of that share by 15% or more, that Party may, before the Bank Protection Contract is awarded by the Board of Directors, deliver a written objection to the other Parties. If such an objection is made, RFCD will reject all the bids and the Parties will confer in good faith and attempt to determine if the Project can be re-engineered to reduce costs or otherwise how to proceed.
- 5.2.2. *Linear Park Contract.* After bidding the Linear Park Contract, but prior to awarding the contract, RFCD will, with the assistance of Cypress Engineering and ARC Studios, recalculate each Party’s share of Project Costs using the amount of the Linear Park Contract bid that RFCD staff intends to recommend for acceptance by the RFCD Board of Directors, the previously awarded Bank Protection Contract bid, and the Cost Allocation Spreadsheet.

If a Party’s recalculated share of Project Costs exceeds that Party’s Adjusted Share Estimate by 20% or more, that Party may, before the Linear Park Contract is awarded by the Board of Directors, deliver a written objection to the other Parties. If such an objection is made, RFCD will reject all the bids and the Parties

will confer in good faith and attempt to determine if the Project can be re-engineered to reduce costs or otherwise how to proceed.

- 5.2.3. *County Nursery.* To ensure the quality of native plant species used for landscaping, RFCD may obtain or require the contractor to obtain trees, shrubs and cacti from the Pima County Native Plant Nursery for the Linear Park Improvements. The cost of these plants, for purposes of calculating Project Costs and allocations, will be the full outside vendor rate.

### 5.3. **Construction; Meetings.**

- 5.3.1. After each contract is awarded, RFCD will cause the selected contractor to construct its portion of the Project, in compliance with the Project Plans, including all Special Conditions, and will oversee and administer the construction.

- 5.3.2. RFCD will appoint an individual to serve as the Project Manager for the Project, and IT and Alta Vista will each designate a representative to act as a “**Project Liaison**” for the Project. The Project Manager and Project Liaisons will meet on a regular monthly basis during construction (the “**Monthly Meetings**”) to discuss the Project’s progress and change orders regarding scope or cost. Each Developer shall have the right to approve any change order that will increase that Developer’s share of the Project Costs, and in this regard, IT shall only have the right to approve change orders pertaining to (i) Bank Improvement Additional Costs on the IT Property for which IT is responsible, and (ii) changes to Bank Improvements or Linear Park Improvements along the IT Property that are not also being made to the other portions of the Bank Improvements or Linear Park Improvements. Such approval may not be unreasonably withheld, conditioned or delayed.

- 5.4. **Final Letter of Map Revision.** Following completion of construction, Developers will obtain the LOMR at their cost, with the cooperation of and in the name of RFCD.

- 5.5. **Release of Liability.** Alta Vista and IT each hereby releases RFCD from any liability for work done by RFCD or its contractors on that Developer’s retained property, including the grading on Lot 3.

6. **Cost Sharing.** The Parties will provide Escrow Agent a copy of this Agreement with direction to follow the process in this Section 6. As required by the Escrow Agent, the Parties will execute escrow instructions consistent with this Section 6.1.

### 6.1. **Payments.**

- 6.1.1. IT and Alta Vista will each, before RFCD solicits bids for the Bank Protection Contract, deposit with Title Security Agency LLC, One S. Church Ave., Suite 1610, Tucson, Arizona attention Bobbi Raymond (the “**Escrow Agent**”) its estimated share of Project Costs based on the Engineer’s Estimate Schedule of Values and the Cost Allocation Spreadsheet.

- 6.1.2. Each Developer will pay to RFCD additional funds as necessary if, during the course of the Project, that Developer's estimated share of Project Costs increases (subject to approval under Section 5.3.2) to the extent that it exceeds the amount previously paid by that Developer.
- 6.2. **Disbursals & Deeds.** The Parties will instruct the Escrow Agent to pay the deposited funds to RFCD, and deliver the right-of-way conveyance documents to RFCD, upon receiving from RFCD a copy of a Notice of Recommendation for Award of the Bank Protection Contract and a copy of an executed Bank Protection Contract.
- 6.3. **Project Commencement.** Upon receipt of the deposited funds into escrow (the "Deposit Date"), RFCD will make reasonable efforts to issue a notice to proceed to the bank-protection contractor, directing the contractor to commence the Project as soon as possible but not more than 120 days. If the notice to proceed is delayed more than 60 days beyond the Deposit Date, RFCD will provide Developers a written notice regarding the reason for the delay. If the notice to proceed is delayed an additional 60 days (120 days since the Deposit Date), RFCD and Developers will meet and confer on whether the Project can move forward. Unless the Parties agree that the Project can move forward, RFCD will provide written notice to the Escrow Agent directing the Escrow Agent to return the deposited funds to IT and Alta Vista, and this Agreement will be deemed to be terminated.
- 6.4. **Cost Reconciliation.**
- 6.4.1. *Final Accounting.* On or before 120 days after substantial completion of the Project, RFCD shall submit to Developers a final accounting and allocation of all Project Costs which is consistent with decisions made by the parties at the Monthly Meetings, including any additional amounts due from the Developers, and any amounts by which the Developers overpaid (the "**Final Accounting**").
- 6.4.2. *Developer Objections.* Either Developer may, within 30 days after receiving the Final Accounting, notify RFCD, in writing, of any amount by which it believes its share has been miscalculated (an "**Objection**"); provided, however, that the only Objection IT may make is that its share of Bank Improvement Additional Costs has been miscalculated. If no Objections are issued, then within 30 days after the end of the Objection period, RFCD will issue any refunds due to the Developers, subject to retention of a good faith estimate of any future Project Costs associated with obtaining the LOMR, and the Developers will pay to RFCD any additional funds due from them. All refunds shall belong to Alta Vista unless pertaining to the refund of a Bank Improvement Additional Cost paid by IT.
- 6.4.3. *RFCD Decision.* RFCD will review any Objection(s) and, within 30 days after receipt of the Objection(s), notify Developers, in writing, whether RFCD is modifying the Final Accounting (the "**Decision Notification**"). Any failure by RFCD to provide a Decision Notification within that 30-day period will be deemed a decision not to make any changes. Within 30 days after RFCD issues a Decision Notification, or within 30 days after the end of the 30-day notification

period if no Decision Notification is issued, RFCD will issue any refunds due to the Developers, subject to retention of a good faith estimate of any future Project Costs associated with obtaining the LOMR, and the Developers will pay to RFCD any additional funds due from them. Any dispute regarding the Final Accounting or refunds due to or amounts due by Developers shall be resolved pursuant to Section 9.2.

7. **Responsibility for Maintenance and Repair of Improvements.** After completion of the Project, RFCD will maintain and repair all Improvements, and the Developers will have no further responsibility for the Improvements. RFCD is not responsible for the maintenance of areas outside of property conveyed to RFCD pursuant to Sections 5.1.1 and 5.1.2.

8. **Development Calculations and Related Matters.**

- 8.1. **Areas.** Upon the request of Alta Vista (with respect to the Alta Vista Property) or IT (with respect to the IT Property), in connection with that Developer's development or use of its respective property, and provided that the Linear Park Improvements are constructed substantially as described in Section 1.4 and in the "Landscape Site Plan" section of the Project Plans, the Town will deem such Developer's property to include the property conveyed by the Developer to RFCD pursuant to this Agreement for all applicable purposes including, without limitation, calculating density and lot coverage ratios (such as maximum lot coverage), floor area ratios, and landscaped areas not covered by buildings, and for determining permitted land uses.

- 8.2. **Bufferyards & Setbacks.** Pursuant to Marana Land Development Code section 17.03.07 as it may be amended and/or recodified, this Agreement constitutes a "landscape buffer agreement" with abutting landowners, allowing the Alta Vista Property and the IT Property to use the areas conveyed by Alta Vista and IT to RFCD under this Agreement to provide some or all of any required landscape buffer. So long as they are constructed and maintained as provided in this Agreement, the total size and plant quantities of the landscaping as described in Section 5.2.3 and depicted in the "Landscape Site Plan" section of the Project Plans (Project No. 5CDONB; Marana Ref ENG1705-010) satisfy the requirements for landscaping in Marana Land Development Code Chapter 17-3 ("Landscape Requirements") and Chapter 8.7.3 ("Commercial Design Standards"), including but not limited to Section A(6)(b)(3)(b) ("Perimeter Landscaping"), as they may be amended and/or recodified.

- 8.3. **IT Larger Parcel.** For the purpose of this Section 8 only, the IT Property also includes the property commonly known as Pima County Assessor's Parcels 101-05-042J and 101-05-042K, legally described on **Exhibit N**.

9. **Disputes.** Notwithstanding anything in this section or elsewhere in this Agreement, RFCD will at all times be in charge of the Project, and will have no obligation to suspend or delay the Project during the attempted resolution of any dispute.

- 9.1. If the Project Manager and a Project Liaison disagree on any aspect of the Project, they will submit the dispute to the RFCD Director and Garry Brav, or his designee, on behalf

of Alta Vista and Doron Sears, or his designee, on behalf of IT (collectively, the Developer Designees”) for resolution. If the RFCD Director and the Developer Designees do not reach a resolution within 10 calendar days, they will submit the dispute to the County Administrator and the Developer Designees, who will attempt to reach a mutually agreeable resolution. If the dispute is not resolved within 10 calendar days, either party to the dispute may initiate the process as described in Section 9.2 below by sending the other party written notice (a “**Dispute Notice**”).

- 9.2. All claims, disputes and causes of action, whether arising in contract, tort, or equity, arising from or related to this Agreement shall first be subject to Mediation and then Arbitration. Unless the parties agree within thirty (30) days of any Dispute Notice from one party to the other, the mediator will be chosen by the presiding Judge of the Pima County Superior Court with Mediation to occur in Pima County, Arizona. If the dispute is not resolved by Mediation, either party may initiate an Arbitration process by sending the other party written notice (the “**Arbitration Notice**”). Unless the parties resolve the dispute within thirty (30) days after the Arbitration Notice, the Arbitrator will be chosen by the Presiding Judge of the Pima County Superior Court. Arbitration will be pursuant to A.R.S. § 12-3001 et seq. The prevailing party will be awarded its reasonable attorneys’ fees and costs, costs of mediation, costs of arbitration, fees and costs of expert witnesses. Parties will be entitled to reasonable discovery and a reasoned opinion.

## 10. Miscellaneous.

- 10.1. **Effective Date.** This Agreement becomes effective on the date it is signed by the last Party to execute it.
- 10.2. **Entire Agreement.** This Agreement constitutes the entire integrated agreement among the Parties and supersedes all prior written and oral matters related to the Project.
- 10.3. **Severability.** If any provision of this Agreement is declared void or unenforceable, the Parties agree promptly to meet to attempt to reach an agreement on a substitute provision. If the parties fail to reach a decision, such provision will be severed from the Agreement, which will otherwise remain in full force and effect, provided such severance does not vitiate the overall intent of the Parties in entering into this Agreement.
- 10.4. **Conflict of Interest.** This Agreement is subject to the provisions of A.R.S. § 38-511.
- 10.5. **Authority.** IT and Alta Vista represent to RFCD that they have full power and authority to enter this Agreement. IT and Alta Vista warrant to RFCD that the individuals executing this Agreement on their respective behalves are authorized and empowered to bind the Party on whose behalf each individual is signing. RFCD represents to IT and Alta Vista that the individuals executing this Agreement on its behalf are authorized and empowered to bind RFCD.
- 10.6. **No Waiver.** No delay in exercising any right or remedy will constitute a waiver of that right or remedy, and no waiver by a Party of the breach of any provision of this

Agreement by another Party will be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Agreement.

- 10.7. **Governing Law.** The laws of the State of Arizona govern the interpretation and enforcement of this Agreement.
- 10.8. **Recording and Successors.** RFCD may, any time following the awarding of contracts for construction of the Project pursuant to Section 6.2, record a copy of this Agreement with the Pima County Recorder, or a memorandum of agreement, which Developers agree to execute. The burdens of this Agreement are binding on, and the benefits of this Agreement inure to, the Parties and to all their successors in interest and assigns.
- 10.9. **Amendment.** This Agreement may be amended, in whole or in part, only with the mutual written consent of all the Parties, or their successors. The County will record any amendment or cancellation in the official records of the Pima County Recorder.
- 10.10. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- 10.11. **Force Majeure.** The time for performance by any party to this Agreement of any term, provision or covenant of this Agreement shall be deemed extended by time lost due to delays resulting from acts of God, strikes, terrorism, unavailability of building materials, civil riots, floods, material or labor restrictions by governmental authority, enforcement of governmental regulations or requirements that were not in effect on the effective date, unreasonable delay by governmental authorities of applicable approvals, and any other cause not within the control of a respective party, as the case may be.
- 10.12. **No Agency Created.** Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the Parties.
- 10.13. **Timeline.** Attached as Exhibit O is an estimated timeline for the Project, from execution of this Agreement through completion.
- 10.14. **Counterparts.** This Agreement may be executed by facsimile or electronic signature in any number of counterparts, which together constitute one and the same instrument.

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SIGNATURE PAGES FOLLOW

**Pima County Regional Flood Control District,  
a political subdivision of the State of Arizona**

By: \_\_\_\_\_  
Richard Elias, Chairman of the Board of Directors

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

ATTEST:

By: \_\_\_\_\_  
Julie Casaneda, Clerk of the Board

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

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
Suzanne Shields, Chief Engineer & Director of the District

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

APPROVED AS TO FORM:

By:  \_\_\_\_\_  
Deputy County Attorney

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

**The Town of Marana,  
a municipal corporation**

By: \_\_\_\_\_  
Ed Honea, Mayor

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

ATTEST:

By: \_\_\_\_\_  
Town Clerk

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Frank Cassidy, Town Attorney

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

**Alta Vista Communities RP LLC**  
**an Arizona limited liability company**

By Casitas Investor RP, LLC  
an Arizona limited liability company, Manager

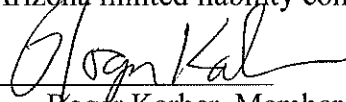
By Brav Holding Company LLC  
an Arizona limited liability company, Co-Manager

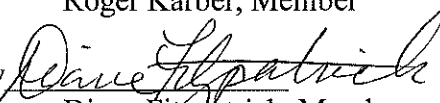
By   
Garry Brav, Manager

By Indus Holdings LLC  
an Arizona limited liability company, Co-Manager

By   
G.S. Jaggi, Manager

By Karber Holdings LLC  
an Arizona limited liability company, Co-Manager

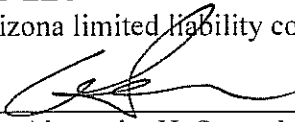
By   
Roger Karber, Member

By   
Diane Fitzpatrick, Member

**I.T. Investments Three, L.L.C.**  
**an Arizona limited liability company**

By WC Group LLC  
an Arizona limited liability company, Manager

By WCLP LLC  
an Arizona limited liability company, Manager

By   
Alexander H. Sears, Manager

EXHIBITS:

- A Project Diagram
- B Copy of Existing Access Easement
- C Description of Plans
- D Cross-Section Diagrams
- E Legal Description of Property, Fee Title to which is being Conveyed to RFCD by Alta Vista
- F. Form of Lot 3 Access Easement Agreement
- G Legal Description of Lot 3 Access Easement Area
- H Legal Description of Property, Fee Title to which is being conveyed to RFCD by IT
- I Form of Amendment to Existing Access Easement
- J Form of Alta Vista Temporary Easement
- K Legal Description of Alta Vista Temporary Easement Parcel
- L Form of IT Temporary Easement
- M Legal Description of IT Temporary Easement Parcel
- N Legal Description of IT Larger Parcel
- O Project Timeline

# PROJECT DIAGRAM CDO NORTH BANK PROTECTION

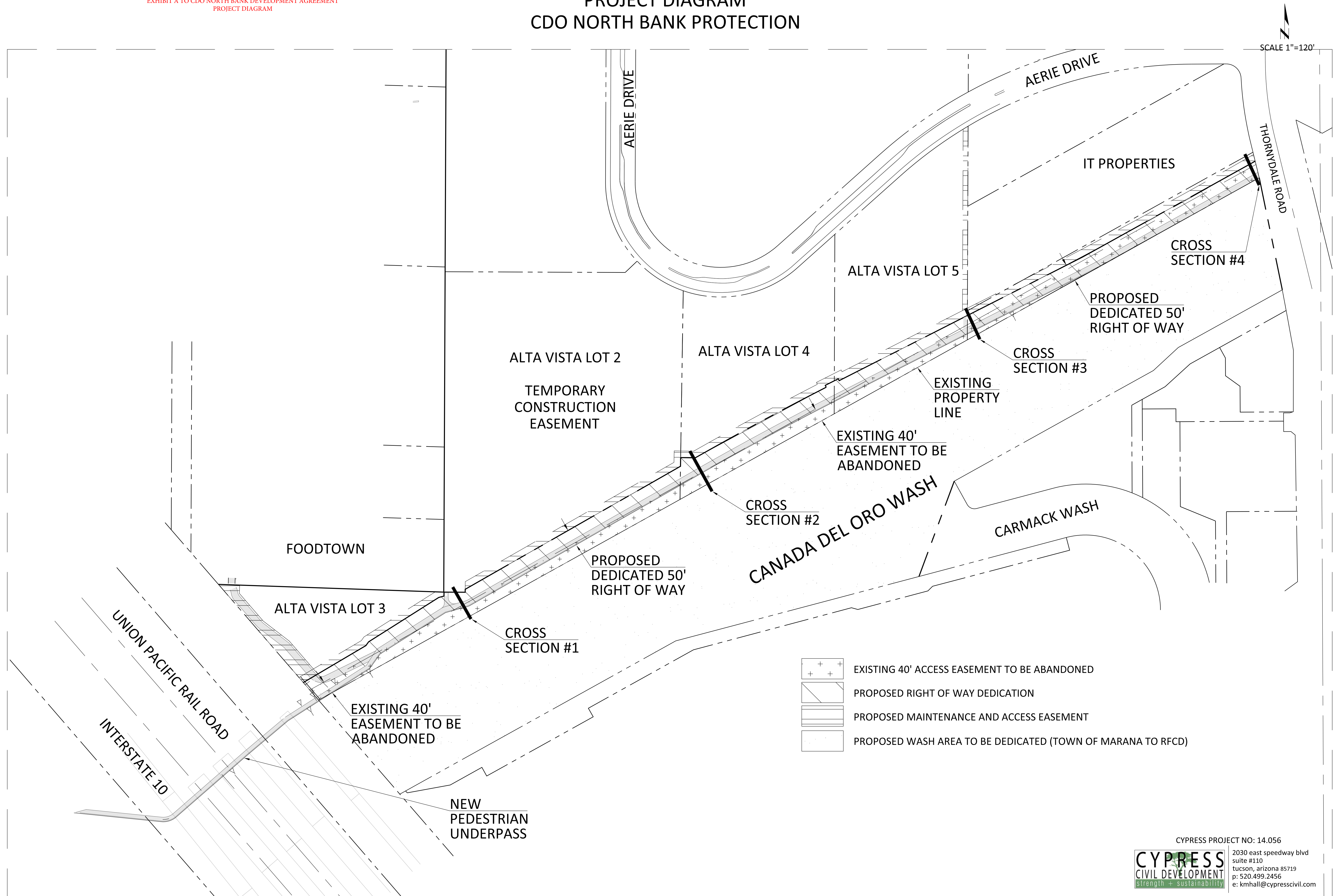


EXHIBIT B TO CDO NORTH BANK DEVELOPMENT AGREEMENT  
EXISTING ACCESS EASEMENT  
17 PAGES

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No. Pages: 17  
3/2/2018 2:57 PM

F. ANN RODRIGUEZ, RECORDER  
Recorded By: HEM(e-recording)



**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

Kohn Law Firm, PLLC  
1200 N. El Dorado Pl., Suite H-810  
Tucson, Arizona 85715  
Attention: Sidney Y. Kohn, Esq.

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**ACCESS EASEMENT AGREEMENT**

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THIS ACCESS EASEMENT AGREEMENT (“**Agreement**”) is made and entered into as of March 1, 2018, by and between FOODTOWN DEVELOPMENT COMPANY II, L.L.C., an Arizona limited liability company, and CLOVER REAL ESTATE II, LLC, an Arizona limited liability company (collectively, the “**Grantor**”) and ALTA VISTA COMMUNITIES RP LLC, an Arizona limited liability company (“**Grantee**”) with reference to the following facts:

A. Grantor is the owner of certain real property described on Exhibit A attached hereto (the “**Servient Tenement**”).

B. Grantee is the owner of certain real property described on Exhibit B attached hereto (the “**Dominant Tenement**”). Grantee will construct or will cause to be constructed certain bank protection improvements within the Dominant Tenement on or adjacent to the wash that runs through or next to the Dominant Tenement (the “**Bank Protection Improvements**”).

C. Grantor desires to grant to Grantee an easement over a portion of the Servient Tenement to provide the owner of the Dominant Tenement access to the Dominant Tenement subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant of Easement. Grantor hereby grants and conveys to Grantee a perpetual, nonexclusive easement (“**Easement**”) in, upon, over, across, through and along that portion of the Servient Tenement depicted on Exhibit C hereto as the “**Easement Area**” for the purposes of ingress to and egress from the Dominant Tenement. Grantee is hereby authorized to permit others to use the Easement Area for the purposes set forth herein. The foregoing grant of Easement is subject to any and all covenants, conditions, restrictions, reservations, easements, rights and other matters which are of record or set forth in this Agreement. The Easement Area shall be used solely for the purposes described in this Section 1 and nothing herein shall be deemed to grant any right to Grantee to construct improvements within or alter the Easement Area, except as expressly set forth herein. The Easement Area shall not be used for access or travel from or to any property other than the Dominant Tenement, and this restriction shall continue to apply notwithstanding any future replat or recombination of the Dominant Tenement with any other real property.

2. Assignment of Rights to County. Grantee hereby grants and assigns, on a nonexclusive basis, its rights to use the Easement to the County of Pima, Arizona (the “County”), subject to the following terms and conditions:

- a. Grantee shall retain all its rights to use the Easement and the Easement Area;
- b. The grant and assignment set forth in this Section 2 shall not operate to increase the scope of the Easement in any way, including size or location of the Easement Area and use; and
- c. The County may use the Easement Area pursuant to this Agreement only for the purposes set forth herein and for the purposes of construction, maintenance and repair of the Bank Protection Improvements or the Easement Area itself.

Grantor consents to the grant and assignment set forth in this Section 2, subject to the terms and conditions set forth in this Agreement, including the provisions set forth in Sections 2.a and 2.b above and the indemnification obligations of Grantee set forth in Section 7 below.

3. Construction of Driveway.

- a. Grantee shall have sole responsibility, at its sole cost and expense, for construction of a paved driveway on the Easement Area, joining the cul-de-sac at the southern end of Camino Martin adjoining the Servient Tenement to the Dominant Tenement. Grantee shall have sole responsibility, at its sole cost and expense, for obtaining any necessary permits and otherwise complying with all applicable law, codes, and regulations. However, Grantor shall cooperate with and assist Grantee, at no cost to Grantor, in connection with obtaining such necessary permits or governmental approvals.
- b. Grantee shall construct the paved driveway on the Easement Area to Grantee’s specifications, provided that such driveway (i) shall meet the construction standards for the existing driveway on the Servient Tenement and (ii) shall consist of a minimum 6” aggregate base and minimum 2” asphalt cement.
- c. Grantee shall use diligent efforts to complete the paved driveway to be constructed in the Easement Area. Following completion of initial construction of the paved driveway in the Easement Area, Grantee shall not undertake any further construction on the Servient Tenement, including the Easement Area, subject to Grantor’s performance of its maintenance and repair obligations pursuant to Section 5.a or absent prior written consent of Grantor, which consent shall not be unreasonably withheld, conditioned, or delayed.
- d. Grantee shall keep the Easement Area and the Servient Tenement free and clear of any mechanics’ liens or materialmen’s liens arising from work or materials provided to Grantee or on Grantee’s behalf in connection with the construction contemplated under this Section 3.
- e. Grantee shall have the express right and ability to obtain assistance or financial contribution from any third party, including the County, in performing any

obligation or responsibility set forth in this Section 3, notwithstanding that any such obligation or responsibility may be specified as the “sole” obligation or responsibility of Grantee or that such obligation or responsibility is to be performed at Grantee’s “sole” cost or expense, provided, however, that Grantee shall remain obligated for the performance and payment of such obligation or responsibility as designated herein.

4. Cleaning and Repair during Construction Periods.

a. During the construction of the paved driveway on the Easement Area or of Bank Protection Improvements (the “Construction Periods”), Grantee shall use reasonable efforts to minimize adverse effects of construction by Grantee or its agents or the County on the tenants and invitees at the Servient Tenant; provided, however, that the foregoing limitation shall not prohibit Grantee or its agents from performing such construction during normal business hours.

b. During the Construction Periods, there shall be a presumption that dust, dirt, sand, rocks, construction debris, or damage found or occurring on the Easement Area or any paved areas on the Servient Tenement that have been traversed by any vehicles or equipment during the Construction Periods were deposited or caused by Grantee, its agents, or the County. Grantee may overcome the foregoing presumption with clear and convincing evidence.

c. Grantee shall at its sole cost and expense (i) immediately clear and clean any dust, dirt, sand, rocks, or construction debris deposited by Grantee, its agents, or the County on the Easement Area or any paved areas on the Servient Tenement during the Construction Periods, and (ii) promptly repair any damage to the Easement Area or any paved areas on the Servient Tenement caused by Grantee, its agents, or the County during the Construction Periods. Grantee shall perform the foregoing obligations without requirement of notice by Grantor or any other action by Grantor. “Cleaning” of paved areas shall mean returning such paved areas to the customarily clean state of the Servient Tenement as evidenced by such photographs as may be provided by Grantor.

d. In the event Grantee shall fail to perform its obligations set forth in Section 4.b above immediately following reasonable notice to Grantor, Grantor may at its sole discretion elect to perform such clearing, cleaning, and/or repair and Grantee shall pay Grantor’s documented out-of-pocket costs and internal manual labor charges at a reasonable rate for such work within thirty (30) days following invoice by Grantor. Grantee acknowledges that (i) the presence of dust, dirt, sand, rocks, construction debris, damage and the like may materially and adversely affect Grantor’s tenants’ access, activities, and presentation to their clients and customers, (ii) “reasonable notice” under such circumstances may be satisfied by telephonic notice to Grantee’s designated contacts, and (iii) “immediate” performance may be reasonably deemed to mean same-day commencement and diligent performance.

5. Maintenance; Maintenance Costs.

a. Grantor shall maintain the Easement Area in good condition at all times so Grantee, the County and both of their permitted users shall have unobstructed access to the Easement Area and the Dominant Tenement, SUBJECT TO REASONABLE INTERRUPTION UPON PRIOR NOTICE FOR MAINTENANCE OR REPAIR, PROVIDED THAT GRANTOR SHALL USE REASONABLE BUSINESS EFFORTS TO AVOID AND MINIMIZE SUCH INTERRUPTION.

b. All expenses incurred by Grantor in performing maintenance on the Easement Area ("**Maintenance Expenses**") shall be shared equally by Grantee and Grantor. Maintenance Expenses shall include expenses that are required to be capitalized under GAAP. Maintenance Expenses shall be calculated pro rata based on area of the Easement Area, area of all driveways on the Servient Tenement, and the maintenance costs for all driveways on the Servient Tenement. Grantor and Grantee acknowledge that the Easement Area includes a portion of the driveway used by Grantor and intend that the equal sharing of Maintenance Expenses be performed as set forth above because of such joint usage. The parties intend that the Maintenance Expenses for each calendar year not exceed the amounts stated in a budget of the anticipated Maintenance Expenses for the calendar year (the "**Maintenance Budget**"). On or before December 1, 2018, and December 1 of each year thereafter Grantor shall prepare and deliver to Grantee a proposed Maintenance Budget for the next calendar year, provided that failure by Grantor to meet such deadlines shall not affect the obligations and rights of the parties. If Grantee reasonably objects to the proposed Maintenance Budget for the next calendar year Grantee shall deliver to Grantor written notice thereof within thirty (30) days after receipt of the proposed Maintenance Budget. In the event Grantee timely objects to the proposed Maintenance Budget, the parties shall promptly and in good faith negotiate and finalize the terms of the proposed Maintenance Budget. If Grantee does not object to the proposed Maintenance Budget within thirty (30) days after receipt thereof then Grantee shall be deemed to have accepted and approved of the proposed Maintenance Budget for the next calendar year. If by December 31, of any year the parties cannot agree upon the Maintenance Budget for the next calendar year, the Maintenance Budget shall be the actual Maintenance Expenses incurred during the calendar year ending on said December 31 less any costs for repaving or major repair incurred during such year, plus five percent (5%). Grantee shall not be liable for any Maintenance Expenses in excess of 110% of the amounts stated in the approved Maintenance Budget, nor for any Maintenance Expenses for items not included in the Maintenance Budget, in each case without Grantee's prior written consent. Grantor shall deliver to Grantee periodic statements, either monthly or quarterly, of the maintenance costs for all driveways on the Servient Tenement incurred during the period included in the statement including a calculation of the amount of the Maintenance Expenses attributable to the Easement Area (the "**Maintenance Expenses Statement**").

c. Upon request by Grantee, Grantor shall submit copies of all invoices, bills, statements, and other evidence of the expenditures incurred in connection therewith. Within thirty (30) days after delivery of the Maintenance Expenses Statement to Grantee, Grantee shall pay to Grantor the amount of the Maintenance Expenses incurred by Grantor and shown in the Maintenance Expense Statement. Any undisputed Maintenance Expenses

payable by Grantee and not paid within thirty (30) days after delivery of the Maintenance Expenses Statement shall thereafter accrue interest at the per annum rate of twelve percent (12%) until paid.

d. Amounts not timely paid by Grantor or Grantee under this Section 5 only shall constitute a lien against the Servient Tenement or Dominant Tenement, respectively. Such lien shall attach and take effect upon recordation of a claim of lien in the office of the Pima County Recorder by the party making the claim. The claim of lien shall include (i) the name of the lien claimant; (ii) a statement concerning the basis for the claim of lien; (iii) a statement identifying the owner of the parcel against which the lien is claimed; (iv) a description of the parcel against which the lien is claimed; (v) a description of the work performed or action taken which is giving rise to the claim of lien and a statement itemizing the amount thereof; and (vi) a statement that the lien is claim pursuant to the provisions of this Agreement. The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the owner against whom the lien is claimed by personal service or by mailing and by personal service at or mailing to the address given for the mailing of tax statements in the Pima County assessor's office for the parcel against which the lien is claimed. The lien so claimed shall attach from the date of recordation solely in the amount claimed there by and may be enforced in any manner allowed by law. Notwithstanding the foregoing, any lien arising under this Section 5.d shall be subordinate to any mortgage lien recorded against the Servient Tenement.

6. Repairs. Grantee shall repair any and all damage to the Easement Area or any other portion of the Servient Tenement resulting from its use thereof at its sole cost and expense to the condition of such property prior to the damage and in accordance with all applicable laws and governmental regulations. If such damage to the Easement Area or any other portion of the Servient Tenement is caused by the County or any of its permitted users and Grantee shall be required hereunder to pay for such damage, then Grantee shall have the right to recover any costs incurred in connection with those damages, including attorneys' fees, and Grantor shall cooperate with Grantee to obtain recovery for Grantee's costs. In no event shall Grantor be entitled to any compensation or recovery in connection with its efforts on behalf of or in assistance to Grantee to collect such amounts from the County. If Grantee fails to so repair the damaged property, Grantor may deliver to Grantee a written notice for Grantee to effect such repairs. If Grantee fails to commence such repairs and maintenance within thirty (30) days thereafter and pursue same diligently to completion, then Grantor may thereafter commence such maintenance or repairs at any time prior to the date Grantee commences the same. If Grantor completes such maintenance or repairs, Grantee shall reimburse Grantor for the reasonable costs actually incurred by Grantor with respect to such repairs within thirty (30) days after receipt from Grantor of an itemized statement of the costs and expenses incurred along with invoices. If Grantee disagrees with Grantor's determination, then before Grantee shall be liable for any amount or in breach hereunder, the same must be determined by an arbitrator under Section 13 below. If such damage is caused by Grantor or any of its permitted users, then Grantor shall restore such damage as set forth in this Section 6.

7. Indemnification. Grantee agrees to indemnify, defend and hold Grantor and its successors and assigns harmless from and against any and all claims, demand, liabilities, costs, expenses, obligations, damages and losses, causes of action, compliance orders, fines, penalties

and suits of any nature whatsoever (“Claim”) arising out of or related to Grantee’s construction of the Easement Area as set forth in Section 3. This indemnification shall expire and be of no further force and effect six (6) months after substantial completion of the construction set forth in Section 3. Notwithstanding the foregoing, in no event shall Grantee be required to indemnify Grantor for any Claim relating to the negligent or intentional acts or omissions of Grantor, its permitted users, agents and employees. In the event Grantee is at any time obligated to Grantor under the foregoing provisions, Grantee (i) assigns to Grantor any payments Grantee may receive from the County under any obligation of County to indemnify, defend and hold Grantee harmless in connection with the Bank Protection Improvements, including any construction, maintenance or repair of the Bank Protection Improvements, and (ii) subrogates to Grantor any right of recovery under any such obligation of County to indemnify, defend and hold Grantee harmless in connection with the Bank Protection Improvements.

8. Insurance. During the construction of the paved driveway described in Section 3, Grantee agrees to maintain general liability insurance, with a single combined liability limit of not less than \$1,000,000.00 for bodily injury, death, property damage and personal injury of one person in any one accident or occurrence, and in the amount of not less than \$2,000,000.00 for injury or death of more than one person in any one accident or occurrence, insuring against injuries, accidents or damages arising or in any way related to the use of the Easement Area. Such policies shall name Grantor as an additional insured. Grantee shall provide promptly on request by Grantor reasonable evidence of compliance with the insurance requirements set forth herein.

9. Releases.

a. Grantee permanently releases and surrenders all rights relating to the 60 foot roadway along the Southwesterly portion as referred to in Deed recorded in Docket 3684 at page 441, Official Records of Pima County, Arizona, also referred to in the Deed recorded in Book 2302 at page 348 (the “**Old ROW**”), including any rights created by reference to such Old ROW in any other instrument, recorded or unrecorded; and

b. Grantee permanently releases and surrenders all rights relating to the 24 foot access easement contemplated under the Marana Ordinance No. 2002.05 recorded in Docket 11762 at page 2444 of the Official Records of Pima County, Arizona, and the Preliminary Plat for Old West Industrial Village, referenced in such Ordinance as the “Development Plan” for the real property described therein.

c. The foregoing releases in this Section 9 shall be effective in perpetuity, notwithstanding any termination of this Agreement.

10. Term. The term of this Agreement shall commence as of the date hereof and shall be perpetual, unless terminated with the mutual written consent of all parties. All of the agreements, easements, and covenants run with the land and are binding on successors-in-interest of the parties that execute or join in this Agreement.

11. Notice. Any notice, communication, request, reply or advice (collectively, “**Notice**”) provided for or permitted by this Agreement to be made or accepted by the Parties must be in writing. Notice may, unless otherwise provided herein, be given or served (i) by depositing

the same in the United States mail, postage paid, certified, and addressed to the party to be notified, with return receipt requested, (ii) by delivering the same to such party, or an agent of such party, in person or by commercial courier, or (iii) by depositing the same into the custody of a nationally recognized overnight delivery service. Notice deposited in the mail in the manner hereinabove described shall be effective on the third (3rd) business day after such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified between the hours of 8:00 A.M. and 5:00 P.M. of any business day with delivery made after such hours to be deemed received the following business day. For the purposes of notice, the addresses of the Parties, until changed as hereinafter provided, are set forth below. The Parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by at least five (5) days written notice to the other party.

If to Grantor: Foodtown Development Company II, L.L.C., and  
Clover Real Estate II, LLC  
Attn: Paul Kraft  
6650 N Oracle Road, Suite 111  
Tucson, AZ 85704

with a copy to: Sidney Y. Kohn  
Kohn Law Firm, PLLC  
1200 N. El Dorado Pl., Suite H-810  
Tucson, AZ 85715  
Email: [skohn@kohnlawfirm.net](mailto:skohn@kohnlawfirm.net)

If to Grantee: Alta Vista Communities RP LLC  
700 East Broadway Boulevard  
Suite 1200  
Tucson, Arizona 85719  
Attn: Roger Karber  
Email: [Roger@AerieDev.com](mailto:Roger@AerieDev.com)

with a copy to: Matthew A. Thrasher  
Thrasher Law Offices PLLC  
1785 East Skyline Drive, Suite 131  
Tucson, Arizona 85718  
Email: [matt@thrasherpllc.com](mailto:matt@thrasherpllc.com)

12. Miscellaneous.

a. No Rights for Public. This Agreement shall not be construed as creating any rights in the general public nor as dedicating for public use any portion of the Servient Tenement.

b. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. Any action brought in connection with this Agreement shall be brought and prosecuted in Pima County Superior Court as the court

of exclusive jurisdiction and proper venue and the parties hereby consent to the jurisdiction and venue of said court.

c. No Joint Venture or Partnership. Neither anything contained in this Agreement, nor any act of any person hereunder shall be deemed or construed to create the relationship of principal and agent or of partnership or of joint venture or of any association between or among the parties hereto or any other person.

d. Attorney's Fees. If either party commences an action or proceeding against the other party arising out of or in connection herewith, the prevailing party in such action or proceeding and in any appeal in connection therewith shall be entitled to have and recover from the unsuccessful party attorneys' fees, court costs, expenses and other costs of investigation and preparation. If the prevailing party recovers a judgment in any such action, proceeding or appeal, such attorneys' fees, court costs and expenses shall be included in and as a part of such judgment.

e. Interest on Amounts Owed. If at any time either party owes any amount of money to the other party under this Agreement, interest shall accrue on the amount owed from the date such amount was first incurred or accrued, at the per annum rate of twelve percent (12%) until the amount owed is paid in full.

f. Estoppel. Any party to this Agreement shall deliver an estoppel within twenty (20) business days of written request by any other party hereto, stating whether the Agreement has been amended, whether the Agreement is in full force and effect, and the nature of any default (including amounts owed) by any other party hereto, if any, as well as any other information that may be reasonably requested in connection with the sale or finance of the requesting party's property. In the event the responding party fails to respond by such deadline, the requesting party may execute such an estoppel on behalf of the responding party, which estoppel may be relied on by third parties.

g. Counterparts. This Agreement may be executed in any number of counterparts, which together will constitute the agreement of the Parties.

h. Exhibits. All exhibits hereto are hereby incorporated herein and made a part hereof.

13. Arbitration. In the event a dispute arises between Grantee and Grantor, either party may proceed to elect to resolve the dispute through arbitration, by delivering written notice to the other within five (5) days after the termination of the mediation process. If notice is given in a timely manner, the parties agree to select an arbitrator to arbitrate the dispute who shall, thereafter, conduct a hearing as soon as possible and decide whether or not any party is in default under the terms of this Agreement, or the meaning or interpretation to be given to the terms or provisions hereof, or other matter which is the subject of arbitration. This provision for arbitration is designed to provide a speedy method for determining such matters. The determination of the arbitrators shall be final and binding upon the parties as to the matter arbitrated and shall be enforceable in a court of law. Each of the parties shall bear their respective cost and expense for the arbitration and each party will bear one half (1/2) of the cost of the arbitrator. The arbitration shall be held pursuant to the Arizona Rules of Civil Procedure and the arbitrator may order injunctive relief.

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

**“GRANTOR”**

FOODTOWN DEVELOPMENT COMPANY II, L.L.C., an  
Arizona limited liability company

By: Foodtown Development Company, L.L.C., a  
Missouri limited liability company, its sole member

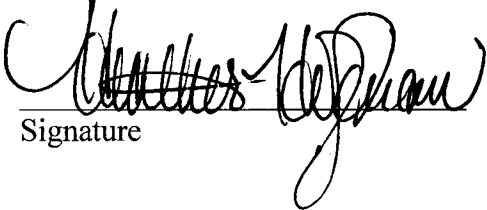
By: Leslie E. Glaze, Shelly M. Silverman, Jody  
M. Gross, Scott J. Maizlish, and UMB Trust  
Company of South Dakota, Trustees  
("Trustees") of the Clover Trust, dated June  
30, 1999, its sole member

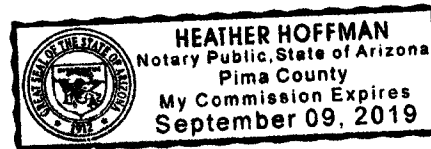
By:   
Name: Paul Kraft  
Title: Agent for Trustees under Clover  
Trust Agent Agreement

State of Arizona  
County of Pima

On February 14, 2018, before me, Heather Hoffman, personally appeared  
Paul Kraft, personally known to me (or proved to me on the basis of  
satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same in his/her/their authorized  
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity  
upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

  
Signature

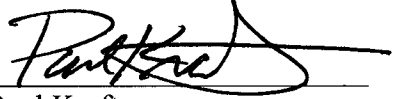


(Seal)

CLOVER REAL ESTATE II, LLC, an Arizona limited liability company

By: Clover Real Estate, L.L.C., a Missouri limited liability company, its sole member

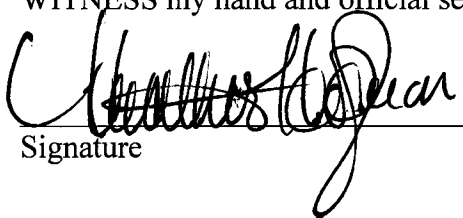
By: Leslie E. Glaze, Shelly M. Silverman, Jody M. Gross, Scott J. Maizlish, and UMB Trust Company of South Dakota, Trustees ("Trustees") of the Clover Trust, dated June 30, 1999, its sole member

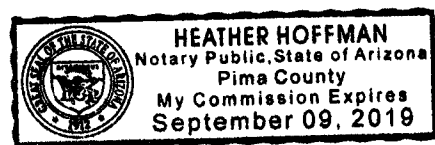
By:   
Name: Paul Kraft  
Title: Agent for Trustees under Clover Trust Agent Agreement

State of Arizona  
County of Pima

On February 14, 2018, before me, Heather Hoffman, personally appeared Paul Kraft, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

  
Signature



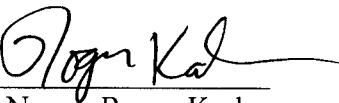
(Seal)

**"GRANTEE"**

ALTA VISTA COMMUNITIES RP LLC, an  
Arizona limited liability company

By CASITAS INVESTOR RP LLC, an  
Arizona limited liability company, its  
manager

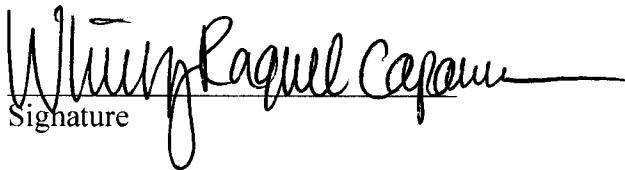
By: KARBER HOLDINGS LLC, an  
Arizona limited liability company, a manager

By:   
Name: Roger Karber  
Its: Member

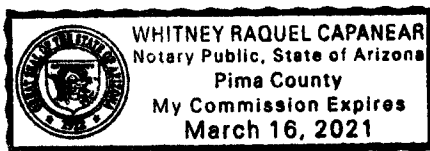
State of Arizona  
County of Pima

On 3/1/18, before me, Whitney Capanear, personally appeared Roger Karber, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

  
Signature

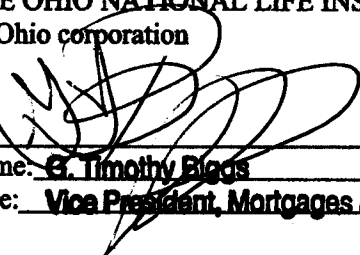
(Seal)



**CONSENTED TO BY:**

The undersigned, being the beneficiary and lienholder under that certain Deed of Trust, Security Agreement and Fixture filing dated July 22, 2016, by FOODTOWN DEVELOPMENT COMPANY II, L.L.C., an Arizona limited liability company, and CLOVER REAL ESTATE II, LLC, an Arizona limited liability company, collectively, as trustor, for the benefit of the undersigned, recorded on July 22, 2016, as Sequence 20162040543 in the Official Records of Pima County, Arizona, hereby consents to the foregoing Access Easement Agreement effective as of the date first set forth above.

THE OHIO NATIONAL LIFE INSURANCE COMPANY,  
an Ohio corporation

By:   
Name: G. Timothy Biggs  
Title: Vice President, Mortgages & Real Estate

State of Ohio  
County of Hamilton

On March 1, 2018, before me, Virginia L. Elliot, personally appeared G. Timothy Biggs, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Virginia L. Elliot  
Signature

(Seal)



Virginia L. Elliot  
Notary Public, State of Ohio  
My Commission Expires 05-09-2019

**EXHIBIT A**

**LEGAL DESCRIPTION OF SERVIENT TENEMENT**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF PIMA, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

The South Half of the following described property:

All that part of the Northwest Quarter of Section 6, Township 13 South, Range 13 East, Gila and Salt River Base and Meridian, Pima County, Arizona, lying Easterly of the Easterly right of way of that certain road dedicated by Deed recorded in the office of the County Recorder of Pima County, Arizona, in Docket 996 at page 161, and Northeasterly of the Southern Pacific Railroad right of way; EXCEPT the North 2185.52 feet thereof.

FURTHER EXCEPT any portion thereof conveyed to the Town of Marana, an Arizona municipal corporation, by Deed of Dedication recorded at Sequence No. 20160530366.

EXHIBIT B

LEGAL DESCRIPTION OF DOMINANT TENEMENT

Lot 3 of AERIE RIVERWALK, Pima County, Arizona, according to the map or plat thereof of record in the office of the County Recorder of Pima County, Arizona, recorded in Sequence No. 20131090246.

EXHIBIT C

LEGAL DESCRIPTION AND DEPICTION OF EASEMENT AREA

**Bruce Small Surveys, Inc.**

3040 N. Conestoga Ave.  
Tucson AZ 85749-9332  
e-mail: bruce.small@cox.net  
voice: (520) 444-7186

October 14, 2017

Description of Access Easement.

A part of Section 6, Township 13 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona, described as follows:

COMMENCING at the Southwest corner of Parcel A as shown on the Record of Survey filed as Sequence 20160550043;

THENCE S 89°30'59" E along the South line of Parcel A a distance of 17.25 feet to the POINT OF BEGINNING;

THENCE N 32°18'55" W 144.27 feet to the Easterly right-of-way line of Camino Martin as deeded in Sequence 20160530366, being a point on the arc of a non-tangent curve concave to the Northwest, a radial line of said curve through said point having a bearing of S 16°02'14" E;

THENCE Northeasterly along said right-of-way line, along the arc of said curve, to the left, having a radius of 50.00 feet, with a chord of N 55°11'06" E 32.19 feet, and a central angle of 37°33'19" for an arc distance of 32.77 feet to a non-tangent line;

THENCE S 35°41'04" E 173.25 feet to the South line of Parcel A;

THENCE N 89°30'59" W along said South line a distance of 50.37 feet to the POINT OF BEGINNING.

Containing 0.1328 acres or 5,785 square feet, more or less.

Prepared by:

Bruce Small



Expires 06/30/2019

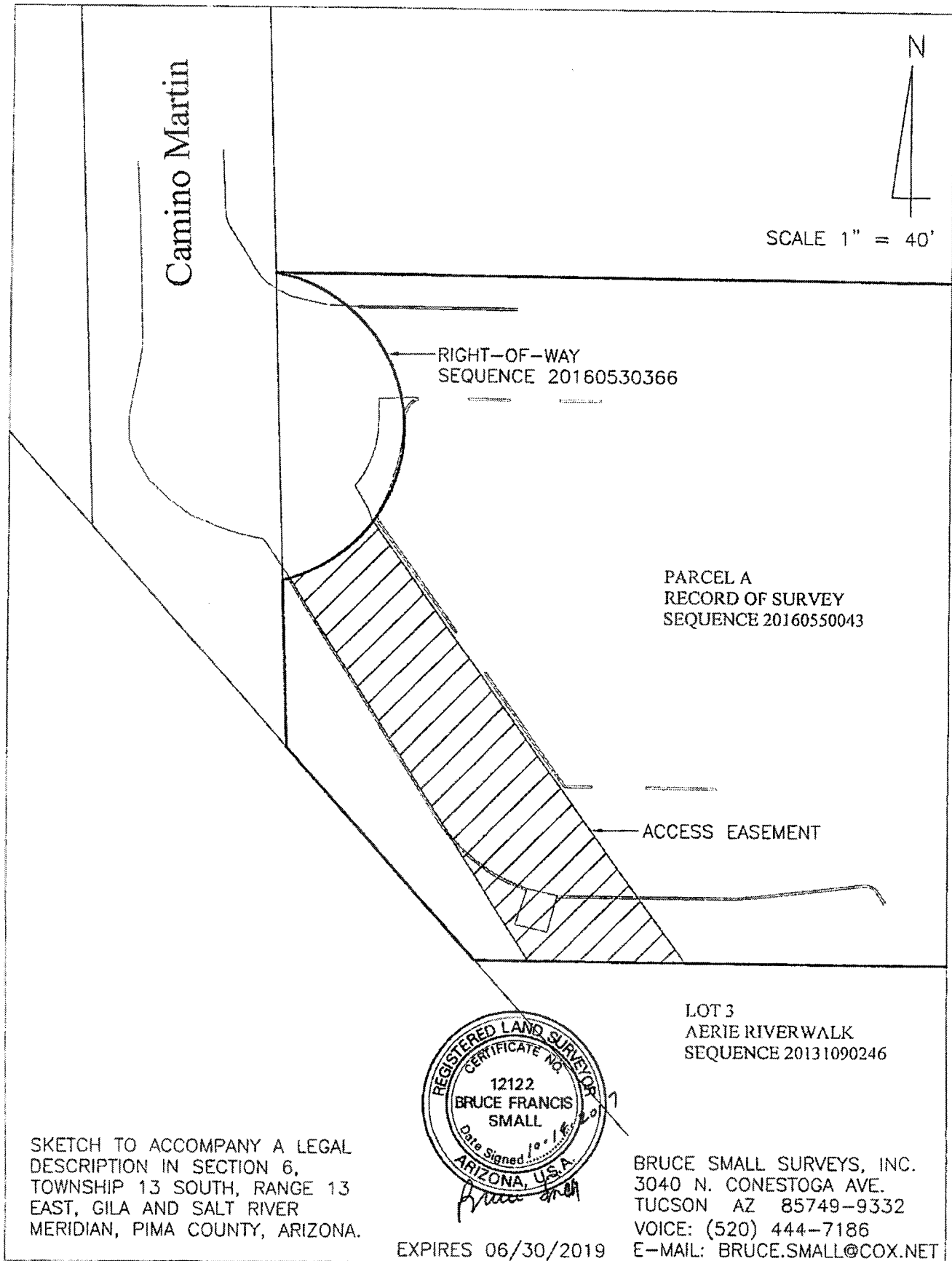
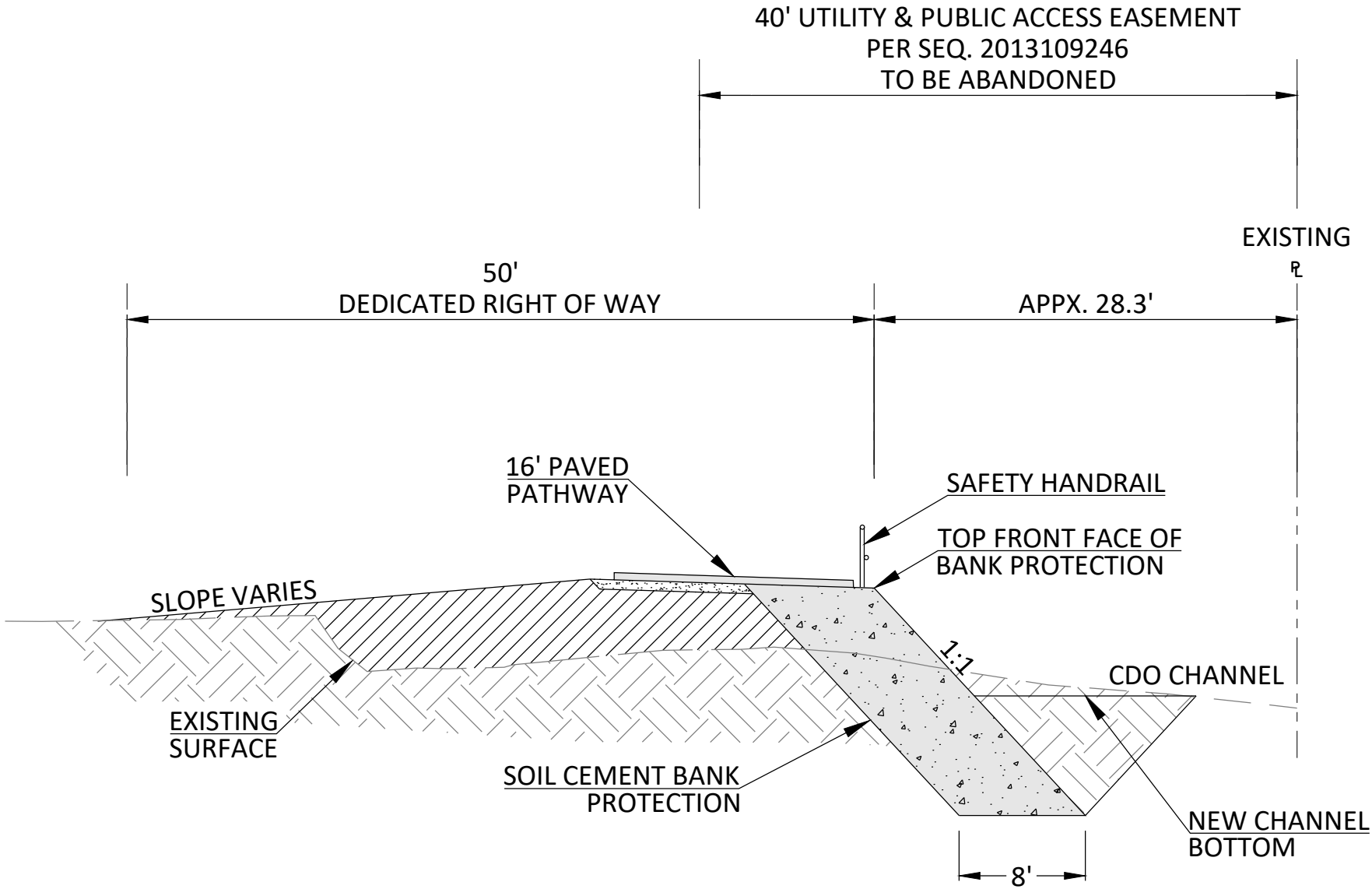


**EXHIBIT C**  
**TO CDO NORTH BANK DEVELOPMENT AGREEMENT**  
**DESCRIPTION OF PROJECT PLANS**

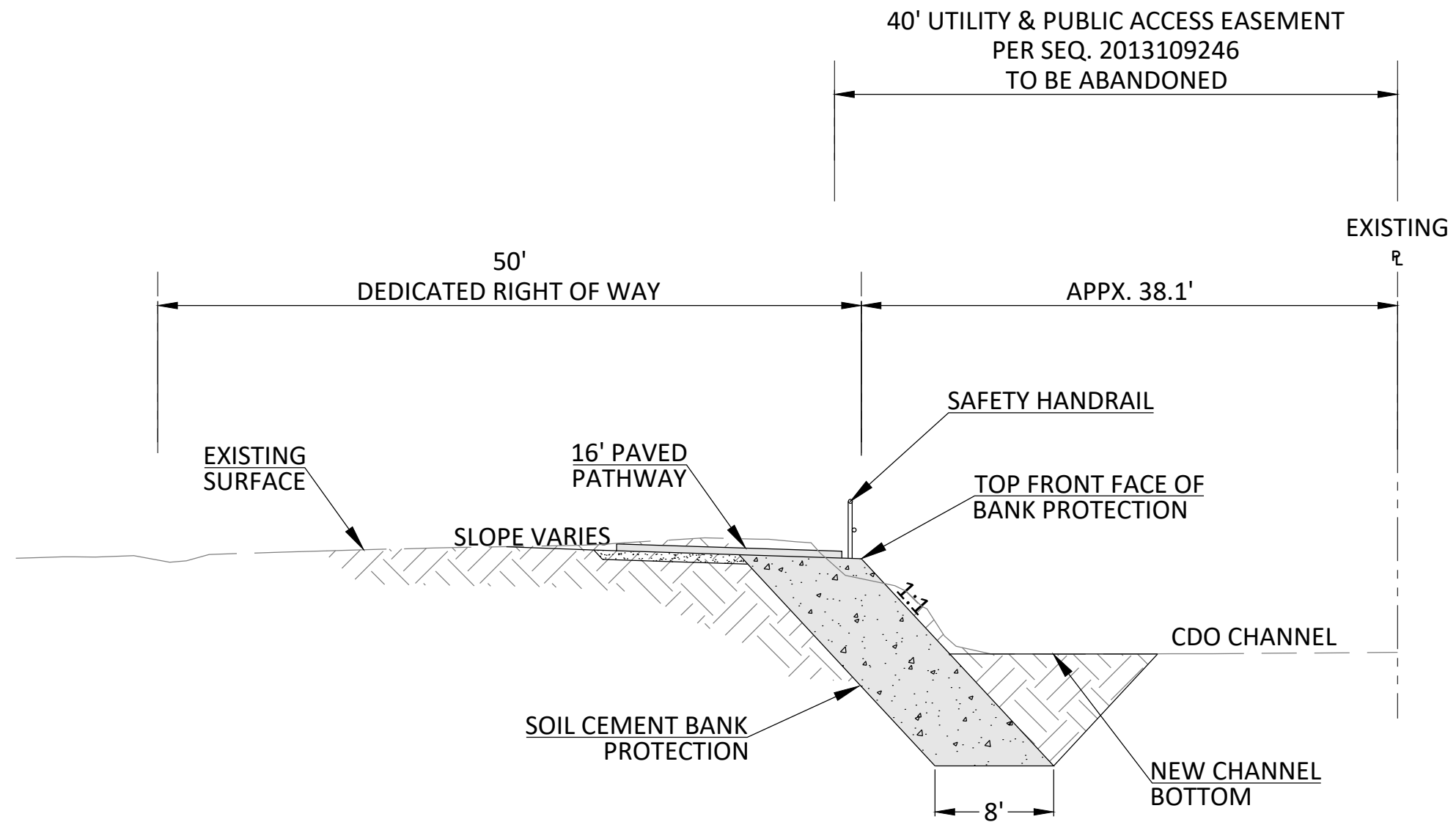
Plans for the Project consist of the following plans, reports and specifications:

- Native Plant Preservation Site Plan Canada Del Oro North Bank, Bank Protection and Linear Park pages 1-37 prepared by ARC Studios.
- Drainage Report and Appendix dated \_\_\_\_\_, 2018 for Canada Del Oro Linear Park (Interstate 10 to Thorneydale Road) prepared by Cypress Civil Development, LLC
- Civil and Bank Protection Detail for Canada Del Oro Linear Park, Sheets DT 1-DT 11 dated \_\_\_\_\_, 2018 and prepared by Cypress Civil Development, LLC.
- Canada Del Oro North Bank, Bank Protection and River Park I-10 to Thorneydale, General Description, Notes and Path Plan and Profile pages 1-37 dated \_\_\_\_\_, 2018 and prepared by Cypress Civil Development, LLC.

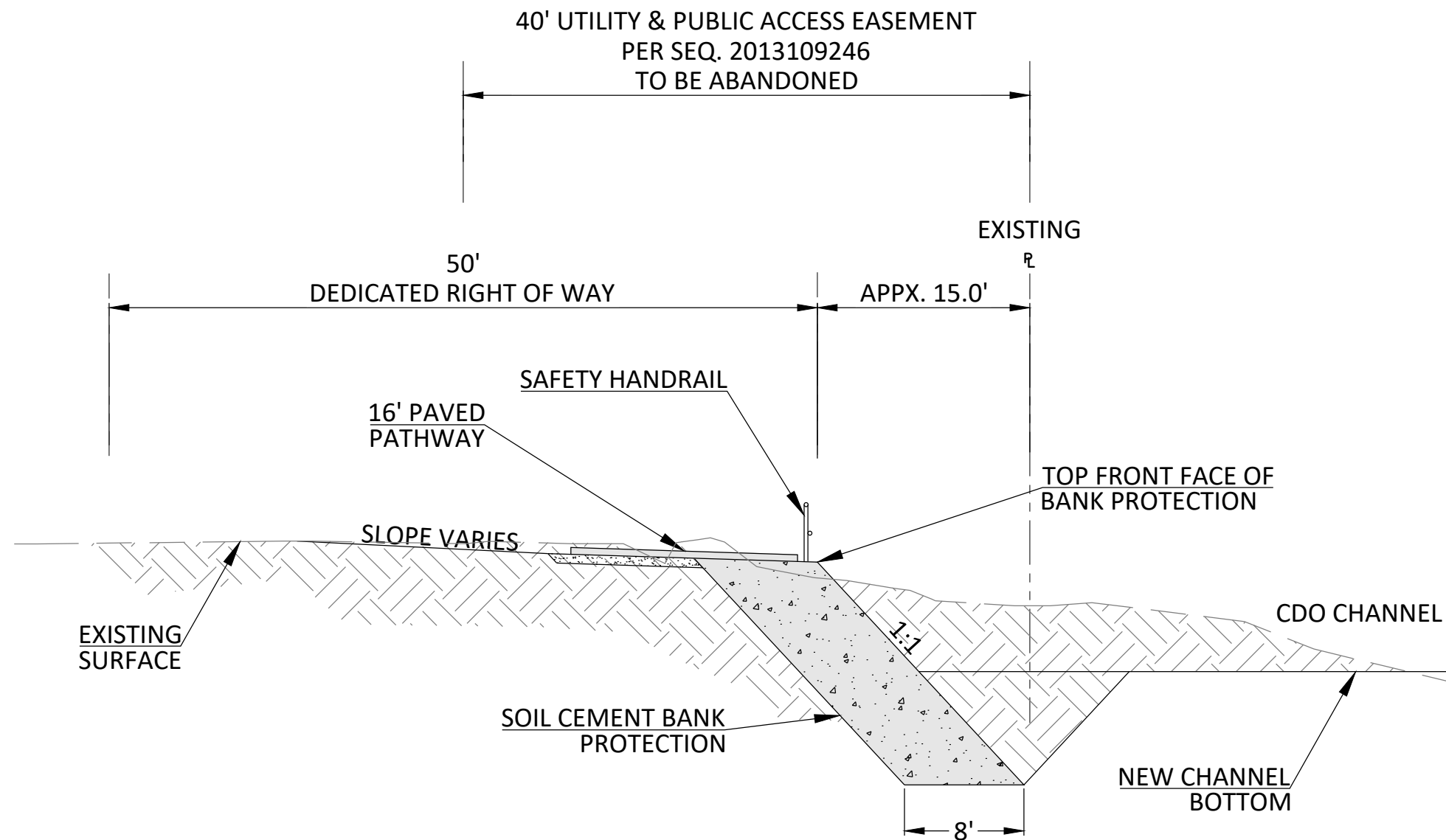
EXHIBIT D TO CDO NORTH BANK DEVELOPMENT AGREEMENT  
PROJECT CROSS-SECTIONS  
4 PAGES



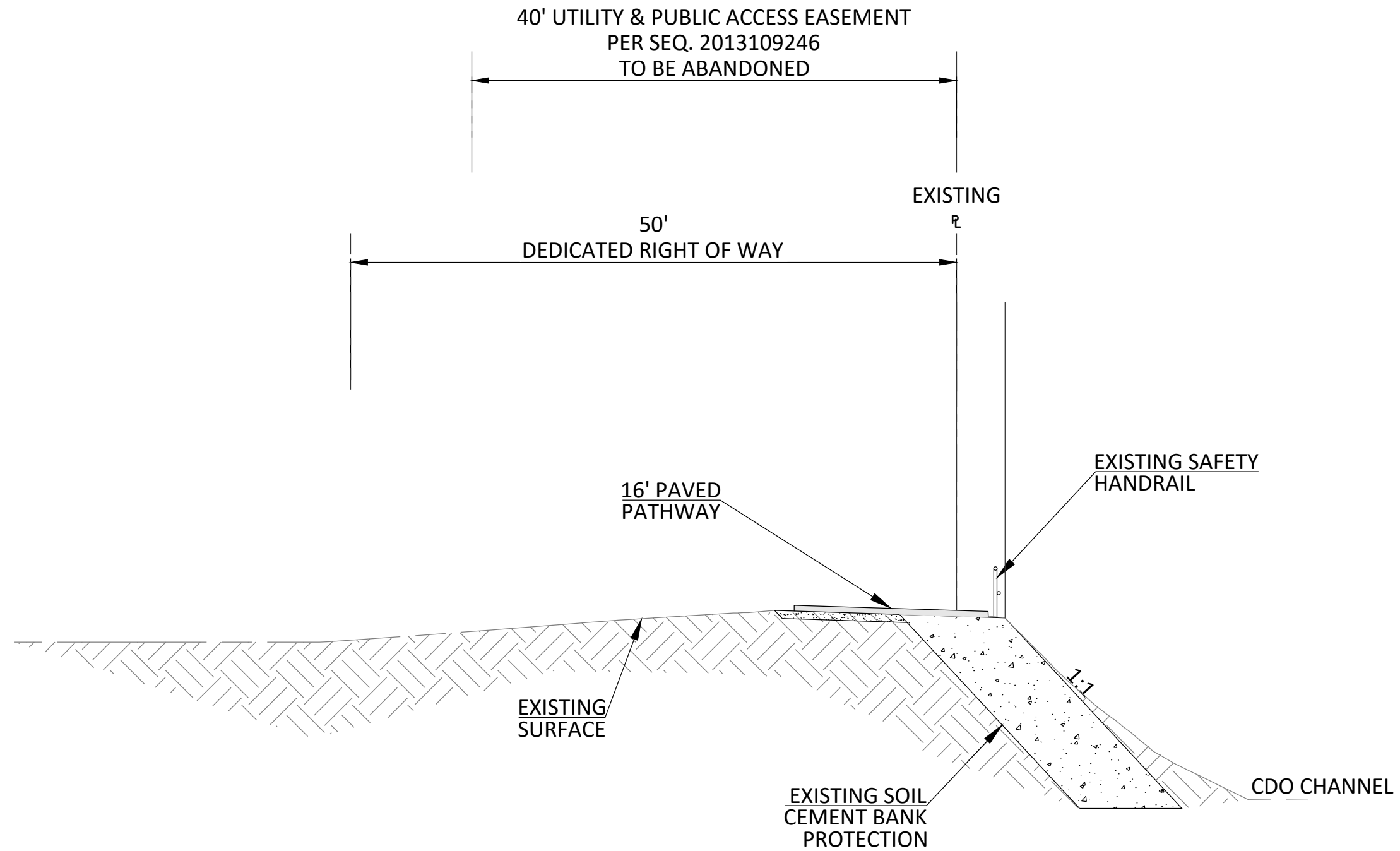
**RIGHT OF WAY CROSS SECTION #1**  
APPROXIMATE SCALE: N.T.S.



**RIGHT OF WAY CROSS SECTION #2**  
 APPROXIMATE SCALE: N.T.S.



**RIGHT OF WAY CROSS SECTION #3**  
 APPROXIMATE SCALE: N.T.S.



**RIGHT OF WAY CROSS SECTION #4**  
 APPROXIMATE SCALE: N.T.S.



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**DEDICATED RIGHT-OF-WAY**

A Dedicated Right-of-Way over a portion of Lots 2, 3, 4, and 5 of "Aerie Riverwalk", as recorded at Sequence No. 20131090246, Pima County Records, located in the Northeast quarter and the South half of Section 6, Township 13 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona, being more particularly described as follows:

**Beginning** at the Southeast corner of said Lot 5 on the Northwest line of Canada del Oro Wash per said "Aerie Riverwalk Final Plat", said point being a ½ inch rebar tagged "RLS 14145";

Thence South 60°56'19" West 2251.66 feet upon the Southeast lines of said Lots 2, 3, 4, and 5, upon the Northwest line of said Canada del Oro Wash, to the Northeast right-of-way line of the Union Pacific Railroad, to the Southernmost corner of said Lot 3;

Thence North 40°49'58" West 70.80 feet upon said Northeast right-of-way, upon the Southwest line of said Lot 3;

Thence North 59°25'34" East 220.47 feet;

Thence North 35°37'50" East 14.11 feet;

Thence North 57°41'20" East 251.86 feet;

Thence North 74°16'10" East 15.74 feet to the East line of said Lot 3, also being the West line of said Lot 2;

Thence North 00°14'25" East 11.95 feet upon said common line to the Northeast corner of said Lot 3;

Thence South 89°45'35" East 65.00 feet;

Thence North 00°14'25" East 8.92 feet;

Thence North 60°14'29" East 752.47 feet to the East line of said Lot 2, also being the West line of said Lot 4;

Thence North 00°53'02" East 26.26 feet upon said common line;

Thence South 89°06'43" East 44.37 feet to a non-tangent curve, concave to the Southeast, from which the radius point bears South 29°38'04" East at 10,045.00 feet distant;

Thence Northeasterly upon said curve, turning to the right, through a delta angle of 2°34'31" and an arc length of 451.48';

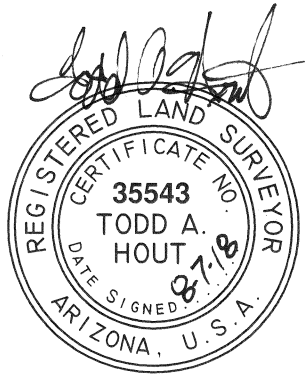
Thence North 27°03'33" West 6.43 feet;

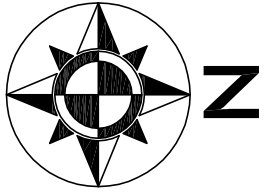
Thence North 63°14'47" East 44.11 feet;

Thence South 26°57'35" East 6.26 feet;

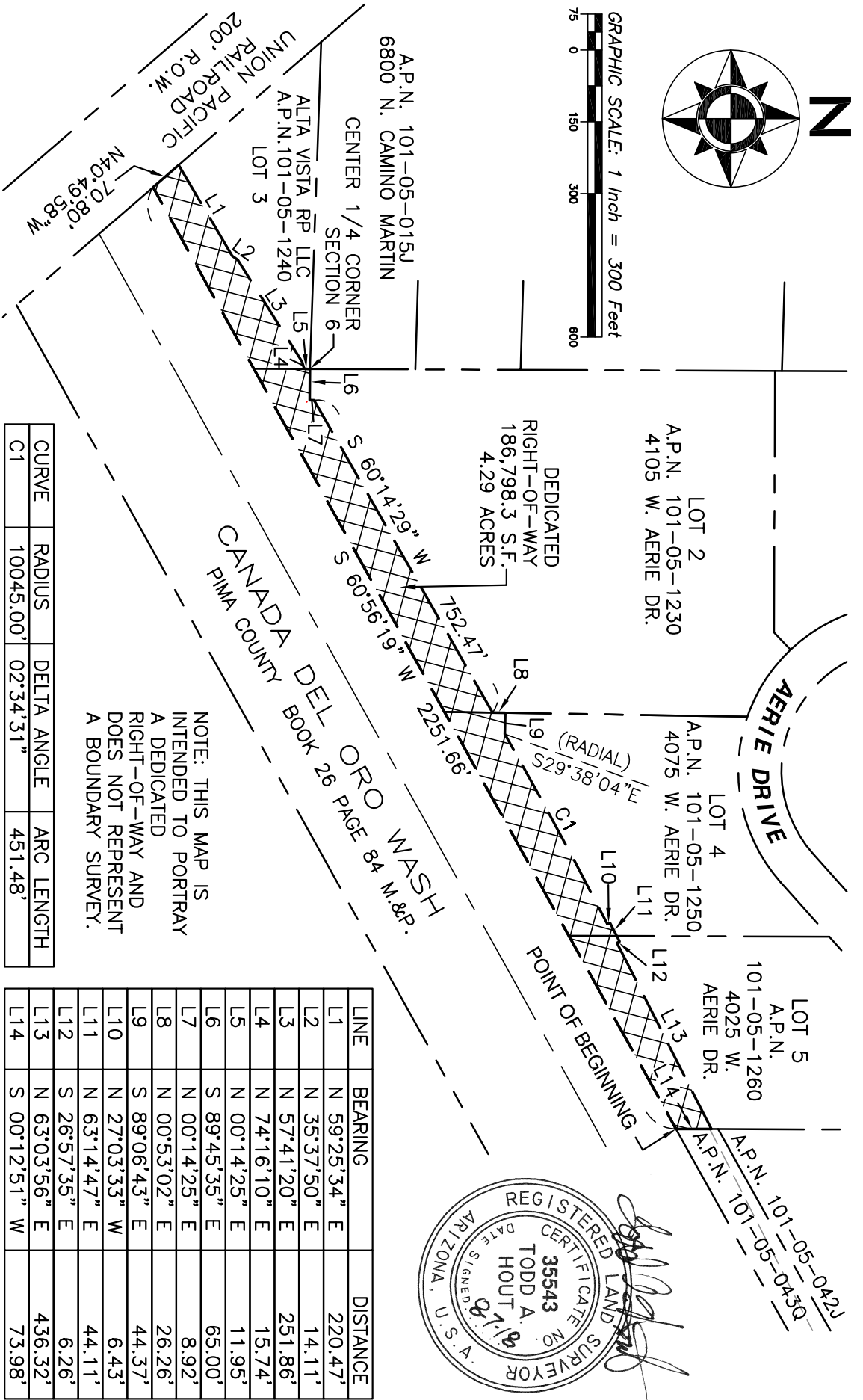
Thence North 63°03'56" East 436.32 feet to the East line of said Lot 5;

Thence South 00°12'51" West 73.98 feet upon said East line to the **Point of Beginning**.





GRAPHIC SCALE: 1 inch = 300 Feet  
75 0 150 300 600



| CURVE | RADIUS    | DELTA ANGLE | ARC LENGTH |
|-------|-----------|-------------|------------|
| C1    | 10045.00' | 02°34'31"   | 451.48'    |

| LINE | BEARING       | DISTANCE |
|------|---------------|----------|
| L1   | N 59°25'34" E | 220.47'  |
| L2   | N 35°37'50" E | 14.11'   |
| L3   | N 57°41'20" E | 251.86'  |
| L4   | N 74°16'10" E | 15.74'   |
| L5   | N 00°14'25" E | 11.95'   |
| L6   | S 89°45'35" E | 65.00'   |
| L7   | N 00°14'25" E | 8.92'    |
| L8   | N 00°53'02" E | 26.26'   |
| L9   | S 89°06'43" E | 44.37'   |
| L10  | N 27°03'33" W | 6.43'    |
| L11  | N 63°14'47" E | 44.11'   |
| L12  | S 26°57'35" E | 6.26'    |
| L13  | N 63°03'56" E | 436.32'  |
| L14  | S 00°12'51" W | 73.98'   |

## ALTA ARIZONA

SURVEY - ENGINEERING - GEOTECH  
2025 W. RUTHRAUFF ROAD, SUITE 125  
TUCSON, ARIZONA 85705  
(520) 398-6651

DEPICTION OF EXHIBIT "A" - DEDICATED RIGHT-OF-WAY OVER A PORTION OF "AERIE RIVERWALK", SEQ. NO. 20131090246, PIMA COUNTY RECORDS, IN THE S. 1/2 & THE N.E. 1/4 OF SECTION 6, T. 13 S., R. 13 E., G. & S. R. M., PIMA COUNTY, ARIZONA

PROJECT NO. 13055

DATE: AUG. 7, 2018

SHEET 2 OF 2

**EXHIBIT F**  
**TO CDO NORTH BANK DEVELOPMENT AGREEMENT**  
**FORM OF ACCESS EASEMENT OVER ALTA VISTA LOT 3**  
**4 PAGES**

When Recorded, Please Return to:  
Pima County Flood Control District  
201 North Stone Avenue, 9th Floor  
Tucson, AZ 85701-1215

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Exempt from Affidavit of Value per A.R.S. § 11-1134(A)(3).

**ACCESS EASEMENT**

1. **Grant of Easement.** For valuable consideration, Alta Vista Communities RP LLC, an Arizona limited liability company (“**Alta Vista**”), hereby grants to the Pima County Flood Control District (“**RFCD**”), a perpetual, non-exclusive easement (the “**Easement**”) over the real property described on **Exhibit A** (the “**Easement Area**”), for ingress and egress to the real property described on **Exhibit B** (the “**Benefitted Property**”), subject to the terms and conditions in this Access Easement Agreement (the “**Agreement**”).
2. **Use of the Easement Area.**
  - 2.1. RFCD owns the Benefitted Property, on which it is constructing and will thereafter maintain, repair, and when necessary replace, public-park and bank-protection improvements.
  - 2.2. The Easement is for the purpose of pedestrian and vehicular ingress to and egress from the Benefitted Property solely to allow RFCD to construct, repair and maintain public-park and bank-protection improvements on the Benefitted Property, in the regular course of RFCD’s operations, in a condition similar to other RFCD-owned or controlled flood-control improvements and linear parks.
  - 2.3. RFCD will improve the Easement Area with a roadway in connection with its construction of the public-park and bank-protection improvements on the Benefitted Property.
  - 2.4. The Easement does not allow the general public to access the Benefitted Property or the Easement Area.
3. **Maintenance.** RFCD will maintain the Easement Area in a good and safe condition. Alta Vista is not required to perform or pay for any routine maintenance or repair of the Easement Area, but Alta Vista will promptly repair any damage to the Easement Area caused by Alta Vista or any employee, agent, contractor or invitee of Alta Vista.
4. **Indemnity.** To the extent permitted by law, RFCD will indemnify, defend and hold Alta Vista harmless from and against any and all claims, demands, and causes of action in law

or equity caused by acts or omissions of the officers, agents, contractors, and/or employees of RFCD, related to RFCD's or RFCD's contractors' use of the Easement Area.

**5. Contractor Indemnity & Insurance.**

5.1. RFCD will require each RFCD contractor or subcontractor using the Easement Area to agree to indemnify, defend, save and otherwise hold harmless Alta Vista, and its members, managers, invitees, directors, officers, and employees, from and against any and all causes of action, liabilities, damages, losses or expenses, including reasonable attorney's fees, arising from or alleged to have arisen in whole or in part from the acts or omissions of the contractor (or any subcontractor of the contractor) related to its use of the Easement Area.

5.2. RFCD will require each RFCD contractor or subcontractor using the Easement Area to provide the following insurance coverages during the entire period that the Easement Area is being used by that contractor. RFCD will require that each policy name Alta Vista as an additional insured and contain a waiver of subrogation endorsement in favor of Alta Vista. Certificate(s) of insurance and applicable endorsements will be supplied to Alta Vista before any contractor or subcontractor enters on or uses the Easement Area.

5.2.1. Commercial General Liability policy, broad form, including coverage for personal injury up to and including death, property damage, written on an occurrence basis with limits not less than a one (\$1) million per occurrence with a two (\$2) million aggregate.

5.2.2. Workers Compensation policy providing coverage required by law.

5.2.3. Automobile Liability policy – Combined Single Limit for all hired, owned, non-owned vehicles in an amount no less than 1 million

**6. Runs with the Land.** This Easement Agreement runs with the land. It is binding on Alta Vista and any successor owner of any portion of the Easement Area, and inures to the benefit of RFCD and any successor owner of any portion of the Easement Area.

**Alta Vista Communities RP LLC,  
an Arizona limited liability company**

By Casitas Investor RP, LLC  
an Arizona limited liability company, Manager

By Brav Holding Company LLC  
an Arizona limited liability company, Co-Manager

By \_\_\_\_\_  
Garry Brav, Manager

By Indus Holdings LLC  
an Arizona limited liability company, Co-Manager

By \_\_\_\_\_  
G.S. Jaggi, Manager

By Karber Holdings LLC  
an Arizona limited liability company, Co-Manager

By \_\_\_\_\_  
Roger Karber, Member

By \_\_\_\_\_  
Diane Fitzpatrick, Member

STATE OF ARIZONA       )  
                                      ) ss.  
COUNTY OF PIMA       )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by Roger Karber and Diane Fitzpatrick, Members, on behalf of Karber Holdings, LLC, an Arizona limited liability company; by G.S. Jaggi, Manager, on behalf of Indus Holdings, LLC, an Arizona limited liability company; and by Garry Brav, Manager, on behalf of Brav Holding Company, LLC, an Arizona limited liability company.

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

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

**PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT**

\_\_\_\_\_  
Richard Elias  
Chairman, Board of Directors

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Julie Castaneda, Clerk of Board of Directors

\_\_\_\_\_  
Date

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Suzanne Shields, Director  
Pima County Flood Control District

APPROVED AS TO FORM:

\_\_\_\_\_  
Regina L. Nassen, Deputy County Attorney, Civil Division

STATE OF ARIZONA       )  
                                          ) ss  
COUNTY OF PIMA       )

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by Richard Elias, the Chairman of the Board of Directors of the Pima County Flood Control District. .

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

My Commission Expires:

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**MAINTENANCE ACCESS AND DRAINAGE ACCESS EASEMENT**

That portion of Lot 3 of "Aerie Riverwalk", as recorded at Sequence No. 20131090246, Pima County Records, located in the Southwest quarter of Section 6, Township 13 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona, being more particularly described as follows:

**Beginning** at the Westernmost corner of said Lot 3, also being Southwest corner of the parcel described at Sequence No. 20160530610, Pima County Records, on the Northeast right-of-way line of the Union Pacific Railroad;

Thence South 88°01'33" East 64.53 feet upon the North line of said Lot 3, on the South line of said parcel described at Sequence No. 20160530610, Pima County Records;

Thence South 01°58'27" West 25.52 feet;

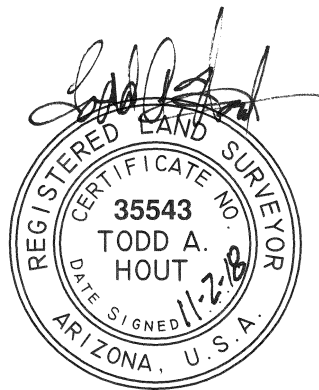
Thence South 40°49'58" East 110.72 feet;

Thence South 52°24'23" East 99.69 feet;

Thence South 40°49'58" East 131.98 feet;

Thence South 59°25'34" West 50.81 feet to the Southwest line of said Lot 3, to the Northeast right-of-way line of said Union Pacific Railroad;

Thence North 40°49'58" West 393.88 feet upon said common line to the **Point of Beginning**.



**CAMINO MARTIN**  
DKT. 996  
PG. 161

GRAPHIC SCALE: 1 Inch = 100 Feet  
25 0 50 100 200



| LINE | BEARING       | DISTANCE |
|------|---------------|----------|
| L1   | S 88°01'33" E | 64.53'   |
| L2   | S 01°58'27" W | 25.52'   |
| L3   | S 40°49'58" E | 110.72'  |
| L4   | S 52°24'23" E | 99.69'   |
| L5   | S 40°49'58" E | 131.98'  |
| L6   | S 59°25'34" W | 50.81'   |

POINT OF BEGINNING  
WESTERMOST CORNER  
LOT 3  
A.P.N. 101-05-015J  
6800 N CAMINO MARTIN  
SEQ. 20160530610

CENTER  
1/4 CORNER  
SECTION 6

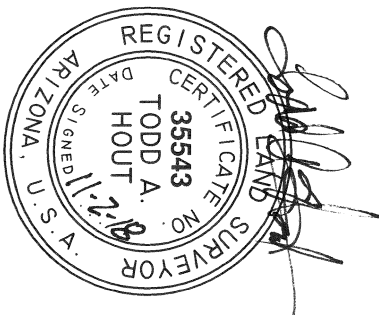
**AERIE RIVERWALK**  
SEQ. 20131090246

LOT 3  
A.P.N. 101-05-1240

NEW MAINTENANCE ACCESS  
& DRAINAGE EASEMENT  
15,362.7 S.F.  
0.35 ACRES

UNION PACIFIC RAILROAD  
(U.P.R.R.)  
200' R.O.W.  
N 40°49'58" W 393.88'

CANADA DEL ORO WASH.  
PIMA COUNTY BK. 26 PG. 84 M.&P.



NOTE: THIS MAP IS INTENDED  
TO PORTRAY A MAINTENANCE  
ACCESS & DRAINAGE EASEMENT  
AND DOES NOT REPRESENT A  
BOUNDARY SURVEY.

## ALTA ARIZONA

SURVEY - ENGINEERING - GEOTECH  
2025 W. RUTHRAUFF ROAD, SUITE 125  
TUCSON, ARIZONA 85705  
(520) 398-6651

**DEPICTION OF EXHIBIT "A" - MAINTENANCE ACCESS & DRAINAGE  
EASEMENT OVER A PORTION OF LOT 3 OF "AERIE RIVERWALK FINAL  
PLAT", SEQ. 20131090246, PIMA COUNTY RECORDS, IN THE  
SOUTHWEST 1/4 OF SECTION 6, T. 13 S., R. 13 E.,  
G. & S.R.M., PIMA COUNTY, ARIZONA**

PROJECT NO. 13055

DATE: NOV. 2, 2018

PAGE 2 OF 2

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**DEDICATED RIGHT-OF-WAY**

A Dedicated Right-of-Way over a portion of the parcel described in Docket 10258 at Page 338, Pima County Records, in the Northeast quarter of Section 6, Township 13 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona, being more particularly described as follows:

**Beginning** at the Southeast corner of Lot 5 of "Aerie Riverwalk", as recorded at Sequence No. 20131090246, Pima County Records, also being the Southernmost corner of said parcel described in Docket 10258 at Page 338, Pima County Records, said point being a ½ inch rebar tagged "RLS 14145";

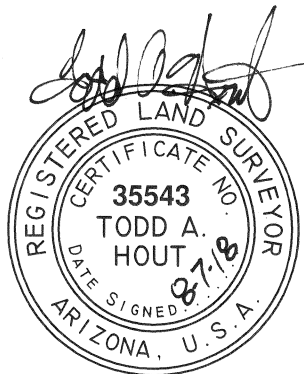
Thence North 60°56'19" East 1,012.31 feet upon the Southwest line of said parcel, upon the Northwest line of the Canada del Oro Wash, to the Westerly right-of-way line of Thornydale Road;

Thence North 13°50'16" West 51.82 feet upon the Easterly line of said parcel, upon the Westerly right-of-way line of said Thornydale Road;

Thence South 60°56'19" West 597.10 feet;

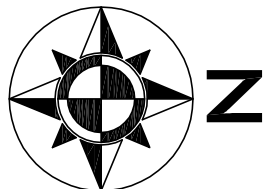
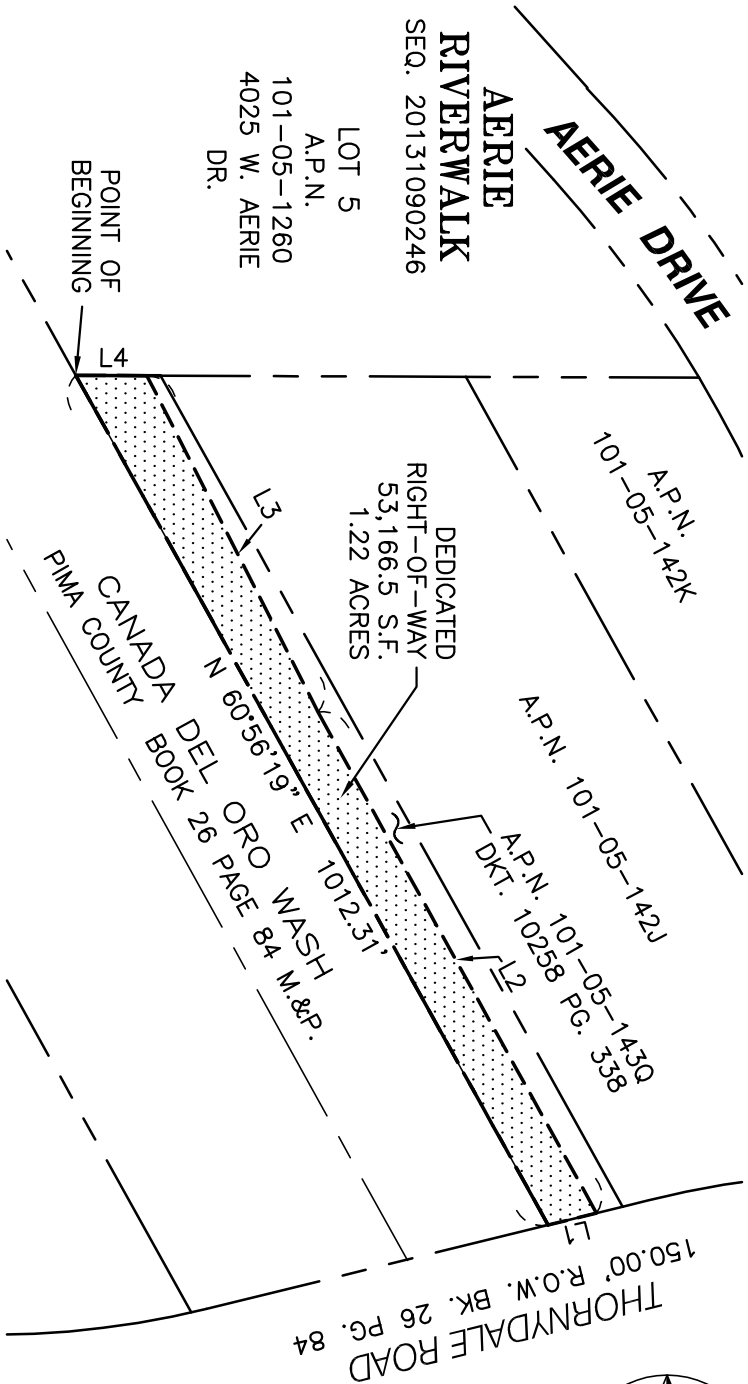
Thence South 63°03'29" West 392.91 feet to the West line of said parcel, also being the East line of Lot 5 of said "Aerie Riverwalk";

Thence South 00°12'51" West 73.98 feet upon said common line to the **Point of Beginning**.



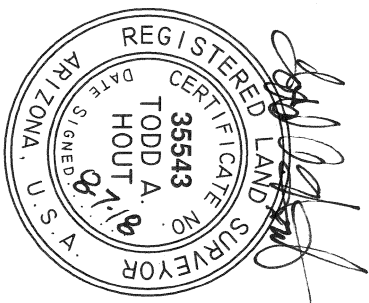
GRAPHIC SCALE: 1 Inch = 200 Feet

50 0 100 200 400



| LINE | BEARING       | DISTANCE |
|------|---------------|----------|
| L1   | N 13°50'16" W | 51.82'   |
| L2   | S 60°56'19" W | 597.10'  |
| L3   | S 63°03'29" W | 392.91'  |
| L4   | S 00°12'51" W | 73.98'   |

NOTE: THIS MAP IS INTENDED TO PORTRAY A DEDICATED RIGHT-OF-WAY AND DOES NOT REPRESENT A BOUNDARY SURVEY.



## ALTA ARIZONA

SURVEY - ENGINEERING - GEOTECH  
2025 W. RUTHRAUFF ROAD, SUITE 125  
TUCSON, ARIZONA 85705  
(520) 398-6651

**DEPICTION OF EXHIBIT "A" - A DEDICATED RIGHT-OF-WAY  
OVER A PORTION OF THE N.E. 1/4 OF SECTION 6,  
T. 13 S., R. 13 E., G. & S. R. M., PIMA COUNTY, ARIZONA**

PROJECT NO. 13055

DATE: AUG. 7, 2018

PAGE 2 OF 2

EXHIBIT I  
TO CDO NORTH BANK DEVELOPMENT AGREEMENT  
FORM OF AMENDMENT TO EXISTING ACCESS AGREEMENT  
8 PAGES

When Recorded Mail to:  
Hinderaker Rauh & Weisman PLC  
2401 E. Speedway Blvd.  
Tucson, Arizona 85719

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**AMENDMENT TO ACCESS EASEMENT AGREEMENT**

THIS AMENDMENT TO ACCESS EASEMENT AGREEMENT ("**Amendment**") is made and entered into as of \_\_\_\_\_, 2018, by and between FOODTOWN DEVELOPMENT COMPANY II, L.L.C., an Arizona limited liability company, and CLOVER REAL ESTATE II, LLC, an Arizona limited liability company (collectively, the "**Grantor**") and ALTA VISTA COMMUNITIES RP LLC, an Arizona limited liability company ("**Grantee**"), and the Pima County Regional Flood Control District, a special taxing district and political subdivision of the State of Arizona ("**District**"), for the purpose of amending the Access Easement Agreement between the parties dated March 1, 2018 and recorded March 2, 2018 at Sequence No. 20180610427 ("**Access Easement Agreement**"), with reference to the following recitals:

**Recitals**

- A. Grantor is the owner of the Servient Tenement, being the real property legally described in Exhibit A attached hereto (which is also Exhibit A to the Access Easement Agreement).
- B. Grantee is the owner of the Dominant Tenement, as described in Exhibit B to the Access Easement Agreement.
- C. Pursuant to the Access Easement Agreement, Grantor has granted and assigned to Grantee a perpetual, nonexclusive access easement (the "**Easement**") over an Easement Area located on a portion of the Servient Tenement for the "purposes of ingress and egress from the Dominant Tenement." Section 1 of the Access Easement states that the "Easement Area shall not be used for access or travel from or to any property other than the Dominant Tenement..."
- D. Section 2 of the Access Easement Agreement permits the assignment by Grantee to the County of Pima, Arizona ("**County**") of the right to use the Easement and Easement Area for ingress and egress and "for the purposes of construction, maintenance and repair of the Bank

Protection Improvements or the Easement Area itself.” It is the District, and not the County, which plans to construct Bank Protection Improvements if certain conditions are met.

E. In addition to the Bank Improvements, the District is constructing a 50 foot linear park adjacent to the CDO Wash, which will include a paved multi-use path, barricade rail, and pedestrian underpass canopy structure for an I-10 underpass (the “**Linear Park**”). The area on which the Bank Protection Improvements and Linear Park will be constructed is depicted and legally described in Exhibit C attached hereto (the “**Project Area**”).

F. Pursuant to the terms and conditions set forth below the parties desire to amend the Access Easement Agreement to clarify that the District may utilize the Easement and Easement Area for the purpose of constructing, repairing and maintaining the Bank Protection Improvements and Linear Park within the Project Area.

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The “Dominant Tenement” as defined in Section B on the first page of the Access Easement Agreement, and legally defined in Exhibit B to the Access Easement Agreement, is amended to include the entire Project Area.

2. All references in the Access Easement Agreement to “Pima County” or the “County,” will henceforth be references to the District.

3. The Easement is for the purposes of ingress to and egress from the Dominant Tenement to allow the District to construct, repair and maintain the Bank Protection Improvements and Linear Park within the Project Area in the regular course of the District’s operations, in a condition similar to other District owned or controlled flood-control improvements and linear parks. The frequency with which the District anticipates using the Easement, and the general type of equipment it anticipates using, is described on Exhibit D to this Amendment. The actual use will, however, change from time to time or over time in response to changed conditions or the need to respond to an emergency or perform any major repairs. The District will be responsible for and will repair any damage it causes to the Easement Area, to the same extent as Grantee is liable under Section 6 of the Access Easement Agreement. The Easement does not allow the general public to access the Project Area or permit access or travel from or to any property other than the Dominant Tenement, except for the District’s access to the Project Area for the work described in Exhibit D.

4. In the event of a conflict between the terms of the Access Easement Agreement and the terms of this Amendment, the terms of this Amendment shall control. Where not inconsistent, the terms of the Access Easement Agreement shall remain in full force and effect. This Amendment may be executed in counterpart and by electronic or facsimile signature.

*Signatures on following page.*

Executed as of the Effective Date stated in the introductory paragraph.

**“GRANTOR”**

FOODTOWN DEVELOPMENT COMPANY II, L.L.C., an Arizona limited liability company

By: Foodtown Development Company, L.L.C.  
a Missouri limited liability company, its sole member

By: Leslie E. Glaze, Shelly M. Silverman, Jody M. Gross, Scott J. Maizlish, and UMB Trust Company of South Dakota, Trustees (“Trustees”) of the Clover Trust, dated June 30, 1999, its sole member

By: \_\_\_\_\_  
Name: Paul Kraft  
Title: Agent for Trustees under Clover Trust Agent Agreement

State of Arizona       )  
                                  )  
County of Pima        )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared Paul Kraft, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

(Seal)

CLOVER REAL ESTATE II, LLC, an Arizona limited liability company

By: Clover Real Estate, L.L.C., a Missouri limited liability company, its sole member

By: Leslie E. Glaze, Shelly M. Silverman, Jody M. Gross, Scott J. Maizlish, and UMB Trust Company of South Dakota, Trustees ("Trustees") of the Clover Trust, dated June 30, 1999, its sole member

By: \_\_\_\_\_  
Name: Paul Kraft  
Title: Agent for Trustees under Clover Trust Agent Agreement

State of Arizona  
County of Pima

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared Paul Kraft, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

(Seal)

**“GRANTEE”**

ALTA VISTA COMMUNITIES RP LLC, an  
Arizona limited liability company

By CASITAS INVESTOR RP LLC, an Arizona  
limited liability company, its manager

By: KARBER HOLDINGS LLC, an  
Arizona limited liability company, a manager

By: \_\_\_\_\_  
Roger Karber, authorized Member

State of Arizona       )  
                                  )  
County of Pima        )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared Roger Karber,  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)  
whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the  
instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the  
instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

(Seal)

Pima County Regional Flood Control District  
a political subdivision of the State of Arizona

By: \_\_\_\_\_  
Chairman, Board of Directors

State of Arizona       )  
                                  )  
County of Pima        )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

(Seal)

**CONSENTED TO BY:**

The undersigned, being the beneficiary and lienholder under that certain Deed of Trust, Security Agreement and Fixture filing dated July 22, 2016, by FOODTOWN DEVELOPMENT COMPANY II, L.L.C., an Arizona limited liability company, and CLOVER REAL ESTATE II, LLC, an Arizona limited liability company, collectively, as trustor, for the benefit of the undersigned, recorded on July 22, 2016, as Sequence 20162040543 in the Official Records of Pima County, Arizona, hereby consents to the foregoing Access Easement Agreement effective as of the date first set forth above.

THE OHIO NATIONAL LIFE INSURANCE COMPANY  
an Ohio corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

(Seal)

**Language for Exhibit D:**

The access easement will be utilized by Pima County Regional Flood Control District staff, or their contractor, as well as staff from the Pima County Natural Resources Parks and Recreation department.

The access route will be secured with locked gates and will only be able to be accessed by authorized individuals. Maintenance and repair activities would be limited to repair work for the river park pathway, handrail and landscape improvements as well as bank protection and cross drainage structure repairs. This type of work is limited in frequency and duration - typically 4 to 6 times per year and usually for a period of 1 to 3 days. For day to day river-park maintenance activities – sweeping, pruning and emptying trash cans - the access would be from an alternate route either at Thornydale Road or from the pathway under I-10.

The vehicles to be used in all instances will be limited small electric “golf carts” or gators and vehicles not larger than pickup trucks, provided, however, that as to those events that have a material adverse effect, such as failure of bank protection, larger vehicles may be used if reasonably required.

EXHIBIT J  
TO CDO NORTH BANK DEVELOPMENT AGREEMENT  
FORM OF ALTA VISTA TEMPORARY CONSTRUCTION EASEMENT  
3 PAGES

When Recorded, Please Return to:

Pima County Flood Control District  
201 North Stone Avenue, 9th Floor  
Tucson, AZ 85701-1215

---

Exempt from Affidavit of Value per A.R.S. § 11-1134(A)(3).

**TEMPORARY CONSTRUCTION EASEMENT**

1. **Grant of Easement.** Alta Vista Communities RP LLC, an Arizona limited liability company (“**Alta Vista**”), hereby grants to Pima County Flood Control District (“**RFCD**”), a non-exclusive temporary construction easement (the “**Easement**”) over the property described on **Exhibit A** (the “**Easement Area**”), for use during the construction of bank-protection and linear-park improvements on adjacent property (the “**Project**”), subject to the terms and conditions in this Temporary Construction Easement agreement (“**TCE Agreement**”).
2. **Term.** The Easement will be effective upon recordation of this TCE Agreement in the Office of the Pima County Recorder. It will automatically terminate upon final completion of the Project, but in any event no later than the date that is two years after the recordation date. If requested by Alta Vista, RFCD will, after termination, record a notice acknowledging that the Easement has terminated.
3. **Condition of Property on Termination.** Upon completion of the Project and termination of the Easement, RFCD will remove all material, supplies, and debris, and leave the Easement Area in the same condition existing at commencement of the Easement, except as modified under the Development Agreement.
4. **No Conveyance of Title.** This TCE Agreement does not grant RFCD title to, or any permanent interest in, the Easement Area.
5. **Indemnity.** To the extent permitted by law, RFCD will indemnify, defend and hold Alta Vista harmless from and against any and all claims, demands, and causes of action in law or equity caused by the acts or omissions of the officers, agents and/or employees of RFCD, related to RFCD’s or RFCD’s contractors’ use of the Easement Area.
6. **RFCD Self-Insured.** RFCD is a political subdivision of the State of Arizona and is self-insured as authorized by Law under A.R.S. §§ 11-261 and 11-981. For so long as this Easement shall be in force and effect, RFCD will maintain its self-insurance.

## **7. Contractor Indemnity & Insurance.**

- 7.1. RFCD will require each RFCD contractor or subcontractor using the Easement Area in connection with the Project to agree to indemnify, defend, save and otherwise hold harmless Alta Vista, and its members, managers, directors, officers, and employees, from and against any and all causes of action, liabilities, damages, losses or expenses, including reasonable attorney's fees, arising from or alleged to have arisen in whole or in part from the acts or omissions of the contractor (or any subcontractor of the contractor) or any of their agents or employees related to its use of the Easement Area.
- 7.2. RFCD will require each RFCD contractor or subcontractor using the Easement Area to provide the following insurance coverages during the entire period that the Easement Area is being used by that contractor. RFCD will require that each policy name Alta Vista as an additional insured and contain a waiver of subrogation endorsement in favor of Alta Vista. Certificate(s) of insurance and applicable endorsements will be supplied to Alta Vista before any contractor or subcontractor enters on or uses the Easement Area.
- 7.2.1. Commercial General Liability policy, broad form, including coverage for personal injury up to and including death, property damage, written on an occurrence basis with limits not less than a one (\$1) million per occurrence with a two (\$2) million aggregate.
- 7.2.2. Workers Compensation policy providing coverage required by law.
- 7.2.3. Automobile Liability policy – Combined Single Limit for all hired, owned, non-owned vehicles in an amount no less than 1 million

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGE FOLLOWS]

**Alta Vista Communities RP LLC,  
an Arizona limited liability company**

By Casitas Investor RP, LLC  
an Arizona limited liability company, Manager

By Brav Holding Company LLC  
an Arizona limited liability company, Co-Manager

By \_\_\_\_\_  
Garry Brav, Manager

By Indus Holdings LLC  
an Arizona limited liability company, Co-Manager

By \_\_\_\_\_  
G.S. Jaggi, Manager

By Karber Holdings LLC  
an Arizona limited liability company, Co-Manager

By \_\_\_\_\_  
Roger Karber, Member

By \_\_\_\_\_  
Diane Fitzpatrick, Member

STATE OF ARIZONA     )  
                                  ) ss.  
COUNTY OF PIMA     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by Roger Karber and Diane Fitzpatrick, Members, on behalf of Karber Holdings, LLC, an Arizona limited liability company; by G.S. Jaggi, Manager, on behalf of Indus Holdings, LLC, an Arizona limited liability company; and by Garry Brav, Manager, on behalf of Brav Holding Company, LLC, an Arizona limited liability company.

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

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

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**TEMPORARY CONSTRUCTION EASEMENT**

A 20.00 – foot wide Temporary Construction Easement over a portion of Lots 2, 3, 4, and 5 of "Aerie Riverwalk", as recorded at Sequence No. 20131090246, Pima County Records, located in the Northeast quarter and the South half of Section 6, Township 13 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona, being more particularly described as follows:

**Commencing** at the Southernmost corner of said Lot 3;

Thence North 40°49'58" West 70.80 feet upon the Southwest line of said Lot 3, upon the Northeast right-of-way line of the Union Pacific Railroad to the **Point of Beginning**;

Thence North 59°25'34" East 220.47 feet;

Thence North 35°37'50" East 14.11 feet;

Thence North 57°41'20" East 251.86 feet;

Thence North 74°56'43" East 16.34 feet;

Thence North 00°14'24" East 11.97 feet;

Thence North 89°45'35" West 0.63 feet to the Center one-quarter corner of said Section 6, to **Point 'A'**, also being the Northeast corner of said Lot 3;

Thence North 88°01'33" West 25.60 feet upon the North line of said Lot 3;

Thence South 57°41'20" West 256.13 feet;

Thence South 35°37'50" West 13.80 feet;

Thence South 59°25'34" West 219.88 feet to the Southwest line of said Lot 3, to the Northeast right-of-way line of Union Pacific Railroad;

Thence South 40°49'58" East 20.32 feet upon said common line to the **Point of Beginning**;

Together with a 20.00 – foot wide Temporary Construction Easement, the sideline lying 20.00 feet to the left of the following described line:

**Beginning** at aforementioned **Point 'A'**;

Thence South 89°45'35" East 65.00 feet;

Thence North 00°14'25" East 8.92 feet;

Thence North 60°14'29" East 752.47 feet;

Thence North 00°53'17" East 26.26 feet;

Thence South 89°06'43" East 44.37 feet to a non-tangent curve, concave to the Southeast from which the radius point bears South 29°38'04" East at 10,045.00 feet distant;

Thence Northeasterly upon said curve, turning to the right, through a delta angle of 2°34'31" and an arc length of 451.48 feet;

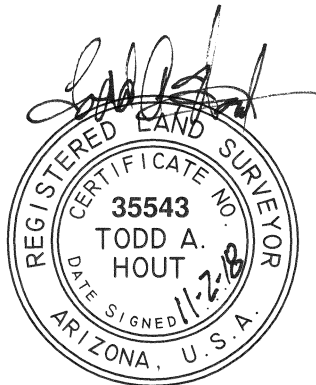
Thence North 27°03'33" West 6.43 feet;

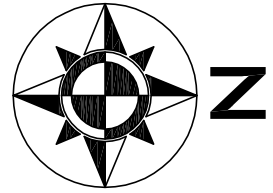
Thence North 63°14'47" East 44.11 feet;

Thence South 26°57'35" East 6.26 feet;

Thence North 63°03'56" East 436.32 feet to the **Point of Terminus**.

The sideline of said easement to be lengthened or shortened as required to terminate on the West line of said Lot 2 and the East line of said Lot 5.





LOT 2  
A.P.N. 101-05-1230  
4105 W. AERIE DR.

**AERIE RIVERWALK**  
SEQ. 20131090246

LOT 4  
A.P.N. 101-05-1250  
4075 W. AERIE DR.

LOT 5  
A.P.N. 101-05-1260  
4025 W. AERIE DR.

A.P.N. 101-05-0423Q

CENTER 1/4 CORNER  
SECTION 6  
POINT OF BEGINNING  
POINT 'A'

A.P.N. 101-05-015J  
6800 N. CAMINO MARTIN

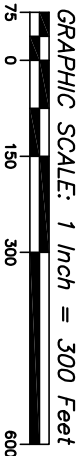
A.P.N. 101-05-1240  
LOT 3

POINT OF BEGINNING  
N 70°08'00" E  
40°49'58" W

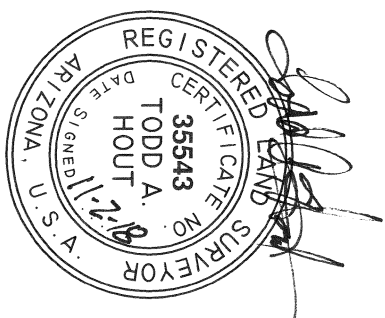
TEMPORARY  
CONSTRUCTION  
EASEMENT  
1.077 ACRES

S27°03'33"E  
(RADIAL)  
S29°38'04"E  
(RAD)

CANADA DEL ORO WASH.  
PIMA COUNTY BOOK 26 PAGE 84 M.&P.



SEE LINE AND CURVE CHARTS  
SHEET 4



NOTE: THIS MAP  
IS INTENDED TO  
PORTRAY A  
TEMPORARY  
CONSTRUCTION  
EASEMENT AND  
DOES NOT  
REPRESENT A  
BOUNDARY  
SURVEY.

# ALTA ARIZONA

SURVEY - ENGINEERING - GEOTECH  
2025 W. RUTHRAUFF RD., #125  
TUCSON, ARIZONA 85705  
(520) 398-6651

**DEPICTION OF EXHIBIT "A" - TEMPORARY CONSTRUCTION EASEMENT  
OVER A PORTION OF "AERIE RIVERWALK", SEQ. NO. 20131090246, PIMA  
COUNTY RECORDS, IN THE SOUTH 1/2 & THE N.E. 1/4 OF SECTION 6,  
T. 13 S., R. 13 E., G. & S. R. M., PIMA COUNTY, ARIZONA**

PROJECT NO. 13055

DATE: NOV. 2, 2018

SHEET 3 OF 4

# LINE AND CURVE CHARTS

| LINE | BEARING       | DISTANCE |
|------|---------------|----------|
| L1   | N 59°25'34" E | 220.47'  |
| L2   | N 35°37'50" E | 14.11'   |
| L3   | N 57°41'20" E | 251.86'  |
| L4   | N 74°56'43" E | 16.34'   |
| L5   | N 00°14'24" E | 11.97'   |
| L6   | N 89°45'35" W | 0.63'    |
| L7   | N 88°01'33" W | 25.60'   |
| L8   | S 57°41'20" W | 256.13'  |
| L9   | S 35°37'50" W | 13.80'   |
| L10  | S 59°25'34" W | 219.88'  |
| L11  | S 40°49'58" E | 20.32'   |
| L12  | S 89°45'35" E | 65.00'   |
| L13  | N 00°14'25" E | 8.92'    |
| L14  | N 00°53'17" E | 26.26'   |
| L15  | S 89°06'43" E | 44.37'   |
| L16  | N 27°03'33" W | 6.43'    |
| L17  | N 63°14'47" E | 44.11'   |
| L18  | S 26°57'35" E | 6.26'    |
| L19  | N 63°03'56" E | 436.32'  |

| CURVE | RADIUS    | DELTA ANGLE | ARC LENGTH |
|-------|-----------|-------------|------------|
| C1    | 10045.00' | 02°34'31"   | 451.48'    |



## ALTA ARIZONA

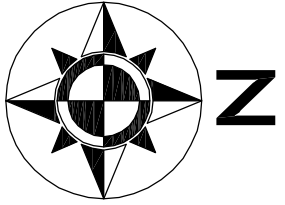
SURVEY – ENGINEERING – GEOTECH  
2025 W. RUTHRAUFF RD., #125  
TUCSON, ARIZONA 85705  
(520) 398-6651

**DEPICTION OF EXHIBIT "A" - TEMPORARY CONSTRUCTION EASEMENT  
OVER A PORTION OF "AERIE RIVERWALK", SEQ. NO. 20131090246, PIMA  
COUNTY RECORDS, IN THE SOUTH 1/2 & THE N.E. 1/4 OF SECTION 6,  
T. 13 S., R. 13 E., G. & S. R. M., PIMA COUNTY, ARIZONA**

PROJECT NO. 13055

DATE: NOV. 2, 2018

SHEET 4 OF 4



GRAPHIC SCALE: 1 inch = 300 Feet  
 75 0 150 300 600

NOTE: THIS MAP IS  
 INTENDED TO PORTRAY  
 A TEMPORARY  
 CONSTRUCTION  
 EASEMENT AND DOES  
 NOT REPRESENT A  
 BOUNDARY SURVEY.

A.P.N. 101-05-015J  
 6800 N. CAMINO MARTIN  
 CENTER 1/4 CORNER  
 SECTION 6  
 A.P.N. 101-05-1240  
 LOT 3  
 SOUTHERN PACIFIC RAILROAD  
 200' RIGHT-OF-WAY

LOT 1  
 A.P.N. 101-05-1220  
 4115 W. AERIE DR.

LOT 2  
 A.P.N. 101-05-1230  
 4105 W. AERIE DR.

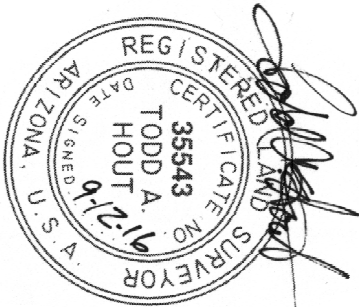
TEMPORARY CONSTRUCTION  
 EASEMENT  
 29.10 ACRES

LOT 4  
 A.P.N. 101-05-1250  
 4075 W. AERIE DR.

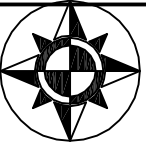
LOT 5  
 A.P.N. 101-05-1260  
 4025 W.  
 AERIE DR.

A.P.N. 101-05-042K  
 A.P.N. 101-05-042J

CANADA DEL ORO WASH  
 PIMA COUNTY BOOK 26 PAGE 84 M.&P.  
 S 60°55'19" W 2251.66'



EXPIRES 12-31-18



**POLARIS  
 AND  
 SURVEYING, LLC**

3528 N. FLOWING WELLS RD.  
 TUCSON, ARIZONA 85705  
 TEL.: (520) 322-6400  
 FAX: (520) 322-6401

LOTS 2, 3, 4 & 5 OF "AERIE RIVERWALK FINAL PLAT",  
 SEQ. 20131090246, PIMA COUNTY RECORDS, IN THE  
 NORTHEAST 1/4 AND THE SOUTH 1/2 OF SECTION 6,  
 T. 13 S., R. 13 E., G. & S. R. M., PIMA COUNTY, ARIZONA

DATE: SEPT. 12, 2016 POLARIS JOB NO. 13055  
**DEPICTION OF EXHIBIT "A" - TEMPORARY  
 CONSTRUCTION EASEMENT - OVER**

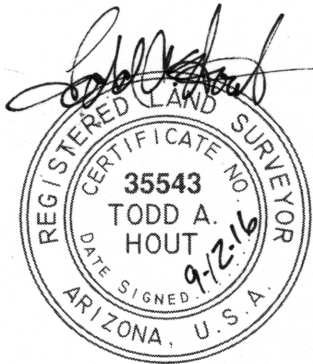


**POLARIS  
AND  
SURVEYING, LLC**

3528 N FLOWING WELLS RD  
TUCSON, ARIZONA 85705  
TEL: 520-322-6400  
FAX: 520-322-6401  
Sept. 12, 2016

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**TEMPORARY CONSTRUCTION EASEMENT**

A Temporary Construction Easement over Lots 2, 3, 4, and 5 of "Aerie Riverwalk Final Plat", as recorded at Sequence No. 20131090246, Pima County Records, located in the Northeast quarter and the South half of Section 6, Township 13 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona.



EXPIRES 12-31-18

**EXHIBIT L**  
**TO CDO NORTH BANK DEVELOPMENT AGREEMENT**  
**FORM OF IT TEMPORARY CONSTRUCTION EASEMENT**  
**3 PAGES**

When Recorded, Please Return to:

Pima County Flood Control District  
201 North Stone Avenue, 9th Floor  
Tucson, AZ 85701-1215

---

Exempt from Affidavit of Value per A.R.S. § 11-1134(A)(3).

**TEMPORARY CONSTRUCTION EASEMENT**

1. **Grant of Easement.** I.T. Investments Three, L.L.C., an Arizona limited liability company (“IT”), hereby grants to Pima County Flood Control District (“RFCD”), a non-exclusive temporary construction easement (the “**Easement**”) over the property described on **Exhibit A** (the “**Easement Area**”), for use during the construction of bank-protection and linear-park improvements on adjacent property (the “**Project**”), subject to the terms and conditions in this Temporary Construction Easement agreement (“**TCE Agreement**”).
2. **Term.** The Easement will be effective upon recordation of this TCE Agreement in the Office of the Pima County Recorder. It will automatically terminate upon final completion of the Project, but in any event no later than the date that is two years after the recordation date. If requested by IT, RFCD will, after termination, record a notice acknowledging that the Easement has terminated.
3. **Condition of Property on Termination.** Upon completion of the Project and termination of the Easement, RFCD will remove all material, supplies, and debris, and leave the Easement Area in the same condition existing at commencement of the Easement.
4. **No Conveyance of Title.** This TCE Agreement does not grant RFCD title to, or any permanent interest in, the Easement Area.
5. **Indemnity.** To the extent permitted by law, RFCD will indemnify, defend and hold IT harmless from and against any and all claims, demands, and causes of action in law or equity caused by the acts or omissions of the officers, agents and/or employees of RFCD, related to RFCD’s or RFCD’s contractors’ use of the Easement Area.
6. **RFCD Self-Insured.** RFCD is a political subdivision of the State of Arizona and is self-insured as authorized by Law under A.R.S. §§ 11-261 and 11-981. For so long as this Easement shall be in force and effect, RFCD will maintain its self-insurance.

## **7. Contractor Indemnity & Insurance.**

- 7.1. RFCD will require each RFCD contractor or subcontractor using the Easement Area in connection with the Project to agree to indemnify, defend, save and otherwise hold harmless IT, and its members, managers, directors, officers, and employees, from and against any and all causes of action, liabilities, damages, losses or expenses, including reasonable attorney's fees, arising from or alleged to have arisen in whole or in part from the acts or omissions of the contractor (or any subcontractor of the contractor) or any of their agents or employees related to its use of the Easement Area.
- 7.2. RFCD will require each RFCD contractor or subcontractor using the Easement Area to provide the following insurance coverages during the entire period that the Easement Area is being used by that contractor. RFCD will require that each policy name IT as an additional insured and contain a waiver of subrogation endorsement in favor of IT. Certificate(s) of insurance and applicable endorsements will be supplied to IT before any contractor or subcontractor enters on or uses the Easement Area.
- 7.2.1. Commercial General Liability policy, broad form, including coverage for personal injury up to and including death, property damage, written on an occurrence basis with limits not less than a one (\$1) million per occurrence with a two (\$2) million aggregate.
- 7.2.2. Workers Compensation policy providing coverage required by law.
- 7.2.3. Automobile Liability policy – Combined Single Limit for all hired, owned, non-owned vehicles in an amount no less than 1 million

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGE FOLLOWS]

**I.T. Investments Three, L.L.C.  
an Arizona limited liability company**

By WC Group LLC  
an Arizona limited liability company, Manager

By WCLP LLC  
an Arizona limited liability company, Manager

By \_\_\_\_\_  
Alexander H. Sears, Manager

STATE OF ARIZONA       )  
                                      ) ss.  
COUNTY OF PIMA       )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by Alexander H. Sears, Manager, on behalf of WCLP LLC, an Arizona limited liability company.

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

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

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**TEMPORARY CONSTRUCTION EASEMENT**

A 20.00 – foot wide Temporary Construction Easement over a portion of Lot 5 of "Thornydale Plaza", Book 26 at Page 84 of Maps and Plats, Pima County Records, and the parcels described in Docket 10258 at Page 338, and Docket 10098 at Page 1866, Pima County Records, in the Northeast quarter of Section 6, Township 13 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona, the sideline lying 20.00 feet to the left of the following described line:

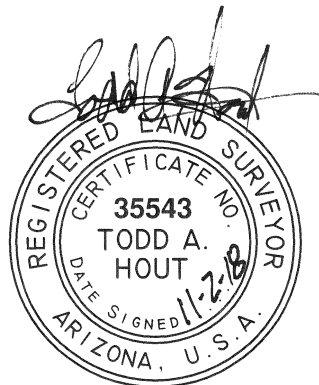
**Commencing** at the Southeast corner of Lot 5 of "Aerie Riverwalk", as recorded at Sequence No. 20131090246, Pima County Records, also being the Southernmost corner of said parcel described in Docket 10258 at Page 338, Pima County Records, said point being a ½ inch rebar tagged "RLS 14145";

Thence North 00°12'51" East 73.98 feet upon the East line of said Lot 5 of "Aerie Riverwalk" to the **Point of Beginning**;

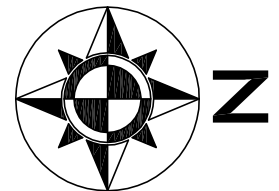
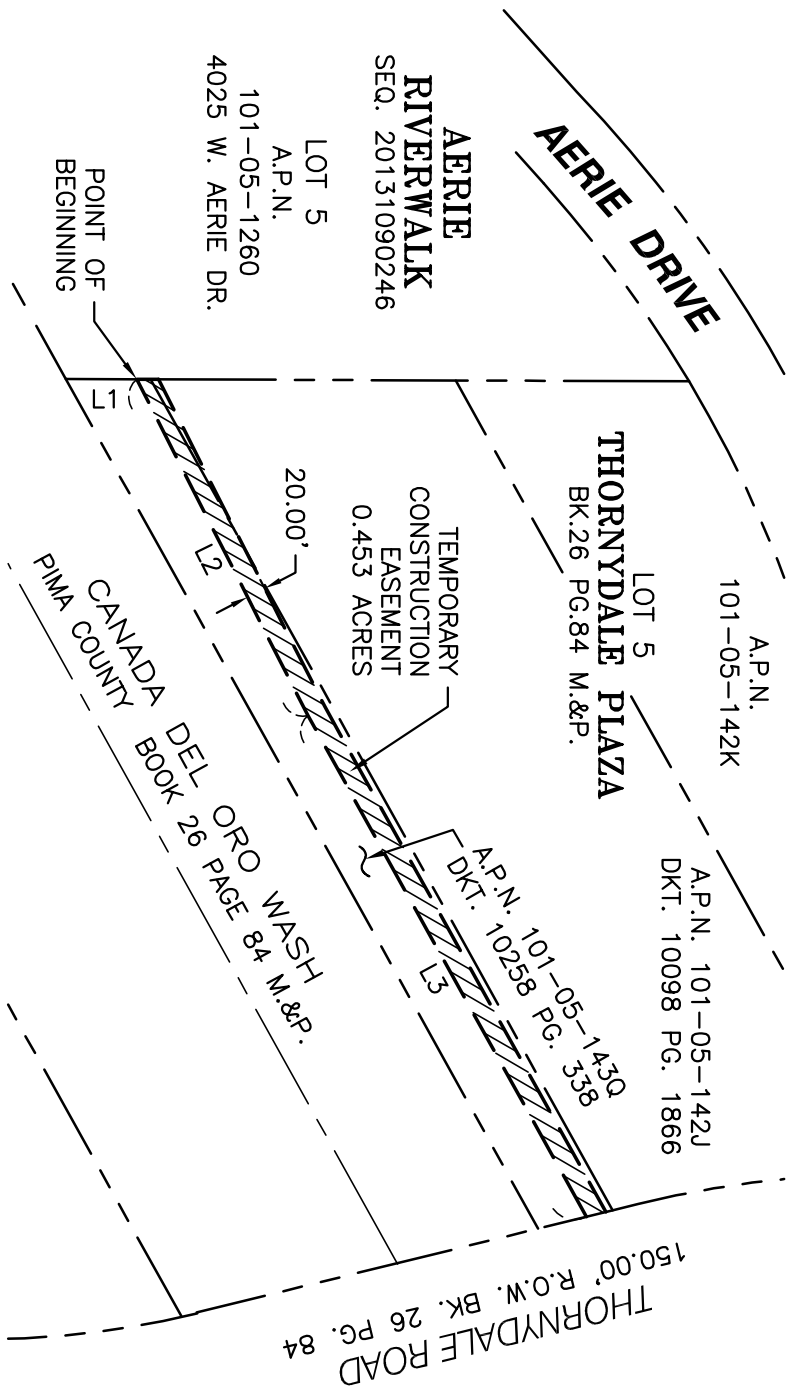
Thence North 63°03'29" East 392.91 feet;

Thence North 60°56'19" East 597.10 feet to the Westerly right-of-way line of Thornydale Road, to the **Point of Terminus**.

The sideline of said easement to be lengthened or shortened as required to terminate on said Westerly right-of-way and on the East line of said Lot 5 of "Aerie Riverwalk".

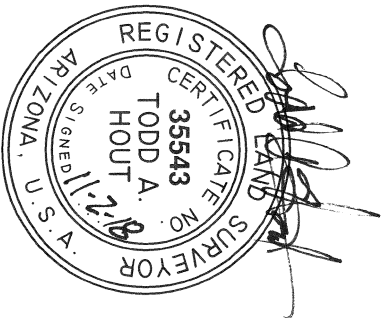


GRAPHIC SCALE: 1 Inch = 200 Feet



| LINE | BEARING       | DISTANCE |
|------|---------------|----------|
| L1   | N 00°12'51" E | 73.98'   |
| L2   | N 63°03'29" E | 392.91'  |
| L3   | N 60°56'19" E | 597.10'  |

NOTE: THIS MAP IS INTENDED TO PORTRAY A TEMPORARY CONSTRUCTION EASEMENT AND DOES NOT REPRESENT A BOUNDARY SURVEY.



## ALTA ARIZONA

SURVEY - ENGINEERING - GEOTECH  
2025 W. RUTHRAUFF RD., #125  
TUCSON, ARIZONA 85705  
(520) 398-6651

DEPICTION OF EXHIBIT "A" - A TEMPORARY CONSTRUCTION EASEMENT OVER A PORTION OF LOT 5 OF "THORNYDALE PLAZA", BK. 26, PG. 84, OF MAPS & PLATS, AND THE PARCELS DESCRIBED IN DKT. 10258, PG. 338, & DKT. 10098, PG. 1866, P.C.R. IN THE N.E. 1/4 OF SECTION 6, T. 13 S., R. 13 E., G. & S .R.M., PIMA COUNTY, ARIZONA

EXHIBIT N TO CDO NORTH BANK DEVELOPMENT AGREEMENT  
DESCRIPTION OF IT PROPERTY

WLB 193045-A-001-1000  
May 5, 1993

The  
WLB  
Group  
INC.

THORNYDALE PLAZA

That portion of Section 6, Township 13 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona, and that portion of Lot 5, Thornydale Plaza as recorded in Book 26 of Maps and Plats at Page 84, Pima County Recorder's Office, Pima County, Arizona, described as follows:

COMMENCING at the most Northerly corner common to Lots 5 and 6 of Thornydale Plaza;

THENCE S 00°14'25" W, along the West line of the said Lot 5, a distance of 508.30 feet to the POINT OF BEGINNING;

THENCE S 00°14'25" W, along the said West line and its Southerly prolongation, a distance of 649.06 feet to a line 77.00 feet Southeasterly of and parallel with the Southeasterly line of the said Lot 5;

THENCE N 60°56'45" E, along the said parallel line, a distance of 1012.94 feet to the Westerly right-of-way of Thornydale Road;

THENCE N 13°48'45" W, along the said right-of-way, a distance of 102.62 feet to a point of curvature of a tangent curve concave to the East;

THENCE Northerly along the said right-of-way, along the arc of said curve, to the right, having a radius of 1075.10 feet and a central angle of 010°59'27" for an arc distance of 206.32 feet to a point of reverse curvature of a tangent curve concave to the Southwest;

THENCE Northwesterly along the arc of said curve, to the left, having a radius of 45.00 feet and a central angle of 07°28'05" for an arc distance of 68.70 feet to a point of tangency on the South right-of-way of that easement recorded in Docket 7816 at Page 1861;

THENCE S 89°42'37" W, along the said right-of-way, a distance of 105.78 feet to a point of curvature of a tangent curve concave to the Southeast;

THENCE Southwesterly along the said right-of-way, along the arc of said curve, to the left, having a radius of 1335.99 feet and a central angle of 30°31'09" for an arc distance of 711.63 feet to the POINT OF BEGINNING.

Containing 10.747 Acres, more or less.

Prepared by:

THE WLB GROUP, INC.

*Kenneth E. Zismann*  
Kenneth E. Zismann, R.L.S.

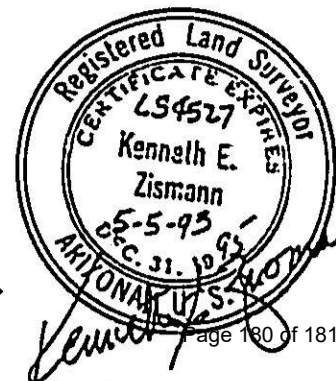
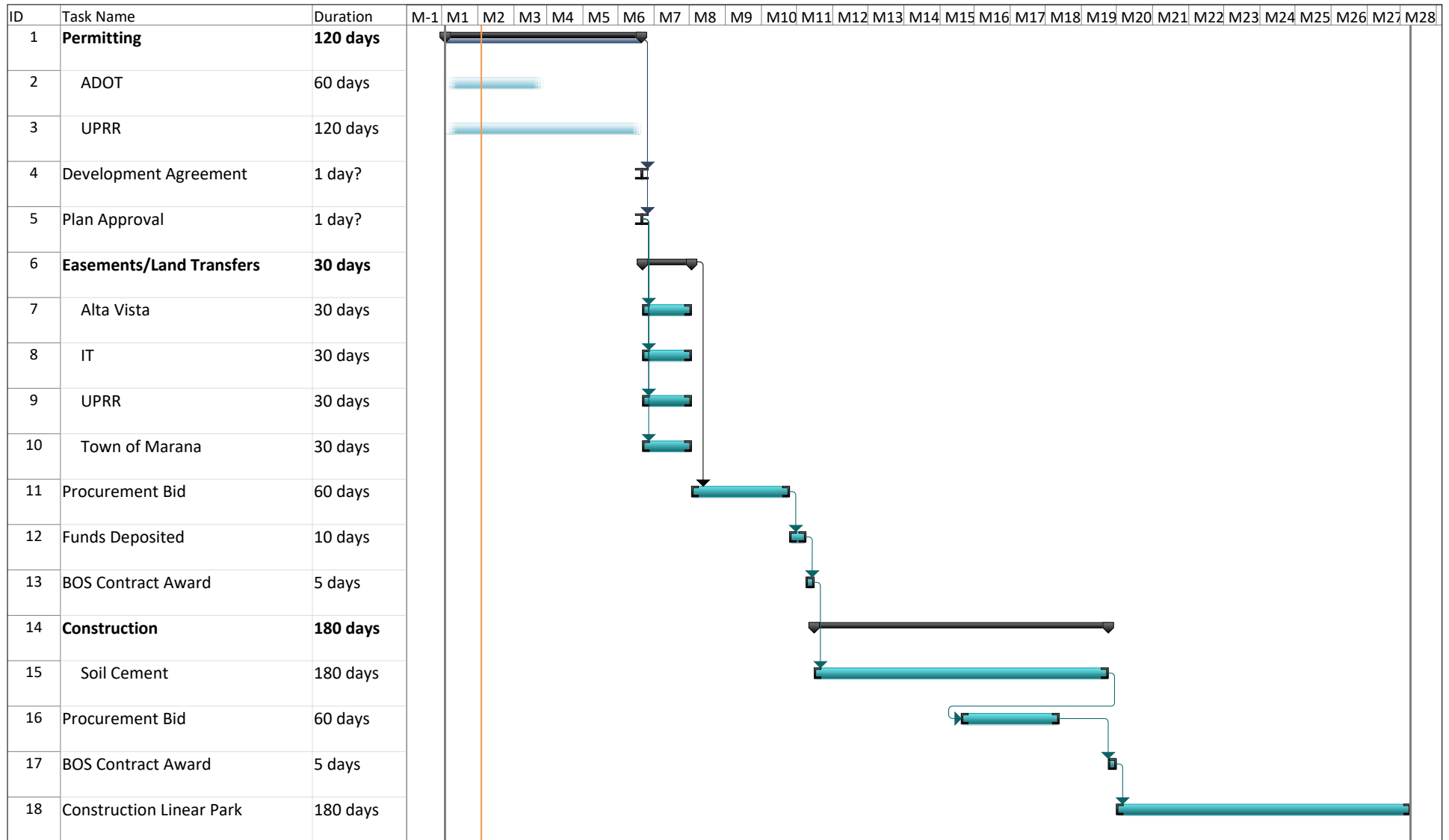


EXHIBIT O TO CDO NORTH BANK DEVELOPMENT AGREEMENT - PROJECT SCHEDULE



|                                |                 |  |                    |  |                       |  |
|--------------------------------|-----------------|--|--------------------|--|-----------------------|--|
| Project: CDONB Sample Schedule | Task            |  | External Milestone |  | Manual Summary Rollup |  |
|                                | Split           |  | Inactive Task      |  | Manual Summary        |  |
|                                | Milestone       |  | Inactive Milestone |  | Start-only            |  |
|                                | Summary         |  | Inactive Summary   |  | Finish-only           |  |
|                                | Project Summary |  | Manual Task        |  | Deadline              |  |
|                                | External Tasks  |  | Duration-only      |  | Progress              |  |