AMENDED AUGUST 31, 2020 @ 4:28 PM

MARANA TOWN COUNCIL
REGULAR COUNCIL MEETING
NOTICE AND AGENDA
11555 W. Civic Center Drive, Marana, Arizona 85653
Council Chambers, September 1, 2020, 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

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 September 1, 2020, at or after 6:00 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 6:00 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 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 under Agendas and Minutes.

Due to concerns related to the COVID-19 pandemic, meetings may be viewed online by clicking the below link:
http://maranaaz.swagit.com/live

As an alternative to appearing in person, citizens may speak during the Call to the Public or Public Hearings or when called upon by Council by using Zoom, as directed below:

Please click the link below to participate in the Council meeting (refer to the instructions below for how to participate):

https://us02web.zoom.us/j/82365685905?pwd=QWk4RVRZNTA2bm1MdFRYSExaSXc3UT09
Passcode: 536715

For instructions on participating virtually in the Town Council Meeting click here:
https://www.maranaaz.gov/virtual-meetings

Please note that by participating virtually, you will not be able to watch video of the Council meeting, you will only be able to hear the meeting and to speak if you are called upon.

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 Proclamation declaring September 21–27, 2020 as, "Diaper Need Awareness Week" (Cherry L. Lawson)

MAYOR AND COUNCIL REPORTS: SUMMARY OF CURRENT EVENTS

MANAGER'S REPORT: SUMMARY OF CURRENT EVENTS

PRESENTATIONS

P1 Relating to Budget; presentation of preliminary year-end results (July-June) for the Town's General Fund and other selected major funds for the 2019-2020 fiscal year (Yiannis Kalaitzidis)

P2 Relating to Budget; presentation of monthly financial revenues (July) of the Town's General Fund funds for the 2020-2021 fiscal year (Yiannis Kalaitzidis)

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. 2020-091: Relating to Utilities; approving and authorizing the Mayor to sign a five-year intergovernmental agreement with the Metropolitan Domestic Water Improvement District for the purchase of long term water storage credits (Scott Schladweiler)

C2 Resolution No. 2020-092: Relating to Utilities; approving and authorizing the Mayor to sign an agreement with B.K.W. Farms, Inc. for in-lieu water deliveries and storage (Scott Schladweiler)

C3 Resolution No. 2020-093: Relating to Utilities; approving and authorizing the Water Director to sign a Joint Funding Agreement with the U.S. Department of the Interior U.S. Geological Survey for Aquifer Storage Change and Land Surface Elevation Change Monitoring from October 1, 2020 through June 30, 2024 (Scott Schladweiler)

C4 Resolution No. 2020-094: Relating to Parks and Recreation; approving and authorizing the Parks and Recreation Director to execute the third amendment to Facility Usage Agreement between the Town of Marana and Leman Academy of Excellence, Inc. (Jane Fairall)

C5 Approval of the Regular Council Meeting Summary Minutes of August 18, 2020 (Cherry L. Lawson)

LIQUOR LICENSES

BOARDS, COMMISSIONS AND COMMITTEES

COUNCIL ACTION

A1 *Relating to Finance; discussion and direction to staff regarding whether to implement the federal payroll tax deferral program authorized by the August 8, 2020 Presidential Memorandum Deferring Payroll Tax Obligations in Light of the Ongoing COVID–19 Disaster (Yiannis Kalaitzidis)*

A2 Resolution No. 2020-095: Relating to Annexation; approving and authorizing the Mayor to sign the Intergovernmental Agreement among Pima County, the Pima County Flood Control District, and the Town of Marana regarding open space near the El Río Preserve; approving and authorizing the Mayor to sign the La Puerta Del Norte East Pre-Annexation Development Agreement with Marana Unified School District No. 6; authorizing the Mayor to sign the annexation petition for Town-owned properties in the La Puerta Del Norte East Annexation area; and authorizing Town staff to de-annex Town-owned properties from the La Puerta Del Norte Mobile Home Subdivision Declaration of Restrictions (Frank Cassidy)

A3 Resolution No. 2020-096: Relating to Development; amending the infrastructure improvements plan supporting development impact fees for parks and recreation facilities by revising the projects included in the infrastructure improvements plan and shifting the anticipated development impact fee funding among those projects without changing the amount of the fee or the level of service (Jim Conroy)

A4 Resolution No. 2020-097: Relating to Capital Improvement Projects; approving and authorizing the Mayor to sign the Second Amendment to Mandarina Mediation Agreement (Jane Fairall)

ITEMS FOR DISCUSSION / POSSIBLE ACTION

D1 Relating to Development and Public Works; update, discussion, and possible direction regarding public and private projects and development applications on the Town's Marana Current and Proposed Projects internet site (Jason Angell)

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), Council may ask for discussion or consideration, or consultation with designated Town representatives, or consultation for legal advice with the Town Attorney, concerning any matter listed on this agenda for any of the reasons listed in A.R.S. §38-431.03 (A).

E2 Executive session pursuant to A.R.S. § 38-431.03(A)(4) for discussion or consultation with the Town's attorneys in order to consider the Town's position and instruct its attorneys regarding the Town's position regarding contemplated litigation to collect unpaid water resource development impact fees from HZ Props RE, Limited Partnership for the Popeyes restaurant constructed at 3814 West River Road in Marana.

E3 Executive session pursuant to A.R.S. § 38-431.03(A)(4) for discussion or consultation with the Town's attorneys in order to consider the Town's position and instruct its attorneys regarding the Town's position regarding possible litigation and/or settlement negotiations arising from the Public Water Infrastructure Participation and Water Service Agreement entered into between the Town of Marana, Marana Technology Campus, L.L.C., and Northwest Storage, L.L.C., and recorded in the Pima County Recorder's office on August 14, 2014 at Sequence 20142260255.

E4 Executive session pursuant to A.R.S. § 38-431.03(A)(4) for discussion or consultation with the Town's attorneys in order to consider the Town's position and instruct its attorneys regarding the Town's position regarding possible litigation and/or settlement negotiations to collect unpaid water resource development impact fees from Pulte Home Company, LLC.

E5 Executive session pursuant to A.R.S. § 38-431.03(A)(7) for discussion or consultation with the Town Manager, Town Engineer, and Town Attorney, as designated representatives of the Town, in order to consider the Town's position and instruct its representatives regarding negotiations for the sale or lease of interests in real property located in Ora Mae Harn Park to Southwest Gas Corporation for the installation of natural gas facilities to connect to the El Paso Natural Gas pipeline.

E6 Executive session pursuant to A.R.S. § 38-431.03(A)(4) for discussion and consultation with and instructions to the Town's attorneys regarding settlement discussions in the pending litigation Betty Sieber v. Town of Marana, Pima County Superior Court Case No. C20202255.

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: 09/01/2020

From: Cherry L. Lawson, Town Clerk

Date: September 1, 2020

Subject: Proclamation declaring September 21–27, 2020 as, "Diaper Need Awareness Week" (Cherry L. Lawson)

Attachments

Proclamation

MARANA AZ

Proclamation
DIAPER NEED AWARENESS WEEK
September 21–27, 2020

WHEREAS, diaper need – the condition of not having a sufficient supply of clean diapers to keep babies and toddlers clean, dry, and healthy – can adversely affect the health and well-being of babies, toddlers, and their families; and

WHEREAS, national surveys and research studies report that one in three families struggles with diaper need and 48 percent delay changing a diaper to extend their supply, as children go through six to 12 diapers each day during the two to three years they wear diapers; and

WHEREAS, purchasing enough diapers to keep a baby or toddler clean, dry, and healthy can consume 14 percent of a low-wage family's post-tax income, making it difficult to obtain a sufficient supply; and

WHEREAS, a daily or weekly supply of diapers is generally an eligibility requirement for babies and toddlers to participate in child care programs and quality early-education programs; and

WHEREAS, without enough diapers, babies and toddlers risk infections and health problems that may require medical attention, and may prevent parents from attending work or school, thereby hurting the family's economic prospects and well-being; and

WHEREAS, the people of Marana recognize that diaper need is a public health issue, and addressing diaper need can lead to economic opportunity for the state's families and communities and to improved health for children, thus ensuring all children and families have access to the basic necessities required to thrive and reach their full potential; and

WHEREAS, diaper banks and their staff and volunteers served on the front lines of Marana's COVID-19 pandemic response helping families in our communities weather the crisis; and

WHEREAS, while experiencing double, triple, or greater increase in demand for diapers due to the pandemic and economic shutdown, these diaper banks did everything in their ability to increase diaper distributions and support children and families in need of immediate assistance.

NOW, THEREFORE, Mayor Honea and the Marana Town Council do hereby declare the week of September 21–27, 2020 as,

"DIAPER NEED AWARENESS WEEK"

in the Town of Marana, and thank the aforementioned diaper banks, their staff, volunteers, and donors for their courageous service during the COVID-19 crisis, and encourage the citizens of Marana to donate generously to diaper banks, diaper drives, and those organizations that collect and distribute diapers to those struggling with diaper need, so that all of Marana's children and families can thrive and reach their full potential.

Dated this 1st day of September 2020.

ATTEST:

Cherry L. Lawson, Town Clerk

Ed Honea, Mayor

Council-Regular Meeting **P1**

Meeting Date: 09/01/2020

To: Mayor and Council

From: Yiannis Kalaitzidis, Finance Director

Date: September 1, 2020

Strategic Plan Focus Area:
Not Applicable

Subject: Relating to Budget; presentation of preliminary year-end results (July-June) for the Town's General Fund and other selected major funds for the 2019-2020 fiscal year (Yiannis Kalaitzidis)

Discussion:

The purpose of this item is to present a summary of the Town's preliminary year-end financial results for the Town's General Fund and other selected major funds for fiscal year 2019-20. It is important to note that these results are preliminary, unaudited and subject to change based upon adjusting entries, as necessary. The attached provides a high level revenue summary, expenditure summary, and anticipated ending balances at the year-end.

Revenue

Overall, revenues and other financing sources are within or above expectations for the Town's General Fund and other selected funds largely due to better than anticipated revenues prior to the onset of the pandemic. Staff will provide additional detail about fourth quarter major revenue stream collections during the presentation.

General Fund revenue is slightly above budgeted expectations and projected to come in at about 19% above budgeted amounts, 7% of which is related to AZCares related grant funding. In addition to this grant funding, the higher revenues are primarily due to higher than anticipated sales tax revenues, Single Family Resident (SFR) permits, and increased returns on investments.

Revenues for the Transportation Fund which is comprised of 75% of all contracting taxes collected and used for new road construction and reconstruction projects are

significantly higher than anticipated at 65% above budgeted expectations due to a combination of conservative budgeting and significantly stronger than anticipated revenues spurred by low interest rates.

Revenues for the Bed Tax Fund, which accounts for the portion of bed tax revenues restricted for tourism related costs, are also above expectations after a strong winter tourism season and better than expected revenues during the last quarter of the year.

Overall revenues for the Water Fund meet expectations for the fiscal year despite rate revenues being slightly below budgeted levels due to lower consumption and an overestimation of these revenues during the budgeting process.

Revenues for the Water Reclamation Fund are projected to come in at about 22% above budgeted amounts due to higher sewer fees and strong account growth.

Revenues for the Airport are near budgeted levels when excluding a planned operating transfer between funds. Additional detail on these variances and other listed funds is included within the visualization slides attached to this item.

Expenditures

Expenditures in all funds are at or below expectations through the fourth quarter. This is primarily attributable to vacancy savings, operational efficiencies and also the timing and deferral of large one-time projects and programs which have yet to occur such as the construction of the Jury Room at the Court building and the Pines Stabilization project in the General Fund, as well as lower operating expenses caused by the onset of the pandemic throughout all funds. Additional detail on this variance and other funds are included within the visualization slides attached to this item.

General Fund Balance and Reserves

Based upon the preliminary year-end results, we expect that the General Fund fund balance will grow by as much as $10.3M from $36.6M in fiscal year 2018-2019 to $46.8M at the end of fiscal year 2019-2020. It is important to note, as we have in the past, that not all of the estimated $46.8M in General Fund fund balance is available to spend for a number of reasons including the Town's minimum reserve policy. In fact, staff estimates that up to $21.5M is unassigned. Please find a General Fund reserve impact slide attached to this Council report which breaks out in greater detail the various obligations of the General Fund. The amount of available fund balance will change as the Town reconciles and closes the books for fiscal year 2019-2020.

The preliminary year-end update will be available on the Town's website following tonight's meeting. The public may interact with the Power BI tool by drilling down into the data. The tool can be found on the following page after the Council meeting:
http://www.maranaaz.gov/financial-documents

Staff Recommendation:

Presentation only.

Suggested Motion:
Presentation only.

Attachments

Presentation
General Fund Reserves Information

Financial Brief: Fourth Quarter

Fiscal Year

2019 – 2020

Prepared by: Finance Department

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FISCAL YEAR 2019 - 2020 FOURTH QUARTER FINANCIAL BRIEF

This financial brief is intended to provide a broad overview and status of revenues and expenditures for the Town's selected major funds through the fourth quarter of fiscal year 2020 (July 2019 - June 2020). Major funds included in this financial brief are the General Fund, Highway User Revenue Fund (HURF), Bed Tax Fund and Transportation Fund. Also included are the enterprise funds Airport, Water, and Water Reclamation. Please note that all amounts are preliminary, un-audited and subject to change based upon adjusting entries, as necessary.

The table below shows an overview for each fund.

	REVENUES			EXPENDITURES			OVER/UNDER
Fund	FY 2020 Budget	Actual	% Budget	FY 2020 Budget	Actual	% Budget	YTD Over/Under
GENERAL FUND	47,188,667	55,966,073	119%	51,726,494	45,702,008	88%	10,264,065
HURF	3,655,329	3,982,360	109%	4,906,881	4,077,771	83%	-95,411
TRANSPORTATION FUND	5,421,050	8,940,505	165%	17,126,581	6,686,438	39%	2,254,067
BED TAX FUND	1,227,600	1,288,972	105%	889,730	820,775	92%	468,197
WATER FUND	7,121,267	7,489,112	105%	7,361,638	6,770,097	92%	719,015
WATER RECLAMATION FU...	2,380,115	2,682,270	113%	2,467,387	2,061,131	84%	621,139
AIRPORT FUND	644,880	363,845	56%	644,880	450,190	70%	-86,345

Click HERE for a User Guide and FAQ about this report

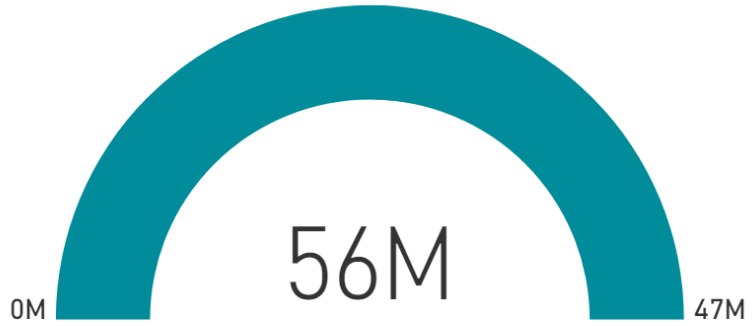
MARANA AZ

FY 2019-2020 FOURTH QUARTER: GENERAL FUND REVENUES

Select Revenue or Expense

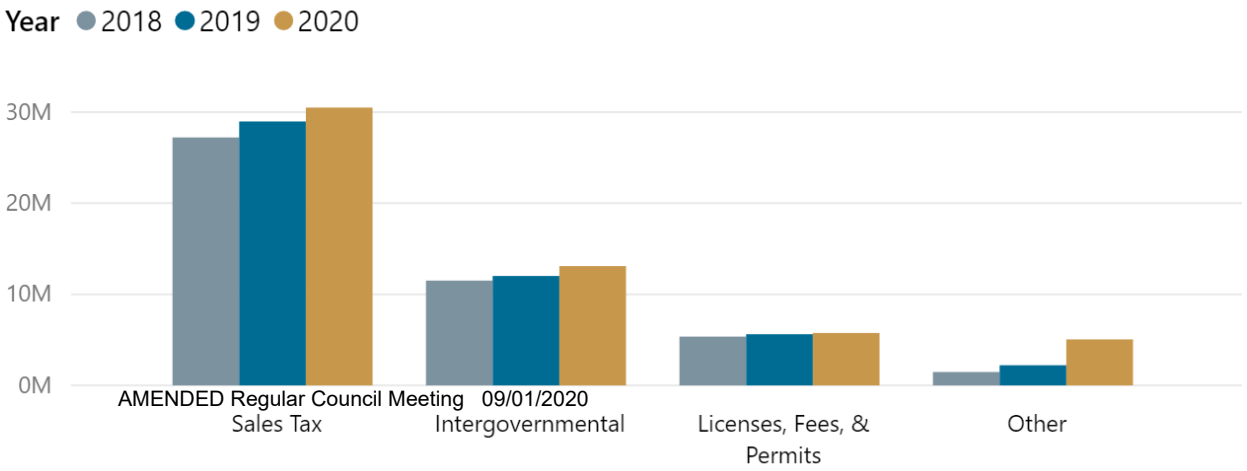
- ☐ EXPENSES
- ■ REVENUES

Category	FY 2020 Budget	Actual	% Budget
Sales Tax	26,910,247	30,497,789	113%
Intergovernmental	12,840,139	13,098,547	102%
Licenses, Fees, & Permits	4,881,012	5,933,473	122%
Charges for Services	494,750	510,232	103%
Other	2,062,519	5,926,032	287%
Total	**47,188,667**	**55,966,073**	**119%**



General Fund Relevant Information

The General Fund is the Town's primary operating fund. Sales Tax, Intergovernmental Revenues and Licenses, Fees, & Permits make up 95% of budgeted revenues for the fund. Due to stronger than expected economic conditions, overall preliminary year-end collections are above budgeted levels for FY2020. Intergovernmental revenues are amounts received from the State's shared revenue program and are distributed based upon population estimates. Licenses, Fees & Permits are above expectations due to strong Commercial and Single Family Residential (SFR) permit revenue throughout the year. Other revenues, comprised of various sources, include investment income earnings, AMRRP dividends and AZCares grant funding.



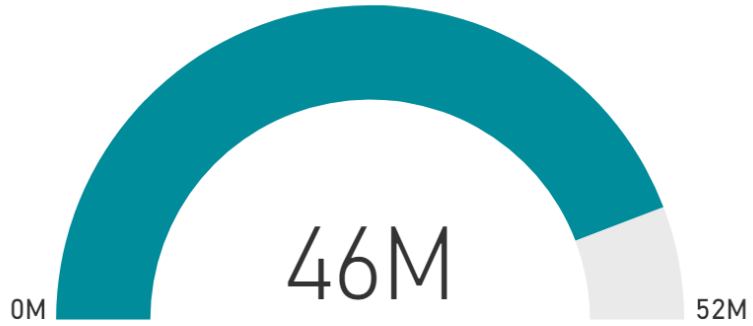
Category	2018	2019	2020
Sales Tax	27,218,959	28,972,723	30,497,789
Intergovernmental	11,505,675	12,012,620	13,098,547
Licenses, Fees, & Permits	5,593,212	5,851,394	5,933,473
Charges for Services	580,895	582,922	510,232
Other	1,722,557	2,877,015	5,926,032
Total	**46,621,298**	**50,296,674**	**55,966,073**

FY 2019-2020 FOURTH QUARTER: GENERAL FUND EXPENSES

Select Revenue or Expense

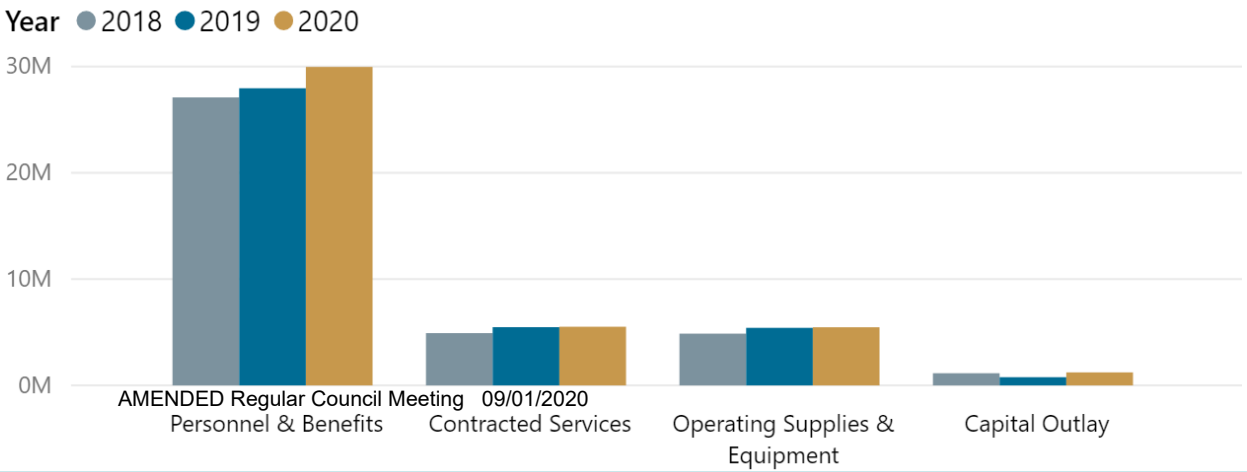
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Category	FY 2020 Budget	Actual	% Budget
Personnel & Benefits	31,029,155	29,967,123	97%
Contracted Services	7,251,427	5,508,068	76%
Operating Supplies & Equipment	5,485,869	5,471,033	100%
Capital Outlay	2,929,580	1,224,277	42%
Other Financing Uses	5,030,463	3,531,507	70%
Total	**51,726,494**	**45,702,008**	**88%**



General Fund Relevant Information

General Fund Expenses through the end of FY2020 are below budgeted expectations. Contracted Services and Capital Outlay includes projects that were either deferred to future years due to the pandemic or were carried forward to be completed in the next fiscal year, including the Jury Room construction and Pines Stabilization projects, in addition to some equipment purchases and overall lower expenditures in select areas during the last quarter. Other Financing Uses is related to all budgeted transfers, some of which are yet to occur as the Town reconciles and closes the books for the year.

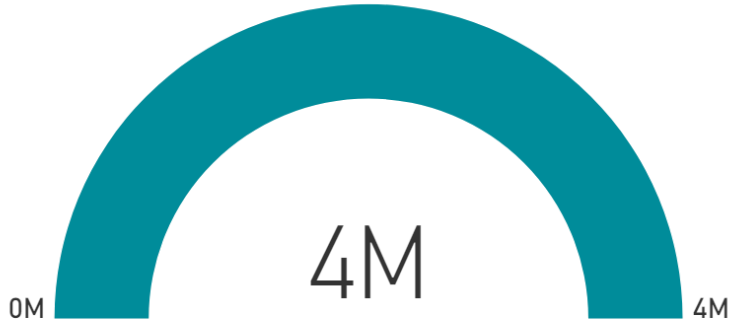


Category	2018	2019	2020
Personnel & Benefits	27,099,269	27,959,081	29,967,123
Contracted Services	4,904,132	5,466,830	5,508,068
Operating Supplies & Equipm...	4,870,051	5,414,277	5,471,033
Capital Outlay	1,144,508	771,754	1,224,277
Other Financing Uses	4,339,516	3,730,917	3,531,507
Total	**42,357,475**	**43,342,860**	**45,702,008**

FY 2019-2020 FOURTH QUARTER: HURF REVENUES

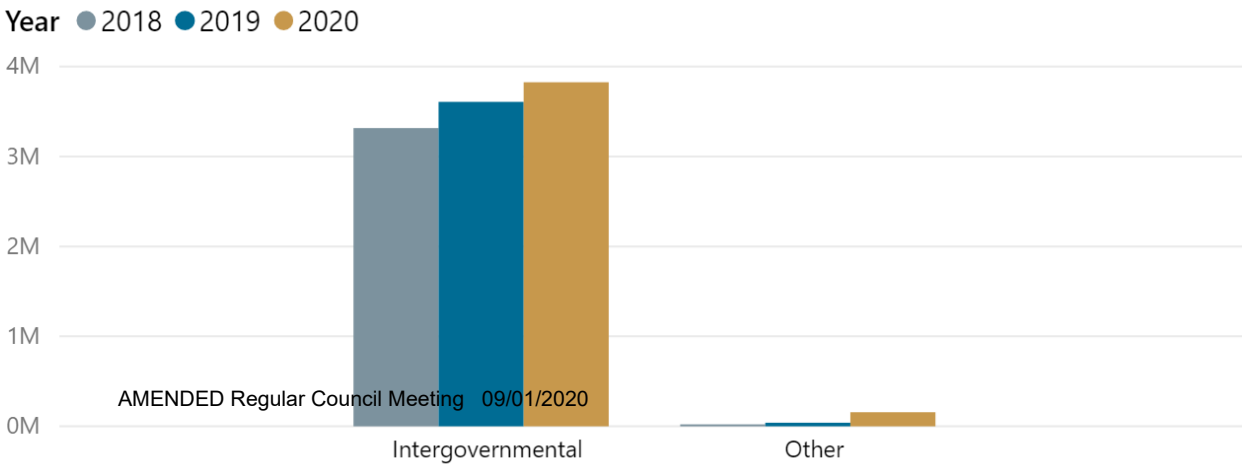
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- REVENUES

Category	FY 2020 Budget	Actual	% Budget
Intergovernmental	3,640,329	3,825,665	105%
Other	15,000	156,695	1045%
Total	**3,655,329**	**3,982,360**	**109%**



HURF Relevant Information

The Highway User Revenue Fund or HURF is set by the collection of fees and taxes from users of the State's roads and highways which the State collects. Cities and towns receive a percentage of revenues based on population estimates and gasoline sales within each county. Preliminary HURF revenue collections are above forecasted levels due to a one-time distribution to cities and towns for FY2020. Other revenue is comprised of investment income and in-lieu contributions from third parties to be used toward pavement preservation.



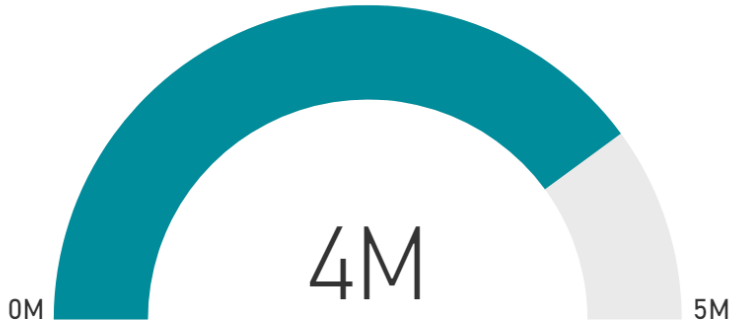
Category	2018	2019	2020
Intergovernmental	3,316,057	3,607,631	3,825,665
Other	15,843	39,943	156,695
Total	**3,331,900**	**3,647,574**	**3,982,360**

FY 2019-2020 FOURTH QUARTER: HURF EXPENSES

Select Revenue or Expense

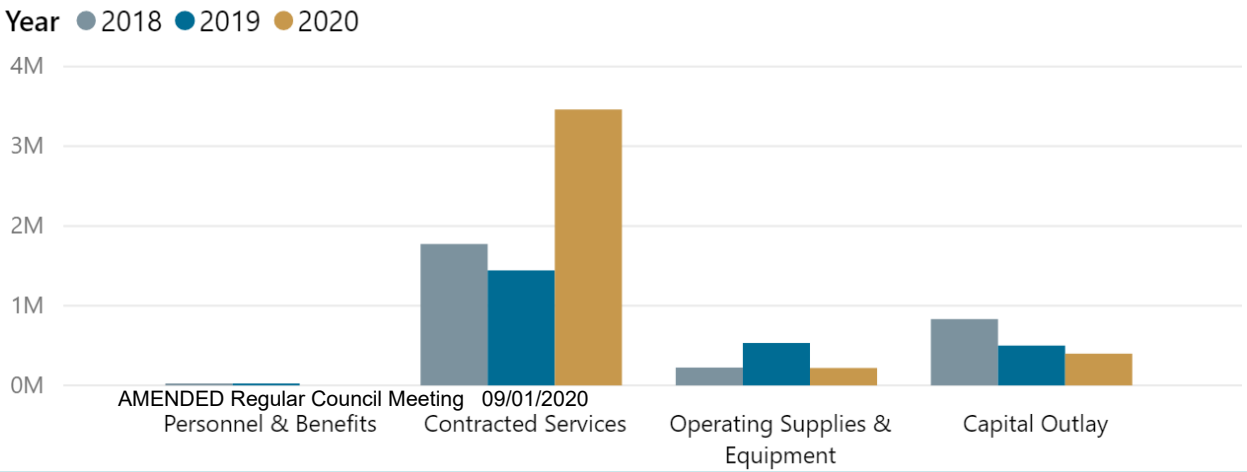
- EXPENSES
- REVENUES

Category	FY 2020 Budget	Actual	% Budget
Contracted Services	4,017,881	3,461,653	86%
Operating Supplies & Equipment	270,000	217,886	81%
Capital Outlay	619,000	398,232	64%
Other Financing Uses	200,000		
Total	**5,106,881**	**4,077,771**	**80%**



HURF Relevant Information

HURF expenses through the end of FY2020 are below budgeted expectations. Contracted Services includes amounts carried forward from the previous year as well as current year amounts spent toward the Town's Pavement Preservation Program which was completed as planned below initial cost estimates. Operating Supplies & Equipment are below budgeted levels due to savings in fuel costs and also utility costs, as the Town continued the process of converting to LED street lamps. Capital Outlay is associated with equipment purchases and a planned drainage improvement which will continue into fiscal year 2020-2021. Other Financing Uses was restricted budget for possible monsoon storm damage, which did not occur.



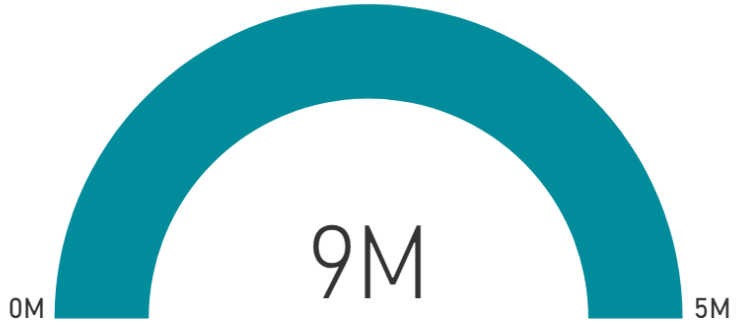
Category	2018	2019	2020
Personnel & Benefits	6,450	12,900	
Contracted Services	1,774,050	1,442,758	3,461,653
Operating Supplies & Equipm...	223,959	531,523	217,886
Capital Outlay	832,025	499,487	398,232
Total	**2,836,483**	**2,486,666**	**4,077,771**

FY 2019-2020 FOURTH QUARTER: TRANSPORTATION FUND REVENUES

Select Revenue or Expense

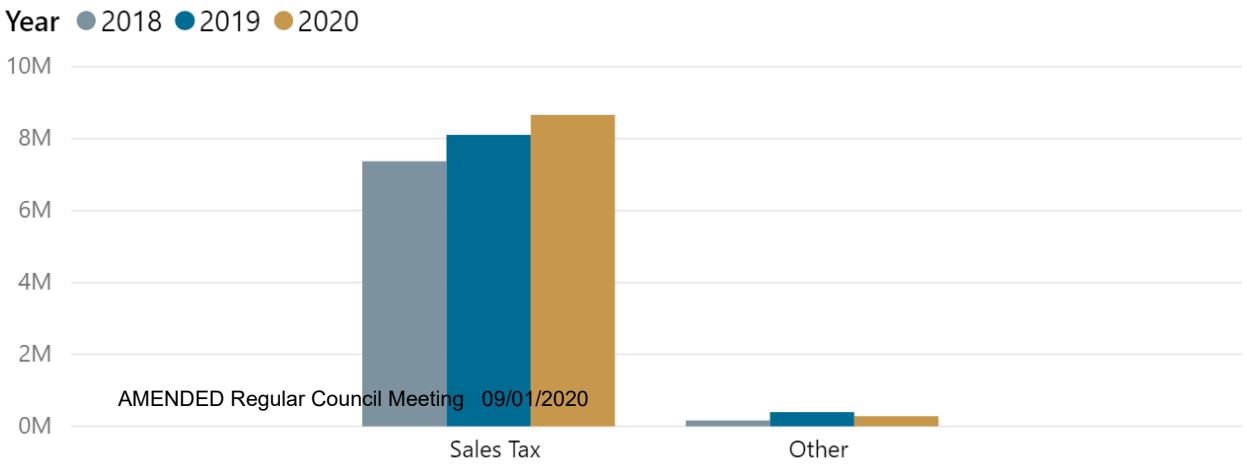
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- ■ REVENUES

Category	FY 2020 Budget	Actual	% Budget
Sales Tax	5,371,050	8,657,955	161%
Other	50,000	282,550	565%
Total	**5,421,050**	**8,940,505**	**165%**



Transportation Fund Relevant Information

The Transportation Fund is comprised of 75% of all contracting taxes collected by the Town and is to be used for new road construction and reconstruction projects. Preliminary year-end revenue collections are higher than budgeted amounts due to stronger than anticipated residential housing (855 SFR permits) and commercial construction activity spurred by low interest rates, combined with conservative forecasting during budget development. Other revenue is primarily comprised of investment income.



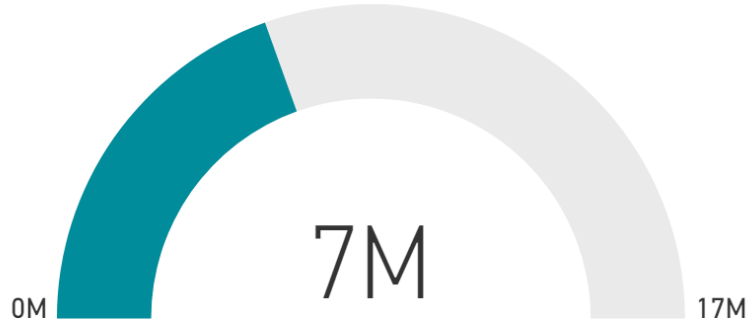
Category	2018	2019	2020
Sales Tax	7,368,949	8,101,697	8,657,955
Other	162,955	394,524	282,550
Total	**7,531,904**	**8,496,221**	**8,940,505**

FY 2019-2020 FOURTH QUARTER: TRANSPORTATION FUND EXPENSES

Select Revenue or Expense

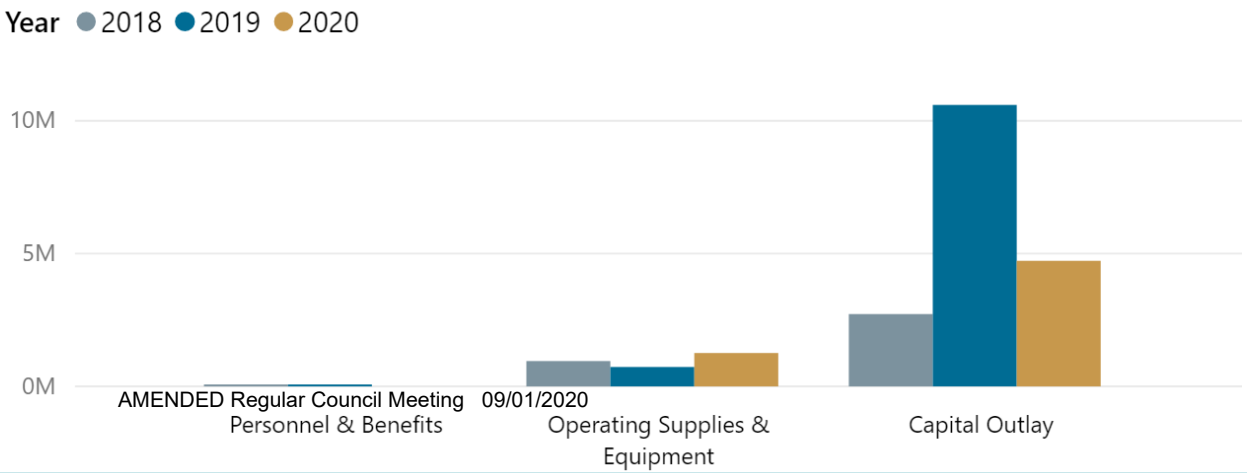
- EXPENSES
- REVENUES

Category	FY 2020 Budget	Actual	% Budget
Operating Supplies & Equipment	0	1,256,528	0%
Capital Outlay	14,300,458	4,720,199	33%
Debt Service	0	17,813	0%
Other Financing Uses	2,826,123	691,899	24%
Total	**17,126,581**	**6,686,438**	**39%**



Transportation Fund Relevant Information

Transportation Fund expenses are below budgeted levels through the end of FY2020 due to a number of reasons. A number of projects are continuing and will carry-forward into next fiscal year including the Camino De Oeste restoration and the Lon Adams reconstruction projects while we are still waiting for the State to close out the Ina Road Project which was completed last year. Other Financing Uses is associated with restricted budgets and planned transfers related to debt service.



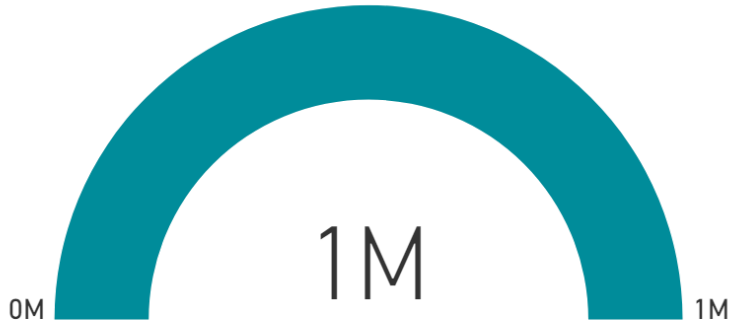
Category	2018	2019	2020
Personnel & Benefits	67,318	31,591	
Operating Supplies & Equipm...	953,744	730,617	1,256,528
Capital Outlay	2,722,391	10,592,347	4,720,199
Debt Service	13,519	19,534	17,813
Other Financing Uses	391,239	788,706	691,899
Total	**4,148,211**	**12,162,795**	**6,686,438**

FY 2019-2020 FOURTH QUARTER: BED TAX FUND REVENUES

Select Revenue or Expense

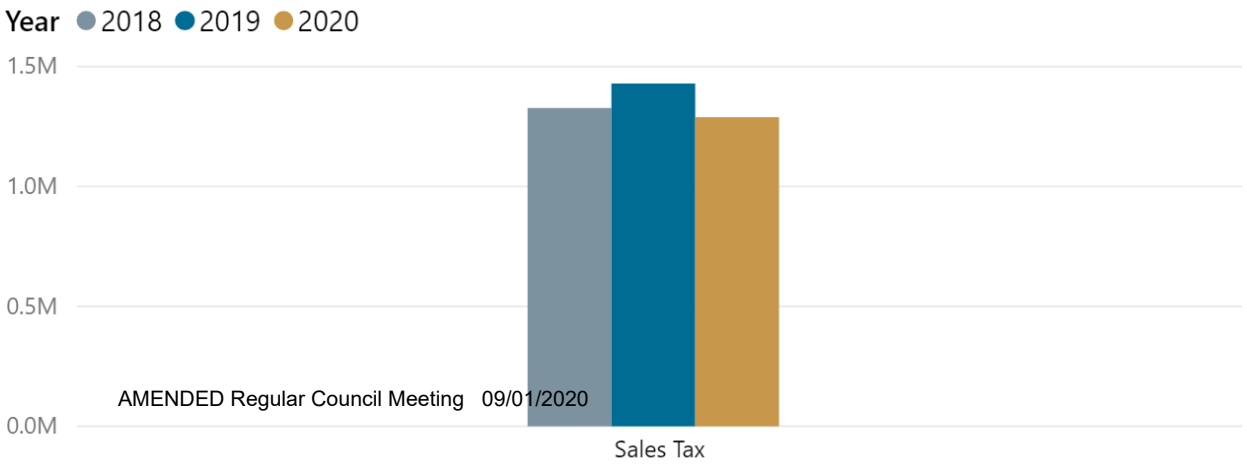
- ☐ EXPENSES
- ■ REVENUES

Category	FY 2020 Budget	Actual	% Budget
Sales Tax	1,227,600	1,288,972	105%
Total	**1,227,600**	**1,288,972**	**105%**



Bed Tax Fund Relevant Information

The Bed Tax Fund accounts for the collection of the discriminatory portion of revenues restricted for tourism initiatives. Overall revenue collections for FY2020 are above forecasted levels as we experienced a strong winter season and occupancy levels were better than anticipated in the last quarter of the fiscal year.



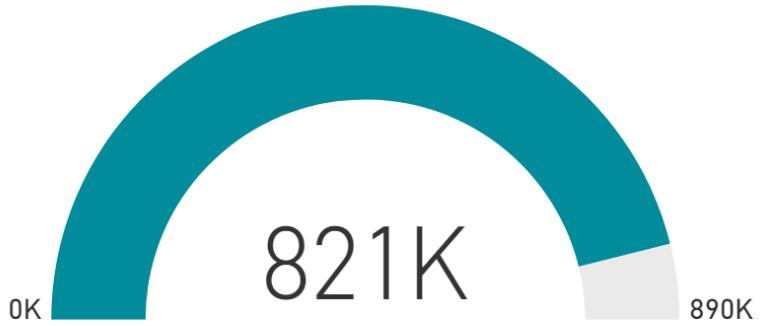
Category	2018	2019	2020
Sales Tax	1,327,289	1,429,401	1,288,972
Other		3,212	
Total	**1,327,289**	**1,432,613**	**1,288,972**

FY 2019-2020 FOURTH QUARTER: BED TAX FUND EXPENSES

Select Revenue or Expense

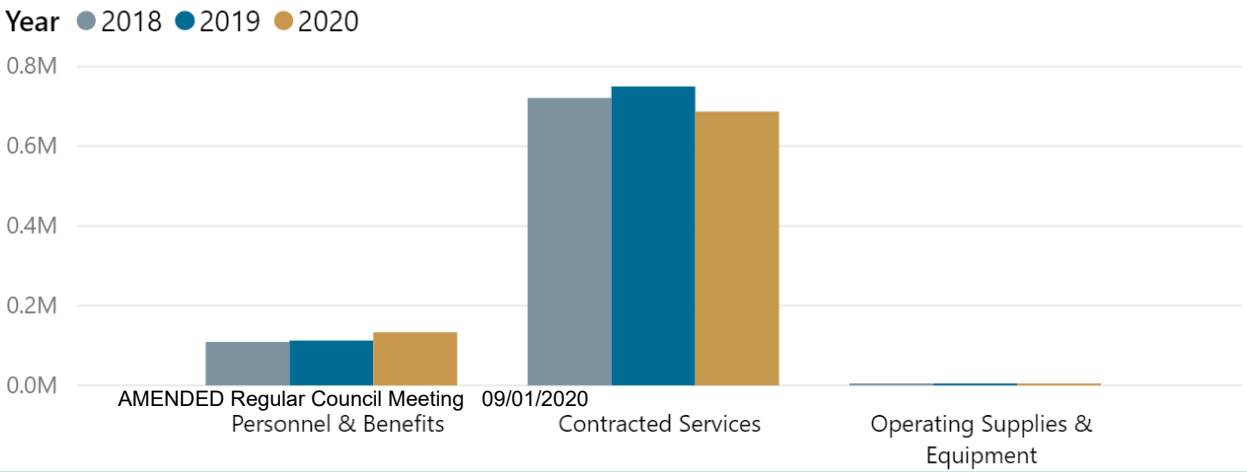
- EXPENSES
- REVENUES

Category	FY 2020 Budget	Actual	% Budget
Personnel & Benefits	129,108	133,245	103%
Contracted Services	758,622	687,048	91%
Operating Supplies & Equipment	2,000	482	24%
Total	**889,730**	**820,775**	**92%**



Bed Tax Fund Relevant Information

As a whole, the Bed Tax Fund spending was below forecasts primarily due to reduced travel, advertising and consulting services which were deferred due to the impact of the pandemic.



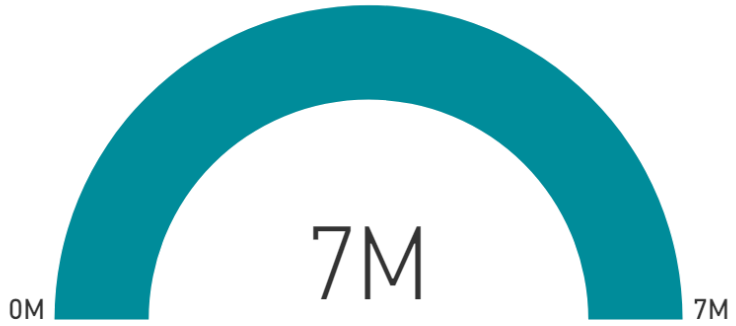
Category	2018	2019	2020
Personnel & Benefits	109,051	112,507	133,245
Contracted Services	721,247	750,098	687,048
Operating Supplies & Equipment	170	322	482
Total	**830,468**	**862,927**	**820,775**

FY 2019-2020 FOURTH QUARTER: WATER OPERATING FUND REVENUES

Select Revenue or Expense

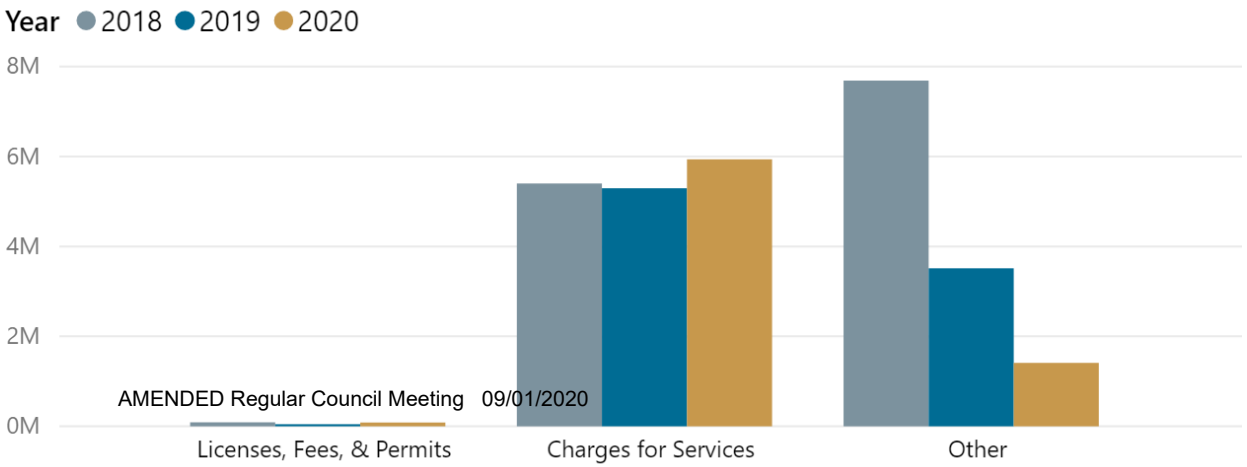
- ☐ EXPENSES
- ■ REVENUES

Category	FY 2020 Budget	Actual	% Budget
Licenses, Fees, & Permits	50,000	84,659	169%
Charges for Services	5,895,969	5,982,986	101%
Other	1,175,298	1,421,467	121%
Total	**7,121,267**	**7,489,112**	**105%**



Water Fund Relevant Information

The current rates and fees for Marana Water customers can be found at - http://www.maranaaz.gov/water-rates-and-fees . Charges for Services (water sales) comprise the majority of the revenue for the fund. Preliminary year-end charges for services were slightly above expectations for FY2020. Other revenue is primarily comprised of miscellaneous revenue sources including a reimbursement for utility improvements at Saguaro Bloom, and interfund transfers used for debt service payments including a WIFA loan to finance the Water Treatment Plant projects.



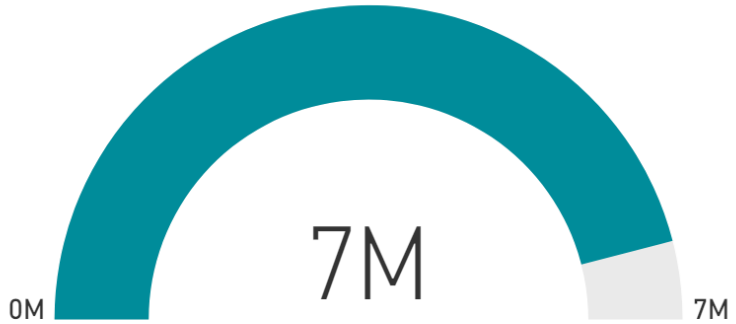
Category	2018	2019	2020
Licenses, Fees, & Permits	88,824	46,843	84,659
Charges for Services	5,417,751	5,341,370	5,982,986
Other	7,688,499	3,586,040	1,421,467
Total	**13,195,075**	**8,974,253**	**7,489,112**

FY 2019-2020 FOURTH QUARTER: WATER OPERATING FUND EXPENSES

Select Revenue or Expense

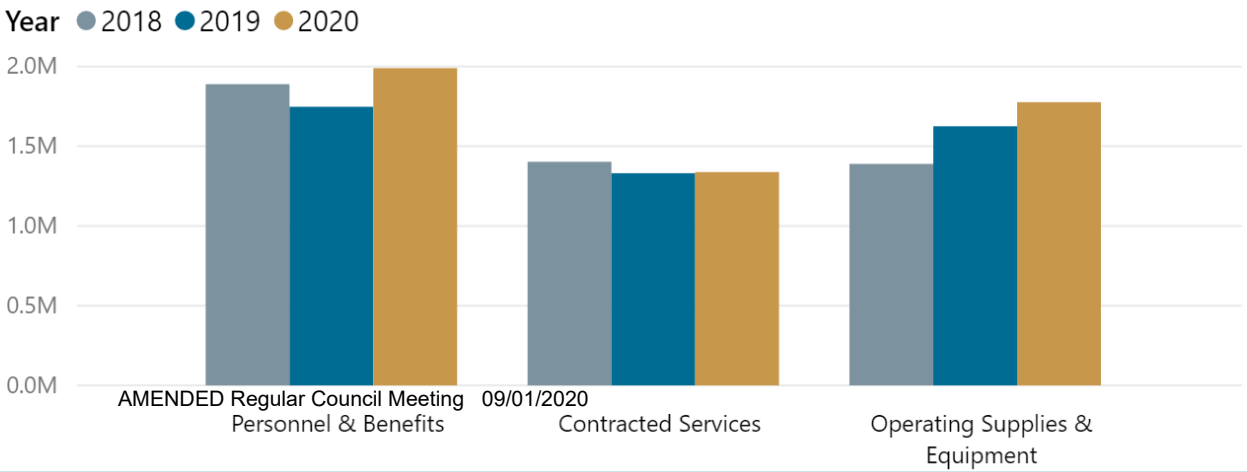
- ■ EXPENSES
- □ REVENUES

Category	FY 2020 Budget	Actual	% Budget
Personnel & Benefits	2,155,330	1,990,173	92%
Contracted Services	1,720,741	1,338,085	78%
Operating Supplies & Equipment	1,907,878	1,776,758	93%
Capital Outlay	315,000	383,700	122%
Debt Service	1,262,689	1,123,362	89%
Other Financing Uses	0	158,019	0%
Total	**7,361,638**	**6,770,097**	**92%**



Water Fund Relevant Information

Overall, FY2020 preliminary year-end expenses for the Water Operating Fund are as expected. Contracted Services is below budget primarily due to lower than expected system repairs and software maintenance expenses. Capital Outlay is associated with vehicle and equipment purchases and the Town's share for the acquisition of the Twin Peaks Utility easement. Debt service costs are lower than budget as we have not yet drawn down the full amount of the WIFA loans that are financing the Water Treatment Plant projects. Capital costs associated with infrastructure and CIP projects are captured in separate funds.

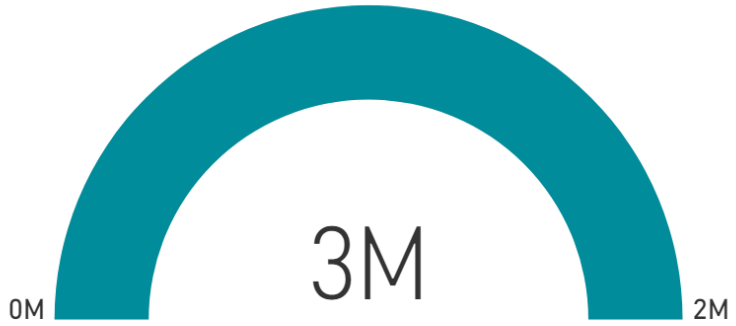


Category	2018	2019	2020
Personnel & Benefits	1,889,563	1,747,854	1,990,173
Contracted Services	1,400,567	1,328,532	1,338,085
Operating Supplies & Equipm...	1,389,539	1,625,580	1,776,758
Capital Outlay	0	0	383,700
Debt Service	120,779	109,702	1,123,362
Other Financing Uses	25,711	648,722	158,019
Total	**4,826,159**	**5,460,389**	**6,770,097**

FY 2019-2020 FOURTH QUARTER: WATER RECLAMATION OPERATING FUND REVENUES

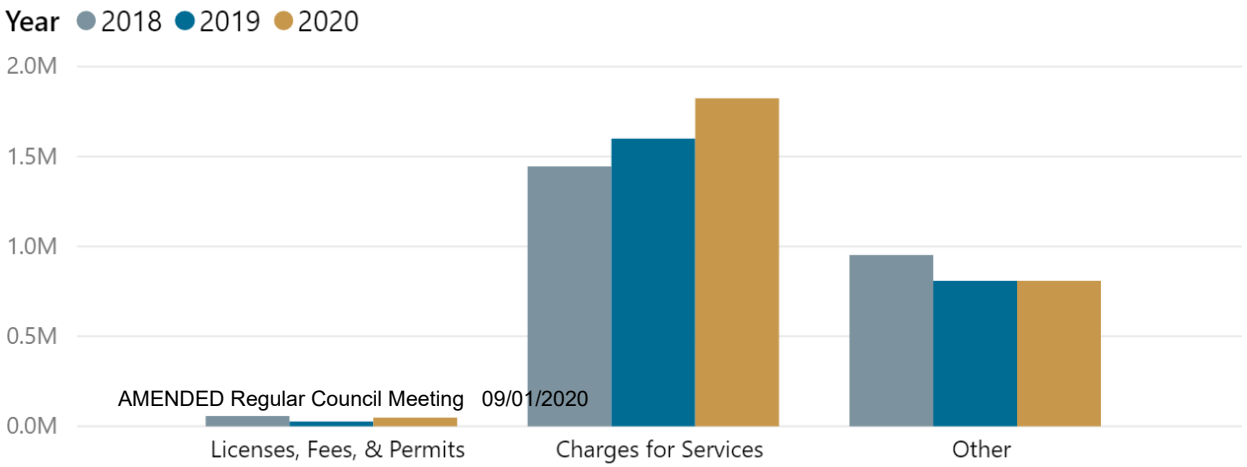
Select Revenue or Expense
- EXPENSES
- REVENUES

Category	FY 2020 Budget	Actual	% Budget
Licenses, Fees, & Permits	30,000	49,513	165%
Charges for Services	1,490,045	1,823,690	122%
Other	860,070	809,067	94%
Total	**2,380,115**	**2,682,270**	**113%**



Water Reclamation Fund Relevant Information

The current rates and fees for Marana Sewer customer can be found at - http://www.maranaaz.gov/water-rates-and-fees . Charges for Services (sewer rates) comprise the majority of the revenue for the fund. Preliminary FY2020 year-end revenue collections are above expectations due to higher sewer fees and strong account growth. The majority of Other revenue is related to budgeted transfers between funds for debt service payments.



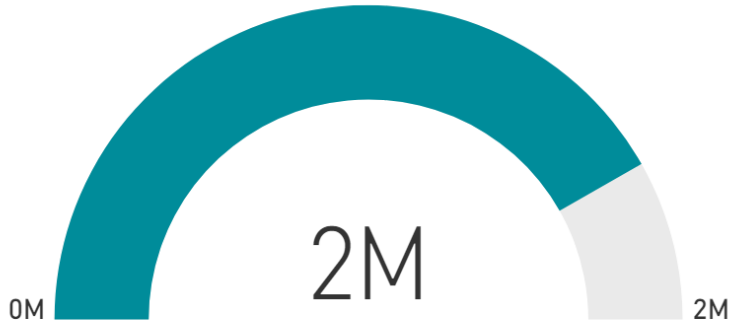
Category	2018	2019	2020
Licenses, Fees, & Permits	57,224	26,849	49,513
Charges for Services	1,444,992	1,599,545	1,823,690
Other	952,349	808,764	809,067
Total	**2,454,565**	**2,435,159**	**2,682,270**

FY 2019-2020 FOURTH QUARTER: WATER RECLAMATION OPERATING FUND EXPENSES

Select Revenue or Expense

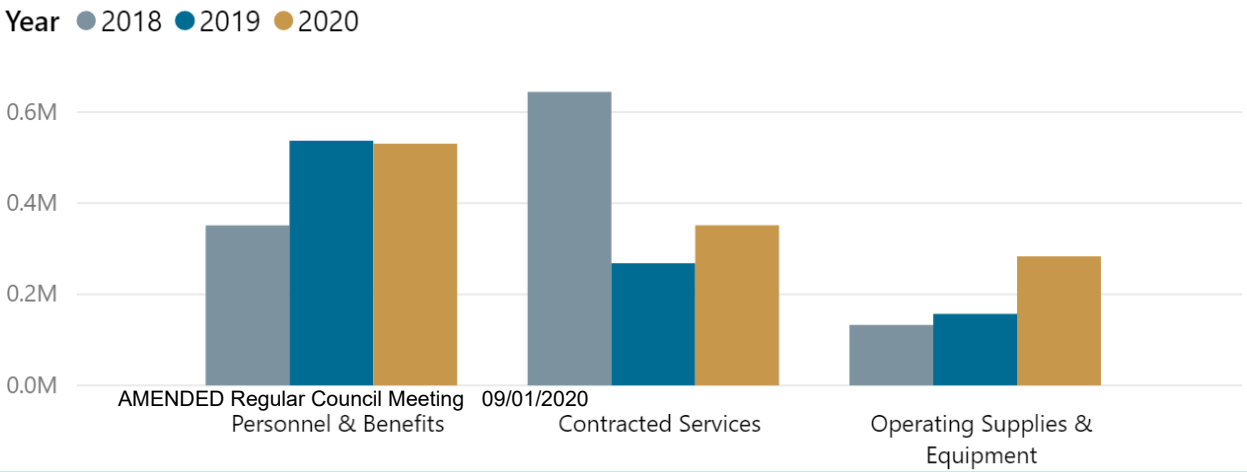
- EXPENSES
- REVENUES

Category	FY 2020 Budget	Actual	% Budget
Personnel & Benefits	628,941	530,715	84%
Contracted Services	549,885	351,616	64%
Operating Supplies & Equipment	360,850	283,359	79%
Capital Outlay	71,800	57,388	80%
Debt Service	855,911	838,053	98%
Total	**2,467,387**	**2,061,131**	**84%**



Water Reclamation Fund Relevant Information

Preliminary year-end expenses for the Water Reclamation Operating Fund are below budgeted levels due to vacancy savings due to turnover, reduced sludge hauling and electrical costs associated with the new treatment facility and lower system repairs expenses. Capital costs associated with infrastructure and CIP projects are captured in separate funds.



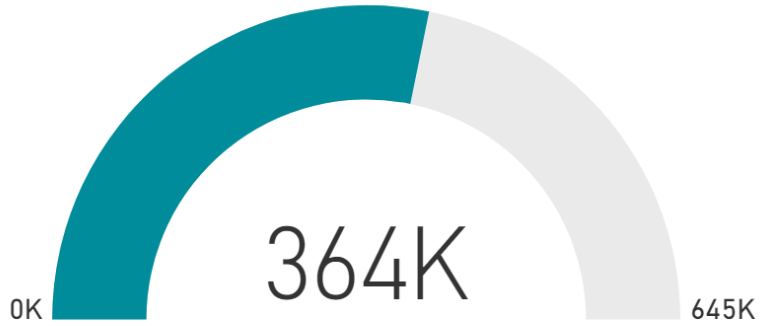
Category	2018	2019	2020
Personnel & Benefits	351,378	537,218	530,715
Contracted Services	644,373	268,031	351,616
Operating Supplies & Equipm...	132,773	157,019	283,359
Capital Outlay	0	0	57,388
Debt Service	544,413	1,193,915	838,053
Total	**1,672,937**	**2,156,183**	**2,061,131**

FY 2019-2020 FOURTH QUARTER: AIRPORT OPERATING FUND REVENUES

Select Revenue or Expense

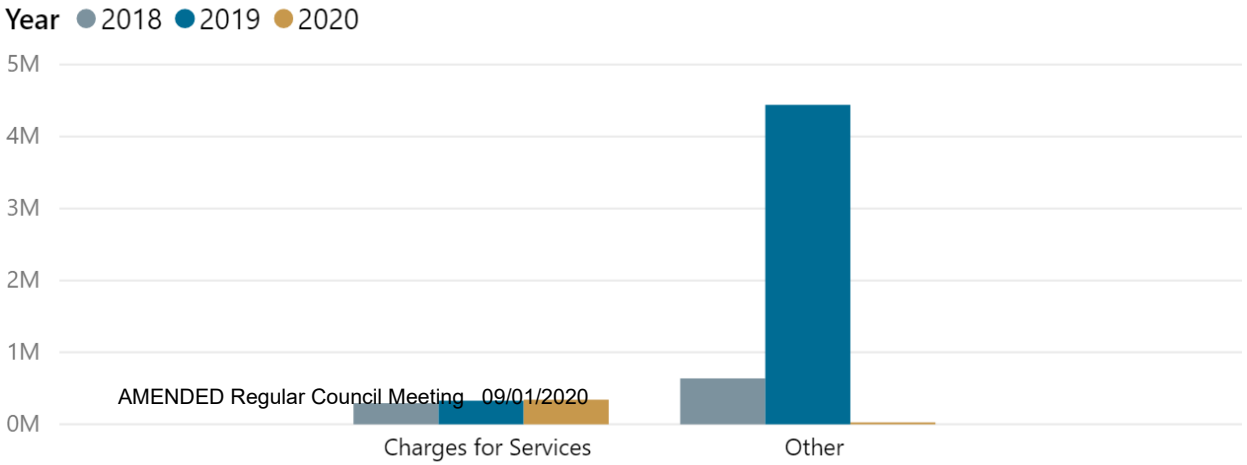
- ☐ EXPENSES
- ■ REVENUES

Category	FY 2020 Budget	Actual	% Budget
Licenses, Fees, & Permits	0	50	0%
Charges for Services	339,200	342,770	101%
Other	305,680	21,026	7%
Total	**644,880**	**363,845**	**56%**



Airport Fund Relevant Information

Overall, preliminary year-end revenue collections for the Airport Fund are as expected. Charges for Services comprise of the majority of budgeted operating revenue, while Other revenue is primarily comprised of third-party revenues not yet collected associated with the Airport repaving project and transfers between funds scheduled to take place once the all fund activity is finalized. The fund will be balanced once transfers are completed.



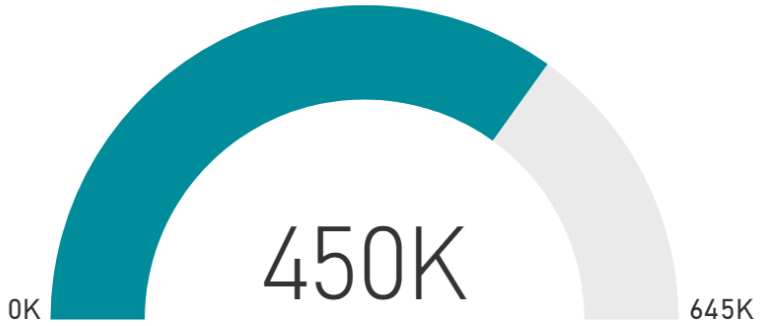
Category	2018	2019	2020
Licenses, Fees, & Permits			50
Charges for Services	294,133	328,630	342,770
Other	638,293	4,440,219	21,026
Total	**932,426**	**4,768,849**	**363,845**

FY 2019-2020 FOURTH QUARTER: AIRPORT OPERATING FUND EXPENSES

Select Revenue or Expense

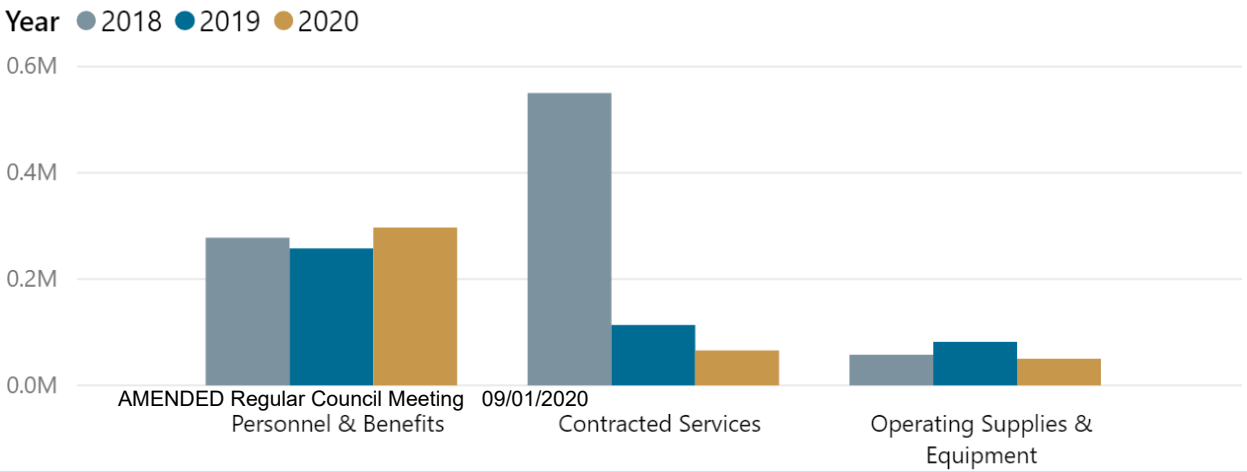
- ■ EXPENSES
- □ REVENUES

Category	FY 2020 Budget	Actual	% Budget
Personnel & Benefits	291,331	297,105	102%
Contracted Services	117,609	65,810	56%
Operating Supplies & Equipment	73,900	50,235	68%
Capital Outlay	37,040	37,040	100%
Other Financing Uses	125,000		
Total	**644,880**	**450,190**	**70%**



Airport Fund Relevant Information

Overall, preliminary year-end expenses for the Airport Fund are at or below budgeted levels for FY2020. Due to the impact of the pandemic, contracted services were below budget as some maintenance work on surveillance equipment upgrades was deferred, while additional savings in operating equipment and supplies resulted from lower utility, fuel, tools & equipment and travels costs. Other Financing Uses is related to restricted budget amounts which were carried forward to next fiscal year. Costs related to CIP projects are captured in other funds

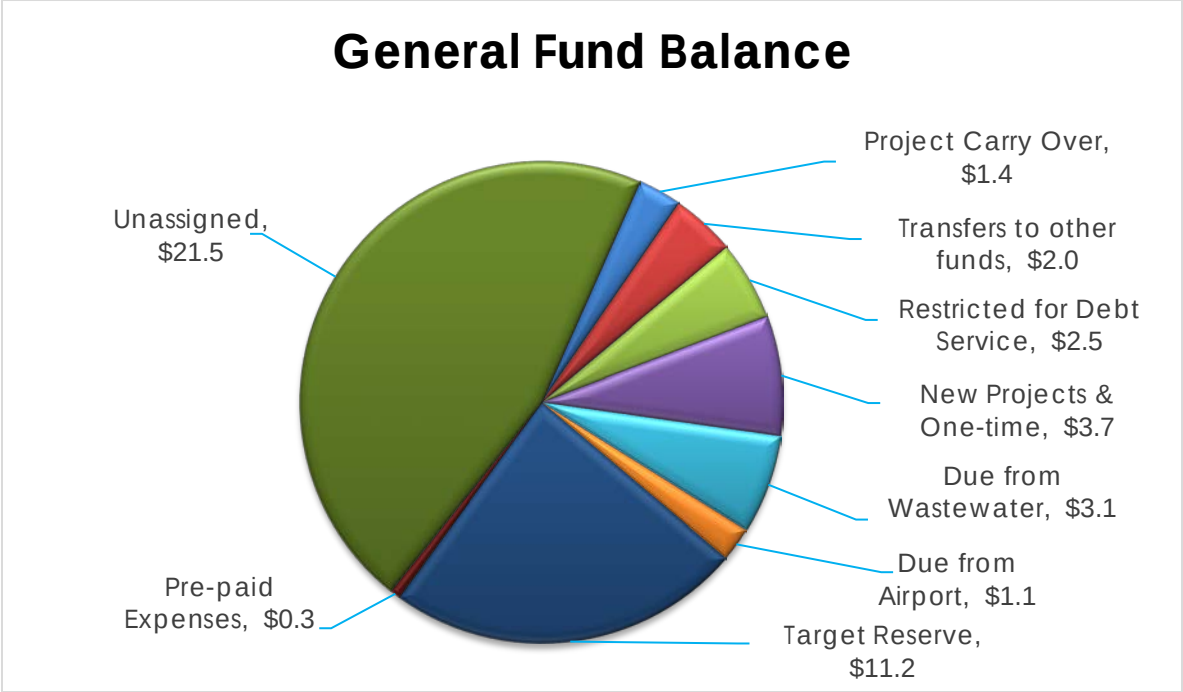


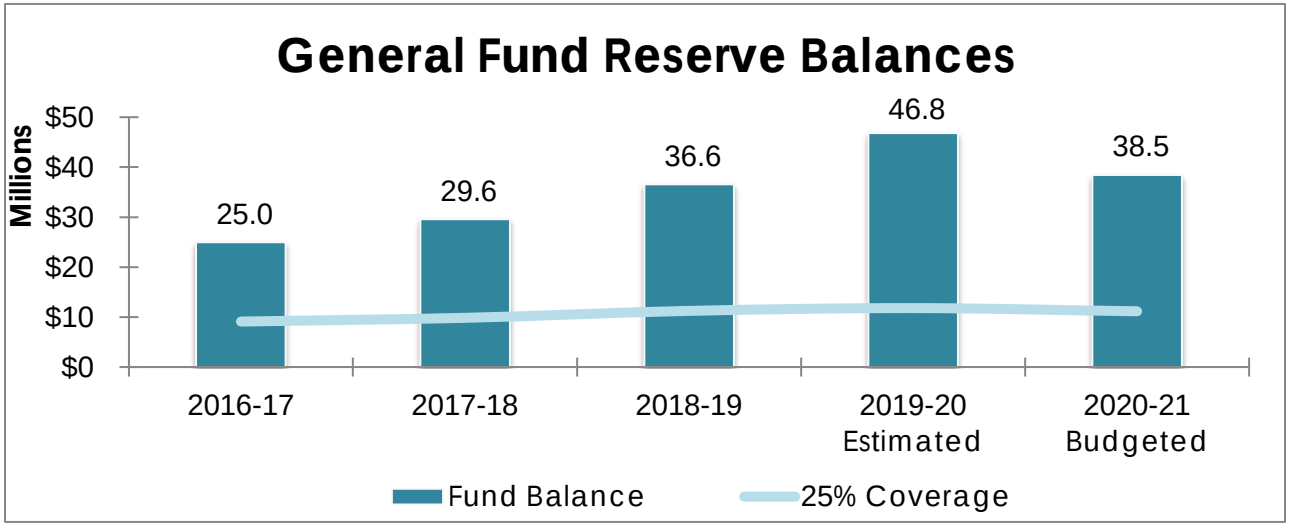
Category	2018	2019	2020
Personnel & Benefits	277,869	257,773	297,105
Contracted Services	550,181	113,691	65,810
Operating Supplies & Equipm...	57,746	81,971	50,235
Capital Outlay			37,040
Total	**885,796**	**453,435**	**450,190**

GENERAL FUND BALANCE & RESERVE IMPACT

PRELIMINARY YEAR END RESULTS FY20

Estimated Fund Balance @ 6/30/20	$	46,819,921
Project Carry Over		1,373,908
Transfers to Other Funds		2,015,321
Restricted for Debt Service		2,499,563
New Projects & One-time		3,742,225
Due from Wastewater		3,111,943
Due from Airport		1,079,926
Target Reserve		11,159,098
Pre-paid Expenses		330,333
Unassigned	$	21,507,604





Council-Regular Meeting **P2**

Meeting Date: 09/01/2020

To: Mayor and Council

From: Yiannis Kalaitzidis, Finance Director

Date: September 1, 2020

Strategic Plan Focus Area:
Not Applicable

Subject: Relating to Budget; presentation of monthly financial revenues (July) of the Town's General Fund funds for the 2020-2021 fiscal year (Yiannis Kalaitzidis)

Discussion:

The Town of Marana started the new fiscal year 2020-2021 with a reduced revenue budget in anticipation of the continued negative impact of the COVID-19 pandemic to the economy.

During budget development Council and the Town Manager took steps to ensure that the Town continued to provide services at existing levels, while also presenting a structurally balanced budget, where ongoing revenues cover ongoing expenses. These steps included deferring projects to future periods, delaying or freezing the hiring of certain positions, and restricting some budget capacity until such time when fiscal year 2020-2021 revenues come in better than anticipated.

Staff will present an update of the Town's most significant General Fund revenue sources to Council on a monthly basis to assist Council in remaining informed during this period of economic uncertainty.

Overall, revenues for the month of July and the prior three months of April through June 2020 are higher than anticipated, while in some cases they are lower than amounts collected for the same periods in 2019.

While the current revenue levels are encouraging, economic data in this environment is still limited and the future continues to be uncertain. Factors that may impact the economy include the effectiveness of current measures against the disease, additional

federal relief funds, and a solution to the virus that is still several months away.

As such, staff will continue to monitor revenues and recommends maintaining the course set in the recently adopted Town Budget for fiscal year 2020-2021.

Staff Recommendation:
Presentation only.

Suggested Motion:
Presentation only.

Attachments

July Monthly Update presentation

Fiscal Year 2020-2021: Monthly Update Revenues

MARANA AZ



ITEMS FOR DISCUSSION

- Current State of Economy
- Revenue history, April-June
- July revenue update

FY 2021

BACKGROUND

- COVID-19 caused GDP to fall by 32.9% in the second quarter ended June 30, 2020
- Unemployment stands at 10.2% nationally (July) and 10.0% in AZ (June)
- Federal relief funds help keep economy afloat, but continuation is uncertain
- Economic recovery still uncertain without proven vaccine or therapeutic solution expected for months

FY2021 INDICATORS

- Real-Time Indicators & Trends
  - Marana Hotel Occupancy rate fell by 10.2% (July Year over Year)
  - Marana Hotel Revenues declined by 11.6% (July Year over Year)
  - Housing Permits still being issued but future is uncertain
    - 855 issued in FY2020 vs 802 in FY2019
    - 205 issued April – June 2020 vs. 256 in April – June 2019
    - 103 issued in July 2020 vs. 83 in July of 2019

FY 2021

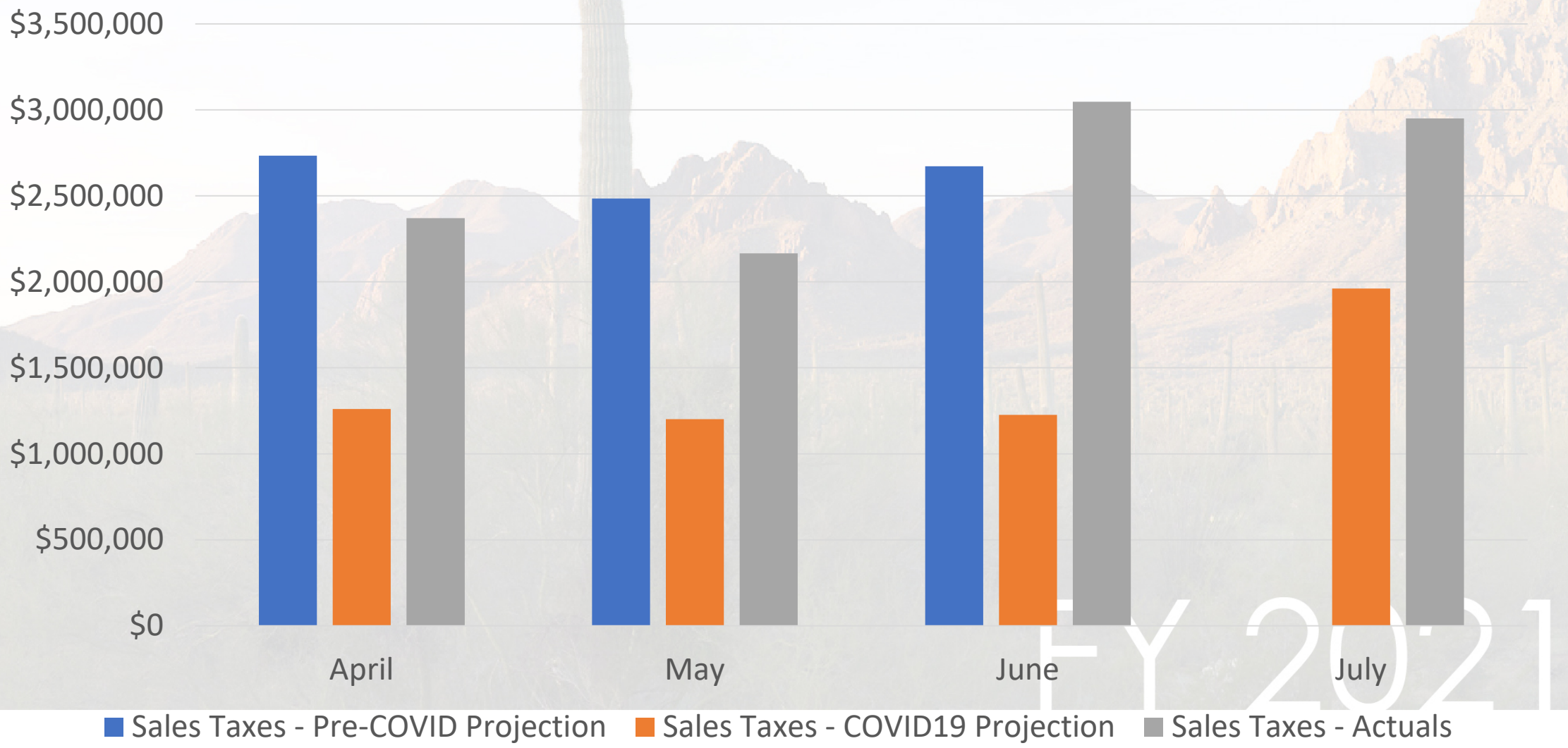
Sources: STR Report, JLBC, Marana Development Services

F/Y 2020 Projections vs. Actuals

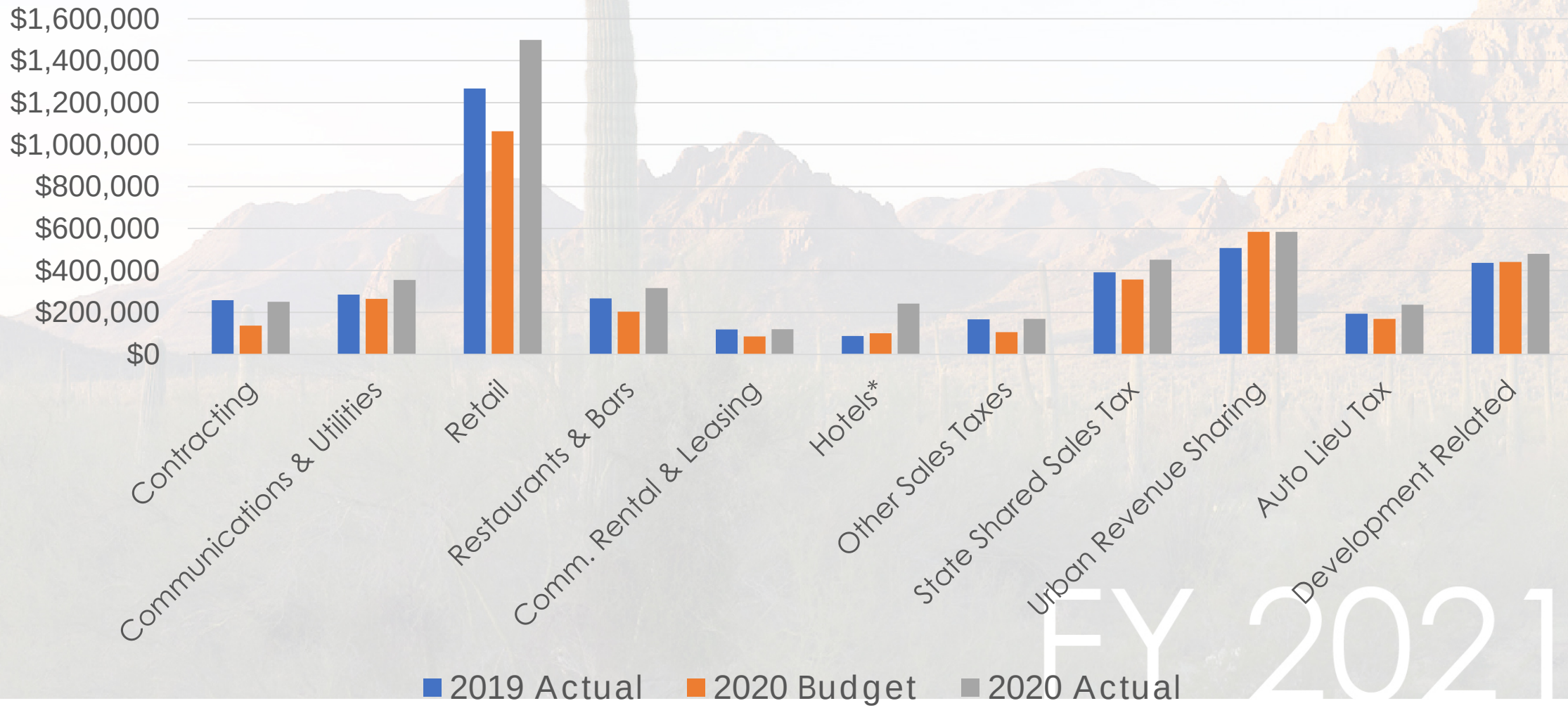
April-June actual revenues compared to pre-pandemic anticipated projections

Category	Projected change	Actual change
Sales Tax		
Retail	-50%	+6%
Utilities & Insurance	-20%	+12.6%
Construction	-40%	Unchanged
Restaurants & Bars	-65%	-20.1%
Hotels	-65%	-38.2%
Intergovernmental		
State Shared Sales Tax	-50%	+13.1%
Auto Lieu Tax	-35%	+10.6%
Development Related	-50%	-5%

April – July Revenues
General Fund Sales Taxes



July General Fund Collections Year On Year Comparison



*Some hotel sales tax payments were deferred for the months of April-June and were paid in July.

IN SUMMARY

- Revenues are better than anticipated
- Still early to determine the future which will depend on
  - Federal relief funds
  - Virus solution (Vaccine or therapeutics)
  - Effectiveness of current measures
- Stay the course while uncertainty remains
- Continue to monitor revenues



DISCUSSION

MARANA AZ

Council-Regular Meeting **C1**

Meeting Date: 09/01/2020

To: Mayor and Council

Submitted For: Scott Schladweiler, Water Director

From: Asia Philbin, Water Resources Coordinator

Date: September 1, 2020

Strategic Plan Focus Area:
Community

Strategic Plan Focus Area Additional Info:

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Subject: Resolution No. 2020-091: Relating to Utilities; approving and authorizing the Mayor to sign a five-year intergovernmental agreement with the Metropolitan Domestic Water Improvement District for the purchase of long term water storage credits (Scott Schladweiler)

Discussion:

In September 2010, the Town entered into an Intergovernmental Agreement (IGA) with the Metropolitan Domestic Water Improvement District (Resolution No. 2010-087) for the purchase of long term storage credits generated by delivery and recharge of Central Arizona Project water. This IGA was for a term of 5 years and expired in August 2015. A subsequent IGA (Resolution No. 2015-103) was executed for an additional 5 years and is set to expire in December 2020.

The long-term storage credits to be gained through an additional 5-year agreement provide access to renewable resources and supplement the Town's water portfolio. On a year-to-year basis, the Town may elect to purchase up to 1000 acre-feet of CAP water credits from the Metropolitan Domestic Water Improvement District. The proposed IGA provides for water ordering, calculation of water credits, and payments according to terms previously agreed by the parties in previous agreements (Resolution No. 2010-087) and 2015 (Resolution No. 2015-103). Payment for credits is based on current rate for CAP water purchase, O&M of facilities where water is stored, and an administrative charge.

Financial Impact:

Fiscal Year:	FY21-25
Budgeted Y/N:	Y
Amount:	$1,000,000*

*Pursuant to the IGA that expires in December 2020, approximately 800 AF of credits are being purchased with payments in equal monthly installments Jan-Dec 2020.The July through December payments for those credits are budgeted at $92,932 in FY2021. No additional water credit purchase is planned for the first year of this new IGA, i.e. calendar year 2021, so no additional (Jan-June) purchase is budgeted for FY2021, related to the IGA under consideration. Assuming full purchase of the credits on offer for the remaining term of the IGA under consideration, i.e. CY2022 through CY2025, and payment at currently projected rates for CAP water, the Town would pay approximately $1,000,000 for approximately 3,750 to 4,000 AF of long term water storage credits.

Staff Recommendation:

Staff recommends adoption of Resolution No. 2020-091, approving and authorizing the Mayor to sign the intergovernmental agreement with the Metropolitan Domestic Water Improvement District for the purchase of long term storage credits.

Suggested Motion:

I move to adopt Resolution No. 2020-091, approving and authorizing the Mayor to sign the intergovernmental agreement with the Metropolitan Domestic Water Improvement District for the purchase of long term storage credits.

Attachments

Resolution No. 2020-091

MDWID Agreement

MARANA RESOLUTION NO. 2020-091

RELATING TO UTILITIES; APPROVING AND AUTHORIZING THE MAYOR TO SIGN A FIVE YEAR INTERGOVERNMENTAL AGREEMENT WITH THE METROPOLITAN DOMESTIC WATER IMPROVEMENT DISTRICT FOR THE PURCHASE OF LONG TERM WATER STORAGE CREDITS

WHEREAS the Town of Marana and Metropolitan Domestic Water Improvement District (Metro) provide potable water to residents and businesses; and

WHEREAS the Town endeavors to purchase water annually equivalent to the volume of water pumped; and

WHEREAS Metro has a volume of long term storage credits they are willing to sell on an annual basis which will supplement the Town's purchase of water from Central Arizona Project; and

WHEREAS the Town and Metro have just completed two mutually beneficial five-year intergovernmental agreements for the Town's purchase of Metro long term storage credits, approved by the adoption of Marana Resolution Nos. 2010-87 and 2015-103, and the Mayor and Council find that entering into a new five-year intergovernmental agreement is in the best interests of the Town and its citizens and businesses.

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

SECTION 1. The "Agreement to Sell and Assign Central Arizona Project Long-Term Storage Credits in the Tucson Active Management Area" included 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 various Town officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this resolution.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, ARIZONA, this 1st day of September, 2020.

Mayor Ed Honea

ATTEST:

Cherry L. Lawson, Town Clerk

APPROVED AS TO FORM:

Frank Cassidy, Town Attorney

AGREEMENT TO SELL AND ASSIGN
CENTRAL ARIZONA PROJECT LONG-TERM STORAGE CREDITS
IN THE TUCSON ACTIVE MANAGEMENT AREA

THIS AGREEMENT TO SELL AND ASSIGN LONG-TERM STORAGE CREDITS IN THE TUCSON ACTIVE MANAGEMENT AREA (this "Agreement") is entered into as of the first day of January, 2021 ("Effective Date") by and between the Town of Marana, an Arizona municipal corporation ("Town"), and Metropolitan Domestic Water Improvement District, an Arizona municipal corporation ("District"), (collectively referred to as the "Parties").

RECITALS

A. The purpose of this Agreement is to provide for cooperation between the Town and District for the purpose of providing renewable water supplies to the Parties' customers in accordance with the requirements of the Assured Water Supply program in the Tucson Active Management Area ("Tucson AMA"), which will mutually benefit the Town and District.

B. The Town seeks to acquire long-term storage credits ("LTSCs"), as defined in A.R.S. § 45-802.01(11).

C. The District desires to sell, and the Town desires to acquire, a portion of the District's Central Arizona Project ("CAP") Municipal and Industrial ("M&I") Subcontract water that will be stored in the future, as LTSCs, on a best efforts basis during the term of this Agreement.

D. Both the Town and District own and operate wells permitted by the Arizona Department of Water Resources ("ADWR") as recovery wells that may recover stored water within their service areas.

E. The District has entered into a subcontract with the Central Arizona Water Conservation District ("CAWCD") in the amount of 13,460 acre-feet ("af") per year of CAP M&I Subcontract water to be delivered through the CAP canal system.

F. The District holds Water Storage Permit No. 73-564896.0100 to store up to 11,000 af per year at the Avra Valley Underground Storage Facility ("AV-USF"); and holds Water Storage Permit No. 73-561366.0300 to store up to 15,000 af per year at the Lower Santa Cruz Underground Storage Facility ("LSC-USF"); and holds Water Storage Permit No. 73-555750.0002 to store up to 14,316.66 af per year at the BKW Farms Groundwater Savings Facility, and holds Long-Term Storage Account (Permit No. 70- 411130.0000).

G. The Town is a Designated Municipal Water Provider (DWR No. 26-402254.000) in the Tucson AMA enrolled as a Member Service Area of the Central Arizona Groundwater Replenishment District ("CAGRD") and holds Long-Term Storage Account (Permit No. 70-411220.0000).

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties here to agree to the following terms and conditions:

1.0 Incorporation of Recitals. The Recitals set forth above are true and correct and are incorporated by reference as though fully set forth herein.

2.0 Order and Purchase of LTSCs. Pursuant to the terms and conditions of this Agreement, District agrees to sell the Town up to 1,000 af of LTSCs in the Tucson AMA each year during the term of this Agreement, in accordance with the terms and conditions set forth below:

2.1 The District agrees that the Town shall have first opportunity to purchase up to annually 1,000 af of LTSCs to be accrued by the District in the Tucson AMA during the term of this Agreement.

2.2 Except as provided in subparagraph 2.3 herein, the Town shall elect the amount of LTSCs it wishes to purchase in any calendar year by notifying the District by August 31st of the preceding calendar year. Failure to provide such notice shall abrogate the District's obligations under this Agreement for the following year only.

2.3 The District shall be responsible for ordering and arranging for the delivery and storage of CAP M&I water in the Tucson AMA. For calendar year 2021, the District shall order and arrange for the delivery and storage of CAP M&I water, in order to enable the assignment to the Town, after regulatory deductions, up to 1,000 acre-feet of LTSCs for the Town's use as early as calendar year 2022 unless additional credits are transferred to the Town per Sections 2.5 and 2.6. The method for calculating the costs and credits to Marana for calendar year 2020 and each calendar year thereafter are reflected on Schedule 1.

2.4 The price per acre-foot of CAP water stored for the Town during the term of this Agreement shall be based upon the volume of CAP water ordered and delivered and the following: (a) the annual purchase price shall be the Capital and Delivery charges set forth in the Annual Rate Schedule adopted by the CAWCD Board of Directors for M&I long-term subcontractors during the year in which the CAP water was delivered to the District; plus (b) the District' s operation and maintenance fee at the AV-USF of $18.44 per acre-foot for 2020 with an annual increase of 3% in subsequent years, or the applicable current fee for storage paid by the District at the LSC-USF and/or BKW-GSF, plus (c) District administration costs in an amount

equal to 1.02 for AV-USFs and LSC-USF, and 1.03 for BKW-GSF multiplied by the sum of (a) + (b). These costs are reflected on Schedule 1.

2.5 CAP Reconciliation. If the CAWCD Board of Directors determines the District overpaid on CAP deliveries, the District will confer with Town what additional credits will be transferred to the Town equivalent to the Town's proportional share of the District's order with the CAP Reconciliation decided by CAWCD. If the CAWCD Board of Directors determines the District underpaid on CAP deliveries, the District will confer with the Town on what reduction in the number of credits will be transferred to the Town equivalent to the Town's proportional share of the District's order and the CAP Reconciliation. These costs and credit additions or subtractions are reflected on Schedule 2.

2.6 If the Town desires to have CAP water stored at BKW's GSF, then the District will increase the number of credits earned and transferred based on the In- Lieu Rebate from BKW Farms, Inc. The credit addition calculation is reflected on Schedule 2.

2.7 Payment from the Town for the annual LTSCs acquired from the District shall be made in twelve equal installments due on the last day of each month of each year in which CAP water is delivered to the District. The monthly payments shall be based upon the amount of LTSCs requested by the Town pursuant to this Paragraph 2.

3.0 Term. The term of this Agreement will commence on the Effective Date and will terminate on December 31, 2025 unless the Parties mutually agree in writing to extend the term of this Agreement.

4.0 Water Storage. All CAP M&I water stored by the District in the Tucson AMA pursuant to subparagraph 2.3 of this Agreement, shall be stored in compliance with the requirements of A.R.S. § 45-852.01 (B) at the AV-USF (Permit No. 71-564896.0004) and/or the LSC-USF (Permit No. 71-561366.0003) and/or the BKW-GSF (Permit No. 71-538133.0004), as those permits may be amended from time to time.

5.0 ADWR and CAGRD Reporting. The Town and District shall comply with all applicable permitting and filing requirements of the ADWR, CAWCD, and CAGRD, on a timely basis. If necessary, the Parties shall cooperate to ensure timely compliance.

6.0 Assignment of LTSCs Accrued by the District. Within thirty (30) days after District receives annual notification from ADWR of the amount of LTSCs accrued from the storage of CAP M&I water in the Tucson AMA, the District shall prepare for the Town's execution, ADWR's form authorizing the assignment of the District's LTSCs to the Town based upon of the amount of LTSCs identified by the Town per subparagraph 2.2 herein.

7.0 Assignment of LTSCs Accrued by the District. Not later than September 30th of each calendar year, beginning in 2017, the Parties shall notify ADWR, on a form provided by ADWR, of the assignment of LTSCs agreed upon by the Parties in Section 2 of this Agreement, minus the regulatory deductions described in Section 8, below, from the District's Long-Term Storage Account (Permit No. 70-411130.0000) to the Town's Long-Term Storage Account

(Permit No. 70-411220.0000). The Town will be responsible for payment to ADWR of the LTSC transfer fee.

8.0 ADWR Determination of LTSC.

8.1 The Parties acknowledge that any LTSCs issued by ADWR for CAP water stored by the District in the Tucson AMA will reflect reductions made by ADWR in accordance with the requirements of A.R.S. § 45-852.01 of the gross water volume delivered into a storage facility (the "Net Credits"). The Parties further acknowledge that the exact amount of LTSCs earned by the District will not be known until after a final determination is made by the Director of ADWR, which may occur after June 30th of the calendar year following storage. The District shall assign to the Town the Net Credits earned for the water ordered per subparagraph 2.3.

8.2 ADWR's rejection and invalidation of an assignment of LTSCs to the Town pursuant to A.R.S. § 45-854.01(C) shall not cause a reduction in the amount of monies owed the District by the Town pursuant to the terms of this Agreement.

9.0 District's Warranties; Limitations.

9.1 All applicable legal requirements and fees related to the storage of CAP water in the Tucson AMA pursuant to this Agreement will have been or will be satisfied by the District at the time of the assignment.

9.2 The District will have good and marketable title to the LTSCs, free of any liens or encumbrances, at the time of assignment.

9.3 Because CAWCD controls all deliveries of CAP water to the Tucson AMA, and to the AV-USF and the LSC-USF and to BKW-GSF, the District does not warrant that CAP water will be successfully delivered throughout the term of this Agreement

10.0 Water Recovery. The Parties acknowledge the need to construct recovery wells to facilitate the recovery of water they have stored in the AV-USF and the LSC- USF, and the BKW-GSF, which are located within the Town's service area. During the term of this agreement, the Parties agree to work together to locate any such wells that might occur outside of the area of hydrologic impact in mutually acceptable locations within the Town's service area, recognizing that the District and Town's primary obligation is to provide adequate and efficient service to its customers.

11.0 Termination.

11.1 This Agreement may be terminated for any reason by either Party upon one hundred and eighty (180) days written notice in accordance with the provisions of Paragraph 12 herein; provided however, that the Parties will continue to honor any contractual obligations entered into prior to the termination date, which obligations extend longer than 180 days following the date of such notice.

11.2 This Agreement may be terminated upon the effective date of a statutory or regulatory change that results in the prohibition of this type of transaction.

11.3 The District may terminate this Agreement immediately if, after using its best efforts, the District is unable to procure the necessary CAP water to store for LTSC as required by the terms of this Agreement.

12.0 Notices. All notices or other communications required or provided to be sent by either Party shall be in writing and shall be sent by United States Postal Service, postage prepaid, return receipt requested; courier; any nationally recognized overnight delivery service; facsimile transmission; or in person. Any such notice sent by registered or certified mail return receipt requested shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage prepaid. Notices delivered by overnight service shall be deemed to have been given twenty-four (24) hours after delivery of the same, charges prepaid, to U.S. Postal Service or private courier. Notice hand-delivered by courier for same-day delivery shall be deemed to have been given on the date of hand-delivery. If any notice is transmitted by facsimile transmission or similar means, the same shall be deemed served or delivered upon confirmation of transmission thereof. Any notice or other document sent by any other manner shall be effective only upon actual receipt thereof. All notices shall be addressed to the Party at the address below:

If to the Town of Marana:	Marana Water Attn: Mr. Scott Schladweiler 11555 W. Civic Center Dr. Marana, Arizona 85653 Fax No.: 520-382-2590
With a copy to:	Town Attorney Attn: Mr. Frank Cassidy 11555 W. Civic Center Dr. Marana, Arizona 85653 Fax No.: 520-382-1945
If to Metropolitan DWID:	General Manager Attn: Mr. Joseph Olsen P.O. Box 36870 Tucson, Arizona 85740 Fax No. 520-575-8454

13.0 Change of Address. Any address or name specified above may be changed by notice given to the addressee by the other Party in accordance with this Paragraph. The inability to deliver because of a changed address of which no notice was given, or rejection or other refusal to accept any notice, shall be deemed to be the receipt of the notice as of the date of such inability

to deliver or rejection or refusal to accept. Any notice to be given by any Party hereto may be given by the counsel for such Party.

14.0 Additional Documents. Each of the Parties agrees to execute any and all documents necessary to effectuate the intent and purposes of this Agreement.

15.0 Entire Agreement. This Agreement, together with any attachments or other documents expressly referred to or incorporated by reference herein, contains the entire Agreement of the Parties with respect to the subject matter herein, and constitutes and embodies the full and complete understanding and agreement of the Parties hereto with respect to the subject matter herein, and supersedes all prior understandings and agreements, whether oral or in writing.

16.0 Non-Discrimination. The Parties agree to be bound by applicable state and federal laws, rules and regulations governing equal employment opportunity and prohibiting discrimination.

17.0 Inspection and Audit. All books, accounts, reports, files and other records relating to this Agreement shall be subject at all reasonable times to inspection and audit by either Party for five (5) years after completion of performance under this Agreement, as required by A.R.S. § 35-214 and any successor statutes. Such records shall be produced at the Arizona Attorney General's office or at the requesting party's principal office within a reasonable time after request is made therefore.

18.0 Conflicts of Interest. The Parties acknowledge that either the Town or the District may, pursuant to A.R.S. § 38-511 or any successor statute, within three (3) years after execution of this Agreement, and without penalty or further obligation, cancel this Agreement if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Town or District is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other Party to the Agreement in any capacity or a consultant to any other Party of the Agreement with respect to its subject matter.

19.0 Governing Law. The law of the State of Arizona shall govern this Agreement's interpretation and enforcement.

20.0 Dispute Resolution. In the event that a dispute between or among the Parties to this Agreement should arise, to the extent required by law, and subject to applicable jurisdictional amounts, such dispute shall be resolved by arbitration pursuant to the Arizona Uniform Rules of Procedures for Arbitration and A.R.S. § 12-1518.

21.0 Counterparts. This Agreement may be executed in counter parts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

22.0 Headings. The headings and titles to the paragraphs of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.

23.0 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

24.0 Attorneys' Fees. If either Party hereto breaches any provision of this Agreement, the breaching Party shall pay to the non-breaching Party all reasonable attorneys' fees and other costs and expenses incurred by the non-breaching Party in enforcing this Agreement or preparing for legal or other proceedings regardless of whether suit is instituted

25.0 Waiver. A waiver of any breach or default shall not be a waiver of any other breach or default.

26.0 Force Majeure. Any prevention, delay or stoppage due to Force Majeure shall excuse the performance by a Party for a period equal to any such prevention, delay or stoppage.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above.

TOWN OF MARANA, ARIZONA,
an Arizona municipal corporation

By:_____
Printed Name:_____
Its: Mayor
Date:_____

Attest:

_____
Cherry Lawson, Town Clerk

Approved as to Form:

_____
Town Attorney

METROPOLITAN DOMESTIC WATER IMPROVEMENT DISTRICT,
an Arizona municipal corporation

By:_____
Printed Name: Judy Scrivener
Its: Chair of the Board
Date: AUGUST 10, 2020

Attest:

_____
Theo Fedele, District Clerk

Approved as to Form:

_____
Lewis Roca Rothgerber Christie, LLP
District Legal Counsel

Schedule No. 1

Recharge Costs for 2020 (Example A)

MDWID to order and recharge 1,000 AF at AVRP-USF and assign to Marana the net allowable by ADWR following deductions for "cut to the aquifer" and evaporation. Recharge Cost Formula = Water Ordered x (Price of CAP Capital charge + CAP Delivery charge + Recharge O&M charge) + MDWID Administrative Charge Factor for USF

For 2020 1,000 AF x ($56/AF + $155/AF + $18.44/AF) x 1.02, or
1,000 AF x $229.44/AF x 1.02, or
1,000 AF x $234.03/AF = $234,028.80

Payable on the last day of each month in twelve equal annual installments of $19,502.40.

Recharge Costs for 2020 (Example B)

MDWID to order and recharge 1,000 AF at LSC-USF and assign to Marana the net allowable by ADWR following deductions for "cut to the aquifer" and evaporation. Recharge Cost Formula= Water Ordered x (Price of CAP Capital charge + CAP Delivery charge + Recharge O&M charge) + MDWID Administrative Charge Factor for USF

For 2020 1,000 AF x ($56/AF + $155/AF + $15.00/AF) x 1.02, or
1,000 AF x $226.00/AF x 1.02, or
1,000 AF x $230.52/AF = $ 230,520.00

Payable on the last day of each month in twelve equal annual installments of $19,210.00.

Recharge Costs for 2020 (Example C)

MDWID to order and recharge 1,000 AF at BKW-GSF and assign to Marana the net allowable by ADWR following deductions for "cut to the aquifer" and evaporation. Recharge Cost Formula = Water Ordered x (Price of CAP Capital charge + CAP Delivery charge) x MDWID Administrative Charge Factor for GSF

For 2020 1,000 AF x ($56/AF + $155/AF) x 1.03, or
1,000 AF x $211.00 /AF x 1.03, or
1,000 AF x $217.33AF = $217,330.00

Payable on the last day of each month in twelve equal annual installments of $18,110.83.

Recharge Credit Formula = Water Ordered x (1 – Percent of Evaporation Losses – Percent Cut to the Aquifer). Evaporation Loss values used below are only for illustration

Recharge Credit Example for AVRP-USF

For 2020 1,000 AF x (1 – 0.011) x (1 – 0.05), or
1,000 AF x 0.99 x 0.95 = 940.50 AF

Recharge Credit Example for LSC-USF

For 2020 1,000 AF x (1 – 0.012) x (1 – 0.05), or
1,000 AF x 0.988 x 0.95 = 938.60 AF

Recharge Credit Example for BKW-GSF

For 2020 1,000 AF x (1 – 0.00) x (1 – 0.05), or
1,000 AF x 0.95 = 950.00 AF

Recharge Costs for 2020 through 2025

Except for the annual 3% increase for operation and maintenance costs at the District's AVRP, the Recharge Costs for the remaining years of this agreement shall be calculated in the same manner as the prior years.

Schedule No. 2

Calculation of Marana's Proportional Cost for MDWID's CAP Order and Reconciliation Credits Example:

Metro 2019 Order	2019 Deliveries for Marana	2019 Deliveries for Metro	Percent for Marana
13,460 AF	800 AF	12,660 AF	5.94
Delivery Cost 2019 Order @ $155/AF	Delivery Cost Marana @ $155/AF	Delivery Cost Metro @ $155/AF	Percent for Marana
$2,101,800.00	$124,000.00	$1,962,300.00	5.94
Reconciliation Refund on 2019 Order @ $3.03/AF	Reconciliation Refund for Marana @ $3.03/AF	Reconciliation for Metro @ $3.03/AF	Percent for Marana
$6,386.45	$2,424.00	$38,395.80	5.94

2019 Delivery Volume Equivalent to Marana Reconciliation Refund

2019 Reconciliation Volume = 2019 Reconciliation Refund/2019 Storage Cost

2019 Reconciliation Volume = $2,424.00 / (CAP Water Capital Cost + CAP Actual Delivery Cost + BKW Storage Cost) x Administrative Charge for GSF

2019 Reconciliation Volume = $2,424.00 / ($56/AF + $155/AF + $0/AF) x 1.03

2019 Reconciliation Volume = $2,424.00 / ($211.00/AF) x 1.03

2019 Reconciliation Volume = $2,424.00 / $217.33/AF

2019 Reconciliation Volume = 11.15 AF

2019 Reconciliation Credits after Regulatory Deductions Equivalent to Volume Stored at AVRP from Marana Reconciliation Refund

2019 Reconciliation Credits to Marana = Volume Stored x (1 – 1.1% Evaporation)*(1 – Cut to Aquifer %)

2019 Reconciliation Credits to Marana = 11.15 AF x (1 – 0.011) x (1 – 0.05)

2019 Reconciliation Credits to Marana = 11.15 AF x 0.989 x 0.95

2019 Reconciliation Credits to Marana = 10.48 AF

Calculation for Additional 2019 Credits to Marana from In-Lieu Rebate at BKW-GSF Example

In-Lieu Rebate from Marana GSF Storage = Marana Stored Volume at BKW-GSF x BKW-GSF In-Lieu Rebate

In-Lieu Rebate from Marana GSF Storage = 800 AF x $12/AF

In-Lieu Rebate from Marana GSF Storage = $9,600

Credits Earned from Marana GSF Storage = In-Lieu Rebate from Marana GSF Storage/[(Price of CAP Capital Charge+ Price of CAP Delivery Charge) x MDWID Administrative Charge Factor for GSF]

Credits Earned from 2019 Marana GSF Storage = $9,600 / [($56/AF + $155/AF) x 1.03]

Credits Earned from 2019 Marana GSF Storage = $9,600 / ($211/AF x 1.03)

Credits Earned from 2019 Marana GSF Storage = $9,600/ ($217.33/AF)

Credits Earned from 2019 Marana GSF Storage = 44.17 AF

Council-Regular Meeting **C2**

Meeting Date: 09/01/2020

To: Mayor and Council

Submitted For: Scott Schladweiler, Water Director

From: Asia Philbin, Water Resources Coordinator

Date: September 1, 2020

Strategic Plan Focus Area:
Community

Subject: Resolution No. 2020-092: Relating to Utilities; approving and authorizing the Mayor to sign an agreement with B.K.W. Farms, Inc. for in-lieu water deliveries and storage (Scott Schladweiler)

Discussion:

Under state law, underground water storage may occur at Underground Storage Facilities (USFs) and Groundwater Savings Facilities (GSFs). Storage at a USF involves direct recharge of CAP water to the aquifer and would include a $15 per acre foot annual operations and maintenance charge, paid by the Town. At a GSF, storage occurs where CAP water is used (e.g. agricultural irrigation) in-lieu of groundwater that would otherwise be pumped from the aquifer.

The proposed five-year agreement with B.K.W. Farms, Inc ("BKW"), will allow Marana to maximize storage of its CAP water at the BKW Farms GSF, located in Marana, AZ, while minimizing costs of storage. Benefits of storage at this GSF are location in proximity to Marana wells (potential for recovery within the area of impact), and no deduction for evaporative losses. Additionally, continued use of the BKW GSF would benefit the Town by avoiding the $15 per acre foot annual operations and maintenance charge at a USF, and would generate revenue from BKW who would pay the Town $12 per acre foot of water stored at the GSF. It is anticipated that the Town's entire annual CAP allocation of 2,336 acre feet will be stored at the BKW GSF.

The terms for the proposed agreement are the same as prior five-year agreement (Resolution No. 2015-076) which is set to expire in December 2020.

Financial Impact:

Fiscal Year:	2021-25
Budgeted Y/N:	Y
Amount:	$28,032

The Town will experience a positive financial impact estimated up to $28,032 in annual revenues for the duration of this agreement.

Staff Recommendation:

Staff recommends adoption of Resolution No. 2020-092 approving and authorizing the Mayor to sign the agreement with B.K.W. Farms, Inc. for in-lieu water deliveries and storage.

Suggested Motion:

I move to adopt Marana Resolution No. 2020-092, approving and authorizing the Mayor to execute an agreement with BKW Farms, Inc. for in-lieu water deliveries and storage.

Attachments

Resolution No. 2020-092
BKW GSF Draft
Prior Resolution and Agreement BKW

MARANA RESOLUTION NO. 2020-092

RELATING TO UTILITIES; APPROVING AND AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT WITH B.K.W. FARMS, INC. FOR IN LIEU WATER DELIVERIES AND STORAGE

WHEREAS B.K.W. Farms, Inc. ("BKW") possesses a Groundwater Savings Facility Permit from the Arizona Department of Water Resources authorizing the storage of 14,351 acre feet per year of Central Arizona Project ("CAP") water; and

WHEREAS the Town has a contract with the Central Arizona Water Conservation District (CAWCD) for the purchase of CAP water; and

WHEREAS the Town desires to maximize the use of its CAP water to reduce or offset the Town's use of groundwater within the Tucson Active Management Area; and

WHEREAS the proposed agreement with BKW for in lieu water deliveries and storage would allow the Town to receive in-lieu credit for CAP water delivered to BKW at its Groundwater Savings Facility, and allows BKW to use CAP water for its irrigation needs in order to reduce its groundwater use, in accordance with its Groundwater Savings Facility Permit; and

WHEREAS the Town and BKW have just completed a mutually beneficial five-year agreement for in lieu water deliveries and storage, approved by the adoption of Marana Resolution No. 2015-076, and the Mayor and Council find that entering into a new five-year agreement is in the best interests of the Town and its citizens and businesses.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, that the agreement with B.K.W. Farms, Inc. for in lieu water deliveries and storage in substantially the form included in the agenda materials accompanying this resolution 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 1st day of September, 2020.

Mayor Ed Honea

ATTEST:

Cherry L. Lawson, Town Clerk

APPROVED AS TO FORM:

Frank Cassidy, Town Attorney

AGREEMENT BETWEEN THE TOWN OF MARANA
AND B.K.W. FARMS, INC.
FOR IN-LIEU WATER DELIVERIES AND STORAGE

THIS AGREEMENT is made by and between the TOWN OF MARANA (the "Town"), an Arizona municipal corporation, and B.K.W. FARMS, INC. ("BKW"), an Arizona corporation, for the delivery and storage of In-Lieu Water at a Groundwater Savings Project pursuant to A.R.S. § 45-812.01, et seq.

Recitals

A. BKW possesses a Groundwater Savings Facility Permit from the Arizona Department of Water Resources authorizing the storage of 14,351 acre feet per year of Central Arizona Project ("CAP") water.

B. The Town is a party to a contract with the Central Arizona Water Conservation District (CAWCD) enabling it to purchase CAP water.

C. The Town desires to maximize the use of its CAP water to reduce or offset the Town's use of groundwater within the Tucson Active Management Area.

D. The Town desires to deliver CAP water to BKW at its Groundwater Savings Facility for which the Town possesses a Water Storage Permit.

E. BKW desires to use CAP water for its irrigation needs in order to reduce its groundwater use, in accordance with its Groundwater Savings Facility Permit.

F. BKW desires to purchase CAP water from the Town and the Town desires to sell BKW such CAP water under the terms and conditions of this Agreement.

Agreement

NOW, THEREFORE, for and in consideration of, the mutual covenants set forth in this Agreement, the Town and BKW agree as follows:

1. Definitions. The following terms have the following meanings for purposes of this Agreement:

"ADWR" shall mean the Arizona Department of Water Resources.

"CAP water" shall mean the Central Arizona Project water that the Town has the legal right to purchase and use.

"CAWCD" shall mean the Central Arizona Water Conservation District.

"Delivery" or "Delivered" shall mean CAP water purchased by the Town, made available in the CAWCD canal at the designated point specified by BKW and received by BKW.

"Facility Permit" shall mean Permit No. 72-538133.0005 (or the active Permit Number subsequent to modification) issued by ADWR to BKW to operate a groundwater savings facility pursuant to A.R.S. § 45-801.01 et seq.

"Groundwater Savings Facility" shall mean a groundwater savings facility pursuant to A.R.S. § 45-812.01, for which a Facility Permit has been issued.

"In-Lieu Water" shall mean CAP water as defined in A.R.S. § 45-802.01(9), purchased by the Town for Delivery to BKW under this Agreement.

"Pumped Groundwater" shall mean water withdrawn from any of the wells listed in the plan of operation incorporated in the Facility Permit and designated by the ADWR as pumping groundwater for the purpose of Title 45 of A.R.S., Chapter 3.1.

"Recovery Well Permit" shall mean Permit No. 74-211278, issued by ADWR to the Town for recovery of water stored in a storage facility, pursuant to a storage permit.

"Water Storage Permit" shall mean Permit No.73-538133.0700 (or active Permit Number subsequent to modification) issued by ADWR to the Town for storage of In-Lieu Water at the Groundwater Savings Facility pursuant to A.R.S. § 45-801.01, et seq.

"Long-Term Storage Credits" shall mean those credits accrued by the Town's Account LTS #70-411220 from In-Lieu Water stored pursuant to this Agreement, as determined by the requirements of A.R.S. § 45-852.01.

2. Obligations of BKW

2.1. Purpose of Use. BKW shall use the In-Lieu Water Delivered under this Agreement for agricultural irrigation, to replace, on a gallon-for-gallon basis, pumped groundwater within the area designated on the Facility Permit.

2.2. Quantity of In-Lieu Water. Pursuant to applicable Facility and Water Storage Permits issued by the ADWR, BKW shall request that the Town order a minimum of 500 acre feet of In-Lieu Water from the Town's CAP water during the term of this Agreement, provided, however that if BKW desires to order additional of CAP water, the Town may do so upon the mutual agreement of the Town and BKW. BKW shall take Delivery of any and all In-Lieu Water ordered by the Town on BKW's behalf.

2.3. Notice of Order.

2.3.1. Annual. On or before July 15 of each year, BKW shall submit a preliminary order to the Town for In-Lieu Water for the following year. The order shall indicate, by month, the number of acre-feet of In-Lieu Water requested by BKW to be Delivered for the ensuing 12-month period.

2.3.2. Town Recharge Quantification. On or before September 1 of each year, the Town shall notify BKW, in writing, of the amount of In-Lieu Water the Town has elected to purchase for delivery to BKW in the following calendar year. Concurrently with its order, the Town shall notify BKW whether it has elected to have CAP water delivered pursuant to its contract with CAWCD.

2.4. Monthly Meter Reading. All water Delivered from the water supply system shall be measured with equipment furnished and installed by BKW and operated and maintained by

BKW in accordance with ADWR standards and requirements. The results of such measurement shall be subject to monitoring and verification, in cooperation with BKW, from time to time by the Town.

2.5. Points of Delivery. BKW shall take Delivery of the In-Lieu Water at such points along the CAP canal as may be agreed upon in writing by CAWCD and BKW.

2.6. Water Quality Standard. BKW shall be responsible for meeting all applicable federal, state, or local water quality standards for its use of the In-Lieu Water and for reasons beyond BKW's control may decline to take Delivery of any In-Lieu Water BKW determines to be unsuitable for irrigation use under said standards. In-Lieu Water determined to be unsuitable for irrigation shall be included in calculating BKW's compliance with the minimum order requirement of Section 2.2 of this Agreement, but shall not be subject to the payment obligation of Sections 2.7 and 3.5 of this Agreement, except to the extent BKW takes Delivery of the In-Lieu Water.

2.7. In-Lieu Water Charge Per Acre-Foot. BKW shall pay the Town $12.00 per acre-foot for In-Lieu Water Delivered from the Town's CAP water. If BKW fails to accept Delivery of In-Lieu Water ordered from CAWCD by or on BKW's behalf in accordance with Sections 2.3.1 and 3.3 of this Agreement, BKW shall nonetheless pay the Town the actual cost of such ordered but not Delivered In-Lieu Water, except as provided by Sections 2.6 (except to the extent BKW takes Delivery of the In-Lieu Water), 2.10, and 2.11 of this Agreement.

2.8. Delivery Systems and Other Costs. BKW shall be responsible for the design, construction and costs of any necessary delivery systems required to be constructed on property owned or controlled by BKW to accept Delivery of In-Lieu Water under the terms of this Agreement. BKW shall be solely responsible for any costs arising out of the use of the In-Lieu Water, the operation or maintenance of the delivery systems described in this paragraph or the construction, operation and maintenance of any treatment system or other delivery system. Nothing herein shall be construed as requiring BKW to construct, replace, operate or maintain any delivery system or portion thereof.

2.9. Maintenance of Records; Reporting. BKW shall maintain all records and accounts of deliveries, storage and uses of the In-Lieu Water under this Agreement. BKW shall provide the Town, annually, all records, accounts, reports, and plans necessary for the Town to file any reports or other documentation required under the terms of its Water Storage Permit. BKW shall file all reports and documentation required under the Facility Permit. Copies of all such records, accounts, reports, plans or other documents shall be made available to the Town.

2.10. Ineligible In-Lieu Water. Instead of the fee set forth in Section 2.7 of this Agreement, if ADWR determines that any In-Lieu Water Delivered was not used on a gallon-for-gallon basis in-lieu of groundwater under A.R.S. § 45-852.01(C)(2), BKW shall reimburse the Town $12.00 an acre foot for such In-Lieu Water from the Town's CAP water if such determination is based on ADWR's finding that the In-Lieu Water does not qualify as "water that cannot reasonably be used directly" under A.R.S. § 45-801.01(21)(b) or does not qualify for some other reason beyond BKW's control. If the Town fails to receive Long-Term Storage Credits due to reasons within BKW's control; BKW shall pay the Town the Town's actual cost for such ineligible Delivered In-Lieu Water.

2.11. Interruptibility of In-Lieu Water Deliveries; Curtailments. BKW acknowledges the interruptible nature of the In-Lieu Water supply to be furnished under this Agreement. The Town shall not be liable for any damages to BKW resulting from curtailment, interruptions, discontinuances or reductions in supply or undeliverable water that are beyond the control of the Town. In-Lieu Water deliveries curtailed, interrupted, discontinued or reduced by someone other than BKW shall still count toward BKW's obligation to order under Section 2.2 of this Agreement, and BKW shall only be obligated to pay the fees set forth in Section 2.7 of this Agreement for the amount of the actual In-Lieu Water Delivered due to the curtailment, interruption, discontinuance or reduction.

2.12. Interference with Contract. Nothing herein shall preclude BKW from entering into agreements to accept water and/or effluent for storage by others; provided, however, any such agreement executed after the effective date of this Agreement shall not adversely affect the Town's rights under this Agreement or cause BKW to otherwise act in any manner that is inconsistent with this Agreement or BKW's obligations under this Agreement.

3. Obligations of the Town

3.1. Water Storage Permit. The Town shall be responsible for maintaining a Water Storage Permit before any In-Lieu Water is Delivered to the Groundwater Savings Facility.

3.2. In-Lieu Water Order. By October 1 of each year, the Town shall order from CAWCD the In-Lieu Water the Town has elected to purchase pursuant to Section 2.3.2 for delivery to BKW the next year.

3.3. Delivery of In-Lieu Water. During the term of this Agreement, the Town shall order and arrange for the Delivery of a minimum of 500 acre-feet of In-Lieu Water to be Delivered through the CAP aqueduct to BKW. The Town shall provide assistance reasonably required to achieve Delivery of any ordered In-Lieu Water to BKW. By mutual agreement, the parties may agree to the Delivery of additional amounts of In-Lieu Water under the terms and conditions herein.

3.4. Quality of In-Lieu Water. The Town makes no representations or warranties as to the quality of any In-Lieu Water Delivered hereunder and is under no obligation to construct or furnish water treatment facilities to maintain or improve the quality of any In-Lieu Water Delivered pursuant to this Agreement.

3.5. Billing. Upon receipt of a monthly statement from CAWCD indicating the amount of In-Lieu Water billed to the Town, the Town shall issue a bill to BKW monthly for the In-Lieu Water to be Delivered under this Agreement. The bill will be for the actual amount of In-Lieu Water for which the Town has been billed by CAWCD. The amount billed shall be paid within 45 days from the date of the bill. Late payments shall incur interest at the rate of (a) 12% per annum from and after the date of delinquency of any such payment, or (b) 4% over Bank of America – Arizona's then applicable prime interest rate, whichever is lower.

3.6. Accounting. Within 30 days of the Town's receipt of its long-term storage account report from ADWR reflecting the In-Lieu Water stored pursuant to this Agreement, the Town shall prepare an accounting of all In-Lieu Water ordered and Delivered to and all payments for In-Lieu Water paid by BKW under Section 3.5 of this Agreement, adjusted as appropriate pursuant to Sections 2.6, 2.10, and 2.11 of this Agreement. BKW shall pay the Town within 10 days of receipt of said accounting any amounts due pursuant to this Agreement. The Town shall refund any overpayments made by BKW.

3.7. Accrual of Credits. Pursuant to its Water Storage Permit, the Town shall recover credits annually pursuant to its Recovery Well Permit or accrue Long-Term Storage Credits in its storage account LTS #70-411220 for the In-Lieu Water Delivered to BKW and may use them at its sole discretion. If BKW enters into agreements with other persons to store In-Lieu Water at the same Groundwater Savings Facility, the In-Lieu Water Delivered pursuant to this Agreement shall be deemed to have been Delivered and stored in the same order of priority and sequence as the execution of this Agreement as compared to any other agreements or amendments thereof entered into by BKW and other third parties.

3.8. Recovery of Credits. The Town may recover its Long-Term Storage Credits from any location and at any time as may be permitted by ADWR; provided, however, that such credits shall not be recovered from any lands controlled by BKW without the approval of BKW, and under such terms and conditions as may be mutually agreed to hereafter.

3.9. No Interference with BKW. Nothing in this Agreement shall be construed to require BKW to construct or replace any facility to take, deliver or recharge In-Lieu Water under this Agreement or to construct, replace, or operate any well or water related facility to recover water stored at the Groundwater Savings Facility. Nothing in this Agreement shall be construed as BKW's consent to the establishment of any recovery well or any recovery activity underlying BKW's Groundwater Savings Facility. Notwithstanding the foregoing, BKW shall be obligated to pay any costs incurred by the Town for In-Lieu Water as a result of BKW's failure to take Delivery of such In-Lieu Water due to BKW's decision not to construct or replace any facility necessary to take Delivery of such In-Lieu Water.

4. Term and Termination

4.1. Term. This Agreement shall become effective on the last party's signature date and shall be operative up to and including December 31, 2025, unless terminated sooner as provided by this Agreement.

4.2. The Town's Termination Right. The Town may terminate this Agreement without further obligation or consequence upon written notice to BKW if any of the following occurs:

4.2.1. The Town cannot secure In-Lieu Water, or

4.2.2. The Town is no longer eligible to obtain Long-Term Storage Credits, or

4.2.3. The Town determines that the In-Lieu Water Charge Per Acre-Foot payable by BKW pursuant to this Agreement (Section 2.7) does not match the market price based on the charge per acre-foot paid by other in-lieu water providers, or

4.2.4. The Town is for any reason regularly or routinely not receiving gallon-for-gallon credits for In-Lieu Water, whether the cause is within BKW's control or not; or

4.2.5. The Town determines that this Agreement is impracticable or not feasible due to regulatory or financial reasons, including but not limited to changes in ADWR's current calculation of the accrual of Long-Term Storage Credits for groundwater savings facilities.

4.3. BKW's Termination Right. Provided that BKW pays the Town for all costs incurred by the Town for the In-Lieu Water ordered under Sections 2.3.1 and 3.3 of this Agreement but not Delivered, BKW may terminate this Agreement without further obligation or consequence upon written notice to the Town if BKW is unable to utilize In-Lieu Water due to any of the following:

4.3.1. BKW determines that the In-Lieu Water Charge Per Acre-Foot payable by BKW pursuant to this Agreement (Section 2.7) does not match the market price based on the charge per acre-foot paid by other in-lieu water providers, or

4.3.2. The Town is for any reason regularly or routinely not receiving gallon-for-gallon credits for In-Lieu Water, whether the cause is within BKW's control or not; or

4.3.3. Regulatory changes, or

4.3.4. Unsuitability of water for irrigation, or

4.3.5. Weather conditions, or

4.3.6. Acts of nature or God, or

4.3.7. Flooding, or

4.3.8. Crop failure, or

4.3.9. Other natural disaster.

4.4. Insolvency or Bankruptcy. Notwithstanding any of the above, this Agreement shall automatically terminate if BKW becomes insolvent or initiates bankruptcy proceedings, loses its Facility Permit, or fails to meet its operating or Groundwater Savings Facility plan of operation.

5. Assignment

5.1. Assignment by the Town. The Town may assign all or a portion of its obligations and rights under this Agreement to any successors or assigns without prior written consent of BKW, provided that each such successor in interest or assignee is bound by each and every term and condition of this Agreement applicable to the Town.

5.2. Assignment of Long-Term Storage Credits. The Town, in its sole discretion, may assign its Long-Term Storage Credits without prior consent of BKW; provided, however, that the Town shall not assign credits for recovery of stored water underlying the exterior boundaries of the BKW's Groundwater Savings Facility without the written consent of BKW and upon terms and conditions acceptable to BKW.

5.3. Assignment by BKW. BKW may not assign all or a portion of its rights and obligations under this Agreement to any successors or assigns without the prior written consent of the Town and the Town shall not unreasonably withhold its consent. Further, BKW shall not sell or transfer the In-Lieu Water Delivered under this Agreement to others or allow the use by others of the In-Lieu Water outside the areas included in the Facility Permit without prior written consent of the Town. BKW may sell, transfer or allow others to use the In-Lieu Water within the area included in the Facility Permit.

6. Indemnification

6.1. BKW shall hold the United States, CAWCD, and the Town harmless from any damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with BKW's control, carriage, handling, use, disposal, or distribution of In-Lieu Water Delivered pursuant to this Agreement. Nothing in this Agreement shall make BKW responsible for or require BKW to indemnify anyone, including the Town, for any degradation of the aquifer associated with use of In-Lieu Water instead of Pumped Groundwater.

6.2. The Town shall hold BKW harmless from any damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the Town's control, carriage, handling, use, disposal, or distribution of In-Lieu Water Delivered pursuant to this Agreement. Nothing in this Agreement shall make the Town responsible for or require the Town to indemnify others, including BKW, for any degradation of the aquifer associated with the use of In-Lieu Water instead of Pumped Groundwater.

6.3. The Town and BKW shall work together to mitigate any costs incurred by either party for any In-Lieu Water ordered, but not Delivered due to the conditions set forth in Sections 2.6, 2.10, or 2.11.

7. Miscellaneous

7.1. Notices**.** Any notice, demand or request authorized or required by this Agreement shall be deemed to have been given when mailed, postage prepaid, or delivered as follows:

If to the Town:	Water Department Director Town of Marana 11555 W Civic Center Drive Marana, AZ 85653
If to BKW:	BKW Farms, Inc. P.O. Box 638 Marana, Arizona 85653-0638

7.2. Conflict of Interest. This Agreement is subject to the provisions of A.R.S. § 38-511, which provides for cancelation of contracts in certain instances involving conflicts of interest.

7.3. Governing Law. This Agreement and the rights, duties and obligations of the parties hereto shall be governed and construed in accordance with the substantive laws of the State of Arizona. The characterization hereunder, or by the Director of ADWR, of Pumped Groundwater as groundwater is not binding for any other purpose and is not intended for use and shall not be used as evidence of the validity, invalidity, nature, legal character, extent or relative priority of any water right or source of water in any administrative or judicial proceeding except one arising directly from the Director's determination pursuant to Chapter 3.1, Title 45, Arizona Revised Statutes, regarding whether In-Lieu Water Delivered pursuant to this Agreement was Delivered on a gallon-for-gallon substitute basis in lieu of groundwater that otherwise would have been pumped by recipient BKW from the Tucson Active Management Area.

7.4. Modifications. This Agreement shall only be amended or modified upon the written agreement of the parties; provided, however, that if there are changes in ADWR's current calculation of the accrual of Long-Term Storage Credits at groundwater savings facilities, the parties shall renegotiate the charge for In-Lieu Water payable under this Agreement.

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

The "Town":	"BKW":
TOWN OF MARANA, an Arizona municipal corporation	B.K.W. FARMS, INC., an Arizona corporation
Mayor Ed Honea	Brian K. Wong, President

ATTEST:

Cherry Lawson, Town Clerk

APPROVED AS TO FORM:

Frank Cassidy, Town Attorney

MARANA RESOLUTION NO. 2015-076

RELATING TO UTILITIES; APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH B.K.W. FARMS, INC. FOR IN LIEU WATER DELIVERIES AND STORAGE

WHEREAS B.K.W. Farms, Inc. ("BKW") possesses a Groundwater Savings Facility Permit from the Arizona Department of Water Resources authorizing the storage of 14,351 acre feet per year of Central Arizona Project ("CAP") water; and

WHEREAS the Town has a contract with the Central Arizona Water Conservation District (CAWCD) for the purchase of CAP water; and

WHEREAS the Town desires to maximize the use of its CAP water to reduce or offset the Town's use of groundwater within the Tucson Active Management Area; and

WHEREAS the proposed agreement with BKW for in lieu water deliveries and storage would allow the Town to receive in-lieu credit for CAP water delivered to BKW at its Groundwater Savings Facility, and allows BKW to use CAP water for its irrigation needs in order to reduce its groundwater use, in accordance with its Groundwater Savings Facility Permit; and

WHEREAS the Mayor and Council of the Town of Marana find that the best interests of Marana and its citizens are served by entering into this agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, that the agreement with B.K.W. Farms, Inc. for in lieu water deliveries and storage in substantially the form attached to this resolution 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 30th day of June, 2015.

TOWN OF MARANA 1 9 7 7 ARIZONA

Mayor Ed Honea

ATTEST:

Jocelyn C. Bronson, Town Clerk

APPROVED AS TO FORM:

Frank Cassidy, Town Attorney

AGREEMENT BETWEEN THE TOWN OF MARANA AND B.K.W. FARMS, INC. FOR IN-LIEU WATER DELIVERIES AND STORAGE

THIS AGREEMENT is made by and between the TOWN OF MARANA (the "Town"), an Arizona municipal corporation, and B.K.W. FARMS, INC. ("BKW"), an Arizona corporation, for the delivery and storage of In-Lieu Water at a Groundwater Savings Project pursuant to A.R.S. § 45-812.01, et seq.

Recitals

A. BKW possesses a Groundwater Savings Facility Permit from the Arizona Department of Water Resources authorizing the storage of 14,351 acre feet per year of Central Arizona Project ("CAP") water.

B. The Town is a party to a contract with the Central Arizona Water Conservation District (CAWCD) enabling it to purchase CAP water.

C. The Town desires to maximize the use of its CAP water to reduce or offset the Town's use of groundwater within the Tucson Active Management Area.

D. The Town desires to deliver CAP water to BKW at its Groundwater Savings Facility for which the Town shall acquire a Water Storage Permit.

E. BKW desires to use CAP water for its irrigation needs in order to reduce its groundwater use, in accordance with its Groundwater Savings Facility Permit.

F. BKW desires to purchase CAP water from the Town and the Town desires to sell BKW such CAP water under the terms and conditions of this Agreement.

Agreement

NOW, THEREFORE, for and in consideration of, the mutual covenants set forth in this Agreement, the Town and BKW agree as follows:

1. Definitions. The following terms have the following meanings for purposes of this Agreement:

"ADWR" shall mean the Arizona Department of Water Resources.

"CAP water" shall mean the Central Arizona Project water that the Town has the legal right to purchase and use.

"CAWCD" shall mean the Central Arizona Water Conservation District.

"Delivery" or "Delivered" shall mean CAP water purchased by the Town, made available in the CAWCD canal at the designated point specified by BKW and received by BKW.

"Facility Permit" shall mean Permit No. 72-538133.0005 (or the active Permit Number subsequent to modification) issued by ADWR to BKW to operate a groundwater savings facility pursuant to A.R.S. § 45-801.01 et seq.

"Groundwater Savings Facility" shall mean a groundwater savings facility pursuant to A.R.S. § 45-812.01, for which a Facility Permit has been issued.

"In-Lieu Water" shall mean CAP water as defined in A.R.S. § 45-802.01(9), purchased by the Town for Delivery to BKW under this Agreement.

"Pumped Groundwater" shall mean water withdrawn from any of the wells listed in the plan of operation incorporated in the Facility Permit and designated by the ADWR as pumping groundwater for the purpose of Title 45 of A.R.S., Chapter 3.1.

"Recovery Well Permit" shall mean Permit No. 74-211278, issued by ADWR to the Town for recovery of water stored in a storage facility, pursuant to a storage permit.

"Water Storage Permit" shall mean the permit issued by ADWR to the Town for storage of In-Lieu Water at the Groundwater Savings Facility pursuant to A.R.S. § 45-801.01, et seq.

"Long-Term Storage Credits" shall mean those credits accrued by the Town's Account LTS #70-411220 from In-Lieu Water stored pursuant to this Agreement, as determined by the requirements of A.R.S. § 45-852.01.

2. Obligations of BKW

2.1. Purpose of Use. BKW shall use the In-Lieu Water Delivered under this Agreement for agricultural irrigation, to replace, on a gallon-for-gallon basis, pumped groundwater within the area designated on the Facility Permit.

2.2. Quantity of In-Lieu Water. Pursuant to applicable Facility and Water Storage Permits issued by the ADWR, BKW shall request that the Town order a minimum of 500 acre feet of In-Lieu Water from the Town's CAP water during the term of this Agreement, provided, however that if BKW desires to order additional of CAP water, the Town may do so upon the mutual agreement of the Town and BKW. BKW shall take Delivery of any and all In-Lieu Water ordered by the Town on BKW's behalf.

2.3. Notice of Order.

2.3.1. Annual. On or before July 15 of each year, BKW shall submit a preliminary order to the Town for In-Lieu Water for the following year. The order shall indicate, by month, the number of acre-feet of In-Lieu Water requested by BKW to be Delivered for the ensuing 12-month period.

2.3.2. Town Recharge Quantification. On or before September 1 of each year, the Town shall notify BKW, in writing, of the amount of In-Lieu Water the Town has elected to purchase for delivery to BKW in the following calendar year. Concurrently with its order, the Town shall notify BKW whether it has elected to have CAP water delivered pursuant to its contract with CAWCD.

2.4. Monthly Meter Reading. All water Delivered from the water supply system shall be measured with equipment furnished and installed by BKW and operated and maintained by

BKW in accordance with ADWR standards and requirements. The results of such measurement shall be subject to monitoring and verification, in cooperation with BKW, from time to time by the Town.

2.5. Points of Delivery. BKW shall take Delivery of the In-Lieu Water at such points along the CAP canal as may be agreed upon in writing by CAWCD and BKW.

2.6. Water Quality Standard. BKW shall be responsible for meeting all applicable federal, state, or local water quality standards for its use of the In-Lieu Water and for reasons beyond BKW's control may decline to take Delivery of any In-Lieu Water BKW determines to be unsuitable for irrigation use under said standards. In-Lieu Water determined to be unsuitable for irrigation shall be included in calculating BKW's compliance with the minimum order requirement of Section 2.2 of this Agreement, but shall not be subject to the payment obligation of Sections 2.7 and 3.5 of this Agreement, except to the extent BKW takes Delivery of the In-Lieu Water.

2.7. In-Lieu Water Charge Per Acre-Foot. BKW shall pay the Town $12.00 per acre-foot for In-Lieu Water Delivered from the Town's CAP water. If BKW fails to accept Delivery of In-Lieu Water ordered from CAWCD by or on BKW's behalf in accordance with Sections 2.3.1 and 3.3 of this Agreement, BKW shall nonetheless pay the Town the actual cost of such ordered but not Delivered In-Lieu Water, except as provided by Sections 2.6 (except to the extent BKW takes Delivery of the In-Lieu Water), 2.10, and 2.11 of this Agreement.

2.8. Delivery Systems and Other Costs. BKW shall be responsible for the design, construction and costs of any necessary delivery systems required to be constructed on property owned or controlled by BKW to accept Delivery of In-Lieu Water under the terms of this Agreement. BKW shall be solely responsible for any costs arising out of the use of the In-Lieu Water, the operation or maintenance of the delivery systems described in this paragraph or the construction, operation and maintenance of any treatment system or other delivery system. Nothing herein shall be construed as requiring BKW to construct, replace, operate or maintain any delivery system or portion thereof.

2.9. Maintain of Records; Reporting. BKW shall maintain all records and accounts of deliveries, storage and uses of the In-Lieu Water under this Agreement. BKW shall provide the Town, annually, all records, accounts, reports, and plans necessary for the Town to file any reports or other documentation required under the terms of its Water Storage Permit. BKW shall file all reports and documentation required under the Facility Permit. Copies of all such records, accounts, reports, plans or other documents shall be made available to the Town.

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2.11. Interruptibility of In-Lieu Water Deliveries; Curtailments. BKW acknowledges the interruptible nature of the In-Lieu Water supply to be furnished under this Agreement. The Town shall not be liable for any damages to BKW resulting from curtailment, interruptions, discontinuances or reductions in supply or undeliverable water that are beyond the control of the Town. In-Lieu Water deliveries curtailed, interrupted, discontinued or reduced by someone other than BKW shall still count toward BKW's obligation to order under Section 2.2 of this Agreement, and BKW shall only be obligated to pay the fees set forth in Section 2.7 of this Agreement for the amount of the actual In-Lieu Water Delivered due to the curtailment, interruption, discontinuance or reduction.

2.12. Interference with Contract. Nothing herein shall preclude BKW from entering into agreements to accept water and/or effluent for storage by others; provided, however, any such agreement executed after the effective date of this Agreement shall not adversely affect the Town's rights under this Agreement or cause BKW to otherwise act in any manner that is inconsistent with this Agreement or BKW's obligations under this Agreement.

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3.2. In-Lieu Water Order. By October 1 of each year, the Town shall order from CAWCD the In-Lieu Water the Town has elected to purchase pursuant to Section 2.3.2 for delivery to BKW the next year.

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3.4. Quality of In-Lieu Water. The Town makes no representations or warranties as to the quality of any In-Lieu Water Delivered hereunder and is under no obligation to construct or furnish water treatment facilities to maintain or improve the quality of any In-Lieu Water Delivered pursuant to this Agreement.

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3.6. Accounting. Within 30 days of the Town's receipt of its long-term storage account report from ADWR reflecting the In-Lieu Water stored pursuant to this Agreement, the Town shall prepare an accounting of all In-Lieu Water ordered and Delivered to and all payments for In-Lieu Water paid by BKW under Section 3.5 of this Agreement, adjusted as appropriate pursuant to Sections 2.6, 2.10, and 2.11 of this Agreement. BKW shall pay the Town within 10 days of receipt of said accounting any amounts due pursuant to this Agreement. The Town shall refund any overpayments made by BKW.

3.7. Accrual of Credits. Pursuant to its Water Storage Permit, the Town shall recover credits annually pursuant to its Recovery Well Permit or accrue Long-Term Storage Credits in its storage account LTS #70-411220 for the In-Lieu Water Delivered to BKW and may use them at its sole discretion. If BKW enters into agreements with other persons to store In-Lieu Water at the same Groundwater Savings Facility, the In-Lieu Water Delivered pursuant to this Agreement shall be deemed to have been Delivered and stored in the same order of priority and sequence as the execution of this Agreement as compared to any other agreements or amendments thereof entered into by BKW and other third parties.

3.8. Recovery of Credits. The Town may recover its Long-Term Storage Credits from any location and at any time as may be permitted by ADWR; provided, however, that such credits shall not be recovered from any lands controlled by BKW without the approval of BKW, and under such terms and conditions as may be mutually agreed to hereafter.

3.9. No Interference with BKW. Nothing in this Agreement shall be construed to require BKW to construct or replace any facility to take, deliver or recharge In-Lieu Water under this Agreement or to construct, replace, or operate any well or water related facility to recover water stored at the Groundwater Savings Facility. Nothing in this Agreement shall be construed as BKW's consent to the establishment of any recovery well or any recovery activity underlying BKW's Groundwater Savings Facility. Notwithstanding the foregoing, BKW shall be obligated to pay any costs incurred by the Town for In-Lieu Water as a result of BKW's failure to take Delivery of such In-Lieu Water due to BKW's decision not to construct or replace any facility necessary to take Delivery of such In-Lieu Water.

4. Term and Termination

4.1. Term. This Agreement shall become effective on the last party's signature date and shall be operative up to and including December 31, 2020, unless terminated sooner as provided by this Agreement.

4.2. The Town's Termination Right. The Town may terminate this Agreement without further obligation or consequence upon written notice to BKW if any of the following occurs:

4.2.1. The Town cannot secure In-Lieu Water, or

4.2.2. The Town is no longer eligible to obtain Long-Term Storage Credits, or

4.2.3. The Town determines that the In-Lieu Water Charge Per Acre-Foot payable by BKW pursuant to this Agreement (Section 2.7) does not match the market price based on the charge per acre-foot paid by other in-lieu water providers, or

4.2.4. The Town is for any reason regularly or routinely not receiving gallon-for-gallon credits for In-Lieu Water, whether the cause is within BKW's control or not; or

4.2.5. The Town determines that this Agreement is impracticable or not feasible due to regulatory or financial reasons, including but not limited to changes in ADWR's current calculation of the accrual of Long-Term Storage Credits for groundwater savings facilities.

4.3. BKW's Termination Right. Provided that BKW pays the Town for all costs incurred by the Town for the In-Lieu Water ordered under Sections 2.3.1 and 3.3 of this Agreement but not Delivered, BKW may terminate this Agreement without further obligation or consequence upon written notice to the Town if BKW is unable to utilize In-Lieu Water due to any of the following:

4.3.1. BKW determines that the In-Lieu Water Charge Per Acre-Foot payable by BKW pursuant to this Agreement (Section 2.7) does not match the market price based on the charge per acre-foot paid by other in-lieu water providers, or

4.3.2. The Town is for any reason regularly or routinely not receiving gallon-for-gallon credits for In-Lieu Water, whether the cause is within BKW's control or not; or

4.3.3. Regulatory changes, or

4.3.4. Unsuitability of water for irrigation, or

4.3.5. Weather conditions, or

4.3.6. Acts of nature or God, or

4.3.7. Flooding, or

4.3.8. Crop failure, or

4.3.9. Other natural disaster.

4.4. Insolvency or Bankruptcy. Notwithstanding any of the above, this Agreement shall automatically terminate if BKW becomes insolvent or initiates bankruptcy proceedings, loses its Facility Permit, or fails to meet its operating or Groundwater Savings Facility plan of operation.

5. Assignment

5.1. Assignment by the Town. The Town may assign all or a portion of its obligations and rights under this Agreement to any successors or assigns without prior written consent of BKW, provided that each such successor in interest or assignee is bound by each and every term and condition of this Agreement applicable to the Town.

5.2. Assignment of Long-Term Storage Credits. The Town, in its sole discretion, may assign its Long-Term Storage Credits without prior consent of BKW; provided, however, that the Town shall not assign credits for recovery of stored water underlying the exterior boundaries of the BKW's Groundwater Savings Facility without the written consent of BKW and upon terms and conditions acceptable to BKW.

5.3. Assignment by BKW. BKW may not assign all or a portion of its rights and obligations under this Agreement to any successors or assigns without the prior written consent of the Town and the Town shall not unreasonably withhold its consent. Further, BKW shall not sell or transfer the In-Lieu Water Delivered under this Agreement to others or allow the use by others of the In-Lieu Water outside the areas included in the Facility Permit without prior written consent of the Town. BKW may sell, transfer or allow others to use the In-Lieu Water within the area included in the Facility Permit.

6. Indemnification

6.1. BKW shall hold the United States, CAWCD, and the Town harmless from any damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with BKW's control, carriage, handling, use, disposal, or distribution of In-Lieu Water Delivered pursuant to this Agreement. Nothing in this Agreement shall make BKW responsible for or require BKW to indemnify anyone, including the Town, for any degradation of the aquifer associated with use of In-Lieu Water instead of Pumped Groundwater.

6.2. The Town shall hold BKW harmless from any damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the Town's control, carriage, handling, use, disposal, or distribution of In-Lieu Water Delivered pursuant to this Agreement. Nothing in this Agreement shall make the Town responsible for or require the Town to indemnify others, including BKW, for any degradation of the aquifer associated with the use of In-Lieu Water instead of Pumped Groundwater.

6.3. The Town and BKW shall work together to mitigate any costs incurred by either party for any In-Lieu Water ordered, but not Delivered due to the conditions set forth in Sections 2.6, 2.10, or 2.11.

7. Miscellaneous

7.1. Notices. Any notice, demand or request authorized or required by this Agreement shall be deemed to have been given when mailed, postage prepaid, or delivered as follows:

If to the Town:	Water Department Director Town of Marana 5100 W. Ina Road Marana, AZ 85743
If to BKW:	BKW Farms, Inc. P.O. Box 638 Marana, Arizona 85653-0638

7.2. Conflict of Interest. This Agreement is subject to the provisions of A.R.S. § 38-511, which provides for cancelation of contracts in certain instances involving conflicts of interest.

7.3. Governing Law. This Agreement and the rights, duties and obligations of the parties hereto shall be governed and construed in accordance with the substantive laws of the State of Arizona. The characterization hereunder, or by the Director of ADWR, of Pumped Groundwater as groundwater is not binding for any other purpose and is not intended for use and shall not be used as evidence of the validity, invalidity, nature, legal character, extent or relative priority of any water right or source of water in any administrative or judicial proceeding except one arising directly from the Director's determination pursuant to Chapter 3.1, Title 45, Arizona Revised Statutes, regarding whether In-Lieu Water Delivered pursuant to this Agreement was Delivered on a gallon-for-gallon substitute basis in lieu of groundwater that otherwise would have been pumped by recipient BKW from the Tucson Active Management Area.

7.4. Modifications. This Agreement shall only be amended or modified upon the written agreement of the parties; provided, however, that if there are changes in ADWR's current calculation of the accrual of Long-Term Storage Credits at groundwater savings facilities, the parties shall renegotiate the charge for In-Lieu Water payable under this Agreement.

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

The "Town":	"BKW":
TOWN OF MARANA, an Arizona municipal corporation	B.K.W. FARMS, INC., an Arizona corporation
Mayor Ed Honea	Brian K. Wong, President

ATTEST:

Jocelyn C. Bronson, Town Clerk

APPROVED AS TO FORM:

Frank Cassidy, Town Attorney

Council-Regular Meeting **C3**

Meeting Date: 09/01/2020

To: Mayor and Council

Submitted For: Scott Schladweiler, Water Director

From: Asia Philbin, Water Resources Coordinator

Date: September 1, 2020

Strategic Plan Focus Area:
Community

Subject: Resolution No. 2020-093: Relating to Utilities; approving and authorizing the Water Director to sign a Joint Funding Agreement with the U.S. Department of the Interior U.S. Geological Survey for Aquifer Storage Change and Land Surface Elevation Change Monitoring from October 1, 2020 through June 30, 2024 (Scott Schladweiler)

Discussion:

Since 2003, Marana has been one of several regional partners with the United States Geological Survey (USGS) in the study of land subsidence and aquifer storage projects in the region. The study has involved monitoring changes at over 100 benchmarks within the Tucson Active Management Area to monitor changes in aquifer storage and land surface elevations. Data is used to improve the understanding of the aquifer systems and to improve groundwater flow models used in water resource planning. Land-surface elevation change monitoring provides the distribution and magnitude of differential subsidence, which can in turn help to guide the design and implementation of maintenance and monitoring schedules, selection of monitoring methods, and the design and construction of future infrastructure.

The proposed joint funding agreement will continue Marana's participation at a level similar to past support (Resolution No. 2017-068) and will increase the capacity for monitoring in the Marana area. Additional partners include the Arizona Department of Water Resources, Pima County and the City of Tucson.

Financial Impact:

Fiscal Year: FY21-24

Budgeted Y/N: Y
Amount: $17,717

The amount above shows the total contracted amount for the four-year term. The amount of $4,430 due in FY2021 has been included in the department's budget.

Staff Recommendation:

Staff recommends adoption of Resolution No. 2020-093, approving and authorizing the Water Director to execute a Joint Funding Agreement with the U.S. Department of the Interior U.S. Geological Survey for Water Resources Investigations, during the period October 1, 2020 through June 30, 2024.

Suggested Motion:

I move to adopt Marana Resolution No. 2020-093, approving and authorizing the Water Director to execute a Joint Funding Agreement with the U.S. Department of the Interior U.S. Geological Survey for Water Resources Investigations, during the period October 1, 2020 through June 30, 2024.

Attachments

Resolution No. 2020-093
USGS Joint Funding Agreement

MARANA RESOLUTION NO. 2020-093

RELATING TO UTILITIES; APPROVING AND AUTHORIZING THE WATER DIRECTOR TO SIGN A JOINT FUNDING AGREEMENT WITH THE U.S. DEPARTMENT OF THE INTERIOR U.S. GEOLOGICAL SURVEY FOR AQUIFER STORAGE CHANGE AND LAND SURFACE ELEVATION CHANGE MONITORING FROM OCTOBER 1, 2020 THROUGH JUNE 30, 2024

WHEREAS the U.S. Geological Service, the Town of Marana, and other governmental entities have since 2003 been jointly funding a study of changes in aquifer storage and land-surface elevation in the Tucson Active Management Area; and

WHEREAS the land subsidence and aquifer storage project provides information needed for the development of water resources and land planning.

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

SECTION 1. The Joint Funding Agreement between the Town of Marana and the U.S. Department of the Interior U.S. Geological Survey in substantially the form included in the agenda materials accompanying this resolution is hereby approved, and the Water Director is hereby authorized to sign it on the Town's behalf.

SECTION 2. The various Town officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this resolution.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, ARIZONA, this 1st day of September, 2020.

Mayor Ed Honea

ATTEST:

Cherry L. Lawson, Town Clerk

APPROVED AS TO FORM:

Frank Cassidy, Town Attorney

United States Department of the Interior

U.S. GEOLOGICAL SURVEY
Arizona Water Science Center
520 North Park
Tucson, AZ 85719

August 3, 2020

Ms. Asia Philbin
Water Resources Coordinator
Town of Marana
11555 W. Civic Center Drive
Marana, AZ 85653

Dear Ms. Philbin:

Enclosed is a signed original of our standard joint-funding agreement for the Aquifer-Storage Change and Land-Surface Elevation Change Monitoring in the Tucson Active Management Area project, during the period October 1, 2020 through June 30, 2024, in the amount of $17,717 from your agency. U.S. Geological Survey contributions for this agreement are $12,724 for a combined total of $30,441. Please sign and return one fully-executed original to Autumn Henson at the address above.

Federal law requires that we have a signed agreement before we start or continue work. Please return the signed agreement by **October 1, 2020**. If, for any reason, the agreement cannot be signed and returned by the date shown above, please contact Elizabeth (Libby) Kahler by phone number (520) 670-3335 or email ekahler@usgs.gov to make alternative arrangements.

This is a fixed cost agreement to be billed quarterly via Down Payment Request (automated Form DI-1040). Please allow 30-days from the end of the billing period for issuance of the bill. If you experience any problems with your invoice(s), please contact Alexis Lopez at phone number (520) 670-3339 or email at aslopez@usgs.gov.

The results of all work performed under this agreement will be available for publication by the U.S. Geological Survey. We look forward to continuing this and future cooperative efforts in these mutually beneficial water resources studies.

Sincerely,

JAMES LEENHOUTS
Digitally signed by JAMES LEENHOUTS
Date: 2020.08.03 16:09:33 -07'00'

James M Leenhouts
Director

Enclosure
21ZFJFA0900 (2)

Form 9-1366
(May 2018)

U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement
FOR
Water Resource Investigations

Customer #: 6000000832
Agreement #: 21ZFJFA0900
Project #: ZF009EF
TIN #: 86-3301775

Fixed Cost Agreement YES[X] NO[ ]

THIS AGREEMENT is entered into as of the October 1, 2020, by the U.S. GEOLOGICAL SURVEY, Arizona Water Science Center, UNITED STATES DEPARTMENT OF THE INTERIOR, party of the first part, and the Town of Marana party of the second part.

1. The parties hereto agree that subject to the availability of appropriations and in accordance with their respective authorities there shall be maintained in cooperation Water Resource Investigations (per attachment), herein called the program. The USGS legal authority is 43 USC 36C; 43 USC 50, and 43 USC 50b.

2. The following amounts shall be contributed to cover all of the cost of the necessary field and analytical work directly related to this program. 2(b) include In-Kind-Services in the amount of $0.00

(a) $12,724 by the party of the first part during the period October 1, 2020 to June 30, 2024

(b) $17,717 by the party of the second part during the period October 1, 2020 to June 30, 2024

(c) Contributions are provided by the party of the first part through other USGS regional or national programs, in the amount of:

Description of the USGS regional/national program:

(d) Additional or reduced amounts by each party during the above period or succeeding periods as may be determined by mutual agreement and set forth in an exchange of letters between the parties.

(e) The performance period may be changed by mutual agreement and set forth in an exchange of letters between the parties.

3. The costs of this program may be paid by either party in conformity with the laws and regulations respectively governing each party.

4. The field and analytical work pertaining to this program shall be under the direction of or subject to periodic review by an authorized representative of the party of the first part.

5. The areas to be included in the program shall be determined by mutual agreement between the parties hereto or their authorized representatives. The methods employed in the field and office shall be those adopted by the party of the first part to insure the required standards of accuracy subject to modification by mutual agreement.

6. During the course of this program, all field and analytical work of either party pertaining to this program shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner, either party may terminate this agreement upon 60 days written notice to the other party.

7. The original records resulting from this program will be deposited in the office of origin of those records. Upon request, copies of the original records will be provided to the office of the other party.

8. The maps, records or reports resulting from this program shall be made available to the public as promptly as possible. The maps, records or reports normally will be published by the party of the first part. However, the party of the second part reserves the right to publish the results of this program, and if already published by the party of the first part shall, upon request, be furnished by the party of the first part, at cost, impressions suitable for purposes of reproduction similar to that for which the original copy was prepared. The maps, records or reports published by either party shall contain a statement of the cooperative relations between the parties. The Parties acknowledge that scientific information and data developed as a result of the Scope of Work (SOW) are subject to applicable USGS review, approval, and release requirements, which are available on the USGS Fundamental Science Practices website (https://www.usgs.gov/about/organization/science-support/science-quality-and-integrity/fundamental-science-practices).

9. Billing for this agreement will be rendered **quarterly**. Invoices not paid within 60 days from the billing date will bear Interest, Penalties, and Administrative cost at the annual rate pursuant the Debt Collection Act of 1982, (codified at 31 U.S.C. § 3717) established by the U.S. Treasury.

USGS Technical Point of Contact

Name: Elizabeth (Libby) Kahler
Hydrologist
Address: 520 N. Park Ave
Tucson, AZ 85719
Telephone: (520) 670-3335
Fax:
Email: ekahler@usgs.gov

Customer Technical Point of Contact

Name: Asia Philbin
Water Resources Coordinator
Address: 11555 W. Civic Center Drive
Marana, AZ 85653
Telephone: (520) 382-1900
Fax:
Email: aphilbin@maranaaz.gov

USGS Billing Point of Contact

Name: Alexis Lopez
Budget Technician
Address: 520 N. Park Ave
Tucson, AZ 85719
Telephone: (520) 670-3339
Fax:
Email: aslopez@usgs.gov

Customer Billing Point of Contact

Name: Asia Philbin
Water Resources Coordinator
Address: 11555 W. Civic Center Drive
Marana, AZ 85653
Telephone: (520) 382-1900
Fax:
Email: aphilbin@maranaaz.gov

U.S. Geological Survey
United States
Department of Interior

Signature

By JAMES LEENHOUTS Digitally signed by JAMES LEENHOUTS Date: 2020.08.03 16:10:13 -07'00' **Date:**
Name: James M Leenhouts
Title: Director

Town of Marana

Signatures

By_____ **Date:** _____
Name:
Title:

By_____ **Date:** _____
Name:
Title:

By_____ **Date:** _____
Name:
Title:

Aquifer-Storage Change and Land-Surface Elevation Change Monitoring in the Tucson Active Management Area, July 1, 2020 to June 30, 2024

Prepared by: Libby Kahler, U.S. Geological Survey, AZ Water Science Center
Date: July 23, 2020

Introduction

The U.S. Geological Survey (USGS) has been monitoring aquifer-storage change within the Tucson Active Management Area (AMA) since the late 1990s, in cooperation with local and state agencies. The extent of monitoring has varied through time, depending on the number of active cooperators in each funding cycle and their interests, but on average has involved monitoring changes in gravity at over 100 benchmarks in the Tucson AMA, annually to biannually. A number of reports have been published based on data collected through this project, including the most recent report with results from 2003 to 2016 (Carruth and others, 2018). Results from that report for the monitoring period from 2014 to 2016 indicate that basin-wide positive aquifer storage change occurred for the first time in the Tucson Basin and continues to occur in Avra Valley (fig. 1). Data collected between 2016 and 2018 however indicate negative storage change to the south of the Tucson Basin (fig. 2), and continuing net storage loss from the Tucson Basin.

Over the course of this project, development in the Tucson AMA has led to a loss of monitoring stations. Continued monitoring will require construction of stations to replace those lost, and to increase the resolution of the network in critical areas. Stations should also be added in areas of interest to project cooperators, including at new artificial recharge facilities, groundwater savings facilities, or locations where development and increased pumping may be occurring. Additionally, the highly variable nature of natural recharge resulting from precipitation continues to be of interest and increasing the number of stations along ephemeral channels would aid in identifying storage changes due to such infiltration. This proposal includes construction of additional station to capture changes occurring in these areas and increase the density of stations across the whole monitored area.

This project has relied on two LaCoste and Romberg D-type relative gravimeters for relative data collection since the project beginning. These meters are more than thirty years old and are less stable than newer relative gravimeters, resulting in longer collections times per measurement, and increased personnel hours to complete a network survey. A ZLS Burris relative gravimeter that belongs to the USGS Southwest Gravity Program (SGP) is currently being utilized, to increase the efficiency of data collection, but this limits the ability of other SGP projects to collect data for the duration of the Tucson gravity surveys. For this reason, the SGP is planning on purchasing a new relative gravimeter, to help support both this project and all other current gravity monitoring projects. A portion of the cost for this new equipment is factored into the budget for this funding cycle, proportional to the amount of usage of that equipment by this project.

Finally, the funding cycle for this project has historically been three years but is proposed here as four years. The timing of surveys in this proposal includes surveys of the full network every other year, beginning in the first year, and partial surveys at critical locations in years that full surveys are not completed. Changing the length of the project to four-year intervals allows enough time after the last full survey to publish and communicate results to cooperators, and discuss future needs the project can address.

This proposal outlines a new scope of work for continued and expanded monitoring of aquifer-storage change and continued monitoring of land-surface elevation change in the Tucson AMA for the period of October 10, 2020 through June 30, 2024.

Problem

Aquifer-Storage Change

The volume of water artificially recharged or pumped from an aquifer is easily measured. Estimations based on indirect methods must be used for other groundwater-budget components, including withdrawals by small capacity (<35 gallon per minute) wells, evapotranspiration, groundwater underflow from adjacent basins, incidental recharge from effluent recharge and other sources, and natural recharge from many sources including mountain fronts and ephemeral streams. This estimation of several groundwater-budget components results in large uncertainty in the groundwater budget. The greatest uncertainty can be attributed to a lack of information about natural recharge and groundwater-storage change. Estimates of the natural recharge rates are highly uncertain and depend on accurate measurements of annual precipitation and streamflow, which have high interannual variation (Pool, 2005). Estimates of groundwater-storage change are also highly uncertain when computed as residuals in the water budget equations because the storage term includes the cumulative uncertainty of all other components.

Water levels in wells have been monitored to estimate aquifer-storage changes. However, use of water-level variations entails significant assumptions about the hydraulic properties of the aquifer system. One difficulty is the heterogeneity of hydrologic properties of the aquifer; the alluvial sediments of the aquifer vary in lithology and texture, both laterally and with depth. Thus, hydraulic properties estimated from water levels in individual wells may not adequately represent aquifer characteristics at distances away from the well. A second difficulty is monitor- well design; particularly when water levels are measured in deep wells that tap multiple aquifers, most of which are confined and have accordingly low storage properties. Water levels in these deep wells open to multiple aquifers represent a composite of water levels from several aquifer units. When these composite water levels are used to estimate storage changes, the hydrologic properties used in the calculation typically do not reflect the range of aquifer materials over which the well is screened. Water-level responses also depend on the geometry and lithology of the hydrogeologic units that constitute the aquifer system that wells sample. This information often is incomplete, or uncertain. Because of these complexities and requisite assumptions, use of water-level variations as the only indicators of storage change can be uncertain, and cannot be reliably extrapolated beyond the well location.

Aquifer-storage can be monitored by measuring changes in gravity alone. As water is added or removed from the aquifer, there is a change in mass and a corresponding measurable change in gravity. The repeat microgravity method, developed primarily at the University of Arizona and the U.S. Geological Survey (USGS) Arizona Water Science Center, is an established method for monitoring aquifer-storage changes in alluvial basins. The method has successfully been used to track the dispersal of water recharged through the channel of an ephemeral stream in Tucson, Arizona (Pool, 1997). Monitoring of gravity and groundwater levels in the Tucson Basin has shown that large changes in groundwater storage, as much as several feet of water, have occurred that were not reflected in comparable water-level changes (Carruth and others, 2018). Gravity monitoring of a spreading-basin artificial recharge facility in Avra Valley, Arizona, showed preferential groundwater flow, as storage accumulated to the west of three recharge basins but not to the east (Kennedy, 2016). Also at that facility, gravity data proved useful for identifying hydraulic conductivity and storage parameters in a MODFLOW groundwater model (Kennedy and others, 2016). The method is presently in use by the USGS Southwest Gravity Program (http://go.usa.gov/xqBnQ) for several projects across New Mexico, Arizona, and California.

Land-Surface Elevation Change

Permanent land subsidence can occur in alluvial basins when water is removed from aquifer systems (Galloway and others, 1999). Aquifer systems in unconsolidated rocks such as those in the Tucson AMA are supported by the granular skeleton and the pore-fluid pressure. When groundwater is withdrawn and the pore-fluid pressure is reduced, the granular skeleton is compressed, causing some lowering of the land surface. Both the aquifers (sand and gravel) and aquitards (clay and silt) of aquifer systems are deformed as a result of changes to the pore-fluid pressure and skeleton, but to different degrees. Most permanent subsidence occurs due to the irreversible compression of aquitards during the slow process of aquitard drainage (over a number of years).

Permanent subsidence, seasonal elastic deformation, and uplift have been observed in Tucson Basin and Avra Valley. Rates of compaction in Tucson Basin in relation to water-level decline have been less than 0.5 foot per 100 feet of water-level decline. Comparison with the Eloy and Phoenix areas (greater than 1 foot per 100 feet of decline) suggests that compaction to date in the Tucson region has been largely elastic and recoverable. Compaction and land subsidence can be slowed or stopped, and in areas having appropriate geologic conditions, reversed to some extent by eliminating groundwater withdrawals or through artificial recharge.

The City of Tucson has increased delivery of recharged, recovered, and blended Central Arizona Project (CAP) water, while reducing pumping from the Central Well Field. This appears to have reduced or stopped water-level declines an induced recovery in most areas. However, subsidence due to previous levels of pumping and maximum water-level declines will continue in some areas into the future. Continued monitoring of areas having the greatest potential for subsidence will provide information that resource managers can use in the development and implementation of mitigation efforts.

Objectives

The objectives of this project are to monitor aquifer-storage change and land-surface elevation change within the Tucson AMA. The updates to the network proposed here would enable better estimates of storage change occurring in sensitive areas, such as the southern portion of the Tucson Basin. Additional stations near ephemeral channels and in the Catalina foothills would increase the resolution of storage changes that may be related to variations in natural recharge.

Data releases published after every full survey (every other year) will be used to produce an interpolated map of storage changes across the monitored area, which will be presented to the cooperators and the community and be made publicly available online.

Relevance and Benefits

This study directly contributes to the USGS Water Science Strategy goal to "Provide society the information it needs regarding the amount…of water in all components of the water cycle at high temporal and spatial resolution, nationwide" with the specific objective of advancing hydrologic monitoring networks and techniques (Evenson and others, 2013).

Aquifer-storage monitoring

Microgravity surveys are an efficient, noninvasive means of measuring changes in the amount of groundwater in Southwestern alluvial basins. Monitoring changes in groundwater storage in the Tucson AMA is a means to monitor the status of the basin aquifers and to track the progress toward the statutory goals of the 1980 Groundwater Management Act. This will be of value as water-supply entities in eastern Pima County address needs to manage and augment groundwater resources.

Water-level data entail assumptions about aquifer and well properties; thus, monitoring of gravity changes as pumping decreases in the basin currently is the only way to measure attendant changes in the amount of water in the aquifer and determine if and when aquifer recovery is occurring. This information conceivably will serve as part of a basis for decisions regarding distribution of groundwater withdrawals to help in mitigating land subsidence or aquifer storage losses in particular areas.

Aquifer-storage change is one of the three components of the groundwater budget. The other two are inflow to and outflow from the aquifer system. Measurement of aquifer-storage change and measures and estimates of outflow enable better estimation of recharge and development of a more reliable groundwater budget for the basin. Measures of aquifer-storage change increase the reliability and utility of groundwater flow and management models. Use of storage-change data to improve model calibration enables additional reduction in the uncertainty of model results. The improved understanding of the movement, distribution, volume, and availability of ground water, to which storage monitoring contributes, enables more effective water management in the Tucson AMA and in other areas of the State.

Surveys in the Tucson AMA since 1998 have provided previously unavailable data quantifying recharge and storage changes. For example, the results of aquifer-storage change monitoring in the Tucson Basin between 1998 and 2012 indicate that storage change and recharge can vary considerably from year to year (Carruth and others, 2018). It is possible that just a few years may account for the majority of recharge to southwestern aquifers for an entire decade or more. These data are being used to improve the understanding of the aquifer systems and to improve groundwater flow models that will be used in resource planning.

Land-surface elevation change monitoring

Some types of infrastructure are more sensitive to changes in land slope than other types. Sewer systems are largely gravity driven and are designed and constructed at slopes of about 2 feet per 1,000 feet. Small slope changes can cause operational problems under some conditions. Accurate determination of the rates, amounts, and distribution of land subsidence, together with delineation of higher-risk areas, will provide data upon which mitigation and protection plans can be based. Subsidence rates will increase when the stress threshold between elastic and inelastic compaction is exceeded. Because it is not possible to reliably estimate when the threshold might be exceeded in the Tucson AMA, and infrastructure damage becomes more likely, subsidence monitoring also provides a means to identify the type of compaction that is occurring.

Groundwater withdrawals from the city's Central Well Field has been substantially decreased as CAP recharge and recovery reaches full capacity. However, regional subsidence in response to previous pumping is unlikely to end in the near future. It will continue until the aquifer system reaches pressure equilibrium. Observation of the timing and magnitude of aquifer responses will further improve the understanding of land subsidence and of how the aquifer systems function. Monitoring data also will contribute to a better understanding of the responses of the aquifer systems to withdrawals and will provide additional insight in future plans for well-site selection, recharge efforts, and water-management programs.

Differential subsidence refers to a relatively large amount of subsidence over a relatively short distance and can cause focused effects. For example, localized subsidence of as little as one-half inch can necessitate rebuilding a highway overpass. Differential subsidence has the potential to separate pipe joints of sewer and water lines—this can lead to system disruptions and roadway damage. Also vulnerable are the concrete lining sections of engineered channels that rely on the integrity of expansion joints to prevent flood damage. Costs to address such infrastructure failures are high. Awareness of the distribution and magnitude of differential subsidence can help to guide the design and implementation of maintenance and monitoring schedules, selection of monitoring methods, and the design and construction of future infrastructure.

Approach

Repeat microgravity surveys in Southwest alluvial basins are useful for detecting local changes in the gravitational field of the Earth attributed to water mass change (Pool, 2008). As water is added to or removed from the aquifer, there is a change in mass and a corresponding measurable change in gravity. Two instruments are used for microgravity surveys, the relative-gravity meter and the absolute-gravity meter. The highly portable relative-gravity meter is used to measure relative gravity differences between stations. The absolute-gravity meter is used at a smaller number of stations to provide "benchmark values" of absolute gravity. These measurements are combined (post-processed) in a manner similar to how height differences and elevations are used in geodetic levelling surveys. This combination of relative- and absolute-gravity meters provides the highest-possible accuracy and represents a unique capability of the USGS Southwest Gravity Program.

Proposed locations for additional gravity stations are shown in figure 4. The final configuration of stations will utilize existing infrastructure where possible, and depend on permission to access some locations. The location of some of the proposed stations is based on the result of monitoring in previous time periods. Specifically, increasing the number of stations in the eastern foothills of the Catalina Mountains is intended to better capture storage changes due to infiltrated runoff resulting from precipitation; new stations in the southern part of the Tucson Basin will increase certainty related to long-term negative storage changes often observed in that area. The number of absolute gravity stations is also increased, to support the larger network and to include a greater proportion of stations as datum observations.

Land-surface elevation change is monitored across the Tucson AMA by measuring changes in land surface elevation over time (approximately annually) with Interferometric Synthetic Aperture Radar (InSAR). These data come from the Arizona Department of Water Resources (ADWR), which has an InSAR program in the Tucson AMA. InSAR is a technique that utilizes interferometric processing to compare the amplitude and phase signals received during one pass of the satellite-based SAR platform over the AMA with the amplitude and phase signals received during a second pass of the platform over the same area but at a different time.

Data Management Plan

Gravity data for the project will be collected using a Micro-g Lacoste A-10 absolute gravity meter and relative-gravity meters made by Lacoste and Romberg and ZLS Corporation. All gravity data will be collected by trained personnel using techniques consistent with published methodologies for using microgravity to investigate and monitor aquifer-storage change and land subsidence (Carruth and others, 2018; Kennedy and others, *in press*).
Data will be archived in the Arizona Water Science Center gravity data archive. All data will be published as one or more formal data releases at the USGS Southwest Gravity Program ScienceBase website (http://go.usa.gov/xqBnQ). Data collected during each year of a full survey will be published online within five months of final data collection.

All gravity data for the project will be processed, reviewed, approved, and published following QA/QC protocols established by the USGS Southwest Gravity Program (Kennedy and others, *in press*). Gravity data will be processed by USGS personnel in the office within 3 months of data collection. An experienced reviewer will review and check the data for accuracy. Data releases will be peer-reviewed and include complete metadata. Once published, data will be publicly accessible.

GPS data of station positions will be archived at the Arizona Water Science Center. Data will be processed using the National Geodetic Survey Online Positioning User Service or Project Networks and (or) OPUS projects service.

Products and Timeline

The schedule of work is based on ADWR's fiscal year, which begins July 1 and ends June 30, and is contingent on receiving signed agreements from the cooperators listed below by 9/30/2020. Gravity surveys of the entire network will be completed every other year (ADWR fiscal years 2020-2021 and 2022-2023) followed by a data release, and a partial survey will be completed in each of the off years. A coverage map of storage-change will be generated from published data and shared with cooperators following full surveys. Partial surveys in the off years will not result in maps of storage change but will provide a snapshot of change in different parts of the network and allow for annual monitoring at critical locations. Similarly, partial surveys will not result in a data release, however, cooperator meetings or updates may be requested after partial surveys.

Calendar Year	2020				2021				2022				2023				2024
State Fiscal Year	FY 20-21				FY 21-22				FY 22-23				FY 23-24				
State Fiscal Quarter	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	
USGS Fiscal Year		*FY 2021*				*FY 2022*				*FY 2023*				*FY 2024*			
Network planning and permitting																	
Station construction																	
Gravity survey																	
Cooperator meeting																	
Data release publication																	
Purchase equipment																	

Table 1. Project timeline by quarter.

The project budget shown in Table 2 represents tentatively approved contributions from the cooperators listed. Proportional costs to different cooperators are roughly based on the number of monitoring stations that are of interest to the cooperator and are informed by prior contributions to this project by each cooperator. The proposed monitoring network shown in figure 4 depends on signed agreements from all the cooperators listed.

Costs in the state fiscal year of 21-22 include a proportional contribution to the planned purchase of a new relative gravimeter and includes the costs of doing a meter comparison to ensure a seamless transition between meters moving forward.

State FY	FY 20-21		FY 21-22		FY 22-23		FY 23-24	
	Cooperator	USGS match	Cooperator	USGS match	Cooperator	USGS match	Cooperator	USGS match
ADWR	$ 19,965	$ 14,040	$ 25,573	$ 18,380	$ 26,162	$ 18,945	$ 19,422	$ 14,064
Pima County	$ 14,420	$ 10,140	$ 18,470	$ 13,274	$ 18,895	$ 13,682	$ 14,026	$ 10,157
Marana	$ 4,430	$ 3,181	$ 4,429	$ 3,181	$ 4,429	$ 3,181	$ 4,429	$ 3,181
Tucson Water	$ 4,991	$ 3,510	$ 6,394	$ 4,595	$ 6,541	$ 4,737	$ 4,855	$ 3,515
Totals	$ 43,806	$ 30,871	$ 54,866	$ 39,430	$ 56,027	$ 40,545	$ 42,732	$ 30,917

Table 2. Project budget by state fiscal year. FY 20-21 is 7/1/2020 – 6/30/2021, but work, and therefore billing, would not begin until 10/1/2020. Budget is based on agreements being signed by 9/30/2020.

Figures

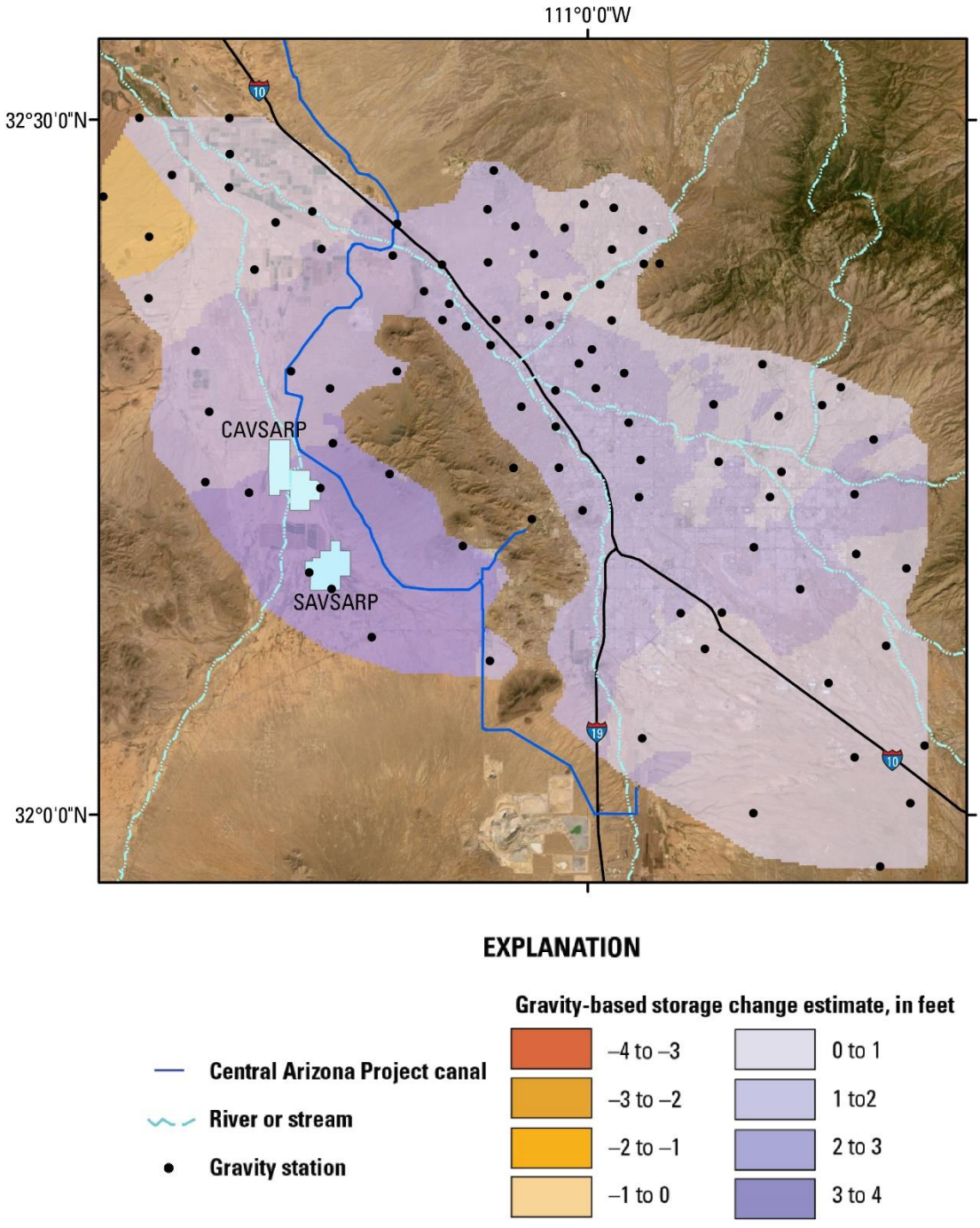


Figure 1. Storage-change from 2014 to 2016 was positive over almost the entire monitored area.

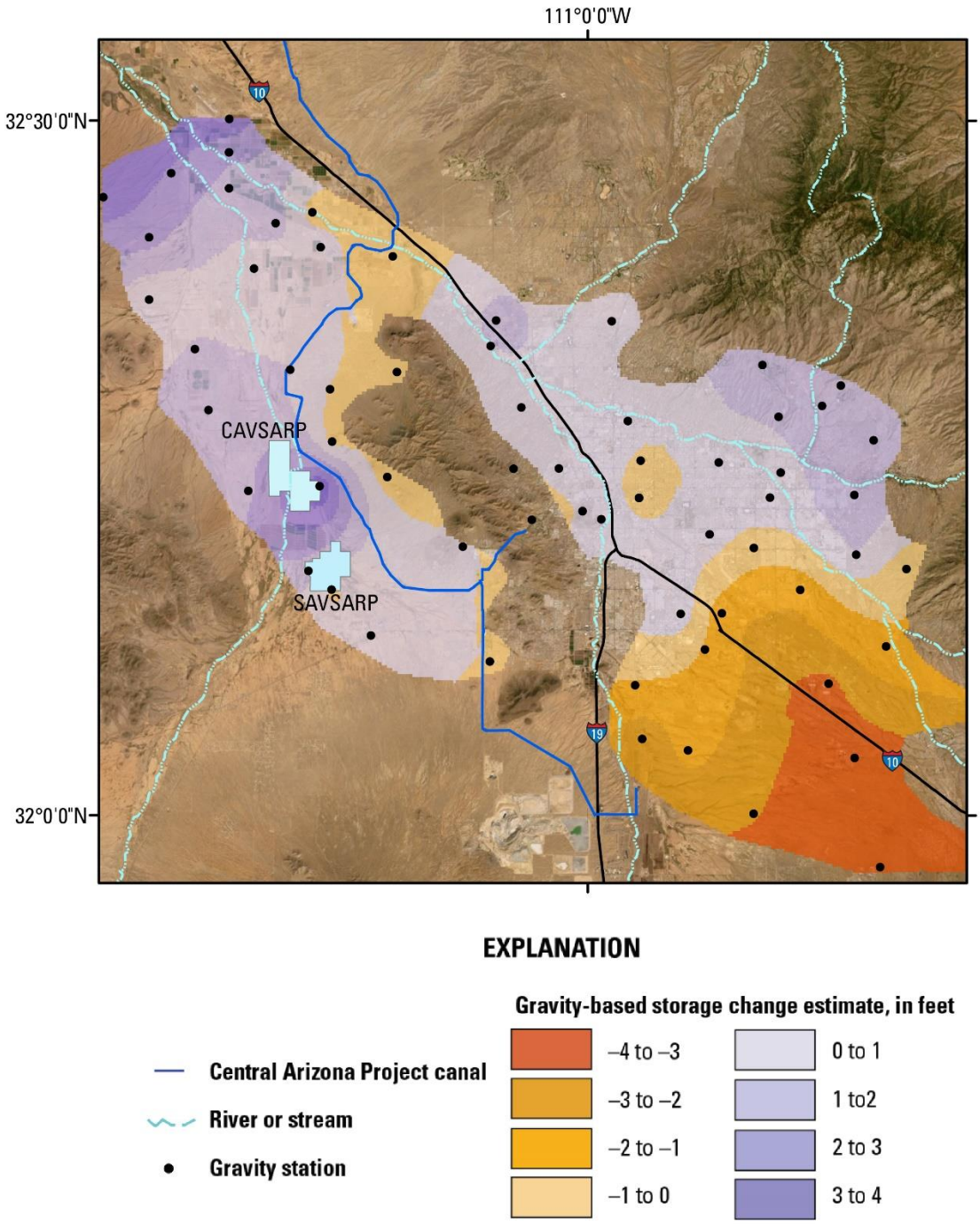


Figure 2. Negative storage change between 2016 and 2018 in the southern part of the Tucson Basin is more typical throughout this project's history.

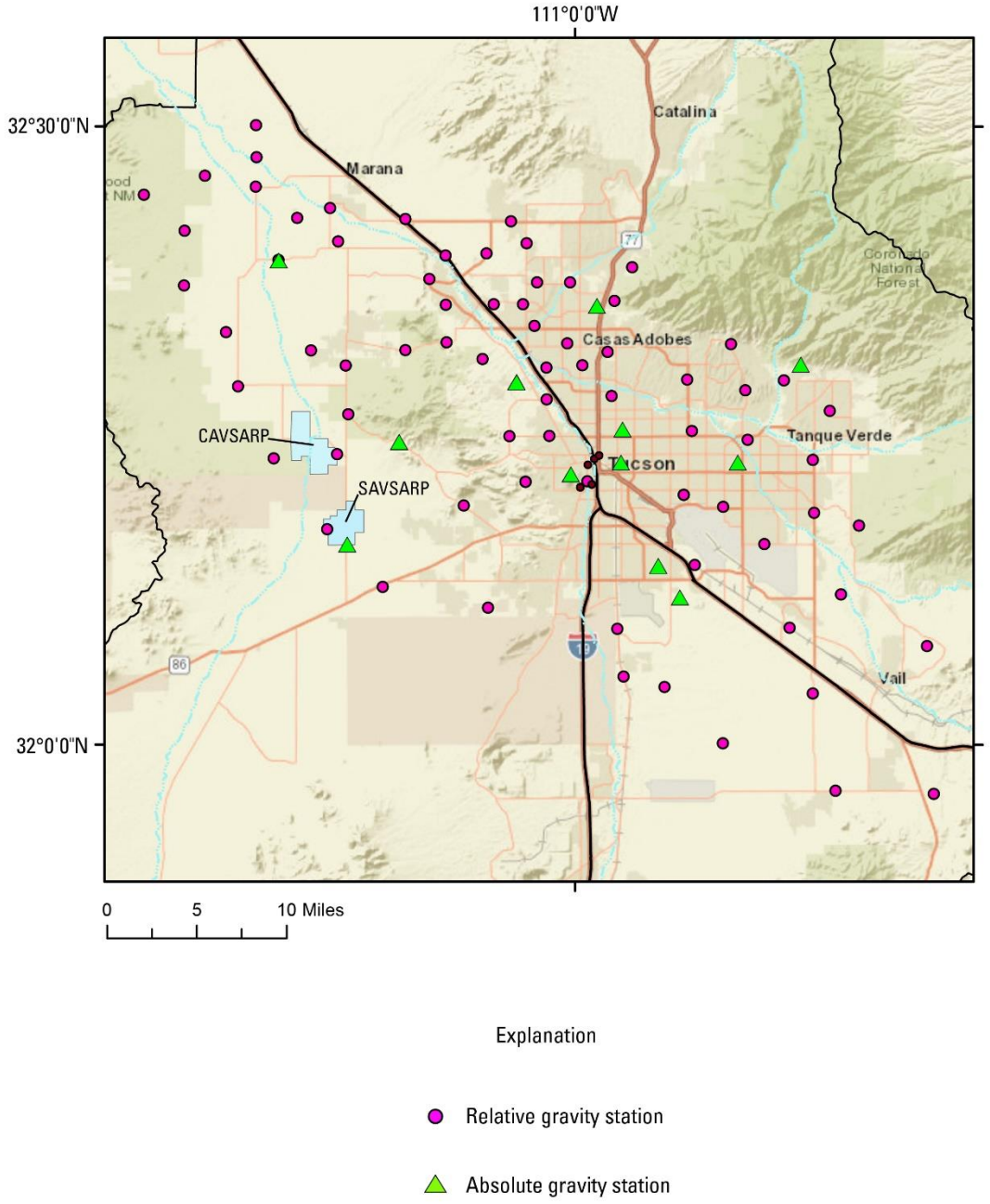


Figure 3. Current relative and absolute gravity stations in the network. Benchmarks have been lost over time, largely due to development but also as a result of aging benchmarks deteriorating and becoming unstable.

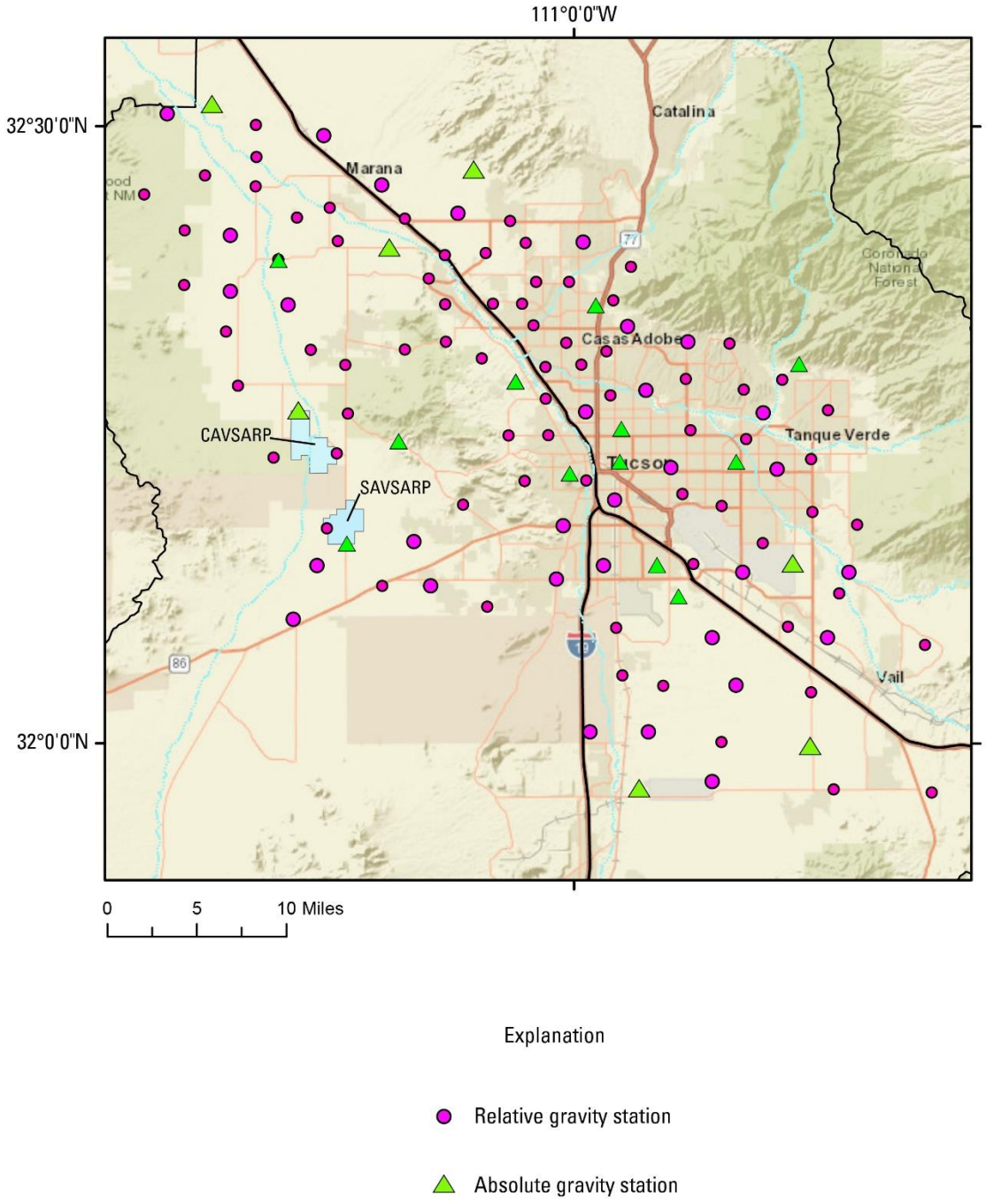


Figure 4. New stations proposed here are shown as slightly larger than the existing stations. There are 7 additional absolute stations and 31 additional relative stations shown here. The final distribution of new stations depends on access to roads and some private areas, and on

measurement quality concerns such as background noise near roads. This proposed network is based on obtaining signed agreements with the budget shown in Table 2.

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Kennedy, J. R., Ferré, T. P. A., & Creutzfeldt, B., 2016, Time-lapse gravity data for monitoring and modeling artificial recharge through a thick unsaturated zone. *Water Resources Research*, vol. *52* no. 9, 7244–7261. https://doi.org/10.1002/2016WR018770

Kennedy, J.R., Pool, D.R., Carruth, R.L., *in press*, Procedures for field data collection, processing, quality assurance and quality control, and archiving relative- and absolute-gravity surveys, U.S. Geological Survey Techniques and Methods Report 2019-XXXX, 112 p.

Pool, D.R., and Schmidt, W., 1997, Measurements of ground-water storage change and specific yield using the temporal-gravity method near Rillito Creek, Tucson, Arizona: U.S. Geological Survey Water-Resources Investigations Report 97–4125, 30 p.

Pool, D.R., 2005, Variations in climate and ephemeral channel recharge in southeast Arizona, United States: Water Resources Research, v. 41, no. 11, 24 p., https://doi.org/10.1029/2004WR003255.

Pool, D. R., 2008, The utility of gravity and water-level monitoring at alluvial aquifer wells in southern Arizona: *Geophysics, vol. 73 no. 6*, WA49-WA59. https://doi.org/10.1190/1.2980395

Pool, Donald R., and Anderson, Mark T., 2008, Ground-water storage change and land subsidence in Tucson Basin and Avra Valley, southeastern Arizona, 1998-2002: U.S. Geological Survey Scientific Investigations Report 2007-5275, 34 p

Council-Regular Meeting **C4**

Meeting Date: 09/01/2020

To: Mayor and Council

From: Jane Fairall, Deputy Town Attorney

Date: September 1, 2020

Strategic Plan Focus Area:
Recreation, Not Applicable

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.
Initiative 6: Use recreation facilities and partnerships with recreation contractors to provide exceptional programming.

Subject: Resolution No. 2020-094: Relating to Parks and Recreation; approving and authorizing the Parks and Recreation Director to execute the third amendment to Facility Usage Agreement between the Town of Marana and Leman Academy of Excellence, Inc. (Jane Fairall)

Discussion:

The Town of Marana Parks and Recreation department and the Leman Academy of Excellence, Inc. wish to continue the facility use agreement that permits common use of respective facilities at Crossroads at Silverbell District Park and Leman Academy to minimize expenses to citizens, improve service delivery, and provide enhanced resources to the community. The Town of Marana's 2016 Parks, Recreation, Trails and Open Space 5 Year Master Plan Update recommends the department seek partnerships to coordinate a diverse offering of programs and services throughout the community. The plan also suggests that as Marana grows in population, program offering should also expand as feasible and be created to service all sectors of the population. Additionally, the plan suggests the Town explore opportunities for joint facility uses, collaborative programming, and shared financing between internal and external partners. Through this partnership, Marana Parks and Recreation is able to expand its

adult and youth fitness, sports, and wellness offerings.

The facility use agreement permits Leman Academy use of the softball field, soccer / multiuse fields, and basketball courts at Crossroads Park, during non-peak hours only, defined as Monday through Friday, 6:00 a.m. to 6:00 p.m., for Leman Academy curricular and extracurricular activities at no cost to Leman. In return, Leman will permit the Town to use the Leman Academy gymnasium, cafeteria, and designated outdoor facilities for Town recreational programming, community meetings, and similar governmental uses at no cost to the Town.

The original Agreement had a one-year term with four possible one-year renewals. The parties have exercised two renewal periods, leaving two years left of the original contemplated term. This Third Amendment extends the term of the agreement for those final two years, from June 1, 2020 through May 31, 2022.

Staff Recommendation:

Staff recommends renewal of the facility usage agreement.

Suggested Motion:

I move to adopt Resolution No. 2020-094, approving and authorizing the Parks and Recreation Director to execute the third amendment to Facility Usage Agreement between the Town of Marana and Leman Academy of Excellence, Inc.

Attachments

Resolution No. 2020-094

Exhibit A to Marana Resolution No. 2020-094

MARANA RESOLUTION NO. 2020-094

RELATING TO PARKS AND RECREATION; APPROVING AND AUTHORIZING THE PARKS AND RECREATION DIRECTOR TO EXECUTE THE THIRD AMENDMENT TO FACILITY USAGE AGREEMENT BETWEEN THE TOWN OF MARANA AND LEMAN ACADEMY OF EXCELLENCE, INC.

WHEREAS on May 16, 2017, the Mayor and Council of the Town of Marana adopted Resolution No. 2017-041, approving and authorizing the Parks and Recreation Director to execute a Facility Usage Agreement between the Town of Marana and Leman Academy of Excellence, Inc.; and

WHEREAS the Mayor and Council have subsequently approved two one-year renewals of the Facility Usage Agreement; and

WHEREAS the Mayor and Council find that it is in the best interests of the Town of Marana and its citizens to renew the agreement for a third time.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, that the Third Amendment to Facility Usage Agreement between the Town of Marana and Leman Academy of Excellence, Inc., attached to this resolution as Exhibit A, is hereby approved, and the Parks and Recreation Director 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 Facility Usage Agreement.

PASSED AND ADOPTED by the Mayor and Council of the Town of Marana, Arizona, this 1st day of September, 2020.

Mayor Ed Honea

ATTEST:

Cherry L. Lawson, Town Clerk

APPROVED AS TO FORM:

Frank Cassidy, Town Attorney

THIRD AMENDMENT TO FACILITY USAGE AGREEMENT BETWEEN TOWN OF MARANA AND LEMAN ACADEMY OF EXCELLENCE, INC.

This Third Amendment to Facility Usage Agreement (this "Third Amendment") is made and entered into by and between the TOWN OF MARANA (the "Town"), an Arizona municipal corporation and LEMAN ACADEMY OF EXCELLENCE, INC. ("Leman"), an Arizona non-profit corporation. Leman and the Town are sometimes collectively referred to in this Agreement as the "Parties," either of which is sometimes referred to as a "Party."

RECITALS

A. In May 2017, the Parties entered into a Facility Usage Agreement (the "Agreement") to allow the Town and Leman to permit common use of their respective facilities at Crossroads Park and the Leman Academy.

B. Paragraph 13 of the Agreement provides that the Agreement expired on May 31, 2018, but that the Parties may renew the Agreement for up to four consecutive one-year periods on the same terms as set forth in the Agreement, by executing a written amendment setting forth the renewal term and signed by the Parties.

C. Effective June 1, 2018, the Parties entered into an amendment to the Agreement (the "First Amendment") to renew the Agreement for the first of four possible one-year renewal periods and to make other miscellaneous amendments regarding the Parties' rights and responsibilities.

D. Effective June 1, 2019, the Parties entered into an amendment to the Agreement (the "Second Amendment") to renew the Agreement for the second of four possible one-year renewal periods.

E. The Town and Leman desire to amend the Agreement, as previously amended, to renew it for a two-year renewal period.

AGREEMENT

NOW, THEREFORE, based on the foregoing recitals the Parties agree as follows:

1. **Term.** The Agreement, as previously amended, is hereby amended to combine the final two one-year renewal periods into one two-year renewal period and to renew the Agreement for a two-year period from June 1, 2020 through May 31, 2022.

2. **Scheduling.** The Agreement, as previously amended, is hereby amended to replace paragraph 3 (Scheduling) of the Agreement with the following: "The Parties shall schedule their use of each other's facilities in advance pursuant to scheduling procedures agreed to by the Parties. If either Party needs to cancel a scheduled activity, whether at their own facility or at the other Party's facility, the Party shall contact a representative of the other Party as soon as possible, and at least 24 hours in advance."

3. **Effective Date**. This Third Amendment shall be effective June 1, 2020.

4. **Other Terms and Provisions.** All other terms and provisions of the Agreement and its exhibits, as previously amended, not specifically changed by this Third Amendment, shall remain in effect and be binding upon the Parties as provided for in the Agreement. Words and phrases having a defined meaning in the Agreement have the same respective meanings when used in this Third Amendment unless otherwise expressly stated.

5. **Recitals.** The recitals set forth at the beginning of this Third Amendment are hereby acknowledged, confirmed to be accurate, and incorporated here by reference.

6. **Entire Agreement.** This Third Amendment constitutes the entire agreement between the Parties pertaining to the subject matter of this Third Amendment. All prior and contemporaneous agreements, representation and understanding of the Parties, oral or written, are hereby superseded and merged in this Third Amendment.

7. **Severability.** If any provision of this Third Amendment is declared illegal, invalid or unenforceable, in whole or in part, under present or future laws, it shall be severed from the remainder of this Third Amendment, which shall otherwise remain in full force and effect. In lieu of the illegal, invalid or unenforceable provision, there shall be added automatically as part of this Third Amendment a provision as similar in terms to the illegal, invalid, or unenforceable provisions as may be possible and still be legal, valid, and enforceable, and this Third Amendment shall be deemed reformed accordingly.

8. **Governing Law.** This Third Amendment is entered into in Arizona and shall be construed and interpreted under the laws of Arizona.

9. **Interpretation.** This Third Amendment has been negotiated by the Town and Leman, and neither Party shall be deemed to have drafted this Third Amendment for purposes of construing any portion of this Third Amendment for or against any Party.

[SIGNATURE PAGE FOLLOWS]

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

"Town":

TOWN OF MARANA, an Arizona municipal corporation

By:_____
Jim Conroy
Parks & Recreation Director

Date:_____

"Leman":

LEMAN ACADEMY OF EXCELLENCE, INC., an Arizona non-profit corporation

By:_____

Its:_____

Date:_____

ATTEST:

_____
Cherry L. Lawson, Town Clerk

APPROVED AS TO FORM:

_____
Frank Cassidy, Town Attorney

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____, the _____ of LEMAN ACADEMY OF EXCELLENCE, INC., an Arizona non-profit corporation, on behalf of the corporation.

(Seal)

_____
Notary Public

Council-Regular Meeting **C5**

Meeting Date: 09/01/2020

To: Mayor and Council

From: Cherry L. Lawson, Town Clerk

Date: September 1, 2020

Subject: Approval of the Regular Council Meeting Summary Minutes of August 18, 2020 (Cherry L. Lawson)

Attachments

Regular Council Meeting Summary Minutes, 08/18/2020

MARANA TOWN COUNCIL

REGULAR COUNCIL MEETING

11555 W. Civic Center Drive, Marana, Arizona 85653
Council Chambers, August 18, 2020, 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 at 6:05 PM and directed the Clerk to call the roll. **Mayor Honea, Vice Mayor Post, Council Members: Dave Bowen, Patti Comerford, Roxanne Ziegler, John Officer, and Herb Kai.**

PLEDGE OF ALLEGIANCE/INVOCATION/MOMENT OF SILENCE: Led by **Mayor Honea.**

APPROVAL OF AGENDA

Vice Mayor Post, moved and Council Member Kai second the motion to approve the agenda as presented. Motion passes, 7-0.

CALL TO THE PUBLIC

Mayor Honea open the meeting to receive public comments, and the following individuals provided comments.

David Morales provided general comments related to starting each Council Meeting with a prayer.

PROCLAMATIONS

P1 Proclamation recognizing the month of August 2020 as "Child Support Awareness Month" (Cherry L. Lawson)

MAYOR AND COUNCIL REPORTS: SUMMARY OF CURRENT EVENTS

Council Member Comerford reported that she and **Council Member Ziegler** had attended the Back to Blue event and complimented the Marana Police Department on its work and efforts throughout the community.

Council Member Officer thanked the Town's Road Maintenance and Parks Department for coming out to trim trees at the intersection of Grier and Sandario at it was difficult for him to see traffic moving in the south direction. He was able to accomplish reporting this matter to the town using its app.

Council Member Ziegler commented on having attended the Back to Blue event stating the man who founded Back to Blue attended. He made a request to have a blue line painted in front of town hall entrance. Although she supports his request, the town is not able to do fulfill that request, due to First Amendment concerns.

Mayor Honea reported that he and **Council Member Ziegler** went out to visit the La Puerta Del Norte community and were a guest in Joy White's home, along with other members of the community. Although it is a county neighborhood, it is neighboring a Marana project. They wanted to ensure the residents that people are listing to their concerns. Marana cannot necessarily do everything that they want Council to do, but do try to adopt some changes if they can.

He commented on COVID-19 numbers stating that it is doing much better. In his press conference, Governor Ducey reported a couple of weeks ago that he is waiting for the rate to decrease to five (5%) percent or less. It was seven (7%) percent last week, and 21% approximately six weeks ago. The numbers are decreasing rapidly, as Arizona is one of the two (2) green states nationally for the rate of COVID that has been on the decline. It is his hope that Marana business community will be able to reopen once the numbers decrease to five (5%) percent.

MANAGER'S REPORT: SUMMARY OF CURRENT EVENTS

Town Manager Jamsheed Mehta stated the Council has a copy of the Executive Report, as well as provided on the Town's website. He commented on the development that is happening in the community, and is happy to report that the month of July was terrific.

Marana had 103 single-family residential issuances, which is 20 more than we had last July.

The Westridge fire began in the Tortolita Mountains on August 17, 2020. Northwest Fire has been involved in assisting with the fire with the state crew in fighting the fire. There are roughly 500 acres that has burned. If the winds do not change or other drastic actions, it is expected that those crews would leave, as those fires will be under control tomorrow.

He reported on the Adonis Road Extension Project stating Council direction given to Staff in June to take responsibility of that project. The Construction Manager at Risk (CMAR) was selected in July. The Town has roughly 75% design already reviewed. Final designs by Mandarina and the Guaranteed Max Price (GMP) development by the CMAR are both on schedule for construction to begin in late October 2020. Some sections may start in late September 2020.

Council Member Ziegler asked when the completion of the project. **Mr. Mehta** stated it would be three to four (3-4) months.

Mr. Mehta commented on the progress of the Parks and Recreation Department providing an update on the following:

- The Marana Community Pool at Ora Mae Harn Park continues to operate in conjunction with COVID19 protocol. The pool will be open through Labor Day Weekend, and is currently one of the only community pools operating during COVID19.
- The Parks and Recreation Master Plan process was delayed slightly by COVID19, but has resumed stakeholder meetings recently via Zoom, and is making good progress. Parks and Rec Staff anticipate this Plan to be brought before Council for review as the process progresses into Fall and early Winter.

- ***AWARDS:*** Parks and Rec received three (3) prestigious statewide awards at the 70th Annual Arizona Parks and Rec Association Conference and Expo (APRA).
    - ***2020 Outstanding Aquatics Program: Doggy Paddle Pool Party (held on September 7, 2019). Special recognition to Parks and Rec Staff Kevin Goodrich and Olivia Salazar for their roles in this event.***

    - ***2020 Outstanding Active Adult Program (for ages 50+): Police Appreciation Event hosted by the seniors who are regularly engaged at the Senior Center (held on January 15, 2020). Special recognition to Parks and Rec Staff Julie Mudd and Olivia Salazar!***

    - ***2020 APRA President's Award: Corey Larriva, Marana P&R Recreation Superintendent.*** *The APRA President's Award is exceptionally prestigious in that it recognizes one individual from around the entire State for their*

contributions, outstanding service, and dedication to the organization and the industry.

Lastly, **Mr. Mehta** provided an update to COVID-19 as provided below.

- ***Executive Order Enforcement:*** Executive Order 2020-43 is still effective, and extended by Executive Order 2020-52. This effectively paused activity establishment, including gyms, bars, clubs, water tubing operations, and others, and laid enforcement of these orders to local jurisdictions.
    - **Ms. Fairall** provided a presentation on this matter just over a month ago addressing the Town's procedure in addressing those types of usages.

- To date, the Town has received complaints on 15 establishments. At this point, there has been widespread compliance with the Executive Orders, as well as with any communications from the Town to businesses about the Orders and how to comply; all are now in compliance with state law.

PRESENTATIONS

P1 Relating to Development; presentation of the Town of Marana Development Activity Annual Report Fiscal Year 2020 Update (Jason Angell)

Development Services Director Jason Angell provided a PowerPoint Presentation overview of the Development Services Department Activity Annual Report for Fiscal Year 2020. Below is an overview of the presentation. *(A copy of the presentation is on file in the Town Clerk's Office for review).*

Presentation Overview: Content
- January – June 2020 Report Update
- Population and Home Sales Data
- Commercial & Residential Projects
- Development Activity

Highlights:

Population & Housing Data
- 2020 Census response at 66.2%
- Town is over 50,000 residents
- Median sales price up despite COVID-19
- Existing home inventory low

Residential Permits
- Single-family permits ± 800/year since 2017
- Permit valuations increasing since 2016

Commercial Permits

- 29 permits issued for new construction and tenant improvements

Water and Sewer Connections
- Steady increase for Marana Water

Subdivisions
- 3,239 new lots platted since 2017
- 692 lots in platting process

CONSENT AGENDA

C1 Resolution No. 2020-080: Relating to Development; approving a release of assurances for Fianchetto Farms and accepting public improvements for maintenance (Keith Brann)

C2 Resolution No. 2020-081: Relating to Development; approving a release of assurances for Del Webb at Dove Mountain VIII subdivision and accepting public street improvements for maintenance (Keith Brann)

C3 Resolution No. 2020-082: Relating to Police Department, approving and authorizing the Mayor to execute an intergovernmental agreement between the Town of Marana and other public agencies to participate in the Arizona Child Abduction Response Team (Libby Shelton) ***Pulled from the agenda.***

C4 Resolution No. 2020-083: Relating to Personnel; approving the ICMA Retirement Corporation 457 Deferred Compensation Plan and designating a coordinator for the plan (Curry Hale)

C5 Approval of the Special Council Meeting Summary Minutes of July 21, 2020, the Regular Council Meeting Summary Minutes of July 21, 2020, and the Study Session Meeting Summary Minutes of July 14, 2020 (Cherry L. Lawson)

Vice Mayor Post, moved and Council Member Kai second the motion to pull Item No. C3 and approving the Consent Agenda. Motion passes unanimously, 7-0.

LIQUOR LICENSES

BOARDS, COMMISSIONS AND COMMITTEES

B1 Resolution No. 2020-084: Relating to Flood Plain Management; granting a variance to Marana Town Code Chapter 17-15 (floodplain and erosion hazard management code) for property located at 7430 North Silverbell Road (Keith Brann)

Town Engineer Keith Brann provided a PowerPoint presentation overview of this item stating a Variance is requested from the Town Floodplain Code for 7430 N. Silverbell

Road in relation to the time of construction and FEMA approvals. In this case, the applicant has done a flood control infrastructure designs, and submitted those designs to FEMA for a Conditional Letter of Map Revision. They made that submittal in June 2020. The CLOMAR is under review by FEMA at this time, but there is no determination of whether they will have comments or the timeline for approval.

Town Code section 17-15-10.E.9 combined with its subsection c states:
When a modification or removal of a FEMA SFHA is sought for a development, the following requirements apply: A CLOMR must be submitted to and accepted by FEMA prior to construction of physical improvements.

The purpose and background for this requirement is to ensure that improvements made will ultimately be approved by FEMA, and a subsequent full Letter of Map Revision (LOMR) will be issued. Until FEMA approves those plans, the Town is unaware if the improvements made are accurate or will result in a change to the floodplain.

At this time, the applicant as the developer for an apartment complex desires to move forward without the FEMA approval, at his or her own risk. **Mr. Brann** displayed a map of the Current Floodplain *(on file in the Town Clerk's Office)* explaining the nature of the area of the location. It is a FEMA Zone A Floodplain, which means it is a floodplain of indeterminate nature, and FEMA does not have flood elevations to tell a developer how something should be built. Because of that, the Marana Town Code requires from a building standpoint that you have to elevate for a worst-case scenario, which is three (3') feet plus one foot of freeboard. That only applies to the building permit portion of this project, not these grading improvements.

He continued stating the proposed improvements that they have involve a perimeter channel system, where they intend to pick up the drainage coming through two (2) box coverts location that were built with the Silverbell Road project. They would take the water from those box coverts and wrap them around the property to another larger covert that punches through the bank protection soil cement that was built by the Town and Pima County on the Santa Cruz River.

These improvements have been approved from a design standpoint by both the Town staff and the Flood Control District. No one is disputing that this is a viable design; it is a matter of whether FEMA will accept it and allow a change to the floodplain so that they can move forward.

Some of the risks of moving forward, and the reasons why Town the Code is written the way it is and Town staff would recommend a denial of a floodplain variance; ultimately, FEMA cannot approve the CLOMR in its current state, which would require redesign and possible change of improvements that they have already constructed in the field. They have seen instances where people have started grading and doing work before FEMA has approved the design aspect. They then ask people to give those as-builts and more information, which prolongs the process with FEMA. In the end, Marana is

required to report to FEMA on a biannual basis all variances that are granted by the Town of Marana. Those variances can come into play against the Town on various things such as the Town's CRS Program (Community Rating System). Marana is by choice in this voluntary program. By doing so, Marana receives a score from FEMA. That score translate into discounts on flood insurance policies for town citizens. Currently, the Town is at a Class 7 in the program, which translate to a 15% reduction in premiums for all town residents. If FEMA choses that, they would want to sanction Marana from that program, and town residents would lose that discount.

Additionally, FEMA could also sanction Marana from the actual flood insurance program itself, and its ability for people to obtain mortgages that are backed by federal loan insurance. That is an example of an extreme action taken by FEMA.

Mr. Brann stated the applicant is not seeking a variance to construct the building. As it stands, the building and the floodplain that it is in requires either a four (4') feet of elevation, or four (4') feet of flood proofing of the lower level. The Town Code requires not just the CLOMR, this conditional design approval, but also the final map approval must be approved by FEMA either before Marana can allow a building permit to be issued – with the elevation or the flood proofing to come into compliance. It is possible that the developer can start these improvements, and we can get to the same point of them asking for a variance to either waive those conditions or meet those conditions.

Ross McCallister, Principal of MC Companies the developer of the apartment complex stating they have been working on this project for months. They submitted to Marana in March and received approval by the Town of Marana on June 8. They then submitted to FEMA on June 9 and paid fees on June 10. Their only correspondence with FEMA since that time has been an email that FEMA had appointed a reviewer to the plan. However, their efforts to contact the reviewer to learn the status, has been met with no response.

As a result, they are not able to submit for the CLOMR currently with approval from the Town or Pima County Flood Control. They have received an approval from the Town and Pima County Flood Control. It has been his experience as this is his third major project requiring the CLOMR that FEMA relies upon the jurisdictions to approve the improvements. They have and are willing to accept the fact that CLOMR is an administrative process. They are willing to accept the risk that they would not be able to move forward.

As with most projects, any type of significant delay will result in the possible cost increases. They have already experienced cost increases in the last six months due to construction activities as well as the pandemic. They believe that any additional delays will result in cost increases and possible loss of its project financing from which they have obtained preliminary approval from the National Bank of Arizona. He would respectfully request that Council allow this variance and allow them to proceed forward.

They will continue to move forward in its processing of the CLOMR and work with the Town; they are represented by Dean Allen Architects as well as Rick Engineering Firm. Both of his consultants feel comfortable with the project moving forward.

Mr. Brann confirmed that the Town as well as Pima County Flood Control approved the design plan.

Mayor Honea asked whether the earth moving would take place with the actual structural part of the building and before the LOMR was issued. **Mr. McCallister** inaudible reply.

Council Member Bowen asked whether **Mr. McCallister** has experience working with FEMA the timelines of the approval process by FEMA. **Mr. McCallister** stated his experience in the past with FEMA is that they have 90 days to respond, as that is the rule. However, that was pre-pandemic. He is not sure what the timelines are now. **Council Member Bowen** commented stating **Mr. McCallister** has five months of dirt to move; however, if Council approves this, then shortly after **McCallister** could begin building. **Mr. McCallister** stated that he would still have to apply for a building permit. **Council Member Bowen** stated the project could stop if approval is not provided. **Mr. McCallister** confirmed stating that is true.

Council Member Comerford asked for clarification of **Mr. Brann** stating if the Town provides the permit for them to go in and blade the property and get the drainage area ready, what happens if FEMA denies the applicant. She asked whether the Town would then have a piece of scraped-off land to contend. **Mr. Brann** stated yes. The permit would be the grading permit, which is more than grading. It would also be other structural types of site improvements allowed under the type 2 grading permit. It would preclude going vertical on the building.

Council Member Ziegler commented stating as much as she would like to see this project move forward, FEMA is the same organization that put nearly the entire Town of Marana in a floodplain. It took Marana enlisting senators such as Gabby Gilford and $300,000 from the Town, and took a year before FEMA would remove Marana out from the floodplain. She does not have a high confidence as to the timeliness of the CLOMR due to the pandemic. She does not believe the 90-day timeline will occur, and does not believe the Town wants to take on that type of risk. She understands that **Mr. McCallister** is willing to take on that risk; however, the collateral damage will be greater for the Town.

She would not be in support of this as the collateral damage would be too much for the Town if something should happen to **Mr. McCallister's** company.

Board Member Bowen moved and Board Member Comerford second the motion to deny the floodplain variance. Motion passes unanimously, 7-0.

COUNCIL ACTION

A1 Public Hearing on proposed La Puerta Del Norte East Annexation, located south of Coachline Boulevard, north of Linda Vista Boulevard, and east of Silverbell Road (Jane Fairall)

[6:55 PM Minutes:]
Mayor Honea opened the public hearing to receive testimony on this item.

Deputy Town Attorney Jane Fairall provided an overview of this item stating Council held a Study Session Meeting on July 21 to discuss the proposed annexation. The blank petition was recorded on July 28. By law, the public hearing must occur not less than 20 days and not more than 30 days after the recording of the blank petition. As required by law, notice of this public hearing was timely published in the newspaper, posted in the proposed annexation area, and mailed to the Chairman of the Pima County Board of Supervisors, as well as to all property owners in the proposed annexation area. The official annexation map and a contest map of the proposed annexation area were included with this item as backup materials.

No action is required at the conclusion of this public hearing. Members of the public are present to provide comment on the proposal by KB Home to develop a 150-lot single story residential subdivision in the proposed annexation area. **Ms. Fairall** stated the map shown only applies to section C as the proposed annexation area.

The following individuals provided comments on this item either in person or by email to the Town Clerk's Office.

Mark Johnson spoke in opposition of this item for reasons provided in his letter from the Tortolita Alliance dated, August 15, 2020.

Nancy Ernst spoke in support of the Tortolita Alliance position regarding this item.

Carolyn Campbell spoke in opposition of this item as provided in her letter to the Mayor and Town Council.

Joy White spoke of the meeting with **Mayor Honea and Council Member Ziegler** in her home. She and members of her community are opposed to the proposed project going forward.

Bill Ohl spoke in opposition of the proposed annexation and KB Housing project moving forward as there will be impacts to the traffic movement, animals and the historic nature of the area.

Ken Larkin commented on the meeting with **Mayor Honea and Council Member Ziegler** stating he opposes any home development coming into his neighborhood.

James Meyer commented on the past flooding events and hurricane that produced an extraordinary amount of rain. It will likely happen again in the future.

Council Member Ziegler asked the individuals representing KB to identify themselves for the record.

Attorney Rory Juneman, Lazarus & Silvyn, P.C.; KB Homes Representatives Project Manager Briana Rader, Forward Planning Manager Kelly Lee, and Director of Land Acquisition & Entitlements Andrew Gasparro.

Anthony Paashaus commented on past actions in the valley. There used to be a buffer zone that prevented the stripping of the dessert or the foothills. This disappeared due to Councils (such as this one) that changes everything. If the Town does not receive any benefit from this project, then why allow the project to move forward. He commented on the destruction of the dessert, animals and trees by allowing development. We need to respect the dessert.

[7:15 PM: Minutes] Mayor Honea closed the meeting to receive public testimony on this item.

Council Member Ziegler asked for clarification on the area in question on the map. She wanted to ensure the location on the map that certain areas would not be developed. **Ms. Fairall** provided clarification of the location. **Mr. Juneman** commented on the map that **Council Member Ziegler** asked for clarification. He stated the objective is to preserve the space that is north of Coachline, and part of their variance, as open space. South of Coachline area C in green is the annexation area. Areas A and B on the map will be preserved as open space.

A2 Resolution No. 2020-085: Relating to Real Estate; vacating that public right-of-way located south of the Santa Cruz River and north of the Central Arizona Project canal and dedicated to the Town in 2004 by Deed of Dedication from B.K.W. Farms, Inc. (Jane Fairall)

Ms. Fairall provided an overview of this item stating in 2004, the Town received a Deed of Dedication from B.K.W. Farms, Inc., dedicating 17.050 acres of right-of-way located immediately north of the Central Arizona Project canal and south of the Santa Cruz River for a possible future public roadway to connect Tangerine Road to Avra Valley Road. The BKW Deed of Dedication included a reversionary clause, automatically reverting title to the right-of-way back to B.K.W. Farms if the connecting roadway is not constructed on or before June 2024.

The Town has no plans to build the connecting roadway in the location dedicated by BKW Deed of Dedication, and certainly not by June 2024. Any future road connecting Tangerine Road to Avra Valley Road will likely extend more directly south from the Town's existing unused right-of-way through the Tangerine Commerce Park property

near the existing Ventana Medical building, across the Santa Cruz River, and south to Avra Valley Road. Any future connecting road will not run parallel to the north edge of the CAP canal, which is where the BKW Deed of Dedication's right-of-way is located.

Normally, Town staff would just recommend that the Council do nothing and allow the automatic reversion clause in the BKW Deed of Dedication to BKW Deed to take care of it. The Town has received an application for a license to construct a conveyor belt across the connecting road right-of-way, so abandoning it will avoid the need to prepare and manage a license agreement now and terminate the license agreement in 2024.

By law, this abandonment can be accomplished without the payment of compensation, because B.K.W. Farms dedicated the right-of-way to the Town at no cost as a condition of development in 2004 and the reversionary clause makes the value of the right-of-way nominal.

Vice Mayor Post moved and Council Member Ziegler second the motion to adopt Resolution No. 2020-085, vacating that public right-of-way south of the Santa Cruz River and north of the Central Arizona Project canal that was dedicated to the Town in 2004 by Deed of Dedication from B.K.W. Farms, Inc. Motion passes unanimously, 7-0.

A3 Resolution No. 2020-086: Relating to Real Estate; vacating that Marana Main Street public right-of-way associated with a driveway turnout located along the frontage of the new Northwest Fire District Administration Building parcel (Jane Fairall)

Ms. Fairall provided an overview of this item stating The new NWFD Administration Building parcel, located immediately north of Station 36, is served by a driveway turnout from Marana Main Street. NWFD has decided to access the Administration parcel from the south, through Station 36, and has requested that the 1,518 square foot area of public right-of-way associated with the driveway turnout be abandoned. If approved, this resolution will accomplish the requested abandonment.

The legal description and depiction of the driveway turnout right-of-way is attached as Exhibit A to the proposed Quit Claim Deed of Abandonment, in the backup materials for this item.

Council Member Kai moved and Council Member Ziegler second the motion adopting Resolution No. 2020-086, vacating the Marana Main Street public right-of-way associated with a driveway turnout located along the frontage of the new Northwest Fire District Administration Building parcel. Motion passes unanimously, 7-0.

A4 Resolution No. 2020-087: Relating to Utilities; approving and authorizing the Mayor to sign the Intergovernmental Agreement between the City of Tucson and the Town of Marana relating to the Delivery of Central Arizona Project Water (Scott Schladweiler)

Water Direct Scott Schladweiler provided a PowerPoint overview of this item stating Marana Water and Tucson Water staff have negotiated an "Intergovernmental Agreement between the City of Tucson and the Town of Marana relating to the Delivery of Central Arizona Project Water," more commonly referred to as the "Tucson Water Wheeling IGA." This IGA will facilitate the wheeling of a portion of Marana Water's allocation of Central Arizona Project water through Tucson Water's potable water delivery system to locations of interconnection to Marana Water's service area in the Marana town limits. *(A copy of the presentation is on file in the Town Clerk's Office.)*

Current Water Service in Marana: Big Gaps

- *Map of the area is on file in the Town's Clerk Office*
- Yellow borders/cross-hatch = contracted TW areas (no issues)
- Dark brown = served by MW (no issues)
- Dark blue = served by TW with current IGA; MW provides water resources (no issues)
- **Wheeling IGA = allows MW to serve tan & light blue areas that can be reached with TW infrastructure**

Proposed Wheeling IGA

- Deliver portion of Marana's CAP allocation (wet water) to Tucson Water's underground storage facilities (SAVSARP and CAVSARP)
    - Demands estimated and ordered annually
- Water is pumped and delivered to the points of connection via Tucson Water infrastructure
    - Recovered water through Tucson Water's wells
- Applies to areas within Marana town limits regardless of service area
- Blanket agreement; can be applied to multiple areas
- Marana will sign off on assured water supply; Water supply will be permanent for each development
- Tucson Water will verify that they can meet the demands of the proposed development; Identify any infrastructure improvements required
- Point(s) of connection will be a valve or location decided by the Directors (or designees)
- All infrastructure and customers within development will be Marana Water's
- Customer meters will serve as billing meters
- Will be reliant on Tucson Water for water service reliability and water quality
- May create satellite water systems
    - Proposed Project: Silverbell Gateway
    - Hazra Property

Proposed Wheeling IGA: Costs

- Marana will pay $499.89 per acre foot to store and deliver Marana's CAP water

- Additional unique power costs will apply to specific developments for areas in higher elevation
  Example:
  - 163 unit development
  - Assuming 2.7 pph , 100 gpcpd, and 163 units
  - No additional power costs
  - 48.6 acre feet per year, or $24,305.76 per year
  - $1.53/1000 gallons
- Cost recovery
  - Separate line on water bill
  - Online map for future customers
- Will not collect Marana infrastructure impact fees; Only water resource development impact fee

The memorandum included describes the methodology used to determine the volume charge (or wheeling rate) for delivery of wheeled CAP water to Oro Valley, and was similarly used to determine the rate for Marana Water.

Council Member Bowen asked what the average amount of the water utility bill for a resident. **Mr. Schladweiler** replied stating Marana has a tiered rate structure that goes from zero to 10,000, 10,000 to 20,000 and 20,000 to 30,000. Our first tier is $3.15/1,000 gallon. The average residential customer uses approximately 7,000 gallons it would be less than $11/month per billing. It is a flat fee, not a tiered fee amount.

Council Member Kai inquired about the amount less than $500 breaker foot with the City of Tucson he asked whether the Town could cap that amount or limit the increases, or whether Marana is at the whim of Tucson. **Mr. Schladweiler** stated in 10 years, Marana could re-evaluate the agreement; that we are locked in for 10 years. Unless there are other locations that have power costs, the $499 will remain in effect for 10 years without change.

Mayor Honea opened the meeting to receive public comments on this item. The below individuals provided comments on this item.

Mark Johnson spoke in opposition of this item as provided in his email communication to the Mayor and Council. He requested Council defer making a decision on this item as he and the Tortolita Alliance have many questions that they would like to address as this item has come forward quickly.

Council Member Kai responded to **Mr. Johnson** comments stating the Wheeling Agreement is the same Wheeling Agreement that Metro Water and Oro Valley Water has in effect for the past 15 to 20 years. Metro Water had to be able to use their allocation of CAP water. All of that water goes down to CAVSAR to the cities a recharge basin. The city pumps that water out and it is put into the city line to Metro or Oro Valley Water. This same thing will occur for the Town of Marana. Marana will put its CAP water with

recharge with the City of Tucson, and that water will be delivered to Marana at the $499 per acre-foot.

Council Member Kai moved and Council Member Bowen second the motion adopt Resolution No. 2020-087, approving and authorizing the Mayor to sign the Tucson Water Wheeling IGA. Motion passes unanimously, 7-0.

A5 Resolution No. 2020-088: Relating to Utilities; approving and authorizing the Mayor to sign a protected facility agreement for the Artesiano water main (David L. Udall)

Associate Town Attorney David Udall provided an overview of this item stating the Artesiano water main is located along Artesiano Road, which is just north of Ina Road and west of Wade Road. This agenda item presents a protected facility agreement for the Artesiano water main pursuant to Marana Town Code Section 14-4-3. In 2018, George F. and Graciela Z. Garcia paid the Town to construct the water infrastructure necessary to serve their property, including a water manifold oversized to reasonably serve other new water customers in the same water pressure zone.

If Council approves this agreement, it will provide for fair-share reimbursement to the Garcia's from other new water customers in the same water pressure zone for a period of 15 years or until the Garcia's receive their total reimbursement under the terms of the agreement, whichever happens first. This reimbursement is accomplished with an "oversizing recovery charge," authorized by Marana Town Code section 14-4-3 (C). The agreement requires the Town to reimburse the oversizing cost as additional water connections are made, and costs are recovered, for the Artesiano protected main. The total reimbursement is currently estimated to be $19,929.36.

Mayor Honea open the meeting to receive comments on this item. The following persons came forward to provide comments.

Lynn Drake asked for clarification of the area as well as the benefit to the Garcia's of the agreement. He asked if he were to tap into the service line, would he have to pay the entire amount of the $19,929.36. **Mr. Udall** responded stating the way that the reimbursement would work there is a charge that is assessed, approximately $830.39 for any new connection into the line. That **Mr. Drake** would not be responsible for the remaining construction cost. Any other new customers wishing to tie into the line would also have to pay the $830.39. **Mr. Schladweiler** stated if **Mr. Drake** wanted to extend the water main, there a few ways it could be handled. He explained that process to **Mr. Drake.**

George Garcia commented on the letter and stated he and his wife began to receive many questions on this matter. He is in the middle of a home build in that area. Their sole intent for getting water supply to their property was so that the bank would work with them on a construction loan. Receiving reimbursed was a pleasant surprise to him and his wife.

However, working with the Marana Water Department was not the most pleasant to get this water main installed to their home. As was stated, a resident could elect to hire his or her own contractor. When he met with the Water Department staff on this design, a contractor met with them out there. He stated he was told by the Water Department that they were going to use that contractor. He had asked a question about using his own general contractor.

Vice Mayor Post, moved and Council Member Officer second the motion adopting Resolution No. 2020-088, approving and authorizing the Mayor to sign the protected facility agreement for the Artesiano water main. Motion passes unanimously, 7-0.

A6 Resolution No. 2020-089: Relating to Personnel; approving and ratifying the Temporary Personnel Policy - Families First Coronavirus Response Act (FFCRA) (Curry C. Hale)

Human Resource Director Curry Hale provided a PowerPoint presentation on the Temporary Personnel Policy – Families First Coronavirus Response Act (FFCRA), and provided below. *(A copy of the presentation is available on file in the Town Clerk's Office for review.)*

Background:

- March 13, 2020 - the United States government declared a National Emergency related to the COVID-19 pandemic
- March 17, 2020 - Council adopted Resolution No. 2020-029, approving a temporary personnel policy regarding employee leave and telework during the COVID-19 pandemic
- Resolution authorized the Town Manager to implement further revisions to the temporary policy as necessary in response to the evolving nature of the emergency
- March 18, 2020 - the Families First Coronavirus Response Act (FFCRA) was signed into law
- Provides protected leave under the Emergency Paid Sick Leave Act (EPSLA) and the Emergency Family and Medical Leave Expansion Act (EFMLEA) to assist employees during the Coronavirus pandemic
- Effective April 1, 2020 through December 31, 2020
- April 1, 2020 - Town Manager implemented an Addendum to Temporary Personnel Policy Regarding Employee Leave and Telecommuting, Temporary Personnel Policy - Families First Coronavirus Response Act (FFCRA)

Emergency Paid Sick Leave Act (EPSLA)

- Entitlement
  - Up to 80 hours of Emergency Paid Sick Leave when employee is unable to work or telework for any of the qualifying reasons

- Qualifying Reasons for Emergency Paid Sick Leave

- The employee is subject to a quarantine due to concerns related to COVID-19 or is subject to any order from the government requiring the employee not to leave the employee's residence.
- The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- The employee is caring for an individual who is subject to an order as described in the previous slide or for an individual who has been advised as described in the previous slide.
- The employee is caring for their son or daughter if the school or place of care of the son or daughter has been closed, or the childcare provider of the son or daughter is unavailable due to COVID-19 precautions.
- The employee is experiencing any other substantially similar condition as specified by the United States Secretary of Health and Human Services (HHS).

- Compensation
  - For qualifying reasons related to employee's own condition, Emergency Paid Sick Leave is compensated at the same hourly rate as the employee normally earns during hours worked
  - For qualifying reasons related to caring for another, childcare issues, or other similar circumstance as determined by HHS, Emergency Paid Sick Leave is compensated at 2/3 employee's normal pay

- Entitlement
  - All Town employees who have been employed at least 30 calendar days are entitled to up to 12 weeks of Expanded Family and Medical Leave between April 1, 2020 and December 31, 2020
  - Leave counts toward normal FMLA entitlement of 12 weeks

- Qualifying Reasons for Expanded Family and Medical Leave
  - The employee is unable to work or telework due to a need to care for their child whose school or place of care has been closed, or whose child care provider is unavailable due to COVID-19

- Compensation
  - First 2 weeks (or 80 hours) of Expanded FML is unpaid leave, but eligible employees may substitute Emergency Paid Sick Leave
  - Next 10 weeks (or 400 hours) paid at 2/3 of an employee's regular rate of pay

<u>Specific Decision Points:</u>
- Allow eligible employees to use EFMLEA intermittently

    - Department Head may revoke the approval at any time based on changing operational needs
- Allow eligible employees to use any accrued leave for the remaining 1/3 of the employee's regular rate of pay to receive full pay
- Allow emergency responders (Police Officers & Dispatchers) to be eligible for childcare-related leave on a case-by-case basis
    - Town Manager or Police Chief may revoke the leave at any time based on changing operational needs

Vice Mayor Post commented on the 30 days stating that appears to be difficult or short to then receive 12 weeks of leave. He asked where that number came from. **Mr. Hale** replied stating, that is according to federal law. Marana does not have a say about the number of weeks it is set by the government. **Vice Mayor Post** stated most of these, aside from the Police Department, are federal law. **Mr. Hale** stated outside of the decision points everything within the presentation is mandated by the federal government.

Council Member Bowen moved and Vice Mayor Post second the motion to adopt Resolution No. 2020-089, approving and ratifying the Temporary Personnel Policy – Families First Coronavirus Response Act (FFCRA). Motion passes unanimously, 7-0.

A7 Resolution No. 2020-090: Relating to Elections, declaring and adopting the results of the Town of Marana primary election held on August 4, 2020 (Cherry L. Lawson)

Town Clerk Cherry Lawson provided a brief overview of the Town of Marana Primary Elections results of August 4, 2020 stating pursuant to A.R.S. 16-646, the governing body of a city of town must enter on the official record of the city or town the official canvass of the votes after a primary or general election. Per A.R.S. 16-642, this must take place not less than six days nor more than 20 days following the election.

At the time the packet was released, the Clerk's Office had not received the full scope of the Official Canvass. However, the canvass was provided to Council as well as recompiled within the Council Packet for review by the public. Staff recommends Council adopt Resolution No. 2020-099 that approves the Official Canvass of the vote for the Primary Election held on August 4, 2020.

Council Member Kai moved and Council Member Bowen second the motion adopting Resolution No. 2020-090, declaring and adopting the results of the Town of Marana Primary Election held on August 4, 2020. Motion passes unanimously, 7-0.

ITEMS FOR DISCUSSION / POSSIBLE ACTION

D1 Relating to Development and Public Works; update, discussion, and possible direction regarding public and private projects and development applications on the Town's Marana Current and Proposed Projects internet site (Jason Angell)

Mr. Angell provided an updated to the public and private projects, and development applications occurring in the Town of Marana as provided on the Town's website under Current and Proposed Projects.

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)

Mr. Mehta reported on the below legislative and government items:

FEDERAL:
Congress has not agreed upon a federal stimulus package at this time.
In response to this, the President issued an Executive Order to address multiple items, including:

- Enhanced unemployment benefits for those on Unemployment Insurance. It would be an additional $300/week for eligible claimants. This item is moving forward.

- Details about a Payroll Tax Holiday, assistance to homeowners and renters, and extending student loan payment relief. However, the details of these three elements have yet to be released.

STATE

Commercial Reopening Benchmarks: The Governor's Office recently released "reopening benchmarks" that would un-pause establishments that were halted by EO 2020-43 and 2020-52 (bars, gyms, clubs, etc.) in a phased approach.

- Each set of benchmarks uses a combination of total cases, percent positivity, and COVID-like illness to place a county in a designation of "Substantial," "Moderate" or "Minimal" cases, and each business type may open in accordance with that designation.

- As an example, if Pima County meets the benchmarks to be designated "Moderate": Gyms may reopen at 25% capacity, theaters may operate at 50% capacity, bars and nightclubs with food permits may operate at 50% capacity (with other requirements), and bars and nightclubs w/o food permits remain closed.

There is no special session in sight, to address any outstanding or necessary legislation at this time.

BILL TRACKING

No bills are being tracked right now; however, we are monitoring four (4) propositions that may be on the ballot in November, including recreational marijuana, Criminal Justice Reform, Pay Increases for Medical Workers, and Invest in Ed. As information comes forward, he will provide Council with an update.

Mayor Honea stated he spoke with Senator Leach who had indicated that they would like to schedule an emergency session meeting of the legislatures in order to address some of the issues. The group at the legislature cannot agree on anything. Several of the senators and representatives have tried to meet with the governor; however, they are not having much luck there. The governor has been busy, so meetings have occurred with his staff. The governor has been conducting news conferences every Thursday, and everyone waits in anticipation that something else will be closed. Marana does not have the authority to do anything without the governor's approval.

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), Council may ask for discussion or consideration, or consultation with designated Town representatives, or consultation for legal advice with the Town Attorney, concerning any matter listed on this agenda for any of the reasons listed in A.R.S. §38-431.03 (A).

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

Mayor Honea ask for a motion to adjourn the meeting.

Vice Mayor Post, moved and Council Member Officer second the motion to adjourn the meeting. Motion passes, 7-0. Meeting adjourned at 8:12 PM.

CERTIFICATION

I hereby certify that the foregoing are the true and correct minutes of the Marana Town Council meeting held on August 18, 2020. I further certify that a quorum was present.

_____

Cherry L. Lawson, Town Clerk

Council-Regular Meeting **A1**

Meeting Date: 09/01/2020

To: Mayor and Council

Submitted For: Yiannis Kalaitzidis, Finance Director

From: Jane Fairall, Deputy Town Attorney

Date: September 1, 2020

Strategic Plan Focus Area:
Not Applicable

Subject: *Relating to Finance; discussion and direction to staff regarding whether to implement the federal payroll tax deferral program authorized by the August 8, 2020 Presidential Memorandum Deferring Payroll Tax Obligations in Light of the Ongoing COVID–19 Disaster (Yiannis Kalaitzidis)*

Discussion:

The purpose of this agenda item is for Council to elect whether the Town, as an employer, will implement the federal payroll tax deferral program, and, if so, whether the Town will allow employees the choice to opt in or out of the program.

On August 8, 2020, President Trump issued a Presidential Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster (attached). The memorandum directed the Secretary of the Treasury to defer the withholding, deposit, and payment of the employee portion of the Old Age, Survivors, and Disability Insurance (OASDI) segment of FICA taxes, i.e., the 6.2% tax on employee wages, paid during the period of September 1, 2020, through December 31, 2020, subject to the following conditions:

(a) The deferral is only available for employees who earn less than $4,000 per pay period, calculated on a pre-tax basis.
(b) Amounts shall be deferred without any penalties, interest, additional amount, or addition to the tax.

The memorandum also directed the Secretary of the Treasury to issue guidance to implement the memorandum.

On August 28, 2020, the IRS issued guidance in the form of Notice 2020-65 (attached).

The Notice primarily addresses three issues:

1. It designates "employers that are required to withhold and pay the employee share of social security tax" as "Affected Taxpayers" for purposes of the applicable Internal Revenue Code section.
2. It clarifies that the $4,000 per pay period threshold for tax deferral eligibility must be determined on a pay period-by-pay period basis. Thus, if an employee makes $3,999 in one pay period and $4,001 in the next, the employee will only be eligible for the deferral during the pay period in which the employee made $3,999.
3. It provides that any deferred payroll taxes must be repaid between January 1, 2021 and April 30, 2021. Interest, penalties, and additions to tax for any deferred amounts not repaid during that time period will begin to accrue on May 1, 2021.

The Notice does not directly state whether the payroll tax deferral is optional for employers. However, based on the authority on which the guidance relies, it appears that employers can choose whether to implement the deferral. The Notice relies on section 7508A of the Internal Revenue Code, which authorizes the IRS to postpone deadlines for various acts, but does not permit the IRS to prohibit the timely withholding and payment of taxes.

The Notice does not designate employees as "Affected Taxpayers;" thus, it appears that the IRS did not intend to grant employees an independent right to defer withholding, deposit and payment of the employee portion. However, there appears to be no prohibition on an employer allowing employees to choose whether or not to defer the employee portion.

In summary, the Council must make the following decisions:

1. Will the Town implement the federal payroll tax deferral program?
2. If yes, will the Town allow individual employees to choose whether to participate in the program?

Financial Impact:

Based on a preliminary staff analysis, all but 24 full time employees will be eligible for the payroll tax deferral. Based on this preliminary analysis, total amounts deferred would be approximately $370,000. Deferral amounts per employee range from $5-$248 per paycheck, while the total amount to be deferred through December per employee ranges from $40-$1,983.

Staff Recommendation:

Staff recommends that the Town choose not to implement the payroll tax deferral program. The program does not appear to provide any long-term benefits to employees or to the Town, as the taxes will simply be deferred for 4 months before having to be withheld and paid in full.

If Council chooses to implement the program, then staff recommends as follows:

1. Employees should be allowed to choose whether or not to participate in the

program on an individual basis.

2. An employee's decision to opt in or out of the deferral program should be irrevocable, i.e., the employee may not opt in and then opt out, or vice versa.
3. Employees that do participate in the program should be required to sign an agreement regarding repayment, as drafted and approved by the Town's Legal Department.

Suggested Motion:

Option 1: I move to direct staff not to implement the federal payroll tax deferral program authorized by the August 8, 2020 Presidential Memorandum.

Option 2: I move to direct staff to implement the federal payroll tax deferral program authorized by the August 8, 2020 Presidential Memorandum, subject to the listed staff recommendations.

Option 3: I move to direct staff to implement the federal payroll tax deferral program authorized by the August 8, 2020 Presidential Memorandum, subject to the following recommendations: [Council's pleasure]

Attachments

Payroll Deferral Tax Presentation
Presidential Memorandum
IRS Notice 2020-65

MARANA AZ
ESTABLISHED 1977

Payroll Tax Deferral

September 1, 2020

MARANA AZ
ESTABLISHED 1977

BACKGROUND

- Presidential Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster – issued on August 8, 2020
- Directed Secretary of the Treasury (IRS) to defer certain payroll tax obligations from September 1, 2020 to December 31, 2020
  - Applicable wages = 6.2% of Employee Social Security contribution
  - Only employees making less than $4,000 (pre-tax) on a bi-weekly basis are eligible for the deferral

MARANA AZ
ESTABLISHED 1977

BACKGROUND

- Presidential Memorandum further directs Secretary of Treasury to:
  - Issue guidance to implement the memorandum
  - Explore avenues to eliminate the obligation to pay the taxes deferred

MARANA AZ
ESTABLISHED 1977

GUIDANCE FROM TREASURY

IRS issued guidance on August 28, 2020:

- Pay back period starting January 1, 2021 and no later than April 1, 2020; interest & penalties accrue beginning May 1, 2020
- Employer to “withhold and pay” any deferred amounts during the pay back period
- Ultimately, an employer liability to pay back any taxes deferred
- If necessary, employer may make arrangements to collect the deferred taxes from employee

MARANA AZ
ESTABLISHED 1977

GUIDANCE FROM TREASURY

- Designates "employers that are required to withhold and pay the employee share of social security tax" as the "Affected Taxpayers"
- Clarifies that the $4,000 per pay period threshold for tax deferral eligibility must be determined on a pay period-by-pay period basis

MARANA AZ
ESTABLISHED 1977

GUIDANCE FROM TREASURY

Treasury guidance did not address the following:

- Whether payroll tax deferral is mandatory or optional
  - Appears to be optional for employer
  - Relies on Section 7508A of the IRS Code which allows IRS to postpone deadlines - does not allow IRS to prohibit timely withholding and payment of taxes
  - Employees are not designated as “Affected Taxpayers” – appear to have no independent right to deferral

MARANA AZ
ESTABLISHED 1977

GUIDANCE FROM TREASURY

Treasury guidance did not address the following (cont.):

- Whether employees may opt-out
  - Appears to be no prohibition on an employer allowing employees to choose whether or not to defer the employee portion
- Participation & payback for temporary employees
- How to collect amounts deferred if the employee separates from the Town

MARANA AZ
ESTABLISHED 1977

POTENTIAL CONSIDERATIONS

For Employees:

- Benefit for 4 months through December 2020
- Burden for 4 months from January-April 2021 to pay back deferred tax (essentially double payroll taxes) unless Congress passes legislation to forgive deferred amounts
- Potential tax implications for 2020 & 2021

MARANA AZ
ESTABLISHED 1977

POTENTIAL CONSIDERATIONS

For Employer:

- Administrative burden to implement & maintain
- Manual calculation each pay period to determine eligibility of each employee
- Collections from employees upon separation and during payback period
- Temporary employees might not be able to participate
- Payback is ultimately Town's responsibility

MARANA AZ
ESTABLISHED 1977

ESTIMATED IMPACT

- Eligible employees – up to 373 of 397 (excluding impact of overtime to wages)
- Impact to individual employees:
  - $5 – $248 per paycheck
  - $40 - $1,984 from September – December in total
- Total liability to Town estimated at $371,000

MARANA AZ
ESTABLISHED 1977

NEXT STEPS

Request for Council to provide direction on the following:

- Town implementation of payroll tax deferral considering the impact to the Town and employees
- If Council votes for Town to participate
  - Allow individual employees to opt-out?
  - Obtain written, signed agreement from participating employees for potential collection of taxes owed at separation
  - Inclusion or exclusion of temporary employees

MARANA AZ
ESTABLISHED 1977

TIMELINE

If Council votes to implement the payroll tax deferral program and allows individual employees to opt in or out:

- Survey employees to determine participation
- Implement written, signed agreements with participating employees
- Implement for pay period ending 9/11/20

DISCUSSION

Presidential Documents

Memorandum of August 8, 2020

Deferring Payroll Tax Obligations in Light of the Ongoing COVID–19 Disaster

Memorandum for the Secretary of the Treasury

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* The 2019 novel coronavirus (COVID–19) that originated in the People's Republic of China has caused significant, sudden, and unexpected disruptions to the American economy. On March 13, 2020, I determined that the COVID–19 pandemic is of sufficient severity and magnitude to warrant an emergency declaration under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207, and that is still the case today. American workers have been particularly hard hit by this ongoing disaster. While the Department of the Treasury has already undertaken historic efforts to alleviate the hardships of our citizens, it is clear that further temporary relief is necessary to support working Americans during these challenging times. To that end, today I am directing the Secretary of the Treasury to use his authority to defer certain payroll tax obligations with respect to the American workers most in need. This modest, targeted action will put money directly in the pockets of American workers and generate additional incentives for work and employment, right when the money is needed most.

Sec. 2. *Deferring Certain Payroll Tax Obligations.* The Secretary of the Treasury is hereby directed to use his authority pursuant to 26 U.S.C. 7508A to defer the withholding, deposit, and payment of the tax imposed by 26 U.S.C. 3101(a), and so much of the tax imposed by 26 U.S.C. 3201 as is attributable to the rate in effect under 26 U.S.C. 3101(a), on wages or compensation, as applicable, paid during the period of September 1, 2020, through December 31, 2020, subject to the following conditions:

(a) The deferral shall be made available with respect to any employee the amount of whose wages or compensation, as applicable, payable during any bi-weekly pay period generally is less than $4,000, calculated on a pre-tax basis, or the equivalent amount with respect to other pay periods.

(b) Amounts deferred pursuant to the implementation of this memorandum shall be deferred without any penalties, interest, additional amount, or addition to the tax.

Sec. 3. *Authorizing Guidance.* The Secretary of the Treasury shall issue guidance to implement this memorandum.

Sec. 4. *Tax Forgiveness.* The Secretary of the Treasury shall explore avenues, including legislation, to eliminate the obligation to pay the taxes deferred pursuant to the implementation of this memorandum.

Sec. 5. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

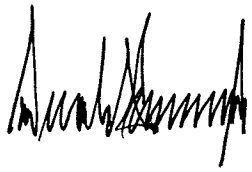
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) You are authorized and directed to publish this memorandum in the *Federal Register.*



THE WHITE HOUSE,
Washington, August 8, 2020

[FR Doc. 2020–17899
Filed 8–12–20; 11:15 am]
Billing code 4811–33–P

Part III - Administrative, Procedural, and Miscellaneous

Relief with Respect to Employment Tax Deadlines Applicable to Employers Affected by the Ongoing Coronavirus (COVID-19) Disease 2019 Pandemic

Notice 2020-65

On August 8, 2020, the President of the United States issued a Presidential Memorandum directing the Secretary of the Treasury (Secretary) to use his authority pursuant to section 7508A of the Internal Revenue Code (Code) to defer the withholding, deposit, and payment of certain payroll tax obligations.[1] Accordingly, the Secretary has determined that employers that are required to withhold and pay the employee share of social security tax under section 3102(a) or the railroad retirement tax equivalent under section 3202(a) are affected by the COVID-19 emergency for purposes of the relief described in the Presidential Memorandum and this notice (Affected Taxpayers). For Affected Taxpayers, the due date for the withholding and payment[2] of the tax imposed by section 3101(a), and so much of the tax imposed by

[1] The Presidential Memorandum is available at https://www.federalregister.gov/d/2020-17899.

[2] The deposit obligation for employee social security tax does not arise until the tax is withheld. Accordingly, by postponing the time for withholding the employee social security tax, the deposit obligation is delayed by operation of the regulations. Thus, this notice does not separately postpone the deposit obligation.

section 3201 as is attributable to the rate in effect under section 3101(a), on Applicable Wages, as defined herein, (collectively Applicable Taxes) is postponed until the period beginning on January 1, 2021, and ending on April 30, 2021.

Applicable Wages

For purposes of this notice, Applicable Wages means wages as defined in section 3121(a) or compensation as defined in section 3231(e)[3] paid to an employee on a pay date during the period beginning on September 1, 2020, and ending on December 31, 2020, but only if the amount of such wages or compensation paid for a bi-weekly pay period is less than the threshold amount of $4,000, or the equivalent threshold amount with respect to other pay periods. The determination of Applicable Wages is made on a pay period-by-pay period basis. If the amount of wages or compensation payable to an employee for a pay period is less than the corresponding pay period threshold amount, then that amount is considered Applicable Wages for the pay period, and the relief provided in this notice applies to those wages or that compensation paid to that employee for that pay period, irrespective of the amount of wages or compensation paid to the employee for other pay periods.

Payment of Deferred Applicable Taxes

An Affected Taxpayer must withhold and pay the total Applicable Taxes that the Affected Taxpayer deferred under this notice ratably from wages and compensation

[3] Because Applicable Wages are defined as wages as defined in section 3121(a) and compensation as defined in section 3231(e), any amounts excluded from wages or compensation under these sections are not included when determining Applicable Wages.

paid between January 1, 2021 and April 30, 2021 or interest, penalties, and additions to tax will begin to accrue on May 1, 2021, with respect to any unpaid Applicable Taxes. If necessary, the Affected Taxpayer may make arrangements to otherwise collect the total Applicable Taxes from the employee.

Drafting Information

The principal authors of this notice are attorneys of the Office of Associate Chief Counsel, Employee Plans, Exempt Organizations, and Employment Taxes, with the participation of staff from other offices. For further information regarding the guidance under this notice, please call the Notice 2020-65 Hotline at (202) 317-5436 (not a toll-free number).

Council-Regular Meeting **A2**

Meeting Date: 09/01/2020

To: Mayor and Council

From: Frank Cassidy, Town Attorney

Date: September 1, 2020

Strategic Plan Focus Area:
Not Applicable

Subject: Resolution No. 2020-095: Relating to Annexation; approving and authorizing the Mayor to sign the Intergovernmental Agreement among Pima County, the Pima County Flood Control District, and the Town of Marana regarding open space near the El Río Preserve; approving and authorizing the Mayor to sign the La Puerta Del Norte East Pre-Annexation Development Agreement with Marana Unified School District No. 6; authorizing the Mayor to sign the annexation petition for Town-owned properties in the La Puerta Del Norte East Annexation area; and authorizing Town staff to de-annex Town-owned properties from the La Puerta Del Norte Mobile Home Subdivision Declaration of Restrictions (Frank Cassidy)

Discussion:

This agenda item is the next step in the La Puerta Del Norte East Annexation -- an annexation initially discussed at the July 14 Town Council study session, the public hearing for which was held on August 18. If adopted, the resolution presented with this agenda item will accomplish four things associated with the annexation:

1. It will approve and authorize the Mayor to sign the Intergovernmental Agreement among Pima County, the Pima County Flood Control District, and the Town of Marana regarding Open Space near the El Río Preserve (the "Open Space IGA")
2. It will approve and authorize the Mayor to sign La Puerta Del Norte East Pre-Annexation Development Agreement with Marana Unified School District No. 6 (the "PADA")
3. It will authorize the Mayor to sign the annexation petition for Town-owned properties in the La Puerta Del Norte East Annexation area
4. It will authorize Town staff to de-annex Town-owned properties from the La Puerta Del Norte Mobile Home Subdivision Declaration of Restrictions.

General Background

As explained in the materials for the previous Council meetings, KB Home is investigating the acquisition of 52.66* acres part of a complicated three-party deal among MUSD, Gladden Phase II LLC, and KB Home. The land is north and south of Coachline Boulevard in the La Puerta Del Norte area -- an unincorporated county island located adjacent to Continental Ranch.

The MUSD-owned land north of Coachline consists of two parcels totaling 10.99 acres located immediately south of the El Rio Preserve. One of the two parcels, consisting of 2.24 acres, is already located in the Marana town limits, and the other, consisting of 8.75 acres, is in unincorporated Pima County. These two parcels are together referred to as "MUSD Parcel D" in the Open Space IGA.

The MUSD-owned land south of Coachline consists of four parcels totaling 41.67* acres, together referred to in the Open Space IGA as the "Replat Area," located between the Sunflower area of Continental Ranch and the remaining remnant of the La Puerta Del Norte neighborhood. KB Home proposes to develop the Replat Area as a single-story residential subdivision with 150 lots containing a minimum lot size of 4,800 square feet, and setting aside an area referred to in the Open Space IGA as the "Cultural Preservation Area," containing about ten acres of the western portion of the Replat Area.

(*Note: Some acreages have been revised from those reported earlier based on a legal description correction.)

The Open Space IGA

The Open Space IGA facilitates the transfer of MUSD Parcel D and the Cultural Preservation Area to Pima County, as required for KB Home to satisfy a condition proposed by Pima County staff for approval of a currently-pending variance application before Pima County Board of Adjustment District No. 3. The Board of Adjustment is scheduled to hear the variance on September 10. Pima County will then transfer MUSD Parcel D and the Cultural Preservation Area to the Pima County Flood Control District (PCFCD), who will place a deed restriction on the property restricting its use to open space, linear park, and flood control uses.

The PADA

The PADA addresses matters related to the development of the Replat Area, including the developer's obligation to install water facilities required for the development, Linda Vista Boulevard improvements, drainage issues, and various other related matters. It also facilitates the exchange of an unused 10,000 square foot well site located in the area for additional land to expand the existing Town wellsite at the east end of Linda Vista Boulevard.

Most importantly, the PADA addresses the Town's financial participation in the Linda Vista Boulevard improvements through reimbursement to the developer of a portion of the Town construction sales taxes generated from the development of the Replat Area. If developed in unincorporated Pima County, the developer would not be required to pay Town of Marana construction sales tax. The reimbursement softens the financial impact of the annexation on the developer and provides a fair-share contribution for benefits of the Linda Vista Boulevard improvements accruing to the general public. In the PADA

draft contained in the backup materials, the Town's contribution is limited to 50% of the total Linda Vista Boulevard construction cost, not to exceed $400,000. The Town's participation in the cost of the offsite improvements on Linda Vista Boulevard is an opportunity to bring the street to a higher quality standard and to address existing drainage issues.

Annexation Petition Signature Authorization

The Town of Marana owns two well sites in the La Puerta Del Norte East Annexation area. The resolution authorizes the Mayor to sign the annexation petition on behalf of the Town for the two well sites.

De-Annexation from Restrictions

On May 5, 1970, a "Declaration of Restrictions" was recorded in the Pima County Recorder's office at Book 3738, Page 40 against the La Puerta Del Norte Mobile Home Subdivision. A copy of the declaration is included in the backup materials. Among other things, the restrictions require development of the property on the lots as configured on the La Puerta Del Norte subdivision plat recorded in the Pima County Recorder's office on April 25, 1961 at Book 15 of Maps & Plats, Page 76. A copy of the plat is included with the backup materials. One of the Town's well sites is affected by the Restrictions.

The Pima County zoning entitlements for the Replat Area allow the development of single family homes on the lots as shown in the 1961 La Puerta Del Norte subdivision plat. However, the purpose of the currently-pending variance application before the Pima County Board of Adjustment is to allow the construction of an equivalent number of homes on reconfigured lots, to allow the development to avoid development of an approximately 10-acre cultural resource area. Without the variance and the withdrawal from the Restrictions, it will not be possible to prevent development over the cultural resource area.

Financial Impact:

This IGA is not anticipated to have a financial impact on the Town. The PADA will commit the Town to reimburse up to a maximum of $400,000 of the Town of Marana construction sales taxes that will be generated from development of the property. In addition to the construction sales tax revenues, the annexation itself will cause roadway and park development impact fees in the annexation area to be paid to the Town of Marana. If the property remains in unincorporated Pima County, county roadway impact fees will be payable by the development. Current Town roadway and park impact fees for 150 homes total $1,018,200 ($4,327 per home for roadway development impact fees; $2,461 per home for park development impact fees). Current Pima County roadway impact fees for 150 homes total $986,550 ($6,577 per home, including a $75 per home administrative fee).

Staff Recommendation:

Town staff recommends adoption of Resolution No. 2020-095, approving and authorizing the Mayor to sign the Open Space IGA, the PADA, and the La Puerta Del Norte East annexation petition, and authorizing staff to de-annex Town-owned properties from the La Puerta Del Norte Mobile Home Subdivision Declaration of Restrictions.

Suggested Motion:

I move to adopt Resolution No. 2020-095, approving and authorizing the Mayor to sign the Open Space IGA, the PADA, and the La Puerta Del Norte East annexation petition, and authorizing staff to de-annex Town-owned properties from the La Puerta Del Norte Mobile Home Subdivision Declaration of Restrictions.

Attachments

Resolution No. 2020-095
Open Space IGA
PADA
La Puerta Restrictions
La Puerta Plat

MARANA RESOLUTION NO. 2020-095

RELATING TO ANNEXATION; APPROVING AND AUTHORIZING THE MAYOR TO SIGN THE INTERGOVERNMENTAL AGREEMENT AMONG PIMA COUNTY, THE PIMA COUNTY FLOOD CONTROL DISTRICT, AND THE TOWN OF MARANA REGARDING OPEN SPACE NEAR THE EL RÍO PRESERVE; APPROVING AND AUTHORIZING THE MAYOR TO SIGN THE LA PUERTA DEL NORTE EAST PRE-ANNEXATION DEVELOPMENT AGREEMENT WITH MARANA UNIFIED SCHOOL DISTRICT NO. 6; AUTHORIZING THE MAYOR TO SIGN THE ANNEXATION PETITION FOR TOWN-OWNED PROPERTIES IN THE LA PUERTA DEL NORTE EAST ANNEXATION AREA; AND AUTHORIZING TOWN STAFF TO DE-ANNEX TOWN-OWNED PROPERTIES FROM THE LA PUERTA DEL NORTE MOBILE HOME SUBDIVISION DECLARATION OF RESTRICTIONS

WHEREAS several matters associated with the Town of Marana's proposed La Puerta Del Norte East Annexation require consideration and action before the annexation can be brought forward; and

WHEREAS the Town Council finds that this resolution is in the best interests of the Town and its citizens and businesses.

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

SECTION 1. The "Intergovernmental Agreement among Pima County, the Pima County Flood Control District, and the Town of Marana regarding Open Space near the El Río Preserve" in substantially the form included 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 "La Puerta Del Norte East Pre-Annexation Development Agreement" in substantially the form included 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 3. The Mayor is hereby authorized to sign the annexation petition for the Town of Marana's proposed La Puerta Del Norte East Annexation for Town-owned properties located in the annexation area.

SECTION 4. Town staff is hereby authorized to take all steps necessary to remove Town-owned properties located in the annexation area from the "Declaration of Restrictions" recorded in the Pima County Recorder's office on May 5, 1970, at Book 3738, Page 40 against the La Puerta Del Norte Mobile Home Subdivision according to the plat recorded in the Pima County Recorder's office on April 25, 1961 at Book 15 of Maps & Plats, Page 76.

SECTION 5. The various Town officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this resolution.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, ARIZONA, this 1st day of September, 2020.

_____
Mayor Ed Honea

ATTEST:

_____
Cherry L. Lawson, Town Clerk

APPROVED AS TO FORM:

_____
Frank Cassidy, Town Attorney

INTERGOVERNMENTAL AGREEMENT AMONG PIMA COUNTY, THE PIMA COUNTY FLOOD CONTROL DISTRICT, AND THE TOWN OF MARANA REGARDING OPEN SPACE NEAR THE EL RÍO PRESERVE

This Intergovernmental Agreement (this "Agreement") is entered into by and among Pima County ("County"), a political subdivision of the State of Arizona, the Pima County Flood Control District ("District"), a political taxing subdivision of the State of Arizona, and the Town of Marana ("Marana"), an Arizona municipal corporation, pursuant to Arizona Revised Statutes section (A.R.S. §) 11-952. County, District, and Marana are sometimes collectively referred to as the "Parties," any of which is sometimes individually referred to as a "Party."

Recitals

A. County is authorized pursuant to A.R.S. §§ 11-951 and 11-932 to own real property and to develop, operate and maintain parks and trail systems for the benefit of its residents.

B. District is authorized by A.R.S. § 48-3603 to construct, operate, and maintain flood control works and storm-drainage facilities for the benefit of the District, and to acquire property for those purposes.

C. Marana is authorized by A.R.S. §§ 9-240, 9-462 *et seq.* and 9-471 to own, annex, zone and rezone real property.

D. The Parties are authorized by A.R.S. § 11-952 to enter into agreements with one another for joint or cooperative action or exercise jointly held powers.

E. An application for variance has been filed by home builder KB Home Tucson, Inc. before Pima County Board of Adjustment District 3, bearing the case name "P20VA00015 MARANA UNIFIED SCHOOL DISTRICT NO 6 - N. COACHLINE BOULEVARD" (the "Pending Variance Request").

F. The Pending Variance Request involves about 50.99 acres of land currently owned by the Marana Unified School District and currently anticipated to be purchased by KB Home Tucson, Inc., located south of Marana's El Río Preserve and east of the District's Los Morteros Conservation Area. About 40 acres of the land is located south of Coachline Boulevard (the Replat Area) and about 10.99 acres is located north of Coachline Boulevard (MUSD Parcel D). The Replat Area is zoned to allow one home per 8,000 square feet. The development proposal as set forth in the Pending Variance Request is to construct approximately 150 homes on lots with a minimum size of 4,800

square feet on the Replat Area, and leaving about ten acres of the land (the Cultural Preservation Area) undeveloped. County staff have expressed support for the Pending Variance Request on condition that the Cultural Preservation Area and MUSD Parcel D are dedicated at no cost to the County or the District for flood control and permanent open space purposes.

G. All but 2.24 acres of the land involved in the Pending Variance Request is located in unincorporated Pima County; 2.24 acres of MUSD Parcel D is located in the town limits of Marana.

H. Marana has begun the process described in A.R.S. § 9-471 to annex into the town limits of Marana the Replat Area, and the Parties desire that the Pending Variance Request be completed in Pima County prior to annexation, to clarify the zoning entitlements associated with the property and to ensure that conditions of approval of the Pending Variance Request are carried out.

I. The Parties recognize and acknowledge that eventual Marana annexation of the existing unincorporated Pima County island which includes the property and its vicinity will allow the area to be served by the Marana Police Department and other Marana services.

Agreement

NOW THEREFORE, the Parties, pursuant to the above recitals which are incorporated herein, and in consideration of the matters and things set forth in this Agreement, do mutually agree as follows:

1. Definitions. The following definitions apply to capitalized terms in this Agreement.

a. The "Cultural Preservation Area" means the approximately 10-acre portion of the Replat Area identified as "Cultural Preservation/Open Space," the ultimate size and configuration of which will be determined, along with the final subdivision lot and street layouts, through the formal subdivision platting process.

b. The "Dedications" means transfer to the County or the District of fee title ownership of MUSD Parcel D and the Cultural Preservation Area.

c. The "Effective Date" is defined in paragraph 7.a below.

d. "MUSD Parcel D" means the 10.99 acres of land located north of Coachline Boulevard and legally described in Exhibit B attached to and incorporated by this reference in this Agreement.

e. The "Pending Variance Request" is defined in recital E above.

f. The "Replat Area" means the approximately 40-acre area of land depicted in the Concept Site Plan attached as Exhibit A to and incorporated by this reference in this Agreement.

2. **Marana consent and commitment to County and/or District ownership of MUSD Parcel D and the Cultural Preservation Area**. If the Pending Variance Request is approved and the annexation occurs, Marana consents to the Dedications and agrees to honor and carry out the condition of approval of the Pending Variance Request requiring KB Home Tucson, Inc. or any other developer of the Replat Area to make the Dedications. A.R.S. § 9-471 paragraph L requires Marana to adopt zoning classifications that permit densities and uses not greater than those permitted by the county immediately before annexation. To comply with that requirement, translational Marana zoning for the Replat Area that relies on approval of the Pending Variance Request must also include the Dedications.

3. **Restrictions on use of MUSD Parcel D**. Not later than 60 days after the County or the District receives title to MUSD Parcel D, the County or District (whichever of them then owns them) shall record a restrictive covenant against the title to MUSD Parcel D, enforceable by the Town, and in the form attached as Exhibit C attached to and incorporated by this reference in this Agreement (or with substantively the same terms but in another form acceptable to the Marana Town Attorney). If the Dedications are made to the County, the County intends to subsequently convey the property to the District as part of a real property exchange.

4. **No representations about applicability of statutes**. The Parties acknowledge the existence of A.R.S. §§ 11-251.19 and 11-264.07 and acknowledge that this Agreement will satisfy the statutory requirements to the extent they are applicable; however, nothing in this Agreement is intended to or shall be interpreted as District's acknowledgment that the statutes apply if and to the extent the Dedications are made to the District and not to the County.

5. **County and District consent to annexation**. The County and the District hereby consent to Marana's future annexation of the unincorporated portion of MUSD Parcel D.

6. **District consent to annexation**. The District hereby consents to Marana's future annexation of District-owned land located within the same unincorporated county island where the Dedications are located, provided the District still owns it at the time of annexation. This District-owned land currently includes all of the following:

    a. Twenty-four vacant lots within the La Puerta del Norte subdivision, according to the plat recorded in the office of the Pima County Recorder on April 25, 1961 at Book 15 of Maps and Plats, Page 76; specifically, lots 7-15, 36-38, 55-58, 72-76, and 150 (currently bearing Assessor's Parcel Numbers 226-051-152A, -152B, and -152C) including any previously abandoned public right-of-way now combined with those lots.

    b. Two parcels located immediately west of MUSD Parcel D, currently bearing Assessor's Parcel Numbers 226-04-014C and 226-04-1120.

7. **Term and termination.**

   a. *Effective Date*. This Agreement shall be effective (the "Effective Date") on the date of the last signature of a Party.

   b. *Term*. Upon completion of the Dedications, the provisions of this Agreement pertaining to the Dedications shall become permanent. Upon Marana's annexation of the unincorporated portion of MUSD Parcel D and/or District-owned properties, this Agreement shall terminate. This Agreement shall terminate on the 20th anniversary of the Effective Date if and to the extent the Dedications or annexations addressed by this Agreement have not by that time occurred.

   c. *Termination for conflict of interest*. This Agreement can 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.

8. **Construction of Agreement.**

   a. *Entire agreement*. This instrument constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged in this Agreement.

   b. *Amendment.* This Agreement shall not be modified, amended, altered or changed except by written agreement signed by the 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.

   d. *Severability*. If any provision of this Agreement or the application of it 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 this Agreement are severable. If provision of this Agreement is declared invalid or void, the Parties agree to meet promptly upon request of a Party in an attempt to reach an agreement on a substitute provision.

9. **Legal jurisdiction.** Nothing in this Agreement shall be construed as either limiting or extending the legal jurisdiction of the County, the District, or Marana.

10. **No third party beneficiaries**. Nothing in this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement.

11. **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*. The provisions of A.R.S. § 41-1463 and Executive Order 75-5, as amended by Executive Orders 99-4 and 2009-9, issued by the Governor of the

State of Arizona are incorporated by this reference as a part of this Agreement as if set forth in full here.

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.

12. Waiver. Waiver by any Party of any breach of any term, covenant or condition of this Agreement 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 of this Agreement.

13. Notification. All notices or demands upon either Party shall be in writing, unless other forms are designated elsewhere, and shall be delivered in person or sent by mail addressed as follows:

COUNTY: REAL PROPERTY SERVICES ADMINISTRATOR
Attn: Manager
201 N Stone Ave, 6th Floor
Tucson, AZ 85701

DISTRICT: PIMA COUNTY FLOOD CONTROL DISTRICT
Attn: Chief Engineer
201 N Stone Ave, 8th Floor
Tucson, AZ 85701

MARANA: TOWN OF MARANA
11555 W. Civic Center Drive
Marana, Arizona 85653

Notices shall be deemed delivered and received on the date of delivery, if delivered in person, or on the third business day after mailing, if delivered by any form of mail. A Party may, by written notice to the other Parties, designate another address or person for receipt of notices under this Agreement.

14. Remedies. Any 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.

IN WITNESS WHEREOF, County has caused this Agreement to be executed by the Chair of its Board of Supervisors, upon resolution and attested to by the Clerk of the Board; District has caused this Agreement to be executed by the Chair of its Board of Directors, upon resolution and attested to by the Clerk of the Board; and the Marana has caused this

Agreement to be executed by the Mayor upon resolution of the Mayor and Council and attested to by its Clerk.

PIMA COUNTY FLOOD CONTROL DISTRICT	**TOWN OF MARANA**
_____	_____
Chair, Board of Directors	Mayor
Date: _____	Date: _____
ATTEST:	ATTEST:
_____	_____
Clerk of the Board	Town Clerk

PIMA COUNTY

_____

Chair, Board of Supervisors

Date: _____

ATTEST:

_____

Clerk of the Board

Intergovernmental Agreement Determination

The foregoing intergovernmental agreement between PIMA COUNTY, the PIMA COUNTY FLOOD CONTROL DISTRICT, 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 the Party to this Agreement represented by the undersigned.

PIMA COUNTY FLOOD CONTROL DISTRICT:

_____
Deputy County Attorney

Date: _____

TOWN OF MARANA:

_____
Town Attorney

Date: _____

PIMA COUNTY:

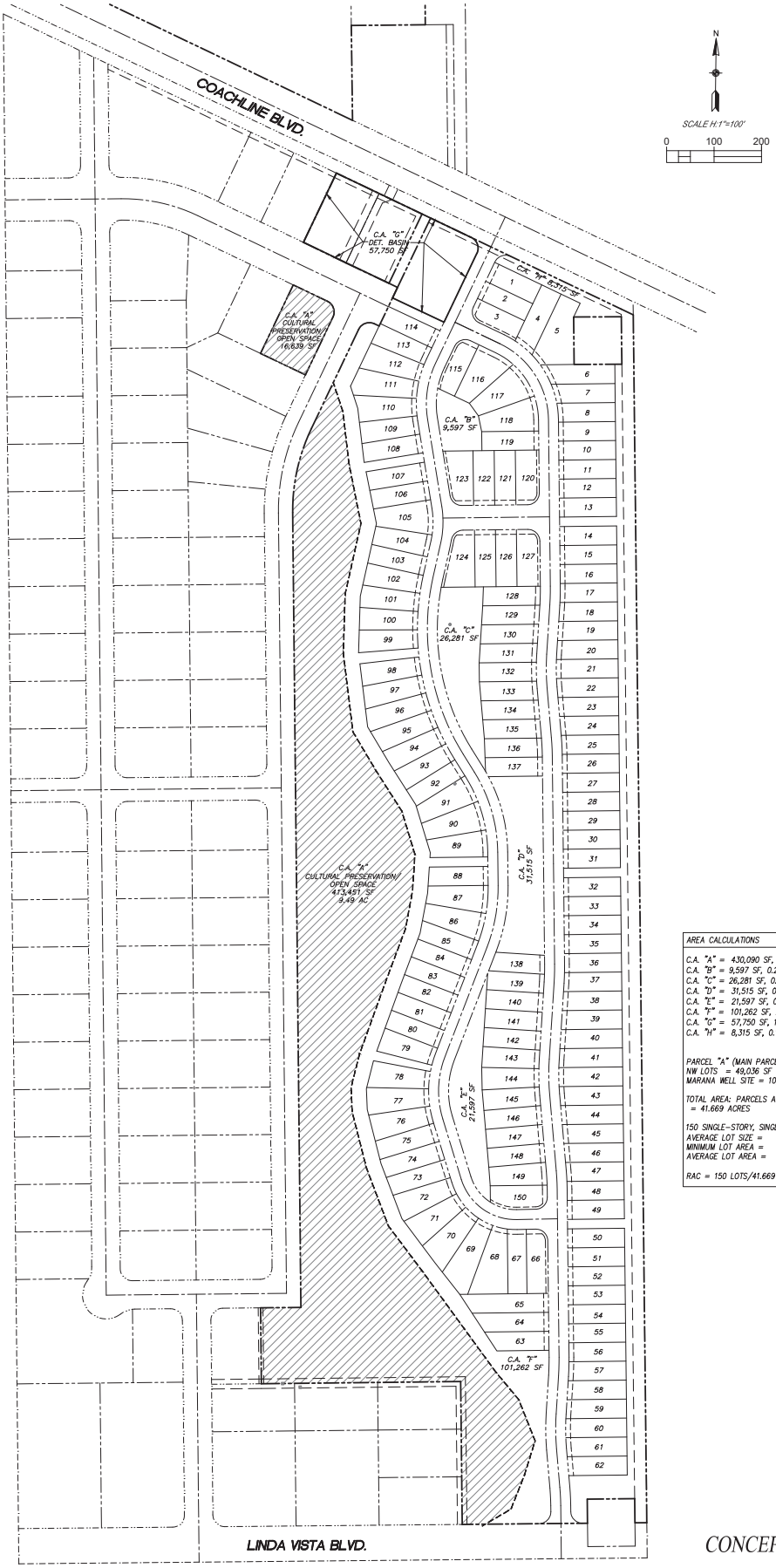
_____
Deputy County Attorney

Date: _____

List of Exhibits

Exhibit A	The Replat Area
Exhibit B	MUSD Parcel D
Exhibit C	Restrictive Covenant

EXHIBIT A TO INTERGOVERNMENTAL AGREEMENT



AREA CALCULATIONS

C.A. "A" = 430,090 SF, 9.87 ACRES (OPEN SPACE)
C.A. "B" = 9,597 SF, 0.22 ACRES
C.A. "C" = 26,281 SF, 0.60 ACRES
C.A. "D" = 31,515 SF, 0.72 ACRES
C.A. "E" = 21,597 SF, 0.50 ACRES
C.A. "F" = 101,262 SF, 2.32 ACRES
C.A. "G" = 57,750 SF, 1.33 ACRES (DETENTION/RETENTION)
C.A. "H" = 8,315 SF, 0.19 ACRES

PARCEL "A" (MAIN PARCEL) = 1,757,083 SF, 40.34 ACRES
NW LOTS = 49,036 SF OR 1.13 ACRES
MARANA WELL SITE = 10,006 SF OR 0.229 ACRES

TOTAL AREA: PARCELS A & NW LOTS & MARANA WELL SITE = 41.669 ACRES

150 SINGLE-STORY, SINGLE-FAMILY HOMESITES
AVERAGE LOT SIZE = 120' X 40'
MINIMUM LOT AREA = 4,800 SF
AVERAGE LOT AREA = 5,273 SF

RAC = 150 LOTS/41.669 ACRES = 3.600

PERRY ENGINEERING
501 W WETMORE ROAD
TUCSON, AZ 85705
CONTACT: KEN PERRY, P.E.
PHONE: 520.620.9870

CONCEPT SITE PLAN
FOR
REPLAT OF LA PUERTA DEL NORTE
LOTS 1 - 150 & COMMON AREAS A - H
DATED 07-23-2020

EXHIBIT B TO INTERGOVERNMENTAL AGREEMENT

PERRY ENGINEERING

DATE: 06/24/2020
PROJECT: 20024

LEGAL DESCRIPTION

PARCEL D

A PORTION OF CONTINENTIAL RANCH PARCEL 44 AND CONTINENTIAL RANCH PARCEL 45 AS RECORDED IN DOCKET 12449, PAGE 5258, RECORDS OF PIMA COUNTY, ARIZONA, SITUATED IN A PORTION OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 12 SOUTH, RANGE 12 EAST OF THE GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST PROPERTY CORNER OF SAID CONTINENTIAL RANCH PARCEL 45, BEING A 1/2" IRON REBAR WITH BRASS TAG, STAMPED 51130, FROM WHICH THE SOUTHWEST OF SAID CONTINENTIAL RANCH PARCEL 44, BEING A 1/2" IRON REBAR WITH BRASS TAG, STAMPED 51130, BEARS NORTH 00° 44' 02" WEST, A DISTANCE OF 199.89 FEET;

THENCE, DEPARTING SAID SOUTHEAST PROPERTY CORNER AND ALONG THE NORTH RIGHT OF WAY OF COACHLINE BOULEVARD AS RECORDED IN DOCKET 10867, PAGE 2986, RECORDS OF PIMA COUNTY, ARIZONA, NORTH 64° 28' 19" WEST, A DISTANCE OF 615.55 FEET, TO A 1/2" IRON REBAR WITH BRASS TAG, STAMPED 51130;

THENCE, DEPARTING SAID NORTH RIGHT OF WAY, NORTH 00° 31' 03" WEST, A DISTANCE OF 554.28 FEET, TO A 1/2" IRON REBAR WITH BRASS TAG, STAMPED 51130;

THENCE, NORTH 89° 25' 37" EAST, A DISTANCE OF 552.56 FEET, TO A 1/2" IRON REBAR WITH BRASS TAG, STAMPED 51130;

THENCE, NORTH 89° 20' 17" EAST, A DISTANCE OF 156.00 FEET, TO A 1/2" IRON REBAR WITH BRASS TAG, STAMPED 51130;

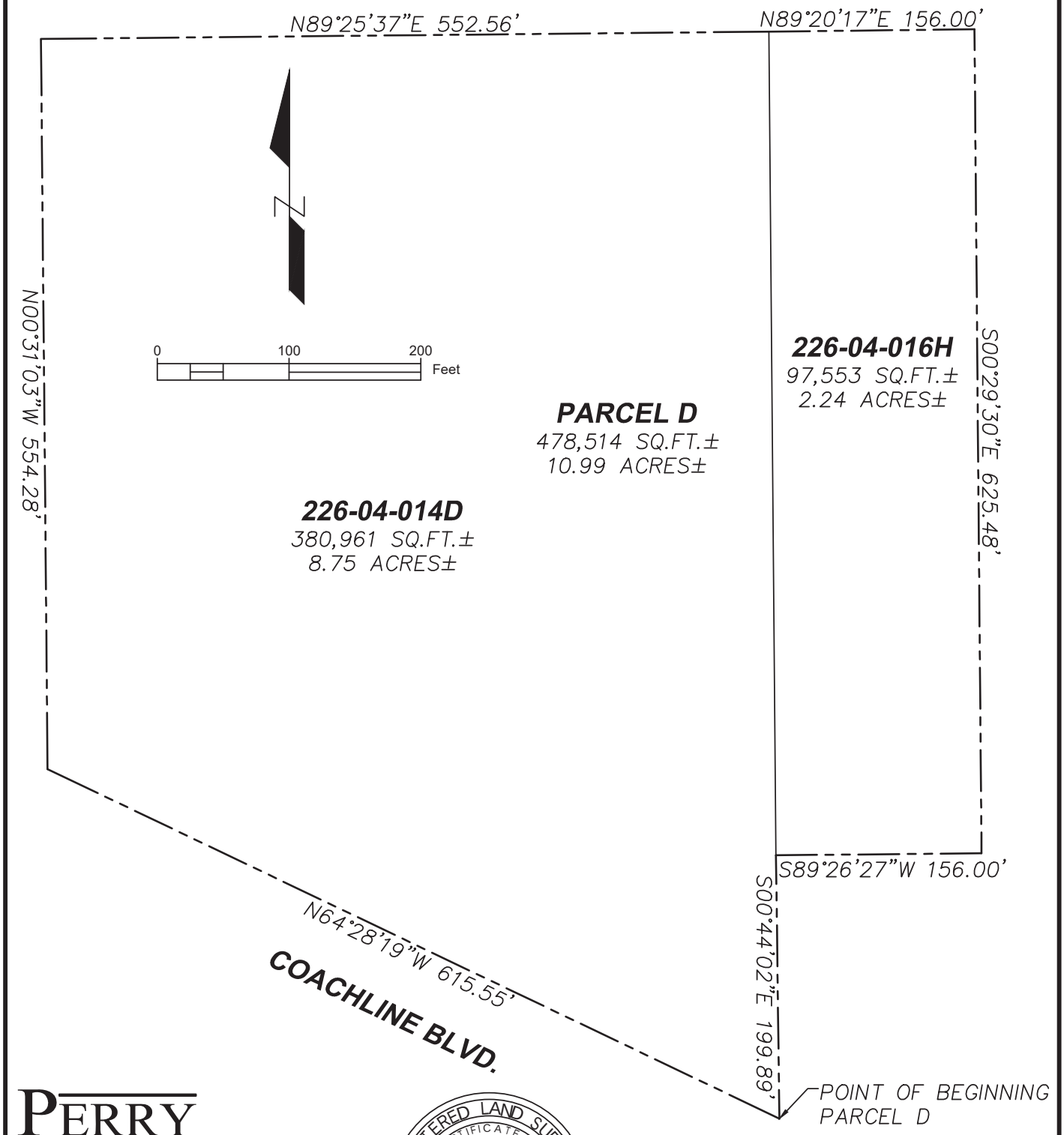
THENCE, SOUTH 00° 29' 30" EAST, A DISTANCE OF 625.48 FEET, TO A 1/2" IRON REBAR WITH BRASS TAG, STAMPED 51130;

THENCE, SOUTH 89° 26' 27" WEST, A DISTANCE OF 156.00 FEET, TO A 1/2" IRON REBAR WITH BRASS TAG, STAMPED 51130;

THENCE, SOUTH 00° 44' 02" EAST, A DISTANCE OF 199.89 FEET, TO THE **POINT OF BEGINNING**.

THE TOTAL PARCEL AREA CONTAINS 478,514 SQUARE FEET OR 10.99 ACRES, MORE OR LESS.





PERRY
ENGINEERING
501 W WETMORE RD.
TUCSON, AZ 85705
CONTACT: ANDREW M. CLARK, RLS
PHONE: 520-620-9870
ACLARK@PERRYENGINEERING.NET

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
51130
ANDREW MYRL
CLARK
DATE SIGNED 06/24/20
ARIZONA U.S.A.

PARCEL D

A PORTION OF THE NORTHEAST 1/4 OF S.17 T.12S., R.12E. OF THE G.&S.R.M.

EXHIBIT DRAWING

DECLARATION OF CONDITIONS, COVENANTS, AND RESTRICTIONS RUNNING WITH THE LAND

These Covenants, Conditions and Restrictions (these "CCRs") are made by PIMA COUNTY FLOOD CONTROL DISTRICT, a political subdivision of the State of Arizona ("Declarant").

1. GENERAL

1.1. Affected Property. Declarant is the owner of the land referred to in these CCRs as the Affected Property, legally described and depicted in Exhibit A attached to and incorporated by this reference in this instrument.

1.2. Purpose. These CCRs are executed to satisfy Declarant's obligations arising from the INTERGOVERNMENTAL AGREEMENT BETWEEN THE PIMA COUNTY FLOOD CONTROL DISTRICT AND THE TOWN OF MARANA REGARDING OPEN SPACE NEAR THE EL RÍO PRESERVE (the "Agreement"), dated _____, 2020, by and between Declarant and the Town of Marana.

1.3. Declaration. Declarant, for itself and future owners of any or all of the Affected Property, hereby declares that all of the Affected Property and each part thereof shall be owned, held, transferred, conveyed, sold, leased, rented, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions and other provisions set forth in these CCRs for the period these CCRs are in effect.

1.4. Common and General Plan. These CCRs are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement and protection of the Affected Property.

1.5. Effect. The provisions of these CCRs are not personal and are intended to and shall run with the land and, until their expiration or termination, shall bind, be a charge upon and inure to the mutual benefit of (a) the owners of all or a portion of the Affected Property, (b) Declarant (as it now exists or as it may be later reorganized, consolidated, enlarged, or reincorporated), and (c) the Town of Marana.

2. RESTRICTIONS

2.1. Linear Park. The "Linear Park" means the Chuck Huckelberry Loop, a system of paved, shared-use paths and short segments of buffered bike lanes connecting the Rillito, Santa Cruz, and Pantano River Parks and other linear parks and greenways, one segment of which is located adjacent to the north boundary of the Affected Property.

2.2. Allowed Uses. Use of the Affected Property shall be limited to the following:

2.2.1. Amenities for the Linear Park, including comfort stations, restrooms and parking, and public use of the Linear Park.

2.2.2. Access for ordinary maintenance and repair of the Linear Park and/or the Bank Protection, including a storage shed not larger than 250 square feet for equipment.

2.2.3. During an emergency or flood event, the temporary storage of heavy equipment necessary to deal with the emergency.

2.2.4. Such additional uses as may be approved by resolution adopted by the Town of Marana's Mayor and Council.

2.3. Prohibited Uses. All uses other than those set forth in paragraph 2.2 above are prohibited.

3. MISCELLANEOUS

3.1. Effective Date. These CCRs shall be effective on the date they are recorded in the office of the Recorder of Pima County, Arizona.

3.2. Perpetual Duration. Unless amended as provided in paragraph 3.3 below, all provisions, covenants, conditions and restrictions contained in these CCRs shall continue in full force and effect in perpetuity.

3.3. Amendment. These CCRs may be amended only upon the concurrence of the Town of Marana, Declarant (as it now exists or as it may be later reorganized, consolidated, enlarged, or reincorporated), and (if different) the then owners of at least 75% of the land area of the Affected Property.

3.4. Enforcement. These CCRs may be enforced only by the Town of Marana.

IN WITNESS WHEREOF, DECLARANT has caused this DECLARATION OF CONDITIONS, COVENANTS, AND RESTRICTIONS RUNNING WITH THE LAND to be signed by the undersigned duly authorized officer and to be recorded thereafter.

"DECLARANT:"
PIMA COUNTY FLOOD CONTROL DISTRICT, a
political subdivision of the State of Arizona

By:_____

Its:_____

APPROVED AS TO FORM:

By:_____
Deputy Pima County Attorney

EXHIBIT C TO INTERGOVERNMENTAL AGREEMENT

STATE OF ARIZONA)
ss
County of Pima)

The foregoing instrument was acknowledged before me this ____ day of _____, 202___, by _____, the _____ of PIMA COUNTY FLOOD CONTROL DISTRICT, a political subdivision of the State of Arizona, on its behalf.

(Seal)

_____
Notary Public

LA PUERTA DEL NORTE EAST
PRE-ANNEXATION DEVELOPMENT AGREEMENT

Town of Marana, Arizona.

THIS LA PUERTA DEL NORTE EAST PRE-ANNEXATION DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into by and between the TOWN OF MARANA, an Arizona municipal corporation (the "Town"), and the MARANA UNIFIED SCHOOL DISTRICT NO. 6, a political subdivision of the State of Arizona ("MUSD"). The Town and MUSD are sometimes collectively referred to as the "Parties," either one of which is sometimes individually referred to as a "Party." The term Party and Parties shall include MUSD's successors in interest of the Property as provided in, and subject to, **Section 17** hereof.

RECITALS

A. MUSD owns approximately 41.67 acres of land south of Coachline Boulevard ("Coachline") bearing Pima County ("County") Assessor's Parcel Numbers ("APN") 226-05-0070, 226-05-0080, 226-05-0610, and 226-05-1570, as depicted and described at **Exhibit A** (the "Property"). The Property includes about 31.8 acres that will be developed as a single-family home subdivision (the "Development Area") and about 9.87 acres that will be preserved as archeologically significant open space ("Cultural Open Space"). **Exhibit B** depicts the Cultural Open Space as Open Space "A," and the Development Area as the remaining common areas, rights of way, and lots. MUSD also owns approximately 11 acres of land located north of Coachline ("North Parcel") that includes about 8.8 acres of vacant land ("County Open Space") in the County currently identified as APN 226-04-014D, and about 2.2 acres of vacant land ("Town Open Space") in the Town limits currently identified as APN 226-04-016H. The County Open Space, Town Open Space and Cultural Open Space are collectively referred to as the "Open Space Parcels."

B. MUSD has entered into an exchange agreement with Gladden Phase II, LLC ("GL2") to exchange the Property and North Parcel for certain other real property owned by GL2 (the "GL2 Exchange"). GL2 has entered into a purchase agreement with KB Home Tucson, Inc. ("KB") to convey the Property and the North Parcel post-exchange to KB. KB intends to develop the Property into a single-family home residential subdivision with approximately 150 single-family homes (the "Development"). MUSD and its successors in interest are referred to as the "Developer."

C. To allow the Development to preserve the Cultural Open Space as non-developable land, KB has filed a zoning variance with the County Board of Adjustment District 3 ("Board"), bearing the case name "P20VA00015 MARANA UNIFIED SCHOOL DISTRICT NO 6 - N. COACHLINE BOULEVARD" (the "Variance Request"). The Property's current County zoning "TH" allows one single-family home per 8,000 square feet, and the Variance Request asks to allow one home per 4,800 square feet with commensurate setbacks. The Variance Request will reduce lot sizes without increasing density, therefore creating enough vacant land to preserve the Cultural Open Space. County staff have expressed support for the Variance Request on the condition that the Open Space Parcels are preserved and dedicated as permanent open space to the County. The Developer is agreeable to a condition that requires the dedication of the Open Space Parcels after both the Variance Request approval and the Town's approval of the Development's final plat.

D. The Developer and the Town desire to annex the Property into the Town in order to facilitate the improvement of the Development Area and the preservation of the Open Space Parcels. The Town believes that it will derive substantial economic, environmental, educational, and other benefits by including the Property within the Town and facilitating the improvements to the Development Area. This will provide the Town with additional sources of revenue, while preserving significant open space for natural wildlife habitat at no expense to the Town.

E. The future development of the Property shall be subject to the rules and regulations applicable to the Property, including but not limited to the following:

1. The Marana Land Development Code (the "Code"), collectively establishing, among other things, the type of land uses, location, density and intensity of such land uses, and community character of the Property, and providing for, among other things, the development of housing and recreation/open space opportunities; and

2. The approved Variance Request, including any conditions approved by the Board that are within the jurisdiction of the Town.

F. In connection with the Development, the Town has requested the Developer construct what are referred to in this Agreement as the Linda Vista Improvements and the Water System Improvements, and to dedicate to the public a portion of the Property referred to in this Agreement as the Additional Water System Area, all of which the Developer is willing to do on the terms and conditions set forth in this Agreement. The Parties acknowledge that the Development's southern point of ingress and egress will connect to West Linda Vista Boulevard ("Linda Vista"), which is currently in substandard condition.

G. The Town is authorized by A.R.S. § 9-500.05 to enter into a development agreement with a landowner or other person or entity having an interest in real property located within the Town to facilitate development of the property by providing for, among other things, the conditions, terms, restrictions, and requirements for

development and public infrastructure and the financing of public infrastructure.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into this Agreement as though fully restated here, and the mutual covenants set forth in this Agreement, the Parties hereby agree as follows:

1. *Definitions*. The following definitions apply to this Agreement:

(A) "**Additional Water System Area**" means the approximately 10,000 square feet of the Property necessary to construct the Water System Improvements in the location defined on the Development's preliminary plat ("Pre-plat"). Developer will dedicate the Additional Water System Area to the Town in exchange for the Shuttered Well Site.

(B) "**Annexation**" means the annexation of the Property into the Town as contemplated by this Agreement.

(C) "**Construction Sales Tax Revenues**" mean those portions of the Town's transaction privilege taxes (currently 4%) generated pursuant to Section 8-415 or 8-416 of the Marana Tax Code (or corresponding sections of successor codes) from construction contracting or speculative builder activities occurring as part of the Development (including but not limited to the construction of the Linda Vista Improvements and the Water System Improvements).

(D) "**Developer**" is defined in recital B above.

(E) "**Development**" is defined in recital B above.

(F) "**Development Regulations**" collectively mean the existing Code, the Translational Zoning including the approved Variance Request and conditions, and this Agreement, which collectively set forth the basic land uses, densities and intensities of land uses currently authorized for and development regulations related to the Property.

(G) "**Linda Vista Improvements**" means the design, demolition, and reconstruction of Linda Vista as a Minor Collector, as shown on **Exhibit C**, from its intersection with North Silverbell Road eastward to the southern entrance of the Development, as depicted on **Exhibit D.** The Linda Vista Improvements will include sidewalks and curbing on only one side of the roadway, in a location mutually agreed to by the Parties.

(H) "**Onsite**" means within the boundaries of the Property.

(I) "**Public Improvements**" means the Linda Vista Improvements.

(J) "**Public Improvement Costs**" means all costs, expenses, fees, transaction privilege taxes and charges actually incurred and paid by or on behalf of the

Developer to contractors, architects, engineers, surveyors, governmental agencies, other professionals and consultants, and other third parties for materials, labor, planning, design, engineering, surveying, site excavation and preparation, governmental permits and payments, payment and performance bonds, other professional services, and all other costs and expenses related or incidental to and reasonably necessary for, the acquisition, improvement, construction, installation, or provision of the Public Improvements and warranting them for one year after completion.

(K) "**Reimbursement Account**" means a separate account within the Town's General Fund or accounted for by an appropriate book or ledger entry designation for the purpose of making Reimbursement Payments.

(L) "**Reimbursement Payments**" is defined in paragraph 6(C) below.

(M) "**Shuttered Well Site**" means the approximately 10,000 square feet of land owned by the Town and identified as APN 226-05-149B containing an abandoned Marana Water well that is surrounded by the Property. The Town shall abandon and convey the Shuttered Well Site to the Developer in exchange for the Additional Water System Area.

(N) "**Town Engineer**" means the duly appointed town engineer of the Town of Marana.

(O) "**Town's Share of Public Improvement Costs**" means fifty percent (50%) of all Public Improvement Costs for the Linda Vista Improvements, except that the Town's reimbursements for Public Improvements shall not exceed Four Hundred Thousand and 0/100 Dollars ($400,000.00).

(P) "**Water System Improvements**" means the demolition and replacement of the Water Tank Area's water storage tank and booster with a 100,000-gallon water tank and booster station, along with eliminating the pipes connecting the water main to the Shuttered Well Site. The Water System Improvements will be constructed on the Water Tank Area and Additional Water System Area as defined on the Pre-plat.

(Q) "**Water Tank Area**" means the land currently owned by the Town of Marana and identified as APN 226-03-002A, containing the existing Marana Water booster and water storage tank.

2. *Annexation and original zoning*. The Town has initiated the Annexation process to annex the Property into the Town by filing a blank annexation petition with the Pima County Recorder, Sequence No. 20202100291, consistent with the requirements of Arizona Revised Statutes ("ARS") § 9-471 and all other applicable laws, ordinances and rules ("Annexation Laws"). The Town has provided timely notice and held the public hearing as required by the Annexation Laws. Pursuant to the requirements of the Annexation Laws, the Parties agree to the following:

(A) Petition & Council Action: Following the process defined in ARS § 9-471 and

the Town's approval of this Agreement, the Developer shall sign and deliver to the Town the Annexation petition ("Petition") for the Property. The Town agrees to schedule the Annexation ordinance for adoption by the Town Council at the first possible Town Council meeting after the Developer has submitted the signed Petition.

(B) Original Zoning*:* The Annexation Laws require the Town to translate the Property's original Town zoning from the lawful uses, activities and zoning in the County, and without permitting densities or uses that are greater than those permitted in the County prior to annexation. To establish original Town zoning for the Property that is consistent with the Property's current lawful uses in the County and minimizes legal nonconforming uses, upon Annexation the Town shall impose the R-3.5 zoning district in the Town's Land Development Code (the "Translational Zoning"). The Town also agrees to incorporate into the Translational Zoning the minimum lot size and setbacks, along with any variance conditions, that are approved in the Variance Request. The Town Council will adopt the Property's Translational Zoning at the same Town Council meeting at which it adopts the Annexation.

(C) Failure to Adopt Annexation: It is understood by the Parties that the Town Council retains the discretion to approve or deny the Annexation ordinance. In the event that the Town Council decides not to adopt the Annexation ordinance that annexes the Property into the Town, all provisions of this Agreement shall be void and of no force or effect; except that the Parties agree that Section 4(A) shall survive and continue to be binding on the Town and the Developer. In the event the Town Council has not adopted the Annexation within forty-five (45) days after the Developer has signed and submitted the Petition to the Town, the Town Council shall not take any further action regarding the Annexation based on the submitted Petition, and all other provisions of this Agreement shall automatically and immediately become null and void; except that the Parties agrees that Section 4(A) shall survive and continue to be binding on the Town and the Developer. The Developer may extend the foregoing forty-five (45) day deadline for up to another forty-five (45) days by written notice to the Town.

3. *Development Plans*.

(A) Development Review. The Development shall be developed in accordance with the Development Regulations. Upon the Developer's compliance with the applicable development review and approval procedures and substantive requirements of the Development Regulations, the Town agrees to issue such permits or approvals for the Development as may be requested by the Developer.

(B) Review Timing. The Town acknowledges the necessity for prompt review by the Town of all plans, plats, permits, and other materials (the "Submitted

Materials") submitted by the Developer to the Town hereunder or pursuant to any zoning procedure, permit procedure, or other governmental procedure pertaining to the development of the Property and agrees to use its best efforts to accomplish such prompt review of the Submitted Materials whenever possible. The Town Representative, as defined in Section 15(A), shall ensure that Submitted Materials are reviewed in a timely manner.

4. *On-site Infrastructure.*

(A) Water Utilities. The Property is located within the Marana Water's water service area and Marana Water's designation as having an assured water supply pursuant to ARS § 45-576 shall apply to the entire Property. The Town agrees that Marana Water shall provide municipal water service to the Property and serve the Development's water utilities on the same terms and conditions as it provides water to other residential customers. The Developer shall be responsible for the construction of all Onsite water utility infrastructure, including the 8-inch waterline internal to the subdivision.

(B) Wastewater. It is understood that the Developer will obtain approval from County Wastewater Reclamation for Onsite wastewater collection and treatment for the Development. The Developer must show proof of wastewater system approval to the Town before the Town will issue any building permits.

(C) Roadways. The Developer shall be responsible for the construction of all of the Development's Onsite roadways. As a condition of the Town's approval of the Development, and not as a separate legal obligation, the Developer must substantially complete construction of at least one Onsite roadway that provides a connection within the Property between Linda Vista and Coachline before seeking occupancy of any structure other than model homes.

(D) Onsite Private Recreational Facilities. The Parties acknowledge that the Developer is designing its Onsite recreational facilities with the goal of complying with the major provisions of the Town's yet to be adopted draft Recreational Area Design Manual, specifically the requirement for 350 square feet of Onsite park space per unit, and amenities to include a dog park (the "New Park Regulations"). The Town agrees that the Development must comply with the Code's Park Regulations, Code Ch. 13-1, in effect on the Effective Date, except that the Town will approve the Development's Onsite recreational facilities that comply with the New Park Regulations referred to herein.

5. *Offsite improvements construction and reimbursement.*

(A) Improvement Completion. As a condition of the Town's approval of the Development, and not as a separate legal obligation, the Developer must substantially complete construction of the Water System Improvements before seeking occupancy of any structure other than model homes. The Town agrees

that Developer shall commence the site work for the construction of the Linda Vista Improvements on or before the date that Town issues the building permit for the Development's fiftieth (50th) residential home. Model home lots may not be sold until they have been released from subdivision assurances.

(B) Improvement Reimbursement. As a condition precedent to receiving Reimbursement Payments under paragraph 6(C) of this Agreement, and not as a separate contractual obligation, the Developer shall, in conjunction with its construction of the Development and in accordance with the State of Arizona and the Town public infrastructure construction procurement laws and procedures:

(i) Design and construct the Public Improvements; and

(ii) Pay all Public Improvement Costs for the Public Improvements as they become due.

(C) Access. The Developer's obligation to construct the Linda Vista Improvements is conditioned on Linda Vista remaining a public right of way with unrestricted access to the Property's southern boundary adjacent to Linda Vista.

(D) Permit and review fee waiver. The Town will waive 60% of all plan review fees and inspection and construction permit fees for the Linda Vista Improvements.

(E) Maintenance. Once the Public Improvements are completed by the Developer and accepted by the Town, and the warranty has expired, the Town shall have full operation and maintenance responsibility for the Public Improvements.

(F) Defined Improvements. Developer is not required to complete any off-site infrastructure improvements other than the Water System Improvements and the Linda Vista Improvements defined herein.

6. Construction Sales Tax Reimbursement.

(A) Reimbursement amount. The Town shall make Reimbursement Payments to the Developer for the Town's Share of Public Improvement Costs pursuant to paragraph 6(C) below. The Developer shall submit to the Town quarterly statements showing the actual Public Improvement Costs incurred and paid to date for the Linda Vista Improvements. Quarterly statements shall be provided until the total amount of all Reimbursement Payments to the Developer equals the Town's Share of Public Improvement Costs or until the 15th anniversary of the Effective Date, whichever first occurs. Within 60 days thereafter, the Developer shall provide a final statement to the Town. The Developer shall provide the Town with invoices or other backup information reasonably requested by the Town to confirm the accuracy of the Developer's quarterly statement of costs and contributions or credits.

(B) Reimbursement Account. The Town shall deposit the Construction Sales Tax Revenues into the Reimbursement Account as they are received from the

Arizona Department of Revenue, beginning with the first such revenues generated from the Development and ending upon the expiration of this Agreement. Funds in the Reimbursement Account shall be reimbursed to the Developer pursuant to paragraph (C) below.

(C) Reimbursement Payments. The Town shall pay the Developer within the first 30 days of each calendar quarter the lesser of (i) the Town's Share of Public Improvement Costs shown on the most recent unpaid quarterly statement and (ii) all funds in the Reimbursement Account ("Reimbursement Payments"). Reimbursement Payments shall begin the first calendar quarter after all of the following have occurred: (a) the Developer has incurred Public Improvement Costs for the Public Improvements; (b) the Developer has submitted the first quarterly statement pursuant to paragraph (A) above; and (c) the Town has received Construction Sales Tax Revenues generated by the Development. Any funds accrued in the Reimbursement Account and owed to the Developer for the Town's Share of Public Improvement Costs but not yet disbursed to the Developer upon the expiration of this Agreement shall be paid to the Developer within 30 days after the expiration of this Agreement.

(D) Effect of loss of Construction Sales Tax Revenues. If the laws of the State of Arizona are revised in a way that reduces or eliminates Construction Sales Tax Revenues, the Town shall make quarterly deposits into the Reimbursement Account from such funding, if any, that the Town receives under then-existing laws of the State of Arizona to replace the reduced or eliminated Construction Sales Tax Revenues, in an amount that is proportional, in the Town's Finance Director's reasonable opinion, to the Construction Sales Tax Revenues that the Town would have received if the laws of the State of Arizona had not been so revised.

(E) No Town representation of sufficiency of Reimbursement Payments. The Developer acknowledges and understands that the amount of the Construction Sales Tax Revenues depends on many factors and may be insufficient to pay all of the Town's Share of Public Improvement Costs.

(F) Developer audit. Not more than once each calendar year, the Developer may, at its own cost, audit Town sales tax returns and other appropriate financial records of the Town to assure prompt and accurate deposit into the Reimbursement Account of all revenues as required pursuant to this Agreement. The Developer audit authorized by this paragraph shall be subject to all applicable laws that may prohibit or limit the dissemination or use of transaction privilege tax and related information. Before the Developer audit occurs, the Developer shall obtain and provide to the Town written waivers of confidentiality sufficient to satisfy the requirements of Arizona Revised Statutes § 42-2003(A)(6) from each taxpayer whose sales tax returns and other financial records are provided by the Town in connection with the audit.

(G) Annual report. Within 45 days following the end of each Town fiscal year, the Town shall deliver to the Developer a report of all Construction Sales Tax Revenues generated by or attributable to the Development which have been utilized by the Town in determining the amount deposited into the Reimbursement Account. The report shall be restricted to information that may be released by the Town without violating applicable laws that may prohibit or limit the dissemination or use of transaction privilege tax and related information. The report will not contain information capable of identifying confidential information of any particular taxpayer unless and until the Developer has obtained and provided to the Town written waivers of confidentiality sufficient to satisfy the requirements of Arizona Revised Statutes § 42-2003 from each taxpayer whose confidential information is revealed in the report.

(H) Limitations. During the Term of this Agreement, the Town shall not enter into any agreement or transaction which impairs the rights of the Developer under this Agreement, including, without limitation, the right to receive the Reimbursement Payments and the proceeds of the Reimbursement Account in accordance with the procedures established in this Agreement.

(I) Contractor and subcontractor disaggregation of tax information for the Development; release of tax information. The Developer shall require each contractor and subcontractor responsible for the payment of construction sales tax for work attributable to the Development ("Construction Sales Tax") to separately report Construction Sales Tax attributable to the Development. The Developer shall exercise reasonable efforts to obtain from each contractor and subcontractor doing work attributable to the Development a consent to release of tax information in a form reasonably acceptable to the Town. If the separate report required by this paragraph is not provided to the Town, the Town shall make a reasonable estimate of the Construction Sales Tax Revenues derived from the Development based on all information available to the Town, including information provided by the Developer, and the good faith certification by the Town's Finance Director shall be considered final and binding upon the Developer. The final certification of the Town's Finance Director shall be subject to all applicable laws that may prohibit or limit the dissemination or use of transaction privilege tax and related information.

7. *Water system Improvements land exchange.* The Parties acknowledge that the Water System Improvements will not fit within the current boundary of the Water Tank Area, and that the Additional Water System Area will be necessary to construct these improvements. To provide sufficient land for the Water System Improvements, the Developer agrees to dedicate the Additional Water System Area to the Town as part of the Development's final plat. The Additional Water System Area is shown on the Pre-plat, or as may be modified during the plat review process by mutual agreement of the Parties. In exchange for and concurrently with the

Developer's dedication of the Additional Water System Area to the Town, the Town, at its sole cost and expense, shall abandon and convey fee title to the Shuttered Well Site to the Developer via special warranty deed or such other legal mechanism agreed to between the Parties. To allow for construction of the Water System Improvements and demolition and site improvements of the Shuttered Well Site, the Town shall grant Developer any temporary construction easements necessary for development of these areas.

8. *Drainage Infrastructure.*

(A) Drainage facilities and Coachline: The Parties acknowledge that the Developer, in order to provide for adequate drainage infrastructure at the Property's northern boundary as approved by the Town Engineer, may require an additional 24-inch drainage pipe ("Pipe") to accompany the existing "Coachline Boulevard Phase 2 Bleeder Pipe" (WLB Job No. 186031-P004) that extends under Coachline, as approved by the Town on June 4, 2001. Conditioned on the approval by the Town Engineer that the Development requires the additional Pipe, the Town agrees that Developer may install the Pipe with an open pavement cut on and under Coachline, pursuant to the Town Code § 12-7-9.

(B) Eminent domain for southern drainage facilities: The Developer anticipates the need to acquire a drainage easement across land southeast of the Property to benefit the Development and surrounding areas. The Developer will use commercially reasonable efforts to acquire any and all property rights needed to construct offsite drainage facilities to serve the Property. The Developer shall not construct these offsite drainage facilities until either (i) the Developer has acquired the necessary property rights pursuant to this paragraph or, (ii) the Town has obtained possession of the necessary property rights by eminent domain, which the Town shall exercise by filing a condemnation lawsuit in Pima County Superior Court within 180 days after the Developer advises the Town in writing that it has been unable to obtain the necessary property rights. If the Town exercises its power of eminent domain pursuant to this paragraph, the Developer shall pay all costs of condemnation, including but not limited to the condemnation award to the property owners, costs of litigation, and reasonable attorneys' fees. If the Town settles a condemnation lawsuit, the Developer shall pay the settlement costs, provided that those costs do not exceed the higher of (a) 120% of the appraised value of the property rights acquired or (b) an amount approved by the Developer.

9. *School improvement contribution.* The Developer agrees to make a contribution to MUSD in the amount of One Thousand Two Hundred Dollars ($1,200.00) per subdivided residential lot ("Lot") within the Property ("School Contribution"). The School Contribution shall be due and payable at the time a building permit is issued for each Lot within the Property. Developer also agrees to make a contribution to the Marana Unified School District Foundation in the amount of One Thousand Two Hundred Fifty Dollars ($1,250.00) per Lot within the Property ("Foundation

Contribution"). The Foundation Contribution shall be due and payable at the time that such Lot, together with the completed residential dwelling located thereon, is first sold to a retail homebuyer in a retail sale, and shall be payable out of the escrow established to consummate the closing of such transaction.

10. *Ownership and control of open space*.

(A) Dedicated Open Space. As contemplated by the Variance Request, the Developer shall dedicate the Open Space Parcels to the County, and such dedication shall be conditioned on the Town's approval of the Development's final plat. To facilitate this dedication, the Town agrees to approve and execute an intergovernmental agreement with the County to allow the County to own any portion of the Open Space Parcels that are currently in or potentially will be within the Town limits, pursuant to ARS § 11-251.19.

(B) Common Areas. Common areas and any areas to be preserved as natural open space or undisturbed areas within the Development Area as shown on any plat for the Property other than the Cultural Open Space (the "Common Areas") may be conveyed to a non-profit entity for management, and may be protected by deed restrictions, declarations of restrictive covenants, and/or other instruments.

11. *Term*. This Agreement shall become effective upon the later of its execution by all the Parties and the effective date of the Town Council resolution approving this Agreement (the "Effective Date"). The term of this Agreement ("Term") shall begin on the Effective Date and, unless sooner terminated by the mutual consent of the Parties, shall automatically terminate and shall thereafter be void for all purposes on the 15th anniversary of the Effective Date, provided Marana Water's obligations under Section 4(A) shall survive. The Parties agree that if the GL2 Exchange does not occur for any reason whatsoever and that the Development contemplated in this Agreement does not commence, that the Developer may terminate this Agreement upon written notice to the Town, except that if the Town Council has approved the Annexation, the Annexation shall remain in effect and all other provisions of this Agreement may be terminated.

12. *Amendments to Agreement*. The Town and Developer agree to cooperate and in good faith pursue any amendments to this Agreement that are reasonably necessary to accomplish the goals expressed in the Translational Zoning, Variance Request, and the Code. Any amendment to the Agreement shall be approved pursuant to Section 17 herein.

13. *Termination upon sale to the public.* This Agreement shall terminate without the execution or recordation of any further document or instrument as to any lot that has been finally subdivided and individually (and not in "bulk") leased (for a period of longer than one year) or sold to the end purchaser or user thereof, and thereupon such lot shall be released from and no longer be subject to or burdened by the provisions of this Agreement. Further, this Agreement shall terminate

without the execution or recordation of any further document or instrument as to any Common Areas that are conveyed to a non-profit entity for management, and upon such conveyance such Common Areas shall be released from and no longer be subject to or burdened by the provisions of this Agreement.

14. *No partnership or joint venture*. Nothing in this Agreement shall be understood or construed to create or imply a partnership or joint venture between the Developer and the Town

15. *Cooperation and alternative dispute resolution*.

(A) Appointment of representatives. To further the commitment of the Parties to cooperate in the progress of the development of the Property, the Town and the Developer each shall designate and appoint a representative to act as a liaison between the Town and its various departments and the Developer. The initial representative for the Town (the "Town Representative") shall be the Town Manager, and the initial representative(s) for the Developer shall be Dan Contorno (MUSD), James Gaulin (GL2) and Andrew Gasparro (KB) or a replacement(s) to be selected by the Developer. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties and the development.

(B) Non-performance; remedies. If either Party does not perform under this Agreement (the "Non-Performing Party") with respect to any of that Party's obligations under this Agreement, the other Party (the "Demanding Party") shall be entitled to give written notice in the manner prescribed in paragraph 16 below to the Non-Performing Party, which notice shall state the nature of the non-performance claimed and make demand that such non-performance be corrected. The Non-Performing Party shall then have (i) 15 days from the date of the notice within which to correct the non-performance if it can reasonably be corrected by the payment of money, or (ii) 30 days from the date of the notice to cure the non-performance if action other than the payment of money is reasonably required, or if the non-monetary non-performance cannot reasonably be cured within 30 days, then such longer period as may be reasonably required, provided and so long as the cure is promptly commenced within 30 days and thereafter diligently prosecuted to completion. If any non-performance is not cured within the applicable time period set forth in this paragraph, then the Demanding Party shall be entitled to begin the mediation and arbitration proceedings set forth in this paragraph. The Parties agree that due to the size, nature and scope of the development, and due to the fact that it may not be practical or possible to restore the property to its condition prior to Developer's development and improvement work, once implementation of this Agreement has begun, money damages and remedies at law will likely be inadequate and that specific performance will likely be appropriate for the non-performance of a covenant contained in this Agreement. This paragraph shall not limit any

contract or other rights, remedies, or causes of action that either Party may have at law or in equity; provided, however, each Party waives any right to seek recovery of, or recover, any speculative, consequential, lost profits, punitive, exemplary, or any other damages, other than actual damages and reimbursement for its costs and expenses incurred in enforcing this Agreement. Notwithstanding the foregoing, the foregoing waiver of damages shall not apply to any claims arising from a Party's fraud or intentional bad faith misconduct.

(C) Mediation. If there is a dispute under this Agreement which the Parties cannot resolve between themselves, the Parties agree that there shall be a 45-day moratorium on arbitration during which time the Parties agree to attempt to settle the dispute by nonbinding mediation before commencement of arbitration. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by the Developer and the Town. If the Parties cannot agree upon the selection of a mediator within seven days, then within three days thereafter the Town and the Developer shall request the presiding judge of the Superior Court in and for the County of Pima, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five years' experience in mediating or arbitrating disputes relating to real estate development. The cost of any such mediation shall be divided equally between the Town and the Developer. The results of the mediation shall be nonbinding on the Parties, and any Party shall be free to initiate arbitration after the moratorium.

(D) Arbitration. After mediation, as provided for in paragraph 15(C), any dispute, controversy, claim or cause of action arising out of or relating to this Agreement shall be settled by submission of the matter by both Parties to binding arbitration (to occur in Pima County) in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-501 *et seq*., and judgment upon the award rendered by the arbitrator(s) may be entered in a court having jurisdiction.

16. *Notices*. All notices, requests and other communications under this Agreement shall be given in writing and either (i) personally served on the party to whom it is given, or (ii) mailed by registered or certified mail, postage prepaid, return receipt requested, or (iii) sent by private overnight courier such as Federal Express or Airborne, or (iv) transmitted by facsimile (provided that a confirming copy of the facsimile transmission is mailed on the date of such transmission), addressed as follows:

If to the Town:

TOWN OF MARANA

11555 W. Civic Center Drive, Bldg. A3
Marana, Arizona 85653-7006
Telephone: (520) 382-1900
Fax: (520) 382-1901

If to Developer:

To MUSD: Marana Unified School District No. 6
Attention: Dan Contorno
11279 W. Grier Road
Marana, Arizona 85653

With a Copy to: DeConcini McDonald Yetwin & Lacy, P.C.
Attention: Spencer Smith
2525 E. Broadway, Suite 200
Tucson, AZ 85716-5300

To GF2: Gladden Phase II, LLC
1350 Avenue of the Americas, Suite 1600
New York, New York 10019
Attention: Frank J. Walter III/ Christopher F. Bennett
Telephone: 212.977.3708
Facsimile: 212.977.5500
E-mail: frankwalter@petruspartners.com
cfb@petruspartners.com

And: Crown West Land Group
333 East Wetmore Road, Suite 250
Tucson, Arizona 85705
Attention: Dean Wingert
Telephone: 520.888.3962
E-mail: dwingert@crownwest.com

with a copy to: Fennemore Craig, P.C.
2394 East Camelback Road, Suite 600
Phoenix, Arizona 85016-3429
Attention: Sean M. Sabo
Telephone: 602.916.5438
Facsimile: 602.916.5638
E-mail: ssabo@fclaw.com

To KB: KB Home Tucson, Inc.
3501 E. Speedway, Suite 101

Tucson, AZ 85716
Attn: Amy McReynolds
Telephone: 520-918-3450
Facsimile: 602-282-3068
E-Mail: amcreynolds@kbhome.com

with a copy to: KB Home Tucson, Inc.
3501 E. Speedway, Suite 101
Tucson, AZ 85716
Attn: Andrew Gasparro
Telephone: 520-918-3450
Facsimile: 602-282-3068
E-Mail: apgasparro@kbhome.com

with a copy to: KB Home
10429 South 51st St., Ste. 100
Phoenix, AZ 85044
Attn: Michael O. Andersen, Esq.
Telephone: 480-758-3059
Facsimile: 480-758-3050
E-Mail: moandersen@kbhome.com
Attn: Marie Vozikis
Telephone: 702-266-8412
Facsimile: 702-266-8623
E-Mail: mvozikis@kbhome.com

with a copy to: Gammage & Burnham, PLC
Two North Central Avenue - 15th Floor
Phoenix, AZ 85004
Attn: Thomas J. McDonald and James B. Senften
Telephone: 602-256-0566
Facsimile: 602-256-4475
E-Mail: tmcdonald@gblaw.com and jsenften@gblaw.com

with a copy to Lazarus & Silvyn, PC
5983 East Grant Road, Suite 290
Tucson, AZ 85712
Telephone: 520-207-4464
Facsimile: 520-300-9662
E-Mail: rjuneman@lslawaz.com

All notices shall be deemed given when delivered or transmitted by facsimile or, if mailed as provided above, on the second day after the day of mailing, and if sent by overnight courier, on the next day after the date of deposit with the courier. Any party may change its address for the receipt of notices at any time by giving written

notice thereof to the other parties in accordance with the terms of this section. The inability to deliver notice because of a changed address of which no notice was given, or rejection or other refusal to accept any notice, shall be deemed to be the effective receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept.

17. *Miscellaneous*.

(A) This Agreement may not be modified except in a writing signed by the Parties.

(B) Time is of the essence of this Agreement.

(C) This Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona, and any lawsuit to enforce any provision of this Agreement or to obtain any remedy with respect to this Agreement shall be brought in the Pima County Superior Court, and for this purpose the Parties expressly and irrevocably consent to the jurisdiction of the Pima County Superior Court.

(D) If either of the Parties fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in the dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under this Agreement, including, without limitation, court costs and reasonable attorneys' fees.

(E) This Agreement may be executed in identical counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature pages and this Agreement may be executed by the affixing of the signature pages, and all of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all the signers had signed a single signature page.

(F) This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors in interest and assigns; provided, however, that:

(i) The Town may not assign any of its rights, obligations, or liabilities under this Agreement without Developer's consent;

(ii) upon the conveyance of all of the Property to a single grantee, the grantor shall automatically be released from any further obligations or liabilities under, and shall have no further rights under (including, without limitation, the right to any notices) this Agreement and this Agreement shall thereafter bind the grantee who shall have all rights, obligations, and liabilities of the Developer and owner of the Property

under this Agreement and shall be considered the "Developer" for all purposes hereunder; and

(iii) in no event shall this Agreement be binding on or burden the property of a purchaser of a home in the Development.

Notwithstanding anything to the contrary contained in this Agreement, unless and until GL2 or KB acquires the Property, neither GL2, nor KB, shall have any obligations or liabilities under this Agreement.

(G) This Agreement is subject to A.R.S. § 38-511, which provides for cancellation of contracts in certain instances involving conflicts of interest.

(H) If any provision of this Agreement is declared void or unenforceable by a court of competent jurisdiction, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect if the remaining provisions permit the Parties to achieve the practical benefits of the arrangements contemplated by this Agreement. If any applicable law or court of competent jurisdiction prohibits or excuses the Town or the Developer, as applicable, from undertaking any contractual commitment to perform any act hereunder, this Agreement shall remain in full force and effect, but the provisions requiring such action shall be deemed to permit the Town or the Developer, as applicable, to take such action at its discretion, if such a construction is permitted by law.

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

THE "**TOWN**":

TOWN OF MARANA, an Arizona municipal corporation

By:_____
Mayor Ed Honea

Date:_____

ATTEST:

_____

Cherry Lawson, Town Clerk

APPROVED AS TO FORM:

_____
Frank Cassidy, Town Attorney

State of_____)
ss
County of_____)

The foregoing instrument was acknowledged before me on_____by _____, the _____ of THE TOWN OF MARANA, an Arizona municipal corporation.

(Seal)

_____
Notary Public

"**MUSD**":

MARANA UNIFIED SCHOOL DISTRICT NO. 6,
a political subdivision of the State of Arizona

By:_____

Its:_____

Date: _____

State of_____)
ss
County of_____)

The foregoing instrument was acknowledged before me on_____by _____, the _____ of MARANA UNIFIED SCHOOL DISTRICT NO. 6, a political subdivision of the State of Arizona.

(Seal)

_____
Notary Public

EXHIBIT A TO PRE-ANNEXATION DEVELOPMENT AGREEMENT

PERRY ENGINEERING

DATE: 07/23/2020
PROJECT: 20024

ANNEXATION
LEGAL DESCRIPTION

PARCEL 1A

A PORTION OF W. LINDA VISTA BOULEVARD AS RECORDED IN BOOK 13, OF ROAD MAPS, PAGE 37 AND THAT PORTION OF W. LINDA VISTA BOULEVARD AND AS RECORDED IN LA PUERTA DEL NORTE SUBDIVISION, AS RECORDED IN BOOK 15 OF MAPS AND PLATS AT PAGE 76, RECORDS OF PIMA COUNTY AND LOTS 1 THROUGH 6, LOT 59, LOTS 80 THROUGH 149, CERTAIN ROADS, RIGHTS OF WAY, AND STREETS LOCATED WITHIN SAID LA PUERTA DEL NORTE, DESCRIBED AS FOLLOWS: A PORTION OF W. DOS ROTUNDO, LYING EASTERLY OF THE SOUTHERLY PROLONGATION OF THE WEST LOT LINE OF LOT 85 TO ITS INTERSECT ON THE SOUTH RIGHT OF WAY LINE OF W. DOS ROTUNDO; AND A PORTION OF W. OASIS STREET, LYING SOUTHEASTERLY OF THE SOUTHWESTERLY PROLONGATION OF THE NORTHWEST LOT LINE OF LOT 6 TO ITS INTERSECT ON THE SOUTHWESTERLY RIGHT OF WAY LINE OF SAID W. OASIS STREET; AND A PORTION OF N. EL UNO GORDO, LYING NORTHEASTERLY OF THE SOUTHEASTERLY PROLONGATION OF THE SOUTH LOT LINE OF LOT 59; AND ALL OF W. EL ENTRÉE, LYING EASTERLY OF THE TANGENT LINE OF THE RESPECTIVE SPANDRELS, EXTENDING BETWEEN THE WEST LINES OF LOT 90 AND LOT 91, AND FURTHER BEING A PROLONGATION OF THE EAST RIGHT OF WAY LINE OF N. EL UNO GORDO; AND ALL THAT PORTION OF W. LA ENTRADA LYING NORTH OF THE EASTERLY PROLONGATION OF THE NORTHERLY RIGHT OF WAY W. LINE OF LINDA VISTA BOULEVARD, AND TO INCLUDE ALL THOSE PORTIONS OF LOT 148 AND LOT 149, DEDICATED IN DOCKET 2955, AT PAGE 366, ET SEQ., EXCEPT ANY PORTION OF THE EAST 25 FEET THEREOF LYING NORTH OF A LINE BEING THE SOUTHEASTERLY PROLONGATION OF THE NORTHEAST LINE OF LOT 1; AND ALL OF W. PLACITA ADIOS; AND ALL OF W. PLACITA BRUCE; AND ALL OF W. PLACITO CINCO OF SAID LA PUERTA DEL NORTE, SITUATED IN A PORTION OF THE EAST 1/2 OF SECTION 17, TOWNSHIP 12 SOUTH, RANGE 12 EAST OF THE GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST 1/4 CORNER OF SAID SECTION 17, BEING A 5/8” IRON REBAR WITH BRASS TAG, RLS 21782, FROM WHICH THE SOUTHEAST CORNER OF SAID SECTION 17, BEING A 1/2” IRON REBAR WITH BRASS TAG, RLS 51130, BEARS SOUTH 00° 38' 34" EAST, A DISTANCE OF 2640.65 FEET;

THENCE, ALONG THE EAST SECTION LINE OF SAID SECTION 17, SOUTH 00° 38' 34" EAST, A DISTANCE OF 21.06 FEET, TO A 1/2” IRON REBAR WITH BRASS TAG, RLS 51130, ALSO BEING THE **POINT OF BEGINNING**;

THENCE, CONTINUING ALONG SAID EAST SECTION LINE, SOUTH 00° 38' 34" EAST, A DISTANCE OF 2,619.59 FEET, TO THE SOUTHEAST CORNER OF SAID SECTION 17, ALSO BEING A 1/2” IRON REBAR WITH BRASS TAG, RLS 51130;

THENCE, DEPARTING SAID EAST SECTION LINE AND ALONG THE SOUTH SECTION LINE OF SAID SECTION 17, SOUTH 89° 27' 19" WEST, A DISTANCE OF 1,456.28 FEET;

THENCE, DEPARTING SAID SOUTH SECTION LINE, NORTH 0° 35' 12" WEST, A DISTANCE OF 75.00 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE AS SHOWN ON W. LINDA VISTA BOULEVARD, RECORDED IN BOOK 13, OF ROAD MAPS, PAGE 37, RECORDS OF PIMA COUNTY, ARIZONA;

THENCE, ALONG SAID NORTH RIGHT OF WAY LINE, NORTH 89° 27' 19" EAST, A DISTANCE OF 1,067.16 FEET, TO THE SOUTHWEST CORNER OF SAID LOT 149, ALSO BEING A 1/2” IRON REBAR WITH BRASS TAG, STAMPED 51130;

THENCE, DEPARTING THE SOUTHWEST PROPERTY CORNER OF SAID LOT 149, ALONG THE WEST PROPERTY LINE OF SAID LOTS 148 AND 149, NORTH 00° 37' 04" WEST, A DISTANCE OF 300.44 FEET TO THE SOUTHEAST PROPERTY CORNER OF SAID LOT 83, ALSO BEING A 1/2” IRON REBAR WITH BRASS TAG, STAMPED 51130;

THENCE, DEPARTING SAID SOUTHEAST PROPERTY CORNER AND ALONG THE SOUTH PROPERTY LINE OF SAID LOTS 80 THROUGH 83, SOUTH 89° 21' 23" WEST, A DISTANCE OF 420.13 FEET TO THE SOUTHWEST PROPERTY CORNER OF SAID LOT 80, ALSO BEING A 1/2” IRON REBAR WITH BRASS TAG, STAMPED 51130;

THENCE, DEPARTING SAID SOUTHWEST PROPERTY CORNER AND ALONG THE WEST PROPERTY LINE OF SAID LOT 80, NORTH 00° 35' 00" WEST, A DISTANCE OF 160.00 FEET TO THE NORTHWEST PROPERTY CORNER OF SAID LOT 80, ALSO BEING A POINT ON THE SOUTH RIGHT OF WAY LINE OF W. DOS ROTUNDO, ALSO BEING A 1/2” IRON REBAR WITH BRASS TAG, STAMPED 51130;

THENCE, DEPARTING SAID NORTHWEST PROPERTY CORNER AND ALONG THE NORTH PROPERTY LINE OF SAID LOT 80, ALSO BEING THE SOUTH RIGHT OF WAY OF W. DOS ROTUNDO, NORTH 89° 25' 00" EAST, A DISTANCE OF 85.00 FEET TO THE INTERSECTION OF THE SOUTHERLY PROLONGATION OF SAID N. EL UNO GORDO EAST RIGHT OF WAY LINE AND SAID SOUTH RIGHT OF WAY LINE, ALSO BEING THE NORTH LINE OF LOT 80, ALSO BEING A 1/2” IRON REBAR WITH BRASS TAG, STAMPED 51130;

THENCE, DEPARTING SAID SOUTH RIGHT OF WAY AND ALONG THE EAST RIGHT OF WAY OF N. EL UNO GORDO, NORTH 00° 35' 40" WEST, A DISTANCE OF 1,675.04 FEET, TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE EASTERLY, SAID CURVE HAS A RADIUS OF 401.14 FEET, TO WHICH A RADIAL LINE BEARS NORTH 89° 30' 24" EAST, ALSO BEING A 1/2” IRON REBAR WITH BRASS TAG, STAMPED 51130;

THENCE, CONTINUING ALONG SAID EAST RIGHT OF WAY LINE AND NORTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 26° 09' 07" AND AN ARC DISTANCE OF 183.09 FEET TO A 1” OPEN PIPE WITH BRASS TAG, STAMPED 51130;

THENCE, DEPARTING SAID NON-TANGENT CURVE AND CONTINUING ALONG SAID EAST RIGHT OF WAY LINE, NORTH 25° 28' 06" EAST, A DISTANCE OF 95.33 FEET, TO A POINT THAT IS THE INTERSECTION OF THE EAST RIGHT OF WAY AND THE PROLONGATION OF THE SOUTH PROPERTY LINE OF SAID LOT 59;

THENCE, DEPARTING SAID EAST RIGHT OF WAY AND ALONG THE PROLONGATION OF SAID SOUTH PROPERTY LINE OF LOT 59, NORTH 64° 03' 42" WEST, A DISTANCE OF 60.08 FEET, TO A POINT ON THE

EXHIBIT A TO PRE-ANNEXATION DEVELOPMENT AGREEMENT

WEST RIGHT OF WAY OF N. EL UNO GORDO, ALSO BEING THE SOUTHEAST CORNER OF SAID LOT 59, ALSO BEING A 1/2" IRON REBAR WITH BRASS TAG, STAMPED 51130;

THENCE, DEPARTING SAID SOUTHEAST CORNER AND ALONG THE SOUTH PROPERTY LINE OF SAID LOT 59, NORTH 64° 03' 42" WEST, A DISTANCE OF 104.78 FEET, TO THE SOUTHWEST CORNER OF SAID LOT 59, ALSO BEING A 1/2" IRON REBAR WITH BRASS TAG, STAMPED 51130;

THENCE, DEPARTING SAID SOUTHWEST CORNER AND ALONG THE WEST PROPERTY LINE OF SAID LOT 59, NORTH 25° 24' 30" EAST, A DISTANCE OF 159.69 FEET, TO NORTHWEST CORNER OF SAID LOT 59, ALSO BEING A POINT ON THE SOUTH RIGHT OF WAY OF W. OASIS STREET, ALSO BEING A 1/2" IRON REBAR WITH BRASS TAG, STAMPED 51130;

THENCE, DEPARTING SAID NORTHWEST CORNER AND ALONG SAID SOUTH RIGHT OF WAY LINE, NORTH 64° 23' 41" WEST, A DISTANCE OF 18.91 FEET TO A POINT OF INTERSECTION OF SAID SOUTH RIGHT OF WAY LINE AND THE PROLONGATION OF THE WEST PROPERTY LINE OF SAID LOT 6;

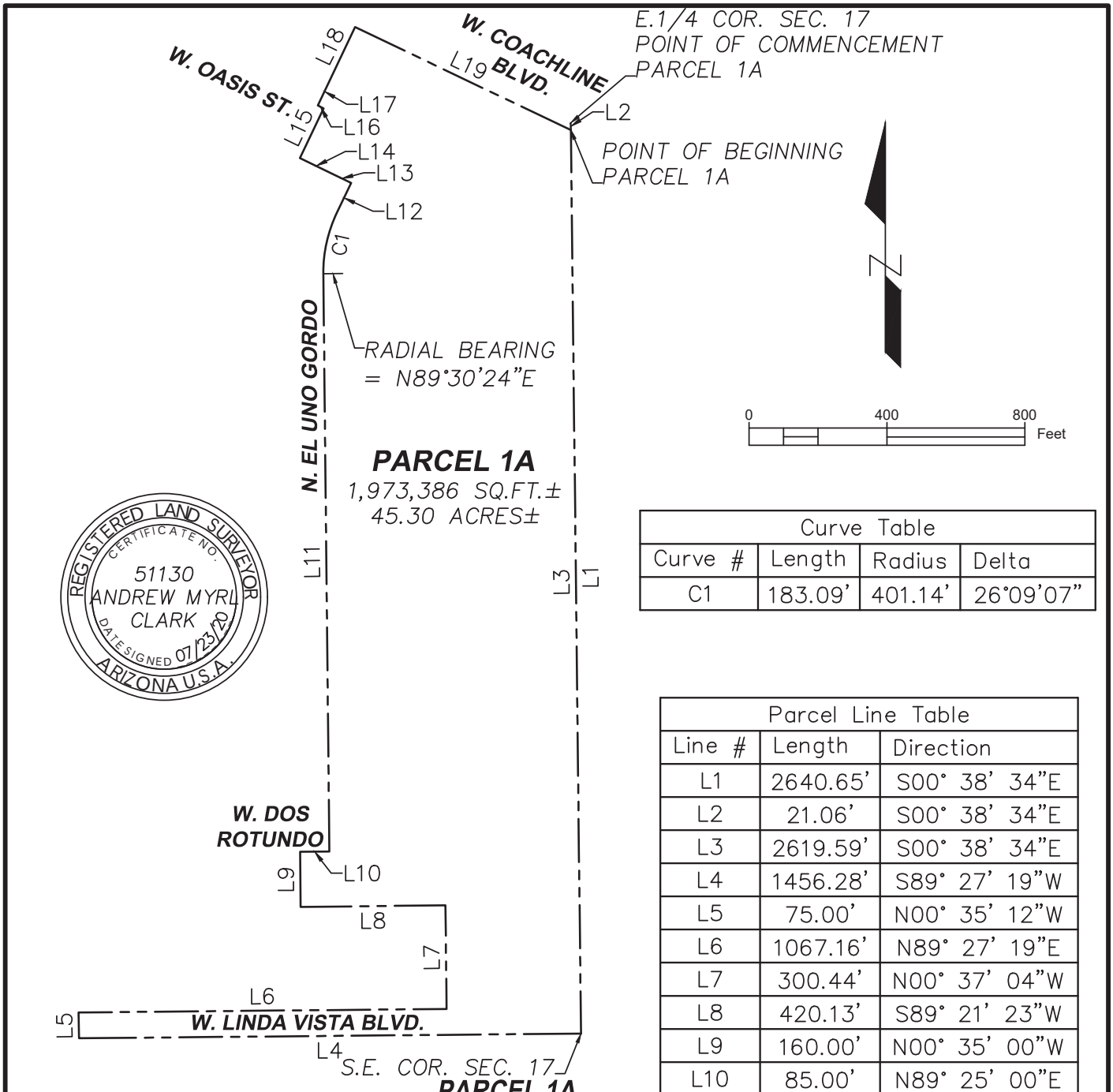
THENCE, DEPARTING SAID SOUTH RIGHT OF WAY LINE AND ALONG SAID PROLONGATION OF THE WEST PROPERTY LINE OF LOT 6, NORTH 25° 29' 43" EAST, A DISTANCE OF 90.48 FEET, TO A POINT ON THE NORTH RIGHT OF WAY LINE OF SAID W. OASIS STREET, ALSO BEING THE SOUTHWEST CORNER OF SAID LOT 6, ALSO BEING A 1/2" IRON REBAR WITH BRASS TAG, STAMPED 51130;

THENCE, DEPARTING SAID NORTH RIGHT OF WAY AND ALONG THE WEST PROPERTY LINE OF SAID LOT 6, NORTH 25° 29' 43" EAST, A DISTANCE OF 161.60 FEET, TO THE NORTHWEST PROPERTY CORNER OF SAID LOT 6, ALSO BEING A 1/2" IRON REBAR WITH BRASS TAG, STAMPED 51130;

THENCE, DEPARTING SAID NORTHWEST PROPERTY CORNER AND ALONG THE NORTH PROPERTY LINE OF SAID LOTS 1 THROUGH 6 AND 20' DRAINAGE WAY AND THE PROLONGATION OF SAID NORTH PROPERTY LINE, SOUTH 64° 28' 46" EAST, A DISTANCE OF 693.23 FEET TO **POINT OF BEGINNING**.

THE TOTAL PARCEL AREA CONTAINS 1,973,386 SQUARE FEET OR 45.30 ACRES, MORE OR LESS.





REGISTERED LAND SURVEYOR
CERTIFICATE NO.
51130
ANDREW MYRL
CLARK
DATE SIGNED 07/23/20
ARIZONA U.S.A.

Curve Table			
Curve #	Length	Radius	Delta
C1	183.09'	401.14'	26°09'07"

Parcel Line Table		
Line #	Length	Direction
L1	2640.65'	S00° 38' 34"E
L2	21.06'	S00° 38' 34"E
L3	2619.59'	S00° 38' 34"E
L4	1456.28'	S89° 27' 19"W
L5	75.00'	N00° 35' 12"W
L6	1067.16'	N89° 27' 19"E
L7	300.44'	N00° 37' 04"W
L8	420.13'	S89° 21' 23"W
L9	160.00'	N00° 35' 00"W
L10	85.00'	N89° 25' 00"E
L11	1675.04'	N00° 35' 40"W
L12	95.33'	N25° 28' 06"E
L13	60.08'	N64° 03' 42"W
L14	104.78'	N64° 03' 42"W
L15	159.69'	N25° 24' 30"E
L16	18.91'	N64° 23' 41"W
L17	90.48'	N25° 29' 43"E
L18	161.60'	N25° 29' 43"E
L19	693.23'	S64° 28' 46"E

PARCEL 1A

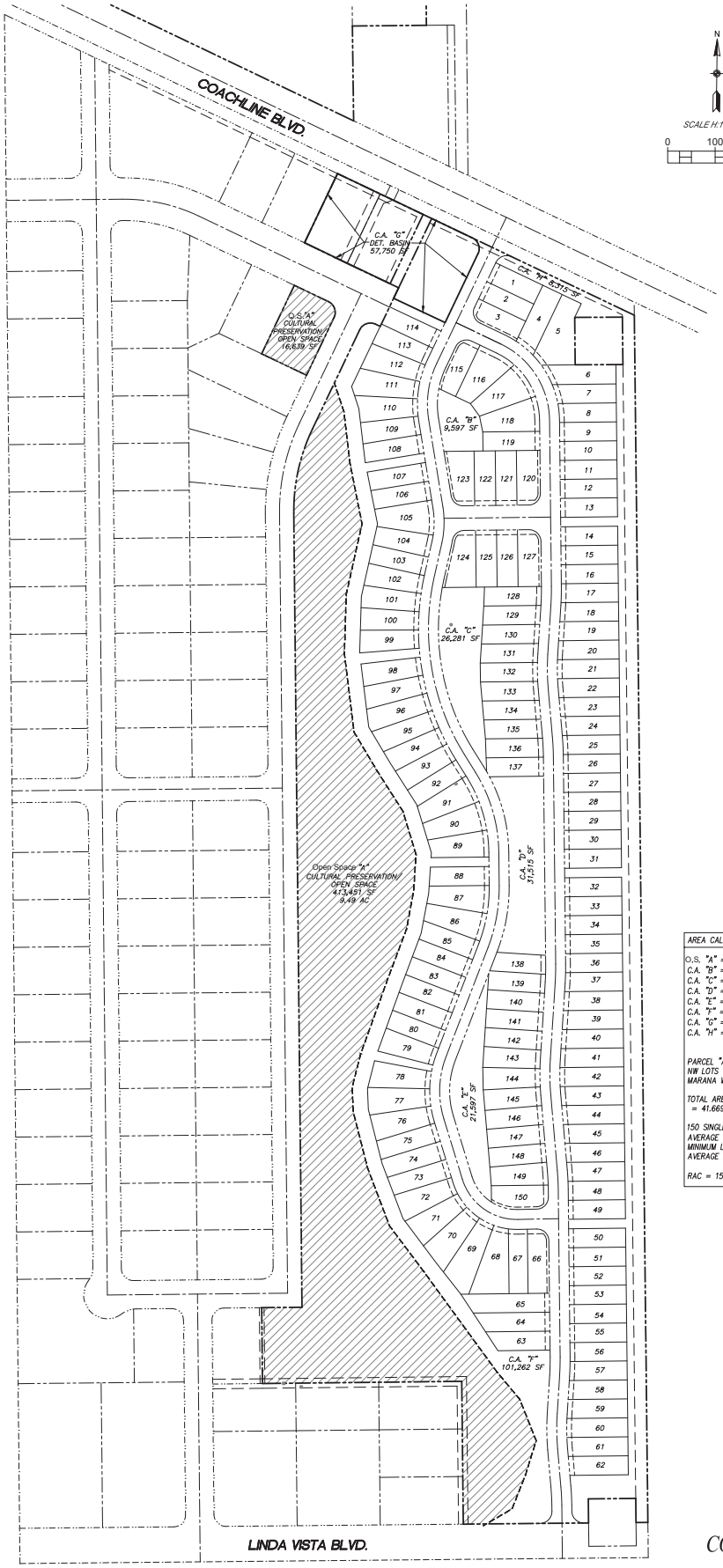
W. LINDA VISTA BOULEVARD, LOTS 1 THROUGH 6, LOT 59, LOTS 80 THROUGH 149, CERTAIN ROADS AND STREETS LOCATED WITHIN LA PUERTA DEL NORTE SUBDIVISION, BOOK 15 OF MAPS AND PLATS AT PAGE 76, RECORDS OF PIMA COUNTY, ARIZONA. IN A PORTION OF S.17 T.12S., R.12E. OF THE G.&S.R.M.

PERRY
ENGINEERING
501 W WETMORE RD.
TUCSON, AZ 85705
CONTACT: ANDREW M. CLARK, RLS
PHONE: 520-620-9870
ACLARK@PERRYENGINEERING.NET

ANNEXATION EXHIBIT

EXHIBIT B TO PRE-ANNEXATION DEVELOPMENT AGREEMENT

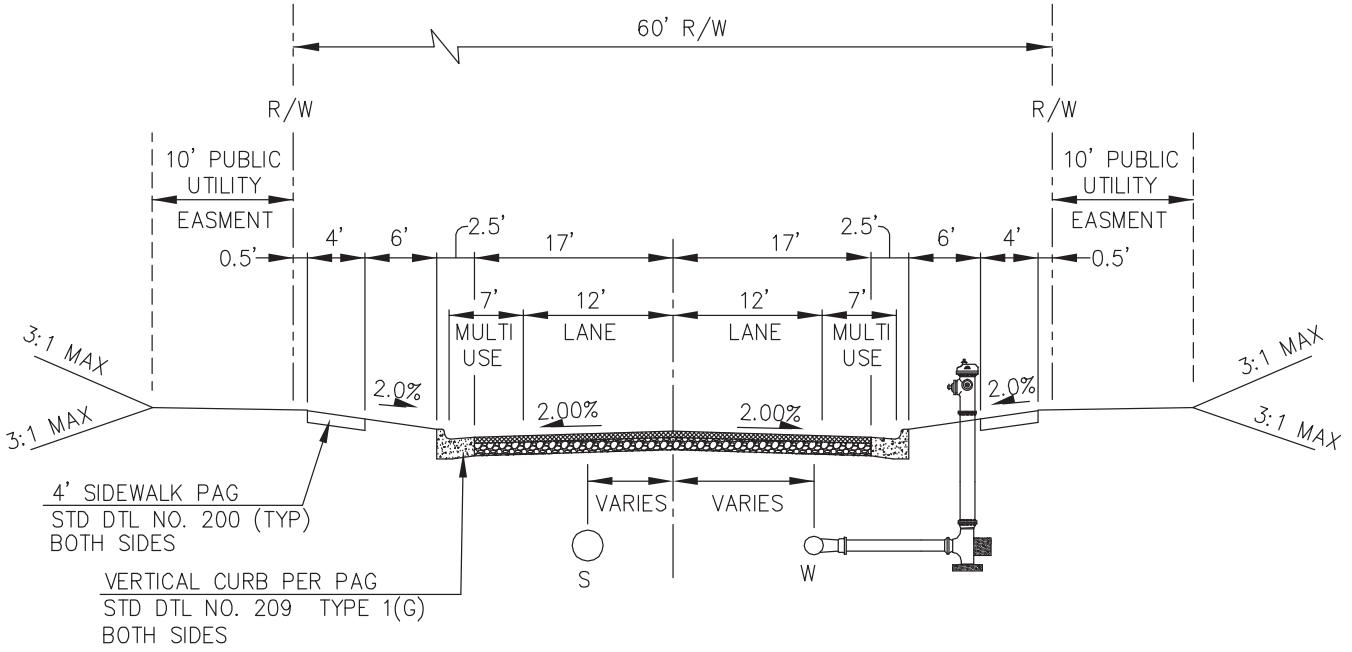
Exhibit B



AREA CALCULATIONS
O.S. "A" = 430,090 SF, 9.87 ACRES (OPEN SPACE)
C.A. "B" = 9,597 SF, 0.22 ACRES
C.A. "C" = 26,281 SF, 0.60 ACRES
C.A. "D" = 31,515 SF, 0.72 ACRES
C.A. "E" = 21,597 SF, 0.50 ACRES
C.A. "F" = 101,262 SF, 2.32 ACRES
C.A. "G" = 57,750 SF, 1.33 ACRES (DETENTION/RETENTION)
C.A. "H" = 8,315 SF, 0.19 ACRES
PARCEL "A" (MAIN PARCEL) = 1,757,083 SF, 40.34 ACRES
NW LOTS = 49,036 SF OR 1.13 ACRES
MARANA WELL SITE = 10,006 SF OR 0.229 ACRES
TOTAL AREA: PARCELS A & NW LOTS & MARANA WELL SITE = 41.669 ACRES
150 SINGLE-STORY, SINGLE-FAMILY HOMESITES
AVERAGE LOT SIZE = 120' X 40'
MINIMUM LOT AREA = 4,800 SF
AVERAGE LOT AREA = 5,273 SF
RAC = 150 LOTS/41.669 ACRES = 3.600

PERRY ENGINEERING
501 W WETMORE ROAD
TUCSON, AZ 85705
CONTACT: KEN PERRY, P.E.
PHONE: 520.620.9870

CONCEPT SITE PLAN
FOR
REPLAT OF LA PUERTA DEL NORTE
LOTS 1 - 150 & COMMON AREAS A - H
DATED 07-23-2020



1. THIS DETAIL SUPERSEDES PRIOR SUBDIVISION STREET STANDARDS DETAIL NUMBERS 3 AND 4.
2. NO ON STREET PARKING SUPPORTED.

NOT TO SCALE

EXPIRES 6/30/2019

APPROVED FOR DISTRIBUTION:

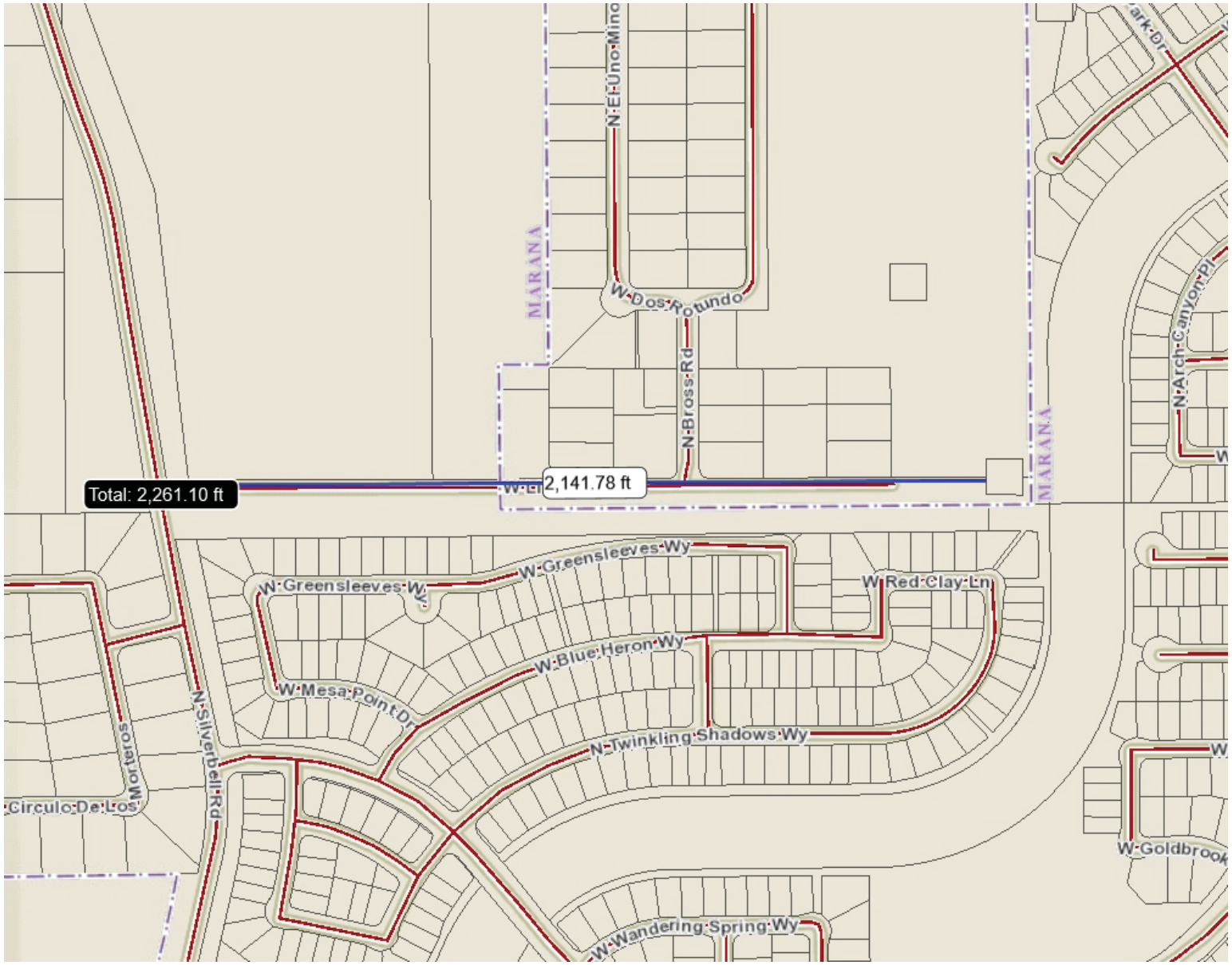
Keith E. Brann, P.E.,
Town Engineer

Registered Professional Engineer (Civil) CERTIFICATE NO. 40845 KEITH EDWARD BRANN Date Signed 1-18-16 ARIZONA, U.S.A.

TOWN OF MARANA 1977 ARIZONA

STANDARD DETAIL		DETAIL NO:
MINOR COLLECTOR		100-5
DATE: 3/4/2004	REVISED: 8/1/2016	SHEET 1 OF 1

Linda Vista Street Section



800.0 0 400.00

Feet

Pima County GIS

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map are subject to Pima County's ITD GIS disclaimer and use restrictions.

Legend

- Primitive Roads, Pima County
- Streets - All
- Parcels



Notes:

8/19/2020

EXHIBIT D TO PRE-ANNEXATION DEVELOPMENT AGREEMENT

STEWART TITLE AND TRUST
Date 1970 MAY 5 AM 8 18
Book 3738 Page 40-43
day and year
By Deputy

LA PUERTA DEL NORTE
MOBILE HOME SUBDIVISION

DECLARATION OF RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

That Stewart Title & Trust of Tucson, an Arizona corporation, as Trustee, being the owner of all of the following described premises, situate within the county of Pima, State of Arizona, to wit:

> LA PUERTA del NORTE, a subdivision of part of the East half of the East half of Section 17, Township 12 South, Range 12 East, Pima County, Arizona as recorded in Book 15 of Maps and Plats at page 76 in the office of the County Recorder of Pima County of Arizona;

and desiring to establish the nature of the use and enjoyment thereof, does hereby declare said premises subject to the following express covenants, stipulations and restrictions as to the use and enjoyment thereof, all of which are to be construed as restrictive covenants running with the title to said premises and with each and every part and parcel thereof, to-wit:

1. All lots are to be maintained as lots for mobile-homes or private residence not less than 900 square feet, except that The Developer, hereinafter referred to as The Company, shall have the right and privilege to designate one or more such lots or areas not designated as lots, to the use shown in Paragraph 14.

2. No mules, goats, cows, chickens, pigs or other livestock or fowl may be kept on any lot in this subdivision, and dogs must be kept on a leash or enclosed in a yard.

3. No more than one mobile-home shall be permitted or maintained on one lot, except that a small vacation trailer may be stored on a lot if it is screened from all adjoining property.

4. No mobile-home may be placed on any lot until approved in writing by The Company, as to the size, condition, appearance, and placement on the lot. Said mobile-home must have complete sanitary facilities, including among others, a lavatory, toilet, wash basin, tub or shower, kitchen sink, and must be connected to sewage outlets in conformity with State Health Requirements, or the requirements of the governing health agencies.

5. Any fence to be placed on any lot must be approved in writing by The Company as to materials used and design, prior to installation.

6. Any porches, additional rooms, car-ports, fences, or other constructions to be built on any lot in conjunction with the mobile-home may not be built separate from the mobile-home, but must be attached to the mobile-home directly or by breezeway. The design, construction plans and materials to be used for such additions are to be approved inwriting by The Company, and a building permit secured from the proper governing agency.

7. Floor level of all mobile-homes may not be higher than ten inches above ground level unless otherwise approved in writing by The Company. In the event that a mobile-home is allowed by The Company to be installed wherein the wheels are at ground level, a matching skirt must be installed at the time of placing the mobile-home on the lot, unless otherwise approved in writing by The Company.

8. All mail boxes must be approved in writing by The Company.

9. No permanent or temporary structure shall be permitted to be maintained or constructed closer than 7 feet from the side lot line on the non-entry side of the mobile-home nor closer than 20 feet from the side lot line on the entry side of the mobile-home, nor closer than 25 feet from the rear lot line, nor closer than 30 feet from the front lot line on interior lots, except where compliance with the set back lines as shown on the recorded plat requires a greater minimum set back. The minimum side set back on the non-entry side of the mobile on exterior lots shall be 10 feet. No structure shall be built in any utility easement.

10. All clothes lines shall be maintained on the rear of the lot.

11. No washing machines nor other appliances may be kept on the outside, and no construction machinery, dump trucks, unused automobiles, tractors, blades, etc., may be parked, or stored on any lot.

12. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon, which may become an annoyance or nuisance to the community.

13. None of said lots shall be resubdivided into smaller lots nor conveyed or encumbered in less than the full original dimension of such lot as shown by the plat of LA PUERTA DEL NORTE, except for public utilities, provided, that this restriction shall not prevent the conveyance or encumbrance of adjoining or contiguous lots or parts of lots in such a manner as to create parcels of land in a common ownership having the same or greater street frontage than lots shown on the plat of LA PUERTA DEL NORTE for any one lot, portions of which are conveyed or encumbered. Thereafter, such parts of adjoining or contiguous lots in such common ownership, shall, for the purposes of these restrictions be considered as one lot. Nothing herein contained shall prevent the dedication or conveyance of portions of lots for public utilities, in which event the remaining portion of any such lot, shall for the purposes of this provision, be treated as a whole lot. These restrictions do not apply to Lots number 147, 148, 149, 150, 151, 152, 153, 154, owners of which may apply for a zoning change.

14. LA PUERTA DEL NORTE LOT OWNER'S ASSOCIATION will be comprised of all owners of all lots within all units of LA PUERTA DEL NORTE. As provided below, said LA PUERTA DEL NORTE LOT OWNER'S ASSOCIATION shall manage, own and be responsible for all community areas, streets, walkways, drainage-ways, easements, and all other areas now or hereafter designated by the Company as community areas, and all recreational and functional buildings, structures, facilities, landscaping, or other improvements thereon, shall remain the property of The Company. The Company shall maintain and care for such community areas and shall install and maintain such improvements, plantings, and landscaping on such portions of said subdivision as The Company shall deem desirable. At such time as 50% of all of the lots in LA PUERTA DEL NORTE and any subsequent unit thereof have been sold, then The Company may transfer to the LA PUERTA DEL NORTE LOT OWNER'S ASSOCIATION all management rights and obligations specified under these restrictions. At such time as all of the lots in all of the units of LA PUERTA DEL NORTE have been sold, then The Company shall convey to the LA PUERTA DEL NORTE LOT OWNER'S ASSOCIATION title to all community property now owned and controlled by The Company. LA PUERTA DEL NORTE LOT OWNER'S ASSOCIATION shall be comprised of all lot owners in LA PUERTA DEL NORTE and each lot owner in LA PUERTA DEL NORTE shall be entitled to one (1) vote in the affairs of the Association for each lot owned. Until such time as the community areas have been conveyed to the LA PUERTA DEL NORTE LOT OWNER'S ASSOCIATION, The Company shall maintain and care for all such areas. Each resident of any lot in LA PUERTA DEL NORTE, or in any subsequent unit thereof, shall have the right to use the community areas in accordance with such rules and regulations, as may from time to time be prescribed by The Company or by the LA PUERTA DEL NORTE LOT OWNER'S ASSOCIATION. The owner of each lot not owned by The Company shall pay to The Company, or to its successor in interest, as compensation for the privileges herein granted and for the services furnished or secured by The Company hereunder, such amount as may be assessed ratably against said owner by The Company

each month, such amount so assessed shall be reasonable and shall be based on the cost of maintenance of said facilities and the furnishing of any and all services hereunder. Any and all charges made by The Company under this paragraph shall, at the time of the assessment provided herein, constitute a lien on the lot against which made and shall be payable within ten (10) days after such charge is made. The Company shall be entitled to enforce its rights hereunder by following the procedure provided for the enforcement of Mechanics and Materialmen's Liens in the State of Arizona. Any claim against The Company shall not constitute a defense nor offset in any action by The Company for non-payment of any amounts which may be assessed hereunder. This paragraph shall constitute a request by each lot owner for The Company to perform the obligations imposed on it hereunder.

15. All lots or parcels including landscaping and improvements thereon shall be maintained and kept clean at all times in a manner as to meet the approval of The Company in its sole discretion, and no trash, garbage, or other waste may be kept on any lot except in a sanitary container. In the event any lot or parcel including landscaping or improvements thereon is not maintained and kept clean in such a manner, The Company shall have the right, either itself or through any person, to furnish the labor and/or materials necessary to bring said lot or parcel including improvements and/or landscaping thereon up to a standard which meets approval of The Company in its sole discretion, and to maintain them according to such a standard. In such event, the owner of any such lot shall pay to The Company an amount equal to all direct and indirect costs and expenses incurred by The Company in furnishing such labor and/or materials or having the same furnished; the amount that the owner of any such lot is obligated to pay hereunder shall constitute a lien on such lot or parcel, and shall be payable within ten (10) days after the charge is made. The Company shall be entitled to enforce its rights hereunder by following the procedure provided for the enforcement of the Mechanics and Materialmen's Liens in the State of Arizona. This paragraph shall constitute a request by each lot or parcel owner under the conditions stated herein for The Company to furnish any labor and/or materials which are furnished hereunder. Any claim against The Company shall not constitute a defense nor offset in any action by The Company for nonpayment of any amounts which may be assessed hereunder.

16. In the event of any violation or threatened violation of any of the covenants herein, The Company or any owner of any lot, block or parcel in the Subdivision may bring action at law or in equity, either for injunction, action for damages or such other remedy as may be available. In the event that The Company or other owner recovers judgment against any person for a violation or threatened violation of any of the covenants herein, The Company or other owner shall also be entitled to recover from such person reasonable attorney's fees.

17. The failure by any land owner or The Company to enforce any restrictions, conditions, covenant or agreement herein contained shall in no event be deemed a waiver of the right to do so thereafter as to the same breach or as to one occuring prior or subsequent thereto, nor shall such failure give rise to any claim or cause of action against The Company or such land owner. Violation of any one or more of such covenants may be restrained by any court of competent jurisdiction, and damages awarded against such violator, provided however that a violation of these restrictive covenants, or any one of them, shall not affect the lein of any mortgage now of record, or which hereafter may be placed of record upon said lots or any part thereof.

18. The covenants herein contained run with the land, and unless otherwise terminated by The Company in accordance with the provisions herein contained, shall bind all persons in interest, all owners of lots, blocks or parcels in said Subdivision and their heirs, legal representatives, successors and assigns until January 1, 1985, at which time said covenants shall be automatically extended for successive periods of ten years each unless, by mutual agreement between The Company and owners of a majority in number of lots at or prior to the end of the initial term or any successive period of ten years, said covenants shall be amended, changed or terminated in whole or in part. Such amendments, changes or terminations shall be effected by instruments in

recordable form executed by The Company and owners of lots constituting a majority in number of lots and filed in the proper office of record.

19. The Company shall have the right to transfer to any other corporation, person or partnership, all of its rights and obligations hereunder; upon such transfer and the assumption of such obligations by the transferee, The Company shall have no further obligations hereunder.

20. If any provision of this indenture or the application of such provision to any person or circumstances shall be held invalid, the remainder of this indenture or the application of such provision to person or circumstances other than those as to which it is held invalid, shall not be effected thereby.

IN WITNESS WHEREOF, The Stewart Title and Trust Company of Arizona, as Trustee, has caused its corporation name to be signed and its corporate seal to be affixed by the undersigned officer therunto duly authorized this 30th day of April, 1970.

Stewart Title and Trust of Tucson
as Trustee under Trust 0683, as Trustee
only, and not in its Corporate Capacity.

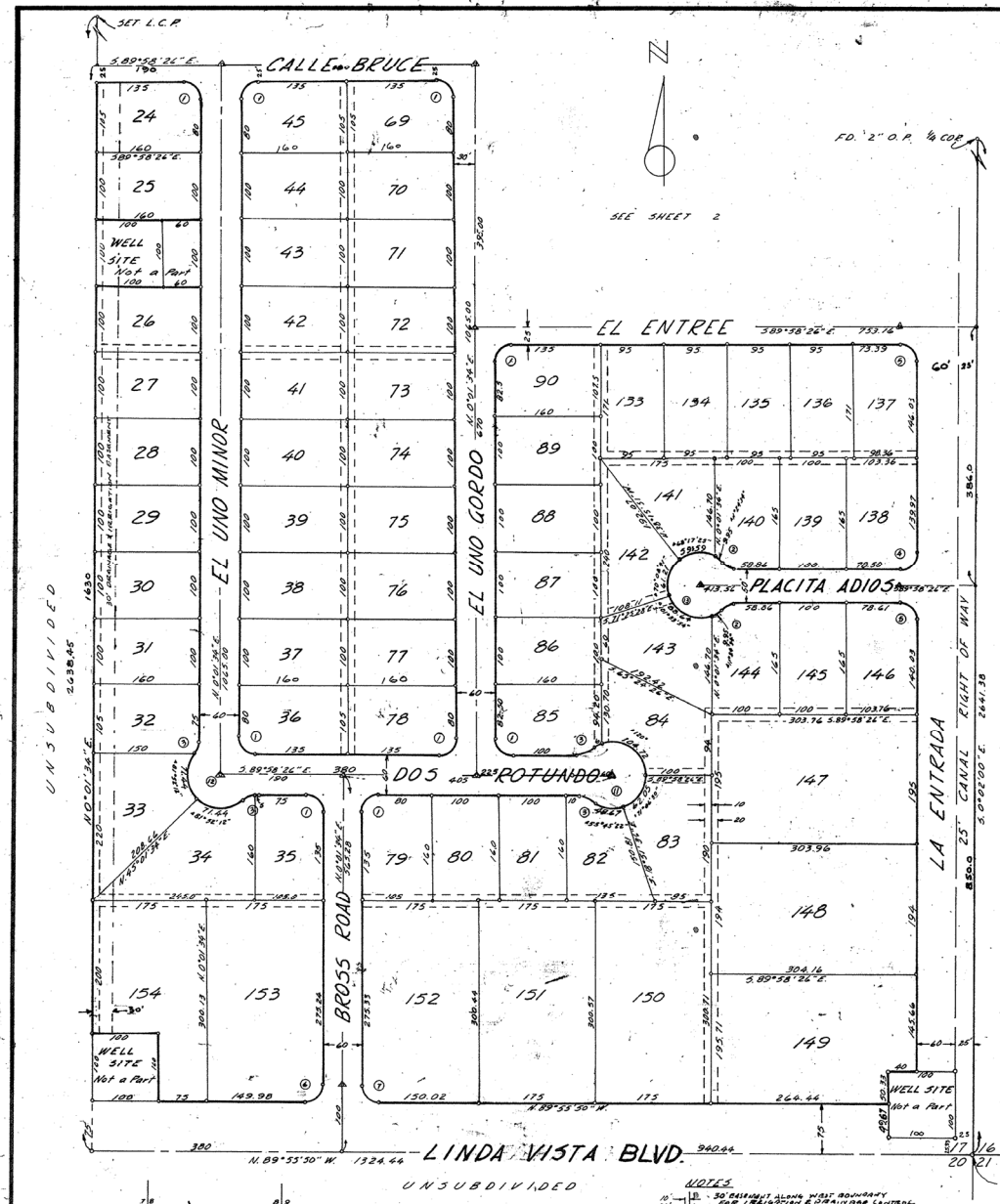
By Wanda Dannenfelser
Wanda Dannenfelser-Trust Officer

STATE OF ARIZONA)
) ss
COUNTY OF PIMA)

Before me this 30th day of April, 1970, personally appeared Wanda Dannenfelser who acknowledged himself to be a Trust Officer of Stewart Title & Trust of Tucson, an Arizona corporation and that he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation as Trustee, by himslef as such officer.

Notary Public

My commission will expire:
10-15-73



DEDICATION

WE THE UNDERSIGNED, HEREBY CERTIFY THAT WE ARE THE SOLE OWNERS OF THE LAND SHOWN ON THIS PLAT AND THAT WE HAVE CAUSED THE SAME TO BE SUBDIVIDED IN THE MANNER HERE SHOWN AND FURTHERMORE WE DO HEREBY DEDICATE TO PUBLIC USE FOREVER, ALL ROADS, STREETS, SEWERS AND EASEMENTS AS DESIGNATED AND SHOWN HEREON TOGETHER WITH AN ADDITIONAL 5' OVERHEAD OR AERIAL EASEMENT ON EACH SIDE OF SAID EASEMENTS, LYING WITHIN THE BOUNDARIES OF THIS SUBDIVISION FOR WIRES, CROSSARMS AND INCIDENTALS ON POWER AND POLE LINE EQUIPMENT. DRAINAGE & IRRIGATION AS NOTED AND TRUST

ARIZONA LAND TITLE CO., A CORPORATION, AS TRUSTEE UNDER TRUST NO. T 6036

Wayne Clover

WAYNE CLOVER & Trust Officer

State of Arizona ss:
County of Pima

The foregoing instrument was acknowledged before me this 23rd day of March, 1961, by WAYNE CLOVER & Trust Officer.

Betty Jane Doggett
Notary Public

My commission expires July 7, 1962

APPROVALS

M. Lowe 4/5/61
Executive Secretary, Planning & Zoning Comm. Date

Walter A. Berg 4-5-61
County Engineer, Pima County Date

I, Elsa B. Hanna, Clerk of the Board of Supervisors, hereby certify that this plat was approved by the Board of Supervisors, County of Pima, State of Arizona, on this 4th day of April, 1961.

Elsa B. Hanna 4-25-61
Clerk, Board of Supervisors Date

State of Arizona ss:
County of Pima

Fee $1.50
No. 27630

The foregoing instrument was filed for record at the request of:
Alfred F. Bross

Book 15 of Maps & Plats, Page 76
Date April 25, 1961 Time 4:34 PM.
ANNA SWILLINGER
County Recorder
Ida Mae Smyth
By Deputy County Recorder

LA PUERTA del NORTE

A SUBDIVISION OF PART OF THE E ½, E ½, SECTION 17, T. 12S., R. 12E. PIMA COUNTY, ARIZ.

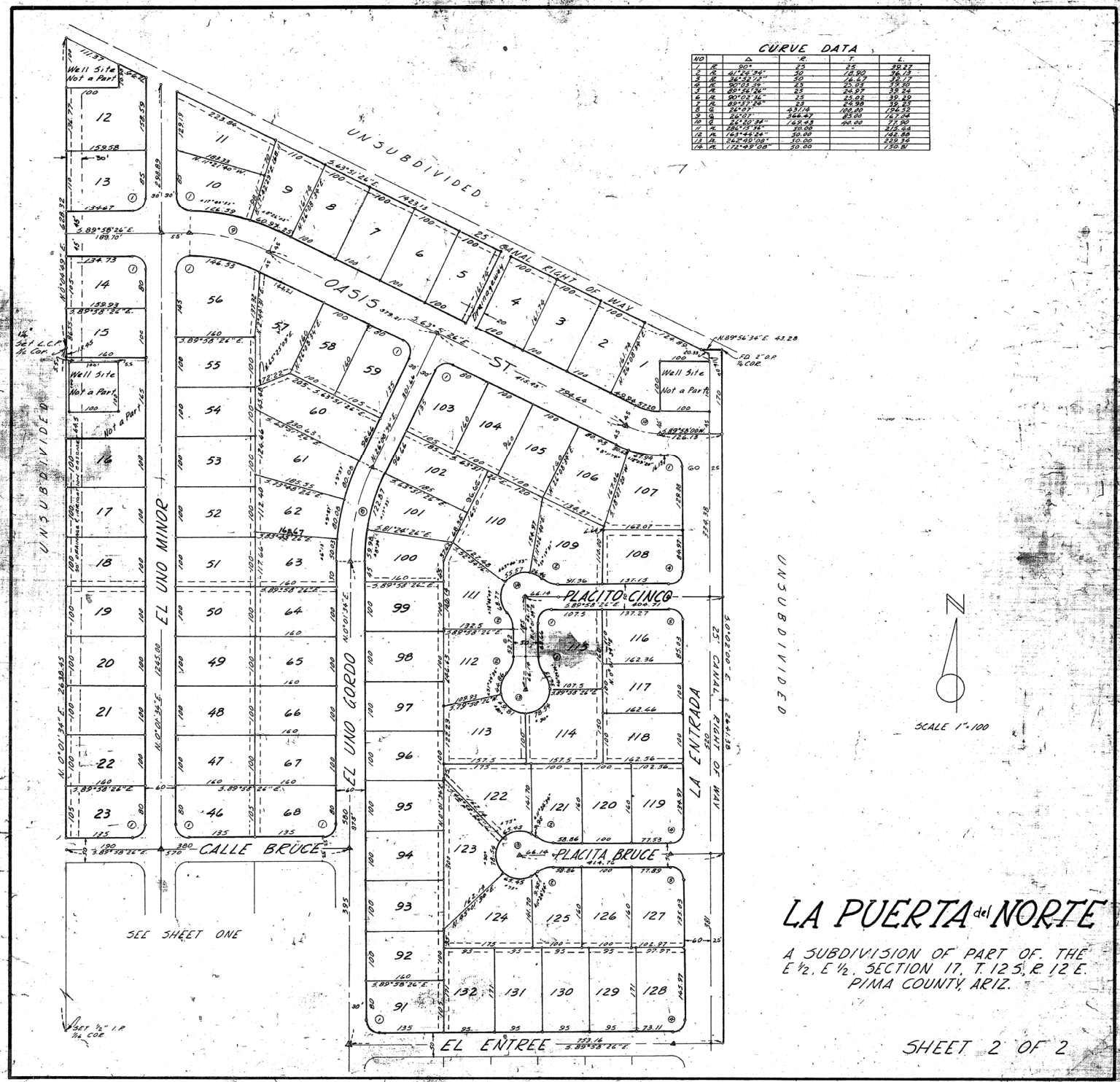
CERTIFICATION

I hereby certify that the property shown on this plat has been surveyed under my supervision and monuments set as indicated.

Thomas C. Burden
Registered Land Surveyor

SCALE 1" = 100' FEBRUARY 1961

15/76



LA PUERTA del NORTE

A SUBDIVISION OF PART OF THE E½, E½, SECTION 17, T.12S., R.12E. PIMA COUNTY, ARIZ.

SHEET 2 OF 2

Council-Regular Meeting **A3**

Meeting Date: 09/01/2020

To: Mayor and Council

Submitted For: Jim Conroy, Parks & Recreation Director

From: Frank Cassidy, Town Attorney

Date: September 1, 2020

Strategic Plan Focus Area:
Recreation

Strategic Plan Focus Area Additional Info:
Principle Statement 1: We will promote healthy and active lifestyles through … 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. 2020-096: Relating to Development; amending the infrastructure improvements plan supporting development impact fees for parks and recreation facilities by revising the projects included in the infrastructure improvements plan and shifting the anticipated development impact fee funding among those projects without changing the amount of the fee or the level of service (Jim Conroy)

Discussion:

The Town Council held a July 14 study session on this item. Based on the direction given at that study session, this item has been brought through the process required by state law and is now ready for formal adoption.

The Town's infrastructure improvements plan for parks and recreation facilities (the "Parks IIP") identifies the projects and funding levels for parks and recreation facilities that are proposed to be funded with the Town's Parks and Recreation Facilities Development Impact Fee (the "P&R DIF"), adopted by Marana Ordinance No. 2014.012 and kept in place by Marana Ordinance No 2017.029.

The CalPortland segment of the Santa Cruz River Shared Use Path, Town of Marana Project No. PK023, proposes to extend the Chuck Huckelberry Loop from its current termination point at Avra Valley Road to the existing segment of the Loop serving the Gladden Farms area. PK023 is listed in the Parks IIP as "Santa Cruz SUP Avra Valley Rd. – N. Marana" with proposed P&R DIF funding of $1,500,000 through fiscal year 2028. Revised estimates for PK023 indicate that it will likely require $3,000,000 in P&R DIF funding.

To make the additional $1,500,000 in P&R DIF funding available for Project PK023, Town staff proposes to shift $1,050,000 in funding from the "North Marana Sports Fields" line item and $450,000 in funding from the "Tortolita Trail Extension" line item of the Parks IIP.

The "North Marana Sports Fields" line item of the Parks IIP refers to the new soccer fields to be constructed at Gladden Farms Community Park. With the shift in funding, $2,300,000 in P&R DIF funding will remain available to the North Marana Sports Fields project, which is consistent with the current cost estimates for those park improvements.

The "Tortolita Trail Extension" line item of the Parks IIP refers to trail improvements in the Tortolitas. The trail improvements have now been completed, so the shifted $450,000 of funding is no longer needed for that item.

The proposed resolution for this item includes a finding that the shift in funding will not change the amount of the fee or the level of service. The P&R DIF is proposed to remain at $2,461 per single family residence. Town staff believes the shift in funding to the Loop, which provides broad regional benefit to all future P&R DIF payers, will not reduce the level of service anticipated by the Parks IIP.

Since the July 14 study session, Town staff has reached out to the umbrella home-builders group, SAHBA, and other interested parties for feedback on this proposed resolution.

In comments received for the July 14 study session and in comments made throughout the public comment period for this item, the Tortolita Alliance and individual residents in the Dove Mountain area have urged that the shift in funding be made to the Tortolita Preserve rather than to Project PK023. In particular, these commenters seek funding to install stock-tight fencing around the Tortolita Preserve, to reduce encroachment into the Preserve by cattle and off-road vehicles. Town staff supports a long-term goal of securing the Tortolita Preserve, but believes that using P&R DIF funding for Project PK023 is the more immediate need and will benefit a broader range of the community.

Town staff has directly presented the proposed revisions to SAHBA representatives, who expressed no objection to the shift in funding, which does not increase the amount of the existing P&R DIF.

Staff Recommendation:

Staff recommends adoption of Resolution No. 2020-096, amending the infrastructure improvements plan supporting development impact fees for parks and recreation facilities by revising the projects included in the infrastructure improvements plan and shifting the anticipated development impact fee funding among those projects without changing the amount of the fee or the level of service.

Suggested Motion:

I move to adopt Resolution No. 2020-096, amending the infrastructure improvements plan supporting development impact fees for parks and recreation facilities by revising the projects included in the infrastructure improvements plan and shifting the anticipated development impact fee funding among those projects without changing the amount of the fee or the level of service.

Attachments

Resolution No. 2020-096

Parks IIP Projects

MARANA RESOLUTION NO. 2020-096

RELATING TO DEVELOPMENT; AMENDING THE INFRASTRUCTURE IMPROVEMENTS PLAN SUPPORTING DEVELOPMENT IMPACT FEES FOR PARKS AND RECREATION FACILITIES BY REVISING THE PROJECTS INCLUDED IN THE INFRASTRUCTURE IMPROVEMENTS PLAN AND SHIFTING THE ANTICIPATED DEVELOPMENT IMPACT FEE FUNDING AMONG THOSE PROJECTS WITHOUT CHANGING THE AMOUNT OF THE FEE OR THE LEVEL OF SERVICE

WHEREAS the Town is authorized by the Arizona municipal development impact fee enabling statute, A.R.S. § 9-463.05, to assess and collect development impact fees to offset costs to the Town associated with providing necessary public services to a development; and

WHEREAS the Town adopted Marana Ordinance No. 2017.029 to, among other things, revise development impact fees for and parks and recreation facilities to conform to A.R.S. § 9-463.05; and

WHEREAS the parks and recreation facilities development impact fee adopted by Ordinance No. 2017.029 relied on the parks and recreation infrastructure improvement plan adopted by paragraph 3 of and incorporated by reference in Marana Resolution No. 2017-090 dated September 19, 2017 (the "2017 Parks IIP"); and

WHEREAS the 2017 Parks IIP used an incremental expansion methodology, which allows the Town to adjust the projects on the capital plan to meet changing needs without having to also go through the process of re-calculating the fees or a master plan update (2017 Parks IIP, last bulleted paragraph on page 2); and

WHEREAS new citizen demand for Town parks and recreation facilities and emerging opportunities make it prudent to revise the projects included in the 2017 Parks IIP and shift the anticipated development impact fee funding among those projects; and

WHEREAS the revisions to the 2017 Parks IIP supporting development impact fees for and parks and recreation facilities will not result in any change in the amount of the parks and recreation development impact fee or the level of service provided to payers of the fee, and therefore fall within the authorization found at A.R.S. § 9-463.05(D)(10), allowing the revisions to be adopted upon 30 days' notice without a public hearing; and

WHEREAS notice of the proposed revisions to the parks and recreation infrastructure improvements plan was published in *The Daily Territorial* on July 27, 28, 29, and 30, 2020; and

WHEREAS the Town Council finds this resolution to be in the best interests of the Town and its citizens.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Marana, Arizona, that Exhibit 6 of the 2017 Parks IIP is hereby amended as follows (with the "Original Allocation" and corresponding projects being those set forth in the 2017 Parks IIP and the "Amended Allocation" and corresponding projects being those funded pursuant to this resolution):

Project	Original Allocation			Amended Allocation		
	FY 2018-20	FY 2021-28	**Original 10 yr Total**	FY 2018-20	FY 2021-28	**Amended 10 yr Total**
North Marana Sports Fields	$350,000	$3,000,000	$3,350,000		$2,300,000	$2,300,000
Saguaro Bloom Community Park		$3,377,800	$3,377,800		$3,377,800	$3,377,800
Tangerine Sky Community Park Hard Structures	$500,000	$0	$500,000	$500,000	$0	$500,000
Ne District Park Land Acquisition		$1,500,000	$1,500,000		$1,500,000	$1,500,000
CAP Canal Trail Improvements	$100,000	$0	$100,000	$100,000	$0	$100,000
Santa Cruz SUP Avra Valley Rd. – N. Marana		$1,500,000	$1,500,000		$3,000,000	$3,000,000
Tortolita Trail Extension		$450,000	$450,000		$0	$ 0
Ora Mae Harn Park Improvements	$250,000	$2,200,000	$2,450,000	$250,000	$2,200,000	$2,450,000
Heritage River Park Improvements		$1,000,000	$1,000,000		$1,000,000	$1,000,000
Tangerine Rd. Corridor Path		$900,000	$900,000		$900,000	$900,000
Santa Cruz Shared Use Path, Phase III	$1,000,000	$0	$1,000,000	$1,000,000	$0	$1,000,000
Adult Softball Field Ora Mae Harn Park	$360,000	$0	$360,000	$360,000	$0	$360,000
Impact Fee Study		$65,000	$65,000		$65,000	$65,000
Parks, Recreation, Trails, & Open Space Master Plan	$350,000	$0	$350,000	$350,000	$0	$350,000
		Total:	**$16,902,800**		**Total:**	**$16,902,800**

PASSED AND ADOPTED by the Mayor and Council of the Town of Marana, Arizona, this 1st day of September, 2020.

Mayor Ed Honea

ATTEST:

Cherry L. Lawson, Town Clerk

APPROVED AS TO FORM:

Frank Cassidy, Town Attorney

Project	Original Allocation			Amended Allocation		
	FY 2018-20	FY 2021-28	**Original 10 yr Total**	FY 2018-20	FY 2021-28	**Amended 10 yr Total**
North Marana Sports Fields	$350,000	$3,000,000	$3,350,000		$2,300,000	$2,300,000
Saguaro Bloom Community Park		$3,377,800	$3,377,800		$3,377,800	$3,377,800
Tangerine Sky Community Park Hard Structures	$500,000	$0	$500,000	$500,000	$0	$500,000
Ne District Park Land Acquisition		$1,500,000	$1,500,000		$1,500,000	$1,500,000
CAP Canal Trail Improvements	$100,000	$0	$100,000	$100,000	$0	$100,000
Santa Cruz SUP Avra Valley Rd. – N. Marana		$1,500,000	$1,500,000		$3,000,000	$3,000,000
Tortolita Trail Extension		$450,000	$450,000		$0	$ 0
Ora Mae Harn Park Improvements	$250,000	$2,200,000	$2,450,000	$250,000	$2,200,000	$2,450,000
Heritage River Park Improvements		$1,000,000	$1,000,000		$1,000,000	$1,000,000
Tangerine Rd. Corridor Path		$900,000	$900,000		$900,000	$900,000
Santa Cruz Shared Use Path, Phase III	$1,000,000	$0	$1,000,000	$1,000,000	$0	$1,000,000
Adult Softball Field Ora Mae Harn Park	$360,000	$0	$360,000	$360,000	$0	$360,000
Impact Fee Study		$65,000	$65,000		$65,000	$65,000
Parks, Recreation, Trails, & Open Space Master Plan	$350,000	$0	$350,000	$350,000	$0	$350,000
		Total:	**$16,902,800**		**Total:**	**$16,902,800**

Council-Regular Meeting **A4**

Meeting Date: 09/01/2020

To: Mayor and Council

Submitted For: Keith Brann, Town Engineer

From: Frank Cassidy, Town Attorney

Date: September 1, 2020

Strategic Plan Focus Area:
Not Applicable

Subject: Resolution No. 2020-097: Relating to Capital Improvement Projects; approving and authorizing the Mayor to sign the Second Amendment to Mandarina Mediation Agreement (Jane Fairall)

Discussion:

Town Council adopted Marana Resolution No. 2020-061 on June 2, 2020, which included authorization to proceed as swiftly as possible with Town construction of the Adonis Road Improvements and approval of a "First Amendment to Mandarina Mediation Agreement" facilitating construction of a portion of the Adonis Road improvements as a permanent two-lane roadway, with the difference in cost being borne by the developer of the Mandarina property.

The developer of Mandarina has now determined that it can feasibly extend its financial commitment to permanent roadways on the Mandarina property by also paying for the additional cost of constructing permanent improvements to a portion of Mandarina Boulevard -- the road connecting Adonis Road to Tangerine Road.

The proposed Second Amendment to Mandarina Mediation Agreement provides for the Town to contribute the estimated cost it would have spent on the temporary two-lane roadway improvements through the section where the permanent Mandarina Boulevard improvements will now be constructed. The net result is the construction of a longer section of permanent roadway through the Mandarina property at no additional cost to the Town for this phase of improvements.

By building a portion of permanent Mandarina Boulevard, the intersection of Adonis Road and Mandarina Boulevard will now be shifted westward about 200 feet. This will

slightly increase the Town's future cost to extend Adonis Road to Tangerine Road, after issues are resolved concerning Adonis Road's crossing of the CAP.

Financial Impact:

Under the First Amendment to Mandarina Mediation Agreement, the Town agreed to contribute $972,281 toward the construction of Adonis Road (the estimated cost of building the temporary two-lane Adonis Road) on the Mandarina property, with the Mandarina developer paying any additional cost. If the Second Amendment to Mandarina Mediation Agreement is approved, the Town will now agree to contribute an additional $162,461 -- the Town Engineer-reviewed and approved estimated cost of building the temporary two-lane portion of Mandarina Boulevard that will now be built as a permanent road using additional funds contributed by the Mandarina developer. This results in no net change in the Town's cost to build the initial Adonis Road improvements. The future cost to extend Adonis Road to Tangerine Road will increase slightly due to the westward shift of the intersection of Adonis Road and Mandarina Boulevard.

Existing budget capacity for the project (ST059) is adequate as the Town's obligation remains unchanged.

Staff Recommendation:

Town staff recommends adoption of Resolution No. 2020-097, approving and authorizing the Mayor to sign the Second Amendment to Mandarina Mediation Agreement.

Suggested Motion:

I move to adopt Resolution No. 2020-097, approving and authorizing the Mayor to sign the Second Amendment to Mandarina Mediation Agreement.

Attachments

Resolution No. 2020-097

Mandarina Mediation Agt 2nd Amendment

MARANA RESOLUTION NO. 2020-097

RELATING TO CAPITAL IMPROVEMENT PROJECTS; APPROVING AND AUTHORIZING THE MAYOR TO SIGN THE SECOND AMENDMENT TO MANDARINA MEDIATION AGREEMENT

WHEREAS the Marana Town Council adopted Marana Resolution No. 2020-061 on June 2, 2020, which included, among other things, authorization for Town staff to proceed as swiftly as possible with Town construction of the Adonis Road Improvements and approval of a "First Amendment to Mandarina Mediation Agreement" facilitating construction of a portion of the Adonis Road improvements as a permanent two-lane roadway, with the difference in cost being borne by the developer of the Mandarina property; and

WHEREAS Town staff and the developer of the Mandarina property have now negotiated a "Second Amendment to Mandarina Mediation Agreement," which extends the length of permanent roadways by facilitating construction of a portion of the Mandarina Boulevard improvements (linking Adonis Road to Tangerine Road) as a permanent two-lane roadway, with the difference in cost being borne by the developer of the Mandarina property; and

WHEREAS the Marana Town Council finds that Town execution of the Second Amendment to Mandarina Mediation Agreement is in the best interests of the Town and its citizens.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Marana, Arizona, that the Second Amendment to Mandarina Mediation Agreement is approved in the form provided in the agenda materials associated with this Council agenda item, the Mayor is authorized to sign it, and Town staff is authorized to carry out its terms.

PASSED AND ADOPTED by the Mayor and Council of the Town of Marana, Arizona, this 1st day of September, 2020.

Mayor Ed Honea

ATTEST:

Cherry L. Lawson, Town Clerk

APPROVED AS TO FORM:

Frank Cassidy, Town Attorney

SECOND AMENDMENT TO MANDARINA MEDIATION AGREEMENT

Town of Marana, Arizona

THIS SECOND AMENDMENT TO MANDARINA MEDIATION AGREEMENT (this "Amendment") is made and entered into by and between the TOWN OF MARANA (the "Town"), an Arizona municipal corporation; and MANDARINA, LLC ("Mandarina"), a Colorado limited liability company. The Town and Mandarina are sometimes collectively referred to as the "Parties," either of which is sometimes individually referred to as a "Party."

RECITALS

A. The Parties entered into a "MEDIATION AGREEMENT" (the "Mediation Agreement") dated October 30, 2019, in settlement of two then-pending lawsuits, entitled *Mandarina, LLC v. Town of Marana,* Pima County Superior Court case number C20161982, and *Town of Marana v. Mandarina, LLC,* Pima County Superior Court case number C20184425.

B. The Parties entered into a "FIRST AMENDMENT TO MANDARINA MEDIATION AGREEMENT" (the "First Amendment") dated June 3, 2020, amending the Mediation Agreement to accommodate construction of Adonis Road by the Town of Marana with Mandarina providing a funding contribution to facilitate construction of Adonis Road on the Mandarina Property as a permanent two-lane road.

C. The Parties now desire to further amend the Mediation Agreement as amended by the First Amendment to facilitate construction of a portion of Mandarina Road Link as a permanent two-lane road.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into this Amendment as though fully restated here, and the mutual covenants set forth in the Mediation Agreement, the First Amendment, and this Amendment, the Parties hereby agree as follows:

1. *Definitions of terms.* Terms used in this Amendment shall have the definitions found in the Mediation Agreement as amended by the First Amendment and as further amended by this Amendment.

2. *Mandarina Boulevard defined and Mandarina Link Road redefined.*

a. "Mandarina Boulevard" means A two-lane permanent Mandarina Boulevard and its transition to temporary two-lane roadway between Adonis Road and Station 20+88 of "INTERIM MANDARINA BLVD (PUBLIC STREET)" as shown on the plans entitled "PUBLIC PAVING IMPROVEMENT PLAN FOR MANDARINA/INTERIM

ADONIS ROAD AND MANDARINA BLVD (SOUTHERN PORTION OF ADONIS ROAD ROW ONLY)" prepared by Psomas and bearing an engineering stamp dated January 8, 2020.

b. "Mandarina Link Road" means the section of temporary road located south of Mandarina Boulevard described in subparagraph a above.

3. *Revision to the Subject Improvements*. The improvements referred to as the "Subject Improvements" as defined in paragraph 4 of the First Amendment are now defined to include all of the following-described improvements on the Mandarina Property:

a. A two-lane permanent Adonis Road roadway (the north/east two lanes of the four-lane ultimate Adonis Road roadway) to a "permanent interim cross-section" of three inches of asphaltic concrete over a four inch aggregate base course over a six inch cement treated subgrade, consistent with the cross section exhibit attached to the First Amendment as Exhibit A.

b. Curbs and sidewalks and the top two inches of asphalt are excluded from initial construction of Adonis Road described in subparagraph a above, but will be provided by Mandarina in phases as the Mandarina Property is developed, so that the final two-lane permanent Adonis Road roadway will be consistent with the cross section exhibit attached to the First Amendment as Exhibit B.

c. A two-lane permanent Mandarina Boulevard to a "permanent interim cross-section" of three inches of asphaltic concrete over a four inch aggregate base course over a six inch cement treated subgrade, consistent with the cross section exhibit attached to this Amendment as Exhibit C, and its transition to temporary two-lane roadway connecting to Mandarina Link Road.

d. Curbs and sidewalks and the top two inches of asphalt are excluded from initial construction of permanent Mandarina Boulevard described in subparagraph c above, but will be provided by Mandarina in phases as the Mandarina Property is developed, so that the final two-lane permanent Mandarina Boulevard roadway will be consistent with the cross section exhibit attached to this Amendment as Exhibit D.

e. As constructed pursuant to the First Amendment as amended by this Amendment, the two-lane permanent Adonis Road roadway shall only extend as far east as its intersection with Mandarina Boulevard as constructed pursuant to subparagraph c above and not to the east Mandarina Property boundary.

4. *Payment for the Adonis Road Improvements.* Paragraph 9 of the First Amendment is amended by deleting subparagraph b.ii and replacing it with the following:

ii. The Town shall pay the next $1,134,742 from the funds it would have spent to construct temporary two-lane Adonis Road through the Mandarina Property and to construct the temporary two-lane segment now replaced by permanent Mandarina Boulevard.

5. *Earthwork equipment crossing of Mandarina Boulevard and Mandarina Link Road*. During development of the Mandarina Property, the Town shall allow earthwork equipment to cross Mandarina Boulevard and Mandarina Link Road with appropriate protection of the roadway and with appropriate traffic control to be reviewed and approved by the Town in connection with the submittal for and issuance of one or more applicable right-of-way use permits pursuant to Marana Town Code Chapter 12-7 ("Construction in Town rights-of-way").

6. *Remainder of the Mediation Agreement and First Amendment unchanged*. Except as revised in and/or as revised by applying the revised definitions of terms in this Amendment, the Mediation Agreement as amended by the First Amendment shall remain unchanged.

7. *Term*. This Amendment shall become effective (the "Effective Date") on the last Party's signature date below, and shall terminate upon completion of construction of and payment for the Adonis Road Improvements, unless earlier terminated by operation of subparagraph 9.b.iv of the First Amendment.

8. *Miscellaneous*.

a. The Mediation Agreement as amended by the First Amendment and this Amendment may not be modified except in a writing signed by the Parties.

b. This Amendment may be executed in identical counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument. In addition, this Amendment may contain more than one counterpart of the signature pages and this Amendment may be executed by the affixing of the signature pages, and all of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all the signers had signed a single signature page.

c. This Amendment is subject to A.R.S. § 38-511, which provides for cancellation of contracts in certain instances involving conflicts of interest.

[Remainder of page left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the last date set forth below their respective signatures, with an Effective Date determined as set forth in paragraph 7 above.

THE "TOWN":

TOWN OF MARANA, an Arizona municipal corporation

By: _____
Ed Honea, Mayor

Date: _____

ATTEST:

_____
Cherry L. Lawson, Town Clerk

APPROVED AS TO FORM:

_____
Frank Cassidy, Town Attorney

"Mandarina":

MANDARINA, LLC, a Colorado limited liability company
By: MSP INVESTMENT CO., LLP, a Colorado limited liability partnership, its Manager

By: _____
Marcus Palkowitsh, Partner

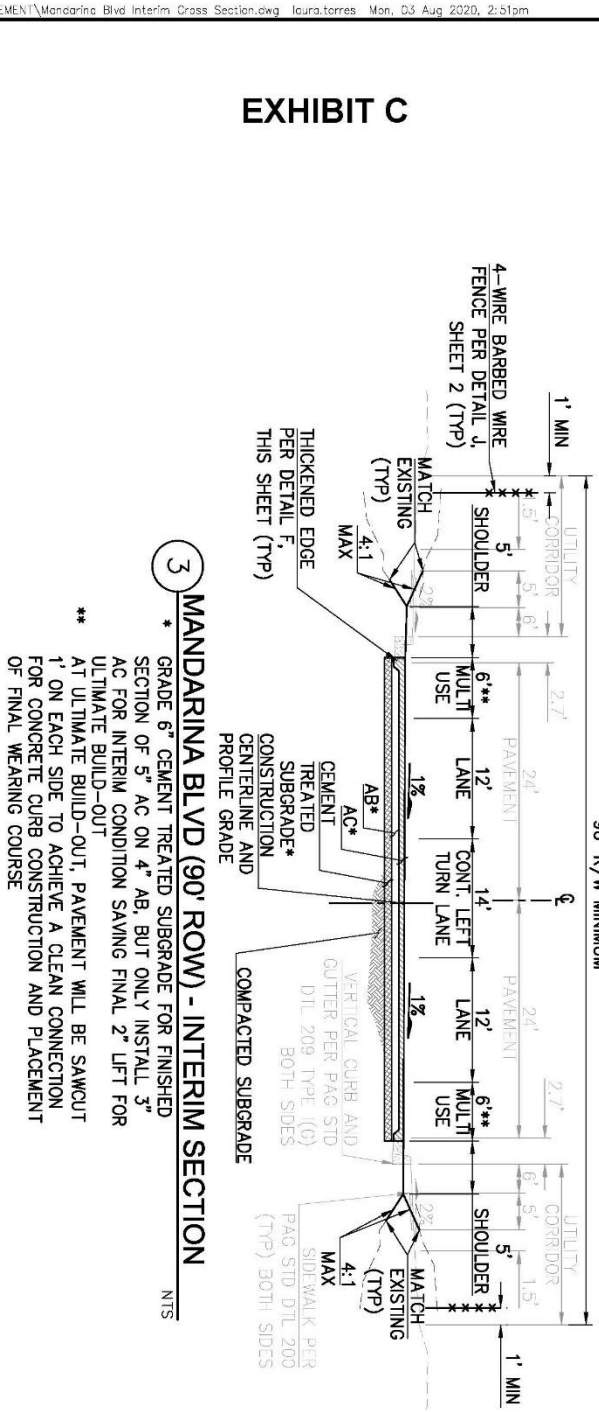
Date: _____

LIST OF EXHIBITS

Exhibit C	Mandarina Boulevard permanent interim cross section exhibit
Exhibit D	Mandarina Boulevard ultimate cross section exhibit

T:\7MAN190101\ENGR\EXHIB\MEDIATION AGREEMENT\Mandarina Blvd Interim Cross Section.dwg laura.torres Mon, 03 Aug 2020, 2:51pm

EXHIBIT C



3 MANDARINA BLVD (90' ROW) - INTERIM SECTION

NTS

* GRADE 6" CEMENT TREATED SUBGRADE FOR FINISHED SECTION OF 5" AC ON 4" AB, BUT ONLY INSTALL 3" AC FOR INTERIM CONDITION SAVING FINAL 2" LIFT FOR ULTIMATE BUILD-OUT

** AT ULTIMATE BUILD-OUT, PAVEMENT WILL BE SAWCUT 1' ON EACH SIDE TO ACHIEVE A CLEAN CONNECTION FOR CONCRETE CURB CONSTRUCTION AND PLACEMENT OF FINAL WEARING COURSE

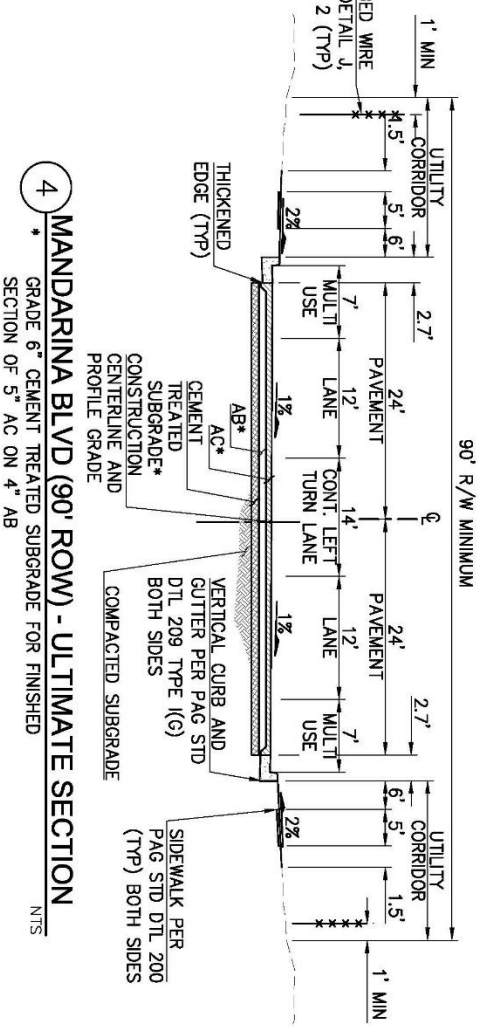
PSOMAS
3333 E. Westmoreland Road, Suite 450
Tucson, AZ 85705
(520) 292-2300
(520) 292-1290 fax
www.psomas.com

MANDARINA SITE

MANDARINA BLVD PERMANENT INTERIM CROSS SECTION EXHIBIT

DATE: 8/3/2020
PSOMAS NO: 7MAN190101

EXHIBIT D



4 MANDARINA BLVD (90' ROW) - ULTIMATE SECTION

NTS

* GRADE 6" CEMENT TREATED SUBGRADE FOR FINISHED SECTION OF 5" AC ON 4" AB

PSOMAS
333 E. Wetmore Road, Suite 450
Tucson, AZ 85705
(520) 292-2300
(520) 292-1290 fax
www.psomas.com

MANDARINA SITE
MANDARINA BLVD ULTIMATE CROSS SECTION EXHIBIT

DATE: 8/3/2020
PSOMAS NO: 7MAN190101