MARANA AZ
CELEBRATING 45 YEARS

MARANA TOWN COUNCIL
REGULAR COUNCIL MEETING
NOTICE AND AGENDA

11555 W. Civic Center Drive, Marana, Arizona 85653
Council Chambers, September 6, 2022, at or after 6:00 PM

Ed Honea, Mayor
Jon Post, Vice Mayor
Patti Comerford, Council Member
Jackie Craig, 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 6, 2022, 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.

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

PR1 Proclamation honoring Sgt. Steve Johnson, Marana Police Department, on his retirement (David Udall)

PR2 Proclamation recognizing and commemorating the 21st Anniversary of 9-11 (David Udall)

PR3 Proclamation recognizing September 16, 2022, as "POW / MIA Recognition Day" (David Udall)

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 2021-2022 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. 2022-090: Relating to Budget; approving a new capital improvement project, Tangerine Traffic Interchange Improvements, and approving the transfer of up to $600,000 in budgeted expense authority from the Regional Transportation Fund to the Other Agency Fund in the fiscal year 2022-2023 budget to fund the project (Fausto Burruel)

C2 Resolution 2022-091: Relating to Budget; approving the transfer of $435,157.80 in budgeted expense authority from multiple projects in the general fund to increase the project budget for the Marana Municipal Complex Drainage Improvement Project in the fiscal year 2022-2023 Budget (Fausto Burruel)

C3 Resolution No. 2022-092: Relating to the Marana Regional Airport; approving and authorizing the Town Manager to execute the Lessor's Consent to Leasehold Deed of Trust and Estoppel Certificate for the benefit of Western Alliance Bank, related to the Marana Regional Airport Lease Agreement with The J.D. Russell Company for the lease of approximately 1.078 acres of real property located at 11155 N. Air Commerce Way at the Marana Regional Airport (Jane Fairall)

C4 Approval of Council Study Session Summary Minutes of August 9, 2022 and Approval of Council Regular Meeting Summary Minutes of August 16, 2022 (David Udall)

LIQUOR LICENSES

BOARDS, COMMISSIONS AND COMMITTEES

COUNCIL ACTION

A1 Resolution No. 2022-093: Relating to Real Estate; approving and authorizing the Mayor to execute a Real Property Agreement and related conveyance documents in favor of Southwest Gas Corporation for the fee title sale and transfer of a new natural gas tap site, along with perpetual easements for natural gas pipelines and a temporary construction easement for temporary workspace over Ora Mae Harn District Park property (George Cardieri)

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 Resolution No. 2022-094: Relating to Strategic Planning; approving and authorizing implementation of Marana Strategic Plan Five (Terry Rozema)

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 and consultation with and instructions to the Town's attorneys regarding the pending litigation entitled Connie Partridge v. City of Marana, et al., Pima County Superior Court Case No. C20204074.

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 **PR1**

Meeting Date: 09/06/2022

Submitted For: David Udall, Interim Town Clerk

Date: September 6, 2022

Subject: Proclamation honoring Sgt. Steve Johnson, Marana Police Department, on his retirement (David Udall)

Attachments

Proclamation Honoring Sgt. Steve Johnson Retirement

MARANA AZ
ESTABLISHED 1977

PROCLAMATION
Honoring Marana Police Sergeant Steve Johnson

WHEREAS, after serving 19 years in the United States Air Force, **Steve Johnson** retired and was hired by the Marana Police Department on August 17, 1996. He quickly moved up in the organization, being promoted to Sergeant in July 1999. Throughout his career, **Sgt. Johnson** has demonstrated an exceptional degree of good judgment, initiative and competence. He served in many roles as a supervisor, including as the Emergency Management/Homeland Security Coordinator, and he supervised the Internal Affairs Unit, Crime Scene Unit, and Training Unit; and

WHEREAS, Steve was responsible for successfully coordinating the Town's Emergency Response Plan with Federal, State, County, and local jurisdictions, and spearheaded the Town Council's resolution and adoption of the National Incident Management System (NIMS) for major events and disasters. He was responsible for training Town personnel in the Incident Command System and was the Marana Police Department's Liaison Officer for the Arizona Counter Terrorism Information Center; and

WHEREAS, as the Emergency Management/Homeland Security Coordinator **Steve** was responsible for writing several grants, which resulted in the Town receiving over $200,000 in funding and equipment. As the Special Events Coordinator, he was responsible for several Town events to include El Tour De Tucson, 4th of July Star Spangled Spectacular, and Founders Day; ensuring these events sustained a safe environment. Between 2007 and 2014, **Sgt. Johnson** served as the ICS Planning Chief for the Accenture Matchplay Golf Championship. This involved several months of planning and coordinating resources for the Town, the police department, and outside agencies; and

WHEREAS, over his career **Sgt. Johnson** has received several certificates and accolades. He has received the 2005 Sons of the American Revolution Outstanding Officer of the Year award, the Chief's Medal of Merit, Chief's Citation of Excellence, Lifesaving award, and the Department's Distinguished Service Medal. This past year **Steve** was assigned as the Department's (First Shirt) Sergeant overseeing many operational needs within the organization.

WHEREAS, Steve enjoys his time away from the police department by spending time with his family – his wife Teresa, daughters Ryann and Breeana, his son Steven Jr, and his grandchildren. He enjoys an occasional nap at home, and sometimes at work.

NOW, THEREFORE be it resolved, Mayor Honea and the Marana Town Council commend and thank **Sgt. Steve Johnson** for his lengthy career in public service and his dedication to the Marana community, and urge its citizens join them in congratulating him on his retirement.

Dated this 6th day of September 2022.

ATTEST:

David L. Udall, Interim Town Clerk

Ed Honea

Ed Honea, Mayor

Council-Regular Meeting **PR2**

Meeting Date: 09/06/2022

Submitted For: David Udall, Interim Town Clerk

Date: September 6, 2022

Subject: Proclamation recognizing and commemorating the 21st Anniversary of 9-11 (David Udall)

Attachments

Proclamation Recognizing and Commemorating the 21st Anniversary of 9-11

MARANA AZ
ESTABLISHED 1977

PROCLAMATION
NATIONAL 21st ANNIVERSARY OF SEPTEMBER 11, 2001 (9-11)

WHEREAS, on September 11, 2001, nineteen terrorist members of al-Qaeda, an Islamist extremist network, hijacked four commercial airplanes. In a coordinated attack, the hijackers intentionally flew two of the planes into the Twin Towers of the World Trade Center and a third into the Pentagon. Learning about the other hijackings, passengers and crewmembers on the fourth plane launched a counterattack, spurring the hijacker pilot to crash the plane into a field in Pennsylvania. Nearly 3,000 people were killed on that day, the single largest loss of life resulting from a foreign attack on American soil; and

WHEREAS, within hours of the September 11, 2001 attacks, millions of people across the world felt compelled to respond to the crisis. Volunteers and trained professionals from near and far rushed to help in the rescue and recovery efforts at the World Trade Center, Pentagon, and Flight 93 sites; and

WHEREAS, on February 26, 1993, terrorists placed a bomb in the garage beneath the World Trade Center. The explosion killed six people and injured more than 1,000 others. This timeline tells the story of the bombing plot, its effects on the World Trade Center, and the campaign to bring the perpetrators to justice; and

WHEREAS, the National September 11 Memorial & Museum will soon lead the nation, and the world, as we mark the passage of over two decades since the day that changed our lives forever. The focus of the commemoration will be the reading of the names by family members' in-person; and

WHEREAS, throughout the commemoration ceremony, six moments of silence will be observed, acknowledging when each of the World Trade Center towers was struck and fell, along with the times corresponding to the attack on the Pentagon and the crash of United Airlines Flight 93. The first moment of silence will be observed at 8:46 a.m. At sundown, the annual "Tribute in Light" will once again illuminate the sky in commemoration of the anniversary of the attacks.

NOW, THEREFORE, the Mayor and Marana Town Council do hereby declare September 11, 2022 as **NATIONAL 21st ANNIVERSARY OF SEPTEMBER 11, 2001 (9-11)**, and encourages the Marana community and houses of worship to toll their bells and observe the six moments of silence in remembrance and honor of the many individuals who perished that day, as well as honoring the First Responders who bravely responded during that event in American history.

Dated this 6th day of September 2022.

ATTEST:

David L. Udall, Interim Town Clerk

Ed Honea

Ed Honea, Mayor

Council-Regular Meeting **PR3**

Meeting Date: 09/06/2022

Submitted For: David Udall, Interim Town Clerk

Date: September 6, 2022

Subject: Proclamation recognizing September 16, 2022, as "POW / MIA Recognition Day" (David Udall)

Attachments

Proclamation Recognizing POW/MIA Recognition Day

MARANA AZ
CELEBRATING 45 YEARS

PROCLAMATION
POW / MIA RECOGNITION DAY – SEPTEMBER 16, 2022

WHEREAS, America is still missing men from the Vietnam War, 155 are unaccounted for from the Korean War, one is still missing from the Cold War, and 364 are missing from World War II with thousands from that war being assessed as unrecoverable deep-sea losses; and

WHEREAS, families and friends of these unaccounted-for veterans still await recovery and identification of their loved ones' remains or, if determined unrecoverable, certainty regarding their fates; and

WHEREAS, on POW / MIA Recognition Day, we pause to acknowledge, with deep reverence, the brave Americans who were held in captivity and those whose fates have never been resolved, remembering that their families continue to suffer; and

WHEREAS, we recognize that our nation feels the cost of war long after the last battle is fought, and we refuse to allow the sacrifices of our brave servicemembers to go unrecognized; and

WHEREAS, now and forever, Americans will stand with the families and friends of servicemembers as they await news of their loved ones who are deployed overseas; and

WHEREAS, the Town of Marana fully supports the national commitment to account, as fully as possible, for Americans still missing from our nation's wars.

NOW, THEREFORE, the Mayor and Council of the Town of Marana, do hereby proclaim September 16, 2022 as **"POW / MIA RECOGNITION DAY"** in Marana and urge all Americans to pay special honor to those who have been prisoners of war, to those who remain missing in action, and to the families and friends of these valiant servicemembers.

Dated this 6th day of September 2022.

ATTEST:

Ed Honea

David L. Udall, Interim Town Clerk

Ed Honea, Mayor

Council-Regular Meeting **P1**

Meeting Date: 09/06/2022

To: Mayor and Council

From: Yiannis Kalaitzidis, Finance Director

Date: September 6, 2022

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 2021-2022 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 2021-22. 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 fueled by a combination of ongoing federal relief funds and low interest rates for the majority of the fiscal year which have boosted most sectors of the economy, but also due to a reduced budget for fiscal year 2021-2022 in anticipation of the impact of the pandemic to the economy. Staff will provide additional detail about fourth quarter major revenue stream collections during the presentation.

General Fund revenue is significantly above budgeted expectations and projected to come in about 43% above budgeted amounts, primarily impacted by retail sales taxes, which are higher than ever before, and Single Family Resident (SFR) permits. A large

part of this increase is due to second and final disbursement of $8.2 million of ARPA funding, which arrived earlier than anticipated and is being recorded in fiscal year 2022 instead of fiscal year 2023. It should be noted that most revenue categories were higher than prior year actual revenues.

Highway User Revenue Fund (HURF) revenues resulting from the collection of fees and taxes from users of the State's roads and highways exceeded expectations by 11%.

Revenues for the Transportation Fund which comprises 75% of all contracting taxes collected and used for new road construction and reconstruction projects are significantly higher than anticipated at 12% above budgeted expectations due to significantly higher revenue earnings for the last two months of the fiscal year as compared to prior months' trends. Contracting Sales tax revenues are estimated at $8.4 million at year-end.

Revenues for the Bed Tax Fund, which accounts for the portion of bed tax revenues restricted for tourism related costs, exceeded expectations after a strong recovery that allowed the hospitality industry a return to pre-pandemic occupancy rates and demand for hotel rooms while being able to generate higher revenues for the majority of the year. That in turn has resulted in Bed Tax Fund revenues of $1.9 million or 53% more than anticipated, which is likely to be a one-time event as demand and pricing in the industry might be impacted in the near future by uncertain economic conditions.

Revenues for the Water and Water Reclamation Funds were within or above expectations for the fiscal year due to continued account growth directly related with the high demand for new housing and commercial projects in Marana.

Revenues for the Airport met expectations with lease income performing slightly above budgeted levels due to a new ground lease which added to economic development opportunities at that location. 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 of capital projects many of which will commence later than originally anticipated. Also, certain purchases and projects were deferred to the next fiscal year due to continued supply chain disruptions for equipment and materials. Additional detail on these variances and other funds are included within the visualization slides attached to this item.

General Fund Balance and Reserves

Based upon preliminary year-end results for fiscal year 2021-2022, we expect General Fund reserves of approximately $46.9 million available to use for one-time projects and other one-time needs by the end of fiscal year 2022-2023. This balance excludes items like the General Fund reserve of 25% of budgeted revenues, or $16.8 million, the $5 million of contingency budget capacity in next year's budget and money set aside as

part of the Town's equipment and vehicle replacement program, which are available to support continued, efficient and uninterrupted service delivery. Please find a General Fund available 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 2021-2022.

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

FY2021-2022 Preliminary Year-End Financial Update

FY2021-2022 General Fund Available Balances

Financial Brief: Fourth Quarter

Fiscal Year

2021 – 2022

Prepared by: Finance Department

Contents

Summary 1

General Fund Revenues 2

General Fund Expenses 3

HURF Revenues 4

HURF Expenses 5

Transportation Fund Revenues 6

Transportation Fund Expenses 7

Bed Tax Fund Revenues 8

Bed Tax Fund Expenses 9

Water Revenues 10

Water Expenses 11

Water Reclamation Revenues 12

Water Reclamation Expenses 13

Airport Revenues 14

Airport Expenses 15

FISCAL YEAR 2021 - 2022 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 2022 (July 2021 - June 2022). 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.

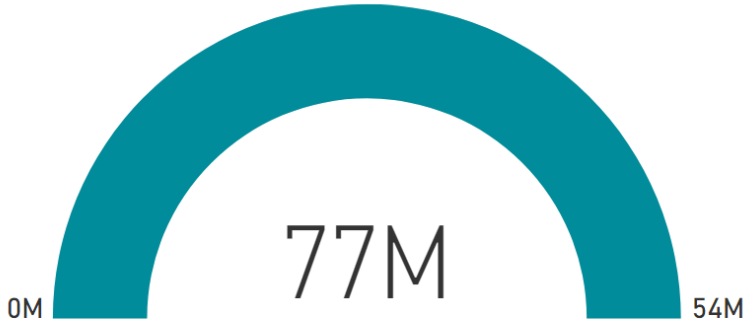
	REVENUES			EXPENDITURES			OVER/UNDER
Fund	FY 2022 Budget	Actual	% Budget	FY 2022 Budget	Actual	% Budget	YTD Over/Under
GENERAL FUND	53,735,342	76,689,202	143%	54,457,494	48,382,576	89%	28,306,626
HURF	3,917,106	4,357,234	111%	4,348,548	3,194,841	73%	1,162,903
TRANSPORTATION FUND	7,600,000	9,690,670	128%	16,216,631	2,823,722	17%	6,866,948
BED TAX FUND	1,243,341	1,901,388	153%	1,243,341	1,122,077	90%	779,746
WATER FUND	9,314,917	9,594,899	103%	9,581,972	8,718,116	91%	876,783
WATER RECLAMATION FU...	3,182,972	3,892,887	122%	4,237,261	2,810,559	66%	1,082,328
AIRPORT FUND	641,443	381,073	59%	641,443	469,259	73%	-88,186

Click HERE for a User Guide and FAQ about this report

FY 2021-2022 FOURTH QUARTER: GENERAL FUND REVENUES

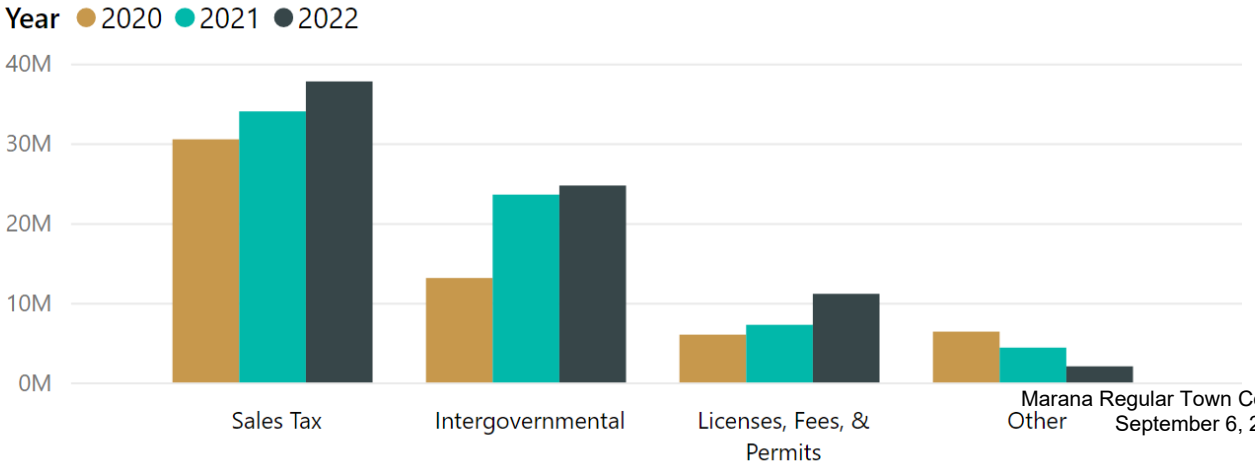
Select Revenue or Expense
- EXPENSES
- REVENUES

Category	FY 2022 Budget	Actual	% Budget
Sales Tax	30,950,841	37,758,889	122%
Intergovernmental	14,620,322	24,700,801	169%
Licenses, Fees, & Permits	5,843,300	11,113,073	190%
Charges for Services	609,500	1,100,108	180%
Other	1,711,379	2,016,331	118%
Total	**53,735,342**	**76,689,202**	**143%**



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. Fourth quarter collections are above expected levels for FY2022 due to stronger than anticipated activity in all categories. Intergovernmental Revenues are amounts received from the State's shared revenue program and are distributed based upon population estimates and economic conditions. Licenses, Fees, & Permits include Single Family Residential (SFR) permit revenue. Other revenues, comprised of various sources include investment income earnings and insurance dividends.



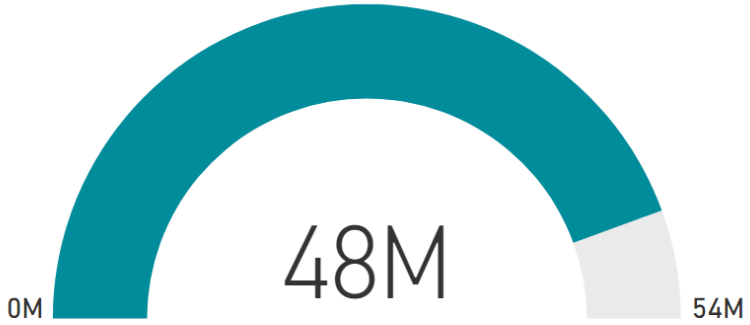
Category	2020	2021	2022
Sales Tax	30,497,789	34,001,110	37,758,889
Intergovernmental	13,098,547	23,559,039	24,700,801
Licenses, Fees, & Permits	5,992,340	7,225,295	11,113,073
Charges for Services	510,232	658,737	1,100,108
Other	6,370,726	4,364,201	2,016,331
Total	**56,469,634**	**69,808,381**	**76,689,202**

FY 2021-2022 FOURTH QUARTER: GENERAL FUND EXPENSES

Select Revenue or Expense

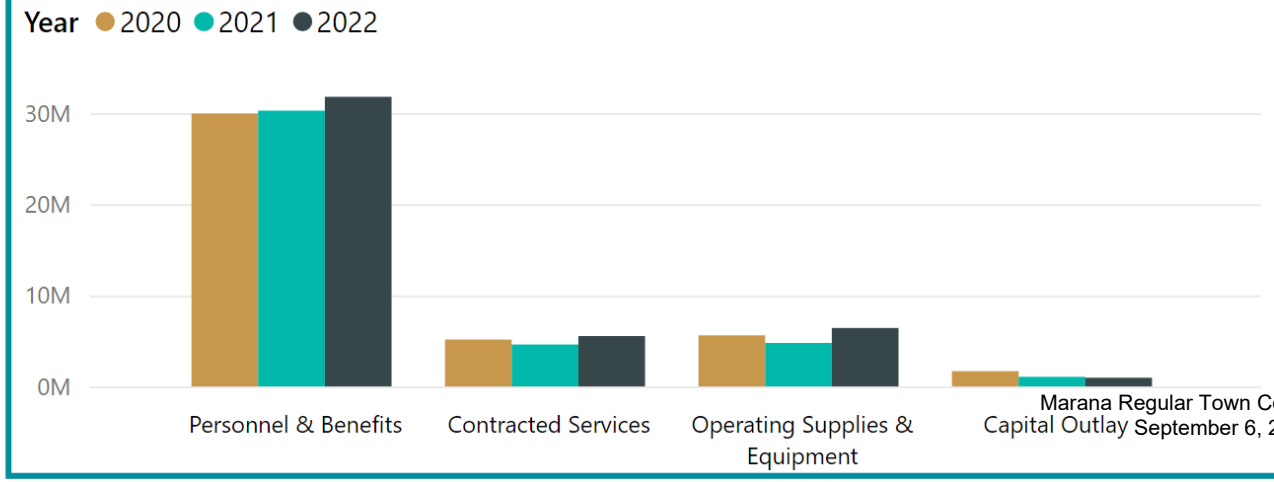
- [x] EXPENSES
- [ ] REVENUES

Category	FY 2022 Budget	Actual	% Budget
Personnel & Benefits	34,296,577	31,788,645	93%
Contracted Services	6,512,486	5,527,482	85%
Operating Supplies & Equipment	6,436,843	6,411,011	100%
Capital Outlay	2,737,053	949,542	35%
Other Financing Uses	4,474,535	3,705,897	83%
Total	**54,457,494**	**48,382,576**	**89%**



General Fund Relevant Information

General Fund expenses through the fourth quarter of FY2022 are overall as expected. Personnel & Benefits is below anticipated levels due to higher vacancy rates related with the current job market. Capital Outlay is associated with a number of projects many of which are still getting underway and with the vehicle replacement program which continues to experience delays associated with supply chain disruptions. Other Financing Uses is related to budgeted transfers, some of which are yet to occur as the Town reconciles and closes the books for the year.



Category	2020	2021	2022
Personnel & Benefits	29,957,935	30,268,994	31,788,645
Contracted Services	5,140,196	4,598,461	5,527,482
Operating Supplies & Equipm...	5,606,589	4,769,327	6,411,011
Capital Outlay	1,675,482	1,053,254	949,542
Other Financing Uses	4,749,652	4,306,521	3,705,897
Total	**47,129,854**	**44,996,558**	**48,382,576**

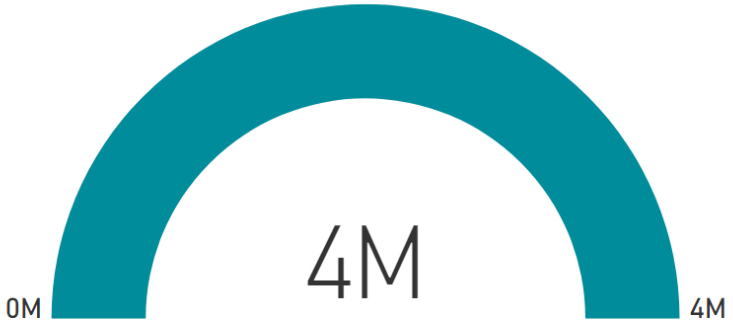
FY 2021-2022 FOURTH QUARTER: HURF

REVENUES

Select Revenue or Expense

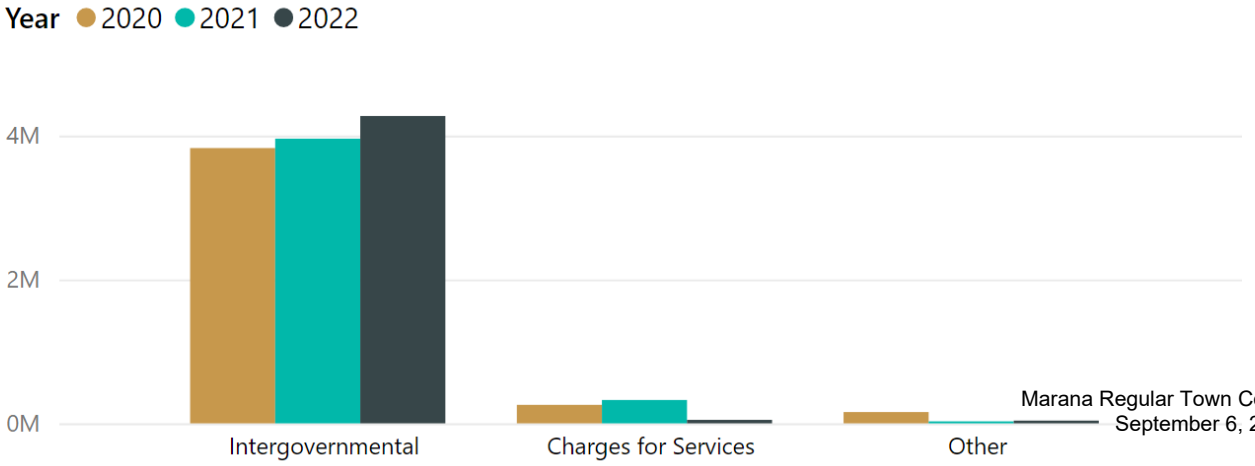
- EXPENSES
- REVENUES

Category	FY 2022 Budget	Actual	% Budget
Intergovernmental	3,912,106	4,271,391	109%
Charges for Services	0	48,098	0%
Other	5,000	37,744	755%
Total	**3,917,106**	**4,357,234**	**111%**



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. Fourth quarter HURF revenue collections are slightly above forecasted levels due to better than anticipated activity. Charges for services are payment in lieu of fees collected from third parties to be expended for the preservation of roads. Other revenue is comprised of investment income and auction proceeds.

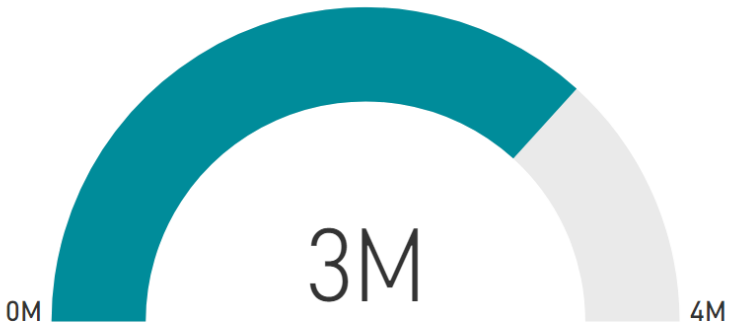


Category	2020	2021	2022
Intergovernmental	3,825,665	3,956,482	4,271,391
Charges for Services	256,695	324,246	48,098
Other	156,695	603	37,744
Total	**4,239,055**	**4,281,332**	**4,357,234**

FY 2021-2022 FOURTH QUARTER: HURF EXPENSES

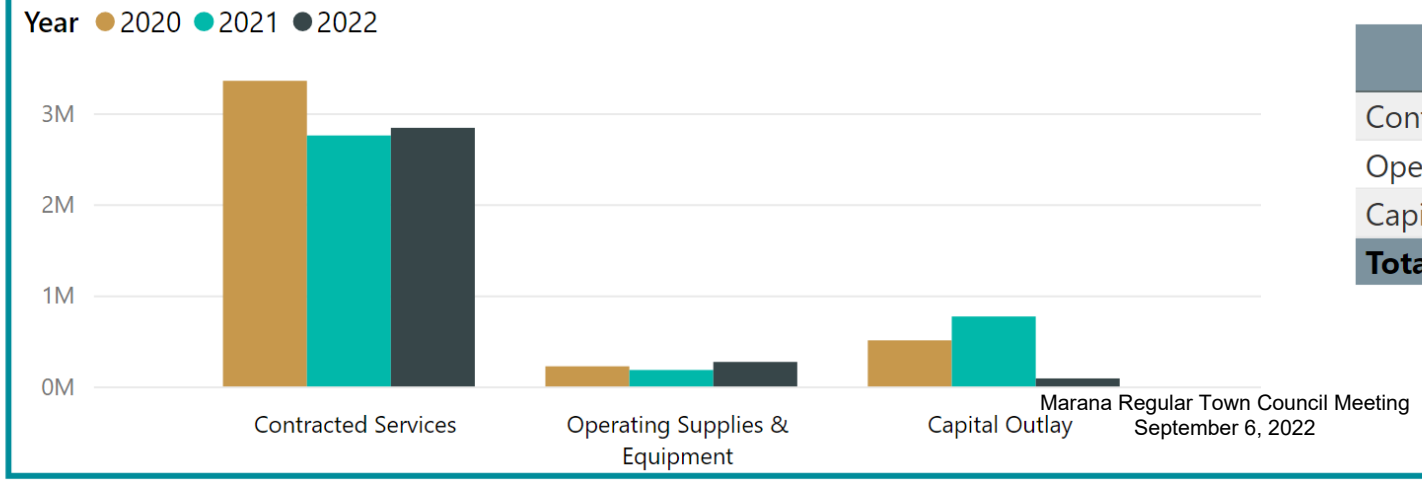
Select Revenue or Expense
- [x] EXPENSES
- [ ] REVENUES

Category	FY 2022 Budget	Actual	% Budget
Contracted Services	3,789,781	2,838,629	75%
Operating Supplies & Equipment	271,550	268,662	99%
Capital Outlay	137,600	87,549	64%
Other Financing Uses	149,617		
Total	**4,348,548**	**3,194,841**	**73%**



HURF Relevant Information

HURF expenses are below budgeted amounts through the fourth quarter of FY2022. Contracted Services is below budget due to the timing of the Town's Pavement Preservation Program, a portion of which was carried forward into next fiscal year. Operating Supplies & Equipment are in line with expectations as the Town continues the multi-year process of converting to LED street lamps which generate savings in utility costs. Capital Outlay is associated with vehicle/equipment purchases which is impacted by supply chain disruptions. Other Financing Uses is restricted budget for possible monsoon storm damage or other unanticipated needs.



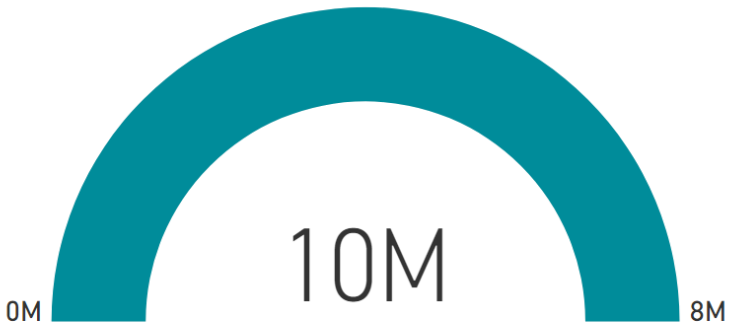
Category	2020	2021	2022
Contracted Services	3,354,679	2,754,594	2,838,629
Operating Supplies & Equipm...	220,631	180,283	268,662
Capital Outlay	505,706	767,722	87,549
Total	**4,081,016**	**3,702,599**	**3,194,841**

FY 2021-2022 FOURTH QUARTER: TRANSPORTATION FUND

REVENUES

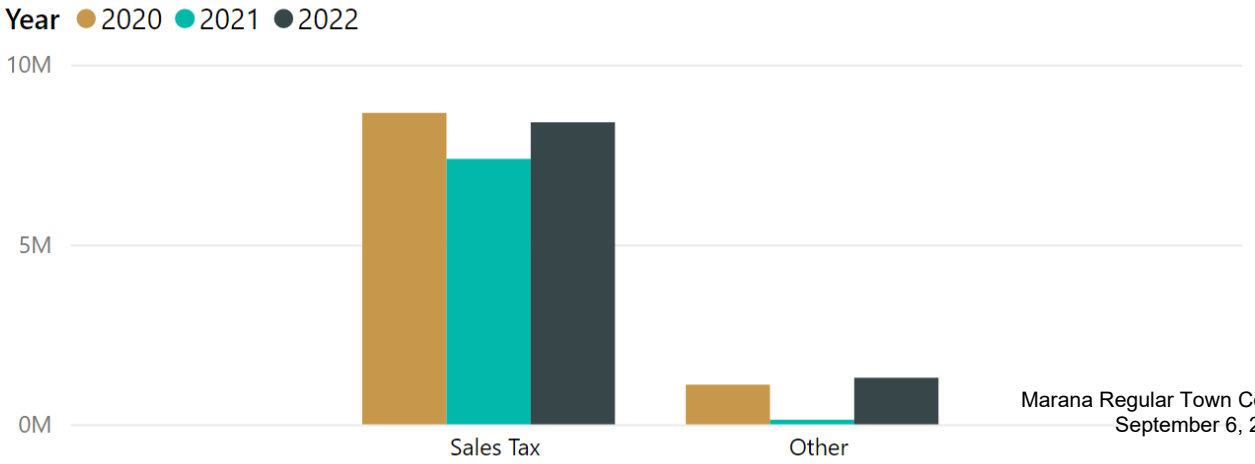
Select Revenue or Expense
- EXPENSES
- REVENUES

Category	FY 2022 Budget	Actual	% Budget
Sales Tax	7,500,000	8,395,919	112%
Other	100,000	1,294,751	1295%
Total	**7,600,000**	**9,690,670**	**128%**



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. Fourth quarter revenue collections are above expectations due to higher than anticipated construction activity in the last quarter. Residential housing activity remained strong in the last quarter (1,303 SFR permits issued vs. 940 budgeted for the year) and overall revenues exceeded expectations in the last two months. Other revenue is comprised of investment income and one-time third party contributions.

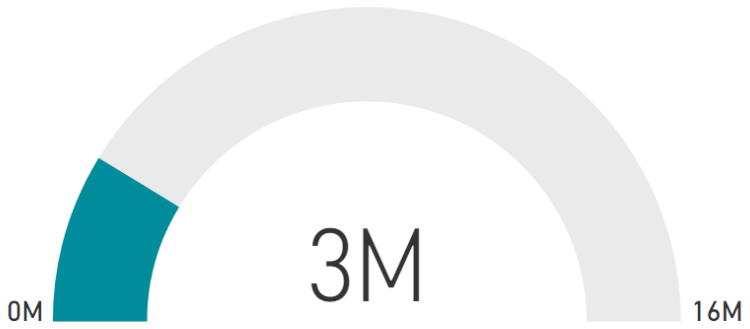


Category	2020	2021	2022
Sales Tax	8,657,955	7,378,783	8,395,919
Other	1,102,213	128,092	1,294,751
Total	**9,760,168**	**7,506,876**	**9,690,670**

FY 2021-2022 FOURTH QUARTER: TRANSPORTATION FUND EXPENSES

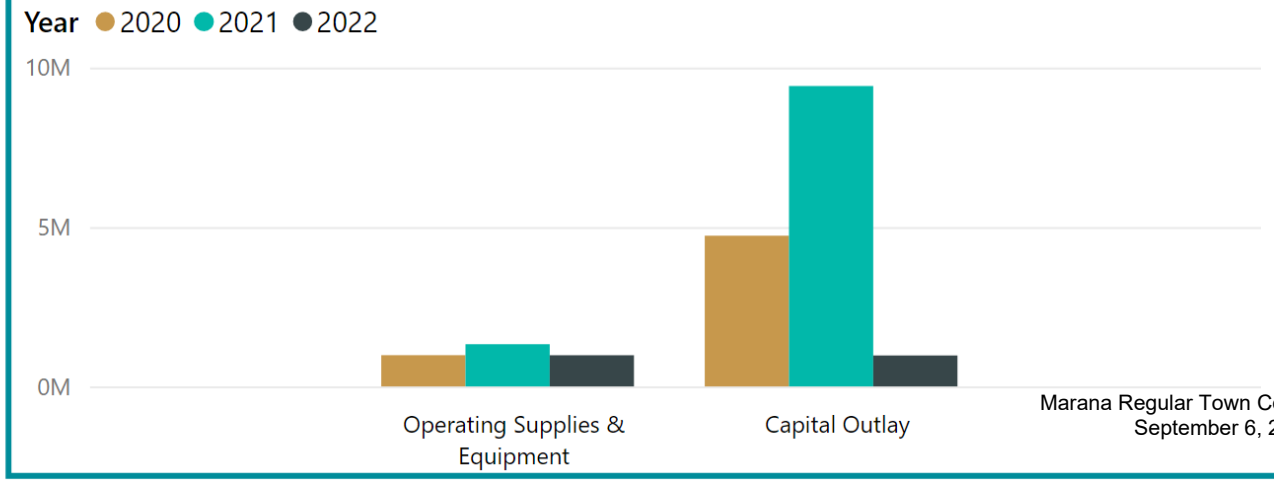
Select Revenue or Expense
- [x] EXPENSES
- [ ] REVENUES

Category	FY 2022 Budget	Actual	% Budget
Operating Supplies & Equipment	1,187,000	977,459	82%
Capital Outlay	14,170,602	970,242	7%
Debt Service	0	17,645	0%
Other Financing Uses	859,029	858,375	100%
Total	**16,216,631**	**2,823,722**	**17%**



Transportation Fund Relevant Information

Transportation Fund expenses are below budgeted levels through the fourth quarter of FY2022. Operating Supplies & Equipment is associated with ongoing developer reimbursements paid on a semi-annual basis. Capital Outlay is associated with CIP projects some of which kicked off during the first half of the year with many still in the planning and design stages of the project. Also, some projects were solicited, but bids exceeded budget appropriations and thus were not awarded while staff continues to evaluate how to proceed. Other delays are associated with material shortages. Other Financing Uses is associated with planned transfers related to debt service.



Category	2020	2021	2022
Operating Supplies & Equipm...	979,395	1,323,442	977,459
Capital Outlay	4,720,199	9,421,469	970,242
Debt Service	19,752	18,029	17,645
Other Financing Uses	691,899	693,655	858,375
Total	**6,411,245**	**11,456,595**	**2,823,722**

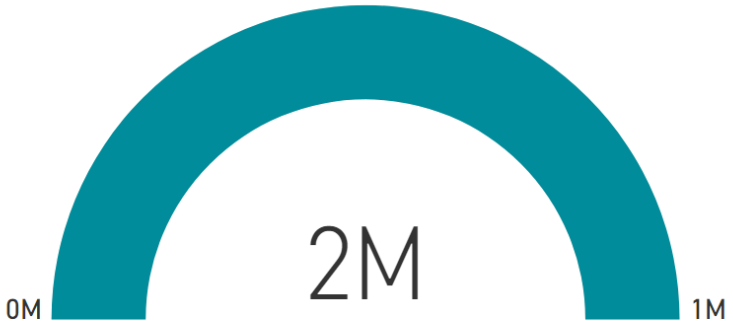
FY 2021-2022 FOURTH QUARTER: BED TAX FUND

REVENUES

Select Revenue or Expense

- EXPENSES
- REVENUES

Category	FY 2022 Budget	Actual	% Budget
Sales Tax	1,243,341	1,901,388	153%
Total	**1,243,341**	**1,901,388**	**153%**



Bed Tax Fund Relevant Information

The Bed Tax Fund accounts for the collection of the discriminatory portion of revenues restricted for tourism initiatives. Fourth quarter revenue collections for FY2022 are above expectations as the hospitality sector appears to have recovered after a sharp downturn caused by the pandemic. Recent month trends indicate these revenues will likely be stabilizing with revenues likely to resemble pre-pandemic levels next fiscal year.

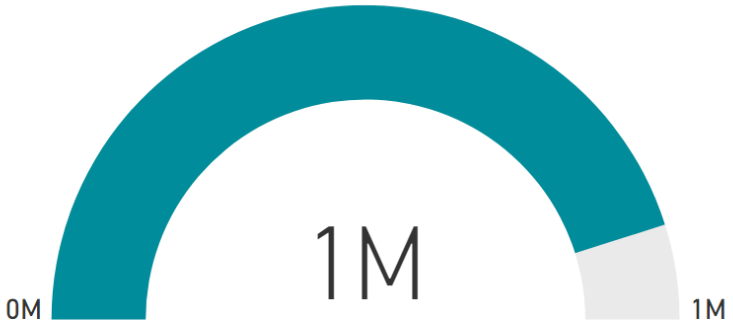
Category	2020	2021	2022
Sales Tax	1,288,972	1,246,249	1,901,388
Total	**1,288,972**	**1,246,249**	**1,901,388**

FY 2021-2022 FOURTH QUARTER: BED TAX FUND

EXPENSES

Select Revenue or Expense
- [x] EXPENSES
- [ ] REVENUES

Category	FY 2022 Budget	Actual	% Budget
Personnel & Benefits	144,916	119,541	82%
Contracted Services	859,891	803,701	93%
Operating Supplies & Equipment	117,927	198,835	169%
Other Financing Uses	120,607		
Total	**1,243,341**	**1,122,077**	**90%**



Bed Tax Fund Relevant Information

As a whole, the Bed Tax Fund is spending it's resources as expected through the fourth quarter of FY2022. Contracted services include the annual State Land lease payment made in the second quarter. Higher than anticipated Operating Supplies and Equipment are due to developer rebates which are directly related to higher revenues generated for the year. Other Financing Uses is restricted budget for unanticipated needs.

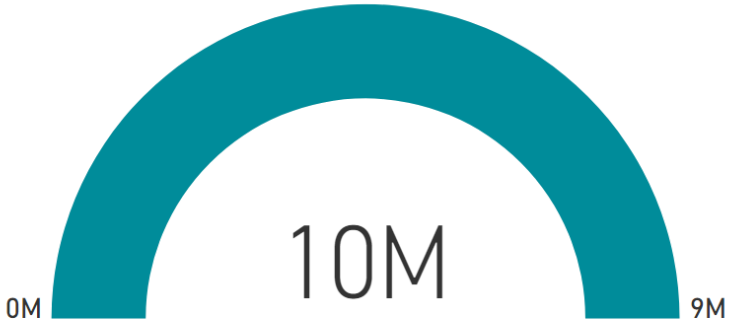
Category	2020	2021	2022
Personnel & Benefits	133,245	139,718	119,541
Contracted Services	687,048	747,761	803,701
Operating Supplies & Equipment	482	217	198,835
Total	**820,775**	**887,697**	**1,122,077**

FY 2021-2022 FOURTH QUARTER: WATER OPERATING FUND

REVENUES

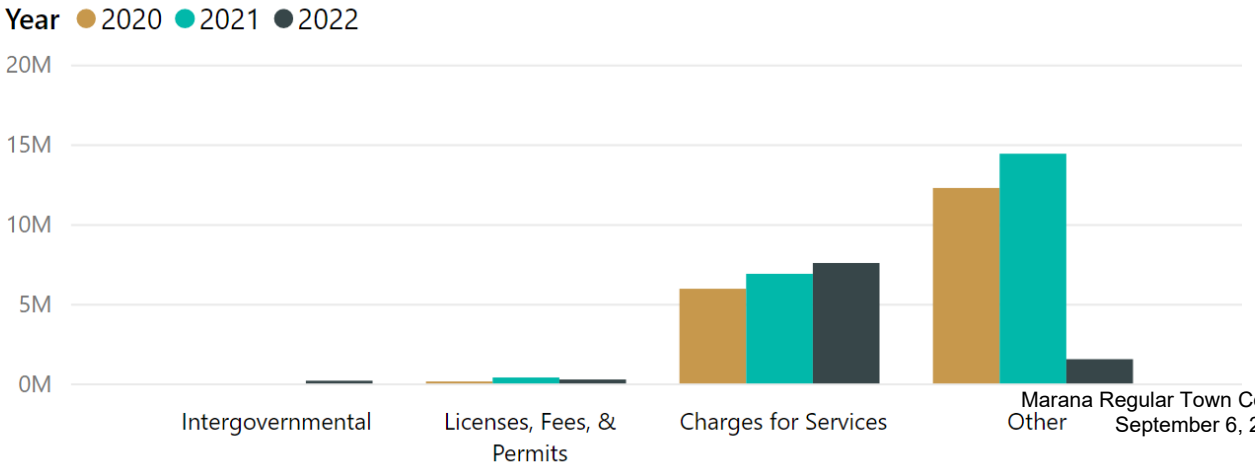
Select Revenue or Expense
- EXPENSES
- REVENUES

Category	FY 2022 Budget	Actual	% Budget
Intergovernmental	177,550	169,451	95%
Licenses, Fees, & Permits	50,000	246,318	493%
Charges for Services	7,723,232	7,615,488	99%
Other	1,364,135	1,563,641	115%
Total	**9,314,917**	**9,594,899**	**103%**



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. Fourth quarter revenue collections are within expectations for FY2022 though user revenues recorded in Charges of Services are slightly below expectations. The Department experienced strong account growth and revenues are higher year-over-year. Other revenue is primarily comprised of miscellaneous revenue sources and interfund transfers used for debt service payments some of which are yet to occur as the Town reconciles and closes the books for the year.

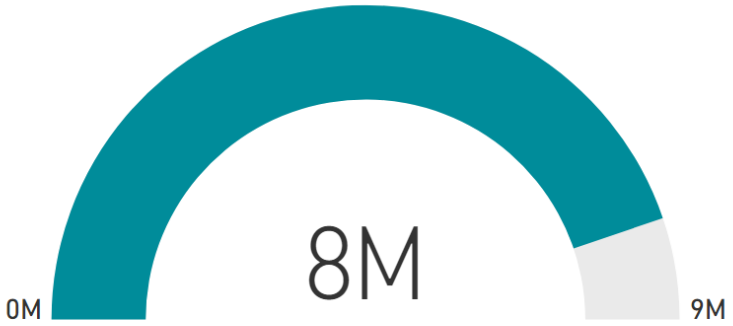


Category	2020	2021	2022
Intergovernmental		68,554	169,451
Licenses, Fees, & Permits	84,659	371,224	246,318
Charges for Services	5,982,986	6,926,989	7,615,488
Other	12,269,908	14,510,138	1,563,641
Total	**18,337,553**	**21,876,905**	**9,594,899**

FY 2021-2022 FOURTH QUARTER: WATER OPERATING FUND EXPENSES

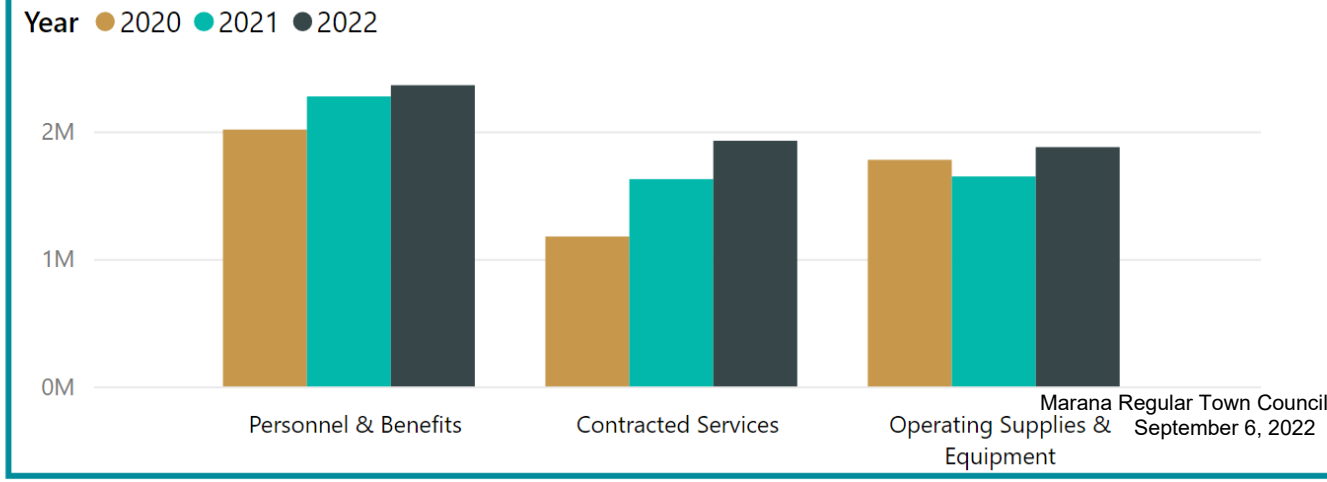
Select Revenue or Expense
- [x] EXPENSES
- [ ] REVENUES

Category	FY 2022 Budget	Actual	% Budget
Personnel & Benefits	2,799,225	2,361,821	84%
Contracted Services	2,400,652	1,926,243	80%
Operating Supplies & Equipment	2,004,602	1,876,201	94%
Capital Outlay	54,400	202,916	373%
Debt Service	1,501,773	1,478,396	98%
Other Financing Uses	821,320	872,539	106%
Total	**9,581,972**	**8,718,116**	**91%**



Water Fund Relevant Information

Overall, FY2022 fourth quarter expenses for the Water Operating Fund are at or below expected levels. Personnel & Benefits are below expectations due to turnover and perstistent vacancies in a number of positions. Debt Service is related to WIFA loan payments made in the first and third quarter of FY2022. Capital costs associated with infrastructure and CIP projects are captured in separate funds. Other Financing Uses is associated with transfers to the Water Capital fund for the construction of capital projects and also for the accounting of gains or losses on the disposal of capital assets.

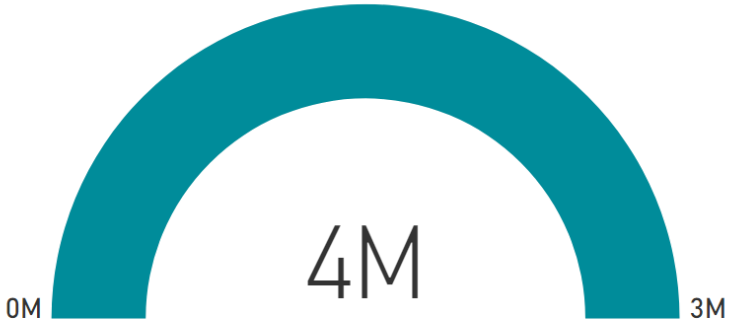


Category	2020	2021	2022
Personnel & Benefits	2,013,803	2,273,762	2,361,821
Contracted Services	1,175,100	1,625,151	1,926,243
Operating Supplies & Equipm...	1,776,758	1,646,211	1,876,201
Capital Outlay	0	0	202,916
Debt Service	115,893	294,074	1,478,396
Other Financing Uses	7,083,881	8,565,556	872,539
Total	**12,165,435**	**14,404,754**	**8,718,116**

FY 2021-2022 FOURTH QUARTER: WATER RECLAMATION OPERATING FUND REVENUES

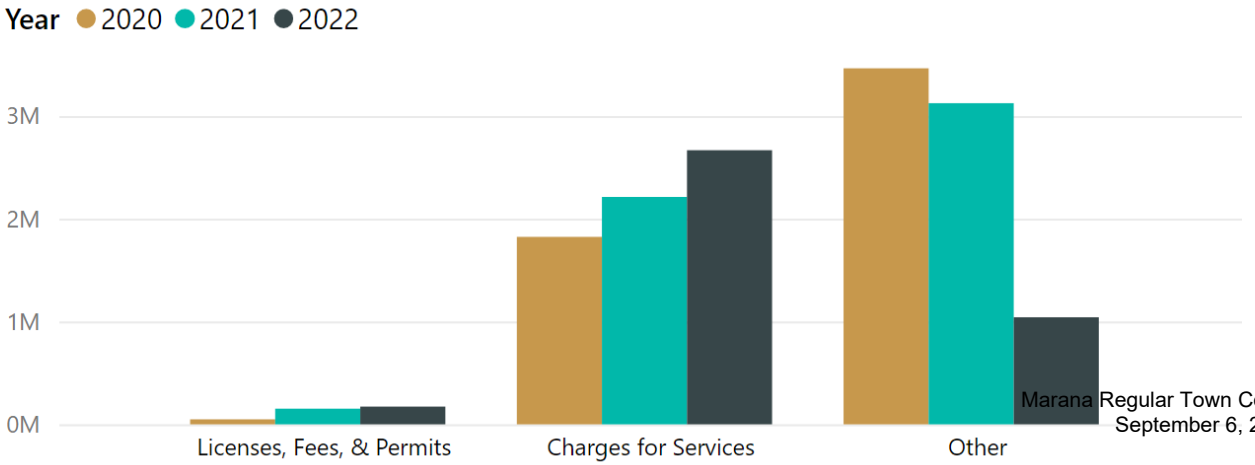
Select Revenue or Expense
- EXPENSES
- REVENUES

Category	FY 2022 Budget	Actual	% Budget
Licenses, Fees, & Permits	30,000	172,386	575%
Charges for Services	2,341,902	2,666,732	114%
Other	811,070	1,053,769	130%
Total	**3,182,972**	**3,892,887**	**122%**



Water Reclamation Fund Relevant Information

The current rates and fees for Marana Sewer customers 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. Overall, preliminary FY2022 fourth quarter revenue collections are above expectations due to strong account growth. Licenses, Fees, & Permits are above expectations due to continued strong housing growth. The majority of Other revenue is mainly related to budgeted transfers between funds for debt service payments and a one-time miscellaneous revenue related to a hydorpower agreement.

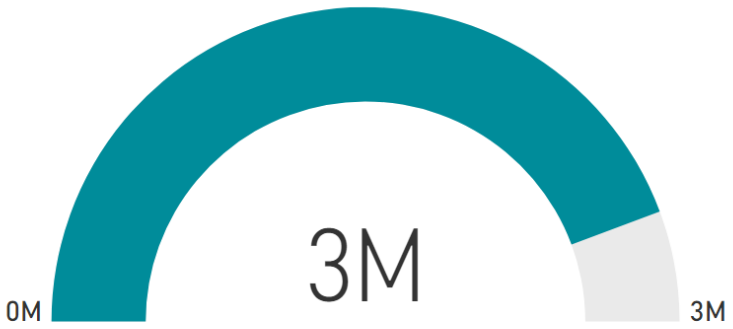


Category	2020	2021	2022
Licenses, Fees, & Permits	49,513	152,263	172,386
Charges for Services	1,823,690	2,212,272	2,666,732
Other	3,463,667	3,144,578	1,053,769
Total	**5,336,870**	**5,509,114**	**3,892,887**

FY 2021-2022 FOURTH QUARTER: WATER RECLAMATION OPERATING FUND EXPENSES

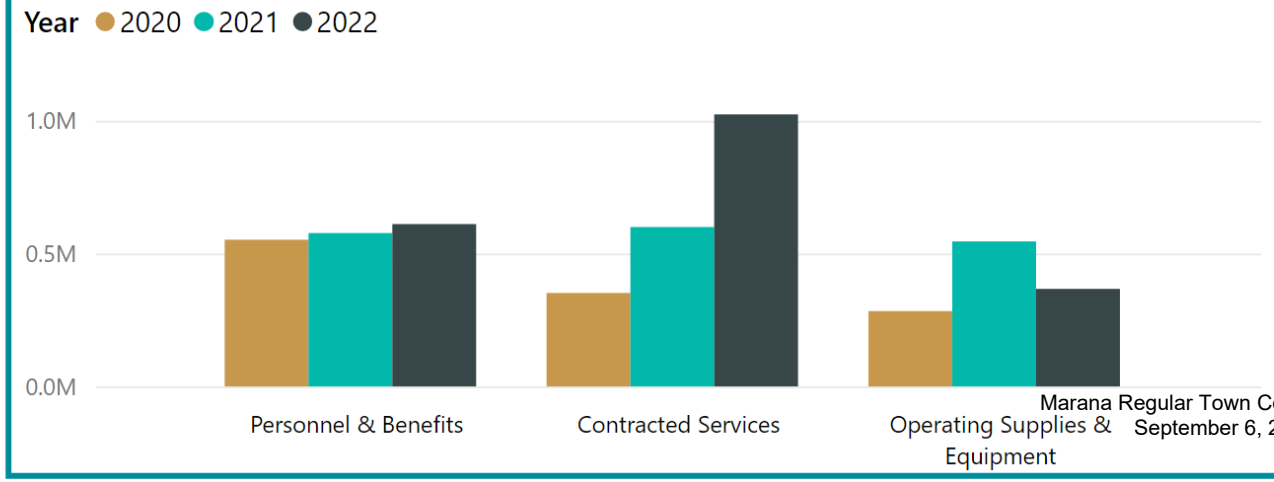
Select Revenue or Expense
- [x] EXPENSES
- [ ] REVENUES

Category	FY 2022 Budget	Actual	% Budget
Personnel & Benefits	618,590	610,880	99%
Contracted Services	1,266,643	1,023,782	81%
Operating Supplies & Equipment	412,463	367,059	89%
Debt Service	873,165	808,838	93%
Other Financing Uses	1,066,400		
Total	**4,237,261**	**2,810,559**	**66%**



Water Reclamation Fund Relevant Information

Overall, fourth quarter expenses for the Water Reclamation Operating Fund are within expectations at this time of year. The fund experienced a number of emergency repairs to the system during the first half of the year which are recorded in Contracted Services. Debt Service is related to annual WIFA loan payments. Other Financing Uses is associated with transfers out for the funding of capital improvement projects most of which were carried forward to the next fiscal year. Capital costs associated with infrastructure and CIP projects are captured in separate funds.



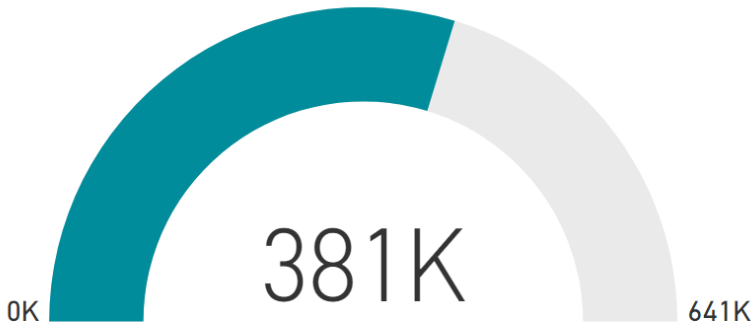
Category	2020	2021	2022
Personnel & Benefits	552,114	577,130	610,880
Contracted Services	351,616	599,826	1,023,782
Operating Supplies & Equipm...	283,359	545,633	367,059
Debt Service	789,381	801,382	808,838
Total	**1,976,469**	**2,523,971**	**2,810,559**

FY 2021-2022 FOURTH QUARTER: AIRPORT OPERATING FUND

REVENUES

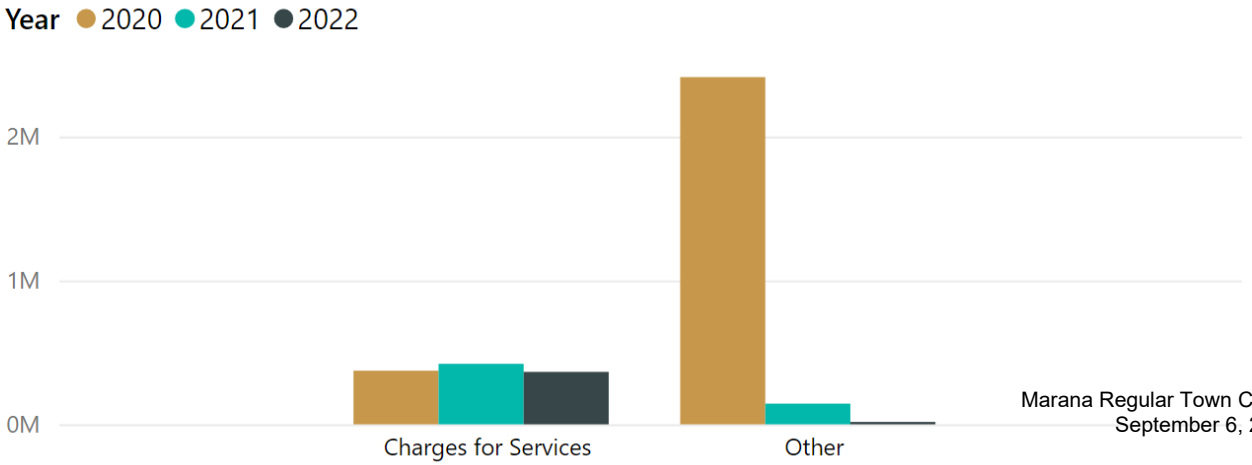
Select Revenue or Expense
- EXPENSES
- REVENUES

Category	FY 2022 Budget	Actual	% Budget
Licenses, Fees, & Permits	4,000		
Charges for Services	338,334	364,418	108%
Other	299,109	16,655	6%
Total	**641,443**	**381,073**	**59%**



Airport Fund Relevant Information

Overall, preliminary fourth quarter revenue collections for the Airport Fund are in line with expectations. Other revenue is primarily comprised of miscellaneous revenues and transfers between funds scheduled to be completed as the Town reconciles and closes the books for the year.



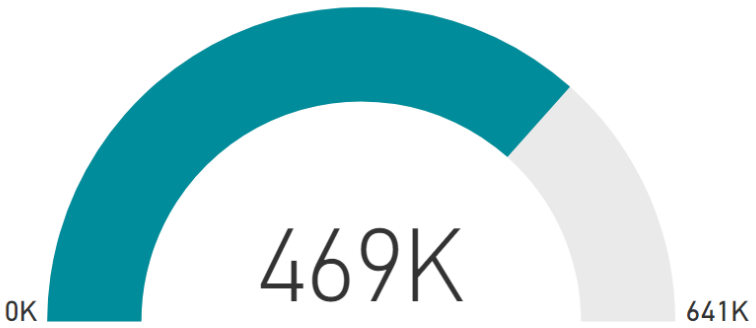
Category	2020	2021	2022
Licenses, Fees, & Permits	50		
Charges for Services	372,781	420,389	364,418
Other	2,412,896	143,676	16,655
Total	**2,785,727**	**564,065**	**381,073**

FY 2021-2022 FOURTH QUARTER: AIRPORT OPERATING FUND

EXPENSES

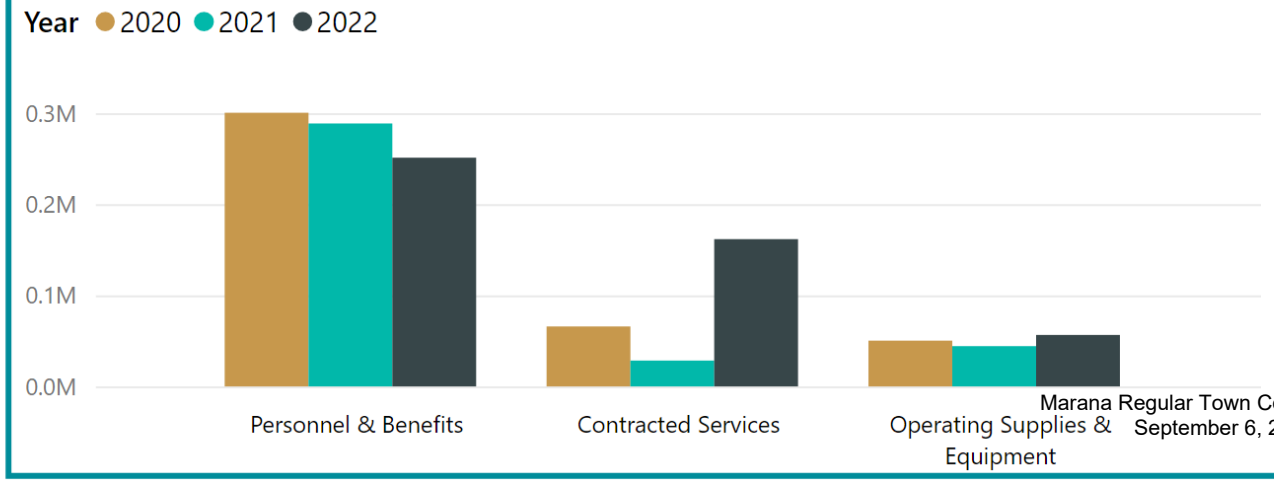
Select Revenue or Expense
- [x] EXPENSES
- [ ] REVENUES

Category	FY 2022 Budget	Actual	% Budget
Personnel & Benefits	295,278	251,080	85%
Contracted Services	228,961	161,645	71%
Operating Supplies & Equipment	62,800	56,486	90%
Capital Outlay	0	48	0%
Other Financing Uses	54,404		
Total	**641,443**	**469,259**	**73%**



Airport Fund Relevant Information

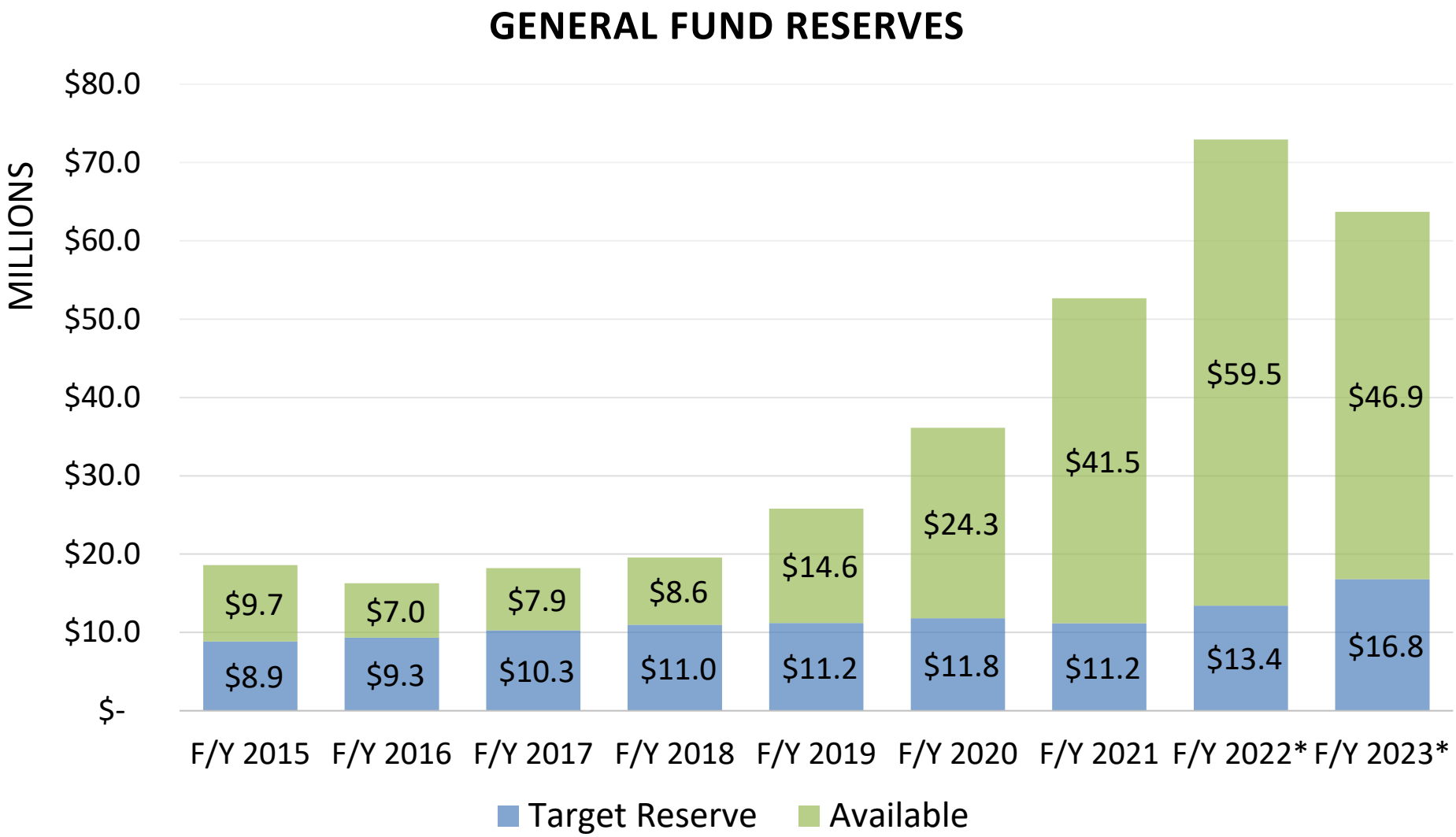
Overall, expenses for the Airport Fund are in line with expectations through the fourth quarter of FY2022. Contracted Services include a one-time contractual payment related to an airport repavement project. Some amounts for one-time security enhancements will be carried forward to the next fiscal year due to delivery delays. Other Financing Uses is related to restricted budget amounts to be used for unanticipated needs. Costs related to CIP projects are captured in other funds.



Category	2020	2021	2022
Personnel & Benefits	300,396	288,630	251,080
Contracted Services	65,810	28,357	161,645
Operating Supplies & Equipm...	50,235	44,195	56,486
Capital Outlay	0	0	48
Total	**416,441**	**361,182**	**469,259**

GENERAL FUND AVAILABLE BALANCES

PRELIMINARY YEAR END RESULTS FY22



Note: Balances presented exclude other assigned balances.
**Estimated ending balances based on projections*

Council-Regular Meeting **C1**

Meeting Date: 09/06/2022

To: Mayor and Council

Submitted For: Fausto Burruel, Interim Public Works Director

From: Dan Grossman, CIP Process Analyst

Date: September 6, 2022

Strategic Plan Focus Area:
Not Applicable

Subject: Resolution No. 2022-090: Relating to Budget; approving a new capital improvement project, Tangerine Traffic Interchange Improvements, and approving the transfer of up to $600,000 in budgeted expense authority from the Regional Transportation Fund to the Other Agency Fund in the fiscal year 2022-2023 budget to fund the project (Fausto Burruel)

Discussion:

On April 19th, 2022 the Town of Marana approved The Crossroads at Gladden Development Agreement, between the Town of Marana and Tangerine 2021, LLC (Developer). The Development Agreement requires the Developer to contribute $2.6 million towards the design and construction of the Tangerine Traffic Interchange (TI) Improvements. The DA agreement requires that the Developer pay the Town of Marana $600,000 within 60 days of approval of the Development Agreement and then $2,000,000 within 10 business days after the Town has approved a Guaranteed Maximum Price for roadway construction. The Town of Marana received the $600,000 from the Developer on April 22, 2022.

Staff is now requesting Council approve transfer of budgeted expense authority to fund a new CIP Project: Tangerine TI Improvements (ST107).

The project involves the reconstruction of Tangerine Road under Interstate-10 (I-10) widening it to a seven-lanes as follows:

- Construction of one new westbound travel lane and one new eastbound lane between the existing I-10 bridge piers and the bridge abutments, one lane on the north side of the existing roadway and one lane on the south side of existing roadway
- Construction of structural retaining walls at the north and south bridge abutments to create space for the new travel lanes
- Realignment of approximately 3,000 lenear feet of the I-10 eastbound frontage road/ramps to shift the new eastbound frontage road/ramps intersection approximately 150′ to the west (in line with the decommissioned original frontage road)
- Construction of a new traffic signal at the I-10 eastbound frontage road/ramps new intersection location, and reconstruction of the I-10 westbound frontage road/ramps traffic signal to accommodate the revised lane configuration and widening
- Addition of dual right-turn lanes for eastbound Tangerine Road at the new eastbound frontage road/ramps intersection, with a minimum of 350′ storage for each lane (700′ minimum total storage), or storage as recommended through a traffic evaluation and accepted by the Town
- Modifications to the eastbound on-ramp to accommodate the new dual right-turn lanes
- Addition of pedestrian and bicycle improvements to the extent possible that fit within the constraints of the existing I-10 bridges

The design of the Tangerine TI Improvements (ST107) project will coincide with the existing Tangerine Rd Widening project (ST098) currently being designed by Psomas Inc. The Town of Marana has received a proposal from Psomas Inc. to design the Tangerine TI Improvements (ST107) project for $495,291.

The estimated project cost of Tangerine TI Improvements (ST107) project will be calculated by Psomas Inc. as the design plans near completion. Funding in the amount of $600,000 can be re-allocated from the Tangerine Rd Widening project.

Financial Impact:

Fiscal Year:	2023
Budgeted Y/N:	Yes
Amount:	$600,000

Funding in the amount of $600,000 was received by the Town of Marana from Developer on April 19, 2022 in accordance with the terms of a development agreement. This funding has been deposited to be spent out of the Other Agency fund (Fund 3045, GL Account # 34543000-8010-ST107). Budget capacity for this project will be transferred from the Tangerine Rd Widening project (GL Account # 36043000-8015-ST098).

Staff Recommendation:

Staff recommends the approval of a new project and authorizing the transfer of up to $600,000 in budgeted expenditure authority from the Regional Transportation Fund to the Other Agency Fund to fund the Tangerine TI Improvements.

Suggested Motion:

I move to approve Resolution No. 2022-090, approving the transfer of up to $600,000 in budgeted expense authority from the Regional Transportation Fund to the Other Agency Fund in the fiscal year 2022-2023 budget for a new Capital Improvement Project, Tangerine Traffic Interchange Improvements.

Attachments

Resolution No. 2022-090

MARANA RESOLUTION NO. 2022-090

RELATING TO BUDGET; APPROVING A NEW CAPITAL IMPROVEMENT PROJECT, TANGERINE TRAFFIC INTERCHANGE IMPROVEMENTS, AND APPROVING THE TRANSFER OF UP TO $600,000 IN BUDGETED EXPENSE AUTHORITY FROM THE REGIONAL TRANSPORTATION FUND TO THE OTHER AGENCY FUND IN THE FISCAL YEAR 2022-2023 BUDGET TO FUND THE PROJECT

WHEREAS on June 21, 2022, the Town Council adopted the fiscal year 2022-2023 budgetary document and overall financial plan which set the legal level of budgetary control at the department level for the General Fund and at the fund level for all other funds; and

WHEREAS on April 19, 2022, the Town of Marana approved The Crossroads at Gladden Development Agreement (DA) that requires Tangerine 2021, LLC (the Developer) to contribute $2.6 million towards the design and construction of the Tangerine Traffic Interchange (TI) Improvements; and

WHEREAS the Developer, pursuant to the terms of the DA, paid the Town of Marana $600,000 on April 22, 2022 and those funds were deposited in the Other Agency Fund; and

WHEREAS the $600,000 will be used for the design of the new capital improvement project, Tangerine TI Improvements, to coincide with the existing Tangerine Road Widening Project; and

WHEREAS the Town Council desires to transfer budgeted expense authority in the fiscal year 2022-2023 budget of $600,000 from the Regional Transportation Fund to the Other Agency Fund to fund the new capital improvement project, Tangerine TI Improvements; and

WHEREAS transferring the budgeted expense authority from the Regional Transportation Fund to the Other Agency Fund within fiscal year 2022-2023 budget will not significantly impact the General Fund; and

WHEREAS reallocations of budgeted expense authority between funds are necessary from time to time; and

WHEREAS the Council finds that the reallocations addressed by this resolution are in the best interest of the Town of Marana and its citizens.

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

SECTION 1. The new capital improvement project, Tangerine TI Improvements, is hereby approved.

SECTION 2. The transfer of $600,000 in budgeted expense authority from the Regional Transportation Fund to the Other Agency Fund in the fiscal year 2022-2023 budget for anticipated costs associated with the newly established project for design of the TI improvements described in section 1 is hereby approved.

SECTION 3. The Town's Manager and staff are hereby directed and authorized to undertake all other and further tasks required or beneficial to carry out the terms, obligations, and objectives of this resolution.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, ARIZONA, this 6th day of September, 2022.

_____
Mayor Ed Honea

ATTEST:

_____
David Udall, Interim Town Clerk

APPROVED AS TO FORM:

_____
Jane Fairall, Town Attorney

Council-Regular Meeting **C2**

Meeting Date: 09/06/2022

To: Mayor and Council

Submitted For: Fausto Burruel, Interim Public Works Director

From: Dan Grossman, CIP Process Analyst

Date: September 6, 2022

Strategic Plan Focus Area:
Not Applicable

Subject: Resolution 2022-091: Relating to Budget; approving the transfer of $435,157.80 in budgeted expense authority from multiple projects in the general fund to increase the project budget for the Marana Municipal Complex Drainage Improvement Project in the fiscal year 2022-2023 Budget (Fausto Burruel)

Discussion:

Marana Town Code Section 3-4-7(B)(2) provides that Town Council approval is necessary where the purchase exceeds $100,000 and funds for the purchase are not provided in the budget as adopted.

The budget for fiscal year 2022- 2023 was adopted on June 21, 2022. The MMC Drainage Improvements (FA108) was properly included within the Town of Marana's FY2023 Capital Improvement Plan.

The available funding for the MMC Drainage Improvements (FA108) project is $251,440.

The Town of Marana has received a competent bid from Falcone Brothers and Associates in the amount of $686,597.80 to construct the MMC Drainage Improvements (FA108) project. The MMC Drainage Improvements (FA108) project will need an additional $435,157.80 to fund the construction contract.

The funding for the $435,157.80 will come from the following projects:

1. Cortaro RD, Beautification (ST091), $120,000 (Project will move to future budget cycle)
2. Marana Gateway and Monuments (ST102), $160,000 (Project will move to future budget cycle)
3. Town Street Lighting Program (ST106), $100,000 (Project will move to future budget cycle)
4. Civic Center Dr Electrical Improvements (ST090), $25,157.80 (No impact to completion of project)
5. MPD Console Modernization (FA107), $30,000 (No impact to completion of project)

Financial Impact:

Fiscal Year:	2023
Budgeted Y/N:	Yes
Amount:	$435,157.80

This change in project budget represents a budget reallocation and will be funded with the following General fund, GL Accounts:
Cortaro RD, Beautification (ST091), $120,000, 10043000-8015-ST091
Marana Gateway and Monuments (ST102), $160,000, 10051010-8015-ST102
Town Street Lighting Program (ST106), $100,000, 10041000-8015-ST106
Civic Center Dr Electrical Improvements (ST090), $25,157.80, 10043000-8010-ST090
MPD Console Modernization (FA107), $30,000, 10031000-8010-FA107

Staff Recommendation:

Staff recommends the approval of the change in project budget to the MMC Drainage Improvements (FA108) project in the amount of $435,157.80.

Suggested Motion:

I move to adopt Resolution No. 2022-091 approving the transfer of $435,157.80 in budgeted expense authority from multiple projects in the general fund to increase the project budget for the Marana Municipal Complex Drainage Improvement Project in the fiscal year 2022-2023 Budget.

Attachments

Resolution No. 2022-091

MARANA RESOLUTION NO. 2022-091

RELATING TO BUDGET; APPROVING THE TRANSFER OF $435,157.80 IN BUDGETED EXPENSE AUTHORITY FROM MULTIPLE PROJECTS IN THE GENERAL FUND TO INCREASE THE PROJECT BUDGET FOR THE MARANA MUNICIPAL COMPLEX DRAINAGE IMPROVEMENT PROJECT IN THE FISCAL YEAR 2022-2023 BUDGET

WHEREAS on June 21, 2022, the Town Council adopted the fiscal year 2022-2023 budgetary document and overall financial plan which set the legal level of budgetary control at the department level for the General Fund and at the fund level for all other funds; and

WHEREAS the budget included the Marana Municipal Complex (MMC) Drainage Improvement Project with funding set at $251,440; and

WHEREAS the low bid received for the MMC Drainage Improvement Project is $686,497.80 thereby requiring an additional $435,157.80 of budgeted expense authority to fund the project; and

WHEREAS Town staff have identified funding from five other Town projects that can instead be used to fund the MMC Drainage Improvement Project; and

WHEREAS transferring amounts within the fiscal year 2022-2023 budget will not significantly impact the General Fund; and

WHEREAS the Council finds that the reallocations addressed by this resolution are in the best interest of the Town of Marana and its citizens.

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

SECTION 1. The transfer of up to $435,157.80 in budgeted expense authority from multiple projects in the General Fund in the fiscal year 2022-2023 budget is hereby approved.

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

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, ARIZONA, this 6th day of September, 2022.

_____
Mayor Ed Honea

ATTEST:

_____
David Udall, Interim Town Clerk

APPROVED AS TO FORM:

_____
Jane Fairall, Town Attorney

Council-Regular Meeting **C3**

Meeting Date: 09/06/2022

To: Mayor and Council

From: Jane Fairall, Town Attorney

Date: September 6, 2022

Strategic Plan Focus Area:
Not Applicable

Subject: Resolution No. 2022-092: Relating to the Marana Regional Airport; approving and authorizing the Town Manager to execute the Lessor's Consent to Leasehold Deed of Trust and Estoppel Certificate for the benefit of Western Alliance Bank, related to the Marana Regional Airport Lease Agreement with The J.D. Russell Company for the lease of approximately 1.078 acres of real property located at 11155 N. Air Commerce Way at the Marana Regional Airport (Jane Fairall)

Discussion:

The Town and The J.D. Russell Company (JDR) entered into a Lease dated June 17, 2020, for the purpose of JDR using approximately 0.817 acres of property at the Marana Regional Airport for commercial aeronautical uses, as those uses are defined and approved by the United States Federal Aviation Administration ("FAA"), including for the construction of a hangar on the property. The parties entered into the First Amendment to the Lease, dated December 8, 2021, to revise the description of the property that is the subject of the Lease to add a parcel of land consisting of approximately 11,388 square feet or .26 acres. The term of JDR's tenancy under the Lease is for 25 years, with one additional 10-year option period.

JDR has constructed a hangar on the leased property using self-financing. Anticipating a June 2022 completion of the hangar, JDR contracted with Western Alliance Bank to provide JDR with long-term financing to recover some of its out-of-pocket monies. JDR and Western Alliance Bank contacted the Town and requested that the Town sign the attached proposed Lessor's Consent to Leasehold Deed of Trust and Estoppel

Certificate (the "Consent") in order for JDR to receive the requested financing. If the Town approves and executes the Consent, the Town would consent to the encumbrance of JDR's Lease, pursuant to the recordation of the Deed of Trust, for the benefit of Western Alliance Bank. Per the Consent, if JDR defaults on the loan from the bank, the bank will have the right to enforce the Deed of Trust and acquire title to the leasehold estate, and pending foreclosure of the Deed of Trust, may take possession of and rent the premises that are the subject of the Lease. The bank may also assign the leasehold estate to a new tenant, provided that the new tenant is capable of complying with all applicable Federal Aviation Administration (FAA) rules and regulations governing the property, and upon not less than ten business days prior written notice to the Town. Additionally, if JDR files for bankruptcy at any point, and the lease is rejected under Bankruptcy Code, Western Alliance Bank will have the right to request that the Town enter into a New Lease under the same terms as the existing Lease.

JDR is also partnering with the Town in the development of the Marana Air Commerce Park. In May of 2021, the Town Council approved the sale of 4.184 acres of property in Marana Air Commerce Park, adjacent to the Marana Regional Airport, to Penvesco, a Michigan co-partnership, to develop new corporate headquarters for JDR. JDR manufactures and distributes steel, plastic, rubber, and wood products used in the concrete construction industry and the landscape sector, and expects to build a 25,000 to 30,000 square foot structure to house corporate activities and expanded light production and distribution, and to initially employ approximately 30 people at this location.

Paragraph 10.3 of the Lease agreement provides that JDR may mortgage, encumber or assign any portion of its right, title and interest in the leasehold estate created by the Lease to lenders for purposes of financing the initial construction of the capital improvements required by this Lease and that any such mortgage, encumbrance or assignment shall be subject to all of JDR's obligations under the Lease. The Lease agreement also provides that no person or entity shall have the right to place any mortgages, deeds of trusts, liens or encumbrances of any nature on the Town's property, nor shall any permitted assignment result in a subordination, in whole or in part, of the Town’s rights under the Lease. The terms of the Consent do not place any mortgage, deed of trust, lien or encumbrance on the Town's property, only on JDR's leasehold interest. Moreover, the Consent does not cause the Town's rights to be subordinated. However, if the Town approves the Consent, the Town agrees that it will not modify or cancel the Lease with JDR without notice to and prior written consent from Western Alliance Bank. Additionally, if the Town desires to terminate or cancel the Lease, the Town must give the bank 30 days' notice and allow the bank the opportunity to remedy any breach of the Lease.

Staff Recommendation:

Staff recommends approval.

Suggested Motion:

I move to adopt Resolution No. 2022-092, approving and authorizing the Town Manager to execute the Lessor's Consent to Leasehold Deed of Trust and Estoppel Certificate for the benefit of Western Alliance Bank, related to the Marana Regional Airport Lease Agreement with The J.D. Russell Company for the lease of approximately 1.078 acres of real property located at 11155 N. Air Commerce Way at the Marana Regional Airport.

Attachments

Resolution No. 2022-092

Exhibit A - Lessor's Consent

MARANA RESOLUTION NO. 2022-092

RELATING TO MARANA REGIONAL AIRPORT; APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE LESSOR'S CONSENT TO LEASEHOLD DEED OF TRUST AND ESTOPPEL CERTIFICATE FOR THE BENEFIT OF WESTERN ALLIANCE BANK, RELATED TO THE MARANA REGIONAL AIRPORT LEASE AGREEMENT WITH THE J.D. RUSSELL COMPANY FOR THE LEASE OF APPROXIMATELY 1.078 ACRES OF REAL PROPERTY LOCATED AT 11155 N. AIR COMMERCE WAY AT THE MARANA REGIONAL AIRPORT

WHEREAS the Town of Marana and The J.D. Russell Company ("JDR") are parties to a lease agreement entitled "Marana Regional Airport Lease Agreement" with an Effective Date of June 17, 2020 (the "Lease"), by which the Town leases to JDR approximately 1.078 acres of real property located at 11155 N. Air Commerce Way at the Marana Regional Airport, 11700 West Avra Valley Road, Town of Marana; and

WHEREAS paragraph 10.3 of the Lease provides that JDR may mortgage, encumber or assign any portion of its right, title and interest in the leasehold estate created by the Lease to lenders for purposes of financing the construction of any capital improvements; that any such mortgage, encumbrance or assignment shall be subject to all of JDR's obligations under the Lease; and that no person or entity shall have the right to place any mortgages, deeds of trusts, liens or encumbrances of any nature on the property subject to the Lease, nor shall any permitted assignment result in a subordination, in whole or in part, of the Town's rights under the Lease; and

WHEREAS JDR has agreed to provide a Leasehold Deed of Trust to Western Alliance Bank (the "Bank") encumbering JDR's leasehold interest in the Lease in exchange for the Bank providing financing to JDR; and

WHEREAS JDR and the Bank have requested that the Town as lessor consent to the Leasehold Deed of Trust; and

WHEREAS the Mayor and Council of the Town of Marana find that approving the Lessor's Consent to Leasehold Deed of Trust and Estoppel Certificate is in the best interests of the Town of Marana and its citizens.

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

SECTION 1. The Lessor's Consent to Leasehold Deed of Trust and Estoppel Certificate for the benefit of Western Alliance Bank attached to and incorporated within this resolution as Exhibit A is hereby approved and the Town Manager is authorized and directed to execute it for and on behalf of the Town of Marana.

SECTION 2. The Town Manager and staff are hereby directed and authorized to undertake all other and further tasks required or beneficial to carry out the terms, obligations, conditions and objectives of the Lessor's Consent to Leasehold Deed of Trust and Estoppel Certificate.

PASSED AND ADOPTED by the Mayor and Council of the Town of Marana, Arizona, this 6th day of September 2022.

_____
Mayor Ed Honea

ATTEST:

_____
David Udall, Interim Town Clerk

APPROVED AS TO FORM:

_____
Jane Fairall, Town Attorney

LESSOR'S CONSENT TO
LEASEHOLD DEED OF TRUST AND ESTOPPEL CERTIFICATE

The undersigned Lessor hereby consents to the Deed of Trust attached hereto as Exhibit B (the "Deed of Trust"), and the terms and conditions set forth therein and hereby agrees, warrants, represents and certifies to Beneficiary as follows:

A. Consent.

TOWN OF MARANA, an Arizona municipal corporation (the "Lessor"), the Lessor named in that certain Marana Regional Airport Lease Agreement dated on or about June 17, 2020 (as amended by the First Amendment to Marana Regional Airport Lease Agreement dated December 8, 2021, and as memorialized by that certain Memorandum of Lease dated June 22, 2022, and recorded _____, 2022, at Instrument No. _____ in the Official Records of Pima County, Arizona, as it may be further amended, the "Lease"), which encumbers the real property more particularly described on Exhibit A, attached hereto (the "Property"), does hereby consent to the encumbrance of the Lease of The J.D. Russell Company, a Michigan corporation (the "Trustor"), pursuant to the recordation of the Deed of Trust, for the benefit of WESTERN ALLIANCE BANK, an Arizona corporation (the "Beneficiary"), upon the following terms and conditions:

1. Enforcement of Deed of Trust. In the event of any default by the Trustor under the Deed of Trust, the Beneficiary shall have the right to enforce the Deed of Trust and acquire title to the leasehold estate in any lawful way, and pending foreclosure of the Deed of Trust may take possession of and rent the premises demised by the Lease, and upon foreclosure thereof or assignment of the Lease to the Beneficiary in lieu of foreclosure, the Beneficiary may, subject to the terms and conditions of the Lease, and all covenants, conditions and restrictions encumbering the Property, sell and assign the leasehold estate to a new assignee by assignment, provided that such assignee is capable of complying with all applicable Federal Aviation Administration (FAA) rules and regulations governing the Property, and upon not less than ten (10) Business Days prior written notice to Lessor. In addition, in the assignment, the assignee shall expressly assume and agree to observe and perform all of the covenants of the lessee under the Lease, and such assignee may make a purchase money deed of trust of the Lease to the Beneficiary, provided that upon execution of any such assignment of deed of trust, a true copy thereof shall be delivered promptly to the Lessor and that no other or further assignment of the Lease for which any provision of the Lease requires the Lessor’s written consent shall be made without such consent. The Beneficiary or any tenant of the Beneficiary pending foreclosure shall be liable to perform the obligations imposed upon the lessee by the Lease only during the period such party has possession or ownership of the leasehold estate. Nothing contained in the Deed of Trust shall release or be deemed to relieve the Trustor from the full and faithful observance and performance of the lessee's covenants under the Lease or from any liability for the nonobservance or nonperformance thereof, nor be deemed to constitute a waiver of any rights of the Lessor under the Lease, and the terms, covenants and conditions of the Lease shall control in case of any conflict with the provision of the Deed of Trust, except as herein set forth.

2. Protection of Beneficiary. No agreement between the Lessor and the Trustor modifying, cancelling or surrendering the Lease shall be effective without the prior written consent of the Beneficiary, which shall not be unreasonably withheld. Lessor shall take no action to terminate or cancel the Lease for any reason including a breach by the Trustor unless and until it shall have given Beneficiary thirty (30) days' prior written notice advising Beneficiary of the action proposed to be taken and the reasons thereof. During such thirty (30) day period, Beneficiary may, at its own option, without relieving the Trustor of any of its obligations under any Loan Document, take any actions necessary in order to eliminate the reasons for the proposed action of Lessor.

In the event of the bankruptcy of the Trustor, the Lessor agrees to extend the two hundred ten (210) day limitation period under Section 365(d)(4) of the Bankruptcy Code for such period of time as is reasonable and necessary for the Beneficiary to perform the undertakings agreed upon in the paragraph immediately below, provided that all rent and other charges due under the Lease are paid.

In consideration of the Lessor's agreement in the paragraph immediately above and to the "New Lease" provisions in favor of the Beneficiary contained in paragraph (a) below, in the event the Beneficiary elects to pursue its rights and remedies in and to the Deed of Trust, the Beneficiary does hereby undertake and agree for the benefit of Lessor that if at any time a bankruptcy proceeding shall be commenced concerning the Trustor and/or the leasehold estate that the Beneficiary shall use its reasonable efforts to diligently and in good faith, obtain or cause the Trustor and/or Trustee in Bankruptcy to obtain within the statutory time period or any extension thereof provided under Section 365 of the Bankruptcy Code for the rejection or assumption of leases,:

(i) an extension of the period during which the Lease may be assumed or rejected as ordered by the Court; or

(ii) an abandonment of the leasehold estate by the bankruptcy court pursuant to Section 554 of the Bankruptcy Code, as amended; or

(iii) an assumption or assumption and assignment of the Lease pursuant to Section 365 of the Bankruptcy Code, as amended.

In the event that, notwithstanding the Beneficiary's compliance with the provisions immediately preceding, an actual or deemed rejection of the Lease shall occur under any provision of the Bankruptcy Code (Title 11, United States Code) or any successor law having similar effect, then, and in any such event, the Beneficiary (or the first Beneficiary if more than one) shall thereupon have the option to obtain a new lease ("New Lease") of the Property in accordance with and upon the following terms and conditions:

(a) Within sixty (60) days after the Beneficiary has delivered to the Lessor written request for a New Lease (such written request to be delivered to Lessor within sixty (60) days after the Beneficiary receives from the Lessor written notice of the actual or deemed rejection of the Lease), Lessor shall enter into a New Lease of the Property with such Beneficiary, or its designee, provided, however, that if Lessor receives no such written

request within said sixty (60) day period, then all of Beneficiary's rights to a New Lease hereunder shall automatically terminate.

(b) Such New Lease shall be effective as of the date of the actual or deemed rejection of the Lease and shall be for the remainder of the term of the Lease at the same rent, additional rent and other charges therein provided and otherwise upon the same agreements, terms, covenants and conditions contained therein, except that the New Lease shall also include an additional indemnity paragraph under the terms of which the lessee shall indemnify and hold the Lessor harmless from and against all claims, demands or liability whatsoever (except those arising from the negligence or misconduct of Lessor) by whomsoever made for loss or damage arising out of or in connection with the issuance of the New Lease and will promptly reimburse Lessor for its costs and expenses, including reasonable attorney's fees, incurred in connection with the defense of any such claims. The New Lease issued hereunder shall have the same relative priority in time and right as the Lease and have the benefit of and vest in the Beneficiary (or first Beneficiary if more than one) all of the same rights, title, interest, powers and privileges of the Trustor under the Lease. The New Lease shall, subject to the same agreements, terms, covenants and conditions contained in the Lease, also demise to the Beneficiary or its designee all buildings, improvements and appurtenances situated on the Property, together with all equipment, fixtures and machinery therein. Concurrently with execution of the New Lease, Lessor shall assign its interest in and to any then existing sublease under which the tenant has attorned to and been recognized by Lessor. During the period between the actual or deemed rejection of the Lease and execution of the New Lease, Lessor shall not amend or modify the subleases or take any action which will adversely affect the Property or give rise to any liens against the Property.

(c) As a condition to and concurrently with delivery of said New Lease, the lessee named therein shall pay any and all sums which would at the time of the execution thereof be due under the Lease but for the rejection as aforesaid, and shall fully otherwise remedy any existing defaults under the Lease susceptible of cure by Beneficiary, or such designee, and shall pay to Lessor all costs and expenses, including but not limited to any insurance premiums paid or incurred by Lessor in order to maintain the insurance coverage required under the terms of the Lease, and the reasonable attorney's fees and costs incurred by Lessor in connection with the preparation, execution and delivery of such New Lease. Any default which cannot be cured by such lessee until it obtains possession shall be cured by the lessee within a reasonable time after it obtains possession.

(d) The Beneficiary, if it is the initial lessee under the New Lease, may assign such New Lease to a new assignee by assignment, provided that such assignee is capable of complying with all applicable Federal Aviation Administration (FAA) rules and regulations governing the Property, and upon not less than ten (10) Business Days prior written notice to Lessor. In addition, in the assignment, the assignee shall expressly assume and agree to observe and perform all of the covenants of the lessee under the Lease, and Beneficiary shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such New Lease contained and on the lessee's part to be performed and observed from and after the date of such assignment, provided that a certified copy of such assignment be provided to Lessor.

Ownership by or for the same person of both the fee and leasehold estates in the Property shall not effect the merger thereof, without the prior written consent of any beneficiary of either such estate to such merger.

B. Estoppel Certificate.

The Lessor hereby certifies to the Beneficiary that (1) the Lease is in full force and effect and unmodified by any instruments, except as hereinabove provided, and will not be further modified or amended without the Beneficiary's written consent, so long as the Beneficiary remains in effect; (2) the Trustor is not in default in the payment of rent under the Lease or, to the best of Lessor's knowledge, in the performance or observance of any covenant or condition to be performed or observed by the lessee thereunder; (3) no event has occurred which authorizes, or with the lapse of time will authorize, the Lessor to terminate the Lease; (4) the execution and delivery by the Trustor of the Deed of Trust will constitute neither a breach of the Trustor's obligations as lessee under the Lease, nor an event of default thereunder; and (5) a copy of any notice to be sent by the Lessor to the Trustor pursuant to the Lease shall be sent by the Lessor to the Beneficiary.

As used herein, the terms "Lessor", "Trustor" and "Beneficiary" shall mean and include the Lessor, the Trustor and the Beneficiary named above and their respective heirs, executors, administrators, successors, successors in trust and assigns. Where there is more than one Lessor, Trustor or Beneficiary, the use of the singular shall be construed to include the plural wherever the context shall so require. The use of any gender herein shall include all genders.

This consent is given upon the understanding and condition that should there be any conflict between the terms of the Lease and the terms of the Deed of Trust, the Lease shall control, except as hereinabove set forth; and that nothing herein shall be construed as being a waiver of any of the terms, covenants and conditions of the Lease.

IN WITNESS WHEREOF, the Lessor has executed this Consent on the ____th day of _____, 2022.

TOWN OF MARANA, an Arizona municipal corporation

By:_____
Name:_____
Title:_____

"LESSOR"

STATE OF ARIZONA)
) ss.
County of Pima)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____, the _____ of the Town of Marana, an Arizona municipal corporation, on behalf of the corporation.

_____
Notary Public

My Commission Expires:
_____

EXHIBIT A

LEGAL DESCRIPTION

[See Attached]

EXHIBIT B

Deed of Trust

[See Attached]

EXHIBIT A

LEGAL DESCRIPTION

THE “REAL PROPERTY” FOR PURPOSES OF THIS DEED OF TRUST IS TRUSTOR’S LEASEHOLD INTEREST IN THE APPROXIMATELY 1.078 ACRES OF LAND SITUATED IN THE COUNTY OF PIMA, STATE OF ARIZONA, AND DESCRIBED AS FOLLOWS:

Parcel 1:

That Portion of the North Half (N2) of Section 10, Township 12 South, Range 11 East, Gila and Salt River Meridian, Pima County, Arizona, and also being a portion of that 32.72 acre parcel described in Docket 11122 at page 1560 and shown as parcel 2B on Record of survey recorded at Seq. 20133610161 described as Follows:

Commencing at the Northwest Corner of Said Section 10,
Thence upon the North Line of said Section 10, North 89°26'42" East, a distance of 1317.39 feet to the Northwest Corner of the East Half of the Northwest Quarter (E2NW4) of said Section 10;
Thence continuing upon said North Line of Section 10, North 89°26'42" East, a distance of 404.15' feet;
Thence South 00°34’21"East, a distance of 7.98 feet;
Thence South 45°05'10"West, a distance of 284.70' feet;
Thence South 44°53'50"East, a distance of 765.03 feet to the POINT OF BEGINNING;

Thence continuing South 44°53'50"East, a distance of 125.00 feet
Thence North 45°05'10"East, a distance of 284.70' feet;
Thence North 44°53'50"West, a distance of 125.00 feet;
Thence South 45°05'10"West, a distance of 284.70' feet to the POINT OF BEGINNING;

EXCEPT all coal and other minerals as reserved in the patent to said land.

Parcel 2:

That portion of the parcel described in Docket 11122 at page 1560, Pima County Records, located in the Northwest quarter of Section 10, Township 12 South, Range 11 East, Gila and Salt River Meridian, Pima County, Arizona, being more particularly described as follows:

Commencing at the West one-quarter corner of said Section 10, said point being a 2” brass cap stamped “T.O.M.”, from which the Center one-quarter corner of said Section 10 bears North 89°24’46” East at 2,638.51 feet distant, said point being 2” brass cap stamped “T.O.M.”;

Thence, North 89°24’46” East, 2142.14 feet, upon the South line of the Northwest quarter of said Section 10;

Thence, North 00°35’14” West, 1798.65 feet to an 80d nail, tagged “LS 24530” at the South corner of the “5 Acre Plot” Parcel, as described in that non-recorded Legal Description by Aztec Land Surveying Inc., dated May 22, 2020, being the Point of Beginning;

Thence, upon the Southeast line of said “5 Acre Plot’ Parcel, to a 1/2 “ rebar tagged “LS 24530”, to the East corner thereof, North 45°06’10” East, 284.70 feet;

Thence, South 44°53’50” East, 40.00 feet;

Thence South 45°06’10” West, 284.70 feet;

Thence, North 44°53’50” West, 40.00 feet to the Point of Beginning.
APN: **215-10-0530 (covers more property)**

RECORDATION REQUESTED BY:
Western Alliance Bank, an Arizona corporation
TUCSON WILLIAMS CENTRE
200 S. CRAYCROFT ROAD
TUCSON, AZ 85711

WHEN RECORDED MAIL TO:
Western Alliance Bank, an Arizona corporation
TUCSON WILLIAMS CENTRE
200 S. CRAYCROFT ROAD
TUCSON, AZ 85711

FOR RECORDER'S USE ONLY

DEED OF TRUST

THIS DEED OF TRUST is dated _____, 2022, among The J. D. Russell Company, a Michigan corporation, whose address is 4075 N. Highway Drive, Tucson, AZ 85705 ("Trustor"); Western Alliance Bank, an Arizona corporation, chartered in the United States of America under the laws of the State of Arizona, whose address is TUCSON WILLIAMS CENTRE, 200 S. CRAYCROFT ROAD, TUCSON, AZ 85711 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and Western Alliance Bank, an Arizona corporation, organized or registered in the United States of America under the laws of the State of Arizona, whose address is 1 East Washington Street #100, Phoenix, AZ 85004 (referred to below as "Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Trustor conveys to Trustee in trust, with power of sale, for the benefit of Lender as Beneficiary, all of Trustor's right, title, and interest in, to and under the Lease described herein of the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; and together with all rights (but none of the duties) of Trustor as declarant under any presently recorded declaration of covenants, conditions and restrictions affecting real property; and all other rights, royalties, and profits relating to the real property, including without limitation any rights Trustor later acquires in the fee simple title to the land, subject to the Lease, and all minerals, oil, gas, geothermal and similar matters, **(the "real property") located in Pima County, State of Arizona:**

See Exhibit A, which is attached to this Deed of Trust and made a part of this Deed of Trust as if fully set forth herein.

The Real Property or its address is commonly known as 11155 N. Air Commerce Way, Marana, AZ 85653. The Real Property is a leasehold interest in a 1.078 portion of the approximately 19.9 acre parcel of land bearing tax identification number 215-10-0530.

Trustor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Trustor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Trustor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Trustor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Trustor's obligations under the Note, this Deed of Trust, and the Related Documents.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Trustor agrees that Trustor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Trustor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Trustor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Trustor represents and warrants to Lender that: (1) During the period of Trustor's leasehold interest in the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Trustor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Trustor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Trustor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Trustor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Beneficiary, at its option, but without obligation to do so, may correct any condition violating any applicable Environmental Law affecting the Property, and in doing so shall conclusively be deemed to be acting reasonably and for the purpose of protecting the value of its collateral, and all costs of correcting a condition or violation shall be payable to Beneficiary by Trustor as provided in the Expenditures by Lender section of this Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Trustor or to any other person. The representations and warranties contained herein are based on Trustor's due diligence in investigating the Property for Hazardous Substances. Trustor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Trustor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Trustor's ownership or interest in the Property, whether or not the same was or should have been known to Trustor. The provisions of this section of the Deed of Trust, including the obligation to indemnify and defend, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Trustor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Trustor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Trustor shall not demolish or remove any Improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any Improvements, Lender may require Trustor to make arrangements satisfactory to Lender to replace such Improvements with Improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Trustor's

compliance with the terms and conditions of this Deed of Trust.

Compliance with Governmental Requirements. Trustor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Trustor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Trustor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Trustor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Trustor agrees neither to abandon or leave unattended the Property. Trustor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

Compliance with Lease. Trustor will pay all rents and will strictly observe and perform on a timely basis all other terms, covenants, and conditions of the Lease. Trustor will indemnify, defend, and hold Lender harmless against all losses, liabilities, actions, suits, proceedings, costs including attorneys' fees claims, demands, and damages whatsoever which may be incurred by reason of Trustor's failure to pay rents or strictly observe or perform under the Lease.

Other Agreements Relating to the Lease. Trustor further agrees (1) not to surrender, terminate, or cancel the Lease, and (2) not to modify, change, supplement, alter, or amend the Lease, either orally or in writing, without Lender's prior written consent. Any attempt by Trustor to do any of the foregoing without Lender's prior written consent will be void and of no force and effect. At Lender's option, Trustor will deposit with Lender as further security all original documents relating to the Lease and the leasehold interest in the Property. Unless Trustor is in breach or default of any of the terms contained in this Deed of Trust, Lender will have no right to cancel, modify, change, supplement, alter or amend the leasehold interest. No estate in the Property, whether fee title to the leasehold premises, the leasehold estate, or any subleasehold estate, will merge without Lender express written consent; rather these estates will remain separate and distinct, even if there is a union of these estates in the landlord, Trustor, or a third party who purchases or otherwise acquires the estates. Trustor further agrees that if Trustor acquires all or a portion of the fee simple title, or any other leasehold or subleasehold title to the Property, that title will, at Lender's option, immediately become subject to the terms of this Deed of Trust, and Trustor will execute, deliver and record all documents necessary or appropriate to assure that such title is secured by this Deed of Trust.

Notices Relating to the Lease. Trustor will promptly notify Lender in writing:

(1) if Trustor is in default in the performance or observance of any of the terms, covenants, or conditions which Trustor is to perform or observe under the Lease;

(2) if any event occurs which would constitute a default under the Lease;

(3) if any notice of default is given to Trustor by the landlord under the Lease;

(4) if, pursuant to the Lease, any proceeds received for the Property are deposited with someone other than Lender, whether received from any insurance on the Property or from the taking of any or all of the Property by eminent domain; and

(5) if any arbitration or appraisal proceedings are requested or instituted pursuant to the Lease.

Trustor agrees to provide Lender promptly with a copy of all written materials relating to any of the above and to provide Lender with such other information as Lender may reasonably request. Trustor agrees that promptly after the execution and delivery of this Deed of Trust, Trustor will notify the landlord under the Lease in writing of the execution and delivery of this Deed of Trust and of the name and address of Lender and will deliver a copy of this Deed of Trust to the landlord.

Option to Cure Lease Default. Upon Lender's receipt of any written notice of Trustor's default under the Lease, Lender may, at Lender's option, cure such default, even though Trustor, or any party on behalf of Trustor, questions or denies the existence of such default or the nature of the default. Trustor expressly grants to Lender the absolute and immediate right to enter upon the Property to such extent and as often as Lender in it sole discretion deems

necessary or desirable in order to prevent or cure any such default by Trustor.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any restructuring of the legal entity (whether by merger, division or otherwise) or any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Trustor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by Arizona law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

Payment. Trustor shall pay when due (and in all events prior to delinquency) all taxes and assessments, including without limitation sales or use taxes in any state, local privilege or excise taxes based on gross revenues, special taxes, charges (including water and sewer), fines and impositions levied against Trustor or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Trustor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust. Beneficiary shall have the right, but not the duty or obligation, to charge Trustor for any such taxes or assessments in advance of payment. In no event does exercise or non-exercise by Beneficiary of this right relieve Trustor from Trustor's obligation under this Deed of Trust or impose any liability whatsoever on Beneficiary.

Right to Contest. Trustor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Trustor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Trustor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Trustor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Trustor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Trustor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Trustor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials and the cost exceeds $10,000.00. Trustor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Trustor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust.

Maintenance of Insurance. Trustor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all Improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Trustor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Trustor shall maintain such other insurance, including but not limited

to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Trustor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Trustor or any other person. Should the Real Property be located in an area designated by the Administrator of the Federal Emergency Management Agency as a special flood hazard area, Trustor agrees to obtain and maintain flood insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan. Flood insurance may be purchased under the National Flood Insurance Program, from private insurers providing "private flood insurance" as defined by applicable federal flood insurance statutes and regulations, or from another flood insurance provider that is both acceptable to Lender in its sole discretion and permitted by applicable federal flood insurance statutes and regulations.

Application of Proceeds. Trustor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds $10,000.00. Lender may make proof of loss if Trustor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the Indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Trustor shall repair or replace the damaged or destroyed Improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Trustor from the proceeds for the reasonable cost of repair or restoration if Trustor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the Indebtedness. If Lender holds any proceeds after payment in full of the Indebtedness, such proceeds shall be paid to Trustor as Trustor's interests may appear.

Trustor's Report on Insurance. Upon request of Lender, however not more than once a year, Trustor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Trustor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Trustor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Trustor's failure to discharge or pay when due any amounts Trustor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Trustor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, to the extent permitted by applicable law, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Trustor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon the occurrence of any Event of Default and shall be exercisable by Lender to the extent permitted by applicable law.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust:

Title. Trustor warrants that: (a) Trustor holds good and marketable title of record to the leasehold interest in the Property pursuant to the Lease, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender, or have otherwise been previously disclosed to and accepted by Lender in writing in connection with this Deed of Trust, and (b) Trustor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Trustor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Trustor's title or the interest of Trustee or Lender under this Deed of Trust, Trustor shall defend the action at Trustor's expense. Trustor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Trustor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Trustor warrants that the Property and Trustor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Trustor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Trustor's Indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Deed of Trust:

Proceedings. If any proceeding in condemnation is filed, Trustor shall promptly notify Lender in writing, and Trustor shall promptly take such steps as may be necessary to defend the action and obtain the award. Trustor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Trustor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

Current Taxes, Fees and Charges. Upon request by Lender, Trustor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Trustor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the Indebtedness secured by this Deed of Trust; (2) a specific tax on Trustor which Trustor is authorized or required to deduct from payments on the Indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Trustor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Trustor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Trustor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Trustor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Trustor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Trustor shall not remove, sever or detach the Personal Property from the Property. Upon default, Trustor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Trustor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Trustor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

Further Assurances. At any time, and from time to time, upon request of Lender, Trustor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Trustor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Trustor. Unless prohibited by law or Lender agrees to the contrary in writing, Trustor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Trustor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Trustor and at Trustor's expense. For such purposes, Trustor hereby irrevocably appoints Lender as Trustor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Trustor pays all the Indebtedness when due, and otherwise performs all the obligations imposed upon Trustor under this Deed of Trust, Lender shall execute and deliver to Trustee a request for full reconveyance without warranty and shall execute and deliver to Trustor suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Any reconveyance fee required by law shall be paid by Trustor, if permitted by applicable law.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

Payment Default. Trustor fails to make any payment when due under the Indebtedness.

Other Defaults. Trustor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Trustor.

Compliance Default. Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

Default on Other Payments. Failure of Trustor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with the Property.

Default in Favor of Third Parties. Should Trustor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Trustor's property or Trustor's ability to repay the Indebtedness or Trustor's ability to perform Trustor's obligations under this Deed of Trust or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Trustor or on Trustor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Insolvency. The dissolution or termination of Trustor's existence as a going business, the insolvency of Trustor, the appointment of a receiver for any part of Trustor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Trustor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Trustor or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of Trustor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Trustor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Trustor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Lease Default. Trustor defaults under the terms of the Lease, or any other event (whether or not Trustor's fault) results in the termination or cancellation of Trustor's leasehold rights.

Breach of Other Agreement. Any breach by Trustor under the terms of any other agreement between Trustor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Trustor to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

Adverse Change. A material adverse change occurs in Trustor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Trustor under this Deed of Trust, after Trustor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Accelerate Indebtedness. Lender shall have the right at its option without notice to Trustor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Trustor would be required to pay.

Foreclosure. With respect to all or any part of the Real Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law. To the extent permitted by law, Trustor shall be and remain liable for any deficiency remaining after sale, either pursuant to the power of sale or judicial proceedings.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Trustor to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Trustor irrevocably designates Lender as Trustor's attorney-in-fact to endorse instruments received in payment thereof in the name of Trustor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Tenancy at Sufferance. If Trustor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Trustor, Trustor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or available at law or in equity.

Notice of Sale. Lender shall give Trustor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

Sale of the Property. To the extent permitted by applicable law, Trustor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Insurance Policies. Lender shall have the right upon an Event of Default, but not the obligation, to assign all of Trustor's right, title and interest in and to all policies of insurance on the Property and any unearned premiums paid on such insurance to any receiver or any purchaser of the Property at a foreclosure sale, and Trustor hereby appoints Lender as attorney in fact to assign and transfer such policies.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings

(including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. However, Trustor will only pay attorneys' fees of an attorney not Lender's salaried employee, to whom the matter is referred after Trustor's default. Trustor also will pay any court costs, in addition to all other sums provided by law.

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

POWERS AND OBLIGATIONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust:

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Trustor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

Obligations to Notify. Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Trustor, Lender, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

Successor Trustee. Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed under this Deed of Trust by an instrument executed and acknowledged by Lender and recorded in the office of the recorder of Pima County, State of Arizona. The instrument shall contain, in addition to all other matters required by state law, the names of the original Lender, Trustee, and Trustor, the book and page where this Deed of Trust is recorded, and the name and address of the successor trustee, and the instrument shall be executed and acknowledged by Lender or its successors in interest. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.

NOTICES. Any notice required to be given under this Deed of Trust, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Trustor agrees to keep Lender informed at all times of Trustor's current address. Unless otherwise provided or required by law, if there is more than one Trustor, any notice given by Lender to any Trustor is deemed to be notice given to all Trustors.

NOTICE OF FINAL AGREEMENT. By signing this agreement each party represents, warrants and agrees that: (a) this written agreement represents the final agreement between the parties regarding the subject matter hereof, (b) there are no unwritten oral agreements between the parties, and (c) no written agreement to which Lender is a party may be contradicted by evidence of any prior, contemporaneous, or subsequent unwritten agreements or understandings of the parties.

RULES OF CONSTRUCTION. As used herein, (i) "includes," " including," and similar terms are not limiting; (ii) "may not" and similar terms are prohibitive and not permissive; (iii) the singular includes the plural; (iv) "or" is not exclusive; (v) any reference to a form, plan, policy, procedure, guideline, instruction, title, code, law, statute, ordinance,

rule, regulation, order, or other governmental provision, or any part thereof, shall include the same as it may from time to time be amended, succeeded or replaced; and (vi) in construing any ambiguity herein, the agreement shall be interpreted in a neutral manner as to each of the parties, notwithstanding any common law or statutory rule of construction that the terms of an agreement should be interpreted most strongly against the party who caused the uncertainty to exist; (vii) words of any gender include each other gender; (viii) the terms "hereof," "herein," "hereby" and derivative or similar words refer to this entire Agreement (including any schedules, exhibits and attachments hereto); (ix) references to any Person shall be deemed to mean and include the successors and permitted assigns of such Person; (x) any reference to a number of days shall refer to calendar days unless business days are specified; and (xi) any reference to an attached Exhibit or a Schedule, the Exhibit or Schedule shall be deemed to be incorporated by reference.

WAIVER OF JURY TRIAL. Notwithstanding anything contained in the Related Documents to the contrary, all Borrower(s), Guarantor(s), and Grantor(s) hereby waive to the fullest extent permitted by law, the right to trial by jury in any action, proceeding or counterclaim, whether in contract, tort or otherwise, relating directly or indirectly to the Loan evidenced by any of the Related Documents, including, without limitation, the Note and any security instrument or any acts or omissions of Lender, its officers, employees, directors or agents in connection therewith.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Trustor's residence, Trustor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Trustor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Governing Law. This Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Arizona without regard to its conflicts of law provisions. This Deed of Trust has been accepted by Lender in the State of Arizona.

Choice of Venue. If there is a lawsuit, Trustor agrees upon Lender's request to submit to the jurisdiction of the courts of PIMA County, State of Arizona.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Trustor, shall constitute a waiver of any of Lender's rights or of any of Trustor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this

Deed of Trust.

Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of Trustor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Trustor, Lender, without notice to Trustor, may deal with Trustor's successors with reference to this Deed of Trust and the Indebtedness by way of forbearance or extension without releasing Trustor from the obligations of this Deed of Trust or liability under the Indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Deed of Trust.

Waiver of Homestead Exemption. Trustor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Arizona as to all Indebtedness secured by this Deed of Trust.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

Beneficiary. The word "Beneficiary" means Western Alliance Bank, an Arizona corporation, and its successors and assigns.

Borrower. The word "Borrower" means The J. D. Russell Company, a Michigan corporation and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Trustor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced

by Lender to discharge Trustor's obligations or expenses incurred by Trustee or Lender to enforce Trustor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust.

Lease. The word "Lease" means the lease of the Property dated June 3, 2020, between Town of Marana, an Arizona municipal corporation, Landlord and Trustor.

Lender. The word "Lender" means Western Alliance Bank, an Arizona corporation, its successors and assigns.

Note. The word "Note" means the promissory note dated _____, 2022, **in the original principal amount of $750,000.00** from Trustor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Trustor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the Trustor's leasehold interest, as described in the Lease, which encumbers the real property described on Exhibit A.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

Trustee. The word "Trustee" means Western Alliance Bank, an Arizona corporation, whose address is 1 East Washington Street #100, Phoenix, AZ 85004 and any substitute or successor trustees.

Trustor. The word "Trustor" means The J. D. Russell Company, a Michigan corporation.

TRUSTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND TRUSTOR AGREES TO ITS TERMS.

TRUSTOR:

THE J. D. RUSSELL COMPANY, A MICHIGAN CORPORATION

By: _____
Nicholas H. Danna, President of The J. D. Russell Company, a Michigan corporation

CORPORATE ACKNOWLEDGMENT

STATE OF _____)
) **SS**
COUNTY OF _____)

On this _____ day of _____, 20 _____, before me, the undersigned Notary Public, personally appeared **Nicholas H. Danna, President of The J. D. Russell Company, a Michigan corporation** and known to me to be an authorized agent of the corporation that executed the Deed of Trust and acknowledged the Deed of Trust to be the free and voluntary act and deed of the corporation, by authority of its Bylaws or by resolution of its board of directors, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Deed of Trust and in fact executed the Deed of Trust on behalf of the corporation.

By_____ **Residing at**_____

Notary Public in and for the State of_____

My commission expires_____

REQUEST FOR FULL RECONVEYANCE

(To be used only when obligations have been paid in full)

To: _____, Trustee

The undersigned is the legal owner and holder of all Indebtedness secured by this Deed of Trust. All sums secured by this Deed of Trust have been fully paid and satisfied. You are hereby directed, upon payment to you of any sums owing to you under the terms of this Deed of Trust or pursuant to any applicable statute, to cancel the Note secured by this Deed of Trust (which is delivered to you together with this Deed of Trust), and to reconvey, without warranty, to the parties designated by the terms of this Deed of Trust, the estate now held by you under this Deed of Trust. Please mail the reconveyance and Related Documents to:

_____.

Date: _____ **Beneficiary:**

_____

By: _____

Its: _____

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Council-Regular Meeting **C4**

Meeting Date: 09/06/2022

To: Mayor and Council

From: David Udall, Interim Town Clerk

Date: September 6, 2022

Subject: Approval of Council Study Session Summary Minutes of August 9, 2022 and Approval of Council Regular Meeting Summary Minutes of August 16, 2022 (David Udall)

Attachments

Council Study Session Summary Minutes, 08/09/2022

Regular Council Meeting Summary Minutes, 08/16/2022

MARANA TOWN COUNCIL
STUDY SESSION
11555 W. Civic Center Drive, Marana, Arizona 85653
Second Floor Conference Center, August 9, 2022, at or after 6:00 PM

Ed Honea, Mayor
Jon Post, Vice Mayor
Patti Comerford, Council Member
Jackie Craig, 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 6:01 PM and directed the Clerk to call the roll. **Mayor Honea, Vice Mayor Post, Council Members: Jackie Craig, Patti Comerford (Excused), 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 Officer second the motion approving the agenda as presented. Motion passes, 6-0.

DISCUSSION/DIRECTION/POSSIBLE ACTION

D1 Relating to Strategic Planning; discussion, consideration, and direction regarding the Marana Strategic Plan V Draft (Andrea Caicedo)

Town Manager Terry Rozema provided opening remarks related to the process and development of the Strategic Plan Update V (*A copy of the presentation is on file in the Town Clerk's Office for review upon request*), that this meeting would provide the Council with one last opportunity to review and provide direction to Town staff before Strategic Plan Update V is brought forward to Council during its September 6, 2022 meeting for consideration.

Assistant to the Town Manager Andrea Caicedo reviewed each of the focus areas of the draft Strategic Plan V, and stated that previous feedback from Town Council have been included with the draft before Council and meetings with Town staff have followed. The draft is not the final product, as Council has the opportunity to provide additional comments and directions. She gave an overview of the process to occur during this meeting as Council will review each of the focus areas and provide feedback to Town staff, and reminds staff that this will be the final opportunity for input to be incorporated in the Strategic Plan V before Town Council adoption.

Below are the comments made by Council and Town staff during the review of each focus area of the draft Strategic Plan V.

Focus Area 1: <u>Cherished Heritage (CH)</u>

Assistant to the Town Manager Andrea Caicedo directs the discussion to Cherished Heritage Goal 1.

Mayor Honea questioned regarding whether it should be more specific or general. – **Assistant to the Town Manager Andrea Caicedo** directs that actions are intended to be more specific.

Vice Mayor Post commented that Strategies 1.1 (Prepare a Marana Cultural and Heritage Preservation Plan that provides a comprehensive record of local historic and cultural resources, and include strategies for celebrating the Town's unique identity) and 1.2 (Create educational programs and initiatives that increase community awareness of the Town's rich heritage) look great.

Mayor Honea asked about the grain silos, and whether the plan mentions them. **Town Manager Terry Rozema** referred the Mayor to Strategy 3.2.

Council Member Ziegler mentions that she is glad Community Partners and Heritage Organizations were well captured and that funds will be applied towards this. **Assistant to the Town Manager Andrea Caicedo** confirms this and explains what emphasis will be placed on this.

Regarding Strategy CH 2.2 - Consensus that expanding art policy is a good idea.

Vice Mayor Post asks for clarification on the Private Development Art Project and **Assistant to the Town Manager Andrea Caicedo** explains how this will expand funds for private development. **Town Manager Terry Rozema** says it is intended for larger developments like Premium Outlet Mall or the Walmart on Cortaro. This is for working with larger private developer coming in to plan and implement art throughout our town.

Council Member Ziegler asks for clarification on the Art Policy and if we can expand public art projects into private development. **Town Manager Terry Rozema** responds that the intent of the art policy is about commercial, larger developments. The Town is working with private developers to plan and implement art in the community and make it more prevalent. **Assistant to the Town Manager Andrea Caicedo** suggests an addition of a definition for a "heritage-based art project." Will be discussed further.

Council Member Kai recommends looking at Oro Valley Art Policy for guidance.
Regarding Strategy 3.2, **Council Member Jackie Craig** recommends the Heritage Museum in Springerville as an example. **Council Member Ziegler** expressed concerns that there was not much interest in a museum in the past, but she approves of conducting a feasibility study. **Council Member Officer** says the Town should do a museum and expressed his belief that the museum failed in the past because volunteerism wasn't there.

Consensus: Council is pleased with Cherished Heritage and would like staff to put funding towards the goals and strategies.

Focus Area 2: <u>Vibrant Community</u>

Assistant to the Town Manager Andrea Caicedo directs the discussion to Vibrant Community Goals 1 and 2.

Council Member Ziegler asks about current HCP that was developed and whether to vote on it and **Vice Mayor Post** suggests that a new one should be done and that this is important to constituents, but it can incorporate helpful information from the HCP. **Town Manager Terry Rozema** clarified that VC 1.2 action is separate/different than HCP. Deals with open space and wildlife conservation relative to development. This is for identifying what things should look like and to what extent do we want to ensure there is a natural pathway for the animals and/or what setback we are dealing with.

Assistant to the Town Manager Andrea Caicedo directs the discussion to Vibrant Community Goals 3 and 4.

Council Member Craig recommends adding utilization of "Complete Streets" to the Transportation Master Plan in Strategy 3.1 (Update the Transportation Master Plan to

reflect community needs and meet the demands of new growth). **Town Manager Terry Rozema** agrees to include under Strategy 3.1**.**

Council Member Post asks about the high-speed rail project between Tucson and Phoenix and notes that there are large companies moving to Pinal County and there is not the housing to support it.

Council Member Post asks about the new roundabout by the high school and Town staff report that it is running smooth even when busy.

Council Member Craig questions the lack of public transportation.

Assistant to the Town Manager Andrea Caicedo directs the discussion to Vibrant Community Goal 5.

Council Member Post suggests that there are many options in the Strategic Plan V Update that the Citizens' Forum could consider, such as water conservation and energy conservation. **Mayor Honea** suggest using CDBG funding to replace all toilets in Honea Heights.

Mayor Honea states that housing needs are an issue of importance to both the League of Cities and Towns and the Arizona legislature. **Mayor Honea** and **Councilmember Craig** both seek to focus on affordable housing.

Council Member Kai seeks an increase in dumpsters in neighborhoods and funding for it. **Town Manager Terry Rozema** reports that it is anticipated that the Town will receive 350,000 in funding from CDBG and that dumpsters will be prioritized and if Town Council wants additional funding towards dumping, town staff will follow the direction. **Deputy Town Manager Erik Montague** notes there is also the Waste Management quarterly rollout program.

Council Member Ziegler states that the Citizens Forum needs to be revamped and encourages that moving forward, rather than individual prioritizing from various topics, all seven members of the Council should agree on a topic from a list determining what is the most important topic. **Council Member Craig** notes that it is problematic that the recommendation from the Citizens Forum are not often done. **Assistant to the Town Manager Andrea Caicedo** responds that she is currently planning on presenting options to the Town Council for the Citizens Forum moving forward. **Council Member Ziegler** requests that the size of the Citizens Forum and the quorum have varied and **Assistant to the Town Manager Andrea Caicedo** responds that this can be addressed.

Focus Area 3: <u>Thriving Commerce</u>

Assistant to the Town Manager Andrea Caicedo directs the discussion to Thriving Commerce Goals 1 and 2.

Council Member Craig questions financing State Land development along Tangerine Road. **Vice Mayor Post** says State Land wants to bring industry into the state. **Town Manager Terry Rozema** adds that there are lots of obstacles to development there including utilities. **Town Manager Rozema** reports that State Land has communicated it is open to selling land and the director of State Land expressed a desire for opening lines of communication. Consensus that there will not be water and sewer there for purpose of development.

Council Member Ziegler wants more information on Business Retention and Expansion Program. **Assistant to the Town Manager Andrea Caicedo** reports that this will involve the Economic Development Department creating a program focused on bigger industries focused on retention and more frequent communication.

Council Member Ziegler wants something at every exit off the freeway so that you know you are in Marana. There is consensus that it is a great idea and there should be ongoing discussions about what it could be. **Town Manager Terry Rozema** suggests looking at the wayfinders on Ina Road and that the Communications Department at the Town is a good resource for ideas moving forward.

Assistant to the Town Manager Andrea Caicedo directs the discussion to Thriving Commerce Goals 3 and 4.

Council Member Craig questions if it is worth having our own tourism website as opposed to being part of Visit Tucson. **Mayor Honea** reports that Visit Tucson wanted half of our bed tax (approximately 700-800,000 per **Vice Mayor Post**), so the Town then started its own Economic Development Department. Both **Vice Mayor Post and Mayor Honea** report that we are currently using the bed tax for the lease and other Town needs.

Council Member Ziegler questioned when the last Airport Master Plan was done and it was reported by staff that it was probably in 2016 or 2017. **Council Member Kai** asked who is running the airport and was informed that Galen Beem, a 17-year Town employee, is at the airport. **Vice Mayor Post** questions if there is a manager for the FBO at the airport and is informed by staff that Peter is the person there.

Focus Area 4: <u>Healthy Lifestyles</u>

Assistant to the Town Manager Andrea Caicedo directs the discussion to Healthy Lifestyles Goals 1 and 2.

Council Member Craig notes that Strategy 1.5 action item to complete the CalPortland section of the Santa Cruz Shared Use Path is nearly completed and suggests tie into CAP and Tortolita Mountain trails to beef this up a little.

Council Member Craig opines Goal 2 (Identify open space areas and balance with the needs of the community) might be a good place for Barnett Channel Park goal. **Town Manager Terry Rozema** expresses concern about adding it since Strategic Plan Update V is a five-year plan and the Park would not be completed during that time.

Focus Area 5: Proactive Public Services

Assistant to the Town Manager Andrea Caicedo directs the discussion to Proactive Public Services Goals 1 and 2.

Council Member Craig recommends adding working on building codes to build in sustainable features, like plug-in cars and recirculating pumps, under Strategy 1.3. **Council Member Ziegler** suggests removing grass for water conservation and adding rocks, also requiring less maintenance.

Councilmember Kai, referring to Strategy 1.5 action to develop a drainage manual, and questions if is a regional study and asks what would be included in the drainage manual. **Deputy Town Manager Erik Montague** reports it would have design standards and maintenance requirements, cites as an example the millions of dollars of drainage in Saguaro Bloom, and emphasizes the importance of drainage to the Town.

Council Member Craig questions that there is not a goal specific to water conservation what can be done to calm public concerns regarding water conservation and to show that the Town is planning for water conservation. **Assistant to the Town Manager Andrea Caicedo** responds that the action under Strategy 2.2 includes a public campaign to increase awareness.

Council Member Craig recommends moving Drought Preparedness to Strategy 2.1 "Deliver safe, reliable and sustainable water services to meet current needs" and there is consensus to make that change.

Assistant to the Town Manager Andrea Caicedo directs the discussion to Proactive Public Services Goals 3 and 4.

Council Member Ziegler asks the timeframe for the update to the Facilities Master Plan and is informed it will be done this year. **Vice Mayor Post** says that will be an interesting document. **Council Member Ziegler** questions whether we need more facilities and **Town Manger Rozema** informs that there are ongoing internal discussions to accommodate growth in the Town and make better use of space that we currently have,

but notes that the current building was done in 2006 and questions the future placement of our facilities either on the current campus or in substations. **Mayor Honea** cites the benefit of keeping buildings on the main campus to enhance efficient service for citizens and enhanced efficiency when Town staff know each other and work together often due to proximity.

Councilmember Kai, referring to Strategy 3.2, asks about possibly billing requesting parties for public records requests due to Town staff time to process. **Deputy Town Attorney Libby Shelton** explains there can be charges for staff time when it is a commercial records request, but not when it is a standard public records request. **Deputy Town Attorney Libby Shelton** further notes that in the past there were charges to requestors for the cost of the paper to produce records, but now most requests are processed digitally. **Mayor Honea** notes that this is an issue often addressed at the League of Cities and Town and that other cities in Maricopa County have dedicated staff to public records and the courts have frowned on charging.

Assistant to the Town Manager Andrea Caicedo addresses what the public facing Strategic Plan V document will look like.

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 asked for a motion to adjourn the meeting.

Vice Mayor Post, moved and Council Member Officer second the motion to adjourn the meeting. Motion passes, 6-0. Meeting adjourned at 7:31PM.

CERTIFICATION

I hereby certify that the foregoing are the true and correct minutes of the Marana Town Council Study Session Meeting held on August 9, 2022. I further certify that a quorum was present.

_____

David L. Udall, Interim Town Clerk

DRAFT

MARANA TOWN COUNCIL
REGULAR COUNCIL MEETING
11555 W. Civic Center Drive, Marana, Arizona 85653
Council Chambers, August 16, 2022, at or after 6:00 PM

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

SUMMARY MINUTES

CALL TO ORDER AND ROLL CALL

Vice Mayor Post called the meeting to order at 6:00 PM and directed the Interim Town Clerk to call the roll. **Mayor Honea** was excused, **Vice Mayor Post** was present, **Council Member Jackie Craig** was present, **Council Member Patti Comerford** was present, **Council Member Herb Kai** was present, **Council Member John Officer** was excused, and later present, and **Councilmember Roxanne Ziegler** was present. The Interim Town Clerk stated a quorum was present.

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

APPROVAL OF AGENDA

Council Member Kai moved and Council Member Ziegler seconded the motion approving the agenda as presented. Motion passed, 6-0.

CALL TO THE PUBLIC

Vice Mayor Post opened the meeting to receive public comment. There were no comments.

PROCLAMATIONS

MAYOR AND COUNCIL REPORTS: SUMMARY OF CURRENT EVENTS

Vice Mayor Post recognized **Council Member Officer** was now present [6:01 PM].

Council Member Ziegler congratulated **Council Member Comerford**, **Vice Mayor Post**, **Council Member Officer** and **Council Member Kai** on their election campaigns.

Council Member Craig thanked the Police Department for keeping schools safe.

MANAGER'S REPORT: SUMMARY OF CURRENTEVENTS

Town Manager Terry Rozema reported on the following:

- The Police Department and the Communications Department put together several videos related to school zones and speeding. Both departments were thanked.
- The Development Services Department has issued 12 single-family residential permits so far for the month of August.
- The Audubon Society held a successful and well-attended event at El Rio Preserve, and the location is growing in popularity.
- Fall Festival is coming up and is anticipated to include a couple of unveilings.
- Concerts in the Courtyard starts up again on September 15, 2022. The event will be from 5:00 PM to 7:30 PM.

PRESENTATIONS

CONSENT AGENDA

C1 Resolution No. 2022-081: Relating to the Marana Regional Airport; approving and authorizing the Mayor to sign the Land/Facility Use Agreement Amendment No. 1 between the Town of Marana and the Arizona Department of Forestry and Fire Management in order to correct a scrivener's error in the original agreement (David Udall)

C2 Resolution No. 2022-082: Relating to Budget; approving the transfer of up to: $615,000 in budgeted expenditure authority from the General Fund contingency line item to the Police department budget for officer-related costs; $105,000 from the Development Services department budget to the Town Manager department budget for the Town's

master transportation study; and $192,369 from the Finance department budget to the Human Resources department budget for re-organization of payroll-related functions, in the fiscal year 2022-2023 budget (Yiannis Kalaitzidis)

C3 Resolution No. 2022-083: Relating to Development; approving a release of assurances for Tortolita Ridge Lots 1 through 32 and accepting public improvements for maintenance (Jason Angell)

C4 Resolution No. 2022-084: Relating to Economic Development; designating the Town of Marana as the official Destination Marketing Organization (DMO) for the Town for the purpose of coordinating tourism promotion with the Arizona Office of Tourism (AOT) (Curt Woody)

C5 Resolution No. 2022-085: Relating to Personnel; approving and adopting an amendment to the Town's Personnel Policies and Procedures, revising Chapter 6 – Performance Management and Employee Development, Section 6-2-6 "Application and Reimbursement Procedures" (Curry C. Hale)

C6 Resolution No. 2022-086: Relating to the Police Department; approving and authorizing the Town Manager to execute a High Intensity Drug Trafficking Area (HIDTA) grant agreement between the City of Tucson (COT) and the Town of Marana to receive funding under COT Grant Number HT-22-2930 (Yiannis Kalaitzidis)

C7 Resolution No. 2022-087: Relating to Utilities; approving and authorizing the submission of an application for funds from the Water Infrastructure Finance Authority of Arizona (WIFA) to fund the construction of the Twin Peaks Interconnect project and the design and construction of the Picture Rocks Interconnect project and authorization to incur debt (Jing Luo)

C8 Approval of the Council Regular Meeting Summary Minutes of August 3, 2022 (David Udall)

Council Member Kai moved, and Council Member Officer seconded, the motion approving the Consent Agenda as presented. Motion passed, 6-0.

LIQUOR LICENSES

BOARDS, COMMISSIONS AND COMMITTEES

COUNCIL ACTION

A1 Ordinance No. 2022.012: Relating to Utilities; amending Town Code Title 14 (Utilities) by adding new Chapter 14-11 (Non-Potable Water Service Within Cortaro-Marana Irrigation District Boundaries) (Jing Luo)

Water Director Jing Luo provided a presentation related to new Chapter 14-11 of the Marana Town Code. She introduced the topic with a brief statement regarding the historic drought and the resulting cuts in Colorado River water allocations that have made optimizing the use of renewable water resources increasingly important. A brief overview of her presentation is below. *(A copy of the PowerPoint presentation is available on file in the Town Clerk's Office for review upon request.)*

Background

- The 2013 intergovernmental agreement between the Town and the Cortaro-Marana Irrigation District ("CMID") transferred the North Marana non-potable water system to CMID, but did not address certain administrative matters. It did not require developers to connect to CMID's non-potable system.
- Potable water is currently used for landscape irrigation in most neighborhoods with the exception of a few subdivisions.
- No recharge credit is collected on irrigation water.
- Non-potable water use represents 10–15% of total water use within Marana Water's service area.

Two maps were shown related to CMID's service area and non-potable system.

Goals and Purposes

- Optimize the use of renewable water resources in Marana's current water portfolio.
- Reduce the Town's potable water obligations for non-potable use.
- Increase the use of CMID's available water rights in North Marana.

Outreach Activities

Since Council Study Session on July 14, 2020

- On July 14, 2020, Council unanimously moved to direct staff to bring a finalized ordinance before Council.
- Town staff worked closely with CMID's staff and attorney.
- Town staff held multiple meetings with stakeholders, including CMID, SAHBA and MPA.

- Several rounds of feedback were received from CMID, SAHBA, and other stakeholders. The feedback was carefully considered and, where appropriate, incorporated into the proposed ordinance.
- Both Marana Water and CMID updated their websites to include information about non-potable water service.
- Town staff facilitated a joint meeting with CMID and SAHBA to discuss implementing the new ordinance.

The following list of outreach activities was shown:

Meetings or Outreach Activities Conducted with Stakeholders

- Efforts made in 2021
- March 7, 2022 – Non-potable Water Presentation to SAHBA Members
- March 22, 2022 – Non-potable Water Presentation to MPA Members
- April 6, 2022 – Coordination Meeting with CMID on Non-potable Water
- June 10, 2022 – Follow-up Meeting with MPA Members
- June 27, 2022 – Follow-up Meeting with SAHBA Members
- July 5, 2022 – Coordination Meeting with CMID on Non-potable Water
- July 6, 2022 – Pulled the Item from Council Agenda for July 12 Meeting
- July 19, 2002 – Three-party Meeting SAHBA/CMID/TOM
- Numerous conversations with SAHBA Leadership
- Received written feedback from SAHBA numerous times and provided written responses

Key Components of the Proposed Ordinance

Proposed Non-potable Water Service Ordinance

- Addresses the coordinated expansion of the non-potable water system, which is not addressed by the 2013 IGA.
- Coordinating with CMID for non-potable water service is required when:
    - Required as a rezoning condition.
    - The cost of installing non-potable infrastructure is equal to or less than the 20-year cost saving of using CMID's non-potable water versus Marana's potable water.
    - When the Town Council requires the connection to offset the environmental burden of a particular project.
- CMID may waive the right to serve.
- Requires the Marana Water Director and CMID, and/or its management agent to enter a MOU in order to ensure consistency in the provision of service and to coordinate compliance with the Town Code and other regulations.

Next Steps

- If approved, staff will continue to work with CMID and other stakeholders in implementing the ordinance.

Vice Mayor Post asked if there were any questions. There were not any questions.

Council Member Comerford moved, and Council Member Craig seconded, the motion to approve Ordinance No. 2022.012. Motion passed, 6-0.

A2 Resolution No. 2022-088: Relating to Water; approving and authorizing the Mayor to execute the First Amendment to Intergovernmental Agreement between the Cortaro-Marana Irrigation District and the Town of Marana relating to the ownership and operation of the non-potable water system in north Marana (Jane Fairall)

Assistant Town Attorney David Udall provided a brief overview of the item, stating the Town entered into an intergovernmental agreement ("IGA") with CMID in 2013 in order transfer the Town's non-potable water system to CMID. **Mr. Udall** further stated that, if adopted, the amendment would make two substantive changes to the original IGA:

> (1) Paragraph 18 would be revised to clarify the agreement's geographic area to include areas CMID now supplies with non-potable water services but did not at the time of the original IGA, and to include any future expansion of CMID's boundaries; and
>
> (2) Paragraph 19 would be revised to allow for CMID and the Town to negotiate toward a solution in the event CMID no longer provided non-potable water to one or more areas in the Town instead of the system automatically reverting to the Town, as is currently the case under the original agreement.

Mr. Udall noted that representatives of CMID were also present in the event the Council had any questions for them.

Vice Mayor Post asked if there were any questions. There were not any questions.

Council Member Comerford moved, and Council Member Kai seconded, the motion to approve Resolution No. 2022-088. Motion passed, 6-0.

A3 Resolution No. 2022-089: Relating to Elections; declaring and adopting the results of the Town of Marana primary election held on August 2, 2022 (David Udall)

Interim Town Clerk David Udall stated that under Arizona law, the Town is required to enter on the record the official canvass of the votes of the August 2, 2022 primary

election no earlier than six days, nor more than 20 days, after the election. He said that the Town has now received the official canvass from the County and that copies are included in the agenda materials. **Mr. Udall** further stated that Resolution No. 2022-089 now includes the official election results as reported by the Pima County Elections Department, and noted that the language of Section 2 of the resolution was revised to reflect that the number of ballots rejected is a countywide number and not a Marana-specific number.

Vice Mayor Post asked if there were any questions. There were not any questions.

Council Member Ziegler moved, and Council Member Kai seconded, the motion to approve Resolution No. 2022-089. Motion passed, 6-0.

ITEMS FOR DISCUSSION / POSSIBLE ACTION

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

Vice Mayor Post asked for a motion to adjourn the meeting.

Council Member Kai moved, and Council Member Officer seconded, the motion to adjourn. Motion passed, 6-0. Meeting adjourned at 6:19 PM.

CERTIFICATION

I hereby certify that the foregoing are the true and correct minutes of the Marana Town Council meeting held on August 16, 2022. I further certify that a quorum was present.

_____

David L. Udall, Interim Town Clerk

DRAFT

Council-Regular Meeting **A1**

Meeting Date: 09/06/2022

To: Mayor and Council

Submitted For: George Cardieri, Real Property Manager

From: George Cardieri, Real Property Manager

Date: September 6, 2022

Strategic Plan Focus Area:
Not Applicable

Subject: Resolution No. 2022-093: Relating to Real Estate; approving and authorizing the Mayor to execute a Real Property Agreement and related conveyance documents in favor of Southwest Gas Corporation for the fee title sale and transfer of a new natural gas tap site, along with perpetual easements for natural gas pipelines and a temporary construction easement for temporary workspace over Ora Mae Harn District Park property (George Cardieri)

Discussion:

Southwest Gas Corporation (SWG) has submitted a request to acquire fee title for a natural gas tap site, along with perpetual easements for natural gas pipelines and a temporary construction easement for temporary workspace, to increase their natural gas distribution capacity in Northwest Marana. The requested real property rights are located within the Town's Ora Mae Harn District Park, which was acquired by the Town per the deed recorded on April 16, 1991, in Docket 9018, Page 810 in the Pima County Recorder's Office. In addition to tendering contract consideration of $1.00 (One Dollar), SWG has agreed to install approximately 300 feet of decorative block wall around the Town's existing water facility, and to install landscaping improvements around the north side of the new natural gas tap site. The proposed resolution will authorize the Mayor to execute the Real Property Agreement and related conveyance documents in favor of Southwest Gas Corporation.

Financial Impact:

If approved, the Town will receive a new decorative block wall and new landscaping improvements.

Staff Recommendation:

Staff recommends adoption of Resolution No. 2022-093 authorizing the Mayor, on behalf of the Town, to execute the Real Property Agreement and related conveyance documents in favor of Southwest Gas Corporation in substantially the forms attached to and incorporated in this resolution as Exhibit A.

Suggested Motion:

I move to adopt Resolution No. 2022-093, authorizing the Mayor to execute the Real Property Agreement and related conveyance documents in favor of Southwest Gas Corporation.

Attachments

Resolution No. 2022-093

Exhibit A (Real Property Agreement and related conveyance documents)

MARANA RESOLUTION NO. 2022-093

RELATING TO REAL ESTATE; APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A REAL PROPERTY AGREEMENT AND RELATED CONVEYANCE DOCUMENTS IN FAVOR OF SOUTHWEST GAS CORPORATION FOR THE FEE TITLE SALE AND TRANSFER OF A NEW NATURAL GAS TAP SITE, ALONG WITH PERPETUAL EASEMENTS FOR NATURAL GAS PIPELINES AND A TEMPORARY CONSTRUCTION EASEMENT FOR TEMPORARY WORKSPACE OVER ORA MAE HARN DISTRICT PARK PROPERTY

WHEREAS the Town of Marana owns and maintains the real property acquired for Ora Mae Harn District Park, recorded on April 16, 1991, in Docket 9018, Page 810 in the Pima County Recorder's Office; and

WHEREAS Southwest Gas Corporation ("SWG") has submitted a request to acquire fee title for a natural gas tap site, along with perpetual easements for natural gas pipelines and a temporary construction easement for temporary workspace, to increase their natural gas distribution capacity in Northwest Marana; and

WHEREAS in addition to tendering contract consideration of $1.00 (One Dollar), SWG has agreed to install approximately 300 feet of decorative block wall around the Town's existing water facility, and to install landscaping improvements around the north side of the new natural gas tap site; and

WHEREAS the Mayor and Council of the Town of Marana find that the public interests are served by approving this resolution.

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

SECTION 1. The Real Property Agreement and related conveyance documents in favor of SWG in substantially the forms attached as Exhibit A and incorporated by this reference in this resolution, are hereby approved, and the Mayor is hereby authorized to sign them and any associated documents for and on behalf of the Town of Marana,

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

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, ARIZONA, this 6th day of September 2022.

_____
Mayor Ed Honea

ATTEST:

_____
David Udall, Interim Town Clerk

APPROVED AS TO FORM:

_____
Jane Fairall, Town Attorney

TOWN OF MARANA/SOUTHWEST GAS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND ESCROW INSTRUCTIONS

This Agreement is made by and between the TOWN OF MARANA, an Arizona municipal corporation (the "Seller"), and SOUTHWEST GAS CORPORATION, a California corporation (the "Buyer"). The Seller and the Buyer are sometimes referred to collectively in this Agreement as the "Parties" and individually as a "Party."

1. Property. The Buyer needs to acquire fee title to lands owned by the Seller that are referred to in this Agreement as the "Property," which is a portion of Pima County Assessor's Parcel Number 217 36 004B, with a land area of approximately 4,400 square feet, located within Ora Mae Harn District Park, 13250 North Lon Adams Road, Marana, Arizona 85653, and more particularly described on **Exhibit I**, attached hereto and incorporated herein by this reference.

2. Use Restriction. Buyer shall use the Property only for the purpose of installing utility infrastructure, facilities, and associated appurtenances.

3. Consideration. In consideration for Seller's sale of the Property to Buyer, upon the installation of any utility facilities, Buyer agrees to:

a. Install approximately 300 feet of block wall (the "Block Wall") around Seller's existing water facilities as depicted in **Exhibit II** as "WATER FACILITIES." The block wall around Seller's water facilities shall match the block wall Buyer installs around its own facilities on the Property.

b. Install the landscaping improvements (the "Landscaping Improvements") listed below in or around the area depicted in Exhibit II as "LANDSCAPING ON THE NORTH SIDE OF PROJECT." Buyer will not provide any warranty, guarantee, or maintenance for installed vegetation and drip irrigation system.

i. Three 35-gallon size trees

ii. Ten 5-gallon size shrubs, bushes, or other vegetation used as groundcover

iii. A drip irrigation system that includes drippers, plastic tubing, and connection to an existing irrigation system. Pop-up sprinkler heads, valves, or controllers are excluded.

4. Purchase Price. In addition to the consideration referenced in paragraph 3 above, the purchase price of the Property shall be One ($1) Dollar to be paid by Buyer to Seller ("Purchase Price"). No debt, obligation, or other liability of the Seller will be assumed as part of this Agreement.

5. Block Wall and Landscaping Improvements.

a. Construction. The Block Wall and Landscaping Improvements (together the "Improvements") shall be constructed and installed at Buyer's sole cost and expense and in a good and workmanlike manner. Buyer shall obtain Seller's prior approval of construction plans and specifications for the Improvements, which shall not be unreasonably withheld. All Improvements shall be constructed or installed in compliance with specifications of plans approved by Seller. Within 30 days after completion of construction, Buyer shall provide Seller with as-built drawings of the Improvements.

b. Title to Improvements. Title to the Improvements once constructed and installed shall be held by Seller. However, Seller irrevocably grants authority to Buyer to install, mount, affix or otherwise attach required signs, warnings, or notices to the Improvements related to the utility infrastructure, facilities, and associated appurtenances. Seller acknowledges that Buyer may need to modify or remove the Improvements to remedy, remove, or eliminate any hazard, obstruction, or condition that may pose a threat to the safety of the public or the utility infrastructure, facilities, and associated appurtenances. To the extent that Buyer takes any action to modify or remove the Improvements, it will use its best efforts to restore the Improvements to the same or similar condition prior to any modification or removal.

6. Grant of Easements. At Closing, Seller shall deliver to Buyer permanent Grants of Easements for underground pipelines in the forms of and as described in **Exhibit III** and **Exhibit IV**, attached hereto and incorporated herein by this reference, free and clear of all liens and encumbrances, and a Temporary Construction Easement to allow for the use of heavy machinery, equipment, and personnel to aid in the installation of utility infrastructure in the form of and as depicted in **Exhibit V** attached hereto and incorporated herein by this reference.

7. Joint Escrow Instructions. Escrow Agent is by this Agreement appointed and designated to act as such and is authorized and instructed to deliver, pursuant to the terms of this Agreement, such documents and monies deposited with Escrow Agent as provided in this Agreement. The provisions of this Agreement shall constitute joint Escrow Instructions to the Escrow Agent; provided however, that the Parties shall execute such additional instructions as requested by the Escrow Agent not inconsistent with the provisions of this Agreement.

8. Closing Date. The closing of this transaction (the "Closing", "Closing Date", or "Close of Escrow") shall mean the date on which the Warranty Deed is recorded. The Closing Date shall be no later than 20 days following the expiration of the Inspection Period (defined below), or as mutually agreed by the Seller and the Buyer. The Closing shall occur at the office of Stewart Title & Trust of Tucson ("Escrow Agent"), located at 3939 East Broadway Boulevard, Tucson AZ, or at such other place as may be mutually agreed upon by the Parties.

9. Terms of Escrow. The Closing and consummation of this escrow shall be subject to and in accordance with the following terms and conditions:

a. Buyer shall deposit a fully executed copy of this Agreement with Escrow Agent as escrow instructions, with any amendments or additional instructions which shall be in writing and signed by both Parties, that may be needed from time to time by Escrow Agent for purposes of performing its functions under this Agreement.

b. Buyer shall execute and deposit into escrow, on or before the Closing Date, the cash and other documents required to consummate the purchase and sale pursuant to the terms set forth in this Agreement.

c. Seller shall deposit into escrow, on or before Close of Escrow:

i. an executed Warranty Deed ("Deed") in a form acceptable to Buyer and in recordable form conveying the Property purchased and sold hereunder; and

ii. such other executed documents or easements as may be necessary to carry out the terms set forth in this Agreement.

d. Escrow Agent shall cause to be drafted any other documents to be recorded or signed by the Parties as may be necessary to carry out the terms set forth in this Agreement.

10. Title Review, Title Insurance, and Feasibility Period.

a. Title Policy Order. Within five days of the Effective Date, the Buyer shall order from Stewart Title & Trust of Tucson (the "Title Company") a commitment for an owner's title insurance policy for the Property. The type of policy (standard, extended, etc.) is Buyer's choice, and is referred to in this Agreement as the "Owner's Policy."

b. Title Review. The Buyer shall have 30 days from the delivery of the preliminary title commitment (the "Title Review Period") in which to review and to provide written objection to the Escrow Agent and the Seller (the "Buyer's Notice") to the condition of title to the Property (the "Title Exceptions"). If the Buyer fails to notify the Seller and the Escrow Agent in writing of the Buyer's approval or disapproval of the Title Exceptions within the Title Review Period, the Title Exceptions as shown in the preliminary title commitment shall be deemed approved by the Buyer. Any Title Exception objected to by the Buyer in the Buyer's Notice shall be an "Unpermitted Exception."

i. If the Buyer gives notice of disapproval to the Seller and the Escrow Agent, during the Title Review Period, the Seller shall be required to cure the Unpermitted Exceptions by removing or correcting any Unpermitted Exceptions or by causing the Title Company to waive or commit to insure over the Unpermitted Exceptions at the Seller's cost. If the Seller, after using commercially reasonable efforts, is unable to cure any one or more of the Unpermitted Exceptions prior to the scheduled Closing Date, the Buyer at its sole discretion may exercise any of the following options:

(A) postpone the Closing for an additional period of time to be determined by the Parties to allow for the removal of the Unpermitted Exceptions;

(B) waive the removal of any such Unpermitted Exception as a condition to Closing, in which event such Unpermitted Exception shall be deemed an additional Permitted Exception under this Agreement; or

(C) terminate this Agreement.

ii. If the Title Company amends the Title Commitment to provide for exceptions in addition to those approved by the Buyer, the Buyer shall have three days after the Buyer's receipt of any such amendment, together with good and legible copies of all documents referenced in this Agreement, to give notice to Escrow Agent and the Seller whether it shall accept the additional exceptions or elect to terminate this Agreement unless the additional exceptions are cured to the Buyer's reasonable satisfaction by the Seller. The Closing Date shall be extended, if necessary, to accommodate this procedure.

c. Prorations. Ad valorem taxes for the then-current period shall be prorated at the Closing, effective as of the date of Closing. If the Closing shall occur before the tax rate is fixed for the then-current period, the apportionment of the taxes shall be upon the basis of the tax rate for the preceding period applied to the latest assessed valuation, but any difference in actual and ad valorem taxes for the period of sale actually paid by the Buyer shall be adjusted between the Parties upon receipt of written evidence of their payment. Special assessments which are or will become a lien on the Property will be assumed by the Buyer and treated as a Permitted Exception.

d. Title Policies. The Title Company shall issue to the Buyer at Closing the Owner's Policy (or the Title Company's irrevocable commitment to issue such Owner's Policy within 30 days after Closing). The Owner's Policy shall be issued by the Title Company in the full amount of the Purchase Price, effective as of the Closing and shall insure the Buyer that fee simple title to the Property is vested in the Buyer subject only to the "Permitted Exceptions," which term is defined to mean only such title matters as are approved and accepted by the Buyer in accordance with the provisions of subparagraph 10.b above. Except for the cost to insure over Unpermitted Exceptions as provided in subparagraph 10.b.i above, the Buyer shall pay the full cost of the Owner's Policy and any additional charges arising out of the title policy.

e. Inspection Period. The Buyer shall have sixty (60) calendar days from the Effective Date to inspect or investigate to the Buyer's sole and absolute satisfaction the Property (the "Inspection Period"). During the Inspection Period, at the Buyer's expense, the Buyer may cause to be prepared or performed an appraisal and environmental reports and studies and any other reports, surveys or studies which are deemed necessary by the Buyer in order to perform its due diligence investigation and analysis of the Property. Prior to the expiration of the Inspection Period, the Buyer shall notify the Seller if the Buyer determines, in its sole discretion, to terminate this Agreement.

11. Closing Duties of Escrow Agent. At the Close of Escrow, Escrow Agent shall:

a. record the Deed and any other appropriate documents with the County Recorder's office;

b. deliver to Buyer the title policy as provided herein and other instruments conveying title to the Property;

c. deliver to Seller, the payment specified in Section 3 above; and

d. deliver to Seller and Buyer certified copies of recorded documents and any other relevant documents.

12. Representations and Warranties of the Seller and the Buyer.

a. The Seller's representations and warranties. The Seller represents and warrants, as of the date of this Agreement, as follows:

i. The Seller is the owner of the Property in fee simple, and the Seller shall convey title to the Property to the Buyer at Closing by Warranty Deed, free of all liens, claims or encumbrances, subject only to the Permitted Exceptions;

ii. To Seller's knowledge at Close of Escrow there are no easements, encumbrances, encroachments or other clouds on title to the Property which would adversely affect Buyer's Intended Use or marketability of the Property;

iii. At the Close of Escrow, the Seller shall be ready, willing, and able to perform in accordance with the terms of this Agreement;

iv. The execution and delivery of this Agreement and the consummation of the transaction contemplated by this Agreement have been duly authorized on the part of the Seller;

v. The Seller will perform, observe, and comply with all of the covenants, agreements, and conditions required by this Agreement to be performed, observed and complied with by the Seller on or before the Closing and will execute and deliver all documents required to be executed and delivered by the Seller in order to consummate the transaction contemplated by this Agreement on or before the Closing (if such shall close in accordance with the terms of this Agreement) and of the time periods set forth in this Agreement.

vi. The Seller has not been notified that the Property is not in compliance (both as to condition and use) with all applicable federal, state and local laws, statutes, ordinances, codes and administrative rules or regulations and with any applicable orders of any court or other judicial body having jurisdiction over the Property, including, but not limited to, building, subdivision, pollution, environmental protection, water disposal, health, fire and safety engineering codes, rules or regulations, and as of Closing the Seller shall have taken no action to knowingly cause the Property to violate any of the foregoing as the same existed upon the Opening of Escrow.

vii. The Seller has no actual notice of any issues relating to access to the Property or utility service to the Property.

viii. Other than the representations and warranties expressly stated in this Agreement, the Seller makes no further representations and/or warranties of any sort whatsoever. Except as expressly provided in this Agreement, the Buyer is relying entirely on the Buyer's own investigations and examinations as to the physical condition and every other aspect of the Property, including without limitation, conformity to past, current or future zoning or building code requirements, the existence of soil instability, soil repairs, and any other soil conditions, sufficiency of undershoring and drainage, the existence of any flood plains or flood hazards or similar conditions, every other matter affecting the stability or integrity of the Property and any improvements or buildings located on the Property, the environmental condition of the Property and the income and expenses generated by the Property. The Buyer acknowledges that it has performed the investigation, that any information provided or made available or to be provided or made available to the Buyer by the Seller, or its agents, brokers, members, managers, partners, representatives, or others was provided or made available or will be provided or made available solely as a courtesy, and that the Buyer has the sole responsibility for determining the existence or nonexistence of any fact material to the Buyer's decision to purchase the Property. The Buyer acknowledges that the Buyer is purchasing the Property on an "AS-IS, WHERE-IS" basis WITH ALL FAULTS, except as specifically represented and warranted in this subparagraph 12.a of this Agreement, without any implied warranties, and the Buyer is completely at risk with respect to all attributes and conditions, latent or otherwise, of the Property. The Seller does not warrant the Property to be free from defects and the Buyer expressly accepts the possibility of such defects. By executing this Agreement, the Buyer by this Agreement gives the Seller, as a material inducement for the Seller to enter into this Agreement, a full release of any and all claims or causes of action arising at common law, under statute or otherwise, whether sounding in contract or in tort, arising out of or related to the condition of the Property and any equipment remaining on the Property. Notwithstanding the foregoing or anything else in this Agreement to the contrary, the Buyer does not releases the Seller from any claims or causes of action the Buyer may have now or in the future based upon fraudulent misrepresentation by the Seller.

b. The Buyer's representations and warranties. The Buyer represents and warrants, as of the date of this Agreement, as follows:

i. At the Close of Escrow, the Buyer shall be ready, willing, and able to perform in accordance with the terms of this Agreement.

ii. The execution and delivery of this Agreement and the consummation of the transaction contemplated by this Agreement have been duly authorized on the part of the Buyer.

iii. The Buyer warrants to the Seller that the Buyer understands that this is a binding contract, that there are no oral or verbal representations about the Property which have been made by the Seller which will survive the execution of this Agreement including, but not limited to, statements as to size, acreage, boundaries, location, zoning, suitability or any other representation, unless said statement is in expressly made in writing in this Agreement or related documents and signed by the Seller.

iv. The Buyer will, prior to Closing, fully inspect the Property, in accordance with subparagraph 10.e above, and at Closing, will accept the Property in an "AS-IS, WHERE-IS" condition, WITH ALL FAULTS, unless this Agreement has been canceled in accordance with its terms and conditions.

v. The Buyer will perform, observe, and comply with all of the covenants, agreements, and conditions required by this Agreement to be performed, observed and complied with by the Buyer on or before the Closing and will execute and deliver all documents required to be executed and delivered by the Buyer in order to consummate the transaction contemplated by this Agreement on or before the Closing (if such shall close in accordance with the terms of this Agreement) and of the time periods set forth in this Agreement.

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

14. Environmental Inspection Rights. The Seller shall permit the Buyer to conduct such inspections of the Property as the Buyer deems necessary to determine the environmental condition of the Property. If environmental inspections do not specifically identify contamination but indicate a potential for contamination and recommend further testing or inspection, the Parties hereby agree to extend the date of Closing to at least 30 days after the report for such additional testing or inspection is completed on behalf of the Buyer. If any environmental inspection reveals the presence of contamination or the need to conduct environmental clean-up as a result of contamination occurring during Seller's Ownership of the Property, the Seller shall remediate all contamination within the Property adequate to bring it into compliance with all applicable Federal, state, or local environmental regulations prior to Closing or the Buyer may terminate this Agreement. If contamination is discovered which occurred prior to Seller acquiring title to the Property, Seller may decline

to conduct a clean-up to bring the Property into compliance with applicable law. In such case, Buyer may terminate this Agreement.

15. Indemnification

a. The Buyer's indemnity. The Buyer agrees to indemnify, defend, protect and hold the Seller harmless of and from any and all liabilities, claims, demands, and expenses, of any kind or nature (except those items, which by the terms of this Agreement specifically remain the obligation of the Seller) arising or accruing after the Closing Date and which are in any way related to the ownership, maintenance, or operation of the Property, or from the Buyer's use of the Property prior to Closing including during the Inspection Period, or from any activity, work or things done, permitted or suffered by the Buyer in or about the Property prior to Closing including during the Inspection Period, including, but not limited to, court costs and attorney's fees.

b. The Seller's indemnity. The Seller agrees to indemnify, defend, protect and hold the Buyer harmless of and from any and all liabilities, claims, demands, and expenses, of any kind or nature (except those items, which by the terms of this Agreement specifically remain the obligation of the Buyer) arising or accruing prior to the Closing Date and which are in any way related to the ownership, maintenance, or operation of the Property, including, but not limited to, court costs and attorney's fees.

c. Notice of claim. If either Party receives notice of a claim or demand which results or may result in indemnification pursuant to subparagraphs 15.a or 15.b of this Agreement, the Party receiving notice of the claim shall as soon as practicable give notice of request for indemnity to the other Party. The Party receiving the notice of request for indemnity shall immediately take such measures as may be reasonably required to properly and effectively defend the claim, and may defend same with counsel of its own choosing. If the Party receiving notice of request for indemnity fails to properly and effectively defend the claim, the Party giving notice of request for indemnity may defend the claim and seek reimbursement of all expenses and of any final judgment that should have been covered by the indemnifying Party.

16. Default and remedies

a. If the Buyer fails to consummate this Agreement for any reason except: (i) the Seller's default, (ii) termination of this Agreement by the Buyer pursuant to a right of termination given in this Agreement, or (iii) the failure of a condition to Closing or to the Buyer's obligations under this Agreement as set forth in this Agreement, the Buyer shall be in default under this Agreement in which event the Seller, as its sole and exclusive remedy, may terminate this Agreement.

b. If default by either Party causes the other Party not to close, the non-defaulting Party shall have all remedies available at law against the defaulting Party, including but not limited to specific performance.

c. Except at otherwise provided in this Agreement, any Party who wishes to cancel this Agreement because of any breach by the other Party, or because escrow fails to close

by the agreed date, and who is not himself in breach of this Agreement, except as occasioned by a breach by the other Party, may cancel this Agreement by delivering a notice to either the breaching party and to the Escrow Agent stating the nature of the breach and that this Agreement shall be cancelled unless the breach is cured within 15 calendar days following the delivery of the notice. Any notice delivered to any Party must be delivered to the Escrow Agent. Within three calendar days after receipt of such notice, the Escrow Agent shall send the notice by mail to the Party in breach at the address contained in the notice. No further notice shall be required. If the breach is not cured within 15 calendar days following the delivery of the notice, this Agreement shall be cancelled.

d. If the Buyer defaults on any of its obligations under paragraph 3 above, the Seller shall have all remedies available to it by law to require construction and completion of the Improvements by the Buyer.

17. No Leases. The Seller warrants that there are no oral or written leases on all or any portion of the Property.

18. Broker's Commission. No broker or finder has been used and the Buyer shall owe no brokerage or finders' fee related to this transaction. The Seller has sole responsibility to pay all brokerage or finders' fees to any agent employed by Seller.

19. Closing Costs. Expenses incidental to transfer of title, including title reports, recording fees, escrow fees, releases and Owner's Policy, shall be paid by the Buyer.

20. Right of Entry. This Agreement grants the Buyer, its employees, agents, and consultants, the right to enter the Property effective as of the date this Agreement is signed on behalf of the Seller, which shall terminate when the Buyer takes title to the Property or when the Buyer notifies the Seller that the Buyer has determined to terminate this Agreement as described in paragraph 10.e above.

21. No Sale. Seller shall not sell or encumber the Property prior to close of escrow.

22. Miscellaneous Provisions

a. Interpretation. The Parties acknowledge and agree that each has been given the opportunity to independently review this Agreement with legal counsel, and/or has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions of this Agreement. The Parties have equal bargaining power and intend the plain meaning of the provisions in this Agreement. In the event of an ambiguity in, or dispute regarding, the interpretation of same, the interpretation of this Agreement shall not be resolved by any rule of interpretation providing for interpretation against the party who causes the uncertainty to exist or against the draftsman.

b. Risk of loss. The risk of loss or damage to the Property and all liability to third persons until the Closing shall be borne by the Seller and thereafter shall be borne by the Buyer.

c. Counterpart and electronic signatures. This Agreement may be executed in several counterparts, each of which shall be deemed 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 page and this Agreement may be executed by the affixing of the signature page of each of the Parties to one of such counterpart signature pages and all such counterpart signature pages shall be attached to one Agreement, and read having the same force and effect as though all of the signatories had signed a single page. Further, the execution and delivery of this Agreement may be effectuated by the use of electronic transmission and the electronic signature shall be considered an original signature.

d. Attorneys' fees. If either Party shall be required to employ an attorney to enforce or defend its rights under this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees, all such fees to be set by the Court and not by the jury.

e. Integration. This Agreement contains the complete agreement between the Parties and cannot be varied except by the written agreement of the Parties. The Parties agree that there are no oral agreements, understandings, representations, or warranties which are not expressly set forth in this Agreement.

f. Binding effect. This Agreement shall inure to the benefit of and bind the Parties and their respective heirs, representatives, successors, and permitted assigns.

g. Dates and time periods. Should the date for the giving of any notice, the performance of any act, or the beginning or end of any period provided for in this Agreement fall on a Saturday, Sunday or other legal holiday, such date shall be extended to the next succeeding business day which is not a Saturday, Sunday or legal holiday.

h. Non-waiver. No delay or failure by either Party to exercise any right under this Agreement and no partial or single exercise of such right will constitute a waiver of that or any other right, unless expressly provided in this Agreement.

i. Assignment. The Buyer shall have no right, without the prior written approval of the Seller, which approval shall not be unreasonably withheld, to sell, assign, or transfer this Agreement or any rights or responsibilities of the Buyer under this Agreement.

j. Not a partnership/no third party beneficiaries. Nothing in this Agreement shall be deemed to create a partnership or joint venture among the Parties. This Agreement is not intended to benefit and shall not be construed as conveying any rights upon any parties other than the Parties to this Agreement.

k. Conflict of interest. This Agreement is subject to A.R.S. § 38-511, which provides for cancellation of contracts by the Buyer for certain conflicts of interest.

l. Choice of law/venue. This Agreement shall be governed by Arizona law. Venue for any action brought under this Agreement shall be Pima County.

m. Time is of the essence. Time is of the essence in the performance of this Agreement.

n. Severability. If any one or more of the provisions of this Agreement or the applicability of any provisions to a specific situation is held to be invalid or unenforceable, the provision will be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all of such provisions of this Agreement and all other application of such provisions will not be affected by any such invalidity or unenforceability.

o. Independent counsel. The Seller and the Buyer each represent and acknowledge that it has had the benefit and advice of independent legal counsel in connection with the preparation and execution of this Agreement or has been advised to seek such counsel and has voluntarily or knowingly chosen not to do so.

p. Notices. Any notice or communication required or permitted under this Agreement shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage fully prepaid, registered or certified mail, addressed to the intended recipient at the address on the signature page of this Agreement or when received if delivered personally. Notices delivered by email shall also be allowed and shall be effective upon transmission provided electronic confirmation of the transmission is kept by the Party giving notice. Any address for notice may be changed by five days prior written notice so given. Any notice to a Party required or permitted under this Agreement shall be delivered to the following:

If to the Seller:

TOWN OF MARANA
Attn: Town Attorney
11555 W. Civic Center Drive, Bldg. A3
Marana, Arizona 85653-7006
jfairall@maranaaz.gov

If to the Buyer:

SOUTHWEST GAS CORPORATION
Attn: Legal Affairs
8360 South Durango Drive
Las Vegas, Nevada 89113
Telephone: (702) 876-7293

If to the Escrow Agent:

Stewart Title & Trust of Tucson
3939 East Broadway Blvd
Tucson AZ 85711

23. Survival of Representation and Warranties. All representations and warranties contained in this Agreement shall survive close of escrow.

24. Entire Agreement. This signed document shall constitute the entire agreement between the Parties. No modification or amendment to this Agreement shall be binding unless in writing and signed by both Parties.

25. Effective Date. As used in this Agreement, the term "Effective Date" shall mean the later of the following dates: (i) the date of the Seller's signature on this Agreement or (ii) the date of the Buyer's signature on this Agreement.

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

THE "SELLER":

TOWN OF MARANA, an Arizona municipal corporation

By:_____
Ed Honea, Mayor

Date: _____

ATTEST:

_____
Town Clerk

APPROVED AS TO FORM:

_____
Town Attorney

THE "BUYER":

SOUTHWEST GAS CORPORATION, a California Corporation

By: _____

Its: _____

Date: _____

STATE OF _____)

ss.

County of _____)

The foregoing instrument was acknowledged before me on _____ by _____, _____ of SOUTHWEST GAS CORPORATION, a California Corporation.

(Seal)

_____
Notary Public

List of Exhibits

Exhibit I Legal Description of Property
Exhibit II Site Plan
Exhibit III Form of Grant of Easement
Exhibit IV Form of Grant of Easement
Exhibit V Temporary Construction Easement

ALTA ARIZONA 2025 W. Ruthrauff Road, Suite 125 · Tucson, Arizona 85705 | Office: 520.398-6651

APN: 217-36-004B

EXHIBIT I
SOUTHWEST GAS CORPORATION

THAT PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN QUIT CLAIM DEED RECORDED IN DOCKET 9018, PAGE 810, OFFICIAL RECORDS PIMA COUNTY, ARIZONA, LOCATED IN THE NORTHEAST QUARTER (NE 1/4) OF SECTION 27, TOWNSHIP 11 SOUTH, RANGE 11 EAST, GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER (NE 1/4), MARKED BY A 3-INCH BRASS CAP SURVEY MONUMENT STAMPED "TOWN OF MARANA RLS 13187 POINT NO. C. 1/4" FROM WHICH THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER (NE 1/4), MARKED BY A 3-INCH BRASS CAP SURVEY MONUMENT STAMPED "TOWN OF MARANA RLS 13187 POINT NO." BEARS NORTH 89°18'47" EAST (BASIS OF BEARINGS), A DISTANCE OF 2,645.98 FEET;

THENCE ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER (NE 1/4) COINCIDENT WITH THE CENTERLINE OF BARNETT ROAD (50' WIDE), NORTH 89°18'47" EAST, A DISTANCE OF 301.82 FEET;

THENCE NORTH 00°41'13" WEST, A DISTANCE OF 75.00 FEET TO **THE POINT OF BEGINNING**;

THENCE CONTINUING NORTH 00°41'13" WEST, A DISTANCE OF 40.00 FEET;

THENCE NORTH 89°18'47" EAST, A DISTANCE OF 110.00 FEET;

THENCE SOUTH 00°41'13" EAST, A DISTANCE OF 40.00 FEET;

THENCE SOUTH 89°18'47" WEST, A DISTANCE OF 110.00 FEET TO THE **POINT OF BEGINNING** AS DEPICTED ON THE **EXHIBIT "A"** ATTACHED HERETO AND MADE A PART HEREOF;

CONTAINING 4,400 SQUARE FEET (0.101 ACRES), MORE OR LESS.

PREPARED BY:
Alta Arizona

PATRICIA GAJDA, RLS

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
46278
PATRICIA
GAJDA
DATE SIGNED 3/3/22
ARIZONA U.S.A.

JOB #200098
DATE: March 3, 2022

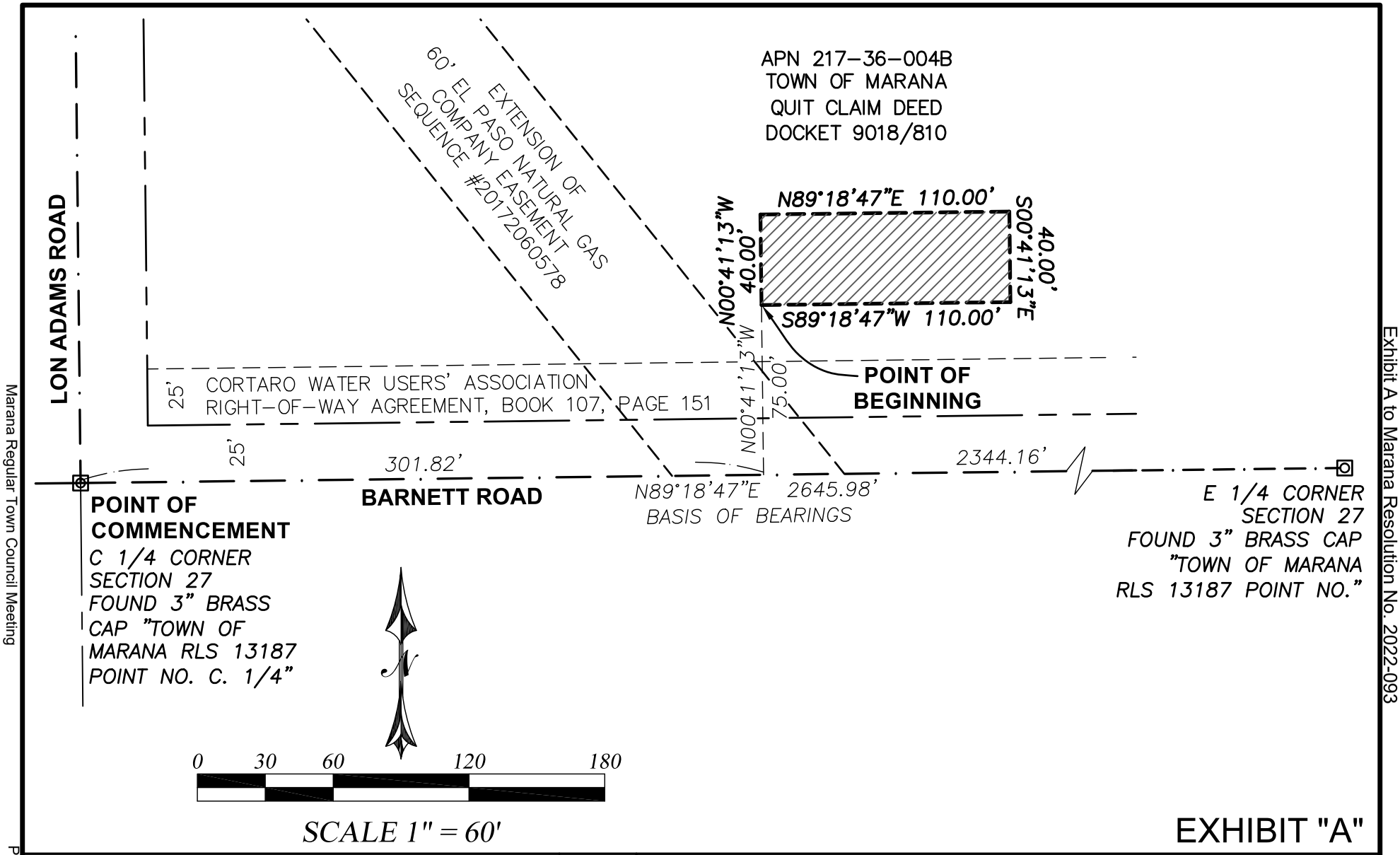


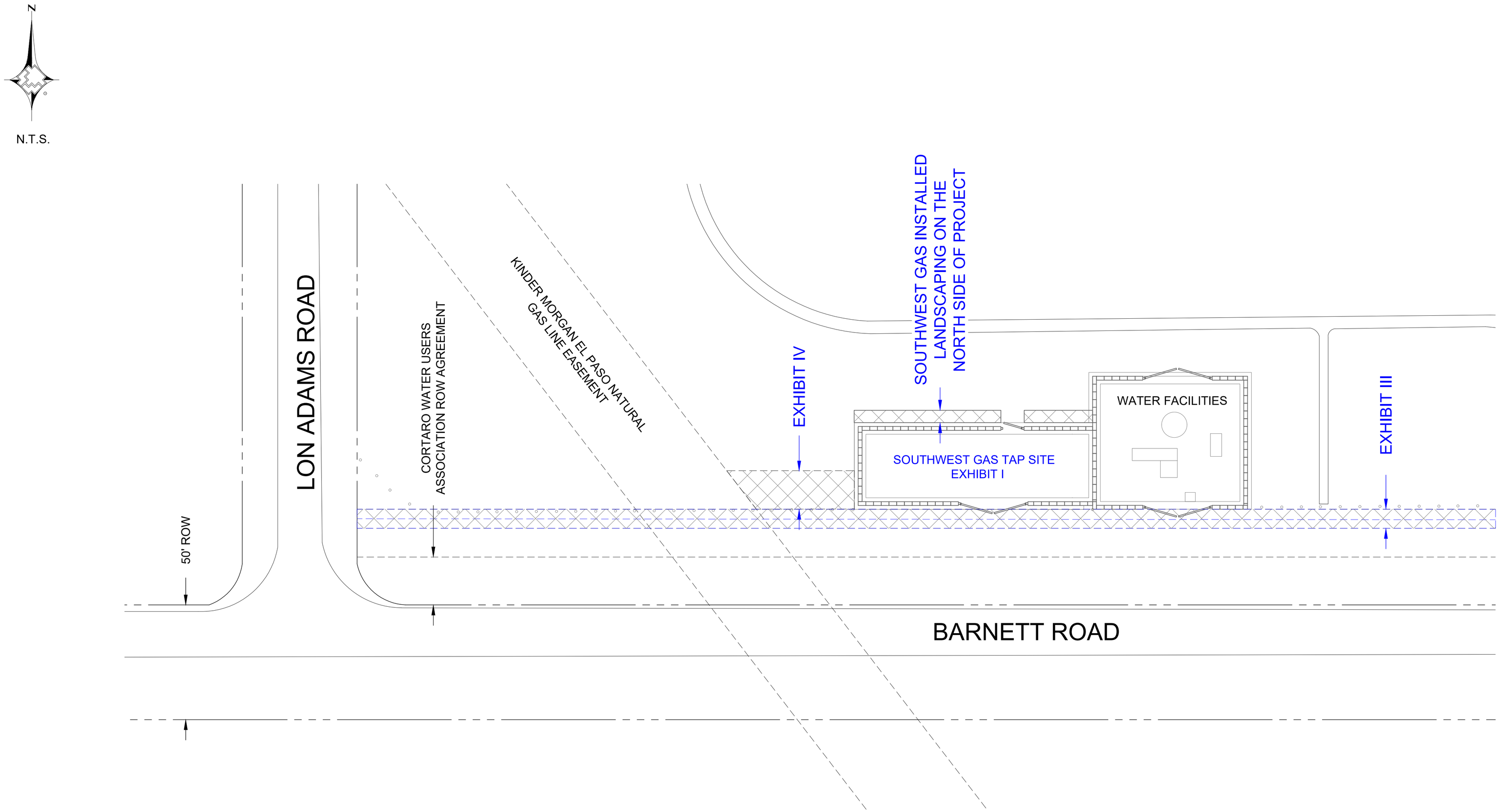
EXHIBIT "A"

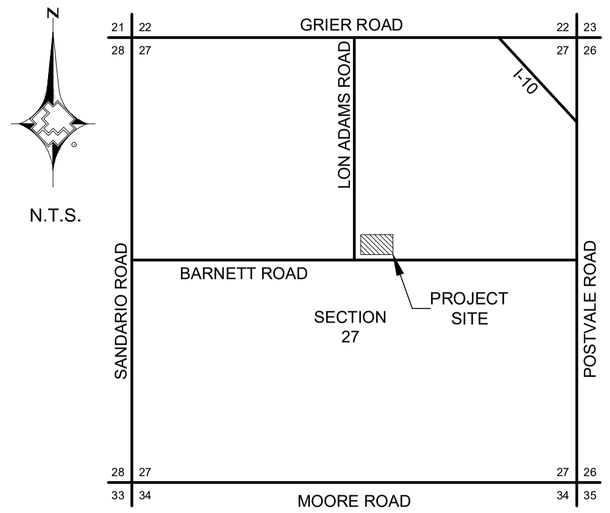
ALTA ARIZONA
SURVEY – ENGINEERING – GEOTECH
2025 W. RUTHRAUFF ROAD, SUITE 125
TUCSON, ARIZONA 85705
(520) 398-6651

TOWN OF MARANA
A PORTION OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 27, TOWNSHIP 11 SOUTH, RANGE 11 EAST, G&SRM, PIMA COUNTY, ARIZONA

Project No.	Drawn By: AD	Date: 3/3/2022
200098	Checked By:PG	Page 2 of 2

Exhibit II





LOCATION MAP
T11S R11E S27
G&SRM

CONTACT ARIZONA 811 AT LEAST
TWO FULL WORKING DAYS
BEFORE YOU BEGIN EXCAVATION

CALL 811 OR CLICK ARIZONA811.COM

SOUTHWEST GAS CORPORATION

Southwest Gas Corporation Confidential and Proprietary Information

For Reference Only - Not Valid for Line Locating Purposes. No representation or warranty is made for the adequacy, accuracy or completeness of the information or depictions shown. **This information is protected from further disclosure under the federal Freedom of Information Act and the Protected Critical Infrastructure Information Act of 2002, and Arizona Revised Statutes § 41-4272.**

This document may not be copied, distributed, or shared to any other person or entity in any manner or form without prior written consent of Southwest Gas Corporation.

REVISIONS

NO.	DESCRIPTION	BY	DATE	APPVD.

PERMIT INFORMATION	ISOLATION AREA	LOCATION	ATLAS OR TILE
	400	T11S R11E S27	1453

36004	
SYSTEM MAOP:	60
SYSTEM MOP:	60
SYSTEM MAOP:	
SYSTEM MOP:	

JOB TYPE
- HP SERVICE ☐
- DISTRIBUTION ☐
- FEEDER ☐
- TRANS. BY DEF ☐
- TRANS > 20% ☐

WR NO.: ----

RELATED WR NO.S

ENGINEER/TECHNICIAN ERIKA FUND		PHONE: 520-429-9283
ACCOUNT REP. WILL FIELDER		PHONE: 602-395-4067
PROJECT CONTACT		PHONE:
SHEET NO. 1 OF 1	SCALE N.T.S	DATE ----
DWN. BY EEF	CHKD. BY EEF	APPVD. BY RDD

EXHIBIT II
SOUTHWEST GAS TAP SITE PLAN

Exhibit III

Recording Requested By/Return To:
Southwest Gas Corporation
Attn: Whitney Budinoff, MC 36O-580
3401 E. Gas Road
Tucson, AZ 85714-1994

APN 217-36-004B
13250 N Lon Adams Rd

SOUTHWEST GAS CORPORATION®

GRANT OF EASEMENT

This form is used to acquire land rights for installation of pipeline(s) and appurtenances.

Prepared By	WDB2	Reviewed By	
Sec. 27	T 11S R 11E	Meridian	G&SR
County	Pima	State	Arizona
WR No.	3697313	LRS No.	12363

I (We) the Town of Marana, a body politic

For and in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, the undersigned, hereinafter referred to as Grantor(s), does hereby grant, convey, quitclaim and release unto **SOUTHWEST GAS CORPORATION**, a California Corporation, its successors, assigns, licensees, and invitees as reasonably necessary to effect the purpose of the easement, hereinafter referred to as Grantee, a perpetual easement for the installation and maintenance of a natural gas pipeline or pipelines and appurtenances, across, over, under and through the following described property, to wit:

SEE ATTACHED EXHIBIT(s) "III" & "A"

together with the right of ingress and egress to and from the said easement and the right to use existing roads for the purpose of constructing, inspecting, repairing, and maintaining said pipeline or pipelines and appurtenances and the removal or replacement of same, in whole or in part, at will.

Grantor agrees that no buildings, structures, fences or trees shall be placed upon, over or under said parcel of land, except for street, road or driveway purposes, which Grantor agrees shall not interfere with Grantee's exercise of the rights herein granted. Grantee agrees to work with due care in the exercise of its rights on the property and to restore it to reasonably the same condition which existed before the work was performed.

Except as provided above, Grantee agrees to pay all direct damages which are caused by the Grantee's exercise of the rights herein granted.

Form 335.00 (08/2015) 581 - Microsoft Word ***Link to Form Instructions***

W.R. No. **3697313** LRS No. **12363**

The undersigned hereby affirms that there is no Social Security Number contained in this document submitted for recording.

TO HAVE AND TO HOLD said easement unto Grantee, its successors, assigns, licensees, and invitees, together with all rights granted hereby.

IN WITNESS WHEREOF, the duly authorized representative of the undersigned has executed this Grant of Easement this

_____ day of _____ , _____ .

Town of Marana

Grantor _____

Signature

Grantor _____

Print name and title

ACKNOWLEDGMENT

STATE OF _____)
)
COUNTY OF _____)

On _____ , before me, _____ ,
(here insert name of the officer)

a notary public, personally appeared _____

_____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Form 335.00 (08/2015) 581 - Microsoft Word

ALTA ARIZONA 2025 W. Ruthrauff Road, Suite 125 · Tucson, Arizona 85705 | Office: 520.398-6651

APN: 217-36-004B

EXHIBIT III
SOUTHWEST GAS CORPORATION

THAT PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN QUIT CLAIM DEED RECORDED IN DOCKET 9018, PAGE 810, OFFICIAL RECORDS PIMA COUNTY, ARIZONA, LOCATED IN THE NORTHEAST QUARTER (NE 1/4) OF SECTION 27, TOWNSHIP 11 SOUTH, RANGE 11 EAST, GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER (NE 1/4), MARKED BY A 3-INCH BRASS CAP SURVEY MONUMENT STAMPED "TOWN OF MARANA RLS 13187 POINT NO. C. 1/4" FROM WHICH THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER (NE 1/4), MARKED BY A 3-INCH BRASS CAP SURVEY MONUMENT STAMPED "TOWN OF MARANA RLS 13187 POINT NO." BEARS NORTH 89°18'47" EAST (BASIS OF BEARINGS), A DISTANCE OF 2,645.98 FEET;

THENCE ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER (NE 1/4) COINCIDENT WITH THE CENTERLINE OF BARNETT ROAD (50' WIDE), NORTH 89°18'47" EAST, A DISTANCE OF 1,124.58 FEET;

THENCE NORTH 00°41'13" WEST, A DISTANCE OF 50.00 FEET TO **THE POINT OF BEGINNING**;

THENCE CONTINUING NORTH 00°41'13" WEST, A DISTANCE OF 10.00 FEET;

THENCE SOUTH 89°18'47" WEST, A DISTANCE OF 1,094.50 FEET TO THE EAST RIGHT-OF-WAY LINE OF LON ADAMS ROAD (60' WIDE);

THENCE ALONG SAID EAST RIGHT-OF-WAY LINE, NORTH 00°36'49" WEST, A DISTANCE OF 15.00 FEET;

THENCE NORTH 89°18'47" EAST, A DISTANCE OF 1,210.52 FEET TO THE EASTERLY LINE OF SAID PARCEL OF LAND DESCRIBED IN SAID QUIT CLAIM DEED RECORDED IN DOCKET 9018, PAGE 810;

THENCE ALONG SAID EASTERLY LINE, SOUTH 00°09'43" WEST, A DISTANCE OF 25.00 FEET;

THENCE SOUTH 89°18'47" WEST, A DISTANCE OF 115.67 FEET TO THE **POINT OF BEGINNING** AS DEPICTED ON THE **EXHIBIT "A"** ATTACHED HERETO AND MADE A PART HEREOF;

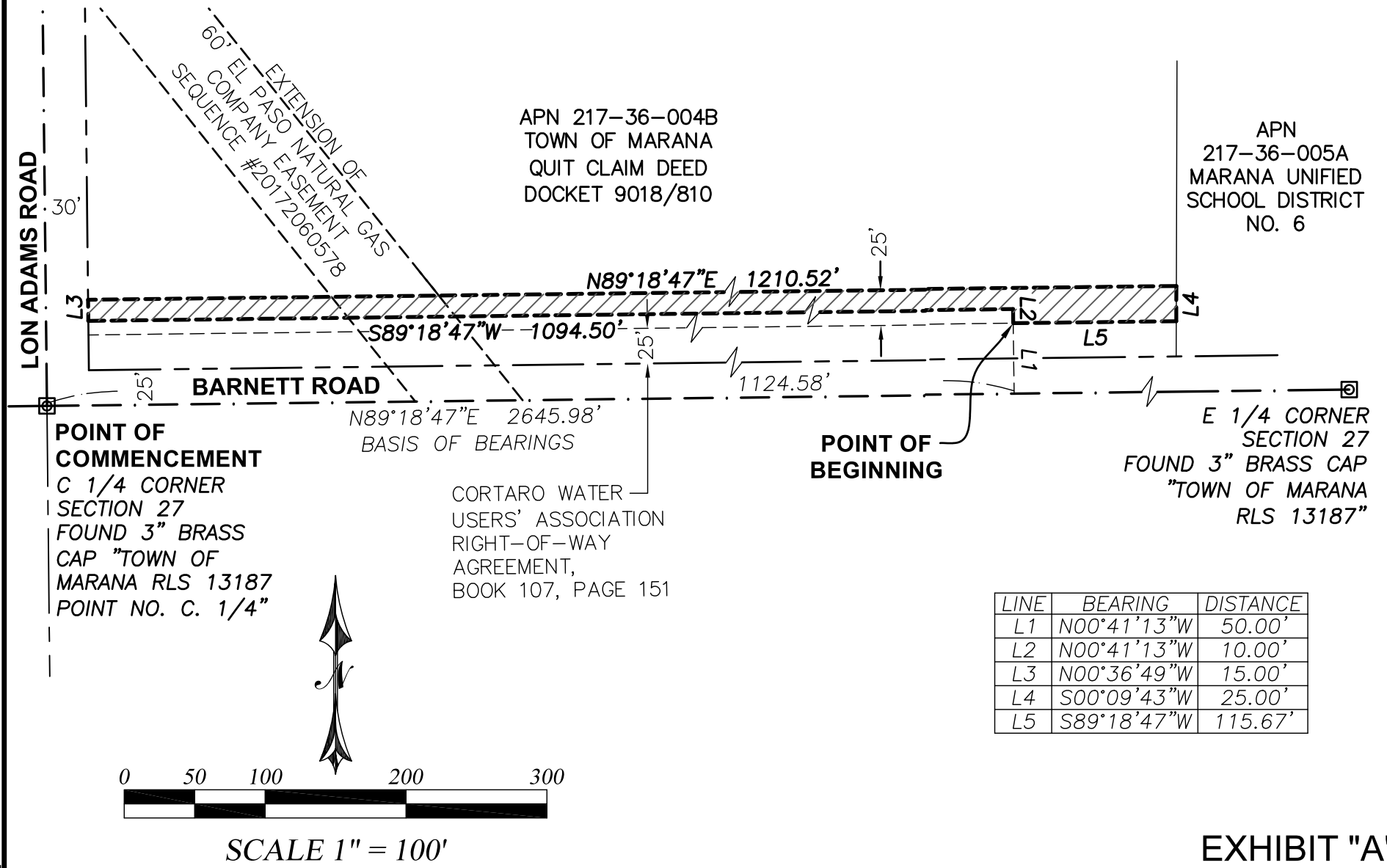
CONTAINING 19,314 SQUARE FEET (0.443 ACRES), MORE OR LESS.

PREPARED BY:
Alta Arizona

PATRICIA GAJDA, RLS

JOB #200098
DATE: March 3, 2022

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
46278
PATRICIA
GAJDA
DATE SIGNED 3/3/22
ARIZONA U.S.A.



LINE	BEARING	DISTANCE
L1	N00°41'13"W	50.00'
L2	N00°41'13"W	10.00'
L3	N00°36'49"W	15.00'
L4	S00°09'43"W	25.00'
L5	S89°18'47"W	115.67'

EXHIBIT "A"

ALTA ARIZONA
SURVEY – ENGINEERING – GEOTECH
2025 W. RUTHRAUFF ROAD, SUITE 125
TUCSON, ARIZONA 85705
(520) 398-6651

TOWN OF MARANA
A PORTION OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 27, TOWNSHIP 11 SOUTH, RANGE 11 EAST, G&SRM, PIMA COUNTY, ARIZONA

Project No.	Drawn By: AD	Date: 3/3/2022
200098	Checked By:PG	Page 2 of 2

Exhibit IV

Recording Requested By/Return To:
Southwest Gas Corporation
Attn: Whitney Budinoff, MC 36O-580
3401 E. Gas Road
Tucson, AZ 85714-1994

APN 217-36-004B
13250 N Lon Adams Rd

SOUTHWEST GAS CORPORATION®

GRANT OF EASEMENT

This form is used to acquire land rights for installation of pipeline(s) and appurtenances.

Prepared By	WDB2	Reviewed By	
Sec. 27	T 11S R 11E	Meridian	G&SR
County	Pima	State	Arizona
WR No.	3697313	LRS No.	12363

I (We) the Town of Marana, a body politic

For and in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, the undersigned, hereinafter referred to as Grantor(s), does hereby grant, convey, quitclaim and release unto **SOUTHWEST GAS CORPORATION**, a California Corporation, its successors, assigns, licensees, and invitees as reasonably necessary to effect the purpose of the easement, hereinafter referred to as Grantee, a perpetual easement for the installation and maintenance of a natural gas pipeline or pipelines and appurtenances, across, over, under and through the following described property, to wit:

SEE ATTACHED EXHIBIT(s) "IV", "A" & Addendum Attached Hereto and Made a Part Hereof

together with the right of ingress and egress to and from the said easement and the right to use existing roads for the purpose of constructing, inspecting, repairing, and maintaining said pipeline or pipelines and appurtenances and the removal or replacement of same, in whole or in part, at will.

Grantor agrees that no buildings, structures, fences or trees shall be placed upon, over or under said parcel of land, except for street, road or driveway purposes, which Grantor agrees shall not interfere with Grantee's exercise of the rights herein granted. Grantee agrees to work with due care in the exercise of its rights on the property and to restore it to reasonably the same condition which existed before the work was performed.

Except as provided above, Grantee agrees to pay all direct damages which are caused by the Grantee's exercise of the rights herein granted.

Form 335.00 (08/2015) 581 - Microsoft Word ***Link to Form Instructions***

W.R. No. **3697313** LRS No. **12363**

The undersigned hereby affirms that there is no Social Security Number contained in this document submitted for recording.

TO HAVE AND TO HOLD said easement unto Grantee, its successors, assigns, licensees, and invitees, together with all rights granted hereby.

IN WITNESS WHEREOF, the duly authorized representative of the undersigned has executed this Grant of Easement this

_____ day of _____ , _____ .

Town of Marana

Grantor _____

Signature

Grantor _____

Print name and title

ACKNOWLEDGMENT

STATE OF _____)
)
COUNTY OF _____)

On _____ , before me, _____ ,
(here insert name of the officer)

a notary public, personally appeared _____

_____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Form 335.00 (08/2015) 581 - Microsoft Word

ALTA ARIZONA 2025 W. Ruthrauff Road, Suite 125 · Tucson, Arizona 85705 | Office: 520.398-6651

APN: 217-36-004B

EXHIBIT IV
SOUTHWEST GAS CORPORATION

THAT PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN QUIT CLAIM DEED RECORDED IN DOCKET 9018, PAGE 810, OFFICIAL RECORDS PIMA COUNTY, ARIZONA, LOCATED IN THE NORTHEAST QUARTER (NE 1/4) OF SECTION 27, TOWNSHIP 11 SOUTH, RANGE 11 EAST, GILA AND SALT RIVER MERIDIAN, PIMA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER (NE 1/4), MARKED BY A 3-INCH BRASS CAP SURVEY MONUMENT STAMPED "TOWN OF MARANA RLS 13187 POINT NO. C. 1/4" FROM WHICH THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER (NE 1/4), MARKED BY A 3-INCH BRASS CAP SURVEY MONUMENT STAMPED "TOWN OF MARANA RLS 13187 POINT NO." BEARS NORTH 89°18'47" EAST (BASIS OF BEARINGS), A DISTANCE OF 2,645.98 FEET;

THENCE ALONG THE SOUTH LINE OF SAID NORTHEAST QUARTER (NE 1/4) COINCIDENT WITH THE CENTERLINE OF BARNETT ROAD (50' WIDE), NORTH 89°18'47" EAST, A DISTANCE OF 301.82 FEET;

THENCE NORTH 00°41'13" WEST, A DISTANCE OF 75.00 FEET TO **THE POINT OF BEGINNING**;

THENCE SOUTH 89°18'47" WEST, A DISTANCE OF 22.88 FEET TO THE NORTHEASTERLY LINE OF THAT CERTAIN 60' EL PASO NATURAL GAS COMPANY EASEMENT GRANTED PER SEQUENCE NO. 20172060578;

THENCE ALONG SAID NORTHEASTERLY LINE, NORTH 38°41'49" WEST, A DISTANCE OF 21.58 FEET;

THENCE NORTH 89°18'47" EAST, A DISTANCE OF 36.17 FEET;

THENCE SOUTH 00°41'13" EAST, A DISTANCE OF 17.00 FEET TO THE **POINT OF BEGINNING** AS DEPICTED ON THE **EXHIBIT "A"** ATTACHED HERETO AND MADE A PART HEREOF.

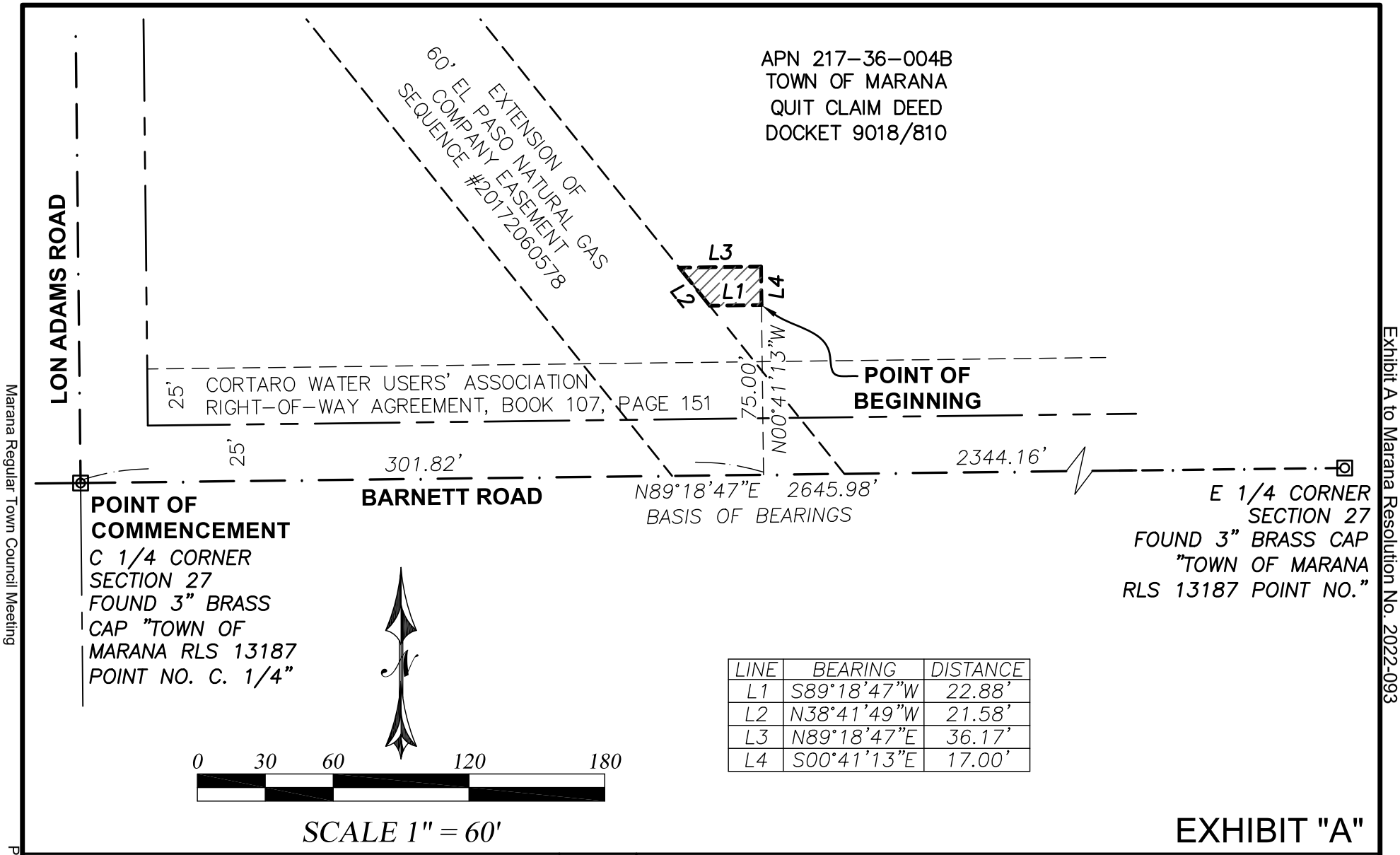
CONTAINING 502 SQUARE FEET (0.012 ACRES), MORE OR LESS.

PREPARED BY:
Alta Arizona

PATRICIA GAJDA, RLS

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
46278
PATRICIA
GAJDA
DATE SIGNED 3/3/22
ARIZONA U.S.A.

JOB #200098
DATE: March 3, 2022



LINE	BEARING	DISTANCE
L1	S89°18'47"W	22.88'
L2	N38°41'49"W	21.58'
L3	N89°18'47"E	36.17'
L4	S00°41'13"E	17.00'

EXHIBIT "A"

ALTA ARIZONA

SURVEY – ENGINEERING – GEOTECH
2025 W. RUTHRAUFF ROAD, SUITE 125
TUCSON, ARIZONA 85705
(520) 398-6651

TOWN OF MARANA
A PORTION OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 27, TOWNSHIP 11 SOUTH, RANGE 11 EAST, G&SRM, PIMA COUNTY, ARIZONA

Project No.	Drawn By: AD	Date: 3/3/2022
200098	Checked By:PG	Page 2 of 2

Addendum
SOUTHWEST GAS CORPORATION
GRANT OF EASEMENT
WR # 3697313 / LRS # 12363
Page 5 of 5

APN 217-36-004B

This Addendum is attached to and made a part of the Southwest Gas Corporation Grant of Easement ("GOE") between Town of Marana, a body politic (as "Grantor"), and Southwest Gas Corporation (As "Grantee"). This Addendum shall govern in the event of conflict with the stated terms of the GOE.

1. Grantee agrees to work with due care in the exercise of its rights on the Grantor's property, to exercise its rights hereunder in a manner so as not to damage Grantor's real property or any property that may at any time be located thereon, and to promptly repair and restore Grantor's property to substantially the same condition which existed before the work was performed.
2. In the event Grantor requires the relocation of the natural gas facilities that are the subject of this GOE; then, provided that equivalent easement rights and property are provided at no cost to Grantee, Grantee shall relocate the natural gas facilities and commence the proper abandonment of the subject natural gas facilities. Grantee shall commence such relocation efforts within sixty (60) days of receipt of Grantor's written request. Grantor shall be responsible for all such relocation and abandonment costs incurred by Grantee.
3. Upon completion of the relocation and abandonment work, and the granting of a new GOE for the relocated facilities, Grantee shall record and deliver to Grantor a release of its easement rights for the Easement Area that is the subject of this GOE and Addendum within thirty (30) days of completion of such work.
3. All other provisions of the GOE remain as written.

The duly-authorized representatives of the Parties have executed this Addendum, to be effective as of the effective date of the GOE.

"**GRANTEE**"
Southwest Gas Corporation,
a California corporation

By: _____

Title: _____

Printed Name: _____

Date: _____

"GRANTOR"
Town of Marana
a body politic

By: _____

Title: _____

Printed Name: _____

Date: _____

Exhibit V

Recording Requested By/Return To:
Southwest Gas Corporation
Attn: W. Budinoff; MC 36O-580
PO Box 26500
Tucson, AZ 85726-6500

APN 217-36-004B
13250 N Lon Adams Rd

SOUTHWEST GAS CORPORATION®

TEMPORARY EASEMENT

This form is used to acquire land rights for installation of pipeline(s) and appurtenances.

Prepared By	WDB2	Reviewed By	
Sec. 27	T 11S R 11E	Meridian	Gila & Salt River
County	Pima	State	Arizona
W.R. No.	3669427	W.O. No.	12363

I (We) the Town of Marana, a body politic

For and in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, the undersigned, hereinafter referred to as Grantor(s), does hereby grant, convey, quitclaim and release unto **SOUTHWEST GAS CORPORATION**, a California Corporation, hereinafter referred to as Grantee, a temporary easement for the installation and maintenance of a natural gas pipeline or pipelines and appurtenances, across, over, under and through the following described property, to wit:

SEE ATTACHED EXHIBIT(s) "A" & "B"

together with the right of ingress and egress to and from the said easement and the right to use existing roads for the purpose of constructing, inspecting, repairing, and maintaining said pipeline or pipelines and appurtenances and the removal or replacement of same, in whole or in part, at will.

That said use of described temporary easement be restricted to a period of time not to exceed 36 months from the date of this instrument, or the completion of construction, whichever is the latter.

Grantor agrees that no buildings, structures, fences or trees shall be placed upon, over or under said parcel of land, except for street, road or driveway purposes, which Grantor agrees shall not interfere with Grantee's exercise of the rights herein granted. Grantee agrees to work with due care in the exercise of its rights on the property and to restore it to reasonably the same condition which existed before the work was performed.

This temporary easement shall be subject to all existing encumbrances.

Except as provided above, Grantee agrees to pay all direct damages which are caused by Grantee's exercise of the rights herein granted.

Form 335.08 (09/2014) 581 - Microsoft Word ***Link to Form Instructions***

Page 2 of 4 APN # 217-36-004B

W.R. No. 3697313 W.O. No. 12363

The undersigned hereby affirms that there is no Social Security Number contained in this document submitted for recording.

TO HAVE AND TO HOLD said temporary easement unto Grantee, its successors and assigns, together with all rights granted hereby.

IN WITNESS WHEREOF, the duly authorized representative of the undersigned has executed this Temporary Easement

this _____ day of _____ , _____ .

Town of Marana

Grantor _____

Signature

Grantor _____

Print name and title

ACKNOWLEDGMENT

STATE OF _____)
)
COUNTY OF _____)

On _____ , before me, _____ ,
(here insert name of the officer)

a notary public, personally appeared _____

_____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

Form 335.08 (09/2014) 581 - Microsoft Word

EXHIBIT “A”

SOUTHWEST GAS CORPORATION
TEMPORARY EASEMENT
LRS # 12363
Page 3 of 4

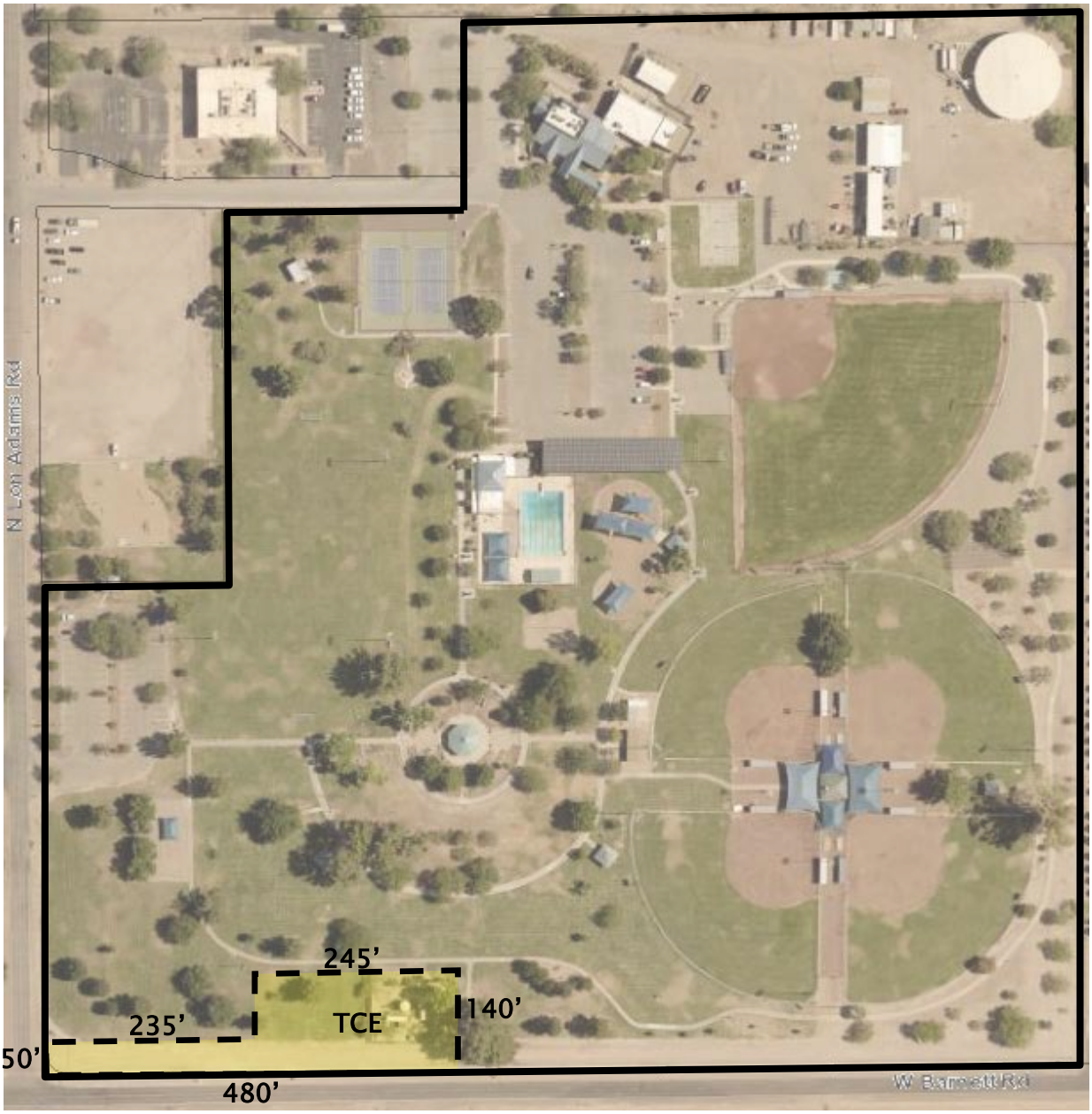
APN 217-36-004B

THAT PORTION OF THE SOUTHWEST QUARTER (SW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION 27, TOWNSHIP 11 SOUTH, RANGE 11 EAST, GILA AND SALT RIVER BASE AND MERIDIAN, PIMA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE SOUTHERLY 50.00 FEET OF THE WESTERLY 235.00 FEET AND THE SOUTHERLY 140.00 FEET OF THE EASTERLY 245.00 FEET OF THE WESTERLY 480.00 FEET OF A PARCEL OF LAND AS DESCRIBED IN QUIT CLAIM DEED RECORDED IN OFFICIAL RECORDS OF PIMA COUNTY, ARIZONA, IN DOCKET 9018, PAGE 810, ON APRIL 16, 1991.

EXHIBIT “B”

SOUTHWEST GAS CORPORATION
TEMPORARY EASEMENT
LRS # 12363
Page 4 of 4



N↑ / LOCATION IS APPROXIMATE / NOT TO SCALE

Council-Regular Meeting **D2**

Meeting Date: 09/06/2022

To: Mayor and Council

Submitted For: Terry Rozema, Town Manager

From: Andrea Caicedo, Assistant to the Town Manager

Date: September 6, 2022

Strategic Plan Focus Area:
Not Applicable

Subject: Resolution No. 2022-094: Relating to Strategic Planning; approving and authorizing implementation of Marana Strategic Plan Five (Terry Rozema)

Discussion:

The Marana Town Council adopted the first Strategic Plan in 2008, and this version will be the fifth iteration of the plan. In early 2022, the Town began the process to update the strategic plan and set new priorities that will guide municipal operations over the next few years.

The strategic planning process involved community and stakeholder input and several working sessions with Department Leadership and Council. The Town Manager's Office facilitated discussions with the Town Council on all aspects of the plan. On August 9, 2022, a Town Council study session was held to obtain final comments and recommendations from Council. Staff worked through these recommendations to incorporate them into a comprehensive document that reflects Council's vision and strategy for Marana. The following five focus areas are identified in the plan:

1. Cherished Heritage
2. Vibrant Community
3. Thriving Commerce
4. Healthy Lifestyles
5. Proactive Public Services

If Council approves the proposed Strategic Plan Five document, Town staff will begin the implementation process of the strategies outlined in the plan through Envisio, a strategic planning and performance management software. Frequent reports will be provided to Council and the public concerning strategic plan progress.

Staff Recommendation:

Staff recommends approval of Strategic Plan Five.

Suggested Motion:

I move to adopt Resolution No. 2022-094; approving Marana Strategic Plan Five.

Attachments

Resolution No. 2022-094

Exhibit A to Resolution (Strategic Plan Five)

MARANA RESOLUTION NO. 2022-094

RELATING TO STRATEGIC PLANNING; APPROVING AND AUTHORIZING IMPLEMENTATION OF MARANA STRATEGIC PLAN FIVE

WHEREAS the Town of Marana has engaged in a process to update the key focus areas and strategies that constitute the Town of Marana Strategic Plan; and

WHEREAS the Town of Marana has updated its Strategic Plan document to serve as the foundation for the Town's future, including land use planning, budget development, and assessment of individual and organizational performance; and

WHEREAS the Town Council finds that adoption of the updated Town of Marana Strategic Plan is in the best interests of the Town and its residents.

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

SECTION 1. The Town of Marana Strategic Plan Five, attached to and incorporated by this reference in this resolution as Exhibit A, is hereby approved, and the Town Manager is hereby authorized to implement it for and on behalf of the Town of Marana.

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

PASSED AND ADOPTED by the Mayor and Council of the Town of Marana, Arizona, this 6th day of September 2022.

Mayor Ed Honea

ATTEST:

APPROVED AS TO FORM:

David Udall, Interim Town Clerk

Jane Fairall, Town Attorney

STRATEGIC PLAN

MARANA AZ
CELEBRATING 45 YEARS

MAYOR
ED HONEA

On behalf of the Town Council, I am pleased to present the Town of Marana's fifth strategic plan.

Marana has come a long way since its beginnings as a ranching and agricultural community of only 1,500 residents. Now, celebrating 45 years, Marana is the fastest growing community in Southern Arizona with over 55,000 residents. Over the decades, we have been deliberate in our efforts to make Marana the best place to live and grow a business, and we have made great strides through our strategic plans.

As we look ahead, Council's vision for Marana is to be a trailblazing community that raises the bar for the best quality of life. Through this commitment to our community, this strategic plan is built on five focus areas – Cherished Heritage, Vibrant Community, Thriving Commerce, Healthy Lifestyles, and Proactive Public Services. The focus areas, with their corresponding goals, will guide the work in all Town service areas for the next three years. Strategic Plan 5 is a living document and a roadmap that will help us achieve Marana's vision and improve the lives of our citizens.

I want to convey my appreciation to our residents, local businesses, and community partners for their input during the strategic planning process, Town staff for their hard work, and Council for their leadership and commitment to Marana. As you read this document, I hope you all agree that we have a bright future ahead.

Sincerely,

Mayor Ed Honea

MARANA TOWN COUNCIL

VICE MAYOR
JON POST

COUNCILMEMBER
PATTI COMERFORD

COUNCILMEMBER
HERB KAI

COUNCILMEMBER
ROXANNE ZIEGLER

COUNCILMEMBER
JOHN OFFICER

COUNCILMEMBER
JACKIE CRAIG

COMMUNITY PROFILE

YEAR OF INCORPORATION
1977

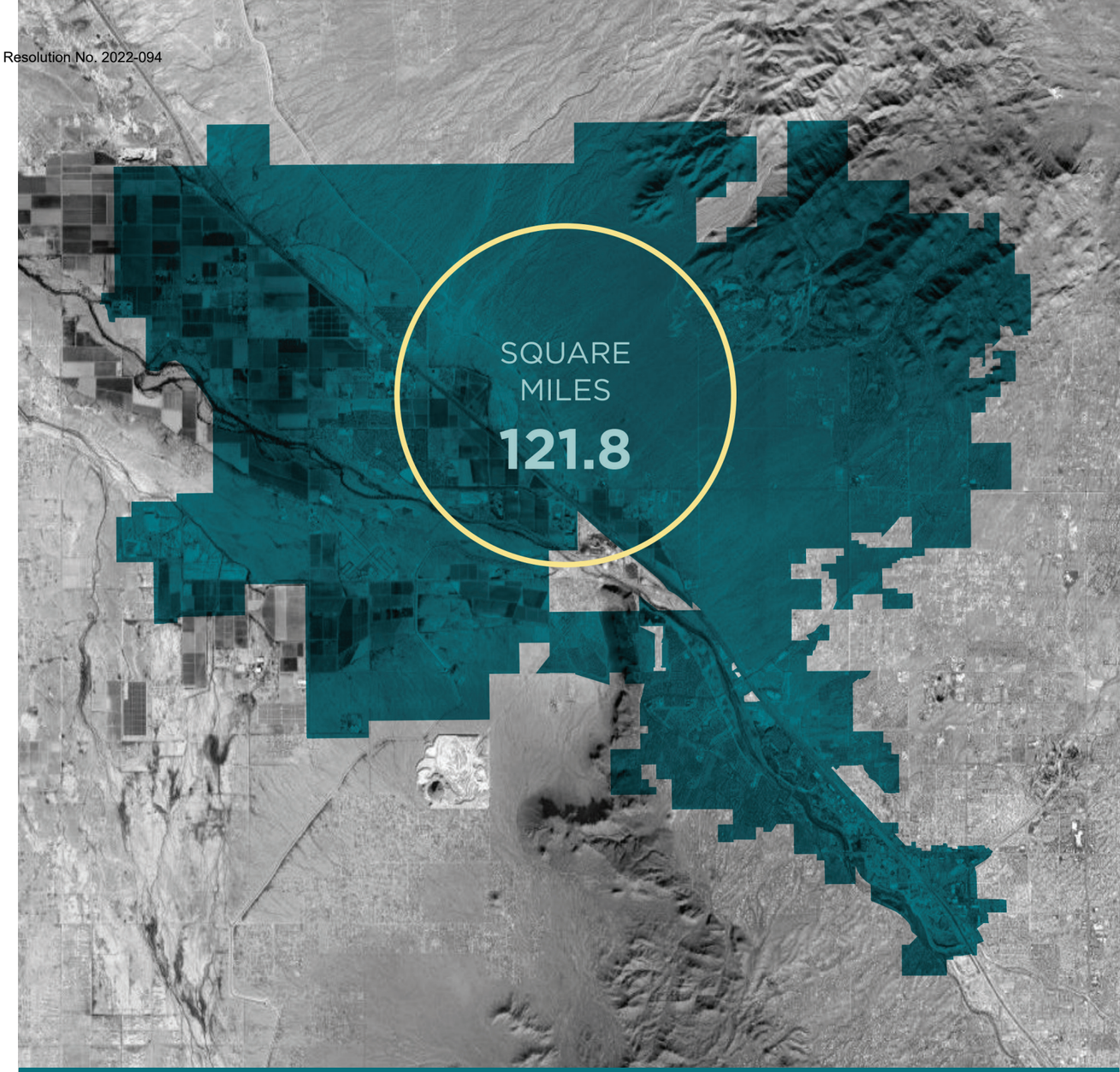
TOWN POPULATION
55,000+

TOWN PARKS
14

SQUARE MILES
121.8

NUMBER OF HOUSEHOLDS
20,000+

MEDIAN HOUSEHOLD INCOME
$90,302



MARANA AZ
CELEBRATING 45 YEARS

TOWN BOUNDARIES

VISION:

Marana is a trailblazing community that raises the bar for the best quality of life.

MISSION:

Five-star service for a thriving community.

VALUES:

Dedicated Service

Respect

Teamwork

Engaged Innovation

FOCUS AREAS

CHERISHED HERITAGE:

Leverage the region's historic and cultural legacy to strengthen community character, increase community pride, and build heritage-driven tourism.

VIBRANT COMMUNITY:

Strengthen the sense of place and create opportunities for community connections.

THRIVING COMMERCE:

Recruit and maintain a diverse commercial sector that is supported by local workforce training and funding opportunities.

HEALTHY LIFESTYLES:

Provide a variety of recreational, artistic, and cultural opportunities along with a flourishing natural environment to support healthy and active lifestyles.

PROACTIVE PUBLIC SERVICES:

Foster an open atmosphere that embraces change, creativity, innovation and calculated risk, and maintains the Town's high quality customer service.

"FOCUS AREA 1: CHERISHED HERITAGE

Leverage the region's historic and cultural legacy to strengthen community character, increase community pride, and build heritage-driven tourism."

GOAL 1: IMPROVE RECOGNITION AND AWARENESS OF MARANA'S UNIQUE AND RICH HERITAGE.

STRATEGY: Prepare a Marana Cultural and Heritage Preservation Plan that provides a comprehensive record of local historic and cultural resources, and includes strategies for celebrating the Town's unique identity.

STRATEGY: Create educational programs and initiatives that increase community awareness of the Town's rich heritage.

GOAL 2: EMBED HERITAGE IN POLICY AND PLANNING TO ENSURE CONTINUED PRESERVATION OF MARANA'S HERITAGE.

STRATEGY: Further advance development of Marana Heritage Park.

STRATEGY: Expand current art policy to require the integration of public art into public and private development projects that captures Marana's heritage.

GOAL 3: PROVIDE LOCATIONS WHERE RESIDENTS CAN CELEBRATE AND LEARN ABOUT MARANA'S HISTORY AND TRADITIONS.

STRATEGY: Develop strategies to leverage developments, public facilities, events, and amenities to embed heritage-related art features and cultural expression.

STRATEGY: Identify heritage sites for the establishment of a heritage museum facility.

"FOCUS AREA 2: VIBRANT COMMUNITY

Strengthen the sense of place and create opportunities for community connections."

GOAL 1: ESTABLISH A STRONG SENSE OF PLACE THROUGH THE CREATION OF UNIQUE PUBLIC SPACES AND ARCHITECTURE THAT FOSTER COMMUNITY PRIDE.

STRATEGY: Build a Marana-wide lifestyle brand that reflects Marana's unique character and identity.

STRATEGY: Enhance architectural sites and landscape design standards to increase compatibility with adjacent existing or planned uses while minimizing impacts to the natural environment.

STRATEGY: Work with Marana Unified School District, MHC Healthcare, Northwest Fire District, and other institutional partners to identify and develop venues for expressing local arts, music, and cultural talent in public spaces and facilities within the community.

GOAL 2: PROVIDE HIGH-LEVEL PUBLIC SAFETY SERVICES THAT STRENGTHEN MARANA'S REPUTATION AS A SAFE AND SECURE TOWN.

STRATEGY: Prepare an annual report that tracks department performance per industry standards and recommends strategies to improve overall community safety while increasing the level of public trust in the Marana Police Department.

STRATEGY: Support a safe and informed community through the implementation of public safety educational programs, events, surveys, and other outreach channels.

GOAL 3: PROVIDE A SAFE AND CONNECTED MULTI-MODAL TRANSPORTATION SYSTEM TO SUPPORT THE MOBILITY NEEDS OF PRESENT AND FUTURE RESIDENTS.

STRATEGY: Update the Transportation Master Plan to reflect community needs and to support a Complete Streets approach to street design.

STRATEGY: Improve safety for people using all modes of travel by implementing programs, policies, educational resources, and infrastructure improvements to minimize traffic congestion.

GOAL: SUPPORT INITIATIVES THAT ENHANCE THE QUALITY OF MARANA NEIGHBORHOODS.

STRATEGY: Provide programs for animal welfare, community beautification, safe hazardous waste disposal, and recycling.

STRATEGY: Locate, engage, and conduct a community needs assessment and revitalization plan that prioritizes areas in need.

STRATEGY: Accept the U.S. Department of Housing and Urban Development's invitation to become a metropolitan city and operate our own Community Block Grant Program.

STRATEGY: Encourage housing options by analyzing current available housing and identify incentives and codes to further diversify housing stock and improve affordability.

GOAL: INVITE CITIZEN INVOLVEMENT AND DELIVER TRANSPARENT AND TIMELY DISTRIBUTION OF INFORMATION THROUGH A VARIETY OF TRADITIONAL AND INNOVATIVE PLATFORMS.

STRATEGY: Pursue meaningful topics with the Marana Citizens' Forum with the intent to enhance public service excellence, and explore pathways to track and report implementation of their recommendations.

STRATEGY: Grow the Town's communication reach using digital platforms and media campaigns to provide accurate and timely information about organizational services, programs, and achievements.

STRATEGY: Create effective and consistent methods for seeking and tracking community input into ongoing plans and recommendations for improving Town services.

"FOCUS AREA 3: THRIVING COMMERCE

Recruit and maintain a diverse commercial sector that is supported by local workforce training and funding opportunities."

GOAL: **PROVIDE A SUPPORTIVE ENVIRONMENT FOR INDUSTRY LEADERS, STARTUPS, SMALL BUSINESSES, AND ENTREPRENEURS THROUGH EVERY STAGE OF BUSINESS DEVELOPMENT.**

STRATEGY: Evaluate and implement economic development tools and strategies to support the retention and expansion of Marana key employers and attract new compatible sectors.

STRATEGY: Develop and implement strategies that strengthen key employment and business centers.

STRATEGY: Develop a conceptual vision, design standards, and implementation strategy for Downtown Marana.

GOAL: **EXPAND MARANA'S THRIVING TOURISM INDUSTRY BY PROMOTING ITS HERITAGE, CULTURAL RESOURCES, SCENIC OPEN SPACES, AND SIGNATURE EVENTS.**

STRATEGY: Expand Marana's tourism efforts and enhance its regional relevance through a comprehensive assessment of the Town's strengths and unique offerings.

STRATEGY: Continue to enhance visitor experiences and partner with stakeholders to promote Marana's entertainment, recreation, sports and cultural events, and hospitality venues.

GOAL: **MAXIMIZE THE ECONOMIC IMPACT OF THE AIRPORT BY IDENTIFYING AND RECRUITING AVIATION AND NON-AVIATION-RELATED INDUSTRIES FOR BUSINESS DEVELOPMENT OPPORTUNITIES.**

STRATEGY: Update the Airport Master Plan to provide the framework needed to guide future airport development.

STRATEGY: Develop a marketing campaign that leverages the advantages of the Marana Airport as a business travel destination and operations hub.

GOAL: **COLLABORATE WITH ACADEMIC INSTITUTIONS TO PROVIDE EDUCATIONAL OPPORTUNITIES TO MEET CURRENT AND FUTURE WORKFORCE AND COMMUNITY NEEDS.**

STRATEGY: Support efforts to cultivate, retain, and attract talent to meet business and community needs.

STRATEGY: Commission a feasibility study, plan, and strategy for attracting post-secondary educational and training institutions.

"FOCUS AREA 4: HEALTHY LIFESTYLES

Provide a variety of recreational, artistic, and cultural opportunities along with a flourishing natural environment to support healthy and active lifestyles."

GOAL: **OFFER A WIDE VARIETY OF RECREATIONAL PROGRAMS AND AMENITIES FOR RESIDENTS OF ALL AGES AND ABILITIES.**

STRATEGY: Continue to enhance year-round recreation programs and opportunities for all community members.

STRATEGY: Expand and enhance youth sports in the community.

STRATEGY: Support healthy communities by maintaining clean, safe, and accessible recreation facilities.

STRATEGY: Invest in the top priorities of the Parks and Recreation Master Plan.

STRATEGY: Enhance network of shared-use trails and pathways that provide non-vehicular modes of travel, including bicycling and walking.

GOAL: **IDENTIFY OPEN SPACE AREAS AND BALANCE WITH THE NEEDS OF THE COMMUNITY.**

STRATEGY: Develop landscape and irrigation design guidelines for ongoing improvements of Town-maintained infrastructure.

STRATEGY: Develop and adopt an Open Space and Wildlife Conservation Master Plan.

"FOCUS AREA 5: PROACTIVE PUBLIC SERVICES

Foster an open atmosphere that embraces change, creativity, innovation and calculated risk, and maintains the Town's high quality customer service."

GOAL: **PRIORITIZE INFRASTRUCTURE AND MAINTENANCE THAT SUPPORT NEW GROWTH AND DEVELOPMENT IN A PROACTIVE AND SUSTAINABLE MANNER.**

STRATEGY: Continue annual updates to the 5-year Capital Improvement Plan to ensure public infrastructure is provided and maintained in a proactive manner.

STRATEGY: Develop an asset management program that anticipates on-going maintenance needs through an integrated system.

STRATEGY: Develop best practices to encourage energy conservation and sustainability throughout municipal operations and facilities.

STRATEGY: Evaluate current development practices to ensure that the Town develops in a sustainable manner.

STRATEGY: Establish standard principles and practices for designing drainage facilities in the Town.

STRATEGY: Study the short and long-term benefits and financial impacts of annexation to inform a Town-wide annexation policy and strategy.

GOAL: **MAINTAIN AN ASSURED WATER SUPPLY AND PROVIDE HIGH-QUALITY WATER AND WATER RECLAMATION INFRASTRUCTURE TO MEET EXISTING AND FUTURE CUSTOMER NEEDS.**

STRATEGY: Deliver safe, reliable, and sustainable water services to meet current customer needs.

STRATEGY: Encourage water conservation and long-term water sustainability by promoting efficient use of resources.

STRATEGY: Invest in new and renewable water resources and water conservation efforts to increase the Town's water portfolio.

STRATEGY: Invest in water and water reclamation infrastructure to meet projected growth needs.

GOAL: ELEVATE THE TOWN'S PUBLIC SERVICE QUALITY THROUGH EFFICIENT PROCEDURES.

STRATEGY: Update the Facilities Master Plan to determine current and future space needs.

STRATEGY: Provide accurate and responsive administration of official Town records.

STRATEGY: Implement processes and tools to effectively gauge customer service satisfaction.

STRATEGY: Utilize technology process improvements to innovate and enhance service delivery.

STRATEGY: Maintain a transparent financial environment by providing accurate and accessible financial information.

GOAL: FOSTER A WORKPLACE CULTURE THAT ATTRACTS, RETAINS, AND MOTIVATES A TALENTED WORKFORCE.

STRATEGY: Invest in professional development, training, and engagement opportunities for employees.

STRATEGY: Continue to instill a culture of excellence through initiatives and actions that value performance and behavior.

MARANA AZ

CELEBRATING 45 YEARS