

AGENDA

REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, TO BE HELD FEBRUARY 20, 2024, AT 6:00 PM., AT THE CITY COUNCIL CHAMBERS--RIVERFRONT, 1083 RIVERFRONT ROAD, COTTONWOOD, AZ.

- I. CALL TO ORDER
- II. ROLL CALL
- III. PLEDGE OF ALLEGIANCE
- IV. BRIEF SUMMARY OF CURRENT EVENTS BY MAYOR, CITY COUNCIL AND/OR CITY MANAGER -- THE PUBLIC BODY DOES NOT PROPOSE, DISCUSS, DELIBERATE OR TAKE LEGAL ACTION ON ANY MATTER BROUGHT UP DURING THIS SUMMARY UNLESS THE SPECIFIC MATTER IS PROPERLY NOTICED FOR LEGAL ACTION.
- V. PROCLAMATIONS

PROCLAMATION--NATIONAL TEEN DATING VIOLENCE AWARENESS MONTH
- VI. CALL TO THE PUBLIC--This portion of the agenda is set aside for the public to address the Council regarding an item that is not listed on the agenda for discussion. However, the Council cannot engage in discussion regarding any item that is not officially listed on the agenda for discussion and/or action (A.R.S. §38-431.02(H).) Comments are limited to a 3 minute time period.
- VII. APPROVAL OF MINUTES

APPROVAL OF MINUTES--REGULAR MEETING OF DECEMBER 19, 2023; WORK SESSION OF JANUARY 9, 2024; AND THE SPECIAL MEETING OF JANUARY 9, 2024.

Comments regarding items listed on the agenda are limited to a 3 minute time period per speaker.
- VIII. CONSENT AGENDA--The following items are considered to be routine and non-controversial by the Council and will be approved by one motion. There will be no separate discussion of these items unless a Council Member or a citizen so requests, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the Agenda.
 1. APPROVAL OF THE CONTRACT FOR THE ACTING CITY MANAGER, TOM WHITMER.
 2. REQUEST FOR AUTHORIZATION TO SUBMIT AN APPLICATION FOR THE 5311 FEDERAL TRANSPORTATION AUTHORITY FUNDING THROUGH THE ARIZONA DEPARTMENT OF REVENUE FOR THE

COTTONWOOD AREA TRANSIT AND VERDE SHUTTLE PROGRAMS.

3. RESOLUTION NUMBER 3255--A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, AUTHORIZING THE ACTING CITY MANAGER TO EXECUTE A TRANSPORTATION SERVICE AGREEMENT WITH VERDE VALLEY CAREGIVERS COALITION, AN ARIZONA NONPROFIT CORPORATION, FOR FISCAL YEAR 2025.
 4. RESOLUTION NUMBER 3260--A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNT, ARIZONA, APPROVING AND AUTHORIZING THE ACTING CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF COTTONWOOD AND THE TOWN OF CLARKDALE FOR THE CO-LOCATION AND OPERATIONS OF MUNICIPAL COURT.
 5. RESOLUTION NUMBER 3259--A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, APPROVING AN AGREEMENT WITH DIBBLE & ASSOCIATES CONSULTING ENGINEERS, INC, AN ARIZONA CORPORATION, IN AN AMOUNT NOT TO EXCEED ONE HUNDRED TWO THOUSAND, ONE HUNDRED EIGHTEEN DOLLARS (\$102,118).
 6. RESOLUTION NUMBER 3262--A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, AUTHORIZING A COOPERATIVE USE PURCHASING AGREEMENT FOR ELECTRICAL MOTOR DRIVES AND MAINTENANCE FROM DYKMAN ELECTRICAL, INC, AN IDAHO CORPORATION, IN AN AMOUNT NOT TO EXCEED \$56,495.79.
- IX. NEW BUSINESS—The following items are for Council discussion, consideration, and possible legal action.
1. CONSIDERATION OF A FINAL PLAT FOR A 6-LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION IN THE R-3 (MULTIPLE FAMILY RESIDENTIAL) ZONE TO BE KNOWN AS 6 ON SIXTEEN.
 2. CONSIDERATION OF A FINAL PLAT FOR A 10-LOT SINGLE FAMILY RESIDENTIAL SUBDIVISION IN THE R-1 (SINGLE FAMILY RESIDENTIAL) ZONE TO BE KNOWN AS MINGUS VIEWS.
 3. EXECUTIVE SESSION FOR LEGAL ADVICE--PURSUANT TO A.R.S. 38-431.03(A)(3) AND 38-431.03(A)(4), DISCUSSION OR CONSULTATION WITH LEGAL COUNSEL FOR LEGAL ADVICE REGARDING ALLEGATIONS IN NOTICE OF CLAIM

SUBMITTED BY STEVE GESELL.

4. EXECUTIVE SESSION FOR LEGAL ADVICE--PURSUANT TO A.R.S. 38-431.(A)(3) AND 38-431(A)(4), DISCUSSION AND LEGAL ADVICE REGARDING A LETTER RECEIVED FROM THE FORMER CITY MANAGER, SCOTTY DOUGLASS, REGARDING HIS CONTRACT SEVERANCE PROVISIONS.

5. EXECUTIVE SESSION FOR LEGAL ADVICE--PURSUANT TO A.R.S. 38-431(A)(3) AND 38-431(A)(4), DISCUSSION AND LEGAL ADVICE REGARDING A NOTICE OF CHARGE FILED BY THE ARIZONA CIVIL RIGHTS DIVISION (ACRD).

X. CLAIMS AND ADJUSTMENTS

CLAIMS AND ADJUSTMENTS--FEBRUARY 20, 2024.

XI. ADJOURNMENT

The Cottonwood Council Chambers is accessible to the disabled in accordance with Federal "504" and "ADA" laws. Those with needs for special typeface print or hearing devices may request these from the City Clerk (TDD 634-5526.) All requests must be made 24 hours prior to the meeting.

Members of the City Council will attend either in person or by telephone conference call.



PROCLAMATION

WHEREAS, this February, during National Teen Dating Violence Awareness and Prevention Month, we stand with those who have known the pain and isolation of an abusive relationship, and we recommit to ending the cycle of teen dating violence that affects too many of our young people.

WHEREAS, together, it's on all of us to raise regional awareness about teen dating violence and promote safe and healthy relationships.

WHEREAS, females between the ages 16-24 are more vulnerable to intimate partner violence, experiencing abuse at a rate almost triple the national average; and

WHEREAS, one in three adolescent girls in the United States is a victim of physical, emotional, or verbal abuse from a dating partner, a figure that far exceeds victimization rates for other types of violence affecting youth; and

WHEREAS, high school students who experience physical violence in a dating relationship are more likely to use drugs and alcohol, are at greater risk of suicide, and are much more likely to carry patterns of abuse into future relationships; and

WHEREAS, only 33% of teens who are in an abusive relationship ever tell anyone about the abuse, and 81% of parents surveyed either believe teen dating violence is not an issue or admit they do not know if it is one; and

WHEREAS, by providing young people with education about healthy relationships and healthy relationship skills and by changing attitudes that perpetuate violence, we recognize that dating violence can be prevented; and

WHEREAS, the establishment of Teen Dating Violence Awareness and Prevention Month will benefit young people, their families, schools and communities regardless of socioeconomic status, gender, sexual orientation, or ethnicity; and

WHEREAS, everyone has the right to a safe and healthy relationship and to be free from abuse.

WHEREAS, dating violence transcends gender, race, religion, ethnicity, sexual orientation, and socioeconomic status. It takes many forms, including physical, sexual, and emotional abuse, bullying, and shaming, which can occur in person or through electronic communication and social media.

WHEREAS, If you or someone you know is involved in an abusive relationship of any kind, immediate and confidential support is available by calling Verde Valley Sanctuary at (928) 634-2511.

NOW, THEREFORE, BE IT RESOLVED, that I, Tim Elinski, Mayor of the City of Cottonwood, Arizona, on behalf of the City Council, do hereby proclaim February 2024 as National Teen Dating Violence Awareness and Prevention Month. I call upon all citizens to support efforts in their communities and schools, and in their own families, to empower young people to develop healthy relationships throughout their lives and to prevent and respond to teen dating violence. It's on all of us.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Cottonwood, Arizona, to be affixed this 20th day of February 2024.

Tim Elinski, Mayor

Dated this 20th day of February 2024.

MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, HELD DECEMBER 19, 2023, AT 6:00 P.M., AT THE COUNCIL CHAMBERS--RIVERFRONT LOCATED AT 1083 E. RIVERFRONT ROAD, COTTONWOOD, ARIZONA.

Mayor Elinski called the meeting to order at 6:00 p.m.

Roll call was taken as follows:

COUNCIL MEMBERS PRESENT

Tim Elinski, Mayor
Debbie Wilden, Vice Mayor
Stephen DeWillis, Council Member
Lisa DuVernay, Council Member
Helaine Kurot, Council Member
Michael Mathews, Council Member
Derek Palosaari, Council Member (Via Zoom)

STAFF MEMBERS PRESENT

Scotty Douglass, City Manager
Jenny Winkler, City Attorney
Tami S. Mayes, City Clerk
James Bramble, City Engineer
Amanda Wilber, Human Resources Director
Ryan Bigelow, Director of Strategic Initiatives

PLEDGE OF ALLEGIANCE

Mayor Elinski led the Pledge of Allegiance,

BRIEF SUMMARY OF CURRENT EVENTS BY MAYOR, CITY COUNCIL AND/OR CITY MANAGER -- THE PUBLIC BODY DOES NOT PROPOSE, DISCUSS, DELIBERATE OR TAKE LEGAL ACTION ON ANY MATTER BROUGHT UP DURING THIS SUMMARY UNLESS THE SPECIFIC MATTER IS PROPERLY NOTICED FOR LEGAL ACTION

Mayor Elinski and Vice Mayor Wilden announced their participation in current community and City events.

A brief moment of silence was observed in honor of the late Yavapai-Apache Tribal Chairman Vincent Randall.

Mr. Douglass announced current and upcoming community and City events.

CALL TO THE PUBLIC

Michael Nisito addressed the Council regarding the status of the City Council and moral questions brought to the City Council by the public at large, the resignation of two Council Members, and the recent resignation of the City Attorney.

Joseph Giulietti addressed the Council regarding the great job of the Cottonwood Recreation Center as well as the state of the City of Cottonwood and the desire to remain a small town.

Sharon Bonney addressed the Council requesting that the Council define the term family friendly.

Leslie Evans, Karla Erickson, and Mary Lou Rose addressed the Council regarding the abuse of airspace by Embry Riddle and the constant airport noise. Carla Hill addressed Council regarding a group that has been formed called Verde Valley Aviation Impact Relief.

UNFINISHED BUSINESS

ORDINANCE NUMBER 739--DECLARING THAT DOCUMENT ENTITLED "2023 CODE AMENDMENTS--FLOODPLAIN MANAGEMENT" TO BE A PUBLIC RECORD, AMENDING TITLE 18 (ZONING AND LAND USE) BY AMENDING CHAPTER 18.08 (FLOODPLAIN MANAGEMENT); PROVIDING FOR SEVERABILITY; AND PROVIDING FOR PENALTIES; SECOND AND FINAL READING.

Mr. Bramble presented a PowerPoint presentation regarding Ordinance Number 739, 2023 Code Amendments.

There were no comments or questions from Council or the public regarding the adoption of Ordinance Number 739.

Council Member Kurot moved to approve Ordinance Number 739 declaring that document entitled "2023 Code Amendments--Floodplain Management" to be a public record, amending Title 18, Zoning and Land Use, by amending Chapter 18.08, Floodplain Management; providing for a repeal of conflicting ordinances; providing for severability; and providing for penalties. The motion was seconded by Council Member DeWillis.

A roll call vote on the motion was taken as follows:

	<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>
Council Member DeWillis	X		Council Member Palosaari	X	
Council Member DuVernay	X		Vice Mayor Wilden	X	
Council Member Kurot	X		Mayor Elinski	X	
Council Member Mathews	X				

The motion unanimously carried.

Mayor Elinski requested the City Clerk read Ordinance Number 739 by title only.

ORDINANCE NUMBER 739

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, DECLARING THAT DOCUMENT ENTITLED “2023 CODE AMENDMENTS – FLOODPLAIN MANAGEMENT” TO BE A PUBLIC RECORD; AMENDING TITLE 18 (ZONING AND LAND USE), BY AMENDING CHAPTER 18.08 (FLOODPLAIN MANAGEMENT); PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR PENALTIES.

CONSENT AGENDA

Mayor Elinski requested the City Clerk read the Consent Agenda items up for consideration.

RESOLUTION NUMBER 3215

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, AUTHORIZING A COOPERATIVE USE PURCHASING AGREEMENT FOR THE PURCHASE OF FIREFIGHTER SELF CONTAINED BREATHING APPARATUS (SCBA) EQUIPMENT AND SERVICES WITH L.N. CURTIS AND SONS, INC, A CALIFORNIA CORPORATION, IN AN AMOUNT NOT TO EXCEED \$54,102.77.

RESOLUTION NUMBER 3232

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, AUTHORIZING A COOPERATIVE USE PURCHASING AGREEMENT FOR THE PURCHASE OF ASPHALT PRODUCTS AND SERVICES FROM CACTUS ASPHALT LLC, AN ARIZONA LIMITED LIABILITY COMPANY, IN AN AMOUNT NOT TO EXCEED \$750,000.

RESOLUTION NUMBER 3235

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, APPROVING THE CITY OF COTTONWOOD’S PARTICIPATION IN THE ARIZONA MUTUAL AID COMPACT AND AUTHORIZING THE MAYOR TO EXECUTE THE COMPACT.

RESOLUTION NUMBER 3240

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, REAPPOINTING SCOTT ELLIS A

MEMBER OF THE MUNICIPAL PROPERTY CORPORATION AND ESTABLISHING HIS TERM OF OFFICE.

RESOLUTION NUMBER 3241

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, REAPPOINTING RUDY RODRIGUEZ A MEMBER OF THE MUNICIPAL PROPERTY CORPORATION AND ESTABLISHING HIS TERM OF OFFICE.

RESOLUTION NUMBER 3242

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, REAPPOINTING CHRISTOPHER DOWELL A MEMBER OF THE MUNICIPAL PROPERTY CORPORATION AND ESTABLISHING HIS TERM OF OFFICE.

RESOLUTION NUMBER 3239

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, AMENDING THE ADOPTED FULL-TIME EQUIVALENCY POSITION NUMBER BY ONE, ADDING A FULL-TIME LEGAL ASSISTANT.

RESOLUTION NUMBER 3215, AUTHORIZING A COOPERATIVE USE PURCHASING AGREEMENT FOR THE PURCHASE OF FIREFIGHTER SELF-CONTAINED BREATHING APPARATUS (SCBA) EQUIPMENT AND SERVICES WITH L.N. CURTIS AND SONS, INC., A CALIFORNIA CORPORATION, IN AN AMOUNT NOT TO EXCEED \$54,102.77

RESOLUTION NUMBER 3232--AUTHORIZING A COOPERATIVE USE PURCHASING AGREEMENT FOR THE PURCHASE OF ASPHALT PRODUCTS AND SERVICES FROM CACTUS ASPHALT, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, IN AN AMOUNT NOT TO EXCEED \$750,000

RESOLUTION NUMBER 3235--APPROVING THE CITY OF COTTONWOOD'S PARTICIPATION IN THE ARIZONA MUTUAL AID COMPACT AND AUTHORIZING THE MAYOR TO EXECUTE THE COMPACT

RESOLUTION NUMBERS 3240, 3241, AND 3242--APPOINTING THREE MEMBERS TO THE MUNICIPAL PROPERTY CORPORATION

RESOLUTION NUMBER 3239--AMENDING THE ADOPTED FULL-TIME EQUIVALENCY POSITION NUMBER BY ONE, ADDING A FULL-TIME LEGAL ASSISTANT

Council Member Mathews pulled Item Number 5, Resolution Number 3239, from the Consent Agenda for further discussion.

Mayor Elinski moved to approve the Consent Agenda, Items 1 through 4. The motion was seconded by Vice Mayor Wilden and unanimously carried.

RESOLUTION NUMBER 3239--AMENDING THE ADOPTED FULL-TIME EQUIVALENCY POSITION NUMBER BY ONE, ADDING A FULL-TIME LEGAL ASSISTANT

Mr. Douglass stated the City has operated its Legal Department with one staff member, the City Attorney, for a number of years. The Legal Department had not been in a position to request help with an additional staff member. While the City has been able to contract with certain legal needs, and continues to do so, the City has a number of administrative functions with the Legal Department that could use the assistance of a legal assistant. It is eventually to assist with the preparing and writing of resolutions and other administrative functions, such as initial potential contract review and editing before it is passed on to the City Attorney for final review. A lot of items could be kicked back to staff to do corrections, if necessary, or to go back to vendors, if necessary. This is a lower cost per hour to support something like this. However, staff is open to Council's direction.

Council Member Mathews stated, in light of what is going to be happening later this evening, it is something that should be tabled until we determine how we are going to move forward with that position.

Mayor Elinski stated we do have some runway in front of us in terms of the resignation date from Ms. Winkler. For a lot of years we have been without staff to assist our one-person legal department. The last time we met for the City Attorney's mid-year review, it was a priority of Council to get help in the Legal Department. We have known for a lot of years that the office will need the assistance. I still feel it is a position worth supporting. We could have our contract legal firm fill in, but that is going to be a lot more expensive.

Vice Mayor Wilden stated there is no harm in doing this. It is an advantage because the City does have outside Counsel, and this would be someone that would not have to be as experienced. I am in favor of continuing with that thought process.

Council Member DuVernay stated I am not in favor of it with the resignation of the current attorney.

Council Member DeWillis stated I agree. We should table it for right now and readdress it after the City has legal counsel settled.

Council Member Kurot stated, either way, moving forward, we will need that position. If the majority of Council wants to table it until we determine the next steps, I am okay with that.

Vice Mayor Wilden stated we need this person. There is no question. We have some months that extra help will be needed, and this is the extra help that the City desperately needs.

Council Member Palosaari stated I am in agreeance with the majority of the Council.

Mayor Elinski asked Council Member Palosaari to state his position. He then asked Council Member Palosaari if he would like to table this item.

Council Member Palosaari stated yes.

Council Member Mathews stated I am not opposed to this position. If the City were going to move forward with a single attorney, I would be in full support of this item. If, down the road, we decide to go that direction, this can be readdressed at that time. The City may also go with a firm. In that case, we may need to consider doing something a little bit different. This may put us in a position that, if we move forward with this, we may not be able to back out of it.

Mr. Douglass stated staff can go either way. If we do decide to hire someone now, training would be a little bit accelerated. We could also option to bring this back into the next fiscal year budget process. Attorney services will be discussed and/or filling the City Attorney position in the near future but, either way, our prior attorney worked largely remotely. There is a certain benefit of having boots on the ground to interact with staff as well.

Council Member Mathews stated I disagree with that statement.

Council Member Mathews moved to table Resolution Number 3239. The motion was seconded by Council Member DuVernay.

A roll call vote on the motion was taken as follows:

	<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>
Council Member DeWillis	X		Council Member Palosaari	X	
Council Member DuVernay	X		Vice Mayor Wilden		X
Council Member Kurot	X		Mayor Elinski	X	
Council Member Mathews	X				

The motion carried by a vote of six to one, with a dissenting vote by Vice Mayor Wilden.

NEW BUSINESS

INTERVIEWS OF BOARD OF ADJUSTMENT APPLICANTS

Ms. Wilber presented a PowerPoint presentation regarding the history and process of posting

for the solicitations of Board of Adjustments members. The open positions on the Board of Adjustments have been posted four times in 2022 and five times in 2023. Our two most recent postings resulted in one application each time. Both of those applications are combined for this process this evening.

The following persons were interviewed by Council one at a time and asked a series of three questions:

- Patricia Monell
- Catherine Ransom

This matter will be brought back to Council for the appointment of members to the Board of Adjustments on January 16, 2024.

INTERVIEWS OF PERSONNEL BOARD APPLICANTS

Ms. Wilber presented a PowerPoint presentation regarding the history and process of posting for the solicitation of Personnel Board members. There is currently one open position on the Personnel Board. This position has been open for quite some time. We have received multiple applications over five postings; however, for different reasons, it did not work out.

The following persons were interviewed by Council one at a time and asked a series of three questions:

- Patricia Monell
- Mark Tracy

This matter will be brought back to Council for the appointment of members to the Personnel Board on January 16, 2024.

RESOLUTION NUMBER 3244—ADOPTING THE CITY OF COTTONWOOD CITY COUNCIL CODE OF CONDUCT

Mayor Elinski stated this matter was discussed at a work session on December 12, 2023.

Mr. Bigelow presented a PowerPoint presentation on the proposed Cottonwood City Council Code of Conduct. This item was co-sponsored by Council Members DeWillis and Kurot. It was originally brought to a work session on October 16th, 2023. At that point, the consensus of Council was that a Code of Conduct would be beneficial to the Council; should be short and to the point; and that the Code of Conduct is intended to be self-enforcing. This matter was again before Council at the work session held on December 12, 2023.

Council Member Mathews stated I am fully in favor. He then asked if there is a corresponding document in which Management and other Contract Employees/Staff are required to follow.

Mr. Bigelow stated it would be similar to our Human Resources policy. When staff is hired, they have to review the Employee Manual and sign an acknowledgment form.

Council Member Mathews stated something like this may be a blanket Code of Conduct for everybody. He then asked if Council was able to see some examples from other communities.

Mr. Bigelow stated correct. That was at the October 16th work session.

Council Member Mathews asked, regarding Clause 1, it states, "And they will assure fair and equitable treatment of all persons, claims, transactions coming before the City of Cottonwood." If you are talking about equal, or equality, that is a definitive term. When you bring equity into it, it is very subjective. Equitable treatment would mean treating some people differently than others. I would like to see the word "equal" instead of "equity". And 2, "Members shall comply with the laws of the nation, state, City of Cottonwood, City ordinances, and policies, and, if Members have questions, encouraged to seek the advice of City Manager and City Attorney." Council Member Mathews stated I have seen legal counsel interpret things differently than what even the Attorney General's Office interprets it as, and has told another Council Member that Municipal Codes are just suggestions. So a little hypocrisy at the moment on that. "Conduct of Members: Professional personal conduct of members must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct, harassment, personal charges, or verbal attacks upon the character or motives of other members of Council, Boards, Commissions, staff, or the public." Just last week we saw this very Code before it was even brought up publicly used as a weapon used to bludgeon. Then, when a Council Member didn't vote properly, she was kind of verbally accosted for that vote. "Respect for the process," no comment on that one. "Policy Role of Members: Members shall, therefore, not interfere with the administrative functions of the City or the professional duties of City staff." We've already seen where this was violated by one member in a unilateral action which was highlighted at last week's meeting. Nothing prevents the majority of Council from directing the City Manager regarding a personnel issue of concern, but not unilaterally. We have a lot of distasteful work ahead of us. I love the spirit of the Code of Conduct, and Council should address it at some point, but in light of what I have seen over the last year, lying, unethical behavior, several things, we need to really consider tabling this item, letting things calm down, and bring it back to Council. It is not appropriate, and is the height of hypocrisy right now, to ask Council Members to sign this and abide by it.

Mayor Elinski stated this was discussed last week at a work session, and it appeared Council was in agreement that it was well written and didn't suggest any substantial changes.

Council Member DuVernay stated I took issue with this matter at the work session on December 12, 2023. That is on the record. I illustrated two or three examples and, if we're self-governing, nothing was addressed at that point or even a discussion about what had been asked about. I agree that Council needs a Code of Conduct, but it needs to be talked about a lot more, which I did state last week.

Council Member Kurot stated a Code of Conduct is definitely needed. I am open to making

modifications as necessary. At the same time, Council needs to be on the same page, and this is a starting point.

Vice Mayor Wilden stated I was under the understanding last time that staff has done their research, and it is normal for City Councils to have a Code of Conduct. There has not been one, and it has been needed for a long time. I thought Council was okay, as a whole, with what was discussed last week. It was well done, and I am in favor of approving it.

Council Member DeWillis stated Council does need a Code of Conduct. Due to events that are facing Council right now, I would agree that it needs to be tabled and some wording on it needs to be tweaked.

Council Member Palosaari stated I agree that tabling it is a good idea at this point.

Mayor Elinski stated I disagree. Council was in agreement, more or less, with a couple concerns from one Council Member. There was a lot of work put into it, and Council liked the document, felt it was important, and a good step forward. I do not think it should be tabled and it should be approved. If things need changed in the future, by all means, Council can do that as their prerogative.

Mayor Elinski moved to approve Resolution Number 3244. The motion was seconded by Council Member Kurot.

A roll call vote was taken on the motion as follows:

	<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>
Council Member DeWillis		X	Council Member Palosaari		X
Council Member DuVernay		X	Vice Mayor Wilden	X	
Council Member Kurot	X		Mayor Elinski	X	
Council Member Mathews		X			

The motion failed by a vote of three to four, with dissenting votes from Council Members DeWillis, DuVernay, Mathews, and Palosaari.

RESOLUTION NUMBER 3245—CONDEMNING THE CONDUCT OF COUNCIL MEMBER DEREK PALOSAARI TOWARD FEMALE EMPLOYEES OF THE CITY OF COTTONWOOD

Mayor Elinski stated there was an incident at an employee Christmas party for the City of Cottonwood where a Council Member said and acted in an inappropriate manner. The Council needs to address this issue as a Council. There is a resolution which I will read, and then a discussion can take place.

Council Member DuVernay asked if the proposed resolution needs to be read before the discussion takes place, as every other resolution is read after a discussion.

Mayor Elinski stated the proposed resolution goes over a lot of the facts of the issue.

Council Member DuVernay stated I agree, but I would like to do some other things because I would like to comment on it before it is read.

Mayor Elinski asked if the Council would like the resolution read.

Council Member DeWillis stated I would like to table the matter and go into an executive session at a later date before we condemn an individual.

Mayor Elinski stated the item does not need to be tabled. The individual is present via Zoom.

Vice Mayor Wilden stated it is something that happened that is explained in the resolution. The public deserves to know what happened.

Council Member DuVernay stated the resolution has been out in the newspaper and on the agenda, which is public. Before the resolution is read, some of the Council need to discuss it. It can then be read and the public can interact.

Council Member Palosaari made the following statement: "I was shocked and blindsided at the way this has been handled. I need to understand the investigation. I need to be there so I can defend myself in person, be heard, and have the opportunity to seek my legal counsel."

Mayor Elinski stated the Council is discussing the conduct of Council Member Palosaari and the facts around the employee party, as well as conduct with other female employees, that occurred.

Council Member Palosaari stated that Scotty (Douglass) and the Mayor knew that I was going to be out of town. This was an opportune time to take this up when I am not present in person.

Council Member DuVernay stated Council Members were made aware of this at 5:50 yesterday evening. She then asked Mr. Douglass if he had consulted anyone, Council Members or the Mayor, about this agenda item, and if he had prior knowledge that Council Member Palosaari was not going to be in attendance this evening.

Mr. Douglass stated I did not have knowledge that Council Member Palosaari was not going to be in town.

Mayor Elinski stated whether or not he is in town, he is present with Council (via Zoom) this evening and can speak to the facts of this resolution. As the Mayor, and as Council Members, we have an obligation to act quickly on a matter of such weight as this.

Council Member Mathews stated I just took an oath to uphold the Constitution, and the laws of this State and the City. The Mayor wants to be judge, jury, and executioner of this gentleman. I am not defending Council Member Palosaari as I do not know whether he is guilty or not. Council Member Palosaari has a right to stand in front of the Council personally and defend himself. I have not seen any evidence regarding this matter. This is a hit and absolutely out of line, and I would not be surprised if this brings another lawsuit into the City. This is unsubstantiated. The Mayor just brought out this proclamation and destroyed this man's reputation publicly. This came out a little over 24 hours ago. Council Member Palosaari and the rest of Council were blindsided with it. You all worked behind the scenes. You have already judged him guilty and you've convicted him. Now you want to go ahead and pass this resolution without any discussion, without Council being able to confront him, ask him questions, and allow him to explain himself.

Mayor Elinski stated Council has all evening to discuss this. Council Member Palosaari is present (via Zoom). For the benefit of the public, I will read the resolution.

Council Member DuVernay stated that a fundamental principle in the American justice system is the presumption of innocence, and it is crucial, insuring individuals like Council Member Palosaari are given a fair chance to defend himself against accusations brought forth. It is an important part of the legal process. If the Mayor is going to accuse people of the way they behave as Council Members, I am going to bring up, again, how the Mayor behaved toward me. I would be more than happy to read that statement about how the Mayor aggressively lunged at a female Councilwoman, and then denied it. Nothing was done by the City Manager. Nothing was there to defend me. The Mayor is saying now, with no judge, no jury, Council Member Palosaari is guilty. She then asked what about the Mayor.

Mayor Elinski stated this is not a trial. This is a censure resolution. We have the facts in front of us, and I will read them out. Council Member Palosaari is welcome to rebut the facts. Mayor Elinski then pointed out that we did attempt to meet with Council Member Palosaari, who did decline the meeting.

Council Member DuVernay asked who "we" is; the Mayor, as in the Judge, or the Attorney and Human Resources. The Mayor has no right to talk about Human Resources. It is clearly stated that the Mayor should not interject himself into those matters. She further stated you (the Mayor) already did that once when you fired the Police Chief.

Mayor Elinski stated that by "we", it was myself, the City Attorney, and the City Manager who attempted to meet with Council Member Palosaari, but Council Member Palosaari declined.

Vice Mayor Wilden stated if the resolution was read, it would be understood what has happened throughout the whole thing; what he said, what he did, the evidence, the witnesses. As it says in the resolution, it is up to the City Council to support staff, help staff, and make things like this not happen. I am not saying Council Member Palosaari is guilty, but the Council needs to do this resolution to explain the situation. It is simple.

Mayor Elinski then read Resolution Number 3245 into the record.

Mayor Elinski stated, as a Council, we have no way to remove from office any other colleague. Although Council Member Palosaari was appointed, he serves as an elected official. The strongest thing that Council can do is public condemnation. I am happy to answer any questions on how this came about. Council Member Palosaari is present to speak for himself.

Council Member Mathews stated I am not defending Council Member Palosaari, but there has been nothing provided to Council other than accusations. They are very, very serious allegations of the highest degree. There is no doubt about it. If I can be convinced through the evidence that the allegations are true, I would have no problem voting to condemn those actions. Right now it is inappropriate and will not happen. I will not support it now; not because it is not serious but because this is the worst process I have seen regarding something like this.

Council Member DuVernay asked why there was not a resolution that addressed other behavior, either legal or illegal, by other Council Members, or other abusive behavior to a female Councilwoman, and a person of color at that. Let's talk about equitable.

Vice Mayor Wilden stated Council has an obligation because of what has happened in the past with the Police Chief. She then asked City Attorney Winkler if there is an obligation to report this matter to the Attorney General's Office.

Ms. Winkler stated that is correct.

Council Member Mathews asked, if Council Member Palosaari is guilty of this behavior, why there is no law enforcement involved. That is due process. Law enforcement gets involved; they make an arrest; they make an investigation; and they make a conviction. That is not Council's job.

Mayor Elinski stated it is not Council's job. Council's job is to condemn the behavior of a colleague who is acting inappropriately. Law enforcement will handle it as they do, and it is up to the victims on whether or not they will pursue this further. Council's job is to condemn the behavior, period. Council Member Palosaari admits to behaving in this way. I think it is condemnable. I am shocked that my colleagues don't, but it absolutely is. We have a duty and an honor to this community to show that we don't discriminate or harass.

Council Member DuVernay stated but yet you do.

Mayor Elinski stated if you (Council Member DuVernay) could stay on topic, that would be great.

Council Member DuVernay stated I am talking about harassment. The Mayor stated “we” don’t harass; “we” don’t abuse; but yet you (the Mayor) harasses and abuses. Do not use the word “we”. I have evidence and a legal statement from someone, and I have all of my evidence.

Mayor Elinski stated to Council Member DuVernay to then move forward with that. What Council is considering tonight is a condemnation of Council Member Palosaari’s behavior.

Council Member DeWillis stated to Council Member Palosaari, “I’m going to ask you outright. A finger has been pointed at you for misconduct, at the very least. I’m going to ask you point blank, did you do any of these things?”

Council Member Palosaari stated, “The whole story is not out there, and any attorney would tell me not to say anything, and I’m not going to because they are going to use it against me. They are coming after me, and I’m going to seek legal counsel, and I’m going to move forward that way.”

Council Member DeWillis stated, “Thank you. That’s what I wanted to hear.”

Council Member Kurot stated that in the statement he admitted to it. I would have very much preferred an executive session to get more details on it, because part of Council’s job is to protect our staff. There are some things that are better off left to executive session; not that certain things aren’t going to be public either way, but to get more details on it. If he is admitting that he did any part of it, that is absolutely a problem.

Mayor Elinski stated people were victims; it was reported; there were witnesses; and he admitted to the behavior. I am having a hard time understanding how he (Council Member Palosaari) is not culpable.

Council Member DeWillis stated, at this point, it is an attorney issue. I will not condemn him personally until there is a lot more evidence sitting in front of me.

Council Member Kurot asked how quickly a special meeting could be called to have an executive session.

Mayor Elinski stated I do not know that Council needs to go into executive session on this.

Council Member Kurot stated my understanding is that Council cannot go into executive session now because it wasn’t on the agenda.

Ms. Winkler stated Council cannot go into an executive session tonight. The Mayor would call a special session.

Vice Mayor Wilden stated I am not sure why Council would need to go into executive session. To delve into who this happened to, supposedly, although he did admit it, would not be appropriate for Council.

Mayor Elinski stated there is an opportunity for folks who submitted a form to speak to Council.

Council Member Palosaari stated I am boarding a plane.

Council Member Palosaari was no longer present via Zoom at 6:26 p.m.

Mayor Elinski stated Council Member Palosaari did admit this.

Mr. Douglass stated a Human Resources complaint was filed. A full investigation was conducted. It was fairly straightforward. Given the conduct that was mentioned, there were several witnesses, as a City Manager, I am responsible for ensuring that all City employees are protected and afforded a workplace free from bullying, discrimination, and harassment, including sexual harassment. The City of Cottonwood has a zero-tolerance policy regarding such behavior. If a City employee engaged in these types of activities, as a City Manager, I am able to take action up to and including dismissal, which this would have reached that for me. I understand the concerns that Council is voicing, but I need to protect my employees.

Vice Mayor Wilden stated the Council needs to do the same. That is what Council is for.

Council Member Kurot stated yes.

Mayor Elinski stated I couldn't agree more. There was an investigation; he did admit to it; there were witnesses. Council Member Palosaari's conduct was inappropriate.

Mayor Elinski then opened the floor to the public.

The following persons addressed Council in support of Resolution Number 3245; Llama Habern, Julie Fernatt, and George Lee.

Council Member Mathews stated I had communication with Council Member Palosaari this morning. There are accusations coming from the City, and Council Member Palosaari has told me that it is not so. I cannot discern who is telling the truth or where the truth lies, but I want to get to the bottom of it. This is not the process for doing it. I cannot condemn somebody for something this serious without having some kind of due process that convinces me that he is guilty; not just being told he is guilty. The only thing available to review is the proposed resolution, and that was only available for about 24 hours prior to this meeting. I will not declare him innocent or guilty at this time.

Cathy Ransom addressed Council in support of Resolution Number 3245.

Jill (no last name given) addressed Council in opposition to Resolution Number 3245.

Mayor Elinski stated this isn't a court. This isn't a trial. I am asking Council to condemn the behavior of Council Member Palosaari. The victims do have rights, and they may choose to pursue action against Council Member Palosaari. If that happens, there may be legal proceedings, but that is not what we are here to do this evening. The investigation was completed by the City's Human Resources Department. The behavior was witnessed; the actions were witnessed; the victims gave their testimony; the investigation was completed, and Council Member Palosaari did admit that he did and said those things to those women. It couldn't be any clearer that this Council needs to condemn the behavior, at a bare minimum.

Mayor Elinski moved to approve Resolution Number 3245. The motion was seconded by Council Member Kurot.

A roll call vote on the motion was taken as follows:

	<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>
Council Member DeWillis		X	Council Member Palosaari	(Absent)	
Council Member DuVernay		X	Vice Mayor Wilden	X	
Council Member Kurot	X		Mayor Elinski	X	
Council Member Mathews		X			

The motion failed by a vote of three to three, with dissenting votes from Council Members DeWillis, DuVernay, and Mathews.

DISCUSSION AND POSSIBLE LEGAL ACTION ON HIRING TIMOTHY A. LASOTA, PLC, AS A LEGAL ADVISOR TO THE CITY COUNCIL

Mayor Elinski stated this item was sponsored by Council Members DuVernay and Palosaari.

Council Member DuVernay stated, with the last year being as tumultuous as it has been, it would be in the Council's best interest to hire an outside attorney. We have been in a rut for the last 12 months. Moving forward, without doing anything to change the result, especially with our City Attorney now resigning, there is no moving forward. As a Council, now more than ever, we need legal guidance, which I currently do not have.

Council Member Kurot stated this is why we don't do things last minute. I do not know anything about this particular attorney. As a Council, we select the City Attorney. We had a six-month evaluation for our current City Attorney where some concerns were raised, but she is still here. Bringing in a second attorney would not help anything. It would make the whole situation worse. If there are issues that need to be addressed with how things have been handled, that's a whole separate conversation. To just bring this up the way it was brought up doesn't help anything at this point.

Council Member DuVernay stated this was put on the agenda with Mr. LaSota's credentials. It was not a last-minute addition. The agenda was sent out 24 hours and 15 minutes ago, and this was not a last-minute addition.

Council Member Kurot asked when the item was submitted.

Council Member DuVernay stated it was submitted last week with Mr. LaSota's credentials.

Mayor Elinski stated this Council hires its attorney, and there is typically a process followed to do that. It is unusual to kind of handpick an attorney that you would like to work with but not do a process that is open to the public, that vets out candidates and defines what the goal is. It is obvious what the goal is with our City Attorney, which is to represent all of Council and the City as an entity. In this particular case, I am not sure what the goal is in hiring Mr. LaSota other than using him as a sounding board. It sounds as though Council Member DuVernay has had some frustrations.

Council Member DuVernay stated yes.

Mayor Elinski stated to handpick an attorney leaves the public out of the process, and it is not right that we should spend the public's money on an attorney that Council Member DuVernay has handpicked without a request for qualifications.

Council Member DuVernay stated there was a request for qualifications sent in.

Mayor Elinski stated there was an engagement letter that was requested, but this Council has not been able to vet this gentleman's qualifications or even discuss what the need is in hiring this additional attorney to represent Council. We are not following a policy or process that is very transparent.

Vice Mayor Wilden stated my concern is the fact that two Council Members solicited this attorney, who is present this evening, without the other Council Members' knowledge. I have checked into the background of Mr. LaSota and I am not exactly thrilled.

Council Member DuVernay stated background checking is very good.

Council Member Mathews stated I have done my research on Mr. LaSota. This is not hiring a City Attorney. This is an attorney that is being asked to come in and represent Council. Council has issues that need to be dealt with, and Council does not have an attorney. This is not a permanent City Attorney position. This is somebody to represent Council, as we have a lot of things to discuss and talk about. I have questions currently that cannot be answered without good, competent legal counsel. If this matter fails, we need to go through the process to bring this back up again. Council needs legal representation from somewhere.

Council Member Kurot asked what the legal representation would be for.

Council Member Mathews stated we are losing our City Attorney. There are a lot of other issues that are coming up, and Council will need some good, competent, experienced help to bring Council to a place to hire a new firm or a new City Attorney. I would like someone with Mr. LaSota's experience to help Council through that process.

Mayor Elinski asked if the two Council Members who sponsored this item could come up with whatever it is that they are attempting to accomplish with this new position so that Council could discuss it in a work session, we could then do an RFQ (Request for Qualifications), which would be the best way to spend public resources in hiring this attorney. We did go through the process to get competent legal help, and we hired her. She has been representing us well since she has been here.

Vice Mayor Wilden stated extremely well.

Mayor Elinski stated the legal counsel would stand between Council and the City Attorney, but there is no need for that. It would really complicate things and throw sand in the gears.

Council Member Kurot stated bringing in a second attorney would not accomplish anything productive. All it would be is a back and forth between lawyers. If you have three lawyers, you will get three opinions. We need to go through the process that we will have to go through anyway – having a bidding process, getting a consensus, and selecting an attorney the way we have done in the past, where it is an open bid with qualified candidates putting in for it, and then go from there – not just picking one. Having a second attorney to argue with the City Attorney would not help us when we go put out for a City Attorney because they will not want to deal with that, either.

Council Member DeWillis stated we have a resignation from the City Attorney. She has given us a March date for her last day. We are definitely going to be needing some sort of legal advice. Looking at this item, it says as a legal advisor to the City Council. Perhaps we can look at that as an advisor after the March date. As to the hiring of an actual attorney, we will need to go through the cost of finding a new City Attorney. I do not know what the individual's background is or anything else, but we're going to need some legal advice. We've got a lot that is coming up and we need legal advice. I do not think there is anything to do right now other than to advertise for another firm or attorney.

Vice Mayor Wilden stated we still have outside Council, and so we are covered. It is a strong, good firm that we have worked with. This is not necessary for several reasons.

Mayor Elinski stated what I heard from Council is there is no desire to move forward with hiring Mr. LaSota.

Council Member Kurot stated not right now, no.

RESIGNATION OF THE CITY ATTORNEY

Ms. Winkler stated I have submitted my resignation to the City Council. I gave the required 90-days' notice under my contract, and I am happy to continue serving as the City Attorney until March 15, 2024.

Mayor Elinski stated, for the benefit of the public and the Council, the City does have a contract attorney in place, Pierce Coleman, and they have been in place for a couple years now. Ms. Winkler is staying with us for 90 days as the City transitions, and Council will need to discuss what to do to make sure our legal partner remains functioning.

Ms. Winkler stated Pierce Coleman was on board before I came on board to serve as the outside City Attorney for the City. That contract is still in place. Obviously, if Council wants to revisit that contract, that is up to Council.

Mayor Elinski moved to accept the resignation of the City Attorney dated March 15, 2024. The motion was seconded by Council Member DuVernay.

A roll call vote was taken on the motion as follows:

	<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>
Council Member DeWillis	X		Council Member Palosaari	(Absent)	
Council Member DuVernay	X		Vice Mayor Wilden		X
Council Member Kurot		X	Mayor Elinski	X	
Council Member Mathews	X				

The motion carried by a vote of four to two, with dissenting votes from Vice Mayor Wilden and Council Member Kurot.

MONTHLY FINANCIAL REPORT—SEPTEMBER 2023

There were no comments or questions regarding the Monthly Financial Report.

CLAIMS AND ADJUSTMENTS—DECEMBER 19, 2023

Mayor Elinski moved to pay the claims and adjustments as presented. The motion was seconded by Council Member DeWillis and carried.

ADJOURNMENT

Mayor Elinski moved to adjourn the regular meeting. The motion was seconded by Council Member DeWillis and carried.

The regular meeting was adjourned at 7:55 p.m.

MINUTES OF THE WORK SESSION OF THE CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, HELD JANUARY 9, 2024, AT 6:00 P.M., AT THE COUNCIL CHAMBERS-RIVERFRONT, 1083 EAST RIVERFRONT ROAD, COTTONWOOD, ARIZONA.

Mayor Elinski called the meeting to order at 6:00 p.m.

Roll call was taken as follows:

COUNCIL MEMBERS PRESENT

Tim Elinski, Mayor
Debbie Wilden, Vice Mayor
Stephen DeWillis, Council Member
Lisa DuVernay, Council Member
Helaine Kurot, Council Member
Michael Mathews, Council Member
Derek Palosaari, Council Member (via Zoom)

STAFF MEMBERS PRESENT

Tami Mayes, City Clerk
Amanda Wilber, Human Resources Director
Kirsten Lennon, Financial Services Director
Jeff Cook, Accounting Manager
Ryan Bigelow, Director of Strategic Initiatives

ITEMS FOR DISCUSSION, CONSIDERATION AND POSSIBLE LEGAL ACTION:

DISCUSSION AND COUNCIL DIRECTION FOR THE FUTURE ADMINISTRATION OF OUTSIDE AGENCY GRANT PROGRAM

Mr. Cook, Mr. Bigelow, and Ms. Lennon presented a PowerPoint presentation regarding the Outside Agency Grant Program, including a history of the program, how it is done in Cottonwood, what other jurisdictions are doing, and some suggested changes moving forward. The previous feedback staff heard from Council was a request for the possibility of more funding, potentially more City Council input in evaluation of applications, the possibility of more dollars for underserved communities, and the need to include the submission of financials prior to the application process.

Mayor Elinski stated staff would like more clear direction on how much to increase the funding, whether or not we want to bifurcate this process, maybe separate tourism and marketing from social programs or nonprofits, and then how much involvement Council wants to have on the committee, if any. I liked how things were done in the past where it was tied directly to the Strategic Plan. It is important that we continue the program with it being tied to the Strategic Plan because that is very reflective of what this Council's vision is for the community, and it helps to have our nonprofits and others align with our Strategic Plan so we

can get more accomplished. As a Council, we can't do everything as we don't have the funding to do everything. Pima County separates tourism and marketing from the rest of the program, and that may alleviate some of the concerns we have had where we're not funding some of the social programs enough. Maybe Council could weigh it separately and bifurcate that program. In addition, I would be on board with a couple Council Members attending the committee, but it is important that we let professional staff score everything based on how we weight things and on Council's direction to staff. If Council gets involved, it may open things up to selecting our favorites or getting overly influenced. It is nice to have an impartial look at things from professional staff or a community committee.

Vice Mayor Wilden stated I agree with the last statement. She then asked who determines if the City has enough money in the budget to pay for this program.

Ms. Lennon stated that would be part of the budget process; when we are developing the budget, is funding available. It would come down to if we fund this program or something else.

Vice Mayor Wilden asked who would be described as underserved.

Ms. Lennon stated the population that does not have funding; low income, lack of housing, those types of underserved areas.

Vice Mayor Wilden asked who would determine that.

Ms. Lennon stated that could be part of the criteria, that we're looking for serving and helping these organizations that are helping the underserved.

Council Member DeWillis stated I would like to see the funding go up to 180,000, two Council Members on the scoring committee with staff, and aligning it with the Strategic Plan.

Council Member DuVernay stated I am glad to know that a 501(c) is required. I am in favor of increasing the amount to 180,000 or 200,000 based on the budget. As far as criteria, the landscape of the underserved community has changed over the last five years, and even over the last year, and that should be revisited. Even if there is no Council input when the scoring is done, everything should be brought to Council to have a discussion about it before finalizing it.

Council Member Kurot stated I like the idea of increasing funding. As far as the financials, I would like a breakdown of how much money goes to people in the City of Cottonwood versus a regional project. I do not want to be in the middle of scoring as staff has a hard enough choice with that. I am not opposed to looking at the numbers after scoring, as a discussion, before it is voted on.

Council Member Mathews stated I have no problem with increasing the funding. I do tend to weigh heavy on the underserved population. Cottonwood has a lot of people that are really struggling. They don't make a lot of money. We only have so much to give. Not that other

things aren't worth supporting, but that is what we are here to do is to serve our community and its people and residents. There are a lot of people that need help, and it would not be hard to distribute that among them. I like the idea of letting staff take direction and come up with a presentation, bring it to Council first in case Council has any modifications or anything that they might want to consider. The last meeting Council had on this, there were Council Members wanting to talk about that and change it, and they were kind of pushed into making a decision that they didn't seem to want to make. Just bring it in a little bit earlier, so that we're not late on it, and let Council look at it. Staff will do a great job based on Council's direction.

Mayor Elinski stated, to sum up, Council is on board with increasing the amount to 180,000 if the budget allows. We don't want to have Council's involvement on the committee itself. Council is comfortable with tying things to the Strategic Plan, but Council wants to weight things more heavily on the underserved population, and will rely on staff to make some suggestions around that. There doesn't seem to be an appetite from Council to bifurcate the program for tourism and marketing. We will just try to weight it more heavily towards the underserved.

OVERVIEW AND DISCUSSION REGARDING VOLUNTEERS FOR THE LEAGUE OF ARIZONA CITIES AND TOWNS LEGISLATIVE POLICY COMMITTEES

Mr. Bigelow presented a PowerPoint presentation regarding the League of Arizona Cities and Towns Legislative Policy Committees. I would not be doing my job if it was not tied to the Strategic Plan. The League has established five Legislative Policy Committees; Budget, Financial and Economic Development; General Administration, Human Resources, and Elections; Transportation, Infrastructure, and Public Works; Public Safety, Military Affairs, and the Courts; and Neighborhoods Sustainability and Quality of Life. We are here tonight to determine if any of the Council Members want to participate on one of the five Legislative Policy Committees and if there is any research Council would like staff to work on to bring back in February. In 2023, Vice Mayor Wilden and Council Member Kurot each served on one of these committees.

Vice Mayor Wilden stated these are statewide issues; not just local issues. There are very few meetings. You can participate via Zoom or in person. I was on the Financial and Economic Development Committee last year. At these discussions, various Mayors, Vice Mayors, and Council Members bring up issues that are important for the State, and it is discussed in a casual atmosphere. If you agree and there is a majority, staff would put the issue together in legal form and bring it to the entire State Councils at the meeting. Participation on these committees is not labor-intensive.

Mr. Bigelow stated there is a new rule implemented this year that the Council has to approve it collectively as a body. Previously, one Council Member could take a policy to the committee and not represent the entire Council. There were Council Members saying this is not exactly how we would like to see it. This year, an entire Council will need to approve the issue so that it is not just one or two Council Members pushing something through. If you are on a committee, you can only vote once for each Council.

Mayor Elinski asked if all the communities that are in these committees have a discussion at the first meeting and then they bring it back to their own Council, or is it intended that the Council should discuss some of the high-level issues that they have and bring it to that first meeting.

Mr. Bigelow stated we would want the Council to discuss some policy that they would want to bring to the first meeting. The first meeting is when all the different communities are involved. It's at that time that they vet which policy they would like to explore further.

Vice Mayor Wilden stated I am comfortable being on the same committee; Finance and Economic Development.

Council Member Kurot stated I was on two of the committees last year and would be willing to stay on the same two: Transportation, Infrastructure, and Public Works; and Public Safety, Military Affairs, and the Courts.

Council Member DuVernay stated I will get back with staff regarding my participation.

Mr. Bigelow stated that last year Rudy Rodriguez was staff representation on all of the committees. Staff cannot vote, but they can be called upon to be part of the discussion and to inform the City what is going on at the State level.

Mayor Elinski stated I am on the Resolutions Committee. I will be voting at the end of the season, but would be happy to sit in on one of the committees if there are not enough volunteers to sit on all the committees.

Mr. Bigelow stated, currently, Vice Mayor Wilden and Council Member Kurot will serve on the same committees as last year, and we will hear back later if anybody else is interested in any of the committees.

DISCUSSION AND DIRECTION TO STAFF REGARDING LEGAL SERVICES

Ms. Wilber presented a PowerPoint presentation regarding the City's need for legal services. Currently, the City does not have a City Attorney, and there needs to be a discussion surrounding a plan to move forward with how the City will address that. There are two different topics for this evening. The first topic is what the City will do for temporary legal services. The City currently has a contract with Pierce Coleman to help us in the immediate now; however, that is not a solution that Council would like to use past our immediate need. Staff needs to know what direction Council would like to move in to find a firm or other services, and to discuss a permanent solution as well.

Mayor Elinski stated Pierce Coleman has been serving the City of Cottonwood for several years now. They have been great when the City has needed them. Obviously, they haven't been at Council meetings except for when the City was transitioning from Steve Horton to Jenny Winkler. There was a single representative from their firm that was at Council meetings during that transition point. I have been pleased with their response time and the service that they

have provided. I am perfectly fine to continue to use Pierce Coleman in this temporary situation that the City finds itself in. They are well aware of some of the pending litigation that we have here at the City. Ms. Winkler did get them quickly up to speed on everything that is happening here, and we have points of contacts for different attorneys that help us out with planning and other land-use issues. For the near future, the City is pretty well represented with Pierce Coleman, and they have a deep bench. Anything that came up that Ms. Winkler couldn't handle, she would give to them anyway because they have broad experience and they represent many other communities in Arizona.

Vice Mayor Wilden stated I am also completely comfortable with keeping Pierce Coleman. They know the City's background and the cases pending. They have proven themselves worthy, and they have a great reputation.

Council Member Kurot stated I am okay with Pierce Coleman short term. I had some concerns on the initial list, and they were pretty quick to respond.

Council Member Mathews stated I am not so sure the City has been that greatly served by Pierce Coleman recently. My problem, along with a majority, is they are named as a defendant in a large claim against the City, which may turn into a lawsuit before long. I am not comfortable having Pierce Coleman represent the Council and that they can be trusted by Council that they are going to guide the Council properly. If the City needs to have somebody cover temporarily, I would like to have some representation for Council. Right now, Council needs somebody that we can count on and trust to get through the issues that we have coming up, as well as moving forward, somebody who is qualified to help find short-term help, and also help find a long-term solution. Perhaps the way to go is that Council, Human Resources, and anybody else on staff can throw a name in a hat, and then Council can come back together as soon as possible to discuss those people and how Council would like to move forward. On a temporary basis, immediately, I would like to hire somebody that can help Council through this process, to represent Council, and then they would help the City find temporary legal counsel in the interim, and also have them help find a permanent solution.

Mayor Elinski asked Council Member Mathews if his suggestion is to pick an attorney by writing a name on a piece of paper and putting it in a hat, kind of thing, to select from.

Council Member Mathews stated, figuratively speaking, yes. Anybody on Council can make a suggestion, staff can make their suggestions, Mayor Elinski can throw Pierce Coleman in there, and then Council can come together to discuss all options. Human Resources, whoever it is, can vet them, check them out, get their credentials, and then Council can get together to decide who to move forward with to help Council put all those pieces together.

Council Member DuVernay stated I agree with that. My concern is that Pierce Coleman is named in a claim, which could turn to a lawsuit. When Pierce Coleman emailed the Council as a whole after Jenny Winkler had resigned, Ms. Winkler was still on the email chain. When I inquired about it, the attorney for Pierce Coleman wasn't sure if Ms. Winkler was still working and in the transition. It made me a little bit uncomfortable because it was clearly stated that Ms. Winkler resigned effective immediately. That was a concern just from today. I agree with

vetting whoever people suggest.

Council Member DeWillis stated keeping Pierce Coleman temporarily is fine because the City needs representation right now. I am not comfortable continuing with Pierce Coleman. Council does need to do some checking and investigating to see if there is a better firm or individual out there for the Council.

Council Member DuVernay stated actually finding permanent legal services, which could be a firm or an attorney, to have guidance in that would be imperative because the last round was extremely hard, and the City was not as well represented as hoped. That could have been because of searching for a single attorney, which might have made the choices a lot less, as opposed to opening up to attorneys and firms.

Council Member Palosaari stated I agree. Figuratively speaking, we should put names in a hat and discuss each and every one of them.

Mayor Elinski stated the majority of Council are fine with keeping Pierce Coleman temporarily. Three Council Members would like to put names in a hat, figuratively speaking.

Ms. Wilber stated I believe I heard that the City will continue to use Pierce Coleman until it can be discussed again. For longer-term, temporary solutions, Council should have several names to choose from to make a more permanent, temporary decision. That would be the immediate future. Currently, the City and Council will have two temporary solutions; one, the immediate now, today, until we make a decision from a larger group on who we can use as a temporary solution, and then discuss a permanent solution later.

Council Member DuVernay asked Council Member DeWillis if he said the City can keep Pierce Coleman today, as in immediately, and then wait for a permanent one or vet other people to help us look for permanent services.

Council Member DeWillis stated keep Pierce Coleman now for temporary legal representation, toss names into a hat, figuratively speaking, and then we go from there.

Ms. Wilber stated I will need direction from Council to determine if Council wants to continue to have a contracted City Attorney or if Council would like to move away from that method and model and have a firm represent the City as a whole. That would change how the City would recruit for long-term legal services and/or what will be needed to provide to a recruiter if that is the way Council chooses to go. Whether the City has a contracted employee or a firm, we could do that in-house or use a recruitment firm to find either of those.

Mayor Elinski stated we should wait until after the election to let the new Council decide on what course of action they want to take regarding having someone who is an employee of the City or somebody who is from a firm or contracting with a firm for the City's legal needs. Council does need to decide who will be used in the interim, and then let the new Council that is seated after the election decide on what they would like to do on a permanent basis.

Council Member Mathews stated what I heard from the majority of Council Members is that the City is going to find somebody to help in the search. Council Members, HR and/or City staff, and the Mayor may have some suggestions, and all of the suggestions will be included. Council needs someone to represent the Council and help vet anybody that will be long-term temporary and anybody that is going to be permanent. I would really like to explore a firm. The City needs legal services immediately, right now, and Pierce Coleman is it. I have no desire to go any further down the road with Pierce Coleman than is absolutely necessary. I want somebody to come in, work with Council, and help Council find and vet somebody that will be qualified to represent the City of Cottonwood to be either a temporary or permanent legal representative.

Council Member DuVernay stated I agree and believe that is what the majority of Council has asked for.

Mayor Elinski stated I am concerned about picking favorites and putting names in a hat, so to speak. The City and staff need more of a process, such as a Request For Qualifications (RFQ) or some sort of process that vets out the best firm to represent the City through this period until after the election. I am not really comfortable with this Council, Human Resources, or whatever other City employee just wanting to throw out names of attorneys or firms. There needs to be more of a process that vets them as actually qualified.

Ms. Wilber stated those two options can be married together and do a Request For Proposal (RFP) or Qualifications. I will work with the procurement team for that. Any firm or attorney that anyone is interested in could be directed to the proposal so that they can submit a proposal. Everyone would then have the same criteria to be submitting their work on. Council would still have a say to encourage them to apply. They would just submit their proposal to be considered as a group.

Council Member Mathews asked what they would be considered for.

Ms. Wilber stated for a temporary solution. We can use that type of process for any piece of the process.

Council Member Mathews stated the majority of Council wants to find somebody to help Council vet somebody to come in to help Council. That is the first step. I am hearing that as a majority from Council, and that the Mayor is saying he wants to do what he wants to do without the majority of Council.

Mayor Elinski stated it would work out well if Ms. Wilber put out proposals so that all of the attorneys or firms that are applying for this position would be following the same process and filling out the same information. This Council could then review all of the proposals and make a decision on who best to serve the City on a temporary basis until the new Council is seated and makes a different decision.

Ms. Wilber asked if Council Member Mathews is saying that part of the review of the RFP process should have someone who has legal background to help score and make that

decision.

Council Member Mathews stated that Council could say, HR, go out and start finding somebody to come in and represent Council as their legal counsel, or we could hire a recruitment firm. There are also very good attorneys out there who are very well versed in Arizona law and that help people specifically with these things. I would like to hire somebody who knows the landscape, knows the firms, is familiar with City government, State government, and County government, and that can help Council find somebody to represent the City and Council temporarily. The City can then start the search for a permanent solution.

Council Member DuVernay stated that it should be sooner rather than later.

Vice Mayor Wilden asked Council Member Mathews if he has somebody in mind.

Council Member Mathews stated I have a file with a bunch of people that might be qualified.

Vice Mayor Wilden stated the attorney that was brought before us at the last meeting was Kari Lake's attorney, and I am not comfortable with that at all. Council needs to make sure it's with complete Council approval.

Council Member DuVernay stated it will go through all the procedures and Council will be able to vote on it.

Mayor Elinski stated, to be clear, Council Members, individually, will encourage attorneys to submit a proposal through HR. Council will then discuss and decide which is the best qualified firm to get the City through on a temporary basis. That firm would then help the City transition into the next phase of a more permanent attorney and/or firm, and that may come before the election or after the election. The firm or individual that is hired would help us through RFP for more permanent representation.

Council Member DuVernay stated that individual and/or firm would help vet permanent legal representation, either an attorney or a firm.

Mayor Elinski asked why Council would not want to go through that process now.

Council Member DuVernay stated I do not feel comfortable with Pierce Coleman. Last time the City looked for an attorney, it was a very long process. It could very well take until after the election. This will not be a quick process, but I do not feel comfortable having Pierce Coleman as temporary legal representation, and quite a few Council Members have expressed that. The Mayor and Vice Mayor have expressed they are comfortable with Pierce Coleman, but there are other Council Members that do not feel comfortable. It could take until after the election.

Mayor Elinski stated that during the last recruitment process for a City Attorney, Pierce Coleman did not assist the City with that. The recruitment was done through HR with Council.

Ms. Wilber stated that is correct. Pierce Coleman was the City's temporary service. There was no attorney used through our recruitment process. The City used Raftelis, the recruitment company, to do all the vetting, interviewing, and backgrounds. Raftelis did everything with the candidates.

Mayor Elinski asked if the majority of Council wants to be done with Pierce Coleman and bring in a temporary attorney.

Council Member Mathews stated we want to bring in an advisor to advise Council and to help Council find temporary and/or permanent representation.

Mayor Elinski then asked if the majority wants to hire an advisor instead of an attorney and/or legal firm.

Council Member Mathews stated it will be an attorney.

Mayor Elinski asked if Council is looking to replace the City Attorney with another attorney and/or firm.

Council Member DuVernay stated that Council is looking to replace Pierce Coleman for temporary legal coverage. Last time it took a long time to actually get a permanent person. Council needs legal representation that will represent Council, all of Council, and a majority of Council feels that we should submit names or firms to HR. It is always on the majority of Council.

Council Member Kurot asked if Council Members Mathews and DuVernay are asking to bring in an attorney or a firm, instead of a recruitment firm, to find a new attorney.

Council Member Mathews stated their job will be to represent the City and Council immediately, to be able to answer questions Council has in regards to anything that Council has to deal with immediately. Then, that person is going to help recruit either temporary or permanent representation, just like hiring somebody to go out and find these people.

Vice Mayor Wilden stated it is simple. We just voted, a majority, to keep Pierce Coleman.

Council Member DuVernay stated we did not vote a majority.

Vice Mayor Wilden stated, right, four of us agreed to keep Pierce Coleman on a temporary basis.

Council Member DuVernay stated on a temporary basis, and Council Member DeWillis clarified that, yes, everyone should throw names through the process that HR is asking Council for. Because you (Vice Mayor Wilden) did not like one person does not define how Council moves forward. They will all be vetted through the exact procedure that everyone else is, and four of the Council Members have requested that. It is very clear.

Mayor Elinski asked Ms. Wilber if the direction is clear to her what the majority is asking.

Ms. Wilber stated it is clear, generally.

Mayor Elinski stated if Council is looking for an advisor, that's one thing. There are many more things that the legal department does for the City; not just advise Council. If the majority of Council does not want to move forward with Pierce Coleman, that's all well and good, but the City needs a firm that has the breadth and experience to replace Pierce Coleman; not an advisor.

Council Member Mathews stated we need somebody to find that.

Mayor Elinski stated the contract attorney that was in place when the City went through the process to hire Ms. Winkler wasn't involved in the process. The City hired Raftelis, which is an executive recruitment search firm that helped us through the process. I do not feel that the City needs to hire an attorney or an advisor to help the City through the process of hiring an attorney. There are firms out there that do exactly that. If the majority of Council does not want to move forward with Pierce Coleman, that is fine. Council can select off merits. Request for Qualifications, a proposal from other firms to replace Pierce Coleman, that makes sense, but to have that firm or attorney help select the next one doesn't make sense.

Council Member DuVernay asked if you (the Mayor) means using a firm or attorney to replace Pierce Coleman but to not be involved in the recruiting; that Council does not need an attorney to help go through the recruitment; the City would use a firm.

Mayor Elinski stated correct.

Council Member DuVernay stated the majority of Council feels that Council needs to replace Pierce Coleman.

Mayor Elinski stated I understand that.

Council Member DuVernay asked Ms. Wilber if she will be able to accept applications for either a firm or an attorney to replace Pierce Coleman.

Ms. Wilber stated yes. It sounded like Council, in general, was okay with using an RFQ or an RFP process to collect those qualifications, and then review at that point.

Vice Mayor Wilden asked if that is as opposed to using a recruitment firm.

Ms. Wilber stated to use that process to figure out who is interested; they all submit the same qualifications, and use that process to figure out who the new temporary attorney and/or firm would be, however long temporary is.

Mayor Elinski stated correct. We will go through HR, either through an RFP or RFQ process; everybody submits on the same criteria; and it is ultimately Council's decision.

Council Member DuVernay asked how long the process will take. A majority of Council are not happy with Pierce Coleman, and so there is some urgency to it.

Ms. Wilber stated it depends on whether Council wants HR to bring back the RFP qualifications to review before it goes out, or if Council would feel comfortable with staff moving forward without a full discussion on what that looks like. If a further discussion with Council is needed regarding the RFP, it would be the first meeting in February. Ms. Wilber stated I am not an expert on procurement law.

Mr. Cook stated, based on past experience, something like that would depend on the scoring process. If staff is not reviewing and scoring, staff will bring it forward for Council to score, that would expedite the process. In a traditional sense, where staff might review and score RFPs, that is probably a six to eight-week process. Staff would work on it as quickly as possible, but would not be able to guarantee anything sooner than that.

Council Member Mathews asked if staff brought the reviewing and scoring to Council, would that expedite the process.

Mr. Cook stated I believe so. It would depend on how long the advertisement is ran. Usually there is an end date. I would recommend four-weeks advertising. It could be cut down to two weeks if Council desires.

Council Member Mathews stated time is of the essence.

Vice Mayor Wilden stated this Council does not run the City. I am comfortable with the staff and their expertise to do what they need to do.

Council Member DeWillis stated let's move forward. Let's get this moving now. Staff knows what they are doing. It is fresh in their minds.

Mayor Elinski asked if Council is comfortable with leaving the recruitment open for four weeks to try to get a wide variety of firms to respond. That seems like a reasonable timeframe.

Council directed staff to go through HR for the standard RFQ process, open for four weeks, bring the respondents back to Council to be reviewed in public and to make a decision.

Ms. Wilber stated Council is only focusing on the temporary firm to move forward, and unless Council wants to discuss the next steps for a permanent solution tonight, staff is okay to bring it back at a later meeting.

ADJOURNMENT

Mayor Elinski moved to adjourn the work session. The motion was seconded by Council Member Kurot and unanimously carried.

The work session was adjourned at 7:00 p.m.

MINUTES OF THE SPECIAL MEETING OF THE CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, HELD JANUARY 9, 2024, AT 5:00 P.M. AT THE COUNCIL CHAMBERS-RIVERFRONT, 1083 EAST RIVERFRONT ROAD, COTTONWOOD, ARIZONA.

Mayor Elinski called the meeting to order at 5:05 p.m.

Roll call was taken as follows:

COUNCIL MEMBERS PRESENT

Tim Elinski, Mayor
Debbie Wilden, Vice Mayor
Stephen DeWillis, Council Member
Lisa DuVernay, Council Member
Helaine Kurot, Council Member
Michael Mathews, Council Member
Derek Palosaari, Council Member (via Zoom)

STAFF MEMBERS PRESENT

Tami Mayes, City Clerk
Steve Coleman, Pierce Coleman, PLC, Outside Counsel

ITEMS FOR DISCUSSION, CONSIDERATION AND POSSIBLE DIRECTION TO STAFF:

SET AN EXECUTIVE SESSION

- DISCUSSION OR CONSIDERATION OF RESIGNATION OF A PUBLIC OFFICER, APPOINTEE, OR EMPLOYEE--PURSUANT TO A.R.S. 38-431.03(A)(1), DISCUSSION OR CONSIDERATION OF THE RESIGNATION OF THE CITY ATTORNEY
- DISCUSSION OR CONSIDERATION OF RESIGNATION OF A PUBLIC OFFICER, APPOINTEE, OR EMPLOYEE--PURSUANT TO A.R.S. 38-431.03(A)(1), DISCUSSION OR CONSIDERATION OF THE RESIGNATION OF THE CITY MANAGER
- LEGAL ADVICE--PURSUANT TO A.R.S. 38-431.03(A)(3), DISCUSSION OR CONSULTATION WITH LEGAL COUNSEL FOR LEGAL ADVICE REGARDING ALLEGATIONS IN NOTICE OF CLAIM SUBMITTED BY STEVE GESELL

RESIGNATION OF THE CITY ATTORNEY

Mayor Elinski stated as events unfolded today, the City Attorney will no longer be with us at the City of Cottonwood. The resignation of the City Attorney will be tabled as there is nothing to discuss at this point.

Mayor Elinski moved to table the resignation of the City Attorney. The motion was seconded by Vice Mayor Wilden and unanimously carried.

RESIGNATION OF THE CITY MANAGER

Mayor Elinski stated as events unfolded today, the City Manager will no longer be with us at the City of Cottonwood. The resignation of the City Manager will be tabled as there is nothing to discuss at this point. There may be something to discuss in the future with our City Manager being gone, but at this point there is nothing to discuss.

Mayor Elinski moved to table the resignation of the City Manager. The motion was seconded by Vice Mayor Wilden and unanimously carried.

COUNCIL MEMBER REQUEST FOR AGENDA ITEM—LISA DUVERNAY AND MICHAEL MATHEWS- DISCUSSION OF ALLEGATIONS IN NOTICE OF CLAIM SUBMITTED BY STEVE GESELL

Mayor Elinski stated legal advice is the nature of the executive session: Pursuant to Arizona Revised Statutes 38-431.03 (A)(3), discussion or consultation with legal counsel for legal advice regarding allegations in notice of claim submitted by Steve Gesell. Council may choose to go into executive session to discuss this matter. This matter was co-sponsored by Councilwoman DuVernay and Council Member Mathews.

Council Member Mathews stated there are a couple of things to go over here. It looked like for a while we weren't going to have time for this. It looks like now we probably would have time. We've had two principals take flight right before they have to answer these questions, and that only leaves two more. We are going to go ahead and cancel this request, and we will circle around later. We will restructure and refocus this matter at a later time and make a request for a meeting.

ADJOURNMENT

Mayor Elinski moved to adjourn the special meeting. The motion was seconded by Council Member Kurot and unanimously carried.

The special meeting was adjourned at 5:09 p.m.

City of Cottonwood, Arizona
City Council Agenda Communication



 Print

Meeting Date: February 20, 2024
Subject: Approval of the Contract with the Acting City Manager
Department: HR
From: Amanda Wilber, Human Resources Director

REQUESTED ACTION

Please consider approving the proposed contract with the Acting City Manager.

SUGGESTED MOTION

If the Council desires to approve this item the suggested motion is:

"I move to approve the proposed contract with Tom Whitmer, the Acting City Manager."

BACKGROUND

On February 6, the City Council appointed Tom Whitmer as the Acting City Manager and directed staff to work with the newly appointed Legal Counsel to prepare a contract between the City and the Acting City Manager. The resulting proposed contract is attached for consideration and possible approval.

JUSTIFICATION/BENEFITS/ISSUES

Approving a contract with the Acting City Manager clarifies basic expectations while Mr. Whitmer is in the role, such as pay, terms, and various other conditions.

COST/FUNDING SOURCE

Any additional cost allocated to this assignment will be absorbed by the cost savings of the currently vacant City Manager position.

ATTACHMENTS:

File Name	Description	Type
Acting_CM_Assignment_Agreement_Feb_2024(6087005.3).pdf	Proposed Agreement	Cover Memo

**ACTING CITY MANAGER
TEMPORARY ASSIGNMENT AGREEMENT**

This Temporary Assignment Agreement (this “Agreement”) is made and entered into as of February 20, 2024, by and between the City of Cottonwood, an Arizona municipal corporation in the County of Yavapai, State of Arizona (“Employer” or “City”), and Tom Whitmer (“Employee”). The Employer and Employee are the only parties to this Agreement.

RECITALS

WHEREAS, Employee is the Director of the City of Cottonwood Utility Department (“Utilities Director”); and

WHEREAS, the City Council is authorized by the Municipal Code of the City of Cottonwood (“City Code”), Section 2.16.040, to appoint an Acting City Manager; and

WHEREAS, Employee has accepted the role of Acting City Manager, as a temporary assignment in addition to his duties as Utilities Director; and

WHEREAS, Employee and Employer desire to establish the terms of Employee’s role as Acting City Manager, including appropriate remuneration; and

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Employer and Employee agree as follows:

SECTION 1: EMPLOYEE MANUAL

The appointment of Employee as Acting City Manager shall be treated as a temporary assignment for purposes of interpreting and applying the City of Cottonwood Employee Manual. If any conflict arises between the terms of this Agreement and those of the City of Cottonwood Employee Manual, the terms of this Agreement control. The terms of this Agreement apply to and for the duration of Employee’s role as Acting City Manager and do not modify or subtract from any term, benefit, status, allowance, or condition of his employment as Utilities Director.

SECTION 2: DUTIES

In addition to his responsibilities as Utilities Director, Employee shall have the powers, duties, and responsibilities of the City Manager of the City of Cottonwood, in accordance with the terms and conditions set forth herein. Employee shall perform the functions and duties of the City Manager as set forth under City Code Chapter 2.16, as well as those set forth under state law, and shall perform such other legally permissible and proper duties and functions as the City Council assigns from time to time.

SECTION 3: TERM

Employee's appointment as Acting City Manager took effect during the Regular Meeting of the Cottonwood City Council held on February 8, 2024 (the "Effective Date"). The term of this Agreement shall be for one year from the Effective Date, unless renewed by mutual agreement.

Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Council to terminate Employee's appointment as Acting City Manager at any time, subject only to the provisions set forth in Section 7 of this Agreement.

SECTION 4: REMUNERATION

During the term of this Agreement, a 20% premium shall be added to Employee's base pay.

SECTION 5: BENEFITS, ALLOWANCES

Any benefit or allowance to which Employee is entitled as Utilities Director shall remain unchanged by this Agreement or by Employee's temporary assignment.

SECTION 6: BONDING

Employer shall bear the full cost of any fidelity or other bonds required of Employee under any law or ordinance.

SECTION 7: TERMINATION; UNDERLYING POSITION NOT AFFECTED

As Acting City Manager, Employee serves at the pleasure of the City Council, which may terminate this Agreement and remove Employee from the position of Acting City Manager at any time, with or without cause and with or without notice to Employee.

If Employee voluntarily resigns from his role as Acting City Manager before the end of the term set forth in Section 3 above, he shall give Employer at least 60 days' notice thereof, unless the parties otherwise agree.

The termination or resignation of Employee's position as Acting City Manager will not impact his role as Utilities Director; however, if such termination is for cause, the same set of supporting facts may lead to additional disciplinary action against Employee in his role as Utilities Director.

SECTION 8: PERFORMANCE EVALUATION

The City Council may review and evaluate Employee's performance annually or more or less frequently, in Council's sole discretion. Employer shall provide adequate opportunity for Employee to discuss his evaluation with the City Council.

SECTION 9: NOTICE PROVISIONS

Any notice concerning this Agreement must be via e-mail to Employee, or in writing delivered personally or sent by certified or registered mail to the City, as follows:

Employer: Mayor & City Council
City of Cottonwood
827 North Main Street
Cottonwood, AZ 86326

Employee: Tom Whitmer
twhitmer@cottonwoodaz.gov

SECTION 10: GENERAL PROVISIONS

A. Headings. The descriptive headings of the sections of this Agreement are inserted for convenience only and do not control or affect the meaning or construction of the provisions hereof.

B. Jurisdiction and Venue. This Agreement must be administered and interpreted under the laws of the State of Arizona, and venue for any legal action hereunder shall be the Yavapai County Superior Court in Camp Verde, Arizona.

C. Attorney's Fees. If either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party is entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, as the court may adjudge, or in event of appeal as allowed by the appellate court.

D. Severability. If any part of this Agreement is determined by a court to conflict with any statute or constitution or to be unlawful for any reason, the parties intend that the remaining provisions of this Agreement remain in full force and effect unless the stricken provision leaves the remaining Agreement unenforceable.

E. Conflict of Interest. Employee covenants that he presently has no interest and will not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The parties agree that this Agreement may be cancelled for conflict of interest in accordance with Arizona Revised Statutes § 38-511.

F. Entire Agreement. This Agreement constitutes the entire Agreement between the parties and must not be changed or added to except by written amendment. All prior

and contemporaneous agreements, representations, and understandings of the parties, oral or written, other than specifically incorporated herein by reference, are superseded by this Agreement.

G. No Waiver. No waiver of, acquiescence in, or consent to any breach of any term, covenant, or condition hereof may be construed as, or constitute, a waiver of, acquiescence in, or consent to any other, further, or succeeding breach of the same or any other term, covenant, or condition.

H. Indemnification. In addition to that required under state and local law, Employer shall defend, save harmless, and indemnify Employee from and against any tort, professional liability claim, or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of his Acting City Manager duties as prescribed by the City Code or separate directions of the City Council. Except for actions or omissions that are intentional and tortious, or criminal in nature, Employer shall indemnify, defend, and hold Employee harmless from all liability for damages, court costs, litigation expenses, defense costs, and attorneys' fees that arise out of Employee's acts or omissions committed within the course and scope of his role as Acting City Manager. If Employee engages in actions or omissions that are intentional and tortious or criminal in nature, then Employer may, in the sole discretion of the City Council, indemnify, defend, and hold Employee harmless from all liability for damages, court costs, litigation expenses, defense costs, and attorneys' fees that arise out of his acts or omissions committed within the course and scope of his role as Acting City Manager.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and executed on the day and year first above written.

CITY OF COTTONWOOD:

EMPLOYEE:

Tim Elinski, Mayor

Tom Whitmer

Attest:

Tami Mayes, City Clerk

Approved as to Form:

Gust Rosenfeld, PLC, City Attorney
By John Gaylord

City of Cottonwood, Arizona
City Council Agenda Communication



 Print

Meeting Date:	February 20, 2024
Subject:	Authorization to Apply for Section 5311 Federal Transportation Authority Funding through the Arizona Department of Transportation for the City of Cottonwood Fiscals Years 2025 - 2027 federal budget cycle October 1, 2024 to September 1, 2026.
Department:	Administrative Services David Hausaman, Public Works and Transportation Director
From:	Lisa Boring, Transit Manager Kirsten L Lennon, Financial Services Director

REQUESTED ACTION

Staff requests authorization to submit an application for the 5311 Federal Transportation Authority Funding through the Arizona Department of Revenue for the Cottonwood Area Transit and Verde Shuttle programs.

SUGGESTED MOTION

If the Council desires to approve this item the suggested motion is: "I move to to authorize staff to apply for Section 5311 Federal Transportation Authority (FTA) funding through the Arizona Department of Transportation (ADOT) for the operation, administration and capital of the Cottonwood Area Transit/Verde Shuttle Transit system during the federal budget cycle of October 1, 2024 to September 30, 2026."

BACKGROUND

The Cottonwood Area Transit(CAT)/Verde Shuttle currently operates with federal funding that is passed through the Arizona Department of Transportation. The funding that is currently being received was part of a grant that was applied for in February 2022 and will expire on September 30, 2024. This request is to get authorization to submit for continued federal funding for the CAT/Verde Shuttle programs using the Federal Transportation Administration Section 5311 Grant Funding for October 1, 2024 to September 30, 2026. The Federal Grant program is on a two year funding cycle. The

current grant application is due on February 23, 2024 and requires Council approval for the application to allocate the in kind matching to the grant.

As part of the grant process the transit staff held two public hearings to allow input from citizens on the grant application. Those meetings were held on February 13th and 15th at 4 p.m. at the Recreation Center.

JUSTIFICATION/BENEFITS/ISSUES

Cottonwood Area Transit/Verde Shuttle was created to provide transportation services to the Citizens of Cottonwood and the Verde Valley. The majority of riders would not otherwise have a way to get to and from their jobs, medical appointments, grocery stores, recreational facilities, etc. and the service also reduces traffic on area roads. Applying for this grant allows the CAT/Verde Shuttle program to continue its longtime partnership with the other cities and towns in the Verde Valley, the Arizona Department of Transportation, the Northern Arizona Council of Government (NACOG), and the various organizations that use the CAT/Verde Shuttle to provide services for their clients.

COST/FUNDING SOURCE

This application seeks grant funding for federal fiscal year October 1, 2024 through September 30, 2026. The requests to apply for this grant is on behalf of Cottonwood, Clarkdale, Sedona, Jerome and Yavapai County; each of which contributes to supplying the local match funding to support the transit program.

ATTACHMENTS:

File Name	Description	Type
Attorney Determination_Form_-_Blank.docx	Attorney Determination Form & Authorized Signer Form	Cover Memo
PRESS RELEASE_-_2024_Transit_Public_Hearing_Notice.pdf	Public Hearing Notice	Cover Memo

ATTORNEY DETERMINATION FOR
GRANT AGREEMENT

BETWEEN
THE ARIZONA DEPARTMENT OF TRANSPORTATION
MULTIMODAL PLANNING DIVISION acting for and on behalf of
THE STATE OF ARIZONA
AND

APPROVAL OF City of Cottonwood

E-Grant Application Number: 5311-2022-City of Cottonwood-00013

{This page must be signed by either an attorney or by a legally authorized agency signatory.}

I have reviewed this Grant Agreement BETWEEN the STATE OF ARIZONA, by and through its ARIZONA DEPARTMENT OF TRANSPORTATION, MULTIMODAL PLANNING DIVISION and City of Cottonwood and declare this Agreement to be in proper form and within the powers and authority granted to the City of Cottonwood under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this _____ day of _____, _____

Attorney for the City of Cottonwood

Option for Private or Not-for-Profit Agencies Only:

I herein state that the agency is a Private or Not-for-Profit Agency, and that as a legally-authorized signatory, by signing below, I Acknowledge and Waive attorney review of this Agreement. I furthermore acknowledge that ADOT recommends an attorney review of this Agreement even if not mandatory.

DATED this _____ day of _____, _____

Agency Signature

Print Name and Title of Signatory



Contact: Lisa Boring
Transportation Manager
928-634-2287 ext. 2755
lboring@cottonwoodaz.gov
cottonwoodaz.gov

FOR IMMEDIATE RELEASE
TO ALL MEDIA
January 25, 2024

CITY OF COTTONWOOD, COTTONWOOD AREA TRANSIT ANNOUNCES INTENT TO APPLY FOR FINANCIAL ASSISTANCE UNDER THE FTA RURAL PUBLIC TRANSPORTATION PROGRAM AUTHORIZED UNDER 49 U.S.C. SECTION 5311

COTTONWOOD, AZ – Public notice is hereby made that Cottonwood Area Transit (CAT) is applying for federal financial assistance to continue providing public transportation service as follows:

Cottonwood Area Transit – A traditional bus circular covering Cottonwood, Clarkdale, and areas in Yavapai County. This program has been in place for nearly three decades with select modifications to the routes to accommodate area communities. This year we are proposing the inclusion of a Jerome route having a one-day service on the current Red Line, with three runs on Thursdays. The runs are to be determined by the least passenger counts. During these runs, service will extend from 45 minutes to 90 minutes.

Verde Shuttle – A commuter route between Cottonwood and Sedona that runs seven days a week 6 a.m. to 10:34 p.m. Verde Shuttle has been in place for several years with a complementary CAT Connect service on late night runs to get passengers home safely, which runs Monday through Friday from 6:45 p.m. to 10:34 p.m.

ADA paratransit service – The service, along with other area paratransit service providers, will facilitate curb to curb transportation for those qualifying under the ADA guidelines.

Public notice is further made that Cottonwood Area Transit is also applying for federal financial assistance to purchase several cutaway buses and vans that will be used to provide public transportation service for each of the previously mentioned services, CAT, Verde Shuttle, and Paratransit.

Two public hearings are scheduled to discuss the Cottonwood Area Transit program. These meetings will be held at the Cottonwood Recreation Center, Cottonwood Room located at 150 S. 6th St. The dates for the public hearing are February 13 and 15 at 4 p.m. Transportation will be provided for those in need by calling the CAT office at 928-634-2287.

The transportation service will be available to the general public during all hours of operation. The project is expected to be financed by FTA Section 5311 Rural Program public transportation funds, with additional funds to be provided from the communities of Cottonwood, Clarkdale, Sedona, Jerome, and Yavapai County. The total federal share for operating and capital projects is expected to be \$3.5 million over two years.

Cottonwood Area Transit ensures that the level and quality of transportation service is provided without regard to race, color, or national origin in accordance with Title VI of the Civil Rights Act of 1964 and with the

Inspiring a Vibrant Community



Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973. For more information regarding our Title VI/ADA obligations or to file a complaint, please contact us at the address given below.

Comments on the proposed project are invited from the general public, private bus and taxi companies, other public transportation providers, and human service agencies. Interested parties may comment on the project or obtain more details about the project by writing to:

Lisa Boring
Transportation Manager
340 Happy Jack Way
Cottonwood, AZ 86326
928-634-2287
lboring@cottonwoodaz.gov

CAT provides ADA Paratransit service and four fixed routes serving Cottonwood, Clarkdale and Verde Villages, as well as Verde Shuttle commuter service to Sedona. CAT also connects with Yavapai/Apache Nation Transit to provide connections to Camp Verde and Greyhound. For more information about Verde Valley public transportation, please call the CAT office at 928-634-2287.

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City of Cottonwood, Arizona
City Council Agenda Communication



 Print

Meeting Date:	February 20, 2024
Subject:	Resolution Number 3255--Transportation Service Agreement with Verde Valley Caregivers Coalition.
Department:	Public Works
From:	Lisa Boring, Transit Manager

REQUESTED ACTION

Staff is requesting that Council authorize the Interim City Manager to execute the transportation service agreement with Verde Valley Caregivers Coalition.

SUGGESTED MOTION

If the Council desires to approve this item the suggested motion is:

“I move to approve Resolution Number 3255 authorizing the Interim City Manager to execute a transportation service agreement with Verde Valley Caregivers Coalition for fiscal year 2025.”

BACKGROUND

Mr. Kent Ellsworth, Executive Director of the Verde Valley Caregivers Coalition (VVCC), has been working with older adults and individuals with disability in this area since 2010. The VVCC staff and team of 130 volunteers provided over 20,000 rides last year. VVCC provides its demand response specialized transportation services to over 1,500 individuals annually, utilizing its three wheelchair accessible minivans and over 100 volunteers using their personal vehicles. However, the need for this type of transportation service exceeds VVCC’s capacity in the areas surrounding Cottonwood and Cornville. VVCC and CAT working together through a contract provides the increased trip capacity needed.

JUSTIFICATION/BENEFITS/ISSUES

Cottonwood Area Transit/ Verde Shuttle exists to provide transportation options to those citizens in Cottonwood, Clarkdale, Yavapai County surrounding Cottonwood, and Sedona, who otherwise would have no way to get to needed doctor appointments,

grocery stores, recreational facilities, etc.

By agreeing to the terms of this contract, the Council would continue the long history of providing needed transportation services to not only these communities, but allow CAT to extend its reach into other areas of Yavapai County not so fortunate to have a robust transportation system available, yet still having the same needs for transportation to doctors' appointments, physical therapy, dialysis, etc. This would add to a longstanding partnership with the communities, ADOT, NACOG and the other human services organizations that use CAT/Verde Shuttle to provide transportation services for their clients.

COST/FUNDING SOURCE

This contract is being funded primarily by grant funds that the Verde Valley Caregivers Coalition obtains from various foundations and private donors. Our funding for this comes from grant funding from ADOT/FTA.

ATTACHMENTS:

File Name	Description	Type
2-20-24_VVCG_Service_Contract_-_attorney_reviewed_1.31.24_updated_2.12.24.pdf	VV Caregivers' Service Contract 2024	Backup Material
2-20-24_Resolution_3255_for_Service_Agreement_-_VVCG_attorney_reviewed_1.31.24_for_2.20.24.pdf	Resolution Number 3255	Resolution

**TRANSPORTATION SERVICES
AGREEMENT BETWEEN
VERDE VALLEY CAREGIVERS COALITION, AN ARIZONA
NONPROFIT CORPORATION
AND
THE CITY OF COTTONWOOD, AN ARIZONA MUNICIPAL
CORPORATION**

This Transportation Services Agreement (“Agreement”) is entered into as of the 1st day of July, 2024, by and between the City of Cottonwood, Arizona, acting by and through the public transportation system known as Cottonwood Area Transit ("CAT"), whose business address is 340 Happy Jack Way, Cottonwood, AZ 86326, and Verde Valley Caregivers Coalition ("VVCC"), an Arizona non-profit corporation, whose business address is 299 Van Deren Road, Suite 2, Sedona, AZ, 86336. For and in consideration of the following covenants and conditions, it is hereby agreed as follows:

1. The City of Cottonwood (“City”) operates the regional public transit service known as Cottonwood Area Transit (“CAT”), which provides public transportation services within and between the cities of Cottonwood and Sedona; the towns of Clarkdale and Jerome; and the unincorporated areas of Bridgeport, Cornville, Big Park/Village of Oak Creek and Verde Village, including areas serviced by VVCC.
2. This Agreement will be effective from July 1, 2024, and continue in full force until June 30, 2025 unless terminated by either party upon thirty (30) days’ written notice to the other party at the addresses listed above.
3. CAT will provide transportation services to VVCC's clients within CAT’s service area as described in Section 1 above, as such may be amended from time to time; and during the operating hours described in Section 4 below, as such may be amended from time to time, in accordance with the applicable federal, state and local laws, rules, regulations, policies and guidelines.
4. Current CAT operating hours are from approximately 6:45 a.m. to 6:45 p.m. daily, Monday through Friday. If rides are needed on Saturday or Sunday, CAT will provide those rides to VVCC clients with 48 hours’ notice at a rate of \$40 per trip. CAT currently does not provide transit services of any kind on the following holidays: New Years' Day, Thanksgiving Day, and Christmas Day.
5. VVCC will pay CAT for its services according to the schedule set forth below, such payments to be made within 30 days of receipt of a monthly invoice showing the number of authorized VVCC clients transported in the prior month as reflected in CAT’s dispatch logs.
6. The formula for determining VVCC’s monthly payments to CAT is set forth in Exhibit A. The contribution provided is in the form of a transportation fee that will be

provided by VVCC.

7. Annually, during the budgeting process, VVCC and CAT shall meet to determine if an increase in the transportation fee is necessary and appropriate. Any proposed transportation fee increase must be approved by CAT and VVCC and shall take effect after the start of the fiscal year beginning on July 1.
8. All clients of VVCC assigned to VVCC programs shall ride CAT routes and ADA Paratransit at no charge to them, provided that the VVCC client boards or alights the CAT vehicle within $\frac{3}{4}$ mile on either side of a CAT bus route. VVCC clients that are not authorized by VVCC shall be required to pay regular CAT fares.
9. VVCC shall maintain and provide CAT with a current list of eligible users and promptly following any changes add or remove eligible clients by the 5th of the upcoming month. This list must include all pertinent contact information.
10. VVCC's Coordinator shall schedule rides with the CAT dispatcher and VVCC's clients should contact the VVCC Coordinator to request transportation. CAT dispatchers will not accept ride requests from persons other than the VVCC Coordinator for VVCC-funded trips.
11. VVCC shall be responsible for the full payment of all no-show trips. The VVCC client shall be considered a no-show if the client does not come out to the bus within five (5) minutes of the bus arrival time. All no-shows shall be reported to the VVCC Coordinator at the end of the month with the invoicing.
12. To the extent permitted by law, each party shall indemnify and hold harmless the other party and its officers, officials, agents and employees (collectively "Indemnitees") against any and all claims arising from any liability or bodily injury, including death or property damages, to any person or persons to the extent caused by the negligence or willful misconduct of the indemnifying party or its employees, officers or agents. The obligations under this Section 12 shall survive termination of this Agreement. If a claim or claims by third parties become subject to this indemnity provision, the parties to this Agreement shall expeditiously meet to discuss a common and mutual defense, including possible proportionate liability and payment of possible litigation expenses and damages.
13. To the extent applicable under Arizona Revised Statutes §41-4401, VVCC warrants compliance with all Federal immigration laws and regulations that relate to their employees and compliance with the e-Verify requirements under A.R.S. §23-214(A). VVCC's breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and may result in immediate termination of this Agreement.
14. This Agreement contains the entire understanding between VVCC and the City of Cottonwood and no term or provision may be changed, waived, discharged or terminated unless the same is in writing executed by both VVCC and the City. All prior and contemporaneous agreements, representations, and understandings, written or oral, are superseded by and merged into this

Agreement.

15. This Agreement is subject to cancellation pursuant to A.R.S. §38-511.
16. In the event suit is brought or an attorney is retained by any party to this Agreement to seek interpretation or construction of any term or provision hereof, to enforce the terms of this Agreement, to collect any money due, or to obtain any money damages or equitable relief for breach, or to seek recourse in a bankruptcy proceeding, the prevailing party shall be entitled to recover, in addition to any other available remedy, reimbursement for reasonable attorneys' fees including attorney's fees for representation in the bankruptcy court, court costs, costs of investigation, and other related expenses.
17. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.
18. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
19. This Agreement shall be construed in accordance with the laws of the State of Arizona, and any controversy, dispute or litigation shall be brought or commenced only in the Superior Court of Yavapai County, Arizona.

IN WITNESS WHEREOF, the Parties hereto have executed this transportation service agreement effective this 20th day of February, 2024.

VERDE VALLEY CAREGIVERS COALITION:

Kent Ellsworth, Executive Director

Date

CITY OF COTTONWOOD:

Tom Whitmer, Acting City Manager

Date

APPROVED AS TO FORM:

William J. Sims, III, Attorney, Sims Mackin, Ltd.

EXHIBIT A
FORMULA FOR CAT CONTRIBUTION

The transportation fee is \$20.00 per client, each trip based on the following formula:

- Based on an approximate enrollment of 25 unduplicated clients traveling round trip.
- 25 clients making two (2) trips/day, five days a week, 52 weeks/year.
- **Total revenue generated from VVCC based on the above numbers annually:
\$260,000**

This exhibit may be amended annually by VVCC and CAT to reflect the new client numbers as determined by the VVCC Executive Director.

The amount paid to CAT shall be \$20.00 per client/trip regardless of whether the client travels one-way or round trip.

Annually during the budgeting process, VVCC and CAT shall meet to determine if an increase in the transportation fee is necessary. Such transportation fee increase must be approved by VVCC and take effect at the start of the fiscal year beginning on July 1.

RESOLUTION NUMBER 3255

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, AUTHORIZING THE ACTING CITY MANAGER TO EXECUTE A TRANSPORTATION SERVICE AGREEMENT WITH VERDE VALLEY CAREGIVERS COALITION, AN ARIZONA NONPROFIT CORPORATION, FOR FISCAL YEAR 2025.

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, AS FOLLOWS:

WHEREAS, the City of Cottonwood operates the regional public transit service know as Cottonwood Area Transit (CAT), which provides public transportation services within and between the cities of Cottonwood and Sedona; the towns of Clarkdale and Jerome; and the unincorporated areas of Bridgeport, Cornville, Big Park/Village of Oak Creek and Verde Village, including areas serviced by Verde Valley Caregivers Coalition; and

WHEREAS, the Verde Valley Caregivers Coalition has requested a service agreement with CAT since April 2015 to provide transportation for their clients; and

WHEREAS, the City of Cottonwood desires to continue a working relationship with the Verde Valley Caregivers Coalition.

IT IS HEREBY RESOLVED authorizing the Acting City Manager to execute a transportation service agreement with the Verde Valley Caregivers Coalition for Fiscal Year 2025.

PASSED AND ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, THIS 20TH DAY OF FEBRUARY, 2024.

Tim Elinski, Mayor

ATTEST:

Tami Mayes, City Clerk

APPROVED AS TO FORM:

William J. Sims, III, Attorney, Sims Mackin, Ltd.

City of Cottonwood, Arizona
City Council Agenda Communication



 Print

Meeting Date:	February 20, 2024
Subject:	Possible approval of Resolution Number 3260--Intergovernmental Agreement with the Town of Clarkdale for the Co-Location and Sharing of Municipal Court Facilities and Staff.
Department:	City Manager
From:	Jesus R. Rodriguez, Deputy City Manager

REQUESTED ACTION

Staff is requesting that Council review and approve Resolution Number 3260--the Intergovernmental Agreement with the Town of Clarkdale for the co-location and sharing of municipal court facilities and staff.

SUGGESTED MOTION

If the Council desires to approve this item the suggested motion is:

“I move to approve Resolution Number 3260, authorizing the Interim City Manager to execute an Intergovernmental Agreement between the City of Cottonwood and the Town of Clarkdale for the co-location and operations of their Municipal Court.”

BACKGROUND

In January 2022, the City of Cottonwood and Town of Clarkdale entered into an two year Intergovernmental Agreement for co-location and sharing of Municipal Court facilities and staff. That agreement will be expiring March 31, 2024. Clarkdale has requested this new agreement be for a period longer than two years.

To accommodate Clarkdale's request, this agreement is for five years with an additional five one-year automatic extensions. The agreement also provides language for automatic annual rate increases of 5%.

All other terms of this agreement remain the same.

JUSTIFICATION/BENEFITS/ISSUES

The City continues to have the space and capacity to accommodate the Clarkdale Court. This arrangement also provides our Magistrate with a full-time job instead of a part-time (0.8 FTE) position.

The City will receive an annual Facility and Operations Fee of \$110,100, to be paid quarterly by Clarkdale beginning April 1, 2024. This fee includes all personnel, utilities and other costs allocable to Clarkdale. This Facility and Operations Fee shall be adjusted annually, increasing by 5%, on April 1 of subsequent years of the agreement.

The IGA will continue to provide excellent uninterrupted customer service to not only Clarkdale residents, but Cottonwood residents as well.

COST/FUNDING SOURCE

In addition to paying a fair rental rate for its shared use of the City's court facility, all additional costs associated with this proposed co-location and sharing of support staff will be covered by Clarkdale.

ATTACHMENTS:

File Name	Description	Type
2-20-24 Clarkdale Court Consolidation IGA 24-26 updated 2.1.24 - attorney reviewed 2.2.24 updated 2.12.24.pdf	Clarkdale Court Consolidation IGA	Backup Material
Res3260 - Clarkdale updated 2.12.24.pdf	Resolution Number 3260	Resolution

**TOWN OF CLARKDALE/CITY OF COTTONWOOD
INTERGOVERNMENTAL AGREEMENT
CO-LOCATION AND OPERATIONS OF MUNICIPAL COURT**

THIS AGREEMENT made this 20th day of February, 2024, by and between the TOWN OF CLARKDALE, a municipal corporation of the State of Arizona, hereinafter called "Town" and the CITY OF COTTONWOOD, a municipal corporation of the State of Arizona, hereinafter called "City".

RECITALS

WHEREAS, the Town is authorized to enter into this Agreement pursuant to A.R.S. §9-240, A.R.S. § 11- 952, and Town's Code; and

WHEREAS, the City is authorized to enter into this Agreement pursuant to A.R.S. §9-240, A.R.S. § 11- 952, and City's Code; and

WHEREAS, the City operates and maintains a Municipal Court facility and employs staff for the conduct of certain City judicial operations; and

WHEREAS, the Town requires facilities and staff for its Municipal Court operations; and

WHEREAS, the Parties have determined that it is to their mutual benefit to enter into an agreement for joint utilization of facilities and staff required for their respective Court operations.

NOW THEREFORE, IT IS AGREED by and between the Town and the City as follows:

I. OCCUPANCY AND USE OF COURT FACILITIES

- A. Use of Court Facilities.** The City hereby grants to the Town the right to use and occupy the City's Municipal Court facilities for the use of the Town Magistrate and for ancillary services. Employees and/or Contractors (e.g., Town Prosecutor, Public Defender, etc.) of the Town shall have the right of access to the described premises, which shall be in conjunction and coextensive with the use of the City and its employees. City agrees to furnish the Town and its employees, licensees, and/or permittees during the Term of this Agreement, or any extension hereof, proper heating, cooling, electricity, use of common corridors, lobbies, rooms, stairs, ingress and egress, and reasonable janitorial service.
- B. Court Staffing and Equipment.** The City shall provide all necessary staffing and equipment to operate the Town Magistrate Court, with operations to be as similar as possible to the City Magistrate Court. Staffing shall include, but is not limited to clerks, a court administrator, and security staff ("Court Staff"). Equipment shall include, but is not limited to, computers, software, and court session video recording equipment. The Town shall appoint, contract with and pay for its Town Magistrate; any pro tem magistrates that may be required; its public defender; and its prosecutor. In the event the City Magistrate does not also serve as the Town Magistrate, this Agreement may be cancelled or renegotiated by the Town and the City.

C. Worker's Compensation. To the extent permitted by law, while Court Staff are providing services for Town Magistrate Court, Court Staff are still the employees of City. City agrees to employ and be responsible for the Court Staff as its employee for all matters including, but not limited to, purposes of compensation, Workers' Compensation premiums, benefits, retirement and discipline (subject to consultation as set forth herein), and to budget for the expense of all wages, benefits, and taxes, while also accounting for, and paying all applicable wages, benefits, and payroll taxes for Court Staff. As such, City shall maintain Workers' Compensation insurance coverage on Court Staff. All personnel costs of the Court Staff will be the responsibility of City, who is the primary employer of Court Staff, including any overtime. For purposes of workers' compensation, an employee of a Party to this Agreement who works under the control of another Party pursuant to this Agreement, is deemed to be an employee of both the Party who is her primary employer and the Party under whose control she is then working, as provided in A.R.S. §23-1022(D). The primary employer of such employee shall be solely liable for payment of workers' compensation benefits for the purposes of this section. Each Party herein shall comply with the provisions of A.R.S. §23-1022(E) by posting the notice required. The Magistrate will be under contract as an employee of both Town and City.

D. Records. The records of the Town Magistrate Court shall remain the property of Town and shall not be withheld from Town under any circumstance.

II. COST REIMBURSEMENT

A. Reimbursement by Town. During the Term of this Agreement Town shall reimburse the City in the following amounts:

- 1. Facility and Operations Fee.** A Facility and Operations Fee of \$110,100.00 (One Hundred Ten Thousand, One Hundred Dollars) annually, is established commencing April 1, 2024. The Facility and Operations Fee shall be comprised of all reasonable facility-based (e.g., electricity, plumbing, physical security, janitorial services, physical security) and operations-based (e.g., staffing, hours of operations, materials, forms, etc.) expenses. The Facility and Operations Fee shall be adjusted in accordance with Section 11.A.3 of this Agreement as of April 1 of each successive year of this Agreement and any renewals thereof.
- 2. Initial Tenant Improvements and Equipment Acquisition.** The City shall provide the Town with an estimate of the costs for required tenant improvements and equipment necessary to accommodate the Town Magistrate Court (the "Initial Costs"), and shall obtain the Town's approval prior to incurring any such costs. The Town shall thereafter reimburse the City for such approved costs over each of the first two (2) quarterly billing cycles identified in Section III(B). If the Town terminates this Agreement prior to reimbursement for the Initial Costs, then the Town shall reimburse the City for the remaining amount of the Initial Costs at the time of termination.
- 3. Reimbursement Adjustments.** The Facility and Operations Fee shall have an automatic annual adjustment of a 5 percent increase of the prior calendar year's obligation.

III. SCHEDULE OF PAYMENTS

A. Payments by the Town. Amounts owed by the Town during the initial term of this Agreement, or renewals thereof, are payable in quarterly installments as follows:

1. Facility and Operations Fee: 25% of the annual Facility and Operations Fee as calculated herein for the Term or renewals thereof.

B. Quarterly Payment Processing. On or before the 15th day of each quarter following execution of this Agreement, during the Term of this Agreement, or renewals thereof, the City shall transmit to the Town an itemized invoice for: 25 percent of the annual Facility and Operations Fee in addition to any other contractually agreed upon charges. Upon receipt, the Town shall timely issue payment to the City for the total amount of the itemized charges.

IV. INDEMNITY AND INSURANCE

A. Indemnity. To the extent permitted by law, each Party, as "Indemnitor", shall indemnify, defend, and hold harmless, to the fullest extent permitted by law, the other Party and its officers, officials, employees and agents, collectively as "Indemnitee", from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") relating to, arising out of, or alleged to have resulted from the negligent acts, errors, omissions, mistakes, malfeasance, or intentional acts of the Indemnitor's officers, officials, employees or agents relating to the performance of this Agreement.

B. Insurance. The City shall obtain and maintain public entity liability insurance coverage with minimum annual policy limits of \$2,000,000 (Two Million Dollars) naming the Town as an additional insured and shall, on or before the effective date of this Agreement provide the Town with a certificate of insurance confirming the existence of the required coverage and the addition of the Town as an additional insured. The Town shall obtain and maintain public entity liability insurance coverage with minimal annual policy limits of \$2,000,000 (Two Million Dollars) naming the City as additional insured and shall, on or before the effective date of this Agreement, provide the City with a certificate of insurance confirming the existence of the required coverage and the addition of the City as an additional insured.

V. SEVERABILITY

The invalidity of any provision of this Agreement as determined by a Court of competent jurisdiction, shall in no way effect the validity of any other provision hereof, so long as the original intent of the Parties is not defeated thereby.

VI. TERM AND RENEWAL

The Initial Term of this Agreement shall commence on April 1, 2024, and shall expire on March 31, 2029, unless earlier terminated as provided herein. Thereafter, this Agreement will automatically renew for five (5) additional successive one-year renewal terms with a maximum effective term, including initial and renewal terms, not to exceed ten (10) years. The Initial Term and any extension thereto shall be referred to as the "Term."

VII. TERMINATION

Notwithstanding the expressed term of the Agreement, either Party reserves the right to terminate this Agreement with or without cause at any time, by providing to the other Party, in writing, notice of intent to terminate at least ninety (90) days prior to the specified date of termination.

VIII. NOTICES

Notices to be sent pursuant to this Agreement shall be personally delivered or mailed by prepaid postage and certified mail, to the following addresses:

Town of Clarkdale
Town Manager
P.O. Box 308
Clarkdale, AZ 86324

City of Cottonwood
Court Administrator
665 E Mingus Avenue
Cottonwood, AZ 86326

IX. MISCELLANEOUS

- A. Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with respect to the subject matters hereof, and it may be amended, modified, or waived only by an instrument in writing signed by both Parties.
- B. Termination for Conflict of Interest.** This Agreement is subject to cancellation pursuant to A.R.S. §38-51 I, the pertinent portions of which are incorporated by reference herein.
- C. Non-Discrimination.** The Parties warrant that they comply with all state and federal laws, rules and regulations which mandate that all persons, regardless of race, color, creed, religion, sex, genetic information, age, national origin, disability, familial status or political affiliation shall be afforded equal access to employment opportunities, including but not limited to the Americans with Disabilities Act. The parties shall take affirmative action to ensure that it will not participate either directly or indirectly in any form of discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; Section 109 of the Housing and Community Development Act of 1974; the Age Discrimination Act of 1975; or the Genetic Information Nondiscrimination Act of 2008.
- D. Legal Arizona Workers Act Compliance.** To the extent permitted by law, both parties are required to comply with A.R.S. §41-4401, and hereby warrant that they will, at all times during the term of this Agreement, comply with all federal immigration laws applicable to the employment of their respective employees, the requirements of A.R.S. §41-4401, and with the verification requirements of A.R.S. §23-214(A) (together the "state and federal immigration Laws"). The parties further agree to ensure that each subcontractor that performs any work under this Agreement likewise complies with the state and federal immigration laws. A breach of a warranty regarding compliance with the state and federal immigration laws shall be deemed a material breach of the Agreement and the party who breaches may be subject to penalties up to and including termination of the Agreement.

Each party retains the legal right to inspect the papers of any contractor or subcontract employee of the other working under the terms of the Agreement to ensure that the other party is complying with the warranties regarding compliance with the state and federal immigration laws.

- E.** The parties acknowledge that this Agreement is not intended for the benefit of any third party and shall not be construed as a third-party beneficiary contract.
- F.** Should any provision of this Agreement be found unlawful or unenforceable, it shall be stricken, and the balance of the Agreement shall remain in full force and effect; provided, however, that in the event the stricken portion makes it impractical or impossible for either party to perform their responsibilities under this Agreement, then it shall terminate, and the parties shall be responsible for payment of their share of employment costs through the date of termination.
- G.** This Agreement in no way restricts either party from participating in similar activities with other public or private agencies, organizations, and individuals.
- H.** This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the parties hereto. This Agreement is the result of negotiations between, and has been reviewed by, each of the parties hereto and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of all of the parties hereto, and no ambiguity shall be construed in favor of, or against any one of the parties hereto.
- I.** This Agreement shall be construed and interpreted under the laws of Arizona, and any litigation under this Agreement shall be commenced in Yavapai County.
- J.** The parties agree to make use of mediation and/or another form of alternative dispute resolution prior to commencing litigation, except in cases where a party reasonably determines that it would be futile to do so.
- K.** Nothing contained in this Agreement shall create any partnership, joint venture or other agreement between the parties hereto. Except as expressly provided in this Agreement, no term or provision of this Agreement is intended or shall be for the benefit of any person or entity not a party to this Agreement, and no such other person or entity shall have any right or cause of action under this Agreement.
- L.** This Agreement sets forth all of the covenants, promises, agreements, conditions and understandings between the parties to this Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the parties other than as set forth in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officials on the aforementioned date.

TOWN OF CLARKDALE

CITY OF COTTONWOOD

Susan Guthrie, Town Manager

Tom Whitmer, Acting City Manager

Date

Date

DETERMINATIONS OF COUNSEL

Pursuant to A.R.S. Section 11-952(D), the foregoing agreement has been reviewed by the undersigned attorney for the Town of Clarkdale, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this State to the Town of Clarkdale.

Stephen W. Polk
Town Attorney

Pursuant to A.R.S. Section 11-952(D), the foregoing agreement has been reviewed by the undersigned attorney for the City of Cottonwood, who has determined that the agreement is in proper form and is within the powers and authority granted under the laws of this State to the City of Cottonwood.

William J. Sims, III
Attorney, Sims Mackin, Ltd.

RESOLUTION NUMBER 3260

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNT, ARIZONA, APPROVING AND AUTHORIZING THE ACTING CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF COTTONWOOD AND THE TOWN OF CLARKDALE FOR THE CO-LOCATION AND OPERATIONS OF MUNICIPAL COURT.

Whereas, the Town is authorized to enter into this Agreement pursuant to A.R.S. §9-240, A.R.S. §11-952, and Town's Code; and

Whereas, the City is authorized to enter into this Agreement pursuant to A.R.S. §9-240, A.R.S. §11-952, and City's Code; and

Whereas, the City operates and maintains a Municipal Court facility and employs staff for the conduct of certain City judicial operations; and

Whereas, the Town requires facilities and staff for its Municipal Court operations; and

Whereas, the Parties have determined that it is to their mutual benefit to enter into an agreement for joint utilization of facilities and staff required for their respective Court operations; and

IT IS HEREBY RESOLVED approving and authorizing the Acting City Manager to execute an Intergovernmental Agreement between the City of Cottonwood and the Town of Clarkdale for the co-location and operations of municipal court.

PASSED AND ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, THIS 20TH DAY OF FEBRUARY 2024.

Tim Elinski, Mayor

RESOLUTION NUMBER 3260

Page 2

ATTEST:

Tami Mayes, City Clerk

APPROVED AS TO FORM:

William J. Sims, III, Attorney, Sims Mackin, Ltd.

City of Cottonwood, Arizona
City Council Agenda Communication



 Print

Meeting Date:	February 20, 2024
Subject:	Resolution Number 3259--Dibble Engineering Support Services for Lift Station #2
Department:	Utility Services
From:	Thomas Whitmer, Acting City Manager/Utilities Director

REQUESTED ACTION

Staff; is requesting Council review and approve Resolution Number 3259--the Direct Select Agreement for engineering services with Dibble and Associates Consulting Engineers, Inc., for the lift station #2 project.

SUGGESTED MOTION

If the Council desires to approve this item the suggested motion is:

“I move to approve Resolution Number 3259 authorizing a Direct Select Agreement for the procurement of professional engineering services from Dibble & Associates Consulting Engineers, Inc., in an amount not to exceed \$102,118 and authorizing the Acting City Manager to execute the agreement on behalf of the City.”

BACKGROUND

Lift station #2 plays a vital role in facilitating the transfer of sewage to the Mingus Wastewater Treatment Plant. The current lift station #2 has reached its capacity and is in need of having the capacity increased. Unfortunately, the size and location of the current lift station #2 makes it impossible to increase the capacity or even perform major overhauls of the lift station. As a result, the city purchased property in close proximity to the existing lift station #2 and had Dibble & Associates Consulting Engineers complete the engineering and design for the new lift station #2. A contract for constructing the plant has already been approved and this agreement between the City and Dibble & Associates Consulting Engineers will provide engineering oversight and management of the construction.

JUSTIFICATION/BENEFITS/ISSUES

The capacity of lift station #2 needs to be increased in order to ensure lift station #2 can handle the increases in capacity that are projected to occur as the City's population increases. Constructing a new lift station will ensure the city has the capability to handle increased sewer flows as well as allow easy access for making major repairs and upgrades as needed in the future.

COST/FUNDING SOURCE

The project is budgeted for in the Wastewater Capital budget.

ATTACHMENTS:

File Name	Description	Type
2-20-24_Dibble_-_Direct_Select_Agreement_-_lml_2.13.24_attorney_reviewed.pdf	Dibble--Direct Select Agreement	Backup Material
Dibble_Direct_Select_-_Exhibit_A_SOW.pdf	Dibble Direct Select - Exhibit A SOW	Cover Memo
Dibble_Direct_Select_-_Exhibit_B_Fee_Proposal.pdf	Dibble Direct Select - Exhibit B Fee Proposal	Cover Memo
Res3259.pdf	Resolution Number 3259	Resolution

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF COTTONWOOD
AND
DIBBLE & ASSOCIATES CONSULTING ENGINEERS, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT (this “Agreement”) is entered into as of this 20th day of February, 2024, between the City of Cottonwood, an Arizona municipal corporation (the “City”), and Dibble & Associates Consulting Engineers, Inc., an Arizona corporation, a professional engineering firm (the “Consultant”).

RECITALS

- A. Arizona Revised Statute 34-103, subsection D. allows for direct selection of engineering firms for contracts less than Five Hundred Thousand Dollars (\$500,000.00).
- B. The City desires to enter into an Agreement with the Consultant to provide engineering services for the limited construction phase of the Lift Station No. 2 (the “Services”).

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Consultant hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until completion of the project as defined in the Scope of Work (the “Initial Term”), unless terminated as otherwise provided in this Agreement.
2. Scope of Work. Consultant shall provide the Services as set forth in the Scope of Work, attached hereto as Exhibit A and incorporated herein by reference.
3. Compensation. The City shall pay Consultant an amount not to exceed one hundred two thousand dollars, one hundred eighteen dollars (\$102,118) for the Services at the rates set forth in the Fee Proposal, attached hereto as Exhibit B and incorporated herein by reference.
4. Payments. The City shall pay the Consultant monthly, based upon work performed and completed to date, and upon submission and approval of invoices. All invoices shall document and itemize all work completed to date. Each invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment.
5. Documents. All documents, including any intellectual property rights thereto, prepared and submitted to the City pursuant to this Agreement shall be the property of the City.

6. Consultant Personnel. Consultant shall provide adequate, experienced personnel, capable of and devoted to the successful performance of the Services under this Agreement. Consultant agrees to assign specific individuals to key positions. If deemed qualified, the Consultant is encouraged to hire City residents to fill vacant positions at all levels. Consultant agrees that, upon commencement of the Services to be performed under this Agreement, key personnel shall not be removed or replaced without prior written notice to the City. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Consultant shall immediately notify the City of same and shall, subject to the concurrence of the City, replace such personnel with personnel possessing substantially equal ability and qualifications.
7. Inspection; Acceptance. All work shall be subject to inspection and acceptance by the City at reasonable times during Consultant's performance. The Consultant shall provide and maintain a self-inspection system that is acceptable to the City.
8. Licenses; Materials. Consultant shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Consultant. The City has no obligation to provide Consultant, its employees or subcontractors any business registrations or licenses required to perform the specific services set forth in this Agreement. The City has no obligation to provide tools, equipment or material to Consultant.
9. Standard of Care. In providing services under this Agreement, the Consultant shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the State of Arizona.
10. Indemnification. To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, ("Claims") to the extent that such Claims (or actions in respect thereof) are caused by the negligent acts, recklessness or intentional misconduct of the Consultant, its officers, employees, agents, or any tier of subcontractor in connection with Consultant's work or services in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.
11. Insurance.
 - 11.1 General.
 - A. Insurer Qualifications. Without limiting any obligations or liabilities of Consultant, Consultant shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies

authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

- B. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect Consultant. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
- C. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.
- D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.
- E. Primary Insurance. Consultant's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.
- F. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.
- G. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Consultant. Consultant shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

- H. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Consultant shall be solely responsible for any such deductible or self-insured retention amount.
- I. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Consultant shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and Consultant. Consultant shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- J. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Consultant will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Consultant's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The City shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Consultant's responsibility to forward renewal certificates and declaration page(s) to the City 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the title or this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate title or a reference to this Agreement, as applicable. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:
- (1) The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

- (a) Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.
 - (b) Auto Liability – Under ISO Form CA 20 48 or equivalent.
 - (c) Excess Liability – Follow Form to underlying insurance.
- (2) Consultant’s insurance shall be primary insurance with respect to performance of this Agreement.
 - (3) All policies, except for Professional Liability, including Workers’ Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Consultant under this Agreement.
 - (4) ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

11.2 Required Insurance Coverage.

- A. Commercial General Liability. Consultant shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

- B. Vehicle Liability. Consultant shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Consultant's owned, hired and non-owned vehicles assigned to or used in the performance of the Consultant's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

- C. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Consultant engages in any professional services or work adjunct or residual to performing the work under this Agreement, the Consultant shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Consultant, or anyone employed by the Consultant, or anyone for whose negligent acts, mistakes, errors and omissions the Consultant is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claim and \$2,000,000 annual aggregate.

- D. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Consultant's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

11.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without 30 days' prior written notice to the City.

12. Termination; Cancellation.

12.1 For City's Convenience. This Agreement is for the convenience of the City and, as such, may be terminated without cause after receipt by Consultant of written notice by the City. Upon termination for convenience, Consultant shall be paid for all undisputed services performed to the termination date.

12.2 For Cause. If either party fails to perform any obligation pursuant to this Agreement and such party fails to cure its nonperformance within 30 days after notice of nonperformance is given by the non-defaulting party, such party will be in default. In the event of such default, the non-defaulting party may terminate this Agreement immediately for cause and will have all remedies that are available to it

at law or in equity including, without limitation, the remedy of specific performance. If the nature of the defaulting party's nonperformance is such that it cannot reasonably be cured within 30 days, then the defaulting party will have such additional periods of time as may be reasonably necessary under the circumstances, provided the defaulting party immediately (A) provides written notice to the non-defaulting party and (B) commences to cure its nonperformance and thereafter diligently continues to completion the cure of its nonperformance. In no event shall any such cure period exceed 90 days. In the event of such termination for cause, payment shall be made by the City to the Consultant for the undisputed portion of its fee due as of the termination date.

- 12.3 Due to Work Stoppage. This Agreement may be terminated by the City upon 30 days' written notice to Consultant in the event that the Services are permanently abandoned. In the event of such termination due to work stoppage, payment shall be made by the City to the Consultant for the undisputed portion of its fee due as of the termination date.
- 12.4 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The City may cancel this Agreement without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or any of its departments or agencies is, at any time while this Agreement or any extension of this Agreement is in effect, an employee of any other party to this Agreement in any capacity or a consultant to any other party of this Agreement with respect to the subject matter of this Agreement.
- 12.5 Gratuities. The City may, by written notice to the Consultant, cancel this Agreement if it is found by the City that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Consultant or any agent or representative of the Consultant to any officer, agent or employee of the City for the purpose of securing this Agreement. In the event this Agreement is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover and withhold from the Consultant an amount equal to 150% of the gratuity.
- 12.6 Agreement Subject to Appropriation. The City is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the City's then current fiscal year. The City's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the City concerning budgeted purposes and appropriation of funds. Should the City elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the City shall be relieved of any subsequent obligation under this Agreement. The parties agree that the City has no obligation or duty of good faith to budget or appropriate the payment

of the City's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The City shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The City shall keep Consultant informed as to the availability of funds for this Agreement. The obligation of the City to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the City. Consultant hereby waives any and all rights to bring any claim against the City from or relating in any way to the City's termination of this Agreement pursuant to this section.

13. Miscellaneous.

- 13.1 Independent Contractor. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Consultant acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the City. Consultant, its employees and subcontractors are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual work of Consultant, its employees or subcontractors. The Consultant, and not the City, shall determine the time of its performance of the services provided under this Agreement so long as Consultant meets the requirements of its agreed Scope of Work as set forth in Section 2 above and in Exhibit A. Consultant is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. City and Consultant do not intend to nor will they combine business operations under this Agreement.
- 13.2 Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Yavapai County, Arizona.
- 13.3 Laws and Regulations. Consultant shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Consultant is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (A) existing and future City and County ordinances and regulations, (B) existing and future State and Federal laws and (C) existing and future Occupational Safety and Health Administration standards.
- 13.4 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Consultant.
- 13.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were

included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, this Agreement will promptly be physically amended to make such insertion or correction.

- 13.6 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of this Agreement which may remain in effect without the invalid provision or application.
- 13.7 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.
- 13.8 Assignment; Delegation. No right or interest in this Agreement shall be assigned or delegated by Consultant without prior, written permission of the City. Any attempted assignment or delegation by Consultant in violation of this provision shall be a breach of this Agreement by Consultant.
- 13.9 Subcontracts. No subcontract shall be entered into by the Consultant with any other party to furnish any of the material or services specified herein without the prior written approval of the City. The Consultant is responsible for performance under this Agreement whether or not subcontractors are used. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by Consultant.
- 13.10 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release the Consultant from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.
- 13.11 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach

or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

13.12 Liens. All materials or services shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.

13.13 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the City may offset from any money due to the Consultant any amounts Consultant owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The City may offset from any money due to the Consultant any amounts Consultant owes to the City for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

13.14 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the City: City of Cottonwood
821 N. Main Street
Cottonwood, Arizona 86326
Attn: Purchasing

If to Consultant: Dibble & Associates Consulting Engineers, Inc.

Attn: _____

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other

recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

- 13.15 Confidentiality of Records. The Consultant shall establish and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that information contained in its records or obtained from the City or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Consultant's duties under this Agreement. Persons requesting such information should be referred to the City. Consultant also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Consultant as needed for the performance of duties under this Agreement.
- 13.16 Records and Audit Rights. To ensure that the Consultant and its subcontractors are complying with the warranty under subsection 13.17 below, Consultant's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Consultant and its subcontractors' employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Consultant's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Consultant's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 13.17 below. To the extent necessary for the City to audit Records as set forth in this subsection, Consultant and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the City to Consultant pursuant to this Agreement. Consultant and its subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this subsection. The City shall give Consultant or its subcontractors reasonable advance notice of intended audits. Consultant shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.
- 13.17 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Consultant and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Consultant's or its subcontractor's failure to comply with such warranty shall be

deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

13.18 Israel Boycott Disclosure. Consultant warrants that it and all proposed subcontracts are not currently engaged in, and agrees for the duration of this Contract/Agreement that it will not engage in, a boycott of Israel, as that term is defined in A.R.S. § 35-393.

13.19 Forced Labor of Ethnic Uyghurs. "In Accordance with A.R.S. § 35-394, the bidder is not currently and for the duration of the contract will not use the forced labor of ethnic Uyghurs in the People's Republic of China including goods, services, contractors, subcontractors, or suppliers thereof."

A. A public entity may not enter into or renew a contract with a company to acquire or dispose of services, supplies, information technology, goods or construction unless the contract includes a written certification that the company does not currently, and agrees for the duration of the contract that it will not, use:

1. The forced labor of ethnic Uyghurs in the People's Republic of China.
2. Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
3. Any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

B. If a company that has provided a written certification pursuant to subsection A of this section becomes aware during the term of the contract that the company is not in compliance with the written certification, the company shall notify the public entity within five business days after becoming aware of the noncompliance. If the company does not provide the public entity with a written certification that the company has remedied the noncompliance within one hundred eighty days after notifying the public entity of the noncompliance, the contract terminates, except that If the contract termination date occurs before the end of the remedy period, the contract terminates on the contract termination date.

C. This section does not apply to a contract entered into before September 24, 2022.

D. For the purposes of this section:

1. "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate, that engages in for-profit activity and that has ten or more full-time employees.

2. "Public entity" means this state, a political subdivision of this state or an agency, board, commission or department of this state or a political subdivision of this state

13.20 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, the Scope of Work, any City-approved Purchase Order, the Fee Proposal, and the Consultant's SOQ, the documents shall govern in the order listed herein.

13.21 Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the City. The City reserves the right to obtain like goods and services from another source when necessary.

13.22 Cooperative Purchasing. Specific eligible political subdivisions and nonprofit educational or public health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

IN WITNESS THEREOF, this Contract has been duly executed by the parties herein above named on the date and year first above written.

Contractor agrees that this Contract, as awarded, is for the stated work and understands that payment of the work will be made on the basis of the indicated amount(s), as bid in the Proposal.

“City”

CITY OF COTTONWOOD,
an Arizona municipal corporation

Tom Whitmer, Acting City Manager

Approved as to form:

John A. Gaylord, City Attorney

“Consultant”

Dibble & Associates Consulting Engineers, Inc.

By: _____

Name: _____

Title: _____

EXHIBIT A
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF COTTONWOOD
AND
DIBBLE & ASSOCIATES CONSULTING ENGINEERS, INC.

[Scope of Work]

See following page.

EXHIBIT B
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF COTTONWOOD
AND
DIBBLE & ASSOCIATES CONSULTING ENGINEERS, INC.

[Fee Proposal]

See following page.

October 30, 2023

City of Cottonwood
c/o Russell Freye
111 N Main St
Cottonwood, AZ 86326
rfrey@cottowoodaz.gov

**RE: Cottonwood Lift Station No. 2
Construction Phase Services – Letter Proposal (Revision 1)**

Dear Mr. Freye:

Please find enclosed our Scope of Services and Fee Proposal Summary for limited construction phase services for the Lift Station No. 2 project. The new lift station will be constructed by Schofield Civil Contractors as a JOC contractor. The City will act as the construction manager and will be the point of contact for the Contractor. The project schedule is **assumed to be a continuous 7 months** (30 weeks) from mobilization to demobilization. The following tasks will be provided for the construction phase services:

SCOPE OF SERVICES:

1.0 Study Phase Services

1.1 Submittal Review (20)

Dibble will review and respond to engineering-related material shop drawings/submittals from the Contractor within two (2) weeks of receipt. Approximately twenty (20) submittals are anticipated, with half anticipated to require resubmittal and second review. No submittals are assumed to require a third review.

1.2 RFI Review (8)

Dibble will respond to up to eight (8) Contractor requests for information (RFIs) or field orders (FO) providing supplemental information drawings and/or sketches for clarifications to the contract documents during construction. RFI or FO responses will be provided within five (5) working days. Urgent RFI responses will be provided within two (2) business days of receipt.

1.3 Construction Meetings (8)

Dibble will attend a total of eight (8) meetings during construction to provide engineering support during construction phase. Seven of these meetings will be monthly progress meetings. One will be the Preconstruction meeting. It is anticipated that four of these meetings will be remote (virtual) and three will be onsite. **The Contractor will prepare the agenda, submittal, and RFI logs, and notes for the meetings.** The Contractor will facilitate the meetings and provide the meeting notes.

1.4 Site Visits (4)

Four (4) site visits will be made by engineering staff to monitor construction progress, observe conformance with the contract documents, evaluate work completed and in progress, and report construction status that supports or impacts potential future certification of completion. Site visits are assumed to be concurrent to the in-person construction meetings. The last site visit is assumed to be the punch walk.

Following site observation visits, a Field Observation Report will be prepared by the Engineer. Observed construction progress, deficiency in construction, and causes for concern as to lack of material/workmanship documentation will be summarized. Field Observation Reports will be provided to the City for directives to the JOC.

1.5 Structural Submittal Review

Dibble will review and respond to structural shop drawings/submittals from the contractor within two (2) weeks of receipt. These shop drawings are anticipated to include concrete, reinforcement, CMU, grout, foundation layout, steel gate, SCADA Tower, and premanufactured metal building.

1.6 Startup and Commissioning

Dibble will provide an on-site engineer for initial startup for two (2) days, to confirm equipment and piping are operational, and that the lift station is meeting the design intent. Dibble has assumed effort and office time for documentation, collaboration, and review of Contractor's startup plan. The Engineer will not provide an operator – the City and the Contractor are responsible for the actual operation of lift station.

1.7 Permit Closeout (Yavapai County)

Site observations, satisfactory testing results, and installed material certifications will be compared to approved contract documents. Upon receipt of Substantial Completion by the Contractor, receipt of passing test results, and receipt of Contractor redline as-builts, Dibble will issue the Engineer's Certificate of Completion and submit to Yavapai County for Discharge Authorization. The City will pay any fees for the permit closeout.

1.8 Project Management

Dibble will manage staff and subconsultants, so work is performed timely. This includes regular communication with the City, the Contractor, and sub-consultants.

SUBCONSULTANTS:

Electrical Engineering – DARcor

Dibble, through its qualified subconsultant (Darcor), will provide limited construction phase services for the lift station, such as meetings, submittals, RFI's, FO, site observations, factory testing's, substantial completion, I/O, O&M, and record drawings, as described in their proposal. See attached scope of work.

ALLOWANCES:

Extended Services

An allowance is provided for costs associated with construction schedule extending up to four (4) weeks longer than planned. This allowance will cover work related to the extended schedule such as additional construction meetings, inspections, site visits, and other work related to schedule.

ASSUMPTIONS / EXCLUSIONS:

1. Contractor is responsible for flow management during construction, including bypass pumping.
2. City to provide testing results and lift station O&M manual for inclusion with the Engineer's Certificate of Completion. This will be used to obtain Discharge Authorization from Yavapai County.
3. Mechanical and Civil O&M Manual review is excluded.
4. Record drawings are excluded. The contractor's sealed as-builts will be used for Discharge Authorization.
5. QA/QC testing is excluded.
6. Contractor pay application and change order review is excluded.
7. Permit closeout fees will be paid by the City.
8. Regular inspection services are excluded.
9. Structural special inspections are excluded.
10. Items not specifically included in this Scope and Fee Matrix are excluded.

This project will be performed for a Time-and-Material, Not-to-Exceed Fee. Invoices will be submitted monthly based on the actual hours worked. If this proposal (including the attached documents) is acceptable, please provide a contract for signature.

If you have any questions, please call me at (602) 957-1155.

Sincerely,



Mike Logan, PE
Project Manager

Dibble

September 26, 2023



Dibble
1640 S. Stapley Drive
Suite 120
Mesa, Arizona, 85204

Attn: Mr. Mike Logan, P.E.

RE: Cottonwood Lift Station No.2
Engineering Services During Construction

Dear Mike,

Thank you for the opportunity to provide you with a proposal to provide electrical engineering services during construction for the above referenced project.

The following is our estimated manhour and fee breakdown.

<u>TASK DESCRIPTION</u>	<u>MANHOURS</u>
200. Coordination with City, Contractor, and Dibble	8
201. Meetings (8 assumed)	24
202. Submittal/shop drawing reviews	80
203. Respond to Contractor RFI's	6
204. Prepare field orders	6
205. <i>Review change orders</i>	0
206. Site observations (3 assumed)	18
207. Site observation reports	8
208. Factory acceptance test preparation	2
209. Factory acceptance test with panel shop	8
210. Review generator & ground test results	2
211. Create checklist for substantial completion walk-thru	3
212. Substantial completion walk-thru (checklist verification)	10
213. Prepare punchlist and list of close-out req'ts	3
214. I/O loop testing	10
215. Final inspection/start-up and report	10
216. Review O&M Manuals	8
217. Prepare record drawings	18
218. Miscellaneous tasks	<u>8</u>
TOTAL =	232

Estimated manhour cost based on hours described above = \$36,920.00

Estimated reimbursable costs (deliveries, mileage, meals, etc.) = \$ 1,539.00

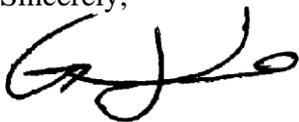
Total fee for construction services as described above = \$38,459.00

NOTES:

1. You will be invoiced on a time and expense basis. Our hourly rates for 2023, which will be used throughout this project, are as follows.
 - Senior Engineer/Project Manager \$195/Hour
 - Electrical Construction Manager \$195/Hour
 - Electrical Assistant Construction Manager \$160/Hour
 - Senior Designer/Technician \$140/Hour
 - Designer/Technician \$120/Hour
 - AutoCAD Draftsperson \$100/Hour
 - Clerical/Administrative \$85/Hour
2. Proposal assumes our attendance will be required at a maximum of 2 meetings on-site. The remainder of the meetings are assumed to be teleconference style meetings.
3. Proposal assumes 7 site visits during construction. 3 for underground conduit observations, 1 to witness the local control panel factory acceptance testing, 1 to witness I/O loop testing, 1 for substantial completion/startup and 1 for the final walk-thru.
4. Additional meetings, site visits or work requested by you or the City, and not indicated above will require additional monies.
5. Preparation of Record Drawings and the verification of the Contractor's compliance with the Construction Documents and any local and National Codes, requires us to visit the site at key intervals during construction and perform the work indicated above, especially observation of all underground conduits before they are backfilled. If we cannot prepare record drawings, we will identify the item(s), which prohibit us from doing so.
6. Proposal includes coordination with the Contractor, Contractor's vendors, and equipment suppliers.
7. Proposal includes a maximum of two (2) submittal reviews for each piece of electrical and instrumentation equipment. This includes O&M manual reviews.
8. Monthly progress billings are due within 30 days of the billing date.
9. Proposal is valid for 60 days.

Please do not hesitate to call if you have any questions.

Sincerely,



Jorge Gerardo, P.E.
Vice President

Dibble Staff Hours and Fee By Task

		Contract Billing Rate							
		\$ 205.00	\$ 225.00	\$ 172.00	\$ 139.00	\$ 119.00	\$ 85.00		
Task No.	Task	Project Manager	QA/QC Manager	Project Engineer	Assistant Engineer	CAD Technician	Admin Assistant	Total Task Hours	Total Task Fee
1.1	Submittal Review (20)	10		20	40		10	80	\$ 11,900
1.2	RFI Review (8)	8	2	16	20	8		54	\$ 8,574
1.3	Construction Meetings (8)	16		22	8			46	\$ 8,176
1.4	Site Visits (4)	8		16	8		4	36	\$ 5,844
1.5	Structural Submittal Review	4		16				20	\$ 3,572
1.6	Startup and Commissioning	16	2	28			6	52	\$ 9,056
1.7	Permit Closeout (Yavapai County)	4		6	10		2	22	\$ 3,412
1.8	Project Management	25						25	\$ 5,125
TOTAL		91	4	124	86	8	22	335	\$ 55,659

Subconsultants

	Unit	Cost/Unit	No. of Units	Total
Electrical - Darcor	LS	\$ 38,459	1	\$ 38,459
Subtotal, Subconsultants				\$ 38,459

Allowances

	Unit	Cost/Unit	No. of Units	Total
Extended Services	Allow	\$ 5,000	1	\$ 5,000
Subtotal, Allowances				\$ 5,000

Direct Expenses

	Unit	Cost/Unit	No. of Units	Total
Document Reproduction, Mileage	EACH	\$ 3,000	1	\$ 3,000
Subtotal, Direct Costs				\$ 3,000

Fee Summary

	Fee
Construction Phase Labor	\$ 55,659
Subconsultants	\$ 38,459
Allowances	\$ 5,000
Direct Expenses	\$ 3,000
TOTAL FEE	\$ 102,118.00

RESOLUTION NUMBER 3259

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, APPROVING AN AGREEMENT WITH DIBBLE & ASSOCIATES CONSULTING ENGINEERS, INC, AN ARIZONA CORPORATION, IN AN AMOUNT NOT TO EXCEED ONE HUNDRED TWO THOUSAND, ONE HUNDRED EIGHTEEN DOLLARS (\$102,118).

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, AS FOLLOWS:

WHEREAS, the City of Cottonwood needs to procure engineering services for the lift station number 2 project; and

WHEREAS, Arizona Revised Statute 34-103, subsection D allows for direct selection of engineering firms for contracts less than Five Hundred Thousand Dollars (\$500,000); and

WHEREAS, the City staff have identified Dibble & Associates Consulting Engineers, Inc. is a qualified engineering service; and

IT IS HEREBY RESOLVED approving a professional services contract for engineering services from Dibble & Associates Consulting Engineers, Inc. in an amount not to exceed One hundred two thousand, one hundred eighteen dollars (\$102,118) and authorizing the Acting City Manager to execute the agreement on behalf of the City.

PASSED AND ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, THIS 20TH DAY OF FEBRUARY, 2024.

Tim Elinski, Mayor

ATTEST:

Tami Mayes, City Clerk

APPROVED AS TO FORM:

John A. Gaylord, City Attorney

City of Cottonwood, Arizona
City Council Agenda Communication



 Print

Meeting Date:	February 20, 2024
Subject:	Resolution Number 3262--Authorizing a Cooperative Use Purchasing Agreement with Dykman Electrical, Inc. for a variable frequency drive for the new Verde Santa Fe Well.
Department:	Utility Services
From:	Tom Whitmer, Acting City Manager/Utilities Director

REQUESTED ACTION

Staff is requesting that Council review and approve Resolution Number 3262--the Cooperative Use Purchasing Agreement for the purchase of a variable frequency drive for the new Santa Fe Well from Dykman Electrical, Inc.

SUGGESTED MOTION

If the Council desires to approve this item the suggested motion is:

“I move to approve Resolution Number 3262 authorizing a Cooperative Use Purchasing Agreement with Dykman Electrical, Inc. for electrical motor drives and maintenance in an amount not to exceed \$56,495.79 and authorizing the Acting City Manager to execute the agreement on behalf of the City.”

BACKGROUND

All wells require the installation of a variable frequency drive (VFD) booster pump in order to maintain operating pressures within the distribution system. This purchase is for the VFD for the proposed new well at Verde Santa Fe.

JUSTIFICATION/BENEFITS/ISSUES

With the recent approval of drilling a new well at Verde Santa Fe, it is imperative to purchase a VFD booster pump in order to efficiently and effectively maintain operating pressures in the distribution system supplied by the well.

COST/FUNDING SOURCE

This project is budgeted for in the Water Utilities Water Development Fund.

ATTACHMENTS:

File Name	Description	Type
2-20-24_Cooperative_Purchase_Agreement_-_Dykman_2.13.24_attorney_reviewed.pdf	Cooperative Purchase Agreement--Dykman Dykman	Backup Material
2-20-24_Dykman_quote_0673567_500HP_SO_updated_2.9.24.pdf	Quote 0673567--500HP So Updated 2.9.24	Backup Material
2-20-24_Phoenix_CON158214-0.pdf	PHOENIX CON158214-0	Backup Material
Res3262__for_Dykman_2.13.24_attorney_reviewed.pdf	Resolution Number 3262	Resolution

COOPERATIVE PURCHASE AGREEMENT

THIS AGREEMENT (The “Agreement”) is made and entered into effective as of February 20th, 2024 (the “Effective Date”), by and between the City of Cottonwood, Arizona, an Arizona municipal corporation (“City”), and Dykman Electrical, Inc., an Idaho Corporation, (“Vendor”). The City and the Vendor are sometimes referred to in this Agreement collectively as the “Parties” and each individually as a “Party.”

RECITALS:

The Parties wish to enter into an Agreement pursuant to the terms and conditions of that outside contract for Electrical Motor Drives and Maintenance and all subsequent revisions, between the City of Phoenix and the Vendor (the “Original Contract.”) Such action is authorized under A.R.S. §41-2632 and is pursuant to the terms of the City of Phoenix contract #158214--0. All capitalized terms used without definition in this Agreement shall have the definitions ascribed to them in the Original Contract.

AGREEMENTS:

NOW, THEREFORE, for and in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to the terms of the Original Contract as follows:

1. Reaffirmation of Original Contract. The Original Contract shall remain in full force and effect, and all terms and conditions of the Original Contract are hereby incorporated by reference into this Agreement, creating an agreement identical in terms between the City and the Vendor. In the event of any conflict between this Agreement and the Original Contract, the terms of this Agreement shall prevail. In the Original Contract, the terms “City” shall be deemed to be and refer to the City of Cottonwood, and the term “Contractor” shall be deemed to be and refer to Dykman Electrical, Inc. under this Agreement. The amount paid under this Agreement shall be an amount as per the rates as set forth in the cost proposal submitted by Dykman Electrical, Inc. in IFB number IFB-2223-WAD-576 facilitated by the City of Phoenix.

2. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all of the Parties. The Parties agree that this Agreement may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed agreement containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

3. Compliance with Federal and State Laws.

3.1 The Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The Contractor understands and acknowledges that it must also comply with A.R.S. § 34-301, “Employment of Aliens on Public Works Prohibited”, and A.R.S. § 34-302, as amended, “Residence Requirements for Employees.”

3.2 Pursuant to the provisions of A.R.S. §41-4401, the Contractor warrants to the City that the Contractor and all its subcontractors are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by the Contractor or any of its subcontractors will be deemed a material breach of this Contract and may subject the Contractor or subcontractor to penalties up to and including termination of this Contract or any subcontract.

The City retains the legal right to inspect the papers of any employee of the Contractor or any subcontractor who works on this Contract to ensure that the Contractor or any subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of the Contractor and any of its subcontractors to ensure compliance with this warranty.

The City will not consider the Contractor or any of its subcontractors in material breach of this Contract if the Contractor and its subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A). The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

3.3 This Agreement is subject to cancellation for conflicts of interest pursuant to A.R.S. § 38-511.

4. The City may terminate this Agreement at any time for its convenience by written notice to Dykman Electrical, Inc. specifying the termination date. In the event of termination which is not the fault, in whole or in part, of Dykman Electrical, Inc., City shall pay to Vendor only such compensation, including reimbursable expenses, due for Work properly performed on the Project prior to the termination date. Upon any termination of the Agreement, no further payments shall be due from City to Dykman Electrical, Inc. unless and until Dykman Electrical, Inc. has delivered to City any and all documentation required to be maintained by Dykman Electrical, Inc. or provided by Dykman Electrical, Inc. to City.

5. All warranties, representations and indemnifications by Dykman Electrical, Inc. shall survive the completion or termination of this Agreement.

6. The Contractor shall provide the Services described in Contract #158214--0. Unless expressly excluded, in writing, in the Agreement, the Services shall include any and all services reasonably contemplated, normally included, and necessary to complete the Services set forth in the Scope of Services described in solicitation # IFB-2223-WAD-576 in a good and workmanlike manner with due diligence and, at a minimum, in conformance with generally accepted industry standards and standard of care for like professionals in the same geographic area.

7. Forced Labor of Ethnic Uyghurs. Contractor agrees and certifies that it does not currently, and for the duration of this Contract will not use: 1) the forced labor of ethnic Uyghurs in the People's Republic of China; 2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or 3) any subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Contractor becomes aware during the term of this contract that it is not in compliance with this written certification, it shall notify the City within five business days after becoming aware of the noncompliance. If Contractor does not provide the City with a written certification that it has remedied the noncompliance within 180 days after notifying the City of the noncompliance, this Contract shall terminate, except that if the Contract termination date occurs before the end of the remedy period, the Contract terminates on the Contract termination date. Contractor also agrees to indemnify and hold harmless the City, its officials, employees, and agents from any claims or causes of action

relating to any City decision or action taken in reliance on this representation, including the payment of all costs and attorney fees incurred by the City in defending such decision or action.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date set forth above.

City of Cottonwood, an Arizona municipal corporation

Date: _____

By: _____
Tom Whitmer, Acting City Manager

Approved as to form:

By: _____
John A. Gaylord, City Attorney

Dykman Electrical, Inc.

Date: _____

By: _____

Its: _____



Sales Order

Order Number: 0673567

Order Date: 1/8/2024

Salesperson: KP

Customer Number: 32-CITAZCO

Division: PHOENIX

Sold To: CITY OF COTTONWOOD
816 N Main St
Cottonwood, AZ 86326-4011

Ship To: CITY OF COTTONWOOD
827 N MAIN ST
COTTONWOOD, AZ 86326-4012

Confirm To: CHRIS NORWOOD

Entered By: MAYRA GUADARRAMA

Customer P.O.	Ship VIA		F.O.B.	Terms
500HP IQ1000	TRUCK	PREPAID&ADD	FACTORY	NET 30

Item Number	Ordered	Shipped	Back Order	Exp Ship	Price	Amount
Q1C3B590PC4 YASK-VFD-IQ1000-500HP@480V-N3R-590A-65KAIC- C/B-50°C • APPROX. LEAD TIME: 30-40 WEEKS SUBJECT TO CHANGE WITHOUT NOTICE • PRICING IN ACCORDANCE WITH CITY OF PHOENIX CONTRACT CON158214-0 • LIST PRICE: \$78.337.00 x .6355 MULT.	1	0	0	4/24/2024	49,784.00	49,784.00
		Q1C3B590PC4		Whse: PHO		

Net Order:	49,784.00
Less Discount:	0.00
Shipping & Handling:	2,575.00
Sales Tax:	4,136.79
Order Total: USD	56,495.79

A 3.5% Surcharge may be added to Credit Card Payments.

158214--0



City of Phoenix

INVITATION FOR BID
IFB-2223-WAD-576
ELECTRICAL MOTOR DRIVES AND MAINTENANCE

City of Phoenix
Water Services
200 W. Washington St.
9th floor
Phoenix, AZ
85003

RELEASE DATE: January 20, 2023
DEADLINE FOR QUESTIONS: February 2, 2023
RESPONSE DEADLINE: February 15, 2023, 2:00 pm

City of Phoenix
INVITATION FOR BID
IFB-2223-WAD-576
Electrical Motor Drives and Maintenance

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5. SPECIAL TERMS AND CONDITIONS.....	34
6. DEFENSE AND INDEMNIFICATION.....	47
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Attachments:

Submittals - Costs and Payments

Submittals - Contractor Licensing Requirements

Submittals - Warranty

Submittals - 24 Hour Emergency Contact

Submittals – Debarment and Exclusion

Submittals – Offer Page

Acceptance Form 2023

Attachment A – Conflict of Interest and Transparency Form

Attachment B - References

Attachment C - Fee Schedule

Attachment D – Discount from List Price

Exhibit 1 - Aviation Supplemental Terms and Conditions (Rev 2-1-19)

Exhibit 2 - Performance Record Sample

1. INTRODUCTION

1.1. Summary

The City of Phoenix Phoenix (“City”) Water Services Department (“WSD”) requires services from a Contractor(s) experienced in supplying electrical motors, and/or providing electrical maintenance, and repairs. The Public Works, Aviation, and Phoenix Convention Center Departments may also utilize the resulting contract.

1.2. Contact Information

Audrey Mims

Contracts Specialist II
200 W. Washington St.
9th floor
Phoenix, AZ 85003
Email: audrey.mims@phoenix.gov
Phone: [\(602\) 256-3343](tel:(602)256-3343)

Department:

Water Services

1.3. Timeline

Schedule of Events

The City reserves the right to change dates, times, and locations, as necessary. The City does not always hold a Pre-Offer Conference or Site Visit.

To request a reasonable accommodation or alternative format for any public meeting, please contact the Procurement Officer (Audrey Mims) at (602) 256-3343/Voice or 711/TTY, or audrey.mims@phoenix.gov, no later than two (2) weeks prior to the meeting.

Solicitation Issue Date	Friday, January 20, 2023
Pre-Offer Conference (Non-Mandatory)	Monday, January 30, 2023, 10:00am (see Webex meeting information on next page)
Written Inquiries Due Date	Thursday, February 2, 2023, 3:00pm
Offer Due Date	Wednesday, February 15, 2023, 2:00pm

Pre-Offer Conference WebEx Information:

Join from the meeting link

<https://cityofphoenix.webex.com/cityofphoenix/j.php?MTID=ma833293566bbb9bf97ec9c1fb5cec649>

Join by meeting number

Meeting number (access code): 2462 769 8244

Meeting password: hrTSEJJA338

Tap to join from a mobile device (attendees only)

[+1-415-655-0001,24627698244###](tel:+1-415-655-0001,24627698244###) US Toll

Join by phone

+1-415-655-0001 US Toll

Global call-in numbers

2. INSTRUCTIONS

2.1. Description – Statement of Need

The City of Phoenix invites electronic offers for Electrical Motor Drives and Maintenance for a six (6) year contract term, commencing on or about July 1, 2023, in accordance with the specifications and provisions contained herein or the “Effective Date” which is upon award by City Council, conditioned upon signature and recording by the City Clerk’s department, as required by the Phoenix City Code, whichever is later.

City of Phoenix facilities requires the use of different types of electrical motors for continued operation of the facilities.

This solicitation is available through Arizona Relay Service 7-1-1. Please call TTY 800-367-8939 for assistance.

Notwithstanding the foregoing, this Agreement will terminate upon the earliest occurrence: by reaching the end of the term including any extensions exercised, or termination pursuant to the provisions of this Agreement.

2.2. City's Vendor Self-Registration and Notification

Vendors must be registered in the City’s procurePHX Self-Registration System at <https://www.phoenix.gov/procure> to respond to solicitations and access procurement information. The City may, at its sole discretion, reject any offer from an Offeror who has not registered.

2.3. Preparation of Offer

All forms provided in Submittal Section must be completed and submitted with the Offer. The signed and completed Conflict of Interest and Transparency form must be included or your Offer may be deemed non-responsive.

It is permissible to copy Submittal forms if necessary. Erasures, interlineations, or other modifications of the Offer must be initialed in original ink by the authorized person signing the Offer. No offer will be altered, amended or withdrawn after the specified offer due date and time. The City is not responsible for Offeror’s errors or omissions.

All time periods stated as a number of days will be calendar days.

It is the responsibility of all Offerors to examine the entire solicitation and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting an offer. Negligence in preparing an offer confers no right of withdrawal after due date and time. Offerors are strongly encouraged to:

- A. Consider applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the products or services.
- B. Study and carefully correlate Offeror’s knowledge and observations with the solicitation and other related data.

- C. Promptly notify the City of all conflicts, errors, ambiguities, or discrepancies that Offeror has discovered in or between the solicitation and other related documents.
- D. The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Offeror is responsible for all costs incurred in responding to this solicitation. All materials and documents submitted in response to this solicitation become the property of the City and will not be returned.
- E. Offerors are reminded that the specifications stated in the solicitation are the minimum level required and that offers submitted must be for products or services that meet or exceed the minimum level of all features specifically listed in this solicitation. Offers offering less than any minimum specifications or criteria specified are not responsive and should not be submitted.
- F. Offer responses submitted for products considered by the seller to be acceptable alternates to the brand names or manufacturer's catalog references specified herein must be submitted with technical literature and/or detailed product brochures for the City's use to evaluate the products offered. Offers submitted without this product information may be considered as non-responsive and rejected. The City will be the sole judge as to the acceptability of alternate products offered.
- G. Prices will be submitted on a per unit basis by line item, when applicable. In the event of a disparity between the unit price and extended price, the unit price will prevail unless obviously in error.

2.4. Fixed Offer Price Period

All offers shall be firm and fixed for a period of 180 calendar days from the solicitation opening date.

2.5. Obtaining a Copy of the Solicitation and Addenda

Interested Offerors may download the complete solicitation and addenda from <https://solicitations.phoenix.gov/>. Any interested Offerors without internet access may obtain this solicitation by calling the Procurement Officer or picking up a copy during regular business hours at the City of Phoenix, Water Services Department, Procurement Section, 200 W. Washington Street, 9th floor, Phoenix, AZ. It is the Offeror's responsibility to check the website, read the entire solicitation, and verify all required information is submitted with their Offer.

2.6. Exceptions

Offeror must not take any exceptions to any terms, conditions or material requirements of this solicitation. Offers submitted with exceptions may be deemed non-responsive and disqualified from further consideration in the City's sole discretion. Offerors must conform to all the requirements specified in the solicitation. The City encourages Offerors to send inquiries to the Procurement Officer rather than including exceptions in their Offer.

2.7. Inquiries

All questions that arise relating to this solicitation should be directed via email to the Procurement Officer and must be received by the due date indicated in the Schedule of Events. The City will not consider questions received after the deadline.

No informal contact initiated by Offerors on the proposed service will be allowed with members of City's staff from date of distribution of this solicitation until after city council awards the contract. All questions concerning or issues related to this solicitation must be presented in writing.

The Procurement Officer will answer written inquiries in an addendum and publish any addendums on the Procurement Website.

2.8. Addenda

The City of Phoenix will not be responsible for any oral instructions made by any employees or officers of the City of Phoenix regarding this solicitation. Any changes will be in the form of an addendum. The Offeror must acknowledge receipt of any/all addenda by signing and returning the document with the Offer submittal.

2.9. Business in Arizona

The City will not enter contracts with Offerors (or any company(ies)) not granted authority to transact business, or not in good standing, in the state of Arizona by the Arizona Corporation Commission, unless the Offeror asserts a statutory exception prior to entering a contract with the City.

2.10. Licenses

If required by law for the operation of the business or work related to this Offer, Offeror must possess all valid certifications and/or licenses as required by federal, state or local laws at the time of submittal.

2.11. Certifications

By signature in the Offer section of the Offer and Acceptance page(s), Offeror certifies:

- The submission of the Offer did not involve collusion or other anti-competitive practices.
- The Offeror must not discriminate against any employee, or applicant for employment in violation of Federal or State Law.
- The Offeror has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Offer.

2.12. Submission of Offer

Offers must be in possession of the Department on or prior to the exact time and date indicated in the Schedule of Events. Late offers will not be considered. The prevailing clock will be the City Department's clock.

Offers must be submitted in one of the following ways:

- A. Submitted in a sealed envelope and the following information should be noted on the outside of the envelope:
 - 1. Offeror's Name
 - 2. Offeror's Address (as shown on the Certification Page)
 - 3. Solicitation Number
 - 4. Solicitation Title
 - 5. Offer Opening Date
 - 6. Such offers must be completed in ink or typewritten. Include the number of copies that are required as indicated in the Submittal section.

Submitted electronically by email to wsdprocurement@phoenix.gov and the following information should be noted in the email:

- A. Offeror's Name
- B. Offeror's Address (as shown on the Certification Page)
- C. Solicitation Number
- D. Solicitation Title
- E. Offer Opening Date
- F. Due to file size limitations for electronic transmission (for sending or receiving), Offers sent by email may need to be sent in parts with multiple emails. It is the responsibility of the Offeror to ensure that the Offer (including all parts if sent in multiple emails) is timely and to confirm that there are no technical reasons that any offer submitted electronically may be delayed. The date and time on the email(s) as received/stamped by the City's inbox will provide proof of submission and verification whether the Offer was received on or prior to the exact time and date indicated in the Schedule of Events.

2.13. Withdrawal of Offer

At any time prior to the solicitation due date and time, an Offeror (or designated representative) may withdraw the Offer by submitting a request in writing and signed by a duly authorized representative. If Offeror withdraws the Offer electronically by email to the Procurement Officer, the request to withdraw must be in the form of a letter attached to the email that includes either an image of the duly authorized representative's signature or an electronic signature from a verifiable source, such as Adobe Sign, DocuSign or a similar verifiable software program.

2.14. Offer Results

Offers will be opened on the offer due date, time and location indicated in the Schedule of Events, at which time the name of each Offeror, and the prices may be read. Offers and other information received in response to the solicitation will be shown only to authorized City

personnel having a legitimate interest in them or persons assisting the City in the evaluation. Offers are not available for public inspection until after the City has posted the award recommendation on the City's website.

The City will post a preliminary offer tabulation on the City's website, <https://solicitations.phoenix.gov/Awards> within five calendar days of the offer opening. The City will post the information on the preliminary tabulation as it was read during the offer opening. The City makes no guarantee as to the accuracy of any information on the preliminary tabulation. Once the City has evaluated the offers, the City will post an award recommendation on the website. By signing and submitting its Offer, each Offeror agrees that this posting of the award recommendation to the City's website effectively serves as the Offeror's receipt of that notice of award recommendation. The City has no obligation to provide any further notification to unsuccessful Offerors.

2.15. Pre-Award Qualifications

Offeror's normal business activity during the last five (5) years will have been for providing the goods or services in this solicitation.

For Offeror's that will be providing services, their employees shall have a minimum of five (5) years of experience repairing electric motors, providing electrical maintenance, troubleshooting, and repair services of electrical problems.

For Offeror's that will be providing services, Offeror shall employ a sufficient number of employees that have acquired technical knowledge of electric motors through certification or have specific factory or field training in accordance with industry standards.

Upon notification of an intent to award, the Offeror will have ten calendar days to submit a complete certificate of insurance in the minimum amounts and the coverages as required in the Insurance Requirements of this agreement. Insurance requirements are non-negotiable.

2.16. Award of Contract

Unless otherwise indicated, award(s) will be made to the most responsive, responsible Offeror(s) who are regularly established in the service, or providing the goods, contained in this solicitation and who have demonstrated the ability to perform in an acceptable manner.

A. Factors that may be considered by the City include:

1. Technical capability of the Offeror to accomplish the scope of work required in the Solicitation. This may include performance history on past and current government or industrial contracts; and,
2. Demonstrated availability of the necessary manpower (both supervisory and operational personnel) and necessary equipment to accomplish the scope of work in the Solicitation; and,
3. Safety record; and,
4. Offeror history of complaints and termination for convenience or cause.

- B. Notwithstanding any other provision of this solicitation, the City reserves the right to: (1) waive any immaterial defect or informality; or (2) reject any or all offers or portions thereof; or (3) reissue a solicitation.
- C. A response to a solicitation is an offer to contract with the City based upon the terms, conditions, and specifications contained in the City's solicitation. Offers do not become contracts until they are executed by the Chief Procurement Officer or Department Director. A contract has its inception in the award, eliminating a formal signing of a separate contract. For that reason, all of the terms, conditions and specifications of the procurement contract are contained in the solicitation, and in any addendum or contract amendment.

2.17. Solicitation Transparency Policy

Commencing on the date and time a solicitation is published, potential or actual Offerors or respondents (including their representatives) shall only discuss matters associated with the solicitation with the Mayor, any members of City Council, the City Manager, any Deputy City Manager, or any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated Procurement Officer) at a public meeting, posted under Arizona Statutes, until the resulting contract(s) are awarded to all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or similar solicitation.

As long as the solicitation is not discussed, Offerors may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff. Offerors may not discuss the solicitation with any City employees or evaluation panel members.

Offerors may discuss their proposal or the solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Procurement Officer, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.

With respect to the selection of the successful Offerors, the City Manager and/or City Manager's Office will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction on the selection from the City Manager and/or City Manager's Office and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective Offerors.

This policy is intended to create a level playing field for all Offerors, assure that contracts are awarded in public, and protect the integrity of the selection process. OFFERORS THAT VIOLATE THIS POLICY SHALL BE DISQUALIFIED. After official Notice is received by the City for disqualification, the Offeror may follow the Protest process, unless the Solicitation is cancelled without notice of intent to re-issue.

"To discuss" means any contact by the Offeror, regardless of whether the City responds to the contact. Offerors that violate this policy will be disqualified until the resulting contract(s) are awarded, or all offers or responses are rejected and the solicitation is cancelled without any

announcement by the Procurement Officer of the City's intent to reissue the same or a similar solicitation. The City interprets the policy as continuing through a cancellation of a solicitation until Council award of the contract, as long as the City cancels with a statement that the City will rebid the solicitation.

2.18. Protest Process

Offeror may protest the contents of a solicitation no later than seven days before the solicitation deadline when the protest is based on an apparent alleged mistake, impropriety or defect in the solicitation. Protests filed regarding the solicitation may be addressed by an amendment to the solicitation or denied by the City. If denied, the opening and award will proceed unless the City determines that it is in the City's best interests to set new deadlines, amend the solicitation, cancel or re-bid.

Therefore, unless otherwise notified by a formal amendment, the Protester must adhere to all solicitation dates and deadlines, including timely filing of an offer, regardless of filing a protest.

Offeror may protest an adverse determination issued by the City regarding responsibility and responsiveness, within seven days of the date the Offeror was notified of the adverse determination.

Offeror may protest an award recommendation if the Offeror can establish that it had a substantial chance of being awarded the contract and will be harmed by the recommended award. The City will post recommendations on the City's website to award the contract(s) to an Offeror(s). Offeror must submit award protests within seven days after the posting of the award recommendation, with exceptions only for good cause shown, within the City's full and final discretion.

All protests will be in writing, filed with the Procurement Officer identified in the solicitation and include the following:

- Identification of the solicitation number;
- The name, address and telephone number of the protester;
- A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents;
- The form of relief requested; and
- The signature of the protester or its authorized representative.

The Procurement Officer will render a written decision within a reasonable period after the protest is filed. The City will not request City Council authorization to award the contract until the protest process is complete. All protests and appeals must be submitted in accordance with the City's Procurement Code, (Phoenix City Code, Ch. 43) and any protests or appeals not submitted within the time requirements will not be considered. Protests must be filed with the Procurement Officer.

2.19. Public Record

All Offers submitted in response to this solicitation will become the property of the City and become a matter of public record available for review pursuant to Arizona State law. If an Offeror believes that a specific section of its Offer response is confidential, the Offeror will isolate the pages marked confidential in a specific and clearly labeled section of its Offer response. An Offeror may request specific information contained within its Offer is treated by the Procurement Officer as confidential provided the Offeror clearly labels the information "confidential." To the extent necessary for the evaluation process, information marked as "confidential" will not be treated as confidential. Once the procurement file becomes available for public inspection, the Procurement Officer will not make any information identified by the Offerors as "confidential" available to the public unless necessary to support the evaluation process or if specifically requested in accordance with applicable public records law. When a public records request for such information is received, the Procurement Officer will notify the Offeror in writing of any request to view any portion of its Offer marked "confidential." The Offeror will have the time set forth in the notice to obtain a court order enjoining such disclosure. If the Offeror does not provide the Procurement Officer with a court order enjoining release of the information during the designated time, the Procurement Officer will make the information requested available for inspection.

2.20. Late Offers

Late Offers must be rejected, except for good cause. If a late Offer is submitted, the Department will document the date and time of the submittal of the late Offer, keep the Offer and notify the Offeror that its Offer was disqualified for being late.

2.21. Right to Disqualify

The City reserves the right to disqualify any Offeror who fails to provide information or data requested or who provides materially inaccurate or misleading information or data. The City further reserves the right to disqualify any Offeror on the basis of any real or apparent conflict of interest that is disclosed by the Offer submitted or any other data or information available to the City. This disqualification is at the sole discretion of the City. By submission of a solicitation response, the Offeror waives any right to object now or at any future time, before any agency or body including, but not limited to, the City Council of the City or any court as to the exercise by the City of such right to disqualify or as to any disqualification by reason of real or apparent conflict of interest determined by the City. The City reserves the right to replace the disqualified Offeror.

2.22. Contract Award

The City reserves the right to award a contract by individual line items, by group, all or none, or any other combination most advantageous to the City. The City reserves the right to multiple award.

2.23. Determining Responsiveness and Responsibility

Offers will be reviewed for documentation of any required minimum qualifications, and completeness and compliance with the solicitation requirements. The City reserves sole discretion to determine responsiveness and responsibility.

Responsiveness: Nonresponsive Offers will not be considered in the evaluation process. The solicitation states criteria that determine responsiveness, and the solicitation includes terms and conditions that if included or excluded from Offers will render an Offer nonresponsive.

Responsibility: To obtain true economy, the City must conduct solicitations to minimize the possibility of a subsequent default by the Offeror, late deliveries, or other unsatisfactory performance that may result in additional administrative costs. It is important that the Offeror be a responsible Offeror. Responsibility includes the Offeror's integrity, skill, capacity, experience, and facilities for conducting the work to be performed.

2.24. Equal Low Offer

Contract award will be made by putting the names of the tied Offerors in a cup for a blind drawing limited to those bidders with tied Offers. If time permits, the Offerors involved will be given an opportunity to attend the drawing. The drawing will be witnessed by at least three persons, and the contract file will contain the names and addresses of the witnesses.

3. SCOPE OF WORK

3.1. PURPOSE:

The City of Phoenix (“City”) Water Services Department (“WSD”) requires services from a Contractor(s) experienced in supplying electrical motors, and/or providing electrical maintenance, and repairs. The Public Works, Aviation, and Phoenix Convention Center Departments may also utilize the resulting contract.

3.2. BACKGROUND:

3.2.1 The Water Production Division is currently responsible for five Water Treatment Plants (WTPs), Water System Operations and Remote Facilities (wells, booster stations, storage tanks, reservoirs, and pressure reducing valve stations). The water treatment plants include the 24th Street WTP, Deer Valley WTP, Val Vista WTP, Union Hills WTP and Lake Pleasant WTP. Lake Pleasant WTP is a Design Build Operate (DBO) plant built in 2007 and is under contract operations with Veolia Water North America Operating Services, LLC.

3.2.2 The Wastewater Treatment and Wastewater Collection Divisions are currently responsible for three Wastewater Treatment Plants (WWTP) and Lift Stations. The WWTP's are 23rd Ave. WWTP, 91st Ave. WWTP, and Cave Creek Water Reclamation Plant.

3.2.3 The manufacturers below are the brands of electric motors currently used by the City.

3.2.3.1 Baldor

3.2.3.2 Toshiba

3.2.3.3 G.E.

3.2.3.4 Reliance

3.2.3.5 Mitsubishi

3.2.3.6 Emerson

3.2.3.7 Leeson

3.2.3.8 U.S. Motors

3.2.3.9 Lincoln

3.2.3.10 EIM

3.2.3.11 Marathon

3.2.3.12 Westinghouse

3.2.3.13 Dayton

3.2.3.14 Flygt

3.2.3.15 Wilo

3.2.3.16 Fairbanks Morse

3.3. CONTRACTOR WORK REQUIREMENTS:

3.3.1 Provide all labor, materials, supplies, equipment, supervision, transportation, mileage and all other overhead burdens associated with the cost to supply and/or install electrical motors with various horsepower, ratings, model designations, and configurations, and/or provide electrical maintenance, troubleshooting, replacement parts as required, and repair services of electrical problems on an as-needed basis. The nature of the work will determine if the work will be performed on-site or off-site at the Contractor's facility.

3.3.2 Contractor shall have sole responsibility for the means, methods, techniques, procedures, and safety precautions in connection with performance of the required services.

3.3.3 Contractor will be responsible for implementing all final settings and adjustments in accordance with the electric motor manufacturer's specifications.

3.3.4 Contractor will repair or replace electric motors sized from ½ to 5,000 horsepower (HP). City approval is required prior to rebuilding or reconditioning an electric motor.

3.3.5 Equivalent brands of electric motors will be taken into consideration by the City.

3.3.6 Repair services for large electric motors (above 150 HP) shall include the following as a minimum. The work requirement in this subparagraph, with the exception of sub-subparagraph 3.3.6.3.4, also applies to electric motors below 150 HP, but the City reserves the right to have the work in sub-subparagraph 3.3.6.3.4 performed on electric motors below 150 HP if deemed necessary.

3.3.6.1 Disassembly

3.3.6.2 Cleaning of all components

3.3.6.3 Test/Measurements performed as follows:

3.3.6.3.1 Perform polarization index (P.I.) test to determine winding condition.

3.3.6.3.2 Perform two plane dynamic balance test.

3.3.6.3.3 Perform efficiency test.

3.3.6.3.4 Perform sonic test on shafting for cracking and fatiguing.

3.3.6.3.5 Megger stator to consist of:

3.3.6.3.5.1 Phase balance stator applying 20% of rated voltage to stator winding.

3.3.6.3.5.2 Inspect all bearings.

3.3.6.3.5.3 Clean, bake, balance and check alignment.

3.3.6.3.5.4 Measure bearing journals and housing (end bells).

3.3.6.3.5.5 Perform total indicator reading to motor shaft.

3.3.6.3.5.6 Dynamic balance rotor – check rotor bars and growl test rotor.

3.3.6.3.5.7 Inspect all components to ensure compliance with the Original Equipment Manufacturer (OEM) specification.

3.3.6.3.5.8 Machine stator feet (if needed) parallel to axial motor center line.

3.3.6.3.5.9 Vacuum Pressure Impregnation (V.P.I.) all new stator windings.

3.3.6.4 Reassemble motor as follows:

3.3.6.4.1 Test to OEM specifications (vibration test to thousands of an inch).

3.3.6.4.2 Perform core loss test on stator and provide printout of data as found prior to rewind.

3.3.6.4.3 Return all old bearings to the City for analysis by City staff.

3.3.6.4.4 Repaint.

3.3.7 All replacement parts shall be new and must meet or exceed the OEM specifications and standards. Parts that are replaced shall be returned to the City with delivery of the completed motor.

3.3.8 Contractor must use factory authorized replacement parts to maintain compliance with the manufacturer's warranty requirements. Contractor may be required to provide proof of certification upon request by the City.

3.3.9 All fabrication must meet or exceed the specifications indicated. All materials, electrical, wiring, fittings, fasteners, bolts and miscellaneous hardware shall be properly designed and engineered for the specifications indicated. All fabrication and assembly techniques shall be consistent with or exceed industry standards.

3.3.10 Contractor shall maintain a sufficient supply of products and provide stock inventory for routine repair items or be able to obtain parts from the manufacturer, the manufacturer's distributor or other source.

3.3.11 Contractor will provide delivery Monday – Friday, 6:00am – 4:00pm. If special handling or freight are required, Contractor will assume all charges unless prior authorization has been received from the City. Any authorized special handling will be reimbursed to the Contractor as a pass-through cost.

3.3.12 Contractor employee shall be required to contact the City representative upon arrival and departure from the job site.

3.3.13 After completion of the work, inspections, and any testing, the area shall be restored to a clean and presentable condition.

3.3.14 All work will be scheduled with the City representative and the work will begin only after receipt of a Purchase Order.

3.3.15 Contractor will attend meetings as requested by the City.

3.3.16 Contractor will provide 24-hour telephone support at no additional cost to the City.

3.3.17 Contractor shall provide the current Manufacturer Suggested Retail Price (MSRP) reference material (catalog, website or disk) for each brand of motor offered.

3.3.18 One (1) electronic copy and hard copy of each service manual and parts book shall be supplied.

3.3.19 One (1) electronic copy and hard copy of the electric motor diagram and settings and complete wiring diagrams and schematics shall also be provided for each electric motor including the electric motor delivered "as built". The manufacturer's part numbers shall also be provided.

3.3.20 Electronic copies shall be presented in portable document format (pdf).

3.3.21 Contractor shall provide the current Vaughen's Pricing Guide (catalog, website or disk) and provide updated guides.

3.4. PICKUP AND DELIVERY:

3.4.1 Contractor shall be responsible for pick-up and delivery of all motors when and where requested by the City representative. All pick-up and delivery of motors shall be performed within 24 hours of notification by the City representative.

3.4.2 Contractor shall offer over-the-counter service for those City locations that do not request pick-up or delivery of motors.

3.4.3 The Contractor may be requested to pick-up a disassembled motor and on occasion the City may deliver disassembled motors to the Contractor.

3.5. CONTRACTOR ESTIMATE FOR REPAIRS:

3.5.1 Contractor shall submit a written, itemized cost estimate, within 24 hours from the initial request for service, to the City representative for approval. The written estimate shall include the following:

3.5.1.1 Identify the condition of the equipment

3.5.1.2 Recommended repairs

3.5.1.3 Equipment information (brand, model, serial no..etc)

3.5.1.4 Equipment location

3.5.1.5 Horsepower

3.5.1.6 Frame size

3.5.1.7 Estimated Cost of repair to include required materials, hourly rate, and estimated number of hours to complete repairs

3.5.2 If the motor repair cost exceeds 60% of the cost of a new motor, the City reserves the right to replace the motor rather than repair it. The City reserves the right to make a determination at any time during the repair process to replace the motor with a new one, depending upon the situation.

3.5.3 No additional costs other than the cost for the tear down will be charged to the City if the motor is not repaired. All non-repaired motors and parts will be returned to the City within 72 hours if requested.

3.6. CITY OF PHOENIX RESPONSIBILITY:

3.6.1 The City reserves the right to purchase new electric motors and replacement parts. Electric motors and replacement parts purchased from the Contractor will be inspected prior to delivery. Additional non-manufacturer accessories, options, or upgrades may be purchased anytime during the contract term.

3.6.2 The City reserves the right to supply spares (electric motors or parts) from its current inventory.

3.6.3 The City representative will identify the project area(s), storage area, and parking to be utilized by the Contractor.

3.7. CONTRACTOR'S FACILITY:

3.7.1 Contractor must be an authorized service center ("service center") for each brand of electric motor they are authorized to service.

3.7.2 Contractor's service center must have the equipment necessary to perform electromechanical repairs/rewinding to electric motors per the established guidelines in Electrical Apparatus Service Association (EASA) AR100-2015, Recommended Practice for the Repair of Rotating Electrical Apparatus.

3.7.3 Contractor's service center must also be fully equipped to repair and fabricate parts as required for the size and type of electric motor.

3.7.4 City reserves the right to conduct a site visit at Contractor's facility to review operating procedures and to conduct an on-site inspection of the facility.

3.8. CONTRACTOR'S EQUIPMENT:

Contractor must have access to various sizes of cranes capable of lifting motors up to 5,000 HP and capable of long reach applications.

3.9. CONTRACTOR EMPLOYEE TRAINING:

Contractor employees shall complete on-going training on current and new technologies throughout the contract term. The City may request proof of on-going training. Training must comply with the National Fire Protection Association 70, National Electrical Code.

3.10. SUBCONTRACTOR:

Contractor will not subcontract or use any other party to perform services without prior written authorization from the City. Contractor's use of a subcontractor or other party to perform services shall not relieve or release the Contractor from their duties, liabilities or obligations under the contract.

3.11. CONFINED SPACE:

Contractor personnel may be required to work in confined spaces. Contractor must furnish equipment for confined space entry and must comply with Occupational Safety and Health Administration (OSHA), Regulation 1910.146 or most recent regulation. Refer to Section 5, paragraph 5.49, Confined Space Structure Entry.

3.12. LOCATION:

Contractor must be capable of providing these services within a 50-mile radius of Central Avenue and Washington St.

3.13. WORK HOURS:

Normal work hours will be Monday through Friday, 6:00a.m. – 4:00p.m., excluding City holidays, and all work performed on-site at a City location will be performed during these hours.

3.14. RESPONSE TIMES:

3.14.1 For routine service calls, upon initial notification by the City representative, the Contractor's representative must respond via phone or email within one (1) hour of receipt of a service call. Contractor's on-site response shall be within 24 hours. Contractor must complete the work within 48-hours from receipt of a purchase order from the City) unless circumstances require additional time and the City representative approves the additional time.

3.14.2 For emergency service calls, upon initial notification by the City representative, the Contractor's representative must respond via phone or email within 15 minutes of receipt of a service call. Contractor's on-site response shall be within two (2) hours. Emergency repairs shall be completed within 24-hours from the initial call request unless circumstances require additional time and the City representative approves the additional time. Emergency work shall be performed during normal working hours whenever possible; however, services may be performed on a 24-hour, seven (7) days a week basis, if deemed necessary by the City.

3.15. RECEIVING GOODS AND SERVICES (WATER SERVICES FACILITIES):

3.15.1 One (1) business day prior to delivery of an electric motor, Contractor shall email the following information to the City representative:

3.15.1.1 Before delivering the equipment for WSD's acceptance, the Contractor shall email the City representative their quote/draft invoice amount for an electric motor or repairs and warranty information.

3.15.1.2 Any difference between the quote/draft invoice and the purchase order must be identified and reconciled prior to delivery.

3.15.1.3 Contractor shall provide the following documentation the day of delivery:

3.15.1.3.1 Email confirmation of the required documents

3.15.1.3.2 Any deviations are documented and approved by the City representative

3.15.1.3.3 Warranty information

3.15.1.3.4 Test reports and documentation of repairs

3.15.1.3.5 Invoice amount and purchase order amount must match

3.15.2 All deliveries to the plant will be at the receiving area. If delivery is required at a remote site or administration office, also email the end user at these locations.

3.16. RECEIVING GOODS AND SERVICES (PUBLIC WORK FACILITIES):

3.16.1 One (1) business day prior to delivery, Contractor shall email the following information to the City representative:

3.16.1.1 Before delivering the equipment for WSD's acceptance, the Contractor shall email the City representative their quote/draft invoice amount for an electric motor or repairs and warranty information.

3.16.1.2 Any difference between the quote/draft invoice and the purchase order must be identified and reconciled prior to delivery.

3.16.1.3 Contractor shall provide the following documentation the day of delivery:

3.16.1.3.1 Email confirmation of the required documents

3.16.1.3.2 Any deviations are documented and approved by Public Works

3.16.1.3.3 Warranty information

3.16.1.3.4 Test reports and documentation of repairs

3.16.1.3.5 Invoice amount and purchase order amount must match

3.16.2 Public Works may reject the delivery if there is no documentation.

3.17. STANDARDS:

All work performed shall be accomplished in accordance with the current applicable standards set forth by the Electrical Apparatus Service Association, Inc., Occupational Safety and Health Administration, industry accepted standards for the repair of electrical apparatus, and the Water Services, Public Works, Aviation, and Phoenix Convention Center Department requirements.

3.18. DELIVERABLES:

3.18.1 Contractor shall provide via email, in pdf format, a certificate or other proof of membership in the Electrical Apparatus Service Association prior to commencement of work.

3.18.2 Provide via email in pdf format, two (2) sets of test and measurement reports after completion of the work, to include:

3.18.2.1 P.I. test data sheet

3.18.2.2 Core loss test data sheet

3.18.2.3 Two plane dynamic balance test data sheet

3.18.2.4 Efficiency test data sheet

3.18.3 Provide the most recent Vaughen's Pricing Guide (catalog, website address, disk) as they are released.

3.18.4 Provide the current Manufacturer Suggested Retail Price (MSRP) reference material (catalog, website, or disks) for each brand of motor offered within 10 days of notice of award.

3.18.5 Provide one (1) electronic copy and hard copy of each service manual and parts book after completion of the work.

3.18.6 Provide one (1) electronic copy and hard copy of the electric motor diagram and settings and complete wiring diagrams and schematics for each electric motor including the electric motor delivered "as built" after completion of the work. The manufacturer's part numbers shall also be provided.

3.18.7 Provide the current MSRP reference material annually or whenever it is updated.

4. STANDARD TERMS AND CONDITIONS

4.1. Definition of Key Words Used in the Solicitation

Shall, Will, Must: Indicates a mandatory requirement. Failure to meet these mandatory requirements may result in the rejection of Offer as non-responsive.

Should: Indicates something that is recommended but not mandatory. If the Offeror fails to provide recommended information, the City may, at its sole option, ask the Offeror to provide the information or evaluate the Offer without the information.

May: Indicates something that is not mandatory but permissible.

For purposes of this solicitation, the following definitions will apply:

“A.R.S.” Arizona Revised Statute

“Buyer” or “Procurement Officer” City of Phoenix staff person responsible for the solicitation. The City employee or employees who have specifically been designated to act as a contact person or persons to the Contractor, and responsible for monitoring and overseeing the Contractor’s performance under this contract.

“City” The City of Phoenix

“Contractor” The individual, partnership, or corporation who, as a result of the competitive process, is awarded a contract by the City of Phoenix.

“Contract” or “Agreement” The legal agreement executed between the City of Phoenix, AZ and the Contractor.

“Days” Means calendar days unless otherwise specified.

“Chief Procurement Officer” The contracting authority for the City of Phoenix, AZ, authorized to sign contracts and amendments thereto on behalf of the City of Phoenix, AZ.

“Employer” Any individual or type of organization that transacts business in this state, that has a license issued by an agency in this state and employs one or more employees in this state. Employer includes this state, any political subdivision of this state and self-employed persons. In the case of an independent contractor, employer means the independent contractor and does not mean the person or organization that uses contract labor. (A.R.S. 23-211).

“Offer” Means a response from a Supplier, Contractor, or Service Provider to a solicitation request that, if awarded, binds the Supplier, Contractor, or Service Provider to perform in accordance with the contract. Same as bid, proposal, quotation or tender.

“Offeror” Any Vendor, Seller or Supplier submitting a competitive offer in response to a solicitation from the City. Same as Bidder or Proposer.

“Solicitation” Means an Invitation for Bid (IFB), Request for Proposal (RFP), Request for Quotations (RFQ), Request for Qualifications (RFQu) and request for sealed bids, or any other type of formal procurement which the City makes public through advertising, mailings, or some other method of communication. It is the process by which the City seeks information, proposals, bids or quotes from suppliers.

“Suppliers” Firms, entities or individuals furnishing goods or services to the City.

“Vendor or Seller” A seller of goods or services.

4.2. Contract Interpretation

- A. **APPLICABLE LAW:** This Contract will be governed by the law of the State of Arizona, and suits pertaining to this Contract will be brought only in Federal or State courts in Maricopa County, State of Arizona.
- B. **CONTRACT ORDER OF PRECEDENCE:** In the event of a conflict in the provisions of the Contract, as accepted by the City and as they may be amended, the following will prevail in the order set forth below:
1. Federal terms and conditions, if any
 2. Special terms and conditions
 3. Standard terms and conditions
 4. Amendments
 5. Statement or scope of work
 6. Specifications
 7. Attachments
 8. Exhibits
 9. Instructions to Contractors
 10. Other documents referenced or included in the Solicitation
- C. **ORGANIZATION – EMPLOYMENT DISCLAIMER:** The Agreement resulting hereunder is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind, and the rights and obligations of the parties will be only those expressly set forth in the agreement. The parties agree that no persons supplied by the Contractor in the performance of Contractor’s obligations under the agreement are considered to be City’s employees and that no rights of City civil service, retirement or personnel rules accrue to such persons. The Contractor will have total responsibility for all salaries, wage bonuses, retirement, withholdings, workmen’s compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons, and will save and hold the City harmless with respect thereto.
- D. **SEVERABILITY:** The provisions of this Contract are severable to the extent that any provision or application held to be invalid will not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.

- E. **NON-WAIVER OF LIABILITY:** The City of Phoenix as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law.
- F. **PAROL EVIDENCE:** This Agreement is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage in the trade will be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this contract will not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

4.3. Contract Administration and Operation

- A. **RECORDS:** All books, accounts, reports, files and other records relating to the contract will be subject at all reasonable times to inspection and audit by the City for five years after completion of the contract. Such records will be produced at a City of Phoenix office as designated by the City. Confidentiality will be maintained, and City will not violate any proprietary or other confidentiality agreements Contractor has in place.
- B. **DISCRIMINATION PROHIBITED:** Contractor agrees to abide by the provisions of the Phoenix City Code Chapter 18, Article V as amended. Any Contractor, in performing under this contract, will not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age or disability nor otherwise commit an unfair employment practice. The supplier and/or lessee will take action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, or national origin, age or disability and adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort and responsibility, and that are performed within the same establishment under similar working conditions. Such action will include but not be limited to the following: Employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-contractor agreements or subleases of this agreement entered into by supplier/lessee.
- C. **EQUAL EMPLOYMENT OPPORTUNITY AND PAY:** In order to do business with the City, Contractor must comply with Phoenix City Code, 1969, Chapter 18, Article V, as

amended, Equal Employment Opportunity Requirements. Contractor will direct any questions in regard to these requirements to the Equal Opportunity Department, (602) 262-6790.

1. **For a Contractor with 35 employees or fewer:** Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts related to this Agreement that involve furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement. Contractor further agrees that this clause will be incorporated in all subcontracts, Contractor agreements or subleases of this agreement entered into by supplier/lessee.

2. **For a Contractor with more than 35 employees:** Contractor in performing under this Agreement shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The Contractor will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability, and shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The Contractor further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Contractor further agrees that this clause will be incorporated in all subcontracts, job-Contractor agreements or subleases of this Agreement entered into by supplier/lessee. The Contractor further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

3. **Documentation:** Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.
 4. **Monitoring:** The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this article as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.
- D. **LEGAL WORKER REQUIREMENTS:** The City of Phoenix is prohibited by A.R.S. § 41-4401 from awarding a contract to any Contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, Contractor agrees that:
1. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A.
 2. A breach of a warranty under paragraph 1 will be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.
 3. The City of Phoenix retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the contract to ensure that the Contractor or subcontractor is complying with the warranty under paragraph 1.
- E. **HEALTH, ENVIRONMENTAL AND SAFETY REQUIREMENTS:** The Contractor's products, services and facilities will be in full compliance with all applicable Federal, State and local health, environmental and safety laws, regulations, standards, codes and ordinances, regardless of whether or not they are referred to by the City. At the request of City representatives, the Contractor will provide the City:
1. Environmental, safety and health regulatory compliance documents (written safety programs, training records, permits, etc.) applicable to services provided by the Contractor in this contract.
 2. A list of all federal, state, or local (EPA, OSHA, Maricopa County, etc.) citations or notice of violations issued against their firm or their subcontractors including dates, reasons, dispositions and resolutions.
 3. The City will have the right, but not the obligation to inspect the facilities, transportation vehicles or vessels, containers and disposal facilities provided by the Contractor or subcontractor. The City will also have the right to inspect operations conducted by the Contractor or subcontractor in the performance of this agreement. The City further reserves the right to make unannounced inspections of the Contractor's facilities (during normal business hours).
- F. **COMPLIANCE WITH LAWS:** Contractor agrees to fully observe and comply with all applicable Federal, State and local laws, regulations, standards, codes and ordinances

when performing under this Contract regardless of whether they are being referred to by the City. Contractor agrees to permit City inspection of Contractor's business records, including personnel records to verify any such compliance. Because the contractor will be acting as an independent contractor, the City assumes no responsibility for the Contractor's acts.

- G. **LAWFUL PRESENCE REQUIREMENT:** Pursuant to A.R.S. §§ 1-501 and -502, the City of Phoenix is prohibited from awarding a contract to any natural person who cannot establish that he or she is lawfully present in the United States. In order to establish lawful presence, this person must produce qualifying identification and sign a City-provided affidavit affirming that the identification provided is genuine. This requirement will be imposed at the time of contract award. In the event the prevailing responder is unable to satisfy this requirement, the City will offer the award to the next-highest scoring responder. The law does not apply to fictitious entities such as corporations, partnerships and limited liability companies.
- H. **CONTINUATION DURING DISPUTES:** Contractor agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the Contractor will continue to perform the obligations required of Contractor during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.
- I. **EMERGENCY PURCHASES:** The City reserves the right to purchase from other sources those items which are required on an emergency basis and cannot be supplied immediately from stock by the Contractor.

4.4. Costs and Payments

- A. **GENERAL:** Any prompt payment terms offered must be clearly noted by the Contractor on all invoices submitted to the City for the payment of goods or services received. The City will make every effort to process payment for the purchase of material or services within thirty to forty-five calendar days after receipt of a correct invoice, unless a good faith dispute exists to any obligation to pay all or a portion of the account. Payment terms are specified in the Offer.
- B. **PAYMENT DEDUCTION OFFSET PROVISION:** Contractor acknowledges that the City Charter requires that no payment be made to any Contractor as long as there is an outstanding obligation due to the City. Contractor agrees that any obligation it owes to the City will be offset against any payment due to the Contractor from the City.
- C. **LATE SUBMISSION OF CLAIM BY CONTRACTOR:** The City will not honor any invoices or claims which are tendered one year after the last item of the account accrued.
- D. **DISCOUNTS:** Payment discounts will be computed from the date of receiving acceptable products, materials and/or services or correct invoice, whichever is later to the date payment is mailed.

- E. **NO ADVANCE PAYMENTS:** Advance payments are not authorized. Payment will be made only for actual services or commodities that have been received, unless addressed specifically in the Scope of work for subscription services.
- F. **FUND APPROPRIATION CONTINGENCY:** The Contractor recognizes that any agreement entered into will commence upon the day first provided and continue in full force and effect until termination in accordance with its provisions. The Contractor and the City herein recognize that the continuation of any contract after the close of any given fiscal year of the City, which ends on June 30th of each year, will be subject to the approval of the budget of the City providing for or covering such contract item as an expenditure therein. The City does not represent that said budget item will be actually adopted, said determination being the determination of the City Council at the time of the adoption of the budget.
- G. **MAXIMUM PRICES:** The City will not be invoiced at prices higher than those stated in any contract resulting from this Offer. Contractor certifies, by signing this Offer that the prices offered are no higher than the lowest price the Contractor charges other buyers for similar quantities under similar conditions, as applicable and shown by quotes for like services and goods. Contractor further agrees that any reductions in the price of the goods or services covered by this Offer and occurring after award will apply to the undelivered balance. The Contractor will promptly notify the City of such price reductions.
- H. **F.O.B. POINT:** All prices are to be quoted F.O.B. destination, unless specified elsewhere in this solicitation.

4.5. Contract Changes

- A. **CONTRACT AMENDMENTS:** Contracts will be modified only by a written contract amendment signed by persons duly authorized to enter into contracts on behalf of the Contractor. No verbal agreement or conversation with any officer, agent, or employee of the City either before or after execution of the contract, will affect or modify any of the terms or obligations contained or to be contained in the contract. Any such verbal agreements or conversation shall be considered as unofficial information and in no way binding upon the City or the Contractor. All agreements shall be in writing and contract changes shall be by written amendment signed by both parties.
- B. **ASSIGNMENT - DELEGATION:** No right or interest in this contract nor monies due hereunder will be assigned in whole or in part without written permission of the City, and no delegation of any duty of Contractor will be made without prior written permission of the City, which may be withheld for good cause. Any assignment or delegation made in violation of this section will be void.
- C. **NON-EXCLUSIVE CONTRACT:** Any contract resulting from this solicitation will be awarded with the understanding and agreement that it is for the sole convenience of the

City. The City reserves the right to obtain like goods or services from another source when necessary.

4.6. Risk of Loss and Liability

- A. **TITLE AND RISK OF LOSS:** The title and risk of loss of material or service will not pass to the City until the City actually receives the material or service at the point of delivery; and such loss, injury, or destruction will not release seller from any obligation hereunder.
- B. **ACCEPTANCE:** All material or service is subject to final inspection and acceptance by the City. Material or service failing to conform to the specifications of this contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Noncompliance will conform to the cancellation clause set forth in this document.
- C. **FORCE MAJEURE:** Except for payment of sums due, neither party will be liable to the other nor deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Force majeure will not include late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition. If either party is delayed at any time in the progress of the work by force majeure, the delayed party will notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and will specify the causes of such delay in such notice. Such notice will be hand-delivered or mailed certified-return receipt and will make a specific reference to this provision, thereby invoking its provisions. The delayed party will cause such delay to cease as soon as practicable and will notify the other party in writing when it has done so. The time of completion will be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this contract.
- D. **LOSS OF MATERIALS:** The City does not assume any responsibility, at any time, for the protection of or for loss of materials, from the time that the contract operations have commenced until the final acceptance of the work by the City.
- E. **CONTRACT PERFORMANCE:** Contractor will furnish all necessary labor, tools, equipment, and supplies to perform the required services at the City facilities designated, unless otherwise specifically addressed in the scope, or elsewhere in this Agreement. The City's authorized representative will decide all questions which may arise as to the quality and acceptability of any work performed under the contract. If, in the opinion of the City's authorized representative, performance becomes unsatisfactory, the City will notify the Contractor. The Contractor will have 30 days from that time to correct any specific instances of unsatisfactory performance, unless a different amount of time is specified in the agreement. In the event the unsatisfactory performance is not corrected within the time specified, the City will have the immediate right to complete the

work to its satisfaction and will deduct the cost to cover from any balances due or to become due the Contractor. Repeated incidences of unsatisfactory performance may result in cancellation of the agreement for default.

- F. **DAMAGE TO CITY PROPERTY:** Contractor will perform all work so that no damage to the building or grounds results. Contractor will repair any damage caused to the satisfaction of the City at no cost to the City. Contractor will take care to avoid damage to adjacent finished materials that are to remain. If finished materials are damaged, Contractor will repair and finish to match existing material as approved by the City at Contractor's expense.

4.7. City's Contractual Rights

Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five days, the demanding party may treat this failure as an anticipatory repudiation of this contract.

- A. **NON-EXCLUSIVE REMEDIES:** The rights and remedies of the City under this Contract are non-exclusive.
- B. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE BREACH:** Each installment or lot of the agreement is dependent on every other installment or lot and a delivery of non-conforming goods or a default of any nature under one installment or lot will impair the value of the whole agreement and constitutes a total breach of the agreement as a whole.
- C. **ON TIME DELIVERY:** Because the City is providing services which involve health, safety and welfare of the general public, delivery time is of the essence. Delivery must be made in accordance with the delivery schedule promised by the Contractor.
- D. **DEFAULT:** In case of default by the Contractor, the City may, by written notice, cancel this contract and repurchase from another source and may recover the excess costs by (1) deduction from an unpaid balance due; (2) collection against the bid and/or performance bond, or (3) a combination of the aforementioned remedies or other remedies as provided by law.
- E. **COVENANT AGAINST CONTINGENT FEES:** Seller warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employers or bona fide established commercial or selling agencies maintained by the seller for the purpose of securing business. For breach or violation of this warranty, the City will have the right to annul the contract without liability or in its discretion to deduct from the contract price a consideration, or otherwise recover the full amount of such commission, brokerage or contingent fee.

- F. **COST JUSTIFICATION:** In the event only one response is received, the City may require that the Contractor submit a cost proposal in sufficient detail for the City to perform a cost/price analysis to determine if the Offer price is fair and reasonable.
- G. **WORK PRODUCT, EQUIPMENT AND MATERIALS:** All work product, equipment, or materials created or purchased under this contract belongs to the City and must be delivered to the City at City's request upon termination of this contract. Contractor agrees to assign to City all rights and interests Contractor may have in materials prepared under this contract that are "works for hire" within the meaning of the copyright laws of the United States, including any right to derivative use of the material.

4.8. Contract Termination

- A. **GRATUITIES:** The City may, by written notice to the Contractor, cancel this contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City making any determinations with respect to the performing of such contract. In the event this contract is canceled by the City pursuant to this provision, the City will be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

B. **CONDITIONS AND CAUSES FOR TERMINATION:**

1. This contract may be terminated at any time by mutual written consent, or by the City, with or without cause, upon giving thirty-day written notice to Contractor. The City at its convenience, by written notice, may terminate this contract, in whole or in part. If this contract is terminated, the City will be liable only for payment under the payment provisions of this contract for services rendered and accepted material received by the City before the effective date of termination. Title to all materials, work-in-process and completed but undeliverable goods, will pass to the City after costs are claimed and allowed. The Seller will submit detailed cost claims in an acceptable manner and will permit the City to examine such books and records as may be necessary in order to verify the reasonableness of any claims.
2. The City reserves the right to cancel the whole or any part of this contract due to failure of Contractor to carry out any term, promise, or condition of the contract. The City will issue a written notice of default to Contractor for acting or failing to act as in any of the following:
 - a. In the opinion of the City, Contractor provides personnel who do not meet the requirements of the contract;
 - b. In the opinion of the City, Contractor fails to perform adequately the stipulations, conditions or services/specifications required in this contract;
 - c. In the opinion of the City, Contractor attempts to impose on the City personnel or materials, products or workmanship, which is of an unacceptable quality;

- d. Contractor fails to furnish the required service and/or product within the time stipulated in the contract;
 - e. In the opinion of the City, Contractor fails to make progress in the performance of the requirements of the contract and/or give the City a positive indication that Contractor will not or cannot perform to the requirements of the contract.
- C. **CONTRACT CANCELLATION:** All parties acknowledge that this contract is subject to cancellation by the City of Phoenix pursuant to the provision of Section 38-511, Arizona Revised Statutes.

4.9. State and Local Transaction Privilege Taxes

In accordance with applicable state and local law, transaction privilege taxes may be applicable to this transaction. The state and local transaction privilege (sales) tax burden and legal liability to remit taxes are on the Contractor that is conducting business in Arizona and the City of Phoenix. Any failure by the Contractor to collect applicable taxes from the City will not relieve the Contractor from its obligation to remit taxes. It is the responsibility of the prospective bidder to determine any applicable taxes. The City will look at the price or offer submitted and will not deduct, add or alter pricing based on speculation or application of any taxes, nor will the City provide advice or guidance. If you have questions regarding your tax liability, please seek advice from a tax professional prior to submitting your Offer. You may also find information at <https://www.phoenix.gov/finance/plt> or <https://www.azdor.gov/Business.aspx>. Once your Offer is submitted, the Offer is valid for the time specified in this Solicitation, regardless of mistake or omission of tax liability. If the City finds over payment of a project due to tax consideration that was not due, the Contractor will be liable to the City for that amount, and by contracting with the City, the Contractor agrees to remit any overpayments back to the City for miscalculations on taxes included in an offer price.

4.10. Tax Indemnification

Contractor will pay all federal, state and local taxes applicable to its operation and any persons employed by the Contractor, and require the same of all subcontractors. Contractor will hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation, and require the same of all subcontractors.

4.11. Tax Responsibility Qualification

Contractor may be required to establish, to the satisfaction of City, that any and all fees and taxes due to the City or the State of Arizona for any License or Transaction Privilege taxes, Use Taxes or similar excise taxes, are currently paid (except for matters under legal protest). Contractor agrees to a waiver of the confidentiality provisions contained in the City Finance Code and any similar confidentiality provisions contained in Arizona statutes relative to State Transaction Privilege Taxes or Use Taxes. Contractor agrees to provide written authorization to the City Finance Department and to the Arizona State Department of Revenue to release tax information relative to Arizona Transaction Privilege Taxes or Arizona Use Taxes in order to assist the Department in evaluating Contractor's qualifications for and compliance with contract for duration of the term of contract.

4.12. No Israel Boycott

If this Contract is valued at \$100,000 or more and requires Contractor (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, or construction, then Contractor must certify and agree that it does not and will not boycott goods or services from Israel, pursuant to Title 35, Chapter 2, Article 9 of the Arizona Revised Statutes. Provided that these statutory requirements are applicable, Contractor by entering this Contract now certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of goods or services from Israel.

4.13. No Forced Labor of Ethnic Uyghurs

If this Contract requires Contractor (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, goods, or construction, then pursuant to Title 35, Chapter 2, Article 10 of the Arizona Revised Statutes Contractor must certify and agree that it and any contractors, subcontractors, or suppliers it utilizes do not and will not use the forced labor of ethnic Uyghurs in the People's Republic of China or any goods or services produced by such forced labor. Provided these statutory requirements are applicable, Contractor, by entering this Contract, now certifies it is not currently engaged in, and agrees for the duration of the Contract to not engage in, (a) the use of forced labor of ethnic Uyghurs in the People's Republic of China; (b) the use of any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (c) the use of any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

4.14. Advertising

Except as required by law, Contractor shall not publish, release, disclose or announce to any member of the public, press, official body, or any other third party any information or documents concerning this Agreement or any part thereof without the prior written consent of the City. The name of any City site on which services are performed by the Contractor pursuant to this Agreement shall not be used in any advertising or other promotional context by Contractor without the prior written consent of the City.

4.15. Strict Performance

Failure of either party to insist upon the strict performance of any item or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the contract, or by law, or the acceptance of materials or services, obligations imposed by this contract, or by law, will not be deemed a waiver of any right of either party to insist upon the strict performance of the contract.

5. SPECIAL TERMS AND CONDITIONS

5.1. Free on Board (FOB)

Prices quoted shall be FOB destination and delivered, as required, to the following point(s):
There will be multiple delivery addresses.

5.2. Price

All prices offered shall be firm and fixed for the first year of the contract. Thereafter, price increases will be considered annually provided the adjustments are submitted in writing with 30 days' notice to the Procurement Officer. Price increase requests shall be accompanied with written documentation to support the increase, such as a letter from the manufacturer, published price index, applicable change in law, etc. Price decrease requests do not require supporting documentation and are allowed at any time during the contract term.

The City will be the sole judge in determining the allowable increase amount. Price increases agreed to by any staff other than the Deputy Finance Director or Department Director are invalid. The Contractor acknowledges and agrees to repay all monies paid because of a requested price increase unless the increase was specifically approved, in writing, by the Deputy Finance Director or Department Director.

5.3. Method of Ordering

Contractor shall deliver items and/or services only upon receipt of a written purchase order. All Contractor invoices and packing/delivery tickets must include the City of Phoenix purchase order number.

5.4. Method of Invoicing

Invoice must be emailed in .pdf format to invoices@phoenix.gov and must include the following:

- City purchase order number or shopping cart number
- Items listed individually by the written description and part number.
- Unit price, extended and totaled.
- Quantity ordered, back ordered, and shipped.
- Applicable tax
- Invoice number and date.
- Delivery address.
- Payment terms.
- FOB terms.
- Remit to address

5.5. Method of Payment

Payment to be made from Contractor's invoice and a copy of the signed delivery/service ticket submitted to cover items received and accepted during the billing period.

5.6. Supplier Profile Changes

It is the responsibility of the Contractor to promptly update their profile in procurePHX at <https://www.phoenix.gov/procure>. If Contractor's legal identify has changed, the Procurement Officer must be notified immediately. Failure to do so may result in non-payment of invoices and contract termination.

5.7. Suspensions of Work

The City reserves the right to suspend work wholly or in part if deemed necessary for the best interest of the City. This suspension will be without compensation to the Contractor, other than to adjust the contract completion/delivery requirements.

5.8. Hours of Work

All work under this contract shall be coordinated with the City's authorized Department representative. Any changes to the established schedule must have prior written approval by the City's authorized Department representative.

5.9. Post Award Conference

A post-award conference will be held prior to commencement of any work on the project. The purpose of this conference is to discuss critical elements of the work schedule and operational problems and procedures.

5.10. Performance Interference

Contractor shall notify the City's authorized Department representative immediately of any occurrence and/or condition that interferes with the full performance of the contract and confirm it in writing within 24 hours.

5.11. Cooperative Agreement

In addition to the City and with approval of the Contractor, this contract may be extended for use by other municipalities and government agencies in the State of Arizona.

5.12. Exclusive Possession

All services, information, computer program elements, reports, and other deliverables which may be created under this contract are the sole property of the City of Phoenix and will not be used by the Contractor or any other person except with prior written permission by the City.

5.13. Licenses and Permits

Contractor will keep current Federal, State, and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this contract.

5.14. Delivery

All deliveries shall be made between the hours of 6:00a.m. - 4:00p.m., local time, Monday through Friday, excluding City holidays. City holiday calendar:

<https://www.phoenix.gov/calendar/holidays>

5.15. Miscellaneous Fees

Additional charges for fuel surcharges, delivery charges, dealer prep, environmental fees, waste disposal, shop supplies, set-up, freight and/or shipping and handling, etc. will not be paid. These costs must be incorporated in the pricing provided.

Labor rates (Shop and On-site) shall be charged as a flat hourly rate and are allowed only in performance of services under this agreement. Travel hours and other incidental fees will not be permitted under this agreement. Labor hours will be from “check-in” to “check-out” at the worksite.

5.16. Single Source for Warranty Work

Contractor shall be fully responsible for all warranty work. In addition, Contractor shall have or establish a single local Phoenix source that will accomplish or coordinate any necessary warranty work. Contractor shall respond to requests for repairs within one (1) hour after a verbal request by the City.

5.17. Warranty

All equipment supplied under this contract shall be fully guaranteed by the contractor for a minimum period of one (1) year from the date of acceptance by the City. Any defects of design, workmanship, or materials that would result in non-compliance with the contract specifications shall be fully corrected by the Contractor (including parts and labor) without cost to the City.

5.18. Equipment Installation

All equipment shall be completely assembled and installed by the Contractor and ready for use on the City's property at the location where the equipment is being delivered.

5.19. Evaluation Literature

Offers submitted for products considered by the Contractor to be equal or better than the products specified herein must be submitted with technical literature and/or product brochures for the City's use to evaluate the offered products. Complete specifications, literature, illustrations, blueprints, photos etc. describing the offered product shall be included with the Offer. Contractor shall indicate any variation between the product offered and the literature submitted.

5.20. Industry Standards

It is intended that the manufacturer in the selection of components will use material and design practices that are the best available in the industry for the type of operating conditions to which the item will be subjected. Component parts shall be selected to give maximum performance, service life and safety and not merely meet the minimum requirements of this specification. All parts, equipment and accessories shall conform in strength, quality of material and workmanship to recognized industry standards.

The term "heavy duty" if used in these specifications shall mean that the item to which the term is applied shall exceed the usual quantity, quality, or capacity supplied with standard production items and it shall be able to withstand unusual straining, exposure, temperature, wear and use.

The City reserves the right to waive minor variations if, in the opinion of the City's authorized Department representative, the basic unit meets the general intent of these specifications.

The product offered shall not include a major component that is of a prototype nature or has not been in production for a sufficient length of time to demonstrate reliability.

If the specifications stated herein for component items do not comply with legal requirements, the Contractor shall so notify the City prior to the offer opening due date.

5.21. Inspection and Acceptance

Each product delivered shall be subject to complete inspection by the City prior to acceptance. Inspection criteria shall include, but not be limited to, conformity to the specifications, mechanical integrity, quality, workmanship and materials. Ten business days will be allowed for this process. If delivered items are unacceptable and returned to the Contractor prior to acceptance, an additional five business days will be allowed for inspection when subsequent delivery occurs. It shall be the Contractor's responsibility to pick up unacceptable products, correct the deficiencies, and return the product following the corrections.

5.22. Manuals

All complete operating manuals and parts manuals are to be furnished after completion of the work and provided at no additional cost to the City. Manuals and other materials shall show all electric motor specifications and mechanical troubleshooting in electronic media.

5.23. Product Discontinuance

The City may award contracts for products and/or models of equipment because of this solicitation. If a product or model is discontinued by the manufacturer, the City, in its sole discretion, may allow the Contractor to provide a substitute for the discontinued item. Contractor shall request permission to substitute a new product or model and will provide the following:

- A formal announcement from the manufacturer that the product or model has been discontinued.
- Documentation from the manufacturer that names the replacement product or model.
- Documentation that provides clear and convincing evidence that the replacement meets or exceeds all specifications required by the original solicitation
- Documentation that provides clear and convincing evidence that the replacement will be compatible with all functions or uses of the discontinued product or model.
- Documentation from the manufacturer confirming that the price for the replacement item will be the same as the discontinued item.
- The Chief Procurement Officer will be the sole judge in determining the allowable substitute, new product or model change for discontinued item.

5.24. Repair and Replacement Parts Guarantee

Following the expiration of any express or implied warranty applicable to those goods, furnished to the City under this contract, Contractor agrees to supply the City (as well as its agents, representatives, Contractors, and hires) with in-stock repair and replacement parts carrying a full manufacturer's warranty at a cost that shall not exceed the cost it would charge if it were contracted to service or install those repair and replacement parts.

5.25. Replacement Parts Availability

A response to this solicitation shall constitute a guarantee by the Contractor that a stock of replacement parts for the specified equipment is locally available. Captive parts must be available within 48 hours following the placement of an order. Contractor shall provide parts delivery. If special handling and/or freight are required, the Contractor will assume all charges.

5.26. Substitution of Specified Items

Whenever in the specifications any item or process is requested or identified by manufacturer name, proprietary name, or patent such specifications shall be used to facilitate descriptions of the item or process and shall be followed by the words "or equal". The Contractor may offer any item or process that is equal in every respect. However, if the item or process delivered is not, in the opinion of the City of Phoenix, equal in every respect to the specifications, then the Contractor must furnish the item or material that is equal, in the opinion of the City.

5.27. Communication in English

It is mandatory that the Contractor's lead person assigned to any City facility can speak, read, and write in English to effectively communicate with City staff.

5.28. Contractor Assignments

The Contractor hereby agrees that any of its employees who may be assigned to a City site to satisfy obligations under this contract shall be used exclusively for that purpose during the hours when they are working in areas covered by this contract and shall perform no work at other City facilities. If other services, in addition to or separate from, the services specified herein, may be deemed necessary by the Chief Procurement Officer or his authorized representative, the Contractor may be requested to perform the additional or special service.

5.29. Final Inspection and Approval

The Contractor will request the City's authorized Department representative to conduct a site inspection after the project is complete. City's authorized Department representative will prepare a "punch-list" during the inspection and will forward a copy to the Contractor.

After the "punch-list" items have been corrected, the Contractor will request a final inspection with the authorized Department representative. Final project approval is contingent upon the City authorized Department representative's final inspection and written approval.

5.30. Storage Space

The Contractor may store supplies, materials and equipment in a storage area on the City facility premises designated by the City's authorized Department representative during work. The Contractor agrees to keep its portion of this storage area in accordance with all applicable

fire regulations. The use of City storage facilities will be on a space available basis and subject to the approval of the City's authorized Department representative.

No materials or equipment will be stored or temporarily set in restrooms, under stairwells or other spaces accessible to the public. Hazardous chemicals such as solvent based strippers and cleaners will not be stored on City property.

If storage is in an electrical closet, a minimum of 36 inches shall be provided in front of all electrical panels. The width shall be a minimum of 30 inches or the width of the panel. The width of working space in front of the electrical equipment shall be the width of the equipment or 30 inches, whichever is greater. In all cases, the work space shall permit at least a 90-degree opening of equipment.

5.31. Transition of Contract

Contractor will, without limitation, provide important information to a successor Contractor and the City to ensure continuity of service at the required level of proficiency and agrees to provide to the City all files, supplies, data, records, and any other properties or materials of the City, which the City owns or has rights to pursuant to this contract and which are in the possession of Contractor. The provisions of this section will survive the expiration or termination of this contract.

5.32. Types of Work Supervision

The Contractor shall provide onsite supervision and appropriate training to assure competent performance of the work. Contractor or authorized agent will make sufficient daily routine inspections to ensure the work is performed as required by this contract.

5.33. Background Screening

Contractor agrees that all Contractor and subcontractors' workers (collectively "Contract Worker(s)") pursuant to this Agreement will be subject to background and security checks and screening (collectively "Background Screening") at Contractor's sole cost and expense, unless otherwise provided for in the scope of work. Contractor's background screening will comply with all applicable laws, rules and regulations. Contractor further agrees that the background screening is necessary to preserve and protect the public health, safety and welfare. The City requires a completed Contract Worker Badge/Key/Intrusion Detection Responsibilities Agreement for each Contract Worker who requires a badge or key.

5.34. Background Screening Risk Level

The City has established two levels of risk: Standard and Maximum risk. If the scope of work changes, the City may amend the level of risk, which could require the Contractor to incur additional contract costs to obtain background screens or badges.

5.35. Terms of This Section Applicable to all Contractor's Contracts and Subcontracts

Contractor will include Contract Worker background screening in all contracts and subcontracts for services furnished under this agreement.

5.36. Materiality of Background Screening Requirements; Indemnity

The background screening requirements are material to City's entry into this agreement and any breach of these provisions will be deemed a material breach of this contract. In addition to the indemnity provisions set forth in this agreement, Contractor will defend, indemnify and hold harmless the City for all claims arising out of this background screening section including, but not limited to, the disqualifications of a Contract Worker by Contractor. The background screening requirements are the minimum requirements for the Agreement. The City in no way warrants that these minimum requirements are sufficient to protect Contractor from any liabilities that may arise out of the Contractor's services under this Agreement or Contractor's failure to comply with this section. Therefore, Contractor and its Contract Workers will take any reasonable, prudent and necessary measures to preserve and protect public health, safety and welfare when providing services under this Agreement.

5.37. Continuing Duty; Audit

Contractor's obligations and requirements will continue throughout the entire term of this Agreement. Contractor will maintain all records and documents related to all background screenings and the City reserves the right to audit Contractor's records.

5.38. Variances and Exemptions

Contract Workers who fall under the following areas may be considered exempt from this policy:

- Federal Homeland Defense Bureau.
- Transportation Security Administration.
- Federal Aviation Administration.
- Department of Public Safety (DPS) Administration – presenting a current Level One Department of Public Safety fingerprint card.
- Arizona or other State Bars.
- Other background checks performed within the last three to five years may be approved if they fit all required criteria herein, at the City's discretion.

5.39. Contractor's Default; Liquidated Damages; Reservation of Remedies for Material Breach

If Contractor is required to access any City facilities, City badging is required. Contractor's default under this section will include, but is not limited to, the following:

- Contract Worker gains access to a City facility(s) without the proper badge or key;
- Contract Worker uses a badge or key of another to gain access to a City facility;
- Contract Worker commences services under this agreement without the proper badge, key or background screening;

- Contract Worker or Contractor submits false information or negligently submits wrong information to the City to obtain a badge, key or applicable background screening; or
- Contractor fails to collect and timely return Contract Worker's badge or key upon termination of Contract Worker's employment, reassignment of Contract Worker to another City facility or upon the expiration, cancellation or termination of this Agreement.
- Contractor acknowledges and agrees that the access control, badge and key requirements in this section are necessary to preserve and protect the public health, safety and welfare. Accordingly, Contractor agrees to properly cure any default under this section within three business days (excluding weekends and City holidays) from the date notice of default is sent by the City. The parties agree that Contractor's failure to properly cure any default under this section will constitute a breach of this section. In addition to any other remedy available to the City at law or in equity, the Contractor will be liable for and pay to the City the sum of \$1,000.00 for each breach by Contractor in this section. The parties further agree that the sum fixed above is reasonable and approximates the actual or anticipated loss to the City at the time and making of this agreement if Contractor breaches this section. Further, the parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the City's actual damages if Contractor breaches this section. The parties further agree that three breaches by Contractor in this section arising out of any default within a consecutive period of three months or three breaches by Contractor in this section arising out of the same default within a period of 12 consecutive months will constitute a material breach of this agreement by Contractor and the City expressly reserves all of its rights, remedies and interests under this agreement, at law and in equity including, but not limited to, termination of this agreement.

5.40. Employee Identification and Access

Contract Workers are forbidden access to designated restricted areas. Access to each building will be as directed by the authorized Phoenix authorized representative. Contract Workers are not authorized access other than during scheduled hours. Access to the building will be directed by the City's authorized representative.

Only authorized Contract Workers are allowed on the premises of the City facilities/buildings. Contract Workers are not to be accompanied in the work area by acquaintances, family members, assistants or any other person unless said person is an authorized Contract Worker.

Unless otherwise provided for in the scope of work:

- Contract Workers must always have city issued badges and some form of verifiable company identification (badge, uniform, employee id).
- Contractor will supply a list of the names and titles of all employees requiring access to the buildings. It is the Contractor's responsibility to provide updates and changes of personnel as necessary.

5.41. Key Access Procedures

If the Contractor Worker's services require keyed access to enter a City facility(ies), a separate key issue/return form must be completed and submitted by the Contractor for each key issued. Contractor must submit the completed key issue/return form to the appropriate badging office.

5.42. Stolen or Lost Badges or Keys

Contractor must immediately report lost or stolen badges or keys to the City's appropriate badging office. If the badge/key was stolen, Contract Worker's must report the theft to their local police department. Prior to issuance of a new badge or key, a new badge application or key issue form must be completed, submittal of a police department report for stolen badges, and applicable payment of the fee(s) listed herein.

5.43. Return of Badge or Key

All badges and keys are the property of the City and must be returned to the City at the badging office within one business day (excluding weekends and City holidays) of when the Contract Worker's access to a City facility is no longer required to furnish the services under this agreement. Contractor will collect a Contract Worker's badge and key(s) upon the termination of the Contract Worker's employment; when the Contractor Worker's services are no longer required at a City facility(s); or upon termination, cancellation or expiration of this agreement.

5.44. Badge and Key Fees

The following constitute the badge and key fees under this agreement, which shall be paid for at the Contractor's sole cost and expense, unless otherwise provided for in the scope of work. The City reserves the right to amend these fees upon a 30-day prior written notice to Contractor.

Initial Badge Fee: \$55.00 per application

Replacement Badge Fee: \$55.00 per badge

Lost/Stolen Badge Fee: \$55.00 per badge

Replacement Key Fee: \$55.00 per key

Replacement Locks: \$55.00 per lock

5.45. Background Screening – Maximum Risk

- A. Determined Risk Level: The current risk level and background screening required is **MAXIMUM RISK**.
- B. Maximum Risk Level: A maximum risk background screening will be performed every **five** years when the Contract Worker's work assignment will:
 - 1. work directly with vulnerable adults or children, (under age 18); or
 - 2. any responsibility for the receipt of payment of City funds or control of inventories, assets, or records that are at risk of misappropriation; or
 - 3. unescorted access to:

- a. City data centers, money rooms, high-value equipment rooms; or
 - b. unescorted access to private residences; or
 - c. access to critical infrastructure sites/facilities; or
 - d. direct or remote access to Criminal Justice Information Systems (CJIS) infrastructure.
- C. Requirements: The background screening for maximum risk level will include a background check for real identity/legal name and will include felony and misdemeanor records from any county in the United States, the State of Arizona, plus any other jurisdiction where the Contractor worker has lived at any time in the preceding seven years from the Contract Worker's proposed date of hire. In addition, Maximum screening levels may require additional checks as included herein, depending on the scope of work, and may be amended if the scope of work changes.

5.46. Additional Maximum Risk Background Checks

Maximum screening will additionally require:

- Driving records (for driving positions only)

5.47. Contractor Certification; City Approval of Maximum Risk Background Screening

Unless otherwise provided for in the Scope of Work, Contractor will be responsible for:

- A. determining whether Contract Worker(s) are disqualified from performing work for the City for maximum risk level background checks; and,
- B. submitting pass/fail results to the City for approval; and,
- C. reviewing the results of the background check every three to five years, dependent on scope; and,
- D. to engage in whatever due diligence is necessary to make the decision on whether to disqualify a Contract Worker; and,
- E. Submitting the list of qualified Contract Workers to the contracting department; and,
- F. If, upon review of the background information, the City will advise the Contractor if it believes a Contract Worker should be disqualified. The Contractor will evaluate the Contract Worker and if the Contractor believes that there are extenuating circumstances that suggest that the person should not be disqualified, the Contractor will discuss those circumstances with the contracting department. The contracting department decision on disqualification of a Contract Worker is final.
- G. For sole proprietors, the Contractor must comply with the background check for himself and any business partners, or members or employees who will assist on the contract and for whom the requirements of the Agreement apply.

- H. By executing this agreement, Contractor certifies and warrants that Contractor has read the background screening requirements and criteria in this section, and that all background screening information furnished to the City is accurate and current.
- I. The City final documented decision will be an “approve” or “deny” for identified Contract Workers.
- J. The City will not keep records related to background checks once they are confirmed. Information to verify the results will be returned to the Contractor, or any contracted agency that assists with review, after the City’s completed review.
- K. By executing this agreement, Contractor further certifies and warrants that Contractor has satisfied all such background screening requirements for the maximum risk background screening, and verified legal worker status, as required.
- L. Contract Workers will not apply for the appropriate City of Phoenix identification and access badge or keys until Contractor has received the City’s written acceptance of Contract Worker’s maximum risk background screening. The City may, in its sole discretion, accept or reject any or all the Contract Workers proposed by Contractor for performing work under this Agreement. A Contract Worker rejected for work at a maximum risk level under this agreement will not be proposed to perform work under other city contracts or engagements without city’s prior written approval.

5.48. Security Inquiries

Contractor acknowledges that all of the employees that it provides pursuant to this Contract shall, at Contractor’s expense, be subject to background and security checks and screening at the request of the City. Contractor shall perform all such security inquiries and shall make the results available to the City for all employees considered for performing work (including supervision and oversight) under this Contract. City may make further security inquiries. Whether or not further security inquiries are made by the City, City may, at its sole, absolute and unfettered discretion, accept or reject any or all of the employees proposed by the Contractor for performing work under this Contract. Employees rejected by the City for performing services under this Contract may still be engaged by Contractor for other work not involving the City. An employee rejected for work under this Contract shall not be proposed to perform work under other City contracts or engagements without the City’s prior approval.

The City, in its sole discretion, reserves the right, but not the obligation to:

- require an employee/prospective employee of the Contractor to provide fingerprints and execute such other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. 41-1750 (G) (4);
- act on newly acquired information whether or not such information should have been previously discovered;
- unilaterally change its standards and criteria relative to the acceptability of Contractor’s employees and/or prospective employees; and

- object, at any time and for any reason, to an employee of Contractor performing work (including supervision and oversight) under this Agreement. Contractor will bear the costs of all inquiries requested by the City.

5.49. Confined Space Structure Entry

Services performed under this agreement may require Contractor personnel to enter confined spaces. Contractor will be required to furnish equipment for confined space entry and must comply with OSHA regulation 1910.146 or most recent regulation. Contractor shall provide all necessary personnel, supplies, and equipment to satisfy the confined space entry program including, but not limited to, designated rescue personnel, appropriate fall protection supplies, atmospheric monitors and retrieval systems.

Contractor shall have a written Confined Space Entry Program that meets all Federal, State and local regulations and will be required to submit a copy of this program to the City for review and acceptance. The City reserves the right to modify the Contractor's Confined Space Entry Program where it is determined to be in the best interest of the City. Contractor will be required to fully comply with the final approval Confined Space Entry Program while performing work at all City locations.

Contractor's supervisory personnel shall have successfully completed an accredited Confined Space Entry Training Program and a 40-hour HAZWOPER Training Program. Certifications or Certificates of Completion must be current.

5.50. Handling of Photographs

The US Department of Homeland Security has designated water and wastewater treatment facilities as 'critical infrastructure/key resources'. Because of federal directives, only persons authorized by the WSD Security Management Unit are permitted to photograph or film Water infrastructure, facilities, and assets which any include, but are not limited to: pay stations, warehouses, lift stations, treatment plants, service yards, booster stations, well sites, vehicles and related equipment and supplies.

5.51. Confidentiality and Data Security

All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to Contractor in connection with this Agreement is confidential, proprietary information owned by the City, the Contractor shall not disclose data generated in the performance of the service to any third person.

Contractor agrees to abide by all current applicable legal and industry data security and privacy requirements and subject to Payment Card Industry Standards, if applicable. A violation of this Section may result in immediate termination of this Agreement without notice. The obligations of Contractor under this Section shall survive the termination of this Agreement.

5.52. Authorized Changes

The City reserves the right at any time to make changes in any one or more of the following: (a) specifications; (b) methods of shipment or packing; (c) place of delivery; (d) time of delivery; and/or (e) quantities. If the change causes an increase or decrease in the cost of or the time required for performance, an equitable adjustment may be made in the price or delivery

schedule, or both. Any claim for adjustment will be deemed waived unless asserted in writing within thirty days from the receipt of the change. Price increases or extensions of delivery time will not be binding on the City unless evidenced in writing and approved by the Deputy Finance Director or Department Director prior to the institution of the change.

6. DEFENSE AND INDEMNIFICATION

6.1. Standard General Defense and Indemnification

Contractor ("Indemnitor") must defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents, and employees ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses or expenses (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever ("Losses") caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees or subcontractors ("Indemnitor's Agents") arising out of or in connection with this Contract. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses arising out of or recovered under any state's Workers' Compensation Law or arising out of the failure of Indemnitor or Indemnitor's Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Indemnitor's duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor's duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely a result of Indemnitee's own negligent or willful acts or omissions. Indemnitor will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this Contract, Indemnitor waives all rights of subrogation against Indemnitee for losses arising from the work performed by Indemnitor or Indemnitor's Agents for the City of Phoenix. The obligations of Indemnitor under this provision survive the termination or expiration of this Contract.

7. INSURANCE REQUIREMENTS

7.1. Contractor's Insurance

Contractor and subcontractors must procure insurance against claims that may arise from or relate to performance of the work hereunder by Contractor and its agents, representatives, employees and subcontractors. Contractor and subcontractors must maintain that insurance until all their obligations have been discharged, including any warranty periods under this Contract.

The City in no way warrants that the limits stated in this section are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors and Contractor may purchase additional insurance as they determine necessary.

7.2. Scope and Limits of Insurance

Contractor must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the liability limits provided that (1) the coverage is written on a "following form" basis, and (2) all terms under each line of coverage below are met.

7.3. Commercial General Liability – Occurrence Form

General Aggregate \$2,000,000
Products – Completed Operations Aggregate \$1,000,000
Personal and Advertising Injury \$1,000,000
Each Occurrence \$1,000,000

- The policy must name the City of Phoenix as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations and liability assumed under an insured contract arising out of the activities performed by, or on behalf of the Contractor related to this Contract.
- There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Phoenix as an additional insured.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

7.4. Automobile Liability

Bodily Injury and Property Damage coverage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

- The policy must be endorsed to include the City of Phoenix as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, relating to this Contract.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

7.5. Worker's Compensation and Employers' Liability

Workers' Compensation Statutory

Employers' Liability:

Each Accident \$100,000

Disease – Each Employee \$100,000

Disease – Policy Limit \$500,000

- Policy must contain a waiver of subrogation against the City of Phoenix.
- This requirement does not apply when a contractor or subcontractor is exempt under A.R.S. §23-902(E), **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

7.6. Notice of Cancellation

For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within 5 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed, or hand delivered to:

City of Phoenix Water Services Department

200 W. Washington St., 9th floor

Phoenix, AZ 85003

wsdprocurement@phoenix.gov

7.7. Acceptability of Insurers

Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The City in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

7.8. Verification of Coverage

Contractor must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the

project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract must be sent directly to:

City of Phoenix Water Services Department
200 W. Washington St., 9th floor
Phoenix, AZ 85003
wsdprocurement@phoenix.gov

The City project/contract number and project description must be noted on the certificate of insurance. The City reserves the right to review complete copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY'S RISK MANAGEMENT DIVISION.**

7.9. Subcontractors

Contractor's certificates shall include all subcontractors as additional insureds under its policies **OR** Contractor shall be responsible for ensuring and verifying that all subcontractors have valid and collectable insurance. At any time throughout the life of the contract, the City of Phoenix reserves the right to require proof from the Contractor that its subcontractors have insurance coverage. All subcontractors providing services included under this Contract's Scope of Services are subject to the insurance coverages identified above and must include the City of Phoenix as an additional insured. In certain circumstances, the Contractor may, on behalf of its subcontractors, waive a specific type of coverage or limit of liability where appropriate to the type of work being performed under the subcontract. Contractor assumes liability for all subcontractors with respect to this Contract.

7.10. Approval

Any modification or variation from the insurance coverages and conditions in this Contract must be documented by an executed contract amendment.

8. SUBMITTALS

8.1. Copies

Please submit one original pdf copy electronically of the Submittal Section and all other required documentation via email to the following: wsdprocurement@phoenix.gov Please do not lock the electronic copy with password protection so that the CITY may digitally incorporate the successful offer into the awarded contract.

Please submit only the Submittal Section and all other required documentation. Do not submit a copy of the entire solicitation document. This Offer will remain in effect for a period of 180 calendar days from the opening date and is irrevocable unless it is in the City's best interest to release offer(s).

8.2. Solicitation Response Check List

Use this check list as a tool to review your submission to ensure that all required documents and forms are included.

The written offer should be:

- Typewritten for ease of evaluation
- Signed by an authorized representative of the Offeror
- Submitted with contact information for the individual(s) authorized to act on behalf of the Offeror

Submit with a Cover letter and tabbed per the following major sections:

Tab A - Table of Contents

Tab B – Offeror shall affirm the Pre-Award Qualifications in Section 2 - Instructions, paragraph 2.15, are met.

Tab C - Section 8 – Submittals

Tab D – Submittals – Costs and Payments

Tab E – Submittals - Contractor Licensing Requirements

Tab F – Submittals - Warranty

Tab G – Submittals - 24-Hour Emergency Contact

Tab H – Submittals - Debarment and Exclusion

Tab I – Submittals - Offer Page

Tab J – Acceptance Form 2023

Tab K - Attachment A - Conflict of Interest and Transparency Form

Tab L - Attachment C - Fee Schedule

Tab M – Attachment D - Discount from List Price

Tab N - Signed Addenda (if applicable)

Note: Attachment B - References, must be returned by email from the Offeror's References directly to the Procurement Officer no later than the Offer Due date and time shown on Page 3 or as modified by addendum.

Offers must be in possession of the Department on or prior to the exact time and date indicated in the Schedule of Events. Late offers will not be considered. Electronic submission is preferred. Due to file size limitations for electronic transmission, offers sent by email may need to be sent in parts with multiple emails. It is the responsibility of the Offeror to ensure that the offer is received timely and that there are no technical reasons for delay. Please refer to the Instructions Section for complete information regarding the submission of offers.

8.3. Additional Quantities

The City anticipates considerable activity under the resultant contract(s). However, no guarantee can be made as to actual electrical motor drives and maintenance services that will be purchased under this contract. The City reserves the right to add, change or delete quantities or items as circumstances may require.

Note: Offers taking exception to this option for additional quantities clause shall indicate in their offer.

COSTS AND PAYMENTS

(please complete and return with the submittal)

PAYMENT TERMS & OPTIONS: Vendors must choose an option, if a box is not checked, the City **will default to 0% - net 45 days:**

Contractor offers a prompt payment discount of either 0 % - 30 days or 0% – 45 days - to apply after receipt of invoice or final acceptance of the products (invoice approval), whichever date is later, starts the 30 days. If no prompt payment discount is offered, the default is 0%, net 45 days; effective after receipt of invoice or final acceptance of the products, whichever is later. **Payment terms offering a discount will not be considered in the price evaluation of your offer.**

Contractor may be paid immediately upon invoice approval, if enrollment is made to the Single Use Account (SUA) Program, administered by the City's servicing bank ("Bank"). By checking this box, the vendor accepts transaction costs charged by their merchant bank and agrees not to transfer to the City those extra charges. The City will not pay an increase in our services for the SUA charges; if an audit uncovers an upcharge for the SUA charges the vendor will owe the City all costs. The vendor may opt-out of the SUA program once, but then may not rejoin during the same contract term. **For more information about the SUA program or to enroll, send email to mailbox.sua@phoenix.gov.**

CONTRACTOR LICENSING REQUIREMENTS

(please complete and return with the submittal)

Offeror shall comply with all statutes and rules of the State of Arizona and the Registrar of Contractors. In accordance with A.R.S. § 32-1151, and unless otherwise exempted by A.R.S. § 32-1121, Offeror shall have the correct class of license as required by the Registrar of Contractors for the work specified, at the time of offer submission.

Offeror certifies possession of the following license:

Licensed Contractor's Name	N/A
Class	N/A
License Number.	N/A
Expiration Date	N/A

WARRANTY

(please complete and return with the submittal)

Specify the Contractor or dealership / manufacturer where warranty work will be done:

Contractor	Foster Electric Motor Services, Inc. _____
Address	490 E. Frye Rd _____
City, State, Zip Code	Chandler, Az. 85225 _____

EMERGENCY 24-HOUR SERVICE CONTACT

(please complete and return with the submittal)

Contact Name: DYKMAN AFTER HOURS SERVICE LINE
Telephone Number: (866) 725-3395

Alternate Contact: KIP POLLAY
Telephone Number: (928) 671-0061



City of Phoenix

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY
AND VOLUNTARY EXCLUSION**

(please complete and return with the submittal)

The prospective participant certifies, by submission of this solicitation and certification, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by **any** federal department or agency.

Where the prospective participant is unable to certify to any of the statements in this certification, such participant **shall** attach an explanation to this solicitation.

THE PARTICIPANT CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. 3801 ET SEQ. ARE APPLICABLE THERETO.

Authorized Official:

Jarred McKenzie

Title of Authorized Official:

Chief Operating Officer

Date:

2/13/2023

ACCEPTANCE OF OFFER

The Offer is hereby accepted.

The Contractor is now bound to sell the material(s) or service(s) listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc. and the Contractor's Offer as accepted by the City.

This contract shall henceforth be referred to as Contract No. 158214--0. The Contractor has been cautioned not to commence any billable work or provide any material or service under this contract until Contractor receives purchase order, or contract documentation.

CITY OF PHOENIX
A Municipal Corporation
Jeffrey Barton, City Manager


Troy Hayes (May 8, 2023 08:30 PDT)

Director or delegate: Troy Hayes
Title: Water Services Director
Department: Water Services

Attest:



_____ this 9th day of May 2023

City Clerk



Approved as to form this 19th day of January 2017. This document has been approved as to form by the City Attorney and is on file with the City Clerk. It need not be submitted to the City Attorney for approval unless the form document is altered.



ATTACHMENT A – CONFLICT OF INTEREST AND TRANSPARENCY FORM

(please complete and return with the submittal)

This form must be signed and submitted to the City and all questions must be answered (or N/A) or your Offer may be considered non-responsive.

1. Name of person submitting this disclosure form.

Jarred McKenzie

First	MI	Last	Suffix
-------	----	------	--------

2. Contract Information

Solicitation # or Name: IFB-2223-WAD-576

3. Name of individual(s) or entity(ies) seeking a contract with the City (i.e. parties to the Contract)

Dykman Electrical, Inc.

4. List any individuals(s) or entity(ies) that are owners, partners, parent, sublessees, joint venture, or subsidiaries of the individual or entity listed in Question 3. Please include all Board members, executive committee members and officers for each entry. If not applicable, indicate N/A.

Allen Dykman, Dixie Dykman, Bryan Dykman,
Allison Dykman, David George, Jarred McKenzie

5. List any individuals or entities that will be subcontractors on this contract or indicate N/A.

- Subcontractors may be retained, but not known as of the time of this submission.
- List of subcontracts, including the name of the owner(s) and business name:

N/A

6. List any attorney, lobbyist, or consultant retained by any individuals listed in Questions 3, 4, or 5 to assist in the proposal or seeking the resulting contract. If none, indicate N/A.

N/A



7. Disclosure of Conflict of Interest:

A. City Code Section 43-34

Are you aware of any fact(s) with regard to this solicitation or resulting contract that would raise a “conflict of interest” issue under City Code Section 43-34?

“An elected City official or a City employee shall not represent any person or business for compensation before the City regarding any part of a procurement, including any resulting contract, if during the time the elected official is or was in office or the employee is or was employed by the City such elected official or employee played a material or significant role in the development of the solicitation, any other part of the procurement, or the contract award.”

- I am not aware of any conflict(s) of interest under City Code Section 43-34.
- I am aware of the following potential or actual conflict(s) of interest:

B. ARS Sections 38-501 et. Seq. & City Charter Chapter 11

State law and the Phoenix City Charter and Code prohibit public officers or employees, their close relatives, and any businesses they, or their relatives, own from (1) representing before the City any person or business for compensation, (2) doing business with the City by any means other than through a formal procurement, and (3) doing business with the City without disclosing that the person has an interest in the contract. This prohibition extends to subcontracts on City contracts and also applies to parent, subsidiary, or partner businesses owned by a public officer or employee. See A.R.S. Sections 38-501 through 38-511, for more information (City Charter, Chapter 11, applies the state conflict-of-interest law to City employees).

Please note that any contract in place at the time a person becomes a public officer or employee may remain in effect. But the contract may not be amended, extended, modified, or changed in any manner during the officer’s or employee’s City service without following City administrative regulations.



Are you aware of any fact(s) with regard to this contract that would raise a “conflict of interest” issue under A.R.S. Sections 38-501 through 38-511 (See Arizona Revised Statutes regarding conflict of interest at www.azleg.gov).

- I am not aware of any conflict(s) of interest under Arizona Revised Statutes Sections 38-501 through 38-511.
- I am aware of the following conflict(s) of interest:

8. Acknowledgements

A. Solicitation Transparency Policy – No Contact with City Officials or Staff During Evaluation

- I understand that a person or entity who seeks or applies for a City contract, or any other person acting on behalf of that person or entity, is prohibited from contacting City officials and employees regarding the contract after a solicitation has been posted.

And

- This “no-contact” provision only concludes when the contract is awarded at a City Council meeting. If contact is required with City official or employees, the contact will take place in accordance with procedures by the City. Violation of this prohibited contacts provision, set out in City Code Sections 2-190.4 and 43-36, by respondents, or their agents, will lead to **disqualification**.

B. Fraud Prevention and Reporting Policy

- I acknowledge that the City has a fraud prevention and reporting policy and takes fraud seriously. I will report fraud, suspicion of fraud, or any other inappropriate action to: telephone no. 602-261-8999 or 602-534-5500 (TDD); or aud.integrity.line@phoenix.gov .

The purpose of the fraud policy is to maintain the City's high ethical standards. The policy includes a way for our business partners to report wrongdoing or bad behavior. Suspected fraud should be reported immediately to the Phoenix Integrity Line. The City has adopted a zero-tolerance policy regarding fraud.



City of Phoenix

OATH

I affirm that the statements contained in this form, including any attachments, to the best of my knowledge and belief are true, correct, and complete.

Should any of the answers to the above questions change during the course of the contract, particularly as it relates to any changes in ownership, applicant agrees to update this form with the new information within 30 days of such changes. Failure to do so may be deemed a breach of contract.

Jarred McKenzie

C.O.O.

PRINT NAME

TITLE

Jarred McKenzie

2/13/2023

SIGNATURE

DATE

DYKMAN ELECTRICAL, INC.

COMPANY (CORPORATION, LLC, ETC.) NAME and DBA



ATTACHMENT C – FEE SCHEDULE (Addendum 1)

(please complete and return with the submittal)

1. LABOR RATE:

1.1 Prices offered shall not include applicable taxes. The City will pay all applicable taxes. For purposes of determining the lowest rate, the City will not take tax into consideration. After contract award, all applicable taxes will apply.

1.2 The City does not guarantee that the Contractor will receive a specific amount of work.

1.3 The hourly rate shall include the cost of labor, materials, supplies, equipment, supervision, transportation, mileage, and all other overhead burdens associated with the cost to perform the required services. Additional charges will not be paid.

ITEM NO.	DESCRIPTION	UNIT OF MEASURE	HOURLY RATE
1.	Field Technician – Onsite (normal work hours Mon – Fri, 6:00a.m. – 4:00p.m.)	Hour	\$ <u>N/A</u>
2.	Contractor Machine Shop (normal hours)	Hour	\$ <u>N/A</u>
3.	Field Technician – Onsite (after hours Mon – Fri, 4:01pm – 5:59a.m.)	Hour	\$ <u>N/A</u>
4.	Contractor Machine Shop (after hours)	Hour	\$ <u>N/A</u>

ITEM NO.	DESCRIPTION	UNIT OF MEASURE	UNIT PRICE
5.	New Electric Motor (as needed)	Each	To be quoted
6.	Replacement Parts		To be quoted

2. PARTS:

Vaughens Price Guide Discount N/A %

Date of Vaughen’s Price Guide N/A

Horsepower Range for Service N/A to N/A

3. INCIDENTAL/REPAIR PARTS:

Costs Plus (not to exceed 10%) N/A %



4. ELECTRICAL MOTOR SUPPLY, MAINTENANCE AND REPAIR

Contractor shall indicate if they can supply electrical motors, provide maintenance, and repair

YES _____ or NO X _____

5. ELECTRICAL MOTOR SUPPLY

Contractor shall indicate if they can supply electric motors

YES X _____ or NO _____

6. MAINTENANCE AND REPAIR

Contractor shall indicate if they can provide maintenance and repair

YES _____ or NO X _____



ATTACHMENT D - DISCOUNT FROM LIST PRICE

(please complete and return with the submittal)

Complete the following information for each manufacturer the offeror is authorized to supply or service. The City will not evaluate a range of discounts offered per manufacturer due to the variability of the electric motors. A discounted range will be considered non-responsive. If price list offered have multiple pricing columns, indicate which column is applicable.

A. Baldor 20 %
a1. Horsepower range 1 to 5000
Item Number 3.2.3.1
Title ABB-2022 BALDOR-RELIANCE 501
Published Price List Number 501 STANDARD MOTORS
Date FEBRUARY 7, 2022

B. Toshiba 45 %
b1. Horsepower range 1 to 5000
Item Number 3.2.3.2
Title 2023 INDUSTRIAL CATALOG
Published Price List Number Rev.01ESSENCE0123
Date 1/2023

C. G.E. 62 %
c1. Horsepower range 1 to 5000
Item Number 3.2.3.3
Title STANDARD INDUSTRIAL MOTOR CATALOG
Published Price List Number 02/23
Date FEBRUARY 2023



D. Reliance 20 %
d1. Horsepower range 1 to 5000
Item Number 3.2.3.4
Title ABB-2022 BALDOR-RELIANCE 501
Published Price List Number 501_2022
Date FEBRUARY 7, 2022

E. Mitsubishi 0 %
e1. Horsepower range 1 to 5000
Item Number 3.2.3.5
Title COULD CROSS REFERENCE IF NEEDED
Published Price List Number N/A
Date 2/14/2023

F. Emerson 32 %
f1. Horsepower range 1 to 400
Item Number 3.2.3.6
Title FULL LINE STANDARD MOTR PRODUCTS
Published Price List Number FL600
Date 2/13/2023

G. Leeson 52 %
g1. Horsepower range 1 to 1250
Item Number 3.2.3.7
Title REGAL REXNORD WEBSITE CATALOG
Published Price List Number 13-FEB-2023
Date 2/13/2023



H. U.S. Motors 30 %

h1. Horsepower range 1 to 5000

Item Number 3.2.3.8

Title FULL LINE STANDARD MOTOR PRODUCTS

Published Price List Number FL600

Date 2/13/2023

I. Lincoln 52 %

i1. Horsepower range 1 to 1250

Item Number 3.2.3.9

Title REGAL REXNORD WEBSITE CATALOG

Published Price List Number 13-FEB-2023

Date 2/13/2023

J. EIM SEE BELOW %

j1. Horsepower range 1/8 to 1

Item Number 3.2.3.10

Title MODEL AND SERIAL NUMBER REQUIRED

Published Price List Number NOT TYPICAL LIST STOCK

Date 2/13/2023

K. Marathon 52 %

k1. Horsepower range 1 to 1250

Item Number 3.2.3.11

Title REGAL REXNORD WEBSITE

Published Price List Number 13-FEB-2023

Date 2/13/2023



P. Fairbanks Morse _____ %
p1. Horsepower range _____ to _____
Item Number _____
Title _____
Published Price List Number _____
Date _____

Q. Siemens _____ 35 %
q1. Horsepower range _____ 1 _____ to _____ 5000
Item Number 3.2.3.17
Title SIMOTICS MOTORS CATALOG
Published Price List Number D 81.1
Date 12/2/2022

Per Addendum 1



**EXHIBIT 1
SUPPLEMENTAL TERMS AND CONDITIONS
TO ALL AIRPORT AGREEMENTS**

1. Definitions

1.1 "Airport" means Phoenix Sky Harbor International Airport, Phoenix Deer Valley Airport, and/or Phoenix Goodyear Airport, according to the context of the contract.

1.2 "Contract" means all City of Phoenix Aviation Department contracts, subcontracts, agreements, leases, subleases, licenses, permits, concessions, and other documents, however denominated, that grant or convey a right or privilege on an Airport and to which this Exhibit is attached.

1.3 "Contractor" means all lessees, sublessees, licensees, permittees, consultants, concessionaires and other persons, firms, or corporations exercising a right or privilege on an Airport pursuant to a Contract and includes Contractor's heirs, personal representatives, successors, and assigns.

1.4 "Premises" means the area of an Airport occupied or used by Contractor pursuant to a Contract.

2. Federal Aviation Administration (FAA) Grant Assurances

2.1 Title VI of the Civil Rights Act of 1964 – Compliance with Nondiscrimination Requirements – 49 U.S.C. § 47123 and FAA Order 1400.11

During the performance of this Contract, Contractor agrees as follows:

A. Compliance with Regulations. Contractor will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as provided in Section 7 below), as it may be amended from time to time, which is incorporated herein by reference and made a part of this Contract.

B. Nondiscrimination. With regard to the work performed by it under this Contract, Contractor will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Contractor will not participate, directly or indirectly, in the discrimination prohibited by the Title VI List of Pertinent Nondiscrimination Acts and Authorities, including employment practices when this Contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.



C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation, made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by Contractor of Contractor's obligations under this Contract and the Title VI List of Pertinent Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

D. Information and Reports. The Contractor will provide all information and reports required by the Title VI List of Pertinent Nondiscrimination Acts and Authorities, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City of Phoenix or the FAA to be pertinent to ascertain compliance with the Title VI List of Pertinent Nondiscrimination Acts and Authorities and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish the information, Contractor will so certify to the City of Phoenix or the FAA, as appropriate, and will set forth what efforts Contractor has made to obtain the information.

E. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of this Contract, the City of Phoenix will impose such Contract sanctions as it or the FAA may determine to be appropriate, including:

(i) Withholding payments to Contractor under this Contract until Contractor complies, and/or

(ii) Cancelling, terminating, or suspending this Contract, in whole or in part.

F. Covenant Running with the Land. Contractor for itself and its heirs, personal representatives, successors, and assigns, as a part of the consideration for this Contract, hereby covenants and agrees that, in the event facilities are constructed, maintained, or otherwise operated on the property described in this Contract for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Contractor will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities. In the event of a breach of any of the above Nondiscrimination covenants, the City of Phoenix will have the right to terminate this Contract and to enter, re-enter and repossess the



property and facilities thereon and hold the same as if this Contract had never been made or issued.

G. Incorporation of Provisions. Contractor will include the provisions of paragraphs A through F in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Title VI List of Pertinent Nondiscrimination Acts and Authorities, the Regulations, and directives issued pursuant thereto. Contractor will take action with respect to any subcontract or procurement as the City of Phoenix or the FAA may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that if Contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, Contractor may request the City of Phoenix to enter into any litigation to protect the interests of the City of Phoenix. In addition, Contractor may request the United States to enter into the litigation to protect the interests of the United States.

2.2 General Civil Rights Provisions – 49 U.S.C. § 47123

A. Sponsor Contracts. Contractor agrees to comply with pertinent statutes, executive orders, and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability, be excluded from participating in any activity conducted with or benefiting from federal assistance. This provision binds Contractor and subtier contractors from the bid solicitation period through the completion of this Contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

B. Sponsor Lease Agreements and Transfer Agreements. Contractor agrees to comply with pertinent statutes, executive orders, and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability, be excluded from participating in any activity conducted with or benefiting from federal assistance, including Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. If Contractor transfers its obligations to another, then the transferee is obligated in the same manner as Contractor. This provision obligates Contractor or its transferee for the period during which the property is owned, used, or possessed by Contractor and the City of Phoenix remains obligated to the FAA. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

2.3 Economic Nondiscrimination – 49 U.S.C. § 47107

In any Contract under which a right or privilege on the Airport is granted to a Contractor to conduct or to engage in any aeronautical activity for furnishing services to the public, Contractor shall:



A. Furnish its services on a reasonable, and not unjustly discriminatory basis to all users of the Airport, and

B. Charge reasonable, and not unjustly discriminatory prices for each unit or services, provided that Contractor may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. Non-compliance with this requirement shall be a material breach of this Contract for which the City of Phoenix shall have the right to terminate this Contract and any estate created herewith without liability therefor or, at the election of the City of Phoenix or the United States shall have the right to judicially enforce said requirement.

2.4 Disadvantaged Business Enterprise Requirements – 49 C.F.R. Part 26

A. Contract Assurance (§ 26.13). To the extent that this Contract is covered by 49 C.F.R. Part 26, Contractor agrees that this Contract is subject to the requirements of the U.S. Department of Transportation regulations at 49 C.F.R. Part 26. Contractor or its subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the City of Phoenix deems appropriate, which may include (i) withholding monthly progress payments, (ii) assessing sanctions, (iii) liquidated damages, and/or (iv) disqualifying Contractor from future bidding as non-responsible. Contractor agrees to include the foregoing statement in any subsequent contract that it enters into and cause those businesses to similarly include the statement in further agreements.

B. Prompt Payment (§ 26.29). Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its contract not later than seven (7) days from the receipt of each payment Contractor receives from City of Phoenix. Contractor agrees further to return retainage payments to each subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the City of Phoenix. This clause applies to both DBE and non-DBE subcontractors.

2.5 Airport Concessions Disadvantaged Business Enterprise Requirements – 49 C.F.R. Part 23

Contract Assurance (§ 23.9). To the extent that this Contract is a concession agreement covered by 49 C.F.R. Part 23, Contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement



covered by 49 C.F.R. Part 23. Contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 C.F.R. Part 23 that it enters into and cause those businesses to similarly include the statements in further agreements.

2.6 Miscellaneous

A. Contractor agrees that it will undertake an affirmative action plan in conformance with 14 C.F.R. Part 152, Subpart E (Nondiscrimination in Airport Aid Program), to ensure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment, contracting, or leasing activities covered in 14 C.F.R. Part 152, Subpart E. Contractor assures that no person will be excluded on such grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. Contractor further agrees that it will require its covered suborganizations to provide assurances to Contractor that they similarly will undertake affirmative action programs and that they will require like assurances from their suborganizations as required by 14 C.F.R. Part 152, Subpart E.

B. City of Phoenix reserves the right to further develop, improve, repair, and alter the Airport and all roadways, parking areas, terminal facilities, landing areas, and taxiways, as it may reasonably see fit, free from any and all liability to Contractor for loss of business or damages of any nature whatsoever to Contractor occasioned during the making of such improvements, repairs, alterations, and additions.

C. The City of Phoenix reserves the right, but is not obligated to Contractor, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Contractor in this regard.

D. Contractor acknowledges that this Contract is subordinate to any existing or future agreement between the City of Phoenix and the United States concerning the development, operation, or maintenance of the Airport. If the FAA or its successors require modifications or changes in the Contract as a condition to obtaining funds for improvements at the Airport or as a requirement of any prior grants, Contractor hereby consents to any and all such modifications and changes as may be reasonably required and agrees that it will adopt any such modifications and changes as part of this Contract.

E. This Contract is subordinate to the reserved right of the City of Phoenix and its successors and assigns to occupy and use for the benefit of the public the airspace above the Premises for the right of flight for the passage of aircraft. This public right of flight includes the right to cause in the airspace any noise inherent in the



operation of any aircraft through the airspace or in landing at, taking off from, or operating at an Airport.

F. Contractor agrees to comply with the notification and review requirements, as required by 14 C.F.R. Part 77 (Safe, Efficient Use, and Preservation of the Navigable Airspace), if future construction of a structure is planned for the Premises or a planned modification of a structure on the Premises. Contractor shall submit the required FAA Form 7460-1 (Notice of Proposed Construction or Alteration) and provide documentation showing compliance with the federal requirements. After the FAA has completed the aeronautical study, Contractor shall provide to the City of Phoenix the FAA determination letter on proposed construction and any impact to air navigation. Contractor covenants for itself and its successors and assigns that it will not erect or permit the erection of any structure or permit the growth of any tree on the Premises above the mean sea level elevation for (1) Phoenix Sky Harbor International Airport, 1,134 feet, (2) Phoenix Goodyear Airport, 968 feet, and (3) Phoenix Deer Valley Airport, 1,476 feet. As a remedy for the breach of the covenant, the City of Phoenix reserves the right to enter the Premises and remove the offending structure or cut the offending tree at Contractor's expense.

G. Contractor, by accepting this Contract, covenants for itself and its successors and assigns, that no use will be made of the Premises that might in any manner interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard to air navigation. As a remedy for the breach of the covenant, the City of Phoenix reserves the right to enter the Premises and abate the interference at Contractor's expense.

H. Contractor agrees that nothing in this Contract may be construed to grant or authorize the granting of an exclusive right within the meaning of 49 U.S.C. § 40103(e) (No exclusive rights at certain facilities).

I. This Contract is subordinate to whatever rights the United States now has or in the future may acquire affecting the control, operation, regulation, and taking-over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during a time of war or national emergency.

J. If this Contract involves construction, Contractor shall carry out the project in accordance with FAA airport design, construction, and equipment standards and specifications current on the date of project approval.

K. Contractor is encouraged to use fuel and energy conservation practices.



3. Immigration Reform and Control Act of 1986 (IRCA)

Contractor agrees that IRCA (Public Law 99-603) applies to it. Contractor shall comply with the provisions of IRCA as it applies to its activities under this Contract and to permit the City of Phoenix to inspect its personnel records to verify its compliance.

4. Conflict of Interest

Contractor agrees that the City of Phoenix may cancel this Contract pursuant to Arizona Revised Statutes (A.R.S.) § 38-511 (Cancellation of political subdivision and state contracts).

5. Legal Worker Requirements

The City is prohibited by A.R.S. § 41-4401 from awarding an agreement to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A) (Verification of employment eligibility; e-verify program). Therefore, Contractor agrees that:

A. Contractor and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214(A).

B. A breach of warranty under paragraph A above shall be deemed a material breach of this Contract and is subject to penalties up to and including termination of the Agreement.

C. The City of Phoenix retains the legal right to inspect the papers of Contractor or its subcontractor employees who work on this Contract to ensure that Contractor or its subcontractors are complying with the warranty under paragraph A above.

6. City of Phoenix Equal Employment Opportunity Requirement

6.1 If Contractor is by this Contract a supplier to or lessee of the City, then the requirements of the Phoenix City Code, Chapter 18, Article V applies, including the agreement that:

“Any supplier/lessee in performing under this contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The supplier and/or lessee shall ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex,



national origin, age, or disability, and shall adhere to a policy to pay equal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility, and that are performed within the same establishment under similar working conditions. Such action shall include but not be limited to the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.”

Supplier/lessee further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by supplier/lessee.

If the supplier/lessee employs more than 35 employees, the following language shall be included as the last paragraph to the clause above:

“The supplier/lessee further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.”

6.2 Documentation. Suppliers and lessees may be required to provide additional documentation to the Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.

6.3 Monitoring. The Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this Section 3 as deemed necessary. The Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

7. Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this Contract, Contractor agrees to comply with all federal, state, and local nondiscrimination laws, rules, and regulation, including the following:



A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) (prohibits discrimination on the basis of race, color, or national origin).

B. 49 C.F.R. Part 21 (Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964).

C. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. §§ 4601, *et seq.*) (prohibits unfair treatment of persons displaced or whose property has been acquired because of federal or federal aid programs and projects).

D. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 701, *et seq.*), as amended (prohibits discrimination on the basis of disability), and 49 C.F.R. Part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance).

E. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101, *et seq.*) (prohibits discrimination on the basis of age). Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex).

F. The Civil Rights Restoration Act of 1987 (Public Law 100-209) (broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973 by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the federal-aid recipients, sub-recipients, and contractors, whether the programs or activities are federally funded or not).

G. Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101, *et seq.*), which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities as implemented by U.S. Department of Transportation regulations at 49 C.F.R. Part 37 (Transportation Services for Individual with Disabilities) and Part 38 (Americans with Disabilities Act Accessibility Specification for Transportation Vehicles).

H. Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations.

I. Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency) and resulting agency guidance and national origin



City of Phoenix

discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100).

J. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681, *et seq.*), as amended, which prohibits you from discriminating because of sex in education programs or activities.

2068157
Revised 2/1/19



EXHIBIT 2 – PERFORMANCE RECORD SAMPLE

CONTRACTOR PERFORMANCE RECORD: <i>[Insert Company Name]</i> <i>[Insert Contact's Name]</i> <i>[Insert Contact's phone #]</i>			Assessment Period: <i>[Insert the Month and Year]</i>		
Contract Monitor:		Contract Manager:		Contract Administrator:	
Contract Period:		Lead Department:		Payment Ordinance #:	
Award Date:		Approved Annual Contract Amount:		Approved Total Contract Amount:	
Section [#] - Scope of Work: Subsection [#] <i>[Insert Title of Subsection]</i>					
Contract Requirement	Monitor Frequency	Result			Comments
		Completed per Contract	Completed with Deficiencies	Not Completed	
Repair electric motor	As needed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Replace electric motor	As needed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Cleaning of all components	As needed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Parts replaced returned to the City with delivery of completed electric motor	As needed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Return all old bearings to the City for analysis	As needed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Contact City rep upon arrival and departure from job site	As needed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Area restored to a clean and presentable condition	As needed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Pick-up and delivery of electric motor performed within 24 hours of notification by City rep	As needed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

	SOLICITATION ADDENDUM Page 1 of 2	CITY OF PHOENIX Water Services Department 200 W. Washington Street 9th Floor Phoenix, AZ 85003
	Solicitation Number: IFB 2223-WAD-576 Addendum #1 Solicitation Due Date: 2/15/2023, 2:00 p.m., Phoenix Local Time	

Electrical Motor Drives and Maintenance

This addendum incorporates the following changes into the subject solicitation:

- I. This addendum revises the terms and conditions of the subject solicitation as follows:
 1. Section 3, Scope of Work, sub-paragraph 3.2.3 from the subject solicitation is revised to add the following brand of electric motor:
 - 3.2.3.17 Siemens
 2. This addendum replaces Attachment C – Fee Schedule with the attached revised Attachment C – Fee Schedule.

- II. This addendum answers the following questions, which the City of Phoenix received before the subject solicitation’s pre-proposal conference:

1. Question: 2.1. Description – Statement of Need

The City of Phoenix invites electronic offers for Electrical Motor Drives and Maintenance for a six (6) year contract term, commencing on or about July 1, 2023, in accordance with the specifications and provisions contained herein or the “Effective Date” which is upon award by City Council, conditioned upon signature and recording by the City Clerk’s department, as required by the Phoenix City Code, whichever is later.

***Please clarify this means Electric Motor Drives and/or Maintenance. I assume an offerer who is a large scale distributor but not a repair facility is allowed to provide electric motor drives only as was the case in the current IFB 16-168.

Answer: Per the IFB, Section 3, Scope of Work, paragraph 3.1 reads as follows:

3.1 Purpose:

The City of Phoenix (“City”) Water Services Department requires services from a Contractor(s) experienced in supplying electrical motors, **and/or** providing electrical maintenance, and repairs. The Public Works, Aviation, and Phoenix Convention Center Departments may also utilize the resulting contract.

2. Question: 2.3. Preparation of Offer

All forms provided in Submittal Section must be completed and submitted with the Offer. The signed and completed Conflict of Interest and Transparency form must be included or your Offer may be deemed non-responsive.

***Attachment C is primarily a repair facility form except for Lines 5 and 6 which new motor replacements and parts would be quoted per contract discounts. As a distributor, we would mark the labor fee boxes as N/A, correct?

Answer: Yes. Also, see the response above in Section I, no. 2.



SOLICITATION ADDENDUM

Page 2 of 2

**CITY OF PHOENIX
Water Services Department
200 W. Washington Street
9th Floor
Phoenix, AZ 85003**

Solicitation Number: IFB 2223-WAD-576
Addendum #1

Solicitation Due Date: 2/15/2023, 2:00 p.m., Phoenix Local Time

3. Question: 3.2.3 The manufacturers below are the brands of electric motors currently used by the City.

***Siemens is another manufacturer that is in city plants that you may want added to this list.

Answer: See the response above in Section I, no. 1.

4. Question: 5.15. Miscellaneous Fees

Additional charges for fuel surcharges, delivery charges, dealer prep, environmental fees, waste disposal, shop supplies, set-up, freight and/or shipping and handling, etc. will not be paid. These costs must be incorporated in the pricing provided.

***In the case the City has a non-typical catalog stock motor which has been modified, how do we handle that? Without a list price, it won't have applicable discounts. Should this such item be sent in an all-inclusive quote with freight factored in or with freight on a separate line. Distributors are always charged freight on modified motors.

Answer: Freight should be factored in the total price. Per the IFB, Section 5, Special Terms and Conditions, paragraph 5.1, reads as follows:

5.1 Free on Board (FOB)

Prices quoted shall be FOB Destination and delivered, as required, to the following point(s): There will be multiple delivery addresses.

All other terms and conditions remain unchanged.

Offeror is required to sign and return addendum with their bid.

Name of Company: Dykman Electrical, Inc.

Address: 3902 E. Roeser Rd., Phoenix, Az. 85040

Print Name and Title: Jarred McKenzie C.O.O.

Authorized Signature: *Jarred McKenzie*

RESOLUTION NUMBER 3262

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, ARIZONA, AUTHORIZING A COOPERATIVE USE PURCHASING AGREEMENT FOR ELECTRICAL MOTOR DRIVES AND MAINTENANCE FROM DYKMAN ELECTRICAL, INC, AN IDAHO CORPORATION, IN AN AMOUNT NOT TO EXCEED \$56,495.79.

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, AS FOLLOWS:

WHEREAS, the City of Cottonwood needs to procure a variable frequency drive for the new Verde Santa Fe Well; and

WHEREAS, the City's Procurement Policy requires formally sealed proposals or the use of a cooperative purchasing agreement for such expenditures; and

WHEREAS, the City purchasing staff have identified a contract between the City of Phoenix and Dykman Electrical, Inc. for the purchase of such equipment; and

IT IS HEREBY RESOLVED authorizing the City of Cottonwood to enter into a cooperative use purchasing agreement with Dykman Electrical, Inc. for electrical motor drives and maintenance in an amount not to exceed \$56,495.79, and authorizing the Acting City Manager to execute such agreements on behalf of the City.

PASSED AND ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF COTTONWOOD, YAVAPAI COUNTY, ARIZONA, THIS 20TH DAY OF FEBRUARY, 2024.

Tim Elinski, Mayor

ATTEST:

Tami Mayes, City Clerk

APPROVED AS TO FORM:

John A. Gaylord, City Attorney



 Print

Meeting Date:	February 20, 2024
Subject:	Consideration of a Final Plat for a 6-lot single family residential subdivision in the R-3 (Multiple Family Residential) zone to be known as 6 on Sixteen.
Department:	Community Development
From:	Kristina Hayden, Community Development Planner

REQUESTED ACTION

Consideration of a Final Plat for a 6-lot single family residential subdivision in the R-3 (Multiple Family Residential) zone to be known as 6 on Sixteen.

SUGGESTED MOTION

If the Council desires to approve this item the suggested motion is:

"I move to approve FP-23-001 for a 6-lot single family residential subdivision to be known as 6 on Sixteen, subject to the stipulations that staff has read into the record."

BACKGROUND

The applicant requests consideration of a Final Plat for a 6-lot single-family residential subdivision to be known as 6 on Sixteen.

Typically the Planning and Zoning Commission reviews and makes a recommendation to Council for a submitted Preliminary Plat, however Section 104.08 of the Subdivision Ordinance allows an alternative process for subdivisions that consist of 10 or fewer lots. This alternative process allows the applicant to bypass the Preliminary Plat phase and proceed directly to the Final Plat phase. In that case, the Planning and Zoning Commission reviews the Final Plat and makes a recommendation to City Council. The only additional requirement for this process is a deed restriction that prohibits the further division or subdivision of the approved plat.

STAFF ANALYSIS:

The applicant proposes 6 single-family residential lots on a 0.95-acre parcel. Each lot exceeds the minimum lot size of 5,000 square feet required in the R-3 (Multiple Family Residential) development standards. All lots will be accessed from two private drives that are proposed to have shared ownership and easement access. The private drives will be accessed directly off of S. 16th Street, and the developer proposes easement access for utilities and emergency vehicle access along these drives.

Along the property frontage adjacent to S. 16th Street, the applicant is dedicating a 4-foot sidewalk and public utilities easement.

There is an existing 5-foot wide sewer easement along the southern parcel lot line, and an existing 5-foot wide slope easement along the eastern lot line. There are multiple drainage easements dedicated on all sides of the parcel:

- 20-foot drainage easement at the northern corner of the parcel
- 7.5-foot drainage easement on the western lot line (north)
- 10-foot drainage easement on the western lot line (south)
- 5-foot drainage easement along the south lot line
- 10-foot easement along the eastern lot line

The applicant has provided documentation to abandon a utilities easement along the mid-portion of the western lot line and has conducted a title search to identify any potential grantees of the easement and also provided letters from the various utilities providers stating that they have no need for the easement. The applicant has also provided a document that will indemnify and hold the City harmless if anyone seeks to claim easement access.

The City Engineer is requiring that the applicant provide half-street improvements along the S. 16th Street property frontage including a 6-foot wide sidewalk. The applicant is able to defer the submittals for the Construction Plans, Construction Cost Estimates, and the Phase 3 Drainage Report until they submit for the required Grading & Civil permit. The applicant has been made aware that the deferred submittal is at risk and that a Plat Amendment may be required in the future to resolve any concerns that arise during permit review.

Staff posted a notice of the City Council hearing at the property at 856 S. 16th Street and mailed notifications to owners of all

properties within 300 feet of the site.

On January 22, 2024, the Planning and Zoning Commission recommended approval (5-1 vote) to the City Council regarding FP-23-001.

The attached Final Plat, titled "03_Revised Plat 11-29-2023" has had minor modifications since Planning and Zoning Commission review. These modifications are considered "minor authorized" by the Community Development Director and are as follows:

- Subdivision Title changed from FINAL PLAT OF "856 S. 16TH STREET" to FINAL PLAT OF "6 ON SIXTEEN".
- Additional paragraph added to Dedication: "Cross access easement dedicated as shown hereon to include easements for utilities and access on and through the common area to each lot for emergency vehicle access."

Staff has reviewed this project and finds that the requested Final Plat for a 6-lot single family subdivision is subject to approval by the City Council. Staff recommends the following stipulations:

1. The project shall be developed in conformance with the development plans as reviewed by the Planning and Zoning Commission at the January 22, 2024 meeting, and as reviewed by the City Council.
2. The developer shall adhere to the Code Review Board comment letters dated August 2, 2022 (Re: CRB #22-019), December 20, 2022 (Re: CRB #22-019 ~~031~~ REVISION), and November 2, 2023 (Re: CRB-23-043).
3. The Construction Plans, Construction Cost Estimate, and Phase 3 Grading Report shall be submitted with the required Grading and Civil permit submittal.
4. The developer shall provide City staff with proof of recordation of the approved Final Plat within 60 days of City Council approval.

Stipulation 2 was amended by staff to reflect the correct CRB case number.

JUSTIFICATION/BENEFITS/ISSUES

The proposed Final Plat creates 6 lots that will allow for single-family residential infill development.

COST/FUNDING SOURCE

There are no costs associated with this item.

ATTACHMENTS:

File Name	Description	Type
01_SUBMITTAL_LETTER_PLANNING_COMMISSION_CITY_OF_COTTONWOOD_(1).pdf	01_Letter of Intent	Backup Material
02_Locator_Map_6_on_16th_Plat_Color.pdf	02_Locator Map	Backup Material
03_Revised_Plat_11-29-2023.pdf	03 Revised Plat 11-29-2023	Backup Material
04_CCRs.v5_COTTONWOOD_(2).pdf	04_CCRs.v5 Cottonwood	Backup Material
05_COTTONWOOD_Designated_Builder_Designation_OCTOBER_23.pdf	05 Cottonwood Designated Builder Designation	Backup Material
06_FINAL_Design_Guidelines_(including_Resolution).pdf	06_Final Design Guidelines	Backup Material
07_5-30-23_Recorded_Termination_of_Easement_COTTONWOOD_1__LLC.pdf	07_5-30-23 Recorded Termination of Easement_Cottonwood 1 LLC	Backup Material
2-20-24_08_FJC_mark_up_of_Revised_Hold-Harmless_(Indemnity)_Agreement.pdf	08 Revised Hold-Harmless (Indemnity) Agreement_Markup	Backup Material
09_UNSOURCE_EASEMENT_Concurrence_Letter.pdf	09_unisource Easement Concurrence Letter	Backup Material
10_APS_EASEMENT_Concurrence_Letter-_16th_Street.pdf	10_APS Easement Concurrence Letter	Backup Material
11_CRB_#22-019.pdf	11_CRB #22-019	Backup Material
12_CRB_#22-019_REVISION.pdf	12_CRB #22-019 REVISION	Backup Material
13_CRB-23-043.pdf	13_CRB-23-043	Backup Material
6_on_Sixteen_Title.pdf	14_Title Report	Backup Material

June 21st, 2022

City of Cottonwood Planning and Zoning
111 North Main Street
Cottonwood, AZ 86326

RE: Letter of Intent Parcel #406-06-364E and F

Dear Mr. Padgett and members of the Planning Commission,

We previously submitted our Letter of Intent to the planning and development staff in preparation for our Code Review meeting that was held on June 7th 2022. We have prepared this updated letter for the benefit of the Planning Commission for approval of a 15-unit, single-family for rent product to be built in the City of Cottonwood.

During the June 7th meeting, we received verbal communication on our proposed site plan from the Police Department, Fire Department, Building and Safety and Engineering representatives. However as of this writing, we did not receive any written comments to prepare for this Planning Commission submittal. We are under a very tight timeframe to complete our due diligence on this property prior to closing escrow. Our closing date is currently scheduled for July 20th, 2022. Without the benefit of receiving written comments from our initial meeting, we have prepared this updated development package that we believe addresses many of the comments we did receive.

To facilitate your review, we have prepared the following summary of our proposed development:

- The parcel number is 406-06-364E and 406-06-364F. The address is 856 South 16th Street, Cottonwood, AZ.
- The project participants are Daniel Fox, managing member for Cottonwood 1, LLC., a group assembled for the specific purpose of acquiring and developing the subject parcel into 15 for rent dwelling units. The individuals consist of family members, Mr. Caesar Perez, equity partner, Mr. George Rosansky, who, along with me will head up the design team for the development.

The seller is Mr. Henry Chaikin, Trustee for Wild River Profit Sharing Plan.

- We have engaged Superior Surveying to prepare a boundary and topographical survey that will be forthcoming. We will be using SEC civil engineers to produce the civil documents for permitting. Except for SEC, the other participants reside in Scottsdale, AZ. We are currently in escrow and are scheduled to close on the property in mid-July.
- The site is triangular in form with a slight rise in elevation, sloping west to east toward 16th street. The property appears to maintain a natural slope of less than 20% which will not require us to provide a slope analysis. We intend to maintain much of the natural grade to allow the units on the west side of the site to capture the views to the east with minimal obstruction over the units to toward the lower end of the site. There is currently low native shrub growth on the site. Little in the way of salvageable trees are on the parcel. The parcel is currently zoned R-3 and shall remain R-3.
- We propose to develop the property into fifteen (15) attached single family residential units for long term rental. The units will include a combination of:
 - 4 - 1bedroom/1 bath units (one-story)
 - 8 - 2bedroom/2 bath units (one-story)
 - 3 - 3-bedroom/2 bath units (two-story)

The buildings will be of a contemporary design, capturing geometric forms and finishes that are current in today's market. They are unique in that each unit will have its own entrance and small fenced rear yard for children to play safely in their own space and each will have doggy doors for pet owners.

Building placement allows for a distinct separation between vehicular traffic limited to the outer perimeter of the site with the buildings clustered in the center. No parking is proposed to face the 16th street frontage. An interior network of sidewalks within the interior courtyards will provide access between the buildings and to each unit. Seating areas will be provided with firepits, BBQ grills and other site amenities for the residents. The open spaces between the buildings will be well landscaped with indigenous trees, shrubs, and ground cover.

We understand the great need for both rental and for sale units in the Cottonwood area. Although our project is relatively small, we believe this project will fill at least a part of the need for housing but expect this will be a springboard for other similar, larger projects we hope to build in the Cottonwood area. We propose to develop this project in a single phase.

- We do not believe there are no historic or topographical features that will require special treatment. Site drainage will follow the City of Cottonwood's requirements for on-site detention. We do not believe that there are any code restrictions or exceptions that will prevent the development from moving forward as intended. We understand that there will be new off-site improvements required as a part of this

Design/Build • Construction Management • Development Consulting
402.708.2121 • realtyassetadvisor@gmail.com • raasouthwest.com

501 Esplanade, #206, Redondo Beach, CA 90277
7727 East Sandalwood Drive, Scottsdale, AZ 85250

development. This will include but not be limited to a new city standard sidewalk, curb and gutter along the 16th street frontage and new water and sewer taps from the existing mains in 16th street.

- Our timeline for the project is sensitive in relation to closing on the property. This Letter of Intent, along with other exhibits are being submitted to the Cottonwood Planning Commission today for the hearing to be held on July 18th, 2022.

The Exhibits included in this submittal include:

- 11x17 site plan with parcel map number, legal description, north arrow, current zoning, parking both required and provided, Sq. ftg, summaries and proposed landscaping and site lighting.
- 11x17 full colored renderings of the building plans and elevations
- Sample color palettes with two (2) potential options
- Lighting cut sheets of our proposed site light fixtures and building mounted lighting
- A slope analysis will not be required

We look forward to working with the City of Cottonwood on this new project. Should you have any further questions regarding our submittal, please do not hesitate to contact me directly.

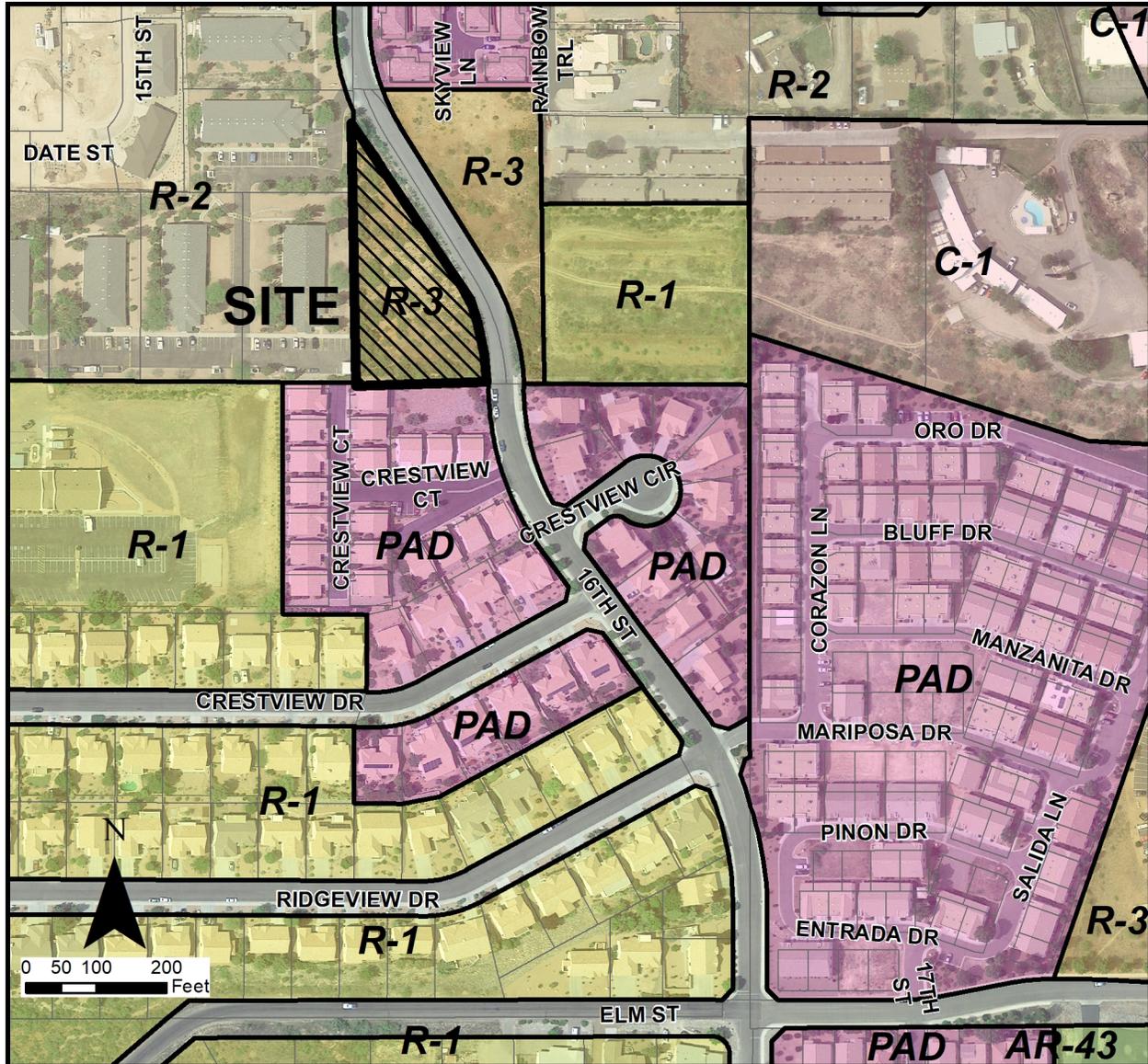
Respectfully submitted,

Cottonwood 1, LLC



Daniel Fox
Managing Member

FP 23-001 6 ON 16TH FINAL PLAT



-  Proposed Final Plat
-  Zoning Boundary

FINAL PLAT OF "6 ON SIXTEEN"

OF A.P.N. 406-06-364J BEING PORTION OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 15 NORTH, RANGE 3 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, YAVAPAI COUNTY, ARIZONA

DEDICATION

KNOW ALL MEN BY THESE PRESENTS: COTTONWOOD 1 LLC, A WYOMING LIMITED LIABILITY COMPANY, AS SOLE OWNER, HAS SUBDIVIDED UNDER THE NAME OF "6 ON SIXTEEN", A PORTION OF SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 15 NORTH, RANGE 3 EAST OF THE GILA AND SALT RIVER MERIDIAN, YAVAPAI COUNTY, ARIZONA, AS SHOWN PLATTED HEREON, AND HEREBY DECLARES THAT THIS PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF THE LOTS, EASEMENTS AND STREETS CONSTITUTING THE SAME; AND THAT EACH LOT, AND STREET SHALL BE KNOWN BY THE NUMBER OR NAME GIVEN TO EACH RESPECTIVELY ON SAID PLAT.

CROSS ACCESS EASEMENT DEDICATED AS SHOWN HEREON TO INCLUDE EASEMENTS FOR UTILITIES AND ACCESS ON AND THROUGH THE COMMON AREA TO EACH LOT FOR EMERGENCY VEHICLE ACCESS.

IN WITNESS WHEREOF, COTTONWOOD 1 LLC, A WYOMING LIMITED LIABILITY COMPANY, AS SOLE OWNER, HAS CAUSED THE NAME OF COTTONWOOD 1 LLC, A WYOMING LIMITED LIABILITY COMPANY, TO BE AFFIXED HERETO AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF _____, ITS _____ FOR THE PURPOSES HEREIN CONTAINED, BEING DULY AUTHORIZED TO DO SO.

BY: COTTONWOOD 1 LLC, A WYOMING LIMITED LIABILITY COMPANY

BY: _____
ITS: PRESIDENT
DATE: _____

ACKNOWLEDGMENT

STATE OF _____ }
COUNTY OF _____ } ss

BEFORE ME THIS _____ DAY OF _____, 2022, _____ PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, WHO ACKNOWLEDGED THEMSELVES TO BE PRESIDENT OF COTTONWOOD 1 LLC, A WYOMING LIMITED LIABILITY COMPANY, THE LEGAL OWNER OF THE PROPERTY PLATTED HEREON AND ACKNOWLEDGE THAT _____ AS _____ EXECUTED THIS INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF, I HERETO SET MY HAND AND OFFICIAL SEAL

NOTARY PUBLIC _____ EXPIRES _____

FLOOD ZONE INFORMATION

THE SUBJECT PROPERTY LIES WITHIN ZONE X OF THE FLOOD INSURANCE RATE MAP (FIRM) COMMUNITY NUMBER 040096 PANEL 1757 MAP NUMBER 04025C, DATED OCTOBER 16, 2015.

ASSURED WATER SUPPLY

*ACCORDING TO THE ARIZONA DEPARTMENT OF WATER RESOURCES, THIS SUBDIVISION IS LOCATED WITHIN AN AREA DESIGNATED AS HAVING ASSURED WATER SUPPLY, PURSUANT TO A.R.S. 45-576 SUBSECTION 'B'.

BY (COMMUNITY DEVELOPMENT DIR.) _____ DATE _____

APPROVALS

THIS PLAT HAS BEEN CHECKED FOR CONFORMANCE TO THE APPROVED PRELIMINARY PLAT AND ANY SPECIAL CONDITIONS ATTACHED THERETO, TO THE REQUIREMENTS OF THE CITY OF COTTONWOOD SUBDIVISION ORDINANCE, AND TO ANY OTHER APPLICABLE REGULATIONS, AND APPEARS TO COMPLY WITH ALL REQUIREMENTS WITHIN MY JURISDICTION TO CHECK AND EVALUATE.

BY (CITY ENGINEER) _____ DATE _____

BY (COMMUNITY DEVELOPMENT DIR.) _____ DATE _____

THIS FINAL PLAT WAS REVIEWED AND APPROVED BY THE CITY COUNCIL, SUBJECT TO STIPULATIONS ON _____ DATE _____

COTTONWOOD MAYOR _____ DATE _____

OWNER

COTTONWOOD 1 LLC, A WYOMING LIMITED LIABILITY COMPANY
3300 N. SCOTTSDALE ROAD, SUITE 4108
SCOTTSDALE, AZ 85251
(402) 708-2121

SURVEYOR

SUPERIOR SURVEYING SERVICES INC.
2122 W. LONE CACTUS DRIVE, SUITE 11
PHOENIX, AZ 85027
(623) 869-0223

PARENT DESCRIPTION

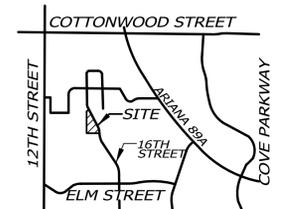
PARCEL NO. 1:
A PARCEL OF LAND LOCATED IN THE EAST HALF OF SECTION 3, TOWNSHIP 15 NORTH, RANGE 3 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, YAVAPAI COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 3;
THENCE SOUTH 00°02'02" WEST ALONG THE EAST LINE OF SAID SECTION 3, A DISTANCE OF 417.96 FEET;
THENCE NORTH 89°42'54" WEST, A DISTANCE OF 351.94 FEET TO THE POINT OF BEGINNING;
THENCE CONTINUING NORTH 89°42'54" WEST, A DISTANCE OF 206.36 FEET;
THENCE NORTH 00°46'08" WEST, A DISTANCE OF 403.96 FEET TO A POINT OF A NON-TANGENT CURVE;
THENCE SOUTHERLY ALONG SAID CURVE CONCAVE SOUTHWEST, HAVING A RADIUS OF 350.00 FEET, AN ARC LENGTH OF 101.51 FEET, A CENTRAL ANGLE OF 16°37'00" AND A RADIAL BEARING OF SOUTH 42°53'07" WEST;
THENCE SOUTH 31°56'00" EAST, A DISTANCE OF 203.83 FEET TO A POINT ON A NON-TANGENT CURVE;
THENCE SOUTHEASTERLY AND SOUTHERLY ALONG SAID CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 300.00 FEET, AN ARC LENGTH OF 160.33 FEET, A CENTRAL ANGLE OF 30°37'14" AND A RADIAL BEARING OF SOUTH 59°51'01" WEST TO THE POINT OF BEGINNING.
EXCEPT ALL OIL, MINERALS, ORES AND METALS OF EVERY KIND, AS RESERVED IN DEED RECORDED IN BOOK 187 OF DEEDS, PAGE 331, RECORD OF YAVAPAI COUNTY, ARIZONA.

PARCEL NO. 2:
THAT PORTION OF EAST HALF OF SECTION 3, TOWNSHIP 15 NORTH, RANGE 3 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, YAVAPAI COUNTY, ARIZONA, BEING THE PROPERTY ABANDONED BY THE CITY OF COTTONWOOD IN DEED RECORDED IN BOOK 4018 OF OFFICIAL RECORDS, PAGE 640, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 3, SAID CORNER BEING MARKED BY A ½ INCH REBAR TAGGED "LS4491";
THENCE NORTH 00°16'31" EAST ALONG THE WESTERLY LINE OF SAID SOUTHEAST QUARTER OF SAID NORTHEAST QUARTER OF SAID SECTION 3, A DISTANCE OF 227.23 FEET TO A POINT, SAID POINT BEING MARKED BY A ½ INCH REBAR STAMPED "LS 25384";
THENCE SOUTH 89°49'28" EAST 25.53 FEET TO A POINT, SAID POINT BEING MARKED BY A 5/8 INCH REBAR STAMPED "LS 13015";
THENCE SOUTH 89°59'41" EAST 242.59 FEET TO A POINT, SAID POINT BEING MARKED BY A ½ INCH REBAR;
THENCE NORTH 46°46'41" EAST A DISTANCE OF 661.90 FEET TO THE MOST NORTHERLY CORNER OF THE LAND DESCRIBED IN DEED RECORDED IN BOOK 3624 OF OFFICIAL RECORDS, PAGE 314, RECORDS OF YAVAPAI COUNTY, SAID CORNER BEING MARKED BY A ½ INCH REBAR;
THENCE SOUTH 00°43'53" EAST ALONG THE EASTERLY LINE OF THE LAND DESCRIBED IN SAID DEED A DISTANCE OF 717.91 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 325.00 FEET, A RADIAL LINE TO SAID CURVE BEARS NORTH 66°38'56" EAST, SAID POINT BEING THE TRUE POINT OF BEGINNING;
THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 8°32'41", AN ARC LENGTH OF 48.47 FEET TO A POINT OF TANGENCY WITH THE NORTHWESTERLY PROLONGATION OF THAT CERTAIN COURSE HAVING A BEARING OF NORTH 31°56'00" WEST AND A DISTANCE OF 203.36 FEET, BEING THE SOUTHERLY BOUNDARY OF PARCEL "B" OF THE LAND DESCRIBED IN DEED RECORDED IN BOOK 3598 OF OFFICIAL RECORDS, PAGE 977, RECORDS OF YAVAPAI COUNTY;
THENCE SOUTH 31°53'45" EAST ALONG SAID PROLONGATION, A DISTANCE OF 36.16 FEET TO THE NORTHWESTERLY TERMINUS OF SAID CERTAIN COURSE, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 325.00 FEET, SAID CURVE ALSO BEING THE SOUTHWESTERLY BOUNDARY OF SAID PARCEL "B", A RADIAL LINE TO SAID CURVE BEARS SOUTH 59°35'30" WEST;
THENCE NORTHWESTERLY ALONG SAID CURVE AND SOUTHWESTERLY LINE OF A SAID PARCEL "B" THROUGH A CENTRAL ANGLE OF 12°15'41", AN ARC LENGTH OF 69.55 FEET TO THE EASTERLY LINE OF SAID LAND DESCRIBED IN SAID DEED RECORDED IN BOOK 3624 OF OFFICIAL RECORDS, PAGE 314, RECORDS OF YAVAPAI COUNTY;
THENCE NORTH 0°43'53" WEST ALONG SAID EASTERLY LINE A DISTANCE OF 17.84 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT ANY PORTION LYING WITHIN PARCEL NO. 1 ABOVE.



VICINITY MAP

NOT TO SCALE

ZONING

R-3 ZONE, MULTIPLE-FAMILY RESIDENTIAL

SURVEYOR NOTES

- 1) THE BASIS OF BEARING IS THE MONUMENT LINE OF 12TH STREET, USING A BEARING OF NORTH 00 DEGREES 09 MINUTES 56 SECONDS EAST, PER THE RECORD OF SURVEY, IN FEE 2021-0060288, RECORDS OF YAVAPAI COUNTY, ARIZONA.
- 2) ALL TITLE INFORMATION AND THE DESCRIPTION SHOWN IS BASED ON AN OWNER'S POLICY ISSUED BY STEWART TITLE GUARANTY COMPANY, POLICY NUMBER 0-9301-5279357, DATED JULY 20, 2022.

REFERENCES

GENERAL LAND OFFICE RECORDS ON FILE WITH THE U.S. DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT

FINAL PLAT OF "CRESTVIEW SUBDIVISION PHASE TWO" RECORDED IN BOOK 36 OF MAPS, PAGE 41, YAVAPAI COUNTY RECORDS

FINAL PLAT OF "SKYLINE ESTATES" RECORDED IN BOOK 54 OF MAPS, PAGE 30, YAVAPAI COUNTY RECORDS

MINOR LAND DIVISION RECORDED IN FEE 2015-0020034, YAVAPAI COUNTY RECORDS

RESULTS OF SURVEY IN FEE 2019-0010241, YAVAPAI COUNTY RECORDS

FINAL PLAT OF "RIDGECREST SUBDIVISION" RECORDED IN FEE 2019-0026087, YAVAPAI COUNTY RECORDS

RECORD OF SURVEY IN FEE 2019-0051664, YAVAPAI COUNTY RECORDS

RECORD OF SURVEY IN FEE 2021-0060288, YAVAPAI COUNTY RECORDS

GENERAL WARRANTY DEED IN FEE 3042653, YAVAPAI COUNTY RECORDS

RIGHT OF WAY IN FEE 30722911, YAVAPAI COUNTY RECORDS

RIGHT OF WAY IN FEE 30722912, YAVAPAI COUNTY RECORDS

ROAD DEED IN FEE 3477717, YAVAPAI COUNTY RECORDS

SLOPE EASEMENT DEED IN FEE 3477725, YAVAPAI COUNTY RECORDS

QUIT CLAIM DEED IN FEE 3566625, YAVAPAI COUNTY RECORDS

WARRANTY DEED IN FEE 3777787, YAVAPAI COUNTY RECORDS

CORRECTED RIGHT OF WAY IN FEE 3791389, YAVAPAI COUNTY RECORDS

WARRANTY DEED IN FEE 3971812, YAVAPAI COUNTY RECORDS

CERTIFICATION

THIS IS TO CERTIFY THAT THE SURVEY OF THE PREMISES (PROPERTY) DESCRIBED AND PLATTED HEREON WAS MADE UNDER MY DIRECTION AND SUPERVISION AND IS ACCURATELY REPRESENTED ON THIS PLAT. I ALSO CERTIFY THAT THE PLAT IS IN SUBSTANTIAL CONFORMANCE TO THE APPROVED PRELIMINARY PLAT AND THAT THIS PLAT IS CORRECT AND ACCURATE AS SHOWN.

JAMES M. WILLIAMSON
R.L.S. #76041

-FOR REVIEW
NOT FOR
CONSTRUCTION
OR RECORDING



FINAL PLAT OF
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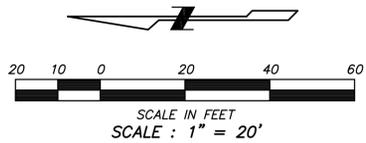
DWN: LE CHR: JW

SHEET 1 OF 5

DATE: 11/28/23

JOB: 202206018

FINAL PLAT OF "6 ON SIXTEEN"



S 00°02'02" W (R) 417.96'
S 00°02'10" W (M)

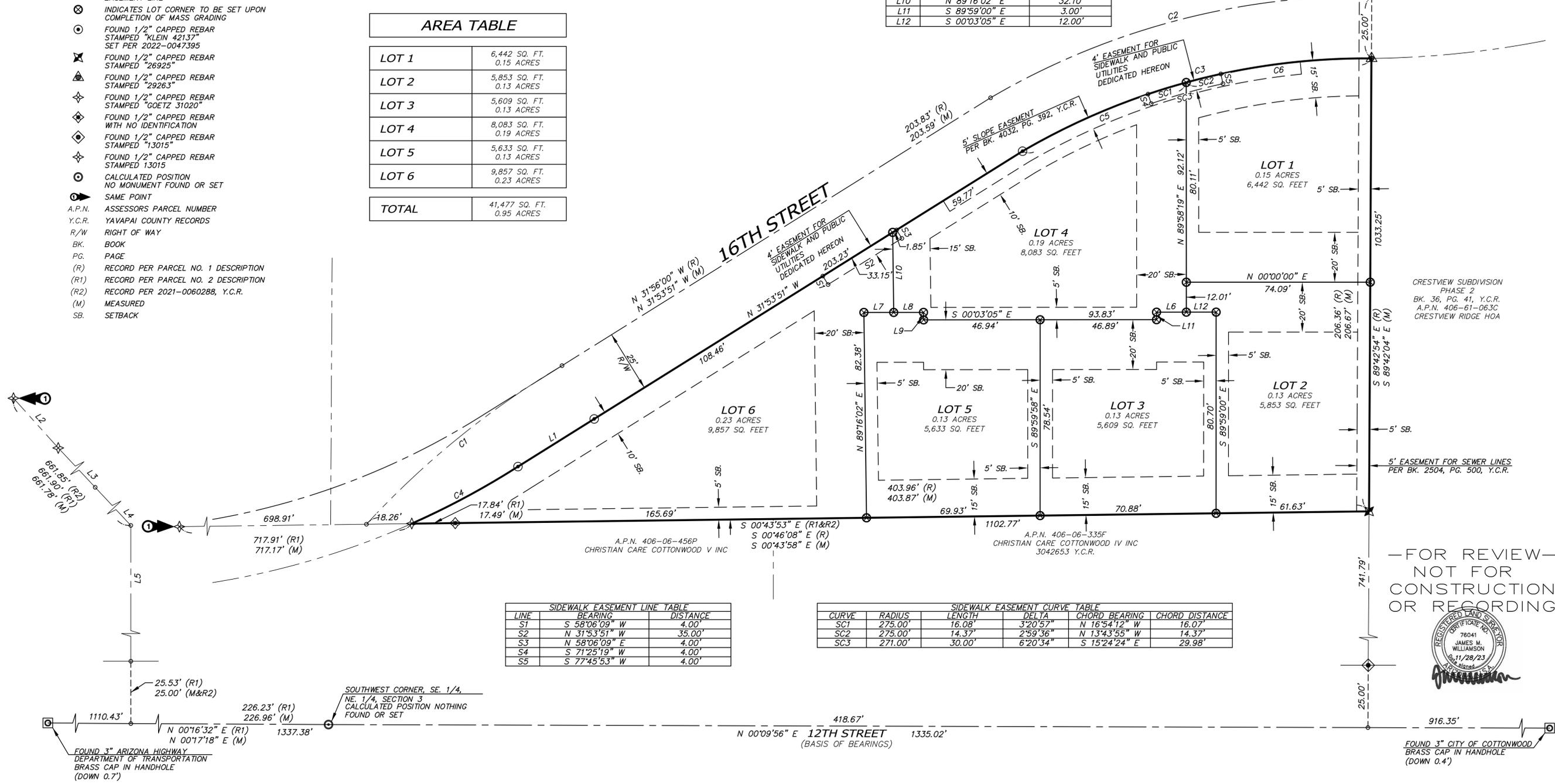
EAST 1/4 CORNER SECTION 3, T-15N, R-3E
CALCULATED POSITION NOTHING
FOUND OR SET
POINT OF COMMENCEMENT

CURVE	RADIUS	LENGTH	DELTA	CHORD BEARING	CHORD DISTANCE
C1	350.00'	101.51' (R) 101.59' (M)	16°37'00" (R) 16°37'52" (M)	S 38°55'21" E	101.24'
C2	300.00'	160.33' (R) 160.78' (M)	30°37'14" (R) 30°42'25" (M)	S 14°52'41" E	158.86'
C3	275.00'	147.10'	30°38'56"	S 14°49'59" E	145.36'
C4	325.00'	48.47' (R1) 48.56' (M)	8°32'41" (R1) 8°33'36" (M)	S 28°06'30" E	48.51'
C5	275.00'	71.65'	14°55'43"	S 22°41'35" E	71.45'
C6	275.00'	75.45'	15°43'13"	S 07°22'07" E	75.21'

LINE	BEARING	DISTANCE
L1	S 31°53'45" E (R1) S 31°53'51" E (M)	36.16'
L2	N 46°46'41" E (R1) N 47°53'50" E (M)	26.90'
L3	N 46°46'41" E (R1) N 46°41'41" E (M)	298.40'
L4	N 46°46'41" E (R1) N 46°48'15" E (M)	336.48'
L5	N 89°59'21" E (R2) N 89°49'28" E (R1) N 89°59'28" E (M)	242.95' (R2) 242.59' (R1) 242.92' (M)
L6	S 00°03'05" E	12.00'
L7	S 00°03'05" E	12.00'
L8	S 00°03'05" E	12.00'
L9	N 89°26'33" E	3.00'
L10	N 89°16'02" E	32.10'
L11	S 89°59'00" E	3.00'
L12	S 00°03'05" E	12.00'

LOT	AREA
LOT 1	6,442 SQ. FT. 0.15 ACRES
LOT 2	5,853 SQ. FT. 0.13 ACRES
LOT 3	5,609 SQ. FT. 0.13 ACRES
LOT 4	8,083 SQ. FT. 0.19 ACRES
LOT 5	5,633 SQ. FT. 0.13 ACRES
LOT 6	9,857 SQ. FT. 0.23 ACRES
TOTAL	41,477 SQ. FT. 0.95 ACRES

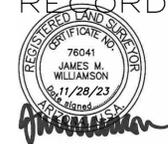
- LEGEND**
- BOUNDARY LINE
 - CENTER LINE OR MONUMENT LINE
 - - - EASEMENT LINE
 - ⊗ INDICATES LOT CORNER TO BE SET UPON COMPLETION OF MASS GRADING
 - ⊙ FOUND 1/2" CAPPED REBAR STAMPED "KLEIN 42137" SET PER 2022-0047395
 - ⊗ FOUND 1/2" CAPPED REBAR STAMPED "26925"
 - ⊙ FOUND 1/2" CAPPED REBAR STAMPED "29263"
 - ⊗ FOUND 1/2" CAPPED REBAR STAMPED "GOETZ 31020"
 - ⊙ FOUND 1/2" CAPPED REBAR WITH NO IDENTIFICATION
 - ⊗ FOUND 1/2" CAPPED REBAR STAMPED "13015"
 - ⊙ FOUND 1/2" CAPPED REBAR STAMPED 13015
 - ⊙ CALCULATED POSITION NO MONUMENT FOUND OR SET
 - ⊙ SAME POINT
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 - Y.C.R. YAVAPAI COUNTY RECORDS
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 - (M) MEASURED
 - SB. SETBACK



LINE	BEARING	DISTANCE
S1	S 58°06'09" W	4.00'
S2	N 31°53'51" W	35.00'
S3	N 58°06'09" E	4.00'
S4	S 71°25'19" W	4.00'
S5	S 77°45'53" W	4.00'

CURVE	RADIUS	LENGTH	DELTA	CHORD BEARING	CHORD DISTANCE
SC1	275.00'	16.08'	3°20'57"	N 16°54'12" W	16.07'
SC2	275.00'	14.37'	2°59'36"	N 13°43'55" W	14.37'
SC3	271.00'	30.00'	6°20'34"	S 15°24'24" E	29.98'

— FOR REVIEW —
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OR RECORDING

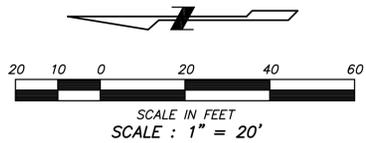


FINAL PLAT OF
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info@superiorsurveying.com



FINAL PLAT OF "6 ON SIXTEEN" DRAINAGE EASEMENTS



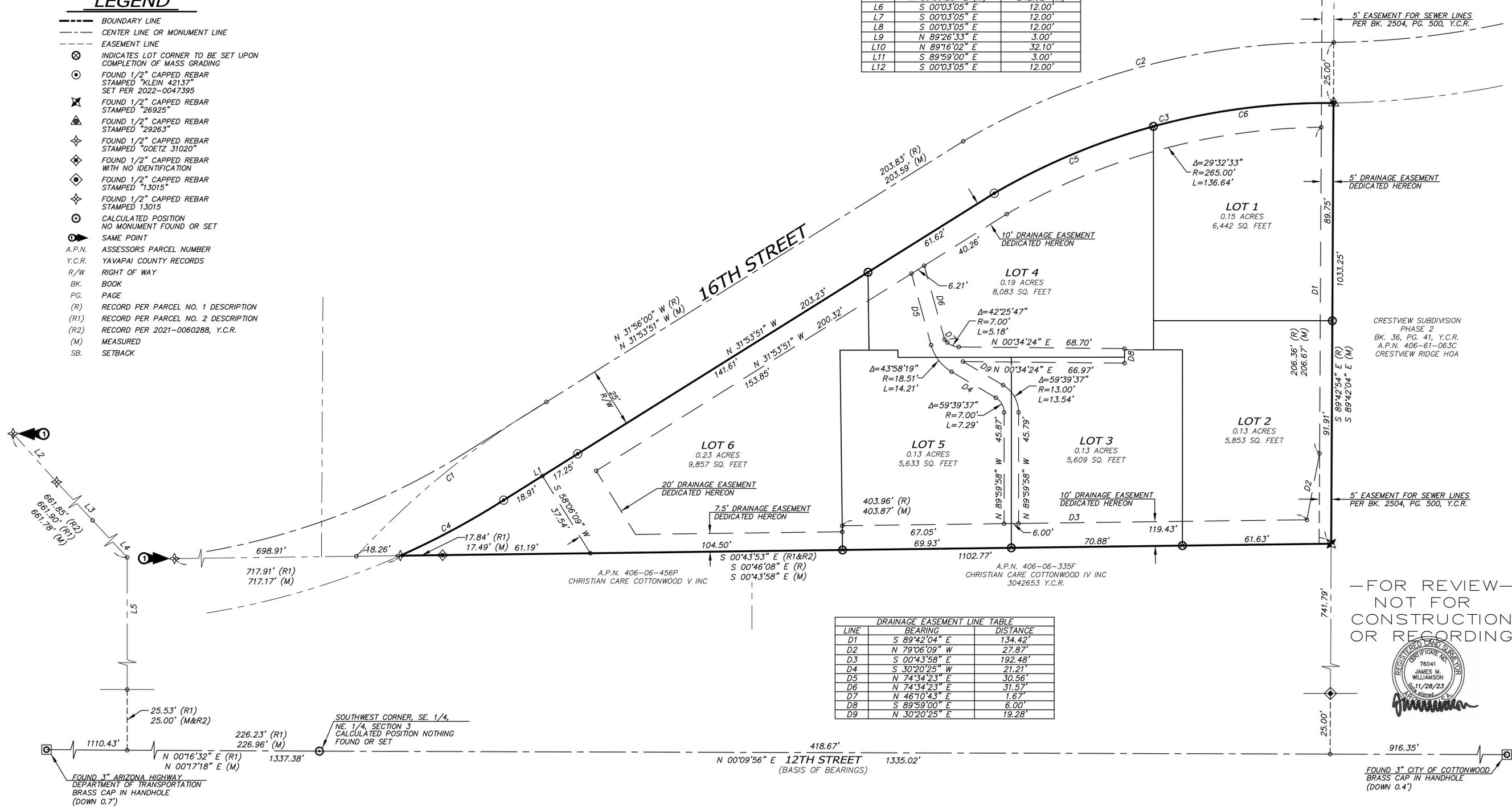
S 00°02'02" W (R) 417.96'
S 00°02'10" W (M)

EAST 1/4 CORNER SECTION 3, T-15N, R-3E
CALCULATED POSITION NOTHING
FOUND OR SET
POINT OF COMMENCEMENT

CURVE	RADIUS	LENGTH	DELTA	CHORD BEARING	CHORD DISTANCE
C1	350.00'	101.51' (R)	16°37'00" (R)	S 38°55'21" E	101.24'
		101.59' (M)	16°37'52" (M)		
C2	300.00'	160.33' (R)	30°37'14" (R)	S 14°52'41" E	158.86'
		160.78' (M)	30°42'25" (M)		
C3	275.00'	147.10'	30°38'56" (M)	S 14°49'59" E	145.36'
C4	325.00'	48.47' (R1)	8°32'41" (R1)	S 28°06'30" E	48.51'
		48.56' (M)	8°33'36" (M)		
C5	275.00'	71.65'	14°55'43" (M)	S 22°41'35" E	71.45'
C6	275.00'	75.45'	15°43'13" (M)	S 07°22'07" E	75.21'

LINE	BEARING	DISTANCE
L1	S 31°53'45" E (R1)	36.16'
	S 31°53'51" E (M)	
L2	N 46°46'41" E (R1)	26.90'
	N 47°53'50" E (M)	
L3	N 46°46'41" E (R1)	298.40'
	N 46°41'41" E (M)	
L4	N 46°46'41" E (R1)	336.48'
	N 46°48'15" E (M)	
L5	N 89°59'21" E (R2)	242.95' (R2)
	N 89°49'28" E (R1)	242.59' (R1)
	N 89°59'28" E (M)	242.92' (M)
L6	S 00°03'05" E	12.00'
L7	S 00°03'05" E	12.00'
L8	S 00°03'05" E	12.00'
L9	N 89°26'33" E	3.00'
L10	N 89°16'02" E	32.10'
L11	S 89°59'00" E	3.00'
L12	S 00°03'05" E	12.00'

- ### LEGEND
- BOUNDARY LINE
 - CENTER LINE OR MONUMENT LINE
 - - - EASEMENT LINE
 - ⊗ INDICATES LOT CORNER TO BE SET UPON COMPLETION OF MASS GRADING
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 - ⊗ FOUND 1/2" CAPPED REBAR STAMPED "GOETZ 31020"
 - ⊙ FOUND 1/2" CAPPED REBAR WITH NO IDENTIFICATION
 - ⊗ FOUND 1/2" CAPPED REBAR STAMPED "13015"
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 - (M) MEASURED
 - SB. SETBACK



LINE	BEARING	DISTANCE
D1	S 89°42'04" E	134.42'
D2	N 79°06'09" W	27.87'
D3	S 00°43'58" E	192.48'
D4	S 30°20'25" W	21.21'
D5	N 74°34'23" E	30.56'
D6	N 74°34'23" E	31.57'
D7	N 46°10'43" E	1.67'
D8	S 89°59'00" E	6.00'
D9	N 30°20'25" E	19.28'

- FOR REVIEW -
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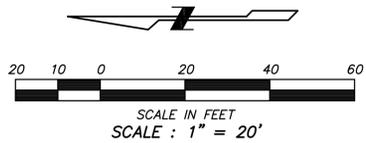


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SUPERIOR
SURVEYING SERVICES, INC.

DWN: LE CR: JW
SHEET 3 OF 5
DATE: 11/28/23
JOB: 202206018



S 00°02'02" W (R)
S 00°02'10" W (M) 417.96'

EAST 1/4 CORNER SECTION 3, T-15N, R-3E
CALCULATED POSITION NOTHING
FOUND OR SET
POINT OF COMMENCEMENT

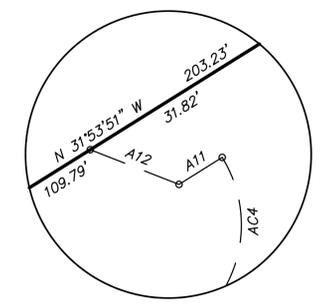
FINAL PLAT OF "6 ON SIXTEEN" CROSS ACCESS AND UTILITIES EASEMENTS

CURVE	RADIUS	LENGTH	DELTA	CHORD BEARING	CHORD DISTANCE
C1	350.00'	101.51' (R) 101.59' (M)	16°37'00" (R) 16°37'52" (M)	S 38°55'21" E	101.24'
C2	300.00'	160.33' (R) 160.78' (M)	30°37'14" (R) 30°42'25" (M)	S 14°52'41" E	158.86'
C3	275.00'	147.10'	30°38'56"	S 14°49'59" E	145.36'
C4	325.00'	48.47' (R1) 48.56' (M)	8°32'41" (R1) 8°33'36" (M)	S 28°06'30" E	48.51'
C5	275.00'	71.65'	14°55'43"	S 22°41'35" E	71.45'
C6	275.00'	75.45'	15°43'13"	S 07°22'07" E	75.21'

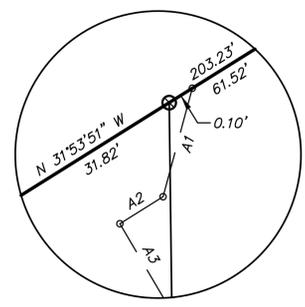
LINE	BEARING	DISTANCE
L1	S 31°53'45" E (R1) S 31°53'51" E (M)	36.16'
L2	N 46°46'41" E (R1) N 47°53'50" E (M)	26.90'
L3	N 46°46'41" E (R1) N 46°41'41" E (M)	298.40'
L4	N 46°46'41" E (R1) N 46°48'15" E (M)	336.48'
L5	N 89°59'21" E (R2) N 89°49'28" E (R1) N 89°59'28" E (M)	242.95' (R2) 242.59' (R1) 242.92' (M)
L6	S 00°03'05" E	12.00'
L7	S 00°03'05" E	12.00'
L8	S 00°03'05" E	12.00'
L9	N 89°26'33" E	3.00'
L10	N 89°16'02" E	32.10'
L11	S 89°59'00" E	3.00'
L12	S 00°03'05" E	12.00'

LEGEND

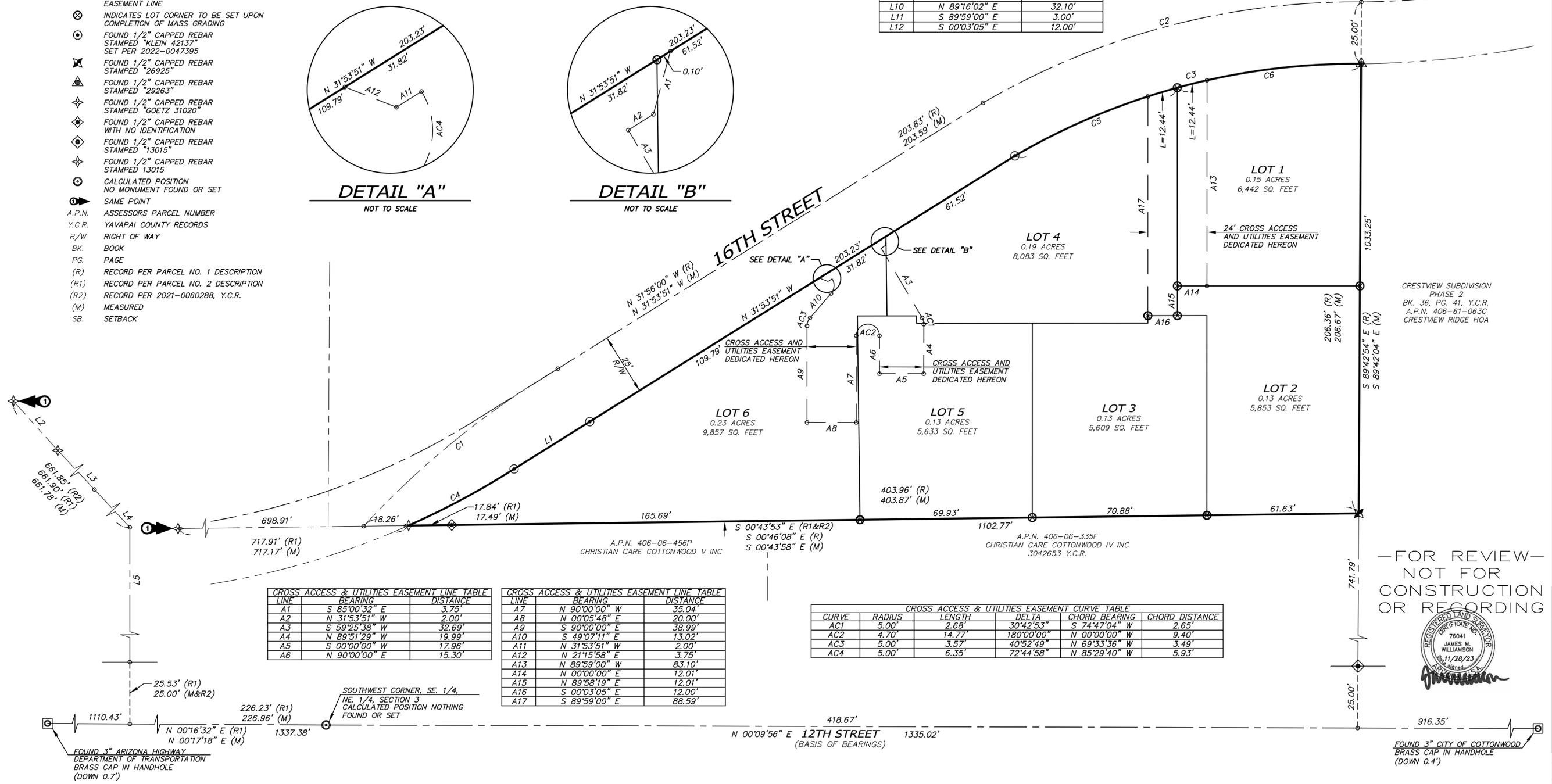
- BOUNDARY LINE
- CENTER LINE OR MONUMENT LINE
- EASEMENT LINE
- ⊗ INDICATES LOT CORNER TO BE SET UPON COMPLETION OF MASS GRADING
- ⊙ FOUND 1/2" CAPPED REBAR STAMPED "KLEIN 42137" SET PER 2022-0047395
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- (M) MEASURED
- SB. SETBACK



DETAIL "A"
NOT TO SCALE



DETAIL "B"
NOT TO SCALE



LINE	BEARING	DISTANCE
A1	S 85°00'32" E	3.75'
A2	N 31°53'51" W	2.00'
A3	S 59°25'38" W	32.69'
A4	N 89°51'29" W	19.99'
A5	S 00°00'00" W	17.96'
A6	N 90°00'00" E	15.30'

LINE	BEARING	DISTANCE
A7	N 90°00'00" W	35.04'
A8	N 00°05'48" E	20.00'
A9	S 90°00'00" E	38.99'
A10	S 49°07'11" E	13.02'
A11	N 31°53'51" W	2.00'
A12	N 21°5'59" E	3.75'
A13	N 89°59'00" W	83.10'
A14	N 00°00'00" E	12.01'
A15	N 89°58'19" E	12.01'
A16	S 00°03'05" E	12.00'
A17	S 89°59'00" E	88.59'

CURVE	RADIUS	LENGTH	DELTA	CHORD BEARING	CHORD DISTANCE
AC1	5.00'	2.68'	30°42'53"	S 74°47'04" W	2.65'
AC2	4.70'	14.77'	180°00'00"	N 00°00'00" W	9.40'
AC3	5.00'	3.57'	40°52'49"	N 69°33'36" W	3.49'
AC4	5.00'	6.35'	72°44'58"	N 85°29'40" W	5.93'

-FOR REVIEW-
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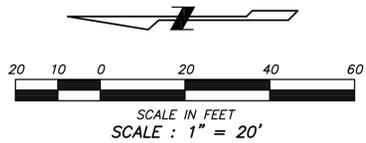


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SUPERIOR
SURVEYING SERVICES, INC.

DWN: LE CR: JW
SHEET 4 OF 5
DATE: 11/28/23
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EAST 1/4 CORNER SECTION 3, T-15N, R-3E
 CALCULATED POSITION NOTHING
 FOUND OR SET
 POINT OF COMMENCEMENT

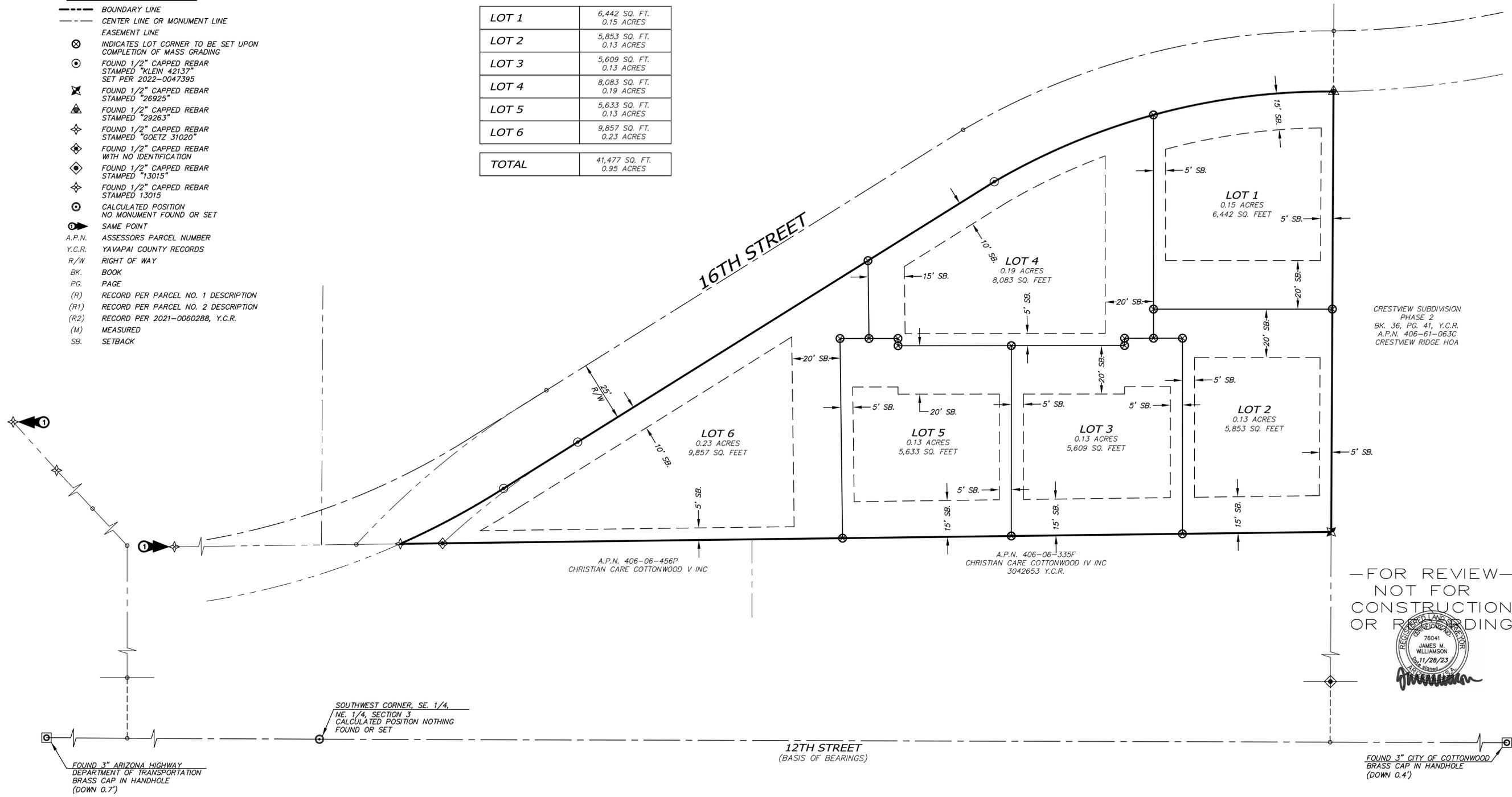
SETBACK EXHIBIT FOR "6 ON SIXTEEN"

NOTE: SETBACK INFORMATION SHOWN ON THIS EXHIBIT PROVIDED BY THE DEVELOPER

LEGEND

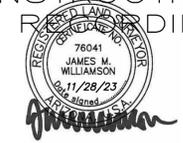
- BOUNDARY LINE
- - - CENTER LINE OR MONUMENT LINE
- EASEMENT LINE
- ⊗ INDICATES LOT CORNER TO BE SET UPON COMPLETION OF MASS GRADING
- ⊙ FOUND 1/2" CAPPED REBAR STAMPED "KLEIN 42137" SET PER 2022-0047395
- ⊗ FOUND 1/2" CAPPED REBAR STAMPED "26925"
- ⊗ FOUND 1/2" CAPPED REBAR STAMPED "29263"
- ⊗ FOUND 1/2" CAPPED REBAR STAMPED "GOETZ 31020"
- ⊗ FOUND 1/2" CAPPED REBAR WITH NO IDENTIFICATION
- ⊗ FOUND 1/2" CAPPED REBAR STAMPED "13015"
- ⊗ FOUND 1/2" CAPPED REBAR STAMPED 13015
- ⊙ CALCULATED POSITION NO MONUMENT FOUND OR SET
- ⊙ SAME POINT
- A.P.N. ASSESSORS PARCEL NUMBER
- Y.C.R. YAVAPAI COUNTY RECORDS
- R/W RIGHT OF WAY
- BK. BOOK
- PG. PAGE
- (R) RECORD PER PARCEL NO. 1 DESCRIPTION
- (R1) RECORD PER PARCEL NO. 2 DESCRIPTION
- (R2) RECORD PER 2021-0060288, Y.C.R.
- (M) MEASURED
- SB. SETBACK

AREA TABLE	
LOT 1	6,442 SQ. FT. 0.15 ACRES
LOT 2	5,853 SQ. FT. 0.13 ACRES
LOT 3	5,609 SQ. FT. 0.13 ACRES
LOT 4	8,083 SQ. FT. 0.19 ACRES
LOT 5	5,633 SQ. FT. 0.13 ACRES
LOT 6	9,857 SQ. FT. 0.23 ACRES
TOTAL	41,477 SQ. FT. 0.95 ACRES



CRESTVIEW SUBDIVISION
 PHASE 2
 BK. 36, PG. 41, Y.C.R.
 A.P.N. 406-61-063C
 CRESTVIEW RIDGE HOA

—FOR REVIEW—
 NOT FOR
 CONSTRUCTION
 OR RECORDING



FOUND 3" CITY OF COTTONWOOD
 BRASS CAP IN HANDHOLE
 (DOWN 0.4')

FINAL PLAT OF
 "6 ON SIXTEEN"
 856 S. 16TH STREET, COTTONWOOD, AZ 86326

2122 W. Lone Cactus Drive, Suite 11
 Phoenix, AZ 85027
 623-869-0223 (office) 623-869-0726 (fax)
 www.superiorsurveying.com
 info@superiorsurveying.com



WHEN RECORDED, RETURN TO:

COTTONWOOD 1, LLC
7909 East Pecos Lane
Scottsdale, Arizona 85250
Attn: Daniel Fox

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
6 on Sixteen**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

6 ON SIXTEEN

This Declaration of Covenants, Conditions, and Restrictions for 6 on Sixteen ("**Declaration**") is made this _____ day of October 2023, by Cottonwood 1, LLC, a Wyoming limited liability company (the "**Declarant**").

INTRODUCTION

A. The Declarant is the owner of fee title to the real property described on Exhibit A attached to this Declaration (the "**Initial Covered Property**").

B. The Declarant desires to reserve to the Declarant the right to expand the real property subject to this Declaration by annexing and subjecting to this Declaration all or any part of the Additional Property.

C. By executing and recording this Declaration with the County Recorder of Yavapai County, Arizona, the Declarant intends to impose upon the Project mutually beneficial covenants, conditions, restrictions, and easements to establish a flexible and reasonable procedure for the overall development, administration, maintenance, use and preservation of the Project. The Declarant intends for this Declaration to create equitable servitudes and covenants appurtenant to and running with the Project and which will be binding upon all future Owners of all or any portion of Project and any other Person acquiring any right, title or interest in or to all of any portion of the Project.

D. The Declarant desires to provide for the creation of a nonprofit corporation under the laws of the State of Arizona to administer and maintain, repair and replace the Areas of Association Responsibility and to provide for the levying and collecting of Assessments and other charges by the Association for the purpose, among other things, of paying all costs and expenses incurred or to be incurred by the Association in connection with the maintenance, repair and replacement and administration of the Areas of Association Responsibility and the enforcement of the covenants, conditions and restrictions contained in this Declaration.

ARTICLE 1 **DEFINITIONS**

Unless otherwise defined, the following words and phrases when used in this Declaration shall have the meanings set forth in this Article.

"**Additional Property**" means any real property together with any other real property that is adjacent to any real property that is then subject to this Declaration. Property shall be deemed adjacent if contiguous at any point or if separated only by a street, alley, right-of-way or easement.

"**Affiliate**" means any Person that (either directly or indirectly, through one or more intermediaries) controls, is under common control with or is controlled by, another Person, and

any Person that is a director, trustee, officer, co-venturer, subsidiary, manager, or member of any of the foregoing. For purposes of this definition, the term "control" means the direct or indirect power to direct or cause the direction of an entity's management or policies, whether through the ownership of voting securities, by contract or otherwise.

"Alleged Defect" means any alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the Common Area or any Lot.

"Areas of Association Responsibility" means: (a) all Common Area; (b) all land, and the Improvements situated thereon, located within the boundaries of a Lot or a public right-of-way which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration, or a Supplemental Declaration, or other Recorded document executed by the Declarant or the Association; (c) all land or right-of-way easements which are dedicated to the public, the City or any other governmental body or agency, but which the Association has agreed to maintain with the approval of the governmental body or agency.

"Articles" means the Articles of Incorporation of the Association, as amended from time to time.

"Assessable Lot" means a Lot which is not Exempt Property.

"Assessment" means a Regular Assessment, Special Assessment, Enforcement Assessment or Benefited Property Assessment.

"Assessment Lien" means the lien created and imposed by Article 6.

"Assessment Period" means the period set forth in Section 6.7.

"Association" means 6 on Sixteen Homeowners Association, and its successors and assigns.

"Association Expenses" means the actual and estimated expenses incurred or anticipated to be incurred by or on behalf of the Association, including, but not limited to, any allocations to reserves determined by the Board to be necessary and appropriate, any funds requested by the Design Review Committee, and all other financial liabilities of the Association.

"Association Rules" means the rules adopted by the Board pursuant to Section 5.7.

"Benefited Property Assessment" means an assessment levied against less than all of the Lots pursuant to Section 6.5.

"Benefited Property Assessment Area" means a portion of the Project designated in a Supplemental Declaration as an area containing Limited Common Area or as an area in which the Association will provide Special Services.

"Benefited Property Expenses" means the actual or estimated expenses, including allocations to reserves, incurred or anticipated to be incurred by the Association for the maintenance, repair and replacement of Limited Common Areas or to provide Special Services to the Owners, Lessees and Residents in a Benefited Property Assessment Area.

"Board" or "Board of Directors" means the Board of Directors of the Association.

"Bound Parties" means: (a) the Declarant; (b) any Affiliate of the Declarant; (c) a Builder; (d) the Association; (e) all Lot Owners, Lessees and Residents; and (f) any contractor or subcontractor, architect, engineer, consultant or other Person who performs or furnishes the design, specifications, surveying, planning, supervision, testing, construction or observation of construction of the Common Area or the Lots and who agrees in writing to be bound by the provisions of Article 9.

"Builder" means (a) any Person that is regularly engaged in the business of constructing residences for the purpose of resale or lease in the ordinary course of such Person's business and that has purchased one or more Lots for the purpose of constructing a residence thereon for later sale and has been designated by Declarant as a Builder pursuant to a Recorded instrument, and (b) any land banking entity that has purchased one or more Lots for the purpose of selling the Lots to any Person that is regularly engaged in the business of constructing residences for the purpose of resale or lease in the ordinary course of such Person's business and has been designated by Declarant as a Builder pursuant to a Recorded instrument.

"Bylaws" means the Bylaws of the Association, as amended from time to time.

"City" means the City of Cottonwood, Arizona.

"Claim" means: (a) any claim or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Common Area or the Lots or any other part of the Project, including, without limitation, any claim or cause of action for construction defects with respect to the design and construction of the Common Area or the Lots; or (b) any claim or cause of action against the Declarant or a Builder or their respective employees, agents, directors, members or officers or any Affiliate of the Declarant or any Affiliate of a Builder or their respective employees, agents, directors, members or officers arising out of or in any way related to the development of the Project or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty.

"Collection Costs" means all costs, fees, charges and expenditures including, without limitation, attorneys' fees (whether or not a legal action is filed), court costs, filing fees and recording fees incurred by the Association in collecting and/or enforcing payment of Assessments, monetary penalties, late fees, demand fees, interest or other amounts payable to the Association pursuant to this Declaration.

"Common Area" means all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest, except that Common Area shall not include any Lot the Association acquires by the foreclosure of the Assessment Lien or by any Deed in lieu of foreclosure

"Community Documents" means, collectively, this Declaration, the Articles, the Bylaws, the Association Rules and the Design Guidelines.

“Construction” means any devegetation, excavation or grading work or the construction, erection or installation of any Improvement on a Lot.

"Design Guidelines" means the procedures, standards and guidelines adopted by the Design Review Committee pursuant to Section 3.1, as amended or supplemented from time to time.

"Declarant" means Cottonwood 1, LLC, a Wyoming limited liability company, and any Person to whom it may expressly assign any or all of its rights under this Declaration by a Recorded instrument. At any time when there is more than one Declarant, (a) all rights, exemptions, and privileges granted to Declarant that do not require an approval or vote of the Declarant for exercise shall be available to each Declarant, (b) all rights, exemptions, and privileges granted to Declarant that may be exercised as to a specific Lot or portion of the Property may be exercised only by the Declarant that owns such Lot or portion of the Property, and (c) the following rights and privileges of the Declarant shall require the written consent of the Declarants owning a majority of all Lots then owned by all Declarants: (i) annexation of Additional Property into the Declaration, pursuant to Section 2.2(a), (ii) execution and recordation of Supplemental Declarations, pursuant to Section 2.3(a), (iii) approval and execution of an amendment to a Supplemental Declaration, pursuant to Section 2.3(b), (iv) withdrawal of property from the Declaration, pursuant to Section 2.4, (v) changes or modifications to the development plan for the Project, pursuant to Section 2.6, (vi) approval of the matters described in Section 2.7, (vii) determination of the number of members on the Design Review Committee and the appointment and removal of the members of the Design Review Committee, pursuant to Section 3.1(a), (viii) grant, assignment and reservation of any easements, rights-of-way and licenses, pursuant to Sections 4.2 and 4.3, (ix) appointment and removal of the members of the Board, pursuant to Section 5.1(a), (x) approval of any encumbrance or conveyance of Common Area, pursuant to Section 5.9, (xi) approval of the termination of the Declaration, pursuant to Section 11.2, (xii) approval of an amendment to the Declaration, pursuant to Section 11.3(a), (xiii) amendment of the Declaration, pursuant to Section 11.3(b), and (xiv) any other approval or action required or permitted by the “Declarant” under this Declaration and not described in (a) or (b) above. No successor Declarant shall have any liability resulting from any actions or inactions of any preceding Declarant unless expressly assumed by the successive Declarant, in which event the preceding Declarant shall be released from liability. If there is more than one Declarant, the obligations and liabilities of each Declarant under this Declaration shall be limited to the obligations that relate to the Lots within the Project then owned by such Declarant at the time liabilities or obligations arose, such liability shall not be joint or joint and several, and a Declarant shall not be liable for the actions or inactions of another Declarant.

"Declarant Control Period" means the period commencing upon the Recording of this Declaration and ending on the earlier of (a) the date that neither the Declarant nor any Builder owns or holds an option to purchase any part of the Property or any part of the Additional Property, or (b) the date that is twenty (20) years after the date on which this Declaration is Recorded, or (c) the date on which the Declarant notifies the Association in writing that the Declarant is terminating the Declarant Control Period.

"Declaration" means this Declaration of Covenants, Conditions, and Restrictions for 6 on Sixteen, as amended from time to time.

"Design Review Committee" means the committee created pursuant to Article 3.

"Eligible Votes" means the total votes in the Association, except for any votes allocated to Owners whose voting rights have been suspended by the Association.

"Enforcement Assessment" means an assessment levied pursuant to Section 6.4.

"Exempt Property" means: (a) all Lots owned by the Declarant or an Affiliate of Declarant, except as otherwise provided in Section 6.6; and (b) all land and improvements owned by or dedicated to the City or other public or governmental agency or authority for so long as the public or governmental authority agency or authority is the owner thereof.

"First Mortgage" means any mortgage or Deed of trust on a Lot which has priority over all other mortgages and Deeds of trust on the same Lot.

"First Mortgagee" means the holder or beneficiary of any First Mortgage.

"Improvement" means: (a) a Residence or other building; (b) a fence or wall; (c) a swimming pool, tennis court, basketball goal, backboard or apparatus or playground equipment; (d) a road, driveway or parking area; (e) a tree, plant, shrub, grass or other landscaping improvement of any type and kind; (f) a statuary, fountain, artistic work, craft work, figurine or ornamentation of any type or kind; and (g) any other structure of any type, kind or nature.

"Lessee" means the lessee or tenant under a lease, oral or written, of any Lot including an assignee of the lessee's or tenant's interest under a lease.

"Limited Common Area" means real property, and the Improvements situated thereon, which are part of the Common Area and which are designated in a Supplemental Declaration as being for the sole or primary benefit of the Owners, Lessees and Residents of a particular part of the Project. Limited Common Areas may include, without limitation, private streets, access gates, guardhouses, drainage or retention areas or landscape medians.

"Lot" means a parcel of land within the Project, whether improved or unimproved, intended for independent ownership and use and designated as a "lot" on a Plat and any Residence, building, structure or other Improvements situated thereon.

"Maintenance" means care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

"Maintenance Standard" means the standard of Maintenance of Improvements situated on Lots as established from time to time by the Board or, in the absence of any standard established by the Board, the standard of Maintenance of Improvements situated on Lots generally prevailing throughout the Project.

"Member" means a Person who is a member of the Association.

"Modification" means any addition, alteration, repair, change or other work which in any way alters the exterior appearance of any Improvement located on a Lot.

"Motor Vehicle" means a car, van, sport utility vehicle, bus, truck, recreational vehicle, motor home, motorcycle, all-terrain vehicle, utility vehicle, pickup truck or other motor vehicle.

"Neighborhood Association" means any homeowners association, condominium association or similar association formed or organized pursuant to a Neighborhood Declaration.

"Neighborhood Common Area" means all real property, and all Improvements located thereon, owned or leased by a Neighborhood Association for the common use and benefit of the members of the Neighborhood Association.

"Neighborhood Declaration" means any Declaration of Covenants, Conditions and Restrictions, or similar instrument (other than this Declaration or a Supplemental Declaration) recorded against any part of the Project.

"Owner" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation or a Lessee. In the case of a Lot subject to a Recorded option, the optionor shall be deemed to be the Owner. Owner shall include a purchaser under a Recorded contract for the conveyance of real property subject to the provisions of Arizona Revised Statutes. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots subject to a Deed of trust pursuant to Arizona Revised Statutes, the Trustor shall be deemed to be the Owner. In the case of Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

"Owner's Agent" means any employee, agent, contractor or subcontractor acting on behalf of or pursuant to a contract with an Owner.

"Permitted Motor Vehicle" means a car, mini-van, sport utility vehicle, pick-up truck, motorcycle, jeep or station wagon, except for any such vehicle that is designed or used for carrying persons, merchandise, supplies or equipment for commercial purposes.

"Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, limited liability company, government, governmental subdivision or agency, or other legal or commercial entity.

"Plat" means any subdivision plat recorded against all or any part of the Project.

"Property" or "Project" means the real property described on Exhibit A attached to this Declaration, together with all Improvements located thereon, and any part of the Additional Property, and all Improvements situated thereon, which is annexed and subjected to this Declaration pursuant to Section 2.2.

"Purchaser" means any Person (other than the Declarant or a Builder) who becomes the Owner of a Lot, except for: (a) a Person who purchases a Lot and then leases it to the Declarant or a Builder for use as a model in connection with the sale or lease of other Lots; or (b) a Person who, in addition to purchasing a Lot, is assigned any or all of the rights of the Declarant under this Declaration.

"Recording" means placing an instrument of public record in the office of the County Recorder of Yavapai County, Arizona, and **"Recorded"** means having been so placed of public record.

"Regular Assessment" means any assessment levied and assessed pursuant to Section 6.2.

"Residence" means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

"Resident" means each natural person occupying or residing in any Residence.

"Special Assessment" means any assessment levied and assessed pursuant to Section 6.3.

"Special Services" means services designated in a Supplemental Declaration as being for the sole or primary benefit of the Owners, Lessees and Residents of a particular part of the Project. Special Services may include, without limitation, guard services (including the maintenance of guard gates or guardhouses) and landscape maintenance services for landscaping situated on Lots.

"Supplemental Declaration" means a Supplemental Declaration executed by the Declarant and Recorded pursuant to Section 2.3.

"Visible From Neighboring Property" means, with respect to any given Improvement, that such Improvement is or would be visible to a natural person six (6) feet tall, standing at ground level on any part of any Lot, Common Area, Neighborhood Common Area, any public street or other real property within or adjacent to the Project.

ARTICLE 2

PROPERTY AND PERSONS BOUND BY DECLARATION; ESTABLISHMENT OF GENERAL PLAN OF DEVELOPMENT

2.1 Purpose and Binding Effect. Declarant intends by this Declaration to impose upon the Project covenants, conditions, restrictions and easements to create a general plan of development for the Project and to provide a flexible and reasonable procedure for the administration, maintenance, preservation, use and enjoyment of the Project. The Declarant declares that all of the Project shall be held, sold, used and conveyed subject to the easements, restrictions, conditions and covenants set forth in this Declaration which are for the purpose of protecting the value, desirability and appearance of the Project. Declarant further declares that all of the easements, restrictions, conditions and covenants in this Declaration shall run with the Project and shall be binding upon and inure to the benefit of the Declarant, the Builders and all Owners, Lessees and Residents and all other Persons having or acquiring any right, title or interest in the Project or any part thereof, their heirs, successors, successors in title and assigns. Each Person who acquires any right, title or interest in the Project, or any part thereof, agrees to abide by all of the provisions of the Community Documents. This Declaration shall be binding upon and shall be for the benefit of and enforceable by the Association.

2.2 Annexation of Additional Property.

(a) So long as either: (i) the Declarant, (ii) Cottonwood 1, LLC a Wyoming corporation (“**Cottonwood 1**”) or (iii) any Affiliate of the Declarant or Cottonwood 1 owns any Lot or any part of the Additional Property, the Declarant shall have the right to annex and subject to this Declaration all or any portion of the Additional Property. The annexation of all or any portion of the Additional Property shall be effected by the Declarant Recording a Declaration of Annexation setting forth the legal description of the Additional Property being annexed and stating that such portion of the Additional Property is annexed and subjected to this Declaration. If the portion of the Additional Property being annexed is not owned by the Declarant, the Declaration of Annexation must be signed by the Owner of fee title to the portion of the Additional Property being annexed.

(b) The Additional Property may be annexed as a whole, at one time or in one or more portions at different times, or it may never be annexed, and there are no limitations upon the order of annexation or the boundaries thereof. The Additional Property annexed by the Declarant pursuant to this Section need not be contiguous with other property already subject to this Declaration, and the exercise of the right of annexation as to any portion of the Additional Property shall not bar the further exercise of the right of annexation as to any other portion of the Additional Property. The Declarant makes no assurances as to which, if any, part of the Additional Property will be annexed.

(c) After neither the Declarant nor any Affiliate of the Declarant owns any Lot or any part of the Additional Property, the Association may annex and subject all or any part of the Additional Property to this Declaration by executing and Recording a Declaration of Annexation containing the information required for a Declaration of Annexation Recorded by the Declarant pursuant to this Section, provided the annexation is approved by Owners holding at least sixty-seven percent (67%) of the Eligible Votes, and the Declaration of Annexation is signed by the owners of fee title to the portion of the Additional Property being annexed.

2.3 Supplemental Declarations.

(a) The Declarant shall have the right to record one or more Supplemental Declarations for various parts of the Project. If the property covered by the Supplemental Declaration is not owned by the Declarant, then the Supplemental Declaration must also be signed by the owners of fee title to the property subject to the Supplemental Declaration. A Supplemental Declaration may designate Common Areas or other Areas of Association Responsibility and impose such covenants, conditions, restrictions and easements as the Declarant deems appropriate for the property subject to the Supplemental Declaration. A Supplemental Declaration may also designate Limited Common Areas, and Special Services. If a Supplemental Declaration designates any Limited Common Areas or Special Services, the Supplemental Declaration shall also designate the Benefited Property Assessment Area containing the Lots which will be subject to a Benefited Property Assessment.

(b) A Supplemental Declaration may only be amended by a written instrument executed by: (1) the Owners representing more than sixty-seven percent (67%) of the votes in the Association held by the Owners of all of the Lots subject to the Supplemental Declaration; (2) the Association; and (3) the Declarant so long as the Declarant or an Affiliate of the Declarant owns any Lot or any part of the Additional Property. After the expiration of the Declarant Control

Period, if an amendment to a Supplemental Declaration adds, deletes or changes any Limited Common Areas or Special Services or any Benefited Property Assessment Area, then such amendment must also be approved by at least sixty-seven percent (67%) of the votes held by Owners of Lots within such Benefited Property Assessment Area or by such greater percentage of votes as may be required by the Supplemental Declaration, and, if the proposed amendment will convert any Limited Common Areas to Common Areas maintained by the Association without a Benefited Property Assessment, by the Class A Members holding more than fifty-percent (50%) of the votes allocated to Lots owned by the Class A Members and located outside of the area formerly subject to the Benefited Property Assessment. Any amendment to a Supplemental Declaration approved in accordance with this Section shall be executed by the Association and shall be effective only upon the Recording of the Supplemental Declaration.

2.4 Withdrawal of Property. The Declarant shall have the right to withdraw property from this Declaration without the consent of any other Owner or Person. The withdrawal of all or any portion of the Project from this Declaration shall be affected by the Declarant Recording a Declaration of Withdrawal setting forth the legal description of the property being withdrawn. If the Declarant does not own the property to be withdrawn, then the Declaration of Withdrawal must be signed by the owners of fee title to the property to be withdrawn. Upon the withdrawal of any property from the Property pursuant to this Section, such property shall no longer be subject to any of the covenants, conditions and restrictions set forth in the Community Documents.

2.5 Disclaimer of Representations and Implied Covenants. The Declarant and Builders make no representation or warranty that the Project will be developed in accordance with the development plan for the Project approved by the City, as such development plan exists as of the Recording of this Declaration. Each Owner, Lessee, Resident and other Person acquiring any Lot or other property in the Project acknowledges that the development plan for the Project may be amended from time to time with the consent of the City. The Declarant and Builders make no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of the Community Documents or as to the compliance of any provision of the Community Documents with public laws, ordinances, or regulations applicable to the Project. Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or salesmen shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any property subject to this Declaration or any part of the Additional Property.

2.6 Development Plan. Notwithstanding any other provision of this Declaration to the contrary, the Declarant, with the approval of the City, but without obtaining the consent of any other Owner or other Person, shall have the right to make changes or modifications to the development plan for the Project previously approved by the City in any way which the Declarant desires including, but not limited to, changing the density of all or any portion of the Project owned by the Declarant or changing the nature or extent of the uses to which the Project, or any part thereof, may be devoted.

2.7 Further Subdivision, Property Restrictions, Rezoning and Timeshares. Without the prior written approval of the Declarant and the Association, no Owner other than the Declarant or an Affiliate of the Declarant shall do any of the following: (a) further subdivide a Lot or separate a Lot into smaller lots; (b) convey or transfer less than all of a Lot; (c) replat a Lot or combine a Lot with other Lot or Lots; (d) record covenants, conditions, restrictions or easements against any Lot; (e) file any application for zoning, rezoning, variances or use permits pertaining

to any Lot with the City; or (f) subject or use a Lot for any timesharing, cooperative, weekly, monthly or any other type of revolving or periodic occupancy by multiple owners, cooperators, licensees or timesharing participants.

2.8 Conveyance of Common Areas. Any area designated by a Plat as “common area” shall be conveyed to the Association, and the Association shall accept such conveyance, upon the completion of the improvements to such common area in accordance with the approved plans. Such common area shall be conveyed to the Association, free of all monetary encumbrances (including mechanics’ and materialmen’s liens), except current real and personal property taxes and other easements, conditions, reservations and restrictions then of record, including without limitation, this Declaration. The foregoing shall not preclude the Association from accepting fee title to any common area tracts prior the completion of any improvements.

ARTICLE 3 **ARCHITECTURAL CONTROL**

3.1 Design Review Committee.

(a) A Design Review Committee will be established to perform the duties and exercise the power and authority imposed or granted to the Design Review Committee by the Community Documents. Until the expiration of the Declarant Control Period, the Declarant shall have the sole right to determine the number of members (up to a maximum of 5 members) on the Design Review Committee and to appoint and remove the members of the Design Review Committee. After the expiration of the Declarant Control Period, the Board shall determine the number of members (up to a maximum of 5 members) of the Design Review Committee, the members of the Design Review Committee shall be appointed and removed by the Board, and the Design Review Committee shall not include more than one member who is not an Owner residing within the Project at the time of appointment to the Design Review Committee. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Design Review Committee, and in that event the Declarant may require that until the expiration of the Declarant Control Period, specified actions of the Design Review Committee, as described in a Recorded instrument executed by the Declarant, must be approved by the Declarant before they become effective. All approvals and disapprovals of the matters by the Design Review Committee must be in writing.

(b) The Design Review Committee may adopt, amend and repeal architectural guidelines, standards and procedures to be used in rendering its decisions. The Design Guidelines may include, without limitation, provisions regarding: (1) the size and height of Residences, buildings or other improvements; (2) architectural style or design; (3) placement of Residences and other buildings including establishing building envelopes; (4) landscaping design, content and conformance with the character of the Project and permitted and prohibited plants, trees or bushes; (5) requirements concerning exterior color schemes, exterior finishes and materials; (6) signage; (7) perimeter and screen wall design and appearance; (8) time periods for commencement and completion of any approved Construction or Modification; and (9) rules and regulations governing construction activities; and (10) standards and procedures for submissions and approval of plans. After the expiration of the Declarant Control Period, any repeal or amendment of the Design Guidelines must be approved by the Board. Any approval by the Design Review Committee of standard plans for use by a Builder shall apply to all Lots on which such Builder desires to use

such plans and shall not be subject to subsequent rescission or modification without the Builder's consent.

3.2 Approval Required.

(a) No Construction or Modification shall be made or done without the prior written approval of the Design Review Committee; provided, however, that the provisions of this Article do not apply to, and approval of the Design Review Committee shall not be required for, any Construction or Modification or any other work made by, or on behalf of, the Declarant or any Affiliate of the Declarant. In addition, the provisions of this Section 3.2 do not apply to, and approval of the Design Review Committee shall not be required for, any Construction or Modification or any other work made by, or on behalf of, a Builder pursuant to plans approved by the Declarant.

(b) The Design Review Committee may exempt certain Construction or Modification from the application and approval requirements of this Article 3, provided such Construction or Modification is undertaken in strict compliance with the requirements of such exemption. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild an Improvement in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of a Residence or other building without approval so long as such activity does not affect the exterior appearance of the Residence or building. In addition, any Owner may undertake routine maintenance, trimming, mowing, etc. of any trees, plants, shrubs, grass or other landscaping improvement of any type and kind, and of any a statuary, fountain, artistic work, craft work, figurine or ornamentation of any type or kind, placed on such Owner's Lot by Owner in compliance with the Community Documents without being required to obtain approval of the Design Review Committee.

(c) Any Owner desiring approval of the Design Review Committee for any Construction or Modification shall submit to the Design Review Committee a written request for approval specifying in detail the nature and extent of the Construction or Modification which the Owner desires to perform. The request for approval must be accompanied by plans or specifications showing the nature, kind, color, shape, height, materials and location of the Improvements and such other information as may be required by the Design Guidelines. Any Owner requesting the approval of the Design Review Committee shall also submit to the Design Review Committee any additional information, plans and specifications which the Design Review Committee may request.

(d) In the event that the Design Review Committee fails to approve or disapprove an application for approval within forty-five (45) days after the complete application, together with any fee payable pursuant to Section 3.7 and all supporting information, plans and specifications requested by the Design Review Committee, have been received by the Design Review Committee, the application will be deemed disapproved and Owner shall resubmit in accordance with the terms of this Article 3. The approval by the Design Review Committee of any Construction or Modification shall not be deemed a waiver of the Design Review Committee's right to withhold approval of any Construction or Modification subsequently submitted for approval.

(e) The Design Review Committee may delegate to a Neighborhood Association the authority to review and approve or disapprove any Construction or Modification within the property subject to the jurisdiction of the Neighborhood Association. Any delegation by the Design Review Committee of its authority or power under this Article 3 shall be subject to such conditions and limitations as may be imposed by the Design Review Committee and may be revoked at any time by the Design Review Committee by written notice to the Neighborhood Association to whom the power or authority had been delegated.

3.3 Review of Plans.

(a) In reviewing plans and specifications for any Construction or Modification, the Design Review Committee may consider any and all factors which the Design Review Committee, in its sole and absolute discretion, determines to be relevant including, but not limited to: (1) the harmony of the proposed Improvements with existing Improvements in the Project or with Improvements previously approved by the Design Review Committee but not yet constructed; (2) the location of the proposed Improvements in relation to existing topography, finished grade elevations, roads, Common Area and other structures; (3) the exterior design, finish materials and color of the proposed Improvements; and (4) compliance of the proposed Improvements with this Declaration and the Design Guidelines. The Design Review Committee may disapprove plans and specifications for any Construction or Modification even though the plans and specifications may be in substantial compliance with this Declaration and the Design Guidelines if the Design Review Committee, determines that the proposed Construction or Modification, or some aspect or portion thereof, is undesirable or unattractive.

(b) Decisions of the Design Review Committee may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and attractiveness of certain Improvements. Each Owner agrees that the decision of the Design Review Committee shall be final on all matters submitted to it pursuant to this Declaration, subject to an appeal of the decision to the Board as provided in this Section.

(c) The approval required of the Design Review Committee pursuant to this Article 3 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

(d) All Improvements constructed on Lots shall be of new construction, and no buildings or other structures shall be removed from other locations onto any Lot.

(e) After the expiration of the Declarant Control Period, any Owner aggrieved by a decision of the Design Review Committee may appeal the Design Review Committee's decision to the Board of Directors. Any appeal to the Board of Directors shall be made in accordance with such procedures as may be adopted by the Board of Directors.

3.4 Variances. The Design Review Committee may grant variances from compliance with any provision of the Design Guidelines in circumstances where the design meets the intent of the provision sought to be varied and where granting of the variance would enhance design innovation and excellence, or when circumstances such as topography, natural obstructions, economic or procedural hardship, or aesthetic or environmental considerations so require, and the Design Review Committee determines, that the objective of the particular requirement can still be

achieved. No variance approved by the Design Review Committee shall be effective until the variance is set forth in a written document signed by or on behalf of the Design Review Committee. No variance shall amend or modify any provision of this Declaration or prevent the Design Review Committee from denying a variance in other circumstances. For purpose of this Section, the inability to obtain approval of any governmental agency or the issuance of any license or permit, or to comply with the terms of any financing shall not constitute an economic or procedural hardship.

3.5 Construction of Improvements. Upon receipt of approval from the Design Review Committee for any Construction or Modification, the Owner who had requested such approval shall proceed with the Construction or Modification approved by the Design Review Committee as soon as practicable and within such time as may be prescribed by the Design Review Committee. After commencement of the approved construction or modification, the Owner shall diligently pursue such Construction or Modification so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Design Review Committee.

3.6 No Changes Without Approval. Any Construction or Modification approved by the Design Review Committee must be done or performed in accordance with the plans and specifications approved by the Design Review Committee. No change, deletion or addition to the plans and specifications approved by the Design Review Committee may be made without the prior written approval of the Design Review Committee. The Design Review Committee shall not prohibit a Construction or Modification that is required by applicable law, provided, that the Design Review Committee may impose reasonable requirements (including reasonable alternatives to the proposed Construction or Modification) for the manner in which such legal requirement is satisfied.

3.7 Review Fee. The Design Review Committee shall have the right to charge a fee for reviewing requests for approval of any Construction or Modification, which fee shall be payable by the Owner at the time the application for approval is submitted to the Design Review Committee. The fee charged by the Design Review Committee may include the actual or estimated fees or costs incurred or anticipated to be incurred by the Design Review Committee in processing the application and in consulting with, or having the application reviewed by, architects, engineers or other professionals. The Design Review Committee may retain architects, engineers or other persons as deemed necessary to review applications. The Builders shall not be required to pay a design review fee for any Construction or Modification.

3.8 No Warranty; Limitation of Liability. The approval by the Design Review Committee of any Construction or Modification shall not be deemed a warranty or representation by the Design Review Committee as to the quality of such Construction or Modification or that such Construction or Modification conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation. The Design Review Committee shall not be liable or bear any responsibility for any of the following: (a) ensuring the structural integrity, quality, soundness or workmanship of any Construction or Modification approved by the Design Review Committee, (b) ensuring compliance with building codes or other governmental requirements; or (c) ensuring that all Improvements are of comparable quality, value, size or similar design.

3.9 Improvements to Areas of Association Responsibility. If plans and specifications submitted to the Design Review Committee pertain to an Improvement which is

within an Area of Association Responsibility so that the Association is responsible for the maintenance, repair and replacement of such Improvement, the Design Review Committee may condition its approval of the plans and specifications for the proposed Construction or Modification on the agreement of the Owner to reimburse the Association for the future cost of the repair, maintenance or replacement of such Improvement. This Section shall not apply to the initial Improvements constructed by Builders within the Project.

3.10 Compliance Deposit. The Design Review Committee shall have the right, on a case-by-case basis and in its sole discretion, to condition the approval by the Design Review Committee of plans submitted by an Owner, upon the receipt by Design Review Committee of a deposit (the "**Compliance Deposit**") to secure the performance of the Owner's obligations under Section 7.7 to clean up and/or remove equipment, building materials, dirt, debris and similar materials, and to protect from damage and repair any damage to improvements sustained, in connection with construction activities by or for the benefit of Owner and to ensure that the Construction or Modification will be made in accordance with the plans and specifications approved by the Design Review Committee. The Compliance Deposit shall be in such amount as may reasonably be determined by the Design Review Committee. The Design Review Committee shall not require a Compliance Deposit from a Builder. The Design Review Committee may apply the Compliance Deposit toward payment of any of the following: (a) any costs incurred by the Design Review Committee with respect to any construction cleanup or removal required and/or the repair or replacement of any damaged or destroyed Improvements, the cost for which the Owner is responsible under Section 7.7; (b) any costs incurred by the Design Review Committee in connection with the inspection of the Construction or Modification to ascertain whether the Construction or Modification is being made in accordance with the approved plans; and (c) any attorney fees, court costs and other costs (including, but not limited to, costs incurred to correct the violation) incurred by the Design Review Committee or the Association in connection with any violation of the Community Documents related directly or indirectly to the Construction or Modification. Following receipt by the Design Review Committee of a written request from an Owner delivered subsequent to the completion of the Construction or Modification, and following confirmation by the Design Review Committee that any necessary cleanup work or damages attributable to the Owner or the Owner's Agent has been properly performed, repaired or replaced, as applicable, that all costs attributable to the Owner in connection therewith have been paid in full and that the Construction or Modification was made in accordance with the plans and specifications approved by the Design Review Committee, the Design Review Committee shall return to such Owner the unapplied portion of the Owner's Compliance Deposit. The liability of an Owner to promptly cleanup such Owner's Lot and any surrounding area of the Project and to repair or replace any improvements damaged or destroyed by an Owner or the Owner's Agent shall not be limited to the amount of such Owner's Compliance Deposit, and in no event shall the posting of a Compliance Deposit limit or prejudice the right of the Design Review Committee or the Association to pursue any available legal remedies against the Owner or any of Owner's Agents causing the need for cleanup or causing the damage or destruction.

ARTICLE 4
EASEMENTS AND DEVELOPMENT RIGHTS

4.1 Easements for Use of Common Area.

(a) Every Owner, Lessee and Resident and their guests shall have a right and easement of enjoyment in and to the Common Area, which right shall be appurtenant to and shall pass with the title to every Lot, subject to:

(1) The right of the Association, subject to Section 5.9, to dedicate, convey, transfer, lease or encumber the Common Area; provided, however, that if access to a Lot is over any part of the Common Area, any conveyance, lease or encumbrance of such Common Area shall be subject to an easement for ingress and egress in favor of the Owner, Lessees and Residents of the Lot and their guests and invitees;

(2) The right of the Board to adopt rules, regulations or policies regulating the use of the Common Area including rules, regulations and policies limiting the number of guests who may use the Common Area and restricting or prohibiting access to such portions of the Common Area not intended for use by the Owners, Lessees or Residents, including without limitation landscaped areas and areas designated for use as natural area open space;

(3) The right of the Association to suspend the right of an Owner and such Owner's family, tenants and guests to use the Common Area (other than the right of an Owner and such Owner's family, tenants and guests to use any streets which are part of the Common Area for ingress or egress to the Owner's Lot) if such Owner is more than forty-five (45) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner has violated any other provisions of the Community Documents (a “**Non-Monetary Violation**”) and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation, provided, however, that if a Non-Monetary Violation cannot be cured within such fifteen (15) day period, the Owner shall have an additional reasonable period of time, not to exceed forty-five (45) days, within which to cure the Non-Monetary Violation on condition that such Owner has begun such cure within said fifteen (15) day period and thereafter works diligently to complete the cure;

(4) The rights and easements reserved by or granted to the Declarant, or a Builder by the Community Documents;

(5) The right of the Association to rent or lease any portion of the Common Area on a short-term basis to an Owner or

Resident for the exclusive use of such Owner or Residents and their guests and invitees;

(6) The right of the Association to charge reasonable admission or other fees for the use of any recreational facility or amenity situated on the Common Area;

(7) The right of the Association to permit the use of any recreational facility or amenity situated on the Common Area by Persons other than Owners or Residents and their guests upon payment of such fees as may be established by the Board; and

(8) The rights and easements, if any, reserved or granted to the Declarant, a Builder or any other Person in the Deed conveying the Common Area to the Association.

(b) The right of easement and enjoyment of the Common Area may not be transferred or assigned except upon the conveyance or transfer of the Lot to which such right is appurtenant.

(c) Notwithstanding any other provision of this Section to the contrary, the right to use and enjoy any Limited Common Area shall only extend to the Owners and Residents designated in the Supplemental Declaration establishing such Limited Common Area as the Owners and Residents solely or primarily benefited by the Limited Common Area.

4.2 Utility and Development Easements. A non-exclusive, perpetual blanket easement is hereby granted over, under and through the Common Area and any public utility easements shown on any Plat executed by a Declarant or approved by the Declarant or the Association for any of the following purposes: (a) installing, constructing, operating, maintaining, repairing or replacing equipment used to provide to any portion of the Project or adjacent land any utilities (including, without limitation, water, sewer, drainage, gas, electricity, telephone, digital and other data transmission service and television service), whether public or private; and (b) install, construct, operate, maintain, repair and replace such equipment; and (c) access on and through the Common area to each lot for emergency vehicle access. Such easement is hereby granted to any Person providing such utilities or installing, constructing, maintaining, repairing or replacing equipment related thereto. Any pipes, conduits, lines, wires, transformers and any other apparatus necessary for the provision or metering of any utility shall be installed or relocated only where permitted by the Declarant or the Design Review Committee or, where contemplated on any site plan approved by the Declarant or the Design Review Committee. Equipment used to provide or meter such utilities or services may be installed above ground during periods of construction if approved by the Declarant or the Design Review Committee. The Person providing a service or installing a utility pursuant to this easement shall install, construct, maintain, repair or replace the equipment used to provide or meter the utility as promptly and expeditiously as possible, and shall restore the surface of the land and the surrounding vegetation and improvements to their original condition as soon as possible.

4.3 Rights and Easements to Facilitate Development.

(a) The Declarant hereby reserves to itself and its successors and assigns a non-exclusive blanket easement over and through the Project for all purposes reasonably related to the completion of Improvements in the Project.

(b) The Declarant hereby reserves to itself, its successors and assigns the right and easement to do any of the following: (1) use any Lots owned or leased by the Declarant, any other Lot with written consent of the Owner thereof, or any portion of the Common Area as models, management offices, sales offices, a visitors' center, construction offices, customer service offices or sales office or model home parking areas; and (2) install and maintain on the Common Area, any Lot owned or leased by the Declarant or any other Lot with the consent of the Owner thereof, such marketing or promotional flags and flag poles and such marketing, promotional, identification, direction or other signs which the Declarant deems necessary for the development, sale or lease of Lots in the Project. The Declarant shall have the right to grant and reserve easements, rights-of-way and licenses over and through the Common Area for the purposes set forth in this Section or for any other purpose necessary or desirable for the orderly development of the Project. The Declarant may make any dedications and grant any easements, rights-of-way and licenses required by any government or governmental agency over and through all or any portion of the Common Area.

(c) Any and all conveyances made to the Association or any Owner shall be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants. The easements and rights granted or reserved to the Declarant in this Declaration shall not terminate or merge and shall continue to run with the land, notwithstanding the common law doctrine of merger and the common ownership of all of Project by the Declarant. Upon written request of the Declarant, the Association and each Owner shall from time to time sign, acknowledge and deliver to the Declarant such further assurances of these reservations of rights and easements as may be requested.

(d) The Declarant hereby grants to the Builder and the Builder's agents, employees and contractors the right and easement to do any of the following: (1) use any Lots owned or leased by the Builder, any other Lot (with written consent of the Owner thereof) or any portion of the Common Area (with the prior written consent of Declarant) as models, management offices, sales offices, a visitors' center, construction offices, customer service offices or sales office or model home parking areas; and (2) install and maintain on the Common Area (with the prior written consent of the Declarant), any Lot owned or leased by the Builder or any other Lot (with the consent of the Owner thereof), such marketing or promotional flags and flag poles and such marketing, promotional, identification, direction or other signs which the Builder deems necessary for the development, sale or lease of Lots in the Project.

(e) In the event of any conflict or inconsistency between this Section and any other provision of the Community Documents, this Section shall prevail.

4.4 Easement for Private Street Maintenance, Emergency Access and Enforcement. The Association and its directors, officers, agents, and employees, and the Design Review Committee and its directors, officers, agents and employees are hereby granted an easement and right of access over and through any Lots (excluding the interior of any Residence) for the following purposes: (a) the exercise and discharge of their respective powers and

responsibilities under the Community Documents; (b) making inspections in order to verify that all Improvements on the Lot have been constructed in accordance with the plans and specifications for such Improvements approved by the Design Review Committee and that all Improvements are being properly maintained as required by the Community Documents; (c) correcting any condition originating in a Lot or in any Common Area threatening another Lot, the Common Area or any Neighborhood Common Area; (d) performing installations or Maintenance of utilities, landscaping or other Improvements located on Areas of Association Responsibility situated within the boundaries of the Lots; (e) correcting any condition which violates the Community Documents; and (f) **provisions for emergency vehicle access on and through each lot within the Common Area.**

4.5 Easements for Encroachments. If any Improvement on any Lot, Common Area or Neighborhood Common Area now or hereafter encroaches on any other property by reason of the original construction thereof, deviations within normal construction tolerances in the Maintenance of any Improvement or the settling or shifting of any land or Improvement, an easement is hereby granted to the extent of any such encroachment for the period of time the encroachment exists. The Owner of the encroaching Improvement shall also have an easement for the limited purpose of Maintenance of the encroaching Improvement. This easement does not relieve any Owner or any other Person from liability for such Owner's or other Person's gross negligence or willful misconduct.

ARTICLE 5 **THE ASSOCIATION**

5.1 Formation and Powers of the Association.

(a) The Association shall be an Arizona nonprofit corporation. The Association shall have all of the common law and statutory powers conferred upon nonprofit corporations under Arizona law and all powers necessary or desirable to do any of the following: (1) perform the Association's duties and obligations under the Community Documents or imposed by law; (2) exercise the rights and powers of the Association set forth in the Community Documents; and (3) foster and promote the common good and general welfare of the Project, the Owners, Residents and Lessees, and the surrounding community. The Association may exercise any right or privilege given to the Association expressly by the Community Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Community Documents or reasonably necessary to effectuate any such right or privilege. The Association shall be managed by a Board of Directors. Until the expiration of the Declarant Control Period, the Declarant shall have the right to appoint and remove the members of the Board. After the expiration of the Declarant Control Period, the members of the Board shall be elected by the Owners in accordance with the Articles and Bylaws, and the Board shall not include more than one director who is not an Owner residing within the Project at the time of their election to the Board. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Board, and in that event the Declarant may require that until the expiration of the Declarant Control Period, specified actions of the Board, as described in a Recorded instrument executed by the Declarant, must be approved by the Declarant before they become effective. The Association shall not be dissolved unless another entity has agreed to assume the operation and maintenance responsibilities of the Association under the Community Documents.

(b) The Association may create profit or nonprofit subsidiaries which may be tax-exempt organizations and delegate to such subsidiaries portions of the powers and authority of

the Association under the Community Documents. The Association may engage in activities to benefit persons other than Owners, Lessees and Residents and may operate, manage and maintain property not owned by the Association (including, without limitation, property dedicated to public use) if the Association determines in its discretion that such action confers some benefit upon the Project.

5.2 Authorized Community Activities, Services and Programs.

(a) The Association may organize, fund and administer community-building activities, services and programs as the Association deems necessary, desirable or appropriate. Examples of such activities, services and programs include, but are not limited to, the following:

- (1) Operation and management of the Areas of Association Responsibility;
- (2) Primary and adult education programs;
- (3) Recreation and social programs;
- (4) Activities designed to promote compliance with the Community Documents through education and communication;
- (5) Public relations activities on behalf the Project;
- (6) Cultural, arts, environmental and wellness programs;
- (7) Community service activities for the benefit of Owners, Lessees or Residents of the Project and the surrounding community;
- (8) Community internet and intranet sites;
- (9) Charter clubs and other volunteer organizations and activities; and
- (10) Other services, activities and programs which enhance the sense of community in the Project.

(b) Nothing in this Section shall be construed as a representation by the Declarant or the Association as to what, if any, activities, services and programs will be provided by the Association. In addition, the Association may modify or cancel existing activities, services and programs in its discretion. Nonuse of any activities, services or programs offered by the Association shall not exempt any Owner from the obligation to pay Assessments.

5.3 Relationship with Other Entities. The Association may enter into cooperative agreements and expend funds for facilities, services and activities which benefit the Project and the surrounding community. The Association may provide, or provide for, such services and facilities for all of the Owners, Lessees and Residents and their Lots, and the Association is authorized to enter into and terminate contracts or agreements with other entities, including the Declarant or any Affiliate of the Declarant, to provide such services and facilities. The Association

may charge use or service fees for any such services and facilities provided, but may also include all or a portion of the cost thereof in the Association's budget as an Association Expense and assess it as part of the Regular Assessment if the services and facilities are provided to all Lots or may also include all or a portion of the cost thereof in a Benefited Property Assessment if the services and facilities are provided to less than all of the Lots. In any contracts or agreements with third parties for the provision of services within the Project, the Association may assign to the service provider the right to bill Owners directly and to pursue all legal or equitable remedies otherwise available to the Association for the collection of such bills.

5.4 Oversight of Neighborhood Associations. The Association shall have oversight authority over any action taken or proposed by a Neighborhood Association and may, in its discretion, veto any action or decision of a Neighborhood Association determined to be contrary to the general scheme of development for the Project. In addition, the Association shall have the power to take action against, or require that specific action be taken by, a Neighborhood Association, and to enforce the terms of any Neighborhood Declaration. Such actions may include requiring specific maintenance or repairs to Neighborhood Common Area.

5.5 Identity of Members. The members of the Association shall be Owners of the Lots. All Owners of Lots shall be mandatory members of the Association. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be limited to the Declarant and the Owners of Lots. Each such membership shall be appurtenant to and may not be separated from ownership of the Lot to which the membership is attributable, and joint ownership or ownership of undivided interests in any real property which established a membership shall not cause there to be more memberships than the number established for purposes of this Section 5.5. There shall be one (1) membership for each Lot.

5.6 Classes of Members and Voting Rights. The Association shall have the following two classes of voting membership:

Class A. Class A members shall be all Owners of Lots, except for the Declarant. Each Class A member shall be entitled to one (1) vote for each Lot owned by such Member.

Class B. The Class B members shall be the Declarant and Builder. Each Class B member shall be entitled to three (3) votes for each Lot owned by such Class B member.

5.7 The Association Rules. The Board may adopt, amend and repeal rules and regulations pertaining to any of the following: (a) the management, operation and use of the Areas of Association Responsibility including, but not limited to, any recreational facilities situated upon the Areas of Association Responsibility; and (b) minimum standards for the Maintenance of Lots. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

5.8 Personal Liability. No director, officer, employee or agent of the Association or the Design Review Committee or of any committee of the Association, and no other Person acting on behalf of the Association or the Design Review Committee shall be personally liable to any Person for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence in the discharge of such Person's duties and responsibilities under the Community Documents provided such Person acted in good faith.

5.9 Conveyance, Lease or Encumbrance of Common Area. The Association may dedicate parts of the Common Area to the City or any public agency, authority or utility for such purposes and subject to such conditions as the Board may determine to be in the best interests of the Project. The Association may convey portions of the Common Area for the purpose of adjusting the boundary lines between the Common Area, Limited Common Area and adjoining Lots or dedicated rights-of-way. The Association may grant permits, licenses and easements on, over, under and through the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance and operation of the Project. The Association may lease all or any part of the Common Area for such purposes and on such terms and conditions as the Board determines to be necessary or desirable; provided, however, that any lease entered in to after the expiration of the Declarant Control Period must be approved by Owners entitled to cast more than fifty percent (50%) of the Eligible Votes. After the expiration of the Declarant Control Period, the Common Area shall not be mortgaged or conveyed by the Association without the prior written consent or affirmative vote of Members holding at least sixty-seven percent (67%) of the Eligible Votes and by the Declarant so long as the Declarant or any Affiliate of Declarant owns any Lot or any part of the Additional Property.

ARTICLE 6

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

6.1 Creation of Lien and Personal Obligation of Assessments. Each Owner, by becoming the Owner of a Lot, is deemed to covenant and agree to pay to the Association all Assessments, Collection Costs and all other fees and costs which may become payable by the Owner to the Association under the Community Documents. All Assessments shall be established and collected as provided in this Declaration. Each Assessment, together with all interest thereon, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them. No Owner shall be exempt from liability for Assessments because of such Owner's non-use of the Common Area, abandonment of such Owner's Lot or other circumstance. The obligation to pay Assessments is a separate and independent obligation on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association, the Board or the Design Review Committee to take some action or perform some function required of them. Neither the Declarant nor any Affiliate of the Declarant shall be obligated to pay any Assessments, and the Association shall not levy any Assessment or other fee or charge of any kind against any Lot owned by the Declarant nor any Affiliate of the Declarant.

6.2 Regular Assessments.

(a) At least thirty (30) days prior to the commencement of each Assessment Period, the Board shall prepare and adopt a budget (the "**Budget**") of the estimated Association Expenses for the next Assessment Period, including any contribution to be made to a reserve fund.

The Budget shall also reflect the sources and estimated amount of funds required to pay such Association Expenses, which sources may include any surplus to be applied from prior years, any income expected from sources other than Assessments and the amount to be generated through Assessments against the Lots. The Budget shall separately reflect any Benefited Property Expenses.

(b) Concurrently with the adoption of the Budget, the Board shall determine the amount of the Regular Assessment for each Assessable Lot. The Regular Assessment shall be the same amount for each Assessable Lot. The amount of the Regular Assessment for an Assessment Period for each Assessable Lot shall be calculated by dividing the Budget amount for the applicable Assessment Period, which Budget amount shall be based on the completed Project, by the total number of Lots within the Property and the number of Lots reasonably estimated by the Board to be included in the Annexable Property. The amount of increase, if any, in the Regular Assessment from one Assessment Period to the next Assessment Period shall be subject to such limitations as may be imposed by Arizona law.

(c) The Board shall give notice of the Regular Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Regular Assessment established by the Board nor relieve any Owner from its obligation to pay the Regular Assessment. If the Board fails to adopt a Budget for any Assessment Period, then until and unless such Budget is adopted and a Regular Assessment is levied by the Board for such Assessment Period, the amount of the Regular Assessment for the immediately preceding Assessment Period shall remain in effect.

(d) If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Association Expenses for any reason, including, without limitation, nonpayment of Assessments, the Board may amend the Budget and increase the Regular Assessment for that Assessment Period and the revised Regular Assessment shall commence on the date designated by the Board.

6.3 Special Assessments. The Association may levy against each Assessable Lot a Special Assessment for the purpose of obtaining funds to pay the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area (including fixtures and personal property related thereto), or to pay unbudgeted expenses or expenses in excess of the amount budgeted. The Special Assessment shall be the same amount for each Assessable Lot. After the termination of the Declarant Control Period, any Special Assessment must be approved by Members holding at least sixty-seven percent (67%) of the votes cast with respect to the proposed Special Assessment. The presence in person or by absentee ballot of Members holding more than fifty percent (50%) of the Eligible Votes shall constitute a quorum for any vote with respect to a proposed Special Assessment.

6.4 Enforcement Assessment. The Association may impose against an Owner as an Enforcement Assessment any Collection Costs incurred by the Association in attempting to collect Assessments or other amounts payable to the Association by the Owner; and any monetary penalties levied against the Owner. The Enforcement Assessment shall be automatically imposed against an Owner at such time as the Collection Cost or other amounts are incurred by the Association or, in the case of a monetary penalty, the date the monetary penalty is imposed on the Owner by the Board.

6.5 Benefited Property Assessments. All Association Expenses pertaining to the Maintenance of Limited Common Areas or pertaining to the providing of Special Services shall be shown separately in the budget adopted by the Board. The Association Expenses pertaining to the Maintenance of a Limited Common Area or to the providing of Special Services shall be assessed solely against the Lots within the Benefited Property Assessment Area as established by the Supplemental Declaration designating the Benefited Property Assessment Area. No Association Expenses pertaining to the Maintenance of Limited Common Area or pertaining to providing Special Services shall be used in computing the Regular Assessments to be levied pursuant to Section 6.2. Unless otherwise provided for in the applicable Supplemental Declaration, Benefited Property Assessments shall be levied against the Assessable Lots within the Benefited Property Assessment Area at a uniform amount per Assessable Lot. If the Board determines during any Assessment Period that any Benefited Property Assessment is, or will, become inadequate to pay all Association Expenses to be paid by the Benefited Property Assessment for any reason, including, without limitation, nonpayment of Benefited Property Assessments by Owners, the Board may increase the Benefited Property Assessment for that Assessment Period and the revised Benefited Property Assessment shall commence on the date designated by the Board.

6.6 Reduced Assessments; Deficiencies.

(a) A Builder shall be obligated to pay only twenty-five percent (25%) of the Regular Assessments attributable to any Lot owned by such Builder until the earlier of the date on which the Lot is conveyed to a Purchaser or thirty-six (36) months after the date the Builder acquires the Lot. If a Lot ceases to qualify for the reduced twenty-five percent (25%) rate of Assessment during any Assessment Period, the Regular Assessment shall be prorated between the applicable rates on the basis of the number of days in the Assessment Period that the Lot qualified for each rate.

(b) The Lots owned by a Declarant are not Assessable Lots and therefore Declarant is exempt from payment of Regular Assessments on Lots owned by the Declarant. If a Lot ceases to be owned by Declarant and therefore becomes subject to Assessment during any Assessment Period, the Assessment shall be prorated on the basis of the number of days in the Assessment Period that the Lot is not owned by Declarant.

(c) From and after the first Assessment Period, the Declarant and each Builder paying reduced assessments pursuant to Section 6.6(a) above shall pay to the Association such funds ("**Deficiency Payments**") as may be necessary, when added to the Regular Assessments, to pay all Association Expenses of the Association as they become due. From and after the first Assessment Period, in no event shall the Declarant or any Builder be obligated to contribute funds to the Association in excess of the amount of Regular Assessments that would have been payable by the Declarant or Builder if the Lots owned by the Declarant or Builder had been assessed as Assessable Lots and at the full rate of Regular Assessment. Any Deficiency Payments shall be allocated among Declarant and the Builders on the basis of the respective number of Lots owned by each of them as of the date that the Board determines payment is necessary under this Section. Payments under this Section shall be made by Declarant and Builders on such basis as the Board may determine from time to time, but in no event more often than monthly or less often than annually. Any estimated payment by the Declarant or the Builders in excess of such Person's actual obligation for Deficiency Payments shall, at Declarant's option, be credited toward payment of Declarant's and such Builder's next due Deficiency Payment or refunded to the applicable payor.

6.7 Assessment Period. The period for which the Regular Assessment and Benefited Property Assessments shall be levied shall be the calendar year, except that the first Assessment Period shall commence on the first day of the first month after the transfer to the Association of any Common Area, and the first Assessment Period shall terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period, including the Assessment Period for Additional Property.

Notwithstanding anything stated to the contrary herein, upon annexation of any Additional Property, unless otherwise provided in the Declaration of Annexation, the Owners of Lots within the annexed Additional Property shall have no obligation to pay Assessments until the first Lot within the annexed Additional Property is conveyed to a Purchaser, or the first Common Area tract within the annexed Additional Property is transferred to and accepted for maintenance by the Association, whichever is earlier.

6.8 Rules Regarding Billing and Collection Procedures. Regular Assessments and Benefited Property Assessments shall be collected on a monthly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to an Owner shall not relieve any Owner of such Owner's liability for any Assessment or charge under this Declaration. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period, but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

6.9 Effect of Nonpayment of Assessments; Remedies of the Association.

(a) Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of ten percent (10%) per annum or such other rate of interest as may be established by the Board from time to time. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within fifteen (15) days after such payment was due, subject to any limitations imposed by applicable law.

(b) The Association shall have a lien on each Lot for any Assessment levied against that Lot from the time the Assessment becomes due and for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments. The Association's lien for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments may be foreclosed in the same manner as a mortgage on real estate. Fees, charges, late charges, monetary penalties and interest charged pursuant to Arizona Revised Statutes, other than charges for late payment of Assessments, are not enforceable as Assessments under this Section 6.9. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment of the Assessment becomes due. The Association has a lien for fees, charges, late charges (other than charges for late payment of Assessments), monetary penalties or interest charged pursuant to Arizona Revised Statutes after the entry of a judgment in a civil suit for those fees, charges, late charges, monetary

penalties, or interest from a court of competent jurisdiction and the recording of that judgment in the records of the County Recorder of Yavapai County, Arizona, as otherwise provided by law. The Association's lien for monies other than for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments may not be foreclosed and is effective only on conveyance of any interest in the Lot. The recording of this Declaration constitutes record notice and perfection of the Association's lien for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments, and no further recordation of any claim of lien shall be required. Although not required in order to perfect the Association's lien, the Association shall have the right but not the obligation, to record a notice setting forth the amount of any delinquent Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorney fees and costs incurred with respect to those Assessments which are secured by the Association's lien. If the Association records a notice of lien, the Association may charge the Owner of the Lot against which the Notice of Lien is Recorded a lien fee in an amount established from time to time by the Board.

(c) The Assessment Lien shall have priority over all liens or claims except for: (1) liens and encumbrances Recorded before the Recording of this Declaration; (2) liens for real estate taxes and other governmental assessments and charges; and (3) the lien of any First Mortgage or seller's interest in a first contract for sale recorded prior to the Assessment Lien. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a Deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

(d) The Association shall have the right, at its option, to enforce collection of any delinquent Assessments and any other sums due to the Association in any manner allowed by law including, but not limited to: (1) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien; or (2) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

6.10 Purposes for which Association's Funds May Be Used. The Association may use all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the purpose of any of the following: (a) discharging and performing the Association's duties and obligations under the Community Documents or applicable law; (b) exercising the rights and powers granted to the Association by the Community Documents or applicable law; (c) providing for promotion activities and services the Board deems appropriate, necessary or desirable to foster or promote the common good and general welfare of the Project and the Owners, Lessees and Residents; (d) contracting for services (including, without limitation, cable television) to be provided to Owners, Lessees and Residents; (e) providing the Design Review Committee with

such funds as may be requested by the Design Review Committee; and (f) taking such other action as the Association deems necessary, appropriate or desirable for the management and administration of the Association or for the benefit of the Association or of the Project.

6.11 Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Regular Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the financial security of the Association and the accomplishment of its purposes.

6.12 Contribution to Reserves.

(a) Except as otherwise provided in this Section, each Purchaser shall pay to the Association, immediately upon becoming the Owner of a Lot, a contribution in the amount of one-sixth (1/6th) of the amount of the annual Regular Assessment (the "**Reserve Contribution**") to the reserves to be established pursuant to Section 6.13. The Board of Directors may from time to time thereafter increase or decrease the amount of the Reserve Contribution, but following the expiration of the Declarant Control Period the amount of the Reserve Contribution may not be increased by the Board of Directors by more than twenty percent (20%) during any twelve month period without the approval of Members holding more than fifty percent (50%) of the Eligible Votes. The Reserve Contribution shall be deemed a contribution to the capital of the Association.

(b) No Reserve Contribution shall be payable with respect to the following: (1) the transfer or conveyance of a Lot by devise or intestate succession; (2) a transfer or conveyance of a Lot to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (3) a transfer or conveyance of a Lot to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution; or (4) the transfer or conveyance of a Lot as a result of a trustee's sale under a Deed of trust, the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. 33-741, et seq.

6.13 Reserves. The Board shall establish reserves for the future periodic maintenance, repair or replacement of the major components of the Areas of the Association Responsibility. The reserves may be funded from Regular Assessments, the Reserve Contributions paid pursuant to Section 6.12 or any other revenue of the Association. All amounts designated as reserves shall be deposited by the Board of Directors in a separate bank account (the "**Reserve Account**") to be held for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. To assist the Board in determining the appropriate amount of reserves, the Board shall obtain a reserve study at least once every three (3) years, which study shall at a minimum include the following: (a) identification of the major components of the Project which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years; (b) identification of the probable remaining useful life of the identified major components as of the date of the study; (c) an estimate of the cost of repair, replacement, restoration, or maintenance of the identified major components during and at the end of their useful life; and (d) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the

identified major components during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

6.14 Community Enhancement Fee. Each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a community enhancement fee in such amount as is established from time to time by the Board to compensate the Association for the administrative cost resulting from the transfer of a Lot. The community enhancement fee is not intended to compensate the Association for the costs incurred in the preparation of the statement which the Association is required to mail or deliver to a purchaser under A.R.S. § 33-1806A and, therefore, the community enhancement fee shall be in addition to the fee which the Association is entitled to charge pursuant to A.R.S. § 33-1806C.

6.15 Contribution to Working Capital.

(a) Except as otherwise provided in this Section, each Purchaser of a Lot shall pay to the Association, immediately upon becoming the Owner of a Lot, a contribution in the amount of one-sixth (1/6th) of the amount of the annual Regular Assessment (the "**Working Capital Contribution**"). The Working Capital Contributions may be used by the Association for payment of operating expenses or any other purpose permitted under this Declaration including the establishment of reserves. The Board of Directors may from time to time thereafter increase or decrease the amount of the Working Capital Contribution, but following the expiration of the Declarant Control Period the amount of the Working Capital Contribution may not be increased by the Board of Directors by more than twenty percent (20%) during any twelve month period without the approval of Members holding more than fifty percent (50%) of the Eligible Votes. The Working Capital Contribution shall be deemed a contribution to the capital of the Association.

(b) No Working Capital Contribution shall be payable with respect to the following: (1) the transfer or conveyance of a Lot by devise or intestate succession; (2) a transfer or conveyance of a Lot to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (3) a transfer or conveyance of a Lot to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Working Capital Contribution; or (4) the transfer or conveyance of a Lot as a result of a trustee's sale under a Deed of trust, the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. 33-741, et seq.

ARTICLE 7
MAINTENANCE

7.1 Areas of Association Responsibility. The Association shall be responsible for the management, operation and Maintenance of all Areas of Association Responsibility, and all Improvements located thereon, except for any part of the Areas of Association Responsibility which any governmental entity is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate Maintenance of all Areas of Association Responsibility, but the Areas of Association Responsibility, and the Improvements located thereon, shall be maintained in good condition and repair at all times. No Owner, Resident or other Person shall construct or install any Improvements on the Areas of Association Responsibility or alter, modify or remove

any Improvements situated on the Areas of Association Responsibility without the approval of the Board. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's management, operation or Maintenance of the Areas of Association Responsibility, and the Improvements located thereon.

7.2 Lots. Each Owner of a Lot shall be responsible for the Maintenance of his Lot, and all buildings, Residences, landscaping or other Improvements situated thereon, except for any portion of the Lot, or any Improvement situated thereon, which is an Area of Association Responsibility. All buildings, Residences, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless different foliage is approved in writing by the Design Review Committee. No yard equipment, wood piles or storage areas may be maintained so as to be Visible From Neighboring Property. All Lots upon which no Residence has been constructed shall be maintained in an attractive manner and shall be maintained such that weeds are trimmed on a regular basis.

7.3 Assessment of Certain Costs of Maintenance and Repair. In the event that the need for Maintenance of an Area of Association Responsibility is caused through the willful or negligent act of any Owner, his family, tenants, guests or invitees, the cost of such Maintenance shall be paid by such Owner to the Association upon demand (subject to any minimum notice and cure periods required by applicable law) and payment of such amounts shall be secured by the Assessment Lien.

7.4 Improper Maintenance and Use of Lots. In the event (a) any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project, (b) any portion of a Lot is being used in a manner which violates the Community Documents, or (c) the Owner of any Lot is failing to perform any of its obligations under the Community Documents, the Board may give notice to the offending Owner of the corrective action that must be taken and the date by which the corrective action must be completed (subject to any minimum notice and cure periods required by applicable law). If the required corrective action is not completed by the completion date established by the Board, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

7.5 Boundary Walls.

(a) Each wall or fence which is located between two (2) Lots shall constitute a boundary wall and, to the extent not inconsistent with this Section, the general rules of law regarding boundary walls shall apply.

(b) The Owners of contiguous Lots who share a boundary wall shall both equally have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner. In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a boundary wall shall first obtain the written consent of the adjoining Owner(s).

(c) Each Owner shall maintain the exterior surface of a boundary wall facing such Owner's Lot.

(d) Except as otherwise provided in this Section, the Owners of contiguous Lots who share a boundary wall shall each pay fifty percent (50%) of the cost of any maintenance, repair or replacement of the boundary wall. Either of such Owners may perform any necessary repair, maintenance or replacement of the boundary wall and in such event, such Owner shall be entitled to reimbursement from the other Owner for fifty percent (50%) of such cost. In the event that any boundary wall is damaged or destroyed through the negligence or willful act of an Owner, his agents, tenants, licensees, guests or family, it shall be the obligation of such Owner to rebuild and repair the boundary wall without cost to the other Owner or Owners who share the boundary wall. The right of any Owner to payment from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

(e) In the event any boundary wall encroaches upon a Lot, a valid easement for such encroachment and for the maintenance of the boundary wall shall and does exist in favor of the Owners of the Lots which share such boundary wall for so long as the boundary wall exists.

7.6 Maintenance of Walls other than Boundary Walls. Walls (other than boundary walls) located on a Lot shall be maintained, repaired and replaced by the Owner of the Lot. Any wall which is placed on the boundary line between a Lot and an Area of Association Responsibility shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and maintenance of the surface of the wall which faces the Area of Association Responsibility. In the event any such wall encroaches upon the Area of Association Responsibility, an easement for such encroachment shall exist in favor of the Association or the Owner of the Lot, as the case may be, for so long as the wall exists. Any wall which is placed on the boundary line between a Lot and public right-of-way shall be maintained, repaired and replaced by the Owner of the Lot, except that the Association shall be responsible for the repair and replacement of the surface of the wall which faces the public right-of-way.

7.7 Construction Activities. Normal construction activities and parking in connection with the Construction or Modification of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration. Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate and supplies of brick, block, lumber and other building materials shall be piled only in such areas as may be approved by the Design Review Committee. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements may be kept only in areas approved by the Design Review Committee. The Design Review Committee may also require screening of said storage areas. Each Owner shall keep such Owner's Lot, as well as surrounding areas of the Project, including, without limitation, all pedestrian and road rights-of-way and drives, reasonably clean and clear of equipment, building materials, dirt, debris and similar materials in connection with or related to construction activities by or for the benefit of such Owner. Each Owner also shall make reasonable efforts to protect from damage, and in any event to promptly repair or rebuild, any buildings, structures, landscaping or other Improvements (including, without limitation, any improvements that are, or are intended to be, Common Area, Neighborhood Common Area, Areas of Association Responsibility or owned and/or maintained by the City or any political subdivision or utility provider) that are damaged or destroyed through the act of any Owner or an Owner's Agent in connection with or related to construction activities by or for the benefit of such Owner, whether or not such act is negligent or otherwise culpable.

7.8 Installation of Landscaping. Within one hundred twenty (120) days after the date on which a Lot is first conveyed to a Purchaser other than a Builder, landscaping must be installed and substantially completed in the front yard and side yard of the Lot, and in the rear yard of any Lot that is Visible From Neighboring Property. All landscaping in the front yard and side yard, and all landscaping in any portion of the rear yard which is Visible From Neighboring Property must comply with the Design Guidelines and must be approved by the Design Review Committee, and any alterations or modifications made to the landscaping of a Lot as originally installed must be approved in advance by the Design Review Committee. If any Owner does not install and complete approved landscaping within the applicable time required by this Section, the Association, after giving the Owner thirty (30) days written notice to cure any such default, shall have the right (but not the obligation) to cause the necessary landscaping to be installed, and in such event, the Owner shall pay the Association, upon demand, all costs incurred by the Association in connection with the installation of the landscaping, together with interest thereon at the rate of fifteen percent (15%) per annum.

ARTICLE 8

USE AND OCCUPANCY RESTRICTIONS

8.1 Residential Use. All Lots shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Lot or in or from any Residence, except that the Owner, Lessee or other Resident of a Residence may conduct a business activity within the Residence so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residence; (b) the business activity is a legal activity and conforms to all applicable zoning ordinances or requirements for the Project; (c) the business activity does not involve persons coming to the Lot to purchase goods or services or the door-to-door solicitation of Owners, Lessees or Residents in the Project; (d) the use of the Residence for trade or business in no way destroys or is incompatible with the residential character of the Residence or the surrounding neighborhood; (e) the trade or business is conducted only inside the Residence, and does not involve the viewing, purchasing or taking delivery of goods or merchandise at, to, from or in any Residence; (f) the trade or business is conducted by a Resident or Residents of the Residence with no employee working in or from such Residence who is not a Resident thereof; (g) the volume of vehicular or pedestrian traffic or parking generated by such trade or business does not result in congestion or be in excess of what is customary in a residential neighborhood; (h) the trade or business does not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; and (i) the use of the Residence for a trade or business does not violate any other provision of the Community Documents. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity. The leasing of a Residence by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

8.2 Nuisances. No trash or debris of any kind shall be placed or permitted to accumulate on any Lot, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the Residents of such

other property. No condition shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its Residents. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed, or maintained on any Lot so as to be Visible From Neighboring Property. No Person shall permit anything or condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind.

8.3 Animals.

(a) No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot, except that a reasonable number of dogs, cats or small birds or animals which are commonly accepted household pets may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. The Board shall have the authority to determine (i) whether a particular animal or bird is permitted to be kept on a Lot pursuant to this Section and (ii) what is a reasonable number of dogs, cats or small birds or animals which are commonly accepted household pets for any particular Lot, and the Board's determination shall be final. All dogs, cats, birds or animals permitted under this Section shall be confined to an Owner's Lot, except that a dog may be permitted to leave an Owner's Lot if such dog is at all times kept on a leash not to exceed six feet (6') in length and is not permitted to enter upon any other Lot. Any person bringing a dog onto the Common Area shall immediately remove any feces deposited on the Common Area by the dog. The Board may restrict the portions of the Common Area on which dogs are permitted.

(b) No dog, cat, bird or animal permitted to be kept on a Lot pursuant to this Section shall be allowed to become a nuisance. No structure for the care, housing or confinement of any dog, cat, bird, or animal permitted to be kept on a Lot pursuant to this Section shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, Lessee or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular dog, cat, bird or animal permitted to be kept on a Lot pursuant to this Section is a nuisance. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions set forth in this Declaration.

(c) The Board may adopt rules and regulations further restricting and governing animals within the Project, which rules may include, without limitation rules providing for the removal from the Project of a domestic pet which has bitten or attacked a person or other animal, has a propensity to attack persons or other animals or otherwise constitutes a threat to the safety of persons or other animals in the Property or which because of incessant barking or other behavior constitutes an unreasonable annoyance or nuisance to Owners and Residents.

8.4 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with residential use of property or machinery or equipment necessary for the construction of a Residence, building, structure, or other Improvement on the Lot. All machinery or equipment as permitted above shall be stored as to not be Visible From Neighboring Property, except for machinery and equipment used for Construction or Modification of Improvements on a Lot, which shall be stored per Section 7.7.

8.5 Vehicles and Parking.

(a) No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment or vehicle may be parked, kept or stored on the Common Area. No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment may be parked, kept, or stored on any Lot so as to be Visible From Neighboring Property.

(b) Except as permitted by this Section, no Motor Vehicle may be parked, kept or stored on any Lot or the Common Area. No Motor Vehicles designed or used for carrying persons, merchandise, supplies or equipment for commercial purposes may be parked on the Common Area or on a Lot, except for the temporary parking of the Motor Vehicles of contractors, subcontractors, suppliers or vendors of the Association or the Owners, Lessees or Residents. Permitted Motor Vehicles may be parked on Lots or Common Area only in accordance with the provisions of this Section.

(c) A Permitted Motor Vehicle owned or leased by an Owner, Lessee or Resident of a Lot may be parked on the streets only if space for the parking of the Permitted Motor Vehicle is not available in all of the following areas: (1) the garage situated on the Lot of the Owner, Lessee or Resident; (2) the driveway on the Lot constructed as part of the initial construction of Improvements on the Lot; or (3) a driveway extension constructed on the Lot with the approval of the Design Review Committee.

(d) A Permitted Motor Vehicle owned or leased by an Owner, Lessee or Resident of a Lot must be parked in the garage situated on the Lot to the extent space is available in the garage for the parking of such Permitted Motor Vehicles. If space is not available in the garage, then the Permitted Motor Vehicle owned or leased by an Owner, Lessee or Resident of a Lot may be parked on the driveway constructed as part of the initial construction of Improvements on the Lot. Permitted Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot may only be parked on a driveway extension constructed with the approval of the Design Review Committee if space for the parking of such Permitted Motor Vehicles is not available either in the garage or in the driveway constructed as part of the initial construction or Improvements on the Lot. The parking of a Permitted Motor Vehicle owned or leased by an Owner, Lessee or Resident of a Lot on a driveway extension is also subject to such rules and regulations as may be adopted by the Board.

(e) No Motor Vehicle of any kind may be stored on a Lot except in a garage, and no Motor Vehicle of any kind may be stored on the Common Area. For purposes of illustration but not of limitation, a Motor Vehicle shall be deemed stored if it is covered by a car cover, tarp or other material. Motor Vehicles owned by guests of an Owner, Lessee or other Resident may be parked in the driveway on a Lot or on the streets for a maximum of seven (7) days.

(f) Recreational vehicles, motor homes and similar vehicles owned or leased by an Owner, Lessee or Resident may be parked in the driveway on a Lot only for the purpose of loading or unloading, subject to such limitations as may be established by the Board.

(g) No Motor Vehicle shall be constructed, reconstructed, or repaired on any Lot in such a manner as to be Visible From Neighboring Property, and no inoperable Motor Vehicle may be stored or parked on any Lot in such a manner as to be Visible From Neighboring Property. Except for emergency repairs, no Motor Vehicle shall be constructed, reconstructed or

repaired on the streets or any other part of the Common Area. No inoperable Motor Vehicle may be stored or parked on the streets or any other part of the Common Area.

(h) The Board shall have the right and power to adopt rules and regulations governing and further restricting the parking of Motor Vehicles on Lots or the Streets and implementing the provisions of this Section. In the event of any conflict or inconsistency between the provisions of this Section and the rules and regulations adopted by the Board of Directors, the provisions of this Section shall control.

8.6 Garages. Garages shall not be converted to living spaces or altered or used for purposes which would prevent the use of the garage for the parking of the number of vehicles for which it was designed, except that the Declarant or a Builder may use a garage in one or more model homes for a sales office and/or a construction office. The interior of all garages shall be maintained and kept in a neat, clean and slightly condition, free of debris or unsightly objects. Garage doors shall be kept closed except when the opening of the door is necessary to permit ingress or egress.

8.7 Rooftop HVAC Equipment; Solar Energy Device. No heating, ventilating, air conditioning or evaporative cooling units or equipment related thereto may be mounted, installed, or maintained on the roof of any Residence or other building so as to be Visible From Neighboring Property. No solar energy device shall be installed on the roof of any Residence or elsewhere on a Lot so as to be Visible From Neighboring Property without the prior written approval of the Design Review Committee. The Association or the Design Review Committee may adopt reasonable rules regarding the placement of a solar energy on the roof of a Residence or elsewhere on a Lot if such rules do not prevent the installation, impair the functioning of the solar energy device or restrict its use or adversely affect the cost or efficiency of the device. The restrictions in this Section shall be subject to any limitations imposed by law.

8.8 Basketball Goals and Backboards. No portable basketball goals or backboards may be kept or stored on a Lot so as to be Visible From Neighboring Property. Permanent basketball goals or backboards attached to a free standing pole may be constructed, installed or maintained on a Lot, provided the location, design, material and color of the pole and the basketball goal or backboard are approved by the Design Review Committee and they are used in accordance with the Design Guidelines and Association Rules, both of which may govern the hours of use and placement thereof.

8.9 Playground Equipment. No jungle gyms, swing sets or similar playground equipment which would be Visible From Neighboring Property shall be erected or installed on any Lot without the prior written approval of the Design Review Committee.

8.10 Rental of Lots. No Owner may lease less than his entire Lot and the Residence situated thereon. All leases must be in writing and must provide that the terms of the lease are subject in all respect to the provisions of the Community Documents and that any violation of this Declaration or the Design Guidelines or the Association Rules by the lessee or the other occupants shall be a default under the lease. At least ten (10) days before commencement of the lease term, the Owner shall provide the Association with the following information: (a) the commencement date and expiration date of the lease term; (b) the names of each of the Lessees and each adult who will reside in the Residence during the lease term; (c) the address and telephone number at which the Owner can be contacted by the Association during the lease term; and (d) the name, address

and telephone number of a person other than the Owner whom the Association can contact in the event of an emergency involving the Lot. Any Owner who leases his Lot and the Residence situated thereon must provide the Lessee with copies of this Declaration, the Design Guidelines and the Association Rules. Any lease of a Lot or Residence situated thereon must be for an initial term of at least three (3) months. The Owner shall be liable for any violation of this Declaration, the Design Guidelines or the Association Rules by the Lessees or other persons residing in the Residence and their guests or invitees and, in the event of any such violation, the Owner, upon demand of the Association, shall immediately take all necessary actions to correct any such violations.

8.11 Screening Materials. All screening materials, whether fences, hedges or walls, shall be maintained and replaced from time to time on the Lots by the Owners thereof in accordance with the initial construction of such Improvements by a Declarant or a Builder or as approved by the Design Review Committee pursuant to Article 3.

8.12 Lights. Except as initially installed by the Declarant or a Builder, no spotlights, floodlights or other high intensity lighting shall be placed or utilized upon any Lot or any structure erected thereon which in any manner will allow light to be directed or reflected on any other property except as approved by the Design Review Committee.

8.13 Window Cover Materials. Within one hundred and twenty (120) days of occupancy, each Owner of a Residence shall install permanent window treatments on all windows Visible From Neighboring Property. All window coverings facing the street must show white or beige colors unless otherwise approved in writing by the Design Review Committee. No reflective materials (including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar items) and no sheets, bedding or similar items shall be installed or placed upon the exterior or interior of any windows of a Residence without the prior written approval of the Design Review Committee. Except as provided in this Section, no enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Residence shall be constructed or installed without the prior written consent of the Design Review Committee.

8.14 Trash Containers and Collection. No trash shall be placed or kept on any Lot except in covered containers of a type, size and style which are approved by the Design Review Committee. In no event shall such containers on a Lot be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All trash shall be removed from Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

8.15 Temporary Occupancy and Temporary Buildings. No trailer, basement or any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings, trailers or other structures used during the Construction or Modification of Improvements approved by the Design Review Committee shall be removed immediately after the completion of Construction or Modification, and in no event shall any such buildings, trailers or other structures be maintained or kept on any property for a period in excess of twelve months without the prior written approval of the Design Review Committee.

8.16 Antennas. Except for antennas, satellite dishes and other over-the-air receiving devices covered by the FCC rules governing Over-the-Air Reception Devices; Television Broadcast Service and Multi-channel Multipoint Distribution Service (the "**FCC Rule**"), no antenna for the transmission or reception of television or radio signals or for access to the internet shall be installed on any Lot unless approved by the Design Review Committee. Any antenna, satellite dish or other receiving device covered by the FCC Rule may be installed on a Lot without the prior approval of the Design Review Committee provided the antenna, satellite dish or receiving device is placed inside a Residence or other Building or is placed on the portion of the Lot which is the least Visible From Neighboring Property and does not interfere with the viewer's ability to install, maintain or use the antenna, satellite dish or receiving device. The Design Review Committee shall have the right to adopt rules and regulations with respect to the installation and placement of antennas, satellite dishes and other receiving devices; provided, however, that the Design Review Committee shall not impose or enforce any rule or regulation which is inconsistent with or prohibited by the FCC Rule.

8.17 Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Design Review Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the Construction or Modification of Improvements approved by the Design Review Committee.

8.18 Signs. No signs, except for standard size "for sale" or "for lease" signs, may be erected, posted or displayed on any Lot in a location that is Visible From Neighboring Property without the prior written approval of the Association, except for signs constructed or erected by the Declarant pursuant to the rights granted or reserved in Section 4.3 or signs which the Association, under Arizona law, may not prohibit from being displayed on a Lot. The Association may regulate the display of political signs on a Lot to the extent permitted by Arizona law. No signs of any kind shall be placed or displayed on the Common Area without the prior written approval of the Association.

8.19 Drainage. No Residence, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the drainage plans on file with the City.

8.20 Flags and Flagpoles. Except for flags that cannot be prohibited by law, no flag may be displayed on a Lot if the flag is Visible From Neighboring Property without the prior written approval of the Design Review Committee. The Design Review Committee may adopt reasonable rules and regulations regarding the placement and manner of display of flags, including flags that cannot be prohibited by law. The Association may adopt rules and regulations regulating the location and size of flagpoles, limiting an Owner or Resident to displaying no more than two (2) flags at once and limiting the height of a flagpole to no more than the height of the rooftop of the Residence located on the Lot on which the flagpole is installed.

ARTICLE 9
DISPUTE RESOLUTION

9.1 Agreement to Resolve Certain Disputes Without Litigation. All Bound Parties agree that all Claims shall be resolved exclusively in accordance with the dispute resolution procedures set forth in this Article 9.

9.2 Notice of Claim. Any Bound Party having or alleging to have a Claim (a "**Claimant**") against any other Bound Party (a "**Respondent**") shall notify each Respondent in writing of the Claim (the "**Claim Notice**"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim. In the event the Claimant is the Association, the Association must provide written notice to all Members prior to delivering a Claim Notice or commencing any legal action, cause of action, proceeding, reference or arbitration against the Declarant or any other Bound Party which notice shall (at a minimum) include: (a) a description of the Claim, (b) a description of the attempts of any Declarant or other Bound Party to correct such Alleged Defect and the opportunities provided to Declarant or other Bound Party to correct such Alleged Defect, (c) the estimated cost to repair such Alleged Defect, (d) the name and professional background of the attorney retained by the Association to pursue the claim against a Declarant or other Bound Party and a description of the relationship between such attorney and member(s) of the Board (if any), (e) a description of the fee arrangement between such attorney and the Association, (f) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against the Declarant or other Bound Party and the source of the funds which will be used to pay such fees and expenses, (g) the estimated time necessary to conclude the action against the Declarant or other Bound Party, (h) a description of the manner in which the action will be funded and a description of any demands, notices, offers to settle or responses to offers to settle made either by the Association or other Bound Party, and (i) an affirmative statement from the Board that the action is in the best interests of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State of Arizona under Arizona Revised Statutes (a "**Licensed Professional**"), then the notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to Arizona Revised Statutes.

9.3 Mediation. If the Parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties ("**Termination of Negotiations**"), the Claimant shall have thirty (30) additional days within which to submit the Claim to mediation by the American Arbitration Association ("**AAA**") or such other independent mediation service agreed to by the Claimant and Respondent. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("**Termination of**

Mediation Notice"). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

9.4 Binding Arbitration.

(a) In the event a Claim is not resolved by mediation, the Claimant shall have ninety (90) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section 9.4. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. A Claimant may only submit a Claim in arbitration on its own behalf. No Claimant may submit a Claim in arbitration as a representative or member of a class, and no Claim may be arbitrated as a class action. All Bound Parties agree that all Claims that are not resolved by negotiation or mediation shall be resolved exclusively by arbitration conducted in accordance with this Section 9.4. All Bound Parties waive their right to have a Claim resolved by a court, including, without limitation, the right to file a legal action as the representative or member of a class or in any other representative capacity. The Claimant and Respondent shall cooperate in good faith to assure that all Bound Parties who may be liable to the Claimant or Respondent with respect to the Claim are made parties to the arbitration.

(b) If the Claimant submits the Claim to binding arbitration in accordance with this Section 9.4, the arbitration shall be conducted by a single arbitrator in accordance with the AAA Commercial Arbitration Rules, or such other AAA rules as the AAA determines to be applicable (the "**AAA Rules**") and the Arizona Revised Uniform Arbitration Act (the "**Arbitration Act**"). In the event of any conflict or inconsistency between the Arbitration Act and the AAA Rules, the Arbitration Act shall control. A Respondent may join as a party to the arbitration any Bound Party who may be liable to the Respondent or the Claimant with respect to the Claim.

(c) The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made; provided, however, that such damages may be deemed by the Arbitrator to be direct damages in an award reimbursing payments made by a party therefor to a third party. The Arbitrator shall award the prevailing party reasonable attorney fees and reasonable expenses of the arbitration. The Arbitrator shall not grant any damages or other remedy not permitted by this Declaration or grant any damages or other remedy which could not be granted by a court.

9.5 Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by the Declarant or other Bound Party of a Claim Notice, the Declarant or other Bound Party shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Area, any Lot, including any Residence constructed thereon, and/or any Improvements for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Declarant or other Bound Party, to correct, repair and/or replace any Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, Declarant or other Bound Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. Nothing set forth in this Section shall be construed to impose any obligation on the Declarant or other Bound Party to inspect, test, repair, or replace any item or Alleged Defect for which the Declarant or other Bound Party is not otherwise obligated under applicable law or any limited warranty provided by the

Declarant or other Bound Party in connection with the sale of the Lots and/or the Improvements constructed thereon. The right of the Declarant and other Bound Parties to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by the Declarant or other Bound Party. In no event shall any statutes of limitations be tolled during the period in which the Declarant or other Bound Party conducts any inspection or testing of any Alleged Defects.

9.6 Use of Funds. In the event the Association recovers any funds from a Declarant or any other Person as a result of a claim involving an Alleged Defect, the funds shall first be used to correct and or repair the Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect, and any excess funds shall be paid into the Association's reserve fund.

9.7 Approval of Litigation. The Association shall not deliver a Claim Notice to any Bound Party, commence any legal action or arbitration proceeding against any Bound Party or incur any expenses (including, without limitation, attorneys' fees) in connection with any Claim without the written approval of Owners entitled to cast more than seventy-five percent (75%) of the total votes in the Association, excluding the votes of any Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action or arbitration proceeding involving a Claim, all Owners must notify prospective purchasers of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Association in accordance with Section 9.2.

9.8 Statute of Limitations. All statutes of limitations applicable to Claims shall apply to the commencement of arbitration proceedings under Section 9.4. If the arbitration proceedings are not initiated within the time period provided by Arizona law for the filing of a legal action with respect to the Claim, the Claim shall forever be barred.

9.9 Federal Arbitration Act. Because many of the materials and products that will be incorporated into the Residences and other Improvements constructed on the Lots will be manufactured in other states, the development and conveyance of the Lots evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. §1, et. seq.) now in effect or as it may be hereafter amended, will govern the interpretation and enforcement of the arbitration provisions of this Declaration.

9.10 Conflicts. In the event of any conflict between this Article 9 and any other provision of the Community Documents, this Article 9 shall control. In the event of any conflict between the provisions of this Article 9 and the terms of any express warranty provided to a Purchaser by the Declarant or a Builder or any third party home warranty company in connection with the purchase of a Lot from the Declarant or a Builder, the provisions of the express warranty shall control; provided, however, that if the Claim is being asserted by the Association, the approval of the members of the Association required by Section 9.7 must be obtained prior to the Association demanding arbitration of the Claim or filing any legal action with respect to the Claim.

BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH PERSON, FOR HIMSELF, HIS HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS,

TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM RESOLVED ACCORDING TO THE FEDERAL ARBITRATION ACT, THE ARIZONA REVISED STATUTES PERTAINING TO THE ARBITRATION OF DISPUTES TO THE EXTENT NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT AND THE PROVISIONS OF THIS ARTICLE 9 AND WAIVES THE RIGHT TO PURSUE ANY BOUND PARTY IN ANY MANNER OTHER THAN AS PROVIDED IN ARTICLE 9. THE ASSOCIATION, EACH OWNER AND DECLARANT ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS ARTICLE 9, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIM TRIED BEFORE A JURY. THE ASSOCIATION, EACH OWNER AND DECLARANT FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH OWNER VOLUNTARILY ACKNOWLEDGES THAT HE IS GIVING UP ANY RIGHTS HE MAY POSSESS TO PUNITIVE AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JURY RELATING TO A CLAIM.

IF AN OWNER OR THE ASSOCIATION FILES A CIVIL ACTION ASSERTING ANY CLAIM AGAINST ANY BOUND PARTY INSTEAD OF COMPLYING WITH THE DISPUTE RESOLUTION PROVISIONS OF THIS ARTICLE 9 (OR THE OTHER DISPUTE RESOLUTION PROVISIONS, AS APPLICABLE), THE PARTY AGGRIEVED BY THE FILING MAY APPLY TO THE YAVAPAI COUNTY SUPERIOR COURT FOR AN ORDER DISMISSING THE CIVIL ACTION AND COMPELLING THE FILING PARTY TO SUBMIT THE CLAIM TO THE DISPUTE RESOLUTION PROVISIONS APPLICABLE THERETO. THE APPLYING PARTY SHALL BE ENTITLED TO IMMEDIATE ENTRY OF AN ORDER OF DISMISSAL AND A MANDATORY AWARD OF ATTORNEY'S FEES AND TAXABLE COSTS INCURRED IN COMPELLING COMPLIANCE WITH THE APPLICABLE DISPUTE RESOLUTION PROVISION.

IN THE EVENT THE ARBITRATION PROVISIONS OF THIS ARTICLE 9 ARE HELD NOT TO APPLY OR ARE HELD INVALID OR UNENFORCEABLE FOR ANY REASON, ALL DISPUTES SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. EACH OWNER IN THE ASSOCIATION, BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES, INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR DECLARANT'S FAILURE TO DISCLOSE MATERIAL FACTS. THIS MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON THE RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF DECLARANT, ANY OWNER, THE ASSOCIATION OR THE RESPECTIVE SUCCESSORS AND ASSIGNS.

ARTICLE 10
INSURANCE

10.1 Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

(a) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Areas of Association Responsibility and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

(b) Property insurance on all Areas of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Areas of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy.

(c) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

(d) Directors and officers liability insurance providing coverage in an amount determined by the Board, but not less than \$1,000,000;

(e) Such other insurance as the Board shall determine from time to time to be appropriate to protect the Association or the Owners;

(f) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (1) that there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household; (2) no act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy; (3) that the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under Deeds of trust; (4) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; (5) statement of the name of the insured as the Association ; and (6) for policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy. The premiums for any insurance obtained by the Association pursuant to this Section 10.1 shall be included in the budget of the Association and shall be paid by the Association.

10.2 Certificates of Insurance. An insurer that has issued an insurance policy under this Article 10 shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a Deed of trust. Any insurance obtained pursuant to this Article 10 may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under a Deed of trust to whom certificates of insurance have been issued.

10.3 Payment of Insurance Proceeds. With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article 10, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a Deed of trust. Subject to the provisions of Section 10.4, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

10.4 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Areas of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly by the Association unless repair or replacement would be illegal under any state or local health or safety statute or ordinance. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas of Association Responsibility shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance.

ARTICLE 11 **GENERAL PROVISIONS**

11.1 Enforcement.

(a) The Association may enforce the Community Documents in any manner provided for in the Community Documents or by law or in equity, including, but not limited to the following:

(1) imposing reasonable monetary fines after notice and an opportunity to be heard by the Board is given to the Owner or other violator. An Owner shall be responsible for payment of any fine levied or imposed against a Lessee or Resident of the Owner's Lot or by any guest or invitee of the Owner or any Lessee or Resident;

(2) suspending an Owner's right to vote;

(3) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner fails to pay any Assessment or other charge owed to the Association within fifteen (15) days after demand for payment is made;

(4) exercising self-help or taking action to abate any violation of the Community Documents;

(5) requiring an Owner, at the Owner's expense, to remove any structure or Improvement on such Owner's Lot that is in violation of this Declaration and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right (but not the obligation) to enter the Lot, remove the violation and restore the Lot to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(6) without liability to any Person, prohibiting any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration or the Design Guidelines from continuing or performing any further activities in the Project;

(7) towing vehicles which are parked on Common Area in violation of this Declaration or the Association Rules;

(8) filing a suit at law or in equity to enjoin a violation of the Community Documents, to compel compliance with the Community Documents, to recover fines or money damages or to obtain such other relief as to which the Association may be entitled; or

(9) record a written notice of a violation by any Owner, Lessee or Resident of any restriction or other provision of the Community Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner, Lessee or Resident violating, or responsible for the violation of, the Community Documents; (ii) the legal description of the Lot against which the notice is being Recorded; (iii) a brief description of the nature of the violation; and (iv) a statement of the specific steps which must be taken by the Owner or occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent purchaser of the Lot, that there is such a violation. Failure by the Association to Record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Community Documents.

(b) The Association may elect not to take any enforcement action with respect to a particular violation of the Community Documents if the Board determines, in its sole discretion, that because of the strength of any possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board, enforcement action would not be appropriate or in the best interests of the Association. All rights and remedies of the Association under the Community Documents

or at law or in equity are cumulative, and the exercise of one right or remedy shall not waive the Association's right to exercise another right or remedy.

(c) Each Owner, the Design Review Committee and the Declarant shall have the right to enforce this Declaration in any manner available at law or in equity. The failure of the Association, the Declarant, the Design Review Committee or an Owner to take enforcement action with respect to a violation of the Community Documents shall not constitute or be deemed a waiver of the right of the Association, the Declarant, the Design Review Committee or any Owner to enforce the Community Documents in the future. If any lawsuit is filed by the Association, the Declarant, the Design Review Committee or any Owner to enforce the provisions of the Community Documents or in any other manner arising out of the Community Documents or the operations of the Association, the prevailing party in such action shall be entitled to recover from the other party all attorney fees incurred by the prevailing party in the action.

11.2 Duration; Termination. This Declaration, as it may be amended pursuant to Section 11.3, shall run with the land and bind the Project and be in full force and effect in perpetuity unless terminated as provided in this Section. This Declaration may be terminated at any time if such termination is approved by the following: (a) the Declarant so long as the Declarant or any Affiliate of the Declarant owns any part of the Property or Additional Property; and (b) by the Owners holding ninety percent (90%) or more of the Eligible Votes. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Following the Recording of a Certificate of Termination, this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

11.3 Amendments.

(a) This Declaration may be amended at any time by the affirmative vote or written consent of Members holding not less than sixty-seven percent (67%) of the Eligible Votes. Any amendment to this Declaration approved by the Members also must be approved in writing by the Declarant if the Declarant or any Affiliate of the Declarant owns any part of the Property or Additional Property at the time the amendment is approved by the Members.

(b) During the Declarant Control Period, the Declarant shall have the right to unilaterally amend the Declaration to: (1) comply with or make the Declaration consistent with any applicable federal, state or local law, ordinance or regulation, whether existing at the time the Declaration was Recorded or enacted after the Declaration was Recorded; or (2) correct any error or inconsistency or resolve any ambiguity in the Declaration.

(c) Any amendment approved by the Members pursuant to Section 11.3(a) shall be signed by the President or Vice President of the Association and shall be Recorded. Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.

(d) Any challenge to an amendment to this Declaration for the reason that the amendment was not adopted by the required number of Owners or was not adopted in accordance with the procedures set forth in this Section must be made within one (1) year after the Recording of the amendment.

11.4 Interpretation. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of the Community Documents. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or the Design Guidelines, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, Association Rules or the Design Guidelines, the Articles shall control. In the event of any conflict between the Bylaws and Design Guidelines or the Association Rules, the Bylaws shall control. Except for judicial construction, the Design Review Committee shall have the exclusive right to construe and interpret the Design Guidelines. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Design Review Committee's construction or interpretation of the Design Guidelines shall be final, conclusive and binding as to all Persons and property benefited or bound by this Declaration.

11.5 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

11.6 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

11.7 Laws, Ordinances and Regulations. The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Board or the Design Review Committee with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations. Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

11.8 References to this Declaration in Deeds. Deeds to and instruments affecting any Lot or any other part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assignees.

11.9 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

11.10 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the

intent of context thereof. Unless otherwise specified, all references in this Declaration to Articles or Sections are to Articles and Section of this Declaration.

11.11 Notices. All notices, demands, statements or other communications required to be given or served under this Declaration shall be in writing and shall be deemed to have been duly given and served if delivered personally, sent by Federal Express or other overnight delivery service, sent by United States mail, postage prepaid or sent by fax, electronic mail or other form of wireless communication, as follows: (a) if to an Owner, at the mailing address, email address or fax number which the Owner provides to the Secretary of the Association for the purpose of notice or, if no such mailing address, email address or fax number is provided, at the street address of the Lot of such Owner; (b) if to the Association, at the principal place of business of the Association as shown on the records of the Arizona Corporation Commission or at such other mailing address, email address or fax number as may be designated by the Association in a written notice to the Owners pursuant to this Section; or (c) if to the Design Review Committee, at the principal place of business of the Design Review Committee as shown on the records of the Arizona Corporation Commission or at such other mailing address, email address or fax number as may be designated by the Design Review Committee in a written notice to the Owners pursuant to this Section. Notice given by personal delivery, overnight delivery service, fax, electronic mail or other form of wireless communication shall be deemed to have been received by the Person to whom the notice was addressed when the notice is actually received. A notice given by United States mail shall be deemed to have been received by the Person to whom the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is mailed. If a Lot is owned by more than one Person, notice to one of the Owners shall constitute notice to all Owners of the same Lot.

DECLARANT:

Cottonwood 1, LLC, a Wyoming limited liability company

By: _____
Daniel Fox, Managing Member

State of Arizona)
) ss.
County of Yavapai)

Acknowledged before me this _____ day of October, 2023 by Daniel Fox, Managing Member of Cottonwood 1, LLC, a Wyoming limited liability company, on behalf of the company.

My Commission Expires: _____
Notary Public

ASSOCIATION:

6 on Sixteen Homeowners Association, an Arizona nonprofit corporation

By: _____
Daniel Fox, President

State of Arizona)
) ss.
County of Yavapai)

Acknowledged before me this _____ day of _____, 2023, by Daniel Fox, President of 6 on Sixteen Homeowners Association, an Arizona nonprofit corporation, on behalf of the corporation.

My Commission Expires: _____
Notary Public

AS OF THE DATE OF THIS DECLARATION,
THE UNDERSIGNED, AS OWNER OF THE
INITIAL COVERED PROPERTY SET FORTH
ON EXHIBIT A OF THIS DECLARATION,
HEREBY RATIFIES AND CONSENTS TO
THE RECORDING OF THIS DECLARATION:

STRUCTR GROUP, LLC,
An ARIZONA limited liability company

By: _____
Name: _____
Its: _____

STATE OF ARIZONA)
) ss.
County of Yavapai)

Acknowledged before me this ___ day of October, 2023, by _____,
the _____ of Structr Group, LLC, an Arizona limited liability company, for
and on behalf thereof.

Notary Seal/Stamp

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF INITIAL COVERED PROPERTY

APN 406-06-364J BEING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 3,
TOWNSHIP 15 NORTH, RANGE 3 EAST OF THE GILA AND SALT RIVER BASE AND
MERIDAN, YAVAPAI COUNTY, ARIZONA.

Parcel No. 1:

A parcel of land located in the East half of Section 3, Township 15 North, Range 3 East, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, being more particularly described as follows:

Commencing at the East quarter corner of said Section 3;

Thence South 00°02'02" West along the East line of said Section 3, a distance of 417.96 feet;

Thence North 89°42'54" West, a distance of 351.94 feet to the point of beginning;

Thence continuing North 89°42'54" West, a distance of 206.36 feet;

Thence North 00°46'08" West, a distance of 403.96 feet to a point of a non-tangent curve;

Thence Southerly along said curve concave to the Southwest, having a radius of 350.00 feet, an arc length of 101.51 feet, a central angle of 16°37'00" and a radial bearing of South 42°53'07" West;

Thence South 31°56'00" East, a distance of 203.83 feet to a point on a non-tangent curve;

Thence Southeasterly and Southerly along said curve concave to the West, having a radius of 300.00 feet, an arc length of 160.33 feet, a central angle of 30°37'14" and a radial bearing of South 59°51'01" West to the point of beginning.

Except all oil, minerals, ores, and metals of every kind, as reserved in Deed recorded in Book 187 of Deeds, Page 331, record of Yavapai County, Arizona.

Parcel No. 2:

That portion of the East half of Section 3, Township 15 North, Range 3 East, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, being the property abandoned by the City of Cottonwood in Deed recorded in Book 4018 of Official Records, Page 640, more particularly described as follows:

Commencing at the Southwest corner of the Southeast quarter of the Northeast quarter of said Section 3, said corner being marked by a 6 inch rebar tagged "LS 4491";

Thence North 00°16'32" East along the Westerly line of said Southeast quarter of said Northeast quarter of said Section 3, a distance of 227.23 feet to a point, said point being marked by a 1/2-inch rebar stamped "LS 25384";

Thence South 89°49'28" East 25.53 feet to a point, said point being marked by a 5/8-inch rebar stamped "LS 13015";

Thence South 89°59'41" East 242.59 feet to a point, said point being marked by a 6 inch rebar;

Thence North 46°46'41" East a distance of 661.90 feet to the most Northerly corner of the land described in Deed recorded in Book 3624 of Official Records, Page 314, records of Yavapai County, said corner being marked by a 6 inch rebar;

Thence South 00°43'53" East along the Easterly line of the land described in said Deed a distance of 717.91 feet to a point on a non-tangent curve, concave Northeasterly, having a radius of 325.00 feet, a radial line to said curve bears North 66°38'56" East, said point being the true point of beginning;

Thence Southeasterly along said curve through a central angle of 8°32'41", an arc length of 48.47 feet to a point of tangency with the Northwesterly prolongation of that certain course having a bearing of North 31°56'00" West and a distance of 203.36 feet, being the Southerly boundary of Parcel "B" of the land described in Deed recorded in Book 3598 of Official Records, Page 977, records of Yavapai County;

Thence South $31^{\circ}53'45''$ East along said prolongation, a distance of 36.16 feet to the Northwesterly terminus of said certain course, said point being the beginning of a non-tangent curve, concave Southwesterly, having a radius of 325.00 feet, said curve also being the Southwesterly boundary of said Parcel "B", a radial line to said curve bears South $59^{\circ}35'30''$ West;

Thence Northwesterly along said curve and Southwesterly line of said Parcel "B" through a central angle of $12^{\circ}15'41''$, an arc length of 69.55 feet to the Easterly line of said land described in said Deed recorded in Book 3624 of Official Records, Page 314, records of Yavapai County;

Thence North $0^{\circ}43'53''$ West along said Easterly line a distance of 17.84 feet to the true point of beginning. Except any portion lying within Parcel No. 1 above.

APN: 406-06-364J (Underlying APN's: 406-06-364E & 406-06-364F)

When recorded, return to:

Cottonwood 1, LLC
7909 East Pecos Lane
Scottsdale, Arizona 85250
Attn: Daniel Fox

DESIGNATION OF BUILDER UNDER DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
6 ON SIXTEEN

This DESIGNATION OF BUILDER UNDER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR DEL RIO RANCH PHASE 3 (“Designation”) is made by COTTONWOOD 1, LLC, a Wyoming limited liability company (“COTTONWOOD”), as the “Declarant” under that certain Declaration of Covenants, Conditions and Restrictions for 6 on Sixteen, recorded in the Official Records of the Yavapai County, Arizona, Recorder as Instrument No. 2023- (the “Declaration”). Capitalized terms used in this Designation without definition shall have the meanings stated in the Declaration.

Cottonwood 1, LLC hereby designates Structr Group, LLC, an Arizona limited liability company (“Structr”) as a Builder under the Declaration.

DATED: November ____, 2023

[Balance of the Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, Cottonwood 1, LLC has executed this Designation as of the date first above written.

Cottonwood 1, LLC, a Wyoming limited liability company

By: _____
Daniel Fox, Managing Manager

STATE OF ARIZONA)
) ss.
County of Yavapai)

Acknowledged before me this _____ day of October _____, by Daniel Fox Manager of Cottonwood 1 LLC, a Wyoming limited liability company, on behalf of the company.

Notary Seal/Stamp

Notary Public

6 on Sixteen Homeowners Association

**Design Guidelines
And
Association Rules and Regulations**

October 26th, 2023

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Overview

Community Organization

Every Resident of 6 on Sixteen is a Member of the 6 on Sixteen Homeowners Association (the "Association"). The Association is an Arizona nonprofit corporation formed to manage and maintain the Common Areas and to perform all duties and exercise all rights imposed on or granted to the Association by the Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for 6 on Sixteen (the "CC&Rs"). The CC&Rs, as amended from time to time, provide for Design Guidelines and Rules and Regulations to interpret, clarify, and implement the restrictions detailed in the CC&Rs (the "Design Guidelines"). In the event of any conflict between the Design Guidelines and the CC&Rs, the CC&Rs shall control.

The Board of Directors of the Association (the "Board") is responsible for the administration of the Association. The Design Review Committee is appointed by the Board, as set forth in the CC&Rs to review all Improvements within 6 on Sixteen including new construction and modifications to the existing Improvements.

The Design Review Committee has adopted the Design Guidelines and standards to evaluate proposed construction activities. The purpose of the Design Guidelines are to assist Owners in gaining approval for structural and landscape Improvements and repairs, and are necessary to enhance Property values, desirability, and attractiveness of the Property located within the Association. These Design Guidelines may be amended by the Design Review Committee and reissued from time to time. *Following the guidance detailed in these Design Guidelines does NOT eliminate the need for submission of plans for approval by the Design Review Committee except as specifically noted herein.*

Design Review Process

Any change, addition, or modification to a Lot or a building exterior of a residential Property requires the prior written approval of the Design Review Committee. Residents with proposed changes must contact the management company, with whom the Association has contracted for the day-to-day management of its affairs, to obtain the necessary submittal documentation.

Simply stated, no Improvements, alterations, repairs, additions, or other work, including changes in exterior color or landscaping, are to be constructed on any Lot or exterior of any home from its improved state existing on the date such Property was first conveyed by the Declarant or Designated Builder to a Purchaser without the prior written approval of the Design Review Committee. The responsibility of the Design Review Committee is to ensure the harmonious, high quality image of 6 on Sixteen is implemented and maintained. Any Owner requesting approval of any construction, installation, addition, alteration, repair, change or other work to their Lot or home shall follow the application procedures listed below. Upon approval, Owners shall diligently pursue approved work so that it is completed as soon as reasonably practicable.

Application Procedure

The following information must be included in each application:

- ❑ Application Form completed and signed (copy enclosed), additional copies can be obtained from the Association's management office.
- ❑ Plot Plan – A site plan indicating dimensions relating to the existing dwelling and Property lines (setbacks, etc.) and the proposed Improvement to be installed.
- ❑ Elevation Plans – Plans showing finished appearance of the Improvements in relation to the existing dwelling and Property lines.
- ❑ Specifications – Description detailing materials to be used with color samples attached; drawing or brochure of the proposed Improvement indicating dimensions and color.

Applications and plans must be submitted to:

**6 on Sixteen Homeowners Association c/o
Realty Asset Advisors SW, Inc.
7909 East Pecos Lane
Scottsdale, AZ 85250
realtyassetadvisors@gmail.com**

Office: (402) 708-2121

It is the Owner's responsibility to ensure that any proposed construction is coordinated with, and where applicable, approved by all city, county, state and federal government agencies. The Design Review Committee, the management company and the Association assume no responsibility for obtaining these reviews, approvals, or permits. An approval by the Design Review Committee does not indicate or imply the request complies with local zoning or building code requirements. The Design Guidelines are independent of the obligation of Owners to comply with all applicable laws, ordinances, codes and regulations.

FOR CLARITY: Only Lot Owners may request approval.

Design Guidelines

General Principles

The purpose of the Design Review Committee is to insure consistent application of the Design Guidelines, as set forth in the CC&Rs. The Design Review Committee monitors any portion of any Lot or parcel that is Visible From Neighboring Property, the street, or the Association Common Areas. The Design Guidelines promote those qualities in the 6 on Sixteen that enhance the attractiveness and functional utility of the community. Those qualities include a harmonious relationship among structures, vegetation, topography and overall design of the community.

All buildings and structures erected within the Association, and the use and appearance of all land within the Association, shall comply with all applicable municipal requirements (including any zoning requirements), as well as the requirements contained in the CC&Rs.

Design Compatibility

The proposed construction must be compatible with the design characteristics of the Property itself, adjoining properties and the neighboring setting. Compatibility is defined as harmony in style, scale, material, color and construction details.

Workmanship

The quality of workmanship evidenced in construction must be equal to, or better than, that of the surrounding properties. In addition to being visually objectionable, poor construction practices can cause functional problems and create safety hazards. The Association and the Design Review Committee assume no responsibility for the safety or livability of any construction by virtue of design review.

Building Architecture

In general, any exterior addition or alteration to an existing residence shall be compatible with the design character of the original structure.

Building Repairs

No building or structure shall be permitted to fall into a state of disrepair. The Owner of every home or structure is responsible at all times for keeping all buildings located on the Lot in good condition and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, the Owner is responsible for immediate repair or reconstruction. Roofs must also be kept in good repair at all times.

Awnings

The Design Review Committee must approve all awnings. Awnings over windows shall be canvas or similar material, of solid color on both sides which match the color of the body of the exterior of the home or roof color and may only be installed on the rear of the home. All awnings must be commercially manufactured or the equivalent, and requests for the Design Review Committee's approval of the same must include: (i) a drawing with the location of the proposed awning installation, (ii) a sample of the material to be used, and (iii) the color and design of the proposed awnings. The Owner is responsible for

maintenance and repair of any installed awnings. The Association retains all rights to determine when an awning must be repaired and/or replaced due to weather fading, tearing, ripping, and other states of disrepair.

Basketball Goals

Permanent basketball goals are prohibited. Portable basketball goals will be considered if they meet the following guidelines:

1. Backboards must be of a predominantly neutral color (gray, black, or white) or painted to match the color of the body of the home. Clear Plexiglas backboards are acceptable.
2. Only nylon or similar cord nets are acceptable. Metal or chains are expressly prohibited.
3. Portable goals cannot be placed or used in Common Areas, the street or upon sidewalks at any time.
4. Portable goals must be removed and stored on a daily basis when not in use and shall not be Visible From Neighboring Property.
5. Basketball courts may not be painted or permanently outlined on any concrete and/or asphalt surface in the front, side yard, or motor court area.
6. Equipment shall only be used during daylight hours, and lighting for night use is prohibited.
7. All equipment must be constantly maintained. Broken backboards, disfigured or bent rims, ripped or torn nets, chipped or peeling paint, and other states of disrepair are a violation.

The Design Review Committee reserves the right to rescind its approval, should the backboard cause a nuisance, such as traffic, noise or damage to any adjacent Property or Common Area.

Clotheslines

Clotheslines or other outside facilities for drying clothes are not permitted unless they are placed exclusively in the rear yard and not Visible From Neighboring Property.

Driveway Extensions

Driveway extensions will be reviewed on a case-by-case basis with strong consideration of any impact on the architectural features of the neighborhood. The maximum driveway width (existing and addition) shall not exceed twenty (20) feet of contiguous area. Approved driveway extensions will be for the purpose of access to side/rear yard gates only. Use of driveway extensions for permanent parking of vehicles is not allowed. All driveways must be kept clean and free of debris, oil, rust, and other stains. The use of planting material between the street and driveway extension is required to minimize the effect of additional hardscape.

Flagpoles

Prior to installing a flagpole on any Lot, the Owner of the Lot shall submit a written request including specific plans detailing the height, type, location, method of installation, color and any proposed flag and flagpole illumination to the Design Review Committee for approval. The Design Review Committee shall not unreasonably deny an Owner's request to install a flagpole, but retains the right to approve the flagpole subject to the following guidelines:

1. Only one (1) permanent, removable, wall mounted or freestanding pole will be permitted per Lot.
2. The height of a flagpole can be no taller than the height of the highest point of the roofline.
3. Wall mounted flag poles shall be a maximum of five feet (5') long with attaching brackets painted to match the attachment area and will not require prior approval.
4. Flag size may not exceed 3'x 5', and no more than two (2) flags shall be displayed at one time. Pursuant to A.R.S. § 33-1808(A), as it may be amended from time to time, the following flags shall be permitted (so long as displayed in a respectful manner): the American flag or an official or replica of a flag of the United States Army, Navy, Air Force, Marine Corps or Coast Guard, the POW/MIA flag, the Arizona state flag, an Arizona Indian nations flag, and the Gadsden flag, all other flags are prohibited.
5. Flags must be removed during inclement weather.
6. All equipment including poles, ropes, pulleys, and flags shall be maintained in good condition at all times.
7. If the flagpole, or its installation, causes physical damage to any other Lot or the Common Areas, the Owner of the Lot shall be responsible for all damage caused.

The Association permits display of a reasonable number of additional American flags on the following National Holidays only (to be removed no later than 5:00 p.m. of the following day): Memorial Day, Flag Day, July 4, Labor Day, Veterans Day.

Fences/Walls

Plans for new or improved fences or walls must be submitted to the Design Review Committee prior to construction. Subject to the CC&Rs and applicable laws, plans to raise the height of a common wall must be submitted to the Design Review Committee for prior approval with written consent from the adjacent neighbor(s). Owners requesting the height adjustment are solely responsible for engineering new wall footings and submitting engineering plans with each request. Copies of all applicable municipal and other approvals must be submitted with the requests. Walls Improvements must match the existing walls in texture and color. Boundary wall Improvements or modifications are prohibited.

Gates

Double gates at the side of the home may be installed to allow wider access to rear yards with prior written approval from the Design Review Committee, provided that the installation of such gates does not require boundary wall modifications. All gates (double or single) shall be the same material, design and color as the originally installed single gate. Shrubs, trees and plant material must be installed and maintained between the street and the gate access whenever possible.

Gutters and Downspouts

Gutters and downspouts will be considered for approval if the finish matches the color of the home. The Association strongly recommends use of high quality materials that offer long life as the gutter must be maintained in good condition. Downspouts must be directed so as not to drain on to neighboring Property.

HVAC

Except as initially installed by the Declarant or Designated Builder, no heating, air conditioning or evaporative cooling unit shall be placed, installed, constructed or maintained upon any Lot without the prior approval of the Design Review Committee. All units must be ground mounted, located within the perimeter of the rear yard and screened or concealed so that they are not Visible From Neighboring Property.

Outdoor Fireplaces

Outdoor fireplaces may only be installed and used in rear yards and require the prior approval of the Design Review Committee. Outdoor fireplaces may not exceed seven (7) feet in height and may not be closer than five (5) feet to the Property line or any greater distance as may be required in order to comply with any applicable ordinances, codes, or laws. Proposals for the installation of outdoor fireplaces and barbecues must include materials, colors and the location and distance from neighboring Lots. The style, color and materials of the proposed Improvement shall complement the style, color and materials of the community. Each Owner is responsible for assuring that the operation of the fireplace is in compliance with all applicable ordinances, codes and laws. The Design Review Committee may require neighbor approval of such Improvements.

Outdoor Lighting

Any outdoor lighting installed on a Lot or home must receive advance approval from the Design Review Committee. Permanent lighting sources shall not be directed towards streets, Common Areas or neighboring Property. Lighting mounted on the front or side of a building shall be in decorative fixtures that diffuse light and shall not contain colored bulbs or bulbs with wattage greater than sixty (60) watts or eight hundred (800) lumens.

Patio Covers

Roofing material color shall match that which was installed by the Declarant or Designated Builder on the original roof of the home. The color of supports and material shall match the color of the body or trim of the home. Structures must be professionally installed, and

match the exterior color of the home. A setback to sidewalls that complies with applicable regulations must be maintained.

Ramadas and Gazebos

Ramadas and gazebos may be erected in rear yards with the prior approval of the Design Review Committee, subject to the following guidelines:

1. Maximum square footage (under roof area) is one hundred and twenty (120) square feet.
2. Maximum roof height is ten (10) feet at the highest point.
3. The structure must be set back a minimum of five (5) feet from any common wall or any greater distance as may be required in order to comply with any applicable ordinances, codes, or laws.
4. The structure must be painted a natural cedar or match the color of the home and be maintained in good condition.
5. Any roof tile must also match the tile on the home.
6. Lighting of the structure must be approved by the Design Review Committee prior to installation.

Play Structures

Play structures may be erected in rear yards only with the prior approval of the Design Review Committee, subject to the following guidelines:

1. Structures must be set back a minimum of seven (7) feet from any common wall.
2. Maximum height allowed to the top support bar, highest point of structure or shade canopy is ten (10) feet.
3. Maximum height of any deck or platform is to be four (4) feet above ground.
4. The distance from the ground elevation to the top of the common wall must be measured and submitted with plans.
5. The Design Review Committee will take appearance, height, and proximity to neighboring properties into consideration.
6. Any shade canopy must be solid tan or earthtone color.
7. A brochure or picture must be included with each submittal.

Pools and Spas

Pools and spas require the prior approval of the Design Review Committee as provided below:

1. Common walls on Lots bordering Common Areas may not be torn down to allow access to rear yards.
2. Access must be gained by removing a portion of the front wall on the side of the home.
3. Gates, walls and any front yard landscaping that is removed or damaged must be returned to their original condition in a timely fashion.

4. All pool and spa motors and associated equipment must be screened or concealed so they are not Visible From Neighboring Property, and placed in a location so that noise generated from such equipment will be the least disruptive to neighbors.
5. Lots with view fence must include an equipment screening plan for approval by the Design Review Committee.
6. Except for hot tubs or whirlpool spas, above-ground pools are not permitted.
7. Plans and specifications for a pool or spa, as prepared by the pool or spa contractor, must include any proposed fencing.
8. To the greatest extent possible, hot tubs and spas shall be located in such a manner that they are not Visible From Neighboring Property.
9. Backwash water from pools and spas (including water drained from pools or spas in order to perform maintenance on pools or spas) must be contained wholly on an Owner's Lot and may not be permitted to seep or flow onto an adjacent Lot or Common Area (including streets). The Owner of the Lot shall be responsible for all damage caused to an adjacent Lot or Common Area due to backwash, including erosion.
10. Pool ladders, slides, rock waterfalls, etc. that exceed the height of the fence or wall must have the prior approval of the Design Review Committee. Such items shall not exceed eight (8) feet in height and must be set back a minimum of five (5) feet from the Property lines.

Pool Fencing and Equipment

The specifications for rear yard pool fencing installation on a Lot with view fencing shall be neutral earth tone color to match or blend with the existing color of the home or fencing. Pool fence enclosures must meet all city, county, state and federal requirements, and an Owner shall submit a proposal for a pool fence enclosure only after being assured by the applicable municipal authority that the proposed fence enclosure will not violate those requirements.

Pool equipment on Lots with view fencing must be screened so as to not be Visible From Neighboring Property or Common Area. Screening may be through plant material or hardscape enclosure. Hardscape enclosures do not require approval if the enclosure does not exceed four (4) feet in height and is painted to match the exterior color of the home. All other screening material requires the approval of the Design Review Committee.

Satellite Dishes

An antenna one (1) meter or less in diameter or diagonal measurement which is designed to receive signals from direct broadcast satellites (DBS) or designed to receive video programming services from multi-channel multi-point distribution (wireless cable) providers (MMDS) or an antenna that is designed to receive television broadcast signals (TVBS) may be placed, installed, or kept on a Lot subject to the provisions of 47 C.F.R. Section 1.4000 of the Code of Federal Regulations (“Federal Regulations”).

Should applicable law prohibit the Design Review Committee from requiring prior approval for the installation of certain antennas, the preferred locations, in descending order of preference, are as follows

1. The antenna must be placed on the Lot in such a manner as to not be Visible From Neighboring Property unless it is impossible to do so without impairing the user’s ability to receive signals from a provider of DBS, MMDS or TVBS.
2. If the antenna cannot be placed on the Lot in such a manner as to not be Visible From Neighboring Property without impairing the user’s ability to receive signals from a provider of DBS, MMDS or TVBS, then the antenna must be screened by landscaping or by some other means to reduce to the greatest extent possible its Visibility From Neighboring Property without impairing the user’s ability to receive signals from a provider of DBS, MMDS or TVBS.
3. If the antenna is mounted on a residence or other structure and is Visible From Neighboring Property, the antenna must be painted a color that will blend into the background against which the antenna is mounted, unless the painting of the antenna would impair the user’s ability to receive signals from a provider of DBS, MMDS or TVBS.
4. An antenna that is less than one (1) meter in diameter and is designed to receive video program services from MMDS or an antenna designed to receive TVBS may be mounted on a mast, provided that the mast may be no higher than twelve (12) feet above the roofline or the height necessary to establish line of sight contact with the transmitter, whichever is lower. If the mast or antenna is Visible From Neighboring Property, the mast or antenna must be painted a color that will blend into the background against which the antenna is mounted, so long as the painting of the antenna does not impair the user’s ability to receive signals from the MMDS or TVBS provider.

Security Doors, Screen Doors and Sunscreens

Metal security/screen door designs along with the proposed sunscreen materials must be submitted for approval. Approvals will only be considered if the doors are of a neutral design and are painted to match the exterior color of the home or are a neutral “earth tone” color. Bronze, gray, charcoal, brown or beige sunscreen material may also be considered for approval.

Silver colored aluminum security/screen doors and/or wire screen mesh doors are strictly prohibited on front doors.

Reflective and non-reflective window films are expressly prohibited.

Signs

No sign of any kind which is Visible From Neighboring Property shall be installed or displayed on any Lot or Common Area without the prior written approval of the Design Review Committee as to size, color, design, message content, number and location except:

1. Such signs as may be used by Declarant or Designated Builder in connection with the development and sale of Lots in the community;
2. Such signs as may be required by legal proceedings, or which by law may not be prohibited;
3. One temporary sign per Lot no larger than thirty (30) inches by twenty-four (24) inches used exclusively to advertise the Lot for sale;
4. Political sign (as defined by A.R.S. §33-1808) with a maximum aggregate total of nine (9) square feet; provided that no political signs may be displayed earlier than seventy-one (71) days before an election day or more than three (3) days after an election day;
5. Such signs as may be desired by Declarant or Designated Builder or required for traffic control, construction job identification, builder identification and subdivision identification as are in conformance with the requirements of the City;
6. Security signs are acceptable but they may not exceed eighty (80) square inches;
7. All other signs must be approved in advance in writing by the Design Review Committee.

All signs shall conform to applicable municipal ordinances and other governmental requirements. **Signs advertising landscaping or pool contractors, etc., must be removed within forty-eight (48) hours of completion of work.**

Solar Panels

The Association recognizes the Owners' right to install and use solar energy devices, as set forth in A.R.S. § 33-1816, and hereby adopts these guidelines in order to regulate the placement of solar energy devices that are governed by A.R.S. § 33-1816 and A.R.S. § 44-1761. If the solar energy device is one of the devices listed in A.R.S. § 44-1761, the placement of the solar energy device must be approved in advance by the Design Review Committee. Such solar energy device must comply with the following guidelines, to the extent that they do not impair the functioning of the device, or adversely affect the cost or efficiency of the device:

1. No solar energy device may encroach upon the Common Area or the Property of another Owner.
2. A solar energy device must be placed in the rear patio or on a portion of the roof facing away from the street so as not to be Visible From Neighboring Property.
3. The solar energy device must be shielded from view so as not to be Visible From Neighboring Property to the maximum extent possible. The landscaping or structure used to shield the solar energy device must be approved in advance by the Design Review Committee.
4. The solar energy device must comply with all applicable city, county and state laws, regulations and codes. The Association must be provided with a copy of any applicable governmental permits.

5. Placement and installation must be pursuant to the manufacturer's instructions.
6. In order to protect against personal injury and property damage, the solar energy device may not be placed in a location where it may come into contact with a power line.
7. In order to protect against personal injury and property damage, all solar energy devices must be properly grounded and secured.
8. In order to protect against personal injury, solar energy devices may not block or obstruct any driver's view of an intersection or street.
9. The Owner is responsible for all costs associated with the installation and maintenance of the solar energy device and shall keep the device in good repair.
10. The Owner is responsible for all damage caused by or connected with the solar energy device.
11. The Owner must hold the Association harmless and indemnify the Association in the event that someone is injured by the solar energy device.

Storage Sheds

Storage sheds require the prior written approval of the Design Review Committee and are subject to the following guidelines:

1. Storage sheds are subject to rear setbacks of a minimum of five (5) feet from any Property line or any greater distance as may be required in order to comply with any applicable ordinances, codes, or laws.
2. Sheds may not be Visible From Neighboring Property, the streets or the Common Areas.
3. Quality materials and construction shall be required.
4. Sheds must be in harmony with the exterior of the residence including siding, color, and roofing materials.

Window Coverings Criteria

Permanent draperies or suitable window treatments must be installed on all front-facing windows within sixty (60) days of occupancy. No reflective materials, including but not limited to, aluminum foil, reflective screens or glass, mirrors or similar type material shall be installed or placed upon the outside or inside of any windows. Exterior window coverings, shelf openings, or treatments used to decorate must be compatible with respect to materials and color, and with the style and color of the home, and require the prior written approval of the Design Review Committee.

Landscape Guidelines

Front Yard Landscaping

Unless installed by the Declarant or Designated Builder, within ninety (90) days from the close of escrow, each Owner shall install landscaping Improvements, together with any sprinkler system or drip irrigation system sufficient to adequately water the landscaping Improvements in the front yard of their Lot and any public right-of-way areas lying between the front or side boundaries of the Lot and an adjacent street. All landscaping Improvements installed in such areas must be approved by the Design Review Committee prior to installation. The area from the street to the back of the sidewalk, shown as the Private Sidewalk Easement, is maintained by the HOA. No changes to this area are permitted by the homeowner.

Fine Grading and Mounding

Fine grading and mounding is a critical aspect of landscaping. Each Lot has been graded such that all storm water will drain away from the home. It is important that this drainage pattern is maintained when preparing the landscape design, especially if mounding or berming is proposed. In all cases, the installation must comply with the approved grading and drainage plan. Mounding must appear natural.

Rear Yard Landscaping

Unless installed by the Declarant or Designated Builder, within ninety (90) days from the close of escrow, each Owner of a Lot where the rear and/or side yards are enclosed with wrought iron view fence and Visible From Neighboring Property shall install all landscaping Improvements, together with any sprinkler system or drip irrigation system sufficient to adequately water the landscaping Improvements, on such rear yard and/or side yards. All landscaping Improvements installed in such areas must be approved by the Design Review Committee prior to installation.

Rear yard landscaping Improvements on Lots that are not Visible From Neighboring Property shall be completed within one hundred eighty (180) days from the close of escrow and do not require the approval of the Design Review Committee.

Front Yard Landscape Minimum Standards

Front yards shall be designed to include minimum quantities and sizes of plant material. The following minimum plant material sizes and quantities are required; however the Design Review Committee may consider variations of these requirements if turf, courtyard walls or other items are installed not allowing for the minimum requirements specified in which the completed landscape plan results in an attractive front yard:

Trees: 2 (24" box)

Shrubs: 8 (5 gallon)

Ground Cover: 6 (5 gallon)

1. Plants must not include any plant/material listed in the Prohibited Plant Materials. (listed below)
2. Owners are to select low shrubs/groundcover along driveway and street frontages to maintain visibility. Plants exceeding two (2) feet in mature height shall be located at least eight (8) feet back from public sidewalks or curbs.
3. Surface select boulders may be grouped in clusters, with varied sizes, buried 1/3 below grade and incorporated with grades to mimic a natural outcropping. Boulders may not exceed three (3) feet in height and shall have a natural oval character that is compatible with specific decomposed granite. Colored and lava rocks are prohibited.
4. Owners may use low voltage lighting to highlight entry walks, or accentuate trees where permitted by all applicable laws and ordinances. Colored bulbs and lenses are prohibited. Light source shall be adjusted to minimize glare on adjacent properties, the streets and Common Areas.
5. Ornamentation such as driftwood, skulls, wagon wheels, sculptures, and others are not permitted in front yards.

Rock and Ground Cover

Decomposed granite used in the community shall be of a neutral earth tone color, artificially colored rock or granite is prohibited. No more than two (2) different colors of one-half (1/2) inch screened granite rock is allowed in the front yard and rock shall not spell out any words or names. All granite areas must be treated with a pre-emergent weed control at regular intervals to retard weed growth.

River rock shall be three (3) to six (6) inches in diameter and cover not more than ten percent (10%) of front yard landscaping. Rip rap that matches or complements the front yard decomposed granite, placed in a "run" must also meet the percent (10%) maximum coverage.

Boulders

Use of boulders to create a natural setting is permitted subject to the following criteria:

Boulders must be "surface select" granite boulders and must be buried with one-third of the boulder being underground. Boulders shall be installed in a naturalistic manner and integrated within the landscape including other boulders or landscape materials such as plants, decomposed granite and contouring.

Turf

Turf is an approved ground cover permitted in front and rear yard landscaping provided that no turf or spray irrigation shall abut walls or fences. Planting areas of at least five (5) feet are recommended between walls, fences, structures and turf or spray irrigation. Great care should be taken to avoid spraying of walls, fences and other structures that may cause

damage and void any warranty. Drainage shall flow away from all walls and any structures, and Owners shall maintain proper grading on the Lot to eliminate any undue drainage onto neighboring Lots. Irrigation systems shall not produce excessive watering on walls so as to cause structural damage to common walls.

Artificial Turf

High quality and natural-looking artificial turf is an acceptable landscape option to provide the appearance of a well-kept lawn without the cost of irrigation and routine maintenance. Any application or request to use artificial turf in front yards and rear yards Visible From Neighboring Property must be approved by the Design Review Committee in writing prior to installation.

The Design Review Committee will consider applications for the use of artificial turf on a case-by-case basis, subject to the following guidelines:

1. Artificial turf must be of a high quality material, suitable style and color for the purpose intended and must appear seamless, natural and well groomed.
2. Appropriate front yard uses are strictly for lawns and landscape elements.
3. Artificial turf and natural turf are not allowed in the same yard which is Visible From Neighboring Property.
4. Specialized surfaces for putting greens, play areas, bocce ball and other uses are allowed in rear yards only and must be installed as permanent construction. Rear yards Visible From Neighboring Property require the prior approval of the Design Review Committee.
5. Artificial turf must be installed by a professional, qualified contractor. Owners and Do-it-Yourselfers are not allowed to install artificial turf.

Maintenance Requirements for Artificial Turf

Owners must maintain the appearance of the artificial turf in a clean, “like-new” condition. Periodically, leaves and other debris shall be raked or removed in order to keep the artificial turf looking similar to natural turf. The Association retains the right to determine when the artificial turf must be replaced due to weathering or other types of damages. Artificial turf must be replaced with the same turf originally approved if replacement or repair is required.

Submittal Requirements for Artificial Turf Applications

Applications for the use of artificial turf must be submitted to the Design Review Committee for review and approval PRIOR to any installation. Construction or installation may not commence until such approval is granted in writing by the Design Review Committee.

Submittals must include:

- **Application Form:** The completed application form must be signed by the Owner and must include the contact information of the contractor that will be installing the artificial turf.
- **Site Plan**
 - Location of the proposed artificial turf.
 - Dimensions for the proposed Improvements.

- Proposed plan for drainage of the affected area.
- **Manufacturers Specifications**
- **Sample of Artificial Turf:** 12” x 12” minimum size
 - This must be a sample of the actual turf to be used.
 - Label the back of the sample with the Owner’s Name and Address.
 - Label the back of the sample with the Product Name and Manufacturer.

The Design Review Committee may, at its discretion, maintain a collection of samples and specifications of artificial turf products that have been deemed acceptable and approved by the Design Review Committee, and Owners and Applicants may request a list of these products. The Design Review Committee does not endorse or warranty any artificial turf products.

Irrigation

With an average rainfall of less than nine (9) inches, most plant material requires a supplemental irrigation system to sustain plant life yet preserve our precious water supply. Each Owner shall provide a complete irrigation system compatible with the front yard design. All landscape irrigation must be underground, automatic and low water use drip systems with time clocks cycled for efficient deep watering, except for turf and flower bed areas which may use spray systems with 100% head-to-head coverage. Overspray onto sidewalks and streets is strictly prohibited, and great care should be taken to avoid spray of walls, fences and other structures that may cause damage and void any warranty. All irrigation and drip system lines must be covered under gravel or within plant material. Exposed irrigation or drip system lines are prohibited. Any irrigation lines that are not in use must be capped.

Landscape Lighting

Lighting, other than that installed by Declarant or Designated Builder, must be approved by the Design Review Committee. The following outlines the minimum standards for lighting:

1. Lighting shall be shielded such that the light shines primarily on the Lot on which it is installed. Lights which create glare Visible From Neighboring Property are prohibited.
2. Lights shall be screened whenever possible with walls, plant materials or internal shielding to allow the light to be seen, but not the fixture itself.
3. Only low-voltage landscape lighting is permitted, and fixtures shall not exceed an illumination intensity of more than one (1) foot-candle power as measured from the closest Property line.

Prohibited Plant Materials

The following vegetation types and varieties are expressly prohibited due to reasons of profuse and noxious pollen, excessive heights and weed-like characteristics of excessive growth, high water demands or other similar traits. Under no circumstances is it permissible to plant a prohibited plant or allow it to remain within the front yard or backyard of any Lot within the community, unless specifically noted below.

TREES

<u>Common Name</u>	<u>Botanical Name</u>
Australian Bottle Trees	Brachychiton populneus
Australian Willow	Geijera parviflora
Canary Date Palm	Phoenixd/canariensis
Cottonwood	Populus
Cypress	Cupressus
False Cypress	Chamaecyparissus
Olive trees other than “Swan Hill” variety	Olea Europaea
Jacaranda	Jacaranda mimosifolia
Mexican Fan Palm	Washingtonia robusta
Mexican Palo Verde	Parkinsonia aculeate
Mimosa	Algizia Julibrissin
Oleanders other than dwarf variety	Nerium Oleander
Thevetia	Thevetia species
Windmill Palm	Trachycarpus forunii
Mulberry trees, all varieties	Morus L.
Eucalyptus trees, all varieties	

Note: All Citrus, Palms, Oleanders, Pines, Juniper and Cedar, whose mature growth height may reasonably be expected to exceed ten (10) feet will be prohibited for aesthetic reasons. Dwarf varieties, and those specimens whose mature growth height may reasonably be expected to be maintained at less than ten (10) feet, may be installed in rear yards only.

Ground Cover

<u>Common Name</u>	<u>Botanical Name</u>
Fountain Grass	Pennisetum setaceum
Pampas grass	Cortaderia selloana

Maintenance

All landscaping shall be maintained in a neat and attractive condition. Minimum maintenance requirements include watering, mowing, edging, pruning, removal and replacement of dead or dying plants, removal of weeds and noxious grasses, and removal of trash, leaves, and debris.

Water Features and Statuary

Lawn ornamentations, including but not limited to, landscape sculptures, statues, outdoor art, decorative water features, waterfalls, fountains, ponds, animal replicas, pottery or similar landscape elements, or any material or object applied to a wall, fence, gate or other Improvement on a Lot, whether permanently installed or not, are considered Improvements and part of the landscaping and therefore subject to the prior written approval of the Design Review Committee before installation. Items such as fountains and statuary are permissible within the rear yard (as long as they are not visible above the fence line). Fountains in the front yard may not exceed four (4) feet in height. Statuary is not allowed in the front yard except for seasonal decorations which must be removed in a timely manner (see Holiday Lighting). Following approval by the Design Review Committee, it is recommended that water features and fountains be chlorinated. The Design Review Committee reserves the right to limit the size and quantity of statuary in rear yards where the Improvement is Visible From Neighboring Property. Statuary must be of earth tones, no painted finishes, and must be approved in advance by the Design Review Committee.

Hardscape

The Design Review Committee must approve any hardscape items proposed for front yard installation. Hardscape items that will be Visible From Neighboring Property, the streets, or the Common Area in the rear yard also require prior approval.

Association Rules

The following Association rules summarize some of the common provisions found in the CC&Rs as well as rules established by the Board pursuant to its rulemaking authority set forth in the CC&Rs.

General Property Restrictions

No Owner may lease less than his, her or its entire Lot, and no Lot may be leased for a period of less than three (3) consecutive months. All leases must restrict occupancy to a Single Family Residential Use and be in writing. No gainful occupation, trade or other non-residential use may be conducted on the Property for the purpose of receiving products or services related to such usage. Owners must notify the Association of any lease within fifteen (15) days of the effective date of the lease, and provide the Association with the following: (a) name of tenant, (b) date and term of the lease, and (c) current address of the Owner. The Association shall have the right to charge an administrative fee in connection with the Association's record keeping of each new lease.

Trash/Recycling Containers and Collection

No garbage or trash shall be kept on any Lot except in covered containers. These containers must be stored so that they are not Visible From Neighboring Property, the street, or Common Areas, except up to twenty-four (24) hours in advance of collection and not later than twenty-four (24) hours after collection. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot. Notwithstanding the foregoing, garbage or trash placed on any Lot solely in connection with any bulk trash pickup program shall be acceptable so long as such garbage or trash is placed neatly on the Lot and is made available for collection no earlier than the weekend immediately prior to the weekday of collection.

Pets

Residents are allowed to keep a reasonable number of generally recognized domesticated house or yard pets. Animals cannot be kept or raised for commercial purposes and they are not allowed to make an unreasonable amount of noise or become a nuisance to neighbors. Dog runs must have the prior approval of the Design Review Committee. Dogs must be kept on leashes at all times while on the Association's Property and all Owners must clean up after their pets. No structure for the care, housing, or confinement of any pet shall be maintained so as to be Visible From Neighboring Property. Upon the written request of an Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether a particular animal, bird, poultry, or livestock is a generally recognized as a domesticated house or yard pet and whether such a pet is a nuisance.

Holiday Lighting

Temporary holiday decorations are permitted from Thanksgiving through January 15. Other holiday lighting must receive the approval of the Design Review Committee prior to being installed.

Seasonal and Decorative Flags

Seasonal and decorative flags, which are house mounted below the roofline, do not require approval. Seasonal flags must be removed within ten (10) days after the date of the holiday, and all flags must be maintained in good condition at all times. Seasonal or decorative flags that are determined by the Board, in its sole discretion, to be offensive to neighbors or the Association must be removed. Sports flags will only be allowed to be displayed on the day prior to and the day of the specified team's most recent game.

Machinery and Equipment

No machinery, fixtures, or equipment of any type, including, but not limited to heating, cooling, air-conditioning and refrigeration equipment, may be placed on any Lot without screening or concealment so they are not Visible From Neighboring Property, the street or Common Areas. Oil pans, carpet, boards or any other object used to collect oil spills from driveways must be removed when not in use and stored so as not to be Visible From Neighboring Property, the street or Common Areas.

Vehicles

Motor vehicles classed by manufacturer rating as exceeding one (1) ton, mobile homes, recreational vehicles, travel trailers, tent trailers, camper shells, detached campers, boats, boat trailers, hang gliders, ultra lights, or other similar equipment or vehicle cannot be parked, kept, placed, or maintained on the street or any Lot so as to be Visible From Neighboring Property, the street or Common Areas. The provisions of this section shall not apply to pickup trucks of less than one (1) ton capacity with camper shells not exceeding seven (7) feet in height measured from ground level and mini-motor homes not exceeding seven (7) feet in height and eighteen (18) feet in length which are parked and used on a regular and reoccurring basis for basic transportation or in conjunction with a Resident's occupation, provided the vehicle is in good repair and any and all "tools of the trade" stored in or upon the vehicle are not visible.

Automobiles, motorcycles, motorbikes or other vehicles cannot be constructed, reconstructed or repaired upon any Lot, parcel or street, and no inoperable vehicles, including but not limited to vehicles with flat tires. Vehicles described in the preceding sentence cannot be stored or parked on the street or any Lot, so as to be Visible From Neighboring Property, the street or Common Areas; provided, however, that the provisions of this section shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during and used exclusively in connection with the construction of any Improvement approved in writing by the Design Review Committee.

Parking

Vehicles of all Owners, lessees, and Residents, and of their guests and invitees, are to be kept in garages, carports or the residential driveways of the Owner, whenever such facilities are sufficient to accommodate the number of vehicles on the Lot. In the event the garage and driveway is insufficient for parking, temporary parking shall be allowed on the street directly adjacent to the Lot.

Speakers

Outside speakers will only be allowed if they are concealed in the patio cover and secluded from view. Residents are required to keep the volume as low as possible so as not to disturb the peaceful enjoyment of neighbors.

**UNANIMOUS CONSENT TO ACTION BY THE BOARD OF DIRECTORS OF
6 ON SIXTEEN HOMEOWNERS ASSOCIATION**

c/o Realty Asset Advisors SW, Inc.
7909 East Pecos Lane, Scottsdale, AZ 85250
PHONE: 402-708-2121/E-Mail: realtyassetadvisors@gmail.com

RESOLUTION TO ADOPT DESIGN GUIDELINES AND RULES AND REGULATIONS

WHEREAS, the 6 on Sixteen Homeowners Association (the "Association") is an Arizona nonprofit corporation that governs, in whole or in part, the property subject to the Declaration of Covenants, Conditions and Restrictions for 6 on Sixteen Homeowners Association, recorded as Document No. 2019-0021869 in the Official Records of Yavapai County, Arizona, as amended from time to time (the "Declaration");

WHEREAS, the Declaration of the 6 on Sixteen Homeowners Association provides the Board of Directors of the Association (the "Board") the authority to govern the affairs of the Association;

WHEREAS, Article 3, Section 3.1(b) of the Declaration provides for the Board's authority to adopt, amend and repeal architectural guidelines, standards and procedures;

WHEREAS, the Board now wishes to adopt certain architectural guidelines and rules and regulations; and

WHEREAS, the Board hereby takes the following action in writing and without a meeting pursuant to A.R.S. § 10-3821, which action shall have the same force and effect as if taken by the Board at a duly called meeting of the Board.

NOW, THEREFORE, the Board hereby approves and adopts the 6 on Sixteen Homeowners Association Design Guidelines and Association Rules and Regulations dated effective October 2023 (the "Design Guidelines"), and declares that these Design Guidelines shall be binding and enforceable as set forth in the Declaration.

IN WITNESS WHEREOF, the undersigned have executed this consent as of this _____ day of October, 2023



Daniel Fox
President and Director, Board of Directors

After recording, return to:

Rose Law Group p.c.
Attn: Tony Freeman
7144 E. Stetson Dr., Ste. 300
Scottsdale, AZ 85251
Telephone: 480-944-4250

ABANDONMENT AND RELEASE OF EASEMENT

THIS ABANDONMENT AND RELEASE OF EASEMENT ("Abandonment") is made effective as of June 30, 2022, by express acknowledgment of COTTONWOOD 1, LLC, a Wyoming limited liability company (the "Owner").

WHEREAS, the Owner is the fee title owner of that certain property described in the Warranty Deed, recorded with the Yavapai County Recorder on July 20, 2022, at Reception Number 2022-0044194 ("Property");

WHEREAS, pursuant to that certain Warranty Deed, recorded with the Yavapai County Recorder on March 2, 1981, at Book 1363, Page 457 (as attached in Exhibit A hereto, "Easement Warranty Deed"), a portion of the Property was subject to a purported Easement for Ingress-Egress and Utilities over the West 25.00 feet of the parcel (the "Easement");

WHEREAS, the grantee named in the Easement Warranty Deed subsequently conveyed the affected portion of the Property via Quit Claim Deed, recorded with the Yavapai County Recorder on May 8, 1998, at Book 3569, Page 250 (as attached in Exhibit B hereto, the "Quit Claim"), without condition or reference to such Easement;

WHEREAS, pursuant to a Yavapai County Recorder title search, there is no record of any dominant estate grantee holding rights, title, or interest to said Easement in any prior or subsequent conveyance related to the same;

WHEREAS, no property or record owner adjacent to the Property or purported Easement, contends to benefit from or use such Easement for ingress, egress, or utilities;

WHEREAS, the Easement has not been in use for a significant period, if any, and is unduly and significantly burdensome to the Owner's rights, title, use, and enjoyment of the Property;

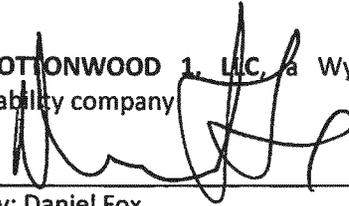
WHEREAS, the Owner owns the entirety of the Property which make up the adjoining parcels of land abutting the purported Easement, meaning there is complete unity of the dominant and servient estates, if any, and no other known property or person benefits from or holds any recorded or known rights, title or interest in the Easement, and Owner so desires to expressly state and confirm that the Easement is, abandoned, extinguished, terminated and released in all material respects by virtue of merger of ownership.

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, and to forego any reasonable doubt, the Owner is duly authorized and so does expressly agree and acknowledge

that the Easement, and all rights and interests granted thereunder, if any, is hereby abandoned, extinguished, terminated and released in all respects, and that the Easement is hereby null, void and no longer of any further force or effect.

IN WITNESS WHEREOF, the Owner has caused this Abandonment and Release of Easement to be effective as of the date first written above.

COTTONWOOD 1, LLC, a Wyoming limited liability company



By: Daniel Fox
Its: Authorized Signatory

NOTARY PUBLIC

State of Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 26th day of May, 2023, by Daniel Fox, a duly authorized representative of Cottonwood 1, LLC, a Wyoming limited liability company.

Angelica Van Balen
Notary Public

My commission expires: June 5, 2023

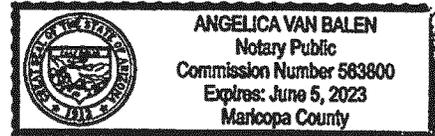


Exhibit A

ATTACHED.

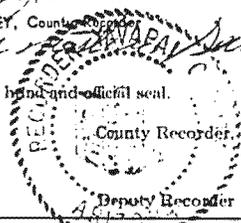
STATE OF ARIZONA, County of Yavapai—7398
I do hereby certify that the within instrument was filed and recorded at the request of TRANSAMERICA TITLE INSURANCE CO.
on MAR 2 '81-3 20 PM o'clock 1363 book Official Records Page 457
Records of Yavapai County, Arizona. WITNESS my hand and official seal the day and year first above written.

By PATSY C. JENNEY, County Recorder Deputy

When recorded, mail to:

M. and R. Enterprises, an Ariz. Partnership
3602 N. 30th Street
Phoenix, Arizona 85016

Witness my hand and official seal.



Compared
Photostated
Fee:

5

Escrow #40006080-4

WARRANTY DEED

For the consideration of Ten Dollars, and other valuable considerations,

HANS-RUDY C. STADELMAN and CYNTHIA L. STADELMAN, husband and wife
hereafter called the Grantor, whether one or more than one, hereby conveys to

M. AND R. ENTERPRISES, AN ARIZONA PARTNERSHIP
the following real property situated in Yavapai County, Arizona, together with all rights and privileges appurtenant thereto, to wit:

A parcel of land located in the East 1/2 of Section 3, Township 15 North, Range 3 East, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

Commencing at the East quarter corner of said Section 3; thence S 00°02'02" West, along the East line of said Section 3; a distance of 417.96 feet; thence N 89°42'54" West, a distance of 291.82 feet to the TRUE POINT OF BEGINNING; thence continuing N 89°42'54" West, a distance of 266.48 feet; thence N 00°46'08" West, a distance of 1103.53 feet; thence S 89°44'08" East, a distance of 266.48 feet; thence S 00°46'08" East, a distance of 1103.63 feet to the POINT OF BEGINNING.

EXCEPT all oil, minerals, ores and metals of every kind, as reserved in Deed recorded in Deed recorded in Book 187 of Deeds, page 331, records of Yavapai County, Arizona.

Subject to an Easement for Ingress-Egress and Utilities over the West 25.00 feet of the above described parcel.

arb. 186

Subject to current taxes and other assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record, the Grantor warrants the title against all persons whomsoever.

Dated this 25th day of November 1980

Hans-Rudy C. Stadelman
Cynthia L. Stadelman

STATE OF ARIZONA } ss.
County of Yavapai

This instrument was acknowledged before me this 1ST day of February 1981, by Hans-Rudy C. Stadelman and Cynthia L. Stadelman

My commission will expire Mar. 18, 1983

Kathleen Ware
Notary Public

STATE OF _____ } ss.
County of _____

This instrument was acknowledged before me this _____ day of _____, 19____, by _____

BOOK 1363 PAGE 457

My commission will expire

Notary Public

FURNISHED THROUGH THE COURTESY OF TRANSAMERICA TITLE INSURANCE COMPANY

Exhibit B

ATTACHED.

2023-0023107 ABND
05/30/2023 08:22:39 AM Page 7 of 11
3037754 BK 3569 PG 250
Hawaii County
Patsy Jenney-Colon, Recorder
05/08/1998 10:31A PAGE 1 OF 5
R E SPURR
RECORDING FEE 5.00
SURCHARGE 4.00
POSTAGE 1.00

Recorded at the request of:

When Recorded, MAIL TO:

See p. 2

QUIT CLAIM DEED

2023-0023107 ABND
05/30/2023 08:22:39 AM Page 8 of 11

WHEN RECORDED, MAIL TO:

R.E. Spurr, as Trustee of the Raymond and Laura Spurr Family Trust dated November 19, 1987
3602 N. 30th Street
Phoenix, Arizona 85016

Escrow No. **200221**

QUIT CLAIM DEED

For the consideration of Ten Dollars, and other valuable considerations, **M AND R ENTERPRISES, AN ARIZONA GENERAL PARTNERSHIP**

hereby quit-claim to R.E. SPURR, AS TRUSTEE OF THE RAYMOND AND LAURA SPURR FAMILY TRUST DATED NOVEMBER 19, 1987

all right, title, or interest in the following real property situated in Yavapai County, Arizona:

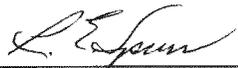
See Attached Legal Description

THE BENEFICIARIES OF THE TRUST ARE:
RAYMOND E. SPURR AND LAURA M. SPURR
3602 N. 30th Street, Phoenix, Arizona 85016

Exempt from Affidavit of Value per ARS 42-1614B 8

Dated: May 6, 1998

M and R Enterprises, an Arizona general partnership:

BY: 

R.E. Spurr, Partner

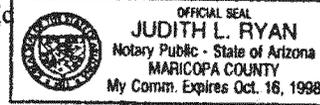
2023-0023107 ABND
05/30/2023 08:22:39 AM Page 9 of 11

STATE OF Arizona)
) ss.
County of Maricopa)

This instrument was acknowledged before me this 050698 by R.E. Sparr, as partner of M and R Enterprises, an Arizona general partnership.

My commission expires:

Notary Public



DESCRIPTION
OF A
4.1912 ACRE PARCEL

A PARCEL OF LAND LOCATED IN THE EAST HALF OF SECTION 3, TOWNSHIP 15 NORTH, RANGE 3 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, YAVAPAI COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 3;
THENCE SOUTH 00°02'02" WEST ALONG THE EAST LINE OF SAID SECTION 3, A DISTANCE OF 417.96 FEET;
THENCE NORTH 89°42'54" WEST, A DISTANCE OF 291.82 FEET;
THENCE NORTH 00°46'08" WEST, A DISTANCE OF 418.25 FEET TO THE POINT OF BEGINNING;
THENCE NORTH 89°40'22" WEST, A DISTANCE OF 266.48 FEET;
THENCE NORTH 00°46'08" WEST, A DISTANCE OF 685.09 FEET;
THENCE SOUTH 89°44'08" EAST, A DISTANCE OF 266.48 FEET;
THENCE SOUTH 00°46'08" EAST, A DISTANCE OF 685.38 FEET TO THE POINT OF BEGINNING.

CONTAINING 182,568 S.F. OR 4.1912 ACRES OF LAND, MORE OR LESS.

PREPARED BY:

O'NEILL ENGINEERING, INC.
2001 WEST CAMELBACK ROAD
SUITE 200
PHOENIX, AZ 85015

JOB NO: 3055

D:\3055\LEGAL.001

MAY 4, 1998



DESCRIPTION
OF A
1.2003 ACRE PARCEL

2023-0023107 ABND
05/30/2023 08:22:39 AM Page 11 of 11

A PARCEL OF LAND LOCATED IN THE EAST HALF OF SECTION 3, TOWNSHIP 15 NORTH, RANGE 3 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, YAVAPAI COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 3;
THENCE SOUTH 00°02'02" WEST ALONG THE EAST LINE OF SAID SECTION 3, A DISTANCE OF 417.96 FEET;
THENCE NORTH 89°42'54" WEST, A DISTANCE OF 351.94 FEET TO THE POINT OF BEGINNING;
THENCE CONTINUING NORTH 89°42'54" WEST, A DISTANCE OF 206.36 FEET;
THENCE NORTH 00°46'08" WEST, A DISTANCE OF 403.96 FEET TO A POINT OF A NON-TANGENT CURVE;
THENCE SOUTHEASTERLY ALONG SAID CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 350.00 FEET AN ARC LENGTH OF 101.51 FEET, A CENTRAL ANGLE OF 16°37'00" AND A RADIAL BEARING OF SOUTH 42°53'07" WEST;
THENCE SOUTH 31°56'00" EAST, A DISTANCE OF 203.83 FEET TO A POINT ON A NON-TANGENT CURVE;
THENCE SOUTHEASTERLY AND SOUTHERLY ALONG SAID CURVE CONCAVE TO THE WEST HAVING A RADIUS OF 300.00 FEET AN ARC LENGTH OF 160.33 FEET, A CENTRAL ANGLE OF 30°37'14" AND A RADIAL BEARING OF SOUTH 59°51'01" WEST TO THE POINT OF BEGINNING.

CONTAINING 52,284 S.F. OR 1.2003 ACRES OF LAND, MORE OR LESS.

PREPARED BY:

O'NEILL ENGINEERING, INC.
2001 WEST CAMELBACK ROAD
SUITE 200
PHOENIX, AZ 85015



JOB NO: 3055

D:\3055\LEGAL.003

MAY 5, 1998

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT (the "Agreement") made as of this 9th day of October, 2023 (the "Execution Date"),

BETWEEN:

Cottonwood 1, LLC of 7909 East Pecos Lane
(the "Indemnifier")

OF THE FIRST PART

and

City of Cottonwood Arizona of 111 N. Main Street Cottonwood, AZ 86326
(the "Indemnitee")

OF THE SECOND PART

BACKGROUND:

1. The Indemnitee desires protection against any personal liability, claim, suit, action, loss, or damage that may result from the Indemnitee's participation in the Activity.
2. The Indemnifier wishes to minimize any hardship the Indemnitee might suffer as the result of any personal liability, claim, suit, action, loss, or damage that may result from the Indemnitee's participation in the Activity.

IN CONSIDERATION and as a condition of the Indemnifier and the Indemnitee entering into this Agreement and other valuable consideration, the receipt and sufficiency of which consideration is acknowledged, the Indemnifier and the Indemnitee agree as follows:

Definitions

1. The following definitions apply in the Agreement:
 - a. "Activity" means the following:
Hold Harmless Agreement in favor of the City of Cottonwood for the abandonment of a 25' wide access and utility easement along the West boundary of referenced property.
 - b. "Expenses" means all costs incurred in the defense of any claim or action brought against the Indemnatee including lawyers' fees.
 - c. "Notice of Claim" means a notice that has been provided by the Indemnatee to the Indemnifier describing a claim or action that has or is being brought against the Indemnatee by a Third Party.
 - d. "Notice of Indemnity" means a notice that has been provided by the Indemnatee to the Indemnifier describing an amount owing under this Agreement by the Indemnifier to the Indemnatee.
 - e. "Parties" means both the Indemnatee and the Indemnifier.
 - f. "Party" means either the Indemnatee or the Indemnifier.
 - g. "Third Party" means any person other than the Indemnifier and the Indemnatee.

Indemnification

2. The Indemnifier will hold harmless and indemnify the Indemnatee against any and all claims and actions arising out of the participation of the Indemnatee in the Activity, including, without limitation, Expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with any liability, suit, action, loss, or damage arising or resulting from the Indemnatee's participation in the Activity, subject to the limits on indemnification described in the section titled Exceptions to Indemnification. Where prohibited by law, the above indemnification does not include indemnification of the Indemnatee against a claim caused by the negligence or fault of the Indemnatee, its agent or employee, or any third party under the control or supervision of the Indemnatee, other than the Indemnifier or its agent, employee or subcontractor.

3. In the case of a criminal proceeding, the Indemnitee will not be indemnified by the Indemnifier.

Exceptions to Indemnification

4. The Indemnitee will not be entitled to indemnification from the Indemnifier for any Expenses, judgments, fines, settlements and other amounts incurred as the result of the Indemnitee's participation in the Activity where:
 - a. in the case of a civil claim, the Indemnitee did not act in good faith and in a reasonable manner;
 - b. the actions or conduct of the Indemnitee constituted willful misconduct or was knowingly fraudulent or deliberately dishonest;
 - c. the Indemnitee will or has received payment under a valid and collectible insurance policy or under a valid and enforceable indemnity clause, bylaw or agreement, except where payment under this insurance policy, clause, bylaw or agreement is not sufficient to fully indemnify the Indemnitee in which case the Indemnifier will be responsible for any shortfall in payment received; or
 - d. an action or proceeding was initiated in whole or in part by the Indemnitee whether alone or along with one or more other claimants unless the action or proceeding has the written consent of the Indemnifier.

Notice of Claim

5. In the event of any claim or action, the Indemnitee will promptly provide the Indemnifier with written notice of the claim or action and will notify the Indemnifier within five business days of the commencement of any legal proceedings relating to the claim or action. The Indemnitee will provide the Indemnifier with all available information known to the Indemnitee relating to the claim or action.

Authorization of Indemnification

6. In any case where the Indemnitee requires indemnification, the Indemnifier will make the determination of whether indemnification is appropriate having given consideration to the terms described in the Exceptions to Indemnification section. If the Indemnitee disagrees with the determination of the Indemnifier then the matter must be referred for review and determination to independent legal counsel reasonably satisfactory to the Indemnitee. In all cases the Indemnifier will bear all costs of any independent determination.

7. The Indemnifier will bear the burden of proving that indemnification is not appropriate.
8. The termination of any claim or action by judgment, order, settlement, conviction or upon an admission of guilt or its equivalent will not, of itself, create a presumption that the person did not act in good faith and in a reasonable manner.

Assumption of Defense

9. On being notified of any impending action or claim, the Indemnifier may, at its own Expense, participate in the defense of any action or claim and may, alone or with any other indemnifying party, assume the defense against the action or claim using counsel that are reasonably satisfactory to the Indemnitee.
10. Once the Indemnifier has notified the Indemnitee of the intention to assume the defense, the Indemnifier will no longer be liable to the Indemnitee for any further Expenses subsequently incurred by the Indemnitee in relation to the defense of the claim. Once the Indemnifier provides notice to the Indemnitee that the defense of claim has been assumed by the Indemnifier, the Indemnitee may employ or continue to employ its own legal counsel however any fees or Expenses incurred by the Indemnitee subsequent to the notice of assumption of defense by the Indemnifier will be the sole responsibility of the Indemnitee.

Failure to Defend

11. If the Indemnifier elects not to assume the defense against the claim or action then the Indemnitee may defend against the claim or action in any manner the Indemnitee deems appropriate. The Indemnifier will promptly reimburse the Indemnitee for Expenses, judgments, fines, settlements and any other amounts actually and reasonably incurred in connection with the defense of the claim or action subject to the limits on indemnification described in the section titled Exceptions to Indemnification.

Settlement and Consent of Indemnifier

12. The Indemnitee will not settle any claim or action without first obtaining the written consent of the Indemnifier. The Indemnifier will not be liable for any amounts paid in settlement of any claim or action where written consent of the Indemnifier was not first obtained. The Indemnifier will not unreasonably withhold consent to any settlement.

Settlement and Consent of Indemnitee

13. The Indemnifier will not settle any claim or action without first obtaining the written consent of the Indemnitee. The Indemnitee will not unreasonably withhold consent to any settlement.

Cooperation

14. The Indemnifier agrees to cooperate in good faith and use best efforts to ensure that the Indemnitee is indemnified and reimbursed for any and all Expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with the defense of any claim or action resulting from the participation of the Indemnitee in the Activity.
15. The Indemnitee agrees to cooperate in good faith and provide any and all information within the Indemnitee's power as required for the defense of any claim or action and also to provide any and all information within the Indemnitee's power as required to help in a determination of indemnification as described under the Authorization of Indemnification section.

Expenses

16. No costs, charges or Expenses for which indemnity will be sought under this Agreement may be incurred without the Indemnifier's written consent. Any required consent must not be unreasonably withheld.
17. All reasonable Expenses incurred by the Indemnitee to enforce this Agreement, and all costs of defending any Third Party claims or actions brought against the Indemnitee under this Agreement will be the sole responsibility of the Indemnifier subject to the limits on indemnification described in the section titled Exceptions to Indemnification.

Advances of Expenses

18. At the written request of the Indemnitee, the Indemnifier will advance to the Indemnitee any Expenses, including lawyers' fees, incurred by the Indemnitee in defending any action brought against the Indemnitee. Where reasonable, and to minimize hardship to the Indemnitee, advance payments may be made prior to the disposition of any claim.
19. The Indemnitee agrees to repay to the Indemnifier any advance payments of Expenses where a determination is ultimately made that the Indemnitee is not entitled to indemnification for reasons described under the Indemnification and the Exceptions to Indemnification sections.

Payment

20. All payments made by the Indemnifier to the Indemnitee will be made in full in immediately available funds within sixty days of receipt of Notice of Indemnity from the Indemnitee and without deduction for any counterclaim, defense, recoupment, or set-off.
21. Any Notice of Indemnity sent by the Indemnitee to the Indemnifier must be made in writing and contain a full listing of the items to be covered in the payment. Any payment made by the Indemnifier to the Indemnitee will contain a listing of items covered under the payment.

Enforcement

22. If any right or remedy claimed by the Indemnitee under this Agreement is denied or is not paid by the Indemnifier, or on its behalf, within sixty days after a written Notice of Indemnity has been submitted by the Indemnitee to the Indemnifier, the Indemnitee may then bring suit against the Indemnifier to recover any unpaid amounts and if successful in whole or in part, the Indemnitee will be entitled to be paid any and all costs related to resolving the claim.
23. Where a determination as described under Authorization of Indemnification concludes that the Indemnitee's behavior is not entitled to indemnification, this will not create a presumption that the Indemnitee is not entitled to indemnification under this Agreement.

Insurance

24. The Indemnifier must take out and maintain insurance coverage with an insurer reasonably acceptable to the Indemnitee on terms reasonable and sufficient to indemnify the participation of the Indemnitee in the Activity.
25. If the Indemnifier fails to maintain adequate liability insurance, the Indemnitee may take out insurance and charge all costs to the Indemnifier.

Duration

26. The rights and obligations of the Indemnitee and the Indemnifier under this Agreement will continue:
 - a. so long as the Indemnitee is or will be subject to any possible claim or threatened, pending or completed action, suit or proceeding, whether civil, arbitrational, administrative or investigative that results from the participation of the Indemnitee in the Activity; or

- b. until terminated by an agreement in writing signed by both the Indemnifier and the Indemnitee.

Unlimited Indemnification

- 27. Under this Agreement, indemnification will be unlimited as to amount.

Full Release

- 28. Only payment and satisfaction in full of all amounts and charges payable under this Agreement and the due performance and observance of all terms, covenants and conditions of this Agreement will release the Indemnifier and the Indemnitee of their obligations under this Agreement.

Further Action

- 29. No action or proceeding brought or instituted under this Agreement and no recovery from that action or proceeding will be a bar or defense to any further action or proceeding which may be brought under this Agreement by reason of any further failure in the performance and observance of the terms, covenants and conditions of this Agreement.

Subrogation

- 30. In the event that any indemnity payment is made under this Agreement, the Indemnifier will be subrogated to the extent of this payment to all of the rights of recovery of the Indemnitee. The Indemnitee will take all action required and provide all information necessary to secure these rights and to fully enable the Indemnifier to take any action to enforce these rights in the recovery of the indemnity payment.

Amendments

- 31. This Agreement may only be amended, terminated or cancelled by an instrument in writing, signed by both the Indemnifier and the Indemnitee.

Assignment of Indemnifier Rights and Obligations

- 32. The rights and obligations of the Indemnifier as existing under this Agreement may not be assigned, in whole or in part, without the prior written consent of the Indemnitee.

Assignment of Indemnitee Rights and Obligations

- 33. The rights and obligations of the Indemnitee as existing under this Agreement may not be assigned, either in whole or in part, without the prior written consent of the Indemnifier.

Notices

34. Any notices or deliveries required in the performance of this Agreement will be deemed completed when hand-delivered, delivered by agent, or seven days after being placed in the post, postage prepaid, to the Parties to this Agreement at the addresses contained in this Agreement or as the Parties may later designate in writing.

Governing Law

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

Jurisdiction

36. The courts of the State of Arizona are to have jurisdiction to decide and settle any dispute or claim arising out of or in connection with this Agreement.

General Provisions

37. This Agreement contains all terms and conditions agreed to by the Indemnifier and the Indemnitee. Statements or representations which may have been made by either Party in the negotiation stages of this Agreement may in some way be inconsistent with this final written Agreement. All such statements are declared to be of no value to either Party. Only the written terms of this Agreement will bind the Parties.
38. Any failure of either Party to enforce any of the terms, covenants and conditions in this Agreement does not infer or permit a further waiver of that or any other right or benefit under this Agreement. A waiver by one Party of any right or benefit provided in this Agreement does not infer or permit a further waiver of that right or benefit, nor does it infer or permit a waiver of any other right or benefit provided in this Agreement.
39. This Agreement will pass to the benefit of and be binding upon the Parties' respective heirs, executors, administrators, successors, and permitted assigns.
40. The clauses, paragraphs, and subparagraphs contained in this Agreement are intended to be read and construed independently of each other. If any part of this Agreement is held to be invalid, this invalidity will not affect the operation of any other part of this Agreement.
41. All of the rights, remedies and benefits provided in this Agreement will be cumulative and will not be exclusive of any other such rights, remedies and benefits allowed by law or equity that the Parties may have now or may acquire in the future.

42. Time is of the essence in this Agreement.
43. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which together will be deemed to be one and the same instrument.
44. Headings are inserted for the convenience of the Parties only and will not be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine gender include the feminine gender and vice versa. Words in the neuter gender include the masculine gender and the feminine gender and vice versa.

IN WITNESS WHEREOF the Indemnitee and the Indemnifier have duly affixed their signatures under hand and seal on this 9th day of October, 2023.

Cottonwood 1, LLC (Indemnifier)



Authorized Signatory

Managing Member, Cottonwood 1, LLC

APPROVED AS TO FORM

Frank Cassidy, P.C.

By: Frank Cassidy, attorney
Outside counsel to the City of Cottonwood (Indemnitee)
For the Cottonwood City Attorney

City of Cottonwood Arizona (Indemnitee)

Authorized Signatory



October 6, 2023

Dear Mr. Daniel Fox,

Regarding Cottonwood 1, LLC., Abandonment and Release of Easement, reception number 2023-0023107 as recorded in Yavapai Co., Az.

UniSource does not occupy and has no future intention of occupying the referenced "Easement" as recorded in Book 1363, Page 457, Yavapai Co., Az, as it pertains to the "Property" in Deed 2022-0044194.

This letter represents UniSource Energy Services approval for abandonment of the ROW as noted on the aforementioned documents.

Thank you,

Brad Wurmser

Right of Way Agent I

Unisource Energy Services

6405 Wilkinson Dr.

Prescott, AZ 86301





October 2, 2023

Daniel Fox
Realty Asset Advisors
3300 n Scottsdale Rd. #4108
Scottsdale, AZ 85251

RE: *Ingress, Egress and Utility Easement Abandonment Concurrence*

Dear Mr. Fox:

Per your request for Arizona Public Service Company's (APS) concurrence to the abandonment of the ingress, egress, and utility easement (Easement) located on APN 406-36-364J (856 S. 16th St., Cottonwood, AZ), the following information is provided.

I have researched our records and found that the subject property is situated within the APS service territory. Our records indicate that there are no APS service or primary overhead or underground electric lines installed in the area of said Easement.

Should you have further questions concerning this matter, please contact me at (928) 773-6439 or dee.mcgrath@aps.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Dee McGrath", with a long horizontal flourish extending to the right.

Dee A. McGrath
Senior Right of Way Agent
Right of Way Services Department
Arizona Public Service Company



"Inspiring a Vibrant Community"

VIA EMAIL

August 2, 2022

Daniel Fox
3300 N. Scottsdale Rd. #4108
Scottsdale, AZ 85251
realtysassetadvisors@gmail.com

Re: CRB #22-019 Cottonwood 1
APN 406-06-364E, 406-06-364F

Dear Mr. Fox,

Thank you for meeting with the Code Review Board on July 26, 2022 regarding the above referenced proposal for a seven-lot single-family subdivision.

The following is a process summary and preliminary comments from city departments:

1. **Site Improvement Permits:** Permits may not be issued nor any site work commenced until after approval of Final Plats.
2. **These comments are only for the project as presented at code review. Any additional work may require additional reviews and approvals. Contact staff before starting any work that was not part of this review.**

These comments are only for the project as presented at code review. Any additional work may require additional reviews and approvals. Contact staff before starting any work that was not part of this review.

DEPARTMENT COMMENTS REGARDING SUBMITTAL

Community Development/Planning – Tina Hayden, khayden@cottonwoodaz.gov (928) 634-5505 x3320

1. For a subdivision of 10 or fewer lots an applicant may meet with the Community Development Director and the Public Works Director to review the conceptual plan for the subdivision. After approval from both Directors the applicant can proceed with having the Final Plat prepared.
2. The sidewalk on the eastern side of the parcel can be relocated into public right of way and does not have to be within the parcel. If the sidewalk is to remain within the property then an easement will be required for the sidewalk.
3. Lot setbacks should be measured from the exterior wall/post of any covered portion of the building. Lot 3 shows a back patio that extends into the rear yard setback of 15 feet. If the patio is covered then this does not meet the 15-foot setback requirements as we measure from the exterior post.
4. A lot combination will be required prior to approval of a Final Plat.
5. The site plan and letter of intent state that all units will be single-story. However, the site plan for the 3-bedroom units shows stairs and there does not seem to be 3 bedrooms in those floorplans. 2 and 2 & 1/2 story buildings are permitted with a maximum height of 35 feet.
6. We recommend driveways for lots 2,3,5 and 6 extend to at least 20 feet to increase parking capacity from 2 to 4 spaces per lot. Having vehicles parked in driveways that are too short will result in vehicles blocking the road/fire lane.
7. Any exterior lighting for residential uses shall meet the provisions of the State's Dark Sky Laws as well as the City's Lighting Code, Section 408. Full, cut-off style shielding is required. Please submit a lighting plan with cut sheets on all lighting fixture types and lumen calculation.
8. If you wish to receive additional Code Review comments before preparing the Final Plat contact Community Development at (928) 634-5505 to schedule an additional Code Review meeting. No additional Code Review application or fee is required.

Fire Department Rick Contreras, rcontreras@cottonwoodaz.gov (928) 634-2741 x2145

PRELIMINARY FIRE DEPARTMENT COMMENTS CRB 22-019

1. As a reminder, all plans and designs shall fully comply with the 2018 International Fire Code {IFC} and the 2018 International Building Code {IBC} and per the Cottonwood Fire Departments Conditions. Please review the comments that are listed below.
2. A full complete set of detailed stamped plans shall be provided to the Cottonwood Fire & Medical Department for review and prior approval of all phases before the work is permitted to start.

FIRE SPRINKLERS

3. Fire sprinklers shall be installed throughout the building{s} per NFPA 13D and all local regulations. The system shall be designed to meet the Hazard Class.
4. The Fire Marshal or his representative shall inspect any/all fire protection system{s} components prior to concealment. Call 24 hours in advance to schedule all fire inspections @ {928} 634-2741 The following inspections are required for Fire Sprinklers:

- *The installation of a 1.5" yard line shall be installed*
- *The installation of Underground Fire Hydrants*
- *Fireline Flush*
- *Aboveground Rough-in & 200# test for Fire Sprinklers*
- *Freeze Protection/Insulation.*
- *Final system acceptance*
- *Above and Below ground Certifications*

FIRE HYDRANT AND FIRE FLOW COMMENTS

5. One Fire Hydrant is required to be installed on this project. Contact the Cottonwood Fire Marshal for direct placement of the Fire Hydrants.
6. All plans, designs and fire flow calculations shall fully comply with the 2018 International Fire Code Appendix B and Chapter 5 of the IFC and per the Cottonwood Fire Departments Conditions.
7. Fire hydrants and all water supply systems shall be installed, inspected, tested and accepted in accordance with all fire code requirements before any building materials and combustibles are allowed to arrive on site.

STREET / ACCESS / FIRE LANE COMMENTS

8. Surface shall be designed and maintained to support the imposed loads of all fire apparatus and shall be surfaced so as to provide all weather driving capabilities.
9. All Fire Lane access roads shall be capable of supporting the imposed load of fire apparatus weighing up to 75,000 {GVW}
10. All road widths turn around distance shall meet the requirements in the 2018 International Fire Code Appendix D and the City of Cottonwood conditions.
11. The minimum turning radius for all turns shall be twenty-eight (35) feet inside turning radius and fifty (50) feet outside turning radius. Show all Fire Apparatus turning radius movements on the plans.
12. Fire lanes shall be provided and shall be a minimum of 20' wide and have a vertical clearance of 13'6" and maintained within 150' of any part of the building. All turn radius shall meet Appendix D of the 2018 IFC.
13. 12"x 8" red retro reflective Fire Lane signs stating "No parking by order of the Fire Marshal" shall be posted at every 75'

MAPPING / ADDRESSING COMMENTS

14. All addressing and street names shall be coordinated and approved with the Cottonwood Fire Departments Captain Jeff Boyd. All requirements and conditions shall meet the conditions of Chapter 5 and appendix D of the 2018 IFC.
15. Six inch addressing shall be installed onto the buildings.

FIRE DEPARTMENT ACCESS

16. A designated approved Fire Department access Fire Lane{s} shall be installed and maintained at all times during construction. No roll off bins, dumpsters or construction materials shall obstruct the Fire Lane at any time.

FIRE MARSHAL DIRECT COMMENTS

17. The contractor shall schedule an onsite meeting with the Cottonwood Fire Marshal at the start of the project.
18. Schedule all Fire Inspections from Monday to Thursday 7:00am to 4:00pm
19. If there are any questions or comments, please feel free to contact me at 928} 634-2741 or email rcontreras@cottonwoodaz.gov

<https://www.knoxbox.com/Products>

No plan review approval will be provided until all conditions are fully met. These comments are preliminary and final determinations, comments and approvals will be provided upon review of the final sets of plans submitted. All comments and standards shall meet the City of Cottonwood Fire & Medical Department.

Public Works/Engineering – James Bramble, jbramble@cottonwoodaz.gov (928) 340-2770

1. This development will require a drainage study according to the requirements of the City of Cottonwood Engineering Design Standards Manual which is located on the City website under public works.
2. Any increase in runoff as a result of this development will need to be detained/mitigated and the “first flush” will need to be retained or treated.
3. A full set of final civil improvement plans shall be provided to the City of Cottonwood Engineering Department for review and approval prior to the issuance of any permits.
4. Any work within the City’s right-of-way will require an approved right-of-way permit. The application for this permit may be obtained through the City’s Public Works facility or on the City’s official website.
5. All improvements within the City’s right-of-way shall comply with the City’s engineering design standards.
6. All work within the City’s right-of-way will be subject to the inspections and approval by the City’s Engineering Department.
7. This development will be responsible for completing offsite improvements along 16th Street adjacent to the development’s frontage. The developer will be required to install vertical curb and gutter and 6-foot wide concrete sidewalk from the existing improvements south of the development to the development’s northmost property corner.

8. This project will disturb more than ¼ acre of ground. A stormwater pollution prevention plan (SWPPP) and permit coverage ADEQ will be required. Provide the City Engineering Department with a copy of the Notice of Intent (NOI), SWPPP, and all inspection reports.

Risk Management – Amanda Wilber, awilber@cottonwoodaz.gov (928) 340-2713

1. No comments.

Cottonwood Municipal Airport – Jeffrey S. Tripp, A.A.E. jtripp@cottonwoodaz.gov
928-340-2722

1. Please use industry standards and techniques necessary to achieve interior noise level reduction of 65 DNL.
2. Per [A.R.S. § 28-8486 Territory in the Vicinity of a Public Airport](#), the Public Airport Disclosure Map (**Attachment A**) notifies owners and potential purchasers of property that the property is located in the vicinity of a public airport and hospital heliport. The proposed development is located within the flight patterns for the runway and near the Verde Valley Regional Medical Center heliport. Residents/occupants will experience aircraft and helicopter overflight and noise.
3. A Surface and Overhead Avigation Easement (**Attachment B**) is required and must be recorded by the Yavapai County Recorder’s Office before the Certificate of Occupancy is issued by the City. Any future owners should be provided a copy of the recorded “Surface and Overhead Avigation Easement”.
4. The Airport requests all residents be provided with a copy of the Cottonwood Airport Traffic Area disclosure notice (**Attachment C**) in all fair disclosure documents and CC&Rs. The Airport supports no-cost, reasonable access to airport/avigation-related disclosures and easement information to prospective residents to the public (owner-occupants and/or renters).
5. Airport staff reserves the right to append CRB comments or provide more specific information about requirements, conditions, applicable regulatory/safety processes, etc., as the project evolves.

Utilities – Russell Freye, P.E. rfrey@cottonwoodaz.gov (928) 634-0186

1. City of Cottonwood standard specifications and details shall be used to construct and install water and sewer utilities.
2. Maintain water and sewer separation per City of Cottonwood and MAG Standards.

3. Capacity fees are to be paid for by the developer or owner.
4. Since Fire flows to the building are required for interior sprinkler system a backflow preventer per City of Cottonwood Standards will be required on the water service lines where applicable.

Police Department – Christopher Dowell, cdowell@cottonwoodaz.gov (928) 634-4246 x 2270

1. No comments.

Building Department- Cody Blazer, cblazer@cottonwoodaz.gov (928) 634-5505 x3368

1. All plan submittals shall be through the Community Development Department.
2. All change orders which occur following the issuance of a building permit must be approved by city staff or they will be cited as part of the final inspection corrections and must be remedied before a certificate of occupancy will be issued.
3. Two sets of plans as well as one digital copy prepared and stamped by a licensed architect shall be submitted for each building for review accompanied by a completed building permit application for each.
4. All plans submitted shall meet the applicable code requirements of the 2018 IBC, 2018 IRC, 2018 IPC, 2018 IMC, 2018 IECC, and the 2017 NEC.
5. Fire sprinklers may be required and will be submitted as a separate permit, verify with Fire Marshal.
6. Where required by law all work will be performed by contractors licensed by the State of Arizona and the City of

Yavapai County Community Health Services – Robert Mumper, robert.mumper@yavapaiaz.us (928) 634-6891

1. No comments.

Housing Manager – Shannon Boone, sboone@cottonwoodaz.gov (928) 203-5126

1. No comments.

NOTE: Changes to project proposals following approval which have been incorporated into permit submittal must be highlighted in writing and attached to the building permit, or they will not be considered approved.

Please call if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tina Hayden".

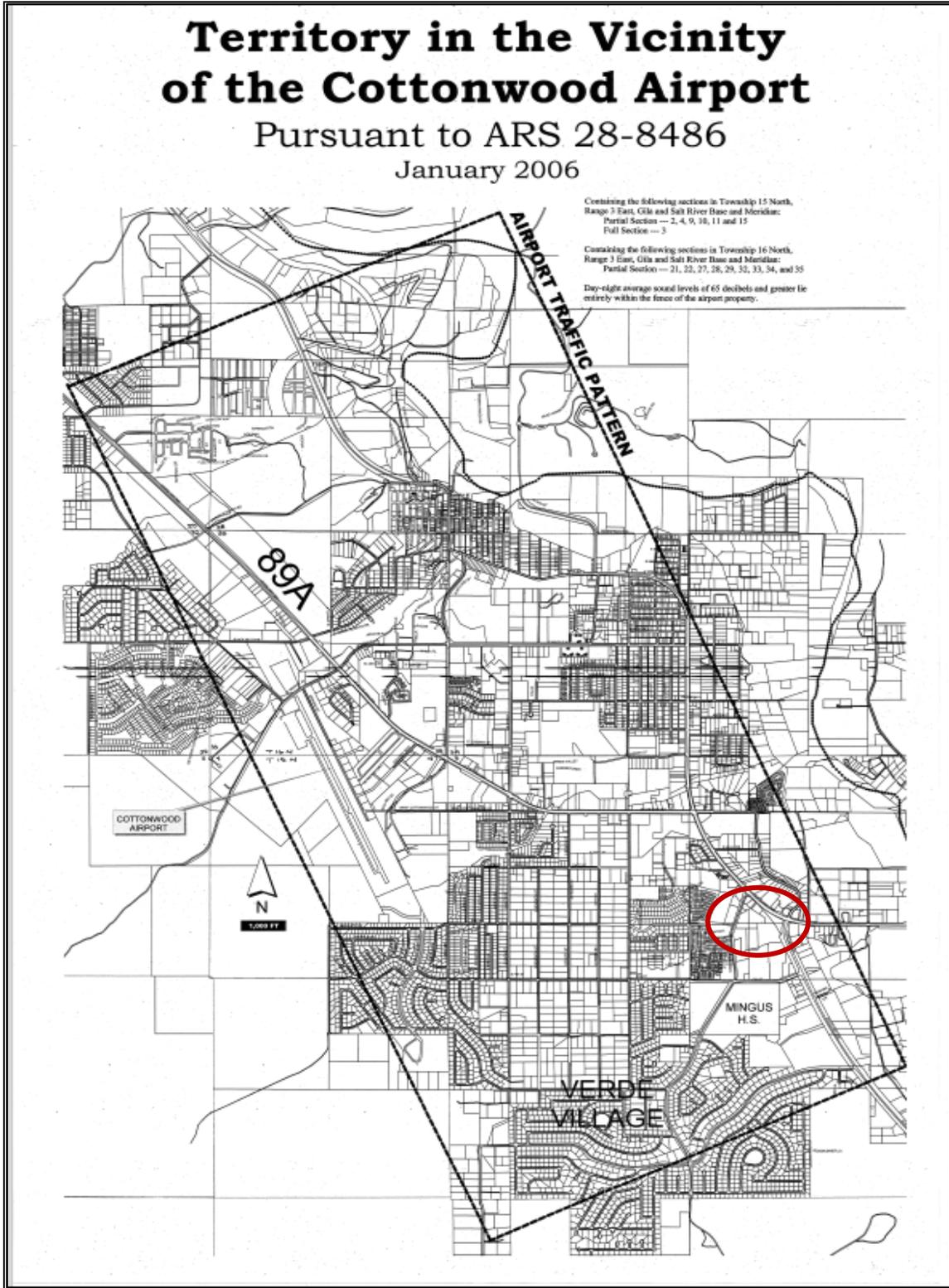
Tina Hayden
Community Development Planner

Attachment A
Public Airport Disclosure Map

Territory in the Vicinity of the Cottonwood Airport

Pursuant to ARS 28-8486

January 2006



Attachment B

SURFACE AND OVERHEAD AVIGATION EASEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 20__, by and between _____, (“Grantor”), and the CITY OF COTTONWOOD, a municipal corporation of the State of Arizona. (“Grantee”).

WHEREAS, Grantor is the owner of certain real property in Yavapai County, Arizona, more particularly described as parcel(s) _____ on Exhibit A, attached hereto and by this reference incorporated herein (“the Property”).

NOW, THEREFORE, the Grantor, for themselves, their heirs, administrators, executors, successors and assigns do hereby grant the following appurtenant rights and benefits to the (Cottonwood Municipal Airport) hereinafter called the “Grantee” for the use and benefit of the public.

The appurtenant rights and benefits include the uses, rights and restrictions described as follows:

The unobstructed use and passage of all types of aircraft in and through the airspace at any height or altitude above the surface of the land.

The right of said aircraft to cause noise, vibrations, fumes, deposits of dust, fuel particles (incidental to the normal operation of aircraft); fear, interference with sleep or communication, and any other effects associated with the normal operation of aircraft taking off, landing or operating in the vicinity of Cottonwood Municipal Airport.

As used herein, the term “aircraft” shall mean any and all types of aircraft, whether now in existence or hereafter manufactured and developed, to include jet, propeller-driven, civil, military or commercial aircraft; helicopters, regardless of existing or future noise levels, for the purpose of transporting persons or property through the air, by whoever owned or operated.

In granting this easement, the Grantor agree to construct no buildings taller than one hundred feet (100’) in height from the surface of the above listed property.

The Grantor agrees that during the life of this easement, they will not construct, erect, suffer to permit or allow any structure or trees on the surface of the burdened property taller than the height listed above.

The Grantor agrees to keep the easement area free of the following: structures (permanent or temporary) that might create glare or contain misleading lights; fuel handling and storage facilities and smoke generating activities and creation of any means of electrical interference that could affect the movement of aircraft over the easement area.

Grantor agrees to waive all damages and claims for damages caused or alleged to be caused by the Grantors violation of any aspect of this easement document. The (Cottonwood Municipal Airport)

Attachment C

DISCLOSURE OF THE COTTONWOOD AIRPORT TRAFFIC AREA

The City of Cottonwood (“City”) seeks to provide prospective buyers or renters of property near the Cottonwood Municipal Airport (“Airport”) with notice and information regarding the potential to experience airport noise within the Cottonwood Municipal Airport Traffic Area (“ATA”). In addition, the Airport currently provides recommended noise abatement procedures to all pilots. These procedures are posted at the airport; in various FAA and other aviation-related publications; and are broadcast on the Airport’s Automated Weather Observation System in an attempt to decrease the amount and impact of airport noise on surrounding residential areas whenever possible. The City is sensitive to aeronautical noise over residential areas; however, noise is an inevitable effect of operating a public airport, and cannot be fully eliminated.

In accordance with Arizona Revised Statutes Sections 28-8485 and 28-8486, the City is recording this Notice and the attached Municipal Airport Traffic Area and Noise Contour Maps in the Official Records of Yavapai County, and has also submitted them to the AZ Department of Real Estate for posting on its website.

Prospective buyers and/or renters of property within the Cottonwood Municipal Airport Traffic Area are hereby advised that:

(a) Cottonwood Municipal Airport is located approximately 1.3 miles southwest of the center of the City of Cottonwood. The Airport is generally located between Route 89A to the north, Mesquite Drive to the south, Willard Street to the east, and Mingus Avenue to the west. The Cottonwood Municipal Airport Traffic Area map indicates the estimated current noise levels, in decibels, of certain areas of the Traffic Area.

(b) The Airport is operated as a general aviation airport for City of Cottonwood and is used mostly for single engine and twin-engine airplanes, corporate jets, helicopters, unscheduled service of turboprop and jet aircraft, helicopter medical evacuation, and charter services that use both helicopters and fixed wing aircraft of various sizes.

(c) Aircraft leaving or approaching the Airport may fly over nearby residential areas at varying altitudes depending on meteorological conditions, aircraft type, aircraft performance, and pilot proficiency.

(d) The Airport encourages aviators to follow the published noise abatement procedures, which may change from time to time. However, the Airport is open 24 hours / 7 days per week per Federal Aviation Administration requirements — which means takeoffs and landings may occur at any hour.

(e) The average number of takeoffs and landings at the Airport in calendar year 2021 was approximately 37,000 per year. However, that number varies, and has steadily increased in correlation with the population growth of the City of Cottonwood and surrounding Verde Valley and flight training activity.

(f) Flights over properties within the ATA may generate noise. The volume, pitch, amount, and frequency of such noise varies depending the altitudes at which the aircraft fly, wind direction and other meteorological conditions, and the number or type of aircraft.

(g) The Airport has, and will continue to implement noise abatement procedures. These procedures include informing aviators of the procedures that may help reduce or minimize aircraft noise within the ATA. These noise abatement procedures are published in various FAA and other aviation publications, and they are also on the Airport's website.

The Arizona Department of Real Estate – <https://azre.gov/public-airports>



"Inspiring a Vibrant Community"

VIA EMAIL

December 20, 2022

Daniel Fox
3300 N. Scottsdale Rd. #4108
Scottsdale, AZ 85251
realtyassetadvisors@gmail.com

Re: CRB #22-019 REVISION

**Cottonwood 1: 856 S. 16th Street
APN 406-06-364J**

Dear Mr. Fox:

Thank you for meeting with the Code Review Board on December 13, 2022 regarding the above referenced project. The project as presented is for single-family subdivision consisting of six residential lots. As mentioned, this project is subject to the Subdivision Ordinance and will require review by the Planning and Zoning Commission and City Council approval of the Final Plat. Please review the [Subdivision Ordinance](#) for the Final Plat submittal requirements, the following is a process summary:

1. **Conceptual Plan:** For subdivisions of 10 or fewer lots a Conceptual Plan may be reviewed by the Community Development Director and the Public Works Director. The Community Development Director may approve the Conceptual Plan, bypassing the Sketch Plan phase and Preliminary Plat phase.
2. **Final Plat:** A Final Plat application submittal is required, and the application fee is \$1,120 (\$1000 base fee plus \$20 per lot). The application and fees should be submitted four to five weeks prior to a Planning and Zoning hearing. The Planning and Zoning Commission typically meets at 6 PM on the third Monday of each month. If this date falls on an observed holiday, then the meeting will take place on the following Monday. After Commission review, a City Council hearing will be scheduled to review the application. The City Council meets at 6 PM on the first and third Tuesday of each month.
3. **Site Improvement Permits:** Permits may not be issued nor any site work commenced until after approval of Final Plats.

4. **Certificate of Occupancy:** Issuance of a Certificate of Occupancy is required for each unit prior to use. All requirements stipulated as part of the Platting process must be addressed before any Certificate of Occupancy will be issued.

DEPARTMENT COMMENTS REGARDING SUBMITTAL

These comments are only for the project as presented at Code Review. Any additional work may require additional reviews and approvals. Contact staff before starting any work that was not part of this review.

Community Development/Planning – Tina Hayden, khayden@cottonwoodaz.gov (928) 634-5505 x3320

1. For a subdivision of 10 or fewer lots, an applicant may meet with the Community Development Director and the Public Works Director to review the conceptual plan for the subdivision. After approval from both Directors, the applicant can proceed with having the Final Plat prepared. A deed restriction will be required to prohibit further division or subdivision of these parcels when using this alternative procedure.
2. Any exterior lighting for residential uses shall meet the provisions of the State's Dark Sky Laws as well as the City's Lighting Code, Section 408. Full, cut-off style shielding is required. Please submit a lighting plan with cut sheets on all lighting fixture types and lumen calculation.
3. All previous iterations of Code Review comments, regarding this subdivision project, shall be complied with.

Fire Department Rick Contreras, rcontreras@cottonwoodaz.gov (928) 634-2741 x2145

PRELIMINARY FIRE DEPARTMENT COMMENTS CRB 22-019 THIRD REVIEW

1. As a reminder, all plans and designs shall fully comply with the 2018 International Fire Code {IFC} and the 2018 International Building Code {IBC} and per the Cottonwood Fire Departments Conditions. Please review the comments that are listed below.
2. A full complete set of detailed stamped plans shall be provided to the Cottonwood Fire Department for review and prior approval of all phases before the work is permitted to start.

FIRE SPRINKLERS

3. Fire sprinklers shall be installed throughout the building {s} per NFPA 13D and all local regulations. The system shall be designed to meet the Hazard Class.

4. The Fire Marshal or his representative shall inspect any/all fire protection system{s} components prior to concealment. Call 24 hours in advance to schedule all fire inspections @ {928} 634-2741 The following inspections are required for Fire Sprinklers:
- *Installation and testing of underground Fireline's {including thrust blocks}*
 - *The installation of Underground Fire Hydrants*
 - *#200 lb. test of the Fireline*
 - *Fireline Flush*
 - *Aboveground Rough-in & 200# test for Fire Sprinklers*
 - *Freeze Protection/Insulation.*
 - *Final system acceptance*
 - *Above and Below ground Certifications*

FIRE HYDRANT AND FIRE FLOW COMMENTS

5. One Fire Hydrant is required to be installed on this project. Contact the Cottonwood Fire Marshal for direct placement.
6. All plans, designs and fire flow calculations shall fully comply with the 2018 International Fire Code Appendix B and Chapter 5 of the IFC and per the Cottonwood Fire Departments Conditions.
7. Fire hydrants and all water supply systems shall be installed, inspected, tested and accepted in accordance with all fire code requirements before any building materials and combustibles are allowed to arrive on site.

STREET / ACCESS / FIRE LANE COMMENTS

8. Surface shall be designed and maintained to support the imposed loads of all fire apparatus and shall be surfaced so as to provide all weather driving capabilities.
9. All Fire Lane access roads shall be capable of supporting the imposed load of fire apparatus weighing up to 75,000 {GVW}
10. Fire lanes shall be provided and shall be a minimum of 20' wide and have a vertical clearance of 13'6" and maintained within 150' of any part of the building. All turn radius shall meet Appendix D of the 2018 IFC.
11. 12"x 8" red retro reflective Fire Lane signs stating "No parking by order of the Fire Marshal" shall be posted at every shared driveway {Two required at each driveway}

MAPPING / ADDRESSING COMMENTS

12. All addressing and street names shall be coordinated and approved with the Cottonwood Fire Departments Captain Jeff Boyd. All requirements and conditions shall meet the conditions of Chapter 5 and appendix D of the 2018 IFC.
13. Six inch addressing shall be installed onto the building, six-inch numbering shall be installed onto the signage at the entrance.

FIRE MARSHAL DIRECT COMMENTS

14. Call 24 hours in advance to schedule all fire inspections at {928} 634-2741.
 15. Schedule all Fire Inspections from Monday to Thursday 7:00am to 4:00pm
 16. If there are any questions or comments, please feel free to contact me at 928} 634-2741 or email rcontreras@cottonwoodaz.gov
- **No plan review approval will be provided until all conditions are fully met. These comments are preliminary and final determinations, comments and approvals will be provided upon review of the final sets of plans submitted. All comments and standards shall meet the City of Cottonwood Fire & Medical Department.**

Public Works/Engineering – James Bramble, jbramble@cottonwoodaz.gov (928) 340-2770

1. This development will require a drainage study according to the requirements of the City of Cottonwood Engineering Design Standards Manual which is located on the City website under Public Works.
2. Any increase in runoff as a result of this development will need to be detained/mitigated and the “first flush” will need to be retained or treated.
3. A full set of final civil improvement plans shall be provided to the City of Cottonwood Engineering Department for review and approval prior to the issuance of any permits.
4. Any work within the City’s right-of-way will require an approved right-of-way permit. The application for this permit may be obtained through the City’s Public Works facility or on the City’s official website. The current cost for this permit is \$65 and is adjusted January 1 of every year.
5. All improvements within the City’s right-of-way shall comply with the City’s engineering design standards.
6. All work within the City’s right-of-way will be subject to the inspection and approval by the City’s Engineering Department.

7. This development will be responsible for completing offsite improvements along 16th Street adjacent to the development's frontage. The developer will be required to install vertical curb and gutter and 6' wide concrete sidewalk from the existing improvements south of the development to the development's northernmost property corner
8. This project will disturb more than 1 acre of ground. A stormwater pollution prevention plan (SWPPP) and permit coverage from ADEQ will be required. Provide the City Engineering Department with a copy of the Notice of Intent (NOI), SWPPP and all inspection reports.
9. Please revise the driveway configuration to ensure that all vehicles can exit the property without backing out onto 16th Street.

Risk Management – Amanda Wilber, awilber@cottonwoodaz.gov (928) 340-2713

1. No comments.

Cottonwood Municipal Airport – Jeffrey S. Tripp, A.A.E. jtripp@cottonwoodaz.gov
928-340-2722

1. No comments.

Utilities – Russell Freye, P.E. rfreyec@cottonwoodaz.gov (928) 634-0186

1. No additional comments. All comments from previous Code Review Board meetings still apply.

Police Department – Christopher Dowell, cdowell@cottonwoodaz.gov (928) 634-4246 x 2270

1. No comments.

Building Department- Cody Blazer, cblazer@cottonwoodaz.gov (928) 634-5505 x3368

1. All plan submittals shall be through the Community Development Department.
2. All change orders which occur following the issuance of a building permit must be approved by city staff or they will be cited as part of the final inspection corrections and must be remedied before a certificate of occupancy will be issued.

3. Two sets of plans or one digital copy prepared and stamped by a registered design professional shall be submitted for each building for review accompanied by a completed building permit application for each.
4. All plans submitted shall meet the applicable code requirements of the 2018 IBC, 2018 IRC, 2018 IPC, 2018 IMC, 2018 IFGC, 2018 IECC, 2017 NEC, and 2009 A117.1 (including ADA parking).
5. Where required by law all work will be performed by contractors licensed by the State of Arizona and the City of Cottonwood.

Yavapai County Community Health Services – Robert Mumper,
robert.mumper@yavapaiaz.us (928) 634-6891

1. No comments.

Housing Manager – Shannon Boone, sboone@cottonwoodaz.gov (928) 203-5126

1. No comments.

NOTE: Changes to project proposals following approval which have been incorporated into permit submittal must be highlighted in writing and attached to the building permit, or they will not be considered approved.

Please call if you have any questions.

Sincerely,



Tina Hayden
Community Development Planner



"Inspiring a Vibrant Community"

VIA SMARTGOV APPLICATION PORTAL

November 13, 2023

Daniel Fox
3300 N. Scottsdale Road
Scottsdale, AZ 85251
realtysassetadvisors@gmail.com

Re: CRB-23-043

**6 on 16th: 856 S. 16th Street
APN 406-06-364J**

Dear Mr. Fox:

Thank you for your submittal. The project as presented is for the subdivision of a parcel into 10 residential lots. As mentioned, this project would require Final Plat approval recommendation by the Planning and Zoning Commission and Final Plat Approval by the City Council. Please review the Cottonwood Zoning Ordinance procedural codes in the [Subdivision Ordinance](#). The following is a process summary:

1. **Final Plat submittal:** A Final Plat application submittal is required; and the application fee is \$1,000 plus \$20/lot (including any additional tracts of land). The application and fees should be submitted five to six weeks prior to a Planning and Zoning hearing. The Planning and Zoning Commission meets at 6 PM on the third Monday of each month. The City Council meets at 6 PM on the first and third Tuesday of each month.
2. **Site Improvement Permits:** Permits may not be issued nor any site work commenced until after Council approval and Final Plat recordation.
3. **Certificate of Occupancy:** Issuance of a Certificate of Occupancy is required prior to use. All requirements stipulated as part of the Building Permit process must be addressed before the Certificate of Occupancy will be issued.

DEPARTMENT COMMENTS REGARDING SUBMITTAL

These comments are only for the project as presented at Code Review. Any additional work may require additional reviews and approvals. Contact staff before starting any work that was not part of this review.

Community Development/Planning – Tina Hayden, khayden@cottonwoodaz.gov
(928) 634-5505 x3320

1. This proposed plat consists of 10 or fewer lots and is eligible, per Section 104.08 of the Subdivision Ordinance, to progress directly to the preparation of the Final Plat with the concurrence of the Community Development Director.

The Community Development Director has reviewed the preliminary plat and has determined that there are currently no unresolved issues with the preliminary plat and concurs that the applicant may progress to the preparation of the Final Plat.

The Final Plat will be required to be reviewed by the Planning and Zoning Commission prior to City Council review of the Final Plat.

This alternative procedure is not intended for property that will be further divided or subdivided into smaller tracts, parcels or lots at a later time. A deed restriction will be required as part of any Final Plat approved under this alternative procedure, prohibiting the further division or subdivision of lots approved as part of the Final Plat.

2. The cross-access easement must allow for emergency vehicle access for the City of Cottonwood.

Public Works/Engineering – James Bramble, jbramble@cottonwoodaz.gov (928) 340-2770

1. The site will need to account for offsite flow entering the property from the south and west. Assume the 4-6” diameter outlets from the west are flowing full and the 4.7 CFS from the Crestview drainage report are entering the site.
2. Verify that the runoff directed to flow on 16th Street will not encroach more than half of the lane.
3. A catch basin is preferred instead of a scupper to capture runoff on 16th Street. +
4. Verify that the pipe under 16th Street will accommodate the peak runoff without overtopping the roadway. Upsize the pipe if necessary.
5. Add a layer of separation fabric on top of the rock in the detention ditch approximately six inches from the surface.

6. I do not see where the volume of the rock in the detention ditches are accounted for in the capacity.
7. The owner will need to execute a maintenance agreement with COC for the permanent stormwater controls per COCEDSM 3.10.4 B.
8. Developer may be required to apply a chip seal to 16th Street depending on the number and extent of patches caused by utility connections.
9. Pavement section for 16th Street will be 3" AC on 6" AB or match existing, whichever is greater. I did not see this called out on the plans.
10. Any work within the City's right-of-way will require an approved right-of-way permit. The application for this permit may be obtained through the City's Public Works facility or on the City's official website. The current cost for this permit is \$69 and is adjusted January 1 of every year.
11. All improvements within the City's right-of-way shall comply with the City's engineering design standards.
12. All work within the City's right-of-way will be subject to the inspection and approval by the City's Engineering Department.
13. This project will disturb more than 1 acre of ground. A stormwater pollution prevention plan (SWPPP) and permit coverage from ADEQ will be required. Provide the City Engineering Department with a copy of the Notice of Intent (NOI), SWPPP and all inspection reports.
14. Public Works will require the design engineer to provide certification that the civil improvements were constructed in substantial conformance with the approved plans at project completion.
15. An easement is required to address the drainage flow from the south adjacent property.

Utilities – Russell Freye, P.E. rfrey@cottonwoodaz.gov (928) 634-0186

1. City of Cottonwood standard specifications and details shall be used to construct and install water and sewer utilities.
2. Maintain water and sewer separation per City of Cottonwood and MAG Standards.
3. Capacity fees are to be paid for by the developer or owner.

4. The property owner or developer shall provide a third-party testing agency to inspect and ensure testing is done of installed utilities per the City of Cottonwood Design Standards. The testing reports shall be submitted to City of Cottonwood for documentation purposes.
5. The property owner or developer shall submit Approval to Construct (ATC) to ADEQ or appropriate paperwork from Yavapai County and provide completed forms to City of Cottonwood prior to construction permits being issued if ATC is required by the county. This is also documented the City of Cottonwood Standards and Specifications.
6. The City of Cottonwood has no water or sewer utilities on the western boundary of the property or in the easement at that location. Therefore, is okay with abandoning that easement as noted on the Submitted Plat maps.
7. For clarification, the City ROW will need to be retained for access to public utilities in it. This would be on the North and East side of the property. The existing 5' sewer will need to be retained for access to an existing sewer in it on the south side of the property.

NOTE: Changes to project proposals following approval which have been incorporated into permit submittal must be highlighted in writing and attached to the building permit, or they will not be considered approved.

Please reach out if you have any questions.

Sincerely,



Tina Hayden
Community Development Planner

**PRELIMINARY MEMORANDUM REPORT
FOR THE USE OF**

**Stewart Title & Trust of Phoenix
3131 E. Camelback Rd., Suite 200**

File No.: 2061750

Search made to January 23, 2024 at 7:00AM

Examiner: Beene Smith

THIS IS A MEMORANDUM REPORT ONLY, NOT A TITLE INSURANCE POLICY.

CONDITION OF TITLE

The above named has examined for Stewart Title & Trust of Phoenix the title to the land described herein, the results of which are set forth in Schedule A and B hereof.

This is a Condition of Title Report only. This report does not represent nor commit any type of title insurance. The liability incurred, if any, is limited to twice the amount of the fees paid for this report.

(All recording data refer to records in the office of the County Recorder of the county in which the land is situated.)

SCHEDULE A

File Number:: 2061750

1. The estate or interest in the land described in this report is:

FEE SIMPLE

2. Title to said estate or interest in said land is at the effective date hereof vested in:

Cottonwood 1, LLC, a Wyoming Limited Liability Company

3. The land referred to in this report is situated in the State of Arizona, County of Yavapai and is described as follows:

Parcel No. 1:

A parcel of land located in the East half of Section 3, Township 15 North, Range 3 East, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, being more particularly described as follows:

Commencing at the East quarter corner of said Section 3;

Thence South 00°02'02" West along the East line of said Section 3, a distance of 417.96 feet;

Thence North 89°42'54" West, a distance of 351.94 feet to the point of beginning;

Thence continuing North 89°42'54" West, a distance of 206.36 feet; Thence North 00°46'08" West, a distance of 403.96 feet to a point of a non tangent curve;

Thence Southerly along said curve concave to the Southwest, having a radius of 350.00 feet, an arc length of 101.51 feet, a central angle of 16°37'00" and a radial bearing of South 42°53'07" West;

Thence South 31°56'00" East, a distance of 203.83 feet to a point on a non tangent curve;

Thence Southeasterly and Southerly along said curve concave to the West, having a radius of 300.00 feet, an arc length of 160.33 feet, a central angle of 30°37'14" and a radial bearing of South 59°51'01" West to the point of beginning.

Except all oil, minerals, ores and metals of every kind, as reserved in deed recorded in Book 187 of Deeds, Page 331, record of Yavapai County, Arizona.

Parcel No. 2:

That portion of the East half of Section 3, Township 15 North, Range 3 East, of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, being the property abandoned by the City of Cottonwood in deed recorded in Book 4018 of Official Records, Page 640, more particularly described as follows:

Commencing at the Southwest corner of the Southeast quarter of the Northeast quarter of said Section 3, said corner being marked by a ½ inch rebar tagged "LS 4491";

Thence North 00°16'32" East along the Westerly line of said Southeast quarter of said Northeast quarter of said Section 3, a distance of 227.23 feet to a point, said point being marked by a 1/2 inch rebar stamped "LS 25384";

Thence South 89°49'28" East 25.53 feet to a point, said point being marked by a 5/8 inch rebar stamped "LS 13015";

Thence South 89°59'41" East 242.59 feet to a point, said point being marked by a ½ inch rebar;

SCHEDULE A

File Number:: 2061750

Thence North 46°46'41" East a distance of 661.90 feet to the most Northerly corner of the land described in deed recorded in Book 3624 of Official Records, Page 314, records of Yavapai County, said corner being marked by a ½ inch rebar;

Thence South 00°43'53" East along the Easterly line of the land described in said deed a distance of 717.91 feet to a point on a non-tangent curve, concave Northeasterly, having a radius of 325.00 feet, a radial line to said curve bears North 66°38'56" East, said point being the true point of beginning;

Thence Southeasterly along said curve through a central angle of 8°32'41", an arc length of 48.47 feet to a point of tangency with the Northwesterly prolongation of that certain course having a bearing of North 31°56'00" West and a distance of 203.36 feet, being the Southerly boundary of Parcel "B" of the land described in Deed recorded in Book 3598 of Official Records, Page 977, records of Yavapai County;

Thence South 31°53'45" East along said prolongation, a distance of 36.16 feet to the Northwesterly terminus of said certain course, said point being the beginning of a non-tangent curve, concave Southwesterly, having a radius of 325.00 feet, said curve also being the Southwesterly boundary of said Parcel "B", a radial line to said curve bears South 59°35'30" West;

Thence Northwesterly along said curve and Southwesterly line of said Parcel "B" through a central angle of 12°15'41", an arc length of 69.55 feet to the Easterly line of said land described in said deed recorded in Book 3624 of Official Records, Page 314, records of Yavapai County;

Thence North 0°43'53" West along said Easterly line a distance of 17.84 feet to the true point of beginning.

Except any portion lying within Parcel No. 1 above.

APN: 406-06-364J (Underlying APN's: 406-06-364E & 406-06-364F)

SCHEDULE B

File Number:: 2061750

Subject to the usual printed conditions, stipulations and exceptions contained in the regular form of a policy, or by a rider attached thereto, and also subject to the following specific encumbrances, reservations and exceptions:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
3. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
4. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
5. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
6. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water.
7. Any right, title, interest, estate or easement in land beyond the lines of the area specifically described or referred to in Schedule A, or in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing in this paragraph shall modify or limit the extent to which the ordinary right of an abutting owner for access to a physically open street or highway is insured by this policy.
8. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
9. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the land together with all rights, privileges and immunities relating thereto, whether or not appearing in the Public Records or listed in Schedule B. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.
10. Rights of parties in possession.
11. Any action by the County Assessor and/or Treasurer, altering the current or prior tax assessment, subsequent to the date of the Policy of Title Insurance.
12. Taxes and assessments collectible by the County Treasurer, a lien not yet due and payable for the year 2023.
13. Reservations or exceptions in Patents or in Acts authorizing the issuance thereof.
14. Water rights, claims or title to water, and agreements, covenants, conditions or rights incident thereto, whether or not shown by the public records.
This exception is not limited by reason of the disclosure of any matter relating to Water Rights as may be set forth elsewhere in Schedule B.
15. Liabilities and obligations imposed upon said land by reason of its inclusion within any district formed pursuant to Title 48 Arizona Revised Statutes.
16. Liabilities and obligations imposed upon said land by reason of its inclusion within Cottonwood Volunteer Fire District.
17. Liabilities and obligations imposed upon said land by reason of its inclusion within Cottonwood Ditch Association.
18. The right of Entry to prospect for, mine and remove the minerals in said land, smoke easement and rights of way and rights incident thereto, as reserved in Instrument recorded October 17, 1946, [Book 187 of Deeds, Page 331](#).

SCHEDULE B

File Number:: 2061750

19. Easement for ingress, egress and utilities and rights incident thereto, as set forth in instrument recorded March 2, 1981, [Book 1363, Page 457](#).
20. Easement for sanitary sewer lines and rights incident thereto, as set forth in instrument recorded July 7, 1992, [Book 2504, Page 500](#).
21. Easement for public road, street or highway and rights incident thereto, as set forth in instrument recorded September 3, 1998, [Book 3598, Page 977](#).
22. Easement for public road, street or highway and rights incident thereto, as set forth in instrument recorded May 16, 2003, [Book 4032, Page 391](#).
23. Matters shown on survey recorded August 5, 2022, [Instrument No. 2022-0047395](#).
24. Delinquent taxes and assessments collectible by the County Treasurer, a lien for the year 2022.
25. Deed of Trust given to secure the original amount of \$125,000.00, and any other amounts payable under the terms thereof
Dated: July 19, 2022
Trutor: Cottonwood 1 LLC, a Wyoming Limited Liability Company
Trustee: Weststar Mortgage Corp
Beneficiary: Spectrum Finance, LLC ISAOA, an Arizona limited liability company
Recorded: July 20, 2022, [Instrument No. 2022-0044195](#)

The Beneficial Interest under said Deed of Trust was assigned to Pacific Premier Trust Custodian FBO Mark A. Greenberg IRA, as to an undivided 100.00% beneficial interest, Assignee, by mesne assignments of record the last of which was recorded August 1, 2022, [Instrument No. 2022-0046255](#).

NOTE: There is located on said land Commercial Property, commonly known as:

856 North 16th St, Cottonwood, AZ 86326

[24] MONTH CHAIN NOTE: The conveyances that recorded on the property that is subject of this escrow that have recorded within the last [24] months of the effective date hereof are as follows:

[(a)] Warranty Deed, recorded July 20, 2022, [Instrument No. 2022-0044194](#).

Note: 2022 Tax parcel # 406-06-364F ([Tax Sheet](#)) ([Assessors Map](#)) ([Vesting deed](#))

PRIOR to recording, obtain current tax information from:

Yavapai County Treasurer
10 South 6th Street
Cottonwood, AZ 86326
Phone: (928) 639-8123

<http://www.yavapai.us/treasurer>

Note: 2022 Tax parcel # 406-06-364E ([Tax Sheet](#)) ([Assessors Map](#)) ([Vesting deed](#))

PRIOR to recording, obtain current tax information from:

Yavapai County Treasurer
10 South 6th Street
Cottonwood, AZ 86326
Phone: (928) 639-8123

SCHEDULE B

File Number:: 2061750

<http://www.yavapai.us/treasurer>

City of Cottonwood, Arizona
City Council Agenda Communication



 Print

Meeting Date:	February 20, 2024
Subject:	Consideration of a Final Plat for a 10-lot single family residential subdivision in the R-1 (Single Family Residential) zone to be known as Mingus Views.
Department:	Community Development
From:	Kristina Hayden, Community Development Planner

REQUESTED ACTION

Consideration of a Final Plat for a 10-lot single family residential subdivision in the R-1 (Single Family Residential) zone to be known as Mingus Views.

SUGGESTED MOTION

If the Council desires to approve this item the suggested motion is:

"I move to approve FP-23-002 for a 10-lot single family residential subdivision Final Plat to be known as Mingus Views, subject to the stipulations that staff has read into the record."

BACKGROUND

The applicant requests consideration of a Final Plat for a 10-lot single-family residential subdivision. The 2.73-acre site is located on the south side of Marauder Drive approximately 250 feet west of 16th Street.

Typically the Planning and Zoning Commission reviews and makes a recommendation to Council for a submitted Preliminary Plat, however Section 104.08 of the Subdivision Ordinance allows an alternative process for subdivisions that consist of 10 or fewer lots. This alternative process allows the applicant to bypass the Preliminary Plat phase and proceed directly to the Final Plat phase. In that case, the Planning and Zoning Commission reviews the Final Plat and makes a recommendation to City Council. The only additional requirement for this process is a deed restriction that prohibits the further division or subdivision of the approved plat.

STAFF ANALYSIS:

The applicant proposes 10 single-family residential lots, and two private streets to be named Wvatt Wav and Mingus Views Lane. Wvatt Wav is an east-west street that would connect to

north-south Mingus Views Lane which further connects to the existing east-west Marauder Drive. Lots 1-4 are proposed to have access along Marauder Drive, and Lots 5-10 are proposed to have access along Wyatt Way.

Lots 2,3, and 5-10 will share ownership of private streets, and have easement access to those streets. The applicant is also dedicating easement access for emergency vehicle access along the private streets. Additional 8-foot wide public utility access easements are being dedicated along the interior side yards of Lots 1,2, 5, and 6; and the interior side yards of Lots 3, 4, 7, and 8. An 85-foot wide drainage easement along the interior side yard of Lots 9 and 10 is also proposed. Each lot exceeds the minimum lot size of 7,500 square feet required in the R-1 (Single Family Residential) Development Standards.

Per the CRB Comment Letter dated November 2, 2023, the City Engineer is requiring off-site improvements which includes the sidewalk across the property frontage adjacent to Marauder Drive. The off-site improvement plans would be included in the required Construction Plans submittal. The City Engineer is allowing the applicant to defer the submittals for the Construction Plans, Construction Cost Estimates, and the Phase 3 Drainage Report until Grading & Civil permit is submitted. The applicant has been made aware that the deferred submittal is done at risk and that a Plat Amendment may be required in the future to resolve any concerns that arise during permit review.

The proposed subdivision is not within a PAD (Planned Area Development) zone and so Design Review for single-family residences is not required for this proposal.

Staff posted a notice of the City Council hearing at the property APN:406-06-036A and mailed notifications to owners of all properties within 300 feet of the site.

On January 22, 2024, the Planning and Zoning Commission unanimously recommended approval to the City Council regarding FP-23-002.

The attached Final Plat, titled "Final Plat Revised 2-8-2024" has had a minor modification since Planning and Zoning Commission review. This modification is considered "minor authorized" by the Community Development Director and is as follows:

- Added a signature block for the property owner/s for the Final Plat Ratification and Dedication Certificate.

Staff has reviewed this project and finds that the requested Final Plat for a 10-lot single family subdivision is subject to approval by the City Council. Staff recommends the following stipulations:

1. The project shall be developed in conformance with the development plans as reviewed by the Planning and Zoning Commission at the January 22, 2024 meeting, and as reviewed by the City Council

reviewed by the City Council.

2. The developer shall adhere to the Code Review Board comment letters dated September 7, 2022 (Re: CRB #22-031), April 12, 2023 (Re: CRB #22-031 REVISION), and November 2, 2023 (Re: REVISED CRB-23-041).
3. The Construction Plans, Construction Cost Estimate, and Phase 3 Grading Report shall be submitted with the required Grading and Civil permit submittal.
4. The developer shall provide City staff with proof of recordation of the approved Final Plat within 60 days of City Council approval.

JUSTIFICATION/BENEFITS/ISSUES

The proposed Final Plat creates 10 lots that will allow for single-family residential infill development.

COST/FUNDING SOURCE

There are no costs associated with this item.

ATTACHMENTS:

File Name	Description	Type
Proposed_Subdivision_Letter_of_Intent_(1).pdf	Letter of Intent	Backup Material
Locator_Map_Mingus_View_Plat_Color.pdf	Locator Map	Backup Material
2-20-24_FINAL_PLAT_REVISIED_02-09-2024_SHEET_1_OF_2.pdf	Final Plat Revised 2-9-24 Sheet 1 of 2	Backup Material
FINAL_PLAT_REVISIED_12-12-23_SHEET_2_OF_2.pdf	Final Plat Revised 12-12-23 Sheet 2 of 2	Backup Material
CC_Rs_2_Updated.pdf	CC&Rs 2 Updated 21-067 Mingus Views Subdivision Drainage Report	Backup Material
21-067_Mingus_Views_Subdivision_Drainage_Report_(2).pdf	Views Subdivision Drainage Report	Backup Material
Mingus_Views_Report_of_Title.pdf	Title Report	Backup Material
CRB_22-031_8-30-2022_Marauder_Comments.pdf	CRB #22-031	Backup Material
CRB_22-031__Comment_Letter_Marauder_Subdivision_2nd_Meeting.pdf	CRB #22-031 REVISION	Backup Material
CRB-23-	REVISED CRB-23-	Backup
041_IR_REV_CRB_Comment_Letter_Marauder_Subdivision_(2).pdf	041	Material

11/13/2023

To Whom It May Concern,

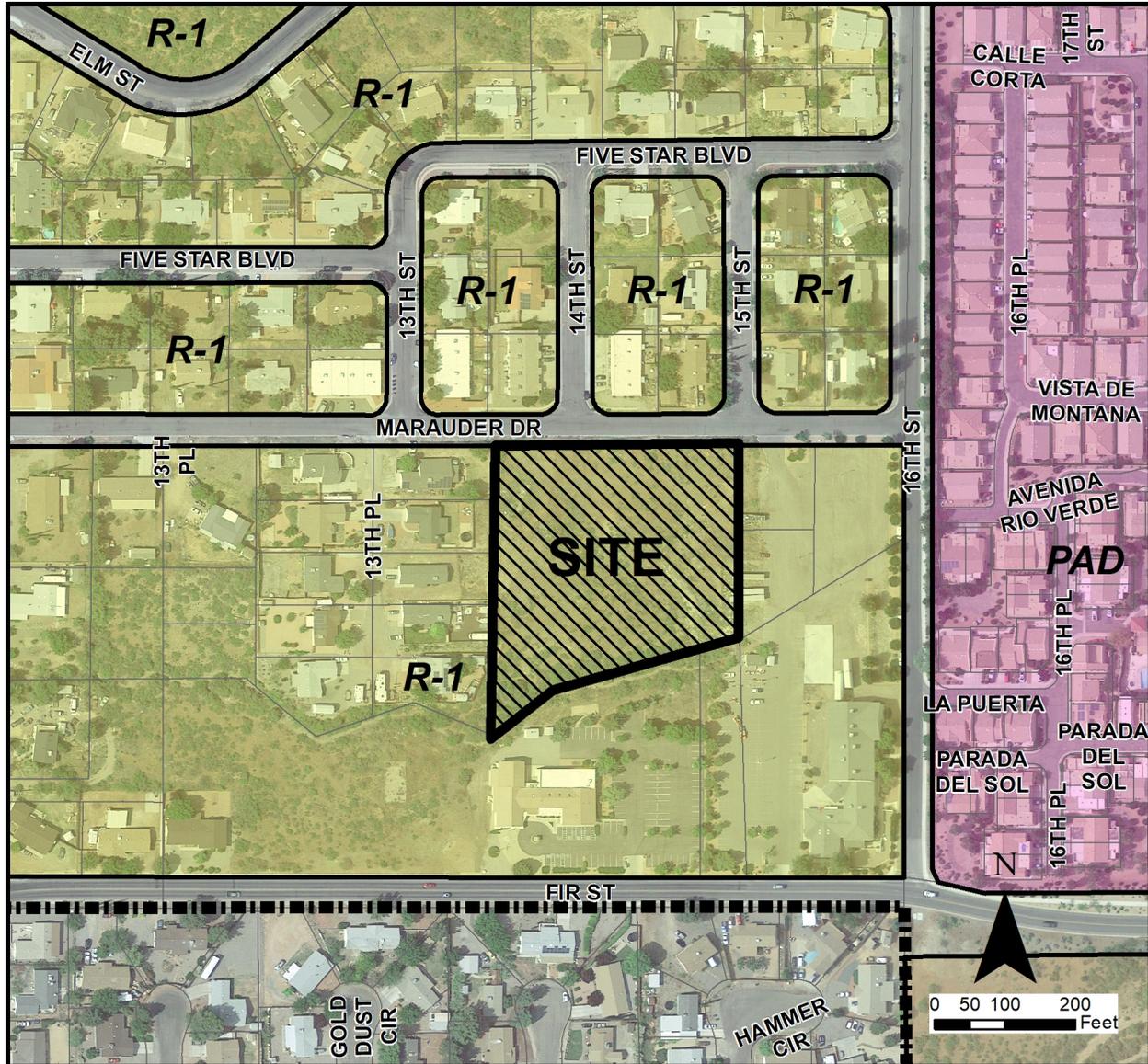
Joe Mulcaire Contracting LLC, owned by Joe & Rachel Mulcaire, has purchased the following parcel: 406-06-036A located to the south of Marauder Dr. and to the west of 16th St. Joe Mulcaire Contracting LLC is a local general contracting business that prides itself on building homes that our clients won't just live in but that they'll love. Joe & I have a collective 50 years of experience in the industry and deep roots in the Verde Valley. We are excited to meet a need the community we live in, and love, has for housing. The previously described parcel is 2.73 acres of relatively flat terrain, slightly sloping toward the wash at the southern rear of the property. A retention area will be implemented at the southern end of the proposed road to feed into the preexisting wash. We are proposing to build 10 single family residences with an estimated size of 1200-1800 SQFT each. They will be craftsman and farmhouse style. The road providing access to these home sites will be owned and maintained by the property owners, while meeting the specifications and standards of the City of Cottonwood. There are no other conditions or deed restrictions to address. There are no significant issues that have been identified in prior reviews. No code exemptions are being requested. Upon approval of the project, all infrastructure will be installed. Initially, we will be installing all City Utilities (power, sewer, gas and water), after which we will begin building 1-2 homes at a time with a 2-3 year estimated completion for the entire project. There are no future development or redevelopment of later phases applicable to this project.

Thank you for reviewing our project.

Sincerely,

Joe & Rachel Mulcaire

FP 23-002 MINGUS VIEW FINAL PLAT



-  City Boundary
-  Proposed Final Plat
-  Zoning Boundary

FINAL PLAT OF MINGUS VIEWS

CITY OF COTTONWOOD, ARIZONA
APN: 406-06-036A
**BEING A PORTION OF SECTION 3,
 TOWNSHIP 15 NORTH, RANGE 3 EAST,
 GILA & SALT RIVER BASE & MERIDIAN,
 YAVAPAI COUNTY, ARIZONA**
CONTAINING 2.81 ACRES ±

FINAL PLAT NOTES

1. THE SUBDIVIDER HERBERY DECLARES AND AGREES THAT THE NUMBERED LOTS ARE SHOWN AT THE MINIMUM SIZE. THE REMAINING LOTS ARE SHOWN AT THE MINIMUM SIZE. THIS PROVISION DOES NOT APPLY TO THE REMAINING UNDIVIDED LOTS. THIS PROHIBITION SHALL NOT APPLY TO THE CREATION OF EASEMENTS OR RIGHTS-OF-WAY. NOR TO THE CONVEYANCE OF MINOR PORTIONS OF A LOT TO THE OWNER OF A CONTIGUOUS LOT FOR ATTACHMENT TO THAT LOT. IN NO CASE SHALL ANY LOT BE SO DIVIDED AS TO CREATE A LOT OF LESSER SIZE THAN THAT ALLOWED WITHIN THE ZONING DISTRICT IN FORCE OVER THIS PLAT.
2. NO STRUCTURE OF ANY KIND SHALL BE CONSTRUCTED OR PLACED WITHIN OR OVER UTILITY EASEMENTS EXCEPT UTILITIES, WOOD, WIRE, OR REMOVABLE SECTION TYPE OF FENCING, ASPHALT PAVING, GRAVEL, CONCRETE, OR OTHER DRIVEWAY MATERIALS OR SUITABLE LANDSCAPING. IT SHALL BE FURTHER UNDERSTOOD THAT THE UTILITY COMPANIES SHALL NOT BE REQUIRED TO REPLACE OBSTRUCTIONS, PAVING, OR LANDSCAPING THAT MUST BE REMOVED DURING THE COURSE OF MAINTENANCE, CONSTRUCTION OR RECONSTRUCTION OF UTILITIES.
3. LOT CORNERS SHALL BE SET WITHIN 120 DAYS OF APPROVAL AND RECORDING OF THIS FINAL PLAT AND WILL BE MONUMENTED WITH A 4" REBAR WITH PLASTIC CAPS STAMPED "RLS 50106" OR OTHER ACCEPTED CORNER MONUMENT.
4. NO LINES, WIRES OR OTHER SERVICES FOR THE COMMUNICATION OF TELEVISION, RADIO, TELEPHONE, OR OTHER ELECTROMAGNETIC WAVELENGTHS, INCLUDING TELEPHONE, TELEVISION AND RADIO SIGNALS, SHALL BE ERECTED, PLACED, OR MAINTAINED ANYWHERE IN OR UPON THE PROPERTY UNLESS THEY ARE CONTAINED IN CONDUITS TO CABLES INSTALLED AND MAINTAINED UNDERGROUND OR CONCEALED IN, UNDER, OR ON BUILDINGS OR OTHER STRUCTURES APPROVED BY THE ASSOCIATION, NOTWITHSTANDING THE FOREGOING, BUT SUBJECT TO ANY APPLICABLE REQUIREMENTS OR RESTRICTIONS OF ANY OTHER APPLICABLE ASSOCIATION. THE SUBDIVIDER MAY AUTHORIZE THE ERECTION OF MICROWAVE TOWERS, AND SIMILAR STRUCTURES ON COMMON AREAS FOR CENTRALIZED RECEPTION, TRANSMISSION AND RETRANSMISSION OF MICROWAVE AND SIMILAR SIGNALS. NO PROVISION OF THIS PLAT APPROVED SHALL BE DEEMED TO FORBID THE ERECTION OF TEMPORARY POWER OF TELEPHONE STRUCTURES INCIDENT TO THE CONSTRUCTION OF BUILDINGS, STRUCTURES OR IMPROVEMENTS APPROVED BY THE ASSOCIATION.

DECLARATION AND DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT JOE MULCARE CONTRACTING, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, AS OWNER OF THE PROPERTY DESCRIBED IN THE FOREGOING INSTRUMENT, HAS SUBDIVIDED THE PROPERTY DESCRIBED IN SECTION 3, TOWNSHIP 15 NORTH, RANGE 3 EAST, GILA AND SALT RIVER BASE AND MERIDIAN, YAVAPAI COUNTY, ARIZONA, AND HEREBY PUBLISHES THIS PLAT AS AND FOR THE PLAT OF "MINGUS VIEWS" (THE "PLAT"). OWNER HERBERY DECLARES THAT THE PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF THE LOTS, TRACTS, STREETS AND EASEMENTS AND THAT SUCH LOTS, TRACTS AND STREETS SHALL BE KNOWN BY THE NUMBER, LETTER OR NAME GIVEN HERON.

1. OWNER HERBERY DEDICATES TO THE PUBLIC NON-EXCLUSIVE DRAINAGE EASEMENTS UPON, OVER, ACROSS, AND THROUGH OPEN SPACE TRACTS AND THOSE AREAS SPECIFICALLY DESIGNATED AS SUCH HERON. NO USE SHALL BE PERMITTED WITHIN THE DRAINAGE EASEMENTS WHICH WOULD PROHIBIT OR INTERFERE WITH THE DRAINAGE USE. MAINTENANCE OF THE DRAINAGE EASEMENTS SHALL BE THE RESPONSIBILITY OF THE LOT OR TRACT OWNER. SHOULD THE PROPERTY OWNER NOT MAINTAIN THE DRAINAGE EASEMENTS, THE CITY OF COTTONWOOD, ARIZONA, AND THE DRAINAGE DEPARTMENT, THROUGH THE DRAINAGE DEPARTMENT, MAY IN ITS DISCRETION, ANY ENTER UPON AND MAINTAIN THE DRAINAGE EASEMENTS AND CHARGE THE PROPERTY OWNER THE COST OF THE MAINTENANCE. ALL EASEMENTS ARE SUBORDINATE TO THE DRAINAGE EASEMENTS.

2. OWNER HERBERY DEDICATES THE "DRAINAGE EASEMENT" AS SHOWN ON THE FINAL PLAT TO THE CITY OF COTTONWOOD, ARIZONA, AS THE CITY ENGINEER, FOR THE RETENTION OF STORM WATER RUNOFF FROM THE PROPERTY AND HOMEOWNERS OF "MINGUS VIEWS". THE RIGHT TO ACCESS, AND MAINTAIN THE AREA DEEMED AS RETENTION AREA/DRAINAGE EASEMENT.

3. OWNER HERBERY DEDICATES ACCESS TO THE CITY OF COTTONWOOD EMERGENCY SERVICES FOR THE PRIVATE ROADS SHOWN ON THE FINAL PLAT OF "MINGUS VIEWS" SUBDIVISION CALLED OUT AS WYATT WAY AND MINGUS VIEWS.

4. OWNER HERBERY DEDICATES THE CITY OF COTTONWOOD AND PRIVATE UTILITY COMPANIES THOSE AREAS ON THIS PLAT DESCRIBED AS PUBLIC UTILITY EASEMENT (P.U.E.) FOR THE INSTALLATION, OPERATION AND MAINTENANCE OF UTILITIES AND ACCESS THERETO INCLUDING BUT NOT LIMITED TO SEWER, WATER, ELECTRIC, GAS, TELEPHONE AND CABLE TELEVISION.

IN WITNESS WHEREOF JOE MULCARE CONTRACTING A LIMITED LIABILITY COMPANY, AS SOLE OWNER, HAS CAUSED THE NAME OF JOE MULCARE CONTRACTING A LIMITED LIABILITY COMPANY, TO BE AFFIXED HERETO AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF JOE MULCARE, ITS OWNER, FOR THE PURPOSES HEREBIN CONTAINED, BEING DULY AUTHORIZED TO DO SO.

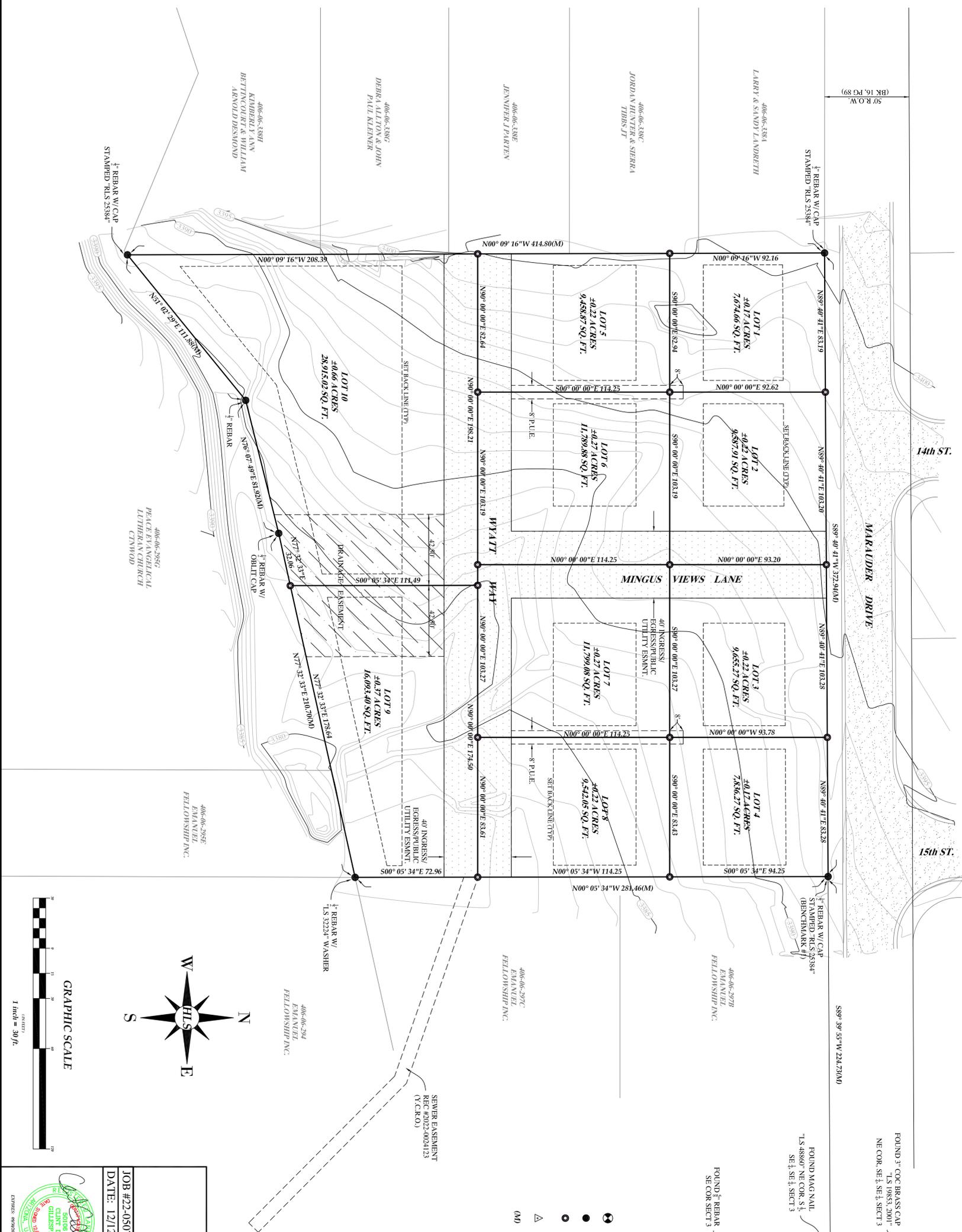
BY: JOE MULCARE CONTRACTING A LIMITED LIABILITY COMPANY

BY: _____
 ITS: _____
 DATED: _____



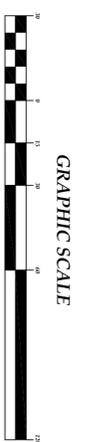
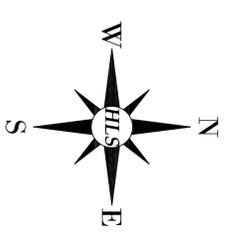
FINAL PLAT OF MINGUS VIEWS

CITY OF COTTONWOOD, ARIZONA
 APN: 406-06-036A
 BEING A PORTION OF SECTION 3,
 TOWNSHIP 15 NORTH, RANGE 3 EAST,
 GILA & SALT RIVER BASE & MERIDIAN,
 YAVAPAI COUNTY, ARIZONA



- LEGEND:**
- INDICATES FOUND GOVERNMENT MONUMENT AS NOTED
 - INDICATES FOUND MONUMENT AS NOTED
 - INDICATES SET 1/2" REBAR WITH PLASTIC CAP STAMPED T.S. 50106
 - △ INDICATES CALCULATED POSITION (NOTHING FOUND OR SET)
 - (M) INDICATES MEASURED FIELD DIMENSION

ZONING R-1:
 BUILDING SET BACKS
 FRONT: 25 ft.
 REAR: 20 ft.
 SIDE (INTERIOR): 7 ft.
 SIDE (EXTERIOR): 15 ft.
 MINIMUM LOT SIZE 7,500 sq. ft.



	JOB #22-0507C DATE: 12/12/2023	SHEET 2 OF 2 DRAWN BY: CDG
HERITAGE LAND SURVEYING & MAPPING INC. CLINT D. GILLESPIE, R.L.S. PO BOX 3320 CAMP VERDE, AZ 86322 (928) 562-9170		

Restrictive Covenants

Mingus Views

KNOWN BY ALL MEN THESE PRESENTS:

That Joe Mulcaire Contracting LLC, being the owner of the following described premises located within the City of Cottonwood, Yavapai County, Arizona, to wit:

Mingus Views lots 1-10 according to the plat of record in the office of the County Recorder of Yavapai County, State of Arizona in Book () of Maps and Plats, Page ().

WHEREAS, the owner has subdivided said protected area and intends to sell lots and building sites therein subject to certain protective restrictions, conditions, limitations, reservations, and covenants, herein referred to as "PROTECTIVE RESTRICTIONS" in order to ensure the most beneficial development in said area, and to prevent any detrimental use thereof.

1. **LANDSCAPING:** The natural or planted vegetation and landscape materials within the setbacks will be maintained by the property owner and may not be removed. All lots shall be landscaped to be aesthetically complimentary to the subdivision. Driveways must be concrete, granite, or asphalt with a minimum base of four inches. Granite, gravel or grass may be used for ground cover, however desert landscaping is recommended. The use of low water required plants is also recommended.
2. **MOTOR VEHICLE:** No motor vehicle, boat, camper, recreational vehicle, trailer or bus shall be constructed, reconstructed, repaired or stored on any lot in the project in such manner as to be visible from neighboring property; provided however, that the provisions of this section shall not apply to emergency repairs. Motor vehicles shall not be permitted to park on the roadways in the project. No vehicle shall be kept in a state of disrepair on the lot site or the roadway.
3. **FENCING:** All fences shall be wooden, wrought iron, ornamental iron, or vinyl construction. No chain link fencing.
4. **LOT DIVISION:** Lots are not permitted to be further subdivided.
5. **ROADS:** All roads are private and maintenance is the shared responsibility of all lot owners. Roads are to be maintained to accommodate emergency vehicle access in accordance with current fire codes.

Title subject to restrictions. Nothing contained in this declaration shall impair or defeat the lien of any mortgage or deed of trust made in good faith and for value, but titles to any property subject to the declaration obtained through sales in satisfaction of any mortgage or deed of trust shall thereafter be held subject to all the protective covenants hereof.

The foregoing protective covenants shall be binding on all parties and all persons claiming under them for a period of twenty five years from _____, at which time said protective restrictions shall be automatically renewed for an additional period of twenty

five years, unless 75% or more of the owners of record, at that time, agree in writing to changes and said changes are made in a lawful manner. Each and all of the protective restrictions shall be enforceable by injunction or by other forces of action available to the parties aggrieved, or to the grantor or their successors in interest. Invalidation of any one of these protective restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

DATED this _____ day of _____

Joe Mulcaire Contracting LLC by

STATE OF ARIZONA)
) SS
COUNTY OF YAVAPAI)

On this _____ day of _____, before me personally appeared

_____ and _____

who acknowledged to be the Owners of the above described property and that as such Owners executed the foregoing instrument for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(Notary Public)

My Commission expires:

Drainage Report

for

Mingus Views Subdivision

City of Cottonwood, Yavapai County, Arizona

Prepared for

Joe Mulcaire Contracting, LLC

2280 W. Quail Springs Ranch Rd.
Cottonwood, AZ 86326

This report and drainage plan for the drainage design of Cottonwood Subdivision was prepared by me in accordance with the provisions of the “Drainage Planning Submittal Requirements” of Yavapai County and other regulations of Yavapai County. I understand that Yavapai County does not, and will not, assume liability for the drainage facilities designed by others.

SIGNATURE:
Registered Professional Engineer



EXPIRES 12-31-2025

State of Arizona No. 51810

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APPENDIX A – DEVELOPER CERTIFICATION SHEET

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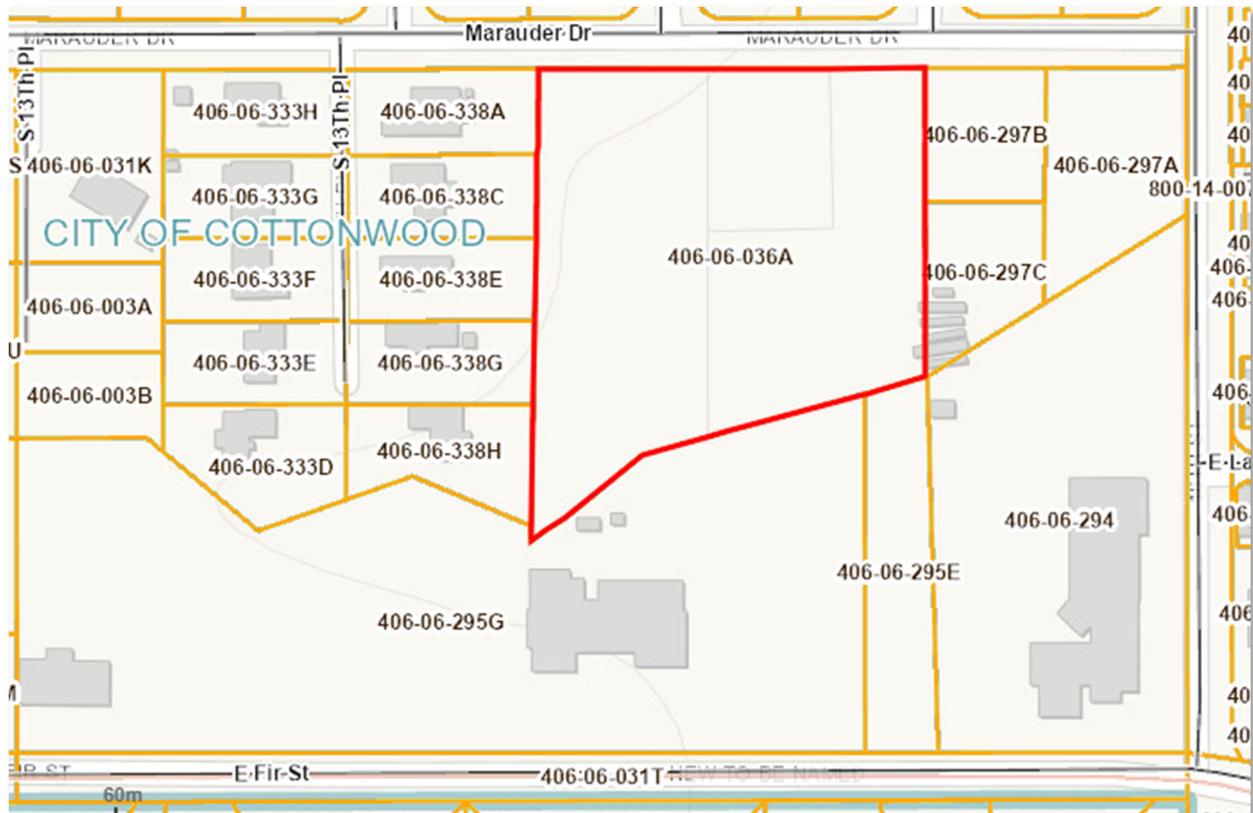
APPENDIX D – DRAINAGE EXHIBITS

APPENDIX E – HYDRAULIC CALCULATIONS

1.0 GENERAL LOCATION AND DESCRIPTION

The Mingus Views Subdivision (Project) is being developed by Joe Mulcaire Contracting, LLC and is located within APN 406-06-036A (Site), just south of Marauder Dr. in Cottonwood, Yavapai County, Arizona. The site is further described as a portion of Section 3, Township 15 North, Range 3 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona. Refer to the Vicinity Map on the following below.

Vicinity Map



The proposed Project is comprised of 2.81-acres of land and will incorporate private streets, ten (10) graded pads and a retention basin.

The existing site consists of an unoccupied residence, unimproved vacant land with desert vegetation and generally drains to the southeast corner at approximately 5% and ultimately into a drainage wash to the South running west to east direction. The site is accessed via paved public roads from Marauder Drive. The Project will include one main access to/from Marauder Drive.

Due to the generally steep nature of the terrain within the Project, the on-site private drive aisles will be approximately 5.5% heading south from Marauder and up to 8.6% from the west, with a standard 2% cross-slope, respectively. All pads will be graded approximately 12 inches above adjacent street grades to act as freeboard as required within the YCDDM.

The Project will include the other applicable utilities that will include, but not be limited to water, sewer, electric, etc. These utilities will be carefully designed with respect to each other to eliminate conflicts.

A Boundary & Topographic Survey was performed and prepared for the property by Heritage Land Surveying & Mapping, Inc. (Heritage), dated January 24, 2022. An AutoCAD file was provided by Heritage, which was incorporated and used as the base files for the Project.

The purpose of this report is to show that the proposed development will be designed to meet the Yavapai County Drainage Design Manual (YCDDM) and to provide the supporting documentation required by the County's Development Services Department (DSD) for the Client to acquire the pertinent permit(s) to construct the Project.

2.0 DRAINAGE BASINS AND SUB-BASINS

The Site is identified on a Flood Insurance Rate Map (FIRM) panel number 04025C1757H, Yavapai County, effective October 16, 2015. The site, in its entirety, is located within Zone "X" designation. This is described as, "0.2% annual chance flood hazard, areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile."

The off-site flow condition is minimal for this project. The Project is being constructed from an improved street, therefore flow generated to the north will remain within the ROW. Flows generated on-site will remain on-site as further described below.

3.0 DRAINAGE DESIGN CRITERIA

This drainage for this Project was designed in accordance with the YCDDM, including no requested deviations. It is our understanding there are no other drainage studies or reports that would influence the drainage design for this Project.

The hydrology for this Project was analyzed using the 100-year, 2-hour storm event in accordance with Chapter 7 of the YCDDM, more specifically Section 7.3, using the Rational Method. Point precipitation frequency estimates were derived from the National Oceanic and Atmospheric Administration (NOAA) Atlas 14 website. The supporting website documentation has been provided in Appendix B of this report. The resultant 100-year, 10-minute intensity and 100-year, 2-hour depths provided were 6.94 in/hour and 2.64 inches, respectively.

Runoff coefficients for this project were derived from the Table 7.6 of the YCDDM and vary per storm frequency. They were used to calculate the 100-year peak flows using the following equation and are presented in the summary of peak discharges below. Additionally, the areas and peak flows are presented in the Drainage Area Map in Appendix C of this report.

Summary of Onsite Peak Discharges

Rational Method - $Q = C \times i \times A$

Where: C_{pre} = Runoff Coefficient =	0.50
C_{post2} = Runoff Coefficient =	0.55
C_{post10} = Runoff Coefficient =	0.55
C_{post25} = Runoff Coefficient =	0.70
$C_{post100}$ = Runoff Coefficient =	0.80
i = Rainfall Intensity (2-year) =	2.45
i = Rainfall Intensity (10-year) =	4.06
i = Rainfall Intensity (25-year) =	5.11
i = Rainfall Intensity (100-year) =	6.94
A = Area in acres	

DESIGN POINT	DRAINAGE AREA (AC)	PRE-DEVELOPED				POST-DEVELOPED			
		PEAK FLOW (cfs)				PEAK FLOW (cfs)			
		2-YR	10-YR	25-YR	100-YR	2-YR	10-YR	25-YR	100-YR
1	2.57	3.15	5.22	6.57	8.92	3.46	5.74	9.19	14.27

The stormwater detention for this Project was designed in accordance with Chapter 15 of the YCDDM, more specifically Sections 15.3 and 15.4. The detention basin has been designed to retain the first 0.5-inch of runoff for the improved area, and will detain a minimum of the difference between the pre-and post-developed 100-year storm events. Due to the outlet pipe size and head pressure restrictions of the basin, the volume of the basin had to be slightly oversized. These parameters are further described below.

The detention basin bottom and high-water-level elevations are 3381.0 and 3383.8, respectively. The side-slopes will be constructed at a maximum of 3:1 slope and a total depth of 3.8 feet, including 12 inches of freeboard. With a total required retention/detention volume of 8,240 cf, the provided volume for the development was calculated as follows:

Summary of First-Flush Retention

Retention Volume - $V = 0.5/12 \times A$

A = Volume in cubic feet

DRAINAGE AREA I.D.	AREA (Ac)	AREA (sf)	VOLUME REQUIRED (cf)
1	2.57	111,948	4,665
FIRST-FLUSH RETENTION REQUIRED =			4,665
FIRST-FLUSH RETENTION PROVIDED =			4,675

Summary of Onsite Detention (Pre- vs Post-)

Detention Volume - $V = (Q_{post} - Q_{pre}) \times 10 \text{ Min Duration}$

Q_{post} = Post-Developed 100-yr Flow

Q_{pre} = Pre-Developed 100-yr Flow

V = Volume Required (in cubic feet)

V = Volume Provided (in cubic feet)

DRAINAGE AREA I.D.	Q_{post} (cfs)	Q_{pre} (cfs)	VOLUME REQUIRED (cf)
1	14.27	8.92	3,210
Orifice Design	14.27	8.31	3,575
DETENTION REQUIRED =			3,575
DETENTION PROVIDED =			9,770

Summary of Onsite Overall Volume

TOTAL VOLUME REQUIRED =	8,240
TOTAL VOLUME PROVIDED =	14,445
TOTAL VOLUME SURPLUS =	6,206

In order to detain a minimum of the predeveloped flow, the restricted outlet is proposed as a 4.5-foot long weir set at the same flowline elevation of 1182.0. The stormwater retention required for the ultimate condition was evaluated and considered to verify there will be adequate space on the site to accommodate, and to consider the earthwork volumes necessary for construction purposes. The bottom twelve (12) inches of the retention basin shall be dewatered within 36 hours as required by the YCDDM via evaporation and natural percolation. The retention basin is shown on the Grading and Drainage Plans submitted in conjunction with this report.

The hydraulics for this Project were analyzed in accordance with Chapter 10 of the YCDDM and were analyzed using Hydraulic Toolbox, version 4.2. Considering the post-developed peak flow of 14.3 cfs, the drive isle and retention basin inlet and outlets were evaluated to ensure flow adequacy and conveyance.

Supporting hydraulic calculations are found in Appendix E of this report.

4.0 DRAINAGE FACILITY DESIGN

The proposed drainage improvements and associated facilities will remain in general conformance with the existing drainage pattern flowing from a northwest to southeast flow pattern, eventually reaching the existing creek just south of the Project.

Due to the majority of this project being covered in decomposed granite along with the nature of the project, there was effort to minimize grade slopes to minimize flow velocities during larger storm events. During and after large rain events, the detention basin along with the inlet and outlet

will need to be inspected and maintained to remain clear of any debris. Erosion will be controlled via rip-rap in areas where drainage will flow in conditions of concentrated flow. Rip-rap has been sized in accordance with the flow and velocities associated. In an effort to control sedimentation transport during construction, Erosion Control Plans have been provided to accompany the Grading and Drainage Plans.

Finished floors were set a minimum of 12 inches above adjacent inlet elevations and 18 inches above low lot outfall for the project. There are no upstream or downstream properties that will be affected by the drainage design associated with this project.

5.0 CONCLUSIONS

The proposed Bradshaw Mountain RV Park Project will adhere to Yavapai County drainage criteria to retain the first-flush volume and detain the pre-developed vs post-developed 100-year, 2-hour storm event flow. The detention basin will be dewatered within 36 hours via evaporation and natural percolation.

There are no anticipated offsite flows that will impact the proposed pads. Any unanticipated offsite flows will remain within the right-of-way and conveyed along the existing road to existing drainage swales. Construction will consist of private roadway and ten (10) graded pads and a retention basin.

6.0 REFERENCES

Yavapai County Drainage Design Manual, Version 2015

Uniform Details for Public Works Construction, by the M.A.G., 2018 Revisions

Uniform Standard Specifications for Public Works Construction, by the M.A.G., Version 2018

7.0 APPENDICES

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Appendix A
Developer Certification Sheet

Developer Certification Sheet

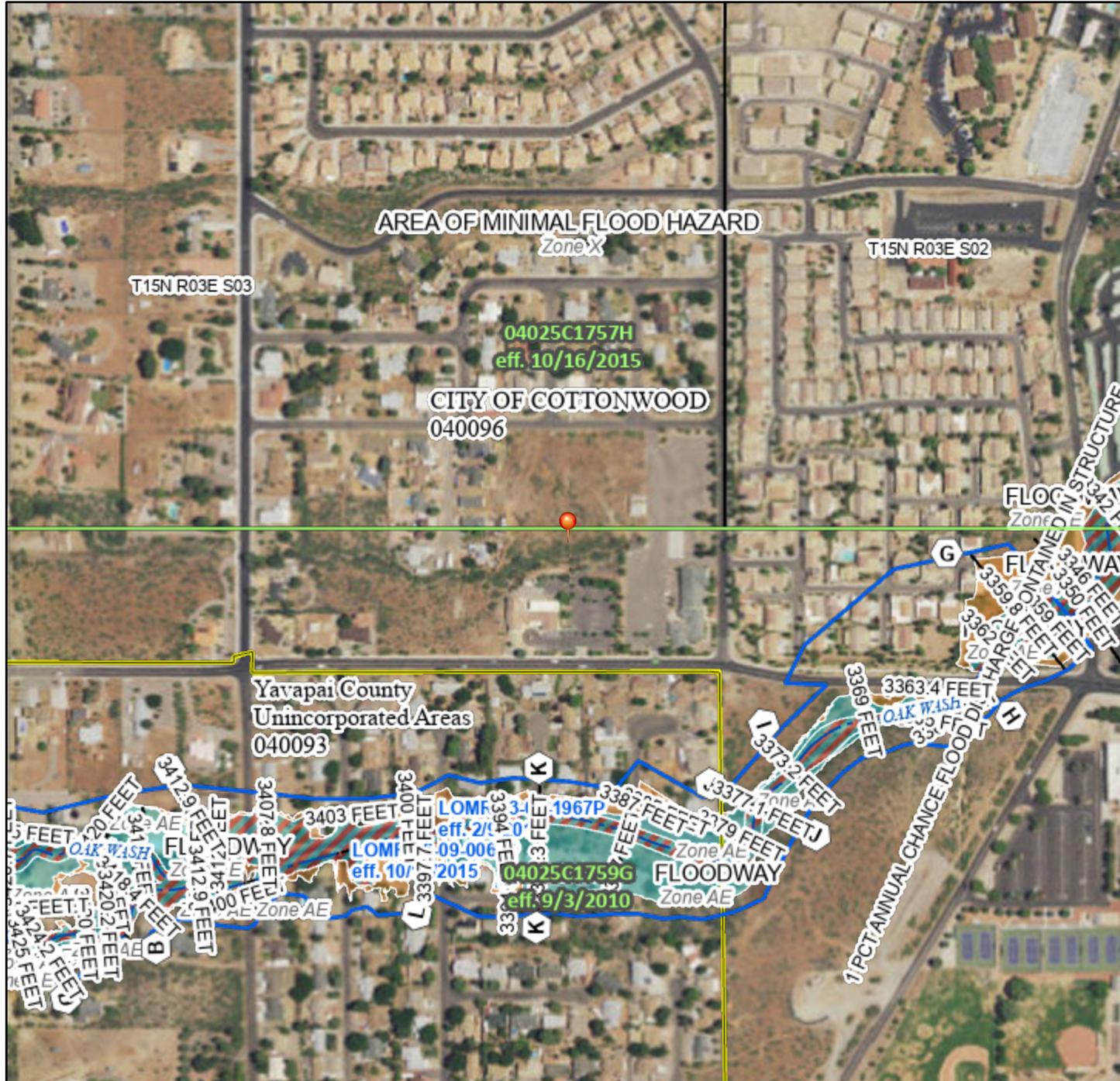
Joe Mulcaire Contracting, LLC hereby certify that the drainage facilities for Mingus Views Subdivision shall be constructed according to the design presented in this report. I understand that Yavapai County does not, and will not, assume liability for the drainage facilities designed and/or certified by my engineer, and that Yavapai County reviews drainage plans pursuant to the Arizona Revised Statutes, Chapter 21, Article 1, §48-3601 to §48-3628; but cannot, on behalf of Joe Mulcaire Contracting, LLC, guarantee that final drainage design review will absolve Joe Mulcaire Contracting, LLC and/or their successors and/or assigns of future liability for improper design.

Appendix B
FEMA FIRM Map

National Flood Hazard Layer FIRMMette



112°0'59"W 34°43'22"N



112°0'21"W 34°42'52"N

Basemap: USGS National Map: Orthoimagery: Data refreshed October, 2020

Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS		Without Base Flood Elevation (BFE) Zone A, V, A99
		With BFE or Depth Zone AE, AO, AH, VE, AR
		Regulatory Floodway
OTHER AREAS OF FLOOD HAZARD		0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
		Future Conditions 1% Annual Chance Flood Hazard Zone X
		Area with Reduced Flood Risk due to Levee. See Notes. Zone X
		Area with Flood Risk due to Levee Zone D
OTHER AREAS		NO SCREEN Area of Minimal Flood Hazard Zone X
		Effective LOMRs
GENERAL STRUCTURES		Area of Undetermined Flood Hazard Zone D
		Channel, Culvert, or Storm Sewer
OTHER FEATURES		Levee, Dike, or Floodwall
		20.2 Cross Sections with 1% Annual Chance Water Surface Elevation
MAP PANELS		17.5 Coastal Transect
		Base Flood Elevation Line (BFE)
OTHER FEATURES		Limit of Study
		Jurisdiction Boundary
OTHER FEATURES		Coastal Transect Baseline
		Profile Baseline
OTHER FEATURES		Hydrographic Feature
		Digital Data Available
MAP PANELS		No Digital Data Available
		Unmapped



The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 5/18/2023 at 4:45 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.

Appendix C

NOAA Atlas 14 Documentation



NOAA Atlas 14, Volume 1, Version 5
Location name: Cottonwood, Arizona, USA*
Latitude: 34.7192°, Longitude: -112.0112°
Elevation: 3396.22 ft**
* source: ESRI Maps
** source: USGS



POINT PRECIPITATION FREQUENCY ESTIMATES

Sanja Perica, Sarah Dietz, Sarah Heim, Lillian Hiner, Kazungu Maitaria, Deborah Martin, Sandra Pavlovic, Ishani Roy, Carl Trypaluk, Dale Unruh, Fenglin Yan, Michael Yekta, Tan Zhao, Geoffrey Bonnin, Daniel Brewer, Li-Chuan Chen, Tye Parzybok, John Yarchoan

NOAA, National Weather Service, Silver Spring, Maryland

[PF_tabular](#) | [PF_graphical](#) | [Maps_&_aerials](#)

PF tabular

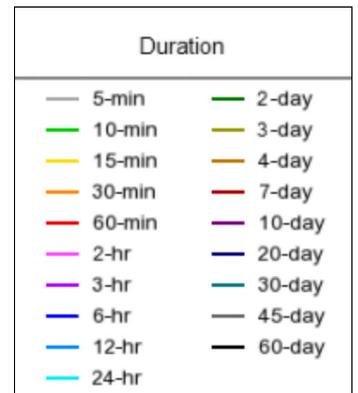
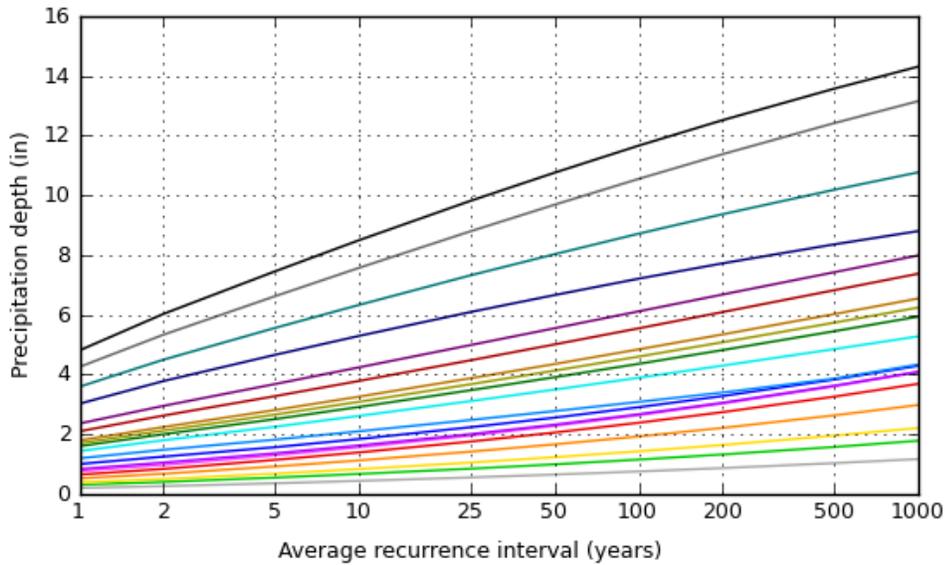
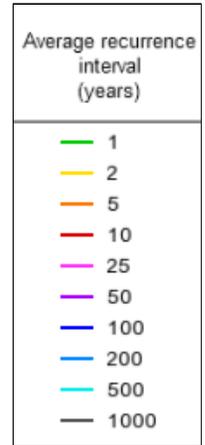
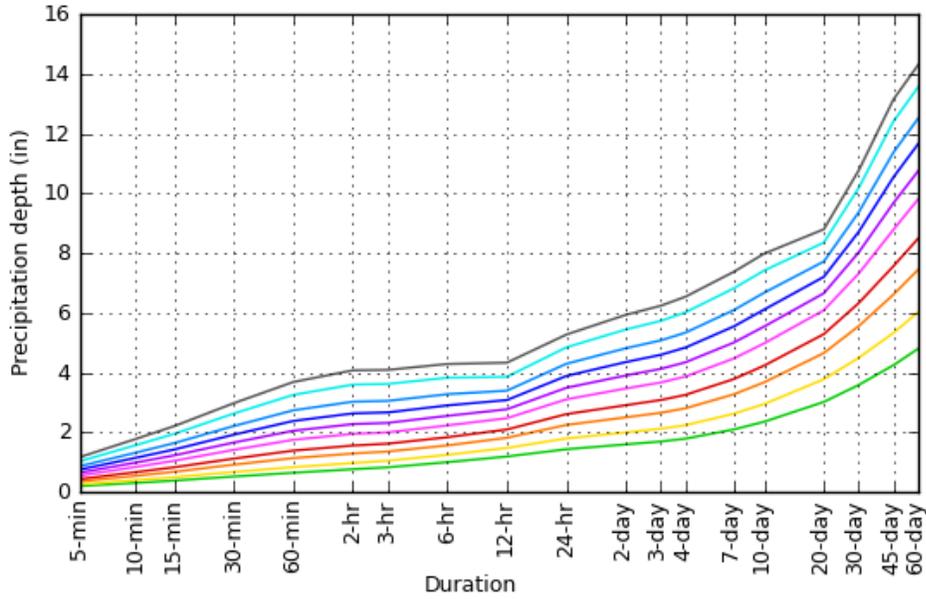
PDS-based point precipitation frequency estimates with 90% confidence intervals (in inches)¹										
Duration	Average recurrence interval (years)									
	1	2	5	10	25	50	100	200	500	1000
5-min	0.208 (0.176-0.245)	0.268 (0.227-0.316)	0.364 (0.309-0.427)	0.444 (0.375-0.520)	0.559 (0.466-0.652)	0.655 (0.541-0.763)	0.759 (0.619-0.886)	0.873 (0.702-1.02)	1.04 (0.818-1.22)	1.17 (0.911-1.39)
10-min	0.317 (0.269-0.373)	0.409 (0.347-0.480)	0.554 (0.470-0.651)	0.676 (0.571-0.791)	0.851 (0.710-0.993)	0.997 (0.824-1.16)	1.16 (0.943-1.35)	1.33 (1.07-1.55)	1.58 (1.25-1.86)	1.79 (1.39-2.11)
15-min	0.393 (0.333-0.462)	0.506 (0.429-0.596)	0.687 (0.582-0.807)	0.838 (0.707-0.981)	1.06 (0.880-1.23)	1.24 (1.02-1.44)	1.43 (1.17-1.67)	1.65 (1.33-1.92)	1.96 (1.54-2.30)	2.21 (1.72-2.61)
30-min	0.529 (0.449-0.623)	0.682 (0.578-0.802)	0.926 (0.784-1.09)	1.13 (0.952-1.32)	1.42 (1.19-1.66)	1.67 (1.38-1.94)	1.93 (1.58-2.25)	2.22 (1.79-2.59)	2.64 (2.08-3.10)	2.98 (2.32-3.52)
60-min	0.655 (0.556-0.770)	0.844 (0.716-0.993)	1.15 (0.971-1.35)	1.40 (1.18-1.64)	1.76 (1.47-2.05)	2.06 (1.70-2.40)	2.39 (1.95-2.79)	2.74 (2.21-3.21)	3.26 (2.57-3.83)	3.69 (2.87-4.36)
2-hr	0.773 (0.672-0.892)	0.979 (0.850-1.13)	1.30 (1.12-1.50)	1.57 (1.35-1.80)	1.96 (1.67-2.25)	2.28 (1.92-2.62)	2.64 (2.19-3.04)	3.03 (2.48-3.49)	3.60 (2.89-4.17)	4.08 (3.21-4.73)
3-hr	0.837 (0.738-0.960)	1.06 (0.933-1.21)	1.37 (1.20-1.56)	1.63 (1.43-1.86)	2.01 (1.74-2.28)	2.32 (2.00-2.64)	2.67 (2.27-3.05)	3.06 (2.56-3.50)	3.63 (2.97-4.18)	4.10 (3.30-4.74)
6-hr	1.01 (0.900-1.14)	1.25 (1.12-1.42)	1.57 (1.39-1.77)	1.84 (1.63-2.08)	2.24 (1.96-2.52)	2.56 (2.22-2.88)	2.91 (2.50-3.28)	3.28 (2.78-3.72)	3.83 (3.18-4.37)	4.29 (3.50-4.93)
12-hr	1.20 (1.07-1.35)	1.49 (1.33-1.68)	1.82 (1.63-2.05)	2.10 (1.87-2.36)	2.48 (2.20-2.79)	2.78 (2.44-3.12)	3.09 (2.69-3.47)	3.40 (2.94-3.84)	3.86 (3.30-4.39)	4.34 (3.59-4.98)
24-hr	1.44 (1.31-1.59)	1.80 (1.64-1.99)	2.26 (2.04-2.48)	2.62 (2.37-2.88)	3.11 (2.81-3.42)	3.50 (3.14-3.84)	3.89 (3.48-4.28)	4.30 (3.82-4.73)	4.85 (4.26-5.35)	5.28 (4.61-5.84)
2-day	1.61 (1.46-1.77)	2.01 (1.82-2.22)	2.51 (2.28-2.77)	2.92 (2.65-3.21)	3.48 (3.14-3.82)	3.91 (3.51-4.31)	4.36 (3.89-4.80)	4.82 (4.28-5.32)	5.45 (4.79-6.03)	5.94 (5.18-6.60)
3-day	1.70 (1.56-1.86)	2.13 (1.95-2.33)	2.66 (2.44-2.91)	3.09 (2.83-3.37)	3.68 (3.35-4.01)	4.13 (3.75-4.51)	4.60 (4.16-5.03)	5.08 (4.57-5.57)	5.74 (5.11-6.30)	6.24 (5.51-6.88)
4-day	1.80 (1.66-1.95)	2.25 (2.08-2.44)	2.81 (2.60-3.05)	3.26 (3.01-3.54)	3.88 (3.57-4.20)	4.35 (3.99-4.72)	4.84 (4.43-5.26)	5.34 (4.85-5.81)	6.02 (5.42-6.56)	6.55 (5.84-7.16)
7-day	2.10 (1.94-2.29)	2.63 (2.43-2.86)	3.28 (3.03-3.56)	3.79 (3.49-4.10)	4.48 (4.12-4.84)	5.01 (4.59-5.42)	5.55 (5.07-6.01)	6.09 (5.54-6.62)	6.82 (6.15-7.43)	7.37 (6.61-8.05)
10-day	2.36 (2.18-2.57)	2.95 (2.72-3.22)	3.68 (3.39-4.00)	4.24 (3.90-4.60)	4.99 (4.57-5.40)	5.55 (5.08-6.02)	6.12 (5.57-6.64)	6.68 (6.06-7.27)	7.42 (6.69-8.09)	7.99 (7.16-8.73)
20-day	3.02 (2.79-3.29)	3.78 (3.49-4.11)	4.66 (4.30-5.06)	5.29 (4.88-5.74)	6.09 (5.60-6.60)	6.66 (6.11-7.22)	7.21 (6.60-7.82)	7.72 (7.05-8.38)	8.36 (7.60-9.08)	8.80 (7.99-9.58)
30-day	3.59 (3.32-3.89)	4.50 (4.16-4.88)	5.56 (5.13-6.02)	6.33 (5.85-6.84)	7.32 (6.75-7.91)	8.03 (7.39-8.69)	8.71 (8.01-9.44)	9.37 (8.59-10.2)	10.2 (9.30-11.1)	10.8 (9.81-11.7)
45-day	4.26 (3.93-4.62)	5.34 (4.93-5.79)	6.62 (6.11-7.16)	7.57 (6.98-8.17)	8.79 (8.10-9.48)	9.68 (8.89-10.4)	10.5 (9.66-11.4)	11.4 (10.4-12.3)	12.4 (11.3-13.4)	13.1 (12.0-14.3)
60-day	4.81 (4.44-5.19)	6.03 (5.58-6.51)	7.45 (6.89-8.03)	8.49 (7.85-9.14)	9.81 (9.04-10.5)	10.8 (9.89-11.5)	11.7 (10.7-12.5)	12.5 (11.5-13.5)	13.6 (12.4-14.6)	14.3 (13.0-15.4)

¹ Precipitation frequency (PF) estimates in this table are based on frequency analysis of partial duration series (PDS). Numbers in parenthesis are PF estimates at lower and upper bounds of the 90% confidence interval. The probability that precipitation frequency estimates (for a given duration and average recurrence interval) will be greater than the upper bound (or less than the lower bound) is 5%. Estimates at upper bounds are not checked against probable maximum precipitation (PMP) estimates and may be higher than currently valid PMP values. Please refer to NOAA Atlas 14 document for more information.

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PF graphical

PDS-based depth-duration-frequency (DDF) curves
 Latitude: 34.7192°, Longitude: -112.0112°



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Maps & aerials

Small scale terrain



NOAA Atlas 14, Volume 1, Version 5
 Location name: Cottonwood, Arizona, USA*
 Latitude: 34.7192°, Longitude: -112.0112°
 Elevation: 3396.22 ft**



* source: ESRI Maps
 ** source: USGS

POINT PRECIPITATION FREQUENCY ESTIMATES

Sanja Perica, Sarah Dietz, Sarah Heim, Lillian Hiner, Kazungu Maitaria, Deborah Martin, Sandra Pavlovic, Ishani Roy, Carl Trypaluk, Dale Unruh, Fenglin Yan, Michael Yekta, Tan Zhao, Geoffrey Bonnin, Daniel Brewer, Li-Chuan Chen, Tye Parzybok, John Yarchoan

NOAA, National Weather Service, Silver Spring, Maryland

[PF_tabular](#) | [PF_graphical](#) | [Maps_&_aerials](#)

PF tabular

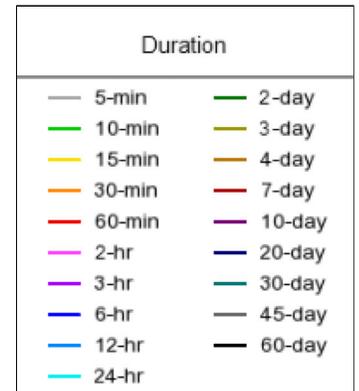
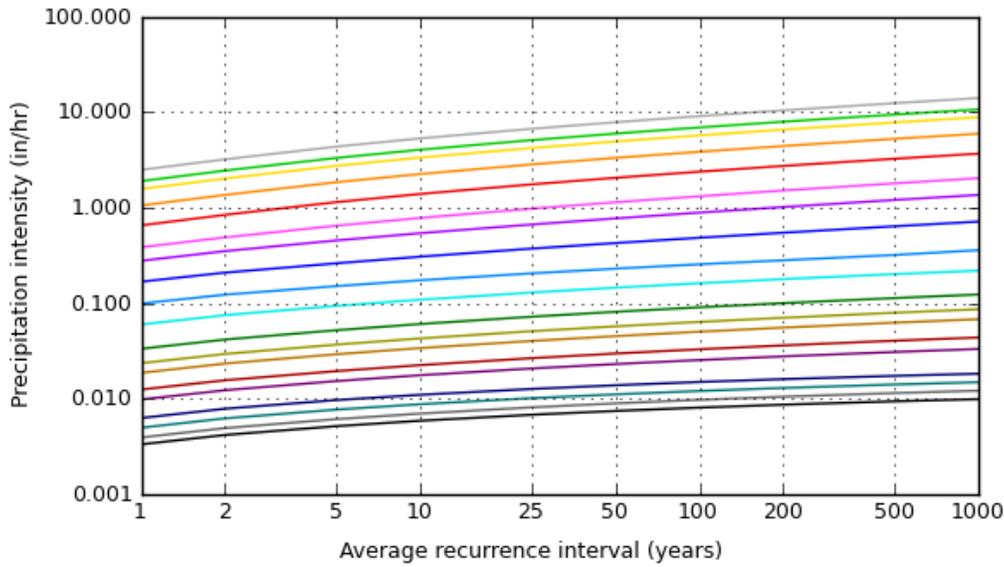
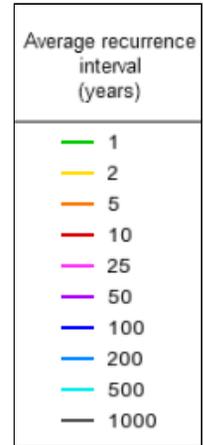
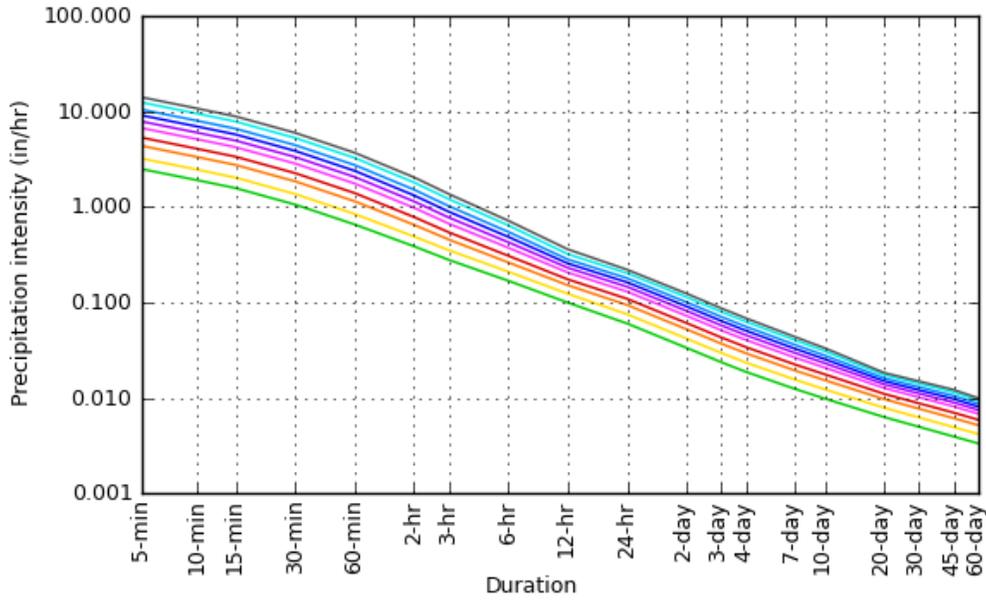
PDS-based point precipitation frequency estimates with 90% confidence intervals (in inches/hour)¹										
Duration	Average recurrence interval (years)									
	1	2	5	10	25	50	100	200	500	1000
5-min	2.50 (2.11-2.94)	3.22 (2.72-3.79)	4.37 (3.71-5.12)	5.33 (4.50-6.24)	6.71 (5.59-7.82)	7.86 (6.49-9.16)	9.11 (7.43-10.6)	10.5 (8.42-12.2)	12.4 (9.82-14.6)	14.1 (10.9-16.6)
10-min	1.90 (1.61-2.24)	2.45 (2.08-2.88)	3.32 (2.82-3.91)	4.06 (3.43-4.75)	5.11 (4.26-5.96)	5.98 (4.94-6.97)	6.94 (5.66-8.09)	7.97 (6.41-9.31)	9.47 (7.47-11.1)	10.7 (8.32-12.7)
15-min	1.57 (1.33-1.85)	2.02 (1.72-2.38)	2.75 (2.33-3.23)	3.35 (2.83-3.92)	4.22 (3.52-4.92)	4.94 (4.09-5.76)	5.73 (4.68-6.69)	6.58 (5.30-7.69)	7.82 (6.18-9.20)	8.86 (6.88-10.5)
30-min	1.06 (0.898-1.25)	1.36 (1.16-1.60)	1.85 (1.57-2.17)	2.26 (1.90-2.64)	2.84 (2.37-3.31)	3.33 (2.75-3.88)	3.86 (3.15-4.50)	4.43 (3.57-5.18)	5.27 (4.16-6.19)	5.96 (4.63-7.04)
60-min	0.655 (0.556-0.770)	0.844 (0.716-0.993)	1.15 (0.971-1.35)	1.40 (1.18-1.64)	1.76 (1.47-2.05)	2.06 (1.70-2.40)	2.39 (1.95-2.79)	2.74 (2.21-3.21)	3.26 (2.57-3.83)	3.69 (2.87-4.36)
2-hr	0.386 (0.336-0.446)	0.490 (0.425-0.567)	0.650 (0.562-0.750)	0.783 (0.673-0.900)	0.978 (0.833-1.12)	1.14 (0.960-1.31)	1.32 (1.10-1.52)	1.52 (1.24-1.74)	1.80 (1.44-2.08)	2.04 (1.61-2.37)
3-hr	0.279 (0.246-0.320)	0.352 (0.311-0.403)	0.455 (0.401-0.520)	0.542 (0.476-0.618)	0.668 (0.580-0.761)	0.774 (0.665-0.879)	0.890 (0.756-1.01)	1.02 (0.852-1.17)	1.21 (0.990-1.39)	1.36 (1.10-1.58)
6-hr	0.169 (0.150-0.190)	0.210 (0.187-0.237)	0.262 (0.233-0.296)	0.308 (0.272-0.347)	0.374 (0.328-0.422)	0.427 (0.371-0.481)	0.486 (0.417-0.548)	0.548 (0.465-0.621)	0.640 (0.531-0.730)	0.717 (0.585-0.823)
12-hr	0.100 (0.089-0.112)	0.123 (0.110-0.139)	0.151 (0.135-0.170)	0.174 (0.155-0.196)	0.206 (0.182-0.231)	0.231 (0.203-0.259)	0.256 (0.224-0.288)	0.282 (0.244-0.318)	0.321 (0.273-0.364)	0.360 (0.298-0.413)
24-hr	0.060 (0.055-0.066)	0.075 (0.068-0.083)	0.094 (0.085-0.104)	0.109 (0.099-0.120)	0.130 (0.117-0.142)	0.146 (0.131-0.160)	0.162 (0.145-0.178)	0.179 (0.159-0.197)	0.202 (0.178-0.223)	0.220 (0.192-0.243)
2-day	0.033 (0.030-0.037)	0.042 (0.038-0.046)	0.052 (0.047-0.058)	0.061 (0.055-0.067)	0.072 (0.065-0.080)	0.081 (0.073-0.090)	0.091 (0.081-0.100)	0.100 (0.089-0.111)	0.114 (0.100-0.126)	0.124 (0.108-0.137)
3-day	0.024 (0.022-0.026)	0.030 (0.027-0.032)	0.037 (0.034-0.040)	0.043 (0.039-0.047)	0.051 (0.047-0.056)	0.057 (0.052-0.063)	0.064 (0.058-0.070)	0.071 (0.063-0.077)	0.080 (0.071-0.087)	0.087 (0.076-0.096)
4-day	0.019 (0.017-0.020)	0.023 (0.022-0.025)	0.029 (0.027-0.032)	0.034 (0.031-0.037)	0.040 (0.037-0.044)	0.045 (0.042-0.049)	0.050 (0.046-0.055)	0.056 (0.051-0.061)	0.063 (0.056-0.068)	0.068 (0.061-0.075)
7-day	0.013 (0.012-0.014)	0.016 (0.014-0.017)	0.020 (0.018-0.021)	0.023 (0.021-0.024)	0.027 (0.024-0.029)	0.030 (0.027-0.032)	0.033 (0.030-0.036)	0.036 (0.033-0.039)	0.041 (0.037-0.044)	0.044 (0.039-0.048)
10-day	0.010 (0.009-0.011)	0.012 (0.011-0.013)	0.015 (0.014-0.017)	0.018 (0.016-0.019)	0.021 (0.019-0.023)	0.023 (0.021-0.025)	0.025 (0.023-0.028)	0.028 (0.025-0.030)	0.031 (0.028-0.034)	0.033 (0.030-0.036)
20-day	0.006 (0.006-0.007)	0.008 (0.007-0.009)	0.010 (0.009-0.011)	0.011 (0.010-0.012)	0.013 (0.012-0.014)	0.014 (0.013-0.015)	0.015 (0.014-0.016)	0.016 (0.015-0.017)	0.017 (0.016-0.019)	0.018 (0.017-0.020)
30-day	0.005 (0.005-0.005)	0.006 (0.006-0.007)	0.008 (0.007-0.008)	0.009 (0.008-0.009)	0.010 (0.009-0.011)	0.011 (0.010-0.012)	0.012 (0.011-0.013)	0.013 (0.012-0.014)	0.014 (0.013-0.015)	0.015 (0.014-0.016)
45-day	0.004 (0.004-0.004)	0.005 (0.005-0.005)	0.006 (0.006-0.007)	0.007 (0.006-0.008)	0.008 (0.008-0.009)	0.009 (0.008-0.010)	0.010 (0.009-0.011)	0.011 (0.010-0.011)	0.011 (0.010-0.012)	0.012 (0.011-0.013)
60-day	0.003 (0.003-0.004)	0.004 (0.004-0.005)	0.005 (0.005-0.006)	0.006 (0.005-0.006)	0.007 (0.006-0.007)	0.007 (0.007-0.008)	0.008 (0.007-0.009)	0.009 (0.008-0.009)	0.009 (0.009-0.010)	0.010 (0.009-0.011)

¹ Precipitation frequency (PF) estimates in this table are based on frequency analysis of partial duration series (PDS). Numbers in parenthesis are PF estimates at lower and upper bounds of the 90% confidence interval. The probability that precipitation frequency estimates (for a given duration and average recurrence interval) will be greater than the upper bound (or less than the lower bound) is 5%. Estimates at upper bounds are not checked against probable maximum precipitation (PMP) estimates and may be higher than currently valid PMP values. Please refer to NOAA Atlas 14 document for more information.

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PF graphical

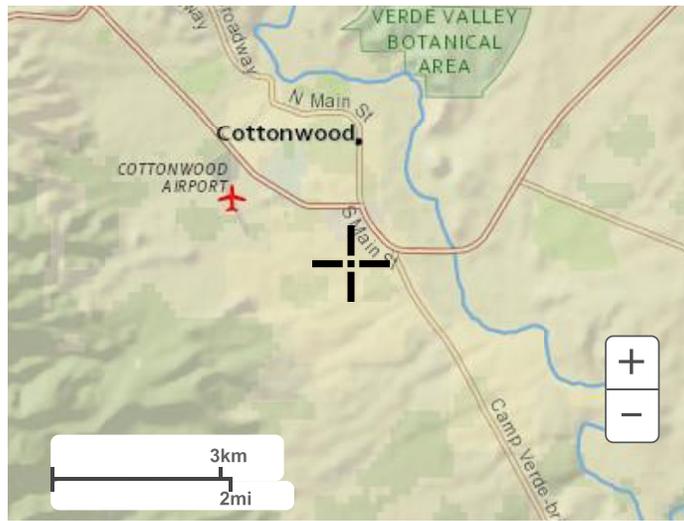
PDS-based intensity-duration-frequency (IDF) curves
 Latitude: 34.7192°, Longitude: -112.0112°



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Maps & aerials

Small scale terrain



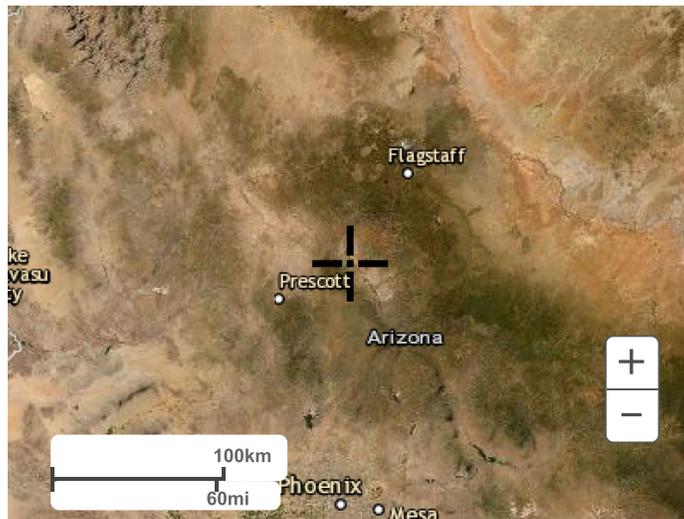
Large scale terrain



Large scale map



Large scale aerial



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[US Department of Commerce](#)
[National Oceanic and Atmospheric Administration](#)
[National Weather Service](#)
[National Water Center](#)
1325 East West Highway
Silver Spring, MD 20910
Questions?: HDSC.Questions@noaa.gov

[Disclaimer](#)

Appendix D
Drainage Exhibits

13th ST. 14th ST. 15th ST.

MAURADER DR.

APN 406-06-338A
LANDRETH LARRY & SANDY
(NOT A PART)

PARCEL: 1
PAD ELEV: 3401.25

PARCEL: 2
PAD ELEV: 3396.75

PARCEL: 3
PAD ELEV: 3396.75

PARCEL: 4
PAD ELEV: 3395.25

APN 406-06-297B
EMANUEL FELLOWSHIP INC.
(NOT A PART)

APN 406-06-338C
TIBBS JORDAN HUNTER &
SIERRA JT
(NOT A PART)

PARCEL: 5
PAD ELEV: 3398.00

PARCEL: 6
PAD ELEV: 3390.00

PARCEL: 7
PAD ELEV: 3389.50

PARCEL: 8
PAD ELEV: 3386.00

APN 406-06-297C
EMANUEL FELLOWSHIP INC.
(NOT A PART)

APN 406-06-338E
PARTEN JENNIFER J
(NOT A PART)

APN 406-06-338G
DEBRA ALLTON & JOHN
PAUL KLEINER
(NOT A PART)

PARCEL: 10
PAD ELEV: 3394.00

RETENTION
AREA
ELEV: 3381.00

PARCEL: 9
PAD ELEV: 3386.00

APN 406-06-338H
KIMBERLY ANN BETTINGCOURT
& WILLIAM ARNOLD
DESMOND (NOT A PART)

APN 406-06-294
EMANUEL FELLOWSHIP INC.
(NOT A PART)

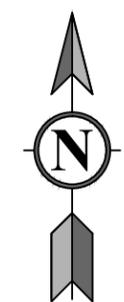
DETENTION BASIN #1
VOL. REQ'D = 7,785 CF
VOL. PROV'D = 8,025 CF
(2.7' DEEP)

APN 406-06-295E
EMANUEL FELLOWSHIP INC.
(NOT A PART)

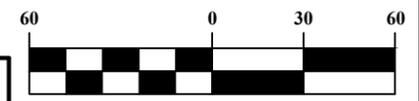
APN 406-06-295G
PEACE EVANGELICAL
LUTHERAN CHURCH COTTONWOOD
(NOT A PART)

WYATT WAY

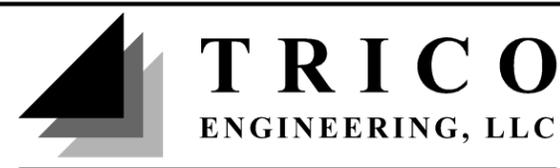
MINGUS VIEWS LN.



GRAPHIC SCALE



(IN FEET)
1 inch = 60 feet



231 SWANSON AVENUE, STE. 204
LAKE HAVASU CITY, AZ 86403
(928) 230-4969

MINGUS VIEWS SUBDIVISION
APN 406-06-333A, -0311, & -031P
COTTONWOOD, AZ 86326

DRAINAGE AREA MAP

DATE:	JULY 9, 2023	DRAWN BY:	SDP
DWG SCALE:	1"=60'	CHECKED BY:	EJP
PROJECT NO:			21-067
APPROVED BY:			SDP

DRAWING NO.:
DA-1
SHEET 1 OF 1

Appendix E
Hydraulic Calculations

Hydraulic Analysis Report

Project Data

Project Title: 21-067_Mingus Views Stormwater

Designer:

Project Date: Thursday, June 8, 2023

Project Units: U.S. Customary Units

Notes:

Weir Analysis: 4.5 Ft Weir Analysis

Notes:

Input Parameters

Weir Type: Cipolletti

Coefficient: 3.3670

Length: 4.5000 ft

Flow: 8.9200 cfs

Result Parameters

Head: 0.7024 ft

Yavapai Title Agency, Inc.

REPORT OF TITLE

OUR NO. **06016590**

Dated: October 30, 2023 at 7:30 a.m.

Fee: \$600.00

Report is issued for the sole use and benefit of:

Jeanne Stickler, c/o Yavapai Title Agency, Inc. – Cottonwood Office

Yavapai Title Agency, Inc. hereby reports that an examination of the title to the land described in Schedule A discloses that title is vested as shown in Schedule A, subject to the liens, encumbrances, and defects as shown in Schedule B.

This report is **FOR INFORMATIONAL PURPOSES ONLY**. It is neither a guarantee of title, a commitment to insure title nor a policy of title insurance.

SCHEDULE A

1. Title to the estate or interest covered by this report at the date hereof is vested in:

Joe Mulcaire Contracting, LLC, an Arizona limited liability company

2. The estate or interest in the land hereinafter described in this report is a fee.

3. The land referred to in this report is situated in the County of **Yavapai**, State of Arizona, and is described as follows:

See Exhibit A attached hereto and made a part hereof.

All recording references are to records in the office of the County Recorder of the county in which the property is situated.

Yavapai Title Agency, Inc.

By 

Authorized Officer or Agent

Yavapai Title Agency, Inc.

REPORT OF TITLE (Continued)

EXHIBIT A

PARCEL 1:

A parcel of land in the Southeast Quarter of Section 3, Township 15 North, Range 3 East, Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

BEGINNING at a point on the North line of said South Half of the Southeast Quarter of the Southeast Quarter that lies North 89° 58' West, 224.8 feet from the Northeast corner of said South Half of the Southeast Quarter of the Southeast Quarter;

THENCE North 89° 58' West, 205 feet along said North line;

THENCE South 0° 12' West, 326.8 feet;

THENCE North 76° 39' East, 210.7 feet;

THENCE North 0° 12' East, 277.5 feet to the POINT OF BEGINNING.

EXCEPT the following described property:

A portion of the Southeast quarter of Section 3, Township 15 North, Range 3 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

BEGINNING at the Northeast corner of the South half of the Southeast quarter of the Southeast quarter of said Section 3;

THENCE North 89° 58' West, a distance of 314.8 feet to the TRUE POINT OF BEGINNING;

THENCE South 0° 12' West, a distance of 140.00 feet to a point;

THENCE North 89° 58' West, a distance of 115.00 feet to a point;

THENCE North 0° 12' East, a distance of 140.00 feet to a point;

THENCE South 89° 58' East, a distance of 115.00 feet to the TRUE POINT OF BEGINNING.

PARCEL 2:

A parcel of land in the Southeast Quarter of Section 3, Township 15 North, Range 3 East, Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

BEGINNING at the Northeast corner of the South half of the Southeast quarter of the Southeast quarter of said Section 3;

THENCE North 89° 58' West, a distance of 314.8 feet to the TRUE POINT OF BEGINNING;

THENCE South 0° 12' West, a distance of 140.00 feet to a point;

THENCE North 89° 58' West, a distance of 115.00 feet to a point;

THENCE North 0° 12' East, a distance of 140.00 feet to a point;

THENCE South 89° 58' East, a distance of 115.00 feet to the TRUE POINT OF BEGINNING.

Yavapai Title Agency, Inc.

REPORT OF TITLE (Continued)

EXHIBIT A (Continued)

PARCEL 3:

An easement for ingress, egress and utilities, 25.00 feet in width lying 25 feet East of the West line of the following described premises:

A portion of the Southeast quarter of Section 3, Township 15 North, Range 3 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

BEGINNING at the Northeast corner of the South half of the Southeast quarter of the Southeast quarter of said Section 3;

THENCE North 89° 58' West, a distance of 314.8 feet to the TRUE POINT OF BEGINNING;

THENCE South 0° 12' West, a distance of 140.00 feet to a point;

THENCE North 89° 58' West, a distance of 115.00 feet to a point;

THENCE North 0° 12' East, a distance of 140.00 feet to a point;

THENCE South 89° 58' East, a distance of 115.00 feet to the TRUE POINT OF BEGINNING.

PARCEL 4:

An easement for ingress and egress and utility purposes, along the Easterly 25 feet of the following described tract:

A parcel of land in the Southeast Quarter of Section 3, Township 15 North, Range 3 East, Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

BEGINNING at a point on the North line of said South half of the Southeast Quarter of the Southeast Quarter that lies North 89° 58' West 429.80 feet from the Northeast corner of said South Half of the Southeast Quarter of the Southeast Quarter;

THENCE North 89° 58' West, 260.00 feet along said North line;

THENCE South 0° 12' West, 385.50 feet;

THENCE South 67° 26' East, 89.20 feet;

THENCE North 51° 37' East, 116.00 feet;

THENCE North 76° 39' East, 89.3 feet;

THENCE North 0° 12' East 326.8 feet to the TRUE POINT OF BEGINNING.

PARCEL 5:

A parcel of land in the Southeast Quarter of Section 3, Township 15 North, Range 3 East, Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

BEGINNING at the Northeast corner of the South half of the Southeast quarter of the Southeast quarter of said Section 3;

THENCE North 89° 58' West, a distance of 429.80 feet to the TRUE POINT OF BEGINNING;

THENCE South 00 degrees 11 minutes 44 seconds West, a distance of 325.62 feet;

Yavapai Title Agency, Inc.

REPORT OF TITLE (Continued)

EXHIBIT A (Continued)

THENCE South 76 degrees 35 minutes 44 seconds West, a distance of 81.96 feet;

THENCE South 51 degrees 36 minutes 44 seconds West, a distance of 113.00 feet;

THENCE North 00 degrees 11 minutes 44 seconds East, a distance of 414.80 feet to the North boundary of the South half of the Southeast quarter of the Southeast quarter;

THENCE South 89 degrees 58 minutes 16 seconds East, a distance of 168.00 feet to the POINT OF BEGINNING.

Yavapai Title Agency, Inc.

REPORT OF TITLE (Continued)

EXHIBIT A (Continued)

SCHEDULE B

At the date hereof exceptions to title are:

1. Taxes and assessments collectible by the county Treasurer for the following year:

Year : 2023

2. OBLIGATIONS imposed upon said land by its inclusion within any district formed pursuant to Title 48, Arizona Revised Statutes, excluding however Municipal or County Improvement Districts.
3. RESTRICTIONS, CONDITIONS AND COVENANTS, omitting, if any, from the above, any restrictions based on race, color, religion, sex, handicap, familial status or national origin contained in instrument:

Recorded in Book 187 of Deeds
Page 331

4. RESTRICTIONS, CONDITIONS AND COVENANTS, omitting, if any, from the above, any restrictions based on race, color, religion, sex, handicap, familial status or national origin contained in instrument:

Recorded in Book 808 of Official Records
Page 226
Recorded in Book 802 of Official Records
Page 187
Recorded in Book 829 of Official Records
Page 744

5. EASEMENTS and rights incident thereto, as set forth in instrument:

Recorded in Book 965 of Official Records
Page 710
Recorded in Book 1007 of Official Records
Page 393
Recorded in Book 1288 of Official Records
Page 873
Purpose ingress, egress and utilities

6. Easements and rights incident thereto, as set forth in instrument:

Recorded in Book : 187 of Deeds
Page : 331-333
Purpose : smoke

7. Easements and rights incident thereto, as set forth in instrument:

Recorded in Book : 1724 of Official Records
Page : 104
Purpose : ingress, egress and utilities

Yavapai Title Agency, Inc.

REPORT OF TITLE (Continued)

EXHIBIT A (Continued)

8. Easements and rights incident thereto, as set forth in instrument:

Recorded in Book : 2207 of Official Records
Page : 688
Purpose : ingress, egress and utilities

9. Deed of Trust given to secure the original amount shown below, and any other amount payable under the terms thereof:

Amount: \$300,000.00
Dated: March 28, 2022
Recorded: April 4, 2022
Document No.: [2022-0020966](#)
Trustor: Joe Mulcaire Contracting, LLC, An Arizona limited liability company
Trustee: Yavapai Title Agency, Inc., an Arizona corporation
Beneficiary: Robert L. Alred and Melanie J. Alred, Husband and Wife

Yavapai Title Agency, Inc.

REPORT OF TITLE (Continued)

TAX NOTE:

Year	2023
Parcel No.	406-06-036A-3
Total Tax	\$826.80 NONE PAID
First Half	\$413.40
Second Half	\$413.40

End of Exceptions



"Inspiring a Vibrant Community"

VIA EMAIL

September 7, 2022

Joe Mulcaire
2280 W. Quail Springs Ranch Road
Cottonwood, AZ 86326
joemulcaire@gmail.com

Re: CRB #22-031 Marauder Subdivision
APN 406-06-036A

Dear Mr. Mulcaire,

Thank you for meeting with the Code Review Board on August 30, 2022 regarding the above referenced project. The project as presented is for an 11-lot single family subdivision. As mentioned, this project is subject to the Subdivision Ordinance. Please review the Cottonwood [Subdivision Ordinance](#) procedural codes for the Platting Process.

The following is a process summary and preliminary comments from city departments:

1. **Platting Process:** Preliminary Plats are required to go before the Planning and Zoning Commission and City Council and Final Plats are required to be reviewed by City Council. No permits may be applied for until the Final Plats are approved by City Council.
2. **Site Improvement Permits:** Grading and Building Permits may not be issued nor any site work commenced until after approval of Final Plats.
3. **Certificate of Occupancy:** Issuance of a Certificate of Occupancy is required prior to use. All requirements stipulated as part of the Code Review process must be addressed before the Certificate of Occupancy will be issued.

DEPARTMENT COMMENTS REGARDING SUBMITTAL

The following comments are only for the project as presented at code review. Any additional work may require additional reviews and approvals. Contact staff before starting any work that was not part of this review.

Community Development/Planning – Tina Hayden, khayden@cottonwoodaz.gov
(928) 634-5505 x3320

1. For a subdivision of more than 10 lots a Preliminary Plat and Final Plat are required. The Preliminary Plat requires review and approval from both the Planning and Zoning Commission and the City Council. The Final Plat requires review and approval from the City Council.
2. Determine whether roads will be a single tract or if ownership will be divided among lots with an easement.
3. Follow the Property Development Standards in Section [413.D](#) of the Zoning Ordinance pertaining to development in R-1 zones.
4. Any exterior lighting shall meet the provisions of the State's Dark Sky Laws, [ARS 49-1101–49-1106](#) as well as the City's Lighting Code, [Section 408](#). Full, cut-off style shielding is required. Please submit a lighting plan with cut sheets on all lighting fixture types and lumen calculation.

Fire Department Rick Contreras, rcontreras@cottonwoodaz.gov (928) 634-2741 x2145

PRELIMINARY FIRE DEPARTMENT COMMENTS CRB 22-031

1. As a reminder, all plans and designs shall fully comply with the 2018 International Fire Code {IFC} and the 2018 International Building Code {IBC} and per the Cottonwood Fire Departments Conditions. Please review the comments that are listed below.
2. A full complete set of detailed stamped plans shall be provided to the Cottonwood Fire & Medical Department for review and prior approval of all phases before the work is permitted to start.

FIRE HYDRANT AND FIRE FLOW COMMENTS

3. Fire Hydrants are required to be installed on this project. Contact the Cottonwood Fire Marshal for direct placement of the Fire Hydrants.

4. All plans, designs and fire flow calculations shall fully comply with the 2018 International Fire Code Appendix B and Chapter 5 of the IFC and per the Cottonwood Fire Departments Conditions.
5. Fire hydrants and all water supply systems shall be installed, inspected, tested and accepted in accordance with all fire code requirements before any building materials and combustibles are allowed to arrive on site.

STREET / ACCESS / FIRE LANE COMMENTS

6. All Fire Lane access roads shall be capable of supporting the imposed load of fire apparatus weighing up to 75,000 {GVW}
7. All road widths turn around distance shall meet the requirements in the 2018 International Fire Code Appendix D and the City of Cottonwood conditions.
8. The minimum turning radius for all turns shall be twenty-eight (35) feet inside turning radius and fifty (50) feet outside turning radius. Show all Fire Apparatus turning radius movements on the plans.
9. Fire lanes shall be provided and shall be a minimum of 20' wide and have a vertical clearance of 13'6" and maintained within 150' of any part of the building. All turn radius shall meet Appendix D of the 2018 IFC.
10. 12"x 8" red retro reflective Fire Lane signs stating "No parking by order of the Fire Marshal" shall be posted at every 75' {where required}.

MAPPING / ADDRESSING COMMENTS

11. All addressing and street names shall be coordinated and approved with the Cottonwood Fire Departments Captain Jeff Boyd. All requirements and conditions shall meet the conditions of Chapter 5 and appendix D of the 2018 IFC.

FIRE DEPARTMENT ACCESS

12. A designated approved Fire Department access Fire Lane{s} shall be installed and maintained at all times during construction. No roll off bins, dumpsters or construction materials shall obstruct the Fire Lane at any time.
13. If there are any questions or comments, please feel free to contact me at 928} 634-2741 or email rcontreras@cottonwoodaz.gov

No plan review approval will be provided until all conditions are fully met. These comments are preliminary and final determinations, comments and approvals will be provided upon review of the final sets of plans submitted. All comments and standards shall meet the City of Cottonwood Fire & Medical Department.

Public Works/Engineering – James Bramble, jbramble@cottonwoodaz.gov (928) 340-2770

1. A drainage memo/study for this development will be required to document the mitigation of any increase in peak runoff and treatment of “first flush” rainfall.
2. The developer shall provide a full set of civil improvement plans to the City’s Engineering Department for review and approval.
3. Any work within the City’s right-of-way requires an approved right-of-way permit.
4. All work within the City right-of-way will be subject to inspection and approval by the City of Cottonwood Engineering Department.
5. All work within the public right-of-way shall conform to all federal, state, and local laws, ordinances, and specifications.
6. If the streets shown within this development are to be designated as public streets they shall conform to the standard for a local street as specified by the City of Cottonwood Engineering Design Standards Detail 1601.
7. The developer will be required to file a Notice of Intent (NOI) with the Arizona Department of Environmental Quality (ADEQ) as well as prepare and maintain a Storm Water Pollution Prevention Plan (SWPPP).

Cottonwood Municipal Airport – Jeffrey S. Tripp, A.A.E. jtripp@cottonwoodaz.gov
928-340-2722

1. No comments.

Utilities – Russell Freye, P.E. rfrey@cottonwoodaz.gov (928) 634-0186

1. City of Cottonwood standard specifications and details shall be used to construct and install water and sewer utilities.
2. Maintain water and sewer separation per City of Cottonwood and MAG Standards.
3. Capacity fees are to be paid for by the developer or owner.
4. Since Fire flows to the building are required for interior sprinkler system a backflow preventer per City of Cottonwood Standards will be required on the water service lines where applicable.
5. A complete set of signed and sealed utility drawings shall be submitted for approval prior to construction activities beginning.

6. The developer shall submit water and sewer design reports for approval.
7. The property owner or developer shall submit Approval to Construct (ATC) to ADEQ or appropriate paperwork from Yavapai County and provide completed forms to City of Cottonwood prior to construction permits being issued. This is also documented the City of Cottonwood Standards and Specifications.
8. The property owner or developer shall provide a third-party testing agency to inspect and ensure testing is done of installed utilities per the City of Cottonwood Design Standards. The testing reports shall be submitted to City of Cottonwood for documentation purposes.
9. Water for irrigation would need to be metered as well for the property.
10. Provide to the City of Cottonwood Utility Department the easement paperwork across the church property.
11. City water connection would be in Marauder Ave ROW.
12. If the roads were to remain private, a utility easement would be required for City of Cottonwood access for repairs and Maintenance. Otherwise if a utility is not completed, the maintenance and repairs would be on the property owners beyond the master water meter and to the sewer connection point.

Police Department – Christopher Dowell, cdowell@cottonwoodaz.gov (928) 634-4246 x 2270

1. No comments

Building Department- Cody Blazer, cblazer@cottonwoodaz.gov (928) 634-5505 x3368

1. No comments

Yavapai County Community Health Services – Robert Mumper, robert.mumper@yavapaiaz.us (928) 634-6891

1. No comments

Housing Manager – Shannon Boone, sboone@cottonwoodaz.gov (928) 203-5126

1. No comments.

Risk Management – Amanda Wilber, awilber@cottonwoodaz.gov (928) 340-2713

1. No comments.

NOTE: Changes to project proposals following approval which have been incorporated into permit submittal must be highlighted in writing and attached to the building permit, or they will not be considered approved.

Please call if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tina Hayden".

Tina Hayden
Community Development Planner



"Inspiring a Vibrant Community"

VIA EMAIL

April 12, 2023

Joe Mulcaire
2900 Spring View Drive
Cottonwood, AZ 86326
joemulcaire@gmail.com

**Re: CRB #22-031 REVISION Mingus View: Marauder Drive
APN 406-06-036A**

Dear Mr. Mulcaire:

Thank you for meeting with the Code Review Board on March 27, 2023 regarding the above referenced project. The project as presented is for 10-lot single-family subdivision. As mentioned, this project is subject to the Subdivision Ordinance. Please review the Cottonwood [Subdivision Ordinance](#) regarding procedural codes for the Platting process. The following is a process summary:

1. **Platting Process:** Preliminary Plats are required to go before the Planning and Zoning Commission and City Council, and Final Plats are required to be reviewed by City Council. No building permits may be applied for until the Final Plat is approved by City Council, and recorded.
2. **Site Improvement Permits:** Grading and Building Permits may not be issued nor any site work commenced until after approval of the Final Plat.
3. **Certificate of Occupancy:** Issuance of a Certificate of Occupancy is required prior to use. All requirements stipulated as part of the Code Review and Subdivision processes must be addressed before the Certificate of Occupancy will be issued.

DEPARTMENT COMMENTS REGARDING SUBMITTAL

These comments are only for the project as presented at code review. Any additional work may require additional reviews and approvals. Contact staff before starting any work that was not part of this review.

Community Development/Planning – Tina Hayden, khayden@cottonwoodaz.gov
(928) 634-5505 x3320

1. For a subdivision of 10 or fewer lots, the applicant may choose the alternative platting procedure that bypasses the Sketch Plan and Preliminary Platting phases. The alternative procedure requires that both the Public Works Director and Community Development Director review the conceptual plans. If the Directors determine that there are no unresolved issues, then the applicant can proceed directly to the Final Plat phase.

With the alternative procedure, the Final Plat is required to be reviewed by the Planning and Zoning Commission prior to City Council review and decision. A deed restriction will also be required to limit the further division or subdivision of any lots approved on the plat.

2. It is indicated that the roads will be divided among the lots with an access easement.
3. Follow the Property Development Standards in Section [413.D](#) of the Zoning Ordinance pertaining to development in R-1 zones.
4. Any exterior lighting shall meet the provisions of the State's Dark Sky Laws, [ARS 49-1101–49-1106](#) as well as the City's Lighting Code, [Section 408](#). Full, cut-off style shielding is required. Please submit a lighting plan with cut sheets on all lighting fixture types and lumen calculation.

Fire Department Rick Contreras, rcontreras@cottonwoodaz.gov (928) 634-2741 x2145

1. All previous comments from the August 30, 2022 Code Review Meeting are still applicable.

Public Works/Engineering – James Bramble, jbramble@cottonwoodaz.gov (928) 340-2770

1. A drainage memo/study for this development will be required to document the mitigation of any increase in peak runoff and treatment of “first flush” rainfall.
2. The developer shall provide a full set of civil improvement plans to the City's Engineering Department for review and approval.
3. Any work within the City's right-of-way requires an approved right-of-way permit.

4. All work within the City right-of-way will be subject to inspection and approval by the City of Cottonwood Engineering Department.
5. All work within the public right-of-way shall conform to all federal, state, and local laws, ordinances, and specifications.
6. If the streets shown within this development are to be designated as public streets they shall conform to the standard for a local street as specified by the City of Cottonwood Engineering Design Standards Detail 1601.
7. The developer will be required to file a Notice of Intent (NOI) with the Arizona Department of Environmental Quality (ADEQ) as well as prepare and maintain a Storm Water Pollution Prevention Plan (SWPPP).
8. The developer shall provide a full set of final civil improvement plans to the City's Engineering Department for review and approval.

Risk Management – Amanda Wilber, awilber@cottonwoodaz.gov (928) 340-2713

1. No comments.

Cottonwood Municipal Airport – Jeffrey S. Tripp, A.A.E. jtripp@cottonwoodaz.gov
928-340-2722

1. No comments.

Utilities – Russell Freye, P.E. rfrey@cottonwoodaz.gov (928) 634-0186

1. City of Cottonwood standard specifications and details shall be used to construct and install water and sewer utilities.
2. PUE for any Public Utility water and/or sewer are 20' wide per City of Cottonwood Engineering design Standards.
3. Maintain water and sewer separation per City of Cottonwood and MAG Standards.
4. Capacity fees are to be paid for by the developer or owner.
5. Since Fire flows to the building are required for interior sprinkler system a backflow preventer per City of Cottonwood Standards will be required on the water service lines where applicable.

6. A complete set of signed and sealed utility drawings shall be submitted for approval prior to construction activities beginning.
7. The developer shall submit water and sewer design reports for approval.
8. The property owner or developer shall submit Approval to Construct (ATC) to ADEQ or appropriate paperwork from Yavapai County and provide completed forms to City of Cottonwood prior to construction permits being issued. This is also documented the City of Cottonwood Standards and Specifications.
9. The property owner or developer shall provide a third-party testing agency to inspect and ensure testing is done of installed utilities per the City of Cottonwood Design Standards. The testing reports shall be submitted to City of Cottonwood for documentation purposes.
10. Water for irrigation would need to be metered as well for the property.
11. Provide to the City of Cottonwood Utility Department the sewer easement paperwork across the church property for documentation.
12. City water connection would be in Marauder Ave ROW.
13. If the roads were to remain private, a utility easement would be required for City of Cottonwood access for repairs and Maintenance. Otherwise if a utility easement is not completed, the maintenance and repairs would be on the property owners beyond the master water meter and to the sewer connection point.

Police Department – Gareth Braxton-Johnson, gjohnson@cottonwoodaz.gov (928) 634-4246 x 2256

1. No comments.

Building Department- Cody Blazer, cblazer@cottonwoodaz.gov (928) 634-5505 x3368

2. All previous comments from the August 30, 2022 Code Review Meeting are still applicable.

Yavapai County Community Health Services – Robert Mumper, robert.mumper@yavapaiaz.us (928) 634-6891

1. No comments

Housing Manager – Shannon Boone, sboone@cottonwoodaz.gov (928) 203-5126

1. No comments.

NOTE: Changes to project proposals following approval which have been incorporated into permit submittal must be highlighted in writing and attached to the building permit, or they will not be considered approved.

Please call if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Tina Hayden".

Tina Hayden
Community Development Planner



"Inspiring a Vibrant Community"

VIA EMAIL

November 2, 2023

Joe Mulcaire
2900 Spring View Drive
Cottonwood, AZ 86326
joemulcaire@gmail.com

Re: REVISED CRB-23-041

**Mingus Views: Marauder Drive
APN 406-06-036A**

Dear Mr. Mulcaire:

Thank you for your submittal. The project as presented is for the subdivision of a parcel into 10 residential lots. As mentioned, this project would require Final Plat approval recommendation by the Planning and Zoning Commission and Final Plat Approval by the City Council. Please review the Cottonwood Zoning Ordinance procedural codes in the [Subdivision Ordinance](#). The following is a process summary:

1. **Final Plat submittal:** A Final Plat application submittal is required; and the application fee is \$1,000 plus \$20/lot (including any additional tracts of land). The application and fees should be submitted five to six weeks prior to a Planning and Zoning hearing. The Planning and Zoning Commission meets at 6 PM on the third Monday of each month. The City Council meets at 6 PM on the first and third Tuesday of each month.
2. **Site Improvement Permits:** Permits may not be issued nor any site work commenced until after Council approval and Final Plat recordation.
3. **Certificate of Occupancy:** Issuance of a Certificate of Occupancy is required prior to use. All requirements stipulated as part of the Building Permit process must be addressed before the Certificate of Occupancy will be issued.

DEPARTMENT COMMENTS REGARDING SUBMITTAL

These comments are only for the project as presented at Code Review. Any additional work may require additional reviews and approvals. Contact staff before starting any work that was not part of this review.

Community Development/Planning – Tina Hayden, khayden@cottonwoodaz.gov
(928) 634-5505 x3320

1. This proposed plat consists of 10 or fewer lots and is eligible, per Section 104.08 of the Subdivision Ordinance, to progress directly to the preparation of the Final Plat with the concurrence of the Community Development Director.

The Community Development Director has reviewed the preliminary plat and has determined that there are currently no unresolved issues with the preliminary plat and concurs that the applicant may progress to the preparation of the Final Plat.

The Final Plat will be required to be reviewed by the Planning and Zoning Commission prior to City Council review of the Final Plat.

This alternative procedure is not intended for property that will be further divided or subdivided into smaller tracts, parcels or lots at a later time. A deed restriction will be required as part of any Final Plat approved under this alternative procedure, prohibiting the further division or subdivision of lots approved as part of the Final Plat.

Fire Department Rick Contreras, rcontreras@cottonwoodaz.gov (928) 634-2741 x2145

PRELIMINARY FIRE DEPARTMENT COMMENTS CRB 22-031

1. As a reminder, all plans and designs shall fully comply with the 2018 International Fire Code {IFC} and the 2018 International Building Code {IBC} and per the Cottonwood Fire Departments Conditions. Please review the comments that are listed below.
2. A full complete set of detailed stamped plans shall be provided to the Cottonwood Fire Department for review and prior approval of all phases before the work is permitted to start.

FIRE HYDRANT AND FIRE FLOW COMMENTS

3. Fire Hydrants are required to be installed on this project. Contact the Cottonwood Fire Marshal for direct placement of the Fire Hydrants.
4. All plans, designs and fire flow calculations shall fully comply with the 2018 International Fire Code Appendix B and Chapter 5 of the IFC and per the Cottonwood Fire Departments Conditions.
5. Fire hydrants and all water supply systems shall be installed, inspected, tested and accepted in accordance with all fire code requirements before any building materials and combustibles are allowed to arrive on site.

STREET / ACCESS / FIRE LANE COMMENTS

6. All Fire Lane access roads shall be capable of supporting the imposed load of fire apparatus weighing up to 75,000 {GVW}
7. All road widths turn around distance shall meet the requirements in the 2018 International Fire Code Appendix D and the City of Cottonwood conditions.
8. The minimum turning radius for all turns shall be twenty-eight (28) feet inside turning radius and fifty (50) feet outside turning radius. Show all Fire Apparatus turning radius movements on the plans.
9. Fire lanes shall be provided and shall be a minimum of 20' wide and have a vertical clearance of 13'6" and maintained within 150' of any part of the building. All turn radius shall meet Appendix D of the 2018 IFC.
10. 12"x 8" red retro reflective Fire Lane signs stating "No parking by order of the Fire Marshal" shall be posted at every 75' {where required}.

MAPPING / ADDRESSING COMMENTS

11. All addressing and street names shall be coordinated and approved with the Cottonwood Fire Departments Captain Jeff Boyd. All requirements and conditions shall meet the conditions of Chapter 5 and appendix D of the 2018 IFC.

FIRE DEPARTMENT ACCESS

12. A designated approved Fire Department access Fire Lane{s} shall be installed and maintained at all times during construction. No roll off bins, dumpsters or construction materials shall obstruct the Fire Lane at any time.
13. If there are any questions or comments, please feel free to contact me at 928} 634-2741 or email rcontreras@cottonwoodaz.gov

No plan review approval will be provided until all conditions are fully met. These comments are preliminary and final determinations, comments and approvals will be provided upon review of the final sets of plans submitted. All comments and standards shall meet the City of Cottonwood Fire Department.

Public Works/Engineering – James Bramble, jbramble@cottonwoodaz.gov (928) 340-2770

1. A drainage memo/study for this development will be required to document the mitigation of any increase in peak runoff and treatment of “first flush” rainfall.
2. The developer shall provide a full set of civil improvement plans to the City’s Engineering Department for review and approval.
3. Any work within the City’s right-of-way requires an approved right-of-way permit.
4. All work within the City right-of-way will be subject to inspection and approval by the City of Cottonwood Engineering Department.
5. All work within the public right-of-way shall conform to all federal, state, and local laws, ordinances, and specifications.
6. If the streets shown within this development are to be designated as public streets they shall conform to the standard for a local street as specified by the City of Cottonwood Engineering Design Standards Detail 1601.
7. The developer will be required to file a Notice of Intent (NOI) with the Arizona Department of Environmental Quality (ADEQ) as well as prepare and maintain a Storm Water Pollution Prevention Plan (SWPPP).
8. This development will be required to construct off-site improvements including sidewalk across the property frontage on Marauder.
9. Previous temporary street patches from utility connections on Marauder west of this site need to be replaced with standard t-top patches according to the right of way permit.
10. The developer shall provide a full set of final civil improvement plans to the City’s Engineering Department for review and approval.
11. It is likely that Marauder will need to be resurfaced full width across the site frontage after all utility connections are made. More information is needed.

Utilities – Russell Freye, P.E. rfrey@cottonwoodaz.gov (928) 634-0186

All Submitted Documents

1. City of Cottonwood standard specifications and details shall be used to construct and install water and sewer utilities.
2. Maintain water and sewer separation per City of Cottonwood and MAG Standards.
3. Capacity fees are to be paid for by the developer or owner.
4. Since Fire flows to the building are required for interior sprinkler system a backflow preventer per City of Cottonwood Standards will be required on the water service lines where applicable.
5. The property owner or developer shall submit Approval to Construct (ATC) to ADEQ or appropriate paperwork from Yavapai County and provide completed forms to City of Cottonwood prior to construction permits being issued. This is also documented the City of Cottonwood Standards and Specifications.
6. The property owner or developer shall provide a third-party testing agency to inspect and ensure testing is done of installed utilities per the City of Cottonwood Design Standards. The testing reports shall be submitted to City of Cottonwood for documentation purposes.
7. Water for irrigation would need to be metered as well for the property.
8. Final approval of Fire related water appurtenances or hydrants shall be at the approval of the City of Cottonwood Fire Department.
9. For Gravity Sewer PVC piping SDR-26 is minimum wall thickness for PVC sewer pipe in this diameter per City of Cottonwood Standard.

Water and Sewer Utility Plans

10. Provide to the City of Cottonwood Utility Department the easement paperwork across the property to where the sewer is installed to connect to the existing sewer, and verify the timing of when the PUE was completed, the width of the sewer does not meet City of Cottonwood current standards.
11. Sheet C-10, Provide detail of connection of new sewer into exist MH at Existing MH.
12. Engineer of record shall record as-built utility separations for water and sewer utilities in relation to other utilities at all crossings.

13. All Sewer sheets, City of Cottonwood Standard for PVC sewer pipe is SDR26.

Water and Sanitary Sewer System Report

14. 3.0 Water Study – Basis of Design, Existing System, for clarification, the City of Cottonwood Utility Department did not provide Heritage Land Surveying water flow data.

15. 4.0 Wastewater Study – Basis of Design, Existing system, the extent, location, and pipe material of the sewer stub out should be field verified prior to construction. The pipe material listed in the report does correspond to PVC sewer pipe material.

16. 4.0 Wastewater Study – Basis of Design, SDR-26 is minimum wall thickness for PVC sewer pipe in this diameter per City of Cottonwood Standard.

NOTE: Changes to project proposals following approval which have been incorporated into permit submittal must be highlighted in writing and attached to the building permit, or they will not be considered approved.

Please reach out if you have any questions.

Sincerely,



Tina Hayden
Community Development Planner

City of Cottonwood, Arizona
City Council Agenda Communication



 Print

Meeting Date:	February 20, 2024
Subject:	Discussion and Legal Advice Regarding a Notice of Claim Against the City from Steve Gesell
Department:	HR
From:	Amanda Wilber, Human Resources Director

REQUESTED ACTION

Discussion and legal advice regarding a Notice of Claim submitted by Steve Gesell.

SUGGESTED MOTION

If the Council desires to approve this item the suggested motion is:

N/A

BACKGROUND

In November, 2023, Steve Gesell filed a Notice of Claim against the City of Cottonwood. It was tendered to the Arizona Municipal Risk Retention Pool. A legal update regarding the claim had been scheduled for January 9, 2024. Now that the City has a City Attorney again, it has been rescheduled. The Council may meet in executive session pursuant to 38-431.03(A)(3) and (A)(4).

JUSTIFICATION/BENEFITS/ISSUES

N/A

COST/FUNDING SOURCE

N/A

ATTACHMENTS:

File Name	Description	Type
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City of Cottonwood, Arizona
City Council Agenda Communication



 Print

Meeting Date:	February 20, 2024
Subject:	Discussion and Legal Advice Regarding a Letter Received from the Former City Manager Regarding his Contract Severance Provisions
Department:	HR
From:	Amanda Wilber, Human Resources Director

REQUESTED ACTION

Discuss and receive legal advice regarding a letter received from the former City Manager regarding his contract severance provisions.

SUGGESTED MOTION

If the Council desires to approve this item the suggested motion is:

N/A

BACKGROUND

On January 9, 2024, the City Manager gave notice to the City Council of his immediate resignation. Within that notice, his contract severance provisions were referenced. The Council may vote to convene in executive session to discuss and receive legal advice on this matter pursuant to A.R.S. 38-431(A)(3) and 38-431(A)(4).

JUSTIFICATION/BENEFITS/ISSUES

This matter should be discussed and resolved as soon as possible.

COST/FUNDING SOURCE

N/A

ATTACHMENTS:

File Name	Description	Type
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City of Cottonwood, Arizona
City Council Agenda Communication



 Print

Meeting Date:	February 20, 2024
Subject:	Discussion and Legal Advice Regarding a Notice of Charge of Discrimination filed by the Arizona Civil Rights Division (ACRD)
Department:	HR
From:	Amanda Wilber, Human Resources Director

REQUESTED ACTION

Discuss and receive legal advice regarding a Notice of Charge of Discrimination filed by the Arizona Civil Rights Division (ACRD).

SUGGESTED MOTION

If the Council desires to approve this item the suggested motion is:

N/A

BACKGROUND

The City has received a Notice of Charge of Discrimination filed by the Arizona Civil Rights Division of the Attorney General's Office. This is an opportunity for Council to hold an executive session to receive legal advice regarding the notice pursuant to A.R.S. 38-431.03(A)(3) and 38.431.03(A)(4).

JUSTIFICATION/BENEFITS/ISSUES

Council should continue to be informed regarding the notice of charge.

COST/FUNDING SOURCE

N/A

ATTACHMENTS:

File Name	Description	Type
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CLAIMS EXCEPTIONS REPORT OF FEBRUARY 20,2024

FUND	VENDOR NAME	DESCRIPTION	TOTAL
All	City of Cottonwood	Payroll 02/16/2024	762,735.98
Gen	Gust Rosenfeld PLC	Attorney Services	7,777.02
Transit	Hansen Enterprise Fleet Repair	Vehicle Maintenance	10,575.79
Utilities	Schofield Civil Construction LLC	Mingus Injection Well	316,146.08
All	KAIROS	Health Insurance Premiums	266,432.72
All	Diesel Direct West Inc	Fuel	20,909.99
Grant Funds	Dibble & Associates Consulting Engineers Inc	Taxiway A and Design Services	33,033.20
All	Amazon Capital Services	Office Supplies	9,844.07
Gen	City of Sedona	Housing Manager	14,281.47
Gen	Code 3 Technology LLC	Getac Mobile Data Computer	75,207.70
All	UNS Gas Inc	Gas Utilities	7,980.18
All	Musgrove Drutz Kack & Gautreaux	Prosecuting Attorney	11,025.00
Utilities	VLS Environmental Solutions	Biosolids Hauling	5,358.00
Utilities	DARcor	Onsite Radio Path Study	14,787.50
Utilities	Independent Electric Supply Inc	Cable	5,103.95
Gen	Jeffrey Bulman	Painting at Rec Center	14,650.00
Airport	Southwest Risk Services	Annual Liability Insurance	17,050.00
Utilities	Border States Electric Supply	Wtr Equipment	6,025.66
Utilities	Hennesy Mechanical Sales LLC	Wastewater pump	20,432.45
Gen	Arizona State Treasurer	Cottonwood Court Fines	15,860.78
Utilities	KP Ventures Drilling	Pump Replacement	14,655.15
All	City of Cottonwood	Water Utilities	28,871.16
All	APS	Electric Utilities	123,756.96
Utilities	Fields Custom Concrete	Generator Pads	6,475.00
Utilities	Salt Works	Arsenic	5,553.44
Utilities	Empire Southwest	Generator Rental	5,425.66
All	Melton & Sons Custodial	Custodial Services	37,417.38
TOTAL			\$ 1,857,372.29