

CITY COUNCIL REPORT



Meeting Date: July 10, 2023
General Plan Element: *Public Services and Facilities*
General Plan Goal: *Provide city service facilities to meet the needs of the community*

ACTION

Request for Council to grant authority for the City to enter into development agreement with private developer (David Weekly Homes) for cost reimbursement to design and construct a portion of Infrastructure Improvement Plan (IIP) Project IIP-012 (128th Street Water Transmission Mains).

Adopt Resolution 12854 authorizing Development Agreement No. 2023-084-COS with CND-Preserve Ranch, LLC (dba David Weekley Homes) for cost reimbursement of a portion of IIP Project IIP-012 (128th Street Water Transmission Mains).

BACKGROUND

The City of Scottsdale adopted the IIP in 2021 with projected dates of project construction. The Preserve Ranch development needs the water infrastructure associated with IIP Project IIP-012 faster than the city can deliver the project. Therefore, the developer was provided the option to design and construct the needed portion of IIP Project IIP-012 under a development reimbursement agreement. One major requirement of the reimbursement agreement will include adherence to State Title 34 (Public Buildings and Improvements) which requires a competitive bidding process. The developer will design and construct a 12-inch and 16-inch water distribution main line and pressure reducing valve beginning along Rio Verde Drive from 122nd Street to 128th Street, continuing south on 128th Street and ending at the Pinnacle Vista Drive alignment.

ANALYSIS & ASSESSMENT

Recent Staff Action

The City has worked with private developer in establishing the portion of IIP Project IIP-012 that will be designed and constructed under State Title 34, and which will be subject to reimbursement. The City will provide assistance to the private developer in adhering to the provisions of State Title 34. This council action request is the result of the associated City coordination efforts with the subject private developer.

Council approval to authorize City to enter into a development reimbursement agreement with private developer.

RESOURCE IMPACTS

Available funding

Reimbursement for IIP Project IIP-012 will come from Development Impact Fee Capital Program Funding.

Staffing, Workload Impact

Existing staff are available to complete efforts identified in this report.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Adopt Resolution 12854 authorizing Development Agreement No. 2023-084-COS with Weekley Homes Arizona, LLC (dba David Weekley Homes) for cost reimbursement of a portion of IIP Project IIP-012 (128th Street Water Transmission Mains).

Proposed Next Steps:

Upon Council approval, the City will have authority to enter into a development agreement with private developer (David Weekly Homes) for cost reimbursement of a portion of IIP Project IIP-012 (128th Street Water Transmission Mains).

RESPONSIBLE DEPARTMENT(S)

Water Resources Division in coordination with City Attorney's Office.

STAFF CONTACT (S)

Scott Mars, Water Resources Planning and Engineering Director
(480) 312-5681, SMars@Scottsdaleaz.gov

APPROVED BY



Brian K. Biesemeyer, Water Resources Executive Director
(480) 312-5683, BBiesemeyer@scottsdaleaz.gov

JUNE 14, 2023

Date

ATTACHMENTS

1. Resolution No. 12854
2. Development Agreement No. 2023-084-COS

RESOLUTION NO. 12854

A RESOLUTION OF THE CITY OF SCOTTSDALE, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE DEVELOPMENT AGREEMENT NO. 2023-084-COS WITH CND-PRESERVE RANCH, LLC dba DAVID WEEKLEY HOMES FOR COST REIMBURSEMENT TO DESIGN AND CONSTRUCT A PORTION OF INFRASTRUCTURE IMPROVEMENT PLAN (IIP) PROJECT IIP-012 (128TH STREET WATER TRANSMISSION MAINS).

WHEREAS, A.R.S. § 9-500.05 authorizes the City to enter into development agreements with persons having an interest in real property located in the City; and

WHEREAS, Scottsdale Revised Code Chapter 49 authorizes the City to enter into development agreements for the construction of water facilities; and

WHEREAS, the City's Infrastructure Improvement Plan ("IIP") provides for the construction of a water transmission main along 128th Street near Rio Verde Road; and

WHEREAS, operational efficiencies and strategic resource allocation of City resources can be best achieved by entering an agreement for the private construction of a portion of IIP Project IIP-012; and

WHEREAS, CND-Preserve Ranch, LLC, dba David Weekley Homes ("Weekley") is willing to construct a portion of the Project in order to improve the water distribution capabilities of the City; and

WHEREAS, it is in the best interest of the City and Weekley to enter into Development Agreement No. 2023-084-COS;

NOW, THEREFORE, LET IT BE RESOLVED, by the Council of the City of Scottsdale, as follows:

Section 1. That Mayor David D. Ortega is authorized and directed to execute Development Agreement No. 2023-084-COS for cost reimbursement in the estimated amount of \$2,248,375.00 to design and construct a portion of Infrastructure Improvement Plan (IIP) project IIP-012 (128th Street Water Transmission Mains).

Section 2. The City Council hereby authorizes the City Manager or designee to execute any other documents and take such other actions as are necessary to carry out the intent of this Resolution and Contract No. 2023-084-COS.

PASSED AND ADOPTED by the Council of Scottsdale this _____ day of _____,
2023.

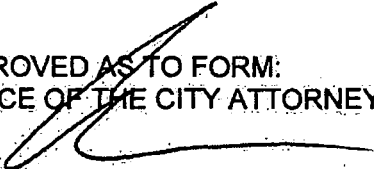
ATTEST:

CITY OF SCOTTSDALE, an Arizona
municipal corporation

By: _____
Ben Lane, City Clerk

By: _____
David D. Ortega, Mayor

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By:  _____
Sherry R. Scott, City Attorney
By: Eric Anderson, Senior Assistant City Attorney

WHEN RECORDED, MAIL TO:
CITY OF SCOTTSDALE
Planning & Development
7447 E. Indian School Road
Scottsdale, AZ 85251

Contract No. 2023-084-COS
Resolution No. 12854

INFRASTRUCTURE REIMBURSEMENT AGREEMENT

THIS INFRASTRUCTURE DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of the ____ day of _____, 2023 (The "Effective Date"), between CND-Preserve Ranch, LLC, (dba David Weekley Homes), an Arizona limited liability company ("Developer") and the City of Scottsdale, Arizona, a municipal corporation ("City"), collectively referred to as the Parties.

RECITALS

This Agreement is predicated upon the following facts:

A. The City is authorized to enter into a development agreement with a landowner or any other person having an interest in real property located in the City. Scottsdale Revised Code ("SRC") § 49-84 authorizes the City to enter into an agreement to reimburse Developer for construction of a water or wastewater capital facility from development fee accounts.

B. Developer is CND-Preserve Ranch, LLC.

C. Developer owns or controls approximately thirty acres of land located at the northeast corner of 128th Street and the Pinnacle Vista Drive alignment, which Developer seeks to develop with seventeen single-family lots in accordance with the approved zoning and preliminary plat (Case No. 6-PP-2015#2) ("Developer's Property").

D. In order for Developer to develop its project, Developer will need to establish connections to City's water main distribution and sewer collection systems.

E. In accordance with state law, City has developed and maintains an infrastructure improvement plan ("IIP") which provides for construction of various water main distribution and sewer collection facilities throughout the City's service area to be funded by the collection of development fees.

F. Included within City's IIP is a planned project ("the IIP Project") to construct a 12-inch and 16-inch water distribution main line, pressure reducing valve and other facilities generally beginning along Rio Verde Drive from 122nd Street to 128th Street, continuing south on 128th Street and ending at Ranch Gate Road, and known as City of Scottsdale Project Number W IIP-012. Developer has been asked to construct a portion of the IIP Project, including a 12-inch and 16-inch water distribution main line and pressure reducing valve generally beginning along Rio Verde Drive from 122nd Street to 128th Street, continuing south on 128th Street and ending at the Pinnacle Vista Drive alignment ("the Project"). The Project is legally described and depicted as **Exhibit A** hereto.

G. The Project will facilitate City's water distribution to Developer's property as well as other properties in the area. While City intends to construct the Project in the future, Developer desires to assist in acceleration of construction of the Project.

H. City has determined that it is in the best interests of the City's Water Resources Division to enter into this Agreement to accelerate construction of the Project.

AGREEMENTS

NOW, THEREFORE, the Parties agree as follows:

1. Recitals. The recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated herein by reference.

2. Effective Date; Recordation. This Agreement shall become effective immediately upon the execution hereof by Developer and the City. This signed Agreement will be recorded in the Office of the Maricopa County Recorder within 10 days of execution.

3. Assignment. The rights and obligations of Developer under this Agreement, and the rights of any successor to which Developer might assign any of its rights hereunder, may be transferred or assigned, in whole or in part, by written instrument recorded in the Office of the Maricopa County Recorder, to any current or future owner of Developer's Property so long as such assignee executes a written agreement with the City to assume and be liable for the payment and performance of, all obligations hereunder arising or accruing under this Agreement after the date of such assignment. Upon execution of such written agreement and assignment, the rights and obligations of the assigning Developer under this Agreement will be terminated.

4. Binding Effect of Agreement. The burdens of this Agreement bind, and the benefits of this Agreement inure to, the Parties hereto and their successors in interest and assigns as to those portions of Developer's Property in which a successor or assign has a fee title or leasehold interest.

5. Other Development Agreements and Regulatory Approvals. The City and Developer hereby acknowledge that the development of Developer's Property may be accomplished by Developer through other development agreements, regulatory approvals or permitting from the City. The Parties hereby agree that this Agreement shall only concern construction of the Project as defined and shall not be construed as a commitment by City to enter into any other agreements with Developer or issue any regulatory approvals or permits.

6. Construction of the Project. The Project shall initially be designed and constructed by Developer (or others on behalf of Developer) at no cost and expense to the City, but subject to City approval as set forth herein. In no event, including without limitation termination of this Agreement for any reason, shall City be obligated to compensate Developer in any manner for the Project prior to final completion and acceptance by the City of the Project, as well as all required local subdivision water infrastructure, pursuant to the City's standard and customary processes. Developer shall timely pay for all labor, materials, work and all professional and other services related thereto and shall pay, indemnify, defend and hold harmless City and City's employees, officer's, contractors and agents against all claims related thereto.

6.1. Design and Construction Professionals. All construction work performed and plans prepared for the Project from initial proposals through final construction documents and completion of construction shall be performed by professionals selected and paid by Developer, or by others on behalf of Developer. Provided, however, Developer agrees that all construction work performed and plans prepared for the Project will be done following the applicable public procurement procedures set forth in Title 34 of the Arizona Revised Statutes, including that professional design services may be procured from technical registrants by direct selection if the contract amount is five hundred thousand dollars or less pursuant to A.R.S. 34-103(D). All of Developer's design professionals and construction contractors shall have substantial experience in timely and successfully constructing projects similar to the Project.

6.2. Improvement Quality. Any and all work performed for the Project by Developer or those acting on its behalf shall be performed in a workman-like manner as reasonably determined by City and shall be diligently pursued to completion and in conformance with all building and development codes and similar rules; all as approved by City through the plans approval processes described in this Agreement in addition to any zoning, building code or other regulatory processes that may apply.

6.3. Time for Completion. Developer shall diligently and expeditiously pursue to completion the construction of the Project and shall complete construction of the Project no later than the earlier of i) prior to issuance of a certificate of occupancy for the first residential home on a lot within Developer's Property, (ii) thirty-six months after execution of this Agreement, or iii) any earlier date required by this Agreement.

6.4. Construction Coordination. Developer shall conduct all of its construction activities so as not to materially interfere with activities, operation, and other construction in the City's Rights-of-Way ("ROW").

6.4.1. *Approval Required.* Developer shall not perform any construction work requiring a permit without having first received the written consent (which may include issuance of a construction permit) from City.

6.4.2. *Effect of Approval.* City's approval of plans submitted shall be irrevocable for purposes of this Agreement and shall constitute approval (but only at the level of detail of the applicable stage of the review process) of the matters plainly shown on the plans approved. City shall not reject subsequent plans to the extent the matter to which City objects was clearly included in plans previously approved by City and plainly shown on plans previously approved by City. However, City is not precluded from objecting to refinements or implementation of matters previously approved or treatment of matters previously not approved.

6.4.3. *Design Requirements.* All of Developer's improvements for the Project shall comply with the following design requirements:

6.4.3.1. The Project shall be contained entirely within City's ROW and without any encroachment or dependence upon any other property with the exception of any necessary temporary construction easements.

6.4.3.2. The Project shall be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other improvements located in City's ROW.

6.4.3.3. The Project shall comply with all requirements of law, any applicable insurance contracts, all documents applicable to the Project area and this Agreement.

6.4.3.4. Developer shall be responsible to directly obtain all necessary permits and approvals from any and all governmental or other entities having standing or jurisdiction over the Project area.

6.4.3.5. To the extent requested by City, Developer's plans shall include a description of construction methods employed to address environmental issues affecting or affected by the premises and protect other facilities in the City's ROW and surrounding properties.

6.4.3.6. *Disturbance of Toxic Substances.* Prior to undertaking any construction or maintenance work, Developer shall cause the premises to be inspected to ensure that no potential asbestos or other Toxic Substances are disturbed, except in accordance with all applicable laws and regulations. Prior to any work of any description that bears a material risk of disturbing potential asbestos or other Toxic Substances, Developer shall cause

the contractor or other person performing such work to give to City notice by the method described in this Agreement to the effect that the person will inspect for such materials, will not disturb such materials except in accordance with all applicable laws and regulations, and will indemnify, defend and hold City harmless against any disturbance of such materials in the course of the contractor's or other person's work. Developer shall cause any on-site or off-site storage, inspection, treatment, transportation, disposal, handling, or other work involving Toxic Substances by Developer in connection with the premises to be performed by persons, equipment, facilities and other resources who are at all times properly and lawfully trained, authorized, licensed, permitted and otherwise qualified to perform such services.

6.4.4. Plans Required. Developer's design of all improvements for the Project shall occur in multiple stages culminating in final working construction documents for the Project (the "Final Construction Plans").

6.4.4.1. City recognizes that the design of the Project has been partially completed and is under review by the City. Developer, or others on behalf of Developer, will submit its partially completed design through City's Development Services for City's review. The design will be reviewed through multiple cycles of submittals until all City comments have been resolved. Once City approves the drawings, Developer will prepare the Final Construction Plans.

6.4.4.2. Final Construction Plans (100% plans for construction/conformed plans) shall be a complete construction package. All documents requiring a seal should be sealed with this submittal.

6.4.5. Approval Process. The following procedure shall govern Developer's submission to City of all plans for the Project, including any proposed changes by Developer to previously approved plans:

6.4.5.1. Upon execution of this Agreement, City and Developer shall each designate a contract manager to coordinate the respective party's participation in designing and constructing the Project. Each contract manager shall devote such time and effort to the Developer's improvements as may be necessary for timely, good faith, and convenient coordination among the parties and their representatives involved with the Developer's improvements and compliance with this Agreement. City's contract manager will not be exclusively assigned to this Agreement.

6.4.5.2. All plans submitted under this Agreement shall show design, appearance, style, landscaping, mechanical, utility, communication and electrical systems, building materials, layout, colors, streets, sidewalks, transportation elements, views, and other information reasonably deemed necessary by City for a complete understanding of the work proposed, all in detail reasonably deemed appropriate by City for the level of plans required by this Agreement.

6.4.5.3. All plans submitted under this Agreement shall be delivered directly to City's contract manager and shall be clearly labeled to indicate that they are submitted pursuant to this Agreement and not for building permits, zoning or other approvals. Each submittal of plans by Developer for City's review shall include two (2) complete sets of the plans on paper together with one (1) electronic copy of the plans in PDF.

6.4.5.4. Developer shall coordinate with City as necessary on significant design issues.

6.4.5.5. In addition to other submissions required under this Agreement, Developer shall simultaneously deliver to City's contract manager copies of all applications and supplemental, supporting and related materials for all zoning, development review and similar processes, if any, for the Project (excluding building permits).

6.4.5.6. No plans shall be deemed approved by City until stamped "APPROVED PER THIS AGREEMENT" (or other words clearly evidencing City's approval pursuant to this Agreement as distinguished from any regulatory or other approval) and dated and initialed, by City's contract manager (collectively "Stamped").

6.4.5.7. Construction shall not commence until a City construction permit has been issued and Developer delivers to City a formal certification in favor of City by a qualified registered engineer acceptable to City to the effect that the Developer's improvements are properly designed to be safe and functional in accordance with all City building and development codes and applicable rules and comply with this Agreement. Such certification shall be accompanied by and refer to such supporting information and analysis as City may require. Such certification shall be on the face of the plans themselves.

6.4.5.8. Contractor Insurance and Indemnification. Developer shall require the general contractor and any subcontractors for the Project to maintain insurance in accordance with the requirements set forth in **Exhibit B**. In addition, Developer shall require its general contractor to provide performance and payment bonds as set forth in Title 34, Arizona Revised Statutes.

6.4.6. City Contract Manager Authority. Developer acknowledges that City's contract manager's authority with respect to the Project is limited to the administration of the requirements of this Agreement. No oral approval, consent or direction by City's contract manager or other persons affiliated with City inconsistent with this Agreement shall be binding upon City. Developer shall be responsible for securing all environmental and zoning approvals, development review, and other governmental approvals and for satisfying all governmental requirements pertaining to the Project and shall not rely on City's contract manager for any of the same.

6.4.7. City Permits. City's issuance of building permits or zoning clearances, or any other governmental reviews or actions shall not constitute approval of any plans

for purposes of this Agreement. Developer's submission of plans under this Agreement, City's approval of plans for purposes of this Agreement, and the plans approval process under this Agreement, shall be separate and independent of all zoning, design review and other regulatory or similar plans submittal and approval processes, all of which shall continue to apply in addition to the requirements of this Agreement and its approvals.

6.4.8. Delivery of Plans. Developer shall hand deliver all plans to City no later than each submission date. Submission dates shall be such dates as are necessary for Developer to timely obtain the approvals required by this Agreement. Developer is responsible to allow adequate time for all communications and plans revisions necessary to obtain approvals and shall schedule its performances hereunder and revise its plans as necessary to timely obtain all approvals.

6.4.8.1. Within thirty (30) days after City's receipt of plans from Developer, City shall make available to Developer one (1) copy of the plans Developer submitted either Stamped or marked to indicate the reasons that City does not approve the plans.

6.4.8.2. If changes are required, Developer shall revise the plans incorporating the changes requested by City and shall within thirty (30) days after City returns the marked up plans to Developer submit revised plans to City. Within twenty (20) days after City's receipt of the revised plans, City shall make available to Developer one (1) copy of the revised plans either Stamped or marked to indicate the reasons that City does not approve the plans.

7. Reimbursement for Project Costs to Developer. Developer shall bear the initial cost to construct the Project. Within the IIP, City has a project budgeted amount of \$3,229,880 for the IIP Project ("City's IIP Project Budget"). Based on the Engineer's Cost Estimate attached hereto as **Exhibit C**, Developer has estimated that the proportionate share cost of the City's IIP Project Estimate for the Project is \$2,248,375.00 ("Engineer's Estimate"). Upon completion of construction and acceptance of the Project by City, completion of construction and acceptance by the City of required local subdivision water infrastructure, and recordation of the proposed seventeen single-family lots subdivision final plat for Developer's Property, Developer shall be entitled to reimbursement from the City for the actual cost expended by Developer for the design and construction of the Project, even if such actual cost exceeds the Engineer's Estimate ("Reimbursement Amount"), subject to the following limitations:

7.1. In no event shall reimbursement to Developer be conducted without accurate and detailed cost documentation approved by the City.

7.2. Developer shall only be eligible for reimbursement for actual costs expended by Developer toward construction costs and design professionals, contractors, construction managers or other third parties working on the Project and any fees incurred by Developer (such as permitting) for the same. Developer shall not be entitled to a construction management or similar fee and shall not be reimbursed for time expended by Developer or its own employees. Any fee proposals by design professionals, bid awards, alternative delivery guaranteed

maximum price construction contracts or similar agreements must be approved in advance by City's contract manager and in compliance with A.R.S. Title 34.

7.3. Any change orders or other alterations must be approved in advance and in writing by City's contract manager in order to be eligible for reimbursement.

7.4. The amount of reimbursement available from the City shall not exceed the City's IIP Project Budget as stated in this section above.

7.5. After completion of construction, prior to acceptance of the Project by City, Developer shall submit documentation of eligible costs expended. Costs must be clear and detailed and demonstrated by invoices, agreements, actual cost documentation with all back up details. After review, examination and concurrence of reimbursable amount, and acceptance of the Project, the City will issue by check the amount to be reimbursed within ninety (90) days.

7.6. To the extent that Developer has verified eligible costs in excess of the City's IIP Project Estimate, the City agrees that Developer is eligible for a credit or payback agreement for such excess eligible costs in accordance with Scottsdale Revised Code Chapter 49, Article III.

7.7. Delays in reimbursement will not result in interest or other penalties.

8. Amendments or Cancellation of the Agreement. This Agreement may be amended only with the mutual written consent of the City and Developer.

9. Relationship of the Parties. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture or similar relationship between the parties.

10. General Provisions.

10.1. Notices.

10.1.1. Manner of Serving. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith ("Notices") shall be validly given, filed, made, delivered or served if in writing and delivered personally, sent by registered or certified United States Postal Service Mail, return receipt requested, postage prepaid, or via overnight delivery service to:

If to the City: City of Scottsdale
 3939 Drinkwater Boulevard
 Scottsdale, Arizona 85251
 Attn: Water Resources Director

With a copy to:

City of Scottsdale
3939 Drinkwater Boulevard
Scottsdale, Arizona 85251
Attn: City Attorney

If to Developer:

David Weekley Homes
8058 South Priest Drive, Suite 104
Tempe, Arizona 85284
Attn: Christian Colegrove and Mark Weber
Email: ccolegrove@dwhomes.com
Email: mweber@dwhomes.com

with required copies to:

CND-Preserve Ranch, LLC
8058 S. Priest Drive, Suite 104
Tempe, AZ 85284
Attention: Mark Weber
Telephone: 480.768.4962
E-Mail: MWeber@dwhomes.com

CND-Preserve Ranch, LLC
8058 S. Priest Drive, Suite 104
Tempe, AZ 85284
Attention: Christian Colegrove
Telephone: 480.768.4955
E-Mail: ccolegrove@dwhomes.com

CND-Preserve Ranch, LLC
9025 E. Kenyon Ave, #300
Denver, CO 80237
Attention: John Mosesso
Telephone: 720.382.5903
E-Mail: jmosesso@dwhomes.com

CND-Preserve Ranch, LLC
9025 E. Kenyon Ave, #300
Denver, CO 80237
Attention: Christy Fink
Telephone: 720.838.2196
E-Mail: cfink@dwhomes.com

Or to such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective.

10.2. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the Parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Agreement.

10.3. Attorneys' Fees and Costs. If legal action by either party is brought because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and court costs.

10.4. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

10.5. Headings. The description headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

10.6. Severability. If any provision of this Agreement is declared void or unenforceable, the provisions shall be severed from this Agreement, which shall otherwise remain in full force and effect, provided that the overall intent of the Parties is not materially vitiated by such severability

10.7. Governing Law. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona. The Parties agree that venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Maricopa County, Arizona, and the Parties hereby waive any right to object to such venue.

10.8. Default, Remedies. Failure or unreasonable delay by either Party to perform or otherwise act in accordance with any term or provision of this Agreement for a reasonable time after written notice thereof from the other Party shall constitute a default under this Agreement. The notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within a reasonable time, the non-defaulting Party shall be entitled to all remedies available at both law and in equity, including specific performance.

10.9. Authority. Developer represents and warrants that it is a limited liability company duly formed and validly existing under the laws of the State of Arizona and is qualified to transact business in the State of Arizona and that the individual executing this Agreement on behalf of Developer is authorized and empowered to do so. The City represents and warrants that

the individual(s) executing this Agreement on behalf of the City are authorized and empowered to do so.

10.10. Third Party Beneficiaries. There are no third-party beneficiaries to the Agreement.

10.11. Cancellation. This Agreement is subject to the cancellation provisions of A.R.S. §38-511.

10.12. No Liability of City Officials and Employees. No member, official, representative or employee of City shall be personally liable to any party, or to any successor in interest to any party, in the event of any default or breach by City or for any amount which may become due to any party or successor, or with respect to any obligation of City or otherwise under the terms of this Agreement or related to this Agreement.

10.13. Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, draft agreements, discussion outlines, correspondence and memoranda or representation regarding the premises.

10.14. Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against any party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, which might otherwise favor Developer or City.

10.15. Survival of Covenants, Warranties and Indemnifications. All covenants, representations, warranties and indemnifications contained in this Agreement shall survive the execution and delivery of this Agreement, all conveyances contemplated by this Agreement, and the rescission, cancellation, expiration or termination of this Agreement for any reason.

10.16. Force Majeure. Neither party will be responsible for delays or failures in performance resulting from acts beyond their control, and all dates and time periods provided for in this Agreement shall be extended by the duration of any delays resulting therefrom. These acts will include, but not be limited to, riots, acts of war, acts of terrorism, epidemics, labor disputes not arising out of the actions of the Parties, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

10.17. Contract Administrator. The Contract Administrator for this Agreement on behalf of the City shall be the Water Resources Director or designee.

10.18. Termination. This Agreement will terminate upon completion of construction and acceptance of the Project by the City and upon receipt by Developer of City's

reimbursement for the Reimbursement Amount expended to design and construct the Project subject to the survival provisions in Section 10.15. The Parties agree that upon termination of this Agreement and at the request of either Party, a notice of termination will be executed and recorded with the Office of the Maricopa County Recorder.

[rest of page intentionally blank – signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

DEVELOPER:

By: _____
Name: _____
Title: _____

CITY:
CITY OF SCOTTSDALE, ARIZONA, a municipal
corporation

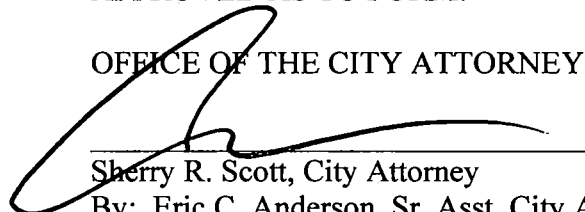
By: _____
David D. Ortega, Mayor

ATTEST:

Ben Lane, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY



Sherry R. Scott, City Attorney
By: Eric C. Anderson, Sr. Asst. City Attorney

EXHIBIT A

Depiction of the Project

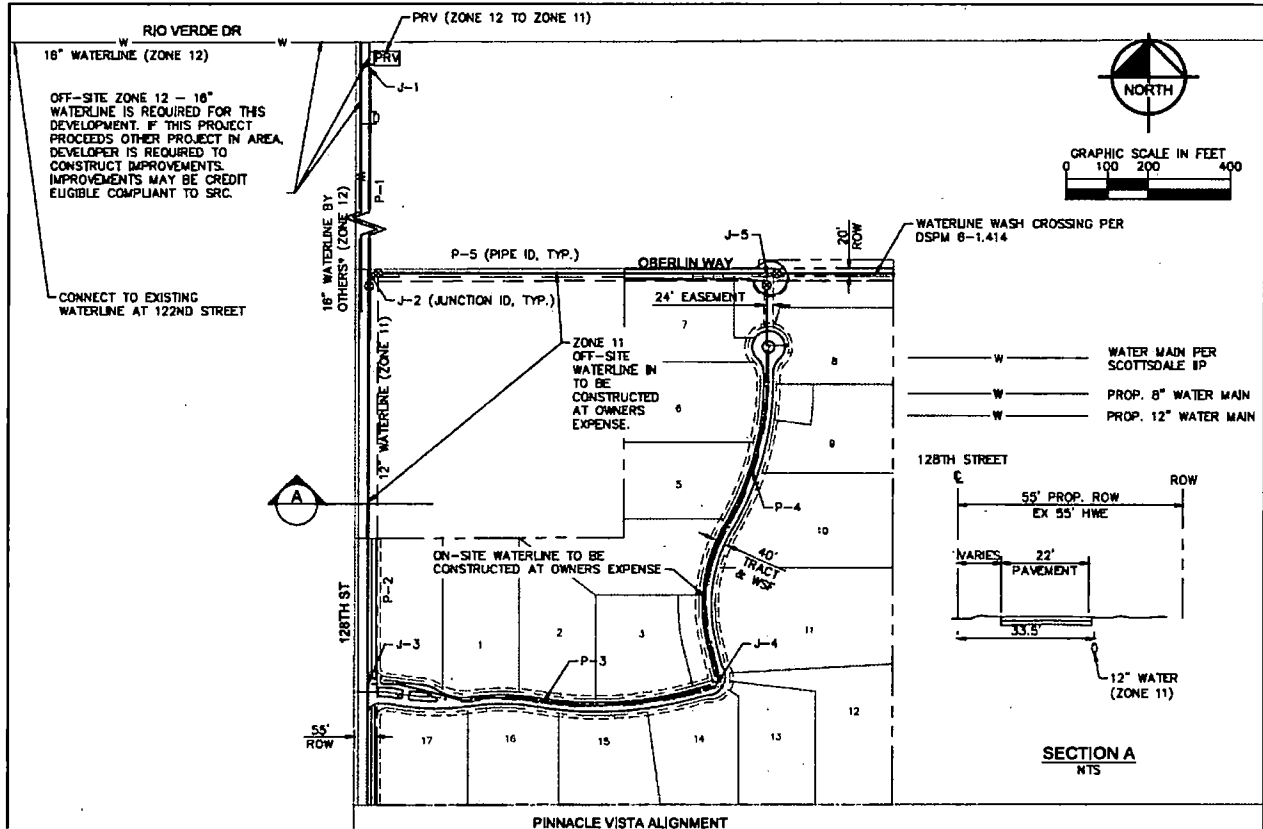


EXHIBIT B

Contractor & Subcontractor Insurance and Indemnification Requirements

INSURANCE REQUIREMENTS

- A. Prior to the commencement of any construction, the Contractor will furnish a Certificate of Insurance on a standard insurance industry ACORD form. The ACORD form will be issued by an insurance company authorized to transact business in the State of Arizona.
- B. The Contractor, Subcontractors and Subconsultants must procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property, which may arise from or in connection with the performance of the Work by the Contractor, its agents, representatives, employees, or Subcontractors.
- C. The insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.
- D. The City in no way warrants that the minimum limits contained in this Contract are sufficient to protect the Contractor from liabilities that might arise out of the performance of the Contract Services under this Contract by the Contractor, its agents, representatives, employees, Subcontractors or Subconsultants and the Contractor is free to purchase any additional insurance as may be determined necessary. The City will not pay for higher limits, but if the Contractor pays for insurance with higher limits, the Contractor will name the City as an additional insured on any additional insurance.
- E. Claims Made. In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall continue uninterrupted throughout the term of this Contract by keeping coverage in force using the effective date of this Contract as the retroactive date on all "claims made" policies. The retroactive date for exclusion of claims must be on or before the effective date of this Contract and can never be after the effective date of this Contract. Upon completion or termination of this Contract, the "claims made" coverage shall be extended for an additional three (3) years using the original retroactive date, either through purchasing an extended reporting option; or by continued renewal of the original insurance policies. Submission of annual Certificates of Insurance, citing the applicable coverages and provisions specified herein, shall continue for three (3) years past the completion or termination of this Contract.
- F. Self-Insured Retentions. Any self-insured retentions and deductibles must be declared to and approved by the City. If not approved, the City may require that the insurer

reduce or eliminate any self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.

MINIMUM SCOPE AND LIMITS OF INSURANCE

The Contractor must provide coverage with limits of liability not less than those stated below.

A. Commercial General Liability-Occurrence Form

General Aggregate \$2,000,000
Products-Completed Operations Aggregate \$2,000,000
Personal & Advertising Injury \$1,000,000
Each Occurrence \$2,000,000
Fire Damage (Any one fire) \$100,000
Medical Expenses (Any one person) OPTIONAL

B. Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles

Combined Single Limit Per Accident \$1,000,000
For Bodily Injury and Property Damage

C. Workers Compensation and Employers Liability

| | |
|-------------------------|-------------|
| Workers Compensation | Statutory |
| Employers Liability: | |
| Each Accident | \$500,000 |
| Disease - Each Employee | \$500,000 |
| Disease - Policy Limit | \$1,000,000 |

D. Coverage Terms and Required Endorsements

1. The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the Contractor including the City's general supervision of the Contractor; products and completed

operations of the Contractor; and automobiles owned, leased, hired, or borrowed by the Contractor.

2. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.

3. The Contractor's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees will be in excess of the coverage provided by the Contractor and must not contribute to it.

4. The Contractor's insurance must apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Coverage provided by the Contractor must not be limited to the liability assumed under the indemnification provisions of this Contract.

6. All policies must contain a waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the Contractor for the City.

7. If the Contractor receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Contractor's responsibility to provide prompt notice to the contract administrator of same to the City, unless such coverage is immediately replaced with similar policies.

E. Builders Risk Insurance (Course of Construction)

To be provided if determined by the City as necessary with each Contract.

The Contractor bears all responsibility for loss to all Work being performed and to buildings under construction. Unless waived in writing by the City, the Contractor will purchase and maintain in force Builders Risk-Installation insurance on the entire Work until completed and accepted by the City. This insurance will be Special Causes of Loss or Open Perils policy form, for the completed value, at replacement cost equal to each Job Order contract price and all subsequent modifications. The Contractor's Builders Risk-Installation insurance will be primary and not contributory; and waive all rights of subrogation against the City, its officers, officials and employees.

This Builders Risk-Installation insurance must name the City, the Contractor and all tiers of Subcontractors as respects their insurable interest at the date of loss. It must contain a provision that subject insurance will not be canceled or materially altered without at least 30 days advance notice to the City. The Contractor is also required to give the City thirty

(30) days advance written notice of the coverage termination for each project. The City will also be named as a Loss Payee under Builders Risk-Installation coverage.

This Builders Risk-Installation insurance must cover the entire Work including reasonable compensation for architects and Contractor's services and expenses and other "soft costs" made necessary by an insured loss. Builders Risk-Installation insurance must provide coverage from the time any covered property comes under the Contractor's control and or responsibility, and continue without interruption during course of construction, renovation and or installation, including any time during which any project property or equipment is in transit, off site, or while on site for future use or installation. Insured property must include, but not be limited to, scaffolding, false work, and temporary buildings at the site. This insurance must also cover the cost of removing debris, including demolition as may be legally required by operation of any law, ordinance, regulation or code.

The Contractor must also purchase and maintain Boiler and Machinery insurance with the same requirements as Builders Risk-Installation insurance stated above if the Work to be performed involves any exposures or insurable property normally covered under a Boiler and Machinery insurance policy or made necessary as required by law and or testing requirements in the performance of this Contract.

The Contractor will be responsible for any and all deductibles under these policies and the Contractor waives all rights of recovery and subrogation against the City under the Contractor-provided Builders Risk-Installation insurance described in this Article.

The Builders' Risk insurance must be endorsed so that the insurance will not be canceled or lapse because of any partial use or occupancy by the City. Builders' Risk Insurance must be maintained until whichever of the following first occurs: (i) final payment has been made; or (ii) until no person or entity, other than the City, has an insurable interest in the property required to be covered.

By signing this Contract, all rights of subrogation are waived against the City of Scottsdale, its officers, officials, agents and employees.

SUBCONSULTANT'S AND SUBCONTRACTOR'S INSURANCE

Unless the Contractor's Subconsultants and Subcontractors can provide the same level of coverage as detailed above and name the City and the Contractor as Additional Insureds, the Contractor's certificates must include all Subcontractors and Subconsultants as insureds under its policies or the Contractor must maintain separate certificates and endorsements for each Subcontractor and Subconsultant. All coverages for Subcontractors and Subconsultants must be in the amounts shown above. Certificates must contain a provision that the insurance will not be canceled or materially altered without at least 30 days

advance notice to the City. The City must also be named as a Loss Payee under the Builders Risk-Installation coverage.

NOTICE OF CANCELLATION

If the Contractor receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Contractor's responsibility to provide prompt notice to the contract administrator of same to the City, unless such coverage is immediately replaced with similar policies. Each insurance policy required by the insurance provisions of this Contract must provide the required coverage and must not be suspended, voided, canceled by either party, reduced in coverage or in limits until 30 days written notice has first been given, by certified mail, return receipt requested to City.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers duly licensed or approved to conduct business in the State of Arizona and with an A. M. Best rating of no less than B++6. The City in no way warrants that the above required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency. Failure to maintain insurance as required may result in termination of this Contract at the City's option.

VERIFICATION OF COVERAGE

A. The Contractor must furnish the City Certificates of Insurance (ACORD form or equivalent approved by the City) and with original endorsements effecting coverage as required by this Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

B. All certificates and endorsements are to be received and approved by the City before Contract Services commence except for Builders Risk Insurance, which will be received and approved as provided in Article 9.2(E). Each insurance policy required by this Contract must be in effect at or before the earlier of commencement of Contract Services under the Contract Documents or the signing of this Contract except for Builders Risk Insurance which must be in effect before commencement of the Work 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.

C. All Certificates of Insurance required by this Contract must be sent directly to the City. The project number and project description must be included on the Certificates of Insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time. Failure to provide a Certificate of Insurance with the appropriate verbiage will result in rejection of the Contractor's Certificate and delay in contract execution.

Additional Certificates of Insurance submitted without referencing a Contract number will be subject to rejection and returned or discarded.

APPROVAL

Any modification or variation from the insurance requirements in this Contract must be approved by [City's] Risk Management Division, whose decision is final. This action does not require a formal Contract Modification, but may be made by administrative action.

INDEMNIFICATION

A. CONTRACTOR'S GENERAL INDEMNIFICATION

Contractor's General Indemnification. To the fullest extent permitted by law, the Contractor, its successors, assigns and guarantors, must defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, investigation and litigation, for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, related to, arising from or out of, or resulting from any acts, omissions, negligence, recklessness, or intentional wrongful conduct to the extent caused by the Contractor or any of its owners, officers, directors, agents or employees performing Work or Services under this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages by any of the Contractor employees. This indemnity includes any claim or amount arising out of, or recovered under, the Worker's Compensation Law or arising out of the failure of the Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the City shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the City, be indemnified by the Contractor from and against any and all claims. It is agreed that the Contractor will be responsible for primary investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this Contract, the Contractor agrees to waive all rights of subrogation against the City, its officers, agents, representatives, directors, officials, and employees for losses arising from the work performed by the Architect for the City.

Insurance provisions in this Contract are separate and independent from the indemnity provisions of this Article and will not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph will not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

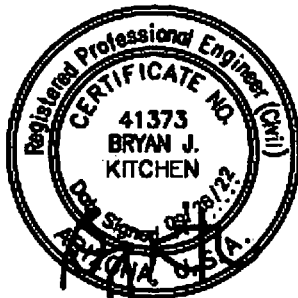
EXHIBIT C

Engineer's Cost Estimate for the Project



Engineer's Cost Estimate - Rio Verde Waterline

| Description | Qty. | Unit | Unit Price | Total Cost |
|------------------------------------|--------|------|---------------|------------------------|
| Water | | | | |
| 16" DIP (Class 350) Waterline | 4,160 | LF | \$ 145.00 | \$ 603,200.00 |
| 16" VB&C | 4 | EA | \$ 12,000.00 | \$ 48,000.00 |
| 12" VB&C | 2 | EA | \$ 3,000.00 | \$ 6,000.00 |
| Fire Hydrant w/ Bypass | 3 | EA | \$ 15,000.00 | \$ 45,000.00 |
| Pressure Reducer - ARV | 1 | EA | \$ 100,000.00 | \$ 100,000.00 |
| Vault & Cover - Inspection Manhole | 1 | EA | \$ 50,000.00 | \$ 50,000.00 |
| Vertical Realignment | 1 | EA | \$ 14,000.00 | \$ 14,000.00 |
| Bore w/ Casing | 50 | LF | \$ 900.00 | \$ 45,000.00 |
| Slurry Backfill | 4,500 | CY | \$ 125.00 | \$ 562,500.00 |
| Sawcut Existing Asphalt | 1 | EA | \$ 12,000.00 | \$ 12,000.00 |
| Mill Existing Asphalt | 1 | EA | \$ 25,000.00 | \$ 25,000.00 |
| Asphalt Pavement | 3,000 | SY | \$ 55.00 | \$ 165,000.00 |
| Earthwork Hauloff | 14,000 | Ton | \$ 5.00 | \$ 70,000.00 |
| Barricades | 1 | EA | \$ 28,000.00 | \$ 28,000.00 |
| Mobilization | 1 | EA | \$ 25,000.00 | \$ 25,000.00 |
| Subtotal: | | | | \$ 1,798,700.00 |
| Owners Contingency (25%) = | | | | \$ 449,675.00 |
| Construction Total = | | | | \$ 2,248,375.00 |



EXPIRES: 09/30/22