



AMENDED AGENDA

Queen Creek Town Council Regular Session

Community Chambers, 20727 E Civic Parkway

November 2, 2022

6:30 PM

Pursuant to A.R.S. §§ 38-431.02 and 38-431.03, notice is hereby given to the members of the Town Council and the general public that, at this Regular Meeting, the Town Council may vote at any time during the Council Meeting to go into Executive Session, which will not be open to the public, for legal advice and discussion with the Town Attorney(s) for legal advice on any item listed on the following agenda, pursuant to A.R.S. § 38-431.03(A)(3).

The public can continue to watch the meeting live streamed at [QueenCreek.org/WatchMeetings](https://www.queen-creek.org/WatchMeetings) by selecting "video" next to the applicable meeting (once the meeting begins) or by visiting the Town's Ustream account at <https://video.ibm.com/councilmeeting>.

In addition to attending in-person, residents may submit public comment for this Town Council meeting by submitting their comments via email to PublicComment@QueenCreekAZ.gov. Every email, if received by the deadline of 5:00 p.m., the day of the meeting will be entered into the official record. Please include your name, address, comment and note if your comment is for call to the public. Comments without identifying name and address will not become part of the written record.

The Mayor or other presiding officer at the meeting may change the order of Agenda Items and/or take items on the Agenda in an order they determine is appropriate. Some members of the Town Council and staff may attend electronically.

- 1. Call to Order:**
- 2. Roll Call:** *(Members of the Town Council may attend electronically and/or telephonically)*
- 3. Pledge of Allegiance:**
- 4. Invocation/Moment of Silence:**
- 5. Ceremonial Matters (Presentations, Proclamations, Awards, Guest Introductions and Announcements):**
 - A. Proclamation - Lung Cancer Awareness Month
 - B. Proclamation - East Valley Marines National Red Ribbon Campaign
 - C. Proclamation - Small Business Saturday
- 6. Committee Reports:**
 - A. Council summary reports on meetings and/or conferences attended. This may include but is not limited to Phoenix-Mesa Gateway Airport; MAG; East Valley Partnership; CAG. The Council will not propose, discuss, deliberate or take legal action on any matter in the summary unless the specific matter is properly noticed for legal action.

B. Committee and outside agency reports (only as scheduled)

1. None.

- 7. Public Comments:** *Members of the public may address the Town Council on items not on the printed agenda and during Public Hearings. Please address the Town Council by completing a Request to Speak Card and returning it to the Town Clerk (limited to three (3) minutes each), or by emailing your comment for this Town Council meeting to PublicComment@QueenCreekAZ.gov (limited to 500 words). Every email, if received by the deadline of 5:00 p.m., the day of the meeting, will be entered into the official record. Only one comment per person, per Agenda Item will be allowed. Comments without identifying name and address will not be entered into the official record. The Town Council may not discuss or take action on any issue raised during public comment until a later meeting.*

8. Final Action:

If you wish to speak to the Town Council on any of the items listed under Final Action, please address the Town Council by completing a Request to Speak Card and returning it to the Town Clerk (limited to three (3) minutes each), or by emailing your comment for this Town Council meeting to PublicComment@QueenCreekAZ.gov (limited to 500 words). Every email, if received by the deadline of 5:00 p.m., the day of the meeting, will be entered into the official record. Only one comment per person, per Agenda Item will be allowed. Comments without identifying name and address will not be entered into the official record.

- A. Consideration and possible approval of Resolution 1500-22 maintaining the same Primary Property Taxes for existing taxpayers beginning July 1, 2023 for five years.
- B. Consideration and possible approval of Resolution 1503-22 setting Streetlight Improvement District (SLIDs) property taxes at zero dollars effective July 1, 2023.
- C. Consideration and possible approval of a Wired Telecommunications License and Right-of-Way Use Agreement, and Reimbursement Agreement, with Wyverd Connect, LLC.

- 9. Consent Agenda:** *Matters listed under the Consent Agenda are considered to be routine and will be enacted by one motion and one vote. Members of the Town Council and/or staff may comment on any item without removing it from the Consent Agenda or remove any item for separate discussion and consideration.*

- A. Consideration and possible approval of the October 19, 2022 Regular Session minutes.
- B. Consideration and possible approval of Expenditures \$25,000 and over, pursuant to Town Purchasing Policy. (FY 22/23 Budgeted Items)
 - 1. AllChem - Trichlor Acid Tablets for Water Disinfection and Treatment: Additional \$85,000 contract spending authority for Trichlor Acid Tablets. Town Council approved \$200,000 on June 1, 2022. This request would take the total contract spending authority to \$285,000. (Utilities)
 - 2. Knowledge Services – Temporary Staffing: \$65,000 (Information Technology)
- C. Consideration and possible approval of the re-appointment of Patrick Camunez, Valerie Done, Brian McKean, Derek Neighbors, and Whitney Tolle to the Downtown Core Arts & Placemaking Advisory Sub-Committee.
- D. Consideration and possible approval of the "Map of Dedication" for Ellsworth Road, a request by Sentry Storage LLC.

- E. Consideration and possible approval of FY 2021-22 budget amendments totaling \$10.0 million in revenue and other sources adjustments and \$6.2 million in adjustments to budgets for transfers between funds (does not increase the FY 2021-22 budget).
- F. Consideration and possible approval of a one-year contract with Cyclone Door Service for door and gate preventative maintenance and repair services with up to four possible one-year renewals in an amount not to exceed \$50,000 on an annual basis. (FY 2022/23 Budgeted Item)
- G. Consideration and possible approval of Delegation Resolution #1502-22 authorizing and directing the Town Manager and/or Capital Improvement Projects Department Director to take any and all action necessary; and to sign any and all documents, contracts, and/or agreements related to construction and completion of the Grounds Maintenance Facility (CIP Project No. XX054) in an amount not to exceed \$450,000; and necessary budget adjustments.

10. Public Hearing Consent Agenda:

Matters listed under the Public Hearing Consent Agenda are considered to be routine and will be enacted by one motion and one vote. Please address the Town Council by completing a Request to Speak Card and returning it to the Town Clerk (limited to three (3) minutes each), or by emailing your comment for this Town Council meeting to PublicComment@QueenCreekAZ.gov (limited to 500 words). Every email, if received by the deadline of 5:00 p.m., the day of the meeting, will be entered into the official record. Only one comment per person, per Agenda Item will be allowed. Comments without identifying name and address will not be entered into the official record.

- A. Consideration and possible recommendation of approval on a Class "A" Bingo License Application submitted by Ms. Beth A. Riley, a resident of Ironwood Crossings.
- B. This case has been formally withdrawn by the applicant. Public Hearing and possible action on Cases Barney Farms North Major General Plan Amendment (Case P22-0051) and PAD Rezone (P22-0178), a request by Greg Davis, Iplan Consulting, for a Major General Plan Amendment for approximately 36.6 acres from Industrial to Neighborhood and a PAD Rezone to rezone 36± acres from Employment Type-A to 25.3 acres of High Density Residential and 11.1 acres of Medium Density Residential. This project is generally located south of Germann Road west of Signal Butte Road.
- C. Public Hearing and possible action on Ordinance 801-22, P22-0205 Permitted Use Table – Data Centers, a staff initiated text amendment to Table 4.6-1 Permitted Uses of the Zoning Ordinance prohibiting data centers.

11. Public Hearings: *If you wish to speak to the Town Council on any of the items listed as a Public Hearing, please address the Town Council by completing a Request to Speak Card and returning it to the Town Clerk (limited to three (3) minutes each), or by emailing your comment for this Town Council meeting to PublicComment@QueenCreekAZ.gov (limited to 500 words). Every email, if received by the deadline of 5:00 p.m., the day of the meeting, will be entered into the official record. Only one comment per person, per Agenda Item will be allowed. Comments without identifying name and address will not be entered into the official record.*

- A. None.

12. Items for Discussion: *These items are for Town Council discussion only and no action will be taken. In general, no public comment will be taken.*

- A. None.

13. Adjournment:

I, Maria Gonzalez, do hereby certify that I caused to be posted this 1st day of November, the Agenda for the November 2, 2022 Regular and Possible Executive Session of the Queen Creek Town Council at Town Hall and on the Town's website at www.QueenCreekAZ.gov.

Maria E. Gonzalez, MMC
Town Clerk

The Town of Queen Creek encourages the participation of disabled individuals in the services, activities, and programs provided by the Town. Individuals with disabilities who require reasonable accommodations in order to participate should contact the Town Clerk's office at (480) 358-3000.



TOWN OF QUEEN CREEK ARIZONA

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS ICMA-CM, TOWN MANAGER

FROM: SCOTT MCCARTY, FINANCE DIRECTOR

RE: CONSIDERATION AND POSSIBLE APPROVAL OF RESOLUTION 1500-22
MAINTAINING THE SAME PRIMARY PROPERTY TAXES FOR EXISTING TAXPAYERS
BEGINNING JULY 1, 2023 FOR FIVE YEARS.

DATE: November 2, 2022

Suggested Action:

Approval of Resolution 1500-22 Maintaining the Same Primary Property Taxes for Existing Taxpayers Beginning July 1, 2023 for Five Years.

Motion to approve Resolution 1500-22 as presented.

Relevant Council Goal(s):

- Effective Government: KRA Financial Stability

Discussion:

At the September 21, 2022 Town Council meeting, the Town staff made a presentation outlining our intention to make three recommendations to provide financial relief to our utility customers and property taxpayers beginning in FY 2023-24. The genesis of looking at these issues was initiated at the February, 2022 Town Council Strategic Planning Session. The three items are:

1. Reduce Water Replenishment Fees by \$0.6M;
2. Eliminate Streetlight Improvement District Property Taxes (SLIDs); and
3. Create a New Financial Policy to Maintain the Same Primary Property Taxes for Existing Taxpayers for Five Years.

At the October 19, 2022 Town Council, the Town staff made a presentation regarding the recommendation to maintain (freeze) primary property taxes for existing taxes for five years beginning July 1, 2023. Resolution 1500-22 implements that recommendation.

Annually, the Town Council is required to set the amount of property taxes to be collected in a fiscal year. Historically, this decision has been made in the spring of every year as the budget for the next fiscal year is being prepared. The process to set property taxes is outlined in State statute.

Rather than continuing the practice of annually deciding the amount to be received from property

taxes, Resolution 1500-22 establishes a process to determine this amount, assuming the two criteria are met. This new approach would take effect for FY 2023-24 and remain in place for five years.

The two criteria are:

1. The primary property tax levy rate will be set so as not to trigger the process of a property tax increase as defined by State statute (Truth in Taxation) and shall be at least \$1.40, and
2. The amount generated from primary property taxes will be at least 20% of police and fire annual expenses (based on actual numbers from the prior fiscal year).

If the Town Council approves Resolution 1500-22, the primary property levy rate will be reduced from the current amount and existing property owners can expect to pay the same amount of property taxes as they did this year for the next five years.

Fiscal Impact:

The fiscal impact of Resolution 1500-22 is twofold. One, it maintains (freezes) property taxes paid for five years beginning July 1, 2023 for existing properties. Two, it shifts a portion of the funding for police and fire/EMS costs from property owners to the Operating Budget (i.e. general revenues such as sales taxes). The amount of costs shifted increases annually and is estimated to be \$4.7M in the fifth year.

The 5-year property tax projections under this policy as estimated to be as follows:

FY 23-24: \$13.3M

FY 24-25: \$14.3M

FY 25-26: \$15.1M

FY 26-27: \$16.0M

FY 27-28: \$16.8M

Alternatives:

Any components of the resolution can be modified. For example, the percent of expenses covered by property taxes could be increased or reduced from the proposed 20%.

Attachment(s):

1. [Resolution 1500-22](#)
2. [Presentation: A New Policy to Maintain \(Freeze\) Primary Property Taxes for Five Years](#)

RESOLUTION NO. 1500-22

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, CREATING A NEW FINANCIAL POLICY FOR PRIMARY PROPERTY TAXES AND PROVIDING FOR REPEAL OF CONFLICTING POLICIES AND RESOLUTIONS

WHEREAS, establishing sound financial policies and principles contributes to sound financial management, continuity in handling financial affairs, and preserving the Town's fiscal integrity; and

WHEREAS, financial policies establish the framework for overall fiscal planning and management; and

WHEREAS, financial plans set forth guidelines against which current performance can be measured and proposals for future programs can be evaluated; and

WHEREAS, the Government Finance Officers Association ("GFOA") recommends adopting financial policies as a best practice; and

WHEREAS, in 2007 the voters in the Town of Queen Cree approved a primary property tax levy rate not to exceed \$1.95 per \$100 of assessed value of real property in the Town predicated to funding Town fire and emergency medical services and police expenses ("Public Safety Expenses");

WHEREAS, if possible, maintaining a primary property tax levy rate below the voter approved maximum rate of \$1.95 per \$100 of assessed value while being able to provide sufficient funding to maintain and allow for required increases in the Town budget for Public Safety Expenses is reasonable and fiscally responsible goal for the Town; and

WHEAREAS, the Council has determined that utilizing the Truth in Taxation primary property rate (that identifies a levy rate that prevents a tax increase in property tax rates based upon the anticipated increase in the appraised value of existing construction in the Town) and increasing tax revenues only by the increase in revenues created by new construction within the Town will provide sufficient funding to maintain and allow for required increases in the Town Public Safety budget for the next five (5) fiscal years.

NOW, THEREFORE BE IT RESOLVED, by the Common Council of Queen Creek, Arizona as follows:

- Section 1: The Primary Property Tax Levy rate shall be the Truth in Taxation Rate for the next five (5) fiscal years provided: (1) the rate exceeds \$1.40 per \$100 of assessed value; and (2) the total amount of property taxes assessed is at least twenty percent (20%) of the Town's Public Safety Expenses (the "Policy").
- Section 2: The Town Manager or designee is authorized and directed to prepare the primary tax levy as outlined in this Resolution.
- Section 3: If any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.
- Section 4: Any policies, resolutions, or parts thereof in conflict with the provisions of this Resolution are hereby repealed.
- Section 5: The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to take all act and steps necessary to carry out the purpose and intent of this Resolution.
- Section 6: The Policy adopted hereby shall become effective for the 2023-2024 fiscal year (July 1, 2023).

PASSED AND ADOPTED by the Common Council of the Town of Queen Creek, this 20th day of October, 2022.

FOR THE TOWN OF QUEEN CREEK:

ATTESTED TO:

Jeff Brown, Vice Mayor

Maria Gonzalez, Town Clerk

REVIEW BY:

APPROVED AS TO FORM:

John Kross, Town Manager

Scott A. Holcomb, Town Attorney



A New Policy to Maintain (Freeze) Primary Property Taxes for Five Years

Town Council
November 2, 2022



Purpose of Presentation

Consideration and Possible Approval of Resolution 1500-22 Adopting a New Financial Policy to Maintain (Freeze) Primary Property Taxes for Existing Taxpayers Beginning July 1, 2023 for Five Years

- Detailed Presentation at October 19th Town Council Meeting

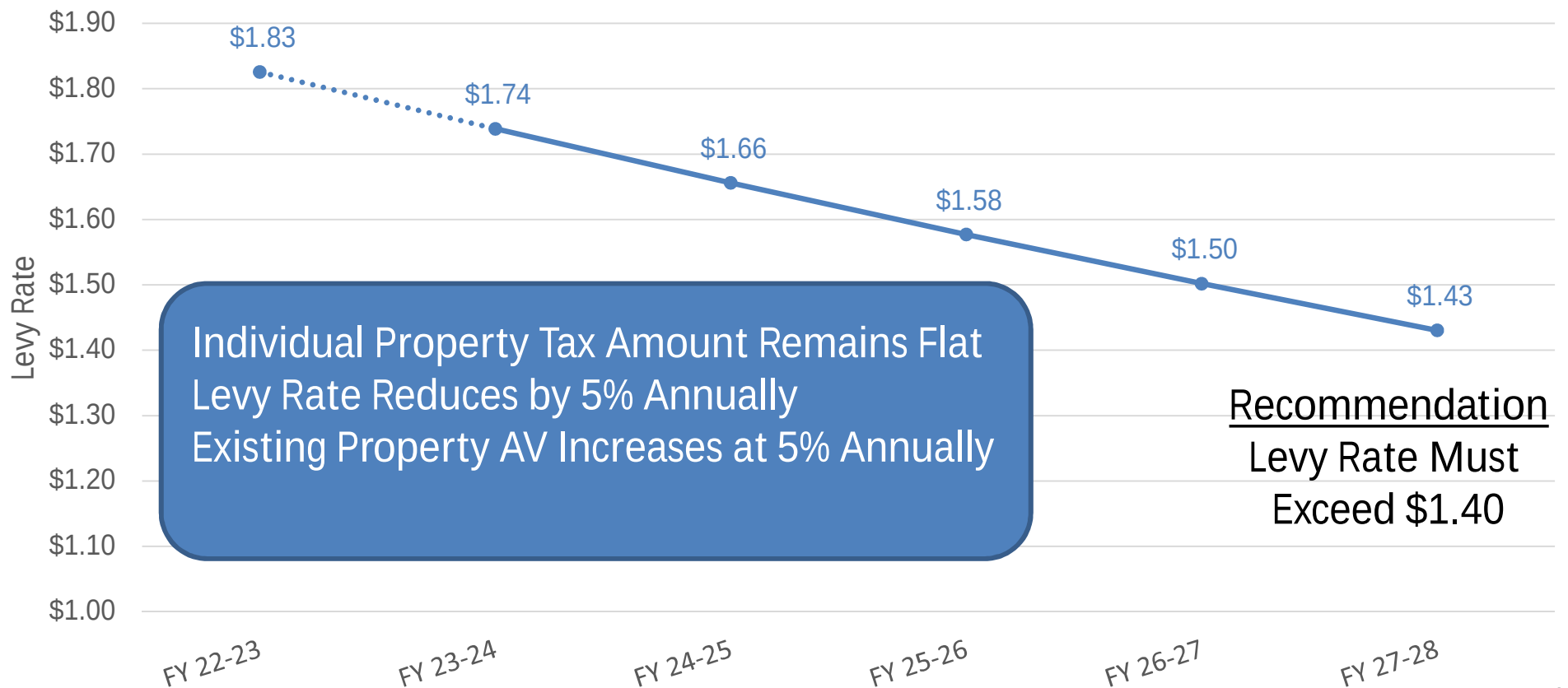


Resolution 1500-22

Effective July 1, 2023, Create a New Primary Property Tax Policy

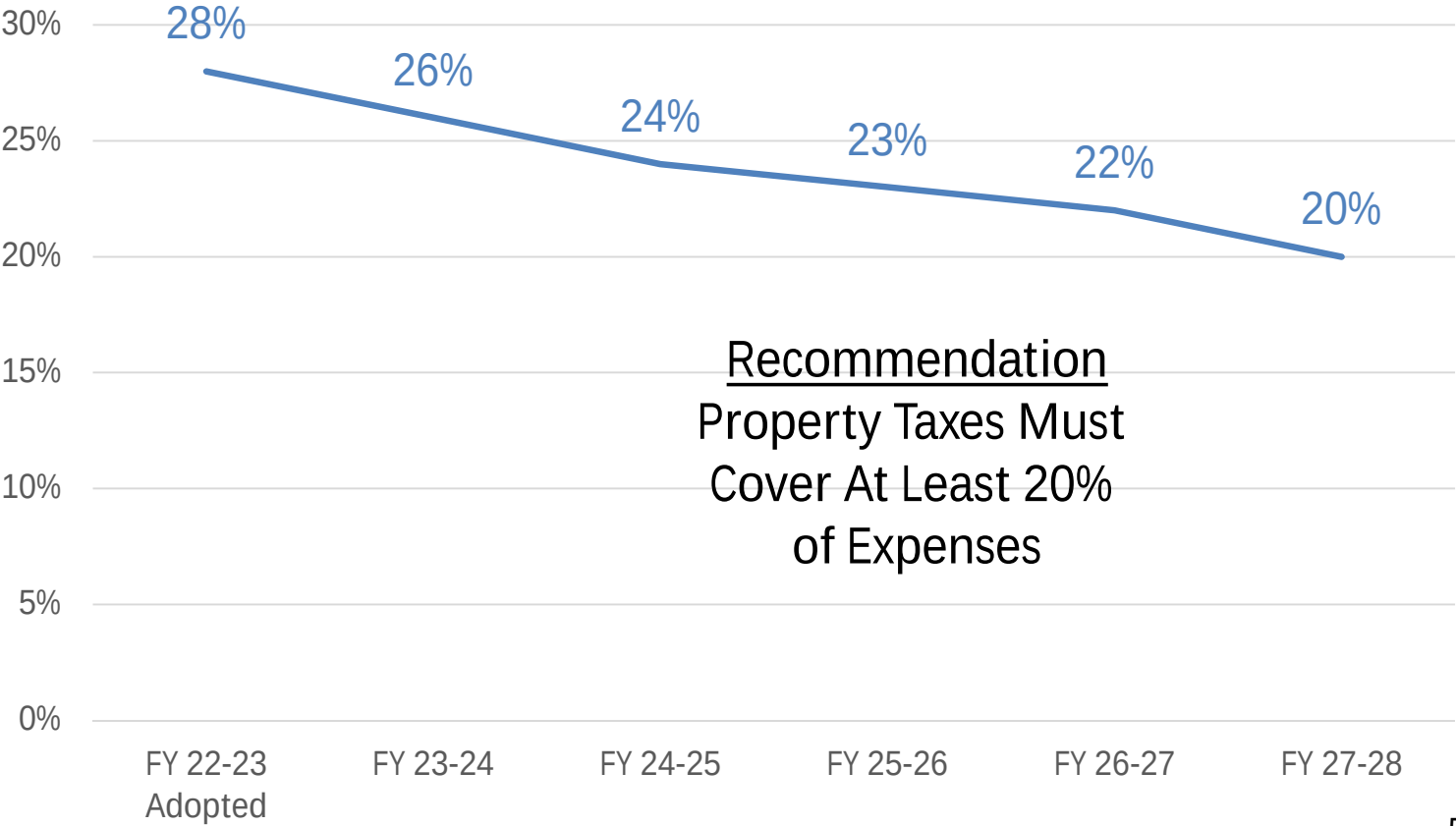
1. Property Taxes Will be Received from New Construction
2. Maintains (Freezes) Primary Property Taxes for Existing Customers for Five Years
3. Property Taxes for Existing Taxpayers Will Be Set at the Truth and Taxation Levy Rate (TNT) Annually if Both of the Following Conditions Exist:
 - A. The Levy Rate Exceeds \$1.40 **AND**
 - B. The Amount of Property Taxes is 20% or Higher of Expenses

Truth and Taxation (TNT) Levy Rate Projection





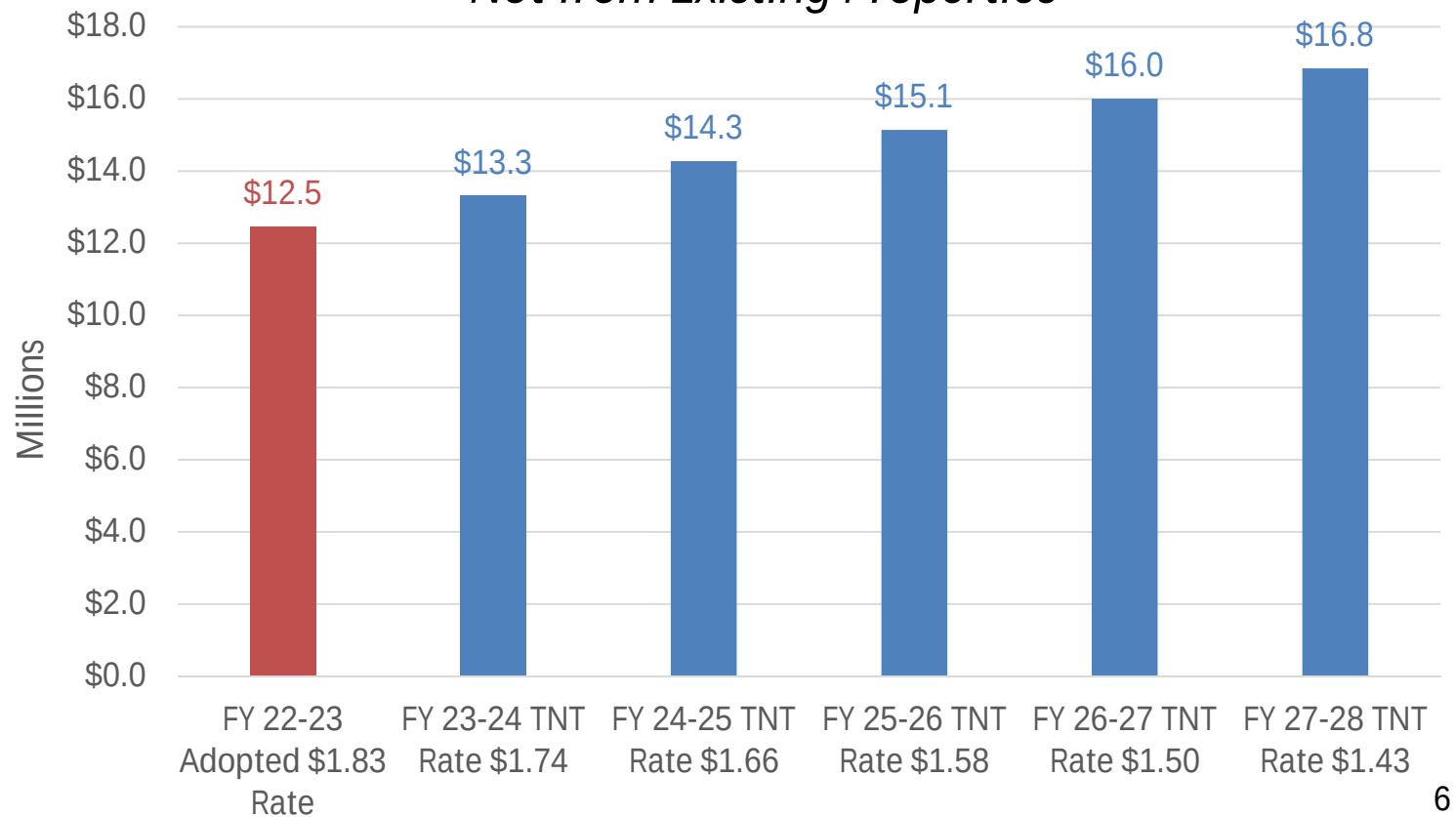
Percent of Expenses Covered by Property Taxes at TNT Rate





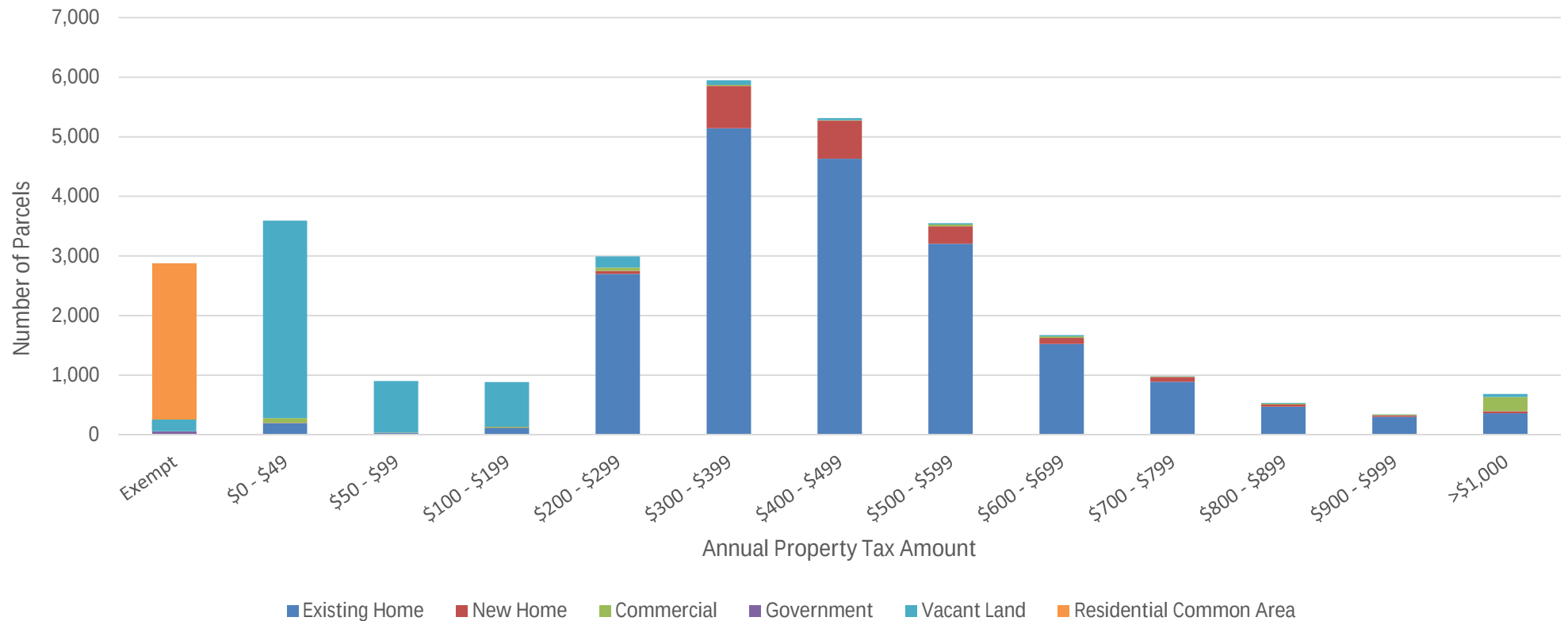
Property Tax Revenue at TNT Rate

*Property Tax Revenues Increase Only by New Construction,
Not from Existing Properties*



Property Taxes: All Property Types (~30K Parcels)

FY 22-23: \$12.5M





Example: Same Property Tax (Median Value Home)

	Assessed Value (+5% Annually)	Levy Rate (-5% Annually)	Property Tax
FY 22-23	\$241K	\$1.83	\$441
FY 23-24	\$253K	\$1.74	\$441
FY 24-25	\$266K	\$1.66	\$441
FY 25-26	\$280K	\$1.58	\$441
FY 26-27	\$294K	\$1.50	\$441
FY 27-28	\$308K	\$1.40	\$441

No
Change

In FY 27-28 (5th Year), \$122 taxes avoided annually (as compared to if levy rate remained at the current \$1.83)

Example: Same Property Tax (Median Value Home)

	Property Taxes at TNT Levy Rate (-5% Reduction Annually)	Property Taxes at \$1.83 Constant Levy Rate	Annual Savings	Cumulative Savings
FY 22-23		\$441		
FY 23-24	\$441	\$463	\$22	\$22
FY 24-25	\$441	\$486	\$45	\$67
FY 25-26	\$441	\$510	\$69	\$136
FY 26-27	\$441	\$536	\$95	\$231
FY 27-28	\$441	\$563	\$122	\$353

What Does the New Policy Accomplish?

- Affirms Public Safety is the Town Council's #1 Priority
 - Does Not Restrict the Ability to Increase Public Safety Expenses
- Creates Certainty for Taxpayers (Existing and New)
 - No Increase for 5 Years
 - \$241K Median Value House: \$122 Less in Property Taxes in 5th Year
- Property Tax Revenues Increase Only by New Construction
 - Foregone Property Tax Revenues (\$4.7M in 5th Year as Compared to the Status Quo)
- A Shift in the Funding of Public Safety Costs
 - More of the Town's General Revenue Sources Will Be Used (\$4.7M More in 5th Year)

Motion

Approval of Resolution 1500-22 as presented





TOWN OF QUEEN CREEK ARIZONA

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS ICMA-CM, TOWN MANAGER

FROM: SCOTT MCCARTY, FINANCE DIRECTOR

RE: CONSIDERATION AND POSSIBLE APPROVAL OF RESOLUTION 1503-22 SETTING STREETLIGHT IMPROVEMENT DISTRICT (SLIDS) PROPERTY TAXES AT ZERO DOLLARS EFFECTIVE JULY 1, 2023.

DATE: November 2, 2022

Suggested Action:

To approve Resolution 1503-22 as presented.

Relevant Council Goal(s):

- Effective Government

Discussion:

At the September 21, 2022 Town Council meeting, the Town staff made a presentation outlining our intention to make three recommendations to provide financial relief to our utility customers and property taxpayers beginning in FY 2023-24. The genesis of looking at these issues was initiated at the February, 2022 Town Council Strategic Planning Session. The three items are:

1. Reduce Water Replenishment Fees by \$0.6M;
2. Eliminate Streetlight Improvement District Property Taxes (SLIDs); and
3. Creating a New Financial Policy to Maintain (Freeze) Primary Property Taxes for Existing Taxpayers for Five Years.

At the October 19, 2022 Town Council meeting, Town staff presented a recommendation to set the SLID property taxes at \$0 effective July 1, 2023. If approved, Resolution 1503-22 would implement that recommendation.

SLIDs are intended to recover the electricity costs associated with streetlights in a residential subdivision. The Town has ~130 separate SLIDs, impacting ~16K property owners. The costs, and therefore the property taxes, vary by SLID and property owner.

For FY 2022-23, the total amount of property taxes levied was \$93K. This amount is lower than the actual costs of \$200K because some SLIDs have cash balances that were used to reduce the revenues needed to pay the annual costs.

The annual cost of electricity totals about \$200K. This is the amount that would be absorbed by the Operating Budget over time if SLIDs were to be eliminated.

However, Resolution 1503-22 does not eliminate the SLID program, just the assessment of the property taxes. The existing SLIDs would remain and SLIDs would be created for new subdivisions as has been done in the past (no change). This would allow the Town Council the ability to reinstate the collection of property taxes at a future date. If the SLID tax collection accounting records were not maintained, it would be a significant undertaking to reinstate the program at a future date. The work to maintain the accounting recordkeeping is not significant and it preserves the Town Council's ability to collect these taxes again in the future if that was the decision.

It is staff's recommendation that Council reaffirm their intent to cost share as part of the annual budget process, and will be included in the enacting legislation to adopt the annual budget. Each year, staff will prepare the upcoming fiscal year's SLID expense estimates so that Council is informed of the amount the Town is paying. Should Council no longer choose to pay the SLID costs, the assessment of property taxes can be resumed. However, arrear amounts cannot be collected.

Fiscal Impact:

Once the existing cash balances are used up, approximately \$200K in annual electric expenses would not be assessed to taxpayers. These costs would be absorbed by the Town's Operating Budget.

Alternatives:

Any components of the recommendation could be changed. For example, the Town Council could decide to maintain part of the property tax (i.e. 50% of required funding instead of the recommended 100% reduction).

Attachment(s):

1. [Resolution 1503-22](#)
2. [Presentation: Elimination of SLIDs](#)

RESOLUTION NO. 1503-22

**A RESOLUTION OF THE COMMON COUNCIL OF THE
TOWN OF QUEEN CREEK, ARIZONA, DECLARING ITS
INTENTION TO PARTICIPATE IN THE ELECTRICITY COST
OF STREET LIGHT IMPROVEMENT DISTRICTS
ESTABLISHED PURSUANT TO SECTION 48-616, ARIZONA
REVISED STATUTES.**

WHEREAS, the Common Council of the Town of Queen Creek has established, and may continue to establish, Street Light Improvement Districts pursuant to Section 48-616, Arizona Revised Statutes; and

WHEREAS, pursuant to Section 48-616(A), Arizona Revised Statutes, the sole purpose of such districts is to purchase energy for the lighting of the public streets and parks within the district; and

WHEREAS, the Common Council of the Town hereby orders that the Town may participate in the cost of purchasing energy for such districts, as provided for in Section 48-616(F), Arizona Revised Statutes;

**NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE
TOWN OF QUEEN CREEK, ARIZONA, THAT:**

- Section 1. The Town may participate in the cost of lighting the streets and parts in Street Light Improvement Districts pursuant to Section 48-616(F), Arizona Revised Statutes.
- Section 2. The Town's participation in the costs of the Street Light Improvement Districts shall be set forth in the annual statements and estimates of the expenses of each district, which shall be noticed and published as required by Section 48-616, Arizona Revised Statutes.
- Section 3. Any remaining costs of each Street Light Improvement District shall be collected in the form of ad valorem taxes on the real and personal property located within the district as required by law.
- Section 4. Any resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.
- Section 5. This Resolution shall become effective and apply all costs of lighting the streets and parts in Street Light Improvement Districts to the Town starting July 1, 2023, resulting in a \$0 property tax assessment to property owners.

(Signatures appear on next page.)

PASSED AND ADOPTED by the Queen Creek Town Council, this ____ day of November 2022.

FOR THE TOWN OF QUEEN CREEK:

ATTESTED TO:

Jeff Brown, Vice Mayor

Maria Gonzalez, Town Clerk

REVIEW BY:

APPROVED AS TO FORM:

John Kross, Town Manager

Dickinson Wright PLLC
Attorneys for the Town

4886-3463-3274 v2 [53749-1]



Elimination of Streetlight Improvement District (SLID) Property Taxes

Town Council

November 2, 2022

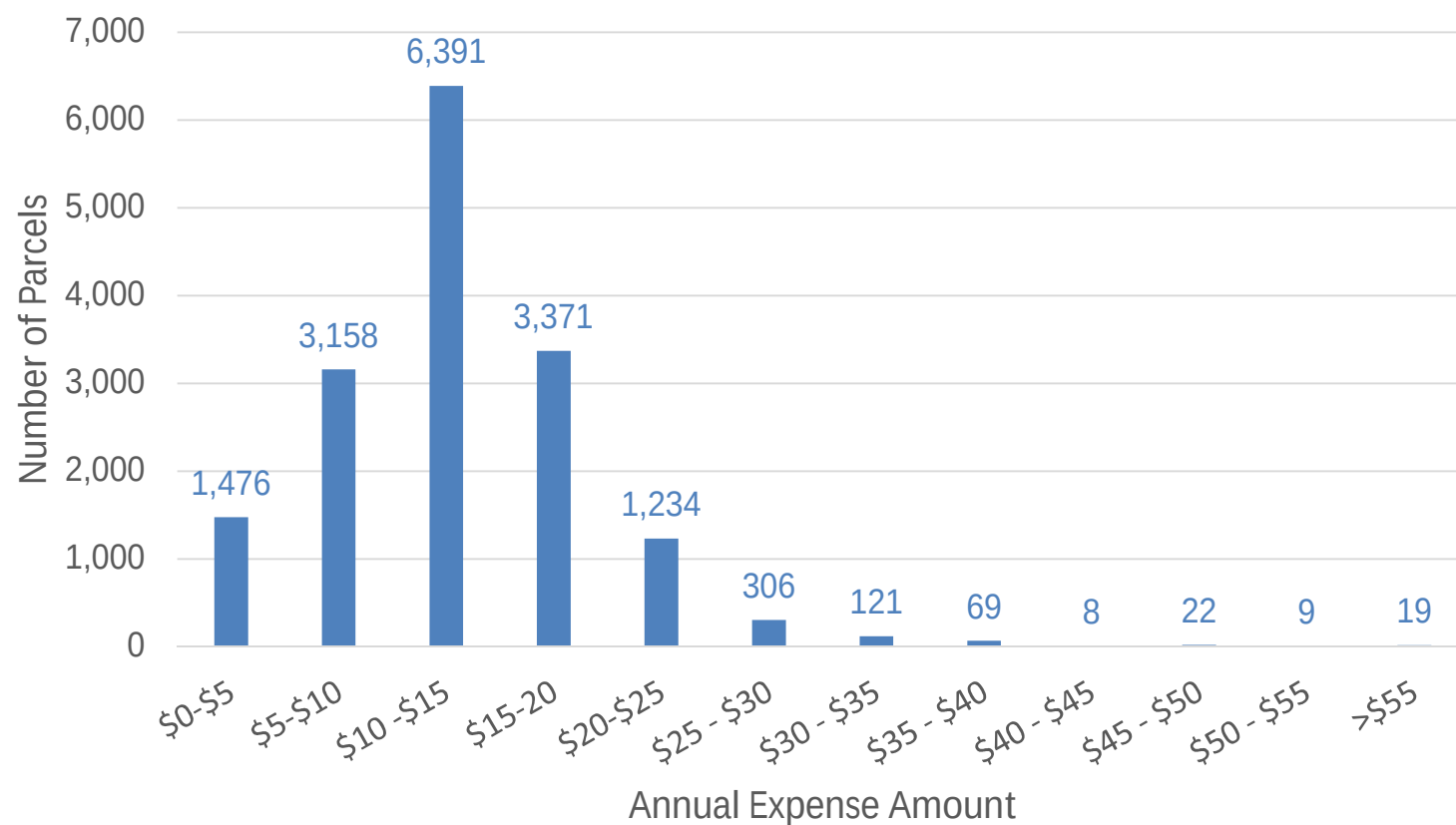
Purpose of Presentation

Consideration and Possible Approval of Resolution 1503-22 Setting Streetlight Improvement District (SLID) Property Taxes at \$0 Beginning in July 1, 2023

- Detailed Presentation at October 19th Town Council Meeting



Annual SLID Expense Amounts by Parcel: \$200K



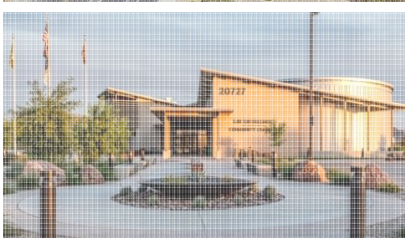
Resolution 1503-22

Effective July 1, 2023, Adopt a New SLID Financial Policy that:

- Maintains All Existing SLIDs
- Sets a Levy Rate of \$0 for All SLIDs (per ARS 48-616 (F))
- Uses Existing SLID Cash Balances to Offset Expenses Until Depleted (\$145K)
- Continues the Existing Process to Form New SLIDs with a \$0 Levy Rate
- Preserves the Town Council's Authority to Set a Levy Rate at Any Amount Greater the \$0 in the Future
 - Arrears Amounts Cannot be Collected

Motion

To Approve Resolution 1503-22 as presented





TOWN OF QUEEN CREEK ARIZONA

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS ICMA-CM, TOWN MANAGER

FROM: BRUCE GARDNER, ASSISTANT TOWN MANAGER, SALAMATULLAH SAYEED, ENGINEER

RE: CONSIDERATION AND POSSIBLE APPROVAL OF A WIRED TELECOMMUNICATIONS LICENSE AND RIGHT-OF-WAY USE AGREEMENT, AND REIMBURSEMENT AGREEMENT, WITH WYYERD CONNECT, LLC.

DATE: November 2, 2022

Suggested Action:

Motion to approve the Wired Telecommunications License and Right-of-Way Use Agreement, and Reimbursement Agreement, with Wyverd Connect, LLC.

Relevant Council Goal(s):

Superior Infrastructure – Capital Improvement Program

- Technology, 4.7 Continue to work with technology providers to provide services Town wide (cell, internet, fiber, etc).

Discussion:

Wyverd Connect LLC approached the staff in January to enter into an agreement with the Town of Queen Creek to install its fiber infrastructure throughout the Town's service area. Wyverd Connect LLC serves as an internet services provider (ISP) to provide fiber internet services and, if successful in obtaining a license agreement to build its infrastructure in the Town, will be a competitor to Cox and Lumen (CenturyLink) internet services. Wyverd is not a cable provider, which would require a franchise agreement. Wyverd has established agreements in Arizona within Surprise, Mesa, Buckeye, Tempe, Sun City, and El Mirage, as well as with Pinal County. Also, Wyverd is currently working with Goodyear and Peoria.

Arizona Revised Statutes (ARS) allows for the Town to enter into a license agreement with companies placing infrastructure in the Town right-of way (ROW). Related ARS requirements include:

- R.S. § 9-501(B) allows a telecommunications company to apply for either a license or franchise, but precludes a municipality from requiring a franchise (which requires an election).
- R.S. §§ 9-582 and 9-583 allow and limit fees that may be charged, and generally requires that the fees and agreements be "competitively neutral and non-discriminatory."
- R.S. §§ 9-582(C) The Town may also require the company to "bear all of the reasonable costs associated with construction, maintenance and operation of its facilities in the public highway

used to provide telecommunications services, including bearing reasonable costs associated with damage caused to public highways.”

A license agreement for a comprehensive project is advantageous because it helps the licensor (the Town) to lay out the guidelines and expectations of the work, but also to provide some protection of the Town’s infrastructure and resident’s property in a manageable process. The advantage for the licensee (Wyverd) is that it allows for the project to move more efficiently and expeditiously. Staff has been working with Wyverd on the agreement for the last several months after receiving initial direction from Council.

The license and reimbursement agreements allow the Town to recoup any costs and requires Wyverd to bear all of the costs associated with the project. Staff will be reimbursed for contracted staff that will support this project in the areas of permitting, project management, inspection, and traffic control planning. Any bluestaking operations for the project will also be reimbursed by Wyverd.

Wyverd has provided a tentative phasing map and schedule for the entire installation with actual construction to begin sometime after the beginning of the year (2023) for the backbone of the system. Wyverd will also be required to submit for traffic control plans well in advance of the work.

An important aspect of the agreement requires Wyverd to provide a detailed notice plan and how this communication will occur with HOAs and Neighborhoods. The communication plan consists of sending out an interest survey and postcard to residents several months prior in advance within the neighborhood. Concurrently, Wyverd will contact the respective HOA (if applicable). Within a month of construction an additional letter and notice, with associated FAQs will be sent. Within one week of construction, a door hanger notice will be delivered to each location. During construction, a dedicated website with dates and the impacted neighborhoods will be live. Residents will also have the option to sign up for email communications and send questions and concerns through email. A customer complaint number will be provided along with a business card for the particular contractor that is doing the work. For any complaints, follow-up will occur within 24-hours. Also, A-frame signs will be placed in and around the work areas.

Throughout the process, Town contracted inspectors will be conducting inspections of the pre and post work to ensure that the work is proceeding consistent with the agreement. The agreement requires Wyverd to repair and replace Town and resident infrastructure to the same or better condition after work is completed. Micro-trenching is not allowed as per the agreement, which tends to impede upon resident and Town property due to the shallow placement of the fiber.

Wyverd is required to provide assurance, such as a performance bond and indemnification that will continue throughout the project and after project completion. Additionally, the agreement provides an avenue for Wyverd to work with the Town to place conduit in order to help complete the Town's fiber infrastructure. In return, Wyverd may request to lease conduit from the Town.

Once the project begins, staff will provide Council periodic updates, regarding work completion.

The agreements are in the process of being finalized by the legal teams. The attached are current drafts and it is estimated that the final agreements will be provided prior to the meeting for signatures.

Additionally, Wyverd will be at the Council meeting to provide a presentation on their goals for

Queen Creek and will be available to respond to questions.

Fiscal Impact:

Because Wyverd will be required to bear all costs of the work, including reimbursing for contracted time for inspection, engineering review, project management, traffic control planning, and bluestake, the fiscal impact should be cost neutral. However, Finance will most likely need to make a mid-year adjustment to accept the reimbursements and to develop expenditure accounts for the contracted staff. We expect the mid-year adjustments to be made sometime in late January or sometime in February.

Alternatives:

The alternative is to not approve the agreements, and to require Wyverd to go through the Town's standard permitting process. This will still require additional staff assistance in the areas of inspection, engineering review, project management, traffic control planning, and bluestake and will cause the project to be delayed significantly. For this alternative, the Town would try and recoup costs through the standard permitting fees.

Attachment(s):

1. [Wired Telecommunications and Right-of-Way Use](#)
2. [Reimbursement Agreement](#)
3. [Draft Town Presentation](#)

WIRED TELECOMMUNICATIONS LICENSE AND RIGHT-OF-WAY USE AGREEMENT

This Wired Telecommunications License and Right-of-Way Use Agreement ("Agreement") is entered into this ____ day of November, 2022, by and between the Town of Queen Creek, an Arizona municipal corporation ("Town") and Wyverd Connect LLC, a Delaware limited liability company ("Licensee").

RECITALS

WHEREAS, Town owns public street and alley right-of-way and public utility easements within the boundaries of the Town of Queen Creek;

WHEREAS, Licensee has obtained from the Arizona Corporation Commission ("ACC") a Certificate of Convenience and Necessity ("CC&N") in Arizona Corporation Commission matter No. 78050 , dated June 24, 2021 (the "Certificate");

WHEREAS, Licensee desires the ability to install, operate, maintain and repair cable containing bundles of multiple optical fibers, within the right-of-way for the purpose of providing fiber-to-the-premise networks and fiber-based services, as authorized by the Arizona Corporation Commission, subject to the requirements of this Agreement;

WHEREAS, Licensee is a Competitive Local Exchange Carrier (CLEC) and will primarily install, operate, maintain, and repair fiber-to-the-premise networks and fiber-based services to homes, residences, and government agencies (including municipal facilities, schools, and police and fire departments), including telephone services, internet/broadband services, and end-to-end fiber-based services. While not its primary business focus, Licensee may also provide ancillary fiber-based services to enterprise and wholesale customer segments (non-residential or non-governmental customers);

WHEREAS, Town is authorized to regulate its streets, alley and public utility easements, and to grant, renew, deny, amend and terminate licenses for and otherwise regulate the installation, operation, repair, and maintenance of facilities within the Town's boundaries pursuant to the Queen Creek Municipal Code, and by virtue of federal (47 U.S.C. § 253) and state statutes (including, but not limited to, A.R.S. §§ 9-581, 9-582, and 9-583), by the Town's police powers, its authority over Town's public right-of-way, and its other governmental powers and authority;

WHEREAS, Town desires to reserve rights to construct, use, and allow others to construct and use all manner of additional improvements in the right-of-way, while granting Licensee a license to install, operate, maintain and repair Fiber Optic Cable within the Town's right-of-way;

WHEREAS, Licensee agrees to provide and maintain accurate maps showing the location of all Fiber Optic Cable owned or used by Licensee in the Town right-of-way, and to comply with such other mapping requirements as Town may establish from time to time;

WHEREAS, Licensee will secure the appropriate licenses, encroachments and other permits required by the Town for the placement of its Conduit Systems, Fiber Optic Networks, and related facilities within Town right of way;

WHEREAS, Licensee has agreed to comply with public property use requirements that Town has and may establish from time to time;

WHEREAS, Licensee has agreed to provide reimbursement for costs incurred by the Town for third-party review of permit applications, inspections, and related project management, the terms of such reimbursement to be established by separate agreement (the “Reimbursement Agreement”); and

WHEREAS, Licensee and Town desire to cooperate in further partnership agreements for additional projects for the benefit of the Town.

NOW THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by Licensee, and the covenants and agreements contained herein to be kept and performed by Licensee, and for other good and valuable consideration, the Town hereby grants to Licensee a telecommunication license and permission to use the public right-of-way pursuant to the terms and conditions set forth herein.

DEFINITIONS

Cable Services shall have the same meaning as the term “Cable Service,” defined in Chapter 17, Article 17-3 of the Queen Creek Municipal Code, herein incorporated by this reference, and in A.R.S. § 9-581. Cable Services is not a Telecommunications Service.

Conduit means pipes made of varying materials designed to protect buried Fiber Optic Cables.

Conduit System means any combination of Conduits, ducts, inner-ducts, manholes, and hand holes – all joined to form an integrated whole.

Dark Fiber means Fiber Optic Cables that have not been connected to transmission equipment or otherwise part of a Fiber Optic Network. Dark Fiber sales and leasing is not a Telecommunications Service.

Facilities means the plant, equipment, and property used in the provision of communication and Telecommunication Services and not owned by the Town, including, but not limited to, poles, wires, pipe, Conduit, pedestals, antenna, Fiber Optic Cables, and other appurtenances placed in, on, or under the ROW.

Fiber Optic Cable means a cable containing bundles of optical fibers used to carry optical signals. Fiber Optic Cables may be part of a Fiber Optic Network.

Fiber Optic Network means a communication system consisting of an optical transmitter used to convert an electrical signal into an optical signal to send into an optical fiber, Fiber Optic Cables routed through conduits and buildings, amplifiers, and an optical receiver to recover the signal as an electrical signal. A Fiber Optic Network contains Fiber Optic Cables and is used for the purpose of Telecommunications Services.

Gross Revenues means all cash, credits, property of any kind or nature, or other consideration, less related bad debt not to exceed one and one-half per cent annually, that is received directly or indirectly by the Licensee, its affiliates, subsidiaries or parent or any person, firm or corporation in which the Licensee has a financial interest or that has a financial interest in the telecommunications provider and that is derived from the Telecommunications Services provided in the area of jurisdiction. Gross revenues include all revenue from charges for Telecommunications Services to subscribers and all charges for installation, removal, connection or reinstatement of equipment necessary for a subscriber to receive Telecommunications

Services, and any other receipts from subscribers derived from operating the telecommunications system to provide Telecommunications Services, including receipts from forfeited deposits, sale or rental of equipment to provide Telecommunications Services, late charges, interest and sale of program guides. Gross revenues also include all income the Licensee receives from the lease of its facilities located in the public streets, roads and alleys, unless services that the lessee provides over the leased facilities are subject to a transaction privilege tax of the licensing authority. Gross revenues do not include revenues from fees, taxes or other fees or charges that the Licensee collects and pays to any governmental authority, any increase in the value of any stock, security or asset, or any dividends or other distributions made in respect of any stock or securities.

Right-of-Way ("ROW") means the roads, streets, highways, and alleys and all other dedicated public rights-of-way and public utility easements of the Town.

Telecommunications means the transmission of information, between or among points specified by a user, of the user's choosing, without change in the form or content of the information as sent and received. Telecommunications does not include commercial mobile radio services, pay phone services, interstate services, Cable Services, information services, or the sale or leasing of Dark Fiber for transmission purposes.

Telecommunications Services means the offering of Telecommunications for a fee directly to the public or to such users as to be effectively available directly to the public. Telecommunications Services does not include commercial mobile radio services, pay phone services, interstate services, Cable Services, information services, the sale or leasing of Dark Fiber for transmission purposes, or the sale or leasing of Conduit.

AGREEMENT

1. LICENSE; TERM

1.1. License; Route. The Town hereby grants to Licensee a non-exclusive, revocable license to use the designated portion of the ROW ("Route") subject to and conditioned upon Licensee's full, timely, complete, and faithful performance of all obligations required under this Agreement. Such use of the Route will be for the sole purpose of operating and maintaining a wired network as described in this Agreement. The Route will be occupied by Licensee's Conduit System, Fiber Optic Network, plant, equipment, and property used in the provision of communication and Telecommunication Services, including, but not limited to, poles, wires, pipe, Conduit, pedestals, antenna, Fiber Optic Cables, and other appurtenances placed in, on, or under the ROW (collectively, the "Licensee's Facilities") and is as reflected on the map (i.e. use area) in **Exhibit A**, herein incorporated by this reference. For the avoidance of doubt, under no circumstances shall the Route include any other property other than the ROW. Licensee may request modification or expansion of the Route by submitting all required permits for construction to the Town. Any modifications or expansions to the Route shall be governed by the terms and conditions of this Agreement and must be approved in writing by the Town in its sole discretion. Any modifications or expansions shall become part of the Route. Licensee shall not use any portion of the ROW that is abandoned by the Town or removed from the Town's legal boundaries or for any purpose other than that expressly stated this Agreement.

1.2. Term; Effective Date. This Agreement is effective the date the last party signs ("Effective Date") and shall remain in effect for five (5) years from the Effective Date ("Term"), unless

sooner terminated. No provision of this Agreement may be construed to grant any automatic extension, renewal, or replacement thereof.

- 1.2.1. Holdover. If Licensee's Facilities remain in the Route, and Licensee continues to use such Licensee's Facilities beyond the expiration of the Term, the Agreement shall be considered to be in a "Holdover Term," subject to the terms and conditions of this Agreement. Such Holdover Term, however, shall not exceed sixty (60) days beyond the expiration of the Term, and no permits will be issued to Licensee by the Town until a new license agreement has been approved by the Town Council.
 - 1.2.2. Failure by Licensee to have a valid license to use the Route or other ROW by the expiration of the Holdover Term shall result in immediate withdrawal and revocation of any existing permits issued by the Town to Licensee. If, however, Licensee has timely filed its application and is in active negotiations with the Town prior to the expiration of the Agreement, the Town may, in its discretion, grant, extend, or take no action on permits issued to Licensee prior to the expiration of the Agreement.
- 1.3. Renewal. The parties may extend the Term of this Agreement for up to three (3) additional five (5) year periods upon the mutual written consent of both parties. Such renewal must be made within one-hundred eighty (180) days prior to the termination of the initial Term of the Agreement or the then current renewal term, as applicable. Licensee understands that the Town may adopt future code amendments or fee schedules relating to use of the ROW, which may become applicable to this Agreement upon its initial or subsequent renewal. Licensee acknowledges the right of the Town to adopt and implement such lawful code amendments and/or fee schedules.
- 1.4. Amendments. This Agreement may not be amended without the written approval of both parties, except as described herein.
- 1.5. No Real Property Interest. Notwithstanding any provision in this Agreement to the contrary, and notwithstanding any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties, Licensee's rights in the Route is limited to the license rights created by this Agreement, which creates a revocable (subject to the terms and provisions herein), non-exclusive license in the Route. The Town and Licensee do not by this instrument intend to create a lease, easement or other real property interest. Licensee shall have no real property interest in the Route or any portion of the ROW. Licensee's rights hereunder are subject to all covenants, restrictions, easements, agreements, reservations and encumbrances upon, and all other conditions of title to, the Route. Licensee's rights hereunder are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions and orders of any local, state or federal agency, now or hereafter having jurisdiction over the Route or Licensee's use thereof.
- 1.6. "AS-IS" Condition. Licensee is responsible for the study and inspection of the Route to be used pursuant to this Agreement and for determining the fitness for use intended by Licensee. The Town expressly disclaims all warranties of merchantability or fitness for a particular purpose or absence of hazardous conditions associated with the Route and the ROW. Licensee accepts the Route and ROW in "AS-IS" condition, without representation or warranty of any kind by the Town, its officers, agents, or employees, and subject to all

applicable laws governing the use of the Route for the permitted uses allowed by this Agreement.

- 1.7. Mapping Requirement. Licensee shall maintain as-built drawings of Licensee's Facilities located within the Route and furnish a copy to the Town using as-builts in pdf and AutoCAD. Upon completion of new or relocation construction of Licensee's Facilities in the Route, Licensee shall create and maintain precise, up-to-date maps of any of Licensee's Facilities and the Route using as-builts in pdf and AutoCAD and will make this information available to the Town.
- 1.8. Dark Fiber. To the extent Licensee occupies the ROW with empty Conduit and/or Dark Fiber and/or uses the ROW to provide services other than the Telecommunication Services as defined by A.R.S. § 9-581, such use or occupation of the ROW is subject to the terms and conditions of this Agreement and any applicable fees, permits, and laws.
- 1.9. Cable System. If Licensee obtains or seeks federal, state, or local approval to provide Cable Services over Licensee's Facilities within the Town, this Agreement shall remain in effect according to its terms, and Licensee shall continue to pay any fee required by this Agreement, regardless of any legal or regulatory provisions, permits or other processes or rules that might now or hereafter provide otherwise. This Agreement does not allow Licensee to provide one-way transmissions by anyone directly to customers or any other type of video programming or other programming or transmission within the Town that may be subject to a cable television license or franchise within the Town's boundaries.
 - 1.9.1. Licensee shall not use Licensee's Facilities to provide Cable Services, cable television, or for open video service without the proper formal authorization by the Town in separate agreements.
 - 1.9.2. Licensee may enter into User Contracts, as defined in Section 3.8, to allow third-parties to use Licensee's Facilities for Cable Services, cable television, or for open video service only if the third-party has already entered into the proper agreements with the Town that allows the third-party to conduct such activities.

2. USE OF THE ROW; PERMITS

- 2.1. Maintenance of Licensee's Facilities. Licensee shall be solely responsible for all maintenance, repair, and provision of all utilities for Licensee's Facilities under this Agreement. Licensee shall at all times repair and maintain Licensee's Facilities and the Route at Licensee's sole expense in a sound, clean, safe manner, meeting or exceeding the best industry practices.
- 2.2. Liability for Licensee's Work. For purposes of this Agreement, whenever work is done in the ROW or adjacent to the ROW as part of any work Licensee is performing in the ROW, Licensee agrees that it is solely responsible for the acts, errors, omissions, and any negligence of any or all persons, firms, partnerships, corporations, associations or other organization, or a combination of any of them, including any subcontractor hired and/ or used by Licensee, that performs services or provides goods relating to this Agreement and that the obligations of this Agreement are imposed on both Licensee and any of Licensee's contractors (and any subcontractors used thereunder), who will be considered Licensee's representatives and for whom Licensee will be responsible.

- 2.3. Licensee shall ensure that Licensee and its employees, agents, contractors, and representatives comply with all ROW use requirements, including, but not limited to, the following:
- 2.3.1. Licensee shall ensure that Licensee's Facilities are constructed, installed, operated, repaired, and/or maintained in accordance with the Queen Creek Town Code and established practices with respect to the ROW, including, but not limited to, obtaining the proper permits prior to commencing any work and following all terms and conditions of such permits.
 - 2.3.2. Licensee shall construct Licensee's Facilities pursuant to the project schedule and phase map attached hereto as **Exhibit B** and incorporated herewith ("Project Schedule and Map"). Licensee may make changes to the Project Schedule and Map and shall notify the Town in writing and **Exhibit B** shall be amended to reflect the then current agreed upon Project Schedule and Map. The Project Schedule and Map notwithstanding, Wyverd agrees that the issuance of permits is subject to Town's control, and may be impacted by factors including, without limitation, staffing, permit processing turnaround, Licensee's public notice and outreach, traffic control, and potential or actual interference with other utilities and permitted users of the ROW.
 - 2.3.3. Licensee shall submit for permits pursuant to this Section 2 in accordance with the Project Schedule and Map, but subject to the performance bond limit as provided in Section 4.14.2. In an effort to reduce the burden imposed on Town by a high volume of permit submittals, Licensee and the Town Engineer shall coordinate permit submittals to cover portions of the phase map at the neighborhood or subdivision and plat level where possible.
 - 2.3.4. Licensee's use of the ROW shall be according to plans which shall be approved by the Town Engineer, provided that such approval of plans shall not be unreasonably withheld or delayed, but which must comply with all of Town's processes and requirements.
 - 2.3.5. Licensee's Facilities to be constructed, installed, operated, maintained, upgraded, and/or removed shall be located or relocated as to interfere as little as possible with traffic or other authorized uses within the ROW. Any phases of construction and/or installation relating to traffic control, backfilling, compaction, paving, and/or location or relocation of Licensee's Facilities shall be subject to regulation by the Town Engineer.
 - 2.3.6. Provided such guidelines complies with State and Federal law, the Town may issue reasonable policy guidelines to all Telecommunications Services licensees/permittees to establish procedures for determining how to control the issuance of engineering permits to multiple licensees/permittees for the same one-mile segments of the ROW (or such other areas as determined by the Town Engineer). Licensee agrees to cooperate with the Town in establishing such policies with procedures established by the Town Manager or their designee to coordinate the issuance of multiple engineering permits in such segments of the ROW.

- 2.3.7. Licensee and its employees, agents, contractors, and representatives are subject to the Town's exercise of its police, regulatory, and other powers as the Town now has or may later obtain, and a license or other agreement may not waive application of the same. The Town shall have continuing jurisdiction and supervision over any construction and facilities located within or on the ROW, including, but not limited to, Licensee's Facilities. Daily administrative, supervisory, and enforcement responsibilities are hereby delegated and entrusted to the Town Manager or their designee to interpret, administer, and enforce the provisions of this Agreement. Licensee and the Town shall follow the procedures set out in Section 2.24 in the event of interference with utilities, other permitted users of the ROW, or in the event of a violation of this Agreement.
- 2.4. Permits before Construction/Installation. Licensee may not install, construct, locate, or attach any Licensee's Facilities to any property within the Town, including the ROW, until Licensee has applied for and received approval for permits from the Town Engineer. Licensee shall be solely responsible for any and all acts, errors, omissions, and negligence of Licensee's contractors (and any subcontractors used thereunder) who are involved in the design, installation, construction, maintenance, repair, location, relocation, and/or any other activity involving Licensee's Facilities subject to this Agreement. Licensee and Licensee's contractors (and any subcontractors used thereunder) shall comply with all provisions of the Queen Creek Town Code, including, but not limited to, off-site construction regarding streets and sidewalks and other applicable Town and/or Maricopa or Pinal County regulations. All rights hereunder are granted under the express condition that the Town shall have the power at any time to impose lawful restrictions and limitations upon, and to make regulations as to Licensee's use of the ROW as may be deemed best for the public interest, safety, or welfare, to the same extent that such restrictions and limitations are applied to all non-governmental occupants/users of the ROW.
- 2.5. Details/Specifications for Permits. Licensee shall submit all applicable permit applications together with the details, plans, and specifications for Town review and approval. Licensee shall not have to pay for any applicable application, review, and inspection fees as agreed upon between the Town and Licensee; however, Licensee has agreed to be responsible for certain cost reimbursement as covered in the Reimbursement Agreement.
- 2.6. Stipulations. Licensee and its contractors shall abide by all stipulations of all licenses and permits issued.
- 2.7. Permits for Relocation. If Licensee desires to change the location of any portion of Licensee's Facilities from the initial permit application(s), Licensee shall apply for and obtain approval for an amendment to the permit prior to installation or construction, which approval shall not be unreasonably withheld or delayed.
- 2.8. Criteria for Approval. The Town will approve or deny applications based on the availability of space at the location(s) sought by Licensee, safety, and other considerations in accordance with the Queen Creek Town Code, the Town's practice, applicable ROW construction regulations, and other applicable laws.
- 2.9. Construction Standards. Any of Licensee's Facilities placed in the ROW shall be constructed using industry standard boring and trenching construction methods, which shall be described in Licensee's permit applications and approved by the Town's Engineer in the Town Engineer's reasonable discretion. Town Engineer's disapproval of

microtrenching and other construction methods not favored by the Town shall not be considered unreasonable for the purposes of this Agreement. Other material placed in the ground may include concrete manholes, generally 4x4x4, pull boxes/handholes (#7s and #9s) and HDPE couplings and elbows, fiber optic cable, splice cases, tracer wire, grounding material, mule tape, jet string and conduit plugs. Licensee and/or its contractors shall install any new Conduit and access points (e.g. manholes, pull boxes) using industry standard practices and in full compliance with the Uniform Standard Specifications for Public Works Construction sponsored and distributed by the Maricopa Association of Governments ("MAG") as amended, the Town's supplements to MAG standards, and any applicable engineering and utility development standards, guidelines and checklists issued by the Town (collectively, "EDS").

- 2.9.1. Aerial Facilities. Town and Licensee agree that all of Licensee's Fiber Optic Cables shall be installed underground, and that Licensee shall not place Fiber Optic Cables above ground without the Town Engineer's written approval, to be granted in Town Engineer's sole discretion.
- 2.10. Written Approval for Changes. Licensee shall obtain written approval from the Town Engineer or their designee if Licensee desires to change any components of any Licensee's Facilities, which shall not be unreasonably withheld, delayed, or denied.
- 2.11. Work Restrictions/Requirements. Licensee shall comply with and ensure that its contractors comply with the Town's policies concerning construction in the ROW, including submission and compliance with a traffic management plan as required by the Public Works Director ("Queen Creek Work Policies"), as amended from time to time, herein incorporated by this reference. All of Licensee's work under this Agreement shall follow the Queen Creek Work Policies, which includes, but is not limited to, defined road types, allowable hours of work and holiday/event restrictions, and other work requirements and restrictions. The Town will provide the Queen Creek Work Policies as requested and may be found on the Town of Queen Creek website.
- 2.12. Right to Inspect. The Town shall have the right, but not the obligation, to inspect all construction and/or installation work performed subject to the provisions of this Agreement and to make such tests as the Town deems necessary to meet the Town's standards, the Queen Creek Work Policy, the MAG Uniform Standard Specifications and Standard Details for Public Works Construction, and any and all applicable Town supplements thereto.
- 2.13. Common Installations. Licensee and the Town shall reasonably coordinate the installation of Licensee's Facilities with other utilities to accommodate opportunities for common installation, including the installation of additional conduit for the Town's uses, upon written notice from the Town in advance of any installation of Licensee's Facilities. Licensee and the Town shall be responsible for the costs associated with installation of their respective conduit under this Section 2.13, except as otherwise provided in Section 4.16.
- 2.14. Boring; Street Openings. Although the exact placement and location of Licensee's Facilities shall be determined by the Town through the permitting process, Licensee has expressed its intent and the Town has expressed its desire to have such Licensee's Facilities installed outside of the paved street area whenever such location is feasible and reasonable. Licensee and the Town further agree to mutually and reasonably cooperate to identify planned Town projects or third-party projects that require excavation of streets

and that are in the same location as the planned or intended Licensee's Facilities, and that Licensee will coordinate with the Town to install empty Conduit at the time of the excavation for those Town projects or third-party projects, and otherwise make all reasonable efforts to prevent the need for multiple excavations of Town streets. The Town shall provide reasonable and timely notification to Licensee of such projects that require excavation of the streets. If Licensee intends to place Licensee's Facilities by directional boring under such streets when feasible and reasonable, said bore profiles based on vacuum pothole information shall be part of the engineered plans to be submitted to the Town. Arterial streets shall not be bored, unless approved by the Town Engineer in writing.

2.15. Dedicated Personnel. Licensee shall provide and identify a representative (e.g. project manager) who shall be the contact person for the Town during any construction periods.

2.16. Adjacent Property-Owners. Licensee shall provide written notice to adjacent property-owners, adjacent homeowners' associations, all residents of any adjacent subdivisions or planned communities, and any other individuals or entities having lawful control of adjoining property (collectively, "Residents"), of any activity by Licensee that may interfere with access to said property (including ingress and egress to said subdivisions or planned communities) during all construction activities or other operations, except to the extent that this requirement of maintain access is waived in writing by the Residents. Such written notice shall be provided at least thirty (30) business days in advance of such activity. If an emergency requires activity without such written notice, Licensee shall use commercially reasonable efforts to provide timely actual notice to Residents. Upon request, Licensee shall promptly provide the Town with the documentation of such permission from such affected property owner.

2.16.1. Furthermore, Licensee shall conduct a comprehensive notice plan ("Comprehensive Notice Plan") for Residents. The Comprehensive Notice Plan shall include (i) providing an interest survey and postcard several months in advance of construction activities to Residents, (ii) providing a written notice that includes FAQs thirty (30) days in advance of construction activities to Residents, (iii) providing door hangers one (1) week prior to construction to Residents, and (iv) placing A-frame signs in and around construction activities.

2.16.2. Residents may opt-in to receive email communications, send his or her concerns via email, and check where impacted neighborhoods are at on the following website: <https://www.fiber.events/>. Residents shall receive a customer complaint number and business card from the contractor completing the construction activities. All customer complaints will receive a follow up communication within twenty-four (24) hours of submitting a complaint.

2.17. Opening/Alteration. Whenever Licensee or Licensee's contractors (and any subcontractors used thereunder) shall cause any opening or alteration to be made for any purpose in any public streets or public places the opening or alteration shall be initially restored (i.e. cold patching etc.) with due diligence within seven (7) business days following completion of Licensee's work which necessitated such opening or alteration, weather permitting. Licensee shall complete final restoration of the opening or alteration thereafter within a commercially reasonable timeframe (typically within 30 days of the initial restoration). Licensee shall upon the completion of the opening or alteration, restore the property, improvements or landscaping disturbed by Licensee or Licensee's contractors (and any subcontractors used thereunder) to a condition substantially

comparable to the condition before the opening or alteration and the restoration shall be performed with due diligence within a reasonably prompt time.

- 2.18. Restoration. After any work, installation, repair, maintenance, replacement, or relocation work performed in the Route, Licensee shall restore all disturbed areas of the Route, affected ROW, and any affected surrounding property to the same condition or better that existed immediately prior to the commencement of the installation, repair, maintenance, replacement or relocation work. Such restoration includes, but is not limited to, repairing and/or replacing to the Town's standards, rules, and policies (as amended from time to time) all pavement, sidewalks, curbs, landscaping, or other Town improvements that may be disturbed or damaged by Licensee's activities or work under this Agreement.
- 2.19. Clean; Removal of Debris. Licensee and/or its contractors shall, during construction and upon completion of the work, remove all temporary construction facilities, debris, and unused materials provided for in the work, and put the work site, the Route, the ROW, and any other affected area in a safe, neat, and clean condition.
- 2.20. Safety. Licensee and its contractors shall be solely and completely responsible for the conditions of any job site, including safety of all individuals (including employees) and property, during performance of the work. This requirement shall apply continuously and is not limited to normal working hours. The safety provisions herein shall conform to all applicable federal (including OSHA), state, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the stricter requirement shall be followed. Licensee's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve Licensee from compliance with these provisions.
- 2.21. Traffic Control. Licensee shall comply with the following traffic control requirements:
 - 2.21.1. Licensee's traffic control shall comply with the Queen Creek Work Policies, herein incorporated by this reference. Licensee shall follow the guidelines contained in the latest editions of the Manual on Uniform Traffic Control Devices ("MUTCD"), herein incorporated by this reference, and the City of Phoenix Traffic Barricade Manual, herein incorporated by this reference. Licensee shall additionally comply with any special provisions herein.
 - 2.21.2. At the time of the pre-construction conference, Licensee shall designate an individual who is well qualified and experienced in construction traffic control and safety, to be responsible for implementing, monitoring, and altering traffic control measures as necessary to insure that traffic is carried through the work area in an effective manner and that motorists, pedestrians, bicyclists, and workers are protected from hazards and accidents. Any entity wishing to obtain a permit to place, maintain, and/or remove temporary traffic control within the Town of Queen Creek shall obtain an annual traffic control permit from the Town per the Queen Creek Work Policies. At the same time, the Town shall designate a representative who will be responsible for ensuring that all traffic control and traffic control alterations are implemented per the traffic control specifications as defined in the approved traffic control plan.
 - 2.21.3. Licensee shall have the full responsibility and liability for traffic control for a project. Licensee shall submit a traffic control plan ("Traffic Control Plan") to Traffic Engineering for approval – thirty (30) business days prior to beginning work under

this Agreement. The Traffic Control Plan shall include all motor vehicles, bicyclists, and pedestrians. Licensee shall not begin construction until the Traffic Control Plan is approved by the Town. An approved Traffic Control Plan shall be maintained onsite during all phases of construction; otherwise, construction will cease until the Traffic Control Plan is approved. During construction it may be necessary to alter traffic control as approved by Traffic Engineering. Alterations to traffic control shall be in accordance with Queen Creek Work Policies, the latest edition of the MUTCD, and/or the latest edition of the City of Phoenix Traffic Barricade Manual. The most restrictive manual shall apply. Licensee shall pay any and all applicable barricade fees. The Town agrees to waive all Traffic Control Plan fees and agrees to be reimbursed pursuant to the Reimbursement Agreement.

- 2.21.4. In the event Licensee or Licensee's contractors (and any subcontractors used thereunder) damages any traffic signal equipment, traffic signal conduit, loop detectors, and/or circuits, Licensee shall have them repaired immediately at its expense by an electrical contractor that has had traffic signal experience which is pre-approved by the Town. Any damage repaired by the Town will be billed to Licensee at cost.
- 2.21.5. Licensee shall notify all adjacent and/or affected residents and/or businesses in advance of any street, alley, sidewalk, and driveway closures per the Temporary Work Zone Traffic Management Policy so that they can make suitable arrangements to have all vehicles moved to a satisfactory location outside the closed area.
- 2.21.6. Pedestrian access shall be maintained along the length of the project at all times per the requirements of the ADA and as approved by Traffic Engineering.
- 2.22. Arizona 811. Licensee and Licensee's contractors (and any subcontractors used thereunder) shall comply with A.R.S. §§ 40-360.21 through 40-360.32 and participate as a member of Arizona 811 with the necessary records and persons to provide location service of Licensee's Facilities upon receipt of a locate call or as promptly as possible, but in no event later than two (2) working days. A copy of the agreement or proof of membership shall be filed with the Town Engineer.
- 2.23. Compliance with Laws. Licensee shall comply with all applicable laws as amended from time to time, including but not limited to, the Queen Creek Town Code, Arizona law, and federal law in the exercise and performance of its rights and obligations under this Agreement. If it is necessary for Licensee to comply with any law or regulation of the Federal Communications Commission ("FCC") or the ACC) to engage in the business activities anticipated by this Agreement, Licensee shall comply with such laws or regulations. Provided, however, no such law or regulation of the FCC or ACC shall enlarge or modify any of the rights or duties granted by this Agreement without a written modification to this Agreement.
- 2.24. Operational Notice and Cure Procedure. Licensee agrees to use commercially reasonable efforts to follow all of the processes and procedures contained in this Section 2, including, but not limited to, communications with the Town, HOAs, and impacted residents, restoration, etc. If the Town determines that Licensee is not complying with these processes and procedures, then the Town may provide Licensee written notice of the alleged non-compliance. If Licensee receives such written notice from the Town, then

Licensee shall have three (3) business days to investigate the alleged non-compliance items and provide a written response to the Town regarding the subject items and what steps Licensee is going to take to rectify same. Licensee shall then have ten (10) days to cure all applicable non-compliance items. If Licensee fails to cure all applicable non-compliance items within such time period, then the Town may impose a reasonable temporary reduction in Licensee's construction activity within the Town, or Town may impose a cessation of work under the permit at issue, until the Town is satisfied that all items have been adequately addressed.

3. **NON-EXCLUSIVITY; THIRD-PARTY CONTRACTS**

- 3.1. Non-Exclusive. This Agreement is non-exclusive and nothing herein shall prevent the Town from granting like or similar privileges to any other individual or entity.
- 3.2. Town's Control of ROW. Any and all rights granted to Licensee shall be subject to the prior and continuing right of the Town to use and manage the ROW exclusively or concurrently with any individuals and/or entities and to manage the Town's own conduit, fiber optic cables, or facilities. Any and all rights granted to Licensee shall be subject to all deeds, easements, dedications, covenants, restrictions, encumbrances, and claims to title which may affect public property. Nothing in this Agreement shall be construed to grant, convey, create, or vest any real property interest in land to Licensee, including any fee or leasehold interest, easement, or any franchise rights. The Town shall have full authority to regulate, on a non-discriminatory basis, use of the Route and the ROW and to resolve competing demands and preferences regarding use of the Route and the ROW and to require Licensee to cooperate and participate in implementing such resolutions. Without limitation, the Town may take any or all of the following into account in regulating use of the Route and the ROW:
 - 3.2.1. All timing, public, operational, financial, and other factors affecting existing and future proposals, needs, and plans for Competing Activities, as defined in Section 3.6;
 - 3.2.2. All other factors the Town may consider relevant, whether or not mentioned in this Agreement; and/or
 - 3.2.3. Differing regulatory regimes and/or laws applicable to claimed rights, public benefits, community needs, and all other factors relating to Competing Activities, as defined in Section 3.6.
- 3.3. Accommodate Town's Activities. Nothing in this Agreement shall be construed to prevent the Town from abandoning, altering, improving, repairing, or maintaining its facilities and/or the ROW, and for that purpose to require Licensee, at no expense to the Town, to remove, relocate, or abandon in place Licensee's Facilities in order to accommodate the activities of the Town. The Town shall not be liable for lost revenues sustained by Licensee, however caused, because of damage, modification, alteration, or destruction of Licensee's Facilities in the ROW, when such costs or lost revenues result from the construction, operation, and/or maintenance of Town facilities and/or the ROW, provided that the activities resulting in such costs or lost revenues are conducted in accordance with applicable laws and regulations.

- 3.4. Town's Rights. There is hereby reserved to the Town every right and power required pursuant to this Agreement to be herein reserved or provided by any lawful ordinance or law, and Licensee by its execution of this Agreement agrees to be bound thereby and to comply with any lawful action or lawful requirements of the Town in its exercise of such rights or power, heretofore or hereinafter enacted or established. Neither the granting of any agreement nor any provision hereof shall constitute a waiver or bar to the exercise of any lawful governmental right or power of the Town.
- 3.5. Interference with Communications Operations. Licensee shall not install, operate, or allow the use of any equipment, methodology, or technology that may or would interfere with the optimum effective use or operation of the Town's existing or future fire, emergency, or other communications equipment, methodology, or technology. Licensee shall be responsible to ensure compliance with this requirement by all persons using the Route through or under Licensee. If such interference should occur, Licensee shall immediately discontinue using the equipment, methodology, or technology that causes the interference until Licensee takes corrective measures to alter the Route
- 3.6. Competing Activities. Licensee accepts the risk that there may exist, now or in the future, all manner of work and improvements upon the ROW ("Competing Activities"). Competing Activities include, but are not limited to, laying construction, erection, installation, use, operation, repair, replacement, removal, relocation, raising, lowering, widening, or realigning, whether above, upon, or below the surface of the ROW and whether occasioned by the existing or proposed uses of the ROW or existing or proposed uses of adjoining or nearby land, (i) all manner of streets, sidewalks, alleys, trails, ways, and traffic control devices of every description, (ii) all manner of other transportation facilities and their appurtenances, (iii) all manners of pipes, wires, cables, conduits, sewers, storm drains, pumps, valves, switches, conductors, connectors, poles, supports, access points and guys of every description, (iv) all manner of other utility facilities and their appurtenances, (v) all manner of canals, drains, bridges, underpasses, culverts and other encroachments of every description and all manner of other facilities and their appurtenances, and (vi) all other uses of the ROW that the Town may permit from time to time.
- 3.7. Subordinate Rights. Any right or privilege claimed pursuant to this Agreement by Licensee for any use of the ROW shall be subordinate to: (i) any prior or subsequent lawful occupancy or use thereof by the Town or any other governmental entity; (ii) any prior lawful occupancy or use thereof by any other individual or entity; and (iii) any prior easements therein, provided however, that nothing herein shall extinguish or otherwise interfere with the property rights established independent of this Agreement. Licensee shall not obstruct, impede, disrupt, or interfere with or prevent any Competing Activities or any person or entity that has prior or subsequent rights to use the Route and/or ROW.
- 3.8. Third-Party Contracts. Licensee may enter into contracts with third-parties ("ROW Users") in the ordinary course of Licensee's business for use of Licensee's Facilities within the Route, subject to this Agreement. Such contracts ("User Contracts") are subject to all terms and conditions of this Agreement, including, but not limited to, the following:
- 3.8.1. No ROW User shall transmit data over Licensee's Fiber Optic Network, use Licensee's Facilities, or use the Route for any purpose, except under a User Contract with Licensee;

- 3.8.2. ROW Users shall not perform any construction, maintenance, repair, or any other work in the ROW, unless a ROW Users has a separate agreement with the Town to do so; and
- 3.8.3. Identities of ROW Users shall be disclosed to the Town, upon reasonable request, but will be deemed confidential if consistent with Arizona public records laws.
- 3.9. Disruption by Others. The Town and its officials, agents, employees, or contractors shall not be liable to Licensee or its customers, the ROW Users, or other contractors for any service disruption or for any other harm caused to them or the Route due to Competing Activities.
- 3.10. Compliance with Agreement. Licensee shall cause all persons and/or entities using the ROW through or under Licensee or this Agreement to comply with all terms and conditions of this Agreement. Licensee is responsible for any and all violations of this Agreement by persons and/or entities using the ROW through or under Licensee or this Agreement.

4. **FEES**

- 4.1. Town's Right of Fair and Reasonable Compensation. By entering into this Agreement, neither party waives any current or future rights reserved under the law or the Telecommunications Act of 1996, including, but not limited to, those rights pursuant to Section 253(c) that reserve the Town's right to manage the ROW and to require fair, non-discriminatory and reasonable compensation from Licensee for use of the ROW.
- 4.2. Licensee's Payments. Licensee shall pay to the Town each of the following separate and cumulative amounts (collectively, the "Fee Payment"):
 - 4.2.1. [Intentionally Omitted]
 - 4.2.2. [Intentionally Omitted]
 - 4.2.3. An amount (the "Violation Fee Payment") based on certain breaches by Licensee of this Agreement as set out below.
 - 4.2.4. An amount (the "Transaction Privilege Tax") based on any qualifying services under the Queen Creek Tax Code.
 - 4.2.5. All other amounts required by this Agreement.
- 4.3. [Intentionally Omitted]
- 4.4. Appropriate Taxes. Licensee shall pay any applicable Town, county and state transaction privilege and use taxes. Such taxes are in addition to any non-tax amounts owed by Licensee pursuant to this Section.
- 4.5. Permit Fee Payment. The Town agrees that no permit fee or other related fees shall be payable by Licensee for any permits related to this Agreement, including, but not limited to, charges for encroachment permit applications, issuance, inspection, testing, plan review, and any other fees adopted by the Town and applicable to persons doing work or

encroaching in the ROW; however, Licensee has agreed to be responsible for certain cost reimbursement as covered in the Reimbursement Agreement.

- 4.6. Adjustments. All fixed dollar amounts stated in this Agreement shall be automatically adjusted upward annually on July 1st. The adjustment shall be made on the basis of changes in the United States Consumer Price Index for all Urban Consumers (CPI-U), Phoenix Area, all items, published by the United States Bureau of Labor Statistics (the "Cost of Living Index"). The period from January to June immediately preceding the then-current anniversary of the Commencement Date shall be the "Current Year 1st Half," and the period from January to June for the year before that shall be "Base Year 1st Half." (For example, if the Commencement Date were September 1, 2019 and the increase in the Annual Fee Payment were being calculated for the Year beginning September 1, 2020, then the increase would be the increase in the CPI-U from 1st Half 2019 to 1st Half 2020). This computation is expressed by the following formula:

$$\frac{\text{Current Year 1st Half}}{\text{Base Year 1st Half}} \times \text{Current Amount} = \text{Adjusted Fee}$$

provided, that in no event shall any amount be adjusted downward from any previous period. If the Cost of Living Index has not been published on any adjustment date, the Town shall have the right to estimate the Cost of Living Index and to make the adjustments based on such estimate, subject to adjustment when the actual figures become known. If such Cost of Living Index shall, for any reason whatsoever, not be published or readily identifiable at the adjustment date, an index published by any state or federal agency or an index, formula or table accepted generally by the real estate profession shall be used as chosen by the Town in the Town's reasonable discretion. Any delayed adjustment shall be effective retroactively. For example, which shall be used only as an example:

Fee for Failure to properly restore public ROW

	1st Half		2019		2020	%
YEAR	CPI-U		Fee		Adjusted Fee	of change
2020	145.122	X	600.00	=	616.60	2.8%
2019	141.214					

- 4.7. Fee Payment Cumulative. All items of Fee Payment shall be cumulative and separate from each other.
- 4.8. Fee Payment Schedule. Except as specifically provided elsewhere for Violation Fee Payment, Licensee shall pay all other fees on the following schedule:
- 4.8.1. All other fees shall be payable quarterly in arrears on the last calendar day of the first month of the next calendar quarter. For example, the Violation Fee Payment for the first calendar quarter of a year shall be payable on or before April 30.
- 4.9. Fee Payment Amount Report. Each installment of Fee Payment by Licensee shall include a report showing the manner in which each component of the Fee Payment was

calculated. The report shall summarize the transactions giving rise to the License Fee Payment.

4.10. Damage Fees. Licensee shall pay all reasonable costs associated with any damage caused by Licensee or its subcontractors, employees, or agents to the ROW or other public property.

4.11. Violation Fee Payment. During the Term of this Agreement, the Town may suffer certain money damages in the form of administrative cost and inconvenience, disharmony among Competing Activities, and general inconvenience in ROW use by the Town, Competing Activities, and the public as a result of an uncured violation of this Agreement by Licensee ("Inconvenience Costs"). Assessing the actual damages for these Inconvenience Costs may be impracticable to determine. In lieu of paying the actual damages for these Inconvenience Costs, the Town may assess Violation Fee Payments against Licensee to cover the damages that caused the Inconvenience Costs and is as described in Section 4.11.1. The Violation Fee Payments will be assessed with the processes described in Section 4.11.2. The Violation Fee Payments are only intended to remedy the Inconvenience Costs that the Town suffers. Licensee's payment of Violation Fee Payment does not in any way excuse any breach by Licensee of this Agreement or limit in any way the Town's obtaining any other legal or equitable remedy provided by this Agreement or otherwise for such breach. For example, Licensee's obligation to pay Violation Fee Payment does not in any way detract from Licensee's indemnity and insurance obligations under this Agreement, which shall apply according to their terms in addition to Licensee's obligation to pay Violation Fee Payment. Provided however, that if the Town determines to exercise any other legal or equitable remedy provided by this Agreement or otherwise, Town may not, in addition to such remedy, assess a Violation Fee Payment. Except for any failure to properly restore the public ROW under 4.11.1.1, or other violation of this Agreement by Licensee that in the Town's sole determination may impact the health, safety, or welfare of the public, Town shall use reasonable efforts to notify Licensee of any violation of this Agreement and permit Licensee an opportunity to cure such violation in accordance with the applicable cure period in this Agreement or as otherwise agreed by Town.

4.11.1. The Violation Fee Payments per calendar day or part thereof are as follows:

4.11.1.1. The amount of Six Hundred Dollars (\$600.00) per calendar day for Licensee's failure to properly restore the public ROW or to correct related violations of specifications, code, ordinance or standards within ten (10) calendar days after the Town's notice to correct such defects except where such curative efforts by Licensee are precluded by a force majeure event. Such Violation Fee Payment shall be in addition to any cost the Licensor may incur to restore the ROW or correct the violation.

4.11.1.2. Following a ten (10) day notice to cure, the amount of Two Hundred Fifty Dollars (\$250.00) per calendar day for each failure to make Licensee's books and records available as required by this Agreement.

4.11.1.3. The amount of Five Thousand Dollars (\$5,000.00) for any unauthorized partial or total assignment of this Agreement.

- 4.11.1.4. The amount of Five Hundred Dollars (\$500.00) per instance of any other action or non-action by the Licensee in violation of this Agreement that causes Inconvenience Costs and that is not cured after three (3) calendar days' notice.
- 4.11.2. Process for assess a Violation Fee Payment:
 - 4.11.2.1. If the Town determines that Licensee is liable for Violation Fee Payment, then the Town shall issue to Licensee a notice of the Town's assessing a Violation Fee Payment. The notice shall set forth the nature of the violation and the amount of the assessment.
 - 4.11.2.2. Licensee shall pay the Violation Fee Payment within ten (10) calendar days after the Town's notice. The following shall apply for any Violation Fee Payment:
 - 4.11.2.3. Licensee shall have thirty (30) calendar days after the notice to pay the Violation Fee Payment or give Licensor notice contesting the assertion of noncompliance.
 - 4.11.2.4. If Licensee fails to respond to the notice, Licensee shall pay the Violation Fee Payment.
- 4.11.3. Except as may be expressly stated in this Section 4, no cure period applies to the accrual of Violation Fee Payment.
- 4.11.4. Licensee may elect to draw upon the letter of credit to collect the Violation Fee Payment
- 4.12. Late Fees. Licensee agrees that if it fails to pay any amounts owed to the Town by the time prescribed for payment, Licensee shall pay interest on the amounts owed at the rate of one percent (1%) per month.
- 4.13. Requirement of Insurance, Performance Bond, and Letter of Credit. Prior to any work being performed in the ROW, Licensee shall secure all performance bond requirements in this Agreement and provide the Town with all insurance requirements prior to the commencement of any work, including, but not limited to, all certificates of insurance required by this Agreement.
- 4.14. Performance Bond.
 - 4.14.1. Prior to receiving any permit and/or during performance under any permit to construct, install, maintain or perform any work on public property that requires a permit from the Town pursuant to applicable Town codes, Licensee shall cause to be filed and maintain until either completion of the construction or termination of this License, a faithful performance bond in favor of the Town in an amount equal to the lesser of (i) One Million Five Hundred Thousand Dollars (\$1,500,000.00) or (ii) 125% of the amount of the estimated construction costs. Such bond shall guarantee that Licensee shall observe, fulfill and perform the construction work under the Agreement and the applicable approved permits. In case of any breach of any condition of this Agreement concerning performance of work in accordance

with the approved permits, any applicable amount of the sum of the bond, up to the whole thereof, may be forfeited to compensate the Town for any damages it may incur to remedy such breach. Said bond shall be acknowledged by Licensee, as principal, and shall be issued by a surety with an AM Best rating of A-VII or better for the last four quarters.

- 4.14.2. Town and Licensee agree that when all the construction and the performance costs under any and all approved permits drops below the One Million Five Hundred Thousand Dollars (\$1,500,000.00) threshold, then as such construction project (under an applicable permit) is completed to the reasonable satisfaction of the Town, then the Town will promptly release the associated bond amount(s) in accordance with the procedures set forth below for the security fund.

4.15. Letter of Credit.

- 4.15.1. Prior to applying for any permit to construct, install, maintain or perform any work in the ROW which requires a construction permit from the Town pursuant to applicable Queen Creek Municipal Codes, Licensee shall provide either a cash deposit into a suitable interest-bearing account, established by the Town, or a domestic irrevocable standby letter of credit (issued from, and able to be drawn on, a financial establishment located in Maricopa County), in the sum of not less than Fifty Thousand Dollars (\$50,000.00) as security for the faithful performance by it of all the provisions of this Agreement and the Reimbursement Agreement, and compliance with all orders, permits and directions of any agency of the Town having jurisdiction over its acts or defaults under the Agreement and license issued pursuant thereto, and the payment by the Licensee of any claims, liens, taxes and fees due the Town which arise by reason of the construction, operation or maintenance of the Fiber Optic Network or under this Agreement or the Reimbursement Agreement (the "security fund"). The Town shall have the full power of withdrawal of funds from the account or letter of credit except that all interest accrued shall be payable to the Licensee on demand. No withdrawals shall be made from the security fund without the prior written approval of the Town Engineer and ten (10) days' prior written notice of intent to withdraw to Licensee.
- 4.15.2. Within twenty (20) days after notice to Licensee that any amount has been withdrawn by the Town from the security fund, Licensee shall deposit a sum of money or present to the Town an additional irrevocable letter of credit sufficient to restore such security fund account to the original amount.
- 4.15.3. If Licensee: (i) fails, within ten (10) business days of a notice of intent to draw on the security fund, to either dispute the notice in writing or to pay the Town any taxes or fees due and unpaid or any damages, costs or expenses which Town shall be compelled to pay by reason of any act or default of Licensee in connection with this Agreement; or (ii) fails, within thirty (30) days of such notice of failure from the Town to dispute the notice in writing, or comply with any provision of this Agreement which the Town reasonably determines can be remedied by an expenditure of funds from the security fund; the Town may immediately withdraw the amount thereof from the security fund. Upon such withdrawal, the Town shall notify Licensee of the amounts and date thereof.

- 4.15.4. The rights reserved to the Town, with respect to the security fund, are in addition to all other rights of the Town whether reserved by this Agreement or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right Town may have.
- 4.15.5. Licensee shall be entitled to the return of such security fund, or portion thereof, as remains on deposit at the expiration of the term of the Agreement or upon termination of the Agreement at an earlier date, provided that there is then no outstanding default on the part of the Licensee. Any funds that the Town erroneously or wrongfully withdraws shall be returned to Licensee, within thirty (30) business days of such a determination.
- 4.16. In-Kind. Licensee hereby agrees to install a 3" HDPE future path conduit for the Town at the four Fiber Laterals identified in Exhibit C. The Town shall only be responsible for payment of the pro rata amount of the labor costs associated with installation of the Town's conduit. Licensee shall pay for all materials required to install the Town's conduit. In consideration of Licensee's installation of the Town's conduit identified in Exhibit C, the Town shall treat such in-kind payment as fair and reasonable compensation for use of the ROW and agrees that Licensee shall not owe any other fees, costs or expenses under this Agreement; however, Licensee has agreed to be responsible for certain cost reimbursement as covered in the Reimbursement Agreement. The parties may mutually agree in writing to other in-kind arrangements via a separate agreement and to the extent permitted by law.
- 4.17. Audits. The Town shall have the right to audit or otherwise inspect any and all customer contracts, subleases, sublicenses, or otherwise subcontracts, including without limitation, all ROW User agreements with Licensee, to the extent reasonably necessary to confirm compliance with this Agreement, including proper payment of all fees under this Section 4. The Town may conduct such audits as often as reasonably necessary in order to justify the necessary payments, but no less than one (1) time per annual term, beginning on the Effective Date.

5. RELOCATION

- 5.1. Licensee shall relocate, at no expense to the Town, any of Licensee's Facilities, or other encroachment installed or maintained in, on or under any public place or ROW, as may be necessary to facilitate any public purpose or any Town or other governmental project whenever directed to do so by Town. Such relocations shall be accomplished in accordance with the directions from Town and shall be pursuant to the same terms and conditions as the initial installation allowed pursuant to this Agreement and any applicable issued permits. Within ninety (90) days after service of notice by the Town, Licensee shall remove the designated portions of Licensee's Facilities, or in the event that, by the nature of the removal such removal cannot be performed within the ninety-day period, Licensee shall take reasonable steps to remove Licensee's Facilities and diligently prosecute the removal to completion, and, if requested, restore the sidewalks and other ROW to a condition comparable to the condition before the construction of the public improvement at no cost and expense to the Town.
- 5.2. Licensee agrees to obtain a permit as required by this Agreement prior to removing, abandoning, relocating, or reconstructing any portion of Licensee's Facilities on public property or ROW. Notwithstanding the foregoing, the Town understands and

acknowledges there may be instances when Licensee is required to make repairs that are of an emergency nature or in connection with an unscheduled disruption of Licensee's Facilities. Licensee will maintain any annual permits required by the Town for such maintenance and emergency repairs. Licensee will notify the Town before the repairs and will apply for and obtain the necessary permits in a reasonable time after notification.

- 5.3. If the Town needs to perform any part of the necessary relocation or removal work that has not been done within the time required by the Town, it shall be entitled to seek payment for such actual relocation costs by drawing upon the letter of credit or security fund required by this Agreement pursuant to Section 4.16 or the performance bond pursuant to Section 4.15.
- 5.4. The Town has no obligation to relocate or otherwise move Licensee's Facilities, any Town-owned facilities, Conduit, or Fiber Optic Cables, ROW Users' Facilities, or any other Facilities of persons or entities lawfully using the ROW. The Town shall require that third parties be responsible for relocation work of Licensee's prior existing Licensee Facilities in the ROW not necessitated by the Town. Notwithstanding the above, the Town will be responsible for any and all relocation work associated with the Town's conduit facilities installed by Licensee in accordance with Section 4.16 and as identified on Exhibit C.
- 5.5. Any relocation work performed by Licensee or its contractors shall be subject to and comply with this Agreement.

6. DAMAGE TO PUBLIC PROPERTY

- 6.1. In addition to any indemnity obligation under this Agreement, whenever the installation, use, maintenance, removal, or relocation of any of Licensee's Facilities is required or permitted hereunder, and such installation, removal, or relocation damages or disturbs the surface or subsurface of any ROW or public property or any public improvement that may be located thereon, therein, or thereunder, however such damage or disturbance was caused, Licensee, at its sole cost and expense, shall promptly restore the surface or subsurface of the ROW or public property and/or repair or replace the surface, subsurface and/or public improvement therein, or thereunder, in as good a condition as before in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the Town Engineer. If Licensee does not repair the damage or disturbance as just described, then Town shall have the option, upon ten (10) business days' prior written notice to Licensee, to perform or cause to be performed such reasonable and necessary work on behalf of Licensee and to charge Licensee for the actual costs incurred by the Town at Town's standard rates.
- 6.2. Notwithstanding the notice provision above, in the event of a public emergency, the Town shall have the right to immediately perform, without prior written notice to Licensee, such reasonable and necessary work on behalf of Licensee to repair and return public property to a safe and satisfactory condition in accordance with applicable laws, normal wear and tear excepted, reasonably satisfactory to the Town Engineer. The Town shall provide written notice to Licensee of the repairs as soon as practicable after the work has begun. Licensee agrees that any damage to Town fiber, conduit, or other property must be replaced or repaired and restored with new or like-new materials. If the Town needs to perform any part of the necessary repairs, relocation and/or removal work, it shall be entitled to seek payment for such repairs and/or relocation and/or removal costs from Licensee and may draw upon the performance bond and/or letter of credit or security fund

required by this Agreement in full or partial satisfaction of such costs, if payment is not made by Licensee as required by Section 6.3 below.

- 6.3. Upon the receipt of a demand for payment by the Town, Licensee shall, within thirty (30) days, reimburse the Town for such costs.
- 6.4. For any pavement cuts by Licensee, Licensee agrees to restore the pavement.

7. PENALTIES FOR VIOLATION OF TERMS

- 7.1. The Town's Remedies. The Town may pursue any remedy at law, including but not limited to injunctive relief, civil trespass, and withholding other Town permits and authorizations until Licensee complies with the terms of this Agreement or any applicable law. Such Town remedies are cumulative and may be pursued in the alternative. The Town's remedies set forth in this Agreement are not exclusive. Except as otherwise set forth in this Agreement, Election of one remedy by the Town, including assessment of liquidated damages, does not preclude the use of other remedies.
- 7.2. Licensee's Remedies. Licensee sole remedy for any breach or threatened breach of this Agreement by the Town shall be an action for equitable or injunctive relief.

8. TERMINATION

- 8.1. The Town Manager has the authority to terminate, subject to Licensee's right to notice and cure where provided, this Agreement.
- 8.2. Immediate Termination. The Town may terminate this Agreement upon thirty (30) days' notice and Licensee's failure to remedy any of the following to the reasonable satisfaction of the Town:
 - 8.2.1. Licensee ceases doing business in the Town;
 - 8.2.2. If Licensee shall be the subject of a voluntary or involuntary bankruptcy, receivership, insolvency or similar proceeding or if any assignment of any of Licensee's or such other person's property shall be made for the benefit of creditors or if Licensee or such other person dies or is not regularly paying its debts as they come due (collectively a "Licensee Insolvency");
 - 8.2.3. Licensee fails to keep the Certificate in effect following any right of appeal or due process of the ACC;
 - 8.2.4. Licensee fails to maintain any insurance required by this Agreement;
- 8.3. Cure of Defect; Termination. The following instances are defects in performance by Licensee shall be deemed instances of "Default" by Licensee:
 - 8.3.1. Licensee fails to comply with the material terms and conditions of this Agreement or applicable law, including, but not limited to, failing to maintain any insurance, security fund, or performance bond;

- 8.3.2. Licensee fails to make payments to the Town in the amounts and at the times specified in this Agreement;
- 8.3.3. Licensee fails to comply with the Queen Creek Work Policy and any other construction, design, or other related requirement under this Agreement;
- 8.3.4. Licensee fails to construct in the designated, approved path of the Route;
- 8.3.5. Licensee fails to provide the current, accurate as-built plans and maps showing the Route, including all of Licensee's Facilities in the Route; and
- 8.3.6. Licensee fails to obtain or maintain the required licenses, permits, or other approvals pertaining to the ROW or timely pay any taxes pertaining to the ROW.
- 8.4. Curing Default. The Town may terminate this Agreement if Licensee does not cure the defect in performance, as listed as Section 8.3 as instances of Default, within sixty (60) days (or such longer period of time as the Town determines is reasonably necessary to cure) following the Town's written notice of Licensee's defective performance. Upon the occurrence of Default or at any time thereafter, the Town may do any of the following:
 - 8.4.1. Pay or perform for Licensee's account, in Licensee's name, and at Licensee's expense, any and all payments or performances required to be paid or performed by Licensee;
 - 8.4.2. Require an additional security deposit adequate in the Town's sole discretion to protect the Town and the ROW in light of Licensee's history of performance under this Agreement;
 - 8.4.3. Abate at Licensee's expense any violation of this Agreement; and/or
 - 8.4.4. Be excused without any liability to Licensee from further performance of any and all obligations under this Agreement.
- 8.5. No Need to Cure. The Town will not need to provide Licensee with a cure period prior to termination if the Town finds the defect in performance is due to intentional misconduct, a violation of law, or is part of a pattern of repeated and persistent violations where Licensee has already had notice and an opportunity to cure.
- 8.6. Licensee's Termination. Licensee may terminate this Agreement by providing the Town with ninety (90) days' written notice and only upon making arrangements satisfactory with the Town Engineer to remove all Licensee's above ground Licensee's Facilities from public property and the ROW, unless the Town Engineer agrees in writing to allow Licensee to abandon part or all of Licensee's Facilities in place. If the Town Engineer agrees to allow Licensee to abandon Licensee's Facilities in place, the ownership of such Licensee's Facilities, including everything permitted by Town to be abandoned in place, shall transfer to Town and Licensee shall cooperate to execute any documents necessary to accomplish such transfer within thirty (30) days of such allowance of abandonment.
- 8.7. Restoring the Route. Upon termination or revocation of this Agreement, Licensee shall cease using the Route. Licensee shall return the Route and any affected portions of the ROW or surrounding property affected by Licensee's Facilities and/or work to the same

condition or better condition prior to the commencement of this Agreement, reasonable wear and tear excepted. Licensee shall remove all of Licensee's Facilities if requested by the Town upon termination of this Agreement and/or revocation of the license granted herein, including, but not limited to, all above ground and subsurface portions of Licensee's Facilities.

9. GOVERNING LAW

It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Arizona, both as to interpretation and performance, without giving effect to its principles of conflicts of laws. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the federal or state courts located within or within the jurisdiction of Maricopa County, Arizona.

10. COMPLIANCE WITH LAWS

- 10.1. Compliance with A.R.S. § 38-511. Pursuant to A.R.S. § 38-511, the Town may cancel this Agreement within three (3) years after execution of the Agreement without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Town is or becomes at any time while this Agreement or an extension of this Agreement is in effect an employee of or a consultant to Licensee with respect to the subject matter of this Agreement. The cancellation shall be effective when Licensee receives written notice of the cancellation, unless the notice specifies a later time.
- 10.2. The Parties shall comply with all federal, state and local laws, codes, rules and regulations.
- 10.3. Compliance with A.R.S. § 35-393.01. Licensee hereby certifies that it does not, and will not, participate in during the term of this Agreement, a boycott of Israel in accordance with Arizona Revised Statute §35-393.01. Licensee hereby agrees to indemnify and hold harmless the Town, its agents and employees from any claims or causes of action relating to the Town's action based upon reliance upon this representation, including the payment of all costs and attorney fees incurred by the Town in defending such an action.
- 10.4. Compliance with Federal Immigration Laws and Regulations. Licensee warrants that it complies with all federal immigration laws and regulations that relate to its employees and that it complies with A.R.S. § 23-214(A). Licensee acknowledges that pursuant to A.R.S. § 41-4401, a breach of this warranty is a material breach of this Agreement subject to penalties up to and including termination of this Agreement, and that the Town retains the legal right to inspect the papers of any employee who works on the Agreement to ensure compliance with this warranty.

11. INDEMNIFICATION

- 11.1. Licensee acknowledges that it has liability for any and all of Licensee's Facilities installed in the public ROW and in the Route, its use and/or occupation of the ROW and the Route, for any work that is done in or adjacent to the ROW and/or the Route, for any loss or liability incurred by reason of any Toxic Substance (as defined in section 19) on or affecting the portion of the ROW and/or the Route used that is attributable to or caused by Licensee and/or its contractor(s), the failure to comply with the request for information and laws pertaining to public records (as further described in section 20.9), and for its exercise of

its rights under this Agreement directly or through its contractor(s), except for the intentional or solely negligent acts on the part of the Town or its agents. To the fullest extent permitted by law, Licensee, shall defend, indemnify and hold harmless the Town, and its officials, boards, commissions, agents, contractors, subcontractors, or employees, individually and collectively, from and against any and all losses, claims, damages, suits, actions, payments, judgments, demands, expenses and costs, including but not limited to, reasonable attorney's fees incurred through all appeals ("Claims") arising out of or alleged to have resulted from or materially related to: (i) the acts, errors, mistakes, or omissions of Licensee, its employees, representatives, or any tier of contractors and/or subcontractors or any other person for whose acts, errors, mistakes, and/or omissions Licensee may be legally liable; (ii) for any loss or liability incurred by reason of any Toxic Substance on or affecting the portion of the ROW and/or the Route used that is attributable to or caused by Licensee and/or its contractor(s); (iii) the failure to comply with the request for information and laws pertaining to public records, including defending the Town in any legal action and payment of any penalties or judgments assessed against the Town; and/or (iv) the Town entering into this Agreement, or the acts or omissions of the Town or its officials, boards, commissions, agents, contractors, subcontractors, or employees acting pursuant to or in furtherance of this Agreement. This defense and indemnification requirement includes any Claims or amounts arising or recovered under worker's compensation laws or any other law, bylaw, or ordinance, order or decree related to any failure on the part of Licensee, its agents, employees or representatives to fulfill Licensee's obligations under this Agreement, whether resolution of the above Claim(s) proceeds to judgment or not. The provisions of this Section shall survive termination of this Agreement. This Section applies even if the party seeking damages makes a claim against the Town or brings a claim against the Town based on vicarious liability or non-delegable duty.

- 11.1.1. In the event that a notice of claim is served on the Town or litigation is commenced against the Town for which Licensee has a duty to indemnify and defend the Town pursuant to this Agreement, the Town must tender the defense of the litigation to Licensee. Licensee shall have the right to retain counsel of its own choice, to settle all or any part of the litigation on terms acceptable to Licensee (and, where such terms directly obligate or affect the Town, acceptable to the Town). Town may retain counsel to assist in the defense, at Town's sole cost and expense. Licensee must consult with the Town while conducting its defense of the Town and must keep the Queen Creek Town Attorney's Office informed of the status and progress of all litigation involving the Town that has been tendered to Licensee or its insurance carrier.
- 11.1.2. The parties shall promptly notify each other in writing of any claims, demands, or lawsuits which may involve the Town and provide copies of all accident reports, incident reports, statements or other documents that are relevant to the claims, demands or lawsuits or which may lead to the discovery of relevant materials or information, in the possession of the other party, its employees, representatives, contractors, and/or others.
- 11.2. Subject to any privilege and/or confidentiality legal protections, both parties agree to make their employees, representatives, and contractors available to the other party to gather any relevant information relating to an incident from which any claim, demand, or lawsuit arises.

- 11.3. It is the purpose of this Section to provide maximum indemnification to the Town under the terms and conditions expressed and, in the event of a dispute, this Section shall be construed (to the greatest extent permitted by law) to provide for the indemnification of the Town by Licensee against any and all claims, demands or lawsuits. The sole exception shall be an express determination by a court of competent jurisdiction upon full adjudication of the case that the damages arose either from Town's sole negligence or intentional acts or that the Town was comparatively at fault for the damages. Only in this event may Licensee then commence an action against the Town for damages related to that portion judicially determined to be Town's fault.
- 11.4. The provisions of this Section shall not be dependent or conditioned upon the validity of this Agreement, but shall be and remain a binding right and obligation of the Town and Licensee, even if part or all of this Agreement is declared null and void in a legal or administrative proceeding. It is the intent of Licensee and the Town upon the effective date of this Agreement that this Section serves as any such declaration and shall be a binding obligation of and inure to the benefit of Licensee and the Town and their respective successors and assigns, if any.
- 11.5. The amount and type of insurance coverage requirements set forth in this Agreement will in no way be construed as limiting the scope of the indemnity in this Section.
- 11.6. As a condition to Town's executing this Agreement, Licensee specifically agrees that to the extent any provision of this Section is not fully enforceable against Licensee for any reason whatsoever, this Section shall be deemed automatically reformed to the minimal extent necessary to cause it to be enforceable to the fullest extent permitted by law.

12. **INSURANCE**

- 12.1. **Limits of Insurance.** Licensee shall at all times during the term of this Agreement, at its own cost and expense, carry and maintain commercial general liability insurance against claims for bodily injury (including death) or property damage, products/completed operations and personal and advertising injury, which insurance shall cover claims as may be occasioned by the operations, act, omission or negligence of Licensee or its officers, agents, representatives, or employees during all times that this Agreement is in effect. Limits may be attained by a combination of primary and umbrella liability coverage. Licensee shall maintain limits no less than those stated herein for each type of insurance.
- 12.2. **General Requirements.** Licensee's insurance of the types and amounts required in this Section shall be from companies possessing a current A.M. Best, Inc. rating of A-VII, or better and legally authorized or permitted to do business in the State of Arizona.
- 12.2.1. 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 is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of the Town, constitute a material breach of this Agreement and may result in termination of this Agreement.
- 12.2.2. The insurance coverage, except workers' compensation and employer's liability, and professional liability, required by this Agreement, shall include the Town, its agents, representatives, directors, officials, and employees, as additional insureds as their interest may appear, and shall specify that insurance afforded Licensee

shall be primary insurance, and that any self-insured retention and/or insurance coverage carried by the Town or its employees shall not contribute to the coverages provided by Licensee. This provision and the inclusion of the Town as an additional insured shall not be construed as giving rise to responsibility or liability of the Town for applicable deductible amounts under such policy(ies).

12.2.3. The insurance policies shall contain a waiver of transfer rights of recovery (subrogation) for workers' compensation against the Town, its representatives, officers, directors, officials and employees for any claims arising out of Licensee's acts, errors, mistakes, omissions, work or service.

12.2.4. The insurance policies may provide coverage, which contain deductibles or self-insured retentions. Such deductible and/or self-insured retention shall be assumed by and be for the account of, and at the sole risk of Licensee who shall be solely responsible for the deductible and/or self-insured retention.

12.2.5. Upon receipt of notice from its insurer(s), Licensee shall use commercially reasonable efforts to provide the Town with thirty (30) days' prior written notice of cancelation of any policy required herein.

12.2.6. Upon request, Licensee shall furnish separate certificates and additional insured endorsements for each of Licensee's contractors (and any subcontractors used thereunder). All coverages for Licensee's contractors (and any subcontractors used thereunder) shall be subject to the same limits as required for Licensee.

12.2.7. The Town reserves the right to periodically review said insurance limits to ensure coverage is based on market and risk requirements throughout the effective term of this Agreement.

12.3. Proof of Insurance – Certificates of Insurance.

12.3.1. Upon execution of this Agreement, Licensee shall furnish to the Town Certificates of Insurance issued by Licensee's agent or broker, as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect and obtain from the Town's Risk Management Division approval of such Certificates. Such Certificate(s) shall include the blanket additional insured endorsement including the Town as an Additional Insured pursuant to Section 12.2.2 and shall be attached as Exhibit C to this Agreement.

12.3.2. If a policy does expire during the life of this Agreement, a renewal certificate must be sent to the Town five (5) business days prior to the expiration date.

12.3.3. All Certificates of Insurance shall identify the policies in effect on behalf of Licensee, their policy period(s), and limits of liability required herein. Coverage shown on the Certificate of Insurance must coincide with the requirements in this Agreement. Information required to be on the Certificate of Insurance may be typed on the reverse of the Certificate and countersigned by an authorized representative of the insurance carrier or agent. Copies of the initial Certificate of Insurance and any and all subsequent renewals that are required under this Agreement shall be sent to:

Town of Queen Creek
Attn: Assistant Town Manager
22358 S. Ellsworth Road
Queen Creek, AZ 85142

- 12.3.4. The Town reserves the right to review, within at least ten (10) business days, certified copies of any or all of the herein required insurance policies and/or endorsements. Such policies shall be made available for review in Maricopa County, Arizona. The Town shall not be obligated, however, to review same or to advise Licensee of any deficiencies in such policies and endorsements, and such receipt shall not relieve Licensee from, or be deemed a waiver of the Town's right to insist on, strict fulfillment of Licensee's obligations under this Agreement.
- 12.4. Required Coverage. Such insurance shall protect Licensee from claims set forth below that may arise out of or result from the operations of Licensee under this Agreement and for which Licensee may be legally liable, whether such operations be by Licensee or by anyone directly employed by Licensee. Coverage under the policy will be at least as broad as ISO forms or equivalent thereof, including but not limited to: severability of interest and waiver of subrogation clauses; claims for damages because of bodily injury, sickness or disease, or death of any person other than the Licensee's employees; claims for damages insured by usual personal and advertising injury liability coverage; claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom; and claims involving contractual liability applicable to Licensee's obligations under the indemnification Section herein.
- 12.5. Commercial General Liability – Minimum Coverage Limits. The Commercial General Liability insurance required herein shall be written in the amount of \$2,000,000 limits per occurrence and \$6,000,000 general aggregate in coverage will be acceptable. The Commercial General Liability additional insured endorsement shall be as broad as the ISO Additional Insured form, and shall include coverage for Licensee's completed operations and products.
- 12.6. Worker's Compensation and Employer's Liability. Licensee shall maintain Worker's Compensation insurance in compliance with the statutory requirements of the state(s) of operation and Employer's Liability insurance with a limit of \$1 million for each accident, \$1 million disease coverage for each employee, and \$1 million disease policy limit.
- 12.7. Automobile Liability. If Licensee owns and/or operates vehicles in Arizona, Licensee shall maintain Commercial Automobile Liability insurance with a combined single limit for bodily injury and property damage of \$1 million each accident covering all owned, hired, and non-owned vehicles assigned to or used in performance of Licensee's work. Any combination between automobile liability and excess/umbrella liability amounting to a minimum of \$5 million per occurrence in coverage will be acceptable. Coverage shall be at least as broad as ISO policy form or equivalent.
- 12.8. Contractors; Changes. Licensee shall ensure that any contractors of Licensee (or subcontractors thereof) shall carry all insurance required of Licensee and that complies with the requirements of this Section 12. If the Licensee anticipates utilizing the same contractors for multiple projects, Licensee shall provide, or require the contractor to provide, certificates of insurance on an annual basis evidencing continuous coverage.

The Town reserves the right to require additional insurance coverages and/or increase any minimum coverages herein at any time with written notice to Licensee.

13. LIMITATION OF LIABILITY

- 13.1. The Town and its officers, agents, elected or appointed officials, employees, departments, boards and commissions, shall not be liable to Licensee or to its affiliates or customers for any interference with or disruption in the operations of Licensee's Fiber Optic Network or the provision of services, or for any damages arising out of or materially related to Licensee's use of the ROW, except to the extent of intentional misconduct or gross negligence on the part of the Town its officers, agents, elected or appointed officials, employees, departments, boards and commissions.
- 13.2. Licensee also agrees that it shall have no recourse whatsoever against the Town or its officials, boards, commissions, agents or employees for any loss, costs, expense or damages arising out of or materially related to any provision or requirement of the Town because of the enforcement of this Agreement.
- 13.3. Licensee shall assume the risk of, and hereby relinquishes any claim against the Town in connection with any final, non-appealable determination by a court of competent jurisdiction that the Town lacked the current statutory authority under Arizona law to issue this Agreement.

14. WARRANTY

- 14.1. The issuance of a license, permit or other authorization by the Town is not a representation or warranty that such license, permit, or authorization is a legally sufficient substitute for a franchise, and is not a representation of warranty that a franchise is not required.
- 14.2. LICENSEE ACKNOWLEDGES AND AGREES THAT TOWN DOES NOT WARRANT THE CONDITION OR SAFETY OF ITS ROW OR THE PREMISES SURROUNDING THE SAME, AND LICENSEE HEREBY ASSUMES ALL RISKS OF ANY DAMAGE, INJURY OR LOSS OF ANY NATURE WHATSOEVER CAUSED BY OR IN CONNECTION WITH THE USE OF ANY THE ROW SUBJECT TO THE PROVISIONS OF THIS AGREEMENT.

15. SURVIVAL OF LIABILITY

All obligations of Licensee and the Town hereunder and all warranties and indemnities of Licensee hereunder shall survive termination of this Agreement.

16. PUBLIC EMERGENCY

- 16.1. The Town shall have the right, because of a public emergency, to sever, disrupt, relocate, remove, tear out, dig-up or otherwise damage and/or destroy Licensee's Facilities of without any prior notice to Licensee, if the action is deemed reasonably necessary by either the Town Manager, Fire Chief, Police Chief, Town Engineer, Public Works Director, or their designees. In such event, neither the Town nor any agent, contractor or employee of the Town shall be liable to Licensee, Licensee's contractors (and any subcontractors used thereunder), or Licensee's customers for any harm so caused to them or Licensee's Facilities. To the extent possible under the circumstances, Town will consult with Licensee in advance to assess the necessity of such actions and to minimize to the extent practical

under the circumstances damage to and disruption of operation of the Fiber Optic Networks. Town shall inform Licensee of any actions taken. Licensee shall be responsible for repair at its sole expense of any of Licensee's Facilities damaged pursuant to any such action taken by Town related to the public emergency.

- 16.2. If any of Licensee's Facilities or activities present any immediate hazard or impediment to the public, to the Town, to other Town improvements or activities within or outside of the Route, or to Town's ability to safely and conveniently operate the ROW or perform Town's utility, public safety, and/or other public health, safety and welfare functions, then Licensee shall immediately remedy the hazard, comply with the Town's request to secure the route area, and otherwise cooperate with the Town at no expense to the Town to remove any such hazard or impediment.
- 16.3. In the event of a public emergency, neither the Town nor any agent, contractor or employee of the Town shall be liable to Licensee, Licensee's contractors (and any subcontractors used thereunder), Licensee's customers, or other third parties for any harm so caused to them by the reasonable actions of the Town or its agents, contractors or employees in reasonably responding to such public emergency. Where possible, the Town will consult with Licensee in advance to assess the necessity of such actions and to minimize, to the extent practical under the circumstances, damage to and disruption of either the public property involved or Licensee's Facilities involved.

17. NOTICE

- 17.1. All notices, which shall or may be given pursuant to this Agreement, shall be in writing and transmitted through the U.S. certified or registered mail, postage prepaid, by means of prepaid private delivery systems, addressed as follows:

THE TOWN

Town Queen Creek
Attn: Dave Lipinski
22358 S. Ellsworth Rd.
Queen Creek, AZ 85142
Phone: (480) 358-3000
Email:
dave.lipinski@queencreekaz.gov

With copy to:

Dickinson Wright PLLC
Attn: Scott Holcomb
1850 N Central Ave, Ste 1400
Phoenix, AZ 85004
Phone: (602) 285-5000
Email:
SHolcomb@dickinson-wright.com

LICENSEE

Wyverd Connect LLC
Attn: Chief Legal Officer
1601 29th Street, Suite #1292-PMB1042
Boulder, CO 80301
Phone: (303) 725-8815
Email: scott.beer@wyverd.com

With copy to:

Wyverd Connect LLC
Attn: Chief Financial Officer
1601 29th Street, Suite #1292-PMB1042
Boulder, CO 80301
Phone: (303) 263-7299
Email: tim.gentry@wyverd.com

- 17.2. Notices shall be deemed sufficiently given and served upon the other party the first business day after deposit if sent by private delivery systems and the fifth business day after deposit in U.S. Mail.

- 17.3. Either party may from time to time designate any other address for this purpose by written notice to the other party in the manner set forth above. Licensee shall notify the Town within ten (10) business days of any change in mailing address.

18. TRANSFERABILITY OF LICENSE

- 18.1. This Agreement is personal to Licensee and therefore the rights, privileges and license granted herein shall not be sold, sublet, assigned, conveyed or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, sold, conveyed or otherwise transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except Licensee, either by act of Licensee or operation of law, without the express written consent of the Town, which consent shall not be unreasonably withheld or delayed. Prior to any proposed transfer of any kind becoming final, Licensee shall seek the consent of the Town to the proposed transfer. Approval by the Town to a transfer does not constitute a waiver or release of any of the rights of the Town under the Queen Creek Municipal Code or this Agreement, whether arising before or after the date of transfer.
- 18.2. The assignee or transferee as approved by the Town shall be equally subject to all the obligations and privileges of this Agreement, including any amendments, which will remain in full effect, as if the assignee or transferee were the original Licensee.
- 18.3. Nothing in this Section shall be deemed to prohibit a pledge or, hypothecation or mortgage or similar instrument transferring conditional ownership of all or part of the Licensee's assets to a lender or creditor in the ordinary course of business. In the event a lender assumes control of the assets and operation of the Licensee through a default of the Licensee in loan obligations, the lender may assume the rights and obligations of the Licensee. The lender may not transfer or change control of the Agreement without submitting the change to the Town for consent under this Section. If the lender does continue operation on any basis at any time, it shall be subject to all provisions of the Agreement. No later than three (3) years after assumption of control by the lender, the lender shall apply to the Town for the right to continue assumption of control or to transfer the Agreement. Application by the lender for approval of such assumption of control or transfer shall be subject to all provisions set forth herein on consent by the Town Council and approval shall not be unreasonably denied or delayed. A "lender" as discussed herein does not include a Licensee, person or corporation or other entity that operates cable television systems or telecommunications systems as a principal or important business. This Section is intended to prohibit the intentional use of lending and/or foreclosure as a method for effecting change of control or transfer of the Agreement without Town Council review and approval.
- 18.4. Any transfer without Town's consent shall be void and shall not result in the transferee obtaining any rights or interests in, under or related to this Agreement. The Town may, in its sole discretion and in addition to all other lawful remedies available to the Town under this Agreement or otherwise, and in any combination, terminate this Agreement, collect any fees owed from Licensee and/or declare the transfer to be void, all without prejudicing any other right or remedy of Town under this Agreement. No cure or grace periods shall apply to transfers or assignments prohibited by this Agreement or to enforcement of any provision of this Agreement against an assignee who did not receive the Town's consent. Notwithstanding, the above, transfer or assignment to Provider's financially viable parent,

subsidiary, successor, or affiliate under common control, shall not require consent and shall be effective upon written notice to the Town.

19. **HAZARDOUS SUBSTANCES**

19.1. Licensee's and its contractors' activities upon or about the ROW shall be subject to the following regarding any hazardous or toxic substances, waste or materials, or any substance now or hereafter subject to regulation under the Comprehensive Environmental Response Compensation and Liability Act 42 U.S.C. §§ 9601, et. seq., the Arizona Hazardous Waste Management Act, A.R.S. §§ 49-901, et. seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et. seq., the Toxic Substances Control Act, 15 U.S.C. § 2601, et. seq., or any other federal, state, county or local law pertaining to hazardous substances, waste or toxic substances and their reporting requirements (collectively "Toxic Substances"):

19.1.1. Licensee and/or its contractors shall not produce, dispose, transport, treat, use or store any Toxic Substances upon or about the ROW. The prohibitions of the preceding sentence only shall not apply to:

19.1.1.1. Ordinary gasoline, diesel fuel or other fuels or lubricants necessary for ordinary use in motor vehicles and ordinary construction machinery permitted upon the ROW. Such materials must be properly and lawfully contained in ordinary quantities in ordinary tanks and receptacles that are permanently installed in such vehicles and machinery, or small portable tanks that are being used for fueling permitted construction machinery; or

19.1.1.2. Electric backup batteries.

19.1.2. Licensee and/or its contractors shall dispose of any Toxic Substances away from the ROW as required by law and as reasonably required by the Town.

19.1.3. Licensee and/or its contractors shall not use the ROW in a manner inconsistent with regulations issued by the Arizona Department of Environmental Quality, or in a manner that would require a permit or approval from the Arizona Department of Environment Quality or any other governmental agency. The preceding sentence does not prohibit ordinary permits for control of dust during construction permitted by this Agreement.

19.1.4. Licensee and/or its contractors shall immediately notify the Town of any Toxic Substance at any time discovered or existing upon the ROW. Licensee is not responsible for Toxic Substances that may exist at the ROW if Licensee's contractors (and any subcontractors used thereunder) and/or any other persons using the ROW under this Agreement did not do any of the following:

19.1.4.1. Participate in the Toxic Substance coming to the ROW;

19.1.4.2. Fail to immediately report the Toxic Substance to the Town;

19.1.4.3. Knowingly participate in spreading or otherwise disturbing the Toxic Substance; or

- 19.1.4.4. Knowingly exacerbate the effects of the Toxic Substance or the difficulty or cost of dealing with the Toxic Substance.
- 19.1.5. Licensee understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. Licensee acknowledges the possibility that the ROW may contain actual or presumed asbestos and other Toxic Substances containing materials.
- 19.1.6. Within twenty-four (24) hours after any violation by Licensee and/or by its contractors of this Agreement pertaining to Toxic Substances, Licensee shall give the Town notice reporting such violation.
- 19.1.7. Licensee shall be available to staff employees of any Town department having jurisdiction over Licensee's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the installation, operation, maintenance, or removal of Licensee's Facilities. The Town may contact by telephone the network control center operator at the following phone number 866-236-2824 regarding such problems or complaints, and may use that number in order to reach Licensee at any time for any emergency matter. Licensee shall use reasonable efforts to respond to any issues within the time frames specified in its service level agreements. Licensee shall make arrangements with a local entity to handle any necessary problems or complaints that require a physical presence. In addition, Licensee will immediately notify the Town if there is a change in the telephone number listed in this Section.

20. MISCELLANEOUS

- 20.1. Complete Agreement. This Agreement, including all Exhibits which are attached, are hereby incorporated into this Agreement and all of which constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous agreements whether written or oral. This Agreement cannot be modified or amended except in writing signed by both parties.
- 20.2. Validity. Licensee shall acknowledge that as a condition of acceptance of this Agreement, Licensee was required to be represented throughout the negotiations of the Agreement by its own attorneys and Licensee had the opportunity to consult with its own attorneys about its rights and obligations regarding this Agreement. Licensee has reviewed Town's authority to execute and enforce this Agreement and has reviewed all applicable law, both federal and state, and, after considering same, Licensee acknowledges and accepts the right and authority of the Town to execute this Agreement and to enforce the terms herein.
- 20.3. Partial Invalidity. If any section, paragraph, subdivision, clause, phrase or provision of this Agreement shall be adjudged invalid or unenforceable, or is preempted by federal or state laws or regulations, the same shall not affect the validity of this Agreement as a whole or any part of the provisions of this Agreement other than the part adjudged to be invalid, unenforceable, or preempted. Parties agree if a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that the Town did not have the authority to issue a license to Licensee under A.R.S. § 9-581 to § 9-583, as amended or succeeded, then this Agreement shall be considered a revocable permit with a mutual right in either party to terminate without cause upon giving sixty (60) days written notice to the other. The requirements and conditions of such revocable permit shall be the same

requirements and conditions as set forth in this Agreement except for conditions relating to the term of the Agreement and the right of termination. If this Agreement shall be considered a revocable permit as provided herein, Licensee acknowledges the authority of the Town Council to issue a revocable permit and the power to revoke as provided therein.

- 20.4. Time of Essence. Time is of the essence in each and every provision of this Agreement.
- 20.5. Severability. If any provision of this Agreement shall be ruled by a court or agency of competent jurisdiction to be invalid or unenforceable for any reason, or superseded by other lawful authority including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, the invalidity or unenforceability of such provision shall not affect the validity of any remaining provisions of this Agreement and the parties may agree in writing to amend this Agreement to address such invalid or unenforceable provisions; however, if the parties disagree as to the validity or enforceability of such provisions, the Agreement will not be affected to the extent of such disagreement until a court of competent jurisdiction determines otherwise or the parties later agree in writing. In the event either party seeks such judicial declaration or interpretation of any provision herein, neither party will be liable for the other party's attorney's fees, regardless of which party is deemed the successful party.
- 20.6. Headings. The headings contained herein are for convenience only and not intended to define or limit the scope of any provision of this Agreement.
- 20.7. No Partnership. Each party will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other under this Agreement.
- 20.8. No third-Party Beneficiaries. No person or entity shall be a third party beneficiary to this Agreement or shall have any right or cause of action hereunder. The Town shall have no liability to third parties for any approval of plans, Licensee's construction of improvements, Licensee's negligence, Licensee's failure to comply with the provisions of this Agreement (including any absence or inadequacy of insurance required to be carried by Licensee), or otherwise as a result of the existence of this Agreement.
- 20.9. Public Records. Notwithstanding any provisions of this Agreement regarding confidentiality, secrets, or protected rights, Licensee acknowledges that all documents provided to the Town may be subject to disclosure by laws related to open public records. Consequently, Licensee understands that disclosure of some or all of the items subject to this Agreement may be required by law. In the event the Town receives a request for disclosure that is reasonably calculated to incorporate information that might be considered confidential by Licensee, the Town agrees to provide Licensee with notice of that request. Within ten (10) days of such notice (which shall reference the 10-day requirement), Licensee must inform the Town in writing of any objection by Licensee to the disclosure of the requested information. Failure by Licensee to object timely will waive Licensee's ability to object under this section and will waive any remedy against the Town for disclosure. In the event Licensee objects to disclosure within the time specified, Licensee agrees to handle all aspects related to the request including properly communicating with the requestor and timely responding with information. This provision will survive the termination of this Agreement.

- 20.10. Force Majeure. With respect to any provision of this Agreement, the violation or non-compliance of which could result in the imposition of a financial penalty, liquidated damages, forfeiture or other sanction upon Licensee, such violation or non-compliance shall be excused where such violation or non-compliance is the result of acts of God; war; terrorist attack; civil disturbance, strike or other labor unrest; plague; pandemics; epidemics; quarantine orders or directives by a governmental entity; outbreaks of infectious disease or other public health crisis, including without limitation, quarantine or other employee restrictions; or other events, the occurrence of which was not reasonably foreseeable by Licensee and is beyond its reasonable control.
- 20.10.1. Government Directives. Any delay or nonperformance of any provision of or obligation under this Agreement caused by a federal, state, and/or local directive, order, or similar requirement, including without limitation, the COVID-19 pandemic and related quarantine orders, shall not constitute a breach of this Agreement or any portion thereof, provided that one party has provided the other party with at least seventy-two (72) hours' written notice of such delay or nonperformance.
- 20.11. Attorneys' Fees. Except as described herein, 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 is entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which will accrue on the commencement of such action and will be enforced whether or not such action is prosecuted through judgment.
- 20.12. Non-Waiver. Licensee shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of Town upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.
- 20.13. Recitals. The Recitals set forth above are hereby incorporated by this reference, as if fully set forth herein.
- 20.14. Cooperation. The Town is a rapidly growing metropolitan area. To support the growth and development of the Town, and to improve upon and/or expand the services available to Town residents, Licensee agrees to cooperate with Town in good faith to identify and delivery additional projects and services that may be compatible with Licensee's Facilities and Town's infrastructure. The agreed upon scope of work for any such projects, and the allocation of responsibilities between Licensee and Town, shall be added to this Agreement by amendment to Schedule 20.14 (each a "Scope of Work"). Unless otherwise stated in a Scope of Work, the terms and conditions of this Agreement shall apply to all work to be performed under this Section 20.14 and any attached Scope of work.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date the last party signs.

Town of Queen Creek
An Arizona municipal corporation

Licensee
Wyverd Connect LLC

By: _____
Jeff Brown, Vice Mayor

By: _____

Date: _____

Print Name: _____

ATTEST:

Title: _____

By: _____
Maria Gonzales, Town Clerk

Date: _____

APPROVED AS TO FORM:

By: _____
Town Attorney's Office

EXHIBIT A – The Route Map/Use Area

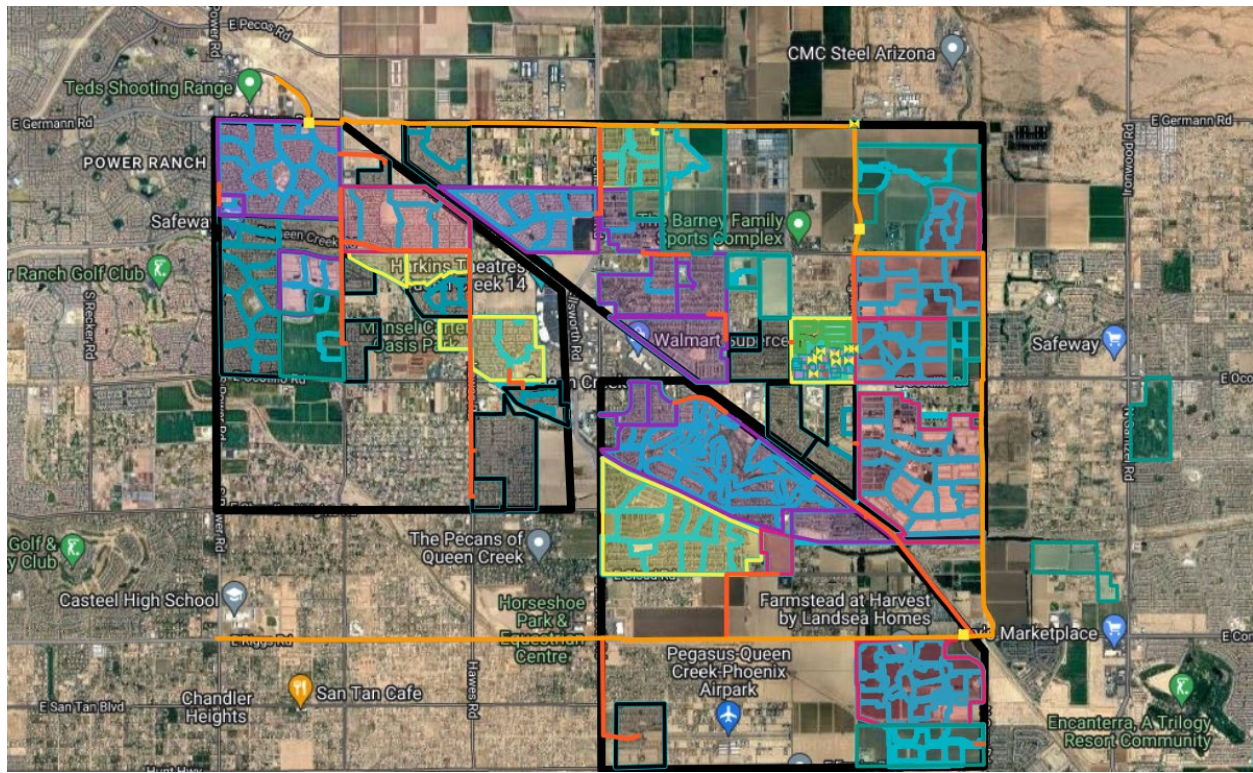
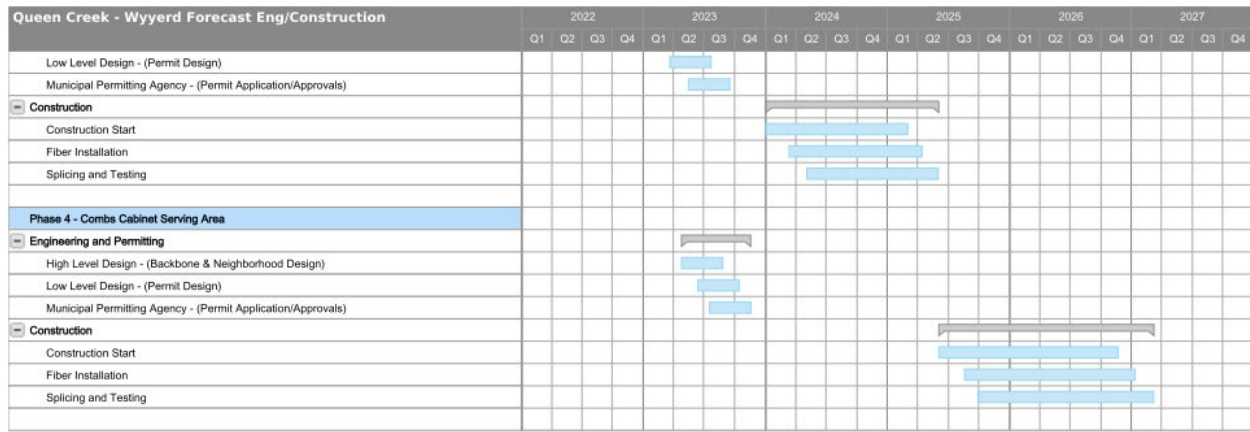
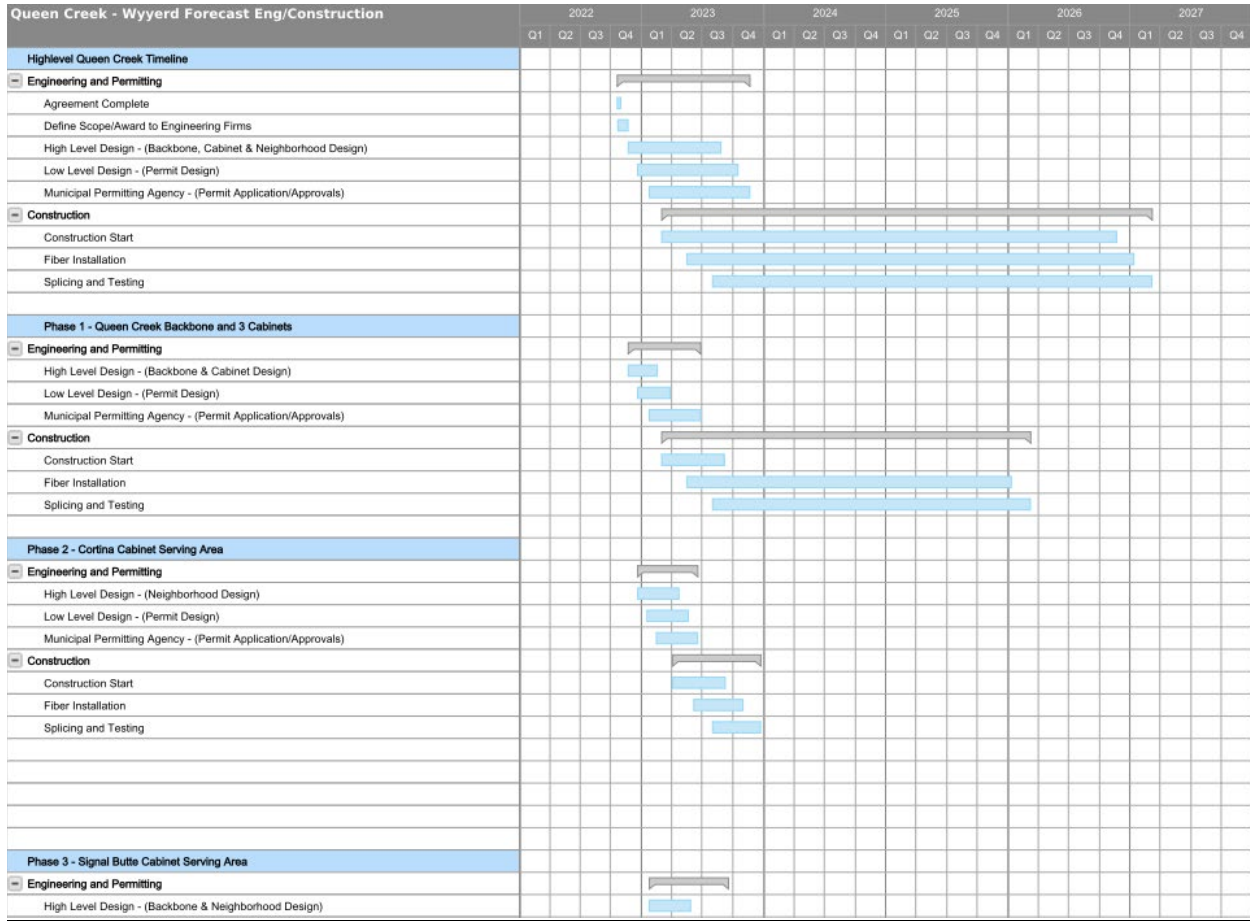


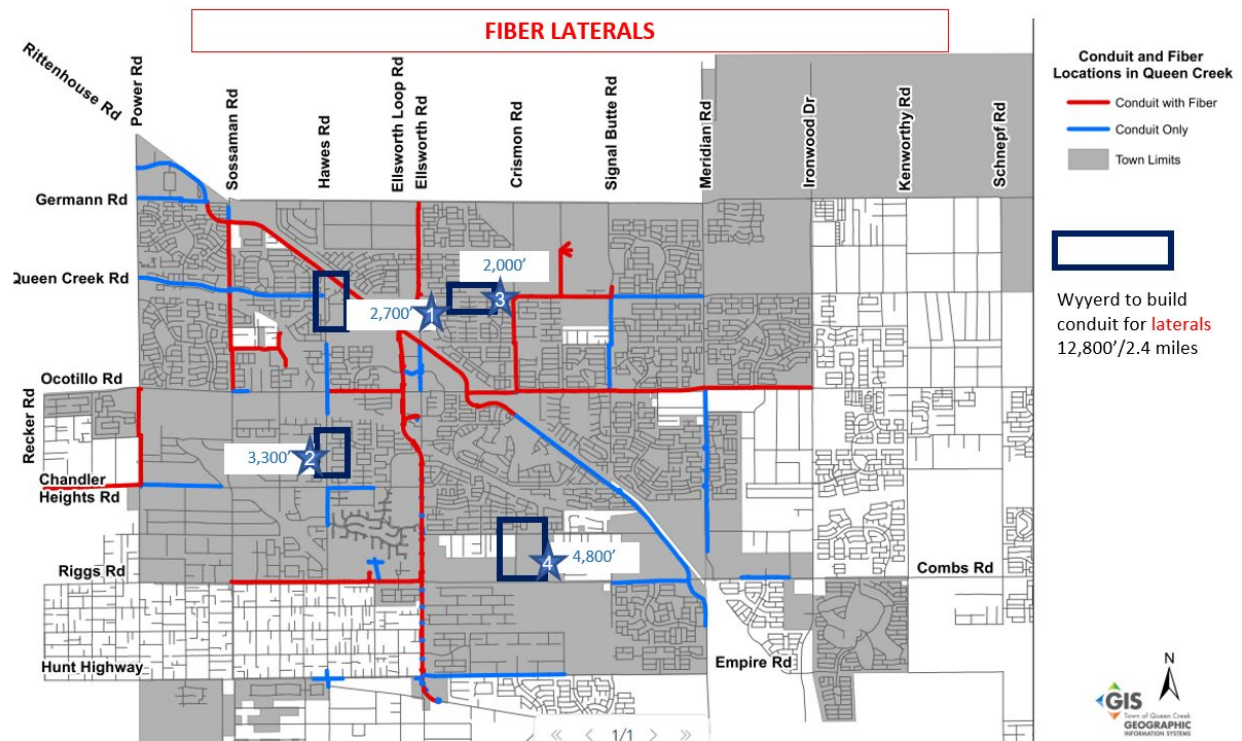
EXHIBIT B – Project Schedule and Phase Maps



Cabinet	Phase 1 communities	Homes passed	Phase 2 communities	Homes passed	Phase 3 communities	Homes passed
Phase 2 Cortina Cabinet	Cortina	1188	Cielo Noche	179	Emperor Estates	922
5738	Legado	263	Lucia at Queen Creek	117		
	Rosewood Grove	120	Montelena	443		
			Quail Creek	67		
			Rittenhouse Ranch	64		
			Roman Estates	171		
			Sossaman Estates	1304		
			TerraRanch at Queen Creek	69		
			Victoria	548		
			Villagio	162		
			Will Rogers Equestrian Ranch	141		
	Total	1571		3245		922
Cabinet	Phase 1 communities	Homes passed	Phase 2 communities	Homes passed	Phase 3 communities	Homes passed
Phase 3 Signal Butte Fire Station Cabinet	Barney Farms - OT	1205	Ash Creek Estates	235	Barney Farms - OB	497
10373	Jorda Farms - OT	250	Crismon Heights	270	Church Farm	1984
	Langley Gateway Estates	312	Crismon Meadows	61	Madera	814
	Light Sky Ranch - OT	128	La Jara Farms	147	Spur Cross	702
	Madera West Estates - OT	238	Ocotillo Heights	362		
	Malone Place Park - OT	269	Gateway Quarter	632		
	Nauvoo Station	478	Charleston Estates	395		
	Queen Creek Station	758				
	Queenland Manor	385				
	Terravella	360				
	Total	4384		1992		3997
Cabinet	Phase 1 communities	Homes passed	Phase 2 communities	Homes passed	Phase 3 communities	Homes passed
Phase 4 Combs Cabinet	Empire Point - OT	533	Bellero	205	Caleda	103
6337	Indigo Trails	237	Hastings Farms	1312	Harvest at Queen Creek	1312
	La Sentiero	341				
	Ocotillo Landing	243				
	Villages at Queen Creek	2051				
	Total	3405		1517		1415

Please see file Queen Creek Deployment Gantt and Phase for more details and updates to the Project Schedule and Phase Map.

EXHIBIT C- In-Kind Agreement



Fiber Laterals:

Conduit build current forecast for City Total- 12800 or 2.4 miles

1. 2700' conduit- Intersection of Hawes rd. and Queen Creek rd. proceeding south
2. 3300' conduit- Hawes rd between Ocotillo rd. and Chandler rd.
3. 2000' conduit- Queen Creek Rd between Ellsworth and Crismon Rd
4. 4800' conduit- Intersection of Riggs rd and Crismon rd proceeding North.

Schedule 20.14 – Additional Projects

4892-6530-6685 v2 [53749-36]

REIMBURSEMENT AGREEMENT

This **REIMBURSEMENT AGREEMENT** ("Agreement") is made by and between the Town of Queen Creek, an Arizona municipal corporation (the "Town"), and Wyverd Connect LLC d/b/a Wyverd Fiber, a Delaware corporation, on behalf of its subsidiaries and related organizations (collectively, "Wyverd"). The Town and Wyverd may each be referred to in this Agreement as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Town entered into a Wired Telecommunications License and Right-of-Way Use Agreement with Wyverd of even date therewith (the "Wyverd License"), which is hereby incorporated by this reference;

WHEREAS, pursuant to the Wyverd License, Wyverd will submit application requests to the Town for right-of-way permits to construct its wired, fiber network within the Town's right-of-way;

WHEREAS, given Wyverd's high volume of anticipated right-of-way permit requests, Wyverd has requested that the Town retain, or otherwise approve the use of third party consultant(s) ("Consultant(s)") to supplement and complete the Town's review, inspection, project management, processing, and other work related to Wyverd's right-of-way application permit requests in accordance and compliance with the Town's Code, policies, rules, engineering regulations, engineering guidelines, and/or engineering standards;

WHEREAS, given Wyverd's high volume of anticipated right-of-way permit requests, the Town has also requested that Wyverd help differ the cost of a Town employee to conduct Wyverd's blue-staking (i.e. locate) operations ("Reimbursable Headcount");

WHEREAS, Wyverd has agreed to reasonably compensate the Town for the work of the Consultant(s) and Reimbursable Headcount, for fees, costs, and expenses associated with the Consultant(s) and Reimbursable Headcount, and all work for, in response to, on behalf of, or related to Wyverd's fiber construction work within the Town (including its right-of-way permit(s) review, inspections, project management, processing, blue-staking and traffic control plan management); and

WHEREAS, the intent of this Agreement is to have Wyverd reimburse the Town for the work performed by the Consultant(s) and Reimbursable Headcount when Consultant(s) and Reimbursable Headcount are deemed necessary by the Town, in Town's sole discretion, and only for such time as such Consultant(s) and Reimbursable Headcount are working on Wyverd related fiber construction in the Town and related project management.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and Wyverd agree as follows:

TERMS AND CONDITIONS

- 1. RECITALS.** The above Recitals are incorporated by this reference and are made a part of this Agreement as if fully set forth herein.
- 2. TERM, TERMINATION, AND AMENDMENT.** This Agreement shall remain in full force and effect for a term of sixty (60) months from the date of the last signature hereto, unless terminated sooner as set forth herein. This Agreement is for the convenience of the Town and the Town may terminate this Agreement at any time, with or without cause, for any reason or no reason, without further penalty, damage, or obligation to Wyverd, by providing written notice of termination to Wyverd. This Agreement shall be deemed terminated five (5) business days after the Town sends written notice to Wyverd. This Agreement may be modified only upon a written agreement signed by authorized representatives of the Town and Wyverd.
- 3. CONSULTANTS AND REIMBURSABLE HEADCOUNT.**

- a. Subject to paragraph 2.d. below, Wyverd agrees to reimburse the Town for the below referenced Consultant(s):
 - i. two (2) Inspector(s), who shall be CEI or another similar firm that is mutually agreed on by the Town and Wyverd, who shall supplement and complete the Town's review, inspection, project management, processing, and other work related to Wyverd's right-of-way permit requests ("Inspector(s)"),
 - ii. a Permit Reviewer, who shall be CEI or another similar firm that is mutually agreed on by the Town and Wyverd, who shall supplement and complete the Town's review, inspection, project management, processing, and other work related to Wyverd's right-of-way permit requests ("Permit Reviewer"),
 - iii. an Engineering Technician, who shall be CEI or another similar firm that is mutually agreed on by the Town and Wyverd, who shall supplement and complete the Town's review, inspection, project management, processing, and other work related to Wyverd's right-of-way permit requests ("Engineering Technician"),
 - iv. a Traffic Control Plan Reviewer ("TCP") who shall be mutually agreed to by the Town and Wyverd, who shall review Wyverd's relevant Traffic Control Plan(s) and ensuring that all traffic control and traffic control alterations are implemented pursuant to the Town approved Traffic Control Plan(s) ("TCP Staff"), and
 - v. any additional support that is mutually agreed upon in writing by both Parties, who shall assist in supplementing and completing the Town's review, inspection, project management, processing, and other work related to Wyverd's right-of-way permit requests; provided, however, if Town desires additional support and Wyverd declines such request, Wyverd acknowledges such denial may have an adverse impact on the timeliness and processing flow of Wyverd's right-of-way permit requests and inspections.
- b. Wyverd agrees to reimburse the Town for the below referenced Reimbursable Headcount:
 - i. a bluestake/locate staff position who shall be an employee of the Town.- Such blue-stake/locate staff member shall conduct blue-staking/locate operations for Wyverd's right-of-way permit requests ("Locate Position"). All bluestake requests from Wyverd or sub-contractors need to refer to "Wyverd" as work being performed on bluestake for the possibility of tracking.
- c. The Town shall select the Consultant(s) and Reimbursable Headcount, if deemed necessary by the Town, based on workload, staffing, and turnaround times associated with Wyverd's permit requests. In the event that a proposed Consultant(s) or Reimbursable Headcount is unsatisfactory to Wyverd, within seven (7) days of written notice to Town from Wyverd of such disapproval, each party shall submit the name of a senior staff member to meet and discuss Wyverd's disapproval. The Parties shall meet and attempt to resolve Wyverd's disapproval within ten (10) days of Wyverd's notice to Town. Such resolution may include, without limitation and in Town's sole discretion, change in Town's management of the Consultant(s) or Reimbursable Headcount, reassignment, and/or change in the Consultant(s) or Reimbursable Headcount.
- d. Wyverd shall disclose to Town, within three (3) business days of receipt of the name of a proposed Consultant or Reimbursable Headcount, any prior dealings or contracts with the proposed Consultant or Reimbursable Headcount, and any such further information requested by Town thereafter to determine whether a conflict of interest may exist. Once approved, Town shall contract directly with the approved Consultant(s) and/or hire the Reimbursable Headcount, and said Consultant(s) and Reimbursable Headcount shall be tasked with inspecting, reviewing, project management, processing, and other work related to Wyverd's fiber construction permits and oversight. The Consultant(s) and Reimbursable Headcount shall perform all such work in a timely fashion and in compliance with all applicable laws, rules, and regulations and subject to the Town's Code, engineering guidelines, engineering standards, and standard processes.
- e. Notwithstanding the foregoing, the Town reserves the right at all times to conduct all inspection services, to review, manage and process all right-of-way permit applications within the Town's right-of-way, and to manage the issuance and flow of right-of-way permits. Additionally, the Town may enter into separate agreement(s) directly with third party Consultant(s) for inspection consulting services related to inspection services and/or

review and processing of Town right-of-way permit applications submitted by Wyverd. Such Consultant(s) may be tasked with inspecting, reviewing, managing and processing Wyverd's submitted fiber construction applications and associated Town-requested permits related to the Wyverd License; in addition to the foregoing, the Consultant(s) will be tasked with performing all such work in a timely fashion and in accordance with applicable industry standards. Wyverd shall not be deemed a third party beneficiary to any agreement between the Town and the Consultant(s).

- f. The selected Consultant(s) shall fully cooperate with the Town, its inspectors, engineers, officials, employees, and/or other designative representatives with respect to the work herein.
- g. Wyverd shall fully cooperate with the Town, its officials, employees, other representatives, the Consultant(s) and Reimbursable Headcount with respect to the work herein.
- h. Wyverd acknowledges that the Town's in-house officials and employees solely represent the Town and its interest and do not represent Wyverd. Wyverd further acknowledges that the Consultant(s) and Reimbursable Headcount solely represent the interest of the Town and in no way represents Wyverd or its interests. Wyverd shall not apply any undue pressure to the Consultant(s) or Reimbursable Headcount, nor threaten in any way, in order to induce the Consultant(s) or Reimbursable Headcount to expedite its work beyond industry standards, and/or in an effort, or in a manner, that could cause the Consultant(s) or Reimbursable Headcount to approve work that is not in accordance with Town standards.
- i. Wyverd understands and acknowledges that the Consultant's and Reimbursable Headcount's work must be done in compliance with all applicable laws, rules, and regulations and subject to the Town's Code, engineering guidelines, engineering standards, the Town's standard processes, and limitations set forth in the Wyverd License. The Consultant(s) and Reimbursable Headcount will be tasked with performing the work up to the Town's standards; accordingly, the Town, in its sole discretion, will have the final say as to whether the work is acceptable or if a permit is to be issued. The Town may reject any work that does not meet the Town's standards or fails to comply with applicable laws, rules, regulations and/or guidelines, including the Town's engineering guidelines and the Wyverd License, and any such rejection will not be deemed a breach or attempted breach of this Agreement or the Wyverd License nor a delay within the Town's control. Notwithstanding anything to the contrary in this Agreement, the Town shall not be liable to Wyverd or deemed in breach or attempted breach of this Agreement or the Wyverd License due to any delay or non-performance by any Consultant or Reimbursable Headcount. The scope of this Agreement is solely to describe the reimbursement by Wyverd to the Town for the work performed by the Consultant and Reimbursable Headcount, subject to the terms and conditions set forth herein.

4. REIMBURSEMENT.

- a. Wyverd shall directly compensate the Town for fees, costs, and expenses associated with the Consultant(s) and all work for, in response to, on behalf of, or related to Wyverd's right-of-way permit application requests, inspections, and other work related thereto.
- b. Wyverd shall also compensate the Town a pro rata amount for the Reimbursable Headcount for performing blue-stake/locate work associated with Wyverd's fiber construction permits; however, the Parties have mutually agreed the Locate Position shall be compensated annually and shall not exceed \$90,000.00/year.
- c. Furthermore, Wyverd shall also compensate the Town six thousand dollars (\$6,000.00) for the license fees associated with two (2) licenses from the Accela licensing program and three thousand two hundred dollars (\$3,200.00) for the license fees associated with two (2) licenses from the EPR licensing program to be used by two (2) Consultant(s) ("License Fees"). The Parties intend for the License Fees reimbursement to be a pass-thru expense, and Town shall provide Wyverd documentation substantiating the License Fees as provided in Section 4(f) below. If the costs of the License Fees increase annually beyond the above amounts, the increased cost for the License fees shall be a pass-thru expense.

- d. The Town shall deliver an invoice for the costs and expenses associated with the Consultant(s) every month and Wyverd shall immediately, within ten (10) business days of delivery of an invoice, reimburse the Town for all such costs and expenses.
- e. The Town shall deliver an invoice for the pro rata costs associated with the Reimbursable Headcount every twelve (12) months starting from the date of execution of this Agreement and Wyverd shall immediately, within ten (10) business days of delivery of an invoice, reimburse the Town for all such costs.
- f. If Wyverd requests backup documentation from the Town as part of an invoice audit, then Town agrees to cooperate in good faith and provide all reasonable backup documentation. Under such circumstances, Wyverd will not be responsible for payment of the subject invoice until ten (10) days after Wyverd completes such invoice audit. In addition, the Town agrees that the reimbursable amount(s) under this Agreement shall wind down (and eventually be eliminated) once Wyverd's high-volume of permits subsides and a normalized utility permit volume exists.

5. BREACH AND REMEDIES. In the event of a breach or attempted breach of any of the terms or conditions of this Agreement by Wyverd, the Town may terminate this Agreement or take any action at law or in equity. Wyverd hereby irrevocably waives all monetary damages under this Agreement and its sole remedy under this Agreement shall be an action for specific performance or injunctive relief.

6. INDEMNIFICATION. To the fullest extent permitted by law, Wyverd and its subsidiaries and related entities (the "Indemnifying Parties") shall indemnify, defend and hold harmless the Town and its council members, managers, officers, boards, commissions, officials, employees, or agents (collectively "Indemnified Party"), for, from, and against any and all losses, claims, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees, claims processing, investigation, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), including negligence, insofar as such Claims (or actions with respect thereof) relate to, arise out of, or are caused by, or in connection with this Agreement. Such indemnification includes indemnifying, defending, and holding the Town harmless from any and all claims brought by Wyverd or any third party pursuant to the work of the Consultant(s).

7. INSURANCE, BONDS, AND LETTERS OF CREDIT. The Insurance, Performance Bond, and Letter of Credit provisions set forth in each of the Wyverd License are applicable to this Agreement and are incorporated by reference as if fully set forth herein. Wyverd shall take any and all action necessary to incorporate or otherwise apply said insurance, performance bond, and letter of credit to this Agreement.

8. GOVERNING LAW. In all respects, this Agreement and the obligations arising hereunder shall be governed by and construed and enforced in accordance with the laws of the State of Arizona. Any litigation initiated pursuant to this Agreement shall be commenced in a court of competent jurisdiction located in Maricopa County, Arizona.

9. CONFLICTS OF INTEREST. Wyverd acknowledges that this Agreement is subject to Ariz. Rev. Stat. § 38-511 and may be terminated in accordance therewith.

10. REPRESENTATIONS AND WARRANTIES. Wyverd represents and warrants that it has the full authority to enter into this Agreement and to bind the foregoing to the terms and conditions of this Agreement.

11. SUCCESSORS AND ASSIGNS. This Agreement will be binding upon, and inure to the benefit of, each Party hereto and such Party's permitted successors and assigns; provided, however, that Wyverd may not assign this Agreement without the prior written consent of the Town.

12. NO AGENCY. Each Party hereto will act in its individual capacity. Nothing in this Agreement will be deemed to create the relationship of principal and agent, of partnership, agency, employer-employee, a joint venture, or an association among the Parties hereto.

13. NO THIRD PARTY BENEFICIARY. This Agreement is solely for the benefit of the Parties hereto and will not be deemed to be for the benefit of, or to create any rights in favor of, any third party.

- 14. COMPLIANCE WITH LAWS.** The Parties hereto shall comply with all applicable federal, state, and local laws, rules and regulations in the performance of their duties under this Agreement.
- 15. FORCE MAJEURE.** Except for payment for sums due, neither Party will be liable to the other nor deemed in default under this Agreement if and to the extent that such Party's performance of this Agreement 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. Without limiting the foregoing, force majeure includes acts of God: acts of the public enemy; war; acts of terror, hate crimes affecting public order; riots; strikes; mobilization; labor disputes; civil disorders; plague; pandemics (including without limitation, the COVID-19 pandemic); epidemics; quarantine orders or directives by a governmental entity; outbreaks of infectious disease or any other public health crisis, including without limitation, quarantine or other employee restrictions; fire; floods; lockouts, injunctions-interventions-acts, or failures or refusals to act by government authority; events or obstacles resulting from a governmental authority's response to the foregoing; and other similar occurrences beyond the control of the Party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. The force majeure notifies the other Party of the existence of the force majeure and will be deemed to continue as long as the results or effects of the force majeure prevent the Party from resuming performance in accordance with this Agreement. Force majeure will not include the following occurrences: (A) Failure or delay resulting from general economic conditions or other market effects, foreseen or unforeseen, including any increase in the cost of materials, supplies, or services, or any decrease in profit or profit margins resulting therefrom; (B) Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences; or (C) Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this section.
- 16. SEVERABILITY.** If any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, such determination shall not affect any other provision hereof, all of which other provisions shall remain in full force and effect.
- 17. CONFLICT.** If the terms and conditions of this Agreement conflict with any law or ordinance of the Town or agreement between the Parties, the terms and conditions of this Agreement shall supersede, set, and control any other terms and conditions to the extent permitted by law.
- 18. ENTIRE AGREEMENT.** The Town and Wyverd acknowledge and agree that no promises or representations have been made which do not appear written herein and that this Agreement contains the entire understanding of the Parties as to the subject matter contained in this Agreement.

SIGNATURES ON THE FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date the last party signs.

"Town"

Town of Queen Creek, an Arizona municipal corporation

"Wyverd"

Wyverd Connect LLC d/b/a Wyverd Fiber

By: _____

Printed Name: _____

Title: _____

Date: _____

By: _____

Printed Name: _____

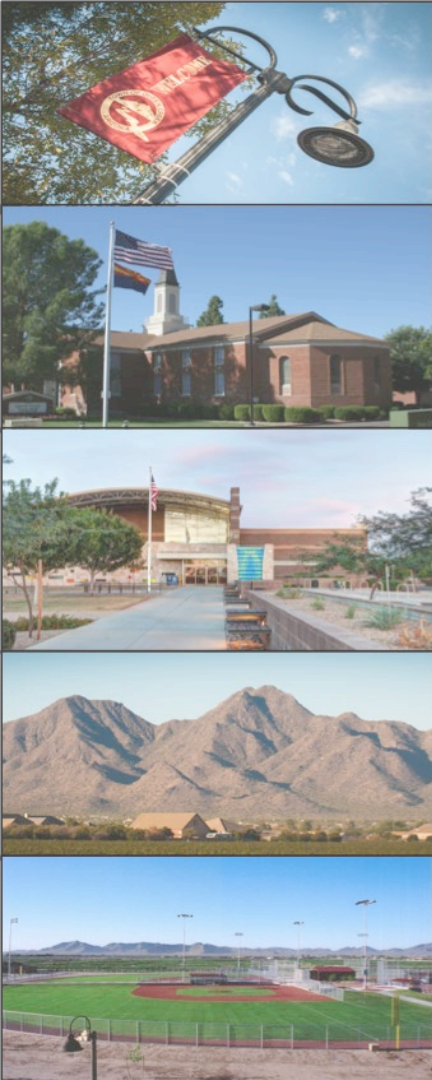
Title: _____

Date: _____

APPROVED AS TO FORM:

Town Attorney

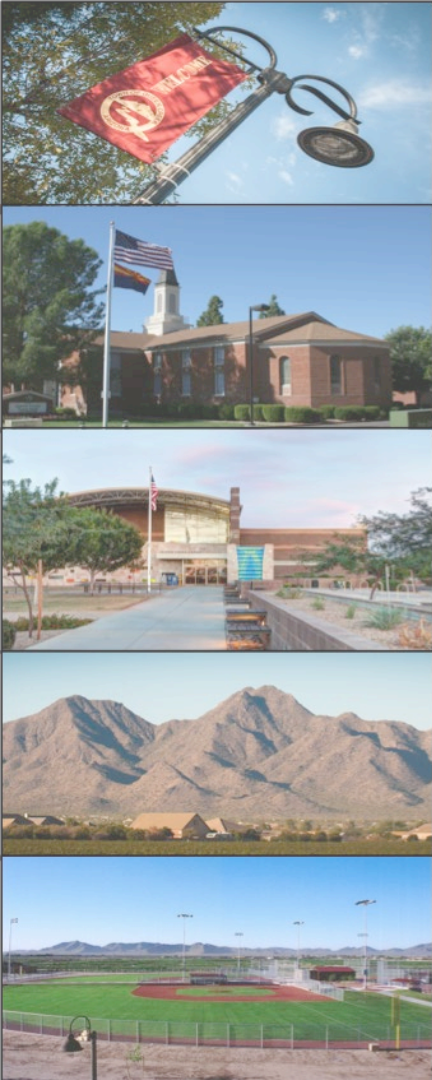
4877-2134-4061 v1 [53749-36]



Fiber Infrastructure Agreement with Wyverd Connect LLC

Council Presentation

November 2, 2022



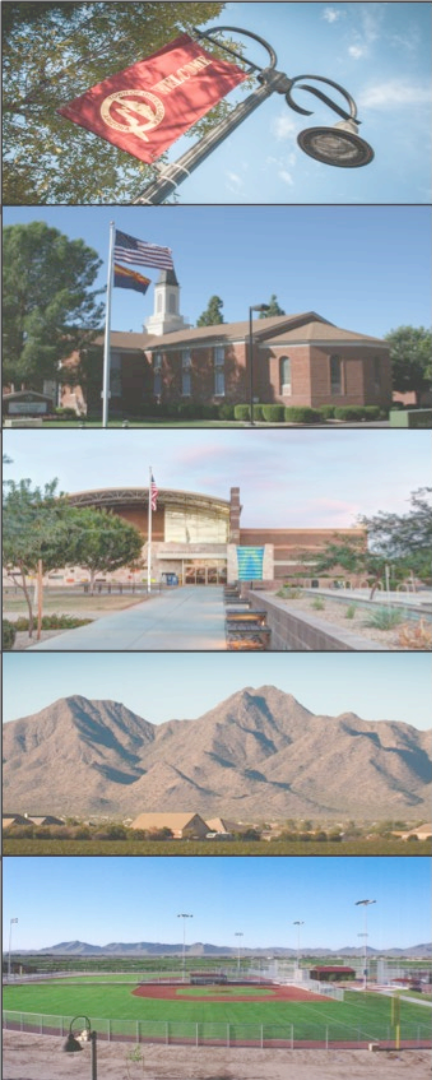
Staff is recommending the approval of a Wired Telecommunications License and Right-of-Way Use Agreement, and Reimbursement Agreement, with Wyverd Connect, LLC.

Corporate Strategic Plan Priority



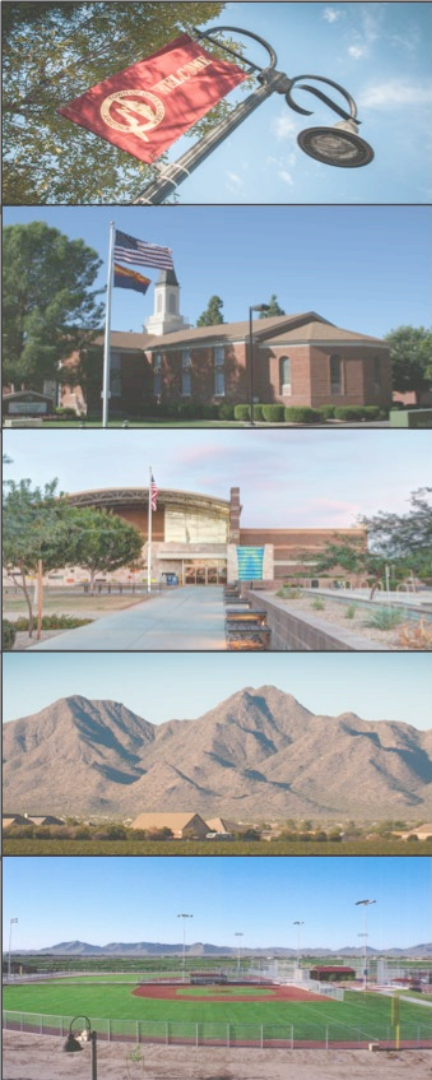
Superior Infrastructure

Technology Objective, 4.7 Continue to work with technology providers to provide services Town wide (cell, internet, fiber, etc).



Background

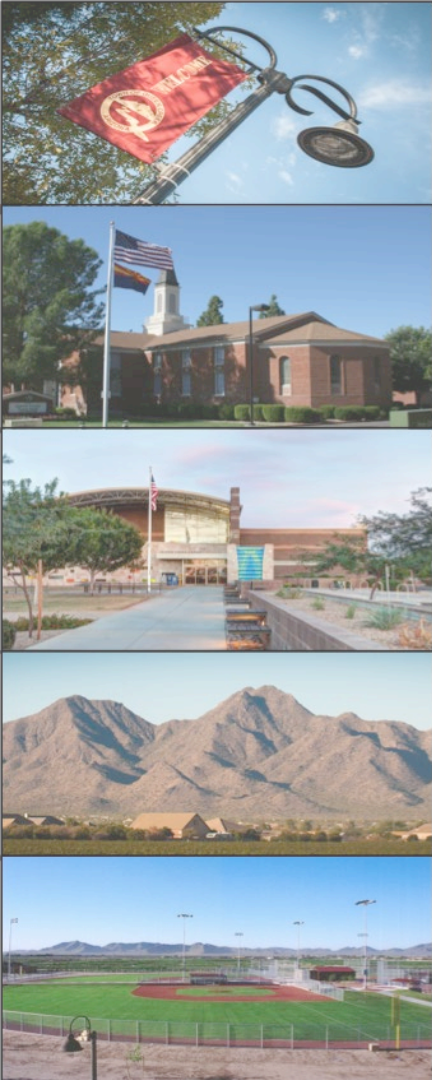
- Wyverd Group was founded in 2017 in Colorado.
- Acquired Zona Communications in 2019, an ISP in the West Valley of Arizona since 1995.
- Wyverd provides fiber internet services.
 - Fiber internet generally provides faster speeds and services than traditional cable internet.
 - Fiber internet tends to be more reliable.
 - Fiber internet tends to be more expensive than cable internet, but costs have been reduced in recent years.
- Wyverd has established agreements in Arizona in the Cities of Surprise, Mesa, Buckeye, Tempe, Sun City, and El Mirage, as well as with Pinal County. Also currently working with Goodyear and Peoria.



Legal Considerations

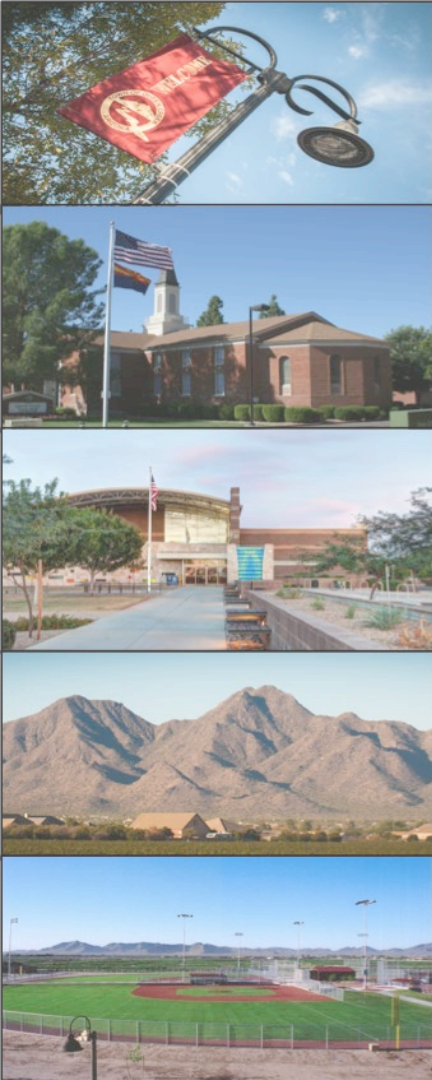
- A.R.S. § 9-501(B) allows a telecommunications company to apply for either a license or franchise, but precludes a municipality from requiring a franchise (which requires an election).
- A.R.S. §§ 9-582 and 9-583 allow and limit fees that may be charged, and generally requires that the fees and agreements be “competitively neutral and non-discriminatory.”
- A.R.S. §§ 9-582(C) The Town may also require them to “bear all of the reasonable costs associated with construction, maintenance and operation of its facilities in the public highway used to provide telecommunications services, including bearing reasonable costs associated with damage caused to public highways.”

License Agreement - Neutral Fees - Bear All Costs



Agreement Items

- ✓ Recoup any costs through the agreement for staff time.
 - ✓ Plan Review (2), Inspection (2), Traffic Control, and BlueStake.
- ✓ No right-of-way and related permit fees as long all other costs could be recouped consistent with Cox and CenturyLink (dba Lumen)
- ✓ Prior to start of any work, require a detailed notice plan and how this communication will occur with HOAs and Neighborhoods
- ✓ Require Wyverd to submit for Traffic Control Plans well in advance of the work
- ✓ Require Wyverd to identify the type of trenching that will be imposed (no micro-trenching)



Agreement Items

- ✓ Require an overall phasing map and schedule for the entire installation
- ✓ Require Wyverd to provide assurance, such as a performance bond and indemnification, that continues after the work is completed
- ✓ Require Wyverd to repair and replace Town and resident infrastructure to the same or better condition after work is completed.
- ✓ In areas where it makes sense, request for Wyverd to place Town conduit to complete the Town's fiber map. In return, Wyverd may request to lease conduit from the Town. Once these areas are identified, it will be a future addendum to the agreement.

Pre- Construction and Pothole

Lined out for Blue Stage



A Frame notice



Blue Stake marked



Pothole and Clean up



Construction through existing neighborhood





Duct pull and protection



Location for Flowerpot





Build Strategy

Flower pot between homes



Handhole at the edge
of neighborhood



Completed HH
At the edge
Marks cleaned



Completed HH
Along ROW



Build Strategy Wyverd Comparison

Wyverd HH placement



Flower pot placement comparison



One Cabinet to Serve 10k+ homes



Communication Requirements

Before:

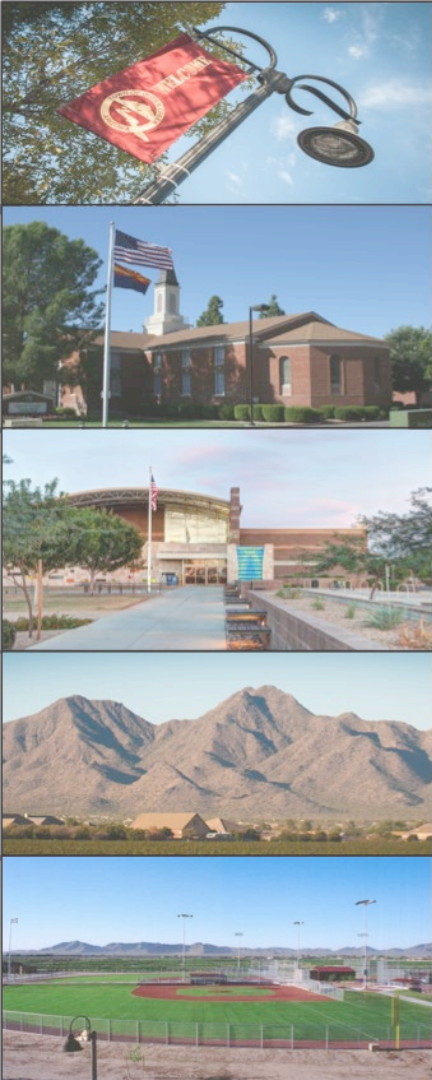
- Within 6 months - Interest survey / postcard
- Concurrent contact with HOA, if applicable
- 1 month – Regulatory and FAQ letter
- 1 week - Construction notice door hanger

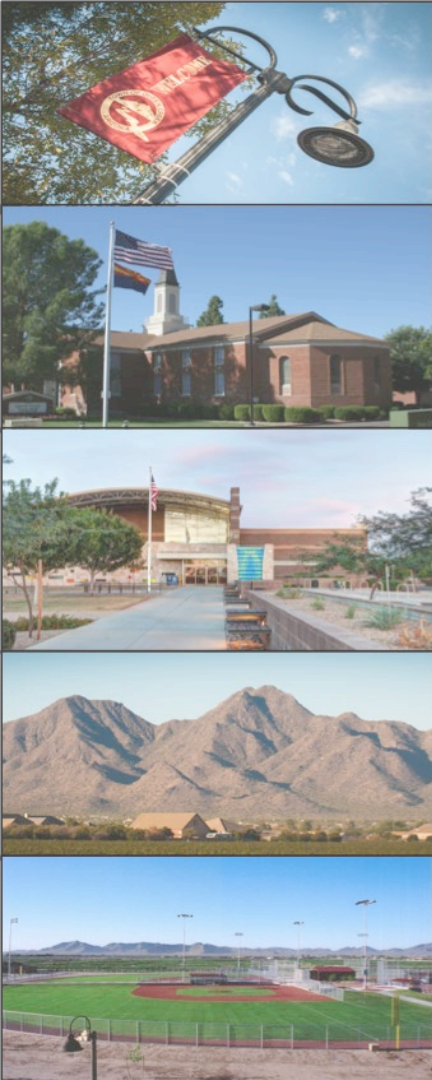
During:

- Dedicated website with dates and neighborhoods
- Option to sign up for email communication
- Contractors - Business cards, A-Frame signs
- Dedicated email *and* phone number for all questions/concerns

After:

- Orange door hanger
- Emails, if opt in
- Letters and postcards sent





Coming To Your Neighborhood Very Soon...

Experience ultra fast fiber internet

[CHECK AVAILABILITY](#)

Construction News & Projects

Click each neighborhood below to view updates

Last revised 10/20/22



CONSTRUCTION NOTICE

Wyverd is now constructing its fiber-to-the-home network in your neighborhood!

You will see our crews constructing Wyverd's 100% fiber optic network. When our construction is complete you will have access to:

- Fast Fiber Internet
- Fiber Voice Digital Phone Service

For Construction updates and FAQs visit www.fiber.events

(623) 253-5030
www.Wyverd.com

Services offered by Wyverd Connect LLC, an affiliate of Zona Wyverd

Hello Neighbor!

In the coming weeks, Wyverd will begin constructing its world class fiber-to-the-home network in your neighborhood. When our construction is complete, you will have access to fast fiber internet and fiber voice digital phone service all while experiencing exceptional customer service from our local team.

The construction and restoration process does not cost homeowners, HOAs, or cities one cent. Our goal is to give neighbors the latest technology for the internet with up to TWO GIGs up and down. Once construction is complete, we hope you will trust us to be your internet provider.

Construction times can vary with weather and other factors. To get notified by email, please visit www.fiber.events to sign up for emails and see weekly updates.

Here are some frequently asked questions and answers about construction in your neighborhood:

Q. Will you be digging in my yard or on my sidewalk?
A. It is possible. All construction will be in the Public Utility Easement, which is from the back of the curb and extends into your front yard. But rest assured, we will fix anything we might have moved in the process. Please take photos of your yard today for reference.

Q. What if my sidewalk needs repairs after digging?
A. We replace and restore everything we touch to its original condition. Concrete patches are a 3 step process and will need time to fill, but be reassured every patch will be repaired to original condition.

Q. What are the markings or flags on my sidewalk and yard? Do you remove it after construction?
A. The marks on the sidewalk and the flags in your yard are to help the construction crews understand where the existing utilities are. The marking paint is not permanent and is designed to fade away over time.

Q. Will it be noisy? What hours will you be working?
A. Please expect a little added traffic noise. A typical work day starts at 7AM and ends at sunset.

Q. How long does the construction take per street?
A. Approximately two weeks.

Q. How long after you build can I get service to my home?
A. You can get construction notices by signing up for the email list at www.fiber.events, or you can pre-order by visiting www.Wyverd.com.

Thank you for your patience during construction. If you have any questions or concerns, reach us directly via construction.az@wyverd.com or (623) 253-5030, M-F 7AM - 5PM.

Kind Regards,
The Wyverd Team

Services offered by Wyverd Connect LLC, an affiliate of Zona Wyverd

SCAN CODE for Construction Updates

www.fiber.events

Construction Team

📞 (623) 253-5030
 ✉️ construction.az@wyverd.com
 🌐 www.fiber.events

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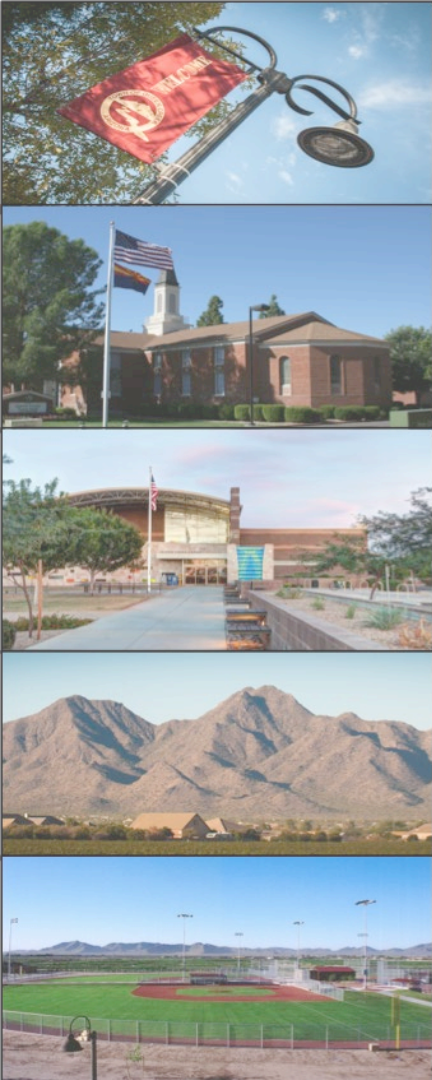
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Questions and Comments



TOWN OF
QUEEN CREEK
ARIZONA

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS ICMA-CM, TOWN MANAGER

FROM: MARIA GONZALEZ CMC, TOWN CLERK

RE: CONSIDERATION AND POSSIBLE APPROVAL OF THE OCTOBER 19, 2022 REGULAR SESSION MINUTES.

DATE: November 2, 2022

Suggested Action:

To approve the draft minutes as presented.

Alternatives:

Council can request revisions to be made to the draft minutes and approve with revisions or continue to a future meeting.

Attachment(s):

1. [10-19-22 Minutes](#)



Minutes
Town Council Regular Session
Community Chambers, 20727 E. Civic Parkway
Wednesday, October 19, 2022
6:30 PM

1) Call to Order:

The meeting was called to order at 6:30 p.m.

2) Roll Call:

PRESENT:

Jeff Brown, Vice Mayor
Robin Benning, Council Member
Leah Martineau, Council Member
Dawn Oliphant, Council Member
Julia Wheatley, Mayor-Elect

ABSENT:

Emilena Turley, Council Member

Council Member Oliphant attended virtually.

3) Pledge of Allegiance:

Led by Mayor-Elect Wheatley.

4) Invocation/Moment of Silence:

A moment of silence was held for men and women in uniform and first responders.

5) Ceremonial Matters (Presentations, Proclamations, Awards, Guest Introductions and Announcements):

5.A) Presentation of awards related to communication efforts

Communications and Marketing Manager Constance Halonen-Wilson recognized the Communication and Marketing team for their communication and outreach efforts and said they were recently honored with several awards.

The Town received the Award of Excellence from 3CMA for our Town

postcard and the Silver Circle Award from 3CMA for our Queen Creek Police Department (QCPD) outreach campaign. Three Awards of Merit were received from the Public Relations Society of America (PRSA) Phoenix for public relations efforts related to the QCPD launch, the QCPD cruiser video and women in law enforcement. Ms. Halonen-Wilson said that Queen Creek won the highest honor with the PRSA Phoenix Copper Anvil Award for Diversity with our 30x30 initiative related to recruitment of women in the police department.

Ms. Halonen-Wilson presented the awards to Council and thanked all departments involved for their support.

- 5.B) Recognition of Town Clerk Maria Gonzalez for obtaining her Master Municipal Clerk certification.

Council recognized Town Clerk Maria Gonzalez for obtaining her Master Municipal Clerk Certification from the International Institute of Municipal Clerks and congratulated her for her educational accomplishments.

6) Committee Reports:

- 6.A) Council summary reports on meetings and/or conferences attended. This may include but is not limited to Phoenix-Mesa Gateway Airport; MAG; East Valley Partnership; CAG. The Council will not propose, discuss, deliberate or take legal action on any matter in the summery unless the specific matter is properly noticed for legal action.

Committee Reports 

- 6.B) Committee and outside agency reports (only as scheduled): None

7) Public Comments:

None.

8) Consent Agenda:

- 8.A) Consideration and possible approval of the October 5, 2022 Regular Session minutes.

Department: Town Clerk's Office

Staff Report 

10-05-22 Minutes 

- 8.B) Consideration and possible approval of Expenditures \$25,000 and over, pursuant to Town Purchasing Policy. (FY 22/23 Budgeted Items)

Department: Finance

Staff Report 

Expenditures over \$25k - 101922.pdf 

- 8.C) Consideration and possible approval of the "Final Plats" for Legado West Phases 1 and 2, a request by Pulte Group.

Department: Development Services

Staff Report 

Aerial Exhibit - Legado West.pdf 

Final Plat - Legado West Phase 1.pdf 

Final Plat - Legado West Phase 2.pdf 

- 8.D) Consideration and possible approval of a Professional Services Contract with Hazen and Sawyer in an amount not to exceed \$44,506 for Pretreatment Support Services. (FY 23 Budgeted Item)

Department: Utilities

Staff Report 

Professional Services Agreement - Hazen and Sawyer 

- 8.E) Consideration and possible approval of a professional services contract with Periscope Holdings, Inc. in an amount not to exceed \$59,026 to review and recommend updates to the Town's Purchasing Policy. (FY 22/23 Budgeted Item)

Department: Finance

Staff Report 

Professional Services Contract - Periscope Holdings Inc.pdf 

- 8.F) Consideration and possible approval of an Amendment #1 to Delegation Resolution 1488-22 authorizing and directing the Town Manager and/or Capital Improvement Projects Department Director to take any and all action necessary; and to sign any and all documents, contracts, and/or agreements related to construction and completion of Mansel Carter Oasis Park Phase 2 (CIP Project No. P0615), increasing the total Resolution amount by \$4,694,407 for a total amended Resolution not to exceed \$13,251,033; and necessary budget adjustments.

Department: Capital Improvement Projects

Staff Report 

Fiscal Impact Attachment 1 

Project Location Exhibit 

Project Site Location 

DR 1488-22 Amendment #1 

Consent Agenda Item 8(F) was pulled by Council Member Martineau for a separate vote.

- 8.G) Consideration and possible approval of Delegation Resolution #1499-22 authorizing and directing the Town Manager and/or Capital Improvement Projects Department Director to take any and all action necessary; and to sign any and all documents, contracts, and/or agreements related to construction and completion of the Heavy Equipment Washout Facility (CIP Project No. MF012) in an amount not to exceed \$949,592; and necessary budget adjustments.

Department: Capital Improvement Projects

Staff Report 

Project Location Exhibit 

Project Site Exhibit 

Delegation Resolution #1499-22 Exhibit 1 

MOTION: To approve the Consent Agenda less item 8(F).

RESULT: Approved unanimously (5-0)

MOVER: Julia Wheatley, Mayor-Elect

SECONDER: Robin Benning, Council Member

AYES: Jeff Brown, Vice Mayor, Robin Benning, Council Member, Leah Martineau, Council Member, Dawn Oliphant, Council Member, Julia Wheatley, Mayor-Elect

ABSENT: Emilena Turley, Council Member

MOTION: To approve Consent Agenda Item 8(F) an Amendment #1 to Delegation Resolution 1488-22 authorizing and directing the Town Manager and /or Capital Improvement Projects Department Director to take any and all action necessary; and to sign any and all documents, contracts, and/or agreements related to construction and completion of Mansel Carter Oasis Park Phase 2 (CIP Project No. P0615), increasing the total Resolution amount by \$4,694,407 for a

total amended Resolution not to exceed \$13,251,033; and necessary budget adjustments.

RESULT: Approved (4-1)

MOVER: Robin Benning, Council Member

SECONDER: Julia Wheatley, Mayor-Elect

AYES: Jeff Brown, Vice Mayor, Robin Benning, Council Member, Dawn Oliphant, Council Member, Julia Wheatley, Mayor-Elect

NAYS: Leah Martineau, Council Member

ABSENT: Emilena Turley, Council Member

9) Public Hearing Consent Agenda:

- 9.A) Public Hearing and possible action on Ordinance 796-22, P22-0061 and P22-0062 Sparrow SFG PAD Rezone and Site Plan, a request for a PAD Rezone from C-2 (General Commercial) to MDR/PAD (Medium Density Residential) and Site Plan approval of a 110-unit, multi-family development located on approximately 11 acres west of the northwest corner of Ironwood and Ocotillo roads.

Department: Development Services

Staff Report 

Aerial Exhibit.pdf 

General Plan Exhibit.pdf 

Current Zoning Exhibit.pdf 

Proposed Zoning Exhibit.pdf 

Site Plan.pdf 

Landscape Plan.pdf 

Elevations and Floor Plans.pdf 

Project Narrative.pdf 

Neighborhood Meeting Summary.pdf 

Ordinance 796-22.docx 

Sparrow SFG PAD Rezone and Site Plan - Staff Presentation.pptx 

Vice Mayor Brown opened the public hearing for Public Hearing Consent Agenda Item 9(A). There were no comments and the public hearing was closed.

MOTION: To approve Ordinance 796-22, P22-0061 and P22-0062 Sparrow SFG PAD Rezone and Site Plan, subject to the Conditions of Approval included in this report.

RESULT: Approved unanimously (5-0)

MOVER: Robin Benning, Council Member

SECONDER: Leah Martineau, Council Member

AYES: Jeff Brown, Vice Mayor, Robin Benning, Council Member, Leah Martineau, Council Member, Dawn Oliphant, Council Member, Julia Wheatley, Mayor-Elect

ABSENT: Emilena Turley, Council Member

- 9.B) Consideration and possible approval of Ordinance 797-22 amending the Queen Creek Town Code, Chapter Seven, Article 7.1 "Administration" and Article 7.2 "Amendments"; adopting updated Building Construction Codes and Standards; providing for penalties and enforcement; repealing all Ordinances of The Town of Queen Creek in conflict therewith and setting an effective date.

Department: Development Services

Staff Report 

Ordinance 797-22.docx 

Exhibit A to Building Code Amendment Ordinance.docx 

Council Member Martineau removed Public Hearing Consent Agenda Item 9(B) for discussion. Vice Mayor Brown opened the public hearing for Item 9(B).

Rusdon Ray, 19520 E Aster Dr, Queen Creek commented in opposition of the ICC codes.

In response to Vice Mayor Brown, Michael Williams, Building Official provided a brief presentation depicting outreach efforts and details of the proposed code adoptions. Mr. Williams said the Town sought extensive feedback from contractors, stakeholders, architects, engineers and the Homebuilders Association. Mr. Williams said the Homebuilders Association of Central Arizona support this amendment.

There were no other public comments and Vice Mayor Brown closed the public hearing.

Council Member Martineau thanked Mr. Williams for his efforts and was in agreement with some of the amendments but said she is not in support of the item at this time.

Vice Mayor Brown said he relies on information from staff and the professionals on the impact of the adoption of the code.

MOTION: To approve Ordinance 797-22, amending the Queen Creek Town Code, Chapter Seven, Article 7.1 "Administration" and Article 7.2

“Amendments”; adopting updated building construction codes and standards; providing for penalties and enforcement; repealing all ordinances of the Town of Queen Creek in conflict therewith and setting an effective date of January 1, 2023, with a 90-day grace period.

RESULT: Approved (4-1)

MOVER: Robin Benning, Council Member

SECONDER: Julia Wheatley, Mayor-Elect

AYES: Jeff Brown, Vice Mayor, Robin Benning, Council Member, Dawn Oliphant, Council Member, Julia Wheatley, Mayor-Elect

NAYS: Leah Martineau, Council Member

ABSENT: Emilena Turley, Council Member

- 9.C) Public Hearing and possible action on Ordinance 799-22, Case P22-0116 Meridian Rezone, a request by Dorothy Shupe, Sketch Architecture Company, to rezone 17.69 acres from R1-54 to C-3, located immediately south of SR24 at the southeast corner of Meridian Road and SR24.

Department: Development Services

Staff Report 

Meridian Rezone Aerial.pdf 

Meridian Rezone General Plan Exhibit.pdf 

Meridian Rezone Current Zoning Exhibit.pdf 

Meridian Rezone Proposed Zoning Exhibit.pdf 

Narrative.pdf 

Site Plan.pdf 

Neighborhood Meeting Summary.pdf 

Ordinance 799-22.docx 

Council Member Benning declared a conflict and recused himself from Item 9(C). Vice Mayor Brown opened the public hearing for Public Hearing Consent Agenda Item 9(C). There were no comments and the public hearing was closed.

MOTION: To approve Ordinance 799-22, P22-0116 Meridian Rezone, subject to the Conditions of Approval outlined in this report.

RESULT: Approved unanimously (4-0)

MOVER: Julia Wheatley, Mayor-Elect

SECONDER: Leah Martineau, Council Member

AYES: Jeff Brown, Vice Mayor, Leah Martineau, Council Member, Dawn Oliphant, Council Member, Julia Wheatley, Mayor-Elect
ABSENT: Emilena Turley, Council Member

- 9.D) Public Hearing and possible action on Ordinance 800-22, P22-0207 Landscape Medians Text Amendment, a staff initiated text amendment to Article 5.3 Landscaping Standards of the Zoning Ordinance addressing installation and maintenance of landscaping medians and a mechanism for addressing lack of maintenance.

Department: Development Services

Staff Report 

Proposed Zoning Ordinance - Redline.pdf 

Proposed Zoning Ordinance - Clean.pdf 

Ordinance 800-22.docx 

Vice Mayor Brown opened the public hearing for Public Hearing Consent Agenda Item 9(D). There were no public comments and the public hearing was closed.

MOTION: To approve Ordinance 800-22, P22-0207 Landscape Medians Text Amendment.
RESULT: Approved unanimously (5-0)
MOVER: Leah Martineau, Council Member
SECONDER: Julia Wheatley, Mayor-Elect
AYES: Jeff Brown, Vice Mayor, Robin Benning, Council Member, Leah Martineau, Council Member, Dawn Oliphant, Council Member, Julia Wheatley, Mayor-Elect
ABSENT: Emilena Turley, Council Member

10) Public Hearings:

- 10.A) Public Hearing and possible action on Ordinance 798-22, Volare Estates PAD Rezone and Site Plan (Cases P22-0089 & P22-0091), a request from Sean Lake, Pew and Lake PLC, to rezone approximately seven acres of property in Pegasus Airpark from R1-43 to MU PAD, and approval of the associated site plan, to allow for the construction of 34 hangars, located east of the northeast corner of Empire Blvd and Ellsworth Road.

Department: Development Services

Pegasus Airpark Staff Report 

Aerial 

Current Zoning Map 

Proposed Zoning Map 

Site Plan 

Elevations 

Landscape Plan 

Project Narrative 

Citizen Participation Report 

Letter of Support Pegasus Homeowner's Association 

Public Comments 

Pegasus Airpark Operating Rules and Regulations and related noise/safety documents 

Ordinance 798-22.docx 

Staff Presentation 

Mallory Ress, Planner II, summarized the project location and site plan for a rezone of approximately 7 acres inside the Pegasus Airpark and for the construction of 34 hangars. Ms. Ress outlined the elevations and layout of the hangars and said a portion of the hangars are proposed to be built with a residential component.

Ms. Ress noted that a neighborhood meeting was held and 15 members of the public were in attendance and there was general support for the project. The HOA Board provided a letter of unanimous approval and the Planning and Zoning Commission approved the project (6-1). Staff received 16 letters of support and 3 letters in opposition.

Sean Lake, Pew & Lake, was present on behalf of the applicant to answer questions. Council Member Benning asked about aesthetics and design and asked if the project meets the quality standards of Queen Creek. Mr. Lake discussed the location and the hangar elevations and said the look is meant to distinguish itself from Pegasus and have a resort business park feel. He said it is not intended to look like residential homes and the project will be attractively landscaped and well maintained and they have reached an agreement with the HOA.

Vice Mayor Brown opened the public hearing.

There were no comments and Vice Mayor Brown closed the public hearing.

MOTION:

To approve Ordinance 798-22, Volare Estates PAD Rezone and Site Plan (Case P22-0089 and P22-0091), subject to the Conditions of Approval included in this report.

Approved unanimously (5-0)

Jeff Brown, Vice Mayor

Julia Wheatley, Mayor-Elect

Jeff Brown, Vice Mayor, Robin Benning, Council Member, Leah

Martineau, Council Member, Dawn Oliphant, Council Member, Julia

Wheatley, Mayor-Elect

Emilena Turley, Council Member

MOVER:

SECONDER:

AYES:

ABSENT:

11) Items for Discussion:

- 11.A) Discussion on a follow-up from the 2022 Council Strategic Planning Session on the topic of multi-family development.

Department: Development Services

REVISED Final Staff Report - 2022 CSPA Staff Report - Multi-Family.pdf 

Land Use Balance and Fiscal Impact Report.pdf 

Map 1 - Existing Approved Multi-Family Developments by Type.pdf 

Map 2 - Existing Approved & Zoned Multi-Family Developments by Type.pdf 

Map 3 - Existing Zoned and Proposed MF Development By Type.pdf 

Map 4 - MF Project Status.pdf 

Map 5 - Vacant Land and GP Land Use MF Permitted.pdf 

Map 6 - Vacant Land and GP Land Use.pdf 

8. Map 7 - Vacant Land and GP Land Use with Existing and Proposed MF.pdf 

Oct. 19 Council Meeting PPT - MF.pptx 

Development Services Director Brett Burningham introduced the discussion on the increase of multi-family and medium-density development in Queen Creek and said this is a follow up item from Council's Strategic Planning Session. He said the objective is to help staff evaluate planning and zoning requests. Mr. Burningham introduced consultants from Applied Economics to provide an update on the results of a recent market analysis.

Rick Brammer, from Applied Economics, presented information on the surge of multi-family projects in the region and the fiscal impacts. He said that Queen

Creek has some of the highest rents in the area mainly because all of our products are new. He said a lack of apartments and rentals in general, is a stumbling-block to economic development. He provided a comparison of housing and commercial land uses in Queen Creek to other neighboring cities and said it is important to match the need as our employer base grows.

Sarah Murley, from Applied Economics, reported on the fiscal impacts of different types of residential development. She said the rentals being developed in Queen Creek tend to be high quality complexes and are attracting “renters by choice” who seek certain amenities. She said the income of rental residents are very similar to single-family home residents. She discussed the revenue impact generated by residents, and said that apartments may generate more revenue for the Town based on density and that residential rental tax adds to our sales tax. Ms. Murley said that based on the impact of increasing housing prices the need for affordable units is likely to increase.

Council commented on the current market conditions and median household income to rental price ratio and had concerns about affordability of rents in Queen Creek.

Senior Planner Sarah Clark discussed the different types of multifamily zoning in Queen Creek. She showed examples of Medium Density Residential (MDR) and High Density Residential (HDR) products and provided examples of projects located in Queen Creek.

Ms. Clark presented several maps depicting the amount of existing and approved multi-family units currently in the Town along with proposed projects submitted and vacant land located in the General Land Use areas. She said there is currently 2,825 acres of vacant land in the Neighborhood category where multifamily is permitted with conditions. Ms. Clark concluded with a brief overview on the review process for multi-family developments and asked Council for feedbacks or questions.

Mayor-Elect Wheatley commented that multi-family is an important element in the community and makes sense in certain areas such as Town Center and employment corridors. She had concerns about the amount of multi-family requests we are receiving. She said our General Plan was well intended to allow flexibility but it did not envision the current trends and is a departure from our original vision. Mayor-Elect Wheatley said that she would like staff to come back with an option to amend the General Plan to specifically eliminate the multi-family land use allowed within the Neighborhood classification and any related verbiage changes as needed in an efficient schedule. She added that she is not recommending that we undo any approved zoning.

Vice-Mayor Brown said he was cognizant of the resident's sentiments and said some medium density products are favorably looked upon. He recommended fewer submissions of HDR in the remaining Neighborhood area categories and would like to see some options that narrow down HDR options to only certain areas such as Town Center, freeway corridors and job centers. Vice-Mayor

Brown asked Ms. Clark if this would require a change to the General Plan or the Zoning Ordinance and how we would separate MDR vs. HDR.

Ms. Clark said it would be a Major General Plan Amendment request to change the parameters of what would be allowed within the Neighborhood category and as part of this request staff will analyze options and schedules for presentation to council for formal adoption.

Council Member Benning said he concurs with Mayor-Elect Wheatley and commented that the voter approved General Plan did not anticipate the shift in market conditions that would make apartment development so attractive to applicants. Council Member Benning said we should go back to the General Plan process, whether staff initiated, and take it back to our voters to provide solutions. He had concerns about affordability in the housing market and in Queen Creek.

Council Member Martineau appreciated the information provided and said she advocates for property rights, the free market and what is in demand.

Council Member Oliphant commented on the different types of multifamily and the importance of diverse housing options in the community to provide some affordability to residents. She said she is in favor of looking at different areas for these uses and having additional discussion.

Council had additional discussion on affordability and providing a balance of housing to support future employment. Council discussed high-density vs. medium density and providing options that align with the Queen Creek vision and still allow for flexibility. There was discussion on HDR in certain areas only and protecting neighborhood categories from multi-family.

Planning Administrator Erik Swanson reported on multi-family projects adjacent to the Town in San Tan Valley and Pinal County that would add additional multi-family units to the area if approved.

Council Member Martineau asked for more information on by-right zoning. Mr. Burningham said the General Plan Neighborhood Use designation is not particularly "by-right". He said an application is still needed along with other criteria, including public hearings, to be considered for approval for a rezone. The burden is on the applicant to ask for a rezone or a Major General Plan Amendment.

Town Manager John Kross clarified the definition of by-right. He said preferred land uses are adopted by the Town and applicants must ask for a rezone to get the by-right privilege to build.

- 11.B) Property Tax Recommendations to 1.) eliminate Streetlight Improvement Districts (SLIDs) beginning in FY 23/24, and 2.) maintain the same Primary Property Taxes for existing taxpayers beginning in FY 23/24 for five years.

Department: Finance

Staff Report

Presentation: Property Tax Policy Reductions

Finance Director Scott McCarty provided background history and detailed information on three recommendations to provide financial relief to Utility customers and taxpayers beginning in FY 2023-24. The three items are:

1. Eliminate Streetlight Improvement District (SLID) Taxes (keep SLIDs in place; just eliminate the assessment of taxes)
2. Create a new financial policy to maintain the same Primary Property Taxes for existing taxpayers for five years. Mr. McCarty discussed criteria that will allow the taxes to remain at the same rate in regards to the levy rate and public safety expenses. He provided revenue and expenditure projections for public safety and the percent of expenses covered by property taxes. Mr. McCarty said if approved this would start July 1, 2023.
3. Reduce water replenishment fees by \$0.6M.

Council was in favor of the three items proposed to save taxpayers money and appreciated the innovative efforts by staff. Council directed staff to move forward with the items and noted the ability to revisit items if needed for public safety purposes.

Mr. McCarty said this was possible due to the growth and development in Town from our sales tax base, our fully funded pension and the flexibility and direction from Council. Mr. McCarty said the items will be evaluated and discussed annually during the budget process and adjustments can be made if needed. He said the next step will be enacting the legislation at the November 2nd Town Council meeting for approval.

12) Final Action:

None.

13) Adjournment:

Council reconvened to Executive Session at 9:20 p.m. The Regular Session reconvened and adjourned at 10:18 p.m.

TOWN OF QUEEN CREEK

Jeff Brown, Vice Mayor

ATTEST:

Maria E. Gonzalez, Town Clerk

I, Maria E. Gonzalez, do hereby certify that to the best of my knowledge and belief, the foregoing Minutes are a true and correct copy of the Town Council Regular Session Minutes of the October 19, 2022 Town Council Regular Session of the Queen Creek Town Council. I further certify that the meeting was duly called and that a quorum was present.

Passed and approved on: _____



TOWN OF
QUEEN CREEK
ARIZONA

9.B

TO: HONORABLE MAYOR AND TOWN COUNCIL
THROUGH: JOHN KROSS ICMA-CM, TOWN MANAGER
FROM: MELISSA BAUER, PROCUREMENT MANAGER
RE: CONSIDERATION AND POSSIBLE APPROVAL OF EXPENDITURES \$25,000 AND OVER, PURSUANT TO TOWN PURCHASING POLICY. (FY 22/23 BUDGETED ITEMS)
DATE: November 2, 2022

Suggested Action:

To approve the Expenditures \$25,000 and over, pursuant to Town Purchasing Policy.

Discussion:

The following items being requested are:

1. AllChem - Trichlor Acid Tablets for Water Disinfection and Treatment: Additional \$85,000 contract spending authority for Trichlor Acid Tablets. Town Council approved \$200,000 on June 1, 2022. This request would take the total contract spending authority to \$285,000. (Utilities)
2. Knowledge Services - Temporary Staffing: \$65,000 (Information Technology)

Fiscal Impact:

The fiscal impact of the requested spending authority for the above expenditures is: \$350,000.00. Funds have been identified within the line item budget as approved in the FY22/23 budget or subsequently approved by Council.

Attachment(s):

1. [Expenditures over \\$25,000.pdf](#)

Attachment: Expenditures \$25,000 and Over

Budgeted in Fiscal Year 22/23

November 2, 2022

Item #	Vendor(s)	Description	Purpose	Requesting Dept(s)	Fiscal Impact \$	Procurement Method	Alternative
1	AllChem	Trichlor Acid Tablets for Water Disinfection and Treatment.	Additional contract spending authority for the purchase of Trichlor Acid Tablets for water disinfection and treatment. Council previously authorized \$200k at the 6/7/22 Council Meeting for FY 23. This additional \$85k would bring the total expenditure to \$285k (FY23 Budgeted Item)	Utilities	\$85,000 (\$285,000 Total)	Sole Source	There is no alternative for this item. Allchem is currently the only distributor in the state that provides this type of chlorine that is compatible with the Town's treatment equipment and processes. The Town is required under state and federal laws to procure the necessary chemicals to treat the Town's potable water supply.
2	Knowledge Services	Temporary Staffing	Contract spending authority for temporary services to assist the Information Technology Department with System Administration duties on an as-needed basis.	Information Technology	\$65,000	ADSP017-174599	I.T. has had great difficulty recruiting a successful candidate to accept a full time position with the Town, and is in desperate need to recruit an individual to support local and wide area network server hardware and operating systems. Council could choose not to approve the temporary staff to assist with IT operations which will delay completion of projects, and further degrade levels of service.



TOWN OF QUEEN CREEK ARIZONA

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS ICMA-CM, TOWN MANAGER

FROM: JENNIFER LINDLEY, DOWNTOWN DEVELOPMENT MANAGER

RE: CONSIDERATION AND POSSIBLE APPROVAL OF THE RE-APPOINTMENT OF PATRICK CAMUNEZ, VALERIE DONE, BRIAN MCKEAN, DEREK NEIGHBORS, AND WHITNEY TOLLE TO THE DOWNTOWN CORE ARTS & PLACEMAKING ADVISORY SUB-COMMITTEE.

DATE: November 2, 2022

Suggested Action:

To re-appoint Patrick Camunez, Valerie Done, Brian McKean, Derek Neighbors, and Whitney Tolle to two-year terms beginning on November 2, 2022 to the Downtown Core Arts & Placemaking Advisory Sub-Committee.

Relevant Council Goal(s):

- Image & Identity 5.3 – Activate the Town’s Arts Commission to develop and implement a master plan consistent with Town Council goals. A master plan should consider a phased approach to implementation with the downtown core identified as a key area to create an environment or creativity and placemaking (as part of a larger initiative to activate the downtown core).

Discussion:

On February 19, 2020 the Town Council approved the formation of the new Downtown Arts & Placemaking Advisory Committee. The advisory committee has continued to meet over the last two-years. Most recently, the advisory committee issued a Request for Proposal’s for a consultant to prepare an Arts & Placemaking Master Plan that will assist the Town in establishing an approach to public art & placemaking, identify resources for the support of public art & placemaking throughout Queen Creek and to set priorities for public art with the Town. This project is anticipated to begin in early 2023.

On July 15, 2020, the Town Council appointed Patrick Camunez, Valerie Done, Brian McKean, Derek Neighbors, and Whitney Tolle to serve two-year terms beginning on July 15, 2020 to the Downtown Core Arts & Placemaking Advisory Sub-Committee. In addition, Lisa Dalton was appointed on August 18, 2021 for a two-year term.

The recommended composition of the Advisory Sub-Committee is seven (7) members, appointed for one-year and two-year terms. This Advisory Committee reports to the Economic Development

Commission (EDC); since the EDC is officially established under the Town Council, it will fall under the Open Meeting Law. A minimum of seven (7) members with experience in the creation, exhibition, curation, or management of art works, public or private. Experience may include and is not limited to the following: practicing artists; art professionals such as arts and culture teachers, art history, historian/art historian, architect or landscape architect; or, representative from an organization that supports arts and culture. Preference may be given to applicants with experience related to visual arts.

If re-appointed, the following individuals will represent the advisory committee:

Patrick Camunez

Patrick is an attorney and has served on several committees and boards including US Vets, Arizona Bar Leadership Committee, Flinn Brown Civic leadership Committee, and the Arizona Commission for the Arts, Grants Committee.

Valerie Done

Valerie is a retired teacher and President of the San Tan Artist Guild. She is a local artist and has a lot of connections with local artists and the community.

Derek Neighbors, EDC representative

Derek is co-founder of Gangplank and is a technology executive. He has always been passionate about downtown development and serves on the Economic Development Commission.

Brian McKean, EDC representative

Brian currently owns Old Ellsworth Brewing in the Downtown Core. He currently serves on the Economic Development Commission and is interested in helping to facilitate arts placemaking in downtown Queen Creek.

Whitney Tolle

Whitney has been a resident of Queen Creek for five years and is a Quality Engineering Manager. She also owns her own business, Needle & Print, which does screen printing & embroidery.

Councilmember Robin Benning will continue to serve as the Town Council liaison for this committee.

Staff recommends the re-appointment of all of the individuals based on their interest in serving the community and their commitment to furthering the arts, placemaking and economic development initiatives of Queen Creek.

Fiscal Impact:

There is no fiscal impact associated with making appointments to the Downtown Core Arts & Placemaking Sub-Advisory Committee.

Alternatives:

The Town Council could choose not to appoint the recommended individuals and request that staff

present alternative appointments at the next Town Council meeting.

Attachment(s):

1. [Notice of Interest Applications.pdf](#)

Submitter DB ID 27394
IP Address 174.17.90.68
Submission Recorded On 03/04/2020 7:27 pm
Time to Take the Survey 7 minutes, 4 secs.

Page 1

The Town of Queen Creek depends on its citizens to help advance the community toward its goals. Residents can participate in local decision-making by serving on volunteer boards, commissions, committees and task forces. In most cases, volunteer members act in an advisory capacity making recommendations to the Town Council.

Appointments are made by approval of the Town Council. If you would like to be considered for an appointment, complete this form, attach a resume or letter about yourself and return all documents to:

**Town of Queen Creek
Town Clerk's Office
22350 S. Ellsworth Road
Queen Creek, AZ 85142
Fax: 480-358-3001**

1. Date

03/04/2020

2. Name

First Patrick

Middle Jerome

Last Camunez

3. Home Address

21503 E Alyssa Ct

4. Mailing Address (if different than home address)

Not answered

5. Occupation

Attorney

6. Phone

Home Phone (480) 204-6730

Work Phone (480) 858-7761

Best time to call (a.m. or p.m.) Pm

Fax number Not answered

7. Email Address

Patrick.camunez@gmail.com

8. How long have you been a resident of Queen Creek?

11 yeats

9. Are you a registered voter?

Yes

10. Do you live within the Town's incorporated limits?

Yes

11. Have you participated in the Queen Creek Citizen Leadership Institute?

No

12. If yes, did you graduate?

No

13. Which boards, commissions, committees or task forces have you served on in the past, in Queen Creek or elsewhere?

US Vets, Arizona Bar Leadership Committee, Flinn Brown Civic leadership Committee, Arizona Commission for the Arts- Grants Committee

14. I am interested in serving on: (Please rank the committees you are interested in, with 1 being your first choice.)

Board of Adjustment Not answered

Economic Development Commission Not answered

Downtown Arts & Placemaking Advisory Committee 1

Parks and Recreation Advisory Board 2

Planning and Zoning Commission Not answered

Transportation Advisory Committee 3

15. Please describe why you would like to serve on this board, committee, commission, etc.

I have experience planning and vision. I was on the state commission for the arts. I would be interested in trying to better my local community and get involved.

16. Please describe special knowledge or expertise you have that would benefit the Town.

Served in a variety of performance arts and visual arts.

17. Please list community, civic, professional, social, cultural or athletic organizations you have been affiliated with and in what capacity.

US Vets, Arizona Bar Leadership Committee, Flinn Brown Civic leadership Committee, Arizona Commission for the Arts- Grants Committee

18. Are you available for evening meetings?

Yes

19. Are you available for morning meetings?

No

20. Are you available for lunch meetings?

Yes

21. Are there days of the week you are not available for meetings? (Check all that apply)

Tuesday

22. Resume

I hereby acknowledge that all information provided on this application is subject to disclosure pursuant to the Arizona Public Records Law. I understand that members of boards, commissions, committees and task forces are subject to disclosure of conflicts of interest. I certify that the information contained herein is true and accurate to the best of my knowledge.

Note: Notice of Interest forms will be kept on file for 12 months. After that, they will expire and applicant's will need to submit a new form.

23. Signature

Patrick Camunez

This question is marked as sensitive.

Submitter DB ID 44909
IP Address 72.201.115.45
Submission Recorded On 10/23/2022 5:24 pm
Time to Take the Survey 6 minutes, 40 secs.

Page 1

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Town of Queen Creek

Town Clerk's Office

22350 S. Ellsworth Road

Queen Creek, AZ 85142

Fax: 480-358-3001

1. Date

10/23/2022

2. Name

First Valerie

Middle Mills

Last Done

3. Home Address

24745 S. 186th Pl.

4. Mailing Address (if different than home address)

Not answered

5. Occupation

Retired

6. Phone

Home Phone (480) 370-3736

Work Phone Not answered

Best time to call (a.m. or p.m.) a.m. or p.m.

Fax number Not answered

7. Email Address

valeriemdone@gmail.com

8. How long have you been a resident of Queen Creek?

7 years

9. Are you a registered voter?

Yes

10. Do you live within the Town's incorporated limits?

Yes

11. Have you participated in the Queen Creek Citizen Leadership Institute?

No

12. If yes, did you graduate?

No

13. Which boards, commissions, committees or task forces have you served on in the past, in Queen Creek or elsewhere?

Down Town Arts and Placemaking Committee

14. I am interested in serving on: (Please rank the committees you are interested in, with 1 being your first choice.)

Board of Adjustment Not answered

Economic Development Commission Not answered

Downtown Arts & Placemaking Advisory Committee 1

Parks and Recreation Advisory Board Not answered

Planning and Zoning Commission Not answered

Transportation Advisory Committee Not answered

15. Please describe why you would like to serve on this board, committee, commission, etc.

I have enjoyed the experience so far and would like to continue to serve.

16. Please describe special knowledge or expertise you have that would benefit the Town.

I am a local artist

17. Please list community, civic, professional, social, cultural or athletic organizations you have been affiliated with and in what capacity.

I am a retired K-8 teacher.

18. Are you available for evening meetings?

No

19. Are you available for morning meetings?

Yes

20. Are you available for lunch meetings?

Yes

21. Are there days of the week you are not available for meetings? (Check all that apply)

Not answered

22. Resume

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Note: Notice of Interest forms will be kept on file for 12 months. After that, they will expire and applicant's will need to submit a new form.

23. Signature

Valerie M. Done

This question is marked as sensitive.

Submitter DB ID	27406
IP Address	98.191.180.74
Submission Recorded On	03/05/2020 11:28 am
Time to Take the Survey	6 minutes, 46 secs.

Page 1

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Town of Queen Creek
Town Clerk's Office
22350 S. Ellsworth Road
Queen Creek, AZ 85142
Fax: 480-358-3001

1. Date

03/05/2020

2. Name

First Brian

Middle Michael

Last McKean

3. Home Address

22005 South Ellsworth Road

4. Mailing Address (if different than home address)

22005 South Ellsworth Road

5. Occupation

Business Owner/Superhero

6. Phone

Home Phone (480) 433-0651

Work Phone (480) 433-0651

Best time to call (a.m. or p.m.) yes

Fax number Not answered

7. Email Address

brian@oldebc.com

8. How long have you been a resident of Queen Creek?

3 years

9. Are you a registered voter?

Yes

10. Do you live within the Town's incorporated limits?

No

11. Have you participated in the Queen Creek Citizen Leadership Institute?

Yes

12. If yes, did you graduate?

Yes

13. Which boards, commissions, committees or task forces have you served on in the past, in Queen Creek or elsewhere?

Currently serving a commission on the EDC!!!

14. I am interested in serving on: (Please rank the committees you are interested in, with 1 being your first choice.)

Board of Adjustment 3

Economic Development Commission 1

Downtown Arts & Placemaking Advisory Committee 1

Parks and Recreation Advisory Board 2

Planning and Zoning Commission 4

Transportation Advisory Committee 5

15. Please describe why you would like to serve on this board, committee, commission, etc.

I feel the new design guidelines for the downtown core area will allow smaller businesses to express themselves with some artistic flair. There will need to be some direction and some processes set up to ease the approval for this. The artistic expression of the downtown core business owners can really create a unique and appealing character.

I also am trying to fill out qa sign application to get a mural approved.....

16. Please describe special knowledge or expertise you have that would benefit the Town.

I spent two years in graphic design school. I have a BS in Business and a Masters in Business. I am directly in charge of all of our printed and electronic media design at Old Ellsworth Brewing Company.

17. Please list community, civic, professional, social, cultural or athletic organizations you have been affiliated with and in what capacity.

I have attended the Citizen Leadership Institute for the Town of Queen Creek.

I am currently serving on the EDC.

18. Are you available for evening meetings?

Yes

19. Are you available for morning meetings?

Yes

20. Are you available for lunch meetings?

Yes

21. Are there days of the week you are not available for meetings? (Check all that apply)

Friday

22. Resume

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Note: Notice of Interest forms will be kept on file for 12 months. After that, they will expire and applicant's will need to submit a new form.

23. Signature

Brian McKean

This question is marked as sensitive.

Submitter DB ID 44836
IP Address 199.117.152.162
Submission Recorded On 10/20/2022 12:15 pm
Time to Take the Survey 12 minutes, 38 secs.

Page 1

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Town of Queen Creek

Town Clerk's Office

22350 S. Ellsworth Road

Queen Creek, AZ 85142

Fax: 480-358-3001

1. Date

10/20/2022

2. Name

First Whitney

Middle Katherine

Last Tolle

3. Home Address

19510 E Via Del Oro

4. Mailing Address (if different than home address)

Not answered

5. Occupation

Quality Engineering Manager

6. Phone

Home Phone (317) 727-5231

Work Phone Not answered

Best time to call (a.m. or p.m.) Not answered

Fax number Not answered

7. Email Address

wksinger21@gmail.com

8. How long have you been a resident of Queen Creek?

7

9. Are you a registered voter?

Yes

10. Do you live within the Town's incorporated limits?

Yes

11. Have you participated in the Queen Creek Citizen Leadership Institute?

Yes

12. If yes, did you graduate?

Yes

13. Which boards, commissions, committees or task forces have you served on in the past, in Queen Creek or elsewhere?

Arts and Placemaking Committee

14. I am interested in serving on: (Please rank the committees you are interested in, with 1 being your first choice.)

Board of Adjustment 6

Economic Development Commission 3

Downtown Arts & Placemaking Advisory Committee 1

Parks and Recreation Advisory Board 2

Planning and Zoning Commission 5

Transportation Advisory Committee 4

15. Please describe why you would like to serve on this board, committee, commission, etc.

I'd like to continue serving on this board as I was part of the initial committee. We are getting to a point to see the fruition of the thoughts and direction in which we have been working. I'd like to continue in to see this team develop.

16. Please describe special knowledge or expertise you have that would benefit the Town.

Currently a small business owner in Town of Queen Creek.

Work as a quality manager which works among teams and seek resolution.

17. Please list community, civic, professional, social, cultural or athletic organizations you have been affiliated with and in what capacity.

Previous director for Region 3 Gold Cup Show Morgan Horse show committee (mid west)

Citizen Leadership Program in QC

Volunteered at recycle and pancake events in Town of Queen Creek

ISO 9001 lead auditor

AMHA lifetime member (American Morgan Horse Association)

Small Business owner Needle and Print

18. Are you available for evening meetings?

Yes

19. Are you available for morning meetings?

Yes

20. Are you available for lunch meetings?

Yes

21. Are there days of the week you are not available for meetings? (Check all that apply)

Not answered

22. Resume

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Note: Notice of Interest forms will be kept on file for 12 months. After that, they will expire and applicant's will need to submit a new form.

23. Signature

Whitney Tolle

This question is marked as sensitive.

Submitter DB ID 17665
IP Address 184.190.9.125
Submission Recorded On 05/29/2018 4:56 p.m.

Received

MAY 29 2018

Town of Queen Creek

Page 1

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Town of Queen Creek
Town Clerk's Office
22350 S. Ellsworth Road
Queen Creek, AZ 85142
Fax: 480-358-3001

[PDF version of this form]

1. Date

05/29/2018

2. Name

First Derek

Middle Not answered

Last Neighbors

3. Home Address

21469 East Lords Way

4. Mailing Address (if different than home address)

Not answered

5. Occupation

Technology Executive

6. Phone

Home Phone (480) 726-1753

Work Phone (480) 335-9746

Best time to call (a.m. or p.m.) pm

Fax number Not answered

7. Email Address

derek@gangplankhq.com

8. How long have you been a resident of Queen Creek?

10 years

9. Are you a registered voter?

Yes

10. Do you live within the Town's incorporated limits?

Yes

11. Have you participated in the Queen Creek Citizen Leadership Institute?

No

12. If yes, did you graduate?

No

13. Which boards, commissions, committees or task forces have you served on in the past, in Queen Creek or elsewhere?

I am currently on the Economic Development Commission in Queen Creek. I served as the President of the Downtown Chandler Community Partnership for two terms. I was on the Arts Commission Task and Development Fees Task Forces for Queen Creek.

14. I am interested in serving on: (Please rank the committees you are interested in, with 1 being your first choice.)

Board of Adjustment 6

Economic Development Commission 1

Municipal Arts Commission 2

Parks and Recreation Advisory Board 4

Planning and Zoning Commission 3

Transportation Advisory Committee 5

15. Please describe why you would like to serve on this board, committee, commission, etc.

I was involved in early assessment and would like to kick off the committee and serve to get it stabilized.

16. Please describe special knowledge or expertise you have that would benefit the Town.

Lots of experience in place making and economic development. Experience running high tech businesses and hiring creative class employees.

17. Please list community, civic, professional, social, cultural or athletic organizations you have been affiliated with and in what capacity.

Arizona Soccer Club - Past President

Downtown Chandler Community Partnership - Past President

AZCEND - Past Board Member

Town of Queen Creek Economic Development Commission - Member

Gangplank - President

18. Are you available for evening meetings?

Yes

19. Are you available for morning meetings?

Yes

20. Are you available for lunch meetings?

No

21. Are there days of the week you are not available for meetings? (Check all that apply)

Monday

22. Resume

I hereby acknowledge that all information provided on this application is subject to disclosure pursuant to the Arizona Public Records Law. I understand that members of boards, commissions, committees and task forces are subject to disclosure of conflicts of interest. I certify that the information contained herein is true and accurate to the best of my knowledge.

Note: Notice of Interest forms will be kept on file for 12 months. After that, they will expire and applicant's will need to submit a new form.

23. Signature

Derek Neighbors

This question is marked as sensitive.



TOWN OF
QUEEN CREEK
ARIZONA

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS ICMA-CM, TOWN MANAGER

FROM: BRETT BURNINGHAM, DEVELOPMENT SERVICES DIRECTOR, CHRIS DOVEL,
TOWN ENGINEER, SALAMATULLAH SAYEED, ENGINEER

RE: CONSIDERATION AND POSSIBLE APPROVAL OF THE "MAP OF DEDICATION" FOR
ELLSWORTH ROAD, A REQUEST BY SENTRY STORAGE LLC.

DATE: November 2, 2022

Suggested Action:

To approve the "Map of Dedication" for Ellsworth Road, a request by Sentry Storage LLC.

Relevant Council Goal(s):

Superior Infrastructure

Discussion:

The applicant is requesting approval of the Map of Dedication for Ellsworth Road Right-of-Way. This portion of Ellsworth Road is located south of Chandler Heights Road and north of Riggs Road on the west side of Ellsworth Road. The roadway dedication is a requirement for the new Sentry Storage development project.

This portion of Ellsworth Road was planned as a Principal Arterial Road. The half street Right-of-Way width that is required for a Principal Arterial Road is 70 feet per Town of Queen Creek Standards. The existing half street Right-of-Way is 65 feet and this map of dedication will dedicate an additional 5 feet to meet the Town's standard.

Fiscal Impact:

The Owner (Sentry Storage LLC) will complete the remaining half-street roadway improvements along Ellsworth Road as part of their approved construction plans. The Town will be responsible for the future roadway maintenance cost.

Alternatives:

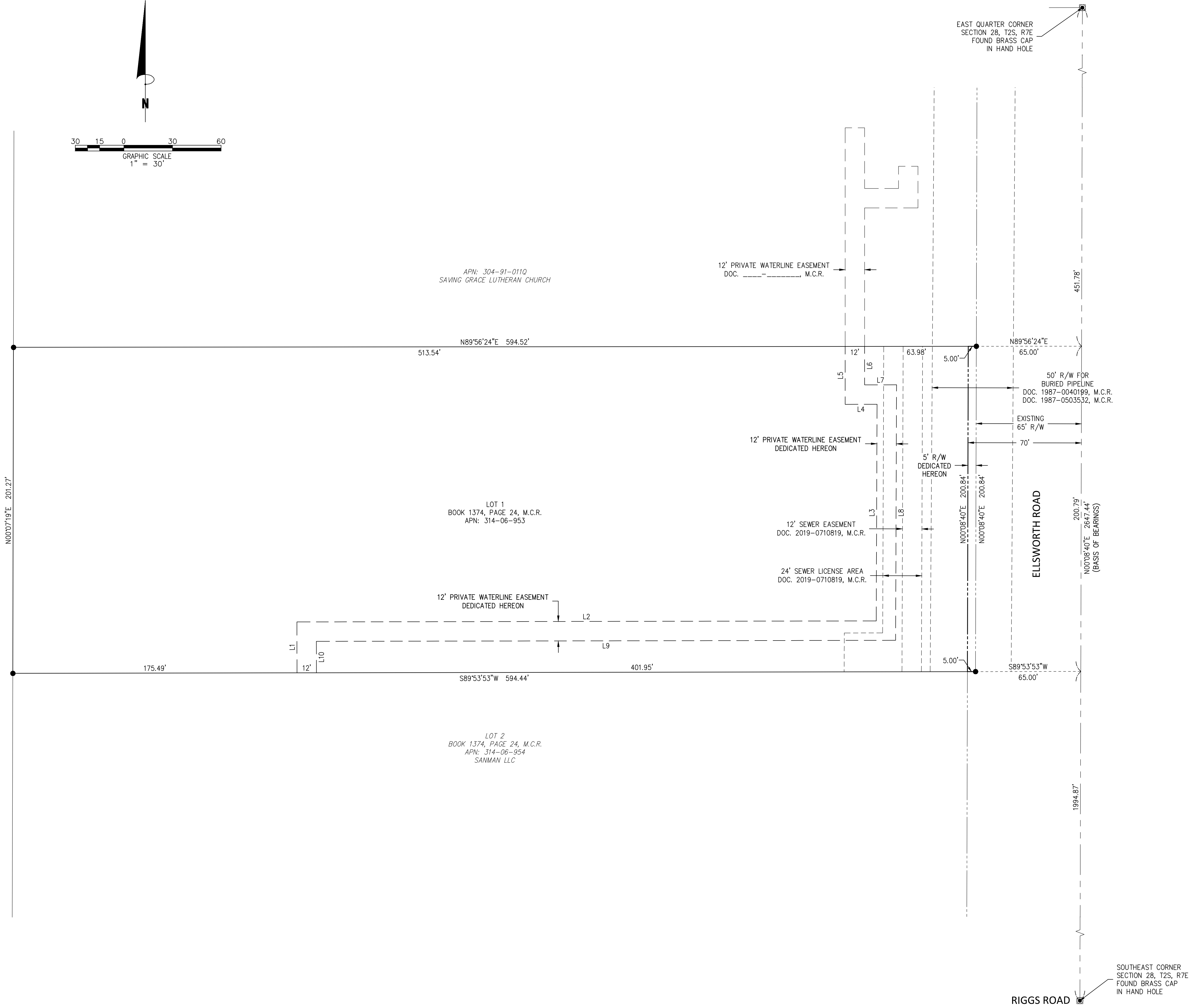
Not to accept the additional Right-of-Way that is being dedicated by the developer per the requirements of the new Sentry Storage development project. If the Town does not accept the additional Right-of-Way, the roadway improvements will not be able to be constructed to accommodate the planned designs.

Attachment(s):

1. [Aerial Exhibit - Map of Dedication Ellsworth Road.pdf](#)
2. [Map of Dedication - Ellsworth Road.pdf](#)

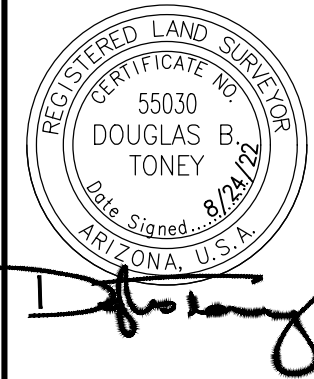


PECAN LIGHTS
BOOK 1310, PAGE 36



MAP OF DEDICATION FOR
ELLSWORTH ROAD
QUEEN CREEK, ARIZONA

DATE: 8/24/22	
PROJ NO: 051044-01	
TASK NUM: 001	
DRAWN BY: DT/TL	
CHECKED:	
QUALITY:	
CLIENT NO:	
SCALE 1" = 30'	
2 OF 2	





TOWN OF
QUEEN CREEK
ARIZONA

9.E

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS ICMA-CM, TOWN MANAGER

FROM: SCOTT MCCARTY, FINANCE DIRECTOR

RE: CONSIDERATION AND POSSIBLE APPROVAL OF FY 2021-22 BUDGET AMENDMENTS TOTALING \$10.0 MILLION IN REVENUE AND OTHER SOURCES ADJUSTMENTS AND \$6.2 MILLION IN ADJUSTMENTS TO BUDGETS FOR TRANSFERS BETWEEN FUNDS (DOES NOT INCREASE THE FY 2021-22 BUDGET).

DATE: November 2, 2022

Suggested Action:

To approve FY 2021-22 budget amendments totaling \$10.0 million in revenue and other sources adjustments and \$6.2 million in adjustments to budgets for transfers between funds.

Relevant Council Goal(s):

Effective Government: KRA Financial Stability.

Discussion:

The Town is currently undergoing its annual audit and preparing our FY 2021-22 financial statements. While preparing these statements, staff has identified six budget adjustments that require Town Council approval. These adjustments do not affect expenditures, only revenues and transfers related to the Town's capital improvement programs. These adjustments are necessary to correct year-end budget-to-actual variances in the Town's financial statements.

Fiscal Impact:

Please see attachment.

Alternatives:

The Town Council could choose to not approve some or all of these reallocations. However, this would result in unfavorable budget and financial reporting variances at year-end.

Attachment(s):

1. [Year-End FY22 Budget Adjustments Staff Report](#)



TO: HONORABLE MAYOR AND TOWN COUNCIL

FROM: SCOTT MCCARTY, FINANCE DIRECTOR

THROUGH: JOHN KROSS, TOWN MANAGER

RE: Consideration and possible approval of FY 2021-22 budget amendments totaling \$10.0 million in revenue and other sources adjustments and \$6.2 million in adjustments to budgets for transfers between funds (does not increase the FY 2021-22 budget).

DATE: November 2, 2022

Staff Recommendation:

Staff recommends approval of FY 2021-22 budget amendments totaling \$10.0 million in revenue and other sources adjustments and \$6.2 million in adjustments to budgets for transfers between funds.

Proposed Motion:

Motion to approve FY 2021-22 budget amendments totaling \$10.0 million in revenue and other sources adjustments and \$6.2 million in adjustments to budgets for transfers between funds.

Relevant Council Goal(s):



Effective Government: KRA Financial Stability

Discussion:

The Town is currently undergoing its annual audit and preparing our FY 2021-22 financial statements. While preparing these statements, staff has identified six budget adjustments that require Town Council approval. These adjustments do not affect expenditures, only revenues and transfers related to the Town's capital improvement programs. These adjustments are necessary to correct year-end budget-to-actual variances in the Town's financial statements.

Fiscal Impact

Revenue and Other Source Adjustments: The proposed budget adjustments increase revenues and other sources by a net amount of \$10.0 million as explained in the notes below this schedule:

NOTE	DESCRIPTION	FUND	FY 21-22 CURRENT BUDGET	FY 21-22 REVISED ESTIMATE	INCREASE (DECREASE)
a	Bond and Loan Proceeds - Parks Master Plan	General CIP Fund	106,980,000	131,203,000	24,223,000
b	Intergovernmental Revenues	General CIP Fund	-	24,127	24,127
c	Contributions	Drainage & Transportation Fund	-	200,000	200,000
d	Intergovernmental Revenues	Drainage & Transportation Fund	14,438,253	-	(14,438,253)
Total Revenue and Other Source Adjustments			121,418,253	131,427,127	10,008,874

- a) On June 23, 2022, the Town closed on a second loan to provide funding for construction of various projects identified in Phase I of the Parks Master Plan. This budget adjustment recognizes \$24.2 million of loan proceeds from this loan.
- b) The Town has partnered with the Maricopa County Flood Control District to make drainage improvements in and near Frontier Family Park. During FY 21-22, the Town received \$24,127 from the District towards the cost of this project. This amount was not included in the adopted budget, requiring a budget adjustment.
- c) The Town received a total of \$200,000 from two developers as cash-in-lieu for two future traffic signals. These amounts were not expected and therefore require a budget adjustment to accommodate the cash receipts.
- d) The FY 21-22 budget anticipated receiving contributions from various partners on several road projects, including the Town of Gilbert, Maricopa County, and Pinal County. However, all of these projects were still under construction at the end of the fiscal year and, according to the terms of most of these IGAs, the reimbursements for the projects will not arrive until the projects are complete. Staff expects to receive these reimbursements by the end of FY 22-23.

Adjustments to Budgets for Transfers Between Funds: Transfers are not considered “expenses” or use of budget spending authority; they are merely moving resources from one fund to pay for expenses incurred in another fund. Staff proposes two adjustments to Transfers budgets, as follows:

DESCRIPTION		FUND / PROJECT	INCREASE (DECREASE) TRANSFERS IN	INCREASE (DECREASE) TRANSFERS OUT
ADJUSTMENTS TO TRANSFER BUDGETS:				
a	Transfers In - CIP Projects	General CIP Fund	5,780,000	
	Transfers Out - CIP Projects	Public Safety Impact Fee Fund		1,200,000
	Transfers Out - CIP Projects	Fire Impact Fee Fund		4,580,000
b	Transfers In - CIP Projects	Drainage & Transportation Fund	375,522	
	Transfers Out - CIP Projects	Water Operating Fund		189,034
	Transfers Out - CIP Projects	Water Capacity Fee Fund		41,566
	Transfers Out - CIP Projects	Wastewater Operating Fund		117,426
	Transfers Out - CIP Projects	Wastewater Capacity Fee Fund		27,496
Total Adjustments to Transfers			6,155,522	6,155,522

- a) The FY 21-22 budget did not include budgets for transfers of funds from the Public Safety and Fire Impact Fee Funds towards the construction costs of Fire Station #2 and Fire Station #5. This budget adjustment corrects this oversight.
- b) With creation of the new CIP Department in FY 21-22, all project management activities are now budgeted and accounted for in the Drainage & Transportation Fund. Finance staff developed a cost allocation method whereby the Water and Wastewater funds contribute funding towards their proportionate share of project management costs by

transferring resources from the utility funds to the Drainage & Transportation Fund. This budget adjustment accommodates this new cost allocation method.

Alternative

The Town Council could choose to not approve some or all of these reallocations. However, this would result in unfavorable budget and financial reporting variances at year-end.



TOWN OF
QUEEN CREEK
ARIZONA

9.F

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS ICMA-CM, TOWN MANAGER

FROM: MOHAMED YOUSSEF, PUBLIC WORKS DIRECTOR

RE: CONSIDERATION AND POSSIBLE APPROVAL OF A ONE-YEAR CONTRACT WITH CYCLONE DOOR SERVICE FOR DOOR AND GATE PREVENTATIVE MAINTENANCE AND REPAIR SERVICES WITH UP TO FOUR POSSIBLE ONE-YEAR RENEWALS IN AN AMOUNT NOT TO EXCEED \$50,000 ON AN ANNUAL BASIS. (FY 2022/23 BUDGETED ITEM)

DATE: November 2, 2022

Suggested Action:

To approve a one-year contract with Cyclone Door Service for door and gate preventative maintenance and repair services with up to four possible one-year renewals in an amount not to exceed \$50,000 on an annual basis. (FY 2022/23 Budgeted Item)

Relevant Council Goal(s):

Safe Community

Discussion:

The Town issued a formal solicitation (Request for Proposal No. 23-007) on Aug. 3, 2022 for door and gate preventative maintenance and repair services for all public buildings.

The proposal was reviewed and evaluated by a (3) member evaluation committee. Based on the results of the evaluation committee, an award was recommended to Cyclone Door Service.

The objective of the program is to mitigate mechanically operated door and gate failures at public safety locations, operational support facilities and all other facilities with mechanically operated doors and gates. A list of locations of service and type of doors and gates at each location is provided on page 18 of the contract (Attachment A).

The contract details the use of Cyclone Door Service technicians to perform preventative maintenance inspections and tasks. They will provide all labor, parts and materials.

Preventative maintenance will also be performed every six months per location. Cyclone Door Service shall use qualified technicians with appropriate certifications, where required, to perform the services under this contract. They will be required to provide emergency services 24 hours a day, 365 days a year, in which they shall respond within 60 minutes of a call-out request.

Fiscal Impact:

Sufficient funding for this item was included in the Facilities FY22/23 operating budget and requires no budget adjustment to award this contract. All subsequent renewal periods (years) will be evaluated and budgeted accordingly during the annual budget process.

Alternatives:

Council could decide not to award the door and gate preventative maintenance and repair services contract at this time and direct staff to issue another formal solicitation. Choosing this option could delay specialized preventative maintenance tasks and repairs, presenting a more reactive approach to failures as a result of the deferred maintenance.

Attachment(s):

1. [DRAFT - CONTRACT- Cyclone.pdf](#)

TOWN OF QUEEN CREEK

SERVICES CONTRACT

This Contract is made and entered into effective as of the ____ day of _____, 2022 (the "Effective Date"), by and between the Town of Queen Creek, an Arizona municipal corporation ("Town"), and Cyclone Door Service, LLC, an Arizona Limited Liability Company ("Vendor"). Town and Vendor may be referred to in this Contract collectively as the "Parties" and each individually as a "Party."

RECITALS

WHEREAS, Town issued a Request for Proposals for Door and Gate Preventative Maintenance and Repair Services, RFP No. 23-007, (hereinafter "the RFP"); and,

WHEREAS, Vendor submitted a response to the RFP on or before August 30, 2022 ("Response"); and,

WHEREAS, Town received and evaluated responses in response to the RFP; and,

WHEREAS, Town has the power to execute this Agreement on behalf of Town; and,

WHEREAS, Vendor has the power to execute this Agreement on behalf of Vendor; and,

WHEREAS, Town desires to hire Vendor to provide those services specified hereinafter; and,

NOW THEREFORE, Town and Vendor do hereby agree as follows:

NOW THEREFORE, IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, Town and Vendor agree as follows:

AGREEMENTS

ARTICLE 1. SCOPE OF SERVICES

Vendor shall provide the services described in the Scope of Services attached here to as Exhibit B (the "Services"). The Services may include providing and/or installing certain Goods, as either specified on Exhibit B or as necessary to properly provide the Services ("Goods"), in which case such Goods to be provided shall be included in the Services provided under this Contract. All Services will be reviewed and approved by the Contract Administrator to determine acceptable completion. Review and approval by the Contract Administrator shall not relieve Vendor of any liability for defective, non-complying, improper, negligent or inadequate Services rendered, and/or Goods provided, pursuant to this Contract.

ARTICLE 2. FEES

1. The amount paid under this Agreement shall be on an as needed basis and in

accordance with the Town's Purchasing Policy and Procedures.

2. Vendor shall be paid according to the schedule set forth in Exhibit C.

3. The Town will make every effort to process payment for the purchase of goods or services within thirty (30) calendar days after receipt of goods or services and a correct notice of amount due, unless a good faith dispute exists as to any obligation to pay all or a portion of the account. A Town issued purchase order is required prior to any services being rendered. A Town purchasing card is an acceptable method of payment.

4. If for any reason the Vendor fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Vendor violates any of the covenants, agreements, or stipulations of this Contract, the Town may withhold from payment due to the Vendor such amounts as are necessary to protect the Town's position for the purpose of set-off until such time as the exact amount of damages due to the Town from Vendor is agreed to by the parties in writing, or is finally determined by a court of competent jurisdiction.

ARTICLE 3. TERM OF CONTRACT

1. This Contract shall be in full force and effect when approved by the Town Council of Queen Creek, Arizona and signed by its Mayor as attested by the Town Clerk.

2. The Vendor shall proceed with providing the Services immediately upon receipt of a notice to proceed issued by the Contract Administrator.

3. The term of the Contract shall commence on the date of award and shall continue for a period of one (1) year from the date of the award. The Town has the option, in the Town's sole discretion to renew the Contract for four (4) additional one year periods. If the Contract is renewed, the total length of the Contract shall not exceed five (5) years. Any of the one (1) year contracts may be unilaterally extended by the Town for a period of thirty-one (31) days.

ARTICLE 4. TERMINATION OF CONTRACT

1. The Town has the right to terminate this Contract for cause or convenience, or to terminate any portion of the Services which have not been performed by the Vendor.

2. In the event the Town terminates this Contract or any part of the Services as herein provided, the Town shall notify the Vendor in writing, and immediately upon receipt of such notice, the Vendor shall discontinue all Services, or the specific Services being terminated, as applicable, under this Contract.

3. Upon such termination, the Vendor shall immediately deliver to the Town any and all documents or work product generated by the Vendor under the Contract (collectively, the "Work Product"), together with all unused material supplied by the Town, applicable to the Services being terminated. Vendor shall be responsible only for such portion of the work as has been completed and accepted by the Town. Use of incomplete data by the Town shall be the Town's sole responsibility.

4. The Vendor shall receive as compensation in full only for Services performed and Goods delivered to the Town, and approved in writing by the Contract Administrator, prior to the date of such termination. The Town shall make such final payment within 60 days after the latest of: (i) Vendor's completion or delivery to the Town of any portion of the Services not terminated; or (ii) Vendor's delivery to the Town of all Work Product and any unused material supplied by the Town, in accordance with Paragraph 3 of Article 4.

ARTICLE 5. ALTERATIONS OR ADDITIONAL SERVICES

The entire Scope of Services to be performed in accordance with this Contract is set forth in Exhibit B. Services and Goods which are not included or necessary to providing the Services set forth in Exhibit B will be considered Additional Services, only if approved in writing by the Contract Administrator prior to their performance. The Vendor shall not perform such Additional Services without prior written authorization in the form of an approved written change order or contract amendment from the Town. In the event the Vendor performs such claimed Additional Services without prior written authorization from the Town, it shall be conclusively presumed that the claimed Additional Services were included in the Scope of Services and Vendor shall not be permitted to request or receive any additional compensation for such claimed Additional Services.

ARTICLE 6. ASSIGNMENT AND SUBCONTRACTING

1. This Contract may not be assigned in whole or in part without the prior written consent of the Town, and any such attempted assignment shall be null and void and a material breach of this Contract, and shall transfer no rights to the purported assignee.

2. The Vendor may engage such subvendors as Vendor may deem necessary or desirable for the timely and successful completion of this Contract. However, the use of such subvendors for the performance of any part of the Services specified in Exhibit B shall be subject to the prior written approval of the Town. Vendor will submit a complete list of subvendors on Exhibit D *[or B if included in Exhibit B]* and will update the information on the list during the term of the Contract, should the status or identity of said subvendors change. Employment of such subvendors in order to complete the Services set forth in Exhibit B shall not entitle Vendor to additional compensation beyond that set forth in Article 2. The Vendor shall be responsible for and shall warrant all Services including work delegated to such subvendors.

ARTICLE 7. COMPLETENESS AND ACCURACY

The Vendor shall be responsible for and shall and hereby does warrant the completeness, accuracy and quality of all Services performed pursuant to the Contract including, but not limited to the Services, and any the reports, surveys, plans, supporting data and/or other documents prepared or compiled pursuant to Vendor's obligations under this Contract and shall correct at Vendor's expense all errors or omissions which may be discovered therein. Town's acceptance or approval of the Vendor's Services shall in no way relieve the Vendor of any of Vendor's responsibilities hereunder.

ARTICLE 8. OWNERSHIP OF DOCUMENTS

All documents including but not limited to data computation, studies, reports, notes, drawings, or other documents, which are prepared in the performance of this Contract are to be and remain the property of the Town and are to be delivered to the Contract Administrator before final payment under this Contract is made to the Vendor, or upon termination of this Contract for any reason. To the extent any such documents is deemed to be the property of Vendor, Vendor hereby assigns all of Vendor's right, title and interest (including any applicable copyright) in such documents and Work Product to the Town.

ARTICLE 9. INDEMNIFICATION

1. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the Town of Queen Creek, and its departments, agencies, boards, commissions, officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") 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, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such 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 Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss 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 Town of Queen Creek, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the Town of Queen Creek.

2. In the event that any action or proceeding shall at any time be brought against any of the Indemnitees by reason of any Claim referred to in this Article, the Vendor, at Vendor's sole cost and upon at least 10 day's written notice from Town, shall defend the same with counsel acceptable to Town, in Town's sole discretion.

3. The Vendor's obligations under this Article shall survive the expiration or earlier termination of this Contract.

4. The insurance provisions set forth in this Contract are separate and independent from the indemnity provisions of this Article and shall not be construed in any way to limit the scope and magnitude of this Indemnification, nor shall this Indemnification be construed in any way to limit the scope, magnitude or applicability of the insurance provisions.

ARTICLE 10. INSURANCE

Vendor shall secure and maintain during the life of this Contract, the insurance coverages set forth on Exhibit A.

ARTICLE 11. WARRANTIES

1. The Vendor shall be responsible for and shall and hereby does warrant the that all Services provided shall: (i) be of good quality; (ii) be provided by properly trained, qualified, and licensed (where applicable) workers and/or subvendors; (iii) conform to the requirements of this Contract (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects; (v) be appropriate for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statues and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Vendor's warranties running in favor of the Town under this Contract.

2. The Vendor shall be responsible for and shall and hereby does warrant the that all Goods provided pursuant to this Contract shall: (i) be new; (ii) be of good quality and manufacture; (iii) conform to the requirements of this Contract and the specific Purchase Order (including all applicable descriptions, specifications, drawings and samples); (iv) be free from defects in material, workmanship, or design; (v) be fit for the intended purpose; (vi) meet or exceed all specifications, requirements and legal regulations, statues and/or codes that apply thereto, including, without limitation, all federal, state, county, and Town rules regulations, ordinances and/or codes that may apply; and (vii) be fully covered by Vendors and manufacturers' warranties applicable to the Goods running in favor of the Town.

3. Copies of all applicable manufacturers' warranties shall be delivered to the Town with or before delivery to the Town, or installation of any Goods. The Contract Administrator may at any time require Vendor to deliver to the Contract Administrator written warranties from the Vendor, and/or the manufacturers of the Goods, for review and approval by the Town. These warranties shall be in form and content satisfactory to the Town, the Project building owner (if different than the Town), the Town's lender(s), if any, and any other person reasonably requested by the Town, or the Town's lender(s). If the Vendor fails to deliver such warranties, or if the warranties are determined by the Contract Administrator to be inadequate or unacceptable, the Vendors will be considered to be in material breach of this Contract.

4. Immediately upon notice from the Contract Administrator thereof, Vendor shall correct or replace as required by the Contract Administrator, at Vendor's expense, all defects, noncompliance, or inadequacies which may be discovered in any of the Services and/or Goods provided under this Contract. The Town's acceptance or approval of the Serilvices and/or Goods shall in no way relieve the Vendor of any of Vendor's responsibilities hereunder. Unless a longer period is provided in the Contract Documents, the Vendor's or manufacturers' written warranties, this obligation to correct or replace shall continue for a period of two (2) years after acceptance of the specific Services and/or Goods.

ARTICLE 12. ADDITIONAL DISCLOSURES BY VENDOR

1. The Vendor shall reveal fully and in writing any financial or compensatory

agreements which the Vendor has with any prospective contractor prior to the Town's publication of requests for proposals or comparable documents.

2. The Vendor hereby warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Vendor, to solicit or secure this contract, and that the Vendor has not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Vendor any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this contract.

3. The Vendor shall comply with Executive Order No. 11246 entitled "Equal Opportunity Employment" as amended by Executive Order no. 11375, and supplemented Department of Labor Regulations 41 CFR, Part 16.

ARTICLE 13. CONTRACT ADMINISTRATOR

The Town's Contract Administrator for this Contract shall be the Town Manager or his/her designee(s).

ARTICLE 14. NOTICE

All notices or demands required to be given, pursuant to the terms of this Contract, shall be given to the other Party in writing, delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

Town: John Kross, Town Manager
22350 South Ellsworth Road
Queen Creek, AZ 85142
Facsimile: (480) 358-3189

With a copy to: Dickinson Wright PLLC
1850 N Central Avenue, Suite 1400
Phoenix, Arizona 85004
Attn: Scott A. Holcomb
Email: SHolcomb@dickinsonwright.com

Vendor: Vanessa Salas
305 E. Comstock Dr. Suite #4
Chandler, AZ 85225
Email: contact@cyclonedoorservice.com
Email: vanessa@cyclonedoorservice.com

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by Email, on the second day after its deposit with any commercial air courier or express

services or, if mailed, three (3) working days (exclusive of United States Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by Email shall also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by Email.

ARTICLE 15. GENERAL PROVISIONS

A. **RECORDS AND AUDIT RIGHTS.** Vendor's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the Town to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by Town's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the Services, and any invoices, change orders, payments, or claims submitted by the Vendor or any of his payees related to or arising out of the Contract. The Town's authorized representative shall be afforded access, at reasonable times and places, to all of the Vendor's records and personnel throughout the term of this Contract and for a period of three (3) years after last or final payment.

B. **INCORPORATION OF RECITALS AND EXHIBITS.** The Recitals, Exhibits and Appendices attached hereto are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.

C. **ATTORNEYS' FEES.** In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or an 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 (including expert witness fees), determined by the arbitrator or court sitting without a jury, which fees 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.

D. **ENTIRE AGREEMENT.** This Contract constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein.

E. **GOVERNING LAW.** This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Maricopa County, Arizona and both Parties consent to the sole jurisdiction of, and venue in, such court for such purposes.

F. **INDEPENDENT CONTRACTOR.** The services Vendor provides under the terms of this Contract to the Town are that of an Independent Contractor, not an employee, or agent of the Town. As an independent contractor, Vendor shall: (a) have discretion in deciding upon the method of performing the services provided; (b) not be entitled to worker's compensation benefits from the Town; (c) not be entitled to any Town sponsored benefit plan; (d) shall select the hours of his/her work; (e) shall provide her/her own equipment and tools; and (f) to the extent required by law, be responsible for obtaining and remaining licensed to provide the Services.

G. TAXES. Vendor shall be solely responsible for any and all tax obligations which may result out of the Vendors performance of this contract. The Town shall have no obligation to pay any amounts for taxes, of any type, incurred by the Vendor. The Town will report the value paid for these Services each year to the Internal Revenue Service (I.R.S.) using Form 1099. The Town shall not withhold income tax as a deduction from contractual payments. Vendor acknowledges that Vendor may be subject to I.R.S. provisions for payment of estimated income tax. Vendor is responsible for consulting the local I.R.S. office for current information on estimated tax requirements. Sales tax for Goods received by the Town in relation to this Contract shall be indicated as a separate item on any notice of amount due.

H. AMENDMENTS. Any amendment, modification or variation from the terms of this Contract shall be in writing and signed by all Parties hereto.

I. COMPLIANCE WITH LAW. The Vendor specifically agrees and hereby warrants to the Town that in the performance of the Services, Vendor and anyone acting on Vendor's behalf, including but not limited to Vendor's subvendors, will comply with all state, federal and local statutes, ordinances and regulations, and will obtain all permits and licenses applicable for performance under this contract.

J. SEVERABILITY. In the event that any provision of this Contract shall be held to be invalid and/or unenforceable, the remaining provisions shall be valid and binding upon the Parties.

K. WAIVER. One or more waivers by either Party of any provisions, terms, conditions, or covenants of this Contract, or any breach thereof, shall not be construed as a waiver of a subsequent breach by the other Party.

L. COUNTERPARTS. This Contract 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 Contract may be transmitted between them via facsimile. The Parties intend that the faxed signatures constitute original signatures and that a faxed contract containing the signatures (original or faxed) of all the Parties is binding upon the Parties.

M. COMPLIANCE WITH IMMIGRATION LAWS AND REGULATIONS.

Pursuant to the provisions of A.R.S. §41-4401, the Vendor warrants to the Town that the Vendor and all its subvendors 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). Vendor acknowledges that a breach of this warranty by the Vendor or any of its subvendors is a material breach of this Contract subject to penalties up to and including termination of this Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of the Vendor or any subvendor who works on this Contract to ensure compliance with this warranty.

The Town may conduct random verification of the employment records of the Vendor and any of its subvendors to ensure compliance with this warranty.

The Town will not consider Vendor or any of its subvendors in material breach of the

foregoing warranty if Vendor and its subvendors 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 Arizona Revised Statutes § 23-214(A).

The provisions of this Article must be included in any contract the Vendor enters into with any and all of its subvendors who provide services under this Contract or any subcontract. As used in this Section M "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.

N. ISRAEL BOYCOTT PROVISION. Contractor certifies to Town that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393

O. CANCELLATION FOR CONFLICT OF INTEREST. Pursuant to the provisions of A.R.S. § 38-511, the Town may cancel any contract or agreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Town is, at any time while the contract or any extension thereof is in effect, an employee of any other party to the contract in any capacity or a Vendor to any other party to the contract with respect the subject matter of the contract.

P. LICENSES. Vendor shall maintain in current status all Federal, State, and Local licenses and permits required for the operation of the business conducted by Vendor and the services to be performed under the resultant contract.

Q. PERMITS AND RESPONSIBILITIES. Vendor shall, without additional expense to the Town, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and Municipal Laws, codes and regulations in connection with the execution of the work.

R. LIENS. Vendor shall cause all materials, service or construction provided or performed under the resultant contract to be free of all liens, and if the Town requests, Vendor shall deliver appropriate written releases, in statutory form of all liens to the Town.

S. PATENTS AND COPYRIGHTS. All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the Town and shall not be used or released by Vendor or any other person except with the prior written permission of the Town.

T. WORKPLACE COMPLIANCE. Vendor 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.

U. PRIORITY OF DOCUMENTS. In the event of a conflict between the terms of this Contract and the terms of any other document related to the Services, including but not limited to Scope of Services, the terms of this Contract shall prevail. In the event of a conflict between the terms of any bid document (RFP, RFQ, IFB) and the terms of a response, the terms of the bid document will control.

ARTICLE 16. FUNDS APPROPRIATION

If the term of this Contract or provision of any Services hereunder extends beyond the current fiscal period of the Town and the Town Council does not appropriate funds to continue this Contract and pay for charges hereunder, the Town may terminate this Contract at the end of the current fiscal period. The Town agrees, to the extent reasonably practical, to give written notice of such termination pursuant to Article 13 of this Agreement at least thirty (30) days prior to the end of the current fiscal period and will pay to the Consultant approved charges incurred through the end of such period.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK.

In witness whereof, the parties hereto have executed and caused to be signed by their duly authorized representatives, this Contract effective on the date first written above.

TOWN OF QUEEN CREEK:

Approval of Town Council:

Approval of Contract Administrator:

Jeff Brown, Vice Mayor

John Kross, Town Manager

ATTEST:

Maria Gonzalez, Town Clerk

REVIEWED AS TO FORM:

Dickinson Wright PLLC
Town Attorneys

VENDOR:

Fermin Salas Jr.
Cyclone Door Service, LLC

EXHIBIT A

INSURANCE

Insurance Requirements

- 1) Contractor and subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract, insurance against claims for injury to persons or damage to property arising from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.
- 2) The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The Town of Queen Creek in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

- 3) Minimum Scope and Limits of Insurance

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

- a) Commercial General Liability (CGL) – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$50,000
- Each Occurrence \$1,000,000
 - a. The policy shall be endorsed, as required by this written agreement, to include the Town of Queen Creek, and its departments, agencies, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.
 - b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the Town of Queen Creek, and its departments, agencies, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

4) Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or nonowned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) \$1,000,000
 - (a) Policy shall be endorsed, as required by this written agreement, to include the Town of Queen Creek, and its departments, agencies, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving automobiles owned, hired and/or non-owned by the Contractor.
 - (b) Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the Town of Queen Creek, and its departments, agencies, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

b) Workers' Compensation and Employers' Liability

Workers' Compensation Statutory

Employers' Liability

- Each Accident \$1,000,000
- Disease – Each Employee \$1,000,000
- Disease – Policy Limit \$1,000,000
 - (a) Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the Town of Queen Creek, and its departments, agencies, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
 - (b) This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

5) Additional Insurance Requirements

The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

- a) The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the Town of Queen Creek shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

- b) Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

6) Notice of Cancellation

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the Town of Queen Creek. Within two (2) business days of receipt, Contractor must provide notice to the Town of Queen Creek if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Procurement Department and shall be mailed, emailed, or hand delivered to the Procurement Department at 22358 S. Ellsworth Road, Queen Creek, AZ. 85142, or procurement@queencreekaz.gov.

7) Acceptability of Insurers

Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A- VII. The Town of Queen Creek in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

8) Verification of Coverage

Contractor shall furnish the Town of Queen Creek with certificates of insurance (valid ACORD form or equivalent approved by the Town of Queen Creek) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

- a) All such certificates of insurance and policy endorsements must be received by the Town before work commences. The Town's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.
- b) Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. 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 required by this Contract shall be sent directly to the Procurement Department at 22358 S. Ellsworth Road, Queen Creek, AZ. 85142, or procurement@queencreekaz.gov. The Town of Queen Creek project/contract number and project location shall be noted on the certificate of insurance. The Town of Queen Creek reserves the right to require complete copies of all insurance policies required by this Contract at any time.

9) Subconsultants

Consultant's certificate(s) shall include all suconsultants as insureds under its policies or Consultant shall be responsible for ensuring and/or verifying that all subconsultants have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subconsultant. All coverages for subconsultants shall be subject to the minimum Insurance Requirements identified above naming the Town and Consultant as "Additional Insured" on all insurance policies, except Worker's compensation. The Town reserves the right to require, at any time throughout the life of this contract, proof from the Consultant that its subconsultants have the required coverage.

10) Approval and Modifications

The Contracting Agency, in consultation with Town of Queen Creek Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary and subject to at least 30 days written notice. Such action will not require a formal Contract amendment but may be made by administrative action.

11) Exceptions

In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance.

EXHIBIT B
SCOPE OF SERVICES

A. The Town of Queen Creek Door and Gate Preventative Maintenance is for the following types of doors, gates and parts:

- Rolling Gates
- Automated doors
- Bi-fold doors
- Roll up doors
- Sectional roll up doors
- Safety devices and edges
- Track bars
- Loop detectors

B. Preventative Maintenance includes, but not limited to, the following:

- Safety Inspection
- Adjustments (as needed)
- Lubrication of all points of friction
- Testing to ensure all equipment is working properly
- Detailed report of inspection performed complete with technicians' notes, photos, work completed, and any recommended corrective repair work
- Estimate any recommended repairs
- Individual site billing

C. Preventative Maintenance will be performed bi-annually (every 6 months) per location.

Contractor shall use qualified technicians with appropriate certifications, where required, to perform the services under this Contract. Contractor shall supply all labor, cleaning solvents, lubricants, tools, parts and equipment necessary to perform the work.

D. Repair:

Repairs will be on an as needed basis. Individual quotes will be provided by vendor based on contracted rates. Contractor shall conduct scheduled preventative maintenance and routine repairs during office hours, excluding holidays.

- E. Contractor shall be available to provide emergency services 24 hours a day, 365 days a year. Contractor shall provide Town maintenance personnel with emergency call-out procedures and numbers. Contractors shall respond within sixty (60) minutes of call-out.
- F. Non-Routine, Non-Emergency Repairs and Maintenance. These services shall include any major non-emergency installation, repair, replacement, modification on Town doors and gates that were not included in the Scheduled Preventative Maintenance Services. Prior to commencing any non-routine, non-emergency repairs, the Contractor shall provide a written cost estimate for time and materials to the Town. All costs for labor and materials for non-routine, non-emergency services shall be billed as per contract pricing.
- G. The Contractor shall respond to all requests for non-routine emergency repairs within four (4) hours. Response time shall start when the Town calls the problem into the Contractor's designated emergency phone number.
- H. Emergency Repair Services. The Contractor shall respond to requests for emergency repairs within two (2) hours, 24 hours per day, 365 days per year, including holidays. All costs for labor and materials for emergency repair services shall be billed as per contract pricing.
- I. Parts, Materials and Equipment Pricing: The Contractor shall furnish all parts, materials or equipment necessary for properly maintaining and repairing doors and gates in Town facilities. The Town will pay for replacement parts, materials or equipment required for routine, non-routine or emergency repairs at Cost Plus % (see Pricing below). The Town reserves the right to request documentation to review actual cost incurred by the Contractor when applicable.
- J. The Contractor shall not bill the Town for unnecessary repairs, repairs that were not completed satisfactorily, repairs that did not fix an identified problem, or for facility visits that were made by staff unqualified to complete needed repairs.
- K. Contractor's services shall meet warranties and be in accordance with all applicable laws, codes, and regulations.
- L. The Contractor shall provide 24-hour/7 days a week telephone number to receive emergency and urgent service call requests.
- M. The Contractor shall erect barricades, warning signs and other devices to prevent unauthorized access by the public or unauthorized Town staff to work areas.
- N. The Contractor shall leave work areas free of all dirt, litter, lubricants, or other materials utilized to perform door and gate maintenance. Contractor shall be responsible for discarding all used materials.

- O. Safety and Security. The Contractor and staff shall follow all established safety procedures and take special care not to endanger the public in any way. The Contractor is responsible for the security of all doors or gates at the conclusion of work in each site. All exterior doors shall remain locked at all times. Interior doors that are found open or unlocked shall be left in the same position/condition in which they were found.
- P. Inspections and Remedies. To ensure consistent quality of the work being performed, the Town contract administrator or his designee will perform periodic inspections of doors and gates to ensure compliance with the contract specifications. Inspections may be made by the Town at any time to confirm that work performed meets specifications. If corrective work is required, the Town will provide a written list of items and the Contractor shall correct deficiencies as directed. If deficiencies are not corrected in a timely manner, the Town may perform the work using others and deduct the cost from the Contractor's payment.

Locations of Service and Type of Doors and Gates at each location:

Town Owned Buildings	Address	Rollin g Gate	Roll Up Door	Bifol d Door s	Automat ic Entry Door
Library & Rec Annex	21802 S. Ellsworth Rd.				3
Municipal Services Building (MSB)	22358 S. Ellsworth Rd	3			
Public Safety Building (PSB)	20727 E Civic Parkway	2	2		
Grounds maintenance building	22626 S. Ellsworth Rd.		2		
	Total per location	5	4	0	3
Parks					
Desert Mountain Park (DMP) Maintenance Bldg.	22301 S. Hawes Road	1	2		
Mansel Carter Oasis Park (MCOP)	19535 E Appleby Rd	3	2		
	Total per location	4	4	0	0
Field Operations Facility					
Street/Traffic Warehouse-April 2019	19805C S. 220th Street		4		
Utilities Building A	19715A S. 220th. Street	1	6		
Fleet Maintenance	19805D S. 220th		7		

	Street				
Utilities Admin B	19715B S. 220th. Street				1
	Total per location	1	17	0	1
QCFD					
Fire station - FS#1	20678 E. Civic Parkway	2	5	3	
Fire station - FS#2	24787 S. Sossaman Road	1	3	3	
Fire station - FS#3	19159 E. Queen Creek Rd	1	2	2	
Fire Station - FS#4	20155 S. Signal Butte Rd.	1	3	3	
Fire Station - FS#5	245 W. Combs Rd	1	3	3	
	Total per location	8	20	14	0
Economic Development					
HPEC Maint Building	20464 E. Riggs Rd.		3		
HPEC Concessions	20464 E. Riggs Rd.		2		
	Total per location	0	5	0	0
TOTAL	Total for all locations	16	46	14	4

The Town reserves the right to add/remove locations, doors and gates during the duration of the contract.

EXHIBIT C

PAYMENT SCHEDULE/TERMS

Town Owned Buildings

- Library & Rec Annex -21802 S. Ellsworth Rd. (3) Automatic Entry Doors
- Municipal Services Building 22358 S. Ellsworth Rd. - (3) Horizontal Sliding Gates
- Public Safety Building (PSB) 20727 E Civic Parkway - (2) Rolling Gates, (2) Rolling Steel Doors
- Grounds maintenance building 22626 S. Ellsworth Rd. - (2) Steel Sectional Overhead Doors

Lump Sum: \$1,434.97

Parks

- Desert Mountain Park (DMP) Maintenance Bldg. 22301 S. Hawes Road - (1) Horizontal Sliding Gate, (2) Heavy Duty Rolling Steel Doors
- Mansel Carter Oasis Park (MCOP) 19535 E Appleby Rd. - (3) Horizontal Sliding Gates, (2) Heavy Duty Rolling Steel Doors

Lump Sum: \$649.98

Field Operations Facility

- Street/Traffic Warehouse- 19805C S. 220th Street- (2) Rolling Steel Doors
- Fleet Maintenance 19805D S. 220th Street - (7) Rolling Steel Doors

Lump Sum: \$624.98

Utilities

- Utilities Building A 19715A S. 220th. Street - (2) Rolling Gates, (4) Rolling Steel Doors
- Utilities Admin B 19715 B S. 220th Street - (1) Automatic Entry Door

Lump Sum: \$669.99

Queen Creek Fire Department

- Fire station #1- 20678 E. Civic Parkway- (2) Hydraulic Horizontal Sliding Gates, (5) Rolling Steel Doors, (3) Bi-Folding
 - Fire station #2- 24787 S. Sossaman Road- (1) Hydraulic Horizontal Sliding Gate, (3) Rolling Steel Doors, (3) Bi-Folding
 - Fire station #3- 19159 E. Queen Creek Rd- (1) Hydraulic Horizontal Sliding Gate, (2) Aluminum Sectional Overhead Doors, (2) Bi-Folding
 - Fire Station #4- 20155 S. Signal Butte Rd.- (1) Hydraulic Rolling Gate, (3) Rolling Steel Doors, (3) Bi-Folding
 - Fire Station #5- 245 W. Combs Rd.- (1) Hydraulic Rolling Gate, (3) Rolling Steel Doors, (3) Bi-Folding
- Lump Sum: \$2,594.95

Economic Development

- HPEC Maint. Building 20464 E. Riggs Rd. - (3) Heavy Duty Rolling Steel Doors
 - HPEC Concessions 20464 E. Riggs Rd. - (1) Heavy Duty Rolling Steel Door
- Lump Sum: \$324.99

Additional hourly rates for other services:

The following is a list of our hourly rates and dispatch fees. Please note that the dispatch fees below are for locations within a 30-mile radius of Chandler, AZ. Locations further than 30 miles are subject to an additional fee.

Item #	Item Name/Description	Price
Item #1	Standard Hourly Rate	\$120 / hour
Item #2	Standard Hourly Rate - Crew of (2)	\$180 / hour
Item #3	Standard Dispatch Fee	\$150 / visit
Item #4	Overtime Hourly Rate	\$180 / hour
Item #5	Overtime Hourly Rate- Crew of (2)	\$270 / hour
Item #6	Overtime Dispatch Fee	\$225 / visit
Item #7	Double Time & Holiday Hourly Rate	\$240 / hour
Item #8	Double Time & Holiday Hourly Rate - Crew of (2)	\$360 / hour
Item #9	Double Time & Holiday Dispatch Fee	\$300 / visit

Standard, Overtime and Double Time hours and days

Standard Hours: Mon. -Fri. 7:30 am-4:00 pm

Overtime Hours: Mon. -Fri. 4:00 pm-8:00 pm & Sat. 7:00 am-4:00 pm

Double time Hours: Mon. -Fri. 8:00 pm-7:30 am the following day. Sat. beginning @ 4:00 pm, all day Sun. & ends 7:30am Mon.

Please Note: The rates above DO NOT include the cost for parts or materials. All rates are subject to change due to currency fluctuation, fuel prices and /or unforeseen economic circumstances.

Materials = Material Cost + 1.5%

Response time for Non Emergency - Typically 1-5 business days

Response time for Emergency - Typically 2-6 hours

EXHIBIT D

LIST OF SUBVENDORS

U:\ATTORNEYS\SAH\QUEEN CREEK\CONTRACTS\2010 TEMPLATES\SERVICES CONTRACT (5-31-10).doc



TOWN OF QUEEN CREEK ARIZONA

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS ICMA-CM, TOWN MANAGER

FROM: DAVE LIPINSKI, CIP DEPARTMENT DIRECTOR

RE: CONSIDERATION AND POSSIBLE APPROVAL OF DELEGATION RESOLUTION #1502-22 AUTHORIZING AND DIRECTING THE TOWN MANAGER AND/OR CAPITAL IMPROVEMENT PROJECTS DEPARTMENT DIRECTOR TO TAKE ANY AND ALL ACTION NECESSARY; AND TO SIGN ANY AND ALL DOCUMENTS, CONTRACTS, AND/OR AGREEMENTS RELATED TO CONSTRUCTION AND COMPLETION OF THE GROUNDS MAINTENANCE FACILITY (CIP PROJECT NO. XX054) IN AN AMOUNT NOT TO EXCEED \$450,000; AND NECESSARY BUDGET ADJUSTMENTS.

DATE: November 2, 2022

Suggested Action:

To approve Delegation Resolution #1502-22 authorizing and directing the Town Manager and/or Capital Improvement Projects Department Director to take any and all action necessary; and to sign any and all documents, contracts, and/or agreements related to construction and completion of the Grounds Maintenance Facility (CIP Project No. XX054) in an amount not to exceed \$450,000; and necessary budget adjustments.

Relevant Council Goal(s):

Superior Infrastructure – Capital Improvement Program

Discussion:

Town staff was tasked early in 2022 with identifying a new location for a grounds maintenance facility which is currently located in the Town Center area, directly north of the Municipal Services Building. The current location is in conflict with the proposed Town Center road project as the extension of Aldecoa Road encroaches into the current site.

Town staff held several multi-department meetings and looked at several different available locations around Town to relocate this storage area. It was determined that the most desirable available location is on a remnant parcel at the far north end of the Mansel Carter Oasis park property northwest of the fishing lake adjacent to Queen Creek Wash. With minimal improvement, this location will allow for certain equipment and material storage as well as green waste processing in a safe and secure area. Town Grounds Division staff may also conduct overall drainage wash maintenance responsibilities with reasonable access convenience and actions. The proposed staff use is not expected to conflict with park users. The wash greenery helps to conceal the site from neighbors and provides distance for noise abatement.

The proposed location requires minimal grading for access and drainage management and will be surfaced with millings for dust control and erosion protection. This surfacing is an interim condition that will need further improvement at a later date when funding is available. The proposed project improvements include new privacy fencing on the west and northeast sides of the site for security, a matching block wall extension east of the existing well and pump station for security and modification and relocation of existing park waste bins to accommodate access.

A summary of items included in the proposed project budget are included in the attached Delegation Resolution #1502-22 as Exhibit 1.

If Delegation Resolution #1502-22 is approved, construction is anticipated to start December 2022 and the project is expected to be completed mid-2023.

Fiscal Impact:

Funding for the grounds maintenance facility relocation project was included in the FY 2022/23 Operating Budget. However, as the CIP Department is managing all aspects of design and construction, instead of Grounds staff, moving the project budget to the General CIP Fund will allow the CIP Department to more easily manage project orders and contracts and track the project budgets as work progresses.

Town policies require Town Council approval to move budgets between funds, therefore a budget adjustment is required to move the project budget to the FY 2022/23 General CIP Budget. This adjustment does not increase the project's budget; it merely moves it from one fund to another. The total budget for the grounds maintenance facility totals \$450,000 as shown in the following table:

Project	Name	FY 2022/23 Adopted Budget- A budget adjustment is required to move the projects from the Operating Budget to the Capital Budget
XX054	Grounds Maintenance Facility	\$450,000

The funding source for the project is the Operating Budget.

Alternatives:

The Town Council may decide not to approve Delegation Resolution #1502-22 in order to re-prioritize capital projects. If the resolution is not approved, the project construction schedules will be delayed and another location to store certain Grounds Division equipment and materials must be found. It will likely delay the Town Center improvement project as relocation of the equipment may not be able to occur as soon as needed.

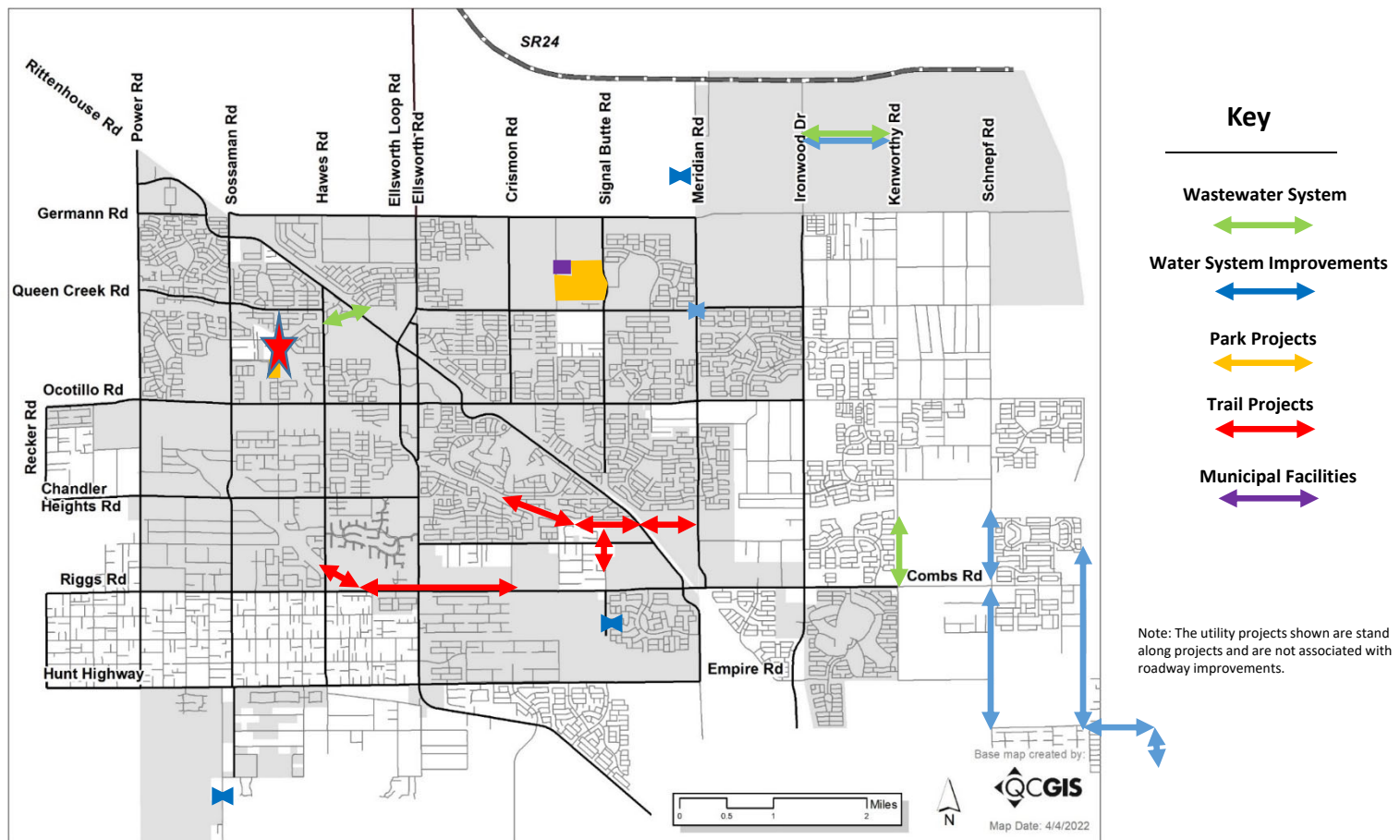
Attachment(s):

1. [XX054 Project Location Exhibit](#)
2. [XX054 Project Site Exhibit](#)

3. Delegation Resolution #1502-22 Exhibit 1

CIP Projects – Other than Transportation

Project Location Exhibit – XX054 Grounds Maintenance Facility



Rev. 04-20-2022

Delegation Resolution 1502-22, XX054 Grounds Maintenance Facility



RESOLUTION 1502-22

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN COUNCIL OF QUEEN CREEK, ARIZONA, AUTHORIZING AND DIRECTING THE TOWN MANAGER, AND/OR CAPITAL IMPROVEMENT PROJECTS DEPARTMENT DIRECTOR TO TAKE ANY AND ALL ACTION NECESSARY; AND TO SIGN ANY AND ALL DOCUMENTS, CONTRACTS AND AGREEMENTS RELATED TO THE GROUNDS MAINTENANCE FACILITY (CIP PROJECT XX054).

WHEREAS, the Town Council finds that it is in the interest of the Town to enter into Contracts and/or Agreements to complete the Grounds Maintenance Facility (CIP Project XX054) (the "Project"), as more specifically described in the Staff Report presented to the Council in support of this Resolution, and the summary of items included in the Project set forth in Exhibit 1 attached hereto, both of which are incorporated herein by this reference; and

WHEREAS, Article 5 of the Town's Procurement Policy authorizes the Town Council to delegate signature authority to the Town Manager and/or Department Director for certain contracts related to the Project; and

WHEREAS, funding for the Project is included in the Town's Capital Improvement Plan (CIP) Budget;

NOW, THEREFORE, the Common Council resolve as follows:

Section 1. That the total Resolution amount is affirmed to be \$450,000 and the total authorized budget amount for the Project is hereby affirmed to be \$450,000.

Section 2. That the Town Manager has the authority to sign and enter into, on the Town's behalf, individual contracts, up to an aggregate limit of the total authorized budget amount, for the completion of the Project.

Section 3. That the Capital Improvement Projects Director has the authority to sign and enter into, on the Town's behalf, individual contracts and/or agreements valued at less than \$100,000, up to an aggregate limit of the total authorized budget amount, for the completion of the Project.

Section 4. That the Town Manager, Capital Improvement Projects Director and Town Attorney are authorized to sign such documents in such form as is finally approved and take such actions as are reasonably necessary to effectuate the terms of the contracts, services, and/or agreements.

Section 5. This delegation of signature authority shall remain in force until the Project is delivered, completed, and placed into service, or until revoked by a subsequent, validly passed resolution of the Town Council.

PASSED AND ADOPTED by the Common Council of the Town of Queen Creek, Arizona this 02 day of November, 2022.

FOR THE TOWN OF QUEEN CREEK:

Jeff Brown, Vice Mayor

REVIEWED BY:

John Kross, Town Manager

ATTESTED TO:

Maria Gonzalez, Town Clerk

APPROVED AS TO FORM

Dickinson Wright PLLC
Town Attorneys

Resolution #1502-22
Exhibit 1

XX054 Grounds Relocation		Estimated Cost	10% Contingency	Extended Cost
CONSTRUCTION	MR Tanner	399,091		
	QA/ QC Testing	10,000		
	Proposed Construction Subtotal			
	<i>Total Project Budget Requested</i>	<i>409,091</i>	<i>40,909</i>	<i>450,000</i>
	<i>Adopted Project Budget</i>	<i>\$450,000.00</i>		
	<i>Additional Funding Required</i>			
	Delegation Resolution Net Request	\$450,000.00		



TOWN OF
QUEEN CREEK
ARIZONA

10.A

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS ICMA-CM, TOWN MANAGER

FROM: MARIA GONZALEZ CMC, TOWN CLERK

RE: CONSIDERATION AND POSSIBLE RECOMMENDATION FOR APPROVAL ON A CLASS "A" BINGO LICENSE APPLICATION SUBMITTED BY MS. BETH A. RILEY, A RESIDENT OF IRONWOOD CROSSINGS.

DATE: November 2, 2022

Suggested Action:

A recommendation of approval to the Arizona Department of Revenue for a Class "A" Bingo License submitted by Ms. Beth A. Riley.

Discussion:

Ms. Beth Riley submitted an application for a Class "A" Bingo License to be held at the Ironwood Crossing Clubhouse in Queen Creek. Games are exclusive to the applicant's friends and it is anticipated to be held once a month, depending on room availability.

Pursuant to A.R.S. 5-404(J), bingo licenses are regulated by the Arizona Department of Revenue (ADOR) - Bingo Section and require endorsements from the local governing body. A Class "A" license is designed for recreational and social purposes, returning all gross receipts to the players in prizes and cannot exceed \$75,000 per year in gross receipts.

The Queen Creek Police Department was provided with a copy of the application for a background investigation. The investigation did not reveal further derogatory information on the applicant to prevent or disqualify Ms. Riley from receiving a recommendation for approval by the Town Council.

Alternatives:

Council could elect to forward a recommendation for disapproval to the Arizona Department of Revenue; however, the endorsement shall contain the specific reasons for disapproval.

Attachment(s):

1. [Bingo Application_Riley](#)
2. [QCPD Report](#)

- Type or print in black ink and complete all information requested on this form. If you do not, your application will be rejected. All information is subject to verification. If you need more space, attach additional sheets.
- All bingo licenses expire one year from the date of issue.** To continue conducting live bingo games, you must renew your license prior to the expiration date pursuant to A.R.S. §§ 5-403(C) and 5-410.

1 Applicant's Name Beth A Riley		Falsification of information contained in this application constitutes a Class 6 felony. REVENUE USE ONLY. DO NOT MARK IN THIS AREA. [88] [81] PM [80] RCVD	
2a Mailing Address [REDACTED]			
2b City Queen Creek	State AZ		ZIP Code 85140
3a Administrative Office Location N/A			
3b City	State		ZIP Code
4a Name of Contact Person Beth A Riley	4b Telephone No. [REDACTED]		
4c E-mail Address [REDACTED]	4c Fax No. [REDACTED]		

5 Class B and Class C license applicants only: If applying as a qualified organization, *check one box* to indicate the type of organization:

- ☐ Charitable
 ☒ Social
 ☐ Religious
 ☐ Veterans
☐ Fraternal
 ☐ Volunteer Fire Department
 ☐ Homeowners Association
 ☐ Nonprofit Ambulance Service

6 Class B and Class C license applicants only applying as a qualified organization, ***provide parent or auxiliary information:***

6a Parent Name	6b Auxiliary Name
Address – Number and Street, Rural Rt., Apt. No.	Address – Number and Street, Rural Rt., Apt. No.
City State ZIP Code	City State ZIP Code

7 Class B and Class C license applicants only applying as a qualified organization, ***list the current officers or Board of Directors of the organization:***

7a Name	7b Name
Title	Title
Address – Number and Street, Rural Rt., Apt. No.	Address – Number and Street, Rural Rt., Apt. No.
City State ZIP Code	City State ZIP Code
7c Name	7d Name
Title	Title
Address – Number and Street, Rural Rt., Apt. No.	Address – Number and Street, Rural Rt., Apt. No.
City State ZIP Code	City State ZIP Code

8 Class B and Class C license applicants only: Bingo checking account information:

Checking Account Number	Bank Name	Bank Branch
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Continued on page 2 →

Applicant's Name (as shown on page 1) Beth A Riley	APPLICATION FOR BINGO LICENSE
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9 Class B and Class C license applicants only: Bingo interest-bearing account information:

Account Number	Bank Name	Bank Branch

10 Class B and Class C license applicants only: List all officers and/or supervisors authorized to sign checks from the accounts listed above. If applying as a qualified organization, all supervisors must be members of the applicant:

10a Name	10b Name
Title	Title

11 List the name(s) of the one or two persons who will serve as managers. If applying as a qualified organization, these persons must be members of the applicant. Each person must submit an affidavit.

11a Name Beth Riley	11b Name
Title N/A	Title

12 List the name of the one person designated as proceeds coordinator. If applying as a qualified organization, this person must be an officer or director and a member of the applicant. Each person must submit an affidavit.

Name Beth Riley	Title N/A

13 List the name(s) of the person(s) who will serve as supervisor. If applying as a qualified organization, each person must be a member of the applicant. Each person must submit an affidavit. If additional names are required, please attach affidavits.

13a Name Beth Riley	13b Name
Title N/A	Title

14 List the name(s) of the person(s) who will serve as assistants. If applying as a qualified organization, each person must be a member or new member of the applicant. Except for "Class A" licensees, each person must submit an affidavit.

14a Name N/A	14b Name
14c Name	14d Name

15 Street address of the PHYSICAL location where live bingo will be played:

Ironwood Crossing Clubhouse 41480 N BARNES PKWY

16 Games of Bingo must not exceed 5 days a week. Indicate the time on each respective day that live bingo will be played:

SUN	MON	TUE	WED	THUR	FRI	SAT
☐ a.m.	☐ a.m.	☐ a.m.	☐ a.m.	☐ a.m.	☐ a.m.	☐ a.m.
☐ p.m.	☐ p.m.	☐ p.m.	☐ p.m.	☐ p.m.	☐ p.m.	☐ p.m.

not playing more than 1 time per month
not on a specific day, just depends on when
community room is available.

Continued on page 3 →

Applicant's Name (as shown on page 1)

Beth A Riley

APPLICATION FOR BINGO LICENSE

17 Indicate the type of premises where bingo will be played. Check one box:

- a ☒ Neither rent nor mortgage will be paid from bingo funds.
- b ☐ Rented or leased. Attach rental affidavit and copy of rental agreement.

Landlord's Name	Address – Number and Street, Rural Rt., Apt. No.		
Telephone Number (with area code)	City	State	ZIP Code

- c ☐ Owned solely by the organization. Attach copy of mortgage, deed of trust, purchase agreement, escrow agreement, or other related document.

Holder of Mortgage	Address – Number and Street, Rural Rt., Apt. No.		
Telephone Number (with area code)	City	State	ZIP Code

- d ☐ Owned jointly with other organization. Attach copy of mortgage, deed of trust, purchase agreement, escrow agreement, or other related document:

1) Holder of Mortgage	Address – Number and Street, Rural Rt., Apt. No.		
Telephone Number (with area code)	City	State	ZIP Code
2) Co-Owner Holder:	Address – Number and Street, Rural Rt., Apt. No.		
Telephone Number (with area code)	City	State	ZIP Code
3) Co-Owner Holder:	Address – Number and Street, Rural Rt., Apt. No.		
Telephone Number (with area code)	City	State	ZIP Code

18 List bingo licensees who are or will be conducting bingo in the same premises as you and those licensees located within 1,000 feet of your premises:

18a Name N/A	18b Name
Address – Number and Street, Rural Rt., Apt. No.	Address – Number and Street, Rural Rt., Apt. No.
City State ZIP Code	City State ZIP Code

Continued on page 4 ➔

Applicant's Name (as shown on page 1)

Beth A Riley

APPLICATION FOR BINGO LICENSE

19 Expected bingo expenses:

a Mortgage: \$_____ per month

Payable to N/A	Address – Number and Street, Rural Rt., Apt. No.		
Telephone number (with area code)	City	State	ZIP Code

b Rent: \$_____ per ☐ month ☐ hour ☐ occasion

Payable to N/A	Address – Number and Street, Rural Rt., Apt. No.		
Telephone number (with area code)	City	State	ZIP Code

c Janitorial Services: \$_____ per ☐ month ☐ hour ☐ occasion

Payable to N/A	Address – Number and Street, Rural Rt., Apt. No.		
Telephone number (with area code)	City	State	ZIP Code

d Accounting Services: \$_____ per ☐ month ☐ hour ☐ occasion

Payable to N/A	Address – Number and Street, Rural Rt., Apt. No.		
Telephone number (with area code)	City	State	ZIP Code

e Security Services: \$_____ per ☐ month ☐ hour ☐ occasion

Payable to N/A	Address – Number and Street, Rural Rt., Apt. No.		
Telephone number (with area code)	City	State	ZIP Code

f Bingo Supplies: \$ 281⁰⁰ per N/A

Payable to Amazon, Bingo Wholesale Warehouse	Address – Number and Street, Rural Rt., Apt. No. Amazon.com		
Telephone number (with area code)	City	State	ZIP Code

20 Who is your live bingo supplier? (For all bingo supplies). Do you foresee purchasing/renting machines as "technological aids for your live bingo games?"

N/A

Continued on page 5 →

Applicant's Name (as shown on page 1)

Beth A Riley

APPLICATION FOR BINGO LICENSE

I, Beth Aileen Riley, under penalty of perjury and upon oath, declare that I am duly authorized to sign and file this application. I hereby swear or confirm that I have read the foregoing application and know the contents thereof and that all information provided has been fully, accurately, and truthfully completed to the best of my knowledge.

APPLICANT'S SIGNATURE

DATE

License Holder
TITLE

Please mail to:
Arizona Department of Revenue
1600 W Monroe Street, Division Code 22
Phoenix, AZ 85007
☎ (602) 716-7801

REVENUE USE ONLY. DO NOT MARK IN THIS AREA.

☐ Approved☐ Disapproved☐ Class A License☐ Class B License☐ Class C License

Reviewer's Name (please print)

Date

License Number

Effective Date

Expiration Date

Arizona Form
830

Affidavit

Bingo

This affidavit must be completed by each person who wishes to assist in the conduct of any game of bingo. If any information is blank or incorrect, the affidavit will be returned to you. All information is subject to verification. Disclosure of your Social Security Number (SSN) is voluntary. This information may be used to establish positive identification for purposes of criminal background checks pursuant to A.R.S. § 5-404.

Licensee's Name		License Number	
Position (check the appropriate boxes): ☒ Manager ☐ Supervisor ☐ Proceed Coordinator ☐ Assistant			
Affiant's Name Beth A Riley			
Social Security Number [REDACTED]		Date of Birth [REDACTED]	
Address [REDACTED]			
City Queen Creek		State AZ	ZIP Code 85140
Home Phone No. (with area code) [REDACTED]		Work Phone No. (with area code) [REDACTED]	

REVENUE USE ONLY. DO NOT MARK IN THIS AREA.
 [88]

 [81] PM [80] RCVD

If licensee is a qualified organization, complete the following section:

Member? ☐ Yes ☐ No	Date Joined Organization [REDACTED]
Officers? ☐ Yes ☐ No	Officer Title [REDACTED]
Do you have an affidavit on file for any other licensee? ☐ Yes ☐ No If "Yes", list license number(s):	

I, Beth A Riley AFFIANT'S NAME, the above-named affiant, under penalty of perjury, upon oath, depose and say that I will conduct or assist in conducting all bingo games in compliance with the terms of the license, Arizona Revised Statutes, Title 5, Chapter 4, and the rules of the licensing authority. I am of good moral character and have never been convicted of any misdemeanor involving moral turpitude or felony. I have not and shall not receive any reward, compensation or recompense for my participation in the conduct of bingo games except as provided for by law. I hereby swear or confirm that I have read and understand the foregoing and verify that the information and statements made herein are true and correct to the best of my knowledge.

[REDACTED SIGNATURE]

Signature of Affiant

10/17/2022

Date

Please mail to:
Arizona Department of Revenue
1600 W Monroe Street, Division Code 22
Phoenix, AZ 85007

☎ (602) 716-7801

Arizona Form 832

Endorsement by Local Governing Body

Bingo

FOR OFFICIAL USE ONLY PURSUANT TO A.R.S. § 5-404.A

- **License Applicants:** Complete lines 2, 3, and 4. Submit with entire license package to local governing body.
- **Local Governing Body:** Complete and return with license package to the Department of Revenue Bingo Section.
A.R.S. §§ 5-409 and 5-410

☒ New Application ☐ Change of Location		Date	License Number	
From (Name of local governing body)		REVENUE USE ONLY. DO NOT MARK IN THIS AREA. 88		
Address (number and street, PO Box)				
City	State			ZIP Code
Phone No. (with area code)				
		81 PM	80 RCVD	

- 1 This is to certify that on a hearing was conducted pursuant to Arizona Revised Statute, Title 5, Chapter 4, in the matter of:
- ☐ Application for a bingo license by the following applicant.
- ☐ Application for a bingo license location transfer.

2 Applicant's Name

3 Location/Address where live bingo will be conducted:

City State ZIP Code

4 Fill in the time on the days live bingo will be played:

SUN	MON	TUE	WED	THUR	FRI	SAT
☐ a.m.	☐ a.m.	☐ a.m.	☐ a.m.	☐ a.m.	☐ a.m.	☐ a.m.
☐ p.m.	☐ p.m.	☐ p.m.	☐ p.m.	☐ p.m.	☐ p.m.	☐ p.m.

5 Who is your live bingo supplier?

6 Recommendation for the application: ☐ Approved ☐ Disapproved

7 Specific reasons for disapproval are hereby listed pursuant to A.R.S. § 5-404.1:

This endorsement must be signed by a delegated authority of the local governing body.

PRINTED NAME

SIGNATURE

DATE

TITLE

Please mail to:
 Arizona Department of Revenue
 1600 W Monroe Street, Division Code 22
 Phoenix, AZ 85007

☎ (602) 716-7801



QUEEN CREEK POLICE DEPARTMENT
BACKGROUND INVESTIGATION REPORT
BINGO LICENSE

APPLICANT: Beth A. Riley
LICENSE #: N/A
INVESTIGATOR: Sgt. M. Erwin #1168

October 27, 2022

PARTIES/ENTITIES INVOLVED
Beth A. Riley

INVESTIGATION

An Arizona Department of Revenue application for bingo license was received. The applicant is Beth A. Riley. Beth is the only representative listed on the bingo license application. The application specified the bingo would be taking place at the Ironwood Crossing Clubhouse at 41681 N. Barnes Pkwy., Queen Creek. The application did not specify a date/time that the bingo would be taking place; however, it indicated that bingo would not be occurring more than one time per month, depending on community room availability.

A review of the application materials was conducted in addition to history of the party named in the application. The only items found were indication that the applicant has filed Chapter 7 and Chapter 13 bankruptcies in the past.

A site visit was not conducted.

CONCLUSION

Aside for the applicant's previous bankruptcy information, the background investigation did not reveal any further derogatory information on the applicant. This information is not a sufficient reason to prevent or disqualify the applicant, Beth A. Riley from approval to move forward with licensing.



TOWN OF
QUEEN CREEK
ARIZONA

10.B

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS ICMA-CM, TOWN MANAGER

FROM: BRETT BURNINGHAM, DEVELOPMENT SERVICES DIRECTOR, ERIK SWANSON, PLANNING ADMINISTRATOR, SARAH CLARK, SENIOR PLANNER/PROJECT MANAGER

RE: THIS CASE HAS BEEN FORMALLY WITHDRAWN BY THE APPLICANT. PUBLIC HEARING AND POSSIBLE ACTION ON CASES BARNEY FARMS NORTH MAJOR GENERAL PLAN AMENDMENT (CASE P22-0051) AND PAD REZONE (P22-0178), A REQUEST BY GREG DAVIS, IPLAN CONSULTING, FOR A MAJOR GENERAL PLAN AMENDMENT FOR APPROXIMATELY 36.6 ACRES FROM INDUSTRIAL TO NEIGHBORHOOD AND A PAD REZONE TO REZONE 36&PLUSMN; ACRES FROM EMPLOYMENT TYPE-A TO 25.3 ACRES OF HIGH DENSITY RESIDENTIAL AND 11.1 ACRES OF MEDIUM DENSITY RESIDENTIAL. THIS PROJECT IS GENERALLY LOCATED SOUTH OF GERMANN ROAD WEST OF SIGNAL BUTTE ROAD.

DATE: November 2, 2022

Suggested Action:

Move to withdraw cases P22-0051 and P22-0178 Barney Farms North Major General Plan Amendment and PAD Rezone, as requested by the applicant.

Discussion:

Staff has received a request from the applicant to withdraw cases P22-0051 Barney Farms North Major General Plan Amendment and P22-0178 Barney Farms North PAD Rezone. Having previously been advertised for public hearing, staff recommends cases P22-0051 and P22-0178 Barney Farms North Major General Plan Amendment and PAD Rezone be withdrawn.



TOWN OF
QUEEN CREEK
ARIZONA

10.C

TO: HONORABLE MAYOR AND TOWN COUNCIL

THROUGH: JOHN KROSS ICMA-CM, TOWN MANAGER

FROM: BRETT BURNINGHAM, DEVELOPMENT SERVICES DIRECTOR, ERIK SWANSON, PLANNING ADMINISTRATOR

RE: PUBLIC HEARING AND POSSIBLE ACTION ON ORDINANCE 801-22, P22-0205 PERMITTED USE TABLE & NDASH; DATA CENTERS, A STAFF INITIATED TEXT AMENDMENT TO TABLE 4.6-1 PERMITTED USES OF THE ZONING ORDINANCE PROHIBITING DATA CENTERS.

DATE: November 2, 2022

Suggested Action:

To approve Ordinance 801-22, P22-0205 Permitted Use Table – Data Centers, a staff initiated text amendment to Table 4.6-1 Permitted Uses of the Zoning Ordinance prohibiting data centers.

Planning Commission Recommendation:

The Planning Commission recommended approval of P22-0205 Permitted Use Table - Data Centers, with a vote of 7-0 at their regularly scheduled October 12, 2022 meeting.

Relevant Council Goal(s):

Effective Government

Summary:

The request is for a staff initiated text amendment to table 4.6-1 Permitted Uses of the Zoning Ordinance, prohibiting data centers.

Discussion:

Staff has received significant interest in the Employment sector throughout the Town. With the recent zoning approvals in the State Land Special District coupled with heightened interest in the sub-market of data centers, staff is recommending codifying the prohibition of data centers as a primary use. Staff has found generally that data centers do not create significant employment opportunities and growth in the Town's Targeted Employment sectors as outlined in the Town's Economic Development Strategic Plan. It is important to note that data centers are not a targeted use within the Economic Development Strategic Plan.

Currently there are no provisions in the Table of Permitted Uses that allow data centers to be considered in any of the Town's various zoning districts. As a means to codifying the prohibition, Staff

is proposing the text amendment to restrict the use. It is understood that many employment uses may have internal data centers as part of the business's day-to-day operations operating in a minimal support capacity as an ancillary use and provides a minimal footprint on the overall operations of the use and site, and as such, data centers may be considered with a Conditional Use Permit when associated with and operating as a secondary function in direct use by the underlying use and business operations of the site.

Attachment(s):

1. [Proposed Permitted Use Table - Redline.pdf](#)
2. [Proposed Permitted Use Table - Clean.pdf](#)
3. [Ord. 801-22.pdf](#)

ARTICLE 4 – PERMITTED USE TABLE

Table 4.6-1 Permitted Uses (Continued)

Use Category	Specific Use Type	Residential Zoning Districts					Non-Residential Zoning Districts										
		A1 R1-190 R1-145 R1-108	R1-54 R1-43 R1-35	R1-18 R1-15 R1-12	R1-9 R1-8 ¹ R1-7 R1-6 ¹ R1-5 R1-4	HDR/ MDR	AT	RC	DC	MU	C-1	C-2	C-3	EMP A	EMP B	PRC	PQP
Commercial (Continued)																	
Eating and Drinking Establishments (Continued)	* Restaurant, with In-Vehicle Service (see section 6.5.B)	--	--	--	--	--	--	--	--	C	P	P	P	--	--	--	--
	Coffee Houses (see Section 4.6.D.11)	--	--	--	--	--	P	C	P	P	P	P	P	--	--	--	--
* Home-based occupations	All (when AT, DC, MU is residential use)	P	P	P	P	P	P	P	P	P	--	--	--	--	--	--	--
Office	General Offices (see section 4.6.D.4)	--	--	--	--	--	W	P	P	P	P	P	P	P	--	--	--
	Coworking space (Business Incubator)	--	--	--	--	--	P	P	P	P	P	P	P	P	P	--	--
	Data center only when associated as a secondary function with and necessary to a permitted use at the same location	--	--	--	--	--	--	--	--	--	--	--	C	C	C	--	--
	All other offices	--	--	--	--	--	C	C	C	C	C	C	P	--	--	--	--
Parking, Commercial	Commercial Parking Lot or Parking Structure	--	--	--	--	--	--	--	C	C	C	C	C	C	C	--	--
Entertainment Event Major	Indoor Facilities	--	--	--	--	--	P	--	P	P	C	C	P	P	P	C	--
	Outdoor Facilities	--	--	--	--	--	P	--	C	C	C	C	C	P	P	C	--
Recreation and Entertainment Outdoor	Campgrounds and Camps (see Section 4.6.D.2)	W	W	--	--	--	W	--	--	--	--	--	--	W	W	W	--
	Commercial Ranch, Commercial Stable, Outdoor Guest Ranch	C	C	--	--	--	P	--	--	--	--	--	--	--	--	--	--
	Equestrian boarding and riding arenas, (setback 500 feet from all property lines)	--	--	--	--	--	P	--	--	--	--	--	--	C	C	--	--
	Equestrian facilities in conjunction with an approved single family residential development	--	--	--	--	--	P	--	--	--	--	--	--	--	--	C	--
	Hunting, fishing, game preserves and recreational clubs or camps - not including recreational vehicle campgrounds.	--	--	--	--	--	P	--	--	--	--	--	--	--	--	P	--
	Resort, Cabins and Lodges	C	C	--	--	--	P	--	--	C	--	P	C	C	C	C	--

ARTICLE 4 – PERMITTED USE TABLE

Table 4.6-1 Permitted Uses (Continued)

Use Category	Specific Use Type	Residential Zoning Districts					Non-Residential Zoning Districts										
		A1 R1-190 R1-145 R1-108	R1-54 R1-43 R1-35	R1-18 R1-15 R1-12	R1-9 R1-8 ¹ R1-7 R1-6 ¹ R1-5 R1-4	HDR/ MDR	AT	RC	DC	MU	C-1	C-2	C-3	EMP A	EMP B	PRC	PQP
Commercial (Continued)																	
Eating and Drinking Establishments (Continued)	* Restaurant, with In-Vehicle Service (see section 6.5.B)	--	--	--	--	--	--	--	--	C	P	P	P	--	--	--	--
	Coffee Houses (see Section 4.6.D.11)	--	--	--	--	--	P	C	P	P	P	P	P	--	--	--	--
* Home-based occupations	All (when AT, DC, MU is residential use)	P	P	P	P	P	P	P	P	P	--	--	--	--	--	--	--
Office	General Offices (see section 4.6.D.4)	--	--	--	--	--	W	P	P	P	P	P	P	P	--	--	--
	Coworking space (Business Incubator)	--	--	--	--	--	P	P	P	P	P	P	P	P	P	--	--
	Data center only when associated as a secondary function with and necessary to a permitted use at the same location	--	--	--	--	--	--	--	--	--	--	--	C	C	C	--	--
	All other offices	--	--	--	--	--	C	C	C	C	C	C	P	--	--	--	--
Parking, Commercial	Commercial Parking Lot or Parking Structure	--	--	--	--	--	--	--	C	C	C	C	C	C	C	--	--
Entertainment Event Major	Indoor Facilities	--	--	--	--	--	P	--	P	P	C	C	P	P	P	C	--
	Outdoor Facilities	--	--	--	--	--	P	--	C	C	C	C	C	P	P	C	--
Recreation and Entertainment Outdoor	Campgrounds and Camps (see Section 4.6.D.2)	W	W	--	--	--	W	--	--	--	--	--	--	W	W	W	--
	Commercial Ranch, Commercial Stable, Outdoor Guest Ranch	C	C	--	--	--	P	--	--	--	--	--	--	--	--	--	--
	Equestrian boarding and riding arenas, (setback 500 feet from all property lines)	--	--	--	--	--	P	--	--	--	--	--	--	C	C	--	--
	Equestrian facilities in conjunction with an approved single family residential development	--	--	--	--	--	P	--	--	--	--	--	--	--	--	C	--
	Hunting, fishing, game preserves and recreational clubs or camps - not including recreational vehicle campgrounds.	--	--	--	--	--	P	--	--	--	--	--	--	--	--	P	--
	Resort, Cabins and Lodges	C	C	--	--	--	P	--	--	C	--	P	C	C	C	C	--

ORDINANCE 801-22

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AMENDING TABLE 4.6-1 PERMITTED USE TABLE AS PROVIDED IN EXHIBIT A ATTACHED HERETO AND IN ACCORDANCE WITH PLANNING CASE P22-0205.

WHEREAS, Arizona Revised Statutes § 9-802 provides a procedure whereby a municipality may enact the provisions of a code or public record by reference, without setting forth such provisions, providing that the adopting ordinance is published in full; and

WHEREAS, Article 3, **ZONING PROCEDURES**, Section 3.4 **AMENDMENT AND REZONING**, establishes the authority and procedures for amending the Zoning Ordinance; and

WHEREAS, a Public Hearing on this ordinance was heard before the Planning and Zoning Commission on October 12, 2022; and

WHEREAS, the Planning and Zoning Commission voted 7-0 in favor of this text amendment case;

NOW THEREFORE BE IT ORDAINED BY THE COMMON COUNCIL OF THE TOWN OF QUEEN CREEK, ARIZONA, AS FOLLOWS:

Section 1. The Queen Creek Zoning Ordinance – Table 4.6-1 Permitted Use Table, is amended as set forth and referenced to as “Exhibit A”, and incorporated herein;

Section 2. If any section, subsection, clause, phrase or portion of this ordinance or any part of these amendments to the Zoning Ordinance is for any reason held invalid or unconstitutional by the decision of any court or competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED BY the Common Council of the Town of Queen Creek, Arizona, this 2nd day of November 2022.

FOR THE TOWN OF QUEEN CREEK:

ATTESTED TO:

Jeff Brown, Vice Mayor

Maria Gonzalez, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:

John Kross, ICMA-CM Town Manager

Dickinson Wright PLLC
Attorneys for the Town

Exhibit 'A'

ARTICLE 4 – PERMITTED USE TABLE

Table 4.6-1 Permitted Uses (Continued)

		Residential Zoning Districts						Non-Residential Zoning Districts									
Use Category	Specific Use Type	A1 R1-190 R1-145 R1-108	R1-54 R1-43 R1-35	R1-18 R1-15 R1-12	R1-9 R1-8 ¹ R1-7 R1-6 ¹ R1-5 R1-4	HDR/ MDR	AT	RC	DC	MU	C-1	C-2	C-3	EMP A	EMP B	PRC	PQP
Commercial (Continued)																	
Eating and Drinking Establishments (Continued)	* Restaurant, with In-Vehicle Service (see section 6.5.B)	--	--	--	--	--	--	--	--	C	P	P	P	--	--	--	--
	Coffee Houses (see Section 4.6.D.11)	--	--	--	--	--	P	C	P	P	P	P	P	--	--	--	--
* Home-based occupations	All (when AT, DC, MU is residential use)	P	P	P	P	P	P	P	P	P	--	--	--	--	--	--	--
Office	General Offices (see section 4.6.D.4)	--	--	--	--	--	W	P	P	P	P	P	P	P	--	--	--
	Coworking space (Business Incubator)	--	--	--	--	--	P	P	P	P	P	P	P	P	P	--	--
	Data center only when associated as a secondary function with and necessary to a permitted use at the same location	--	--	--	--	--	--	--	--	--	--	--	C	C	C	--	--
	All other offices	--	--	--	--	--	C	C	C	C	C	C	P	--	--	--	--
Parking, Commercial	Commercial Parking Lot or Parking Structure	--	--	--	--	--	--	--	C	C	C	C	C	C	C	--	--
Entertainment Event Major	Indoor Facilities	--	--	--	--	--	P	--	P	P	C	C	P	P	P	C	--
	Outdoor Facilities	--	--	--	--	--	P	--	C	C	C	C	C	P	P	C	--
Recreation and Entertainment Outdoor	Campgrounds and Camps (see Section 4.6.D.2)	W	W	--	--	--	W	--	--	--	--	--	--	W	W	W	--
	Commercial Ranch, Commercial Stable, Outdoor Guest Ranch	C	C	--	--	--	P	--	--	--	--	--	--	--	--	--	--
	Equestrian boarding and riding arenas, (setback 500 feet from all property lines)	--	--	--	--	--	P	--	--	--	--	--	--	C	C	--	--
	Equestrian facilities in conjunction with an approved single family residential development	--	--	--	--	--	P	--	--	--	--	--	--	--	--	C	--
	Hunting, fishing, game preserves and recreational clubs or camps - not including recreational vehicle campgrounds.	--	--	--	--	--	P	--	--	--	--	--	--	--	--	P	--
	Resort, Cabins and Lodges	C	C	--	--	--	P	--	--	C	--	P	C	C	C	C	--