

MAR 26 2015

LICENSE AGREEMENT

AGREEMENT made this ___ day of _____ 2015, by and between CITY OF CHANDLER, an Arizona municipal corporation (hereinafter "Licensor"), and COR DEVELOPMENT COMPANY, LLC, a ~~New York~~ limited liability company, (hereinafter "Licensee"). Licensor and Licensee shall sometimes hereinafter be referred to as the "Parties".

RECITALS

WHEREAS, Licensor is the owner of property located at the northeast corner of Arizona Avenue and Buffalo Street, Chandler, Arizona, identified as Maricopa County Tax Parcels 303-06-062-A and 303-06-060, (hereinafter "the Subject Property").

WHEREAS, Licensee is interested in developing the Subject Property in accordance with the terms of an existing development agreement that covers the Subject Property and certain adjacent property.

WHEREAS, in furtherance of its interest in developing the Subject Property, Licensee has tested the soil and groundwater beneath the Subject Property for contamination at the soil boring locations depicted in **Figure 1** hereto.

WHEREAS, as a result of such testing, Licensee has discovered soil and groundwater contamination to and under the Subject Property that may impact development of the Subject Property.

WHEREAS, Licensee wishes to further assess any environmental contamination to and under the Subject Property at its expense.

NOW THEREFORE, in consideration of the granting of the foregoing, the mutual promises, covenants, conditions and agreements hereinafter set forth, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

1. Grant of License.

Subject to the conditions and terms set forth herein, Licensor hereby grants to Licensee, its employees, representatives and contractors a non-exclusive license (hereinafter the "License") to enter upon the Subject Property for the following purposes and under the following terms:

- A. Licensor shall sign necessary Arizona Department of Water Resources ("ADWR") forms, to permit Licensee to place, install, operate and/or conduct sampling initially from four (4) monitoring wells, two (2) air sparging wells and two (2) vapor extraction wells, and such other wells that Licensor and Licensee and/or representatives of the parties mutually determine to be necessary (hereinafter "the Subject Wells") on the Subject Property in the general locations depicted in **Figure 1** attached hereto. To the extent that additional wells are

determined to be necessary, the Licensor will provide Licensee with a revised **Figure 1**, to show such additional wells.

- B. Licensee may utilize equipment reasonably necessary to install and operate the Subject Wells. To the extent Licensee elects to conduct remedial activities, such equipment shall include remediation equipment such as above-ground pumps, compressors, flares, catalytic combustors, absorption packs and similar equipment necessary to remediate the Subject Property (the "Remediation Equipment").
- C. In addition to the waste processing requirement set forth in Section 11 of this License, Licensee shall properly dispose of and/or treat on the Subject Property, all contaminated waste (including excavated soil, slurry, mud, absorbents, etc.) generated by the activities performed pursuant to this License in accordance with applicable state and federal requirements and as soon as practically possible.
- D. Licensee shall be permitted to place temporary underground power and/or gas lines under the Subject Property as reasonably necessary to operate the Subject Wells and Remediation Equipment permitted pursuant to this License.
- E. The Remediation Equipment, any piping manifolds, any waste barrels and all other above-ground facilities associated with the efforts to remediate the Subject Property shall be secured by a fence accessible through a locked gate in a design and location approved by Licensor's Downtown Redevelopment Manager.
- F. Licensee shall conduct all activities permitted under this License in a professional manner and shall promptly address any nuisance-related issues associated with such activities brought to Licensee's attention.

2. License Term.

This License shall commence on the date that Licensor executes this License and automatically expire on December 31, 2016. Licensee expressly understands and acknowledges that Licensor is under absolutely no obligation to enter into a new License Agreement upon the expiration of this License, or to expand the property covered by this License, even if a governmental or regulatory agency requires that Licensee conduct further assessment or remedial activities.

3. Maintenance of Wells and Equipment.

Licensee shall maintain the Subject Wells and Remediation Equipment in accordance with all appropriate governmental regulations and industry standards. Licensee shall promptly repair any damage to the Subject Wells and Remediation Equipment and otherwise correct any problems discovered or informed of relating to the Subject Wells and Remediation Equipment.

4. Termination.

During the agreed upon term of this License, Licensor may terminate this License if

Licensee is in material default of its obligations under this License, and fails after being notified of the nature of such default, to effect a cure within a reasonable period of time, considering the nature of the default.

5. Compliance with Laws.

Licensee shall conduct all activities which are the subject of this License in compliance with all federal, state, and municipal statutes and ordinances, and with all regulations, orders, and directives of appropriate governmental agencies that enacted such statutes, ordinances, regulations, orders and directives, as they now exist at the time this License is executed and as they may be modified during the term of this License, except to the extent such modifications are grandfathered.

6. Permits.

Licensee, at no cost or expense to Licensor, shall be responsible for obtaining any and all governmental permits and approvals which may be necessary for it to conduct any work or activities under this License. Licensor shall cooperate with Licensee in Licensee's activities to obtain all necessary government permits and permissions, and in consideration of the cost and expense to be incurred by Licensee to further assess contamination to and under the Subject Property.

7. Liens and Claims.

Licensee will not permit any mechanics' materialmen's, or similar liens or claims to stand against the Subject Property for labor or material furnished in connection with any work performed by Licensee under this License. Upon reasonable and timely notice of any such lien or claim delivered to Licensee by Licensor, Licensee may bond and contest the validity and the amount of such lien, but Licensee will immediately pay any final and unappealable judgment rendered, will pay all proper costs and charges, and will have the lien or claim released at its sole expense.

8. Licensees' Obligations upon Termination or Expiration of Lease: Closure Bond.

A. On or before the expiration or termination of this License, Licensee shall, at its sole cost and expense, close the Subject Wells in accordance with Arizona Department of Water Resources ("ADWR") and/or other applicable regulatory standards, cause any excavations to be returned to the original gradient, remove all equipment and power lines, including the Remediation Equipment and fence surrounding same, placed on the Subject Property, fill and level all ditches, ruts and depressions, if any, caused by either closure or other activities undertaken pursuant to this License, repave any paved surfaces to blend with adjacent surfaces, place matching decomposed granite in areas where decomposed granite previously existed, remediate contamination, if any, that Licensee has caused to the Subject Property, including the groundwater under the Subject Property, during any closure drilling, sampling column maintenance or other activities undertaken pursuant to this License, to levels required by applicable laws and regulations, and fully restore the Subject Property to the condition that it was in prior to the placement of any of the Subject Wells on the Subject Property. Licensee will provide the Licensor with a copy of the certified well driller's report documenting the Subject

Wells were closed in accordance with ADWR requirements. Such report will be submitted to the Licensor within thirty (30) days of closure of the Subject Well, as generally referenced in Section 19 of this License. In the event that Licensee holds over, or attempts to hold over, after the expiration or termination of this License, such action shall not constitute a renewal or extension of this License or give Licensee any rights hereunder or in or to the Subject Property. Licensee shall post a performance bond in the amount of \$20,000.00, in a form reasonably acceptable to Licensor, with Licensor to secure Licensee's performance of the above obligations. Licensor may draw from the bond if Licensee fails to timely satisfy its obligations under Section 8.A. and 8.B. herein after written notice and Licensee's failure to diligently proceed to cure any default under this License, and said bond shall remain in effect until all obligations under Section 8 of this License have been satisfied.

- B. If Licensee fails to satisfy its closure obligations under section 8.A. hereof, Licensor may, in addition to any other remedy available hereunder or at law or in equity, retain a third party or utilize City of Chandler personnel to satisfy the above-referenced obligations and submit an itemized bill to Licensee of the reasonable cost associated therewith. So as to provide Licensee a reasonable opportunity to remedy its failure to satisfy its obligations under Section 8.A., Licensor shall provide written notice to Licensee thirty (30) days prior to taking any action under this Section 8.B. Licensee shall pay the bill for said closure services within thirty (30) days or receipt. This provision shall not impact the waiver and indemnification obligations of Licensee under this License.
- C. Licensee may elect to satisfy the bond requirements of this Section 8.C. by submitting a certificate of deposit, or other cash deposit, to Licensor, in which case Licensee shall be entitled to the certificate of deposit (and all interest that has accrued thereon) upon satisfying its obligations under Section 8.A. and 8.B. herein. The existence of the bond shall in no way limit Licensee's liability under this License.

9. Waiver and Indemnity.

- A. Licensor and Licensee do hereby covenant and agree to each indemnify and save the other harmless from any and all fines, suits, claims, demands, actions and/or causes of action of any kind and nature for personal injury or death or property damage, including damage or contamination to the Subject Property and the groundwater beneath the Subject Property, excluding however all existing contamination, and resulting from any activity or operation of the Licensor or Licensee, its agents, employees, guests or private contractors under the License or in connection with either party's use of the Subject Property; provided, however, that Licensor or Licensee shall not be liable for any injury, damage or loss occasioned by the sole negligence or willful misconduct of Licensor or Licensee, their agents or employees. Licensor and Licensee shall give to the other party prompt and timely notice of any claim made or suits instituted which in any way directly or indirectly, contingently or otherwise, affects or might affect Licensor or Licensee and Licensor and Licensee shall have the right to compromise and defend the same to the extent of its own interest.
- B. Licensor and Licensee hereby assumes all risk of, and waives all claim against the other

party for any loss, injury, death or damage to the other party's property, or to other persons or property sustained while in, on or about the Subject Property, except where such loss, injury death or damage is the result of the negligence or intentional acts of Licensor, its agents and employees.

10. Insurance.

Without limiting any obligations or liabilities of Licensee, Licensee shall purchase and maintain at its own expense insurance policies approved by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B++6 or above, or by an equivalent qualified unlicensed insurer approved by the State of Arizona (non-admitted insured) with policies and forms satisfactory to the Licensor. Failure to maintain insurance as specified may result in termination of this License at the Licensor's option. In addition, the Licensor will be included as an additional insured except for Workers Compensation and Professional Liability. The Licensee's General, Automobile, and Excess Liability insurance policies are primary over any insurance available to the Licensor and as to any claims resulting from the License, it being available to the Licensor and as to any claims resulting from the License, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.

The Licensee or Licensee's contractors/consultants shall maintain coverage with limits of not less than \$2 million per occurrence from, and maintain insurance in, a company or companies lawfully authorized to do business in Arizona. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

Each insurance policy shall name Licensor as an additional insured and shall provide for thirty (30) days' prior written notice by the insurance company to Licensor in the event of cancellation of the policy or policies. Said insurance must be in place before Licensee engages in any activity under this License and shall remain in place during the full term of this License. Evidence of such insurance shall be provided to Licensor promptly after a request therefor.

11. Waste.

Licensee shall be responsible for any waste generated during any activities undertaken by Licensee or its agents, employees or contractors pursuant to this License, as well as any activities undertaken by Licensor pursuant to Section 8.B. of this License. Liquids and other substances pumped from any wells installed or any contaminated waste generated during and activities undertaken by the Licensee or its agents, employees, or contractors, pursuant to this License, shall be properly characterized and disposed of off-site or treated on-site in a manner that is in accordance with all applicable laws, rules and regulations. Licensee shall not dispose of any contaminated liquids or materials on the land surface of or wells located on the Subject Property, or any other property of Licensor. Licensee shall also not dispose of said pumped liquids or materials in the sanitary sewer unless Licensee complies with the provisions of Licensor's Pretreatment Program and Licensee provides Licensor written notice of intent to discharge to the sewer at least ten (10) working days prior to any such discharge.

12. Notices.

Any notice provided for herein or otherwise required to be given hereunder shall be given by registered mail, or certified United States mail, postage prepaid, addressed to the contact persons identified below. The person and the place to which notices are to be mailed may be changed by either party by providing written notice of same to the other. The person initially set forth by Licensor as its contact person is:

City of Chandler
Downtown Redevelopment Manager
P.O. Box 4008, MS 605
Chandler, Arizona 85244-4008
Telephone: (408) 782-3045
Facsimile: (480) 782-2209

The person initially set forth by Licensee as its contact person is:

COR Development Company, LLC
Joseph Gerardi
540 Towne Drive
Fayetteville, NY 13066
Telephone: (315) 663-2100
Facsimile: (315) 663-2109

13. Assignment.

This License may not be assigned by either party without the prior written consent of the other, which shall not be unreasonably withheld or delayed, but otherwise shall be binding upon and inure to the benefit of the Parties' respective representatives, successors in interest and assigns. Nothing herein shall be deemed to require Licensor to consent to any assignment of this License.

14. Entire Agreement.

This License represents the full, complete and entire agreement between the parties with respect to the activities contemplated to be undertaken on behalf of Licensee under this License. This License cannot be changed or supplemented through oral agreement, but only by an agreement in writing, which is signed by an authorized representative of the party against whom enforcement of any waiver, change, modification or discharge is sought.

15. Governing Law.

This Agreement shall be construed and interpreted and governed by and in accordance with the laws of the State of Arizona. Any litigation relating to this License shall be conducted in the Superior Court in and for the County of Maricopa, Arizona. This License shall not be construed for or against any party on the basis that such party drafted any portion of this License.

16. Reports.

Licensee shall provide Licensor with all data and reports associated with its assessment of the Subject Property within thirty (30) days of generating such data or reports.

17. No Joint Venture.

Nothing in this License shall be construed to create a partnership, joint venture or relationship other than that of Licensor and Licensee.

18. Waiver.

No waiver of any breach hereof shall be deemed a waiver of any other breach hereof or any subsequent breach by Licensee under the same or any other provision of this License. No provision of this License may be waived except by the written consent of Licensor, and forbearance or indulgence by Licensor, in any regard whatsoever, shall not constitute a waiver of any provision of this License, and until Licensee satisfies all of its obligations under this License, Licensor shall be entitled to invoke any remedy available to it as specified in this License, or under law, despite such forbearance or indulgence.

19. Authorized Parties.

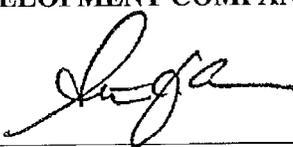
The parties signing below represent and warrant that they have the requisite authority to bind the entities on whose behalf they are signing.

IN WITNESS WHEREOF, the Parties have executed this License by their duly authorized representative.

LICENSOR
CITY OF CHANDLER
A Municipal Corporation

LICENSEE
COR DEVELOPMENT COMPANY, L.L.C.

By: _____

By:  _____

Its _____

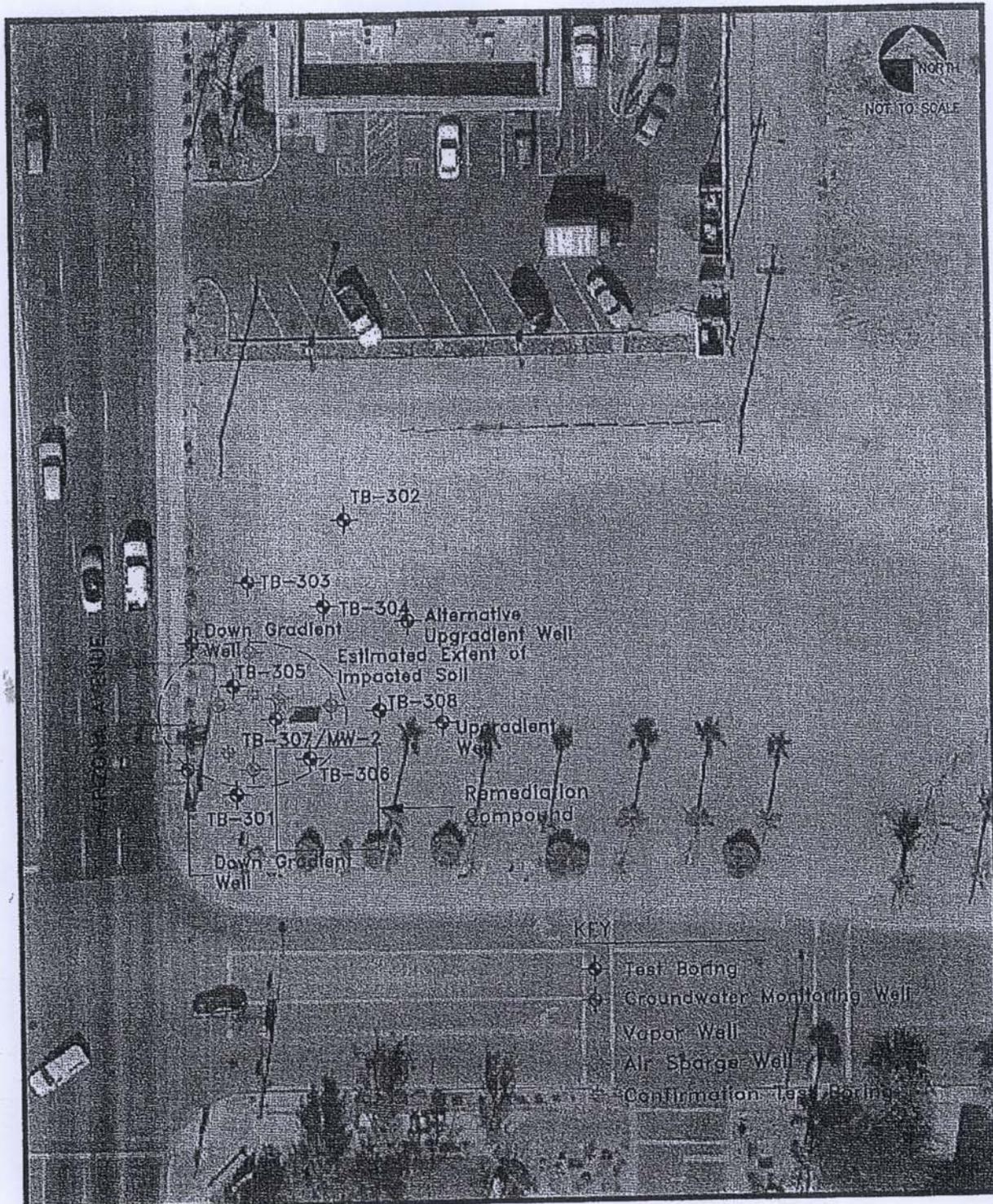
Its President

ATTEST:

City Clerk

APPROVED AS TO FORM:

Chandler City Attorney 



Western
Technologies
Inc.

FIGURE 1. PROPOSED WELL LOCATION MAP
 Proposed Commercial Building Development
 NEC of Arizona Avenue and Buffalo Street
 Chandler, AZ

Project No. 2179JZ227



#41



MEMORANDUM Law Department - Council Memo

DATE: March 12, 2015
TO: MAYOR AND COUNCIL
FROM: KAY BIGELOW, Chandler City Attorney *kb*
SUBJECT: License Agreement relating to Site 7 Environmental Assessment (Chandler City Center)

RECOMMENDATION: Authorize the Mayor to execute a License Agreement between COR Development Company, LLC and the City of Chandler consistent in all material respects with the terms of the License Agreement attached hereto.

BACKGROUND: In March, 2010 the City Council approved a License Agreement with COR Development Company, LLC (“COR”) that granted a license to COR to conduct environmental testing of property located at the northeast corner of Buffalo Street and Arizona Avenue owned by the City of Chandler known to have previously been potentially exposed to environmental contaminants by virtue of the sites former use as a gasoline fueling and service station. The 2010 License Agreement expired in 2013 without COR having conducted its environmental site assessment as authorized under the terms of the License Agreement.

The License Agreement before you is nearly identical in all respects to the March, 2010 License Agreement previously approved by City Council. The License Agreement contemplates the installation of monitoring wells to be located on City property and also provides:

1. Indemnification provisions that cover any liability associated with the monitoring wells, unless such liability arises out of the sole negligence of the City; and
2. Insurance coverage wherein the City is named as an additional insured; and
3. Provisions specifying the limited nature of the license and when activities associated with the well (monitoring, maintenance, etc.) will be conducted; and
4. Provisions relating to the City’s ability to terminate the license and require closure of the monitoring well(s); and
5. The requirement of the posting of a bond to satisfy any liens and to ensure adequate funds for the closure of the well(s); and

6. Provisions relating to the City's access to information derived from the sampling of the well(s); and

7. The termination of the License on December 31, 2016.

PROPOSED MOTION: Move to authorize the Mayor to execute a License Agreement between the City of Chandler and COR Development Company, LLC consistent in all material respects with the License Agreement attached hereto and incorporated herein.

LICENSE AGREEMENT

AGREEMENT made this ___ day of _____ 2015, by and between CITY OF CHANDLER, an Arizona municipal corporation (hereinafter "Licensor"), and COR DEVELOPMENT COMPANY, LLC, a _____ limited liability company, (hereinafter "Licensee"). Licensor and Licensee shall sometimes hereinafter be referred to as the "Parties".

RECITALS

WHEREAS, Licensor is the owner of property located at the northeast corner of Arizona Avenue and Buffalo Street, Chandler, Arizona, identified as Maricopa County Tax Parcels 303-06-062-A and 303-06-060, (hereinafter "the Subject Property").

WHEREAS, Licensee is interested in developing the Subject Property in accordance with the terms of an existing development agreement that covers the Subject Property and certain adjacent property.

WHEREAS, in furtherance of its interest in developing the Subject Property, Licensee has tested the soil and groundwater beneath the Subject Property for contamination at the soil boring locations depicted in **Figure 1** hereto.

WHEREAS, as a result of such testing, Licensee has discovered soil and groundwater contamination to and under the Subject Property that may impact development of the Subject Property.

WHEREAS, Licensee wishes to further assess and remediate the contamination to and under the Subject Property at its expense.

NOW THEREFORE, in consideration of the granting of the foregoing, the mutual promises, covenants, conditions and agreements hereinafter set forth, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

1. Grant of License.

Subject to the conditions and terms set forth herein, Licensor hereby grants to Licensee, its employees, representatives and contractors a non-exclusive license (hereinafter the "License") to enter upon the Subject Property for the following purposes and under the following terms:

- A. Licensor shall sign necessary Arizona Department of Water Resources ("ADWR") forms, to permit Licensee to place, install, operate and/or conduct sampling initially from four (4) monitoring wells, two (2) air sparging wells and two (2) vapor extraction wells, and such other wells that Licensor and Licensee and/or representatives of the parties mutually determine to be necessary (hereinafter "the Subject Wells") on the Subject Property in the general locations depicted in **Figure 1** attached hereto. To the extent that additional wells are

determined to be necessary, the Licensor will provide Licensee with a revised **Figure 1**, to show such additional wells.

- B. Licensee may utilize equipment reasonably necessary to install and operate the Subject Wells. To the extent Licensee elects to conduct remedial activities, such equipment shall include remediation equipment such as above-ground pumps, compressors, flares, catalytic combustors, absorption packs and similar equipment necessary to remediate the Subject Property (the "Remediation Equipment").
- C. In addition to the waste processing requirement set forth in Section 11 of this License, Licensee shall properly dispose of and/or treat on the Subject Property, all contaminated waste (including excavated soil, slurry, mud, absorbents, etc.) generated by the activities performed pursuant to this License in accordance with applicable state and federal requirements and as soon as practically possible.
- D. Licensee shall be permitted to place temporary underground power and/or gas lines under the Subject Property as reasonably necessary to operate the Subject Wells and Remediation Equipment permitted pursuant to this License.
- E. The Remediation Equipment, any piping manifolds, any waste barrels and all other above-ground facilities associated with the efforts to remediate the Subject Property shall be secured by a fence accessible through a locked gate in a design and location approved by Licensor's Downtown Redevelopment Manager.
- F. Licensee shall conduct all activities permitted under this License in a professional manner and shall promptly address any nuisance-related issues associated with such activities brought to Licensee's attention.

2. License Term.

This License shall commence on the date that Licensor executes this License and automatically expire on December 31, 2016. Licensee expressly understands and acknowledges that Licensor is under absolutely no obligation to enter into a new License Agreement upon the expiration of this License, or to expand the property covered by this License, even if a governmental or regulatory agency requires that Licensee conduct further assessment or remedial activities.

3. Maintenance of Wells and Equipment.

Licensee shall maintain the Subject Wells and Remediation Equipment in accordance with all appropriate governmental regulations and industry standards. Licensee shall promptly repair any damage to the Subject Wells and Remediation Equipment and otherwise correct any problems discovered or informed of relating to the Subject Wells and Remediation Equipment.

4. Termination.

During the agreed upon term of this License, Licensor may terminate this License if

Licensee is in material default of its obligations under this License, and fails after being notified of the nature of such default, to effect a cure within a reasonable period of time, considering the nature of the default.

5. Compliance with Laws.

Licensee shall conduct all activities which are the subject of this License in compliance with all federal, state, and municipal statutes and ordinances, and with all regulations, orders, and directives of appropriate governmental agencies that enacted such statutes, ordinances, regulations, orders and directives, as they now exist at the time this License is executed and as they may be modified during the term of this License, except to the extent such modifications are grandfathered.

6. Permits.

Licensee, at no cost or expense to Licensor, shall be responsible for obtaining any and all governmental permits and approvals which may be necessary for it to conduct any work or activities under this License. Licensor shall cooperate with Licensee in Licensee's activities to obtain all necessary government permits and permissions, and in consideration of the cost and expense to be incurred by Licensee to further assess contamination to and under the Subject Property.

7. Liens and Claims.

Licensee will not permit any mechanics' materialmen's, or similar liens or claims to stand against the Subject Property for labor or material furnished in connection with any work performed by Licensee under this License. Upon reasonable and timely notice of any such lien or claim delivered to Licensee by Licensor, Licensee may bond and contest the validity and the amount of such lien, but Licensee will immediately pay any final and unappealable judgment rendered, will pay all proper costs and charges, and will have the lien or claim released at its sole expense.

8. Licensees' Obligations upon Termination or Expiration of Lease: Closure Bond.

A. On or before the expiration or termination of this License, Licensee shall, at its sole cost and expense, close the Subject Wells in accordance with Arizona Department of Water Resources ("ADWR") and/or other applicable regulatory standards, cause any excavations to be returned to the original gradient, remove all equipment and power lines, including the Remediation Equipment and fence surrounding same, placed on the Subject Property, fill and level all ditches, ruts and depressions, if any, caused by either closure or other activities undertaken pursuant to this License, repave any paved surfaces to blend with adjacent surfaces, place matching decomposed granite in areas where decomposed granite previously existed, remediate contamination, if any, that Licensee has caused to the Subject Property, including the groundwater under the Subject Property, during any closure drilling, sampling column maintenance or other activities undertaken pursuant to this License, to levels required by applicable laws and regulations, and fully restore the Subject Property to the condition that it was in prior to the placement of any of the Subject Wells on the Subject Property. Licensee will provide the Licensor with a copy of the certified well driller's report documenting the Subject

Wells were closed in accordance with ADWR requirements. Such report will be submitted to the Licensor within thirty (30) days of closure of the Subject Well, as generally referenced in Section 19 of this License. In the event that Licensee holds over, or attempts to hold over, after the expiration or termination of this License, such action shall not constitute a renewal or extension of this License or give Licensee any rights hereunder or in or to the Subject Property. Licensee shall post a performance bond in the amount of \$20,000.00, in a form reasonably acceptable to Licensor, with Licensor to secure Licensee's performance of the above obligations. Licensor may draw from the bond if Licensee fails to timely satisfy its obligations under Section 8.A. and 8.B. herein after written notice and Licensee's failure to diligently proceed to cure any default under this License, and said bond shall remain in effect until all obligations under Section 8 of this License have been satisfied.

- B. If Licensee fails to satisfy its closure obligations under section 8.A. hereof, Licensor may, in addition to any other remedy available hereunder or at law or in equity, retain a third party or utilize City of Chandler personnel to satisfy the above-referenced obligations and submit an itemized bill to Licensee of the reasonable cost associated therewith. So as to provide Licensee a reasonable opportunity to remedy its failure to satisfy its obligations under Section 8.A., Licensor shall provide written notice to Licensee thirty (30) days prior to taking any action under this Section 8.B. Licensee shall pay the bill for said closure services within thirty (30) days or receipt. This provision shall not impact the waiver and indemnification obligations of Licensee under this License.
- C. Licensee may elect to satisfy the bond requirements of this Section 8.C. by submitting a certificate of deposit, or other cash deposit, to Licensor, in which case Licensee shall be entitled to the certificate of deposit (and all interest that has accrued thereon) upon satisfying its obligations under Section 8.A. and 8.B. herein. The existence of the bond shall in no way limit Licensee's liability under this License.

9. Waiver and Indemnity.

- A. Licensor and Licensee do hereby covenant and agree to each indemnify and save the other harmless from any and all fines, suits, claims, demands, actions and/or causes of action of any kind and nature for personal injury or death or property damage, including damage or contamination to the Subject Property and the groundwater beneath the Subject Property, excluding however all existing contamination, and resulting from any activity or operation of the Licensor or Licensee, its agents, employees, guests or private contractors under the License or in connection with either party's use of the Subject Property; provided, however, that Licensor or Licensee shall not be liable for any injury, damage or loss occasioned by the sole negligence or willful misconduct of Licensor or Licensee, their agents or employees. Licensor and Licensee shall give to the other party prompt and timely notice of any claim made or suits instituted which in any way directly or indirectly, contingently or otherwise, affects or might affect Licensor or Licensee and Licensor and Licensee shall have the right to compromise and defend the same to the extent of its own interest.
- B. Licensor and Licensee hereby assumes all risk of, and waives all claim against the other

party for any loss, injury, death or damage to the other party's property, or to other persons or property sustained while in, on or about the Subject Property, except where such loss, injury death or damage is the result of the negligence or intentional acts of Licensor, its agents and employees.

10. Insurance.

Without limiting any obligations or liabilities of Licensee, Licensee shall purchase and maintain at its own expense insurance policies approved by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B++6 or above, or by an equivalent qualified unlicensed insurer approved by the State of Arizona (non-admitted insured) with policies and forms satisfactory to the Licensor. Failure to maintain insurance as specified may result in termination of this License at the Licensor's option. In addition, the Licensor will be included as an additional insured except for Workers Compensation and Professional Liability. The Licensee's General, Automobile, and Excess Liability insurance policies are primary over any insurance available to the Licensor and as to any claims resulting from the License, it being available to the Licensor and as to any claims resulting from the License, it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.

The Licensee or Licensee's contractors/consultants shall maintain coverage with limits of not less than \$2 million per occurrence from, and maintain insurance in, a company or companies lawfully authorized to do business in Arizona. Coverage under the policy will be at least as broad as Insurance Services Office, Inc., policy form CG00011093 or equivalent thereof, including but not limited to severability of interest and waiver of subrogation clauses.

Each insurance policy shall name Licensor as an additional insured and shall provide for thirty (30) days' prior written notice by the insurance company to Licensor in the event of cancellation of the policy or policies. Said insurance must be in place before Licensee engages in any activity under this License and shall remain in place during the full term of this License. Evidence of such insurance shall be provided to Licensor promptly after a request therefor.

11. Waste.

Licensee shall be responsible for any waste generated during any activities undertaken by Licensee or its agents, employees or contractors pursuant to this License, as well as any activities undertaken by Licensor pursuant to Section 8.B. of this License. Liquids and other substances pumped from any wells installed or any contaminated waste generated during and activities undertaken by the Licensee or its agents, employees, or contractors, pursuant to this License, shall be properly characterized and disposed of off-site or treated on-site in a manner that is in accordance with all applicable laws, rules and regulations. Licensee shall not dispose of any contaminated liquids or materials on the land surface of or wells located on the Subject Property, or any other property of Licensor. Licensee shall also not dispose of said pumped liquids or materials in the sanitary sewer unless Licensee complies with the provisions of Licensor's Pretreatment Program and Licensee provides Licensor written notice of intent to discharge to the sewer at least ten (10) working days prior to any such discharge.

12. Notices.

Any notice provided for herein or otherwise required to be given hereunder shall be given by registered mail, or certified United States mail, postage prepaid, addressed to the contact persons identified below. The person and the place to which notices are to be mailed may be changed by either party by providing written notice of same to the other. The person initially set forth by Licensor as its contact person is:

City of Chandler
Downtown Redevelopment Manager
P.O. Box 4008, MS 605
Chandler, Arizona 85244-4008
Telephone: (408) 782-3045
Facsimile: (480) 782-2209

The person initially set forth by Licensee as its contact person is:

COR Development Company, LLC
Joseph Gerardi
540 Towne Drive
Fayetteville, NY 13066
Telephone: (315) 663-2100
Facsimile: (315) 663-2109

13. Assignment.

This License may not be assigned by either party without the prior written consent of the other, which shall not be unreasonably withheld or delayed, but otherwise shall be binding upon and inure to the benefit of the Parties' respective representatives, successors in interest and assigns. Nothing herein shall be deemed to require Licensor to consent to any assignment of this License.

14. Entire Agreement.

This License represents the full, complete and entire agreement between the parties with respect to the activities contemplated to be undertaken on behalf of Licensee under this License. This License cannot be changed or supplemented through oral agreement, but only by an agreement in writing, which is signed by an authorized representative of the party against whom enforcement of any waiver, change, modification or discharge is sought.

15. Governing Law.

This Agreement shall be construed and interpreted and governed by and in accordance with the laws of the State of Arizona. Any litigation relating to this License shall be conducted in the Superior Court in and for the County of Maricopa, Arizona. This License shall not be construed for or against any party on the basis that such party drafted any portion of this License.

16. Reports.

Licensee shall provide Licensor with all data and reports associated with its assessment of the Subject Property within thirty (30) days of generating such data or reports.

17. No Joint Venture.

Nothing in this License shall be construed to create a partnership, joint venture or relationship other than that of Licensor and Licensee.

18. Waiver.

No waiver of any breach hereof shall be deemed a waiver of any other breach hereof or any subsequent breach by Licensee under the same or any other provision of this License. No provision of this License may be waived except by the written consent of Licensor, and forbearance or indulgence by Licensor, in any regard whatsoever, shall not constitute a waiver of any provision of this License, and until Licensee satisfies all of its obligations under this License, Licensor shall be entitled to invoke any remedy available to it as specified in this License, or under law, despite such forbearance or indulgence.

19. Authorized Parties.

The parties signing below represent and warrant that they have the requisite authority to bind the entities on whose behalf they are signing.

IN WITNESS WHEREOF, the Parties have executed this License by their duly authorized representative.

LICENSOR
CITY OF CHANDLER
A Municipal Corporation

LICENSEE
COR DEVELOPMENT COMPANY, L.L.C.

By: _____

By: _____

Its _____

Its _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

Chandler City Attorney *kb*

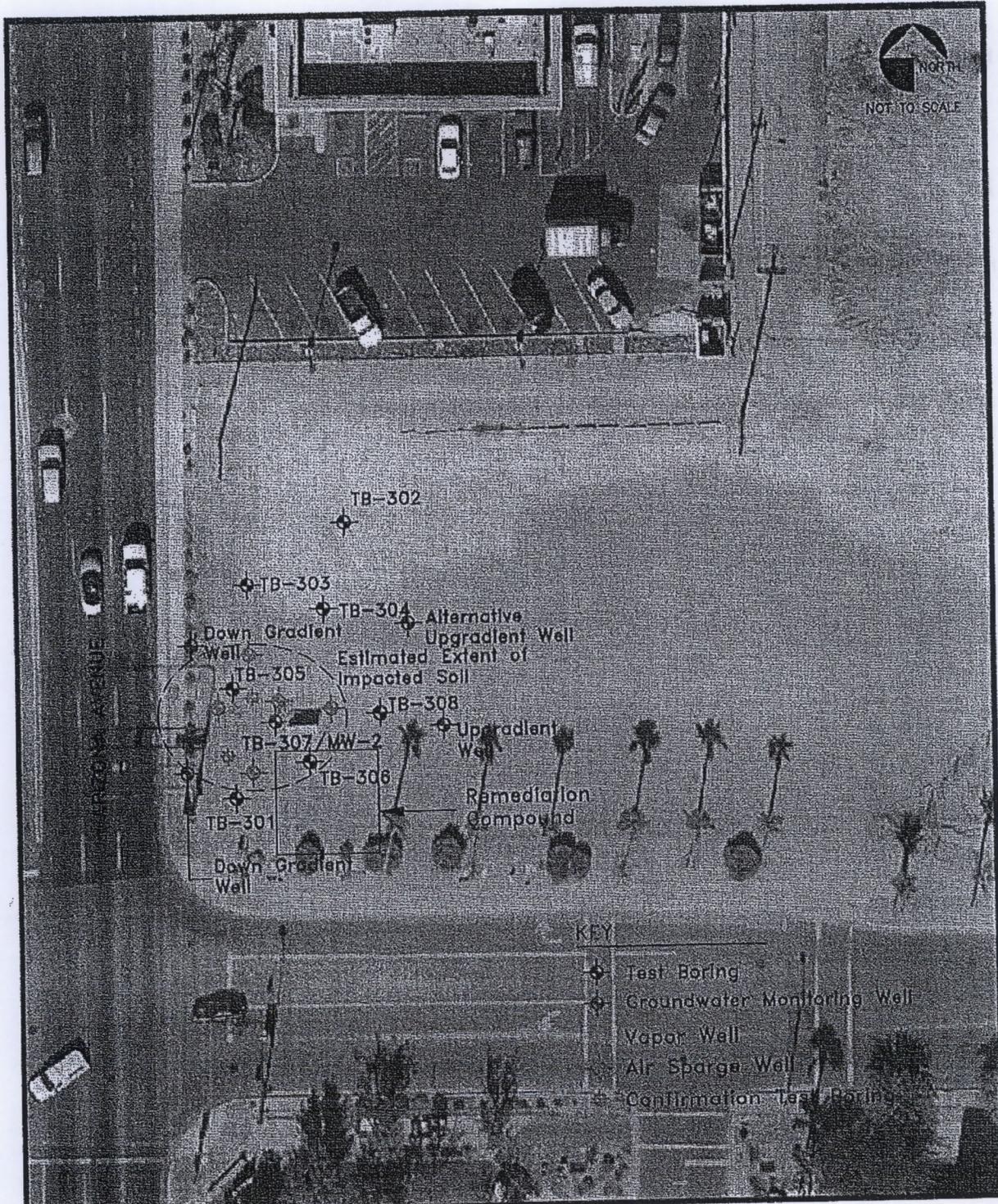


FIGURE 1. PROPOSED WELL LOCATION MAP
 Proposed Commercial Building Development
 NEC of Arizona Avenue and Buffalo Street
 Chandler, AZ

Project No. 2179JZ227