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JAN 11 2007

MEMORANDUM

Public Works Engineering - Council Memo ENG07-025

DATE: JANUARY 11, 2007

TO: MAYOR AND COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER *WMP*
DAVE SIEGEL, MUNICIPAL UTILITIES DIRECTOR *DS*
ELIZABETH HUNING, ASSISTANT PUBLIC WORKS DIRECTOR/CITY ENGINEER *EH Acting*
SHEINA HUGHES, PUBLIC WORKS ENGINEER/OFFSITE DEVELOPMENT *SH*

FROM: CHARLES W. SMITH, ENGINEER *CWS*

SUBJECT: Approval of City Participation Agreement CP06-002 with Fulton Homes Corporation for the installation of water lines in excess of their offsite improvement obligation to serve two City well sites located in the Fulton Ranch area at a cost to the City not to exceed \$575,141.

RECOMMENDATION:

Staff recommends that Council approve City Participation Agreement CP06-002 with Fulton Homes Corporation for the installation of water lines in excess of their offsite improvement obligation to serve two City well sites located in the Fulton Ranch area at a cost to the City not to exceed \$575,141.

BACKGROUND AND DISCUSSION:

Fulton Homes Corporation is constructing a residential subdivision, to be known as Fulton Ranch, in the area bounded by Arizona Avenue on the east, Ocotillo Road on the north, Chandler Heights Road on the south, and Alma School and Basha Roads on the west. There are two new City well sites within this development area. As part of the process for receiving approval of the subdivision from the City, the developer was required to include the installation of pipelines for transporting water from these well sites to a water storage tank along Basha Road and to also install purge water lines from the well sites to either a lake or retention basin within the development. The City was to provide reimbursement for the cost of installing these lines. A City Participation Agreement has been prepared that would provide for this reimbursement.

Under the proposed agreement, the City will reimburse the developer for the full cost of installing water lines from the new wells to the water storage tank and purge lines from the wells to the storm drain system. Since a portion of the storm drain system will serve the dual purpose

of handling both storm water and purge water, the cost of those facilities are to be shared equally between the City and the developer.

The work covered by this agreement has been completed, and the City's portion of the expenses, including design, construction, and various overhead costs, comes to a total of \$575,141. That is the amount included in the agreement.

FINANCIAL IMPLICATIONS:

Cost: Not to exceed \$575,141

Savings: N/A

Long Term Costs: Minimal. Normal pipeline operation and maintenance.

<u>Account No.</u>	<u>Fund Name</u>	<u>Program Name</u>	<u>CIP Funded</u>	<u>Amount</u>
601.3820.0000.6713.6WA034	Water Bonds	Well Construction	FY05/06	\$575,141

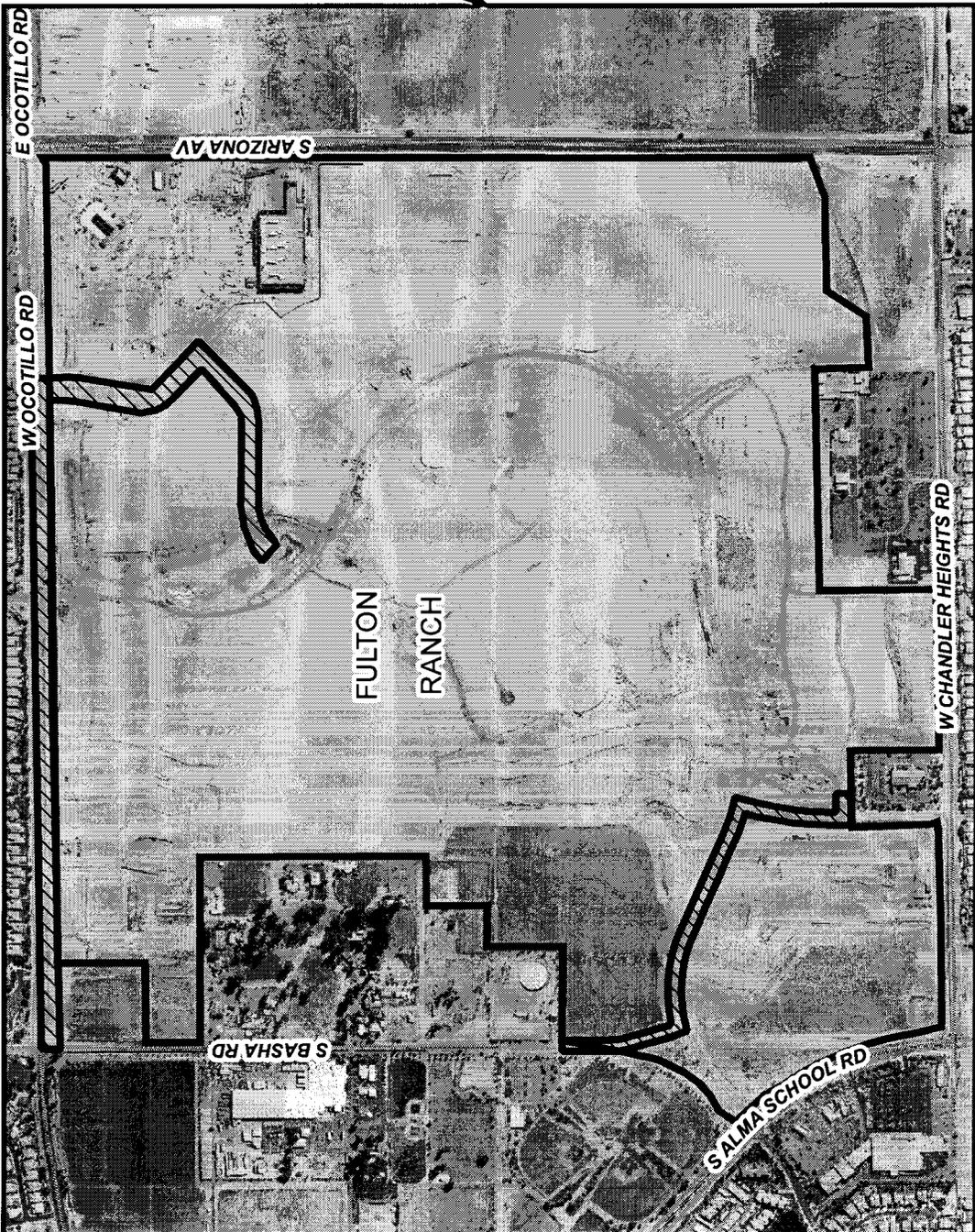
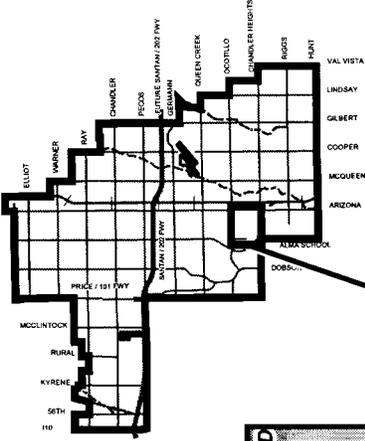
Costs for this work were evaluated and found to be consistent with those experienced in recent City capital projects.

PROPOSED MOTION:

Move that Council approve City Participation Agreement CP06-002 with Fulton Homes Corporation for the installation of water lines in excess of their offsite improvement obligation to serve two City well sites located in the Fulton Ranch area at a cost to the City not to exceed \$575,141, and authorize the Mayor to sign the Agreement.

Attachments: Agreement No. CP06-002, Location Map

LOCATION MAP FOR FULTON RANCH CITY PARTICIPATION AGREEMENT NO. CP06-002



MEMO NO. ENG07-025

LEGEND

 IMPROVEMENTS TO BE REIMBURSED



**AGREEMENT FOR CITY PARTICIPATION IN
OFFSITE CONSTRUCTION COSTS
AGREEMENT NUMBER CP06-002
(Purge Lines and Water Lines)**

THIS AGREEMENT, made and entered into this ____ day of _____, 200__, by and between the CITY OF CHANDLER, a municipal corporation of the State of Arizona, hereinafter designated as "City", and FULTON HOMES CORPORATION, an Arizona corporation ("Developer").

RECITALS:

A. Developer desires to construct certain offsite improvements as required by the City in connection with development of the following described property:

SEE EXHIBIT "A", LEGAL DESCRIPTION, ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

B. A Benefit Study has been performed which determined the Developer's obligation to provide offsite improvements.

C. The value of the improvements constructed by Developer exceeds the Developer's offsite improvement obligation.

D. City funds have been budgeted and are available to pay that part of the cost of construction of these improvements which exceed the Developer's obligation.

E. Existing Development will preclude reimbursement of these costs from other property owners.

F. Developer desires to enter into an agreement with City for City participation for reimbursement of costs incurred by Developer for construction of offsite improvements bordering existing development that does not belong to Developer, whose value exceeds the Developer's offsite improvement obligation.

G. Chandler City Code Section 47-11.6 and 47-11.7 authorize the City Council to enter into an agreement providing for City participation for reimbursement to Developer from City funds when requested by developers.

NOW, THEREFORE, it is agreed as follows:

1. Code Compliance. Developer agrees to construct improvements as required by the Chandler City Code. Construction shall be in accordance with plans approved by the City Engineer.

2. Construction Costs. Developer agrees to pay all construction costs including, but not limited to, right-of-way, easement, legal, engineering, and energization, which are required to complete the work. The improvements eligible for cost reimbursement include the following: the full cost of installing water lines from the new wells at the Property to the water storage tank located adjacent to Basha Road, the full cost of installing purge lines from the new water wells at the Property to the storm drain system, and half the cost of installing combined storm drain and purge line improvements directing flow to lakes

located on the Property, as more specifically described on Exhibit "B" attached hereto and incorporated herein.

3. Ownership. City shall acquire ownership of said improvements, including those eligible for reimbursement, when completed, approved and accepted by written notification to Developer from the City Engineer. Following acceptance, all costs for maintenance and power shall become the responsibility of the City.
4. Bankruptcy. Should Developer be adjudged bankrupt or make an assignment for benefit of creditors prior to the completion of the construction of the work to be performed under the terms of this Agreement, all rights under the reimbursement provisions hereof, if any, shall be null and void and without force or effect, and facilities constructed prior to bankruptcy become the property of the City in fee simple, free and clear of any and all encumbrances, claims or liens whatsoever of Developer.
5. City Participation. The City's participation in the Project shall be limited to the actual cost of the items included in the Project, up to an amount not to exceed Five Hundred Seventy Five Thousand, One Hundred Forty One Dollars and No Cents (\$575,141.00), and the unit costs for those improvements for which the City is providing reimbursement shall not exceed the unit cost for the entire offsite improvements.
6. Inspection. Offsite inspection of the construction will be performed by City staff. Any additional inspection required for the construction shall be performed by the Developer's engineer at the Developer's sole expense.
7. As-Built Drawings. As-built drawings shall be prepared and certified by Developer's engineer prior to final acceptance of the Project by the City.
8. Enforcement. In the event of any enforcement action relating to this Agreement, the prevailing party shall be entitled to recover all costs, expenses and fees, including reasonable attorney's fees, incurred by it should litigation be instituted to enforce any term or provision of this Agreement or any portion of the amount payable under this Agreement.
9. Governing Law. This Agreement shall be governed by the laws of the State of Arizona and may be executed in counterparts, each of which shall constitute the original. There are no understandings or agreements except as expressly stated herein.
10. Waiver. No waiver by either party of a breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained.
11. Severability. In the event that any phrase, clause, sentence, paragraph, section, article or portion of this Agreement shall become illegal, null or void or against public policy, for any

reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law, except if the remaining portions of the Agreement do not provide one or both of the parties with the essential consideration for entering into this Agreement.

- 12. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunder duly affixed and attested by its City Clerk, and the Developer has signed the same, on or as of the day and year first above written.

CITY OF CHANDLER, a municipal corporation of
the State of Arizona

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney



STATE OF ARIZONA)
)ss
County of Maricopa)

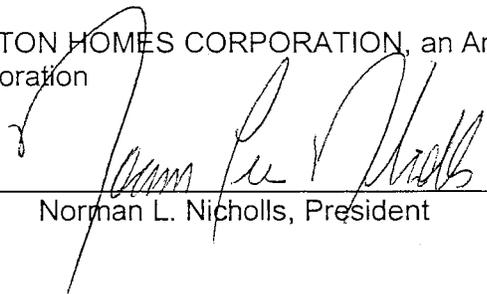
The foregoing Agreement was acknowledged before me this ____ day of _____, 200_ by _____, Mayor of the City of Chandler, who acknowledges that he signed the foregoing instrument on behalf of the City of Chandler.

Notary Public

My Commission Expires:

FULTON HOMES CORPORATION, an Arizona
corporation

By:


Norman L. Nicholls, President

STATE OF ARIZONA)
)ss
County of Maricopa)

On this 18th day of December, 2006, before me the undersigned Notary Public, personally appeared Norm Lee Nicholls of Fulton Homes Corporation and that he/she being authorized so to do, executed the foregoing Agreement in the capacity therein stated and for the purposes therein contained.


Notary Public Dawn Wahl

My Commission Expires: 3/1/2009

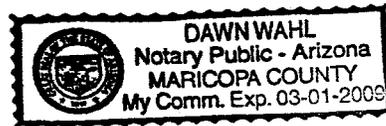


EXHIBIT "A"
LEGAL DESCRIPTION
FULTON RANCH

THAT PORTION OF SECTION 21 AND THE SOUTHEAST QUARTER OF SECTION 20,
TOWNSHIP 2 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA
COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 21 AND THE BEGINNING OF
A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 1700.00
FEET THE CENTER OF WHICH BEARS NORTH 89 DEGREES 58 MINUTES 35 SECONDS WEST,
SAID POINT ALSO BEING THE POINT OF BEGINNING;

THENCE NORTHWESTERLY ALONG SAID CURVE AND THE MONUMENT LINE OF ALMA
SCHOOL ROAD THROUGH A CENTRAL ANGLE OF 43 DEGREES 55 MINUTES 50 SECONDS AN
ARC LENGTH OF 1303.45 FEET TO A NON-TANGENT POINT ON THE MONUMENT LINE OF
BASHA ROAD;

THENCE NORTH 46 DEGREES 04 MINUTES 02 SECONDS EAST A DISTANCE OF 300.01 FEET
ALONG THE MONUMENT LINE OF BASHA ROAD TO A NON-TANGENT CURVE CONCAVE TO
THE NORTHWEST HAVING A RADIUS OF 846.72 FEET, THE CENTER OF WHICH BEARS
NORTH 43 DEGREES 55 MINUTES 38 SECONDS WEST;

THENCE NORTHEASTERLY ALONG SAID CURVE AND THE MONUMENT LINE OF BASHA
ROAD THROUGH A CENTRAL ANGLE OF 12 DEGREES 32 MINUTES 56 SECONDS AN ARC
LENGTH OF 185.45 FEET TO A NON-TANGENT CURVE, CONCAVE SOUTHERLY, HAVING A
RADIUS OF 865.00 FEET, THE CENTER OF WHICH BEARS SOUTH 31 DEGREES 39 MINUTES
11 SECONDS EAST;

THENCE EASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 51 DEGREES 01
MINUTES 44 SECONDS, AN ARC LENGTH OF 770.39 FEET;

THENCE DEPARTING SAID CURVE NORTH 84 DEGREES 32 MINUTES 24 SECONDS EAST A
DISTANCE OF 266.05 FEET;

THENCE NORTH 75 DEGREES 46 MINUTES 22 SECONDS EAST A DISTANCE OF 360.79 FEET
TO THE BEGINNING OF A CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF
100.00 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 41
DEGREES 40 MINUTES 10 SECONDS, AN ARC LENGTH OF 72.73 FEET;

THENCE NON-TANGENT TO SAID CURVE NORTH 00 DEGREES 00 MINUTES 06 SECONDS
WEST A DISTANCE OF 1116.84 FEET;

THENCE NORTH 44 DEGREES 50 MINUTES 24 SECONDS WEST A DISTANCE OF 229.55 FEET;

THENCE NORTH 00 DEGREES 09 MINUTES 36 SECONDS EAST A DISTANCE OF 1331.17 FEET;

THENCE NORTH 89 DEGREES 49 MINUTES 39 SECONDS WEST A DISTANCE OF 1110.00 FEET
TO THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 21;

THENCE NORTH 00 DEGREES 09 MINUTES 36 SECONDS EAST ALONG SAID WEST LINE A DISTANCE OF 915.76 FEET TO A FOUND MCD BRASS CAP IN A HAND HOLE ACCEPTED AS THE NORTHWEST CORNER OF SAID SECTION 21;

THENCE NORTH 89 DEGREES 38 MINUTES 25 SECONDS EAST ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 21 A DISTANCE OF 2640.57 FEET TO A FOUND MCDOT BRASS CAP FLUSH ACCEPTED AS THE NORTH QUARTER CORNER OF SAID SECTION 21;

THENCE NORTH 89 DEGREES 06 MINUTES 48 SECONDS EAST ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 21 A DISTANCE OF 2636.22 FEET TO A FOUND BRASS CAP IN A HAND HOLE ACCEPTED AS THE NORTHEAST CORNER OF SAID SECTION 21;

THENCE SOUTH 00 DEGREES 10 MINUTES 04 SECONDS WEST ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 21 A DISTANCE OF 2666.25 FEET TO A FOUND BRASS CAP IN A HAND HOLE ACCEPTED AS THE EAST QUARTER CORNER OF SAID SECTION 21;

THENCE SOUTH 00 DEGREES 56 MINUTES 14 SECONDS WEST ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 21 A DISTANCE OF 2625.72 FEET TO A FOUND BRASS CAP IN A HAND HOLE ACCEPTED AS THE SOUTHEAST CORNER OF SAID SECTION 21;

THENCE SOUTH 89 DEGREES 20 MINUTES 19 SECONDS WEST ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 21 A DISTANCE OF 1295.16 FEET;

THENCE DEPARTING SAID SOUTH LINE NORTH 00 DEGREES 29 MINUTES 42 SECONDS EAST A DISTANCE OF 734.20 FEET;

THENCE SOUTH 89 DEGREES 20 MINUTES 09 SECONDS WEST A DISTANCE OF 1285.81 FEET;

THENCE SOUTH 00 DEGREES 03 MINUTES 16 SECONDS WEST A DISTANCE OF 734.05 FEET TO THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 21;

THENCE SOUTH 89 DEGREES 20 MINUTES 19 SECONDS WEST ALONG SAID SOUTH LINE A DISTANCE OF 15.00 FEET TO A FOUND CITY OF CHANDLER BRASS CAP ACCEPTED AS THE SOUTH QUARTER CORNER OF SAID SECTION 21;

THENCE SOUTH 89 DEGREES 20 MINUTES 39 SECONDS WEST ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 21 A DISTANCE OF 926.54 FEET;

THENCE DEPARTING SAID SOUTH LINE NORTH 00 DEGREES 01 MINUTES 38 SECONDS EAST A DISTANCE OF 575.01 FEET;

THENCE SOUTH 89 DEGREES 20 MINUTES 39 SECONDS WEST A DISTANCE OF 395.00 FEET;

THENCE SOUTH 00 DEGREES 01 MINUTES 38 SECONDS WEST A DISTANCE OF 575.01 FEET TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 21;

THENCE SOUTH 89 DEGREES 20 MINUTES 39 SECONDS WEST ALONG SAID SOUTH LINE A DISTANCE OF 1321.54 FEET TO THE POINT OF BEGINNING;

EXCEPT THAT PORTION OF THE SOUTHEAST QUARTER OF SAID SECTION 21 BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 21;

THENCE NORTH 00 DEGREES 03 MINUTES 16 SECONDS EAST ALONG THE NORTH-SOUTH MID-SECTION LINE THEREOF, A DISTANCE OF 1108.17 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING NORTH 00 DEGREES 03 MINUTES 16 SECONDS EAST ALONG SAID NORTH-SOUTH MID-SECTION LINE A DISTANCE OF 219.73 FEET;

THENCE DEPARTING SAID NORTH-SOUTH MID-SECTION LINE NORTH 89 DEGREES 22 MINUTES 18 SECONDS EAST A DISTANCE OF 458.18 FEET;

THENCE SOUTH 17 DEGREES 11 MINUTES 17 SECONDS WEST A DISTANCE OF 45.22 FEET;

THENCE SOUTH 35 DEGREES 13 MINUTES 03 SECONDS WEST A DISTANCE OF 49.17 FEET;

THENCE SOUTH 35 DEGREES 31 MINUTES 54 SECONDS WEST A DISTANCE OF 51.72 FEET;

THENCE SOUTH 44 DEGREES 10 MINUTES 04 SECONDS WEST A DISTANCE OF 51.79 FEET;

THENCE SOUTH 58 DEGREES 23 MINUTES 16 SECONDS WEST A DISTANCE OF 51.87 FEET;

THENCE SOUTH 73 DEGREES 27 MINUTES 24 SECONDS WEST A DISTANCE OF 67.49 FEET;

THENCE SOUTH 86 DEGREES 16 MINUTES 19 SECONDS WEST A DISTANCE OF 242.14 FEET TO THE POINT OF BEGINNING; AND

EXCEPT THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 2 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 21;

THENCE NORTH 89 DEGREES 38 MINUTES 25 SECONDS EAST, ALONG THE NORTH LINE OF SAID SECTION 21, A DISTANCE OF 52.41 FEET;

THENCE SOUTH 00 DEGREES 21 MINUTES 35 SECONDS EAST A DISTANCE OF 65.00 FEET TO THE PROPOSED SOUTHERLY RIGHT-OF-WAY LINE OF OCOTILLO ROAD AND THE POINT OF BEGINNING;

THENCE ALONG SAID PROPOSED RIGHT-OF-WAY LINE NORTH 89 DEGREES 38 MINUTES 25 SECONDS EAST, A DISTANCE OF 437.02 FEET;

THENCE, LEAVING SAID PROPOSED RIGHT-OF-WAY LINE, SOUTH 00 DEGREES 09 MINUTES 36 SECONDS WEST A DISTANCE OF 540.02 FEET;

THENCE SOUTH 89 DEGREES 38 MINUTES 25 SECONDS WEST A DISTANCE OF 457.02 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF BASHA ROAD;

THENCE NORTH 00 DEGREES 09 MINUTES 36 SECONDS EAST, ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 520.02 FEET;

THENCE NORTH 44 DEGREES 54 MINUTES 00 SECONDS EAST, A DISTANCE OF 28.41 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B"
**ESTIMATED COSTS FOR INSTALLING PURGE LINES AND WATER TANK LINES
FOR CITY WELL SITES**

Description	Est. Qty.	Unit	Unit Price	Pro-Rata Share	Ext. Price
Well Site # 1 Purge Lines					
18" RGRCP Class IV (Purge only)	880	LF	66.00	100%	58,080.00
Storm Drain Manholes (Purge only)	4	EA	2,450.00	100%	9,800.00
24" RGRCP Class IV (Combined)	9	LF	80.00	50%	360.00
30" RGRCP Class IV (Combined)	1,316	LF	98.00	50%	64,484.00
Storm Drain Manholes (Combined)	6	EA	2,450.00	50%	7,350.00
Change Order – Plan Approval	1	LS	4,964.00	100%	4,964.00
Well Site # 2 Purge Lines					
18" RGRCP Class IV (Purge only)	335	LF	67.50	100%	22,613.00
Storm Drain Manholes (Purge only)	1	EA	2,600.00	100%	2,600.00
18"RGRCP Class IV (Combined)	456	LF	67.50	50%	15,390.00
Storm Drain Manholes (Combined)	2	EA	2,600.00	50%	2,600.00
Well Site # 1 Water Line to Stge Tank					
12" PC-350 DIP Waterline	3,949	LF	38.50	100%	152,037.00
12" Gate Valve w/Box & Cover	10	EA	1,278.00	100%	12,780.00
12" x 2" TC & Flushing Pipe	2	EA	460.00	100%	920.00
Pavement Replacement	75	SY	25.00	100%	1,875.00
Adjust Valves	9	EA	255.00	100%	2,295.00
Change Order – Plan Approval	1	LS	1,561.00	100%	1,561.00
Well Site # 2 Water Line to Stge Tank					
12" PC-350 DIP Waterline	2,480.00	LF	38.75	100%	96,100.00
12" Gate Valve w/Box & Cover	4	EA	1,350.00	100%	5,400.00
12" Vertical Realignment	1	EA	4,200.00	100%	4,200.00
12" x 2" TC & Flushing Pipe	1	EA	650.00	100%	650.00
12" Remove Cap & Connect	1	EA	300.00	100%	300.00
				Subtotal	466,359.00
				Sales Tax (4.33%)	20,172.00
				Design Costs (6%)	27,982.00
				Construction Staking & Testing (6%)	27,982.00
				Construction Administration (3%)	13,991.00
				Permitting Fees (3.5%)	16,323.00
				Performance Bond (0.5%)	2,332.00
				Grand Total	575,141.00