

JOINT DEVELOPMENT AGREEMENT

(AMKOR-PARCEL D-15/16)

This Joint Development Agreement (the “**Agreement**”) is made as of _____, 2024 (the “**Effective Date**”), by and among Vistancia Development LLC, a Delaware limited liability company (“**VDV**”), Amkor Technology Arizona, Inc., an Arizona corporation (“**Amkor**”), and any purchaser of all or any portion of an Individual Parcel that executes an Addendum (as defined in *Section 14.8*) (each, an “**Owner**” and collectively, the “**Owners**”) and the City of Peoria, a municipal corporation of the State of Arizona (the “**City**”). The Owners, the City and the Contract Administrator (as defined in *Section 2.1*), are sometimes hereinafter collectively referred to as the “**Parties**” and individually as a “**Party**.”

RECITALS

- A.** City is a municipal corporation, duly formed under the laws of the State of Arizona.
- B.** As of the Effective Date, (i) VDV is an owner of certain real property legally described on Exhibit A-1 attached hereto (“**VDV Parcel**”) and (ii) Amkor is the owner of certain real property legally described on Exhibit A-2 attached hereto (“**Amkor Parcel**”). The VDV Parcel and the Amkor Parcel are each sometimes referred to herein as an “**Individual Parcel**”, and all Individual Parcels are sometimes collectively referred to herein as the “**Property**.” The Property is located in the geographic boundaries of the City.
- C.** The City requires and/or the Owners desire the construction of certain offsite infrastructure improvements generally described in Exhibit B-1 attached hereto, and all necessary related improvements in connection therewith (collectively, the “**City Improvements**”) and certain offsite infrastructure improvements generally described in Exhibit B-2 attached hereto, and all necessary related improvements in connection therewith (collectively, the “**VDV Improvements**” and together with the City Improvements, the “**Infrastructure Improvements**”), which are intended to jointly serve or otherwise benefit the Property and other property located in the geographic boundaries of the City. In addition to the Infrastructure Improvements, additional modifications may be required to Lone Mountain Parkway (the “**Lone Mountain Amkor Improvements**”) as set forth on Exhibit B-3 attached hereto (the “**Description of Lone Mountain Amkor Improvements**”).
- D.** The Parties have caused a budget to be prepared for the Improvement Costs (as defined in *Section 5.1* below) for the design and construction of the Infrastructure Improvements (as defined in *Section 3.1.1* below), a copy of which is attached hereto as Exhibit D (the “**Budget**”). The Improvement Costs have been allocated to each Party in the percentages more particularly described on Exhibit E attached hereto (the “**Allocation Exhibit**”). As used herein, the term “**Allocable Share**” means each Owner’s and the City’s fixed percentage share (as set forth on the Allocation Exhibit) of its obligations and liabilities under this Agreement. Pursuant to the terms of this Agreement, the City and each Owner is responsible for paying its Allocable Share of the Improvement Costs in accordance with the terms of this Agreement.
- E.** Among other things, the purpose of this Agreement is to: (i) establish an orderly plan for the design and construction of the Infrastructure Improvements; (ii) allocate the Improvement Costs between the Parties; (iii) establish a mechanism for the funding of the Improvement Costs; and (iv) delegate to Contract Administrator the authority and obligation to cause the construction and installation of the Infrastructure Improvements, all subject to and in accordance with the terms and conditions of this Agreement.

F. The Parties hereto acknowledge that this Agreement constitutes a “development agreement” within the meaning of Arizona Revised Statutes (“**A.R.S.**”) § 9-500.05, and that, in accordance therewith, it shall be recorded against the interest of City and the Owners in the Property, as set forth herein, in the Office of the Maricopa County Recorder to give notice to all persons of its existence.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, the terms of which are agreed to by the Parties, and which are hereby incorporated by reference, and also in consideration of the mutual agreements, covenants and promises contained in this Agreement and other good and valuable consideration, the receipt, sufficiency and validity of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1 COOPERATION; CONTINUING OBLIGATIONS

1.1 Cooperation. Each Owner acknowledges that the detailed planning, improvement and ultimate development of the Property as a comprehensive and integrated master-planned development requires a significant commitment of financial and other resources on the part of the Owners. Among other things, the Owners agree to cooperate with each other, and to support the efforts of Contract Administrator consistent with this Agreement, as reasonably necessary, including, among other things, executing and delivering any and all applications, agreements and other documents and performing all acts as may be required by the City, applicable utility providers, municipalities, and/or all other governmental and quasi-governmental entities having jurisdiction over either or both of the Property or the Infrastructure Improvements (each, a “**Governmental Authority**”, or collectively, the “**Governmental Authorities**”), or as may be reasonably requested by Contract Administrator to facilitate and expedite, the installation and construction of the Infrastructure Improvements in accordance with the Plans and Specifications (as defined in *Section 3.1.2.3* below) and the terms of this Agreement; provided that such cooperation would not: (i) require the payment of additional funds; (ii) cause an Owner to incur any material out-of-pocket costs; or (iii) materially increase any obligations of the Parties not otherwise contemplated in this Agreement.

1.2 Continuing Obligations. Subject to *Section 4.10*, each Individual Parcel shall be held, transferred, sold, conveyed, leased, occupied and used subject to the terms, covenants and conditions of this Agreement, which shall run with the land and be appurtenant to and binding upon, and shall benefit and burden, each Individual Parcel, it being agreed that all persons having or acquiring any right, title or interest in or to each Individual Parcel shall be bound by this Agreement, and each Owner agrees that upon sale of any portion of an Individual Parcel, such Owner will cause the assignee to assume such obligations. Without the consent of the Contract Administrator, no assignment shall relieve an Owner or the City of their respective obligations hereunder.

ARTICLE 2 CONTRACT ADMINISTRATOR

2.1 Selection of Contractors; Contracting. The City and the Owners hereby agree that VDV shall act as, and carry out the duties of, the contract administrator (the “**Contract Administrator**”) in accordance with the terms of this Agreement.

2.1.1 Selection of Contractors. Contract Administrator shall be responsible for bidding the work comprising the Infrastructure Improvements consultants, contractors, material suppliers and service providers determined by Contract Administrator for each item of work comprising the Infrastructure Improvements.

2.1.1.1 For the City Improvements, Contract Administrator shall comply with the provisions of Title 34 of the A.R.S. and City requirements for construction projects as specified in the Peoria City Code, rules, regulations, standards, permit requirements, and other requirements and official policies of the City, as they may be amended or hereafter enacted from time to time.

2.1.1.2 For the VDV Improvements, Contract Administrator may either (a) bid the VDV Improvements together with the City Improvements as part of *Section 2.1.1.1* above, or (b) use its reasonable good faith efforts to obtain at least three (3) bids for each for each item of work or materials for any portion of the VDV Improvements from the contractors, materials suppliers and service providers determined by Contract Administrator; provided, that Contract Administrator shall not be required to obtain three (3) bids for any work the total cost of which Contract Administrator reasonably estimates to be less than One Hundred Thousand Dollars (\$100,000.00). If Contract Administrator elects to bid the VDV Improvements separately, upon receipt of bids, the Contract Administrator shall provide notice to each Owner, within thirty (30) days after receipt of such bids, with a list of the proposed bids that Contract Administrator recommends be selected. Such notice shall be accompanied by (i) copies of all bids received by Contract Administrator for each component of the VDV Improvements, (ii) a line item bid tabulation comparing the line item components of each bid and the completion schedule for the work under each bid, and (iii) if the selected contractor, supplier or service provider was not the lowest bidder, an explanation for the reason that the lowest bidder was not selected. Subject to the foregoing, if Contract Administrator does not elect to bid the VDV Improvements together with the City Improvements as part of *Section 2.1.1.1* above, Contract Administrator shall have the sole discretion to select the contractors, suppliers or service providers for the VDV Improvements.

2.1.2 Execution of Contracts; Form. In connection with the construction of the Infrastructure Improvements, Contract Administrator shall enter into: (i) construction contracts (each, a “**Construction Contract**”), with the contractors and material suppliers selected pursuant to *Section 2.1.1* (each, a “**Contractor**”); and (ii) professional services contracts (each, a “**Consulting Contract**”), with the service providers, consultants or other professionals selected pursuant to *Section 2.1.1* (each, a “**Service Provider**”). Each Construction Contract and Consulting Contract shall be in the standard form used by Contract Administrator, provided that Contract Administrator shall cause each Construction Contract and Consulting Contract to contain provisions (i) stating that the contract is assignable to any Replacement Contract Administrator (defined below) pursuant to this Agreement; (ii) stating that all warranties and indemnities in such contract will run in favor of each Owner, City, Contract Administrator and any Replacement Contract Administrator; (iii) requiring that any insurance required of the Contractor or its subcontractors (or the Service Provider or other consultant, as applicable) under such additional contract name each Owner, the City, Contract Administrator and any Replacement Contract Administrator as additional insureds; (iv) naming the Owners and the City as intended third party beneficiaries; and (v) with respect to each Construction Contract, provide for retainage of at least ten percent (10%). Contract Administrator shall not permit any Contractor, subcontractor or Service Provider to enter the Property without written evidence of the insurance required to be maintained by such Contractor, subcontractor or Service Provider pursuant to the terms of this Agreement. Contract Administrator shall endeavor to require the Contractors to provide Contract Administrator, the City, and Owners with progress updates on at least a monthly basis. Contract Administrator shall use commercially reasonable, good faith efforts to cause each Construction Contract to require that each Contractor maintain the amounts and types of insurance coverage described on **Exhibit H** attached to this Agreement. Each Owner and the City agree that sole recourse against Contract Administrator for the failure to use commercially reasonable, good faith efforts to include the insurance requirements of **Exhibit H** shall be to replace the Contract Administrator pursuant to *Section 4.3* below.

2.2 Responsibilities of Contract Administrator. Contract Administrator shall administer, coordinate and oversee the design and construction of the Infrastructure Improvements in accordance with and subject to the terms and conditions of this Agreement. In connection therewith, Contract Administrator shall coordinate, administer and oversee: (i) the preparation and implementation of all applications, filings, submittals, inspections, further plans and specifications (if necessary), budgets, schedules, timetables and other documents pertaining to design, construction and installation of the Infrastructure Improvements; (ii) the services of Service Providers and other persons responsible for the designs, inspections, testing, and/or engineering required for the Infrastructure Improvements, and (iii) the work of the Contractors, subcontractors and other persons responsible for the construction of the Infrastructure Improvements. Contract Administrator shall reasonably cooperate with the Owners and the City, at no out of pocket cost or liability to Contract Administrator, to resolve any disputes between the Contractors, Service Providers and the Owners, or any particular Owner. Contract Administrator represents and warrants that it will maintain (or cause Contractor to maintain) all applicable licenses required for the performance of its responsibilities pursuant to this Agreement, and Contract Administrator shall timely perform its obligations hereunder in accordance with the care and skill ordinarily and customarily used by a consultant performing similar services under similar circumstances at the same time and in the same locality as the Property (the “**Standard of Care**”). The services to be performed by Contract Administrator pursuant to this Agreement shall continue until the Final Completion of the Infrastructure Improvements (as defined below) and the satisfaction of any required work under any applicable Warranty Period (as defined below). Contract Administrator shall not be entitled to a management fee or other compensation for performing the services described in this Agreement.

2.3 Indemnity. Contract Administrator shall be entitled to rely upon the advice of counsel concerning legal matters, upon the recommendations and work product of architects, engineers, consultants and other design professionals engaged by Contract Administrator in connection with the Plans and Specifications and/or otherwise relating to the Infrastructure Improvements, and upon any document or notice delivered to Contract Administrator hereunder that Contract Administrator reasonably and in good faith believes to be genuine or to have been presented by a proper person. Subject to the qualifications set forth in this **Section 2.3**, the City and the Owners shall severally (and not jointly), to the extent of each such Party’s Allocable Share, indemnify, defend and hold Contract Administrator harmless for, from and against all claims, costs, damages, demands, expenses and liabilities (including, but not limited to, reasonable attorneys’ fees and costs) which Contract Administrator may incur or sustain in connection with complying with this Agreement or as a result of any court action arising therefrom or in connection with the Infrastructure Improvements following Final Completion, including without limitation post-Final Completion construction defect claims, except to the extent that any such claim arises out Contract Administrator’s fraud, bad faith, recklessness, gross negligence, willful misconduct or breach of this Agreement. The obligation of the City and the Owners to severally (and not jointly) indemnify, defend and hold Contract Administrator harmless pursuant to this **Section 2.3** (sometimes referred to herein as the “**Indemnity Obligation**”) shall be allocated among the City and the Owners in accordance with their respective Allocable Shares; provided, however, that Contract Administrator shall use commercially reasonable efforts to recover from the responsible Contractor, subcontractor, Service Provider or other person any amounts that would otherwise result in an indemnity claim, and the amounts so recovered shall be allocated among the City and the Owners in accordance with their respective Allocable Shares. The City’s and the Owners’ Indemnity Obligation shall include, without limitation, claims arising from errors in the Plans and Specifications and with respect to the Owners but not the City, failure of the Infrastructure Improvements to be constructed pursuant to the Plans and Specifications. If, after paying upon the Indemnity Obligation as provided above, Contract Administrator recovers funds from any responsible Contractor, subcontractor, Service Provider or other person (or any other source), such funds shall be paid to the Owners or the City in accordance with their respective Allocable Shares. In no event will an Owner be liable for another Owner’s (nor (i) will an Owner be liable for the City’s, nor (ii) will the City be liable

for any Owner's) actions, inactions, or Indemnity Obligations hereunder. Furthermore, notwithstanding anything herein to the contrary, the foregoing Indemnity Obligations shall not apply to any claims, costs, damages, demands, expenses, and liabilities (including reasonable attorneys' fees and costs) to the extent insured by, or paid by proceeds of, any insurance policy required to be maintained by Contract Administrator. The City and the Owners shall have control of any claim, cost, damage, fine, demand, expense or liability claimed against Contract Administrator, and the City and the Owners shall incur directly all reasonable attorneys' fees and costs associated with the defense and prosecution thereof. However, Contract Administrator shall have the right to approve counsel selected by the City and the Owners, which shall not be unreasonably withheld, conditioned or delayed.

2.4 No Warranty. Contract Administrator makes, and each of the Owners and the City receive, no warranty, either express or implied, from Contract Administrator with respect to the Infrastructure Improvements (including, but not limited to, any warranty of merchantability or fitness for any particular purpose), and such warranties are hereby expressly excluded and disclaimed by each of the Owners and the City. Except for Contract Administrator's responsibility to pursue corrective work from the applicable Contractor or Service Provider as provided in this Agreement, Contract Administrator shall have no other liability relating to defects and/or the quality of workmanship or materials in any of the Infrastructure Improvements or otherwise in connection with any work done or materials supplied by any Contractor or Service Provider, each Owner and the City hereby releasing Contract Administrator and agreeing that it shall only have the right to pursue an action against the Contractor or Service Provider, as applicable, with regard to such claims and not Contract Administrator.

2.5 Permits.

2.5.1 SWPPP. To the extent required by applicable law, Contract Administrator shall be responsible to cause the Contractors to (i) cause a Storm Water Pollution Prevention Plan to be prepared and implemented, and (ii) file a Notice of Intent to obtain coverage under an AZPDES Construction General Permit in Contract Administrator's name ("**SWPPP Permit**"), in each case solely with respect to the Infrastructure Improvements (including, without limitation, salvage, clear and grub, and mass grading and infrastructure) and Contract Administrator's obligations under this Agreement. The cost of obtaining and implementing the SWPPP shall be included as part of the Improvement Costs. Upon Final Completion of the Infrastructure Improvements, Contract Administrator shall cause the Contractors to close out and terminate the SWPPP Permit.

2.5.2 Dust Control Permits. To the extent required by applicable law, Contract Administrator shall be responsible to cause the Contractors to obtain a dust control permit ("**Dust Control Permit**") in Contract Administrator's name (or the applicable Contractors' name) solely with respect to the Infrastructure Improvements. The cost of obtaining and implementing the Dust Control Permit shall be included as part of the Improvement Costs. Upon Final Completion of the Infrastructure Improvements, Contract Administrator shall cause the Contractors to prepare any items needed to close out the Dust Control Permit, and each Owner shall provide a copy of its dust control permit number to Contract Administrator.

2.6 Compensation. Contract Administrator shall not be paid a management fee for performing the services hereunder.

**ARTICLE 3
PLANS AND SPECIFICATIONS**

3.1 Design, Plan Approval, Permitting and Construction of the Infrastructure Improvements.

3.1.1 Description of Infrastructure Improvements. Contract Administrator shall coordinate, administer, direct and oversee the design, plan approval, permitting and construction of the Infrastructure Improvements. Each of the Parties acknowledges and agrees that, except for the Infrastructure Improvements, any and all other improvements to or for the benefit of any Party's real property will be the sole responsibility of the owner of such real property. To the extent not started prior to the date hereof, Contract Administrator will engage engineers, consultants and other professionals who shall be responsible for the design, plan approval, permitting and construction of the Infrastructure Improvements within thirty (30) days after the Effective Date. Any engagement of engineers, consultants and other professionals engaged to design, permit and construct the City Improvements, shall be in accordance with the provisions of Title 34 of the A.R.S. and City requirements for construction projects as specified in the Peoria City Code, rules, regulations, standards, permit requirements, and other requirements and official policies of the City, as they may be amended or hereafter enacted from time to time. Following completion and receipt of Final Approval (as defined in *Section 3.1.2.3* below) of the Approved Plans (as defined in *Section 3.1.2.3* below) for the Infrastructure Improvements, Contract Administrator will engage contractors and subcontractors pursuant to *Section 2.1* who will be responsible for the construction of the Infrastructure Improvements and suppliers who will be responsible for supplying materials in connection with the construction of the Infrastructure Improvements.

3.1.2 Improvement Plans.

3.1.2.1 Design and Plan Approval. To the extent not previously prepared and approved by Owners, Contract Administrator shall cause to be prepared and submitted to the Owners, proposed plans reflecting the design of the Infrastructure Improvements (the "**Plans**"). To initiate required revisions to the Plans, Contract Administrator requires that Amkor provide required utility tie-in locations for the Amkor Parcel (the "**Amkor Utility Tie-In Locations**"). Amkor shall provide to Contract Administrator (and the City) the Amkor Utility Tie-In Locations not later than November 12, 2024 (the "**Amkor Tie-In Location Delivery Date**"). If Amkor fails to deliver the Amkor Utility Tie-In Locations to the Contract Administrator by the Amkor Tie-In Location Delivery Date, and such failure continues for an additional ten (10) business days following written notice from Contract Administrator to Amkor, then the tie-in locations for the Amkor Parcel shown Exhibit B-4 (and which reflect the required utility tie-in locations for the Amkor Parcel from the Plans prepared prior to the execution of this Agreement, the "**Existing Utility Tie-In Locations**") shall be deemed approved by Amkor, and any further changes requested by Amkor shall be considered Amkor Modifications and shall be governed by *Section 5.2.1*.¹ At least ten (10) business days prior to Contract Administrator's submittal of the Plans to

¹ Drafting Note (Remove Prior to Signing): If Amkor's acquisition of the Amkor Parcel occurs after November 12, the parties acknowledge that the outside date for Amkor's delivery of the Amkor Utility Tie-In Locations shall remain November 27, 2024 with no further notice of this date to be provided by Contract Administrator. If Amkor's acquisition of the Amkor Parcel occurs after November 27, the parties acknowledge that the Existing Utility Tie-In Locations shall be used unless prior to the acquisition, Amkor has provided updated Amkor Utility Tie-In Locations to Contract Administrator. outside date for Amkor's delivery of the Amkor Utility Tie-In Locations shall remain November 27, 2024 with no further notice of this date to be provided by Contract Administrator. In each case, and based on the acquisition date, the language will to be modified consistent with this footnote.

the applicable Governmental Authorities, Contract Administrator shall deliver a copy of the Plans (in the form to be submitted) to the Owners. If an Owner reasonably objects to the form of the Plans (as delivered by Contract Administrator) (an “**Objection**”), that Owner must deliver written notice to all other Owners of such Objection (the “**Objection Notice**”) within ten (10) business days after Contract Administrator’s delivery of such Plans. Any Objection Notice delivered by the Owners shall specify in reasonable detail the specific matters to which the Owners objects. If an Owner fails to timely deliver an Objection Notice with respect to any Plans, such Owner shall be conclusively deemed to have approved such Plans and the matters contained therein. All Parties shall use diligent, good faith efforts and shall meet together to attempt to resolve any Objections contained in any Objection Notice which is timely and properly delivered. If, despite the Parties’ diligent, good faith efforts, the Parties are unable to resolve any such Objection(s) within ten (10) business days after Contract Administrator’s receipt of an Objection Notice to be timely and properly delivered, the Parties shall submit the dispute with respect to the Objection(s) to Ron Hilgart of HilgartWilson or another principal of HilgartWilson if Ron Hilgart is unavailable, or if another principal of HilgartWilson is not available, then by another civil engineer or construction manager reasonably agreed upon by the Parties to the Dispute (the “**Consultant**”) for prompt determination and resolution. The Consultant shall be entitled to reasonable compensation for its services in deciding and resolving the dispute. Any costs incurred in connection with the submittal of the dispute to the Consultant shall be paid by (a) the Owners if Contract Administrator prevails in the dispute, (b) Contract Administrator if the Owners prevail in the dispute, or (c) Contract Administrator and the Owners, on an equal basis, if neither Contract Administrator nor the Owners is clearly the prevailing party in such dispute, each as determined by Consultant. The Plans, as approved (or deemed approved) by the Parties (or as determined by Consultant in the event of any dispute with respect to an Objection), are hereinafter referred to as the “**Final Plans**”.

3.1.2.2 Modifications to Final Plans. Each Party acknowledges and agrees that as Contract Administrator endeavors to obtain Final Approval of the Final Plans from the Governmental Authorities certain matters reflected in the Final Plans may have to be modified due to the requirements or requests of the Governmental Authorities. Additionally, notwithstanding anything to the contrary in this Agreement, no Owner shall have the right to object to or otherwise prevent Contract Administrator from making (a) any modification or change to the Final Plans which is required by any Governmental Authority or (b) a Minor Plan Change (defined in *Section 3.3.2* below); provided that in either case such modification(s) will not adversely affect the development of any Party’s real property or the willingness of a Governmental Authority to accept such Infrastructure Improvements. Any other change in the scope of the work shall be subject to the approval provisions of *Section 3.3* of this Agreement.

3.1.2.3 Approval by Governmental Authorities. After the Plans have been reviewed and approved (or are deemed approved) by the Owners pursuant to *Section 3.1.2.1* above, Contract Administrator shall submit within sixty (60) days after approval by the Parties, the Final Plans to the applicable Governmental Authorities for Final Approval. Contract Administrator shall use commercially reasonable efforts to attempt to obtain Final Approval of the Final Plans from the Governmental Authorities. The term “**Final Approval**,” as used in this Agreement, shall mean that each of the applicable Governmental Authorities have approved the Final Plans (as may be modified from time to time pursuant to *Section 3.1.2.2* above), and that any applicable protest, appeal, and/or referendum periods applicable to such approvals have expired without any protest, appeal,

referendum or litigation having been filed. Notwithstanding anything contained herein to the contrary, in no event shall any failure by Contract Administrator to obtain Final Approval of the Final Plans constitute a default by Contract Administrator under this Agreement, except if caused by the gross negligence or willful misconduct of Contract Administrator. The Final Plans, after having received Final Approval from the applicable Governmental Authorities, shall hereinafter be referred to as the “**Plans and Specifications**” or “**Approved Plans.**” A list of the Approved Plans shall be attached as **Exhibit C** to this Agreement pursuant to an amendment to this Agreement executed by the Owners. Nothing in this agreement shall be interpreted as imposing any additional obligation on or promise by City to approve any permit, plan, or any other application whatsoever submitted to City pursuant to this Agreement.

3.2 Administration of Approved Plans. Contract Administrator shall cause the Infrastructure Improvements to be installed and constructed in substantial accordance with the Plans and Specifications, in a good and workmanlike manner and in compliance with applicable requirements of all Governmental Authorities and free of all liens for labor or materials. The foregoing shall not constitute a warranty by Contract Administrator that survives Final Completion of the Infrastructure Improvements.

3.3 Changes to Plans and Specifications.

3.3.1 Notice of Plan Change. If the City or other Governmental Authority requires, or Contract Administrator reasonably determines, that the Plans and Specifications need to be amended (a “**Plan Change**”), then Contract Administrator shall provide written notice of the change (a “**Notice of Plan Change**”) to each Owner. The Notice of Plan Change shall (i) describe the modification to the Plans and Specifications requested by Contract Administrator, (ii) state whether or not the requested Plan Change is a Minor Plan Change (as defined below), and (iii) set forth the Contract Administrator’s good faith estimate of the adjustments to the Improvement Costs (including the proposed Budget revisions therefor) and the Construction Schedule (as defined in **Section 4.1.2**) resulting from the proposed Plan Change.

3.3.2 Minor Plan Change Definition. Contract Administrator shall have the right to implement, and consent of the Owners shall not be required for, any Minor Plan Change. As used herein, the term “**Minor Plan Change**” shall mean a Plan Change as to which Contract Administrator reasonably determines that all of the following criteria are satisfied:

(a) The estimated cost of the proposed Plan Change will not (i) increase any line item component of the Improvement Costs by more than Ten Thousand and No/100 Dollars (\$10,000.00), or (B) increase the aggregate total cost of all Minor Plan Changes to date (including the current Minor Plan Change) above the sum of One Hundred Thousand and No/100 Dollars (\$100,000.00);

(b) The proposed Plan Change will not delay the Substantial Completion Deadline (as defined below) set forth in the then-current Construction Schedule;

(c) The proposed Plan Change does not change the location, configurations or size of Infrastructure Improvements providing service to any Owner or its Individual Parcel;

(d) The proposed Plan Change does not adversely affect the development of any Owner’s real property; and

(e) The proposed Plan Change does not materially increase on-site development costs for any Owner.

3.3.3 Procedures. If a Plan Change is not a Minor Plan Change, then before such Plan Change is effective, Contract Administrator shall provide the Owners ten (10) business days to provide any input desired. Contract Administrator shall obtain approval of the Owners before adopting the Plan Change, provided that if the Plan Change only affects a particular Owner and/or its Individual Parcel and no other portion of the Property, then approval shall be required only from the affected Owner.

3.3.4 Plan Change Requested by an Owner. Notwithstanding anything in this Agreement to the contrary, if a Plan Change is made at the request and direction of an Owner and the Plan Change is specific to the Owner's Individual Parcel and does not affect any other portion of the Property, then unless otherwise agreed by the City and/or the other Owners, only the requesting Owner shall be solely responsible for the cost of the Plan Change. Owner requested Plan Changes are subject to approval of the applicable Governmental Authority.

3.4 Deemed Acceptance. Notwithstanding any provision in this Agreement to the contrary, any assignee Owner that executes an Addendum shall be deemed to accept and approve the Plans and Specifications (as the same may be or may have been amended pursuant to the provisions of *Section 3.2* above) as they exist on the date of the Addendum. Contract Administrator shall, upon request therefor, provide copies of the then-current Plans and Specifications to any assignee Owner executing an Addendum.

ARTICLE 4 CONSTRUCTION OF INFRASTRUCTURE IMPROVEMENTS

4.1 Definitions. As used herein, the following terms shall have the meanings set forth below:

4.1.1 "Applicable Recipient" shall mean the City (as to any component of the Infrastructure Improvements that is to be dedicated to or maintained by the City), any other Governmental Authority (as to any component of the Infrastructure Improvements that is to be dedicated to or maintained by such other Governmental Authority).

4.1.2 "Construction Schedule" shall mean the construction schedule attached hereto as **Exhibit F**.

4.1.3 "Final Completion" of the Infrastructure Improvements shall be deemed to have occurred for purposes of this Agreement when: (i) Substantial Completion has occurred, free of any mechanics, materialmen's, or other liens arising from the Infrastructure Improvements; (ii) Contract Administrator has caused to be completed any punch list items with respect to the Infrastructure Improvements; (iii) Contract Administrator has submitted a final Draw Request in accordance with the provisions of *Section 6.6* below; (iv) Contract Administrator has caused to be completed any so-called "punchlist items" noted in connection with the Applicable Recipient's walk-through inspection of the Infrastructure Improvements; and (v) to the extent applicable, the Infrastructure Improvements have been accepted by the Applicable Recipient, subject to warranty and maintenance obligations and a one-year "walk through," if applicable, as confirmed in writing by Contract Administrator.

4.1.4 "Final Completion Deadline" shall mean the deadline set forth in the Construction Schedule for Final Completion of all Infrastructure Improvements, as extended by any Force Majeure Delay (as defined below).

4.1.5 “Force Majeure Delay” shall mean a delay in progress of construction of the Infrastructure Improvements due to unusually inclement weather, acts of God, substantial unavailability or shortage of labor or materials (except as a result of Contract Administrator’s failure to timely order or request any material or labor), national emergency, epidemics or pandemics resulting in a federal or state declared state of emergency, fire or other casualty, natural disaster, war, the failure to perform required actions within customary time periods by Governmental Authorities, riots, acts of violence, labor strike, injunctions in connection with litigation, or any other cause not within the reasonable control of Contract Administrator, but excluding any failure to pay any amount due from an Owner or the City pursuant to this Agreement when due. Delay caused by Escrow Agent’s (as defined below) failure to pay (or Contract Administrator’s failure to disburse) amounts owed (i.e., amounts owed to any Contractor or Service Provider) shall not constitute a Force Majeure Delay unless such failure results from the failure of the City or an Owner to timely pay its applicable Allocable Share of the Improvement Costs. Contract Administrator shall provide written notice to the City, the Owners and Escrow Agent within ten (10) business days after Contract Administrator first becomes aware of a condition that creates the Force Majeure Delay, which notice shall reasonably detail the reason(s) giving rise to the Force Majeure Delay and what efforts Contract Administrator intends to take to minimize the Force Majeure Delay, and which shall also set forth a good faith estimate of the anticipated duration of the Force Majeure Delay, and any increased costs arising out of the Force Majeure Delay. Contract Administrator shall make reasonable efforts to minimize any Force Majeure Delay. Notwithstanding the foregoing or anything herein to the contrary, in no event may any Force Majeure Delay exceed one-hundred twenty (120) days in the aggregate.

4.1.6 “Milestone Date” shall mean each interim milestone date set forth in the Construction Schedule that is to occur prior to Substantial Completion of a particular component of the Infrastructure Improvements, as extended by any Force Majeure Delay.

4.1.7 Intentionally Omitted.

4.1.8 “Substantial Completion” of the Infrastructure Improvements shall be deemed to have occurred for purposes of this Agreement when the Infrastructure Improvements have been substantially completed in accordance with the Plans and Specifications such that an Owner will not be precluded, solely as a result of the degree of completion of the Infrastructure Improvements, from: (i) obtaining a building permit for a building to be constructed on any portion of its Individual Parcel; (ii) obtaining a certificate of occupancy following the proper completion of the building on any portion of the Owner’s Individual Parcel; or (iii) using any portion of the Infrastructure Improvements for its intended purpose.

4.1.9 “Substantial Completion Deadline” shall mean the deadline set forth in the Construction Schedule for Substantial Completion of a particular component of the Infrastructure Improvements, as extended by any Force Majeure Delay (as defined above).

4.1.10 “Warranty Period” shall mean the greater of (i) one year or (ii) the warranty period for the Infrastructure Improvements required by any Applicable Recipient.

4.2 Commencement; Milestones; Completion Deadlines. Contract Administrator shall use commercially reasonable efforts to cause the Infrastructure Improvements to be installed and constructed in substantial accordance with the Plans and Specifications and in compliance with all applicable laws and other applicable requirements of any Governmental Authorities; provided however, the foregoing shall not be construed as a warranty by Contract Administrator that survives Final Completion of the Infrastructure Improvements and the expiration of the Warranty Period. Contract Administrator shall use commercially

reasonable efforts to: (i) cause the installation and construction of the Infrastructure Improvements to be commenced promptly following the Effective Date; (ii) cause construction of each component of the Infrastructure Improvements to proceed in a manner so as to satisfy the applicable Milestone Dates for that component; (iii) cause the Substantial Completion of each component of the Infrastructure Improvements to occur on or before the applicable Substantial Completion Deadline therefor; (iv) cause the Final Completion of all of the Infrastructure Improvements on or before the Final Completion Deadline; and (v) cause any repairs to the Infrastructure Improvements to be completed during the Warranty Period in accordance with **Section 4.6.3**. If Contract Administrator fails to perform or otherwise breaches any of its obligations under this **Section 4.2**, then an Owner may deliver a Notice of Breach to Contract Administrator in accordance with the terms of **Section 4.3** below.

4.3 Termination/Replacement of Contract Administrator.

4.3.1 Notice of Breach. If Contract Administrator (i) fails to cause the Substantial Completion of each component of the Infrastructure Improvements to occur on or before the applicable Substantial Completion Deadline therefor; (ii) fails to cause the Final Completion of all of the Infrastructure Improvements on or before the Final Completion Deadline, or (iii) breaches any of its obligations under this Agreement (including, but not limited to, its obligations under **Section 4.2**), then the City or any Owner may deliver written notice of the breach to Contract Administrator and the other Owner(s) (a “**Notice of Breach**”). The Notice of Breach shall specify in reasonable detail the basis for the Owner’s determination of the breach. Contract Administrator shall have thirty (30) days after Contract Administrator’s receipt of the Notice of Breach to cure any breach of Contract Administrator’s obligations specified in the Notice of Breach (the “**Cure Period**”); provided, however, if the nature of any breach is such that it cannot reasonably be cured within thirty (30) days, the Cure Period shall be deemed extended for a reasonable period of time not to exceed a total of sixty (60) days so long as Contract Administrator is proceeding in good faith and with due diligence to cause such breach to be remedied. If Contract Administrator receives a Notice of Breach from an Owner, then Contract Administrator shall deliver to each Owner and the City copy of such Notice of Breach.

4.3.2 Replacement Contract Administrator. If Contract Administrator does not, prior to expiration of the applicable Cure Period, cure (or cause the cure of) each breach specified in a Notice of Breach, then the City and Owners who are not the Contract Administrator or an affiliate thereof (the “**Non-Defaulting Owners**”), shall be entitled to appoint a replacement Contract Administrator (the “**Replacement Contract Administrator**”) if the City and all of the Non-Defaulting Owners approve the replacement. From and after the date of any such replacement, the Replacement Contract Administrator shall be the “Contract Administrator” for purposes of this Agreement and shall have all of the rights of, and shall be responsible for causing the full and timely performance of the duties and obligations of, the replaced Contract Administrator accruing from and after the date of the replacement, but shall not be responsible for any liabilities arising from the acts or omissions of the replaced Contract Administrator, which shall remain with the replaced Contract Administrator. The replaced Contract Administrator shall cooperate to effect a smooth and timely transition, including but not limited to, returning to the Parties or to the Replacement Contract Administrator (as applicable) all documents pertaining to this Agreement. The replaced Contract Administrator shall, if requested by the Replacement Contract Administrator, execute, acknowledge and deliver to the Replacement Contract Administrator such agreements, documents or instruments as may be reasonably necessary to assign to the Replacement Contract Administrator (and have the Replacement Contract Administrator assume) all Construction Contracts, Service Contracts, and any other contracts with third parties pertaining to the Infrastructure Improvements, and to transfer to the Replacement Contract Administrator the right to receive payments as described in this Agreement (including, but not limited to, **Article 6** hereof).

4.3.3 Replacement Permits. The replacement of the Contract Administrator shall not be effective unless and until: (i) the Replacement Contract Administrator shall have executed and delivered to the prior Contract Administrator, a Notice of Intent to obtain coverage under the AZPDES Construction General Permit (“**Replacement Permit**”); and (ii) Replacement Contract Administrator shall obtain a new dust control permit for the Infrastructure Improvements (“**Replacement Dust Control Permit**”). The Replacement Contract Administrator shall comply with all applicable requirements to obtain and maintain coverage under the Replacement Permit and the Replacement Dust Control Permit. Upon receipt of such Notice of Intent, the prior Contract Administrator shall execute a Notice of Termination to terminate coverage in its name under the SWPPP Permit. After such replacement occurs, the prior Contract Administrator shall promptly file both documents with the Arizona Department of Environmental Quality and provide evidence of filing to the Replacement Contract Administrator. After the replacement occurs, the Replacement Contract Administrator shall be solely responsible for compliance with general permit and construction-related stormwater requirements with respect to the Infrastructure Improvements and Contract Administrator’s obligations under this Agreement.

4.3.4 Sole Remedy. Subject to the further provisions of this *Section 4.3.4*, and except as may be expressly set forth in this Agreement, the Parties acknowledge and agree that the termination/replacement remedy set forth in this *Section 4.3*, if exercised and complied with by Contract Administrator, shall be the sole and exclusive remedy with respect to a breach by Contract Administrator of its obligations under this Agreement. In no event shall Contract Administrator be liable for, and the City and the Owners expressly waive any claims against Contract Administrator for actual, special, consequential, or punitive damages as a result of any breach by Contract Administrator of its obligations as Contract Administrator under this Agreement, except that Contract Administrator shall be liable for actual out-of-pocket damages resulting from Contract Administrator’s fraud, bad faith, recklessness, gross negligence or willful misconduct, provided however, that with regard to the City, Contract Administrator shall be liable to the City for, and the indemnity shall not apply to, ordinary negligence as well.

4.4 Inspection of Infrastructure Improvements.

4.4.1 Owner Inspection Rights. Any Owner and the City shall have the right to inspect the construction of the Infrastructure Improvements at any time, provided that any inspection shall be at the sole risk, cost and expense of the Party making the inspection and such inspection shall be performed in a manner that does not result in a delay in the construction of the Infrastructure Improvements.

4.4.2 Notice of Non-Compliance. If the City or an Owner believes that the Infrastructure Improvements are not being constructed in substantial conformance with the Plans and Specifications, then the objecting Owner or the City shall provide written notice to all Parties explaining in reasonable detail the basis of its belief that the Infrastructure Improvements are not being constructed in accordance with the Plans and Specifications (a “**Notice of Non-Compliance**”). If Contract Administrator receives a Notice of Non-Compliance from the City or any Owner, Contract Administrator shall within seven (7) business days after its receipt thereof provide a copy of such Notice of Non-Compliance to the City and all other Owners and shall concurrently deliver written notice informing the City and all Owners whether Contract Administrator agrees or disagrees with such Notice of Non-Compliance, and if Contract Administrator disagrees, Contract Administrator shall also inform the City and all Owners of the time and location of the meeting to be held pursuant to *Section 4.4.3* to resolve the Notice of Non-Compliance. The date of such meeting shall not be more than twenty (20) days nor fewer than seven (7) business days after the date on which such notice is delivered by Contract Administrator.

4.4.3 Meeting to Resolve Disagreement. If Contract Administrator delivers notice pursuant to *Section 4.4.2* disagreeing with a Notice of Non-Compliance, then Contract Administrator, the City, and the Owners shall meet at the time and in the location specified in the notice delivered pursuant to *Section 4.4.2*, to determine whether the Infrastructure Improvements are being constructed in substantial conformance with the Plans and Specifications. If all of the Owners agree with the Party submitting the Notice of Non-Compliance, or if Contract Administrator agreed with the Notice of Non-Compliance without the necessity of a meeting of the Parties, then Contract Administrator shall promptly correct (or cause to be corrected) any work identified in the Notice of Non-Compliance as not being in substantial conformance with the Plans and Specifications. If the City or any of the Owners is not satisfied with the resolution of the Notice of Non-Compliance, then the City, any Owner or Contract Administrator may initiate arbitration as provided in *Article 13*.

4.5 Oversee Progress of Construction. In addition to arranging for the scheduling and coordination of the construction of the Infrastructure Improvements and any work related thereto, Contract Administrator shall: (i) cause the general progress of the work of the Infrastructure Improvements to be inspected on a periodic basis; and (ii) communicate with any Contractors, subcontractors, Service Providers, and other third parties as needed and based on inspections of the general progress of the work of the Infrastructure Improvements.

4.6 Conveyance of Infrastructure Improvements.

4.6.1 Execution of Conveyance Documents. Upon Substantial Completion of all Infrastructure Improvements that are to be dedicated or maintained by the City, other Governmental Authority or applicable property owners' association (the "POA"), Contract Administrator and the Owners shall execute, acknowledge and deliver such further agreements, documents and/or instruments as may be necessary to convey or dedicate the Infrastructure Improvements to the City, other applicable Governmental Authority or POA, together with all appurtenant facilities, free and clear of all liens and encumbrances. Upon written acknowledgement of acceptance by the City, other applicable Governmental Authority or POA, such accepted Infrastructure Improvements will be operated and maintained by the City, other applicable Governmental Authority or POA at its sole cost and expense.

4.6.2 Acceptance Letters. Upon dedication and/or conveyance of the Infrastructure Improvements as required under this *Section 4.6*, Contract Administrator shall request that the Applicable Recipient accepting the conveyance of any of the Infrastructure Improvements issue letters of acceptance, to the extent it customarily issues letters of acceptance.

4.6.3 Warranty Repairs. Except as provided below, during the Warranty Period, Contract Administrator shall cause any repairs to the Infrastructure Improvements to be completed in accordance with any warranty required to be provided to the Applicable Recipient in connection with the conveyance of any of the Infrastructure Improvements (the "Warranty Repairs"), subject to and in accordance with the provisions of *Section 6.4* below. Notwithstanding the foregoing, each Owner shall be solely responsible for repairing any damages to the Infrastructure Improvements caused by such Owner (and/or its contractors, subcontractors, agents or employees); and each Owner will be presumed to have caused any damage to Infrastructure Improvements on or adjacent to its Individual Parcel (unless such Owner can prove that the other Owner, or another party is responsible for the damage).

4.7 Financial Assurances. Contract Administrator shall post any bond or other financial assurance as may be required by the City, and the premium for any such financial assurance shall be an Improvement Cost.

4.8 Warranty Assurances. Upon Final Completion of the Improvements, if the City will require that financial assurances be provided for the purpose of securing the completion of any Warranty Repairs to the Improvements, if any (“**Warranty Assurances**”), each Owner agrees to post a separate warranty bond in an amount equal to the product of the total amount of the Warranty Assurances required by the City multiplied by the Owner’s Allocable Share. If the City requires that the bonds be issued by the same bonding company, the Owners agree to obtain the bonds from a single bonding company selected by the Owners. If the City requires that a single warranty bond be issued, then Contract Administrator shall be responsible for promptly obtaining such warranty bond, and each Owner shall promptly reimburse Contract Administrator for its Allocable Share of the cost of such warranty bond.

4.9 Grant of Necessary Licenses.

4.9.1 To Contract Administrator. Contract Administrator, its agents, designees, contractors and employees shall have the right and license to enter upon portions of each Owner’s Individual Parcel as reasonably required to construct or install the Infrastructure Improvements. Each Owner specifically authorizes and grants to the City, Contract Administrator and to their agents, designees, contractors and employees, a license to enter each Owner’s Individual Parcel to undertake and perform the construction and installation of the Infrastructure Improvements, provided that such entry is coordinated with the Owner so as not to disrupt development on or use of the Owner’s Individual Parcel. No easements, rights of entry and/or licenses over any portion of any Individual Parcel (including those set forth in *Article II* below) may be exercised or used by Contract Administrator, City, or any Owner in any fashion that would unreasonably interfere with or adversely impact the remainder of such Individual Parcel or any Owner’s development of its Individual Parcel or its use thereof. Contract Administrator shall, as part of the Improvement Costs, promptly cause the restoration of any portion of any Individual Parcel that it or its agents, designees, and employees enters upon as part of its construction of the Infrastructure Improvements to substantially the condition existing before entry upon that portion of the Individual Parcel. The rights under this *Section 4.9* shall terminate upon the full satisfaction of all of Contract Administrator’s obligations under this Agreement. The provisions of this *Section 4.9* shall not diminish the liability of any Owner to repair (or to pay for the repair of) any damage caused to the Individual Parcel of another Owner or to any Infrastructure Improvements during the Warranty Period. Prior to any entry by Contract Administrator, its agents, designees, and employees upon an Individual Parcel, Contract Administrator shall obtain and continuously maintain at all times during the term of this Agreement, commercial general liability insurance with a combined single limit of at least Two Million and No/100 Dollars (\$2,000,000.00) (or One Million Dollars (\$1,000,000) with a One Million Dollar (\$1,000,000) umbrella policy), per occurrence, with deductibles no higher than Fifty Thousand and No/100 Dollars (\$50,000.00) written by an insurance company having a rating of at least A-:VII by A.M. Best. Contract Administrator shall cause each applicable Owner of an Individual Parcel to be listed as an additional insured on such policies, and Contract Administrator shall provide certificates of insurance to each applicable Owner evidencing such coverage prior to any such entry.

4.9.2 To Contractors and Service Providers. Each Contractor and Service Provider, and their respective agents, designees, employees, contractors and subcontractors, shall have the right and temporary license to enter upon portions of each Owner’s Individual Parcel in order to install the Infrastructure Improvements and to do Warranty Repairs. The liability and indemnity obligations of each Contractor and Service Provider to the Owners in connection with any such

entry upon an Individual Parcel shall be as set forth in its applicable Construction Contract or Consulting Contract, which shall require the Owners to be named as indemnitees and additional insureds.

4.10 Third Party Owner Self-Help Right. VDV intends to sell portions of the VDV Parcel, and expects the purchasers to develop the portion of the VDV Parcel acquired under this Agreement. If VDV does not assign, and the purchaser of the portion of the VDV Parcel does not assume, this Agreement with regard to the portion of the VDV Parcel acquired, VDV shall retain the rights and obligations under this Agreement with regard to the portion of the VDV Parcel acquired by the purchaser. In the event of the sale of a portion of the VDV Parcel, without a partial assignment of this Agreement to the purchaser, then the portion of the VDV Parcel acquired by the purchaser shall be referred to as the “**Other Benefitted Parcel(s)**”. For purposes of this Agreement, an “**Other Benefitted Owner**” is an owner of legal title to all or any portion of the Other Benefitted Parcels. Upon request of the City and/or Amkor, VDV shall provide written notice of the sale of any portion of the VDV Parcel, a description of each Other Benefitted Parcel, and the name and address of the Other Benefitted Owners. An Other Benefitted Owner may elect to become the Replacement Contract Administrator under this Agreement by delivering an Other Benefitted Owner Self-Help Notice (as hereinafter defined) to VDV, Amkor, the City and Escrow Agent if and only if each of the following circumstances then exist: (i) Contract Administrator has failed to timely cure a breach under this Agreement; (ii) thirty (30) days have elapsed after receipt by Contract Administrator, the City and Amkor of a written notice from any Other Benefitted Owner, which notified Contract Administrator that Contract Administrator failed to achieve any milestone or otherwise Substantially Complete the Improvements in accordance with the Construction Schedule; and (iii) neither the City nor Amkor under this Agreement has delivered a Notice of Breach to Contract Administrator with a simultaneous copy of the Notice of Breach to the Other Benefitted Owners prior to the time the Other Benefitted Owner gives the Other Benefitted Owner Self-Help Notice (it being understood that Amkor will have the prior right to become a Replacement Contract Administrator). An “**Other Benefitted Owner Self-Help Notice**” is a written notice pursuant to which an Other Benefitted Owner agrees: (a) to appoint the Replacement Contract Administrator under this Agreement with respect to all Improvements then remaining to be completed under this Agreement; (b) to assume all the rights and obligations of the Contract Administrator under this Agreement for the benefit of the Owners; (c) to take possession of the work site and of all the materials located at the site that were delivered to the site for inclusion into the Improvements as reasonably necessary to enable the Other Benefitted Owner to complete the Improvements; and (d) from and after the delivery of the Other Benefitted Owner Self-Help Notice, to indemnify, defend and hold Contract Administrator (and the City, Amkor and any Other Benefitted Owners other than the Replacement Contract Administrator) harmless for, from and against any and all injuries, liabilities, claims, demands, actions, losses and expenses of any nature whatsoever (including attorneys’ fees and litigation and court costs) sustained or threatened against Contract Administrator (and the City, Amkor and any Other Benefitted Owners other than the Replacement Contract Administrator) that results from or arises in connection with the exercise by the Other Benefitted Owner of the self-help rights under this Agreement or the failure of the Other Benefitted Owner to fulfill the obligations of a Replacement Contract Administrator under this Agreement. The Other Benefitted Owner will be the Replacement Contract Administrator under this Agreement upon delivery of the Other Benefitted Owner Self-Help Notice in accordance with the terms and conditions of this Section. If there is more than one Other Benefitted Owner of the Other Benefitted Parcels, only one Other Benefitted Owner at a time may serve as a Replacement Contract Administrator under this Section, and if more than one Other Benefitted Owner delivers an Other Benefitted Owner Self-Help Notice, the first Other Benefitted Owner to deliver such notice shall be the Replacement Contract Administrator. Delivery of an Other Benefitted Owner Self-Help Notice shall be deemed to be Other Benefitted Owner’s agreement to be bound by the terms of this Agreement.

ARTICLE 5 IMPROVEMENT COSTS ALLOCATION AND BUDGET

5.1 Improvement Costs Definition. Concurrently with the execution of this Agreement by all Parties hereto, each Owner shall provide the security for its Allocable Share of Improvement Costs, if any, in accordance with the Budget in the manner provided for in *Article 6* below. As used herein, the term “**Improvement Costs**” shall mean the hard and soft costs incurred in connection with the design, engineering, permitting, construction, installation and warranty of the Infrastructure Improvements, including, but not limited to, costs of labor, materials suppliers, consultant fees and costs, blue printing services, construction staking, demolition, soil or compaction, any processing, plan check or permit fees, legal and engineering services required to obtain a permit for and complete the Infrastructure Improvements, costs of insurance required by this Agreement, any corrections, changes or additions to work required by the City or other Governmental Authorities or necessitated by site conditions, state, county and City sales taxes imposed in connection with construction of the Infrastructure Improvements (but not any City speculative builder tax, which shall be the responsibility of each Owner as to its Individual Parcel), other contractor’s fees, any contingency funds, and funds for repair during the Warranty Period (the “**Warranty Funds**”), all as listed on the Budget.

5.2 Allocation of Improvement Costs. Each Owner and the City agrees to pay its Allocable Share of the Improvement Costs as set forth in the Allocation Exhibit and in accordance with the terms of this Agreement.

5.2.1 The Parties acknowledge that as of the Effective Date (and except in the event of the construction of the improvements described on **Exhibit B-3**), Amkor has no Allocable Share of the Improvement Costs and no obligation to pay for any Infrastructure Improvements. If Amkor requests (i) changes or modifications to the Approved Plans, to increase the size or capacity of the Infrastructure Improvements to benefit the Amkor Parcel or modify the Amkor Utility Tie-In Locations following the approval or deemed approval of the such Amkor Utility Tie-In Locations pursuant to *Section 3.1.2.1* or (ii) Contract Administrator to construct additional improvements related to the Amkor Parcel (the “**Amkor Modifications**”), and with respect to any additional improvements, the Contract Administrator is willing to construct any additional improvements, then unless otherwise agreed by the City and/or the other Owners, the cost of any Amkor Modifications shall be considered Improvement Costs and as part of the Amkor Modifications, the Allocable Share of any additional costs related to the Amkor Modifications will be modified to reflect the percentage of the Improvement Costs allocable to the Amkor Modifications as agreed to by VDV and Amkor, and such percentage will be payable by Amkor, the City shall have no responsibility or obligation to pay any portion of the costs related to the Amkor Modifications, and the City’s Allocable Share shall not be affected by such modifications. In addition to the Infrastructure Improvements, the Lone Mountain Amkor Improvements may be required as set forth on **Exhibit B-3** attached hereto (the “**Description of Lone Mountain Amkor Improvements**”), and such Lone Mountain Amkor Improvements shall be considered Amkor Modifications.

5.2.2 The Parties acknowledge and agree that it is the intent of the Parties that no Owner nor the City shall be obligated to pay toward the Improvement Costs an amount greater than its Allocable Share of actual Improvement Costs. If an Owner advances funds on behalf of another Owner for any Improvement Costs pursuant to *Section 14.1* below, then the non-paying Owner agrees to reimburse the Owner who advanced funds on behalf of the non-paying Owner. The obligation to make the payments and/or reimbursements described in this *Section 5.2* shall survive the Final Completion of the Infrastructure Improvements.

5.3 Revisions to Budget. The Owners and the City acknowledge that conditions and circumstances may hereafter be found to exist that necessitate a change in the Budget and, as a result,

neither Contract Administrator nor any other party guarantees that the Infrastructure Improvements can be constructed and completed for the Improvement Costs amount set forth in the Budget. As a result, from time to time, Contract Administrator may determine that the Budget needs to be revised, in which event Contract Administrator shall deliver to all Owners and the City written notice (a “**Budget Revision Notice**”), together with a copy of the proposed revised Budget and appropriate supporting documentation. In addition, the Owners and the City acknowledge that the Budget has been prepared on the basis of final bids, preliminary bids, and/or estimates of the Improvement Costs, as available on the Effective Date. As and when final bids have been selected for all of the Infrastructure Improvements in accordance with *Section 2.1.1*, Contract Administrator shall update and revise the Budget to conform to the final bid numbers or other applicable information, and shall deliver to all Owners and the City written notice (a “**Budget Revision Notice**”), together with a copy of the proposed revised Budget and appropriate supporting documentation.

5.3.1 Deemed Approval. The revised Budget delivered pursuant to a Budget Revision Notice shall be deemed to have been approved by the Owners as to each line item amount.

5.3.2 City Approval. Any revised Budget related to City Improvements that have been delivered pursuant to a Budget Revision Notice must be reviewed and approved by the City prior to the applicable line item amount being updated.

5.3.3 Funding of Overrun Line Items by Owners. If any line item amount set forth on a revised Budget is greater than the amount set forth on the previous Budget in effect as of the date of delivery of the revised Budget to the City and the Owners (an “**Overrun Line Item**”), then to the extent the cost of the Overrun Line Item(s) exceeds the available funds in the Budget for such line item(s), plus any contingency funds remaining in the Budget, then the City and each Owner (to the extent of their Allocable Share) shall pay such Overrun Line Item when such amounts are due and payable to Contractors pursuant to a properly delivered Draw Request.

5.3.4 Minimum Contingency Funds. The Budget includes a contingency amount of ten percent (10%). If Owners and the City approve, or are required to approve, a Budget revision, then the next Draw Request shall allocate to each Owner, as applicable, the costs of the Overrun Line Item required by the revised Budget, including any amounts necessary to ensure that the contingency amount set forth in the revised Budget is not less than ten percent (10%) of the remaining cost to obtain Final Completion of the Infrastructure Improvements (excluding contractor retainage, as applicable)

5.3.5 Supersedes Prior Budget; Deemed Approval. Upon the approval (or deemed approval) of any Overrun Line Item(s) in accordance with the provisions of this *Section 5.3*, the revised Budget containing the approved Overrun Line Item(s) shall supersede and replace the then-existing Budget (without any need to amend this Agreement) and shall constitute the “Budget” for purposes of this Agreement. Notwithstanding any provision in this Agreement to the contrary, any Owner that executes an Addendum shall be deemed to accept and approve the Budget and any revisions thereto as it exists on the date of the Addendum. Contract Administrator shall, upon request therefor, provide copies of the then-current Budget to any Owner executing an Addendum.

5.3.6 Change Authorized Under another Provision. Notwithstanding any contrary provision of this *Section 5.3*, any revision to the Budget resulting from a Plan Change authorized pursuant to *Section 3.2*, or from the right of Contract Administrator to reallocate contingency funds to a particular line item in the Budget in accordance with the provisions of *Section 6.5* below, shall be deemed approved for purposes of this *Section 5.3*, and no separate approval, notice, or meeting of the Owners and the City shall be required pursuant to this *Section 5.3*.

ARTICLE 6
PAYMENT OF IMPROVEMENT COSTS

6.1 Intentionally Omitted.

6.2 Draw Request. Contract Administrator shall be entitled to submit draw requests that comply with the requirements set forth in this Section (each, a “**Draw Request**”) to Escrow Agent and the Owners and the City on or before the 5th business day of each calendar month to pay all Improvement Costs incurred through the 30th calendar day of the prior calendar month. Draw Requests may be submitted no more than once per month, and shall be subject to the following additional requirements, terms and conditions:

6.2.1 Required Content. To be complete, each Draw Request must contain the following items of information:

(a) It must set forth the total amount to be paid pursuant to the current Draw Request, as well as the total amount paid pursuant to prior Draw Requests, together with copies of all invoices and other supporting information evidencing the amounts to be paid;

(b) It must allocate the amounts in *Subsection (a)* above among the Owners in accordance with their respective Allocable Shares;

(c) It must allocate the total amount to be paid pursuant to the current Draw Request among the Budget line items to be paid with the withdrawn funds;

(d) It must contain Contract Administrator’s estimate of the percentage of completion of the Infrastructure Improvements and each component thereof;

(e) It must contain Contract Administrator’s estimate of the cost to complete the Infrastructure Improvements and each component thereof, together with Contract Administrator’s estimate that, after payment of the Draw Request, sufficient funds remain available to pay the cost of completing the Infrastructure Improvements or Contract Administrator’s estimate of the additional amounts required to complete the Infrastructure Improvements;

(f) It must contain Contract Administrator’s statement that, to its knowledge, the Draw Request is true, correct and complete in all material respects; and

(g) It must be accompanied by: (i) statutory conditional lien waivers and releases from all of the Contractors, Service Providers and other suppliers, contractors, subcontractors and other lower tier providers of labor, materials, equipment, services and other work (excluding subcontractors and materials suppliers who have not filed a preliminary twenty (20) day lien notice) that are to be paid from the current Draw Request (collectively “**Lien Claimants**”); and (ii) to the extent not previously provided, statutory unconditional waivers and releases from such Lien Claimants in the full amount shown on all conditional waivers and releases previously submitted in connection with prior Draw Requests for which payment has been made hereunder. In the event an Owner receives a preliminary 20-day lien notice relating to the Infrastructure Improvements, that Owner shall deliver a copy of such a preliminary 20-day lien notice to Contract Administrator, the City and the other Owner within ten (10) days following receipt thereof. Contract Administrator shall not pay any retainage under a Construction Contract or Service

Contract until such time as such retainage becomes due and payable under such Construction Contract or Service Contract.

6.2.2 Intentionally Omitted.

6.2.3 Payment by the City and Owner. The City shall pay to Escrow Agent, in cash or other immediately available funds, the amount due from the City as set forth in the Draw Request and Owner shall pay to Escrow Agent, in cash or other immediately available funds, the amount due from that Owner as set forth in the Draw Request. All such payments shall be due on or before twenty (20) days after the date on which the Draw Request was delivered to the City and such Owner by Contract Administrator, unless within that period the City or such Owner objects to the Draw Request in accordance with the provisions of **Section 6.3** below. Funds paid to Escrow Agent pursuant to this **Section 6.2.3** in connection with a Draw Request shall be disbursed by Escrow Agent to Contract Administrator within five (5) business days of Escrow Agent's receipt thereof. Funds disbursed to Contract Administrator pursuant to a Draw Request shall be used by Contract Administrator to pay the payees identified in the Draw Request, in the amounts set forth in the Draw Request. Notwithstanding anything to the contrary in this Agreement, in the event Contract Administrator is also an Owner, Owner shall not be obligated to pay its Allocable Share of the Draw Request to Escrow Agent in recognition that Escrow Agent is to disburse such amounts back to such Owner in Owner's capacity as Contract Administrator; such Owner (in Owner's capacity as Contract Administrator) shall pay directly its Allocable Share of the Draw Request.

6.3 Objections to Draw Requests.

6.3.1 So long as the terms of **Section 6.2** above have been satisfied, the City and the Owners shall have no right to delay the payment of or object to any Draw Request, except as permitted in this **Section 6.3**. The City or an Owner shall have the right to object to a Draw Request in good faith and for any reasonable cause, including on the basis that: (i) a line item amount listed in a Draw Request that, when added to previous line item amounts paid by the Parties, is in excess of the total amount for that line item as listed in the then-current Budget, except as may be attributable to a Previously Authorized Matter (as hereinafter defined); (ii) any statement or document provided by the Contract Administrator in the Draw Request is inaccurate; or (iii) the work or materials to be paid by the Draw Request are defective or is not work that is to be completed pursuant to this Agreement. As used herein, the term "**Previously Authorized Matter**" shall mean an increase in a line item amount that results from the right of Contract Administrator to modify the Plans and Specifications as set forth in **Section 3.3** above (subject to any necessary Party approval as required in that Section), the right of Contract Administrator to modify the Budget as set forth in **Section 5.3** above (subject to any necessary approval by the Owners or the City as required in that Section), and/or the right of Contract Administrator to reallocate contingency funds to a particular line item in the Budget in accordance with the provisions of **Section 6.5** below.

6.3.2 If an objection to a Draw Request delivered by an Owner or the City pursuant to the provisions of this **Section 6.3** relates to a Previously Authorized Matter, then Contract Administrator shall provide written notice thereof to the objecting Party and to Escrow Agent, and the objecting Party or Escrow Agent, as the case may be, shall make payment on account of such Draw Request within five (5) business days after receipt of Contract Administrator's notice. If an objection to a Draw Request delivered by a Party pursuant to the provisions of this **Section 6.3** does not relate to a Previously Authorized Matter, then Contract Administrator shall deliver a copy of such objection to each Owner and the City and shall call a meeting of the Owners and the City in accordance with the provisions of **Section 9.1** below. The failure by an Owner or the City to deliver to Contract Administrator an objection to a Draw Request shall not preclude such Owner or the City from voting against such Draw Request at the meeting described in the immediately preceding

sentence. The portion of the Draw Request that was disputed shall either be approved or disapproved by all of the Owners and the City. If the disputed item(s) are approved by all of the Owners and the City at the meeting held in accordance with the provisions of **Section 9.1**, then each Owner shall fund its Allocable Share of the disputed item(s) within three (3) business days after the meeting at which the disputed item was approved, and Escrow Agent shall make payment to Contract Administrator immediately following such approval (or, if later, immediately following Escrow Agent's receipt of such funds). If the disputed item(s) are not approved by the Owners and the City, then any Owner, the City, or Contract Administrator may initiate arbitration as provided in **Article 13**. Notwithstanding any provisions of this **Section 6.3** or the provisions of **Section 6.2** above to the contrary, in the event an Owner or the City timely delivers an objection to Contract Administrator or Escrow Agent with respect to a Draw Request, Escrow Agent shall pay to Contract Administrator for disbursement to Contract Administrator, as applicable), within the time frame set forth in **Section 6.2** above, any amounts that are not the subject of such objection.

6.4 Warranty Funds.

6.4.1 Use of Funds for Warranty Work. Contract Administrator shall be entitled to withdraw (pursuant to Draw Requests in accordance with **Section 6.2**) all or any part of the Warranty Funds at any time or from time to time, as necessary in the judgment of Contract Administrator, to pay for Warranty Repairs during the Warranty Period. Upon expiration of the Warranty Period and the resolution of all claims made during the Warranty Period, Contract Administrator shall instruct Escrow Agent to disburse to the City and each Owner any Warranty Funds remaining in such Party's Escrow Account. Except as stated herein, Contract Administrator shall have no liability with respect to any warranty claims and the Owners shall look solely to the warranties provided by Contractors, Service Providers and/or other third parties.

6.4.2 Deposit of Additional Funds. If prior to the expiration of the Warranty Period, additional funds in excess of the remaining Warranty Funds then held in the Escrow Accounts need to be paid to complete Warranty Repairs, then Contract Administrator shall advise the City and the Owners in writing (the "**Call**"), together with evidence supporting the request for Warranty Repairs and the contribution amount required by the City and each Owner (the "**Call Amount**"). The Call Amount required of the City or of an Owner shall be based on and reflect, first, funds necessary to complete Warranty Repairs for which the City or such Owner is solely responsible pursuant to **Section 4.6.3**, and second, the City and such Owner's Allocable Share of the remaining funds. The City and each Owner shall deposit its Call Amount in such Party's Escrow Account within five (5) business days after receipt of the Call. All amounts paid by the City or an Owner in response to a Call shall be utilized only for the purposes of paying to complete Warranty Repairs. Any amounts not so expended shall be promptly allocated and refunded to the City and each Owner in a manner consistent with the formula above used for determining Call Amounts.

6.4.3 Claims Against Defaulting Contractor. Notwithstanding the provisions of this **Section 6.4** to the contrary, if Contract Administrator has the right to require any Contractor or Service Provider to pay for and/or perform the repair of any portion of the Infrastructure Improvements (the "**Defaulting Contractor or Service Provider**") (*i.e.*, if a Defaulting Contractor or Service Provider is obligated to pay for and/or repair any Infrastructure Improvements under any warranty provided by the Defaulting Contractor or Service Provider with respect to the affected Infrastructure Improvements), then Contract Administrator shall reasonably exercise any and all rights against the Defaulting Contractor or Service Provider on behalf of the Owners or the City, to seek reimbursement and/or performance from the Defaulting Contractor or Service Provider (and the Owners and the City hereby authorize Contract Administrator to do so on each Owner's and the City's behalf). Any monies thereafter received from the Defaulting Contractor or Service

Provider, less the collection costs (including reasonable attorneys' fees), shall be used to reimburse any Warranty Funds and/or Call Amount, if applicable, used to pay for any repair of the Infrastructure Improvements. Any collection costs (including reasonable attorneys' fees) reasonably incurred by Contract Administrator and not recovered from the Defaulting Contractor or Service Provider shall be paid by the City and the Owners pursuant to the Call procedures specified in *Section 6.4.2*.

6.5 Use of Contingency Funds; Reallocation of Line Items. Notwithstanding any contrary provision of this Agreement, if the actual Improvement Costs incurred with respect to any Budget line item relating to a component of the Infrastructure Improvements (after Substantial Completion of that component of the Infrastructure Improvements and reservation of such funds as, in Contract Administrator's reasonable determination, will be sufficient to attain Final Completion thereof) is less than the amount of such Budget line item (a "**Budget Savings**") or if there are remaining contingency funds that were allocated to a component of the Infrastructure Improvements after Final Completion of that component of the Infrastructure Improvements, then Contract Administrator may, in its reasonable discretion, reallocate such Budget Savings or such unused contingency funds to other line items in the Budget without the consent of the Owners or the City (provided however, that in no event shall any component of the Budget that was not publicly bid be reallocated to or combined with a component that was publicly bid). Contract Administrator shall not, however, prior to Substantial Completion of any Improvement, reallocate Budget amounts for that Infrastructure Improvement to any other Infrastructure Improvement, nor may Contract Administrator reallocate contingency funds that were allocated to a component of the Infrastructure Improvements prior to Final Completion of that component of the Infrastructure Improvements, unless the Owners and the City approve such reallocation, such approval not to be unreasonably withheld. In addition, upon Final Completion of all Infrastructure Improvements, subject to the further provisions of this *Section 6.5*, any remaining contingency funds and any Budget Savings with respect to any Infrastructure Improvement shall be considered Warranty Funds for the purposes of this Agreement and shall be retained in the Escrow Accounts (subject to the reduction in the Warranty Funds amount as required under *Section 6.6* below) until the expiration of the Warranty Period, at which time any remaining Warranty Funds shall be returned to the City and the Owners, as applicable. Contract Administrator may, without the consent of Owners, reallocate any general contingency funds or funds allocated to a contingency with respect to any component of the Infrastructure Improvements to pay for the Improvement Costs incurred in connection with such component of the Infrastructure Improvements; provided that in Contract Administrator's reasonable determination, the amount retained in the Escrow Accounts (after such contingency funds are applied) remains sufficient to attain Final Completion of the Infrastructure Improvements.

6.6 Final Disbursement. Upon Final Completion of all of the Infrastructure Improvements, Contract Administrator shall submit to the Owners, the City, and to Escrow Agent a final Draw Request containing the information described in *Section 6.2* above, together with a final accounting of the Improvement Costs. Any then undisbursed funds shall constitute Warranty Funds; provided, however, that the Warranty Funds to be held in the Escrow Accounts as of Final Completion shall not exceed the total sum of Twenty Five Thousand and No/100 Dollars (\$25,000.00), and any such undisbursed funds in excess of that amount shall be returned to the Party having paid such funds initially. On or before fifteen (15) days after payment of the final Draw Request, Contract Administrator shall deliver to Escrow Agent, the City and each Owner copies of full and final unconditional lien waivers executed by all Lien Claimants for all labor and materials paid for pursuant to the final Draw Request.

6.7 Accounting. Contract Administrator shall keep (or cause to be kept) good and accurate books and records in sufficient detail to allow the Improvement Costs to be calculated (the "**Joint Development Books**"). Contract Administrator shall, upon prior reasonable notice to Contract Administrator, make the Joint Development Books available for review by any Owner and the City. Contract Administrator shall maintain (or cause to be maintained) the Joint Development Books for a period

of three (3) years after the Final Completion of the Infrastructure Improvements. Any Owner and the City may audit (upon prior reasonable notice) the Joint Development Books at its own expense (subject to the immediately following sentence) (an “**Audit**”). If as a result of an Audit it is determined that any Owner or the City paid to Contract Administrator more than three percent (3%) in excess of the correct Allocable Share of the Improvement Costs, Contract Administrator shall be required to pay for the reasonable, out of pocket, non-contingent costs of the Audit. In addition, if as a result of an Audit, it is determined that any Owner or the City overpaid its Allocable Share of the Improvement Costs (regardless of the amount of the overpayment), any Party who underpaid their Allocable Share of the Improvement Costs shall reimburse their respective Allocable Shares of the overpayment made by the applicable overpaying Parties. Similarly, if as a result of an Audit, it is determined that any Party underpaid any Allocable Share of the Improvement Costs (regardless of the amount or the underpayment), such Party shall promptly pay the amount of such underpayment to the Parties who overpaid their Allocable Share of the Improvement Costs, and such reimbursement shall be allocated to the overpaying Parties based on their Allocable Shares.

ARTICLE 7 ESCROW AGENT PROVISIONS

7.1 Instructions to Escrow Agent. This Agreement shall constitute instructions to Escrow Agent and all amounts deposited with Escrow Agent shall be disbursed and dealt with by Escrow Agent in strict accordance with the terms set forth in this *Article 7*.

7.2 Liability of Escrow Agent. Escrow Agent shall not be liable for any action taken or omitted by it or by Contract Administrator or the Owners, except for its own negligence, fraud, bad faith, recklessness, willful misconduct or breach of this Agreement. Notwithstanding any provision in this Agreement, Escrow Agent shall not be responsible for determining the sufficiency of any lien waivers required to be submitted as part of any Draw Request.

7.3 Reliance on Advice of Counsel. Escrow Agent shall be entitled to rely upon advice of counsel concerning legal matters and upon any document or notice delivered to it hereunder which it believes to be genuine or to have been presented by a proper person.

7.4 Indemnity. The City and the Owners hereby severally (each in accordance with its respective Allocable Share) indemnify Escrow Agent for, from and against all costs, damages, expenses and liabilities (including reasonable attorney’s fees) which Escrow Agent may incur or sustain in connection with complying with this Agreement or as a result of any court action arising therefrom except claims arising out of Escrow Agent’s negligence, fraud, bad faith, recklessness, intentional misconduct or breach of this Agreement.

7.5 Conflicting Demands. If conflicting demands are made upon Escrow Agent to any monies at any time held by it hereunder, then Escrow Agent may hold the monies or any documents pertaining thereto, pending receipt of mutual instructions, until the rights of the City and the Owners are determined by an appropriate court of law, or Escrow Agent may interplead any and all documents and/or monies held by it hereunder pending the outcome of the litigation.

7.6 Compensation. Escrow Agent shall be entitled to receive reasonable compensation for its services hereunder. Escrow Agent’s current fee schedule is attached hereto as **Exhibit I**. The fees and costs of Escrow Agent shall constitute part of the Improvement Costs. Escrow Agent is hereby authorized to deduct its fees from the first monies available. Escrow Agent may make a reasonable charge for extraordinary services that are not contemplated by the express terms of this Agreement.

7.7 Monthly Account Statements. Escrow Agent shall provide Contract Administrator, the City, and the other Owners with monthly account statements regarding amounts of cash, if any, in the City's and each Owner's Escrow Account.

7.8 Resignation. Escrow Agent may, at its election, resign as Escrow Agent under this Agreement at any time. In the event Escrow Agent elects to resign, it shall provide written notice to the Parties at least ten (10) business days prior to the date that the resignation will be effective. Prior to the date that the resignation is effective, Contract Administrator may select another licensed escrow agent to carry out the applicable terms of this Agreement and may instruct Escrow Agent to disburse any remaining funds being held in the escrow to the newly appointed escrow agent selected by such Parties.

7.9 Limitations on Scope of Services. The Parties understand that the Escrow Agent is not providing management or oversight functions with respect to a payment made on behalf of another, nor has significant economic interest in connection with the payment; and therefore, would not be responsible for issuing information returns to the IRS under IRC section 6041 and/or Rev. Rul. 73-90. The Parties understand that Escrow Agent is acting as a disbursing/holding agent whose duties include servicing the Draw Requests, managing the Escrow Accounts, and holding documents. Notwithstanding anything stated to the contrary in this agreement, Escrow Agent shall not be bound by any term or provision in an agreement to which it is not a party.

7.12 Escrow Instructions. This Agreement shall constitute escrow instructions to Escrow Agent as well as the agreement of the Parties. Escrow Agent's printed Standard Conditions of Escrow and Trust Department Special Collection Account Fee Schedule are attached hereto as **Exhibit I** and are by reference incorporated into and made a part of this Agreement (the "**Printed Instructions**"). If the Printed Instructions, or any other printed escrow instructions requested of the Parties with regard to Escrow Agent, conflict or are inconsistent with any provision of this Agreement, the provisions of the Standard Conditions of Escrow (Holdback/JDA Account) shall control.

7.13 Deletion of Escrow Provisions. Upon the approval of the City and all of the Owners, the Parties shall amend this Agreement to remove the provisions of the Agreement identifying the Escrow Agent as a party to this Agreement or assigning rights or obligations to Escrow Agent.

ARTICLE 8 PARTY REPRESENTATIVES

The City agrees to use its best efforts to assist the other Parties or their affiliates in the development of the Property, including any assistance with other Governmental Authorities as appropriate. To further the commitment of City and the other Parties to cooperate in the implementation of this Agreement, each Party and Escrow Agent (each an "**Appointing Party**") designates the individual named below and in each Addendum as its representative to act on its behalf in all matters covered by this Agreement (each, a "**Designated Representative**"). All inquiries, requests, instructions, authorizations, and other communications with respect to the matters covered by this Agreement shall be made to the Designated Representatives. Escrow Agent and each Party may, without further or independent inquiry, assume and rely at all times that a Designated Representative has the power and authority to make decisions on the Appointing Party's behalf, to communicate all decisions to the Escrow Agent and the other Parties and to bind the Appointing Party by his/her acts and deeds, unless otherwise notified in writing by the Appointing Party. As such, each Party executing this Agreement or executing an Addendum and thereby becoming a Party to this Agreement, hereby confers upon its Designated Representative the authority to act on its behalf and all matters covered by this Agreement. Any Appointing Party may change its Designated Representative under this Agreement at any time by written notice to the other Parties at least ten (10) days

before the change is to take effect. The initial Designated Representatives of the initial Escrow Agent and Parties to this Agreement shall be as follows:

Contract Administrator:	Karen Howard
Escrow Agent:	Sandi Gable
Amkor:	Ji Park
VDV:	Eric Koff
City:	City Manager

The initial Designated Representative of any additional Owner shall be deemed to be that individual listed in the applicable Addendum signed by such Owner. If the Designated Representative of an Appointing Party is listed as or changed to be more than one individual, any one individual designated as Designated Representative of that Appointing Party shall have the full authority and may be relied upon to bind the Appointing Party without any concurrence of or notice to any other individual who may also be designated as Designated Representative of that Appointing Party.

ARTICLE 9 MEETINGS AND VOTING

9.1 Status / Monthly Meetings. From and after the date of this Agreement and until Final Completion of all of the Infrastructure Improvements, the Designated Representatives of Contract Administrator, the City and the Owners shall meet at least monthly (in person or by electronic means) on a regular basis (or more frequently if determined by Contract Administrator), and Contract Administrator shall keep the City and the Owners reasonably informed concerning the activities and progress of the Infrastructure Improvements, including, but not limited to, providing the City and the Owners copies of all applications, submittals, filings, approvals, agreements and/or other significant documents or instruments relating to the construction and installation of the Infrastructure Improvements, or other such items as the City or an Owner may reasonably request. The purpose of the monthly meetings held by Contract Administrator shall be to: (i) update the City and the Owners regarding the status of construction of the Infrastructure Improvements, including any anticipated changes to the Construction Schedule; (ii) address other scheduling, coordination, engineering, and design issues; (iii) review Draw Requests and any objections thereto; (iv) review the Budget and, in this regard, prior to the first meeting held in each calendar month, Contract Administrator shall provide the City and the Owners with an updated Budget showing funds spent on each Budget line item and funds remaining to pay each Budget line item and any anticipated shortfalls; and (v) address and discuss any other similar issues. From time to time, Contract Administrator may call for an additional meeting of the City and the Owners. Contract Administrator shall schedule the time and location of the meetings and shall give the City and the Owners written notice at least five (5) business days prior to the scheduled meeting, except no notice shall be required for regularly scheduled meetings previously agreed upon by the City and the Owners. Contract Administrator shall keep (or cause to be kept) minutes of each meeting and shall promptly distribute to the City and each Owner minutes of each meeting. Meetings may be attended in person, by electronic means or by proxy. For the purposes of this Agreement, a “**proxy**” shall be a written instrument executed by the Designated Representative of the City or an Owner granting only to Contract Administrator or the Designated Representative of the City or another Owner the authority to act on behalf of the City or such Owner, which proxy must be delivered to Contract Administrator prior to the commencement of any meeting.

9.2 Voting. For purposes of voting on any matter under this Agreement, the City and each Owner shall be entitled to a number of votes based on its percentage share of the Improvement Costs (as set forth in the Allocation Exhibit), with the total number of votes being one hundred (100). During such time as there are only two (2) Parties entitled to vote, the consent of both Parties shall be required. Notwithstanding any contrary provision hereof, a Party that is then in default of its payment obligations under this Agreement shall have no voting rights hereunder and the votes of the defaulting Party shall be allocated to the remaining Parties (for voting purposes only) on a proportionate basis, so that the total votes equal one hundred (100).

ARTICLE 10 NOTICES AND COMMUNICATIONS

Any and all notices, approvals, consents or other communications required or permitted by this Agreement shall be given in writing and personally delivered, sent by e-mail, sent by registered or certified mail, return receipt requested, postage prepaid, or sent by Federal Express, U.P.S. or other similar nationally recognized overnight courier, addressed as follows:

To VDV and:
and Contract Administrator: Vistancia Development LLC
 c/o Land Resources Inc.
 8080 East Gelding Drive, Suite 108
 Scottsdale, AZ 85260
 Attention: Mark Hammons
 Telephone: (480) 305-2173
 E-Mail: mhammons@landresourcesinc.com

with a copy to: Vistancia Development LLC
 100 Bayview Circle #2000
 Newport Beach, CA 92660
 Attention: Richard S. Whiteley
 Telephone: (949) 851-2121
 Email: rwhiteley@ihpinc.com

with an additional copy to: IHP Capital Partners
 100 Bayview Circle #2000
 Newport Beach, CA 92660
 Attention: Legal Department
 Telephone: (949) 851-2121
 Email: legalnotices@ihpinc.com

with an additional copy to: Berens Blonstein PLC
 7033 E. Greenway Parkway, Suite 210
 Scottsdale, AZ 85254
 Attention: Marc D. Blonstein
 Telephone: (480) 624-2703
 Email: mblonstein@berensblonstein.com

To Amkor: Amkor Technology Arizona, Inc.
2045 East Innovation Circle
Tempe, AZ 85284
Attention: Kevin Engel, President
Telephone: (480) 821-5000
E-mail: kevin.engel@amkor.com

with a copy to: c/o Amkor Technology, Inc.
2045 East Innovation Circle
Tempe, AZ 85284
Attention: Ji Park
Telephone: (480) 786-7534
E-mail: ji.park@amkor.com

with an additional copy to: c/o Amkor Technology, Inc.
2045 East Innovation Circle
Tempe, AZ 85284
Attn: Mark Rogers, General Counsel
Telephone: (480) 786-7601
E-mail: Mark.Rogers@amkor.com

To City: City of Peoria
8401 West Monroe Street
Peoria, Arizona 85345
Attention: Henry Darwin, City Manager
Telephone: (623) 773-7114
E-mail: henry.darwin@peoriaaz.gov

With a copy to: City of Peoria
8401 West Monroe Street
Peoria, Arizona 85345
Attention: Emily Jurmu, City Attorney
Telephone: (623) 773-7330
E-mail: emily.jurmu@peoriaaz.gov

Escrow Agent: First American Title Insurance Company
National Commercial Services
8605 E Raintree, Suite 130
Scottsdale, AZ 85260
Attention: Sandi Gable
Telephone: (602) 685-7120
E-Mail: sgable@firstam.com

The notice address for any additional Owner shall be deemed to be the address listed in the applicable Addendum executed by such Owner. Escrow Agent or any Party may from time to time designate in writing and deliver in a like manner any changes in address at least ten (10) days before the change becomes effective. Notices, approvals and other communications provided for herein shall be deemed received upon the earlier of: (i) if personally delivered, or sent via overnight courier, the date of business day delivery to the address of the person to receive the notice; or (ii) if mailed, the sooner of actual receipt or three (3) business days after the date of deposit; or (iii) if emailed, upon electronic confirmation by the sending Party. Notwithstanding the foregoing, any notice received after 5:00 p.m. (local time where

the notice is received) or on a Saturday, Sunday or federal legal holiday shall be deemed received on the immediately following business day.

ARTICLE 11 CONSTRUCTION ON EACH INDIVIDUAL PARCEL

11.1 Reciprocal Nonexclusive License. As part of each Owner's development of its Individual Parcel, each Owner (a "**Licensor**") shall be deemed to have granted the other Owners (each a "**Licensee**") the right to a reciprocal and temporary nonexclusive license over, across, in, under and through those portions of such Licensor's Individual Parcel that are not planned or utilized for the construction of buildings, structures, or other improvements, and if so requested, a Licensor shall grant to Licensee reasonable reciprocal and temporary nonexclusive license over, across, in, under and through those portions of such Licensor's Individual Parcel that are not planned for the construction of buildings, structures, or other improvements (a "**Reciprocal License**"). As a condition to any Licensee exercising any of the Reciprocal License rights granted above, such Licensee shall (i) notify the Licensor in writing of its intent to exercise the Reciprocal License and abide by any reasonable requirements imposed by the Licensor, (ii) indemnify, defend and hold harmless the Licensor for, from and against any loss, cost, damage or expense resulting from Licensee's exercise of the Reciprocal License, and (iii) obtain and maintain commercial general liability insurance with a combined single limit of at least Two Million and No/100 Dollars (\$2,000,000.00) (or One Million Dollars (\$1,000,000) with a One Million Dollar (\$1,000,000) umbrella policy), per occurrence, with deductibles no higher than Fifty Thousand and No/100 Dollars (\$50,000.00) written by an insurance company having a rating of at least A-:VII by A.M. Best. The Owner exercising any license or Reciprocal License shall cause an endorsement to be issued by the insurer naming the other affected Owner(s) as additional insureds. Upon request, the Owner exercising any license or Reciprocal License shall deliver a certificate of insurance (on ACORD form 25-S or its equivalent) to the Owner(s) granting the license or Reciprocal License. No license or Reciprocal License may be exercised or used in any fashion that would unreasonably interfere with or impact any Owner's development of its Individual Parcel. The Reciprocal License with respect to any Public Sale Property within an Individual Parcel shall automatically expire upon the completion of any improvements located on the applicable portion of the Individual Parcel, and an initial sale or conveyance of such Public Sale Property to a third party. As used herein, the term "**Public Sale Property**" shall mean any parcel or tract upon the dedication and conveyance of such parcel or tract, without compensation, to an applicable Governmental Authority; provided, however, that such termination and release of this Agreement upon the conveyance of a Public Sale Property shall not release, relieve or otherwise affect the continued rights, obligations and liabilities of the Parties under this Agreement, and all such rights, obligations and liabilities shall survive such termination and release.

ARTICLE 12 REPRESENTATIONS AND WARRANTIES OF EACH OWNER

Each Party by executing this Agreement (or an Owner executing an Addendum hereto), represents and warrants (with the understanding and intent that the other Parties are relying and will rely on these representations and warranties) that:

12.1 Authority. The Party is authorized to enter into and perform this Agreement and this Agreement is binding and enforceable against it in accordance with its terms.

12.2 Organization. The Party has been duly and legally organized in the State of its organization and is authorized to transact business in the State of Arizona.

12.3 No Violation. The execution, delivery, and performance by the Party of this Agreement and any other instruments and documents to be executed and delivered in connection with this Agreement

does not, and will not, result in any violation of, or conflict with, or constitute a default under, any provisions of any mortgage, deed of trust, indenture, lease, security agreement, or other instrument or agreement to which the Party is a party or any judgment, writ, decree, order, injunction, rule, or governmental requirement to which it is subject.

12.4 No Litigation. There is no litigation, investigation or proceeding pending or, to the knowledge of the Party, contemplated or threatened against it, that would materially impair or affect the ability of the Party to perform its obligations under this Agreement or under any contract, instrument or document related hereto.

12.5 Due Execution. The individual and/or entity executing this Agreement on behalf of the Party is authorized and empowered to enter into this Agreement.

12.6 No Prohibition. The Party is not prohibited from consummating the transaction contemplated in this Agreement by any law, regulation, agreement, restriction, order, or judgment.

12.7 Creditor's Rights. There are no attachments, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy or pursuant to any other laws for relief of debtors contemplated or filed by the Party or, to the Party's actual knowledge, pending against the Party or with respect to any Owner affecting or involving any of the Owner's Individual Parcel.

The representations and warranties under this *Article 12* shall be true and correct as of the date of this Agreement (and with respect to each additional Owner, as of the date the Owner executes its Addendum). If a Party learns that any representation and warranty is untrue after the date that it becomes bound by this Agreement, the Party shall provide written notice to the other Parties within seven (7) days after learning of the inaccuracy. The Party shall indemnify, defend the other Parties and hold them harmless for, from and against any liability, loss, cost, damage or expense including, but not limited to, court costs and reasonable attorneys' fees, arising out of any breach by Party of its representations and warranties set forth in this *Article 12*.

ARTICLE 13 ARBITRATION

If any question, dispute, or controversy remains in connection with this Agreement on which the applicable Parties and/or Escrow Agent cannot agree (a "**Dispute**"), then such Dispute shall be resolved by mandatory arbitration in accordance with the Commercial Arbitration Rules for the Real Estate Industry of the American Arbitration Association then in effect (the "**Rules**"), in accordance with and subject to the following provisions:

13.1 Dispute Notice. If any Party or Escrow Agent believes that a Dispute exists, it may notify the other Parties involved in such Dispute and if applicable Escrow Agent (all such parties involved in the dispute being referred to as the "**Disputing Parties**") thereof, which notice (a "**Dispute Notice**") shall identify the Dispute. Within ten (10) days after giving or receiving such notice, each Disputing Party shall submit to the others its final and best position as to the Dispute (hereinafter referred to as a "**Final Position**") which shall remain the position of such Disputing Party throughout the arbitration process. Notwithstanding the foregoing, the Disputing Parties may make offers in settlement at any time, but no such proposal shall be considered by the Arbitrator. As promptly as practicable, and in any event within thirty (30) days following the delivery of the Dispute Notice, the Disputing Parties shall meet in an attempt to resolve the Dispute. If the Dispute cannot be resolved at that meeting, any Disputing Party may submit the Dispute to arbitration as hereinafter provided.

13.2 Appointment of Arbitrator. A single arbitrator shall be selected according to the Rules; provided, however, that the individual selected must be recognized in the Phoenix metropolitan area as having competence in the subject matter of the Dispute, and except as stated in *Section 13.7* shall be a member of the State Bar of Arizona experienced in real estate and construction matters. The term “**Arbitrator**” as used herein shall mean and refer to the single arbitrator selected pursuant to this Section.

13.3 Conduct of Arbitration. The arbitration shall be conducted in Phoenix, Arizona. The arbitration process shall generally be conducted by the designated Arbitrator in accordance with the Rules, but the Arbitrator shall have discretion to vary from those Rules in light of the nature or circumstances of any particular Dispute. In all events, unless waived by the Disputing Parties, the Arbitrator will conduct an arbitration hearing at which the Disputing Parties and their counsel shall be present and have the opportunity to provide a statement and present evidence and examine the evidence presented by the other Disputing Parties. The proceedings at the arbitration hearing shall, unless waived by the Disputing Parties, be conducted under oath. Any Disputing Party may elect to pay for a court reporter at its sole expense. The Disputing Parties shall cooperate in good faith to permit a conclusion of the arbitration hearing within twenty (20) days following the appointment of the Arbitrator and shall endeavor to submit a joint statement setting forth each Dispute to be submitted to arbitration, including a summary of each Disputing Party’s Final Position on each Dispute. The Arbitrator shall make a determination as to each Dispute in favor of the Final Position (as submitted within the first ten (10) days following the delivery of a Dispute Notice) determined by the Arbitrator to be the most reasonable of all the Final Positions submitted by the Disputing Parties in accordance with this Agreement, which Final Position shall be selected by the Arbitrator. In addition, the Arbitrator shall require the unsuccessful Disputing Party(ies) to pay all reasonable costs and fees, including attorney’s fees, of the prevailing Disputing Party(ies) and costs and fees of the Arbitrator. The award of the costs and fees of the prevailing Disputing Party(ies) shall be allocated among the prevailing Disputing Party(ies) based upon the relative costs and fees incurred by the prevailing Disputing Party(ies) with respect to the matter arbitrated.

13.4 Standards of Conduct. The Disputing Parties agree that with respect to all aspects of the arbitration process contained herein they will conduct themselves in a manner intended to assure the integrity and fairness of that process. To that end, if a Dispute is submitted to arbitration, the Disputing Parties agree that they will not contact or communicate with the Arbitrator with respect to any Dispute either ex parte or outside of the contacts and communications contemplated by this *Article 13*, and the Disputing Parties further agree that they will cooperate in good faith in the production of documentary and testimonial evidence in a prompt and efficient manner to permit the review and evaluation thereof by the other Disputing Party(ies).

13.5 Decision. The decision of the Arbitrator with respect to any Dispute shall be final and binding on all Disputing Parties and not subject to appeal, in the absence of fraud or to the extent required by law, and the prevailing Disputing Party(ies) may enforce the same by application for entry of judgment in any court of competent jurisdiction or by other procedures established by law. The decision of the Arbitrator shall, for the purposes of this Agreement, be deemed to be the consent, approval or decision of the Disputing Parties.

13.6 Time of the Essence. The Disputing Parties agree that time is of the essence with respect to the resolution of any Dispute arising hereunder.

13.7 Disputes Related to Certain Matters. Notwithstanding the foregoing or any other provisions contained in this Agreement, Disputes related to the Allocation Exhibit, the Approved Plans, Plan Changes, the percentage of completion of an Infrastructure Improvement or whether an Infrastructure Improvement has been constructed in accordance with the Plans and Specifications, shall be resolved by

Ron Hilgart, as Arbitrator (or another principal of HilgartWilson if Ron Hilgart is unavailable, or if another principal of HilgartWilson is not available, then by another civil engineer or construction manager reasonably agreed upon by the Disputing Parties). A hearing will be held by such Arbitrator within ten (10) days after receipt of notice of Dispute, at which the Disputing Parties shall be present and to which any Disputing Parties may bring counsel. The Arbitrator may modify the Rules as the Arbitrator deems reasonable or necessary. The Arbitrator shall permit the Disputing Parties to provide a statement and evidence as to their position. The Arbitrator shall inspect the work in question and shall make a decision as promptly as possible. The Disputing Parties acknowledge that there is a benefit to the Disputing Parties in having work done as expeditiously as possible and that there is a need for a streamlined method of making decisions described in this Section so that work is not delayed.

ARTICLE 14 MISCELLANEOUS

14.1 Failure to Pay Amounts Due. All amounts not timely paid hereunder shall bear interest at the rate of eighteen percent (18%) per annum until paid in full (the “**Interest**”). Any Owner may advance unpaid funds (a “**Paying Owner**”) due from any other non-paying Owner or the City (a “**Non-Paying Party**”) and shall be reimbursed the amount advanced plus Interest at the time the Non-Paying Party pays its overdue portion. Notwithstanding anything stated to the contrary in *Section 6.1.3*, *Section 6.1.4*, or *Section 6.6*, Escrow Agent shall disburse to the Paying Owner any funds to which a Non-Paying Party would otherwise be entitled pursuant to *Section 6.1.3*, *Section 6.1.4*, or *Section 6.6*, until the Paying Owner has been paid in full (including Interest), before any funds are returned to the Non-Paying Party pursuant to *Section 6.1.3*, *Section 6.1.4*, or *Section 6.6*.

14.2 Attorneys’ Fees. In the event any Party brings any action at law or other proceeding against any other Party (as applicable) to enforce any of the terms, covenants or conditions hereof, the Party prevailing in any action or other proceeding shall be paid all reasonable costs and reasonable attorneys’ fees and all other reasonable litigation-related expenses by the non-prevailing Party(ies). In the event any arbitration award or judgment is secured by the prevailing Party, all costs and attorneys’ fees shall be included therein and determined by the Arbitrator, or the court having jurisdiction.

14.3 Further Acts. Each of the Parties shall execute and deliver all documents and perform all acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

14.4 No Partnership; Outside Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any owner-contractor, contractor-subcontractor, employer-employee, partnership, joint venture or other arrangement between or among the Parties. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a Party hereto, and no other person, firm, organization or corporation shall have any right or cause of action hereunder.

14.5 Entire Agreement. This Agreement constitutes the entire agreement among the Parties pertaining to the construction of the Infrastructure Improvements. All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are hereby superseded and merged herein. No change or addition is to be made to this Agreement except by written amendment executed by the Parties. Notwithstanding anything to the contrary, this Agreement is not intended to imply any change or revision to any of the terms of any real property purchase agreement.

14.6 Governing Law. This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona.

14.7 Severability. If any provision of this Agreement is declared void or unenforceable, the provision shall be severed from this Agreement and the remaining provisions shall remain in full force and effect.

14.8 Successors and Assigns.

14.8.1 Generally. The burdens of this Agreement are binding on, and the benefits of this Agreement shall inure to the benefit of the Parties and all of their assigns and successors in interest; provided, however, that no Owner may assign this Agreement or any rights or obligations hereunder without the consent of the Contract Administrator and City, which shall not be unreasonably withheld, delayed or conditioned. All the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto pursuant to A.R.S. § 9-500.05(D). As part of any assignment becoming effective, the assignor shall cause the assignee to assume its rights, duties, liabilities and obligations as an Owner under this Agreement by executing an Addendum in the form attached hereto as **Exhibit G** (each, an “**Addendum**”). With respect to its Individual Parcel and upon Contract Administrator’s approval, any purchaser of an Individual Parcel that executes an Addendum shall be bound by the rights and obligations set forth in this Agreement as of the date the Addendum is executed and the assigning Owner shall be automatically released from any further liabilities and obligations under this Agreement with respect to such Individual Parcel accruing from any after the date of the Addendum. Except in connection with the sale of all of substantially all of the land owned by Vistancia within the portion of Vistancia known as the “**Commercial Core**” (depicted on **Exhibit A-3**), Contract Administrator shall not assign its rights and delegate its obligations hereunder, without the consent of the Owners and the City, which consent may be withheld in the sole and absolute discretion of each Owner and the City. Notwithstanding anything set forth herein to the contrary, an assignment under the provisions of this **Section 14.8** shall be deemed accepted for an assignment of this Agreement by an Owner to an assignee: (i) that is wholly owned or controlled by such Owner or by an entity that owns or controls such Owner or is under common control with such Owner (ownership of more than a fifty percent (50%) interest); (ii) in which such Owner is general partner or managing member; (iii) that is a successor by merger or consolidation or is the purchaser of all or substantially all of such Owner's assets in a single transaction or the purchaser of all or substantially all of the issued and outstanding stock of such Owner; or (iv) which is a landbanker with whom such Owner, concurrently with the execution of such assignment, enters into an agreement granting to the Owner the right or option to purchase platted residential lots within such Owner's Individual Parcel; provided however, in all events, the assignee shall have assumed all obligations hereunder (as a condition to the effectiveness of the assignment).

14.8.2 Partial Assignment. If a purchaser acquires less than all of an Owner’s Individual Parcel and otherwise meets the conditions of **Section 14.8.1**, then (a) the Allocable Share of the Costs of that Individual Parcel shall be allocated between the portion of the Individual Parcel retained by the conveying Owner and the portion of the Individual Parcel acquired by the acquiring Owner in the manner agreed on in the Addendum, and (b) following delivery of the Addendum, the portion of the Individual Parcel retained by the conveying Owner and the portion of the Individual Parcel acquired by the acquiring Owner shall each be deemed to be a separate Individual Parcel for all purposes of this Agreement.

14.8.3 Other Assignments. Except as otherwise provided herein, all other assignments are prohibited without the prior written consent of all Owners and City.

14.9 Counterparts. This Agreement and any Addendum may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from the counterparts and the signature

pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document. Signatures transmitted by email PDF or DocuSign (or similar software) signatures shall be valid as originals.

14.10 Time of Essence. Time is of the essence each and every term, condition, obligation and provision hereof.

14.11 Captions. Any captions to, or headings of, the paragraphs or subparagraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

14.12 Exhibits. The exhibits attached hereto are hereby incorporated herein by this reference.

14.13 Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of the provision or any other provision hereof.

14.14 Computation of Periods. All time periods referred to in this Agreement shall include all Saturdays, Sundays and holidays, unless the period of time specifies business days. If the date to perform any act or give a notice with respect to this Agreement shall fall on a Saturday, Sunday or national holiday, or other day that Escrow Agent is not open for business, the act or notice may be timely performed on the next succeeding day which is not a Saturday, Sunday or a national holiday, or other day that Escrow Agent is not open for business.

14.15 Satisfaction of Obligations. Obligations required under this Agreement shall be deemed to be satisfied if the Party responsible to satisfy the obligation performs the obligations itself or causes the obligation to be performed by some other third party.

14.16 Waiver of Certain Damages. Each Party hereby waives for itself and its insurers all claims against each other Party for the waiving Party's consequential, incidental, special, exemplary, and punitive damages, but not the waiving Party's actual damages, arising out of or relating to this Agreement. This reciprocal waiver includes, but is not limited to: (i) damages incurred by a Party for losses of use, income, profit, financing, business, and reputation, and for loss of management or employee productivity or of the services of such persons; and (ii) damages incurred by a Party for principal office expenses (including the compensation of personnel stationed there), for losses of financing, business, and reputation, and for loss of profit.

14.17 Compliance with Law. The Parties shall comply with all applicable laws that affect the Property as are now in effect or as may hereafter be adopted or amended. In the event of any moratorium that is instituted pursuant to A.R.S. § 9-463.06, the Parties or any owner of all or any portion of the Property shall be automatically granted a waiver of the applicability of such moratorium to develop the Property pursuant to the provisions of this Agreement, as described in A.R.S. § 9 463.06.D.

14.18 City Manager's Power to Consent. City authorizes and empowers the person designated by the City as the "City Manager" to review, enter, and consent, at the sole discretion of the City Manager, to any amendments to this Agreement modifying the obligations imposed on a Party, or to enter any agreement relating directly to the matters addressed herein so long as said amendments and other agreements advance the objectives and goals of this Agreement and neither undermine nor run counter to the substantive requirements established by this Agreement.

14.19 No Liability of City Officials. No City Council member, official, representative, agent, attorney, or employee of City shall be personally liable to the Parties, or to any successor in interest to

Parties, in the event of default by City or for any amount that may become due to the Parties or their successors, or with respect to any obligation of City under the terms of this Agreement or for any amount that may become due to the Parties or their successors.

14.20 Arizona Law Provisions.

14.20.1 No member, its officer, official, agent, or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement, which is prohibited by applicable law. This Agreement shall be subject to cancellation pursuant to the provisions of A.R.S. § 38-511 relating to conflicts of interest.

14.20.2 To the extent applicable, the Parties certify that they are not currently engaged in, and agree for the duration of this Agreement that they will not engage in, a boycott, as that term is defined in A.R.S. § 35-393, of Israel.

14.20.3 To the extent applicable under A.R.S. § 41-4401, the Parties warrant compliance with all federal immigration laws and regulations that relate to their employees and contractors and their compliance with the e-verify requirements under A.R.S. § 23-214(A). The failure by a Party to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

14.20.4 To the extent applicable under A.R.S. § 35-394, each Party hereby certifies it does not currently, and for the duration of this Agreement shall not use: (a) the forced labor of ethnic Uyghurs in the People’s Republic of China, (b) any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China, and (c) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China. If a Party becomes aware during the duration of this Agreement that it is not in compliance with such certification, such Party shall take such actions as provided by applicable law, including providing the required notice to City. If City determines that a Party is not in compliance with the foregoing certification, such failure to comply with the certifications in this *Section 14.20.4* shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by City if not cured within any applicable cure period.

[NO FURTHER TEXT ON THIS PAGE – SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

CONTRACT ADMINISTRATOR:

VISTANCIA DEVELOPMENT LLC,
a Delaware limited liability company

By: Vistancia Investors LLC, a Delaware
limited liability company,
its Manager

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

VDV:

VISTANCIA DEVELOPMENT LLC,
a Delaware limited liability company

By: Vistancia Investors LLC, a Delaware
limited liability company,
its Manager

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

AMKOR:

AMKOR TECHNOLOGY ARIZONA, INC.,
an Arizona corporation:

By: _____
Name: _____
Its: _____

CITY:

CITY OF PEORIA, an Arizona municipal corporation

By: _____
Henry Darwin, City Manager

ATTEST:

Agnes Goodwine, City Clerk

APPROVED AS TO FORM:

Emily Jurmu, City Attorney

CONSENT OF ESCROW AGENT:

**[TO BE EXECUTED BY ESCROW AGENT AND FEES DUE TO ESCROW AGENT
PURSUANT TO SECTION 7.6 ARE TO BE PAID WHEN THE FIRST DRAW REQUEST IS
FUNDED]**

Escrow Agent has executed this Agreement as of the day and year first above written for the sole purpose of accepting the responsibilities of Escrow Agent set out in *Articles 6 and 7* and *Section 14.8.1*.

ESCROW AGENT:

First American Title Insurance Company, a Nebraska corporation

By: _____
Name: _____
Its: _____
File No.: _____

LIST OF EXHIBITS

Exhibit A-1:	Legal Description of VDV Parcel
Exhibit A-2:	Legal Description of Amkor Parcel
Exhibit A-3:	Depiction of Commercial Core
Exhibit B-1:	Description of City Improvements
Exhibit B-2:	Description of VDV Improvements
Exhibit B-3:	Description of Amkor Modifications
Exhibit B-4:	Existing Utility Tie-In Locations
Exhibit C:	Schedule of Plans and Specifications
Exhibit D:	Budget
Exhibit E:	Allocation Exhibit
Exhibit F:	Construction Schedule
Exhibit G:	Form of Addendum to Joint Development Agreement
Exhibit H:	Insurance Requirements
Exhibit I:	Escrow Agent Printed Instructions and Fee Schedule

EXHIBIT A-1

LEGAL DESCRIPTION OF VDV PARCEL

PARCELS D-11/12, D-13/14, D-17, D-18, D-20, D-21, D-22 OF RE-PLAT FOR "VISTANCIA VILLAGE D SOUTH, PARCELS D-11/12, D-13/14, D-15/16, D-17, D-18, D-19, D-20, D-21 & D-22" ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA RECORDED IN BOOK 1793 OF MAPS, PAGE 45.

EXHIBIT A-2

LEGAL DESCRIPTION OF AMKOR PARCEL

(see attached)

LEGAL DESCRIPTION FOR
VISTANCIA VILLAGE D SOUTH, PARCELS D-15 & D-16

All that certain lot, tract, or parcel of land, situated in a portion of Section 25, Township 5 North, Range 1 West and Section 30, Township 5 North, Range 1 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, and being more completely described as follows, to-wit:

COMMENCING at a found GLO monument on pipe for the Southeast corner of said Section 25, from which a found GLO monument on 2" pipe for the South Quarter corner of said Section 25 bears North 89 deg. 47 min. 14 sec. West (Basis of Bearings) – 2,565.10 feet, said point also being the most southerly Southeast corner of Parcel D6 as shown on the Master Plat of Vistancia Village D South recorded in Book 1498 of Maps, Page 14, of Maricopa County Records (MCR);

THENCE North 89 deg. 47 min. 14 sec. West along the South line of the Southeast Quarter of said Section 25, same being the South line of said Parcel D6, a distance of 2,108.38 feet;

THENCE North 00 deg. 12 min. 46 sec. East departing said South lines, a distance of 1,634.39 feet to the **TRUE POINT OF BEGINNING**;

THENCE North 22 deg. 13 min. 05 sec. West, a distance of 42.43 feet;

THENCE North 22 deg. 46 min. 55 sec. East, a distance of 114.66 feet to a Point of Curvature of a circular curve to the right, having a radius of 965.00 feet, a central angle of 08 deg. 31 min. 12 sec., and being subtended by a chord which bears North 27 deg. 02 min. 31 sec. East - 143.37 feet;

THENCE in a northeasterly direction along said curve to the right, a distance of 143.50 feet;

THENCE North 31 deg. 18 min. 07 sec. East tangent to said curve, a distance of 1,059.97 feet;

THENCE North 76 deg. 18 min. 07 sec. East, a distance of 42.43 feet;

THENCE South 58 deg. 41 min. 53 sec. East, a distance of 394.70 feet to a Point of Curvature of a circular curve to the left, having a radius of 1,070.00 feet, a central angle of 08 deg. 27 min. 30 sec., and being subtended by a chord which bears South 62 deg. 55 min. 38 sec. East - 157.82 feet;

THENCE in a southeasterly direction along said curve to the left, a distance of 157.96 feet;

THENCE South 67 deg. 09 min. 23 sec. East tangent to said curve, a distance of 1,064.24 feet;

THENCE South 22 deg. 09 min. 23 sec. East, a distance of 42.43 feet;

THENCE South 22 deg. 50 min. 37 sec. West, a distance of 791.97 feet to a Point of Curvature of a circular curve to the right, having a radius of 635.00 feet, a central angle of 61 deg. 46 min. 14 sec., and being subtended by a chord which bears South 53 deg. 43 min. 44 sec. West - 651.92 feet;

THENCE in a southwesterly direction along said curve to the right, a distance of 684.59 feet;

THENCE South 84 deg. 36 min. 51 sec. West tangent to said curve, a distance of 511.50 feet;

THENCE North 52 deg. 23 min. 23 sec. West, a distance of 43.88 feet to a Point of Curvature of a non-tangent circular curve to the left, having a radius of 715.00 feet, a central angle of 56 deg. 37 min. 20 sec., and being subtended by a chord which bears North 38 deg. 54 min. 25 sec. West - 678.19 feet;

THENCE in a northwesterly direction along said curve to the left, a distance of 706.59 feet;

THENCE North 67 deg. 13 min. 05 sec. West tangent to said curve, a distance of 387.22 feet to the **POINT OF BEGINNING**, containing 2,452,934 square feet or 56.312 acres of land, more or less.

EXHIBIT A-3

DEPICTION OF COMMERCIAL CORE

(see attached)

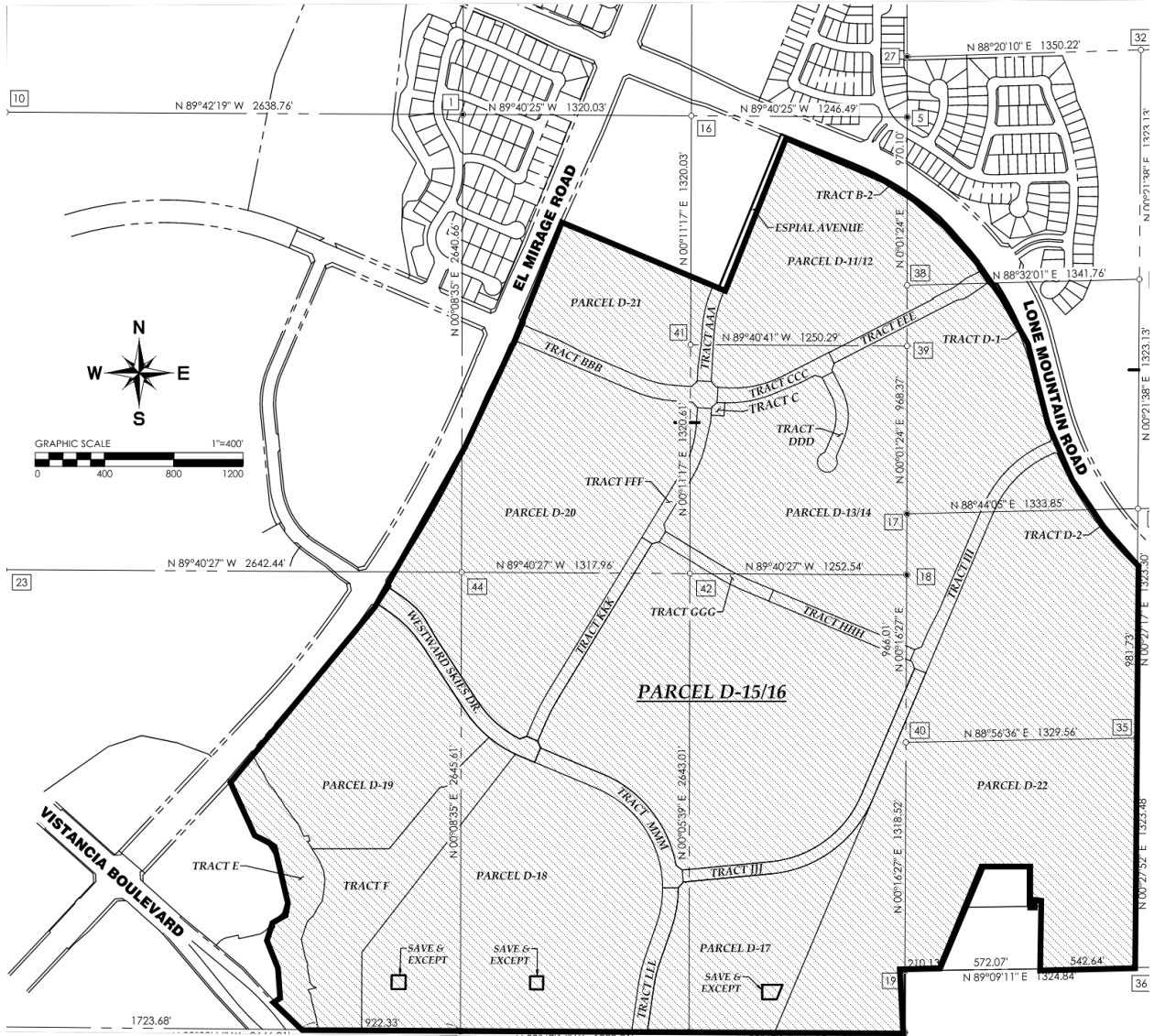


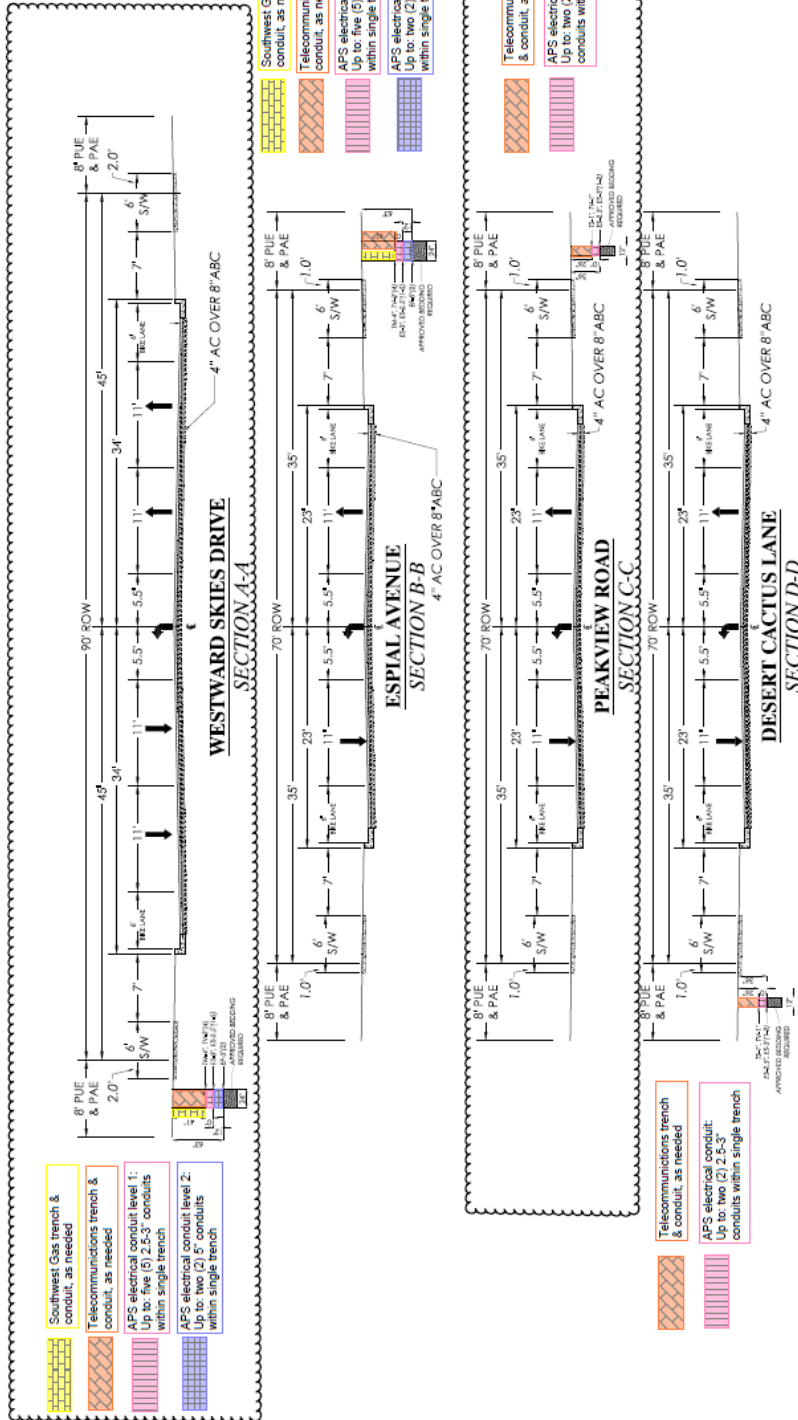
EXHIBIT B-1

DESCRIPTION OF CITY IMPROVEMENTS

Location	Approximate Distance
<p>Peakview Road Phase 1 (one-median-one)² From Espial Ave, east Approximately 884 Feet</p> <p>Improvements consist of grading, drainage facilities, wet utilities as required per the Vistancia Utility Master Plan 2023 Amendment, dated June 20, 2023 and depicted on Exhibit B-1 Part 2, which consists of; 12” water line, and dry utilities as depicted in Exhibit B-1 Part 2. Surface improvements consist of concrete, paving, signing and striping, streetlights, one-way stop control, multi-way stop control, or traffic-circle at intersections¹, and landscape.</p>	884 linear feet
<p>Westward Skies Dr Ph 2 (two-median-two) From Espial Avenue, East to Desert Cactus Lane</p> <p>Improvements consist of grading, drainage facilities, wet utilities as required per the Vistancia Utility Master Plan 2023 Amendment, dated June 20, 2023 and depicted on Exhibit B-1 Part 2, which consists of; 16” water line, existing 27” sewer line, and dry utilities, plus addition of approximately 453 lineal feet⁺ of 16” reclaimed water line as depicted in Exhibit B-1 Part 2. Surface improvements consist of concrete, paving, signing and striping, streetlights, one-way stop control, multi-way stop control, or traffic signal¹ Desert Cactus to Westward Skies, and landscape.</p>	1171 linear feet ⁺ Length of Reclaimed Water Line based on estimate from Amkor, length to be determined
<p>Espial Avenue Ph 3 (one-median-one) From Revel Way, South to Peakview Road</p> <p>Upsize reclaimed water line from 8” to 16”.</p>	855 linear feet
<p>Espial Avenue Ph 4 (one-median-one) From Peakview Road, South to Westward Skies Dr</p> <p>Upsize reclaimed water line from 8” to 16”.</p>	1410 linear feet

¹ Final intersection improvement and/or traffic control device shall be determined based on the analysis by and recommendation of South-West Traffic Engineering.

² Intersection configurations at each segment end of Peakview Rd assume minimum one (1) egress driveway each from the project site to Espial Rd and to Desert Cactus Lane as part of Phase 1 construction.

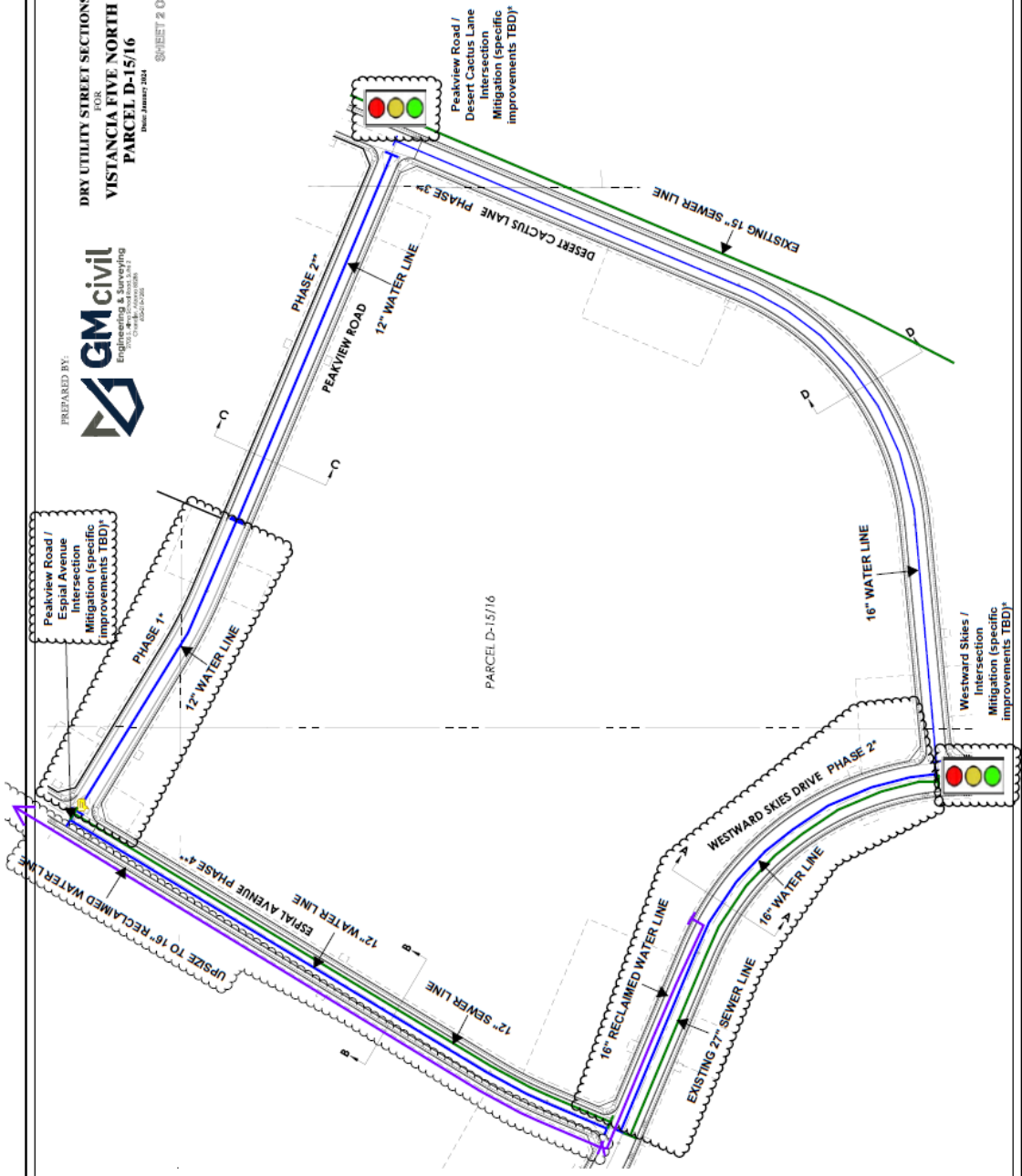


DRY UTILITY STREET SECTIONS
FOR
VISTANCIA FIVE NORTH
PARCEL D-15/16

DATE: JANUARY 2024
SHEET 2 OF 2



PREPARED BY:



* - City Improvement
** - VDV Improvement

EXHIBIT B-2

DESCRIPTION OF VDV IMPROVEMENTS

Location	Approximate Distance
<p>Peakview Road Phase 2 (one-median-one)² From eastern end of Peakview Road Phase 1, east to Desert Cactus Lane.</p> <p>Improvements consist of grading, drainage facilities, wet utilities as required per the Vistancia Utility Master Plan 2023 Amendment, dated June 20, 2023 and depicted on Exhibit B-2 Part 2, which consists of; 12” water line, and dry utilities as depicted in Exhibit B-2 Part 2. Surface improvements consist of concrete, paving, signing and striping, streetlights, one-way stop under the control of a stop sign at intersection¹, and landscape.</p>	858 linear feet
<p>Espial Avenue Ph 3 (one-median-one) From Revel Way, South to Peakview Road</p> <p>Install 8” reclaimed water line.</p>	855 linear feet
<p>Espial Ave Phase 4 (one-median-one) From Peakview Road South to Westward Skies Drive</p> <p>Improvements consist of grading, drainage facilities, wet utilities as required per the Vistancia Utility Master Plan 2023 Amendment, dated June 20, 2023 and depicted on Exhibit B-2 Part 2, which consists of; 12” water line, 12” sewer line, 8” reclaimed water line, and dry utilities as depicted in Exhibit B-2 Part 2. Surface improvements consist of concrete, paving, signing and striping, streetlights, and landscape.</p>	1410 linear feet
<p>Desert Cactus Lane Phase 3 (one-median-one) Peakview Road, south to Westward Skies Drive</p> <p>Improvements consist of grading, drainage facilities, wet utilities as required per the Vistancia Utility Master Plan 2023 Amendment, dated June 20, 2023 and depicted on Exhibit B-2 Part 2, which consists of; 16” water line, existing 15” sewer line located within the powerline corridor, and dry utilities as depicted in Exhibit B-2 Part 2. Surface improvements consist of concrete, paving, signing and striping, streetlights, and landscape.</p>	2112 linear feet

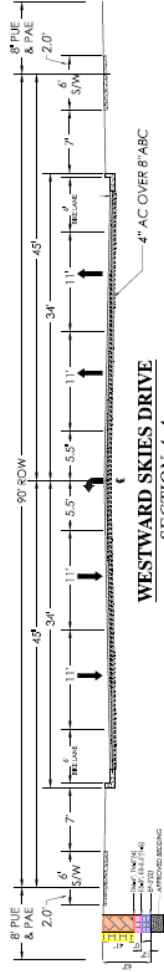
- ¹ Should Amkor proceed with Phase 2 expansion and any subsequent TIA’s indicate additional mitigation measures warranted at Peakview Rd and Desert Cactus Lane, the mitigation will be considered City Improvements or Amkor Modifications, and Amkor and City shall negotiate the cost of such improvements in good faith.

² Intersection configurations at each segment end of Peakview Rd assume minimum one (1) egress driveway each from the project site to Espial Rd and to Desert Cactus Lane as part of Phase 1 construction.

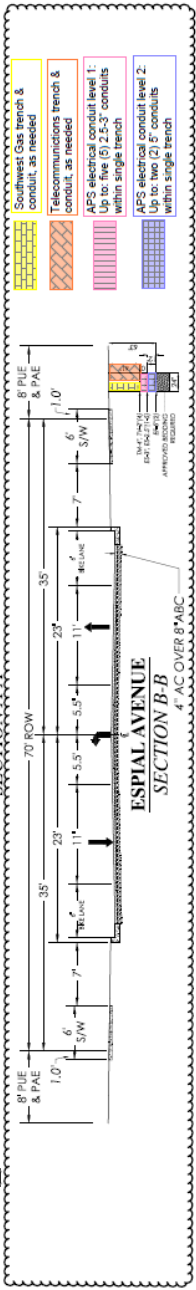


PREPARED BY:

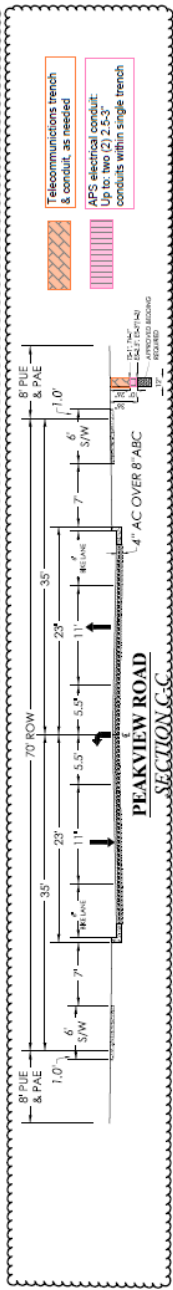
- Southwest Gas trench & conduit, as needed
- Telecommunications trench & conduit, as needed
- APS electrical conduit level 1: Up to five (5) 2.5-3" conduits within single trench
- APS electrical conduit level 2: Up to two (2) 5" conduits within single trench



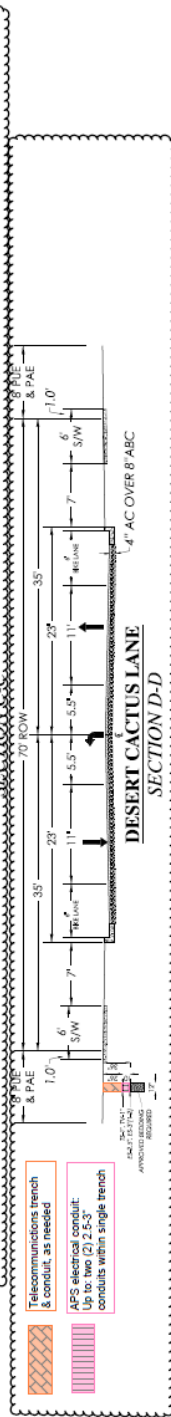
SECTION A-A
WESTWARD SKIES DRIVE



SECTION B-B
ESPIAL AVENUE



SECTION C-C
PEAKVIEW ROAD



SECTION D-D
DESERT CACTUS LANE

- Southwest Gas trench & conduit, as needed
- Telecommunications trench & conduit, as needed
- APS electrical conduit level 1: Up to five (5) 2.5-3" conduits within single trench
- APS electrical conduit level 2: Up to two (2) 5" conduits within single trench

- Telecommunications trench & conduit, as needed
- APS electrical conduit: Up to two (2) 2.5-3" conduits within single trench

- Telecommunications trench & conduit, as needed
- APS electrical conduit: Up to two (2) 2.5-3" conduits within single trench

EXHIBIT B-3

DESCRIPTION OF LONE MOUNTAIN AMKOR IMPROVEMENTS

Location	Approximate Distance
Lone Mountain Parkway¹	<p>Given the uncertainty of future traffic patterns, the City will monitor Level of Service (LOS) and queuing of the left turn movement from westbound Lone Mountain Parkway to southbound Desert Cactus Lane at 30-day, 90-day and 150-day intervals from issuance of Certificate of Occupancy for Phase 1 of the improvements to be constructed on the Amkor Parcel.</p> <p>If such monitoring indicates (i) the westbound to southbound left turn movement does not maintain a Level of Service of “D” or better at all times or (ii) queueing beyond the existing westbound left turn lane based on applicable traffic standards, the City may require reasonable roadway improvements or modifications to Lone Mountain Parkway, including but not limited to modification to the center median to provide increased left turn lane length based on observed queues.</p>

¹ Should City cause expansion of Lone Mountain Parkway from two-median-two configuration to three-median-three configuration prior to Amkor site generated traffic causing degradation of LOS to Level “D” or worse or queuing exceeding existing turn lane capacity then the cost of such left turn lane improvements shall be consolidated into the City’s larger project.

EXHIBIT B-4

EXISTING UTILITY TIE-IN LOCATIONS

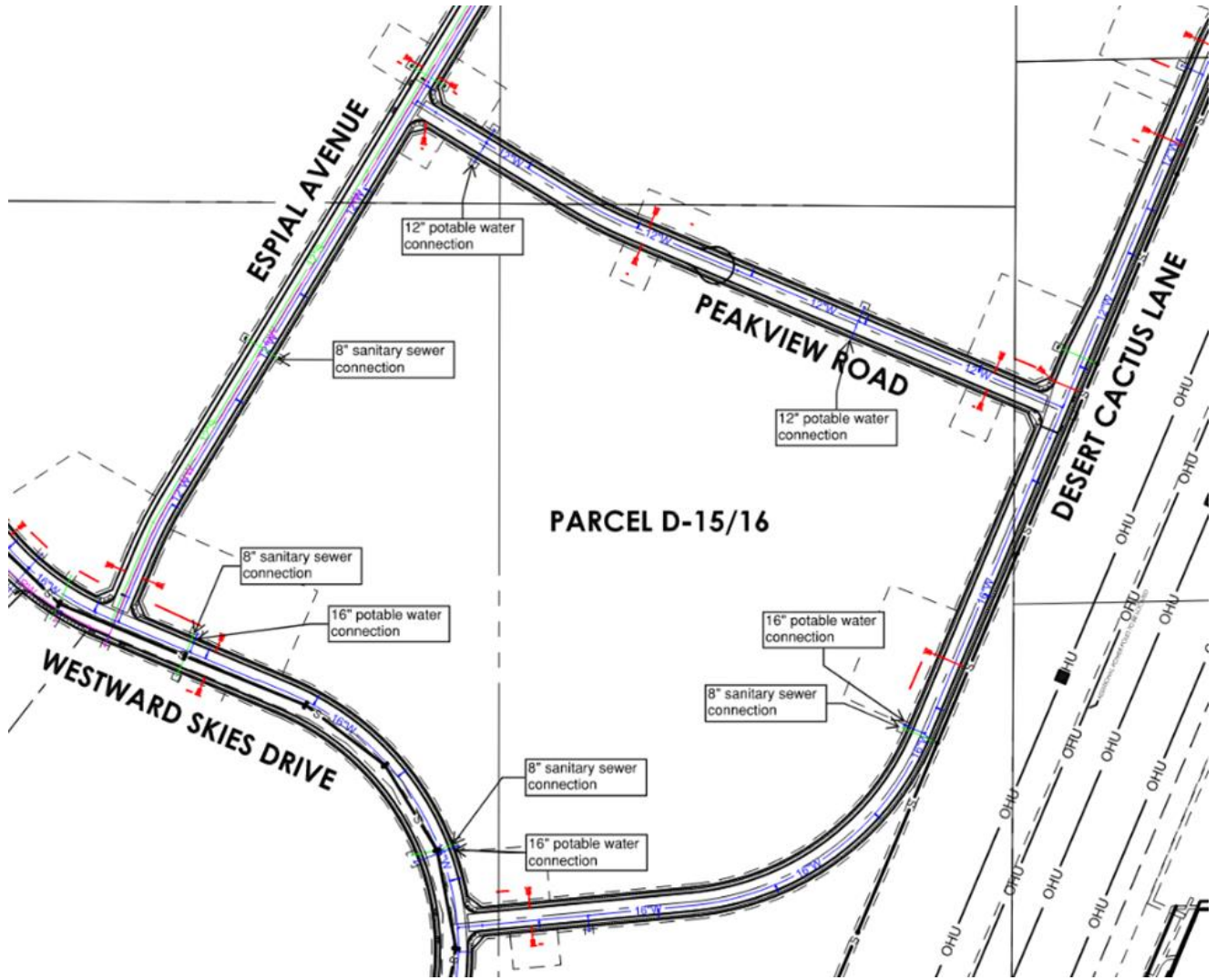


EXHIBIT C

SCHEDULE OF PLANS AND SPECIFICATIONS

Description of Approved Plans to be inserted once they have been approved.

EXHIBIT D

BUDGET

(see attached)

SUMMARY OF IMPROVEMENT COSTS
(for detail see individual cost estimates attached)

CITY IMPROVEMENTS

	Total Cost (Including 10% Congingency - except where noted)
Peakview Road Phase 1	\$ 1,418,017
Westward Skies Drive Phase 2	\$ 2,898,323
ESTIMATED Cost to include 16" Reclaimed Waterline in Westward Skies Dr Ph 2^	\$ 160,838
ESTIMATED Cost for upsize to 16" Reclaimed Waterline in Espial Ave^	\$ 423,219
ESTIMATED Peakview/Espial and Westward Skies/Desert Cactus Future Intersection Improvements^	\$ 1,100,000
Peakview / Desert Cactus Future Intersection Improvements	TBD
Total Initial Budget for City Improvements:	\$ 6,000,397

VDV IMPROVEMENTS

	Total Cost (Including 10% Congingency - except where noted)
Peakview Road Phase 2	\$ 1,496,383
Espial Avenue Phase 4	\$ 2,676,328
Desert Cactus Lane Phase 3	\$ 2,949,144
ESTIMATED Cost allocation for 8" Reclaimed Waterline in Espial Ave^	\$ 380,254
Total Initial Budget for VDV Improvements:	\$ 7,502,109

AMKOR MODIFICATIONS

	Total Cost (Including 10% Congingency - except where noted)
ESTIMATED Cost for Lone Mountain Parkway Turn Lane Improvements^	\$ 2,100,000
Peakview / Desert Cactus Future Intersection Improvements	TBD
Total Initial Budget for Amkor Modifications:	\$ 2,100,000

^ Improvements have not been designed; costs are ESTIMATES only and do not include Contingency



Description of Work	Peakview Ph 1
I SOFT COSTS	
Engineering & Fees	\$ 500
Permits & Fees	\$ 54,363
Eng. - Staking	\$ 20,246
Construction Inspection & Testing	\$ 13,906
II HARD COSTS	
Plant Salvage	\$ -
Clear & Grubb	\$ 6,400
SWPPP Implementation/Maint.	\$ 11,225
Dust Control	\$ 20,598
Grading	\$ 104,141
Sewer	\$ 25,000
Water - Tax Exempt Materials	\$ 97,610
Water	\$ 124,188
Storm Drain - Tax Exempt Materials	\$ 6,650
Storm Drain	\$ 19,815
Dry Utilities	\$ 54,600
Street Light	\$ 36,700
Concrete	\$ 191,032
Paving	\$ 230,051
Paving & Concrete Repairs	\$ 20,000
Landscaping	\$ 133,260
Property Maintenance	\$ 5,000
Pre-Construction Services	\$ -
General Conditions	\$ -
Warranty	\$ 35,000
Bonds	\$ 31,838
TOTAL SOFT COSTS	\$ 89,015
TOTAL HARD COSTS	\$ 1,153,108
CONSTRUCTION MANAGEMENT FEE (5%)	\$ -
CONTINGENCY (10%)	\$ 124,212
SALES TAX (4.095%)	\$ 51,682
Total Budget	\$ 1,418,017



Description of Work	Westward Skies Ph 2
I SOFT COSTS	
Engineering & Fees	\$ 500
Permits & Fees	\$ 90,514
Eng. - Staking	\$ 32,200
Construction Inspection & Testing	\$ 22,117
II HARD COSTS	
Plant Salvage	\$ -
Clear & Grubb	\$ 8,000
SWPPP Implementation/Maint.	\$ 12,225
Dust Control	\$ 36,864
Grading	\$ 184,484
Sewer	\$ 67,000
Water - Tax Exempt Materials	\$ 227,260
Water	\$ 274,138
Storm Drain - Tax Exempt Materials	\$ 3,950
Storm Drain	\$ 12,795
Dry Utilities	\$ 364,000
Street Light	\$ 96,550
Concrete	\$ 277,516
Paving	\$ 461,856
Paving & Concrete Repairs	\$ 25,000
Landscaping	\$ 234,648
Property Maintenance	\$ 5,000
Pre-Construction Services	\$ -
General Conditions	\$ -
Warranty	\$ 35,000
Bonds	\$ 67,839
TOTAL SOFT COSTS	\$ 145,331
TOTAL HARD COSTS	\$ 2,394,125
CONSTRUCTION MANAGEMENT FEE (5%)	\$ -
CONTINGENCY (10%)	\$ 253,946
SALES TAX (4.095%)	\$ 104,922
Total Budget	\$ 2,898,323



Description of Work	Peakview Ph 2
I SOFT COSTS	
Engineering & Fees	\$ 500
Permits & Fees	\$ 56,098
Eng. - Staking	\$ 25,121
Construction Inspection & Testing	\$ 17,255
II HARD COSTS	
Plant Salvage	\$ -
Clear & Grubb	\$ 8,000
SWPPP Implementation/Maint.	\$ 12,225
Dust Control	\$ 15,846
Grading	\$ 90,483
Sewer	\$ 25,000
Water - Tax Exempt Materials	\$ 125,790
Water	\$ 141,532
Storm Drain - Tax Exempt Materials	\$ 4,600
Storm Drain	\$ 13,455
Dry Utilities	\$ 69,000
Street Light	\$ 45,250
Concrete	\$ 197,191
Paving	\$ 220,974
Paving & Concrete Repairs	\$ 25,000
Landscaping	\$ 144,753
Property Maintenance	\$ 5,000
Pre-Construction Services	\$ -
General Conditions	\$ -
Warranty	\$ 35,000
Bonds	\$ 33,423
TOTAL SOFT COSTS	\$ 98,974
TOTAL HARD COSTS	\$ 1,212,522
CONSTRUCTION MANAGEMENT FEE (5%)	\$ -
CONTINGENCY (10%)	\$ 131,150
SALES TAX (4.095%)	\$ 53,737
Total Budget	\$ 1,496,383



Description of Work	Espial Ave Ph 4
I SOFT COSTS	
Engineering & Fees	\$ 500
Permits & Fees	\$ 70,348
Eng. - Staking	\$ 34,007
Construction Inspection & Testing	\$ 23,358
II HARD COSTS	
Plant Salvage	\$ -
Clear & Grubb	\$ 11,200
SWPPP Implementation/Maint.	\$ 14,225
Dust Control	\$ 34,663
Grading	\$ 170,725
Sewer	\$ 385,238
Water - Tax Exempt Materials	\$ 214,100
Water	\$ 250,635
Storm Drain - Tax Exempt Materials	\$ -
Storm Drain	\$ -
Dry Utilities	\$ 99,750
Street Light	\$ 62,350
Concrete	\$ 251,416
Paving	\$ 339,621
Paving & Concrete Repairs	\$ 25,000
Landscaping	\$ 255,162
Property Maintenance	\$ 5,000
Pre-Construction Services	\$ -
General Conditions	\$ -
Warranty	\$ 35,000
Bonds	\$ 62,673
TOTAL SOFT COSTS	\$ 128,213
TOTAL HARD COSTS	\$ 2,216,757
CONSTRUCTION MANAGEMENT FEE (5%)	\$ -
CONTINGENCY (10%)	\$ 234,497
SALES TAX (4.095%)	\$ 96,862
Total Budget	\$ 2,676,328



Description of Work	Desert Cactus Ph 3
I SOFT COSTS	
Engineering & Fees	\$ 500
Permits & Fees	\$ 76,322
Eng. - Staking	\$ 51,579
Construction Inspection & Testing	\$ 35,428
II HARD COSTS	
Plant Salvage	\$ -
Clear & Grubb	\$ 16,000
SWPPP Implementation/Maint.	\$ 17,225
Dust Control	\$ 38,004
Grading	\$ 198,650
Sewer	\$ 44,350
Water - Tax Exempt Materials	\$ 283,660
Water	\$ 399,108
Storm Drain - Tax Exempt Materials	\$ -
Storm Drain	\$ -
Dry Utilities	\$ 114,750
Street Light	\$ 88,000
Concrete	\$ 361,953
Paving	\$ 483,234
Paving & Concrete Repairs	\$ 25,000
Landscaping	\$ 243,304
Property Maintenance	\$ 5,000
Pre-Construction Services	\$ -
General Conditions	\$ -
Warranty	\$ 35,000
Bonds	\$ 68,647
TOTAL SOFT COSTS	\$ 163,829
TOTAL HARD COSTS	\$ 2,421,886
CONSTRUCTION MANAGEMENT FEE (5%)	\$ -
CONTINGENCY (10%)	\$ 258,571
SALES TAX (4.095%)	\$ 104,858
Total Budget	\$ 2,949,144

EXHIBIT E

ALLOCATION EXHIBIT

Infrastructure Improvements	Allocable Share*	
City Improvements	City	100%
VDV Improvements	VDV	100%
Amkor Modifications	Amkor	100%

* The Allocable Share is subject to adjustment as set forth in *Section 5.2*.

EXHIBIT F

CONSTRUCTION SCHEDULE

Milestone	Milestone Date VDV Improvements	Milestone Date City Improvements
<u>Grading Commencement</u>	2 months after receipt of applicable permits from the City	3 months after receipt of applicable permits from the City
<u>Wet Utility Installation Completion</u>	5 months after receipt of applicable permits from the City	6 months after receipt of applicable permits from the City
<u>Dry Utility Installation Completion</u>	8 months after receipt of applicable permits from the City	9 months after receipt of applicable permits from the City
<u>Concrete Installation Completion</u>	10 months after receipt of applicable permits from the City	11 months after receipt of applicable permits from the City
<u>Paving Installation Completion</u>	11 months after receipt of applicable permits from the City	12 months after receipt of applicable permits from the City
<u>Landscape Installation Completion</u>	12 months after receipt of applicable permits from the City	13 months after receipt of applicable permits from the City
<u>Substantial Completion of all VDV Improvements or City Improvements, as applicable</u>	12 months after receipt of applicable permits from the City, but in no event later than 18 months following the date Amkor has Commenced Construction of the improvements to be constructed by Amkor on the Amkor Parcel ²	13 months after receipt of applicable permits from the City but in no event later than 18 months following the date Amkor has Commenced Construction of the improvements to be constructed by Amkor on the Amkor Parcel ¹

² For purposes of this Exhibit F, Commenced Construction” means City shall have issued a building permit for the first structure on the Amkor Parcel, Amkor shall have signed a construction contract with a general contractor for construction of such improvements, and the general contractor or one or more of its subcontractors shall have mobilized on site.

EXHIBIT G

ADDENDUM TO JOINT DEVELOPMENT AGREEMENT

(see attached)

ADDENDUM TO JOINT DEVELOPMENT AGREEMENT

THIS ADDENDUM TO JOINT DEVELOPMENT AGREEMENT (the “**Addendum**”) is executed as of the ____ day of _____, 20__ by _____, a(n) _____.

1. _____, a(n) _____, hereby joins in and assumes all of the rights and obligations of an “Owner” under that certain Joint Development Agreement, dated _____, 20__, by and among _____ [X], [Y], [Z] [INSERT NAMES OF OTHER OWNER(S) SIGNING THIS AGREEMENT] _____, _____, a[n] _____ (“**Contract Administrator**”), _____, a[n] _____ (“**Escrow Agent**”), and [INSERT NAME(S) OF ANY OWNER(S) WHO SUBSEQUENTLY SIGNED AN ADDENDUM] _____ (the “**Joint Development Agreement**”), solely with respect to the real property described on **Exhibit A** attached hereto and incorporated herein by this reference (the “**Property**”), and only to the extent arising from and after the date of this Addendum. Capitalized terms used in this Addendum without definition shall have the meanings assigned to such terms in the Joint Development Agreement.

IF PARTIAL ASSIGNMENT ONLY ADD:

2. *Partial Assignment.* The new Owner and existing Owner acknowledge that the Property constitutes only a portion of existing Owner’s Individual Parcel, and that the remaining portion of the Individual Parcel is being retained by existing Owner (“**Retained Parcel**”). Accordingly, pursuant to the Joint Development Agreement, the Property’s Allocable Share is ____% and the Retained Parcel’s Allocable Share is ____% and the Property and the Retained Parcel shall each be considered separate Individual Parcels.

3. For purposes of **Article 8** under the Joint Development Agreement, Owner’s Designated Representative is _____.

4. For purposes of **Article 10** under the Joint Development Agreement, Owner’s notice address is:

Attention: _____
Telephone: (____) _____

5. The Joint Development Agreement, as supplemented hereby, is assumed, reaffirmed and constitutes the binding obligation of the undersigned.

a(n) _____

By: _____
Name: _____
Its: _____

EXHIBIT H

AMOUNTS AND TYPES OF INSURANCE COVERAGE

Contractor will maintain the amounts and types of insurance described below and shall cause its subcontractors to maintain such coverage.

- A. Commercial General Liability Insurance coverage including premises, operations, products, completed operations, and contractual liability coverage in an amount no less than \$1,000,000 per occurrence, \$1,000,000 personal injury and advertising injury, \$2,000,000 Products and Completed Operations Aggregate and \$2,000,000 General Aggregate. The preferred form is CG0001. Coverage shall include:
1. Waiver of Subrogation to Contract Administrator, City and each Owner and any related or affiliated entities, partners, subsidiaries, partnerships, joint ventures, and limited liability companies and their respective directors, officers, partners, agents, employees, volunteers, members, and shareholders.
 2. Policy to include liability arising out of subcontractors.
 3. Deletion of any limitation or exclusion on coverage for bodily injury or property damage arising out of subsidence or soil or earth movement.
 4. A provision that the insurance company has a duty to defend all insureds under the policy and a provision that defense costs are paid in addition to and do not deplete any of the policy limits.
 5. Provision that insurance policy shall be primary and noncontributory.
 6. At each Owner's election, the insurance required by this **Section A** may be provided under a blanket policy subject to Contract Administrator approval.
- B. Automobile Liability Insurance of all motor vehicles operated by or for the contractor, including owned, hired, and non-owned autos, with minimum Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 for each occurrence.
- C. Workers Compensation Insurance to cover statutory limits of Workers Compensation Laws of the state in which the work is being performed and state employee is hired. Workers Compensation coverage shall extend to any individual, including owners, directors, officers, and employees who will be performing the work under this agreement regardless of any ability under state law to reject workers compensation coverage. This insurance shall include Employer's Liability insurance with a limit of no less than \$1,000,000 for each occurrence. This insurance shall include a Waiver of Subrogation Endorsement waiving the carrier's right of subrogation to Contract Administrator, and each Owner there affiliated entities, parents, subsidiaries, partnerships, joint ventures, and limited liability companies and their respective directors, officers, partners, agents, employees, volunteers, members, and shareholders. If any class of employees engaged in the Work is not protected by the Workers Compensation stature, subcontractor shall provide special insurance for the protection of such employees not otherwise protected, which is similar to the coverage required above and otherwise complies with the requirements of this Exhibit.
- D. Umbrella/Excess Liability Insurance providing excess liability coverage with respect to the commercial general liability, business automobile liability and employers liability policies

described above, on an occurrence basis with limits of at least \$5,000,000 per occurrence and \$5,000,000 general aggregate and products/completed operations aggregate. Such insurance shall be written as a follow form or with a form that provides coverage that is at least as broad as the underlying insurance policies.

The following general requirements shall apply to all insurance policies described in this Exhibit.

- A. All liability insurance policies, except professional liability and workers compensation insurance, shall be written on an occurrence basis.
- B. All insurance policies required hereunder except Workers Compensation shall: (i) name Contract Administrator and each Owner and any related or affiliated entities, parents, subsidiaries, partnerships, joint ventures, and limited liability companies and their respective directors, officers, partners, agents, employees, volunteers, members, and shareholders as “additional insured” utilizing an ISO endorsement form CG2010 (11/85) (if available and, if not available, the current standard form of such endorsement) Additional Insured - Owners, Lessees, or Contractors (Form B); (ii) be issued by an insurer and shall be in a form approved by Contract Administrator; and (iii) provide that such policies shall not be canceled or not renewed, nor shall any material change be made to the policy without at least thirty (30) days prior written notice to Contract Administrator and each Owner.
- C. The liability insurance policies shall provide that such insurance shall be primary on a non-contributory basis.
- D. All insurers providing the coverage specified in this Section shall be rated A- or better than Best’s.
- E. Subcontractors shall provide the contractor with certificates evidencing the insurance coverage required by this Exhibit in the certificate form included in this Exhibit, prior to the commencement of any activity or operation which could give rise to a loss to be covered by such insurance. Replacement certificates shall be sent to Contract, as policies are renewed, replaced, or modified.
- F. The foregoing insurance coverage must be maintained in force at all times during the construction of the Infrastructure Improvements and the Commercial General Liability Insurance (for Products and Completed Operations) is to be maintained for 10 years following final completion of the Infrastructure Improvements.
- G. No exclusion or limitations shall apply to the additional insureds which do not apply to the named insured.
- H. There shall be no exclusion for residential work.

EXHIBIT I

ESCROW AGENT PRINTED INSTRUCTIONS AND FEE SCHEDULE

(see attached)

EXHIBIT "1"
STANDARD CONDITIONS OF ESCROW
(HOLDBACK / JDA ACCOUNT)

RECITALS:

- A. This Escrow Agreement is made and executed for the sole benefit of the parties hereto and Escrow Agent. It is the intention of the parties hereto that no materialman or supplier concerned with the construction of improvements upon the property shall be or shall be considered to be a third party Beneficiary, either incidentally or directly, of this Escrow Agreement.
- B. The parties hereto understand that the Escrow Agent is acting as a disbursing/holding agent whose duties may include servicing draw requests, managing Letters of Credit, managing interest-bearing accounts and holding documents.
- C. Notwithstanding anything in this Agreement to the contrary, Escrow Agent shall not be bound by any term or provision in an agreement to which it is not a party.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, the parties hereto agree as follows;

AGREEMENT

1. **Disbursements:** Escrow Agent shall disburse funds, subject to the terms of the Escrow Agreement (Holdback / JDA), in accordance with the written authorization executed by the Parties hereto or their Designated Agent. Note: Escrow Agent may require mutual instruction from all Parties.
2. **Requests of Accounting:** Upon request of any of the Parties hereto a copy of Escrow Agent's record of accounting for funds received and disbursed, on Escrow Agent's form, shall be furnished to the parties hereto.
3. **Indemnification:** The Parties hereto hereby indemnify and promise to hold harmless Escrow Agent against but not limited to all costs, damages, attorneys fees, expenses and liabilities which Escrow Agent may incur or sustain in connection with the Escrow Agreement (Holdback / JDA), or any court action arising therefrom, and will pay the same upon demand, except claims arising out of Escrow Agent's negligence, bad faith, recklessness, intentional misconduct or breach of the Agreement.
4. **Conflicting Demands:** If conflicting demands are made upon Escrow Agent, Escrow Agent may hold any money or documents subject to such conflicting demands until the rights of the Parties making such conflicting demands be determined by court action. Escrow Agent may interplead said money or documents, whereupon Escrow Agent shall be fully relieved of any and all liability in regard to such demands and the Parties hereunder.
5. **Specimen Signatures:** The Parties hereto shall furnish to Escrow Agent such information as may be required by Escrow Agent setting forth the names and specimen signatures of their Designated Agent whose signature Escrow Agent may accept.

6. **Instruction to Escrow Agent:** This Agreement shall constitute joint instructions to Escrow Agent from the Parties and the amounts deposited shall be disbursed and dealt with by Escrow Agent in strict accordance with the following:
 - a. **Money Market Account:** Escrow Agent may deposit or invest the amounts deposited in a money market account reasonably acceptable to Parties (provided the deposited amounts are available for immediate withdrawal, as and when required under the Agreement). Interest monies earned on such Money Market Account(s) will be added to the Escrow Account funds to be utilized for costs and fees related to the Agreement. It is understood by the Parties that the Escrow Agent is not providing management nor oversight functions with respect to a payment made on behalf of another, nor has significant economic interest in connection with the payment; and therefore, would not be responsible for issuing information returns to the IRS under IRC section 6041 and/or Rev. Rul. 73-90.
 - b. **Limitation of Liability:** Notwithstanding any other provisions of this Escrow Agreement, Escrow Agent has no responsibility nor liability for completion of improvements to the Property; or to guarantee that the funds deposited into escrow are sufficient to complete the improvements; or for any mechanic's or materialman's liens that may be filed except to the extent that Escrow Agent fails to properly disburse monies pursuant to these instructions. Escrow Agent shall not be liable for any action taken or omitted by it, except for its own negligence, bad faith or willful misconduct; nor shall it be liable or responsible for the validity, enforceability or sufficiency of any document furnished to it pursuant to any provision thereof; nor shall it be responsible for any representation or statements made in any of those documents. Any disbursement by Escrow Agent of any advance shall not be deemed to be approval by Escrow Agent of any work performed or any materials furnished with respect thereto or a representation by Escrow Agent that the unused portion of the total cumulative sum is sufficient to pay remaining construction costs.
 - c. **Advice of Counsel:** Escrow Agent shall be entitled to rely upon advice of counsel concerning legal matters and upon any document or notice delivered to it hereunder which it believes to be genuine or to have been presented by a proper person.
 - d. **Compensation:** Escrow Agent shall be entitled to receive compensation for its services hereunder in accordance with the rate schedule attached hereto as Exhibit "2" and is incorporated herein by this reference. Escrow Agent is hereby authorized to deduct from first monies available its fees. **Note: A reasonable charge will be made for extraordinary services rendered.**
 7. **Cancellation:** This Escrow Agreement may be canceled only upon written approval of all Parties hereto except as otherwise provided in the Escrow Agreement.
 - a. The Escrow Agent's action upon cancellation shall consist of final disbursement of funds upon written direction of the Parties or by court action, whichever is applicable.
 8. **Standard Conditions of Escrow Controls:** To the extent of any conflicts between the Escrow Agreement and the Standard Conditions of Escrow concerning the obligations of the Escrow Agent, the provisions of this Standard Conditions of Escrow shall control.
 9. **Resignation:** Escrow Agent has the right to resign upon written notice thereof mailed to the parties thirty (30) days prior to the effective date of such resignation. If such right is exercised, all funds and documents shall be delivered to a mutually appointed substitute Escrow Agent or as otherwise directed by the parties hereto.
-

10. **Binding Effect:** This Agreement shall be binding upon and shall inure to the benefit of the heirs, representatives, successors and assigns of the Parties hereto.
11. **Party:** Whenever the context of this instrument so requires words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word person includes a corporation, company, partnership or association, or society as well as a natural person. Every reference to any Party or to the Parties collectively shall be deemed to constitute a reference to all successors in interest or assigns of the Party referred to.

ESCROW AGENT:

First American Title Insurance Company
8605 E. Raintree Dr., Suite 130
Scottsdale, AZ 85260
Phone: (602) 685-7000
Fax: (602) 685-7029



TRUST DEPARTMENT
SPECIAL COLLECTION ACCOUNT FEE SCHEDULE
Effective 02/01/2021

ACCEPTANCE AND SET UP FEE	\$ 500.00
Set Up Accounting of each Allocation Account	\$ 250.00
ADDITIONAL DEPOSIT (Not in Investment Account)	\$ 25.00
SET UP FEE OF INVESTMENT ACCOUNT (per account)	\$ 100.00
Additional Deposits (each check)	\$ 25.00
Withdrawals (each)	\$ 25.00
Each DISBURSEMENT (includes 2 remittances)	\$ 125.00
Each additional remittance	\$ 25.00
Annual Fee in advance ¹	\$ 500.00
Annual Fee in advance of each Allocation Account	\$ 250.00
Courier Fee	\$ 20.00
Courier Fee – Special	\$ 50.00
NSF Fee	\$ 25.00
Assignment and Assumption	\$ 200.00
Amendment / Modification	\$ 200.00
Accounting Review/ Analysis Fees (per hour)	\$ 150.00
Letters of Credit (LOC's)	
Acceptance/ Setup Fees	\$ 100.00
Renewal	\$ 100.00
Modification (Reduction/Extension)	\$ 100.00
Termination	\$ 100.00
Deed of Trust (Full or Partial Release)	\$ 75.00
Termination/Close out Fee	\$ 400.00
Termination/Close out Fee of each Allocation Account	\$ 250.00

The above charges are the minimum charges and First American Title Insurance Company reserves the right to amend this schedule from time to time as deemed necessary.

¹: Annual Fee of \$500.00 covers the first \$50,000 of initial budget as outlined by the agreement between parties and shall increase \$1.00 for every additional \$1,000.00 or fraction thereafter. If the actual for the first year exceed the initial budget, the annual fee for that year will be adjusted to reflect the actual expenses. After the first year, the annual fee will be based on the then-current budget or the amount held in escrow, whichever is greater.

In addition to the fees described above, all parties will be required to pay for additional services in terminating the account or accounts and in performing services in connection with the transmission of any notices required to be transmitted under terms of the agreement being serviced.

The fees in this Section are based on present costs and are subject to change, without written notice or otherwise, in accordance with costs of operation.

Specific charges for letters of credit renewal, increases or decreases required pursuant to terms of the Agreement will be determined by the type of transaction, complexity of administration and/or accounting services required. These charges and any additional work will range from a minimum of \$100.00 to a maximum of \$1,000.00 depending on the services required. The Company will require written instructions concerning the handling of these accounts along with a completed (IRS) W-9 Form.

Need to confirm with FATCO this fee schedule is still applicable and/or replace with current fee schedule.