

When Recorded Return to:
City of Peoria
City Clerk's Office
8401 W. Monroe Street
Peoria, Arizona 85345

**WATERLINE DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF PEORIA
AND
VISTANCIA DEVELOPMENT, LLC**

THIS WATERLINE DEVELOPMENT AGREEMENT (the "Agreement") dated the ___ day of _____, 2026 (the "Effective Date"), by and between the City of Peoria, Arizona, an Arizona municipal corporation (the "City"), and Vistancia Development LLC, a Delaware limited liability company ("Vistancia" or "Vistancia Development LLC"). The City and Vistancia may be referred to herein as the "Parties" or individually as a "Party."

RECITALS

A. The City has a number of projects in various states of planning, design, and construction as a part of the Integrated Water Utilities Master Plan (the "IWUMP").

B. As part of the IWUMP, the City has designed and planned the Reclaimed Water Main Project #2 that involves constructing a 24-inch reclaimed water main to convey reclaimed water from the Pleasant Valley Reservoir & Booster Pump Station along Lone Mountain Parkway and into the Vistancia development, which will be redesigned to follow an alternative alignment that routes the waterline along the new Revel Way alignment within the Vistancia development as illustrated in **Exhibit A** attached hereto (the "Revel Way Waterline").

C. Vistancia has developed plans through its engineer to construct the following within the Five North at Vistancia development ("Five North at Vistancia"): Revel Way Phases 1, 2, and 3 between El Mirage Road and Lone Mountain Parkway, including plans for installation of wet utilities (the "Revel Way Improvements") to support continued growth of the Vistancia community. The Revel Way Improvements do not include plans for reclaimed water utilities.

D. The City would like to incorporate the installation of the Revel Way Waterline into the overall Revel Way Improvements plans being designed and constructed by Vistancia.

E. The underlying land, roadway alignments, and rights-of-way that include the Revel Way Improvements as described in **Exhibit B** is referred to as a "Property."

F. The Parties agree that it would be more efficient and cost beneficial to the City if Vistancia constructs the Revel Way Waterline (referred to as the “Project”) concurrently with the Revel Way Improvements.

G. The City will be responsible for designing the Project.

H. The Project will be constructed per engineering plans and specifications approved by the City.

I. Vistancia is responsible for paying the costs associated with the Revel Way Improvements.

J. The City is responsible for paying the costs associated with the Revel Way Waterline.

K. A contractor (the “Contractor”) as yet undetermined, will be selected by Vistancia and the City as the construction manager at-risk (CMAR) procured in accordance with Title 34 of the Arizona Revised Statutes to build the Project per guaranteed maximum price contracts procured in accordance with Title 34 of the Arizona Revised Statutes.

L. An engineer (the “Engineer”), will be selected by Vistancia and the City to provide Construction Administration and Inspection (CA&I) services for the Project.

M. Vistancia will perform construction management, coordination, and administrative services necessary for the successful completion of the Project and, subject to the terms and limitations of this Agreement, Vistancia may receive compensation for such construction management services associated with the Project in an amount equal to five percent (5%) of Total Construction Costs (the “Construction Management Fee”). For purposes of this Agreement, the “Total Construction Costs” shall mean the total costs of the Project, including without limitation, the construction costs, all permit fees and other fees related to the Project. The Construction Management Fee shall be paid exclusively from the Escrow Account established for the Project pursuant to Section 5.

N. The Parties agree and acknowledge that the City is not participating in the actual construction of the Project, nor will the City participate in the installation of equipment for the Project. All such activities are being coordinated solely by Vistancia. The Parties agree and acknowledge that the City’s sole and only responsibility under this Agreement is the monetary contribution toward the Project, at the time and in the manner provided in this Agreement, and that the City will not have any responsibility or liability regarding their installation, nor for the construction of the Revel Way Improvements until the City accepts for maintenance the Revel Way Improvements.

O. City and Vistancia are entering into this Agreement pursuant to Arizona Revised Statutes §9-500.05, which authorizes the City to enter into a development agreement related to real property located inside the incorporated area of the City with a landowner or other person having an interest in the real property. The purpose of this Agreement is to establish the conditions, terms, restrictions and requirements for public infrastructure and the financing of public infrastructure. Notwithstanding anything to the contrary contained in this Agreement, within thirty (30) days after Final Completion (as defined herein) of the Project, the Parties shall execute, and record, an instrument terminating this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, which are hereby acknowledged, the City and Vistancia agree as follows:

1. **Incorporation of Recitals.** The Parties acknowledge that the Recital Paragraphs A through O inclusive (the “Recitals”) set forth above are true and correct in all material respects and are incorporated into this Agreement as though fully set forth herein.

2. **Definitions.** In this Agreement, unless a different meaning clearly appears from the context, the words and phrases below shall be construed as defined in this Section 2. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The use of the term “shall” in this Agreement means a mandatory act or obligation.

“**Agreement**” means this Agreement, as amended and restated or supplemented in writing from time to time and includes all attached exhibits and schedules. References to sections or exhibits are to this Agreement unless otherwise qualified. The Recitals set forth in Paragraphs A through O, inclusive, are incorporated by reference in, and form a part of, this Agreement but are not intended to expand the scope, number, or nature of Vistancia’s undertakings beyond those expressly set forth in the numbered sections of or the exhibits to this Agreement.

“**Applicable Laws**” means collectively, all laws that apply to the development of the Property including, to the extent applicable, without limitation federal, state, county, and local laws (statutory and common law), ordinances, 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, the Peoria City Code, City’s Zoning Ordinance, City’s General Plan, City’s Minimum Park Standards, and all related necessary approvals or requirements by City Council or City Boards and Commissions.

“**A.R.S.**” means Arizona Revised Statutes as now or later enacted or amended.

“**City**” means the City of Peoria, Arizona as designated on the first page of this Agreement.

“**City Code**” means the Code of the City as amended from time to time.

“City Council” means the City Council of the City.

“City Representative” is defined in Subsection 13.1.

“Contractor” means as defined in Recital K.

“Construction Management Fee” means as defined in Recital M.

“Cure Period” means as defined in Section 10.

“Default (including Event of Default, Defaulting Party, Non-Defaulting Party, and Notice of Default)” means as defined in Section 10.

“Draw Request” means as defined in Section 5.4.

“Effective Date” means as defined on Page 1.

“Engineer” means as defined in Recital L.

“Escrow Account” means as defined in Section 5.1.

“Escrow Agent” means as defined in Section 5.3.

“Escrow Funds” means as defined in Section 5.1.

“Final Completion” of the Project 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 Project; (ii) Vistancia has submitted a final Draw Request in accordance with the provisions of Section 5 below; (iii) Vistancia and Contractor have caused to be completed any Punch List items noted in connection with the City’s Final Walk-Through inspection of the Project; and (iv) to the extent applicable, the Project have been accepted by the City, subject to warranty and maintenance obligations and a one-year walk-through, if applicable, as confirmed in writing by Vistancia and the Contractor.

“Final Walk-Through” means as defined in Section 7.2.

“Indemnity” means as defined in Section 15.

“IWUMP” means the Integrated Water Utilities Master Plan as defined in Recital A.

“Management Fee Invoice” means a Construction Management Fee invoice as defined in Section 3.11.

“Monthly Invoice” means as defined in Subsection 3.7.

“**Notice and Notify**” means as defined in Subsection 17.5.

“**Party**” or “**Parties**” means Vistancia and the City as designated on the first page of this Agreement and their successors and assigns.

“**Printed Instructions**” means as defined in Section 5.8.

“**Project**” means as defined in Recital F.

“**Property**” means as defined in Recital E and legally described and depicted in **Exhibit B**.

“**Punch List Items**” means as defined in Section 7.4.

“**Recitals**” means as defined in Section 1.

“**Revel Way Completion Date**” means as defined in Section 6.

“**Revel Way Improvements**” means as defined in Recital C.

“**Revel Way Waterline**” means as defined in Recital B.

“**State**” means the State of Arizona.

“**Substantial Completion**” of the Revel Way Improvements shall be deemed to have occurred for purposes of this Agreement when the applicable improvements have been substantially completed in accordance with the plans and specifications, subject only to punch list items. Seller shall cause any punch list items to be corrected and completed within ninety (90) days after the date of Substantial Completion (or any applicable component thereof).

“**Term**” means as defined in Section 16.

“**Vistancia**” means the entity Vistancia Development LLC as designated on the first page of this Agreement.

“**Vistancia’s Representative**” means as defined in Section 13.1.

3. **Vistancia’s Obligations**: In exchange for City’s Obligations Vistancia will:
 - 3.1. Vistancia and Contractor shall establish a construction schedule. All amounts deposited with Escrow Agent shall be deemed budgeted and appropriated in the fiscal year in which this Agreement was executed, even if construction of the Project is not Finally Completed until a subsequent fiscal year.

- 3.2. Vistancia will require the Engineer to provide CA&I services and ensure the Contractor constructs the Revel Way Waterline concurrently with the Revel Way Improvements per the Contractor's schedule and per the City approved plans and specifications.
- 3.3. Vistancia shall require the Contractor to construct the Revel Way Waterline in accordance with the current approved plans for the Revel Way Improvements, and the City will not require Vistancia to modify the location of the Revel Way Waterline regardless of any change in design to the Revel Way Improvements.
- 3.4. Vistancia will require the Contractor to construct the Revel Way Improvements, with the exception of the Project, at Vistancia's expense.
- 3.5. Vistancia will require the Engineer to provide CA&I services and the Contractor to construct the Project at the City's expense, per the guaranteed maximum cost breakdown outlined in **Exhibit C**. Any change orders adjusting the scope of the Project or the costs of the construction of the Project is subject to review and approval by the City Manager, in the City Manager's reasonable discretion.
- 3.6. Vistancia will require the Engineer and Contractor to submit pay applications for the work completed (using Vistancia's standard form of pay application) to Vistancia and the City on a monthly basis (the "Monthly Invoice") for City review and reasonable approval. The pay application must contain a clear and accurate accounting that clearly separates the work completed on the overall Revel Way Improvements from the Project to clearly articulate the amount owed by Vistancia and the City.
- 3.7. Vistancia will require the Engineer and Contractor to submit Monthly Invoices to the City at the address set forth in Subsection 5.4 of this Agreement.
- 3.8. Upon the City's reasonable approval of any Monthly Invoice associated with work for the Project, Vistancia shall submit a Draw Request to the Escrow Agent as set forth in Section 5 of this Agreement (using Vistancia's standard form of draw request).
- 3.9. Upon receipt of a disbursement from Escrow, as set forth in Section 5, Vistancia shall pay the entire amount invoiced in the applicable Monthly Invoice for work completed on the Project.
- 3.10. Vistancia shall submit invoices to the City and the Escrow Agent for the Construction Management Fee on a monthly basis with each Draw Request (each a "Management Fee Invoice"). Each Management Fee Invoice shall reflect the Construction Management Fee earned during the applicable monthly period in an amount equal to five percent (5%) of Total Construction Costs incurred during such period.

- 3.11. Vistancia agrees to permit the City to attend coordination, progress, and other meetings related to the Project. The City's attendance at such meetings will be at its sole discretion.
- 3.12. Pursuant to Section 7 hereto, upon achieving Substantial Completion of the Project, Vistancia shall provide written notice to the City and schedule a Final Walk-Through with the City.
4. **City's Obligations**: In exchange for Vistancia's Obligations City will:
- 4.1. The City will be responsible for the design of the Project, but the Parties acknowledge that the design of the Project is complete and is the subject of approved plans.
- 4.2. Within ten (10) days of receipt of a Management Fee Invoice or Monthly Invoice for work associated with the Project, the City shall submit its approval or reasonable denial to Vistancia and the Escrow Agent as set forth in Section 5 of this Agreement. The City's approval of a Management Fee Invoice or Monthly Invoice for the Project is deemed approval of the associated Draw Request set forth in Section 5 herein. Any denial shall be accompanied by written notice describing the reasons for disapproval. City approval shall be within the City's sole discretion to ensure statutory and contractual compliance, provided if the City's reasons for objecting to a Management Fee Invoice or a Monthly Invoice do not relate to statutory or contractual compliance, then the City's disapproval will be effective only if reasonable. A failure of the City to timely approve or deny shall be deemed to be City's approval for all purposes under this Agreement.
- 4.3. The City's responsibility to pay Vistancia the actual cost for the Project shall not exceed the guaranteed maximum price of two million and eight-hundred and forty-thousand dollars (\$2,840,000), which includes a contingency in the amount of fifteen percent (15%) of the cost of the Project (the "Cap"), as provided in **Exhibit C**, unless the City agrees, in writing, in the City's sole discretion, to an increase in costs. Notwithstanding anything to the contrary, in the event Vistancia or the Contractor procure or receive an updated budget for the cost of the Project (including a fifteen percent (15%) contingency), on or before February 27, 2026, and the updated budget (including the fifteen percent (15%) contingency) establishes an estimated cost for the Project which exceeds the Cap, and if the City does not agree to increase the Cap in writing within ten (10) days after Vistancia delivers the updated budget to the City, then Vistancia may elect to terminate this Agreement upon written notice to the City, and upon such termination by Vistancia, neither party shall have any further obligation hereunder.

- 4.4. Upon Substantial Completion of the Project and notice thereof from Vistancia, Conduct a Final Walk-Through with the Contractor and Vistancia.
- 4.5. Upon completion of construction of the Project by Vistancia and after final acceptance thereof by the City, the City will own, operate and maintain the Project.

5. **Payment of Project Costs; Escrow.**

- 5.1. **Cash in Escrow Account.** Within ten (10) business days of Vistancia providing the City a copy of an executed construction contract for the Project, the City shall establish with the Escrow Agent an interest bearing account (the "Escrow Account") for the Project into which it shall deposit, in cash, by cashier's check or by wires transfer of immediately available funds, an amount equal to the maximum price for the Project as set forth in **Exhibit C** plus the Construction Management Fee calculated based on the maximum price for the Project as set forth in **Exhibit C** (the "Escrow Funds"). Interest earned on the Escrow Accounts shall accrue to the benefit of the City. The Escrow Agent shall provide accounting statements upon request to the City and Vistancia.
- 5.2. **Limited Purpose of Escrow Funds.** The Escrow Funds shall be used solely to pay Construction Management Fees and to disburse funds to Vistancia for payment of eligible, documented costs set forth in a Draw Request, approved as set forth in Section 3, in connection with the Project, as expressly permitted by this Agreement. No funds shall be disbursed in advance of costs being incurred by way of a Monthly Invoice, approved as set forth in Section 3, and submitted via a Draw Request.
- 5.3. **Designation of Escrow Agent.** For purposes of this Section 5, the City and Vistancia by execution of this Agreement designate First American Title Insurance Company (the "Escrow Agent") as its agent with full power and authority to execute any and all documents, notices and any other documents necessary to permit the Escrow Agent to draw against the available funds in an Escrow Account in order to fund Vistancia's Draw Request for the Project pursuant to this Section 5.
- 5.4. **Monthly Draw Requests.** Vistancia may submit written requests to both the City and the Escrow Agent for payment of Monthly Invoices and/or Construction Management Fees from the Escrow Account on a monthly basis ("Draw Request"). All Draw Requests shall be delivered to the City and the Escrow Agent by email or U.S. mail as follows:

City of Peoria:
Development and Engineering Department Director
9875 N 85th Avenue
Peoria, AZ 85345

Email: enadmin@peoriaaz.gov

Copy to:

Development and Engineering Department

Attn: Project Manager

9875 N 85th Avenue

Peoria, AZ 85345

Email: enadmin@peoriaaz.gov

Escrow Agent:

First American Title Insurance Company

Attn: Jeff Schumacher

2555 E. Camelback Rd., Suite 350

Phoenix, AZ 85016

Email: JSchumacher@firstam.com

Each Draw Request shall be submitted in a form reasonably acceptable to the City and shall include:

- 5.4.1. An itemized statement of eligible Project costs or Construction Management Fees incurred during the applicable month; and
 - 5.4.2. Supporting documentation, including invoices, and lien waivers as reasonably required by the City; and
 - 5.4.3. A certification by Vistancia that all requested amounts represent eligible costs incurred in compliance with this Agreement and applicable law.
- 5.5. City Review and Approval. The City's approval of a Monthly Invoice or Management Fee Invoice for the Project is deemed approval of the associated Draw Request set forth in this Section 5.
 - 5.6. Disbursement by Escrow Agent. The Escrow Agent shall release funds from the Escrow Account only upon receipt of written authorization from the City approving the applicable Monthly Invoice or Management Fee Invoice. The Escrow Agent shall have no responsibility to evaluate the eligibility or accuracy of the Draw Request and may conclusively rely on the City's written approval.
 - 5.7. Termination; Remaining Funds. Upon completion of the Project or termination of this Agreement, any funds remaining in the Escrow Accounts after payment of all approved Draw Requests shall revert to the City, unless otherwise expressly provided herein.

- 5.8. **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 D** 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 shall control. The City shall pay all fees associated with the Escrow Account or Escrow Agent’s services.

6. **Completion Deadline and Force Majeure Delay.** The construction of the Revel Way Waterline must be completed prior to June 30, 2027 (the “Revel Way Completion Date”). Should Vistancia and Contractor fail to complete the Project by the Completion Date, then the Parties may agree in writing to extend the completion timeframe. The agreement to such an extension can be facilitated and executed administratively by the City Manager by way of a letter agreement. However, the decision to allow any extension as set forth in this Section 6 will be in the reasonable discretion of the City Manager. Notwithstanding anything to the contrary, the Revel Way Completion Date shall be subject to a day-for-day extension due to any Force Majeure Delay. “Force Majeure Delay” shall mean a delay in progress of construction of the Project due to unusually inclement weather, acts of God, substantial unavailability or shortage of labor or materials, national emergency, epidemics or pandemics only if 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 Vistancia. Vistancia must provide written notice to the City within thirty (30) days after Vistancia first becomes aware of a condition that creates a Force Majeure Delay, which notice shall reasonably detail the reason(s) giving rise to 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. Any additional costs arising from a Force Majeure Delay (in excess of the amount deposited in the Escrow Account) shall require the City’s reasonable approval before being eligible for reimbursement in accordance with Section 5 of this Agreement.

7. **Project Completion; Walk-Through Inspection.**

- 7.1. **Notice of Substantial Completion.** Upon achieving Substantial Completion of the Project, Vistancia shall provide written notice to the City certifying that the Project has been completed in substantial accordance with the approved plans, specifications, and the terms of this Agreement.
- 7.2. **Scheduling of Walk-Through Inspection.** Within a reasonable time following such notice, Vistancia and the Contractor shall coordinate with the City to schedule a joint walk-through inspection of the Project (“Final Walk-Through”). The Final Walk-

Through shall be conducted at a mutually agreed-upon date and time during normal business hours.

- 7.3. Purpose of Inspection. The purpose of the Final Walk-Through shall be to allow the City to verify completion of the Project, identify any incomplete, defective, or non-conforming work, and confirm compliance with applicable City standards, approvals, and this Agreement.
- 7.4. Punch List Items. Following the Final Walk-Through, the City may provide the Vistancia with a written list of any items requiring correction or completion (“Punch List”). Vistancia shall cause all Punch List items to be completed or corrected within a reasonable time, prior to final acceptance of the Project.
- 7.5. Final Acceptance. Completion of the Final Walk-Through and correction of any Punch List items shall be a condition precedent to the City’s final acceptance of the Project and, if applicable, release of any remaining Escrow Funds.
- 7.6. No Waiver. The City’s participation in the Final Walk-Through or acceptance of the Project, shall not constitute a waiver of any rights, remedies, or warranties provided under this Agreement or applicable law.

8. City Representations. The City represents and warrants to Vistancia that as of the Effective Date.

- 8.1. The City has the full right, power, and authorization to enter into and perform this Agreement and each of the City’s obligations and undertakings under this Agreement, and the City’s execution, delivery, and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the City Code.
- 8.2. All consents and approvals necessary to the execution, delivery, and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery, and performance.
- 8.3. This Agreement (and each undertaking of the City contained herein), constitutes a valid, binding, and enforceable obligation of the City, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency, and other laws of general application affecting creditors’ rights and by equitable principles, whether considered at law or in equity.
- 8.4. The execution, delivery, and performance of this Agreement by the City is not prohibited by and does not conflict with, any other agreements, instruments, judgments, or decrees to which the City is a party or is otherwise subject.

9. **Vistancia Representations.** Vistancia represents and warrants to the City that as of the Effective Date:

- 9.1. Vistancia has the full right, power, and authorization to enter into this Agreement and perform its undertakings contemplated by this Agreement, and the execution, delivery, and performance of this Agreement by Vistancia has been duly authorized and agreed to in compliance with the organizational documents of Vistancia.
- 9.2. All consents and approvals necessary to the execution, delivery, and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery, and performance.
- 9.3. Vistancia knows of no litigation, proceeding, or investigation pending or threatened against or affecting Vistancia contesting the validity or enforceability of this Agreement or Vistancia's performance under this Agreement.
- 9.4. This Agreement (and each undertaking of Vistancia contained herein) constitutes a valid, binding, and enforceable agreement of Vistancia, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency, and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.
- 9.5. The execution, delivery, and performance of this Agreement by Vistancia is not prohibited by, and does not conflict with, any other agreements, instruments, judgments, or decrees to which Vistancia is a party or to which Vistancia is otherwise subject.
- 9.6. Vistancia has not paid or given, and will not pay or give, any Third Party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers, and attorneys.

10. **Default.** In the event (an "Event of Default") a Party (the "Defaulting Party") fails to perform or fails to otherwise act in accordance with any term or provision hereof (a "Default") then the other Party (the "Non-Defaulting Party") may provide Notice of the Default to the Defaulting Party (the "Notice of Default"). The Defaulting Party shall have thirty (30) days from receipt of the Notice of Default to cure the Default (the "Cure Period"). If the failure is such that more than thirty (30) days would reasonably be required to cure the Default or otherwise comply with any term or provision herein, then the Defaulting Party shall Notify the Non-Defaulting Party of such and the timeframe reasonably needed to cure such Default. So long as the Defaulting Party commences performance or compliance or gives Notice of additional time needed to cure within said thirty (30) day period and the Defaulting Party diligently proceeds to complete such performance or fulfill such obligation, the Cure Period will be extended as reasonably necessary; provided further, however, that no Cure Period shall exceed ninety (90) days except by mutual written agreement of the Parties. Any Notice shall specify the nature of the Default and the manner

in which the Default may be satisfactorily cured, if reasonably practicable. Notwithstanding anything to the contrary, there shall be no Cure Period for a failure of a Party to pay money when due.

11. Remedies for Default. Whenever any Event of Default occurs and is not cured (or cure undertaken) by the Defaulting Party in accordance with this Agreement, the other Party may take any of one or more of the following actions:

- 11.1. **Remedies of City.** City's remedies for an uncured event of Default by Vistancia shall be all remedies available at law or in equity, including, without limitation, any of the following:
 - 11.1.1. If an uncured event of Default by Vistancia occurs prior to completion of construction as required by the terms of this Agreement, City may terminate this Agreement.
 - 11.1.2. Notwithstanding the foregoing, at any time, City may seek special action or other similar relief (whether characterized as mandamus, injunction, or otherwise), requiring Vistancia to undertake and fully and timely to address or to enjoin any construction or activity undertaken by Vistancia that is not in accordance with the terms of this Agreement.
 - 11.1.3. Notwithstanding the foregoing, Vistancia shall be liable, and City may recover from Vistancia, its actual damages for any unrepaired damage to any City facility or real property caused by Vistancia's actions taken pursuant to this Agreement.
 - 11.1.4. Notwithstanding anything to the contrary, in no event will Vistancia be liable for consequential, speculative or punitive damages.
- 11.2. **Remedies of Vistancia.** Vistancia's remedies for an uncured event of Default by the City shall be all remedies available at law or in equity, including, without limitation, any of the following:
 - 11.2.1. If an uncured event of Default by the City occurs prior to completion of construction as required by the terms of this Agreement, Vistancia may terminate this Agreement.
 - 11.2.2. Notwithstanding the foregoing, at any time, Vistancia may seek special action or other similar relief (whether characterized as mandamus, injunction, or otherwise), requiring the City to undertake and fully and timely to address or to enjoin any construction or activity undertaken by the City that is not in accordance with the terms of this Agreement.

11.2.3. Notwithstanding anything to the contrary, in no event will the City be liable for consequential, speculative or punitive damages.

12. **Delays; Waivers.** Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any default by the other Party shall not be considered as a waiver of rights with respect to any other default by the performing Party or with respect to the particular default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches, or otherwise at a time when it may still hope to resolve the problems created by the default involved.

13. **Cooperation and Alternative Dispute Resolution.**

13.1. **Representatives.** To further the cooperation of the Parties in implementing this Agreement, the City and Vistancia each shall designate and appoint a representative to act as a liaison between the City and its various departments and Vistancia. The initial representative for the City shall be the City staff member designated by the City Manager (the “**City Representative**”) and the initial representative for Vistancia shall be its Project Manager, as identified by Vistancia from time to time (the “**Vistancia’s Representative**”). The City’s Representative and Vistancia’s Representatives shall be reasonably available to the extent necessary to discuss and review the performance of the Parties to this Agreement and the development of the Property.

13.2. **Impasse.** The Parties agree that if at any time Vistancia believes an impasse has been reached with City staff on any issue affecting the Project, the Revel Way Improvements, which the Parties agree is not a Default, Vistancia shall have the right to immediately appeal to the City Representative for an expedited decision pursuant to this Subsection 13.2. If the Vistancia and City Representative cannot resolve an impasse, the Vistancia has the right to meet with the City Manager or the City Manager’s designee.

13.3. **City’s Claim Procedures.** Notwithstanding any language in this Section 13, Claims by Vistancia shall comply with time periods, statutory limits, deadlines, and all other requirements of City’s claims procedures as amended from time to time. Nothing in this Agreement shall be interpreted to amend or alter such time periods, statutory limits, deadlines, or other requirements in any way.

14. **Attorney General Action; A.R.S. § 41-194.01.** If pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Agreement violates any provision of state law or the

Constitution of Arizona and the City and Vistancia are not able (after good faith attempts) to modify the Agreement so as to resolve the violation with the Attorney General within thirty (30) days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1), this Agreement shall automatically terminate at midnight on the thirtieth (30th) day after receiving such notice from the Attorney General, and upon such termination the Parties shall have no further obligations under this Agreement. Additionally, if the Attorney General determines that this Agreement may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), and the Arizona Supreme Court requires the posting of a bond under A.R.S. § 41-194.01(B)(2), the City shall be entitled to terminate this Agreement, except if Vistancia posts such bond; and provided further, that if the Arizona Supreme Court determines that this Agreement violates any provision of state law or the Constitution of Arizona, the City may terminate this Agreement and the Parties shall have no further obligations hereunder.

15. **Indemnity.** Vistancia shall, and shall ensure that the Contractor, Engineer and each subcontractor contractually agrees to indemnify, defend, and hold harmless the City, and its directors, officers, employees, and agents, for, from and against all claims, demands, suits, and costs including, but not limited to, costs of defense, reasonable attorneys' fees, witness fees of any type, losses, damages, expenses and liabilities, whether direct or indirect, and whether to any person (including, but not limited to, employees of the City), or to any property, to which the City, its directors, officers, employees, or agents may be put or subject to by reason of (i) any act or omission by Vistancia, the Contractor, Engineer, or subcontractor or any of its directors, officers, employees, agents, contractors, or invitees relating to actions in connection with the Project, the Revel Way Improvements by any person or entity, including but not limited to Vistancia, the Contractor, Engineer, or such subcontractor and/or its employees, agents, contractors, invitees or successors in interest; or (ii) any failure on the part of Vistancia, the Contractor, Engineer, or subcontractor, or any of its directors, officers, employees, contractors, agents or successors in interest to fulfill its obligations hereunder, except to the extent that any loss, damage, expense, and liability is attributable to the gross negligent or willful acts or failure to act or misconduct of the City, its directors, officers, employees, and agents. Such Indemnity shall survive the revocation, expiration, or termination of this Agreement.

Prior to commencement of any work on the Project, Vistancia will cause its Contractor, Engineer and subcontractors to deliver to the City an amended Certificate of Insurance or a separate Certificate of Insurance naming the City as an additional insured with equivalent limits and terms to that certain Certificate of Insurance issued to Vistancia.

16. **Term.** Unless sooner terminated in accordance with the terms herein, the term of this Agreement shall commence of the Effective Date and continue until all of the following have occurred: (a) the full performance of all obligations by the Parties hereunder; and (b) payment of all amounts due by the Parties hereunder (the "Term"), as it may be extended by the application of extensions otherwise set forth in this Agreement. Notwithstanding the foregoing, all reimbursement obligations, warranties, and indemnity provisions of the Parties, and any provision

of this Agreement that explicitly states it will survive termination will survive any such expiration or termination in accordance with the terms of this Agreement.

17. **Miscellaneous**. The following additional provisions apply to this Agreement:

- 17.1. **Appropriation**. Any funding provided for in this Agreement, other than in the current fiscal year, is contingent upon being budgeted and appropriated by the City's governing body in such fiscal year. This Agreement may be terminated by the City, without penalty, at the end of any fiscal year due to non-appropriation of funds. The City shall give Vistancia prompt written notice after it knows that funding will not be available. Notwithstanding anything to the contrary, the entire amount deposited with Escrow Agent shall be deemed budgeted and fully appropriated within the fiscal year this Agreement is executed, even if construction of the Project is not Finally Completed until a subsequent fiscal year.
- 17.2. **Governing Law; Choice of Forum**. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). The Parties wish to confer jurisdiction, to the extent possible, upon the Superior Court of Maricopa County for the purpose of coordinating and centralizing any required judicial administration of this Agreement. Accordingly, any action brought to interpret, enforce, or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa. The Parties irrevocably consent to the exclusive jurisdiction and venue in such court for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Subsection 17.2. The Parties expressly waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other, on any matter whatsoever arising out of or any way connected with this Agreement or their relationship arising hereunder.
- 17.3. **Limited Severability**. Notwithstanding the provisions of Section 14 of this Agreement, the City and Vistancia each intend that the execution, delivery, and performance of this Agreement are in compliance with all Applicable Laws.
- 17.4. **Construction**. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic, or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that

ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

17.5. Notices.

17.5.1. Except as otherwise required by law, any notice required or permitted under this Agreement (each, a “Notice” or when used as a verb “Notify”) shall be in writing and shall be given by (i) personal delivery, (ii) deposit in the United States certified, registered or express mail, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Subsection 17.5, or (iii) any nationally recognized express or overnight delivery service (e.g. Federal Express or UPS), delivery charges prepaid, for next business day delivery:

If to the City:

City Manager
City of Peoria
8401 West Monroe Street
Peoria, Arizona 85345

With a required copy to:

City Attorney
City of Peoria
8401 West Monroe Street
Peoria, Arizona 85345

Development and Engineering Department Director
9875 N. 85th Ave.
Peoria, AZ 85345

If to Vistancia:

Vistancia Development LLC
c/o Land Resources, LLC
Gabe Hill
Partner
7010 E. Acoma Drive, Suite 204
Scottsdale AZ 85254
Phone: 480-305-2175
Email: ghill@land-resources.com

With a required copy to:

Berens Blonstein PLC
Attn: Marc Blonstein
7033 E. Greenway Parkway, Suite 210
Scottsdale, AZ 85254
Phone: 480-624-2703
Email: mblonstein@berensblonstein.com

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

17.5.2. Effective Date of Notices. Any Notice sent by United States Postal Service certified, registered, or express mail shall be deemed to be effective on the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any Notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Any Notice personally delivered or delivered through a same-day delivery/courier service shall be deemed effective upon its receipt or refusal to accept receipt by the addressee. Notices transmitted digitally or electronically or by facsimile may be offered as a courtesy, but do not constitute "Notice" for the purposes of this Subsection 17.5. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee. Any Party may designate a different person or entity to receive Notice or change the place to which any Notice shall be given as herein provided.

- 17.6. Time of Essence. Time is of the essence of this Agreement and each provision hereof.
- 17.7. Section Headings. The section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.
- 17.8. Attorneys' Fees and Costs Between the Parties. In the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, the prevailing Party in any such dispute will be entitled to reimbursement of its reasonable attorneys' fees and court costs, including, but not limited to, its

reasonable costs of expert witnesses, transportation, lodging and meal costs of out-of-town parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

- 17.9. Exhibits. Without limiting the provisions of this Agreement, the Parties agree that all references to this Agreement include all exhibits designated in and attached to this Agreement, such exhibits being incorporated into and made an integral part of this Agreement for all purposes.
- 17.10. Integration. Except as expressly provided herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement.
- 17.11. Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of: (a) this Agreement as in full force and effect; and (b) the performance of the obligations hereunder at any time during its Term.
- 17.12. Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Friday, Saturday, Sunday or legal holiday, then except with regard to payment provisions, as provided below, the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Friday, Saturday, Sunday or legal holiday. Notwithstanding anything to the contrary, if the date for payment of funds shall fall on a Friday, Saturday, Sunday or legal holiday, the duration of such time period for payment shall be shortened so that it shall end on the day prior to the day on which the payment date falls, and which is not a Friday, Saturday, Sunday or legal holiday.
- 17.13. Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval shall be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise. Wherever the City's consent is required to be given in this Agreement, such consent will be the consent of the City Manager (or his/her designee), without the requirement of the prior approval of the City Council unless required by Applicable Law, City policy, or recommended by the City Manager.

- 17.14. Covenants Running With Land; Inurement. Until such time that this Agreement is terminated pursuant to the terms herein, the covenants, conditions, terms and provisions of this Agreement relating to the Property, the Revel Way Improvements and the Project shall run with the Property and shall be binding upon, and shall inure to the benefit of the Parties and their respective successors and assigns with respect to such Property. Wherever the term “Party” or the name of any particular Party is used in this Agreement such term shall include any such Party’s successors and assigns.
- 17.15. Recordation. Within ten (10) business days after this Agreement has been approved by the City and executed by the Parties, the City shall cause this Agreement to be recorded in the Official Records of Maricopa County, Arizona.
- 17.16. Amendment. From time to time, Vistancia and City (acting through its City Manager or the City Manager’s designee) may, by mutual written agreement, refine, amend, revise, change, or correct any part of this Agreement as the City and Vistancia deem necessary or preferable. The City Council authorizes its City Manager (or the City Manager’s designee), in the City Manager’s administrative capacity, to take any action that the City Manager deems necessary to carry out the intent and purpose of this Agreement, including without limitation to: complete all transactions contemplated within this Agreement, execute amendments to this agreement, approve all Draw Requests and other items the City is to approve in this Agreement, and execute any other documents related to this Agreement. Except as otherwise expressly provided for in this Agreement, no change or addition shall be made to this Agreement except by written amendment executed by the City and Vistancia. Within ten (10) business days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Maricopa County, Arizona. Upon amendment of this Agreement as established herein, references to “Agreement” or “Development Agreement” shall mean the Agreement as amended. The effective date of any duly processed minor or major amendment shall be the date on which the last representative for the Parties executes the Agreement. If, after the effective date of any amendment(s), the Parties find it necessary to refer to this Agreement in its original, unamended form, they shall refer to it as the “Original Development Agreement.” When the Parties mean to refer to any specific amendment to the Agreement, which amendment is unmodified by any subsequent amendments, the Parties shall refer to it by the number of the amendment as well as its effective date.
- 17.17. Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, or capriciously and will not unreasonably withhold, delay, or condition any requested approval, acknowledgment or consent.

- 17.18. Nonliability of City Officials, Etc., and of Employees, Members and Partners, Etc. of Vistancia. No City Council member, official, representative, agent, attorney or employee of the City shall be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any default or breach by the City or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of the City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Vistancia under this Agreement shall be limited solely to the assets of Vistancia and shall not extend to or be enforceable against the personal assets of any of the individuals or entities who are members, managers, or officers of Vistancia.
- 17.19. City Council Action. Notwithstanding any language of this Agreement or any subsequent additional document, no City action shall be required by this Agreement, which either the City Attorney or City Manager determines should be presented to the City Council for formal action; unless and until said formal City Council action has been affirmatively taken and such action is no longer subject to referendum. This Agreement does not bind the City Council or remove its independent authority to make determinations related to formal action of the City Council in any way.
- 17.20. No Partnership. This Agreement shall not be construed as creating a joint venture, partnership, or any other joint arrangement between Vistancia and the City.
- 17.21. No Third-Party Beneficiaries. No person or entity shall be a third-party beneficiary to the Agreement nor have any right or cause of action hereunder. City shall have no liability to third parties for any approval of plans, Vistancia's negligence, Vistancia's failure to comply with the provisions of this Agreement, or otherwise as a result of the existence of this Agreement.
- 17.22. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument.
- 17.23. Arizona Law Provisions. To the extent required by Arizona State Law:
- 17.23.1. No member, official, or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to this Agreement, that is prohibited by law. This Agreement shall be subject to cancellation pursuant to the provisions of A.R.S. § 38-511 relating to conflicts of interest.

- 17.23.2. Vistancia certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a “boycott,” as that term is defined in § 35-393, Arizona Revised Statutes, of Israel.
- 17.23.3. To the extent applicable under A.R.S. § 41-4401, Vistancia warrants 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 Vistancia 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.
- 17.23.4. To the extent applicable under A.R.S. § 35-394, Vistancia 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.

(Signature Page follows)

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

CITY OF PEORIA, an Arizona municipal corporation

By: _____
Henry Darwin, City Manager Date
Or Authorized Designee

APPROVED AS TO FORM:

By: _____
Emily Jurmu, City Attorney Date

ATTEST:

Agnes Goodwine, City Clerk

VISTANCIA DEVELOPMENT LLC,
a Delaware limited liability company

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

By: _____
Senior Vice President

By: _____

Barry S. Villines
Chief Financial Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of the document.

STATE OF California)
) ss.

County of Orange)

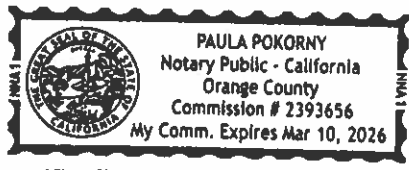
On January 29, 2026, before me, Paula Pokorny,
Notary Public, personally appeared Barry S. Villines and
Eric Koff

, who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal
[Redacted Signature]

Signature



(Seal)

CONSENT OF ESCROW AGENT

**[TO BE EXECUTED BY ESCROW AGENT AND FEES DUE TO ESCROW AGENT
PURSUANT TO SECTION 5.1 TO BE PAID WHEN THE CITY FUNDS THE ESCROW
FUNDS PURSUANT TO SECTION 5.1]**

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 Section 5.1.

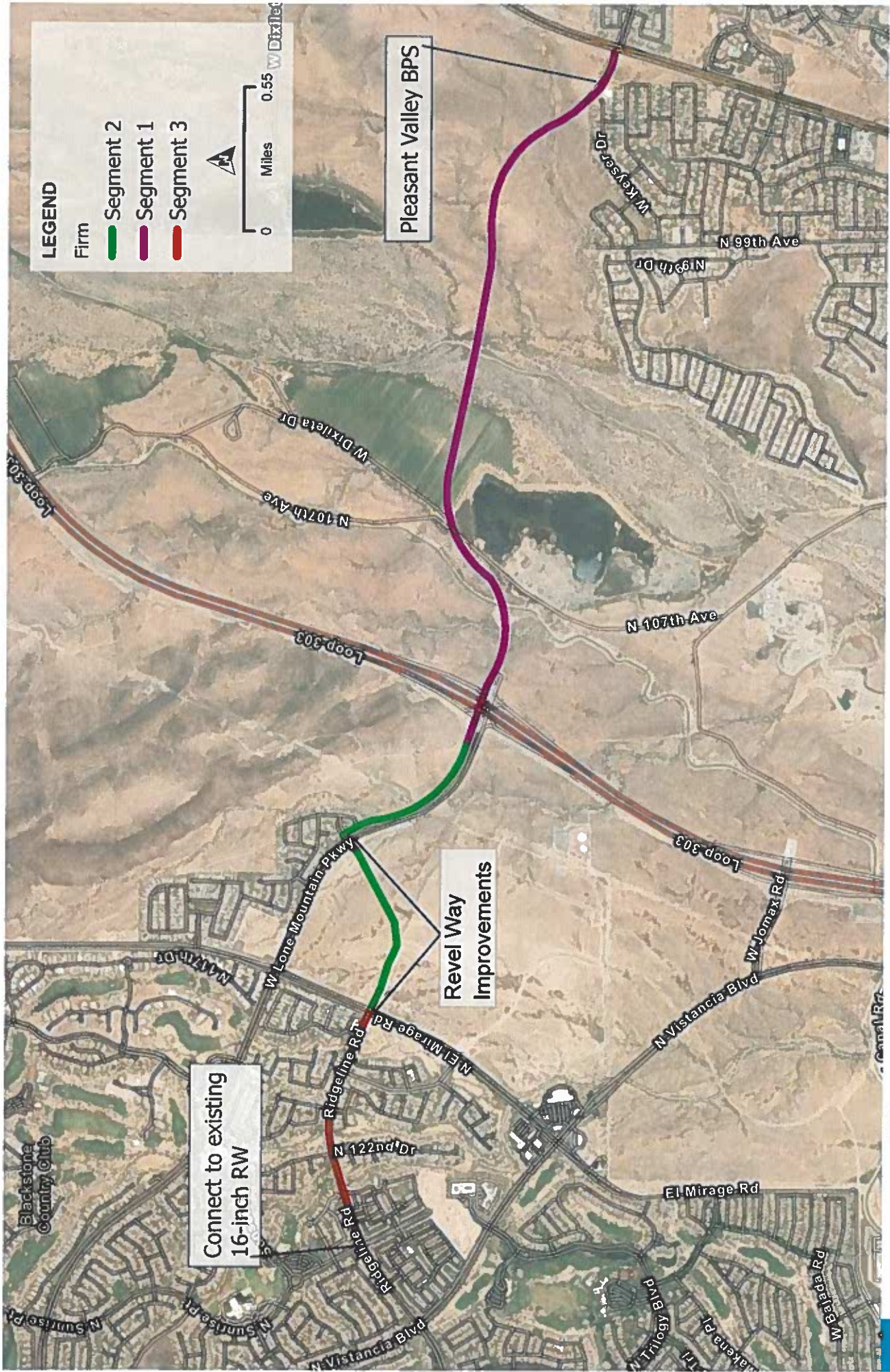
ESCROW AGENT:

FIRST AMERICAN TITLE INSURANCE COMPANY,
a Nebraska corporation

By: _____
Name: _____
Title: _____

EXHIBIT A

Revel Way Waterline



ALIGNMENT - RECLAIMED WATERLINE PROJECT #2
CITY OF PEORIA
JANUARY 2024



EXHIBIT B

Legal Description of the Property

LEGAL DESCRIPTION FOR
"REVEL WAY RIGHT-OF-WAY"

All that certain lot, tract, or parcel of land, situated in a portion of the Northeast Quarter of Section 25, Township 5 North, Range 1 West and the Northwest Quarter of 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 a pipe for the Southeast Quarter of said Section 25, from which a found GLO monument on a 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;

THENCE North 89 deg. 47 min. 14 sec. West along the South line of the Southeast Quarter of said Section 25, a distance of 2,255.39 feet;

THENCE North 00 deg. 12 min. 46 sec. East departing said South line, a distance of 3,979.62 feet to the **TRUE POINT OF BEGINNING**;

THENCE North 23 deg. 04 min. 54 sec. East, a distance of 102.00 feet;

THENCE South 66 deg. 55 min. 06 sec. East, a distance of 230.00 feet;

THENCE South 62 deg. 20 min. 40 sec. East, a distance of 150.48 feet;

THENCE South 66 deg. 55 min. 06 sec. East, a distance of 357.38 feet to a Point of Curvature of a tangent circular curve to the left, having a radius of 625.00 feet, a central angle of 19 deg. 37 min. 37 sec., and being subtended by a chord which bears South 76 deg. 43 min. 54 sec. East - 213.05 feet;

THENCE in a southeasterly direction along said curve to the left, an arc distance of 214.10 feet;

THENCE South 86 deg. 32 min. 43 sec. East tangent to said curve, a distance of 89.63 feet;

THENCE North 48 deg. 27 min. 17 sec. East, a distance of 42.43 feet;

THENCE North 03 deg. 45 min. 03 sec. East, a distance of 4.50 feet;

THENCE South 86 deg. 32 min. 43 sec. East, a distance of 80.98 feet;

THENCE South 41 deg. 32 min. 43 sec. East, a distance of 42.43 feet;

THENCE South 86 deg. 32 min. 43 sec. East, a distance of 61.32 feet to a Point of Curvature of a tangent circular curve to the left, having a radius of 628.50 feet, a central angle of 30 deg. 34 min. 10 sec., and being subtended by a chord which bears North 78 deg. 10 min. 13 sec. East - 331.36 feet;

THENCE in a northeasterly direction along said curve to the left, an arc distance of 335.33 feet;

THENCE North 62 deg. 53 min. 08 sec. East tangent to said curve, a distance of 308.62 feet;

THENCE South 27 deg. 06 min. 52 sec. East, a distance of 1.00 feet;

THENCE North 62 deg. 53 min. 08 sec. East, a distance of 664.00 feet;

THENCE North 27 deg. 06 min. 52 sec. West, a distance of 6.00 feet;

THENCE North 62 deg. 53 min. 08 sec. East, a distance of 134.10 feet to a Point of Curvature of a non-tangent circular curve to the left, having a radius of 626.00 feet, a central angle of 2 deg. 17 min. 52 sec., and being subtended by a chord which bears North 57 deg. 09 min. 19 sec. East - 25.10 feet;

THENCE in a northeasterly direction along said curve to the left, an arc distance of 25.10 feet;

THENCE North 53 deg. 05 min. 41 sec. East non-tangent to said curve, a distance of 69.61 feet;

THENCE North 64 deg. 19 min. 38 sec. East, a distance of 76.22 feet;

THENCE North 54 deg. 51 min. 55 sec. East, a distance of 11.77 feet;

THENCE South 35 deg. 08 min. 05 sec. East, a distance of 81.00 feet;

THENCE South 54 deg. 51 min. 55 sec. West, a distance of 92.15 feet to a Point of Curvature of a tangent circular curve to the right, having a radius of 716.00 feet, a central angle of 5 deg. 46 min. 42 sec., and being subtended by a chord which bears South 57 deg. 45 min. 16 sec. West - 72.18 feet;

THENCE in a southwesterly direction along said curve to the right, an arc distance of 72.21 feet;

THENCE South 77 deg. 28 min. 32 sec. West non-tangent to said curve, a distance of 45.46 feet;

THENCE South 62 deg. 53 min. 08 sec. West, a distance of 794.68 feet;

THENCE South 17 deg. 53 min. 08 sec. West, a distance of 42.43 feet;

THENCE South 27 deg. 06 min. 52 sec. East, a distance of 12.00 feet;

THENCE South 62 deg. 53 min. 08 sec. West, a distance of 70.00 feet;

THENCE North 72 deg. 06 min. 52 sec. West, a distance of 42.43 feet;

THENCE South 62 deg. 53 min. 08 sec. West, a distance of 88.62 feet;

THENCE South 67 deg. 27 min. 24 sec. West, a distance of 150.19 feet to a Point of Curvature of a non-tangent circular curve to the right, having a radius of 704.50 feet, a central angle of 27 deg. 33 min. 44 sec., and being subtended by a chord which bears South 79 deg. 40 min. 26 sec. West - 335.64 feet;

THENCE in a southwesterly direction along said curve to the right, an arc distance of 338.90 feet;

THENCE North 86 deg. 32 min. 43 sec. West tangent to said curve, a distance of 18.21 feet;

THENCE South 48 deg. 27 min. 17 sec. West, a distance of 42.43 feet;

THENCE South 03 deg. 27 min. 17 sec. West, a distance of 6.50 feet;

THENCE North 86 deg. 32 min. 43 sec. West, a distance of 81.00 feet;

THENCE North 41 deg. 32 min. 43 sec. West, a distance of 42.43 feet;

THENCE North 86 deg. 32 min. 43 sec. West, a distance of 100.63 feet to a Point of Curvature of a tangent circular curve to the right, having a radius of 715.00 feet, a central angle of 19 deg. 37 min. 37 sec., and being subtended by a chord which bears North 76 deg. 43 min. 54 sec. West - 243.73 feet;

THENCE in a northwesterly direction along said curve to the right, an arc distance of 244.93 feet;

THENCE North 66 deg. 55 min. 06 sec. West tangent to said curve, a distance of 201.22 feet;

THENCE South 68 deg. 04 min. 54 sec. West, a distance of 35.36 feet;

THENCE North 66 deg. 55 min. 06 sec. West, a distance of 26.00 feet;

THENCE South 23 deg. 04 min. 54 sec. West, a distance of 12.00 feet;

THENCE North 66 deg. 55 min. 06 sec. West, a distance of 26.00 feet;

THENCE North 21 deg. 55 min. 06 sec. West, a distance of 35.36 feet;

THENCE North 66 deg. 55 min. 06 sec. West, a distance of 100.00 feet;

THENCE North 62 deg. 20 min. 40 sec. West, a distance of 150.48 feet;

THENCE North 66 deg. 55 min. 06 sec. West, a distance of 184.16 feet to the **POINT OF BEGINNING**, containing 255,373 square feet or 5.863 acres of land, more or less.

EXHIBIT C

Guaranteed Maximum Cost Breakdown for Revel Way Waterline

ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST

Project Name: Reclaimed Water Project 2 - Segment 2A Pipeline (Revel W)
 Description: Preliminary OPCC
 Level: Class 3 (Semi-Detailed)

Date: 10/23/2024

Bid Item No.	Bid Item Description	Unit	Qty	Unit Price	Extended Total
1	Site Preparation				\$ 60,000.00
	Mobilization \ Demobilization	EA	1	60,000	\$ 60,000.00
2	Pipeline Installation				\$ 1,934,820.00
	F&I 16-inch DIP with Fittings	LF	62	\$ 295	\$ 18,290.00
	F&I 24-inch DIP with Fittings	LF	2,931	\$ 415	\$ 1,216,365.00
	Restrained Joints	LF	2,085	\$ 120	\$ 250,200.00
	24" DIP Plug & Curb Stop	EA	2	\$ 4,200	\$ 8,400.00
	16" DIP Plug & Curb Stop	EA	1	\$ 3,600	\$ 3,600.00
	F&I 2-inch ARV	EA	8	\$ 9,500	\$ 76,000.00
	F&I 16-inch Gate Valve	EA	1	\$ 18,500	\$ 18,500.00
	F&I 24-inch Gate Valve	EA	2	\$ 38,500	\$ 77,000.00
	F&I 2-inch ARV	EA	8	\$ 9,500	\$ 76,000.00
	6" Fire Hydrant Assembly	EA	6	\$ 9,000	\$ 54,000.00
	24" x 16" Tee	EA	1	\$ 6,500	\$ 6,500.00
	24" x 6" Tangential Tee	EA	6	\$ 4,500	\$ 27,000.00
	24" 45° Bend	EA	24	\$ 3,500	\$ 84,000.00
	16" 45° Bend	EA	2	\$ 2,000	\$ 4,000.00
	Trench Safety	LF	2,993	\$ 5	\$ 14,965.00
3	Miscellaneous				\$ 141,000.00
	Construction Staking \ Testing (6%)	LS	1	\$ 116,000	\$ 116,000.00
	Traffic Control	LS	1	\$ 15,000	\$ 15,000.00
	As-built Drawing Preparation	LS	1	\$ 10,000	\$ 10,000.00
Probable Construction Bid Price (Rounded)					\$ 2,136,000.00
Construction Management				10%	\$ 193,482.00
Sales Tax				5.27%	\$ 112,460.40
Bond				1.20%	\$ 25,632.00
<i>Subtotal</i>					\$ 2,467,574.40
Contingency				15.00%	\$ 370,136.16
Total Probable Construction Bid Price (Rounded)					\$ 2,840,000.00

EXHIBIT D
Printed Instructions
[See Attached]

EXHIBIT “D”
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
2555 E. Camelback Road, Suite 350
Phoenix, AZ 85016

Phone: (602) 567-8154



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.