Board of Supervisors Memorandum

April 1, 2014

Proposed Hook M (Co9-11-08 Andrada Investors, LLC) Development Agreement

Background

On April 3, 2012, the Board of Supervisors approved the Hook M [Co9-11-08 Andrada Investors, LLC – Andrada Road (Alignment)] rezoning case subject to standard and special rezoning conditions. A rezoning condition of the case requires that a development agreement be adopted to address the design, construction and funding of offsite transportation improvements. Department of Transportation Rezoning Condition 8E states *"The property owner(s)/developer(s) shall enter into a Development Agreement with Pima County addressing, at a minimum, offsite improvements, phasing of access and right-of-way as approved by the Department of Transportation."*

The Hook M case rezoned a total of 716 acres located west of Houghton Road and Andrada Road, north of Sahuarita Road and northwest of Corona de Tucson. The rezoning site consists of two separate areas: 1) the 79-acre western portion of the site was rezoned from RH (Rural Homestead) to RH-® (Rural Homestead – Restricted Zone) and is intended to remain as open space; and 2) the remaining 637-acre eastern portion was rezoned from RH (Rural Homestead Zone) to RH-® (Rural Homestead – Restricted Zone), SR (Suburban Ranch Zone), CR-5 (Multiple Residence Zone) (Small Lot Subdivision Option), TR (Transitional Zone), and CB-1 (Local Business Zone) and is intended to be developed for single- and multi-family residential, office, employment and commercial uses and public facilities (school).

The proposed development agreement specifies the transportation and wastewater improvements required of the developer to ensure orderly development of the Hook M rezoning site. The development agreement identifies the required design, construction and funding of offsite transportation improvements. Available Hook M Transportation Impact Fees may be used to reimburse eligible costs. The development agreement states that the developer is responsible for the design and construction of any wastewater pump stations, force mains and/or conveyance lines to the Corona de Tucson Wastewater Treatment Facility from the rezoning site, as well as all onsite wastewater improvements necessary to serve the property. If there is insufficient sewer capacity, the developer is responsible for expanding the capacity of the treatment facility to the extent necessary to serve the rezoning site. Additionally, the development agreement grants a 10-year protected development right to the developer.

The term of the proposed development agreement is 25 years from the date the agreement is signed.

Recommendation

I recommend the Board of Supervisors approve Resolution 2014-_____ and the Hook M Development Agreement as presented.

Respectfully submitted,

C.H. Huckelberry
County Administrator

CHH/mjk – March 25, 2014

Attachments

c: John Bernal, Deputy County Administrator for Public Works
Carmine DeBonis, Jr., Director, Development Services
Janet Emel, Senior Planner, Development Services

RESOLUTION 2014-_____

A RESOLUTION OF THE PIMA COUNTY BOARD OF SUPERVISORS APPROVING AND AUTHORIZING THE EXECUTION OF A HOOK M DEVELOPMENT AGREEMENT BETWEEN PIMA COUNTY AND ANDRADA INVESTORS LLC.

WHEREAS, Pima County may, pursuant to A.R.S. § 11-1101, enter into development agreements relating to property located in unincorporated Pima County; and

WHEREAS, the Pima County Board of Supervisors approved the rezoning request Co9-11-08 Andrada Investors LLC – Andrada Road (Alignment) (Hook M) on April 3, 2012 which includes a rezoning condition requiring the adoption of a development agreement to address, at a minimum, offsite transportation improvements, phasing of access and right-of-way; and

WHEREAS, the Parties desire to enter into this Hook M Development Agreement to establish the design, construction, and funding of roadway and wastewater improvements; and

WHEREAS, the Board of Supervisors has concluded that the development of the subject property, under the terms set forth in the proposed Hook M Development Agreement and Co9-11-08 rezoning conditions, will be a benefit for the residents of Pima County;

NOW, THEREFORE, UPON MOTION DULY MADE, SECONDED AND CARRIED, BE IT RESOLVED THAT:

1. The Hook M Development Agreement between Pima County and Andrada Investors LLC, as presented to the Board on this date, is hereby approved.

2. The Chairman of the Board is hereby authorized and directed to sign the Development Agreement for the Pima County Board of Supervisors.

3. The various officers and employees of Pima County are hereby authorized and directed to perform all acts necessary and desirable to give effect to this Resolution and the development agreement.

PASSED, ADOPTED AND APPROVED this 1st day of April 2014.

PIMA COUNTY BOARD OF SUPERVISORS:

_____
Chair

ATTEST:

_____
Clerk Board of Supervisors

APPROVED AS TO FORM:

Regina Nassen
Deputy County Attorney
REGINA NASSEN

When recorded return to:
Pima County
c/o Robin Brigode
Clerk of the Board
130 W. Congress
Tucson, Arizona 85701

HOOK M DEVELOPMENT AGREEMENT

This Agreement, known as the Hook M Development Agreement (the "Agreement"), is entered into by Andrada Investors, L.L.C., an Arizona limited liability company ("Developer") and Pima County, a body politic and political subdivision of the State of Arizona (the "County").

RECITALS

A. On June 5, 2012 the Pima County Board of Supervisors approved a rezoning (Co9-11-08) of that certain property legally described on Exhibit "A" attached hereto (the "Property"), subject to standard and special conditions.

B. The rezoning conditions require that the Developer and County enter into a development agreement to provide for the construction and phasing of certain infrastructure related to the development of the Property.

C. Developer and County are hereby entering into this Agreement to satisfy the above condition and to provide for orderly development of the Property.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, terms, covenants and conditions set forth herein, the County and Developer agree as follows:

1. Authority/Recitals. Developer and County are entering into this agreement pursuant to Pima County Ordinance 2012-28 and A.R.S. § 11-1101 *et seq.* The Recitals set forth above are hereby incorporated into this agreement as though fully set forth herein.

2. Property. "Property" as used in this Agreement means the land legally described and depicted on Exhibits A and B attached hereto and incorporated by this reference.

3. Design and Construction of Off-Site Transportation Improvements. Subject to the terms and conditions set forth below, Developer shall be obligated to design and construct the following off-site transportation improvements with respect to the Property (the "Off-Site Transportation Improvements"):

    3.1. Phase One Andrada Road Extension: Prior to issuance of the first certificate of occupancy for any dwelling unit on the Property, Developer shall:

3.1.1. Design a 4-lane roadway extending Andrada Road from Houghton Road to the project entrance as shown on Exhibit C ("Andrada Road Extension"). The Andrada Road Extension shall be designed in accordance with the Pima County Cross Section attached hereto as Exhibit D;

3.1.2. Obtain approval from the Arizona State Land Department ("ASLD") for the necessary right of way to construct the Andrada Road Extension; and

3.1.3. Construct the first two lanes of the Andrada Road Extension in accordance with the Pima County Cross Section attached hereto as Exhibit D and in compliance with the approved plans and specifications. ("Phase One Andrada Road Extension").

3.1.4. Intersection Improvements. Construct improvements at the intersection of Houghton and Andrada, as determined necessary by County DOT. The need and required timing for intersection improvements at Houghton, if any, shall be determined by the County based on a traffic impact study (the "Traffic Study") to be obtained by Developer, at Developer's cost, and approved by County prior to recordation of the master block plat for the Property. All costs of design, construction and right of way acquisition for the Phase One Andrada Road Extension, including any required intersection improvements, are eligible for impact fee credits/reimbursement as set forth below.

3.2. Phase Two Andrada Road Extension: Prior to issuance of building permits that would result in more than 800 single family residential units on the Property, Developer shall construct the remaining two lanes of the Andrada Road Extension in accordance with the Pima County Cross Section attached hereto as Exhibit D. ("Phase Two Andrada Road Extension"). All costs of design, construction and right of way acquisition for the Phase Two Andrada Road Extension, including any required intersection improvements, are eligible for impact fee credits/reimbursement as set forth below.

3.3. Off-Site Alternative: If Developer, despite its best efforts, has not been successful in obtaining ASLD's approval for the sale of the right-of-way for the Andrada Road Extension as provided in Section 3.5 below, and any requisite approvals from the City of Tucson, by the date that is 36 months after Developer's application to ASLD, then Developer may propose an alternative design for the Andrada Road Extension, based on an updated Traffic Study, that is acceptable to the County ("Off-Site Alternative").

3.4. Relocation/Undergrounding of Utilities. Developer and the County shall cooperate to attempt to design and locate the Andrada Road Extension in a manner that minimizes required relocation or undergrounding of existing power lines or poles located along or near the section line and the moving of existing underground utilities but is still consistent with County requirements and does not increase on-going County maintenance costs.

3.5. ROW Acquisition: Developer will make application to acquire all necessary rights of way and/or easements from private property owners and public property owners, including the ASLD and the United States Bureau of Land Management, for the Off-Site Transportation Improvements.

3.5.1. The County will cooperate with such efforts, including but not limited to serving as the applicant on all governmental applications and assisting in the processing of such applications, provided that County will not be required to bear any expenses associated with the process.

3.5.2. If, despite Developer's best efforts, Developer is unsuccessful in acquiring necessary rights-of-way from other third party landowners outside the Property, then the County will, at Developer's request, acquire the property by negotiated acquisition or through exercise of its powers of eminent domain. Developer shall be responsible for all costs of acquisition, including, if a condemnation action is brought, any award to the property-owner, whether for compensation or attorney fees or other damages, and the County's cost of bringing and prosecuting the action, including the County's attorney fees and/or the cost of in-house counsel. Developer will deposit funds, in an amount reasonably estimated by County as sufficient to cover the above amounts, with the County prior to the County bringing any condemnation action. If that estimate exceeds 200% of the appraised value for such property, County and Developer shall determine the best method of proceeding with the acquisition.

3.6. Transportation Impact Fees. Impact fees collected from within the Property shall be held in the Pima County Mountain View Impact Fee Benefit Area account but Pima County shall keep track of the fees paid by the Property (the "Hook M Transportation Impact Fees"). As Developer designs and constructs eligible Off-Site Transportation Improvements, the Hook M Transportation Impact Fees, if available, shall be used to reimburse Developer for such eligible costs. If there are not sufficient collected Hook M Transportation Impact Fees to pay the full cost to design and construct the eligible Off-Site Transportation Improvements as the work is being done, then Developer shall be entitled, at its election, to either: (i) reimbursement of such costs from future collected Hook M Transportation Impact Fees; (ii) credits for such costs against County transportation impact fees due with respect to the Property pursuant to A.R.S. § 11-1102. In no event will County provide reimbursement or credits that, in total, exceed the amount of the Hook M Transportation Impact Fees. Credits shall be granted on a first come, first served basis as building permits are requested at the then-current transportation impact fee rate, which the County may change from time to time. The total amount of reimbursement or credits shall not exceed the total eligible costs. Developer must provide County with appropriate documentation establishing to the County's reasonable satisfaction the total amount of eligible costs.

3.7. Design, Inspection and Approval. Developer shall design, engineer and construct the Off-Site Transportation Improvements in accordance with County design

standards. Before construction, the Developer shall submit the design plans for the Off-Site Transportation Improvements to the County for review and approval. The County shall inspect the Off-Site Transportation Improvements. If the County finds that the Off-Site Transportation Improvements were completed in substantial conformance with the approved plans and in compliance with all applicable County standards, the County shall approve the Off-Site Transportation Improvements, Developer will convey the Off-Site Transportation Improvements to the County, and the County will accept ownership and maintenance responsibility for improvements located in the County. County shall not withhold its approval of the County Off-Site Transportation Improvements unreasonably.

3.8. As-Built Drawings. Upon completion of the Off-Site Transportation Improvements, the Developer's engineer shall provide to the County as-built drawings and shall certify that the Off-Site Transportation Improvements were constructed in accordance with the approved plans. The Developer shall, at the completion of construction provide the County a warranty from the contractor stating that the Off-Site Transportation Improvements will be free from any material defect for a period of two years from the date the County accepts maintenance of the last Off-Site Transportation Improvements completed by the Developer. The warranty shall run to the benefit of the Developer and the County.

3.9. The Parties agree that, under A.R.S. §28-6713(G) et seq., the Developer can perform the County Off-Site Transportation Improvements on a negotiated contract basis in lieu of obtaining public bids for the construction and it shall not be a requirement that the County Off-Site Transportation Improvements be publicly bid in order for the same to be dedicated to and accepted by the County. The Developer shall be diligent in negotiating the costs for the County Off-Site Transportation Improvements that are reasonable and consistent with the cost of work of similar nature within the County. The Developer shall provide the County with a copy of the contractor's estimate of total costs for review prior to the notice to proceed to the construction. Notwithstanding the foregoing, the Developer agrees that it will conduct a bidding process for the construction if the County requests it to do so.

3.10. The Off-Site Transportation Improvements described in this Section 3 are the only off-site transportation improvements that Developer will be required to construct in connection with the development of the Property.

4. Wastewater. The Property is planned to be served by the Corona de Tucson Wastewater Treatment Plant (the "Treatment Plant"). Developer will be responsible for the design and construction of any pump stations, force mains and/or delivery lines from the Treatment Plant to the Property as well as all on-site wastewater improvements necessary to serve the Property (the "Wastewater Improvements").

4.1. Developer shall negotiate a separate Master Sewer Service Agreement with the County prior to recordation of the master block plat for the Property, which Master Sewer Service Agreement shall be consistent with this Agreement and shall more

specifically identify the design, bid, construction, acceptance, administration, operation, and maintenance requirements for the Wastewater Improvements.

4.2. Connection Fees and Treatment Capacity. The Master Sewer Service Agreement shall provide that the County shall charge, for each sewer connection within the Property, both residential and commercial, a connection fee at the then-current rate established in the Pima County Code. If, at any time, there is insufficient sewer capacity to serve the Property, the Developer will agree to expand the capacity of the Treatment Plant at Developer's cost to the extent necessary to serve the Property, in a manner acceptable to County. If Developer funds an expansion of the Treatment Plant, Developer will be entitled to reimbursement for the cost of the expansion in the form of County sewer connection-fee credits or rebates in the manner provided by the Pima County Code. The timing and manner of such connection fee reimbursements and credits shall be identified in the Master Sewer Service Agreement. The Developer shall have the right to convey wastewater credits to homebuilders tributary to the Treatment Plant, with appropriate notice to County.

4.3. The Master Sewer Service Agreement shall incorporate details of any required Special Facilities Agreements, and the method of payment of any fees associated with the operation of such facilities.

4.4. The Wastewater Improvements described in this Section 4 are the only off-site wastewater improvements that Developer will be required to construct in connection with the development of the Property and nothing in this Agreement requires the Developer to address increased wastewater-collection and treatment-capacity needs caused by development of land other than the Property.

5. Protected Development Right. Pursuant to A.R.S. § 11-1202(F), the Preliminary Development Plan (the "Plan") as presented and approved at by the Board of Supervisors at the rezoning public hearing is hereby designated a protected development right plan, as such term is defined by A.R.S. § 11-1201. County and Developer each acknowledge that granting a protected development right to undertake and complete the development shown on the Plan and permitted under current zoning regulations will promote reasonable certainty, stability and fairness in the land use planning and regulatory process and secure the reasonable investment backed expectations of Developer. The protected development rights granted by this paragraph are governed by the following:

5.1. Term. Pursuant to A.R.S. § 11-1203(A), Developer's protected development right for all development within the Plan as described herein shall terminate ten (10) years after execution and recording of this Agreement (the "PDR").

5.2. Governing Rules. Under the PDR, the development of the Plan shall be governed by the applicable provisions of the Pima County Zoning Code in effect on the effective date of this agreement. Developer's protected development rights, as established by this Agreement, precludes the enforcement against the Property of any other legislative or administrative land use regulation by the County or pursuant

to an initiated measure that would change, alter, impair, prevent, diminish, delay or otherwise impact the development or use of the Property. Notwithstanding the foregoing, the County may enact the following provisions, and take the following actions, which shall be applicable to and binding on the development of the property as set forth in Ordinance 2012-28 , the Plan and this Agreement:

5.2.1. Provisions adopted with the written consent of the affected landowner.

5.2.2. On findings, by ordinance or resolution and after notice and a public hearing, that natural or man-made hazards on or in the immediate vicinity of the Property, if uncorrected, would pose a serious threat to the public health, safety and welfare if the project were to proceed as approved pursuant to this Agreement and the Plan.

5.2.3. On findings, by ordinance or resolution and after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the County's approval of the Plan or any other plat, plan or permit based on the Plan.

5.2.4. On the enactment of a state or federal law or regulation that precludes development as approved in the Plan and pursuant to this Agreement, in which case the governing body of Pima County, after notice and a hearing, may modify the affected provisions, on a finding that the change in state or federal law has a fundamental effect on the protected development rights.

5.2.5. The PDR granted by this Agreement does not preclude the enforcement of a subsequently-adopted overlay zoning classification that imposes additional requirements that do not affect the allowable type or density or use, or the infrastructure to serve same, or ordinances or regulations that are general in nature and that are applicable to all property subject to regulation by the County, such as building, fire, plumbing, electrical and mechanical codes. The protected development rights do not preclude, change, or impair the authority of the County to adopt and enforce zoning ordinance provisions governing nonconforming property or uses.

5.2.6. Nothing herein shall be construed as diminishing or altering the authority of the County to exercise its eminent domain powers or to adopt or increase development impact fees authorized by A.R.S. §§ 11-1102 and 11-1103 or sanitary sewer user or connection fees authorized by Title 13 of the Pima County Code.

5.2.7. Nothing in this Agreement shall affect the claims of the Parties, if any, regarding the vesting of all or a portion of the Plan as a matter of common law, either during the term of or following termination of this Agreement.

6. General Provisions.

6.1. Binding Effect and Recording. The obligations of the Developer under this Agreement will run with the land and will be binding upon each successor owner of any portion of the Property, without the necessity of any explicit assignment and acceptance. Developer's rights and obligations hereunder may only be assigned to a person or entity that has acquired the Property or a portion thereof. Developer will be released from obligations under this Agreement that apply to any portion of the Property conveyed by Developer to another person, but only to the extent that the new owner has entered into an agreement with the County as contemplated in Section 6.16 below, and has in that agreement agreed to perform those obligations. This does not relieve Developer of any obligations that accrued prior to the conveyance. Upon execution hereof, this Agreement shall be recorded in the Office of the Pima County Recorder for Pima County, Arizona.

6.2. Amendments. This Agreement may be amended, in whole or in part and with respect to all or any portion of the Property, only with the mutual written consent of the parties to this Agreement and the owners of that portion of the Property. The amendment or cancellation shall be recorded in the Office of the Pima County Recorder.

6.3. Effective Date and Term. The effective date of this Agreement (the "Effective Date") is the date the Agreement is signed by all the Parties. This Agreement expires twenty-five (25) years from the Effective Date, except that any applicable indemnification and insurance requirements required by this Agreement shall continue in full force and effect.

6.4. Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. The Developer represents and warrants that it is duly formed and validly existing under the laws of the State of Arizona and that it is duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. The Developer and the County warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing. The Developer represents to the County that by entering into this Agreement, the Developer has bound the Property and all persons and entities having any legal or equitable interest therein to the terms of this Agreement

6.5. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the County or the Developer of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

6.6. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one

and the same instrument. The signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document. The signature pages from one or more counterpart may be removed from such counterpart and attached to a single instrument.

6.7. Notices. Any notice to be given or served (and any election to be made or delivered) upon any party hereto in connection with this Agreement must be in writing and shall be deemed to have been given and received (or made and delivered) three (3) days after a Certified or Registered letter containing such notice (or selection), properly addressed, with postage prepaid, is deposited in the United States mail; and if given otherwise than by Registered or Certified mail, it shall be deemed to have been given (or made) when delivered to and received by the party to whom it is addressed. Such notice shall be given to the parties at the following addresses:

DEVELOPER	COUNTY
Andrada Investors, LLC 2200 E. River Rd. #115 Tucson, AZ 85718 Attn: David Goldstein	Pima County Administrator 130 W. Congress 10th Floor Tucson, AZ 85701-1207

A party may change the address at which the party shall receive notice pursuant to this Agreement by giving written notice of such new address in the same manner as any other notice shall be given in accordance with this section.

6.8. Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

6.9. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein. The Parties acknowledge and agree that this Agreement does not replace, supersede or amend the Plan or the conditions of rezoning of the Property.

6.10. Exhibits. The exhibits in this Agreement are fully incorporated herein as if set forth at length in the body of this Agreement.

6.11. Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. The parties agree that venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Pima County, Arizona, and the parties hereby waive any right to object to such venue.

6.12. Conflict of Interest. This Agreement is subject to the provisions of A.R.S. § 38-511, which are incorporated into this Agreement by this reference.

6.13. No Partnership; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, agency or other arrangement between the parties hereto. No term or provision of this Agreement is intended to, or shall be for the benefit of any person, firm, organization or corporation and no such other person, firm, organization or corporation to a party hereto shall have any right or cause of action, except as specifically set forth herein.

6.14. Representatives, Mediation, Default and Non-Liability.

6.14.1. Representatives. To further the cooperation of the parties in implementing this Agreement, the County and the Developer each shall designate and appoint a representative to act as a liaison between the County and its various departments and the Developer. The initial representative for the County (the "County Representative") shall be the County Administrator or his designee and the initial representative for the Developer shall be its project manager, as identified by the Developer from time to time (the "Developer Representative"). The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement and the development of the Property.

6.14.2. Mediation. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try to settle the dispute through mediation before resorting to arbitration, litigation or some other dispute resolution procedure. In the event that the parties cannot agree upon the selection of a mediator within seven (7) calendar days of a written demand from one party to the other invoking this mediation right, any of the parties may request the presiding judge of the Superior Court of Pima County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

6.14.3. Default. Failure or unreasonable delay by any party to perform any term or provision of this Agreement for a period of thirty (30) business days after written notice thereof from another party shall constitute a default under this Agreement. If the default is of a nature which is not capable of being cured within thirty (30) days, the cure, to be timely, must be commenced within the 30-day period, and diligently pursued to completion. The notice must specify the nature of the alleged default and the manner in which the default may be satisfactorily cured. In the event of a default hereunder by any party, the non-defaulting party shall be entitled to all remedies at both law and in equity, including, without limitation, specific performance and the right to perform the obligation(s) of which the defaulting party is in default and to immediately seek reimbursement from the defaulting party of all sums expended in order to cure such default, together with interest on all such sums from the date said sums are expended by the non-defaulting party for the purpose of curing the default to the date such sums are paid in full.

6.14.4. Non-Liability of County and District Officials and Employees. No member, official or employee of the County shall be personally liable to the Developer, or any successor in interest or successor owner of any portion of the Property, for any obligation of the County under this Agreement or any default or breach of such an obligation by the County, or for any amount that may become due to the Developer or successor under this Agreement. This does not preclude Developer or a successor from obtaining injunctive relief against the County or a County official through a mandamus or other special action.

6.15. Attorney's Fees. If any party brings a legal action either because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and court costs.

6.16. Sub-agreements. The County and the Developer hereby acknowledge that the development of the Property may be accomplished by the Developer through a series of sales, leases, joint ventures and/or other agreements and arrangements with other experienced developers, investors and owners of real property. In connection therewith, it is anticipated and contemplated by the parties that such developers, investors or owners may desire to negotiate and enter into separate and subordinate development agreements with the County and/or the Developer with respect to infrastructure improvements, uses, plan approvals and other similar matters which may be the subject of separate agreements between such developers, investors and owners and the County and/or the Developer. The parties hereby agree that any and all development agreements entered into with any such developer, investor or owner of any parcels of the Property shall be subordinate in all respects to the terms and conditions of this Agreement and, in the event of any conflict or discrepancy between the provisions of any such development agreement and the terms and conditions of this Agreement, this Agreement shall govern and control.

6.17. Further Assurance. Each party agrees to execute such further documents, instruments and other writings and to perform such acts as either party may reasonably request in order to fully effectuate the purpose of this Agreement. The County Administrator is authorized to sign any such documents on behalf of the County, but this does not authorize the County Administrator to agree to an Amendment of this Agreement, or approve additional development agreements as described in Section 6.16 above.

6.18. Construction. The terms and provisions of this Agreement represent the results of negotiations between County and Developer, each of which has been represented by counsel of its own choosing, and none of which have 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 no party shall be deemed to have drafted this Agreement for purposes construing any portion of this Agreement for or against any party.

6.19. Severability. If any provision, other than the financing provisions, of this Agreement is declared void or unenforceable, such declaration shall have no effect on those portions of the Agreement not declared void.

6.20. Termination Upon Sale to End Purchaser or User. This Agreement shall terminate without the execution or recordation of any further document or instrument as to any lot that has been finally subdivided and individually (and not in "bulk") leased (for a period of longer than one year) or sold to the end purchaser or user and thereupon such lot shall be released from and no longer be subject to or burdened by the provisions of this Agreement, or entitled to its benefits.

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

Andrada Investors, LLC

By: Diamond Ventures, Inc., Manager

By: _____

Its: President

Date: 2/18/14

Pima County

By _____
Chair, Pima County Board of Supervisors

Date: _____

Attest:

_____
Clerk of the Board

Approved as to form:

_____
Deputy County Attorney
REGINA NASSEN

STATE OF ARIZONA)
) ss
County of Pima)

The foregoing Agreement was acknowledged before me this 18th day of FEBRUARY, 2014, by David Goldstein, the President of Diamond Ventures, Inc., an Arizona corporation, as the Manager of Andrada Investors, LLC, an Arizona limited liability company, on behalf of the company.

Nicola Madsen
Notary Public

My Commission Expires: 6/23/2017

OFFICIAL SEAL
NICOLA MADSEN
NOTARY PUBLIC-ARIZONA
PIMA COUNTY
My Comm. Exp. June 23, 2017

EXHIBIT "A"

Parcel 1

Lot 4 and the Southwest Quarter of the Northwest Quarter of Section 3, Township 17 South, Range 15 East, Gila and Salt River Base and Meridian, Pima County, Arizona.

Parcel 2

Section 4, Township 17 South, Range 15 East, Gila and Salt River Base and Meridian, Pima County, Arizona;

EXCEPT the South Half of the South Half AND the South Half of the North Half of the South Half thereof.

Parcel 3

The South Half of the South Half AND the South Half of the North Half of the South Half of Section 4, Township 17 South, Range 15 East, Gila and Salt River Base and Meridian, Pima County, Arizona.

Parcel 4

Lot 4 and the Southwest Quarter of the Northwest Quarter of Section 5, Township 17 South, Range 15 East, Gila and Salt River Base and Meridian, Pima County, Arizona.

Parcel 5

Lot 11 and the East Half of the East Half of the Southeast Quarter of the Northeast Quarter of Section 6, Township 17 South, Range 15 East, Gila and Salt River Base and Meridian, Pima County, Arizona.

Exhibit "B"

Property Depiction

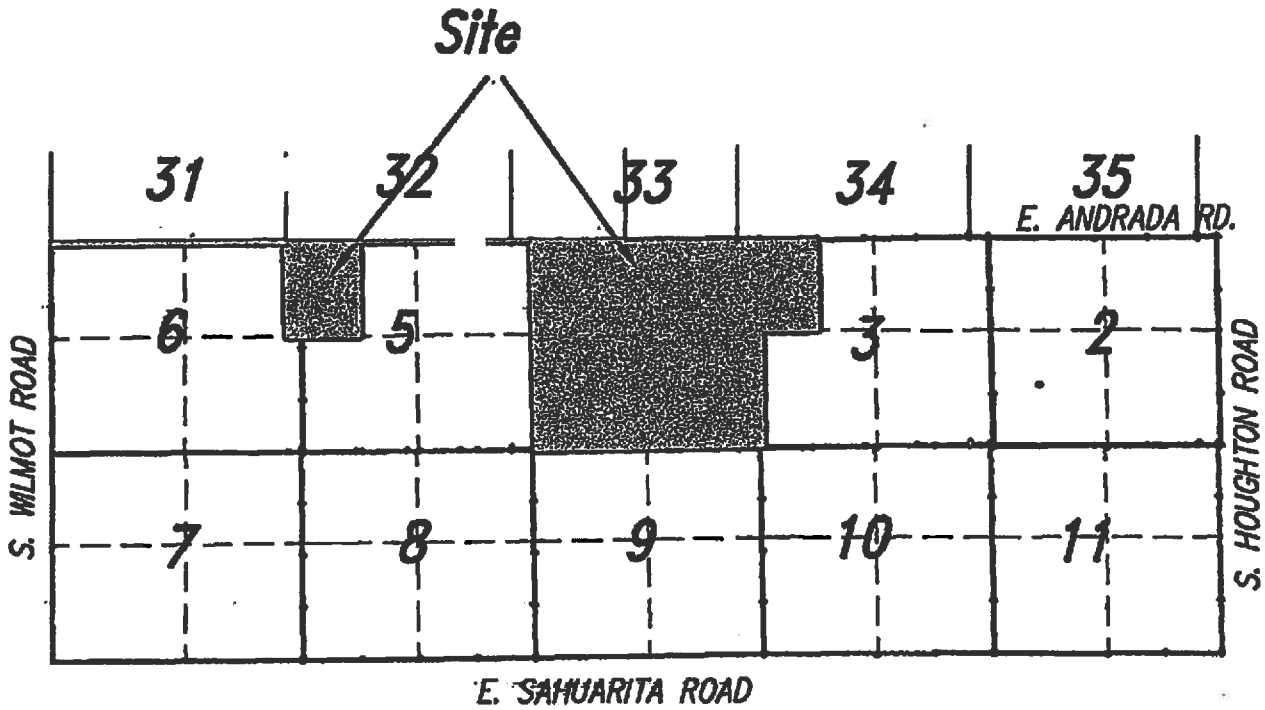


Exhibit C

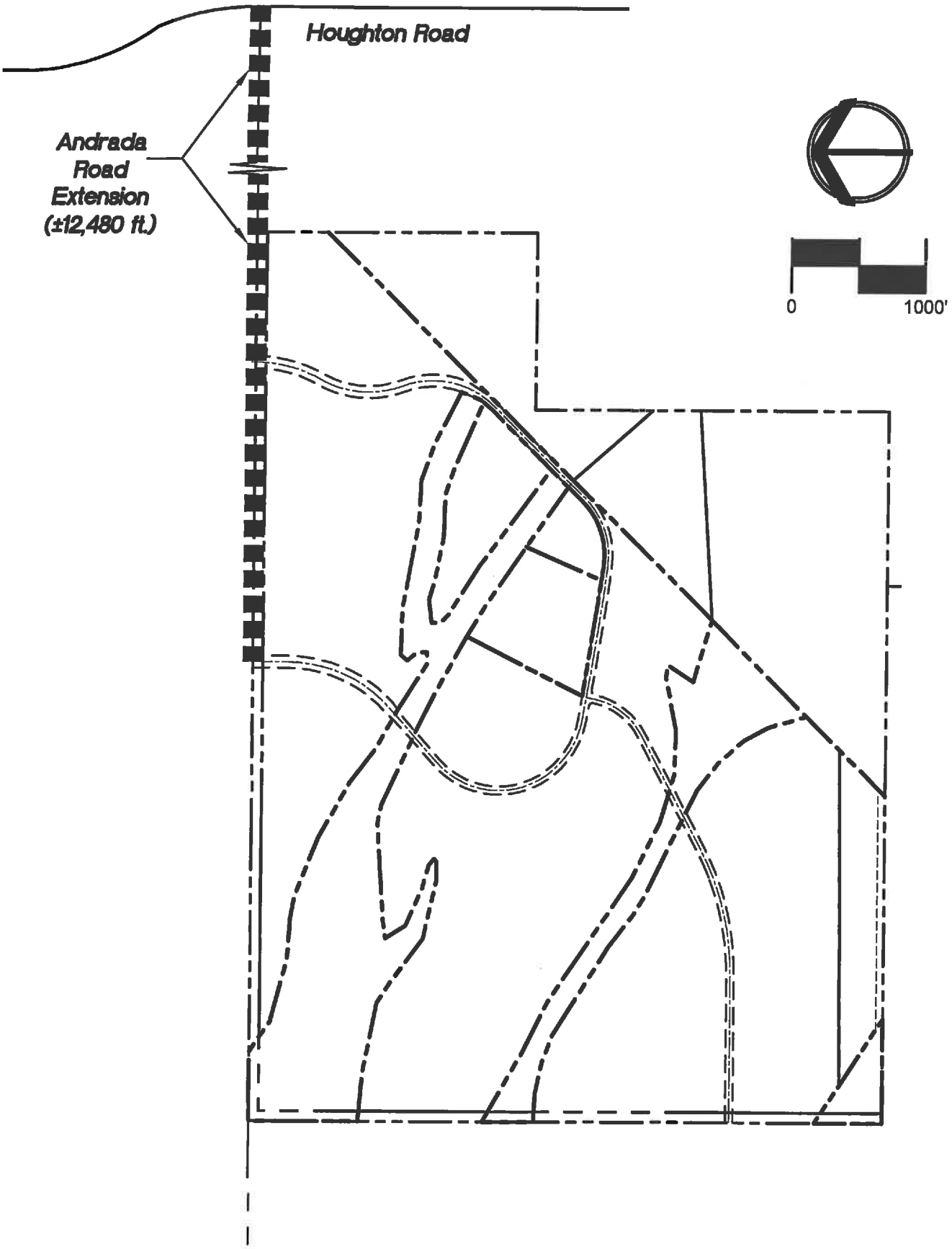
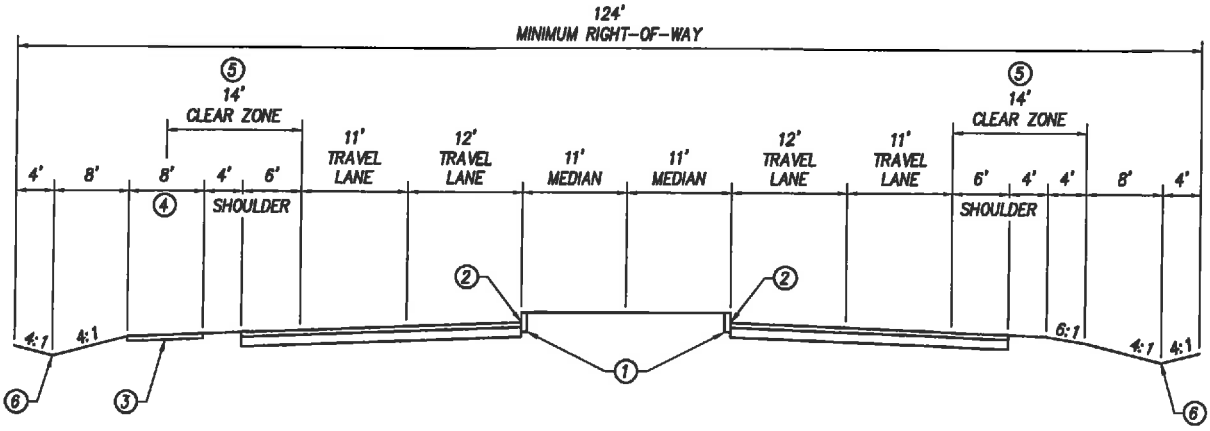


EXHIBIT "D"

NORTH



1. MOUNTABLE (H=6") CONC. VERTICAL CURB PER PC/COT SD 209, TYPE 1 (TYP.)
2. MEDIAN CONTROL PROFILE GRADE AND AXIS OF ROTATION, HORIZONTAL LOCATION MAY VARY.
3. PEDESTRIAN WALKWAY.
4. 8' MEANDERING ASPHALT WALKWAY, SOUTH SIDE ONLY.
5. FOR CLEAR ZONE REQUIREMENTS, REFER TO AASHTO ROADSIDE DESIGN GUIDE, 2002 (CHAPTER 3).
6. A 2' MINIMUM DEPTH ROADWAY CHANNEL IS REQUIRED TO PREVENT SURFACE OR OFF-SITE WATER FROM ENTERING THE SUBGRADE.

TYPICAL SECTION FOR 4-LANE DIVIDED ROAD
ANDRADA ROAD RIGHT-OF-WAY