



BOARD OF SUPERVISORS AGENDA ITEM REPORT
AWARDS / CONTRACTS / GRANTS

Award Contract Grant

Requested Board Meeting Date: 12/06/2022

* = Mandatory, information must be provided

or Procurement Director Award:

***Contractor/Vendor Name/Grantor (DBA):**

Rocking K Development Co.

***Project Title/Description:**

First Amendment to the Second Amended and Restated Rocking K Development Agreement.

***Purpose:**

This amendment clarifies the Landowners' off-site roadway improvement obligations and amends the required phasing, sequencing, and dwelling-unit triggers for the construction of the off-site roadway improvements to those set forth in the 2022 Traffic Report. Traffic Reports have been updated by the Developer to analyze the traffic impacts and improvements as set forth in Rocking K South Transportation Infrastructure Master Plan, Psomas Project No. 7ROC210401, dated June 2022.

***Procurement Method:**

This Contract is a non-Procurement contract and not subject to Procurement rules.

***Program Goals/Predicted Outcomes:**

The amendment to the Development Agreement updates and clarifies the Developer's responsibilities for the required off-site roadway improvements. It also establishes that future Traffic Reports will be completed with each new subdivision plat for any portion of that property that will result in dwelling unit counts higher than the 4715 units set forth in the 2022 Traffic Report.

***Public Benefit:**

At its own cost, the Developer will design, engineer, acquire any necessary right-of-way and permits for, and construct the Off-Site Roadway Improvements as contained in the 2022 Traffic Report.

***Metrics Available to Measure Performance:**

Future Traffic Reports will be completed with each new subdivision plat for any portion of that property that will result in dwelling unit counts higher than the 4715 units set forth in the 2022 Traffic Report.

***Retroactive:**

This amendment is not retroactive.

TO: COB 11/18/22 (1)

Ver: 07

Pgs: 11

NOV 17 22 PM 03:52 PD

THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____
Commencement Date: _____ Termination Date: _____ Prior Contract Number (Synergen/CMS): _____
Expense Amount \$ _____* Revenue Amount: \$ _____

*Funding Source(s) required: _____

Funding from General Fund? Yes No If Yes \$ _____ % _____

Contract is fully or partially funded with Federal Funds? Yes No

If Yes, is the Contract to a vendor or subrecipient? _____

Were insurance or indemnity clauses modified? Yes No
If Yes, attach Risk's approval.

Vendor is using a Social Security Number? Yes No
If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: CT Department Code: TR Contract Number (i.e., 15-123): 20-116

Amendment No.: 01 AMS Version No.: 07

Commencement Date: 12/06/2022 New Termination Date: _____

Prior Contract No. (Synergen/CMS): _____

Expense Revenue Increase Decrease Amount This Amendment: \$ 0.00

Is there revenue included? Yes No If Yes \$ _____

*Funding Source(s) required: SE Benefit Area Permit Fee's 4063-TR-3504

Funding from General Fund? Yes No If Yes \$ _____ % _____

Grant/Amendment Information (for grants acceptance and awards) Award Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____

Commencement Date: _____ Termination Date: _____ Amendment Number: _____

Match Amount: \$ _____ Revenue Amount: \$ _____

*All Funding Source(s) required: _____

*Match funding from General Fund? Yes No If Yes \$ _____ % _____

*Match funding from other sources? Yes No If Yes \$ _____ % _____

*Funding Source: _____

*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?

Contact: Robin Freiman, ROW Section Manager (Administrative Contact: Angela Alvarez 724-5927)

Department: Transportation Telephone: 724-6655

Department Director Signature: [Signature] Date: 11/13/22

Deputy County Administrator Signature: [Signature] Date: 11/9/2022

County Administrator Signature: [Signature] Date: 11/9/2022

**First Amendment to the Second Amended and Restated
Rocking K Development Agreement**

This First Amendment to the Second Amended and Restated Rocking K Development Agreement (this "**First Amendment**"), for reference purposes dated December 06, 2022, is entered into by and among Pima County ("**County**"), Rocking K Development Co., an Arizona corporation ("**Developer**"), Diamond Ventures, Inc., an Arizona corporation ("**DVI**"), Rocking K Holdings Limited Partnership ("**Rocking K Holdings LP**"), Rincon Valley Holdings Limited Partnership ("**Rincon Valley Holdings LP**"), and Fidelity National Title Agency, Inc., an Arizona corporation, as Trustee under Trust No. 60380, as trustee and not otherwise ("**Fidelity Trust 60380**"). Developer, DVI, Rocking K Holdings LP, Rincon Valley Holdings LP, and Fidelity Trust 60380 are collectively referred to in this First Amendment as the "**Landowners.**" County, Developer, DVI, Rocking K Holdings LP, Rincon Valley Holdings LP, and Fidelity Trust 60380 are collectively referred to in this First Amendment as the "**Parties.**"

Recitals

- A. County, Developer and DVI entered into that certain Second Amended and Restated Rocking K Development Agreement, which was recorded with the County's authorizing resolution in the office of the Pima County Recorder on May 21, 2018, at Sequence No. 20181410439 (the "**2018 Rocking K DA**").
- B. The Landowners own the remaining undeveloped portions of land governed by the **Rocking K Specific Plan**, as defined in Recital C of the 2018 Rocking K DA, whose land area is the "**Property**" as defined in Recital A of the 2018 Rocking K DA.
- C. The 2018 Rocking K DA requires Developer to construct certain "**Off-Site Roadway Improvements.**" The Off-Site Roadway Improvements, along with required phasing, sequencing, and dwelling-unit triggers for the construction of the Off-Site Roadway Improvements, were contained in the Off-Site Improvement Analysis for Rocking K prepared by Psomas (Project No. 7ROC100101), dated February 2011 and the Addendum to that study dated February 2, 2018 (together, the "**Old Traffic Reports**").
- D. As contemplated in the 2018 Rocking K DA, the Old Traffic Reports have been further updated by Developer to analyze the traffic impacts and improvements associated with that portion of the Property located south of Old Spanish Trail as set forth in Rocking K South Transportation Infrastructure Master Plan. Psomas Project No. 7ROC210401, dated June 2022 (the "**2022 Traffic Report**"), which report modifies the required Off-Site Roadway Improvements, along with required phasing, sequencing, and dwelling-unit triggers for the construction of the Off-Site Roadway Improvements resulting from development of that portion of the Property located south of Old Spanish Trail. Copies of the 2022 Traffic Report and County approval letters are on file with the Development Services Department. The modified Off-Site Roadway

Improvements are described and depicted on **Exhibit A** attached to and incorporated by this reference in this First Amendment.

- E. The Parties are entering into this First Amendment to clarify the Landowners' off-site roadway improvements obligations pertaining to the Property and to amend the required phasing, sequencing, and dwelling-unit triggers for the construction of the Off-Site Roadway Improvements to those set forth in the 2022 Traffic Report and to for the other purposes as stated in this First Amendment.

Agreement

1. **Authority.** The Parties are entering into this First Amendment under A.R.S. § 11-1101.
2. **Incorporation of Recitals and Exhibits.** The Recitals stated above and the attached Exhibits are incorporated by this reference into this First Amendment.
3. **Developer Responsibility for Off-Site Roadway Improvements.** Section 4.1 of the Second Amended and Restated Rocking K Development Agreement is hereby modified to provide that, at its own cost, Developer will design, engineer, acquire any necessary right-of-way and permits for, and construct the Off-Site Roadway Improvements as contained in the 2022 Traffic Report and depicted on **Exhibit A**, which exhibit supersedes and replaces Exhibit B to the 2018 Rocking K DA. In addition, all references in the 2018 Rocking K DA to the "Traffic Reports" shall hereby be deleted and replaced with the "2022 Traffic Report."
4. **Old Spanish Trail Widening.** Notwithstanding anything to the contrary in the 2018 Rocking K DA, the Parties agree that the widening of Old Spanish Trail shall not be required to be constructed to an all-weather condition but instead Old Spanish Trail shall be constructed so that it is passable during the 10-year flood and does not create levee conditions or increase water surface elevations in the floodway.
5. **Landowners' Responsibility for additional off-site roadway improvements.** The 2022 Traffic Report analyzed only those off-site roadway improvements needed accommodate development of that portion of the Property located south of Old Spanish Trail. The Landowners at their sole cost and expense shall prepare and submit to the County a traffic study (each individually a "**Future Traffic Report**") analyzing the cumulative traffic impacts from development of the Property with each new subdivision plat for any portion of the Property located north of Old Spanish Trail and with each new subdivision plat for any portion of the Property located south of Old Spanish Trail that will cumulatively result in dwelling-unit counts higher than the 4,715 units set forth in the 2022 Traffic Report. The Landowners shall, at their own cost, design, engineer, acquire any necessary right-of-way and permits for, and construct the off-site roadway improvements identified by each Future Traffic Report.
6. **Municipal Annexation or Incorporation.** Section 5.6.5 ("Annexation") of the 2018 Rocking K DA is hereby amended to provide as follows:

Annexation or Incorporation. Landowners may not, so long as any of the Bonds are outstanding, consent to annexation or original incorporation into any municipality of any of the Property that is not presently incorporated unless at that time the property to

be annexed or incorporated has been fully developed and all County development fees with respect to that development have been paid. If annexation or incorporation nevertheless occurs, it will not affect Developer's obligation to pay Debt Service Shortfalls.

7. **Effective Date; Term; Recording.** The effective date of this First Amendment is the date the First Amendment is approved by the Board of Supervisors. County will record this First Amendment in the Office of the Pima County Recorder within 10 days after the effective date.
8. **Counterparts.** This First Amendment may be executed in one 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 from one or more counterparts may be removed from the counterparts and the signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.
9. **Entire Agreement; Force and Effect.** This First Amendment constitutes the entire agreement between the Parties pertaining to the subject matter in it. All prior and contemporaneous agreements, representations, and understandings of the Parties, written or oral, are by this First Amendment superseded and merged in this First Amendment. Except as set forth in this First Amendment, the terms and conditions of the 2018 Rocking K DA shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this First Amendment on the date(s) set forth below.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW]

PIMA COUNTY

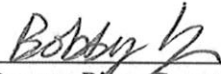
Sharon Bronson
Chair, Board of Supervisors

Date:_____

ATTEST:

Melissa Manriquez
Clerk of the Board of Supervisors

APPROVED AS TO FORM:



Deputy Pima County Attorney


STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Sharon Bronson, Chair of the Board of Supervisors of Pima County, a political subdivision of the State of Arizona, on behalf of the County.

My commission expires:

Notary Public

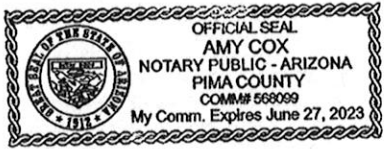
ROCKING K DEVELOPMENT COMPANY, INC.,
an Arizona corporation, on behalf of itself and all
beneficiaries of Fidelity Trust 60380

By: 
David Goldstein, President

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)


The foregoing instrument was acknowledged before me this 21st day of
October, 2022, by David Goldstein, President of Rocking K Development Company,
Inc., an Arizona corporation, on behalf of the corporation and all beneficiaries of Fidelity Trust
60380.

My commission expires: June 27, 2023




Notary Public

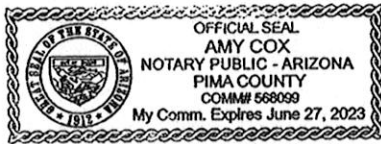
DIAMOND VENTURES, INC.,
an Arizona corporation,

By: 
David Goldstein, President/CEO

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)


The foregoing instrument was acknowledged before me this 21st day of October, 2022, by David Goldstein, President/CEO of Diamond Ventures, Inc., an Arizona corporation, on behalf of the corporation.

My commission expires: June 27, 2023




Notary Public

**ROCKING K HOLDINGS LIMITED
PARTNERSHIP**, an Arizona limited partnership
By: DIAMOND VENTURES, INC., an Arizona corporation, its
General Partner

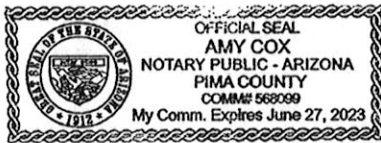
By: 
David Goldstein, President/CEO

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

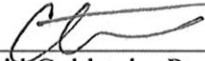
The foregoing instrument was acknowledged before me this 21st day of October, 2022, by David Goldstein, President/CEO of Diamond Ventures, Inc., an Arizona corporation, General Partner of Rocking K Holdings Limited Partnership, an Arizona limited partnership, on its behalf.

My commission expires: June 27, 2023


Notary Public



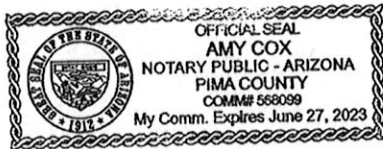
RINCON VALLEY HOLDINGS LIMITED PARTNERSHIP, an Arizona limited partnership
By: RINCON VALLEY PROPERTIES, INC., an Arizona corporation, its General Partner

By: 
David Goldstein, President

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this 21st day of October, 2022, by David Goldstein, President of Rincon Valley Properties, Inc., an Arizona corporation, General Partner of Rincon Valley Holdings Limited Partnership, an Arizona limited partnership, on its behalf.

My commission expires: June 27, 2023




Notary Public

**CONSENT TO FIRST AMENDMENT TO SECOND AMENDED AND RESTATED
ROCKING K DEVELOPMENT AGREEMENT**

Fidelity National Title Agency, Inc., an Arizona corporation, in its capacity as trustee under Trust No. 60380 and not in its corporate capacity (the "Trust"), hereby signs this First Amendment solely to consent to its recordation on the Property.

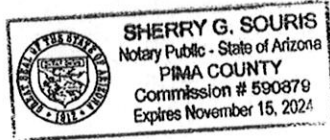
FIDELITY NATIONAL TITLE AGENCY, INC., an
Arizona corporation, as trustee of Trust No. 60380
and not in its corporate capacity

By: *Rachel Turnipseed*
Rachel Turnipseed, Trust Officer

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

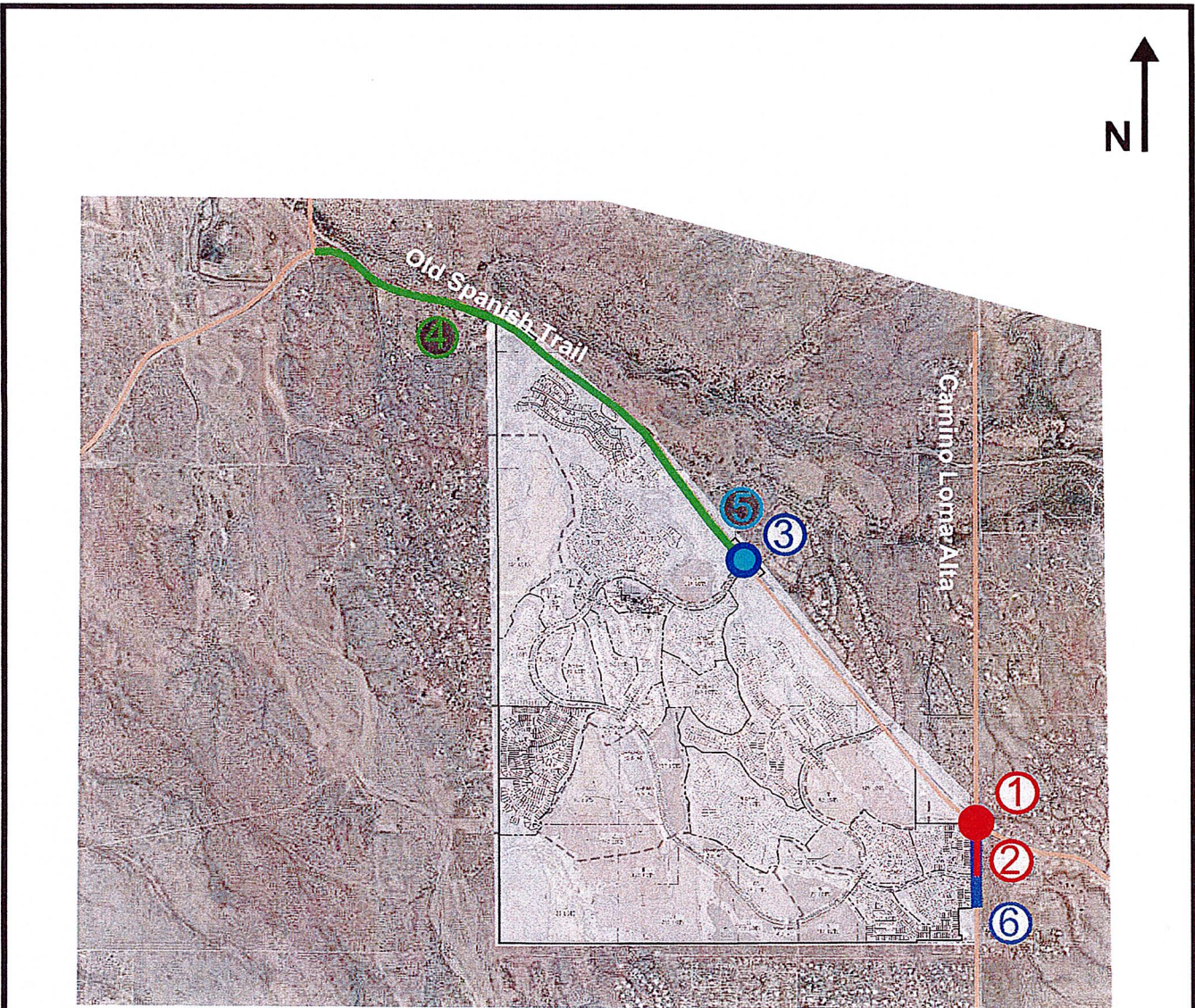
The foregoing instrument was acknowledged before me this 21 day of
October, 2022, by Rachel Turnipseed, Trust Officer of Fidelity National Title Agency,
Inc., an Arizona corporation.

My commission expires:



[Signature]
Notary Public

Exhibit A to First Amendment to Second Amended and Restated Rocking K Ranch Development Agreement



LEGEND

- 1,130 Units (2023)
- ① Traffic signal at OST/CLA
- ② Drainage/profile improvements on CLA dip south of OST
- 1,750 Units (2024)
- ③ Traffic signal at OST/Rocking K Ranch Loop North
- 2,200 Units (2025)
- ④ Widen OST to 4 lanes from Valencia Road to Rocking K Ranch Loop North
- 3,600 Units (2031)
- ⑤ Change eastbound striping at OST/Rocking K Ranch Loop North to include a single left turn lane and a shared left turn-right turn lane
- 4,510 Units (2032)
- ⑥ Widen CLA to 4 lanes from OST to property boundary

*Four-lane section of CLA should carry from OST through PHR intersection, then tapers will extend back through the southern project boundary.