



Board of Supervisors Memorandum

December 17, 2013

Amendment to Development Agreement for Proposed Retail Outlet Center at Avra Valley Road and Interstate 10

Introduction

In 2008, Pima County and the Regional Flood Control District (RFCD) entered into a development agreement with I-10 Avra Valley Mining and Development L.L.C., concerning a 100 acre property located at the southwest corner of Avra Valley Road and Interstate 10, within an unincorporated island surrounded by the Town of Marana. This property is within the County's Conservation Lands System and is adjacent to the Santa Cruz River. It is also within a Critical Landscape Connection that facilitates wildlife movement between the Tucson and the Tortolita Mountains. Pursuant to the development agreement, the developer dedicated more than half of the property to the County and RFCD, including property within the Santa Cruz River, property along the Santa Cruz River levee, property for the wildlife corridor, and an easement for a future trail along the river. The developer also conveyed to the County a 10-year option to purchase an additional 3.5 acres to expand the wildlife corridor. The development agreement calls for the developer to pay the County an enhancement contribution of 2 percent of certain revenues generated by the development over a period of 20 years, primarily for enhancement of the wildlife corridor impacted by the development.

The original owner/developer now intends to sell the property to another entity, AWE Talisman, which specializes in developing and leasing retail outlet centers. AWE's web site, <http://awetalisman.com/our-properties/>, shows four of its existing outlet centers, the closest of which is the Fashion Outlets of Las Vegas. Pima County Development Services recently approved AWE's application for a Development Concept Permit (DCP) for development of a retail outlet center at the site. AWE's purchase of the property and development of the site is conditioned on obtaining certain changes to the original development agreement, the most significant of which is an agreement by the County to share the enhancement contribution revenues with AWE to compensate AWE for the cost of certain public improvements AWE is agreeing to build, and for the value of the 3.5 acre option parcel, which will be conveyed to the County. The proposed amendment also extends the collection period from 20 to 30 years. AWE anticipates starting construction during the summer of 2014. This memorandum summarizes the proposed changes to the development agreement and recommends approval by the Board. If approved, this amended development agreement will only apply if the property is developed as a retail outlet center as described in the approved DCP, and if construction is underway by December 2016.

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Enhancement Contribution Revenue Projections

At the time the original development agreement was entered into, development uses for the property were unknown but were expected to include a mix of industrial, office, retail, and/or hotel uses. It was estimated that industrial and office uses would generate the least amount of enhancement contribution revenues for the County – \$100,000 to \$300,000 a year, or \$2 million to \$6 million over the 20-year term. Retail uses with or without a hotel were estimated to generate the highest amount of enhancement contribution revenues for the County – estimated at that time to be \$1.2 million to \$1.8 million a year, or \$24 million to \$36 million over the 20-year term.

The current proposal for a retail outlet center use has the potential to generate enhancement contribution revenues far exceeding what was previously estimated for other uses. The developer currently estimates that the outlet center could generate \$2.4 million to \$6 million a year, which adds up to as much as \$123 million over an extended 30 year term. This means substantially more revenue for the County than originally anticipated, even with the County sharing the revenue with the developer as described below. Our Finance Department reviewed AWE's projections and determined them to be reasonable. The projections are, however, based on certain assumptions regarding occupancy rates, sale projections, and annual growth in sales. Over the life of the outlet center the accuracy of these assumptions will of course be impacted by how much the developer or successor owners invest in maintaining and marketing the center, and by a number of other factors outside anyone's direct control.

To be clear, AWE has indicated that it intends to pass payment of the enhancement contribution through to the retail customers of the 100+ stores to be located at the outlet center.

Developer Use of Enhancement Contribution Revenue

The public improvements to be built by AWE include the development of wildlife habitat on 30 acres south of the outlet center, two miles of river park improvements from Avra Valley Road to Twin Peaks Road, road improvements to Avra Valley Road and the I-10 frontage Road, undergrounding of electric lines and an irrigation canal, and various water and wastewater improvements. The majority of these improvements are items the County would not be able to complete on its own within this timeframe. AWE has agreed to finance and build these improvements in exchange for a share of the enhancement revenue. The cost to construct this infrastructure, including borrowing costs over a twenty-year period, is estimated at \$33.1 million.

The Honorable Chairman and Members, Pima County Board of Supervisors
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The proposed amendment to the development agreement requires the County to distribute half of the enhancement revenue to the developer for a minimum of 20 years. If the developer has received at least \$33.1 million by the end of year 20, then payments to the developer cease. If at 20 years the developer has not been fully compensated, payments continue until year 24 or until developer has been paid the \$33.1 million, whichever comes first. Overall, if projections are correct and the outlet center does generate a total of \$123 million in enhancement revenue over 30 years, the developer will receive \$33.1 million (27 percent), and the County will receive \$89.9 million (73 percent).

County Use of Enhancement Contribution Revenue

The original development agreement limited the County's use of the enhancement revenues to activities related to management and maintenance of the Critical Landscape Linkage between the Tucson and Tortolita Mountains, and enforcement of the development agreement. The proposed amendment expands the geographical area to include the Tucson and Tortolita Mountains in their entirety, and the broad area in between. It also expands the permitted uses to include maintaining, improving and enhancing plant and wildlife diversity, not just wildlife movement. Eligible expenses continue to include land acquisition, capital improvements, operation and maintenance, and research. This revenue could support continued implementation of the County's Sonoran Desert Conservation Plan within this area of the County, and financial obligations the County may choose to take on as part of the Multi-Species Conservation Plan under a future Section 10 Permit.

County Sale of Type II Water Right

The property currently includes a grandfathered water right that allows pumping of up to 56 acre-feet of water per year, which is probably enough to serve the outlet center. The water right is, however, associated with an exempt well that limits the pumping rate to 35 gallons per minute, which may not be sufficient for the development's needs during the warmer months of the year. The property is not within a municipal water service area. Staff determined that the County and RFCD have unused Type II water rights available that would be suitable for sale to the developer. A recent appraisal estimated the value of 60 acre feet of Type II water rights at \$165,000. The proposed amendment to the development agreement therefore provides the developer with an option to purchase 60 acre feet of Type II non-irrigation water rights from the County for the appraised value of \$165,000.

The developer is also agreeing to provide the County up to 25,000 gallons of water per year, in perpetuity, for use within the 30-acre wildlife habitat area south of the outlet center, and to implement certain water conservation measures within its outlet center development.

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Recommendation

AWE's proposal for a retail outlet center would generate significantly more enhancement revenue for the County than other allowable uses. In addition, the proposed amendment to the development agreement will facilitate the development of certain public infrastructure earlier than the County will otherwise be able to fund and construct it. Therefore, I respectfully recommend the Board approve the proposed amendment to the I-10 Avra Valley development agreement.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Huckelberry", with a long, sweeping underline that extends to the right.

C.H. Huckelberry
County Administrator

CHH/dr- December 12, 2013

Attachments

**I-10 Avra Valley Mining & Development LLC
Development Agreement Amendment**

When recorded, return to:

County Administrator's Office
130 W. Congress
10th Floor
Tucson AZ 85701

For Recorder's Use

**FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT**

between

PIMA COUNTY, ARIZONA

PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT

and

I-10 AVRA VALLEY MINING & DEVELOPMENT L.L.C.

**FIRST AMENDMENT TO
ECONOMIC DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this "Amendment") is entered into by and among PIMA COUNTY, ARIZONA, a body politic and corporate (the "County" or "Pima County"), PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT (the "District") and I-10 AVRA VALLEY MINING & DEVELOPMENT L.L.C., an Arizona limited liability company (together with successors or assigns, the "Developer"), as of December 17, 2013.

RECITALS

A. The County, the District and the Developer (each a "Party" and collectively the "Parties") previously entered into an Economic Development Agreement recorded August 13, 2008, in the records of the Pima County Recorder, Docket 13369, Page 3467 (the "Original Agreement" and, as amended by this Amendment, the "Agreement"). Capitalized terms used in this Amendment that are not otherwise defined will have the meanings assigned to them in the Original Agreement.

B. Pursuant to Article 5 of the Original Agreement, Developer conveyed to the County the Bio Corridor Parcel (deed recorded in Docket 13495 at Page 2932), the Trail Easement (recorded in Docket 13495 at Page 2935), and an option to purchase the Option Parcel (recorded in Docket 13389 at Page 165) (the "Option Agreement"), and Developer conveyed to the District the Levee Parcel and the Santa Cruz Parcel (recorded in Docket 13495 at Page 2927). Developer also executed and recorded certain restrictions on the Development Parcel as required by Section 2.1 of the Original Agreement (recorded in Docket 13495 at Page 2939). The District and County conveyed to the Developer the Sewer Easement (recorded in Docket 13495 at Page 2955) and the Drainage Easement (recorded in Docket 13495 at Page 2944) as required by Article 7 of the Original Agreement.

C. The Original Agreement provides, in Article 3, for payment by Developer to County of an Enhancement Contribution equal to 2% of certain revenues generated by businesses operated on the Development Parcel. The "Development Parcel" consists of Parcel A-1 and the Lewis Parcel, which are both legally described in Exhibit A to the Original Agreement.

D. At the time the Original Agreement was entered into, the development planned for the Development Parcel included primarily office and industrial uses, rather than retail.

E. Developer has now agreed to sell Parcel A-1 (the "Outlet Center Parcel"), subject to the Agreement, to an entity that plans to construct a regional outlet center on it, as described in the Pima County Design Concept Permit (P13DC00003) approved by the County on November 13, 2013 (the "DCP"), and in compliance with all requirements of the DCP (the "Outlet Center"). The Parties agree that the Outlet Center will result in greater economic

benefits to the community, and a higher Enhancement Contribution, than the development originally contemplated.

F. In order to facilitate development of the Outlet Center, the Developer has asked the County and the District to amend the Original Agreement to allow a portion of the Enhancement Contribution collected with respect to the Outlet Center Parcel to be paid to Developer to compensate Developer for Developer's construction of certain public infrastructure, including certain Bio-Corridor, drainage, Santa Cruz River Trail, road, irrigation district, and sewer improvements as listed on Exhibit A (the "Approved Infrastructure"); and extend the term of the Enhancement Contribution from 20 to 30 years. The County and District have determined that the value of the Approved Infrastructure is approximately Thirty-Three Million One-Hundred Thousand Dollars (the "Reimbursement Amount"), assuming amortization at a reasonable commercial interest rate over a twenty-year period. The Parties agree that the Approved Infrastructure could not have been provided by the County and the District to the same extent or within the time period described by this Amendment without the development of the Outlet Center and the funding mechanism created by this Amendment. Consequently, the Parties agree that the funding mechanism is more accurately described as an "environmental fee."

G. Developer also wishes to buy from the County 60-acre-feet of grandfathered type II non-irrigation water rights (the "County Water Rights").

H. The County and District are agreeable to this modification, under certain terms and conditions, and are entering into this Amendment with Developer to effect that modification.

NOW, THEREFORE, in consideration of the recitals, PIMA COUNTY, DISTRICT and DEVELOPER agree as follows:

AGREEMENT

1. Agreement; Exhibits.

- 1.1. All Exhibits attached to this Amendment are incorporated into this Amendment.
- 1.2. All provisions of the Original Agreement remain in full force and effect, as modified in this Amendment.
- 1.3. The Agreement runs with the land and each successor owner of any portion of the Development Parcel is responsible for fulfilling all Developer responsibilities with respect to that portion. Obligations accruing after a transfer of ownership will not be deemed to be obligations of the transferor, though no transfer will relieve a transferor of any obligation that accrued prior to the transfer.

2. Amendment Contingent on Development. This Amendment will expire as of December 17, 2016, unless, as of that date, substantial construction of the Outlet Center in compliance with the DCP has commenced. Commencement of substantial construction means that building permits have been issued, grading has been completed, slabs and foundations have been poured, and streets, curbs, and utilities have been installed.

3. Public Improvements.

- 3.1. Design and Construction. Developer will, at its own cost and expense, complete the design and construction of the Approved Infrastructure as part of the construction of the Outlet Center. All plans are subject to Pima County standard conditions, and must be reviewed and approved by County prior to construction.
- 3.2. Permitting Requirements. Developer will be responsible for complying with all applicable laws and regulations (including the federal Clean Water Act), obtaining all required permits (including Pima County Site Construction and Right-of-Way Use Permits), and complying with all permitting requirements with respect to design and construction of the Approved Infrastructure, as well as the rest of the development. Developer must obtain a permit from the Arizona Department of Transportation (“ADOT”) for the work on the frontage road.
- 3.3. Procurement. Developer may use any method of procurement and project delivery authorized by A.R.S. Title 34 and may contract separately for design and construction of the Approved Infrastructure or combine design and construction with the overall design and construction of the Outlet Center. Developer will obtain the payment and performance bonds required by Title 34. Developer will indemnify and defend the County and the District from any liability, cost, loss or expense suffered or incurred by either in connection with any claim or allegation that Title 34 was not complied with.
- 3.4. Plans and Specifications.
 - 3.4.1. Developer will require the contractor(s) to warrant, and will assign to the County, as applicable, a warranty that the Approved Infrastructure will be free from material defects for a period of two (2) years from the date of County acceptance of the improvements.
 - 3.4.2. Prior to construction, Developer will submit both preliminary and final plans and specifications for the Approved Infrastructure for County’s review and approval through the Site Construction Permit, Right-of-Way Use, and any other applicable Pima County infrastructure review process.
 - 3.4.3. Upon completion of the Approved Infrastructure, Developer will provide the County as-built drawings certified by a registered civil engineer that the Approved Infrastructure (or portion thereof) was constructed in accordance with approved plans and process.
- 3.5. Construction. County may inspect the Approved Infrastructure at any time as it is built. Work will be deemed acceptable if constructed in substantial accordance with the final plans, as approved by Pima County.
- 3.6. Insurance. Developer will cause all contractors designing or constructing any portion of the Approved Infrastructure to provide appropriate insurance policies, including general liability and builder’s risk policies, naming the County (or District, as appropriate) as an additional insured.

- 3.7. Indemnity. Developer will (or will require its contractor(s) to) indemnify, defend, and hold harmless the County, its officers, employees and agents from and against any and all suits, actions, legal administrative proceedings, claims or demands and costs attendant thereto, arising out of any fault or negligence by Developer or any Developer contractor, or the agents or employees of any of them, in connection with the design and construction of the Approved Infrastructure. Notwithstanding any provision of this Agreement, including the Severability Clause, this Section will survive the termination or revocation of this Agreement.
- 3.8. Roadway Improvements. Sections 2.2 and 2.3 of the Original Agreement are hereby amended and restated in their entirety to read as follows:
- 3.8.1. Developer will construct improvements to Avra Valley Road and the Avra Valley/I-10 interchange in conformance with the DCP. The improvements will incorporate all the requirements of the Traffic Impact Analysis for the project prepared by United Civil Group and approved by County Development Services and the ADOT. All improvements must be completed prior to issuance of a final certificate of occupancy for the Outlet Center.
- 3.8.2. To the extent allowed by law, Developer will have a credit against roadway development impact fees paid for qualifying improvements to Avra Valley Road.
4. Enhancement Contribution. Article 3 of the Agreement is hereby amended as follows:
- 4.1. Fee; Term. The "Enhancement Contribution" will be referred to in this Amendment as the "Environmental Fee." The phrase "20th anniversary" in Section 3.2.3 is hereby changed to "30th anniversary." The word "twenty" in Section 3.4.2 is hereby changed to "thirty."
- 4.2. Use of Environmental Fee. Section 3.6 of the Original Agreement is hereby amended and restated in its entirety to read as follows:
- 4.2.1. Notice of Environmental Fee. Developer will, as required in Section 3.1, specifically reference in each lease or conveyance document, concerning any portion of the Outlet Center Parcel, the grantee's/tenant's obligation to pay the Environmental Fee. The County agrees that language requiring the grantee/tenant to pay "the Pima County Environmental Fee" is adequate to satisfy this requirement, though a specific reference to this Agreement, including docket and page, is preferable. Developer will also take appropriate steps to ensure that each Development Parcel Business within the Outlet Center Parcel is notified of the Environmental Fee at least 30 days prior to the commencement date of the lease, and will copy the Pima County Finance Director on the notice to the grantee/tenant.
- 4.2.2. Leases. Developer will notify the County in writing at least 45 days before the commencement date of each new lease that is entered into with respect to any portion of the Outlet Center Parcel, including the name and contact information for the tenant and the term of the lease. Developer will notify the County if any

lease is terminated early, within 30 days after the early termination. Developer will also provide the County, within 20 days after the end of each month, with a list of gross sales reported to Developer by each Development Parcel Business within the Outlet Center Parcel for that month.

4.2.3. Collection. Neither Developer nor County is obligated to the other to take any specific actions to collect the Environmental Fee. The County will decide in its sole discretion whether to pursue collection of the Environmental Fee from a Development Parcel Business that fails to pay it.

4.2.4. Distribution of Environmental Fee. County will distribute half the collected Environmental Fee to the Developer on a quarterly basis for the first twenty years following the first Payment Date. If, as of the end of that period, the total amount of the Environmental Fee payments made to Developer has equaled or exceeded the Reimbursement Amount, the payments to the Developer will cease. If the total payments have not equaled or exceeded the Reimbursement Amount, then County will continue to pay Developer half the collected Environmental Fee until the earlier of the following: (1) the date that is 24 years after the first Payment Date; and (2) the date on which the total payments equal the Reimbursement Amount.

4.2.5. County's Use of the Environmental Fee. The Environmental Fee may be used by the County to pay, or reimburse the County for, all direct and indirect costs incurred by the County in doing any or all of the following: (a) managing, maintaining, improving, and expanding protection of the Critical Landscape Connection and plant and wildlife diversity between and within the Tucson Mountains, Santa Cruz River, and the Tortolita Mountains, with an emphasis on the County's natural resource parks; and (b) exercising the County's rights or fulfilling its obligations under this Agreement (including all overhead costs of tracking, collecting, or allocating the Environmental Fee).

5. Property Conveyances.

5.1. Option Parcel. Developer will convey to County, free and clear of all monetary liens and encumbrances and all easements or restrictive covenants, if any, not acceptable to the County, the Option Parcel. This Amendment will be deemed to be the County's notice of its exercise of the Option as provided in Section 4(a) of the Option Agreement. The purchase price for the Option Parcel is \$1,000,000, which amount is included in the Reimbursement Amount. No cash will be due from the County at closing.

5.2. Drainage Easement.

5.2.1. The Parties will amend the Drainage Easement referenced in the recitals to include the Option Parcel and additional County-owned property, tax parcels 22608002A and 22608007P. The area covered by the expanded Drainage Easement, which Developer will be improving as a bio-corridor as described in

Exhibit A, will be included by Developer in its Site Construction Permit application and plans.

- 5.2.2. County reserves the right to use any fill excavated by Developer on the parcels covered by the expanded Drainage Easement as provided in the Drainage Easement document.
- 5.2.3. The amendment to the Drainage Easement will be in the form attached as Exhibit C.
- 5.3. County Water Rights. County hereby conveys to Developer an option, for a period of 120 days following the date of this Amendment, to purchase the County Water Rights in exchange for One Hundred Sixty-Five Thousand Dollars \$165,000 cash, payable at closing. In order to exercise the option, Developer must give County a written notice of intent prior to the expiration of this 120-day option period. Developer will have 60 days to close the purchase after its exercise of the option.
- 5.4. Sewer Easement. The Parties will amend the Sewer Easement, which is currently a blanket easement, to limit it to the specific location of the sewer facilities and add other properties not covered by the existing Sewer Easement. The amendment to the Sewer Easement will be in the form attached as Exhibit D.
- 5.5. Closing. The Parties will proceed to conduct due diligence and close the conveyance of the Option Parcel as provided in the Option Agreement. The amendment of the Drainage Easement and the Sewer Easement will close at the same time. The Parties will mutually agree on the time and place of closing.
6. Bio-Corridor Water. Developer will provide up to 25,000 gallons of water per year, in perpetuity, for use on the Bio-Corridor Parcel and Option Parcel, including for maintenance of a wildlife watering-hole. Developer's obligation to provide the Bio-Corridor water will be accomplished by a covenant in a form mutually acceptable to the Parties to be executed and recorded at the time of closing described above in Section 5.5.
7. Water Conservation. Developer will implement and ensure compliance with the water conservation measures described on Exhibit B with respect to the Outlet Center Parcel.
8. Sewer Service. Section 15.3 of an intergovernmental agreement between the County and the Town of Marana, a municipal corporation (the "Town") dated April 9, 2013 (the "IGA"), describes mapped areas in which the County and Town will provide future sewer service. In Section 15.3.3, "Service in Boundary Areas," the parties to the IGA agreed to "cooperatively plan" for sewer services to areas near their common service boundary. In a subsequent administrative agreement executed by representatives of the County and Town, CTN-WW-1400000 00000 000000092 (the "Administrative Agreement"), the parties acknowledged that the Outlet Center Parcel is within the Town's sewer service area, but agreed that Outlet Center Parcel will be served by the County unless and until the Town extends its sewer system to the Outlet Center Parcel and elects to take over the provision of sewer service.

- 8.1. The Board of Supervisors hereby ratifies the Administrative Agreement and agrees that the County will remain the sewer-service provider for the Outlet Center Parcel, regardless of any expiration of the term of the Administrative Agreement, until such time as the Town exercises its right to take over the provision of such services. The County's obligation to actually provide sewer service is, however, subject to execution of a sewer service agreement between the County and Developer and Developer's compliance with its terms and conditions and the terms and conditions of the DCP.
- 8.2. The County also agrees that it will seek the Town's cooperation to do one of the following before November 20, 2018: (1) amend the IGA, or enter into new intergovernmental agreement with the Town, to formally acknowledge the County's provision of sewer service to the Outlet Center Parcel and/or ratify the administrative adjustment of service boundaries; or (2) amend the DMA boundaries. The County will also seek to enter into an agreement with the Town permitting the County to provide sewer service to the Lewis Parcel.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of which shall be deemed to be an original, as of the date and year first written above.

**PIMA COUNTY, ARIZONA AND
PIMA COUNTY REGIONAL FLOOD
CONTROL DISTRICT**

ATTEST:

By: _____

As Chairman of the Board of Supervisors
and as Chairman of the Pima County
Regional Flood Control District

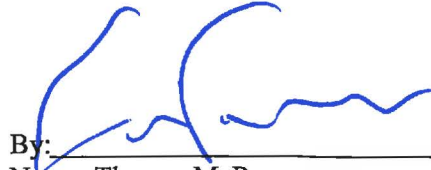
By: _____

As Clerk of the Board of Supervisors
and Clerk of the Pima County Regional
Flood Control District

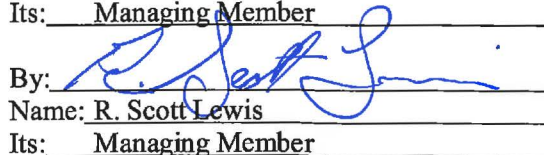
APPROVED AS TO FORM:

By: 
Deputy Pima County Attorney
REGINA NASSEN

**I-10 AVRA VALLEY MINING &
DEVELOPMENT L.L.C.**



By: _____
Name: Thomas M. Parsons
Its: Managing Member



By: _____
Name: R. Scott Lewis
Its: Managing Member

- Exhibit A: Description of Approved Infrastructure, with assigned values
- Exhibit B: Water Conservation requirements
- Exhibit C: Form of amendment to Drainage Easement
- Exhibit D: Form of amendment to Sewer Easement

EXHIBIT A
TO FIRST AMENDMENT TO AVRA I-10 DEVELOPMENT AGREEMENT
APPROVED INFRASTRUCTURE

This exhibit lists and describes certain public infrastructure to be constructed by the Developer and to be reimbursed by the County over time from Environmental Fee. The cost estimates listed were provided prior to execution of the First Amendment to the Development Agreement and were not based on construction documents, but were provided by the Developer based on conceptual drawings and details. The total amount to be reimbursed is stated in Recital F and §4.2.4 of the First Amendment and includes interest associated with financing to be secured by Developer.

Bio Corridor & Drainage

Bio Corridor excavation	\$ 1,223,583
Bio Corridor re-vegetation	\$ 184,164
Bio Corridor wall	\$ 334,205
Bio Corridor extension to County's 18 acres & fence	\$ 1,300,000
Bio Corridor expansion(option parcel)	\$ 1,000,000
Drainage Channel	\$ 1,036,476
Subtotal	\$ 5,078,428

Bio Corridor Excavation, Re-Vegetation, and Wall: Developer will construct drainage improvements in the Bio Corridor, on Pima County-owned property, including the Option Parcel, which will include excavation, re-vegetation, and retaining/screening wall, in conformance with the approved Pima County Design Concept Permit P13DC00003, and future approved Site Construction and Right of Way Use Permits.

Bio Corridor extension to County's 18 acres & fence: Developer will extend the above excavation and re-vegetation improvements to two Pima County-owned parcels (226-08-002A, 226-08-007P), and construct a 6 foot tall chain link fence spanning 850 feet in length along the southern boundary of these parcels, in conformance with future approved Site Construction and Right of Way Use Permits. Note that this extension was not included in the approved Pima County Design Concept Permit P13DC00003.

The goal of this extension will be to develop a single, unified bio corridor area covering approximately 31 acres between the I-10 frontage road to the east, the Santa Cruz River to the west, the retail outlet center to the north and Marana Unified School District property to the south.

Bio Corridor expansion (option parcel): Developer to convey 3.5 acre Option Parcel to County for purposes of expanding the bio corridor.

Santa Cruz River Trail

Santa Cruz River Trail adjacent to development (standard specs)	\$ 251,643
Santa Cruz River Trail to Twin Peaks Road (asphalt path only)	\$ 929,921
Subtotal	\$ 1,181,564

Santa Cruz River Trail Adjacent to development: Developer will construct the segment of the river trail directly west of the development parcel, approximately a half mile in length, in conformance with the

approved Pima County Design Concept Permit P13DC00003, and future approved Site Construction and Right of Way Use Permits.

Santa Cruz River Trail to Twin Peaks Road: Developer will construct approximately 1.5 miles of the river trail from the southern end of the river trail improvements constructed adjacent to development, south along the Santa Cruz River levee, to the existing river trail just north of Twin Peaks Road. This segment requires only the 16 ft wide asphalt path, plus a 175 ft long bridge across an existing canal on property tax parcel 226-08-009E. The ultimate design should be consistent with the future approved Site Construction and Right of Way Use Permits. Note that this segment of the river trail was not included in the approved Pima County Design Concept Permit P13DC00003. County or Flood Control District own land or easements for this segment of the river trail along the levee all the way down to Twin Peaks Road, with the exception approximately 1/3rd of a mile that would cross State Trust land parcel 226-08-009E. The County will need to acquire an easement from the Arizona State Land Department prior to the Developer constructing the river trail across the State Trust land parcel.

Avra Valley Road, Intersection and I-10 Frontage Road

Avra Valley Road Widening	\$ 1,984,092
Avra Valley Road Traffic Signalization	\$ 178,025
I-10 Frontage Road Realignment	\$ 647,252
Subtotal	\$ 2,809,369

Avra Valley Road, Intersection and I-10 Frontage Road: Developer will construct improvements to Avra Valley Road, the Avra Valley/I-10 interchange, and the I-10 Frontage Road in conformance with the approved Pima County Design Concept Permit P13DC00003, and future approved Site Construction and Right of Way Use Permits.

CMID Infrastructure, Water and Sewer

Relocating/Undergrounding Electric to CMID Pumps	\$ 520,552
Convert CMID trench/canal to piped	\$ 362,749
Sanitary Sewer Forced Main	\$ 197,724
50% water, irrigation, fire improvements	\$ 696,776
Subtotal	\$ 1,777,801

CMID (Cortaro-Marana Irrigation District) Infrastructure and Water Related Improvements:

Developer will relocate and underground overhead electrical service that powers CMID pumps; convert the CMID canal to an underground pipe; construct improvements related to the well that serves as the water source for the private and public portions of the development project, the water storage system, irrigation system, and fire suppression system, in conformance with the approved Pima County Design Concept Permit P13DC00003, and future approved Site Construction and Right of Way Use Permits.

Sanitary Sewer Forced Main: Developer will construct the sanitary sewer forced main in conformance with the future Sewer Improvement Plans. Note that the sanitary sewer forced main was not included in the approved Pima County Design Concept Permit P13DC00003.

Subtotal Hard Costs	\$ 10,847,162
Contingency 15%	\$ 1,627,074
Total Hard Costs	\$ 12,474,236
Soft costs related to above hard costs	
Project Administration 15%	\$ 1,627,074
Design/Engineering Fees	\$ 813,000
Interest reserve during construction 6%	\$ 878,456
Legal	\$ 250,000
Business Priv Tax 65% of 6.1% (state construction sales tax)	\$ 460,055
Total Soft Costs	\$ 4,028,585
TOTAL	\$ 16,502,821

EXHIBIT B
FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
WATER CONSERVATION MEASURES

In the design and development of the Outlet Center, Developer will, to the extent reasonably feasible and practicable, implement water conservation measures derived from County policy documents and listed below:

1. Implement rainwater/storm water harvesting and reuse strategies.
2. Install drought-tolerant native vegetation and drip irrigation systems with rain sensors.
3. Minimize impervious surfaces to maximize storm water infiltration.
4. Install water efficient appliances and fixtures and automatic faucets, water-free urinals and/or dual flush toilets.
5. Minimize the amount of water consumed by outdoor evaporative cooling ("mister system") installed by Developer or others at the Outlet Center through a combination of higher pressure lines/pumps, higher quality nozzles with smaller openings, and greater spacing between nozzles. Additionally, such mister systems will use timers, temperature sensors and similar controls which monitor the system in order to limit the time of operation while providing the desired reduction of temperature.

EXHIBIT C
TO FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
FORM OF DRAINAGE EASEMENT

When recorded, return to:

County Administrator's Office
130 W. Congress
10th Floor
Tucson, AZ 85701

For Recorders Use

Amendment to Drainage Easement

This Amendment to Easement Agreement is entered into this ____ day of _____, 20__ by and between Pima County, a political subdivision of the State of Arizona ("County"), the Pima County Flood Control District, a political subdivision and special taxing district of Pima County ("District"), and Fashion Outlets of Tucson LLC, a Delaware limited liability company ("Grantee").

Recitals

- A. By that Drainage Easement recorded on February 13, 2009 in Docket 13495 at Page 2744, Sequence No. 20090300636 (the "Original Easement Agreement"), the County and the District conveyed to Grantee's predecessor in interest, I-10 Avra Valley Mining & Development L.L.C. ("Avra"), a drainage easement (the "Drainage Easement") over certain property owned by the County and District for the benefit of certain adjacent property (the "Benefitted Land") owned by Avra and subsequently conveyed to Grantee.
- B. The County and District have approved a Development Concept Permit Number P13DC00003 (the "DCP") for the Benefitted Land and have agreed to extend the Drainage Easement to additional County-owned land that is legally described and depicted on the attached Exhibits A-1 and A-2 (the "Additional Easement Area").

Easement

1. Grant of Easement. The Drainage Easement will, from and after the date of this Amendment to Drainage Easement, apply to and encumber the Additional Easement

Area, which will henceforth be part of the "Property" as that term is used in the Original Easement Agreement. All provisions of the Original Easement Agreement not specifically modified by this Amendment to Drainage Easement remain in full force and effect and henceforth apply to the Additional Easement Area as well as the rest of the Property.

2. County Use of Fill. County has the right to remove and use all fill material excavated by Grantee on the Property. Prior to the excavation, Grantee will inform the County of the commencement of excavation, request from the County a location on the Property for placement of fill, and stockpile the fill in the indicated location. The Grantee will obtain permits, as appropriate, for the stockpiling of such fill.

PIMA COUNTY & PIMA COUNTY FLOOD CONTROL DISTRICT

Chairman of the Board of Supervisors of Pima County, and
Chairman of the Board of Directors of Pima County Flood Control District

ATTEST

Clerk of the Board of Supervisors of Pima County,
And of the Board of Directors of the Pima County Flood Control District

State of Arizona)
) ss
County of Pima)

This instrument was acknowledged before me the undersigned authority on this ____ day of _____, 20__ by _____ as the Chairman of the Board of Supervisors of Pima County and as the Chairman of the Board of Directors of the Pima County Flood Control District.

Notary Public

My Commission Expires:

GRANTEE

By: _____

Name: _____

Its: _____

State of Florida)

) ss

County of Miami-Dade)

This instrument was acknowledged before me the undersigned authority on this __ day of _____, 20__, by _____ as the _____ of Fashion Outlets of Tucson, L.L.C.

Notary Public

My Commission Expires:

EXHIBIT D

TO FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

FORM OF SEWER EASEMENT

When recorded, return to:

County Administrator's Office
130 W. Congress
10th Floor
Tucson, AZ 85701

For Recorders Use

Amendment to Sewer Easement

This Amendment to Sewer Easement is entered into this ____ day of _____, 20__, by and between Pima County, a political subdivision of the State of Arizona ("County"), the Pima County Flood Control District, a political subdivision and special taxing district of Pima County ("District"), and Fashion Outlets of Tucson L.L.C., a Delaware liability company ("Grantee").

Recitals

- A. By that Sewer Easement recorded on February 13, 2009 in Docket 13495 at Page 2955, Sequence No. 20090300637 (the "Original Easement Agreement"), the County and the District conveyed to Grantee's predecessor in interest, I-10 Avra Valley Mining & Development L.L.C., a blanket sewer easement (the "Easement") over certain land owned by the County and the District, as legally described in Exhibit A to the Original Easement Agreement (the "Blanket Easement Land").
- B. The Original Easement Agreement, in Section 2, "Location of Easement," contemplated that at such time as the Grantee obtained approvals from the County for the location of the sewer line prior to its construction, Grantee would release from the terms of the Easement all those portions of the Blanket Easement Land except the specific areas through which the sewer line will run.
- C. Grantee has agreed to convey an additional parcel of land to the County, portions of which will be subject to the Easement (the "Additional Land").

Easement

1. Release of Easement. The Grantee hereby releases the Easement with respect to all those portions of the Blanket Easement Land except the land that is within the area legally described and depicted on Exhibits A-1 and A-2 (the "Easement Area").
2. Grant of Easement. The Easement will, from and after the date of this Amendment to Sewer Easement, apply to and only to the Easement Area. All provisions of the Original Easement Agreement not specifically modified by this Amendment to Sewer Easement remain in full force and effect with respect to all portions of the Blanket Easement Land within the Easement Area and will, as of the date of this Amendment to Sewer Easement, now apply to those portions of the Additional Land that are within the Easement Area.

PIMA COUNTY & PIMA COUNTY FLOOD CONTROL DISTRICT

Chairman of the Board of Supervisors of Pima County, and
Chairman of the Board of Directors of Pima County Flood Control District

ATTEST

Clerk of the Board of Supervisors of Pima County, and
Clerk of the Board of Directors of the Pima County Flood Control District

State of Arizona)
) ss
County of Pima)

This instrument was acknowledged before me the undersigned authority on this ____ day of _____, 20__ by _____ as the _____ of the Board of Supervisors of Pima County and as _____ of the Board of Directors of the Pima County Flood Control District.

Notary Public

My Commission Expires:

EXHIBIT ONLY - NOT FOR EXECUTION

GRANTEE

By: _____

Name: _____

Its: _____

State of Florida)

) ss

County of Miami-Dade)

This instrument was acknowledged before me the undersigned authority on this __ day of _____, 20 __, by _____ as the _____ of Fashion Outlets of Tucson, L.L.C.

Notary Public

My Commission Expires:

**Regional Flood Control District
Resolution**

Resolution No. 2013- ____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT, APPROVING AND AUTHORIZING THE EXECUTION OF AN AMENDMENT TO A DEVELOPMENT AGREEMENT AMONG PIMA COUNTY, THE FLOOD CONTROL DISTRICT, AND I-10 AVRA VALLEY MINING & DEVELOPMENT L.L.C., REGARDING THE DEVELOPMENT OF LAND NEAR THE INTERSECTION OF WEST AVRA VALLEY ROAD AND THE EAST-BOUND FRONTAGE ROAD TO INTERSTATE 10

The Board of Directors of the Pima County Flood Control District finds as follows:

1. Pima County, the Pima County Flood Control District, and I-10 Avra Valley Mining & Development L.L.C. ("Developer"), previously entered into an Economic Development Agreement recorded August 13, 2008, in the records of the Pima County Recorder, Docket 13369, Page 3467 (the "Original Agreement").
2. The Developer, pursuant to the Original Agreement, conveyed various parcels of property to the County and the District.
3. The Original Agreement requires payment to the County of an enhancement contribution equal to 2% of certain revenues generated by businesses operated on the property covered by the agreement.
4. At the time the Original Agreement was entered into, the development planned for the property included primarily office and industrial uses, rather than retail.
5. Developer has now agreed to sell the property to an entity that plans to construct a regional outlet center on it, as described in the Pima County Design Concept Permit (P13DC00003) approved by the County on November 13, 2013 (the "DCP").
6. In order to facilitate development of the proposed outlet center, Developer has asked the County and the District to amend the Original Agreement in various respects.
7. The proposed outlet Center will result in greater economic benefits to the community than the development originally contemplated and it is therefore in the best interest of the residents of the County and the District to amend the Original Agreement.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The District hereby approves the Amendment to Economic Development Agreement presented to the District Board on the date of this resolution.

2. The Chairman of the Board is hereby authorized and directed to sign said Amendment on behalf of the District.

3. The County Administrator or his designee is authorized perform all additional acts and execute all additional documents necessary and desirable to give effect to this Resolution and to carry out the terms of the Amendment.

PASSED, ADOPTED AND APPROVED this 17th day of December, 2013.

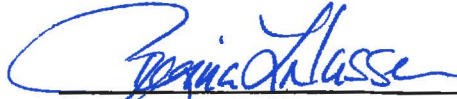
BOARD OF DIRECTORS OF THE PIMA COUNTY FLOOD CONTROL DISTRICT:

Chairman of the Board of Directors

ATTEST:

Clerk of the Board of Directors

APPROVED AS TO FORM:



Deputy County Attorney
REGINA NASSEN

**Pima County
Resolution**

Resolution No. 2013- _____

A RESOLUTION OF PIMA COUNTY APPROVING AND AUTHORIZING THE EXECUTION OF AN AMENDMENT TO A DEVELOPMENT AGREEMENT AMONG PIMA COUNTY, THE PIMA COUNTY FLOOD CONTROL DISTRICT, AND I-10 AVRA VALLEY MINING & DEVELOPMENT L.L.C., REGARDING THE DEVELOPMENT OF LAND NEAR THE INTERSECTION OF WEST AVRA VALLEY ROAD AND THE EAST-BOUND FRONTAGE ROAD TO INTERSTATE 10

The Board of Supervisors of Pima County, Arizona, finds as follows:

1. Pima County, the Pima County Flood Control District, and I-10 Avra Valley Mining & Development L.L.C. ("Developer"), previously entered into an Economic Development Agreement recorded August 13, 2008, in the records of the Pima County Recorder, Docket 13369, Page 3467 (the "Original Agreement").
2. The Developer, pursuant to the Original Agreement, conveyed various parcels of property to the County and the District.
3. The Original Agreement requires payment to the County of an enhancement contribution equal to 2% of certain revenues generated by businesses operated on the property covered by the agreement.
4. At the time the Original Agreement was entered into, the development planned for the property included primarily office and industrial uses, rather than retail.
5. Developer has now agreed to sell the property to an entity that plans to construct a regional outlet center on it, as described in the Pima County Design Concept Permit (P13DC00003) approved by the County on November 13, 2013 (the "DCP").
6. In order to facilitate development of the proposed outlet center, Developer has asked the County and the District to amend the Original Agreement in various respects.
7. The proposed outlet Center will result in greater economic benefits to the community than the development originally contemplated and it is therefore in the best interest of the residents of the County and the District to amend the Original Agreement.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board of Supervisors hereby approves the Amendment to Economic Development Agreement presented to the Board on the date of this resolution.

2. The Chairman of the Board is hereby authorized and directed to sign said Amendment on behalf of the County.

3. The County Administrator or his designee is authorized perform all additional acts and execute all additional documents necessary and desirable to give effect to this Resolution and to carry out the terms of the Amendment.

PASSED, ADOPTED AND APPROVED this 17th day of December, 2013.

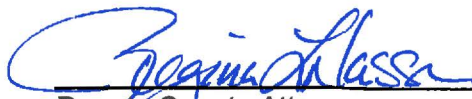
BOARD OF SUPERVISORS OF PIMA COUNTY:

Chairman of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO FORM:



Deputy County Attorney
REGINA NASSEN