



**BOARD OF SUPERVISORS AGENDA ITEM REPORT**  
**CONTRACTS / AWARDS / GRANTS**

Requested Board Meeting Date: June 20, 2017

or Procurement Director Award

**Contractor/Vendor Name (DBA):** City of Tucson, an Arizona municipal corporation

**Project Title/Description:**

- A. Approval of Purchase & Sale of Property at 201 N Stone Avenue (Public Works Building-City side) to City of Tucson. Sale-0045
- B. Approval of Declaration of Easements and Operating Agreement for the Public Works Building, 201 North Stone.

**Purpose:**

Staff asks the Board of Supervisors to approve the sale of the City side of the Public Works Building and approve the Declaration of Easements and Operating Agreement for the building. Additionally, as part of the sale, a Maintenance Agreement for the continued operations and maintenance of the City portion by Pima County Facilities Management Department will be processed for approval by Procurement. The entire building consists of 196,000 square feet. The City has occupied approximately 69,612 square feet since the building was constructed in 1991. The lease agreement with the City, which was last approved by the Board in 2007, provides an option for the City to purchase its portion of the building for \$100. The City has exercised its option to purchase and requested that Pima County continue to operate and maintain the City portion at the City's cost.

**Procurement Method:**

Exempt pursuant to Pima County Code 11.04.020

**Program Goals/Predicted Outcomes:**

Pima County will no longer have liability and maintenance costs for the City portion of the Public Works Building.

**Public Benefit:**

Pima County and City of Tucson will have fee title to the Public Works Building.

**Metrics Available to Measure Performance:**

The purchase price was based on an option price established and approved in the original Lease Agreement. This value is a direct result of the City's amortization of lease costs through the original Lease Agreement.

**Retroactive:**

N/A

*To: CoB. 6-7-17 (3)  
Jec. - 1  
Jgs. 117*

**Original Information**

Document Type: CT Department Code: PW Contract Number (i.e., 15-123): 17\*0398

Effective Date: 7/1/2017 Termination Date: 6/30/2019 Prior Contract Number (Synergen/CMS): \_\_\_\_\_

Expense Amount: \$ 1,000.00  Revenue Amount: \$ \$100.00

Funding Source(s): Facilities General fund

Cost to Pima County General Fund: N/A

Contract is fully or partially funded with Federal Funds?  Yes  No  Not Applicable to Grant Awards

Were insurance or indemnity clauses modified?  Yes  No  Not Applicable to Grant Awards

Vendor is using a Social Security Number?  Yes  No  Not Applicable to Grant Awards

If Yes, attach the required form per Administrative Procedure 22-73.

**Amendment Information**

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Contract Number (i.e., 15-123): \_\_\_\_\_

Amendment No.: \_\_\_\_\_ AMS Version No.: \_\_\_\_\_

Effective Date: \_\_\_\_\_ New Termination Date: \_\_\_\_\_

Expense  Revenue  Increase  Decrease Amount This Amendment: \$ \_\_\_\_\_

Funding Source(s): \_\_\_\_\_

Cost to Pima County General Fund: \_\_\_\_\_

Contact: Rita Leon

Department: Real Property Services Telephone: 724-6462

Department Director Signature/Date:  6/5/17

Deputy County Administrator Signature/Date:  6/7/17

County Administrator Signature/Date:  6/7/2017  
*(Required for Board Agenda/Addendum Items)*

## PURCHASE & SALE AGREEMENT

1. **Parties.** This Purchase & Sale Agreement ("Agreement") is made by and between Pima County, a political subdivision of the State of Arizona, (the "County"), and the City of Tucson, a municipal corporation (the "City"), the County and City being collectively the "Parties". This Agreement is effective on the date it is signed by County and City.

### 2. **Background and Purpose.**

2.1. The County owns the Public Works Building (the "Building") located at 201 North Stone Avenue, Tucson Arizona.

2.2. The Parties entered into that certain Lease dated July 24, 2007 (the "Lease"), pursuant to which the City leased from the County a portion of the Building consisting of approximately 69,612 square (the "Premises").

2.3. The Lease provides the City with an option to purchase the Premises and the real property beneath the Premises (the Premises and the real property beneath the Premises being hereinafter referred to as the "Property"). The Property is described on Exhibits A and B attached hereto.

2.4. The City provided notice to County of its exercising the option to purchase the Property.

2.5. The Lease provides that the conveyance shall be subject to a Declaration of Easements (the "Declaration") to be recorded at Closing. The Parties agree to enter into the Declaration of Easements in the form of Exhibit C attached hereto, to be effective as of the Closing.

2.6. The Parties agree to enter into a Maintenance Agreement in the form of Exhibit D, to be effective from and after the Closing, in accordance with the terms of the Maintenance Agreement.

3. **Property and Acquisition Amount.** Pursuant to the terms of the Lease, City agrees to acquire from County, and County agrees to convey to City, fee title to the Property, for the sum of One Hundred Dollars (\$100.00) (the "Acquisition Amount"), payable in cash or certified funds, on the terms and conditions set forth herein. The conveyance shall be by warranty deed ("Deed") signed by County and tendered to City at Closing.

4. **Closing.** Unless otherwise agreed, Closing shall be on or before July 1, 2017, at the office of the City Attorney or at such other location as the Parties shall designate. At Closing:

4.1. City shall pay to County all rent due for the period through June 30, 2017, regardless of when closing occurs;

4.2. City shall pay the Acquisition Amount to County;

4.3. City shall record the Deed conveying to City fee title to the Property, free and clear of all monetary liens and encumbrances (except property taxes not yet due and payable) but subject to all matters of record and matters that an inspection of the Property would reveal; and

4.4. City shall record the Declaration.

5. **Closing Costs.** Expenses incidental to transfer of title and recordation of the Declaration will be paid by County. If the City elects to obtain a policy of title insurance insuring its title to the Property, City shall be responsible for the payment of any premiums or incidental expenses associated with the policy.

6. **Prorations.** All taxes, assessments, utilities and similar matters shall be prorated between the Parties in accordance with generally accepted accounting principles as of midnight on the day prior to Closing.

7. **No Sale.** County shall not sell or encumber the Property before Closing, except as set forth herein.

8. **Conflict of Interest.** This Agreement is subject to A.R.S. 38-511 which provides for cancellation of contracts by the Parties for Certain Conflicts of Interest.

9. **As Is Sale.** City acknowledges that it has been occupying the Property since it was constructed, and that it is familiar with the condition of the Property and the related Building systems. The Property is being sold "as is," with no representations or warranties as to its condition or the state of its title. No oral statements or representations made by any person ostensibly on behalf of the County are or shall be binding upon the County in any way.

10. **Entire Agreement.** This signed document shall constitute the entire Agreement between the Parties regarding the subject matter thereof and no modification or amendment to this Agreement shall be binding unless in writing and signed by both Parties.

CITY OF TUCSON, a municipal corporation

\_\_\_\_\_  
Jonathan Rothschild, Mayor                      Date

ATTEST:

\_\_\_\_\_  
Roger Randolph, City Clerk                      Date

Approved as to form:

\_\_\_\_\_  
Principal Assistant City Attorney

\_\_\_\_\_  
Date

PIMA COUNTY, a political subdivision of the State of Arizona

\_\_\_\_\_  
Sharon Bronson, Chair, Board of Supervisors

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Julie Castaneda, Clerk of the Board

\_\_\_\_\_  
Date

Approved as to form:

  
\_\_\_\_\_  
Deputy County Attorney

6/7/17  
\_\_\_\_\_  
Date



Pima County  
Survey

## Exhibit A

### LEGAL DESCRIPTION A PORTION OF BLOCK 180 OF THE CITY OF TUCSON

A portion of Block 180 of the City Of Tucson as shown on the subdivision plat recorded in Book 3 of Maps and Plats at Page 82, records of Pima County, Arizona, more particularly described as follows:

COMMENCING at the intersection of Council Street and Stone Avenue;

THENCE South  $89^{\circ} 39' 15''$  West along the centerline of Council Street, 60.40 feet;

THENCE South  $09^{\circ} 38' 53''$  East, 35.36 feet to a point on the north line of said Block 180;

THENCE continuing South  $09^{\circ} 38' 53''$  East, 7.32 feet to the POINT OF BEGINNING;

THENCE continuing South  $09^{\circ} 38' 53''$  East, 15.00 feet to an outside corner of the Public Works Building;

THENCE the following bearings and distances along the outside wall of the Public Works Building:

THENCE continuing South  $09^{\circ} 38' 53''$  East, 11.50 feet to an outside corner of said building;

THENCE South  $80^{\circ} 17' 58''$  West, 2.67 feet to an outside corner of said building;

THENCE South  $09^{\circ} 42' 02''$  East, 30.00 feet to an outside corner of said building;

THENCE South  $80^{\circ} 17' 58''$  West, 2.33 feet to an outside corner of said building;

THENCE South  $09^{\circ} 42' 02''$  East, 30.00 feet to an outside corner of said building;

THENCE South  $80^{\circ} 17' 58''$  West, 2.33 feet to an outside corner of said building;

THENCE South  $09^{\circ} 42' 02''$  East, 29.00 feet to an outside corner of said building;

THENCE South  $80^{\circ} 17' 58''$  West, 11.00 feet to an outside corner of said building;

THENCE continuing South  $80^{\circ} 17' 58''$  West, 77.32 feet to point on the west outside wall of the Public Works Building;

Page 2

A portion of Block 180 of the City of Tucson

THENCE the following bearings and distances along the outside wall of the Public Works Building:

THENCE North 09° 42' 08" West, 88.16 feet to an outside corner of said building;

THENCE South 88° 58' 22" West, 19.89 feet to an outside corner of said building;

THENCE North 00° 43' 47" West, 32.06 feet to an outside corner of said building;

THENCE North 80° 17' 52" East, 50.17 feet to an outside corner of said building;

THENCE South 09° 42' 08" East, 3.33 feet to an outside corner of said building;

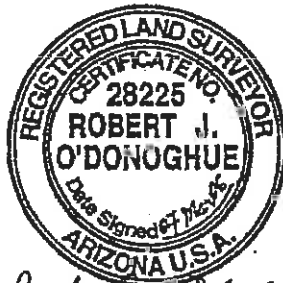
THENCE North 80° 17' 52" East, 21.33 feet to an outside corner of said building;

THENCE South 09° 42' 08" East, 4.00 feet to an outside corner of said building;

THENCE North 80° 17' 58" East, 23.83 feet to an outside corner of said building;

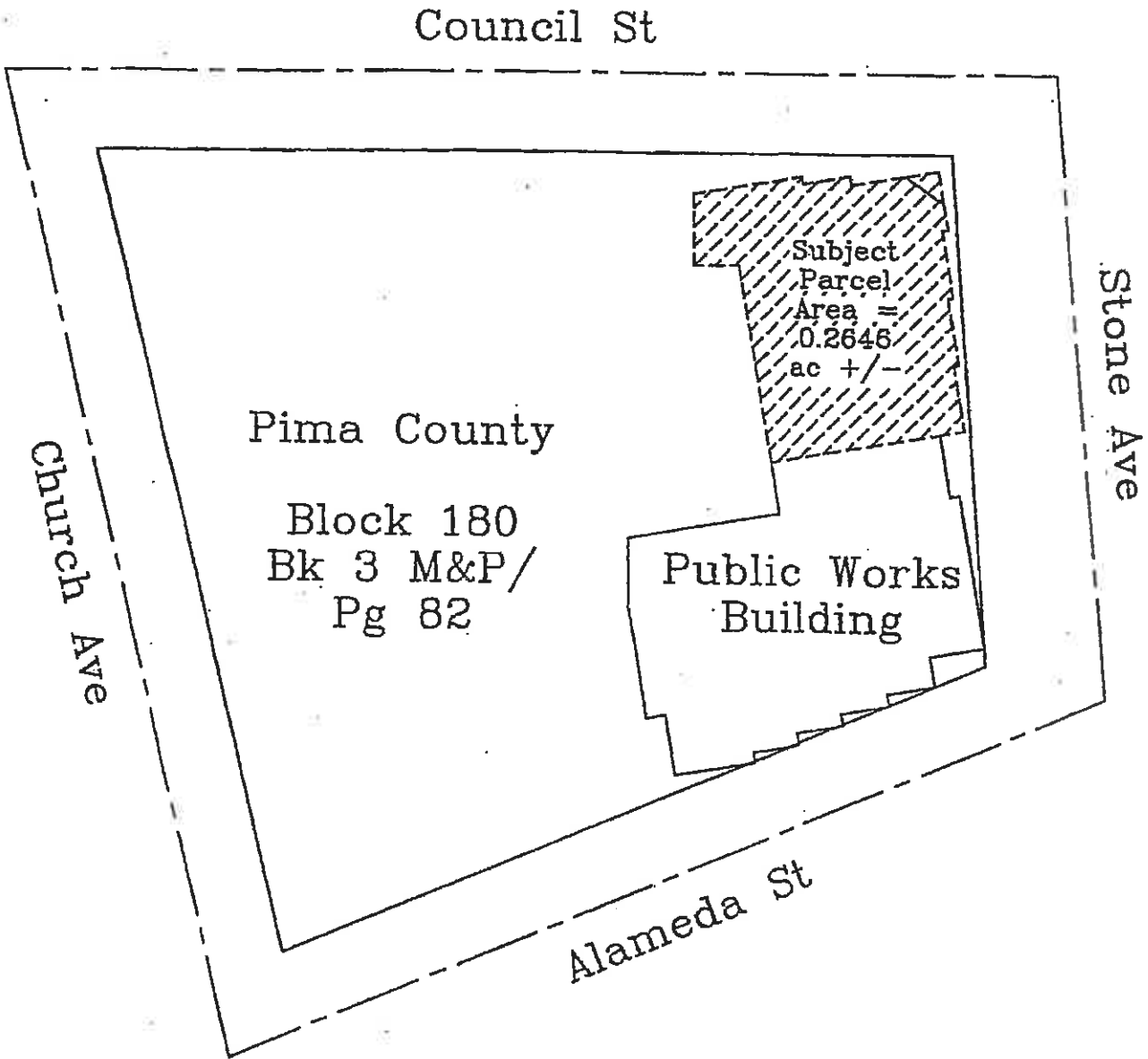
THENCE continuing North 80° 17' 58" East, 15.01 feet to the POINT OF BEGINNING.

The basis of bearing for the above parcel is the centerline of Council Street, said bearing being South 89° 39' 15" West.



*Robert J. O'Donoghue*

Depiction of Exhibit A



PIMA COUNTY SURVEY

A portion of Block 180 of the City of Tucson  
Book 3 of Maps & Plats at Page 82  
Records of Pima County, Arizona

Scale: None

Date: 07 March 2006 Drawn By: R.O'D.

Sheet 1 of 1





Pima County  
Survey

## Exhibit B

### LEGAL DESCRIPTION AIRSPACE

#### A PORTION OF BLOCK 180 OF THE CITY OF TUCSON

Airspace currently occupied by portions of a building now existing and known as the Public Works Building, in particular portions of floors three through six, from a height of approximately twenty two feet – six inches above existing finished grade of floor one, to approximately sixty nine feet – nine inches above said grade, over and above a portion of Block 180 of the City Of Tucson as shown on the subdivision plat recorded in Book 3 of Maps and Plats at Page 82, records of Pima County, Arizona, more particularly described as follows:

COMMENCING at the intersection of Council Street and Stone Avenue;

THENCE South  $89^{\circ} 39' 15''$  West along the centerline of Council Street, 79.05 feet;

THENCE South  $09^{\circ} 42' 08''$  East, 35.37 feet to a point on the north line of said Block 180;

THENCE continuing South  $09^{\circ} 42' 08''$  East, 125.85 feet to the POINT OF BEGINNING, said point being an outside corner of the Public Works Building;

THENCE continuing South  $09^{\circ} 42' 08''$  East, 22.88 feet to point on the east outside wall of the Public Works Building;

THENCE South  $80^{\circ} 13' 09''$  West, 77.32 feet to an outside corner on the west wall of the Public Works Building;

THENCE North  $09^{\circ} 42' 08''$  West, 22.99 feet to point on the west outside wall of the Public Works Building;

THENCE North  $80^{\circ} 17' 58''$  East, 77.32 feet to the POINT OF BEGINNING.

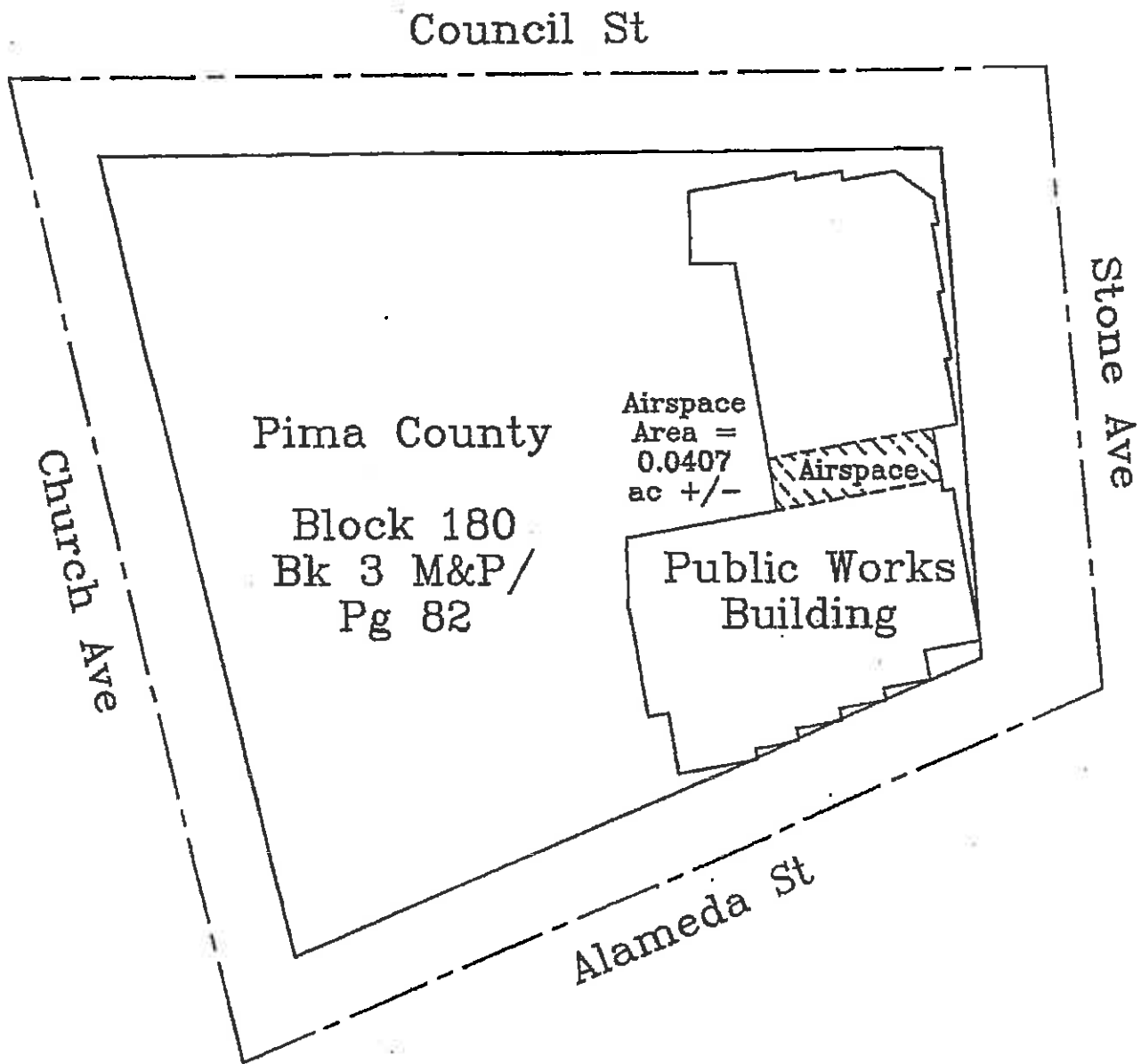
While said Public Works Building is in existence, the actual physical location of said floors three through six shall determine the exact boundary of Grantee's property. If and when said building is removed, the boundaries of the parcel as described above shall be used thereafter.

The basis of bearing for the above parcel is the centerline of Council Street, said bearing being South  $89^{\circ} 39' 15''$  West.



*Robert J. O'Donoghue*

Depiction of Exhibit B



PIMA COUNTY SURVEY

Airspace over & above a portion of Block 180 of the City of Tucson  
Book 3 of Maps & Plats at Page 82  
Records of Pima County, Arizona

Scale: None

Date: 18 April 2006

Drawn By: R.O'D.

Sheet 1 of 1

**EXHIBIT C**

**DECLARATION OF EASEMENTS AND OPERATING AGREEMENT**  
**FOR THE PUBLIC WORKS BUILDING**  
**201 NORTH STONE**

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## DECLARATION OF EASEMENTS AND OPERATING AGREEMENT

DATED: \_\_\_\_\_, 2017.

DECLARANTS: Pima County, a political subdivision of the State of Arizona  
City of Tucson, a municipal corporation

### ARTICLE 1 DEFINITIONS

For purposes of this Declaration, the following terms shall have the following meanings:

1.01 “Agreement” shall mean this Declaration of Easements including all exhibits, if any, attached hereto and documents herein referred to, which are hereby incorporated by reference, and all written amendments and supplements hereto.

1.02 “Benefited Parcel” shall mean the dominant parcel for whose benefit and appurtenant to which a particular easement in, on, over, upon or through a Burdened Parcel is granted or exists.

1.03 “Burdened Parcel” shall mean the servient parcel on, over, upon or through which an easement in favor of a Benefited Parcel is granted or exists.

1.04 “City” shall mean the City of Tucson, a municipal corporation, Arizona.

1.05 “City Property” shall mean all of the real property described on the attached Exhibit A (description of footprint of City wing) and Exhibit B (description of air rights for overhang area, floors 3-6).

1.06 “Common Area” shall mean all areas within the Shell used as or designated within the Plans as common lobby area, common washrooms/restrooms having direct access from the common lobby area, stairways and elevators having access from the common lobby area, the Pedestrian Walkways and Plaza exclusive of any buildings or structures built within the Plaza and the loading zone and trash dumpster areas on the Property, all as shown on the Plans.

1.07 “Common Expenses” shall mean all Insurance Costs, Maintenance and Repair Expenses, Landscaping Expenses, Security Costs, Taxes, and Utility Costs for the Common Area and the Shared Facilities.

1.08 “County” shall mean Pima County, a political subdivision of the State of Arizona.

1.09 “County Property” shall mean all of the Property exclusive of the City Property.

1.10 “Improvements” shall mean all, or less than all if so limited, existing and future buildings and structures erected, built, placed, or installed upon or under the County Property and/or City Property excluding the YMCA Building.

1.11 “Insurance Costs” shall mean the cost of insuring the Common Areas, as described in Article 10 below.

1.12 "Landscaping Expenses" shall mean the cost of maintaining repairing and replacing landscaping within the Plaza or otherwise associated with the Office Building.

1.13 "Lease Agreement" shall mean the existing Lease agreement for the Public Works Building, 201 North Stone Ave. dated July 24, 2007 ("Lease agreement") between the County as Lessor and the City as Lessee relating to the City Property.

1.14 "Lender" shall mean the holder of any mortgage, deed of trust or other financing encumbrance given in good faith and for value and which constitutes a lien on all or any part of the Property.

1.15 "Maintenance and Repair Expense" shall mean all repair, restoration and maintenance expenses of the Common Area and any structures therein, and Shared Facilities; the cost of custodial maintenance and cleaning of the Common Area; and all Landscaping Expenses.

1.16 "Office Building" shall mean all of the Improvements located on the Property and used as or designated in the Plans as the Office Building and specifically excluding any structures in the Plaza and the Parking Garage. The Office Building includes the south wing consisting of nine (9) stories and a basement occupied by the Owner of the County Property, the north wing consists of six (6) stories occupied by the Owner of the City Property and those portions of the Common Area defined in 1.06 above located within the Office Building.

1.17 "Owners" shall mean collectively the Owners of the City Property and of the County Property. "Owner" shall mean either of the Owners so specified.

1.18 "Parking Garage" shall mean that certain parking garage structure designated in the Plans and located on a portion of the Property. The Parking Garage is located above the YMCA Building.

1.19 "Parking Spaces" shall mean individual parking spaces, covered or uncovered, handicap or regular, located within the Parking Garage.

1.20 "Pedestrian Walkway(s)" shall mean all ground-level areas and elevated areas used as or designated within the Plans as pedestrian access to or from the Office Building and the Parking Garage including all walls, floors, ceilings and roofs of such structure, if any.

1.21 "Permittees" shall mean the officers, directors, employees, agents, partners, contractors, customers, subtenants, tenants, visitors, invitees, licensees and concessionaires of the Owners.

1.22 "Plans" shall mean the schematic plans attached hereto as Exhibit C.

1.23 "Plaza" shall mean the area used as or designated within the Plans as an open area plaza on the Property.

1.24 "Property" shall mean the real property described on Exhibit D attached hereto together with all Improvements thereon, excluding the YMCA Building.



1.25 “Property Rules” shall mean and refer to the rules and regulations mutually adopted by the Owners pursuant to this Agreement and in furtherance of sound management and operation of the Property, as the same may be amended from time to time by the Owners.

1.26 “Reserved City Parking Spaces” shall mean those twenty-two (22) contiguous parking spaces located on the bottom floor of the parking Garage that have been designated by County for the exclusive use of the City, which may be relocated by County from time to time.

1.27 “Security Costs” shall mean any and all costs required to provide security whether during or after normal business hours in order to provide a secure, comfortable atmosphere for the Permittees together with adequate protection of any and all personal property items owned by the Owners or the Permittees located on the Property, including but not limited to expenses for security guards, costs of maintaining security surveillance equipment, and/or costs expended to independent third-party security companies to provide the above services.

1.28 “Shared Facilities” as used herein shall mean the emergency generator system, fire alarm system and any other building system or piece of equipment that services the entire Building and which cannot reasonably be divided between the City Property and the County Property.

1.29 “Shell” shall mean the outside surface of the Office Building, together with all structural beams, supports and roofs of such structure.

1.30 “Taxes” shall mean any and all taxes assessed on real or personal property including assessments for improvement districts.

1.31 “Term” shall mean the term of this Agreement as set forth in Article 15 below.

1.32 “Utility Costs” shall mean the costs of any commonly-billed utility expenses for the Office Building and/or the Common Area attributable to the shared use of such areas, including but not limited to electric, gas, water and/or sewer expenses, and the cost of trash removal, but specifically excluding telephone and cable television expenses.

1.33 “Utility Facilities” shall mean any and all wires, pipes, conduit, connections, valves, gauges, panels, meters, hydrants connected with or used in connection with any and all utilities including water service (for domestic use and fire protection), electrical service (including any back-up generators to provide any necessary power), natural gas services, sewer facilities (including manholes which are not within public easements), air conditioning and heating equipment, fire alarm system, exhaust fans, fire and domestic water pumps, and other Building systems and equipment, including telephone and other computer or telecommunications wiring.

1.34 “YMCA” shall mean the Young Men’s Christian Association of Tucson, Arizona, downtown branch located on property that the YMCA leases from Pima County.

1.35 “YMCA Building” shall mean the YMCA Building located under the Parking Garage.

ARTICLE 2  
BACKGROUND AND PURPOSE

2.01 Background. City has been occupying the City Property since the completion of its construction, pursuant to the Lease Agreement, while the County has been occupying the County Property. The Lease Agreement granted City an option to purchase the City Property, which option has been exercised by the City. This Declaration is being made in order to establish certain easements, and certain obligations, to be appurtenant to the City Property and the County Property at the time of conveyance of that Property to the City. This Declaration shall run with the land for the benefit of, and shall be binding upon, the Owners of the City Property and the County Property. The YMCA occupies the YMCA Building as a tenant under the terms of a ground lease from the County. The YMCA Building is excluded from all provisions of this Agreement.

2.02 Purpose. The City Property is located within the Office Building. In order to effectively use the City Property, the City must have access to the Common Area, the Parking Garage and the Utility Facilities serving the City Property. The purpose of this Agreement is to provide such access and to further provide certain restrictions assuring all parties that the Office Building will be used as an office building and that the Common Area and the Parking Garage expenses and the work associated therewith will be performed in an orderly, business-like fashion providing all parties with full use of their respective property subject to the terms and conditions of this Agreement.

ARTICLE 3  
EASEMENTS

3.01 Easements. The County does hereby establish, create, give, grant and convey over, upon and under the Property the following easements, rights, and privileges, for those purposes set forth below. The easements so established shall be for the benefit of the Owner and the Permittees of each Benefited Parcel and their successors and assigns.

3.02 Maintenance Easement. A nonexclusive easement is hereby created in, on and over the following portions of the Property for ordinary maintenance, alterations, replacement or repair necessary to keep the Common Area, the Utility Facilities and the Shell in its current condition. The Burdened Parcels shall be the Common Area, and those portions of the Property necessary or convenient to obtain access to the Utility Facilities and the Shell. The City and the County Properties shall be the Benefited Parcels. The Owners and/or the Permittees shall undertake all reasonable efforts and shall utilize all reasonable diligence in connection with the use of this easement to minimize any interference with the enjoyment and use of the Burdened Parcels. In particular, this easement shall be used by the appropriate entity to perform the Common Area maintenance functions as set forth in Article 5 below. In addition, a nonexclusive easement is hereby created in, on over and through the County Property for the benefit of the Owner of the City Property for its cooling tower facilities and to access, repair, maintain and replace the cooling tower that serves the City Property, which is located on the roof of the County portion of the Office Building, as shown on the Plans.

3.03 Security Easement. A nonexclusive easement is hereby created in, on and over all of the Property for the purpose of inspecting, policing and otherwise assuring the security of the Property and the security of the Owners and the Permittees and their property. The City and the County Properties shall be Benefited Parcels. In particular, this easement shall be used by the appropriate entity to perform the common security functions as set forth in Article 7 below.

3.04 Landscape Easement. A nonexclusive easement is hereby created in, on and over the Common Area for the purpose of construction and maintenance of landscaping including, without limitation, the installation, removal, replacement and maintenance of all vegetation, walkways and other landscape improvements. The City and the County Properties shall be the Benefited Parcels. In particular, this easement shall be used by the appropriate entity to perform the common landscape maintenance functions set forth in Article 5 below.

3.05 Loading Zone Easement. A nonexclusive easement is hereby created in, on and over the portion of the Common Area used as or designated on the Plans as “loading zone” and “trash” for the sole purpose of providing temporary parking for loading and unloading of materials, supplies and equipment, and depositing trash in dumpsters. The City and the County Properties shall be the Benefited Parcels. No vehicles shall be parked in the loading zone for any period of time beyond what is necessary to complete the intended loading or unloading. Each Owner will be responsible for its own recycling.

3.06 Pedestrian Easement. A nonexclusive, non-vehicular pedestrian access easement is hereby created on and over the Common Area for the purpose of providing pedestrian ingress and egress to and from the City Property and the County Property, including but not limited to the Common Area and the Parking Garage. The City and the County Properties shall be the Benefited Parcels. The Owner of the County Property may use portions of the Common Area between the Office Building and the Parking Garage for its exclusive use provided reasonable pedestrian access is provided to and from the Office Building, the Parking Garage and the Loading Dock.

3.07 Parking Easement. A nonexclusive vehicular access easement is hereby created on and over the parking Garage for the purpose of providing vehicular ingress and egress to and from the twenty-two (22) Reserved City Parking Spaces for the Owners and the Permittees of the City Property. An exclusive easement is hereby created in, on and over the Reserved City Parking Spaces (as and where located from time to time as designated by County) for parking purposes. The Benefited Parcel for the foregoing easement shall be the City Property.

3.08 Utility Easement. In addition to the maintenance easement set forth in Article 3.01 above, a nonexclusive easement is hereby created under, on and through the Property for the purpose of placing, maintaining and removing water, sewer, sprinkler systems, fire protection devices, telephone, electric, gas and all other utility lines and Utility Facilities for the sole and exclusive purpose of providing such services to the City and/or the County Properties. Such easement shall be in addition to any separate utility easement instruments which have and/or may be granted to utility companies and/or suppliers of such utility services.

All water, telephone, sewer, electric, gas and other Utility Facilities which have or will be located or placed upon the Property shall be done in a manner so as not to interfere with the permitted use of the Property or the easement rights granted herein to an Owner and/or Permittee. The Benefited Parcels shall be the City and the County Properties.

3.09 Alterations Easement. A nonexclusive easement is hereby created in, on and over the Property for alteration, replacement or repair of any Improvements on the Property including, without limitation, the location of materials, equipment and supplies on the Property, the erection of protective barricades, scaffolding and temporary fencing on the Property, and access for vehicles and personnel to and from the Property as may be reasonably necessary to accomplish such alteration, replacement or repair of the Improvements. Notwithstanding the above, if any alteration, replacement or repair to the Property is exclusively for the benefit of the County Property and/or the City Property, the Owners of such property shall attempt to store any and all materials, equipment and supplies on their property, and use the other portions of the Property as little as possible in order to cause the least disruption to such other party's permitted use of their property. In addition, if such alterations, replacement and/or repairs are for the exclusive benefit of the County Property and/or City Property, the Owners of such parcels shall undertake all reasonable efforts and utilize all reasonable diligence (without incurring any obligation for payment of overtime or premium) in connection with its use of this easement so as to minimize any interference with the use of the Burdened Parcel. Notwithstanding the above, all alterations shall be subject to the requirements of Article 4.03 hereof.

3.10 Sign Easement. A nonexclusive easement is hereby created in, on or over the Shell, Common Area and the Parking Garage for the purpose of locating and maintaining reasonable and appropriate signs identifying the occupants, location of services and uses within the Office Building. The Benefited Parcels shall be the City and the County Properties.

3.11 Scope of Easements. The easements granted herein are appurtenant to the particular properties mentioned. The easements herein shall run with the land and shall inure to the benefit of, and be binding on the County, the Owners, the City, and/or the Permittees of any Benefited or Burdened Parcels, and their successors and assigns.

3.12 Temporary Easements. Any Owner of any Burdened Parcels shall have the right, in its sole and reasonable discretion, for the purpose of construction, alteration, maintenance, repair or replacement of its property and/or Improvements located on such property to temporarily diminish and/or alter any easements granted herein; provided, however, that any diminution or alteration of any easement granted herein shall not unreasonably alter any party's rights to access and/or use of the Common Area, the Utility Facilities or the Parking Garage.

3.13 Regulations and Building Rules. The Owners may jointly adopt reasonable rules regulating the use of the Common Area, pursuant to Article 5.05, even if such rules and regulations alter or modify the easements granted above, as long as the general purpose for which the easements have been granted is not impaired.

ARTICLE 4  
USE RESTRICTIONS

4.01 Restrictive Covenants. The Owners hereby impose the following use restrictions on the Property for the benefit of all Owners of the Property. The purpose of such restrictions is to provide rules facilitating the use of the Office Building as an office building.

4.02 Restrictions on Use. The Owners hereby declare that the use of the Office Building and the Common Area shall be restricted solely and exclusively to office uses and uses incidental to such office use . The use of the County Property shall not unreasonably interfere with the use of the City Property for the purposes herein stated. The use of the City Property shall not unreasonably interfere with the use of the County Property for the purposes herein stated. The restrictions on the use of the Property contained in this Article shall continue in full force and effect during the term of this Agreement.

4.03 Restrictions on Alteration. Any addition, alteration, modification or other change which would:

- (a) alter the appearance of the exterior of the Shell or the exterior of any Improvement; or
- (b) alter, interfere with, or impair the function of the Common Area, the Parking Garage or the Utility Facilities,

shall not be commenced by any Owner until the plans for such addition, alteration, modification or other change have been approved by the other Owners.

The Owner proposing the change (“Proposing Owner”) shall submit to the other Owner (“Approving Owner”) for such Owner’s approval or disapproval with comments thereon, the plans, specifications, and drawings prepared by the Proposing Owner (“Change Documents”) together with a written notification that the Change Documents shall be deemed approved if not disapproved within fourteen (14) days. If within fourteen (14) days after receipt of the Change Documents, the Approving Owner shall not give the Proposing Owner notice of approval or disapproval with comments thereon, the Change Documents shall be deemed approved by the Approving Owner. If within fourteen (14) days after receipt of the Change Documents, the Approving Owner shall give the Proposing Owner notice of disapproval with specific comments thereon, the Proposing Owner shall forthwith revise the Change Documents in accordance with such comments (if reasonably possible), and the Change Documents as so revised, shall be resubmitted to the Approving Owner for approval or disapproval with comments thereon within ten (10) days after the Approving Owner’s receipt of the revised Change Documents. If within ten (10) days after receipt of the Revised Change Documents, the Approving Owner shall not give the Proposing Owner notice of approval or disapproval with comments thereon, the revised Change Documents shall be deemed approved by the Approving Owner.

The rights of the Approving Owner in this Article shall be exercised reasonably and the Approving Owner shall not disapprove any Change Documents unless the change shown by the Change Documents is aesthetically or functionally incompatible with the Office Building, the Common Area and/or the Parking Garage (including structures in the Plaza).

Any additions, alterations, modification or other changes requested by the Proposing Owner shall be done at the Proposing Owner's sole cost and expense. Notwithstanding the above, the parties to this Agreement may have an obligation to make certain additions, alterations, modifications or changes to the exterior of the Shell and/or make certain other alterations or modifications to Improvements located within the Common Area as provided elsewhere herein.

4.04 Nuisances. The Owners shall not use or permit the use of the Property, or any portion thereof, for the conduct of any offensive, noisy or dangerous trade, business or occupation, or for the conduct of any activity which violates public policy or constitutes a nuisance, or for any unreasonable use of the Property not compatible with the operation of the Office Building as intended by the parties to this Agreement.

## ARTICLE 5 OPERATIONS AND MAINTENANCE

### 5.01 Operation and Maintenance of City and County Properties.

(a) Operation and Maintenance; City and County Properties. Except for that portion of the County Property consisting of the Common Area, the Parking Garage and/or the Shared Facilities, the Owner of the County Property, shall operate, maintain, and repair at such Owner's sole expense the County Property, including the cooling tower and all Utility Facilities serving the County Property in good order, condition and repair, commensurate with the operation of a first-class office project. Except for that portion of the City Property comprising part of the Common Area and/or the Shared Facilities, the Owner of the City Property shall operate, maintain and repair at such Owner's sole expense the City Property, including the cooling tower and Utility Facilities serving the City Property in good order, condition and repair, commensurate with the operation of a first-class office project.

(b) Capital Repairs; City and County Properties. All capital expenditures required in order to operate, maintain, restore and repair any part of the City Property except for that portion comprising the Common Area and/or the Shared Facilities, and specifically including the roof on the City Property as well as the cooling tower and Utility Facilities serving the City Property shall be borne by the Owner of the City Property. All capital expenditures required in order to operate, maintain, restore and repair any part of the County Property, except for that portion comprising the Common Area, the Parking Garage, and/or the Shared Facilities, and specifically including the roof on the County Property as well as the cooling tower and Utility Facilities serving the County Property shall be borne by the Owner of the County Property.

5.02 Maintenance, Operation and Repair of Common Area and Shared Facilities. The Owner of the County Property shall be responsible for maintaining, repairing and replacing the Shared Facilities, landscaping, and Common Area improvements, and shall be responsible for custodial maintenance of the Common Area, including trash removal. The Owner of the City Property shall pay to the Owner of the County Property, in the manner provided in Article 9 below, an amount equal to 36% of the Landscaping Expenses and 36% of all other Common

Expenses except those specific components of the Common Expenses for which different percentages are set forth elsewhere in this Agreement. Each Owner shall be responsible for the maintenance, repair and replacement, at such Owner's sole expense, of the cooling tower and Utility Facilities exclusively serving such Owner's portion of the Property.

The Owner of the County Property shall be entitled to exercise its reasonable discretion in determining when major repairs or replacements of Shared Facilities or Common Area improvements are necessary or prudent, and when selecting contractors and suppliers in accordance with all County and State of Arizona governmental regulations regarding procurement policies.

5.03 Common Area Circulation. Except as reasonably necessary during the construction of any Improvements, the Owners shall not permit any interference with efficient pedestrian and/or vehicular circulation as the case may be within the Common Area (including the loading zone, as described in Section 3.05) or the Parking Garage.

5.04 Compliance with Laws. Each Owner shall comply with all laws, rules, orders, ordinances, regulations and requirements now or hereafter enacted or promulgated by the City of Tucson, the County of Pima, the State of Arizona, the United States of America, and any other governmental agency having jurisdiction over the Property.

5.05 Property Rules. The Owners shall from time to time adopt Property Rules pertaining to the use and operation of the Common Area, Shared Facilities and the Parking Garage including such matters as general business hours of such areas, hours of illumination of such areas, hours for security patrol of such areas, procedures for use of such areas, and any specific regulations that may be necessary or appropriate for such areas. The Owners agree to take reasonable steps from time to time to adequately inform Permittees of applicable Property Rules. The Property Rules shall be in writing and must be approved by both Owners through their City Manager and County Administrator, respectively, in order to be effective. If one Owner desires a modification to the Property Rules, such owner shall inform the other Owner, in writing, of the modification desired. If the Owner receiving the notice does not give the Owner requesting the change notice within thirty (30) days after receipt of the notice that the receiving Owner objects to the change, the change shall be deemed to have been accepted and shall be immediately operable. See Exhibit "E" for the initial rules and regulations.

5.06 Books and Records. The Owners shall prepare and keep, or cause to be prepared and kept, detailed accounts and written records in accordance with sound bookkeeping and financial management practices as may be necessary for the proper financial management and legal functioning of the Property under this Agreement. Each of the Owners shall at all times have access to all books, records, correspondence, plans and specifications, receipts, vouchers, memoranda, and documents relating to the Property, except to the extent such documents relate to areas not subject to this Agreement or subject to exclusive use by one Owner.

5.07 Taxes. All Taxes on the Common Area, whether separately assessed or included within the tax bill for the County Property, shall be paid for by the Owner of the County Property. The Owner of the City Property shall pay to the Owner of the County Property, in the manner provided in Article 9 below, an amount equal to 36% of such Common Area taxes.

## ARTICLE 6 PARKING GARAGE

6.01 Operation of Parking Garage. The Parking Garage shall be operated by the Owner of the County Property in accordance with the customary standards for similar parking garages providing parking for office projects in downtown Tucson, Arizona. The Parking Garage may be operated pursuant to a written management agreement with an independent parking operator.

6.02 Parking Garage. The Reserved City Parking Spaces shall be clearly marked as reserved spaces, and the Owner of the County Property shall endeavor to keep such reserved spaces clear and available for use by the Owner of the City Property and its Permittees.

6.03 Payment of Net Expenses. The Owner of the City Property hereby agrees to pay to the Owner of the County Property 2.81329% of the net expenses, as defined below, for the operation of the Parking Garage. The net expenses for the Parking Garage shall be equal to any operating (but not debt) expenses of the Parking Garage including but not limited to Insurance Costs, Maintenance and Repair Expenses, Security Costs, Taxes and Utility Costs.

## ARTICLE 7 SECURITY AND ACCESS

7.01 Security. The Owner of the County Property shall provide blanket security for all of the Property. City shall pay to County, on a monthly basis, upon receipt of an invoice from County, 36% of the Security Costs. Owner of the City Property will pay to the Owner of the County Property 36% of the cost of purchasing, installing, maintaining, updating, repairing or replacing any security equipment, wiring, software or computers that are necessary to operate the Property's interior or exterior security system. If the City requests additional security above the blanket security provided, the City will pay all additional costs of such security.

7.02 Access. Unless modified by the Property Rules, access to the Common Area shall be 24 hours per day, 365 days per year. Such access may be limited after normal business hours to provide adequate security for the Property. Such limitation on access after normal business hours shall not unreasonably restrict the Owners and their Permittees from reasonable access to the Property after normal business hours.



ARTICLE 8  
UTILITIES AND SERVICES

8.01 Services and Utilities. The Owner of the County Property shall cause to be furnished to the Property, the following:

(a) Electricity for all lighting, office machines and similar needs of the Owners and the Permittees, 24 hours per day and 365 days per year.

(b) Heating and air conditioning necessary or desirable for the comfortable use and occupancy of the interior Common Area for all business days throughout the year (except for computer facilities rooms and similar areas which require heating or air conditioning as the case may be 24 hours per day, 365 days per year). If the Owner of the City Property wants heating and air conditioning for the interior Common Area after business hours (before 6:00 A.M or after 6:00 P.M on weekdays), or any time on weekends or holidays, City must send a written request to the Owner of the County Property to approve the after-hours request, at least 48 hours in advance of the date of requested heating and air conditioning. The current rate for after hour use charges of the Common Areas is \$60.00 per hour. This rate may change and the Owner of the County Property shall give the Owner of the City Property thirty (30) days advance written notice of any hourly rate increase.

(c) Reasonable and appropriate janitorial services for the Common Area.

(d) Water and sewer for all water fountains, toilets, sinks, and similar uses, 24 hours per day, 365 days per year.

(e) Reasonable and appropriate illumination of the Common Area 24 hours per day, 365 days per year.

(f) Reasonable and appropriate elevator service from elevators located within the Common Area, 24 hours per day, 365 days per year.

(g) Reasonable and appropriate sprinkling and fire protection systems, 24 hours per day, 365 days per year.

(h) Other reasonable and appropriate management, maintenance and operation of the Common Area, the Parking Garage and the Shared Facilities necessary or desirable for the safe and comfortable use of the Property by the Owners.

(i) The Owner of the City Property may, if it so desires, design, construct and install its own energy management system in order to control the climate within the City Property. Owner of the City Property shall pay all costs associated with connecting the new energy management system to the Office Building's electrical system that serves the Shared Facilities. Owner of the City Property is solely responsible for the maintenance, repair and replacement of the energy management computer(s) equipment and associated software, and all electrical or other cabling required to operate such Owner's energy management system.

8.02 Utilities Costs. The Utility Costs shall be paid by the Owner of the County Property when due, and the Owner of the City Property shall pay to the Owner of the County Property, in the manner provided in Article 9 below, its share of such costs, as set forth in this Article.

- (a) Electricity. The entire Office Building is currently served with electricity through service contracted by the Owner of the County Property. The Owner of the City Property will pay to the Owner of the County Property 36% of the cost of electricity for the Property.
- (b) Water. Owner of the City Property will pay to the Owner of the County Property thirty-six percent (36%) of the cost of the water used by the cooling towers and all other water provided to the Office Building.
- (c) Either Owner may install sub meters to determine the electricity consumption or the water consumption for the City or County Property. If such meters are installed, such Owners shall pay all of the cost of such utilities provided to their respective Property and share of Common Area use.

## ARTICLE 9 PAYMENTS

9.01 Administrative Fee. In addition to all other amounts due hereunder from the Owner of the City Property to the Owner of the County Property, the Owner of the City Property shall pay to the Owner of the County Property an administrative fee in an amount equal to 10% of the other amounts to be paid by the Owner of the City Property pursuant to this Declaration.

9.02 Monthly Payments. The Owner of the County Property shall, upon execution of this Declaration and by December 1 each year, beginning with December 1, 2017, estimate the amounts that will be due from the Owner of the City Property during the following fiscal year and shall give the Owner of the City Property written notice of this estimate, together with an explanation of how it was calculated. Beginning July 1<sup>st</sup> each subsequent year, the Owner of the City Property shall pay to the Owner of the County Property, by the first of each month, an amount equal to 1/12 of the estimated annual expenses. Payments received by the Owner of the County Property more than 30 days after the due date shall be assessed a 5% late fee. At any time during the year, the Owner of the County Property may adjust this estimate if necessary to better reflect actual expenses and shall notify the Owner of the City Property at least 45 days prior to implementing any such adjustment in the amount due.

By October 31<sup>st</sup> of each year (beginning October 31<sup>st</sup>, 2018) the Owner of the County Property shall deliver to the Owner of the City Property an itemized statement showing the actual costs for the previous year, together with a calculation of the amounts actually due from the Owner of the City Property for such year. If the total of the payments made by the Owner of the City Property during such year exceeded the amount actually due, the Owner of the County Property shall credit this amount against subsequent payments due from the Owner of the City Property such that no payments will be due from the City until this credit balance is expended. If the total of the payments made by the Owner of the City Property during such year is less than the amount actually due, then the Owner of the City Property shall promptly pay the difference to the Owner of the County Property.

Upon reasonable notice, the Owner of the County Property shall make available for inspection by the Owner of the City Property, the records relating to such costs.

9.03 Audit. The Owner of the City Property is entitled, with fourteen (14) days advance written notice to the Owner of the County Property, to inspect or audit, at the requesting Owner's expense, any and all books and records in order to verify the amount of Common Expenses. If such audit reveals that the Owner of the City Property has underpaid, such Owner will pay any additional amounts due within thirty (30) days of receipt of the statement or completion of the audit; if the Owner of the City Property has overpaid, such Owner will receive a credit towards subsequent payments in the amount of the overpayment until the credit balance is entirely used.

## ARTICLE 10 INSURANCE

10.01 Property and Casualty Insurance. The Owner of the County Property, at its own expense, shall at all times keep the Improvements located on or under the County Property insured against loss by fire with extended "all risk" coverage for the full replacement value thereof. The Owner of the City Property, at its own expense, shall at all times, keep the Improvements located on or under the City Property insured against loss by fire with extended "all risk" coverage for the full replacement value thereof. No Owner shall violate or permit to be violated any of the conditions or provisions of any of such policies, and each Owner shall so perform and satisfy the requirements of the companies writing such policies that at all times companies of good standing shall be willing to write and continue such insurance. The Owner of the City Property shall pay to the Owner of the County Property 36% of any and all costs of insuring the Common Area. If the Owner of the County Property does not pay a separate premium for the Common Area, the Owner of the County Property shall be entitled to make a reasonable allocation of its premium between the Common Area and the areas that are exclusively used by the Owner of the County property.

10.02 Joint Property and Casualty Insurance. In the event that either the Owner of the City Property or the Owner of the County Property is unable to obtain separate property insurance for its portion of the Office Building (and that portion of the Common Area located within either the County Property or the City Property), then the Owner of the County Property shall at all times keep the Office Building and the Common Area insured against loss by fire as set forth in Article 10.01 and the Owner of the City Property shall pay 36% of such cost.

10.03 Public Liability Insurance. The Owners of the City Property and the County Property shall obtain general liability insurance with respect to the Property and the business of the Owners on the Property, with liability policy limits of not less than Five Million Dollars (\$5,000,000.00) per occurrence and general aggregate to include bodily injury, death or property damage to any person or persons arising from any one occurrence (each Owner shall have its own policy; they shall not be additional insureds on each other's policies). The minimum limit of Five Million Dollars (\$5,000,000.00) shall be increased or decreased (provided, however, that in no event shall the minimum limit of such coverage be less than \$5,000,000.00) every fifth (5<sup>th</sup>) year to equal the

amount of such insurance maintained by owners of similar office projects located in metropolitan Tucson, Arizona. Any cost of such insurance shall be borne by the Owners. The Owners may reasonably self-insure their liability exposures as permitted by law.

10.04 Indemnification. Each Owner (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other Owner (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

10.05 Approval of Insurance. With respect to all insurance required of the Owners under this Article or elsewhere herein, the form and insurers thereof shall be subject to the reasonable approval of both Owners. Certificates evidencing such insurance or self-insurance shall be delivered to the Owners upon request.

10.06 Approval of Insurance Companies. Property insurance required of the Owners under this Article shall be written by insurance companies authorized to do business in Arizona with a minimum Best's rating (as determined by the most recent edition of Best's Insurance Reports) of A- VII for any company writing property casualty insurance policies. The proceeds of such insurance shall be payable to the Owners of the respective Property subject to standard loss payable clauses to any Lender or Lenders, and to the other Owner, as its interests may appear.

10.07 Waiver of Right of Subrogation. To the extent permitted by insurance endorsements reasonably available, each Owner hereby releases and waives any and all rights of subrogation against the other Owner which, in the absence of this Agreement, would arise in favor of any insurance company insuring such Owner against loss by fire, extended coverage, casualty and loss of any other type resulting from damage to or destruction of the Property, the Improvements, or any portion thereof, or in damage to or destruction of the Property of such Owners or such Improvements, and each Owner hereby releases and waives its entire right of recovery against the other Owner for loss and damage resulting from damage to or destruction of the Property, or such Improvements, or any part thereof, or the property of each Owner therein, caused by fire, hazards such as are insured against by extended property coverage. Each Owner shall (if reasonably available) obtain in all present and future policies of fire, extended property coverage, and similar insurance applicable to the Property, clauses which permit the insured to release and waive the insurance company's right of subrogation against third parties responsible for loss.

ARTICLE 11  
OWNER PROPERTY DAMAGE OR DESTRUCTION

11.01. Property Damage Within Insurance Deductible. In the event of damage to or destruction of any of the Improvements, the Owner of the parcel upon which the damaged or destroyed Improvement is located shall give the Owner of the other parcel immediate notice

thereof and shall promptly commence and pursue with reasonable diligence the repair or reconstruction of same or shall make alterations to the same in a good and workmanlike manner to at least as good a condition as existed immediately prior to such damage or destruction.

11.02. Property Damage Above Insurance Deductible. Any insurance proceeds paid for such destruction or damage shall be applied by such Owner to its costs and expenses for such repairs and rebuilding. Owner shall pay in full the Property Insurance deductible.

11.03. Property Damage in Common Area or in the Parking Garage. In the event of damage to or destruction of the Common Area, the cost of repair, reconstruction or alterations to the same, after all insurance proceeds paid therefore have been used, shall be paid 36% by the Owner of the City Property and 64% by the Owner of the County Property. In the event of damage to or destruction of the Parking Garage, the cost of repair, reconstruction or alteration to the same, after all insurance proceeds paid therefore have been used, shall be paid proportionately by each of the Owners in the same ratio as the Owner's share in the net expenses with respect to the Parking Garage as set forth in Article 6 above.

## ARTICLE 12 CONDEMNATION

12.01 Condemnation. Any award of compensation or damages, whether the same is obtained by agreement or by judgment, resulting from a taking of any part of the Property by the exercise of the right of condemnation or eminent domain or an acquisition in lieu thereof shall be distributed in accordance with the terms of the agreement or judgment in the proceedings. Each of the Owners shall have the right to participate in any such condemnation proceedings or agreement for the purpose of protecting their interests.

12.02 Repair and Restoration. Either of the Owners receiving compensation or damages under this Article 12 shall repair or restore the Improvements on such Owner's parcel to the extent necessary to return such parcel as near as possible to its condition existing immediately before the taking (subject to modifications as may be required by law).

## ARTICLE 13 DEFAULT

13.01 Default. If either of the Owners shall default in the payment of any monetary amount required by this Agreement or in the performance or observance of any other covenant, obligation, or requirement set forth in this Agreement, then the non-defaulting Owner shall give written notice to the defaulting Owner specifying with particularity the nature of the default. If the defaulting Owner shall not have cured a monetary default within ten (10) days or a non-monetary default within thirty (30) days after the effective date of the notice from the non-defaulting Owner (or if the default is of such a nature that such default cannot practicably be cured within the thirty (30) day period, then if the defaulting Owner shall not have commenced the curing of such default and thereafter diligently attempted to complete the cure of such default), then in addition to all other rights and remedies the non-

defaulting Owner may take appropriate steps to cure such default, including, without limitation, the payment of any monetary sum or the performance of any maintenance or repair work, and the non-defaulting Owner shall have access to all and any portions of the Property to effect such cure. The non-defaulting Owner shall have the right to recover from the defaulting Owner all costs and other sums expended in connection with the cure of the default hereunder to the extent such costs are otherwise attributable to the defaulting Owner. All such costs and sums shall be payable by the defaulting Owner upon demand by the non-defaulting Owner. Each of the Owners shall be responsible under this Agreement for any default hereunder by any of its Permittees.

13.02 Legal and Equitable Relief. Each Owner shall have the right to prosecute any proceedings at law or in equity against a defaulting Owner who violates or attempts to violate any of the provisions contained in this Agreement in order to prevent a violation hereof or to recover damages for any such violation; provided, however, that no Owner shall be entitled to terminate any easement granted herein.

13.03 Costs and Cure and Interest. All costs and expenses incurred by either Owner to cure a default of the defaulting Owner, including, without limitation payments made pursuant to this Article together with interest thereon from the date due or the date of disbursement, and all costs and expenses of any proceedings at law or in equity, including reasonable attorney's fees awarded to either Owner by any court, shall be assessed against and paid by the defaulting Owner. Interest on all costs and expenses shall accrue at the per annum rate equal to (but not to exceed the maximum permitted by law): or three percent (3%) per annum plus the yield on thirty (30) day United States Treasury Bills.

13.04 Lien. Costs and expenses incurred by a non-defaulting Owner pursuant to this Article which are not paid by the defaulting Owner shall, to the extent permitted by law, constitute a lien against the defaulting Owner's interest in the Property. The lien shall attach and take effect only upon recordation of a claim of lien in the office of the County Recorder of Pima County, Arizona, by the Owner making the claim. The claim of lien shall include the following:

- (a) Name. The name of the lien claimant;
- (b) Basis of Claim. A statement concerning the basis for the claim of lien and identifying the lien claimant as a curing Owner;
- (c) Identification of Owner. An identification of the Owner or reputed owner of the parcel or interest therein against which the lien is claimed;
- (d) Parcel Description. A description of the parcel against which the lien is claimed;
- (e) Work Performed. A description of the work performed which has given rise to the claim of lien and a statement itemizing the amount therefore; and

(f) Statement of Claim. A statement that the lien is claimed pursuant to the provisions of this Agreement, reciting the date and document recording number or docket and page of this Agreement.

The notice shall be duly verified, acknowledged and shall contain a certificate that a copy thereof has been served upon the Owner against whom the lien is claimed, either by personal service or by mailing pursuant to the terms hereof or if no address is provided herein at the address given for the mailing of tax statements in the Office of the County Treasurer of Pima County, Arizona for the parcel or interest against which the lien is claimed. The lien so claimed shall attach from the date of recordation and it may be enforced in any manner allowed by law, including but without limitation, by suit in the nature of a suit to foreclose a mortgage or mechanics' lien under the applicable provisions of Arizona law, and the shortest notice and redemption periods, if any, allowed by Arizona law shall be applicable.

13.05 Remedies Cumulative. All of the remedies permitted or available to the Owners under this Article shall be cumulative. In the event that any action or suit is brought for the enforcement of any provision of this Agreement or as a result of any alleged violation of any of the provisions of this Agreement, the prevailing Owner in such suit shall be entitled to recover its costs of suit, including reasonable attorneys' fees, from the losing Owner, and any judgment or decree entered in such proceeding shall include an award therefore.

13.06 Excusable Delays. Whenever performance is required by an Owner under this Agreement, the Owner shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty or causes beyond the reasonable control of such Owner (excluding, however, the financial inability of such party to perform), then the time for performance shall be appropriately extended by the amount of delay actually so caused.

#### ARTICLE 14 RIGHTS OF THE LENDERS

14.01 Consent Required for Amendment or Termination. The Owners agree that they will not mutually terminate or modify this Agreement without the prior written consent of all Lenders.

14.02 Protection of Lenders. The breach of any provision of this Agreement shall not entitle either Owner to cancel, rescind or otherwise terminate the provisions of this Agreement. No breach hereof shall defeat, render invalid, diminish or impair the lien of any Lender holding a mortgage or deed of trust, but the covenants, restrictions, easements and other provisions of this Agreement shall be binding upon and effective against any Owner whose title is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

ARTICLE 15  
TERM AND AMENDMENTS

15.01 Term. This Agreement shall be effective for a period of thirty-five (35) years and shall automatically renew for successive Ten (10) year periods unless sooner terminated as provided herein commencing on the date of recordation of this Agreement.

15.02 Amendments. This Agreement may be amended, modified, extended or terminated only by a written instrument signed and acknowledged by all Owners of record and recorded with the County Recorder of Pima County, Arizona.

ARTICLE 16  
COVENANT OF GOOD FAITH AND COOPERATION

The Owners acknowledge that the special features of the Property and the lengthy term of this Agreement may likely cause the Property to be subject to conditions and circumstances that will change significantly during the term of this Agreement. The Owners agree to cooperate in good faith to amend this Agreement to carry out the intentions of the Owners as manifested in this Agreement in the event of such changed conditions and circumstances, including amendments reasonably requested by any Lender. The Owners further agree to cooperate to locate exactly any easement described herein with an appropriate legal description or otherwise if requested by any Owner.

Consistent with this Article, Owners may contract with each other for services or enter into a written Memorandum of Understanding to document further details covering any operational, maintenance, improvement, access or financial issues that are not specifically enumerated herein. In the case of any conflicting terms of any other writing and this Declaration, the terms of this Declaration, as amended in accordance with Article 15 herein, shall apply.

ARTICLE 17  
TRANSFER OF INTERESTS

17.01 Limitations on Transfer. In no event shall the rights, powers, and obligations conferred upon the Owners by this Agreement be at any time transferred or assigned by either of the Owners except through a transfer of each Owner's respective interest in the Property and then only in the manner prescribed by this Article.

17.02 Transfer of Interest. In the event of the transfer or conveyance of all or any part of the interest of any Owner in the Property then the rights, powers and obligations of the transferring Owner under this Agreement shall be transferred and assigned with its interest.



17.03 Retention of Interest. In the event that the whole or any part of the interest of an Owner in the Property is transferred or conveyed, but a partial interest is retained or a new interest is created in the transferring Owner simultaneously with the conveyance of its previous interest, by way of leasehold, life estate, or any other similar interest, then the transferring Owner, in addition to the transferee, shall be bound by the rights, powers and obligations of the transferring Owner under this Agreement and all of the rights, powers, and obligations of the transferring Owner under this Agreement shall remain in the transferring Owner so long as such transferring Owner retains any partial interest or the new interest in the Property. Upon the termination of the partial interest or the new interest created in the transferring Owner as specified in this Article, the rights, powers and obligations of such Owner shall vest in accordance with the applicable provision of this Article.

17.04 Multiple Ownership. In the event that an Owner shall transfer or convey its interest in the Property, or a portion of its interest in the Property, in such manner as to vest ownership of its interest in more than one Owner, then the several Owners of the interest involved in such transactions shall designate one of their number to act on behalf of all such Owners in the performance of the provisions of this Agreement. Any such designation shall be in writing and shall be served upon the other Owner in accordance with the notice provisions of this Agreement. In the absence of any such written designation, the acts of the initial Owners to this Agreement, whose interest is so divided, with respect to the performance of the provisions of this Agreement, shall be binding upon all of the Owners of such interest until such time as the written designation is properly served as provided by this Article 17.04. Any person designated pursuant to the provisions of this Article 17.04 shall be the agent of its principals, hereby irrevocably appointed for such purpose, upon whom service of any process, writ, summons, order or other mandate of any nature of any court in any action, suit or proceeding arising out of this Agreement may be made, and service upon such designated person shall constitute due and proper service of any such matter upon its principal, provided a copy of such matter is also mailed to such principal at the principal's last address known to sender.

17.05 Release Upon Sale by an Owner. Upon the sale or transfer by an Owner, or any successor in interest, of its entire right, title and interest in the Property, that Owner shall be released from the obligations of this Agreement, provided that (i) the Owner shall not be in default in the performance of any provision of this Agreement and all amounts which may then be due and owing under this Agreement by such Owner shall have been paid as required under this Agreement, and (ii) the Owner shall have given notice to the other Owner of the sale, transfer, conveyance or assignment of all of its right, title and interest in the Property concurrently with the filing for record of the instrument effecting the same.

17.06 Limited Liability of Transferee. In no event shall any transferee of any Owner be liable for any default under this Agreement of the transferring Owner, or any successor in interest, which occurred prior to the effective date of the transfer of all right, title and interest in the affected property to the transferee; provided, however, that nothing contained in this Article shall affect the existence, priority, validity or enforceability of any lien placed upon the affected property under the provisions of this Agreement prior to the effective date of the transfer.

17.07 Assumption Statement. Concurrently with the transfer of all right, title and interest in the Property by either Owner, the transferee shall execute and deliver to the other Owner a written statement in which: (i) the name and address of the transferee shall be disclosed, and (ii) the transferee shall acknowledge its obligation to be bound by this Agreement and perform all obligations hereunder in accordance with the provisions of this Agreement. Failure to deliver any such written statement shall not affect the continued effect all provisions of this Agreement to otherwise affect the liability of any transferee pursuant to the provisions of this Agreement.

## ARTICLE 18 GENERAL PROVISIONS

18.01 Notices. Any notice, request, demand, instruction or other document required to be given under this Agreement to any Owner or Lender shall be in writing and shall either be served personally or by mail. Any notice personally served shall be deemed effective upon service; any notice given by mail shall be deemed effectively given the second day after being deposited in the United States mail, registered or certified, postage prepaid, return receipt requested, and addressed to such Owner at the address designated in writing by such Owner to the other Owner. All notices hereunder shall also be given to Lenders at their address of record pursuant to the recorded mortgage or deed of trust, or at such address as any Lender may so notify the Owners in writing. The addresses of any Owner or Lender, for the purpose of this Article, may be changed by giving written notice of the change in the manner herein provided for giving notice.

18.02 Headings. The heading of this Agreement are included only as a matter of convenience and for reference. They do not define, limit or describe the scope on intent of this Agreement and they shall not affect the interpretation hereof.

18.03 Waiver of Default. A waiver of any default by a party must be in writing and no such waiver shall be implied from the failure of a party to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, and no submission by a party or acceptance of full or partial performance hereunder during the continuance of any breach shall constitute a waiver of any such breach or any such term. One or more written waivers of any default in the performance of any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained herein. Unless specifically provided herein to the contrary, the rights and remedies given to a party by this Agreement shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or of any other right or remedy at law or in equity which a party might otherwise have for a breach or default under this Agreement, and the exercise of one such right or remedy by a party shall not impair such party's standing to exercise any other right or remedy.

18.04 No Partnership or Joint Venture. Neither this Agreement nor the acts of the Owners shall be deemed by the Owners, or by any third person, to create a partnership or joint venture, or of any association of the Owners and no provisions of this Agreement are intended to create or constitute any person a third-party beneficiary hereof, except as expressly provided.

18.05 Successors. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Owners, their Permittees and Lenders.

18.06 Severability. If any provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement, unless specifically conditioned upon such invalid or unenforceable provision, shall be valid and enforceable to the fullest extent permitted by law.

18.07 Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of Arizona.

18.08 Covenants Run With the Land. The covenants, easements, agreements, promises and duties of each party as set forth in this Agreement shall be constructed as covenants and not as conditions, and, to the fullest extent legally possible, all such covenants shall run with the land or constitute equitable servitudes as between the property of the respective covenantor, as servient tenement, and the property of the respective covenantee, as the dominant tenement.

18.09 Priority. This Agreement and the rights, privileges, and easements of the Owners with respect to each other and the Property shall be superior and senior to any lien placed upon any portion of that property, including the lien of any Lender. Subject to Article 14 (Rights of Lenders), any amendments or modifications hereto, whenever made, shall be deemed superior and senior to any and all liens, including the lien of a Lender, the same as if such amendments or modifications had been executed concurrently herewith.

18.10 Attorney's Fees. If either Owner shall institute an action or proceeding, against the other relating to the provisions of this Agreement or any default hereunder, then, and in that event, the unsuccessful Owner in such action or proceeding agrees to reimburse the successful Owner therein for its reasonable costs and expenses for attorney's fees as determined by the court.

18.11 Estoppel Certificates. Either of the Owners may, at any time and from time to time, in connection with the sale or transfer of the Owner's Property, or in connection with the financing or refinancing of the Owner's Property by bona fide mortgage, deed of trust or sale-leaseback made in good faith and for value, deliver written notice to the other Owner requesting such Owner to execute a certificate certifying that to the best knowledge of the other Owner the requesting Owner is not in default in the performance of its obligations under this Agreement, or, if in default, to describe therein the nature and amount of any and all defaults. Each Owner receiving such request shall execute and return such certificate within twenty (20) days following the receipt thereof. If either Owner fails to execute and return such certificate within five (5) days following such second request shall be deemed an admission on such Owner's part that the Owner requesting the certificate is current and not in default in the performance of such Owner's obligations under this Agreement. The Owners acknowledge that such certificate may be relied upon by transferees, leaseback-lessors and Lenders. In the case of the City, the City Manager may execute such certificates, and in the case of the County, the County Administrator may execute such certificates.

18.12 Time of Essence. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Agreement.

18.13 Entire Agreement. This Agreement, together with exhibits, if any, attached hereto, and other documents incorporated herein by reference, sets forth the entire agreement with respect to the subject matter hereof.

AGREED TO on the dates set forth opposite the signatures below.

ATTEST:

\_\_\_\_\_

PIMA COUNTY, a political subdivision of the State of Arizona

By: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM:

Date: \_\_\_\_\_

*deputy*  
  
**TOBIN ROSEN**  
Pima County Attorney

6/7/17

STATE OF ARIZONA )  
  ) ss  
COUNTY OF PIMA )

ACKNOWLEDGED before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, on behalf of PIMA COUNTY, a body politic.

My Commission Expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

AGREED TO on the dates set forth opposite the signatures below.

THE CITY OF TUCSON, an Arizona Municipal Corporation

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Principal Assistant City Attorney

STATE OF ARIZONA )  
                              ) ss  
COUNTY OF PIMA  )

ACKNOWLEDGED before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by  
\_\_\_\_\_ as Mayor and \_\_\_\_\_ as  
City Clerk, on behalf of the CITY OF TUCSON, an Arizona Municipal Corporation.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

Exhibits

- A: City Property (legal description and depiction of footprint)
- B: City Property (legal description and depiction of air rights)
- C: Floor Plans of City Property
- D: Description of Property including City and County portions, Common Areas
- E: Rules and Regulations

## EXHIBIT A

### LEGAL DESCRIPTION A PORTION OF BLOCK 180 OF THE CITY OF TUCSON

A portion of Block 180 of the City Of Tucson as shown on the subdivision plat recorded in Book 3 of Maps and Plats at Page 82, records of Pima County, Arizona, more particularly described as follows:

COMMENCING at the intersection of Council Street and Stone Avenue;

THENCE South  $89^{\circ} 39' 15''$  West along the centerline of Council Street, 60.40 feet;

THENCE South  $09^{\circ} 38' 53''$  East, 35.36 feet to a point on the north line of said Block 180;

THENCE continuing South  $09^{\circ} 38' 53''$  East, 7.32 feet to the POINT OF BEGINNING;

THENCE continuing South  $09^{\circ} 38' 53''$  East, 15.00 feet to an outside corner of the Public Works Building;

THENCE the following bearings and distances along the outside wall of the Public Works Building:

THENCE continuing South  $09^{\circ} 38' 53''$  East, 11.50 feet to an outside corner of said building;

THENCE South  $80^{\circ} 17' 58''$  West, 2.67 feet to an outside corner of said building;

THENCE South  $09^{\circ} 42' 02''$  East, 30.00 feet to an outside corner of said building;

THENCE South  $80^{\circ} 17' 58''$  West, 2.33 feet to an outside corner of said building;

THENCE South  $09^{\circ} 42' 02''$  East, 30.00 feet to an outside corner of said building;

THENCE South  $80^{\circ} 17' 58''$  West, 2.33 feet to an outside corner of said building;

THENCE South  $09^{\circ} 42' 02''$  East, 29.00 feet to an outside corner of said building;

THENCE South  $80^{\circ} 17' 58''$  West, 11.00 feet to an outside corner of said building;

THENCE continuing South  $80^{\circ} 17' 58''$  West, 77.32 feet to point on the west outside wall of the Public Works Building;

Page 2

A portion of Block 180 of the City of Tucson

THENCE the following bearings and distances along the outside wall of the Public Works Building:

THENCE North 09° 42' 08" West, 88.16 feet to an outside corner of said building;

THENCE South 88° 58' 22" West, 19.89 feet to an outside corner of said building;

THENCE North 00° 43' 47" West, 32.06 feet to an outside corner of said building;

THENCE North 80° 17' 52" East, 50.17 feet to an outside corner of said building;

THENCE South 09° 42' 08" East, 3.33 feet to an outside corner of said building;

THENCE North 80° 17' 52" East, 21.33 feet to an outside corner of said building;

THENCE South 09° 42' 08" East, 4.00 feet to an outside corner of said building;

THENCE North 80° 17' 58" East, 23.83 feet to an outside corner of said building;

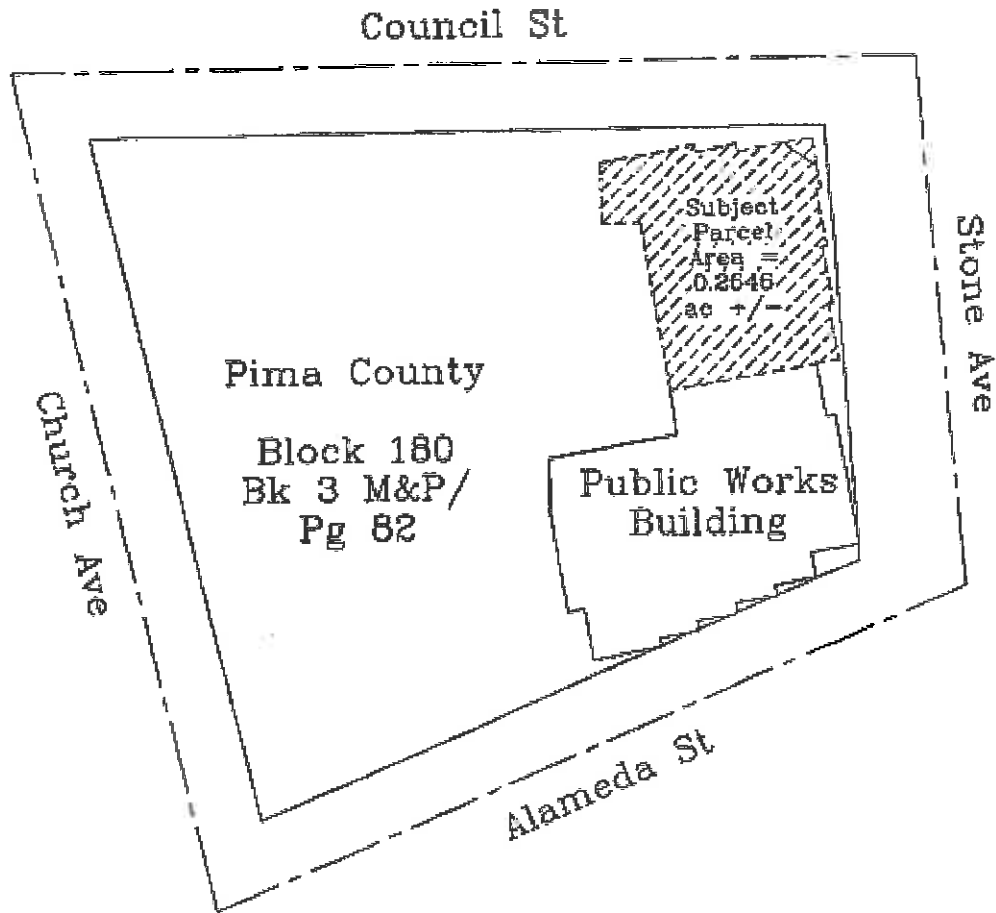
THENCE continuing North 80° 17' 58" East, 15.01 feet to the POINT OF BEGINNING.

The basis of bearing for the above parcel is the centerline of Council Street, said bearing being South 89° 39' 15" West.



*Robert J. O'Donoghue*





**PIMA COUNTY SURVEY**

A portion of Block 180 of the City of Tucson  
 Book 3 of Maps & Plats at Page 82  
 Records of Pima County, Arizona

Scale: None      Date: 07 March 2008      Drawn By: R.N.D.      Sheet 1 of 1

**EXHIBIT B**

**LEGAL DESCRIPTION  
AIRSPACE  
A PORTION OF BLOCK 180 OF THE CITY OF TUCSON**

Airspace currently occupied by portions of a building now existing and known as the Public Works Building, in particular portions of floors three through six, from a height of approximately twenty two feet – six inches above existing finished grade of floor one, to approximately sixty nine feet – nine inches above said grade, over and above a portion of Block 180 of the City Of Tucson as shown on the subdivision plat recorded in Book 3 of Maps and Plats at Page 82, records of Pima County, Arizona, more particularly described as follows:

COMMENCING at the intersection of Council Street and Stone Avenue;

THENCE South 89° 39' 15" West along the centerline of Council Street, 79.05 feet;

THENCE South 09° 42' 08" East, 35.37 feet to a point on the north line of said Block 180;

THENCE continuing South 09° 42' 08" East, 125.85 feet to the POINT OF BEGINNING, said point being an outside corner of the Public Works Building;

THENCE continuing South 09° 42' 08" East, 22.88 feet to point on the east outside wall of the Public Works Building;

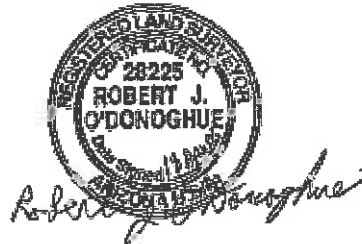
THENCE South 80° 13' 09" West, 77.32 feet to an outside corner on the west wall of the Public Works Building;

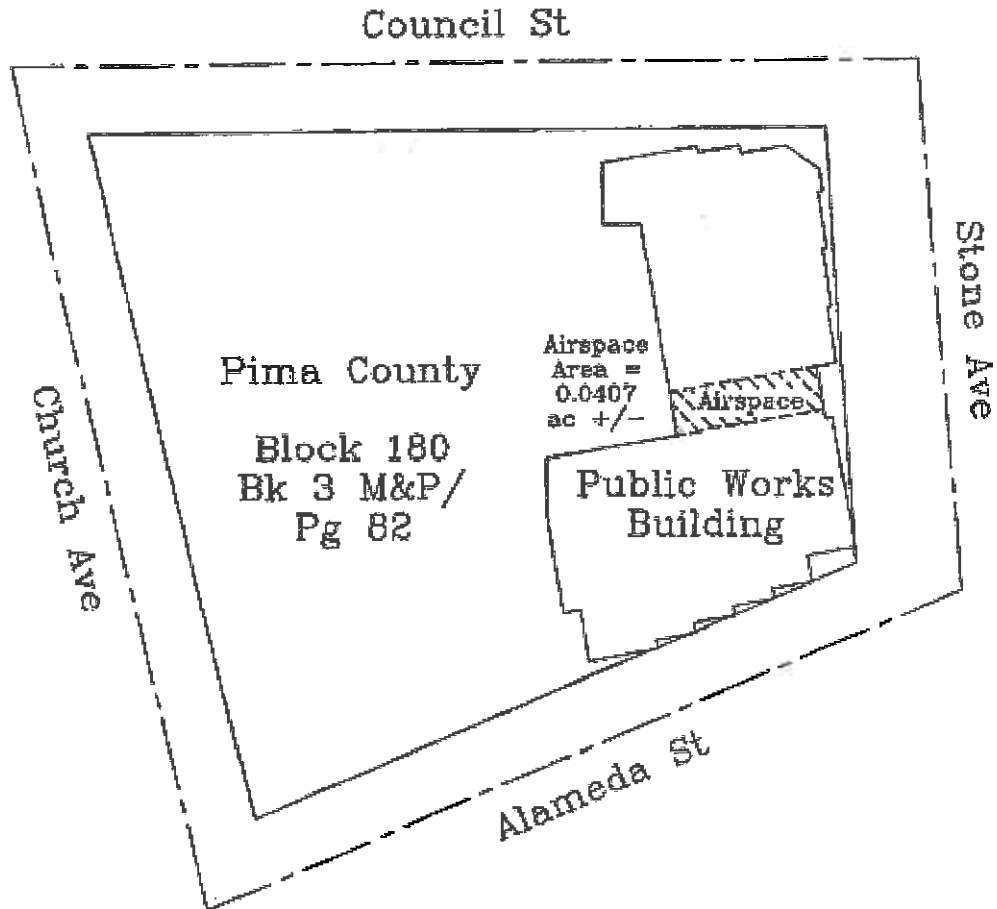
THENCE North 09° 42' 08" West, 22.99 feet to point on the west outside wall of the Public Works Building;

THENCE North 80° 17' 58" East, 77.32 feet to the POINT OF BEGINNING.

While said Public Works Building is in existence, the actual physical location of said floors three through six shall determine the exact boundary of Grantee's property. If and when said building is removed, the boundaries of the parcel as described above shall be used thereafter.

The basis of bearing for the above parcel is the centerline of Council Street, said bearing being South 89° 39' 15" West.





**PIMA COUNTY SURVEY**

Airspace over & above a portion of Block 180 of the City of Tucson  
Book 3 of Maps & Plats at Page 82  
Records of Pima County, Arizona

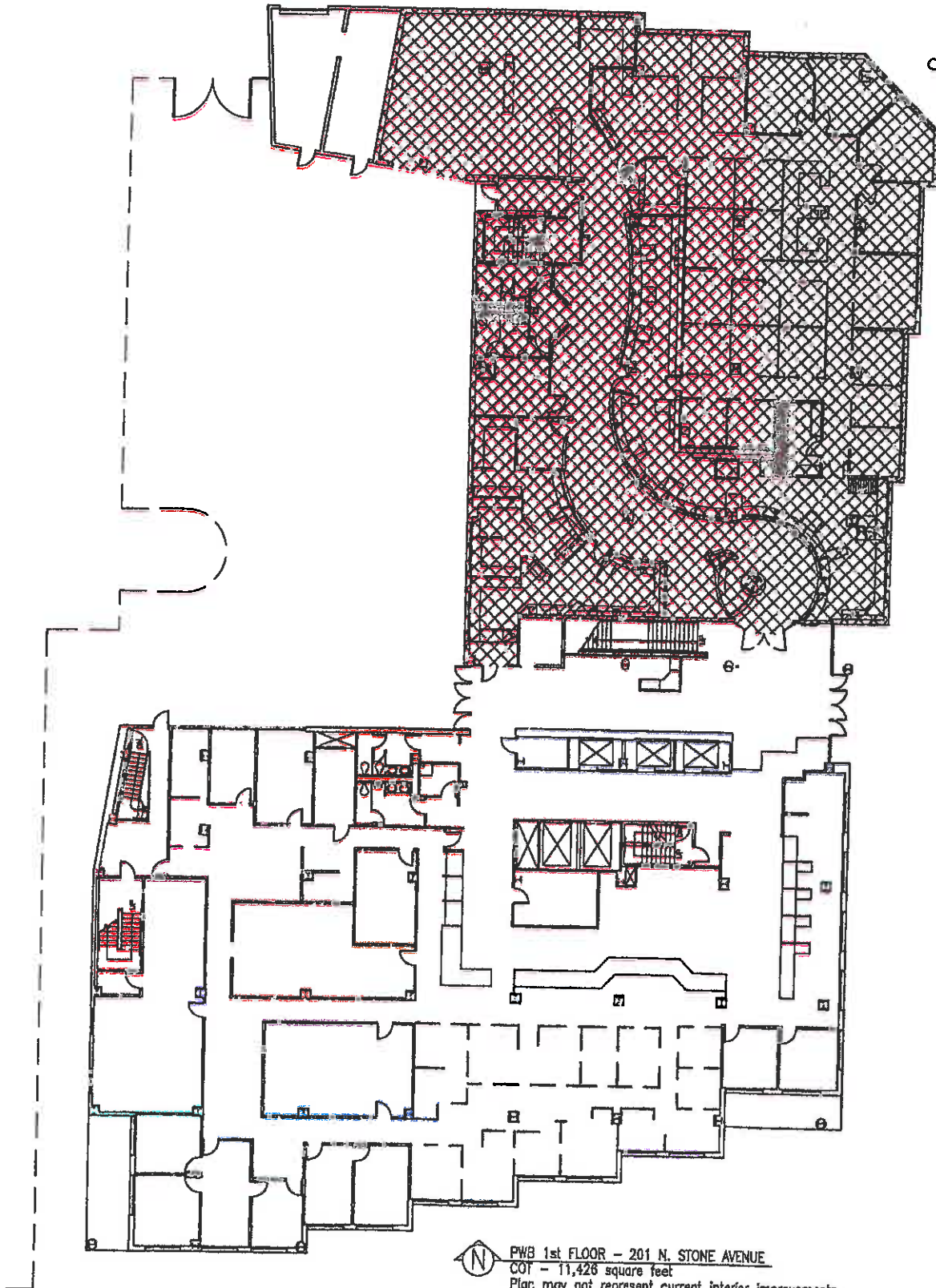
Sales: None

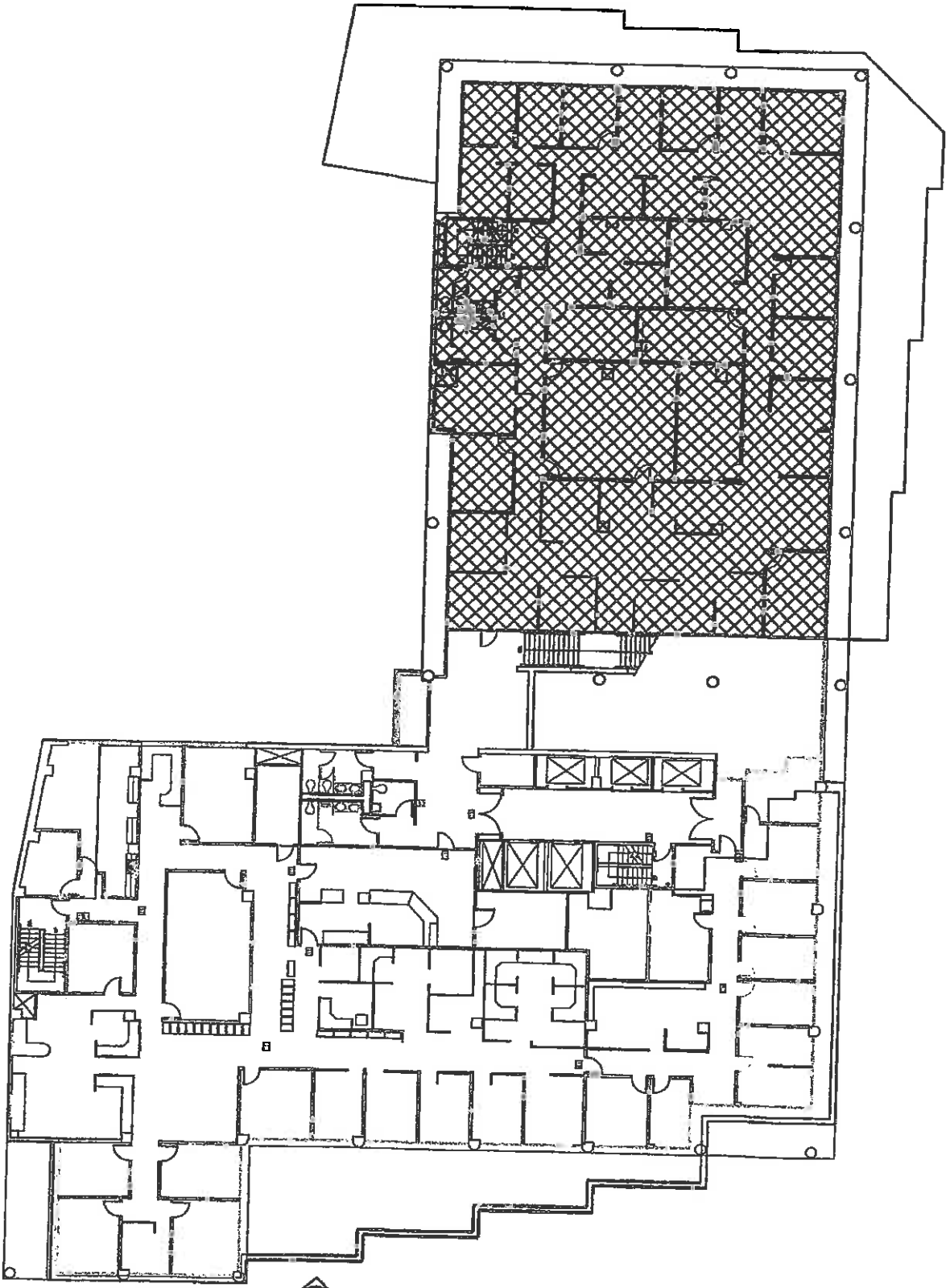
Date: 18 April 2006


Drawn By: R.O'D.

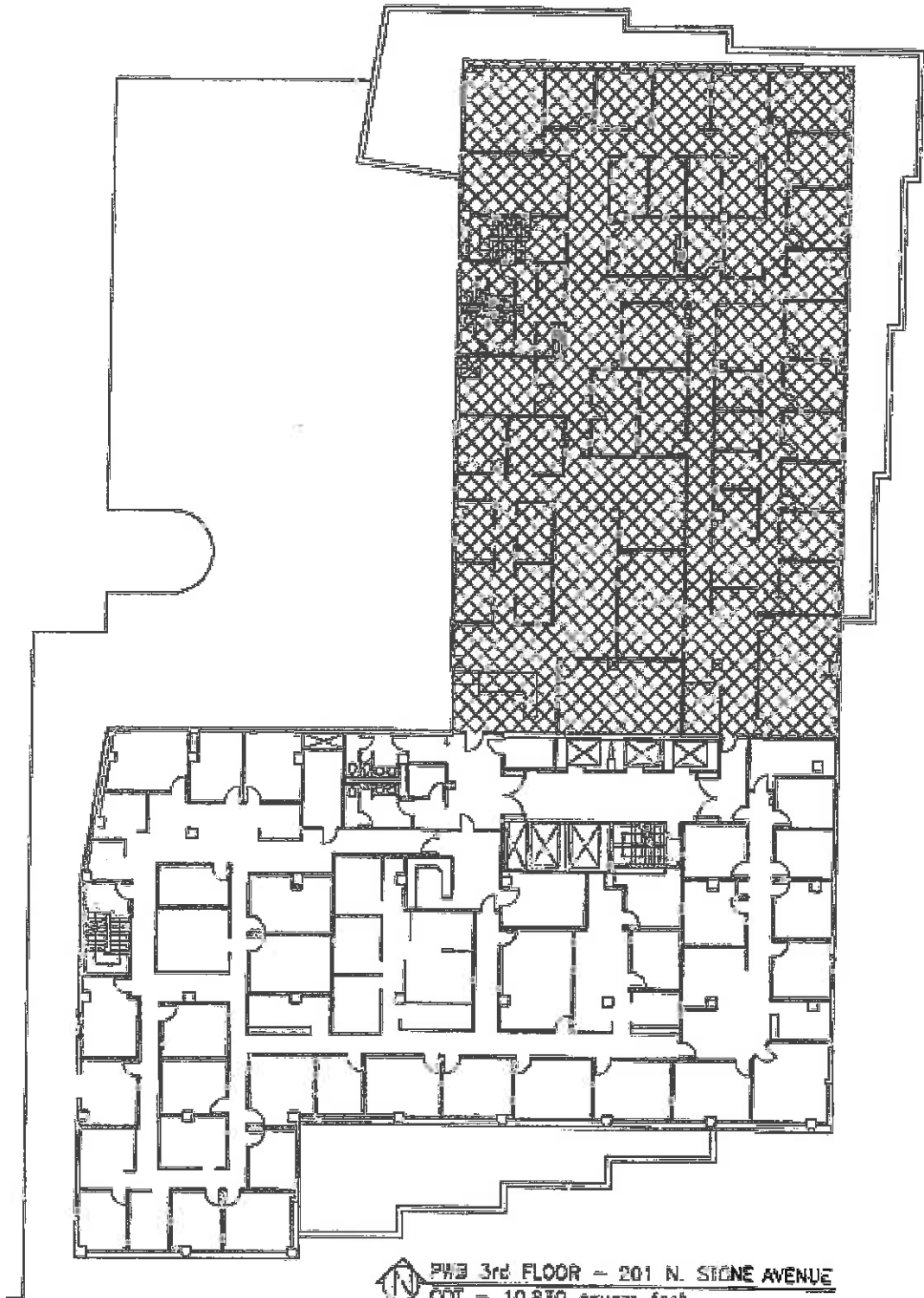
Sheet 1 of 1

EXHIBIT C  
City Property Floor Plans





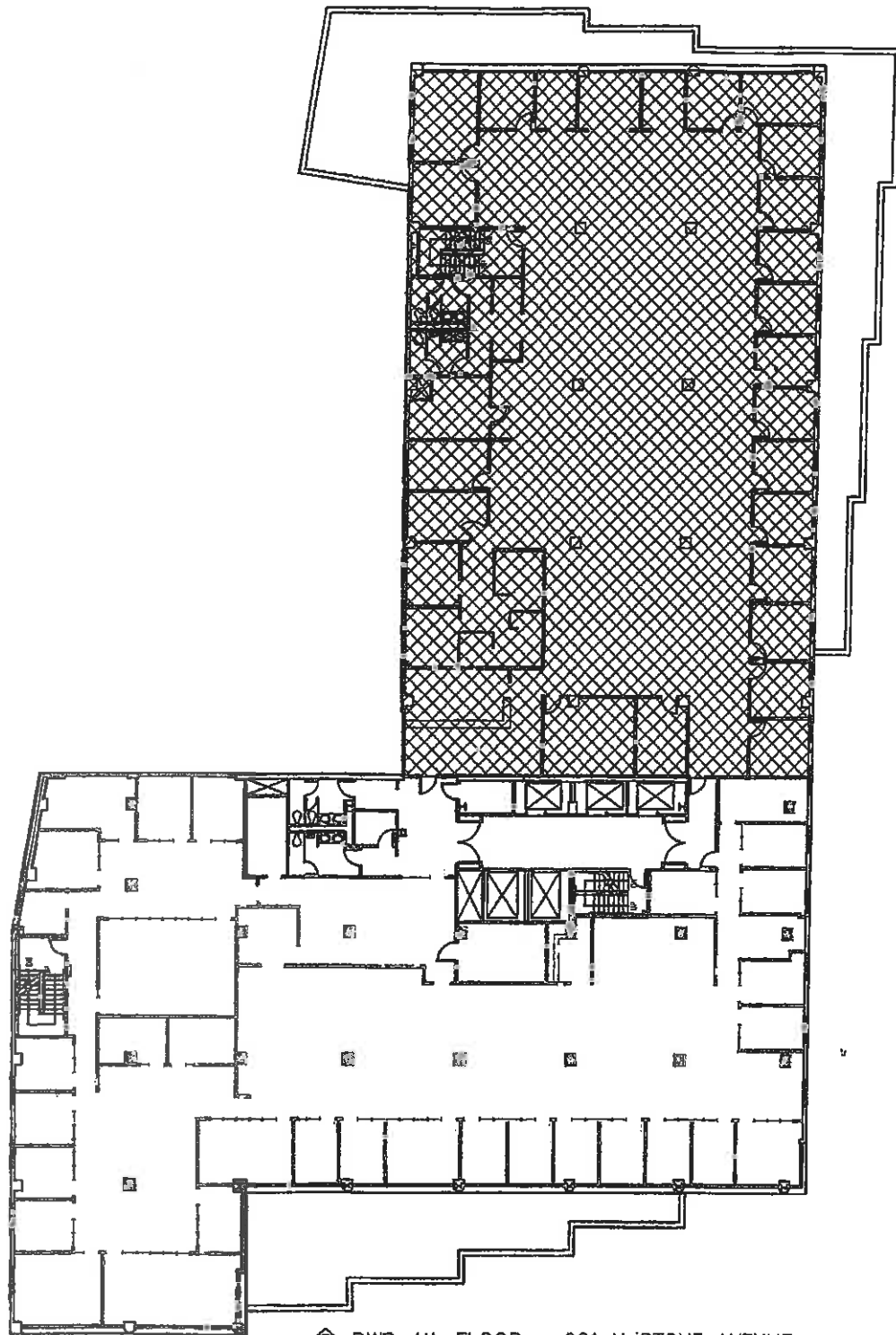
 PWB 2nd FLOOR - 201 N STONE AVENUE  
COT 7,980 square feet  
Plan may not represent current interior improvements




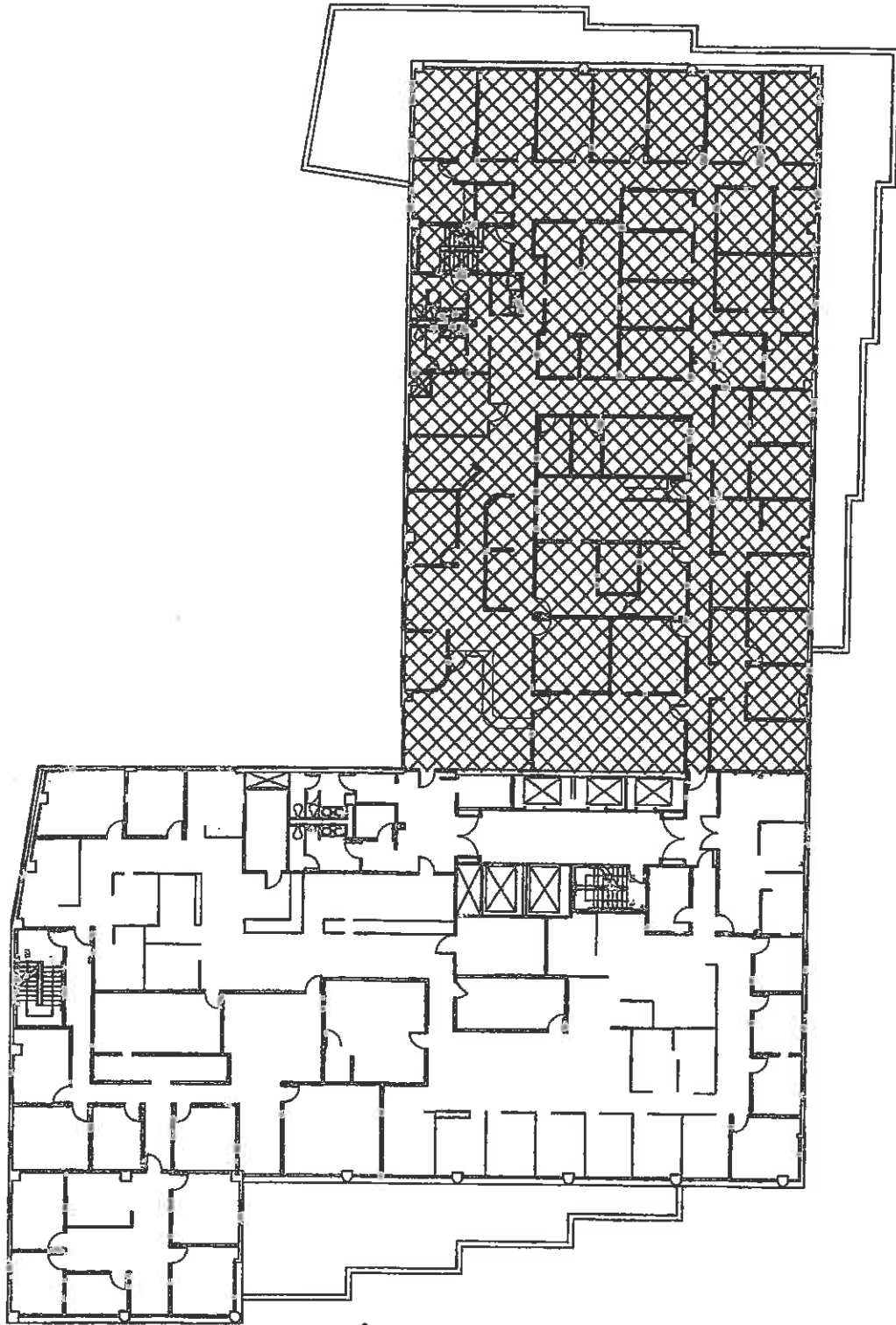
PWB 3rd FLOOR - 201 N. STONE AVENUE


COT = 10,830 square feet

Plan may not represent current interior improvements

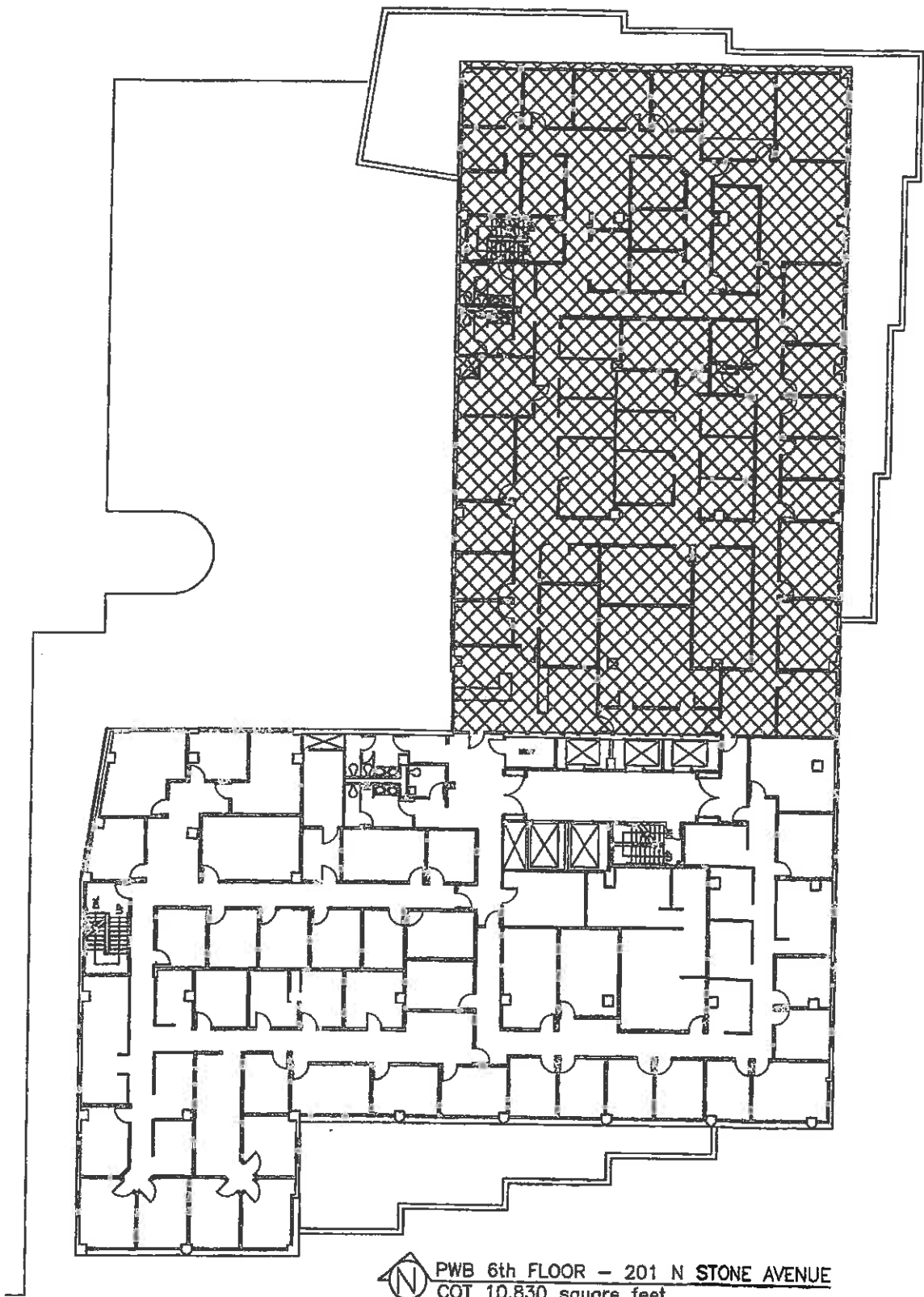


 PWB 4th FLOOR - 201 N STONE AVENUE  
COT - 10,830 square feet  
Plan may not represent current interior improvements



 PWB 5th FLOOR - 201 N STONE AVE.  
COT 10,830 square feet  
Plan may not represent current interior improvements





**N** PWB 6th FLOOR - 201 N STONE AVENUE  
COT 10,830 square feet  
Plan may not represent current interior improvements

## EXHIBIT D

### Description of Property including Common Areas



PIMA COUNTY FACILITIES MANAGEMENT, 150 WEST CONGRESS, TUCSON ARIZONA 85701 (520)740-308



**FACILITIES MANAGEMENT**  
**SQUARE FOOTAGE - EXTERIOR COMMON**  
**PUBLIC WORKS BUILDING**  
**201 N. STONE AVE.**  
**TUCSON, AZ**

DATE: 03/14/05	SCALE: 1" = 40'-0"
CHECKED BY: BSE	DRAWN BY: HO
WORK AUTHORIZATION: TBD	REVS: <span style="border: 1px solid black; padding: 2px;">Δ</span> DATE:
PROJECT NO: <b>EXT bf 1</b>	NOTE: THIS DOCUMENT AND THE INFORMATION CONTAINED HEREIN IS THE PROPERTY OF PIMA COUNTY. FOR OFFICIAL USE ONLY.

## **EXHIBIT E**

### **Rules and Regulations**

These Rules & Regulations have been adopted by the parties as of the date of this Agreement in order to set forth standards of conduct that will allow all Permittees of the Property to enjoy a professional working environment for the provision of public services and administration that is compatible with the general character of the Office Building, Common Area, and Garage. Each Owner reserves the right to make amendments or additions to these Rules and Regulations from time to time, as provided in the Agreement. Each Owner is responsible for informing its employees and invitees as to the provisions of these Rules and Regulations and to enforce same with respect to its employees and invitees. County may waive compliance with any one or more of these Rules and Regulations in writing for the benefit of City. Such waiver shall not be construed as a waiver for any other Owner or occupant, nor will it prevent County from enforcing the same against any or all other Owners or occupants. Each Owner may enforce these rules and regulations. Any concerns about violations of the Rules and Regulations should be addressed to the responsible Owner at such place it may designate in writing from time to time.

1. No sign, placard, picture, advertisement, name or notice will be inscribed, displayed, printed or affixed on or to any part of the inside of the exterior Office Building window(s), doors, interior hallways or Common Areas without the prior written consent of the Owner. Owner has the right to remove any unapproved sign, placard, picture, advertisement, name or notice located on the exterior Office Building window(s), doors, interior hallways or within the Common Areas without notice to and at the expense of the offending party. All signs installed on the exterior of the Office Building will conform with the City of Tucson sign regulations. Each Owner will approve the other Owner's signs to be installed on the exterior of the Office Building so the signs complement each other. Posting areas for announcements and notices shall be provided in each lobby which shall be the only areas where such postings are permitted.
2. The sidewalks of the Office Building and halls, passages, exits, entrances, elevators and stairways in the Common Areas shall not be obstructed by any Owner's Permittees or used for any purpose other than for ingress and egress from Owners' Premises.
3. The plumbing facilities will not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever will be thrown therein. The expense of any breakage, stoppage or damage resulting from a violation of this provision will be borne by the Owner whose employee, agent or invitee will have caused it.
4. No furniture, freight or equipment of any kind will be brought into the Common Areas of the Office Building without prior notice to the Owners. All moving of items into or out of the Office Building will be done at such time and in such manner as the affected Owner(s) may designate. Any damage to the elevators, doors, frames, walls or hallway surfaces caused by Owner or its Permittees shall be repaired at the responsible Owner's expense. County has the right to prescribe the weight, size and position of all heavy equipment brought into the Office Building. Heavy objects, will stand on supports of such thickness as is necessary to properly distribute the weight.

5. Owner will not use, keep or permit to be used or kept any foul or noxious gas or substance in the Owner's Property, hereinafter "the Premises", or Common Areas or permit or allow the Premises or Common Areas to be occupied or used in a manner offensive or objectionable to County or other occupants of the Office Building, hereinafter the "Building" by reason of noise, odors and/or vibrations, or that would interfere in any way with other Building occupants or those having business therein. No animals will be brought in or kept in or about the Premises or the Common Areas of the Building except service animals.

6. Owner will not use or keep in the Premises or the Common Areas of the Building any kerosene, gasoline, or flammable or combustible fluid or material, or use any method of heating or air conditioning other than as provided in the Agreement.

7. Owner acknowledges that periodically the Tucson Fire Department or other contractor or representative of County will inspect the Premises for Fire Code compliance and fire, sprinkler, and alarm testing. Owner and its employees, contractors and invitees will comply with any fire safety and handicap procedures and regulations established by County or any governmental agency. Owner will distribute to its employees, representatives, contractors and invitees a copy of these Rules and Regulations and all fire drill safety and handicap material provided to it from time-to-time by County or any governmental agency. If an audible fire alarm is sounded in the Building, Owner must take immediate and prudent actions to evacuate its employees, guests or contractors from the Building through designated exits as posted by County or City as applicable. Owners will notify each other in writing of the emergency contact information of two on-site employees or representatives who are responsible for emergency evacuations or fire drills for its Premises. Owners are responsible for notifying each other in writing of any changes to such assignments. Owners will notify each other of any handicapped occupants or other individuals who may require special assistance in the event of an emergency.

8. County will direct electricians or phone installation employees or contractors as to where and how telephone and computer network cables are to be introduced to the Property, including the Building. No boring or cutting for wires will be allowed in Common Areas without the consent of County. The location of telephones, call boxes and other office equipment affixed to the Common Areas of the Building will be subject to the approval of County.

9. County reserves the right, in its sole but reasonable discretion, to increase security services for the Common Areas of the Building. Owner will be responsible for its share of costs associated with such additional security as provided in the Agreement.

10. Access Outside of Business Hours, Owner and its employees may access the Common Areas of the Building by using the Building keys provided by County. County is in no case liable for damages with regard to the admission to or exclusion from the Building of any person. In case of invasion, mob, fire alarm, bomb threat, riot, public excitement, or other commotion, County reserves the right to prevent access to the Common Areas of the Building during the continuance of the same by closing of the doors or otherwise, for the safety of Occupants, their employees, guests and contractors, and the protection of the Building.

11. Owners reserve the right to exclude or expel from the Common Areas of the Building any person who, in the judgment of such Owner, is intoxicated or under the influence of alcohol or drugs, or who will in any manner do any act in violation of any of the rules and regulations of the Building or impair the safety of any occupant, employee, or contractor of such Owner.

12. County has the right to control and operate the Common Area(s), and the public facilities, and heating and air conditioning, as well as facilities furnished for the common use of the Building occupants, in such manner as County deems best for the benefit and safety of the Building occupants generally, subject to the terms and conditions of the Agreement.

13. All entrance doors in the Premises will be locked when the Premises are not in use, and all doors opening to public corridors will be kept closed except for normal ingress and egress from the Premises. All emergency fire exit doors must remain free of debris from both the interior and exterior and remain locked when not in use.

14. The common hallway immediately adjoining the Premises will be kept clean and free from dirt and rubbish by Owner and Owner will not place or permit any obstruction or merchandise in such areas.

15. All patio areas, including the Plaza, will be utilized solely by County and the Owner, their employees, guests or invitees. No unsightly storage will be placed upon the patios. There will be no storage, temporary or permanent, refuse containers or other such unsightly materials on any patio.



**PIMA COUNTY, ARIZONA  
BOARD OF SUPERVISORS POLICY**

<b>Subject:</b> Tobacco-Free Environment	<b>Policy Number</b>	<b>Page</b>
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**Purpose:**

Smoking and the use of tobacco related products are a major cause of preventable disease and death. As a leading employer and health proponent Pima County is committed to the promotion of health, wellness, and the prevention / treatment of diseases. Pima County also serves as a model for the public influencing attitudes about smoking and the dangers of tobacco products. The purpose of this tobacco-free policy is to create tobacco-free environments for all Pima County facilities, public buildings and adjacent properties, to provide Pima County employees and the public with guidelines for managing and supporting this policy, and to encourage a healthy lifestyle for all personnel and visitors.

**Background:**

As a major entity involved in the promotion of public health and safety within Pima County, the Board of Supervisors promotes and encourages the establishment of a tobacco-free zone on County facilities, public buildings and adjacent properties. The Board of Supervisors has previously established wellness as a priority for all County employees, by the adoption of the long-range Sustainability Program and employee incentives in the way of premium discounts for health insurance benefits. The establishment of a tobacco-free policy is the natural continuance of those efforts.

**Policy:**

It is the policy of the Board of Supervisors that to provide a safe and healthy environment for all employees, and the general public.

The Board of Supervisors prohibits the use of tobacco products at all times on County facilities, public buildings and adjacent properties, and in County vehicles. This prohibition applies to all employees, and to all visitors and other persons at any County sponsored activity or event conducted on County facilities, in public buildings or on adjacent properties.

**Definitions:**

Tobacco Products include cigarettes, cigars, pipes, smokeless tobacco, water pipes, hookah, e-cigarettes, chewing tobacco, snuff and other products containing tobacco.

County Facilities, Public Buildings and Adjacent Properties including County owned or leased properties and a facility occupied or used by any County personnel, visitor, or vendor, and includes but is not limited to buildings, courtyards, walkways, breeze-ways, parking lots, parking structures, County vehicles (owned or leased), loading docks or construction sites.



**PIMA COUNTY, ARIZONA  
BOARD OF SUPERVISORS POLICY**

<b>Subject:</b> Tobacco-Free Environment	<b>Policy Number</b>	<b>Page</b>
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**Compliance:**

County personnel are responsible for compliance with the policy.

Visitors and vendors observed to violate this policy shall be respectfully informed of the Tobacco-Free Environment Policy and asked to comply. If a visitor or vendor neglects to comply, that neglect to comply may be used as grounds for prohibiting access to premises or facilities by said visitor or vendor.

If any individual violating the policy appears agitated or otherwise confrontational regarding compliance, then County personnel shall immediately inform the staff responsible for the facility or security personnel if available and shall engage in no further intervention.

All vendors doing business with Pima County shall be notified of the Tobacco-Free policy and shall be expected to comply with the policy. Organizers and supervisors of public events, conferences, meetings and work activities on County facilities, work sites, public buildings and adjacent properties shall be responsible to communicating the requirements of the Tobacco-Free Policy to such events or conferences for attendees.

All new employees of Pima County will be informed on and educated about the Tobacco-Free Policy and the requirement that employees comply with the policy. Additionally, new employees shall be made aware of the availability of tobacco cessation programs sponsored or funded by Pima County.

**References:**

- Pima County Ordinance, Chapter 2.12
- Pima County Code, Section 8.50

**Effective Date:** January 1, 2013

# EXHIBIT D

## AGREEMENT FOR MAINTENANCE OF THE CITY OF TUCSON Public Works Building, 201 North Stone Avenue, Tucson

THIS AGREEMENT is made by and between Pima County, a political subdivision of the State of Arizona ("County") and the City of Tucson, a municipal corporation ("City") who together are referred to as the "Parties".

### RECITALS

1. County occupies, operates and maintains a portion of the Public Works Building located at 201 North Stone Avenue, Tucson, Arizona, owned by County.
2. City is acquiring from County approximately 62,666 square feet of the Building located at 201 North Stone Avenue, Tucson, Arizona ("Building"), as illustrated on the attached Exhibit A (the "City Property").
3. City and County have recorded a Declaration of Easements recorded in the office of the Pima County Recorder, Sequence Number \_\_\_\_\_ ("Declaration"). Section 5.01 of the Declaration requires the City to be responsible for the operation and maintenance of the City Property.
4. City has asked to contract with County for operation and maintenance covering the City Property.

NOW THEREFORE, the Parties agree as follows:

### 1. OPERATION & MAINTENANCE OF CITY PROPERTY

- 1.1. **County's Responsibilities:** County will, at City's request and expense, provide property management, maintenance and repair services to the City Property, including, but not limited to, the roof, structural portions of the City Property, windows and major building systems such as water chiller, HVAC systems, air-conditioning motors or compressors, plumbing, heating units and electrical and other items listed below:
  - Repair or replacement of light bulbs and/or fluorescent tubes, ballasts or fixtures.
  - Periodic inspection of the treatment if necessary, of exterior Termite Control and interior Pest Control Services.
  - Custodial services in accordance with County's standards as shown in the attached Exhibit B.
  - Establish and perform work in alignment with a preventative maintenance program for the building that reflects the actual systems and equipment serving the City Property to minimize unplanned shutdowns and realize life-cycle cost savings.
  - Utilize a work order tracking/asset management system that captures and itemizes the date, cost and scope of work associated with the City Property.



1.2. **City's Responsibilities:** City will remain responsible for the cost of all maintenance and repairs that County makes to the City Property pursuant to this Agreement. City will be responsible at City's sole expense for the operation, repair, maintenance and replacement of telephone, internet and cabling for the City Property.

## 2. MAINTENANCE EXPENSES:

2.1 **Payment by City.** City will pay to County, beginning on July 1, 2017 and on the first day of each month during the term of this Agreement thereafter, the estimated Maintenance Expenses for the next month (based on 1/12<sup>th</sup> of the estimated annual Maintenance Expenses). Payments received by County more than 30 days after the due date will be assessed a 5% late fee. For fiscal year 2017/18 the estimated annual cost for maintenance expenses is \$138,393.20 which includes a 10% administrative fee as shown in the attached Exhibit C. County will adjust this rate at least annually based on the estimated Maintenance Expense during the term of this Agreement and notify the City in writing by December 31 of each year for the following fiscal year. At any time during the year, County may adjust this estimate if necessary to better reflect actual expenses and shall give the City written notice of the adjustment, together with an explanation of the adjustment.

2.2 **Reconciliation/Audit.** County will, no less often than annually, give to City a summary statement reconciling estimated Maintenance Expenses paid by City with the County's actual Maintenance Expenses incurred. City is entitled, with fourteen (14) business days advance written notice to County, to inspect or audit, at City's expense, County's books and records in order to verify the amount of Maintenance Expenses. If such a reconciliation or audit reveals that City has underpaid, City will pay any additional amounts due to County within thirty (30) days of receipt of the statement or completion of the audit; if City has overpaid, City will receive a credit towards subsequent payments in the amount of the overpayment from County until the credit balance is entirely used.

## 3. Capital Improvements:

3.1. County and City shall meet periodically but not less than annually to develop a schedule of capital improvements and associated cost estimates. If capital improvements/repairs and/or replacement of shared systems or components are to be performed, County and City shall discuss and agree upon the nature and timing of the work. Cost sharing of the work being performed for the benefit of both the City and County is encouraged and shall be explored whenever possible.

## 4. TERM AND TERMINATION; FACILITIES STAFF COMMUNICATION:

4.1. **Term.** This Agreement commences upon execution by both Parties and runs for a term of two (2) years unless otherwise terminated as provided herein. The Parties may renew this Agreement for three (3) successive one (1) year terms on such terms and conditions as the Parties may agree.

4.2. **Termination.** Either party may terminate this Agreement upon one hundred eighty (180) days' written notice to the other party.

4.3. **Facilities Staff Communication.** Facilities Staff from County and from City will have, at a minimum, an annual meeting and discussion covering Maintenance items for the City Property every year during the Term of this Agreement.

## **5. NOTIFICATION TO COUNTY:**

**Notification to County.** In the event of a breakdown or needed repairs to the Property or equipment associated therewith, City will notify County of such breakdowns or needed repairs, and County will cause such repairs and/or replacements as are necessary to correct such condition to be done within a reasonable period of time, subject to the availability of workers, materials and parts.

## **6. HAZARDOUS MATERIALS:**

**Hazardous Materials.** City agrees not to store or use hazardous chemicals or perform hazardous chemical operations on the Property that would put County staff at risk.

## **7. WORKERS' COMPENSATION:**

**Employees of City and County.** Employees of City or County may be required to perform work for the benefit of the other party pursuant to this Agreement. The performance of work by one party's employee for the benefit of the other party does not render that employee an employee of the other party for purposes of the Workers' Compensation statutes or otherwise. Each party is responsible for compliance with the requirements of the Workers' Compensation statutes regarding its employees.

## **8. GENERAL PROVISIONS:**

- 8.1. Pronouns.** The use of the neuter singular pronoun in referring to a party will, nevertheless, be deemed a proper reference even though that party may be an individual, a corporation, a partnership or a group of two or more individuals or corporations.
- 8.2. Captions.** The captions are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement nor the intent or any provision thereof.
- 8.3. Non-Appropriation/Funding Insufficiency.** County and City acknowledge that funding for this Agreement will come from governmental agencies subject to budgeting and appropriation rules. Notwithstanding any provision of this Agreement, the Agreement may be terminated at any time during the Term upon a minimum of ninety (90) days written notice by either party if, for any reason, sufficient monies for the purpose of maintaining City's or County's obligations under this Agreement are not appropriated or available. In the event of such termination, City will pay the Maintenance Expenses through the date of termination. County will provide the Maintenance Expense Reconciliation through the date of termination to City.
- 8.4. Conflict of Interest.** This Agreement is subject to cancellation for conflict of interest provisions of A.R.S. 38-511, the pertinent provisions of which are incorporated into and made part of this lease as if set forth in foil.
- 8.5. Force Majeure.** If either party is delayed or prevented from the performance of any act required hereunder by reason of acts of god, strikes, lockouts, labor troubles, civil disorder, inability to procure materials, restrictive governmental laws or regulations, or any other cause without fault and beyond the reasonable control of that party, as applicable, (financial inability excepted) performance of such act will be excused for the period of delay.

- 8.6. **Non-waiver of default.** The failure of either party to insist in any one or more instances upon the full and complete performance of any of the terms and conditions of this Agreement to be performed on the part of the other, or to take any action permitted as a result thereof, is not a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.
- 8.7. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions will continue to be valid and enforceable to the full extent permitted by law.
- 8.8. **Entire Agreement.** This document constitutes the entire Agreement between the Parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written are hereby superseded. This Agreement will not be modified, amended, altered or extended except through a written amendment signed by the Parties.
9. **Notices:** Any notice required or permitted to be given under this Agreement will be in writing and will be served by personal delivery, United States mail service, electronic transmission, or by fax, upon the other party.

Notice to County will be addressed and mailed as follows:

Pima County Facilities Management  
150 W. Congress, 3rd Floor  
Tucson, Arizona 85701

Notice to City will be addressed and mailed as follows:

City of Tucson/General Services Department  
Attn: Facilities Management  
P. O. Box 27210  
Tucson, Arizona 85701

With copy to:

City of Tucson/Real Estate Division  
Attn: Property Management  
P. O. Box 27210  
Tucson, Arizona 85701

Either party may change its address for notifications, by sending the other party written notice of the change, following the procedures set forth above.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day, month, and year written below:

**CITY OF TUCSON,**  
a municipal corporation

\_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Principal Assistant City Attorney

APPROVED AS TO CONTENT:

By: \_\_\_\_\_  
City of Tucson Facilities Management

**PIMA COUNTY**  
a body politic

\_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Deputy County Attorney

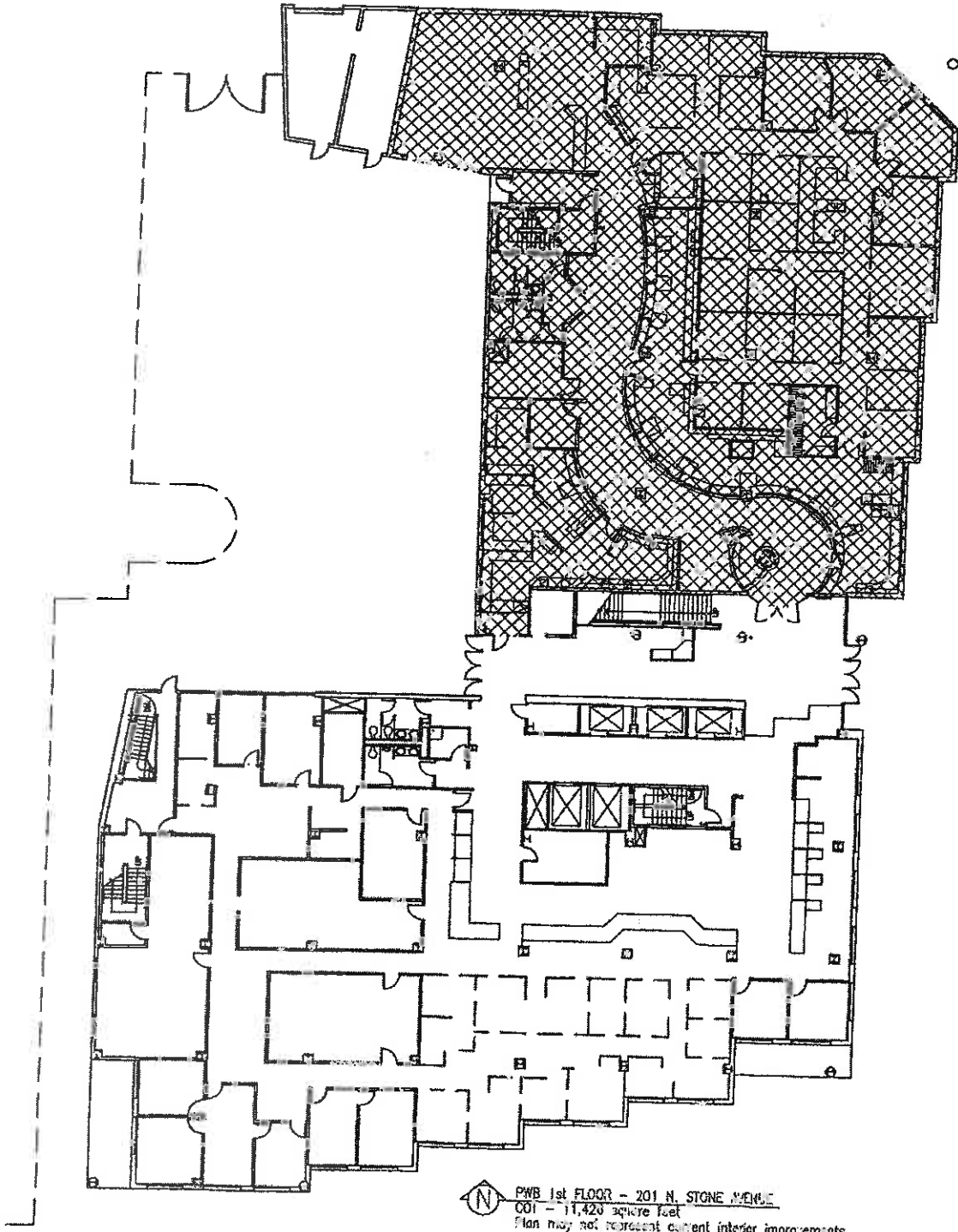
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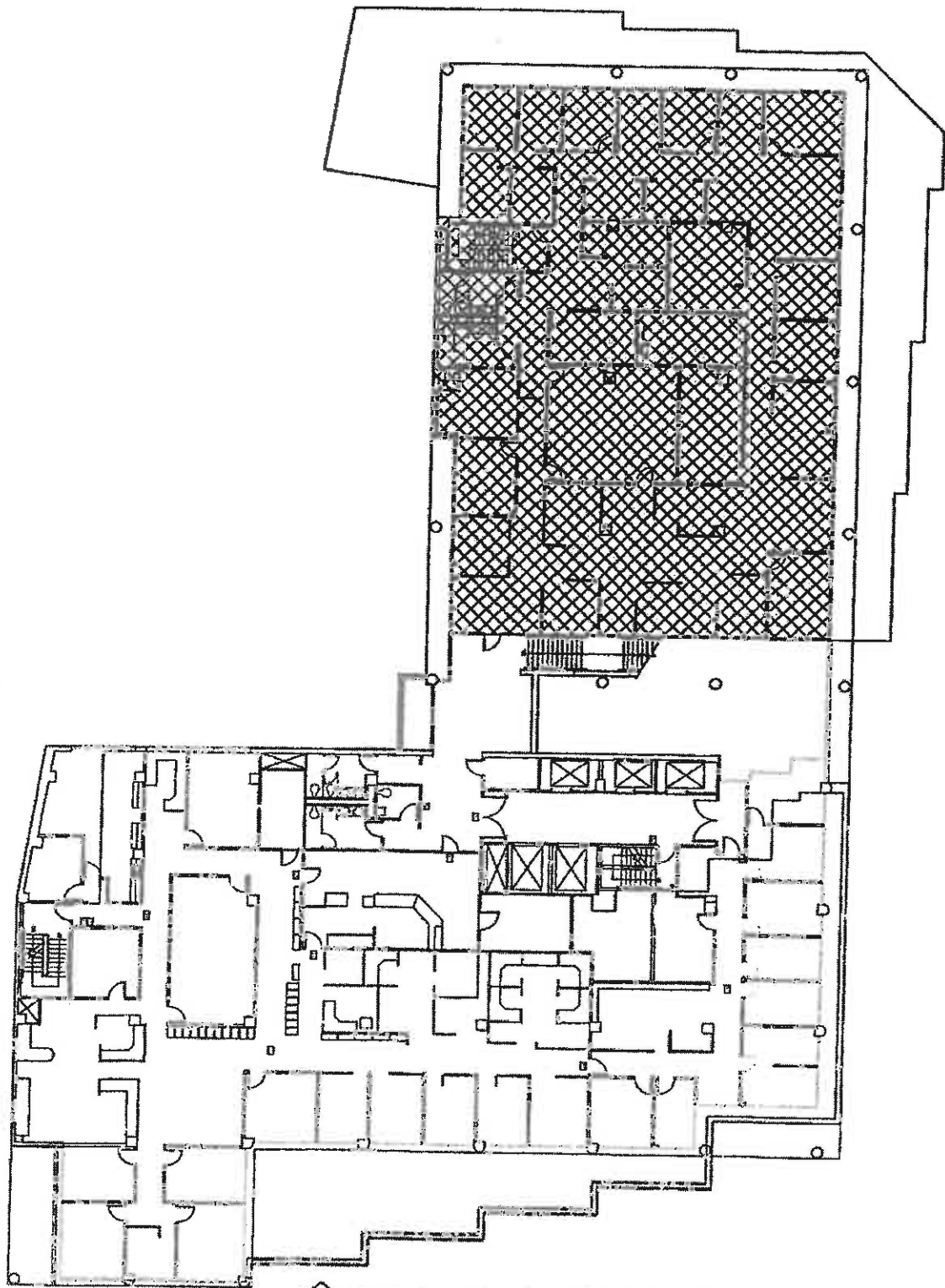
By: \_\_\_\_\_  
Director, Facilities Management Dept.


EXHIBITS:

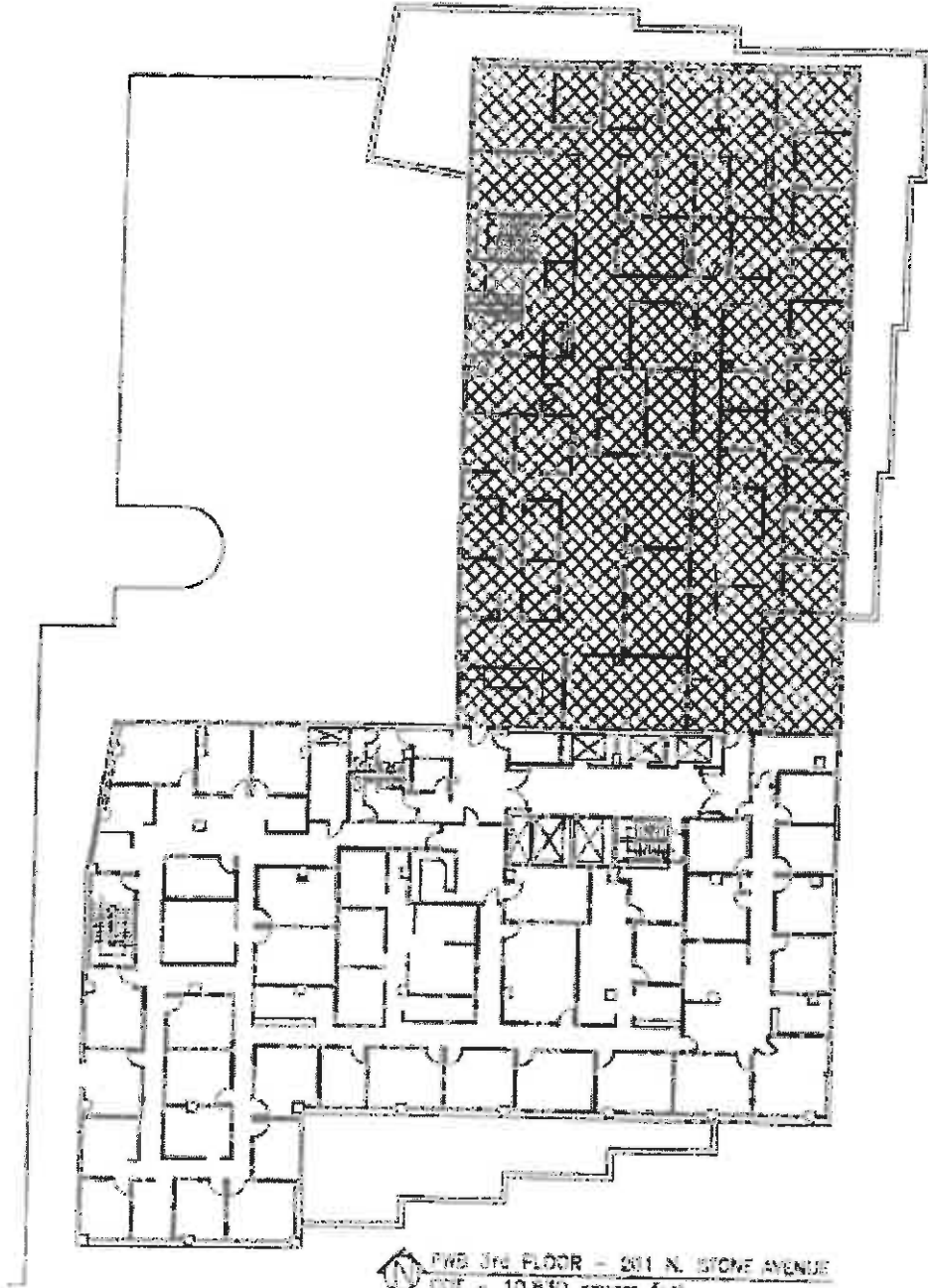
- A – City Property
- B – Janitorial Services
- C – Current Annual Maintenance Expenses

# EXHIBIT A CITY PROPERTY





 **PWB 2nd FLOOR — 201 N STONE AVENUE**  
COT 7,980 square feet  
Plan may not represent current interior improvements

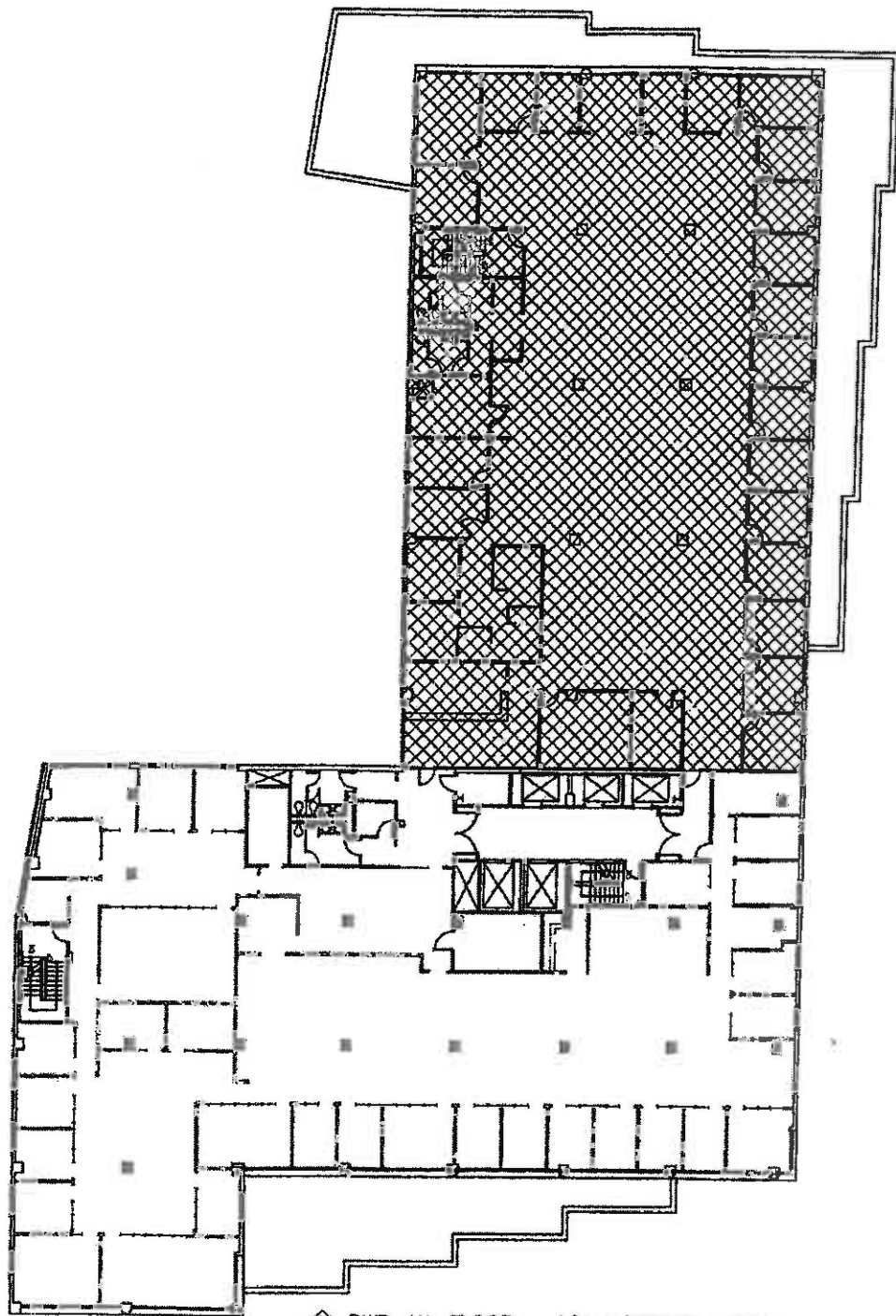



PWS 3rd FLOOR - 211 N. STONE AVENUE

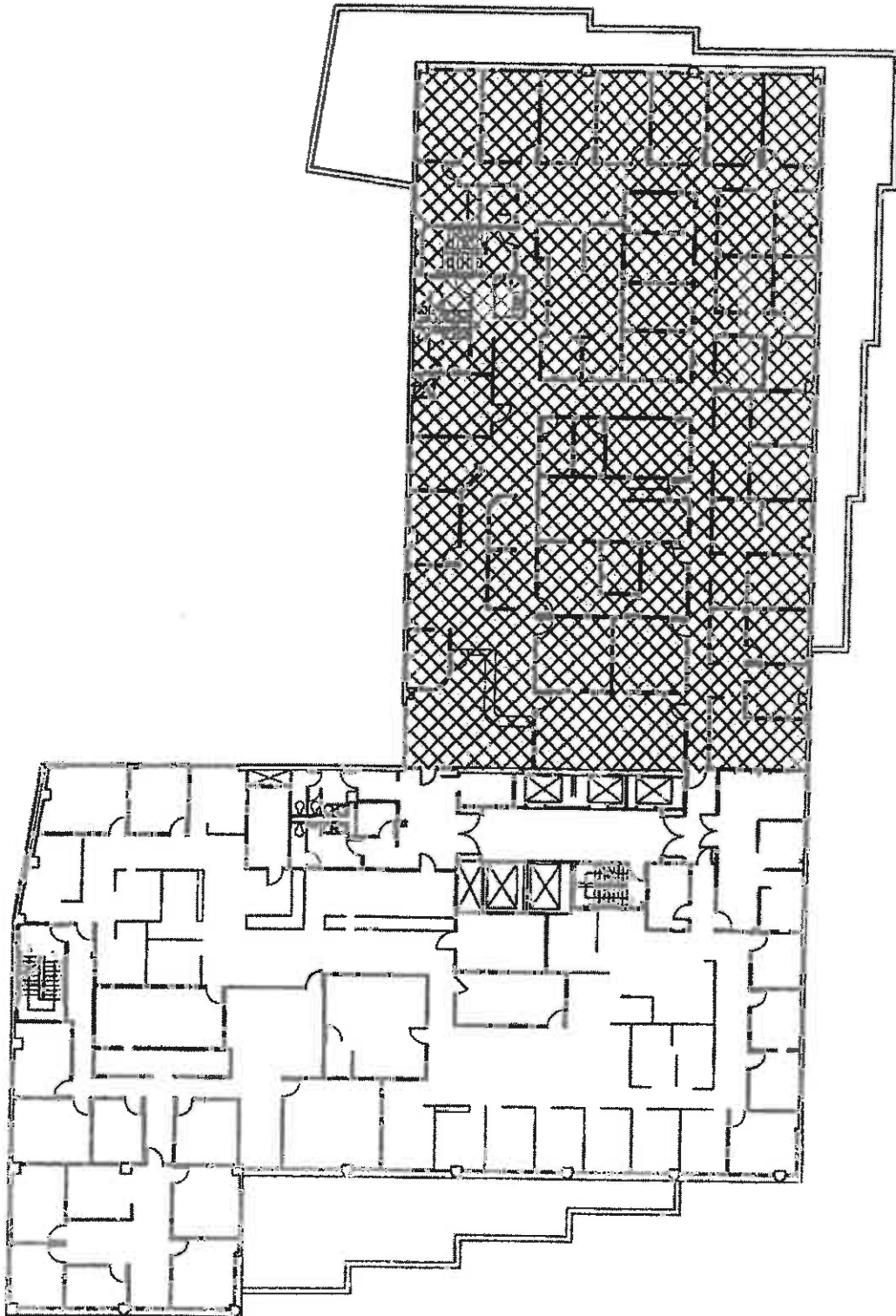
GDF - 10,850 square feet


Plan may not represent current interior improvements

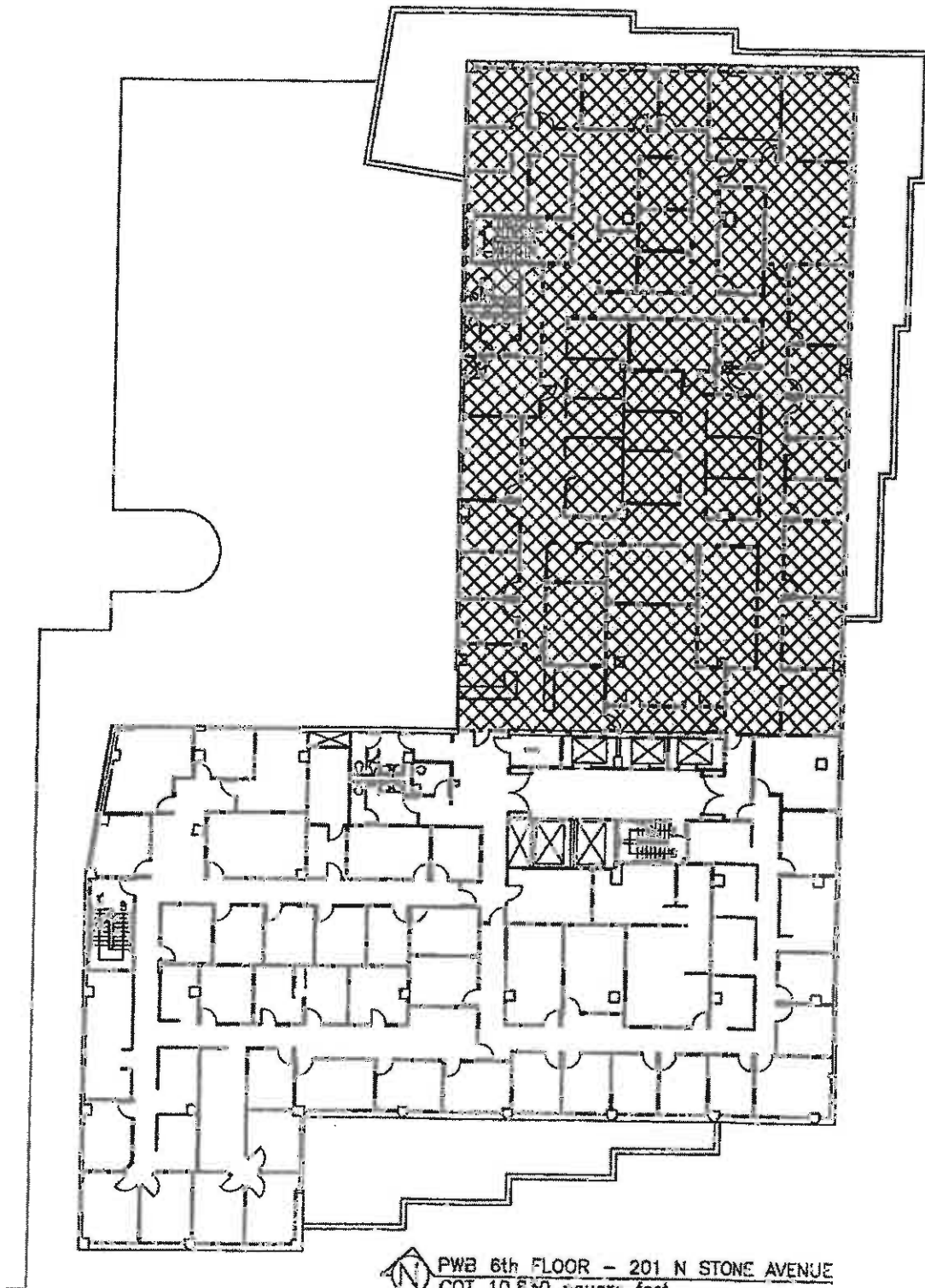





 PWB 4th FLOOR - 201 N STONE AVENUE  
COT - 10,830 square feet  
Plan may not represent current interior improvements



 PWB 5th FLOOR - 201 N STONE AVE.  
COT 10,830 square feet  
Plan may not represent current interior improvements



 PWB 6th FLOOR - 201 N STONE AVENUE  
COT 10,830 square feet  
Plan may not represent current interior improvements

## **EXHIBIT B**

### **Janitorial Services**

#### **PIMA COUNTY CUSTODIAL SERVICES-REQUIREMENTS CONTRACT**

Facility: City of Tucson Public Works Building

- A. Location: 201 N. Stone Avenue
- B. Approximate Square Footage to be Cleaned: 62,666
- C. Nature of Building: Office Building
- D. Work Schedule: Two (2) times a week general cleaning; restrooms, kitchens/lounges five (5) times a week.
- E. Staff Schedule: During business hours
- F. General cleaning requirements specified herein shall be performed. All floor work, including stripping and waxing, spray buffing and carpet cleaning is included in the minimum daily required man-hours. Landlord will inform Tenant of the floor work schedule.
- G. Facility Specific Requirements: Two (2) times a week general cleaning; restrooms, kitchens/lounges five (5) times a week. If additional service is required, contact the Pima County Facilities Management Department at 724-3085.
- H. All employees will have uniforms. Supervisor shall perform a visual inspection to ensure nothing is being taken out of the Building that does not belong to the employee.

**EXHIBIT C**  
**ESTIMATE OF MAINTENANCE EXPENSES**

<b>DECRPTION</b>	<b>AMOUNT</b>
FY 15/16 COT expenses	\$125,812.00
10% Administrative Fee on Expenses	<u>\$12,581.20</u>
Total	\$138,393.20

**Fiscal Year 2016 City Public Works Building Expenses**

<b>OBJECT</b>	<b>#</b>	<b>DECRPTION</b>	<b>AMOUNT</b>
	5428	LD Fringe-Chg In/Dr	\$5,560
	5430	LD Salaries-Chg In/Dr	\$18,327
	5010	Repair & Maintenance Supplies	\$7,437
	5142	Postage & Freight	\$81
	5149	R&M Machinery & Equipment Services	\$3,439
	5150	R&M Building Services	\$77,856
	5152	Other Professional Services	\$222
	5203	Interdepart Sup & Svc Chg In/Dr	\$875
	5204	Intradepart Sup & Svc Chg In/Dr	<u>\$12,015</u>
<b>TOTAL</b>		<b>FY 2015/16 Maintenance Expenses</b>	<b>\$125,812</b>