

When recorded please return to:

City Clerk
City of Mesa
20 E. Main St.
Mesa, Arizona 85211

DEVELOPMENT AGREEMENT
FOR
SAVE THE FAMILY CONFERENCE CENTER

THIS DEVELOPMENT AGREEMENT FOR SAVE THE FAMILY CONFERENCE CENTER (the "Agreement") is entered into this ____ day of _____, 2016, by and between Save the Family Foundation of Arizona, an Arizona _____ ("STF") and the City of Mesa, an Arizona municipal corporation, (the "City"). STF and the City may be referred to individually as a "Party" or together as the "Parties."

RECITALS

A. A.R.S. § 9-500.05 authorizes the City to enter into development agreements with respect to real property that is located in the City for the planning and construction of public improvements and to have the terms of such agreements run with the land.

B. In 2012 the City entered into an agreement to develop the Escobedo at Vista Verde low income housing project.

C. The original project included the apartments and the Helen's Hope Chest building on the north side of University, and a new headquarters for Save the Family (STF) and a conference center to be shared by STF and Mesa United Way at 129 E. University Dr. on the south side of University.

D. Due to financial constraints the conference center was not able to be built as part of the larger Escobedo/STF/Helen's Hope Chest project during construction.

E. STF is now in a position to move forward on construction of the small shared conference facility (approximately 2,424 sq. ft.) (the "Project"). There will be two small bathrooms in the conference center that require water and sewer.

F. STF desires to develop the conference center as generally depicted on the attached Exhibit B.

G. The City acknowledges and agrees that the development of the Property pursuant to this Agreement is in the best interest of the City and its constituents. The development will provide shared conference space for STF and other non-profit entities and will provide a location for the community to hold educational and other community service events.

H. The STF and City desire to enter into this Agreement for the purpose of outlining

and setting forth certain obligations and commitments of the Parties relative to the Project and the development of the conference center , intending this Agreement to be a "Development Agreement" within the meaning of A.R.S. § 9-500.05.

I. The Mayor and City Council have authorized execution of this Agreement by Resolution No. 12-_____.

AGREEMENT

NOW, THEREFORE, in consideration of the following mutual covenants and conditions and for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1: BACKGROUND

1.1 Adoption of Recitals. The Parties adopt and incorporate the foregoing Recitals.

1.2 Project Description. Subject to the terms and conditions of this Agreement, the Parties intend for the Property be developed for as a Conference Center, to provide a shared conference center with other non-profit entities, will provide a facility to provide administrative and office support for new non-profit agencies and will provide a location for the community to hold educational and other community service events.

1.4 Intentionally Omitted.

1.5 STF Contingencies. STF shall be responsible for obtaining all financing contemplated for development of the Project, including but not limited to obtaining an acceptable commitment for a CDBG loan up to \$790,000 from the City. STF agrees to timely and diligently pursue and complete all requirements for its funding of the Project.

1.6 City Approval. All infrastructure and other improvements constructed by STF shall be designed and constructed to meet all applicable codes, or exceptions as authorized by the City Council, for building, safety requirements, and in accordance with all specifications, standards, and engineering practices regularly applied by the City to such improvements within the City at the time of such installation and construction.

ARTICLE 2: GENERAL REQUIREMENTS

2.1 Design of Project. STF shall be responsible for the design of the Project which will be prepared in accordance with City specifications and must be approved by the City ("Project Construction Plans"). The design of the Project will be undertaken by professional architects and engineers registered in the State of Arizona. For purposes of the Project Schedule (defined in Section 2.3) and issuance of any building permits pursuant to this Agreement (Section 2.5), the design of the Project shall be deemed approved upon notification by the City that all site plans, design, and construction documents have been approved and applicable permits are ready to be issued. Design of the STF Conference Center south of University Drive

is subject to approval by the Planning Director and approval of Project Construction Plans is contingent upon compliance with the Design.

2.2 City Review. The City agrees to cooperate reasonably in processing construction plans or other required document reviews and approvals and issuance of permits or other necessary approvals for the Project as may be required. Because the City and STF desire to cooperate so that STF may cause the Project to be constructed without undue delay, the City agrees to review completely and provide comments to STF in conformance with established City review schedules. STF agrees that all initial submittals will be complete, and that all subsequent submittals will respond to all comments made by City reviewers.

2.3 Project Schedule. STF is responsible for the preparation of the Project Schedule, attached hereto as Exhibit D which shall (a) identify all of the work to be done as part of the Project, and (b) set forth the construction schedule for all of such work from commencement to completion of the Project. The City will then use the Project Schedule as the primary reference for determining substantial accordance of the STF in meeting the construction schedule. "Substantial accordance" shall mean within sixty (60) days of a specified event or occurrence specified on the Project Schedule, which may be extended for cause upon written approval of the City's Authorized Agent, which approval may not be unreasonably delayed, withheld, or conditioned.

2.4 Project Construction Manager. STF shall retain a Construction Manager to oversee the construction and financial management of the Project. The Construction Manager may be removed and replaced by STF, provided however, that any appointment of a replacement Construction Manager hereunder shall be subject to the City's approval (which approval shall not be unreasonably withheld and shall be deemed given unless the City's Authorized Agent delivers written notice of objection to the STF within ten (10) calendar days after receipt of written notice from the STF designating a proposed replacement Construction Manager).

2.5 City Permits. STF shall be responsible for obtaining all necessary state, federal, and local permits and approvals, which may be necessary to complete the Project. The City shall cooperate in issuing permits, providing that STF and Construction Manager comply with all applicable procedures and technical requirements governing the issuance of such permits. Issuance of Building Permits for the STF Conference Center south of University Drive is subject to final site plan and design approval by the Planning Director. All approved amenities, landscaping, and buildings shall be maintained in conformance with all approved site plan, building, and design requirements. Significant modification of the approved landscaping, amenities, or buildings shall be subject to appropriate review and approval by the City.

2.6 Land Required for Project. The City is providing the Property for purposes of development of the Project in accordance with the Special Warranty deed approved by Mesa City Council by Resolution # _____ and STF represents and acknowledges that the Property provides all real property, including right-of-way, necessary and appropriate for completion of the Project. In the event that any additional real property interests are or become necessary to complete the Project, it shall be the responsibility of STF to obtain such real property interests. STF acknowledges that the City reserves the right to record the declaration(s)

of deed restrictions attached hereto as Exhibit E, with respect to all or any part of the to address its permissible uses.

2.7 Financial Assurances. With respect to any such infrastructure improvements to be accomplished by STF, STF shall comply with the applicable provisions of the City's Subdivision Ordinance and Engineering Design Standards. Before, or concurrently with, making an application for infrastructure construction permits in any given tract of the Property, and as a condition to the issuance thereof, assurances shall be provided to the City which are appropriate and necessary to assure that the construction of the infrastructure improvements required to be constructed in connection with the development of that tract will be completed.

2.8 Lien Free; Warranty. Upon satisfactory completion of the installation and construction of the infrastructure as outlined in this Agreement and subject to acceptance by City, any such infrastructure, including streets, water, wastewater lines, and electrical services, shall be free of monetary liens. With respect to any such infrastructure improvements to be constructed by STF, STF agrees to warrant the construction of all infrastructure against defective workmanship and/or materials for a period of one (1) year from the acceptance of the infrastructure.

2.9 Acceptance. With respect to any such infrastructure improvements to be constructed by STF, before City acceptance of any infrastructure, the STF shall submit accurate "record" drawings for all infrastructure for approval by the City Engineer, or the designee of the City Engineer, which approval and acceptance shall not be unreasonably withheld or delayed.

2.10 Impact Fees. All applicable impact fees shall be paid (which shall include payment by any applicable impact fee credit) prior to issuance of any construction permits.

2.11 Exception of Terms and Conditions. Notwithstanding the requirements of Section 2.5 above, the City Council, pursuant to Resolution No. 10740, adopted on February 8, 2016, grants an exception to the requirements of Sections 3(A) and (E) of the City's Terms and Conditions For the Sale of Utilities.

ARTICLE 3: PROJECT OBLIGATIONS

3.1 Project Improvements. Obligations for Project improvements shall be as described in this Article 3. STF shall construct the STF Conference Center, an approximately 2,424 sq. ft. new conference center and associated amenities, including adequate parking, south of University Drive, in conformance with the Zoning Code and as approved by the Planning Director, to be of equal quality and character as the adjacent STF Building, as defined in the Development Agreement entered into on July 10, 2012. The City anticipates substantial services will be provided to the community by STF in the utilization of the STF Conference Center including those services attached hereto as Exhibit E and recorded in the Maricopa Records Office at No.2016-0090415. All such improvements which are the responsibility of STF will be identified on the appropriate plan(s), which shall be designed and installed in accordance with Exhibit D, Engineering Design Standards and adopted building codes at the time the improvement plans are reviewed and approved by the City Building Official or his designee.

3.2 Demolition. STF shall be responsible for demolition and removal of all structures located on the Property. STF shall be responsible for all grading and site preparation work related to construction and installation of any improvements contemplated by this Agreement.

3.3 Infrastructure Improvements. All such improvements which are the responsibility of STF pursuant to this Section 3.3 shall be identified on the appropriate plan(s), which shall be designed and installed in accordance with the Prevailing Engineering Design Standards at the time the improvement plans are reviewed and approved by the City Engineer, or his designee, certain water and sewer lines, undergrounding of electrical utilities, and capping and abandoning in-place gas lines, all as more fully detailed in the Infrastructure Improvements described on Exhibit C, but including the following:

- (a) Curb, sidewalk, and gutter. STF shall be responsible for the construction of a new curb, gutter, and sidewalk to match that existing in the vicinity.
- (b) Underground utilities. STF shall coordinate with the City Department of Energy Resources to approve new proposed services to the Conference Center.
- (c) Landscaping. STF shall cause the following landscaping replacements or improvements to be made: (i) any landscaping displaced by construction of the Project shall be replaced, after approval by the Planning Director).
- (d) Dedications, abandonments. STF shall prepare all necessary applications, supporting engineering drawings or other papers, bear any expense of, and process to completion any appropriate right-of-way dedications or abandonments necessary as part of the building plans approvals and permit issuance.

ARTICLE 4: INTENTIONALLY OMITTED.

ARTICLE 5: ADDITIONAL OBLIGATIONS

5.1 Right-of-Way Dedication. To the extent that it has not already been dedicated, the City shall provide for the dedications of necessary easements and rights-of-way, in a form and substance acceptable to the City Engineer or his designee, in conjunction with approval of an applicable site plan and/or subdivision plat and such additional rights-of-way and/or easements as are deemed necessary through the City's subdivision plat and/or site plan approval processes.

5.2 Parcel Combination. In the event STF exercises the options as stated in Section 30 of that certain Lease entered into as of July 10, 2012, and purchases the parcel which is the subject of that certain Lease, STF shall facilitate the combination of the parcel, which is the subject of this Agreement and conveyed pursuant to the Special Warranty Deed recorded in the Maricopa County Recorder at No. _____, with the parcel that is the subject of that certain Lease, at its sole cost and shall take all steps necessary with the Maricopa County Assessor to complete the combination.

In the event the parcel, which is the subject of this Agreement, remains in separate ownership after the expiration of the certain Lease, STF or its successor and assigned, shall facilitate, at its sole cost, compliance with the section of the City's Terms and Conditions For the

Sale of Utilities which the City Council granted an exception to in Resolution No. 10740.

5.4 Compliance With Environmental Laws and Environmental Indemnity.

(a) Definitions for this Section 5.4.

"Environmental Laws": Those laws promulgated for the protection of human health or the environment, including but not limited to the following as the same are amended from time to time: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Clean Water Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Arizona Environmental Quality Act, Title 49 of the Arizona Revised Statutes; the Occupational Safety and Health Act of 1970, as amended, 84 Stat. 1590, 29 U.S.C. §§651-678; the National Environmental Policy Act of 1969, 42 U.S.C.A. §§4321 to 4370b; the Endangered Species Act of 1973, 16 U.S.C.A. §§1531 to 1544; Maricopa County Air Pollution Control Regulations; Title 41, Article 4, Archaeological Discovery, Arizona Revised Statutes; Native American Graves Protection and Repatriation Act, Public Law 101-601; and the Archaeologic Resources Protection Act of 1979; and the regulations promulgated thereunder and any other laws, regulations and ordinances (whether enacted by the local, county, state or federal government) now in effect or hereinafter enacted that deal with the regulation or protection of human health and the environment, including but not limited to the ambient air, ground water, surface water, and land use, including substrata soils.

"Regulated Substances": (i) Any substance identified or listed as a hazardous substance, pollutant, hazardous material, or petroleum in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq., and in the regulations promulgated thereto; and Underground Storage Tanks, U.S.C. §§6991 to 6991i.; (ii) Any substance identified or listed as a hazardous substance, pollutant, toxic pollutant, petroleum, or as a special or solid waste in the Arizona Environmental Quality Act, A.R.S. §49-201 et seq.; including, but not limited to, the Water Quality Assurance Revolving Fund Act, A.R.S. §49-281 et seq.; the Solid Waste Management Act, A.R.S. §49-1001 et seq.; and the Management of Special Waste, A.R.S. §49-851 to 49-868; (iii) All substances, materials and wastes that are, or that become, regulated under, or that are classified as hazardous or toxic under any Environmental Law during the term of this Agreement.

"Release:" Any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping.

(b) Compliance with Environmental Laws.

i. STF shall comply and STF shall require all of its agents, employees, contractors, and subcontractors to comply, with all present and hereinafter enacted Environmental Laws, and any amendments thereto, in connection with their performance under this Agreement.

ii. STF shall, at its own cost and expense, make all tests, reports, studies, and provide all information (collectively referred to as "Environmental Information") to any appropriate governmental agency as may be required by such governmental agency or as may be required pursuant to the Environmental Laws pertaining to their performance hereunder. At no cost or expense to the City, STF shall promptly provide all information requested by the City pertaining to the applicability of the Environmental Laws to the work performed pursuant to this Agreement, to respond to any governmental investigation, or to respond to any claim of liability by third parties which is related to environmental contamination arising from their performance hereunder.

iii. In connection with their obligations and performance under this Agreement, STF shall not cause or permit and STF shall require that all of its agents, employees, contractors, and subcontractors not cause or permit their performance to cause air pollution nor shall they cause or permit any Regulated Substance to be used, generated, manufactured, produced, stored, released, or transported by their agents, employees, volunteers, contractors, subcontractors, or a third party in a manner that would constitute or result in a violation of any Environmental Law or that would give rise to liability under any Environmental Law.

iv. STF shall promptly notify the City of any of the following in connection with its performance hereunder: (1) any correspondence or communication from any governmental agency regarding the application of any Environmental Law; (2) any change in their performance that will change or has the potential to change STF's or the City's obligations or liabilities under Environmental Laws; and (3) any assertion of a claim or other occurrence for which STF may incur an obligation under this section.

vi. STF shall, at its own expense, obtain and comply with any permits or approvals that are required pursuant to any Environmental Law or other law or may become required as a result of any work performed by or on behalf of STF or its respective agents, employees, contractors, subcontractors, volunteers, and assigns.

vii. The City, at the City's cost and expense, shall have the right to access, within ten (10) days of receipt of written request to STF and copy any and all records, test results, studies, and/or other documentation regarding environmental conditions in connection with their performance hereunder.

(c) Indemnification regarding Environmental Laws.

- i. STF agrees to indemnify, defend, and hold harmless, on demand, the City, its successors and assigns, its elected and appointed officials, employees, agents, boards, commissions, representatives, and attorneys, for, from, and against any and all liabilities, obligations, damages, charges, and expenses, penalties, suits, fines, claims, reasonable legal and investigation fees or costs, arising from or related to any claim or action for injury, liability, breach of warranty or representation, or damage to persons, property, or the environment, and any and all claims or actions brought by any person, entity, or governmental body,

alleging or arising in connection with contamination of, or adverse effects on, human health, property, or the environment pursuant to any Environmental Law, the common law, or other statute, ordinance, rule, regulation, judgment, or order of any governmental agency or judicial entity, which are incurred or assessed because of, as a result of, or in connection with whether in part or in whole, the performance by STF of its respective obligations hereunder in connection with: (1) any acts, errors or omissions of STF or its respective members or affiliated entities, agents, employees, or contractors in, (2) any property acquired by or dedicated to the City pursuant to this Agreement; or (3) any Release or threat of Release of a Regulated Substance into the Environment. This indemnification includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial actions, removal, or restoration work required or conducted by any federal, state, county, or local governmental agency or political subdivision. The Parties agree that the City's right to enforce this covenant to indemnify is not an adequate remedy at law for a violation of any provision of this Agreement by STF and that the City shall have the rights set forth in this paragraph in addition to all other rights and remedies provided by law or otherwise provided for in this Agreement. A condition of all construction contracts entered into by STF with respect to the Project shall be that any other contractors or subcontractors of any party employed in connection with the Project shall provide the City with the foregoing indemnity, as well as the obligations set forth below.

ii. Without limiting the foregoing, STF shall promptly take all actions at its sole cost and expense as are necessary to mitigate any immediate threat to human health or the environment by the presence of Regulated Substances in connection with their performance hereunder. STF shall undertake such actions without regard to the potential legal liability of any other person; however, any remedial activities by STF shall not be construed as to impair their rights, if any, to seek contribution or indemnity from another person.

iii. The indemnifications provided herein shall survive the expiration or termination of this Agreement.

(d) Noncompliance with respect to Environmental Laws.

Failure of STF or the failure of its respective agents, employees, contractors, and subcontractors to comply with any of the requirements and obligations of this section or applicable Environmental Laws shall constitute a material default of this Agreement. Notwithstanding any other provision in this Agreement to the contrary, the City shall have the right of "self-help" or similar remedy to minimize any damages, expenses, penalties, and related fees or costs, arising from or related to a violation of Environmental Law by STF without waiving any of City's other rights under this Agreement. The exercise by the City of any of its rights under this section shall not release STF from any obligation it would otherwise have hereunder.

5.6 Indemnification of City. STF hereby agrees to indemnify, defend, save, and hold

harmless the City, including any department or agency issuing any permits for any portion of the Project, and its respective directors, officers, officials, agents, employees, and volunteers (collectively "Indemnitee") from and against all claims, demands, actions, liabilities, damages, losses, or expenses (including court costs, attorney's fees, and costs of claim processing, investigation, and litigation) (collectively "Claims") for personal injury (including death) or property damage caused, or alleged to be caused, by the negligent or willful acts, errors, or omissions of STF, or those of its directors, officers, agents, employees, contractors, and subcontractors, arising out of or resulting from this Agreement. The preceding indemnity obligation includes any claim or amount arising under the Worker's Compensation laws, Environmental laws, as hereunder defined, or arising out of the failure to conform to any federal, state, or local law, statute, ordinance, rule, regulation, court decree, or for any breach or violation of this Agreement. This indemnity shall survive the termination of this Agreement. A condition of all construction contracts entered into by STF with respect to the Project shall be that any other contractors or subcontractors of any party employed in connection with the Project shall provide the City with the foregoing indemnity, as well.

5.7 Insurance Requirements. STF and the Project Construction Manager shall procure and maintain, and shall require each contractor to procure and maintain and provide the City and the STF with certificates evidencing, until all of their respective obligations, including any warranty periods under this Agreement, are satisfied, insurance in accordance with the general requirements set forth in this Section 5.7, against claims for injury to persons or damage to property which may arise from or in connection with the performance of the terms and conditions of this Agreement by themselves and their respective agents, representatives, employees or subcontractors. The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained herein or in the Indemnification Agreements required pursuant to Section 5.6 of this Agreement. The City and STF in no way warrant that the minimum limits contained herein are sufficient protection from liabilities that might arise out of the performance of the work under this Agreement by the STF, the Project Construction Manager, any contractor(s), and their respective agents, representatives, employees, contractors, subcontractors, or consultants and each contractor is free to purchase such additional insurance as may be determined necessary.

- (a) **MINIMUM SCOPE AND LIMITS OF INSURANCE:** STF shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$5,000,000
- Products – Completed Operations Aggregate \$3,000,000
- Personal and Advertising Injury \$3,000,000
- Each Occurrence \$3,000,000

The policy shall be endorsed to include substantially the following additional insured language: "The City of Mesa shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of STF and/or Construction Manager."

2. Worker's Compensation and Employers' Liability

Workers' Compensation

Statutory

Employers' Liability

Each Accident \$100,000

Disease – Each Employee \$500,000

Disease – Policy Limit \$500,000

- a. Policy shall contain a waiver of subrogation against the City of Mesa.
- b. This requirement shall not apply when a STF, contractor or subcontractor is exempt under A.R.S. § 23-901, and when such STF, contractor, or subcontractor executes the appropriate sole proprietor waiver form.

3. Professional Liability (Errors and Omissions Liability)

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim \$1,000,000

Annual Aggregate \$2,000,000

In the event that the professional liability insurance required by this Agreement is written on a claims-made basis, STF(s) warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is completed.

- (b) **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:
 1. On insurance policies where the City of Mesa is named as an additional insured, the City of Mesa shall be an additional insured to the full limits of liability purchased by STF even if those limits of liability are in excess of those required by this Agreement.
 2. STF's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- (c) **NOTICE OF CANCELLATION:** Each insurance policy required by the

insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, or cancelled except after thirty (30) days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent to the City as directed in Section 8.7 of this Agreement.

- (d) **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the STF(s) from potential insurer insolvency.
- (e) **VERIFICATION OF COVERAGE:** STF shall furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) and endorsements as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

5.8 **Water Usage Plans.** All plans or specifications with respect to any water usage within the Project shall be subject to approval by the City. Retention requirements for storm water and irrigation water are subject to standard City requirements. Gray water harvesting and above ground water storage ponds are prohibited.

ARTICLE 6: IMPASSE, MEDIATION, AND DEFAULT

6.1 **Impasse.** If at any time STF believes an impasse has been reached with the City staff on any issue affecting the Property, STF shall have the right to immediately appeal to the City Manager. If the issue on which an impasse has been reached is an issue where a final decision can be reached by the City staff, the City Manager shall give STF a final decision within ten (10) business days after STF's request for a decision. If the issue on which an impasse has been reached is one where a final decision requires action by the City Council, the City Manager shall schedule a City Council hearing on the issue within forty five (45) calendar days after STF's written request for a decision addressed to the City Manager with a copy to the City Attorney. Both Parties agree to use reasonable good faith efforts to resolve any impasse pending any decision.

6.2 **Mediation.** If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through the impasse process, the Parties agree first to try to settle the dispute through mediation before resorting to arbitration, litigation, or some other

dispute resolution procedure. In the event that the Parties cannot agree upon the selection of a mediator within seven (7) days, either Party may request the presiding judge of the Superior Court of Maricopa County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

6.3 Default. Failure or unreasonable delay by either Party to perform any term or provision of this Agreement for a period of thirty (30) days after written notice thereof (the "Notice of Default") from the other Party (or ninety (90) days following the Notice of Default, if the failure cannot reasonably be cured within such thirty (30) day period) shall constitute a default under this Agreement (a "Default").

Prior to the full performance of its obligations under and pursuant to this Agreement, the following also shall constitute a Default: (i) STF shall commence any case, proceeding, or other action (A) under any law relating to bankruptcy, insolvency, reorganization, or relief of indebtedness, (B) seeking an appointment of a receiver, trustee, custodian, or other similar official for all or substantially all of its assets, or (C) make a general assignment for the benefit of creditors; or (ii) there shall be commenced against STF any case, proceeding, or other action of a nature referred to in clause (i) above, unless such STF provides prompt notice to the City that it is contesting said case, proceeding, or action and such case, proceeding, or action is dismissed within ninety (90) days of its commencement, subject to any unavoidable delays in obtaining said dismissal; or (iii) there shall be commenced against STF, and not dismissed within ninety (90) days of its commencement, any meritorious case, proceeding, or other action seeking issuance of a writ of attachment, execution, distraint, or similar process against all or substantially all of its assets; or (iv) STF shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clauses (i), (ii) or (iii) above; or (v) STF shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due.

The Parties agree that so long as any party is diligently pursuing the remedy or correction of any performance or obligation hereunder, such Party shall not be in Default hereunder. The Notice of Default shall specify the nature of the alleged Default and the manner in which the Default may be satisfactorily cured, if possible. In the event of a default hereunder by any Party, the non-defaulting Party shall be entitled to all remedies at both law and in equity, including, without limitation, specific performance and the right to perform the obligations(s) of which the defaulting Party is in default and to immediately seek reimbursement from the defaulting Party of all sums expended to cure such default, together with interest on all such sums from the date said sums are expended by the non-defaulting Party for the purpose of curing the default to the date such sums are paid in full. Notwithstanding the foregoing, in no event are consequential damages available as a remedy for a default or breach of this Agreement.

ARTICLE 7: CONFLICT OF INTEREST; REPRESENTATIVES NOT INDIVIDUALLY LIABLE

7.1 Conflict of Interest. Pursuant to Arizona law, rules, and regulations, no member, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating

to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. All Parties hereto acknowledge that this Agreement is subject to cancellation pursuant to the provisions of Arizona Revised Statutes § 38-511.

7.2 No Personal Liability. No member, official, or employee of the City will be personally liable to STF or any of their respective successors in interest or the Construction Manager, in the event of any default or breach by the City or for any amount which may become due to STF or any successor, or on any obligation under the terms of this Agreement.

ARTICLE 8: MISCELLANEOUS PROVISIONS

8.1 Amendments to the Plan, Engineering Design Standards, and Design Guidelines. The City and STF acknowledge that amendments to the Project Construction Plans and/or the Engineering Design Standards or Design Guidelines applicable to the Project may be necessary from time to time to reflect changes in market conditions and development financing and/or to meet other new requirements of any part of the Project. If and when the Parties find that changes or adjustments are necessary or appropriate, they shall, unless otherwise required by applicable City, state or federal ordinance, statute, or other law, effectuate minor changes or adjustments through administrative amendments approved by the City's Authorized Agent, which, after execution, shall be attached to the Project Construction Plans and/or the Engineering Design Standards or Design Guidelines as an addendum and become a part thereof, and may be further changed and amended from time to time as necessary, with the approval of the City's Authorized Agent and STF. Unless otherwise required by law, no minor amendments to the Plan and/or the Engineering Design Standards or Design Guidelines shall require prior notice or hearing. All major changes or amendments shall be reviewed by the Planning and Zoning Commission and approved by the City Council.

The Parties shall cooperate in good faith to agree upon, and use reasonable best efforts to process any minor or major amendments to the Project Construction Plans and/or the Engineering Design Standards or Design Guidelines.

8.2 Equal Employment Opportunity. In connection with their performance hereunder, STF and Construction Manager shall not discriminate against any worker, employee, or applicant, or any member of the public, because of race, color, religion, gender, sexual preference, national origin, age, or disability nor otherwise commit an unfair employment practice. STF will also take affirmative action to ensure that applicants are employed, and employees dealt with during employment, without regard to their race, color, religion, gender, sexual preference, national origin, age, or disability. Such action may include but is not limited to the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship as well as all labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or services in connection with this Agreement. STF further agrees that this clause will be incorporated in all subcontracts of this Agreement entered into by any STF in furtherance of this Agreement.

8.3 E-Verify. To the extent applicable pursuant to A.R.S. §§ 41-4401 and 23-214, STF represents and warrants compliance with all federal immigration laws and regulations that relate to employers and their compliance with the e-verify requirements. Breach of the warranty stated herein shall be deemed a material breach of this Agreement and may result in termination by the City. The City retains the right to randomly inspect the papers and records of any employee who works under this Agreement and to ensure compliance with the aforementioned laws.

8.4 Prior Appropriation. Pursuant to A.R.S. §§ 42-17106, the City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. The City represents that it intends to pay all monies due from it under this Agreement, if any, if such funds have been legally appropriated. The City agrees to actively request funding for future fiscal periods to satisfy its obligations under the terms of this Agreement. In the event, however, that an appropriation is not granted and operating funds are not otherwise legally available to pay such monies as are due or to become due from the City pursuant to this Agreement, the City shall have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, the City agrees to provide a minimum of thirty (30) days advance written notice of its intent to terminate.

8.5 Notices. All notices and communications provided for herein, or given in connection herewith, shall be validly made if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

The City:

City of Mesa
ATTN: City Manager
20 East Main Street, Suite 750
PO Box 1466 , 85211 - 1466
Mesa, Arizona 85211
Facsimile: (480) 644-2175
Email:

With a copy to:

City of Mesa
ATTN: Development and Sustainability
Director
PO Box 1466, 85211-1466
20 East Main Street
Mesa, Arizona 85211
Facsimile:
Email:

and

City of Mesa
ATTN: City Attorney James N. Smith

20 East Main Street, Suite 850
Mesa, Arizona 85211
Facsimile: (480) 644-2498
Email:

If to the STF:

Save the Family Foundation of Arizona
ATTN: CEO
125 E. University Dr.
Mesa, Arizona 85201
Facsimile: (480) 898-9007
Email: info@savethefamily.org

or to such other addresses as either Party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective. Notices given by mail shall be deemed delivered 72 hours following deposit in the United States Postal Service in the manner set forth above.

8.8 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

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

8.10 Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. STF represents and warrants that it is duly formed and validly existing under the laws of the state in which it was organized and that it is duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. STF and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing.

8.11 Entire Agreement. This Agreement, including any exhibits, together with the Lease, constitutes the entire agreement between the Parties pertaining to the subject matter hereof. This provision applies to the entirety of the Development Agreement only; additional and separate zoning stipulations and agreements with the City may apply to the Property, and this provision has no effect on them.

8.12 Amendment of the Agreement. Pursuant to A.R.S. § 9-500.05(C), this Agreement may be amended or cancelled, in whole or in part, by mutual consent of the Parties, which shall be evidenced by written amendment executed by the City and STF or successors-in-interest or

assigns except that this Agreement may not be cancelled as to, and City shall provide and maintain services to, any portion of Parcel I Property which has been improved, developed, platted or, for which building permits have been issued. Within ten (10) days after any amendment to this Agreement is executed by the Parties, the amendment shall be recorded in the Official Records of Maricopa County, Arizona.

8.13 Severability. Any provision of this Agreement that is declared void or unenforceable shall be severed from this Agreement, and the remainder of this Agreement shall otherwise remain in full force and effect.

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

8.15 Recordation of Agreement and Subsequent Amendment; Cancellation. This Agreement, and any amendment or cancellation of it shall be recorded in the official records of the Maricopa County Recorder no later than ten (10) days after the City and the STF execute such agreement, amendment, or cancellation, as required by A.R.S. § 9-500.05.

8.16 Attorneys' Fees and Costs. If either Party brings a legal action either because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party will be entitled to reasonable attorneys' fees and court costs.

8.17 Conveyance or Assignment. The burdens and benefits of this Agreement will be binding upon and inure to the benefit of the Parties to the Agreement and their respective successors and assigns. This Agreement is not assignable by STF without the written consent of the City which it may grant or withhold in its discretion. Any request for City approval of an assignment shall be in writing and accompanied by information concerning the identity, financial condition, and experience of the assignee. In the event that the City grants consent to an assignment, the assignee shall assume and be responsible for all obligations and liabilities of STF herein which are the subject of the assignment without releasing the assignor from any further obligations or liabilities pursuant to this Agreement which are the subject of the assignment. All successors and assigns of STF that wish to assign any rights under this Agreement shall also be bound by the terms of this section and each successive assignment of the rights hereunder shall also be subject to the requirements of this Agreement.

Notwithstanding the foregoing, STF may assign, as collateral security, all or part of its rights and duties under this Agreement to any financial institution from which STF has borrowed funds for use in funding such STF's obligations under this Agreement and/or otherwise developing the Property for purposes of the Project.

8.18 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement and no person or entity not a party hereto shall have any right or cause of action hereunder.

8.19 No Agency Created. Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the Parties.

8.20 Duration. This Agreement shall automatically terminate as to the Property without the necessity of any notice, agreement, or recording between the Parties thirty (30) years after the Commencement Date and neither Party shall have any further obligations hereunder.

8.21 Further Acts. Each of the Parties shall promptly and expeditiously execute and deliver any and all documents and perform any and all acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

8.22 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from the counterparts and the signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

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

“CITY”

THE CITY OF MESA, an Arizona municipal corporation:

By: _____
Its: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

State of Arizona)
)
County of Maricopa)

On this ____ day of _____, 2016, before me personally appeared _____ as _____ of Save the Family Foundation of Arizona, whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he/she signed the above/attached document.

Notary Seal:

Notary Public

DEVELOPMENT AGREEMENT
FOR
SAVE THE FAMILY CONFERENCE CENTER

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

**LEGAL DESCRIPTION
ESCOBEDO AT VERDE VISTA
SAVE THE FAMILY ADJUNCT PARCEL**

A PARCEL OF LAND SITUATED IN THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 1 NORTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AND CONTAINED WITHIN PARCEL 5, TRACT B, CENTENNIAL WAY AMENDED, ACCORDING TO BOOK 283, PAGE 19, RECORDS OF MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 22, SAID POINT BEING A FOUND BRASS CAP IN A HAND HOLE; THENCE ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER OF SECTION 22, SOUTH 89° 51' 21" WEST (ASSUMED BEARING) 1,459.21 FEET; THENCE SOUTH 00° 03' 12" WEST 64.91 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF UNIVERSITY DRIVE ALSO BEING THE NORTH LINE OF SAID PARCEL 5, BEING THE TRUE POINT OF BEGINNING:

THENCE CONTINUING SOUTH 00° 03' 12" WEST ALONG A LINE 57.00 FEET WEST OF AND PARALLEL TO THE EAST LINE OF SAID PARCEL 5, 102.34 FEET TO A CHISELED "X" ON THE SOUTH LINE OF SAID PARCEL 5;

THENCE ALONG SAID SOUTH LINE, NORTH 89° 56' 48" WEST 59.09 FEET;

THENCE NORTH 00° 03' 12" EAST 49.44 FEET;

THENCE SOUTH 89° 56' 48" EAST 49.09 FEET;

THENCE NORTH 00° 03' 12" EAST 52.86 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF UNIVERSITY DRIVE ALSO BEING THE NORTH LINE OF PARCEL 5;

THENCE NORTH 89° 50' 29" EAST 10.00 FEET TO THE TRUE POINT OF BEGINNING:

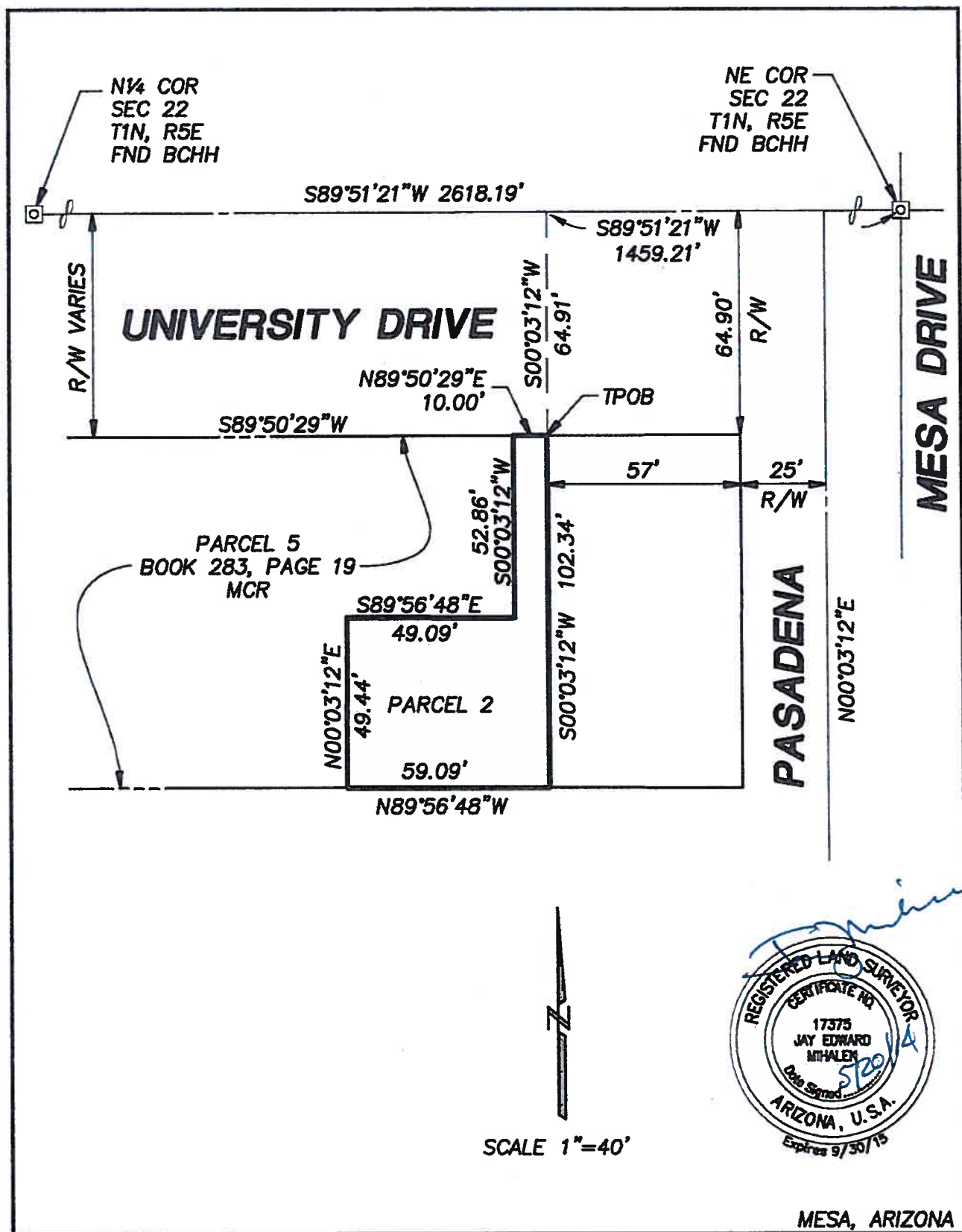
SAID PARCEL CONTAINS 3,450 SQUARE FEET OR 0.0792 ACRES, MORE OF LESS.



DEVELOPMENT AGREEMENT
FOR
SAVE THE FAMILY CONFERENCE CENTER

EXHIBIT B

DEPICTION OF THE PROPERTY



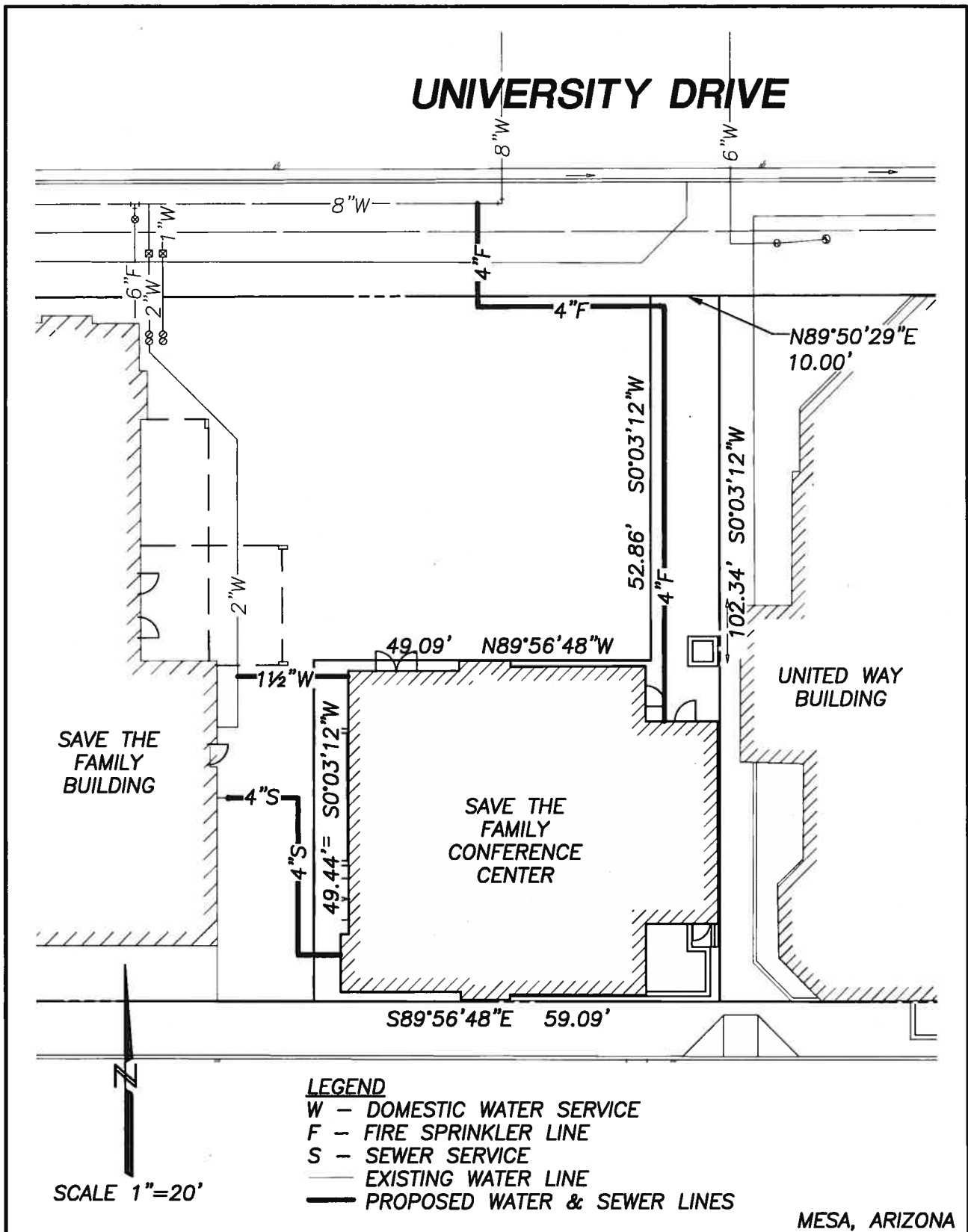
JMA
JMA ENGINEERING CORPORATION
 531 E. Bethany Home Road, Garden Suite
 Phoenix, Arizona 85012
 Phone (602) 248-0286

LEGAL DESCRIPTION EXHIBIT
STF ADJUNCT PARCEL
ESCOBEDO AT VERDE VISTA

DEVELOPMENT AGREEMENT
FOR
SAVE THE FAMILY CONFERENCE CENTER

EXHIBIT C

INFRASTRUCTURE IMPROVEMENTS



JMA

JMA ENGINEERING CORPORATION
 531 E. Bethany Home Road, Garden Suite
 Phoenix, Arizona 85012
 Phone (602) 248-0286

UTILITY IMPROVEMENT EXHIBIT

SAVE THE FAMILY

CONFERENCE CENTER

DEVELOPMENT AGREEMENT
FOR
SAVE THE FAMILY CONFERENCE CENTER

EXHIBIT D

PROJECT SCHEDULE

**Save the Family
Community Development Block Grant (CDBG) Funds-Conference Center Construction
FY 16/17**

Attachment D: Schedule

The following timeline for CDBG funds Project Schedule

Activity	Timeline	
Plans and Specs Approval	3/1/2016	
Initial Constructions Bids	3/10/2016	
Final Bids and Contract Awards	4/15/2016	
Building Permits	4/30/2016	
Site work	5/15/2016	
Construction start	5/20/2016	
Project Completion	12/30/2016	

DEVELOPMENT AGREEMENT
FOR
SAVE THE FAMILY CONFERENCE CENTER

EXHIBIT E

DECLARATION OF RESTRICTIONS

When recorded, return to:

City of Mesa
Real Estate Department
20 East Main Street, Suite 500
Mesa, Arizona 85201

3956-4-10-10--

DECLARATION OF RESTRICTIONS – SAVE THE FAMILY CONFERENCE CENTER

This Declaration of Restrictions (the “Declaration”) is made by CITY OF MESA, an Arizona municipal corporation, (“Declarant”), as present owner of, and to establish the nature of use and enjoyment of, the real property in Maricopa County, Arizona which is more particularly described in Exhibit A attached hereto (the “Property”). Declarant declares the Property to be subject to the following express covenants, stipulations, and restrictions, all of which are to be construed as restrictive covenants running with and burdening the title to the Property, binding upon all owners and owners’ heirs, successors and assigns, and inuring to the benefit of Declarant:

1. The Property shall be used solely as follows:

Use by one or more IRS-qualified 501(3)(c) non-profit organizations for providing community services to the residents of Mesa, Arizona, with a particular focus on residents of the Washington/Escobedo neighborhood, with an array of services which may include:

- Parenting skills programs, such as Common Sense Parenting, Family Camp, How to Access Quality Childcare, etc.;
- Family violence prevention classes, such as Paths Towards Healing and the Breakable Vow Program-a teen dating violence prevention program;
- Financial Education classes such as, *Realizing Your Economic Action Plan (REAP)* - an economic education curriculum for adults experiencing intimate partner violence, SOS Budgeting, etc.;
- Career Development/Job Coaching- to help clients find jobs matching their current financial needs and to guide them in acquiring the skills, education, and/or training needed to obtain jobs paying higher wages;
- Crime Prevention programs such as Positive Adolescent Choice Training, Violence in Society and helping our tenants in establishing a neighborhood block watch;
- Landlord/tenant programs such as Housing Survival Skills;
- Wellness activities for adults and children such as the Bodyworks program and collaborations with both Healthcare for the Homeless for annual free immunizations and Phoenix Children’s Hospital for wellness seminars and medical/dental services;
- Access to a Career Development center where they can access on-line computer training courses to improve educational and vocational opportunities;

- Access to a community room to conduct social gatherings to enhance their life;
- Providing clothing, school supplies, books, toys, and other benefits to foster children;
- Providing other family focused prevention/intervention and social and recreational programs for both adults and children scheduled throughout the year.

By way of example, the community services performed by Save the Family Foundation (and its affiliates) and Mesa United Way/Helen's Hope Chest qualify as such uses.

The covenants and restriction set forth in Paragraph 1 hereof shall run with the land and shall bind all owners of the Property and their heirs, legal representatives, successors, and assigns, and shall inure to the benefit of Declarant, and not be transferred from Declarant by virtue of any conveyance of any portion or interest in the Property and only this Declarant may execute and record any amendment to this Declaration. A request for release of this Declaration may be submitted by the owner of any equitable and/or legal title or interest in any portion of the Property, and such release as to all or part of the Property may be granted or withheld, in whole or in part, upon such terms or conditions as determined by Declarant in its sole discretion.

IN WITNESS WHEREOF, the Declarant has executed this Declaration effective as of the 11th day of February, 2016.

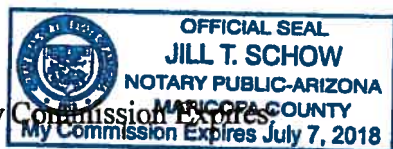
GRANTOR:

City of Mesa, an Arizona municipal corporation

By: *Christopher J. Brady*
 Name: Christopher J. Brady
 Title: City Manager

STATE OF ARIZONA)
) ss.
 County of Maricopa)

The foregoing instrument was acknowledged before me this 11th day of Feb, 2016, by Christopher J. Brady the City Manager of City of Mesa, an Arizona municipal corporation, and he/she in such capacity being authorized so to do, executed the foregoing instrument for the purposes contained therein, on behalf of the City of Mesa.



Jill T. Schow
 NOTARY PUBLIC

My Commission Expires

July 7 2018

NE ¼ Sec 22, T1N, R5E
138-61-094E

EXHIBIT "A"
Legal Description

A parcel of land situated in the Northeast Quarter of Section 22 Township 1 North Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, and contained within Parcel 5, Tract B, CENTENNIAL WAY AMENDED, according to Book 283, Page 19, Records of Maricopa County, Arizona, more particularly described as follows:

Commencing at the Northeast corner of said Section 22, said point being a found brass cap in a hand hole, thence along the north line of said Northeast Quarter of Section 22, South 89 degrees 51 minutes 21 seconds West (assumed bearing) 1,459.21 feet; thence south 00 degrees 03 minutes 12 seconds West 64.91 feet to a point on the South right-of-way line of University Drive also being the north line of said Parcel 5, being the True Point of Beginning:

Thence continuing South 00 degrees 03 minutes 21 seconds West along a line 57.00 feet west of and parallel to the east line of said Parcel 5, 102.56 feet to a chiseled "X" on the south line of said Parcel 5;

Thence along said south line North 89 degrees 56 minutes 48 seconds West 59.09 feet;

Thence North 00 degrees 03 minutes 12 seconds East 49.44 feet;

Thence South 89 degrees 56 minutes 48 seconds East 49.09 feet;

Thence North 00 degrees 03 minutes 12 seconds East 52.86 feet to a point on the south right-of-way line of University Drive also being the north line of Parcel 5;

Thence North 89 degrees 51 minutes 21 seconds East 10.00 feet to the true point of beginning.

Said parcel contains 3,450 square feet or 0.0792 acres, more or less.

