

WHEN RECORDED RETURN TO:

City of Mesa  
Attn: Real Estate Services  
20 E. Main Street  
Mesa, AZ 85201-7425

**DEVELOPMENT AGREEMENT  
DA23-00008**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into this 21<sup>st</sup> day of April, 2025, by and between the CITY OF MESA, an Arizona municipal corporation ("City") and HIGLEY/202 INDUSTRIAL, LLC, an Arizona limited liability company ("Owner"). City and Owner are sometimes referred to herein collectively as the "Parties," or each, individually, as a "Party."

**RECITALS:**

A. Owner owns approximately 4.930 +/- acres of real property located east of Higley Road and north of Thomas Road within the City of Mesa, Maricopa County Assessor's parcel numbers ("APN") 141-38-009E, 141-38-009F, 141-38-009G, 141-38-009H, 141-38-009K, 141-38-009L, 141-38-009M, 141-38-009N, which are legally described in Exhibit A and depicted on Exhibit B (collectively, the "Property").

B. Owner has submitted an application to combine APNs 141-38-009F, 141-38-009H, 141-38-009K, and 141-38-009M, into a single parcel ("Developable Parcel") in order to develop an industrial commerce facility with structures consisting of (i) a 5,400 square foot ("sqft") two-story office building ("Office") and (ii) a 7,744 sqft work shop ("Workshop"), all as shown on the site plan (the "Site Plan") attached as Exhibit C (collectively, the "Project").

C. As a condition of developing the Developable Parcel and in order to develop, operate, and receive utility service at the Project on the Developable Parcel, Owner is required to comply with all applicable City codes and regulations, which include (without limitation) Mesa City Code ("M.C.C.") Title Nine, Chapter Eight and the City's Terms and Conditions for the Sale of Utilities ("Terms and Conditions"). Under M.C.C. Title Nine, Chapter Eight, Owner is required to install onsite and offsite improvements including, without limitation, installing City water and sewer lines in all streets adjacent to the Property ("Improvement Requirements").

D. M.C.C. § 9-8-4(A) allows the City Manager or designee to modify or approve alternatives to the Improvement Requirements based on an individualized finding that there are special conditions involving the development, topography, and other factors, and that the required improvements will substantially impair the ability for development due to these conditions.

E. In order to facilitate the development of the Office and Workshop, Owner has voluntarily requested the following limited modifications of the Improvement Requirements that are more fully set forth herein: (i) substitute the requirement that Owner design and install the City sewer line in Higley Road adjacent to the Developable Parcel as listed in and shown on Exhibit D (the "Higley Sewer Improvements") with a one-time cash payment from Owner to City ("In Lieu Payment"); (ii) allow the onsite wastewater needs of the Office and Workshop to be temporarily served via a fully contained onsite commercial septic wastewater treatment system approved and permitted by the Maricopa County Environmental Services Department (the "Septic System") until a City sanitary sewer service connection is available.

F. City has reviewed Owner's request and the associated Project plans and due to special conditions associated with the development of the Project including, but not limited to, the inability to connect to the City's wastewater system because City has not completed certain regional infrastructure improvements, City will grant the Owner's request and accept an In Lieu Payment instead of Owner designing and installing the Higley Sewer Improvements in Higley Road, and will allow the temporary use of a Septic System on the Developable Parcel to accept wastewater from only the Office and Workshop.

G. The Parties desire to enter into this Agreement for the purpose of setting forth the terms and conditions under which the above described alternative and modification to the Improvement Requirements associated with the Project are approved and to agree to other terms and conditions set forth herein and intend this document to be a "Development Agreement" within the meaning of A.R.S. § 9-500.05.

#### **AGREEMENT:**

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by reference, and the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties state, confirm and agree as follows:

1. City Obligations. In consideration of the timely performance by Owner of Owner's obligations under this Agreement, City, in addition to other obligations that may be set forth herein, agrees as follows:

1.1. In Lieu Payment Acceptance. As authorized by M.C.C. § 9-8-4(D), City will accept an In Lieu Payment from Owner as an approved alternative to Owner designing and installing the Higley Sewer Improvements. City acknowledges and agrees that the In Lieu Payment is based on estimated construction quantities and unit prices of the Higley Sewer Improvements, and City assumes the risk that the actual future costs of the Higley Sewer Improvements may exceed the In Lieu Payment amount. Owner is only obligated to pay the In Lieu Payment amount regardless of the actual future costs of the Higley Sewer Improvements.

1.2 Notice to County. Upon receipt of the In Lieu Payment, and approval of the Construction Documents required pursuant to Subsection 2.1, City, at Owner's request, will provide notice to Maricopa County Environmental Services Department (and any other required department or entity) that Owner is permitted to construct an on-site wastewater collection system on the Developable Parcel to temporarily serve the onsite wastewater needs of the Office and Workshop as shown on the Site Plan via the Septic System until such time as City determines a City sanitary sewer service connection is available.

1.3 Notice to Connect. City will provide a "Connection Notice" to Owner, in accordance with Subsection 4.2, when the City sanitary sewer service connection (i.e., Higley Sewer Improvements) is available to the Project and allow Owner one hundred twenty (120) days for Owner to disconnect the Project from the Septic System and connect the Project to the City sanitary sewer system.

2. Owner Obligations. Owner agrees, in addition to other obligations that may be set forth herein, as follows:

2.1 Compliance with City Requirements. Owner, at its sole cost and expense, will develop the Project and will comply with all Mesa City Code requirements applicable to the development of the Project to the extent not specifically modified by this Agreement including, but not limited to, completion of street improvements, water line extensions, and all other on-site and off-site improvements. For the avoidance of doubt Owner and the Project must comply with all wastewater permitting and discharge requirements including, but not limited to, M.C.C. Title 8, Chapter 4 of and all industrial pretreatment program requirements adopted thereunder including, but not limited to, those described at M.C.C. § 8-4-15 *et seq.*, as though the Project were connected to City's sanitary sewer and thereafter once connected, all as applicable at the time of discharge. Additionally, in order for City to locate the service end for future connection of the Project to the City's sanitary sewer, Owner acknowledges and agrees that as part of the permitting process for the Project, Owner must submit and receive City approval of the construction documents for the Project (collectively the "Construction Documents"). Construction Documents include, but are not limited to, the construction callouts describing the end of the service line consistent with City of Mesa Engineering Standards (including, without limitation, the location which must be immediately adjacent to the right-of-way for the street, and compatible with the proposed depth of the sewer service connection). In addition, the service end must be installed in accordance with the approved Construction Documents and be marked with an electronic marker per MAG Standard Detail 440-1.

2.2 Owner's In Lieu Payment Obligations. Owner must remit to City an In Lieu Payment in the amount of seventy-nine thousand, nine hundred forty-four dollars and zero cents (\$79,944.00), for Owner's share of the estimated costs for all design, materials, installation and overhead of the Higley Sewer Improvements, plus twenty percent (20%) contingency costs, as those cost estimates are further established and detailed in Exhibit E. Owner acknowledges and agrees that the In Lieu Payment is an estimate of costs, the actual future costs of the Higley Sewer Improvements may differ, and Owner is not entitled to any refund or other offset in the event such costs are less than the In Lieu Payment amount. Owner acknowledges and agrees that if City was not willing to accept Owner's In Lieu Payment, Owner would have to design and install the Higley

Sewer Improvements and connect to the City's sanitary sewer system with the development of the Project.

2.3 In Lieu Payment Due Prior to Issuance of Any Permits. Owner further acknowledges and agrees that City will not issue any construction, building, or right-of-way permit(s) or sewer unavailability letters for the Project or the development of Developable Parcel until City receives from Owner the full In Lieu Payment. Owner acknowledges and agrees that the In Lieu Payment is properly due and owing at the time paid.

2.4 Failure of City to Construct the Higley Sewer Improvements. If the City has not constructed the Higley Sewer Improvements within fifteen (15) years from the date City received the In-Lieu Payment from Owner, then upon written request from Owner, the City will refund such money to Owner, without interest, within sixty (60) days of receiving Owner's request. Upon City refunding the In-Lieu Payment to Owner, this Agreement will terminate and be of no further force or effect; but Owner acknowledges and agrees that if the Septic System fails after this Agreement has been terminated and Owner is not able to repair the Septic System, that Owner will have to comply with the City's then-current Terms and Conditions for the Sale of Utilities and the Mesa City Code (which may require Owner to extend the wastewater utility lines and install associated wastewater improvements) and pay the then-applicable impact fees as well as applicable utility rates, fees and charges, all at Owner's sole cost and expense.

2.5 Use of Septic System for On-Site Wastewater Treatment. Owner, at its sole cost and expense, will permit, install, operate, and maintain the Septic System, in full conformance with the requirements of both the Maricopa County Health Services Department and the Arizona Department of Environmental Quality, as applicable, to the extent necessary to serve the wastewater needs of the Workshop and Office until such time that the Higley Sewer Improvements are available to the Project. The Septic System may only be used to accept flows from the Office and Workshop as described in the Site Plan, to the exclusion of any other wastewater flows. Owner can continue to use the Septic System to serve the Office and Workshop until City installs the Higley Sewer Improvements and provides the Connection Notice to Owner (see Subsection 1.3); thereafter, Owner must disconnect the Project from the Septic System and connect the Project to the Higley Sewer Improvements (see Subsection 2.9). Owner must design and install all on-site plumbing including, without limitation, the Septic System with a dry sewer line in a manner that facilitates the future disconnection of the Septic System and connection with the City's sanitary sewer system (i.e., Higley Sewer Improvements), once available. The dry sewer service line must be capable of conveying all wastewater from the Project and the Developable Parcel to the Higley Sewer Improvements according to City specifications. The design of the dry sewer line shall be subject to City review and approval as part of the Construction Documents.

2.6 Septic System Limited. Owner will only utilize the Septic System to serve the wastewater needs of the Office and Workshop as depicted on the Site Plan and not for any other use on the Property or Project, unless Owner receives an Approval Letter as provided under Subsection 2.7.

2.7 Changes that Require City Approval and May Affect Use of Septic System. Until

the Project is connected to the Higley Sewer Improvements, the following changes to the Office, Workshop, and/or Developable Parcel are prohibited absent prior written approval from City ("Approval Letter"), which the City may grant or deny in its sole and absolute discretion for any or no reason:

2.7.1 Increasing the size or capacity of the Septic System beyond the specifications described in the Site Plan or adding an additional Septic System to the Developable Parcel;

2.7.2 Changing the use of the Property to a more intense use of the Developable Parcel.

To request an Approval Letter, Owner must send City a written request with sufficient details and information that will allow the City to review all impacts of the proposed change. The Approval Letter is in addition to any other approvals or requirements imposed by Mesa City Code or other applicable law including, without limitation, those approvals, such as a rezoning, that require the approval of the Mesa City Council which the Mesa City Council may grant or deny at its sole and absolute discretion. If Owner violates this Subsection 2.7, City, at its sole and absolute discretion, may, in addition to the provisions of Subsection 4.5, take any or all of the following actions: (i) seek specific performance including, but not limited to, removal by Owner of any unauthorized improvements or termination of unapproved uses; (ii) pursue liquidated damages in the amount of the estimated wastewater utility charges that are applicable to the Property and for each month the violation continues; and/or (iii) terminate this Agreement and seek any other legal remedy under this Agreement or as otherwise available at law or in equity.

2.8 Failure of the Septic System. If the Septic System fails prior to Owner receiving Connection Notice from City that City sanitary sewer service is available at the Developable Parcel as set forth in Subsection 1.3, Owner may replace the Septic System at Owner's sole cost and expense with an onsite commercial septic system that is materially the same as the original in size and capacity, that is approved and permitted by both the Maricopa County Health Services Department and the Arizona Department of Environmental Quality, as applicable.

2.9 Future Availability of Sewer Service to the Developable Parcel. Within one hundred twenty (120) days from the date Owner receives the Connection Notice from City that City sanitary sewer service (i.e., the Sewer Improvement) is available to the Project at Higley Road, as set forth in Subsection 1.3, Owner, at its sole cost and expense, must: (i) modify the wastewater conveyance system on the Developable Parcel such that any and all wastewater generated by the Project and the Developable Parcel ceases to flow into the Septic System and instead flows to the City's sanitary sewer system; (ii) disconnect the Septic System from the Office and Workshop; and (iii) abandon, remove, or both, the septic tank in full conformance with the requirements of both the Maricopa County Health Services Department and the Arizona Department of Environmental Quality, as applicable. Owner further acknowledges and agrees that once Owner receives such Connection Notice from City, Owner will comply with Mesa City Code and any other applicable City regulations including, but not limited to, payment of all applicable fees and charges previously uncollected and associated with such connection. Wastewater utility service to the Developable Parcel will be provided subject to the City's Terms and Conditions for

the Sale of Utilities, the Mesa City Code, and Owner's payment of applicable rates, fees, and charges at the time of service.

2.10 Construction Coordination. Owner must design and install all onsite plumbing including, without limitation, the Septic System and dry sewer building lines, in a manner that facilitates the Project's future connection with the City's sanitary sewer system (i.e., Higley Sewer Improvements) at Higley Road once the sewer system is available. At the time of installation of the Higley Sewer Improvements and while the trench for the Higley Sewer Improvements is open, City will use reasonable efforts to connect the service end of the dry sewer line installed by Owner, as shown on the approved Construction Documents required under Subsection 2.1, to the Higley Sewer Improvements, with the actual conversion of the Project from the Septic System to the City's sanitary sewer system to occur no later than one hundred twenty (120) days after Connection Notice is provided as required by Subsection 1.3.

2.11 Development Limited to Developable Parcel. The development of APNs 141-38-009E, 141-38-009G, 141-38-009L, 141-38-009N are not contemplated or authorized under this Agreement and any development of one or more of those APNs may be subject to a separate agreement(s) with the City.

3. Term/Termination. This Agreement becomes effective on the date it is recorded in its entirety in the Official Records of Maricopa County, Arizona, and will continue in full force and will automatically terminate upon the earlier of: (i) termination by the mutual written consent of Owner and City; (ii) Owner paying the In Lieu Payment and connecting the Developable Parcel to the City's sanitary sewer system, and satisfying all other Owner obligations in this Agreement; (iii) the effective date of a Council-approved rezoning without an Approval Letter from City as set forth in Subsection 2.7 or that is otherwise in conflict with this Agreement; (iv) the termination conditions described in Subsection 2.4; or (v) twenty-five (25) years from the date of execution of this Agreement by the Parties as set forth on page one (1) of this Agreement.

4. General Provisions.

4.1 Recordation. This Agreement shall be recorded in its entirety in the Official Records of Maricopa County, Arizona, not later than ten (10) days after its full execution by the Parties as set forth on page one (1) of this Agreement.

4.2 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement including, without limitation, a Connection Notice, ("Notice") shall be in writing and shall be deemed to have been duly given if (A) delivered to the party(s) at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, or (C) given to a recognized and reputable overnight delivery service, to the address set forth below or at such other address, and to the attention of such other person or officer, as any Party may designate in writing by Notice duly given pursuant to this Section:

The City:	City of Mesa
	20 East Main Street, Suite 750

Mesa, Arizona 85211  
Facsimile: 480-644-2175  
Attn: City Manager

With copy to: Mesa City Attorney's Office  
20 East Main Street, Suite 850  
Mesa, Arizona 85211  
Facsimile: 480-644-2498  
Attn: City Attorney

Owner: Higley/202 industrial LLC  
c/o Tyson Borum  
4505 E. Virginia St.  
Mesa, Az. 85215

With copy to: W. Ralph Pew  
Pew and Lake, PLC  
1744 S. Val Drive  
Suite 217  
Mesa, Arizona, 85204

Notices shall be deemed received: (A) when delivered to the party; (B) three business days after being sent certified U.S. Mail signature requested, properly addressed, with sufficient postage; or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the Notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a Notice is also given to a Party's counsel or other recipient, the provisions above governing the date on which a Notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the Notice.

4.3 Choice of Law, Venue and Attorneys' Fees. The laws of the State of Arizona shall govern any dispute, controversy, claim or cause of action arising out of or related to this Agreement. The venue for any such dispute shall be Maricopa County, Arizona, and each Party waives the right to object to venue in Maricopa County for any reason. Neither Party shall be entitled to recover any of its attorneys' fees or other costs from the other Party incurred in any such dispute, controversy, claim, or cause of action, but each Party shall bear its own attorneys' fees and costs, whether the same is resolved through arbitration, litigation in a court, or otherwise.

4.4 Default. In the event a Party fails to perform or fails to otherwise act in accordance with any term or provision hereof (the "Defaulting Party") then the other Party (the "Non-Defaulting Party") may provide Notice to perform to the Defaulting Party (the "Notice of Default"). The Defaulting Party shall have thirty (30) days from receipt of the Notice of Default to cure the default. In the event the failure is such that more than thirty (30) days would reasonably be required to cure the default or otherwise comply with any term or provision herein, then the Defaulting Party shall notify the Non-Defaulting Party of such and the timeframe needed to cure such default, so long as the Defaulting Party commences performance or compliance or gives

Notice of additional time needed to cure within said thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation; provided further, however, that no such cure period shall exceed ninety (90) days. Any written Notice shall specify the nature of the default and the manner in which the default may be satisfactorily cured, if possible.

4.5 Remedy/Equitable Relief. The Parties agree that damages alone are not an adequate remedy for Owner's breach of any provision of this Agreement. In the event Owner fails to perform or fails to otherwise act in accordance with any term or provision in this Agreement the City is entitled to immediately seek enforcement of this Agreement by means of specific performance, injunction, or other equitable relief, without any requirement to post a bond or other security. The specific performance remedy provided in this Subsection 4.5 shall be cumulative relief, and shall not be a limitation on the City's other remedies available in this Agreement or at law or in equity including, but limited to, the right to seek contract damages hereunder.

Additionally, the City reserves the right to withhold any City permits or approvals Owner may need to develop the Property and may revoke any City approval, permit, or certificate of occupancy if any of the changes to the Project and/or the Property listed in Subsection 2.7 occur without an Approval Letter.

In the event City fails to perform or fails to otherwise act in accordance with any term or provision of this Agreement, Owner's sole and exclusive remedy shall be to seek enforcement of this Agreement by means of specific performance, injunction, or other equitable relief.

4.6 Good Standing; Authority. Each Party represents and warrants that it is a duly formed and legally valid existing entity under the laws of the State of Arizona with respect to Owner, or a municipal corporation within Arizona with respect to the City and that the individuals executing this Agreement on behalf of their respective Party are authorized and empowered to bind the Party on whose behalf each such individual is signing and represent that upon execution, this Agreement is binding and no further action is or shall be necessary to make the Agreement enforceable in its entirety.

4.7 Assignment. The provisions of this Agreement are binding upon and shall inure to the benefit and burden of the Parties, and all of their successors in interest and assigns.

4.8 Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Parties. No term or provision of this Agreement is intended to, or shall be for the benefit of any person, firm or entity not a party hereto, and no such other person, firm, or entity shall have any right or cause of action hereunder.

4.9 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver of any breach shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant, or condition of this Agreement. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

4.10 Further Documentation. The Parties agree in good faith to execute such further or additional instruments and documents and to take such further acts as may be necessary or



appropriate to fully carry out the intent and purpose of this Agreement.

4.11 Fair Interpretation. The Parties have been represented by counsel in the negotiation and drafting of this Agreement and this Agreement shall be construed according to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the Party who drafted a provision shall not be employed in interpreting this Agreement.

4.12 Computation of Time. In computing any period of time under this Agreement, the date of the act or event from which the designated period of time begins to run shall not be included. The last date of the period so completed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday. The time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Phoenix, Arizona time) on the last day of the applicable time period provided herein.

4.13 Conflict of Interest. Pursuant to A.R.S. § 38-503 and A.R.S. § 38-511, 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. This Agreement is subject to cancellation pursuant to the terms of A.R.S. § 38-511.

4.14 Entire Agreement. This Agreement, together with the following Exhibits attached hereto (which are incorporated herein by this reference) constitute the entire agreement between the Parties:

- Exhibit A: Legal Description of the Property and Developable Parcel
- Exhibit B: Depiction of the Property
- Exhibit C: Site Plan
- Exhibit D: List of Higley Sewer Improvements and Depiction of Location
- Exhibit E: In Lieu Payment Cost Estimate

All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded by and merged in this Agreement.

4.15 Time of the Essence. Time is of the essence in this Agreement and with respect to the performance required by each Party hereunder.

4.16 Severability. If any provisions of this Agreement are declared void or unenforceable, such provisions shall be severed from this Agreement, which shall otherwise remain in full force and effect.

4.17 Proposition 207 Waiver. Owner hereby waives and releases the City from any and all claims under A.R.S. § 12-1134 et seq. including, without limitation, any right to compensation for reduction to the fair market value of the Property, as a result of the City's approval of this Agreement. The terms of this waiver shall run with the land and shall be binding upon all

subsequent landowners and shall survive the expiration or earlier termination of this Agreement.

4.18 E-Verify. To the extent applicable under A.R.S. § 41-4401 and A.R.S. § 23-214, Owner represents and warrants compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-Verify requirements of A.R.S. § 23-214(A). Breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by City. The City retains the legal right to randomly inspect the papers and records of any employee who works under this Agreement to ensure compliance with the above-mentioned laws.

4.19 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. City represents that it intends to pay all monies due under this Agreement if such funds have been legally appropriated. City agrees to actively request funding for future fiscal periods in order to satisfy the terms of this Agreement. However, in the event that an appropriation is not granted and operating funds are not otherwise legally available to pay the monies due or to become due under this Agreement, 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, City agrees to provide a minimum of thirty (30) calendar days' advance written Notice of its intent to terminate.

4.20 Section Headings. The Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

4.21 Covenants Running With Land; Inurement. The covenants, conditions, terms, and provisions of this Agreement relating to use of the Property will run with the Property and will be binding upon, and will inure to, the benefit of the Parties and their respective permitted successors and assigns with respect to such Property. Wherever the term "Party" or the name of any particular Party is used in this Agreement such term will include any such Party's permitted successors and assigns.

4.22 Amendment. No change or addition is to be made to this Agreement except by written amendment executed by City and Owner. Within ten (10) days after any amendment to this Agreement, such amendment will be recorded in the Official Records of Maricopa County, Arizona. Upon amendment of this Agreement as established herein, references to "Agreement" or "Development Agreement" will mean the Agreement as amended. If, after the effective date of any amendment(s), the Parties find it necessary to refer to this Agreement in its original, unamended form, they will refer to it as the "Original Development Agreement." When the Parties mean to refer to any specific amendment to the Agreement which amendment is unmodified by any subsequent amendments, the Parties will refer to it by the number of the amendment as well as its effective date.

4.23 Preserve State Shared Revenue. Notwithstanding any other provision of, or limitation in, this Agreement to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Agreement violates any provision of state law or the Constitution of Arizona (including but not limited to A.R.S. § 42-6201 *et seq.*), City and Owner shall use all and

best faith efforts to modify the Agreement so as to fulfill each Parties obligations in the Agreement while resolving the violation with the Attorney General. If within thirty (30) days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41- 194.01(B)(1), City and Owner cannot agree to modify this Agreement so as to resolve the violation with the Attorney General, this Agreement shall automatically terminate at midnight on the thirtieth (30<sup>th</sup>) day after receiving such notice from the Attorney General, and upon such termination the Parties shall have no further obligations under this Agreement. Additionally, if the Attorney General determines that this Agreement may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), and requires the posting of a bond under A.R.S. § 41-194.01(B)(2), City shall be entitled to terminate this Agreement, except if Owner posts such bond, if required; and provided further, that if the Arizona Supreme Court, determines that this Agreement violates any provision of state law or the Constitution of Arizona, City may terminate this Agreement and the Parties shall have no further rights, interests or obligations in this Agreement or claim against the other Party for a breach or default under this Agreement.

[SIGNATURES OF THE PARTIES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth on page one (1) of this Agreement:

**“CITY”**

CITY OF MESA, an Arizona  
municipal corporation

By: \_\_\_\_\_  
Christopher J. Brady, City Manager

ATTEST:

\_\_\_\_\_  
Holly Moseley, City Clerk

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2025, by Christopher J. Brady, the City Manager for the CITY OF MESA, an Arizona municipal corporation.

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

My Commission Expires:

\_\_\_\_\_

**"OWNER"**

Higley/202 Industrial, LLC, an Arizona limited liability company

By: [Signature]  
Tyson K Borum, Manager

By: [Signature]  
Tyson K Borum and Jeffrie Borum Revocable Trust, Manager

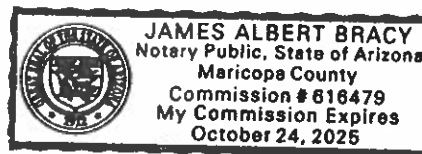
STATE OF ARIZONA       )  
                                      ) ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of APRIL, 202~~5~~, by Tyson K Borum, a Manager of Higley/202 Industrial, LLC, an Arizona limited liability company, on behalf of the company.

[Signature]  
Notary Public

My commission expires:

October 24, 2025



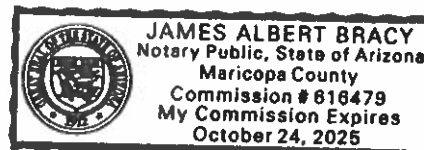
STATE OF ARIZONA       )  
                                      ) ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of APRIL, 202~~5~~, by Tyson K Borum and Jeffrie Borum Revocable Trust, a Manager of Higley/202 Industrial, LLC, an Arizona limited liability company, on behalf of the company.

[Signature]  
Notary Public

My commission expires:

October 24, 2025



**EXHIBIT A**  
**(Legal Description of the Property & Developable Parcel)**

**That portion of the Southwest quarter of Section 26, Township 2 North, Range 6 East of the Gila and Salt River Meridian, Maricopa County, Arizona, described as follows:**

**Commencing at a brass cap in handhole at the West Quarter corner of said Section 26, from which a brass cap in handhole at the Southwest corner of said Section 26 bears South 00 degrees 00 minutes 05 seconds West 2637.89 feet;**

**Thence South along the West boundary line of said Southwest quarter, a distance of 825 feet (record) South 00 degrees 00 minutes 05 seconds West 824.33 feet (measured) to an iron stake being the TRUE POINT OF BEGINNING;**

**Thence East 650 feet (record) South 89 degrees 33 minutes 44 seconds East 652.40 feet (measured) to an iron stake for corner;**

**Thence South 330 feet (record) South 00 degrees 28 minutes 34 seconds West 330.04 feet (measured) to an iron stake for corner;**

**Thence West 650 feet (record) North 89 degrees 32 minutes 55 seconds West 649.67 feet (measured) to an iron stake for corner;**

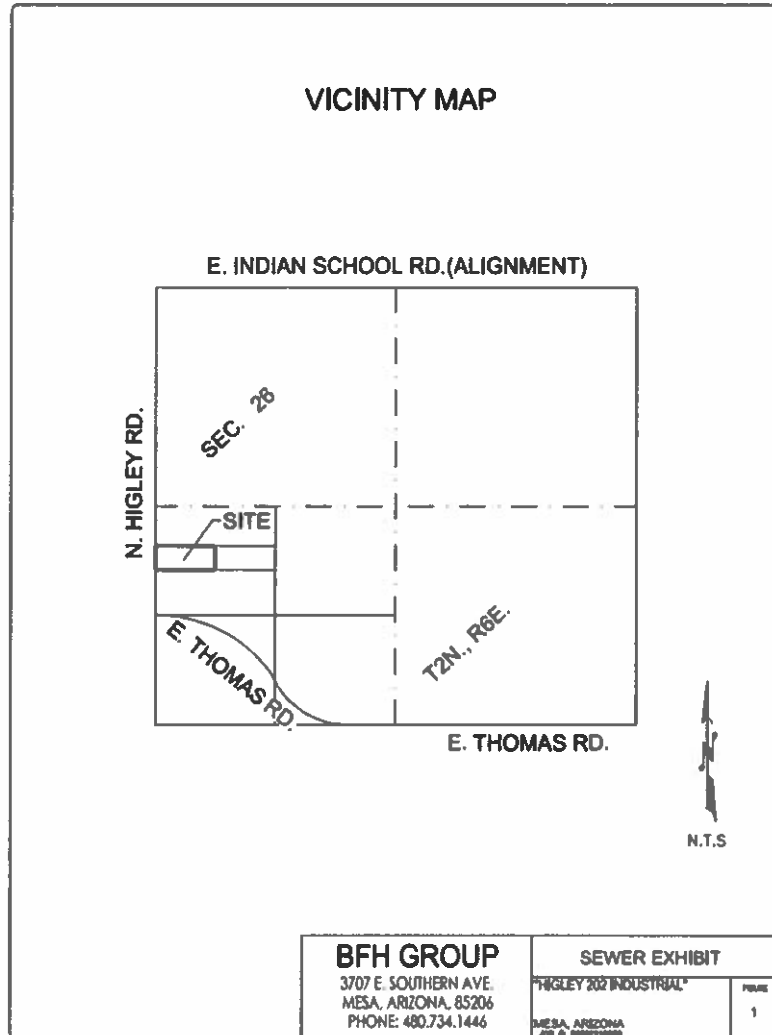
**Thence North 330 feet (record) North 00 degrees 00 minutes 05 seconds East 329.74 feet (measured) to the TRUE POINT OF BEGINNING;**

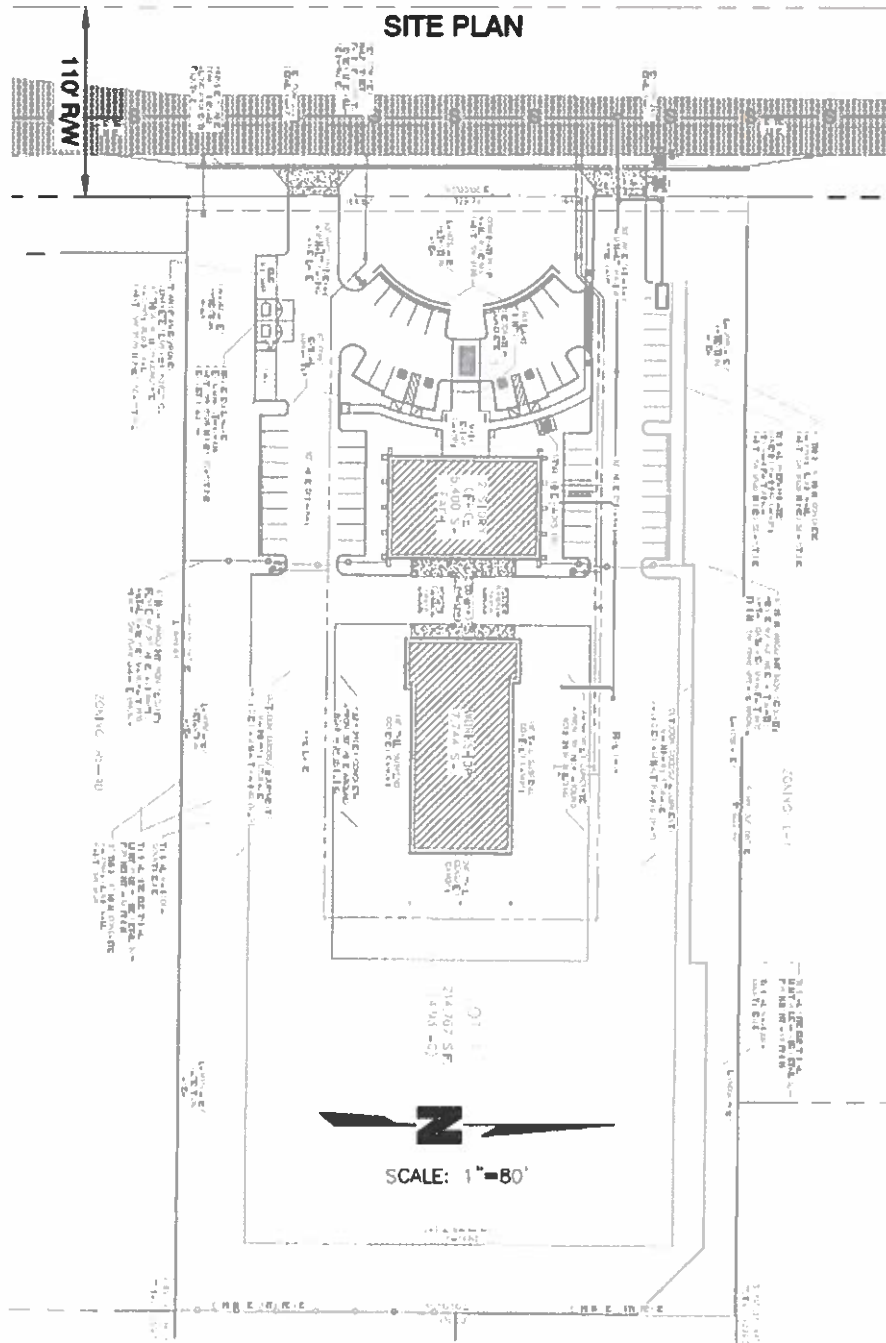
**Containing 214,767 square feet or 4.930 acres, more or less.**

**Subject to existing right-of-way and easements.**

## EXHIBIT B

(Depiction of the Property)

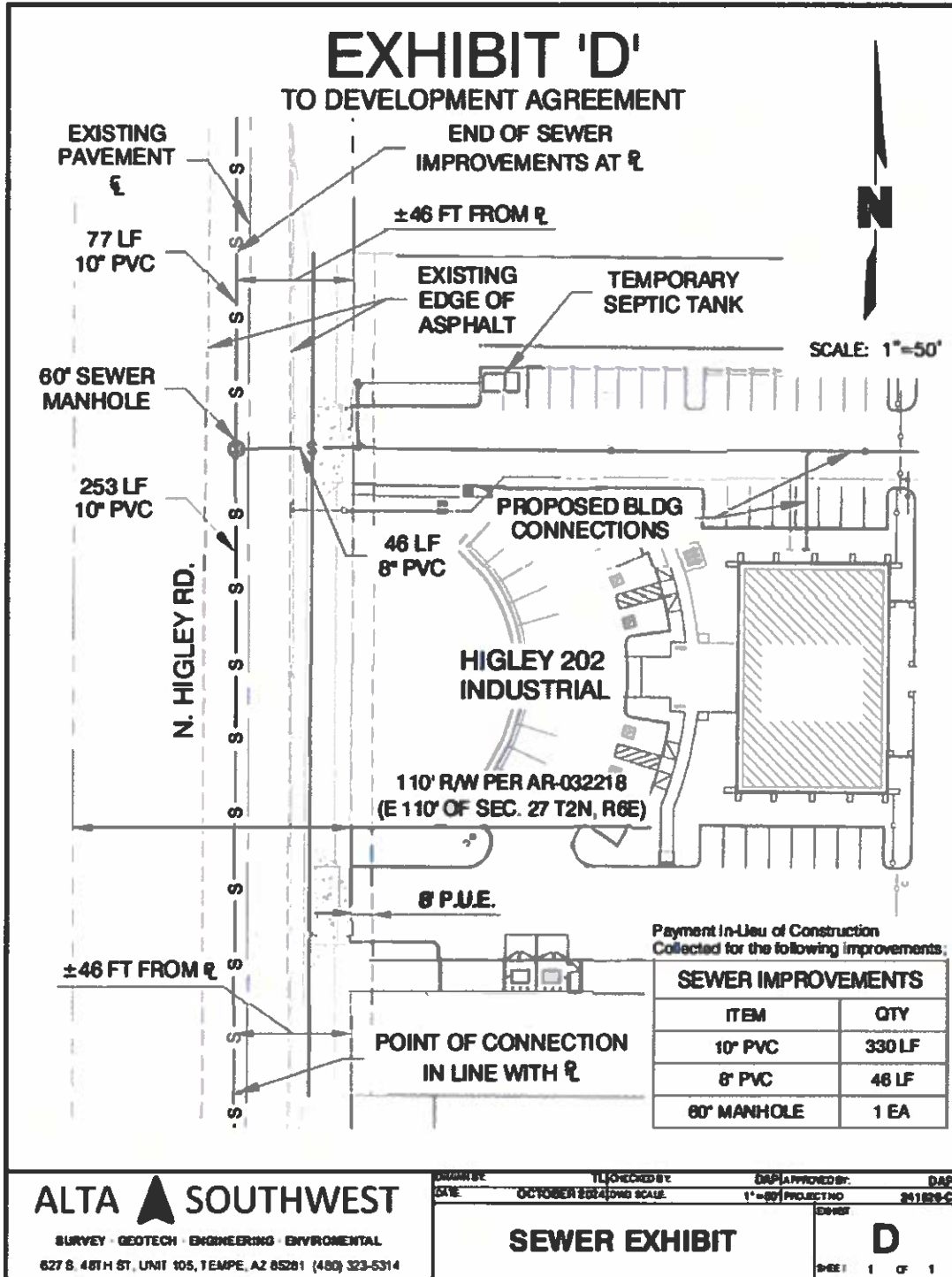






# EXHIBIT D

(List of Higley Sewer Improvements and Depiction of Location)



# EXHIBIT E

(In Lieu Payment Cost Estimate)

Higley 202 Industrial Offsite Improvements - Sewer - MESA AZ				
Item	Unit	Qty	Unit Price	Ext Total
Construction Water, Mobilization, etc.	LS	1	\$ 5,500.00	\$ 5,500.00
Permitting	LS	1	\$ 1,000.00	\$ 1,000.00
General Conditions	LS	1	\$ 2,500.00	\$ 2,500.00
Construction Staking	HR	4	\$ 180.00	\$ 720.00
Traffic Control	LS	1	\$ 5,000.00	\$ 5,000.00
As-built survey & drawing	HR	2	\$ 240.00	\$ 480.00
Sawcut / Remove Asphalt	SY	203	\$ 30.00	\$ 6,083.33
Asphalt / Subgrade replacement	SY	203	\$ 60.00	\$ 12,166.67
Striping	LS	1	\$ 750.00	\$ 750.00
8" PVC Sewer Line	LF	35	\$ 52.00	\$ 1,820.00
10" PVC Sewer Line	LF	330	\$ 70.00	\$ 23,100.00
5' Dia. Sewer Manhole Per M.A.G. Std. Det. 420 & 422	EA	1	\$ 7,500.00	\$ 7,500.00
Sub Total				\$ 68,620.00
20% Contingency				\$ 13,324.00
Total				\$ 79,944.00

**ALTA**  **SOUTHWEST**  
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EXPIRES: 03-31-2027