PUBLIC NOTICE
THE ELOY CITY COUNCIL
Meets
MONDAY, JANUARY 29, 2024
5:00 PM
ELOY CITY COUNCIL CHAMBERS
595 NORTH C STREET
ELOY, ARIZONA 85131
For a
WORK SESSION

AGENDA

I. Call to Order

II. Roll Call

III. Pledge of Allegiance

IV. Unscheduled Public Appearances

V. Discussion

A. City Council Water Resources & Infrastructure Development Update

VI. Adjournment

POSTED BY 2:00 P.M., WEDNESDAY, JANUARY 24, 2024, AT ELOY CITY HALL, ELOY POST OFFICE, AND CITY WEBSITE: www.eloyaz.gov

THE FACILITY WILL BE OPEN TO THE PUBLIC 3O MINUTES PRIOR TO THE START OF THE MEETING AND SEATING WILL BE AVAILABLE FOR "REASONABLY ANTICIPATED ATTENDANCE."

Mary Myers

Mary Myers, MMC, CPM
City Clerk

INDIVIDUALS WITH SPECIAL ACCESSIBILITY NEEDS MAY CONTACT LORENA LaSALDE-RIOS, ADA COORDINATOR FOR THE CITY OF ELOY AT 520-466-9201 OR 520-466-7455 (TDD). IF POSSIBLE, SUCH REQUESTS SHOULD BE MADE 72 HOURS IN ADVANCE. ONE OR MORE MEMBERS OF THE COUNCIL AND/OR STAFF MAY PARTICIPATE BY TELEPHONIC OR VIDEO MEANS.

CITY OF ELOY
REQUEST FOR COUNCIL ACTION

Agenda Item: V.A.
Date: 1/29/2024

Date submitted: 01/23/2024 **Date requested:** 1/29/2024	**Action:** Other	**Subject: City Council Water Resources & Infrastructure Development Update**

TO: Mayor and City Council

FROM: David Malewitz, City Manager

RECOMMENDATION:
No Foraml Recommendation. For Discussion Purposes Only

DISCUSSION:
Discussion Topics for City Council Consideration:

1. Status of the City of Eloy Modified Designation of Assured Water Supply (MDAWS) Application to the Arizona Department of Water Resources (ADWR)
2. Review of Development Agreements
3. Will Serve Letter
4. Water & Wastewater Master Plan Status Report
5. Water and Wastewater Capital Improvements Plan Projects Summary
6. Infrastructure Financing Options (i.e. WIFA & Secondary Property Tax)
7. Review of Assured Water Supply Allocation, Infrastructure, and Central Arizona Groundwater Replenishment District (CAGRD) Cost Sharing DRAFT Agreement
8. Next Steps with MDAWS and ADWR
9. Questions, Answers, and Action Steps

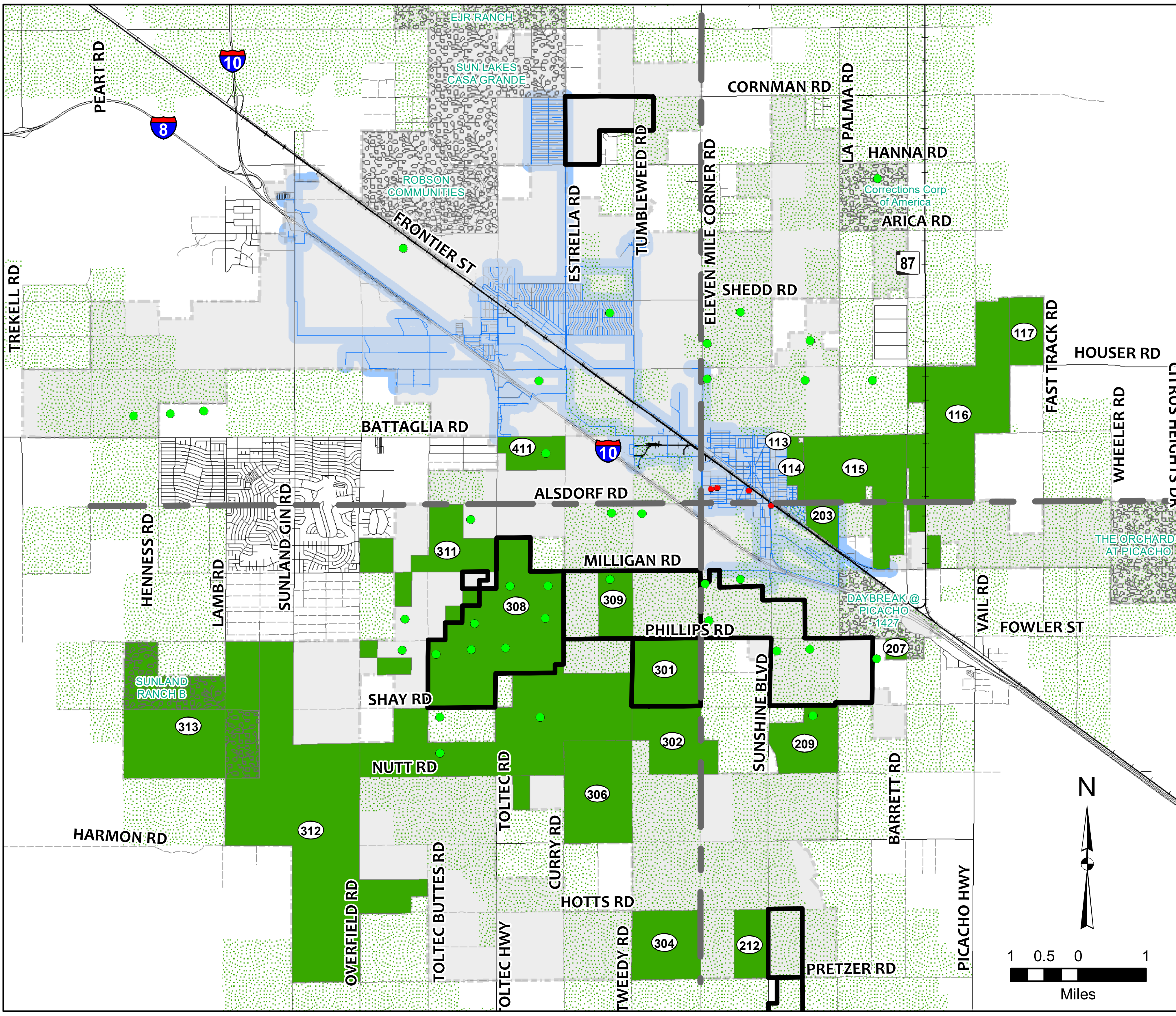
FISCAL IMPACT:
None

Approved as to Form:

Stephen R. Cooper

Stephen R. Cooper, City Attorney

CITY OF ELOY WATER REQUESTS
ACTIVE DEVELOPMENT AGREEMENTS



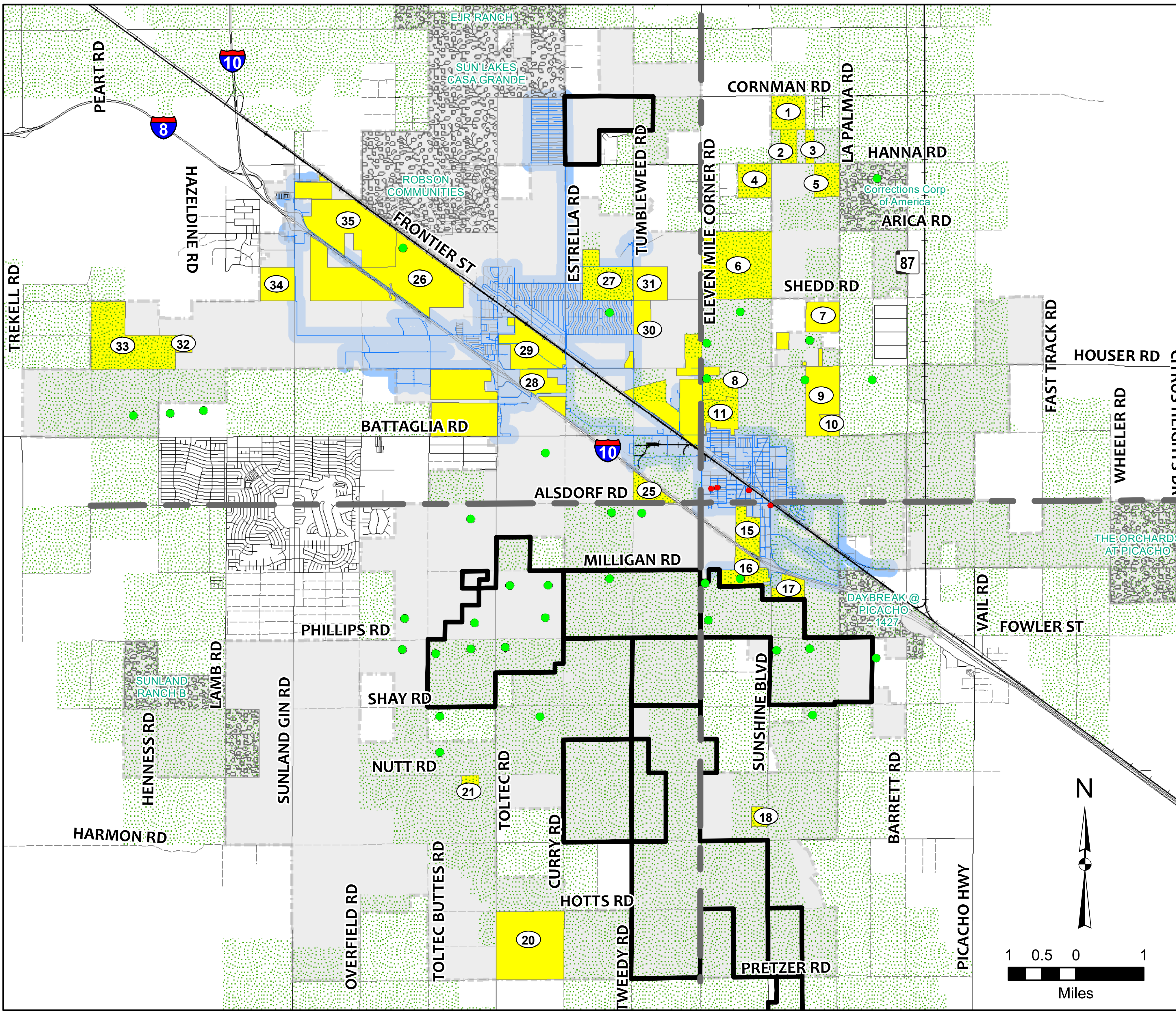
ID	Development	AKA Name	PropertyOwner	Total Units	Stated Project Acres	Calculated Acres	ADWR Demand Calculato	Reduced Request	Status
113	SUNSHINE BATTAGLIA INVESTORS LLC		SUNSHINE BATTAGLIA INVESTORS LLC		25.00	24.07	49	34	Expires less than 5 Yrs
114	WALTON-PALMILLA		WALTON WEST PALMILLA LP ETAL			128.19	244	171	Expires less than 5 Yrs
115	PALMILLA		BIG LAND LLC	3,577	942.00	940.81	1,407	985	Expires less than 5 Yrs
116	BOOL ELOY 2180		BOOL PROPERTIES LP	6,675	2,179.87	2,220.68	2,393	1,676	**Expires more than 5 Yrs**
117	ORCHARD HILLS		RUC HOLDINGS ULC	900	320.00	320.72	549	384	**Expires more than 5 Yrs**
203	LA PALMA RANCH	LA PALMA RANCH	WALTON AZ PINAL COUNTY NO 2 LP	580	155.88	153.07	212	148	**Expires more than 5 Yrs**
207	DAYBREAK @ PICACHO - 1427	DAYBREAK AT PICACHO PEAK	DAYBREAK 1320 LLC	5,708	1,427.00	62.75	114	80	**Expires more than 5 Yrs**
209	SUNSHINE 539		SHEDD, JLC FAMILY INVESTMENTS	2,029	539.00	540.11	731	512	Expires less than 5 Yrs
212	ELOY320		BEN FATTO LTD PSHIP 7TH STREET PROPERTIES LLC	844	320.00	327.69	604	423	Expires less than 5 Yrs
301	COOLEY ELOY 640		JLC FAMILY INVESTMENTS LLC ETAL	2,278	640.00	651.10	891	624	**Expires more than 5 Yrs**
302	ELOY1302		BEN FATTO LTD PSHIP ETAL	5,172	1,302.00	647.21	1,669	1,169	Expires less than 5 Yrs
304	ELOY640		ELOY 660 LLC ETAL	2,634	640.00	658.90	1,021	715	Expires less than 5 Yrs
306	PICACHO VIEW II		LINMARK LLC	3,337	1,040.00	1,056.18	2,152	2,152	Expires less than 5 Yrs
308	CORTEDERRO/ELOY VALLEY	ELOY VALLEY	ELOY ASSOCIATES LLC	20,748	4,480.00	4,350.55	8,196	5,739	Expires less than 5 Yrs
309	TIERRA DEL SOL		ROBERT COX	1,168	309.00	325.81	448	314	Expires less than 5 Yrs
311	PICACHO VIEW I		LINMARK LLC	3,289	940.00	967.42	1,948	1,948	Expires less than 5 Yrs
312	SAWTOOTH VILLAGE		ARIZONA STATE LAND DEPARTMENT	15,200	3,800.00	3,801.34	5,505	3,855	**Expires more than 5 Yrs**
313	SUNLAND RANCH	SUNLAND RANCH (ELOY)	WALTON INTERNATIONAL & RUC HOLDINGS ULC	10,754	1,920.00	2,244.45	2,010	1,407	**Expires more than 5 Yrs**
411	GRANDE VALLEY ESTATES		ELOY 300 LLC	1,155	305.82	299.38	429	300	Expires less than 5 Yrs
				86,048	**21,285.57**	**19,720.43**	**30,572**	**22,636**	

Date: 6/8/2023

Legend

- Active Water
- Solar Projects
- Water Resources Requested Outside Eloy CC&N
- City Limits
- 660' Water Main Buffer
- City Well Site
- Potential Well (2005 Hydrologic Consultants)
- Irrigation Right
- Water Main
- Railroad
- Paved
- Unpaved

CITY OF ELOY WATER REQUESTS (NO DEVELOPMENT AGREEMENT)



ID	Development	Property Owner	Total Units	Stated Project Acres	Calculated Acres	ADWR Demand Calculator	Reduced Request	Status
1	ELOY 160 CORNMAN COMMONS	CORY WEDDLE	938	160	160	102	71	No DA
2	ENCANTO PARISO I	HANNA ROAD 120 LLC	320	80	80	141	99	No DA
3	ENCANTO PARISO II	HANNA ROAD 120 LLC	160	40	40	178	125	No DA
4	ELOY 160 HANNA	CORY WEDDLE	440	160	160	246	172	No DA
5	ENCANTO TRAVERA	TNT LAND HOLDINGS LLC	480	120	120	213	149	No DA
6	BARNES FARM	THE PICNIC BARRELL LIQUOR MART INC & VERNON LESTER BARNES & PATRICIA G. BARNES	1,948		664	727	509	No DA
7	LA PALMA 142	ELOY LAND INVESTMENTS LLC	568	142	141	202	141	No DA
8	VISTA DE PICACHO ET AL	EMBER EQUITY	149		168	323	226	No DA
9	CAMPOS LA PALMA	AAM73 ROTH IRA LLC	1,315	328	289	464	325	No DA
10	TBD	HICKEY & HICKEY LTD PSHIP	43		43	15	11	No DA
11	LANGLEY	LANGLEY SUNSHINE PARK LLC	600		157	224	157	No DA
15	TBD	DYE EQUITIES LLC ETAL	0		128	304	213	No DA
16	GARY LANE	ELOY 170 LLC	1,792		172	457	320	No DA
17	TBD	SOLID STATE ELOY I LP	0		90	182	127	No DA
18	TRAILSIDE 44	ARANA S AGRICULTURE LLC	174	45	44	16	11	No DA
20	IRONWOOD ESTATES	WIS PARTNERS II LLC	2,458	647	650	957	670	No DA
21	OVERFIELD PROPERTY	NORMARK FARMS LLC	16	40	41	14	10	No DA
25	TBD	ELOY PARTNERS LLC	300		100	176	123	No DA
26	TBD	TES FARMS	5,315		1,866	3,529	2,471	No DA
27	TBD	CITY OF ELOY	0		401	769	538	No DA
28	TBD	EMPIRE SOUTHWEST LLC	0		162	298	209	No DA
29	COTTON CITY INDUSTRIAL PARK	RUC HOLDINGS ULC	0		278	513	359	No DA
30	SKY VIEW COUNTRY ESTATES	AZONGA INVESTMENTS/HUNG FAMILY TRUST	325	81	82	254	178	No DA
31	EDGEWATER AIRPORT	ELOY LAND INVESTMENTS LLC	0	162	162	58	41	No DA
32	TOPAZ ESTATES	OASIS HOUSING LLC	200	40	39	43	30	No DA
33	ISOM RANCH	MFC ARIZONA I LLC	1,889	564	562	752	527	No DA
34	SUNLAND GIN 160	KEATING SECURITIES LLC	160	160	163	290	203	No DA
35	INTERSTATE 10-8 BUSINESS PARK	PETERSEN ARIZONA LAND & ENTITLEMENT FUND LLC	0		642	1,079	756	No DA
			19,590	**2,769**	**7,605**	**12,526**	**8,771**	

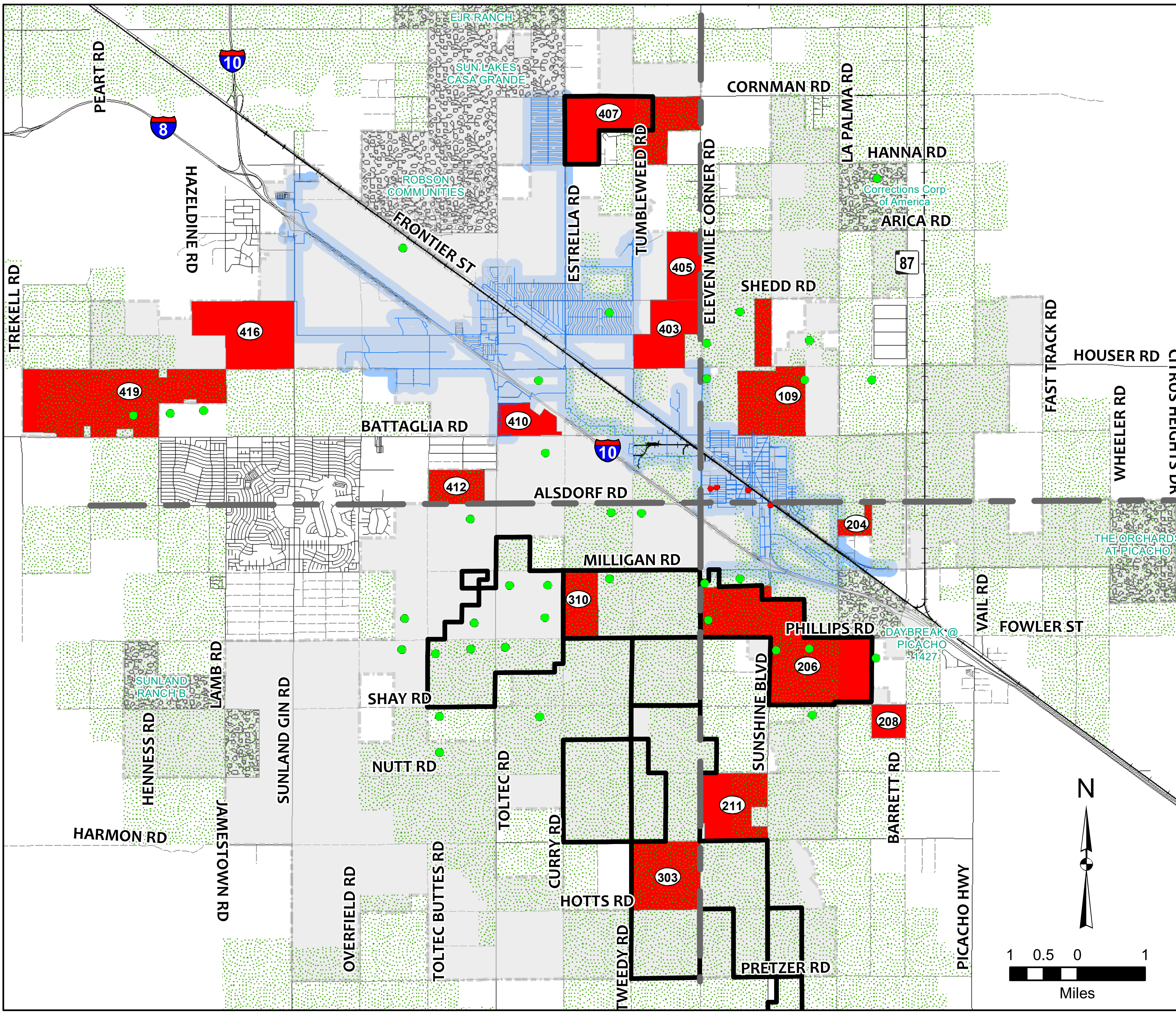
ELOY, ARIZONA

Legend

- No Development
- Water Resources Requested Outside Eloy CC&N
- Solar Projects
- City Limits
- 660' Water Main Buffer
- City Well Site
- Potential Well (2005 Hydrologic Consultants)
- Irrigation Right
- Water Main
- Railroad
- Paved
- Unpaved

Date: 1/23/2024

CITY OF ELOY WATER REQUESTS
TERMINATED DEVELOPMENT AGREEMENTS



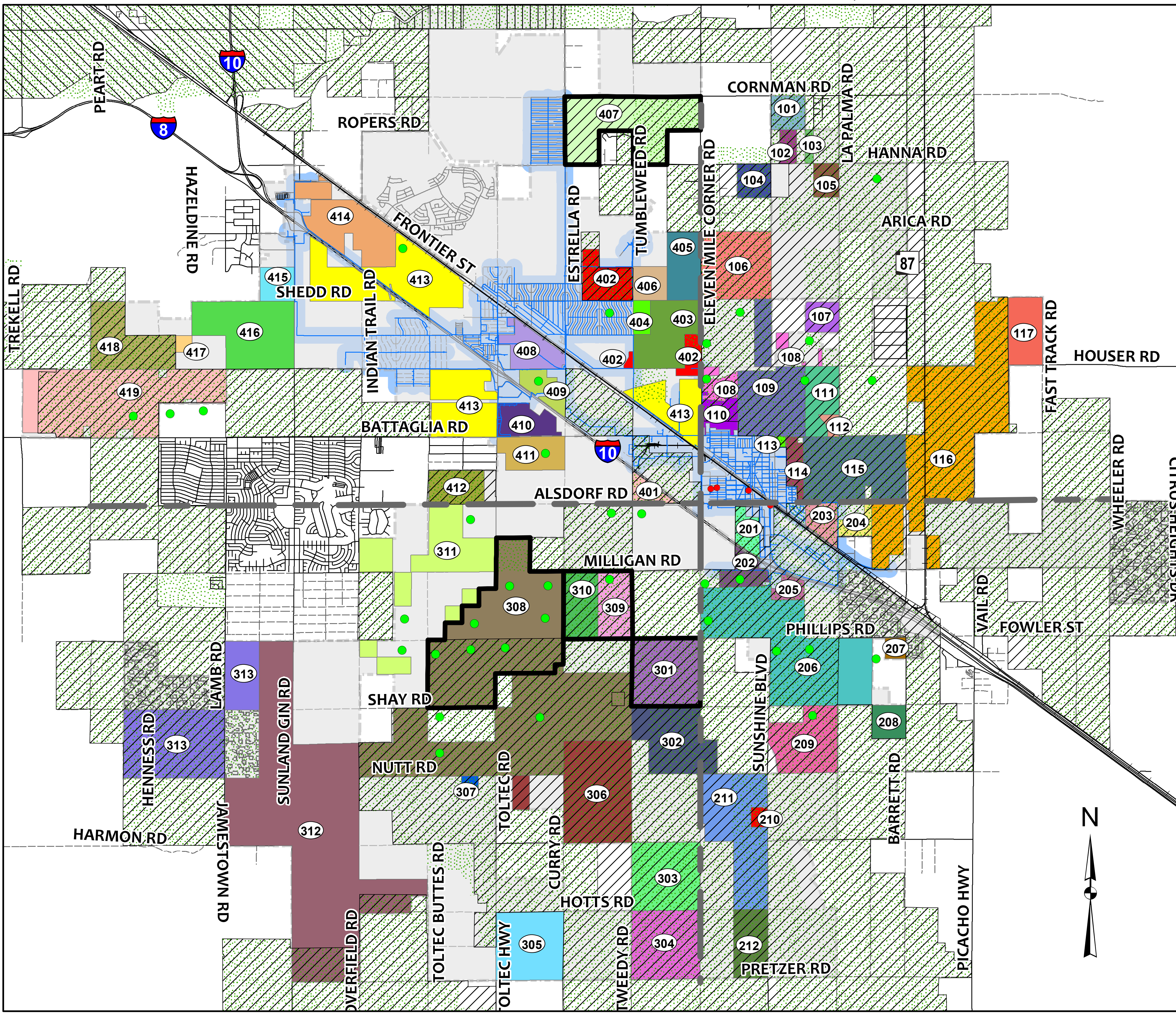
ID	Development	AKA Name	PropertyOwner	Total Units	Stated Project Acres	Calculated Acres	ADWR Demand Calculator	Reduced Request
109	ESPERANZA		MFC ARIZONA LLC	3,034	795.22	794.28	1,145	802
204	PICACHO PEAK WEST		NORTH CAMELBACK LLC	347	160.00	94.95	241	169
206	RANCHO DEL SOL BRILLANTE		CASA GRANDE WEST ETAL	6,008	1,721.00	1,641.64	2,989	2,093
208	SHAY LANDING		SCHMIDT, HUSSAIN, MCLAWS	737	160.00	159.69	293	205
211	TRAILSIDE @ ELOY	SUNSHINE ESTATES	SUNSHINE MANOR II LLC ETAL	3,223	840.89	570.74	1,196	837
303	STEVEN FARMS		BT ELOY LLC	2,493	664.03	652.35	1,007	705
310	ELOY ACRES	ANNEXATION BY JORDON ROSE	GRANDILLA (ARIZONA) INC	1,122	317.00	326.01	467	303
403	EDGEWATER SOUTH RESIDENTIAL		ELOY LAND INVESTMENTS LLC	2,157		486.25	86	60
405	EDGEWATER NORTH RESIDENTIAL		TEXAS LAND HOLDINGS LLC	1,411		324.78	981	687
407	THE VILLAGES OF ELOY		SUSTAINABLE PROPERTY HOLDINGS LLC & HA GOLDEN COMPASS CENTRAL LLC	3,688	967.10	967.37	0	0
410	GRAND VALLEY RANCH		SAN MIGUEL LLC	247	51.35	235.10	530	371
412	THE VILLAGES OF SANTA CRUZ VALLEY		ELOY 260 LLC	993	261.00	261.14	353	247
416	ELOY 812/SIERRA VISTA		KEATING SECURITIES LLC	1,759	812.00	811.92	1,037	726
419	SILVER REEF		WALTON INTERNATIONAL & RUC HOLDINGS ULC	5,500	1,613.66	1,543.11	3,018	2,113
				32,719	**8,363**	**8,869**	**13,343**	**9,318**

Date: 1/23/2024

Legend

- Terminated Water
- Water Resources Requested Outside Eloy CC&N
- Solar Projects
- City Limits
- 660' Water Main Buffer
- City Well Site
- Potential Well (2005 Hydrologic Consultants)
- Irrigation Right
- Water Main
- Railroad
- Paved
- Unpaved

CITY OF ELOY WATER REQUESTS



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103	ENCANTO PARISO II	HANNA ROAD 120 LLC	160	40	178	125	
104	ELOY 160 HANNA	CORY WEDDLE	440	160	246	172	
105	ENCANTO TRAVERA	TNT LAND HOLDINGS LLC	480	120	213	149	
106	BARNES FARM	THE PICNIC BARRELL LIQUOR MART INC & VERNON LESTER BARNES & PATRICIA G. BARNES	1,948	664	727	509	
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112	TBD	HICKEY & HICKEY LTD PSHIP	43	43	15	11	
113	SUNSHINE BATTAGLIA INVESTORS LLC	SUNSHINE BATTAGLIA INVESTORS LLC	NA	24	49	34	
114	WALTON-PALMILLA	WALTON WEST PALMILLA LP ETAL	NA	128	244	171	11/24/2023
115	PALMILLA	BIG LAND LLC	3,577	940	1,407	985	11/24/2023
116	BOOL ELOY 2180	BOOL PROPERTIES LP	6,675	2,175	2,393	1676	8/25/2028
117	ORCHARD HILLS	RUC HOLDINGS ULC	900	318	549	384	8/27/2029
201	TBD	DYE EQUITIES LLC ETAL	0	128	304	213	
202	GARY LANE	ELOY 170 LLC	1,792	171	457	320	
203	LA PALMA RANCH	WALTON AZ PINAL COUNTY NO 2 LP	580	153	212	148	11/24/2033
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205	TBD	SOLID STATE ELOY I LP	0	89	182	127	
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302	ELOY1302	BEN FATTO LTD PSHIP ETAL	5,172	645	1,669	1169	8/26/2026
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402	TBD	CITY OF ELOY	0	400	769	538	
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405	EDGEWATER NORTH RESIDENTIAL	TEXAS LAND HOLDINGS LLC	1,411	325	981	687	
406	EDGEWATER NORTH NON RESIDENTIAL	ELOY LAND INVESTMENTS LLC	0	162	58	41	
407	THE VILLAGES OF ELOY	SUSTAINABLE PROPERTY HOLDINGS LLC & HA GOLDEN COMPASS CENTRAL LLC	3,688	966	0	0	4/25/2023
408	COTTON CITY INDUSTRIAL PARK	RUC HOLDINGS ULC	0	269	513	359	
409	TBD	EMPIRE SOUTHWEST LLC	0	162	298	209	
410	GRAND VALLEY RANCH	SAN MIGUEL LLC	247	220	530	371	
411	GRANDE VALLEY ESTATES	ELOY 300 LLC	1,155	299	429	300	7/28/2023
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416	ELOY 812/SIERRA VISTA	KEATING SECURITIES LLC	1,759	812	1,037	726	
417	TOPAZ ESTATES	OASIS HOUSING LLC	200	39	43	30	
418	ISOM RANCH	MFC ARIZONA I LLC	1,889	562	752	527	
419	SILVER REEF	WALTON INTERNATIONAL & RUC HOLDINGS ULC	5,500	1,469	3,018	2113	
			138,384	**35,641**	**56,441**	**40,725**	

Date: 6/3/2022

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Legend

- City Well Site
- Potential Well
- Water Main
- 660' Water Main Buffer
- Railroad
- Paved
- Unpaved
- Water Resources Requested Outside Eloy CC&N
- Irrigation Right
- Solar Projects

Irrigation District

- Central Arizona Irrigation and Drainage
- Hohokam Irrigation District
- San Carlos Irrigation and Drainage District
- City Limits

City of Eloy
Department of Public Works
1137 W Houser Rd
Eloy, AZ 85131

ISSUE DATE OF LETTER

AVAILABILITY OF WATER/SEWER SERVICE TO PROPERTY

APPLICANT INFO

Name
Address
Project Name/ APN
Residential/Commercial/Industrial   If Residential, Number of Dwelling Units:
Estimated Water/Wastewater Demand
Wastewater Only: Industrial Pretreatment [YES/NO]

The City of Eloy hereby advises you [NAME OF OWNER OR AGENT] that your Project identified above is within the City of Eloy Service Area for Water/Sewer.

The City of Eloy currently has a Designation of Assured Water Supply issued by the Arizona Department of Water Resources for the amount of [DAWS Allocation]. Therefore, the City of Eloy has capacity to provide water and/or wastewater service to this Project. The City of Eloy guarantees to provide water and/or wastewater service for the Project subject to the following conditions:

1. The infrastructure to provide water and/or service is either currently in place, or will be constructed prior to the commencement of the Project; and
2. The Applicant must comply with all current rules, regulations, and policies of the City, as they are amended or may hereafter amended, whether written or otherwise in effect at the time of approval of an application for water and/or sewer; and
3. That there are no restrictive conditions that are beyond the City's control, such as the availability of water, acts of God, regulatory agency requirements or decisions, or legal actions initiated by others; and
4. That the Applicant will provide building plans to the City as required for review and approval; and

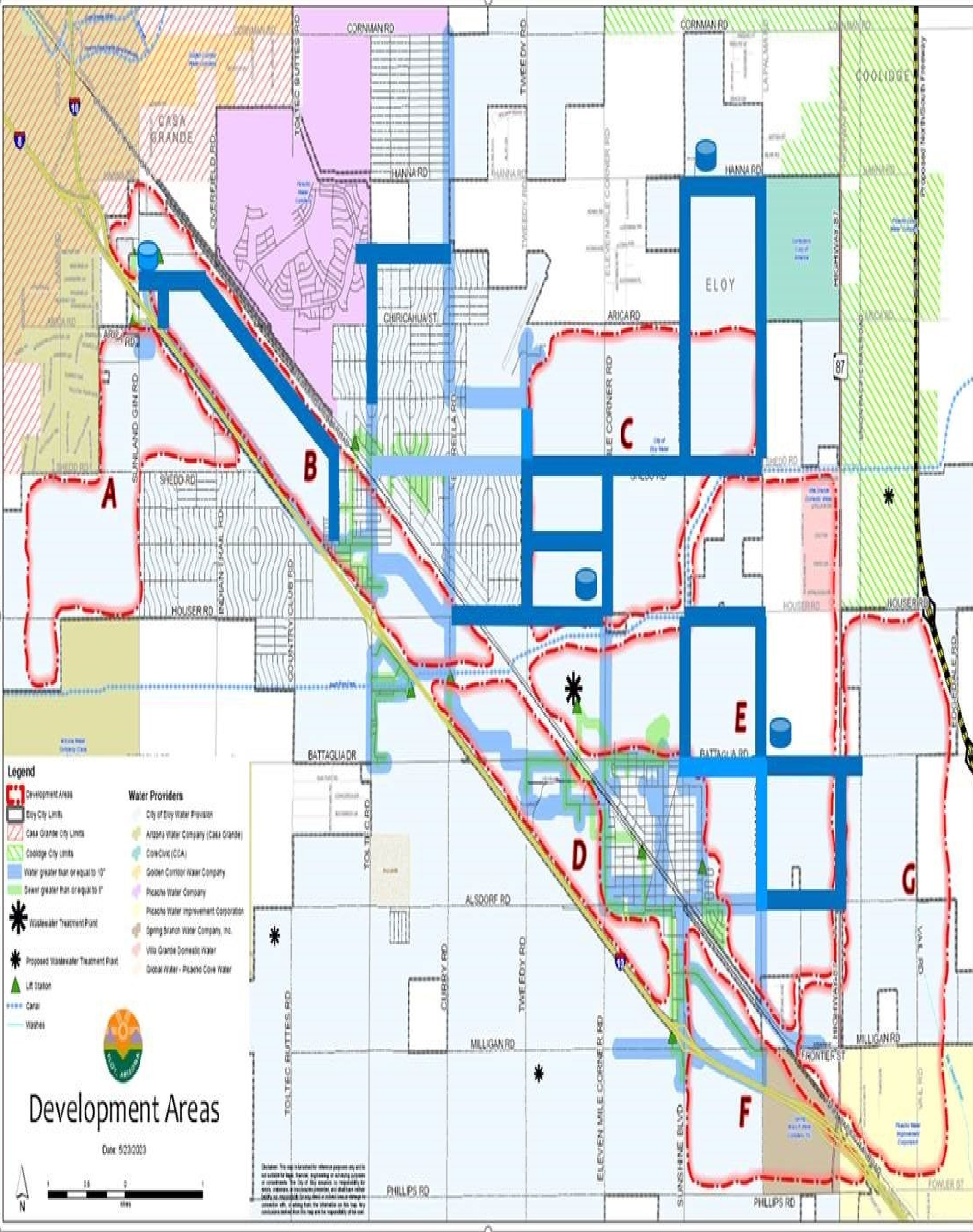
5. That the actual construction of the Project will commence within 1 year from the date of issuance of this letter and such construction will be completed within 18 months of the date of this letter.

This Letter will become null and void and be of no force or effect if any of the foregoing terms and conditions are not satisfied, and any fees paid to the City will be forfeit.

Sincerely,

Matthew D. Rencher, PE
Public Works Director/ City Engineer
City of Eloy, Arizona


Development Areas
Date: 5/23/2023
Legend
Development Areas
Eloy City Limits
Casa Grande City Limits
Coolidge City Limits
Water greater than or equal to 10"
Sewer greater than or equal to 8"
Wastewater Treatment Plant
Proposed Wastewater Treatment Plant
Lift Station
Canal
Washes
Water Providers
City of Eloy Water Provision
Arizona Water Company (Casa Grande)
CoreCivic (CCA)
Golden Corridor Water Company
Picacho Water Company
Picacho Water Improvement Corporation
Spring Branch Water Company, Inc.
Villa Grande Domestic Water
Global Water - Picacho Cove Water
ELOY, ARIZONA
A
B
C
D
E
F
G
CASA GRANDE
ELOY
COOLIDGE
CORNMAN RD
HANNA RD
ARICA RD
SHEDD RD
HOUSER RD
BATTAGLIA DR
BATTAGLIA RD
ALSDORF RD
MILLIGAN RD
FRONTIER ST
PHILLIPS RD
FOWLER ST
CHIRICAHUA ST
SUNLAND GIN RD
OVERFIELD RD
INDIAN TRAIL RD
COUNTRY CLUB RD
TOLTEC BUTTES RD
TOLTEC RD
CURRY RD
ESTRELLA RD
TWEEDY RD
TUMBLEWEED RD
ELEVEN MILE CORNER RD
SUNSHINE BLVD
LA PALMA RD
HIGHWAY 87
VAIL RD
EDGEDALE RD
UNION PACIFIC RAILROAD
Proposed North/South Freeway
Picacho Water Company
Golden Corridor Water Company
City of Eloy Water Provision
Corrections Corp of America
Villa Grande Domestic Water
Picacho Cove Water Company
Spring Branch Water Company Inc
Picacho Water Improvement Corporation
Arizona Water Company (Casa Grande)
Santa Rosa Canal
Eloy Landfill
Miles
1 0.5 0 1
N
Disclaimer: This map is furnished for reference purposes only and is not suitable for legal, financial, engineering, or surveying purposes or commitments. The City of Eloy assumes no responsibility for errors, omissions, or inaccuracies presented, and shall have neither liability nor responsibility for any direct or indirect loss or damage in connection with, or arising from, the information on this map. Any conclusions derived from this map are the responsibility of the user.



CORNMAN RD
HANNA RD
ARICA RD
SHEDD RD
HOUSER RD
BATTAGLIA DR
BATTAGLIA RD
ALSDORF RD
MILLIGAN RD
PHILLIPS RD
FRONTIER ST
FOWLER ST
CHIRICAHUA ST
TOLTEC BUTTES RD
OVERFIELD RD
SUNLAND GIN RD
INDIAN TRAIL RD
COUNTRY CLUB RD
TOLTEC RD
CURRY RD
TWEEDY RD
ELEVEN MILE CORNER RD
SUNSHINE BLVD
HIGHWAY 87
EDGEDALE RD
CASA GRANDE
COOLIDGE
ELOY
A
B
C
D
E
F
G
87
10
8
Legend
Development Areas
Eloy City Limits
Casa Grande City Limits
Coolidge City Limits
Water greater than or equal to 10"
Sewer greater than or equal to 8"
Wastewater Treatment Plant
Proposed Wastewater Treatment Plant
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Water Providers
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Arizona Water Company (Casa Grande)
CoreCivic (CCA)
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Picacho Water Company
Picacho Water Improvement Corporation
Spring Branch Water Company, Inc.
Villa Grande Domestic Water
Global Water - Picacho Cove Water
Development Areas
Date: 5/23/2023
N

Central Arizona Project (CAP)
&
Central Arizona Groundwater Replenishment District (CAGRD)
Expense Breakdown

The financial information below represents the City of Eloy's water purchases in the amount of **2,171 acre-feet** from the Central Arizona Project yearly. Eloy's water allocation has not changed since the inception of the agreement with CAP. However, in March 2021 the City of Eloy and the City of Surprise entered into an agreement that allows the City of Surprise to reimburse the City of Eloy for Surprise's use of a CAP allotment. The City of Surprise reimburses the City for all Capital and Municipal & Industrial (M & I) expenses related to their share of the CAP water. The City of Surprise's uses can fluctuate month to month depending on their needs.

The City of Eloy uses its share of the CAP designation for irrigation purposes at the Eloy Cemetery and Picacho Elementary School. The City invoices the elementary school district for their share which is nominal and under 3 acre-feet per year.

CENTRAL ARIZONA PROJECT (CAP)

Fiscal Year	Captial Charges	M & I Charges	Total CAP Charges
2023-2024	$ 80,136.00	$ 227,954.96	$ 308,090.96
2022-2023	$ 92,458.50	$ 544,554.51	$ 637,013.01
2021-2022	$ 108,550.00	$ 366,270.35	$ 474,820.35
2020-2021	$ 115,063.00	$ 329,955.52	$ 445,018.52
2019-2020	$ 121,576.00	$ 296,302.08	$ 417,878.08
2018-2019	$ 89,011.00	$ 254,948.25	$ 343,959.25
2017-2018	$ 97,695.00	$ 273,461.76	$ 371,156.76
2016-2017	$ 67,301.00	$ 343,151.74	$ 410,452.74
2015-2016	$ 49,933.00	$ 317,818.77	$ 367,751.77
2014-2015	$ 47,762.00	$ 297,897.50	$ 345,659.50
2013-2014	$ 43,420.00	$ 296,021.48	$ 339,441.48

The financial information below represents the annual replenishment membership dues to the Central Arizona Groundwater Replenishment District (CAGRD).

CENTRAL ARIZONA GROUNDWATER REPLENISHMENT DISTRICT (CAGRD) DUES

Fiscal Year	Annual Membership Rate	Quantity (acre/feet)	Total CAGRD Fees
2023-2024	$ 113.42	2,328.93	$ 264,147.24
2022-2023	$ 117.19	2,328.93	$ 272,927.31
2021-2022	$ 95.51	2,328.93	$ 222,436.10
2020-2021	$ 93.73	2,328.93	$ 218,290.61
2019-2020	$ 97.22	2,359.63	$ 229,403.23
2018-2019	$ 76.53	2,359.63	$ 180,582.48
2017-2018	$ 74.44	2,360.00	$ 175,678.40
2016-2017	$ 52.68	2,360.00	$ 124,324.80
2015-2016	$ 32.34	2,360.00	$ 76,322.40
2014-2015	$ 23.67	2,360.00	$ 55,861.20
2013-2014	$ 20.08	2,360.00	$ 47,388.80

The financial information below summarizes the two expenses, CAP and CAGRD, along with the revenue received from the City of Surprise for the purchase of their use of the CAP water.

The variance, shown in red, is the amount of money the City of Eloy's Water Fund pays to CAP and CAGRD. These expenses are supported through current water customer rates and fees.

Fiscal Year	Total CAP Expenses	Total CAGRD Expenses	Revenue from the City of Surprise	Variance (Revenue vs. Expenses)
2023-2024	$ 308,090.96	$ 264,147.24	$ 216,000.00	$ 356,238.20
2022-2023	$ 637,013.01	$ 272,927.31	$ 534,540.00	$ (375,400.32)
2021-2022	$ 474,820.35	$ 222,436.10	$ 475,710.00	$ (221,546.45)
2020-2021	$ 445,018.52	$ 218,290.61	$ 491,520.00	$ (171,789.13)
2019-2020	$ 417,878.08	$ 229,403.23	$ 288,200.00	$ (359,081.31)
2018-2019	$ 343,959.25	$ 180,582.48	$ 238,800.00	$ (285,741.73)
2017-2018	$ 371,156.76	$ 175,678.40	$ -	$ (546,835.16)

ASSURED WATER SUPPLY ALLOCATION, INFRASTRUCTURE AND CAGRD COST SHARING AGREEMENT

This Assured Water Supply Allocation, Infrastructure, and CAGRD Cost Sharing Agreement ("**Agreement**") is between ____ ____, ("**Landowner**") and the City of Eloy, an Arizona municipal corporation ("**City**" or "**the City**"). Landowner and City are sometimes referred to individually as "**Party**" and collectively as "**Parties**."

RECITALS

A. WHEREAS, City holds a designation of assured water supply ("**DAWS**") for the City's municipal water service and planning area (No. 86-402148.0001). City is a Member Service Area of the Central Arizona Groundwater Replenishment District ("**CAGRD**") and currently pays Membership Dues ("**CAGRD Dues**") to CAGRD for a calculated volume of groundwater replenishment services to support City's assured water supply within City's DAWS.

B. WHEREAS, The City has an application pending with the Arizona Department of Water Resources ("**ADWR**") for modification of its DAWS. The application for modification, if approved in its current form, will provide City with a determination of physically available groundwater that City may use to provide water service to customers and landowners within the City's service area, as the service area may be expanded as provided herein.

C. WHEREAS, the City's pending application for modification of its DAWS is dependent in part on the commitment of landowners within the City to construct the necessary infrastructure needed to provide water service to the lands within the City that are outside of the City's current operating water production and distribution system. It is also dependent in part on the individual landowner's agreement to accept water service from the City on the conditions and terms specified in this Agreement. This Agreement, together with others entered into as part of the DAWS modification process, will be submitted to ADWR in support of the application.

D. WHEREAS, Landowner owns approximately _____________ acres of land within the City boundaries, described in the attached **Exhibit A** ("**Landowner's Property**"). The Landowner's Property is currently subject to that certain Pre-Annexation and Development Agreement recorded in the Pinal County Recorder's Office as Fee No. ___________________ ("**Development Agreement**") executed by City _______________. The Development Agreement provides that landowner shall, as a condition to receiving water service under the City's DAWS, provide to City an alternative water supply to completely balance the water demands for the Landowner's Property within the City water service territory. [**This may have to be customized to each particular development agreement, or if there is no development agreement]** City acknowledges that this requirement may be waived under the terms of this Agreement, if City can maintain physically available groundwater within its DAWS to meet the demand of the Landowner's Property as specified herein.

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E. WHEREAS, Landowner is interested in maintaining the development potential of Landowner's Property. City and Landowner agree that if ADWR grants the City's pending application for a modified DAWS, the DAWS will significantly increase the development potential of Landowner's Property and the value thereof. City and Landowner are committed to preserving the development potential of Landowner's Property by entering into this Agreement.

F. WHEREAS, Landowner acknowledges that under Landowner's existing Development Agreement, Landowner is responsible for constructing any infrastructure, including wells, well sites, storage facilities and treatment facilities necessary for the City to provide service to Landowner's Property, all in accordance with City standards and ordinances. To most effectively maintain City's ability to obtain the modified DAWS, this may entail construction of distribution infrastructure from the City's existing service area to Landowner's Property. Landowner understands and agrees that this requirement is a prerequisite to access of City's water supply under the terms of this Agreement.

G. WHEREAS, City and Landowner also desire to execute a cost sharing arrangement between the City and Landowner, whereby Landowner pays a proportionate share of the City's CAGRD Dues ("**Landowner's CAGRD Share**"), corresponding to the Landowner's projected water demands, in exchange for City reserving that projected water demand within the City's DAWS for the benefit of Landowner as provided in this Agreement.

H. WHEREAS, City and Landowner have reviewed the City's preparation of the ADWR generic demand calculator for the projected water demand for Landowner's Property, and that a reasonable estimate of that projected demand (according to the calculator) is ____________ acre feet per year. City and Landowner acknowledge, however, that reasonable estimates for the projected demand for all developable lands within the City would far exceed the City's supply, even under the most favorable determination of the City's DAWS application by ADWR. Therefore, Landowner agrees, as provided herein, to accept the City approved volume of projected water demand for purposes of securing City's DAWS. Landowner understands that they may negotiate with other providers to augment the City's approved volume with the increment they believe is necessary to serve their intended development.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. <u>Incorporation of Recitals and Exhibits</u>. The Parties hereby adopt and incorporate, as if fully set forth herein, the Recitals stated above, and all Exhibits attached to this Agreement.

2. <u>Definitions</u>. Certain capitalized terms used in this Agreement are defined in **BOLD** in the foregoing Recitals and elsewhere in this Agreement. Other capitalized terms that are used refer to terms used in Arizona Revised Statutes, or in regulations adopted by ADWR. Any reference to these terms or the Arizona statutes or regulations shall mean those currently in effect, or as they may be amended/augmented in the future pursuant to duly authorized legislative or administrative action.

3. Effective Date. This Agreement shall take effect upon the full execution of this Agreement by the Parties. Upon execution by the City, City shall insert the date of that execution in the Effective Date blank in the City's signature block at the end of this Agreement.

4. Term and Expiration Date; Renewal. The Agreement is intended to endure until the full utilization of the Landowner's reserved water, or ten (10) years from the Effective Date, whichever occurs first. In the case of termination, modification, revocation, or expiration of the City's DAWS prior to the contemplated term of this agreement, this agreement shall also terminate. For purposes of this Agreement, the termination, modification, revocation, or expiration of the City's DAWS shall include any restriction placed upon the DAWS by CAGRD or ADWR that would prevent the City from providing water service to Landowner's Property as contemplated herein, including but not limited to ADWR's failure to approve the City's pending application for modification of its DAWS in a manner that would accommodate the intentions of this Agreement, but shall not include a modification, renewal, or extension of the DAWS that does not impair the City's ability to perform its obligations under this Agreement.

4.1 At the expiration of the initial 10-year term, City shall review Landowner's progress toward actual development and use of City's water allocation within Landowner's Property. If development is proceeding and at least fifty percent (50.0%) of the total projected water demand is in current use, City shall renew this Agreement for an additional ten (10)-year term, if that is consistent with the City's DAWS in effect at the expiration of the initial ten (10)-year term. If this condition is not met, City shall offer to meet and confer with Landowner regarding the prospect for continued development on Landowner's Property, if that is consistent with the extension of the City's DAWS in effect at the expiration of the initial 10-year term. If Landowner provides information, satisfactory to the City in City's sole discretion, City may extend the term for an additional five (5) years. At the end of the extended term, City shall again offer to meet with Landowner and discuss progress. City may, in its sole discretion, agree to continue the term for an additional five years or the scheduled termination of City's DAWS, whichever is less.

4.2 If any change beyond the control of City or Landowner occurs in any applicable law that makes this Agreement unenforceable or otherwise prohibits performance of either party's obligations or the reservation and allocation of water as provided in the Agreement, or any termination, modification, revocation or expiration of the City's DAWS occurs during the otherwise unexpired term of this Agreement that impairs the City's ability to fully perform this Agreement, this Agreement may be terminated upon seven (7) calendar days' written notice by City to Landowner, or upon mutual assent. Neither City nor Landowner shall attempt in any way, directly or indirectly, to support any change in law that would adversely affect the full performance of the Agreement. If such change, as contemplated by this paragraph, occurs such that this Agreement cannot be entirely fulfilled by the City, or in part, City's performance obligation under this Agreement shall be reduced, or terminated, in accordance with such limitation imposed.

5. Creation of City Cost Share Account. The City has created a special accounting procedure to receive and track funds submitted and released pursuant to this Agreement ("**City Cost Share Account**"). City shall use due care and commercially reasonable standards to maintain the City

Cost Share Account so that it may receive and segregate any funds submitted pursuant to this Agreement and hold those funds in trust for the benefit of Landowner until such time as the funds are paid to CAGRD. The City Cost Share Account shall receive the funds for Landowner's Share of the CAGRD Dues as provided below. Release of funds from the City Cost Share Account to City shall be based upon performance of City's obligations as provided herein. If this Agreement is terminated prior to the full expiration of its intended term, as provided above, any funds remaining in the City Cost Share Account, paid by Landowner but not subject to payment to CAGRD, shall be released to Landowner consistent with the calculations below.

6. City's Pending DAWS Application. City agrees to pursue the pending application for modification of its DAWS No. 86-402148.0001 (as filed with ADWR on September 28, 2021).

6.1 City shall cooperate with CAGRD to retain and preserve groundwater replenishment services under the City's existing Member Service Area Agreement.

6.2 Landowner agrees to cooperate with City in stating the projected demand for Landowner's Property at _______ acre-feet per year for the purpose of advancing City's pending DAWS application, subject to increase or decrease as provided herein.

6.3 Landowner shall cooperate with City to timely provide information, including projected water utilization rates based on the phased development of Landowner's Property, necessary for a proper and effective DAWS, including for purposes of projecting CAGRD Membership Dues.

7. City Obligation to Pursue and Maintain DAWS; Calculation of Landowner's Reserved Water. City shall use commercially reasonable efforts and prudent measures to pursue the pending DAWS application to obtain the maximum amount of physically available groundwater to be included within the DAWS. Landowner and City acknowledge that ADWR may reach a final decision on the DAWS application that results in less physically available groundwater than City's current projected demand volume. To the extent reasonably possible, City shall allocate the final volume of physically available groundwater (as determined by ADWR to be included within City's final DAWS) equitably among all similarly situated landowners (as defined in Section 20 below in this Agreement) included within City's pending DAWS application based on a pro-rata reduction among all such landowners. The pro-rata reduction shall be based upon the relative percentage share that each landowner's projected demand in proportion to the total projected demand of all similarly situated landowners. In the event that ADWR declines or refuses to accept the Landowner's proposed development as properly included within the DAWS and reduces the volume of the DAWS accordingly, City may terminate this Agreement upon issuance of the final DAWS by ADWR. Landowner agrees to accept such reduction or termination as full compliance with City's obligation to acquire and hold Landowner's reserved water under the terms of this Agreement. Upon issuance of the final DAWS, City shall thereafter maintain, through commercially reasonable efforts and prudent measures, the City's DAWS as issued by ADWR consistent with this Agreement and that the DAWS is not thereafter revoked, modified or otherwise changed in any manner that would negatively affect the reservation of water to Landowner as provided herein. Landowner recognizes that, despite City's efforts, the City's DAWS may be denied, reduced, revoked or modified over the objection of City.

8. Reservation of Groundwater within City DAWS. City shall reserve within its DAWS portfolio Landowner's pro-rata share of physically available groundwater and CAGRD

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replenishment capacity for the exclusive benefit of Landowner, as described and limited herein, provided Landowner meets their obligations under this Agreement.

8.1 The Landowner's reserved water is intended for Landowner's Property. Landowner may assign all or a portion of the Landowner's reserved water, together with all or a portion of this Agreement, to a purchaser of all or a portion of Landowner's Property. Notwithstanding the foregoing, Landowner is not required to use all of the Landowner's reserved water for Landowner's Property and Landowner may, with the consent of City as provided below, assign the Landowner's reserved water, or portion thereof, along with the associated CAGRD Dues payment obligation, to another development meeting one of the following conditions:

8.1.1 A subdivision or master planned community within the City that has a development agreement and/or final plat pending with the City providing for City water service. Landowner may conditionally assign reserved water to the proposed development agreement and/or final plat, but such assigned water shall be dependent (conditioned) on final approval of the development agreement and/or final plat by the City; or

8.1.2 A subdivision or master planned community located outside the City that has a pre-annexation development agreement pending with the City providing for annexation into the City and providing for City water service. Landowner may conditionally assign reserved water to a proposed pre-annexation development agreement, but such assignment shall be dependent (conditioned) on final approval of the annexation and the approval of the pre-annexation development agreement by the City.

8.2 Once the Landowner's reserved water or portion thereof is assigned, that water or portion thereof, with the consent of the City and the assignees, may also be assigned to subsequent purchasers of all or portions of the same land that is the subject of the original assignment, but shall not otherwise be further assigned.

8.3 Nothing herein shall require City to approve any subdivision plat, development agreement or pre-annexation development agreement based solely upon the assignment of Landowner's reserved water. Any proposed final plat, development agreement or pre-annexation development agreement must be properly approved through normal City planning, zoning and platting processes. For any proposed assignment, City shall have the right to assure, using commercially reasonable standards, that the original and subsequent assignees are financially capable of undertaking the cost sharing obligation and applying the assigned water to a beneficial use within the City.

8.4 The Landowner and City agree that in any initial assignment, Landowner may recoup from the assignee Landowner's investment (including Landowner's reasonable costs in creating and maintaining this Agreement) for the reserved water, without interest thereon, to the effective date of the assignment. Such recoupment may include a proportionate share of all funds paid into the City Cost Share Account by Landowner as of the date of assignment, but in no event more than the amount of funds that Landowner has actually paid to City.

8.5 Any such assignment shall have the effect of reducing the amount of water reserved to Landowner and shall carry with it the obligation by the assignee to continue the cost sharing arrangements and all remaining terms of this Agreement. Upon City's approval of the assignment, Landowner shall be released from that obligation (or portion of obligation) so assigned and all responsibilities for payments to City for the applicable portion of the assigned water shall be assumed exclusively by the applicable assignee.

8.6 Landowner may, with City's consent, assign their rights under this Agreement to a wholly owned affiliate of Landowner, which affiliate may thereafter assume all rights and responsibilities of Landowner.

8.7 City consent to any assignment by Landowner under this Agreement shall not be unreasonably withheld, conditioned or delayed, if the assignment meets the requirements specified above.

8.8 City may, in its discretion, use non-groundwater supplies within its DAWS portfolio to fulfill the water demand contemplated herein so long as the developer's cost of infrastructure to produce, treat and deliver the non-groundwater supply does not exceed the cost of infrastructure to produce, treat and deliver groundwater for the development. Landowner or assigns shall be entitled to use the reserved groundwater as the cost standard for any proposed alternative and City shall not require an alternative supply as a condition to any development agreement unless the costs of such supply can be matched to the cost to produce, treat and deliver groundwater to that development.

9. <u>Calculation of Landowner's Share of CAGRD Dues</u>. The amount of the yearly CAGRD Dues to be paid by Landowner under this Agreement ("**Landowner's CAGRD Share**") shall be based on the ratio between the Landowner's reserved water volume and the total volume of groundwater determined to be physically available to City within the City's DAWS (currently 48,545 acre feet). Thus, if the calculation were made based upon City's existing DAWS (without the pending modification), that ratio would be:

________ acre feet ÷ 48,545 = _____ or _____%

If this ratio were applied to the CAGRD Dues paid by City for the 2021-2022 CAGRD year ($222,436.10), **WE NEED TO UPDATE THIS CALCULATION** the Landowner's Share would be $__________. The Parties agree that this calculation is by way of example. The 2022-2023 CAGRD Dues will be based upon the City's existing DAWS volume of groundwater (48,545 acre feet) and the 2022-2023 Annual Membership Dues rate applied by CAGRD for the upcoming year. The Parties recognize that if City's DAWS is modified and the total volume of groundwater is reduced below the existing 48,545 acre feet, the ratio between Landowner's Reserved Water and the total volume of groundwater within the City's modified DAWS will also change. The Parties further recognize that while the CAGRD five percent (5%) minimum applies in the immediate future, that will eventually change based on City's actual replenishment obligation, and the CAGRD Dues will be calculated accordingly. The intent of the Parties is that Landowner~~s~~ shall pay the Landowner's Share of the CAGRD Dues as those CAGRD Dues are calculated, and invoiced, by CAGRD.

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10. Buy-In Fee for DAWS Participation. In addition to the annual payment for Landowner's CAGRD Share, Landowner shall be required to pay an initial fee ("**Buy-In Fee**") for participation in the City's modified DAWS. The Buy-In Fee shall be calculated using the same percentage of Landowner's CAGRD share as defined above. That percentage shall be applied to all CAGRD costs for CAGRD Dues that City has paid from its original DAWS (2006) through the end of calendar year 2022. The Buy-In Fee for Landowner is calculated at $___________. The Buy-In Fee shall become due and payable upon issuance of a final Decision and Order from ADWR modifying the City's DAWS.

11. Payment of Landowner's CAGRD Share and Buy-In Fee. After the Effective Date, and upon issuance of the City's amended DAWS by ADWR as contemplated under this Agreement, City shall calculate the Landowner's Share of the CAGRD Dues based upon the volume of physically available groundwater preserved in the final DAWS and the Landowner's reserved water. City shall invoice Landowner for the initial first year payment under this Agreement based on the 2023-2024 CAGRD Dues year invoice to City, anticipated to be received by City in August, 2023. The initial invoice shall include the Buy-In Fee. Landowner shall, within thirty (30) calendar days of the invoice from City to Landowner, pay Landowner's CAGRD Share of the 2022-2023 CAGRD Dues and the Buy-In Fee to City for deposit into the City Cost Share Account. The Buy-In Fee shall be released to City and, if City has paid the 2022-2023 CAGRD Dues, Landowner's CAGRD Share shall also be released to City.

11.1 Thereafter, Landowner shall pay to City for deposit into the City Cost Share Account the calculated Landowner's CAGRD Share for the upcoming year. For example, in August 2023, City will receive another invoice for CAGRD Dues for CAGRD year 2023-2024. City shall calculate Landowner's Share according to the ratio formula above and invoice Landowner for that amount. Landowner shall pay that amount to City for deposit into the City Cost Share Account within thirty (30) calendar days from the date of City's invoice. City may release the funds to City to pay CAGRD's invoice to City. If Landowner has not paid its future CAGRD Dues within sixty (60) calendar days from invoice by the City, City may terminate this agreement for cause.

11.2 If Landowner and City extend this Agreement as provided above, Landowner and City shall continue the payment schedule as provided above, uninterrupted, through the duration of this Agreement, as extended.

12. Adjustment of Landowner's CAGRD Share. During the term of this Agreement, the Landowner's CAGRD Share will vary according to CAGRD's calculation of those dues (including the CAGRD rate for those dues and CAGRD's calculation of the City's replenishment obligations) but will also vary according to the use of the reserved water by Landowner. Landowner's CAGRD Share for each year payable under this Agreement shall be adjusted as follows:

12.1 If Landowner assigns a portion of the reserved water to a third party, as provided for in this Agreement, the assignee shall assume all of the responsibilities of Landowner for the portion of the water so assigned, including the obligation to pay that respective portion of the Landowner's CAGRD Share. Upon such assignment, Landowner shall only remain obligated to pay City for the Landowner's remaining share of the reserved water. The assignment shall not affect the funds in the City Cost Share Account, which will remain available to City as provided herein, but

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Landowner’s CAGRD Share shall be adjusted upon the next CAGRD Dues payment due from Landowner.12.2 Upon sale of lots within any development where the Landowner’s reserved water is used requiring payment of CAGRD Activation Fees, the cost sharing of CAGRD Membership Dues shall cease in the amount of projected (now committed) groundwater demand associated with the lots at the time a Certificate of Occupancy (COO) is issued and when water use commences on related common areas for which the Activation Fees were paid. Thereafter, associated replenishment obligations incurred shall be paid for those lots by City. Such reduction shall not affect the funds in the City Cost Share Account, which will remain available to City as provided herein, but Landowner’s Share shall be adjusted upon the next CAGRD Dues payment due from Landowner

12.3 To the extent necessary, City and Landowner and any Landowner assigns shall cooperate with City to establish sub-accounts to receive funds from Landowner and any third party assigns such that City may withdraw funds from City Cost Share Account as provided herein to cover the proper amount of CAGRD Dues for the Landowner’s reserved water under this Agreement.

13. Water Service Infrastructure; Line Extension Agreement. Landowner shall be responsible, at Landowner’s sole cost and expense, for the planning, design and construction of all infrastructure necessary to extend City municipal water service from City’s existing water production and distribution system to Landowner’s Property, including but not limited to the construction of transmission pipelines, additional water wells, storage, treatment, delivery and metering infrastructure. Upon commencement of Landowner’s development of Landowner’s Property, Landowner will submit for review and approval the plans for water production and delivery, and other public improvements necessary to provide potable water service to Landowner’s Property (collectively the "**Infrastructure**") as necessary and required for the development of Landowner’s Property (collectively referred to as the "**Infrastructure Plans**"). Landowner and City shall, as a condition of approval of the Infrastructure Plans, enter into an agreement (“**Line Extension Agreement**”) specific to the design and construction of the Infrastructure needed for municipal water service extension to the Landowner’s Property. Such Line Extension Agreement shall incorporate the following terms in their material aspects, adjusted as necessary for the specific needs of the Landowner’s Property.

14. Infrastructure Design Concepts. City design standards, requirements and specifications in the Subdivision Ordinance ("**Subdivision Design Standards**"), in effect as of the effective date of the Line Extension Agreement, and any exceptions and variances as may be granted by City, shall be the standard used for Infrastructure requirements and design criteria. Landowner shall notify City Engineer at the time design is started for the Infrastructure or a portion thereof to determine the then applicable Subdivision Design Standards. These Subdivision Design Standards shall include, but not be limited to, design criteria for extension of the City’s existing operating distribution system to the site sufficient to provide service to bona fide customers of City water service, as well as materials specifications for infrastructure improvements required by the Engineering Design Standards for Infrastructure. City and Landowner acknowledge that amendments to the Infrastructure Plans and/or the infrastructure and design standards and specifications for the Landowner’s Property may be necessary from time to time. If City and Landowner jointly determine that amendments are necessary to the Infrastructure Plans, infrastructure and design standards, or infrastructure specifications, Landowner and City (through

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an authorized administrative official), to the extent permitted by applicable law, shall effectuate such amendment(s). Such City administrative approval shall not be unreasonably denied and Landowner shall have an appeal right to the City Council.

15. Infrastructure Construction. All Infrastructure contained in the Infrastructure Plan may be phased and shall be constructed pursuant to the Infrastructure Plan and the Line Extension Agreement. Construction of the Infrastructure shall be performed in a timely and workmanlike manner and in compliance with applicable federal, state, county and local laws. To the maximum extent practical, the prior dedication of any easements or rights-of-way shall not affect or proscribe Landowner's rights to construct the Infrastructure. The parties hereto acknowledge and agree that City, as necessary to implement construction of the Infrastructure, shall cooperate reasonably and may assist in:

15.1 At the sole cost of Landowner, the abandonment of any unnecessary public rights-of-way or easements currently located on the Property and not otherwise used or required by other members of the public;

15.2. Providing Landowner and its agents with the right to enter, remain upon and cross over City easements or rights-of-way to the extent reasonably necessary to design and/or construct the Infrastructure, provided that the Landowner's use of such right does not impede or materially adversely affect City's use and enjoyment of the subject property and provided also that Landowner shall restore such easements and rights-of-way to substantially the same condition as existed prior to Landowner's entry.

15.3 At the sole cost of Landowner, City shall assist in the acquisition and/or condemnation of private property as may be reasonably necessary for public rights-of-way or easements not currently located on the Landowner's Property and required to be consistent with the Infrastructure Plans or to provide access to the Landowner's Property pursuant to the Infrastructure Plans; and

15.4 Submitting requests, or filing applications, or entering into appropriate intergovernmental agreements with Pinal County or other appropriate governmental entities regarding the acquisition or abandonment of public rights-of-way or easements necessary to develop the Landowner's Property.

16. INFRASTRUCTURE FINANCIAL ASSURANCES. Before recordation of a particular final plat, Landowner agrees to provide financial assurances as required by the City Code to assure the installation of the Infrastructure directly related to such final plat. All financial assurances provided by Landowner shall relate to that construction which Landowner undertakes. Landowner may elect, at Landowner's sole discretion, one or more of the following methods of financial assurance:

16.1 An irrevocable letter of credit from a recognized financial institution acceptable to City, authorized and licensed to do business in the State of Arizona;

16.2 Cash or certified bank funds to be held by City in an escrow account;

16.3 A performance surety bond executed by a company acceptable to City and licensed to conduct surety business in the State of Arizona;

16.4 Dual beneficiary letter of credit from a recognized financial institution acceptable to City, authorized and licensed to conduct business in the State of Arizona; and/or

16.5 Such other assurance mechanism agreed to by the parties to this Agreement, such as (i) withholding of the issuance of a certificate of occupancy until such time that all required subdivision improvements have been completed, (ii) placing a lien against other free and clear land owned by Owner, or (iii) third-party trust agreement.

City may allow a partial release of assurances for a portion of a phase in which the Infrastructure has been completed rather than waiting for a total release upon completion of the Infrastructure for an entire phase.

17. Dedication of Infrastructure. Upon completion of the installation and construction of the Infrastructure, or a portion thereof, Landowner shall convey the completed Infrastructure to City, lien and debt free. The procedure for dedication and acceptance of Infrastructure by City shall be as follows:

17.1 Landowner shall give City written notice ("**Notice to Confirm**") promptly following completion of Infrastructure or any portion thereof so long as any portion of completed Infrastructure is a discrete portion and its suitability for its purpose can be adequately determined;

17.2 Within fourteen (14) calendar days after receipt of the Notice to Confirm, City shall inspect the Infrastructure identified therein as to whether it has been constructed in accordance with the City-approved plans and specifications. Upon completion of the inspection, City shall deliver written notice to Landowner either: (i) approving construction and agreeing to accept conveyance of such Infrastructure; or (ii) identifying the specific items that are not in accordance with the City-approved plans and specifications and that are to be corrected by Landowner.

17.3 Upon acceptance of each component of Infrastructure, City shall release the financial assurance(s) provided by Landowner for such accepted Infrastructure unless that financial assurance is in an amount securing a larger portion of Infrastructure. If the financial assurance is in an amount securing a larger portion of Infrastructure, City will only release the financial assurances for the aggregate, if Landowner provides another acceptable assurance in the lower amount.

17.4 Landowner or its successors and assigns shall give to City a one (1)-year warranty for all Infrastructure, such warranty shall begin on the date that City accepts the Infrastructure. Any material deficiencies in materials or workmanship identified by City Staff during the one (1)-year warranty period shall be brought to the attention of Landowner, its successors, or assigns, who provided the warranty, who shall promptly remedy or cause to be remedied such deficiencies to the reasonable satisfaction of the City's Staff. Regardless of whether the one (1)-year warranty period has expired, Landowner agrees to repair any damage to the Infrastructure caused by Landowner's, a commercial builder's, or a homebuilder's construction activities on the Landowner's Property. Nothing contained herein shall prevent City or Landowner from seeking recourse against any other third party for damage to the Infrastructure caused by such third party.

18. Landowner's Monetary Performance and Forfeiture. Landowner agrees to maintain the cost sharing obligations of this Agreement throughout the term of the Agreement, subject to assignment and adjustment as provided herein. In the event that Landowner defaults upon any required payment ("**Monetary Default**"), City may elect to cancel the reservation of the Landowner's reserved water remaining available to Landowner and withdraw the remaining funds from the City Cost Share Account to cover the Landowner's cost sharing obligation as the sole financial remedy against Landowner. Upon cancellation, Landowner's interest in any (or all) remaining (unallocated) Reserved Water shall immediately terminate and City shall assume control of all such remaining reserved water. City may take appropriate actions, as provided by law, to revoke any prior approvals, agreements and/or zoning on the lands that relied upon the reserved water and the Landowner's performance of Landowner's continuing obligations under this Agreement.

18.1 For purposes of this Agreement, if City alleges a Monetary Default by Landowner, City shall provide Landowner with notice of such default, specifying the nature of the default and the amount of the default. Landowner shall have thirty (30) calendar days to cure the default with a 1% penalty, and upon such cure, this Agreement shall remain in effect. If Landowner disputes the default or amount thereof, such dispute shall be resolved according the dispute resolution provisions of this Agreement.

19. Provision of Notice of Intent to Serve. City shall issue a Notice of Intent to Serve (or similar document required by ADWR or the Arizona Department of Real Estate) for any subdivision proposed by Landowner or their assigns subject to, and as part of, the normal subdivision platting process, provided Landowner, or assignees, have complied with the material terms of the Agreement and other City ordinances and regulations. City shall thereby provide the necessary assured water supply commitment for that subdivision to allow recordation of the final plat(s) and issuance of the public subdivision report(s) up to the prior City approved maximum amount of Landowner's reserved water. City shall track and record the volume of committed demand made by each Notice of Intent to Serve and recorded plat and shall make that information available to Landowner (or Landowner's assigns, as applicable) on a periodic basis to allow Landowner or Landowner's assigns to plan successive subdivisions/developments.

20. Definition of Similarly Situated Landowners. The volume of water reserved to Landowner pursuant to this Agreement is subject to revision as provided herein. For purposes of this Agreement, City agrees to use this form of agreement (in material terms, customized for each participating landowner) for each landowner seeking to participate in City's application for the modified DAWS. City and Landowner acknowledge and agree that the certain agreement between City and Linmark, LLC and Musulin Irrevocable Education Trust, dated August 23, 2021, is different than this Agreement and shall not be used for comparison purposes in evaluating any adjustment provided for in this Agreement based on similarly situated landowners.

21. General Terms.

21.1 Entire Agreement. This Agreement constitutes the sole and entire agreement between the Parties with respect to the matters described herein and supersedes any prior or contemporaneous agreements, understandings or undertakings, written or oral, between the Parties regarding the matters covered herein.

21.2 Amendments. This Agreement shall only be modified, amended or restated by a writing duly executed by the Parties.

21.3 Notices and Filings. Any and all notices, consents or other communications required or permitted by this Agreement shall be transmitted in writing and personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, or sent by a nationally recognized overnight carrier with tracking information, addressed as follows:

To City:
City Manager
595 North C Street, Suite 104
Eloy, Arizona 85131
Phone 520.466.9201

To Landowner:
____
____
____
____

The foregoing addresses or contact information may be changed to any other valid person or address as any of the Parties hereto may, from time to time, designate in writing. Any communication so transmitted shall be deemed to have been received as of the date of delivery if hand delivered (with written confirmation of delivery), or as of forty-eight (48) hours following deposit in the U.S. Mail, postage prepaid and addressed as set forth above, or upon notification of delivery by overnight carrier.

21.4 Successors and Assigns. This Agreement is binding on successors and assigns of the Parties if such succession or assignment is by operation of law. Neither City nor Landowner shall voluntarily assign their rights, obligations or interest in this Agreement without the prior written consent of the other, and any attempted voluntary assignment without such consent shall be void and of no effect.

21.5 No Agency or Partnership. Neither Party is acting as the agent of the other with respect to this Agreement. This Agreement shall not be deemed to create a partnership, joint venture, or other business relationship between City and Landowner.

21.6 Conflicts of Interest. This Agreement is subject to the provisions of A.R.S. § 38-511, and may be terminated by City in accordance with such provisions.

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21.7 Calendar Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

21.8 No Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by City or Landowner of the breach of any covenant or condition of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

21.9 Default. Any Party shall be in default under this Agreement if that Party fails to satisfy or perform any due and owing term, obligation or condition as required under this Agreement. A Monetary Default by Landowner shall be governed by Paragraph 13 above. For all other defaults, such default shall accrue within twenty-one (21) calendar days following written notice from the other Party ("**Notice of Default**"). The Notice shall set forth the specific reasons why the Party claims the other Party has failed to satisfy any term, obligation or condition hereof. A Party shall not be in default if the Party agrees to cure, and commences to cure any deficiencies within the twenty-one (21) calendar days after receipt of Notice of Default and does cure such deficiencies with diligence and within a reasonable time thereafter. Any Party may contest a Notice of Default by responding in writing to the other Party within the twenty-one (21) calendar days after receipt of the Notice of Default. Any such response shall state the reasons why the Party claims not to be in default. If any default is alleged and contested, the Parties agree to meet and confer in good faith and attempt to resolve the dispute in an amicable manner. If that is not possible, the Parties shall proceed to mediation and arbitration as provided below.

21.10 Mediation and Compulsory Arbitration. If a dispute arises out of or related to this Agreement, the Parties agree to proceed in good faith through mediation before resorting to arbitration or some other dispute resolution. In the event that the Parties cannot agree upon the selection of an Arizona based mediator within seven (7) calendar days, either Party may request a presiding judge of the Pinal County Superior Court to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool. If the dispute is not resolved within thirty (30) calendar days of from the date a mediator is selected or appointed, the mediation will be deemed to have failed and the obligation hereunder satisfied; provided, however, if the Parties and the agreed upon mediator cannot in good faith schedule a meeting to mediate the dispute within the time stated in the foregoing clause, the period of time stated in the foregoing clause shall be extended by an additional thirty (30) calendar days. The terms of this Paragraph shall survive the expiration or earlier termination of this Agreement.

21.10.1 Arbitration. If a dispute cannot be resolved as set forth above, the matter shall be submitted to binding arbitration in accordance with the rules of commercial arbitration ("**Rules**") then followed by the American Arbitration Association ("**AAA**") in Phoenix, Arizona. If the claim in dispute does not exceed $20,000, then there shall be a single arbitrator selected by mutual agreement of the parties, and in the absence of agreement, appointed according to the Rules. If the claim in dispute exceeds $20,000, the arbitration panel shall consist of three (3) members, one of whom shall be selected by Landowner, one of whom shall be selected by City, and the third, who shall serve as chairman, shall be selected by the AAA. The arbitrator or arbitrators must be knowledgeable in the subject matter of the dispute. The costs and fees of the arbitrator(s) shall be divided equally between the parties. Any decision of the arbitrator(s) shall be supported by written findings of fact and conclusions of law and shall be based upon sound engineering and water management practice. The decision of the arbitrator(s) shall be final, subject to the exceptions outlined in the Arizona Uniform Arbitration Act, A.R.S. Section 12-1502, et seq., and judgment may be entered upon the same; provided, however, that any decision of the arbitrator(s) may be appealed to the Superior Court of Pinal County if it is based on an erroneous interpretation, application or disregard of the law applicable to the dispute. The arbitrator(s) shall control discovery in the proceedings and shall award the prevailing party its reasonable attorneys' fees and costs.

21.11 Specific Performance. The Parties acknowledge and agree that the subject matter of this Agreement is unique and, in cases other than a Monetary Default, money may not be an adequate remedy. The Parties acknowledge and agree that specific performance may be an available remedy to either Party for a default other than a Monetary Default.

21.12 WAIVER OF JURY TRIAL. UNLESS EXPRESSLY PROHIBITED BY LAW, EACH OF THE PARTIES VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY AND ALL ACTIONS OR OTHER LEGAL PROCEEDINGS AGAINST THE OTHER PARTY ARISING OUT OF OR RELATING TO THIS AGREEMENT.

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

21.14 Fair Interpretation. The terms and provisions of this Agreement represent the result of negotiations between the Parties, each of which has had the opportunity to consult with counsel of their own choosing and/or has been represented by counsel of their own choosing, and none of whom has acted under any duress or compulsion, whether economic or otherwise. Consequently, the Parties agree the terms and provisions of this Agreement shall be construed according to their usual and customary meanings, and the Parties each hereby waive the application of any rule of law (common law or otherwise) that ambiguous or conflicting terms be resolved against the Party who prepared, or whose attorney prepared, the executed

Agreement or any earlier draft of same. The terms of this Paragraph shall survive the expiration or earlier termination of this Agreement.

21.15 Choice of Law, Venue, and Attorney's Fees. In any dispute under this Agreement, the successful Party shall be entitled to collect from the other Party its reasonable attorneys' fees, and other costs as determined by Arbitration or a Court of competent jurisdiction. The Parties agree that any dispute, controversy, claim or cause of action arising out of or related to this Agreement shall be governed by the laws of the State of Arizona. The Parties further agree that the venue for any dispute, controversy, claim or cause of action arising out of or related to this Agreement shall be Pinal County. The terms of this Paragraph shall survive the expiration or earlier termination of this Agreement.

21.16 Survival Clause. All provisions in this Agreement that logically ought to survive the expiration or earlier termination of this Agreement shall survive the expiration or earlier termination of this Agreement whether such survival is expressly mentioned or not.

21.17 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one agreement, binding on the Parties. Landowner shall deliver an original of this Agreement to the City for City's official records.

IN WITNESS WHEREOF, and agreeing to be bound by the terms of this Agreement, City and Landowner have caused this Agreement to be executed by their duly appointed representatives.

[SIGNATURES ON FOLLOWING PAGES]

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Landowner:

____,

By: ______________________________

Its: ______________________________

State of Arizona)
) ss.
County of Maricopa)

The foregoing Agreement was acknowledged before me this _____ day of ____________________, 2023, by ______________________________, the ______________________________ of ____________________________________ who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to and acknowledged to me that he being authorized to do so, executed the foregoing instrument for the purposes therein contained.

____
Notary Public

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CITY:

CITY OF ELOY, an Arizona municipal corporation,

By: ______________________________________

Its: Mayor

Effective Date: _______________________________

STATE OF ARIZONA)
) ss.
County of Pinal)

The foregoing Agreement was acknowledged before me this _____ day of ___________________, 2023, by ____________________________, the Mayor of the CITY OF ELOY, an Arizona municipal corporation, for and on behalf thereof.

____
Notary Public

Attest:

____
City Clerk

Approved as to Form:

____
City Attorney

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EXHIBIT A

Description of Landowner's Property