

Staff Summary Report

Council Meeting Date: 12/06/07

Agenda Item Number: 25

SUBJECT: Request approval of a revised Maintenance Agreement for The Pier at Town Lake Improvement District No. 180.

DOCUMENT NAME: 20071206PWCH09 IMPROVEMENT (ASSESSMENT) DISTRICTS (0805-80), IMPROVEMENT DISTRICT I.D. 180, PROJECT NO. 5103011.

SUPPORTING DOCS: Yes

COMMENTS: Revised Maintenance Agreement for the Pier at Town Lake.

PREPARED BY: JIM BOND, ASSISTANT CITY ENGINEER (x8897)
CYNTHIA McCOY, ASSISTANT CITY ATTORNEY (x2187)

REVIEWED BY: ANDY GOH, DEPUTY PW MANAGER/CITY ENGINEER (x8896)

LEGAL REVIEW AS TO FORM: ANDREW CHING, CITY ATTORNEY (x8575)

FISCAL NOTE: Funding for construction of this Improvement District (I.D.) will be completed through the issuance of I.D. bonds, whose debt service costs are paid through assessments on private properties within the Improvement District. The developer and/or future owners are agreeing via the Maintenance Agreement to maintain all of the items noted in the agreement at their cost and at no additional cost to the City.

RECOMMENDATION: Approve the revised Maintenance Agreement for The Pier at Town Lake.

ADDITIONAL INFO: The developer of The Pier at Town Lake has requested the City to allow enhanced pavement, lighting, landscaping and other amenities for this project. The developer is aware that a higher level of maintenance will be required for the proposed enhancements and has, therefore, agreed to maintain those items at its cost. The Tempe City Council approved the original Maintenance Agreement at the October 4, 2007, council meeting. Since that time, attorneys for both the City and the developer have collaborated on revisions to the original agreement to more clearly describe the assumption of risk by the developer and negligence by the City.

Approved by Glenn Kephart, Public Works Manager

MAINTENANCE AGREEMENT

This Agreement ("Agreement") is entered into this 20th day of September, 2007 (the "Effective Date") by and between the City of Tempe, an Arizona municipal corporation (the "City") and Pier At Town Lake, L.L.C., a Delaware limited liability company ("Developer").

WHEREAS, the City owns the real property depicted on Exhibit A attached hereto (the "Linear Park"); and

WHEREAS, pursuant to a Development and Disposition Agreement between the parties, Developer is developing the real property adjacent to the Linear Park depicted on Exhibit B attached hereto (the "Developer Property"); and

WHEREAS, as part of its development plan for the Developer Property, Developer intends to construct and dedicate to the City a central plaza, as depicted on Exhibit C attached hereto (the "Plaza"); and

WHEREAS, Developer has agreed to maintain the Plaza and the landscape improvements on a portion of the Linear Park (the "Improvements"), and the public infrastructure improvements other than the water and sewer lines (the "Infrastructure").

NOW THEREFORE, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

1.1 Linear Park. The term "Linear Park" shall mean and refer to the real property depicted in *Exhibit A* attached hereto.

1.2 Developer Property. The term "Developer Property" shall mean and refer to all real property depicted in *Exhibit B* attached hereto.

1.3 Improvements. The term "Improvements" shall mean and refer to the improvements to the Plaza and the upgraded landscape improvements on the Linear Park described on *Exhibit A* attached hereto.

1.4 Infrastructure. The term "Infrastructure" shall mean and refer to the public infrastructure improvements being constructed by The Pier at Town Lake Improvement District No. 180, City of Tempe Project No. 5103010, excluding sewer and water lines and any infrastructure improvements located along Rio Salado Parkway.

ARTICLE II MAINTAINENCE

2.1 Maintenance of Improvements. During the term of this Agreement, the Developer shall maintain the Improvements in accordance with the Maintenance Specifications set forth in Exhibit D ("Maintenance Specifications"), and shall maintain the Infrastructure in a

manner consistent with other City-owned infrastructure. City shall maintain the balance of the Linear Park in accordance with its normal standards for the Linear Park. In the event the Developer should fail to maintain the Infrastructure in accordance with other City-owned infrastructure or the Improvements in accordance with any part of the Maintenance Specifications, the City may, upon five (5) days written notice to the Developer perform such maintenance as the City deems necessary to comply with the relevant standard, and Developer shall pay any costs, expenses or fees incurred by City to remedy such failure within thirty (30) days of a request for payment or reimbursement. City shall have the right, without prior notice to Developer, to correct or repair any condition within the areas to be maintained by Developer that threatens the public safety or welfare, and Developer shall pay or reimburse the City for any costs, expenses of fees incurred by the City within thirty (30) days of request therefor.

2.2 Term. The term of this Agreement shall be for twenty-five (25) years from the Effective Date, unless terminated sooner by either party pursuant to Article V hereof.

2.3 Permits. The maintenance of the Improvements does not give Developer any right to ownership, use or possession of the Linear Park or the Plaza. If Developer desires to hold a special event in the Plaza, such special event shall only be authorized pursuant to a permit issued by the Rio Salado Manager or his or her designated representative.

ARTICLE III INSURANCE AND INDEMNIFICATION

3.1 Minimum Levels of Insurance. During the term of this Agreement, because Developer will be engaged in ongoing activities on property owned by the City, Developer shall maintain in full force and effect policies of general liability, automobile liability and workers' compensation insurance in amounts reasonably acceptable to the City. Developer shall coordinate the level of coverage with the City's Risk Manager. The Insurance Schedule attached to this Agreement as Exhibit E contains the City's current insurance requirements. All such policies shall name the City of Tempe, its employees, agents, officers and volunteers, as additional insureds and shall state that they may not be cancelled prior to expiration without thirty (30) days prior written notice to the City.

3.2 Indemnification. Developer shall indemnify, defend and hold harmless the City, its agents, officers, officials, and employees (the "City Parties"), from and against all claims, damages, losses, and expenses (included but not limited to attorney's fees, court costs, and the costs of appellate proceedings), arising out of, or alleged to have resulted from the negligent acts, errors, mistakes, omissions, work, services, or professional services of Developer, its agents, employees, or any other person (not the City) for whose acts, errors, mistakes, omissions, work, services, or professional services Developer may be legally liable for in the performance of this Agreement. Developer's duty to hold harmless, defend and indemnify the City Parties shall arise in connection with any claim for damage, loss or expenses that is attributable to bodily injury, sickness disease, death, or injury to, impairment, or destruction of any person or property, including loss of use resulting therefrom, caused by any negligent acts, errors, mistakes, omissions, work, services, or professional services in the performance of this Agreement by Developer or any employee of Developer, or any other person (not the City) for whose negligent acts, errors, mistakes, omissions, work, or services Developer may be legally liable in the

performance of this Agreement. The amount and type of insurance coverage requirement set forth herein will in no way be construed as limiting the scope of indemnity in this paragraph.

ARTICLE IV ADDITIONAL AGREEMENTS AND COVENANTS

4.1 Assumption of Risk. Developer requested the City's consent to placement of the water line for the Developer Property in a location different than that specified by City (the "Relocation"). City has consented to the Relocation on the condition that Developer assume all risks associated with the Relocation, the construction of improvements within proximity of the waterline, and the City's operation and maintenance of the water line in the new location, including without limitation all damages to persons, improvements, equipment, facilities, or any other damages related to the Relocation not caused by the gross negligence of City.

Developer, for itself and its successors, assigns, representatives, agents, officers, employees, managers, members and directors, hereby fully and completely releases the City Parties from any and all damages, liabilities, causes of action, judgments or claims for personal injury or property damage arising out of or related to the Relocation, and waives and relinquishes any right or cause of action of any kind whatsoever arising out of or as a result of the Relocation not caused by the gross negligence of the City. Developer further agrees to indemnify and hold harmless, the City Parties from and against any and all damages, liabilities, causes of action, claims, judgments, fees, expenses or costs of any kind, including without limitation attorney's fees, incurred in connection with the Relocation not caused by the gross negligence of the City, and the operation and maintenance of the water line in the new location. The foregoing release is given in consideration of the City's approval of the Relocation in variance from City standards, and in accordance with Section 6.3 hereof shall run with the land and bind Developer's successors in interest to the Developer Property, and shall survive the expiration or termination of this Agreement.

4.2 Storm Water Drainage Issues. City and Developer agree to cooperate with one another to reach a mutually acceptable resolution to storm water drainage issues pertaining to Right of Way A1119, granted to the City by the Bureau of Land Management.

4.3 Relocation of Dorsey Drain. A portion of the Dorsey Drain pipe currently cuts across the southeast corner of the Developer Property adjacent to the Rio Salado Parkway. This portion of the pipe will not be within the Right-of-Way of the proposed Plat for Pier 202. The Developer shall relocate this portion of the pipe, at its cost, so that the pipe is within the proposed Right-of-Way. Should the Developer elect not to relocate this portion of the pipe or if the pipe can not be completely relocated into the proposed Right-of-Way, the Developer agrees to grant an easement to the City for the drain pipe that is not within the proposed Right-of-Way.

ARTICLE V TERMINATION AND NOTICES

5.1 Termination. In the event that either party is in default under any of the material terms of this Agreement, the non-defaulting party may terminate this Agreement by the giving of notice to the defaulting party, and a thirty (30) day opportunity to cure such default. In the event

that there is no cure of the default within the thirty (30) day period, the non-defaulting party may declare the Agreement terminated.

5.2 Notices. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered upon personal delivery, verified complete facsimile transmission, or as of the second business day after mailing by United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed as follows:

If to Developer: Pier 202 Tempe LLC
626 Wilshire Boulevard, Suite 1150
Los Angeles, California 90017
Attn: Michael Barker and Brad Gorman
PHONE: (213) 624-1811
FAX: (213) 624-1813

With a copy to: Paul E. Gilbert, Esq.
BEUS GILBERT PLLC
4800 North Scottsdale Road, Suite 6000
Scottsdale, Arizona 85251-7630
PHONE: (480) 429-3000
FAX: (480) 429-3100

If to City: City of Tempe
31 E. 5th Street
Tempe, AZ 85281
ATTN: City Manager
PHONE: (480) 350-8884
FAX: (480) 350-8930

With a copy to: City Attorney
City of Tempe
31 East Fifth Street
Tempe, Arizona 85281
Telephone: (480) 350-8227
Fax: (480) 350-8645

Notice of address may be changed by either party by giving notice to the other party in writing of change of address. Such change shall be deemed to have been effectively noticed ten (10) days after the notice is mailed or five (5) days after the notice is delivered by the party changing address.

ARTICLE VI GENERAL PROVISIONS

6.1 Captions. The captions used herein are for convenience only, and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

6.2 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Arizona. This Agreement shall be deemed made and entered into in Maricopa County.

6.3 Successors and Assigns. All of the covenants and conditions set forth herein, shall inure to the benefit of, and shall be binding upon, the successors in interest of each of the parties hereto and shall run with the title of the Linear Park, the Plaza and Developer Property. Upon any change of ownership, the new entity that has acquired the interests of either party hereunder, shall, for all purposes of this Agreement, be deemed to be such party hereunder as to its portion of the Agreement.

6.4 Waiver. No waiver by either party of a breach of any of the terms, covenants, or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant, or condition herein contained.

6.5 Attorney's Fees. In the event any action or arbitration shall be instituted between the parties in connection with this Agreement, the party prevailing in such action or arbitration shall be entitled to recover from the other party all of its costs including reasonable attorneys' fees.

6.6 Severability. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

6.7 Gender and Number. In this Agreement (unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural include one another.

6.8 Exhibits. All Exhibits attached hereto are incorporated herein by reference as though fully set forth herein.

6.9 Conflict of Interest. Pursuant to State law, rules and regulations, no official of City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such official participate in any decision relating to this Agreement which affects his personal interest or the interest of any corporation, partnership, or association in which he has, directly or indirectly, interest.

6.10 No Personal Liability. No officer, official, or employee of City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to such party or successor, or on any obligation under the terms of this Agreement. In addition, no member, official, or employee of Developer shall be personally liable to City, or any successor in interest, in the event of any default or breach by the Developer or for any amount which may become due to such party or successor, or on any obligation under the terms of this Agreement.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested to by the City Clerk, and the Developer has executed and sealed the same on or as of the day and year first above written.

ATTEST:

"CITY"

THE CITY OF TEMPE, an Arizona municipal corporation

City Attorney

APPROVED AS TO FORM:

By:

Hugh L. Hallman, Mayor

City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this ____ day of _____, 2007, before me, the undersigned officer, personally appeared Hugh L. Hallman, who acknowledged himself to be Mayor of THE CITY OF TEMPE, an Arizona municipal corporation, whom I know personally/whose identity was proven to me on the oath of _____, a credible witness by me duly sworn/whose identity was proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument/whose identity I verified on the basis of his _____, and he, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

"DEVELOPER"

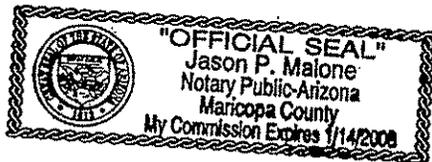
PIER AT TOWN LAKE, LLC,
an Arizona limited liability company
By: PIER AT TOWN LAKE MANAGER, LLC,
an Arizona limited liability company
Its Manager
By: 4Brothers, LLC,
a Washington limited
liability company,
Its Manager

By 
Fritz H. Wolff, its Manager

State of Arizona
County of Maricopa

The foregoing instrument was acknowledged before me this 8th day of November 2007, by Fritz H. Wolff, the Manager of 4Brothers, LLC, as Manager of Pier at Town Lake Manager, LLC, as Manager of Pier at Town Lake, LLC, an Arizona limited liability company, on behalf of the Company.

(Seal and Expiration Date)



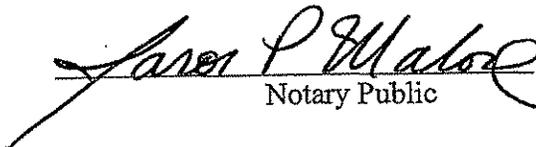

Notary Public

EXHIBIT A
LINEAR PARK

EXHIBIT B

DEVELOPER PROPERTY

EXHIBIT B: DEVELOPER PROPERTY

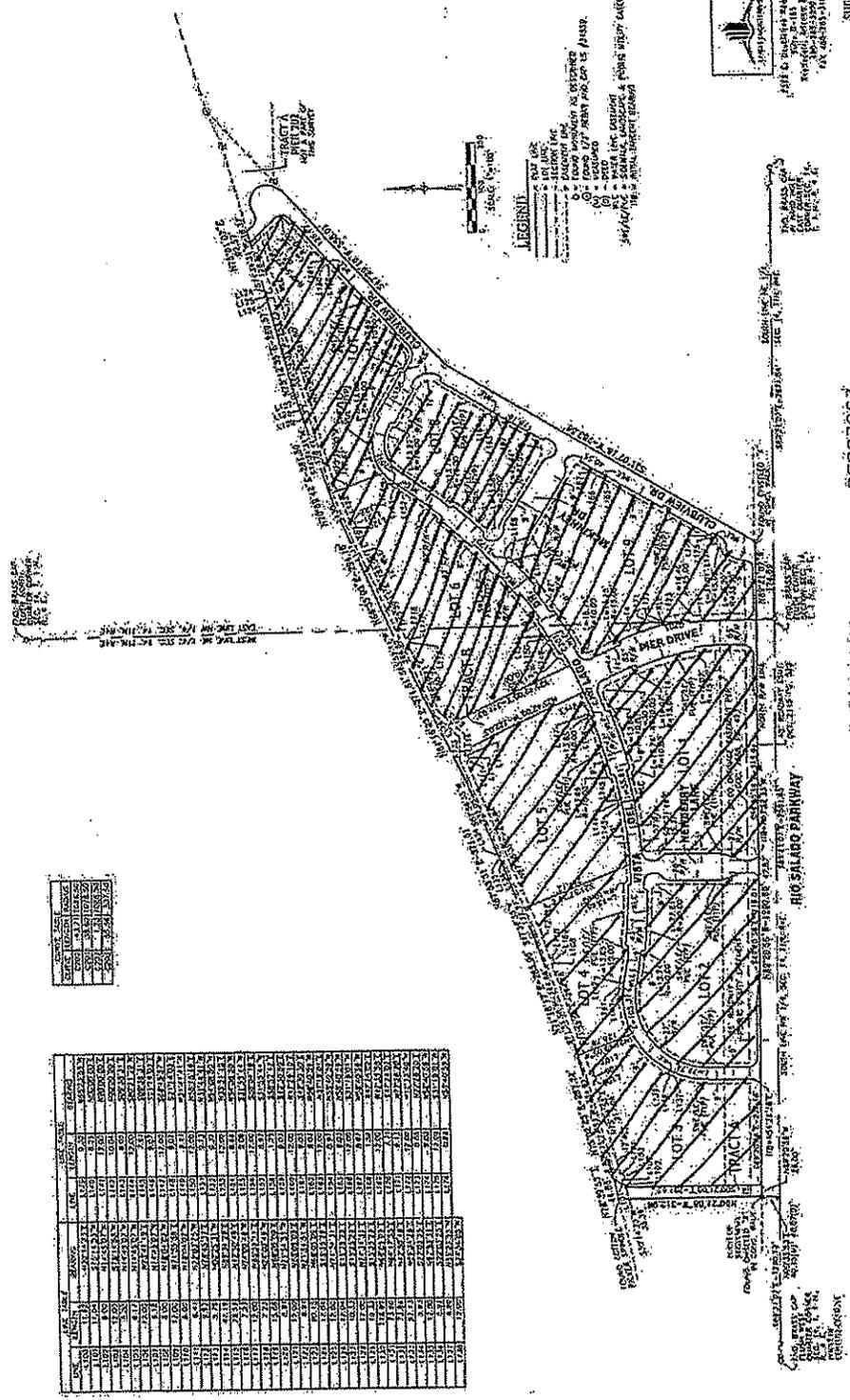
PIER 202 - AMENDED

REG07063

SBD07037

DS061141

LOT	AREA	PERCENTAGE	REMARKS
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REG07063 SBD07037 DS061141

EXHIBIT C

PLAZA

EXHIBIT D

MAINTENANCE SPECIFICATIONS

GENERAL

Proper landscape maintenance sustains the quality and health of a landscaped area and preserves the intended design concept. In the City of Tempe, landscaping is intended to provide an overall aesthetically pleasing appearance for the community.

Plants are chosen for their natural shape and growth habit. All maintenance practices should encourage and enhance the natural form of the plant material. Trimming and pruning should not alter this form appreciably.

1. TREES

A. STAKING & GUYING

1. The purpose of staking and guying trees is to support and protect young trees until they are able to stand alone.
2. All tree stakes, guys and ties shall be maintained to properly support the tree. They shall be inspected a minimum of once every sixty (60) days to prevent girdling or chafing of trunks or branches or rubbing which may cause bark wounds.

B. PRUNING

1. All trees shall be allowed to grow to their natural genetic form and size, unless specifically excepted.
2. All trees shall be pruned to promote structural strength and to accentuate the natural form and features of the tree.
3. Pruning must be carried out to permit unobstructed passage to pedestrians. This means that branches should be maintained to 8-1/2 ft. above the plaza area.
4. Stripping of lower branches ("raising up") of young trees shall not be permitted. Lower branches shall be retained in a "tipped back" or pinched condition with as much foliage as possible to promote caliper in trunk growth. Lower branches should be cut off only after the tree is able to stand erect without staking or other support.
5. Thinning of certain species and individual specimens may be required to prevent wind damage. All suckers, water sprouts, crisscrossing and heavily laden branches shall be removed to provide less wind resistance.

6. Palm tree trimming – all *Washingtonia robustas*, *Washingtonia filigera*, *Phoenix canariensis*, and *Phoenix dactylifera* will be trimmed to as to provide enough growing fronds to create a 45 degree angle with the lowest remaining fronds. Unless otherwise directed, all palm trees will be trimmed at a time to allow for optimum seed pod removal. All seed pods will be removed not less than annually. All *Washingtonia* species will be bark skinned to within three (3) feet of the crown. All *Phoenix* species will be trimmed evenly around crown and base. All palms will be inspected for pests (and bird nests) every 90 days with written authorization of said inspection provided to the Town Lake Parks Coordinator or his representative. Any pests diagnosed will be treated after notification to the Town Lake Parks Coordinator. All waste generated by trimming or skinning of any palms shall be removed from site and properly disposed of. Any palm volunteers will be mechanically removed from the existing landscape.

C. **FERTILIZATION**

1. All trees not located in turf areas shall be fertilized annually, in the spring, with a complete slow release fertilizer. Fertilization of mature trees shall be required only if the trees show a definite need for fertilization.
2. Fertilizer shall be applied around the tree, approximately halfway between the trunk and the drip-line, at the rate of one-half pound of nitrogen per inch of trunk diameter measured at four feet above the soil surface.
3. All trees shall be observed for signs of nutrient deficiencies and treated to correct deficiencies throughout the year.

2. **GROUND COVERS**

A. **TRIMMING**

1. Established ground covers bordering sidewalks or curbs shall be edged as often as necessary to prevent encroachment.
2. Ground covers shall not be allowed to touch or cover the crowns of shrubs and trees.

B. **FERTILIZATION**

1. Fertilization shall coincide with the growing season of each specific ground cover. One application of a complete slow release fertilizer in the spring, per manufacturer's specified rate, is generally adequate for established ground covers.

3. **TURF AREAS (LAWNS)**

A. LAWNS

1. Lawns shall be mowed weekly during the growing season and as required during the winter months if not overseeded. Winter overseeded lawns shall be mowed weekly as well.
2. The height of cutting shall be maintained consistently to prevent scalping or burn.
3. Excessive grass clippings shall be collected and disposed of. The Landscape Improvement Area sidewalks and streets shall be swept or blown clean of clippings.
4. Mowing patterns shall be changed each time to assure even cut and no mower ruts.
5. Lawns shall be overseeded as necessary.

B. EDGING

1. All lawn edges along sidewalks and curbs shall be edged before each mowing and as required for appearance.
2. Edging shall be performed with a blade type mechanical edger or line trimmer. The cut edge should appear as a clean, smooth line.
3. A mono-filament line trimmer shall be used to trim around obstacles within the lawn area. Care shall be taken to insure that the bark of trees and shrubs are not damaged or stripped by the line trimmer.
4. Lawn sprinkler heads shall only be edged to allow for proper distribution of water.
5. Sprinkler valve boxes in turf shall be edged to retain visibility and access.

C. FERTILIZATION

1. Fertilization techniques shall be employed to ensure consistency in the development of these adjacent turf areas.

4. DISEASE AND PEST CONTROL

1. All chemical controls must be applied under the supervision of a licensed and qualified pest control applicator, following the procedures set forth in the labeling of the product, as required by law. The person applying the controls on behalf of Developer shall keep up to date and on file documentation of all certifications, licenses and qualifying parties with a designated representative of Developer.

2. Healthy plants and lawns should be able to withstand minor disease and insect damage without controls. Routine application of pesticides shall not be practiced, as this destroys natural predator-prey relationships in the environment.
3. Where unusually high infestations or infections occur, an accurate identification of the disease or insect shall be made and the control selected with care, prior to application.
4. The designated Developer representative shall be provided with the labeling for each pesticide used before the product is applied.
5. Gophers shall be trapped or controlled with approved baits.
6. Developer shall comply with all reporting requirements imposed by applicable federal, state and local agencies.

5. **GRASS/WEED CONTROL IN DESERT LANDSCAPED AREAS**

A. **PRE-EMERGENT CONTROL**

1. All areas dressed with decomposed granite shall be treated with pre-emergent herbicide twice yearly: in the spring between February 15 and March 15, and in fall between October 15 and November 15. The pre-emergent must receive 0.5" of rain or be watered in within ten (10) days of application.

B. **POST EMERGENT CONTROL**

1. All areas shall be kept free of grass/weeds. Chemical and/or mechanical means may be used as appropriate. If grass/weed control is not performed, maintenance will be considered unsatisfactory.
2. Before applying herbicides, the type of grass/weed shall be identified and the control selected accordingly, using the most effective control for the species, the location and the season.
3. Grass/weeds shall not be allowed to grow in paved areas such as driveways, walks, curbs, gutters, etc. Grass/weeds may be removed manually or sprayed with an herbicide. Dead grass/weeds shall be removed from the paved areas.
4. All pre and post emergent applications to be under the supervision of a Licensed Pest Control applicator and applied as per manufacturer's specifications. Adherence to all Arizona State Pest Control Commission rules and regulations will be the responsibility of the Developer.

6. **PLANT REPLACEMENT**

1. Plant material that dies through the fault or neglect of the Developer or due to preventable circumstances, shall be replaced with a specimen of the same species of equal or similar size as the plant lost, at the sole cost of the Developer. Plant replacement must be coordinated with the City of Tempe Representative.

2. Plant material that dies due to inappropriate species or placement for sun and soil conditions may, with the prior written approval of the City of Tempe Representative be replaced with an acceptable alternative species.

7. **DEBRIS REMOVAL**

1. Litter and trash including leaves, rubbish, paper, bottles, cans, rocks, gravel, and other debris shall be removed on a daily basis.

2. All refuse resulting from the maintenance operation shall be disposed in a proper manner and in compliance with all applicable federal, state or municipal regulations.

8. **SURFACES**

1. All areas dressed with decomposed granite shall be raked as needed, but not less than once every four weeks.

2. Paved sidewalks, paths and patio areas shall be swept or blown off with a power blower on a weekly basis.

9. **IRRIGATION**

1. The City will make available at no cost to Developer a limited inventory of sprinkler parts, heads, fittings, valves, and pipe to assist in the repair or replacement of existing landscape sprinkler systems within the Landscape Improvements that are damaged or destroyed as a result of vandalism, accident by others or by normal wear and tear. Said inventory will be maintained with the Town Lake Parks Coordinator and replenished as replaced or damaged parts are presented to Developer. Costs for additional parts obtained by Developer required for such repairs or replacements will be reimbursed to Developer by the City provided there is a written authorization from the designated City of Tempe Representative

2. Developer will be responsible for any damages to existing landscape sprinkler systems within the Plaza that are caused by its mowers or equipment, its actions or the actions of its tenants or employees, and shall repair or replace these damaged systems at its own expense. Developer shall repair system damage within two (2) working days after discovery of damage.

3. The nature and extent of all repairs made by Developer to irrigation systems within the Plaza must meet with the approval of the designated City of the designated City of Tempe Representative prior to the start of the repair work.
4. Developer shall report all water leaks and/or system malfunctions in the Plaza to the designated City of Tempe Representative. Developer will furnish emergency, twenty-four (24) hour service, to immediately repair damaged or malfunctioning systems within the Plaza that are causing area flooding.
5. Any Vacuum Breaker or Sprinkler System Controller repair or replacement will be the responsibility of the City of Tempe. Developer will notify the City of Tempe Representative of any such malfunctions or damage immediately and document the need in writing.
6. In the event of an extended shut down (more than three (3) days) of an automatic or manual system by Developer, Developer shall verbally notify the City of Tempe Representative immediately and confirm this notification in writing. Developer will determine the process or method to be used for the plant watering, in order to maintain plant growth until the system is restored to operation. Developer is responsible for the health and condition of all plant material affected by the landscape sprinkler system shutdown.
7. All landscape sprinkler water must be contained within a specified target area.
8. Developer shall ensure a sprinkler check/inspection is made after each mowing.

10. **GENERAL**

A. Monthly Maintenance Report

From time to time but not less frequently than once each month, Developer shall notify City of all repairs to the irrigation system, of any scheduled pesticide applications during the preceding month and provide a general update of its activities and any outstanding issues or problems. Developer shall file with City a report on Attachment A hereto on or before the 10th day of each month during the term of this Agreement covering activities during the previous month.

B. Annual Review Meeting

City and Developer shall meet at least once each year to review the past year's activities and plan for the upcoming year.

Date: _____ Supervisor: _____ Crew Leader: _____
 Work schedule: _____ Total # of employees: _____
 Equipment Used: _____

Certification/License	Certification/License #	Expiration Date
Arborist or Tree Worker		
Desert Landscaper		

Task-Function	Week 1#	Week 2#	Week 3#	Week 4#	Week 5#
Trees (certified employee required)					
Trimmed for clearance					
Stakes, ties and guys checked and corrected					
Lifted/trimmed/thinned out					
Removed sucker, dead/broken branches/tree					
Shrubs					
Pruned/trimmed					
Removed debris/litter					
Ground Cover					
Trimmed back from areas & neat/clean appearance					
Cultivated/applied herbicide					
Removed weeds					
Removed debris/litter					
Clean up					
Removed trash & litter					
Water rinsed paved area					
Mowing					
Equipment produced clean cut					
Cleared area of debris					
Mowed					
Swept/blew pavement					
Line Trimming/Edging					
Around trees, tree wells, sidewalks, etc.					
Swept/blew pavement					
Fertilization					
April/May/July/Sept (per contract)					
Pest/Grass/Weed Control (licensed applicator required)					
Manually removed Grass/Weeds					
Pest/Grass/Weed Control Application Needed					
Reported to licensed Applicator					
Surfaces					
Raked granite areas					
Re-graded/raked soil areas					
Swept/blew paved areas					
Removed debris—all areas					
Irrigation (certified employee required)					
Identified irrigation problem					
Reported to Certified Irrigator					
Erosion					
Discovered problems/damage					
Repaired and Reported					

Activities / Issues / Comments (include property damage, accidents, incidents, vandalism, injuries, construction, and similar activities):

Make-up work due to weather: _____

- Written Plan for traffic control and lane closures submitted on: _____ and approved by: _____
- Emergency work reported and, if applicable, verbally authorized for repair by: _____
- Repair and Extra Work Cost Estimate form attached for approval.

City of Tempe
 Pier 202 Plaza – Park Maintenance Services
 Weekly Progress Report for Quadrant _____ for the Week Ending

Date: _____

Name: _____

Title: _____

Areas *	Description of Task Completed/Not Completed Per Monthly Work Plan & Other Activity (use
A	
B	
C	
D	
E	
Status/Comments on Requests/Inquiries; Emergency Work; Repair/Extra Work; Incidents; or Similar Activities	

* Areas: A = All Areas; B = Plaza; C = _____; D = _____; E = _____

EXHIBIT E

INSURANCE SCHEDULE

I. Minimum Limits of Insurance

Developer shall maintain limits no less than:

- A. Commercial General Liability: \$5,000,000 combined single limit per occurrence for bodily injury and property damage, including coverage for contractual liability (including defense expense coverage for additional insureds), personal injury, broad form property damage, products and completed operations. The general aggregate limit shall apply separately to the activities contemplated by this Agreement or the general aggregate shall be twice the required occurrence limit.
- B. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage, including coverage for owned, hired, and non-owned vehicles as applicable.
- C. Workers' Compensation and Employers' Liability: Workers' Compensation and Employers' Liability statutory limits as required by the State of Arizona.

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- D. Environmental Pollution Liability: Per Occurrence - \$1,000,000, Aggregate - \$2,000,000. Coverage will include cleanup costs and third-party coverage.
 - E. Fidelity Bond: Developer shall maintain throughout the term of this Agreement, at its expense, a blanket fidelity bond covering all officers and employees, in an amount not less than \$7,500, with any deductible not to exceed \$1,000, including Tempe as an additional obligee or loss payee as its interest may appear.

II. Deductibles and Self-Insured Retentions

- A. Any deductibles or self-insured retentions must be declared and approved by the Tempe. At the option of Tempe, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Tempe, its officials, employees, and volunteers or Developer shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

III. Other Insurance Provisions

The policies or self insurance certifications are to contain, or be endorsed to contain, the following provisions:

- A. Commercial General Liability and Automobile Liability Coverage

1. Tempe, its officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Developer including the insured's general supervision of Developer; products and completed operations of Developer; premises owned, occupied or used by Developer, or automobiles owned, leased, hired or borrowed by Developer. The coverage shall contain no special limitations on the scope of protection afforded to Tempe, its officials, employees, or volunteers related to Developer's, its employees', agents', subcontractors', or sub-subcontractors' activities pursuant to this Agreement.
2. Developer's insurance coverage shall be primary as respects the Tempe, its officials, employees, and volunteers. Any insurance or self-insurance maintained by Tempe, its officials, employees, or volunteers shall be excess of Developer's insurance and shall not contribute to it.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Tempe, its officials, employees, or volunteers.
4. Coverage shall state that Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

B. Workers' Compensation and Employers' Liability Coverage

1. The insurer shall agree to waive all rights of subrogation against Tempe, its officials, employees and volunteers for losses arising from the activities performed by Developer for Tempe pursuant to this Agreement.

C. All Coverages

1. Each insurance policy required by this Agreement shall be endorsed to state the coverage shall not be suspended, voided, and/or canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to Tempe.

IV. **Other Insurance Requirements:**

Developer shall:

- A. Prior to commencement of services, furnish Tempe with certificates of insurance, in form and with insurers acceptable to Tempe's Risk Manager (or designee) which shall clearly evidence all insurance required in this Agreement and provide that such insurance shall not be canceled, allowed to expire or be materially reduced in coverage except on thirty (30) days prior written notice to and approval by Tempe, and in accord with the stated insurance requirements of this Exhibit. Tempe shall not be obligated, however, to review same or to advise

Developer of any deficiencies in such policies and endorsements, and such receipt shall not relieve Developer from, or be deemed a waiver of the Tempe's right to insist on, strict fulfillment of Developer's obligations under this Agreement.

- B. Provide certified copies of endorsements and policies if requested by Tempe in lieu of or in addition to certificates of insurance.
- C. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of services.
- D. Maintain such insurance from the time services commence until services are completed. Should any required insurance lapse during this Agreement term, requests for payments originating after such lapse shall not be processed until Tempe receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, Tempe may at its sole option, terminate this Agreement effective on the date of such lapse of insurance.
- E. Place such insurance with insurers and agents licensed and authorized to do business in Arizona and having a "Best's" rating of no less than A-VII.
- F. Maintain such coverage continuously throughout the term of this Agreement and without lapse for a period of two years beyond this Agreement expiration, should any of the required insurance be provided under a claims-made form, to the extent that should occurrences during the Agreement term give rise to the claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies. Such extension of coverage shall be evidenced by annual certificates of insurance.

V. Subcontractors and Sub-Subcontractors

Developer shall include all subcontractors and sub-subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor and sub-subcontractor. All coverage for subcontractors and sub-subcontractors shall be subject to all of the requirements stated herein for Developer.

VI. Safety

Developer shall be solely and completely responsible for conditions of the sites used pursuant to this Agreement, including the safety of all persons (including employees) and property at the sites, including any set-up at the sites and any take-down at the sites. This requirement shall apply continuously and not be limited to normal hours of the sites. Safety provisions shall conform to all applicable federal (including OSHA), state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. Developer's failure to thoroughly familiarize itself with the aforementioned safety provisions shall not relieve it from compliance with the obligations set forth therein.