

When Recorded Mail To:

Town of Fountain Hills  
Town Clerk  
16705 East Avenue of the Fountains  
Fountain Hills, Arizona 85268

**TEMPORARY LICENSE AGREEMENT**

GRANTOR: Town of Fountain Hills, an Arizona municipal corporation (the "Town")

GRANTEE: Nesbitt Contracting Co., Inc., an Arizona corporation

THIS LICENSE AGREEMENT (this "Agreement") is entered into and effective October 13, 2014, by and between the Town and Grantee for the purposes set forth below.

RECITALS

A. The Town is the record owner of certain real property at the location described and depicted on Exhibit 1, attached hereto and incorporated herein by this reference (the "Property").

B. The Grantee has requested, and Town has agreed to grant to the Grantee, a temporary non-exclusive license upon, over, across and through the Property for the purpose of storing materials and equipment for the Shea Boulevard widening project (the "Permitted Use").

AGREEMENT

NOW, THEREFORE, in consideration of the recitals set forth above, which are incorporated herein by reference, the mutual covenants set forth herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Town and the Grantee agree as follows:

1. Grant of License and Term. The Town hereby grants to the Grantee a non-exclusive license (the "License") on, over, through and across the Property for the Permitted Use for the period from October 13, 2014 until October 13, 2015 (the "License Period"). This License shall be for the benefit and use of the Grantee, its employees, subcontractors and assigns (including without limitation employees, officers and agents) and no others. This License shall automatically terminate and shall be of no force or effect after the License Period.

2. Manner of Use of the Property. Grantee shall use due care and diligence in the use of the Property for the duration of the License Period and in the exercise of its rights hereunder, and it will at all times exercise its rights hereunder at such times and in such manner as approved by the Town and will not cause (i) any interference with the business operations (if any) on the Town's Property, (ii) any interference with the customary access to or from the

Town's Property or (iii) any damage or injury to the Town's Property, or to any agents, employees or invitees of the Town, ordinary wear and tear excepted. Additionally, Grantee, at its sole expense, without reimbursement from the Town, shall:

2.1 Property Protection. Ensure that all asphalt, curbing and sidewalks on or near the Property are protected from damage by Grantee's vehicles entering or exiting the Property. If Grantee's vehicles damage the asphalt, curbing or sidewalk, Grantee shall repair or replace such damages to the satisfaction of the Town, at no cost to the Town. Prior to first utilizing the Property, Grantee shall provide photographic evidence to the Town of all existing damage to perimeter curbs, gutter, sidewalk and pavement, if any. Photographs will clearly show the location of existing damage on the Property.

2.2 Dust Control. Prior to use of the Property, cover all areas of the Property to be accessed by vehicles with ABC type material, approved by the Development Services Director or authorized designee, in sufficient quantities to prevent the generation of dust. Grantee shall remove such dust preventative materials at the end of the License Period. The Grantee shall identify the Property in its dust control permit and provide the Town with a copy of such permit.

2.3 Property Restoration. Restore or cause to be restored the portions of the Property accessed or utilized by Grantee pursuant to this License to substantially its original condition prior to the completion of the License Period, ordinary wear and tear excepted.

2.4 No Hazardous Materials. Not release, discharge or deposit any toxic, hazardous or petroleum products onto the Property or emit any obnoxious or offensive odor, dust, smoke, gas, noise, vibration, electromagnetic disturbance, radiation or other similar matter that is detrimental to the public health, safety or general welfare.

2.5 Limitations on Use; Security. Not use any portion of the Property for staging or storage of materials or equipment other than those to be used in connection with the Permitted Use. At the end of each day during the License Period, Grantee shall secure the Property to prevent access by unauthorized persons.

2.6 Fencing. Install a temporary six foot high chain link fence with privacy screening that shall not encroach into the required front yard or street side yard areas of the parcel. Fencing materials shall obscure at least ninety-five percent of the fence wall plane. Grantee shall remove such fencing at the end of the License Period.

2.7 Outdoor Lighting. Not install outdoor lighting in residentially zoned areas. Any outdoor lighting in commercial or industrial zoned areas shall be placed and shielded so as to reflect light away from any adjoining residential areas.

2.8 Parking. Ensure that all employee parking is within the fenced site. There shall be no automobile parking, equipment parking or material storage outside of the fenced area.

2.9 Time Limitations. All activities on the Property shall conform to the time limitations specified in Article 7-6 of the Town Code.

3. Permits; Compliance with Laws. The Grantee shall secure, maintain and comply with all required licenses, permits and certificates relating to, or otherwise necessary or appropriate for Grantee's use of the Property during the License Period. Grantee shall comply with all applicable federal, state and local laws, rules, regulations, statutes, codes, orders and ordinances, including, but not limited to, those governing the prevention, abatement and elimination of pollution and/or protection of the environment, and the employment of workers. In exercising any rights and privileges under this License, the Grantee shall comply fully with all applicable permits, authorizations, approvals and other requirements.

4. Liens and Encumbrances. The Grantee represents and warrants that it will maintain the Property free and clear from any liens or encumbrances of any nature whatsoever in connection with the Grantee's use of the Property.

5. Indemnification. The Grantee covenants and agrees with the Town, on behalf of itself or its successors and assigns, as the case may be, to indemnify, defend and to hold harmless the Town, its successors and assigns, for, from and against any and all losses, claims, liabilities, costs and expenses which may be claimed or asserted against the Town, its successors or assigns, or the Property to the extent arising from the negligence or willful misconduct of the Grantee, including, but without limitation, injury to any person or property, any mechanics' or materialmen's liens or claims of lien which may be asserted against the Town as a result of the Grantee's negligence or willful misconduct.

6. Insurance Coverage and Limits. Prior to making use of the Property, the Grantee shall obtain at its own expense, and provide the Town with evidence of, insurance sufficient to insure the Town's interests against claims for personal injury, bodily injury, death and property damage occurring on, in, or about the Property, with a "Combined Single Limit" covering personal injury liability, bodily injury liability and property damage liability of not less than \$2,000,000.00. The Town shall be endorsed as an additional insured on such policy.

7. Reservation of Rights. The Town hereby reserves all such rights and privileges in the Property as may be used and enjoyed by the Town without interfering with or abridging the rights conveyed to the Grantee.

8. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any Property or any portion of any Property to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any party hereto shall inure to the benefit of any third party person, nor shall any third party person be deemed to be a beneficiary of any of the provisions contained herein.

9. Counterparts. This Agreement may be executed in counterparts, all of which are identical, each of which shall be deemed an original, and all of which counterparts, when executed, taken together shall constitute one and the same instrument.

10. Cancellation by Town. This Agreement may be cancelled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

11. Early Termination. The Town reserves the right to terminate this License at any time due to the Grantee's failure to meet any of the conditions of this Agreement. The Grantee shall remove all fencing, equipment and non-native material, and return the Property to its original condition (as of the effective date of this License) within 48 hours of receipt of written notice that this License has been terminated.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date and year first set forth above.

**"Town"**

TOWN OF FOUNTAIN HILLS,  
an Arizona municipal corporation

By: Kenneth W. Buchanan  
Kenneth W. Buchanan, Town Manager

ATTEST:

Bevelyn J. Bender  
Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

On Oct 9, 2014, 2014, before me personally appeared Kenneth W. Buchanan, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the Town of Fountain Hills.

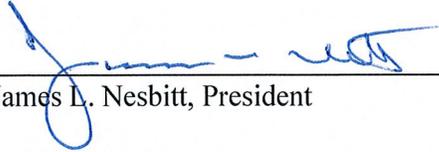
Heather Ware  
Notary Public

(Affix notary seal here)



“Grantee”

NESBITT CONTRACTING CO., INC.,  
an Arizona corporation

  
\_\_\_\_\_  
James L. Nesbitt, President

(ACKNOWLEDGMENT)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

On October 10, 2014, before me personally appeared James L. Nesbitt, the President of NESBITT CONTRACTING CO., INC., an Arizona corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document on behalf of the corporation.



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

(Affix notary seal here)

EXHIBIT 1  
TO  
LICENSE AGREEMENT

[Description and Map of License Property]

An approximately 180 foot x 50 foot area located on Maricopa County APN 176-11-030B  
(Town right-of-way), south of Shea Boulevard and west of Technology Drive.

See following pages.



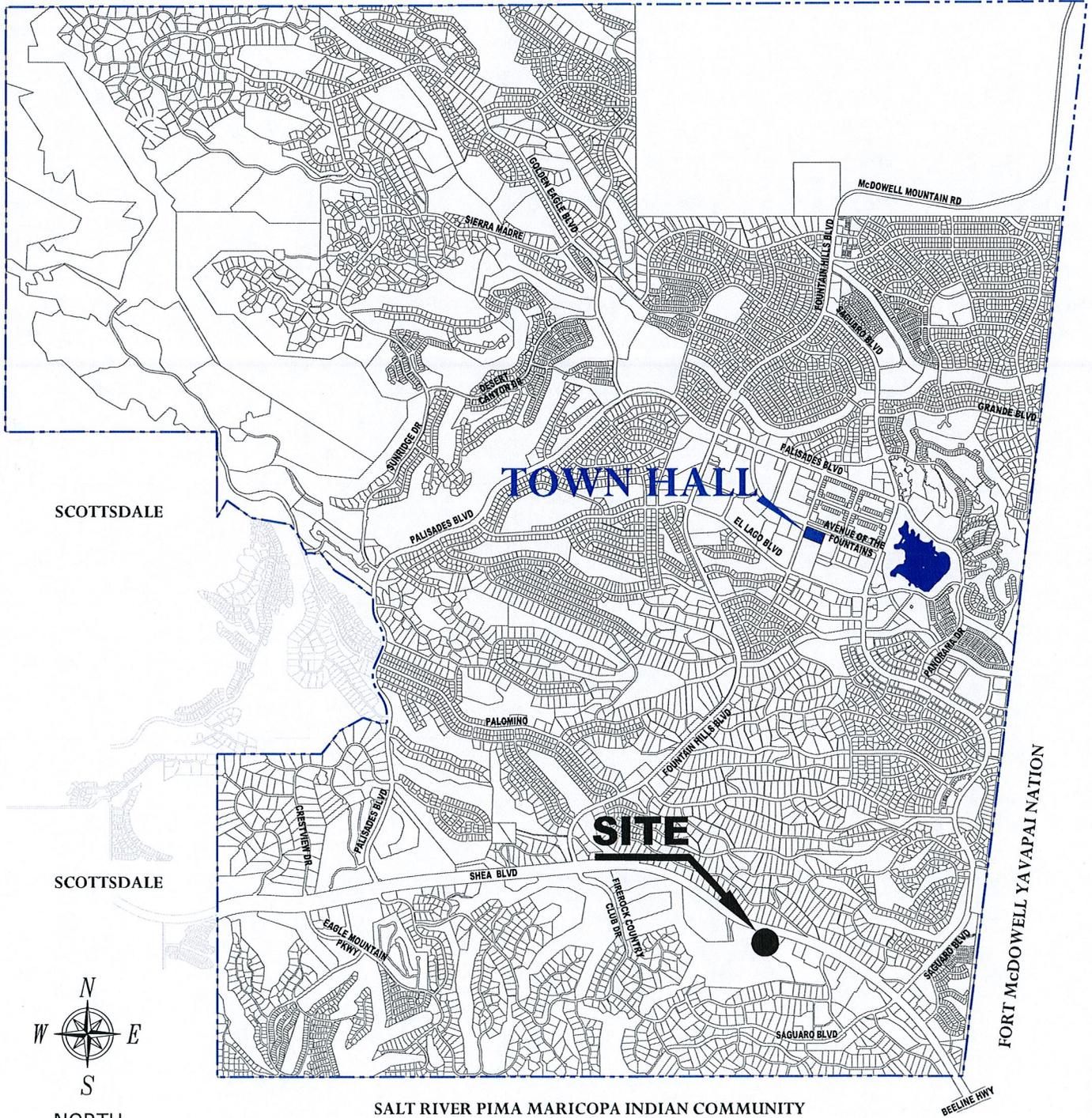
# TOWN OF FOUNTAIN HILLS

## DEVELOPMENT SERVICES DEPARTMENT

### VICINITY MAP

TOWN BOUNDARY

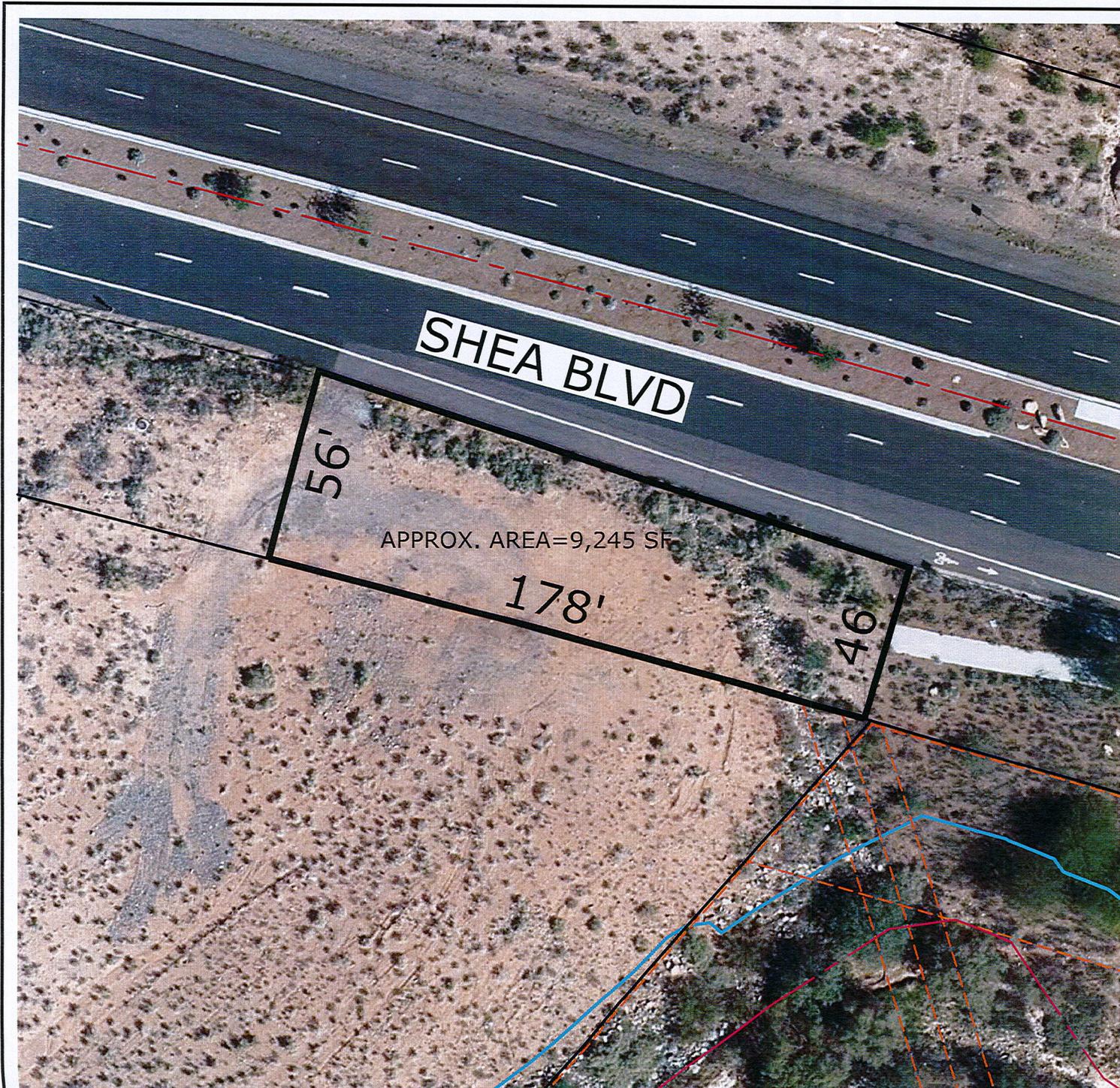
McDOWELL MOUNTAIN PARK



NORTH  
SCALE: 1" = 3500'

SALT RIVER PIMA MARICOPA INDIAN COMMUNITY

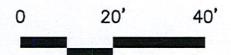
FORT McDOWELL YAVAPAI NATION



DEVELOPMENT SERVICES

AERIAL 2013  
SITE PLAN

- LOTLINE
- ROW
- CENTERLINE
- EASEMENT
- CONTOUR 2ft
- CONTOUR 10ft
- FLOODPLAIN



SCALE: 1" = 40'

TOPO FLIGHT DATE: 9/91  
AERIAL FLIGHT DATE: 11/13