

Intergovernmental Agreement
between
Pima County and the Amphitheater School District
for
Design and Construction of Improvements to Lulu Walker Elementary School,
Oracle Jaynes Station Road and Roller Coaster Road
Tucson, Arizona

This Intergovernmental Agreement is entered into by and between the Amphitheater Unified School District, a political subdivision of the State of Arizona (“AUSD”), and Pima County, a political subdivision of the State of Arizona (“County”) pursuant to the authority granted in Arizona Revised Statutes (A.R.S.) Section 11-952, collectively “the parties.”

Recitals

- A. The parties are authorized to enter into agreements for joint and cooperative action pursuant to the provisions of A.R.S. § 11-951, *et seq.*, A.R.S. § 11-251(4) and A.R.S. § 15-996.
- B. The parties wish to cooperate in the design and construction of roadway and parking facilities (the “Project”) at and adjacent to the Lulu Walker Elementary School (LWES) in Pima County, Arizona.
- C. Local Developer Riverview Ventures LLC and Miramonte Homes wishes and intends to contribute \$100,000.00 to the Project construction pursuant to the Memorandum of Understanding between Riverview and AUSD dated December 16, 2011.
- D. On the _____ day of _____, 2012, the AUSD Governing Board authorized the Superintendent of Schools to execute this Agreement on behalf of AUSD.
- E. On the _____ day of _____, 2012, the Pima County Board of Supervisors authorized the Chair of the Board to execute this Agreement.
- F. The parties desire to enter into this agreement to define roles and responsibilities related to the construction of the Project.
- G. NOW, THEREFORE, AUSD and County, in consideration of the mutual representations and covenants set forth herein, agree to the following:

AGREEMENT

1. Purpose. The purpose of this Agreement is to facilitate the construction of the Project and to define the relevant roles and responsibilities of the parties related thereto.

2. Effective Date; Term. This Agreement shall become effective upon execution by all parties and shall continue in effect until the improvements are fully constructed or the Agreement is terminated pursuant to the terms contained herein, but in no event shall this Agreement remain in effect after June 30, 2013.

3. Project Improvements. The Project consists of improvements to the LWES parking facility (on-site) and improvements to that portion of Oracle Jaynes Station Road and Roller Coaster Road that lie adjacent to the west and south borders of LWES, respectively, and as further depicted in the attached **Exhibit A**. The parties intend for the Project to be done during summer break of 2012.

3.1 Improvements to the school's parking facility (on-site). The improvements to LWES's parking facility include the reconstruction of the existing staff and visitors parking areas, the reconfiguration of the traffic pattern for school buses and student loading and off-loading, and the modification of two of LWES's driveways, converting the east most driveway to the new main entrance. The improvements to the LWES parking facility shall be in constructed in accordance with the plans and specifications developed by the County.

3.2 Improvements to Oracle Jaynes Station Road and Roller Coaster Road (off-site). The improvement to the portions of Oracle Jaynes Station Road and Roller Coaster Road adjacent to the front of LWES shall include construction of a two lane road and installation of speed tables.

4. Project Costs. Design and construction of the Project is currently estimated to cost \$473,750.00. Total cost of the Project will be allocated as follows:

4.1. Riverview Ventures, LLC and Miramonte Homes (the "Developer") will be developing property west of Lulu Walker School and intends to contribute \$100,000 to the Project, which will be paid to the County prior to the advertisement for bids for the construction of the Project.

4.2. The County shall be responsible for 50% of the Project costs after the Developer's contribution of \$100,000.00, currently estimated to be \$186,875.00.

4.3. AUSD shall be responsible for 50% of the Project costs after the Developer's contribution of \$100,000.00, currently estimated to be \$186,875.00, which will be paid to the County prior to commencement of construction on receipt of an invoice from County for the final calculated 50% share of total Project costs.

5. Responsibilities of County. The County shall design and construct the Project and shall advertise, select, award, execute and administer all necessary design and construction contracts for the Project. County shall have the usual rights of the owner of public construction contracts including the authority to approve changes to the work and make payments to contractors, and shall have control and management of the worksite during the construction phase of the Project.

5.1. The parties agree that all design and construction documents regarding the improvements to Oracle Jaynes Station and Roller Coaster Roads be reviewed and approved by the County and that all design and construction documents regarding the improvements to LWES's parking area will be reviewed and approved by both the County and AUSD.

5.2. The County shall be responsible for coordinating and facilitating all utility relocations within the County right of way and on LWES property. AUSD and LWES shall assist the County in any utility relocation efforts.

5.3. The County shall be responsible for acquiring all permits necessary to construct the Project, including the requisite Stormwater Pollution Permit from ADEQ and any federal permits required for

the Project. County shall provide, at no cost to AUSD or LWES, any County permits required in connection with the Project.

5.4. The County shall conduct and manage the public participation process for the Project. County shall give AUSD and LWES prior notice of all public participation event dates and provide AUSD and LWES representatives with the opportunity to participate in all public participation events held by the County for the Project.

5.5. The County shall be responsible for all administration work for the Project.

5.6. The County shall be responsible for ongoing control, operation and maintenance of all improvements made to Oracle Jaynes Station and Roller Coaster Roads both during and after construction of the Project.

6. Responsibilities of AUSD.

6.1. AUSD shall be responsible for 50% of the total Project costs after the Developer's contribution of \$100,000.00, currently estimated to be \$186,875.00.

6.2. AUSD shall be solely responsible for the management and operation of the LWES facilities outside the limits of the Project during construction.

6.2. Upon completion of construction of the improvements to the LWES parking facility, AUSD shall accept and assume ownership and control of all parking facility improvements constructed on LWES property and within the County right of way pursuant to the encroachment license issued to LWES by County.

7. Rights of Way and Construction Easements. AUSD and LWES shall cooperate with and assist County in acquiring any necessary temporary or permanent construction easements required for the Project at no cost to the Project.

8. Right of Entry. Execution of this Agreement by AUSD grants to County the right to enter upon LWES property to design and construct the Project.

9. Project Manager and AUSD/LWES Representative. County shall designate a Project Manager for the Project and AUSD, at no cost to the Project, shall furnish an AUSD representative to liaison with the Project Manager during design and construction of the Project.

10. Status of Officers and Employees. It is not intended by this Agreement to, and nothing contained in this Agreement shall be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between the County and any AUSD or LWES officer or employee. Neither party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for any of its employees.

11. Liability. Each party shall be legally responsible for the acts, errors and omissions of its respective officers, departments, employees, agents, contractors and subcontractors and for any and all suits, actions, legal or administrative proceedings, claims, demands liens, losses, fines or damages of any kind or nature, including consequential damages, liability, interest, attorneys' and accountants' fees or costs, and expenses of whatsoever kind and nature, which are in any manner directly or indirectly caused, occasioned or contributed to by its officers, departments, employees, agents, contractors or subcontractors, or anyone acting under its direction, control or on his behalf, in connection with or

incident to the performance of this Agreement. The mutual liability provision set forth herein is not intended to and does not preclude any party from claiming against another party for breach of this Agreement.

12. Notices. All notices shall be in writing and together with other mailings pertaining to this Agreement shall be made to:

County: Priscilla S. Cornelio, P.E.
Director, Pima County Department of Transportation
201 N. Stone Avenue, 4th Floor
Tucson, AZ 85701

AUSD: Todd A. Jaeger
Amphitheater Unified School District
701 W. Wetmore
Tucson, Arizona 85705

13. Construction and interpretation. All provisions of this Agreement shall be construed to be consistent with the intention of the parties as expressed in the recitals hereof.

14. Amendment. This Agreement shall not be amended except by written instrument mutually agreed upon and executed by the parties.

15. Entire Agreement. This Agreement, including its exhibits and recitals, constitutes the entire agreement between the parties, and includes all prior oral and written agreements of the parties.

16. Anti-Discrimination. The provisions of A.R.S. § 41-1463 and Executive Order Number 75-5, as amended by Executive Orders Numbers 99-4 and 2000-9, issued by the Governor of the State of Arizona are incorporated by this reference as a part of the Agreement.

17. No third party beneficiaries. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective successors and permitted assigns.

18. Timeliness. Each of the parties to this Agreement agrees to take such actions as may be necessary to carry out the terms of this Agreement, and to cause such documents as may be necessary to be executed with reasonable promptness.

19. Non-waiver. The failure of any party to insist, on any one or more instances, upon the full and complete performance of any of the terms and provisions of the Agreement to be performed on the part of the other, or to take any action permitted as a result thereof shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in full or in part in the future. The acceptance by any party of sums of less than may be due and owing it at any time shall not be construed as accord and satisfaction.

20. Severability. In the event that any provision, or any portion of any provision, of this Agreement or the application thereof, is held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall have no effect on the remaining portion of any provision or any other provision, or their application and to this end the provisions of this Agreement shall be deemed to be severable.

21. Termination.

21.1. For Cause. Any party hereto may terminate this Agreement for material breach of the Agreement by another party. Prior to any termination under this section, the party allegedly in default shall be given written notice by the other party of the nature of the alleged default. The party said to be in default shall have forty-five (45) days to cure the default. If the default is not cured within that time, the other party may terminate this Agreement. Any such termination shall not relieve either party from liabilities or costs already incurred under this Agreement.

21.2. Force Majeure. A party shall not be in default under this Agreement if it does not fulfill any of its obligations under this Agreement because it is prevented or delayed in doing so by reason of uncontrollable forces. The term “uncontrollable forces” shall mean, for the purpose of this Agreement, any cause beyond the control of the party affected, including but not limited to failure of facilities, breakage or accident to machinery or transmission facilities, weather conditions, flood, earthquake, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, acts of God, or action or non-action by governmental bodies in approving or failing to act upon applications for approvals or permits which are not due to the negligence or willful action of the parties, order of any government officer or court (excluding orders promulgated by the parties themselves), and declared local, state or national emergency, which, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligations by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

21.3. Funding Sources: Budget: Non-appropriation. This Agreement and all obligations upon the parties arising there from shall be subject to any limitation imposed by budget law. The County affirms that it has within its budget sufficient funds to discharge the obligations and duties assumed under this Agreement. If for any reason the County Board of Supervisors does not appropriate sufficient monies for the purpose of maintaining this Agreement, this Agreement shall be deemed to terminate by operation of law on the date of expiration of funding. In the event of such cancellation, the parties hereto shall have no further obligation to the other party other than for payment for services tendered prior to cancellation.

21.4. Conflict of Interest. Pursuant to A.R.S. § 38-511, the state, its political subdivisions or any department of either, may, within three (3) years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or crating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at anytime, while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

21.5 Ownership of Property Upon Termination. Any termination of this Agreement shall not relieve any party from liabilities or costs already incurred under this Agreement, nor affect any ownership of the Project constructed pursuant to this Agreement.

In Witness Whereof, the parties hereto have hereunto set their hands the day and year first above written.

PIMA COUNTY:

**AMPHITHEATER UNIFIED
SCHOOL DISTRICT:**

Chairman, Board of Supervisors

By _____

Date: _____

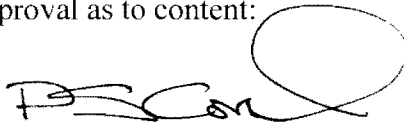
Title: _____

ATTEST:

Date: _____

Clerk of the Board

Approval as to content:



Priscilla Cornelio, P.E., Director,
Pima County Department of Transportation

Intergovernmental Agreement Determination

The foregoing intergovernmental agreement between Pima County and the Amphitheater Unified School District has been reviewed pursuant to A.R.S. § 11-952 by the undersigned, who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Intergovernmental Agreement represented by the undersigned.

For Pima County:

For Amphitheater Unified School District:

Deputy Pima County Attorney

Chief Counsel for the District

Accepted

11/3/11

ATTACHMENT 2

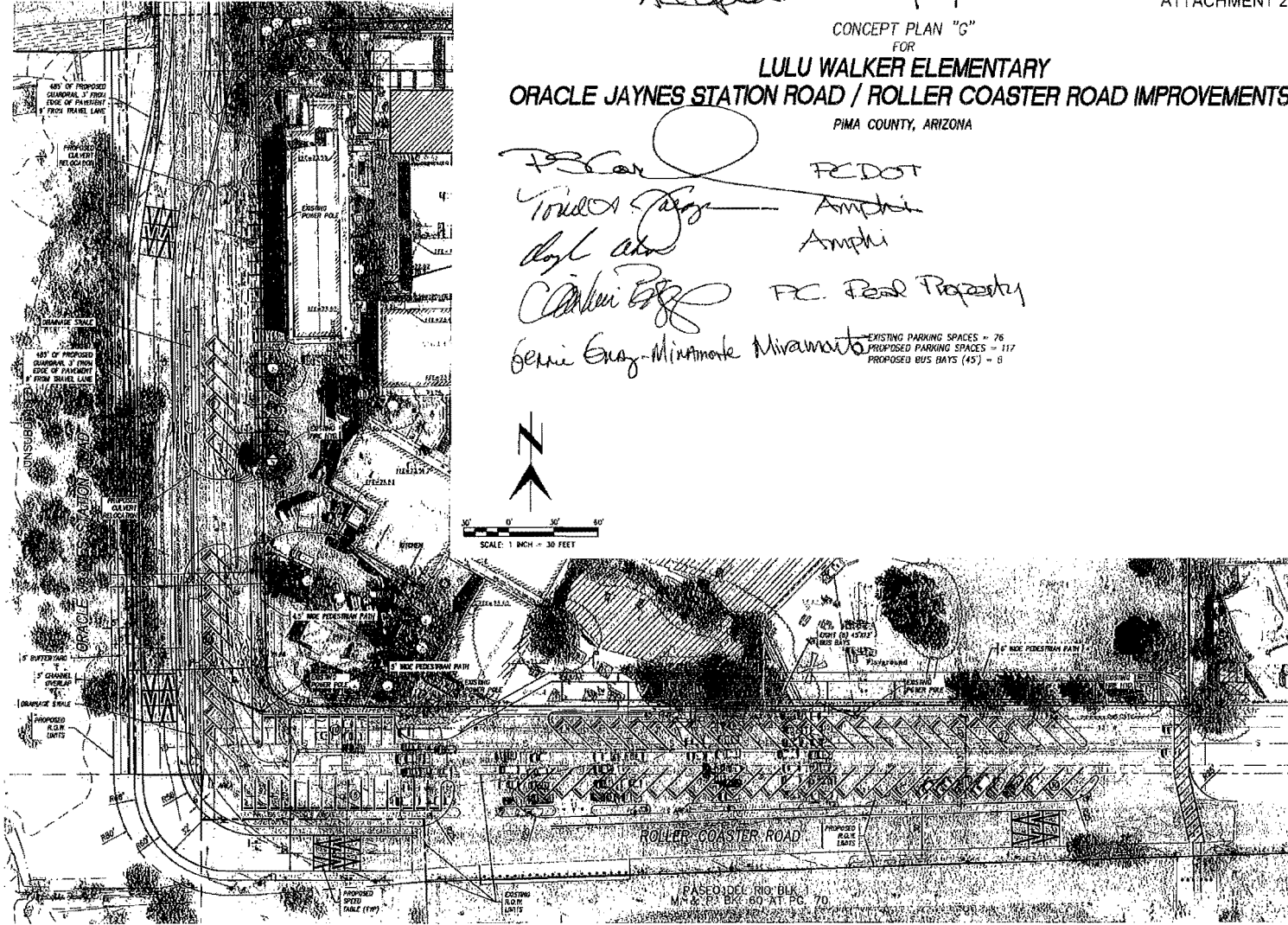
CONCEPT PLAN "G"
FOR

LULU WALKER ELEMENTARY
ORACLE JAYNES STATION ROAD / ROLLER COASTER ROAD IMPROVEMENTS
PIMA COUNTY, ARIZONA

PC DOT
Touder Pappas — *Amphi*
dogh adn — *Amphi*
Carlene Pappas — *PC Real Property*
Sennie Eng-Minamoto Miramoto — *EXISTING PARKING SPACES = 76*
PROPOSED PARKING SPACES = 117
PROPOSED BUS BAYS (45) = 8



SCALE: 1 INCH = 30 FEET



swaim
ASSOCIATES LTD
ARCHITECTS/EA

1200 KELLER BRICKWAY 210
TUCSON, ARIZONA 85710
PHONE: 520-318-7770
FAX: 520-318-7771
WWW.SWAIMLTD.COM



Job
10026
date
10/12/11
revisions

AMPHITHEATER PUBLIC SCHOOLS
Lu-Lu Walker Elementary School
1750 W. Roller Coaster Rd.
Tucson, AZ 85704
Offsite Improvements

ORACLE JAYNES STATION
ROLLER COASTER ROAD
Concept Plan "G"

G

EFC JOB NO. 10026



Engineering and Environmental Consultants, Inc.
4950 E. FT. LOWELL RD. TEL: 520-221-6025 FAX: 520-321-0533
TUCSON, ARIZONA 85712 www.eec-info.com

0:110026-11-14 Swaim (Civil) (Civil) 50110026-11-14 Concept Plan "G" - Rev. 02 - 11/03/11 - 4/0000 - 10026

Accepted

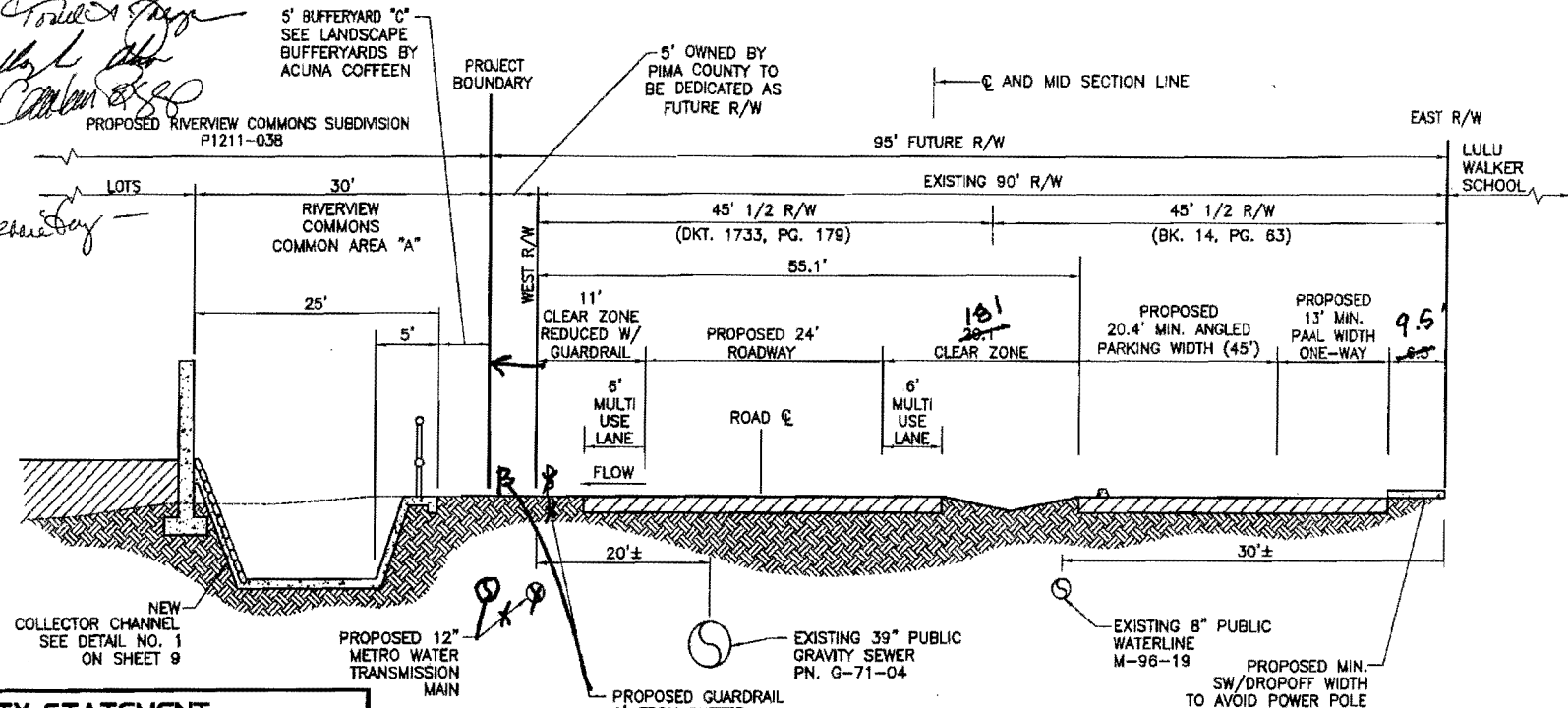
11/3/11

ATTACHMENT 1

Amplifi
Amplifi
Miramonte

Proposed RiverView Commons Subdivision
P1211-038
5' BUFFERYARD "C"
SEE LANDSCAPE
BUFFERYARDS BY
ACUNA COFFEEN

Boundary



UTILITY STATEMENT

THE LOCATION OF ANY UNDERGROUND UTILITIES OR STRUCTURE SHOWN ON THESE PLANS WERE OBTAINED BY A SEARCH OF THE AVAILABLE RECORDS AND FROM FIELD SURVEY. THE ENGINEER MAKES NO GUARANTEE OF THE ACCURACY OR COMPLETENESS OF THE LOCATION OR THE EXISTENCE OR NONEXISTENCE OF ANY UNDERGROUND UTILITY OR STRUCTURE SHOWN. THE CONTRACTOR IS REQUIRED TO TAKE ALL PRECAUTIONARY MEANS NECESSARY TO PROTECT ANY UTILITY. THE CONTRACTOR SHALL VERIFY ANY CONSTRUCTION. CONTRACTOR SHALL ALSO BE RESPONSIBLE FOR DAMAGE TO EXISTING ABOVE GROUND OR UNDERGROUND UTILITIES, INCLUDING THOSE NOT SHOWN ON THESE DRAWINGS.

PROPOSED ORACLE JAYNES STATION ROADWAY X-SECTION

N.T.S.

PRESIDIO ENGINEERING JOB NO. 11012-01-0850, 11/02/2011

PRELIMINARY: NOT FOR CONSTRUCTION

- NOTE:
- HORIZONTAL LOCATION OF PROPOSED 12" METRO WATER TRANSMISSION MAIN PER WESTLAND RESOURCES (KARA FESTA)
 - ROADWAY & PARKING IMPROVEMENTS SHOWN WITHIN R.O.W. PER EEC (RYAN STUCKI)