



SENT VIA ELECTRONIC MAIL

August 14, 2025

Dustin Ward, PE
Development Engineering Division Manager
Town of Marana
11555 W. Civic Center Drive

RE: Town of Marana – Private Improvement Agreement

Mr. Ward,

We appreciate the opportunity to review and provide comments on the proposed revisions to the Town of Marana’s Private Improvement Agreement (PIA) form. Our members are directly affected by these changes. It is our goal to work collaboratively to reach a final product that achieves both the Town and industry objectives.

General Observations

- The revised PIA shifts from a general informational document to a prescriptive contract, imposing higher liability, insurance, and operational requirements on Owners, EORs, and Contractors. It transfers greater inspection responsibility to the licensed EOR without reducing PIA fees, which cover Town inspections; if retained, fees should be lowered or EORs granted full inspection authority with Town-provided training as needed.
These changes will raise project costs, limit the pool of qualified EORs and contractors, and slow project delivery.
The revisions impose more stringent obligations on private parties without reciprocal commitments from the Town regarding review timelines, inspections, or approvals.
There is consensus among members that the impetus for these changes is unclear. To achieve an outcome benefiting both the Town and the regulated community, we seek a clearer explanation for these changes, which otherwise appear to create further costs.

Recitals: The revised form removes the recital from the current PIA that states: “the Town is willing to approve said improvement(s), provided it/they meet Town Standards and the work is completed in accordance with Town requirements.” The absence of this language removes certainty improvements will be approved if done in accordance with Town requirements and ask it be retained.

Section 1 – List of Plans: Recommendation: The list of plans and specifications should be included as an exhibit rather than requiring them to be filled in on the form itself, to ensure clarity and avoid ambiguity.

Section 2 – Maintenance Obligation: The added language stating: “Owner assumes the responsibility for... maintenance associated with all improvements and facilities required by such permits” is interpreted as imposing long-term maintenance obligations beyond project acceptance. Recommendation: Clarify that the Owner’s maintenance responsibility ends upon formal acceptance of improvements by the Town.

Section 3.B – EOR Weekly Visit Requirement The mandate for a minimum of one EOR site visit per week is arbitrary and may be unnecessary depending on project stage (e.g., early grading or utility installation). Recommendation: Modify to allow the EOR to determine site visit frequency based on professional judgment, project phase, and progress.

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**Section 3 – Inspection vs. Observation:** The PIA uses the term “construction inspection” without definition, creating ambiguity and potential liability for EORs. In industry terms, observation means visually monitoring work for general conformance, while inspection implies a formal process with testing and verification, greater frequency, and higher legal exposure. More site visits equate to a far greater cost. **Recommendation:** Strike “inspection” and adopt the term “observation” with an associated definition to align expectations and liability.

**Section 4.A.I – Construction Hours Signage:** The requirement for contractors to post separate signage for construction hours is an unnecessary cost and monitoring burden without clear benefit. **Recommendation:** Strike from document.

**Section 4.E.II – Asphalt Placement Monitoring:** Requiring a geotechnical representative on site during asphalt placement for the entirety of the operation is overly broad and will significantly increase costs. **Recommendation:** Narrow the requirement to instances where it is technically necessary and coordinate with industry best practices.

**Section 5.B – EOR Confirmation of Contractor Understanding:** The EOR cannot reasonably confirm that the Contractor “understands” the plans and specifications, as the EOR has no contractual relationship or control over the Contractor. **Recommendation:** Shift this responsibility to the Owner/Developer.

**Section 6 – Surveyor Retention:** While the current draft specifies that the Owner retains the surveyor, in practice the Contractor often does. **Recommendation:** Revise to allow either Owner or Contractor to retain the surveyor.

**Sections 7 & 8 – Payment of Fees:** Current language assumes the Owner pays all inspection and material testing fees, but these may be paid by the Contractor. **Recommendation:** Make the language neutral to allow either party to fulfill this obligation.

**Section 12 – Bill of Sale:** **Recommendation:** To avoid later disputes, the form of the Bill of Sale should be included as an exhibit in the PIA. This ensures the agreed form is locked in at contract execution.

**Section 15 – Indemnification:** The revised indemnity clause is substantially broader, creating excessive liability for all parties. **Recommendation:** Adopt the following language:

“To the fullest extent permitted by law, Owner, EOR, and Contractor their successors and assigns shall indemnify and hold harmless Town, its officers, employees, and agents, (collectively the “Indemnified Party”) for, from, and against any and all liabilities, damages, losses, claims, expenses, and costs (including, but not limited to, reasonable attorney’s fees and court costs), to which any Indemnified Party may become subject, under any theory of liability whatsoever (“Claims”), to the extent that the Claims (or actions in respect thereof) are caused by the sole negligence or willful misconduct, of Owner, EOR, or Contractor, their officers, employees, agents, or any tier of contractor or subcontractor in connection with the Work provided that in the event any such Claims arise out of the negligence or willful misconduct of any Indemnified Party then there shall be no obligation to indemnify or hold harmless hereunder. Insurance provisions set forth in this Agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions.”

**Section 16 – Insurance:** The requirement for EORs to provide insurance certificates and list the Town as an additional insured is unprecedented in our experience and will reduce the number of firms willing to provide EOR services. **Recommendation:** Remove this requirement for EORs or provide justification for its necessity. Additionally, the phrase “on all policies” contained in the third to last sentence of section 16 be revised to read “on the Commercial General Liability Policy”.

**Section 17 – Town Inspections:** The agreement imposes strict timelines and obligations on private parties but contains no reciprocal commitments from the Town to perform timely inspections or review closeout packages. **Recommendation:** Add timeframes for Town responses to prevent project delays.

**Section 18 – Termination:** The Town may terminate the agreement unilaterally if the EOR fails in duties. **Recommendation:** Add a written notice and cure period (e.g., 30 days) before termination is effective.

**Section 19 – Changes to Agreement:** Current language allows the Town alone to approve changes. **Recommendation:** Require that all parties (Owner, EOR, Contractor) approve any changes.

#### **Additional Recommendations:**

**Reduce PIA fees.** Owners pay substantial PIA fees, ostensibly to cover town inspection costs, yet Contractors are often stopping work progress and waiting for the Town’s inspector to review work cases even having to remove and replace work or material that has sat too long. The shift to the EOR relieves strain on a short-staffed inspection department and therefore fees should be reduced accordingly.

**Make EOR responsible for all inspections.** If this, more EOR focused system, is the desired path forward, why not just have the EOR to be responsible for all the inspections so that work can proceed without delay of waiting on the Town inspection staff?

**Provide EOR training.** EOR’s are licensed professionals and put their licensure on the line in certifying inspections. If the Town has concerns the EOR may not catch something they’re looking for, the Town should provide EOR training or certification focusing on important points.

These comments reflect the cumulative impact of these proposed revisions on project costs, availability of qualified professionals, and overall development timelines. We believe they will ensure the PIA serves both the Town’s interests and the realities of construction and development.

*BT Lyons*

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Director of Government Affairs  
Southern Arizona Home Builders Association

cc:

Jason Angell, Development Services Director

Stephen Dean, Development Services Deputy Director