

# Town of Marana - PRIVATE IMPROVEMENT AGREEMENT

## AGREEMENT FOR CONSTRUCTION OF CIVIL IMPROVEMENTS

In consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, this Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between the Owner/Applicant (hereinafter "Owner"), the Civil Engineer of Record (hereinafter "EOR), and the Owner's Contractor for the Work.

### PROJECT / OWNER / ENGINEER INFORMATION

**PROJECT:**

Town of Marana Project No.(s):

Project Description:

Legal Description of Property:

**Owner/Applicant:**

Contact Name:

Address:

City:

State:

Zip:

Email:

Phone No.:

**Civil Engineer of Record:**

Contact Name:

Address:

City:

State:

Zip:

Email:

Phone No.:

**Contractor:**

Contact Name:

Address:

City:

State:

Zip:

Email:

Phone No.:

Project Superintendent:

Phone No.:

WHEREAS, the Owner desires to make improvements, as described in paragraph 1 below (the "Work"), on the property legally described above; and

WHEREAS, the Owner has retained a civil engineer-of-record (EOR), registered to practice in the state of Arizona, to perform construction inspection and certification of the Work pursuant to Marana Town Code (MTC) Section 17-13-10; and

WHEREAS, the Owner has retained a Contractor to perform the Work; and

WHEREAS, pursuant to MTC Section 17-13-10, the Owner, the EOR, and the Contractor desire to execute this written private improvement agreement (this "Agreement"), clearly enumerating the responsibilities of all parties to the process.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. The Owner shall install and construct, or cause to have installed and constructed by the Contractor, at the Owner's sole expense, the improvements outlined in the following enumerated plans and specifications, \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (the "Work"), which plans and specifications have been prepared by a Professional Civil Engineer registered to practice in Arizona, and which have been reviewed and approved by the Town of Marana, and the officials of the appropriate water and wastewater agencies, or other agencies, if applicable.
2. The Owner must obtain all necessary permits and approvals required under any federal, state, and local laws and regulations prior to the commencement of any work under this Agreement. The Work shall be completed in conformance with all applicable regulations, permits, standards, and requirements of the Town and any applicable federal or state agencies. Owner assumes the responsibility for compliance, engineering, design, construction, inspection, and maintenance associated with all improvements and facilities required by such permits.
3. The Owner shall retain a Professional Civil Engineer, registered to practice in Arizona, as "Engineer of Record" or "EOR". The EOR shall be responsible for performance of all duties listed for the EOR in MTC Section 17-13-10 and all corollary duties, including:
  - A. Performing the required construction inspections using one of the following methods:
    - I. The EOR performs the inspections;
    - II. An authorized representative employed by the firm the EOR represents performs the inspections; or
    - III. A third-party company certified to complete the inspections on behalf of the EOR and to the EOR's satisfaction performs the inspections.
  - B. Surveillance of the construction as it progresses. At a minimum, the EOR or the EOR's representative shall complete one visit per week or as needed to fulfill the responsibility of this paragraph.

- C. Review of the material testing reports to verify the compliance of materials incorporated into the Work.
  - D. Certification, upon completion, that the construction has been performed and completed in accordance with the permit conditions, the approved plans and specifications, and with the applicable Town standards.
  - E. Making periodic (at least monthly) reports to the Town as construction progresses, submitted to DEVENG@MaranaAz.gov and maintaining records for filing with the Town at completion.
  - F. Completion of a final inspection. All required construction work shall be completed in accordance with the permit prior to final inspection by the Town and issuance of a certificate of final approval by the EOR.
4. The Contractor shall be responsible for the following:
- A. Ensuring construction start times, including prestart activities, are in compliance with MTC Section 11-5-4 "Construction Noise".
    - I. Contractor shall post a sign in English and Spanish at the entrance to the site that identifies the working hours for the site and includes reference to MTC Section 11-5-4. The sign shall be placed in a visible and easy-to-read location that can be read as workers enter the site. The sign shall remain in place until all site development and vertical construction is completed.
  - B. The construction of the Work as shown on the approved project plans.
  - C. Knowledge and understanding of the project plans and specifications required to complete the construction of the Work per the Town approved plans and specifications.
  - D. Providing a schedule to the EOR, updated on a regular interval so the EOR can coordinate site visits.
  - E. Knowing and ensuring the required material tests are completed during construction to confirm the materials of construction conform to the project plans and specifications, including the following:
    - I. Material placement for the trench backfills, concrete, subgrade and roadway base course (AB).
    - II. Material placement for the roadway friction course (Asphalt). There shall be a geotechnical representative on site to monitor densities as the asphalt is placed. Asphalt voids in excess of 7.0 will not be accepted and will be subject to removal at no cost to the Town of Marana. Cores shall be taken as per Pima Association of Governments (PAG) standard specification 406.
  - F. Providing the material test results to the EOR for review and approval and to be included in the EOR's report.
5. Acceptance of work performed by the Contractor
- A. The EOR and the Contractor shall coordinate concerning the required project inspections so that there are no delays to the project schedule.

- B. The EOR has the responsibility of confirming that the Contractor has and understands the plans, details, and specifications relevant to the project.
  - C. The EOR has the authority to reject defective material or work. The EOR's failure to discover or reject materials or work not in accordance with the project plans, specifications or contract documents shall not be considered an acceptance of the work or materials or a waiver of defects. Neither the failure of the EOR to properly perform inspections, tests or approvals required by the contract documents nor the activities or duties of the EOR in the administration of this Agreement shall relieve the Contractor from its responsibility for the means, methods, techniques, sequences or scheduling of the construction or the obligation to perform the Work in strict accordance with the contract documents.
  - D. If the Town's presence is requested, the EOR shall be notified and the meeting shall be scheduled such that all parties can have a presence at the scheduled meeting.
6. The Owner shall retain a Licensed Land Surveyor to lay out and establish the lines and grades.
  7. The Owner shall pay any and all inspection fees as may be charged to the Owner by the Town.
  8. The Owner shall be solely responsible for the cost of material tests required by the Town, as well as the costs of securing all applicable materials compliance documents and certifications.
  9. The Work shall be subject to the inspection and approval of the Town as the Work progresses. The EOR shall provide at the end of each month a written report as to the progress of the construction together with inspection reports, materials test reports, and any other supplemental data pertinent to the Work. Deviations from the approved plans shall be shown on the "As-Built" plans. All changes or deviations in the approved plans and/or specifications shall be submitted to the Town for review and approval prior to execution in the field.
  10. The Town Engineer or designated representative shall be present at the final on-site inspection of the improvements. Deficiencies in the Work noted during the final inspection shall be corrected to the satisfaction of the Town prior to approval of the improvement by the Town and/or prior to release of assurances.
  11. Within ten calendar days of the completion of construction, the Owner shall furnish the Town with a closeout package that includes all applicable items listed in MTC Section 17-5-4 (Performance Guarantee), paragraph C. A certified listing of all items and quantities installed and associated costs will be required to verify permit fees.
  12. The Owner shall grant, bargain, sell, convey, transfer, and deliver to the Town the public improvements installed within the Town's Right-of-Way pursuant to this Agreement, and shall execute and deliver to the Town a Bill of Sale, or other approved conveyance instrument, for the public improvements within 30 days of acceptance of the improvements by the Town.
  13. The Town shall accept title to and take possession of the public improvements upon their satisfactory completion as approved by the Town upon receipt of the Bill of Sale from the Owner, and upon execution of a license agreement for private improvements maintenance by the Owner for those private improvements that are constructed within the Town's Right-of-Way.

14. The Owner shall guarantee the Work against defective materials or workmanship for a period of at least one year, or longer as defined by the Marana Town Code from the final acceptance of the improvements by the Town. Upon discovery of defects, any repair or replacement by the Town pursuant to the guarantee shall be undertaken immediately to the satisfaction of and at no cost to the Town.
15. To the fullest extent permitted by law, Owner, EOR, and Contractor their successors and assigns shall indemnify and hold harmless Town, its officers, employees, agents, and volunteers (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 negligence, recklessness, or intentional wrongful conduct of Owner, EOR, or Contractor their officers, employees, agents, or any tier of contractor or subcontractor in connection with the Work. 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.
16. During the construction of the Work, the Owner shall ensure that the Owner's Engineer, contractor(s), and subcontractor(s) shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$1,000,000 Products and Completed Operations Aggregate and \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products/completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract, which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form, CG00011204 or any replacement thereof. The coverage shall not exclude X, C, U. Such policy shall contain severability of interest provision, and shall not contain a sunset provision or commutation clause, nor any provision, which would serve to limit third-party action over claims. The Town of Marana shall be named as an additional insured on all policies. The policy limit shall not be construed to limit the scope of indemnity above. The Contractor and EOR shall submit Certificates of Insurance prior to the issuance of permits.
17. The Owner shall ensure that the Contractor notifies the Development Engineering Division to inspect the subgrade, the aggregate base course (ABC), and asphalt for all public roadways to be dedicated to the Town. Placement of the subsequent lift per the pavement section shall not commence until the Town's inspection has been completed and all corrections have been addressed. All unsatisfactory work, as determined by the Town or designated representatives shall be removed and replaced before placement of the final lift of asphalt.
18. The Town reserves the right to terminate this Agreement if the EOR does not perform all duties listed for the EOR in MTC Section 17-13-10. If the Town terminates the Agreement, the Town will amend the permits to account for the fees required for the Town to act as the EOR.
19. Any changes to this Agreement must be approved by the Town of Marana in writing prior to execution of the Agreement and issuance of permits.

IN WITNESS WHEREOF, Owner, EOR, and Contractor have executed or have caused this Agreement to be executed by their proper and duly authorized officers.

Signature of Owner or Authorized Agent	
Signature of Civil Engineer of Record	
Signature of Contractor	

# PRIVATE IMPROVEMENT AGREEMENT ADDENDUM

## AGREEMENT FOR CONSTRUCTION OF CIVIL IMPROVEMENTS

WHEREAS, the contractors identified below have read the terms of the Agreement and agree to execute their obligations as the contractor completing the balance of the work, as described in paragraph 1 (the "Work") and in the descriptions below.

<b>Additional Work:</b>			
<b>Contractor:</b>		Contact Name:	
Address:	City:	State:	Zip:
Email:	Phone No.:		
Signature of Contractor			
<b>Additional Work:</b>			
<b>Contractor:</b>		Contact Name:	
Address:	City:	State:	Zip:
Email:	Phone No.:		
Signature of Contractor			
<b>Additional Work:</b>			
<b>Contractor:</b>		Contact Name:	
Address:	City:	State:	Zip:
Email:	Phone No.:		
Signature of Contractor			