

When recorded, return to:

40m
Snell & Wilmer L.L.P.
1500 Unisource Energy Tower
One South Church Avenue
Tucson, Arizona 85701
Attention: Marc Simon



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLE

DATE/TIME: 02/26/07 1618
FEE: \$54.00
PAGES: 46
FEE NUMBER: 2007-024078

DEVELOPMENT AGREEMENT

This Development Agreement is being re-recorded solely to correct the prior omission of Exhibit F, which is attached hereto.



OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
LAURA DEAN-LYTLE

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1500 Unisource Energy Tower
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DATE/TIME: 02/09/07 1400
FEE: \$43.00
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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into this 22nd day of January, 2007, by and between the CITY OF ELOY, Arizona, a municipal corporation (the "City"), and NEW NGC, INC., a Delaware corporation ("NGC"). The City and NGC may be referred to herein as the "Parties."

RECITALS

A. NGC owns or has an interest in certain property located in the City of Eloy, Pinal County, Arizona, as particularly described on Exhibit A attached hereto (the "NGC Property"), upon which NGC intends eventually to construct certain commercial improvements, including a facility for the manufacture of wallboard products.

B. The NGC Property and certain adjacent land owned by BRALU, L.L.C., an Arizona limited liability company, are the subject of companion rezoning cases whereby the properties are, or are soon planned to be, rezoned to the classification I-1 and C-2, respectively, under the City's zoning code. NGC's site plan and related materials for its rezoning are attached as Exhibit B hereto.

C. In conjunction with and as a condition to its development of the NGC Property, NGC intends to construct a roadway across and upon the NGC Property or other property (the "Main Access Road"), in order to facilitate access from existing roadways to the NGC Property and various other properties in the immediate area and generally to improve the transportation infrastructure of the City. Subsequent to completion of the Main Access Road, NGC intends to dedicate the Main Access Road to public use. NGC's plan and related materials for the Main Access Road are attached as Exhibit C hereto. The Main Access Road right-of-way shall be, in main part, eighty (80) feet in width from Sunshine Boulevard on the west to La Palma Road on the east, with the improved paved surface being forty five (45) feet in width from curb to curb; provided, however that from the cul-de-sac shown in said Exhibit C to La Palma Road on the east, there shall be within the right-of-way, unless and until later improved by others, a single lane, graded and surfaced all weather access road bed, twenty (20) feet in width. Also as shown on Exhibit C, the Main Access Road shall be widened to one hundred (100) feet where it intersects with Sunshine Boulevard to the west. The estimated total cost for construction of the Main Access Road is One Million Two Hundred Ninety One Thousand Five Hundred Dollars (\$1,291,500.00), plus a construction management fee of approximately three percent (3%) thereof.

D. In conjunction with its development of the NGC Property, NGC intends to construct certain parallel tracks, rail spur tracks, and other rail facilities, structures and infrastructures on the NGC Property, which facilities (collectively, the "Rail Facilities") are intended to connect directly or indirectly to certain Union Pacific railroad tracks adjacent to, and to the north of, portions of the NGC Property. The presence of Rail Facilities will provide a benefit not only to the NGC Property, but also to certain other property adjacent to or near portions of the NGC Property. The estimated total cost for construction of the Rail Facilities is Six Million Dollars (\$6,000,000.00), plus a construction management fee of approximately three percent (3%) thereof.

E. In conjunction with its development of the NGC Property, NGC intends to drill and operate two or more high-production water wells, and one or more test or monitoring wells, on the NGC Property (collectively, the "Water Wells"). The estimated total cost for drilling and installing the Water Wells is One Million One Hundred Fifty Thousand Dollars (\$1,150,000.00).

F. In conjunction with and as a condition to its development of the NGC Property and construction of the Main Access Road, NGC intends to construct and install upon the NGC Property and possibly other property, subject to refinement and change based upon engineering and design plans ultimately submitted by NGC and approved by the City, a twelve inch (12") C 909 PVC water distribution line and related facilities, including twelve inch (12") by twelve inch (12") tapping sleeves and valves; twelve inch (12") valves, boxes and covers; two inch (2") water services; and six inch (6") fire line stubs (collectively, the "Water Line"). The term "Water Line," as used and defined herein, does not include the Water Wells. The Water Line planned by NGC is shown in Exhibit D hereto.

G. In conjunction with and as a condition to its development of the NGC Property, NGC intends to construct and install a twelve inch (12") SDR 35 PVC sewer line and related facilities across and upon the NGC Property and possibly other property, which related facilities may include, but are not limited to, manholes five feet (5') in diameter; and six inch (6") sewer service which is located solely on and serves the NGC Property (the sewer line and related facilities, collectively, the "Sewer System"), in order to facilitate connection to the City's sewage system. The Sewer System planned by NGC is shown in Exhibit E hereto.

H. The estimated total cost for construction and installation of the Water Line and the Sewer System is One Million Seventy Six Thousand Eight Hundred Fifteen Dollars (\$1,076,815.00), plus a construction management fee of approximately three percent (3%) thereof.

I. Upon completion of the Water Line, NGC desires to dedicate the Water Line to the City, such that the Water Line may be operated and maintained as a component of the City's water system, and the City desires to accept such assignment and assume responsibility therefor.

J. Upon completion of the Sewer System, NGC desires to dedicate the Sewer System to the City, such that the Sewer System may be operated and maintained as a component of the City's sewer system, and the City desires to accept such assignment and assume responsibility therefor.

K. The Parties acknowledge that substantial benefits are expected to accrue to the City as a result of NGC's locating the Wallboard Facility within the City, and the development of the NGC Property, the construction of the aforementioned improvements thereon, and the planned dedications and transfers associated therewith. Furthermore, the City acknowledges that NGC will incur considerable expenses in connection with such development, construction, dedications, and transfers. In consideration of such benefits, the City desires to permit NGC to recoup a portion of expenses incurred by NGC in the construction and installation of improvements on the NGC Property and possibly other property, through provision of certain services and incentives by the City to NGC, including a rebate of a portion of the Construction Sales Tax (as hereinafter defined) charged by the City.

L. The Parties desire to enter into this Agreement to set forth their understandings regarding the development of the NGC Property, the assignment of rights related thereto to the City, and NGC's recovery of certain costs incurred in relation to such development.

M. This Agreement shall constitute a Development Agreement pursuant to A.R.S. Section 9-500.05, and this Agreement is approved pursuant to Ordinance No. 07-667, and pursuant to Title 16 of the Eloy City Code pertaining to economic incentives, credits, rebates and the like. This Agreement shall be fully executed by the Parties on or about January 23, 2007, the date of the planned closing of NGC's acquisition of the NGC Property (the "Effective Date") and recorded thereafter as required by law.

NOW, THEREFORE, in consideration of the mutual benefits, obligations, terms and conditions hereof and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and NGC (subject to the closing of NGC's purchase of the NGC Property) agree as follows:

ARTICLE 1 LAND USE FOR NGC MANUFACTURING FACILITY

1.1 **Manufacturing Facility.** NGC currently plans to construct on the NGC Property a facility for the receipt of raw materials and manufacture and distribution of wallboard and related products (the "Wallboard Facility"). The construction and operation of the Wallboard Facility is permissible under the City of Eloy Zoning Ordinance (the "Zoning Ordinance") pursuant to the land use classification "I-1" and does not require any further conditional use permits, special use permits, or other special privileges or permits.

1.2 Consistency with General Plan. The City's Planning and Zoning Department ("Staff") has thoroughly reviewed the City of Eloy General Plan (the "General Plan"), and Staff acknowledges that the proposed rezoning of an area that includes the entire NGC Property to an "I-1" designation is consistent with the General Plan and does not require any change or amendment to the General Plan. Staff recommends approval of the planned rezoning of the NGC Property to I-1. Staff further concurs with the height variances for the Wallboard Facility allowing a single one hundred twenty five (125) foot dome building and two one hundred (100) foot tall mill buildings, which variances were approved by the City of Eloy Board of Adjustment on June 15, 2006 in variance Case No. VA06-33 and which permit the construction and operation of the Wallboard Facility as currently planned by NGC and shown on the site plan and layout furnished to the City, without any material restrictions or conditions imposed, other than those made a part of the height variance approval.

1.3 Review of Plans and Rezoning Submittals. The City shall diligently process all rezoning applications for the NGC Property and complete the rezoning process in early January of 2007 if at all reasonably possible with an adopted final zoning ordinance. In addition, in acknowledgement of the necessity for expeditious review by the City of all plans and other materials ("Submitted Materials") submitted by NGC to the City, including materials submitted for plan approval or for permits, the City agrees to use its best efforts to accomplish prompt and expeditious review and approval of the Submitted Materials. The City represents that it is adequately staffed to provide personnel and other resources such that such submissions will be diligently processed with the goal of a maximum two (2) week response time by the City to all submittals and applications made.

1.4 Consistency of Use. The proposed rezoning of an area that includes the entire NGC Property to an "I-1" designation is consistent with the policies of the City and with sound principles of land planning and management, particularly in light of surrounding uses and the proximity of the NGC Property to interstate highway I-10 and existing railways. Staff has reviewed the rezoning proposal, this Agreement and land use plan and layout of NGC's proposed Wallboard Facility and related improvements, and Staff recommends that the rezoning proposal be adopted by the Council of the City of Eloy to accommodate the uses and development planned by NGC as of the date of this Agreement. Staff and the City acknowledge that the Council of the City of Eloy shall make the conclusive determinations on zoning matters, and nothing herein shall be construed to be illegal contract zoning. Upon the same agenda that the Mayor and City Council considers the rezoning and the development and site plans attached hereto, together with such supplemental material as NGC shall supply, the Mayor and City Council shall consider recognizing NGC's submittals to constitute a "Protected Development Right" under A.R.S. §9-1201, et seq., for a term of at least three (3) years. Such recognition of a Protected Development Right shall occur at the same time that this Agreement is approved by the Mayor and Council.

1.5 Parcel Split Approval. The City hereby approves of the severance and conveyance to NGC of the NGC Property from the larger tract of property initially owned by Bralu, L.L.C.

1.6 Offsite Development Requirements. No offsite augmentation of any water system, sewer system or roadways shall be required in connection with the planned development of the NGC Property or the installation of any improvements hereunder, including the Water Line or Sewer System, nor shall the City require any installation of offsite booster pumps, water treatment systems, water storage systems or the like. Upon construction of any onsite system for water and sewer, as distinct from the Water Line and Sewer System, NGC shall be entitled to use and operate same.

1.7 Closure of La Palma Road Railway Crossing. In view of the benefits accruing to the City by reason of NGC's development of the NGC Property, as more particularly described in Recital J of this Agreement, the City hereby acknowledges that it supports closure, pursuant to A.R.S. Section 28-7205, of that portion of La Palma Road which crosses the Union Pacific railroad lines which run along the northern edge of the NGC Property, which closure is requested by Union Pacific with respect to development of the NGC Property. Formal approval of the closure has not yet occurred.

ARTICLE 2

MAIN ACCESS ROAD; CONSTRUCTION SALES TAX AND REBATE

2.1 Construction Standards. As a condition to its development of the NGC Property, NGC shall construct the Main Access Road in accordance with standards agreed upon by the City and NGC.

2.2 Dedication. Upon completion of the Main Access Road, NGC shall dedicate the Main Access Road for public use in accordance with applicable law. At the time that title to the Main Access Road is transferred to the City by dedication deed or otherwise, NGC shall assign to the City any unexpired warranties relating to design, construction or composition thereof, and thereafter, the Main Access Road shall become a public facility and property of the City and all maintenance and repair of the Main Access Road shall be the obligation of the City. Any such dedication shall include any easements granted to NGC in connection with its construction or use of the Main Access Road. NGC shall cause its contractor to provide, or shall otherwise provide, a one-year warranty on workmanship for the Main Access Road.

2.3 Payment of Construction Sales Tax. Prime contractors or general contractors constructing improvements upon the NGC Property will, to the extent applicable, charge to NGC such transaction privilege taxes, and other related construction taxes, by whatever name, on construction activity or revenues as are chargeable by applicable ordinance of the City. The current tax on the business of contracting is a transaction privilege tax which equals four and one-half percent (4.5%) of taxable revenue as set forth by ordinance, less deductions, credits and other adjustments. City taxes applied to such construction activity or revenues, including the transaction privilege tax, shall be referred to hereinafter as the "Construction Sales Tax".

2.4 Partial Rebate of Construction Sales Tax. In view of the benefit expected to accrue to the City as a result of NGC's locating the Wallboard Facility within the City, and construction of the Wallboard Facility, Rail Facilities and Main Access

Road, and all associated or related development or future development of the NGC Property (collectively, the "NGC Rebate Improvements"), the City hereby agrees, including under the authority of any applicable state or local laws, that upon receipt by the City of any portion of the Construction Sales Tax or proceeds thereof paid by or on behalf of NGC in relation to the NGC Rebate Improvements, whether received in lump sum or in periodic installments, the City shall for the benefit of NGC promptly deposit in a separate, interest-bearing restricted account (the "Restricted Account") two-thirds (2/3) of all such amounts received in connection with any and all said NGC Rebate Improvements for which the Construction Sales Tax has been charged to NGC (the "Rebate Incentive"). The City has determined by competent economic impact analysis that the creation of economic development incentives in connection with the NGC Property will be beneficial to the citizens of the City, and that the benefits to the City exceed the benefit and tax incentive afforded to NGC hereunder. Consequently, the terms of the Rebate Incentive set forth herein shall constitute a tax incentive agreement, as that term is used in the aforementioned statute, which the City shall approve by enacting an ordinance to such effect at the same time that this Agreement is approved by the Mayor and Council. NGC's right to the Rebate Incentive shall be limited to such portions of the Construction Sales Tax actually received by or otherwise credited to the City.

For purposes of determining the dollar amount of the Rebate Incentive to be deposited in the Restricted Account, NGC may provide the City with a monthly or other periodic accounting of the total Construction Sales Tax paid by NGC to its general contractors along with a breakdown showing the dollar amount attributable to specific components of the NGC Rebate Improvements constructed on the NGC Property. The City shall promptly determine on a periodic basis the amount it has received on account of Construction Sales Tax paid in connection such NGC Rebate Improvements, and shall cooperate with NGC to see that the proper Rebate Incentive deposits are timely and periodically made to the Restricted Account. Notwithstanding the foregoing, however, a failure by NGC to provide such monthly or other periodic accounting shall in no way be deemed a waiver of NGC's right to receive payment of the Rebate Incentive, and future accountings may serve to provide the City with the proper amount to be deposited in the Restricted Account.

2.5 Total Cost Limitation of Rebate Incentive. NGC and the City agree that Construction Sales Tax rebated pursuant to the Rebate Incentive shall not exceed the Total Costs of the following: (1) Main Access Road design and construction costs; and (2) costs associated with the design and construction by NGC of the Rail Facilities. Current estimates of such costs are as follows: (1) Main Access Road construction costs: \$1,291,500.00; and (2) costs associated with the construction of the Rail Facilities: \$6,000,000.00, with the foregoing estimates in each case to be increased by the cost of design and other contingencies. Actual costs for the foregoing items, after being incurred by NGC and established by NGC through invoices and other such evidence, are hereinafter referred to as the "Total Costs," and the dollar amount of the Total Costs shall be the upper limit on the total dollar amount of the Rebate Incentive to be paid to NGC.

2.6 Payment of the Rebate Incentive, and Construction Timelines. The City and NGC shall request release of the Rebate Incentive to NGC from the Restricted Account, with disbursement to be made in full to NGC at the time of completion of the Main Access Road, Water Line, Sewer System, and Wallboard Facility, and in accordance with applicable laws. At such time, the City shall be entitled to any and all interest earned by deposits held in the Restricted Account. If the Rail Facilities have not then been completed, then payment of the portion of the Rebate Incentive attributable to the said Rail Facilities shall be paid at the time said Rail Facilities are completed. Construction activity in relation to the Main Access Road, Water Line and Sewer System shall commence within one year after the date that the ordinance approving this Agreement becomes effective and not subject to referendum, and said construction shall be complete within thirty-six (36) months of commencement thereof. The Rail Facilities shall be commenced within twenty-four (24) months of the date that the ordinance approving this Agreement becomes effective and not subject to referendum, and shall be complete no later than forty-eight (48) months thereafter.

NGC shall commence construction of its Wallboard Facility within ninety (90) days after issuance by the City of a building permit therefor and shall complete the Wallboard Facility within twenty four (24) months of the date of such issuance, or thirty six (36) months from the date of approval of this Agreement by the Mayor and Council, and NGC shall make every reasonable effort to have the Wallboard Facility operational with a certificate of occupancy issued within said same thirty six (36) month period. Nothing herein constitutes a commitment by NGC to the City to construct any facility or improvement, but, rather, the provisions hereof are intended to set forth the terms and conditions of such Rebate Incentive.

The aforementioned completion time periods shall be extended due to unusually inclement weather, acts of God, unavailability or shortage of labor or materials, national emergency, fire or other casualty, natural disaster, war, delays or actions of governmental authorities or utilities, acts of omissions of any Owner or Occupant, riots, acts of violence, labor strike, referenda on or affecting this Agreement, or any other circumstance not reasonably within the control of NGC. In the event that a referendum election is called and scheduled on any referendum petition regarding this Agreement, then the aforementioned completion time periods shall be extended by a time period equal to sixty (60) days plus the number of days from the Effective Date to the date of any such referendum election.

2.7 The City's Use of Construction Sales Tax. BRALU, L.L.C. has provided to the City a traffic study addressing the potential impact of increased traffic arising from, among other things, commercial development of the NGC Property, including heavy truck traffic. In connection with any indications in the traffic study to the effect that improvements to Sunshine Boulevard will be required in connection with such use, the City shall use that portion of the Construction Sales Tax which is retained by the City after deposit of the Rebate Incentive in the Restricted Account to improve and upgrade roadway capacity of Sunshine Boulevard in accordance with City of Eloy Ordinance Nos. 06-641 and 05-593. The City acknowledges that NGC shall not be responsible for making such improvements and upgrades to Sunshine Boulevard.

2.8 Economic Strength Program. The City shall work with the Greater Casa Grande/Eloy Economic Development team to submit an application for a grant of \$500,000 from the Arizona Economic Strength Program to obtain extra funds for NGC's design and construction of the Main Access Road. Any grant shall be subject such matching fund requirements as may exist. NGC will provide the City with all information available to NGC in support of the City's application.

ARTICLE 3 CONSTRUCTION AND OPERATION OF WATER LINE

3.1 Manner of Work; Compliance with Laws. As a condition to its development of the NGC Property, NGC shall construct the Water Line, which shall be a loop system in accordance with Exhibit D, located in part within the Main Access Road and in part within adjacent parcels. The Water Line shall be constructed and completed by NGC in a good and workmanlike manner and in compliance with all applicable laws, rules, ordinance, regulations, codes and other requirements promulgated by any governmental authority or agency having jurisdiction over the same.

3.2 Acceptance and Approval of Water Line. Upon completion of the Water Line in accordance with this Agreement, the Parties shall cooperate in good faith and with due diligence in obtaining or causing to be issued (as the case may be), all necessary governmental approvals, certifications, permits and the like, for the operation of the Water Line.

3.3 Assumption and Assignment. Upon completion of the Water Line, and only after NGC has received Development Plan Approval as defined below and a determination that NGC can retire for non-irrigation use the irrigation rights referenced in Section 4.2, NGC shall promptly assign to the City, and the City shall accept assignment of, all of the rights, title and interest of NGC in the Water Line, it being understood that the City intends to and shall operate the Water Line as a component of the City's existing public water system. The City agrees that it shall at all times reserve sufficient capacity in the Water Line to supply all of NGC's Domestic Uses, as defined below, and all other uses, including Wallboard Facility uses for such interim or emergency periods as may require service of water should any of the Joint Use Wells, as defined below, become inoperative. The aforementioned assignment of interests in the Water Line shall include any easements granted to NGC in connection with its construction or use of the Water Line.

ARTICLE 4 WATER RIGHTS AND WELLS

4.1 Service Area. The City represents that its service area does not extend into or encircle the NGC Property and, in fact, is more than fifteen hundred feet (1500') from any portion of the NGC Property.

4.2 Development Plan Approval. The City acknowledges that NGC will file an application for approval of a Development Plan under which irrigation rights

associated with the NGC Property would be retired. Such approval shall hereinafter be referred to as "Development Plan Approval." The City shall support and not oppose NGC in the application for, and the City shall cooperate with NGC in the approval and issuance by ADWR of, such permits or approvals as may be necessary for the operation and use of the Water Wells.

4.3 NGC Requirements. The City acknowledges that NGC will require a reliable flow of water from the Water Wells. The City consents to the drilling of the Water Wells and represents and warrants that, as of the Effective Date, the Water Wells do not conflict with any City system or resource in the surrounding area.

4.4 Joint Use Wells. After obtaining Development Plan Approval and a determination that NGC can retire the aforementioned irrigation rights for non-irrigation use, NGC will cooperate with the City, without prejudice to NGC's water rights, to operate two (2) Water Wells as "joint use" wells (the "Joint Use Wells"), to the extent permitted by law, whereby the City may obtain service from said Joint Use Wells pursuant to City Service Area Number 56-001203, properly metered and monitored, and NGC may use, operate and obtain service from the Joint Use Wells for any and all uses by NGC, properly metered and monitored, with ownership and control over such wells to remain with NGC. NGC shall at all times have first priority with respect to use of the Joint Use Wells such that NGC's use thereof shall be exclusive of any use thereof by the City until and unless NGC provides the City with advance, written notice that the City may utilize the Joint Use Wells pursuant to the terms of this ARTICLE 4. Should NGC deem it necessary, in its sole discretion, then, at NGC's election and with written, advance notice to the City, the Joint Use Wells shall be operated solely and exclusively to serve the Wallboard Facility and, unless otherwise permitted by NGC in its sole discretion, such service shall be utilized by NGC up to the full, aggregate amount of NGC's Type 2 Grandfathered Rights, Type 1 Grandfathered Rights and the Supplemental Water provided by the City, as defined below. In addition, NGC shall have the absolute right at any time to audit and confirm amounts of the City's use of water pursuant hereto and, upon written demand by NGC, the City shall immediately cease its use of water hereunder should NGC determine in its sole discretion that the City's use hereunder may cause interference with NGC's Type 1 or Type 2 Grandfathered Rights, any of the Water Wells (including drawdown) or the quality of water therefrom. Any chlorination or other domestic standard requirements applicable to water delivered from the Joint Use Wells by the City or NGC, including for Domestic Uses as defined below, shall be the sole responsibility of the City. Any improvements or facilities to be constructed or installed specifically to meet such domestic standard requirements shall be constructed, installed and operated at the sole expense of the City.

4.5 Recovery Well Designation. The City and NGC shall cooperate in an effort to assure that one or both the Joint Use Wells may be designated as recovery wells to withdraw effluent whether by stored credits or otherwise. In addition, the City shall cooperate with NGC in good faith in obtaining from ADWR recovery well permits or other governmental approvals for the operation of recovery wells, to the extent such permits will not adversely impact NGC's other water rights. In the event that such withdrawal of effluent should ever require an assignment to NGC of the City's effluent

recovery credits, then the City shall assign the applicable amount of such credits to NGC, but solely for use as contemplated by this Agreement. Once designated as a recovery well, the City may utilize such well for recovery of effluent, and all cost and expense relating thereto imposed or created by governmental regulation, including pumping or withdrawal fees, shall be paid by the City. Any cost or expense imposed or created by governmental regulation, expense or fees in relation thereto incurred by NGC shall be paid by the City and reimbursed to NGC. Once designated as a recovery well, NGC may also use such well for recovery of effluent, and all cost or expense imposed or created by governmental regulation relating to use by NGC, including pumping or withdrawal fees, shall be paid by NGC proportionate to its use of such recovered effluent. All water withdrawn pursuant to rights to recover effluent, to the extent delivered to NGC, shall be deemed withdrawn by the City, and used by the City to supply water to NGC as a customer, unless the water is withdrawn pursuant to storage credits assigned to NGC.

4.6 Supplemental Water; Sale of Effluent to NGC. The City acknowledges that available Type 2 Grandfathered Rights and Type 1 Grandfathered Rights to be obtained by NGC, including in conjunction with the retirement of irrigation rights associated with the NGC Property, may collectively be inadequate for operation of the Wallboard Facility. Therefore, the City agrees, if requested by NGC, to deliver pursuant to its service area right, additional groundwater to NGC for industrial purposes or, at the sole election of the City, to sell, transfer and assign to NGC effluent or effluent recovery credits, but in each case in an amount not more than one hundred (100) acre-feet per year (the "Supplemental Water"). NGC may request the Supplemental Water at any time and at any rate of flow, and the City shall deliver same accordingly. The Supplemental Water shall be in addition to water received or obtained by NGC through exercise of its available Type 2 Grandfathered Rights and Type 1 Grandfathered Rights, and in addition to domestic water to be delivered by the City to the Wallboard Facility pursuant to Section 4.8 below.

The City's commitment to deliver and furnish the Supplemental Water shall endure for a period of not less than thirty five (35) years following the Effective Date. The purchase price for such water shall be the "Firm Rate" published by the Central Arizona Groundwater Replenishment District as its "assessment rate" for the Pinal Active Management Area, which currently is approximately \$192.00 an acre foot, and if such assessment methodology is discontinued and not replaced by a substantially similar regulatory regime establishing comparable assessment methodologies, then the parties shall cooperate and consult with appraisers to determine a market rate. The City shall invoice NGC on an annual basis for Supplemental Water used by NGC in the prior billing period, with payment due within sixty (60) days following the receipt of such invoice by NGC.

4.7 Metering. Metering shall be installed for the Joint Use Wells enabling the City and NGC to account for all water withdrawn therefrom. With respect to NGC, such metering shall permit NGC to account for water withdrawn pursuant to NGC's Type 2 Grandfathered Rights and Type 1 Grandfathered Rights, as opposed to other water, including recovered effluent delivered pursuant to the Supplemental Water provisions of Section 4.6. Installation, operation and maintenance of meters shall be a joint effort

between the Parties, with, among other things, NGC installing a meter at the well head of each of the Joint Use Wells and a meter measuring water flow coming from a pipeline running between the Joint Use Wells and leading to a reservoir tank near the Wallboard Facility. Such meters shall be operated and maintained by NGC. The City shall install, operate and maintain a meter measuring water flow to the City from the Joint Use Wells. Any meter measuring water provided by the City for the Domestic Uses, as defined below, shall be installed, operated and maintained by the City.

4.8 Potable Service to NGC. The City shall, at the request of NGC, serve to NGC potable water from the Joint Use Wells or from the City's service water system for domestic use, including without limitation for bathroom, kitchen and drinking water uses, at the Wallboard Facility (the "Domestic Uses"), or, alternatively, and at NGC's election, such service for Domestic Uses shall be from a separate two inch (2") to three inch (3") water line extending from the City's service area to the Wallboard Facility. The City shall provide Domestic Uses water service for the Wallboard Facility, the NGC Property and adjacent lands of NGC, all at the City's standard rates for service, and the Parties shall enter into the City's standard water agreement for provision of water for Domestic Uses. The City is hereby granted a right to such reasonable access over the NGC Property as may be necessary to install, operate and maintain equipment and facilities reasonably necessary for provision of water to NGC for the Domestic Uses.

4.9 City Use of Water Pursuant to NGC Rights. Subject to prior and exclusive rights of use by NGC and following prior notice to NGC from the City, NGC shall allow the City to use any groundwater which may be pumped and withdrawn from the Joint Use Wells pursuant to NGC's Type 2 Grandfathered Rights but which is determined by NGC, in NGC's sole discretion, in advance and in writing, to be extra water not needed or used by NGC for the period in question. Such right of the City to NGC's extra water shall, in addition to the provisions above, acknowledge NGC's preferential right at any time to use the full amount of such water right to the exclusion of any use by the City. The City shall only be permitted to use water under this Section 4.9 as a backup or supplemental supply, and solely to the extent that NGC's Type 2 Grandfathered Rights permit. NGC shall have the absolute right at any time to audit and confirm amounts of the City's use of water pursuant hereto and, upon written demand by NGC, the City shall immediately cease its use of water hereunder should NGC determine in its sole discretion that the City's use hereunder may cause interference with NGC's Type 2 Grandfathered Rights, any of the Water Wells (including drawdown) or the quality of water therefrom. The City shall be required to notify NGC of any intent to report to the Arizona Department of Water Resources ("ADWR") any water use by the City pursuant to NGC's Type 2 Grandfathered Rights hereunder, it being further understood that, prior to any such reporting or use, NGC must first confirm that, in fact, NGC will not be using the total amount of its Type 2 Grandfathered Rights for the period in question. Charges for water delivered by NGC pursuant to the provisions of this Section shall be set forth in the Service Agreement discussed in Section 4.10 below

4.10 Service Agreement. NGC shall be the sole owner and, except as otherwise set forth herein, operator of the Joint Use Wells. The cost of electricity, repair and replacement of equipment, and general maintenance of the Joint Use Wells, as well

as costs of management or service agreements with third parties, if applicable, shall be set forth in a service agreement entered into by and between the Parties in form substantially similar to Exhibit F attached hereto (the "Service Agreement").

4.11 Release and Indemnity. The City shall be solely responsible for all quality, treatment and other issues with respect to water the City shall receive from the Joint Use Wells. The City fully releases, indemnifies, and agrees to defend NGC from and against any claim, expense, demand, cost or liability relating in any manner whatsoever to water received by the City from the Joint Use Wells, and such release and indemnity shall include claims relating to property damage, death or personal injury.

4.12 City Access to the Joint Use Wells. In the event that for any reason NGC entirely ceases pumping and operation of both of the Joint Use Wells concurrently for a continuous period of twenty four (24) months or more, then the City shall have the right and a license to enter onto so much of the NGC Property as is necessary to access and operate the Joint Use Wells on the City's own behalf and at its own expense, and pursuant to a month-to-month lease of the Joint Use Wells from NGC in the amount of One Hundred Dollars (\$100.00) per year if paid annually or Ten Dollars (\$10.00) per month if paid on a monthly basis (the "City License").

The City shall provide NGC with a minimum of thirty (30) days written notice of its intent prior to any such entry and operation, and must provide evidence that NGC is protected from claims for personal injury or property damage arising from such entry by the City pursuant to the City License, with the City to provide proof of insurance in the amount of at least Two Million Dollars (\$2,000,000.00) per occurrence with an aggregate of Five Million Dollars (\$5,000,000.00), combined single limit, and the City hereby agrees to indemnify, defend, and hold harmless NGC and its officers, agents, employees, representatives and affiliated companies from and against all liability, costs, expenses, or claims for personal injury or property damage on account of, or caused by, such entry by the City or the actions of the City or its employees, contractors or representatives pursuant to the City License.

In addition, the City shall fully be responsible for the maintenance, repair and upkeep of all Joint Use Wells and appurtenant equipment during the period of any such entry and operation pursuant to the City License, and the City shall be solely responsible for all charges for repair, replacement, electricity, groundwater withdrawal or other charges or expenses relating to the use and operation of the Joint Use Wells. The City shall, upon expiration of its period of entry, surrender the Joint Use Wells and appurtenant equipment to NGC in a condition at least as good as existed at the time of any such entry by the City pursuant to the City License.

Following any receipt of notice from the City of its intent to enter and operate the Joint Use Wells pursuant to its City License, NGC at any time, and at its discretion, may resume its own operation of the Joint Use Wells and immediately terminate the City License. Upon the expiration of ten (10) days written notice by NGC of its intent to resume possession and operation of the Joint Use Wells, the City's rights to operate the Joint Use Wells, and the City License, shall immediately cease, and the

City shall abandon operation of the Joint Use Wells, vacate the NGC Property, and assist in facilitating transition of such well operation back to NGC.

Neither such twenty four (24) month cessation of Joint Use Well operation by NGC, nor any other cessation, shall in any way serve as a waiver of the rights of NGC hereunder and, upon any resumption of such operation by NGC, all priority and other rights of NGC hereunder shall continue in effect. Should NGC at any time in the future, after first ceasing to operate the Joint Use Wells for a continuous period of twenty four (24) months, cease to operate such Joint Use Wells for a continuous period of at least six (6) months, the City shall again have a right of entry, upon the same terms as set forth above, and NGC shall have the same rights to resume possession and operation of the Joint Use Wells.

ARTICLE 5 CONSTRUCTION AND OPERATION OF SEWER SYSTEM

5.1 Manner of Work; Compliance with Laws. As a condition to its development of the NGC Property, NGC shall construct and complete the Sewer System in a good and workmanlike manner and in compliance with all applicable laws, rules, ordinances, regulations, codes and other requirements promulgated by any governmental authority or agency having jurisdiction over the same. The Sewer System shall be constructed in accordance with Exhibit E attached hereto.

5.2 Acceptance and Approval of Sewer System. Upon completion of the Sewer System in accordance with this Agreement, the Parties shall cooperate in good faith and with due diligence in obtaining or causing to be issued (as the case may be), all necessary ADEQ or other governmental approvals, certifications, permits and the like, for the operation of the Sewer System (collectively, the "Sewer Approvals"), it being acknowledged that neither Party has control over the approval process therefor, once applications and the like are submitted to ADEQ or other governmental entity.

5.3 Assumption and Assignment. Upon completion of the Sewer System, NGC shall promptly assign to the City, and the City shall accept assignment of, all of the rights, title and interest of NGC in the Sewer System, it being understood that the City intends to and shall operate the Sewer System as a component of the City's existing public sewer system. The City hereby agrees and acknowledges that, following its acceptance of the Sewer System, it shall at all times ensure that the Sewer System continues to accommodate NGC's needs with respect to sewer capacity and that future connections to the Sewer System by third parties shall not deny NGC such sewer capacity even if, to maintain such capacity, the City must require such third parties make improvements to and augment the Sewer System.

5.4 Reverse Osmosis Effluent. The City will work with NGC to develop a solution to the removal and disposal, at NGC's expense, of discharge coming from NGC's reverse osmosis ("RO") system intended to be installed on the NGC Property. Unless otherwise directed by NGC, the City shall, as part of such solution, take as much of NGC's RO discharge as possible and as may be allowed by applicable regulations,

without undermining the hydraulic capacity or treatment efficiency of the City's wastewater treatment system.

ARTICLE 6 DISCLAIMER OF ADDITIONAL UTILITIES INSTALLATION

Nothing in this Agreement shall constitute or imply a promise by NGC to install, construct or deliver electrical, natural gas, fiber optic, cable or other such utilities on or to the NGC Property or any adjacent parcels. Further, nothing in this Agreement shall exempt or purport to exempt NGC from payment of any applicable development impact fees.

ARTICLE 7 NOTICE

All notices or other communication herein required or permitted shall be in writing and given by personal delivery or sent by: (i) registered or certified mail return receipt requested, postage prepaid; (ii) nationally recognized overnight courier service, or (iii) facsimile transmission, at the addresses first set forth hereinbelow (unless changed in accordance herewith). Notice shall be deemed received on the earlier of (i) actual receipt; (ii) three (3) business days after deposit in the U.S. Mail; (iii) the first business day after deposit with an overnight courier; or (iv) if by facsimile transmittal, upon receipt of proof of transmission. Any notice or communication not received because of a change of address or facsimile number, without notice to the other Party thereof, or refusal to accept delivery, shall be deemed received, notwithstanding the same, as set forth above.

City of Eloy:

628 North Main Street, Eloy, Arizona, Attention: Steve Cooper, City Attorney,
Telephone: (520) 466-7570 / Facsimile: (520) 466-3161

New NGC, Inc.:

2001 Rexford Road, Charlotte, North Carolina 28211, Attention: General Counsel,
Telephone: (704) 365-7667 / Facsimile: (704) 365-7281

ARTICLE 8 REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties of NGC. NGC represents and warrants to the City that:

8.1.1 NGC is a Delaware corporation duly organized, validly existing and in good standing under the laws of the State of Delaware;

8.1.2 NGC has the full and complete right, power and authority to enter into this Agreement and to perform the duties and obligations of NGC under this Agreement in accordance with the terms and conditions hereof; and

8.1.3 the individual executing this Agreement on behalf of NGC is duly authorized and empowered to do so and by such execution, binds NGC under this Agreement.

8.2 Representations and Warranties of the City. The City represents and warrants to NGC that:

8.2.1 The City has the full and complete right, power and authority to enter into this Agreement and to perform the duties and obligations of the City under this Agreement in accordance with the terms and conditions hereof.

8.2.2 The individual/s executing this Agreement on behalf of the City is/are duly authorized and empowered to do so and by such execution, binds the City under this Agreement.

ARTICLE 9 DEFAULT AND REMEDIES

9.1 Default. Except as otherwise provided in this Agreement, if either Party breaches any provision of this Agreement or if a dispute otherwise arises hereunder, the Party wishing to complain shall provide the other Party with written notice thereof. Should the non-complaining Party fail to remedy the complaint within ten (10) days after receipt of such notice, the Parties shall proceed in accordance with the provisions below; provided, however, nothing herein shall prevent a Party from seeking immediate equitable relief in the form of an injunction or otherwise in the event it has grounds to do so.

9.2 Senior Executive Meeting. The Parties shall attempt in good faith to promptly resolve any dispute hereunder through direct negotiations. First, each Party's senior executives who have authority to settle the dispute, including without limitation the City Manager for the City (the "Senior Executives"), shall meet at least once and shall attempt to resolve the matter. Such meeting shall take place within ten (10) days of a written request by either Party for such meeting, at a mutually agreed time and place. Telephonic meetings are not preferred; rather, the Senior Executives shall make every effort to meet in person.

9.3 Mediation. If the dispute has not been resolved within ten (10) days after the aforementioned meeting of the Senior Executives, then, unless the Parties otherwise agree, the Parties agree to refer the dispute to mediation. The complaining Party shall provide to the other Party a written demand for mediation. Upon receipt thereof, the Parties shall attempt to mutually choose a mediator; however, in the event that the Parties cannot agree upon the selection of a mediator within ten (10) days after a Party makes a written demand for mediation to the other Party, either Party may request that the presiding judge of the Superior Court of Pinal County assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool and the mediator chosen by such judge shall mediate the dispute. The costs of mediation shall be shared equally between the Parties. The mediator's findings shall be non-binding unless otherwise stipulated by the Parties.

9.4 Failure of Mediation. In the event that the Parties are unable to resolve a dispute hereunder through mediation as set forth above, then the Parties agree that the complaining Party may institute legal action against the other Party, including action for specific performance, injunctive or declaratory relief, damages, or any other remedy provided by law or in equity. Notwithstanding the provisions of this Section 9.4 and of Sections 9.2 and 9.3, however, and as noted above, nothing herein shall prevent a Party from seeking immediate equitable relief in the form of an injunction or otherwise in the event it has grounds to do so.

ARTICLE 10 MISCELLANEOUS

10.1 Term. This Agreement shall endure until December 31, 2042, and shall thereafter be void unless extended by mutual written agreement of the Parties. No provisions hereof shall be construed to create a lien or encumbrance upon the NGC Property.

10.2 Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed, either by the Parties hereto or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture or other association between the City and NGC.

10.3 Exhibits; Recitals. Each exhibit attached to and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to herein. The recitals are incorporated herein by reference as matters of contract and not mere recital.

10.4 Severability. All agreements, covenants and terms hereof shall be deemed severable, and should any one or more terms be determined to be unlawful or unenforceable, the remaining terms shall continue in full force effect.

10.5 Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.

10.6 Headings. Heading of sections are for convenience only and shall not be considered in construing the meaning of the content of such section.

10.7 Entire Agreement; Modification. This Agreement supersedes and cancels all prior negotiations between the Parties with respect to the subject matter hereof, and any changes, amendments, and/or modifications hereto must be in writing signed by the Party against whom enforcement is sought.

10.8 No Waiver. The failure to enforce any particular provision of this Agreement on any particular occasion shall not be deemed a waiver by either Party of any of its rights hereunder, nor shall it be deemed to be a waiver of subsequent or continuing breaches of that provision, unless such waiver expressed in a writing signed by the Party to be bound.

10.9 Interpretation. Since the Parties hereto have participated in extensive negotiations in the drafting of the terms and provisions of this Agreement, the Parties agree that this Agreement shall be construed without regard to the identity of the person or Party who drafted the various provisions and any rule of construction that a document is to be construed against the drafting Party shall not be applicable.

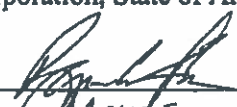
10.10 Binding Effect. All provisions contained in this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the Parties hereto and their respective successors and assigns.

10.11 Information and Cooperation. The City and NGC shall provide, in a timely manner, such information, documentation and assistance reasonably requested from time to time by the other Party, to the extent such information, documentation and assistance is in accordance with the terms and provisions of this Agreement. The City and NGC agree to cooperate in providing easements, rights-of-way and access reasonably necessary for interconnectivity between water and sewer facilities on the NGC Property and the Water Line and Sewer System.

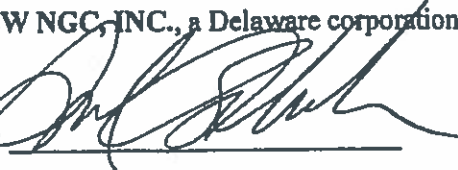
10.12 Assignment. Neither Party hereto shall assign, transfer, pledge or otherwise encumber or dispose of its interest under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. NGC may, however, assign its interest hereunder to any affiliated company, including any company in which NGC or its parent or affiliated companies or shareholders are members, partners, shareholders, or co-venturers, and to any company held in common ownership, or in which NGC holds any equity interest, or which owns any interest in NGC.

IN WITNESS WHEREOF, the City and NGC have executed this Agreement to be effective as of the Effective Date first set forth hereinabove.

**CITY OF ELOY, a municipal
corporation, State of Arizona**

By: 
Its: Mayor
Title

NEW NGC, INC., a Delaware corporation

By: 
Its: Samuel A. Schiffman
Vice President, General Counsel & Secretary

City Clerk:

Mary Redgell

Approved as to Form

City Attorney:

Stephen R. Cooper

STATE OF ARIZONA)

) ss.

County of Pinal)



The foregoing instrument was acknowledged before me this 26th day of January, 2007, by Byron Jackson, the Mayer of the City of Eloy, a municipal corporation, State of Arizona, on behalf of the city.

Notary Public

Lorena Lasalde

My commission expires:

10/23/07

STATE OF North Carolina

) ss.

County of Mecklenburg

The foregoing instrument was acknowledged before me this 19th day of January, 2007, by Samuel A. Schiffman, the Vice President General of New NGC, Inc., a Delaware corporation, on behalf of the corporation. Counsel & Secretary

Chaytor B. Chandler

Notary Public

My commission expires:

10/25/09



EXHIBIT A
NGC Property Legal Description
[ATTACHED]



**Legal Description
National Gypsum
Sunshine Boulevard & I-10**

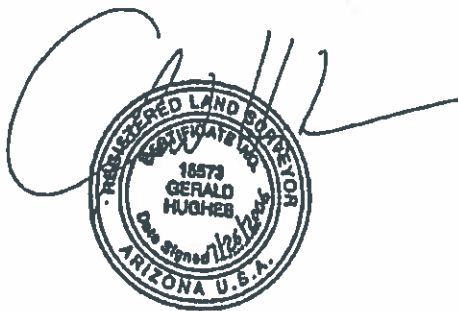
Job No. 06-031

Rev. July 26, 2006
June 28, 2006

A portion of Section 8, Township 8 South, Range 8 East, of the Gila and Salt River Meridian, Pinal County, Arizona, being more particularly described as follows:

BEGINNING at a $\frac{3}{4}$ " pipe at the southeast corner of said Section 8, from which a $\frac{3}{4}$ " pipe at the south quarter corner of said Section 8 bears N89°46'45"W (an assumed bearing) at a distance of 2636.32 feet; thence N89°46'45"W, along the south line of the Southeast Quarter of said Section 8, for a distance of 269.41 feet to the beginning of a curve, concave to the north, the center of which bears N00°13'15"E at a distance of 760.00 feet; thence westerly, along the arc of said curve, through a central angle of 36°06'12" for a distance of 478.89 feet to a point of tangency; thence N53°40'34"W for a distance of 1,210.52 feet to the beginning of a curve, concave to the northeast, the center of which bears N36°19'26"E at a distance of 25.00 feet; thence northwesterly, along the arc of said curve, through a central angle of 51°45'12" for a distance of 22.58 feet; to the beginning of a reverse curve, concave to the southwest, the center of which bears S88°04'38"W at a distance of 80.00 feet; thence northwesterly along the arc of said curve, through a central angle of 103°30'24" for a distance of 144.52 feet to the beginning of a reverse curve, concave to the north, the center of which bears N15°25'46"W at a distance of 25.00 feet; thence westerly, along the arc of said curve, through a central angle of 51°45'12" for a distance of 22.58 feet to a point of tangency; thence N53°40'34"W for a distance of 1633.98 feet; thence N36°19'26"E for a distance of 1350.00 feet to a point on the southerly line of the Union Pacific Railroad right of way; thence S53°40'34"E, along said southerly line for a distance of 2900.00 to a point on the east line of the Southeast Quarter of said Section 8; thence S00°13'36"E, along said east line, for a distance of 1301.21 feet to the POINT OF BEGINNING;

An area containing 102.90 acres, more or less.



EPS Group, Inc. • 2150-1 S. Country Club Dr., Suite 22 • Mesa, AZ 85210
Tel (480) 503-2250 • Fax (480) 503-2258

3:\Projects\2006\06-031\Legal Survey\Legal\06031LD National Gypsum.doc



**Legal Description
Access Road
Sunshine Boulevard & I-10**

Job No. 06-031

Revised: January 16, 2007
August 9, 2006
July 26, 2006
June 28, 2006

A portion of Section 8 and the Northeast Quarter of Section 17, Township 8 South, Range 8 East, of the Gila and Salt River Meridian, Pinal County, Arizona, being more particularly described as follows:

BEGINNING at a $\frac{3}{4}$ " pipe at the southeast corner of said Section 8, from which a $\frac{3}{4}$ " pipe at the south quarter corner of said Section 8 bears N89°46'45"W (an assumed bearing) at a distance of 2636.32 feet; thence S00°24'55"E, along the east line of the Northeast Quarter of Section 17, for a distance of 80.00 feet; thence N89°46'45"W for a distance of 270.29 feet to the beginning of a curve, concave to the north, the center of which bears N00°13'15"E at a distance of 840.00 feet; thence westerly, along the arc of said curve, through a central angle of 36°06'12" for a distance of 529.30 feet to a point of tangency; thence N53°40'34"W for a distance of 1,210.52 feet to the beginning of a curve, concave to the south, the center of which bears S36°19'26"W at a distance of 25.00 feet; thence westerly, along the arc of said curve, through a central angle of 51°45'12" for a distance of 22.58 feet; to the beginning of a reverse curve, concave to the northeast, the center of which bears N15°25'46"W at a distance of 80.00 feet; thence northwesterly along the arc of said curve, through a central angle of 103°30'24" for a distance of 144.52 feet to the beginning of a reverse curve, concave to the west, the center of which bears S88°04'38"W at a distance of 25.00 feet; thence northwesterly, along the arc of said curve, through a central angle of 51°45'12" for a distance of 22.58 feet to a point of tangency; thence N53°40'34"W for a distance of 2739.64 feet to the beginning of a curve, concave to the south, the center of which bears S36°19'26"W at a distance of 1160.00 feet; thence westerly, along the arc of said curve, through a central angle of 30°33'03" for a distance of 618.52 feet; thence S88°05'27"W, not tangent to said curve, for a distance of 246.49 feet; thence S89°46'44"W for a distance of 350.00 feet to a point on the east line of the west 50 feet of the Northwest Quarter of Section 8; thence N00°29'38"W, along said east line, for a distance of 100.00 feet; thence N89°46'44"E, leaving said east line, for a distance of 350.00 feet; thence S88°05'27"E for a distance of 170.70 feet to the beginning of a curve, concave to the southwest, the center of which bears S01°54'33"W at a distance of 1240.00 feet; thence easterly, along the arc of said curve, through a central angle of 34°24'53" for a distance of 744.81 feet to a point of tangency; thence S53°40'34"E for a distance of 2741.16 feet to the beginning of a curve, concave to the north, the center of which bears N36°19'26"E at a distance of 25.00 feet; thence easterly, along the arc of said curve, through a central angle of 51°45'12" for a distance of 22.58 feet to the beginning of a reverse curve, concave to the southwest, the center of which bears S15°25'46"E at a distance of 80.00 feet; thence southeasterly, along the arc of said curve, through a central angle of 103°30'24" for a distance of 144.52 feet to the beginning of a reverse curve, concave to the northeast, the center of which bears N88°04'38"E at a distance of 25.00 feet; thence southeasterly along the arc of said curve, through a central angle of 51°45'12" for a distance of 22.58 feet to a point of tangency; thence S53°40'34"E for a distance of 1,210.52 feet to the

EPS Group, Inc. • 2150-I S. Country Club Dr., Suite 22 • Mesa, AZ 85210

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beginning of a curve, concave to the north, the center of which bears N36°19'26"E at a distance of 760.00 feet; thence easterly, along the arc of said curve, through a central angle of 36°06'12" for a distance of 478.89 feet to a point of tangency on the south line of the Southeast Quarter of said Section 8; thence S89°46'45"E, along said south line, for a distance of 269.41 feet to the POINT OF BEGINNING;

An area containing 11.67 acres, more or less.



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**Legal Description
Rail Siding Tract
Sunshine Boulevard & I-10**

Job No. 06-031

Revised: August 10, 2006
August 9, 2006
June 28, 2006

A portion of the North Half of Section 8, Township 8 South, Range 8 East, of the Gila and Salt River Meridian, Pinal County, Arizona, being more particularly described as follows:

COMMENCING at a $\frac{1}{4}$ " pipe at the southeast corner of said Section 8, from which a $\frac{1}{4}$ " pipe at the south quarter corner of said Section 8 bears N89°46'45"W (an assumed bearing) at a distance of 2636.32 feet; thence N00°13'36"W, along the east line of the Southeast Quarter of said Section 8, for a distance of 1301.21 feet to a point on the southerly line of the Union Pacific Railroad right of way; thence N53°40'34"W, along said southerly line, for a distance of 2900.00 feet to the POINT OF BEGINNING;

Thence S36°19'26"W, leaving said southerly line, for a distance of 150.00 feet; thence N53°40'34"W, along a line parallel with and 150 feet southwest of said Union Pacific Railroad right of way, for a distance of 3123.05 feet to a point on the east line of the west 367.00 feet of the northwest quarter of said Section 8; thence N00°29'38"W, along said east line, for a distance of 187.37 feet to a point on the southerly line of the Union Pacific Railroad right of way; thence S53°40'34"E, along said southerly right-of-way line, for a distance of 3235.34 feet to the POINT OF BEGINNING;

An area containing 10.95 acres, more or less.



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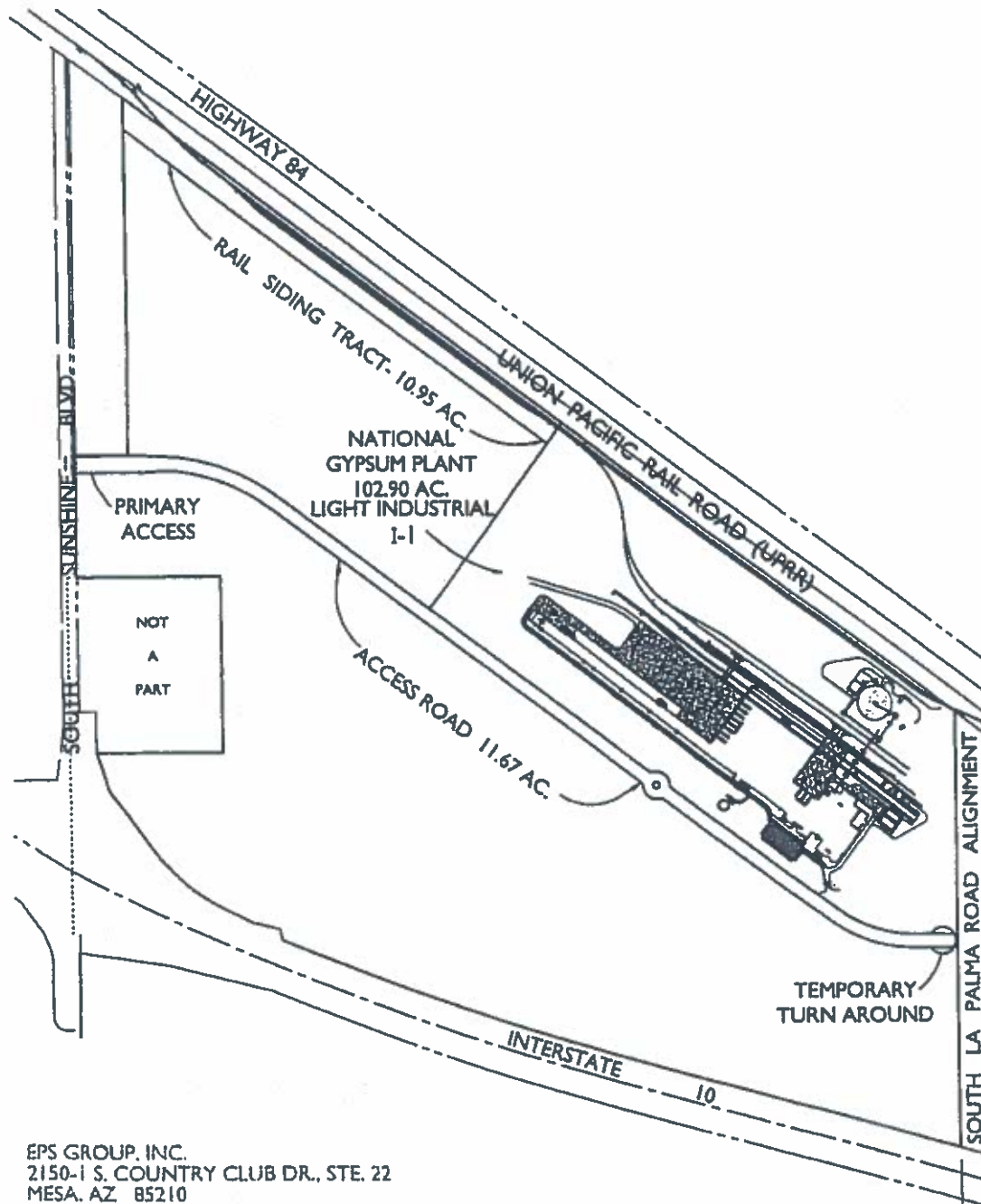
Tel (480) 503-2250 • Fax (480) 503-2258

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EXHIBIT B
Site Plan Materials for Rezoning
[ATTACHED]

**CONCEPTUAL SITE PLAN
FOR
NATIONAL GYPSUM COMPANY**

A portion of Section 8 & Section 17, T. 8 S., R. 8
E., of the Gila and Salt River Meridian, Pinal County,
Arizona



EPS GROUP, INC.
2150-1 S. COUNTRY CLUB DR., STE. 22
MESA, AZ 85210
TEL. (480)-503-2250
FAX (480)-503-2258

JOB NO. 06-031.1
DATE OCTOBER 31, 2006
REVISED JANUARY 18, 2007





eps group, inc.
Engineering, Planning & Construction
2000 S. Cherry Street, Suite 100, Fresno, California 93701
Phone: (559) 233-2222 Fax: (559) 233-2222

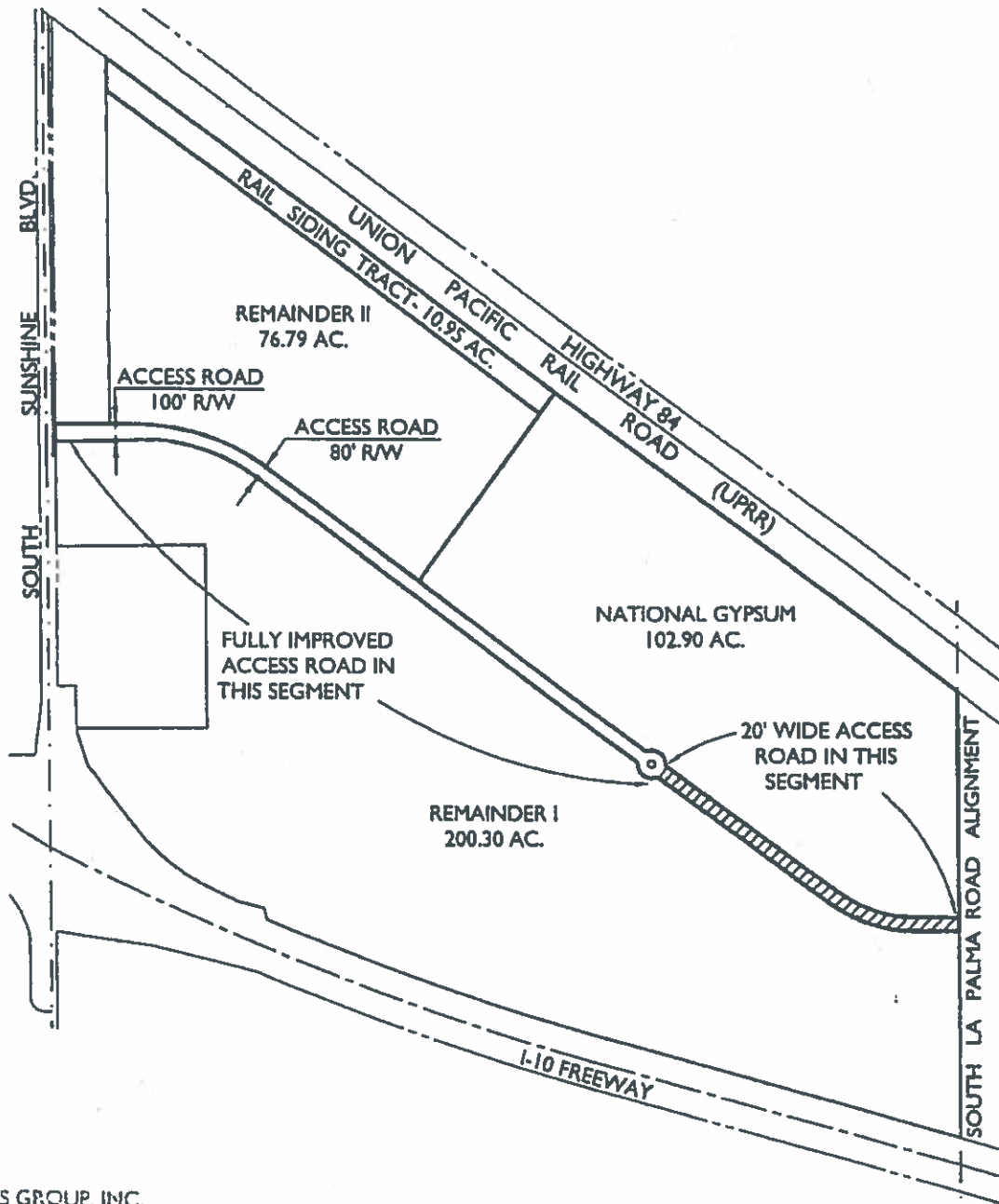
EXHIBIT C

Main Access Road Plan

[ATTACHED]

**ROAD EXHIBIT
FOR
NATIONAL GYPSUM COMPANY**

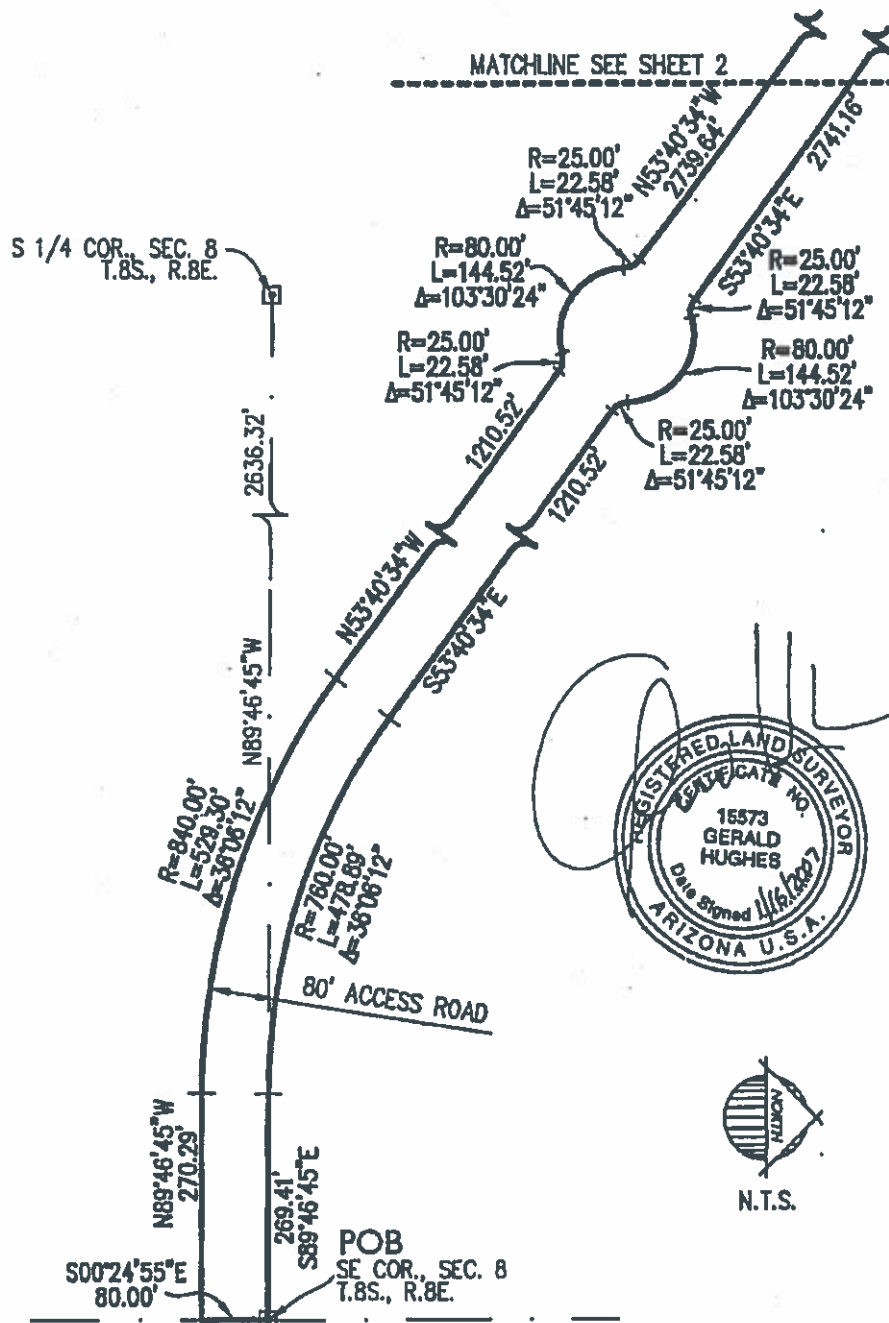
A portion of Section 8 & Section 17, T. 8 S., R. 8
E., of the Gila and Salt River Meridian, Pinal County,
Arizona



EPS GROUP, INC.
2150-1 S. COUNTRY CLUB DR., STE. 22
MESA, AZ 85210
TEL (480)-503-2250
FAX (480)-503-2258

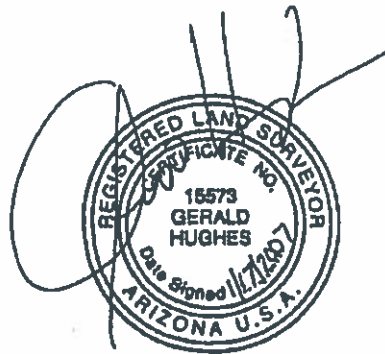
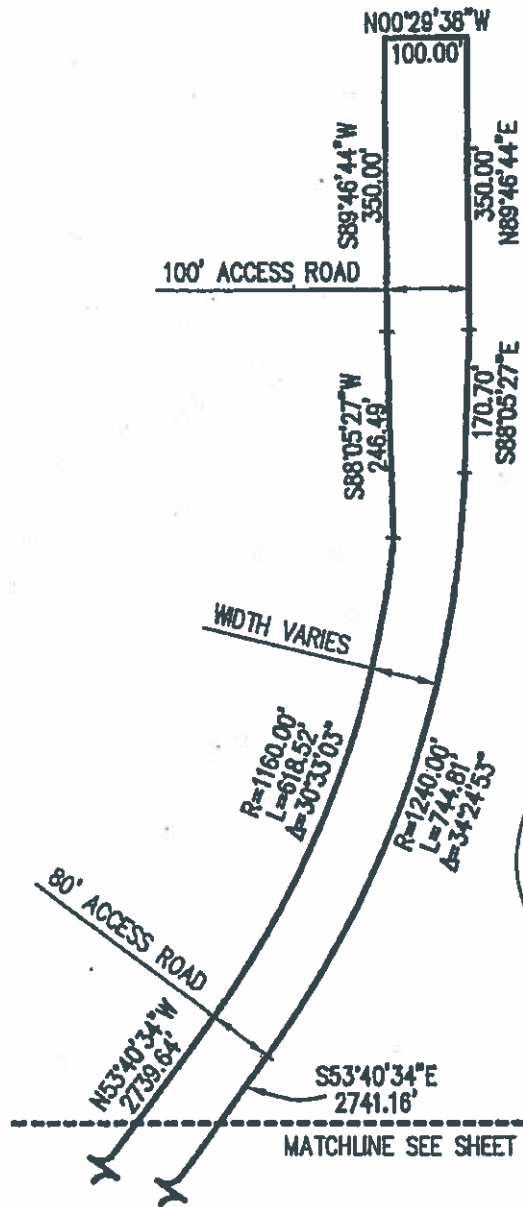
JOB NO. 06-031.1
DATE NOVEMBER 1, 2006
REVISED JANUARY 18, 2007





SHEET 1 OF 2

06-031	Project Access Road Sunshine Boulevard & I-10 Day, Arizona	 Eps group, Inc. Engineers, Planners & Surveyors 3120 - I. E. Country Club Dr., Ste. 21, Mesa, Arizona 85210 Phone (480) 963-2190 Fax (480) 963-2196
	Exhibit	



N.T.S.

SHEET 2 OF 2

06-031	Project	 Eps group, Inc. Engineers, Planners & Surveyors 1120-J S. Canyon Club Dr., Ste. 22, Mesa, Arizona 85209 Phone (480) 963-1700 Fax (480) 963-2250
	Access Road Sunshine Boulevard & I-10 Eliz, Arizona	
	Exhibit	

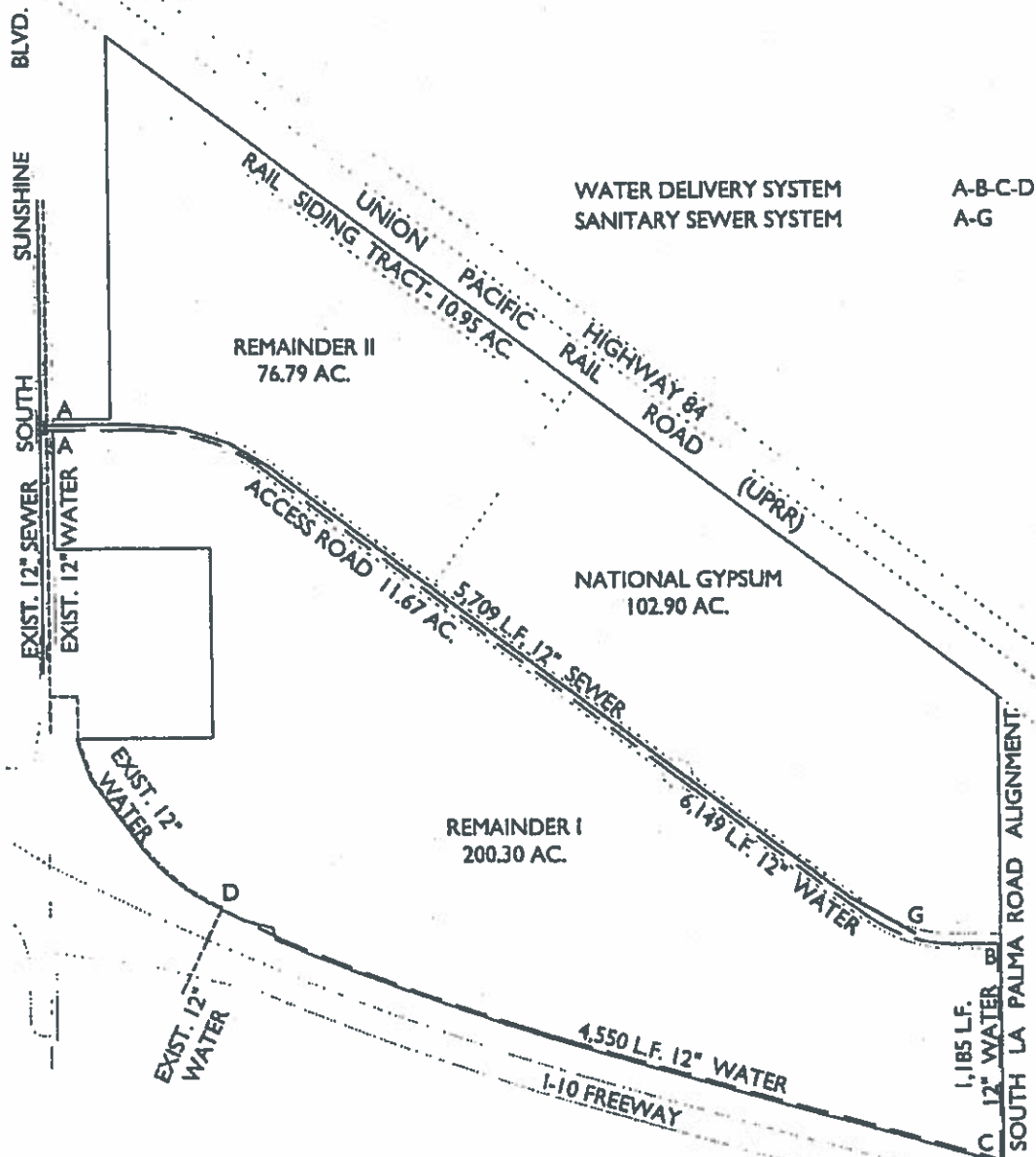
EXHIBIT D

Water Line

[ATTACHED]

WATER AND SEWER EXHIBIT
FOR
NATIONAL GYPSUM COMPANY

A portion of Section 8 & Section 17, T. 8 S., R. 8
E., of the Gila and Salt River Meridian, Pinal County,
Arizona



EPS GROUP, INC.
2150-1 S. COUNTRY CLUB DR., STE. 22
MESA, AZ 85210
TEL. (480)-503-2250
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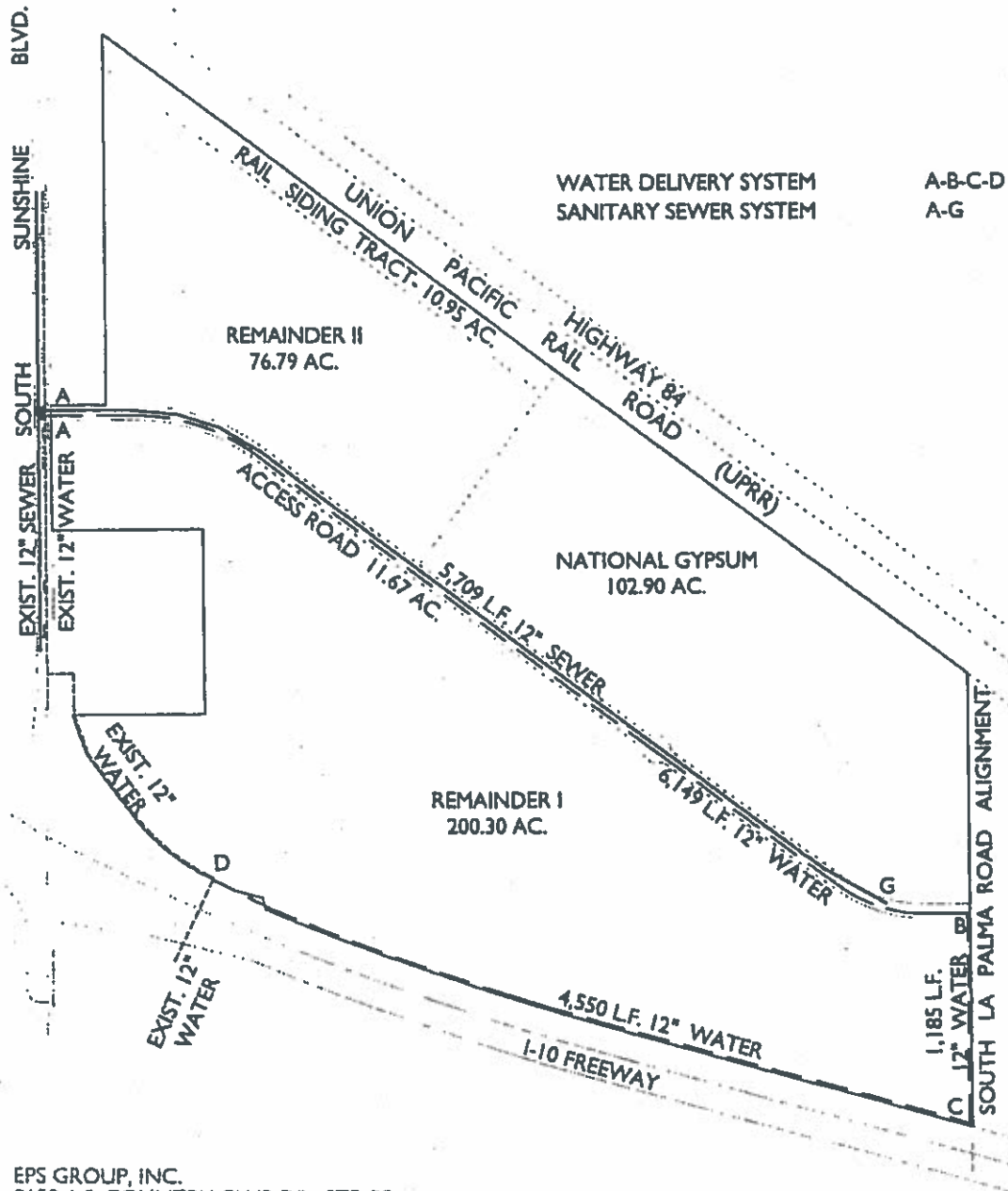
JOB NO. 06-031.1
DATE OCTOBER 4, 2006
REVISED JANUARY 18, 2007



EXHIBIT E
Sewer System
[ATTACHED]

WATER AND SEWER EXHIBIT
FOR
NATIONAL GYPSUM COMPANY

A portion of Section 8 & Section 17, T. 8 S., R. 8
E., of the Gila and Salt River Meridian, Pinal County,
Arizona



EPS GROUP, INC.
2150-1 S. COUNTRY CLUB DR., STE. 22
MESA, AZ 85210
TEL. (480)-503-2250
FAX (480)-503-2258

JOB NO. 06-031.1
DATE OCTOBER 4, 2006
REVISED JANUARY 18, 2007



EXHIBIT F
Service Agreement

[ATTACHED]

BILDHAMITUX421628.21

WATER SERVICE AGREEMENT

THIS WATER SERVICE AGREEMENT (this "Agreement") is entered into this ___ day of January, 2007, by and between the CITY OF ELOY, Arizona, a municipal corporation (the "City"), and NEW NGC, INC., a Delaware corporation ("NGC"). The City and NGC may each be referred to as a "Party," or collectively they may be referred to as the "Parties."

RECITALS

A. NGC is the owner of certain real property located in the City of Eloy, Pinal County, Arizona, which is more particularly described on Exhibit "A" attached hereto (the "NGC Property"), and upon which NGC intends to construct a wallboard manufacturing facility and related improvements.

B. The Parties have entered into that certain Development Agreement dated January ___, 2007 (the "Development Agreement"), regarding development of the NGC Property, a copy of which has been recorded in the office of the Pinal County Recorder. Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Development Agreement.

C. The Development Agreement sets forth, among other things, terms and provisions regarding the Joint Use Wells and pumping and use thereof as well as exchanges of water and water rights in connection therewith. The Development Agreement further provides that this Agreement shall be executed by the Parties in order to address, among other things, maintenance and cost sharing responsibilities of the Parties with respect to the Joint Use Wells and water pumped therefrom.

NOW, THEREFORE, in consideration of the mutual benefits, obligations, terms and conditions hereof and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Assessment Rate. "Assessment Rate" shall mean the "Firm Rate," or any official comparable rate established as a substitute therefor, published from time to time by the Central Arizona Groundwater Replenishment District as its "assessment rate" for the Pinal Active Management Area, which rate currently is approximately One Hundred Ninety Two Dollars (\$192.00) per acre foot.

1.2 City Pro Rata Share. "City Pro Rata Share" shall mean, with respect to (1) General Costs, the ratio obtained by dividing: (A) the total volume of water withdrawn from the Joint Use Wells for delivery to the City during the preceding twelve

(12) months; by (B) the total volume of water withdrawn from the Joint Use Wells during such preceding twelve (12) months; and (2) with respect to Major Costs, the ratio obtained by dividing: (A) the total volume of water withdrawn from the Joint Use Wells for delivery to the City from the date which is the later of the Commencement Date or the date which is five (5) years prior to the date on which the Major Costs are incurred (such date, the "Cost Calculation Date"), through the date of incurrence of such Major Costs; by (B) the total volume of water withdrawn from the Joint Use Wells from the Cost Calculation Date through the date of incurrence of such Major Costs.

1.3 City Use Charges. "City Use Charges" shall mean dollar amount chargeable to the City by NGC for water provided to the City pursuant to NGC's Type 2 Grandfathered Rights as set forth in Section 4.9 of the Development Agreement. City Use Charges shall be based upon a purchase price set at the Assessment Rate.

1.4 Commencement Date. "Commencement Date" shall be the date upon which the City is first provided water from the Joint Use Wells, regardless of whether such water is provided pursuant to the City's rights or those of NGC.

1.5 Electrical District #4. "Electrical District #4" shall mean Electrical District No. 4 of the Central Arizona Irrigation and Drainage District.

1.6 General Costs. "General Costs" hereunder shall be all those costs and expenses associated with the operation and general upkeep of the Joint Use Wells and the Related Equipment, including without limitation, costs of electricity, repairs, replacement of parts and equipment, costs of management or service agreements with third parties (including Operator), and costs of any pumping, use or withdrawal fees payable at law or pursuant to any state, federal or local law, ordinance, rule or regulation. The term General Costs excludes Major Costs, and shall not include for the purposes hereof, any costs incurred by NGC in connection with the Joint Use Wells or the related Equipment prior to the Commencement Date.

1.7 Major Costs. "Major Costs" hereunder shall mean any single item of expenditure for a specific operation, repair, replacement, or upgrade related to the Joint Use Wells or the Related Equipment, whether categorized as a General Cost or otherwise, including costs reasonably related thereto or necessary in connection therewith, which exceeds the sum of \$7,500.00. Examples of Major Costs are items of capital replacements, deepening or replacing well casings, or repairing or replacing motors pressure equipment or devices, or storage equipment or devices. Major Costs shall not include any costs incurred by NGC in connection with the Joint Use Wells or the Related Equipment prior to the Commencement Date.

1.8 Related Equipment. "Related Equipment" shall mean any equipment located in the vicinity of the Joint Use Wells and reasonably necessary to the operation thereof, but excluding any piping on the outflow side of any metering for the Joint Use Wells if such piping is directly utilized or may be directly utilized to provide water flow to the City. Related Equipment shall include electrical and/or mechanical connectors,

valves, wiring, electrical and/or mechanical switches, water metering devices, electricity metering devices, enclosures, tanks, and similar equipment.

1.9 **Supplemental Charges.** "Supplemental Charges" shall mean the dollar amount chargeable to NGC by the City for water provided to NGC pursuant to the City's service area right or effluent recovery credits as described in Section 4.6 of the Development Agreement. Supplemental Charges shall be based upon a purchase price set at the Assessment Rate.

ARTICLE 2

TERM AND OPERATION AND MAINTENANCE OF JOINT WELLS

2.1 **Term.** This Agreement shall endure until December 31, 2042, and shall thereafter be void unless extended by mutual written agreement of the Parties. No provisions hereof shall be construed to create a lien or encumbrance upon the NGC Property.

2.2 **Operation and Maintenance.** NGC shall retain Electrical District #4, or any other entity of its choosing, and which is reasonably acceptable to the City, to operate and maintain the Joint Use Wells and the Related Equipment on an ongoing basis ("Operator"). It is anticipated that Operator shall provide NGC with a monthly accounting of repairs and expenses and shall invoice NGC on a monthly basis for expenses due.

ARTICLE 3

REPORTING, INVOICING AND PAYMENT

3.1 **NGC's Reporting Requirements.** NGC shall provide or cause Operator to provide to the City, within fifteen (15) days after the end of each calendar quarter, beginning at the end of the third month after the Commencement Date occurs, or at such other time to which the Parties may agree, a statement detailing the following for such preceding quarter:

- (a) the total amount of water withdrawn from each of the Joint Use Wells;
- (b) the total amount of water withdrawn from the Joint Use Wells for use by NGC pursuant to NGC's Type 1 Grandfathered Rights and Type 2 Grandfathered Rights;
- (c) the total amount of water withdrawn from the Joint Use Wells for use by the City pursuant to the City's service area right, and pursuant to the City's effluent recovery credits, as provided in Sections 4.4 and 4.5 of the Development Agreement;
- (d) the total amount of water from the Joint Use Wells delivered to the City pursuant to NGC's Type 2 Grandfathered Rights as provided

in Section 4.9 of the Development Agreement, as well as the applicable City Use Charges therefor;

- (e) the total amount of water delivered from the Joint Use Wells to NGC pursuant to the City's service area right and effluent recovery credits as described in Section 4.6 of the Development Agreement, as well as the applicable Supplemental Charges therefor;
- (f) the total amount of water delivered by the City to NGC for potable water service to the Wallboard Facility;
- (g) all General Costs; and
- (h) all Major Costs, if any.

In addition to the aforementioned quarterly reports, NGC shall provide or cause to be provided to the City, by January 15 of each calendar year, or at such other time to which the Parties may agree, an annual statement detailing the foregoing information, i.e., subsections (a) through (h) above, for the preceding calendar year (the "Annual Statement").

3.2 Payment by the City. The City shall pay to NGC on an annual basis for the preceding year: (1) the City Pro Rata Share of the General Costs and the Major Costs; and (2) the City Use Charges. Payment shall be made within sixty (60) days after receipt of an invoice from NGC or from Operator if so instructed by NGC. In no event shall any such payment be due pursuant to this Section 3.2 until NGC files its annual report with the Arizona Department of Water Resources for the applicable year with respect to water pumped from the Joint Use Wells. Any supply of water to the City from the Joint Wells is conditioned upon the City making timely payment hereunder.

3.3 Payment by NGC. NGC shall pay to the City on an annual basis for the preceding year, the Supplemental Charges. Payment shall be made within sixty (60) days after receipt of an invoice from the City. In no event shall any such payment be due pursuant to this Section 3.3 until NGC files its annual report with the Arizona Department of Water Resources for the applicable year with respect to water pumped from the Joint Use Wells.

3.4 Duty to Notify of Pending Major Costs. Except in the event of an emergency, as may be determined by NGC in its sole discretion, NGC intends to notify the City or cause Operator to notify the City of the nature and estimated amount of any expenditure for Major Costs at least fifteen (15) days prior to such expenditure whenever reasonably possible. Should NGC incur a Major Expense pursuant to an emergency without prior notice to the City, then NGC shall provide notice to the City of such expense within five (5) days thereafter. No failure timely to give notice shall in any way prejudice the right of NGC to receive payment or reimbursement from the City.

ARTICLE 4 NOTICE

All notices or other communication herein required or permitted shall be in writing and given by personal delivery or sent by (i) registered or certified mail return receipt requested, postage prepaid, (ii) nationally recognized overnight courier service, or (iii) facsimile transmission, at the addresses first set forth hereinbelow (unless changed in accordance herewith). Notice shall be deemed received on the earlier of (i) actual receipt, (ii) three (3) business days after deposit in the U.S. Mail, (iii) the first business day after deposit with an overnight courier, or (iv) if by facsimile transmittal, upon receipt of proof of transmission. Any notice or communication not received because of a change of address or facsimile number, without notice to the other Party thereof, or refusal to accept delivery, shall be deemed received, notwithstanding the same, as set forth above.

City of Eloy:

628 North Main Street, Eloy, Arizona, Attention: Steve Cooper, City Attorney,
Telephone: (520) 466-7570 / Facsimile: (520) 466-3161

New NGC, Inc.:

2001 Rexford Road, Charlotte, North Carolina 28211, Attention: General
Counsel, Telephone: (704) 365-7667 / Facsimile: (704) 365-7281; and Jim
Ruggiero, Director of Energy Procurement, Telephone: (704) 365-7505 /
Facsimile: (704) 365-7281

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1 Representations of NGC. NGC represents and warrants to the City that:

5.1.1 NGC is a Delaware corporation duly organized, validly existing and in good standing under the laws of the State of Delaware;

5.1.2 NGC has the full and complete right, power and authority to enter into this Agreement and to perform the duties and obligations of NGC under this Agreement in accordance with the terms and conditions hereof; and

5.1.3 the individual executing this Agreement on behalf of NGC is duly authorized and empowered to do so and by such execution, binds NGC under this Agreement.

5.2 Representations of the City. The City represents and warrants to NGC that:

5.2.1 The City has the full and complete right, power and authority to enter into this Agreement and to perform the duties and obligations of the City under this Agreement in accordance with the terms and conditions hereof.

5.2.2 The individual/s executing this Agreement on behalf of the City is/are duly authorized and empowered to do so and by such execution, binds the City under this Agreement.

ARTICLE 6 DEFAULT AND REMEDIES

6.1 **Default.** Except as otherwise provided in this Agreement, if either Party breaches any provision of this Agreement or if a dispute otherwise arises hereunder, the Party wishing to complain shall provide the other Party with written notice thereof. Should the non-complaining Party fail to remedy the complaint within ten (10) days after receipt of such notice, the Parties shall proceed in accordance with the provisions below; provided, however, nothing herein shall prevent a Party from seeking immediate equitable relief in the form of an injunction or otherwise in the event it has grounds to do so. Nonpayment of any sums due hereunder shall be grounds for termination of this Agreement; provided, however, that any dispute in connection therewith shall be dealt with by the Parties in a manner consistent with the terms of this Article 6.

6.2 **Senior Executive Meeting.** The Parties shall attempt in good faith to promptly resolve any dispute hereunder through direct negotiations. First, each Party's senior executives who have authority to settle the dispute, including without limitation the City Manager for the City (the "Senior Executives"), shall meet at least once and shall attempt to resolve the matter. Such meeting shall take place within ten (10) days of a written request by either Party for such meeting, at a mutually agreed time and place. Telephonic meetings are not preferred; rather, the Senior Executives shall make every effort to meet in person.

6.3 **Mediation.** If the dispute has not been resolved within ten (10) days after the aforementioned meeting of the Senior Executives, then, unless the Parties otherwise agree, the Parties agree to refer the dispute to mediation. The complaining Party shall provide to the other Party a written demand for mediation. Upon receipt thereof, the Parties shall attempt to mutually choose a mediator; however, in the event that the Parties cannot agree upon the selection of a mediator within ten (10) days after a Party makes a written demand for mediation to the other Party, either Party may request that the presiding judge of the Superior Court of Pinal County assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool and the mediator chosen by such judge shall mediate the dispute. The costs of mediation shall be shared equally between the Parties. The mediator's findings shall be non-binding unless otherwise stipulated by the Parties.

6.4 **Failure of Mediation.** In the event that the Parties are unable to resolve a dispute hereunder through mediation as set forth above, then the Parties agree that the complaining Party may institute legal action against the other Party, including action for specific performance, injunctive or declaratory relief, damages, or any other remedy provided by law or in equity. Notwithstanding the provisions of this Section 6.4 and of Sections 6.2 and 6.3, however, and as noted above, nothing herein shall prevent a Party

from seeking immediate equitable relief in the form of an injunction or otherwise in the event it has grounds to do so.

ARTICLE 7 MISCELLANEOUS

7.1 Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed, either by the Parties hereto or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture or other association between the City and NGC.

7.2 Exhibits; Recitals. Each exhibit attached to and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to herein. The recitals are incorporated herein by reference as matters of contract and not mere recital.

7.3 Severability. All agreements, covenants and terms hereof shall be deemed severable, and should any one or more terms be determined to be unlawful or unenforceable, the remaining terms shall continue in full force effect.

7.4 Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.

7.5 Headings. Heading of sections are for convenience only and shall not be considered in construing the meaning of the content of such section.

7.6 Entire Agreement; Modification. This Agreement supersedes and cancels all prior negotiations between the Parties with respect to the subject matter hereof, and any changes, amendments, and/or modifications hereto must be in writing signed by the Party against whom enforcement is sought.

7.7 No Waiver. The failure to enforce any particular provision of this Agreement on any particular occasion shall not be deemed a waiver by either Party of any of its rights hereunder, nor shall it be deemed to be a waiver of subsequent or continuing breaches of that provision, unless such waiver expressed in a writing signed by the Party to be bound.

7.8 Interpretation. Since the Parties hereto have participated in extensive negotiations in the drafting of the terms and provisions of this Agreement, the Parties agree that this Agreement shall be construed without regard to the identity of the person or Party who drafted the various provisions and any rule of construction that a document is to be construed against the drafting Party shall not be applicable.

7.9 Binding Effect. All provisions contained in this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the Parties hereto and their respective successors and assigns.

7.10 Information and Cooperation. The City and NGC shall provide, in a timely manner, such information, documentation and assistance reasonably requested from time to time by the other Party, to the extent such information, documentation and assistance is in accordance with the terms and provisions of this Agreement.

7.11 Assignment. Neither Party hereto shall assign, transfer, pledge or otherwise encumber or dispose of its interest under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. NGC may, however, assign its interest hereunder to any affiliated company, including any company in which NGC or its parent or affiliated companies or shareholders are members, partners, shareholders, or co-venturers, and to any company held in common ownership, or in which NGC holds any equity interest, or which owns any interest in NGC.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the City and NGC have executed this Agreement to be effective as of the date first set forth above.

City: **CITY OF ELOY,**
a municipal corporation, State of Arizona

By: _____
Name: _____
Title: _____

City Clerk:

City Attorney:

Approved as to Form

NGC: **NEW NGC, INC.,**
a Delaware corporation

By: _____
Name: _____
Title: _____

EXHIBIT A

Legal Description of the NGC Property

[ATTACHED]

MIECZKDATUX440281.6