

5<sup>th</sup> AMENDMENT  
TO THE BYLAWS OF  
RIO SALADO ENHANCED SERVICES COMMISSION

ARTICLE I: GENERAL PROVISIONS

Section 1. Name. The name of this corporation is and shall be Rio Salado Enhanced Services Commission ( the “Corporation”).

Section 2. Offices. The known place of business of the corporation is at the principal office of the corporation located in Tempe, Arizona. Said office may be changed from time to time by the Board of Directors. The Corporation may have such additional offices as the Board of Directors may designate or as the activities of the Corporation may require from time to time.

ARTICLE II: PURPOSES AND POWERS

Section 1. Purposes. The Corporation is organized and will be operated exclusively for charitable, educational, religious and scientific purposes as referred to in Section 501( c)(3) and 170( c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), for the purpose of serving in an advisory capacity to the City of Tempe (the “City”) and the Rio Salado Community Facilities District ( the “District”) regarding all policy matters affecting the District specifically including, without limitation, all matters that affect the District’s annual operations and maintenance budget ( the ‘Annual operations and Maintenance Budget”), the District’s capital budget ( including, but not limited to, repairs, replacements and additions) ( the “Capital Budget”) and all policy matters that affect the operations, standards and the scheduling of activities and uses within the enhanced service area. In pursuing such purposes, the Corporation may do and perform such acts as may be necessary or appropriate in carrying out the foregoing purposes of the Corporation and in connection therewith to exercise any of the powers granted to nonprofit corporations by the laws of the State of Arizona consistent with the Corporation’s status as an organization exempt from federal income tax under Section 501 (c)(3) of the Code.

Section 2. Powers and Duties. Subject to the limitations of the Articles of Incorporation and the laws of the State of Arizona, the Corporation shall have the following powers and duties:

(a) To establish bylaws and rules and regulations as deemed necessary for the performance of its duties, including, without limitation, the establishment of rules for the conduct of the meeting of the Board of Directors.

(b) To advise and consult, through the Chairman, as defined in Article V, with the Secretary of the Commission, as to the items to be included on the agenda of meetings of the Corporation.

(c) To review and approve the official minutes of all meetings of the Corporation as prepared by the Secretary.

(d) To require members of the Board of Directors to attend the meetings of the members of the Board of Directors.

(e) To advise and make recommendations to the governing board of the District regarding the Annual operations and Maintenance Budget and the Capital Budget.

(f) To advise and make recommendations to the governing board of the District regarding all policy decisions having potential significant impact on the Annual Operations and Maintenance Budget specifically including but not limited to any budget line item which equals a ten percent (10%) or greater change over the same line item from a previous budget and any increase in the overall budget of five percent (5%) or greater.

(g) To advise and make recommendations to the governing board of the District regarding the quality of public and private services, general policies for the programming of events within the District and general policies of lake use and lakeshore park use.

#### ARTICLE III: MEMBERS AND STOCK

Section 1. No Members. The Corporation shall have no members.

Section 2. No Stock. The Corporation shall have no capital stock.

#### ARTICLE IV: BOARD OF DIRECTORS

Section 1. General Powers. Subject to the limitations of these bylaws, the Articles of Incorporation and the laws of the State of Arizona, the affairs of the Corporation shall be managed, and all corporate powers shall be exercised by or under the direction of its Board of Directors. No Director, officer or agent of the Corporation shall authorize or allow any corporate funds to be expended for any purposes other than as set forth in the Articles of Incorporation and these Bylaws or for purposes reasonably incidental thereto.

Section 2. Number. The Board of Directors shall consist of nine voting members plus three nonvoting members as described in Section 3 of this Article. The members of the Board of Directors shall be required to satisfy the eligibility requirements set forth in Section 3. The number of members of the Board of Directors may be increased to eleven voting members plus two nonvoting members as provided in Section 4. Except for the nonvoting members, all Directors shall have equal and full voting responsibilities as members of the Board of Directors.

Section 3. Eligibility. Eligibility requirements for the members of the Board of Directors shall be as follows:

(a) City Members. Four members of the Board of Directors shall be those persons holding the following job titles within the City or their respective designees: (i) the Finance and IT Director; (ii) the Community Development Director; (iii) the Public Works Director, and (iv) the Community Services Director (each a "City Member and, collectively, the "City Members"). Each City Member, or their designee, shall serve only as long as such member holds such position with the City and each such member, or their designee, shall be replaced with any successor to such position, or their designee. If the City no longer maintains one of the designated offices, the City Member for that office shall be the officer of the City assuming the majority of the responsibilities of that office, or their designee.

(b) Landowner Members. Up to five members of the Board shall be drawn from among the major landowner's within the District (each a "Landowner Member" and, collectively, the "Landowner Members"). The land within the District shall be comprised of the following five areas (each an "Area") as set forth on the attached Rio Salado Community Facilities District map: Hayden Ferry ("Area 1"), Playa del Norte ("Area 2"), ASU Waterfront ("Area 3"), Rio East ("Area 4") and Boardwalk West ("Area 5"). A "Landowner Member" shall be a natural person who meets the following criteria or who is designated by an entity that meets the following criteria, and which person or entity holds with respect to at least one (1) acre of land within an Area either (i) development rights pursuant to a validly executed development and disposition agreement with the City, which development agreement is in full force and effect and under which no defaults exist by such person or entity, (ii) a long-term lease having an initial term of ten or more years, or (iii) fee title. A Major Landowner Member may be a representative of a property owners' association so long as such property owners' association encompasses at least five acres within one of the five Areas. Only one person or representative may represent an Area regardless of how many property owners own property within an Area. Until such time as the number of Landowner Members is increased pursuant to Section 4 below, there shall be three Landowner Members who shall represent the major landowners, other than the City, within the District. The three Landowner Members shall be comprised of one representative from Area 1 for Hayden Ferry Lakeside, one representative from Area 2 for Playa Del Norte, and one from Area 3 for ASU Waterfront. The Mayor of the City shall appoint or replace the Landowner Members or shall designate a similar association of Area property owners to make such appointments and replacements, and shall appoint, select or replace a representative in Areas where no property owners' association exists.

(c) Public Member. One member of the Board of Directors shall be a member of the public, which member shall be a [resident of the City of Tempe] member of the Tempe community appointed and replaced by the Mayor of the City (the "Public Member").

(d) ASU Member. One member of the Board of Directors shall be a designated representative of Arizona State University, which representative shall be appointed and replaced by the President of Arizona State University (the "ASU Member").

(e) Nonvoting Members. There shall be three non-voting members of the Board. One shall be a member of the Board of Directors of the Downtown Tempe Community (the "Downtown Tempe Community Member"). The Downtown Tempe Community Member will have an advisory position only and will not have a vote in matters before the Board of Directors. The second non-voting member of the Board shall be the person holding the job title within the City of Community Services Deputy Director, or his/her designee. The third non-voting member of the Board shall be an at-large, residential property owner within the district.

Section 4. Additional Landowner Members. Until the Crossover Date there will be three Landowner Members. From and after the Crossover Date the Board of Directors will be increased to eleven voting members and one nonvoting member and the two additional members shall be Landowner Members appointed and replace pursuant to Section 3(b). "Crossover Date" means the date of the first annual meeting occurring after the total amount of Landowner Revenues for each of the prior two fiscal years exceeds 50% of the District operating and capital budgets (including debt service) for each respective fiscal year. "Landowner Revenues" means all revenues received by the City or the District with respect to the ownership, development and use of the privately owned or privately developed property within the District including without limitation, any and all City taxes, fees, charges and assessments, such as District special assessments for capital and operations, transaction privilege and use taxes, bed tax, rental taxes, construction gross receipts taxes, property taxes, and lease payments for City owned land. Landowner Revenues shall not include (a) revenues from the sale of City owned land, (b) revenues from development or impact fees or plan review fees, or (c) revenues received by the City or the District from the imposition of State, County or other special district taxes of assessments.

Section 5. Resignation. Any Director may resign at any time, either by oral tender of resignation at any meeting of the Board of Directors or by giving written notice thereof to the Chairman or the Secretary of the Corporation. Such resignation shall take effect at the time specified therefor and, unless otherwise specified with respect thereto, the acceptance of such resignation shall not be necessary to make it effective. Absence by any member of the Board of Directors from three consecutive meetings of the Directors of the Corporation within any twelve-month period shall be deemed to constitute the automatic resignation of such member from the Board of Directors. Notwithstanding the foregoing, the attendance requirements set forth herein shall not apply to the ASU Member or to the City Members.

Section 6. Term. There shall be no term limit for the members of the Board of Directors, each of whom shall serve until their successors are elected and qualified. Each Director shall serve until such time as the Director resigns, or is deemed resigned, as provided in Section 5, or is deprived of eligibility for failure to meet the eligibility requirements as provided in Section 3, or, in the case of the ASU Member, replaced by the President of Arizona State University, or, in case of the Public Member, replaced by the Mayor of the City.

Section 7. Vacancies. Except for the ASU Member, the Public Member, and a City Member, any vacancy occurring on the Board of Directors shall be filled only by a person that satisfies the applicable eligibility requirements as provided in Section 3 and receives the vote of three-fourths or more of the members of the Board of Directors then in office. The vacancy of

the ASU Member or the Public Member shall be filled by the President of Arizona State University or the Mayor of the City, respectively, and shall not require a vote of three-fourths or more of the members of the Board of Directors in office. The vacancy of a City Member shall be filled by the City and shall not require a vote of three-fourths or more of the members of the Board of Directors in office. A Director elected to fill a vacancy occurring on the Board of Directors for a Public Member or the Downtown Tempe Community Member shall be elected for a new four-year term, subject to the provisions of Sections 5 and 6.

Section 8. Annual and Quarterly Meetings. The Board of Directors shall hold at least one meeting each three-month period. One meeting during the first twelve-month period shall be designated as the annual meeting and shall be held each annual period thereafter. All members of the Board of Directors shall be notified in writing no less than thirty days in advance of the annual meeting and no less than seven days in advance of any quarterly meeting. The annual and quarterly meetings shall be held at such place and at the time specified in the notice of said meeting.

Section 9. Special Meeting. Unless otherwise provided by resolution of the Board of Directors, all meetings of the Board of Directors, other than the annual and quarterly meetings, shall be special meetings. Special meetings of the Board of Directors may be called by or at the written request of four Members of the Board of Directors or by the Chairman; provided, however, that all Members of the Board of Directors shall be notified in writing no less than seven days in advance of any special meeting. The special meeting shall be held at such place and at the time specified in the notice of said meeting.

Section 10. Notice. Notice of the annual meetings of the Board of Directors shall be given to the Directors at least thirty days, but not more than sixty days, prior thereto by a writing delivered personally or mailed to each Director or by fax. Notice of special meetings of the Board of Directors shall be given at least seven days, but no more than twenty-five days, prior thereto by a writing delivered personally or mailed to each Director or by fax. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail as so addressed with postage thereon prepaid. If notice is given by fax, such notice shall be deemed to be delivered when confirmation of receipt of the fax is received by the sender. Each notice shall declare the time, date and place of the meeting. Unless otherwise required by law or specified by the Articles of Incorporation or the bylaws, neither the business to be transacted nor the purpose of any meeting of the Board of Directors need be specified in the notice. The attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting is not lawfully called or convened. Notice of any meeting may not be waived by a Director.

Section 11. Quorum. A majority of the Board of Directors shall constitute a quorum for the transaction of business of any meeting of the Board of Directors. The Directors may continue to transact business during a meeting at which a quorum is initially present, notwithstanding the withdrawal of Directors, if any action is approved by at least a majority of the Directors present; provided, however, that, unless a greater number is required under the Articles of Incorporation, these Bylaws or the laws of the State of Arizona, all actions shall

require the vote of not less than four Directors if the Board then consists of less than eleven members, or six Directors if the Board then consists of 11 members.

Section 12. Deleted.

Section 13. Compensation. A Director shall not receive any compensation for his/her services as a member of the Board of Directors.

Section 14. Informal Action. Any action required by law to be taken at a meeting of Directors, or any action which may be taken at a meeting of Directors, may be taken without a meeting if a consent in writing, setting forth the actions so taken, shall be signed by all of the Directors. Such action by written consent shall have the same force and effect as an unanimous vote of the Board. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

Section 15. Participation in Meetings by Means of Conference Telephone. Members of the Board of Directors, or any committee of the Board of Directors, may participate in a meeting of the Board of Directors or of such committee by means of a conference telephone or similar communications device whereby all persons participating in the meeting can hear each other, and participation by such means shall constitute presence in person at such meeting.

Section 16. Adjournment. A majority of the Directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

Section 17. Presumption of Assent. A Director of the Corporation who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken, unless his/her dissent shall be entered in the minutes of the meeting, or unless he/she shall file his/her written dissent to such action with the person acting as the Secretary or the meeting before the adjournment thereof, or shall forward such dissent by certified mail, return receipt requested, postage prepaid, to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

## ARTICLE V: OFFICERS

Section 1. Titles. The officers of the Corporation shall be a Chairman of the Board ("Chairman"), a President, a Secretary and a Treasurer, and such other officers, including a Vice President, and assistant officers as the Board of Directors may deem necessary. Any two or more offices may be held by the same person, except the office of President and Secretary, which shall be held by two different persons until Arizona law allows such offices to be held by the same person.

Section 2. Election of Officers. The officers of the Corporation shall be elected by the Board of Directors at the first meeting of the members of the Board of Directors as provided in Section 2, and thereafter at the regular annual meetings of the Board of Directors. If

the election of any officer is not held at such meeting, such election shall be held as soon as conveniently possible thereafter. New officers may be created and filled, and vacancies may be filled, at any meeting of the Board of Directors. Each officer shall hold office until his/her successor shall have been duly elected and qualified, unless such officer is otherwise removed. Each officer shall serve at the pleasure of the Board, subjects to the rights, if any, of an officer under any contract of employment. An officer shall not receive any compensation for his/her services as an officer. Except for the Chairman, who shall be a Director, an officer need not be a Director.

Section 3. Removal. Any officers elected or appointed by the Board of Directors may be removed by the Board of Directors, with or without cause, whenever in its judgment the best interests of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officers so removed.

Section 4. Resignation. Any officer may resign at any time by giving written notice to the Chairman or Secretary. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in such notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract of which the officer is a party.

Section 5. Chairman of the Board. The Chairman shall be a member of the Board of Directors and, subject to the control of the Board of Directors, shall have general and active supervision and direction over the business and affairs of the Corporation and over its several officers. The Chairman shall: (a) preside at all meetings of the Board of Directors; (b) make a report of the state of the business of the Corporation at each meeting of the Directors; (c) advise and consult with the Community Development Director as to the items to be included on the agenda of the meetings of the Directors; and (d) see that all order and resolutions of the Board of Directors are carried into effect. In general, the Chairman shall perform all duties incident to the office of the Chairman and such other duties as from time to time may be assigned to him/her by the Board of Directors. The Chairman will serve for a term of one year and shall not be permitted to serve more than two successive terms.

Section 6. President. The President shall preside at all meetings of the Board of Directors if a Chairman shall have not been appointed or having been appointed, shall be absent. The President shall exercise general supervision over the business and affairs of the Corporation, as assigned to him/her from time to time by the Chairman or the Board of Directors. The offices of President and Chairman of the Board may be held by the same person.

Section 7. Vice-President. The Vice President, if any elected by the Board of Directors, shall perform such duties as may from time to time be assigned to him/her by the Chairman, the President of the Board of Directors.

Section 8. Secretary. The Community Development Director or his or her duly authorized representative shall be the Secretary of the Corporation and shall keep a record of the minutes of all meetings of the Directors; shall give notice of meetings as provided by these

bylaws, shall custody of all books, records and papers of the Corporation, except those in the custody of the Treasurer or some other person authorized to have charge thereof by the Board of Directors, and shall perform such other duties as may from time to time be assigned to him/her by the Board of Directors.

Section 9. Treasurer. The Treasurer shall receive and disburse all corporate funds, if any, and shall keep an accurate and detailed record of all receipts and disbursements, which records shall at all times be subject to inspection by any member of the Board of Directors. The Treasurer shall deposit all of the Corporation funds in such bank of banks as may be designated by the Board of Directors. All checks, drafts, notes, or orders drawn against the accounts or funds of the Corporation shall be signed by the Chairman or President, and the Treasurer or such other officer, agent, or employee authorized by resolution of the Board of Directors.

Section 10. Additional Officers. Officers and assistant officers, in addition to those hereinabove described, who are elected or appointed by the Board of Directors, shall perform such duties as shall be assigned to them by the President or the Board of Directors.

Section 11. Vacancies. A vacancy in any office due to death, resignation, removal, disqualification or other cause may be filled by the Board of Directors. In the event of the death, resignation, removal, disqualification or other cause resulting in the vacancy of the position of Chairman, the vacancy may be filled by the Board of Directors for the unexpired portion of the term of such office.

Section 12. Employees. The Board of Directors may establish such positions of employment as it deems desirable from time to time and shall fix the compensation for such positions. Subject to the control and direction of the Board of Directors, the Chairman shall hire and discharge employees necessary for the proper conduct of the business of the Corporation.

#### ARTICLE VI: COMMITTEES

Section 1. Committees. The Board of Directors, by resolution adopted by a majority of the Directors, may designate and appoint one or more committees, each of which shall consist of one or more Directors, which committees shall have the duties and powers designated in a resolution adopted by the Board of Directors.

Section 2. Removal. Any member of a committee established under this section may be removed by the Board of Directors whenever in their judgment the best interest of the Corporation shall be served by such removal.

Section 3. Term. Each member of a committee established under this section shall continue as such until the next regular annual meeting of the Board of Directors and until his/her successor is appointed, unless the committee shall be sooner terminated or unless any such member is removed from such committee, or unless such member shall cease to qualify as a member thereof.

#### ARTICLE VII: CONTRACTS, CHECKS, DEPOSITS AND FUNDS



Section 1. Contracts. The Board of Directors may authorize any officer or officers, agent or agents of the Corporation, in addition to the officers so authorized by these bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 2. Gifts. The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest, or devise for the general purposes of for any special purpose of the Corporation.

Section 3. Loans. No loan shall be made by of to the Corporation and no evidences of indebtedness shall be issued in its name, unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances. No loans shall be made by the Corporation to any of its Directors of officers.

ARTICLE VIII: FISCAL YEAR

The fiscal year of the Corporation shall end each last day of December of each year.

ARTICLE IX: CHANGE OF BYLAWS

These bylaws may be altered, amended, or repealed, and new bylaws may be adopted, by a majority vote of the Directors in office.

ARTICLE X: CONSTRUCTION AND DEFINITIONS

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the Arizona Revised Statutes applicable to (nonprofit corporations), shall govern the construction of these bylaws. Without limiting the generality of the above, the masculine gender includes the feminine and neuter, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation or other organization and a natural person

Amended: January 15, 2019

  
\_\_\_\_\_  
Chairman

ATTEST:

  
\_\_\_\_\_  
Secretary



## Rio Salado Community Facilities District

- Rio Salado Community Facilities District
- Major Landowner Areas (for Board Positions)