

**CITY OF TEMPE  
BOARD OF ADJUSTMENT**

**Meeting Date: 07/24/2019  
Agenda Item: 3**

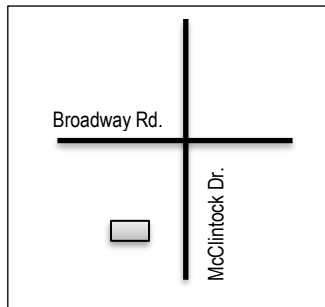
**ACTION:** Request for an appeal of the Zoning Administrator’s Opinion to prohibit a testing laboratory use within the R/O, Residential/Office District for INTEGER CONSULTING LLC, located at 2342 South McClintock Drive. The appellant is Gaona Law Firm, on behalf of Integer Consulting LLC.

**FISCAL IMPACT:** There is no fiscal impact on City funds.

**RECOMMENDATION:** None

**BACKGROUND INFORMATION:** INTEGER CONSULTING LLC (PL190121) is requesting an appeal of the Zoning Administrator’s Opinion regarding certain uses in operation by Integer Consulting, that have been identified as “not permissible” within the subject property’s zoning district. The result of the determination and subsequent appeal was generated from a resident complaint received by the City. The request includes the following:

ADMA190001 Appeal of the Zoning Administrator’s Opinion to prohibit a testing laboratory use within the R/O Residential/Office District.



Property Owner  
Business Owner  
Appellant  
Zoning District  
Gross/Net site area  
Total Building area

Sandman Properties, LLC  
Jose Ojeda, Integer Consulting, LLC  
David Gaona, Gaona Law Firm  
R/O, Residence/Office District  
0.42 acres (2 lots)  
3,114 s.f.

**ATTACHMENTS:** Project File

**STAFF CONTACT(S):** Ryan Levesque, Deputy Community Development Director (480-858-2393)

Department Director: Chad Weaver, Community Development Director  
Legal review by: N/A  
Prepared by: Ryan Levesque

## COMMENTS:

### Public Input

At the time this staff report was completed, staff had received communication from the original complainant resident who had expressed concerns for black smoke and noise coming from the subject business site. Information was provided about the appeal and future hearing date. Staff also received an additional email inquiry from a resident wanting further details on the matter.

### Zoning and Development Code, Section 6-301 - Code Interpretations and Similar Use Rulings.

- A. **Purpose.** *Any use not appearing in this code which is similar to, and not more detrimental than the uses permitted herein, as determined by the Zoning Administrator, may be permitted based on a code interpretation and similar use ruling.*
- B. **Procedure.** *Code interpretations and similar use rulings are processed as administrative review decisions by the Zoning Administrator pursuant to Part 6, Chapter 1 and 2. Decisions by the Zoning Administrator may be appealed to the Board of Adjustment pursuant to Part 6, Chapter 8. (Please refer to the Community Development Department for application requirements.)*
- C. **Approval Criteria.** *The decision-making body shall base its decision regarding a code interpretation and similar use ruling on the definitions and other provisions contained in this Code, relevant city policy, and/or any applicable State or Federal law or case law.*
- D. **Record.** *Code interpretations and similar use rulings shall be catalogued and kept in the Zoning and Development Code Appendix.*

### Pursuant to the ZDC, Section 1-303 – Zoning Administrator:

**B. Zoning Administrator — Duties and Powers.** *The Zoning Administrator shall have the duty to carry out the provisions and intent of the General Plan and this Code. The Zoning Administrator shall have the power to interpret and enforce this Code.*

1. *Interpretation of this Code includes, but is not limited to, clarification of intention, determination of zoning classifications of land uses not specified in this Code, the delegation of processing procedures and requirements, and enforcement of Code provisions. The Zoning Administrator shall keep a record of interpretations made pursuant to this section. The record of interpretations shall be available to the public;*
2. *The Zoning Administrator may appoint representatives of the Community Development Department to enforce provisions of this Code; and*
3. *Any land use that is unspecified in this Code and not classified by the Zoning Administrator is prohibited in any district.*

**C. Zoning Administrator — Appeals.** *Any person aggrieved by a decision of the Zoning Administrator under this Code may file an appeal to the Board of Adjustment, or the Joint Review Committee, as applicable, within fourteen (14) calendar days after the Zoning Administrator has rendered its decision, in accordance with Part 6, Chapter 8, Appeals.*

## **OPTIONS BY THE BOARD OF ADJUSTMENT – Appeal:**

The Board may take one or more of the following actions.

*Approve* the appeal, find in favor of the appellant (Gaona Law Firm) and effectively overturn the Zoning Administrator’s Opinion. The effect of this vote would allow the use by Integer Consulting LLC within the existing site at 2342 South McClintock Drive, within the R/O, Residence/Office district.

*Approve* the appeal with conditions, find in favor of the appellant (Gaona Law Firm) and allow the use but with certain limitations of the business and its functions. The Board can condition certain aspects of the business based on any of the Board’s findings, the interpretation identified within the Zoning Administrator’s Opinion, or any use or regulation within the Code.

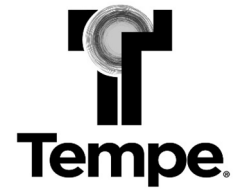
*Deny* the appeal (*find in favor of the Zoning Administrator’s Opinion*, and effectively prohibit the use); The effect of this vote would keep the ZA Opinion in effect and require the business to come into compliance with the decision in a specified time or manner established by the Board, or if absent, by the Code Compliance Division.

*Continue* to a future date certain, requesting additional information before making a final decision on the appeal.

A copy of the appellants filing (appeal) is included, as well as any supporting material provided by staff.

## **HISTORY & FACTS:**

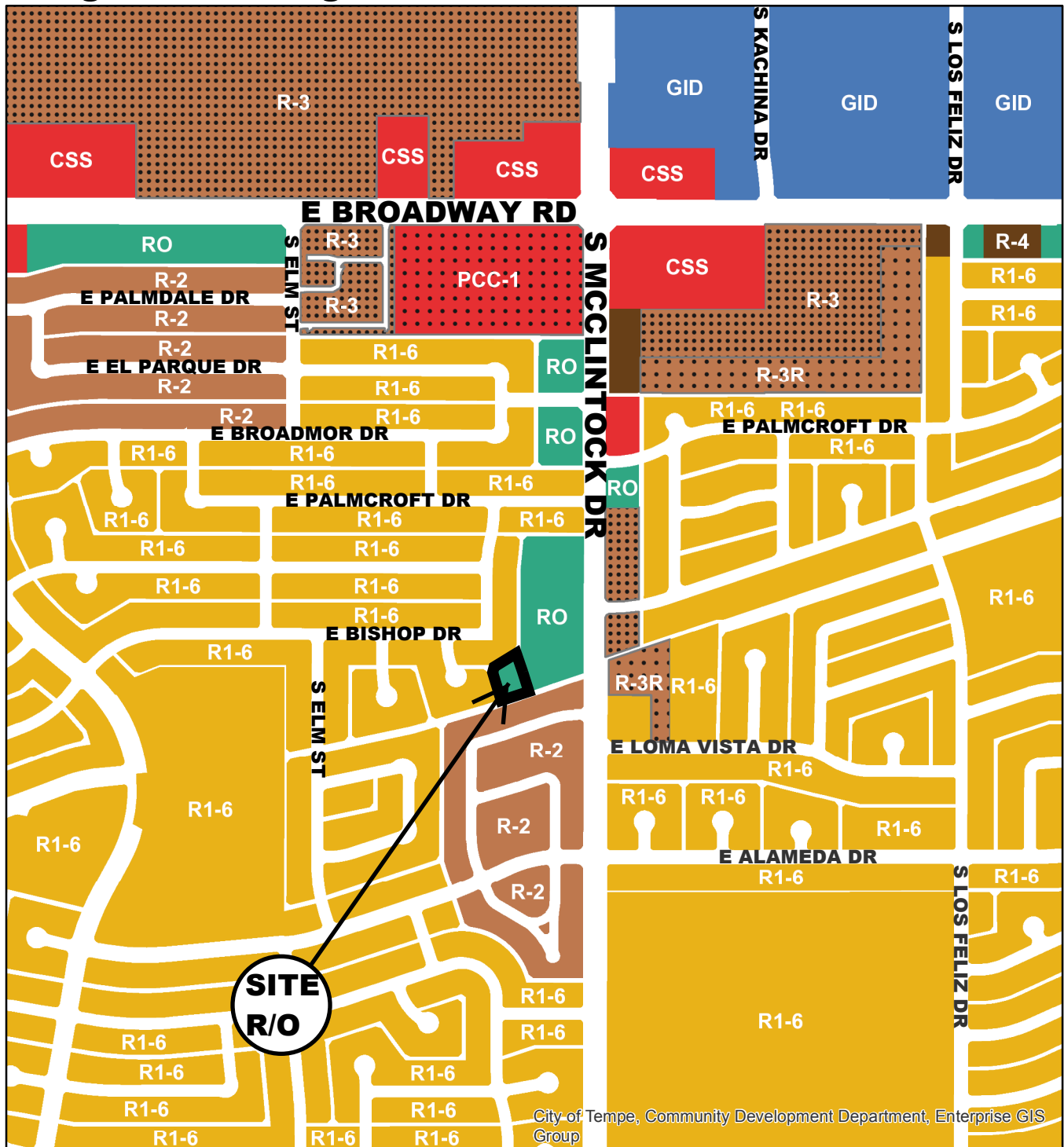
January 12, 2019	The City began receiving communication from a resident complaining of industrial work and black smoke coming from the building.
February 8, 2019	Through communication of the business owner, a site tour of the business was conducted at 2343 South McClintock Drive.
February 14, 2019	A meeting was request by the City of Tempe, Community Development Department with Jose Ojeda, the business owner for Integer Consulting, LLC. In attendance was Mr. Ojeda’s representative from Gaona Law Firm, and City staff including representation from Building Safety, Planning, Code Compliance, and Economic Development. The business was informed that the “testing laboratory use” was not permitted in this zoning district. The City gave the business a 6 month period to come into full compliance with the use or relocate the business.
February 15, 2019	At-risk building permits were filed to address the unauthorized work of the tenant space under the office occupancy.
May 24, 2019	Community Development issued an official Zoning Administrator’s Opinion regarding the business and land uses allowed for this site.
June 5, 2019	Gaona Law Firm filed an appeal of the ZA Opinion, with petition and justification.
July 24, 2019	Board of Adjustment appeal hearing scheduled for this request.












**PROJECT FILE**  
for  
**INTEGER CONSULTING LLC**  
**(PL190121)**

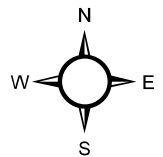
**ATTACHMENTS:**

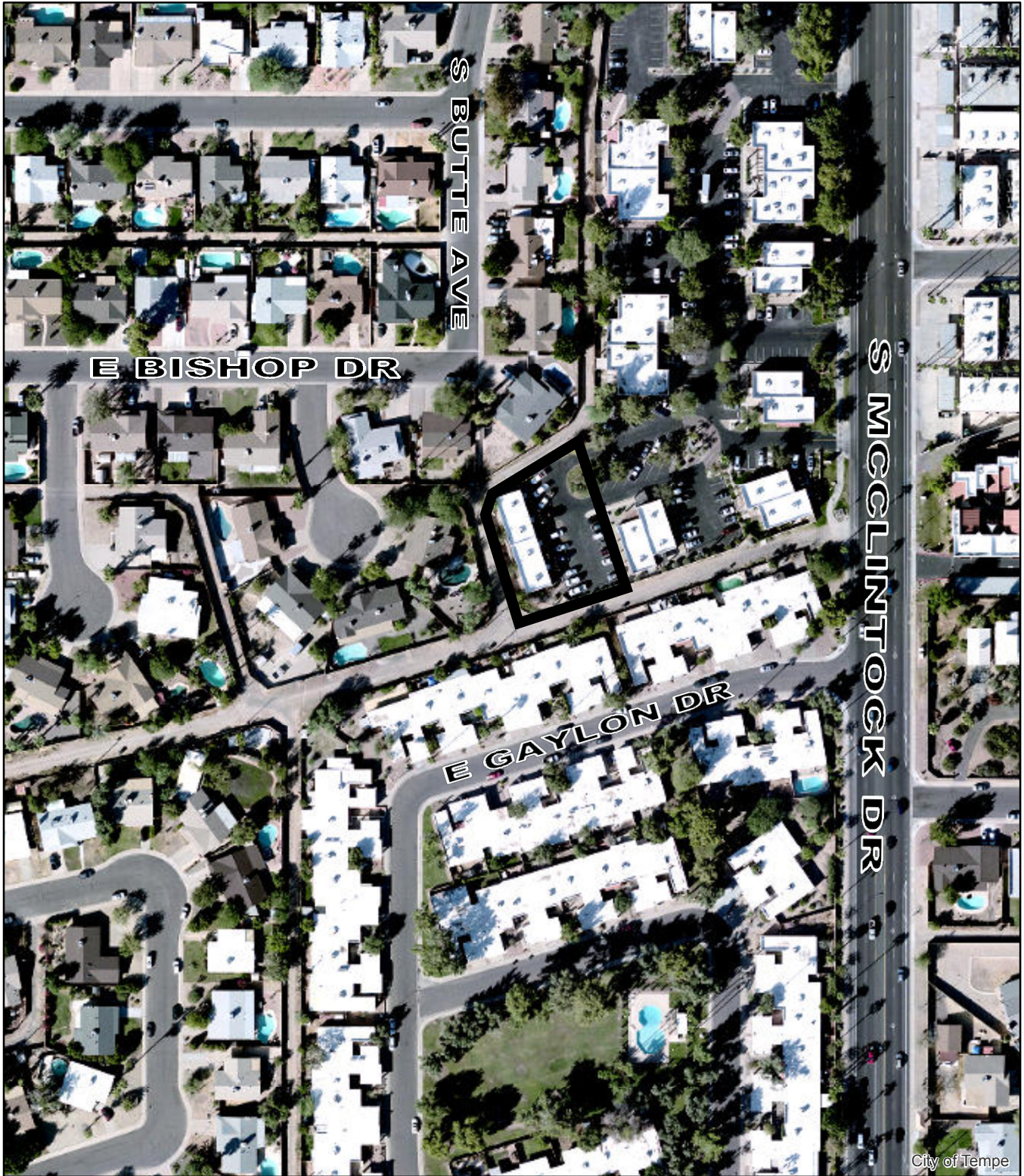
1. Location Map
2. Aerial Map
- 3-25. Letter of Appeal with attachments, dated June 5, 2019
- 26-27. Zoning Administrator's Opinion letter, dated May 24, 2019
28. Supplemental Materials provided by staff: business floor plan



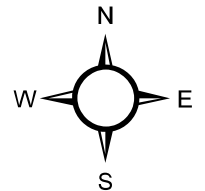
City of Tempe, Community Development Department, Enterprise GIS Group

- |  |  |
|--|--|
|  General Industrial District (GID)              |  Multi-Family Residential (R-2)             |
|  Commercial Shopping and Services (CSS)         |  Multi-Family Residential Restricted (R-3R) |
|  Planned Commercial Center Neighborhood (PCC-1) |  Multi-Family Residential Limited (R-3)     |
|  Residential/Office (RO)                        |  Multi-Family Residential General (R-4)     |
|  Single-Family Residential (R1-6)               |  |





Aerial Map



# GAONA LAW FIRM

A PROFESSIONAL CORPORATION  
NATIONAL BANK PLAZA

3101 NORTH CENTRAL AVENUE, SUITE 720  
PHOENIX, ARIZONA 85012

DAVID F. GAONA  
david@gaonalaw.com

TELEPHONE (602) 230-2636  
FACSIMILE (602) 230-1377

June 5, 2019

Mr. Ryan Levesque, CPM  
Deputy Community Development Director  
City of Tempe  
Planning Division  
31 East Fifth Street  
Tempe, Arizona 85281

Re: *Notice of Appeal on behalf of Integer Consulting, LLC*  
*DS190045 PL 190121*  
*Appeal of Zoning Administrator's Opinion*

Dear Mr. Levesque:

Please accept this letter as part of Integer Consulting, LLC's appeal of your Zoning Administrator Opinion letter dated May 24, 2019 and e-mailed to the undersigned, counsel to Integer as well as the principal of Integer, Jose Ojeda, after 5:00 p.m. on Friday, May 24, 2019. Your opinion letter identifies the fourteen (14) calendar day appeal time, as does § 6-803 of the Tempe Zoning and Development Code. Pursuant to § 6-803(A), the applicant/petitioner's name and the city case file number is referenced above. This appeal is being filed on behalf of Integer through undersigned counsel whose name and address are referenced above in the mast head and whose signature is also contained at the end of this notice of appeal. This letter is an attachment to the City of Tempe Application Form, as prepared and executed by Integer.

Consistent with § 6-803(A)(1)(c), it is incumbent upon Integer to identify the specific grounds for appeal. In that regard, and consistent with Mr. Levesque's opinion letter dated May 24, 2019, Integer objects and disputes the factual content contained in ¶3 of page 1 of the Administrator's Opinion letter. In addition, in ¶4 of the Administrator's Opinion letter, found on page 2, conclusions and opinions set forth therein are also disputed and the subject of the appeal.

Finally, relative to appeal issues, the fifth paragraph of the Zoning Administrator's Opinion, found on page 2, of the opinion letter, items 2, 3 and 4 are disputed and the subject of this appeal. More specifically, the "opinions" or conclusions lack appropriate foundational predicates, most especially any appropriate notice to the Applicant that his business activities are prohibited such that he would not have spent substantial sums of

money to move his business to Tempe. The Tempe Zoning Code does not provide notice of, nor identify to citizens, the “compliance” requirements set forth on page 2, number 3(a) – (d).

#### **I. Nature of Integer Consulting’s Business**

Integer Consulting, LLC, consistent with information previously provided to the City of Tempe, and attached hereto as Ex. 1, is a comprehensive geotechnical engineering firm that provides services to a diverse client base. Integer Consulting involves itself in construction materials oversight, inspections and, if needed, testing. By and large, Integer’s professional staff spends substantial time at construction sites to observe, inspect and advise, as needed, relative to construction materials and introduction of materials into the construction process, soils, aggregates, concrete, asphalt and steel. All of these components, relative to a construction project, must meet certain parameters and makeup, and the on site advice and monitoring, including on site testing, is a key component to keep the construction on going while insuring compliance. Relative to Integer’s office in Tempe, the office is comprised of 3,210 square feet. Attached hereto as Exhibit 2 is the layout of the Integer office suite, identifying in detail each office and its use. Mr. Ojeda, the principal of Integer, confirms that relative to the office space, ninety percent of that space is utilized, on a daily and regular basis, as professional office space versus dedicated lab space.<sup>1</sup>

As noted, there are two asphalt testing ovens that can best be described as microwaves in appearance. The asphalt core samples that are tested come directly from the construction work site and generally speaking, applicable contracts require that cores be taken from an asphalt job for testing to confirm the binder or composite makeup is consistent with specifications contained in the contract relating to that asphalt project. Attached as Exhibit 3 is information from two manufacturers of asphalt testing ovens as utilized by Integer, information that not only depicts the size of the testing ovens and the electronics, but also technical specifications relating generally to the ovens. As noted in those materials, in order to conduct an asphalt test, the asphalt is heated and the typical burn time is twenty minutes or less. There are no solvents utilized relative to this process. The process relative to the burn time produces very little if any emissions whereby the manufacturers do not even recommend a need for filtering. Despite that, Mr. Ojeda chose to pull a permit and complete venting from the ovens up through the roof line, again, although not required and although not recommended by the oven manufacturer, Mr. Ojeda has placed a filter tap vent on the piping.

Importantly, when Mr. Ojeda commenced utilization of the office premises, he did so by entering into a lease with Sandman Properties, LLC. That lease provides Mr.

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<sup>1</sup> Testing using scales and/or other non-destructive means are used in the dedicated lab space or may be used infrequently in the mix use space.



Ojeda with an option to purchase, which has always been in his plans. As such, he incurred the expense of tenant improvements knowing that he would exercise the option to purchase, all the while understanding that the building was zoned R/O and that his use of the building relative to his technical engineering consulting services business, was appropriate in all respects. In fact, he was aware of other properties within the same general location, also zoned R/O, that are solely lab oriented. Relative to Integer Consulting, "lab" work is a part of, or an accessory use of the overall consulting business. At no time was Mr. Ojeda apprised, through a review of City of Tempe documents relating to the zoning and development code, that reasonably apprised him that having two asphalt testing ovens in his office suite as part of his engineering consulting business, was violative of the code. Nor does the Code apprise Mr. Ojeda (or anyone else) of the Zoning Administrator's Opinion letter relating to the four elements of "compliance" necessary as found on page 2 of the opinion letter, number 3(a)-(d).

## **II. Tempe Zoning Development Code**

Section 3-201(B)(1) of the Tempe Zoning Development Code defines the R/O district as follows:

The R/O District allows professionals and administrative services, live-work, and limited retail uses on small parcels located between higher intensity commercial and multi-use zones and residential zones.

Section 3-202 identifies permitted uses in commercial mixed use districts. While there is no specific designation for laboratory use, whether such use is permissible or impermissible, that section does permit, relative to R/O districts, "clinics (medical, dental, veterinary (small animals))" as a permitted use. Clinic is not defined as a laboratory, or tantamount to a laboratory. In addition, § 3-201(A) defines, as the underlying purpose of the Zoning and Development Code, including establishment of mixed use districts, "to create economic and social vitality" by "providing a mixture of complimentary land uses".

Referencing back to the definition of R/O districts, the term "services" appears and § 7-120 defines services as follows:

useful labor that does not produce a tangible commodity

Respectfully, testing an asphalt core in an asphalt testing oven, similar to a microwave used in household kitchens, similar in power used and heat, does not produce a useful commodity and thus, use of the testing oven at Integer Consulting is consistent with the providing of professional and/or administrative services, a permissible R/O use. Indeed, testing is merely accessory to, or incidental to the overall geotechnical services offered by Integer.

Section 6-301 provides, relative to "similar services" the following:

Any use not appearing in this code which is similar to, and not more detrimental than the uses permitted herein, as determined by the Zoning Administrator. . .

As established already, the initial venting associated with the testing ovens was through the side of the building. As a result of the permit pulled by Mr. Ojeda, the venting now goes through the roof and, Mr. Ojeda has placed a filter tap vent on that vent whereby there are no visible emissions when the ovens are utilized. As identified and easily verifiable, within the same complex in which Mr. Ojeda's office is located, there is a dental lab which utilizes at least eight (8) similar type ovens involved in manufacturing of dental products. The dental lab, "Gold Dust Dental Lab" is located at 2242 South McClintock Drive, is in the same office suite subdivision of Integer Consulting. Attached hereto and marked as Exhibit 4 are various photographs within the office suite of the dental lab depicting the various manufacturing machines utilized by the dental lab, which are similar in appearance to the two testing ovens used at Integer Consulting. Also depicted in the picture is the venting from those manufacturing ovens at the dental lab, showing ventilation up into the roof line. Integer is unsure relative to the electric service requirements concerning the various manufacturing ovens used within that dental lab. In the pictures presented, in the one room, there were at least five manufacturing ovens as well as oxygen canisters. Indisputably, the dental lab, a short hop, skip and jump away from Integer Consulting's office suite, appears to be a full time dental manufacturing operation (Integer does not suggest improper use per R/O zoning), as opposed to the Integer office suite consisting of accessory use and/or minor use lab space (10%) relative to the overall office suite.

### **III. The Tempe Code Does Not Prohibit Use of Asphalt Testing Ovens in the Circumstances; Use of Testing Ovens and Non-Destructive Measurement of Materials is an Accessory use**

Pursuant to § 7-102:

Accessory use means either a subordinate use of a building, other structure or use of land under the following situations:

1. Whose use is clearly incidental and customary to the use of the primary building, other structure or use of land; and
2. Which is located on the same zoned lot with the principal building, other structure or use of land, and whose use is specifically permitted in a less restricted district.

With all due respect to the Zoning Administrator, the “facts” set forth in his May 24, 2019 Opinion letter, page 1, ¶3, are inaccurate and without foundation. Exhibit 2, as authenticated by Mr. Ojeda, confirms that most of the offices/rooms in the subject office suite DO NOT have either minor or major aspects of laboratory testing stations. Nor is the Zoning Administrator’s description of items on the back patio of the office suite accurate, let alone his description of the patio and its contents as “adjacent to the public alley” accurately descriptive.

First, items on the back patio do include a small trough used to sift soil samples, as well as general patio items as well. While the patio, and items within it, are “adjacent” to the alley, setbacks are between the two areas.

Second, because the two ovens and the room in which they are located comprise such a small area within the office suite, even characterizing the testing ovens as “lab use” can ONLY be characterized, fairly, as accessory to the use of the geotechnical engineering services for which the large majority of the subject office suite is utilized every day.

Third, “laboratory use” in the circumstances does not become a “non-conforming use” per § 3-504, as the real laboratory use, use of the two (2) asphalt ovens, is less than ten percent (10%) of the office suite. An additional percentage of the office suite, ten to twenty percent (10%-20%), uses, intermittently, weight machines to measure soil and aggregate weight, or other simple equipment for which measurements are taken (Query – does use of rulers and microscopes in a residential home, found in each bedroom, render the majority of the home a “lab” for testing?).

Integer Consulting wants to be, and is, a law abiding Tempe business, neighbor, and taxpayer. Integer wants to remain a Tempe business at the office suite it picked, has placed substantial money into, and serves its purposes well. Integer will be happy to explore other means, if necessary, to remain in its present office suite. Integer respectfully requests the City work with, and not against, Integer. Indisputably, Integer offers and engages in professional services, engages in no retail use and testing of asphalt cores in two (2) microwave ovens, is accessory to its professional services.

For all the foregoing reasons, inclusive of the exhibits attached hereto, and most importantly, the exercise of common sense and reality, no zoning violation has occurred; at worst, the two (2) ovens are accessory uses relative to the professional services provided. Integer respectfully requests the Board to reverse the Zoning Administrator Opinions and confirm Integer’s use and continuing use of its office suite consistent with R/O zoning.

Mr. Ryan Levesque  
June 5, 2019  
Page 6

Sincerely,

GAONA LAW FIRM

A handwritten signature in black ink, appearing to read "D. Gaona", with a long horizontal flourish extending to the right.

David F. Gaona

DFG/bjk  
Enclosures:

## DECLARATION OF JOSE OJEDA

Jose Ojeda, pursuant to Rule 80, *ARCP*, and under penalty of perjury, hereby declares:

1. I am the principal of Integer Consulting, LLC. In that capacity, I am authorized to make this Declaration.
2. I have read the Notice of Appeal document prepared by Integer's counsel, and the facts contained therein are true and accurate.
3. Attached as an exhibit to the Notice of Appeal is the "Integer Consulting, LLC office lay out" that accurately depicts Integer's office suite of 3,210 square feet. Of that total square footage, 1,980 square feet (62%) is general office, 909 square feet is mix use space (28%), and 321 square feet (10%) is dedicated lab space (inclusive of the two (2) asphalt testing ovens).

Dated this 6<sup>th</sup> day of June, 2019

INTEGER CONSULTING, LLC

  
\_\_\_\_\_  
Jose Ojeda, Managing Partner

# **EXHIBIT 1**

# Statement of Qualifications

## The Company

The word Integer is a Latin word meaning whole, complete and without fraction. Although it is associated with numbers it is also the root word for our English word Integrity. Integrity is defined as a quality of being honest, moral, upright and a state of being whole undivided. We believe that these qualities are the keys to providing the highest level of service for our clients. Therefore, here at Integer Consulting LLC we felt that the name Integer Consulting would be a constant reminder to our clients and ourselves of our values and style of services.

Integer Consulting LLC is devoted to producing complete, timely, and accurate integrity-based materials testing and inspection services so clients have the information needed to deliver complete and profitable projects.

Integer Consulting LLC is a full-service quality management company specializing in asphalt, asphalt binder, and pavement preservation consulting services. These services include asphaltic concrete mix designs, polymer modified binders, and all types of preservation design.

Integer Consulting LLC offers a comprehensive geotechnical engineering service to our diverse clients. Our services fall into two main categories of geotechnical engineering services and construction monitoring and laboratory testing.

Relationships are key at Integer Consulting. We place a high value on ensuring that anyone who comes into contact with Integer Consulting leaves with a positive experience; be it our employees, vendors, or customers.

## The People

Integer Consulting has skilled staff ready to meet your project needs head on.

**Jose Ojeda:** Mr. Ojeda is the founder and driving force behind Integer Consulting. He has 18 years experience in the construction materials testing and inspections industry.

Mr. Ojeda's technical experience includes a variety of testing and inspection services both in the field and in the laboratory. Throughout his career, he has worked on a variety of projects which include underground utilities, mass grading, roadway paving, bridges, landfills, and structural building inspections. His core competency is in construction materials and inspections which include; elements of soils, aggregates, concrete, asphalt and steel.

**Peter E. Sebaaly, Ph.D., P.E.:** Mr. Sebaaly serves as the on staff Professional Engineer for Integer Consulting. His expertise includes over 30 years of pavement design, management, construction, rehabilitation, preservation, structural evaluation, and in-situ instrumentation of soils and pavement structures.

Mr. Sebaaly's Published work includes:

- Engineering Properties of Gilsonte-Modified Asphalt Mixtures, Cologne
- Dynamic Pavement Response Coefficient to Estimate the Impact of Variation in Dynamic Vehicle Load
- Effectiveness of Preventive Maintenance of Asphalt Pavements

## The Customers

We believe that our passion is what sets us apart. We have saved our clients time and money with our expertise. And we have the results to back it up.

Customer: Via Sun  
Project Name: 17-001 Peoria Micro Seal Preservation Program  
Scope: Produce an ISSA, MAG, and City of Peoria acceptable Micro Seal Mix design

Customer: Talis  
Project Name: 17-017 K07B Mill and Overlay  
Scope: Quality Control management: Review Mix design submittals for PMTR Asphalt Verification testing during placement

Customer: City of Mesa  
Project Name: 17-040 Research and Development  
Scope: Assist with spec writing and modifications to the following Binder specs, Slurry Specs, Fog Seal specs and Asphalt Specs  
Research and development of a cold-in place mix design

Customer: Town of Gilbert  
Project Name: Williams Field Soils Investigation  
Scope: Perform soils investigation to identify the soil type and in-place density for future force main project to aid in the design of a boar pit

Customer: MR Tanner  
Project Name: 17-011 Bell and Grand AC Placement  
Scope: Quality Control during the placement of PMTR asphalt

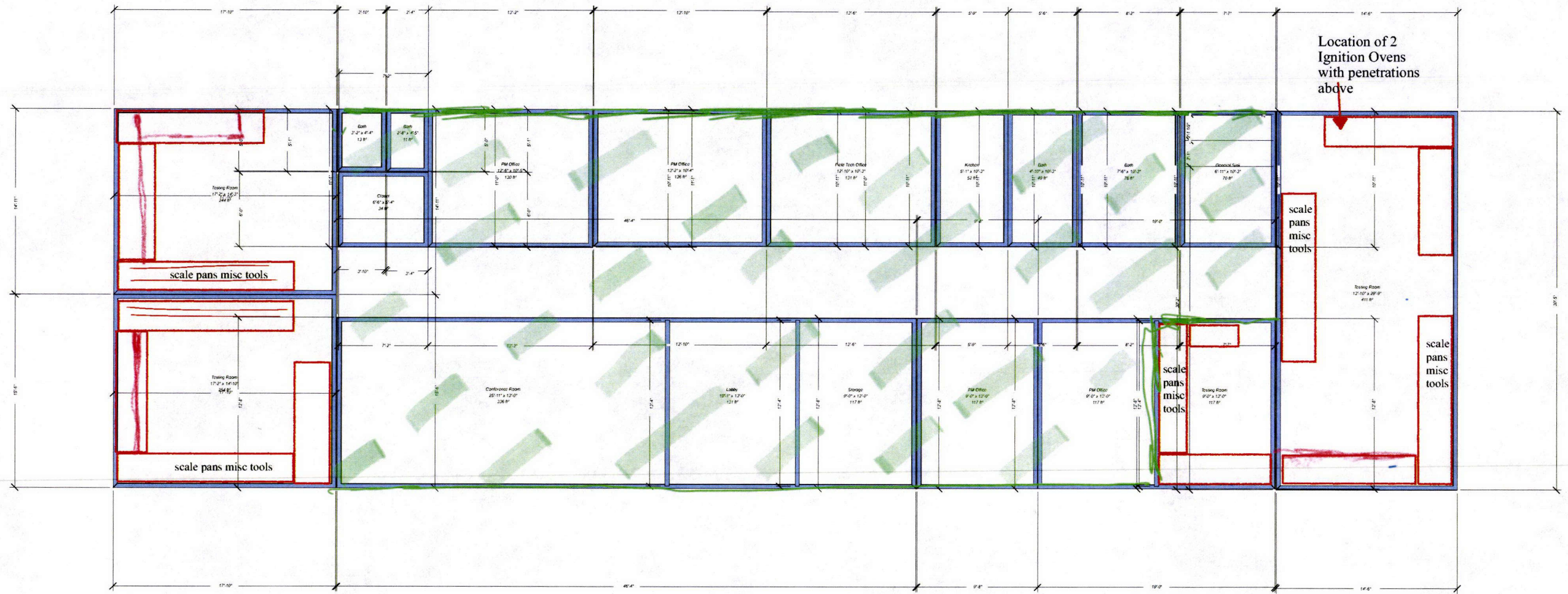
**Integer Consulting, LLC**

756 E Palomino Dr. Gilbert, AZ 85296

Ph: 623-414-0004

# **EXHIBIT 2**



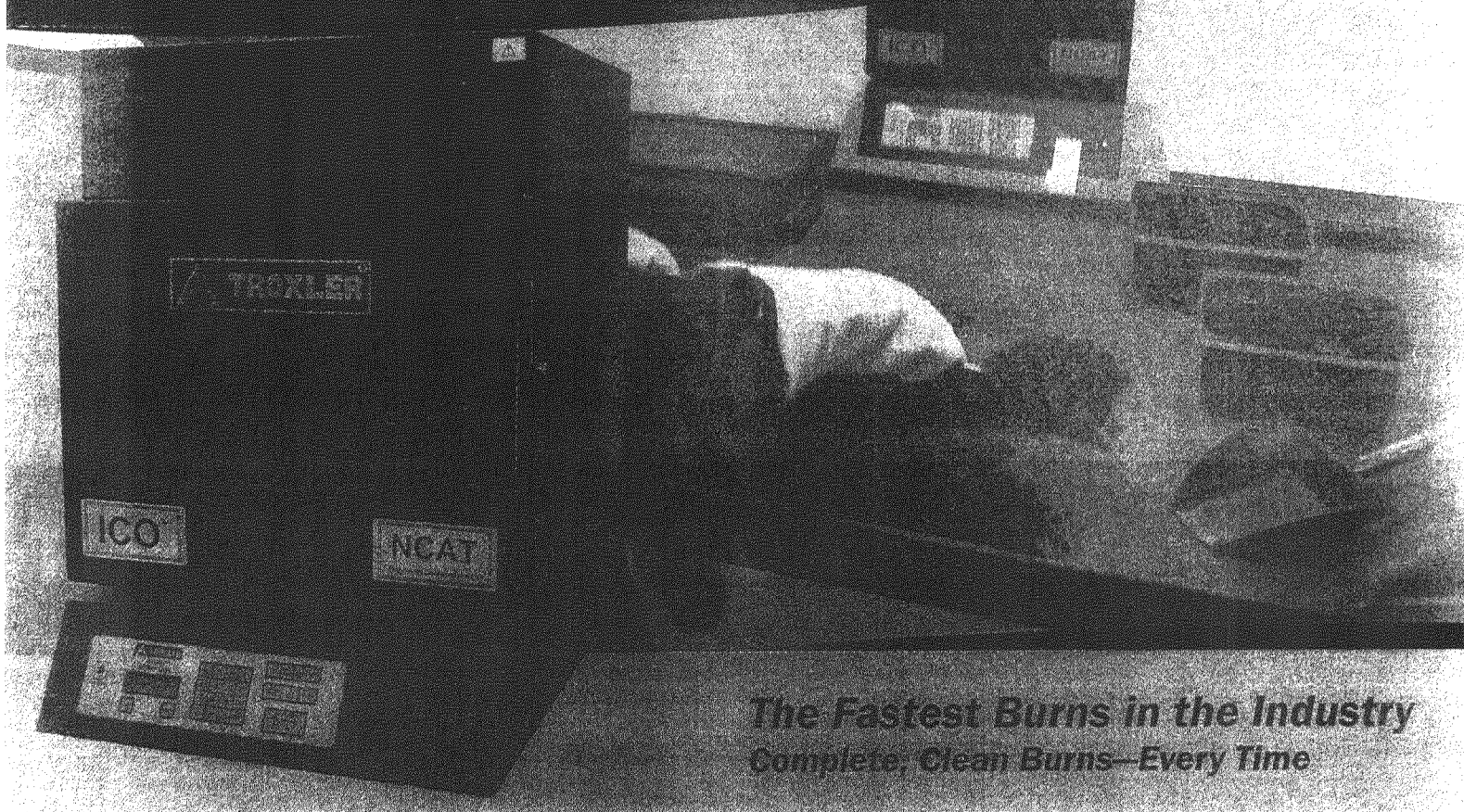


Integer Consulting LLC Office Lay Out  
 Total Sqft: 3210  
 General Office Sqft: 1980 / 62%  
 Mix Use Sqft: 909 / 28%  
 Dedicated Lab Space Sqft 321 / 10 %

# **EXHIBIT 3**

# Troxler ICO™ NCAT Oven

Asphalt Ignition Oven



*The Fastest Burns in the Industry  
Complete, Clean Burns—Every Time*

## **Simple to Use**

Just follow these five easy steps: (1) heat the asphalt sample, (2) weigh the sample and divide it across two sample baskets, (3) enter the sample mass, (4) place the baskets in the chamber, and (5) close the door and press a button to begin the test.

## **Efficient**

Extremely fast warm-up (only twenty minutes) and recovery times ensure quick, complete burns. The typical burn time for a 1200 gram sample is twenty minutes or less (at 240 VAC).

## **Instant Results**

An integrated weighing system continuously measures the bituminous loss during combustion, and the oven displays the percent of asphalt in the mix when the burn is complete. You can then sieve the remaining aggregate for gradation analysis.

## **ASTM and AASHTO Compliant**

The oven uses the NCAT ignition method and fully meets and complies with ASTM D6307 and AASHTO T 308.

## **Superior Serviceability**

Maintenance is simple and straightforward. Removable panels allow easy access to all components and assemblies.

*“ Troxler's ICO NCAT Oven performs at a high level of quality,  
and we are very satisfied with our investment. ”*

*McClelland Consulting Engineers, Inc.*

# Troxler ICO™ NCAT Oven

## Asphalt Ignition Oven

### Additional Features

- A small footprint makes the oven portable and ideal for on-site labs.
- The unit's sturdy construction includes an unbreakable steel hearth plate.
- You can use up to three nested sample baskets for high-mass samples.
- Low emissions eliminate the need for an afterburner or filters.
- No solvents are necessary.
- An internal printer and *Bluetooth*® wireless technology provide multiple printing options.
- Upgradeable software ensures a future-proof solution.
- The oven is delivered fully assembled.

Technical Specifications	
Maximum Sample Size	5000 g (total)
Integrated Scale Resolution	0.1 g
Burn Time for 1200 g	Less than 240 min
Internal Memory Capacity	Sample data: 200 samples Project IDs: 20 Aggregate correction factors: 20
Standards	ASTM D 165, AASHTO T 308
Mechanical Specifications	
Outside Dimensions	35 H x 24 W x 31.5 D in (89 H x 60 W x 80 D cm)
Chamber Dimensions	12 H x 13 W x 19.7 D in (30.5 H x 33 W x 50 D cm)
Sample Pan Dimensions	22.5 H x 11.5 W x 15 D in (6.3 H x 20.3 W x 36.8 D cm)
Complete Pan Assembly Dimensions	6.5 H x 9.4 W x 15.5 D in (16.5 H x 23.8 W x 39.4 D cm)
Weight	180 lbs (72.7 kg)
Electrical Specifications	
Power Source	230 V, 240 V AC, 50/60 Hz
Current	26/30 A
Peak Power Consumption	6305 / 2600 W (5.5 kW)
Other	
RS-232-C Configuration	Data terminal equipment (DTE)
Serial Data Format	8 data bits, 2 stop bits, no parity
Baud Rate Range	300 - 115,200
Liquid Crystal Display	4 lines, 20 characters per line
Keypad	5-key keypad membrane
<i>Bluetooth</i> Wireless Technology	

Made in USA

3008 Cornwallis Road  
 Research Triangle Park, NC 27709  
[www.troxlerlabs.com](http://www.troxlerlabs.com)  
 1-877-TROXLER

 **TROXLER**<sup>®</sup>  
 The Leader in Construction Test Equipment

SSIC0050817

BARNSTEAD THERMOLYNE CORPORATION

# NCAT Asphalt Content Tester

## OPERATION MANUAL AND PARTS LIST

*Series 1087*

<u>Model No.</u>	<u>Phase</u>	<u>Voltage</u>	<u>Watts</u>	<u>Amps</u>
F85930	1	220-240	4879/6379	20/27
F585938	1	208	5757	28
F85930-33	1	220-240	4879/6379	20/27
45-3790/01	1	220-240	4879/6379	20/27
45-3790/07	1	208	5757	28

Rev. G Software

LT1087X2 • 8/23/00

# General Specifications

Model		F85930-33, F85940-33, 45-3790/01, F85930 (240 V)	45-3790/07, F85948, F85938 (208V)	
Overall Dimensions	Width	21.375 (54.29)	21.375 (54.29)	
IN. (CM)	Height	40.500 (102.87)	40.500 (102.87)	
	Depth	25.625 (65.09)	25.625 (65.09)	
	Chamber Dimensions	Width	14.000 (35.56)	14.000 (35.56)
IN. (CM)	Height	14.000 (35.56)	14.000 (35.56)	
	Depth	14.000 (35.56)	14.000 (35.56)	
	Weight	Lbs. (KG)	302 (137)	302 (137)
Electrical Ratings	Volts	220-240	208	
	Amps	20/27	28	
	Watts	4879/6379	5757	
	Freq.	50/60	50/60	
	Phase	1	1	
Chamber Temperature Ratings*		100°C-650°C	100°C-650°C	
Max. Sample Cap.		5 kilograms of asphalt sample.		
Max. Operating Temp.	Chamber	650°C	650°C	
	Filter	900°C	900°C	
Maximum Program Run Time		255 minutes	255 minutes	
Allowable Values for Selected Functions	Chamber Set point	100°C-650°C	100°C-650°C	
	Filter Set point	0°C-900°C	0°C-900°C	
	Sample Weight	100g-5000g	100g-5000g	
	Correction Factor	0.00-99.99	0.00-99.99	
	Wake up Time	0:00-24:00	0:00-24:00	
	Wake up Date	0.00 - 12.31	0.00 - 12.31	
	Inactivity Check	On/Off	On/Off	
	Auto Shut down	On/Off	On/Off	
	Beeper	On/Off	On/Off	
	Serial Port Output	Continuous/Test Only	Continuous/Test Only	
	Chamber Calibration Offset	+50 to -50	+50 to -50	
	Test Stability Threshold	0.01-0.5%	0.01-0.5%	
	Intermediate Printing (Internal Printer)	On/Off	On/Off	
	Default Values for Selected Functions	Chamber Set point	538°C	538°C
		Filter Set point	750°C	750°C
Sample Weight		1200g	1200g	
Correction Factor		0.00	0.00	
Wake up Time		5:00	5:00	
Wake up Date		0.00	0.00	
Inactivity Check		On	On	
Auto Shut down		On	On	
Beeper		On	On	
Serial Port Output		Continuous	Continuous	
Chamber Calibration				

## GENERAL SPECIFICATIONS

Offset	0°C	0°C
Test Stability		
Threshold	0.01%	0.01%
Intermediate Printing (Internal Printer)	On	On

*Maximum temperature can be achieved at the maximum line voltage specified on the Specification Plate.*

## Environmental Conditions

Operating: 17°C - 27°C; 20% - 80% relative humidity, non-condensing. Installation Category II (overvoltage) in accordance with IEC 664. Pollution Degree 2 in accordance with IEC 664.

Altitude limit: 2,000 meters.

Storage: -25°C - 65°C; 10% - 85% relative humidity.

## Declaration of Conformity(-33 models only)

Barnstead/Thermolyne hereby declares under its sole responsibility that the model 45-3790/01 (F85940-33) conforms with the technical requirements of the following standards:

EMC:	EN 50081-1	Generic Emission Standard
	EN 50082-1	Generic Immunity Standard
	EN 61326	Electrical equipment for measurement, control and laboratory use - EMC requirements - Part I: General Requirements.
Safety:	EN 61010-1-92	Safety requirements for electrical equipment for measurement, control and laboratory use; Part I: General Requirements
	EN 61010-2-010	Part II: Particular requirements for laboratory equipment for the heating of materials

per the provisions of the Electromagnetic Compatibility Directive 89/336/EEC, as amended by 93/68/EEC, and per the provisions of the Low Voltage Directive 73/23/EEC, as amended by 93/68/EEC.

The authorized representative located within the European Community is:

Electrothermal Engineering, Inc.  
419 Sutton Road  
Southend On Sea  
Essex SS2 5PH  
United Kingdom

Copies of the Declaration of Conformity are available upon request.

# **EXHIBIT 4**



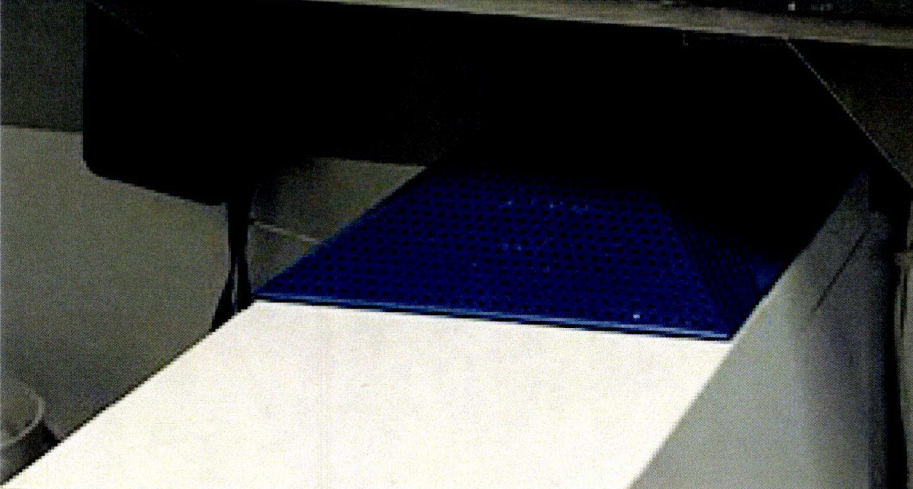
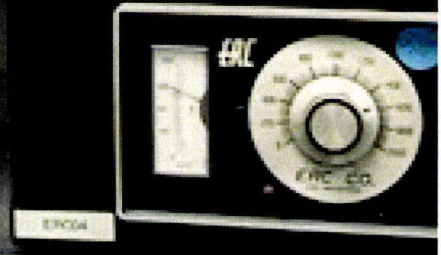
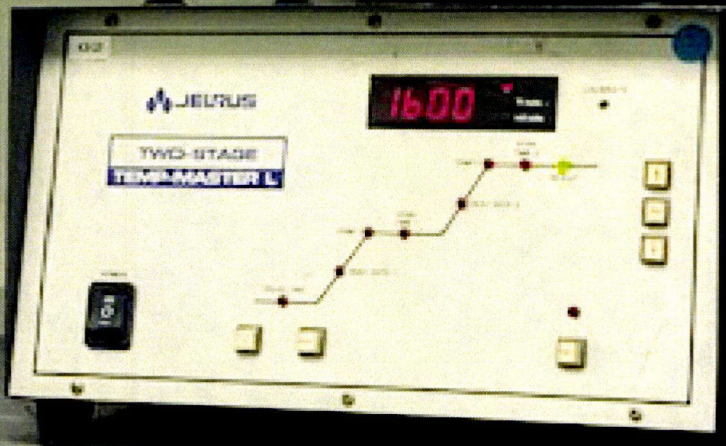
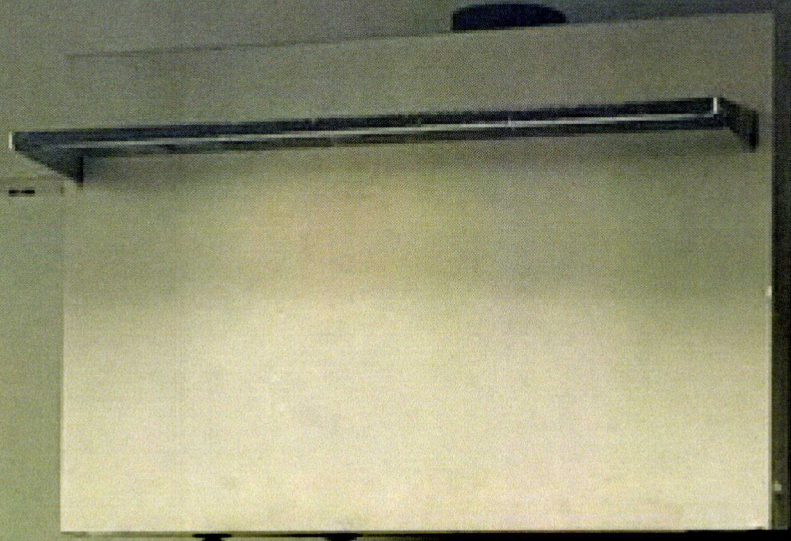


**DANGER**  
**OXYGEN**

NY  
0<sup>3</sup> - 10PM  
5PM - 8PM  
Fluor  
Methyl  
1000  
1000  
1000









City of Tempe  
P. O. Box 5002  
31 East Fifth Street  
Tempe, AZ 85280  
[www.tempe.gov](http://www.tempe.gov)



Community Development Department  
Planning Division

May 24, 2019

Jose Ojeda  
Integer Consulting LLC  
2342 S. McClintock Drive  
Tempe, AZ 85282  
[jojeda@integerconsultingllc.com](mailto:jojeda@integerconsultingllc.com)

David F. Gaona  
Gaona Law Firm  
3101 North Central Ave, Suite 720  
Phoenix, AZ 85012  
[david@gaonalaw.com](mailto:david@gaonalaw.com)

**RE: INTEGER CONSULTING LLC**  
Zoning Administrator's Opinion  
**2342 SOUTH MCCLINTOCK DRIVE**  
**DS190045 PL190121**

Dear Mr. Ojeda,

On February 8, 2019, a courtesy building inspections visit was conducted through communication with Mr. Jose Ojeda owner of Integer Consulting LLC, located at 2342 South McClintock Drive, in Tempe. There was an alleged complaint on the property regarding black smoke emitting from the building and concerns for unauthorized activity. After a tour of the site and space for Integer Consulting LLC with the business tenant, City staff scheduled an in-person meeting to discuss the business activity and any procedure requirements and directions. The meeting was scheduled on February 14, 2019, with attendance from Jose Ojeda, David F. Gaona, with Gaona Law Firm, as well as City of Tempe, Community Development Department staff, consisting of representatives from Code Compliance, Building Safety and Planning. Economic Development staff was also in attendance to assist with any relocation opportunities. At this meeting it was explained to the city that the business had been in operation for approximately a year, and certain changes within the building were made without permits, including ventilation for an asphalt content tester oven. Community Development explained at this meeting that the laboratory testing business activity for Integer Consulting is not permitted within the R/O, Residence/Office District.

The business was authorized to proceed with an at-risk submittal of building permits to rectify any unpermitted work to resolve with Building Safety. The owner of business operations was granted a period of six-months from the date of the meeting to evaluate and address current business operation changes, reduce the on-site activity to general office use, or to search for alternate business locations. It was discussed that the business may seek relief from the land use determination that was made.

As Zoning Administrator for the Community Development Department, I have rendered an opinion concerning the above referenced business of Integer Consulting LLC, located at 2342 South McClintock Drive, in the R/O Zoning District. As noted in Integer Consulting's brochure, *"Integer Consulting LLC offers a comprehensive geotechnical engineering service to our diverse clients."* Services include, *"...geotechnical engineering services and construction monitoring and laboratory testing."* Most of the rooms at the single-tenant building site consist of minor to major aspects of laboratory testing stations either located on tables or on the floor. The other areas of the business are either storage or general office/conference space. There is equipment and materials set up outside of the business, in the back adjacent to the public alley that is across from residential homes. Most of the on-site

PL190121 – INTEGER CONSULTING LLC (Zoning Administrator’s Opinion)

use for the business is set up for laboratory testing with some general office use. It is understood that most of the employees spend a majority of their time out in the field at construction sites.

When a business use is not specifically identified within the Zoning and Development Code City staff must determine whether the use is similar to, and not more detrimental than the uses permitted in the Code. It was apparent that the business functions on-site were primarily a “Testing Laboratory” with some office use. Section 3-302, Permitted Uses in Office/Industrial Districts, describes the following uses, “Industrial, Scientific, Bio-Technology or Business Research, Development and Testing Laboratories, and Offices”. Such uses are permitted in the LID, GID or HID Industrial Districts. “The R/O district allows professional and administrative services, live-work, and limited retail uses on small parcels located between higher intensity commercial and multi-use zones and residential zones;” (Reference: Section 3-201 B.1.). The R/O district is the lowest intensity designation of the commercial zoning districts. This zoning is typically used to buffer larger commercial districts from adjacent single-family residential.

The following opinion is rendered for the business use of Integer Consulting LLC:

1. Offices are permitted within the R/O Zoning District.
2. Testing laboratories are not permitted in the R/O Zoning District or any other commercial zoning district.
3. Testing laboratories, unless accessory to the primary use of office, may be allowed if compliant with the following:
  - a. Where the testing laboratory is less than 50% of the tenant floor area, and
  - b. The laboratory testing does not require ventilation to the exterior of the building, and
  - c. Electrical service is not provided beyond what is normal within an office building, and
  - d. Such testing does not create a nuisance arising from the emission of noise, vibration, heat, glare, dust, gas, smoke, noxious odors or fumes.
4. Any outdoor storage of equipment, goods, or materials; is not permitted in the R/O Zoning District, pursuant to the Zoning and Development Code, Table 3-202A.

The subject property at 2342 South McClintock Drive shall come into compliance with this opinion no later than August 14, 2019, within six months of the original meeting date with City staff. Otherwise the property may be cited in violation of the provisions of the Zoning and Development Code set forth.

If you are aggrieved by this decision you may appeal to the Board of Adjustment within fourteen (14) calendar days, from the date of this letter, by filing a notice of appeal with the Community Development Department, specifying the grounds for such appeal, and paying the applicable fees. After receipt of an appeal letter, a public hearing for the appeal will be scheduled at the next available regular meeting of the Board of Adjustment.

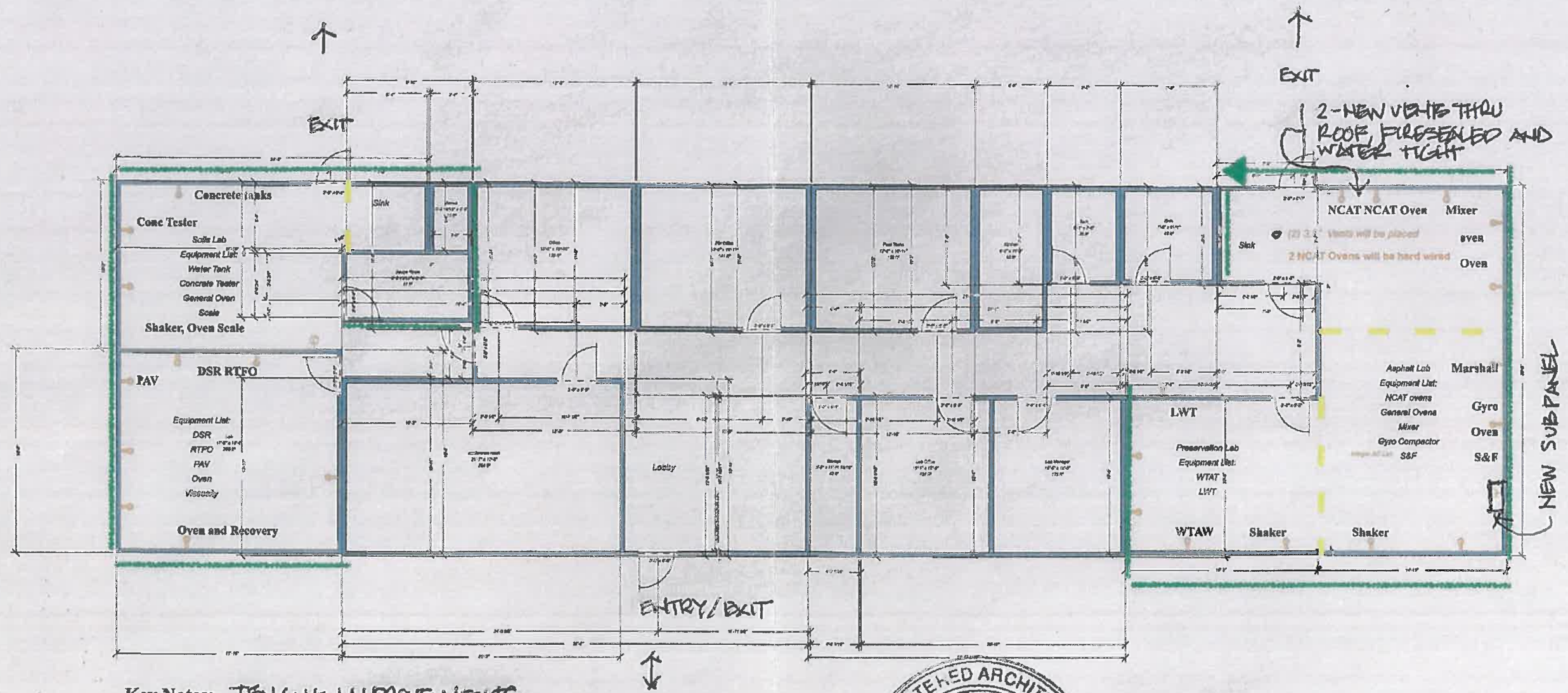
Should you need further assistance or clarification with this matter, please contact staff at (480) 350-8331.

Sincerely,



Ryan Levesque, Zoning Administrator  
Deputy Community Development Director – Planning  
Community Development Department

Integer Consulting LLC



Key Notes: ~~TENANT~~ IMPROVEMENTS

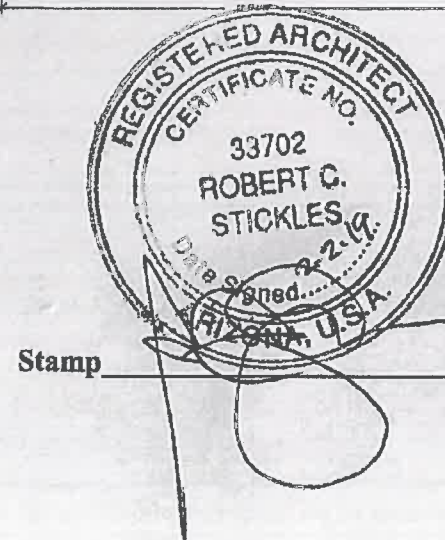
\* Removed Walls

Improvement Areas

Equipment

As listed

\*NON-LOAD BEARING  
DRY WALL PARTITIONS



Job Name: Integer Consulting LLC LAB

Address: 2342 S McClintock Drive

City: Tempe AZ

Reviewed By: Robert C. Stickles RA

Reviewed Date: 2-2-2019