Staff Summary Report

Tempe

To: Mayor & City Council
Through: City Manager

Agenda Item Number 13
Meeting Date: 12/13/01

SUBJECT: LICENSE AGREEMENT WITH 1ST AND BECK, LLC.

PREPARED BY: James R. Cristea, Engineering Supervisor, Land Services (350-8417)

REVIEWED BY: C. Brad Woodford, City Attorney (350-8229)

BRIEF: Authorize the Mayor to execute a license with 1st and Beck, LLC.

COMMENTS: **1ST AND BECK, LLC (0802-25).** 1ST and Beck, LLC has requested a license for the temporary use of City of Tempe owned property North of 1st Street, South of Rio Salado Parkway, East of Priest Drive, and West of Hardy Drive.

Document Name: (20011312casg01) Supporting Documents: Yes.

SUMMARY: 1st and Beck LLC has requested a license to allow their use of City of Tempe property for the temporary placement of fill dirt, the installation of landscaping associated with that fill material to create a temporary green belt, the placement of a construction trailer for their use (they have a development site across 1st Street), and the installation of a water meter. The City of Tempe has agreed to sell or has granted an option to purchase the subject property to TWM, LLC. TWM, LLC. has approved the proposed use of the property and has signed the license agreement as a third party. The license is limited to eighteen months, and can be terminated on sixty (60) days notice. Development Services has reviewed the plans for landscaping and placement of the trailer.

RECOMMENDATION: That the City Council authorize the Mayor to sign the License Agreement.

LICENSE AGREEMENT

This License Agreement ("Agreement") made this 21 day of NOVEMBER 2001, by and between City of Tempe, a political subdivision of the State of Arizona, 31 East Fifth Street, Tempe, Arizona (hereafter referred to as the "Licensor"), and First and Beck, LLC, a Nevada Limited Liability Company, having its Arizona office at 952 East Gemini Drive, Tempe, Arizona 85283 (hereafter referred to as the "Licensee");

W I T N ES S E T H:

WHEREAS, the Licensor is the owner of the real property (the "Property") located in northwest Tempe, Arizona (see legal description attached hereto as Exhibit A); and which Property the Licensor has agreed to sell or has granted an option to purchase to TWM, LLC, an Arizona Limited Liability Company, to buy portion or all of the Property in the future; and

WHEREAS, the Licensor has agreed to allow the Licensee to create contour to the Property with fill dirt ((including the creation of berms), plant grass, install an adequate sprinkler system for the grass, as shown in Exhibit B, all for the purpose of creating a temporary green belt to enhance the aesthetic and visual appearance of the Property and for the benefit of the neighborhood; and

WHEREAS, Licensee desires to temporarily locate a small construction trailer on the Property for office and administrative purposes with offstreet parking for construction and office workers on a dust-controlled surface of gravel or similar material; and

WHEREAS, the Licensor has agreed to provide a water meter for the Property and to absorb all watering costs, and to not require sidewalks shrubbery or trees during the period of this License;

NOW, THEREFORE, in consideration of the sum of Ten ($10.00) Dollars, and other good and valuable consideration paid by Licensee, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. ***Grant of License***

Subject to the provisions of this Agreement, the Licensor hereby grants to the Licensee a license (the "License") to use and to modify the Property as shown on Exhibit B, for dust control and visual aesthetic purposes. In all other respects, the Property will be considered under the control of Licensor for all issues of risk.

2. ***Term of the License***

The term of this license (the "Term") shall commence on the date hereof and continue thereafter until sixty (60) days after Licensor or its successor in title to the Property gives written notice to Licensee to remove the same.

3. ***Subordination***

This License is subject and subordinate to any liens recorded before or after the date of this license now affecting the Property, and Licensee, within five (5) days after request, will execute any document requested by Licensor or its successors in interest conforming the same.

4. ***Maintenance of Property***

Licensee shall, at its sole cost and expense, contour the Property, plant grass thereon, install a sprinkler system in accord with Exhibit "B", and maintain the grass on the Property during the duration of this License Agreement. Licensor shall be responsible for all watering costs for the duration of the Agreement. If Licensor transfers title to the Property to TWM, LLC, Licensee shall pay all such costs.

5. ***Parking/Trailer***

Licensor agrees to permit Licensee to temporarily locate on the Property described in Exhibit A as parcel 2 a small construction trailer for office and administrative purposes with offstreet parking (all for a period not to exceed eighteen months from the date of this Agreement) for construction and office workers on a dust-controlled surface of gravel or similar material at no cost to Licensor. If so requested, Licensee shall remove the gravel to Licensor's satisfaction at the conclusion of this License Agreement. This license may also to terminated on sixty (60) days notice as provided in Paragraph 2 above and Paragraph 7 below, and the Property shall, upon termination, be restored to its prior condition as specified in Paragraph 7 below.

6. ***Alterations***

After the initial contouring of the area for grass, Licensee shall not alter the terrain of the Property during the Term or construct any edifice on the Property without the express written consent of the Licensor and TWM, LLC. In making any alterations on the Property, Licensee shall not import or place on the Property, any manure, debris, contaminated materials or expansive soils.

7. *Termination*

The Term of this License may be terminated by written notice by either party with sixty (60) day written notice. Upon the sending of such notice, this License shall be deemed terminated effective upon the sixtieth day after the sending of such notice. Within that sixty (60) days, Licensee shall remove the sprinkler system and/or construction trailer and shall restore the construction trailer area to its prior condition, if asked to do so in the Notice.

8. *Insurance*

During the term of the Agreement, Licensee and it contractor shall carry liability insurance for use of the Property pursuant to this Agreement in an amount of not less than $2 million dollars and shall name Licensor, and its successors and assigns as additionally insureds. That policy shall be with an insurer reasonably acceptable to Licensor and it successors in interest.

9. *Limitations*

Licensee shall not have the right to create any liens on the Property, shall fully pay for all materials and work performed on or provided to Property and shall only use laborers covered by workers compensation. Licensee, its members, contractor and any party occupying any of the Property pursuant to this Agreement shall indemnify and hold Licensor, TWM, LLC and its successor harmless from any claims, fees and damages or environmental problems caused by Licensee's, its members', or its contractor's action or its modification to the Property or by the action of any party occupying any of the Property pursuant to this Agreement actions.

10. *License Only*

This License shall be deemed to create only a relationship of licensor-licensee between the parties and shall, in no event, be deemed to create any other relationship, including, without limitation, landlord-tenant, principal-agent, master-servant, employer-employee or partner-joint venture.

11. *Compliance with Law*

Licensee, in its use or modification of the Property, shall, at its sole cost and expense, promptly comply with all laws, rules, regulations and requirements of the City of Tempe relating to the placement of grass and the installation of a temporary, short-term underground sprinkler system on the Property.

12. ***No Waiver or Remedies***

No remedy conferred upon or reserved to either party hereunder is intended to be exclusive of any other remedy, but every remedy herein provided shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute; and every power and remedy given hereunder may be exercised from time to time and as often as may be deemed expedient by the party entitled thereto. No delay or omissions by either party to exercise any right or power arising from a breach by the other party of any of the terms of this license shall impair any such right or power or shall be construed to be a waiver of any breach or any acquiescence therein.

13. ***Paragraph Headings***

Paragraph or other headings contained in this Agreement are for referenced purposes only and are not intended to affect in any way the meaning or interpretation of this Agreement.

14. ***Binding Effect***

This Agreement will not be binding on or constitute evidence of a contract between the parties until such time as it has been executed by each party and an original thereof delivered to each other party to this Agreement and Ratification has occurred.

15. ***Additional Documentation***

At all times, the parties hereto agree to execute and deliver, or to cause to be executed and delivered, such documents and to do, or cause to be done, such other acts and things as might reasonably be required in order to confirm or effectuate the provisions of this Agreement.

16. ***No Representations or Warranties***

There are no representations and warranties by the parties, their agents, servants and employees whether oral or in writing, relating to or concerning this Agreement other than as specifically set forth herein. Each of the parties hereto warrants and represents to the other that it is authorized or empowered to enter into this Agreement and perform the terms hereof.

17. ***Entire Agreement.***

This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior written and oral agreements and understanding relating to the subject matter hereof.

18. ***Modification***

This Agreement may not be modified, amended or discharged except by an instrument in writing signed by the parties hereto. No wavier or consent may be enforced unless such waiver or consent shall be in writing and signed by the party against whom enforcement thereof is sought.

19. ***Applicable Law***

This Agreement shall be governed by the laws of the State of Arizona.

20. ***Successors and Assigns***

This Agreement shall be binding upon, and inure to the benefits of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

21. ***Notices***

Any notice, demand or other communication which any party hereto may wish or is required to send to the other party hereto under or pursuant to the provisions of this Agreement shall be in writing and sent either by telefax to the Licensor (at 480-350-8645) or to the Licensee at 480-786-1928, or by registered or certified mail, return receipt requested, in a properly sealed envelope, postage prepaid and addressed to the party for which such notice, demand or other communication is intended at such party's address as set on the first page of this Agreement together with a copy to Licensor's counsel, if directed to Licensor, (or at 480-350-8591) if directed to Licensor by fax with a copy to Licensee's counsel, T. Gerald Chilton if directed to fax and with a copy to Licensee's counsel, 480-969-7056, if directed to the Licensee (or at 480-755-1999 if directed to the Licensee by fax). Copies of all notices shall also be sent to TWM, LLC c/o Thomas W. Meissner, 2901 North Central Venue, Suite 200, Phoenix, Arizona 85012, Fax 602-285-5099. Any address (or attorney or telefax number) may be changed by any party thereto by notice given to the party entitled to receive the same in the manner set forth above.

22. ***No Negative Inference Against Preparer***

This Agreement is the result of negotiations between the parties, each of whom is represented by counsel of its own choosing. All parties shall be deemed to have drawn this Agreement and no negative inference or interpretation shall be made by a court against the party whose counsel drafted this Agreement.

23. ***Parties to Cooperate***

Each Party shall reasonably cooperate with the others, and promptly obtain, execute and deliver such document as are in its possession or control and are reasonably necessary in order to effectuate or confirm any provision of this Agreement.

IN WITNESS WHEREOF, the Parties have hereunto cause this License Agreement to be executed on their behalf by their duly authorized officers and their corporate seals to be hereunto affixed the day and year first above written.

APPROVED AS TO FORM

BY: C. Brad Woodford
TEMPE CITY ATTORNEY

DATE: 12/2/01

LICENSOR

By: _____
Its Authorized Agent

State of Arizona
SS
County of Maricopa
Date of this Acknowledgement

_____

Acknowledgement. On this date before me a Notary Public, _____ personally appeared known to be or satisfactorily proven to be the person whose name is subscribed to this instrument and acknowledgement that he executed the same. If the person's name is subscribed in a representative capacity, it is for the principal name and in the capacity indicated.

Notary Expiration Date:

_____
Notary Public

LICENSEE

By: Maruja Vargas
President, Maja, Ltd.

Its Authorized Co-Managing Member

By: Larry Windes
President, Larry Windes and Associates, Inc.
Its Authorized Co-Managing Member

State of Arizona
SS
County of Maricopa

Date of Acknowledgement 21 NOV 2001

Acknowledgement. On this date before me a Notary Public, Maruja Vargas and Larry Windes personally appeared Known to be or satisfactorily proven to be the person whose name is subscribed to this instrument and acknowledgement that he executed the same. If the person's name is subscribed in a representative capacity, it is for the principal name and in the capacity indicated.

Notary Expiration Date:

OFFICIAL SEAL
CYNTHIA R. CLORE
NOTARY PUBLIC - STATE OF ARIZONA
MARICOPA COUNTY
My Comm. Expires Feb. 24, 2004

Cynthia R. Clore
Notary Public

APPROVED

THIS AGREEMENT HAS BEEN REVIEWED AND APPROVED BY TWM, LLC.

By: _____ Date _____
Thomas W. Meissner, Authorized Member

EXHIBIT "A"

LEGAL DESCRIPTION
PARCEL 1

A portion of the Northwest Quarter of Section 16, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, being more particularly described as follows:

Commencing at the Center of said Section 16;

Thence North 00° 48' 26" West along the North/South midsection line of said Section 16, 40.00 feet;

Thence South 89° 41' 31" West along a line parallel with and 40.00 feet North of the East/West midsection line of said Section 16, 464.00 feet to the Southeast corner of Lot 5, State Plat 12 Amended, according to Book 69 of Maps, Page 38, Maricopa County Recorder; said point also being the Point of Beginning;

Thence continuing South 89° 41' 31" West, 500 feet to the Southwest corner of Lot 9 of said State Plat 12;

Thence North 00° 43' 29" West along the West line of said Lot 9 and its Northerly prolongation, 438.65 feet to a point on a curve, concave to the North, and having a radius of 1210.92 feet; said point also being on the Southerly right of way line of Rio Salado Parkway as described in Document number 89-023644, Maricopa County Recorder, and from which point a radial line bears North 10° 58' 45" East;

Thence Easterly and to the left along the arc of said curve and said Southerly right of way 502.94 feet through a central angle of 23° 47' 49", and to which point a radial line bears South 12° 49' 04' East;

Thence departing said curve and said right of way, South 00° 48' 37' East along the East line of said Lot 5, and its Northerly prolongation, 443.98 feet to the Point of Beginning.

Said parcel contains 4.86 acres.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
16089
JAMES R.
CRISTEA
Date Signed 9/21/10
ARIZONA, U.S.A.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY) 11/20/01

PRODUCER

Southwest Bonding & Insurance
13041 N. 35th Ave.
Suite C-10
Phoenix, AZ 85029

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY A STATEWIDE INSURANCE CO

COMPANY B ZURICH INSURANCE CO.

COMPANY C

COMPANY D

INSURED

EAST BAY BUILDERS LLC
909 S SIESTA LANE #3
TEMPE, AZ 85281

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY [X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS MADE [X] OCCUR [ ] OWNER'S & CONTRACTOR'S PROT	802169290	10/01/01	10/01/02	GENERAL AGGREGATE	$ 2,000,000
					PRODUCTS - COMP/OP AGG	$ 2,000,000
					PERSONAL & ADV INJURY	$ 1,000,000
					EACH OCCURRENCE	$ 1,000,000
					FIRE DAMAGE (Any one fire)	$ 50,000
					MED EXP (Any one person)	$ 5,000
	AUTOMOBILE LIABILITY [ ] ANY AUTO [ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS [ ] HIRED AUTOS [ ] NON-OWNED AUTOS				COMBINED SINGLE LIMIT	$
					BODILY INJURY (Per person)	$
					BODILY INJURY (Per accident)	$
					PROPERTY DAMAGE	$
	GARAGE LIABILITY [ ] ANY AUTO				AUTO ONLY - EA ACCIDENT	$
					OTHER THAN AUTO ONLY:	
					EACH ACCIDENT	$
					AGGREGATE	$
	EXCESS LIABILITY [ ] UMBRELLA FORM [ ] OTHER THAN UMBRELLA FORM				EACH OCCURRENCE	$
					AGGREGATE	$
						$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE: [ ] INCL [ ] EXCL				WC STATUTORY LIMITS / OTHER	
					EL EACH ACCIDENT	$
					EL DISEASE - POLICY LIMIT	$
					EL DISEASE - EA EMPLOYEE	$
B	OTHER BUILDERS RISK	BR 51126176	10/01/01	10/01/02	$2,950,000 W/$5000DED	

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

CERTIFICATE HOLDER IS ADDITIONAL INSURED RE:ANY AND ALL JOBS

FAX:480/755-1999 & 480/786-1928

CERTIFICATE HOLDER

CITY OF TEMPE
31 E. 5th STREET
TEMPE, AZ 85281

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE Suzi Sadell

EXHIBIT "B"

BERN PLAN

(TO BE SUPPLIED)