

**COST SHARE AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
CHAPARRAL CITY WATER COMPANY**

THIS COST SHARE AGREEMENT (this "Agreement") is entered into as of April 21, 2016, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town"), and Chaparral City Water Company, an Arizona corporation ("CCWC").

RECITALS

A. The Town is the record owner of certain real property, Maricopa County Assessor's parcel number 176-13-617W, at the location depicted on Exhibit A, attached hereto and incorporated herein by this reference (the "Town Property").

B. CCWC is the record owner of certain real property, as depicted on Exhibit A, adjacent to the Town Property, Maricopa County Assessor's parcel number 176-13-617G and Maricopa County Assessor's parcel number 176-13-617J, where it operates a retention basin and storage and treatment facility (collectively, the "CCWC Property").

C. The Town and CCWC entered into that certain Temporary License Agreement, dated August 28, 2015, whereby the Town granted CCWC access over certain portions of the Town Property to access the CCWC Property.

D. The Town plans to construct a fire station (the "Fire Station") on the Town Property. In connection with the construction of the Fire Station, the Town desires to design and construct a driveway over certain portions of the CCWC Property, as conceptually depicted on Exhibit B, attached hereto and incorporated herein by reference. The driveway will provide shared access to the Fire Station and to the CCWC Property.

E. The Town and CCWC have agreed, subject to the provisions of this Agreement, that the Town will perform the Work (defined below) and the parties will equally share the cost of the completion of the Work.

F. The Town and CCWC desire to enter into this Agreement to establish the parties' rights and responsibilities with respect to (i) the completion of the Work and (ii) reimbursement to the Town of 50% of the costs associated with the completion of the Work.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and CCWC hereby agree as follows:

1. Design and Construction of the Work. At such time as the Town commences the design and construction of the Fire Station on the Town Property, the Town shall design and construct the driveway and other appurtenances, as necessary (the "Work"), on portions of the CCWC Property at the locations conceptually depicted on Exhibit B, attached hereto.

2. Costs; Reimbursement. The Town will pay for all costs and expenses associated with the completion of the Work. CCWC shall reimburse the Town 50% of all costs incurred in completing the Work. CCWC shall reimburse the Town for all design costs associated with the Work after the award of the construction contract. CCWC shall reimburse the Town for all construction costs associated with the Work upon substantial completion of the construction. CCWC shall pay the Town within 30 days from receipt of an invoice.

3. Access Easement. CCWC agrees that the Work will provide a benefit to the CCWC Property and therefore agrees to provide the Town with a perpetual access easement over and across the driveway at no cost to the Town. Prior to completion of the Work, CCWC shall enter into an easement agreement with the Town for shared access of the driveway.

4. Further Acts. The parties hereto shall promptly and expeditiously execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

5. Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511.

6. Agreement Subject to Appropriation. The Town is obligated only to pay its obligations set forth in the Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the Town's then current fiscal year. The Town's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the Town concerning budgeted purposes and appropriation of funds. Should the Town elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the Town shall be relieved of any subsequent obligation under this Agreement. The parties agree that the Town has no obligation or duty of good faith to budget or appropriate the payment of the Town's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The Town shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The Town shall keep CCWC informed as to the availability of funds for this Agreement. The obligation of the Town to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the Town. CCWC hereby waives any and all rights to bring any claim against the Town from or relating in any way to the Town's termination of this Agreement pursuant to this section.

7. Miscellaneous.

7.1 Independent Contractor. CCWC acknowledges and agrees that the services provided under this Agreement by the Town are being provided as an independent contractor, not as an employee or agent of CCWC. CCWC does not have the authority to supervise or control the Work performed by the Town, its employees or its subcontractors. The Town, and not CCWC, shall determine the time of its performance of the services provided under this Agreement. The Town and CCWC do not intend to combine business operations under this Agreement.

7.2 Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts located in Maricopa County, Arizona.

7.3 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of CCWC and the Town.

7.4 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, this Agreement will promptly be physically amended to make such insertion or correction.

7.5 Severability. In the event that any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the remaining terms shall remain effective, provided that the elimination of the invalid provision does not materially prejudice either party with regard to its respective rights and obligations.

7.6 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to the cost share of the Work, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of and entry into this Agreement.

7.7 Assignment. Neither party may assign, sublet, mortgage or encumber any right or interest under this Agreement without the prior, written consent of the other party, which either party may withhold in its absolute and sole discretion.

7.8 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the Town of any existing or future right and/or remedy

available by law in the event of any claim of default or breach of this Agreement. The failure of the Town to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the Town's acceptance of payment for the Work, shall not release CCWC from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the Town to insist upon the strict performance of this Agreement.

7.9 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to CCWC: Chaparral City Water Company
c/o EPCOR Water Arizona, Inc.
2355 West Pinnacle Peak Road, Suite 300
Phoenix, Arizona 85027
Attn: Andrew D. Brown, Engineering Director

If to the Town: Town of Fountain Hills
16705 East Avenue of the Fountains
Fountain Hills, Arizona 85268
Attn: Grady E. Miller, Town Manager

With copy to: GUST ROSENFELD, P.L.C.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004-2553
Attn: Andrew J. McGuire, Esq.

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

7.10 Time is of the Essence. Time is of the essence with regard to the performance of all of the parties' obligations under this Agreement.

7.11 Benefits and Burdens. The terms of this Agreement shall be binding upon and inure to the benefit of the parties' permitted successors and assigns.

7.12 Captions. Captions and section headings used herein are for convenience only and are not a part of this Agreement and shall not be deemed to limit or alter any provisions hereof and shall not be deemed relevant to construing this Agreement.

7.13 Counterparts. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each counterpart shall be deemed an original of this Agreement.

8. Indemnification. To the fullest extent permitted by law and subject to Section 6 above, each party shall indemnify and hold harmless the other party and each council member, officer, director, employee or agent thereof (any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims") to the extent that such Claims (or actions in respect thereof) are caused by the negligent acts, recklessness or intentional misconduct of the other party, its officers, directors, employees, agents, or any tier of subcontractor in connection with the Work in the performance of this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

“Town”

TOWN OF FOUNTAIN HILLS,
an Arizona municipal corporation


Grady E. Miller, Town Manager

ATTEST:


Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On April 11th, 2016, before me personally appeared Grady E. Miller, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the Town of Fountain Hills.




Notary Public

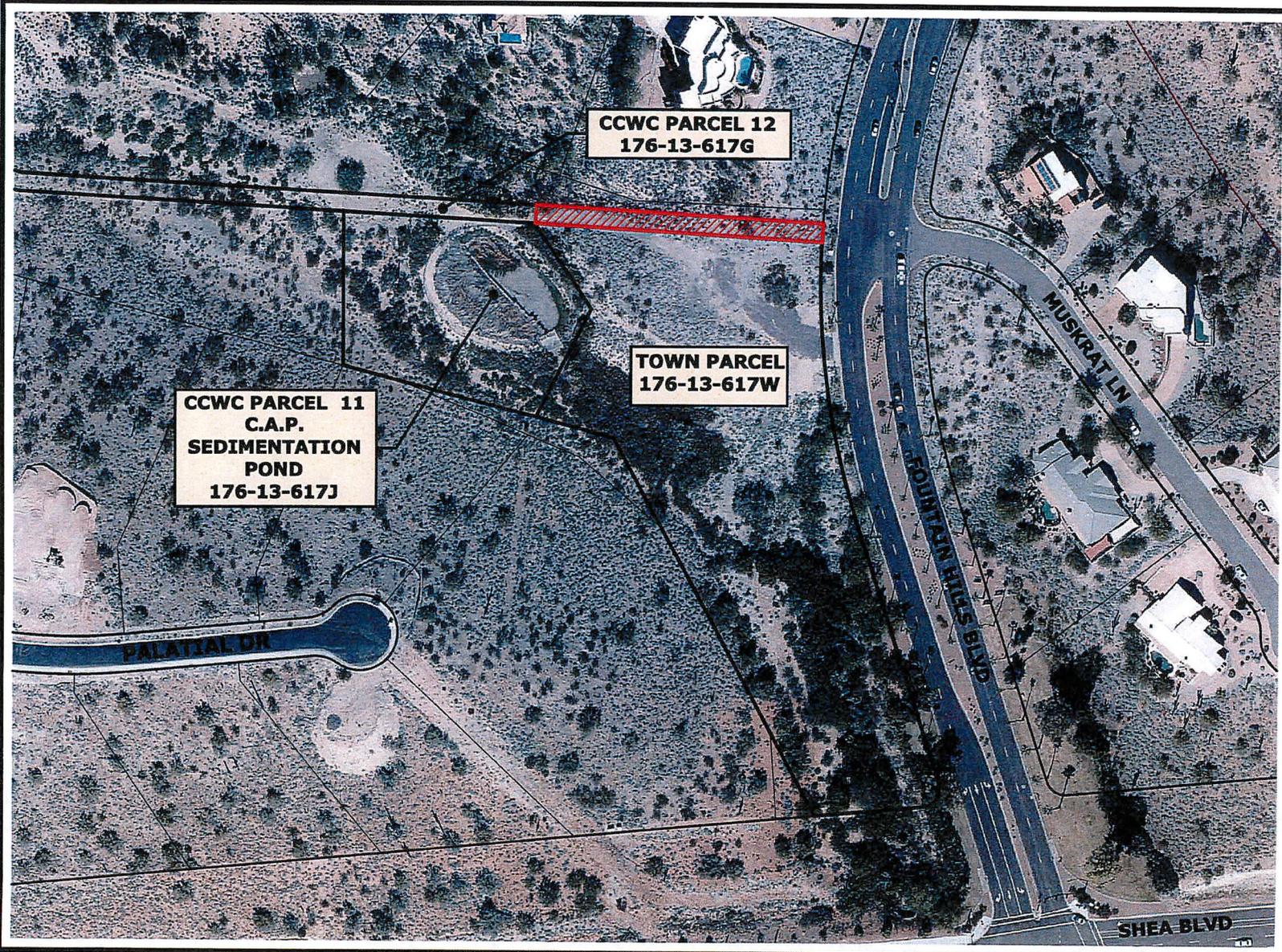
(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

EXHIBIT A
TO
COST SHARE AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
CHAPARRAL CITY WATER COMPANY

[Depiction of Town Property and CCWC Property]

See following page.



DEVELOPMENT SERVICES

 **LIMITS OF SHARED DRIVEWAY**



0 50' 100'
SCALE: 1" = 100'

• AERIAL PHOTO FLIGHT: 10/14
THIS TOPO/AERIAL MAPPING IS SUITABLE FOR GENERAL PLANNING PURPOSES, BUT SHOULD NOT BE USED FOR DESIGN.

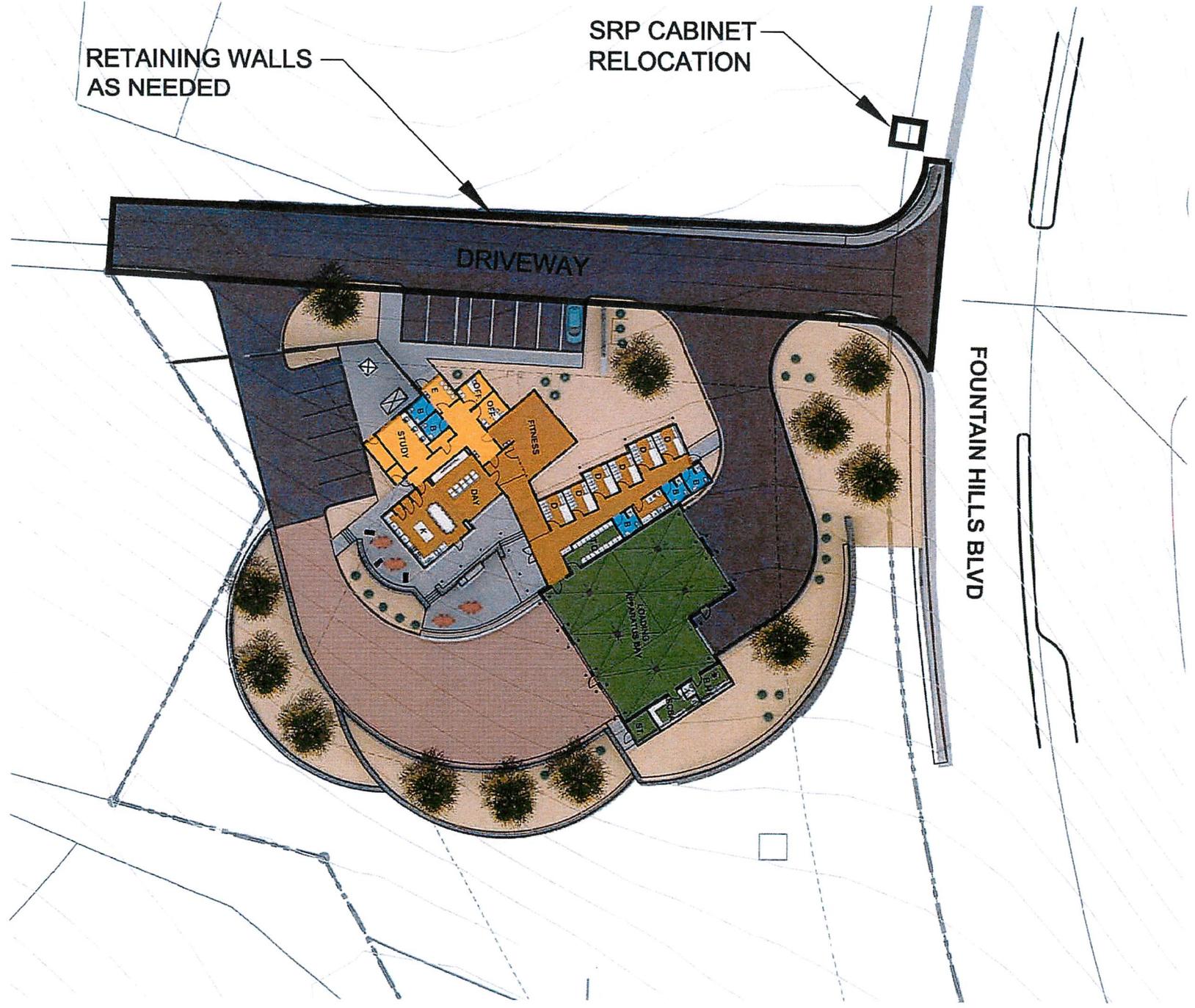
**EXHIBIT B
TO
COST AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
CHAPARRAL CITY WATER COMPANY**

[Conceptual Design of the Work]

See following page.

RETAINING WALLS
AS NEEDED

SRP CABINET
RELOCATION



FOUNTAIN HILLS BLVD