



COUNCIL MEETING AGENDA

May 16, 2019

Members may attend in person or by telephone.

Jenn Daniels, *Mayor* • Eddie Cook, *Vice Mayor*
Scott Anderson • Brigette Peterson • Jordan Ray • Jared Taylor • Aimee Yentes

Regular Meeting
5/16/2019 6:30:00 PM

Municipal Center, Council Chambers
50 E Civic Center Drive
Gilbert, Arizona

AGENDA ITEMS MAY BE DISCUSSED IN A DIFFERENT SEQUENCE.
ITEMS WILL NOT BE DISCUSSED PRIOR TO POSTED MEETING TIME.

ADDENDUM 2

CONSENT CALENDAR

3A CONTRACT – consider approval of:

a) Construction Management Services Contract No. 319001160 with Kenew, LLC in an amount not to exceed \$13,445 for the emergency repairs of a 30" reclaimed water main, Project No. WW1232, and authorize the Mayor to execute the required documents;

b) Task Order No. 021 to Job Order Contract (JOC) No. 319000402 with B&F Contracting Inc. in an amount not to exceed \$161,661.08 for Reclaimed Water Main repair and related construction services, Project No. WW1232, and authorize the Mayor to execute the required documents;

c) a Contingency Transfer from the Wastewater Replacement Fund in the amount of \$181,110 in FY2019; and

d) a Contingency Transfer from the Wastewater Replacement Fund in the amount of \$181,110 in FY2020.

ADDENDUM

CONSENT CALENDAR

2A DEVELOPMENT AGREEMENT/CONTRACT – consider and authorize the Mayor to execute the required documents for:

a) adoption of a Resolution approving a Development and Disposition Agreement with Heritage North Partners, LLC related to the sale and development of property in the Town; and

b) approval of Purchase Contract No. 319001147 with Heritage North Partners, LLC with a minimum payment to the Town of \$5,332,000 for approximately 9.1 acres located south of Juniper Avenue, east of Ash Street, and west of Gilbert Road.

AGENDA ITEM

CALL TO ORDER

PRESENTATION OF STUDENT CITIZEN OF THE MONTH AWARD

INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation may be offered by a person of any religion, faith, belief or non-belief, as well as Councilmembers. A list of volunteers is maintained by the Town Clerk and interested persons should contact the Clerk for further information.

Mayor invites all scouts present to the front of the Council Chambers.

Pledge of Allegiance and introduction and recognition of scouts.

Invocation by Pastor Adam Bailie of Christ Church Gilbert.

ROLL CALL

PRESENTATIONS; PROCLAMATIONS

1 PROCLAMATION - Proclamation declaring Phoenix Wushu Academy as Ambassadors of Gilbert to Leshan, China.

COMMUNICATIONS FROM CITIZENS

At this time, members of the public may comment on matters within the jurisdiction of the Town but not on the agenda. The Council's response is limited to responding to criticism, asking staff to review a matter commented upon, or asking that a matter be put on a future agenda.

CONSENT CALENDAR

All items listed below are considered consent calendar items and may be approved by a single motion unless removed at the request of Council for further discussion/action. Other items on the agenda may be added to the consent calendar and approved under a single motion.

- 2 **AGREEMENT** – consider approval of Operation and Maintenance Agreement No. 319001126 with Inframark for the operation and maintenance of the Neely Wastewater Reclamation Plant for a period of four (4) years commencing July 1, 2019 through June 30, 2023, with the option to renew for three (3) additional two (2) year terms and authorize the Mayor to execute the required documents.

- 3 **CONTRACT** – consider approval of:
 - a) Professional Consulting Services Contract No. 319001116 with Speedie and Associates in an amount not to exceed \$51,250 for the review and revisions to Maricopa Area Governments (MAG) Supplemental Specifications and authorize the Mayor to execute the required documents;

 - b) a Contingency Transfer from the Roadway and Maintenance Contingency Fund in FY2019 in the amount of \$51,250; and

 - c) a Contingency Transfer from the Roadway and Maintenance Contingency Fund in FY2020 in the amount of \$51,250.

- 4 **CONTRACT** – consider approval of the following Cooperative Purchase Agreements in an amount not to exceed \$2,163,100 for water/wastewater treatment chemicals and authorize the Mayor to execute the required documents for:
 - a) Cooperative Purchase Agreement No. 319001060 with Hill Brothers Chemical Company utilizing City of Chandler Cooperative Purchasing Contract No. WA8-885-3868;

 - b) Cooperative Purchase Agreement No. 319001117 with Solenis LLC (formerly BASF Corporation) utilizing City of Chandler Cooperative Purchasing Contract No. WA8-885-3868;

 - c) Cooperative Purchase Agreement No. 319001118 with Thatcher Chemical Company utilizing City of Mesa Cooperative Purchasing Contract No. 2017128; and

- d) Cooperative Purchase Agreement No. 319001129 with Thatcher Chemical Company utilizing Omnia Partners (NIPA) Cooperative Purchasing Contract No. 150063.
- 5 **CONTRACT** – consider approval of a Cooperative Purchase Agreement No. 319001077 with WESCO Distribution doing business as (DBA) Brown Wholesale utilizing Maricopa County Cooperative Purchasing Contract No. 180249-C in an amount not to exceed \$100,000 annually for street light poles and traffic signal supplies with a term beginning July 1, 2019 and renewing automatically every year coterminous with the Maricopa County contract and authorize the Mayor to execute the required documents.
- 6 **CHANGE ORDER** – consider approval of and authorize the Mayor to execute the required documents for:
- a) Change Order No. 1 to Contract No. 319000530 (Eden No. 2018-2106-0323) with Overland Pacific and Cutler increasing the contract amount by \$35,288.54 for Germann Road improvements from Mustang Road to Val Vista Road, Project No. ST1450 and
- b) Change Order No. 1 to Contract No. 319000796 (Eden No. 2018-2106-0193) with Overland Pacific and Cutler increasing the contract amount by \$14,910.58 for Lindsay Road improvements from Pecos Road to SR202, Project No. ST1170.
- 7 **BUDGET** – consider approval of a Contingency Transfer from the Special Revenue contingency fund utilizing Local Transportation Assistance Funding (LTAF) as the designated revenue source in the amount of \$96,700 for Regional Transportation Services.
- 8 **BUDGET** – consider approval of a Contingency Transfer from the General Fund in the amount of \$390,000 for Public Safety Personnel Retirement System (PSPRS) Tier 1b DROP contribution refund and interest payments.
- 9 **ABANDONMENT** - consider adoption of a Resolution of abandonment for approximately 3,666 square feet of Public Utility Easement located in the Copper Bend subdivision near the intersection of 172nd Street and Hunt Highway.
- 10 **FINAL PLAT S17-1008** - consider approval of the final plat for Mosaic at Layton Lakes located on the southwest corner of Lindsay Road and Layton Lakes Boulevard.
- 11 **FINAL PLAT S18-14** - consider approval of the final plat for Bellamy located at the southeast corner of Greenfield Road and Germann Road.
- 12 **FINAL PLAT SP1685** - consider approval of the final plat for Gilbert and Warner Town Center located at the southeast corner of Warner Road and Gilbert Road.

13 BOARDS AND COMMISSIONS – consider:

a) removal of Jolean Fleck from the Town of Gilbert Judicial Selection Committee; and

b) appointment of a member to the Town of Gilbert Judicial Selection Committee.

14 MINUTES – consider approval of the minutes of Study Session of April 18, 2019, Special Meeting of April 18, 2019 and Regular Meeting of April 18, 2019.

PUBLIC HEARING

Items will be heard at one Public Hearing; at which time anyone wishing to comment on a Public Hearing Item may do so. Comments will be heard from those in support of or in opposition to an item. Hearings are noticed for 6:30 p.m.

In order to comment on a Public Hearing Item, you must fill out a public comment form, indicating the Item Number on which you wish to be heard. Once the hearing is closed, there will be no further public comment unless requested by a member of the Council. After the Public Hearing, the Council may act on all items not requiring additional staff, public, or Councilmember comment with a single vote.

15 LIQUOR LICENSE – conduct hearing and consider approval of a Series 7 Beer and Wine Liquor License for Postino Winecafe located at 302 North Gilbert Road.

16 LIQUOR LICENSE – conduct hearing and consider approval of a Series 12 Restaurant Liquor License for Alamo Drafthouse Cinema located at 5478 South Power Road.

17 LIQUOR LICENSE – conduct hearing and consider approval of a Series 12 Restaurant Liquor License for Carabbas Italian Grill #5310 located at 2709 South Market Street.

18 LIQUOR LICENSE – conduct hearing and consider approval of a Series 12 Restaurant Liquor License for Dog Haus located at 2224 East Williams Field Road, Suite 107.

19 PROPERTY ACQUISITION – conduct hearing and consider approving the acquisition of right-of-way and easement on Parcel No. 304-55-016J for the Germann Road - Gilbert Road to Val Vista Road Improvements, Project No. ST1450.

20 COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS – conduct hearing and consider authorizing the Mayor or her designee to execute and submit the Town of Gilbert FY2020 Annual Action Plan for Community Development Block Grant (CDBG) Activities to the United States Department of Housing and Urban Development (HUD).

- 21 CODE OF GILBERT - conduct hearing and consider adoption of an Ordinance amending the Code of Gilbert, Arizona, by amending Chapter 42 Offenses and Abatement of Public Nuisances, Article VI Offenses against Public Authority, by amending Section 42-179 Interfering with a Police Officer, and Enacting Section 42-180 Refusal to Provide True Full Name or Proof of Identification when Lawfully Detained; related to the preservation of Public peace, health and safety.**

ADMINISTRATIVE ITEMS

Administrative Items are for Council discussion and action. It is to the discretion of the majority of the Council regarding public input requests on any Administrative Item. Persons wishing to speak on an Administrative Item should complete a Request to Speak Form and indicate the Item they wish to address. Council may or may not accept public comment.

- 22 BOARDS AND COMMISSIONS – consider adoption of a Resolution creating a 2020 Census Complete Count Committee.**
- 23 BOARDS, COMMISSIONS, AND COMMITTEES - reports from Council Liaisons for the:**
- a) Subcommittee on Board and Commission Application Screening, Interview, and Selection**
 - b) Subcommittee on Building Code**
 - c) Subcommittee on Land Development Code**
 - d) Ad Hoc**
 - e) Regional Meetings**
 - f) Industrial Development Authority**
 - g) Judicial Review Committee**
 - h) Mayor’s Youth Advisory Committee**
 - i) Parks and Recreation Board**
 - j) Planning Commission**
 - k) Redevelopment Commission**
 - l) Town of Gilbert, AZ Public Facilities MPC**
 - m) Town of Gilbert, AZ Water Resources MPC**
 - n) Town of Gilbert, AZ Self-Insured Trust Fund for Health Benefits**
 - o) Utility Board**

POLICY ITEMS

FUTURE MEETINGS

There may be a discussion of whether to place an item on a future agenda and the date, but not the merits of the item.

Requested Agenda Items and Projected Meeting Dates:

6/6/2019 - Allow Development Services to increase the credit card fee to up to 4%.

Contact K. Mieras (J. Ray, A. Yentes, E. Cook)

COMMUNICATIONS

Report from the TOWN MANAGER on current events.

Report from the COUNCIL on current events.

Report from the MAYOR on current events.

ADJOURN

NOTICE TO PARENTS: Parents and legal guardians have the right to consent before the Town of Gilbert makes a video or voice recording of a minor child. A.R.S. 1-602.A.9. Gilbert Council Meetings are recorded and maybe viewed on Channel 11 and the Gilbert website. If you permit your child to participate in the Council Meeting, a recording will be made. If your child is seated in the audience your child may be recorded, but you may request that your child be seated in a designated area to avoid recording. Please submit your request to the Town Clerk.



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Jeanne M. Jensen, PE, CIP Project Supervisor, 503-6198

MEETING DATE: May 16, 2019

SUBJECT: WW1232 – Approval of a Contingency Request, Authorization of Construction Services, and Authorization of Construction Management Services for the Repair of a 30” Reclaimed Water Main

STRATEGIC INITIATIVE: Infrastructure

Robust reclaimed water infrastructure allows for the beneficial use of Gilbert water resources in the Gilbert community.

RECOMMENDED MOTION

A motion to approve a Wastewater Replacement Fund Contingency Transfer in the amount of \$181,110 for FY19, and FY20, and;

A motion to Approve Job Order 021 under contract 319000402 in an amount not to exceed \$161,661.08 for CIP No. WW1232, 30” Reclaimed Water Main Repair, and related construction services associated with this Job Order, and;

A motion to Approve Contract No. 319001160 with Kenew, LLC for Construction Management Services, in an amount not to exceed \$13,445 for CIP No. WW1232, 30” Reclaimed Water Main Repair and, authorize the Mayor to execute the required documents.

BACKGROUND/DISCUSSION

On May 14, 2019 Gilbert crews responded to a reported reclaimed water main break located in the encroaching areas near the Loop 202 and Santan Village Parkway. Crews were able to isolate the section of main that was impacted, and restore typical service to

customers in the area. Repair of the 30” reclaimed water main is necessary to provide system flexibility and operational redundancy in the area as well as allowing the transfer of reclaimed water between the north and south sections of the Gilbert Reclaimed Water Distribution System.

CONTINGENCY REQUEST – WASTEWATER REPLACEMENT FUND

This repair was not included in a previously developed Capital Improvements Plan, and was not included in the proposed budgets for FY19 or FY20. Contingency is needed at this time to complete the repairs in a timely fashion. The contingency request is inclusive of internal CIP management, Job Order cost and allowance, and construction management on-site.

JOB ORDER NO. 021 – B&F CONTRACTING, INC

B&F Contracting, Inc. (Munis 319000402, Eden 2016-4107-0019) is an authorized Job Order Contracting firm for Gilbert, specifically providing response to Gilbert’s critical water and wastewater system infrastructure. Contract 2016-4107-0019 was approved by Council on August 27, 2015, and has been renewed in subsequent years.

The Town of Gilbert has authorized this contract through the cooperative purchase with the City of Peoria. Cooperative purchases are exempt from the requirement to bid by Gilbert because these contracts have been previously bid by another entity.

Job Order No. 021 would include the excavation, repair, and site restoration construction services needed to restore the 30” reclaimed water main to full service. Due to increasing system demand subsequent to the seasonal demand shift, immediate repair is recommended.

CONTRACT – KENEW, LLC – CONSTRUCTION MANAGEMENT

Kenew, LLC was selected from the Gilbert Pre-Qualified Technical Registrants list to provide on-site Construction Management Services. The location of the emergency repair is adjacent to the Roosevelt Water Conservation District, ADOT right-of-way, and private development. Full time inspection services during excavation, repair, and restoration are recommended due to the sensitivity of the location to the stakeholders in the immediate area, in addition to the potential for impacts to travelers along Santan Village Parkway.

The contracts were reviewed for form by Attorney John Baird.

The contract was reviewed by Douglas Boyer, Purchasing Manager.

FINANCIAL IMPACT

To establish WW1232 as a project, it will require the authorization for the following contingency transfers:

1. Wastewater Replacement fund contingency transfer in the amount of \$181,110

Engineering & Construction Administration Budget:	\$13,445
Project Management Budget (Internal):	\$6,000

Construction Budget:	\$161,665
Total Budget	\$181,110

Project Accounting Codes:

WW1232.ConstMgt.Internal	\$6,000
WW1232.ConstMgt.External	\$13,445
WW1232.Construct.WWImp	\$161,665

The financial impact was reviewed by Cris Welch, Senior Management and Budget Analyst.

STAFF RECOMMENDATION

Staff recommends approval of the contingency transfer, Job Order No. 021, and the construction management contracts as described herein.

Respectfully submitted,

Jeanne M. Jensen, PE
CIP Project Supervisor

Approved By

Approval Date

Susanna Struble
Jason Thompson
Jessica Marlow
John Baird
Cris Welch

5/15/2019 3:28:30 PM
5/15/2019 3:49:35 PM
5/15/2019 3:56:30 PM
5/15/2019 4:00:10 PM
5/15/2019 4:04:23 PM

**PROJECT MANAGEMENT/CONSTRUCTION MANAGEMENT
(PM/CM) SERVICES CONTRACT
FOR DESIGN-BID-BUILD (DBB) PROJECT**

THIS CONTRACT is entered into as of this 16th day of May of the year 2019, by and between the Town of Gilbert, Arizona, a municipal corporation (hereinafter referred to as "GILBERT") and Kenew, LLC (hereinafter referred to as the "PM/CM").

FOR THE PURPOSE of providing professional project management/construction management services for the Town of Gilbert on the WW1232 – 30" Reclaimed Water Main Repair Project, more specifically described in Exhibit A and hereinafter referred to as the "Project", GILBERT and PM/CM do hereby mutually agree to the following:

1. RELATIONSHIP OF THE PARTIES

1.1 GILBERT and PM/CM

PM/CM shall act as GILBERT's fiduciary and shall furnish the services described in Exhibit A of this Agreement ("Services"). PM/CM and GILBERT shall perform as stated in this Agreement. PM/CM accepts the relationship of trust and confidence between it and GILBERT established by this Agreement.

- 1.1.1 Conflict of Interest: PM/CM agrees that its officers and employees do not now have a conflict of interest with respect to any aspect of this Agreement and that PM/CM, its officers or employees will not contract for or accept employment for the performance of any work or service with any individual business, corporation or government unit that would create a conflict of interest in the performance of the Services. PM/CM further agrees that during the term of this Agreement PM/CM will not enter into contracts with an architect, engineer or contractor that has a contract to perform work or services related to the Project.
- 1.1.2 Standard of Care: PM/CM covenants with GILBERT to furnish its best skill and its best judgment in all matters related to the Project and in all ways to further the interests of GILBERT and the Project. PM/CM's services shall be rendered in accordance with this Agreement, professional standards for project managers and construction managers as adopted by the Construction Managers' Association of America, and applicable federal, state and local laws and regulations. PM/CM shall furnish the Services in an efficient manner and shall use its best efforts to see that the Project is completed in conformity with the Contract Documents in the best and most expeditious, economical manner consistent with the interest of GILBERT.
- 1.1.3 PM/CM'S Project Representative: The PM/CM'S Project Representative shall be Chad Hafstrom. All communications from GILBERT to PM/CM, the architect or engineering firm and the construction contractor ("CONSTRUCTION CONTRACTOR") shall be directed to the Project Representative. This designation shall not be changed without GILBERT'S prior approval. PM/CM shall substitute an alternative experienced Project Representative upon GILBERT'S request. PM/CM'S key personnel for the Project are set forth in Exhibit B.

~~1.2 GILBERT and A/E~~

~~GILBERT shall enter into a separate agreement with one or more architects and/or engineers (A/E) to provide architectural and/or engineering design for the Project.~~

1.3 GILBERT and Contractors

GILBERT shall enter into a separate contract with a Contractor for the construction of the Project.

1.4 Relationship of PM/CM to Other Project Participants

In providing the Services, PM/CM shall maintain working relationships with the Construction Contractor ~~and A/E~~ on behalf of GILBERT. However, nothing in this Agreement shall be construed to mean that PM/CM assumes any of the responsibilities or duties of the Construction Contractor ~~or the A/E~~. The Construction Contractor is solely responsible for construction means, methods, sequence and procedures used in the construction of the Project and for the safety of its personnel and its operations and for performing in accordance with the Construction Contractor's contract with GILBERT. ~~The A/E is solely responsible for the Project design and shall perform in accordance with the agreement between the A/E and GILBERT.~~ There are no third party beneficiaries of this Agreement and no one except the parties to this Agreement may seek to enforce its terms.

2. PROJECT DESCRIPTION

The Project for which GILBERT has contracted the services of PM/CM is generally described as:

Excavation, repair, and site restoration needed to return a 30" reclaimed water main to service, located in the area of Santan Village Parkway and the Loop 202.

3. PM/CM SERVICES

The PM/CM Services are set forth in Exhibit A.

4. TERM OF AGREEMENT

The term of this Agreement shall be from the date of Notice to Proceed issued by GILBERT to PM/CM, through Project Close-out and Warranty Inspection, as set forth in the Notice to Proceed. The term of this Agreement may be extended pursuant to the provisions of Paragraph 5.

5. CHANGES TO THE SCOPE OF SERVICES

GILBERT may, at any time, and by written change order, make changes in the Services. If such changes cause an increase or decrease in the PM/CM's cost or time required for

performance of the Services, an equitable adjustment shall be made and the Agreement shall be modified in writing accordingly; provided however, any claim of the PM/CM for adjustment under this paragraph must be submitted in writing within thirty (30) days from the date of receipt by the PM/CM of the notification of change. It is distinctly understood and agreed by the parties that no claim for extra services provided or materials furnished by PM/CM will be allowed by GILBERT except as provided herein, nor shall PM/CM provide any services or furnish any materials not covered by this Agreement unless GILBERT first approves in writing.

6. GILBERT'S RESPONSIBILITIES

- 6.1 GILBERT shall provide to PM/CM complete information regarding GILBERT's requirements for the Project.
- 6.2 GILBERT shall examine information submitted by PM/CM and shall render decisions pertaining thereto promptly.
- 6.3 If GILBERT observes or otherwise becomes aware of any fault or defect in the Project or PM/CM's services, or any nonconformity with the Contract Documents, GILBERT shall give prompt written notice thereof to PM/CM, provided however, this shall not diminish PM/CM's obligations to notify GILBERT of any such fault or defect.
- 6.4 ~~GILBERT shall furnish PM/CM with a copy of its written agreement between GILBERT and A/E, including amendments. The services, duties and responsibilities set out in the agreement between GILBERT and the A/E shall be compatible and consistent with this Agreement and the Contract Documents. GILBERT shall, in its agreement with the A/E, require that the A/E perform its services in cooperation with PM/CM, consistent with this Agreement and in accordance with the planning and scheduling requirements and budgetary restraints of the Project as determined by GILBERT and documented by PM/CM.~~
- ~~6.5 The terms and conditions of the Agreement between GILBERT and A/E shall not be changed without written notification to PM/CM and approval by GILBERT.~~
- 6.6 GILBERT shall cause any and all agreements between GILBERT and the CONSTRUCTION CONTRACTOR to be compatible and consistent with this Agreement. Each of the agreements shall include waiver of subrogation and shall expressly recognize PM/CM as GILBERT's representative in providing the PM/CM's Services specified in this Agreement.
- 6.7 At the request of PM/CM, GILBERT shall furnish sufficient copies of the Contract Documents to PM/CM to permit the timely performance of Services by PM/CM.
- 6.8 GILBERT shall, in a timely manner secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the construction of the Project, and the use or occupancy of permanent structures or for permanent changes in existing facilities, where applicable.

- 6.9 GILBERT, its representatives and consultants shall communicate with the CONSTRUCTION CONTRACTOR through PM/CM.
- 6.10 ~~GILBERT shall send to PM/CM and shall require the A/E to send to PM/CM, copies of all notices and communications sent to or received by GILBERT or A/E relating to the Project.~~ During the Construction Phase of the Project, GILBERT shall require that the A/E and CONSTRUCTION CONTRACTOR'S submit all notices and communication relating to the Project directly to PM/CM.
- 6.11 GILBERT shall designate an officer, employee or other authorized representatives to act in GILBERT'S behalf with respect to the Project. GILBERT'S representative for the Project is Sarah Rogowski. This representative shall have the authority to approve changes in the scope of the Project and shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.

7. COMPENSATION AND PAYMENT

- 7.1 Compensation for Services: The Basis of Compensation to PM/CM for Services rendered under this agreement is set forth in Exhibit C and as follows:
- 7.1.1 A fee for all approved project labor not to exceed Thirteen thousand four hundred forty- five dollars (\$ 13,445.00). The labor hours and fee breakdown is indicated in Exhibit C. This breakdown outlines the various positions, billing rates for each position and the estimated hours for each project task for each position during the contract duration.
- 7.1.2 A fee for all approved project expenses not to exceed _____ dollars (\$ 0.00). Allowable reimbursable expenses are indicated in Exhibit C. PM/CM will not exceed the reimbursable expenses allowance of each line item without prior written authorization.
- 7.1.3 The total cost to GILBERT for the Services described in this Agreement shall not exceed Thirteen thousand four hundred forty-five dollars (\$ 13,445.00) (sum of labor and expenses) without the written agreement of GILBERT.
- 7.2 Payment: Payment to be made by GILBERT to PM/CM for the cost of providing SERVICES will be based on monthly invoices which will set forth the hours actually worked during the billing period. The billing rates indicated in Exhibit C will be applied against the actual hours for each position to arrive at the total fee for each month. Reimbursable expenses incurred during the billing period and during previous billing periods and not yet invoiced will be submitted for payment on the monthly invoice along with expense receipts and other acceptable back up. All payment requests shall be certified by the PM/CM's Project Representative and shall be accompanied by a progress report indicating the work completed during the previous month(s), including the project progress to date by tasks as a percentage (%) of the total of each individual project task.

7.2.1 GILBERT shall make payment to PM/CM of one hundred percent (100%) of the approved invoiced amount within thirty (30) days of GILBERT's approval of the invoice.

7.2.2 Payments due to PM/CM which are unpaid for more than sixty (60) days from the date of PM/CM'S invoice shall bear interest at the prevailing rate.

7.3 Accounting Records: Records of PM/CM's personnel expense, consultant fees and direct expenses pertaining to the Project shall be maintained on the basis of generally-accepted accounting practices and shall be available for inspection by GILBERT or GILBERT's representative at mutually convenient times for a period from the date of this Agreement through two years after completion of the Construction Phase Services.

8. INSURANCE REPRESENTATIONS AND REQUIREMENTS

8.1 General: Without limiting any obligations or liabilities of PM/CM, PM/CM shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of A-7 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to GILBERT. Failure to maintain insurance as specified may result in termination of this Agreement at GILBERT's option.

8.2 No Representation of Coverage Adequacy: By requiring insurance herein, GILBERT does not represent that coverage and limits will be adequate to protect PM/CM. GILBERT reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve PM/CM from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

8.3 Additional Insured: All insurance coverage and self-insured retention or deductible portions, except Workers Compensation insurance and Professional Liability insurance if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, GILBERT, its agents, representative, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

8.4 Coverage Term: All insurance required herein shall be maintained in full force and effect until all Services required to be performed under the terms of this Agreement is satisfactorily performed, completed and formally accepted by GILBERT, unless specified otherwise in this Agreement.

8.5 Primary Insurance: PM/CM's insurance shall be primary insurance as respects performance of subject contract and in the protection of GILBERT as an Additional Insured.

- 8.6 Claims Made: In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the Services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three year period.
- 8.7 Waiver: All policies, except Professional Liability, shall contain a waiver of rights of recovery (subrogation) against GILBERT, its agents, representative, officials, directors, officers, and employees for any claims arising out of the Services of PM/CM. PM/CM shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.
- 8.8 Policy Deductibles and/or Self Insured Retentions: The policies set forth in these requirements may provide coverage, which contain deductibles or self insured retention amounts. Such deductibles or self insured retention shall not be applicable with respect to the policy limits provided to GILBERT. PM/CM shall be solely responsible for any such deductible or self insured retention amount. GILBERT, at its option, may require PM/CM to secure payment of such deductible or self insured retention by a surety bond or irrevocable and unconditional Letter of Credit.
- 8.9 Use of Subcontractors: If any Services under this Agreement is subcontracted in any way, PM/CM shall execute written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting GILBERT and PM/CM. PM/CM shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.
- 8.10 Evidence of Insurance: Prior to commencing any Services under this Agreement, PM/CM shall furnish GILBERT with Certificate(s) of Insurance, or formal endorsements as required by this Agreement, issued by PM/CM's Insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage's, conditions, and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. If a Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. Such Certificate(s) shall identify the Agreement and be sent to the Town Risk Manager. If any of the above cited policies expire during the life of this Agreement, it shall be PM/CM's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates shall specifically cite the following provisions:
- 8.10.1 GILBERT, its agents, representatives, officers, directors, officials and employees is an Additional Insured as follows:
- A. Commercial General Liability-Under ISO Form CG 20 10 04 13 or equivalent
 - B. Auto Liability-Under ISO Form CA 20 48 10 13 or equivalent
 - C. Excess Liability-Follow Form to underlying insurance

- 8.10.2 PM/CM'S insurance shall be primary insurance as respects performance of this Agreement.
- 8.10.3 Certificate shall cite that should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.
- 8.10.4 Project descriptive information including:
- A. Project Name
 - B. Project Number
 - C. Town of Gilbert Contract Number

8.11 Required Coverage

- 8.11.1 Commercial General Liability: PM/CM shall maintain "occurrence" from Commercial Liability Insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. Commercial General Liability coverage specifically shall contain contractual liability insurance covering the contractual obligations of this Contract. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insureds clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, GILBERT, its agents, representative, officers, directors, officials and employees shall be cited as an Additional Insured Endorsement form CG 20 37 04 13 or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you". If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
- 8.11.2 Professional Liability: PM/CM shall maintain Professional Liability insurance covering errors and omissions arising out of the Services performed by PM/CM, or anyone employed by PM/CM, or anyone for whose acts, mistakes, errors and omissions PM/CM is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claims and \$2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three (3) years past completion and acceptance of the Services, and PM/CM shall be required to submit Certificates of Insurance evidencing proper coverage is in effect as required above.
- 8.11.3 Vehicle Liability: PM/CM shall maintain Business Automobile Liability Insurance with a limit of \$1,000,000 each occurrence on PM/CM's owned, hired, and non-owned vehicles assigned to or used in the performance of the PM/CM's Services under this Agreement. Coverage will be at least as broad as Insurance Services Office, Inc.

coverage code "1" any auto policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of performance of this Agreement, GILBERT, its agents, representative, officers, directors, officials and employees shall be cited as an Additional Insured under the Insurance Service Offices, Inc. Business Auto Policy Designated Insured Endorsement form CA 20 48 10 13 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

8.11.4 Workers' Compensation Insurance: PM/CM shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of PM/CM's employees engaged in the performance Services under this Agreement and shall also maintain Employer Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

8.12 Indemnification

8.12.1 To the fullest extent permitted by law, PM/CM, its successors and assigns shall indemnify and hold harmless GILBERT, its officers and employees from and against all liabilities, damages, losses and costs (including reasonable attorney fees and court costs) to the extent caused by the negligence, recklessness or intentional wrongful conduct of PM/CM or other persons employed or used by the PM/CM in the performance of this Agreement. PM/CM's duty to indemnify and hold harmless GILBERT, its officers and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use of resulting there from, caused by PM/CM's negligence, recklessness or intentional wrongful conduct in the performance of this Agreement and the negligence, recklessness or intentional wrongful conduct of any person employed by PM/CM or used by PM/CM in the performance of this Agreement

8.12.2 Insurance provisions set forth in this Agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

9. **TERMINATION AND SUSPENSION**

9.1 Termination: GILBERT may, by written notice to PM/CM, terminate this Agreement in whole or in part, either for the convenience of GILBERT or because of failure of PM/CM to fulfill his contract obligations. Upon receipt of such notice, PM/CM shall (1) immediately discontinue all services affected (unless the Notice directs otherwise), and (2) deliver to GILBERT copies of all data, reports, calculations, drawings, specifications and estimates entirely or partially completed, together with all unused materials supplied by GILBERT, used by GILBERT or its agents of the completed documents for the projects for which intended, or for any completed divisible part of the Project which can be deemed to stand alone (the completed divisible

parts of the Project will be determined by both parties prior to at the time of termination). Such termination shall not relieve PM/CM of liability for errors and omissions. Any use of incomplete documents for this Project without the specific written authorization by PM/CM will be without liability or legal exposure to PM/CM. Any use of the aforesaid documents for other projects without the specific written authorization by PM/CM will be without liability or legal exposure to PM/CM. PM/CM shall appraise the work he has completed and submit his appraisal to GILBERT for evaluation. This Agreement may be terminated in whole or in part by PM/CM in the event of substantial failure by GILBERT to fulfill its obligations.

- 9.2 Termination by GILBERT for Convenience: If GILBERT terminates this Agreement for its convenience, GILBERT shall pay the PM/CM for the Services rendered prior thereto in accordance with percent completion at the time the Services are suspended minus previous payments.
- 9.3 Administrative Termination: Under Section 38-511, Arizona Revised Statutes, as amended, GILBERT may cancel any contract it is a party to within three (3) years after its execution and without penalty or further obligation, if any person significantly involved in the initiating, negotiating, securing, drafting or creating the contract on behalf of GILBERT is, at any time while the contract or any extension thereof is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract. In the event GILBERT looks to exercise its rights under Section 38-511, Arizona Revised Statutes, as amended, GILBERT agrees to immediately give notice thereof to PM/CM.
- 9.4 Termination by GILBERT for Failure to Fulfill Obligations; Abandonment by PM/CM: If GILBERT terminates this Agreement for failure of PM/CM to fulfill its obligations or if PM/CM abandons this Project without the consent of GILBERT, PM/CM shall be liable for all actual, incidental and consequential damages arising from or related to said abandonment, including, but not limited to: (1) the difference between the cost of a replacement PM/CM to complete the Project and the contract price for PM/CM under this Agreement; and (2) any additional charges, costs, fees or expenses for labor, materials or professional services incurred by GILBERT as a result of delays caused by abandonment of the Project by PM/CM. GILBERT shall use its best efforts to replace PM/CM within a reasonable time.
- 9.5 Suspension
- 9.5.1 GILBERT may in writing order PM/CM to suspend all or any part of the PM/CM's Services for the Project for the convenience of GILBERT or for stoppage beyond the control of GILBERT or PM/CM. If the performance of all or any part of the Services for the project is so suspended, an adjustment in PM/CM's compensation shall be made for the increase, if any, in the cost of PM/CM's performance of this Agreement caused by such suspension, and this Agreement shall be modified in writing accordingly.
- 9.5.2 In the event the PM/CM's Services for the Project are suspended, GILBERT shall reimburse PM/CM for all of the costs of its construction staff, assigned Project home office staff and other costs as provided for by this Agreement for the first thirty (30) days of such suspension. PM/CM shall reduce the size of its staff for the remainder of

the suspension period as directed by GILBERT and, during such period, GILBERT shall reimburse PM/CM for all of the costs of the staff continuing their assignment to the Project. Upon cessation of the suspension, PM/CM shall restore the construction site staff and home office staff to its former size within thirty (30) days of notification from GILBERT.

- 9.5.3 Persons assigned to another project during such suspension periods and not available to return to the Project upon cessation of the suspension shall be replaced. GILBERT shall reimburse PM/CM for costs incurred in relocating previous staff persons returning to the Project or new persons assigned to the Project.
- 9.5.4 If the Project is suspended by GILBERT for more than three (3) months, PM/CM shall be paid compensation for Services performed prior to receipt of written notice from GILBERT of the suspension, together with direct expenses then due and all expenses and costs directly resulting from the suspension, together with direct expenses then due and all expenses and costs directly resulting from the suspension. If the Project is resumed after being suspended for more than six (6) months, PM/CM shall have the option of requiring that its compensation, including rates and fees, be renegotiated. Subject to the provisions of this Agreement relating to termination, a suspension of the Project does not void this Agreement.
- 9.5.5 Rain Delays: Delays resulting from non-typical weather conditions which make it unreasonable to perform the Services in accordance with the schedule. The PM/CM may allow for up to two (2) working days to be lost due to rain delays. In the event that bad weather conditions are forecasted, the PM/CM shall notify the Contractor to take necessary precautions to protect the construction work.

10. ADDITIONAL PROVISIONS

- 10.1 Confidentiality: PM/CM shall not disclose or permit the disclosure of any confidential information, except as required by Federal, State, or Local Government, as necessary to defend PM/CM from any suit or claim, or to its agents, employees and other consultants who need such confidential information in order to properly perform their duties relative to this Agreement.
- 10.2 Immigration Law Compliance Warranty
- 10.2.1 As required by A.R.S. § 41-4401, PM/CM hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). PM/CM further warrants that after hiring an employee, PM/CM verifies the employment eligibility of the employee through the E-Verify program.
- 10.2.2 If PM/CM uses any subcontractors in performance of the Services, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program.

- 10.2.3 A breach of this warranty shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract. PM/CM is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. GILBERT at its option may terminate the Contract after the third violation. PM/CM shall not be deemed in material breach of this Contract if the PM/CM and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A).
- 10.2.4 GILBERT retains the legal right to inspect the papers of any PM/CM or subcontractor employee who works on the Contract to ensure that the PM/CM or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times.
- 10.2.5 If state law is amended, the parties may modify this paragraph consistent with state law.
- 10.3 Equal Treatment of Workers: PM/CM shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the Services. PM/CM shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Occupational Safety and Health Administration (“OSHA”) and the Fair Labor Standards Act (“FLSA”). PM/CM shall protect and indemnify GILBERT and its representatives against any claim or liability arising from or based on the violation of such, whether by PM/CM or its employees.
- 10.4 Israel. PM/CM certifies that it is not currently engaged in, and agrees for the duration of this Contract that it will not engage in, a boycott of Israel, as that term is defined in Ariz. Rev. Stat. § 35-393.
- 10.5 Limitations and Assignment
- 10.5.1 GILBERT and PM/CM each bind themselves, their successors, assigns and legal representatives to the terms of this Agreement.
- 10.5.2 Neither GILBERT nor PM/CM shall assign or transfer its interest in this Agreement without the written consent of the other, except that PM/CM may assign accounts receivable to a commercial bank for securing loans without approval of GILBERT.
- 10.6 Governing Law: Unless otherwise provided, this Agreement shall be governed by the laws of the State of Arizona where the Project is located.
- 10.7 Extent of Agreement: This Agreement represents the entire and integrated agreement between GILBERT and PM/CM and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by

both GILBERT and PM/CM. Nothing contained in this Agreement is intended to benefit any third party. The Contractor is not an intended third party beneficiary of this Agreement.

10.8 Severability: If any portion of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provisions.

10.9 Meaning of Terms: References made in the singular shall include the plural and the masculine shall include the feminine or the neuter.

10.10 Notices: All Notices required by this Agreement or other communications to either party by the other shall be deemed given when made in writing and deposited in the United States Mail, first class, postage prepaid, addressed as follows:

GILBERT:

Patrick Banger
Town Manager
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85234

PM/CM:

Chad Hafstrom
Owner / Principal
Kenew, LCC
17505 N. 79th Avenue Suite 205-C
Glendale, AZ 85308

This Agreement is executed as of the day and year first written above.

TOWN OF GILBERT

By: _____
Jenn Daniels, Mayor

ATTEST:

Lisa Clark, Town Clerk

APPROVED AS TO FORM:

By: _John Baird, Town Attorney_

PROJECT MANAGER/CONSTUCTION MANAGER

By: Chad Hafstrom
Title: Owner / Principal
Kenew, LLC

EXHIBIT A
PM/CM SCOPE OF WORK
FOR DESIGN-BID-BUILD PROJECT

A. PROJECT DESCRIPTION

The Project is generally described as follows:

Job Order No. 021 would include the excavation, repair, and site restoration construction services needed to restore the 30" reclaimed water main to full service. Due to increasing system demand subsequent to the seasonal demand shift, immediate repair is required.

Construction Management (CM) Services for the 30 inch reclaimed water line repairs will include: full time inspection services during excavation, repair and water line restoration. CM services to inspect landscape restoration on a periodic basis with visits to the project site.

B. PRE-DESIGN PHASE

1. PROJECT MANAGEMENT

- ~~1.1 Project Review: PM/CM shall meet with GILBERT'S representative and other Project team members to fully understand the Project budget and scope and to refine the Project scope as needed. PM/CM shall visit the Project site and become familiar with the local conditions under which the Services and the construction work will be performed.~~
- ~~1.2 Project Management Plan: PM/CM shall prepare a Project Management Plan for the Project. The Plan will be prepared with the full participation of GILBERT and other Project team members. The Plan shall consider GILBERT'S schedule, cost and design requirements for the Project. The Plan shall also identify utility design needs, agency approvals, possible pre-purchase of equipment and other consultants needed. PM/CM may develop various alternatives for the sequencing and management of the Project, make recommendations to GILBERT and secure approval of a project strategy prior to finalizing the Project Management Plan. The Project Management Plan shall be presented to GILBERT for review and acceptance and thereafter shall serve as a guide for the management and coordination of the Project.~~
- ~~1.3 A/E Orientation: PM/CM shall not conduct, or assist GILBERT in conducting, an A/E orientation session during which the A/E shall receive information regarding Project, schedule, costs, administrative and other Project parameters and requirements.~~
- ~~1.4 A/E Contract Preparation: PM/CM shall not assist GILBERT in preparation and review of the contracts between GILBERT and A/E. PM/CM will not provide legal advice regarding the A/E contract and any legal counsel retained to review the A/E contract shall be retained by GILBERT, paid by GILBERT and be responsible to GILBERT. GILBERT will provide its standard form of A/E contract.~~

~~1.5 A/E Contract Negotiations: PM/CM shall not assist GILBERT in negotiating the design contract between GILBERT and A/E.~~

~~2. TIME MANAGEMENT~~

~~2.1 Master Schedule: PM/CM shall, after consultation with and input from the A/E, prepare a critical path method (CPM) Master Schedule in Primavera compatible software for each component of the Project. The Master Schedule shall specify (1) proposed start and finish dates for design(s) milestones, (2) pre-construction and construction activities and (3) dates by which certain project activities must be complete. PM/CM shall submit the Master Schedule to GILBERT for review and acceptance.~~

~~2.2 Design Phase Milestone Schedule: After GILBERT accepts the Master Schedule PM/CM shall prepare the Milestone Schedule for the Design phase. The Design Phase Milestone Schedule shall be prepared in consultation with the A/E. The Design Phase Milestone Schedule will be made part of the Agreement with the A/E and shall be a method for judging progress during the Design Phase. The Design Phase Milestone Schedule shall include milestones for schematic design, design development and contract documents, and shall include all affected agency reviews, permitting milestones and utility relocation information. The Design Phase Milestone Schedule will take into consideration the desire of GILBERT that A/E provide complete design documents at the end of the Design Phase.~~

~~3. COST MANAGEMENT~~

~~3.1 Construction Cost Estimate: PM/CM shall prepare a Construction Cost Estimate based on information provided by GILBERT, A/E and CONSTRUCTION CONTRACTOR on the work required for the Project and information developed by PM/CM as required by this contract. PM/CM shall review the estimate with GILBERT, A/E and CONSTRUCTION CONTRACTOR, and PM/CM shall submit the Construction Cost Estimate to GILBERT for review and acceptance. The Construction Cost Estimate shall be revised as directed by GILBERT. No change to the scope of the Project shall be made that increases the Project costs without a corresponding change to the Project budget as approved by GILBERT.~~

~~3.2 Cost Estimate Format: PM/CM shall establish a cost estimate format that breaks the project cost into its component parts in consultation with GILBERT, A/E and CONSTRUCTION CONTRACTOR. The cost estimate format will be reviewed and updated at each design submittal stage. If the contract involves more than one CIP Project, the estimate shall also break down the information by project.~~

~~3.3 Cost Analysis: In an ongoing effort and mindful of the Project Master Schedule, PM/CM shall timely analyze and make a written report to GILBERT and A/E the cost of various design and construction alternatives. As a part of the cost analysis, PM/CM shall consider costs related to efficiency, usable life expectancy, maintenance, energy and operation.~~

~~4. MANAGEMENT INFORMATION SYSTEM (MIS)~~

- 4.1 ~~Establishing the Project MIS: PM/CM shall develop a Project Procedures Manual using Microsoft Word and Excel software to govern communications between GILBERT, PM/CM, A/E, Contractor and other parties on the Project. The PM/CM shall use GILBERT standard meeting notes forms. In developing the Project Procedures Manual, PM/CM shall interview GILBERT'S key personnel and others in order to determine the type of information to be managed and reported, the reporting format, the desired frequency for distribution of the various reports, the degree of accessibility by potential users, and the security protocol for the system. No licensing or other fees shall be charged to GILBERT. The documents shall become the property of GILBERT upon completion of the Project. The PM/CM shall ensure that GILBERT filing system and numbering system is used to keep all files, records and communications.~~
- 4.2 ~~Design Phase Procedures: PM/CM shall prepare procedures for reporting, communications and administration during the Design Phase, for approval by GILBERT.~~

C. ~~DESIGN PHASE~~

1. ~~PROJECT MANAGEMENT~~

- 1.1 ~~Revisions to the Project Management Plan: During the Design Phase PM/CM, with input from the A/E, shall make recommendations to GILBERT regarding revisions to the Project Management Plan. Revisions approved by GILBERT shall be incorporated into the Plan by PM/CM and the Plan shall be resubmitted to GILBERT for review and acceptance.~~
- 1.2 ~~Design Kick Off Meeting: At the start of the Design Phase, PM/CM shall conduct a Project Conference attended by the A/E, GILBERT and other stakeholders. During the meeting, PM/CM shall review the Scope of the Project, the Project Management plan, the Master Schedule, the proposed Design Phase Milestone Schedule, the Project and Construction Budget and the Project Procedures Manual.~~
- 1.3 ~~Design Phase Information: PM/CM shall monitor the A/E's compliance with the Master Schedule, Project Management Plan, Design Phase Milestone Schedule, and Project and Construction Budget. PM/CM shall coordinate and expedite the flow of information between GILBERT, A/E and others. If the A/E falls behind schedule, the PM/CM shall require the A/E to provide a recovery schedule.~~
- 1.4 ~~Interface with Utility Owners: PM/CM shall be responsible for coordination of utility companies, and with A/E assistance, development of a mitigation plan for relocation of facilities. PM/CM is responsible for ensuring special provisions are developed and a clearance/conflict letter prepared acknowledging confirmation from all utility companies. Copies of these letters shall be forwarded to GILBERT'S Representative.~~
- 1.4.1 ~~PM/CM, with A/E assistance, shall identify all utility stakeholders that might impact this project and shall notify each of the project scope and schedule in an invitation to a utility kickoff meeting.~~

- ~~1.4.2 PM/CM, with A/E assistance, shall conduct a utility kickoff meeting to communicate schedule and plan details, and to discuss the expectations each stakeholder and GILBERT have of each other in order to complete the project. PM/CM shall obtain schedule information from each utility company for the design and construction of all facilities requiring relocation and shall incorporate such into the master schedule.~~
- ~~1.4.3 PM/CM, with A/E assistance, shall host monthly utility coordination meetings to communicate and coordinate schedules and plan details, and to expedite the completion of utility plans and construction of relocations within the timeframe of the Master Schedule.~~
- ~~1.4.4 PM/CM, with assistance from A/E and Town Engineer, shall verify that prior rights documentation submitted by the utility companies represent the utility facility and project area affected by the utility relocation.~~
- ~~1.4.5 At the 30% level of plan completion, the PM/CM shall forward a set of plans to each utility with facilities potentially impacted by the project.
 - ~~1.4.5.1 The PM/CM shall send a transmittal letter with the 30% plans requesting each utility review the plans and attend a Utility Coordination Meeting to review the plans and discuss the utility's comments and potential conflicts.~~
 - ~~1.4.5.2 The PM/CM will provide GILBERT and the A/E with a transmittal letter clearly showing the utility owner, mailing address, point of contact and mailing date for each utility shown on the Utility Contact List.~~
 - ~~1.4.5.3 The PM/CM shall ensure GILBERT utilities, GILBERT Traffic Engineering, and Town Engineer are invited to the Utility Coordination Meeting.~~
 - ~~1.4.5.4 At the meeting the PM/CM shall review the project, discuss GILBERT'S requirement for joint utility trenches, obtain input from each utility, and obtain from A/E and review what pot holing is needed to satisfactorily locate all utilities.~~~~
- ~~1.4.6 At the 60% level of plan completion The PM/CM shall forward a set of plans to each utility with facilities potentially impacted by the project.
 - ~~1.4.6.1 The PM/CM shall send a transmittal letter with the 60% plans requesting each utility review the plans and attend a Utility Coordination Meeting to review the plans and discuss the utility's comments and potential conflicts.~~
 - ~~1.4.6.2 The PM/CM will provide GILBERT and the A/E with a transmittal letter clearly showing the utility owner, mailing address, point of contact and mailing date for each utility shown on the Utility Contact List.~~
 - ~~1.4.6.3 The PM/CM shall ensure GILBERT utilities, GILBERT Traffic Engineering, and Town Engineer are invited to the meeting.~~
 - ~~1.4.6.4 At the meeting the PM/CM will discuss changes made, new issues, and obtain comments from each utility.~~~~

- ~~1.4.6.5 ENGINEER shall make the changes and forward a corrected 60% level of completion plan set back to the PM/CM.~~
- ~~1.4.6.6 The PM/CM shall forward a plan set and a Request to Design letter to each utility that elects to complete their own design.~~
- ~~1.4.7 At the 95% level of completion, the PM/CM will forward a set of plans to each utility for final review and comments. Final construction documents shall not be approved until no conflict (clearance) letters have been received from each utility.~~
- ~~1.4.8 Clearance Letter: PM/CM shall prepare a utility clearance letter and submit it, together with copies of correspondence from utility companies verifying the information, to GILBERT for review and concurrence.~~
- ~~1.4.8.1 If there are no conflicts: The statement that there are no utilities in conflict with construction shall be used only when there are no utility facilities needing adjustment or when all adjustments have been completed prior to writing the clearance letter.~~
- ~~1.4.8.2 If adjustments are needed: When adjustments are required, the clearance letter shall list each utility company separately showing:~~
- ~~● The name of the company~~
 - ~~● The nature of required adjustment~~
 - ~~● The status of Agreements and permits~~
 - ~~● The status of utility adjustment as:~~
- ~~1.4.8.3 Show the status of utility adjustments as:~~
- ~~● Completed~~
 - ~~● To be performed by GILBERT'S Contractor~~
 - ~~● To be performed by utility company during construction, with estimated completion date or number of working days~~
 - ~~● In progress, with estimated completion date~~
 - ~~● To be performed by utility company prior to construction~~
- ~~1.4.9 PM/CM shall coordinate the relocation of utilities, whether performed by utility company or CONSTRUCTION CONTRACTOR. This coordination shall include monitoring the relocation schedule and requiring the utility company or CONSTRUCTION CONTRACTOR to provide a recovery schedule if the work falls behind the originally planned schedule.~~
- ~~1.4.10 When a property is acquired in total for the project, any utility issues are resolved as part of the right-of-way acquisition. When there is only a partial take of property for~~

~~project purposes, PM/CM shall ensure utility adjustments identified as a result of the partial acquisition are incorporated by the A/E.~~

- ~~1.5 — Right of Way Acquisition: PM/CM shall work closely with GILBERT staff and consultants that are obtaining the rights of way necessary for the project. PM/CM shall track the progress of right of way and easement acquisitions required for the project. PM/CM shall conduct meetings as necessary to assure communication between the A/E, the appraiser and the ROW agents regarding project limits, construction space requirements and temporary easements. PM/CM will coordinate with party(s) responsible for the acquisitions and report to GILBERT potential schedule delays that may arise from the acquisition activity. PM/CM shall keep GILBERT informed of potential right of way impediments to the project schedule. Prior to A/E development of legal descriptions, PM/CM will set an on-site meeting with the A/E, ROW Agent, Appraiser, and GILBERT Representative to review the sites needed and to determine what will be included in the appraisal. The PM/CM will review and forward to the Program Manager for approval the description of each real estate purchase prior to forwarding to the property owner.~~
- ~~1.6 — Project Meetings: PM/CM shall conduct periodic Project meetings attended by GILBERT, A/E and others. Such meetings shall serve as a forum for the exchange of information concerning the Project, review of design progress, and discussion of any proposed changes in the scope of the Project. PM/CM shall prepare and distribute minutes of these meetings to GILBERT, A/E and others, as agreed to by GILBERT. No change in the scope of the Project that increases the cost of the Project shall be made without a corresponding change to the Project budget as approved by GILBERT.~~
- ~~1.7 — Review of Design Documents and Design Recommendations:~~
- ~~1.7.1 — PM/CM shall review the design drawings and technical specifications (Design Documents), prepared by A/E for compliance with (1) Town of Gilbert Standard Details and Specifications, (2) MAG Standard Details, Current Edition, (3) MAG Standard Specifications, Current Edition, (4) Manual on Uniform Traffic Control Devices, 1988 Edition, (5) Heritage District Redevelopment Plan (if the Project is located in the Heritage District), (6) GILBERT'S Building and Construction Codes, (7) East Valley Asphalt Committee Mix Design Standards, and (8) other local, state, and federal requirements applicable to the Project. The results of the review shall be provided to GILBERT in writing and as notations on the documents.~~
- ~~1.7.2 — PM/CM shall review the design documents for clarity, consistency, constructability and coordination. As part of this review PM/CM shall prepare a plan for construction sequencing that will result in maintaining traffic flow and business and residential access throughout the duration of the construction phase. The results of the review shall be provided to GILBERT in writing and as notations on the documents.~~
- ~~1.7.4 — PM/CM shall make recommendations to GILBERT with respect to constructability, construction cost, and sequence of construction, construction duration and separation of the contract into categories of the work.~~

~~1.7.5 — PM/CM is not responsible for providing, nor does PM/CM control, the Project design or the contents of the design documents; however, PM/CM shall notify GILBERT if the design or other documents prepared by A/E may result in costs exceeding the Project budget, may depart from accepted architectural or engineering standards, may fail to comply with applicable laws, or may result in delays in the Project schedule. By performing the reviews described herein, PM/CM is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Project design or contract documents. However, PM/CM'S actions shall comply with the fiduciary and professional standards set forth in Paragraph 1 of this Agreement. The A/E is not a third party beneficiary of PM/CM'S work described in this paragraph and the A/E remains solely responsible for the contents of design drawings and contract documents; however, PM/CM remains solely responsible for establishing the overall Project costs and schedule.~~

~~1.8 — GILBERT'S Design Reviews: PM/CM shall be proactive in expediting GILBERT'S design reviews and shall track and report to GILBERT on submittal dates and return of GILBERT'S comments to A/E. PM/CM shall track and report to GILBERT'S Program Manager on submittal dates, distribution of submittal items, return of comments to A/E, and resolution of review comments.~~

~~1.9 — Approvals by Outside Agencies and Utility Companies:~~

~~1.9.1 — The Project Management Plan shall identify all outside agency and utility review and approvals required on the Project. PM/CM shall track the transmittal of documents to outside agencies and utilities for review, and shall report to GILBERT of potential problems or delays in completion of such reviews, and obtaining final approvals.~~

~~1.9.2 — PM/CM shall prepare and provide GILBERT with a list of all permits and approvals required for the project and the responsible party for obtaining each permit or approval. PM/CM shall be responsible for coordinating the permit and approval process and tracking all required permits/approvals to ensure they are obtained.~~

~~1.10 — General Conditions: PM/CM shall review and coordinate the General Conditions and other front end documents with the design documents as prepared by the A/E. GILBERT shall provide PM/CM with its standard general conditions.~~

~~1.11 — Project Funding: PM/CM shall prepare documents concerning the Project and Construction Budget for use in obtaining or reporting on project funding. The documents shall be prepared on forms approved by GILBERT.~~

~~1.12 — Public Participation Meetings: PM/CM will coordinate and attend a number of meetings planned for public involvement in CIP projects, which will be scheduled at the onset of the project, as determined by GILBERT. Typically, a medium scale project will provide for up to three (3) such meetings occurring after the review of the 30% plans, at the 95% submittal, and approximately 2 weeks prior to the start of construction.~~

~~1.13 — Special Provisions: PM/CM, in consultation with A/E and Contractor shall prepare Special Conditions for items, details, and procedures not adequately covered by Maricopa Association of Governments (MAG) Uniform Standard Specifications for Public Works Construction, Town of Gilbert Supplements, Maricopa County Department of Transportation Supplements and other specifications identified by GILBERT.~~

~~2. — TIME MANAGEMENT~~

~~2.1 — Prepare Master Schedule: PM/CM shall, after consultation with the A/E, prepare a resource loaded Master Schedule in Primavera compatible software for each component of the project. The Master Schedule shall specify (1) proposed start and finish date for the pre-design phase and design phase milestone submittals, (2) proposed start and finish dates for pre-construction and construction phase activities, and (3) dates by which certain project activities such as advance ordering of long lead items must be completed. PM/CM shall submit the Master Schedule to GILBERT for review and approval.~~

~~2.2 — Monitoring the Design Phase Milestone Schedule: While performing the services provided elsewhere in this agreement, PM/CM shall track the Design Phase Milestone Schedule. In the event that A/E's schedule begins to fall behind scheduled milestone dates, PM/CM shall work with A/E on remedial/corrective actions necessary to recover. Should A/E fail to meet future Design Phase Milestones in a manner that would affect the overall Master Schedule, PM/CM shall report to GILBERT, and make recommendations with respect to such remedial/corrective actions necessary to achieve a recovery schedule.~~

~~3. — COST MANAGEMENT~~

~~3.1 — Project and Construction Budget Revision: PM/CM shall make written recommendations to GILBERT on the impact of design changes that may result in revisions to the Project and Construction Budget, Master Schedule and Project Management Plan.~~

~~3.2 — Cost Control and Estimating: PM/CM shall immediately notify GILBERT in writing if he has reason to believe the A/E will exceed the A/E contract fee set forth in the contract between the A/E and GILBERT. PM/CM shall review estimates of the construction costs for each submittal of design drawings and specifications from the A/E. The review comments for each submittal shall be accompanied by a written report to GILBERT and A/E identifying variances from the Project and Construction Budget. PM/CM shall coordinate and assist in expediting the activities of GILBERT and A/E when changes to the design are required in order to remain within the Project and Construction Budget.~~

~~3.3 — Value Analysis: PM/CM shall review any value analysis proposed by A/E and/or other stakeholder. The value analysis shall include best value recommendations, offer cost savings suggestions on design and construction materials alternatives, and consider constructability issues. PM/CM acknowledges that GILBERT desires A/E to provide timely and complete design documents at the end of the design phase. To this end, PM/CM shall be expeditious in conducting and reporting on its value analysis.~~

4. — MANAGEMENT INFORMATION SYSTEMS (MIS)

- 4.1 — ~~Schedule Reports: In conjunction with the services provided elsewhere in this agreement, PM/CM shall prepare and distribute Schedule Update Reports that shall compare actual progress with scheduled progress for the Design Phase and the overall Project.~~
- 4.2 — ~~Project Cost Reports: PM/CM shall prepare and distribute Project Cost Reports that shall indicate estimated costs compared to the Project and Construction Budget.~~
- 4.3 — ~~Design Phase Change Order Report: PM/CM shall prepare and distribute monthly Design Phase Change Order Reports, if there are design changes, that shall list all GILBERT approved change orders as of the date of the report and shall state the effect of the change orders on the Project and Construction Budget and the Master Schedule.~~
- 4.4 — ~~Construction Phase Procedures: PM/CM shall prepare advanced procedures for reporting, communications and administration during the Construction Phase for approval by GILBERT.~~

D. — BID AND AWARD PHASE

1. — PROJECT MANAGEMENT

- 1.1 — ~~Bid Documents not prepared by A/E Firm: In the event that the task of preparing Bid Documents was not included in A/E'S Contract, PM/CM shall prepare and package the bid documents. Work may include the preparation of the "front end" documents, including cover page, index, special provisions, bid schedule, etc. The individual project will dictate the actual scope of services required to be included in this sub-task.~~
- 1.2 — ~~Notices and Advertisements: PM/CM shall assist GILBERT in preparing notices and advertisements to solicit bids for the Project.~~
- 1.3 — ~~Preparation and Delivery of Bid Documents: PM/CM shall coordinate the preparation and delivery of Bid Documents to Scott Blue for printing, binding, wrapping, charging and delivery of the bid documents to the bidders. PM/CM shall monitor a list of bidders receiving Bid Documents maintained by Scott Blue.~~
- 1.4 — ~~Pre-bid Conference: PM/CM shall a conduct Pre-bid Conference. The conference shall be a forum for GILBERT, PM/CM and A/E to explain the Project requirements to the bidders, including information concerning schedule requirements, time and cost control requirements, access requirements, GILBERT'S administrative requirements, technical and other information. If any interpretation, instruction or policy not already part of the bid documents are announced, an addendum will be issued reflecting the interpretation, instruction or policy.~~
- 1.5 — ~~Information to Bidders: PM/CM shall develop and coordinate procedures to provide answers to bidders' questions. Any inquiries related to the Contract Documents shall be timely forwarded by PM/CM to A/E for a response. PM/CM shall tabulate and maintain a summary of the inquiries received (verbal and written) and the responses made. If any interpretation,~~

~~instruction or policy not already part of the bid documents is given, an addendum will be issued reflecting the interpretation, instruction or policy.~~

- ~~1.6 — Addenda: PM/CM shall receive from the A/E a copy of all Addenda drafts. PM/CM shall review Addenda for clarity, consistency and coordination with the bid documents. PM/CM may request changes based on his review and discuss such changes with A/E. A/E shall prepare and seal the final addenda. GILBERT shall approve all addenda prior to issuance. PM/CM shall notify GILBERT of the effects of the addenda on the Project and Construction Budget and Master Schedule. PM/CM shall distribute a copy of all approved and sealed addenda to Scott Blue for printing and distribution to each bidder receiving documents and for inclusion in the remaining bid documents. By performing the reviews and distributions described herein, PM/CM is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Project design contents or the design documents.~~
- ~~1.7 — Bid Opening and Recommendations: PM/CM shall assist GILBERT in conducting the bid opening and shall evaluate the bids for bidder responsibility (including previous experience, capabilities, reputation for similar work, and subcontractors), bidder responsiveness (including conformance to instructions, specifications and financial data required) and price. PM/CM shall make a written recommendation to GILBERT concerning the acceptance or rejection of bids.~~
- ~~1.8 — Bid Protests: PM/CM shall assist GILBERT in evaluating any bid protest filed.~~
- ~~1.9 — Construction Contracts: PM/CM shall assist GILBERT in the assembly and delivery of the Contract Documents. GILBERT shall issue the Notice of Apparent Low Bidder to the bidders, the Notice of Award and the Notice to Proceed.~~
- ~~1.10 — Pre-Construction Conference: In consultation with GILBERT and A/E, PM/CM shall conduct a Pre-Construction Conference during which PM/CM shall review the Project organization, communication protocols, security, responsibilities and other general project procedures and other matters set forth in the Construction Contract documents.~~
- ~~1.11 — Permits, Insurance and Labor Affidavits: PM/CM shall verify that the Contractor has secured the building permits, bonds, insurance, labor affidavits and waivers as required by the Contract Documents. Such action by PM/CM shall not relieve the Contractor of his responsibilities to comply with the provisions of the Contract Documents.~~

~~2. — TIME MANAGEMENT~~

- ~~PM/CM shall monitor compliance with the Master Schedule and recommend revisions to GILBERT as appropriate.~~

~~3. — COST MANAGEMENT~~

- ~~3.1 — Estimates for Addenda: PM/CM shall timely prepare an estimate of costs for all Addenda and shall submit the estimate to GILBERT for approval. The Project and Construction Budget shall only be adjusted as directed by GILBERT.~~

~~3.2 Analyzing Bids: Upon receipt of the bids, PM/CM shall evaluate the bids, including additive or deductive alternates and unit bid prices, and shall make a written recommendation to GILBERT regarding the award of the construction contract.~~

~~4. MANAGEMENT INFORMATION SYSTEM (MIS)~~

~~4.1 Schedule Maintenance Reports: PM/CM shall prepare and distribute Schedule Update Reports during the Bid and Award Phase. Such reports shall be in Primavera compatible software. The reports shall compare the actual bid and award dates to scheduled bid and award dates and shall summarize the anticipated impact of current schedule modifications on the Master Schedule.~~

~~4.2 Project Cost Reports: PM/CM shall prepare and distribute a Project Cost Report during the Bid and Award Phase. The Report shall specify actual award prices and construction costs for the Project compared to the Project and Construction Budgets.~~

E. CONSTRUCTION PHASE

1. PROJECT MANAGEMENT

1.1 On-Site Management and Construction Phase Communication Procedures: PM/CM shall provide and maintain a management team on the Project site to provide construction/ contract administration, to be GILBERT'S representative, and to establish and implement coordination and communication procedures among PM/CM, GILBERT, ~~A/E~~ and CONSTRUCTION CONTRACTOR. Construction observations for the Project shall be performed by PM/CM personnel with sufficient expertise to determine whether the construction is proceeding in accordance with the Construction Contract Documents. Construction observation shall be under the direct supervision of an engineer(s) registered in the State of Arizona and qualified to perform this work. PM/CM shall comply with and have sufficient trained personnel to meet the schedule and man-hour requirements set forth in Exhibit C.

1.2 Construction Administration Procedures: PM/CM, ~~with input from A/E~~, shall establish and implement procedures for expediting and processing requests for information (RFI's); review and approval of shop drawings, material and equipment sample submittals, contract schedule adjustments; change orders; material and equipment substitution requests; and payment requests. PM/CM shall establish and maintain logs for tracking all relevant information related to the above. PM/CM shall maintain daily job reports. As GILBERT'S representative at the construction site, PM/CM shall be the party to whom requests for information, submittals, CONSTRUCTION CONTRACTOR schedule adjustments, substitution requests, change order requests and payment applications shall be submitted, processed, approved, and returned to CONSTRUCTION CONTRACTOR.

1.3 Construction Observation: PM/CM shall establish and implement a program to observe and monitor the quality of the construction. The purpose of the program shall be to identify defects and deficiency in the work of the CONSTRUCTION CONTRACTOR. While PM/CM shall not be responsible for construction means, methods, techniques, sequences and procedures

employed by the construction contractor in the performance of its contract, PM/CM shall nevertheless advise GILBERT whether the construction means, methods, techniques, sequences or procedures will delay the work or cause a defect in the work. PM/CM may from time to time, issue work directives, or field orders, which consist of minor changes in the work not involving an adjustment in the Contract Sum or the Contract Time, but consistent with the overall intent of the Contract Documents. PM/CM is authorized to reject work and transmit to GILBERT and CONSTRUCTION CONTRACTOR a notice of nonconforming work when the Work does not conform to the requirements of the Contract Documents. PM/CM is not authorized as a part of this service to change, revoke, alter, enlarge, relax or release any requirements of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents. In the event the Contractor fails to correct deficient work, PM/CM shall issue a stop work order on behalf of GILBERT until such deficiencies are corrected. No action taken by PM/CM shall relieve the CONSTRUCTION CONTRACTOR from his obligation to perform his work in strict conformity with the Contract Documents and in strict conformity with all applicable laws, rules and regulations.

- 1.4 Design Changes: Any decision or action related to the design or engineering of the Project shall be referred to GILBERT for action. No change in the design documents shall be made without written approval of GILBERT
- 1.5 Project Site Meetings: PM/CM shall conduct weekly coordination meetings at the Project site with the Contractor, GILBERT, and the A/E, (if provided for in the Agreement between GILBERT and the A/E) and/or other stakeholders as needed. PM/CM shall record, transcribe and distribute minutes to all attendees, and GILBERT and A/E.
- 1.6 Construction Quality Assurance (Testing): Technical or special inspections required in the Contract Documents per IBC, and testing provided by the A/E or others shall be directed, scheduled, and monitored by PM/CM. PM/CM shall be provided a copy of all inspection and testing reports on the day of the inspection or test or within a reasonable time period. PM/CM is responsible for providing the test results to the Contractor and GILBERT. In the event of a failed test, re-testing will be performed as directed in the Contract Documents.
- 1.7 Review of Requests for Changes to the Contract Time and Price: PM/CM shall review with GILBERT the contents of requests for changes to the contract work, time or price submitted by a Contractor, assemble information concerning the request to determine the cause of the requests and make written recommendations to GILBERT with respect to acceptance of the requests. Any change affecting the design must first be approved by GILBERT. PM/CM will implement GILBERT'S decisions regarding all requests for changes. All changes to the Agreement between GILBERT and Contractor shall be only by change orders executed by GILBERT.
- 1.8 Record Drawings, Operation and Maintenance Materials: As required by the Contract Documents, PM/CM shall receive from the Contractor red-line construction record drawings, operation and maintenance manuals, warranties and guarantees for materials and equipment installed on the Project, and review such documents for completeness and submit documents to GILBERT. ~~Upon verification of the red-line construction record drawings for correctness,~~

~~PM/CM shall transmit same to the A/E for preparation of the as-built drawings.~~ Upon return of the as-built drawings to the PM/CM from the CONTRACTOR, PM/CM's engineer shall be the responsible engineer(s) for purposes of certifying the as-built drawings. "Certify the as-built drawings" means the as-built drawings will be signed, sealed and dated by engineer(s) registered in the State of Arizona in his field of competence. Each plan sheet in the set shall be marked "As-Built". In addition, if the Project requires certification by Maricopa County Environmental Services Department or the Arizona Department of Environmental Quality, PM/CM shall provide such certification.

- 1.9 Substantial and Final Completion: In consultation with ~~the A/E and~~ GILBERT'S inspectors (when applicable), PM/CM shall review the Contractor's written request for substantial completion and final completion and recommend to GILBERT when the Project and the Contractor's Work has achieved substantial and final completion as defined in the Contractor contract. PM/CM shall, prior to issuing a Certificate of Substantial Completion, compile a list of incomplete work or work that does not conform to the Contract Documents (punch-list items) based on his observations and input ~~from the A/E and~~ GILBERT'S inspectors (when applicable). This list shall be attached to the Certificate of Substantial Completion. The Certificate of Final Completion shall not be issued until the incomplete work has been completed and GILBERT is ready to accept the Project. PM/CM shall issue the Certificate of Substantial Completion and Certification of Final Completion to the Contractor.
- 1.10 Project Close-out:
- 1.10.1 Within five (5) days of the receipt of Contractor's written request for a punch list, PM/CM shall make a punch list inspection or inform Contractor that the work is not ready for punch list inspection. Upon completion of the deficient work, Contractor may again request a punch list inspection.
- 1.10.2 PM/CM shall notify Contractor in writing of any deficiencies to be remedied prior to final acceptance by written punch-list. Final acceptance shall not be given until the punch-list items are completed in accordance with the Contract Documents. No one is authorized to amend the Contract Documents by use of the punch list, which is solely for the benefit of Contractor to enable him to determine what items must be corrected before final acceptance will be recommended by the PM/CM.
- 1.10.3 After all work has been completed, as determined by PM/CM, PM/CM shall recommend in writing to GILBERT that final acceptance of the entire work be made as of the date of PM/CM'S final inspection.
- 1.10.4 Simultaneously with Contractor's request for final payment, Contractor is required to submit the following items to PM/CM: (1) red-line construction record drawings; (2) warranties; (3) three sets of documentation covering the operation and maintenance of the mechanical and electrical installation and all other equipment required to be furnished with such manuals; (4) other items required by the Special Conditions. No recommendation shall be made for final acceptance until these items have been received and are complete.
- 1.11 Final Payment: PM/CM shall provide to GILBERT a written recommendation regarding

final payment to the Contractor. A final change order, if applicable, shall be prepared by the Contractor, reviewed and approved by the PM/CM, with a written recommendation for approval by GILBERT. PM/CM'S recommendation for final payment shall take into account the Contract Sum, as adjusted by any change orders, amounts already paid, and sums to be retained for incomplete work, liquidated damages, and for any other cause under the Contract Documents. PM/CM shall prepare a statement of final inspection, stating that the work has been given a final inspection, that Contractor has submitted the required documents, setting forth with detail any deviations in the work as completed, and estimating the cost of correction of such deviations. PM/CM'S statement shall be transmitted to GILBERT along with Contractor's request for final payment. PM/CM shall provide a copy of the statement of final inspection and PM/CM'S estimate of the sum due to Contractor.

2. TIME MANAGEMENT

- 2.1 Master Schedule: PM/CM shall adjust and update the resource loaded Master Schedule and distribute copies to GILBERT and A/E. Recommendations for such adjustments to the Master Schedule shall be made to GILBERT, and upon GILBERT'S approval shall be incorporated by PM/CM.
- 2.2 Contractor's Construction Schedule: PM/CM shall review the Contractor's resource loaded Construction Schedule and shall verify that the schedule is prepared in accordance with the requirements of the Contract Document and that it establishes completion dates that comply with the requirements of the Contract Documents. If changes in the Master Schedule maintained by PM/CM are appropriate, PM/CM shall make such modifications as approved by GILBERT.
- 2.3 Construction Schedule Reports: PM/CM shall, on a monthly basis and at the time of Contractor's pay application, review the progress of construction, shall evaluate the percentage complete of each construction activity as indicated in the Contractor's resource loaded Construction Schedule and shall review such percentages with the Contractor. This evaluation shall serve as data for input to the periodic Construction Schedule Report that shall be prepared and distributed to GILBERT. The Report shall indicate the actual progress compared to scheduled progress and shall serve as the basis for the progress payments to the Contractor. PM/CM shall advise and make recommendations to GILBERT concerning the alternative courses of action that GILBERT may take in its efforts to achieve contract compliance by the Contractor.
- 2.4 PM/CM Review of Time Extension Requests: Prior to the issuance of change orders, PM/CM shall advise GILBERT as to the effect Contractor's requests for time extensions will have on the Master Schedule.
- 2.5 Recovery Schedules: Where Construction Schedule delays are encountered, PM/CM shall request a recovery schedule in writing from the CONSTRUCTION CONTRACTOR and review the recovery schedule for compliance with the Contract Documents. Any delays that may affect the Master Schedule shall be reported to GILBERT in writing.

3. COST MANAGEMENT

- 3.1 Schedule of Values: The CONSTRUCTION CONTRACTOR'S Schedule shall have the total contract price allocated among the CONSTRUCTION CONTRACTOR'S scheduled activities, by project number when more than one project is involved in the contract, so that each of the CONSTRUCTION CONTRACTOR'S activities shall be allocated a price and the sum of the prices of the activities, all equal to the total contract price ("Schedule of Values"). In a unit price contract with lump sum items, a schedule of values shall be provided for all major lump sum items. Procurement of long lead items shall be identified. PM/CM shall review the contract price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents. Progress payments to the CONSTRUCTION CONTRACTOR shall be based on the CONSTRUCTION CONTRACTOR'S percentage of completion of the scheduled activities as set out in the Construction Schedule Reports and the CONSTRUCTION CONTRACTOR'S compliance in accordance with the Contract Documents.
- 3.2 Change Order Control: PM/CM, with input from GILBERT, shall establish and implement a change order control system. All proposed change orders shall first be described in detail by PM/CM, with the assistance of the A/E when necessary, in a request for a proposal to the CONSTRUCTION CONTRACTOR, and shall be accompanied by technical drawings and specifications prepared by an A/E, when required. All change orders shall be classified into one of three categories: "Owner Initiated Change Order", "Error and/or Omission Change Order", and "Unforeseen Conditions Change Order." Change order dollar amounts shall be traced by these three categories. At the end of construction, a Final Change Order Report will be prepared identifying each change order, its classification, and amount. Total amounts for each classification shall also be reported. In response to the request for a proposal, the CONSTRUCTION CONTRACTOR shall submit to PM/CM for evaluation detailed information concerning the cost and time adjustments, if any, as may be necessary to perform the proposed change work order. PM/CM shall discuss the proposed change order with the CONSTRUCTION CONTRACTOR and determine the CONSTRUCTION CONTRACTOR'S basis of the cost and time impacts of performing the work. PM/CM shall make recommendations to GILBERT on acceptability of the change in the work, prior to GILBERT'S execution of change orders. PM/CM shall verify that change order work and adjustments of time, if any, required by approved change orders have been incorporated into the CONSTRUCTION CONTRACTOR'S Schedule, the Master Schedule, and the Construction Budget. No change in the design shall be made without written approval of GILBERT. No change order shall be approved without the written approval of GILBERT.
- 3.3 Change Order Pricing and Verification: If a Change Order provides for an adjustment to the Contract Sum, the cost of the change in the work shall be made as prescribed in the Contract Documents.
- 3.3.1 Where a unit price is contained in the Bid Schedule and agreed to by PM/CM and Contractor, or when a unit price or lump sum is mutually agreed upon for the change in the work, the PM/CM shall make recommendation to GILBERT. A Change Order shall

be executed by GILBERT and Contractor, prior to proceeding with the change in the work, unless an emergency situation exists.

- 3.3.2 Where a change in work is to be performed on a Cost Plus basis, an estimate of the work shall be prepared by the Contractor and reviewed by PM/CM. With GILBERT approval, and based on recommendation from PM/CM, PM/CM'S Project Representative shall direct the Contractor, in writing, to proceed with the change in the work.
- 3.3.3 In addition to receiving the required information from the Contractor documenting time, materials, equipment, and sub-contractors employed to complete the change of work, PM/CM shall personally monitor and record work effort involved in the change of work. PM/CM and Contractor shall confer on a daily basis, and come to a mutual agreement on the time, materials, equipment, and sub-contractors' cost that day. As stipulated in the Contract Documents, final cost of the change in the work shall be reflected and formalized in a Change Order, signed by both GILBERT and Contractor.
- 3.3.4 Should negotiations break down between PM/CM and Contractor over the cost of the change in the work, PM/CM, with GILBERT approval, shall be authorized to seek bids and have the work performed by another contractor.

- 3.4 Progress Payments: PM/CM shall review the payment applications submitted by the Contractor and determine whether the amount requested reflects the progress of the Contractor's work. PM/CM shall make appropriate adjustments to each payment application and shall provide and forward to GILBERT a Progress Payment Report. The Report shall state the total contract price, payments to date, current payment requested, percent work complete, percent payments made, retainage and actual amounts owed for the current period by project number for each project included within the contract. Included in this report shall be a Certificate of Payment that shall be signed by PM/CM and delivered to GILBERT. The issuance of a Certificate of Payment by PM/CM shall constitute a representation by PM/CM to GILBERT, based on PM/CM'S observations and inspections at the site and on the data comprising the Contractor's application for payment, that the work has progressed to the point indicated; that, to the best of PM/CM'S knowledge, information and belief, the quality of the work is in accordance with the Contract Documents, subject to an evaluation of the work for conformance with the Contract Documents upon Substantial Completion, and to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the application for payment; that red-line construction record drawings are up to date; and that the Contractor is entitled to payment in the amount certified.

4. MANAGEMENT INFORMATION SYSTEM (MIS)

- 4.1 Schedule Update Reports: PM/CM shall prepare and distribute weekly Schedule Update Reports during the Construction Phase no less frequently than weekly. The Reports shall compare the actual construction dates to scheduled construction dates for each work item, milestone dates (if any), and to the Master Schedule for the Project.

- 4.2 Project Cost Reports: PM/CM shall prepare and distribute weekly Project Cost Reports during the Construction Phase. The Reports shall specify actual Project and construction costs compared to GILBERT-approved Project and Construction Budget.
- 4.3 Project and Construction Budget Revision: PM/CM shall make recommendations to GILBERT on the impact of construction changes that may result in revision to the Project and Construction Budget.
- 4.4 NOT USED - Cash Flow Reports: ~~PM/CM shall prepare and distribute Cash Flow Reports in a format provided by GILBERT on a monthly basis during the Design and Construction Phases. The Reports shall specify actual cash flow as compared to projected cash flow for the PM/CM, the A/E and the CONSTRUCTION CONTRACTOR. The projected cash flow data shall not be changed during the project without written approval from GILBERT. If more than one CIP Project is included in the Work under this contract, a separate cash flow report shall be prepared for each project.~~
- 4.5 Progress Payment Reports: PM/CM shall prepare and distribute the Progress Payment Reports to GILBERT. The Reports shall state the total construction contract price, payment to date, current payment requested, retainage, percent work complete, percent payments made and actual amounts owed this period by project number for each project included within the contract. A portion of this Report shall be a Certificate of Payment that shall be signed by PM/CM, and delivered to GILBERT for use by GILBERT in making payments to the CONSTRUCTION CONTRACTOR.
- 4.6 Change Order Reports: PM/CM shall weekly prepare and distribute Change Order Reports during the Construction Phase. The Report shall list all GILBERT-approved change orders by number, a brief description of the change order Work, the cost established in the change order time impacts, if any, and percent of completion of the change order work.
- 4.7 Contractor's Safety Program Report: PM/CM shall verify that a copy of CONSTRUCTION CONTRACTOR'S safety program is available at the job site, as required in the Contract Documents, and shall include a copy of the CONSTRUCTION CONTRACTOR'S weekly safety meeting agenda as an attachment to the weekly construction meeting minutes. PM/CM shall not be responsible for or have any liability in whole or in part for CONSTRUCTION CONTRACTOR implementation of or compliance with Contractor safety programs and safety laws, regulations, etc., nor shall PM/CM be responsible for the adequacy, or completeness, of Contractor Safety Programs or the CONSTRUCTION CONTRACTOR'S compliance and performance thereof. PM/CM has no responsibility for review of safety programs; however, if PM/CM observes a violation of the CONSTRUCTION CONTRACTOR'S safety program or witnesses any potentially unsafe condition, he shall immediately notify the CONSTRUCTION CONTRACTOR and GILBERT'S Representative of the potential violation/condition and if the violation/condition is not immediately cured, the PM/CM shall issue a stop work order until the violation/condition is cured.

F. POST-CONSTRUCTION PHASE

1. PROJECT MANAGEMENT

- 1.1 Record Documents: PM/CM shall coordinate and expedite submittals of information from the Contractor for as-built record drawings and specification preparation and shall coordinate and expedite the transmittal of Record Documents to GILBERT. PM/CM shall certify the as-built record drawings as required under this agreement.
- 1.2 Organize and Index Operation Maintenance Materials: Prior to the Final Completion of the Project, PM/CM shall compile and verify completeness of manufacturers' operations and maintenance manuals, warranties and guarantees as received from the Contractor, and submit such documents to GILBERT.
- 1.3 Occupancy Permits: PM/CM shall assist GILBERT in obtaining an Occupancy Permit and final approvals by accompanying governmental officials during inspections of the Project, preparing and submitting documentation to governmental agencies and coordinating final testing and other activities.
- 1.4 Warranty Inspection: PM/CM shall notify GILBERT Program Manager and Operations Staff and jointly perform a warranty inspection ten (10) months after final acceptance.

2. COST MANAGEMENT

Change Orders: PM/CM shall continue to provide services related to Change Orders, as required, during the Post-Construction Phase.

3. MANAGEMENT INFORMATION SYSTEMS (MIS)

- 3.1 Close-out Reports: At the conclusion of the Project, PM/CM shall prepare final Project Cost and closeout reports. All of the project information and documents shall be delivered to GILBERT upon completion of the Project. Following is a list of items to be included with the close-out package:
 - 3.1.1 Copy of Certificate of Substantial Completion with a copy of the punch list itemizing incomplete or deficient items.
 - 3.1.2 Copy of Certificate of Final Completion.
 - 3.1.3 Copy of final change order, if required, prior to submitting final pay applications.
 - 3.1.4 Final pay application with Affidavit for the Settlement of Claims, Record Drawings, Warranties, Operations and Maintenance Manuals and other items as required by the special conditions and/or contract documents.
 - 3.1.5 8½" x 11" drawings showing the actual locations of landscape controllers and electric services, if applicable.

- 3.2 Close-out Meeting: At the conclusion of the Project, PM/CM shall participate in a Project close-out meeting with GILBERT staff and the A/E to evaluate the process used on the Project and the results obtained and to discuss how the process might be improved for the next project. PM/CM shall provide meeting minutes from close-out meeting.

EXHIBIT B
PM/CM'S PROJECT MANAGEMENT KEY PERSONNEL

Principal in Charge: Chad Hafstrom

Project Manager/Construction Manager: Chad Hafstrom

Resident Engineer: N/A

Construction Inspector: Chad Hafstrom

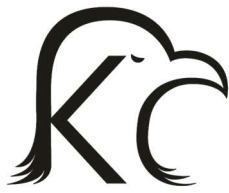
Others: Bob Terry III

EXHIBIT C
FEE AND REIMBURSABLE COSTS

Hourly Rates

Principal:	\$125 / Hour
Project Manager:	\$115 / Hour
On-site Construction Manager / Inspector:	\$85 / Hour
Clerical:	\$55.00 / Hour

See Exhibit C-1 for Proposal and Fee Structure



Kenēw, LLC

May 15, 2019

Jeanne M. Jensen, MPA, PE – Projects Supervisor CIP
 Town of Gilbert
 90 E. Civic Center
 Gilbert, AZ 85296

RE: Cost Proposal for CM/PM Services – Revision 1 – Full-time on site
 30" Reclaimed Waterline Repair

Dear Ms. Jensen:

Kenēw, LLC would like to thank you for the opportunity to submit a proposal on the above-mentioned project.

We've considered your feedback from our original proposal and have modified it as follows: We still anticipate our scope to be similar to the original proposal and the scope that is identified in the contract. As requested, we are amending the proposal to now include an on-site representative for the full three weeks of anticipated construction. We also included hourly rates on Exhibit C of the Scope of Work document in case there are any adjustments needed.

Based on the information above, our updated proposed fee for the project would be:

- **Monitor On-Site Construction Activities (Approx. 120 hours):** **\$10,200.00**
- **Office Work (Including documentation and producing reports):** **\$1,500.00**
- **Profit and Overhead – 15%:** **\$1,775.00**

Total Proposal

\$13,445.00

If you have any questions, or if you need further clarifications, please feel free to contact me at your earliest convenience. We appreciate the opportunity to provide this proposal and look forward to working with you on this exciting project.

Sincerely,

Chad Hafstrom, Principal

Kenēw, LLC

cc: Bob Terry III, Principal, Kenew

Native Owned - Construction Management Services

Bob Terry III	Principal	BobT@KenewLLC.com	(480) 710-2360
Chad Hafstrom	Principal	ChadH@KenewLLC.com	(623) 225-3321

Passionate
Responsive
Reliable
Experienced

EXHIBIT D
CHANGE ORDER NO. _____
(A/E and/or PM/CM)

PROJECT: 30" Reclaimed Water Main Repair – Santan Village Parkway
DATE:
OWNER: Town of Gilbert
PROJECT NO: WW1232
CONTRACT NO: 319001160
CONTRACT DATED: May 16, 2019
A/E: N/A
PM/CM: Kenew, LLC

CHANGES: The CONTRACT is changed as follows: (Insert brief description)

COST/TIME: Original CONTRACT SUM: \$ _____
Previously Authorized CHANGE ORDERS: \$ _____
CONTRACT sum prior to this CHANGE ORDER: \$ _____
CHANGE ORDER # Amount: \$ _____
New CONTRACT SUM: \$ _____

CONTRACT TIME will be increased by:

SUBSTANTIAL COMPLETION as of this Change Order:

Approved/Accepted by:

A/E _____
(Name) (Date)

PM/CM _____
(Name) (Date)

GILBERT: _____
(Name) (Date)

Not valid until signed by GILBERT and/or A/E and/or PM/CM. Signature of A/E and/or PM/CM indicates acceptance, including CONTRACT SUM and CONTRACT TIME.



Town of Gilbert Job Order Cost Proposal



CONTRACTOR NAME:

B & F CONTRACTING, INC.

ROC-089744

ROC-111282

Contract Type: Wet Utility Pipeline Projects
 Job Order No.: TBD
 City Project Mgr: Sarah Rogowski
 Fee Type: Fixed Price GMP
 Location: San Tan Pkwy & Loop 202
 Job Title: San Tan Village Pkwy & Loop 202 30-inch Reclaimed WL Repair

Town Project No.: WW1232
 Job Order No.: 21
 Prepared by: Dan Foley
 Date: 5/15/2019
 Revision: Original

Description of Work to be Performed
 (supporting information attached):

Investigate / Locate / Repair Existing 30" Reclaimed Water Line in the dirt area north of San Tan Village Pkwy. Repair limits approximately 18 LF or 1 pipe joint. These contract terms apply beyond the expiration of the current contract for our Peoria Wet Utility Job Order Contract.

SECTION A: LABOR (inclusive of burden)

Position	Unit	Quantity
Field Labor (Foreman, Operators, Laborers, Pipelayer)	LS	1.0
Onsite Supervisory & Administrative Costs	LS	1.0

Labor Cost		Total
Each		Total
\$ 25,388.20		\$ 25,388.20
\$ 5,750.80		\$ 5,750.80
		\$ 31,139.00

SECTION B: EQUIPMENT (supporting information attached, i.e. EquipmentWatch.com)

Item	Unit	Quantity
See Cost Detail for Equipment Breakdown	LS	1.0
Onsite Supervisory & Administrative Costs	LS	1.0

Equipment		Item
Each		Total
\$ 37,667.60		\$ 37,667.60
\$ 1,548.00		\$ 1,548.00
		Total Equipment Cost \$ 39,215.60

SECTION C: VENDORS & MATERIAL SUPPLIERS

Item	Unit	Quantity
See Cost Detail for Materials Breakdown	LS	1.0
Onsite Supervisory & Administrative Costs	LS	1.0

Material		Item
Each		Total
\$ 17,092.84		\$ 17,092.84
\$ 1,404.00		\$ 1,404.00
		Total Material Cost \$ 18,496.84



Town of Gilbert Job Order Cost Proposal



CONTRACTOR NAME:

B & F CONTRACTING, INC.

ROC-089744

ROC-111282

Contract Type:	<u>Wet Utility Pipeline Projects</u>	Town Project No.:	<u>WW1232</u>
Job Order No.:	<u>TBD</u>	Job Order No.:	<u>21</u>
City Project Mgr:	<u>Sarah Rogowski</u>	Prepared by:	<u>Dan Foley</u>
Fee Type:	<u>Fixed Price GMP</u>	Date:	<u>5/15/2019</u>
Location:	<u>San Tan Pkwy & Loop 202</u>	Revision:	<u>Original</u>
Job Title:	<u>San Tan Village Pkwy & Loop 202 30-inch Reclaimed WL Repair</u>		

SECTION D: SUBCONTRACTORS & CONSULTANTS

Company	Description of Work to be Performed	Item Total
Misc. Sub Work (TCP, Fencing, Welder, Landscape, Concrete, Trucking)	\$25,428.00 1	\$ 25,428.00
		\$ -
	Total Subcontractor Cost	\$25,428.00

OVERHEAD:	<u>7.5000%</u>	(% to be taken from matrix)
PROFIT:	<u>6.0000%</u>	(% to be taken from matrix)
Subtotal General Contractor Costs (A+B+C):		\$88,851.44
O&P (% of A+C):		\$6,700.84
Total General Contractor Costs including O&P:		\$95,552.28
Subtotal Subcontractor Costs (D)		\$25,428.00
Subcontractor Profit <u>5.00%</u>		\$1,271.40
Total Subcontractor Costs including O&P:		\$26,699.40
TOTAL GC Cost (including O&P) and Subcontractor Costs (including Subcontractor Profit):		\$122,251.68
Insurance Costs @ <u>1.00%</u>		\$1,222.52
Bond Costs @ <u>1.50%</u>		\$1,833.78
Sales Tax (65% of 7.8%)		\$6,353.11

Subtotal Job Cost: \$131,661.08

Subtotal Job Cost: \$131,661.08

Utility Coordination Allowance: \$30,000.00

TOTAL JOB COST: \$161,661.08

Submitted by:

Dan Foley - Project Manager

Name, Title

05/15/2019

Date

GUARANTEED MAXIMUM PRICE - SCHEDULE OF VALUES



PROJECT: San Tan Village Pkwy & Loop 202 30-inch Reclaimed Waterline Repair

Corporate HQ: 11011 N. 23rd Ave., Phoenix, AZ 85029

Office: 623-582-1170 | Fax: 623-582-3761

OWNER: Town of Gilbert

JOC: B&F CONTRACTING, INC.

DATE: 5/15/2019

Revision: 0

Arizona Licenses: ROC-089744 A-General Engineering

ROC-111282 B-04 Geneneral Engineering

DATE: 5/15/2019

GMP SCHEDULE OF VALUES

ITEM #	ITEM DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL PRICE
1.0	Mobilization & Demobilization	1	LS	\$5,507.20	\$ 5,507.20
2.0	Construction Water	1	LS	\$825.00	\$ 825.00
3.0	Materials Testing	1	LS	\$1,500.00	\$ 1,500.00
4.0	Traffic Control	1	AL	\$5,600.00	\$ 5,600.00
5.0	Remove & Replace Fence	1	LS	\$9,729.60	\$ 9,729.60
6.0	Investigate & Locate Leak	1	EA	\$23,081.80	\$ 23,081.80
7.0	Repair 30" Reclaimed Water Line Pipe	1	EA	\$38,918.00	\$ 38,918.00
8.0	Final Cleanup & Restore DG	1	LS	\$11,515.04	\$ 11,515.04
9.0	Landscape Plant Replacement	1	AL	\$5,000.00	\$ 5,000.00
10.0	Concrete Curb & Sidewalk Replacement	1	AL	\$3,900.00	\$ 3,900.00
SUBTOTAL - DIRECT COSTS \$					105,576.64

TOTAL ONSITE SUPERVISORY & ADMINISTRATIVE \$ 8,702.80

TOTAL COST \$ 114,279.44

EXHIBIT A2.b ONSITE SUPERVISORY & ADMINISTRATIVE COST BREAKDOWN

Project No.	TBD	Date:	5/15/2019
Project Title	San Tan Village Pkwy & Loop 202 30-inch Reclaimed Waterline Repair	GMP:	N/A
Project Location	San Tan Village Pkwy & Loop 202	B&F Job #:	TBD



Estimated Duration	0.5	MTH
Hours per Month	176	HRS

ITEM NO.	ITEM DESCRIPTION	QTY	Total % of Project	CALC. HOURS	UNIT	UNIT COST	TOTAL COST
<u>LABOR</u>							
01	PROJECT MANAGER	88	25.00%	22.00	HR	\$ 67.60	\$ 1,487.20
02	PROJECT SUPERINTENDENT	88	75.00%	66.00	HR	\$ 64.60	\$ 4,263.60
03	SAFETY MANAGER	88	0.00%	0.00	HR	\$ 58.60	\$ -
						Subtotal	\$ 5,750.80
<u>EQUIPMENT</u>							
04	PROJECT MANAGER TRUCK	88	25.00%	22.00	HR	\$ 14.75	\$ 324.50
05	SUPERINTENDENT TRUCK	88	75.00%	66.00	HR	\$ 14.75	\$ 973.50
06	SMALL TOOLS	0.5	100.00%		MO	\$ 250.00	\$ 125.00
07	FIELD RADIOS & CELL PHONES	0.5	100.00%		MO	\$ 250.00	\$ 125.00
						Subtotal	\$ 1,548.00
<u>VENDORS, MATERIALS, LOT RENTAL, SUPPLIERS</u>							
08	PROJECT PHOTOGRAPHY (PRE, PROGRESS, POST)	0.5	100.00%		EA	\$ 100.00	\$ 50.00
09	OFFICE SUPPLIES, PRINTING & REPROGRAPHICS	0.5	100.00%		MO	\$ 325.00	\$ 162.50
10	PROJECT ICE & DRINKING WATER	0.5	100.00%		MO	\$ 250.00	\$ 125.00
11	PORTABLE RESTROOMS	0.5	100.00%		MO	\$ 200.00	\$ 100.00
12	MISC. YARD DUMPSTERS	0.5	100.00%		MO	\$ 350.00	\$ 175.00
13	LOT RENTAL & STAGING YARD	0.5	100.00%		MO	\$ 1,333.00	\$ 666.50
14	TEMP FENCE RENTAL	0.5	100.00%		MO	\$ 250.00	\$ 125.00
						Subtotal	\$ 1,404.00
TOTAL ONSITE SUPERVISORY & ADMINISTRATIVE COSTS							\$ 8,702.80
	MONTHLY GENERAL CONDITIONS	0.5			MO		\$ 8,702.80



JOB ORDER COST PROPOSAL
San Tan Village Pkwy & Loop 202 30-inch Reclaimed WL Repair
EXHIBIT A - JOB ORDER PROPOSAL CONTENT
TOWN OF GILBERT - JOB ORDER CONTRACT

B&F CONTRACTING, INC.
 11011 N. 23rd Avenue
 Phoenix, AZ 85029
 Office: (623) 582-1170

Date: 5/15/2019
 Revision:

A) Project Scope of Work Description:

This job order consists of the the repair/replacement of approximately 18 LF of an existing 30" DIP reclaimed waterline. The repair is located in the dirt area north of San Tan Village Pkwy. Scope includes location, excavation, repair using solid solids, backfill and restoration of the land. The apartment fencing will need to be removed and replaced to facilitate the repair work. Scope of work and pipe repair limits are based on as-built documents provided by the Town of Gilbert. Excludes costs for casing repair work inside the casing.

B) Project Schedule/Duration:

Project Durection (for substantial completion) 30 Calendar Days including administrative requirements (i.e. submittals)
 B&F to provide Project Schedule after Mutually Agreed Upon NTP

C) Contract Price (See JO Cost Proposal Exhibit A)

D) Contract Price of Pre-Construction Services

No Pre-Construction Services are required on this Job Order.

E) Name of Contractor Representatives on this Project:

Paul Teixeira - Superintendent (480) 299-4410
 Dan Foley - Project Manager (520) 840-9785

F) Job Order Documents / Project Drawings and Specifications:

This Cost Proposal based on the following Job Order Documents provided by the Town of Gilbert:

- 1 As-Built Drawings provided by the Town of Gilbert

G) Assumptions, Clarifications & Exclusions (See Exhibit B)

H) Risk Analysis of the Project:

	SCHEDULE RISKS:	COST RISKS:
1	Pipe & Fittings Procurement	Additional pipe repair needed
2	Utility Coordination / Relocation	Existing utilities conflicting with new pipe
3	Scope of Repair expanding	location of existing reclaimed line not matching as-builts
4	ADOT requirements	ADOT requirements

I) Shop Drawings, Product Data and/or Samples Required:

Density Testing & Standard Submittal Documents

J) Job Order Specific Requirements:



JOB ORDER COST PROPOSAL
San Tan Village Pkwy & Loop 202 30" Reclaimed Water Line Repair
EXHIBIT B - CLARIFICATIONS, ASSUMPTIONS, EXCLUSIONS
TOWN OF GILBERT - JOB ORDER CONTRACT

B&F CONTRACTING, INC.
11011 N. 23rd Avenue
Phoenix, AZ 85029
Office: (520) 888-3577

Date: 5/15/2019
Revision:

- Proposal excludes costs for SWPPP and Fugitive Dust permits/fees and all other environmental permits (total trenched LF is not over 200')
- Proposal excludes costs for inspections and overtime inspection fees.
- Work is based on normal working hours 6:00 AM to 6:00 PM
- No costs have been included for construction engineering and/or engineered drawings
- Schedule based on 30 Calendar days from Mutually Agreed Upon NTP after permits have been obtained.
- Includes investigation and locating of pipe leak and repair for 18 LF on the existing 30" reclaimed water line (1 pipe joint) located in the dirt area north of San Tan Village Pkwy. Scope of work does not include repairs in the steel casing or in roadway.
- Equipment and materials will be staged at a suitable and agreed upon location within ADOT or TOG Right-of-Way
- Hard Dig - This proposal excludes any rock excavation requiring blasting or hydraulic breakers of any kind.
- Excludes costs for Archaeological Monitoring. Job Order Documents stated no Cultural Resources were required within the repair areas
- Pipe material to match existing (either DIP or PVC)
- Traffic control includes northbound lane closure on San Tan Village Pkwy. No police officers or variable message boards are included
- Includes 1/2 sack slurry backfill to to 2' above the 30" pipe and native material above to grade
- B&F to provide density testing at backfill locations per the direction of TOG
- Includes roughly 18 LF of pipe repair or 1 pipe joint on the existing 30" reclaimed WL
- TOG to provide outreach and coordination with nearby Project Stakeholders
- Excludes costs for any ROW, Engineering or Waterline Fees within our proposal
- Proposal excludes asphalt replacement or trenching / pipe repair work in San Tan Village Pkwy
- Reclaimed WL Repair Limits based off as-builts provided by TOG
- Proposal excludes costs for MAG 404 encasements or protection
- Costs related to ADOT requirements and relocation/coordination of electrical lines, pedestals and boxes to be reimbursed under the utility allowance
- Project assumes it can use the existing Town of Gilbert ADOT Blanket Encroachment Permit
- Excludes costs for Off Duty Police Officers (Town of Gilbert)
- Onsite Supervisory & Administrative costs are considered lump sum
- B&F to perform visual leak testing on 30" DIP, not hydrostatic pressure testing
- Excludes costs for variable message boards in traffic control bid
- B&F to utilize solid sleeves, MJ restraints and 30" DIP to repair section of pipe.
- Excludes costs for relocation, support, engineering, inspection or shutdowns on existing utilities in the vicinity of the repair

- If location of the existing leak requires more than (4) days to locate, B&F will need to meet with TOG and amend the scope and extent of the work
- Includes replacement of approximately 2 concrete sidewalk panels and curb and gutter that could be damaged by the excavator
- Includes landscape restoration including replacement of decomposed granite and shrubs/plants that are disturbed
- Excludes costs associated with RWCD permitting, plan development, reviews fees, engineering, inspection, road restoration
- Gilbert to provide all waterline shutdowns as needed to complete this work.



PROPOSAL

Corporatate HQ: 11011 N. 23rd Ave. Phoenix, AZ 85029

Tucson Office: 1904 W. Prince Rd. Tucson, AZ 85705

Office: 623-582-1170 | Fax: 623-582-3614

AZ Licenses: ROC-089744 A General Contracting



























ROC-11282 B-04 General Engineering

Cost Detail With Categories Without Labor and Equipment

Project Name:	San Tan Village Pkwy & Loop 202 30-inch RW Repair	Customer:	Town of Gilbert
Job Number:	BLA number: 42/5-025	Billing Address:	50 East Civic Center Drive
Bid As:	Prime		Gilbert, AZ 85296
Estimator:	Dan Foley	Phone:	4805036430
Project Address:	San Tan Village Pkwy & Loop 202	Contact:	Ken Snow
Completion Date:	TBD		

Pay Items

Description	Quantity	UM	Unit Direct Cost	Total Direct Cost			
D Mobilization & Demobilization	1.00	EACH	\$5,507.20	\$5,507.20			
Labor							
Equipment							
Material							
Subcontracted							
Trucking							
Miscellaneous							
Plug							
Unit:	\$467.20	\$1,520.00	\$0.00	\$3,520.00	\$0.00	\$0.00	\$0.00
Total:	\$467.20	\$1,520.00	\$0.00	\$3,520.00	\$0.00	\$0.00	\$0.00
D Heavy Equipment Mobilization & Demob	1.00	LS	\$3,487.20	\$3,487.20			
Mobilization & Demobilization Crew (16.00 PH/EACH, 2.00 DY)	1.00	EACH	\$1,987.20	\$1,987.20			
S Large Excavator Delivery & Return (Stearns)	2.00	EACH	\$750.00	\$1,500.00			
S 950M Delivery & Pickup (Stearns)	2.00	EACH	\$600.00	\$1,200.00			
S Shoring Delivery & Return	4.00	EACH	\$205.00	\$820.00			
D Construction Water	1.00	LS	\$825.00	\$825.00			
Labor							
Equipment							
Material							
Subcontracted							
Trucking							
Miscellaneous							
Plug							
Unit:	\$175.00	\$250.00	\$400.00	\$0.00	\$0.00	\$0.00	\$0.00
Total:	\$175.00	\$250.00	\$400.00	\$0.00	\$0.00	\$0.00	\$0.00
Q Construction Water	1.00	LS	\$825.00	\$825.00			
D Materials Testing	1.00	LS	\$1,500.00	\$1,500.00			
Labor							
Equipment							
Material							
Subcontracted							
Trucking							
Miscellaneous							
Plug							
Unit:	\$0.00	\$0.00	\$0.00	\$1,500.00	\$0.00	\$0.00	\$0.00
Total:	\$0.00	\$0.00	\$0.00	\$1,500.00	\$0.00	\$0.00	\$0.00
S Materials Testing (ACS)	1.00	EACH	\$1,500.00	\$1,500.00			
D Traffic Control	1.00	AL	\$5,600.00	\$5,600.00			
Labor							
Equipment							
Material							
Subcontracted							
Trucking							
Miscellaneous							
Plug							
Unit:	\$0.00	\$0.00	\$0.00	\$5,600.00	\$0.00	\$0.00	\$0.00
Total:	\$0.00	\$0.00	\$0.00	\$5,600.00	\$0.00	\$0.00	\$0.00
S Barricades (National Barricade Company)	21.00	DY	\$200.00	\$4,200.00			
S Maintenance & Servicing Of Barricades (National Barricade Company)	3.00	DY	\$300.00	\$900.00			
S Traffic Control Plans (National Barricade Company)	2.00	EACH	\$50.00	\$100.00			
S Signage	2.00	EACH	\$200.00	\$400.00			
D Remove Fence & Replace	1.00	LS	\$9,729.60	\$9,729.60			

Description		Quantity	UM	Unit Direct Cost	Total Direct Cost		
(Item Remove Fence & Replace continued)							
	<u>Labor</u>	<u>Equipment</u>	<u>Material</u>	<u>Subcontracted</u>	<u>Trucking</u>	<u>Miscellaneous</u>	<u>Plug</u>
Unit:	\$2,714.00	\$3,015.60	\$0.00	\$4,000.00	\$0.00	\$0.00	\$0.00
Total:	\$2,714.00	\$3,015.60	\$0.00	\$4,000.00	\$0.00	\$0.00	\$0.00
	Remove Fence	1.00	EACH		\$3,437.76		\$3,437.76
	Removals Crew (12.00 PH/EACH, 1.50 DY)	1.00	EACH		\$3,437.76		\$3,437.76
	Replace Fence	1.00	EACH		\$6,291.84		\$6,291.84
	Replace Crew (8.00 PH/EACH, 1.00 DY)	1.00	EACH		\$2,291.84		\$2,291.84
	Fence Cost	1.00	UNIT		\$4,000.00		\$4,000.00
	Investigate & Locate Leak	1.00	EACH		\$23,081.80		\$23,081.80
	<u>Labor</u>	<u>Equipment</u>	<u>Material</u>	<u>Subcontracted</u>	<u>Trucking</u>	<u>Miscellaneous</u>	<u>Plug</u>
Unit:	\$9,143.20	\$13,938.60	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total:	\$9,143.20	\$13,938.60	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Excavate & Locate Leak	1.00	EACH		\$23,081.80		\$23,081.80
	Repair (32.00 PH/EACH, 4.00 DY)	1.00	EACH		\$21,056.80		\$21,056.80
	Shoring Rental	1.00	LS		\$2,025.00		\$2,025.00
	Repair 30" Pipe	1.00	EACH		\$38,918.00		\$38,918.00
	<u>Labor</u>	<u>Equipment</u>	<u>Material</u>	<u>Subcontracted</u>	<u>Trucking</u>	<u>Miscellaneous</u>	<u>Plug</u>
Unit:	\$10,498.40	\$15,118.76	\$11,392.84	\$270.00	\$1,638.00	\$0.00	\$0.00
Total:	\$10,498.40	\$15,118.76	\$11,392.84	\$270.00	\$1,638.00	\$0.00	\$0.00
	Repair 30" Pipe	1.00	EACH		\$27,960.00		\$27,960.00
	Repair (32.00 PH/EACH, 4.00 DY)	1.00	EACH		\$23,592.16		\$23,592.16
	Mixed Load Dump Fees (In Search)	6.00	LOAD		\$45.00		\$270.00
	Shoring Rental	1.00	LS		\$2,025.00		\$2,025.00
	ReadyMix - Slurry 1/2 Sack ABC	29.61	CY		\$70.00		\$2,072.84
	Trucking (1.00 DY, 2.63 Trucks, 9.75 EACH/HR)	78.00	EACH		\$21.00		\$1,638.00
	30" DIP Material	1.00	EACH		\$9,320.00		\$9,320.00
	30" DIP	18.00	LF		\$140.00		\$2,520.00
	Solid Sleeves & Mega Lugs	4.00	EACH		\$1,700.00		\$6,800.00
	Final Cleanup & Restore DG	1.00	AL		\$11,515.04		\$11,515.04
	<u>Labor</u>	<u>Equipment</u>	<u>Material</u>	<u>Subcontracted</u>	<u>Trucking</u>	<u>Miscellaneous</u>	<u>Plug</u>
Unit:	\$2,390.40	\$3,824.64	\$5,300.00	\$0.00	\$0.00	\$0.00	\$0.00
Total:	\$2,390.40	\$3,824.64	\$5,300.00	\$0.00	\$0.00	\$0.00	\$0.00
	General Cleanup (3.00 DY/EACH, 3.00 DY)	1.00	EACH		\$6,215.04		\$6,215.04
	Aggregate - Decomposed Granite 3/4"	100.00	TON		\$53.00		\$5,300.00
	Landscape Plant Replacement	1.00	AL		\$5,000.00		\$5,000.00
	Concrete Curb & Sidewalk Replacement	1.00	AL		\$3,900.00		\$3,900.00
	<u>Labor</u>	<u>Equipment</u>	<u>Material</u>	<u>Subcontracted</u>	<u>Trucking</u>	<u>Miscellaneous</u>	<u>Plug</u>
Unit:	\$0.00	\$0.00	\$0.00	\$3,900.00	\$0.00	\$0.00	\$0.00
Total:	\$0.00	\$0.00	\$0.00	\$3,900.00	\$0.00	\$0.00	\$0.00
	Sidewalk Panels	120.00	SF		\$15.00		\$1,800.00
	Vertical Curb	30.00	SF		\$70.00		\$2,100.00

Direct Cost Totals

	Amount	Percent of Direct Cost
Labor:	\$25,388.20	24.05%
Equipment Owned:	\$33,367.60	31.61%
Equipment Rented:	\$4,300.00	4.07%
Materials Owned:	\$0.00	0.00%
Materials Purchased:	\$17,092.84	16.19%
Subcontracted:	\$23,790.00	22.53%
Trucking Owned:	\$0.00	0.00%
Trucking Hired:	\$1,638.00	1.55%
Miscellaneous:	\$0.00	0.00%
Plug:	\$0.00	0.00%
Direct Cost:	<u>\$105,576.64</u>	

Pay Item Summary

	Amount	Percent of Bid Price
Total Direct Cost:	\$105,576.64	100.00%
Total DC Adds/Cuts:	\$0.00	0.00%
Total Indirect Cost:	\$0.00	0.00%
Total Bond:	\$0.00	0.00%
Total Overall Cost:	<u>\$105,576.64</u>	100.00%
Total Overhead:	\$0.00	0.00%
Total Profit:	\$0.00	-0.00%
Total Margin:	\$0.00	-0.00%
Total Bid Price:	<u>\$105,576.64</u>	

JOB ORDER

Date: May 15, 2019 _____
Project Number: WW1232 _____
Contractor's Name: B&F Contracting, Inc. _____
Project Name: 30" Reclaimed Water Main Repair – Santan Village Parkway
Contract No: 319000402 _____
Job Order No.: 021 _____
Scope of Work/Technical Specifications/Drawings See Attachment 1
Location of Work: Greenfield Rd and Loop 202 near Santan Village Parkway
Total Cost for Job Order: \$161,661.08 _____
Completion Date/Schedule: June 18, 2019 _____
Submittal Requirements: See Attachment 2
Other: _____

Payment Submittal Requirements: The Payment submittal will be monthly and will be on the Town of Gilbert form attached to this Job Order. It shall identify the percent of work complete and the percent of payment requested.

Approved By:  - B&F Contracting, Inc.
CONTRACTOR

Approved By: _____
Authorized Town Representative

Approved By: _____
Town of Gilbert



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Dan Henderson, Economic Development Director, 503-6891

MEETING DATE: 05/16/2019

SUBJECT: Review and consider adoption of a Resolution approving a Development and Disposition Agreement with Heritage North Partners for the sale and development of property located south of Juniper Avenue, east of Ash Street, and west of Gilbert Road consisting of approximately 9.1 acres (contract no. 319001147)

STRATEGIC INITIATIVE: Economic Development

RECOMMENDED MOTION

A motion to approve a Development and Disposition Agreement with Heritage North Partners, LLC, for the sale and development of real property located south of Juniper Avenue, east of Ash Street, and west of Gilbert Road consisting of approximately 9.1 acres and authorize the Mayor to execute all documents.

BACKGROUND/DISCUSSION

The Heritage District is approximately .3 square miles in size and is considered Gilbert's downtown. It is the community's original town site, representing the cultural and historical center of the community. In 1989, the Heritage District was designated as a Redevelopment Area, and in 2013, the area was also designated as an Entertainment District.

In August 2018, Council adopted the 2018 Heritage District Redevelopment Plan. This plan fosters coordinated efforts between the public and private sector in the continued redevelopment of the downtown. The approximately 9.1-acre site, known in the 2018 Redevelopment Plan as the North Anchor, was identified as one of three key redevelopment areas. These areas address community needs, strengthen existing uses

and meet real estate and market demand. In addition, the Redevelopment Plan identified the Commons, an east-west urban park central to the North Anchor redevelopment site, as a catalyst project. Catalyst projects are intended to maximize the land value and tax revenue potential of Town-owned properties that may be acquired by the private sector through Request for Proposals (RFP).

On March 5, 2018, Gilbert issued a Request for Qualifications (RFQ) for purchase and development of land: 9.1 acres, parcels 302-14-907 and 302-14-908. Nine responses to the competitive process were received. In August 2018, five firms were selected for in-person interviews. The shortlist was again narrowed, and three firms were invited to respond to a Request for Proposal (RFP) and working charette with the selection committee on October 16, 2018. Through this competitive process, Gilbert selected Heritage North Partners, LLC to negotiate an agreement for the sale and development of the property. Principal provisions of the Agreement are:

- All square footage referenced in the Development and Disposition Agreement are minimums and in no event will the project total less than 500,000-gross-square-feet.
 - 100,000-square-feet of Class A office
 - 25,000-square-feet of retail and 10,000-square-feet of office
 - 150 Key or 75,000-square-foot boutique hotel
 - 250 Units or 302,000-square-feet of multifamily
 - One (1) parking structure consisting of a minimum of five (5) floors, to be used for vehicular parking supporting the office, retail and hotel uses developed within the Project
 - One (1) parking structure consisting of a minimum of five (5) floors, “wrapped” by the multi-family residential building, to be used for vehicular parking supporting the multi-family residential and hotel uses developed within the Project
- Construction of Commons urban open-space consisting of approximately 15,000-gross-square-feet and priority for City to reserve the common area for public events.
- Heritage North Partners, LLC, as Developer, shall construct and install at its sole cost, Heritage District signature signage within the northeast corner of the Project (or elsewhere within the Project along Gilbert Road in a location mutually acceptable to Gilbert and Developer) of a size and design mutually approved by Developer and Gilbert.
- In addition to the Purchase Price, Heritage North Partners, LLC, shall pay to Gilbert at the Closing the sum of Three Hundred Fifty Thousand and no/100 Dollars (\$350,000) as a contribution of funds to be used for improvements to the Heritage District. Such funds may be spent by Gilbert for such Heritage District improvement projects as Gilbert may determine in its sole discretion, including without limitation Heritage District improvement projects within areas of the Heritage District located outside of the Property.
- Construction of north segment of the Paseo, a car-free, continuous, dedicated north-south pedestrian/bicycle, as identified in the 2018 Redevelopment Plan.
- Improvements to southern border of the development to integrate into the Western Powerline Trail.

- Improvements to the Western Powerline Trail including no less than \$150K in public art.
- One phase of development with certificates of occupancy commencing in Q3-Q4 2021.
- Agreed on a process for determining the fair market value of the Property, subject to minimum purchase price of \$5,332,000.
- Closing will take place no later than nine months after opening of escrow.
- Closing may be extended no more than four months subject to extension payments.

The Resolution and Development and Disposition Agreement were reviewed for form by John Baird, Deputy Town Attorney.

FINANCIAL IMPACT

The negotiated price will be fair market value which will add, at a minimum, \$5,332,000 to the General Fund.

\$350,000 in contributions will be added to the General Fund to be reinvested into the Heritage District.

The financial impact was reviewed by Laura Lorenzen, Management and Budget Analyst.

STAFF RECOMMENDATION

Staff recommends approval of a Development and Disposition Agreement with Heritage North Partners, LLC, for the sale and development of real property located south of Juniper Avenue, east of Ash Street, and west of Gilbert Road consisting of approximately 9.1 acres, and authorizing the Mayor to execute all documents.

Respectfully submitted,

Dan Henderson
Economic Development Director

Approved By

Approval Date

Jennifer Graves

5/9/2019 12:08:28 PM

John Baird

5/9/2019 1:23:45 PM

Laura Lorenzen

5/13/2019 12:03:38 PM

RESOLUTION NO. _____

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AND DISPOSITION AGREEMENT WITH HERITAGE NORTH PARTNERS, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, RELATED TO THE SALE AND DEVELOPMENT OF PROPERTY IN THE TOWN; AND PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS.

WHEREAS, A.R.S. § 9-500.05 authorizes the Town of Gilbert to enter into development agreements related to the development of property in the Town; and

WHEREAS, the property subject to the Development and Disposition Agreement attached as Exhibit A is located within the Town of Gilbert; and

WHEREAS, development of the property subject to the Development and Disposition Agreement will further the economic development and other goals of the Redevelopment Plan for the Downtown Heritage District; and

WHEREAS, the Town Council of the Town of Gilbert finds that entering into said Development and Disposition Agreement is in the best interest of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, that the Development and Disposition Agreement between the Town of Gilbert and Heritage North Partners, LLC, an Arizona limited liability company, attached hereto as Exhibit A, be and is hereby approved and the Mayor is authorized and directed to execute said Development and Disposition Agreement and the Purchase Contract attached thereto; and

FURTHER RESOLVED, that the Town Manager be and he is hereby authorized to take all actions necessary to carry out the Development and Disposition Agreement in accordance with its terms and intent; and

FURTHER RESOLVED, that the Town Clerk be and she is hereby authorized and directed to record a copy of the Development and Disposition Agreement with the Maricopa County Recorder within ten days after the date of its execution by the parties in accordance with the terms of the Agreement.

FURTHER RESOLVED, that all resolutions and parts of resolutions in conflict with this Resolution are hereby repealed.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA THIS 16th DAY OF MAY, 2019.

Jenn Daniels, Mayor

ATTEST:

Lisa Maxwell, Town Clerk
APPROVED AS TO FORM:

Christopher W. Payne, Town Attorney

I hereby certify that the above foregoing Resolution No. _____ was duly passed by the Common Council of the Town of Gilbert, Arizona at a regular meeting held on _____, 2019, and that a quorum was present thereat and that the vote thereon was ___ ayes and ___ nays and ___ abstentions. _____ Councilmembers were absent or excused.

Lisa Maxwell, Town Clerk

When recorded return to:

Town Clerk
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296

DEVELOPMENT AND DISPOSITION AGREEMENT BY AND BETWEEN
THE TOWN OF GILBERT, ARIZONA
AND
HERITAGE NORTH PARTNERS, LLC

Date: May 16, 2019

(Contract No. 319001147)

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DEVELOPMENT AND DISPOSITION AGREEMENT

THIS DEVELOPMENT AND DISPOSITION AGREEMENT (“this Agreement”) is entered into this 16th day of May, 2019, by and between Heritage North Partners, LLC, an Arizona limited liability company (“Developer”), and the Town of Gilbert, Arizona, an Arizona municipal corporation (“Gilbert”) for the development and disposition of the certain property owned by Gilbert in the downtown Heritage District (“Project”)

RECITALS:

- A. Gilbert has adopted a Redevelopment Plan for the redevelopment of its historic downtown, an area known as the “Heritage District.” A principal goal of the Redevelopment Plan is to further economic development in the historic downtown area.
- B. The real property that is the subject of this Agreement is that approximately 9.1 acre parcel located south of Juniper Avenue, east of Ash Street and west of Gilbert Road in Gilbert, Arizona, as more specifically described in the attached Exhibit A (“Property”).
- C. Following a public competitive process, Gilbert selected Developer as the most qualified firm to redevelop the Property.
- D. This Agreement is voluntarily entered into by the parties to further the purposes of the Redevelopment Plan and to fulfill Gilbert’s need for mixed uses in the Heritage District, the creation of new jobs, the stimulation of further economic development within Gilbert, and other tangible and intangible, direct and indirect benefits to Gilbert and its citizens. Developer acknowledges that the Project is an economically viable use at this location and no change in use for a period of ten (10) years after the date of this Agreement will be permitted without amending this Agreement.
- E. The development of the Property in accordance with this Agreement is in the best interest of Gilbert and the health, safety and welfare of its residents.
- F. A.R.S. Section 9-500.05 authorizes Gilbert to enter into a Development Agreement with a landowner or other person having an interest in real property located in Gilbert.
- G. A.R.S. Section 36-1480 authorizes the sale of land in a Redevelopment Area.
- H. The Agreement is being entered into for the purposes of satisfying the above recitals and is consistent with the Redevelopment Plan and Gilbert’s General Plan.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and for the good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Definitions.**

“Developer” means Heritage North Partners, LLC, an Arizona limited liability company, and its permitted successors and assigns.

“Developer’s Representative” means David E. Sellers, or such other person that Developer designates in writing and submits to Gilbert.

“Development Plan” means the plan for the development of the Property as set forth on Exhibit B.

“Development Requirements” means the requirements set forth in the Gilbert Land Development Code, the Heritage District Design Guidelines, the Redevelopment Plan, Gilbert building and other technical codes and other applicable state, federal and local laws governing the development of the Project, including Final Design Approval.

“Event of Default” means an event described in Section 7 of this Agreement.

“Final Design Approval” means the final approval given by the Redevelopment Commission for the design of the Project as set forth in the Development Plan.

“Gilbert’s Representative” means Dan Henderson, or such other person that Gilbert designates in writing and submits to Developer.

“Minimum Improvements” means those improvements described in Section 3.1 of this Agreement.

“Parties” means the Town of Gilbert, Arizona and Heritage North Partners, LLC, collectively.

“Party” means either the Town of Gilbert, Arizona or Heritage North Partners, LLC, individually.

“Project” means development and operation of the Property in compliance with this Agreement.

“Property” means the real property legally described in Exhibit A.

“Redevelopment Commission” means the Gilbert Redevelopment Commission appointed pursuant to Section 5.109 of the Gilbert Land Use Code.

“Redevelopment Plan” means the Gilbert Heritage District Redevelopment Plan, adopted in 1991, and updated in 2001, 2008 and 2018.

“Schedule of Development” means the schedule for development of the Project as set forth in Exhibit C.

“Unavoidable Delay” means the following acts or events, to the extent that they substantially impair the ability of a Party to carry out its obligations under this Agreement: acts of God, acts of the Federal, state or local government (other than ordinary course of business activities or decisions of the Town), acts of war or terrorism, litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated by this Agreement (other than the effect of litigation instituted by Developer, or a successor in interest or tenant of Developer, against Gilbert), fires, floods, epidemics, quarantine, strikes, embargoes, and unusually severe and unanticipated weather, or the delays of subcontractors or materialmen due to such causes, or any other event that is beyond the control of a Party. In no event shall: (i) any Party’s financial condition or inability to fund or obtain funding, financing or leasing constitute an Unavoidable Delay with respect to any obligation of such Party; or (ii) any delay arising from a Party’s default or other failure to perform under this Agreement constitute an Unavoidable Delay with respect to such Party’s obligations under this Agreement.

2. **Purpose.** The purpose of this Agreement is to further the implementation of the Redevelopment Plan by providing for the development and disposition of the Property in accordance with the terms and conditions of this Agreement. This Agreement shall govern the sale of the property and the development and use of the Project.

3. **Developer’s Responsibilities.**

3.1 General. Developer shall develop the entirety of the Property and the Project in compliance with the Development Plan and Development Requirements. Such Development Plan shall include, and Developer shall develop within the Property, all of the following improvements (“Minimum Improvements”):

3.1.1 Buildings.

3.1.1.1 Office Buildings. A minimum of one (1) office building which may consist of up to five (5) floors. The area for such office use shall contain a minimum of one hundred thousand (100,000) gross square feet of building area, to be used for class A office space.

3.1.1.2 Retail/Office Buildings. A minimum of two (2) buildings, each of which may consist of up to two (2) floors, but collectively shall contain a minimum of twenty-five thousand (25,000) gross square feet of building area on the first floor to be used for general and specialty retail establishments, including restaurant, entertainment, fitness and wellness and community merchandise retail uses, and a minimum of ten thousand (10,000) gross square feet of building area on the second floor, to be used for class A office space.

3.1.1.3 Hotel Building. One (1) building to be used for a hotel, consisting of a minimum of either seventy-five thousand (75,000) gross square feet of building

area or one hundred fifty (150) rooms. The hotel shall be a select service, design-forward lifestyle/boutique hotel.

3.1.1.4 Multi-Family Building. One (1) building to be used for multi-family residential living, consisting of a minimum of either three hundred twenty thousand (320,000) gross square feet of building area or two hundred-fifty (250) units. Developer acknowledges that approval of a Conditional Use Permit by the Gilbert Planning Commission in accordance with the Gilbert Land Development Code shall be required for ground floor location of multi-family dwelling units within the Heritage Village Center Zoning District. Developer agrees that the multi-family building shall be located within the Project as generally depicted on Exhibit G, and that the combined footprint of the multi-family building and the multi-family parking structure described below shall be generally consistent with the footprint of such structures as generally depicted on Exhibit G.

3.1.1.5 Retail Arcade. Where retail uses are developed within the Project, arcades or canopies shall be incorporated. Such arcades and canopies shall be constructed in a width and height designed to maximize visibility, daylight, safety, access and ventilation.

Notwithstanding the above Minimum Improvement requirements, Gilbert and Developer acknowledge the need of Developer to have flexibility in the design and development of the Project, taking in consideration numerous factors which are not all within the control of Developer, such as market orientation, demand and competition, and economic considerations, including but not limited to, interest rates. Therefore, it is the intent of Developer and Gilbert to hereby acknowledge and provide for the right of Developer to decrease or increase the total gross square footage for the Project in an amount as may be determined by Developer subject to the prior approval of Gilbert's Representative, which such approval shall not be unreasonably withheld, conditioned or delayed, but in no event to a total gross square footage less than 500,000 gross square feet. Developer agrees that in no event shall the increase in size of any one or more of the above-described uses or asset classes reduce or offset the minimum buildable area of the other uses or asset classes.

3.1.2 Parking Improvements. Developer shall be responsible to provide on-site parking for all uses located within the Project through a combination of surface parking and vertical parking structures. Developer shall endeavor to incorporate access to any parking structures from public streets, rather than from the Project's internal loop road. Gilbert shall be under no obligation to provide or to permit any off-site parking for the Project or any component thereof (including without limitation, parking within any Gilbert-owned parking structures), or to consider any application for Administrative Use Permit to permit off-site parking for the Project or any component thereof pursuant to Section 4.203(I) of the Gilbert Land Development Code. The gross square footage of any parking structure constructed within the Project shall not be included in the calculations of gross square footage contemplated by Section 3.1.1 above, and the gross square footage of any surface parking areas constructed within the Project shall not be included

in the calculations of gross square footage contemplated by Section 3.1.3 below. Parking structures are anticipated to include the following:

3.1.2.1 General Parking Structure. One (1) parking structure consisting of a minimum of five (5) floors, to be used for vehicular parking supporting the office, retail and hotel uses developed within the Project.

3.1.2.2 Multi-Family Parking Structure. One (1) parking structure consisting of a minimum of five (5) floors, “wrapped” by the multi-family residential building, to be used for vehicular parking supporting the multi-family residential and hotel uses developed within the Project.

3.1.3 Commons Area. An urban open-space commons area consisting of approximately fifteen thousand (15,000) gross square feet of walkable open space open to the public, featuring a centralized shade structure providing for filtered sunlight. This commons area shall contain a variety of shaded seating, walking, and play areas for communal use, and shall provide a flexible space which may include an urban splash pad that can be turned on or off in order to accommodate larger events. Public restrooms shall be made available within the Project in reasonable proximity to or within the commons area. Developer agrees that Gilbert shall have first priority to reserve the commons area for public events upon six (6) months’ prior written request.

3.1.4 Circulation.

3.1.4.1 Internal Loop Road. A pedestrian-, bicycle- and passenger vehicle-friendly internal vehicular loop road providing access between Ash Street and Gilbert Road and the internal areas of the Property, together with limited number of surface parallel parking spaces. Developer will provide trees throughout paved areas and along pedestrian pathways to provide shade and reduce heat build-up and glare.

3.1.4.2 The Paseo. The Project’s pedestrian and bicycle circulation route(s) shall connect to the Paseo (as described in the Redevelopment Plan) at the southern boundary of the Property, and shall be designed to integrate in both size and overall design into the existing portions of the Paseo in accordance with the Redevelopment Plan. The portion of the Paseo interior to the Project shall be a car-free, continuous, dedicated north-south pedestrian/bicycle route that may include seating, lighting, bike racks, garbage cans, drinking fountains, and wayfinding. It shall include overhead shade elements, street trees and native landscape elements. Developer and Gilbert shall cooperate reasonably in accomplishing such design and integration. Developer acknowledges that it may be necessary to locate the bicycle path along Ash Street from the southern boundary of the Property to Juniper Avenue if the extension of the Paseo internal to the Project cannot reasonably be designed to accommodate bicycle circulation. A conceptual rendering of the Paseo improvements envisioned by Gilbert and Developer is attached as Exhibit H.

3.1.4.3 External Pedestrian Circulation. Streetscapes along public streets should reinforce the character of the Project and the Heritage District as a pedestrian-oriented area by providing continuity among adjacent uses through use of a variety of water-conserving plant materials, decorative paving, street furniture, public art and integrated infrastructure elements consistent with the overall architectural theme of the Project. Ash Street in particular shall be oriented to provide a vibrant street frontage with pedestrian scale walkability. Pedestrian connections to the Western Power Line Trail, the University Building located at 92 West Vaughn Avenue, Heritage Marketplace, and streetscape shall be provided.

3.1.5 Heritage District Gateway Signage. The Project constitutes a major entry and arrival point into the Heritage District. Developer shall provide a welcoming gateway that sets the desired tone and denotes the significance of arrival in the Heritage District via distinct signage and/or public art which reinforces the downtown identity. Without limiting the foregoing, Developer shall construct and install at Developer's sole cost, Heritage District signature signage within the northeast corner of the Project (or elsewhere within the Project along Gilbert Road in a location mutually acceptable to Gilbert and Developer) of a size and design mutually approved by Developer and Gilbert.

3.1.6 Enhanced South Project Improvements. Developer shall construct and install improvements and enhancements to the portion of the Project located within and along the full east-west length of the south boundary of the Project. At locations where the Project connects to the Western Power Line Trail and canal, the hardscape and landscape shall integrate appropriately the theme and layout of the existing and anticipated future amenity. Design details shall include, at a minimum, the following: (i) integration of the Paseo, which includes an unobstructed walking/biking path and two-way bikeway; (ii) hardscape along the full length of the south boundary of the Project that ties into existing improvements; and (iii) lawn and landscape improvements all along the full length of the south Project boundary (east to west). A conceptual rendering of the enhanced south project improvements envisioned by Gilbert and Developer is attached as Exhibit I.

3.1.7 Western Power Line Trail Improvements. Developer shall construct and install improvements and enhancements to the Western Power Line Trail along and adjacent to the full east-west length of the south boundary of the Project which, at a minimum, includes upgrading the appearance of the existing canal channel. At locations where the Western Power Line Trail and canal connect to the Project, the hardscape and landscape shall integrate appropriately the theme and layout of the existing and anticipated future amenity. Design details shall include, at a minimum, the following: (i) integration of the Paseo, which includes an unobstructed walking/biking path and two-way bikeway; (ii) hardscape and landscape along and adjacent to the full length of the south boundary of the Project that ties into Project improvements; (iii) installation of public art, to be located within the Western Power Line Trail area (or at other locations as determined by Gilbert), the value of which shall be in excess of \$150,000; and (iv) seating areas along Western Power Line Trail; (v) integration of existing water features. A conceptual

rendering of the Western Power Line Trail improvements envisioned by Gilbert and Developer is attached as Exhibit J.

3.1.8 Bus Stop Maintenance. Developer acknowledges there is a bus stop located at the northeast corner of the Project site within the Town's public right of way. The bus stop will remain in substantially its current location, and may be improved by Developer consistent with the overall architectural theme of the current bus stop. Following any improvement of the bus stop by Developer in accordance with the Development Requirements, Gilbert shall be responsible for maintenance of the bus stop.

3.1.9 On-Site Storm Water Retention. Developer shall be responsible for retaining on or under the Property all storm water run-off generated by the Property, the improvements located on the Property and adjacent streets. Developer will utilize pervious ground surface materials where feasible to reduce surface water flows.

3.1.10 Pedestrian Counters. Developer shall cooperate reasonably with Gilbert in the placement of pedestrian counters at various points within the Project.

3.1.11 Outdoor Dog Area. Developer may include an outdoor dog area as an amenity to the multi-family building.

3.1.12 Electric Vehicular Charging Stations. Developer shall be responsible to provide electrical vehicular charging stations within the Project at a location(s) as may be determined by Developer in its reasonable discretion.

3.1.13 Construction Standards. Developer agrees that all vertical improvements constructed within the Project shall conform to the construction standards set forth in Exhibit F.

3.2 Improvements and Technical Requirements.

3.2.1 All offsite improvements required to accommodate the Project are the sole responsibility of Developer.

3.2.2 Developer shall be responsible for the costs of platting or replatting the Property. Gilbert shall reasonably cooperate in such platting or replatting efforts.

3.2.3 Promptly after the execution of this Agreement, Developer shall make applications, submittals and requests to, and seek approvals and permits from, Gilbert for zoning, rezoning, use permits, site plan review and other approvals and permits relating to the development and use of the Property for the Project as contemplated by this Agreement. Such applications, submittals and requests shall seek approvals and permits that will allow the Project to be developed in accordance with the Development Plan. Developer and Gilbert shall, after submission of such applications, submittals and requests, diligently work with one another to pursue such approvals and permits. Developer acknowledges that all applications, submittals and requests described herein

shall be subject to the review and approval processes of Gilbert acting in its governmental capacity.

3.2.4 Developer acknowledges and agrees that there shall be a consistent architectural theme for the Project and that the Project shall be designed and constructed as a first-quality development. The Project shall be designed and constructed so as to be harmonious with existing adjacent uses, including the multi-family properties located to the west of the Project.

3.2.5 The Project shall be designed and constructed so that it does not contain any “back-of-house” areas absent of Project design and finish. All garbage, refuse, recycling and grease collection bins and facilities shall be located indoors and access to such areas shall be designed so as to integrate into the design of the overall Project. Dedicated exterior refuse facilities or enclosures detached from a building shall not be permitted. Internal loading zones shall be located in areas off of the main loop road within the Project.

3.2.6 Developer shall grant to Gilbert recorded emergency vehicle access and use easements over and through the main entrances to the Project and the private roadways as may exist from time to time within the Project, including, without limitation, those shown on the Development Plan.

3.2.7 Developer shall submit a full traffic impact study for the proposed uses within the Project, prepared by a licensed traffic engineer, and in a form and substance as required by the Gilbert Town Traffic Engineer.

3.3 Schedule of Development. Developer shall develop the Project in compliance with the Schedule of Development. Developer may, with the prior written approval of Gilbert which such approval shall not be unreasonably, withheld, conditioned or delayed, revise the Schedule of Development as may be necessitated by Unavoidable Delays, and may, with the prior written approval of Gilbert which such approval shall not be unreasonably, withheld, conditioned or delayed, revise the Schedule of Development to accommodate other unforeseen factors, events or unexpected occurrences such as, among other things, market considerations, adverse interest rates or other market factors adversely affecting the economic feasibility of development of the Project. Notwithstanding the above, Developer acknowledges and agrees that in no event shall the construction on the multi-family portion of the Project start prior to the start of construction on the office, retail or hotel portions.

3.4 Required Approvals for Development.

3.4.1 Final Design Approval for the Project shall be obtained from the Redevelopment Commission pursuant to Section 5.109 of the Gilbert Land Development Code. Following Final Design Approval, the Development Plan will be incorporated into this Agreement as Exhibit B.

3.4.2 Any material change to the Development Plan requires approval by the Redevelopment Commission and the Gilbert Town Council, provided however, that the Redevelopment Commission may approve changes to the location and increases or decreases in the gross square footages of the buildings and other areas of the Project, if such changes are generally consistent with Exhibit B and otherwise in conformance this Agreement, in which case the revised Development Plan shall be attached as a new Exhibit B. Non-material changes to the Development Plan may be approved by Gilbert Town staff, subject to and in accordance with Development Requirements.

3.4.3 Any change to the uses set forth in this Agreement or the Development Plan shall require approval of the Gilbert Town Council.

3.5 Limitation on Changes in Use after Conveyance of the Property to Developer. Developer understands and agrees that the Property is being sold to Developer by Gilbert in reliance on Developer's representations that Developer has the financial capacity to carry out Developer's responsibilities and that the Project will be developed in compliance with this Agreement, including the uses set forth in Section 3.1 of this Agreement and the Development Requirements. Reduction of the Minimum Improvements below the size or quantity minimums set forth in this Agreement prior to the date that is ten (10) years after the date of conveyance of the Property by Gilbert to Developer is prohibited without the consent of the Gilbert Town Council, which consent may be withheld by the Gilbert Town Council in its sole discretion. Any change to a use that is not permitted in the Heritage Village Center zoning district shall require approval of a rezoning ordinance in accordance with the requirements of the Gilbert Land Development Code.

3.6 Insurance. Developer shall obtain the insurance policies, coverages and limits of liability as set forth in Exhibit E.

4. **Gilbert's Responsibilities.**

4.1 Processing of Development Plan. Subject to Development Requirements, Gilbert will cooperate reasonably with Developer in timely processing the approval or issuance of permits, site plans, subdivision plats or other development approvals requested in connection with development of the Project in conformity with the Development Plan. Gilbert further agrees that no unusual or extraordinary review or inspection requirements will be imposed by Gilbert and that approvals, inspections and permits will be processed promptly within the limits of Gilbert's then-existing staff.

4.2 Municipal Services Generally. Gilbert hereby agrees to include the Property in any and all Gilbert service areas and to provide the Property with water, wastewater, police and fire protection services, refuse collection services, and all other services provided by Gilbert, in a manner comparable to those services provided to all landowners and occupants of Gilbert, subject to the terms of this Agreement, the Development Plan and the Development Requirements.

5. Conveyance of Property to Developer.

- 5.1 Purchase Contract. The form of Purchase Contract attached hereto as Exhibit D contains the specific terms and conditions applicable to the sale of the Property by Gilbert to Developer, including the purchase price. The Purchase Contract shall be executed within ten (10) days following the Gilbert Town Council's approval of this Agreement.
- 5.2 Developer's Financial Commitments. At least fifteen (15) days prior to Closing (as that term is defined in the Purchase Contract), Developer shall submit to Gilbert evidence that Developer has obtained final and binding financing commitments necessary for the development of the Property (or portion thereof) in accordance with this Agreement. Within ten (10) days of submittal of the evidence of financing commitments, Gilbert shall, in its discretion, approve or disapprove such evidence of financing commitments, which approval shall not be unreasonably withheld. If Gilbert disapproves of such evidence of financing commitments, Gilbert may elect to terminate this Agreement after providing Developer with written notice and opportunity to cure pursuant to Section 7.3 below.

6. Representations of the Parties.

- 6.1 Developer Representations. Developer represents and warrants to Gilbert, acknowledging and agreeing Gilbert is entering into this Agreement in reliance on such representations and warranties:
- 6.1.1 Developer's execution and approval of this Agreement is in compliance with the organizational, formation and operating documents of Developer.
- 6.1.2 Developer has the financial capacity and the development expertise to develop the Project as set forth in this Agreement.
- 6.1.3 Developer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement and evidence this Agreement.
- 6.1.4 As of the date of this Agreement, Developer knows of no litigation, proceeding or official investigation contesting the powers of Developer or its officers with respect to this Agreement including Developer' execution, delivery and performance hereof.
- 6.1.5 The execution, delivery and performance of this Agreement by Developer is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Developer is a party or is otherwise subject.
- 6.1.6 Developer has not paid or given, and will not pay or given, any third party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

- 6.1.7 Developer has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.
- 6.2 Gilbert Representations. Gilbert represents and warrants to Developer, acknowledging and agreeing Developer is entering into this Agreement in reliance on such representations and warranties:
- 6.2.1 Gilbert will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement and evidence this Agreement.
- 6.2.2 As of the date of this Agreement, Gilbert knows of no allegation, claim, litigation, proceeding, initiative, referendum or official investigation contesting the powers of Gilbert or its officials with respect to this Agreement including Gilbert's execution, delivery and performance hereof.
- 6.2.3 The execution, delivery and performance of this Agreement by Gilbert is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which Gilbert is a party or is otherwise subject.
- 6.2.4 Gilbert has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.
7. **Events of Default; Remedies.**
- 7.1 Events of Default by Developer. Default or an Event of Default by Developer under this Agreement shall mean one or more of the following:
- 7.1.1 Any representation or warranty made in this Agreement by Developer was materially inaccurate when made or shall prove to be materially inaccurate during the term of this Agreement;
- 7.1.2 Developer fails to comply with the Schedule of Development, the Development Plan or the Development Requirements;
- 7.1.3 Developer transfers or attempts to transfer or assign this Agreement in violation of Section 9.17; or
- 7.1.4 Developer fails to observe or perform any other material covenant, obligation or agreement required of it under this Agreement.
- 7.2 Events of Default by Gilbert. Default or an Event of Default by Gilbert under this Agreement shall mean one or more of the following:

- 7.2.1 Any representation or warranty made in this Agreement by Gilbert was materially inaccurate when made or shall prove to be materially inaccurate during the term of this Agreement; or
- 7.2.2 Gilbert fails to observe or perform any other material covenant, obligation or agreement required of it under this Agreement. It is not a Default of this Agreement if Gilbert does not approve the design of the Project in accordance with its design guidelines.
- 7.3 Grace Periods; Notice and Cure. Upon the occurrence of an Event of Default by any Party, such Party shall, upon written notice from a non-defaulting Party, proceed immediately to cure or remedy such Event of Default and, in any event, such Event of Default shall be cured within thirty (30) days after receipt of such notice, or, if such Event of Default is of a nature that is not capable of being cured within thirty (30) days shall be commenced within such period and diligently pursued to completion.
- 7.4 Remedies on Default. Whenever any Event of Default occurs and is not cured (or cure undertaken) in accordance with Section 7.3 of this Agreement, the non-defaulting Party may take any of one or more of the following actions:
- 7.4.1 Remedies of Gilbert. Gilbert's exclusive remedies shall consist of, and shall be limited to, the following:
- (a) If an Event of Default by Developer occurs prior to opening of escrow for the sale of the Property, Gilbert may suspend any or all of its obligations under this Agreement and declare the Agreement terminated.
 - (b) If an Event of Default by Developer occurs after opening of escrow and prior to Closing as defined in the Purchase Contract, Gilbert may exercise its remedies under the Purchase Contract. In addition, Gilbert may suspend any or all of its obligations under this Agreement and declare the Agreement terminated.
 - (c) If an Event of Default by Developer occurs after Closing for the sale of the Property and such default is the failure to develop the Property in compliance with the Schedule of Development, the Development Plan or the Development Requirements, Gilbert shall have all rights available at law or in equity and pursuant to this Agreement, including without limitation the right to seek and obtain actual (but not consequential) damages. Nothing herein shall prevent Gilbert at its option from seeking declaratory, injunctive, special action or other similar relief, requiring Developer to undertake and to fully and timely perform its obligations under this Agreement, including, but not limited to, injunctive relief to address a public safety concern or to enjoin any construction or activity undertaken by Developer which is not in accordance with the terms of this Agreement.

- (d) If an Event of Default occurs at any time with respect to any indemnity obligation of Developer, Gilbert shall have all rights available at law, in equity and pursuant to this Agreement, including the right to seek and obtain actual (but not consequential) damages and the right to injunctive relief.

7.4.2 Remedies of Developer. Developer's exclusive remedies shall consist of, and shall be limited to seeking special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring Gilbert to undertake and to fully and timely perform its obligations under this Agreement.

7.5 Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Event of Default by the other Party shall not be considered as a waiver of rights with respect to any other Event of Default by the non-defaulting Party or with respect to the particular Event of Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the Event of Default involved.

8. **Term of Agreement.** The term of this Agreement shall commence on the date this Agreement is recorded. This Agreement may be terminated for default pursuant to Section 7 or upon the recordation of a mutual notice of termination signed by both Parties. It is expressly understood and agreed that this Agreement shall govern the Property and the Project following Closing, as that term is defined in the Purchase Contract.

9. **General Provisions.**

9.1 Unavoidable Delays. Whether stated or not, all periods of time in this Agreement are subject to this section. Neither Gilbert nor Developer shall be considered in default of this Agreement in the event of Unavoidable Delays. In the event of the occurrence of an Unavoidable Delay, the time or times of performance shall be extended for the period of the Unavoidable Delay, providing that the Party seeking the benefit of the Unavoidable Delay shall, within thirty (30) days after such Party knows of any such Unavoidable Delay, notify the other Party in writing of the event giving rise to the Unavoidable Delay.

9.2 Notices. All notices, filings, consents approvals under the communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally or sent by certified U.S. Postal Service mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier service (e.g., Federal Express, DHL) to:

To Gilbert:

Town Manager
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296

With a copy to:

Town Attorney
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296

To Developer:

David E. Sellers
Heritage North Partners, LLC
1200 N. 52nd Street
Phoenix, Arizona 85008

With a copy to:

Brent Herrington & Jim Hoselton
DMB Development, LLC
7600 E. Doubletree Ranch Road, Suite 250
Scottsdale, Arizona 85258

Or such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective.

- 9.3 Mailing Effective. Notices shall be deemed to have been given as of the date of delivery, if hand or courier delivered, or as of three (3) days after the date of mailing, if mailed certified, return receipt requested, postage prepaid.
- 9.4 No Waiver. Nothing herein shall constitute or be deemed to be a waiver by Developer of its rights to request future rezoning or changes in development standards for all or any portion of the Property pursuant to Gilbert procedures and requirements existing at the time of the request.
- 9.5 Attorneys Fees and Costs. If legal action by either party is required because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorneys and court costs.
- 9.6 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.
- 9.7 Headings. The description headings of the sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.
- 9.8 Entire Agreement. This Agreement, together with the Purchase Contract and all exhibits, constitutes the entire Agreement between the parties and shall not be changed or added to except as agreed to by the parties in writing. All prior and contemporaneous agreements, representations and understandings of the parties, oral or writing, are superseded by this Agreement.

- 9.9 Amendment or Cancellation of the Agreement. Except as otherwise provided herein, this Agreement may be amended or canceled in whole or in part and with respect to all or any portion of the Property only with the mutual consent of Gilbert and Developer of that portion of the Property to which the amendment or cancellation will be applicable. Within ten (10) days after any such amendment or cancellation of this Agreement, the amendment or cancellation shall be recorded by Gilbert in the official records of Maricopa County.
- 9.10 Severability. Gilbert and Developer each believes that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring Gilbert to do any act in violation of any applicable laws) such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.
- 9.11 Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section.
- 9.12 Recordation. No later than ten (10) days after this Agreement has been executed by Gilbert and Developer it shall be recorded in its entirety by Gilbert in the official records of Maricopa County, Arizona.
- 9.13 Proposition 207 Waiver. Developer hereby waives and releases Gilbert from any and all claims under A.R.S. Section 12-1134, et seq., including any right to compensation for reduction to the fair market value of the Property, as a result of Gilbert's approval of this Agreement. The terms of this waiver shall run with the land and shall be binding upon all subsequent landowners and shall survive the expiration or earlier termination of this Agreement.

- 9.14 Assignment. Developer may assign all or any portion of its rights hereunder to any one or more Persons, on such terms and conditions as Developer may deem appropriate, provided, however, that except for an assignment to an Affiliate which acquires the Property to develop and operate the Project, Developer may not convey all or any portion of its obligations hereunder without the prior written consent of the Gilbert Town Council. Notice of the assignment and assumption of Developer's obligations shall be reflected in a document that shall be executed by Developer and the assignee, and recorded by Developer in the official records of Maricopa County, Arizona. Upon the recordation of such document and the assignee's written agreement to assume the obligations under this Agreement corresponding to such assignment, Developer will be released from the obligations assumed by the assignee. An "Affiliate" as applied to Developer, means any Person directly or indirectly controlled by Developer. "Person" means and includes any and all natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts, and other groups and organizations, whether or not legal entities. The burdens of this Agreement bind and the benefits of this Agreement inure to the Parties hereto and their respective successors in interest and assigns as provided in A.R.S. Section 9-500.05.D, except to the extent an assignment is not authorized in this Agreement. Wherever the term "Party" or the name of any particular Party is used in this Agreement such term shall include any such Party's permitted successors and assigns.
- 9.15 No Partnerships; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Parties. No term or provision of this Agreement is intended to, or shall, be for the benefit of any Person not a party hereto, and no such other Person shall have any right or cause of action hereunder, except for transferees or assignees to the extent that they assume or succeed to the rights and/or obligations of Developer under this Agreement.
- 9.16 Waiver of Right to Trial by Jury. The Parties expressly covenant and agree that in the event of a dispute arising from this Agreement, each Party waives any right to a trial by jury. In the event of litigation, the Parties agree to submit to a trial before the court.
- 9.17 Conflict of Interest. This Agreement may be cancelled pursuant to the provisions of A.R.S. Section 38-511.
- 9.18 Time of Essence. Time is hereby declared to be of the essence for the performance of all conditions and obligations under this Agreement.
- 9.19 Rights of Lenders. Gilbert is aware that Developer may obtain financing or refinancing for acquisition, development and/or construction of the Property and/or Project, in whole or in part, from time to time, by one or more third parties (individually a "Lender", and collectively the "Lenders"). In the event of an Event of Default by Developer, Gilbert shall provide notice of such Event of Default, at the same time notice is provided to Developer, to such Lenders as previously designated by Developer to receive such notice

(the “Designated Lenders”) whose names and addresses were provided by written notice to Gilbert. Gilbert shall give Developer copies of any such notice provided to such Designated Lenders. If a Lender is permitted, under the terms of its nondisturbance agreement with Gilbert to cure the Event of Default and/or to assume Developer’s position with respect to this Agreement, Gilbert agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Developer under this Agreement. Gilbert shall, from time to time upon reasonable written request by Developer, provide to any Lender an estoppel certificate or other document evidencing that this Agreement is in full force and effect and that no Event of Default by Developer exists hereunder (or, if appropriate, specifying the nature and duration of any existing Event of Default). Upon reasonable written request by a Lender, Gilbert will enter into a separate nondisturbance and recognition agreement with such Lender in such commercially reasonable form as may be consistent with the provisions of this Section and otherwise reasonably acceptable to Gilbert.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

TOWN OF GILBERT, an Arizona
municipal corporation

By _____
Jenn Daniels, Mayor

ATTEST:

Lisa Maxwell, Town Clerk

APPROVED AS TO FORM:

Christopher W. Payne, Town Attorney

[signatures continue on following page]

[Developer Signature Page to Development and Disposition Agreement]

HERITAGE NORTH PARTNERS, LLC, an
Arizona limited liability company

By: _____

Name: _____

Title: _____

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing Agreement was acknowledged before me this ____ day of _____,
2019, by _____, the _____ of Heritage
North Partners, LLC, an Arizona limited liability company, on behalf of the company.

Notary Public

My Commission Expires:

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY
[attached]

LEGAL DESCRIPTION FOR
TOWN OF GILBERT
ASSESSOR PARCEL 302-14-907 AND 302-14-908 (TRACT A)

An irregular shaped area situated in the Southeast quarter of the Northeast quarter of Section 12, Township 1 South, Range 5 East of the Gila and Salt River Base Line and Meridian, (SE¼ NE¼, Sec 12, T1S, R5E, G&SRB&M) Maricopa County, Arizona more particularly described below:

A basis for bearings is South 00° 57' 30" East as measured along the east line of said Northeast Quarter of Section 12 having a distance of 2,633.77 feet between a brass cap in a hand hole representing the Northeast corner (Maricopa County GDACS point 22041-1) and an aluminum cap on rebar representing the East quarter corner (Maricopa County GDACS point 22047-1M) of said Section 12 calculated from known Arizona State Plane ground coordinate values.

For Lot 1 (Excluding Public Right-of-way)

Commencing from a tie at the East quarter corner of said Section 12; thence North 00° 57' 30" West, 873.71 feet to a found flush brass cap at the intersection of the centerline for W. Juniper Avenue; thence South 89° 02' 30" West along said centerline, 60.00 feet; thence South 00° 57' 30" East, 30.00 feet; thence South 89° 02' 30" West, 170.00 feet along a line parallel to and 30.00 feet south of the centerline for W. Juniper Avenue to the true Point of Beginning;

Thence South 00° 57' 30" East, 200.00 feet;

Thence North 89° 02' 30" East, 175.00 feet to a point on the westerly right-of-way of N. Gilbert Road;

Thence South 00° 57' 30" East, 630.80 feet along said westerly right-of-way of N. Gilbert Road to a point on the north easement line for the Western Canal;

Thence South 89° 46' 33" West along said north line, 528.53 feet to a point on the easterly right-of-way of N. Ash Street;

Thence North 00° 57' 30" West along said easterly right-of-way of N. Ash Street, 538.10 feet to a point of curvature to the right having a radius of 720.00 feet and central angle of 8° 10' 16";

Thence northeasterly along the arc of said curve, 102.68 feet to a point of tangency;

Thence North 15° 10' 45" East, 86.79 feet;

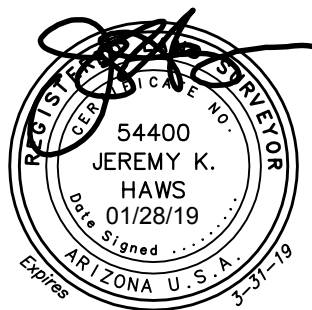
Thence North 07° 12' 21" East, 85.12 feet;

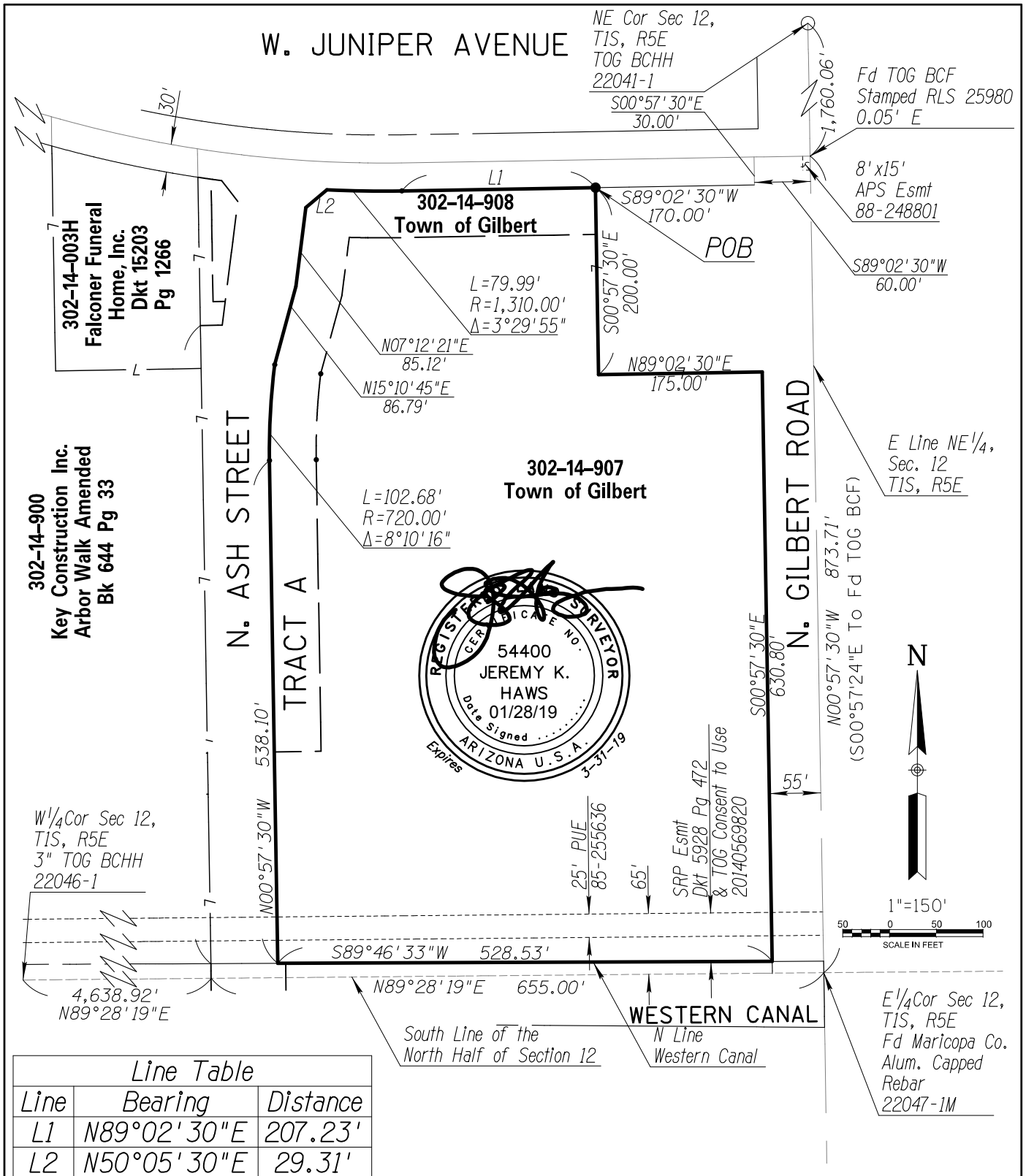
Thence North 50° 05' 30" East, 29.31 feet to a point on a line concentric to and 30.00 feet south of the centerline for W. Juniper Avenue and on a non-tangent curve concave to the northeast having a radius of 1,310.00 feet and a central angle of 03° 29' 55";

Thence southeasterly along the arc of said concentric curve, 79.99 feet to a point of tangency;

Thence North 89° 02' 30" East, 207.23 feet returning to the Point of Beginning.

Containing 396,473 square feet (9.1017 acres) more or less.





Line Table		
Line	Bearing	Distance
L1	$N89^{\circ}02'30''E$	207.23'
L2	$N50^{\circ}05'30''E$	29.31'



HUBBARD
ENGINEERING

1201 S. Alma School Rd.
Suite 12000
Mesa, AZ 85210
Ph: 480.892.3313
www.hubbardengineering.com

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION FOR ASSESSOR PARCEL 302-14-907 & 908



GILBERT
ARIZONA

DATE: 01/19
 DSN: RPW
 DRN: KRT
 CHK: JKH

PROJECT NUMBER RD116
 SHEET 1 OF 1

EXHIBIT B
DEVELOPMENT PLAN

TO BE ATTACHED AT THE TIME OF FINAL DESIGN APPROVAL
(See Section 3.4)

EXHIBIT C
SCHEDULE OF DEVELOPMENT

[attached]

SCHEDULE OF DEVELOPMENT

- Gilbert Council Approval May 16, 2019
- Pre-Application Submittal May 20, 2019
- Entitlement Approval January 6, 2020
- Close on Land February 4, 2020
- Permit Submittal – Office, Multifamily & Retail
- Assumes 2 reviews March 19, 2020
- Plan Approval – Office, Multifamily & Retail
- Assumes 2 reviews June 28, 2020
- Start of Construction* – Offsites June 28, 2020
- Start of Construction* – Office June 28, 2020
- Start of Construction* – Retail June 28, 2020
- Start of Construction* – Multifamily June 28, 2020
- Permit Submittal – Hotel August 11, 2020
- Plan Approval – Hotel November 20, 2020
- Start of Construction* – Hotel November 20, 2020
- Start of Construction* – Parking Garage December 19, 2020
- Contemplated Completion – Offsites December 19, 2020
- Contemplated Completion – Parking Garage August 8, 2021
- Contemplated Completion – Office September 5, 2021
- Contemplated Completion – Retail September 5, 2021
- Contemplated Completion – Hotel April 5, 2022
- Contemplated Completion – Multifamily May 24, 2022

* “Start of Construction” includes pre-construction activities such as permits, bonds & sub-contracts

EXHIBIT D
PURCHASE CONTRACT

[attached]

PURCHASE CONTRACT

SELLER: Town of Gilbert, Arizona, an Arizona municipal corporation

BUYER: Heritage North Partners, LLC, an Arizona limited liability company

ESCROW AGENT: Thomas Title & Escrow, 7150 E. Camelback Rd., Suite 195, Scottsdale, Arizona 85251, Attn: Sheila Hunter

1. Binding Agreement.

1.1 Upon the execution of this Purchase Contract (the “Agreement”) by Seller and Buyer in accordance with this Agreement, it shall constitute a binding contract between Seller and Buyer for the purchase and sale of the real property described on Exhibit A (the “Property”). This Agreement constitutes escrow instructions to Escrow Agent. Should Escrow Agent require the execution of its standard form printed escrow instructions, Buyer and Seller agree to execute same; however, such instructions shall be construed as applying only to Escrow Agent’s engagement, and if there are conflicts between the terms of this Agreement and the terms of the printed escrow instructions, the terms of this Agreement shall control.

1.2 Seller and Buyer have executed a Development and Disposition Agreement dated May 16, 2019 (the “DDA”) related to the development of the Property, including the construction of various buildings and other improvements on the Property for the purposes set forth in the DDA. This Agreement is executed pursuant to the requirements of the DDA.

2. Acceptance, Opening and Closing.

2.1 The offer represented by this Agreement shall be deemed accepted upon Seller’s execution and delivery of a counterpart of this Agreement to Escrow Agent on or before May 27, 2019.

2.2 Escrow shall be opened when Seller and Buyer deliver one (1) fully executed original of this Agreement to Escrow Agent on or before the acceptance date referred to in Section 2.1 (“Opening of Escrow”). Escrow Agent shall sign the Agreement and advise Seller and Buyer, in writing, of the Opening of Escrow and the date thereof.

2.3 Within one (1) day after the Agreement has been executed by Seller and Buyer and delivered to Escrow Agent pursuant to Section 2.2, Buyer shall deposit with Escrow Agent the sum of Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00) (the “Initial Deposit”). Within five (5) days after Final Design Approval (as defined in the DDA), Buyer shall deposit with Escrow Agent an additional sum of Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00) (the “Additional Deposit”, and together with the Initial Deposit, the “Deposit”). The Deposit shall be refundable in the event of termination of this Agreement pursuant to Section 10 or breach of this Agreement by Seller as set forth in Section 23. The Initial Deposit and Additional Deposit shall be made by wire transfer of immediately available funds to be held by the Escrow Company in accordance with the terms and conditions of this Agreement. Escrow Agent shall immediately

invest such Deposit, at Buyer's expense in a federally insured time deposit or money market account which permits the withdrawal of funds at any time upon demand of Escrow Agent. If Buyer fails to timely deposit with the Escrow Company the Initial Deposit in accordance with the provisions of this section, then Seller may, at its sole election and as its sole remedy, immediately and without notice and the opportunity to cure, terminate this Agreement by written notice to Buyer and the Escrow Company and thereafter this Agreement shall be terminated, all without liability of the parties to each other thereafter, except pursuant to provisions hereof which expressly survive such termination. The Deposit shall be applied to the Purchase Price at Closing.

2.4 Consummation of the purchase of the Property contemplated hereby (the "Closing") shall take place on the earlier to occur of: (a) the date that is thirty (30) days after Final Design Approval (as defined in the DDA), or (b) the date that is nine (9) calendar months after Opening of Escrow, in each instance subject to extension by Buyer pursuant to Section 7.2 below. At or before Closing, each party shall execute and deliver such documents and perform such acts as are provided for herein. All monies and documents required to be delivered under this Agreement for Closing shall be deposited in escrow on or before 10:00 a.m. Mountain Standard Time on the Closing date.

3. Title Insurance; Conveyance of Title. The Property, including all rights and privileges appurtenant to or arising from the Property, shall be conveyed by Seller to Buyer upon Closing by Seller's special warranty deed (the "Deed"), subject to current taxes and assessments, reservations in patents, all easements, rights-of-way, encumbrances, liens, covenants, conditions, obligations and liabilities as may appear of record, and all matters which an accurate survey of the Property or a physical inspection of the Property would disclose. Escrow Agent shall issue or cause to be issued an extended coverage owner's policy of title insurance in the amount of the Purchase Price, for which Buyer shall bear the cost. Buyer and Seller shall execute, acknowledge, and deliver to Escrow Agent the Affidavit of Real Property Value required by A.R.S. Section 42-1612.

4. No Recordation of Agreement. Neither this Agreement nor any memorandum of this Agreement shall be recorded.

5. Risk of Loss/Possession. Seller shall be solely responsible for all loss or damage to property (both real and personal) and any third party claims (for injury or otherwise) resulting from any occurrence on or about the Property prior to Closing, except as otherwise set forth in this Agreement. Buyer shall be solely responsible for all loss or damage to property (both real and personal) and any third party claims (for injury or otherwise) resulting from any occurrence on or about the Property after Closing.

6. Seller Consent for Buyer to Enter the Property for the Purposes of Planning the Development of the Property and Obtaining Permits. Prior to Closing, Buyer is required by the DDA to take certain actions related to planning the development of the Property. Seller hereby consents to Buyer entering upon the Property for these purposes, provided however, that Buyer shall indemnify and hold harmless Seller for any damages or injuries arising out of Buyer's activities on the Property, which indemnification obligation is more fully described in Section 10.

7. Purchase Price; Additional Purchase Price; Contribution to Heritage District Improvements.

7.1 Purchase Price. The purchase price for the Property shall be the greater of (A) the Fair Market Value of the Property as determined in Section 7.1(a) below, or (B) Five Million Three Hundred Thirty-Two Thousand and no/100 Dollars (\$5,332,000.00) (in either event, the “Purchase Price”). The Purchase Price shall be paid in the form of cash or wire transfer of immediately available funds to be deposited with Escrow Agent on or before the Closing.

(a) Determination of Fair Market Value. The Fair Market Value for the purpose of determining the Purchase Price shall be established in the following manner:

(i) Buyer shall, on or before the date that is thirty (30) days after Opening of Escrow, deliver notice (the “Buyer Fair Market Value Notice”) to Seller and Escrow Agent setting forth Buyer’s determination of the Fair Market Value. The Buyer Fair Market Value Notice shall include a copy of an appraisal of the Property in support of Buyer’s determination of such Fair Market Value, prepared by a commercial property appraiser who shall have been active over the ten (10) year period ending on the date of delivery of the Buyer Fair Market Value Notice in the appraisal of commercial properties in the Phoenix, Arizona metropolitan area (a “Qualified Appraiser”). For purposes of this Section 7, the “Fair Market Value” of the Property shall mean the terms and conditions that would be offered by and to a third-party purchaser for a comparable property of similar size, taking into account, among other things, the location of the Property and the value of any existing improvements on the Property.

(ii) Seller shall, on or before the date that is thirty (30) days after Opening of Escrow, deliver notice (the “Seller Fair Market Value Notice”) to Buyer and Escrow Agent setting forth Seller’s determination of the Fair Market Value. The Seller Fair Market Value Notice shall include a copy of an appraisal of the Property in support of Seller’s determination of such Fair Market Value, prepared by a Qualified Appraiser.

(iii) If the Fair Market Value determined by Seller in the Seller Fair Market Value Notice and the Fair Market Value determined by Buyer in the Buyer Fair Market Value Notice differ by ten percent (10%) or less, then the Fair Market Value for determining the Purchase Price shall be the mean (i.e., the average) of Seller’s and Buyer’s respective determinations of Fair Market Value.

(iv) If the Fair Market Value determined by Seller in the Seller Fair Market Value Notice and the Fair Market Value determined by Buyer in the Buyer Fair Market Value Notice differ by more than ten percent (10%), then Seller and Buyer shall attempt to agree in writing upon a final Fair Market Value (and thus the Purchase Price) using reasonable good faith efforts. If Seller and Buyer fail to reach such written agreement within forty-five (45) days after Opening of Escrow (the “Outside Agreement Date”), then Buyer or Seller may cancel this Agreement by giving written notice to the other Party within ten (10)

days following the Outside Agreement Date (in which event Escrow Agent shall return the Initial Deposit to Seller, and thereafter neither party shall have any further obligation or liability under this Agreement except those liabilities or obligations arising under the indemnity provisions of Section 12); or, if neither Party timely cancels this Agreement, the determination of the Fair Market Value shall be submitted to further appraisal and if necessary, arbitration, in accordance with Sections 7.1(a)(iv)(A) through 7.1(a)(iv)(D) below.

(A) Seller's appraiser and Buyer's appraiser shall within twenty (20) days after the Outside Agreement Date agree upon and appoint a third appraiser (the "Independent Appraiser") who (1) shall be a Qualified Appraiser, and (2) shall not have previously retained by either Seller or Buyer or any of their Related Parties. "Related Parties" means, with respect to any person or entity, the officers, directors, shareholders, partners, members, employees, agents, attorneys, successors, personal representatives, heirs, executors, or assigns of any such person or entity.

(B) The Independent Appraiser shall, within thirty (30) days after his or her appointment, reach a decision as to the Fair Market Value and shall notify Seller, Buyer and Escrow Agent thereof in writing. The Fair Market Value determined by the Independent Appraiser shall be binding upon Seller and Buyer; provided, however, that if the Fair Market Value determined by the Independent Appraiser is either (1) less than the Fair Market Value determined by Buyer, or (2) greater than the Fair Market Value determined by Seller, then the Fair Market Value determined by Seller or Buyer, as the case may be, that is closest to the Fair Market Value determined by the Independent Appraiser shall be the final Fair Market Value of the Property for purposes of determining the Purchase Price.

(C) If the two (2) appraisers fail to timely agree upon and appoint the Independent Appraiser, then the appointment of the Independent Appraiser shall be dismissed and the matter to be decided shall be forthwith submitted to arbitration under the provisions of the American Arbitration Association ("AAA"), but subject to the instructions and limitations set forth in this Section 7.1(a). Seller and Buyer shall each pay the cost of their respective appraisers, and the cost of the Independent Appraiser or the cost of AAA, as applicable, shall be paid by Seller and Buyer equally.

(D) Once Fair Market Value and the Purchase Price have been established in accordance Sections 7.1(a)(iv)(A) through 7.1(a)(iv)(C) above, Seller and Buyer shall within ten (10) days thereafter confirm such Fair Market Value and Purchase Price by written amendment to this Agreement. A copy of such written, signed amendment shall be promptly delivered to Escrow Agent.

7.2 Extension of Closing; Additional Purchase Price.

(a) Buyer may extend the date of Closing for up to two (2) consecutive periods of thirty (30) days each by delivering to Seller and Escrow Agent, in each instance, written notice of Buyer's desire to extend the date of Closing prior to the then-scheduled date of Closing and by concurrently depositing an additional sum of Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00) (each such deposit, "Extension Deposit") with Escrow Agent. For purposes of this Agreement, each Extension Deposit shall become part of the Deposit in accordance with Section 2.3 and shall be credited against the Purchase Price payable pursuant to Section 7.1, and shall be paid to Seller at Closing.

(b) Buyer may further extend the date of Closing for up to two (2) consecutive periods of thirty (30) days each by delivering to Seller and Escrow Agent, in each instance, written notice of Buyer's desire to extend the date of Closing prior to the then-scheduled date of Closing and by concurrently depositing an additional sum of One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00) (each such deposit, "Additional Purchase Price") with Escrow Agent. For purposes of this Agreement, each deposit of Additional Purchase Price shall become part of the Deposit in accordance with Section 2.3 but shall not be credited against the Purchase Price payable pursuant to Section 7.1, and shall be paid to Seller at Closing in addition to such Purchase Price.

7.3 Contribution to Heritage District Improvements. In addition to the Purchase Price, Buyer shall pay to Gilbert at the Closing the sum of Three Hundred Fifty Thousand and no/100 Dollars (\$350,000) as a contribution of funds to be used for improvements to the Heritage District (as defined in the DDA). Such funds may be spent by Gilbert for such Heritage District improvement projects as Gilbert may determine in its sole discretion, including without limitation Heritage District improvement projects within areas of the Heritage District located outside of the Property.

8. Cooperation. Buyer and Seller acknowledge that it may be necessary to execute documents other than those specifically referred to herein in order to complete the transaction contemplated herein. Both Buyer and Seller hereby agree to cooperate with each other in good faith by executing such other documents or taking such other action as may be reasonably necessary to complete this transaction in accordance with the intent of the parties as evidenced in this Agreement.

9. Fees, Taxes, and Assessments; Costs.

9.1 Real property taxes and assessments shall be prorated at the Closing based on latest available information; however, if, after Closing, the actual tax bill for the Property varies from Escrow Agent's pro ration figures, a new pro ration shall be completed and the party in whose favor any difference exists after pro ration shall be entitled to recover such difference from the other party.

9.2 Expenses of Escrow. Title insurance premiums, loan fees, and all other costs or expenses of escrow shall be paid as follows:

(a) Buyer shall pay the cost of securing the title insurance policy to be issued by Escrow Agent referred to in Section 3 of this Agreement;

(b) Buyer shall pay the cost of recording the Deed described in Section 3 of this Agreement and of filing the Affidavit of Real Property Value required by law;

(c) Seller shall pay the cost of any real property transfer taxes;

(d) Buyer shall pay escrow fees and all fees for filing any deed or mortgages placed on the Property by Buyer;

(e) Buyer shall pay all other expenses of escrow.

10. Buyer's Contingencies. Buyer's obligation to consummate the transactions contemplated by this Agreement is subject to satisfaction of all of the following conditions precedent (any or all of which may be waived by Buyer, but, except as otherwise provided herein, only in a writing signed by Buyer or its duly authorized agent):

10.1 Status of Title. Seller shall cause Escrow Agent, as soon as is reasonably possible after execution of this Agreement, to provide Buyer and Seller with a preliminary title commitment for the Property, disclosing all matters of record which relate to the title to the Property and Escrow Agent's requirements for both closing the escrow created by this Agreement and issuing the policy of title insurance described in Section 3 of this Agreement (the commitment shall also be suitable to serve as the basis for issuance of an ALTA extended form coverage lender's title insurance policy). At such time as Buyer receives the preliminary title commitment, Seller shall also cause legible copies of all instruments referred to in the preliminary title commitment to be furnished to Buyer. Buyer shall have thirty (30) days after receipt of the preliminary title commitment to object in writing to any matter shown in the preliminary title commitment. If Buyer fails to object within the 30-day period, the condition of title to the Property as reflected in the preliminary title commitment shall be deemed approved by Buyer. In the event Buyer does object in writing to any objectionable matter disclosed in the preliminary title commitment, Seller may attempt to remove such objection on or before the Investigation Date (defined below). If any such objectionable matter is not removed on or before the Investigation Date, Buyer shall in writing elect on or before the Investigation Date to either: (i) cancel this Agreement; or (ii) close escrow waiving and taking title subject to such objectionable matters. Failure to give written notice to Seller of Buyer's election shall constitute an election to waive the objection in accordance with the foregoing clause (ii). In the event that, after the date of the preliminary title commitment, any new items appear of record, Escrow Agent shall deliver to Buyer a supplemental preliminary title commitment ("Supplemental Commitment") together with legible copies of all new title exceptions described therein. Buyer shall have ten (10) days after receipt of any Supplemental Commitment to give written notice to Seller ("Objection Notice") disapproving any new items contained in the Supplemental Commitment (other than any items arising pursuant to Buyer's request and Seller's agreement thereto) and identifying the specific new items disapproved by Buyer ("Additional Exceptions"). If Buyer does not deliver such Objection Notice to Seller within the aforementioned 10-day period, Buyer shall be deemed to have approved the unremoved Additional Exceptions. If Buyer timely delivers an Objection Notice, Seller may attempt to

remove such disapproved Additional Exceptions within ten (10) days after receiving the Objection Notice. If Seller does not or cannot remove all of the disapproved Additional Exceptions within such ten (10) day period, Buyer shall have ten (10) days thereafter to give Seller written notice that Buyer has elected to terminate this Agreement. If Buyer does not terminate this Agreement within the aforementioned period, Buyer shall be deemed to have approved the unremoved Additional Exceptions and to have elected to proceed with the Closing.

10.2 Additional Encumbrances. Seller shall not place, permit, or cause to be placed any liens or encumbrances on the title to the Property from the date of this Agreement through Closing.

10.3 Investigation. Buyer shall have until the date that is forty-five (45) days after the Opening of Escrow (the "Investigation Date") to investigate any and all matters concerning the Property, including zoning; access; easements; the availability of water, sewer, and other utilities and services to the Property; development potential; availability of financing; the existence and effect of electrical, agricultural, improvement, or other districts or associations; future installments or obligations relating to assessments and improvement liens; and any restrictions or other matters concerning the Property. In the event Buyer, after conducting in good faith such inspections, investigations, and tests, in its sole discretion, in light of its investigation and review, determines that the Property or any part thereof is not suitable for its purposes, then Buyer may elect at any time on or prior to the Investigation Date to cancel this Agreement by written notice to Escrow Agent and Seller, in which event Escrow Agent shall return the Initial Deposit to Seller, and thereafter neither party shall have any further obligation or liability under this Agreement except those liabilities or obligations arising under the indemnity provisions of Section 12. If Buyer does not elect to cancel the escrow on or prior to the Investigation Date, Buyer shall be deemed to have approved all matters concerning the Property, except as otherwise provided in this Section 10.

10.4 Survey. No later than thirty (30) days after the execution of this Agreement and the issuance of the preliminary title commitment described in Section 10.1, Buyer, at its sole cost, shall cause a survey of the Property to be completed in accordance with the most current ALTA/NSPS land title survey standards (the "Survey") by a registered land surveyor or licensed civil engineer. Upon the completion of the Survey, Buyer shall provide at least three (3) copies to Seller and two (2) copies to Escrow Agent. Buyer shall have five (5) days after receipt of the Survey to deliver an Objection Notice to Seller disapproving any matters shown on the Survey. If Buyer does not deliver such Objection Notice to Seller within the aforementioned 5-day period, Buyer shall be deemed to have approved all matters shown on the Survey. If Buyer timely delivers an Objection Notice relating to a Survey matter, Seller may attempt to remove such disapproved matter within ten (10) days after receiving the Objection Notice. If Seller does not or cannot remove all of the disapproved Survey matters within such ten (10) day period, Buyer shall have ten (10) days thereafter to give Seller written notice that Buyer has elected to terminate this Agreement. If Buyer does not terminate this Agreement within the aforementioned period, Buyer shall be deemed to have approved the unremoved Survey matters and to have elected to proceed with the Closing.

11. Seller's Contingencies. Seller's obligation to consummate the transactions contemplated by this Agreement is subject to satisfaction of all of the following conditions precedent (any or all of which may be waived by Seller, but, except as otherwise provided herein, only in a writing signed

by Seller, or its duly authorized agent): Buyer's compliance with the terms, conditions, requirements and obligations of the DDA.

12. Tests. Buyer, its agents, and designees, shall have the right to enter upon the Property at all times prior to Closing for the purposes of inspecting the Property and making, preparing, and obtaining any tests, surveys, or studies it may desire including, without limitation, any drainage, percolation, and soil tests and studies, and other engineering, environmental or archaeological tests and studies. Buyer agrees to indemnify, pay, defend, and hold harmless Seller from all claims and liabilities for personal injury or physical property damage, or mechanics' or materialmen's liens, which may be asserted against Seller as a result of any entry by Buyer, its agents, or designees onto the Property. Seller shall have the right to have a representative present for all such activities. Prior to entering the Property, Buyer shall provide to Seller proof of insurance reasonably satisfactory to Seller that Buyer has in effect, at all times when Buyer is authorized to come on the Property, commercial general liability insurance in a minimum amount of \$2,000,000, combined single limit per occurrence, insuring Buyer against claims for personal injury, death, and property damage or destruction. Seller shall be named as an additional insured on such policy. Promptly after the completion of any tests, Buyer shall return the Property to substantially the condition existing prior to the time of such entry.

13. Documents Pertaining to the Property. Upon execution of this Agreement, Seller shall allow Buyer to inspect and copy any and all information, data, documents, and other materials in Seller's possession or reasonably available to Seller relating to the property including all reports, engineering and/or survey work.

14. Seller's Representations, Warranties and Covenants. Seller makes the following representations and warranties to Buyer, which are agreed to be a material part of the consideration hereunder, which shall be true when made and on the date of Closing, and which shall survive the Closing: (a) Seller has full power and authority to enter into this Agreement and complete the purchase and sale transaction contemplated herein; and (b) upon Seller's execution of this Agreement, this Agreement shall be binding and enforceable against Seller in accordance with its terms. Upon Seller's execution of the additional documents contemplated by this Agreement, the additional documents shall be binding and enforceable against Seller in accordance with their terms. Seller shall not enter into any agreements, contracts, applications, permits, or approvals relating to the Property which would remain effective beyond the Closing, except as requested by or approved by Buyer.

15. Buyer's Representations, Warranties and Covenants. Buyer warrants and represents that it is a duly organized and validly existing limited liability company formed under the laws of the State of Arizona and authorized to transact business in the State of Arizona. The entry by Buyer into the transaction contemplated by this Agreement and the performance by Buyer of all of its obligations in connection herewith have been duly and validly authorized by all necessary action(s), are in accordance with applicable law and are not in violation of Buyer's articles of organization. This Agreement and all additional documents delivered in connection with this Agreement have been duly and validly executed and delivered by Buyer and constitute the legal, valid and binding obligations of Buyer. Buyer represents, and Seller relies on this

representation, that Buyer has or will have sufficient financing to purchase the Property at Closing.

16. Reserved.

17. Reserved.

18. State Subdivision Laws. Buyer and Seller believe and intend that this transaction is exempt from Article 4, Chapter 20 of Title 32, Arizona Revised Statutes (A.R.S. Sections 32-2181 et seq.) relating to the sale of subdivided lands. Buyer expressly represents to Seller (and acknowledges that Seller is relying upon the representation in entering into this Agreement) that Buyer is not a subdivider, developer, or builder within the meaning of those statutes.

19. Use of Name. Buyer shall not use Seller's name or the name of any affiliate of Seller alone or in combination with any other name, or the logo, trademark, or trade name of any division, project, or profit center of Seller, in any of Buyer's advertising or otherwise, without the prior written approval of Seller. For purposes of this section, "advertisement" includes, without limitation, any notice, circular, letter, or other written or media-transmitted announcement.

20. Survival of Representations and Warranties. All representations and warranties contained in this Agreement (and in any instrument delivered by or on behalf of any party pursuant hereto or in connection with the transactions contemplated hereby) are true on and as of the date so made, will be true in all material respects on and as of the Closing Date, and will survive Closing and execution, delivery, and recordation of the Deed.

21. No Assumption of Seller's Liabilities. Buyer is acquiring only the Property from Seller and is not the successor of Seller. Buyer does not assume, agree to pay, or indemnify Seller or any other person against any liability, obligation, or expense of Seller or relating in any way to the Property except to the extent, if any, expressly and specifically provided for in this Agreement.

22. Property Sold "As-Is". Except as may be expressly provided in this Agreement, it is acknowledged that Seller and its employees, agents, representatives, brokers and attorneys have not made, nor has Buyer relied on, any statements, materials, representations, or warranties, express or implied, of Seller or its employees, agents, representatives, brokers and attorneys. Buyer acknowledges and agrees that it is relying solely on its own examination, inspection and investigation of the condition of the Property including, without limitation, the surface and subsurface thereof, all soil, engineering, environmental and other conditions which may affect the Property, any construction thereof, its zoning and use, its value, the development thereof and title, all as deemed necessary or appropriate, and Buyer is entering into this Agreement and purchasing the Property based upon the results of such inspections and investigations and not in reliance on any statements, representations or agreements of Seller not expressly contained in this Agreement. As a result, it is specifically acknowledged and agreed that Buyer is acquiring the Property "AS IS, WHERE IS".

23. Remedies.

23.1 Seller's Default. In the event of a failure in the performance of this Agreement by Seller, Buyer shall notify Seller in writing, and if Seller has not cured such failure within ten (10) days after such notice, then Seller shall be in default and, as its sole and exclusive remedies, Buyer may either (a) by written notice to Seller and Escrow Agent terminate this Agreement, whereupon the entire Deposit shall be immediately returned to Buyer, or (b) seek specific performance of this Agreement, any for which action shall be commenced within sixty (60) days after Seller's default. Buyer waives any and all other rights and remedies at law or in equity arising by reason of the default of Seller other than those specifically set forth above.

23.2 Buyer's Default. In the event of a failure in the performance of this Agreement by Buyer, Seller shall notify Buyer in writing, and if Buyer has not cured such failure within ten (10) days after such notice, then Buyer shall be in default and, as its sole remedy, Seller shall have the right to terminate this Agreement and retain the Deposit as liquidated damages and not as a penalty. Subject to Section 23.3 of this Agreement, Seller waives any and all other rights and remedies at law or in equity arising by reason of the default of Buyer other than that specifically set forth above.

23.3 Default Related to Buyer Entry Upon Property. Buyer specifically acknowledges and agrees that in the event of a Buyer default in its obligations arising pursuant to this Agreement, Seller shall be entitled to recover from Buyer all actual damages incurred by Seller as a result of Buyer's default. In no event shall Buyer be liable to Seller for any incidental, consequential or punitive damages arising out of or in connection with such default. This Section 23.3 shall survive the Closing or earlier termination of this Agreement.

24. Notices. Notices required or permitted hereunder shall be given in writing and personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier service (e.g., Federal Express, DHL) addressed as follows:

To Buyer: Heritage North Partners, LLC
740 N. 52nd Street
Phoenix, Arizona 85008
Attn: David E. Sellers

With a copy to: DMB Development, LLC
7600 E. Doubletree Ranch Road, Suite 250
Scottsdale, Arizona 85258
Attn: Brent Herrington & Jim Hoselton

To Seller: Town Manager
Town of Gilbert
50 East Civic Center Drive
Gilbert, AZ 85296

With a copy to
Seller's counsel: Town Attorney
Town of Gilbert

50 East Civic Center Drive
Gilbert, AZ 85296

To Escrow Agent:

Thomas Title & Escrow
7150 E. Camelback Rd., Suite 195
Scottsdale, AZ 85251
Attn: Sheila Hunter

or at any other address designated by Buyer, Seller, or Escrow Agent, in writing, and any such notice of communication shall be deemed to have been given as of the date of delivery, if hand or courier delivered, or as of three (3) days after the date of mailing, if mailed certified, return receipt requested, postage prepaid. Copies of all notices or communications to Buyer or Seller shall be hand or courier delivered or mailed, in the manner set forth above, to Escrow Agent, and copies of all notices by Buyer or Seller to Escrow Agent shall be hand or courier delivered or mailed, in the manner set forth above, to the other party.

25. Attorneys' Fees. In the event suit is brought or an attorney is retained by any party to this Agreement to enforce the terms of this Agreement, to collect any money due, or to obtain any money damages or equitable relief for breach, the prevailing party shall be entitled to recover, in addition to any other available remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation, and other related expenses.

26. Intended Agreement. This Agreement is the result of arms-length negotiations between parties of roughly equivalent bargaining power and expresses the complete, actual, and intended agreement of the parties. This Agreement shall not be construed for or against either party as a result of its participation, or the participation of its counsel, in the preparation and/or drafting of this Agreement or any exhibits hereto.

27. Relationship. This Agreement shall not be construed as creating a joint venture, partnership, or any other cooperative or joint arrangement between Buyer and Seller, and it shall be construed strictly in accordance with its terms.

28. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors in interest and permitted assigns.

29. Further Instruments and Documents. Each party hereto shall, promptly upon the request of the other party or Escrow Agent, acknowledge and deliver to the other party or Escrow Agent any and all further instruments and assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement or to satisfy Escrow Agent's requirements.

30. Integration Clause; No Oral Modification. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all agreements, oral or written, entered into prior to this Agreement are 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 other contemporaneous written Agreements. This Agreement may not be changed,

modified, or rescinded, except in a writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

31. Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to choice of law principles). Any action brought to interpret, enforce, or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County or in the United States District Court for the District of Arizona if, but only if, the superior court lacks or declines jurisdiction over such action). The parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section.

32. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, and this Agreement shall otherwise remain in full force and effect.

33. Waiver. Failure of any party to exercise any right, remedy, or option arising out of a breach of this Agreement shall not be deemed a waiver of any right, remedy, or option with respect to any subsequent or different breach, or the continuance of any existing breach.

34. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

35. Broker's Commission. Buyer has not dealt with any real estate salespersons, brokers or agents in connection with this transaction. If any person shall assert a claim to a finder's fee, brokerage commission or other compensation on account of alleged employment by Buyer as a finder or broker in connection with this transaction, Buyer shall indemnify, defend, and hold harmless Seller for, from and against liability arising in connection with such claim or any action or proceeding brought on such claim. Seller has not dealt with any real estate salespersons, brokers or agents in connection with this transaction. If any person shall assert a claim to a finder's fee, brokerage commission or other compensation on account of alleged employment by Seller as a finder or broker in connection with this transaction, Seller shall indemnify, defend, and hold harmless Buyer for, from and against liability arising in connection with such claim or any action or proceeding brought on such claim. The foregoing obligations shall survive the Closing or termination of this Agreement.

36. Date of Agreement. The date of this Agreement shall for all purposes be the date of the signature of the last party to sign this Agreement.

37. Time of Essence. Time is hereby declared to be of the essence for the performance of all conditions and obligations under this Agreement.

38. Construction/Interpretation. The captions and section headings used in this Agreement are for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement. When used herein, the terms “include” or “including” shall mean without limitation by reason of the enumeration. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require. The term “person” shall include an individual, corporation, partnership, trust, estate, or any other entity. If the last day of any time period stated herein shall fall on a Saturday, Sunday, or legal holiday in the State of Arizona, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday in the State of Arizona.

39. Foreign Tax Withholdings. Seller shall provide to Buyer and Escrow Agent at Closing appropriate affidavits stating that it is not a foreign person and that no withholding is required pursuant to Internal Revenue Code § 1445.

40. Conflict of Interest. This contract may be cancelled pursuant to the provisions of A.R.S. Section 38-511.

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement on the dates set forth below.

BUYER:

HERITAGE NORTH PARTNERS, LLC,
an Arizona limited liability company

By: _____

Name: _____

Its: _____

Date: May __, 2019

SELLER:

TOWN OF GILBERT, ARIZONA
an Arizona municipal corporation

By: _____

Jenn Daniels, Mayor

Date: May __, 2019

ATTEST:

Lisa Maxwell, Town Clerk

APPROVED AS TO FORM:

Christopher W. Payne, Town Attorney

ACCEPTANCE OF ESCROW AGENT

The undersigned hereby agrees to act as Escrow Agent pursuant to the foregoing Purchase Contract between the TOWN OF GILBERT and HERITAGE NORTH PARTNERS, LLC.

Escrow Agent has established Escrow No. 3978TAZ pursuant to the terms hereof. Opening of Escrow shall be deemed to have occurred on _____, 2019.

Escrow Agent agrees to cause its underwriter to issue to the parties a closing protection letter in written form satisfactory to Seller, within five (5) days following the Opening of Escrow.

THOMAS TITLE & ESCROW

By: _____

Name: Sheila Hunter, Escrow Officer

EXHIBIT A (To Purchase Contract)
LEGAL DESCRIPTION OF THE PROPERTY
[attached]

LEGAL DESCRIPTION FOR
TOWN OF GILBERT
ASSESSOR PARCEL 302-14-907 AND 302-14-908 (TRACT A)

An irregular shaped area situated in the Southeast quarter of the Northeast quarter of Section 12, Township 1 South, Range 5 East of the Gila and Salt River Base Line and Meridian, (SE¼ NE¼, Sec 12, T1S, R5E, G&SRB&M) Maricopa County, Arizona more particularly described below:

A basis for bearings is South 00° 57' 30" East as measured along the east line of said Northeast Quarter of Section 12 having a distance of 2,633.77 feet between a brass cap in a hand hole representing the Northeast corner (Maricopa County GDACS point 22041-1) and an aluminum cap on rebar representing the East quarter corner (Maricopa County GDACS point 22047-1M) of said Section 12 calculated from known Arizona State Plane ground coordinate values.

For Lot 1 (Excluding Public Right-of-way)

Commencing from a tie at the East quarter corner of said Section 12; thence North 00° 57' 30" West, 873.71 feet to a found flush brass cap at the intersection of the centerline for W. Juniper Avenue; thence South 89° 02' 30" West along said centerline, 60.00 feet; thence South 00° 57' 30" East, 30.00 feet; thence South 89° 02' 30" West, 170.00 feet along a line parallel to and 30.00 feet south of the centerline for W. Juniper Avenue to the true Point of Beginning;

Thence South 00° 57' 30" East, 200.00 feet;

Thence North 89° 02' 30" East, 175.00 feet to a point on the westerly right-of-way of N. Gilbert Road;

Thence South 00° 57' 30" East, 630.80 feet along said westerly right-of-way of N. Gilbert Road to a point on the north easement line for the Western Canal;

Thence South 89° 46' 33" West along said north line, 528.53 feet to a point on the easterly right-of-way of N. Ash Street;

Thence North 00° 57' 30" West along said easterly right-of-way of N. Ash Street, 538.10 feet to a point of curvature to the right having a radius of 720.00 feet and central angle of 8° 10' 16";

Thence northeasterly along the arc of said curve, 102.68 feet to a point of tangency;

Thence North 15° 10' 45" East, 86.79 feet;

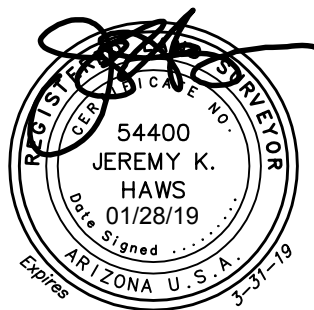
Thence North 07° 12' 21" East, 85.12 feet;

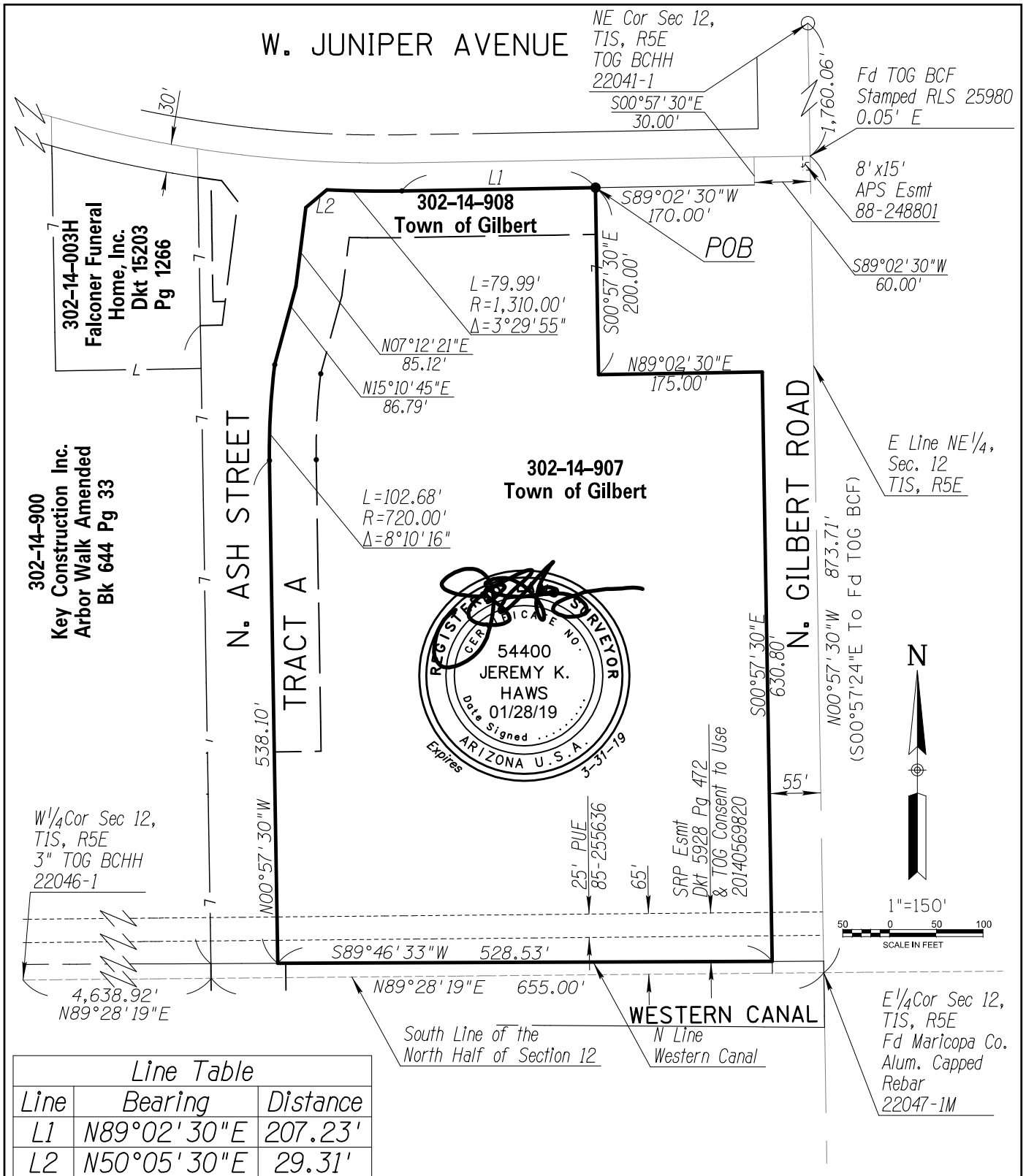
Thence North 50° 05' 30" East, 29.31 feet to a point on a line concentric to and 30.00 feet south of the centerline for W. Juniper Avenue and on a non-tangent curve concave to the northeast having a radius of 1,310.00 feet and a central angle of 03° 29' 55";

Thence southeasterly along the arc of said concentric curve, 79.99 feet to a point of tangency;

Thence North 89° 02' 30" East, 207.23 feet returning to the Point of Beginning.

Containing 396,473 square feet (9.1017 acres) more or less.





Line Table		
Line	Bearing	Distance
L1	$N89^{\circ}02'30''E$	207.23'
L2	$N50^{\circ}05'30''E$	29.31'



HUBBARD
ENGINEERING

1201 S. Alma School Rd.
Suite 12000
Mesa, AZ 85210
Ph: 480.892.3313
www.hubbardengineering.com

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION FOR ASSESSOR PARCEL 302-14-907 & 908



GILBERT
ARIZONA

DATE: 01/19
 DSN: RPW
 DRN: KRT
 CHK: JKH

PROJECT NUMBER
 RD116
 SHEET 1 OF 1

EXHIBIT E

DEVELOPER’S INSURANCE REQUIREMENTS

During the Course of Construction of the Development:

1. Workers’ Compensation:

Coverage A. Statutory Benefits.
Coverage B. Employer’s Liability.

Bodily Injury by accident	\$1,000,000 each accident
Bodily Injury by disease	\$1,000,000 policy limit
Bodily Injury by disease	\$1,000,000 each employee

2. Commercial Auto Coverage:

Auto Liability limits of not less than \$1,000,000 each accident/\$2,000,000 aggregate, combined Bodily Injury and Property Damage Liability insurance. Certificate to reflect coverage for “Any Auto” or “All Owned, Scheduled, Hired and Non-Owned”.

3. Commercial General Liability:

Each Occurrence Limit	\$1,000,000
Personal Injury/Advertising Injury Limit	\$1,000,000
Products/Completed Operations Aggregate Limit	\$1,000,000
General Aggregate Limit (other than Products/Completed Operations)	\$2,000,000

Coverage must include a Waiver of Subrogation endorsement.

Both policy forms must include:

- 1) Premises and Operations coverage with no explosion, collapse or underground damage (XCU) exclusions.
- 2) Products and Completed Operations coverage.
- 5) Gilbert and any other parties in interest to be named as Additional Insured(s).

4. Excess Liability:

Each Occurrence Limit	\$3,000,000
General Aggregate Limit	\$3,000,000

5. Professional Liability

(Applicable only to any design services which are part of Work – Architect required to carry)

Coverage Amount: \$1,000,000 per claim/\$1,000,000 aggregate.

6. Waivers of Subrogation

The policies shall provide waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

EXHIBIT F

CONSTRUCTION STANDARDS

Office Building – Construction Type IIB:

- Steel Framed Building, Concrete composite floor slabs, metal deck roof.
- Group B Primary Occupancy. Group M and A2 possible accessory or additional mixed occupancies (level 1);

Retail Building – Construction Type VB:

- CMU, Steel Joists, Panelized wood roof deck.
- Group M primary Occupancy. Group A2 possible additional mixed occupancy.

Hotel:

Options are based on construction material, height/stories, and per floor maximums.

- Hotel (OPT A, Wood Framed, Sprinklered, 5 stories, 48,000 SF/Floor Max) – Construction Type IIIB:
 - Wood Framed structure. *Compliant Fire-retardant-treated wood and plywood can occur in the exterior walls if 2-hours or less rating is required.
 - Group R1 Primary Occupancy. Group M and A2 possible accessory or additional mixed occupancies.
- Hotel (OPT B, steel framed, Sprinklered, 5 stories, 48,000 SF/Floor Max) – Construction Type IIB:
 - Steel Framed Building, Concrete composite floor slabs, metal deck roof.
 - Group R1 Primary Occupancy. Group M and A2 possible accessory or additional mixed occupancies.

Multi-Family:

- Wood Framed structure. Compliant Fire-retardant-treated wood and plywood can occur in the exterior walls if 2-hours or less rating is required.
- Wood Framed building, wrapped around Concrete parking garage structure.
- Group R2 Primary Occupancy.

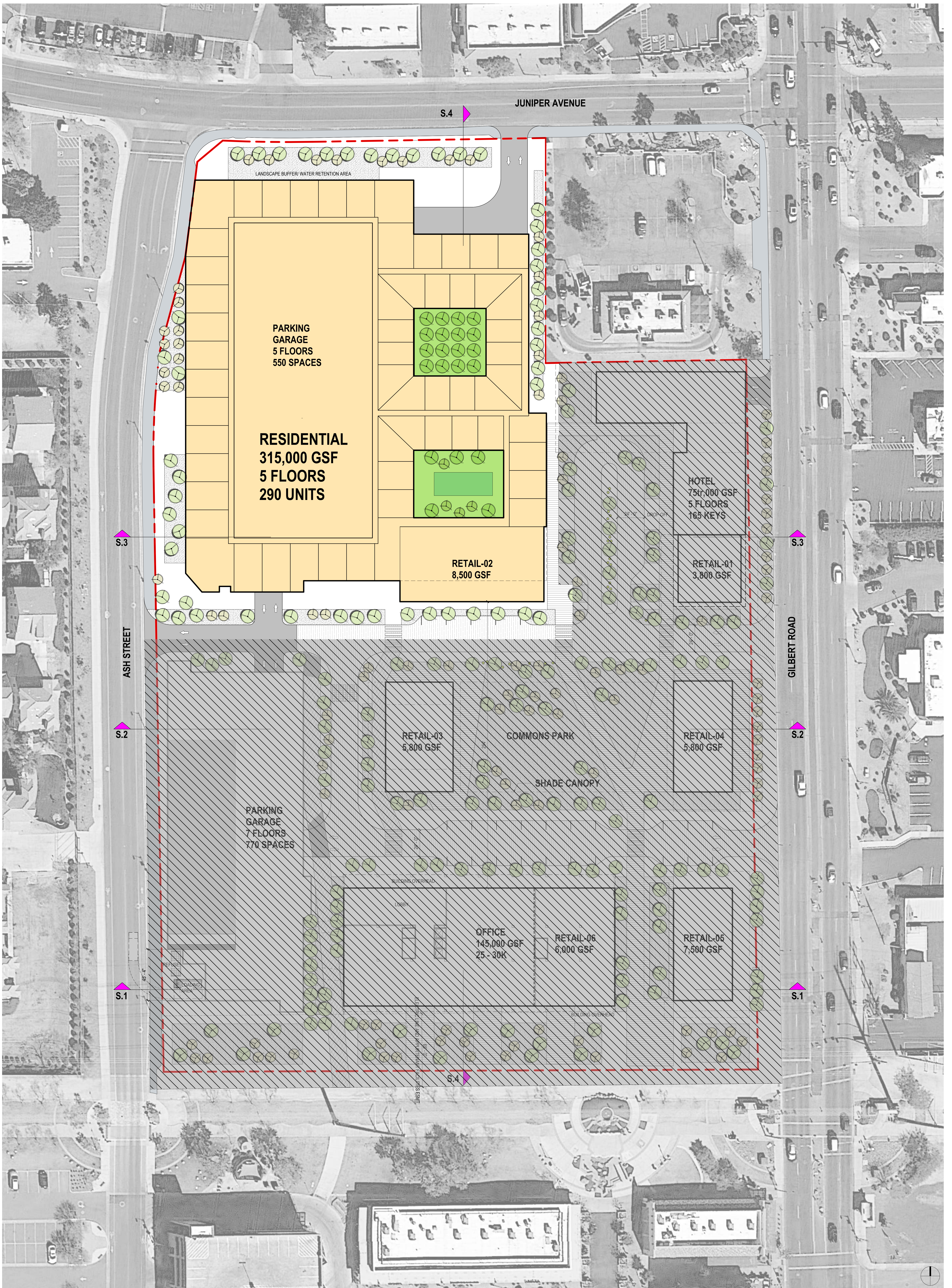
Multi-Family Parking Structure (Enclosed Type Garage, 5 stories, with MF Wrap) – Construction Type IIB:

- Noncombustible construction
- Group S2 Occupancy

General Parking Structure (Stand-alone):

- Type IIB Construction, Precast concrete structure, CMU Elevator Core, Open Air Prefabricated Steel Stairs, Steel Framed Canopies at Perimeter.

EXHIBIT G
MULTI-FAMILY BUILDING
[attached]

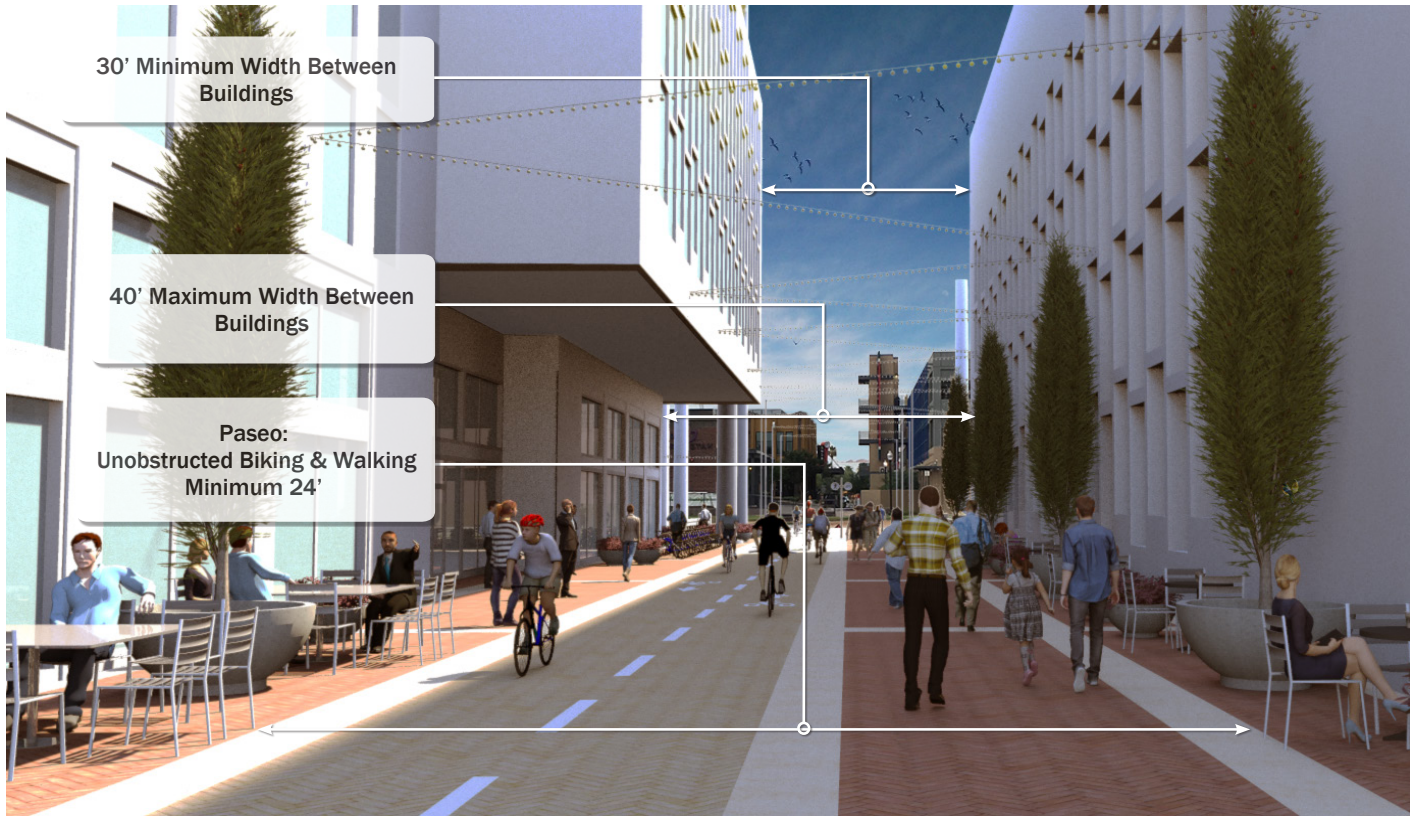


CONCEPTUAL MASTER SITE PLAN

EXHIBIT H
THE PASEO
[attached]

Exhibit H - The Paseo

Conceptual Image Paseo – Perspective Looking South



Paseo – Perspective Looking North

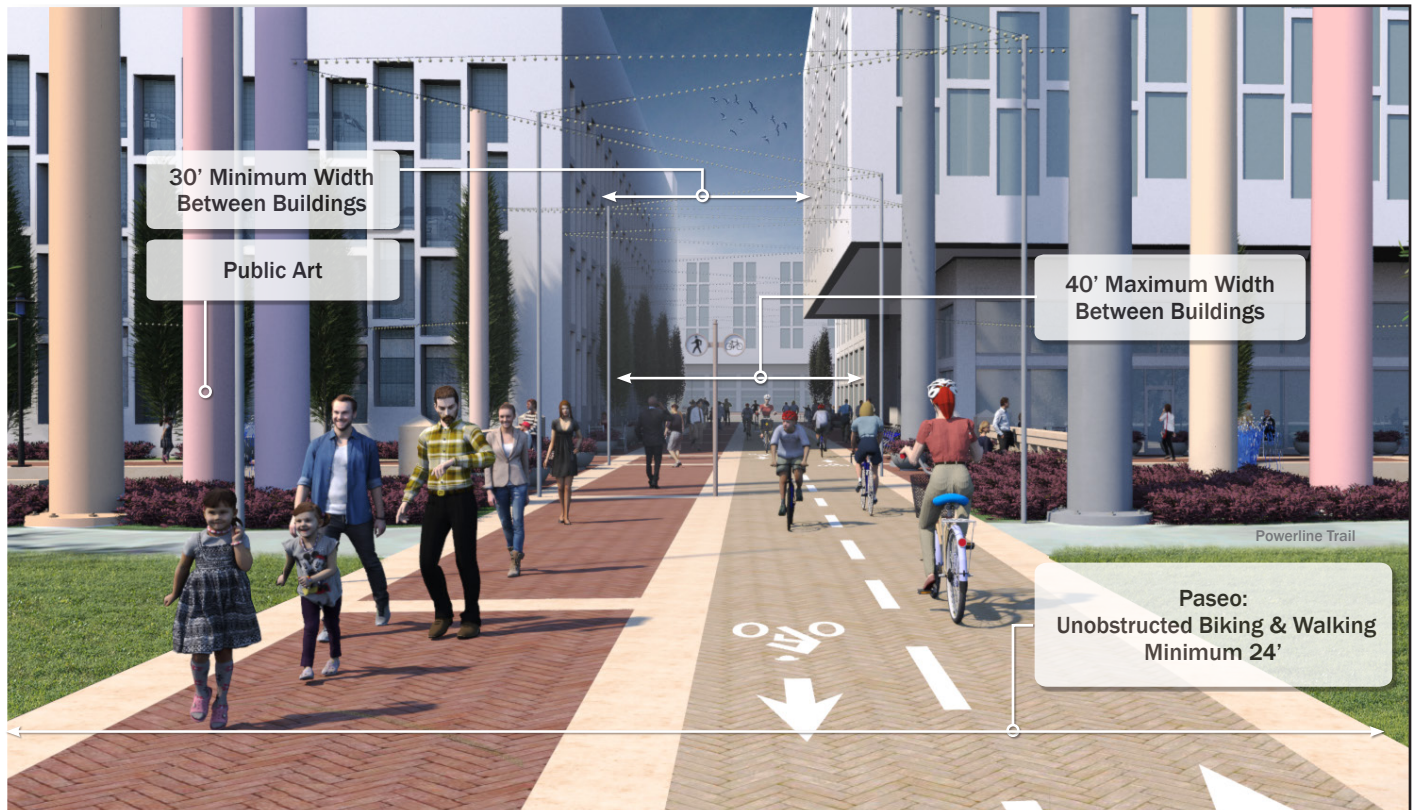
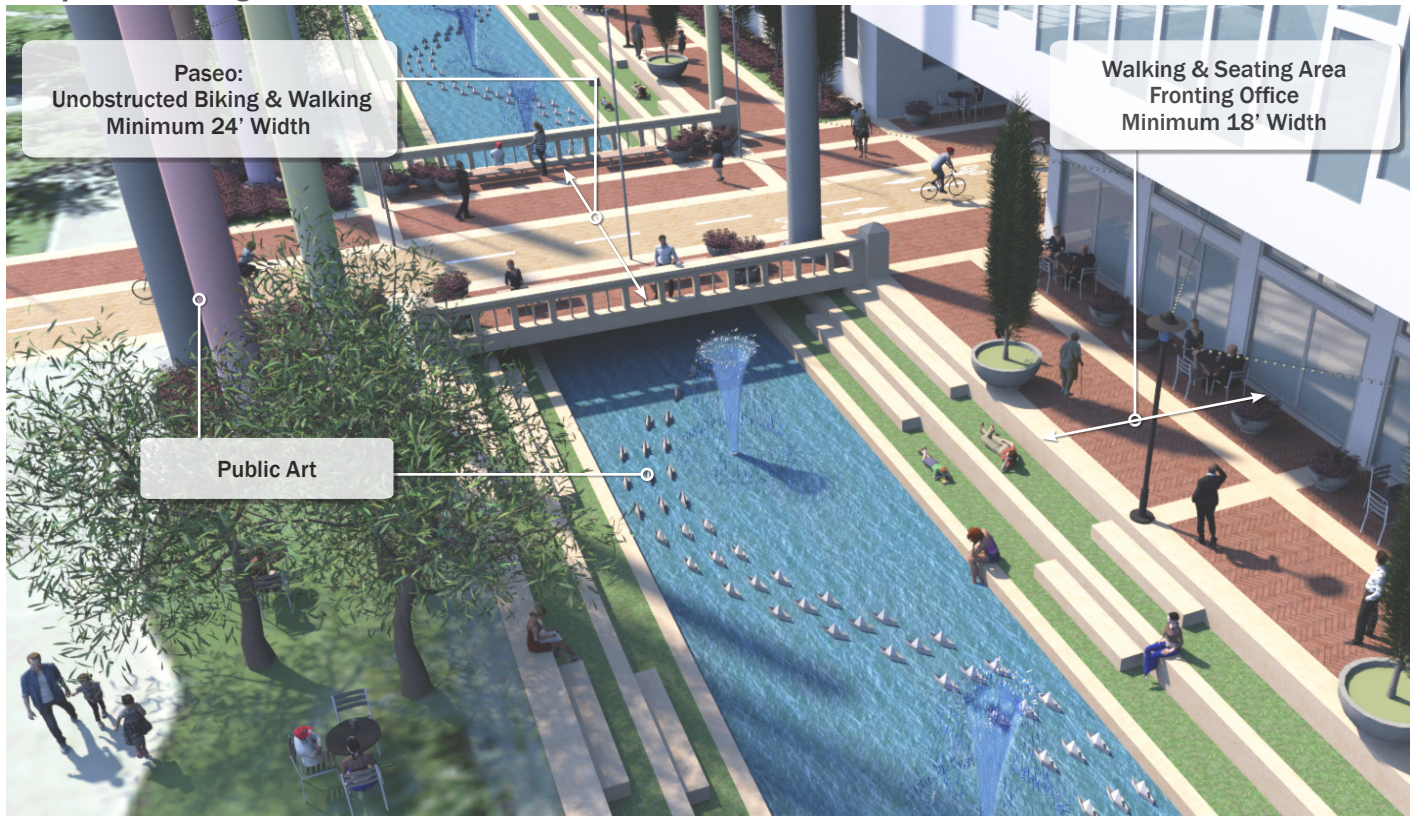


EXHIBIT I

ENHANCED SOUTH PROJECT IMPROVEMENTS

[attached]

Exhibit I
Conceptual Image
Enhanced South Improvements- With Water Feature
Perspective Looking Northwest on Powerline Trail Towards the Paseo



Enhanced South Improvements- Without Water Feature
Perspective Looking Northwest on Powerline Trail Towards the Paseo

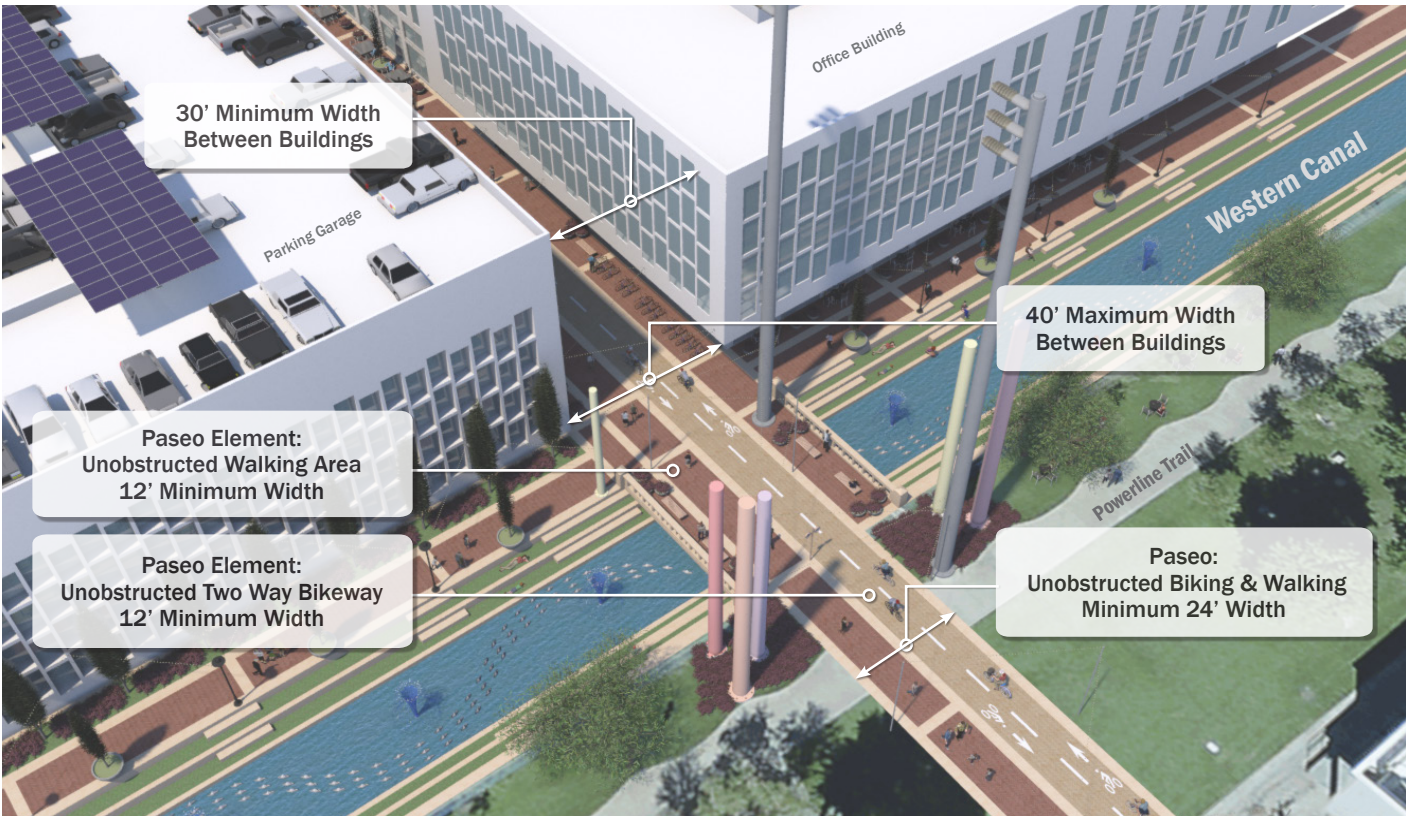


EXHIBIT J

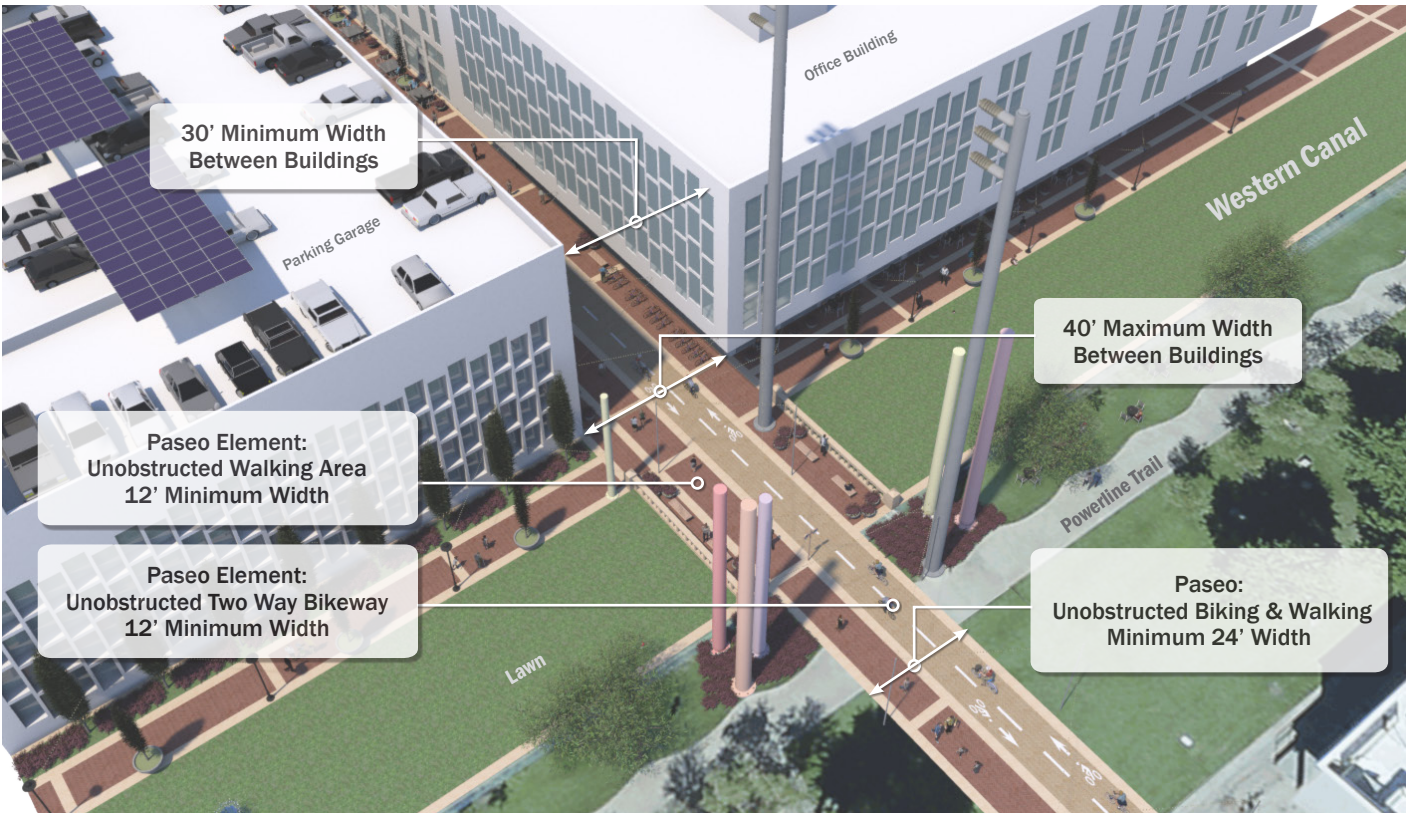
WESTERN POWER LINE TRAIL IMPROVEMENTS

[attached]

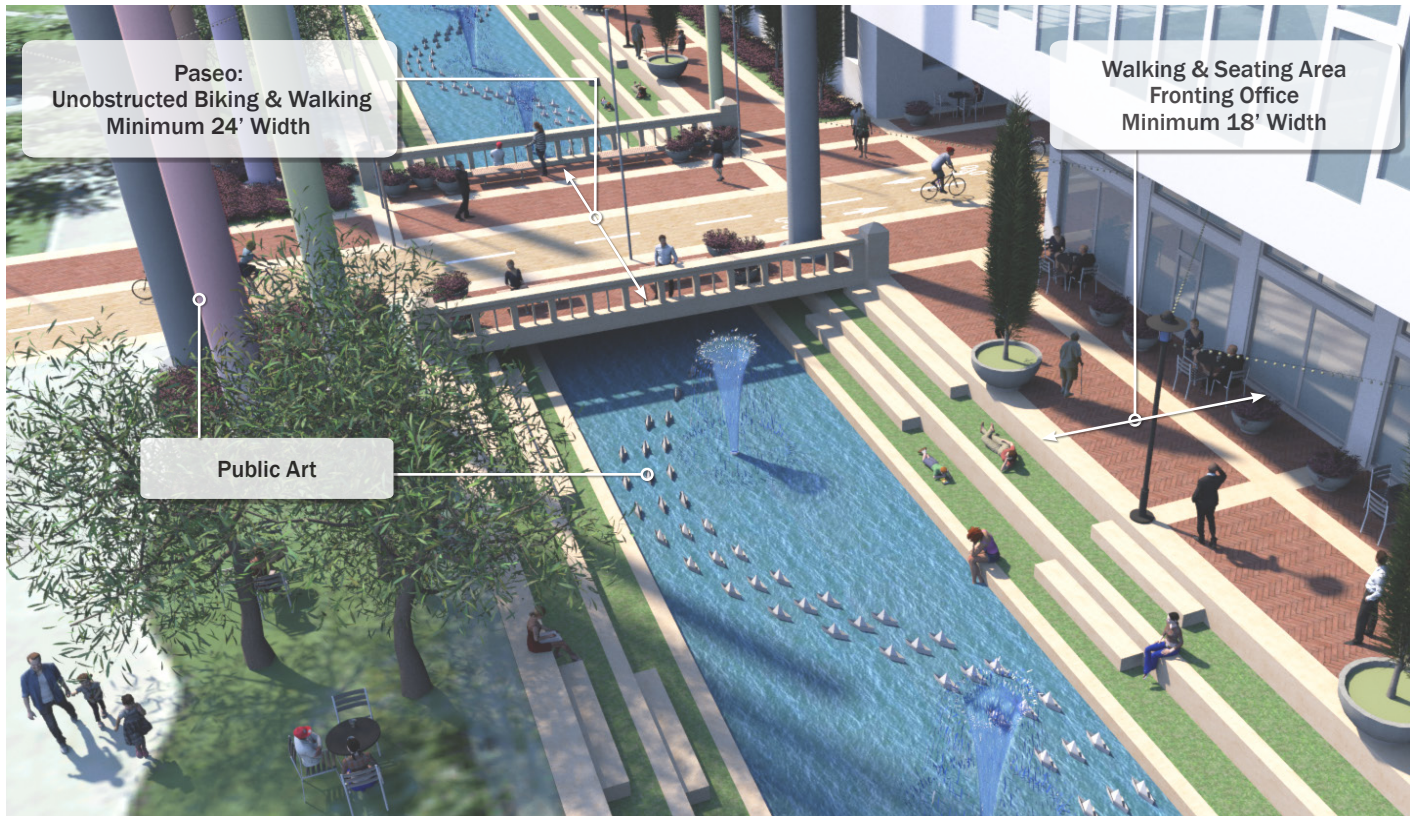
Exhibit J
Conceptual Renderings
Western Powerline Trail Improvements
Aerial Looking Northeast from the Paseo – With Water Feature



Western Powerline Trail Improvements
Aerial Looking Northeast from the Paseo – Without Water Feature



**Western Powerline Trail Improvements
Perspective Looking Northwest – With Water Feature**



**Western Powerline Trail Improvements
Perspective Looking Northwest – Without Water Feature**



PURCHASE CONTRACT
(TOG Contract No. 319001147)

SELLER: Town of Gilbert, Arizona, an Arizona municipal corporation
BUYER: Heritage North Partners, LLC, an Arizona limited liability company
ESCROW AGENT: Thomas Title & Escrow, 7150 E. Camelback Rd., Suite 195, Scottsdale, Arizona 85251, Attn: Sheila Hunter

1. Binding Agreement.

1.1 Upon the execution of this Purchase Contract (the “Agreement”) by Seller and Buyer in accordance with this Agreement, it shall constitute a binding contract between Seller and Buyer for the purchase and sale of the real property described on Exhibit A (the “Property”). This Agreement constitutes escrow instructions to Escrow Agent. Should Escrow Agent require the execution of its standard form printed escrow instructions, Buyer and Seller agree to execute same; however, such instructions shall be construed as applying only to Escrow Agent’s engagement, and if there are conflicts between the terms of this Agreement and the terms of the printed escrow instructions, the terms of this Agreement shall control.

1.2 Seller and Buyer have executed a Development and Disposition Agreement dated May 16, 2019 (the “DDA”) related to the development of the Property, including the construction of various buildings and other improvements on the Property for the purposes set forth in the DDA. This Agreement is executed pursuant to the requirements of the DDA.

2. Acceptance, Opening and Closing.

2.1 The offer represented by this Agreement shall be deemed accepted upon Seller’s execution and delivery of a counterpart of this Agreement to Escrow Agent on or before May 27, 2019.

2.2 Escrow shall be opened when Seller and Buyer deliver one (1) fully executed original of this Agreement to Escrow Agent on or before the acceptance date referred to in Section 2.1 (“Opening of Escrow”). Escrow Agent shall sign the Agreement and advise Seller and Buyer, in writing, of the Opening of Escrow and the date thereof.

2.3 Within one (1) day after the Agreement has been executed by Seller and Buyer and delivered to Escrow Agent pursuant to Section 2.2, Buyer shall deposit with Escrow Agent the sum of Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00) (the “Initial Deposit”). Within five (5) days after Final Design Approval (as defined in the DDA), Buyer shall deposit with Escrow Agent an additional sum of Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00) (the “Additional Deposit”, and together with the Initial Deposit, the “Deposit”). The Deposit shall be refundable in the event of termination of this Agreement pursuant to Section 10 or breach of this Agreement by Seller as set forth in Section 23. The Initial Deposit and Additional Deposit shall be made by wire transfer of immediately available funds to be held by the Escrow Company in accordance with the terms and conditions of this Agreement. Escrow Agent shall immediately

invest such Deposit, at Buyer's expense in a federally insured time deposit or money market account which permits the withdrawal of funds at any time upon demand of Escrow Agent. If Buyer fails to timely deposit with the Escrow Company the Initial Deposit in accordance with the provisions of this section, then Seller may, at its sole election and as its sole remedy, immediately and without notice and the opportunity to cure, terminate this Agreement by written notice to Buyer and the Escrow Company and thereafter this Agreement shall be terminated, all without liability of the parties to each other thereafter, except pursuant to provisions hereof which expressly survive such termination. The Deposit shall be applied to the Purchase Price at Closing.

2.4 Consummation of the purchase of the Property contemplated hereby (the "Closing") shall take place on the earlier to occur of: (a) the date that is thirty (30) days after Final Design Approval (as defined in the DDA), or (b) the date that is nine (9) calendar months after Opening of Escrow, in each instance subject to extension by Buyer pursuant to Section 7.2 below. At or before Closing, each party shall execute and deliver such documents and perform such acts as are provided for herein. All monies and documents required to be delivered under this Agreement for Closing shall be deposited in escrow on or before 10:00 a.m. Mountain Standard Time on the Closing date.

3. Title Insurance; Conveyance of Title. The Property, including all rights and privileges appurtenant to or arising from the Property, shall be conveyed by Seller to Buyer upon Closing by Seller's special warranty deed (the "Deed"), subject to current taxes and assessments, reservations in patents, all easements, rights-of-way, encumbrances, liens, covenants, conditions, obligations and liabilities as may appear of record, and all matters which an accurate survey of the Property or a physical inspection of the Property would disclose. Escrow Agent shall issue or cause to be issued an extended coverage owner's policy of title insurance in the amount of the Purchase Price, for which Buyer shall bear the cost. Buyer and Seller shall execute, acknowledge, and deliver to Escrow Agent the Affidavit of Real Property Value required by A.R.S. Section 42-1612.

4. No Recordation of Agreement. Neither this Agreement nor any memorandum of this Agreement shall be recorded.

5. Risk of Loss/Possession. Seller shall be solely responsible for all loss or damage to property (both real and personal) and any third party claims (for injury or otherwise) resulting from any occurrence on or about the Property prior to Closing, except as otherwise set forth in this Agreement. Buyer shall be solely responsible for all loss or damage to property (both real and personal) and any third party claims (for injury or otherwise) resulting from any occurrence on or about the Property after Closing.

6. Seller Consent for Buyer to Enter the Property for the Purposes of Planning the Development of the Property and Obtaining Permits. Prior to Closing, Buyer is required by the DDA to take certain actions related to planning the development of the Property. Seller hereby consents to Buyer entering upon the Property for these purposes, provided however, that Buyer shall indemnify and hold harmless Seller for any damages or injuries arising out of Buyer's activities on the Property, which indemnification obligation is more fully described in Section 10.

7. Purchase Price; Additional Purchase Price; Contribution to Heritage District Improvements.

7.1 Purchase Price. The purchase price for the Property shall be the greater of (A) the Fair Market Value of the Property as determined in Section 7.1(a) below, or (B) Five Million Three Hundred Thirty-Two Thousand and no/100 Dollars (\$5,332,000.00) (in either event, the "Purchase Price"). The Purchase Price shall be paid in the form of cash or wire transfer of immediately available funds to be deposited with Escrow Agent on or before the Closing.

(a) Determination of Fair Market Value. The Fair Market Value for the purpose of determining the Purchase Price shall be established in the following manner:

(i) Buyer shall, on or before the date that is thirty (30) days after Opening of Escrow, deliver notice (the "Buyer Fair Market Value Notice") to Seller and Escrow Agent setting forth Buyer's determination of the Fair Market Value. The Buyer Fair Market Value Notice shall include a copy of an appraisal of the Property in support of Buyer's determination of such Fair Market Value, prepared by a commercial property appraiser who shall have been active over the ten (10) year period ending on the date of delivery of the Buyer Fair Market Value Notice in the appraisal of commercial properties in the Phoenix, Arizona metropolitan area (a "Qualified Appraiser"). For purposes of this Section 7, the "Fair Market Value" of the Property shall mean the terms and conditions that would be offered by and to a third-party purchaser for a comparable property of similar size, taking into account, among other things, the location of the Property and the value of any existing improvements on the Property.

(ii) Seller shall, on or before the date that is thirty (30) days after Opening of Escrow, deliver notice (the "Seller Fair Market Value Notice") to Buyer and Escrow Agent setting forth Seller's determination of the Fair Market Value. The Seller Fair Market Value Notice shall include a copy of an appraisal of the Property in support of Seller's determination of such Fair Market Value, prepared by a Qualified Appraiser.

(iii) If the Fair Market Value determined by Seller in the Seller Fair Market Value Notice and the Fair Market Value determined by Buyer in the Buyer Fair Market Value Notice differ by ten percent (10%) or less, then the Fair Market Value for determining the Purchase Price shall be the mean (i.e., the average) of Seller's and Buyer's respective determinations of Fair Market Value.

(iv) If the Fair Market Value determined by Seller in the Seller Fair Market Value Notice and the Fair Market Value determined by Buyer in the Buyer Fair Market Value Notice differ by more than ten percent (10%), then Seller and Buyer shall attempt to agree in writing upon a final Fair Market Value (and thus the Purchase Price) using reasonable good faith efforts. If Seller and Buyer fail to reach such written agreement within forty-five (45) days after Opening of Escrow (the "Outside Agreement Date"), then Buyer or Seller may cancel this Agreement by giving written notice to the other Party within ten (10)

days following the Outside Agreement Date (in which event Escrow Agent shall return the Initial Deposit to Seller, and thereafter neither party shall have any further obligation or liability under this Agreement except those liabilities or obligations arising under the indemnity provisions of Section 12); or, if neither Party timely cancels this Agreement, the determination of the Fair Market Value shall be submitted to further appraisal and if necessary, arbitration, in accordance with Sections 7.1(a)(iv)(A) through 7.1(a)(iv)(D) below.

(A) Seller's appraiser and Buyer's appraiser shall within twenty (20) days after the Outside Agreement Date agree upon and appoint a third appraiser (the "Independent Appraiser") who (1) shall be a Qualified Appraiser, and (2) shall not have previously retained by either Seller or Buyer or any of their Related Parties. "Related Parties" means, with respect to any person or entity, the officers, directors, shareholders, partners, members, employees, agents, attorneys, successors, personal representatives, heirs, executors, or assigns of any such person or entity.

(B) The Independent Appraiser shall, within thirty (30) days after his or her appointment, reach a decision as to the Fair Market Value and shall notify Seller, Buyer and Escrow Agent thereof in writing. The Fair Market Value determined by the Independent Appraiser shall be binding upon Seller and Buyer; provided, however, that if the Fair Market Value determined by the Independent Appraiser is either (1) less than the Fair Market Value determined by Buyer, or (2) greater than the Fair Market Value determined by Seller, then the Fair Market Value determined by Seller or Buyer, as the case may be, that is closest to the Fair Market Value determined by the Independent Appraiser shall be the final Fair Market Value of the Property for purposes of determining the Purchase Price.

(C) If the two (2) appraisers fail to timely agree upon and appoint the Independent Appraiser, then the appointment of the Independent Appraiser shall be dismissed and the matter to be decided shall be forthwith submitted to arbitration under the provisions of the American Arbitration Association ("AAA"), but subject to the instructions and limitations set forth in this Section 7.1(a). Seller and Buyer shall each pay the cost of their respective appraisers, and the cost of the Independent Appraiser or the cost of AAA, as applicable, shall be paid by Seller and Buyer equally.

(D) Once Fair Market Value and the Purchase Price have been established in accordance Sections 7.1(a)(iv)(A) through 7.1(a)(iv)(C) above, Seller and Buyer shall within ten (10) days thereafter confirm such Fair Market Value and Purchase Price by written amendment to this Agreement. A copy of such written, signed amendment shall be promptly delivered to Escrow Agent.

7.2 Extension of Closing; Additional Purchase Price.

(a) Buyer may extend the date of Closing for up to two (2) consecutive periods of thirty (30) days each by delivering to Seller and Escrow Agent, in each instance, written notice of Buyer's desire to extend the date of Closing prior to the then-scheduled date of Closing and by concurrently depositing an additional sum of Two Hundred Fifty Thousand and no/100 Dollars (\$250,000.00) (each such deposit, "Extension Deposit") with Escrow Agent. For purposes of this Agreement, each Extension Deposit shall become part of the Deposit in accordance with Section 2.3 and shall be credited against the Purchase Price payable pursuant to Section 7.1, and shall be paid to Seller at Closing.

(b) Buyer may further extend the date of Closing for up to two (2) consecutive periods of thirty (30) days each by delivering to Seller and Escrow Agent, in each instance, written notice of Buyer's desire to extend the date of Closing prior to the then-scheduled date of Closing and by concurrently depositing an additional sum of One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00) (each such deposit, "Additional Purchase Price") with Escrow Agent. For purposes of this Agreement, each deposit of Additional Purchase Price shall become part of the Deposit in accordance with Section 2.3 but shall not be credited against the Purchase Price payable pursuant to Section 7.1, and shall be paid to Seller at Closing in addition to such Purchase Price.

7.3 Contribution to Heritage District Improvements. In addition to the Purchase Price, Buyer shall pay to Gilbert at the Closing the sum of Three Hundred Fifty Thousand and no/100 Dollars (\$350,000) as a contribution of funds to be used for improvements to the Heritage District (as defined in the DDA). Such funds may be spent by Gilbert for such Heritage District improvement projects as Gilbert may determine in its sole discretion, including without limitation Heritage District improvement projects within areas of the Heritage District located outside of the Property.

8. Cooperation. Buyer and Seller acknowledge that it may be necessary to execute documents other than those specifically referred to herein in order to complete the transaction contemplated herein. Both Buyer and Seller hereby agree to cooperate with each other in good faith by executing such other documents or taking such other action as may be reasonably necessary to complete this transaction in accordance with the intent of the parties as evidenced in this Agreement.

9. Fees, Taxes, and Assessments; Costs.

9.1 Real property taxes and assessments shall be prorated at the Closing based on latest available information; however, if, after Closing, the actual tax bill for the Property varies from Escrow Agent's pro ration figures, a new pro ration shall be completed and the party in whose favor any difference exists after pro ration shall be entitled to recover such difference from the other party.

9.2 Expenses of Escrow. Title insurance premiums, loan fees, and all other costs or expenses of escrow shall be paid as follows:

(a) Buyer shall pay the cost of securing the title insurance policy to be issued by Escrow Agent referred to in Section 3 of this Agreement;

(b) Buyer shall pay the cost of recording the Deed described in Section 3 of this Agreement and of filing the Affidavit of Real Property Value required by law;

(c) Seller shall pay the cost of any real property transfer taxes;

(d) Buyer shall pay escrow fees and all fees for filing any deed or mortgages placed on the Property by Buyer;

(e) Buyer shall pay all other expenses of escrow.

10. Buyer's Contingencies. Buyer's obligation to consummate the transactions contemplated by this Agreement is subject to satisfaction of all of the following conditions precedent (any or all of which may be waived by Buyer, but, except as otherwise provided herein, only in a writing signed by Buyer or its duly authorized agent):

10.1 Status of Title. Seller shall cause Escrow Agent, as soon as is reasonably possible after execution of this Agreement, to provide Buyer and Seller with a preliminary title commitment for the Property, disclosing all matters of record which relate to the title to the Property and Escrow Agent's requirements for both closing the escrow created by this Agreement and issuing the policy of title insurance described in Section 3 of this Agreement (the commitment shall also be suitable to serve as the basis for issuance of an ALTA extended form coverage lender's title insurance policy). At such time as Buyer receives the preliminary title commitment, Seller shall also cause legible copies of all instruments referred to in the preliminary title commitment to be furnished to Buyer. Buyer shall have thirty (30) days after receipt of the preliminary title commitment to object in writing to any matter shown in the preliminary title commitment. If Buyer fails to object within the 30-day period, the condition of title to the Property as reflected in the preliminary title commitment shall be deemed approved by Buyer. In the event Buyer does object in writing to any objectionable matter disclosed in the preliminary title commitment, Seller may attempt to remove such objection on or before the Investigation Date (defined below). If any such objectionable matter is not removed on or before the Investigation Date, Buyer shall in writing elect on or before the Investigation Date to either: (i) cancel this Agreement; or (ii) close escrow waiving and taking title subject to such objectionable matters. Failure to give written notice to Seller of Buyer's election shall constitute an election to waive the objection in accordance with the foregoing clause (ii). In the event that, after the date of the preliminary title commitment, any new items appear of record, Escrow Agent shall deliver to Buyer a supplemental preliminary title commitment ("Supplemental Commitment") together with legible copies of all new title exceptions described therein. Buyer shall have ten (10) days after receipt of any Supplemental Commitment to give written notice to Seller ("Objection Notice") disapproving any new items contained in the Supplemental Commitment (other than any items arising pursuant to Buyer's request and Seller's agreement thereto) and identifying the specific new items disapproved by Buyer ("Additional Exceptions"). If Buyer does not deliver such Objection Notice to Seller within the aforementioned 10-day period, Buyer shall be deemed to have approved the unremoved Additional Exceptions. If Buyer timely delivers an Objection Notice, Seller may attempt to

remove such disapproved Additional Exceptions within ten (10) days after receiving the Objection Notice. If Seller does not or cannot remove all of the disapproved Additional Exceptions within such ten (10) day period, Buyer shall have ten (10) days thereafter to give Seller written notice that Buyer has elected to terminate this Agreement. If Buyer does not terminate this Agreement within the aforementioned period, Buyer shall be deemed to have approved the unremoved Additional Exceptions and to have elected to proceed with the Closing.

10.2 Additional Encumbrances. Seller shall not place, permit, or cause to be placed any liens or encumbrances on the title to the Property from the date of this Agreement through Closing.

10.3 Investigation. Buyer shall have until the date that is forty-five (45) days after the Opening of Escrow (the "Investigation Date") to investigate any and all matters concerning the Property, including zoning; access; easements; the availability of water, sewer, and other utilities and services to the Property; development potential; availability of financing; the existence and effect of electrical, agricultural, improvement, or other districts or associations; future installments or obligations relating to assessments and improvement liens; and any restrictions or other matters concerning the Property. In the event Buyer, after conducting in good faith such inspections, investigations, and tests, in its sole discretion, in light of its investigation and review, determines that the Property or any part thereof is not suitable for its purposes, then Buyer may elect at any time on or prior to the Investigation Date to cancel this Agreement by written notice to Escrow Agent and Seller, in which event Escrow Agent shall return the Initial Deposit to Seller, and thereafter neither party shall have any further obligation or liability under this Agreement except those liabilities or obligations arising under the indemnity provisions of Section 12. If Buyer does not elect to cancel the escrow on or prior to the Investigation Date, Buyer shall be deemed to have approved all matters concerning the Property, except as otherwise provided in this Section 10.

10.4 Survey. No later than thirty (30) days after the execution of this Agreement and the issuance of the preliminary title commitment described in Section 10.1, Buyer, at its sole cost, shall cause a survey of the Property to be completed in accordance with the most current ALTA/NSPS land title survey standards (the "Survey") by a registered land surveyor or licensed civil engineer. Upon the completion of the Survey, Buyer shall provide at least three (3) copies to Seller and two (2) copies to Escrow Agent. Buyer shall have five (5) days after receipt of the Survey to deliver an Objection Notice to Seller disapproving any matters shown on the Survey. If Buyer does not deliver such Objection Notice to Seller within the aforementioned 5-day period, Buyer shall be deemed to have approved all matters shown on the Survey. If Buyer timely delivers an Objection Notice relating to a Survey matter, Seller may attempt to remove such disapproved matter within ten (10) days after receiving the Objection Notice. If Seller does not or cannot remove all of the disapproved Survey matters within such ten (10) day period, Buyer shall have ten (10) days thereafter to give Seller written notice that Buyer has elected to terminate this Agreement. If Buyer does not terminate this Agreement within the aforementioned period, Buyer shall be deemed to have approved the unremoved Survey matters and to have elected to proceed with the Closing.

11. Seller's Contingencies. Seller's obligation to consummate the transactions contemplated by this Agreement is subject to satisfaction of all of the following conditions precedent (any or all of which may be waived by Seller, but, except as otherwise provided herein, only in a writing signed

by Seller, or its duly authorized agent): Buyer's compliance with the terms, conditions, requirements and obligations of the DDA.

12. Tests. Buyer, its agents, and designees, shall have the right to enter upon the Property at all times prior to Closing for the purposes of inspecting the Property and making, preparing, and obtaining any tests, surveys, or studies it may desire including, without limitation, any drainage, percolation, and soil tests and studies, and other engineering, environmental or archaeological tests and studies. Buyer agrees to indemnify, pay, defend, and hold harmless Seller from all claims and liabilities for personal injury or physical property damage, or mechanics' or materialmen's liens, which may be asserted against Seller as a result of any entry by Buyer, its agents, or designees onto the Property. Seller shall have the right to have a representative present for all such activities. Prior to entering the Property, Buyer shall provide to Seller proof of insurance reasonably satisfactory to Seller that Buyer has in effect, at all times when Buyer is authorized to come on the Property, commercial general liability insurance in a minimum amount of \$2,000,000, combined single limit per occurrence, insuring Buyer against claims for personal injury, death, and property damage or destruction. Seller shall be named as an additional insured on such policy. Promptly after the completion of any tests, Buyer shall return the Property to substantially the condition existing prior to the time of such entry.

13. Documents Pertaining to the Property. Upon execution of this Agreement, Seller shall allow Buyer to inspect and copy any and all information, data, documents, and other materials in Seller's possession or reasonably available to Seller relating to the property including all reports, engineering and/or survey work.

14. Seller's Representations, Warranties and Covenants. Seller makes the following representations and warranties to Buyer, which are agreed to be a material part of the consideration hereunder, which shall be true when made and on the date of Closing, and which shall survive the Closing: (a) Seller has full power and authority to enter into this Agreement and complete the purchase and sale transaction contemplated herein; and (b) upon Seller's execution of this Agreement, this Agreement shall be binding and enforceable against Seller in accordance with its terms. Upon Seller's execution of the additional documents contemplated by this Agreement, the additional documents shall be binding and enforceable against Seller in accordance with their terms. Seller shall not enter into any agreements, contracts, applications, permits, or approvals relating to the Property which would remain effective beyond the Closing, except as requested by or approved by Buyer.

15. Buyer's Representations, Warranties and Covenants. Buyer warrants and represents that it is a duly organized and validly existing limited liability company formed under the laws of the State of Arizona and authorized to transact business in the State of Arizona. The entry by Buyer into the transaction contemplated by this Agreement and the performance by Buyer of all of its obligations in connection herewith have been duly and validly authorized by all necessary action(s), are in accordance with applicable law and are not in violation of Buyer's articles of organization. This Agreement and all additional documents delivered in connection with this Agreement have been duly and validly executed and delivered by Buyer and constitute the legal, valid and binding obligations of Buyer. Buyer represents, and Seller relies on this

representation, that Buyer has or will have sufficient financing to purchase the Property at Closing.

16. Reserved.

17. Reserved.

18. State Subdivision Laws. Buyer and Seller believe and intend that this transaction is exempt from Article 4, Chapter 20 of Title 32, Arizona Revised Statutes (A.R.S. Sections 32-2181 et seq.) relating to the sale of subdivided lands. Buyer expressly represents to Seller (and acknowledges that Seller is relying upon the representation in entering into this Agreement) that Buyer is not a subdivider, developer, or builder within the meaning of those statutes.

19. Use of Name. Buyer shall not use Seller's name or the name of any affiliate of Seller alone or in combination with any other name, or the logo, trademark, or trade name of any division, project, or profit center of Seller, in any of Buyer's advertising or otherwise, without the prior written approval of Seller. For purposes of this section, "advertisement" includes, without limitation, any notice, circular, letter, or other written or media-transmitted announcement.

20. Survival of Representations and Warranties. All representations and warranties contained in this Agreement (and in any instrument delivered by or on behalf of any party pursuant hereto or in connection with the transactions contemplated hereby) are true on and as of the date so made, will be true in all material respects on and as of the Closing Date, and will survive Closing and execution, delivery, and recordation of the Deed.

21. No Assumption of Seller's Liabilities. Buyer is acquiring only the Property from Seller and is not the successor of Seller. Buyer does not assume, agree to pay, or indemnify Seller or any other person against any liability, obligation, or expense of Seller or relating in any way to the Property except to the extent, if any, expressly and specifically provided for in this Agreement.

22. Property Sold "As-Is". Except as may be expressly provided in this Agreement, it is acknowledged that Seller and its employees, agents, representatives, brokers and attorneys have not made, nor has Buyer relied on, any statements, materials, representations, or warranties, express or implied, of Seller or its employees, agents, representatives, brokers and attorneys. Buyer acknowledges and agrees that it is relying solely on its own examination, inspection and investigation of the condition of the Property including, without limitation, the surface and subsurface thereof, all soil, engineering, environmental and other conditions which may affect the Property, any construction thereof, its zoning and use, its value, the development thereof and title, all as deemed necessary or appropriate, and Buyer is entering into this Agreement and purchasing the Property based upon the results of such inspections and investigations and not in reliance on any statements, representations or agreements of Seller not expressly contained in this Agreement. As a result, it is specifically acknowledged and agreed that Buyer is acquiring the Property "AS IS, WHERE IS".

23. Remedies.

23.1 Seller's Default. In the event of a failure in the performance of this Agreement by Seller, Buyer shall notify Seller in writing, and if Seller has not cured such failure within ten (10) days after such notice, then Seller shall be in default and, as its sole and exclusive remedies, Buyer may either (a) by written notice to Seller and Escrow Agent terminate this Agreement, whereupon the entire Deposit shall be immediately returned to Buyer, or (b) seek specific performance of this Agreement, any for which action shall be commenced within sixty (60) days after Seller's default. Buyer waives any and all other rights and remedies at law or in equity arising by reason of the default of Seller other than those specifically set forth above.

23.2 Buyer's Default. In the event of a failure in the performance of this Agreement by Buyer, Seller shall notify Buyer in writing, and if Buyer has not cured such failure within ten (10) days after such notice, then Buyer shall be in default and, as its sole remedy, Seller shall have the right to terminate this Agreement and retain the Deposit as liquidated damages and not as a penalty. Subject to Section 23.3 of this Agreement, Seller waives any and all other rights and remedies at law or in equity arising by reason of the default of Buyer other than that specifically set forth above.

23.3 Default Related to Buyer Entry Upon Property. Buyer specifically acknowledges and agrees that in the event of a Buyer default in its obligations arising pursuant to this Agreement, Seller shall be entitled to recover from Buyer all actual damages incurred by Seller as a result of Buyer's default. In no event shall Buyer be liable to Seller for any incidental, consequential or punitive damages arising out of or in connection with such default. This Section 23.3 shall survive the Closing or earlier termination of this Agreement.

24. Notices. Notices required or permitted hereunder shall be given in writing and personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier service (e.g., Federal Express, DHL) addressed as follows:

To Buyer: Heritage North Partners, LLC
1200 N. 52nd Street
Phoenix, Arizona 85008
Attn: David E. Sellers

With a copy to: DMB Development, LLC
7600 E. Doubletree Ranch Road, Suite 250
Scottsdale, Arizona 85258
Attn: Brent Herrington & Jim Hoselton

To Seller: Town Manager
Town of Gilbert
50 East Civic Center Drive
Gilbert, AZ 85296

With a copy to
Seller's counsel: Town Attorney
Town of Gilbert

50 East Civic Center Drive
Gilbert, AZ 85296

To Escrow Agent:

Thomas Title & Escrow
7150 E. Camelback Rd., Suite 195
Scottsdale, AZ 85251
Attn: Sheila Hunter

or at any other address designated by Buyer, Seller, or Escrow Agent, in writing, and any such notice of communication shall be deemed to have been given as of the date of delivery, if hand or courier delivered, or as of three (3) days after the date of mailing, if mailed certified, return receipt requested, postage prepaid. Copies of all notices or communications to Buyer or Seller shall be hand or courier delivered or mailed, in the manner set forth above, to Escrow Agent, and copies of all notices by Buyer or Seller to Escrow Agent shall be hand or courier delivered or mailed, in the manner set forth above, to the other party.

25. Attorneys' Fees. In the event suit is brought or an attorney is retained by any party to this Agreement to enforce the terms of this Agreement, to collect any money due, or to obtain any money damages or equitable relief for breach, the prevailing party shall be entitled to recover, in addition to any other available remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation, and other related expenses.

26. Intended Agreement. This Agreement is the result of arms-length negotiations between parties of roughly equivalent bargaining power and expresses the complete, actual, and intended agreement of the parties. This Agreement shall not be construed for or against either party as a result of its participation, or the participation of its counsel, in the preparation and/or drafting of this Agreement or any exhibits hereto.

27. Relationship. This Agreement shall not be construed as creating a joint venture, partnership, or any other cooperative or joint arrangement between Buyer and Seller, and it shall be construed strictly in accordance with its terms.

28. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors in interest and permitted assigns.

29. Further Instruments and Documents. Each party hereto shall, promptly upon the request of the other party or Escrow Agent, acknowledge and deliver to the other party or Escrow Agent any and all further instruments and assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement or to satisfy Escrow Agent's requirements.

30. Integration Clause; No Oral Modification. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all agreements, oral or written, entered into prior to this Agreement are 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 other contemporaneous written Agreements. This Agreement may not be changed,

modified, or rescinded, except in a writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect.

31. Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to choice of law principles). Any action brought to interpret, enforce, or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County or in the United States District Court for the District of Arizona if, but only if, the superior court lacks or declines jurisdiction over such action). The parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section.

32. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, and this Agreement shall otherwise remain in full force and effect.

33. Waiver. Failure of any party to exercise any right, remedy, or option arising out of a breach of this Agreement shall not be deemed a waiver of any right, remedy, or option with respect to any subsequent or different breach, or the continuance of any existing breach.

34. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

35. Broker's Commission. Buyer has not dealt with any real estate salespersons, brokers or agents in connection with this transaction. If any person shall assert a claim to a finder's fee, brokerage commission or other compensation on account of alleged employment by Buyer as a finder or broker in connection with this transaction, Buyer shall indemnify, defend, and hold harmless Seller for, from and against liability arising in connection with such claim or any action or proceeding brought on such claim. Seller has not dealt with any real estate salespersons, brokers or agents in connection with this transaction. If any person shall assert a claim to a finder's fee, brokerage commission or other compensation on account of alleged employment by Seller as a finder or broker in connection with this transaction, Seller shall indemnify, defend, and hold harmless Buyer for, from and against liability arising in connection with such claim or any action or proceeding brought on such claim. The foregoing obligations shall survive the Closing or termination of this Agreement.

36. Date of Agreement. The date of this Agreement shall for all purposes be the date of the signature of the last party to sign this Agreement.

37. Time of Essence. Time is hereby declared to be of the essence for the performance of all conditions and obligations under this Agreement.

38. Construction/Interpretation. The captions and section headings used in this Agreement are for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement. When used herein, the terms “include” or “including” shall mean without limitation by reason of the enumeration. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require. The term “person” shall include an individual, corporation, partnership, trust, estate, or any other entity. If the last day of any time period stated herein shall fall on a Saturday, Sunday, or legal holiday in the State of Arizona, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday in the State of Arizona.

39. Foreign Tax Withholdings. Seller shall provide to Buyer and Escrow Agent at Closing appropriate affidavits stating that it is not a foreign person and that no withholding is required pursuant to Internal Revenue Code § 1445.

40. Conflict of Interest. This contract may be cancelled pursuant to the provisions of A.R.S. Section 38-511.

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement on the dates set forth below.

BUYER:

HERITAGE NORTH PARTNERS, LLC,
an Arizona limited liability company

By: _____

Name: _____

Its: _____

Date: May __, 2019

SELLER:

TOWN OF GILBERT, ARIZONA
an Arizona municipal corporation

By: _____

Jenn Daniels, Mayor

Date: May __, 2019

ATTEST:

Lisa Maxwell, Town Clerk

APPROVED AS TO FORM:

Christopher W. Payne, Town Attorney

ACCEPTANCE OF ESCROW AGENT

The undersigned hereby agrees to act as Escrow Agent pursuant to the foregoing Purchase Contract between the TOWN OF GILBERT and HERITAGE NORTH PARTNERS, LLC.

Escrow Agent has established Escrow No. 3978TAZ pursuant to the terms hereof. Opening of Escrow shall be deemed to have occurred on _____, 2019.

Escrow Agent agrees to cause its underwriter to issue to the parties a closing protection letter in written form satisfactory to Seller, within five (5) days following the Opening of Escrow.

THOMAS TITLE & ESCROW

By: _____

Name: Sheila Hunter, Escrow Officer

EXHIBIT A (To Purchase Contract)
LEGAL DESCRIPTION OF THE PROPERTY
[attached]

LEGAL DESCRIPTION FOR
TOWN OF GILBERT
ASSESSOR PARCEL 302-14-907 AND 302-14-908 (TRACT A)

An irregular shaped area situated in the Southeast quarter of the Northeast quarter of Section 12, Township 1 South, Range 5 East of the Gila and Salt River Base Line and Meridian, (SE¼ NE¼, Sec 12, T1S, R5E, G&SRB&M) Maricopa County, Arizona more particularly described below:

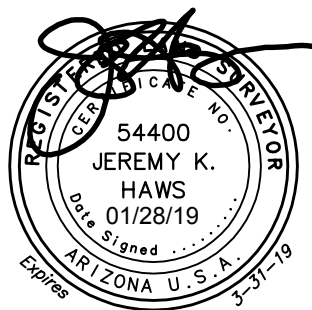
A basis for bearings is South 00° 57' 30" East as measured along the east line of said Northeast Quarter of Section 12 having a distance of 2,633.77 feet between a brass cap in a hand hole representing the Northeast corner (Maricopa County GDACS point 22041-1) and an aluminum cap on rebar representing the East quarter corner (Maricopa County GDACS point 22047-1M) of said Section 12 calculated from known Arizona State Plane ground coordinate values.

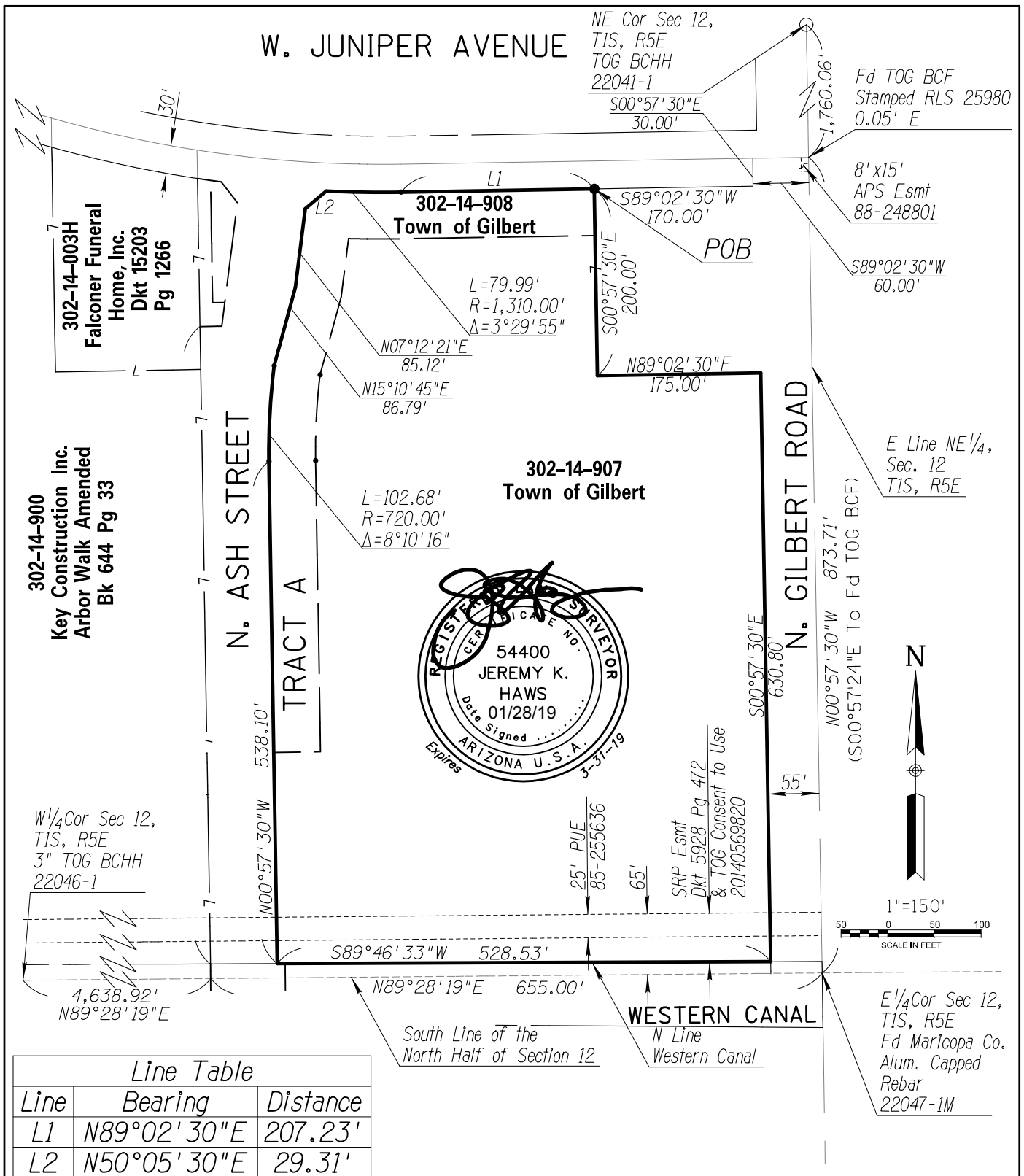
For Lot 1 (Excluding Public Right-of-way)

Commencing from a tie at the East quarter corner of said Section 12; thence North 00° 57' 30" West, 873.71 feet to a found flush brass cap at the intersection of the centerline for W. Juniper Avenue; thence South 89° 02' 30" West along said centerline, 60.00 feet; thence South 00° 57' 30" East, 30.00 feet; thence South 89° 02' 30" West, 170.00 feet along a line parallel to and 30.00 feet south of the centerline for W. Juniper Avenue to the true Point of Beginning;


Thence South 00° 57' 30" East, 200.00 feet;
Thence North 89° 02' 30" East, 175.00 feet to a point on the westerly right-of-way of N. Gilbert Road;
Thence South 00° 57' 30" East, 630.80 feet along said westerly right-of-way of N. Gilbert Road to a point on the north easement line for the Western Canal;
Thence South 89° 46' 33" West along said north line, 528.53 feet to a point on the easterly right-of-way of N. Ash Street;
Thence North 00° 57' 30" West along said easterly right-of-way of N. Ash Street, 538.10 feet to a point of curvature to the right having a radius of 720.00 feet and central angle of 8° 10' 16";
Thence northeasterly along the arc of said curve, 102.68 feet to a point of tangency;
Thence North 15° 10' 45" East, 86.79 feet;
Thence North 07° 12' 21" East, 85.12 feet;
Thence North 50° 05' 30" East, 29.31 feet to a point on a line concentric to and 30.00 feet south of the centerline for W. Juniper Avenue and on a non-tangent curve concave to the northeast having a radius of 1,310.00 feet and a central angle of 03° 29' 55";
Thence southeasterly along the arc of said concentric curve, 79.99 feet to a point of tangency;
Thence North 89° 02' 30" East, 207.23 feet returning to the Point of Beginning.

Containing 396,473 square feet (9.1017 acres) more or less.





Line Table		
Line	Bearing	Distance
L1	N89°02'30"E	207.23'
L2	N50°05'30"E	29.31'



HUBBARD ENGINEERING

1201 S. Alma School Rd. Suite 12000
Mesa, AZ 85210
Ph: 480.892.3313
www.hubbardengineering.com

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION FOR ASSESSOR PARCEL 302-14-907 & 908



GILBERT ARIZONA

DATE: 01/19	PROJECT NUMBER RD116 SHEET 1 OF 1
DSN: RPW	
DRN: KRT	
CHK: JKH	

PHOENIX WUSHU ACADEMY

WHEREAS, Phoenix Wushu Academy is a Chinese martial arts school located in Gilbert with a mission to promote Chinese and Asian culture. The Academy is known for training high level athletes that represent the US in international competitions all around the world; and

WHEREAS, this summer on June 14th-18th, 2019, 5 elite students of the Phoenix Wushu Academy will be traveling to Leshan, China to compete in the 8th World Wushu Kung Fu Championships, the largest Chinese martial arts tournament in the world.

WHEREAS, This tournament has over 7,000 of the top competitors around the globe coming together in a fierce competition where only the best will win. In such a tough competition, Phoenix Wushu Academy has had a record of doing very well; and

WHEREAS, last time in the 7th World Wushu Kung Fu championships they brought home a total of 1 gold, 3 silver and 6 bronze medals.

WHEREAS, Phoenix Wushu Academy students have put in countless hours of hard work in their sport and through their strength, diligence and perseverance they have brought pride and honor to the great Town of Gilbert with their achievements throughout the years; and

WHEREAS, they hope to inspire the people around them with the passion and dedication they have for the sport of Wushu and aspire to become a bridge for American and Chinese culture

NOW THEREFORE, I, Jenn Daniels, Mayor of the Town of Gilbert, do hereby recognize on May 16, 2019:

PHOENIX WUSHU ACADEMY AS AMBASSADORS OF GILBERT TO LESHAN

I urge my fellow citizens to recognize and applaud the achievements of these bright and dedicated students representing our great Town in this prestigious international event.

In witness, thereof, I hereby set my hand and affix the Official Seal of the Office of the Mayor, Town of Gilbert, Arizona, this 16th day of May, 2019.

Jenn Daniels, Mayor



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Mark Horn, Wastewater Manager, 503-6420

MEETING DATE: May 16, 2019

SUBJECT: Neely Wastewater Reclamation Plant Operation and Maintenance Agreement

STRATEGIC INITIATIVE: Infrastructure

The Neely Wastewater Reclamation Plant operation and maintenance agreement supports the infrastructure strategic initiative by providing wastewater treatment services and the production of reclaimed water to benefit the community.

RECOMMENDED MOTION

A motion to approve agreement #319001126 with Inframark for a period of four (4) years commencing July 1, 2019 through June 30, 2023, with the option to renew for three (3) additional two (2) year terms, for the operation and maintenance of the Neely Wastewater Reclamation Plant located at 402 North Neely Street, and authorize the Mayor to execute the required documents.

BACKGROUND/DISCUSSION

The Town of Gilbert issued a Request For Proposals (RFP) in October, 2018 soliciting statements of qualifications and technical approaches from firms capable of providing full service operations, maintenance and management of the Neely Wastewater Reclamation Plant located at 402 North Neely Street. The RFP and the negotiated contract call for a four (4) year contract term with an option to renew the agreement for three (3) additional two (2) year terms with service commencing on July 1, 2019. Two firms responded to the Town's RFP by submitting proposals for consideration. The two firms were Inframark and Veolia/GHD. The proposals received were reviewed by a selection committee and the two

firms were also interviewed as part of the final selection process.

The RFP selection panel initially had the Veolia team ranked slightly higher, which resulted in the Town initiating contract negotiations with them. However, due to changing circumstances, the selection committee reconvened and made the decision that it was in the Town's best interest to cease negotiations with the Veolia team and instead begin contract negotiations with the Inframark team. As a result, the committee has instead selected Inframark as the most responsive firm following this RFP selection process. Inframark is the current operator of the Neely Wastewater Reclamation Plant, and staff is confident that they will continue to do an excellent job operating and maintaining the facility moving forward. The contract agreement requires that Inframark be responsible for all aspects of facility management, operation and maintenance, and chemical costs (with the exception of electrical power costs).

Inframark's (formerly Severn Trent) current original agreement was approved on June 21, 2005. An initial five (5) year term of this agreement then ended on June 30, 2010. Following that initial contract term, the Gilbert Town Council approved the first five (5) year contract renewal term on June 8, 2010. Following the first five (5) year contract renewal term, an Amendment No.1 was then approved by the Gilbert Town Council to change the final remaining five (5) year contract term under the original agreement to a series of one (1) year renewal terms instead. That Amendment No.1, along with a one (1) year contract renewal term was then approved by the Gilbert Town Council on June 4, 2015 for fiscal year 2016. On June 9, 2016 another one (1) year contract term was approved for fiscal year 2017. Then on June 1, 2017 another one (1) year contract term was approved for fiscal year 2018. Finally, the current one (1) year agreement was approved on May 17, 2018 for fiscal year 2019. This Council action would approve a new contract agreement following the Town's recent RFP process.

Additionally, a formal performance review of the current contract operator and a condition assessment of the Neely Wastewater Reclamation Plant infrastructure and process areas was completed in February, 2017 by an independent third party firm retained by Gilbert (i.e. Brown and Caldwell Engineering). The completion of this formal performance review and facility condition assessment was in alignment with Gilbert's ongoing long range infrastructure planning efforts. Overall, the findings contained within the third party's final report from that effort were positive. The third party indicated that it is their belief that "Gilbert is receiving good value from STS (Severn Trent Services) for its operation and stewardship of the Neely WRP. The working relationship between STS and Gilbert staff, knowledge of the facility, and success of STS's electrical power management program would be difficult to replace". It also went on to state that "overall, the facility assets are in good condition, given their age". Recommendations that came from that effort consisted of enhancements that could be incorporated into a new contract document and capital improvement projects to replace some aging process area infrastructure. The identified capital projects recommended for the facility have already been incorporated into Gilbert's future Capital Improvement Plan.

The contract was reviewed for form by John Baird, Deputy Town Attorney.

The contract was reviewed by Doug Boyer, Purchasing Administrator.

FINANCIAL IMPACT

The Neely Wastewater Reclamation Plant contract agreement contains a base compensation fee associated with plant operations and maintenance. The base compensation formula factors expenses related to labor and plant maintenance functions. Annual adjustments to the base compensation fee are made pursuant to an applicable Consumer Price Index. The annual operational fee is paid over twelve monthly payments. Based upon the formula contained within the agreement, the FY-2020 annual operational fee is scheduled to be \$1,846,330. Funds have been included in the FY-2020 wastewater operations budget to accommodate this expense.

In addition to the base compensation fee, funds for the plant's required infrastructure repair and replacement projects are also budgeted each fiscal year based on a maintenance management schedule. The repair and replacement project schedule provided in the FY-2020 operation and maintenance budget includes a proposed amount of \$300,000; this has also been included in the FY-2020 wastewater operations budget.

Funds for the operation and maintenance of the Neely Wastewater Reclamation Plant are budgeted in fund and cost center number 65073305.

The financial impact was reviewed by Cris Welch, Senior Management and Budget Analyst.

STAFF RECOMMENDATION

Staff recommends that Council approve agreement #319001126 with Inframark for a period of four (4) years commencing July 1, 2019 through June 30, 2023, with the option to renew for three (3) additional two (2) year terms, for the operation and maintenance of the Neely Wastewater Reclamation Plant, and authorize the Mayor to execute the required documents.

Respectfully submitted,

Mark Horn
Wastewater Manager

Enclosures:
Contract #319001126, Neely WRP Operation and Maintenance Agreement

Approved By

Approval Date

Jessica Marlow
John Baird
Cris Welch

5/7/2019 7:43:47 AM
5/8/2019 7:26:39 AM
5/7/2019 7:59:11 AM

AGREEMENT FOR
THE OPERATION AND MAINTENANCE
OF THE TOWN OF GILBERT
NEELY WASTEWATER RECLAMATION FACILITY

by and between

THE TOWN OF GILBERT, ARIZONA

and

INFRAMARK, LLC

July 1, 2019

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LIST OF EXHIBITS

- Exhibit A – Environmental Permits
- Exhibit B – Plant Manager and Key Personnel
- Exhibit C – Facility and Facility Site
- Exhibit D – Insurance
- Exhibit E – Effluent and Influent Standards and Loadings
- Exhibit F – SCADA Upgrade Services

AGREEMENT FOR
THE OPERATION AND MAINTENANCE
OF THE TOWN OF GILBERT
NEELY WASTEWATER RECLAMATION FACILITY

This Agreement for Operations and Maintenance Service (hereinafter the “Agreement”) is made and entered into as of the 1st day of July, 2019 (the “Contract Date”), by and between the Town of Gilbert (“Town”), a political subdivision of the State of Arizona, and Inframark, LLC (“Contractor”), a Texas limited liability company with its principal place of business at 2002 West Grand Parkway North, Suite 100, Katy, Texas 77449.

RECITALS

1. Town owns the wastewater reclamation facility which is located at 402 North Neely Road, Gilbert, Arizona 85233 known as the Neely Wastewater Reclamation Facility (the “Facility”); and

2. Town has responsibility for the operation and maintenance of the Facility and for the provision of wastewater reclamation services to residents of the Town; and

3. Town may enter into an operations and maintenance contract for the Facility; and

4. Contractor has the experience, qualifications and personnel to operate and maintain the Facility.

Now, THEREFORE, IT IS MUTUALLY AGREED by and between Town and Contractor as follows:

1. DEFINITIONS

As used in and when capitalized in this Agreement, the following definitions shall apply:

“*Adjustment Date*” means July 1 of every Agreement Year.

“*Affiliates*” means “related parties” to the Contractor (within the meaning of Section 144(a)(3) of the Internal Revenue Code).

“*Agreement*” means this Operations and Maintenance Service Agreement.

“*Agreement Year*” means any consecutive twelve (12) month period during the term of the Agreement (including any Successive Term) that begins on the Commencement Date and subsequently ends on each anniversary of that date.

“*Annual Maintenance Expenditures*” is defined as the total of all expenses incurred annually by the Contractor in connection with the discharge of its maintenance responsibilities as provided by Section 5 of this Agreement; provided however that the Annual Maintenance Expenditures shall exclude Contractor’s direct labor expenses and related benefits for those

individuals assigned by the Contractor to the operations and maintenance of the Facility and whose cost is included in the Base Compensation hereunder. The Annual Maintenance Expenditures shall specifically include, but shall not be limited to, all materials, supplies, parts, tools, outside subcontractors, specialized services, rental equipment and all of the Contractor's overtime costs and related benefits, as well as the cost of Contractor's personnel not exclusively assigned to the operation and maintenance of the Facility at a mutually agreed-upon and Town-approved hourly billing rate. Any individual expenditure for the repair and/or replacement of Facility's equipment or structure, other than a Capital Improvement, whose unit cost (as to any single event or function) exceeds five thousand dollars (\$5,000) shall be subject to the Town's prior approval. The cost of such approved expenditures shall be included in the Annual Maintenance Expenditures. The work performed to undertake a Capital Improvement shall be procured in accordance with Title 34 of the Arizona Revised Statutes (if applicable).

"Annual Repair and Maintenance Limit" is defined as the total of all Annual Maintenance Expenditures in an amount up to a maximum of Two Hundred and Forty Thousand (\$240,000) for the first Agreement Year. For each Agreement Year thereafter, the Annual Repair and Maintenance Limit shall be increased on each Adjustment Date as stated in Section 6.1.2.

"Annual Service Fee Component" is defined in Section 6.1.1.

"Anticipated Extraordinary R&R Expenses" means all Extraordinary R&R Expenses except those resulting from Emergencies, Shutdowns or Force Majeure.

"Applicable Law" means all those laws, rules, regulations, codes, orders, directives, guidelines, judgments, rulings, interpretations or similar requirements or actions of any federal, state, county or local government, agency or executive or administrative body of any of the foregoing, in each case that pertains to the operation or maintenance of the Facility, the health and welfare of individuals working at or visiting the Facility, or the collection, delivery, pretreatment, or treatment of influent wastewater. This definition specifically includes the terms, conditions, requirements or schedules of any administrative or judicial settlement or enforcement related, in any way, to the Facility or the collection, delivery, pretreatment or treatment of influent wastewater and to the Environmental Permits issued for the Facility.

"Base Compensation" means the annual fee payable to the Contractor pursuant to Section 6.1.

"Baseline Conditions" are the total influent flow and pollutant loadings set forth on Exhibit E to this Agreement.

"Budget" means the Base Compensation and the Extraordinary R&R Expense Budget.

"Capital Expenditures" means either (i) Repair and Maintenance expenditures of Ten Thousand (\$10,000) dollars or more per occurrence; or (ii) expenditures for Capital Improvements.

"Capital Improvements" means changes, modifications and/or upgrades to the Facility constructed or implemented by the Town or with the Town's prior approval.

“*Change of Law*” means the occurrence of any of the events listed in (i) through (iv) below, which results or will result in (a) the need to make a Capital Improvement at or to the Facility in order for the Contractor to operate the Facility in accordance with this Agreement and Applicable Law; or (b) an increase or decrease to the cost of managing, operating or maintaining the Facility in accordance with this Agreement and Applicable Law; or (c) a material and adverse effect on the scope of the Contractor’s liabilities or obligations under this Agreement:

- (i) there is passed or promulgated any federal, state, county or other local law, statute, ordinance, rule or regulation different from those existing on the date this Agreement is executed; or
- (ii) there is passed or promulgated any amendment to, or change in, any federal, state, county or other local law, statute, ordinance, rule or regulation (including any applicable sales tax regulation) following the date of this Agreement; or
- (iii) following the execution of this Agreement, there comes into existence an order or judgment of any federal, state, county or local court, administrative agency or other governmental body containing interpretations of any Applicable Law relating to the operation or maintenance of the Facility or the health and safety of the Contractor’s employees that is inconsistent with generally accepted interpretations in effect on the date this Agreement is executed, provided that an order or judgment of any federal, state, county or local court, administrative agency or other governmental body after the date of execution of this Agreement which determines that the Facility has been operated in a manner inconsistent with Contractor’s obligations hereunder shall not constitute a “Change of Law”; or
- (iv) after the effective date of this Agreement any change occurs which affects the issuance or renewal, or causes a suspension, termination, interruption, revocation, denial or failure of renewal (for reasons other than Contractor fault or failure by the Contractor to comply with the terms of this Agreement), of any permit, license or necessary approval by the United States Environmental Protection Agency, the Occupational Safety and Health Administration or the Arizona Department of Environmental Quality.

“*Commencement Date*” means the later of July 1, 2019, or the date on which all conditions precedent to this Agreement, as set forth in Section 4 herein, have been satisfied or waived by each party.

“*Contingency Fund*” means funds not included in the annual Extraordinary R&R Expense Budget allocated for responding to unspecified and unanticipated occurrences that are the financial responsibility of the Town, including without limitation the cost of responding to an event of Force Majeure or Extraordinary R&R Expenses that may be incurred by the Town as a result of Emergencies and/or Shutdowns.

“*Contract Date*” means the date first set forth in the Preamble.

“*Contractor*” has the meaning given that term in the Preamble.

“*Effluent Standards*” means the Effluent Standards set forth in Exhibit E of this Agreement that establish the quality requirements for the treated wastewater discharged from the Facility.

“*Emergency*” or “*Emergencies*” means an event that (i) threatens the immediate Shutdown of or substantial reduction in the productive capacity of the Facility, or (ii) threatens the life, health or property of Town, its residents, or others, or (iii) is likely to result in a violation of Applicable Law.

“*Environmental Permit(s)*” refers to all necessary environmental permits and licenses required for ownership and operation of the Facility including, without limitation, the Town’s Effluent Reuse Permit, Aquifer Protection Permits and Recharge Permits, those permits issued by the State (or a department or agency of the State) or, Federal Government attached hereto as Exhibit A, and any amendments or modifications thereto.

“*Event of Default*” means any one or more of those events described in Section 11.2.

“*Extraordinary R&R Expense(s)*” means expenditures for Repair and Maintenance in amounts greater than Five Thousand Dollars (\$5,000.00) per occurrence.

“*Extraordinary R&R Expense Budget*” means the annual budget of monies allocated for all Anticipated Extraordinary R&R Expenses and for the Contingency Fund, as specified in Section 6.3.1.

“*Facility*” means the Neely Wastewater Reclamation Facility, including the 2 MG reclaimed water reservoir and pump station, as more fully described in Exhibit C, together with all of its structures, appurtenances, equipment and site, including all additions, improvements and replacements thereto during the term hereof.

“*Facility Site or Site*” refers to the boundary limits of the Facility as designated in Exhibit C.

“*Force Majeure*” means civil disturbances, riots, fire, severe weather, governmental action, war, terrorism, acts of God, Change of Law or other causes similar to the foregoing which are beyond the reasonable control of the party from whom the affected performance was due and which materially and adversely affects the ability of such party to perform its obligations under this Agreement. “Force Majeure” does not include:

- (i) general economic conditions, interest or inflation rate fluctuations, commodity prices or changes in process, or currency or exchange rate fluctuations;
- (ii) changes in the financial condition of Town or Contractor or any of its Affiliates or Subcontractors;
- (iii) union work rules which increase Contractor’s operating cost for the Facility;
- (iv) any impact of prevailing wage laws on Contractor’s costs;

- (v) the consequence of Contractor error, including any errors of Contractor's Affiliates or Subcontractors;
- (vi) failure of a Subcontractor or supplier to furnish labor, services, materials or equipment on the dates agreed to unless same is excused by an event of Force Majeure relating to such Subcontractor or supplier;
- (vii) strikes, work stoppages, or labor disputes or labor shortage; and litigation against Contractor.

"Influent Standards" means the Influent Standards set forth in Exhibit E of this Agreement that establish the quality requirements for the influent wastewater received by the Facility.

"Long Range Infrastructure Plan (LRIP)" shall mean an asset management plan, updated annually, that outlines all facility assets including type and/or material, the current age of assets, and the expected life span of assets based on industry standards and a current condition based assessment, and an estimated replacement cost of assets based on current market conditions.

"O&M Manual" is defined in Section 5.1.1.

"Price Index" shall mean the Consumer Price Index for all Urban Consumers – Water and Sewerage Maintenance (CPI-U) for the U.S. City Average, 1982-84=100 as published monthly by the U.S. Department of Commerce, Bureau of Labor Statistics, or any replacement to that index from time to time.

"Prime Rate" is defined as a rate per annum equal to the lesser of (a) a varying rate per annum that is equal to one percentage point over the "prime rate" reported from time to time by *The Wall Street Journal*, with adjustments in that varying rate to be made on the same date as any change in that rate, and (b) the maximum rate permitted by Applicable Law.

"Prudent Industry Practices" means those methods techniques, standards and practices which comply with Applicable Law and, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as prudent in the operation, maintenance, repair, replacement and management of municipal wastewater reclamation facilities in the wastewater treatment industry as practiced in the southwest region of the United States.

"Repair and Maintenance" means the services described in Section 5.6 of this Agreement.

"Services" means the responsibilities of Contractor listed in Article 5.

"Shutdown" means the cessation of operations at the Facility due to failure of operating equipment or interruption of the processes of the Facility for reasons other than the negligence of Contractor or its employees, agents, operators or Subcontractors.

"State" means the State of Arizona, and all of its relevant administrative, contracting and regulatory agencies and offices.

“*Subcontractor*” means any party, firm or corporation having a contract with Contractor to perform a portion of the Services, not including those who merely furnish materials or equipment.

“*Substantiation of Costs*” means (a) with respect to any cost, bills, invoices, receipts, canceled checks and similar evidence of costs incurred and payment made, in each case identifying in relative specificity the item for which the cost was incurred and payment was made, and (b) with respect to internal costs of Contractor or payments by Contractor to an Affiliate, time sheets, time cards, employee salary records, accounting records (in particular relating to benefits plans, in each case allocating the worker time and associated costs to the item for which Substantiation of Costs is being provided, and (c) compliance with Sections 2-356 through 2-382 of the Town’s Municipal Code.

“*Successive Term*” has the meaning given that term in Section 2.3.

“*Town*” has the meaning given that term in the Preamble.

2. AGREEMENT

2.1 – Purpose

The purpose of this Agreement is to define the terms and conditions under which Contractor shall operate, maintain and manage the Facility.

The parties recognize that the governing principle of this Agreement is for Contractor to operate, maintain and manage the Facility on Town’s behalf and to perform the Services; to operate the Facility, as set forth herein, in full compliance with Applicable Law and in accordance with Prudent Industries Practices, and upon the expiration of the term of this Agreement or its termination as otherwise provided for herein and subject to the limitations of the scope of Services and the Extraordinary R&R Expense Budget, Contractor shall return the Facility to Town with all equipment in place and in working order, including Capital Improvements and all other items purchased through a Capital Expenditure with reasonable wear and tear excepted.

2.2 – Relationship of the Parties

Contractor is retained as an independent contractor to furnish the Services and Town hereby grants Contractor full access to the Facility Site and the Facility for the purpose of performing its obligations under this Agreement for a period equal to the term of this Agreement. Contractor agrees to perform all Services in accordance with the terms of this Agreement and Prudent Industry Practices.

2.3 – Term and Termination

The initial term of this Agreement shall commence on the Commencement Date and expire on June 30, 2023 (the “Initial Term”). Thereafter, this Agreement shall be renewed by mutual agreement of the parties for three (3) successive terms of two (2) years in duration

("Successive Terms"). The cumulative duration of the Initial Term and all Successive Terms shall not exceed ten (10) years. The Agreement may be terminated by either party with a written notice given at least one hundred twenty (120) days prior to the end of the then current Term.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PARTIES

3.1 – Representations and Warranties of Town

Town represents and warrants, as of the Contract Date and as of the Commencement Date, that:

3.1.1 Town is an entity duly created and validly existing under the laws of the State with full legal right, power and authority to enter into and perform its obligations under this Agreement.

3.1.2 Town (i) has been duly authorized to enter into this Agreement; and (ii) will not violate any judgment, order, law or regulation applicable to Town by entering into this Agreement.

3.1.3 To the best of the Town's knowledge, the Town is in compliance with all permits and regulations associated with the operation of the Facility.

3.1.4 This Agreement has been duly entered into by Town and will constitute a legal, valid and binding obligation of Town enforceable in accordance with its terms.

3.2 – Representations and Warranties of the Contractor

Contractor warrants and represents, as of the Contract Date and the Commencement Date, that:

3.2.1 Contractor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Texas, qualified to conduct business in the State of Arizona, and has the power and authority to enter into and perform its obligations under this Agreement.

3.2.2 Contractor has the power, authority and legal right to enter into and perform this Agreement, and the execution, delivery and performance hereof (i) has been duly authorized by all necessary corporate action; (ii) will not violate any judgment, order, law or regulation applicable to Contractor or applicable to any provisions of Contractor's organizational documents; and (iii) will not violate any provisions of the Contractor's organizational documents.

3.2.3 This Agreement has been duly entered into by Contractor will constitute a legally valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms.

4. CONDITIONS PRECEDENT TO THE COMMENCEMENT DATE

The obligations and liabilities of the parties hereto under this Agreement shall be subject to Contractor obtaining insurance in accordance with Section 10 hereto and providing evidence thereof to the Town.

5. SERVICES

5.1 – Scope of Services

5.1.1 Contractor shall diligently provide all the necessary labor, materials and services to operate and maintain, and shall operate and maintain the Facility during the term hereof in accordance with Prudent Industry Practices so that effluent discharged from the Facility meets the Effluent Standards, provided that the influent delivered to the Facility meets the Influent Standards. Contractor shall return and redeliver to Town, at its designated delivery points, effluent in such quantities as are commensurate with the quantities of influent received by the Facility. Contractor shall conduct an influent and effluent sampling program reasonably satisfactory to Town and consistent with the Environmental Permits for the Facility and shall convey the effluent from the Facility to Town’s delivery points as designated by Town. Contractor shall comply in all respects with the most current Operations and Maintenance Manual approved by Town (the “O&M Manual”) and pertaining to the Facility, except to the extent the O&M Manual is contrary to Applicable Law, in which case Contractor shall so notify Town and shall comply with such law or regulation.

5.1.2 Contractor shall staff the Facility in accordance with Prudent Industry Practices a minimum of twenty-four (24) hours per day, seven (7) days per week throughout term of this Agreement. Contractor shall provide twenty-four (24) hour monitoring of operations of the Facility, unless otherwise directed by Town. During all time after normal business hours, Contractor shall staff the Facility with at least one employee who shall perform routine maintenance duties and who shall report apparent or potentially apparent security breaches. Contractor’s personnel shall respond to an Emergency within thirty (30) minutes. Contractor shall not modify the number of hours it staffs the Facility without Town’s prior written consent, except as necessary to cure a default or meet an Emergency. Contractor shall comply with equipment manufacturers recommendations in carrying out the Services required herein.

5.1.3 Contractor shall at all times maintain the grounds of the Facility site, including the landscaping, in an aesthetically appropriate and tidy condition and shall minimize the emissions from the Facility of all noxious or unpleasant odors.

5.1.4 Contractor shall be relieved of its obligation to process and discharge effluent that meets the Effluent Standards in the case of events of Emergency, Shutdown, and/or Force Majeure or the receipt of influent that does not meet the Influent Standards. In such event, Contractor shall immediately contact the Town Wastewater Manager or his designee. Nothing herein shall relieve Contractor of the duty to accept influent at the Facility and to operate the Facility to process such influent to the best of its ability to do so. Town shall pay expenses of emergency responses by Contractor and expenses of repairs incurred by Contractor when such costs are necessitated by Force Majeure, Emergency or Shutdown. Town shall pay expenses incurred by Contractor resulting from the treatment of influent that

does not meet the Influent Standards, including without limitation any penalties and fines that may be assessed as a result therefrom.

5.1.5 The status of Shutdown, Emergency or Force Majeure shall terminate upon the termination of the event (and/or the correction thereof by the Contractor) that caused such status and thereafter Contractor shall no longer be relieved of its obligation to process and discharge effluent that meets the Effluent Standards. Contractor shall respond to all events of Shutdown, Emergency and Force Majeure as rapidly as possible under the circumstances and in a manner consistent with Prudent Industry Practices.

5.1.6 Contractor shall schedule and conduct routine meetings as mutually agreed upon with the Town Wastewater Manager or his designee to discuss Facility operation and maintenance.

5.1.7 Contractor shall comply with Sections 2-356 through 2-382 of the Gilbert Municipal Codes in the purchase of equipment and supplies under Section 6.1 of this Agreement.

5.1.8 The Contractor shall utilize the Lucity Computerized Maintenance Software system (“Lucity CMMS”) at the Facility for all service, inventory, and work order management operations. Town fully owns all onsite software programs/system licenses and related historical data utilized at the Facility. For any cloud-based systems used by the contractor, the Town will be provided with “read only” access of all data related to maintenance, operational and/or environmental compliance. Any cloud-based systems used by the Contractor shall remain licensed by the Contractor due, until such time as this Agreement terminates. At that time, the Contractor will assist the Town with obtaining an onsite software license for the same product should it so desire. Any costs associated with this assistance will be borne by the Town. All facility maintenance, operational and/or environmental compliance data generated by the software will be owned by the Town.

5.2 – Standards of Warranty

5.2.1 Subject to the limitations of Section 5.2.2 below, Contractor shall perform all Services in the manner necessary to meet the Effluent Standards and in accordance with the Facility’s O&M Manual, Applicable Law and Prudent Industry Practices.

5.2.2 Except as may be limited by events beyond Contractor’s reasonable control, including events of Emergency, Shutdown and/or Force Majeure or the receipt of influent that does not meet the Influent Standards, Contractor warrants that from and after the Commencement Date, the effluent wastewater discharged from the Facility shall meet the Effluent Standards and the Facility shall be operated in accordance with Applicable Law.

5.3 – Environmental Permits and Manufacturer’s Warranty

5.3.1 The Town shall obtain and/or maintain any and all Environmental Permits with the assistance of the Contractor; including the Town’s Effluent Reuse Permit, related Aquifer Protection Permits and Underground Storage Facility Permits, and any applicable air quality or storm water permits, which are listed in Exhibit A. The Contractor shall obtain the

necessary certifications for its operators and personnel required by the Environmental Permits and Applicable Law, as well as all business permits that are required or appropriate in connection with the performance of the Services. The parties shall cooperate with and assist each other as reasonably required to submit applications for such permits and licenses.

5.3.2 Town shall and hereby does assign all manufacturers' and vendors' warranties on the material and equipment installed in the Facility to Contractor and the Contractor shall diligently enforce such warranties and shall be reasonably compensated by Town for such enforcement costs. Upon expiration or termination of this Agreement, such warranties shall be re-assigned to Town.

5.4 – Personnel

Contractor shall provide competent, State-licensed, experienced and qualified personnel to perform all Services in connection with this Agreement. The personnel to be provided by the Contractor and the minimum qualifications for such personnel are identified in Exhibit B. Town shall have the right to approve the individual selected for the key position of Plant Manager, who shall meet the requirements set forth in Exhibit B. Prior to the Plant Manager being hired, Contractor shall notify Town of the identity and qualifications of the Plant Manager and the Plant Manager shall not be assigned to the position until after Town approval, which shall not be unreasonably withheld or delayed. Once approved, such individual shall not be removed from this position without just cause or, if just cause does not exist, without Town's prior approval, which shall not be unreasonably withheld, unless he/she retires from or voluntarily terminates his/her employment with Contractor. The individual selected to fill the vacated Plant Manager position shall also be subject to the Town's prior written approval, which shall not be unreasonably withheld or delayed.

5.5 – Inspections, Reports and Review of Books and Records

5.5.1 Town shall have full and unrestricted access to any and all parts of the Facility at any and all times to review the performance of Contractor and inspect the condition of the Facility. In connection with such visits and inspections, the Town agrees on behalf of itself, and further agrees to require its agents, licensees, or invitees, to comply with all reasonable safety rules and regulations adopted by the Contractor and/or promulgated by any governmental authority that regulates work place safety.

5.5.2 In conformance with current governmental accounting standards, Contractor shall prepare and maintain a current Facility inventory and Long Range Infrastructure Plan (LRIP) and provide copies of the inventory and Long Range Infrastructure Plan LRIP to the Town on or before March 1st of each year during the term of this Agreement and upon termination of this Agreement.

5.5.3 On or before the seventh (7th) day of every month, Contractor shall provide a report to Town which describes the Facility's performance for the immediately preceding month, including, without limitation, the average and total influent and effluent measurements, influent and effluent quality, sludge wasting, all repairs made, all items replaced during the period covered by the report, a listing of the expenditures to date from the Annual Repair and Maintenance Budget and all abnormal conditions and anticipated maintenance for the

upcoming month. Additionally, on or before August 15th of each year, Contractor shall provide an annual fiscal year report to the Town which describes key performance metrics on plant operations; such as electrical power and chemical demands compared to previous fiscal year, influent flows and loadings compared to previous fiscal year, repair and maintenance activities overview, staffing update, regulatory compliance status, customer complaint activity, and plant security breach events.

5.5.4 Contractor shall make its books and records, including financial records, pertaining to the Annual Repair and Maintenance Expenditures and Extraordinary R&R Expenses available for inspection and copying by Town upon reasonable notice during normal work hours. Such records shall separately document both Annual Repair and Maintenance and Extraordinary R&R Expense(s).

5.5.5 Town may issue a report summarizing all findings from its inspection and annual review and identifying any corrective actions required to be performed by Contractor.

5.5.6 Contractor shall, at its own expense, do whatever is reasonably necessary to modify or repair the Facility, or modify its method of operation in order to comply with or correct the deficiencies noted in Town's inspection report, which are caused by Contractor's failure to perform the Services in accordance with this Agreement. All modifications or repairs must be performed as expeditiously as practical in accordance with this Agreement, Applicable Law and Prudent Industry Practices.

5.6 – Annual Repair and Maintenance of the Facility and Equipment

5.6.1 Subject to the limitations set forth in Section 5.6, 5.7 and 6.2 of this Agreement, the Contractor shall (i) perform routine maintenance in accordance with manufacturers' specifications and approved operating and maintenance procedures developed for equipment and processes of the Facility; (ii) repair and/or replace equipment; (iii) clean and lubricate equipment; (iv) make equipment inspections and needed adjustments; (v) perform building and grounds maintenance services for the Facility and cleaning of all equipment; (vi) perform plumbing and electrical maintenance; and (vii) maintain all of the Facility's instrumentation and Supervisory Control and Data Acquisition (SCADA) system, including instrumentation provided to the Contractor by the Town pursuant to this Agreement. Contractor shall use Lucity CMMS at the Facility for all service, inventory, and work order management operations. During the term of this Agreement, Contractor shall use its best efforts to reduce all Repair and Maintenance expenditures, regardless of item or function, due to faulty construction or due to faulty equipment or materials by enforcing the warranties assigned to it by the Town under Section 5.3 above. The Annual Repair and Maintenance Budget for the first Agreement Year is as provided in Section 5.6.3.

5.6.2 The Contractor shall be responsible for all Annual Maintenance Expenditures up to the Annual Repair and Maintenance Limit. The Contractor shall not incur any single Annual Maintenance Expenditure whose unit cost exceeds five thousand dollars (\$5,000) without the prior written approval of the Town, except in the case of emergencies threatening the immediate Shutdown of, or the substantial reduction in the operational capacity of any of the Facility, or the life, health or property of the Town and/or the Contractor, their

employees and/or agents or others, including residents in the case of the Town. When the Contractor determines that a condition constitutes an Emergency, the Contractor may begin taking the necessary abatement action, including all necessary equipment repairs, immediately without the Town's prior approval. Any cost incurred during the Emergency shall be included in the Annual Maintenance Expenditures, subject to the Town's subsequent review and approval. Any such cost unnecessarily incurred in an Emergency shall be borne by the Contractor without reimbursement by the Town, but only to the extent it is subsequently determined that the Contractor's actions in incurring such cost were not consistent with good and prudent industry practice given the information available to the Contractor at the time the decision to incur such cost was made.

5.6.3 In connection with the performance of its Repair and Maintenance obligations under this Agreement, the Contractor shall, in accordance with Article 6 of this Agreement and as part of Base Compensation, prepare and submit for the Town's review and approval an Annual Repair and Maintenance Budget projecting in reasonable detail the Annual Repair and Maintenance Expenses for the succeeding Agreement Year. The Annual Repair and Maintenance Budget for the first Agreement Year has been agreed by the parties to be the sum of Two-Hundred and Forty Thousand (\$240,000) dollars.

5.7 – Extraordinary Repair and Replacement Expenditures; Capital Expenditures; Expenditures for Emergencies.

5.7.1 Contractor shall not incur an Extraordinary R&R Expense or Capital Expenditure without the prior written approval of the Town, except in the case of an Emergency. The Contractor shall have the right to take the necessary action in an Emergency in the event it is not reasonably possible to give prior written notice to the Town of the need to incur an Extraordinary R&R Expense or Capital Expenditure. When the Contractor determines that a condition constitutes an Emergency, the Contractor shall begin making such repair within (1) hour of the determination. If the Contractor estimates that the Emergency will cost more than Five Thousand dollars (\$5,000), the Contractor shall promptly inform the Town of the repair. Any Extraordinary R&R Expense or Capital Expenditure incurred during an Emergency shall be borne by the Town, subject to the Town's review and approval. Any Extraordinary R&R Expense or Capital Expenditure unnecessarily incurred in an Emergency shall be borne by the Contractor without reimbursement by the Town, but only to the extent it is subsequently determined that the Contractor's actions in incurring such Extraordinary R&R Expense or Capital Expenditure was not consistent with Prudent Industry Practices given the information available to the Contractor at the time the decision to incur such Extraordinary R&R Expense or Capital Expenditure was made.

5.7.2 When requested by the Town, the Contractor shall incur Extraordinary R&R Expenses. Contractor shall manage Extraordinary R&R Expenses less than one hundred thousand dollars (\$100,000.00) based on an annual maintenance schedule or as required by unplanned equipment failures as agreed upon by the parties. For Extraordinary R&R Expenses in excess of one hundred thousand dollars (\$100,000.00), the Contractor shall submit an estimate of the cost of the Extraordinary R&R Expense to assist the Town in its expenditure determinations, and receive authorization prior to beginning each project unless determined to be an Emergency. Extraordinary R&R Expenses in excess of one hundred thousand dollars (\$100,000.00) shall remain the responsibility of the Town.

5.7.3 The Five Thousand Dollar (\$5,000.00) threshold amount for single items of repair and maintenance applied in this Subsection (and the corresponding definition of Extraordinary R&R Expense) may be adjusted upon mutual agreement of the parties.

5.8 – SCADA System Upgrade

Contractor shall perform the SCADA upgrade services as set forth in Exhibit F.

6. BUDGET AND COMPENSATION

6.1 – Base Compensation

6.1.1 From and after the Commencement Date, the Town shall pay the Contractor an annual service fee, which includes the Annual Maintenance and Repair Limit (the “Base Compensation”) as compensation for the performance by the Contractor of the Services under this Agreement. The Base Compensation shall be payable in equal monthly installments, in advance, on the first (1st) day of each and every month for the duration of the Agreement. All other payments shall be due within thirty (30) days of the date of invoice. Any disputes regarding invoices shall be raised, in writing setting forth sufficient detail regarding the nature of the dispute, within ten (10) of the date of said invoice. The Base Compensation shall be calculated in accordance with the following formula:

$$BC = ASFC + ARML$$

BC = Base Compensation

ASFC = Annual Service Fee Component

ARML = Annual Repair and Maintenance Limit

6.1.2 The Base Compensation shall be the amount of One Million Eight Hundred Forty-Six Thousand Three Hundred Thirty and 00/100 Dollars (\$1,846,330.00), which includes the Annual Repair and Maintenance Limit of Two Hundred Forty Thousand Dollars (\$240,000) for the first Agreement Year, and shall be increased on each Adjustment Date, on an annual and compounded basis, in accordance with the following formula. In no event shall the Base Compensation be reduced by virtue of this Section.

$$ABC = BC \times [C/C_0]$$

ABC = Adjusted Base Compensation

BC = Base Compensation

C = Price Index (CPI-U) as of August of each and every current year

C₀ = Price Index (as defined in the Definitions Section hereunder) as August of the prior year

For example, on the next Adjustment Date, which is July 1, 2020, the adjusted Base Compensation as of that Adjustment Date would be calculated by reference to the Price Index for August 2019 and August 2018.

6.1.3 The Contractor shall assume all responsibility and cost for arranging for the delivery of utility services to the Facility, other than electricity, including water and natural gas services, and shall be responsible for maintaining water service to the Facility at its sole cost and expense. The Contractor shall assume all costs related to telephone and Internet usage at the Facility, except as provided in this Section 6.1.3. The Town shall assume all responsibility and cost for arranging for the delivery of electricity services to the Facility. In order to ensure efficient operations of the facility, Contractor will provide the Town with an energy management plan within the first six (6) months of this agreement for consideration and approval. This plan will then be reviewed with Town staff annually and updated as needed for changing conditions, or for equipment or operational impacts.

6.1.4 Any and all costs in excess of the Annual Repair and Maintenance Limit shall be the responsibility of the Town. Town shall directly pay costs in excess of the Annual Repair and Maintenance Limit or reimburse or compensate the Contractor for the costs that exceed the Annual Repair and Maintenance Budget plus an administrative fee of 10% of the cost thereof. Town shall pay the Contractor such amounts within 30 days of issuance of an invoice by Contractor. Client shall reimburse or compensate the Operator for the costs that exceed the Annual Repair and Maintenance Limit within 30 days of issuance of an invoice by Contractor. Any portion of the Annual Repair and Maintenance Limit that has not been spent at the end of each Agreement Year will be credited to Town against the Base Compensation in the subsequent Agreement Year.

6.1.5 The Town shall pay the Contractor at the then current rate of compensation until such time as the Contractor notifies the Town that the Base Compensation has been adjusted. In conjunction with such notification, the Contractor will invoice the Town for any adjusted compensation owed retroactive to the Adjustment Date that has not already been paid by the Town, and the Town shall pay such invoice within thirty (30) days.

6.1.6 Town shall reimburse or compensate any Extraordinary R&R Expense or Capital Expenditure incurred by Contractor at the cost thereof plus and administrative fee of 10% thereof. Town shall pay the Contractor such amounts within 30 days of issuance of an invoice by Contractor.

6.2 – Other Costs and Expenses

Unless specifically provided otherwise in this Agreement, the Contractor will not be required to bear the costs of the following: i) expenses resulting from hydraulic or organic loads exceeding the Baseline Conditions, ii) all costs and expenses outside of Contractor's scope hereunder; and ii) all costs and expenses that, as stated elsewhere in this Agreement, are the responsibility of the Town.

6.3 – Submittal of Budget

No later than October 15th of each Agreement Year, Contractor shall submit to Town the proposed Budget for the subsequent Agreement Year. The proposed Budget shall include the following:

6.3.1 The proposed Extraordinary R&R Expense Budget for the upcoming Agreement Year and a forecast for the subsequent four (4) fiscal years, which shall consist of anticipated Extraordinary R&R Expenses, the Contingency Fund and either (i) an administrative override for Contractor's assistance in coordinating and/or managing such Extraordinary R&R Expenses, or (ii) where the Contractor is responsible to the Town for work to be performed, an allocation for Contractor's profit and overhead shall be implemented in an annual amount of ten 10% for the duration of the Agreement; and

6.3.2 A listing of recommended Capital Improvements and the corresponding proposed Capital Expenditures in order to ensure that the operation of the Facility will continue to conform to Applicable Law and/or in order to improve the reliability of operations.

6.4 – Town Review

Town shall have sixty (60) days in which to review the proposed Budget and negotiate changes to items in the proposed Annual Repair and Maintenance Budget and the Extraordinary R&R Expense Budget that it considers to be excessive or insufficient. If Town has not submitted comments to Contractor at the end of sixty (60) days, the proposed Budget may become the final Budget for the next Agreement Year subject to approval by the Town Council. If Town disputes any portion or all of the proposed items set out in the Annual Repair and Maintenance Budget and the Extraordinary R&R Expense Budget during the sixty (60) day period, the parties shall have thirty (30) more days in which to resolve such disputes. Upon resolution of the disputed items, the revised Budget agreed to by the parties shall be the final Budget for the Successive Term. Until the final Budget for the Successive Term is established, the Annual Repair and Maintenance Budget and Extraordinary R&R Expense Budget for the immediately preceding Agreement Year shall remain in effect.

6.5 – Extraordinary R&R Expenses, and Capital Expenditures

6.5.1 Extraordinary R&R Expenses incurred by the Contractor, including those Extraordinary R&R Expenses which have been included in the Extraordinary R&R Expense Budget, are the responsibility of the Town and shall be paid to Contractor as such Extraordinary R&R Expenses are incurred by the Contractor. Payments shall be made by the Town subject to Substantiation of Costs reasonably acceptable to Town within thirty (30) days following the Town's receipt of Contractor's invoices.

6.5.2 No expenditures shall be made towards a project giving rise to an Extraordinary R&R Expense without prior written approval by Town. Approved expenditures payable for a project giving rise to an Extraordinary R&R Expense shall be payable to Contractor after submittal of a reasonably acceptable Substantiation of Costs.

6.5.3 With the exception of Capital Improvements constructed in accordance with Article 8, Capital Expenditures incurred by the Contractor are the responsibility of the Town and shall be paid to Contractor as such Capital Expenditures are incurred by the Contractor. Capital Expenditures that are reimbursed to the Contractor from the Town may be paid from the Extraordinary R&R Expense Budget or another source of funds available to the Town at the Town's discretion. Payments shall be made by the Town subject to Substantiation of Costs reasonably acceptable to Town within thirty (30) days following the Town's receipt of Contractor's invoices.

6.6 – Change of Scope

6.6.1 In the event of a Change of Law or other factor, including physical changes to the Facility, or an increase in flows or loadings in an amount greater than five percent (5%) which results in the necessity for either an increase or decrease in the Contractor's cost of providing the Services hereunder, one party may provide notice to the other party in accordance with Section 16.2 and the parties shall negotiate in good faith to adjust the Base Compensation to account for such change in Contractor's costs. If the parties are unable to reach a negotiated agreement within thirty (30) days of the date of notice, then the Agreement may be terminated immediately by either party.

6.6.2 Reduction of the overall scope of Services performed by the Contractor under this Agreement may not, over the entire term of this Agreement, reduce the Base Compensation by an amount greater than ten percent (10%) of the Base Compensation as of the Commencement Date.

6.7 – Late Payments

6.7.1 Payments not paid on or before ten (10) days from the date such payment becomes delinquent shall accrue interest at the Prime Rate from the original due date and until payment is received.

6.7.2 If the Town disputes a portion of a bill received from Contractor, the Town shall pay the undisputed portion of the bill; thereafter, the parties shall work diligently to resolve the dispute. If such dispute is not resolved within a period of thirty (30) days, Contractor may pursue its rights and remedies under Article 11 hereunder.

6.8 – Taxes

Town shall pay all property, franchise, sales, use or other taxes associated with the project other than taxes imposed on Contractor's net income or Contractor's payroll taxes. The prices hereunder do not include sales, use, excise, ad valorem, property or other taxes, other than taxes based on income, now or hereafter imposed directly or indirectly, by any governmental authority or agency with respect to this Agreement and the services provided and materials furnished hereunder. Town shall pay directly or reimburse Contractor for any such taxes that Contractor may be required to pay, including without limitation, sales and/or use taxes that Contractor may be required to pay, under applicable law, in connection with Contractor's purchase or use, in performing the Services hereunder, of equipment, supplies, materials, and/or subcontracted services

6.9 – Ownership by Town

All materials, equipment, supplies, software and associated data, and Capital Improvements fully paid for with the use of Town monies for use, in whole or in part, in or for the benefit of the Facility shall be owned by Town, including all such materials, equipment, supplies and Capital Improvements acquired during the term of this Agreement.

7. PERFORMANCE GUARANTEES

7.1 – Compliance with Obligation

Subject to Town's compliance with its obligations under this Agreement and except as may be limited by events of Emergency, Shutdown and/or Force Majeure, or the receipt of influent that does not meet the Influent Standards, Contractor guarantees that the operation of the Facility will comply with the terms of this Agreement, including meeting Effluent Standards and Applicable Law.

7.2 – Penalties

Subject to the limitations set forth in Section 7.1 above, Contractor shall be responsible for all civil and administrative fines or penalties which may be imposed under Applicable Law during the term of the Agreement to the extent such civil and administrative fines or penalties are caused by Contractor's negligence or misconduct. Prior to payment of any such fines, penalties or damages, Contractor reserves the right to contest government or private actions, suits or proceedings for violations through administrative procedures or otherwise at its expense.

8. ALTERATIONS AND ADDITIONS

Contractor may recommend Capital Improvements or operational changes to the Town as are necessary or recommended to perform the Services in compliance with the terms of this Agreement and Applicable Law. Contractor may undertake, with Town prior approval (such approval to be granted at the sole discretion of Town), Capital Improvements to reduce costs, increase energy efficiency or improve Facility operations. Any savings resulting from such Capital Improvements shall be shared as negotiated on a case-by-case basis. Any Capital Improvements or portions thereof funded by the Contractor, including any equipment permanently installed or which replaces equipment existing on the Commencement Date, will not become the property of the Town until such time as all capitalized costs reflected on Contractor's financial statements have been fully amortized. In the event the Client does not approve and make a Capital Improvement or operational change recommended by Operator, Operator will not be liable for any loss, damage or liability arising from or related to the Client's rejection of or refusal to implement the recommended Capital Improvement or operational changes, including any loss, damage, or liability for (a) failure of the Facility, (b) failure to comply with Applicable Law, (c) failure to meet the requirements of this Agreement or (d) claims for indemnification. All Subcontractors retained by Contractor must be approved by Town and be selected in accordance with Sections 2-356 through 2-382 of the Town's Municipal Code. Unless otherwise approved in writing by the Town, which approval shall not be

unreasonably withheld, Contractor shall require its Subcontractors to provide Town with bonds, and insurance and meet all requirements necessary for compliance with Town standards. Upon the completion of any approved work, Contractor shall provide Town, at no additional charge, one (1) set of reproducible as-built drawings and engineer certifications and one (1) set of operation and maintenance manuals for the constructed components, and one (1) set of each in an electronic format that is compatible with Town information technology systems. Any changes to the O&M Manual must be approved, in writing, by Town, which approval shall not be unreasonably withheld.

9. INDEMNIFICATION

During the term of this Agreement and to the extent permissible by law, each party (the “Indemnifying Party”) shall defend, indemnify and hold harmless the other party and their respective successors and assigns (each is referred to herein as an “Indemnified Party”) against any and all liability for damages, costs, losses, and expenses, including reasonable attorney’s fees, resulting from any claim asserted by a third party against the Indemnified Party for wrongful death, bodily injury, and/or property damage, but only to the extent caused by the willful or negligent acts or omissions of the Indemnifying Party. This provision shall survive the termination of this Agreement.

10. INSURANCE AND CONTRACTOR’S LIABILITY

10.1 – Insurance

Contractor shall place and maintain with responsible insurance carriers insurance consistent with the requirements set forth in Exhibit D.

11. DISPUTES

11.1 – Events of Default

A “Default” shall take place upon the occurrence of an “Event of Default”, as defined in Section 11.2 of this Agreement. If an Event of Default shall occur and if the Event of Default is not cured in accordance with Section 11.3 of this Agreement, the non-defaulting party shall have the right to enforce any of the remedies afforded to such party in accordance with Sections 11.4 or 11.5 of this Agreement. A condition of “uncured default” shall occur only after the lapse of the appropriate period under Section 11.3 hereof without the Event of Default having been cured within such period.

11.2 – Event of Default

The occurrence of any of the following shall constitute an “Event of Default” for purposes of this Agreement:

11.2.1 The institution against either party of bankruptcy, insolvency, reorganization, liquidation or receivership proceedings in which it is alleged that the Contractor is insolvent or unable to meet its debts as they mature;

11.2.2 The failure of the Contractor to meet any of its material obligations under Section 5 of this Agreement;

11.2.3 The failure of Contractor (1) to pay undisputed charges, fees and expenses of any and all of its Subcontractors and vendors providing services or goods to it in connection with its services under this Agreement, which charges, fees or expenses are included in the Contractor's invoice to Town as an incurred expense subject to reimbursement under the compensation clause of this Agreement or (2) to discharge or otherwise remove any and all mechanics', materialmen's or other liens placed on the Facility or any part thereof by any of its Subcontractors or vendors or their Subcontractors or vendors of any tier;

11.2.4 Contractor's failure to maintain the Plant Manager as Manager of the Facility, except as excused by Section 5.4;

11.2.5 Contractor's breach of any other of its material obligations under this Agreement; and

11.2.6 Town's breach of any of its material obligation under this Agreement, including its payment obligations in Section 6.

11.3 – Notice and Cure

The non-defaulting party shall give notice to the defaulting party of any Event of Default. The defaulting party shall have thirty (30) days from the giving of such notice to take any and all actions to cure the Event of Default. If an Event of Default is not cured by the defaulting party at the expiration of the thirty (30) day period, the non-defaulting party may exercise any of its remedies set forth in either Sections 11.4 or 11.5 of this Agreement. In the case of default that cannot be cured within thirty (30) days, this Agreement shall not terminate so long as the defaulting party has given written notice of the extension to the other party and the defaulting party has commenced and is diligently pursuing a cure. Evidence of such cure and its diligent pursuit shall be provided from the party determined to be in default to the reasonable satisfaction of the non-defaulting party.

11.4 – Town's Remedies

The following remedies against Contractor in the event it does not cure its Event of Default as set forth in Section 11.3 above shall be available to Town:

11.4.1 Town may withhold the disputed portion of payment of the Contractor's compensation under this Agreement or a reasonable proportion of the payment of the Contractor's compensation under this Agreement without it constituting an Event of Default, until such time as the Event of Default is cured and/or may pay any portion of such compensation due under Section 11.2.3 above directly to the entity to whom such payment is due and shall thereafter be relieved of further liability to Contractor for that portion of Contractor's compensation pertaining to such payment; and

11.4.2 Town may terminate this Agreement upon the expiration of the period provided to the Contractor to cure its Event of Default. In the event of the termination of this Agreement under this Subsection, the Town shall pay Contractor for any Services provided through the date of termination and the cost of any materials ordered but not yet delivered (including any cancellation charges incurred by the Contractor), less any and all reasonable costs and expenses incurred by the Town as a result of such breach. In the event of the termination of this Agreement in the middle of any month for which the monthly component of the Base Compensation and/or Anticipated Extraordinary R&R Expenses have been paid, Contractor shall immediately refund to Town all amounts paid as Base Compensation and/or Anticipated Extraordinary R&R Expenses for the balance of the month. Payment shall be made within thirty (30) days of the date of termination; and

11.4.3 Town may demand that Contractor, and Contractor shall, reimburse the Town for all reasonable expenses incurred by Town as a result of the Event of Default, including reasonable damages and expenses incurred before expiration of the applicable cure period set forth in Section 11.3 above.

The foregoing remedies shall be in addition to, and not in limitation of, all remedies provided in this Agreement or otherwise available at law or in equity to of the Town.

11.5 – Contractor’s Remedies

The following remedies against the Town in the event it does not cure its Event of Default as set forth in Section 11.3 above shall be available to Contractor:

11.5.1 Contractor may terminate this Agreement upon the expiration of the period provided to the Town to cure its Event of Default. In the event of the termination of this Agreement under this Subsection, the Town shall pay Contractor for any Services provided through the date of termination and the cost of any materials ordered but not yet delivered (including any cancellation charges incurred by the Contractor), plus any and all other reasonable costs and expenses incurred by the Contractor as a result of such breach. Payment shall be made within thirty (30) days of the date of termination; and

11.5.2 Contractor may demand that the Town, and the Town shall, reimburse Contractor for all reasonable expenses incurred by Contractor as a result of the Event of Default, including reasonable damages and expenses incurred before expiration of the applicable cure period for curing the Event of Default set forth in Section 11.3 above.

The foregoing remedies shall be in addition to, and not in limitation of, all remedies provided in this Agreement or otherwise available at law or in equity to of the Contractor.

11.6 – Additional Remedy

If Town incurs any liability for any penalty to any governmental agency as a result of the Contractor’s failure to deliver effluent meeting the Effluent Standards and such failure is not caused by or reasonably related to events of Emergency, Shutdown and/or Force Majeure or the receipt of influent that does not meet the Influent Standards, Contractor shall

reimburse Town (subject to Contractor's rights to contest such penalty prior to its payment by the Town in accordance with Section 7.2) within thirty (30) days following the Town's payment, if any, for such penalty, to the extent such penalty was caused by Contractor's negligence or misconduct.

11.7 – Transfer of Operations on Termination

If this Agreement is terminated or expires, Contractor shall cooperate with Town or any other party operating the Facility to assure a smooth transition to a new contractor including, but not limited to, providing reasonably necessary data, including copies of any and all contracts with vendors, employees or services companies.

12. CONSEQUENTIAL DAMAGES

12.1 – Consequential Damages

Notwithstanding anything above to the contrary, neither party shall be liable to the other for any punitive, special, indirect or consequential damages arising from a breach of this Agreement, including damages attributable to loss of use or loss of income even if such party has been advised of the possibility of such damages unless Contractor is able to recover such punitive, special, indirect or consequential damages from its supplier(s) or Subcontractor(s) as set forth in the immediately following sentence. If Contractor becomes entitled to recover consequential damages from any Subcontractors or supplier as a result of a willful breach of contract by, or the negligence of, such Subcontractors or supplier or as a result of the strict liability of such Subcontractors or supplier, then a fair portion of the benefit of that recovery shall be passed onto Town as a reduction in Contractor's compensation under this Agreement.

12.2 – Damages for Failure to Deliver Effluent

If Contractor fails to deliver effluent meeting the Effluent Standards and such failure is, or subject to the requirement of giving notice would be, an Event of Default under Section 11.2 of this Agreement, then, if such failure causes Contractor to be liable to Town for damages or regulatory penalties payable to regulatory authorities, Section 12.1 shall not be interpreted to make any such damages "consequential" for any purpose of this Agreement.

13. FORCE MAJEURE

During any period of Force Majeure, the obligations of the parties under this Agreement shall be suspended, but only for so long as such period of Force Majeure exists.

14. TERMINATION

14.1 – Termination for Convenience

Except as otherwise limited by this Agreement, Town may terminate this Agreement for convenience at any time during any Successive Term by giving Contractor one hundred twenty (120) days written notice.

With copies to: Director of Public Works
Town of Gilbert
90 East Civic Center Drive
Gilbert, Arizona 85296

Wastewater Manager
Town of Gilbert
4760 S. Greenfield Road
Gilbert, AZ 85297

Town Attorney
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296

If to Contractor: Ed Schwab
7001 NW 5th Street
Lincoln, NE 68521

With copy to: Legal Department
Inframark, LLC
220 Gibraltar Road, Suite 200
Horsham, PA 19044

16.2.2 Changes in the respective addresses to which such notices may be directed may be made from time to time by either party by notice to the other party.

16.2.3 Notice shall be complete when such notice is received.

16.3 – Entire and Complete Agreement

This Agreement, including the materials and documents included in the Exhibits hereto, constitutes the entire and complete agreement of the parties with respect to the operation of the Facility, excluding all prior or contemporaneous understandings, arrangements and commitments, all or such, whether oral or written, having been merged herein.

16.4 – Binding Effect

This Agreement shall be binding and inure to the benefit of parties to this Agreement and any successor or assignee acquiring an interest hereunder.

16.5 – Other Documents

Each party agrees to execute and deliver any instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to this Agreement.

16.6 – Cooperation

The parties shall cooperate within the limits of this Agreement as necessary to facilitate the smooth operation, maintenance and management of the Facility. The parties further agree in good faith to undertake resolution of disputes, if any, in an equitable and timely manner so as to avoid, where feasible, the need for arbitration or court action.

16.7 – Choice of Law and Venue

The law of the State of Arizona shall govern the validity, interpretation, construction and performance of this Agreement. The parties agree that the venue of any actions arising out of this Agreement shall be Maricopa County Superior Court.

16.8 – Waiver

Unless otherwise specifically provided by the terms of this Agreement, no delay or failure to exercise a right resulting from any breach of this Agreement shall impair such right or shall be construed to be a waiver thereof, but such may be exercised from time to time and as often as may be deemed expedient. If any representation, warranty or covenant contained in this Agreement is breached by either party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Agreement.

16.9 – Headings

Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

16.10 – Counterparts

This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

16.11 – Modification of the Agreement

No change in or modification, termination or discharge of this Agreement, in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith or his duly authorized representative, provided, however, that any change in or modification, termination or discharge of this Agreement expressly provided for in this Agreement shall be effective as so provided.

16.12 – Non-Solicitation

Neither party may actively solicit, for hire, the employees of the other party during the term of this Agreement or for a period of one (1) year following the termination of this Agreement without prior written consent of the other party, which consent shall not be unreasonably withheld.

ATTEST:

TOWN OF GILBERT, ARIZONA
An Arizona Municipal Corporation

Lisa Maxwell
Town Clerk

Jenn Daniels
Mayor

APPROVED AS TO FORM:

Christopher W. Payne, Town Attorney

INFRAMARK, LLC,
a Texas Limited Liability Company

By: _____
Its: _____

EXHIBIT A
ENVIRONMENTAL PERMITS

Arizona Department of Environmental Quality (ADEQ) Permits

Reclaimed Water Permits:

- Permit #R-105757 – Gilbert Reclaimed Water Reuse Permit

Aquifer Protection Permits (APP):

- Permit #100393 – Gilbert Neely Wastewater Treatment Plant
- Permit #102716 – Effluent Discharge Ponds (Neely Recharge Facility)
- Permit #103339 – Effluent to Offsite Basins - Gilbert Greenfield Groundwater Recharge Facility (Riparian Preserve at Water Ranch)
- Permit #105303 – Gilbert Municipal Center Direct Injection Recharge Wells

Arizona Department of Water Resources (ADWR) Permits

Underground Storage Facility Permits:

- Permit #71-520379 – Gilbert Groundwater Recharge Facility (Neely Recharge Facility)
- Permit #71-564416 – Gilbert Greenfield Groundwater Recharge Facility (Riparian Preserve at Water Ranch)
- Permit #71-591935 – Gilbert Municipal Center Direct Injection Recharge Wells

Maricopa County Air Quality Department Permits

Air Quality Permits:

- Permit #020176 – Neely Wastewater Reclamation Facility

EXHIBIT B
PLANT MANAGER AND KEY PERSONNEL

General Description of Duties

Responsible for administration, operations, and maintenance of entire Facility; exercises direct authority over all plant functions and personnel in accordance with approved policies and procedures; inspects plant regularly; analyzes and evaluates operations and maintenance functions; initiates or recommends new or improved practices; develops plans and procedures to ensure efficient plant operations; coordinates data and prepares or reviews and approves operations reports (including lab reports) and budget requests; controls expenditure of budgeted funds and requests approval for major expenditures, if required; recommends specifications for major equipment and material purchases; organizes and directs activities of plant personnel, including training programs; maintains effective communications and working relationships with employees, government officials, and the general public.

Qualifications

1. Formal Education

College degree in sanitary, civil, chemical, or mechanical engineering highly desirable. Minimum Bachelor Degree or equivalent, plus five to seven years practical and progressively responsible experience in wastewater plant operations, depending upon size and complexity of plant, at least three years of which have been at the Plant Manager level. College degree can be replaced with additional years of applicable experience, subject to approval by the Town, which shall not be unreasonably withheld.

2. General Requirements

- a. Knowledge of processes and equipment involved in wastewater treatment and reclamation, including basic chemical, bacteriological, and biological processes.
- b. Understanding of managerial, administrative, and accounting practices and procedures involved in successful plant operations.
- c. Ability to plan, direct, and evaluate plant operation and maintenance functions.
- d. Ability to prepare, or supervise the preparation of, clear and concise reports and budget recommendations.
- e. Ability to establish and maintain effective communications and working relationships.

3. General Educational Development

- a. Reasoning

- (1) Apply principles of logic to define problems, collect and analyze data, and make management/administrative decisions.
 - (2) Interpret a wide variety of technical instructions in book, manual, mathematical or diagrammatic form.
- b. Mathematical
- Perform ordinary arithmetical, algebraic, and geometric procedures in standard, practical applications.
- c. Language
- (1) Write or edit operation reports.
 - (2) Evaluate and interpret engineering and other technical data, including lab data.
 - (3) Interview applicants and employees.
 - (4) Establish and maintain communications with employees, government officials, and the public.

4. Specific Vocational Preparation

- a. Five to seven years increasingly responsible experience in wastewater treatment plant operations, depending upon the size and complexity of the plant, and educational background.
- b. Minimum three years of supervisory experience at a Plant Manager level.
- c. Certified as Grade IV Wastewater Treatment Plant Operator in accordance with Arizona Department of Environmental Quality regulations.

EXHIBIT C
FACILITY AND FACILITY SITE

Facility Address: 402 North Neely Street, Gilbert, AZ, 85233

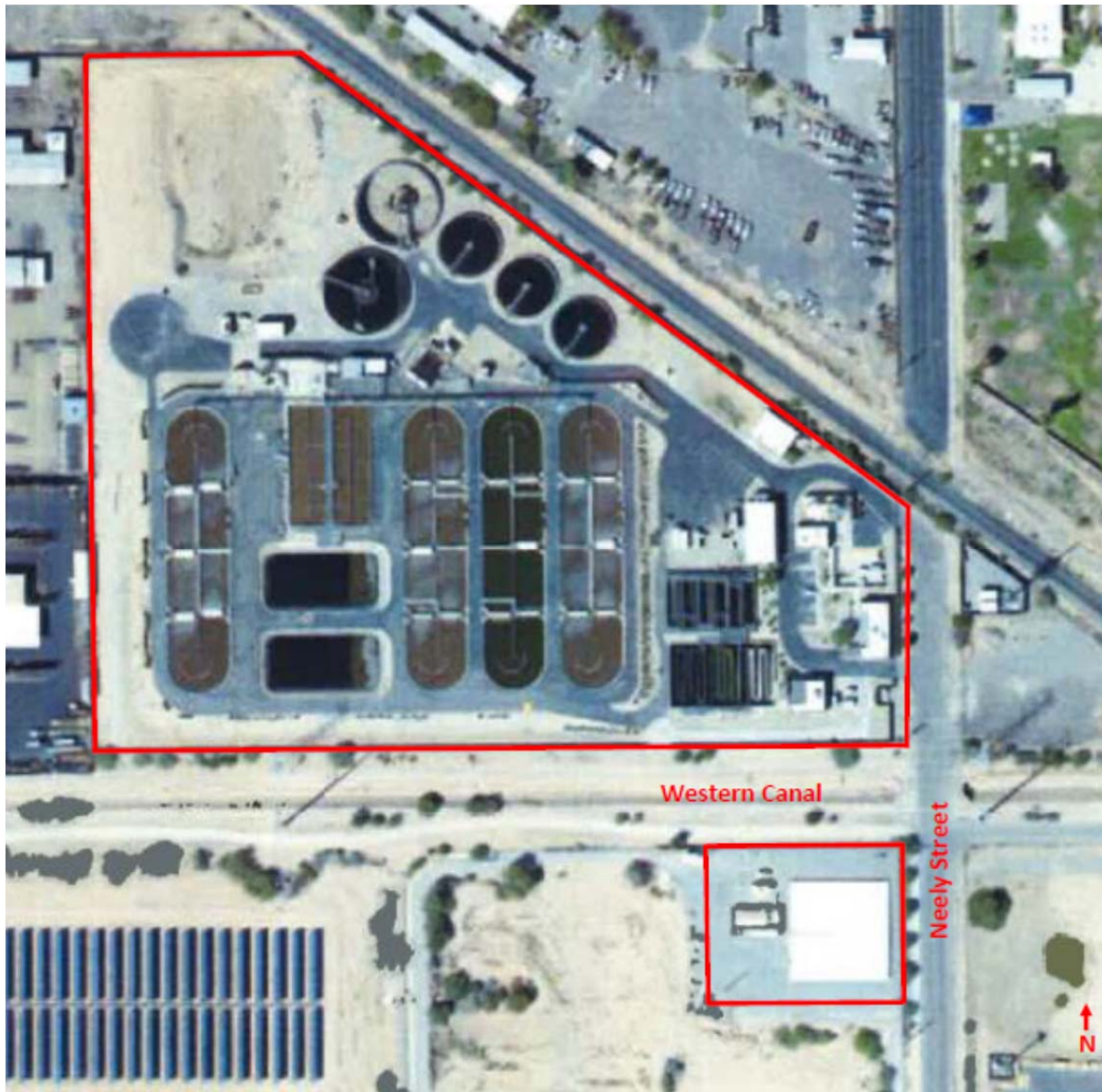


EXHIBIT D
INSURANCE

The Contractor shall deliver to the Town certificates of insurance, which shall provide 30 days' notice be given to the Town in the event of cancellation. The Town shall be named as an additional insured on all policies of insurance except Workers' Compensation and Employer's Liability Insurance. The requirements are:

- a. Workers' Compensation and Employer's Liability Insurance
 - 1) Workers' Compensation in compliance with applicable state and federal laws;
 - 2) Employer's Liability: Limit One Million (\$1,000,000) Dollars.
- b. Commercial General Liability Insurance including Blanket Contractual, Broad Form Property Damage, Completed Operations and Independent Contractor's Liability all applicable to Personal Injury, Bodily Injury and Property Damage to a combined single limit of Ten Million (\$10,000,000) Dollars per occurrence.
- c. Commercial Automobile Liability Insurance including owned, hired and non-owned automobiles. Bodily Injury and Property damage to a combined single limit of One Million (\$1,000,000) Dollars per occurrence.
- d. Pollution liability insurance including clean-up with a limit of Five Million (\$5,000,000) Dollars per occurrence.

EXHIBIT E
EFFLUENT AND INFLUENT STANDARDS AND LOADINGS; BASELINE CONDITIONS

Influent Standards

Flows

Average Annual Flows (maximum)	11.0 MGD
Maximum Month Flow	11.0 MGD
Hydraulic Peak (hourly) Flow	27.5 MGD

Wastewater Loading	Pounds Per Day (lbs./day) Maximum Monthly
Five Day Biochemical Oxygen Demand (BOD ₅)	21,600
Total Suspended Solids	25,250
TKN	3,860
Total Phosphorous (As P)	920

Sample Limits

Five Day Biochemical Oxygen Demand (BOD ₅)	235 mg/L
Total Suspended Solids	275 mg/L
TKN	42 mg/L
Total Phosphorous (As P)	10 mg/L

Effluent Standards

Turbidity (maximum)	5 Nephelometric Turbidity Units
Turbidity (24 hour average)	2 Nephelometric Turbidity Units
Fecal Coliform	
Geometric Mean (4 Sample Minimum)	0 Colony Forming Units Per 100 milliliters
Any Single Sample	25 Colony Forming Units Per 100 milliliters
Nitrate and Nitrite (as N)	10 mg/L
PH	6.0 – 9.0 Standard Units

Baseline Conditions

Based on July 2017 – June 2018 average numbers, the Baseline Conditions shall be the highlighted numbers below:

Baseline Conditions							
	Influent	Influent	Influent	Influent	Influent	Influent	Influent
	Flow	BOD	TSS	TKN	BOD/LBS	TSS/LBS	TKN/LBS
Month	MGD	mg/L	mg/L	mg/L	lbs/day	Lbs	Lbs
Jul 2017	9.39	225	240	45.10	17,458	18,896	3,472
Aug 2017	9.93	223	240	50.70	18,044	19,877	4,086
Sep 2017	9.83	218	242	45.60	17,522	19,775	3,698
Oct 2017	9.32	234	253	47.90	17,920	19,719	3,622
Nov 2017	9.98	225	248	51.20	18,591	20,612	4,231
Dec 2017	9.74	285	268	46.50	22,927	21,797	3,773
Jan 2018	10.09	303	282	55.10	25,025	23,735	4,561
Feb 2018	9.58	331	282	58.70	25,336	22,460	4,452
Mar 2018	9.30	354	296	54.60	26,662	22,954	4,276
Apr 2018	9.30	355	282	50.00	26,859	21,824	3,871
May 2018	9.29	368	289	55.80	28,490	22,345	4,384
Jun 2018	8.94	335	249	49.00	23,523	18,885	3,807
Average	9.56	288	264	50.85	22,363	21,073	4,019

EXHIBIT F
SCADA UPGRADE SERVICES

Contractor shall upgrade the Town's SCADA system in two phases as follows:

Phase One

Contractor shall replace the Wonderware® HMI software with VTScada® by Trihedral®. This system will consist of two licenses of VTScada® running on two separate servers. The two servers will be in a fully redundant, hot standby configuration providing two fully functional operator workstations. The licenses include unlimited remote client connections and integrated alarm management including remote call out (text, voice, email). The remote clients will allow the Town's staff to remotely view the system and plant operations, as well as access operational data and trend plant processes.

Inframark shall install a virtual private network (VPN) with a firewall appliance that meets or exceeds the U.S. Department of Defense's security requirements. All HMI screens and controls will be approved and functionally verified by the operational staff and integrator prior to completion.

Phase Two

Contractor shall replace the Quantum™ PLCs and input/output (I/O) cards in each individual RTU with the Schneider Electric™ Modicon M580 series.

Contractor shall perform this phase each year under the Town's capital program, unless the Town prefers to use a different brand.



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: David Fabiano, Town Engineer, 503-6844

MEETING DATE: May 16, 2019

SUBJECT: Professional Consulting Services to Support Updates to Town of Gilbert Supplements to MAG Specifications

STRATEGIC INITIATIVE: Infrastructure

This professional services agreement will support Gilbert's strategic initiative for Infrastructure as it seeks to help the Town improve our Engineering Standards and Specifications for Public Works Construction to meet the needs of Gilbert's citizens.

RECOMMENDED MOTION

A motion to approve the Professional Services Agreement #319001116 with Speedie and Associates for the Review and Revisions to MAG Supplemental Specifications for a fee not to exceed fifty-one thousand two hundred and fifty dollars (\$51,250) and to approve a Roadway and Maintenance Fund contingency request for \$51,250 for FY 2019 and a contingency request of \$51,250 for FY 2020.

BACKGROUND/DISCUSSION

Town staff in Public Works and Development Services have noted on multiple occasions challenges in the consistency and quality of construction in the public rights of way. Specific areas of concern are in the backfilling of trenches and in the roadway structural section construction. The Town experiences inconsistent results between contractors performing work. There is a lack of consensus or agreement between contractors to many of the provisions found in the MAG documents describing these activities. Communities

throughout the MAG region prepare and adopt supplements to the MAG Specifications. Gilbert has supplements to MAG Standards and Specifications.

This contract will bring in outside expertise to consult with our development, operations and capital staff and draft supplements to the standard MAG documents that are specifically targeted to improve the consistency and quality of results realized for construction in the public rights of way. When updated supplements are prepared, staff will reach out to and solicit feedback from stakeholders. After feedback is received, processed and reviewed, staff will update the draft revisions and present this information to the Town Council for consideration of adoption of revised MAG supplements.

Speedie and Associates was selected after interviews were conducted of three short listed firms for these professional services.

The contract was reviewed for form by Deputy Town Attorney John Baird.

The contract and purchase were reviewed by Douglas Boyer, Purchasing Administrator.

FINANCIAL IMPACT

Approval of this contract will require the authorization of a Roadway and Maintenance contingency transfer in both FY 2019 and FY 2020 in the amount of \$51,250.

11065100.51600 - \$51,250

The financial impact was reviewed by Cris Welch, Senior Management and Budget Analyst.

STAFF RECOMMENDATION

Staff recommends approval of this Professional Services Agreement #319001116 with Speedie and Associates and Budget Contingency request.

Respectfully submitted,

David Fabiano
Town Engineer

Approved By

Approval Date

Jessica Marlow

5/7/2019 7:44:47 AM

John Baird

5/7/2019 8:13:09 AM

Cris Welch

5/7/2019 9:29:08 AM

Douglas Boyer

5/7/2019 2:50:05 PM

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

Contract No. 319001116

THIS Agreement is entered into as of this ____ day of _____, 20____, by and between the Town of Gilbert, Arizona, a municipal corporation, hereinafter referred to as "Gilbert" and SPEEDIE AND ASSOCIATES hereinafter referred to as the "Consultant."

FOR THE PURPOSE of providing professional consulting services for the Town of Gilbert on the **Review and Revision of Mag Supplemental Specifications Project**, hereinafter referred to as the "Project," Gilbert and Consultant do hereby mutually agree to the following:

1. SERVICES AND RESPONSIBILITIES

1.1 Retention of the Consultant. In consideration of the mutual promises contained in this Agreement, Gilbert engages the Consultant to render professional services set forth herein, in accordance with all the terms and conditions contained in this Agreement.

1.2 Scope of Services. The Consultant shall do, perform and carry out in a satisfactory and proper manner, as determined by Gilbert, the services set forth in this Agreement, including all exhibits ("Services"). The specific scope of work for this Project is set forth in Exhibit A.

1.3 Responsibility of the Consultant.

1.3.1 Consultant hereby agrees that the documents and reports prepared by Consultant will fulfill the purposes of the Project, shall meet all applicable code requirements and shall comply with applicable laws and regulations. In addition, and not as a limitation on the foregoing, such documents and reports prepared by Consultant shall be prepared in accordance with professional consulting standards, as applicable. Any review or approval of said documents and reports does not diminish these requirements.

1.3.2 Consultant shall tour the Project site and become familiar with existing conditions, including utilities, prior to commencing the Services and notify Gilbert of any constraints associated with the Project site.

1.3.3 Consultant shall procure and maintain during the course of this Agreement insurance coverage required by Paragraph 4 of this Agreement.

1.3.4 Consultant shall designate Donald L. Cornelison, PE as Project Manager and all communications shall be directed to him. Key Consultant Personnel are set forth in Exhibit B. "Key Personnel" includes the Consultant employee who will place his license number and signature on key documents and those employees who have significant responsibilities regarding the Services and Project. Prior to changing such designation Consultant shall first obtain the approval of Gilbert.

1.3.5 Consultant's subconsultants are set forth in Exhibit B attached hereto and made a part hereof. Any modification to the list of subconsultants on Exhibit B, either by adding, deleting or changing subconsultants, shall require the written consent of Gilbert.

1.3.6 Consultant shall obtain its own legal, insurance and financial advice regarding Consultant's legal, insurance and financial obligations under this Agreement.

1.3.7 Consultant shall coordinate its activities with Gilbert's representative and submit its reports to Gilbert's representative.

1.3.8 Consultant shall provide, pay for and insure under the requisite laws and regulations all labor, materials, equipment, and transportation, and other facilities and services necessary for the proper execution and completion of the Services. Consultant shall provide and pay for and insure for all equipment necessary for the Services.

1.3.9 Consultant shall obtain and pay for all business registrations, licenses, permits, governmental inspections and governmental fees necessary and customarily required for the proper execution and completion of Services. Consultant shall pay all applicable taxes. Consultant shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Services.

1.4 Responsibility of Gilbert.

1.4.1 Gilbert shall cooperate with the Consultant by placing at his disposal all available information concerning the site of the Project Gilbert agrees to obtain its own legal, insurance and financial advice Gilbert may require for the Project.

1.4.2 Gilbert designates **David Fabiano, PE** as its Project Representative. All communications to Gilbert shall be through its Project Representative.

1.5 Contract Time; Renewal.

1.5.1 Contract Time. The Contract Time and any applicable schedule of Services are set forth in Exhibit C. If funds for this Contract are not appropriated or budgeted by July 1, 2019, Gilbert may terminate this contract by giving written notice. Otherwise, the Contract commences upon execution of the Contract and continues through June 30, 2020.

1.5.2 N/A

2. COMPENSATION AND METHOD OF PAYMENT

2.1 Contract Sum: The Basis of Compensation to Consultant for Services rendered under this agreement is set forth in Exhibit D and as follows:

2.2.1 A fee for all approved project labor not to exceed fifty-one thousand, two hundred fifty dollars (\$51,250.00). The labor hours and fee breakdown is indicated in Exhibit D. This breakdown outlines the various positions, billing rates for each position and the estimated hours for each project task for each position during the contract duration.

2.2.2 A fee for all approved project expenses not to exceed zero dollars (\$0).

2.2.3 The total cost to GILBERT for the Services described in this Agreement shall not exceed fifty-one thousand, two hundred fifty dollars (\$51,250.00) (sum of labor and expenses) without the written agreement of GILBERT.

2.3 Method of Payment: Method of payment shall be set forth in Exhibit D. Payment to be made by GILBERT to Consultant for the cost of providing services will be based on monthly invoices which will set forth the hours actually worked during the billing period. The billing rates indicated in Exhibit D-1 will be applied against the actual hours for each position to arrive at the total fee for each month. Reimbursable expenses incurred during the billing period and during previous billing periods and not yet invoiced will be submitted for payment on the monthly invoice along with expense receipts and other acceptable back-up. All payment requests shall be certified by the Consultant's Project Manager and shall be accompanied by a progress report indicating the work completed during the previous month(s), including the project progress to date by tasks as a percentage (%) of the total of each individual project task. All invoices shall be for Services completed.

3. CHANGES TO THE SCOPE OF SERVICES

3.1 Change Orders. Gilbert may, at any time, and by written change order, make changes in the services to be performed under this Agreement. A form of change order is attached hereto as Exhibit E. If such changes cause an increase or decrease in the Consultant's cost or time required for performance of any services under this Agreement, an equitable adjustment shall be made and the Agreement shall be modified in writing accordingly. Any claim of the Consultant for adjustment under this clause must be submitted in writing within thirty (30) days from the date of receipt by the Consultant of the notification of change. It is distinctly understood and agreed by the parties that no claim for extra services provided or materials furnished by Consultant will be allowed by Gilbert except as provided herein nor shall Consultant provide any services or furnish any materials not covered by this Agreement unless Gilbert first approves in writing.

3.2 Emergency Response.

3.2.1 Response. Gilbert is an emergency response organization. Consultant services or supplies may be required in case of an emergency involving a sudden, immediate threat of danger to the public health, welfare or property in Gilbert ("local emergency") or in the case where the Mayor of Gilbert, the mayor or governing body of another municipality in Maricopa County, the Maricopa County Board of Supervisors, the State, or the President of the U.S. has declared an emergency ("State of Emergency"). In the event of a local emergency or State of Emergency, Gilbert may require Consultant to provide services or supplies as rapidly as possible and to such locations as directed by Gilbert when necessary to protect the public health and

welfare and/or property. Consultant shall not be required to respond to the extent response is not feasible due to Acts of God or other factors beyond its control.

3.2.2 Emergency Contact. Consultant shall provide the designated Gilbert Emergency Management Coordinator at (480) 503-6333 and the designated Gilbert representative with a contact point (name, cell phone number, e-mail and facsimile number) who can be reached on a 24 hour/7 days a week basis so that effective response can be initiated. Consultant's contact person(s) must be able to communicate with Gilbert within one (1) hour from the time the contact person is telephoned by Gilbert.

3.3.3 Payment. Consultant shall be paid a premium not to exceed 10% above the standard contract prices for any services or supplies provided in the case of an emergency, at Gilbert's direction, and shall be entitled to reimbursement of expenses not covered by the standard contract prices at a premium not to exceed 10% above actual expenses. In considering the premium to be paid, Gilbert shall consider the good-faith efforts of Consultant to respond, the timeliness of response, and any other factors deemed relevant by either of the parties. If Gilbert believes Consultant's response was adequate, the full 10% premium will be paid; if not, Gilbert, in its reasonable discretion, will pay a lesser premium.

4. INSURANCE REPRESENTATIONS AND REQUIREMENTS

4.1 General. Consultant agrees to comply with all Gilbert ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of Consultant, Consultant shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of A-7 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to Gilbert. Failure to maintain insurance as specified may result in termination of this Agreement at Gilbert's option.

4.2 No Representation of Coverage Adequacy. By requiring insurance herein, Gilbert does not represent that coverage and limits will be adequate to protect Consultant. Gilbert reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Consultant from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

4.3 Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers Compensation insurance and Professional Liability insurance if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, Gilbert, its agents, representative, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

4.4 Coverage Term. All insurance required herein shall be maintained in full force and effect until all Services required to be performed under the terms of this Agreement is satisfactorily performed, completed and formally accepted by Gilbert, unless specified otherwise in this Agreement.

4.5 Primary Insurance. Consultant's insurance shall be primary insurance as respects performance of subject contract and in the protection of Gilbert as an Additional Insured.

4.6 Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the Services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three year period.

4.7 Waiver. All policies, except Professional Liability, shall contain a waiver of rights of recovery (subrogation) against Gilbert, its agents, representative, officials, directors, officers, and employees for any claims arising out of the Services of Consultant. Consultant shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

4.8 Policy Deductibles and or Self Insured Retentions. The policies set forth in these requirements may provide coverage, which contain deductibles or self insured retention amounts. Such deductibles or self insured retention shall not be applicable with respect to the policy limits provided to Gilbert. Consultant shall be solely responsible for any such deductible or self insured retention amount. Gilbert, at its option, may require Consultant to secure payment of such deductible or self insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

4.9 Use of Subconsultants. If any Services under this Agreement are subcontracted in any way, Consultant shall execute written agreement with Subconsultant containing the same Indemnification Clause and Insurance Requirements set forth herein protecting Gilbert and Consultant. Consultant shall be responsible for executing the agreement with Subconsultant and obtaining Certificates of Insurance verifying the insurance requirements.

4.10 Evidence of Insurance. Prior to commencing any Services under this Agreement, Consultant shall furnish Gilbert with Certificate(s) of Insurance, or formal endorsements as required by this Agreement, issued by Consultant's Insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage's, conditions, and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Acceptance and reliance by Gilbert on a Certificate of Insurance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. Such Certificate(s) shall identify the Agreement and be sent to Gilbert Risk Manager. Certificate shall cite that should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. Certificates shall specifically cite the following provisions:

4.10.1 Gilbert, its agents, representatives, officers, directors, officials and employees is an Additional Insured as follows:

- a. Commercial General Liability-Under ISO Form CG 20 10 11 85 or equivalent.
- b. Auto Liability-Under ISO Form CA 20 48 10 13 or equivalent.
- c. Excess Liability-Follow Form to underlying insurance.

4.10.2 Consultant's insurance shall be primary insurance as respects performance of this Agreement.

4.10.3 Certificate shall cite a thirty (30) day advance notice cancellation provision. If ACORD Certificate of Insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

4.11 Required Coverage:

4.11.1 Commercial General Liability: Consultant shall maintain "occurrence" from Commercial Liability Insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. Commercial General Liability coverage specifically shall contain contractual liability insurance covering the contractual obligations of this Agreement. The policy shall cover liability arising from premises, operations, independent Consultants, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, Gilbert, its agents, representative, officers, directors, officials and employees shall be cited as an Additional Insured Endorsement form CG 20 37 04 13 or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you". If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

4.11.2 Professional Liability: Consultant shall maintain Professional Liability insurance covering errors and omissions arising out of the Services performed by Consultant, or anyone employed by Consultant, or anyone for whose acts, mistakes, errors and omissions Consultant is legally liable, with an unimpaired liability insurance limit of \$1,000,000 each claims and \$2,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three (3) years past completion and acceptance of the Services, and Consultant shall be required to submit Certificates of Insurance evidencing proper coverage is in effect as required above.

4.11.3 Vehicle Liability: Consultant shall maintain Business Automobile Liability Insurance with a limit of \$1,000,000 each occurrence on Consultant's owned, hired, and non-owned vehicles assigned to or used in the performance of the Consultant's Services under this Agreement. Coverage will be at least as broad as Insurance Services Office, Inc., coverage code "1" any auto policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of performance of this Agreement, Gilbert, its agents, representative, officers, directors, officials and employees shall be cited as an Additional Insured under the Insurance Service Offices, Inc. Business Auto Policy Designated Insured Endorsement form CA 20 48 10 13 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

4.11.4 Workers' Compensation Insurance: Consultant shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's employees engaged in the performance Services under this Agreement and shall also maintain Employer Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

5. INDEMNIFICATION

5.1 To the fullest extent permitted by law, A/E, its successors and assigns shall indemnify and hold harmless GILBERT, its officers and employees from and against all liabilities, damages, losses and costs (including reasonable attorney fees and court costs) to the extent caused by the negligence, recklessness or intentional wrongful conduct of A/E or other persons employed or used by the A/E in the performance of this Agreement. A/E's duty to indemnify and hold harmless GILBERT, its officers and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use of resulting there from, caused by A/E's negligence, recklessness or intentional wrongful conduct in the performance of this Agreement and the negligence, recklessness or intentional wrongful conduct of any person employed by A/E or used by A/E in the performance of this Agreement.

5.2 Insurance provisions set forth in this Agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

6. TERMINATION OF THIS AGREEMENT

6.1 Termination. Gilbert may, by written notice to the Consultant, terminate this Agreement in whole or in part with seven (7) days notice, either for Gilbert's convenience or because of the failure of the Consultant to fulfill his contract obligations. Upon receipt of such notice, the Consultant shall: (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to Gilbert copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process. This Agreement may be terminated in whole or in part by the Consultant in the event of substantial failure by Gilbert to fulfill its obligations.

6.2 Payment to Consultant Upon Termination. If the Agreement is terminated, Gilbert shall pay the Consultant for the services rendered prior thereto in accordance with percent completion at the time work is suspended minus previous payments.

7. ASSURANCES

7.1 Solicitations for Subconsultants, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Consultant for Services to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and any Regulations relative to nondiscrimination on the grounds of race, color or national origin.

7.2 Examination of Records. The Consultant agrees that duly authorized representatives of Gilbert shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Consultant involving transactions related to this Agreement.

7.3 Ownership of Document and Other Data. Original documents, such as tracings, plans, specifications, maps, basic survey notices and sketches, charts, computations, and other data prepared or obtained under the terms of this Agreement or any change order are and will remain the property of Gilbert unless otherwise agreed to by both parties. Gilbert may use such documents for other purposes without further compensation to the Consultant; however, any reuse without written verification or adaptation by Consultant for the specific purpose intended will be at Gilbert's sole risk and without liability or legal exposure to Consultant. Any verification or adaptation of the documents by Consultant for other purposes than contemplated herein will entitle Consultant to further compensation as agreed upon between the parties.

7.4 Litigation. Should litigation be necessary to enforce any term or provision of this Agreement, or to collect any damages claimed or portion of the amount payable under this Agreement, that all litigation and collection expenses, witness fees, court costs, and reasonable attorneys' fees incurred shall be paid to the prevailing party.

7.5 Independent Consultant. This Contract does not create an employee/employer relationship between the parties. It is the parties' intention that the Consultant will be an independent Consultant and not Gilbert's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the Internal Revenue Code, the Immigration and Naturalization Act, Arizona revenue and taxation laws, Arizona Workers' Compensation Law, and Arizona Unemployment Insurance Law. The Consultant agrees that it is a separate and independent enterprise from Gilbert, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Contract shall not be construed as creating any joint employment relationship between the Consultant and Gilbert, and Gilbert will not be liable for any obligation incurred by the Consultant, including but not limited to unpaid minimum wages and/or overtime premiums. [FOR SOLE PROPRIETORS ONLY: The Consultant shall execute the Sole Proprietor's Waiver of Workers' Compensation Benefits attached hereto and incorporated by reference.

7.6 Immigration Law Compliance Warranty. As required by A.R.S. § 41-4401, Consultant hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Consultant further warrants that after hiring an employee, Consultant verifies the employment eligibility of the employee through the E-Verify program. If Consultant uses any subconsultants in performance of the Services, subconsultants shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subconsultants shall further warrant that after hiring an employee, such subconsultant verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract. Consultant is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. Gilbert at its option may terminate the Contract after the third violation. Consultant shall not be deemed in material breach of this Contract if the Consultant and/or subconsultants establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). Gilbert retains the legal right to inspect the papers of any Consultant or subconsultant employee who works on the Contract to ensure that the Consultant or subconsultant is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the parties may modify this paragraph consistent with state law.

7.7 Equal Treatment of Workers. Consultant shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the Services. Consultant shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Occupational Safety and Health Administration ("OSHA") and the Fair Labor Standards Act ("FLSA"). Consultant shall protect and indemnify Gilbert and its representatives against any

claim or liability arising from or based on the violation of such, whether by Consultant or its employees.

7.8 Israel. Consultant certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in, a boycott of Israel, as that term is defined in Ariz. Rev. Stat. § 35-393.

7.9 Exclusive Use of Services - Confidentiality. The services agreed to be provided by Consultant within this Agreement are for the exclusive use of Gilbert and Consultant shall not engage in conflict of interest nor appropriate Gilbert work product or information for the benefit of any third parties without Gilbert consent.

7.10 Sole Agreement. There are no understandings or agreements except as herein expressly stated.

7.11 Caption. Paragraph captions are for convenience only and are not to be construed as a part of this Agreement; and in no way do they define or limit the Agreement.

7.12 Time is of the Essence. The timely completion of the Project is of critical importance to the economic circumstances of Gilbert.

7.13 Notices. Any notice to be given under this Agreement shall be in writing, shall be deemed to have been given when personally served or when mailed by certified or registered mail, addressed as follows:

GILBERT:

Town Manager
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296

CONSULTANT:
Donald L. Cornelison, PE
Vice President
Speedie and Associates
3331 E. Wood Street
Phoenix, AZ 85040

The address may be changed from time to time by either party by serving notices as provided above.

7.14 Controlling Law. This Agreement is to be governed by the laws of the State of Arizona.

8. SUSPENSION OF WORK

8.1 Order to Suspend. Gilbert may order the Consultant, in writing, to suspend all or any part of the Services for such period of time as he may determine to be appropriate for the convenience of Gilbert.

8.2 Adjustment to Contract Fee. If the performance of all or any part of the Services is, for any unreasonable period of time, suspended or delayed by an act of Gilbert in the administration of this Agreement, or by its failure to act within the time specified in this Agreement (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost

of performance of this Agreement necessarily caused by such unreasonable suspension or modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension or delay to the extent (1) that performance was suspended or delayed for any other cause, including the fault or negligence of the Consultant, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this Agreement.

9. INTERESTS AND BENEFITS

9.1 Interest of Consultant. The Consultant covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed.

9.2 Interest of Gilbert Members and Others. No officer, member or employee of Gilbert and no member of its governing body, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the services to be performed under this Agreement, shall participate in any decision relating to this Agreement which affects his personal interest or have any personal or pecuniary interest, direct or indirect, in this Agreement or the process thereof.

9.3 Notice Regarding A.R.S. § 38-511. This Contract is subject to cancellation under Section 38-511, Arizona Revised Statutes.

10. ASSIGNABILITY

The Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in the same without the prior written consent of Gilbert thereto; provided, however, that claims for money due or to become due to the Consultant from Gilbert under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to Gilbert.

IN WITNESS WHEREOF, Gilbert and the Consultant have executed this Agreement as of the date first written.

TOWN OF GILBERT

By: _____
Jenn Daniels, Mayor

ATTEST:

By: _____
Lisa Maxwell, Town Clerk

APPROVED AS TO FORM:

By: _____
Christopher W. Payne
Town Attorney

CONSULTANT



By: Donald L. Cornelison
Its: Vice President

**EXHIBIT A
SCOPE OF WORK**

A. GENERAL

1. The Project is generally described as follows: *To provide Engineering and Consulting Services for the review and revision of MAG Supplemental Specifications to the Town of Gilbert.*
2. Consultant shall be responsible for the professional quality, technical accuracy and the coordination of all studies, reports, projections, master plans, designs, drawings, specifications and other Services furnished by Consultant under this Contract. Consultant shall, without additional compensation, correct or revise any errors or omissions in its studies, reports, projections, master plans, design, drawings, specifications and other Services.
3. Consultant shall maintain a log of all meetings, site visits or discussions held in conjunction with the Services, with documentation of major discussion points, observations, decisions, question or comments. These shall be furnished to Gilbert, for inclusion in the overall Project documentation.
4. All Services performed under this Contract shall be performed by or under the direct supervision of persons then licensed in the State of Arizona to perform these Services. The name of each such licensed individual shall be listed on the title sheet of the Plans and Specifications.
5. Time is of the essence in this contract.

B. SPECIFIC SCOPE OF SERVICES. *Attached*

APPENDIX A – PROJECT PROPOSAL

We have prepared this proposal to provide technical assistance in reviewing and revising the Town of Gilbert MAG Supplemental Specification for right-of-way construction with an emphasis on roadway structural sections and trench backfill requirements. We propose to provide such personnel necessary to review and evaluate relevant materials, documentation and test data in conjunction with assigned Town of Gilbert staff and provide recommendations for development or revision of the Town's Supplement to the MAG specifications as indicated below.

1. We will supply a qualified, experienced senior engineer to oversee the project and serve as the project principal and liaison with Town of Gilbert staff.
2. We will meet with Town of Gilbert Staff to review and discuss currently utilized specification requirements, areas of concern, and specific items where improvement is needed. We will work with the Town to identify the key goals generated from the meetings and will prepare action items with assigned personnel and deadlines. Some of these action items may be assigned to or require contributions by Town of Gilbert staff. We anticipate that this process will take several meetings with participation from multiple departments and/or staff.
3. We will review and evaluate the information and recommendations resulting from the assigned action items in light of the identified key goals and document the progress being made. All assignments will be reviewed in order to identify trends, delays, complications, or discrepancies. All designated parties will receive regular updates via electronic means to keep them up to date on the status of each action item as well as the overall progress.
4. Based on the information obtained from the assigned tasks, specific recommendations will be made for development or revision of applicable portions of the Town's Supplement to the MAG specifications. These recommendations will likely include technical guidelines for pavement structural sections, appropriate test methods, inspection and acceptance criteria, and specific specification language.
5. We will prepare and submit a report outlining our findings and recommendations. This report will include a summary of the specification sections worked on and any substantive changes recommended.

Based on the indicated scope of work, we have prepared the following unit rates and budget fee estimate for your review. We would not expect to exceed the indicated budget amount unless work outside the included scope is requested. Any additional office support or other services provided at your specific request that are not contained in this proposal will be billed per our Standard Fee and Rate Schedule. Invoices for work performed will be submitted monthly and are payable within 30 days.

EXHIBIT B
CONSULTANT'S KEY PERSONNEL AND SUBCONSULTANTS

KEY PERSONNEL: Gregg Creaser, P.E.
Jason Wells, P.E.
Keith Gravel, P.E.
Brett Creaser, P.E.
Donald Cornelison, P.E.
Additional Staff Engineers and Project Specialists as needed

SUBCONSULTANTS: None anticipated

EXHIBIT C
SCHEDULE OF SERVICES

Scope of work will be completed within 90 working days from NTP

**EXHIBIT D
PAYMENT SCHEDULE**

A. Compensation

1. The consideration of payment to Consultant, as provided herein shall be in full compensation for all of Consultant's work incurred in the performance hereof, including offices, travel, per diem or any other direct or indirect expenses incident to providing the services.
2. Attached hereto as Exhibit D-1 is the Consultant's hours and fee estimate for the Project. Consultant's fee shall not exceed the amounts:

<u>Description</u>	<u>Amount</u>
Assessment	\$51,250

B. Method of Payment

Invoices shall be on a form and in the format provided by Gilbert and are to be submitted in triplicate to Gilbert via Gilbert's authorized representative.

C. Reimbursable Costs

Consultant will be reimbursed for expenses up to a maximum amount of \$0. The items allowable for reimbursement are as follows:

APPENDIX B – UNIT RATES

I. Engineering & Administrative Services	Price
Principal Engineer (per hour)	\$130.00
Administrative/Clerical Time (per hour)	\$40.00
Project Engineer for Technical Review, Meetings, and Report (per hour)	\$100.00
Staff Engineer (per hour)	\$85.00

When work involves travel to the Town of Gilbert offices or other requested site, the indicated unit rates will be invoiced portal to portal from our Phoenix office, with a two hour minimum applied for each visit.

APPENDIX C – BUDGET FEE ESTIMATE

Engineering Services	Qty	Rate	Total
Principal Engineer - Project Management	50 hrs	\$130.00	\$6,500.00
Sr. Engineer - Technical Review and Meetings	250 hrs	\$100.00	\$25,000.00
Staff Engineer - Data Tabulation and Project Assistance	150 hrs	\$85.00	\$12,750.00
Sr. Engineer - Final Report	50 hrs	\$100.00	\$5,000.00
Clerical	50 ea	\$40.00	\$2,000.00
TOTAL PROJECT ESTIMATE			\$51,250.00

NOT TO EXCEED

Speedie & Associates is committed to providing a high level of professional service to its clients, according to their needs. If some portion of this proposal does not meet your current needs or desires, Speedie & Associates is willing to consider appropriate modifications, subject to the standards of care which we adhere to as professionals. Modifications in the scope, methodology, or terms and conditions may result in changes in the estimated fees and changes in the risks which the client will necessarily assume.

**EXHIBIT E
CHANGE ORDER**

CHANGE ORDER NO. _____

Distribution: GILBERT []
CONSULTANT []
OTHER []

PROJECT: _____
OWNER: Town of Gilbert
CONSULTANT:
AGREEMENT DATED:

DATE:

CHANGES:

The Agreement is changed as follows: **COMPLETE**

Not valid until signed by both Gilbert and Consultant.
Signature of Consultant indicates acceptance.

The original compensation under the Agreement was not to exceed _____.

The net change by previously authorized Change Orders is not to exceed _____.

The compensation prior to this Change Order was _____

The compensation will be increased by this Change Order in an amount not to exceed _____.

The new compensation under the Agreement including this Change Order shall not exceed _____.

The Contract Time will increase by _____

ACCEPTANCE STATUS:

Consultant
By _____

Town of Gilbert
By _____

Date _____

Date _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
4/12/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Eaton-Provident Group, LLC dba EPG Insurance 4835 E. Cactus Road, Suite 246 Scottsdale, AZ 85254	CONTACT NAME: Edward Rose PHONE (A/C, No, Ext): (480) 385-7360 FAX (A/C, No): (480) 946-3512 E-MAIL ADDRESS: erose@epgagency.com														
INSURED Speedie & Associates, Inc 3331 E. Wood Street Phoenix, AZ 85040	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: left;">NAIC #</th> </tr> <tr> <td>INSURER A : Houston Casualty</td> <td>42374</td> </tr> <tr> <td>INSURER B :</td> <td></td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Houston Casualty	42374	INSURER B :		INSURER C :		INSURER D :		INSURER E :		INSURER F :	
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INSURER B :															
INSURER C :															
INSURER D :															
INSURER E :															
INSURER F :															

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N N/A If yes, describe under DESCRIPTION OF OPERATIONS below						<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Prof E&O/Claims Made			HCC1823124	9/1/2018	9/1/2019	\$50000 Ded w/Aggr of 2,000,000
A	Pollution/ClaimsMade			HCC1823124	9/1/2018	9/1/2019	Each Claim 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Re: Review and Revision of Mag Supplemental Specifications Town of Gilbert.
 Project No: 190830ZA

CERTIFICATE HOLDER Town of Gilbert 50 East Civic Center Drive Gilbert, AZ 85296	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Kathryn K. Allen</i>
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DESCRIPTIONS (Continued from Page 1)

Waiver of Subrogation is applicable where required by written contract & allowed by law.
Should any of the above described policies be cancelled by the issuing insurer before the expiration date thereof, 30 days' written notice (except 10 days for nonpayment of premium) will be provided to the Certificate Holder.

ADDITIONAL COVERAGES WHEN REQUIRED BY WRITTEN CONTRACT

This is a summary of the coverage provided under the following form (complete form available):

COMMERCIAL AUTOMOBILE COVERAGE FORM HA 99 16 03 12

Additional Insured if Required by Contract

Paragraph A.1. - WHO IS AN INSURED - of Section II - Liability Coverage is amended to add:

When you have agreed, in a written contract or written agreement, that a person or organization be added as an additional insured on your business auto policy, such person or organization is an "insured", but only to the extent such person or organization is liable for "bodily injury" or "property damage" caused by the conduct of an "insured" under paragraphs a. or b. of Who is and Insured with regard to the ownership, maintenance or use of a covered "auto."

Primary and Non-Contributory

Only with respect to insurance provided to an additional insured in 1.D. – Additional Insured If Required by contract, the following provisions apply:

- 1) **Primary Insurance When Required By Contract:** This insurance is primary if you have agreed in a written contract or written agreement that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in Other Insurance Clause.
- 2) **Primary and Non-Contributory To Other Insurance When Required By Contract:** If you have agreed in a written contract or written agreement that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (1) and (2) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other that this insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, by method described in Other Insurance 5.d.

Waiver of Subrogation

We waive any right of recovery we may have against any person or organization with whom you have a written contract that requires such waiver because of payment we make for damages under the Coverage Form.

This page has been left blank intentionally.

ADDITIONAL COVERAGES BY WRITTEN CONTRACT, AGREEMENT OR PERMIT

This is a summary of the coverage provided under the following form (complete form available):

BUSINESS LIABILITY COVERAGE FORM SS 00 08 04 05

Additional Insured When Required by Written Contract, Written Agreement or Permit

WHO IS AN INSURED under Section C. is amended to include as an additional insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- (a) In the performance of your ongoing operations;
- (b) In connection with your premises owned by or rented to you; or
- (c) In connection with "your work" and included within the "products completed operations hazard", but only if
 - (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
 - (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products completed operations hazard".

The person(s) or organization(s) are additional insureds when you have agreed, in a written contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under the provision only for that period of time required by the contract, agreement or permit.

With respect to the insurance afforded to the additional insured, this insurance does not apply to: "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services, including:

- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specification; or
- (b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section D. Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. Liability And Medical Expenses General Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

When You Add Others As An Additional Insured To This Insurance: That is other insurance available to an additional insured. However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

- (a) **Primary Insurance When Required By Contract:** This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.
- (b) **Primary And Non-Contributory To Other Insurance When Required By Contract:** If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs **(a)** and **(b)** do not apply to other insurance to which the additional insured has been added as an additional insured.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

Waiver of Subrogation

If you have waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided you waived your rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Andrew Jackson, Water Manager, 480-503-6470

MEETING DATE: May 16, 2019

SUBJECT: New Contracts for Water/Wastewater Treatment Chemicals

STRATEGIC INITIATIVE: Community Livability

This action supports Gilberts Community Livability Strategic Initiative by providing potable water to residents as well as reclaimed water to our community.

RECOMMENDED MOTION

A motion to enter into agreements pursuant to cooperative purchasing contracts for Water/Wastewater Treatment Chemicals with Thatcher Chemical Company (Aluminum Sulfate), Contract #319001118, Hill Brothers Chemical Company (Bleach 12.5%, Chlorine Tablets, Sodium Hydroxide, and Sulfuric Acid), Contract #319001060, and Solenis LLC (formerly BASF) Corporation (Polymer), Contract #319001117, effective May 16, 2019 upon award and terminating on June 30, 2020 with the option to renew, and authorize the mayor to execute the required documents.

In addition to the Aluminum Sulfate, Thatcher Chemical Company will also be providing Fluoride with contract #319001129 dated July 1 to July 31, 2019 (to align with the term of the Omnia Partners cooperative contract) with the option to renew, and authorize the Mayor to execute the required documents.

With the combined amount not to exceed \$2,163,100 annually.

BACKGROUND/DISCUSSION

The Town of Gilbert participates in joint solicitations with Chandler, Mesa and Omnia Partners. This ability to co-op with other agencies allows Gilbert a significant cost savings on the necessary treatment chemicals. The current contracts are set to expire, so the Town would like to enter into contracts with current pricing and term lengths coterminous with the Chandler, Mesa and Omnia Partners contracts.

Cooperative purchases are exempt from the competitive bidding process, where the Gilbert purchasing officer has made a written determination that rebidding the contract is unlikely to result in a lower price, per Gilbert Municipal Code § 2-357(b) (2).

The contracts were reviewed for form by Attorney Chris Payne.

The contracts and purchase were reviewed by Doug Boyer, Purchasing Administrator.

FINANCIAL IMPACT

The total amount of \$2,163,100 has been budgeted in the FY 19-20 for these products.

The financial impact was reviewed by Cris Welch, Senior Management and Budget Analyst

STAFF RECOMMENDATION

Staff recommends approval of the motion to approve of the following contract numbers 319001060, 319001117, and 319001118 with Hill Brothers Chemical Company, Solenis LLC (formerly BASF) and Thatcher Chemical Company of Arizona (respectively) for the water/wastewater treatment chemicals, effective upon award and terminating June 30, 2020 with the option to renew.

Additionally, staff recommends approval of the motion to approve contract number 319001129 with Thatcher Chemical Company of Nevada through the Omnia Partners cooperative contract for the water treatment chemical Fluoride, effective July 1, 2019 and terminating July 31, 2019 with the option to renew.

Respectfully submitted,

Andrew Jackson
Water Manager

Approved By

Approval Date

Andrew Jackson
Jessica Marlow
John Baird
Cris Welch
Douglas Boyer

5/8/2019 8:23:58 AM
5/8/2019 8:26:42 AM
5/8/2019 8:52:24 AM
5/8/2019 8:32:43 AM
5/8/2019 12:38:55 PM



TOWN OF GILBERT COOPERATIVE PURCHASING AGREEMENT APPROVAL FORM

Requested By: Kurtis McDavid, Water Production Superintendent Date: April 29, 2019

Department: Public Works- Water/Wastewater Divisions: North WTP, Santan WTP, and WW

Cooperative Purchase Agreement with: City of Chandler

Contracting Agency Hill Brothers Contract Number WA8-885-3868

Item(s) or Service Requested:

The NWTP, SWWTP, and WW would like to continue to purchase the water treatment chemicals listed below from Hill Brothers which is utilized in the water production process at both plant and WW facility.
SULFURIC ACID, 3" ACCUTABS, SODIUM HYDROXIDE 25% AND 50%, BLEACH

Account# 600 and 650 . 71205 & 71210 and 73405 . 54100

Justification:

Per Gilbert Purchasing Code 2-357 (b) (2), a separate bidding process is not likely to result in a lower price for these items or service.

Agreement expiration date: June 30, 2020

Departmental Approval: *Justine J. Marlow* Date: 4/30/19

Purchasing Officer Approval: *Douglas E. Boyer* Date: 5/1/19

AGREEMENT
TO PROVIDE SERVICES/SUPPLIES PURSUANT TO A
COOPERATIVE PURCHASING CONTRACT
Contract No. 319001060

This Agreement is made and entered into by and between the Town of Gilbert, Arizona, a municipal corporation, hereinafter designated as “Gilbert” and **Hill Brothers Chemical Co.**, hereinafter designated as the “Contractor.”

Recitals:

- A. Contractor has contracted with the **City of Chandler**, Arizona to provide **Water/Wastewater Treatment Chemicals** services, materials and/or equipment pursuant to **Contract No. WA8-885-3868** (the Cooperative Purchasing Contract); and
- B. Pursuant to A.R.S. § 41-2631 et seq. and Gilbert Municipal Code § 2-357, Gilbert has authority to utilize cooperative purchasing contracts and engage contractors under the terms thereof.

CONTRACTOR AND GILBERT, FOR THE CONSIDERATION
HEREINAFTER SET FORTH, PROMISE, COVENANT AND AGREE AS FOLLOWS:

1. Scope of Work.

1.1 Contractor shall provide the following services, materials and/or equipment:

To provide Water/Wastewater Treatment Chemicals, including, Sulfuric Acid, Drinking Water Grade 3” Calcium Hypochlorite Tablets (Accutabs), Sodium Hydroxide 25% and 50%, Sodium Hypochlorite (Bleach) 12.5%. Selection of chemicals may change during the term of this contract.

as described in the Cooperative Purchasing Contract documents attached hereto as **Exhibit A**, which are incorporated herein by reference. As used in this Contract, all references to the **City of Chandler**, Arizona shall mean the Town of Gilbert, Arizona.

1.2 Contractor shall comply with all specific requirements and/or options of Gilbert, as specified in **Exhibit B** attached hereto and incorporated herein by reference.

2. Payment. The Contract Fee is not to exceed **\$1,208,100.00**. Payment to the Contractor for the services, materials and/or equipment provided, shall be made in accordance with the price list and terms set forth in the Cooperative Purchasing Contract.

3. Terms of Cooperative Purchasing Contract Apply. All provisions of the Cooperative Purchasing Contract documents are incorporated in and shall apply to this Contract as though fully set forth herein, except as otherwise provided for in this Agreement.


4. Contract Term and Renewal. If funds for this Contract are not appropriated or budgeted by July 1, 2018 or by July 1st of any fiscal year thereafter, Gilbert may terminate this contract by giving written notice to Contractor. Otherwise, the term of this Contract shall commence upon approval and continue through **June 30, 2019**. The contract shall automatically renew coterminous with the underlying **Chandler Contract term**. If this Contract is renewed, the Contract fee shall be adjusted as provided for in the Cooperative Purchasing Contract. The Gilbert Purchasing Officer has authority to approve any renewal provided that: (1) the Contract amount does not exceed \$100,000; (2) the original prices remain in effect during the Renewal Term; or (3) the contract unit pricing does not increase or the contract pricing is adjusted pursuant to the terms and conditions of the Cooperative Purchasing Contract. Any renewal shall be contingent on funds being appropriated or budgeted for the renewal term.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names this
29th day of April, 2019.

TOWN OF GILBERT:

CONTRACTOR:

By: _____
Mayor

By:  _____
Title: Area Product Specialist

ATTEST:

Lisa Maxwell
Town Clerk

APPROVED AS TO FORM:

Christopher W. Payne
Town Attorney

EXHIBIT A
CONTRACT OF OTHER GOVERNMENTAL ENTITY

See attached

**CITY OF CHANDLER PURCHASE AGREEMENT
WATER TREATMENT CHEMICALS
AGREEMENT NO.: WA8-885-3868**

THIS AGREEMENT is made and entered into this 18th day of June, 2018, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "City", and Hill Brothers Chemical Company, hereinafter referred to as "Contractor".

WHEREAS, Contractor represents that Contractor has the expertise and is qualified to perform the requirements described in the Agreement.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. AGREEMENT ADMINISTRATOR:

- 1.1. **Agreement Administrator.** Contractor shall act under the authority and approval of the Cost Center Superintendent or designee (Agreement Administrator), to provide the requirements of this Agreement.
- 1.2. **Key Staff.** Contractor shall not change nor substitute any of these key staff for work on this Agreement without prior written approval by City.
- 1.3. **Subcontractors.** During the performance of the Agreement, Contractor may engage such additional Subcontractor as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with Contractor.
- 1.4. **Subcontracts.** Contractor shall not enter into any subcontract under this Agreement for the performance of this Agreement without the advance written approval of City. The subcontract shall incorporate by reference the terms and conditions of this Agreement.

2. SCOPE OF WORK/SPECIFICATIONS: Contractor shall provide chemicals all as more specifically set forth in Exhibit A and B, attached hereto and made a part hereof by reference.

- 2.1. **Non-Discrimination.** The Contractor shall comply with all applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.
- 2.2. **Licenses.** Contractor shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this agreement.
- 2.3. **Advertising, Publishing and Promotion of Agreement.** The Contractor shall not use, advertise or promote information for commercial benefit concerning this Agreement without the prior written approval of the City.
- 2.4. **Compliance with Applicable Laws.** Contractor shall comply with all applicable Federal, state and local laws, and with all applicable licenses and permit requirements.
- 2.4.1. The Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("subcontractors") will comply with all Federal Immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify, hereinafter "Contractor Immigration Warranty".

2.4.1.1 A breach of the Contractor Immigration Warranty shall constitute a material breach of this Agreement that is subject to penalties up to and including termination of the agreement.

- 2.4.1.2 The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Agreement to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.
- 2.4.1.3 The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractor Immigration Warranty. The Contractor agrees to assist the City in performing any such random verification.
- 2.4.1.4 The provisions of this Article must be included in any agreement the Contractor enters into with any and all of its subcontractors who provide services under this Agreement or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.
- 2.4.2 Participation in Boycott of Israel. As defined by A.R.S. §35-383.01:
- 2.4.2.1 "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with Israel or with persons or entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:
- (a) In compliance with or adherence to calls for a boycott of Israel other than those boycotts to which 50 United States Code section 4807(c) applies.
 - (b) In a manner that discriminates on the basis of nationality, national origin or religion and that is not based on a valid business reason.
- 2.4.2.2 "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, and includes a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate.
- 2.4.2.3 "Direct holdings" means all publicly traded securities of a company that are held directly by the state treasurer or a retirement system in an actively managed account or fund in which the retirement system owns all shares or interests.
- 2.4.2.4 "Indirect holdings" means all securities of a company that are held in an account or fund, including a mutual fund, that is managed by one or more persons who are not employed by the state treasurer or a retirement system, if the state treasurer or retirement system owns shares or interests either:
- (a) together with other investors that are not subject to this section.
 - (b) that are held in an index fund.
- 2.4.2.5 "Public entity" means this State, a political subdivision of this State or an agency, board, commission or department of this state or a political subdivision of this state.
- 2.4.2.6 "Public fund" means the state treasurer or a retirement system.
- 2.4.2.7 "Restricted companies" means companies that boycott Israel.
- 2.4.2.8 "Retirement system" means a retirement plan or system that is established by or pursuant to Title 38.
- 2.4.2.9 The City of Chandler will not enter into a contract with a company to acquire or dispose of services, supplies, information technology or construction with a company that is currently engaged in a boycott of Israel. By signing this agreement, the Contractor certifies that the

company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of Israel.

2.4.2.10 By signing this agreement, the Contractor agrees to indemnify and hold the City, its agents and employees, harmless from any claims or causes of action relating to the City's action based upon reliance on the above representations, including the payment of all costs and attorney fees incurred by the City in defending such an action.

- 2.5. **Ordering Instructions:** Authorization for purchases under the terms and conditions of this agreement will be made only upon issuance of a City Purchase Order, a Agreement Release Order or use of a City Procurement Card.
- 2.6. **Annual Usage Report.** Contractor shall furnish City a usage report on an annual basis delineating the acquisition activity governed by the agreement. The format of the report shall be approved by City and shall disclose the quantity and the dollar value of each agreement item by individual purchasing unit.
- 2.7. **Catalogs/Agreement Price Listing.** As applicable, the Contractor (s) shall be required to furnish to all requesting departments catalogs at no cost, which will outline agreement prices.
- 2.8. **Current Models.** It is City's intent to procure materials of the latest technology. All materials bid must be in current production and parts must be available for a minimum of five (5) years from bid date.
- 2.9. **Current Products.** All products offered in response to this solicitation shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in this solicitation.
- 2.10. **New/Current Products.** All goods, equipment, materials, parts and other components supplied pursuant to this Agreement shall be new, or the latest model and of the most suitable grade for the purpose intended.
- 2.11. **New Products.** New products announced by manufacturers on agreement may be submitted by the Contractor for add-ons to the existing agreement. Pricing shall be equivalent to the percentage discount for each brand or class of product originally offered.
- 2.12. **Packing and Shipping.** The Contractor shall be responsible for industry standard packing, which conforms to requirements of carrier's tariffs and Interstate Commerce Commission (ICC) regulations. Containers must be clearly marked as to lot number, destination, address and purchase order number.
- 1.13. **Delivery:** All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. Contractor shall retain title and control of all goods until they are delivered and accepted by City. All risk of transportation and all related charges shall be the responsibility of Contractor. All claims for visible or concealed damage shall be filed by Contractor. City will notify Contractor promptly of any damaged goods and shall assist Contractor in arranging for inspection.
- 1.14. **Delivery Time.** Delivery of all items except Mississippi Lime shall be completed within 48 hours of order. Delivery of Mississippi Lime shall be completed within 4 days of order.
- 2.14. **Risk of Loss:** Contractor shall bear all loss of conforming material covered under this Agreement until received by authorized personnel at the location designated in the purchase order or Agreement. Merely receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with Contractor regardless of receipt.
- 2.15. **Warranties:**

- 2.16. Liens:** Contractor warrants that the materials supplied under this Agreement are free of liens and shall remain free of liens.
- 2.17. Quality:** Unless otherwise modified elsewhere in these terms and conditions, Contractor warrants that, for one year after acceptance by City of the materials, they shall be:
- 2.17.1. Of a quality to pass without objection in the trade under the Agreement description;
 - 2.17.2. Fit for the intended purposes for which the materials are used;
 - 2.17.3. Within the variations permitted by the Agreement and are of even kind, quantity, and quality within each unit and among all units;
 - 2.17.4. Adequately contained, packaged and marked as the Agreement may require; and
 - 2.17.5. Conform to the written promises or affirmations of fact made by Contractor.
- 2.18. Fitness:** Contractor warrants that any material supplied to City shall fully conform to all requirements of the Agreement and all representations of Contractor, and shall be fit for all purposes and uses required by the Agreement.
- 2.19. Inspection/Testing:** The warranties set forth in Section 2 herein are not affected by inspection or testing of or payment for the materials by City.
- 3. ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Agreement Administrator to determine acceptable completion.
- 3.1. Records.** The Contractor shall retain and shall contractually require each Subcontractor to retain all data and other "records" relating to the acquisition and performance of the Agreement for a period of five years after the completion of the Agreement.
 - 3.2. Audit.** At any time during the term of this Agreement and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Agreement or Subcontract. Upon request, the Contractor shall produce a legible copy of any or all such records.
 - 3.3. New/Current Products.** All equipment, materials, parts and other components incorporated in the work or services performed pursuant to this Agreement shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.
 - 3.4. Property of City.** Any materials, including reports, computer programs and other deliverables, created under this Agreement are the sole property of City. Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. Contractor shall not use or release these materials without the prior written consent of City.
- 4. PRICE:**
- 4.1.** The City shall pay Contractor the per-unit cost as set forth in Exhibit B, attached hereto and made a part hereof by reference in an amount not to exceed Six Million Two Hundred and Sixty Three Thousand Dollars (\$6,263,000.00) when combined with companion agreements to this agreement.
 - 4.2. Taxes.** Contractor shall be solely legally responsible for any and all tax obligations, which may result out of Contractor's performance of this Agreement. City shall have no legal obligation to pay any amounts for taxes, of any type, incurred by Contractor. City agrees that Contractor may bill the City for

applicable privilege license taxes which are paid for by Contractor and that the City will reimburse Contractor for privilege license taxes actually paid by Contractor. If Contractor obtains any refund of privilege license taxes paid, City will be entitled to a refund of such amounts.

- 4.3. **Payment.** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice. Any quantities shown on Exhibit B are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by City. City reserves the right to increase or decrease the quantities actually required.
- 4.4. **IRS W9 Form.** In order to receive payment Contractor shall have a current I.R.S. W9 Form on file with City, unless not required by law.
- 4.5. **Price Adjustment in Extension Terms.** All prices offered herein shall be firm against any increase for the initial term of the Agreement. Prior to commencement of subsequent renewal terms, City may approve a fully documented request for a price adjustment. City shall determine whether any requested price increases for extension terms is acceptable to the City. If City approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon by the Parties a written Agreement Amendment shall be approved and executed by the Parties.
- 4.6. **Price Reduction.** Contractor shall offer City a price reduction for its material or services concurrent with a published price reduction made to other customers.
5. **TERM:**
- 5.1. The term of the Agreement is one year, commencing on July 1, 2018 and terminating on June 30, 2019 unless sooner terminated in accordance with the provisions herein. City reserves the right, at its sole discretion, to extend the Agreement for up to two additional terms of one year each.
6. **USE OF THIS AGREEMENT:** The Agreement is for the sole convenience of the City of Chandler. City reserves the rights to obtain like materials or services from another source to secure significant cost savings or when timely completion cannot be met by Contractor.
- 6.1. **Cooperative Use of Agreement.** In addition to the City of Chandler and with approval of the Contractor, this Agreement may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

If required to provide materials or services on a school district property at least five (5) times during a month, Contractor shall submit a full set of fingerprints to the school of each person or employee who may provide such material or service. The District shall conduct a fingerprint of all Contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the District. Additionally, the Contractor shall comply with the governing body fingerprinting policies of each individual school district/public entity. Contractor, sub-contractors, vendors and their employees shall not provide materials or services on school district properties until authorized by the District.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City shall not be responsible for any disputes arising out of transactions made by other agencies who utilize this Agreement.

- 6.2. **Emergency Purchases:** City reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the Contractor.

6.3. Non-Exclusive Agreement: This agreement is for the sole convenience of the City of Chandler. The City reserves the right to obtain like goods or services from another source when necessary.

7. CITY'S CONTRACTUAL REMEDIES:

7.1. Right to Assurance. If the City in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Agreement, the Agreement Administrator may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Agreement in addition to any other rights and remedies provided by law or this Agreement.

7.2. Stop Work Order. The City may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Agreement for period(s) of days indicated by the City after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Agreement Administrator shall make an equitable adjustment in the delivery schedule or Agreement price, or both, and the Agreement shall be amended in writing accordingly.

7.3. Non-exclusive Remedies. The rights and the remedies of the City under this Agreement are not exclusive.

7.4. Nonconforming Tender. Services and materials supplied under this Agreement shall fully comply with Agreement requirements and specifications. Services or materials that do not fully comply constitute a breach of agreement.

7.5. Right of Offset. The City shall be entitled to offset against any sums due Contractor, any expenses or costs incurred by the City, or damages assessed by the City concerning the Contractor's non-conforming performance or failure to perform the Agreement, including expenses to complete the work and other costs and damages incurred by City.

8. TERMINATION:

8.1. Termination for Convenience: City reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, Contractor shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work. As compensation in full for materials or services performed to the date of such termination, the Contractor shall receive a fee for the percentage of materials or services actually performed. This fee shall be in the amount to be mutually agreed upon by the Contractor and City, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director or designee shall determine the percentage of work performed under each task detailed in the Scope of Work and the Contractor's compensation shall be based upon such determination and Contractor's fee schedule included herein

8.2. Termination for Cause: City may terminate this Agreement for Cause upon the occurrence of any one or more of the following events:

- 1) If Contractor fails to perform pursuant to the terms of this Agreement
- 2) If Contractor is adjudged a bankrupt or insolvent;
- 3) If Contractor makes a general assignment for the benefit of creditors;
- 4) If a trustee or receiver is appointed for Contractor or for any of Contractor's property;

- 5) If Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- 6) If Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;

Where Agreement has been so terminated by City, the termination shall not affect any rights of City against Contractor then existing or which may thereafter accrue.

- 8.3. **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, City may cancel this Agreement after Agreement execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is or becomes at any time while this Agreement or an extension of this Agreement is in effect, an employee of or a consultant to any other party to this Agreement. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time.
- 8.4. **Gratuities.** City may, by written notice, terminate this Agreement, in whole or in part, if City determines that employment or a Gratuity was offered or made by Contractor or a representative of Contractor to any officer or employee of City for the purpose of influencing the outcome of the procurement or securing this Agreement, an amendment to this Agreement, or favorable treatment concerning this Agreement, including the making of any determination or decision about agreement performance. The City, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by Contractor.
- 8.5. **Suspension or Debarment.** City may, by written notice to the Contractor, immediately terminate this Agreement if City determines that Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of an agreement shall attest that the Contractor is not currently suspended or debarred. If Contractor becomes suspended or debarred, Contractor shall immediately notify City.
- 8.6. **Continuation of Performance Through Termination.** The Contractor shall continue to perform, in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice.
- 8.7. **No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Agreement shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 8.8. **Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this Agreement beyond the current fiscal year. No legal liability on the part of the City for materials or services may arise under this Agreement beyond the current fiscal year until funds are made available for performance of this Agreement. The City may reduce materials and services or terminate this Agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.
9. **FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
10. **DISPUTE RESOLUTION:**
- 10.1. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

- 10.2. Jurisdiction and Venue.** The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.
- 10.3. Fees and Costs.** Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees.
- 11. INDEMNIFICATION:** To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Contract/Agreement or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Contractor, or any of its subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Contract/Agreement, including but not limited to, any injury or damages claimed by any of Contractor's and subcontractor's employees.
- 12. INSURANCE:**
- 12.1. General.**
- A. At the same time as execution of this Agreement, the Contractor shall furnish the City of Chandler a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to City. Provided, however, the A.M. Best rating requirement shall not be deemed to apply to required Workers' Compensation coverage.
- B. The Contractor and any of its subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set forth below.
- C. The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
- D. The City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect Contractor from liabilities that might arise out of the performance of the Agreement services under this Agreement by Contractor, its agents, representatives, employees, subcontractors, and the Contractor is free to purchase any additional insurance as may be determined necessary.
- E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve the Contractor from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.

- F. **Use of Subcontractors:** If any work is subcontracted in any way, the Contractor shall execute a written contract with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the Contractor in this Agreement. The Contractor is responsible for executing the Agreement with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

12.2. Minimum Scope and Limits of Insurance. The Contractor shall provide coverage with limits of liability not less than those stated below.

- A. **Commercial General Liability-Occurrence Form.** Contractor must maintain "occurrence" form Commercial General Liability Insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury. If any Excess insurance is utilized to fulfill the requirements of this paragraph, the Excess insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
- B. **Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles Vehicle Liability.** Contractor must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on Contractor owned, hired, and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
- C. **Workers Compensation and Employers Liability Insurance:** Contractor must maintain Workers Compensation Insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of work or services under this Agreement and must also maintain Employers' Liability insurance of not less than \$1,000,000 for each accident and \$1,000,000 disease for each employee.

12.3. Additional Policy Provisions Required.

- A. **Self-Insured Retentions or Deductibles.** Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.
 - 1. The Contractor's insurance must contain broad form contractual liability coverage.
 - 2. The Contractor's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the Contractor and must not contribute to it.
 - 3. The Contractor's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - 4. Coverage provided by the Contractor must not be limited to the liability assumed under the Indemnification provisions of this Agreement.
 - 5. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the Contractor for the City.
 - 6. The Contractor, its successors and or assigns, are required to maintain Commercial General Liability insurance as specified in this Agreement for a minimum period of 3 years following

completion and acceptance of the Work. The Contractor must submit a Certificate of Insurance evidencing Commercial General Liability Insurance during this 3 year period containing all the Agreement insurance requirements, including naming the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.

7. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement.

B Insurance Cancellation During Term of Contract/Agreement.

1. If any of the required policies expire during the life of this Contract/Agreement, the Contractor must forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the required insurance provisions.
2. Each insurance policy required by the Insurance provisions of this Contract/Agreement shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to Chandler Law-Risk Management Department, Post Office Box 4008, Mailstop 628, Chandler, Arizona 85225. If any insurance company refuses to provide the required notice, the Contractor or its insurance broker shall notify the City of any cancellation, suspension, non-renewal of any insurance within seven (7) days of receipt of Insurers' notification to that effect.

A. City as Additional Insured. The policies are to contain, or be endorsed to contain, the following provisions:

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the Contractor including the City's general supervision of the Contractor; Products and Completed operations of the Contractor; and automobiles owned, leased, hired, or borrowed by the Contractor.
2. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Agreement.

D. Transportation Pollution Liability – TPL

Contractor must maintain Transportation Pollution Liability – TPL coverage or an equivalent endorsement to include loading or unloading activities under this Agreement. with minimum limits for Bodily Injury/Property Damage or cleanup costs (Each Accident) of \$5,000,000 with the City as additional insured under the other terms of Section 12 of this Agreement.

13. **NOTICES:** All notices or demands required to be given pursuant to the terms of this Agreement shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of the CITY

Agreement
Administrator: Purchasing
Contact: Mike Mandt

In the case of the CONTRACTOR

Hill Brothers
Firm Name: Chemical Company
Contact: Rusty Mosher /
Michael Zaragoza

Mailing Address: PO Box 4008 MS 901
Physical Address: 175 S Arizona Ave.
City, State, Zip Chandler, AZ 85244-4008
Phone: 480-782-2406
E-mail: Michael.mandt@chandleraz.gov

Address: 1675 N. Main St.
City, State, Zip Orange, CA 92867-3499
Phone: 623-879-9210
E-mail: phoenixsales@hillbrothers.com

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

14. CONFLICT OF INTEREST:

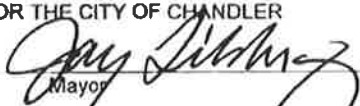
- 14.1. No Kickback.** Contractor warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the City has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in Contractor's proposal to the City.
- 14.2. Kickback Termination.** City may cancel any agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a Contractor to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from City is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).
- 14.3. No Conflict:** Contractor stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

15. GENERAL TERMS:

- 15.1. Ownership.** All deliverables and/or other products of the Agreement (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by Contractor in performance of the Agreement) shall be the sole, absolute and exclusive property of City, free from any claim or retention of right on the part of Contractor, its agents, sub-contractors, officers or employees.
- 15.2. Entire Agreement.** This Agreement, including all Exhibits attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the material or services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives of each party.
- 15.3. Assignment:** Materials or services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the City.
- 15.4. Amendments.** The Agreement may be modified only through a written Agreement Amendment executed by authorized persons for both parties. Changes to the Agreement, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the City in writing or made unilaterally by the Contractor are violations of the Agreement. Any such changes, including unauthorized written Agreement Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Agreement based on such changes.

- 15.5. **Independent Contractor.** The Contractor under this Agreement is an Independent Contractor. Neither party to this Agreement shall be deemed to be the employee or agent of the other party to the Agreement.
- 15.6. **No Parole Evidence.** This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 15.7. **Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this 18th day of June, 2018.

FOR THE CITY OF CHANDLER

 Mayor

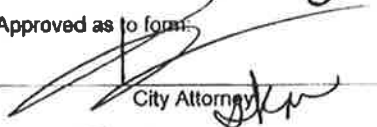
FOR THE CONTRACTOR
 By: 
 Signature

ATTEST:

 City Clerk

SEAL ATTEST: If Corporation

 Secretary

Approved as to form:

 City Attorney



**EXHIBIT A
SPECIFICATIONS**

1. BACKGROUND

The City has an ongoing need for the chemicals listed below to be delivered as requested at various city facilities. The Facilities served under this contract are dynamic and chemical needs can change over time due to equipment functionality, Process results, changes in standards and other circumstances. As a result, the City reserves the right to add, remove, and or substitute products under this contract as needs arrive via contract amendment.

2. All chemicals for Water Treatment Plant and Water Production shall be NSF approved

3. Specifications for each chemical except Bioxide are listed in Exhibit B. Specification for 5 Bioxide and Calcium Nitrate Tetrahydrate is listed below.

Delivery Quantity: 4,400 Gallon (Could take up to 6,000 gallons per load)

Delivery Location:
202 Price Road Diversion Structure
NEC of the 101 and San Tan 202 freeway

Delivery Time: Monday through Friday 8 to 5.

Specification

1. The solution shall contain 3.5 lbs./gallon of nitrate-oxygen.
2. The solution shall be capable of reducing the dissolved hydrogen sulfide concentration in wastewater to less than 0.1 mg/l.
3. The pH of the solution shall not be less than 4.0 or greater than 8.0
4. The product shall contain no more than 0.7% ammonia.
5. The solution shall not crystallize at the locations ambient temperatures.
6. The solution shall be free of debris and any other contaminants.
7. A certificate of analysis must be provided with each delivery.
8. The solution shall contain no hazardous substances as defined by both the Federal EPA's and State EPCRA Section 302 Extremely Hazardous Substances (EHSs), Section 313 Toxic Chemicals, or any CERCLA Reportable Quantity Lists.
9. Recommended handling procedures for the material shall require protective gloves and safety glasses only. Any material recommending more sophisticated equipment (i.e., face shield, body suit, etc.) during routine handling shall not be considered.

Hydrogen Sulfide Monitoring

The Bioxide supplier shall provide chemical feed level monitors on City tanks. Monitors shall be capable of communicating various system parameters (i.e tank level, estimated feed rate, system status) through cellular modem to a secure website provided and hosted by the Bidder and made accessible to the City 24/7. In addition, to confirm appropriate dosage and effectiveness of the product the Bidder shall provide, install and maintain monitoring equipment to measure hydrogen sulfide concentration in up to 4 locations to be determined by the City. Data from said monitors will be communicated by cellular signal to the secure website hosted by the Bidder and made accessible by the City.

4. Delivery Locations for all Chemicals

Aquatics

Mesquite Groves Aquatic Center	5901 S. Hillcrest Dr., Chandler, AZ 85249
Hamilton Aquatic Center	3838 S. Arizona Ave., Chandler AZ 85248
Folley Pool	600 E Fairview, Chandler, AZ 85225
Arrowhead Pool	1475 W. Erie St., Chandler, AZ 85224
Desert Oasis Aquatic Center	1400 W Summit Pl, Chandler, AZ 85224
Nozomi Aquatic Center	260 S Kyrene Rd., Chandler, AZ 85228

Deliveries are required before 11:30 am at aquatics facilities

Water Production

1475 E Pecos Rd, no deliveries after 3:00 pm, no holiday deliveries

OBRF

All OBRF deliveries can go to: 3737 S. Old Price Rd., normal delivery hours are Monday-Friday from 7:00am-5:00pm. We do have operators on duty 24/7 so we have flexibility if we want to allow weekend deliveries.

Water Treatment Plant

1475 E Pecos Rd, no deliveries after 3:00 pm, no holiday deliveries

AWRF - Airport Water Reclamation Facility

905 East Queen Creek Rd
Chandler, AZ 85286

Deliveries between 7 - 2PM

Lone Butte Water Reclamation Facility

No real street address-
Gila River Indian Reservation
3 miles West of Firebird Lake
(110/Maricopa Rd.)

Deliveries between 7AM – Noon

6. Technical Support

If requested by the City, the contractor will provide technical support for the purpose of optimizing use and dosage of the items on contract. Additionally, if requested by the City the Contractor will perform Jar testing to insure performance of the product.

**EXHIBIT B
PRICE SCHEDULE**

Chemical	Unit of Measure	Quantity/Size	Notes/Specifications	Primary Award		Back Up	
				Supplier	Unit Price	Supplier	Unit Price
Bulk Chemicals							
15	50% Liquid Sodium Hydroxide (Caustic Soda) JTL	Dry Ton	Bulk	Performance and/or Quality Requirements: Commercial grade 50% liquid solution.		Hill Brothers	\$ 849,980
16	50% Liquid Sodium Hydroxide (Caustic Soda) LTL Freight Charged Separately per line 18a	gal	Bulk	Performance and/or Quality Requirements: Commercial grade 50% liquid solution.		Hill Brothers	\$ 2,980
17	50% Liquid Sodium Hydroxide (Caustic Soda)	gal	Bulk	Performance and/or Quality Requirements: Commercial grade 50% liquid solution.		Hill Brothers	\$ 2,900
18	50% Liquid Sodium Hydroxide (Caustic Soda) LTL Freight Charged Separately per line 16a	gal	Bulk	Performance and/or Quality Requirements: Commercial grade 50% liquid solution.		Hill Brothers	\$ 2,010
18a	Freight Charge for LTL Caustic Soda Line 16 and 18	Each				Hill Brothers	\$ 25,000
19	Liquid Sodium Hypochlorite (Bleach)	gal	Bulk	Performance and/or Quality Requirements: High-quality Bleached Bleach 12.5%.		Hill Brothers	\$ 0.870
19a	Liquid Sodium Hypochlorite (Bleach)	gal	min bulk approx 800 gal	Performance and/or Quality Requirements: High-quality Bleached Bleach 12.5%.		Hill Brothers	\$ 1,300
20	Liquid Sodium Hypochlorite (Bleach)	gal	55-gal Drum	Performance and/or Quality Requirements: High-quality Bleached Bleach 12.5%.		Hill Brothers	\$ 1,650
22	Hydrochloric Acid (Muriatic Acid)	gal	Min-bulk	Performance and/or Quality Requirements: Technical grade hydrochloric acid.		Hill Brothers	\$ 3,660
23	Hydrochloric Acid (Muriatic Acid)	gal	Bulk	Performance and/or Quality Requirements: Technical grade hydrochloric acid.		Hill Brothers	\$ 1,550
24	Hydrochloric Acid (Muriatic Acid)	gal	Tote	Performance and/or Quality Requirements: Technical grade hydrochloric acid.		Hill Brothers	\$ 1,750
28	Mircoc 2000	gal	Bulk	Performance and/or Quality Requirements: Environmental Operating Solutions, Inc., or equal.		Hill Brothers	\$ 2,350
30	Mircos	gal	Bulk	Specifications 70 boxes	Hill Brothers	\$ 2,187	
Packaged Chemicals							
32	Sodium Thiosulfate	lb	50-lb Bag	Performance and/or Quality Requirements: 30%.	Hill Brothers	\$ 0.550	
37	Cyanuric Acid	lb	50-lb Bag	Performance and/or Quality Requirements: Dry, for use as swimming pool stabilizer.	Hill Brothers	\$ 1,080	
	Minimum Discount for chemicals not on list						15%

EXHIBIT B
SPECIFIC REQUIREMENTS/OPTIONS OF TOWN

Attached: Quote and Specifications. In accordance with **City of Chandler Contract No. WA8-885-3868**.

Notices: All notices required under the Contract shall be sent to:

Town Manager
Town of Gilbert
50 E. Civic Center Drive
Gilbert, Arizona 85296

Delivery Location: Per Purchase Order

Emergency Contact: Gilbert is an emergency response organization. Contractor services or supplies may be required in case of an emergency involving a sudden, immediate threat of danger to the public health, welfare or property in Gilbert (“local emergency”) or in the case where the Mayor of Gilbert, the mayor or governing body of another municipality in Maricopa County, the Maricopa County Board of Supervisors, the State, or the President of the U.S. has declared an emergency (“State of Emergency”). In the event of a local emergency or State of Emergency, Gilbert may require Contractor to provide services or supplies as rapidly as possible and to such locations as directed by Gilbert when necessary to protect the public health and welfare and/or property. Contractor shall not be required to respond to the extent response is not feasible due to Acts of God or other factors beyond its control. Contractor shall provide the designated Gilbert Emergency Management Coordinator at (480) 503-6333 and the designated Gilbert representative with a contact point (name, cell phone number, e-mail and facsimile number) who can be reached on short notice so that effective response can be initiated.

Equal Treatment of Workers: Contractor shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of performance under the Agreement. Contractor shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Occupational Safety and Health Administration (“OSHA”) and the Fair Labor Standards Act (“FLSA”). Contractor shall protect and indemnify Gilbert and its representatives against any claim or liability arising from or based on the violation of such, whether by Contractor or its employees./



TOWN OF GILBERT COOPERATIVE PURCHASING AGREEMENT APPROVAL FORM

Requested By: Robert Braymiller Date: 4/17/19

Department: PW-WATER-NWTP

Cooperative Purchase Agreement with: City of Chandler SOLENIS LLC FORMERLY BASF CORPORATION

Contracting Agency City of Chandler Contract Number WA8-885-3868

Item(s) or Service Requested:

To Provide Water/Wastewater treatment Chemicals, including Polymer LT7996, Selection of Chemicals may change during the term of this contract.

Account# 600 . 71205 . 54100

Justification:

Per Gilbert Purchasing Code 2-357 (b)(2), a separate bidding process is not likely to result in a lower price for these items or service.

Agreement expiration date: 6-30-20

Departmental Approval: Jessie J. Marlow Date: 4/22/19



**TOWN OF GILBERT
COOPERATIVE PURCHASING AGREEMENT
APPROVAL FORM**

Purchasing Officer Approval: Douglas E. Boyer Date: 4/22/19



solenis.com

Paula Nitti
Town of Gilbert
50 E. Civic Center Drive
Gilbert, AZ 85296

Re: CONTRACT NO. 319001117

Dear Ms. Nitti,

Please find the enclosed signed contract, which has been transferred from BASF to Solenis LLC.

We are aware that you piggyback on the contract for Chandler, AZ. We would like to let you know that by mutual agreement the contract price for the City of Chandler will be increasing on July 1, 2019 to \$0.61 / per pound, or \$5.29 per gallon.

Please let me know if you have any questions.

Sincerely,

Christopher Kollman

Christopher Kollman
Municipal Business Manager

AGREEMENT
TO PROVIDE SERVICES/SUPPLIES PURSUANT TO A
COOPERATIVE PURCHASING CONTRACT
Contract No. 319001117

This Agreement is made and entered into by and between the Town of Gilbert, Arizona, a municipal corporation, hereinafter designated as “Gilbert” and **Solenis LLC formerly BASF Corporation**, designated as the “Contractor.”

Recitals:

A. Contractor has contracted with the **City of Chandler** to provide **Water/Wastewater Treatment Chemicals** services, materials and/or equipment pursuant to **Contract No. WA8-885-3868** (the Cooperative Purchasing Contract); and

B. Pursuant to A.R.S. § 41-2631 et seq. and Gilbert Municipal Code § 2-357, Gilbert has authority to utilize cooperative purchasing contracts and engage contractors under the terms thereof.

CONTRACTOR AND GILBERT, FOR THE CONSIDERATION
HEREINAFTER SET FORTH, PROMISE, COVENANT AND AGREE AS FOLLOWS:

1. Scope of Work.

1.1 Contractor shall provide the following services, materials and/or equipment:

To provide Water/Wastewater Treatment Chemicals, including Polymer LT7996. Selection of chemicals may change during the term of this contract.

as described in the Cooperative Purchasing Contract documents attached hereto as **Exhibit A**, which are incorporated herein by reference. As used in this Contract, all references to the **City of Chandler** shall mean the Town of Gilbert, Arizona.

1.2 Contractor shall comply with all specific requirements and/or options of Gilbert, as specified in **Exhibit B** attached hereto and incorporated herein by reference.

2.0 Payment. The Contract Fee is **\$115,000.00**. Payment to the Contractor for the services, materials and/or equipment provided, shall be made in accordance with the price list and terms set forth in the Cooperative Purchasing Contract.

4. Terms of Cooperative Purchasing Contract Apply. All provisions of the Cooperative Purchasing Contract documents are incorporated in and shall apply to this Contract as though fully set forth herein, except as otherwise provided for in this Agreement.

5. Contract Term and Renewal. If funds for this Contract are not appropriated or budgeted by July 1, 2018 or by July 1st of any fiscal year thereafter, Gilbert may terminate this contract by giving written notice to Contractor. Otherwise, the term of this Contract shall commence upon approval and continue through **June 30, 2019**. The contract shall automatically renew coterminous with the underlying Chandler Contract term. If this Contract is renewed, the Contract fee shall be adjusted as provided for in the Cooperative Purchasing Contract. The Gilbert Purchasing Officer has authority to approve any renewal provided that: (1) the Contract amount does not exceed \$100,000; (2) the original prices remain in effect during the Renewal Term; or (3) the contract unit pricing does not increase or the contract pricing is adjusted pursuant to the terms and conditions of the Cooperative Purchasing Contract. Any renewal shall be contingent on funds being appropriated or budgeted for the renewal term.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names this _____ day of _____, 20__.

TOWN OF GILBERT:

CONTRACTOR:

By: _____
Mayor

By: GA. Bl
Title: PRICING ANALYTICS
ADMINISTRATION MANAGER

ATTEST:

Lisa Maxwell
Town Clerk

APPROVED AS TO FORM:

Christopher W. Payne
Town Attorney

EXHIBIT A
CONTRACT OF OTHER GOVERNMENTAL ENTITY

See attached

**CITY OF CHANDLER PURCHASE AGREEMENT
WATER TREATMENT CHEMICALS
AGREEMENT NO.: WAB-885-3868**

THIS AGREEMENT is made and entered into this 15th day of June, 2018, by and between the City of Chandler, a Municipal Corporation of the State of Arizona, hereinafter referred to as "City", and BASF Corporation, hereinafter referred to as "Contractor".

WHEREAS, Contractor represents that Contractor has the expertise and is qualified to perform the requirements described in the Agreement.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1. AGREEMENT ADMINISTRATOR:

- 1.1. **Agreement Administrator.** Contractor shall act under the authority and approval of the Cost Center Superintendent or designee (Agreement Administrator), to provide the requirements of this Agreement.
- 1.2. **Key Staff.** Contractor shall not change nor substitute any of these key staff for work on this Agreement without prior written approval by City.
- 1.3. **Subcontractors.** During the performance of the Agreement, Contractor may engage such additional Subcontractor as may be required for the timely completion of this Agreement. In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Agreement rests with Contractor.
- 1.4. **Subcontracts.** Contractor shall not enter into any subcontract under this Agreement for the performance of this Agreement without the advance written approval of City. The subcontract shall incorporate by reference the terms and conditions of this Agreement.

2. SCOPE OF WORK/SPECIFICATIONS: Contractor shall provide chemicals all as more specifically set forth in Exhibit A and B, attached hereto and made a part hereof by reference.

- 2.1. **Non-Discrimination.** The Contractor shall comply with all applicable City, State and Federal laws, rules and regulations, including the Americans with Disabilities Act.
- 2.2. **Licenses.** Contractor shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by the Contractor as applicable to this agreement.
- 2.3. **Advertising, Publishing and Promotion of Agreement.** The Contractor shall not use, advertise or promote information for commercial benefit concerning this Agreement without the prior written approval of the City.
- 2.4. **Compliance with Applicable Laws.** Contractor shall comply with all applicable Federal, state and local laws, and with all applicable licenses and permit requirements.
- 2.4.1. The Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("subcontractors") will comply with all Federal immigration laws and regulations that relate to the immigration status of their employees and the requirement to use E-Verify, hereinafter "Contractor Immigration Warranty".

2.4.1.1 A breach of the Contractor Immigration Warranty shall constitute a material breach of this Agreement that is subject to penalties up to and including termination of the agreement.

CC 6-14-18

- 2.4.1.2 The City retains the legal right to inspect the papers of any Contractor or Subcontractor employee who works on this Agreement to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. The Contractor agrees to assist the City in the conduct of any such inspections.
- 2.4.1.3 The City may, at its sole discretion, conduct random verifications of the employment records of the Contractor and any Subcontractors to ensure compliance with Contractors Immigration Warranty. The Contractor agrees to assist the City in performing any such random verification.
- 2.4.1.4 The provisions of this Article must be included in any agreement the Contractor enters into with any and all of its subcontractors who provide services under this Agreement or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.
- 2.4.2 Participation in Boycott of Israel. As defined by A.R.S. §35-393.01:
- 2.4.2.1 "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with Israel or with persons or entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:
- (a) in compliance with or adherence to calls for a boycott of Israel other than those boycotts to which 50 United States Code section 4607(c) applies.
 - (b) in a manner that discriminates on the basis of nationality, national origin or religion and that is not based on a valid business reason.
- 2.4.2.2 "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, and includes a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate.
- 2.4.2.3 "Direct holdings" means all publicly traded securities of a company that are held directly by the state treasurer or a retirement system in an actively managed account or fund in which the retirement system owns all shares or interests.
- 2.4.2.4 "Indirect holdings" means all securities of a company that are held in an account or fund, including a mutual fund, that is managed by one or more persons who are not employed by the state treasurer or a retirement system, if the state treasurer or retirement system owns shares or interests either:
- (a) together with other investors that are not subject to this section.
 - (b) that are held in an index fund.
- 2.4.2.5 "Public entity" means this State, a political subdivision of this State or an agency, board, commission or department of this state or a political subdivision of this state.
- 2.4.2.6 "Public fund" means the state treasurer or a retirement system.
- 2.4.2.7 "Restricted companies" means companies that boycott Israel.
- 2.4.2.8 "Retirement system" means a retirement plan or system that is established by or pursuant to Title 38.
- 2.4.2.9 The City of Chandler will not enter into a contract with a company to acquire or dispose of services, supplies, information technology or construction with a company that is currently engaged in a boycott of Israel. By signing this agreement, the Contractor certifies that the

company is not currently engaged in, and agrees for the duration of the contract to not engage in, a boycott of Israel.

2.4.2.10 By signing this agreement, the Contractor agrees to indemnify and hold the City, its agents and employees, harmless from any claims or causes of action relating to the City's action based upon reliance on the above representations, including the payment of all costs and attorney fees incurred by the City in defending such an action.

- 2.5. Ordering Instructions:** Authorization for purchases under the terms and conditions of this agreement will be made only upon issuance of a City Purchase Order, a Agreement Release Order or use of a City Procurement Card.
- 2.6. Annual Usage Report.** Contractor shall furnish City a usage report on an annual basis delineating the acquisition activity governed by the agreement. The format of the report shall be approved by City and shall disclose the quantity and the dollar value of each agreement item by individual purchasing unit.
- 2.7. Catalogs/Agreement Price Listing.** As applicable, the Contractor (s) shall be required to furnish to all requesting departments catalogs at no cost, which will outline agreement prices.
- 2.8. Current Models.** It is City's intent to procure materials of the latest technology. All materials bid must be in current production and parts must be available for a minimum of five (5) years from bid date.
- 2.9. Current Products.** All products offered in response to this solicitation shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in this solicitation.
- 2.10. New/Current Products.** All goods, equipment, materials, parts and other components supplied pursuant to this Agreement shall be new, or the latest model and of the most suitable grade for the purpose intended.
- 2.11. New Products.** New products announced by manufacturers on agreement may be submitted by the Contractor for add-ons to the existing agreement. Pricing shall be equivalent to the percentage discount for each brand or class of product originally offered.
- 2.12. Packing and Shipping.** The Contractor shall be responsible for industry standard packing, which conforms to requirements of carrier's tariffs and Interstate Commerce Commission (ICC) regulations. Containers must be clearly marked as to lot number, destination, address and purchase order number.
- 2.13. Delivery:** All prices are F.O.B. Destination and include all delivery and unloading at the specified destinations. Contractor shall retain title and control of all goods until they are delivered and accepted by City. All risk of transportation and all related charges shall be the responsibility of Contractor. All claims for visible or concealed damage shall be filed by Contractor. City will notify Contractor promptly of any damaged goods and shall assist Contractor in arranging for inspection.
- 2.14. Delivery Time.** Delivery of all items except Mississippi Lime shall be completed within 48 hours of order. Delivery of Mississippi Lime shall be completed within 4 days of order.
- 2.14. Risk of Loss:** Contractor shall bear all loss of conforming material covered under this Agreement until received by authorized personnel at the location designated in the purchase order or Agreement. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with Contractor regardless of receipt.
- 2.15. Warranties:**

- 2.16. Liens:** Contractor warrants that the materials supplied under this Agreement are free of liens and shall remain free of liens.
- 2.17. Quality:** Unless otherwise modified elsewhere in these terms and conditions, Contractor warrants that, for one year after acceptance by City of the materials, they shall be:
- 2.17.1. Of a quality to pass without objection in the trade under the Agreement description;
- 2.17.2. Fit for the intended purposes for which the materials are used;
- 2.17.3. Within the variations permitted by the Agreement and are of even kind, quantity, and quality within each unit and among all units;
- 2.17.4. Adequately contained, packaged and marked as the Agreement may require; and
- 2.17.5. Conform to the written promises or affirmations of fact made by Contractor.
- 2.18. Fitness:** Contractor warrants that any material supplied to City shall fully conform to all requirements of the Agreement and all representations of Contractor, and shall be fit for all purposes and uses required by the Agreement.
- 2.19. Inspection/Testing:** The warranties set forth in Section 2 herein are not affected by inspection or testing of or payment for the materials by City.
- 3. ACCEPTANCE AND DOCUMENTATION:** Each task shall be reviewed and approved by the Agreement Administrator to determine acceptable completion.
- 3.1. Records.** The Contractor shall retain and shall contractually require each Subcontractor to retain all data and other "records" relating to the acquisition and performance of the Agreement for a period of five years after the completion of the Agreement.
- 3.2. Audit.** At any time during the term of this Agreement and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the City to the extent that the books and records relate to the performance of the Agreement or Subcontract. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.3. New/Current Products.** All equipment, materials, parts and other components incorporated in the work or services performed pursuant to this Agreement shall be new, or the latest model and of the most suitable grade for the purpose intended. All work shall be performed in a skilled and workmanlike manner.
- 3.4. Property of City.** Any materials, including reports, computer programs and other deliverables, created under this Agreement are the sole property of City. Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. Contractor shall not use or release these materials without the prior written consent of City.
- 4. PRICE:**
- 4.1.** The City shall pay Contractor the per-unit cost as set forth in Exhibit B, attached hereto and made a part hereof by reference in an amount not to exceed Six Million Two Hundred and Sixty Three Thousand Dollars (\$6,263,000.00) when combined with companion agreements to this agreement.
- 4.2. Taxes.** Contractor shall be solely legally responsible for any and all tax obligations, which may result out of Contractor's performance of this Agreement. City shall have no legal obligation to pay any amounts for taxes, of any type, incurred by Contractor. City agrees that Contractor may bill the City for

applicable privilege license taxes which are paid for by Contractor and that the City will reimburse Contractor for privilege license taxes actually paid by Contractor. If Contractor obtains any refund of privilege license taxes paid, City will be entitled to a refund of such amounts.

- 4.3. **Payment.** A separate invoice shall be issued for each shipment of material or service performed, and no payment will be issued prior to receipt of material and/or completion of specified services and receipt of a correct invoice. Any quantities shown on Exhibit B are estimates only, based upon available information. Payment shall be based on actual quantities and there is no guarantee that any certain quantity shall be required by City. City reserves the right to increase or decrease the quantities actually required.
- 4.4. **IRS W9 Form.** In order to receive payment Contractor shall have a current I.R.S. W9 Form on file with City, unless not required by law.
- 4.5. **Price Adjustment in Extension Terms.** All prices offered herein shall be firm against any increase for the initial term of the Agreement. Prior to commencement of subsequent renewal terms, City may approve a fully documented request for a price adjustment. City shall determine whether any requested price increases for extension terms is acceptable to the City. If City approves the price increase, the price shall remain firm for the renewal term for which it was requested. If a price increase is agreed upon by the Parties a written Agreement Amendment shall be approved and executed by the Parties.
- 4.6. **Price Reduction.** Contractor shall offer City a price reduction for its material or services concurrent with a published price reduction made to other customers.

5. TERM:

- 5.1. The term of the Agreement is one year, commencing on July 1, 2018 and terminating on June 30, 2019 unless sooner terminated in accordance with the provisions herein. City reserves the right, at its sole discretion, to extend the Agreement for up to two additional terms of one year each.
6. **USE OF THIS AGREEMENT:** The Agreement is for the sole convenience of the City of Chandler. City reserves the rights to obtain like materials or services from another source to secure significant cost savings or when timely completion cannot be met by Contractor.
- 6.1. **Cooperative Use of Agreement.** In addition to the City of Chandler and with approval of the Contractor, this Agreement may be extended for use by other municipalities, school districts and government agencies of the State. A current listing of eligible entities may be found at www.maricopa.gov/materials and then click on 'Contracts', 'S.A.V.E.' listing and 'ICPA'. Any such usage by other entities must be in accordance with the ordinance, charter and/or procurement rules and regulations of the respective political entity.

If required to provide materials or services on a school district property at least five (5) times during a month, Contractor shall submit a full set of fingerprints to the school of each person or employee who may provide such material or service. The District shall conduct a fingerprint of all Contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the District. Additionally, the Contractor shall comply with the governing body fingerprinting policies of each individual school district/public entity. Contractor, sub-contractors, vendors and their employees shall not provide materials or services on school district properties until authorized by the District.

Orders placed by other agencies and payment thereof will be the sole responsibility of that agency. The City shall not be responsible for any disputes arising out of transactions made by other agencies who utilize this Agreement.

- 6.2. **Emergency Purchases:** City reserves the rights to purchase from other sources those items, which are required on an emergency basis and cannot be supplied immediately by the Contractor.

6.3. **Non-Exclusive Agreement:** This agreement is for the sole convenience of the City of Chandler. The City reserves the right to obtain like goods or services from another source when necessary.

7. **CITY'S CONTRACTUAL REMEDIES:**

7.1. **Right to Assurance.** If the City in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Agreement, the Agreement Administrator may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the City's option, be the basis for terminating the Agreement in addition to any other rights and remedies provided by law or this Agreement.

7.2. **Stop Work Order.** The City may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Agreement for period(s) of days indicated by the City after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Agreement Administrator shall make an equitable adjustment in the delivery schedule or Agreement price, or both, and the Agreement shall be amended in writing accordingly.

7.3. **Non-exclusive Remedies.** The rights and the remedies of the City under this Agreement are not exclusive.

7.4. **Nonconforming Tender.** Services and materials supplied under this Agreement shall fully comply with Agreement requirements and specifications. Services or materials that do not fully comply constitute a breach of agreement.

7.5. **Right of Offset.** The City shall be entitled to offset against any sums due Contractor, any expenses or costs incurred by the City, or damages assessed by the City concerning the Contractor's non-conforming performance or failure to perform the Agreement, including expenses to complete the work and other costs and damages incurred by City.

8. **TERMINATION:**

8.1. **Termination for Convenience:** City reserves the right to terminate this Agreement or any part thereof for its sole convenience with thirty (30) days written notice. In the event of such termination, Contractor shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and subcontractors to cease such work. As compensation in full for materials or services performed to the date of such termination, the Contractor shall receive a fee for the percentage of materials or services actually performed. This fee shall be in the amount to be mutually agreed upon by the Contractor and City, based on the agreed Scope of Work. If there is no mutual agreement, the Management Services Director or designee shall determine the percentage of work performed under each task detailed in the Scope of Work and the Contractor's compensation shall be based upon such determination and Contractor's fee schedule included herein.

8.2. **Termination for Cause:** City may terminate this Agreement for Cause upon the occurrence of any one or more of the following events:

- 1) If Contractor fails to perform pursuant to the terms of this Agreement
- 2) If Contractor is adjudged a bankrupt or insolvent;
- 3) If Contractor makes a general assignment for the benefit of creditors;
- 4) If a trustee or receiver is appointed for Contractor or for any of Contractor's property;

- 5) If Contractor files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws;
- 6) If Contractor disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction;

Where Agreement has been so terminated by City, the termination shall not affect any rights of City against Contractor then existing or which may thereafter accrue.

- 8.3. **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, City may cancel this Agreement after Agreement execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is or becomes at any time while this Agreement or an extension of this Agreement is in effect, an employee of or a consultant to any other party to this Agreement. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time.
- 8.4. **Gratuities.** City may, by written notice, terminate this Agreement, in whole or in part, if City determines that employment or a Gratuity was offered or made by Contractor or a representative of Contractor to any officer or employee of City for the purpose of influencing the outcome of the procurement or securing this Agreement, an amendment to this Agreement, or favorable treatment concerning this Agreement, including the making of any determination or decision about agreement performance. The City, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by Contractor.
- 8.5. **Suspension or Debarment.** City may, by written notice to the Contractor, immediately terminate this Agreement if City determines that Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of an agreement shall attest that the Contractor is not currently suspended or debarred. If Contractor becomes suspended or debarred, Contractor shall immediately notify City.
- 8.6. **Continuation of Performance Through Termination.** The Contractor shall continue to perform, in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice.
- 8.7. **No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Agreement shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 8.8. **Availability of Funds for the next Fiscal Year.** Funds may not presently be available under this Agreement beyond the current fiscal year. No legal liability on the part of the City for materials or services may arise under this Agreement beyond the current fiscal year until funds are made available for performance of this Agreement. The City may reduce materials and services or terminate this Agreement without further recourse, obligation, or penalty in the event that insufficient funds are appropriated. The City Manager shall have the sole and unfettered discretion in determining the availability of funds.
- 9. **FORCE MAJEURE:** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.
- 10. **DISPUTE RESOLUTION:**
- 10.1. **Arizona Law.** This Agreement shall be governed and interpreted according to the laws of the State of Arizona.

- 10.2. Jurisdiction and Venue.** The parties agree that this Agreement is made in and shall be performed in Maricopa County. Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Maricopa County in the State of Arizona, which shall have exclusive jurisdiction over such lawsuits.
- 10.3. Fees and Costs.** Except as otherwise agreed by the parties, the prevailing party in any adjudicated dispute relating to this Agreement is entitled to an award of reasonable attorney's fees, expert witness fees and costs including, as applicable, arbitrator fees.
- 11. INDEMNIFICATION:** To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall defend, indemnify and hold harmless City and any of its elected or appointed officials, officers, directors, commissioners, board members, agents or employees from and against any and all allegations, demands, claims, proceedings, suits, actions, damages, including, without limitation, property damage, environmental damages, personal injury and wrongful death claims, losses, expenses (including claim adjusting and handling expenses), penalties and fines (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings), judgments or obligations, which may be imposed upon or incurred by or asserted against the City by reason of this Contract/Agreement or the services performed or permissions granted under it, or related to, arising from or out of, or resulting from any negligent or intentional actions, acts, errors, mistakes or omissions caused in whole or part by Contractor, or any of its subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, relating to the discharge of any duties or the exercise of any rights or privileges arising from or incidental to this Contract/Agreement, including but not limited to, any injury or damages claimed by any of Contractor's and subcontractor's employees.
- 12. INSURANCE:**
- 12.1. General.**
- A. At the same time as execution of this Agreement, the Contractor shall furnish the City of Chandler a certificate of insurance on a standard insurance industry ACORD form. The ACORD form must be issued by an insurance company authorized to transact business in the State of Arizona possessing a current A.M. Best, Inc. rating of A-7, or better and legally authorized to do business in the State of Arizona with policies and forms satisfactory to City. Provided, however, the A.M. Best rating requirement shall not be deemed to apply to required Workers' Compensation coverage.
- B. The Contractor and any of its subcontractors shall procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, the insurances set forth below.
- C. The insurance requirements set forth below are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.
- D. The City in no way warrants that the minimum insurance limits contained in this Agreement are sufficient to protect Contractor from liabilities that might arise out of the performance of the Agreement services under this Agreement by Contractor, its agents, representatives, employees, subcontractors, and the Contractor is free to purchase any additional insurance as may be determined necessary.
- E. Failure to demand evidence of full compliance with the insurance requirements in this Agreement or failure to identify any insurance deficiency will not relieve the Contractor from, nor will it be considered a waiver of its obligation to maintain the required insurance at all times during the performance of this Agreement.

- F. **Use of Subcontractors:** If any work is subcontracted in any way, the Contractor shall execute a written contract with Subcontractor containing the same Indemnification Clause and Insurance Requirements as the City requires of the Contractor in this Agreement. The Contractor is responsible for executing the Agreement with the Subcontractor and obtaining Certificates of Insurance and verifying the insurance requirements.

12.2. **Minimum Scope and Limits of Insurance.** The Contractor shall provide coverage with limits of liability not less than those stated below.

- A. ***Commercial General Liability-Occurrence Form.*** Contractor must maintain "occurrence" form Commercial General Liability Insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 aggregate. Said insurance must also include coverage for products and completed operations, independent contractors, personal injury and advertising injury. If any Excess Insurance is utilized to fulfill the requirements of this paragraph, the Excess Insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
- B. ***Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles Vehicle Liability.*** Contractor must maintain Business/Automobile Liability insurance with a limit of \$1,000,000 each accident on Contractor owned, hired, and non-owned vehicles assigned to or used in the performance of the Contractor's work or services under this Agreement. If any Excess or Umbrella Insurance is utilized to fulfill the requirements of this paragraph, the Excess or Umbrella Insurance must be "follow form" equal or broader in coverage scope than underlying insurance.
- C. ***Workers Compensation and Employers Liability Insurance:*** Contractor must maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor employees engaged in the performance of work or services under this Agreement and must also maintain Employers' Liability Insurance of not less than \$1,000,000 for each accident and \$1,000,000 disease for each employee.

12.3. **Additional Policy Provisions Required.**

- A. ***Self-Insured Retentions or Deductibles.*** Any self-insured retentions and deductibles must be declared and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any deductible or self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.
 1. The Contractor's insurance must contain broad form contractual liability coverage.
 2. The Contractor's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees shall be in excess of the coverage provided by the Contractor and must not contribute to it.
 3. The Contractor's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 4. Coverage provided by the Contractor must not be limited to the liability assumed under the indemnification provisions of this Agreement.
 5. The policies must contain a severability of interest clause and waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by the Contractor for the City.
 6. The Contractor, its successors and or assigns, are required to maintain Commercial General Liability Insurance as specified in this Agreement for a minimum period of 3 years following

completion and acceptance of the Work. The Contractor must submit a Certificate of Insurance evidencing Commercial General Liability Insurance during this 3 year period containing all the Agreement insurance requirements, including naming the City of Chandler, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.

7. If a Certificate of Insurance is submitted as verification of coverage, the City will reasonably rely upon the Certificate of Insurance as evidence of coverage but this acceptance and reliance will not waive or alter in any way the insurance requirements or obligations of this Agreement.

B. Insurance Cancellation During Term of Contract/Agreement.

1. If any of the required policies expire during the life of this Contract/Agreement, the Contractor must forward renewal or replacement Certificates to the City within 10 days after the renewal date containing all the required insurance provisions.
2. Each insurance policy required by the Insurance provisions of this Contract/Agreement shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the City, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to Chandler Law-Risk Management Department, Post Office Box 4008, Mallstop 628, Chandler, Arizona 85225. If any insurance company refuses to provide the required notice, the Contractor or its Insurance broker shall notify the City of any cancellation, suspension, non-renewal of any insurance within seven (7) days of receipt of insurers' notification to that effect.

A. City as Additional Insured. The policies are to contain, or be endorsed to contain, the following provisions:

1. The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain, the following provisions: The City, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of activities performed by, or on behalf of, the Contractor including the City's general supervision of the Contractor; Products and Completed operations of the Contractor; and automobiles owned, leased, hired, or borrowed by the Contractor.
2. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Agreement.

D. Transportation Pollution Liability – TPL

Contractor must maintain Transportation Pollution Liability – TPL coverage or an equivalent endorsement to include loading or unloading activities under this Agreement, with minimum limits for Bodily Injury/Property Damage or cleanup costs (Each Accident) of \$5,000,000 with the City as additional insured under the other terms of Section 12 of this Agreement.

13. **NOTICES:** All notices or demands required to be given pursuant to the terms of this Agreement shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of the CITY Agreement

Administrator: Purchasing
Contact: Mike Mandt
Mailing Address: PO Box 4008 MS 901

In the case of the CONTRACTOR

Firm Name: BASF Corporation
Contact: Raahul Sathyanarayana
Address: 11501 Steele Creek Rd.

Physical Address: 175 S Arizona Ave. City, State, Zip Charlotte, NC 28214
City, State, Zip Chandler, AZ 85244-4008 Phone: 704-587-1831
Phone: 480-782-2406 E-mail: Municipal-water-
E-mail: Michael.mandt@chandleraz.gov na@basf.com

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

14. CONFLICT OF INTEREST:

- 14.1. No Kickback.** Contractor warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the City has any interest, financially or otherwise, in the firm unless this interest has been declared pursuant to the provisions of A.R.S. Section 38-501. Any such interests were disclosed in Contractor's proposal to the City.
- 14.2. Kickback Termination.** City may cancel any agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a Contractor to any other party to the Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when written notice from City is received by all other parties, unless the notice specifies a later time (A.R.S. §38-511).
- 14.3. No Conflict:** Contractor stipulates that its officers and employees do not now have a conflict of interest and it further agrees for itself, its officers and its employees that it will not contract for or accept employment for the performance of any work or services with any individual business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this project.

15. GENERAL TERMS:

- 15.1. Ownership.** All deliverables and/or other products of the Agreement (including but not limited to all software documentation, reports, records, summaries and other matter and materials prepared or developed by Contractor in performance of the Agreement) shall be the sole, absolute and exclusive property of City, free from any claim or retention of right on the part of Contractor, its agents, sub-contractors, officers or employees.
- 15.2. Entire Agreement.** This Agreement, including all Exhibits attached hereto, constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the material or services specified herein. This Agreement may not be modified or amended except by a written document, signed by authorized representatives of each party.
- 15.3. Assignment:** Materials or services covered by this Agreement shall not be assigned in whole or in part without the prior written consent of the City.
- 15.4. Amendments.** The Agreement may be modified only through a written Agreement Amendment executed by authorized persons for both parties. Changes to the Agreement, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the City in writing or made unilaterally by the Contractor are violations of the Agreement. Any such changes, including unauthorized written Agreement Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Agreement based on such changes.

- 15.6. **Independent Contractor.** The Contractor under this Agreement is an Independent Contractor. Neither party to this Agreement shall be deemed to be the employee or agent of the other party to the Agreement.
- 15.6. **No Parole Evidence.** This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 15.7. **Authority:** Each party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names to this LEth
 day of June, 2018.

FOR THE CITY OF CHANDLER

Jay Dittmer
 Mayor

ATTEST:

Dana R. DeLong
 City Clerk

Approved as to form:

[Signature]
 City Attorney



FOR THE CONTRACTOR BASF Corporation

By: [Signature]
 Signature Rachel Potter
 Marketing Manager

ATTEST: If Corporation

SEAL [Signature]
~~Secretary~~ Thomas Rozema
 Authorized Signatory Business Director

**EXHIBIT A
SPECIFICATIONS**

1. BACKGROUND

The City has an ongoing need for the chemicals listed below to be delivered as requested at various city facilities. The Facilities served under this contract are dynamic and chemical needs can change over time due to equipment functionality, Process results, changes in standards and other circumstances. As a result, the City reserves the right to add, remove, and or substitute products under this contract as needs arrive via contract amendment.

2. All chemicals for Water Treatment Plant and Water Production shall be NSF approved

3. Specifications for each chemical except Bioxide are listed in Exhibit B. Specification for 5 Bioxide and Calcium Nitrate Tetrahydrate is listed below.

Delivery Quantity: 4,400 Gallon (Could take up to 6,000 gallons per load)

Delivery Location:
202 Price Road Diversion Structure
NEC of the 101 and San Tan 202 freeway

Delivery Time: Monday through Friday 8 to 5.

Specification

1. The solution shall contain 3.5 lbs./gallon of nitrate-oxygen.
2. The solution shall be capable of reducing the dissolved hydrogen sulfide concentration in wastewater to less than 0.1 mg/l.
3. The pH of the solution shall not be less than 4.0 or greater than 8.0
4. The product shall contain no more than 0.7% ammonia.
5. The solution shall not crystallize at the locations ambient temperatures.
6. The solution shall be free of debris and any other contaminants.
7. A certificate of analysis must be provided with each delivery.
8. The solution shall contain no hazardous substances as defined by both the Federal EPA's and State EPCRA Section 302 Extremely Hazardous Substances (EHSs), Section 313 Toxic Chemicals, or any CERCLA Reportable Quantity Lists.
9. Recommended handling procedures for the material shall require protective gloves and safety glasses only. Any material recommending more sophisticated equipment (i.e., face shield, body suit, etc.) during routine handling shall not be considered.

Hydrogen Sulfide Monitoring

The Bioxide supplier shall provide chemical feed level monitors on City tanks. Monitors shall be capable of communicating various system parameters (i.e tank level, estimated feed rate, system status) through cellular modem to a secure website provided and hosted by the Bidder and made accessible to the City 24/7. In addition, to confirm appropriate dosage and effectiveness of the product the Bidder shall provide, install and maintain monitoring equipment to measure hydrogen sulfide concentration in up to 4 locations to be determined by the City. Data from said monitors will be communicated by cellular signal to the secure website hosted by the Bidder and made accessible by the City.

4. Delivery Locations for all Chemicals

Aquatics

Mesquite Groves Aquatic Center	5901 S. Hillcrest Dr., Chandler, AZ 85249
Hamilton Aquatic Center	3838 S. Arizona Ave., Chandler AZ 85248
Folley Pool	600 E Fairview, Chandler, AZ 85225
Arrowhead Pool	1475 W. Erie St., Chandler, AZ 85224
Desert Oasis Aquatic Center	1400 W Summit Pl, Chandler, AZ 85224
Nozomi Aquatic Center	250 S Kyrene Rd., Chandler, AZ 85226

Deliveries are required before 11:30 am at aquatic facilities

Water Production

1475 E Pecos Rd, no deliveries after 3:00 pm, no holiday deliveries

OBRF

All OBRF deliveries can go to: 3737 S Old Price Rd., normal delivery hours are Monday-Friday from 7:00am-5:00pm. We do have operators on duty 24/7 so we have flexibility if we want to allow weekend deliveries.

Water Treatment Plant

1475 E Pecos Rd, no deliveries after 3:00 pm, no holiday deliveries

AWRF - Airport Water Reclamation Facility

905 East Queen Creek Rd
Chandler, AZ 85286

Deliveries between 7 - 2PM

Lone Butte Water Reclamation Facility

No real street address-
Gila River Indian Reservation
3 miles West of Firebird Lake
(110/Maricopa Rd.)

Deliveries between 7AM – Noon

5. Technical Support

If requested by the City, the contractor will provide technical support for the purpose of optimizing use and dosage of the items on contract. Additionally, if requested by the City the Contractor will perform Jar testing to insure performance of the product.

**EXHIBIT B
PRICE SCHEDULE**

	Chemical	Unit of Measure	Container Size	Notes/Specifications	Primary Award		Back Up	
					Supplier	Unit Price	Supplier	Unit Price
	Polymer							
8	Clarifloc Polymer WE-1522	gal	500	Clarifloc Polymer WE-1522			BASF	\$ 11.40
9	Clarifloc Polymer WE-1522	gal	Full Load 5,000 Partial Load 3,000	Clarifloc Polymer WE-1522			BASF	\$ 9.00
10	Clarifloc Polymer WE-1522	lb	gal and over	Clarifloc Polymer WE-1522			BASF	\$ 1.270
11	Clarifloc Polymer WE-1522	gal	Partial Load less than 3,000 gal	Clarifloc Polymer WE-1522 Performance and/or Quality Requirements: BASF or equal.			BASF	\$ 13.500
12	LY-7906	gal	bulk		BASF	\$ 4.900		

EXHIBIT B
SPECIFIC REQUIREMENTS/OPTIONS OF TOWN

Attached: Quote and Specifications. In accordance with City of Chandler Contract No. WA8-885-3868.

Notices: All notices required under the Contract shall be sent to:

Town Manager
Town of Gilbert
50 E. Civic Center Drive
Gilbert, Arizona 85296

Immigration Law Compliance Warranty: As required by A.R.S. § 41-4401, Contractor hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Contractor further warrants that after hiring an employee, Contractor verifies the employment eligibility of the employee through the E-Verify program. If Contractor uses any subcontractors in performance of the Work, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract. Contractor is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. Gilbert at its option may terminate the Contract after the third violation. Contractor shall not be deemed in material breach of this Contract if the Contractor and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). Gilbert retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the Contract to ensure that the Contractor or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the parties may modify this paragraph consistent with state law.

Emergency Contact: Gilbert is an emergency response organization. Contractor services or supplies may be required in case of an emergency involving a sudden, immediate threat of danger to the public health, welfare or property in Gilbert (“local emergency”) or in the case where the Mayor of Gilbert, the mayor or governing body of another municipality in Maricopa County, the Maricopa County Board of Supervisors, the State, or the President of the U.S. has declared an emergency (“State of Emergency”). In the event of a local emergency or State of Emergency, Gilbert may require Contractor to provide services or supplies as rapidly as possible and to such locations as directed by Gilbert when necessary to protect the public health and welfare and/or property. Contractor shall not be required to respond to the extent response is not feasible due to Acts of God or other factors beyond its control. Contractor shall provide the designated Gilbert Emergency Management Coordinator at (480) 503-6333 and the designated

Gilbert representative with a contact point (name, cell phone number, e-mail and facsimile number) who can be reached on short notice so that effective response can be initiated.

Equal Treatment of Workers: Contractor shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of performance under the Agreement. Contractor shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Occupational Safety and Health Administration (“OSHA”) and the Fair Labor Standards Act (“FLSA”). Contractor shall protect and indemnify Gilbert and its representatives against any claim or liability arising from or based on the violation of such, whether by Contractor or its employees./



TOWN OF GILBERT COOPERATIVE PURCHASING AGREEMENT APPROVAL FORM

Requested By: Kurtis McDavid, Water Production Superintendent Date: April 24, 2019

Department: Public Works-Water Production Division: North WTP and Santan Vista WTP

Cooperative Purchase Agreement with: Omnia Partners

Contracting Agency Thatcher Contract Number 150063

Item(s) or Service Requested:

The NWTP and SVWTP would like to continue to purchase the water treatment chemical Fluoride from Thatcher which is utilized in the water production process at both plants.

Account# 600 . 71210 and 71205 . 54100

Justification:

Per Gilbert Purchasing Code 2-357 (b)(2), a separate bidding process is not likely to result in a lower price for these items or service.

Agreement expiration date: July 31, 2019 (with one renewal through July 31, 2020)

Departmental Approval Jessica L. Matthews Date: 4/24/19

Purchasing Officer Approval Douglas E. Bager Date: 4/29/19

AGREEMENT
TO PROVIDE SERVICES/SUPPLIES PURSUANT TO A
COOPERATIVE PURCHASING CONTRACT
Contract No. 319001129

This Agreement is made and entered into by and between the Town of Gilbert, Arizona, a municipal corporation, hereinafter designated as “Gilbert” and **Thatcher Company of Nevada Inc.**, hereinafter designated as the “Contractor.”

Recitals:

A. Contractor has contracted with the **Omnia Partners (NIPA)**, to provide **Water/Wastewater Treatment Chemicals** services, materials and/or equipment pursuant to **Contract No. 150063** (the Cooperative Purchasing Contract); and

B. Pursuant to A.R.S. § 41-2631 et seq. and Gilbert Municipal Code § 2-357, Gilbert has authority to utilize cooperative purchasing contracts and engage contractors under the terms thereof.

CONTRACTOR AND GILBERT, FOR THE CONSIDERATION
HEREINAFTER SET FORTH, PROMISE, COVENANT AND AGREE AS FOLLOWS:

1. Scope of Work.

1.1 Contractor shall provide the following services, materials and/or equipment:

To provide Water/Wastewater Treatment Chemicals, including, Hydrofluorosilicic Acid (Fluoride). Selection of chemicals may change during the term of this contract.

as described in the Cooperative Purchasing Contract documents attached hereto as **Exhibit A**, which are incorporated herein by reference. As used in this Contract, all references to the **Omnia Partners**, Arizona shall mean the Town of Gilbert, Arizona.

1.2 Contractor shall comply with all specific requirements and/or options of Gilbert, as specified in **Exhibit B** attached hereto and incorporated herein by reference.

2. Payment. The Contract Fee is not to exceed **\$120,000.00**. Payment to the Contractor for the services, materials and/or equipment provided, shall be made in accordance with the price list and terms set forth in the Cooperative Purchasing Contract.

3. Terms of Cooperative Purchasing Contract Apply. All provisions of the Cooperative Purchasing Contract documents are incorporated in and shall apply to this Contract as though fully set forth herein, except as otherwise provided for in this Agreement.

4 Contract Term and Renewal. If funds for this Contract are not appropriated or budgeted by July 1, 2019 or by July 1st of any fiscal year thereafter, Gilbert may terminate this contract by giving written notice to Contractor. Otherwise, the term of this Contract shall commence upon approval and continue through **July 31, 2019**. The contract shall automatically renew coterminous with the underlying **Omnia Partners (NIPA)** Contract term. If this Contract is renewed, the Contract fee shall be adjusted as provided for in the Cooperative Purchasing Contract. The Gilbert Purchasing Officer has authority to approve any renewal provided that: (1) the Contract amount does not exceed \$100,000; (2) the original prices remain in effect during the Renewal Term; or (3) the contract unit pricing does not increase or the contract pricing is adjusted pursuant to the terms and conditions of the Cooperative Purchasing Contract. Any renewal shall be contingent on funds being appropriated or budgeted for the renewal term.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names this _____ day of _____, 2019.

TOWN OF GILBERT:

CONTRACTOR:

By: _____
Mayor

By: _____
Title: _____

ATTEST:

Lisa Maxwell
Town Clerk

APPROVED AS TO FORM:

Christopher W. Payne
Town Attorney

EXHIBIT A
CONTRACT OF OTHER GOVERNMENTAL ENTITY

https://www.omniapartners.com/hubfs/PUBLIC%20SECTOR/Supplier%20Information/Thatcher%20Chemicals/Contract_Thatcher.pdf

Above link is for original contract and attached is the renewal and original acceptance.

Current Price Delivered is \$2.65/gal.



**LAS VEGAS
CITY COUNCIL**

CAROLYN G. GOODMAN
Mayor

LOIS TARKANIAN
Mayor Pro-Tem

STAVROS S. ANTHONY
BOB COFFIN
STEVEN G. SEROKA
MICHELE FIORE
CEDRIC CREAR

SCOTT D. ADAMS
City Manager

07/30/2018

Sent this day via email

Attn: Kyle Peterson
Thatcher Company of Nevada, Inc.
P.O. Box 27407
Salt Lake City, UT 84127-0407
Kyle.peterson@tchem.com

RE: Renewal of Contract 150063-SK-ANational IPA Water Treatment Chemicals

Dear Mr. Peterson:

The City has exercised its option to renew Contract 150063-SK-A National IPA Water Treatment Chemicals, in accordance with Section 3 PERFORMANCE PERIOD. This Contract is hereby extended to 07/31/2019, representing the third (3rd) of the 4 one-year renewal options.

The City has accepted the requested price changes on the following, in accordance with Basic Terms Section 3.3 Economic Price Adjustment:

- Aluminum Sulfate - Price increased from \$0.134 to \$0.15 per dry pound
- Sodium Bisulfite - Price decreased from \$0.4394 to \$0.3398 per dry pound
- Sodium Hydroxide - Price increased from \$0.145 to \$0.200 per wet pound
- Sulfuric Acid - Price decreased from \$0.0793 to \$0.0750 per wet pound
- Citric Acid - Price increased from \$0.4431 to \$0.4800 per wet pound
- Hydrogen Peroxide - Price decreased from \$0.346 to \$0.2868 per wet pound
- National Freight Charge per UOM on all Lines is increased from \$2.95 per mile to \$3.15 per mile.

If you have any questions, please contact Heather McLain, Senior Buyer at (702) 229-6005 or hmclain@lasvegasnevada.gov.

Sincerely,

Edward O'Neal, Manager
Purchasing and Contracts
495 S. Main St., 3rd Floor
Las Vegas, NV 89101

Cc: File
PW Environmental
H. McLain, Sr. Buyer

CITY HALL
495 S. MAIN ST.
LAS VEGAS, NV 89101
702.229.6011 | VOICE
711 | TTY



cityoflasvegas
lasvegasnevada.gov



July 30, 2018

Heather L. McLain | Senior Buyer
 Purchasing and Contracts
 495 South Main St. 3rd Floor
 Las Vegas, Nevada 89101
 Phone: (702) 229-6005 | Fax: (702) 464-7703
hmclain@lasvegasnevada.gov

The purpose of this letter is to request a price increase on the following chemicals as currently listed on the National IPA Water Treatment Chemicals Contract 150063-SK-A due to expire 7-31-18

Item #	Description	UOM	Proposed FOB \$	Proposed Unit \$	Proposed So. NV. Shipping Cost
1	Aluminium Sulfate	Dry Pound	\$ 0.15	\$ 0.1367	\$ 0.0133
3	Sodium Bisulfite	Dry pound	\$ 0.3398	\$0.3227	\$ 0.1232
5	Sodium Hydroxide	Wet pound	\$ 0.2000	\$ 0.1574	\$0.0426
12	Hydrofluorosilicic Acid	Dry pound	\$ 1.2609	\$ 1.1035	\$0.1505
15	Hydrated Lime	Dry pound	\$ 0.2300	\$ 0.2000	\$0.0300
24	Sulfuric Acid	Wet pound	\$ 0.0750	\$0.0663	\$0.0087
26	Citric Acid, 50%	Wet pound	\$ 0.4800	\$0.4496	\$0.0304
TBD	Hydrogen Peroxide, 34%	Wet pound	\$ 0.2868	\$0.2468	\$ 0.0400
TBD	T-Floc B 135	Wet pound	\$ 0.3300	\$ 0.3197	\$0.0103
TBD	Lime Slurry (SLS-45)	Per gallon	\$ 2.0720	\$ 1.9800	\$0.0920
TBD	Sodium Bicarbonate	Per pound	\$ 0.5500	\$ 0.5100	\$0.04

As backup for this request, please see the attached producer price increase information from the May 2018 Bureau of Labor Statistics showing an increase in chemical costs of 8.6% and increase in Truck transportation costs of 6.5% and increase in warehousing of 5.8% or a total of 20.9% increase in costs from May 2017 to May 2018 (the most recent Producer Price BLS Report)

However, due to logistic negotiations, Thatcher Company in-house transportation and vendor negotiations, we have been able to control some of the costs which resulted in less than the BLS price increase justification.

Thatcher Company therefore requests the pricing below, all other products pricing will remain as currently listed. With these increases and as listed in the BLS summary we request a price increase in the mileage charge from the current \$ 2.95 per mile to \$ 3.15/mile (6.5% increase)

If you have any questions, feel free to contact me any time at the number listed above. Thank you for your business.

Cordially,

Kyle Peterson
 Kyle R. Peterson

Caustic Market:

- Global demand for caustic is very high and will continue as long as the global economy grows.
- Production rates are currently in the high 80's to low 90% range – the industry cannot meet demand because of outages that need to occur and presence of operational problems/human resources issues.
- Asian production rates have been reduced because of environmental policies being implemented. (The co-product of chlorine having a lack of demand and net backs to the plant at times, which has to make up the difference in the price of caustic.)
- Europe production rates are lowering due to conversion away from mercury-cell to membrane-cell production – this issue will go through 2018.

Caustic price graph:

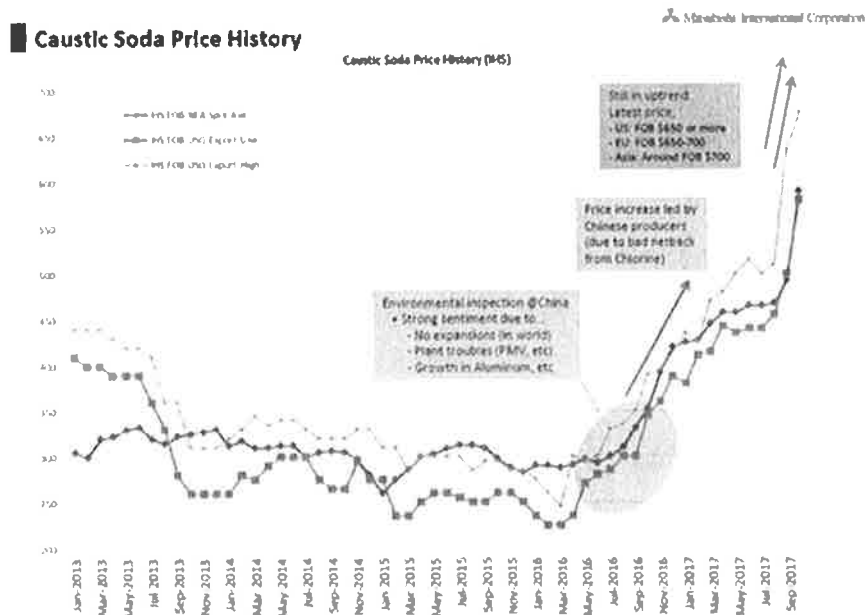


Table 5. Producer price indexes and percent changes for selected commodity groupings of intermediate demand by commodity type category¹ — Continued
 [1982=100, unless otherwise indicated]

Grouping	Commodity code	Other Index base	Unadjusted Index			Unadjusted percent change to May 2018 from:		Seasonally adjusted percent change from:		
			Jan. 2018 ²	Apr. 2018 ²	May 2018 ²	May 2017	Apr. 2018	Feb. to Mar.	Mar. to Apr.	Apr. to May
Courier and messenger services, except air mail.....	30-16-02	04/09	163.8	153.4	153.7	4.9	0.2	0.7	0.1	0.2
Air mail and package delivery services, excluding by USPS.....	30-16-03	04/09	167.9	169.1	170.2	7.9	0.7	-0.1	0.8	1.1
Transportation of passengers (partial).....	30-2	08/09	117.1	124.5	121.9	2.8	-2.1	1.8	1.3	0.7
Services related to water transportation.....	31-1	08/09	119.1	118.7	118.8	2.6	-0.8	-0.2	0.6	-0.8
Arrangement of freight and cargo.....	31-31	12/08	107.1	107.1	107.7	3.5	0.6	0.0	-0.2	0.6
Warehousing, storage, and related services.....	32-1	12/08	106.6	107.6	107.1	6.0	-0.6	1.3	0.4	-0.6
Services less trade, transportation, and warehousing for intermediate demand.....		11/09	116.7	118.4	118.6	2.8	0.1	0.1	0.2	0.1
Network compensation from broadcast TV, cable TV, radio.....	35	08/09	137.7	138.3	138.3	6.1	0.0	0.5	-0.1	0.0
Advertising space sales in periodicals and newspapers.....	36-11	08/09	104.9	104.8	104.1	-1.6	-0.7	1.6	0.3	-0.5
Advertising space sales in directories and mail lists.....	36-12	12/08	100.5	100.5	100.5	-2.0	0.0	0.0	0.0	0.0
Television advertising time sales.....	36-2	08/09	105.0	109.7	112.2	-2.2	2.3	-2.6	3.8	0.8
Radio advertising time sales.....	36-3	03/09	95.6	97.9	97.6	0.0	-0.4	5.8	0.0	-1.6
Internet advertising space sales, excluding internet ads sold by print publishers.....	36-5	12/09	65.0	65.0	61.8	-10.7	-4.8	0.1	-5.8	-4.9
Business wired telecommunication services.....	37-12	08/09	101.6	101.7	101.8	8.3	0.1	0.1	0.1	0.1
Cellular phone and other wireless telecommunication services.....	37-21	03/09	64.7	84.0	82.8	-5.3	-1.9	-1.4	1.7	-1.9
Cable and satellite subscriber services.....	37-3	12/08	124.9	129.1	129.7	6.6	0.6	3.6	-0.5	0.7
Bundled wired telecommunication access services.....	37-5	12/11	103.4	103.8	105.5	2.4	1.8	-1.2	-1.3	1.6
Data processing and related services.....	38-1	06/09	100.9	101.1	101.2	0.3	0.1	-0.2	-0.2	0.1
Business loans (partial).....	39-11	04/09	207.6	213.8	213.8	9.1	0.0	0.5	1.6	3.3
Deposit services (partial).....	39-2	04/09	63.1	63.7	63.6	6.4	-0.2	1.8	-0.2	-0.2
Other credit intermediation, incl. trust services (partial).....	39-3	04/09	102.8	102.0	102.5	-0.7	0.5	-0.1	-0.8	0.5
Securities brokerage, dealing, investment advice, and related.....	40-11	06/09	160.3	163.4	164.8	12.7	0.8	0.2	2.1	0.8
Portfolio management.....	40-2	12/08	209.1	209.5	210.1	4.5	0.9	-0.3	-0.8	0.3
Investment banking.....	40-3	12/08	171.3	174.8	178.3	10.0	0.9	0.9	1.2	0.9
Life insurance.....	41-11-01	03/09	104.3	104.3	104.3	0.3	0.0	0.0	0.0	0.0
Health and medical insurance.....	41-11-03	03/09	100.2	127.1	130.8	4.4	2.9	0.4	0.4	2.8
Property and casualty insurance.....	41-11-04	03/09	120.5	121.1	121.2	2.3	0.1	0.2	0.2	0.1
Annuities.....	41-2	03/09	117.8	118.9	117.2	2.1	0.3	0.4	-0.2	0.3
Commissions from sales of insurance.....	42-1	06/09	108.4	108.4	108.5	1.2	0.1	-0.3	-0.1	0.1
Nonresidential real estate rents.....	43-11	06/09	114.6	114.1	115.0	1.9	0.8	-0.2	-0.8	0.8
Nonresidential property sales and leases.....	43-12	12/08	119.9	121.3	121.9	6.1	0.5	-0.2	0.2	0.5
Residential property management fees.....	43-22	12/08	116.9	116.1	116.4	0.7	0.3	0.0	0.2	0.3
Passenger car rental.....	44-1	03/09	83.6	81.7	83.8	1.8	2.6	-2.6	0.1	2.3
Truck, utility trailer, and RV rental and leasing.....	44-2	06/09	105.1	105.7	107.4	2.1	1.8	-0.8	-2.1	1.6
Construction, mining, and forestry machinery and equipment rental and leasing.....	44-3	03/09	100.8	100.3	97.8	0.6	-2.6	-1.1	0.2	-2.5
Legal services.....	45-1	03/09	128.3	131.1	129.8	2.0	-1.1	0.8	-1.2	-1.2
Accounting services (partial).....	45-2	06/09	107.6	109.8	107.1	0.5	-2.5	0.1	3.5	-2.2
Architectural and engineering services.....	45-3	06/09	114.4	115.0	114.9	2.8	-0.1	0.3	0.1	-0.1
Management, scientific, and technical consulting.....	45-4	08/09	104.9	104.8	104.9	-0.7	0.1	0.8	-0.2	0.1
Advertising and related services (partial).....	45-5	12/08	109.1	109.2	109.6	0.7	0.4	-0.6	0.1	0.4
Permanent placement services.....	46-1	03/09	117.5	118.4	118.9	1.7	-0.4	0.2	0.6	-0.4
Executive search services.....	46-2	12/08	95.6	94.8	92.1	-5.1	-2.8	-3.9	0.7	-2.8
Staffing services.....	46-3	06/09	112.9	113.5	113.2	1.1	-0.3	0.4	0.4	-0.2
Security guard services.....	48-1	03/09	112.8	112.5	112.6	2.5	0.1	0.1	0.5	0.1
Janitorial services.....	49-1	03/09	111.1	111.2	111.4	0.5	0.2	0.2	0.0	0.2
Waste collection.....	50-1	12/08	126.9	128.1	128.6	6.3	0.3	0.2	0.0	0.6
Traveler accommodation services.....	53-11	06/09	112.6	116.9	113.9	-1.1	-4.2	0.2	-3.2	-4.0
Commercial and industrial machinery and equipment repair and maintenance.....	55-1	03/09	121.0	121.8	121.0	2.0	0.0	-0.7	-0.2	0.0
Aircraft repair and maintenance.....	55-4	04/09	123.0	123.1	123.0	2.8	-0.1	0.3	0.7	0.0
Metal treatment services.....	59-1	12/84	185.1	185.9	186.9	1.5	0.6	-0.2	0.2	0.5
Construction for intermediate demand.....		11/09	115.3	115.0	115.7	1.5	0.1	-0.1	0.3	0.0
Maintenance and repair of non-residential buildings (partial).....	80-2	12/10	116.5	116.9	116.8	1.5	0.0	0.0	0.3	-0.1

¹ Further information about the Final Demand-Intermediate Demand Aggregation system is available online at <https://www.bls.gov/ppi/fddaggregation.htm>

² The indexes for January 2018 have been recalculated to incorporate late reports and corrections by respondents. All indexes are subject to revision 4 months after original publication.

³ Not seasonally adjusted.

⁴ Trade indexes measure changes in margins received by wholesalers and retailers.

⁵ Data not available.

NOTE: The term "(partial)" denotes incomplete coverage of the index category.

Table 6. Producer price indexes and percent changes for selected commodity groupings of Intermediate demand by production flow category — Continued
 [1982=100, unless otherwise indicated]

Grouping	Commodity code	Other index base	Unadjusted Index			Unadjusted percent change to May 2018 from:		Seasonally adjusted percent change from:		
			Jan. 2018 ²	Apr. 2018 ²	May 2018 ³	May 2017	Apr. 2018	Feb. to Mar.	Mar. to Apr.	Apr. to May
Janitorial services ¹	49-1	03/09	111.1	111.2	111.4	0.5	0.2	0.2	0.0	0.2
Commercial and industrial machinery and equipment repair and maintenance ¹	55-1	03/09	121.0	121.8	121.8	2.0	0.0	-0.7	-0.2	0.0
Machinery and equipment parts and supplies wholesaling ¹	57-11-02	03/09	117.7	120.1	121.8	3.8	1.2	3.5	0.3	1.2
Building materials, paint, and hardware wholesaling.....	57-3	03/09	93.3	96.9	97.6	1.8	1.8	2.6	1.4	0.8
Metals, minerals, and ores wholesaling ¹	57-4	03/09	144.0	162.6	171.7	30.1	5.5	3.8	10.0	5.5
Chemicals and allied products wholesaling ¹	57-5	03/09	100.1	101.4	107.0	1.0	5.5	-0.3	-0.9	5.5
Paper and allied products wholesaling ¹	57-6	03/09	132.6	133.9	129.4	6.4	-3.4	2.8	-1.7	-3.4
Food and alcohol wholesaling ²	57-8	06/08	108.9	108.4	107.3	-0.9	-1.0	1.7	1.1	-1.0
Hardware and building materials and supplies retailing.....	58-D	03/09	119.5	125.1	124.3	7.0	-0.6	5.4	-0.1	-0.8
Metal treatment services ¹	59-1	12/84	165.1	165.9	168.9	1.5	0.6	-0.2	0.2	0.5
Stage 3 Intermediate demand.....		11/09	114.4	115.8	117.7	5.3	1.6	-0.5	0.2	1.3
Stage 3 Intermediate demand goods.....		04/10	105.3	106.9	110.2	7.2	3.1	-1.4	-0.2	2.3
Slaughter cattle.....	01-31		174.6	177.2	171.7	-14.2	-3.1	-4.0	-6.3	-3.9
Slaughter hogs.....	01-32		84.7	65.0	82.4	-3.7	26.8	-14.7	-18.7	13.7
Slaughter poultry.....	01-4		240.4	272.3	287.2	10.6	9.1	-1.9	8.4	3.5
Raw milk.....	01-6		122.8	110.6	112.8	-11.6	2.0	-2.3	6.4	3.8
Commercial electric power.....	05-42		198.8	194.6	202.8	1.0	4.2	-2.4	1.2	1.6
Industrial electric power.....	05-43		243.4	238.2	242.6	2.3	1.8	-0.9	-0.3	0.5
Gasoline.....	06-71		184.6	202.0	223.4	39.8	10.8	-3.7	-0.4	8.8
Jet fuel.....	06-72-03		203.8	207.9	243.4	67.1	17.1	-7.2	1.8	10.8
No. 2 diesel fuel.....	05-73-03		229.4	230.7	250.9	44.5	8.8	-2.4	1.8	8.5
Finished lubricants ³	05-70		399.8	412.9	418.3	7.4	1.3	1.5	1.1	1.3
Lubricating oil base stocks ³	05-78		110.4	120.5	128.1	28.0	6.3	2.5	7.1	6.3
Asphalt.....	05-81-02	08/09	180.3	185.1	185.1	15.1	5.4	5.0	-6.7	-1.6
Basic inorganic chemicals ³	08-13	06/85	268.9	274.0	275.5	8.6	0.2	0.5	-0.1	0.2
Basic organic chemicals.....	08-14		268.0	265.3	267.3	5.2	0.6	-2.8	-2.1	0.7
Paints and allied products ³	08-2		275.2	278.8	281.7	5.0	0.7	0.8	0.6	0.7
Agricultural chemicals and chemical products.....	08-5		213.9	224.3	224.5	7.6	0.1	2.6	-1.0	0.2
Plastic resins and materials.....	08-6		235.1	241.1	238.0	2.0	-0.9	0.8	-0.2	-1.3
Synthetic rubber ³	07-11-02		198.7	215.5	218.2	1.3	2.2	4.5	2.0	2.2
Unsupported plastic film, sheet, and other shapes ³	07-22		222.7	222.3	222.5	2.7	0.1	0.4	0.4	0.1
Paper ³	08-13		191.4	195.9	196.9	6.8	0.5	1.4	0.4	0.5
Paperboard ³	08-14		285.5	286.7	275.7	9.2	3.4	-0.1	0.2	3.4
Converted paper and paperboard products ³	08-16		234.7	235.1	237.1	2.2	0.9	-0.3	0.2	0.9
Commercial printing ³	09-47	06/82	170.8	170.6	171.3	0.5	0.4	0.1	0.0	0.4
Foundry and large shop products ³	10-15		207.7	210.7	209.7	1.5	-0.5	0.7	0.8	-0.5
Steel mill products ³	10-17		187.2	201.7	210.4	10.5	4.3	1.9	3.2	4.3
Nonferrous mill shapes ³	10-25		211.7	219.3	225.6	15.2	2.9	0.4	1.6	2.9
Nonferrous foundry shop products.....	10-28		215.1	217.5	217.7	3.1	0.1	0.0	0.8	0.0
Metal containers ³	10-3		164.2	159.6	160.8	7.4	0.8	0.8	3.0	0.8
Structural, architectural, and pre-engineered metal products.....	10-74		217.5	227.5	233.8	9.6	2.8	1.8	3.1	2.4
Bolts, nuts, screws, rivets, and washers ³	10-81		191.3	193.2	193.8	1.0	0.3	0.6	-0.4	0.3
Other miscellaneous metal products ³	10-89		169.2	161.3	162.4	3.4	0.7	0.3	0.3	0.7
General purpose machinery and equipment.....	11-4		234.8	236.9	238.2	3.1	0.5	0.6	0.0	0.7
Electrical machinery and equipment.....	11-7		114.0	114.6	114.4	0.4	-0.2	0.0	0.3	-0.2
Construction sand, gravel, and crushed stone.....	13-21		329.1	333.2	334.8	3.6	0.5	0.8	-0.2	0.3
Cement.....	13-22		249.9	250.9	253.0	2.1	0.9	0.6	-1.4	1.1
Motor vehicle parts ³	14-12		126.1	126.6	126.9	1.5	0.2	0.4	0.0	0.2
Aircraft and aircraft equipment.....	14-2		271.1	272.0	272.3	1.2	0.1	0.0	0.2	0.1
Stage 3 Intermediate demand services.....		04/10	115.2	116.2	118.0	3.6	0.3	0.4	0.5	0.3
Rail transportation of freight and mail ³	30-11	12/00	121.0	123.2	123.5	6.2	0.2	1.3	0.2	0.2
Courier, messenger, and U.S. postal services.....	30-18	06/09	138.3	139.0	139.9	4.2	0.2	0.1	0.5	0.5
Arrangement of freight and cargo ³	31-31	12/08	107.1	107.1	107.7	3.5	0.6	0.0	-0.2	0.6
Freight forwarding ³	31-32-01	12/08	97.0	98.5	98.6	1.9	0.0	0.0	1.5	0.0
Warehousing, storage, and related services ³	32-1	12/00	106.5	107.6	107.1	5.8	-0.6	1.3	0.4	-0.8
Advertising space sales in periodicals, newspapers, directories, and mailing lists.....	36-1	06/08	109.5	103.4	102.8	-1.7	-0.9	1.3	0.3	-0.5
Wired telephone services ³	37-1	06/09	116.2	118.1	116.2	4.1	0.1	0.0	0.0	0.1
Bundled wired telecommunications access services ³	37-5	12/11	103.4	103.8	105.5	2.4	1.6	-1.2	-1.3	1.6
Data processing and related services ³	38-1	00/09	100.9	101.1	101.2	0.3	0.1	-0.2	-0.2	0.1
Business loans (partial) ³	39-11	04/09	207.5	213.8	213.8	9.1	0.0	0.5	1.6	3.3
Deposit services (partial) ³	39-2	04/09	63.1	63.7	63.6	6.4	-0.2	1.6	-0.2	-0.2
Securities brokerage, dealing, investment advice, and related services ³	40-11	06/09	150.3	153.4	154.6	12.7	0.8	0.2	2.1	0.8
Insurance.....	41-11	06/00	120.5	119.8	121.0	2.7	1.0	0.3	0.0	1.1
Nonresidential real estate rents ³	43-11	06/09	114.6	114.1	115.0	1.9	0.8	-0.2	-0.8	0.8
Legal services.....	45-1	03/09	129.3	131.1	128.6	2.0	-1.1	0.8	-1.2	-1.2

See footnotes at end of table.

Table 6. Producer price indexes and percent changes for selected commodity groupings of Intermediate demand by production flow category¹ — Continued
 [1992=100, unless otherwise indicated]

Grouping	Commodity code	Other Index base	Unadjusted Index			Unadjusted percent change to May 2018 from:		Seasonally adjusted percent change from:		
			Jan. 2018 ²	Apr. 2018 ²	May 2018 ²	May 2017	Apr. 2018	Feb. to Mar.	Mar. to Apr.	Apr. to May
Industrial electric power.....	05-43		243.4	238.2	242.6	2.3	1.8	-0.9	-0.3	0.5
Commercial natural gas.....	05-52	12/90	193.1	189.9	184.3	-2.0	-2.8	-0.5	-1.7	-1.4
Industrial natural gas.....	05-53	12/90	160.0	155.2	151.0	-4.5	-2.7	-6.6	-1.4	-0.6
Gasoline.....	05-71		194.6	202.0	223.4	36.6	10.6	-3.7	-0.4	0.6
No. 2 diesel fuel.....	05-73-03		229.4	230.7	250.9	44.5	6.8	-2.4	1.8	6.5
Industrial chemicals.....	06-1		268.1	265.8	267.7	5.6	0.7	-2.4	-1.8	0.7
Prepared paint ³	06-21		276.8	281.2	283.5	4.0	0.8	0.2	0.6	0.8
Plastic construction products.....	07-21		221.6	226.1	226.6	4.8	0.2	0.9	-0.4	0.2
Wastepaper ³	09-12		327.9	288.6	252.1	-37.3	-6.1	-6.3	-5.0	-6.1
Paper ³	09-13		191.4	195.9	196.9	6.8	0.5	1.4	0.4	0.5
Converted paper and paperboard products ³	09-16		234.7	235.1	237.1	2.2	0.9	-0.3	0.2	0.9
Iron and steel scrap ³	10-12		497.3	559.6	657.2	28.2	-0.4	4.3	5.2	-0.4
Steel mill products ³	10-17		187.2	201.7	210.4	10.6	4.3	1.9	3.2	4.3
Primary nonferrous metals ³	10-22		189.4	200.1	201.9	11.5	0.9	-0.0	1.0	0.9
Nonferrous scrap.....	10-23		373.7	372.0	374.0	13.3	0.5	1.3	0.3	0.4
Nonferrous wire and cable ³	10-28		242.1	242.3	244.4	6.3	0.9	0.4	-0.6	0.9
Fabricated structural metal products.....	10-7		233.0	230.9	236.4	7.8	2.4	1.6	1.7	2.2
General purpose machinery and equipment.....	11-4		234.8	236.9	238.2	3.1	0.5	0.6	0.0	0.7
Construction sand, gravel, and crushed stone.....	13-21		329.1	333.2	334.8	3.6	0.5	0.8	-0.2	0.3
Stage 1 Intermediate demand services.....		04/10	117.7	119.3	119.8	3.8	0.4	0.3	0.5	0.8
Truck transportation of freight ³	30-12	06/09	118.8	120.2	121.2	0.5	0.8	0.2	0.2	0.6
Airline passenger services.....	30-22	12/06	107.8	114.8	112.3	2.6	-2.2	1.6	1.3	0.6
Advertising space sales in periodicals, newspapers, directories, and mailing lists.....	36-1	08/09	103.5	103.4	102.8	-1.7	-0.6	1.3	0.3	-0.5
Business wired telecommunication services ³	37-12	06/09	101.6	101.7	101.8	6.3	0.1	0.1	0.1	0.1
Wireless telecommunication services ³	37-2	06/09	86.2	85.5	84.3	-6.3	-1.8	-1.4	1.7	-1.8
Bundled wired telecommunication access services ³	37-5	12/11	103.4	103.8	105.5	2.4	1.6	-1.2	-1.3	1.6
Business loans (partial) ³	39-11	04/09	207.5	213.8	213.8	9.1	0.0	0.5	1.8	3.3
Deposit services (partial) ³	39-2	04/09	83.1	83.7	83.6	6.4	-0.2	1.6	-0.2	-0.2
Securities brokerage, dealing, investment advice, and related services ³	40-11	06/09	150.3	153.4	154.6	12.7	0.8	0.2	2.1	0.8
Portfolio management ³	40-2	12/08	209.1	209.5	210.1	4.6	0.3	-0.3	-0.8	0.3
Investment banking ³	40-3	12/08	171.3	174.8	176.3	10.0	0.8	0.9	1.2	0.9
Insurance.....	41-11	06/09	120.5	119.8	121.0	2.7	1.0	0.3	0.0	1.1
Nonresidential real estate rents.....	43-11	09/09	114.8	114.1	115.0	1.9	0.8	-0.2	-0.6	0.8
Architectural and engineering services ³	45-3	06/09	114.4	115.0	114.9	2.8	-0.1	0.3	0.1	-0.1
Management consulting services ³	45-41	08/09	104.9	104.8	104.9	-0.7	0.1	0.6	-0.2	0.1
Waste collection.....	50-1	12/06	125.9	128.1	128.5	5.3	0.3	0.2	0.0	0.6
Traveler accommodation services.....	53-11	06/09	112.5	118.9	113.9	-1.1	-4.2	0.2	-3.2	-4.0
Commercial and industrial machinery and equipment repair and maintenance ³	55-1	03/09	121.0	121.8	121.8	2.0	0.0	-0.7	-0.2	0.0
Machinery and equipment parts and supplies wholesaling ³	57-11-02	03/09	117.7	120.1	121.6	3.8	1.2	3.6	0.3	1.2
Building materials, paint, and hardware wholesaling.....	57-3	03/09	93.3	95.9	97.6	1.8	1.8	2.6	1.4	0.8
Metals, minerals, and ores wholesaling ³	57-4	03/09	144.0	182.0	171.7	30.1	5.5	3.8	10.0	5.5
Chemicals and allied products wholesaling ³	57-5	03/09	100.1	101.4	107.0	1.9	5.5	-0.3	-0.8	5.5
Paper and plastic products wholesaling ³	57-6	03/09	132.6	133.9	129.4	6.4	-3.4	2.6	-1.7	-3.4
Hardware and building materials and supplies retailing.....	58-D	03/09	119.5	125.1	124.3	7.0	-0.6	5.4	-0.1	-0.9
Mining services ³	60-1	06/85	230.8	232.0	232.2	1.8	0.1	0.4	0.0	0.1

¹ Further information about the Final Demand-Intermediate Demand Aggregation system is available online at <https://www.bls.gov/ppi/fddaggregation.htm>
² The indexes for January 2018 have been recalculated to incorporate late reports and corrections by respondents. All indexes are subject to revision 4 months after original publication.
³ Not seasonally adjusted.
 "..." Data not available.
 NOTE: The term "(partial)" denotes incomplete coverage of the index category.

**Table 8. Producer price indexes for selected commodity groupings, not seasonally adjusted
(1982=100, unless otherwise indicated)**

Grouping	Commodity code	Other Index base	Index			Percent change to May 2018 from:	
			Jan. 2018 ¹	Apr. 2018 ¹	May 2018 ¹	May 2017	Apr. 2018
Goods							
All commodities.....			197.9	200.0	203.2	5.4	1.5
Farm products, processed foods and feeds.....			160.0	193.0	194.5	0.6	0.8
Farm products.....	01		160.5	162.1	166.0	-0.6	2.4
Processed foods and feeds.....	02		204.5	208.2	208.6	1.1	0.2
Industrial commodities.....			199.1	200.9	204.5	6.3	1.6
Textile products and apparel.....	03		145.9	148.3	148.8	2.5	0.2
Hides, skins, leather, and related products.....	04		181.6	185.6	183.8	-6.4	-0.9
Fuels and related products and power.....	05		174.4	175.2	186.6	16.2	5.9
Chemicals and allied products.....	06		260.2	291.3	292.0	4.2	0.2
Rubber and plastic products.....	07		191.9	194.4	194.2	2.5	-0.1
Lumber and wood products.....	08		237.3	244.5	248.4	8.0	1.6
Pulp, paper, and allied products.....	09		255.4	257.4	259.5	2.4	0.8
Metals and metal products.....	10		214.6	222.4	226.1	9.2	1.7
Machinery and equipment.....	11		138.5	139.4	139.6	1.2	0.1
Furniture and household durables.....	12		108.9	170.8	171.1	2.5	0.2
Nonmetallic mineral products.....	13		243.3	247.2	247.6	4.0	0.2
Transportation equipment.....	14		100.4	180.6	180.7	1.2	0.1
Miscellaneous products.....	15		261.0	262.7	263.0	2.2	0.1
Industrial commodities less fuels.....			203.0	205.2	206.1	3.5	0.4
Other commodity groupings							
Petroleum products, refined.....	057		197.0	207.7	228.3	37.9	9.9
Industrial chemicals.....	061		288.1	265.8	287.7	5.6	0.7
Rubber and rubber products.....	071		178.0	178.6	178.1	0.0	-0.4
Lumber.....	081		225.3	236.2	247.2	13.2	4.7
Iron and steel.....	101		217.6	234.9	240.7	12.6	2.5
Nonferrous metals.....	102		247.7	250.1	252.8	11.9	1.1
General purpose machinery and equipment.....	114		234.0	238.9	238.2	3.1	0.6
Electrical machinery and equipment.....	117		114.0	114.6	114.4	0.4	-0.2
Electronic components and accessories.....	117B		65.0	65.3	65.9	-2.7	-0.8
Aircraft and aircraft equipment.....	142		271.1	272.0	272.3	1.2	0.1
Services and construction							
Transportation services.....	30	06/09	124.5	127.3	127.3	4.9	0.0
Services related to transportation activities.....	31	03/09	112.4	113.2	113.4	2.7	0.2
Warehousing, storage, and related activities.....	32	12/08	106.5	107.9	107.1	5.8	-0.8
Publishing sales, excluding software.....	33	06/09	117.7	118.0	118.2	2.1	0.2
Software publishing.....	34	09/09	90.5	90.1	91.1	-1.3	1.1
Network compensation from broadcast and cable television and radio.....	36	06/09	137.7	138.3	138.3	6.1	0.0
Advertising space and time sales.....	36	06/09	87.5	99.4	99.1	-3.9	-0.3
Telecommunication, cable, and Internet user services.....	37	06/09	99.9	100.1	100.1	1.3	0.0
Data processing and related services.....	38	09/09	100.9	101.1	101.2	0.3	0.1
Credit intermediation services (partial).....	39	06/09	89.6	91.2	91.2	4.8	0.0
Investment services.....	40	06/09	169.2	170.9	171.9	8.5	0.6
Insurance and annuities.....	41	06/09	119.6	119.0	120.1	2.6	0.9
Commissions and fees from sales and administration of insurance policies (partial).....	42	06/09	106.4	106.4	106.5	1.2	0.1
Real estate services (partial).....	43	06/09	121.3	121.5	122.2	4.1	0.6
Rental and leasing of goods (partial).....	44	06/09	93.5	92.6	93.1	1.4	0.5
Professional services (partial).....	46	08/09	117.3	118.2	117.5	1.5	-0.6
Employment services.....	48	06/09	112.8	113.5	113.1	1.0	-0.4
Travel arrangement services.....	47	06/09	101.5	103.9	105.0	0.4	1.1
Selected security services (partial).....	49	03/09	112.6	112.5	112.6	2.5	0.1
Clearing and building maintenance services (partial).....	49	03/09	111.1	111.2	111.4	0.6	0.2
Waste collection and remediation services (partial).....	50	12/09	126.9	126.1	128.5	5.3	0.3
Health care services.....	51	06/09	117.6	118.0	118.1	2.0	0.1
Education services (partial).....	52	12/08	-	-	-	-	-
Accommodation services.....	53	03/09	112.5	118.9	119.9	-1.1	-4.2
Food and beverages for immediate consumption services (partial).....	54	06/09	121.0	120.9	119.7	-0.3	-1.0
Repair and maintenance services (partial).....	55	06/09	125.5	125.9	125.8	1.1	0.0
Entertainment services (partial).....	56	09/09	112.5	113.9	114.0	1.2	0.1
Wholesale trade services.....	57	06/09	116.1	116.1	119.5	4.0	1.2
Retail trade services.....	58	06/09	114.9	116.3	116.1	0.8	-0.2
Metal treatment services.....	59	12/84	185.1	185.9	186.9	1.5	0.5
Mining services.....	60	06/06	230.6	232.0	232.2	1.8	0.1
Contract work on textile products, apparel, and leather.....	61	06/10	108.7	110.1	110.2	1.3	0.1
Construction (partial).....	60	08/08	115.4	116.5	116.8	3.6	0.1

¹ The indexes for January 2018 have been recalculated to incorporate late reports and corrections by respondents. All indexes are subject to revision 4 months after original publication.

"-" Data not available.

NOTE: The term "(partial)" denotes incomplete coverage of the index category.

City of Las Vegas, Nevada

Contract #150063-SK-A

for

Water Treatment Chemicals

with

Thatcher Company of Nevada

Effective: July 28, 2015

The Signed Contract between the City of Las Vegas and Thatcher Company of Nevada effective July 28, 2015 follows. For ease of due diligence the following documents are also provided herein:

- I. Council Approval
- II. Thatcher Company of Nevada, Response to BID
- III. City of Las Vegas Original BID

CITY-SUPPLIER CONTRACT
National IPA Water Treatment Chemicals - Thatcher
150063-SK-A

THIS CITY OF LAS VEGAS – SUPPLIER CONTRACT (the "Contract") is made and entered into this 28th day of July, 2015, by and between the City of Las Vegas, a municipal corporation in the State of Nevada (the "City") and Thatcher Company of Nevada, Inc., (a corporation organized and existing under the laws of the State of Nevada), (the "Supplier".)

WITNESSETH:

WHEREAS, the Supplier, having submitted a Bid to the City for the project commonly known and referred to as National IPA Water Treatment Chemicals, Bid No.(150063-SK); and,

WHEREAS, the City Council or its designee, after due consideration of the submitted Bids, awarded a Contract to the Supplier in the amount(s) set forth below.

NOW, THEREFORE, in consideration of the above, the parties hereto agree to the following:

1. **CONTRACT OVERVIEW:** The subject matter of this Contract is the purchase of Water Treatment Chemicals as an annual requirement on an as needed basis.
 - A. The Contract type is fixed price. This is a Non-Exclusive Contract
 - B. The Contract Amount and Payment Schedule are defined in 3.0 Basic Terms, 3.2 Pricing Schedule
 - C. The Contract Amount is not to exceed \$ 3,000,000.00
2. **DOCUMENT INCORPORATION.** The Contract consists of this two-page document and the following documents incorporated herein by this reference as a part hereof:
 - i. Pricing Schedule (Form C as submitted by Successful Bidder, including any attachments), (to be inserted prior to Contract award)
 - ii. Basic Terms, General Conditions and Special Conditions, attached hereto
 - iii. Technical Specifications, dated 9/29/2014, attached hereto
 - iv. Addenda No.1, dated 4/6/2015, attached hereto
Addenda No.2, dated 4/8/2015, attached hereto
Addenda No.3, dated 4/20/2015, attached hereto
Addenda No.4, dated 4/23/2015, attached hereto
 - v. National IPA Requirements for National Cooperative Contract Exhibit A
 - vi. National IPA Administration Agreement Attachment 1
3. **PERFORMANCE PERIOD.** The initial performance period shall be from the Award Date through and including July 31, 2016. The prices reflected on Form C - Pricing Schedule shall remain firm throughout the term of the Contract.
 - A. The City may, at its sole option, extend performance period for up to four (4) one-year periods beyond July 31, 2016. The City shall provide written notice to the Supplier of such extension, and the Supplier may not

assume an automatic renewal. Exercise of a one-year option does not commit the City to exercise further options.

- B. The City reserves the right to exercise an option to temporarily extend this Contract for up to one hundred eighty (180) calendar days from the expiration date, for any reason.

IN WITNESS WHEREOF, the City and the Supplier have made and executed this Contract on the day and year first above written.

CITY OF LAS VEGAS

Thatcher Company of Nevada, Inc.

Yolanda C. Jones 7/28/15 *Craig H. Thatcher* 7/15/2015
YOLANDA C. JONES, C.P.M., CPPO Date Craig Thatcher, President Date
Manager, Purchasing and Contracts

ATTEST:

Beverly K. Bridges 7/29/15
BEVERLY K. BRIDGES, MMC Date
City Clerk
By: **LuAnn D. Holmes, MMC**
City Clerk

APPROVED AS TO FORM.

Robert S. Sylvain 6-16-15
Deputy City Attorney Date

EXHIBIT B
SPECIFIC REQUIREMENTS/OPTIONS OF TOWN

Attached: Quote and Specifications. In accordance with **Omnia Partners (NIPA) Contract No. 150063**.

Notices: All notices required under the Contract shall be sent to:

Town Manager
Town of Gilbert
50 E. Civic Center Drive
Gilbert, Arizona 85296

Delivery Location: Per Purchase Order

Emergency Contact: Gilbert is an emergency response organization. Contractor services or supplies may be required in case of an emergency involving a sudden, immediate threat of danger to the public health, welfare or property in Gilbert (“local emergency”) or in the case where the Mayor of Gilbert, the mayor or governing body of another municipality in Maricopa County, the Maricopa County Board of Supervisors, the State, or the President of the U.S. has declared an emergency (“State of Emergency”). In the event of a local emergency or State of Emergency, Gilbert may require Contractor to provide services or supplies as rapidly as possible and to such locations as directed by Gilbert when necessary to protect the public health and welfare and/or property. Contractor shall not be required to respond to the extent response is not feasible due to Acts of God or other factors beyond its control. Contractor shall provide the designated Gilbert Emergency Management Coordinator at (480) 503-6333 and the designated Gilbert representative with a contact point (name, cell phone number, e-mail and facsimile number) who can be reached on short notice so that effective response can be initiated.

Equal Treatment of Workers: Contractor shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of performance under the Agreement. Contractor shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Occupational Safety and Health Administration (“OSHA”) and the Fair Labor Standards Act (“FLSA”). Contractor shall protect and indemnify Gilbert and its representatives against any claim or liability arising from or based on the violation of such, whether by Contractor or its employees./



TOWN OF GILBERT COOPERATIVE PURCHASING AGREEMENT APPROVAL FORM

Requested By: Kurtis McDavid, Water Production Superintendent Date: April 18, 2019

Department: Public Works-Water Production Division: North WTP and Santan Vista WTP

Cooperative Purchase Agreement with: City of Mesa

Contracting Agency Thatcher Contract Number 2017128

Item(s) or Service Requested:

The NWTP and SVWTP would like to continue to purchase the water treatment chemical Aluminum Sulfate from Thatcher which is utilized in the water production process at both plants.

Account# 600 . 71210 and 71205 . 54100

Justification:

Per Gilbert Purchasing Code 2-357 (b)(2), a separate bidding process is not likely to result in a lower price for these items or service.

Agreement expiration date: June 30, 2020

Departmental Approval: Jessica L. Markow Date: 4/22/19

Purchasing Officer Approval: Douglas E. Boyer Date: 5/8/19

AGREEMENT
TO PROVIDE SERVICES/SUPPLIES PURSUANT TO A
COOPERATIVE PURCHASING CONTRACT
Contract No. 319001118

This Agreement is made and entered into by and between the Town of Gilbert, Arizona, a municipal corporation, hereinafter designated as “Gilbert” and **Thatcher Company of Arizona Inc.**, designated as the “Contractor.”

Recitals:

A. Contractor has contracted with the **City of Mesa** to provide **Water/Wastewater Treatment Chemicals** services, materials and/or equipment pursuant to **Contract No. 2017128** (the Cooperative Purchasing Contract); and

B. Pursuant to A.R.S. § 41-2631 et seq. and Gilbert Municipal Code § 2-357, Gilbert has authority to utilize cooperative purchasing contracts and engage contractors under the terms thereof.

CONTRACTOR AND GILBERT, FOR THE CONSIDERATION
HEREINAFTER SET FORTH, PROMISE, COVENANT AND AGREE AS FOLLOWS:

1. Scope of Work.

1.1 Contractor shall provide the following services, materials and/or equipment:

To provide Water/Wastewater Treatment Chemicals, including Aluminum Sulfate Liquid. Selection of chemicals may change during the term of this contract.

as described in the Cooperative Purchasing Contract documents attached hereto as **Exhibit A**, which are incorporated herein by reference. As used in this Contract, all references to the **City of Mesa** shall mean the Town of Gilbert, Arizona.

1.2 Contractor shall comply with all specific requirements and/or options of Gilbert, as specified in **Exhibit B** attached hereto and incorporated herein by reference.

Payment. The Contract Fee is **\$720,000.00**. Payment to the Contractor for the services, materials and/or equipment provided, shall be made in accordance with the price list and terms set forth in the Cooperative Purchasing Contract.

4. Terms of Cooperative Purchasing Contract Apply. All provisions of the Cooperative Purchasing Contract documents are incorporated in and shall apply to this Contract as though fully set forth herein, except as otherwise provided for in this Agreement.

5. Contract Term and Renewal. If funds for this Contract are not appropriated or budgeted by July 1, 2018 or by July 1st of any fiscal year thereafter, Gilbert may terminate this contract by giving written notice to Contractor. Otherwise, the term of this Contract shall commence upon approval and continue through **June 30, 2020**. The contract shall automatically renew coterminous with the underlying **Mesa** Contract term. If this Contract is renewed, the Contract fee shall be adjusted as provided for in the Cooperative Purchasing Contract. The Gilbert Purchasing Officer has authority to approve any renewal provided that: (1) the Contract amount does not exceed \$100,000; (2) the original prices remain in effect during the Renewal Term; or (3) the contract unit pricing does not increase or the contract pricing is adjusted pursuant to the terms and conditions of the Cooperative Purchasing Contract. Any renewal shall be contingent on funds being appropriated or budgeted for the renewal term

IN WITNESS WHEREOF, the parties have hereunto subscribed their names this _____ day of _____, 20__.

TOWN OF GILBERT:

CONTRACTOR:

By: _____
Mayor

By: _____

Title: _____

ATTEST:

Lisa Maxwell
Town Clerk

APPROVED AS TO FORM:

Christopher W. Payne
Town Attorney

EXHIBIT A
CONTRACT OF OTHER GOVERNMENTAL ENTITY

[http://apps.mesaaz.gov/purchasingcontracts/Documents/%7B4C96E4B4-7AF0-4A07-BB4E-F8DADE5000EC%7D 0.pdf](http://apps.mesaaz.gov/purchasingcontracts/Documents/%7B4C96E4B4-7AF0-4A07-BB4E-F8DADE5000EC%7D%200.pdf)

See attached

CITY OF MESA AGREEMENT PURSUANT TO SOLICITATION

This agreement pursuant to solicitation ("Agreement") is entered into this 19th day of June, 2017, by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City"), and Thatcher Company of Arizona, Inc., an Arizona corporation ("Contractor"). The City and Contractor are each a "Party" to the Agreement or together are "Parties" to the Agreement.

RECITALS

- A. The City issued solicitation number **2017128** ("Solicitation") for **WATER/WASTEWATER TREATMENT AND POOL CHEMICALS**, to which Contractor provided a response ("Response"); and
- B. The City Selected Contractor's Response as being in the best interest of the City and wishes to engage Contractor in providing the services/materials described in the Solicitation and Response.

In consideration of the reciprocal promises contained in the Agreement, and for other valuable and good consideration, which the Parties acknowledge the receipt and sufficiency of, the Parties agree to the following Terms & Conditions.

TERMS & CONDITIONS

1. **Term**. This Agreement is for a term beginning on **July 1, 2017** and ending on **June 30, 2020**. The use of the word "Term" in the Agreement includes the aforementioned period as well as any applicable extensions or renewals in accordance with this Section 1.
 - 1.1 **Renewals**. On the mutual written agreement of the Parties, the Term may be renewed up to a maximum of two (2) one (1) year periods. Any renewal(s) will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
 - 1.2 **Extension for Procurement Processes**. Upon the expiration of the Term of this Agreement, including any renewals permitted herein, at the City's sole discretion this Agreement may be extended on a month-to-month basis for a maximum of six (6) months to allow for the City's procurement processes in the selection of a vendor to provide the services/materials provided under this Agreement. The City will notify the Contractor in writing of its intent to extend the Agreement at least thirty (30) calendar days prior to the expiration of the Term. Any extension under this Subsection 1.2 will be a continuation of the same terms and conditions as in effect immediately prior to the expiration of the then-current term.
 - 1.3 **Delivery**. Delivery shall be made to the location(s) contained in the Scope of Work per item, description and delivery location identified in **Exhibit B** ("Pricing").
2. **Scope of Work**. The Contractor will provide the necessary staff, services and associated resources to provide the City with the services, materials, and obligations attached to this Agreement as **Exhibit A** ("Scope of Work") and **Exhibit A-1** ("Technical Specifications") Contractor will be responsible for all costs and expenses incurred by Contractor that are incident to the performance of the Scope of Work unless otherwise stated in **Exhibit A and Exhibit A-1**. Contractor will supply all equipment and instrumentalities necessary to perform the Scope of Work. If set forth in **Exhibit A and Exhibit A-1**, the City will provide Contractor's personnel with adequate workspace and such other related facilities as may be required by Contractor to carry out the Scope of Work.
3. **Orders**. Orders be placed with the Contractor by either a: (i) Purchase Order when for a one-time purchase; (ii) Notice to Proceed, or (iii) Delivery Order off of a Master Agreement for Requirement

City Acceptance of Offer

ACCEPTANCE OF OFFER:

The offer is hereby accepted. The Contractor is now bound to sell the materials or services specified in the Contract, including all terms and conditions, specifications, addenda, etc. This contract shall henceforth be referred to as Contract Number **2017128**.

Awarded this ____ day of _____, 2017.



Digitally signed by Edward Quedens
DN: cn=Edward Quedens, o=City of Mesa,
Arizona, ou=Business Services Director,
email=ed.quedens@mesaaz.gov, c=US
Date: 2017.06.27 13:31:40 -0700

Edward Quedens, CPPO, C.P.M.
As Business Services Director

REVIEWED BY:

By: 

Kristy Garcia, CPPB, Procurement Officer



CONTRACT AMENDMENT

Contract Title: Water/Wastewater Treatment and Pool Chemicals
Contract Number: 2017128 **MA/PO Number:** 17000407
Amendment Number: 1
Description of Change: Price increase for the following items:

Item No. 1A.01 FTL - Aluminum Sulfate, Liquid 48% (ALUM) Bulk Delivery priced per wet pound was \$0.0793/wet lb now \$0.0829/wet lb

Item No. 10 Chlorine 100%, Liquid (1 Ton Container) priced per wet ton was \$420.00/wet ton now \$438.86/wet ton

Item No. 28A.01 FTL - Sodium Bisulfite, 38-40%, NaHSO3 Bulk delivery priced per gallon was \$1.44/gallon now \$1.51/gallon

Item No. 11A Chlorine 99.5%, Liquid (95 lb Cylinder) was \$93.10/cylinder now \$97.28/cylinder

Item No. 11B Chlorine 99.5%, Liquid (150 lb Cylinder) was \$85.00/cylinder now \$88.82/cylinder

Item No. 31A.01 FTL - Sodium Hydroxide, 25% NaOH (Caustic Soda) Bulk delivery priced per gallon was \$1.07/gallon now \$1.12/gallon


Even though the unit price for these items has increased, the total contract award amount will remain the same.

Current contract amount:\$4,700,000 cumulatively all Agreements annually
Change Amount: Increase Decrease No Change..... \$0.00
New contract amount:\$4,700,000 cumulatively all Agreements annually
Effective Date of Change: July 1, 2018


Acceptance: On behalf of the undersigned Contractor, I have given careful consideration to this Contract Amendment and hereby agree to the change(s) and except that as amended herein, all provisions of the Contract remain in full force and effect.

CONTRACT AMENDMENT

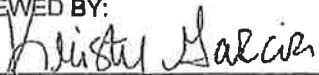
Thatcher Company of Arizona, Inc.:


Signature
Craig N. Thatcher
Printed Name
June 14, 2018
Date

City of Mesa:


Signature
Ed Quedens
City Manager Designee
6-18-18
Date

REVIEWED BY:

By: 
Kristy Garcia, CPPB, Senior Procurement Officer

**TERM CONTRACT
PRICE ADJUSTMENT**

Contract No: **2017128**
Expires: June 30, 2020

Contract Name: Water/Wastewater Treatment and Pool Chemicals

Vendor Name: Thatcher

TO BE COMPLETED BY THE PROCUREMENT OFFICER AFTER A RENEWAL QUOTATION HAS BEEN OBTAINED.

1. Is the vendor willing to renew at last year's prices? **No**
 If not, is the adjustment permitted by the specification? **Yes**
 If the pricing is different, list the average overall increase/decrease

<i>old</i>	<i>new</i>				
\$ 0.0793	\$ 0.0829	\$ 0.00	4.54%	Thatcher - Line item 1A.01	Primary
\$ 420.00	\$ 438.86	\$ 18.86	4.49%	Thatcher - Line item 10	Primary
\$ 1.44	\$ 1.51	\$ 0.07	4.86%	Thatcher - Line item 28A.01	Primary to Secondary
\$ 93.10	\$ 97.28	\$ 4.18	4.49%	Thatcher - Line item 11A	Secondary
\$ 85.00	\$ 88.82	\$ 3.82	4.49%	Thatcher - Line item 11B	Secondary
\$ 1.07	\$ 1.12	\$ 0.05	4.67%	Thatcher - Line item 31A.01	Secondary to Primary

2. Are the vendor's renewal prices still competitive? **Yes and No**
 Specify how this was verified: **Vendor was able to justify price increase (documents in file) but will be moving some line items from primary award to secondary award and some secondary to primary based on other vendors price increases.**
RFI allows for a +4.50% increase.
3. Are you aware of any new suppliers who did not bid on the original contract and who might be competitive? **No. 13 vendors on contract.**
4. Please write a few sentences explaining why you believe your recommendation is in the City's best interest. This paragraph will be used to assist in preparation of the Council Report or memo to management.

n/a

<i>Heidy Garcia</i>	<i>6-12-18</i>
Procurement Officer	Date
<i>Matt Bauer</i>	<i>6-13-18</i>
Concur, Matt Bauer	Date

THATCHER COMPANY OF ARIZONA
6321 South Rainbow Road, Buckeye AZ 85326



Phone (801) 972-4587
Fax (801) 972-4606

Date: 6/01/2018

To: Nicole Arnold

From: Chris Wykstra Market Analyst Thatcher Company, Inc.

Subject: PPI Industry Increase in costs for Chemical mfg.

Thatcher Company based on contract language is seeking a 4.49% increase in the price of chlorine on July 1, 2018. This is based on the Producer Price Index for Industrial Chemicals. Per the attachments we show that an increase of 4.49% is noted. Please confirm and respond with a confirmation.

Should you have any questions please contact Chris Wykstra at 801-972-4593 ext. 1453.

Regards,



Craig N. Thatcher
President
Thatcher Company, Inc.

Chris Wykstra

From: Chris Wykstra
Sent: Thursday, May 31, 2018 12:32 PM
To: Tyler Loosli
Subject: print

Browser address bar: <https://data.bfs.gov/pdq/SurveyOutputServlet>

Phone Lists - All D... RD Web Access... Market Analysis... Bid Tracking Sheet... Bid Tracking Tha... BL

Convert Select

Databases, Tables & Calculators by Subject

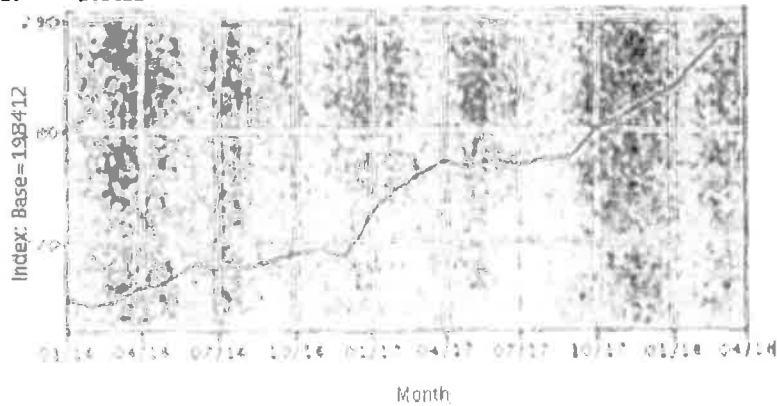
Change Output Options:

From: 2016 To:
 include graphs include annu

Data extracted on: May 24, 2018 (5:49:55 PM)

PPI Industry Data

Series Id: PCU325---325---
Series Title: PPI industry sub-sector data for Chemical mfg, not seasonally adjusted
Industry: Chemical mfg
Product: Chemical mfg
Base Date: 198412



Download: [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
2016	264.9	264.4	264.8	265.0	266.3	268.1	267.7	267.7	268.2	269.0	269.3	268.8	267.1
2017	272.8	274.9	276.1	277.2	276.7	277.5	276.9	277.5	277.6	280.2	281.2	282.5	277.6
2018	283.9(P)	286.3(P)	288.5(P)	288.4(P)									

P: Preliminary. All indexes are subject to revision four months after original publication.

74.5% 74.0%

Example from website:

Calculating Index Changes

Movements of the indexes from 1 month to another are usually expressed as percent changes rather than changes in index points, because index point changes are affected by the level of the index in relation to its base period, while percent changes are not. The following table shows an example of using index values to calculate percent changes:

Item C	Item A	Item B
Year I 110.000	112.500	225.000
Year II 128.000	121.500	243.000
Change in index points 18.000	9.000	18.000
Percent change $9.0/110.000 \times 100 = 8.2$ $18.0/110.000 \times 100 = 16.4$	$9.0/112.500 \times 100 = 8.0$	$18.0/225.000 \times 100 = 8.0$

My calculations for the previous chart found on the PPI for Industrial Chemicals.

$$288.5 - 276.1 = 12.4 / 276.1 * 100 = 4.49\%$$

EXHIBIT B
SPECIFIC REQUIREMENTS/OPTIONS OF TOWN

Attached: Quote and Specifications. In accordance with City of Mesa **Contract No. 2017128**

Notices: All notices required under the Contract shall be sent to:

Town Manager
Town of Gilbert
50 E. Civic Center Drive
Gilbert, Arizona 85296

Immigration Law Compliance Warranty: As required by A.R.S. § 41-4401, Contractor hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Contractor further warrants that after hiring an employee, Contractor verifies the employment eligibility of the employee through the E-Verify program. If Contractor uses any subcontractors in performance of the Work, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract. Contractor is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. Gilbert at its option may terminate the Contract after the third violation. Contractor shall not be deemed in material breach of this Contract if the Contractor and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). Gilbert retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the Contract to ensure that the Contractor or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the parties may modify this paragraph consistent with state law.

Emergency Contact: Gilbert is an emergency response organization. Contractor services or supplies may be required in case of an emergency involving a sudden, immediate threat of danger to the public health, welfare or property in Gilbert (“local emergency”) or in the case where the Mayor of Gilbert, the mayor or governing body of another municipality in Maricopa County, the Maricopa County Board of Supervisors, the State, or the President of the U.S. has declared an emergency (“State of Emergency”). In the event of a local emergency or State of Emergency, Gilbert may require Contractor to provide services or supplies as rapidly as possible and to such locations as directed by Gilbert when necessary to protect the public health and welfare and/or property. Contractor shall not be required to respond to the extent response is not feasible due to Acts of God or other factors beyond its control. Contractor shall provide the designated Gilbert Emergency Management Coordinator at (480) 503-6333 and the designated

Gilbert representative with a contact point (name, cell phone number, e-mail and facsimile number) who can be reached on short notice so that effective response can be initiated.

Equal Treatment of Workers: Contractor shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of performance under the Agreement. Contractor shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Occupational Safety and Health Administration (“OSHA”) and the Fair Labor Standards Act (“FLSA”). Contractor shall protect and indemnify Gilbert and its representatives against any claim or liability arising from or based on the violation of such, whether by Contractor or its employees.]



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Curtis Yardley, Streets Division Manager, 480-503-6428

MEETING DATE: May 16, 2019

SUBJECT: Contract for Street Light Poles & Traffic Signal Supplies with WESCO Distribution dba: Brown Wholesale, Munis Contract #319001077.

STRATEGIC INITIATIVE: Infrastructure

This action supports Gilbert's Infrastructure Strategic Initiative by providing the necessary materials to maintain street lights to Gilbert standards.

RECOMMENDED MOTION

A motion to approve:

- A. A contract for Street Light Poles and Traffic Signal supplies with WESCO Distribution dba: Brown Wholesale, contract #319001077 effective July 1, 2019 and terminating June 30, 2020 with the option to renew and authorize the Mayor to execute the required documents.

BACKGROUND/DISCUSSION

The Town of Gilbert ("Town") will be opting to use a cooperative contract that has been formally and competitively bid by Maricopa County. Town staff feel that the quantities bid by Maricopa County will far exceed the quantities the Town will procure.

Per 2-357 (b) (2) of the Gilbert Procurement Code, cooperative agreements are exempt from competitive bidding where the purchasing officer has determined in writing that a separate bidding process is not likely to result in a lower price for supplies or services. The purchasing officer has made this determination.

The contract was reviewed for form by Deputy Town Attorney John Baird.

The contract was reviewed by Paula Nitti, Contract Analyst.

The contract and purchase were reviewed by Doug Boyer, Purchasing Administrator.

FINANCIAL IMPACT

The contract being awarded is for the FY2019 period, July 1, 2019 – June 30, 2020. Sufficient budget exists for the Group 1 award with WESCO Distribution.

GROUP/VENDOR	G/L	CONTRACT AMOUNT	AMOUNT BUDGETED
Group 1 WESCO Distribution	20065305.54100	\$100,000.00	\$100,000.00
	20065310.54100	\$100,000.00	\$100,000.00

The financial impact was reviewed by Cris Welch, Senior Management and Budget Analyst.

STAFF RECOMMENDATION

Staff recommends approval of Motion A, Contract #319001077 for street light poles and traffic signal supplies with WESCO Distribution dba: Brown Wholesale, effective July 1, 2019 and terminating June 30, 2020 with option to renew.

Respectfully submitted,

Curtis Yardley
Streets Department Manager

Attachments:

Contract #319001077, WESCO Distribution dba Brown Wholesale Electric Signed Cooperative

Approved By

Approval Date

Dennis Sullivan

4/24/2019 10:05:40 AM

Curtis Yardley

4/29/2019 5:30:28 AM

Jessica Marlow

4/29/2019 7:28:11 AM

John Baird

5/6/2019 1:42:46 PM

Cris Welch

5/2/2019 1:30:19 PM

Douglas Boyer

5/7/2019 3:05:24 PM



TOWN OF GILBERT COOPERATIVE PURCHASING AGREEMENT APPROVAL FORM

Requested By: Conrad Ramon Date: 4/3/2019

Department: Public Works Streets

Cooperative Purchase Agreement with: Brown Wholesale

Contracting Agency Maricopa County Contract Number 319001077

Item(s) or Service Requested:

Traffic Signal and Street Light poles and supplies for day to day operations.

Account# 200 . 65305/65310 . 54100

Justification:

Per Gilbert Purchasing Code 2-357 (b)(2), a separate bidding process is not likely to result in a lower price for these items or service.

Agreement expiration date: June 30-, 2020

Departmental Approval: *[Signature]* Date: 04/08/19

Purchasing Officer Approval: *[Signature]* Date: 5/6/19

AGREEMENT
TO PROVIDE SERVICES/SUPPLIES PURSUANT TO A
COOPERATIVE PURCHASING CONTRACT
Contract No. 319001077

This Agreement is made and entered into by and between the Town of Gilbert, Arizona, a municipal corporation, hereinafter designated as “Gilbert” and WESCO Distribution dba: Brown Wholesale hereinafter designated as the “Contractor.”

Recitals:

- A. Contractor has contracted with the Maricopa County to provide Signals and Street Light Poles and Supplies pursuant to Contract No. 180249-C (the Cooperative Purchasing Contract).
- B. Pursuant to A.R.S. § 41-2631 et seq. and Gilbert Municipal Code § 2-357, Gilbert has authority to utilize cooperative purchasing contracts and engage contractors under the terms thereof.

CONTRACTOR AND GILBERT, FOR THE CONSIDERATION
HEREINAFTER SET FORTH, PROMISE, COVENANT AND AGREE AS FOLLOWS:

1. Scope of Work.

1.1 Contractor shall provide the following services, materials and/or equipment:

Signals and Street Light Poles and Supplies

as described in the Cooperative Purchasing Contract documents attached hereto as **Exhibit A**, which are incorporated herein by reference. As used in this Contract, all references to the Maricopa shall mean the Town of Gilbert, Arizona.

1.2 Contractor shall comply with all specific requirements and/or options of Gilbert, as specified in **Exhibit B** attached hereto and incorporated herein by reference.

2. Payment. The Contract Fee is not to exceed \$200,000.00. Payment to the Contractor for the services, materials and/or equipment provided, shall be made in accordance with the price list and terms set forth in the Cooperative Purchasing Contract.

3. Terms of Cooperative Purchasing Contract Apply. All provisions of the Cooperative Purchasing Contract documents are incorporated in and shall apply to this Contract as though fully set forth herein, except as otherwise provided for in this Agreement.

4. Contract Term and Renewal. If funds for this Contract are not appropriated or budgeted by July 1, 2019 or by July 1st of any fiscal year thereafter, Gilbert may terminate this contract by giving written notice to Contractor. Otherwise, the term of this Contract shall commence upon approval and continue through June 30, 2020. The contract shall automatically renew coterminous with the underlying Maricopa County Contract term. If this Contract is renewed, the Contract fee shall be adjusted as provided for in the Cooperative Purchasing Contract. The Gilbert Purchasing Officer has authority to approve any renewal provided that: (1) the Contract amount does not exceed \$100,000; (2) the original prices remain in effect during the Renewal Term; or (3) the contract unit pricing does not increase or the contract pricing is adjusted pursuant to the terms and conditions of the Cooperative Purchasing Contract. Any renewal shall be contingent on funds being appropriated or budgeted for the renewal term

IN WITNESS WHEREOF, the parties have hereunto subscribed their names this _____ day of _____, 20__.

TOWN OF GILBERT:

By: _____
Mayor

CONTRACTOR:

By: Karina Lindberg
Title: ACCOUNT Rep

ATTEST:

Lisa Maxwell
Town Clerk

APPROVED AS TO FORM:

Christopher W. Payne
Town Attorney

EXHIBIT A
CONTRACT OF OTHER GOVERNMENTAL ENTITY

See attached

SERIAL 180249 C TRAFFIC SIGNAL HEADS & COMPONENTS

DATE OF LAST REVISION: December 21, 2018 CONTRACT END DATE: June 30, 2020

CONTRACT PERIOD THROUGH JUNE 30, 2020

TO: All Departments
FROM: Office of Procurement Services
SUBJECT: Contract for TRAFFIC SIGNAL HEADS & COMPONENTS

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **June 21, 2018 (Eff. 07/01/18)**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.



Kevin Tyne, Chief Procurement Officer
Office of Procurement Services

BG/rmm
Attach

Copy to: **Office of Procurement Services**
Suzi Williams, MCDOT
Brian Ball, MCDOT

(Please remove Serial 12021-C from your contract notebook)

WESCO DISTRIBUTION DBA: BROWN WHOLESALE, 3425 E VAN BUREN 140, PHOENIX, AZ 85008

SERIAL 180249-C	WESCO DISTRIBUTION
NIGP CODE: 550-88	VC0000002409
RESPONDENT'S NAME:	3425 E VAN BUREN #140
COUNTY VENDOR NUMBER :	PHOENIX AZ 85008
ADDRESS:	3425 E VAN BUREN #140, PHOENIX AZ 85008
P.O. ADDRESS:	602-275-8521
TELEPHONE NUMBER:	602-275-9632
FACSIMILE NUMBER:	www.wesco.com
WEB SITE:	Laura Sundberg
CONTACT (REPRESENTATIVE):	lsundberg@wesco.com
REPRESENTATIVE'S E-MAIL ADDRESS:	

YES NO

WILL ALLOW OTHER GOVERNMENTAL ENTITIES TO PURCHASE FROM THIS CONTRACT [X] []

[X] NET 30 DAYS

ANNUAL QUANTITIES

	Title	Unit Price	Qty	UofM	Bidder Notes
1	48 or More Traffic Signal Heads Type "F"	\$379.00	48	each	Manufacturer Name: MCCAIN /DIALIGHT Model Number: F/II
2	12 or More Traffic Signal Heads Type "G"	\$504.00	12	each	Manufacturer Name: MCCAIN/DIALIGHT Model Number: G/II
3	16 or More Traffic Signal Heads Type "G"	\$407.00	16	each	Manufacturer Name: MCCAIN/DIALIGHT Model Number: G no mount
4	16 or More Traffic Signal Heads Type "R"	\$382.00	16	each	Manufacturer Name: MCCAIN/DIALIGHT Model Number: R/II
5	96 or More Traffic Signal Heads Type "F"	\$286.00	96	each	Manufacturer Name: MCCAIN/DIALIGHT Model Number: F no mount
6	16 or More Traffic Signal Heads Type "Q"	\$564.00	16	each	Manufacturer Name: MCCAIN/DIALIGHT Model Number: Q/II
7	32 or More Traffic Signal Heads Type "Q"	\$471.00	32	each	Manufacturer Name: MCCAIN/DIALIGHT Model Number: Q no mount
8	32 or More Traffic Signal Heads Type "R"	\$289.00	32	each	Manufacturer Name: MCCAIN/DIALIGHT Model Number: R no mount
9	48 or More Pedestrian Signal Heads	\$213.00	48	each	Manufacturer Name: MCCAIN/DIALIGHT Model Number: Ped #430-6479-001X-no mount

WESCO DISTRIBUTION DBA: BROWN WHOLESALE

	Title	Unit Price	Qty	UofM	Bidder Notes
10	24 or More LED Roadway Lighting Fixtures	\$240.00	24	each	Manufacturer Name: GE Model Number: ERLH007XXXXAXXXLR SPECIFY DISTRIBUTION, CCT, AND COLOR
11	24 or More LED Roadway Lighting Fixtures	\$340.00	24	each	Manufacturer Name: GE Model Number: ERLH011XXXXAXXXLR SPECIFY DISTRIBUTION, CCT, AND COLOR
12	10 or More Battery Backup/Service Cabinets	\$7,850.00	10	each	Manufacturer Name: TESCO Model Number: 27/22-000BBS
13	Cooper #NVN-AE-02-EUT3R-10K-700-HA-AP	\$379.00	1	each	Updated part#NVN-AF-02-E-U-SL3-10K-600-HA-AP
14	Cooper #NVN-AE-03-EUT3R-10K-HA-AP	\$466.00	1	each	Updated part#NVN-AF-03-E-U-T3R-10K-800-HA-AP
15	Cooper #NVN-AE-03-EUT3R-10K-700-4-HA-AP	\$379.00	1	each	Updated part #NVN-AF-02-E-U-T3R-10K-800-HA-AP
16	Cooper #VERD-A028-EUT3R-10K-HA-AP	\$251.00	1	each	Updated part #: VERD-C028-D-U-T3-10K-HA-AP
17	Cooper #VERD-A02-EUT3R-10K-HA-AP	\$251.00	1	each	Updated part #: VERD-C028-D-U-T3-10K-HA-AP
18	Cooper OVH-E03-LED-E-V-SL3-AP	\$507.00	1	each	Updated part #: OVH-E03-LED-E-U-SL3-AP
19	Cooper OVH-E04-LED-E-V-SL3-AP	\$594.00	1	each	Updated part #: OVH-E04-LED-E-U-SL3-AP
20	TESCO MODEL #22-000BBS	\$4,890.00	1	each	TESCO STAND ALONE BBS
21	GE Luminaries	\$189.00	1	each	Manufacturer Name: GE Model Number: ERL1004XXXXAXXXLR SPECIFY DISTRIBUTION, CCT, AND COLOR
22	GE Luminaries	\$372.00	1	each	Manufacturer Name: GE Model Number: ERLH013XXXXAXXXLR SPECIFY DISTRIBUTION, CCT, AND COLOR
23	GE Luminaries	\$377.00	1	each	Manufacturer Name: GE Model Number: ERLH014XXXXAXXXLR SPECIFY DISTRIBUTION, CCT, AND COLOR

WESCO DISTRIBUTION DBA: BROWN WHOLESALE

	Title	Unit Price	Qty	UofM	Bidder Notes
24	GE Luminaries	\$202.00	1	each	Manufacturer Name: GE Model Number: ERL1005XXXXAXXXLR SPECIFY DISTRIBUTION, CCT, AND COLOR
25	GE Luminaries	\$214.00	1	each	Manufacturer Name: GE Model Number: ERL1006XXXXAXXXLR CONFIRM DISTRIBUTION, CCT, AND COLOR
26	GE Luminaries	\$390.00	1	each	Manufacturer Name: GE Model Number: ERLH015XXXXAXXXLR CONFIRM DISTRIBUTION, CCT, AND COLOR
27	GE Luminaries	\$422.00	1	each	Manufacturer Name: GE Model Number: ERL2016XXXXAXXXLR CONFIRM DISTRIBUTION, CCT, AND COLOR
28	GE Luminaries	\$435.00	1	each	Manufacturer Name: GE Model Number: ERL2018XXXXAXXXLR CONFIRM DISTRIBUTION, CCT, AND COLOR
29	GE Luminaries	\$516.00	1	each	Manufacturer Name: GE Model Number: ERL2023XXXXAXXXLR CONFIRM DISTRIBUTION, CCT, AND COLOR
30	GE Luminaries	\$340.00	1	each	Manufacturer Name: GE Model Number: ERLH011XXXXAXXXLR CONFIRM DISTRIBUTION, CCT, AND COLOR
31	GE Luminaries	\$240.00	1	each	Manufacturer Name: GE Model Number: ERL1007XXXXAXXXLR CONFIRM DISTRIBUTION, CCT, AND COLOR
32	GE Luminaries	\$465.00	1	each	Manufacturer Name: GE Model Number: ERL2021XXXXAXXXLR CONFIRM DISTRIBUTION, CCT, AND COLOR
33	GE Luminaries	\$252.00	1	each	Manufacturer Name: GE Model Number: ERL1008XXXXAXXXLR CONFIRM DISTRIBUTION, CCT, AND COLOR

WESCO DISTRIBUTION DBA: BROWN WHOLESALE

	Title	Unit Price	Qty	UofM	Bidder Notes
34	GE Luminaries	\$321.00	1	each	Manufacturer Name: GE Model Number: ERLH010XXXXXXXLR CONFIRM DISTRIBUTION, CCT, AND COLOR

Effective 12-14-18

	Title	Unit Price	Qty	UofM	Bidder Notes
35	Philips Lighting RFM-72W32LED-4K-G2-R3M	\$172.22	1	each	RoadFocus LED Cobra Head – Medium (RFM), 32 LED's 4000K CCT, Type R3M OPT C, (2) LEDgine ARRAY(s) Driven at 700mA
36	Philips Lighting RFM-90W40LED-4K-G2-R3M	177.78	1	each	RoadFocus LED Cobra Head – Medium (RFM), 40 LED's 4000K CCT, Type R3M OPT C, (3) LEDgine ARRAY(s) Driven at 700mA

Title	Qty	UofM	Bidder Notes
Delivery Days	1	day	SIGNALS 55-65 DAYS FLXTURES: 6-8 WEEKS TESCO: 6-8 WEEKS Bidder Notes SIGNAL HOUSINGS-WARRANTY ATTACHED LED'S-60 MONTHS FROM DATE OF MFG FIXTURES: WARRANTY ATTACHED TESCO: 1 YEAR

Title	Qty	UofM	Bidder Notes
Warranty	1	year	SIGNAL HOUSINGS-WARRANTY ATTACHED LED'S-60 MONTHS FROM DATE OF MFG FIXTURES: WARRANTY ATTACHED TESCO: 1 YEAR

Title	Unit Price	Qty	UofM	Bidder Notes
Blanket Discount for Related Supplies	1.00%	1	blanket	TESCO GE LIGHTING ECONOLITE DIALIGHT VALMONT CEMTEC NEWBASIS BOXES OLDCASTLE BOXES ARMORCAST BOXES MR STEEL BOXES MYERS MCCAIN TRASTAR EATON SOUTHERN MANUFACTURING

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WESCO DISTRIBUTION DBA: BROWN WHOLESALE

PRICING SHEET: NIGP CODE 55088,55089, 45006

Terms: NET 30

Vendor Number: VC0000002409

Certificates of Insurance Required

Contract Period: To cover the period ending **June 30, 2020**.

TRAFFIC SIGNAL HEADS & COMPONENTS**1.0 INTENT:**

The intent of this invitation for bids is to establish a contract for Traffic Signal Heads & Components as specifically listed herein, in addition to a blanket discount for related supplies as covered by a current pricing list(s). The quantities estimated in these specifications are for reference only; the County reserves the right to adjust the quantities to meet its needs. This is a requirements contract and the County will purchase the materials described herein on an as required basis over the period of the contract. Material ordered shall be delivered to the Maricopa County Department of Transportation, 2222 S. 27th Ave., Phoenix, Arizona as covered by a purchase order only.

Other governmental entities under agreement with the County may have access to services provided hereunder (see also Sections 3.20 and 3.21, below).

The County reserves the right to add additional contractors, at the County's sole discretion, in cases where the currently listed contractors are of an insufficient number or skill-set to satisfy the County's needs or to ensure adequate competition on any project or task order work.

2.0 SPECIFICATIONS:**2.1 TRAFFIC SIGNAL HEAD:****2.1.1 DESCRIPTION:**

Vehicular traffic signal heads shall be assembled of standard 12-inch lens size signal sections with the number of sections or combination of sections specified on the signal plan, the Traffic Signal Standard Drawings Number 4773, 4778-1, and 4778-2 found in the Maricopa County Department of Transportation, Traffic Signal and Intersection Lighting Standard Specifications and Traffic Signal and Highway Lighting Standard Detail Drawings, current edition and the requirements of the Manual on Uniform Traffic Control Devices. The optical performance and design of signal heads shall conform to the requirements of the Institute of Transportation Engineers Standards for Vehicular Traffic Control Signal Heads and the provisions of these specifications.

2.1.2 STANDARD SIGNAL SECTION:**2.1.2.1 Housing:**

2.1.2.2 A standard 12-inch signal section shall be a one-piece housing with hinged door for housing all optical and electrical components.

2.1.2.3 Both the one-piece signal section housing and door shall be fabricated of corrosive resistant die cast aluminum conforming to Institute of Transportation Engineers Standards. The top and bottom of the housing shall have openings to accommodate standard 1 1/2-inch pipe size fitting. Each opening shall have a locking "Shurlock" boss, or equal, integrally cast into the housing section. The housing door shall be hinged to the signal section housing by stainless steel roll pins and hinge lugs integrally cast on the left side of the door and housing. Latch jaws shall be cast on the right side of each door.

2.1.2.4 A corrosion resistant latch screws and wing nuts on the right side of the housing shall provide for opening and closing of the door (12-inch sections require two latching bolts). A gasket groove on the inside of the door shall accommodate a neoprene gasket to form a positive seal between the door and signal housing when the door is closed and latched. Four quick-change type lens clips and four stainless steel screws shall be provided for securing the lens and lens gasket in the door lens opening. Four stainless steel washer head-type screws shall be provided to secure the signal visor. Signal section housings shall be fastened together by two-

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cadmium cloverleaf style plated clamping washers and three carriage bolts and lock washers. Each complete signal head assembly shall be predrilled to accommodate 10/32 stainless steel self-tapping screws for mounting of signal back-plate

2.1.2.5 All signal sections and visors shall be painted gloss black. The inside of the visor shall be painted luster-less black.

2.1.3 VISORS:

2.1.3.1 Each signal section shall have a tunnel type visor with a 5-7 degree downward tilt provided.

2.1.3.2 Unless otherwise specified, 12-inch signal sections shall be furnished with 9 ½ - 12-inch long visors. All visors shall have twist on attaching ears and shall be secured to the face of the signal door with stainless steel washer head type machine screws.

2.1.4 BACKPLATES:

Backplates and backplate mounting hardware shall be furnished with each vehicular signal head assembly. The back plate shall be fabricated of anodized sheet aluminum. Five (5) inch border louvered back plates shall be provided for twelve (12) inch signal head assemblies. All back plates shall be painted dull black.

2.1.5 ELEVATOR PLUMBIZER:

An elevator plumbizer conforming to the requirements of the Traffic Signal Standard Drawings Number 4778-1 & 4778-2 shall be installed in all 12-inch signal heads. The plumbizer elongated through bolt-hole shall be positioned to align with the signal pole mast arm bolt hole (drilled 2-1/2 inches from the end of the mast arm. The plumbizer signal head mounting position shall be in accordance with the requirements of the Traffic Signal Standard Drawings Number 4773.

2.1.6 LED MODULE:

2.1.6.1 LED traffic signal modules shall be designed to fit traffic signal housings that meet MCDOT specifications. The module shall be weather tight and shall fit securely in the housing and shall have wire leads long enough for easy connection to the traffic signal head wire terminal block. The wire shall have crimped-on terminal connectors. The LED signal module shall be a single, self-contained device. The power supply shall be integral to the sealed LED module.

2.1.6.2 The Contractor shall ensure that the date of installation is filled in on the module label on each LED module. Multiple color modules are not permitted.

2.1.6.3 The LED lamp unit shall be a single self-contained device, not requiring on-site assembly for installation. The assembly and manufacturing process for LED Traffic Signal Lamp unit assembly shall be such as to withstand mechanical shock and vibration caused by winds up to 80 mph. Signal lens shall be convex to minimize sunlight reflectance.

2.1.6.4 The LED shall be manufactured using AlInGaP Technology or equal with low susceptibility to temperature degradation (AlGaS LEDs will not be allowed). The LED signal lamps will be provided in 3 colors: red, yellow and green.

2.1.6.5 Each LED traffic signal lamp shall meet the minimum laboratory light intensity values, color (chromatically), and light output distribution per current ITE

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Standards. Each LED traffic signal lamp shall meet the minimum requirements for light output for the entire range of allowed voltage.

- 2.1.6.6 Each unit shall incorporate a regulated power supply engineered to electrically protect the LEDs and maintain a safe and reliable operation. The power supply shall provide capacitor filtered DC regulated current to the LEDs per the LEDs manufacturer's specification. MCDOT does not require the unit be dimmable.
- 2.1.6.7 The LED traffic signal lamp shall operate on a 60Hz AC line voltage ranging from 80 volts RMS to 135 volts RMS. The circuitry shall prevent flickering over this voltage range. Nominal rated voltage for all measurements shall be 117 volts RMS.
- 2.1.6.8 The LED traffic signal lamp unit shall be operationally compatible with controllers and conflict monitors used by MCDOT.
- 2.1.6.9 The LED lamp units shall contain a disconnect that will show an open switch to the conflict monitor when less than 60% of the LEDs in the unit are operational.
- 2.1.6.10 Two captive, color coded, 3 feet long, 600 V, 18 AWG minimum jacketed wires, conforming to the NEC, rated for service at 105° C, are to be provided for an electrical connection.
- 2.1.6.11 One Schematic diagram shall be provided for each LED lamp unit along with any necessary installation instructions. The LED shall operate with a minimum 0.90 power factor. Total harmonic distortion (current and voltage) induced into an AC power line by a signal module shall not exceed 20 percent.
- 2.1.6.12 LED modules shall have female quick-disconnect type terminals.
- 2.1.6.13 Pedestrian signal modules shall be count-down per current ITE standard.

2.1.7 PEDESTRIAN SIGNAL HEAD:

- 2.1.7.1 Pedestrian signal heads shall be manufactured from aluminum, painted gloss black.
- 2.1.7.2 Heads shall be 16 inch housing (15.8"H x17.4"W x7.3"D).
- 2.1.7.3 Doors shall be constructed of aluminum and shall be attached with 2 each stainless steel pins (detent style clevis or roll).
- 2.1.7.4 Terminal block shall be mounted in the rear of the housing and shall have quick-disconnect male terminals on one side and screw clamps on the other side.
- 2.1.7.5 Pedestrian heads shall have an egg-crate style visor mounted to the front of the door.
- 2.1.7.6 Each opening shall have a locking "Shurlock" boss, or equal, integrally cast into the housing section.

2.1.8 BBS METERED SERVICE PEDESTAL:

- 2.1.8.1 Exterior 1/8" aluminum and interior panels 14 gauge cold rolled steel electrically welded and reinforced where needed to keep the cabinet corrosion free and watertight and secure on the foundation.
- 2.1.8.2 Construction shall be NEMA 3R, Rain tight.

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- 2.1.8.3 All nuts, bolts and screws shall be stainless steel.
 - 2.1.8.4 Nuts, Bolts & screws shall not be visible from outside of enclosure.
 - 2.1.8.5 Nameplates shall be mounted to the door under each breaker noting the circuit to be fed by the breaker.
 - 2.1.8.6 Control wiring shall be marked at both ends by permanent wire markers.
 - 2.1.8.7 A plastic covered wiring diagram shall be attached to the inside of the front door.
 - 2.1.8.8 Enclosure shall be factory wired and conform to required NEMA standards.
 - 2.1.8.9 Cabinet shall meet current EUERC requirements.
 - 2.1.8.10 Battery system shall be hot-swap, parallel wired.
 - 2.1.8.11 Cabinet shall fit on existing BBS foundations, as shown in MCDOT Standard Detail # 4724, without modification to conduit or bolt pattern.
- 2.1.9 LED ROADWAY LIGHTING:
- 2.1.9.1 Fixtures shall be horizontal, Type III, and shall conform to Illumination Engineering Society Standards.
 - 2.1.9.2 The fixture shall be fabricated from a corrosive resistant metal and shall have a baked-on grey enamel finish. Mounting shall be done with an internal 2 bolt slip fitter at the rear of the fixture capable of attachment to a 2" ID pipe.
 - 2.1.9.3 Fixtures shall be wired for use with no photo cell and shall be energized from a remote cabinet mounted PEC.
 - 2.1.9.4 Fixtures shall have a color temperature of 4000K at an ambient temperature of 25 degrees Celsius.
 - 2.1.9.5 Fixtures shall have an average illumence of 1.4 foot candles at amounting height of 30 feet and a range from 6 to 2.0 foot candles in the illuminated zone.
 - 2.1.9.6 Fixture shall have backlight control to restrict illumination at the rear.
 - 2.1.9.7 Fixture shall be capable of operating at sustained ambient temperatures of up to 100 degrees Fahrenheit at a minimum 70% lumen output.
- 2.2 Fixtures shall operate at a range of 120-240VAC and field wiring shall be accessible without removal of the LED array.
- 2.3 TECHNICAL AND DESCRIPTIVE SALES LITERATURE:
- The Contractor shall provide copies of its sales literature and brochures and copies of any manufacturer's technical and/or descriptive literature regarding the material(s) the Contractor proposes to provide. Literature shall be sufficient in detail to allow for full and fair evaluation of the material(s) submitted, and must be included with the bid. Failure to include this information may result in the bid being rejected.

3.0 PURCHASING REQUIREMENTS:

3.1 DELIVERY:

3.1.1 Delivery is desired as soon as possible, and shall be stipulated on the Purchase Order. Contractor shall notify County Representative listed on the order if the requested delivery date cannot be met and the anticipated lead time. Failure to communicate to County changes in the order status may result in default proceedings.

3.1.2 Supplies or equipment shall be delivered between the hours of 8:00am and 5:00pm, Monday through Friday, except on State recognized holidays.

3.1.3 Delivery shall be F.O.B, Destination Freight Prepaid.

3.2 EXPEDITED DELIVERY:

3.2.1 If the Department determines that expedited delivery or other alternate shipping is required, it shall notify the Contractor. The Contractor shall determine any additional costs associated with such delivery terms and communicate that cost to the Department.

3.2.2 The Department shall not advise the Contractor to proceed with an expedited shipment until acceptable terms are agreed upon and a purchase order is issued. Upon agreeing to the additional costs, the Department shall advise the Contractor to proceed.

3.2.3 Upon receipt of material(s) and invoicing, the Department shall ensure that any additional charges are in compliance with and do not exceed agreed to costs. The Department shall retain all documents related to these costs within the agency purchase file.

3.3 SHIPPING DOCUMENTS:

A packing list or other suitable shipping document shall accompany each shipment and shall include the following:

3.3.1 Contract Serial number.

3.3.2 Contractor's name and address.

3.3.3 Department name and address.

3.3.4 Department purchase order number.

3.3.5 A description of product(s) shipped, including item number(s), quantity(ies), number of containers and package number(s), as applicable.

3.4 SHIPPING TERMS:

Bid price(s) and terms shall be F.O.B, Destination Freight Prepaid at the location(s) stipulated on the Purchase Order. All delivery locations are within Maricopa County.

3.5 OPERATING MANUALS:

Upon delivery, Contractor shall provide comprehensive operational manuals, service manuals and schematic diagrams, if required by the Department.

3.6 SAMPLES:

The Contractor may be requested to furnish samples of material(s) bid for examination by the County. Any materials so requested shall be furnished within ten (10) working days from the date

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of request and furnished at no cost to the County and sent to the address designated in the requesting correspondence.

3.7 TESTING:

Unless otherwise specified, materials purchased will be inspected by the Department to ensure the materials meet the quality and quantity requirements of the Specifications. When deemed necessary by the County, samples of the materials may be taken at random from stock received for submission to a commercial laboratory or other appropriate agency for analysis and tests as to whether the materials conform in all respects to the Specifications. In cases where commercial laboratory reports determine that the materials do not meet the Specifications, the expense of such analysis shall be borne by the Contractor.

3.8 ACCEPTANCE:

Upon delivery, the material(s) shall be deemed accepted and the warranty period shall begin. All documentation shall be completed prior to final acceptance.

3.9 STOCK:

The Contractor shall be expected to stock locally, sufficient quantities as may be necessary to meet the County's needs.

3.10 WARRANTY:

3.10.1 All items furnished under this Contract shall conform to the requirements of this Contract and shall be free from defects in design, materials and workmanship.

3.10.2 The warranty period for workmanship and materials shall be for an initial period of twelve (12) months and commence upon acceptance by County.

3.10.2.1 The Contractor shall indicate on the Price Sheet the duration of the warranty and any applicable limitations or conditions which may apply.

3.10.2.2 The Contractor agrees that it will, at its own expense, provide all labor and parts required to remove, repair or replace, and reinstall any such defective workmanship and/or materials which becomes or is found to be defective during the term of this warranty. The Contractor shall guarantee the equipment to be supplied complies with all applicable regulations.

3.11 BRAND NAME:

The County reserves the right to request samples to determine quality and acceptability of materials bid by Contractor. In some cases, brand names have been listed in order to define the desired quality and are not intended to be restrictive or to limit competition. Materials substantially equivalent to those designated shall qualify for consideration.

3.12 MODEL / YEAR OF MATERIALS:

The County will only accept bids offering current model / year equipment / material(s).

3.13 ORDER LEAD-TIME NOTIFICATION:

Contractors submitting bids shall advise the County of lead-time(s) for the required items specified in this solicitation at the time of bid submission. Notification of any changes to lead time (learned after submission of bid) shall also be the Contractor's responsibility. The Contractor shall also notify all County Representatives included on Purchase Orders of lead-time information. If the item(s) become no longer available, Contractor shall notify County of the last available ordering date for the item(s), and may provide County with alternative item(s) that the County

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may elect to purchase at its option. If the alternative item(s) do not meet the County's requirements, County may terminate this Contract for Convenience per Section 4.13.

3.14 USAGE REPORT:

The Contractor shall furnish the County a usage report, upon request, delineating the acquisition activity governed by the Contract. The format of the report shall be approved by the County and shall disclose the quantity and dollar value of each contract item by individual unit.

3.15 BACKGROUND CHECK:

Bidders/proposers need to be aware that there may be multiple background checks (Sheriff's Office, County Attorney's Office, Courts as well as Maricopa County general government) to determine if the respondent is acceptable to do business with the County. This applies to (but is not limited to) the company, subcontractors and employees and the failure to pass these checks shall deem the respondent non-responsible.

3.16 INVOICES AND PAYMENTS:

3.16.1 The Contractor shall submit one (1) legible copy of their detailed invoice before payment(s) will be made. Incomplete invoices will not be processed. At a minimum, the invoice must provide the following information:

- Company name, address and contact
- County bill-to name and contact information
- Contract Serial Number
- County purchase order number
- Invoice number and date
- Payment terms
- Date of service or delivery
- Quantity (number of days or weeks)
- Contract Item number(s)
- Description of Purchase (product or services)
- Pricing per unit of purchase
- Freight (if applicable)
- Extended price
- Total Amount Due

3.16.2 Problems regarding billing or invoicing shall be directed to the Department as listed on the Purchase Order.

3.16.3 Payment shall only be made to the Contractor by Accounts Payable through the Maricopa County Vendor Express Payment Program. This is an Electronic Funds Transfer (EFT) process. After Contract Award the Contractor shall complete the Vendor Registration Form located on the County Department of Finance Vendor Registration Web Site (<http://www.maricopa.gov/922/Vendors>).

3.16.4 Discounts offered in the contract shall be calculated based on the date a properly completed invoice is received by the County.

3.16.5 EFT payments to the routing and account numbers designated by the Contractor will include the details on the specific invoices that the payment covers. The Contractor is required to discuss remittance delivery capabilities with their designated financial institution for access to those details.

3.17 APPLICABLE TAXES:

3.17.1 Payment of Taxes: The Contractor shall pay all applicable taxes. With respect to any installation labor on items that are not attached to real property performed by Contractor

under the terms of this Contract, the installation labor cost and the gross receipts for materials provided shall be listed separately on the Contractor's invoices.

3.17.2 State and Local Transaction Privilege Taxes: To the extent any State and local transaction privilege taxes apply to sales made under the terms of this contract it is the responsibility of the seller to collect and remit all applicable taxes to the proper taxing jurisdiction of authority.

3.17.3 Tax Indemnification: Contractor and all subcontractors shall pay all Federal, State, and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold Maricopa County harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or State and local laws and regulations, and any other costs including; transaction privilege taxes, unemployment compensation insurance, Social Security, and Worker's Compensation.

3.18 TAX (COMMODITIES):

Tax shall not be invoiced against Contractor's labor. It is the responsibility of the Contractor to determine any and all applicable taxes and include the tax percentage in their proposal.

3.19 POST AWARD MEETING:

The Contractor may be required to attend a post-award meeting with the Department to discuss the terms and conditions of this Contract. This meeting will be coordinated by the Procurement Officer of the Contract.

3.20 STRATEGIC ALLIANCE for VOLUME EXPENDITURES (\$AVE):

The County is a member of the \$AVE cooperative purchasing group. \$AVE includes the State of Arizona, many Phoenix metropolitan area municipalities, and many K-12 unified school districts. Under the \$AVE Cooperative Purchasing Agreement, and with the concurrence of the successful Respondent under this solicitation, a member of \$AVE may access a contract resulting from a solicitation issued by the County. If you do not want to grant such access to a member of \$AVE, please state so in your bid. In the absence of a statement to the contrary, the County will assume that you do wish to grant access to any contract that may result from this bid.

3.21 INTERGOVERNMENTAL COOPERATIVE PURCHASING AGREEMENTS (ICPA's):

County currently holds ICPA's with numerous governmental entities. These agreements allow those entities, with the approval of the Contractor, to purchase their requirements under the terms and conditions of the County Contract. It is the responsibility of the non-County government entity to perform its own due diligence on the acceptability of the Contract under its procurement rules, processes and procedures.

4.0 CONTRACTUAL TERMS & CONDITIONS:

4.1 CONTRACT TERM:

This Invitation for Bid is for awarding a firm, fixed-price purchasing contract to cover a term of two (2) years.

4.2 OPTION TO RENEW:

The County may, at its option and with the concurrence of the Contractor, renew the term of this Contract up to a maximum of three (3) additional years, (or at the County's sole discretion, extend the contract on a month to month basis for a maximum of six (6) months after expiration). The Contractor shall be notified in writing by the Office of Procurement Services of the County's

intention to renew the contract term at least sixty (60) calendar days prior to the expiration of the original contract term.

4.3 CONTRACT COMPLETION:

The Contractor shall make all reasonable efforts for an orderly transition of its duties and responsibilities to another provider and/or to the County. This may include, but is not limited to preparation of a transition plan and cooperation with the County or other providers in the transition. The transition includes the transfer of all records, and other data in the possession, custody or control of Contractor required to be provided to the County either by the terms of this agreement or as a matter of law. The provisions of this clause shall survive the expiration or termination of this agreement.

4.4 PRICE ADJUSTMENTS:

Any requests for reasonable price adjustments must be submitted sixty (60) calendar days prior to the Contract annual anniversary date. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. The reasonableness of the request will be determined by comparing the request with the Consumer Price Index or by performing a market survey. If County agrees to the adjusted price terms, County shall issue written approval of the change and provide an updated version of the Contract. The new change shall not be in effect until the date stipulated on the Contract.

4.5 INDEMNIFICATION:

To the fullest extent permitted by law, and to the extent that claims, damages, losses or expenses are not covered and paid by insurance purchased by the Contractor, the Contractor shall defend indemnify and hold harmless the County (as Owner), its agents, representatives, agents, officers, directors, officials, and employees from and against all claims, damages, losses, and expenses (including, but not limited to attorneys' fees, court costs, expert witness fees, and the costs and attorneys' fees for appellate proceedings) arising out of, or alleged to have resulted from the negligent acts, errors, omissions, or mistakes relating to the performance of this Contract.

Contractor's duty to defend, indemnify, and hold harmless the County, its agents, representatives, agents, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss, or expense that is attributable to bodily injury, sickness, disease, death or injury to, impairment of, or destruction of tangible property, including loss of use resulting there from, caused by negligent acts, errors, omissions, or mistakes in the performance of this Contract, but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, any one directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this section.

The scope of this indemnification does not extend to the sole negligence of County.

4.6 INSURANCE:

4.6.1 Contractor, at Contractor's own expense, shall purchase and maintain the herein stipulated minimum insurance from a company or companies duly licensed by the State of Arizona and possessing a current A.M. Best, Inc. rating of B++. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies, which are authorized to do business in the State of Arizona, provided that said insurance companies meet the approval of County. The form of any insurance policies and forms must be acceptable to County.

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- 4.6.2 All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of County, constitute a material breach of this Contract.
- 4.6.3 Contractor's insurance shall be primary insurance as respects County, and any insurance or self-insurance maintained by County shall not contribute to it.
- 4.6.4 Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect the County's right to coverage afforded under the insurance policies.
- 4.6.5 The insurance policies may provide coverage that contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to County under such policies. Contractor shall be solely responsible for the deductible and/or self-insured retention and County, at its option, may require Contractor to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.
- 4.6.6 The insurance policies required by this Contract, except Workers' Compensation and Errors and Omissions, shall name County, its agents, representatives, officers, directors, officials and employees as Additional Insureds.
- 4.6.7 The policies required hereunder, except Workers' Compensation and Errors and Omissions, shall contain a waiver of transfer of rights of recovery (subrogation) against County, its agents, representatives, officers, directors, officials and employees for any claims arising out of Contractor's work or service.
- 4.6.8 Commercial General Liability:
Commercial General Liability insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than \$2,000,000 for each occurrence, \$4,000,000 Products/Completed Operations Aggregate, and \$4,000,000 General Aggregate Limit. The policy shall include coverage for premises liability, bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage, and shall not contain any provisions which would serve to limit third party action over claims. There shall be no endorsement or modifications of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.
- 4.6.9 Automobile Liability:
Commercial/Business Automobile Liability insurance and, if necessary, Commercial Umbrella insurance with a combined single limit for bodily injury and property damage of not less than \$2,000,000 each occurrence with respect to any of the Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work or services or use or maintenance of the premises under this Contract.
- 4.6.10 Workers' Compensation:
Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services under this Contract; and Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.

Contractor, its contractors and its subcontractors waive all rights against Contract and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or

commercial umbrella liability insurance obtained by Contractor, its contractors and its subcontractors pursuant to this Contract.

4.6.11 Certificates of Insurance:

4.6.11.1 Prior to Contract Award, Contractor shall furnish the County with valid and complete certificates of insurance, or formal endorsements as required by the Contract in the form provided by the County, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect. Such certificates shall identify this contract number and title.

4.6.11.2 In the event any insurance policy(ies) required by this Contract is(are) written on a claims made basis, coverage shall extend for two (2) years past completion and acceptance of Contractor's work or services and as evidenced by annual Certificates of Insurance.

4.6.11.3 If a policy does expire during the life of the Contract, a renewal certificate must be sent to County fifteen (15) calendar days prior to the expiration date.

4.6.12 Cancellation and Expiration Notice:

Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to Maricopa County. Contractor must provide to Maricopa County, within two (2) business days of receipt, if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to Maricopa County Office of Procurement Services and shall be mailed or hand delivered to 320 West Lincoln Street, Phoenix, AZ 85003, or emailed to the Procurement Officer noted in the solicitation.

4.7 FORCE MAJEURE:

4.7.1 Neither party shall be liable for failure of performance, nor incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Contract if such delay or failure is caused by events, occurrences, or causes beyond the reasonable control and without negligence of the parties. Such events, occurrences, or causes will include Acts of God/Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, riots, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, lockout, blockage, embargo, labor dispute, strike, interruption or failure of electricity or telecommunication service.

4.7.2 Each party, as applicable, shall give the other party notice of its inability to perform and particulars in reasonable detail of the cause of the inability. Each party must use best efforts to remedy the situation and remove, as soon as practicable, the cause of its inability to perform or comply.

4.7.3 The party asserting *Force Majeure* as a cause for non-performance shall have the burden of proving that reasonable steps were taken to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other party was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated.

4.7.4 The County shall reserve the right to terminate this Contract and/or any applicable order or contract release purchase order upon non-performance by Contractor. The County shall reserve the right to extend the Contract and time for performance at its discretion.

4.8 ORDERING AUTHORITY:

Any request for purchase shall be accompanied by a valid purchase order, issued by Office of Procurement Services, a Purchase Order issued by the using Department or direction by a Certified Agency Procurement Aid (CAPA) with a Purchase Card for payment.

4.9 NO MINIMUM OR MAXIMUM PURCHASE OBLIGATION:

4.9.1 This Contract does not guarantee any minimum or maximum purchases will be made. Orders will only be placed under this Contract when the County identifies a need and proper authorization and documentation have been approved.

4.9.2 Contractors agree to accept verbal notification of cancellation of Purchase Orders from the County Procurement Officer with written notification to follow. Contractor specifically acknowledges to be bound by this cancellation policy.

4.10 PURCHASE ORDERS:

County reserves the right to cancel Purchase Orders within a reasonable period of time after issuance. Should a Purchase Order be canceled, the County agrees to reimburse the Contractor for actual and documentable costs incurred by the Contractor in response to the Purchase Order. The County will not reimburse the Contractor for any costs incurred after receipt of County notice of cancellation, or for lost profits, shipment of product prior to issuance of Purchase Order, etc.

4.11 SUSPENSION OF WORK:

The Procurement Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Procurement Officer determines appropriate for the convenience of the County. No adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor. No request for adjustment under this clause shall be granted unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

4.12 STOP WORK ORDER:

The Procurement Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of ninety (90) calendar days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) calendar days after a stop work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Procurement Officer shall either:

4.12.1 Cancel the stop work order; or

4.12.2 Terminate the work covered by the order as provided in the Default, or the Termination for Convenience clause of this Contract.

The Procurement Officer may make an equitable adjustment in the delivery schedule and/or Contract price, or otherwise, and the Contract shall be modified, in writing, accordingly, if the Contractor demonstrates that the stop work order resulted in an increase in costs to the Contractor.

4.13 TERMINATION FOR CONVENIENCE:

Maricopa County may terminate the resultant Contract for convenience by providing sixty (60) calendar days advance notice to the Contractor.

4.14 TERMINATION FOR DEFAULT:

The County may, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to:

4.14.1 Deliver the supplies or to perform the services within the time specified in this Contract or any extension;

4.14.2 Make progress, so as to endanger performance of this Contract; or

4.14.3 Perform any of the other provisions of this Contract.

The County's right to terminate this contract under these subparagraph may be exercised if the Contractor does not cure such failure within ten (10) business days (or more if authorized in writing by the County) after receipt of the notice from the Procurement Officer specifying the failure.

4.15 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. § 38-511 the County may cancel any Contract without penalty or further obligation within three (3) years after execution of the Contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S. § 38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the County from any other party to the Contract arising as the result of the Contract.

4.16 OFFSET FOR DAMAGES:

In addition to all other remedies at Law or Equity, the County may offset from any money due to the Contractor any amounts Contractor owes to the County for damages resulting from breach or deficiencies in performance of the contract.

4.17 SUBCONTRACTING:

4.17.1 The Contractor may not assign to another Contractor or subcontract to another party for performance of the terms and conditions hereof without the written consent of the County. All correspondence authorizing subcontracting must reference the Bid Serial Number and identify the job or project.

4.17.2 The subcontractor's rate for the job shall not exceed that of the Prime Contractor's rate, as bid in the pricing section, unless the Prime Contractor is willing to absorb any higher rates. The subcontractor's invoice shall be invoiced directly to the Prime Contractor, who in turn shall pass-through the costs to the County, without mark-up. A copy of the subcontractor's invoice must accompany the Prime Contractor's invoice.

4.18 AMENDMENTS:

All amendments to this Contract shall be in writing and approved/signed by both parties. Maricopa County Office of Procurement Services shall be responsible for approving all amendments for Maricopa County.

4.19 ADDITIONS/DELETIONS OF COMMODITIES:

The County reserves the right to add and/or delete materials to a Contract. If additional materials are required from a Contract, prices for such additions will be negotiated between the Contractor and the County.

4.20 ACCESS TO AND RETENTION OF RECORDS FOR THE PURPOSE OF AUDIT AND/OR OTHER REVIEW:

4.20.1 In accordance with section MCI 371 of the Maricopa County Procurement Code the Contractor agrees to retain (physical or digital copies of) all books, records, accounts, statements, reports, files, and other records and back-up documentation relevant to this Contract for six (6) years after final payment or until after the resolution of any audit questions which could be more than six (6) years, whichever is latest. The County, Federal or State auditors and any other persons duly authorized by the Department shall have full access to and the right to examine, copy, and make use of, any and all said materials.

4.20.2 If the Contractor's books, records, accounts, statements, reports, files, and other records and back-up documentation relevant to this Contract are not sufficient to support and document that requested services were provided, the Contractor shall reimburse Maricopa County for the services not so adequately supported and documented.

4.21 AUDIT DISALLOWANCES:

If at any time it is determined by the County that a cost for which payment has been made is a disallowed cost, the County shall notify the Contractor in writing of the disallowance. The course of action to address the disallowance shall be at sole discretion of the County, and may include either an adjustment to future invoices, request for credit, request for a check or a deduction from current invoices submitted by the Contractor equal to the amount of the disallowance, or to require reimbursement forthwith of the disallowed amount by the Contractor by issuing a check payable to Maricopa County.

4.22 STRICT COMPLIANCE:

Acceptance by County of a performance that is not in strict compliance with the terms of the Contract shall not be deemed to be a waiver of strict compliance with respect to all other terms of the Contract.

4.23 VALIDITY:

The invalidity, in whole or in part, of any provision of this Contract shall not void or affect the validity of any other provision of the Contract.

4.24 SEVERABILITY:

The removal, in whole or in part, of any provision of this Contract shall not void or affect the validity of any other provision of this Contract.

4.25 RIGHTS IN DATA:

The County shall have the use of data and reports resulting from a Contract without additional cost or other restriction except as may be established by law or applicable regulation. Each Party shall supply to the other Party, upon request, any available information that is relevant to a Contract and to the performance thereunder.

4.26 RELATIONSHIPS:

- 4.26.1 In the performance of the services described herein, the Contractor shall act solely as an independent contractor, and nothing herein or implied herein shall at any time be construed as to create the relationship of employer and employee, co-employee, partnership, principal and agent, or joint venture between the County and the Contractor.
- 4.26.2 The County reserves the right of final approval on proposed staff. Also, upon request by the County, the Contractor will be required to remove any employees working on County projects and substitute personnel based on the discretion of the County within two business days, unless previously approved by the County.

4.27 NON-DISCRIMINATION:

Contractor agrees to comply with all provisions and requirements of Arizona Executive Order 2009-09 including flow down of all provisions and requirements to any subcontractors. Executive Order 2009-09 supersedes Executive order 99-4 and amends Executive order 75-5 and may be viewed and downloaded at the State of Arizona Research Library website (<http://azmemory.azlibrary.gov/cdm/singleitem/collection/execorders/id/680/rec/1>) which is hereby incorporated into this contract as if set forth in full herein. During the performance of this contract, Contractor shall not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

4.28 ISRAEL BOYCOTT:

By submitting this proposal the Contractor certifies that they are in compliance with Article 9, A.R.S. § 35-393 *et seq.*

4.29 CERTIFICATION REGARDING DEBARMENT AND SUSPENSION:

- 4.29.1 The undersigned (authorized official signing on behalf of the Contractor) certifies to the best of his or her knowledge and belief that the Contractor, its current officers and directors;
 - 4.29.1.1 are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from being awarded any contract or grant by any United States Department or Agency or any state, or local jurisdiction;
 - 4.29.1.2 have not within a three (3) year period preceding this Contract:
 - 4.29.1.2.1 been convicted of fraud or any criminal offense in connection with obtaining, attempting to obtain, or as the result of performing a government entity (Federal, State or local) transaction or contract; and
 - 4.29.1.2.2 been convicted of violation of any Federal or State antitrust statutes or conviction for embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property regarding a government entity transaction or contract;
 - 4.29.1.2.3 are not presently indicted or criminally charged by a government entity (Federal, State or local) with commission of any criminal offenses in connection with obtaining, attempting to obtain, or as the result of performing a government entity public (Federal, State or local) transaction or contract; and are not presently facing any civil charges from any governmental entity regarding obtaining, attempting to obtain, or from performing any governmental entity contract or other transaction; and have not within a three (3) year

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period preceding this Contract had any public transaction (Federal, State or local) terminated for cause or default.

- 4.29.1.2.4 If any of the above circumstances described in the paragraph are applicable to the entity submitting a bid for this requirement, include with your bid an explanation of the matter including any final resolution.
- 4.29.2 The Contractor shall include, without modification, this clause in all lower tier covered transactions (i.e. transactions with subcontractors) and in all solicitations for lower tier covered transactions related to this Contract. If this clause is applicable to a subcontractor, the Contractor shall include the information required by this clause with their bid.
- 4.30 VERIFICATION REGARDING COMPLIANCE WITH A.R.S. §41-4401 AND FEDERAL IMMIGRATION LAWS AND REGULATIONS:
- 4.30.1 By entering into the Contract, the Contractor warrants compliance with the Immigration and Nationality Act (INA using e-verify) and all other Federal immigration laws and regulations related to the immigration status of its employees and A.R.S. §23-214(A). The Contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the Immigration Reform and Control Act of 1986, as amended from time to time, for all employees performing work under the Contract and verify employee compliance using the E-verify system and shall keep a record of the verification for the duration of the employee's employment or at least three (3) years, whichever is longer. I-9 forms are available for download at USCIS.GOV.
- 4.30.2 The County retains the legal right to inspect Contractor and subcontractor employee documents performing work under this Contract to verify compliance with paragraph 4.30.1 of this Section. Contractor and subcontractor shall be given reasonable notice of the County's intent to inspect and shall make the documents available at the time and date specified. Should the County suspect or find that the Contractor or any of its subcontractors are not in compliance, the County will consider this a material breach of the contract and may pursue any and all remedies allowed by law, including, but not limited to; suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.
- 4.31 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLERBLOWER RIGHTS:
- 4.31.1 The Parties agree that this Contract and employees working on this Contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. § 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and section 3.908 of the Federal Acquisition Regulation;
- 4.31.2 Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. § 4712, as described in section 3.908 of the Federal Acquisition Regulation. Documentation of such employee notification must be kept on file by Contractor and copies provided to County upon request.
- 4.31.3 Contractor shall insert the substance of this clause, including this paragraph, in all subcontracts over the simplified acquisition threshold (\$150,000 as of September 2013).

4.32 CONTRACTOR LICENSE REQUIREMENT:

4.32.1 The Contractor shall procure all permits, insurance, licenses and pay the charges and fees necessary and incidental to the lawful conduct of his/her business, and as necessary complete any required certification requirements, required by any and all governmental or non-governmental entities as mandated to maintain compliance with and in good standing for all permits and/or licenses. The Contractor shall keep fully informed of existing and future trade or industry requirements, Federal, State and Local laws, ordinances, and regulations which in any manner affect the fulfillment of a Contract and shall comply with the same. Contractor shall immediately notify both Office of Procurement Services and the Department of any and all changes concerning permits, insurance or licenses.

4.32.2 Contractor furnishing finished products, materials or articles of merchandise that will require installation or attachment as part of the Contract, shall possess any licenses required. Contractor is not relieved of its obligation to obtain and possess the required licenses by subcontracting of the labor portion of the Contract. Contractors are advised to contact the Arizona Registrar of Contractors, Chief of Licensing, to ascertain licensing requirements for a particular contract. Contractor shall identify which license(s), if any, the Registrar of Contractors requires for performance of the Contract.

4.33 INFLUENCE:

As prescribed in MC1-1203 of the Maricopa County Procurement Code, any effort to influence an employee or agent to breach the Maricopa County Ethical Code of Conduct or any ethical conduct, may be grounds for Disbarment or Suspension under MC1-902.

An attempt to influence includes, but is not limited to:

4.33.1 A Person offering or providing a gratuity, gift, tip, present, donation, money, entertainment or educational passes or tickets, or any type of valuable contribution or subsidy,

4.33.2 That is offered or given with the intent to influence a decision, obtain a contract, garner favorable treatment, or gain favorable consideration of any kind.

If a Person attempts to influence any employee or agent of Maricopa County, the Chief Procurement Officer, or his designee, reserves the right to seek any remedy provided by the Maricopa County Procurement Code, any remedy in equity or in the law, or any remedy provided by this contract.

ABSOLUTELY NO CONTACT BETWEEN THE RESPONDENT AND ANY COUNTY PERSONNEL, OTHER THAN THE OFFICE OF PROCUREMENT SERVICES, IS ALLOWED DURING THE SOLICITATION PROCESS UNLESS THE COMMUNICATION IS IN REGARDS TO PRE-EXISTING BUSINESS WITH THE COUNTY. ANY COMMUNICATIONS REGARDING THE SOLICITATION, ITS PARTICIPANTS OR ANY DOCUMENTATION PRIOR TO THE CONTRACT AWARD MAY BE GROUNDS FOR DISMISSAL OF THE RESPONDENT FROM THE EVALUATION PROCESS.

4.34 CONFIDENTIALITY:

In the course of the solicitation process, the County may disclose information that is proprietary or confidential. By submitting a bid to the solicitation, the offeror agrees that, except as necessary to prepare a response to this solicitation, neither it nor its agents or employees will communicate, divulge or disseminate to any third-party-persons or entities, any information that is disclosed to it by the County during the course of these discussions without the express written authorization of the County. If the offeror does disclose County proprietary or confidential information to a third party in preparing a response to this solicitation, it shall require the third party to acknowledge and comply with this provision.

4.35 PUBLIC RECORDS:

Under Arizona law, all bids submitted and opened are public records and must be retained by the Records Manager at the Office of Procurement Services. Offers shall be open to public inspection and copying after Contract award and execution, except for such Bids or sections thereof determined to contain proprietary or confidential information by the Office of Procurement Services. If a Bidder believes that information in its bid or any resulting Contract should not be released in response to a public record request under Arizona law, the bidder shall indicate the specific information deemed confidential or proprietary and submit a statement with its bid detailing the reasons that the information should not be disclosed. Such reasons shall include the specific harm or prejudice which may arise from disclosure.

4.36 INTEGRATION:

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, communications, understandings, representations, or agreements, whether oral or written, express or implied.

4.37 UNIFORM ADMINISTRATIVE REQUIREMENTS:

By entering into this Contract the Contractor agrees to comply with all applicable provisions of Title 2, Subtitle A, Chapter II, PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS contained in Title 2 C.F.R. § 200 *et seq.*

4.38 GOVERNING LAW:

This Contract shall be governed by the laws of the State of Arizona. Venue for any actions or lawsuits involving this Contract will be in Maricopa County Superior Court, Phoenix, Arizona.

EXHIBIT B
SPECIFIC REQUIREMENTS/OPTIONS OF TOWN

Attached: Quote and Specifications. In accordance with Maricopa's Contract 180249C.

Notices: All notices required under the Contract shall be sent to:

Town Manager
Town of Gilbert
50 E. Civic Center Drive
Gilbert, Arizona 85296

Delivery Location: 4760 S. Greenfield Rd.
Gilbert, AZ 85297
Attn: Conrad
Mon.-Thurs. 7am-2:30pm.

Immigration Law Compliance Warranty: As required by A.R.S. § 41-4401, Contractor hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Contractor further warrants that after hiring an employee, Contractor verifies the employment eligibility of the employee through the E-Verify program. If Contractor uses any subcontractors in performance of the Work, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract. Contractor is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. Gilbert at its option may terminate the Contract after the third violation. Contractor shall not be deemed in material breach of this Contract if the Contractor and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). Gilbert retains the legal right to inspect the papers of any Contractor or subcontractor employee who works on the Contract to ensure that the Contractor or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the parties may modify this paragraph consistent with state law.

Emergency Contact: Gilbert is an emergency response organization. Contractor services or supplies may be required in case of an emergency involving a sudden, immediate threat of danger to the public health, welfare or property in Gilbert ("local emergency") or in the case where the Mayor of Gilbert, the mayor or governing body of another municipality in Maricopa County, the Maricopa County Board of Supervisors, the State, or the President of the U.S. has declared an emergency ("State of Emergency"). In the event of a local emergency or State of Emergency, Gilbert may require Contractor to provide services or supplies as rapidly as possible and to such locations as directed by Gilbert when necessary to protect the public health and

welfare and/or property. Contractor shall not be required to respond to the extent response is not feasible due to Acts of God or other factors beyond its control. Contractor shall provide the designated Gilbert Emergency Management Coordinator at (480) 503-6333 and the designated Gilbert representative with a contact point (name, cell phone number, e-mail and facsimile number) who can be reached on short notice so that effective response can be initiated.

Equal Treatment of Workers: Contractor shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of performance under the Agreement. Contractor shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Occupational Safety and Health Administration (“OSHA”) and the Fair Labor Standards Act (“FLSA”). Contractor shall protect and indemnify Gilbert and its representatives against any claim or liability arising from or based on the violation of such, whether by Contractor or its employees./



TOWN OF GILBERT COOPERATIVE PURCHASING AGREEMENT APPROVAL FORM

Requested By: Conrad Ramon Date: 4/3/2019

Department: Public Works Streets

Cooperative Purchase Agreement with: Brown Wholesale

Contracting Agency Maricopa County Contract Number 319001077

Item(s) or Service Requested:

Traffic Signal and Street Light poles and supplies for day to day operations.

Account# 200 . 65305/65310 . 54100

Justification:

Per Gilbert Purchasing Code 2-357 (b)(2), a separate bidding process is not likely to result in a lower price for these items or service.

Agreement expiration date: June 30-, 2020

Departmental Approval: *Mark R* Date: 04/08/19

Purchasing Officer Approval: *Douglas E. Berger* Date: 4/9/19



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Toby Crooks, Sr. Project Manager, 503-6990

MEETING DATE: May 16, 2019

SUBJECT: CIP ST1450 Germann Road – Mustang Rd to Val Vista Road Professional Services Change Order 1 to Contract No. 319000530 (Eden # 2018-2106-0323) and CIP ST1170 Lindsay Road – Pecos to SR202 Professional Services Change Order 1 Contract 319000796 (Eden #2018-2106-0193) with Overland Pacific and Cutler.

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's strategic initiative for Infrastructure as it repairs and improves current systems and meets the needs of Gilbert's residents.

RECOMMENDED MOTION

A motion to approve change order 1 for \$14,910.58 to contract 319000530 (Eden # 2018-2106-0323) for ST1170 and change order 1 for \$35,288.54 to contract 319000796 (Eden #2018-2106-0193) for ST1450 with Overland Pacific and Cutler (OPC).

BACKGROUND/DISCUSSION

A general description of the Projects is: Completion of Germann Road in accordance with the Maricopa Association of Governments (MAG) Regional Transportation Plan approved by voters as Proposition 400 in 2004 and improvements to Lindsay Road in preparation for a new service traffic interchange at SR202L. Improvements on Germann Road are to major arterial roadway standards, including six lanes, a raised median, sidewalk, bike lanes, street lights, traffic signals, interconnect and improvements to the bridge over the Eastern Canal. This project will complete gaps in Germann Road left between areas previously completed by development between Gilbert Road and Val Vista Drive. Portions of this

section of Germann Road are located in unincorporated Maricopa County. Lindsay Road improvements between SR202 and Lovebird Lane, are being designed per the Lindsay Road Traffic Interchange at Loop 202, Design Concept Report.

Overland Pacific and Cutler (OPC) was awarded a contract to serve as an acquisition agent for Right of way acquisition on both of these projects. Services to be provided were estimated at the beginning of the projects. As the Town and OPC began working through this effort with land owners and in coordination with ADOT, it was determined that the Town to incorporate and follow the more complex federal acquisition standards for parcels near ADOT ROW. Additional services by OPC are needed to insure those procedures and policies of the federal requirements are met including multiple appraisal reviews, additional meetings with project team, land owners, developers and other stakeholders. The thirteen parcels associated with projects ST1170 and ST1450 also included extensive meetings to insure property owners fully understood the extent of the project and their rights as property owners. Staff meetings with OPC also provided valuable insight and professional advice on administrative settlement opportunities.

FINANCIAL IMPACT

This project is included in the FY 2019-2028 CIP as Project ST1450 and ST1170. The total proposed contract amount is as follows:

ST1170 Change Order 1 Contract 319000796:	
	Original Amount \$39,985.00
	Requested Change Order \$14,910.58
ST1450 Change Order 1 Contract 319000530:	
	Original Amount \$88,986.00
	Requested Change Order \$35,288.54

The financial impact was reviewed by Cris Welch, Senior Management and Budget Analyst.

STAFF RECOMMENDATION

Staff recommends approval of motion as written.

Respectfully submitted,

Toby Crooks
Senior Project Manager

Approved By

Approval Date

Susanna Struble
David Fabiano
Jessica Marlow
John Baird
Cris Welch

5/7/2019 6:11:42 PM
5/8/2019 5:44:27 AM
5/8/2019 8:05:37 AM
5/8/2019 8:34:33 AM
5/8/2019 8:35:57 AM

CHANGE ORDER

Contract No. 2018-2106-0323

CHANGE ORDER NO. 1

Distribution: GILBERT []
CONSULTANT []
OTHER []

PROJECT: ST117 Lindsay Road – Pecos to SR202 DATE: 2/11/19
OWNER: Town of Gilbert
CONSULTANT: OPC
AGREEMENT DATED: 8/20/18
CHANGES: The Agreement is changed as follows:

\$14,910.58 The ST117 contracted scope of work had an anticipated project timeline of May 2018 to early 2019, with an acquisition offer and negotiation period for each parcel owner, monthly meetings with the Town project manager, monthly status reports, and closeout of parcel files after offer acceptance or directive to submit for condemnation. The contract, however, was not signed by the Town until August 2018, and R/W consulting services provided prior to that were at no charge to the Town. This change order is for out of scope services and time resulting from appraisal, legal description, design and other project changes; protracted negotiations among Town, property owners and other parties; interaction and coordination with Town’s contracted CM, engineers, surveyors, counsel, design, appraisers, environmental, etc.; holds, delays, start/stop impacts; additional meetings; weekly reports; and multiple offers due to project changes. Change Order #1 – 95 Hours

Not valid until signed by both Gilbert and Consultant.
Signature of Consultant indicates acceptance.

The original compensation was \$39,985.00

Net change by previously authorized Change Orders \$0

The compensation prior to this Change Order was \$39,985.00

The compensation will be increased by this Change Order in the amount of \$14,910.58

The new compensation under the Agreement including this Change Order will be \$54,895.58

The Contract Time will increase to 6/30/19

ACCEPTANCE STATUS:

Charles A. Grombacher _____
Consultant: OPC Town of Gilbert

By Charles A. Grombacher By _____

Date 2/13/19 Date _____

CHANGE ORDER NO. 1
Contract No. 2018-2106-0323
ST117 Lindsay Road - Pecos Road to SR 202

DESCRIPTION	PROGRAM MANAGER	SENIOR AGENT	HOURS SUBTOTAL	LUMP SUM AMOUNTS
	\$206.34	\$99.71		
ADDITIONAL ACQUISITION SERVICES				
Project Management	8		8	\$1,650.72
Project Meetings	8	8	16	\$2,448.40
Status Reports		6	6	\$598.26
Acquisition Offers (Rooney, Schuh, San Tan PV)	12	12	24	\$3,672.60
Protracted Negotiations (Rooney, San Tan PV, Schuh), Design Changes (Rooney, San Tan PV, Schuh), Phase I (OPI-Lindsay)	15	10	25	\$4,092.20
Coordination - Appraisal/Reviews, Legal Descriptions, Design, CM, Survey, Environmental, Counsel	8	8	16	\$2,448.40
TOTAL HOURS	51	44	95	
TOTAL CHANGE ORDER #1	\$10,523.34	\$4,387.24	\$14,910.58	\$14,910.58

CHANGE ORDER

Contract No. 2018-2106-0193

CHANGE ORDER NO. 1

Distribution: GILBERT []
CONSULTANT []
OTHER []

PROJECT: ST145 Germann Rd – Gilbert to Val Vista
OWNER: Town of Gilbert
CONSULTANT: OPC
AGREEMENT DATED: 3/8/18
CHANGES: The Agreement is changed as follows:

DATE: 1/31/19

\$35,288.54 The ST145 contracted scope of work had a March-Sept 2018 project timeline, with an acquisition offer and negotiation period for each parcel owner, monthly meetings with the Town project manager, monthly status reports, and closeout of parcel files after offer acceptance or directive to submit for condemnation. (The contract was signed by the Town in March 2018; however, R/W consulting services were requested and provided beginning in late 2017 at no charge to the Town.) This change order is requested for out of scope items that include attendance at additional meetings; weekly report production; additional time due to numerous appraisal, design, legal description changes and other modifications to project (i.e. federal participation, etc.); interaction and coordination with Town’s contracted CM, engineers, surveyors, counsel, design, appraisers, title company, etc.; holds, delays, starts/stops and other impacts that stretched the project timeline and labor exponentially (i.e., offers could not begin in earnest until Aug 2018, multiple offers due to design and other changes, etc.). R/W consulting services for Town-directed condemnations by the County and Town are anticipated, but may be paid under the Town’s outside counsel’s contract. If not, a change order will be requested.
Change Order #1 – 206 Hours

Not valid until signed by both Gilbert and Consultant.
Signature of Consultant indicates acceptance.

The original compensation was \$88,986.00

Net change by previously authorized Change Orders \$0

The compensation prior to this Change Order was \$88,986.00

The compensation will be increased by this Change Order in the amount of \$35,288.54

The new compensation under the Agreement including this Change Order will be \$124,274.54

The Contract Time will increase to 6/30/19

ACCEPTANCE STATUS:

Charles A. Grombacher

Consultant: OPC
By Charles A. Grombacher

Town of Gilbert
By _____

Date 2/7/19

Date _____

CHANGE ORDER NO. 1
Contract No. 2018-2106-1093
ST145 Germann Road - Gilbert to Val Vista

DESCRIPTION	PROGRAM MANAGER	SENIOR AGENT	HOURS SUBTOTAL	LUMP SUM AMOUNTS
	\$206.34	\$99.71		
ADDITIONAL ACQUISITION SERVICES				
Project Management (1hr/wk 6 add'l months)	26			\$5,364.84
Project Meetings (11)	44	44	88	\$13,466.20
Status Reports (15)		30	30	\$2,991.30
Acquisition Offers (6)	24	24	48	\$7,345.20
Coordination - Appraisal/Reviews, Legal Descriptions, Design, CM, Survey, Title, Counsel	20	20	40	\$6,121.00
TOTAL HOURS	114	118	206	
TOTAL CHANGE ORDER #1	\$23,522.76	\$11,765.78	\$35,288.54	\$35,288.54



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Kyle Mieras, AICP, Development Services Director, 503-6705

MEETING DATE: May 16, 2019

SUBJECT: Regional Public Transportation Services Contingency Request

STRATEGIC INITIATIVE: Exceptional Built Environment

Public transportation services are essential for residents to commute to work, school and other destinations in our community and region. Supporting an integrated regional transit system supports quality of life and economic development.

RECOMMENDED MOTION

A motion to approve Special Revenue contingency transfer, utilizing Local Transportation Assistance Funding (LTAF) as the designated revenue source, in the amount of \$96,700.

BACKGROUND/DISCUSSION

The Town of Gilbert has been party to an intergovernmental agreement with the Regional Public Transportation Agency (RPTA) since July 1996 to provide bus services in the Town as well as Paratransit services (formally known as Dial-A-Ride) for eligible residents. The Town also participates in RPTA's RideChoice program which provides a more flexible transportation option for persons with disabilities. Gilbert's funding for these programs is provided through the LTAF which received funding through voter approved distribution of lottery proceeds.

Over the past several years, ridership for both Paratransit and RideChoice has been

increasing. The RPTA determines the total Town contribution based on historical trends. For Paratransit services, for the first three (3) quarters of the year, the Town is billed equal quarterly payments. RPTA undergoes a mid-year reconciliation process, and adjusts the Paratransit fourth quarter bill based on the extent to which the actual cost of service during the year is expected to be higher or lower than the contract amount. For RideChoice, the Town is billed on a monthly basis, and also undergoes a mid-year reconciliation process. In addition, for both programs there is a final reconciliation at the end of the year that may result in either a refund or a final charge for the year. However, the final reconciliation is not completed until 60 days after the close of the fiscal year, meaning that if RPTA determines that Gilbert's contributions were insufficient to cover the actual use of the programs, the Town will have to use funds from the next fiscal year to cover the cost.

During the fourth quarter of FY 2018, RPTA was unable to provide an accurate reconciliation cost to the Town due to extended contract negotiations occurring between RPTA and a provider. The Development Services Department chose to delay payment of the reconciliation bill until a final cost was known. During the budget process for FY 2019, no cost estimate for the FY 2018 reconciliation bill was provided and capacity to pay the bill was not included in the FY 2019 budget. The reconciliation cost for FY 2018 has now been calculated and payment is due. The cost is \$49,259.

Based on initial cost estimates the FY 2019 budget for Paratransit and RideChoice services was recommended and adopted at \$840,000. However, on June 21, 2018 Development Services requested and received \$83,600 in contingency funding to account for cost increases included in the FY 2019 contract renewal with RPTA that exceeded initial cost estimates, bringing the total budget up to \$923,600. Under the renewed IGA the quarterly Paratransit cost was set at \$211,240 and the monthly RideChoice cost was set at \$6,553.

In February, during the mid-year reconciliation process, RPTA reduced the monthly RideChoice cost from \$6,553 to \$1,025 for the remainder of the fiscal year. This change would reduce costs by \$27,640.

The FY 2019 fourth quarter bill for Paratransit services was recently received, and in order to reconcile higher than expected usage of the program, RPTA increased the fourth quarter bill from \$211,240 to \$286,282. The increase of \$75,042 is partially offset by the reduced cost of the RideChoice program, however the cost still exceeds the available budget by approximately \$47,400.

FINANCIAL IMPACT

For the FY 2018 final reconciliation \$49,259 is needed. For the FY 2019 mid-year reconciliation \$47,400 is needed. Total Special Revenue contingency being requested is \$96,700. There is sufficient Special Revenue contingency to meet this need.

In addition, the FY 2019 final annual reconciliation may result in either an increase or decrease to the total cost of these programs. If RPTA determines that Gilbert's FY 19 contributions did not cover the actual cost of the programs, the Town may need to use FY 20 funds to pay the invoice.

The financial impact was reviewed by Justin Romney, Management and Budget Analyst.

STAFF RECOMMENDATION

Staff recommends the approval of the contingency transfer utilizing Local Transportation Assistance Funding.

Respectfully submitted,

Kyle Mieras, AICP
Development Services Director

Approved By

Kyle Mieras
Chris Payne
Justin Romney

Approval Date

5/6/2019 1:08:35 PM
5/7/2019 8:18:29 AM
5/6/2019 2:35:31 PM



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Kelly Pfof, Budget Director, 503-6828

MEETING DATE: May 16, 2019

SUBJECT: Contingency Request for PSPRS Tier 1b DROP Contribution Refund and Interest Payments.

STRATEGIC INITIATIVE: Strong Economy

RECOMMENDED MOTION

A motion to approve \$390,000 of General Fund contingency related to PSPRS Tier 1b DROP contribution refund and interest payments.

BACKGROUND/DISCUSSION

Over the last several months the Administrative Office of PSPRS, as ordered by the Board of Trustees and further solidified through legislation (SB 1146), has been taking steps to reverse changes made in 2011 that impacted Tier 1b members who elected to participate in DROP. As of January 2019, all employers were directed to suspend contributions for Tier 1b members in DROP and Gilbert has complied.

PSPRS has identified the Tier 1b members who are in DROP and are entitled to a refund of member contributions made during their DROP participation period through the date employers suspended those contributions. Under SB1146, members are also entitled to interest on these contributions.

The refunds must be handled in the same manner Hall/Parker excess contribution and interest payments were handled in 2017. Per federal regulations, the refunds cannot be paid directly to members by PSPRS, but instead must be paid by the employers. Gilbert's proportional responsibility for the DROP contribution refund, including interest, is just under \$390,000.

FINANCIAL IMPACT

The financial impact of this request is \$390,000. Sufficient appropriation exists in contingency funds to cover this expenditure.

The financial impact was reviewed by Laura Lorenzen, Senior Management and Budget Analyst.

STAFF RECOMMENDATION

Staff recommends approving the contingency request so refund payments can be made in accordance with instruction from PSPRS.

Respectfully submitted,

Kelly Pfost
Budget Director

Approved By

Approval Date

Kelly Pfof
Chris Payne
Laura Lorenzen

5/6/2019 10:09:40 AM
5/7/2019 8:46:09 AM
5/6/2019 10:11:09 AM



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Tom Condit, PE, Development Engineering Manager, 503-6815

MEETING DATE: May 16, 2019

SUBJECT: S17-1007B: Abandonment of approximately 3,666 square feet of public utility easement located in the Copper Bend subdivision, located near the intersection of 172nd Street and Hunt Highway, at the request of the property owner.

STRATEGIC INITIATIVE: N/A

RECOMMENDED MOTION

A motion to approve a Resolution of Abandonment regarding a public utility easement adjoining Tract A of the Copper Bend subdivision, on the south side of Starflower Drive west of the intersection with Legend Drive, and to authorize the Mayor to execute the required documents.

BACKGROUND/DISCUSSION

The Public Utility Easement that is proposed to be abandoned overlaps with a planned masonry wall. Since there is a parallel 8-foot PUE on the north side of Starflower Drive (adjoining the Copper Bend subdivision lots), this PUE can be abandoned with no impact.

In conformance with the requirements contained in the Town's Land Development Code, notices were sent to potentially impacted utility companies and other interested parties. No objections to the abandonment were received.

The Resolution was reviewed for form by Assistant Town Attorney Nancy Davidson.

FINANCIAL IMPACT

No financial impact is expected as a result of this abandonment.

The financial impact was reviewed by Justin Romney, Management and Budget Analyst.

STAFF RECOMMENDATION

Town staff has reviewed the Resolution of Abandonment and recommend approval.

Respectfully submitted,

Tom Condit, PE
Development Engineering Manager

Approved By

Approval Date

Kyle Mieras

4/30/2019 8:19:12 AM

Chris Payne

5/7/2019 1:51:43 PM

Justin Romney

5/6/2019 8:57:24 AM

RESOLUTION NO. _____

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, VACATING, ABANDONING, AND EXTINGUISHING ALL OF ITS INTEREST IN APPROXIMATELY 3,666 SQUARE FEET OF PUBLIC UTILITY EASEMENT ADJOINING TRACT A OF THE COPPER BEND SUBDIVISION, ON THE SOUTH SIDE OF STARFLOWER DRIVE WEST OF THE INTERSECTION WITH LEGEND DRIVE; AND PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS.

WHEREAS, the Town Council of the Town of Gilbert finds that a portion of the public utility easement adjoining Tract A of the Copper Bend subdivision, on the south side of Starflower Drive west of the intersection with Legend Drive, is no longer necessary for public use; and

WHEREAS, the Town Council finds it to be in the best interest of the Town to abandon and vacate approximately 3,666 square feet of public utility easement adjoining Tract A of the Copper Bend subdivision, on the south side of Starflower Drive west of the intersection with Legend Drive; and

WHEREAS, the Town of Gilbert is authorized to vacate and abandon easements pursuant to Arizona Revised Statutes Sections 9-240(B)(3)(e) and 28-7205;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the Town of Gilbert, Arizona:

1. That the approximately 3,666 square feet of public utility easement adjoining Tract A of the Copper Bend subdivision, on the south side of Starflower Drive west of the intersection with Legend Drive, as legally described in Exhibit A and shown on Exhibit B attached hereto and incorporated herein, is hereby vacated and abandoned in accordance with A.R.S. § 28-7201 *et seq.*

2. That the Town Clerk is hereby authorized and directed to record a copy of this Resolution with the Maricopa County Recorder evidencing the permanent abandonment of said portion of said easement.

3. That, pursuant to Section 28-7213 of the Arizona Revised Statutes, this Resolution shall become effective on the date it is recorded in the Office of the Maricopa County Recorder.

BE IT FURTHER RESOLVED, that all resolutions and parts of resolutions in conflict with this Resolution are hereby repealed.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA THIS 16th DAY OF MAY, 2019.

Jenn Daniels, Mayor

ATTEST:

Lisa Maxwell, Town Clerk

APPROVED AS TO FORM:

Chris Payne, Town Attorney

I hereby certify the above foregoing Resolution No. _____ was duly passed by the Council of the Town of Gilbert, Arizona, at a regular meeting held on May 16th, 2019, and that quorum was present thereat and that the vote thereon was _____ ayes and _____ nays and _____ abstentions. _____ Council members were absent or excused.

Lisa Maxwell, Town Clerk
Town of Gilbert

The following exhibits are attached hereto and incorporated herein:

1. Exhibit A – Legal Description for Easement Abandonment
2. Exhibit B – Map showing Easement Abandonment



EXHIBIT A
Legal Description
ABANDONMENT
A PORTION OF A PUBLIC UTILITY EASEMENT
COPPER BEND
Gilbert, Arizona

Job No. 15-287.1

March 5, 2019

A portion of that public utility easement located within Tract A, Copper Bend, according to Book 1430, Page 36, Records of Maricopa County Recorder and situated in a portion of the Southeast quarter of the Southwest quarter of Section 35, Township 2 South, Range 6 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the southwest corner of said Tract A;

thence North 0 degrees 00 minutes 16 seconds West, 66.59 feet along the west line of said Tract A;

thence North 89 degrees 59 minutes 44 seconds East, 14.95 feet to a point on the west line of said public utility easement and the POINT OF BEGINNING;

thence South 89 degrees 59 minutes 10 seconds East, 8.27 feet to a point on the north line of said public utility easement and the beginning of a non-tangent curve, concave northeast, from which the radius point bears North 73 degrees 35 minutes 35 seconds East a distance of 30.00 feet;

thence southeasterly 38.53 feet along the arc of said curve to the left and said north line through a central angle of 73 degrees 34 minutes 46 seconds;

thence South 89 degrees 59 minutes 10 seconds East, 162.70 feet along said north line to the beginning of a curve, concave northwest, having a radius of 300.00 feet;

thence northeasterly 140.18 feet along the arc of said curve to the left and said north line through a central angle of 26 degrees 46 minutes 22 seconds;

thence North 63 degrees 14 minutes 28 seconds East, 108.68 feet along said north line;



thence South 26 degrees 45 minutes 32 seconds East, 8.00 feet to a point on the south line of said public utility easement;

thence South 63 degrees 14 minutes 28 seconds West, 108.68 feet along said south line to the beginning of a curve, concave northwest, having a radius of 308.00 feet;

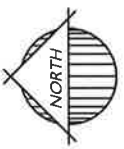
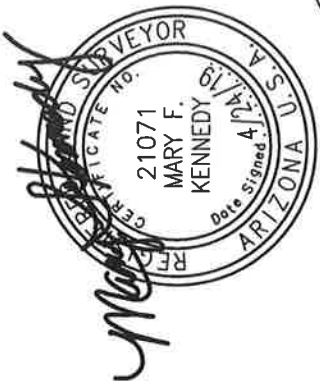
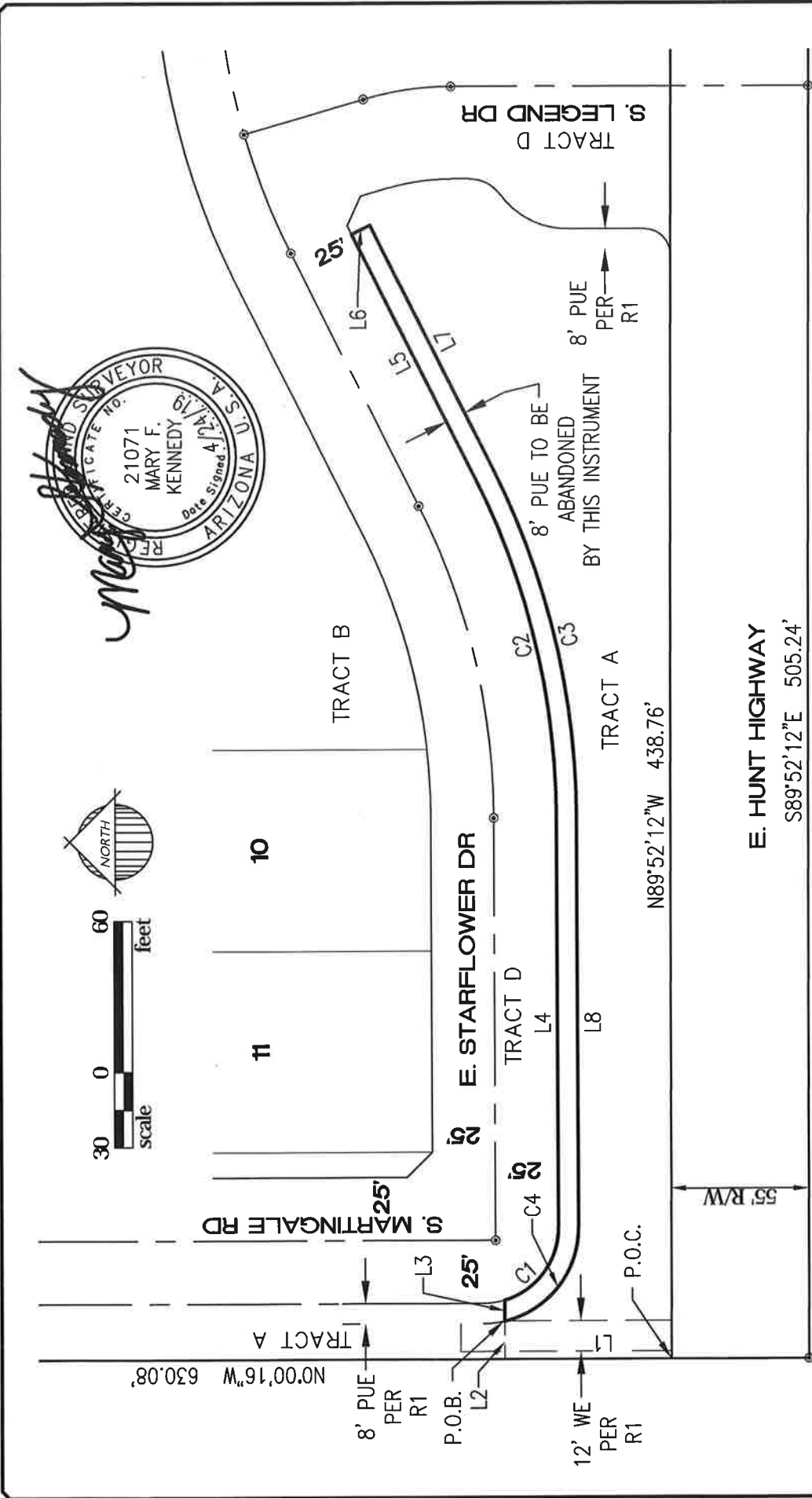
thence southwesterly 143.92 feet along the arc of said curve to the right and said south line through a central angle of 26 degrees 46 minutes 22 seconds;

thence North 89 degrees 59 minutes 10 seconds West, 162.70 feet along said south line to the beginning of a curve, concave northeast, having a radius of 38.00 feet;

thence northwesterly 51.14 feet along the arc of said curve to the right and said south line through a central angle of 77 degrees 06 minutes 16 seconds to the POINT OF BEGINNING.

Contains 3,666 square feet or 0.0844 acres, more or less.





- P.O.C. POINT OF COMMENCEMENT
- P.O.B. POINT OF BEGINNING
- PUE PUBLIC UTILITY EASEMENT
- R/W RIGHT OF WAY
- WE WATER EASEMENT
- R1 PLAT OF COPPER BEND RECORDED IN BOOK 1430 PAGE 36, M.C.R.

SHEET 1 OF 2
www.epsgroupinc.com



ABANDONMENT EXHIBIT B
FOR A PORTION OF A PUBLIC UTILITY EASEMENT
COPPER BEND, GILBERT, AZ

15-287.1

LINE TABLE		
LINE	BEARING	LENGTH
L1	N00°00'16"W	66.59'
L2	N89°59'44"E	14.95'
L3	S89°59'10"E	8.27'
L4	S89°59'10"E	162.70'
L5	N63°14'28"E	108.68'
L6	S26°45'32"E	8.00'
L7	S63°14'28"W	108.68'
L8	N89°59'10"W	162.70'

CURVE TABLE						
CURVE	LENGTH	RADIUS	DELTA	TANGENT	CHORD	CHORD BRG
C1	38.53'	30.00'	73°34'46"	22.43'	35.93'	S53°11'47"E
C2	140.18'	300.00'	26°46'22"	71.39'	138.91'	N76°37'39"E
C3	143.92'	308.00'	26°46'22"	73.30'	142.61'	S76°37'39"W
C4	51.14'	38.00'	77°06'16"	30.28'	47.37'	N51°26'02"W



ABANDONMENT EXHIBIT B

FOR A PORTION OF A PUBLIC UTILITY EASEMENT
COPPER BEND, GILBERT, AZ



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Tom Condit, PE, Development Engineering Manager, 503-6815

MEETING DATE: May 16, 2019

SUBJECT: S17-1008: Approval of the Final Plat for Mosaic at Layton Lakes, located on the southwest corner of Lindsay Road and Layton Lakes Boulevard.

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's Infrastructure Strategic Initiative as it allows for the logical extension of infrastructure to serve the site.

RECOMMENDED MOTION

A motion to approve the Final Plat for Mosaic at Layton Lakes, located on the southwest corner of Lindsay Road and Layton Lakes Boulevard.

BACKGROUND/DISCUSSION

“Mosaic at Layton Lakes” is an 18.9 acre (+/-) parcel located on the southwest corner of Lindsay Road and Layton Lakes Boulevard. The final plat for Mosaic at Layton Lakes establishes 12 tracts encompassing 222 townhome units with common facilities such as private roads, public utilities, emergency vehicle and pedestrian access, landscaped open space, and storm water retention areas. Public utility easements are also provided on this Final Plat. These tracts and easements support the infrastructure needed for the Mosaic at Layton Lakes’ subdivision.

The following is an abbreviated history of Town actions associated with this property:

- March 20, 2001 Town Council approved A00-07 (Ordinance No. 1327), annexing approximately 543 acres into the Town of Gilbert, including the subject site.
- March 20, 2001 Town Council approved Z00-21 (Ord. No. 1328) rezoning approximately 459 acres (including the subject site) from Maricopa County Rural-43 zoning district to Town of Gilbert SF-D, SF-6, SF-7, SF-8, SF-35 and SC zoning districts and creating the Layton Lakes Master Plan PAD with overall density of Residential > 2-3.5 DU / Acre.
- October 3, 2018 The Planning Commission approved S17-1008, the Preliminary Plat and Open Space Plan for Mosaic at Layton Lakes, with conditions.
- October 3, 2018 The Planning Commission approved DR18-92, the building elevations, floor plans, colors and materials for Mosaic at Layton Lakes, with conditions.

FINANCIAL IMPACT

None.

STAFF RECOMMENDATION

Staff recommends approval of the Final Plat for Mosaic at Layton Lakes.

Respectfully submitted,

Tom Condit, PE
Development Engineering Manager

Approved By

Kyle Mieras

Approval Date

4/30/2019 8:17:43 AM

DEDICATION

STATE OF ARIZONA)
)SS
COUNTY OF MARICOPA)

KNOW ALL PERSONS BY THESE PRESENTS:

THAT TNHC ARIZONA MARKETING LLC, A DELAWARE LIMITED LIABILITY COMPANY, ("OWNER"), HAS SUBDIVIDED UNDER THE NAME "MOSAIC AT LAYTON LAKES", A RESUBDIVISION OF PARCEL 3 OF A FINAL PLAT FOR LAYTON LAKES PHASE 1 - GILBERT AS RECORDED ON BOOK 832 OF MAPS, PAGE 14, RECORDS OF MARICOPA COUNTY, ARIZONA, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 2 SOUTH, RANGE 6 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA AS SHOWN AND PLATTED HEREON AND DOES HEREBY PUBLISH THIS PLAT AS AND FOR THE PLAT OF "MOSAIC AT LAYTON LAKES" AND DECLARES THAT THIS PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF EACH LOT, TRACT, AND EASEMENT CONSTITUTING SAME, AND THAT EACH LOT, TRACT, AND EASEMENT SHALL BE KNOWN BY THE NUMBER, LETTER, AND/OR NAME GIVEN TO EACH RESPECTIVELY AS SHOWN ON THIS PLAT.

OWNER HEREBY DEDICATES TO THE MOSAIC AT LAYTON LAKES CONDOMINIUM ASSOCIATION THE PRIVATE ROADWAY EASEMENTS, AS SHOWN HEREON, FOR THE PURPOSE OF PUBLIC ACCESS, PARKING, AND THE CONSTRUCTION, INSTALLATION, IMPROVEMENT, RECONSTRUCTION, REMOVAL, MAINTENANCE, OPERATION AND REPAIR OF ROADWAYS, DRAINAGE STRUCTURES, UNDERGROUND UTILITIES, SIDEWALKS, STREET LIGHTS, STREET SIGNS AND RELATED FACILITIES.

PUBLIC UTILITY EASEMENTS ARE DEDICATED FOR THE BENEFIT OF PUBLIC UTILITIES AND ARE LOCATED WHERE SHOWN, IN, OVER, AND UNDER THE AREAS DESIGNATED AS SUCH HEREON, FOR THE INSTALLATION, MAINTENANCE, REPAIR AND REMOVAL OF NECESSARY UTILITIES. PUBLIC UTILITIES LOCATING UTILITY FACILITIES IN THIS PUBLIC UTILITY EASEMENT SHALL COMPLY WITH THE CODES AND REGULATIONS OF THE TOWN OF GILBERT, ARIZONA. SUCH PUBLIC UTILITIES SHALL BE AND REMAIN RESPONSIBLE FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE AND REPAIR OF THEIR UTILITY FACILITIES.

OWNER HEREBY GRANTS TO THE TOWN OF GILBERT, A NON-EXCLUSIVE EASEMENT OVER, UPON AND ACROSS ALL SEWER LINES AND MANHOLES AS SHOWN ON THE PLAT FOR THE PURPOSE OF INSTALLING, CONSTRUCTING, MAINTAINING, REPAIRING, REPLACING AND UTILIZING THE SEWER LINES, AND MANHOLES.

THE MAINTENANCE OF LANDSCAPING WITHIN THE OPEN SPACES, LANDSCAPED TRACTS, RETENTION BASINS AND PARKS SHALL BE THE RESPONSIBILITY OF THE OWNER OR THE ASSOCIATION FORMED BY THE OWNER.

THE MAINTENANCE OF LANDSCAPING WITHIN THE ADJACENT PUBLIC RIGHTS-OF-WAY, INCLUDING LANDSCAPED AREAS BETWEEN THE CURB AND THE DETACHED SIDEWALK, SHALL BE THE RESPONSIBILITY OF THE ADJACENT PROPERTY OWNER OR THE MOSAIC AT LAYTON LAKES CONDOMINIUM ASSOCIATION.

OWNER WARRANTS AND REPRESENTS TO THE TOWN OF GILBERT TO BE THE SOLE OWNER OF THE PROPERTY COVERED HEREBY AND THAT EVERY EASEMENT HOLDER, OR OTHER PERSON, OR ENTITY, HAVING ANY INTEREST IN THE LAND ADVERSE TO OR INCONSISTENT WITH THE DEDICATIONS, CONVEYANCES, OR OTHER REAL PROPERTY INTEREST CREATED OR TRANSFERRED BY THIS PLAT HAS CONSENTED TO, OR JOINED IN THIS PLAT, AS EVIDENCED BY INSTRUMENTS WHICH ARE RECORDED WITH THE MARICOPA COUNTY RECORDER'S OFFICE, OR WHICH OWNER WILL RECORD NOT LATER THAN DATE ON WHICH THIS PLAT IS RECORDED.

IN WITNESS WHEREOF, TNHC ARIZONA MARKETING LLC, A DELAWARE LIMITED LIABILITY COMPANY, HAS HEREUNTO CAUSED ITS CORPORATE NAME TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY THE UNDERSIGNED,

DULY AUTHORIZED OFFICER THIS ___ DAY OF ___, 2019.

TNHC ARIZONA MARKETING LLC, A DELAWARE LIMITED LIABILITY COMPANY

BY: _____

ITS: _____

ACKNOWLEDGEMENT

STATE OF ARIZONA)
)SS
COUNTY OF MARICOPA)

ON THIS ___ DAY OF ___, 2019, BEFORE ME PERSONALLY

APPEARED _____, WHOSE IDENTITY WAS PROVEN TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON WHO HE OR SHE CLAIMS TO BE, AND ACKNOWLEDGED THAT HE OR SHE SIGNED THE ABOVE/ATTACHED DOCUMENT.

NOTARY PUBLIC SEAL

NOTARY PUBLIC SIGNATURE

HOMEOWNERS ASSOCIATION RATIFICATION

BY THIS RATIFICATION, _____, DULY AUTHORIZED AGENT OF LAYTON LAKES HOMEOWNERS ASSOCIATION, AN ARIZONA NON-PROFIT CORPORATION, HEREBY RATIFIES THE RECORDATION OF THIS PLAT FOR "MOSAIC AT LAYTON LAKES" AND ACKNOWLEDGES THE RESPONSIBILITIES SET FORTH THEREIN.

NAME: _____

TITLE: _____ DATE: _____

HOMEOWNERS ASSOCIATION RATIFICATION

ACKNOWLEDGEMENT

STATE OF ARIZONA)
)SS
COUNTY OF MARICOPA)

ON THIS ___ DAY OF ___, 2019, BEFORE ME PERSONALLY

APPEARED _____, WHOSE IDENTITY WAS PROVEN TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON WHO HE OR SHE CLAIMS TO BE, AND ACKNOWLEDGED THAT HE OR SHE SIGNED THE ABOVE/ATTACHED DOCUMENT.

NOTARY PUBLIC SEAL

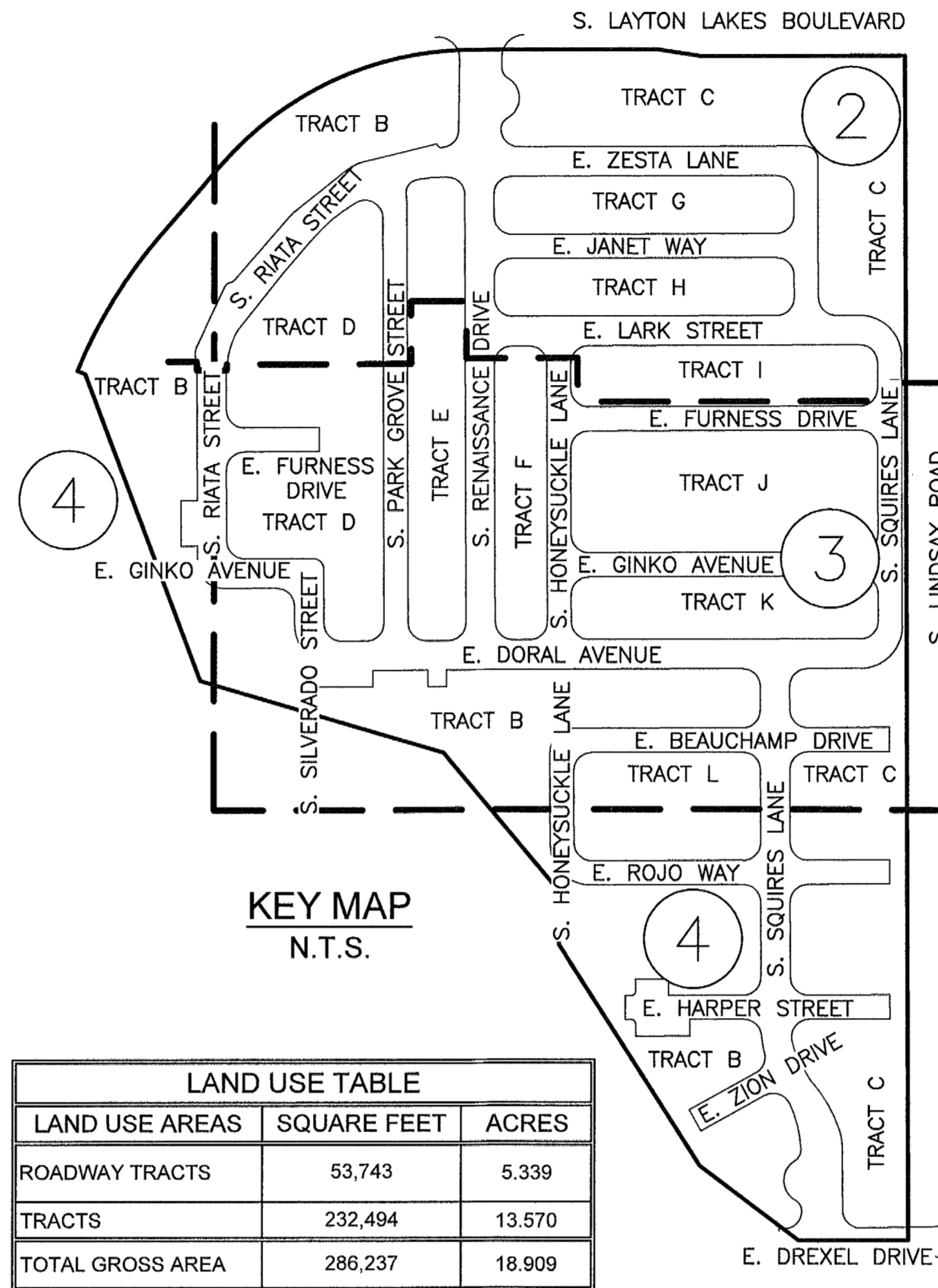
NOTARY PUBLIC SIGNATURE

FINAL PLAT FOR MOSAIC AT LAYTON LAKES

A RESUBDIVISION OF PARCEL 3 OF A FINAL PLAT FOR LAYTON LAKES PHASE 1 - GILBERT AS RECORDED ON BOOK 832 OF MAPS, PAGE 14, RECORDS OF MARICOPA COUNTY, ARIZONA, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 2 SOUTH, RANGE 6 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA

GENERAL NOTES

- 1. CONSTRUCTION WITHIN PUBLIC EASEMENTS, EXCEPT BY PUBLIC ACCESS AND UTILITY COMPANIES, SHALL BE LIMITED TO UTILITIES AND WOOD, WIRE OR REMOVABLE SECTION TYPE FENCING UNLESS APPROVED BY THE TOWN OF GILBERT.
2. ALL UTILITIES SHALL BE CONSTRUCTED UNDERGROUND.
3. ELECTRIC LINES TO BE CONSTRUCTED UNDERGROUND AS REQUIRED BY THE ARIZONA CORPORATION COMMISSION.
4. ALL COMMUNICATION LINES TO BE CONSTRUCTED UNDERGROUND AS REQUIRED BY ARIZONA CORPORATION COMMISSION.
5. THE TOWN OF GILBERT IS NOT RESPONSIBLE FOR AND WILL NOT ACCEPT MAINTENANCE OF ANY PRIVATE STREETS, PRIVATE UTILITIES, PRIVATE FACILITIES OR LANDSCAPED AREAS WITHIN THE PROJECT. ALL LANDSCAPING WITHIN THIS PROJECT IS TO BE MAINTAINED BY THE ADJACENT PROPERTY OWNER, OR THE MOSAIC AT LAYTON LAKES CONDOMINIUM ASSOCIATION.
6. NO STRUCTURES WILL BE CONSTRUCTED IN OR ACROSS NOR SHALL OTHER IMPROVEMENTS OR ALTERATIONS BE MADE TO THE DRAINAGE FACILITIES THAT ARE A PART OF THIS DEVELOPMENT WITHOUT THE WRITTEN AUTHORIZATION OF THE TOWN OF GILBERT.
7. ALL RETENTION BASINS MUST DRAIN ANY STORM EVENT UP TO AND INCLUDING THE 50-YEAR, 24-HOUR STORM WITHIN 36 HOURS. THE MOSAIC AT LAYTON LAKES CONDOMINIUM ASSOCIATION MUST TAKE CORRECTIVE ACTION TO BRING ANY EXISTING BASIN WHICH FAILS TO MEET THIS REQUIREMENT INTO COMPLIANCE.
8. ALL PROPERTIES PLATTED HEREON ARE SUBJECT TO AN ANNUAL STREET LIGHT IMPROVEMENT DISTRICT ASSESSMENT.
9. ALL DRYWELLS SHOWN ON THIS PROJECT SHALL BE MAINTAINED BY THE ADJACENT PROPERTY OWNER, OR THE MOSAIC AT LAYTON LAKES CONDOMINIUM ASSOCIATION, AND ARE TO BE REPLACED BY THE ADJACENT PROPERTY OWNER, OR THE MOSAIC AT LAYTON LAKES CONDOMINIUM ASSOCIATION, WHEN THEY CEASE TO DRAIN THE SURFACE WATER IN A 36 HOUR PERIOD. REGULAR MAINTENANCE OF THE DRYWELL SILTING CHAMBER IS REQUIRED TO ACHIEVE THE BEST OPERATION OF THE DRYWELL.
10. THE SUBDIVISION IS IN THE SERVICE AREA OF THE TOWN OF GILBERT, A DESIGNATED PROVIDER, WHICH WILL PROVIDE WATER SERVICE IN ACCORDANCE WITH THE TOWN CODE AND OTHER ACCEPTABLE REGULATIONS.
11. THIS PROPERTY IS IN CLOSE PROXIMITY TO THE CITY OF CHANDLER WATER RECLAMATION FACILITY. RECLAIMED WATER FOR USE WITH THIS PROPERTY, IS BEING SUPPLIED BY THE CITY OF CHANDLER THROUGH A JOINT USE AGREEMENT WITH THE TOWN OF GILBERT.
12. THE ADJACENT PROPERTY OWNER, OR THE MOSAIC AT LAYTON LAKES CONDOMINIUM ASSOCIATION SHALL BE RESPONSIBLE FOR MAINTAINING THE AREAS WITHIN THE PRIVATE ROADWAY EASEMENTS (PRE), PUBLIC UTILITY EASEMENTS (PUE), AND PRIVATE SHARED DRIVEWAY EASEMENTS (PDE).
13. ALL BUILDING SETBACKS SHALL COMPLY WITH COUNCIL ORDINANCE NO. 1328, AS AMENDED.
14. THIS PROJECT IS LOCATED IN AN AREA THAT MAY BE IMPACTED BY POSSIBLE VISUAL AND PHYSICAL IMPACTS ASSOCIATED WITH AGRARIAN ECONOMIC ACTIVITY (SPECIFICALLY, BUT NOT LIMITED TO DAIRY OPERATIONS) THAT IS WITHIN CLOSE PROXIMITY TO THE DEVELOPMENT.
15. THIS PROPERTY IS LOCATED APPROXIMATELY 1 MILE FROM THE SAN TAN FREEWAY ALIGNMENT, AND APPROXIMATELY 3 MILES FROM A CITY OF CHANDLER WATER RECLAMATION FACILITY.
16. THIS PROPERTY IS LOCATED ADJACENT TO THE CHANDLER MUNICIPAL AIRPORT IMPACT OVERLAY DISTRICT, AND IS SUBJECT TO AIRCRAFT NOISE AND OVERFLIGHT ACTIVITY, AND IS ENCOMBERED BY A NAVIGATIONAL EASEMENT TO THE TOWN OF GILBERT.



LAND USE TABLE
LAND USE AREAS SQUARE FEET ACRES
ROADWAY TRACTS 53,743 5.339
TRACTS 232,494 13.570
TOTAL GROSS AREA 286,237 18.909

OWNER NO LIEN HOLDER STATEMENT

THE UNDERSIGNED OWNER REPRESENTS AND WARRANTS THAT THE PROPERTY INCLUDED IN THE DEDICATED TRACTS IS FREE AND CLEAR OF ALL MONETARY LIENS AND THE DEDICATED TRACTS ARE NOT BEING USED FOR SECURITY OR OTHER COLLATERAL FOR ANY DEBT OF OWNER.
DATED THIS ___ DAY OF ___, 2019.

BY: TNHC ARIZONA MARKETING LLC, A DELAWARE LIMITED LIABILITY COMPANY

BY: _____

ITS: _____

MOAIC AT LAYTON LAKES CONDOMINIUM ASSOCIATION RATIFICATION

BY THIS RATIFICATION, _____, DULY AUTHORIZED AGENT OF MOSAIC AT LAYTON LAKES CONDOMINIUM ASSOCIATION, AN ARIZONA NON-PROFIT CORPORATION, HEREBY RATIFIES THE RECORDATION OF THIS PLAT FOR "MOAIC AT LAYTON LAKES" AND ACKNOWLEDGES THE RESPONSIBILITIES SET FORTH THEREIN.

NAME: _____

TITLE: _____ DATE: _____

MOAIC AT LAYTON LAKES CONDOMINIUM ASSOCIATION RATIFICATION ACKNOWLEDGEMENT

STATE OF ARIZONA)
)SS
COUNTY OF MARICOPA)

ON THIS ___ DAY OF ___, 2019, BEFORE ME PERSONALLY

APPEARED _____, WHOSE IDENTITY WAS PROVEN

TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON WHO HE OR SHE CLAIMS TO BE, AND ACKNOWLEDGED THAT HE OR SHE SIGNED THE ABOVE/ATTACHED DOCUMENT.

NOTARY PUBLIC SEAL

NOTARY PUBLIC SIGNATURE

OWNER/DEVELOPER

TNHC ARIZONA MARKETING LLC, A DELAWARE LIMITED LIABILITY COMPANY
8730 N. SCOTTSDALE RD. STE 290
SCOTTSDALE, AZ 85253
PHONE: 480-834-6385
CONTACT: CONNIE DEAN

ENGINEER

CVL CONSULTANTS
4550 NORTH 12TH STREET
PHOENIX, ARIZONA 85014
PHONE: (602) 264-6831
FAX: (602) 264-0928
CONTACT: PARKER FROELICH, P.E.

SHEET INDEX

- 1 COVER
2-4 BOUNDARY PLAN
5-6 DETAILS, LEGEND AND LINE TABLE

LEGAL DESCRIPTION

PARCEL 3, OF LAYTON LAKES PHASE 1 - GILBERT, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA RECORDED AS BOOK 832 OF MAPS, PAGE 14 AND AFFIDAVIT OF CORRECTIONS RECORDED AS 2007-1216497 OF OFFICIAL RECORDS AND AS 2007-1333728 OF OFFICIAL RECORDS.

CONTAINING 823,668 SQ.FT. OR 18.909 ACRES, MORE OR LESS

FLOOD ZONE CERTIFICATION

THIS IS TO CERTIFY THAT THIS PROPERTY IS LOCATED WITHIN THE ZONE "X" FLOOD HAZARD AREA PER FIRM MAP PANEL NUMBER 04013C-2744 M DATED NOVEMBER 4, 2015, AS PUBLISHED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA).

ZONE "X" AS DEFINED BY FEMA IS: AREAS OF 0.2% ANNUAL CHANCE FLOOD; AREAS OF 1% ANNUAL CHANCE FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE; AND AREAS PROTECTED BY LEVEES FROM 1% ANNUAL CHANCE FLOOD.

BENCHMARK

1" PIPE @ THE INTERSECTION OF QUEEN CREEK ROAD AND THE EASTERN CANAL ELEVATION=1259.06 (TOWN OF GILBERT DATUM)

BASIS OF BEARING

THE BASIS OF BEARINGS FOR THIS SURVEY IS NORTH 00°14'07" WEST ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 2 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, ACCORDING TO BOOK 832 OF MAPS, PAGE 14, MARICOPA COUNTY RECORDS.

APPROVAL

APPROVED BY THE MAYOR AND CITY COUNCIL OF GILBERT, ARIZONA ON THIS ___ DAY OF ___, 2019.

BY: _____ DATE _____

ATTEST: _____ DATE _____

FOR TOWN OF GILBERT ENGINEER _____ DATE _____

PLANNING MANAGER _____ DATE _____

CERTIFICATION

I, RICHARD G. ALCOCER, HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR IN THE STATE OF ARIZONA, THAT THIS MAP, CONSISTS OF SIX (6) SHEETS, CORRECTLY REPRESENTS A BOUNDARY SURVEY MADE UNDER MY SUPERVISION DURING THE MONTH OF MARCH, 2017, THAT THE SURVEY IS TRUE AND COMPLETE AS SHOWN, THAT ALL MONUMENTS SHOWN ACTUALLY EXIST OR WILL BE SET AS SHOWN, THAT THEIR POSITIONS ARE CORRECTLY SHOWN AND THAT SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

BY: [Signature]
RICHARD G. ALCOCER
REGISTRATION NUMBER 33851
4550 N. 12TH STREET
PHOENIX, ARIZONA 85014
(602)-264-6831
CVLSURVEY@CVLCCI.COM

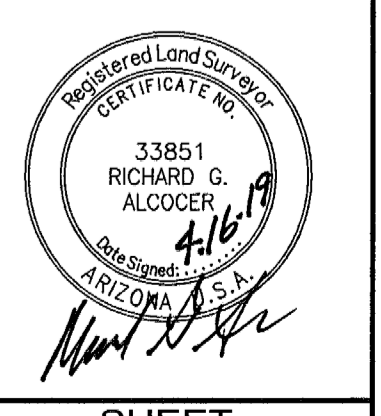
GROSS AREA = 18.909 ACRES

SEE SHEET 6 FOR LINE AND CURVE TABLE AND LEGEND



Table with columns: DATE, REVISION, NO. and vertical text: Coe and Van Loo II L.L.C.

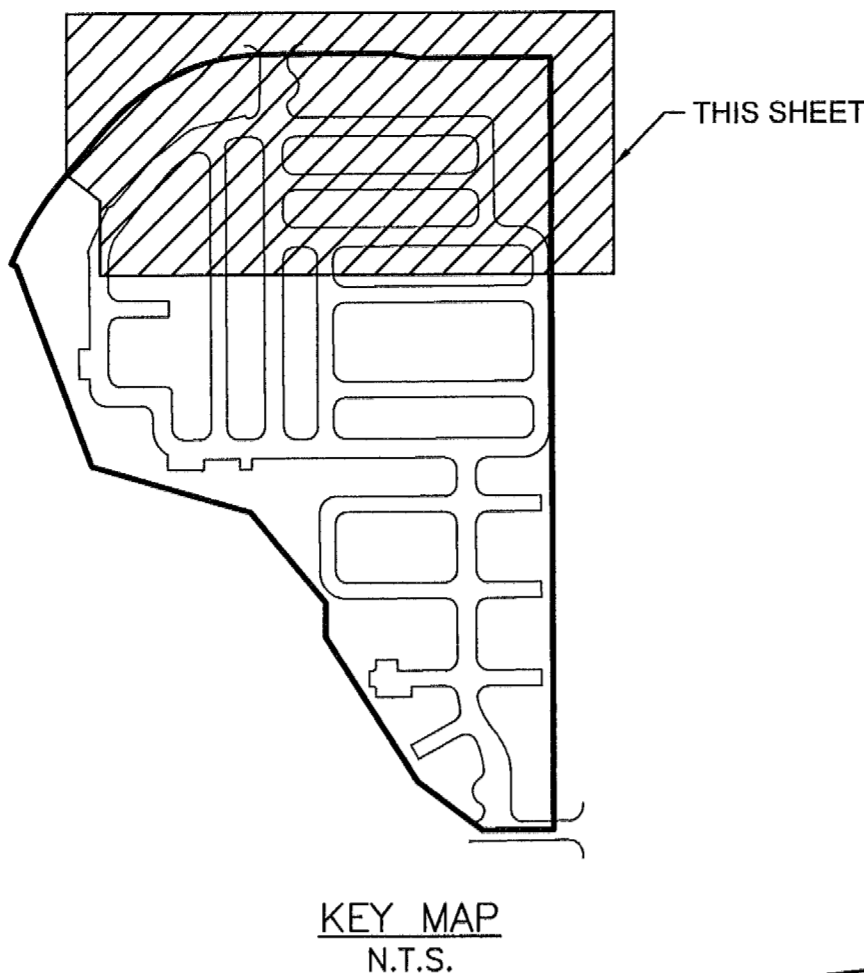
FINAL PLAT
MOAIC AT LAYTON LAKES
GILBERT, ARIZONA



1 SHEET OF 6
CVL Contact: P. FROELICH
CVL Project #: 14.0101235
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Print Date: April 15, 2019 File Name: N114_Coe and Van Loo II L.L.C.0101235CADDDDS.FPLAT.01.dwg

TRACT TABLE			
TRACT	AREA	SQUARE FEET	DESCRIPTION
TRACT 'A'	5.339 ACRES	232,567	PRIVATE ROADWAY, DRAINAGE, PUBLIC WATER, PUBLIC SEWER, EMERGENCY ACCESS, P.U.E.
TRACT 'B'	4.162 ACRES	181,297	FUTURE DEVELOPMENT, DRAINAGE, RETENTION, LANDSCAPE, P.U.E., PUBLIC WATER, PUBLIC SEWER, S.V.T., AMENITIES
TRACT 'C'	3.032 ACRES	132,074	FUTURE DEVELOPMENT, DRAINAGE, RETENTION, LANDSCAPE, P.U.E., PUBLIC WATER, ACCESS, S.V.T., TRASH
TRACT 'D'	1.442 ACRES	62,814	FUTURE DEVELOPMENT, DRAINAGE, LANDSCAPE, P.U.E., WATER
TRACT 'E'	0.772 ACRES	33,628	FUTURE DEVELOPMENT, LANDSCAPE, P.U.E., WATER, S.V.T.
TRACT 'F'	0.438 ACRES	19,079	FUTURE DEVELOPMENT, LANDSCAPE, P.U.E., WATER, S.V.T.
TRACT 'G'	0.495 ACRES	21,562	FUTURE DEVELOPMENT, LANDSCAPE, P.U.E., WATER, S.V.T.
TRACT 'H'	0.493 ACRES	21,475	FUTURE DEVELOPMENT, LANDSCAPE, P.U.E., WATER, S.V.T.
TRACT 'I'	0.535 ACRES	23,305	FUTURE DEVELOPMENT, LANDSCAPE, P.U.E., WATER, S.V.T.
TRACT 'J'	1.072 ACRES	46,696	FUTURE DEVELOPMENT, DRAINAGE, LANDSCAPE, P.U.E., WATER
TRACT 'K'	0.551 ACRES	24,002	FUTURE DEVELOPMENT, LANDSCAPE, P.U.E., WATER, S.V.T.
TRACT 'L'	0.578 ACRES	25,178	FUTURE DEVELOPMENT, DRAINAGE, LANDSCAPE, P.U.E., WATER, S.V.T.
TOTAL	18.909 ACRES	823,676	



LEGEND

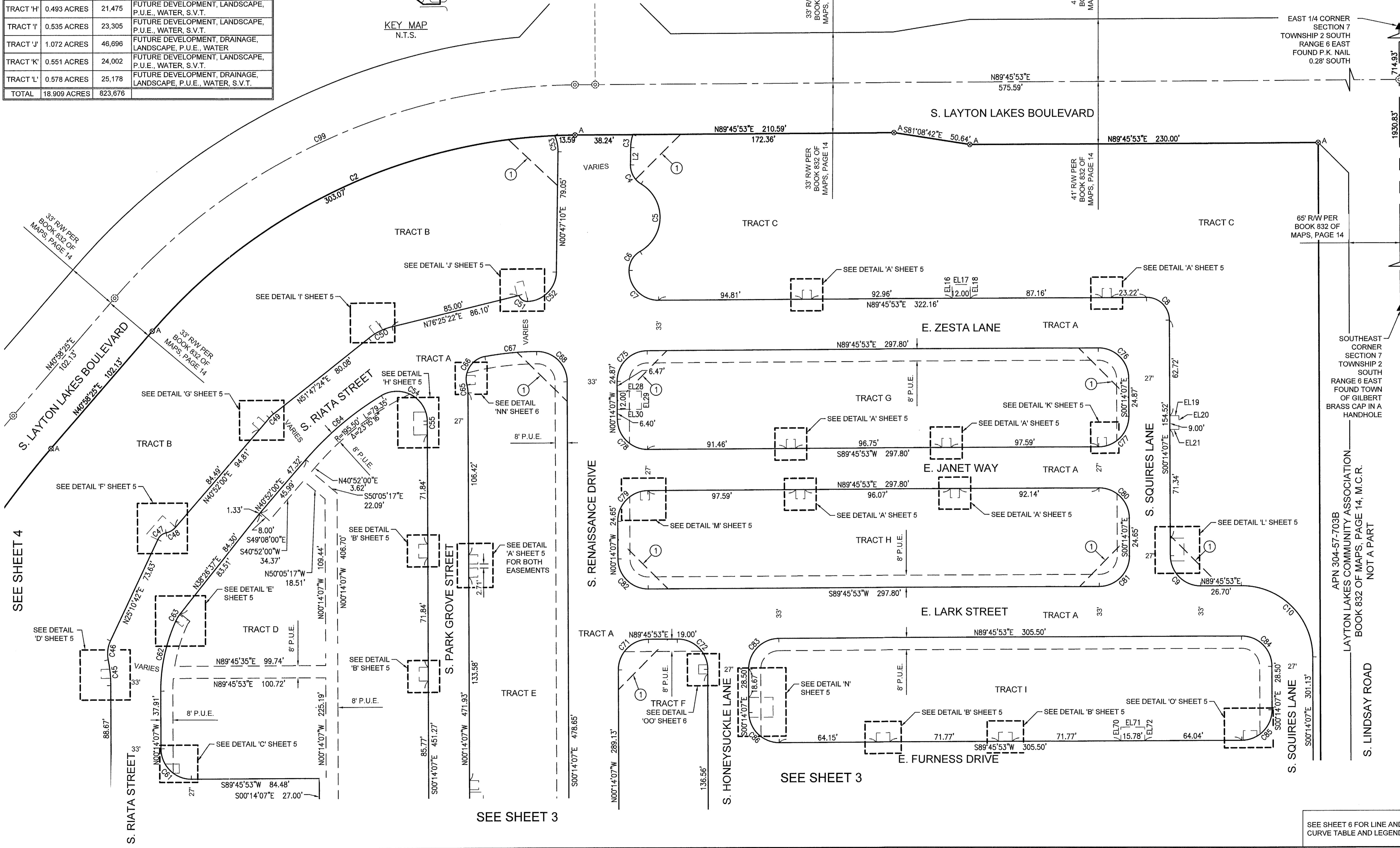
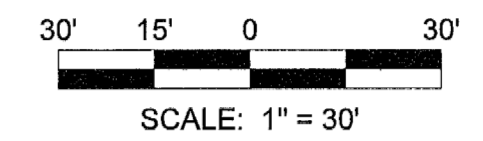
- ▲--- SECTION CORNER - FOUND BRASS CAP (UNLESS OTHERWISE NOTED)
- FOUND BRASS CAP PER ADJOINING RECORDED SUBDIVISION PER M.A.G. STD. DTL. 120, TYPE "B" (UNLESS OTHERWISE NOTED)
- CORNER OF SUBDIVISION - SET BRASS CAP UPON COMPLETION OF JOB PER M.A.G. STD. DTL. 120, TYPE "B" (UNLESS OTHERWISE NOTED)
- FOUND 1/2" REBAR WITH CAP RLS#42186
- SECTION LINE
- MID-SECTION LINE
- BOUNDARY LINE
- LOT LINE
- CENTERLINE
- EASEMENT
- FLOOD ZONE BOUNDARY
- ① SHEET NUMBER
- ① SIGHT VISIBILITY EASEMENT (33' X 33')
- LIMITS OF DETAIL NOT TO SCALE
- EL1 EASEMENT LINE NUMBER
- S.V.T. SIGHT VISIBILITY TRIANGLE
- P.U.E. PUBLIC UTILITY EASEMENT
- AC. ACRES
- L1 LINE NUMBER
- C1 CURVE NUMBER
- R/W RIGHT-OF-WAY
- M.C.R. MARICOPA COUNTY RECORDER
- DOC.# DOCUMENT NUMBER
- R/W RIGHT-OF-WAY
- EX. EXISTING

COUNTY RECORDER

DATE: _____

REVISION: _____

NO. _____



SOUTHEAST CORNER SECTION 7 TOWNSHIP 2 SOUTH RANGE 6 EAST FOUND TOWN OF GILBERT BRASS CAP IN A HANDHOLE

APN 304-57-703B
LAYTON LAKES COMMUNITY ASSOCIATION
BOOK 832 OF MAPS, PAGE 14, M.C.R.
NOT A PART

CVL CONSULTANTS
CELEBRATING 60 YEARS
4550 North 12th Street
Phoenix, Arizona 85014
800-264-6831
www.cvl.com

Coe and Van Loo II L.L.C.

FINAL PLAT
MOSAIC AT LAYTON LAKES
GILBERT, ARIZONA

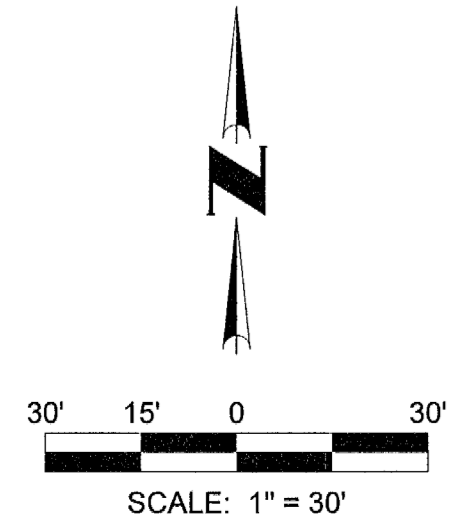
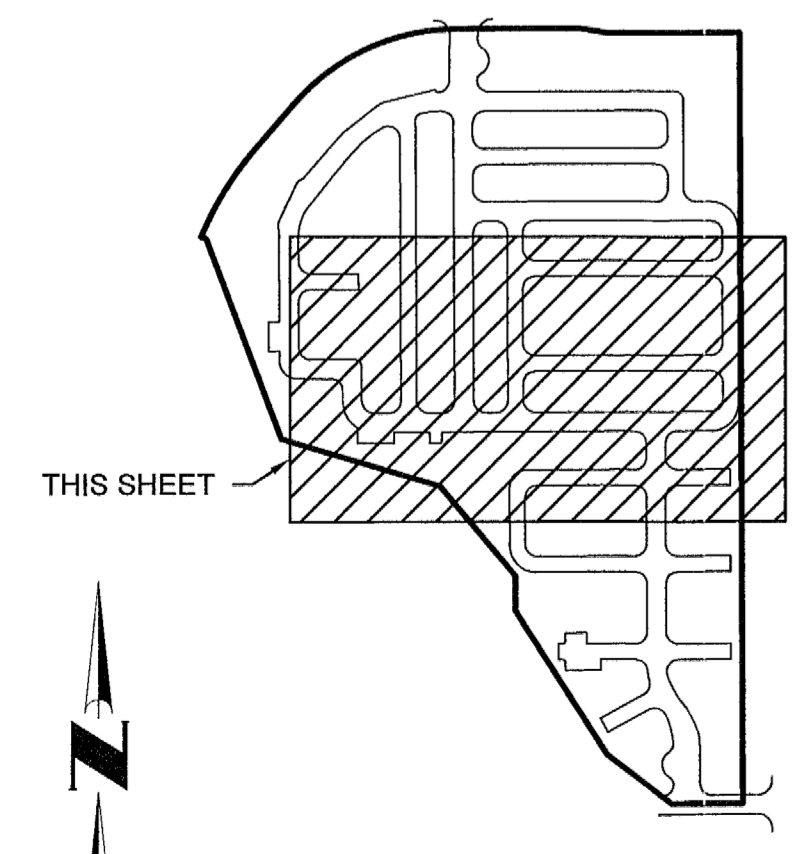
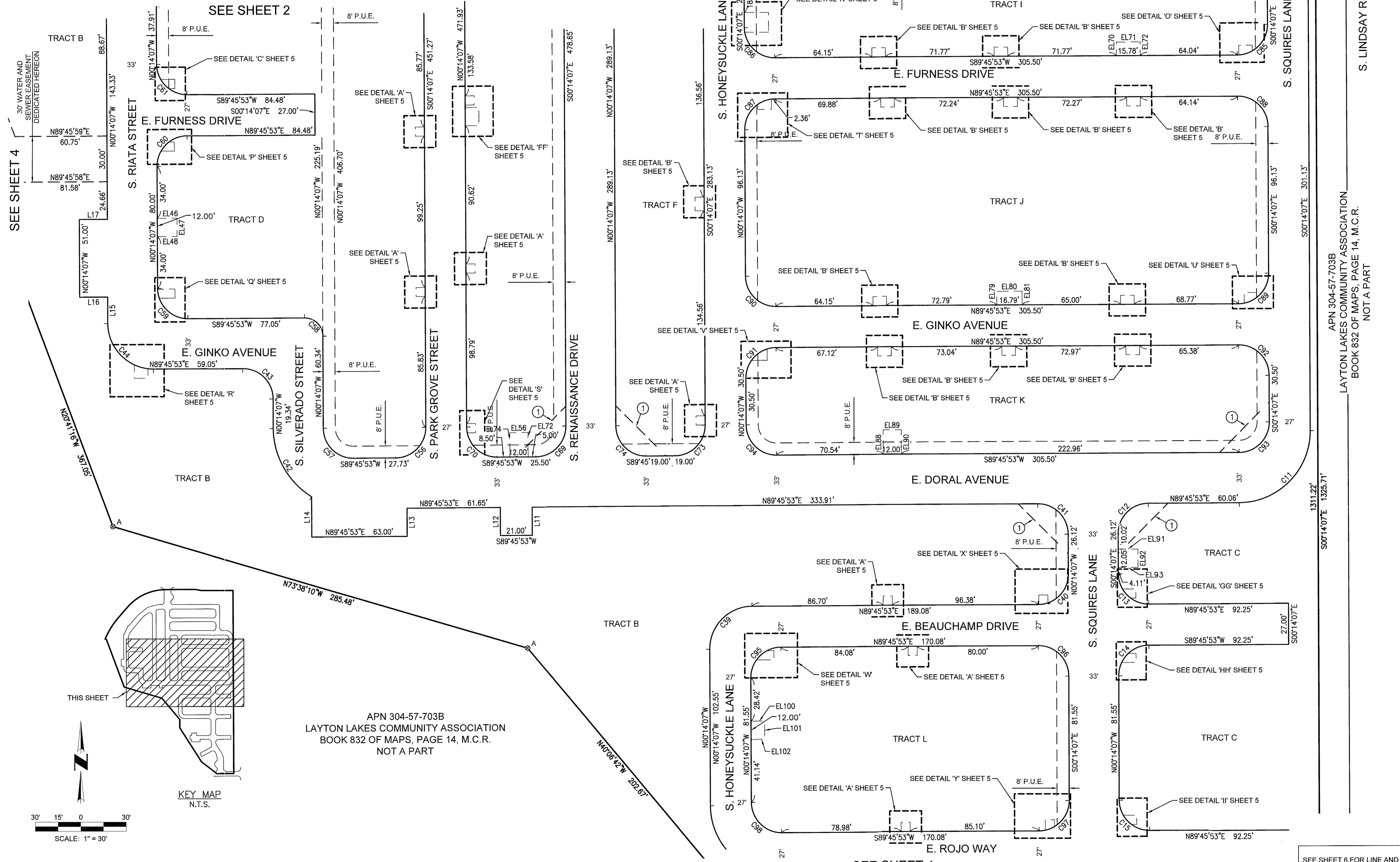
Registered Land Surveyor
CERTIFICATE NO. 33851
RICHARD G. ALCOCKER
Arizona
[Signature]

2 SHEET OF 6
CVL Contact: P. FROELICH
CVL Project #: 14.0101235
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LEGEND

- ▲--- SECTION CORNER - FOUND BRASS CAP (UNLESS OTHERWISE NOTED)
- FOUND BRASS CAP PER ADJOINING RECORDED SUBDIVISION PER M.A.G. STD. DTL. 120, TYPE "B" (UNLESS OTHERWISE NOTED)
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- ▲--- SECTION LINE
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- |--- FLOOD ZONE BOUNDARY
- ① SHEET NUMBER
- ① SIGHT VISIBILITY EASEMENT (33' X 33')
- ① LIMITS OF DETAIL NOT TO SCALE
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- R/W RIGHT-OF-WAY
- EX. EXISTING
- S.V.T. SIGHT VISIBILITY TRIANGLE
- P.U.E. PUBLIC UTILITY EASEMENT
- AC. ACRES
- L1 LINE NUMBER
- C1 CURVE NUMBER
- R/W RIGHT-OF-WAY
- M.C.R. MARICOPA COUNTY RECORDER
- DOC.# DOCUMENT NUMBER

COUNTY RECORDER



APN 304-57-703B
LAYTON LAKES COMMUNITY ASSOCIATION
BOOK 832 OF MAPS, PAGE 14, M.C.R.
NOT A PART

S. SQUIRES LANE
S. LINDSAY ROAD

APN 304-57-703B
LAYTON LAKES COMMUNITY ASSOCIATION
BOOK 832 OF MAPS, PAGE 14, M.C.R.
NOT A PART

NO.	REVISION	DATE

FINAL PLAT

MOSAIC AT LAYTON LAKES
GILBERT, ARIZONA

Coe and Van Loo II L.L.C.

3 SHEET OF 6

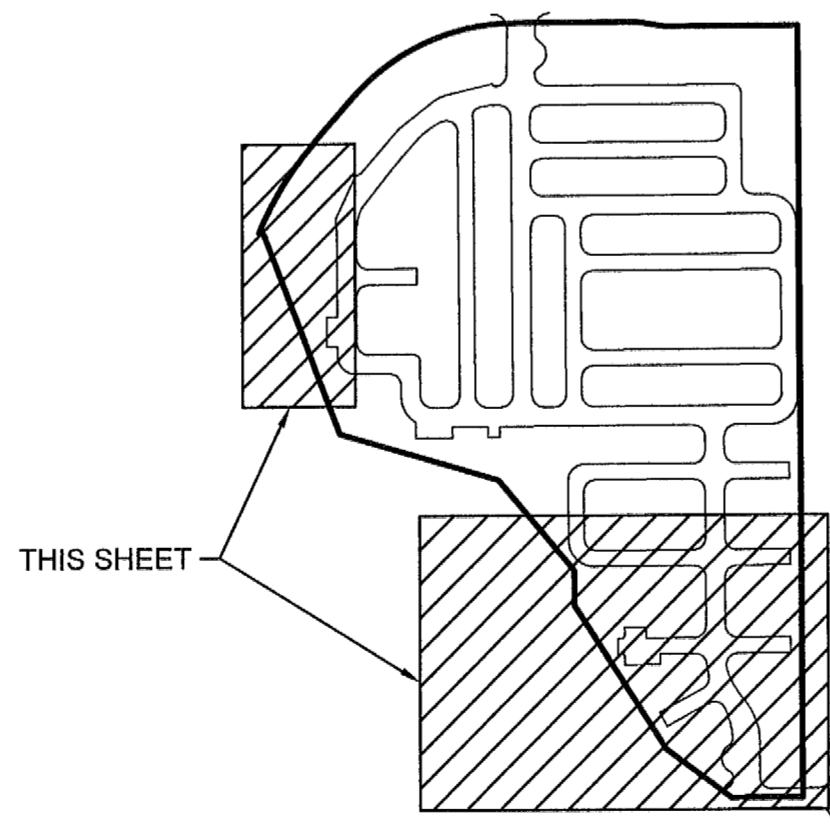
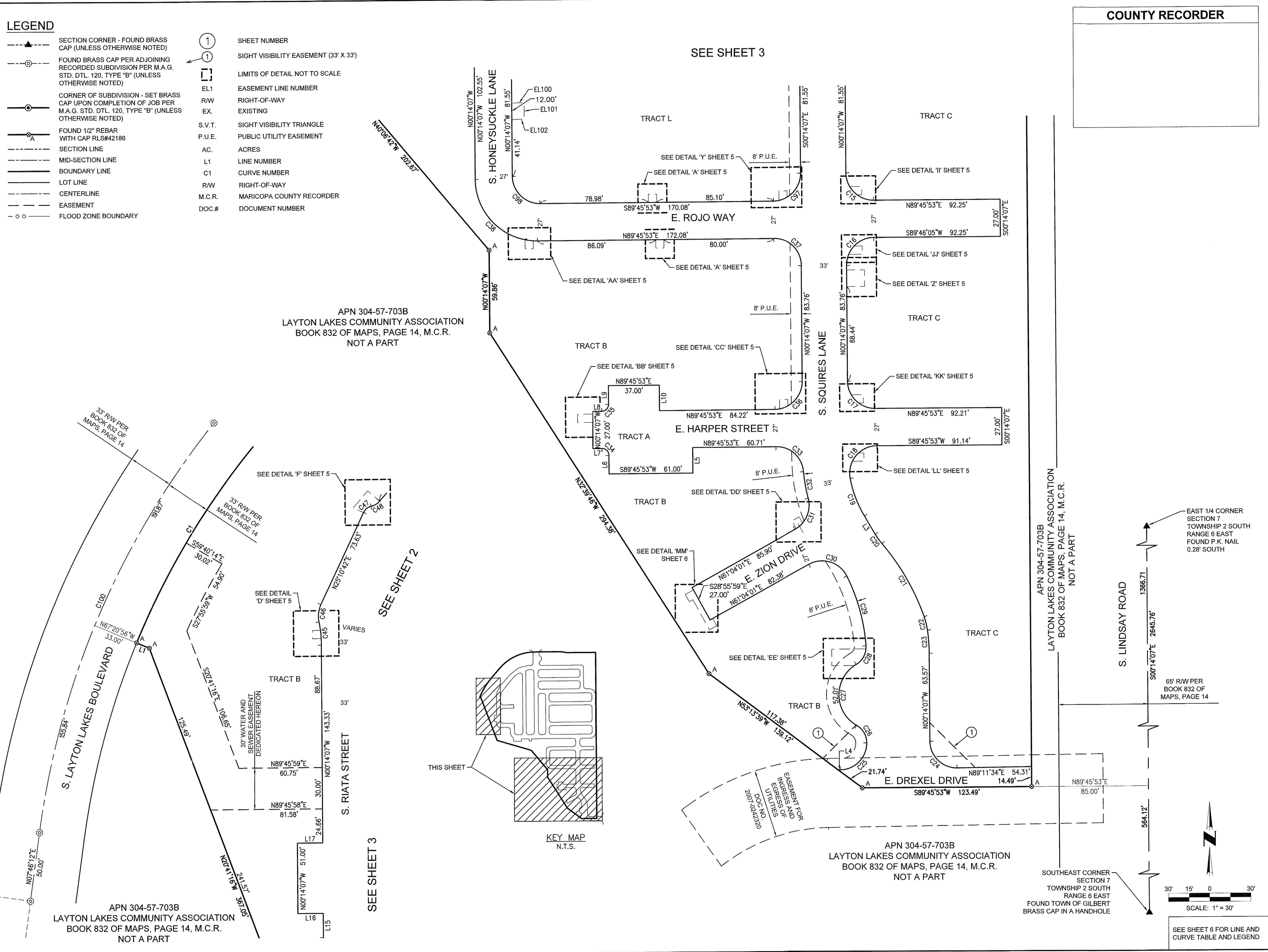
CVL Contact: P. FROEHLICH
CVL Project #: 14.0101235

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LEGEND

- ▲--- SECTION CORNER - FOUND BRASS CAP (UNLESS OTHERWISE NOTED)
 - ⊙--- FOUND BRASS CAP PER ADJOINING RECORDED SUBDIVISION PER M.A.G. STD. DTL. 120, TYPE "B" (UNLESS OTHERWISE NOTED)
 - CORNER OF SUBDIVISION - SET BRASS CAP UPON COMPLETION OF JOB PER M.A.G. STD. DTL. 120, TYPE "B" (UNLESS OTHERWISE NOTED)
 - FOUND 1/2" REBAR WITH CAP RLS#42186
 - SECTION LINE
 - MID-SECTION LINE
 - BOUNDARY LINE
 - LOT LINE
 - CENTERLINE
 - EASEMENT
 - FLOOD ZONE BOUNDARY
- ① SHEET NUMBER
 - ① SIGHT VISIBILITY EASEMENT (33' X 33')
 - LIMITS OF DETAIL NOT TO SCALE
 - EL1 EASEMENT LINE NUMBER
 - R/W RIGHT-OF-WAY
 - EX. EXISTING
 - S.V.T. SIGHT VISIBILITY TRIANGLE
 - P.U.E. PUBLIC UTILITY EASEMENT
 - AC. ACRES
 - L1 LINE NUMBER
 - C1 CURVE NUMBER
 - R/W RIGHT-OF-WAY
 - M.C.R. MARICOPA COUNTY RECORDER
 - DOC.# DOCUMENT NUMBER

Printed By: Parker Print Date: April 15, 2019 Filename: N:\114_Coe and Van Loo II L.L.C.\0101235\CADD\DDIS\FPLAT.02.dwg



COUNTY RECORDER



NO.	REVISION	DATE

FINAL PLAT

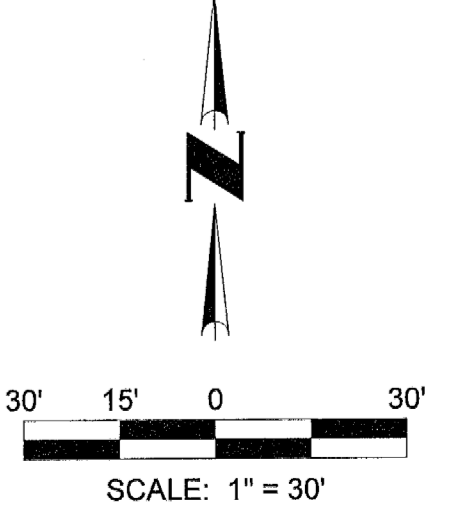
MOSAIC AT LAYTON LAKES
GILBERT, ARIZONA

REGISTERED LAND SURVEYOR
CERTIFICATE NO. 33851
RICHARD G. ALCOCER
ALCOCCER
ARIZONA, U.S.A.

4 SHEET OF 6

CVL Contact: P. FROELICH
CVL Project #: 14_0101235

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EAST 1/4 CORNER SECTION 7 TOWNSHIP 2 SOUTH RANGE 6 EAST FOUND P.K. NAIL 0.28' SOUTH

SOUTHEAST CORNER SECTION 7 TOWNSHIP 2 SOUTH RANGE 6 EAST FOUND TOWN OF GILBERT BRASS CAP IN A HANDHOLE

SEE SHEET 2

SEE SHEET 3

SEE SHEET 3

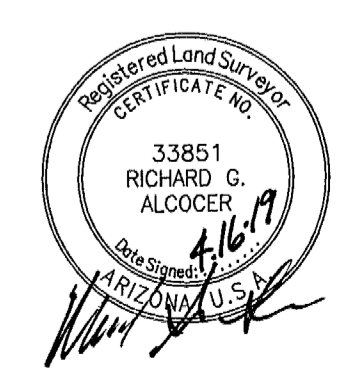
COUNTY RECORDER

NO.	REVISION	DATE

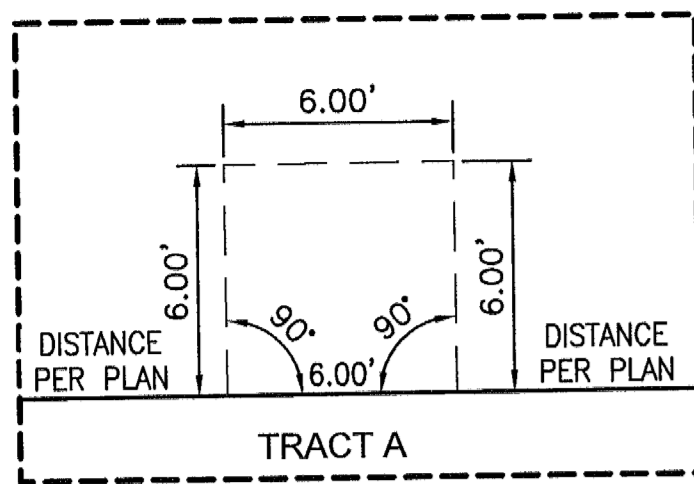
Coe and Van Loo II L.L.C.

MOSAIC AT LAYTON LAKES
GILBERT, ARIZONA

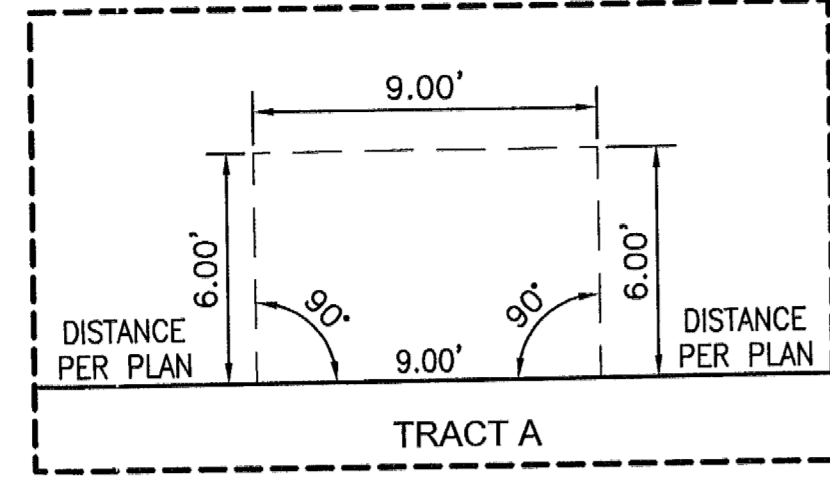
FINAL PLAT



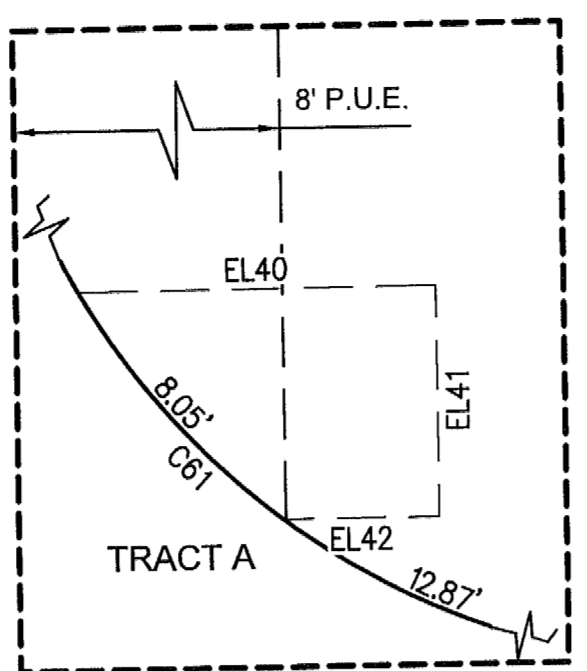
5 SHEET OF 6
CVL Contact: P. FROELICH
CVL Project #: 14.0101235
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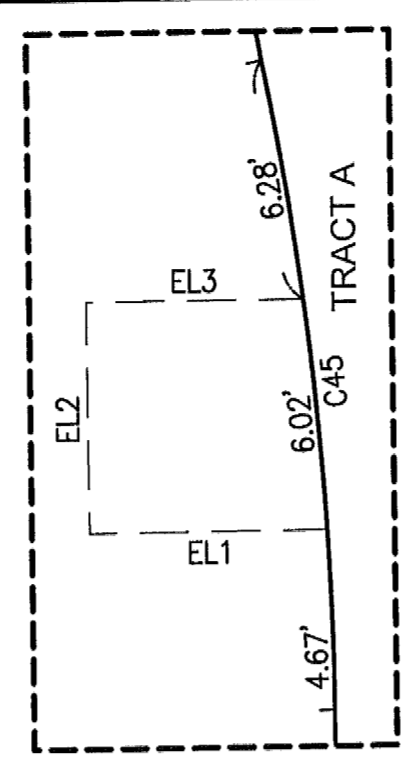
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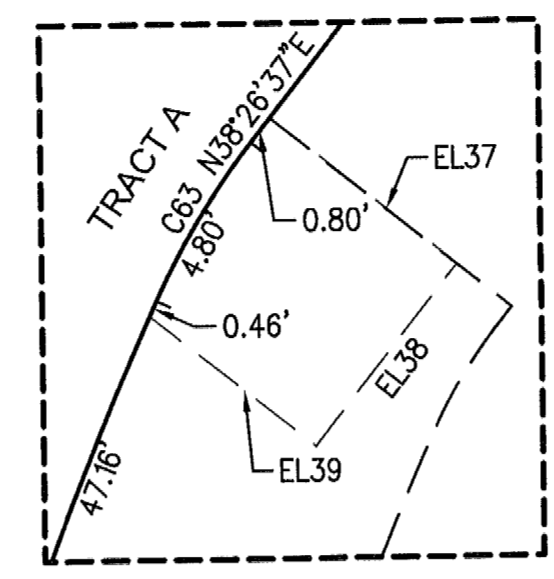
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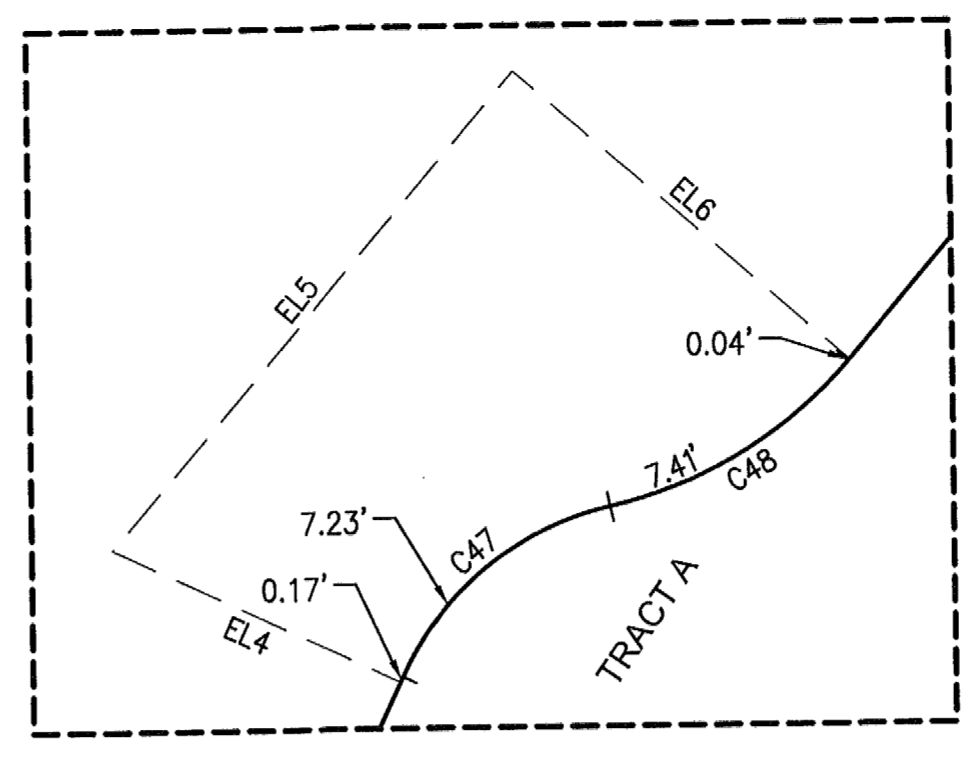
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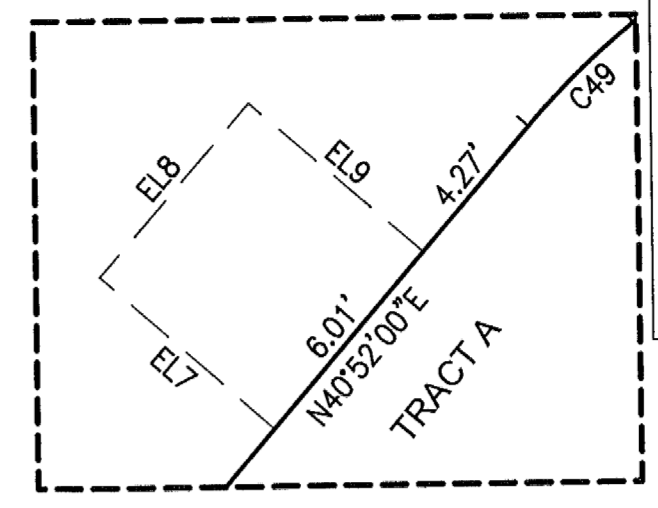
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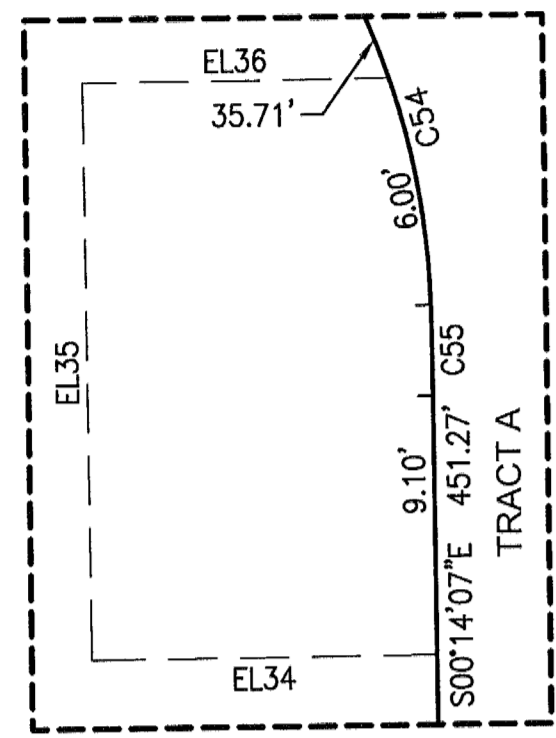
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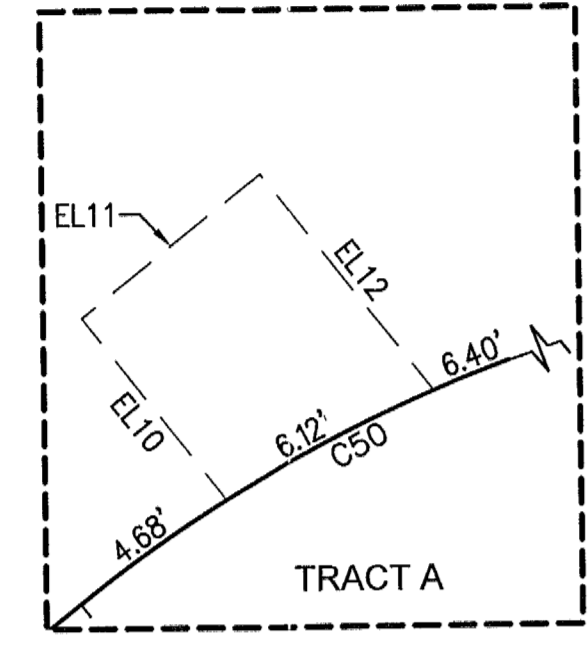
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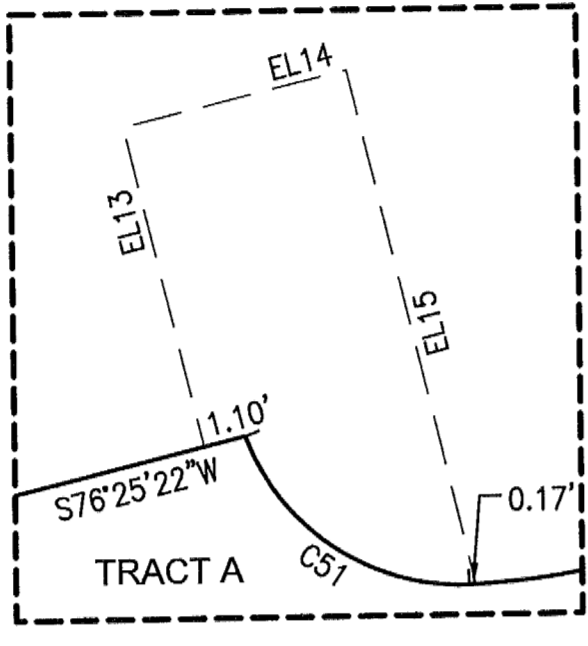
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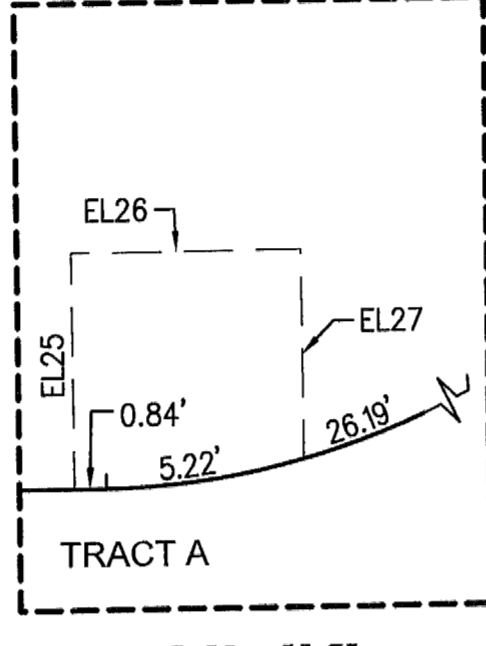
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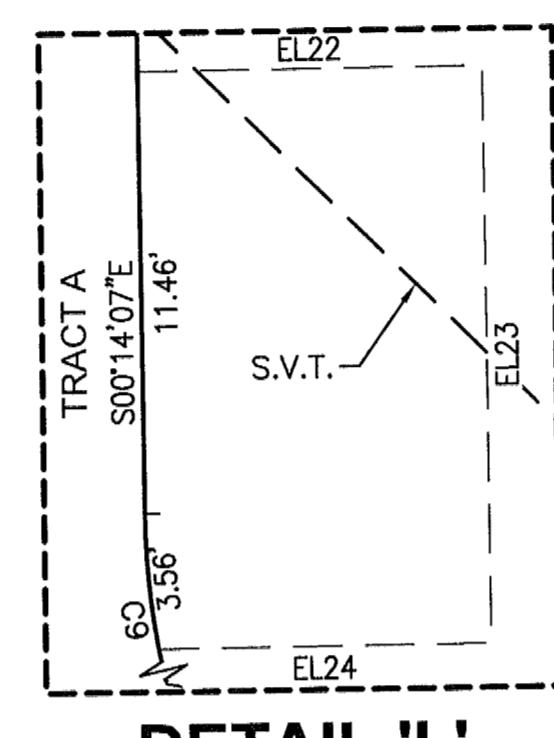
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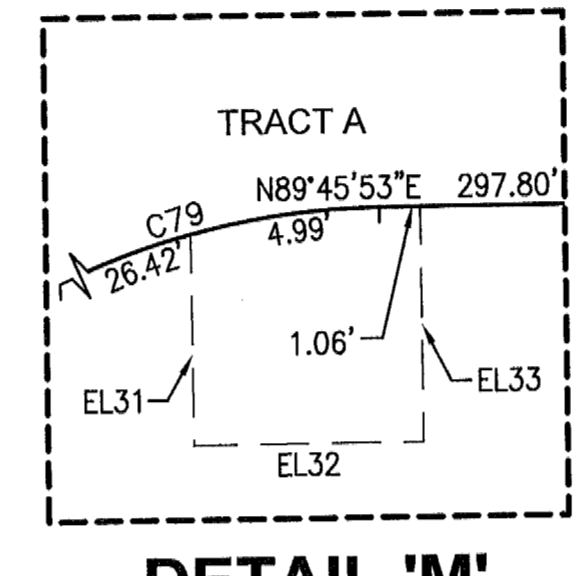
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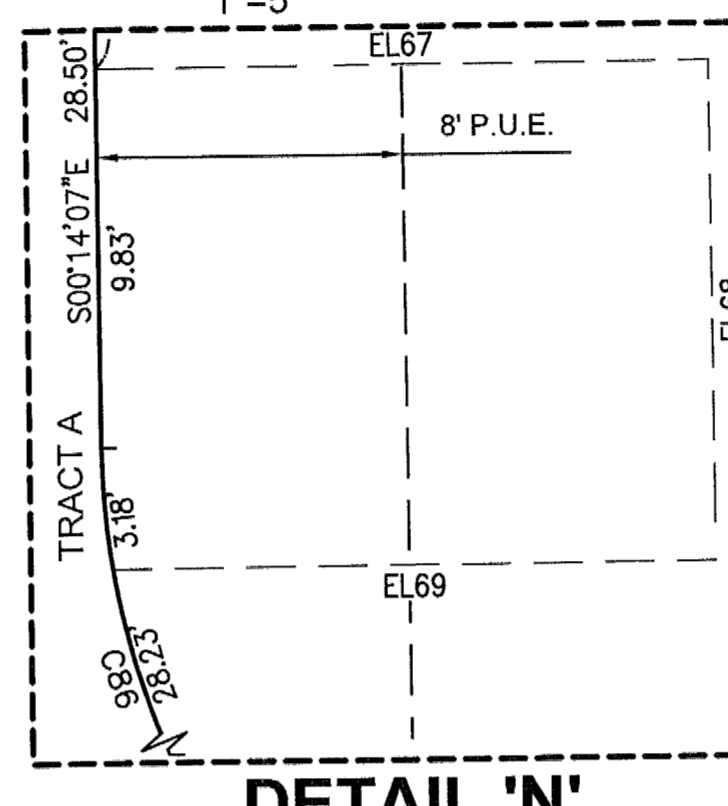
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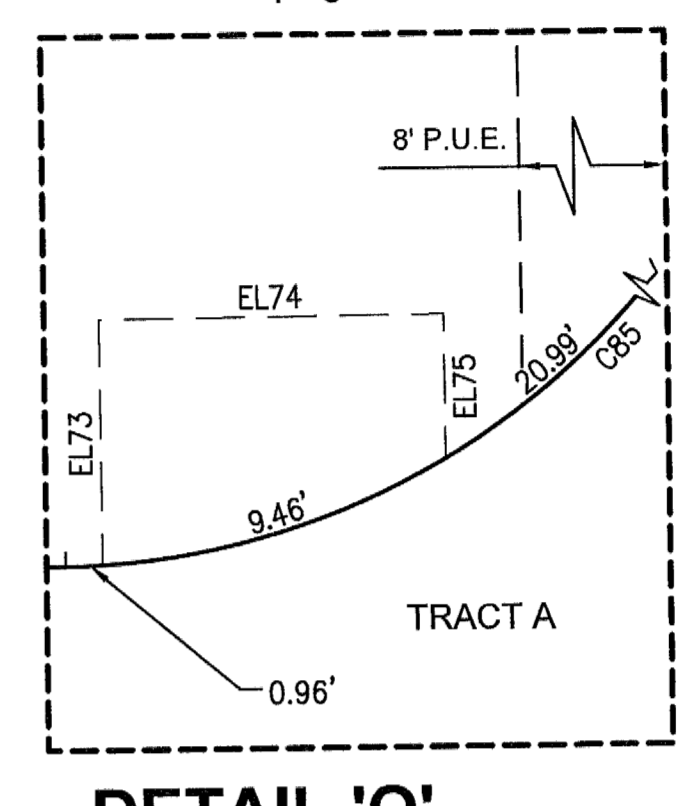
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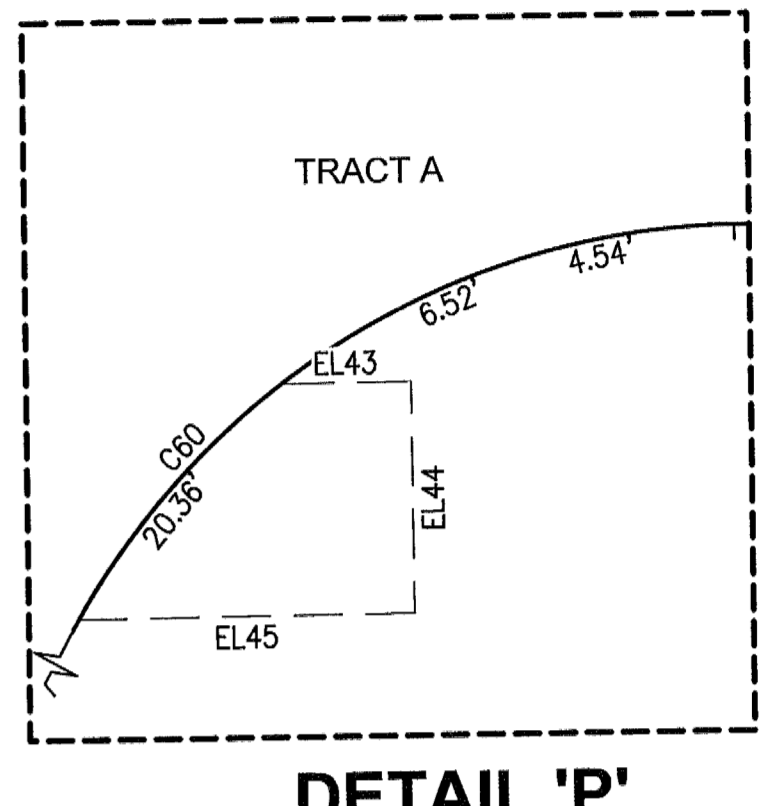
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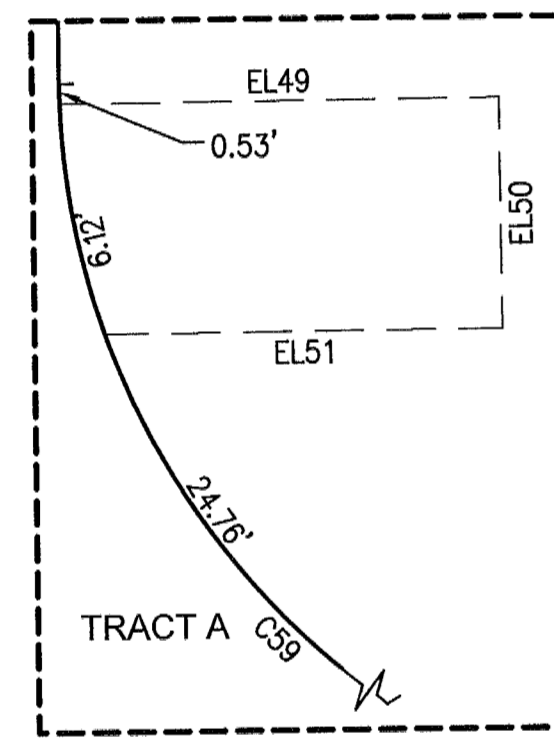
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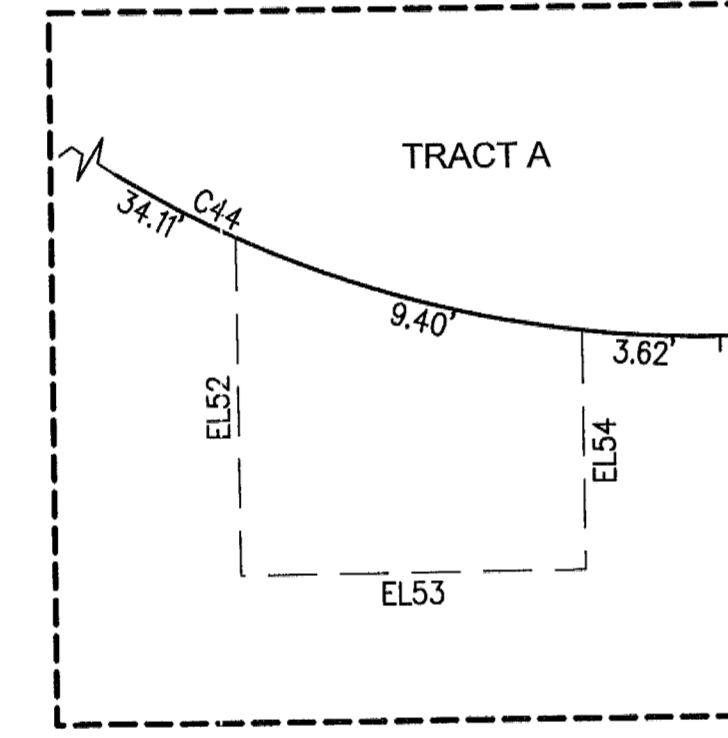
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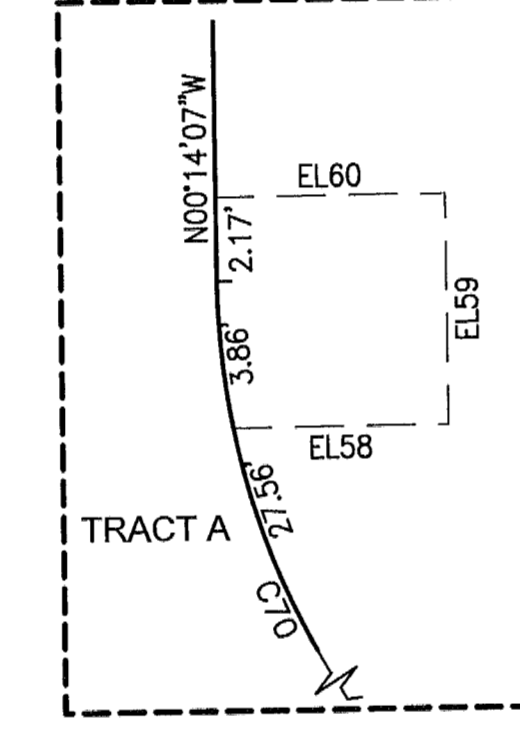
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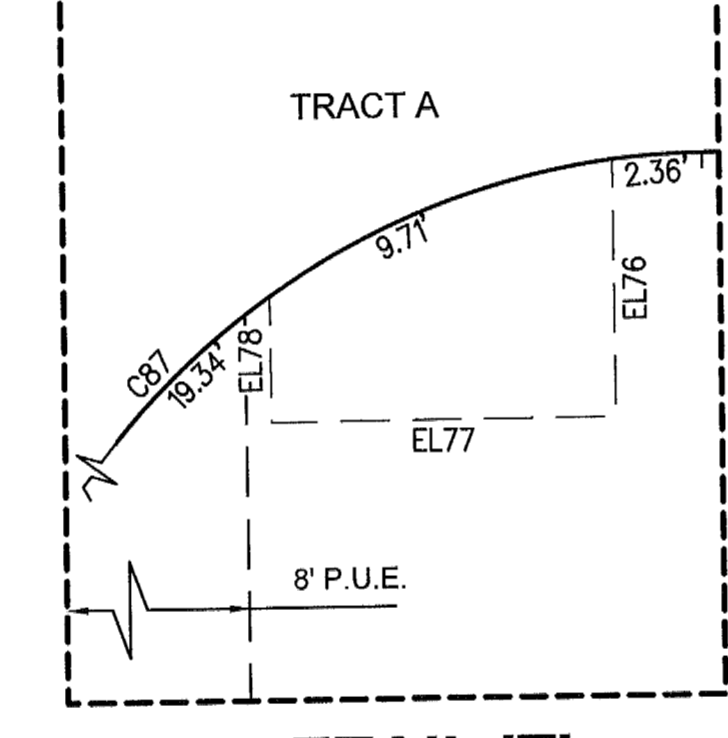
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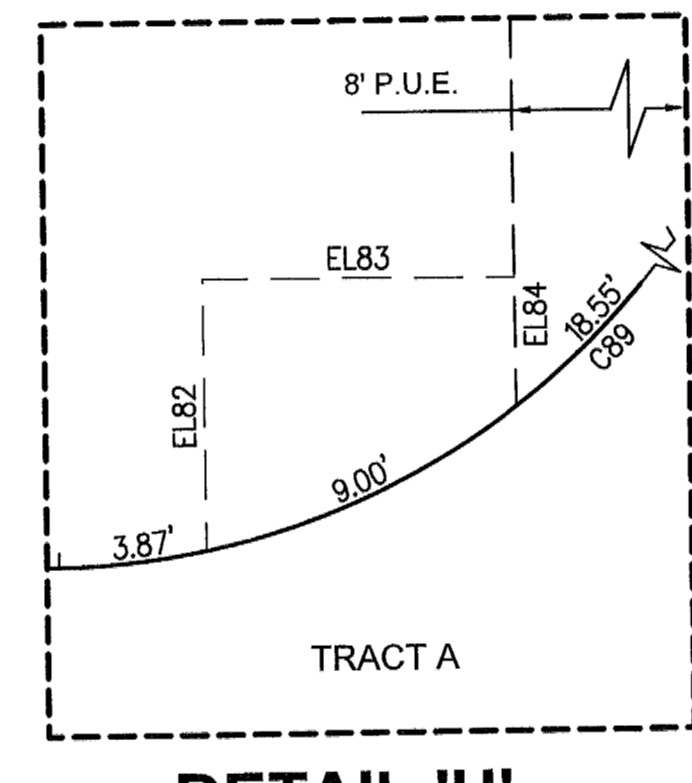
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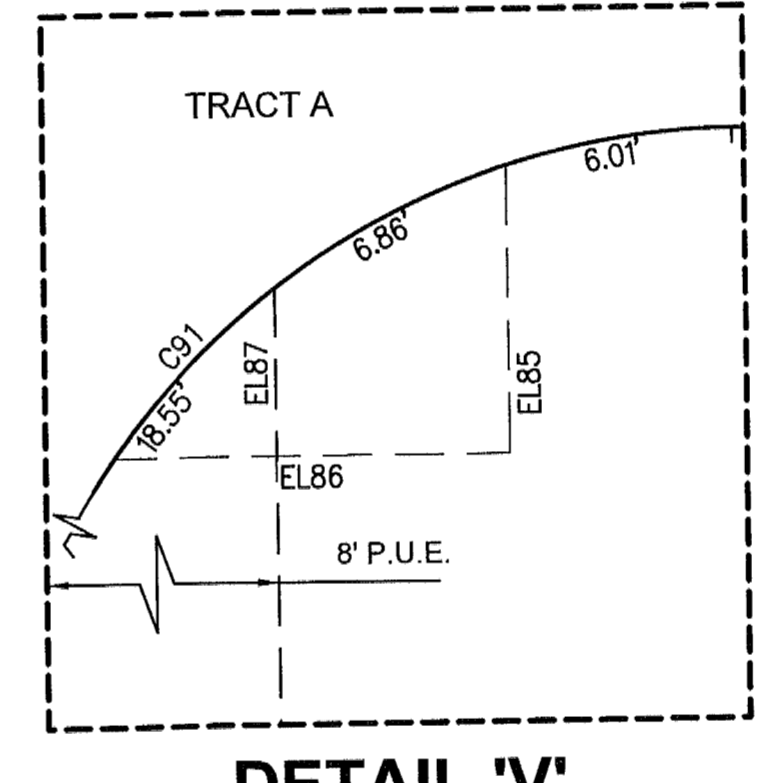
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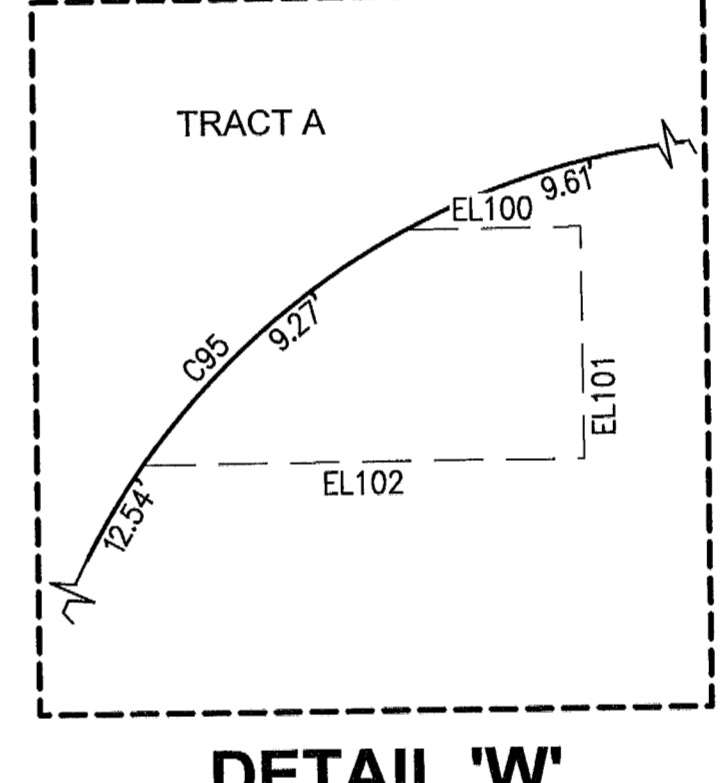
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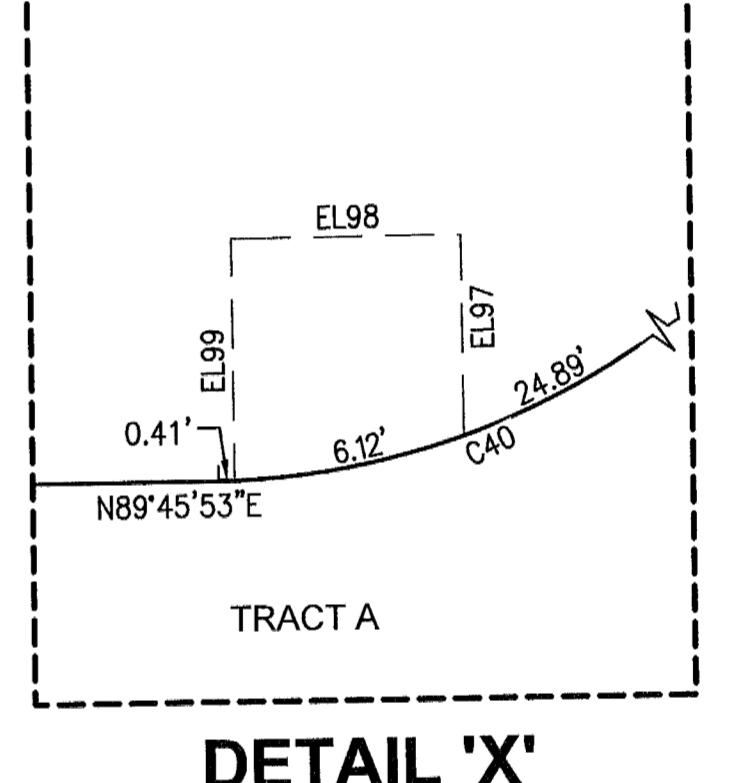
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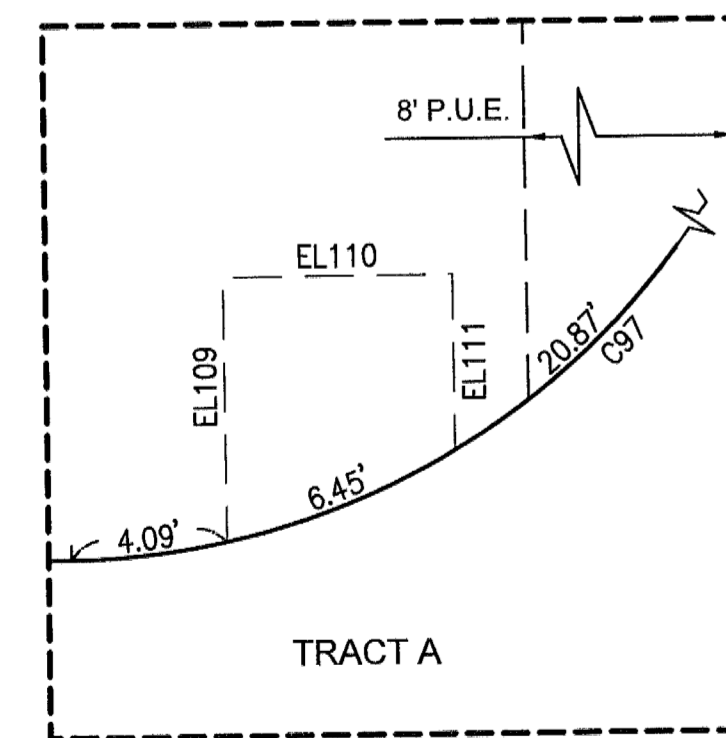
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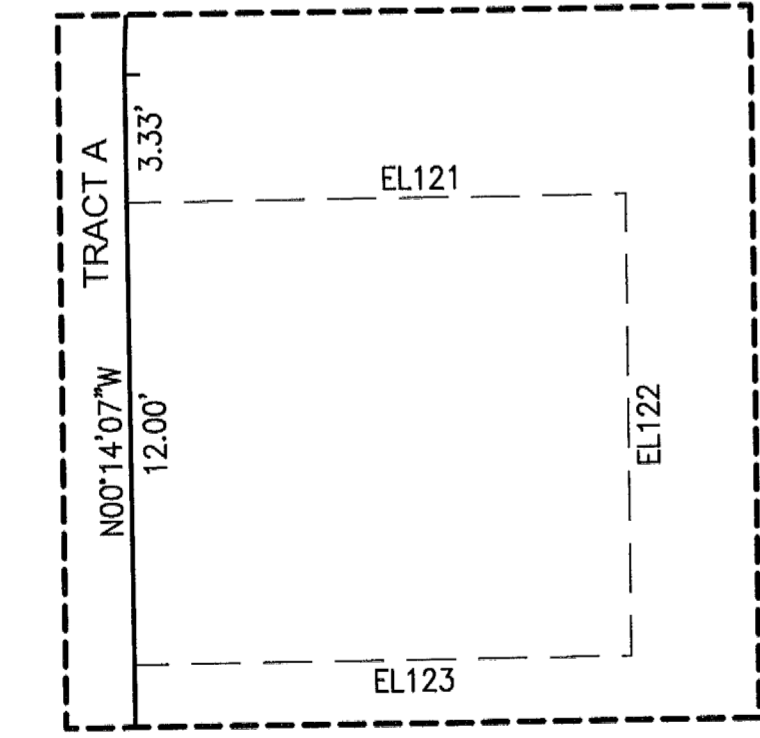
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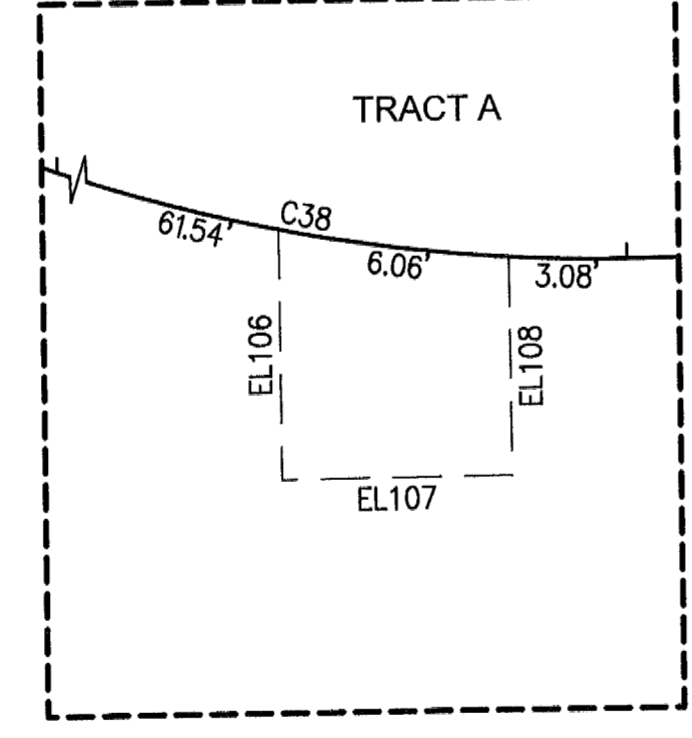
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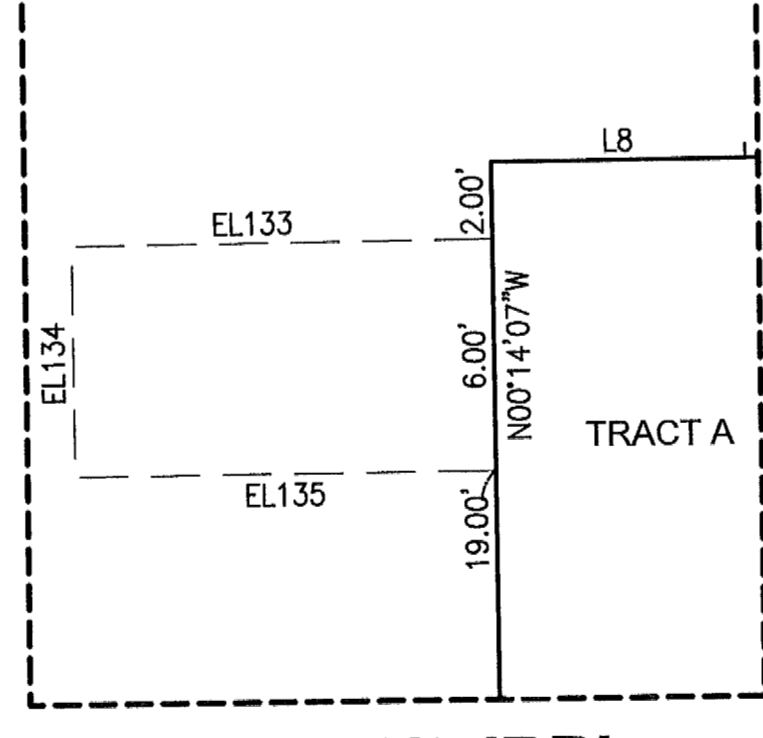
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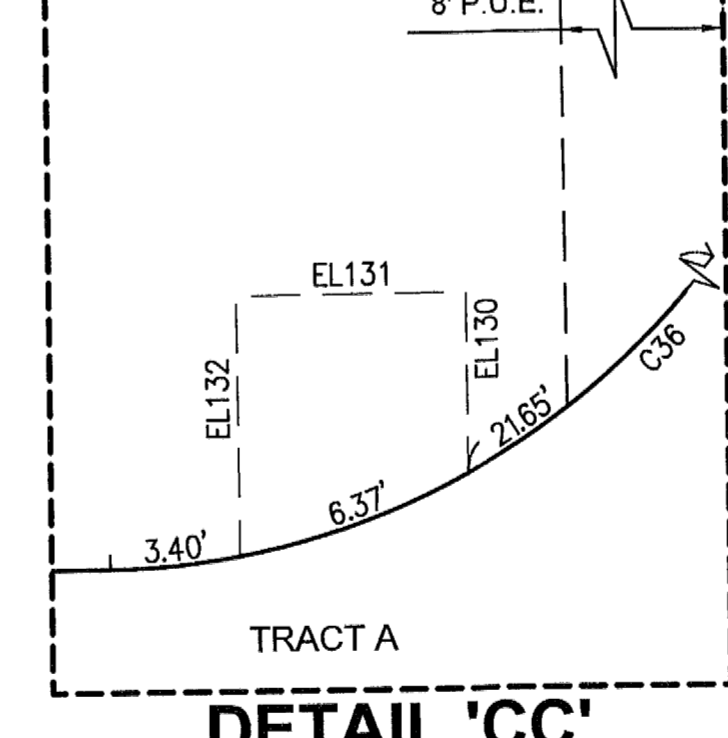
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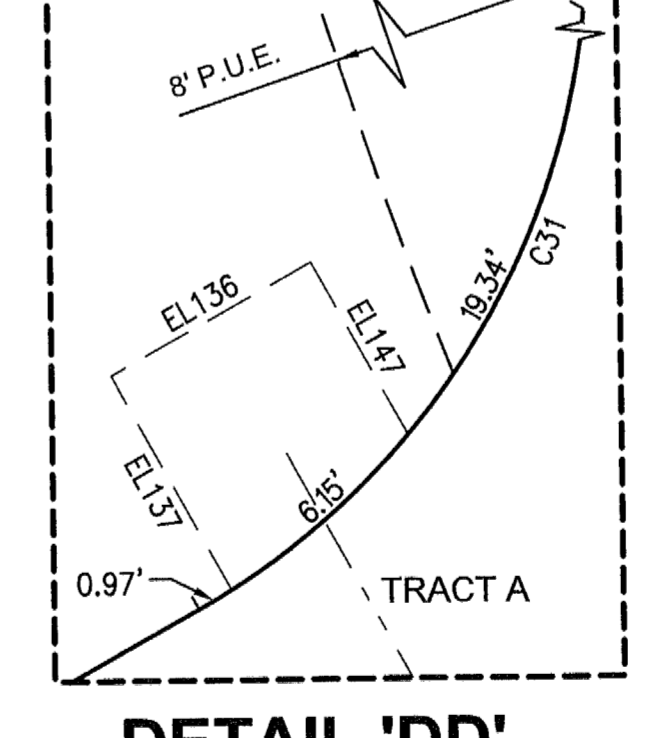
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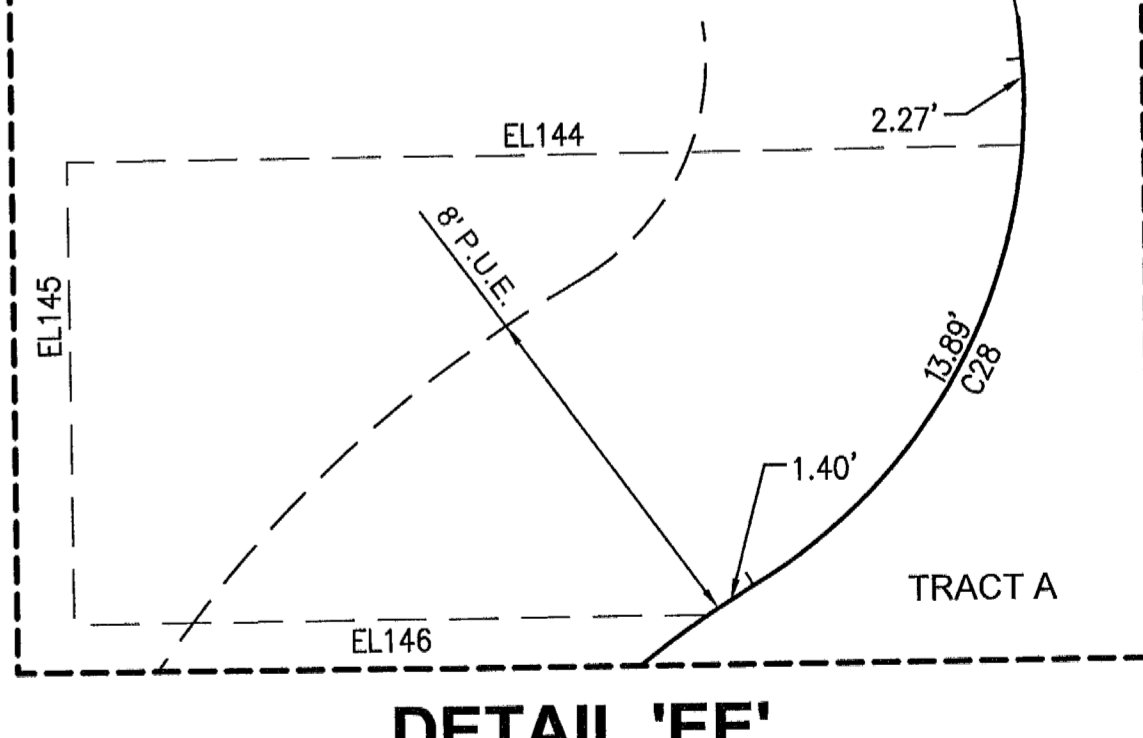
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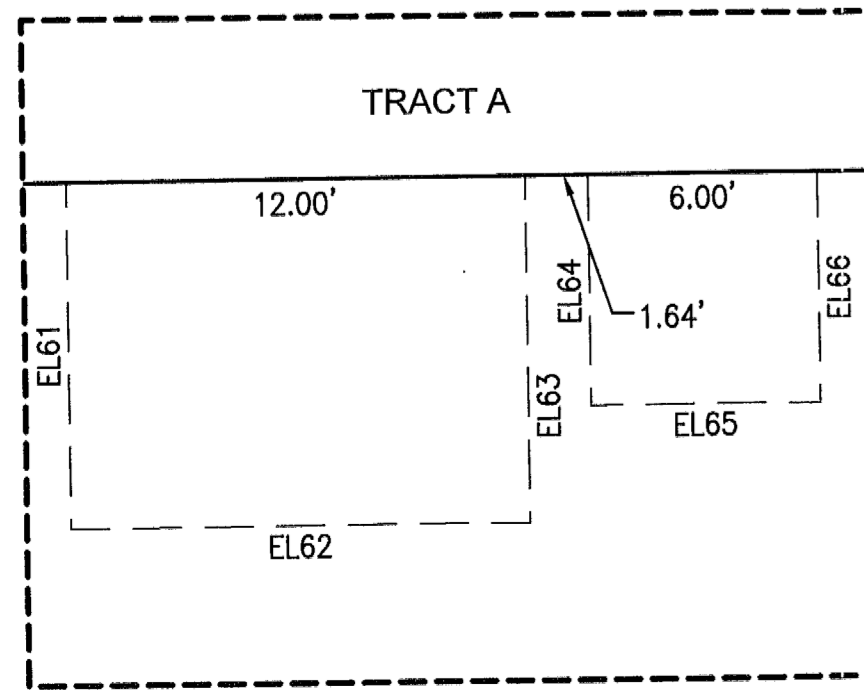
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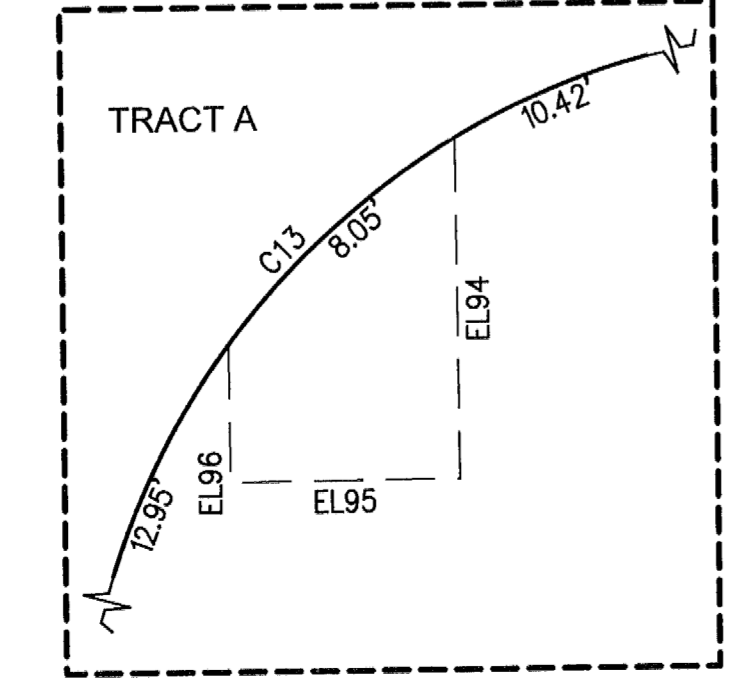
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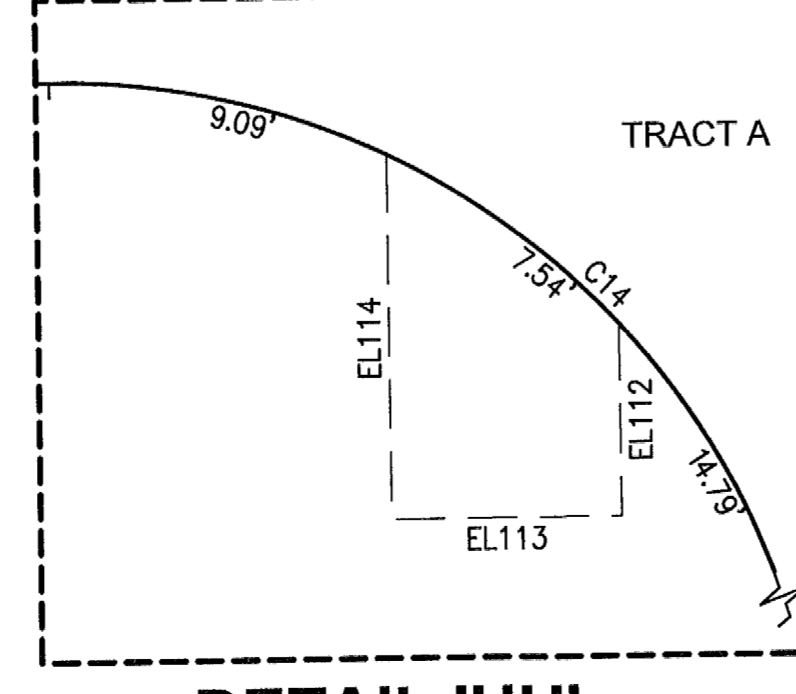
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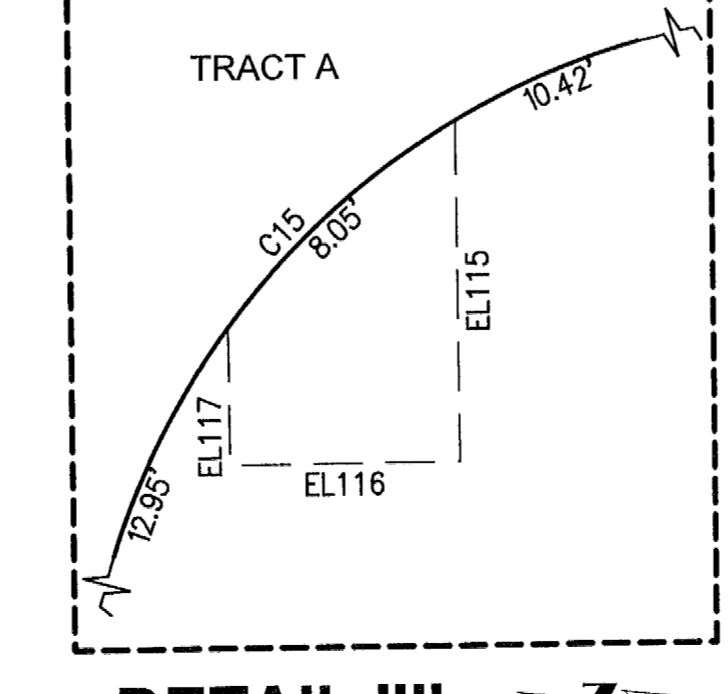
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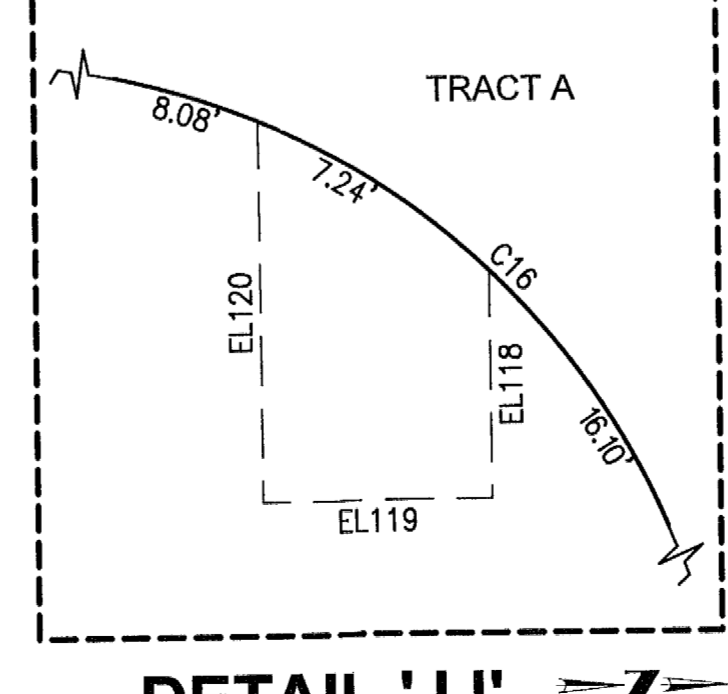
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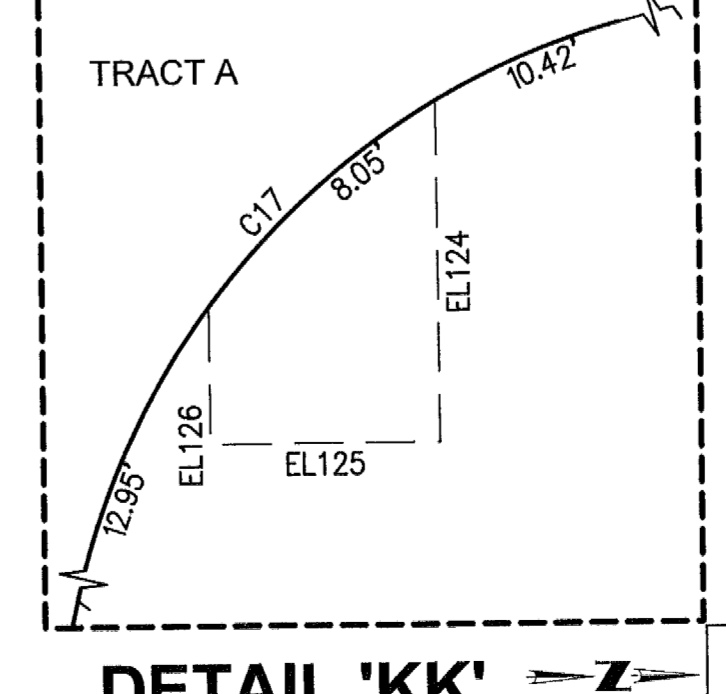
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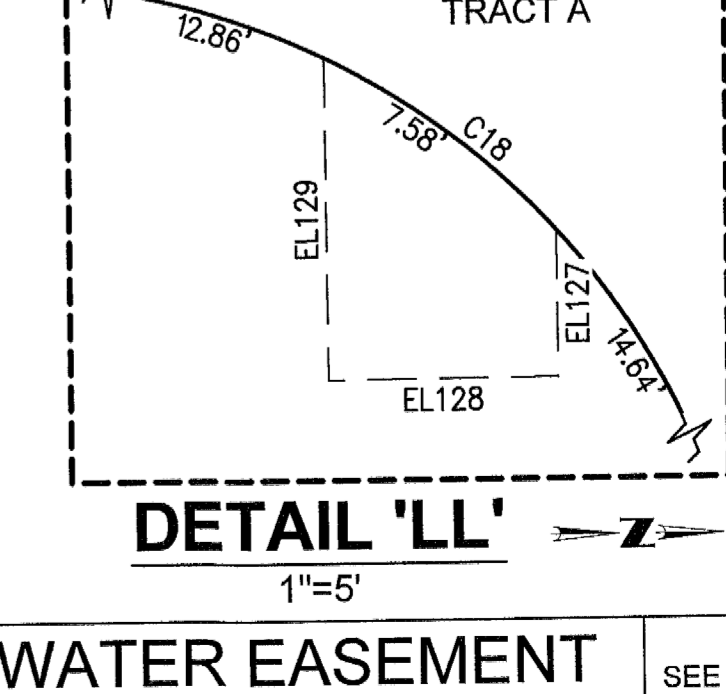
DETAIL 'II'
1"=5'



DETAIL 'JJ'
1"=5'



DETAIL 'KK'
1"=5'



DETAIL 'LL'
1"=5'

WATER EASEMENT DETAILS
SEE SHEET 6 FOR LINE AND CURVE TABLE AND LEGEND

LINE TABLE		
NO.	BEARING	LENGTH
EL1	S89°45'53"W	6.21'
EL2	N00°14'07"W	6.00'
EL3	N89°45'53"E	5.68'
EL4	N64°49'18"W	8.28'
EL5	N40°52'00"E	16.21'
EL6	S49°08'00"E	11.51'
EL7	N48°37'28"W	6.03'
EL8	N41°22'33"E	5.96'
EL9	S49°08'00"E	5.97'
EL10	N38°12'36"W	6.04'
EL11	N51°47'24"E	6.00'
EL12	S38°12'36"E	7.21'
EL13	N13°34'38"W	8.55'
EL14	N76°25'22"E	6.00'
EL15	S13°34'38"E	13.78'
EL16	N00°14'07"W	9.00'
EL17	N89°45'53"E	12.01'
EL18	S00°12'48"E	9.00'
EL19	N89°45'53"E	6.00'
EL20	S00°14'07"E	9.00'
EL21	S89°45'53"W	6.00'
EL22	N89°45'53"E	9.00'
EL23	S00°14'07"E	15.00'
EL24	N90°00'00"E	8.68'
EL25	N00°14'07"W	6.13'
EL26	N89°45'53"E	6.00'
EL27	S00°14'07"E	5.45'
EL28	N89°45'53"E	16.00'

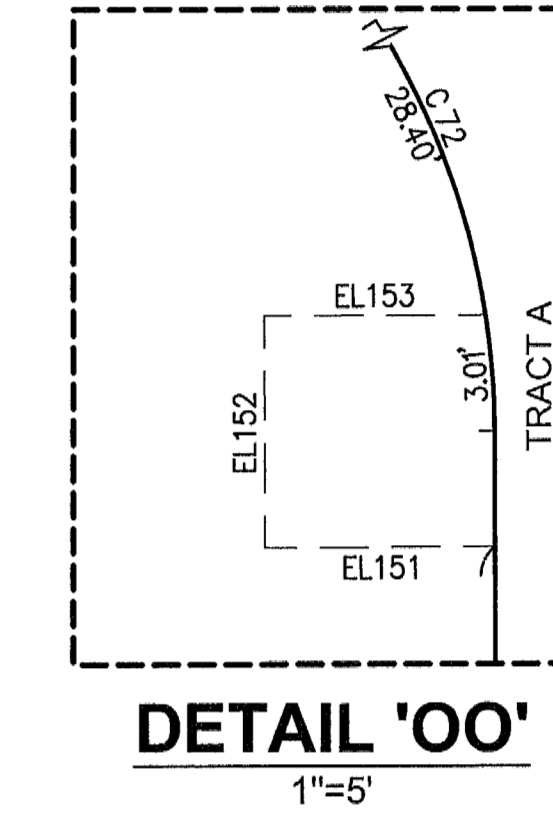
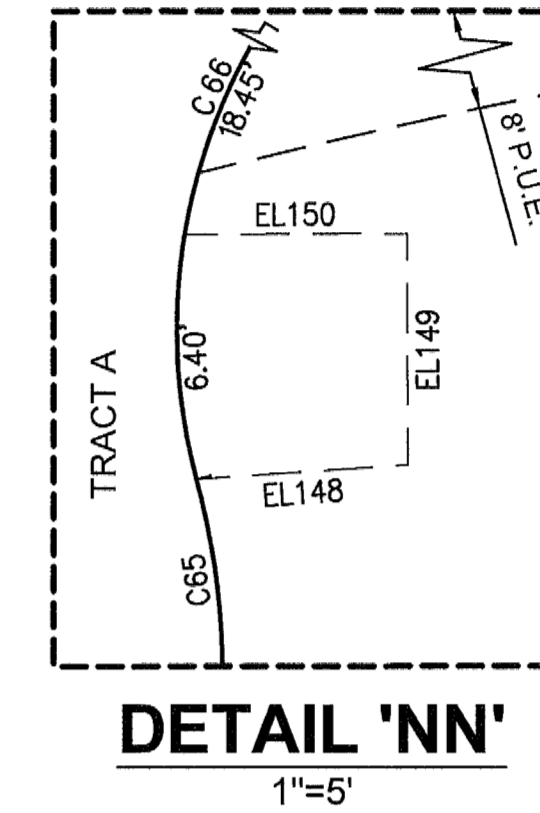
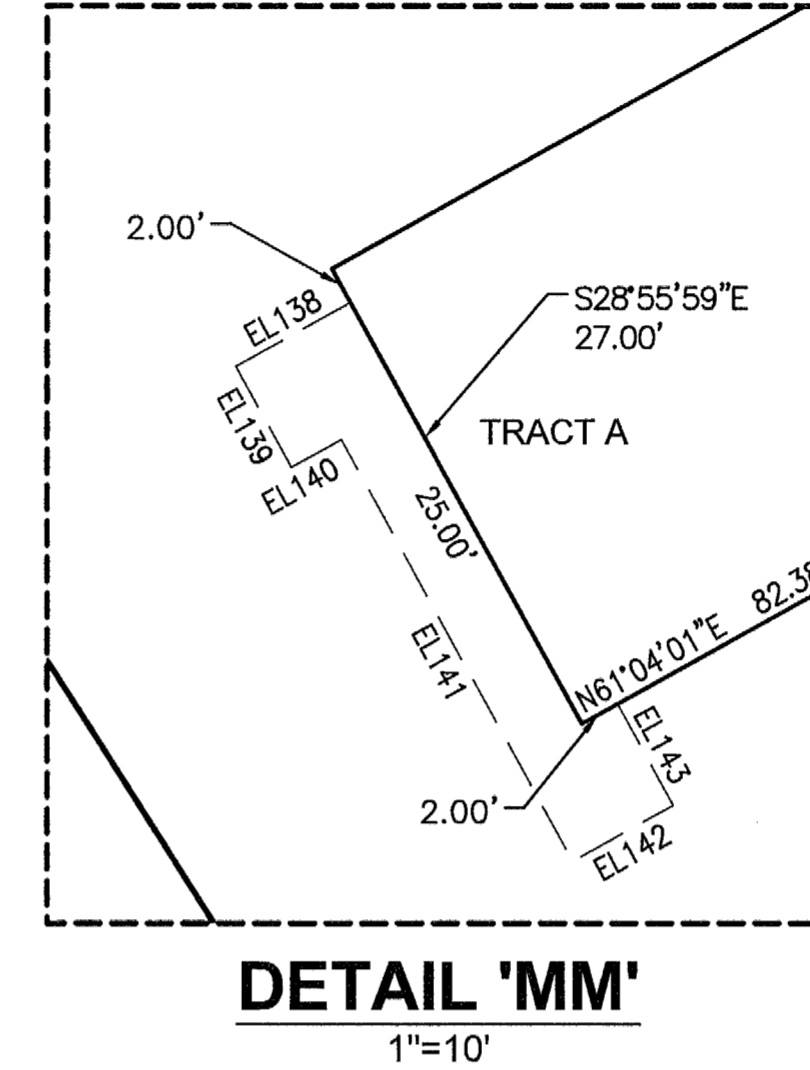
LINE TABLE		
NO.	BEARING	LENGTH
EL29	S00°14'07"E	12.00'
EL30	S89°45'53"W	16.00'
EL31	N00°14'07"W	5.49'
EL32	N89°45'53"E	6.00'
EL33	N00°14'07"W	6.10'
EL34	S89°45'56"W	9.02'
EL35	N00°14'07"W	15.00'
EL36	N89°45'51"E	8.00'
EL37	S51°33'23"E	6.17'
EL38	S38°26'37"W	6.00'
EL39	N51°33'23"W	5.49'
EL40	N89°45'53"E	9.35'
EL41	S00°14'41"E	6.00'
EL42	N89°45'53"E	4.07'
EL43	S89°45'53"W	3.39'
EL44	N00°14'41"W	6.00'
EL45	N89°45'53"E	8.77'
EL46	N90°00'00"W	13.04'
EL47	N00°14'07"W	12.00'
EL48	N89°45'53"E	13.04'
EL49	N89°45'53"E	11.48'
EL50	S00°14'07"E	6.00'
EL51	S89°45'53"W	10.39'
EL52	S00°14'07"E	8.78'
EL53	N89°45'53"E	9.00'
EL54	N00°00'00"E	6.22'
EL55	N00°14'07"W	16.00'
EL56	S89°45'53"W	12.00'

LINE TABLE		
NO.	BEARING	LENGTH
EL57	S00°07'04"E	16.00'
EL58	S89°45'53"W	5.63'
EL59	S00°14'07"E	6.00'
EL60	N89°45'53"E	6.00'
EL61	N89°45'53"E	9.00'
EL62	S00°14'07"W	12.00'
EL63	N89°45'53"E	9.00'
EL64	N89°45'53"E	6.00'
EL65	N00°14'07"W	6.00'
EL66	S89°45'53"W	6.00'
EL67	N89°47'40"E	16.01'
EL68	S00°14'07"E	13.00'
EL69	S89°47'40"W	15.75'
EL70	N00°14'07"W	9.00'
EL71	N90°00'00"E	15.78'
EL72	S00°14'07"E	9.00'
EL73	N00°14'10"W	6.37'
EL74	N89°45'53"E	9.00'
EL75	S00°14'07"E	3.74'
EL76	N00°00'00"E	6.68'
EL77	N89°45'53"E	9.00'
EL78	S00°14'07"E	3.28'
EL79	N00°14'07"W	9.00'
EL80	N89°45'53"E	16.79'
EL81	S00°14'07"E	9.00'
EL82	N00°14'11"W	7.06'
EL83	S89°40'30"E	8.15'
EL84	N00°14'07"W	3.36'

LINE TABLE		
NO.	BEARING	LENGTH
EL85	N00°14'07"W	7.47'
EL86	N89°45'53"E	10.35'
EL87	N00°00'00"E	4.36'
EL88	S00°14'07"E	16.00'
EL89	S89°45'53"W	12.00'
EL90	N00°14'07"W	16.00'
EL91	N90°00'00"E	13.02'
EL92	S00°00'00"E	12.00'
EL93	N00°00'00"W	12.98'
EL94	N89°45'19"E	8.85'
EL95	S00°14'41"E	6.00'
EL96	S89°45'19"W	3.56'
EL97	S00°13'52"E	5.22'
EL98	N89°45'53"E	6.00'
EL99	N00°13'55"W	6.28'
EL100	N89°37'14"E	4.57'
EL101	S00°14'07"E	6.01'
EL102	S89°45'53"W	11.53'
EL103	N89°45'53"E	9.00'
EL104	S00°14'07"E	12.00'
EL105	S89°45'53"W	9.00'
EL106	S00°08'31"E	6.52'
EL107	N89°45'58"E	6.00'
EL108	N00°11'48"W	5.68'
EL109	N00°00'00"W	5.36'
EL110	N89°45'19"E	6.00'
EL111	S00°14'41"E	4.57'
EL112	N89°45'19"E	4.98'

LINE TABLE		
NO.	BEARING	LENGTH
EL113	S00°14'41"E	6.00'
EL114	S89°45'19"W	9.47'
EL115	N89°45'19"E	8.85'
EL116	S00°14'41"E	6.00'
EL117	S89°45'19"W	3.56'
EL118	N89°45'19"E	5.91'
EL119	S00°14'41"E	6.00'
EL120	S89°45'19"W	9.89'
EL121	N89°45'53"E	13.03'
EL122	S00°00'00"E	12.00'
EL123	S89°45'53"W	12.98'
EL124	N89°45'19"E	8.85'
EL125	S00°14'41"E	6.00'
EL126	S89°45'19"W	3.56'
EL127	N89°45'19"E	3.80'
EL128	S00°14'41"E	6.00'
EL129	S89°45'19"W	8.36'
EL130	S00°12'11"E	4.71'
EL131	N89°45'19"E	6.00'
EL132	N00°14'41"W	6.76'
EL133	N89°45'47"E	11.00'
EL134	N00°14'13"W	6.00'
EL135	S89°45'47"W	11.00'
EL136	S61°04'01"W	6.00'
EL137	S28°55'59"E	6.37'
EL138	N61°04'01"E	6.84'
EL139	S28°56'02"E	6.00'

LINE TABLE		
NO.	BEARING	LENGTH
EL140	N61°03'59"E	2.97'
EL141	S28°55'59"E	25.00'
EL142	N61°03'58"E	6.00'
EL143	N28°56'02"W	6.00'
EL144	N89°45'54"E	24.95'
EL145	N00°14'07"W	12.00'
EL146	N89°45'50"E	16.57'
EL147	S28°55'59"E	5.14'
EL148	N86°08'20"E	5.53'
EL149	N00°14'07"W	6.00'
EL150	S89°45'53"W	5.80'
EL151	S89°45'53"W	6.00'
EL152	N00°14'07"W	6.00'
EL153	N89°45'53"E	5.77'



CURVE TABLE						
NO.	LENGTH	RADIUS	DELTA	TANGENT	CHORD	CHORD-BEARING
C1	181.32'	567.00'	018°19'21"	91.44	180.55	S31°48'45"W
C2	316.66'	371.86'	048°47'28"	168.65	307.18	S65°22'09"W
C3	8.72'	24.50'	020°23'21"	4.41	8.67	S10°05'12"W
C4	15.18'	14.50'	060°00'00"	8.37	14.50	S29°12'50"E
C5	53.41'	25.50'	120°00'00"	44.17	44.17	N00°47'10"E
C6	15.18'	14.50'	060°00'00"	8.37	14.50	S30°47'10"W
C7	30.98'	19.50'	091°01'17"	19.85	27.82	S44°43'29"E
C8	23.56'	15.00'	090°00'00"	15.00	21.21	N45°14'07"W
C9	31.42'	20.00'	090°00'00"	20.00	28.28	S45°14'07"E
C10	73.83'	47.00'	090°00'00"	47.00	66.47	N45°14'07"W
C11	73.83'	47.00'	090°00'00"	47.00	66.47	N44°45'53"E
C12	31.42'	20.00'	090°00'00"	20.00	28.28	S44°45'53"W
C13	31.42'	20.00'	090°00'00"	20.00	28.28	S45°14'07"E
C14	31.42'	20.00'	090°00'00"	20.00	28.28	S44°45'53"W
C15	31.42'	20.00'	090°00'00"	20.00	28.28	S45°14'07"E
C16	31.42'	20.00'	090°00'00"	20.00	28.28	S44°45'53"W
C17	31.42'	20.00'	090°00'00"	20.00	28.28	S45°14'07"E
C18	35.08'	20.00'	100°29'39"	24.04	30.75	S39°31'03"W
C19	29.03'	83.50'	019°55'21"	14.67	28.89	S20°41'26"E
C20	8.43'	49.50'	009°45'42"	4.23	8.42	S35°31'58"E
C21	61.46'	169.04'	020°49'53"	31.07	61.12	N29°59'53"W
C22	10.12'	50.50'	011°28'38"	5.07	10.10	N13°50'38"W
C23	16.89'	123.00'	007°52'12"	8.46	16.88	N04°10'13"W
C24	30.83'	19.50'	090°34'19"	19.70	27.71	S45°31'17"E
C25	30.44'	19.50'	089°25'41"	19.31	27.44	N44°28'43"E
C26	15.18'	14.50'	060°00'00"	8.37	14.50	N30°14'07"W
C27	53.41'	25.50'	120°00'00"	44.17	44.17	S00°14'07"E
C28	16.17'	14.50'	063°52'49"	9.04	15.34	N27°49'28"E
C29	52.76'	134.50'	022°28'35"	26.73	52.43	N15°21'14"W
C30	32.23'	20.00'	092°20'27"	20.83	28.86	N72°45'45"W
C31	26.46'	20.00'	075°47'36"	15.57	24.57	N23°10'13"E

CURVE TABLE						
NO.	LENGTH	RADIUS	DELTA	TANGENT	CHORD	CHORD-BEARING
C32	19.58'	116.50'	009°37'50"	9.81	19.56	S09°54'40"E
C33	29.72'	20.00'	085°08'22"	18.37	27.06	N47°39'56"W
C34	7.85'	5.00'	090°00'00"	5.00	7.07	N45°14'07"W
C35	7.85'	5.00'	090°00'00"	5.00	7.07	N44°45'53"E
C36	31.42'	20.00'	090°00'00"	20.00	28.28	N44°45'53"E
C37	31.42'	20.00'	090°00'00"	20.00	28.28	N45°14'07"W
C38	70.69'	45.00'	090°00'00"	45.00	63.64	S45°14'07"E
C39	43.98'	28.00'	090°00'00"	28.00	39.60	S44°45'53"W
C40	31.42'	20.00'	090°00'00"	20.00	28.28	N44°45'53"E
C41	31.42'	20.00'	090°00'00"	20.00	28.28	N45°14'07"W
C42	53.89'	53.00'	058°15'12"	29.53	51.59	S29°21'43"E
C43	31.42'	20.00'	090°00'00"	20.00	28.28	N45°14'07"W
C44	47.12'	30.00'	090°00'00"	30.00	42.43	S45°14'07"E
C45	16.98'	87.23'	011°09'00"	8.51	16.95	N05°48'37"W
C46	12.76'	20.00'	036°33'49"	6.61	12.55	S06°53'47"W
C47	7.23'	7.88'	052°35'46"	3.89	6.98	S51°28'35"W
C48	7.41'	11.50'	036°54'28"	3.84	7.28	N59°19'14"E
C49	3.81'	20.00'	010°55'24"	1.91	3.81	S46°19'42"W
C50	17.20'	40.00'	024°37'58"	8.73	17.06	S64°06'23"W
C51	7.50'	6.00'	071°39'52"	4.33	7.02	S55°57'25"E
C52	29.75'	19.50'	087°25'30"	18.64	26.95	N44°29'55"E
C53	10.96'	24.50'	025°37'52"	5.57	10.87	N12°01'46"W
C54	41.71'	20.00'	119°29'40"	34.29	34.55	N60°58'23"W
C55	2.36'	136.50'	000°59'25"	1.18	2.36	N00°43'50"W
C56	31.42'	20.00'	090°00'00"	20.00	28.28	N44°45'53"E
C57	31.42'	20.00'	090°00'00"	20.00	28.28	S45°14'07"E
C58	18.85'	12.00'	090°00'00"	12.00	16.97	N45°14'07"W
C59	31.42'	20.00'	090°00'00"	20.00	28.28	S45°14'07"E
C60	31.42'	20.00'	090°00'00"	20.00	28.28	S44°45'53"W
C61	31.42'	20.00'	090°00'00"	20.00	28.28	S45°14'07"E
C62	47.62'	109.50'	024°55'09"	24.19	47.25	S12°13'27"W

CURVE TABLE						
NO.	LENGTH	RADIUS	DELTA	TANGENT	CHORD	CHORD-BEARING
C63	4.80'	20.00'	013°45'35"	2.41	4.79	S31°33'50"W
C64	65.40'	203.50'	018°24'47"	32.98	65.12	S50°04'24"W
C65	5.17'	20.00'	014°48'08"	2.60	5.15	N07°38'11"W
C66	24.86'	15.00'	094°57'20"	16.36	22.11	S32°26'25"W
C67	34.34'	203.50'	009°40'03"	17.21	34.30	S84°45'06"W
C68	31.48'	20.00'	090°10'45"	20.06	28.33	N45°19'30"W
C69	31.42'	20.00'	090°00'00"	20.00	28.2	



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Tom Condit, PE, Development Engineering Manager, 503-6815

MEETING DATE: May 16, 2019

SUBJECT: S18-14: Approval of the Final Plat of Bellamy, located at the southeast corner of Greenfield Road and Germann Road.

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's Infrastructure Strategic Initiative, as it allows for the logical extension of infrastructure to the site and surrounding area.

RECOMMENDED MOTION

A motion to approve the Final Plat of Bellamy, located at the southeast corner of Greenfield Road and Germann Road.

BACKGROUND/DISCUSSION

"Bellamy" is a 40 acre (+/-) parcel located at the southeast corner of Greenfield Road and Germann Road. The final plat for Bellamy establishes 163 single family residential lots and 22 tracts encompassing common facilities such as private roads, public utilities, emergency vehicle and pedestrian access, landscaped open space, and storm water retention areas. Public rights-of-way and easements for public utilities and vehicular non-access are also provided on this Final Plat. These rights-of-way, tracts, and easements support the infrastructure that is needed for the Bellamy subdivision.

The following is an abbreviated history of Town actions associated with this property:

October 10, 2006 Town Council approved A05-22 (Ordinance No. 1853), annexing the subject site.

- March 6, 2007 Town Council approved Z06-12-C (Ord. No. 1926) rezoning 170 acres of Agricultural (AG) and R-43 to SF-15, SF-6, SC, and CC zoning districts.
- May 22, 2007 Town Council approved Z07-47 (Ord. No. 1962), a zoning map correction, rezoning 19 acres of SF-35 to PF/I and SF-6.
- December 20, 2018 Town Council approved Z18-26 (Ord. No. 2698) rezoning 16.08 acres of CC and 23.96 acres of SF-6 to 40.04 acres of Single Family-Detached (SF-D) with a Planned Area Development overlay (PAD).
- January 9, 2019 The Planning Commission approved S18-14, the Preliminary Plat and Open Space Plan for Lennar Homes (Bellamy), with conditions.

FINANCIAL IMPACT

None.

STAFF RECOMMENDATION

Staff recommends approval of the Final Plat for Bellamy.

Respectfully submitted,

Tom Condit, PE
Development Engineering Manager

Approved By

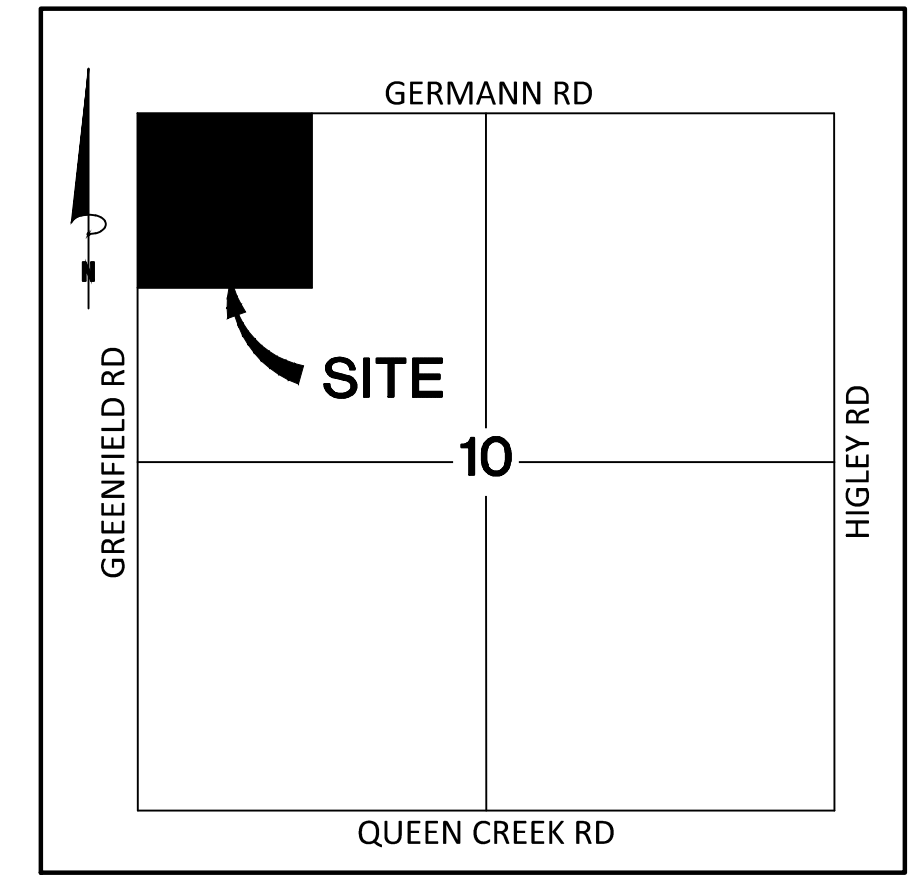
Kyle Mieras

Approval Date

4/30/2019 8:18:15 AM

FINAL PLAT OF BELLAMY

**LOCATED IN THE NORTHWEST QUARTER OF SECTION 10,
TOWNSHIP 2 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER
BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.**



VICINITY MAP
N.T.S.

DEDICATION

KNOWN ALL MEN BY THESE PRESENTS:

THAT LENNAR ARIZONA, INC., AN ARIZONA CORPORATION, AS OWNER, DOES HEREBY PUBLISH THIS PLAT AS AND FOR THE PLAT OF "BELLAMY", LOCATED IN THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 2 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.

OWNER DECLARES THAT SAID PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF EACH LOT, TRACT, STREET AND EASEMENT, AND THAT EACH LOT, TRACT, STREET AND EASEMENT SHALL BE KNOWN BY THE NUMBER, NAME AND/OR LETTER GIVEN TO EACH RESPECTIVELY.

EASEMENTS ARE HEREBY DEDICATED FOR THE PURPOSES SHOWN HEREON.

ALL PROPERTY, AMENITIES & FACILITIES PROPOSED TO BE OWNED AND MAINTAINED BY THE BELLAMY COMMUNITY ASSOCIATION ARE HEREWITH PLATED AS COMMON AREA.

TRACT "A" IS HEREBY DECLARED AS PRIVATE STREET FOR INGRESS/EGRESS TO AND FROM EACH LOT BY THE OWNER THEREOF AND ITS INVITEES, CONTRACTORS, EMPLOYEES, AGENTS AND GUESTS. OWNER GRANTS TO THE TOWN OF GILBERT AND APPLICABLE UTILITY PROVIDERS AND SERVICE PROVIDERS AN EASEMENT OVER, UNDER, THROUGH AND ACROSS TRACT "A" FOR (1) THE INSTALLATION, OPERATION AND FURNISHING OF MAINTENANCE OF PUBLIC UTILITY LINES AND FACILITIES, INCLUDING, WITHOUT LIMITATION, ELECTRICITY, GAS, TELEPHONE, CABLE TV, PUBLIC WATER AND PUBLIC SEWER LINES, AND (2) INGRESS AND EGRESS FOR THE OPERATION AND MAINTENANCE OF SUCH UTILITIES, AND FOR TRASH REMOVAL. A BLANKET EMERGENCY VEHICULAR ACCESS EASEMENT IS HEREBY DEDICATED TO THE TOWN OF GILBERT OVER TRACT "A".

TRACTS "B", "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P", "Q", "R", "S", "T" AND "U" ARE NOT DEDICATED TO THE PUBLIC, BUT ARE PLATTED AS COMMON AREA FOR THE USE AND ENJOYMENT OF THE BELLAMY COMMUNITY ASSOCIATION AS MORE FULLY SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS.

TRACT "V" IS HEREBY DECLARED A FUTURE RIGHT-OF-WAY TRACT TO BE DEEDED TO THE TOWN OF GILBERT UPON REQUEST FOR THE PURPOSE OF EXTENDING SUPERSTITION ROAD.

PUBLIC UTILITY EASEMENTS ARE DEDICATED FOR THE BENEFIT OF PUBLIC UTILITIES AND ARE LOCATED WHERE SHOWN, IN, OVER, AND UNDER THE AREAS DESIGNATED AS SUCH HEREON, FOR THE INSTALLATION, MAINTENANCE, REPAIR AND REMOVAL OF NECESSARY UTILITIES, PUBLIC UTILITIES LOCATING UTILITY FACILITIES IN THIS PUBLIC UTILITY EASEMENT SHALL COMPLY WITH THE CODES AND REGULATIONS OF THE TOWN OF GILBERT, ARIZONA. SUCH PUBLIC UTILITIES SHALL BE AND REMAIN RESPONSIBLE FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE AND REPAIR OF THEIR UTILITY FACILITIES.

THE OWNER WARRANTS AND REPRESENTS TO THE TOWN OF GILBERT TO BE THE SOLE OWNER OF THE PROPERTY COVERED BY THIS PLAT AND THAT EVERY LENDER, EASEMENT HOLDER, OR OTHER PERSON, OR ENTITY HAVING ANY INTEREST IN THE LAND ADVERSE TO OR INCONSISTENT WITH THE DEDICATION, CONVEYANCES, OR OTHER REAL PROPERTY INTEREST CREATED OR TRANSFERRED BY THIS PLAT HAS CONSENTED TO, OR JOINED IN THIS PLAT, AS EVIDENCED BY INSTRUMENTS WHICH ARE RECORDED WITH THE MARICOPA COUNTY RECORDER'S OFFICE, OR WHICH OWNER WILL RECORD NOT LATER THAN THE DATE ON WHICH THIS PLAT IS RECORDED.

IN WITNESS WHEREOF: LENNAR ARIZONA, INC., AN ARIZONA CORPORATION, HAS HEREUNTO CAUSED ITS NAME TO BE AFFIXED AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF THE OFFICER LISTED BELOW, THEREUNTO DULY AUTHORIZED.

LENNAR ARIZONA, INC., AN ARIZONA CORPORATION

BY: _____

ITS: _____

ACKNOWLEDGMENT

STATE OF ARIZONA }
COUNTY OF MARICOPA } S.S.

ON THIS _____ DAY OF _____, 2019, BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, PERSONALLY APPEARED _____ WHO ACKNOWLEDGED HIMSELF TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE INSTRUMENT WITHIN, AND WHO EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES THEREIN CONTAINED.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC DATE

MY COMMISSION EXPIRES: _____

LEGAL DESCRIPTION

THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 2 SOUTH, RANGE 6 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 10, BEING A BRASS CAP IN HAND HOLE, FROM WHICH POINT THE NORTH QUARTER CORNER OF SAID SECTION 10, BEING A BRASS CAP IN HAND HOLE, BEARS SOUTH 89 DEGREES 44 MINUTES 53 SECONDS EAST (BASIS OF BEARINGS), A DISTANCE OF 2643.04 FEET;

THENCE SOUTH 89 DEGREES 44 MINUTES 53 SECONDS EAST, ALONG THE NORTH LINE OF SAID SECTION 10, A DISTANCE OF 1321.52 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 10;

THENCE SOUTH 00 DEGREES 06 MINUTES 38 SECONDS WEST, ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 10, A DISTANCE OF 1321.58 FEET TO THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 10;

THENCE NORTH 89 DEGREES 44 MINUTES 58 SECONDS WEST, ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 10, A DISTANCE OF 1318.15 FEET TO THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 10;

THENCE NORTH 00 DEGREES 02 MINUTES 07 SECONDS WEST, ALONG THE WEST LINE OF SAID SECTION 10, A DISTANCE OF 1321.63 FEET TO THE POINT OF BEGINNING.

GENERAL NOTES

- CONSTRUCTION WITHIN PUBLIC EASEMENTS, EXCEPT BY PUBLIC AGENCIES AND UTILITY COMPANIES, SHALL BE LIMITED TO UTILITIES AND WOOD, WIRE OR REMOVABLE SECTION TYPE FENCING, UNLESS APPROVED BY THE TOWN OF GILBERT.
- ALL UTILITIES SHALL BE CONSTRUCTED UNDERGROUND.
- ALL ELECTRIC LINES AND COMMUNICATION LINES TO BE CONSTRUCTED UNDERGROUND AS REQUIRED BY ARIZONA CORPORATION COMMISSION.
- A PROPERTY OWNERS ASSOCIATION SHALL MAINTAIN PRIVATE UTILITIES, PRIVATE FACILITIES, COMMON AREA LANDSCAPING AND LANDSCAPING IN THE RIGHT-OF-WAY ADJACENT TO THE PROJECT. THE TOWN OF GILBERT IS NOT RESPONSIBLE FOR AND WILL NOT ACCEPT MAINTENANCE OF SUCH AREAS.
- NO STRUCTURES SHALL BE CONSTRUCTED IN OR ACROSS NOR SHALL OTHER IMPROVEMENTS OR ALTERATIONS BE MADE TO THE DRAINAGE FACILITIES THAT ARE A PART OF THIS DEVELOPMENT WITHOUT WRITTEN AUTHORIZATION OF THE TOWN OF GILBERT.
- ALL RETENTION BASINS MUST DRAIN ANY STORM EVENT UP TO AND INCLUDING THE 50-YEAR 24 HOUR STORM WITHIN 36 HOURS. OWNER(S) OF ANY EXISTING BASIN FAILING TO MEET THIS REQUIREMENT MUST TAKE CORRECTIVE ACTION TO BRING THE BASIN INTO COMPLIANCE.
- ALL DRYWELLS SHOWN ON THIS PROJECT SHALL BE MAINTAINED BY THE OWNER(S) AND ARE TO BE REPLACED BY THE OWNER(S) WHEN THEY CEASE TO DRAIN THE SURFACE WATER IN A 36 HOUR PERIOD. REGULAR MAINTENANCE OF THE DRYWELL SILTING CHAMBER IS REQUIRED TO ACHIEVE THE BEST OPERATION OF THE DRYWELL.
- THIS SUBDIVISION IS LOCATED WITHIN FLOOD ZONE X PER FEMA FLOOD INSURANCE RATE MAP #04013C4765M, DATED NOVEMBER 4, 2015.
- ALL BUILDING SETBACKS SHALL COMPLY WITH COUNCIL ORDINANCE NO. 2425, AS AMENDED.
- THE AREA PLATTED HEREON IS APPROVED AND LIES WITHIN THE DOMESTIC WATER SERVICE AREA OF THE TOWN OF GILBERT WHICH IS DESIGNATED AS HAVING AN ASSURED WATER SUPPLY IN ACCORDANCE WITH ARS 45-576.
- EXISTING DRAINAGE EASEMENTS PER DOC. NO. 2009-0190516 AND DOC. NO. 2009-0190517 ARE TO BE ABANDONED BY THIS PLAT. EXISTING SRP ELECTRIC EASEMENT PER DOC. NO. 1990-0504277 IS TO BE ABANDONED BY SEPARATE INSTRUMENT.
- ALL PROPERTIES PLATTED HEREON ARE SUBJECT TO AN ANNUAL STREET LIGHT IMPROVEMENT DISTRICT ASSESSMENT.

NO LIENHOLDER

THE UNDERSIGNED OWNER REPRESENTS AND WARRANTS THAT THE PROPERTY INCLUDED IN THE DEDICATED TRACTS IS FREE AND CLEAR OF ALL MONETARY LIENS AND THE DEDICATED TRACTS ARE NOT BEING USED FOR SECURITY OR OTHER COLLATERAL FOR ANY DEBT OF OWNER.

DATED THIS _____ DAY OF _____, 2019.

LENNAR ARIZONA, INC., AN ARIZONA CORPORATION

BY: _____

ITS: _____

ACKNOWLEDGMENT

STATE OF ARIZONA }
COUNTY OF MARICOPA } S.S.

ON THIS _____ DAY OF _____, 2019, BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, PERSONALLY APPEARED _____ WHO ACKNOWLEDGED HIMSELF TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE INSTRUMENT WITHIN, AND WHO EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES THEREIN CONTAINED.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC DATE

MY COMMISSION EXPIRES: _____

SHEET INDEX

- | | |
|-----|--|
| 1 | COVER SHEET |
| 2 | LOT AND TRACT AREA TABLES,
LINE AND CURVE TABLES, KEY MAP |
| 3-6 | PLAT MAP |

SITE DATA

NUMBER OF LOTS:	163
NET AREA	1,551,142 S.F. / 35.6093 ACRES
GROSS AREA	1,744,290 S.F. / 40.0434 ACRES

OWNER

LENNAR ARIZONA, INC.
1665 W. ALAMEDA DRIVE, SUITE 130
TEMPE, AZ 85282
PHONE: (480) 476-8441
CONTACT: CHRIS CLONTS
EMAIL: chris.clonts@ennar.com

LAND SURVEYOR

BOWMAN CONSULTING GROUP
1295 W. WASHINGTON STREET, SUITE 108
TEMPE, ARIZONA 85281
PHONE: (480) 629-8830
CONTACT: DOUG TONEY
EMAIL: dtoney@bowmanconsulting.com

BASIS OF BEARINGS

NORTH 89 DEGREES 44 MINUTES 53 SECONDS WEST ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 2 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, ACCORDING TO A RE-PLAT OF LOTS 1 & 13 AND TRACT A OF WHITEWING AT GERMANN ESTATES, ACCORDING TO BOOK 1339, PAGE 14, MARICOPA COUNTY RECORDER.

COMMUNITY ASSOCIATION RATIFICATION

BY THIS RATIFICATION _____, DULY ELECTED PRESIDENT OF THE THE BELLAMY COMMUNITY ASSOCIATION, ACKNOWLEDGES THE RESPONSIBILITIES IDENTIFIED HEREON.

SIGNATURE DATE

APPROVALS

APPROVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF GILBERT, ARIZONA THIS _____ DAY OF _____, 2019.

MAYOR DATE TOWN CLERK DATE

TOWN ENGINEER DATE

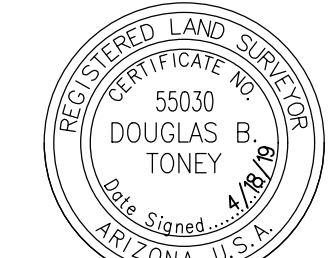
PLANNING MANAGER DATE

SURVEYOR'S CERTIFICATION

THIS IS TO CERTIFY THAT THIS PLAT IS CORRECT AND ACCURATE AND THE MONUMENTS DESCRIBED HEREIN HAVE EITHER BEEN SET OR LOCATED AS DESCRIBED TO THE BEST OF MY KNOWLEDGE AND BELIEF.

D. Toney 4/18/19

DOUGLAS B. TONEY
REGISTERED LAND SURVEYOR NO. 55030
BOWMAN CONSULTING
1295 W. WASHINGTON STREET, SUITE 108
TEMPE, ARIZONA 85281

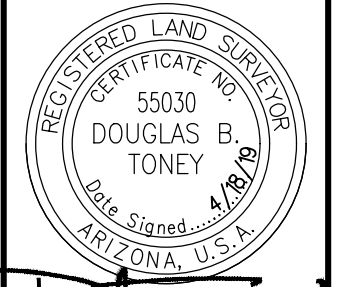


D. Toney

**FINAL PLAT
BELLAMY
GILBERT, ARIZONA**

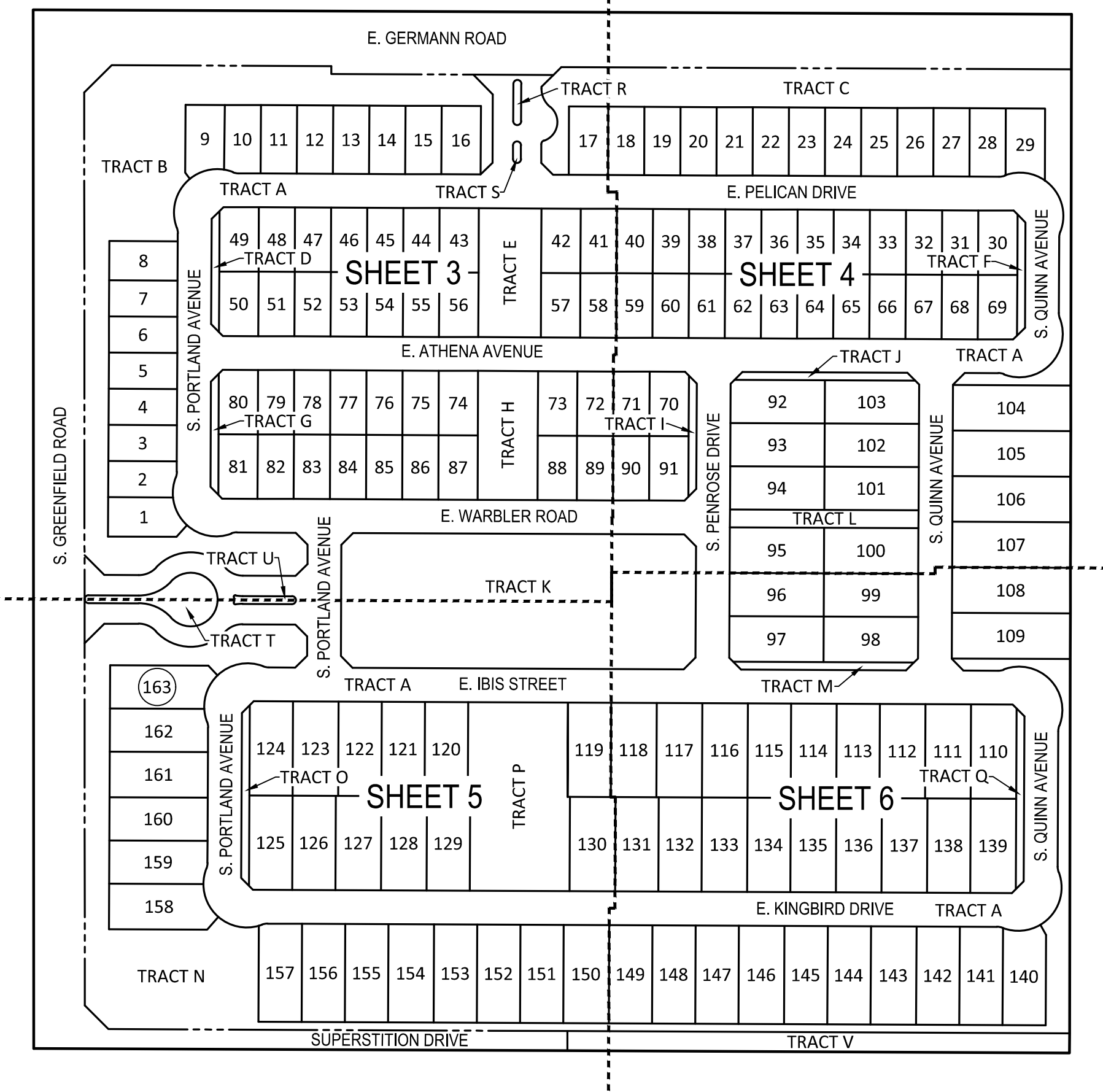
**Bowman
CONSULTING**
Bowman Consulting Group, Ltd.
1295 W. Washington Street, #108
Tempe, AZ 85281
Phone: (480) 629-8830
Fax: (480) 629-8841
www.bowmanconsulting.com

DATE	4/18/19
PROJ NO:	050527-01
TASK NUM:	002
DRAWN BY:	DT
CHECKED:	DMC
QUALITY:	
CLIENT NO:	
SCALE	N.T.S.
	1 of 6



FINAL PLAT
BELLAMY
GILBERT, ARIZONA

REVISION	
DATE	
DATE	4/18/19
PROJ NO:	050527-01
TASK NUM:	002
DRAWN BY:	DT
CHECKED BY:	DMC
QUALITY:	
CLIENT NO:	
SCALE:	N.T.S.
	2 of 6



KEY MAP
NTS

LINE #	LENGTH	DIRECTION
L1	49.37'	N45°06'30"E
L2	42.53'	N44°53'33"W
L3	25.00'	N00°15'02"E
L4	35.36'	N44°44'53"W
L5	14.14'	N45°15'07"E
L6	21.21'	N45°15'07"E
L7	21.21'	N44°44'53"W
L8	21.21'	N45°15'07"E
L9	21.21'	N44°44'53"W
L10	10.10'	N36°36'21"W
L11	21.21'	N45°15'07"E
L12	21.21'	N44°44'53"W
L13	19.92'	N41°53'51"E
L14	21.21'	N44°44'53"W
L15	21.21'	N45°15'07"E
L16	21.21'	N45°15'07"E
L17	35.44'	N44°53'30"W
L18	21.21'	N44°44'53"W
L19	21.21'	N45°15'07"E
L20	21.21'	N45°15'07"E
L21	21.21'	N44°44'53"W

LINE #	LENGTH	DIRECTION
L22	21.21'	N45°15'07"E
L23	21.21'	N44°44'53"W
L24	21.21'	N45°15'07"E
L25	21.21'	N44°44'53"W
L26	21.21'	N45°15'07"E
L27	21.21'	N44°44'53"W
L28	21.21'	N45°15'07"E
L29	21.21'	N44°44'53"W
L30	21.21'	N44°44'53"W
L31	21.21'	N45°15'07"E
L32	14.88'	N29°31'02"W
L33	21.58'	N41°03'15"E
L34	21.21'	N44°44'53"W
L35	21.21'	N45°15'07"E
L36	17.14'	N43°32'31"W
L37	21.21'	N44°44'53"W
L38	21.21'	N45°15'07"E
L39	21.21'	N44°44'53"W
L40	35.27'	N45°06'30"E
L41	10.00'	N00°15'07"E
L42	21.21'	N45°15'07"E

CURVE #	LENGTH	RADIUS	DELTA
C1	15.71'	5.00'	180°00'00"
C2	15.71'	5.00'	180°00'00"
C3	15.71'	5.00'	180°00'00"
C4	15.71'	5.00'	180°00'00"
C5	26.43'	30.00'	050°28'42"
C6	52.80'	25.00'	121°00'27"
C7	6.15'	5.00'	070°31'44"
C8	7.34'	20.00'	021°02'22"
C9	126.79'	55.00'	132°04'44"
C10	7.34'	20.00'	021°02'22"
C11	7.34'	20.00'	021°02'22"
C12	126.79'	55.00'	132°04'44"
C13	7.34'	20.00'	021°02'22"
C14	24.78'	30.00'	047°19'47"
C15	99.13'	60.00'	094°39'34"
C16	24.78'	30.00'	047°19'47"
C17	7.85'	5.00'	090°00'00"
C18	46.26'	56.00'	047°19'47"
C19	162.99'	34.00'	274°39'34"
C20	46.26'	56.00'	047°19'47"

CURVE #	LENGTH	RADIUS	DELTA
C21	9.02'	56.00'	009°13'28"
C22	3.60'	2.00'	102°59'48"
C23	7.24'	55.00'	007°32'40"
C24	3.60'	2.00'	102°59'48"
C25	9.02'	56.00'	009°13'28"
C26	15.71'	5.00'	180°00'00"
C27	24.78'	30.00'	047°19'47"
C28	99.13'	60.00'	094°39'34"
C29	24.78'	30.00'	047°19'47"
C30	7.34'	20.00'	021°02'22"
C31	126.79'	55.00'	132°04'44"
C32	7.34'	20.00'	021°02'22"
C33	7.34'	20.00'	021°02'22"
C34	126.79'	55.00'	132°04'44"
C35	7.34'	20.00'	021°02'22"
C36	7.34'	20.00'	021°02'22"
C37	126.79'	55.00'	132°04'44"
C38	7.34'	20.00'	021°02'22"
C39	7.34'	20.00'	021°02'22"
C40	126.79'	55.00'	132°04'44"

CURVE #	LENGTH	RADIUS	DELTA
C41	7.34'	20.00'	021°02'22"
C42	7.34'	20.00'	021°02'22"
C43	126.79'	55.00'	132°04'44"
C44	7.34'	20.00'	021°02'22"
C45	7.34'	20.00'	021°02'22"
C46	126.79'	55.00'	132°04'44"
C47	7.34'	20.00'	021°02'22"

LOT	SQ. FT.	ACRES
1	4,502	0.1033
2	3,896	0.0894
3	4,002	0.0919
4	4,002	0.0919
5	4,002	0.0919
6	4,002	0.0919
7	4,002	0.0919
8	4,350	0.0999
9	4,269	0.0980
10	3,988	0.0915
11	4,002	0.0919
12	4,002	0.0919
13	4,002	0.0919
14	4,002	0.0919
15	4,002	0.0919
16	4,350	0.0999
17	4,350	0.0999
18	4,002	0.0919
19	4,002	0.0919
20	4,002	0.0919
21	4,002	0.0919
22	4,002	0.0919
23	4,002	0.0919
24	4,002	0.0919
25	4,002	0.0919
26	4,002	0.0919
27	4,002	0.0919
28	3,997	0.0918
29	4,219	0.0969
30	4,088	0.0938

LOT	SQ. FT.	ACRES
31	3,772	0.0866
32	3,772	0.0866
33	3,772	0.0866
34	3,772	0.0866
35	3,772	0.0866
36	3,772	0.0866
37	3,772	0.0866
38	3,772	0.0866
39	3,772	0.0866
40	3,772	0.0866
41	3,772	0.0866
42	4,100	0.0941
43	4,100	0.0941
44	3,772	0.0866
45	3,772	0.0866
46	3,772	0.0866
47	3,772	0.0866
48	3,772	0.0866
49	4,088	0.0938
50	4,088	0.0938
51	3,772	0.0866
52	3,772	0.0866
53	3,772	0.0866
54	3,772	0.0866
55	3,772	0.0866
56	4,100	0.0941
57	4,100	0.0941
58	3,772	0.0866
59	3,772	0.0866
60	3,772	0.0866

LOT	SQ. FT.	ACRES
61	3,772	0.0866
62	3,772	0.0866
63	3,772	0.0866
64	3,772	0.0866
65	3,772	0.0866
66	3,772	0.0866
67	3,772	0.0866
68	3,772	0.0866
69	4,088	0.0938
70	4,087	0.0938
71	3,772	0.0866
72	3,772	0.0866
73	4,100	0.0941
74	4,100	0.0941
75	3,772	0.0866
76	3,772	0.0866
77	3,772	0.0866
78	3,772	0.0866
79	3,772	0.0866
80	4,088	0.0938
81	4,088	0.0938
82	3,772	0.0866
83	3,772	0.0866
84	3,772	0.0866
85	3,772	0.0866
86	3,772	0.0866
87	4,100	0.0941
88	4,100	0.0941
89	3,772	0.0866
90	3,772	0.0866

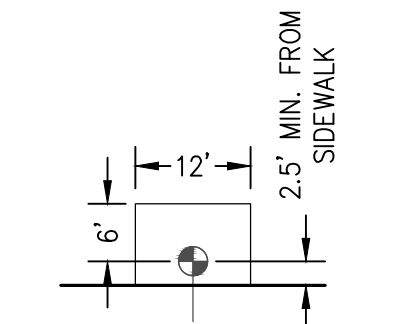
LOT	SQ. FT.	ACRES
91	4,088	0.0938
92	6,588	0.1512
93	6,600	0.1515
94	6,600	0.1515
95	6,960	0.1598
96	6,600	0.1515
97	6,947	0.1595
98	6,948	0.1595
99	6,600	0.1515
100	6,960	0.1598
101	6,600	0.1515
102	6,600	0.1515
103	6,588	0.1512
104	8,706	0.1999
105	8,715	0.2001
106	8,723	0.2003
107	8,731	0.2004
108	8,740	0.2006
109	8,748	0.2008
110	6,948	0.1595
111	6,960	0.1598
112	6,960	0.1598
113	6,600	0.1515
114	6,960	0.1598
115	6,600	0.1515
116	6,960	0.1598
117	6,960	0.1598
118	6,960	0.1598
119	6,600	0.1515
120	6,600	0.1515

LOT	SQ. FT.	ACRES
121	6,600	0.1515
122	6,600	0.1515
123	6,960	0.1598
124	6,587	0.1512
125	6,588	0.1512
126	6,600	0.1515
127	6,960	0.1598
128	6,960	0.1598
129	6,600	0.1515
130	6,960	0.1598
131	6,600	0.1515
132	6,600	0.1515
133	6,960	0.1598
134	6,600	0.1515
135	6,960	0.1598
136	6,960	0.1598
137	6,960	0.1598
138	6,600	0.1515
139	6,947	0.1595
140	6,705	0.1539
141	6,871	0.1577
142	6,875	0.1578
143	7,250	0.1664
144	6,875	0.1578
145	6,875	0.1578
146	7,250	0.1664
147	6,875	0.1578
148	6,875	0.1578
149	6,875	0.1578
150	7,250	0.1664

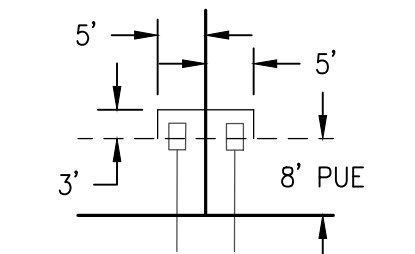
LOT	SQ. FT.	ACRES
151	6,875	0.1578
152	6,875	0.1578
153	6,875	0.1578
154	7,250	0.1664
155	6,875	0.1578
156	6,875	0.1578
157	6,864	0.1576
158	7,400	0.1699
159	6,797	0.1560
160	6,875	0.1578
161	7,250	0.1664
162	6,812	0.1564
(163)	6,942	0.1594
TOTAL	860,777	19.7607

TRACT	SQ. FT.	ACRES	DESCRIPTION
TRACT A	328,214	7.5347	PRIVATE ROADWAY, PUBLIC WATER, PUBLIC SEWER, EMERGENCY VEHICLE ACCESS EASEMENT, PEDESTRIAN ACCESS EASEMENT, PUE
TRACT B	69,534	1.5963	LANDSCAPE, OPEN SPACE, STORM DRAIN, RETENTION, PUE, FHE
TRACT C	44,542	1.0225	LANDSCAPE, OPEN SPACE, STORM DRAIN, RETENTION, PUE, FHE
TRACT D	1,440	0.0331	LANDSCAPE, OPEN SPACE, PUE
TRACT E	13,066	0.2999	LANDSCAPE, OPEN SPACE, STORM DRAIN, RETENTION, PUE
TRACT F	1,440	0.0331	LANDSCAPE, OPEN SPACE, PUE
TRACT G	1,440	0.0331	LANDSCAPE, OPEN SPACE, PUE
TRACT H	12,511	0.2872	LANDSCAPE, OPEN SPACE, STORM DRAIN, RETENTION, PUE
TRACT I	1,440	0.0331	LANDSCAPE, OPEN SPACE, PUE
TRACT J	2,200	0.0505	LANDSCAPE, OPEN SPACE, PUE
TRACT K	76,999	1.7677	LANDSCAPE, OPEN SPACE, STORM DRAIN, RETENTION, AMENITY, PUE
TRACT L	5,419	0.1244	LANDSCAPE, OPEN SPACE, PUE
TRACT M	2,200	0.0505	LANDSCAPE, OPEN SPACE, PUE
TRACT N	72,596	1.6666	LANDSCAPE, OPEN SPACE, STORM DRAIN, RETENTION, PUE
TRACT O	2,200	0.0505	LANDSCAPE, OPEN SPACE, PUE
TRACT P	30,469	0.6995	LANDSCAPE, OPEN SPACE, STORM DRAIN, RETENTION, PUE
TRACT Q	2,200	0.0505	LANDSCAPE, OPEN SPACE, PUE
TRACT R	551	0.0127	LANDSCAPE, OPEN SPACE
TRACT S	250	0.0057	LANDSCAPE, OPEN SPACE
TRACT T	4,894	0.1124	LANDSCAPE, OPEN SPACE, PUBLIC WATER, PUBLIC SEWER EASEMENT
TRACT U	783	0.0180	LANDSCAPE, OPEN SPACE
TRACT V	15,976	0.3668	LANDSCAPE, OPEN SPACE, MAY BE DEDICATED AS PUBLIC RIGHT-OF-WAY IN THE FUTURE
TOTAL	693,241	15.9146	

OVERALL AREA TABLE	PARCEL	SQ. FT.	ACRES
BOUNDARY	1,744,290	40.0434	
ROW	193,148	4.4341	
NET	1,551,142	35.6093	



FIRE HYDRANT EASEMENT DETAIL
SCALE: 1"=20'



NORTHWEST CORNER SECTION 10, T2S, R6E FOUND BRASS CAP IN HAND HOLE

FOUND BRASS CAP FLUSH

GERMANN ROAD CENTERLINE
 50' DRAINAGE EASEMENT DOC. NO. 2009-0190517, M.C.R. TO BE ABANDONED BY THIS PLAT
 70' R/W PER DOC. NO. 2009-0190503, M.C.R.
 80' R/W TOTAL
 8' PUE DOC. NO. 2009-0190510, M.C.R.
 8' PUE DOC. NO. 2009-0190509, M.C.R.
 AERIAL ELECTRIC EASEMENT DOC. NO. 2010-0485288, M.C.R.
 65' R/W PER DOC. NO. 2009-0190502, M.C.R.

S. GREENFIELD ROAD

S. PORTLAND AVENUE

S. GREENFIELD ROAD

S. PORTLAND AVENUE

S. GREENFIELD ROAD

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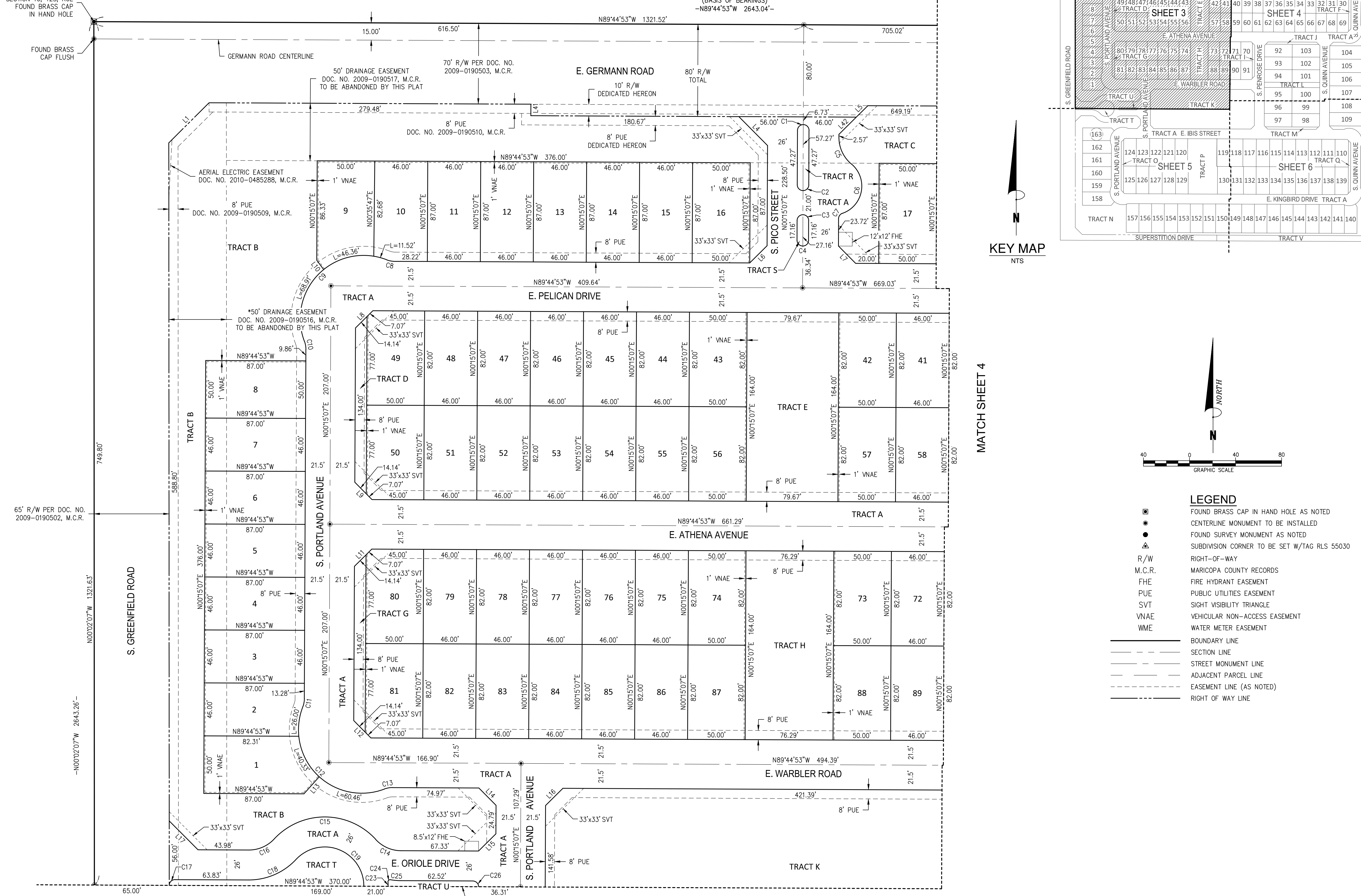
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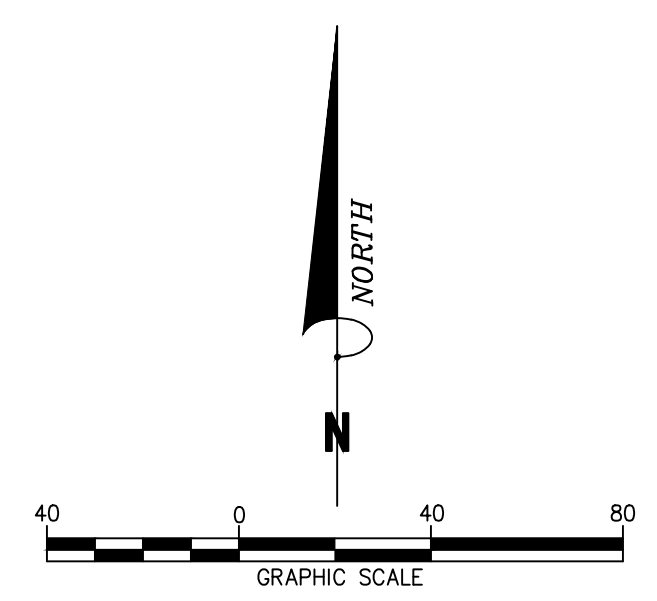
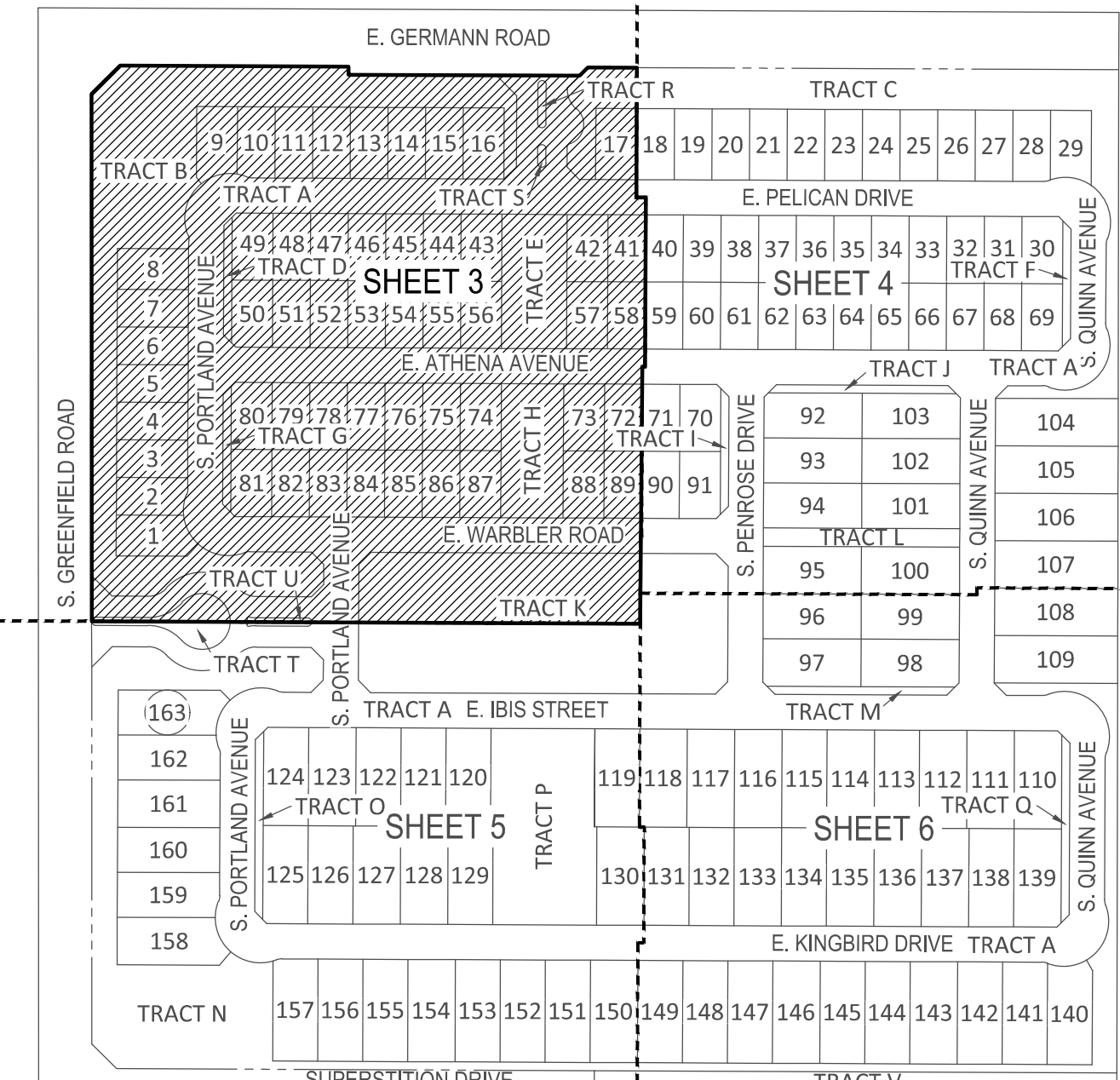


(BASIS OF BEARINGS)
 -N89°44'53"W 2643.04'-

KEY MAP
 NTS

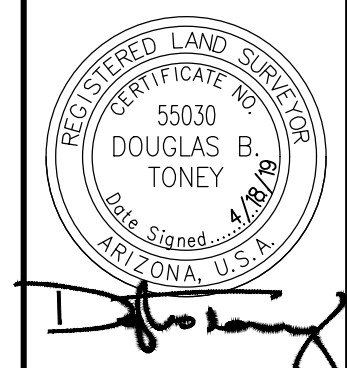
MATCH SHEET 4

MATCH SHEET 5



- LEGEND**
- FOUND BRASS CAP IN HAND HOLE AS NOTED
 - CENTERLINE MONUMENT TO BE INSTALLED
 - FOUND SURVEY MONUMENT AS NOTED
 - ▲ SUBDIVISION CORNER TO BE SET W/TAG RLS 55030
 - R/W RIGHT-OF-WAY
 - M.C.R. MARICOPA COUNTY RECORDS
 - FHE FIRE HYDRANT EASEMENT
 - PUE PUBLIC UTILITIES EASEMENT
 - SVT SIGHT VISIBILITY TRIANGLE
 - VNAE VEHICULAR NON-ACCESS EASEMENT
 - WME WATER METER EASEMENT
 - BOUNDARY LINE
 - - - SECTION LINE
 - · - STREET MONUMENT LINE
 - · - ADJACENT PARCEL LINE
 - · - EASEMENT LINE (AS NOTED)
 - - - RIGHT OF WAY LINE

Bowman CONSULTING
 Bowman Consulting Group, Ltd.
 1295 W Washington Street, #108
 Tempe, AZ 85281
 Phone: (480) 829-8830
 Fax: (480) 829-8841
 www.bowmanconsulting.com



FINAL PLAT
BELLAMY
 GILBERT, ARIZONA

REVISION	
DATE	4/18/19
PROJ NO:	050527-01
TASK NUM:	002
DRAWN BY:	DT
CHECKED:	DMC
QUALITY:	
CLIENT NO:	
SCALE	1" = 40'
3 of 6	



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Tom Condit, PE, Development Engineering Manager, 503-6815

MEETING DATE: May 16, 2019

SUBJECT: SP1685: Approval of the Final Plat for Gilbert and Warner Town Center, located at the southeast corner of Warner Road and Gilbert Road.

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's Infrastructure Strategic Initiative as it allows for the logical extension of infrastructure to serve the site.

RECOMMENDED MOTION

A motion to approve the Final Plat for Gilbert and Warner Town Center, located at the southeast corner of Warner Road and Gilbert Road.

BACKGROUND/DISCUSSION

The Final Plat for Gilbert and Warner Town Center creates 7 lots varying in size from 2.4 acres to 1.0 acre. In addition, the final plat dedicates easements for public water. The site is located in a floodplain, and the developer received a Conditional Letter of Map Revision (CLOMR) from the Federal Emergency Management Agency (FEMA) in February, 2018 (Case 17-09-2769R). Once the site grading has been completed in accordance with the FEMA approved CLOMR, the developer can submit for a Letter of Map Revision (LOMR) to revise the Flood Insurance Rate Map and thereby remove the buildings out of the floodplain. The building elevations are set at or above the Regulatory Flood Elevation; therefore, the construction plans meets the Town's floodplain construction standards, regardless of FEMA approval of the LOMR.

In May 2018, the Planning Commission / Design Review Board approved DR17-1137, Gilbert Town Center PAD - site plan, landscape, grading and drainage, elevations, floor plans, lighting, colors and materials for the project. This approval was for 9 separate buildings to be constructed in multiple phases. The first phase of development will consist of 3 buildings (including a fitness center), with a combined footprint approaching 50,000 square feet.

The following is an abbreviated history of Town actions associated with this property:

- October 25, 2005 Town Council approved Z05-14 adopting Ordinance No. 1689, rezoning the subject site from Shopping Center (SC) zoning district with a PAD overlay to Regional Commercial (RC) zoning district with a PAD overlay.
- May 17, 2012 Town Council approved Z12-02 adopting Ordinance No. 2368, removing the 11.7 acre site from the requirements of the existing Gilbert Town Center PAD.
- November 13, 2014 Town Council approved Z13-08 adopting Ordinance No. 2509, removing the subject site from the Settler's Point PAD and Gilbert Town Square PAD and creating a new Gilbert Town Center PAD.
- April 5, 2018 Town Council approved Z17-1021 adopting Ordinance No. 2651, amending the plan of development and revising conditions for the Gilbert Town Center PAD.
- May 2, 2018 Planning Commission approved DR17-1137, Gilbert Town Center PAD: site plan, landscape, grading and drainage, elevations, floor plans, lighting, colors and materials for approximately 14.69 acres, subject to conditions.

FINANCIAL IMPACT

There is no financial impact on the Town associated with this final plat approval.

STAFF RECOMMENDATION

The Development Engineering staff has reviewed this final plat, and all Town requirements have been addressed by the applicant. Staff therefore recommends approval of this final plat by the Town Council.

Respectfully submitted,

Tom Condit, PE
Development Engineering Manager

Approved By

Kyle Mieras

Approval Date

4/30/2019 8:16:57 AM

FINAL PLAT FOR GILBERT AND WARNER TOWN CENTER

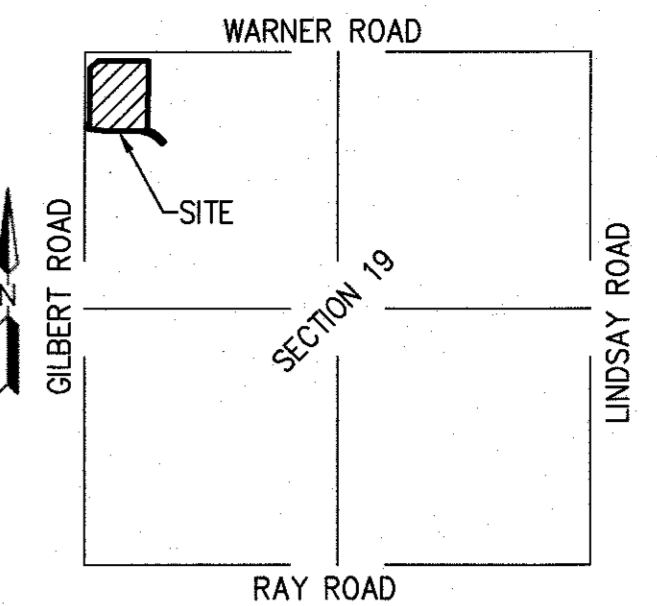
A PLANNED COMMERCIAL DEVELOPMENT
THIS PLAT BEING A PORTION OF TRACT 3 AS SHOWN ON THE MAP OF DEDICATION FILED AS BOOK 343, PAGE 14 RECORDS OF MARICOPA COUNTY, ARIZONA BEING LOCATED WITHIN A PORTION OF THE NORTHWEST QUARTER OF SECTION 19 TOWNSHIP 1 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA

ENGINEER/SURVEYOR:

HILGARTWILSON, LLC
2141 E. HIGHLAND AVE., STE. 250
PHOENIX, ARIZONA 85016
PHONE: (602) 490-0535
FAX: (602) 368-2436
CONTACT: KIRK J. PANGUS, RLS

OWNER/DEVELOPER

MGD HOLDINGS, LLC
5920 SOUTH RAINBOW BLVD, SUITE 11
LAS VEGAS, NEVADA 89118
PHONE: (702) 683-7191
CONTACT: DAVID DEL ZOTTO



VICINITY MAP
NOT TO SCALE

SHEET INDEX

- FP01 COVER SHEET, VICINITY MAP, NOTES, LEGAL DESCRIPTION, KEY MAP, LOT AREA TABLE
- FP02 FINAL PLAT PLAN SHEETS AND LEGEND

LOT TABLE		
LOT NO.	AREA (SQ.FT)	AREA (ACRES)
LOT 1	74528	1.711
LOT 2	42373	0.973
LOT 3	43984	1.010
LOT 4	106112	2.436
LOT 5	97487	2.238
LOT 6	61637	1.415
LOT 7	48619	1.116

TOTAL LOT AREA = 474,740 SQ.FT. OR 10.898 ACRES

BASIS OF BEARING

N89°45'09"W ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 1 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA AS SHOWN ON THE FINAL PLAT OF BANNER GILBERT FILED AS BOOK 1135, PAGE 46 RECORDS OF MARICOPA COUNTY, ARIZONA BETWEEN THE MONUMENT AS SHOWN HEREON

APPROVALS

APPROVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF GILBERT, ARIZONA THIS _____ DAY OF _____, 2019.

MAYOR _____ DATE _____

TOWN CLERK _____ DATE _____

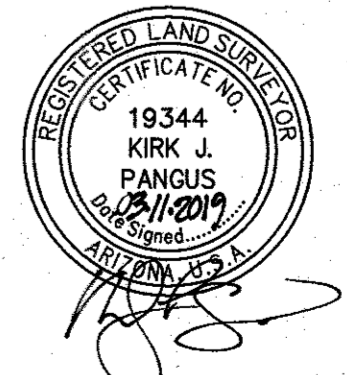
TOWN ENGINEER _____ DATE _____

PLANNING MANAGER _____ DATE _____

SURVEYOR'S CERTIFICATION

I, KIRK J. PANGUS, HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR IN THE STATE OF ARIZONA; THAT THIS PLAT CORRECTLY REPRESENTS A SURVEY MADE UNDER MY DIRECTION DURING THE MONTH OF NOVEMBER, 2018; THAT THE SURVEY IS TRUE AND CORRECT AS SHOWN; THAT ALL EXTERIOR BOUNDARY MONUMENTS ACTUALLY EXIST AS SHOWN; THAT SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

KIRK J. PANUS
RLS# 19344
HILGARTWILSON, LLC
2141 E. HIGHLAND AVE., STE. 250
PHOENIX, ARIZONA 85016
P: (602) 490-0535
kpanus@hilgartwilson.com



NOTE:
A.R.S. 32-151 STATES THAT THE USE OF THE WORD "CERTIFY" OR "CERTIFICATION" BY A PERSON OR FIRM THAT IS REGISTERED OR CERTIFIED BY THE BOARD IS AN EXPRESSION OF PROFESSIONAL OPINION REGARDING FACTS OR FINDINGS THAT ARE SUBJECT OF THE CERTIFICATION AND DOES NOT CONSTITUTE AN EXPRESS OR IMPLIED WARRANTY OR GUARANTEE.

LEGAL DESCRIPTION

A PORTION OF TRACT 3 AS SHOWN ON THE MAP OF DEDICATION FILED AS BOOK 343, PAGE 14 RECORDS OF MARICOPA COUNTY, ARIZONA BEING LOCATED WITHIN A PORTION OF THE NORTHWEST QUARTER OF SECTION 19 TOWNSHIP 1 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT A FOUND BRASS CAP IN HAND HOLE ACCEPTED AS THE NORTHWEST CORNER OF SAID SECTION 19 FROM WITH A FOUND BRASS CAP IN HAND HOLE ACCEPTED AS THE NORTH QUARTER CORNER OF SAID SECTION 19 THEREOF BEARS SOUTH 89°45'09" EAST, 2529.22 FEET;
THENCE SOUTH 89°45'09" EAST, 700.60 FEET ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 19;
THENCE LEAVING SAID NORTH LINE, SOUTH 00°14'51" EAST, 97.00 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF WARNER ROAD BEING 97.00 FEET SOUTH OF AND PARALLEL WITH THE SAID NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 19 ALSO BEING THE NORTHWEST CORNER OF LOT 1 AS SHOWN ON THE FINAL PLAT OF BANNER HEALTH CENTER FILED AS BOOK 1135, PAGE 46 RECORDS OF MARICOPA COUNTY, ARIZONA BEING THE POINT OF BEGINNING;
THENCE LEAVING SAID PARALLEL LINE, SOUTH 00°14'51" WEST, 765.74 FEET ALONG THE WEST LINE OF SAID LOT 1 TO A POINT ON THE SOUTH LINE OF SAID LOT 1 TO A NON-TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 416.00 FEET, THE CENTER OF WHICH BEARS SOUTH 20°04'33" WEST;
THENCE CONTINUING ALONG SAID SOUTH LINE AND SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 31°00'53", AN ARC LENGTH OF 225.18 FEET TO A NON-TANGENT LINE;
THENCE LEAVING SAID SOUTH LINE, SOUTH 54°42'05" WEST, 33.07 FEET TO THE SOUTH LINE OF A 33.00 FOOT ROAD EASEMENT AGREEMENT FILED AS DOCUMENT NO. 2015-314756 RECORDS OF MARICOPA COUNTY, ARIZONA TO A NON-TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 383.00 FEET, THE CENTER OF WHICH BEARS SOUTH 50°46'45" WEST;
THENCE THE FOLLOWING FOUR (4) COURSES ALONG SAID SOUTH LINE:
THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 50°32'05", AN ARC LENGTH OF 337.80 FEET TO A TANGENT LINE;
THENCE NORTH 89°45'20" WEST, 359.74 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 533.00 FEET;
THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 13°03'43", AN ARC LENGTH OF 121.51 FEET TO A TANGENT LINE;
THENCE NORTH 76°41'38" WEST, 65.52 FEET TO THE EAST RIGHT-OF-WAY LINE OF GILBERT ROAD BEING 85.00 FEET EAST OF AND PARALLEL WITH THE CENTERLINE OF GILBERT ROAD TO A NON-TANGENT CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 1039.00 FEET, THE CENTER OF WHICH BEARS NORTH 74°52'26" WEST;
THENCE LEAVING SAID SOUTH LINE, ALONG SAID PARALLEL CURVE AND NORTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 02°24'24", AN ARC LENGTH OF 43.64 FEET TO A NON-TANGENT LINE;
THENCE LEAVING SAID PARALLEL CURVE, SOUTH 89°28'59" EAST, 28.47 FEET TO THE EAST RIGHT-OF-WAY LINE OF GILBERT ROAD BEING 58.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 19 AS FILED IN DOCUMENT NO. 1987-236275 RECORDS OF MARICOPA COUNTY, ARIZONA;
THENCE NORTH 00°31'01" EAST, 621.44 FEET ALONG SAID RIGHT-OF-WAY LINE;
THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE, NORTH 47°49'02" EAST, 121.26 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF WARNER ROAD BEING 97.00 FEET SOUTH OF AND PARALLEL THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 19 AS DESCRIBED IN SAID DOCUMENT;
THENCE SOUTH 89°45'09" EAST, 553.94 FEET ALONG SAID RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING.
GROSS AREA = 11.577 ACRES NET AREA = 10.899 ACRES

NOTES:

1. CONSTRUCTION WITHIN PUBLIC EASEMENTS, EXCEPT BY PUBLIC AGENCIES AND UTILITY COMPANIES SHALL BE LIMITED TO UTILITIES, AND WOOD, WIRE OR REMOVABLE SECTION TYPE FENCING UNLESS APPROVED OTHERWISE BY THE TOWN OF GILBERT.
2. ALL UTILITIES SHALL BE CONSTRUCTED UNDERGROUND.
3. ELECTRIC LINES SHALL BE CONSTRUCTED UNDERGROUND AS REQUIRED BY THE ARIZONA CORPORATION COMMISSION.
4. ALL COMMUNICATION LINES TO BE CONSTRUCTED UNDERGROUND AS REQUIRED BY ARIZONA CORPORATION COMMISSION.
5. A HOMEOWNERS ASSOCIATION SHALL MAINTAIN PRIVATE UTILITIES, PRIVATE FACILITIES, COMMON AREA LANDSCAPING AND LANDSCAPING IN THE RIGHT-OF-WAY ADJACENT TO THE PROJECT. THE TOWN OF GILBERT IS NOT RESPONSIBLE FOR AND WILL NOT ACCEPT MAINTENANCE OF SUCH AREA.
6. NO STRUCTURES SHALL BE CONSTRUCTED IN OR ACROSS NOR SHALL OTHER IMPROVEMENTS OR ALTERATIONS BE MADE TO THE DRAINAGE FACILITIES THAT ARE A PART OF THIS DEVELOPMENT WITHOUT WRITTEN AUTHORIZATION OF THE TOWN OF GILBERT.
7. ALL RETENTION BASINS MUST DRAIN ANY STORM EVENT UP TO AND INCLUDING THE 50-YEAR, 24-HOUR STORM WITHIN 36 HOURS. OWNER(S) OF ANY BASIN FAILING TO MEET THIS REQUIREMENT MUST TAKE CORRECTIVE ACTION TO BRING THE BASIN INTO COMPLIANCE.
8. ALL DRYWELLS SHOWN ON THIS PROJECT SHALL BE MAINTAINED BY THE HOMEOWNERS ASSOCIATION AND ARE TO BE REPLACED BY THE HOMEOWNERS ASSOCIATION WHEN THEY CEASE TO DRAIN THE SURFACE WATER IN A 36 HOUR PERIOD. REGULAR MAINTENANCE OF THE DRYWELL SILTING CHAMBER IS REQUIRED TO ACHIEVE THE BEST OPERATION OF THE DRYWELL.
9. A PORTION OF THE SUBJECT PROPERTY LIES WITHIN ZONE "AH" WITH A DEFINITION OF:
1-PERCENT-ANNUAL-CHANCE SHALLOW FLOODING WITH A CONSTANT WATER-SURFACE ELEVATION (USUALLY AREAS OF PONDING) WHERE AVERAGE DEPTHS ARE BETWEEN 1 AND 3 FEET. BFES DERIVED FROM DETAILED HYDRAULIC ANALYSES ARE SHOWN AT SELECTED INTERVALS WITHIN THIS ZONE. MANDATORY FLOOD INSURANCE PURCHASE REQUIREMENTS APPLY. DESIGNATION DETERMINED BY FEMA FLOOD ZONE MAP 04013C2733M, PANEL NUMBER 2733 OF 4425, EFFECTIVE DATE NOVEMBER 4, 2015.
THE SUBJECT PROPERTY ALSO LIES WITHIN SHADED ZONE "X" WITH A DEFINITION OF:
0.2-PERCENT-ANNUAL-CHANCE FLOODPLAIN, AREAS OF 1-PERCENT-ANNUAL-CHANCE (BASE FLOOD) SHEET FLOW FLOODING WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT, AREAS OF BASE FLOOD STREAM FLOODING WITH A CONTRIBUTING DRAINAGE AREA OF LESS THAN 1 SQUARE MILE, OR AREAS PROTECTED FROM THE BASE FLOOD BY LEVEES. NO BFES OR DEPTHS ARE SHOWN IN THIS ZONE, AND INSURANCE PURCHASE IS NOT REQUIRED. DESIGNATION DETERMINED BY FEMA FLOOD ZONE MAP 04013C2733M, PANEL NUMBER 2733 OF 4425, EFFECTIVE DATE NOVEMBER 4, 2015.
10. ALL BUILDING SETBACKS SHALL COMPLY WITH COUNCIL ORDINANCE NO. 2289, AS AMENDED.
11. A 1/2" REBAR WITH CAP WILL BE SET AT EACH EXTERIOR SUBDIVISION BOUNDARY CORNER UNLESS SHOWN OTHERWISE HEREON.

REFERENCE DOCUMENTS

1. FINAL PLAT PER BOOK 1135, PAGE 46 MCR
2. MAP OF DEDICATION PER BOOK 343, PAGE 14 MCR

DEDICATION

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS

KNOW ALL MEN BY THESE PRESENTS:

THAT MGD HOLDINGS, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, AS OWNER, DOES HEREBY PUBLISH THIS PLAT AS AND FOR THE PLAT OF GILBERT AND WARNER TOWN CENTER, BEING A PORTION OF TRACT 3 AS SHOWN ON THE MAP OF DEDICATION FILED AS BOOK 343, PAGE 14 RECORDS OF MARICOPA COUNTY, ARIZONA BEING LOCATED WITHIN A PORTION OF THE NORTHWEST QUARTER OF SECTION 19 TOWNSHIP 1 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA. MGD HOLDINGS, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, AS OWNER, DECLARE THAT SAID PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF EACH STREET, LOT, TRACT AND EASEMENT AND THAT EACH STREET, LOT, TRACT AND EASEMENT SHALL BE KNOWN BY THE NUMBER, NAME AND/OR LETTER GIVEN TO EACH RESPECTIVELY. MGD HOLDINGS, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, AS OWNER, HEREBY DEDICATE TO THE TOWN OF GILBERT THE PUBLIC STREETS (AMERICAN HEROS WAY) AND EASEMENTS AS SHOWN ON THIS PLAT AND DESIGNATED ON THE PLAT AS PUBLIC RIGHT-OF-WAY. EASEMENTS ARE HEREBY DEDICATED FOR THE PURPOSES SHOWN HEREON.

OWNER WARRANT AND REPRESENT TO THE TOWN OF GILBERT TO BE THE OWNER OF THE PROPERTY COVERED HEREBY AND THAT TO OWNER'S ACTUAL KNOWLEDGE EVERY LENDER, EASEMENT HOLDER, OR OTHER PERSON, OR ENTITY, HAVING ANY INTEREST IN THE LAND ADVERSE TO OR INCONSISTENT WITH THE DEDICATIONS, CONVEYANCES, OR OTHER REAL PROPERTY INTEREST CREATED OR TRANSFERRED BY THIS PLAT HAS CONSENTED TO, OR JOINED IN THIS PLAT, AS EVIDENCED BY INSTRUMENTS WHICH ARE RECORDED WITH THE MARICOPA COUNTY RECORDER'S OFFICE, OR WHICH OWNER WILL RECORD NOT LATER THAN THE DATE ON WHICH THIS PLAT IS RECORDED.

IN WITNESS WHEREOF:

MGD HOLDINGS, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, AS OWNER, HAS HEREUNTO CAUSED ITS CORPORATE NAME TO BE AFFIXED AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF THE AUTHORIZED AGENT LISTED BELOW.

MGD HOLDINGS, LLC, AN ARIZONA LIMITED LIABILITY COMPANY

BY: _____ DATE: _____

TITLE: _____

ACKNOWLEDGMENT

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS

ON THIS _____ DAY OF _____, 2019, BEFORE ME, THE UNDERSIGNED OFFICER, PERSONALLY APPEARED _____, WHO ACKNOWLEDGES THEMSELF TO BE THE _____ OF MGD HOLDINGS, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, AND ACKNOWLEDGES AS SUCH OFFICER, BEING DULY AUTHORIZED TO DO SO, EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

BY: _____ MY COMMISSION EXPIRES: _____
NOTARY PUBLIC

NO LIEN HOLDER STATEMENT

THE UNDERSIGNED OWNER REPRESENTS AND WARRANTS THAT THE PROPERTY INCLUDED IN THE DEDICATED TRACTS IS FREE AND CLEAR OF ALL MONETARY LIENS AND THE DEDICATED TRACTS ARE NOT BEING USED FOR SECURITY OR OTHER COLLATERAL FOR ANY DEBT OF OWNER.

DATED THIS _____ DAY OF _____, 2019.

MGD HOLDINGS, LLC, AN ARIZONA LIMITED LIABILITY COMPANY
OWNER
BY _____
ITS: VICE PRESIDENT

ACKNOWLEDGMENT

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS

ON THIS _____ DAY OF _____, 2019, BEFORE ME, THE UNDERSIGNED OFFICER, PERSONALLY APPEARED _____, WHO ACKNOWLEDGES THEMSELF TO BE THE _____ OF MGD HOLDINGS, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, AND ACKNOWLEDGES AS SUCH OFFICER, BEING DULY AUTHORIZED TO DO SO, EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

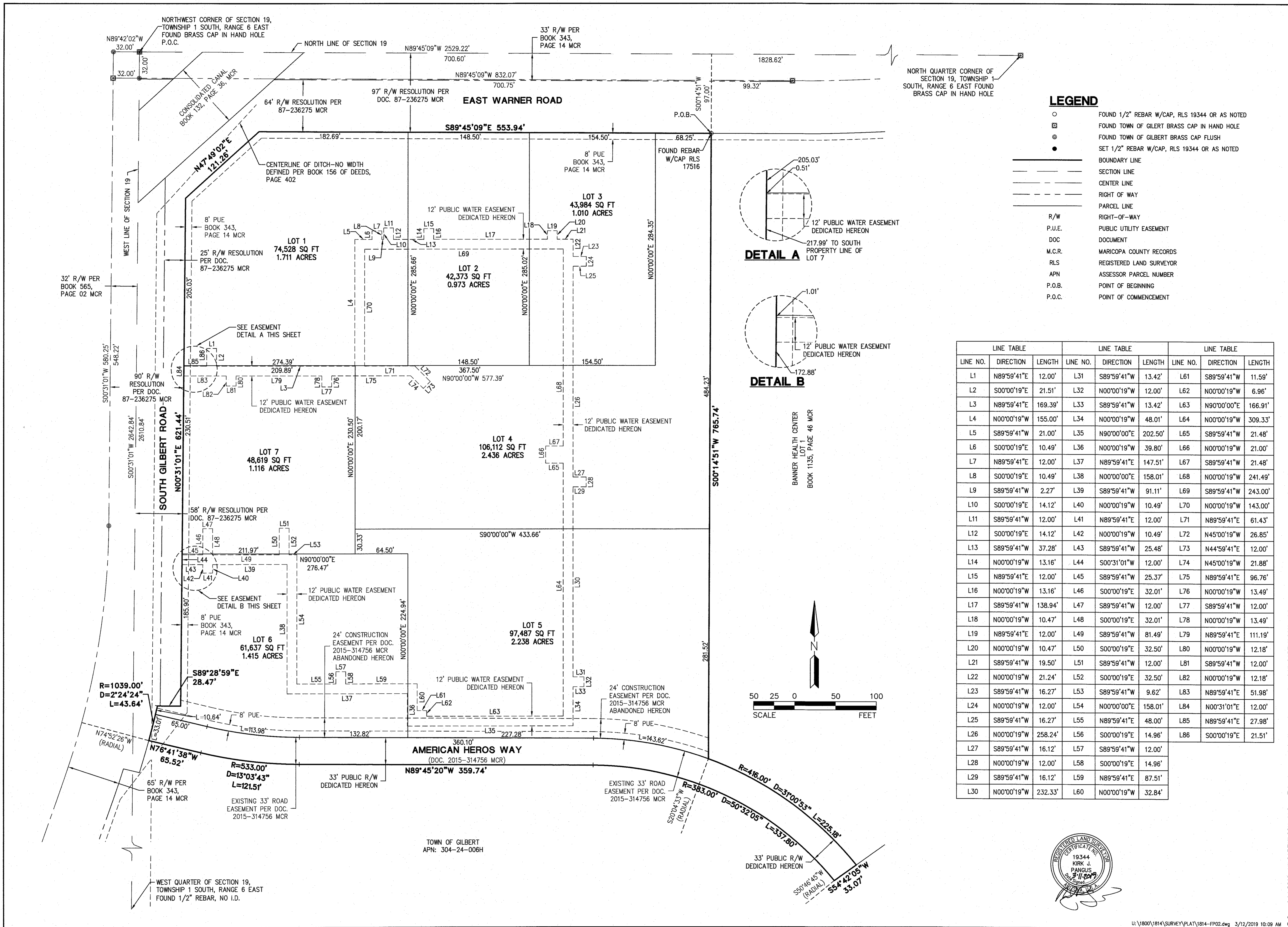
BY: _____ MY COMMISSION EXPIRES: _____
NOTARY PUBLIC

HILGARTWILSON
ENGINEER | PLANNING | SURVEY | MANAGEMENT
2141 E. HIGHLAND AVE., STE. 250 | PHOENIX, AZ 85016
P: 602.490.0535 | F: 602.368.2436
www.hilgartwilson.com

GILBERT AND WARNER TOWN CENTER
S.E.C. OF GILBERT ROAD & WARNER ROAD
GILBERT, ARIZONA
FINAL PLAT

STATUS: _____
PROJ. NO.: 1814
DATE: MAR 2019
SCALE: AS SHOWN
DRAWN: DSP
APPROVED: KJP
MUNICIPAL TRACKING NO: _____

DWG. NO.
FP01
SHT. 1 OF 2



LEGEND

- FOUND 1/2" REBAR W/CAP, RLS 19344 OR AS NOTED
- ⊠ FOUND TOWN OF GILBERT BRASS CAP IN HAND HOLE
- ⊙ FOUND TOWN OF GILBERT BRASS CAP FLUSH
- SET 1/2" REBAR W/CAP, RLS 19344 OR AS NOTED
- BOUNDARY LINE
- - - SECTION LINE
- · - · - CENTER LINE
- · - · - RIGHT OF WAY
- · - · - PARCEL LINE
- R/W RIGHT-OF-WAY
- P.U.E. PUBLIC UTILITY EASEMENT
- DOC DOCUMENT
- M.C.R. MARICOPA COUNTY RECORDS
- RLS REGISTERED LAND SURVEYOR
- APN ASSESSOR PARCEL NUMBER
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT

LINE TABLE		LINE TABLE		LINE TABLE	
LINE NO.	DIRECTION	LENGTH	LINE NO.	DIRECTION	LENGTH
L1	N89°59'41"E	12.00'	L31	S89°59'41"W	13.42'
L2	S00°00'19"E	21.51'	L32	N00°00'19"W	12.00'
L3	N89°59'41"E	169.39'	L33	S89°59'41"W	13.42'
L4	N00°00'19"W	155.00'	L34	N00°00'19"W	48.01'
L5	S89°59'41"W	21.00'	L35	N90°00'00"E	202.50'
L6	S00°00'19"E	10.49'	L36	N00°00'19"W	39.80'
L7	N89°59'41"E	12.00'	L37	N89°59'41"E	147.51'
L8	S00°00'19"E	10.49'	L38	N00°00'00"E	158.01'
L9	S89°59'41"W	2.27'	L39	S89°59'41"W	91.11'
L10	S00°00'19"E	14.12'	L40	N00°00'19"W	10.49'
L11	S89°59'41"W	12.00'	L41	N89°59'41"E	12.00'
L12	S00°00'19"E	14.12'	L42	N00°00'19"W	10.49'
L13	S89°59'41"W	37.28'	L43	S89°59'41"W	25.48'
L14	N00°00'19"W	13.16'	L44	S00°31'01"W	12.00'
L15	N89°59'41"E	12.00'	L45	S89°59'41"W	25.37'
L16	N00°00'19"W	13.16'	L46	S00°00'19"E	32.01'
L17	S89°59'41"W	138.94'	L47	S89°59'41"W	12.00'
L18	N00°00'19"W	10.47'	L48	S00°00'19"E	32.01'
L19	N89°59'41"E	12.00'	L49	S89°59'41"W	81.49'
L20	N00°00'19"W	10.47'	L50	S00°00'19"E	32.50'
L21	S89°59'41"W	19.50'	L51	S89°59'41"W	12.00'
L22	N00°00'19"W	21.24'	L52	S00°00'19"E	32.50'
L23	S89°59'41"W	16.27'	L53	S89°59'41"W	9.62'
L24	N00°00'19"W	12.00'	L54	N00°00'00"E	158.01'
L25	S89°59'41"W	16.27'	L55	N89°59'41"E	48.00'
L26	N00°00'19"W	258.24'	L56	S00°00'19"E	14.96'
L27	S89°59'41"W	16.12'	L57	S89°59'41"W	12.00'
L28	N00°00'19"W	12.00'	L58	S00°00'19"E	14.96'
L29	S89°59'41"W	16.12'	L59	N89°59'41"E	87.51'
L30	N00°00'19"W	232.33'	L60	N00°00'19"W	32.84'





Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Christopher W. Payne, Town Attorney, 503-6168

MEETING DATE: May 16, 2019

SUBJECT: Appointment of a Member to the Judicial Selection Committee

STRATEGIC INITIATIVE: Prosperous Community

RECOMMENDED MOTION

A motion to remove Jolean Fleck from the Judicial Selection Committee; and appoint an employee of the Human Resources Department to the Judicial Selection Committee.

BACKGROUND/DISCUSSION

Section 22-42 of the Town Code provides for the creation of a Judicial Selection Committee to review applications for the presiding judge of the Gilbert Municipal Court. On March 7, 2019, the Council appointed members to the Committee, including Jolean Fleck as the representative from the Human Resources Department. However, she is no longer employed by Gilbert. To comply with Town Code, Council should appoint an employee of the Human Resources Department to the Committee.

FINANCIAL IMPACT None.

STAFF RECOMMENDATION

Appointments to the Judicial Selection Committee are at the discretion of the Council. Staff offers no recommendation on such appointments.

Respectfully submitted,

Christopher W. Payne

Approved By

Chris Payne

Approval Date

5/8/2019 7:42:31 AM

**MINUTES OF THE GILBERT TOWN COUNCIL IN SPECIAL MEETING FOR A STUDY SESSION,
APRIL 18, 2019 AT 6:00 PM, MUNICIPAL CENTER, ROOM 300, 50 E CIVIC CENTER DRIVE,
GILBERT, ARIZONA**

COUNCIL PRESENT: Mayor Jenn Daniels, Vice Mayor Eddie Cook,
Councilmembers Scott Anderson, Brigette Peterson,
Jordan Ray, Jared Taylor, and Aimee Yentes

COUNCIL ABSENT: None

STAFF PRESENT: Town Manager Patrick Banger, Deputy Town Clerk
Chaveli Herrera, Town Attorney Christopher Payne, Office of
Management and Budget Director Kelly Pfof,

CALL TO ORDER OF SPECIAL MEETING

Mayor Daniels called the meeting to order at 6:14 p.m.

1. FY2020 Preliminary Budget

Office of Management and Budget Director Kelly Pfof summarized the FY2020 preliminary budget. She discussed various Budget awards received and the zero based budget process. She provided details on the budget amount requested and what was being recommended to Council. She summarized the different areas of funding and discussed the comparisons between last year and the current years proposed budget. She also provided information on liability and changes in funds.

Vice Mayor Eddie Cook asked for clarification on what the actual general fund expenditure might be. Cris Welch stated that it would be around 156 million.

Kelly discussed the Capital Improvement Project fund and provided details on the infrastructure and total capital expenses and elaborated on carry forward projects. She discussed the property tax levy, debt service and funding for the Public Training Facility. Lastly she provided details on important budget milestones and the timeline and asked for questions from Council.

Councilmember Anderson discussed bed tax and revenue and Councilmember Ray asked what the contingency would be during an economic slowdown and decrease in revenue to the Town. Kelly stated that the first defense would be not to spend the money if we did not need to. She further elaborated on funding and Mayor Daniels stated that she enjoyed how early the budget process was started and thanked everyone for their help.

Mayor Daniels adjourned the meeting at 6:29 p.m.

ATTEST:

Jenn Daniels, Mayor

Chaveli Herrera, CMC, Deputy Town Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the special meeting of the Town Council of the Town of Gilbert held on the 18th day of April, 2019. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____.

Chaveli Herrera, CMC, Deputy Town Clerk

MINUTES OF THE GILBERT TOWN COUNCIL, IN SPECIAL MEETING OF THURSDAY APRIL 18, 2019 AT 5:00 PM, MUNICIPAL CENTER I, ROOM 233 50 E CIVIC CENTER DRIVE, GILBERT, ARIZONA

COUNCIL PRESENT: Mayor Jenn Daniels, Vice Mayor Eddie Cook, Councilmembers Scott Anderson, Brigitte Peterson, Jordan Ray, Jared Taylor, and Aimee Yentes

COUNCIL ABSENT: None

STAFF PRESENT: Town Manager Patrick Banger, Deputy Town Clerk Chaveli Herrera, Town Attorney Christopher Payne

AGENDA ITEM

CALL TO ORDER

Vice Mayor Eddie Cook called the meeting to order at 5:00 p.m.

RECESS SPECIAL MEETING AND RECONVENE IN EXECUTIVE SESSION

A MOTION was made by Councilmember Peterson, seconded by Councilmember Yentes, to recess to Executive Session pursuant to:

a) A.R.S. §§ 38-431.03(A)(3) and (4), legal advice from the Town Attorney and discussion and consultation with Town representatives concerning contemplated litigation involving pharmaceutical companies for damages due to the opioid abuse epidemic.

b) A.R.S. §§ 38-431.03(A)(3), legal advice from the Town Attorney regarding claims concerning rights-of-way and sidewalks.

Motion carried 6-0, Mayor Daniels was not present for the vote.

ADJOURN EXECUTIVE SESSION AND RECONVENE SPECIAL MEETING

Mayor Daniels reconvened the Special at meeting at 6:07 p.m.

ADJOURN

Mayor Daniels adjourned the meeting at 6:07 p.m.

ATTEST:

Jenn Daniels, Mayor

Chaveli Herrera, CMC, Deputy Town Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the special meeting of the Town Council of the Town of Gilbert held on the 18th day of April, 2019. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____.

Chaveli Herrera, CMC, Deputy Town Clerk

MINUTES OF THE GILBERT TOWN COUNCIL, IN REGULAR MEETING OF THURSDAY, APRIL 18, 2019 AT 6:30 PM, MUNICIPAL CENTER, COUNCIL CHAMBERS, 50 E CIVIC CENTER DRIVE, GILBERT, ARIZONA

COUNCIL PRESENT: Mayor Jenn Daniels, Vice Mayor Eddie Cook, Councilmembers Scott Anderson, Brigette Peterson, Jordan Ray, Jared Taylor, and Aimee Yentes

COUNCIL ABSENT: None

STAFF PRESENT: Town Manager Patrick Banger, Deputy Town Clerk Chaveli Herrera, Town Attorney Christopher Payne, and Plan Review and Inspections Manager Larry Taylor

AGENDA ITEM

CALL TO ORDER

Mayor Daniels called the meeting to order at 6:33 p.m.

PRESENTATION OF STUDENT CITIZEN OF THE MONTH AWARD

Mayor Daniels and the Council presented Student Citizen of the Month Awards for March to *(presented alphabetically by school)*:

Isabella Cappotto, Azlyn Openshaw, Miley Arce, Nicole Hernandez, Elishama Rodriguez, Chase Stover, Alaster Rubi, Elizabeth Franklin, Jorge Ortiz-Rivera, Sara Welsh, Valu Paea, Cyndi Romero-Jackson, Wake Forsgren, Vy Diep, Kaylee McKinzie, Alannah Soto, Peyton Wylie, Alexandra Anger, Sydnee Becerra, Zakary Schwartz, Sylus Sirmer, Ramon Gaeta, Ayden McGlawn, Kellen Everett, Brooke Brenchley, Madison Reynolds, Blake Blanton, Madison Mothershed, Josiah Salgado, Cameron Edenfield, Harl "Jolo" Cuaresma, Ethan Kennerley, Gabriela Rodriguez, William Cooks, Alexander Soto, Olivia Davis, Maja McLaren, CJ Parisian, and Briana Caiazzo.

INVOCATION AND PLEDGE OF ALLEGIANCE

Councilmember Peterson introduced the scouts in attendance who led the Pledge of Allegiance and introduced themselves. Pastor Eric Jones of Evident Life Church gave the invocation.

ROLL CALL

Deputy Town Clerk Chaveli Herrera called roll and declared a quorum present.

COMMUNICATIONS FROM CITIZENS

Paul Rodriguez, Gilbert resident, discussed a report he received from a doctor at a veterinary hospital in regards to specific cat who had been neutered.

CONSENT CALENDAR

A MOTION was made by Vice Mayor Cook, seconded by Councilmember Peterson to approve Consent Items 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, and 17; and remove Items 5 and 14 from the Consent Calendar. *Motion carried 7-0.*

1. INTERGOVERNMENTAL AGREEMENT – consider approval of Intergovernmental Agreement No. 319001101 with the Town of Hayden for the transfer of equipment and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

2. INTERGOVERNMENTAL AGREEMENT – consider adoption of a Resolution approving Intergovernmental Agreement No. 319001114 with the San Carlos Apache Indian Tribe for transfer of ownership of a fire department pumper truck and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote. *Resolution No. 4043 was adopted.*

3. CONTRACT – consider approval of a Cooperative Purchase Agreement No. 319001082 with Devau Human Services utilizing City of Chandler Cooperative Purchasing Contract No. 319001082 in an amount not to exceed \$150,500 for Parks and Recreation Department temporary contract worker services and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

4. CONTRACT – consider:

a) approval of a Cooperative Purchase Agreement Job Order Contract (JOC) Contract No. 319001105 with Felix Construction, Inc. utilizing City of Peoria Purchasing Contract No. #ACON20118 in an amount not to exceed \$2,800,000 for FY 2019-2020 for North Water Treatment Plant Filter Rehabilitation, Project No. WA1541, and authorize the Mayor to execute the required documents;

b) approval of Job Order No. 1 to Job Order Contract (JOC) Contract No. 319001105 with Felix Construction, Inc. in an amount not to exceed \$846,908.96 for filter media and underdrain backwash systems procurement and related construction services, Project No. WA1541, and authorize the Mayor to execute the required documents;

c) authorize a Contingency Transfer from the Water Replacement Contingency Fund in the amount of \$2,900,000 for FY2019; and

d) authorize a Contingency Transfer from the Water Replacement Contingency Fund in the amount of \$2,680,000 for FY2020.

This item was approved with the Consent Calendar vote.

5. CONTRACT - consider approval and authorize the Mayor to execute the required documents for:

a) Architecture/Engineering (A/E) Contract No. 319001079 with HDA Architects, LLC in an amount not to exceed \$1,462,741 for construction administration services for the Gilbert Public Safety Training Facility, Project No. MF0400;

b) Project Management/Construction Management (PM/CM) Contract No. 319001080 with CookDZ, LLC in an amount not to exceed \$2,294,497 for construction management services during the construction phase for the Gilbert Public Safety Training Facility, Project No. MF0400; and

c) Construction Manager at Risk (CMAR) Construction Services Contract No. 319001078 CORE Construction, Inc. in an amount not to exceed \$63,908,581 for CMAR construction services for the Gilbert Public Safety Training Facility, Project No. MF0400.

Councilmember Taylor expressed concerns regarding the total expected costs, stating they were higher than market rates. He said his concerns were with the cost, not the need for the facility. He said he would not be supporting the item.

A MOTION was made by Vice Mayor Cook, seconded by Councilmember Peterson to approve Item 5 with the posted changes. *Motion carried 5-2, with Councilmembers Taylor and Yentes casting the dissenting votes.*

6. CHANGE ORDER – consider approval of Change Order No. 1 to Contract No. 319000551 (Eden No. 2017-2106-0589) with Sunrise Engineering, Inc. increasing the contract amount by \$84,010 for Baseline Road – Fiesta Tech to McQueen waterline project, Project No. WA1140, and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

7. CHANGE ORDER – consider approval of Change Order No. 6 to Contract No. 319000985 with APL Access & Security increasing the contract amount by \$206,156.03 for replacement of the outdated security system and additional cameras at the Public Safety Facility and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

8. CHANGE ORDER – consider approval of Change Order No. 1 to Contract No. 319000268 (Eden No. 2017-1105-0454) with Sentinel Technologies, Inc. increasing the contract amount by \$254,000 to provide network equipment, infrastructure and security products and services and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

9. CHANGE ORDER – consider approval of Change Order No. 1 to Contract No. 319000537 (Eden No. 2018-1105-0270) with CDW Government LLC increasing the contract amount by \$164,000 for Microsoft Office 365 software licenses in FY 2019 and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

10. GRANT – consider:

a) application and acceptance of a grant, Contract No. 319001102, from the Governor's Office of Highway Safety for overtime expenses for traffic enforcement, education, DUI enforcement and expenses related to program equipment in an amount not to exceed \$240,000 and authorize the Mayor to execute the required documents; and

b) approval of a Contingency Transfer from the Grant Fund Contingency Fund in the amount of \$240,000.

This item was approved with the Consent Calendar vote.

11. GRANT – consider:

a) adoption of a Resolution approving the application and acceptance of a 12% Gaming Contribution Grant No. 319001086 from the Fort McDowell Yavapai Nation (FMYN) in the amount of \$32,700 for the Native American Management Internship and authorize the Mayor to execute the required documents; and

b) authorize a FY2020 Contingency Transfer in the amount of \$32,700 using revenue received from the FMYN as the designated revenue source.

This item was approved with the Consent Calendar vote. *Resolution No. 4044 was adopted.*

12. GRANT – consider:

a) adoption of a Resolution supporting the application and acceptance of a 12% Gaming Contribution Pass-Through Grant No. 319001087 from the Fort McDowell Yavapai Nation (FMYN) for One Small Step Inc. doing business as (dba) The Clothes Cabin in the amount of \$50,000 and authorize the Mayor to execute the required documents, and

b) authorize a FY 2020 Grant Contingency Transfer in the amount of \$50,000 using revenue received from the FMYN as the designated revenue source.

This item was approved with the Consent Calendar vote. *Resolution No. 4045 was adopted.*

13. GRANT – consider ratification of the application of a pass-through 12% Gaming Grant, Contract No. 319001112, from the Gila River Indian Community for the Gilbert Chamber of Commerce Foundation Inc. in the amount of \$50,000 annually over the next three years.

This item was approved with the Consent Calendar vote.

14. FEES - consider adoption of the System Development Fee Schedules for Traffic Signals, Transportation, Police, Fire, Parks and Recreation, General Government, Water and Wastewater pursuant to Arizona Revised Statutes (ARS) Section 9-463.05 to be effective July 8, 2019.

Councilmember Taylor outlined concerns with the fees, stating the people who would be paying for the work would not be the ones benefitting from it. He said the allocation of the funds should not be going exclusively to the bridge project. He said he was not certain the fee schedule was fully-conforming to the requirement in terms of who it would benefit.

Councilmember Anderson and Mayor Daniels affirmed that 75 percent of the bridge cost was removed from the System Development Fee; only 25 percent remained, and that would be attributed to growth specifically.

Kevin Bishop, Gilbert resident, voiced concerns regarding the impact of the fees on businesses and the possibility of it becoming too expensive for businesses operate in Gilbert. He also expressed concerns regarding the Parks portion of the System Development Fees, stating he did not see any benefit to businesses. He said the costs were applicable to all residents in Gilbert and an unfair portion was being assessed to businesses. He asked for the Council's consideration in exercising caution but thanked them for their work.

A MOTION was made by Vice Mayor Cook, seconded by Councilmember Anderson to approve Item 14. *Motion carried 6-1, with Councilmember Taylor casting the dissenting vote.*

15. STREETLIGHT IMPROVEMENT DISTRICT [19-03] - consider adoption of a Resolution creating Streetlight Improvement District No. 19-03 for Copper Bend Subdivision and ordering the improvements.

This item was approved with the Consent Calendar vote. *Resolution No. 4046 was adopted.*

16. RISK MANAGEMENT - consider acceptance of the Risk Management Quarterly Claim report for Fiscal Year 2019, Quarter 3.

This item was approved with the Consent Calendar vote.

17. MINUTES - consider approval of the minutes of the Regular Meeting of April 4, 2019.

This item was approved with the Consent Calendar vote.

PUBLIC HEARING

Mayor Jenn Daniels opened the public hearing for Items 18, 19, 20, 21, and 22. No one wished to speak and Mayor Jenn Daniels closed the public hearing.

A MOTION was made by Vice Mayor Cook, seconded by Peterson, to approve Public Hearing Items 18, 19, 20, 21, and 22. *Motion carried 7-0.*

18. LIQUOR LICENSE – conduct hearing and consider approval of a Series 12 Restaurant Liquor License for Burgerim located at 3605 South Gilbert Road, Suite 103.

This item was approved with the Public Hearing Vote.

19. LIQUOR LICENSE – conduct hearing and consider approval of a Series 12 Restaurant Liquor License for Elbows Mac N Cheese located at 3757 South Gilbert Road, Suite 106.

This item was approved with the Public Hearing Vote.

20. PROPERTY ACQUISITION – conduct hearing and consider adoption of a Resolution approving the acquisition of temporary construction easements on Parcel No. 304-58-009H for the reservoir pump station and well conversion, Project No. WA0620.

This item was approved with the Public Hearing Vote. *Resolution No. 4047 was adopted.*

21. PROPERTY ACQUISITION – conduct hearing and consider approving the acquisition of right-of-way and easements on Parcel No. 304-81-005K for Val Vista Road Improvements, Project No. ST1120.

This item was approved with the Public Hearing Vote.

22. CODE OF GILBERT – conduct hearing and consider adoption of an Ordinance amending the Code of Gilbert, Arizona, by amending Chapter 10 Buildings and Construction Regulations, Article Vi Public Works, Section 10-202 Adoption of Town of Gilbert's Public Works and Engineering Standards, The Supplement To MAG Uniform Standard Details for Public Works Construction, and the Supplement To MAG Uniform Standard Specifications For Public Works Construction, related to Standards of Public Works construction in the Town.

This item was approved with the Public Hearing Vote. *Ordinance No. 2708 was adopted.*

ADMINISTRATIVE ITEMS

23. Presentation reporting on the findings of the Subcommittee on Building Codes.

Councilmember Taylor presented information on the background of the subcommittee and its recommendations. He summarized the metrics and highlighted the proposed clarifying definitions and new requirements of the Code. He said the benefits would offer immediate relief with the 2018 permits, noting the decisions on new permits going forward would be data-driven. He thanked all who participated in the project.

Councilmember Anderson stated the proposed changes were a good compromise, noting the participants who were originally challenging the changes were now in favor of it.

Councilmember Yentes thanked all those who participated or provided feedback.

Plan Review and Inspections Manager Larry Taylor noted the recommendations had not been adopted. He said the intent would be to bring the vetted changes and a plan to adopt the codes to the Council after receiving feedback. He expressed concerns about making recommendations that were too controversial or restrictive. He suggested having a stakeholders group be included as the process moved forward.

Mayor Daniels stated feedback from stakeholders would be critical to the process and requested a Council Study Session, possibly in August, to alleviate concerns before the time of adoption.

24. BOARDS, COMMISSIONS, AND COMMITTEES - reports from Council Liaisons for the:

- a) Subcommittee on Board and Commission Application Screening, Interview, and Selection
- b) Subcommittee on Building Code
- c) Subcommittee on Land Development Code
- d) Ad Hoc
- e) Regional Meetings
- f) Industrial Development Authority
- g) Judicial Review Committee
- h) Mayor's Youth Advisory Committee
- i) Parks and Recreation Board
- j) Planning Commission
- k) Redevelopment Commission
- l) Town of Gilbert, AZ Public Facilities MPC
- m) Town of Gilbert, AZ Water Resources MPC
- n) Town of Gilbert, AZ Self-Insured Trust Fund for Health Benefits
- o) Utility Board

Councilmember Peterson reported on the Land Development Code Subcommittee, stating the process was long and tedious. She said she was happy with the Subcommittee's progress, but noted it would be several more months before its completion.

POLICY ITEMS

None.

FUTURE MEETINGS

There was no discussion.

COMMUNICATIONS

Report from the TOWN MANAGER on current events.

Town Manager Patrick Banger recognized the following staff for their key role on the Public Safety Training Facility: Deputy Town Manager Leah Hubbard-Rhineheimer, Town Engineer David Fabiano, Assistant Town Engineer Susanna Struble, Engineering Project Supervisor Jack Gierak, Fire Chief Jim Jobusch, Police Chief Michael Soelberg, Assistance Fire Chief Rob Duggan, and Assistant Police Chief Randy Brice. He recognized Office of Management and Budget Director Kelly Pfof for her work on the Impact Fee update. Lastly, he thanked the entire Wastewater Team on how staff dealt with the recent power outage of the Greenfield Wastewater Treatment Plant.

Report from the COUNCIL on current events.

Councilmember Peterson announced there would be a Mother’s Day Tea on Saturday, May 11, 2019 at the Elegant Barn. She said the proceeds would benefit the Gilbert Sister Cities Committee. She also led the audience in singing “Happy Birthday” to Mayor Daniels and offered her well-wishes from the Council.

Report from the MAYOR on current events.

Mayor Daniels announced that applications would be accepted in May for the Mayor’s Youth Advisory Committee and encouraged students to apply. She reported that Gilbert Kindness Week would begin on April 22, 2019, noting that was also Earth Day. She highlighted events to commemorate Kindness Week and asked residents to complete acts of kindness, noting Gilbert is now known as Kindness, USA.

ADJOURN

Mayor Daniels adjourned meeting at 7:51 p.m.

ATTEST:

Jenn Daniels, Mayor

Chaveli Herrera, CMC, Deputy Town Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the regular meeting of the Town Council of the Town of Gilbert held on the 18th day of April, 2019. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____.

Chaveli Herrera CMC, Deputy Town Clerk



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Leslie Giltner, Customer Service Manager, 503-6801

MEETING DATE: May 16, 2019

SUBJECT: Series 7 Beer and Wine Bar Liquor License for Postino Winecafe located at 302 North Gilbert Road

STRATEGIC INITIATIVE: N/A

RECOMMENDED MOTION

A motion to issue an order to recommend approval of a Series 7 Beer and Wine Bar Liquor License for Postino Winecafe located at 302 North Gilbert Road. Amendments were made to page 5 of the application.

BACKGROUND/DISCUSSION

Andrea Dahlman Lewkowitz is requesting approval of a Series 7 Beer and Wine Bar Liquor License for Postino Winecafe located at 302 North Gilbert Road.

The beer and wine bar (series 7) liquor license is a "quota" license available only through the Liquor License Lottery or for purchase on the open market. Once issued, this liquor license is transferable from person to person and/or location to location within the same county and allows the holder both on- & off-sale retail privileges. This license allows a beer and wine bar retailer to sell and serve beer and wine (no other spirituous liquors), primarily by individual portions, to be consumed on the premises and in the original container for consumption on or off the premises. A retailer with off-sale ("To Go") privileges may deliver spirituous liquor off of the licensed premises in connection with a retail sale. A.R.S. 4-206.01.F. states that after January 1, 2011, the off-sale privileges associated with a bar license shall be limited to no more than 30% of the total annual sales receipts of liquor by

the licensee at that location. Off-sale ("To Go") package sales can be made on the bar premises as long as the area of off-sale operation does not utilize a separate entrance and exit from the one provided for the bar. Payment must be made no later than the time of delivery.

FINANCIAL IMPACT

The license fee is \$750 per year.

STAFF RECOMMENDATION

Staff feels such requests are solely Council's prerogative and offers no recommendation on this request.

Respectfully submitted,

Leslie Giltner
Customer Service Manager

Attachments/Enclosures:

- Attachment 1 – Arizona Department of Liquor Licenses & Control, Rule R19-1-702
- Attachment 2 – Liquor License Application

Approved By

Approval Date

Kyle Mieras

5/6/2019 9:33:23 AM

R19-1-702. Determining Whether to Grant a License for a Certain Location

To determine whether public convenience requires and the best interest of the community will be substantially served by issuing or transferring a license at a particular unlicensed location, local governing authorities and the Board may consider the following criteria:

1. Petitions and testimony from individuals who favor or oppose issuance of a license and who reside in, own, or lease property within one mile of the proposed premises;
2. Number and types of licenses within one mile of the proposed premises;
3. Evidence that all necessary licenses and permits for which the applicant is eligible at the time of application have been obtained from the state and all other governing bodies;
4. Residential and commercial population of the community and its likelihood of increasing, decreasing, or remaining static;
5. Residential and commercial population density within one mile of the proposed premises;
6. Evidence concerning the nature of the proposed business, its potential market, and its likely customers;
7. Effect on vehicular traffic within one mile of the proposed premises;
8. Compatibility of the proposed business with other activity within one mile of the proposed premises;
9. Effect or impact on the activities of businesses or the residential neighborhood that might be affected by granting a license at the proposed premises;
10. History for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant received a detailed report of the violations and criminal activity at least 20 days before the hearing by the Board;
11. Comparison of the hours of operation at the proposed premises to the hours of operation of existing businesses within one mile of the proposed premises; and
12. Proximity of the proposed premises to licensed childcare facilities as defined by A.R.S. § 36-881.

This Section is authorized by A.R.S. § 4-201(I).

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APR 02 2019

TOWN OF GILBERT
CUSTOMER SERVICE CENTER

State of Arizona
Department of Liquor Licenses and Control

Created 03/27/2019 @ 03:41:11 PM

Local Governing Body Report

LICENSE

Number:	07070301	Type:	007 BEER AND WINE BAR
Name:	POSTINO WINECAFE		
State:	Pending		
Issue Date:		Expiration Date:	02/29/2020
Original Issue Date:	06/02/1986		
Location:	302 N GILBERT ROAD GILBERT, AZ 85234 USA		
Mailing Address:	2600 N CENTRAL AVENUE #1775 PHOENIX, AZ 85004 USA		
Phone:	(602)277-5991		
Alt. Phone:	(602)200-7222		
Email:	ANDREA@LEWKILAW.COM		

Currently, this license has pending applications.

AGENT

Name:	ANDREA DAHLMAN LEWKOWITZ
Gender:	Female
Correspondence Address:	2600 N CENTRAL AVENUE #1775 PHOENIX, AZ 85004 USA
Phone:	(602)200-7222
Alt. Phone:	
Email:	ANDREA@LEWKILAW.COM

OWNER

ALC 000 503-
04-2019

Name: POSTINO GILBERT HERITAGE DISTRICT LLC
Contact Name: ANDREA LEWOWITZ
Type: LIMITED LIABILITY COMPANY
AZ CC File Number: L16356380 State of Incorporation: AZ
Incorporation Date: 10/25/2010
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (602)200-7222
Alt. Phone: (602)277-5991
Email: ANDREA@LEWKLAW.COM

Officers / Stockholders

Name:	Title:	% Interest:
POSTINO HOLDINGS LLC	Member,Stockholder	100.00

**POSTINO GILBERT HERITAGE DISTRICT LLC -
Member,Stockholder**

Name: POSTINO HOLDINGS LLC
Contact Name: ANDREA LEWKOWITZ
Type: LIMITED LIABILITY COMPANY
AZ CC File Number: State of Incorporation: AZ
Incorporation Date:
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (602)200-7222
Alt. Phone:
Email: ANDREA@LEWKLAW.COM

POSTINO HOLDINGS LLC - Member,Stockholder

Name: UPWARD PROJECTS HOLDINGS LLC
Contact Name: ANDREA LEWKOWITZ
Type: LIMITED LIABILITY COMPANY
AZ CC File Number: State of Incorporation: AZ
Incorporation Date:
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (602)200-7222
Alt. Phone:
Email: ANDREA@LEWKLAW.COM

**UPWARD PROJECTS HOLDINGS LLC -
Stockholder,Member**

Name: INSPIRED RESTAURANT HOLDINGS LLC
Contact Name: ANDREA LEWKOWITZ
Type: LIMITED LIABILITY COMPANY
AZ CC File Number: State of Incorporation: AZ
Incorporation Date:
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (602)200-7222
Alt. Phone:
Email: ANDREA@LEWKLAW.COM

**INSPIRED RESTAURANT HOLDINGS LLC -
Stockholder,Member**

Name: PRIVATE INVESTMENT FIRM
Contact Name: ANDREA LEWKOWITZ
Type: LIMITED LIABILITY COMPANY
AZ CC File Number: State of Incorporation: AZ
Incorporation Date:
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (602)200-7222
Alt. Phone:
Email: ANDREA@LEWKLAW.COM

QUAQUAVERSAL LLC - MEMBER

Name: LAUREN ELAINE BAILEY
Gender: Female
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (602)309-5944
Alt. Phone:
Email: LAUREN@UPWARDPROJECTS.COM

**INSPIRED RESTAURANT HOLDINGS LLC -
MEMBER**

Name: QUAQUAVERSAL LLC
Contact Name: ANDREA DAHLMAN LEWKOWITZ
Type: LIMITED LIABILITY COMPANY
AZ CC File Number: State of Incorporation:
Incorporation Date:
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (602)200-7222
Alt. Phone:
Email: ANDREA@LEWKLAW.COM

**INSPIRED RESTAURANT HOLDINGS LLC -
MEMBER**

Name: DEMARCO FUTURE FUND LLC
Contact Name: ANDREA DAHLMAN LEWKOWITZ
Type: LIMITED LIABILITY COMPANY
AZ CC File Number: State of Incorporation:
Incorporation Date:
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (602)200-7222
Alt. Phone:
Email: ANDREA@LEWKLAW.COM

MANAGERS

Name: KRISTINA KAY CASHMAN
Gender: Female
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (480)702-2244
Alt. Phone:
Email: KCASHMAN@GUYANDLARRYRESTAURANTS.COM

Name: BRENT FRANCIS KARLICEK
Gender: Male
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (480)735-9593
Alt. Phone: (480)927-1111
Email: BKARLIVEK@UPWARDPROJECTS.COM

Name: LAUREN ELAINE BAILEY
Gender: Female
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (602)309-5944
Alt. Phone:
Email: LAUREN@UPWARDPROJECTS.COM

APPLICATION INFORMATION

Application Number: 58042
Application Type: Location / Owner Transfer
Created Date: 03/27/2019

QUESTIONS & ANSWERS

007 Beer and Wine Bar

- 1) If you intend to operate business while your application is pending you will need an interim permit pursuant to A.R.S.§4-203.01. Would you like to apply for an Interim Permit?
No
- 4) Have you submitted a questionnaire? Each person listed must submit a questionnaire and mail in a fingerprint card along with a \$22. processing fee per card.
Yes
- 5) Is the Business located within the incorporated limits of the city or town of which it is located?
Yes
- 6) Does the Business location address have a street address for a City or Town but is actually in the boundaries of another City, Town or Tribal Reservation?
No
- 15) Please provide name, address, and Distance of nearest school.
1987 FT GILBERT ELEMENTARY SCHOOL 175 ELLIOT RD GILBERT AZ 85233
- 16) Please provide name, address, and distance of nearest church.
1026 FT EVIDENT LIFE CHURCH 415 N GILBERT RD GILBERT AZ 85234

- 17) Are you a tenant? (A person who holds the lease of a property; a lessee)
Yes
A Document of type SUPPLEMENTAL INFO is required.
- 18) Is there a penalty if lease is not fulfilled?
Yes
What is the penalty?
TERMINATION AND MONETARY PENALTIES
- 19) Are you a sub-tenant? (A person who holds a lease which was given to another person (tenant) for all or part of a property)
No
- 20) Are you the owner
No
- 21) Are you a purchaser?
No
- 22) Are you a management company?
No
- 23) What is the total money borrowed for the business not including the lease?
Please list lenders/people owed money for the business.
0.00
- 24) Is there a drive through window on the premises?
No
- 25) Have you provided a diagram of your premises?
Yes
- 26) If there is a patio please indicate contiguous or non-contiguous within 30 feet.
CONTIGUOUS
- 27) Is your licensed premises now closed due to construction, renovation or redesign or rebuild?
No

Name: BRENT FRANCIS KARLICEK
Gender: Male
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (480)735-9593
Alt. Phone: (480)927-1111
Email: BKARLIVEK@UPWARDPROJECTS.COM

Name: LAUREN ELAINE BAILEY
Gender: Female
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (602)309-5944
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Email: LAUREN@UPWARDPROJECTS.COM

APPLICATION INFORMATION

Application Number: 58042
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QUESTIONS & ANSWERS

007 Beer and Wine Bar

- 1) If you intend to operate business while your application is pending you will need an interim permit pursuant to A.R.S.§4-203.01. Would you like to apply for an Interim Permit?
No
- 4) Have you submitted a questionnaire? Each person listed must submit a questionnaire and mail in a fingerprint card along with a \$22. processing fee per card.
Yes
- 5) Is the Business located within the incorporated limits of the city or town of which it is located?
Yes
- 6) Does the Business location address have a street address for a City or Town but is actually in the boundaries of another City, Town or Tribal Reservation?
No
- 15) Please provide name, address, and Distance of nearest school.
1987 FT GILBERT ELEMENTARY SCHOOL 175 ELLIOT RD GILBERT AZ 85233
- 16) Please provide name, address, and distance of nearest church.
679 FT CHURCH OF CHRIST 23 E CULLUMBER AVE GILBERT, AZ 85234

49 APR 03 10:06 AM '19

ALC00503 -
04-2019

AMENDMENT



Arizona Department of Liquor Licenses and Control
 800 W Washington 5th Floor
 Phoenix, AZ 85007-2934
 www.azliquor.gov
 (602) 542-5141

**Local Governing Body Recommendation
 A.R.S. § 4-201(C)**

1. City or Town of: Gilbert Liquor License Application #: 58042
(Circle one) (Arizona application #)

2. County of: Maricopa City/Town/County #: Gilbert

3. If licensed establishment will operate within an "entertainment district" as described in A.R.S. §4-207(D)(2),

(Name of entertainment district) (Date of resolution to create the entertainment district)

A boundary map of entertainment district must be attached.

4. The Gilbert Town Council at a Regular meeting held on the 2nd of
(Governing body) (Regular or special) (Day)
May, 2019 considered the application of Andrea Dahlman Lewkowitz
(Month) (Year) (Name of applicant)

for a license to sell spirituous liquor at the premises described in application 58042,
(Arizona liquor license application #)

for the license series #: type Series 7: Beer and Wine Bar as provided by A.R.S §4-201.
(i.e.: series #10: beer & wine store)

ORDER OF APPROVAL/DISAPPROVAL

IT IS THEREFORE ORDERED that the license APPLICATION OF _____
(Name of applicant)

to sell spirituous liquor of the class and in the manner designated in the application, is hereby recommended
 for _____
(Approval, disapproval, or no recommendation)

TRANSMISSION OF ORDER TO STATE

IT IS FURTHER ORDERED that a certified copy of this order be immediately transmitted to the State Department
 of Liquor, License Division, 800 W Washington, 5th Floor, Phoenix, Arizona.

Dated at _____ on _____
(Location) (Day) (Month) (Year)

(Printed name of city, town or county clerk) _____
(Signature of city, town or county clerk)



Arizona Department of Liquor Licenses and Control
 800 W Washington 5th Floor
 Phoenix, AZ 85007-2934
 www.azliquor.gov
 (602) 542-5141

AFFIDAVIT OF POSTING

Date of Posting: 4/9/19 Date of Posting Removal: 4/29/19

Applicant's Name: Lewkowitz Andrea Dahlman
Last First Middle

Business Address: 302 N Gilbert Rd Gilbert 85234
Street City Zip

License #: 58042

I hereby certify that pursuant to A.R.S. 4-201, I posted notice in a conspicuous place on the premises proposed to be licensed by the above applicant and said notice was posted for at least twenty (20) days.

Lorrie DeOrto Code Administrator 480-503-6834
Print Name of City/County Official Title Phone Number

[Signature] 4-29-2019
Signature Date Signed

Return this affidavit with your recommendations (i.e., Minutes of Meeting, Verbatim, etc.) or any other related documents. If you have any questions please call (602) 542-5141 and ask for the Licensing Division.



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Leslie Giltner, Customer Service Manager, 503-6801

MEETING DATE: May 16, 2019

SUBJECT: Series 12 Restaurant Liquor License for Alamo Drafthouse Cinema located at 5478 South Power Road

STRATEGIC INITIATIVE: N/A

RECOMMENDED MOTION

A motion to issue an order to recommend approval of a Series 12 Restaurant Liquor License for Alamo Drafthouse Cinema located at 5478 South Power Road.

BACKGROUND/DISCUSSION

Andrea Dahlman Lewkowitz is requesting approval of a Series 12 Restaurant Liquor License for Alamo Drafthouse Cinema located at 5478 South Power Road.

This non-transferable, on-sale retail privileges liquor license allows the holder of a restaurant license to sell and serve all types of spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food. Failure to meet the 40% food requirement may result in revocation of the license.

Public notice was posted for the required 20-day period in accordance with the Arizona Department of Liquor License and Control posting requirement. No adverse information to justify a denial of this application was received from Planning and Zoning, Building and

Code Compliance or the Police Department. There were no liquor related conditions in the zoning ordinance for this site.

Council's recommendation will be forwarded to the Arizona Department of Liquor License & Control. If Council recommends denial of an application, the minutes must reflect specific reasons, testimony, and other evidence that supports the motion to deny the license applications as required by A.R.S. 4-201.E further defined by Rule R19-1-702 (Attachment 1).

FINANCIAL IMPACT

The license fee is \$750 per year.

STAFF RECOMMENDATION

Staff feels such requests are solely Council's prerogative and offers no recommendation on this request.

Respectfully submitted,

Leslie Giltner
Customer Service Manager

Attachments/Enclosures:

- Attachment 1 – Arizona Department of Liquor Licenses & Control, Rule R19-1-702
- Attachment 2 – Liquor License Application

Approved By

Approval Date

Kyle Mieras

5/6/2019 9:33:51 AM

R19-1-702. Determining Whether to Grant a License for a Certain Location

To determine whether public convenience requires and the best interest of the community will be substantially served by issuing or transferring a license at a particular unlicensed location, local governing authorities and the Board may consider the following criteria:

1. Petitions and testimony from individuals who favor or oppose issuance of a license and who reside in, own, or lease property within one mile of the proposed premises;
2. Number and types of licenses within one mile of the proposed premises;
3. Evidence that all necessary licenses and permits for which the applicant is eligible at the time of application have been obtained from the state and all other governing bodies;
4. Residential and commercial population of the community and its likelihood of increasing, decreasing, or remaining static;
5. Residential and commercial population density within one mile of the proposed premises;
6. Evidence concerning the nature of the proposed business, its potential market, and its likely customers;
7. Effect on vehicular traffic within one mile of the proposed premises;
8. Compatibility of the proposed business with other activity within one mile of the proposed premises;
9. Effect or impact on the activities of businesses or the residential neighborhood that might be affected by granting a license at the proposed premises;
10. History for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant received a detailed report of the violations and criminal activity at least 20 days before the hearing by the Board;
11. Comparison of the hours of operation at the proposed premises to the hours of operation of existing businesses within one mile of the proposed premises; and
12. Proximity of the proposed premises to licensed childcare facilities as defined by A.R.S. § 36-881.

This Section is authorized by A.R.S. § 4-201(I).

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APR 08 2019

State of Arizona
Department of Liquor Licenses and Control

TOWN OF GILBERT
CUSTOMER SERVICE CENTER

Created 04/04/2019 @ 03:34:43 PM

Local Governing Body Report

LICENSE

Number:		Type:	012 RESTAURANT
Name:	ALAMO DRAFTHOUSE CINEMA		
State:	Pending		
Issue Date:		Expiration Date:	
Original Issue Date:			
Location:	5478 S POWER ROAD GILBERT, AZ 85295 USA		
Mailing Address:	2600 N CENTRAL AVENUE #1775 PHOENIX, AZ 85004 USA		
Phone:	(000)000-0000		
Alt. Phone:	(602)200-7222		
Email:	ANDREA@LEWKLAW.COM		

AGENT

Name:	ANDREA DAHLMAN LEWKOWITZ
Gender:	Female
Correspondence Address:	2600 N CENTRAL AVENUE #1775 PHOENIX, AZ 85004 USA
Phone:	(602)200-7222
Alt. Phone:	
Email:	ANDREA@LEWKLAW.COM

OWNER

ALC 000 528-04-
2019

Name: ALAMO GILBERT LLC
Contact Name: ANDREA DAHLMAN LEWKOWITZ
Type: LIMITED LIABILITY COMPANY
AZ CC File Number: L20338327 State of Incorporation: AZ
Incorporation Date: 11/09/2015
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (602)200-7222
Alt. Phone:
Email: ANDREA@LEWKLAW.COM

Officers / Stockholders

Name:	Title:	% Interest:
PASCHICH ALAMO HOLDINGS LLC	MEMBER	70.00

ALAMO GILBERT LLC - MEMBER

Name: PASCHICH ALAMO HOLDINGS LLC
Contact Name: ANDREA LEWKOWITZ
Type: LIMITED LIABILITY COMPANY
AZ CC File Number: L19523128 State of Incorporation: AZ
Incorporation Date: 09/15/2014
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (602)200-7222
Alt. Phone:
Email: ANDREA@LEWKLAW.COM

**PASCHICH ALAMO HOLDINGS LLC - Member,
Stockholder**

Name: PETER CRAIG PASCHICH
Gender: Male
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (512)565-0742
Alt. Phone:
Email: CRAIG.PASCHICH@ADCWEST.COM

**PASCHICH ALAMO HOLDINGS LLC -
Member, Stockholder**

Name: KIMBERLY ANN PASCHICH
Gender: Female
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (512)626-4987
Alt. Phone:
Email: KIM.PASCHICH@ADCWEST.COM

APPLICATION INFORMATION

Application Number: 59945
Application Type: New Application
Created Date: 04/04/2019

QUESTIONS & ANSWERS

012 Restaurant

- 1) If you intend to operate the business while your application is pending you will need an interim permit pursuant to A.R.S. §4-203.01. Would you like to apply for an Interim Permit?
If yes, after completing this application, please go back to your Licensing screen, under New License Application choose "Interim Permit" from the drop-down window.
No
- 2) Have you submitted a questionnaire? Each person listed must submit a questionnaire and mail in a fingerprint card along with a \$22. processing fee per card.
Yes
- 5) Are you a tenant? (A person who holds the lease of a property; a lessee)
Yes
A Document of type LEASE is required.
- 6) Is there a penalty if lease is not fulfilled?
Yes
What is the penalty?
TERMINATION AND MONETARY PENALTIES
- 7) Are you a sub-tenant? (A person who holds a lease which was given to another person (tenant) for all or part of a property)
No
- 8) Are you the owner?
No
- 9) Are you a purchaser?
No
- 10) Are you a management company?
No
- 11) Is the Business located within the incorporated limits of the city or town of which it is located?
Yes
- 12) What is the total money borrowed for the business not including the lease?
Please list lenders/people owed money for the business.
\$1,500,000.00 STERNS BANK 4140 THIELMAN LN #105 ST CLOUD MN 56301

- 13) Have you provided a diagram of your premises?
Yes
- 14) Is there a drive through window on the premises?
No
- 15) If there is a patio please indicate contiguous or non-contiguous within 30 feet.
NONE
- 16) Is your licensed premises now closed due to construction, renovation or redesign or rebuild?
Yes
If yes, what is your estimated completion date?
11/12/2019
- 17) Have you provided a Restaurant Operation Plan form?
Yes
- 18) Have you provided a Records Required for Audit form?
Yes



Arizona Department of Liquor Licenses and Control
 800 W Washington 5th Floor
 Phoenix, AZ 85007-2934
 www.azliquor.gov
 (602) 542-5141

**Local Governing Body Recommendation
 A.R.S. § 4-201(C)**

1. City or Town of: Gilbert Liquor License Application #: 59945
(Circle one) (Arizona application #)

2. County of: Maricopa City/Town/County #: Gilbert

3. If licensed establishment will operate within an "entertainment district" as described in A.R.S. § 4-207(D)(2),

(Name of entertainment district) (Date of resolution to create the entertainment district)

A boundary map of entertainment district must be attached.

4. The Gilbert Town Council at a Regular meeting held on the 16th of
(Governing body) (Regular or special) (Day)
May, 2019 considered the application of Andrea Dahlman Lewkowitz
(Month) (Year) (Name of applicant)

for a license to sell spirituous liquor at the premises described in application 59945,
(Arizona liquor license application #)

for the license series #: type 12: Restaurant as provided by A.R.S § 4-201.
(I.e.: series #10: beer & wine store)

ORDER OF APPROVAL/DISAPPROVAL

IT IS THEREFORE ORDERED that the license APPLICATION OF _____
(Name of applicant)
 to sell spirituous liquor of the class and in the manner designated in the application, is hereby recommended
 for _____
(Approval, disapproval, or no recommendation)

TRANSMISSION OF ORDER TO STATE

IT IS FURTHER ORDERED that a certified copy of this order be immediately transmitted to the State Department
 of Liquor, License Division, 800 W Washington, 5th Floor, Phoenix, Arizona.

Dated at _____ on _____, _____, _____
(Location) (Day) (Month) (Year)

(Printed name of city, town or county clerk) _____
(Signature of city, town or county clerk)



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Leslie Giltner, Customer Service Manager, 503-6801

MEETING DATE: May 16, 2019

SUBJECT: Series 12 Restaurant Liquor License for Carrabba's Italian Grill #5310 located at 2709 South Market Street

STRATEGIC INITIATIVE: N/A

RECOMMENDED MOTION

A motion to issue an order to recommend approval of a Series 12 Restaurant Liquor License for Carrabba's Italian Grill #5310 located at 2709 South Market Street.

BACKGROUND/DISCUSSION

Andrea Dahlman Lewkowitz is requesting approval of a Series 12 Restaurant Liquor License for Carrabba's Italian Grill #5310 located at 2709 South Market Street.

This non-transferable, on-sale retail privileges liquor license allows the holder of a restaurant license to sell and serve all types of spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food. Failure to meet the 40% food requirement may result in revocation of the license.

Public notice was posted for the required 20-day period in accordance with the Arizona Department of Liquor License and Control posting requirement. No adverse information to justify a denial of this application was received from Planning and Zoning, Building and

Code Compliance or the Police Department. There were no liquor related conditions in the zoning ordinance for this site.

Council's recommendation will be forwarded to the Arizona Department of Liquor License & Control. If Council recommends denial of an application, the minutes must reflect specific reasons, testimony, and other evidence that supports the motion to deny the license applications as required by A.R.S. 4-201.E further defined by Rule R19-1-702 (Attachment 1).

FINANCIAL IMPACT

The license fee is \$750 per year.

STAFF RECOMMENDATION

Staff feels such requests are solely Council's prerogative and offers no recommendation on this request.

Respectfully submitted,

Leslie Giltner
Customer Service Manager

Attachments/Enclosures:

- Attachment 1 – Arizona Department of Liquor Licenses & Control, Rule R19-1-702
- Attachment 2 – Liquor License Application

Approved By

Kyle Mieras

Approval Date

4/30/2019 8:14:24 AM

R19-1-702. Determining Whether to Grant a License for a Certain Location

To determine whether public convenience requires and the best interest of the community will be substantially served by issuing or transferring a license at a particular unlicensed location, local governing authorities and the Board may consider the following criteria:

1. Petitions and testimony from individuals who favor or oppose issuance of a license and who reside in, own, or lease property within one mile of the proposed premises;
2. Number and types of licenses within one mile of the proposed premises;
3. Evidence that all necessary licenses and permits for which the applicant is eligible at the time of application have been obtained from the state and all other governing bodies;
4. Residential and commercial population of the community and its likelihood of increasing, decreasing, or remaining static;
5. Residential and commercial population density within one mile of the proposed premises;
6. Evidence concerning the nature of the proposed business, its potential market, and its likely customers;
7. Effect on vehicular traffic within one mile of the proposed premises;
8. Compatibility of the proposed business with other activity within one mile of the proposed premises;
9. Effect or impact on the activities of businesses or the residential neighborhood that might be affected by granting a license at the proposed premises;
10. History for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant received a detailed report of the violations and criminal activity at least 20 days before the hearing by the Board;
11. Comparison of the hours of operation at the proposed premises to the hours of operation of existing businesses within one mile of the proposed premises; and
12. Proximity of the proposed premises to licensed childcare facilities as defined by A.R.S. § 36-881.

This Section is authorized by A.R.S. § 4-201(I).

★ MY COPY ★

State of Arizona
Department of Liquor Licenses and Control

RECEIVED

MAR 28 2019

Created 03/26/2019 @ 10:42:38 AM

Local Governing Body Report

TOWN OF GILBERT
CUSTOMER SERVICE CENTER

LICENSE

Number:		Type:	012 RESTAURANT
Name:	CARRABBA'S ITALIAN GRILL #5310		
State:	Pending		
Issue Date:		Expiration Date:	
Original Issue Date:			
Location:	2709 S MARKET STREET GILBERT, AZ 85296 USA		
Mailing Address:	2600 N CENTRAL AVENUE #1775 PHOENIX, AZ 85004 USA		
Phone:	(480)726-7455		
Alt. Phone:	(602)200-7222		
Email:	ANDREA@LEWKLAW.COM		

AGENT

Name:	ANDREA DAHILMAN LEWKOWITZ
Gender:	Female
Correspondence Address:	2600 N CENTRAL AVENUE #1775 PHOENIX, AZ 85004 USA
Phone:	(602)200-7222
Alt. Phone:	
Email:	ANDREA@LEWKLAW.COM

OWNER

ALC000485
03-2019

Name: ITALIAN RESTAURANT GROUP LLC
Contact Name: ANDREA DAHLMAN LEWKOWITZ
Type: LIMITED LIABILITY COMPANY
AZ CC File Number: 1938120 State of Incorporation: WA
Incorporation Date: 01/18/2019
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (602)200-7222
Alt. Phone:
Email: ANDREA@LEWKLAW.COM

Officers / Stockholders

Name:	Title:	% Interest:
EVERGREEN ACQUISITION LLC	MGR/MEM- STOCKHOLDER	100.00

**ITALIAN RESTAURANT GROUP LLC - MGR/MEM
-STOCKHOLDER**

Name: EVERGREEN ACQUISITION LLC
Contact Name: ANDREA DAHLMAN LEWKOWITZ
Type: LIMITED LIABILITY COMPANY
AZ CC File Number: State of Incorporation:
Incorporation Date:
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (602)200-7222
Alt. Phone:
Email: ANDREA@LEWKLAW.COM

**EVERGREEN ACQUISITION LLC -
MEMBER/STOCKHOLDER**

Name: CLIFFORD LLOYD JONES
Gender: Male
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (425)766-2562
Alt. Phone:
Email: JEFFJONES@OUTBACKWEST.COM

**EVERGREEN ACQUISITION LLC -
MEMBER/STCOKHOLDER**

Name: JEFFREY KARL JONES
Gender: Male
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (425)766-2562
Alt. Phone:
Email: ANDREA@LEWKLAW.COM

MANAGERS

Name: KYLE AUSTIN KELTON
Gender: Male
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (480)785-8586
Alt. Phone: (817)223-5829
Email: KYLEKELTON@GMAIL.COM

Name: LINDSAY RYAN MCGILLIVRAY
Gender: Female
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (623)936-0597
Alt. Phone: (909)996-3250
Email: LINDSAYMCGILLIVRAY@GMAIL.COM

Name: PAUL SETOLA JR
Gender: Male
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (480)726-7455
Alt. Phone: (562)332-0480
Email: PMSETOLA@GMAIL.COM

Name: MICHELLE LANAE DEES
Gender: Female
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (602)863-6444
Alt. Phone: (623)640-6214
Email: MICHELLELANAE05@GMNAIL.COM

Name: JOSHUA ADAM PARDON
Gender: Male
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (480)654-9099
Alt. Phone: (480)235-7143
Email: JPARDON480@GMAIL.COM

Name: JESUS URIEL OCHOA SANTOS
Gender: Male
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (520)742-7442
Alt. Phone: (520)780-2019
Email: JUOCHOA@GMAIL.COM

Name: LUIS ENRIQUE ESTIL
Gender: Male
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (480)948-8881
Alt. Phone: (602)703-8348
Email: LUISF\$ILJR@GMAIL.COM

Name: VALERIE DAWN ENNIST
Gender: Female
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (623)214-3299
Alt. Phone: (480)205-4484
Email: VALERIEENNIST@GMAIL.COM

APPLICATION INFORMATION

Application Number: 57659
Application Type: New Application
Created Date: 03/26/2019

QUESTIONS & ANSWERS

012 Restaurant

- 1) If you intend to operate the business while your application is pending you will need an interim permit pursuant to A.R.S.§4-203.01. Would you like to apply for an Interim Permit?
If yes, after completing this application, please go back to your Licensing screen, under New License Application choose "Interim Permit" from the drop-down window.
Yes
- 2) Have you submitted a questionnaire? Each person listed must submit a questionnaire and mail in a fingerprint card along with a \$22. processing fee per card.
Yes
- 5) Are you a tenant? (A person who holds the lease of a property; a lessee)
Yes
A Document of type LEASE is required.
- 6) Is there a penalty if lease is not fulfilled?
Yes
What is the penalty?
TERMINATION/ MONETARY PENALTIES
- 7) Are you a sub-tenant? (A person who holds a lease which was given to another person (tenant) for all or part of a property)
No
- 8) Are you the owner?
No
- 9) Are you a purchaser?
No
- 10) Are you a management company?
No
- 11) Is the Business located within the incorporated limits of the city or town of which it is located?
Yes
- 12) What is the total money borrowed for the business not including the lease?
Please list lenders/people owed money for the business.
0
- 13) Have you provided a diagram of your premises?
Yes
- 14) Is there a drive through window on the premises?
No
- 15) If there is a patio please indicate contiguous or non-contiguous within 30 feet.
CONTIGUOUS
- 16) Is your licensed premises now closed due to construction, renovation or redesign or rebuild?
No
- 17) Have you provided a Restaurant Operation Plan form?
Yes
- 18) Have you provided a Records Required for Audit form?
Yes

State of Arizona
Department of Liquor Licenses and Control

Created 03/26/2019 @ 10:42:56 AM

Local Governing Body Report

LICENSE

Number:	INP070005459	Type:	INP INTERIM PERMIT
Name:	CARRABBA'S ITALIAN GRILL #5310		
State:	Active		
Issue Date:	03/26/2019	Expiration Date:	07/09/2019
Original Issue Date:	03/26/2019		
Location:	2709 S MARKET STREET GILBERT, AZ 85296 USA		
Mailing Address:	2600 N CENTRAL AVENUE #1775 PHOENIX, AZ 85004 USA		
Phone:	(480)726-7455		
Alt. Phone:	(602)200-7222		
Email:	ANDREA@LEWKILAW.COM		

AGENT

Name:	ANDREA DAHLMAN LEWKOWITZ
Gender:	Female
Correspondence Address:	2600 N CENTRAL AVENUE #1775 PHOENIX, AZ 85004 USA
Phone:	(602)200-7222
Alt. Phone:	
Email:	ANDREA@LEWKILAW.COM

OWNER

Name: ITALIAN RESTAURANT GROUP LLC
Contact Name: ANDREA DAHLMAN LEWKOWITZ
Type: LIMITED LIABILITY COMPANY
AZ CC File Number: 1938120 State of Incorporation: WA
Incorporation Date: 01/18/2019
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (602)200-7222
Alt. Phone:
Email: ANDREA@LEWKLAW.COM

Officers / Stockholders

Name:	Title:	% Interest:
EVERGREEN ACQUISITION LLC	MGR/MEM- STOCKHOLDER	100.00

**ITALIAN RESTAURANT GROUP LLC - MGR/MEM
-STOCKHOLDER**

Name: EVERGREEN ACQUISITION LLC
Contact Name: ANDREA DAHLMAN LEWKOWITZ
Type: LIMITED LIABILITY COMPANY
AZ CC File Number: State of Incorporation:
Incorporation Date:
Correspondence Address: 2600 N CENTRAL AVENUE
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PHOENIX, AZ 85004
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Phone: (602)200-7222
Alt. Phone:
Email: ANDREA@LEWKLAW.COM

**EVERGREEN ACQUISITION LLC -
MEMBER/STOCKHOLDER**

Name: CLIFFORD LLOYD JONES
Gender: Male
Correspondence Address: 2600 N CENTRAL AVENUE
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Phone: (425)766-2562
Alt. Phone:
Email: JEFFJONES@OUTBACKWEST.COM

**EVERGREEN ACQUISITION LLC -
MEMBER/STCOKHOLDER**

Name: JEFFREY KARL JONES
Gender: Male
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (425)766-2562
Alt. Phone:
Email: ANDREA@LEWKLAW.COM

MANAGERS

Name: KYLE AUSTIN KELTON
Gender: Male
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (480)785-8586
Alt. Phone: (817)223-5829
Email: KYLEKELTON@GMAIL.COM

Name: LINDSAY RYAN MCGILLIVRAY
Gender: Female
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (623)936-0597
Alt. Phone: (909)996-3250
Email: LINDSAYMCGILLIVRAY@GMAIL.COM

Name: PAUL SETOLA JR
Gender: Male
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (480)726-7455
Alt. Phone: (562)332-0480
Email: PMSETOLA@GMAIL.COM

Name: MICHELLE LANAE DEES
Gender: Female
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (602)863-6444
Alt. Phone: (623)640-6214
Email: MICHELLELANAE05@GMNAIL.COM

Name: JOSHUA ADAM PARDON
Gender: Male
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (480)654-9099
Alt. Phone: (480)235-7143
Email: JPARDON480@GMAIL.COM

Name: JESUS URIEL OCHOA SANTOS
Gender: Male
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (520)742-7442
Alt. Phone: (520)780-2019
Email: JUOCHOA@GMAIL.COM

Name: LUIS ENRIQUE ESTIL
Gender: Male
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (480)948-8881
Alt. Phone: (602)703-8348
Email: LUISESILJR@GMAIL.COM

Name: VALERIE DAWN ENNIST
Gender: Female
Correspondence Address: 2600 N CENTRAL AVENUE
#1775
PHOENIX, AZ 85004
USA
Phone: (623)214-3299
Alt. Phone: (480)205-4484
Email: VALERIEENNIST@GMAIL.COM

APPLICATION INFORMATION

Application Number: 57662
Application Type: New Application
Created Date: 03/26/2019

QUESTIONS & ANSWERS

INP Interim Permit

- 1) Enter License Number currently at location
12078608
- 2) Is the license currently in use?
Yes
- 3) Please submit section 5, page 6. of the license application when you reach the upload page.
No



Arizona Department of Liquor Licenses and Control
 800 W Washington 5th Floor
 Phoenix, AZ 85007-2934
 www.azliquor.gov
 (602) 542-5141

**Local Governing Body Recommendation
 A.R.S. § 4-201(C)**

1. City or Town of: Gilbert Liquor License Application #: 57659
(Circle one) (Arizona application #)
 2. County of: Maricopa City/Town/County #: Gilbert
 3. If licensed establishment will operate within an "entertainment district" as described in A.R.S. §4-207(D)(2),

(Name of entertainment district) (Date of resolution to create the entertainment district)
- A boundary map of entertainment district must be attached.
4. The Gilbert Town Council at a Regular meeting held on the 16th of
(Governing body) (Regular or special) (Day)
May, 2019 considered the application of Andrea Dahlman Lewkowicz
(Month) (Year) (Name of applicant)
 for a license to sell spirituous liquor at the premises described in application 57659,
(Arizona liquor license application #)
 for the license series #: type Series 12: Restaurant as provided by A.R.S §4-201.
(I.e.: series #10: beer & wine store)

ORDER OF APPROVAL/DISAPPROVAL

IT IS THEREFORE ORDERED that the license APPLICATION OF _____
(Name of applicant)
 to sell spirituous liquor of the class and in the manner designated in the application, is hereby recommended
 for _____
(Approval, disapproval, or no recommendation)

TRANSMISSION OF ORDER TO STATE

IT IS FURTHER ORDERED that a certified copy of this order be immediately transmitted to the State Department of Liquor, License Division, 800 W Washington, 5th Floor, Phoenix, Arizona.

Dated at _____ on _____, _____, _____
(Location) (Day) (Month) (Year)

(Printed name of city, town or county clerk)

(Signature of city, town or county clerk)



Arizona Department of Liquor Licenses and Control
 800 W Washington 5th Floor
 Phoenix, AZ 85007-2934
 www.azliquor.gov
 (602) 542-5141

AFFIDAVIT OF POSTING

Date of Posting: March 28, 2019 Date of Posting Removal: April 17, 2019

Applicant's Name: Lewkowitz Andrea Dahlman
Last First Middle

Business Address: 2709 S. Market St Gilbert 85296
Street City Zip

License #: 57659

I hereby certify that pursuant to A.R.S. 4-201, I posted notice in a conspicuous place on the premises proposed to be licensed by the above applicant and said notice was posted for at least twenty (20) days.

Lorrie DeOrto Code Compliance Administrator 480-503-6074
Print Name of City/County Official Title Phone Number

[Signature] 4-17-19
Signature Date Signed

Return this affidavit with your recommendations (i.e., Minutes of Meeting, Verbatim, etc.) or any other related documents. If you have any questions please call (602) 542-5141 and ask for the Licensing Division.

*CORRADI'S 141011113
 @1111
 ALC 000485-03-2019*



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Leslie Giltner, Customer Service Manager, 503-6801

MEETING DATE: May 16, 2019

SUBJECT: Series 12 Restaurant Liquor License for Dog Haus located at 2224 East Williams Field Road, Suite 107

STRATEGIC INITIATIVE: N/A

RECOMMENDED MOTION

A motion to issue an order to recommend approval of a Series 12 Restaurant Liquor License for Dog Haus located at 2224 East Williams Field Road, Suite 107.

BACKGROUND/DISCUSSION

Damon Daniel Ott is requesting approval of a Series 12 Restaurant Liquor License for Dog Haus located at 2224 East Williams Field Road, Suite 107.

This non-transferable, on-sale retail privileges liquor license allows the holder of a restaurant license to sell and serve all types of spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food. Failure to meet the 40% food requirement may result in revocation of the license.

Public notice was posted for the required 20-day period in accordance with the Arizona Department of Liquor License and Control posting requirement. No adverse information to justify a denial of this application was received from Planning and Zoning, Building and Code Compliance or the Police Department. There were no liquor related conditions in the zoning ordinance for this site.

Council's recommendation will be forwarded to the Arizona Department of Liquor License & Control. If Council recommends denial of an application, the minutes must reflect specific reasons, testimony, and other evidence that supports the motion to deny the license applications as required by A.R.S. 4-201.E further defined by Rule R19-1-702 (Attachment 1).

FINANCIAL IMPACT

The license fee is \$750 per year.

STAFF RECOMMENDATION

Staff feels such requests are solely Council's prerogative and offers no recommendation on this request.

Respectfully submitted,

Leslie Giltner
Customer Service Manager

Attachments/Enclosures:

Attachment 1 – Arizona Department of Liquor Licenses & Control, Rule R19-1-702

Attachment 2 – Liquor License Application

Approved By

Kyle Mieras

Approval Date

4/30/2019 8:15:09 AM

R19-1-702. Determining Whether to Grant a License for a Certain Location

To determine whether public convenience requires and the best interest of the community will be substantially served by issuing or transferring a license at a particular unlicensed location, local governing authorities and the Board may consider the following criteria:

1. Petitions and testimony from individuals who favor or oppose issuance of a license and who reside in, own, or lease property within one mile of the proposed premises;
2. Number and types of licenses within one mile of the proposed premises;
3. Evidence that all necessary licenses and permits for which the applicant is eligible at the time of application have been obtained from the state and all other governing bodies;
4. Residential and commercial population of the community and its likelihood of increasing, decreasing, or remaining static;
5. Residential and commercial population density within one mile of the proposed premises;
6. Evidence concerning the nature of the proposed business, its potential market, and its likely customers;
7. Effect on vehicular traffic within one mile of the proposed premises;
8. Compatibility of the proposed business with other activity within one mile of the proposed premises;
9. Effect or impact on the activities of businesses or the residential neighborhood that might be affected by granting a license at the proposed premises;
10. History for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant received a detailed report of the violations and criminal activity at least 20 days before the hearing by the Board;
11. Comparison of the hours of operation at the proposed premises to the hours of operation of existing businesses within one mile of the proposed premises; and
12. Proximity of the proposed premises to licensed childcare facilities as defined by A.R.S. § 36-881.

This Section is authorized by A.R.S. § 4-201(I).

State of Arizona
Department of Liquor Licenses and Control

ALC000486-03-
2019

Created 03/26/2019 @ 03:35:01 PM

Local Governing Body Report

LICENSE

Number: Type: 012 RESTAURANT
Name: DOG HAUS
State: Pending
Issue Date: Expiration Date:
Original Issue Date:
Location: 2224 E WILLIAMS FIELD ROAD
#107
GILBERT, AZ 85295
USA
Mailing Address: 1200 S HONEYSUCKLE LANE
GILBERT, AZ 85296
USA
Phone: (000)000-0000
Alt. Phone: (602)339-4286
Email: DAMONDOTT@GMAIL.COM

AGENT

Name: DAMON DANIEL OTT
Gender: Male
Correspondence Address: 1200 S HONEYSUCKLE LANE
GILBERT, AZ 85296
USA
Phone: (602)339-4286
Alt. Phone:
Email: DAMONDOTT@GMAIL.COM

OWNER

Name: HAUS OF OTT GILBERT LLC
Contact Name: DAMON DANIEL OTT
Type: LIMITED LIABILITY COMPANY
AZ CC File Number: 1894916 State of Incorporation: AZ
Incorporation Date: 09/24/2018
Correspondence Address: 1200 S HONEYSUCKLE LANE
GILBERT, AZ 85296
USA
Phone: (602)339-4286
Alt. Phone:
Email: DAMONDOTT@GMAIL.COM

Officers / Stockholders

Name:
DAMON DANIEL OTT

Title:
Member, Stockholder

% Interest:
100.00

**HAUS OF OTT GILBERT LLC - Member,
Stockholder**

Name: DAMON DANIEL OTT
Gender: Male
Correspondence Address: 1200 S HONEYSUCKLE LANE
GILBERT, AZ 85296
USA
Phone: (602)339-4286
Alt. Phone:
Email: DAMONDOTT@GMAIL.COM

APPLICATION INFORMATION

Application Number: 57807
Application Type: New Application
Created Date: 03/26/2019

QUESTIONS & ANSWERS

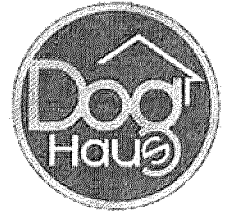
012 Restaurant

- 1) If you intend to operate the business while your application is pending you will need an interim permit pursuant to A.R.S.§4-203.01. Would you like to apply for an Interim Permit?
If yes, after completing this application, please go back to your Licensing screen, under New License Application choose "Interim Permit" from the drop-down window.
No
- 2) Have you submitted a questionnaire? Each person listed must submit a questionnaire and mail in a fingerprint card along with a \$22. processing fee per card.
Yes
- 5) Are you a tenant? (A person who holds the lease of a property; a lessee)
Yes
A Document of type LEASE is required.
- 6) Is there a penalty if lease is not fulfilled?
Yes
What is the penalty?
PAID UNTIL RELEASED; TERMINATE
- 7) Are you a sub-tenant? (A person who holds a lease which was given to another person (tenant) for all or part of a property)
No
- 8) Are you the owner?
No
- 9) Are you a purchaser?
No
- 10) Are you a management company?
No
- 11) Is the Business located within the incorporated limits of the city or town of which it is located?
Yes

- 12) What is the total money borrowed for the business not including the lease?
Please list lenders/people owed money for the business.
NONE
- 13) Have you provided a diagram of your premises?
Yes
- 14) Is there a drive through window on the premises?
No
- 15) If there is a patio please indicate contiguous or non-contiguous within 30 feet.
CONTIGUOUS
- 16) Is your licensed premises now closed due to construction, renovation or redesign or rebuild?
Yes
If yes, what is your estimated completion date?
08/01/2019
- 17) Have you provided a Restaurant Operation Plan form?
Yes
- 18) Have you provided a Records Required for Audit form?
Yes

7900 sq ft + 22944 sq feet = 31294 sq ft total:
 (part 10)

19 MAR 25 11:49 AM, L.P.C. #M 3143



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 308 COMMERCE CENTER DR. SUITE 100
 GILBERT, AZ 85295
 TEL: (480) 388-1000 FAX: (480) 388-1001
 WWW.GARYWANG.COM

STAMP

PROJECT NAME/ADDRESS
DOG HAUS
 PART
 208 SANJAN VILLAGE
 MEDICAL CENTER
 GILBERT, AZ 85295

REVISIONS

NO.	DESCRIPTION	DATE

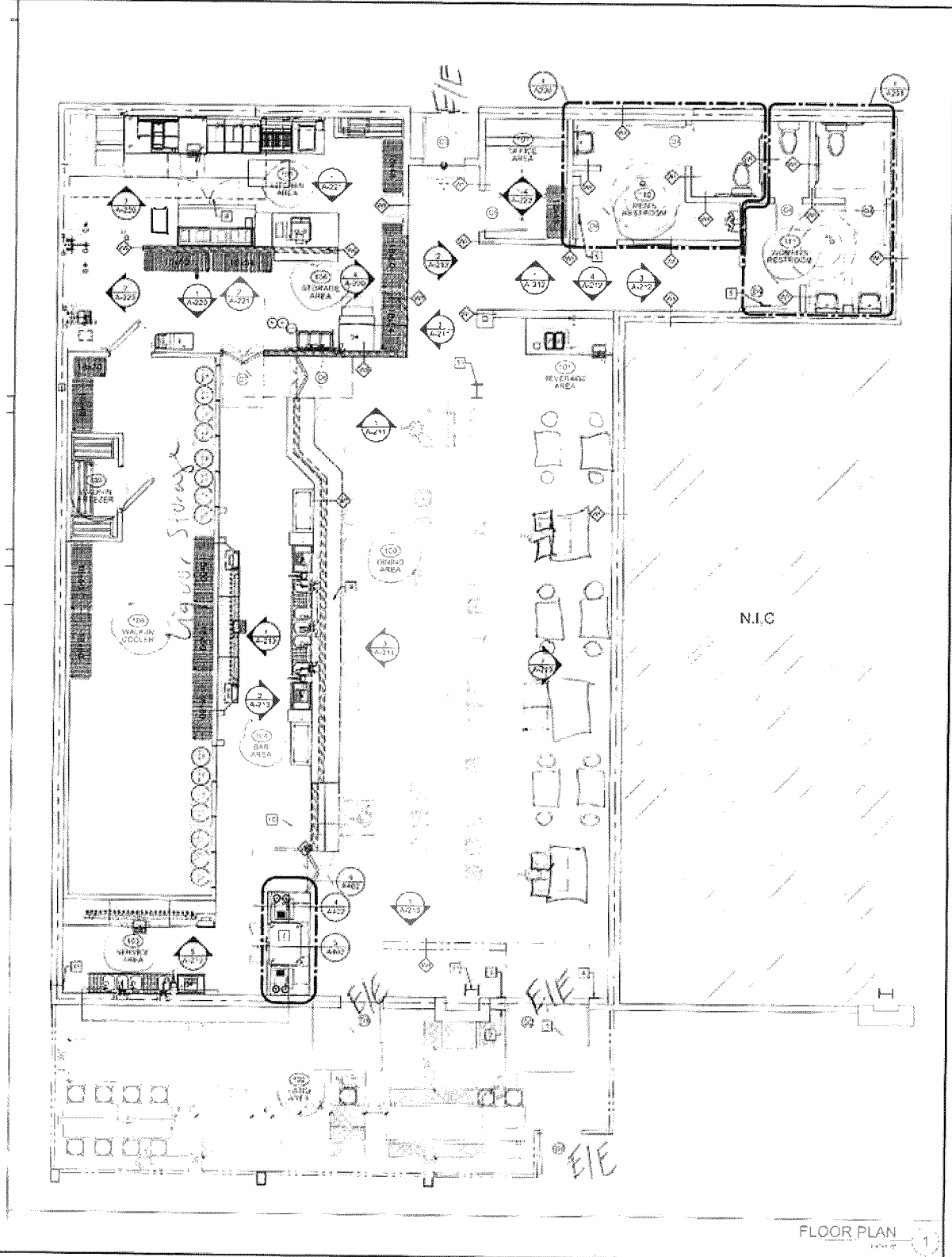
ISSUE DATE

JOB NUMBER
 ARCH PROJECT # 18-030

DRAWN BY: SZ
 CHECKED BY: RE

SHEET CONT'LNT
 FLOOR PLAN

SHEET NO
A-100



FLOOR PLAN 1



Arizona Department of Liquor Licenses and Control
 800 W Washington 5th Floor
 Phoenix, AZ 85007-2934
 www.azliquor.gov
 (602) 542-5141

AFFIDAVIT OF POSTING

Date of Posting: 3/28/19 Date of Posting Removal: 4/17/19

Applicant's Name: Ott Damon Daniel
Last First Middle

Business Address: 2224 E. Williams Field Rd #107 Gilbert 85295
Street City Zip

License #: ALC000486-03-2019

I hereby certify that pursuant to A.R.S. 4-201, I posted notice in a conspicuous place on the premises proposed to be licensed by the above applicant and said notice was posted for at least twenty (20) days.

Lorrie DeCario Code Compliance Administrator 480-503-6834
Print Name of City/County Official Title Phone Number

[Signature] [Signature] 4-17-19
Signature Date Signed

Return this affidavit with your recommendations (i.e., Minutes of Meeting, Verbatim, etc.) or any other related documents. If you have any questions please call (602) 542-5141 and ask for the Licensing Division.

Doc Howe



Arizona Department of Liquor Licenses and Control
 800 W Washington 5th Floor
 Phoenix, AZ 85007-2934
 www.azliquor.gov
 (602) 542-5141

**Local Governing Body Recommendation
 A.R.S. § 4-201(C)**

1. City or Town of: Gilbert Liquor License Application #: 57807
(Circle one) (Arizona application #)
 2. County of: Maricopa City/Town/County #: Gilbert

3. If licensed establishment will operate within an "entertainment district" as described in A.R.S. §4-207(D)(2),

(Name of entertainment district) (Date of resolution to create the entertainment district)

A boundary map of entertainment district must be attached.

4. The Gilbert Town Council at a Regular meeting held on the 16th of
(Governing body) (Regular or special) (Day)
May, 2019 considered the application of Damon Daniel Ott
(Month) (Year) (Name of applicant)
 for a license to sell spirituous liquor at the premises described in application 57807
(Arizona liquor license application #)
 for the license series #: type Series 12 as provided by A.R.S §4-201.
(i.e.: series #10: beer & wine store)

ORDER OF APPROVAL/DISAPPROVAL

IT IS THEREFORE ORDERED that the license APPLICATION OF _____
(Name of applicant)
 to sell spirituous liquor of the class and in the manner designated in the application, is hereby recommended
 for _____
(Approval, disapproval, or no recommendation)

TRANSMISSION OF ORDER TO STATE

IT IS FURTHER ORDERED that a certified copy of this order be immediately transmitted to the State Department
 of Liquor, License Division, 800 W Washington, 5th Floor, Phoenix, Arizona.

Dated at _____ on _____, _____, _____
(Location) (Day) (Month) (Year)

(Printed name of city, town or county clerk) _____
(Signature of city, town or county clerk)



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Toby Crooks, Sr. Project Manager, 503-6990

MEETING DATE: May 16, 2019

SUBJECT: APN 304-55-016J: Approval of Acquisition of Right of Way and Required Easements for Germann Road-Gilbert Road to Val Vista Road, CIP Project No. ST1450.

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's strategic initiative for Infrastructure as it expands and improves roadway conditions to meet the needs of Gilbert's citizens.

RECOMMENDED MOTION

Recommend a motion to approve the acquisition of right of way and easements for improvements to Germann Road-Mustang Drive to Val Vista Road, CIP Project No. ST1450.

Parcel No. 304-55-016J in an amount not to exceed \$738,923.

BACKGROUND/DISCUSSION

The project is identified in the FY 2019-2028 Capital Improvement Plan (CIP) and provides for the design and construction of Germann road- Mustang Drive to Val Vista Road to the Town's current standards.

Resolution No. 3994 was approved by Council on August 16, 2018, this has allowed staff to proceed with the right of way and easements acquisition process for the following parcel impacted by the proposed roadway improvements. Resolution No. 3994 authorized negotiation with an appraised value presented of \$738,923.

The Town made an offer of \$738,923 that was supported by the appraisal. The property owner presented a counter offer of \$911,863. The counter offer was \$172,940 (23.4%) more than the Town's offer.

In an attempt to avoid an eminent domain take, going through the condemnation process and keeping the project on schedule, the Gilbert team negotiated with the property owner. Through the negotiation process, an additional encumbrance on the property was discovered that the first surveys, legal description and appraisal preparation did not uncover. The newly discovered encumbrance appeared to reduce the amount of land and severance damages warranted by the Town's project. It was determined that a new appraisal was required

The parcel was reappraised on December 14, 2018. The original offer of \$738,923 was rescinded by the Town and a new offer of \$689,948 was made to Ms. Litton on January 4, 2019. The revised offer was reduction of \$48,975 (6.6%) from the Town's original offer. In subsequent negotiations, the property owner counter offered and ultimately agreed to accept the Town's original offered amount of \$738,923. This is in excess of the updated appraised value.

We recommend that the Town accept the second counter offer of the property owner for the following reasons:

1. The land has increased in value since the original valuation;
2. Severance damages have increased since the original valuation;
3. The owners first counter offer was \$172,940 more than the Town's appraisal supported (23.4% higher);
4. The owners final counter offer is \$48,975 more than the Town's appraisal supports (6.6%);
5. The subject parcel is located on a county island and any condemnation proceedings must be executed by Maricopa County;
6. Maricopa County estimates 10 to 12 months to complete a condemnation on behalf of the Town, and;
7. Administrative settlement of the case eliminates litigation risk and the cost of legal proceedings (all executed by Maricopa County and billed to the Town of Gilbert), which likely would exceed the \$48,975 administrative increase and require up to an additional year to complete.

	<u>Town Appraised Value</u>	<u>Revised Appraisal</u>	<u>Revised Property Owner Offer</u>	
	\$214,088.00	\$214,088.00	\$214,088.00	
ROW/Fee				
TCE	\$0.00	\$0.00	\$0.00	
DE	\$243,810.00	\$243,810.00	\$243,810.00	
RWCD Easement	\$48,050.00	\$48,050.00	\$48,050.00	
Severance Damage	\$232,975.00	\$184,000.00	\$184,000.00	
Administrative Settlement	\$0.00	\$0.00	\$48,975.00	
	\$738,923.00	\$689,948.00	\$738,923.00	
			Increase to Original	\$48,975.00

Staff is in support of the settlement offer as it represents fair market value and costs of the acquisition.

FINANCIAL IMPACT

The project is within the FY 2019-2028 Budget for Capital Improvement Plan (CIP) Project No. ST1450.

This would be an increase to the Town Council authorized land acquisition.

APN 304-55-016J increase of \$48,975 for a total amount of \$738,923

The financial impact was reviewed by Cris Welch, Senior Management and Budget Analyst.

STAFF RECOMMENDATION

Staff has reviewed the counter offer for land acquisition and recommends approval the negotiated price.

Respectfully submitted,

Toby Crooks
Senior Project Manager

Approved By

Approval Date

Susanna Struble
David Fabiano
Jessica Marlow
John Baird
Cris Welch

5/2/2019 7:25:44 PM
5/2/2019 8:44:32 PM
5/7/2019 7:41:42 AM
5/7/2019 8:04:07 AM
5/7/2019 8:42:55 AM



TO: Toby Crooks, Town of Gilbert

FROM: Charles Grombacher, OPC Regional Manager

RE: Project ST145
 Germann Road – Gilbert Road to Val Vista Drive Roadway Improvements
 Owners: Heather Litton, Trustee
 APN: 304-55-016J

SUBJECT: Administrative Settlement Recommendation

DATE: February 27, 2019

Heather Litton, Trustee, Heather Litton Revocable Living Trust Dated May 15, 2008, is the owner of the subject property located at the northwest corner of Germann and Lindsay Roads in Gilbert, AZ.

On September 14, 2018, the Town’s offer to purchase property rights in the amount of \$738,923 was made to Ms. Litton, as follows:

Real Property (20,628 sf x \$12.50/sf)	\$213,588
Underlying Fee	\$ 500
RWCD Easement (7,688 sf)	\$ 48,050
Permanent Drainage Easement (31,338 sf)	\$243,810
Severance Damages	<u>\$232,975</u>
Total Offer Amount	\$738,923

On October 19, 2018, the owner responded to the \$738,923 offer with a counter offer of \$911,863, an increase of \$172,940 over the Town’s offer.

It was subsequently determined that a new appraisal was required after discovery of a Final Order of Condemnation reducing the size of the Litton parcel to 85,553 sf. The parcel was then reappraised on December 14, 2018. The previous offer of \$738,923 was rescinded and a new offer in the amount of \$689,948 was made to Ms. Litton on January 4, 2019, as follows:

Real Property (20,628 x \$12.50/sf)	\$213,588
Underlying Fee	\$ 500
RWCD Easement (7,688 sf)	\$ 48,050
Permanent Drainage Easement (31,338 sf)	\$243,810
Severance Damages	<u>\$184,000</u>
New Offer	\$689,948

Comparing the two appraisals, it is clear that the values assigned to the interests acquired are the same in both, except that severance damage was reduced in the second appraisal as noted. No adjustments were made for market valuation increases since the original date of valuation, nor was consideration given for possible impacts on the remaining property.

Per discussions with the property owner's counsel on February 19, 2019, we confirmed that the property owner would accept \$738,923, the amount of the original offer, in full satisfaction of any and all claims. This would require an administrative increase of \$48,975 over the revised appraisal amount.

We recommend that the updated offer of \$689,948 be increased by the sum of \$48,975 for the following reasons:

1. The market has increased in value since the original March 29, 2018 date of valuation;
2. The administrative increase is \$172,940 less than the owner's counter offer; and
3. Settlement of the case would eliminate litigation risk and the cost of legal proceedings, which in all probability would exceed the \$48,975 administrative increase.

We are seeking authorization to present a revised offer to Ms. Litton computed as follows:

Real Property (20,628 x \$12.50/sf)	\$213,588
Underlying Fee	\$ 500
RWCD Easement (7,688 sf)	\$ 48,050
Permanent Drainage Easement (31,338 sf)	\$243,810
Severance Damages	<u>\$184,000</u>
	\$689,948
Administrative Settlement	<u>\$ 48,975</u>
Total Revised Offer	<u>\$738,923</u>

RECOMMENDED APPROVAL:

Charles A. Grombacher

Charles Grombacher, OPC Regional Manager

Toby Crooks, Project Manager

APPROVED:

Town Engineer

Patrick Banger, Town Manager



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Melanie Dykstra, Community Resources Program Supervisor, 503-6956

MEETING DATE: May 16, 2019

SUBJECT: Program Year 2019-2020 CDBG Annual Action Plan

STRATEGIC INITIATIVE: Community Livability

The Town of Gilbert annually appropriates Community Development Block Grant funds. These funds address the strategic initiative of community livability by supporting community services, sustaining Gilbert neighborhoods, and enhancing infrastructure.

RECOMMENDED MOTION

A motion to approve the submission of the Program Year 2019-2020 (FY20) Community Development Block Grant (CDBG) Annual Action Plan to the U.S. Department of Housing and Urban Development.

BACKGROUND/DISCUSSION

The U.S. Department of Housing and Urban Development (HUD) requires all local governments receiving Community Development Block Grant (CDBG) funds to submit an Annual Action Plan that will serve as a formal application for the use of federal funds received by the Town of Gilbert. The Annual Action Plan defines the one-year activities in relationship to the five year goals and objectives of the five year CDBG consolidated plan covering fiscal years 2015-2020. Program Year 2019-2020 is the fifth and final year of the five year CDBG consolidated plan period. Gilbert is receiving \$924,318 in FY20 CDBG funds, a decrease of \$23,519. In addition, Gilbert will receive \$250,358.50 in HOME funds, a decrease of \$24,917.50.

The Program Year 2019-2020 Annual Action Plan identifies priorities for use of CDBG funds, which include continued funding for the Gilbert Emergency and Minor Home Repair Program, exterior renovation of the Heritage Center area to comply with the Americans with Disability Act (ADA), design plan for ADA sidewalk repairs in the Heritage District and program administration. The HOME funds will focus on increasing the permanent affordable rental housing stock by one unit.

In the plan, all activities proposed to be completed during Fiscal Year 2020 are described in detail including the scope and proposed benefits to the community. To comply with Gilbert's CDBG Public Participation Plan, public hearings and a 30-day public comment period were available for citizens to provide feedback on the proposed Annual Plan Activities. All comments received are included as attachments in the document.

Attached is the draft Program Year 2019-2020 Annual Action Plan to be submitted to the U.S. Department of Housing and Urban Development by June 11, 2019, to meet the required HUD deadline.

FINANCIAL IMPACT

The CDBG activities identified in the Annual Action Plan are included in the FY 2020 budget.

The financial impact was reviewed by Laura Lorenzen, Management and Budget Analyst.

STAFF RECOMMENDATION

Staff recommends Council approve the Community Development Block Grant (CDBG) Program Year 2019-2020 Annual Action Plan and approve submission of the plan to the U.S. Department of Housing and Urban Development by June 11, 2019.

Respectfully submitted,

Melanie Dykstra
Community Resources Program Supervisor

Approved By

Mary Goodman
Chris Payne
Laura Lorenzen

Approval Date

5/1/2019 2:46:08 PM
5/7/2019 8:44:12 AM
5/6/2019 10:05:51 AM



Town of Gilbert Annual Action Plan 2019-2020



Community Development Block Grant Home Investment Partnership

Additional information related to this report is available upon request at:

Community Resources
Town of Gilbert
50 E Civic Center Dr.
Gilbert, AZ 85296

(480) 503-6956 Voice

(480) 503-6080 TDD

Email. Melanie.dykstra@gilbertaz.gov

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Executive Summary

AP-05 Executive Summary - 91.200(c), 91.220(b)

1. Introduction

Since 1995, the U.S. Department of Housing and Urban Development (HUD) has required the development of a Consolidated Plan every five years and an Annual Action Plan during each of those five years in order for local jurisdictions to receive federal housing and community development funds under the Community Development Block Grant (CDBG) and HOME Investment Partnership Funds (HOME). The plans serve as a comprehensive strategy to address the needs of low to moderate income residents in the community. The Consolidated Plan and Annual Action Plans serve three main functions: 1) a planning document for the Town of Gilbert; 2) an application for federal funds under HUD's CDBG formula grant program; and 3) it details strategies that will be followed in carrying out HUD programs.

Gilbert's Annual Action Plan will outline the objectives, goals and projected outcomes to be carried out utilizing CDBG funds and HOME funds during the final year of the Five Year Consolidated Plan. Priorities presented in the final year Annual Action Plan were developed during the public process of creating the Five Year Consolidated Plan and also represent any input from the residents during the development of this year's plan.

2. Summarize the objectives and outcomes identified in the Plan

This could be a restatement of items or a table listed elsewhere in the plan or a reference to another location. It may also contain any essential items from the housing and homeless needs assessment, the housing market analysis or the strategic plan.

Although identified as priority needs, not all will be addressed in any one planning year. For Gilbert's final Annual Action Plan period, a minimum of two of the high priority needs will be addressed and include a focus on suitable living environment and infrastructure development.

Gilbert's strategy for suitable living environment includes:

- Preserve neighborhoods through emergency and minor housing rehabilitation assistance to a minimum of 60 qualified homeowners;
- Provide general fund opportunities to organizations assisting seniors, families and individuals in crisis and low and moderate income individuals in maintaining self-sufficiency;
- Continue to work on a regional level to address homeless issues as well as provide homeless prevention assistance;

- Increase the permanent affordable rental housing stock by one, from 16 to 17 dwelling units, through the use of HOME funds.

Gilbert's strategy for Public improvement and infrastructure development includes:

- Utilize CDBG funds to renovate the Heritage Center exterior grounds and parking areas to improve accessibility and become ADA compliant
- Begin design for the repair and replacement of sidewalks in the Heritage Center that are not ADA compliant

CDBG Administration costs will include fair housing activities and consulting costs for the development of a feasibility study focusing on a Family Advocacy Center for domestic violence victims.

3. Evaluation of past performance

This is an evaluation of past performance that helped lead the grantee to choose its goals or projects.

Annually, Gilbert prepares the Consolidated Annual Performance and Evaluation Report (CAPER) which captures progress toward meeting the needs and achieving strategies established in the Consolidated Plan and Annual Action Plan. Gilbert also monitors performance measures of sub-recipients and staff regularly reviews internal policies and procedures to identify operational improvements, resource allocation issues, and policy questions to be addressed in the upcoming year.

The Town of Gilbert and its partners have been successful in implementing its projects to meet the priorities and goals identified in last year's annual plan and the five year consolidated plan. In regards to preserving and improving the habitability of owner-occupied housing through emergency home repair assistance, Gilbert has exceeded its goal of assisting 58 income eligible participants. To date, 65 homeowners have been assisted with emergency and minor home repairs, alleviating unsafe or hazardous home conditions.

Gilbert also substantially completed the renovation of Page Park Center, now named the Heritage Center. CDBG funds were used to transform the vacant, non-functional building into a resourcing center that is providing much needed services to Gilbert residents including utility and rent assistance, parenting classes, behavioral health services, preventative dental services for children, and nutrition information and assistance. The renovation was an example of successful collaboration between the Town of Gilbert and community non-profits who are actively assisting in serving the low and moderate income residents of the community.

Gilbert strategically balances HUD goals, CDBG's primary objectives, Gilbert's needs as identified in the Gilbert Community Needs Assessment, council and community feedback in order to plan and implement programs/projects utilizing annual CDBG resources.

4. Summary of Citizen Participation Process and consultation process

Summary from citizen participation section of plan.

The annual plan regulations stipulate that Gilbert must meet minimum citizen participation requirements, consisting of public hearings, public comment periods and consultations.

a. **Public Hearings:** Annually, Gilbert conducts a minimum of one public meeting and a public hearing to allow the community an opportunity to comment on the Annual Action Plan. All public hearings/meetings are posted on Gilbert's website and the draft plan is available for review prior to the public hearing. The first public meeting/hearing to solicit comments on the proposed fifth Annual Action Plan was conducted on Thursday, February 21, 2019 and the second was completed on Wednesday, March 13, 2019.

b. **Public Comment Period:** Gilbert also provides a thirty day public comment period scheduled from February 28, 2019-March 31, 2019. Public comment periods are advertised in a local newspaper of general circulation, posted on social media, on Gilbert's website, noticed through posters/flyers at municipal buildings and placed in targeted locations. Posted flyers in Spanish are also placed in targeted locations.

c. **Consultations:** The consultation process includes outreach to community partners and stakeholders, service providers, regional service providers, government officials, the faith community, and targeted population groups to obtain feedback and input into making Gilbert's goals and objectives. County-wide outreach during the Maricopa County HOME Consortium citizen participation and consultation process includes public meetings, hearings, outreach and newspaper notification in order to receive broader input regarding HOME funded activities.

5. Summary of public comments

This could be a brief narrative summary or reference an attached document from the Citizen Participation section of the Con Plan.

Public comments received at the February 21, 2019 public meeting and the March 13, 2019 public hearing are attached.

6. Summary of comments or views not accepted and the reasons for not accepting them

There were no public comments or views not accepted to date. All public comments have been accepted and incorporated in the annual action plan as appropriate.

7. Summary

The Town of Gilbert is committed to allocating funds that serve the needs of low-income residents. Gilbert will continue to utilize its CDBG appropriations over the next year to address the goals and objectives set forth in the plan. These goals and objectives include targeting aging and non-compliant ADA infrastructure, increasing its permanent affordable rental housing stock, assisting homeowners maintain safe and suitable living environments, educating residents about fair housing, and exploring opportunities to assist domestic violence victims. A majority of CDBG funds will continue to be targeted in the low-income area and neighborhoods of the downtown Heritage District in Gilbert.

In addition, Gilbert will continue to utilize general funds to support public services to low and moderate income people including, but not limited to, health care, food and nutrition programs, education programs, activities and support for seniors, housing assistance, job training, case management and counseling for the homeless, abused children and others.

PR-05 Lead & Responsible Agencies - 91.200(b)

1. Agency/entity responsible for preparing/administering the Consolidated Plan

The following are the agencies/entities responsible for preparing the Consolidated Plan and those responsible for administration of each grant program and funding source.

Agency Role	Name	Department/Agency
Lead Agency	GILBERT	
CDBG Administrator	GILBERT	Town Manager's Office
HOME Administrator	MARICOPA COUNTY	HOME Consortium

Table 1 – Responsible Agencies

Narrative

The following are the agencies/entities responsible for preparing the Fiscal Year 2019-2020 Gilbert Annual Action Plan and those responsible for administration of each grant program and funding source. The Town of Gilbert is responsible for administering the CDBG Funds. The Town of Gilbert works in collaboration with Maricopa County to administer the HOME funds.

Consolidated Plan Public Contact Information

Town of Gilbert, Town Manager's Office
Melanie Dykstra, Community Resources Program Supervisor
50. East Civic Center Dr., Gilbert, AZ 85296
Phone: (480) 503-6956; Fax: (480) 497-4943
Email: melanie.dykstra@gilbertaz.gov

AP-10 Consultation - 91.100, 91.200(b), 91.215(I)

1. Introduction

The Town of Gilbert consulted with other public and private agencies, Maricopa County HOME Consortium, various Maricopa Association of Governments committees, community groups and local non-profits for preparation of the fifth year Annual Action Plan. Gilbert works with local and regional non-profit organizations regularly to ensure that services are provided within the Town of Gilbert and that quality and measurable outcomes are met. Gilbert provides general funds for many social service providers based in both Gilbert and outside of Gilbert in order to provide a variety of services to meet the needs of Gilbert residents.

Provide a concise summary of the jurisdiction's activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health and service agencies (91.215(I)).

Gilbert is focused on the initiatives realized due to the outcomes of the 2014 Gilbert Human Services Needs Assessment by coordinating with public and private providers to discuss and implement actions to address community needs. Specifically, Gilbert is working with the following organizations to meet the needs:

1. Housing

- ARM of Save the Family - acquisition and rehabilitation of single-family housing units.
- City of Mesa- coordination to support the VASH program in Gilbert which allows for veterans to utilize housing vouchers outside of Mesa.

2. Health

- East Valley Behavioral Health Coalition- develop information about accessing the system of care, plus identifying and filling the gaps. This group consists of local and regional mental health and substance use providers and professionals, Town departments such as the Gilbert Youth and Adult Counseling and Victim's Advocates, Gilbert Police, Gilbert Fire and community members.
- Heritage Center Providers- Gilbert continues to collaborate with medical, dental and mental health providers, as well as other non-profits who are beginning to provide a variety of resource services at low or no cost to vulnerable and low income individuals and families.

3. Other services

- Police Community Partnership meetings- community organizations, boards and residents have an opportunity for open dialogue with the Gilbert Police Department regarding other needs and issues facing the community.

- Community Benefits Committee- assistance in the development of the community health report, sustainable initiatives and review of community grants.

Describe coordination with the Continuum of Care and efforts to address the needs of homeless persons (particularly chronically homeless individuals and families, families with children, veterans, and unaccompanied youth) and persons at risk of homelessness.

Gilbert is a participant in the Maricopa County Regional Continuum of Care (CoC) and a member of the Maricopa Association of Governments (MAG). Gilbert provides support to the Maricopa Continuum of Care and regional homeless service providers that provide emergency shelter, transitional housing, and basic needs assistance to homeless individuals and families including chronically homeless, veterans and unaccompanied youth.

The MAG Continuum of Care Regional Committee on Homelessness is responsible for developing a regional plan to end homelessness and the CoC prepares the application for funding to support regional homeless assistance programs. Gilbert participates and contributes data in preparation for the annual funding application by participating in MAG's regional Point-In-Time Homeless Street Count and MAG's annual Heat Relief Campaign.

Gilbert also anticipates utilizing general fund dollars to support the non-profit providers who are serving chronically homeless individuals and families, families with children, veterans, unaccompanied youth and persons at risk of homelessness. In addition, Gilbert has an IGA in place with the City of Mesa supporting the VASH program.

Describe consultation with the Continuum(s) of Care that serves the jurisdiction's area in determining how to allocate ESG funds, develop performance standards for and evaluate outcomes of projects and activities assisted by ESG funds, and develop funding, policies and procedures for the operation and administration of HMIS

The Town of Gilbert does not receive ESG funds.

2. Agencies, groups, organizations and others who participated in the process and consultations

Table 2 – Agencies, groups, organizations who participated

<p>1</p>	<p>Agency/Group/Organization</p> <p>Agency/Group/Organization Type</p>	<p>A New Leaf</p> <p>Services - Housing Services-Children Services-Elderly Persons Services-Persons with Disabilities Services-Persons with HIV/AIDS Services-Victims of Domestic Violence Services-homeless Services-Health Services-Education Services-Employment Services - Victims</p> <p>What section of the Plan was addressed by Consultation?</p> <p>Housing Need Assessment Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs</p> <p>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</p> <p>The organization was invited to submit comments related to housing, homeless services and other issues relevant to the third Annual Action Plan. The anticipated outcome was to improve coordination with a regional organization whose mission is to assist individuals and families from homelessness to permanent supportive housing.</p>
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2	<p>Agency/Group/Organization</p> <p>Agency/Group/Organization Type</p>	<p>Save the Family Foundation of Arizona</p>
	<p>Housing Services - Housing Services-Children Services-Elderly Persons Services-Persons with Disabilities Services-Victims of Domestic Violence Services-homeless Services-Education Services-Employment</p>	
	<p>What section of the Plan was addressed by Consultation?</p>	<p>Housing Need Assessment Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy Non-Homeless Special Needs Anti-poverty Strategy</p>
	<p>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</p>	<p>This organization was invited to submit comments related to housing, homeless services and other issues related to the third Annual Action Plan. The anticipated outcome is to improve coordination with a regional organization whose mission is to promote the general welfare and to enhance the quality of life for homeless families with dependent children and those moving from emergency housing to transitional housing.</p>
3	<p>Agency/Group/Organization</p> <p>Agency/Group/Organization Type</p>	<p>Central Arizona Shelter Services, Inc.</p> <p>Housing Services-homeless</p>

	<p>Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homelessness Strategy</p>
<p>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</p>	<p>This organization was invited to submit comments related to housing, homeless services and other issues relevant to the third Annual Action Plan. The anticipated outcome is to improve coordination with a regional organization whose mission is to assist in moving as many people as possible from homelessness to housing. The agency provides basic needs and emergency housing for single adult men and women. This organization is also a member of the local Coc.</p>
<p>4 Agency/Group/Organization</p> <p>Agency/Group/Organization Type</p> <p>What section of the Plan was addressed by Consultation?</p>	<p>AZCEND</p> <p>Services-Children Services-Elderly Persons Services-Victims of Domestic Violence Services-Education Services-Employment Services - Victims</p> <p>Non-Homeless Special Needs Anti-poverty Strategy</p>

<p>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</p>	<p>This organization was invited to submit comments related to housing, homeless services, non-homeless special needs and other issues relevant to the third year Annual Action Plan. The anticipated outcome is to improve coordination with a local organization whose mission is to assist low to moderate income persons and families with food through the local food pantry, emergency financial services through the Community Action Programming (CAP) offices, and independent living through senior and disabled congregate and home delivered meals.</p>
<p>Agency/Group/Organization</p>	<p>Catholic Charities Community Services</p>
<p>Agency/Group/Organization Type</p>	<p>Services - Housing Services-Children Services-Victims of Domestic Violence Services - Victims</p>
<p>What section of the Plan was addressed by Consultation?</p>	<p>Non-Homeless Special Needs Anti-poverty Strategy</p>
<p>Briefly describe how the Agency/Group/Organization was consulted. What are the anticipated outcomes of the consultation or areas for improved coordination?</p>	<p>This organization was consulted for services to victims of domestic violence and their dependent children as well as the anti-poverty strategy. Catholic Charities provides emergency and transitional shelter for domestic violence victims and their children. Additional services include basic needs, employment assistance, child care assistance and case management.</p>

Identify any Agency Types not consulted and provide rationale for not consulting

N/A

Other local/regional/state/federal planning efforts considered when preparing the Plan

Name of Plan	Lead Organization	How do the goals of your Strategic Plan overlap with the goals of each plan?
Continuum of Care	Maricopa Association of Governments	Goals and strategies for the use of federal funds to address homelessness are consistent

Table 3 - Other local / regional / federal planning efforts

Narrative

None

AP-12 Participation - 91.401, 91.105, 91.200(c)

1. Summary of citizen participation process/Efforts made to broaden citizen participation Summarize citizen participation process and how it impacted goal-setting

According to Gilbert's Citizen Participation Plan, residents and stakeholders are given multiple opportunities to comment on the plan during the plan development and the completed plan. A 30 day comment period is posted on Gilbert's website and two public meetings were scheduled to provide opportunities for public comment. The public meetings are posted on social media and Gilbert's website, noticed through posters/flyers at municipal buildings and placed in targeted locations as well as being advertised in a newspaper with local circulation. Notices provided information about alternative formats and accommodations for disabilities and were also provided in Spanish.

Citizen Participation Outreach

Sort Order	Mode of Outreach	Target of Outreach	Summary of response/ attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (if applicable)
1	Public Meeting	Non-targeted/broad community	Discussion on sewer, drainage issues, paint program, feral cats and marketing. 3 Attendees	Comments received are included as a separate attachment to this report	All comments were accepted and included in the plan as applicable	www.gilbertaz.gov/housing
2	Public Hearing	Non-targeted/broad community	Discussion on sewer, drainage issues, and fair housing workshop. 1 Attendee.	Comments received are included as a separate attachment to this report	All comments were accepted and included in the plan as applicable	www.gilbertaz.gov/housing
3	Flyers	Non-English Speaking - Specify other language: Spanish	None	None	None	
4	Newspaper Ad	Non-targeted/broad community	NA	NA	NA	

Sort Order	Mode of Outreach	Target of Outreach	Summary of response/ attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (if applicable)
5	Internet Outreach	Non-targeted/broad community	62 unique CDBG webpage views 1 Facebook Event Reach: 1,562 Engagements: 39 3 Twitter Posts Impressions: 5,771 Engagements: 80	None	None	www.gilbertaz.gov/housing

Table 4 – Citizen Participation Outreach

Expected Resources

AP-15 Expected Resources - 91.420(b), 91.220(c)(1,2)

Introduction

The following are the expected resources available to the Town of Gilbert for use during the fourth annual action planning period of July 1, 2019 through June 30, 2020.

Anticipated Resources

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 1				Expected Amount Available Remainder of ConPlan \$	Narrative Description
			Annual Allocation: \$	Program Income: \$	Prior Year Resources: \$	Total: \$		
CDBG	public - federal	Acquisition Admin and Planning Economic Development Housing Public Improvements Public Services	924,318	0	212,077	1,136,395	1,136,395	

Table 5 - Expected Resources – Priority Table

Explain how federal funds will leverage those additional resources (private, state and local funds), including a description of how matching requirements will be satisfied

The Town of Gilbert anticipates committing resources from its general fund and from citizen donations through the Neighbor 2 Neighbor/Share My Stamp program (water bill), to assist 28 programs from non-profit agencies that provide services to homeless and domestic violence shelters, programs designed to assist the working poor, those individuals with disabilities, and programs designed to assist youth and seniors. Partnering with these local and regional non-profit partners to implement and administer many of the housing and human services programs in Gilbert allow the non-profits to leverage Gilbert funds with other private, state, and local funds to provide additional services and support for Gilbert residents receiving assistance through the program. If a non-profit partner is a recipient of Gilbert HOME funds, they are required to provide the non-federal Match before receipt of HOME funds. Match funds are documented and monitored to ensure federal regulations are followed.

If appropriate, describe publically owned land or property located within the jurisdiction that may be used to address the needs identified in the plan

The renovation of the exterior areas and parking lots of the Heritage Center are owned by Gilbert and are located in the Gilbert Downtown Heritage District. The renovation project provides an opportunity Gilbert to provide improvements in an income eligible area. In addition, if funding allows all sidewalk improvements related to ADA compliance are also owned by Gilbert and located in the Heritage District.

Discussion

The Town of Gilbert will utilize CDBG and HOME funds for housing and community development activities that are in line with the goals of the 2015-2020 Consolidated plan. Gilbert will allocate the 2019-2020 funds as follows:

- \$324,000 for Emergency and Minor Home Repair program
- \$189,000 for CDBG Administration (including funds for fair housing workshop and family advocacy study)
- \$400,000 for the infrastructure exterior renovation project at the Heritage Center
- \$223,395 ADA sidewalk design and repairs in the Heritage District

Annual Goals and Objectives

AP-20 Annual Goals and Objectives - 91.420, 91.220(c)(3)&(e)

Goals Summary Information

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
1	Emergency & Minor Home Repair	2015	2019	Affordable Housing	Town-wide	Affordable Housing	CDBG: \$324,000	Homeowner Housing Rehabilitated: 60 Household Housing Unit
2	Public Facilities, Improvements and Infrastructure	2015	2020	Non-Housing Community Development	Heritage District	Non-housing Community Development	CDBG: \$623,395	Public Facility or Infrastructure Activities other than Low/Moderate Income Housing Benefit: 5000 Persons Assisted

Table 6 – Goals Summary

Goal Descriptions

1	Goal Name	Emergency & Minor Home Repair
	Goal Description	In Fiscal Year 2019-2020, the fifth year of the Consolidated Plan, Gilbert will utilize \$324,000 for the Emergency and Minor Home Repair program to alleviate health and safety hazards for sixty (60) Gilbert homeowners. Emergency and minor home repairs include repairing or replacing HVAC systems, repairing plumbing or electrical hazards, roof leaks, broken glass, installing fire detectors, and repairing trip hazards. Repairs may also include removing ADA accessible barriers in the home such as bathtub to roll in shower conversations, widening doorways or building wheelchair ramps.

2	Goal Name	Public Facilities, Improvements and Infrastructure
	Goal Description	<p>Gilbert will allocate \$400,000 in FY 2019-2020 to renovate the exterior areas of the Heritage Center. The project focus in FY19-20 will include the design of improvements and construction. Specifically the focus will be to provide better access, lighting, signage and required Americans with Disabilities Act (ADA) upgrades.</p> <p>Gilbert completed an accessibility evaluation in 2018 which identified a variety of ADA compliance issues including parking signs, curb ramp slopes, accessible paths of travel between the building and parking lot, companion bench seating availability, and playground transfer station concerns.</p> <p>The National Objective being met with the exterior improvement is to benefit a low and moderate income area. The target area is within the census tract within Gilbert's Heritage District where over 76.67% of the individuals have incomes of 80% of the median income or less.</p> <p>Gilbert will also allocate \$223,395 in FY 2019-2020 to design and as possible begin the repair of sidewalks in the Heritage District. The project focus in FY19-20 will include the design of improvements of those areas identified in the 2018 study as being out of compliance with the Americans with Disabilities Act (ADA).</p> <p>Gilbert completed a sidewalk accessibility evaluation in 2018 which identified seven zones in the Heritage District that were in need of upgrades.</p> <p>The National Objective being met with the exterior improvement is to benefit a low and moderate income area. The target area is within the census tract where up to 76.67% of the individuals have incomes of 80% of the median income or less.</p>

AP-35 Projects - 91.420, 91.220(d)

Introduction

The Gilbert Five Year Consolidated Plan outlines proposed strategies for the expenditures of Gilbert's CDBG funds with the mission to provide suitable living environments by revitalizing low- to moderate income neighborhoods, to assist disadvantaged, low-income and homeless persons by providing adequate public facilities and services and generating affordable housing opportunities. Gilbert will utilize CDBG funds during the fifth year of the Five Year Consolidated Plan to assist low to moderate income residents with emergency and minor home repairs to alleviate health or safety hazards in their home, implement renovations to the exterior area of the Heritage Center in the Heritage District in order to provide adequate accessibility to public services and begin design and possible construction to meet ADA compliance on sidewalks in the Heritage District.

#	Project Name
1	FY20 Emergency and Minor Home Repair
2	FY20 Heritage Center Exterior Renovation
3	FY20 ADA Sidewalk Repairs- Phase 1
4	FY20 CDBG Administration

Table 7 – Project Information

Describe the reasons for allocation priorities and any obstacles to addressing underserved needs:

The projects identified to be completed during the final year of Gilbert's consolidated plan directly align with the strategies in the five year plan that recognize obstacles to meeting underserved needs.

Obstacles to meeting underserved needs within Gilbert include the following:

- The areas of the built environment in the northern part of the community will require on-going maintenance and replacement costs due to age compared to the new and larger master-planned areas of central and southern Gilbert;
- The aging of homes in north Gilbert;
- Increased need for services due to population growth;

To address some of the identified obstacles, Gilbert will:

- Continue to target capital improvements and services in the Heritage District but improving the accessibility to the Heritage Center that offers social services;
- Continue to use general fund dollars to non-profits with who are providing supportive services to low and moderate income residents;
- Provide emergency and minor home repairs to all Gilbert homeowners;
- Based on a completed study that researched the ADA compliance of sidewalks, design and repairs will be started in the downtown neighborhood areas.

AP-38 Project Summary

Project Summary Information

1	Project Name	FY20 Emergency and Minor Home Repair
	Target Area	Town-wide
	Goals Supported	Emergency & Minor Home Repair
	Needs Addressed	Non-housing Community Development
	Funding	CDBG: \$324,000
	Description	Gilbert Emergency & Minor Home Repair will assist 60 households with health or safety related issues within the home for income eligible homeowners.
	Target Date	6/30/2020
	Estimate the number and type of families that will benefit from the proposed activities	60
	Location Description	Town wide
	Planned Activities	The Gilbert Emergency and Minor Home Repair program will address health and safety hazards in owner-occupied income eligible Gilbert homes. Activities may include repair and replacement of HVAC systems, electrical, plumbing, roof repairs, and glass replacement or removed ADA accessibility barriers.
2	Project Name	FY20 Heritage Center Exterior Renovation
	Target Area	Heritage District
	Goals Supported	Public Facilities, Improvements and Infrastructure
	Needs Addressed	Non-housing Community Development
	Funding	CDBG: \$400,000

	Description	CDBG funds will be utilized to renovate the exterior of the Heritage Center to provide better accessibility to the building, meet Americans with Disabilities Act (ADA) compliance for parking, the playground, and seating. In addition, wayfinding signage and lighting and will be improved for safety. The National Objective being met with the exterior improvement is to benefit a low and moderate income area. The target area is within the census tract within Gilbert's Heritage District where over 76.67% of the individuals have incomes of 80% of the median income or less.
	Target Date	6/30/2020
	Estimate the number and type of families that will benefit from the proposed activities	The Heritage Center provides access to social services for residents of Gilbert in a low-moderate qualifying area and is serving uninsured, underinsured and income eligible families and individuals. It is estimated that the annual attendance at the facility will be 5,000-6,000 visits.
	Location Description	The Heritage Center is located in Gilbert's Heritage District on the northwest corner of Oak Street and Bruce Ave, address 132 W Bruce Ave, Gilbert AZ 85233. Heritage Center is adjacent on the Gilbert Boys and Girls Club, Gilbert Community Center-Home of the Gilbert Senior Center and Page Commons, a 55 and older apartment complex.
	Planned Activities	The project focus in FY19-20 will include the design of improvements and construction. Specifically the focus will be to provide better access to the building, improved area lighting for nighttime safety, sidewalk improvements, wayfinding signage, playground replacement and required Americans with Disabilities Act (ADA) upgrades. Gilbert completed an accessibility evaluation in 2018 which identified a variety of ADA compliance issues including parking signs, curb ramp slopes, accessible paths of travel between the building and parking lot, companion bench seating availability, and playground transfer station concerns.
3	Project Name	FY20 ADA Sidewalk Repairs- Phase 1
	Target Area	Heritage District
	Goals Supported	Public Facilities, Improvements and Infrastructure
	Needs Addressed	Non-housing Community Development
	Funding	CDBG: \$223,395

	Description	This project will focus on design and repair of the areas found out of ADA compliance in the Heritage District. Gilbert completed a study in 2018 that identified seven zones in the Heritage District that are in need of updates. The project will need to be completed in multiple years and phase 1 will focus on completing any necessary design, prioritizing the areas of repair, and beginning construction.
	Target Date	6/30/2020
	Estimate the number and type of families that will benefit from the proposed activities	It is estimated that all 714 households in the Heritage District would benefit, including all businesses and visitors to the area. The target area is within the Heritage District which has census tracts 422401.2 (76.67%), 422402.3 (55%), 422401.1 (44.93%) and 442401.2 (35.17%) where as noted between 76.67% and 35.17% of the individuals have incomes of 80% of the median income or less.
	Location Description	The focus of the project will be within CDBG eligible areas in the Heritage District.
	Planned Activities	The planned activity for phase 1 is to design, prioritize and begin repairs of sidewalks in the Heritage District as identified in the 2018 study as being out of compliance with the Americans with Disabilities Act (ADA).
4	Project Name	FY20 CDBG Administration
	Target Area	Town-wide
	Goals Supported	Emergency & Minor Home Repair Public Facilities, Improvements and Infrastructure
	Needs Addressed	Affordable Housing Non-housing Community Development
	Funding	CDBG: \$189,000
	Description	Funding for administering programs in the Town of Gilbert.
	Target Date	6/30/2020
	Estimate the number and type of families that will benefit from the proposed activities	50 for Fair Housing workshop
	Location Description	NA
	Planned Activities	Administration of Town CDBG programs, funding for a fair housing workshop and funding to support the completion of a feasibility study for a Family Advocacy Center.

AP-50 Geographic Distribution - 91.420, 91.220(f)

Description of the geographic areas of the entitlement (including areas of low-income and minority concentration) where assistance will be directed

Gilbert will direct CDBG assistance to the areas of Gilbert which have the oldest housing stock, low-income and minority concentration as well as reaching out to income eligible residents scattered throughout town limits. U.S. Census Tracts 422401.2 and 422401.3 which includes Gilbert's Downtown Heritage District contains Gilbert's highest concentration of low- to moderate-income residents and are two of the census block groups that exceeds the HUD exception threshold for Gilbert. HUD typically defines a low- and moderate-income area as an area (often a Census Tract) where at least 51 percent of the residents are low and moderate income. However, in some communities, there are no or very few areas in which 51 percent of the residents are low and moderate income. For these grantees, the CDBG regulations authorize an exception criterion in order for such grantees to be able to undertake area benefit activities. The Town of Gilbert is one of the communities where the exception criteria apply. In the case of the Town of Gilbert, the threshold is 29.1% of the total population in an area. Gilbert has 30 census block groups that have low to moderate income residents that meet the exception criterion.

Geographic Distribution

Target Area	Percentage of Funds
Heritage District	65
Town-wide	35

Table 8 - Geographic Distribution

Rationale for the priorities for allocating investments geographically

Gilbert's Downtown Heritage District has approximately 714 residential units which includes congregate care and consist of housing units built in the 1930's and 1940's. Of the 15,009 individuals residing within a mile radius of the Heritage District, the average household size is 2.73 and 11.3% have annual household incomes between \$15,000 and \$24,000. Investments in this area, including infrastructure improvements such as accessibility to the social services available, help stabilize the area, provide opportunities for the residents and can attract businesses which in turn offer new employment opportunities to local residents. Low income households often experience multiple housing problems to a much greater degree than the population in general. Therefore, Gilbert will offer emergency and minor home rehabilitation services to low income households regardless of their specific geographic location in Gilbert. These repairs can make the difference in a low-income household's financial stability by reducing hazards within the home and allowing the households to utilize their limited resources toward other areas to maintain stability.

Discussion

During the 2019-2020 funding year, CDBG and HOME funding will focus on meeting the needs of our top priorities which are improving aging infrastructure, increasing permanent affordable rental housing stock, and assisting homeowners maintain safe and suitable living environments. The majority of the CDBG funds are focused on improving aging infrastructure and HOME funds will be utilized to provide affordable decent housing.

AP-75 Barriers to affordable housing -91.420, 91.220(j)

Introduction

With the high cost of housing impacting the East Valley, Gilbert is committed to exploring opportunities to meet housing needs. Staff will continue to research and identify public/private partnerships in the construction and development of affordable housing. The Town will also continue to look for opportunities to leverage its HOME funds and affordable housing options through the Maricopa County HOME Consortium.

In the final year of the Consolidated Plan, Gilbert will help maintain affordable housing by assisting Gilbert homeowners with emergency and minor home repairs. The program is designed to assist immediate health and safety needs within the home to allow homeowners to utilize their limited resources in other areas of stabilization while allowing the resident to maintain their homeownership.

Gilbert will also focus on affordable housing during this year through the use of HOME funds. Gilbert will partner with a non-profit organization to purchase, rehabilitate and rent an affordable housing unit to income eligible residents.

Actions it planned to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment

In a review of local building codes, no obvious issues were found to discourage the development of affordable housing nor does there appear to be significant barriers to affordable housing with regard to public policy.

Gilbert is continuing to explore a partnership with Maricopa County in which a portion of allocated home funds could be utilized for a TBRA program in Gilbert. Gilbert also met with a company interested in developing a facility for veterans. Finally, Gilbert has seen an increase in allowable residential density and permits for multi-family residential uses. Last fiscal year the planning commission approved over 1678 units for development and it is anticipated that multifamily units will continue to be developed in Gilbert as is showcased by the 240 pending permits this fiscal year.

In order to reduce any potential barriers to affordable housing, Gilbert has identified the following areas where action could assist in limiting such barriers:

- Provide resources and connections to homebuyer education and financial literacy classes through non-profit providers;
- Review town owned and privately owned parcels to determine if any are suitable for affordable

housing; and

Work with organizations receiving funds through the Community Development Housing Organization (CHDO) to determine if there are areas within Gilbert that could satisfy the necessary requirements for development.

Discussion

In the fifth year Annual Action planning period, Gilbert will continue to utilize general funds to support emergency and transitional housing for homeless, non-homeless and special needs individuals and families from Gilbert. In addition, Gilbert will continue to utilize general funds to support the Gilbert CAP office which provides emergency financial assistance to help individuals and families avoid eviction and prevent homelessness. Finally, Gilbert will partner with a non-profit organization to purchase and rehabilitate one single family dwelling unit to be used as permanent affordable rental housing which will increase Gilbert's affordable rental housing stock from 16 units to 17 units.

AP-85 Other Actions - 91.420, 91.220(k)

Introduction

The Town of Gilbert will continue to utilize findings from the 2014 Human Service Needs Assessment, public comments, and coordination with local service providers to identify the needs, gaps in services and prioritize local and federal resources to meet those needs. During the final year of this annual action planning period, Gilbert will continue to implement programs and projects to meet the underserved needs in the community, address housing issues for low- and moderate-income households, support regional homelessness efforts, and support anti-poverty programming.

Actions planned to address obstacles to meeting underserved needs

The largest obstacle Gilbert faces in meeting underserved needs is the limited funding available from federal, state, and local sources. With limited funding, Gilbert must rely on community partners to leverage resources to address priority needs. The town will continue to identify additional funding resources and community partners to assist with prioritized needs. In addition, the town will continue the collaborative efforts with other jurisdictions to improve serving these needs.

Actions planned to foster and maintain affordable housing

The high cost of housing in Gilbert, as similar in the nation, continues to be a challenge in meeting the housing needs of all income levels. Staff will continue to research and explore public/private partnerships in the construction and development of affordable housing. The Town will also continue to look for opportunities to leverage its HOME funds and affordable housing options through the Maricopa County HOME Consortium.

In the fifth year of the Consolidated Plan, Gilbert will help maintain affordable housing by assisting Gilbert homeowners with emergency and minor home repairs. The program is designed to assist immediate health and safety needs within the home to allow homeowners to utilize their limited resources in other areas of stabilization while allowing the resident to maintain their homeownership.

Gilbert will also focus on affordable housing during the final year through the use of HOME funds. Gilbert will partner with a non-profit organization to purchase, rehabilitate and rent an affordable housing unit to income eligible residents.

Actions planned to reduce lead-based paint hazards

Gilbert has newer housing stock of which over 95% of Gilbert's housing stock was built after 1980. Approximately 44 housing units are pre-1940 construction. This older housing stock is often occupied by low and moderate income families. Significant CDBG and HOME investment has been made over the years to rehabilitate much of this older housing. Emergency home repair and minor housing

rehabilitation will continue as the program mechanism utilized by Gilbert to address lead based paint hazards.

The Town of Gilbert administers an Emergency and Minor Home Repair Program which may, at times, occur on a Gilbert home built prior to 1978. In addition, other programs such as acquisition and rehabilitation may occur with homes that are at risk for lead based paint or hazards. Each home that utilizes CDBG or HOME funds is researched to obtain the year in which the home was built. Each home is also inspected by a certified Lead Based Paint Inspector to ensure there are no hazards appearing on the property. If such hazards are present, Gilbert will contract with a consultant to test the level of lead based paint hazard to determine the appropriate mitigation techniques.

The Town of Gilbert administers an Emergency and Minor Home Repair Program which may, at times, occur on a Gilbert home built prior to 1978. In addition, other programs such as acquisition and rehabilitation may occur with homes that are at risk for lead based paint or hazards. Each home that utilizes CDBG or HOME funds is researched to obtain the year in which the home was built. Each home is also inspected by a certified Lead Based Paint Inspector to ensure there are no hazards appearing on the property. If such hazards are present, Gilbert will contract with a consultant to test the level of lead based paint hazard to determine the appropriate mitigation techniques.

Actions planned to reduce the number of poverty-level families

The Town of Gilbert will continue to support various public service programs such as the Community Action Program (CAP) through a non-profit funding process. Essential services aimed at helping to reduce the number of poverty level families include supporting programs that meet the critical needs of families such as food and medical care, emergency financial assistance to prevent eviction and utility shut-offs, employment training and job search, child care assistance, and case management. In addition, with the Heritage Center open, new services have become available to residents including the volunteer income tax assistance (VITA) program which will allow for additional education. These vital services are needed to assist persons and households maintain housing, employment, and stable environments for their dependents.

Actions planned to develop institutional structure

One of the institutional gaps identified previously was that very few service providers are physically located in the Town of Gilbert so residents have to travel to receive services. With the addition of the Heritage Center, Gilbert has the opportunity to work with service providers within the Town limits. In addition, the building has been renovated in a manner in which additional community organizations and groups will be able to utilize the community room within the facility at no cost to provide satellite services to Gilbert residents.

Gilbert will also continue to work together with other local jurisdictions and non-profit organizations to maintain an institutional structure. The Community Resources division of Gilbert will work on behalf of

the Town to administer the CDBG and HOME funding and will be working closely with other departments, such as Public Works, Parks & Recreation, Planning & Zoning, and Economic Development. Non-profit organizations are also an important component of the institutional structure therefore 26 non-profit organizations providing 28 programs will receive general funds from Gilbert and each of these organizations offers a unique service to the Gilbert community.

Actions planned to enhance coordination between public and private housing and social service agencies

Gilbert will continue to collaborate with public and private housing and social service agencies to meet the goals and objectives of the Consolidated Plan. This may include ongoing meetings, special meetings and/or participation on relevant task forces.

Discussion

The actions are primarily the continuation of what Gilbert is currently doing in various areas. Gilbert is satisfied with its efforts to coordinate with social service agencies.

Program Specific Requirements

AP-90 Program Specific Requirements - 91.420, 91.220(I)(1,2,4)

Introduction

The Town of Gilbert does not project to receive any program income for FY 2019-2020. However, if program income is received, Gilbert will allocate those funds in the same program year. Gilbert does not intend to spend any CDBG funds on urgent need activities.

Community Development Block Grant Program (CDBG)

Reference 24 CFR 91.220(I)(1)

Projects planned with all CDBG funds expected to be available during the year are identified in the Projects Table. The following identifies program income that is available for use that is included in projects to be carried out.

1. The total amount of program income that will have been received before the start of the next program year and that has not yet been reprogrammed	0
2. The amount of proceeds from section 108 loan guarantees that will be used during the year to address the priority needs and specific objectives identified in the grantee's strategic plan.	0
3. The amount of surplus funds from urban renewal settlements	0
4. The amount of any grant funds returned to the line of credit for which the planned use has not been included in a prior statement or plan	0
5. The amount of income from float-funded activities	0
Total Program Income:	0

Other CDBG Requirements

1. The amount of urgent need activities	0
2. The estimated percentage of CDBG funds that will be used for activities that benefit persons of low and moderate income. Overall Benefit - A consecutive period of one, two or three years may be used to determine that a minimum overall benefit of 70% of CDBG funds is used to benefit persons of low and moderate income. Specify the years covered that include this Annual Action Plan.	100.00%

Discussion

The purpose of this document is to inform the Housing and Urban Development (HUD) Department and the citizens of Gilbert what the Town intends to do with the funding that we will receive for the 2019-2020 funding year. The Town of Gilbert is a service organization with a new mission to "Anticipate, Create, and Help People and Businesses". With this in mind, Gilbert recognizes it cannot accomplish the goal of helping people, all people, until we are able to provide the same services and resources to our

Annual Action Plan 30
2019

low to moderate income residents, including a focus on providing access to resources, reliable infrastructure, and safe and affordable housing options. The funds that are received from HUD directly help the Town enhance these opportunities for our low income residents.

Attachments

**Town of Gilbert
Community Development Block Grant (CDBG)
Annual Action Plan 2019-2020**

Public Meeting

February 21, 2019 5:30 P.M.

**Heritage Center, 132 W. Bruce Avenue
Gilbert, Arizona 85233**

TOWN OF GILBERT STAFF PRESENT:

Melanie Dykstra, Community Resources Program Supervisor
Amanda Elliott, Heritage District Liaison

MEMBERS OF THE PUBLIC PRESENT:

Doralise Liddell, Resident
Jeremy Conkle, Resident

1. **CALL TO ORDER:** The meeting was called to order by Melanie Dykstra at 5:30 p.m.
2. **PURPOSE OF MEETING:** The Town of Gilbert is in the process of preparing the draft Community Development Block Grant (CDBG) Annual Action Plan for Fiscal Year 2019-2020, as required by the US Department of Housing and Urban Development (HUD) in order to receive federal funds under the CDBG program and HOME Investment Partnership Funds. The one-year action plan is based on the priority needs defined in the 5-year Plan. Overall, the strategy continues to focus on the general priorities for assisting lower-income Gilbert residents and neighborhoods.

This meeting will provide an overview of the eligible range of activities, anticipated potential resources, possible priorities, identified needs, and proposed activities. There will be an opportunity for the public to ask questions and provide feedback regarding the Annual Action Plan.

Last year, Mrs. Liddell suggested looking at the sidewalks, and Mrs. Dykstra was able to redirect funds for a sidewalk study. We are open to ideas from community members as it will make a difference in how these funds are utilized.

CDGB FUNDS MUST MEET NATIONAL OBJECTIVES:

- Benefit low and moderate income persons
- Area benefit (sidewalks, water lines, neighborhood facilities, etc.)
- Qualified populations (Homeless, elderly, domestic violence victims, etc.)
- Housing
- Jobs
- Address slum/blight
- Meet urgent community development need (flood, earthquake, contagious disease)

For example, CDGB funds were used to renovate the Heritage Center building in order to provide social service activities. A project to replace water lines under Linda Lane went out to bid using these funds.

CDBG ELIGIBLE AREAS

The map has changed significantly from last year as the 2010-2015 census data is being used, which goes into effect April 1. The map shows areas that automatically qualify based on the census data. Gilbert is an exception community. Normally 51% or more of the residents of an area need to qualify. Gilbert was given an exception that 29.1% of an area needs to qualify.

The Heritage District is within that exception area, although it is changing over time. The next mapping will come out in 2023. When considering a project or program, if the area does not qualify, the people need to individually income qualify for assistance.

ANTICIPATED RESOURCES

- The town cannot be certain what funding HUD will award
- Funding in final year of 5-year plan is expected to be equal to the prior year at \$947,837 (2018-19).
- Funds remaining from prior year \$247,076.99
- Total anticipated funds \$1.1 Million
- Funds do not need to be expended all in one year. Some projects may be multi-year.

PRIORITIES (Based on current 5-year plan)

- Housing repairs
- Increased access to public facilities
- Public improvements and infrastructure
- Page Park improvements
- ADA accessibility

IDENTIFIED POTENTIAL NEEDS

Housing: Emergency & Minor Home Repair Program for income eligible homeowners (roofing, heating/cooling, plumbing). For the current program year, 54 homeowners have received this assistance, 8 of which were in the Heritage District. This is a town-wide program and the homeowner income qualify individually. CDGB funding is used, however one of the national objectives is to assist low- and moderate-income persons. Targeted outreach is done in eligible areas identified by the map through door to door visits and PSA announcements.

Increased Access to Public Facilities:

- Heritage Center – Accessibility for parking lot and playground, wayfinding, lighting, and security.
- ADA accessibility for sidewalks in the Heritage District in general. Locations that are out of compliance were identified through the sidewalk study.

2019-2020 PROPOSED PROJECTS

Emergency Minor Home Repair

Assist 60 Gilbert homeowners
\$324,000 (includes administration)

Heritage Center Exterior Renovation

ADA accessibility, lighting, signage, landscape, drainage, sidewalk & playground updates
\$400,000 (includes design and construction as a CIP project)

Sidewalk Repairs

ADA compliance of sidewalks in Heritage District, Phase 1 of multi-year project
The study determined a potential cost of \$2 million

Administrative

Staffing, Fair Housing Workshops, Family Advocacy Center
\$189,000

Mrs. Dykstra advised that up to 20% of the overall allocation can go to administration. Those funds could be used for a needs assessment for a family Advocacy Center, which would provide comprehensive services for domestic violence victims all in one facility in Gilbert. Currently, victims are sent elsewhere.

3. PUBLIC COMMENT: Melanie Dykstra opened the floor to members of the public for questions or comments regarding the Annual Action Plan.

Meeting Notification - Mrs. Liddell asked if the neighborhoods in need according to the map are notified of these meetings and how much of the budget is allocated for advertising of meetings? Many of her neighbors are not aware of these meetings and some only speak Spanish. Mrs. Dykstra stated the meeting notification is published in newspapers, on social media, and through flyers at town facilities, including flyers in Spanish. The administration budget includes marketing and legal notices.

Drainage and Sewer Issues in Heritage District - Mrs. Liddell has brought up issues with the drainage in the Lacy Tract in prior annual meetings. It is an infrastructure issue that needs to be addressed in the Heritage District. She has been told that a drainage study needs to be done and that the problems in her neighborhood may affect other areas. She felt no funds should be expended for the Heritage Center exterior improvements until that drainage study has been done and all drainage problems in the area are fixed.

Mrs. Liddell knows of four properties in her neighborhood in which the sewer collapsed. Only the main line has been replaced. Her next-door neighbor needs the sewer tap replaced. Many people in the area may not qualify for funding and don't even know that they have sewer issues. It is a big expense for the homeowner. She felt money needs to be set aside for these repairs as they should have been done in the past. The sewer connections and taps were part of the scope of the new sewer line project.

The infrastructure in the Heritage District is poor and these issues will continue to increase. The drainage problem has become a safety issue with water in the parking lots and on the sidewalks. When the Heritage Center building was remodeled, it changed the slopes in the area, which is now affecting the neighborhood. The elderly and the disabled are unable to use the sidewalks due to drainage issues.

Amanda Elliott advised that there is a Capital Improvement Project (CIP) for a town-wide drainage study. Due to the Vaughn Ventilator, staff has asked for a contingency to proceed with a stormwater and water study for the entire Heritage District. It was her understanding that the study would proceed sooner than July, 2019. Once the study is done, the potential funding of repairs could be addressed as a priority in the next 5-year plan.

Mrs. Dykstra advised that the Heritage Center improvements would focus on parking and accessibility. She understood the need to be aware of the drainage issues in the entire area. There was a question as to how the town can assist in cases where a homeowner does not income qualify. This is handled on a case by case basis.

Mr. Conkle noted that residents have called their HOA board for assistance with sprinkler system issues. Mrs. Dykstra acknowledged that people do reach out for assistance on issues.

Painting Assistance - Mrs. Liddell asked if there have been or could be expenditures for painting a house or condo for a resident who income qualifies. Mrs. Dykstra advised that there was a paint program that is now being redesigned to be more efficient and cost-effective through community partnerships and volunteers. The new program would assist a certain number of homeowners a year (not rentals). There are discussions with a paint company to partner on the project. In the past, the town did not have painting contractors on our list, and general contractors are cost prohibitive. There is the potential to partner with Sherwin-Williams to supply the paint at cost. The town has worked with an HOA to identify income qualified homeowners for the program.

Mrs. Liddell stated in a slum and blighted area, the focus should be on those who income qualify. Mrs. Dykstra suggested homeowners in Ms. Liddell's neighborhood come into the CAP office and fill out an application. The Paint program is still being developed with partnerships and community support to lower the expenses in order to help as many people as possible. Gilbert Cares has done painting for one or two houses a year and the town is working with them on the new program. If that partnership falls through, the town will need to coordinate with another group. The town has reached out to painting companies and the Chamber of Commerce, but still needs a few more painting contractors to join the program as qualified vendors. On the website www.gilbertaz.gov under Community Resources there is a link on how to become vendor for the Emergency and Minor Home Repair Program. Once the program is developed, funds will be set aside to assist a certain number of homes a

year. The Emergency and Minor Home Repair Program will help up to 60 Gilbert homes, and the Painting program will assist up to 6 Gilbert homes per year, initially.

Mrs. Liddell suggested an outreach program to identify houses that need painting services. Robert Kropp, Housing Rehabilitation Coordinator, visits people in the area quite often and hands out information. Once the Paint program is established, there will be outreach and a brochure. The program is now on hold because the expenses were too high. There are already five homes on a wait list.

Heritage Center Improvements / Revenue - Mr. Conkle asked if the Heritage Center facility offers room rentals to generate income? Mrs. Dykstra explained that the Community Center does offer rentals as part of their mission. The Heritage Center is focused on non-profit organizations providing services to the community. Dignity Health offers dental services for children and had their first patients this week. Many of the non-profit organizations partner with AZCEND which is the lead operator at the facility. Dignity Health will be offering chronic disease management, hearing and vision screenings, and immunizations. Non-profits may use the space at no charge for training or community programs.

Mr. Conkle understood how important it is to get the infrastructure at this facility taken care of. He asked if a survey has been done for this area. There have been meetings with town internal staff and stakeholders to evaluate the needs in terms of accessibility, lighting, signage, etc. The facility needs a better access point and a better way to structure pedestrian traffic to the entrance. The playground is old and need to be upgraded.

Mr. Conkle asked if the playground was on the Parks Department list of playgrounds to be replaced. Mrs. Dykstra stated this playground would be part of the renovation for the Heritage Center. It will continue to be geared towards 2 to 5-year-olds. The footprint cannot be expanded, but we can update the structure and bring it into compliance for ADA accessibility. Rubber surfacing could be an option instead of the mulch.

Feral Cats / Feeding - Mrs. Liddell advised that there is a feral cat colony in the area and people are feeding the cats. It is a health hazard with cats defecating in the parks as well as the playground. She asked if funds could be set aside for the cat issue at this facility to pay for the removal of the animals. It is a health and safety issue, especially for children at the playground and for the elderly in the area coming into contact with the cat feces on wheelchairs and walkers. There is poor lighting in the park and the oleanders are overgrown.

Mr. Conkle had worked for Parks and tried to get people to stop feeding cats at Freestone Park. Some people feel it is their mission to help these animals. He noted it is difficult to get rid of all of the cats in an area. One apartment complex got rid of all but one cat in each area in order to keep out the rest. He suggested trapping most of the cats and only keeping two or three in the area.

Mrs. Liddell noted that studies suggest the trap, neuter, and release program does not work.

Mrs. Dykstra will check if that would be an eligible activity for funding. Feral cats are an issue in every city.

Follow up- in reviewing use of CDBG funds, they are not to be used for a feral cat program.

Rental Assistance - Mrs. Liddell has a low-income neighbor waiting for an opening at the retirement community. Are there any programs to assist people with their rentals to bridge that gap? Mrs. Dykstra advised that the mission of the CAP office is to help those with financial difficulties with assistance for rent or utilities for a short term. As far as using CDGB funds for that purpose, a potential use would need to be identified toward social services in order for more money to be allocated to the CAP office. There is a program for rental assistance through housing vouchers through the Maricopa County Housing Authority. The landlords need to be willing to take housing vouchers. The Town of Gilbert has just formed an Intergovernmental Agreement (IGA) with Mesa for a Veteran Assistance Housing Voucher (VASH). We are exploring a tenant-based rental assistance program working with Maricopa County, as Gilbert is not a housing authority. The CAP office does receive funds from Gilbert through the non-profit funding process to provide rental and utility assistance.

Mrs. Liddell asked if her neighbor could be subsidized for another room at the retirement community while she is waiting for her low-income qualified room. That would keep residents in Gilbert rather than having to relocate. Mrs. Dykstra stated the person would need to qualify for a housing voucher through Maricopa County.

There are limited vouchers and the County does not open up the program very often. That is a federally funded program. HOME funds can also be utilized in that type of program. The town purchases one home a year to create an affordable housing opportunity partnering with Save the Family. There are 16 of those homes in Gilbert now. Mrs. Dykstra can explore whether those HOME funds can be used for tenant-based rental assistance. Page Commons is a low-income tax credit property that received special funding under that program to build the facility. There are requirements that the location must be accessible to major services, such as a grocery store.

Domestic Violence Facility - Mr. Conkle asked about the domestic violence facility. Mrs. Dykstra stated a study would be conducted to look at the feasibility and the need for a facility to treat victims of domestic violence in Gilbert to include all services under one roof. The study would explore building or renting a facility and what the needs are in terms of space and the cost. Funds to build such a facility could potentially be included in the next 5-year plan.

Mr. Conkle stated he would support that.

Storage Unit - Mrs. Liddell asked if any funds were being used for a storage unit. Mrs. Dykstra stated no funds were being used for that purpose.

Designated Projects - Mrs. Liddell noted that last year, there were projects designated prior to the annual public meeting. Mrs. Dykstra stated there are scheduled items in the 5-year plan. We anticipated that the water line project would take two years of funding, although it may be completed in this fiscal year. Projects have been proposed based on public feedback regarding needs. At this time, we are looking for public comment on this proposal, which may change the Annual Action Plan.

4. CONCLUSION:

Next steps: The draft document will be available online under Community Development for public comment, and a physical copy will be available at the Gilbert offices, the Southeast Regional Library, and the Heritage Center. As soon as we hear what funding the town will receive, we will finish the process, possibly by May, 2019. It is required to be submitted to HUD by mid-August in order to be eligible. *Update-with HUD allocations, final plan is due in by June 11, 2019*

With no further public comments or questions, Mrs. Dykstra thanked the public for their participation and closed the public meeting at 6:29 p.m.

The next Public Hearing will be held on March 13, 2019 from 6-7 p.m. at the Southeast Regional Library, 775 N. Greenfield Road, Gilbert, 85234.



Melanie Dykstra
Community Resources Program Supervisor

TOWN OF GILBERT
Community Development Block Grant (CDBG)
Annual Action Plan 2019-2020

PUBLIC HEARING

March 13, 2019 6:00 P.M.

Southeast Regional Library
775 N Greenfield Road, Gilbert, Arizona 85234

TOWN OF GILBERT STAFF PRESENT:

Melanie Dykstra, Community Resources Program Supervisor
Mary Goodman, Deputy Town Manager

MEMBERS OF THE PUBLIC PRESENT:

Doralise Liddell, Resident

- 1. CALL TO ORDER:** The meeting was called to order by Melanie Dykstra at 6:06 p.m.
- 2. PURPOSE OF THE MEETING:** The Town of Gilbert is in the process of preparing the Annual Action Plan for Fiscal Year 2019-20. The Annual Action Plan is the specific one-year outline for the use of Department of Housing and Urban Development's CDBG formula grant funds and HOME Investment Partnership Funds. The one-year Action Plan is based on the priorities established over the last five years and the available resources. This year's Annual Action Plan reflects the final year of the Five-Year Consolidated Plan. The Consolidated Plan is used to guide the allocation of resources for projects that will help meet the established goals. The overall strategy is focused on general priorities for assisting Gilbert residents and neighborhoods.

The purpose of this Public Hearing is to solicit citizen views and comments regarding the draft of the Annual Action Plan. The draft document is still being edited, although it is available to review online and a physical copy is available at the Southeast Regional Library, the Heritage Center, and the Town of Gilbert offices for viewing. Public comments will be accepted through March 31, 2019.

Mrs. Dykstra advised that one of the anticipated funding amounts presented in the prior public meeting has changed slightly. The funding for the ADA sidewalk project is now listed at \$241,000 instead of \$281,000. There have been a lot of calls for roof repairs with the recent rain and some funding is being reserved to support those requests through the Emergency and Minor Home Repair Program.

In the last public hearing, Mrs. Liddell had asked about the potential to use these federal funds for the feral cat issue. Mrs. Dykstra has since conducted some research and the initial results show that would not be an accepted use of those funds. She is still working to verify that as it is an issue especially in the Page Park area.

- 3. PUBLIC COMMENT:** Melanie Dykstra opened the floor to members of the public for questions or comments regarding the draft Annual Action Plan for FY 2019-2020.

Are the CDBG and HOME funds consolidated?

Mrs. Dykstra stated that Maricopa County is the lead agency for the HOME Consortium and the allocation of those funds. The dollar amount predicted for the annual allocation reflects only CDBG funds. The HOME funds are from a different pot of money, which is used for affordable housing.

Fair Housing Workshop/Administrative Funds:

How much of the Administrative funds will be utilized for the Fair Housing Workshops and how much was spent on the previous workshop?

A specific amount has not been dedicated, as quotes will be obtained based on what type of workshop would be most effective. We want to have funds set aside to offer that opportunity in the best way possible. The prior workshop was grant-funded as part of a contract through the non-profit funding process and did not utilize CDBG funds. We are in the process of determining the scope of work in order to get quotes. Mrs. Dykstra will try to get an answer before the public comment period ends.

Mrs. Liddell had attended the prior workshop and commented that there was little participation. She felt it may not be a good use of funding. She suggested an ongoing advisory rather than paying for an event.

Mrs. Dykstra stated the agency that the Town previously contracted with did not live up to expectations in terms of marketing, advertising, and communicating with our community and residents. The goal is now to take different steps in order to highlight the opportunity. A workshop that was held a few years ago utilizing CDBG funds had over 100 attendees. There have been a lot of calls and questions and there is a potential need for an educational service to the community. There are additional resources on the Town's website, although there still might be an opportunity to provide that service to the community.

Mrs. Liddell felt the Fair Housing Workshop should be free as it is a government service that has already been paid for.

Mrs. Dykstra stated we could explore different ways to present that information. A few years ago, there was a good turnout at the workshop with some different informational speakers. Mrs. Dykstra asked if there would be value in holding separate sessions for landlords and tenants?

Mrs. Liddell felt that if someone owns a business, they should take it upon themselves to know the law just as a renter should know their rights. The government should not pay for their education as landlords and tenants. There are plenty of places to find that information. She would rather see the money used for roof repairs.

Heritage Center Renovations:

The Heritage Center exterior renovation project includes ADA accessibility, lighting, signage, and playground updates. Why is that estimated at a cost of \$400,000?

Some of the expense will go to the design and a playground structure can cost between \$70,000 and \$100,000. The existing play structure is old, although the shade structure is new. There was a Parks project to shade the playgrounds. The issue with the Heritage Center is the access from the parking lot to the building as the front door location has changed from what was originally designed. Now there is a need to redesign the access and include lighting and sidewalks so people can access the facility. The playground will be updated as it is used by families as well as the Heritage Center and the Community Center preschool classes. The parents prefer to have some type of barrier to prevent kids from running into the parking lot.

Mrs. Liddell felt the playground should be open to everyone and the chain link fence was not inviting to people.

Mrs. Dykstra advised that the playground access would be explored as part of the process to determine if there could be a cost-effective change. The intent is to make the whole area attractive and accessible so that everyone feels invited and welcomed.

Drainage Issues in Lacy Tract:

Mrs. Liddell spoke about major drainage problems in the Lacy Tract, in particular from 114- 122 West Park Avenue. This is an infrastructure issue that she has brought up over the past few years. The ADA sidewalk at her property cannot be accessed as it becomes flooded. She felt the ADA sidewalk project in the area and the

Heritage Center renovations should not be done until the drainage issues have been fixed, or those funds will have been wasted. She also noted an addition being built onto the Senior Center. When that facility was originally built, it changed the drainage pattern.

Mrs. Dykstra advised that the Senior Center addition is for a pop-out from the existing building that will be interior to the courtyard. The CIP project for the ADA accessibility will look at the design and any impacts to the area, keeping the drainage issues in mind. Those impacts may need to be addressed through the town-wide drainage plan.

Mrs. Liddell has been told that her drainage issues cannot be fixed until a drainage plan is developed, as any changes to one property may affect drainage for other properties. It would be the same for any modifications to sidewalks or Town buildings in the area, as those changes may affect the drainage to other areas.

Mrs. Dykstra believed the last communication she received stated that would be determined through the CIP project regarding the drainage plan which is expected to move forward over this next fiscal year. She understood that money should not be put into something that will not result in a final solution.

Sewer Tap Issues in the Lacy Tract:

Mrs. Liddell stated over \$1 million in funding was utilized to replace the sewer taps in the Lacy Tract area. According to the as-builts, the clay taps were to be replaced with PVC pipe where it goes from the main line and ties in beyond the property line. There was excavation done on one of the properties in her neighborhood and the clay tap was not on the personal property, but in the alleyway. At Mrs. Liddell's property, the existing tap was also a clay pipe within the alleyway. She stated three taps were missing and the clay taps were not replaced with PVC as per the as-builts for the project. This leads her to believe that the taps going to the neighboring properties were also not replaced, as should have been done in the original project with the federal grant funding in 2005 or 2006. The property owners should not have to spend money to replace those taps.

Mrs. Dykstra stated when this issue was explored previously, it was determined that if there is a situation where that work was not done correctly, the Town would address that on a case by case basis. The Town cannot bank or sit on CDBG funds as project timelines need to be identified and the work needs to be done within that timeframe. If those funds are not spent within that timeframe, HUD will issue a finding. An inspection was done and Public Works believes the majority of the project was done properly. There may have been a few misses, and if and when any issues arise, the Town will address them.

Mrs. Dykstra felt there may have been a misunderstanding as to what the original project entailed. She stated the area where the clay taps are located was not part of the project. The PVC has been installed in the correct spot and the inspection determined that the sewer connection is appropriate and meets code. The portion on the residents' property can be clay.

Mrs. Liddell stated the clay sewer taps are in the alley which the Town owns and those should have been replaced with PVC as stated in the project. Excavation was done on her property at her expense and a clay tap was found in the alley which had to be replaced. All of that clay infrastructure in the alley should have been replaced as part of the original project. Mrs. Liddell reviewed the language in the as-builts regarding the sewer connections from the main line and lateral connections extending to the right-of-way line.

Mrs. Dykstra advised that the inspection report verified a PVC stub-out off of the main for the service connection to the existing clay pipe at the property address. The CDBG sewer project did not go onto private property. She will follow up to make sure there was not a misunderstanding between departments regarding the project.

Mrs. Liddell stated it cost her thousands of dollars to figure out what the problem was. The camera inspection did not extend out into the alley or town right-of-way where the issue was. The same issue has been found on six properties in her neighborhood. The other residents do not have that kind of money and they are afraid to ask

for help. It would be unfortunate if the Town made improvements to the alleyways without first resolving the sewer tap issue, resulting in the need to tear up the alleyways in the future when problems arise.

A lot of money will be spent on the Heritage Center renovation when a new building could have been constructed. The ADA issues should have been resolved prior to the original Heritage Center project. Those are funds that could have been better spent to help a lot of people. The federal funds are from taxpayer money.

Mrs. Dykstra will follow up with the departments as to the specifications of the original sewer project.

4. **CONCLUSION:** The Draft Annual Action Plan is available to review online and a physical copy is available at the Southeast Regional Library, the Heritage Center, and the Town of Gilbert offices for viewing. Information on the CDBG Grant funding is also provided in Spanish on the Town's website under Community Resources. Public comments may be submitted online or by e-mail to Melanie.Dykstra@gilbertaz.gov through March 31, 2019.

With no further comments or questions, Mrs. Dykstra thanked the public for their participation and closed the Public Hearing at 6:51 p.m.



Melanie Dykstra
Community Resources Program Supervisor



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Christopher W. Payne, Town Attorney, 503-6168

MEETING DATE: May 16, 2019

SUBJECT: Gilbert Town Code Update - Interfering with a Police Officer and Refusal to Provide True Full Name or Proof of Identification when Lawfully Detained

STRATEGIC INITIATIVE: Prosperous Community

RECOMMENDED MOTION

A motion to adopt an ordinance revising Gilbert Town Code Chapter 42 (Offenses and Abatement of Public Nuisances), Article VI (Offenses against Public Authority), Section 42-179 (Interfering with a police officer) and enacting Section 42-180 (Refusal to provide true full name or proof of identification when lawfully detained).

BACKGROUND/DISCUSSION

Staff proposes that Council amend to the Gilbert Town Code to update Section 42-179 dealing with interference with police officer and add new Section 42-180 dealing with refusal to provide identification when lawfully detained. These proposed revisions fall within statutory and constitutional authority based on recent Arizona and federal case law.

This ordinance would revise Section 42-179 regarding interference with police officers engaged in the discharge of their official duties. Specifically, the code revision would provide as follows:

42-179 Interfering with a Peace Officer

It is unlawful for any person to hinder, resist, delay, obstruct or prevent any police officerS in the discharge of or THEIR his attempt to discharge THEIR his official

~~duties, It is further unlawful for any person to fail or refuse to obey or otherwise comply with any lawful order issued by a police officerS ENGAGED IN THE DISCHARGE OF THEIR OFFICIAL DUTIES, including a request to provide a full, true name, when such officer has a reasonable suspicion that criminal activity is occurring, has occurred or is about to occur.~~

This ordinance would also add a new section to the Gilbert Town Code. Currently, police officers are unable sometimes to enforce Town ordinances because they do not have authority under certain circumstances to require someone to identify themselves. This new ordinance would require evidence of identity when a police officer has reasonable suspicion that the person has committed a violation of the law.

Section 42-180 – Refusal to Provide True Full Name or Proof of Identification When Lawfully Detained

It is unlawful for a person, after being advised that the person’s refusal to answer is unlawful, to fail or refuse to provide either identification or evidence of identity on request of a peace officer who has lawfully detained the person based on reasonable suspicion to believe that the person has committed a violation of an ordinance of the Town or any law of the State of Arizona or the United States.

- (a) Identification means any legally government issued document that contains a photograph, date of birth and physical description, including but not limited to height, weight, eye color, sex and hair color of the person presenting the identification.
- (b) Evidence of identity means that the person has provided the peace officer

This ordinance was reviewed for form by Christopher W. Payne

FINANCIAL IMPACT

There is no financial impact as a result of the proposed change.

The financial impact was reviewed by Justin Romney, Management and Budget Analyst.

STAFF RECOMMENDATION

Staff recommends adoption of the proposed ordinance.

Respectfully submitted,

Christopher W. Payne
Town Attorney

Approved By

Approval Date

Chris Payne

5/1/2019 7:09:38 PM

Chris Payne

5/7/2019 1:34:30 PM

Justin Romney

5/6/2019 9:02:41 AM

ORDINANCE NO. _____

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AMENDING THE CODE OF GILBERT, ARIZONA, CHAPTER 42 OFFENSES AND ABATEMENT OF PUBLIC NUISANCES, ARTICLE VI OFFENSES AGAINST PUBLIC AUTHORITY, BY AMENDING, SECTION 42-179 INTERFERING WITH A POLICE OFFICER, AND ENACTING SECTION 42-180 REFUSAL TO PROVIDE TRUE FULL NAME OR PROOF OF IDENTIFICATION WHEN LAWFULLY DETAINED; RELATED TO PRESERVATION OF PUBLIC PEACE, HEALTH, AND SAFETY; AND PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES.

NOW THEREFORE, BE IT ORDAINED by the Common Council of the Town of Gilbert, Arizona, as follows:

Section I. In General.

The Code of Gilbert, Arizona, Chapter 42 Offenses and Abatement of Public Nuisances, Article VI, Offenses against Public Authority, Section 42-179 Interfering with a police officer, is hereby amended as follows (additions in ALL CAPS; deletions in strikeout):

Section 42-179 – Interfering with a police officer

It is unlawful for any person to hinder, resist, delay, obstruct or prevent any police officerS in the discharge of or THEIR his attempt to discharge THEIR his official duties. ~~It is further unlawful for any person to fail or refuse to obey or otherwise comply with any lawful order issued by a police officerS ENGAGED IN THE DISCHARGE OF THEIR OFFICIAL DUTIES., including a request to provide a full, true name, when such officer has a reasonable suspicion that criminal activity is occurring, has occurred or is about to occur.~~

The Code of Gilbert, Arizona, Chapter 42 Offenses and Abatement of Public Nuisances, Article VI, Offenses against Public Authority, Section 42-180 Refusal to provide true full name or proof of identification when lawfully detained, is enacted as follows (additions in ALL CAPS):

SECTION 42-180 – REFUSAL TO PROVIDE TRUE FULL NAME OR PROOF OF IDENTIFICATION WHEN LAWFULLY DETAINED

IT IS UNLAWFUL FOR A PERSON, AFTER BEING ADVISED THAT THE PERSON'S REFUSAL TO ANSWER IS UNLAWFUL, TO FAIL OR REFUSE TO PROVIDE EITHER IDENTIFICATION OR EVIDENCE OF IDENTITY ON

REQUEST OF A POLICE OFFICER WHO HAS LAWFULLY DETAINED THE PERSON BASED ON REASONABLE SUSPICION TO BELIEVE THAT THE PERSON HAS COMMITTED A VIOLATION OF AN ORDINANCE OF THE TOWN OR ANY LAW OF THE STATE OF ARIZONA OR THE UNITED STATES.

(A) IDENTIFICATION MEANS ANY LEGALLY GOVERNMENT ISSUED DOCUMENT THAT CONTAINS A PHOTOGRAPH, DATE OF BIRTH AND PHYSICAL DESCRIPTION, INCLUDING BUT NOT LIMITED TO HEIGHT, WEIGHT, EYE COLOR, SEX AND HAIR COLOR OF THE PERSON PRESENTING THE IDENTIFICATION.

(B) EVIDENCE OF IDENTITY MEANS THAT THE PERSON HAS PROVIDED THE POLICE OFFICER WITH THEIR TRUE FULL NAME AND DATE OF BIRTH UPON REQUEST.

Section II. Providing for Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

Section III. Providing for Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this ____ day of _____, 2019, by the following vote:

AYES: _____

NAYES: _____ ABSENT: _____

EXCUSED: _____ ABSTAINED: _____

Ordinance No. _____
Page ___ of _____

APPROVED this ____ day of _____, 2019.

Jenn Daniels, Mayor

ATTEST:

Lisa Maxwell, Town Clerk

APPROVED AS TO FORM:

Christopher W. Payne, Town Attorney

I, LISA MAXWELL, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE ORDINANCE NO. _____ ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT ON THE ____ DAY OF _____, 2019, WAS POSTED IN FOUR PLACES ON THE ____ DAY OF _____, 2019.

Lisa Maxwell, Town Clerk



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Jacob Ellis, Deputy Town Manager, 480.503.6758

MEETING DATE: May 16, 2019

SUBJECT: 2020 Census Complete Count Committee

STRATEGIC INITIATIVE: Prosperous Community

RECOMMENDED MOTION

A motion to establish a 2020 Census Complete Count Committee for the Town of Gilbert.

BACKGROUND/DISCUSSION

In preparation for the 2020 Census, cities and Towns across Maricopa County, the state and nationwide are forming Complete Count Committees (CCC). The purpose of these committees is to increase awareness and motivate residents to respond to the 2020 Census. CCCs serve as state and local “census ambassador” groups that play an integral part in ensuring a complete and accurate count of the community. The ultimate goal of the CCC is to increase the self-response rate for households responding online, by phone, or mailing back their questionnaire. This is achieved by utilizing the local knowledge, expertise and influence of CCC members to design and implement a census awareness campaign targeted to the community.

The resolution was reviewed for form by Attorney Chris Payne.

FINANCIAL IMPACT

There is no budget impact as a result of forming a 2020 Census Complete Count Committee.

STAFF RECOMMENDATION

Staff recommends approval of the resolution forming the 2020 Census Complete Count Committee.

Respectfully submitted,

**Jacob Ellis
Deputy Town Manager**

Approved By

Approval Date

RESOLUTION NO. _____

**A RESOLUTION OF THE COMMON COUNCIL OF THE
TOWN OF GILBERT, ARIZONA, CREATING THE 2020
GILBERT ARIZONA COMPLETE COUNT COMMITTEE**

WHEREAS, the U.S. Census Bureau is required by the United States Constitution to conduct a count of all persons; and

WHEREAS, the Census count requires extensive work, and the Census Bureau requires partners at the state and local level to insure a complete and accurate count; and

WHEREAS the Town of Gilbert Complete Count Committee will bring together a cross section of community members who will utilize their local knowledge and expertise to reach out to all persons of our community; and

WHEREAS the Town of Gilbert Complete Count Committee will work with the Census Bureau and the State of Arizona to strive for an accurate count.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the Town of Gilbert, Arizona that the Town of Gilbert establishes a 2020 Census Complete Count Committee.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA THIS _____ DAY OF _____, 20__.

Jenn Daniels, Mayor

ATTEST:

Lisa Maxwell, Town Clerk

APPROVED AS TO FORM:

Christopher W. Payne, Town Attorney

I hereby certify the above foregoing Resolution No. _____ was duly passed by the Council of the Town of Gilbert, Arizona, at a regular meeting held on _____, 20__, and that quorum was present thereat and that the vote thereon was _____ ayes and _____ nays and _____ abstentions. _____ Council members were absent or excused.

Resolution No. _____
Page ___ of _____

Lisa Maxwell, Town Clerk, CMC
Town of Gilbert