COUNCIL MEETING AGENDA
June 25, 2015

Members may attend in person or by telephone.

John W. Lewis, *Mayor*
Jordan Ray, *Vice Mayor*

Eddie Cook
Victor Petersen
Jared Taylor

Jenn Daniels
Brigette Peterson

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

Regular Meeting
7:00 PM

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

ADDENDUM

PRESENTATIONS; PROCLAMATIONS

3A. Proclamation declaring July 2015 as Park and Recreation Month In Gilbert.

CONSENT CALENDAR

9A. AGREEMENT – consider authorizing the Town Manager to enter into a settlement and release agreement with M.A. Mortenson Co. to settle all claims in Town of Gilbert v. M.A. Mortenson Co., Maricopa County Superior Court Case No. CV2013-092379.

AGENDA ITEM

CALL TO ORDER

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 Councilmember.

ROLL CALL

PRESENTATIONS; PROCLAMATIONS

1. Recognition of Mary Jo Kuzmick for 22 years of service to the Town of Gilbert.

2. Recognition of Gilbert Feeding Families for their efforts to organize an annual food drive held in May.

3. Recognize innovative Water Conservation Program in Parkway Improvement Districts.

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.

4. INTERGOVERNMENTAL AGREEMENT – consider approval of renewal of Intergovernmental Agreement No. 2001-1003-0033 with Amendment No. 1 with Salt River Project and regional municipalities for the Granite Reef Underground Storage Project (GRUSP) to allow Gilbert to store up to 3,650 AF of water annually or 3.44% of annual GRUSP recharge capacity and authorize the Mayor to execute the required documents.

5. INTERGOVERNMENTAL AGREEMENT – consider approval of Intergovernmental Agreement No. 2015-1304-0764 with the State of Arizona authorizing Arizona Department of Revenue to administer Town of Gilbert municipal privilege and affiliated excise taxes and authorize the Mayor to execute the required documents.

6. INTERGOVERNMENTAL AGREEMENT – consider approval of Intergovernmental Agreement No. 2015-1001-0765 with the Mesa Housing Authority for the Housing Choice Voucher Veteran Affairs Supportive Housing Program and authorize the Mayor to execute the required documents.

7. INTERGOVERNMENTAL AGREEMENT – consider approval of Amendment No. 1 to Intergovernmental Agreement No. 2015-7009-0767 with City of Chandler for design,

construction, and operation of the expansion of the San Tan Vista Water Treatment Plant, Project No. WA070, and authorize the Mayor to execute the required documents.

8. INTERGOVERNMENTAL AGREEMENT – consider approval of Intergovernmental Agreement No. 2015-7003-0682 with Maricopa County for the necessary property acquisition, design, construction, and ownership of improvements to Val Vista Drive from Appleby to Riggs Road, Project ST112, and authorize the Mayor to execute the required documents.

9. AGREEMENT – consider approval of Telecommunication License Agreement No. 2015-1004-0734 with Teleport Communications America, LLC for use of right-of-way, and authorize the Mayor to execute the required documents.

10. LEASE AGREEMENT – consider approval and authorize the Mayor to execute Wireless Communications Lease Agreement No. 2015-1105-0677 with STC Five LLC for $2,015.99 per month at 2855 E Guadalupe Road; increasing three percent per year until October 2021; increasing twenty percent in October 2021 and then increasing three percent per year thereafter; and a $10,000 signing bonus paid to the Town upon contract execution.

11. AGREEMENT – consider approval of Cooperative Purchasing Contract No. 2015-1302-0763 with PFM Asset Management LLC for continued investment management services and authorize the Mayor to execute the required documents.

12. CONTRACT – consider approval of:

a) Professional Engineering Services Contract No. 2015-7009-0761 with Hubbard Engineering for the Gail Water Line Project, in an amount not to exceed $24,000, Project No. WA111, and authorize the Mayor to execute the required documents; and

b) authorize a Water Fund Contingency Transfer in the amount of $68,000.

13. CONTRACT – consider approval of Contract No. 2015-5001-0396 with Chandler Christian Community Center in an amount not to exceed $137,000 for the Gilbert Senior Center and authorize the Mayor to execute the required documents.

14. CONTRACT – consider approval of Contract No. 2015-4106-0711 with Degan Construction, LLC in an amount not to exceed $800,000 for Minor Concrete Repair and authorize the Mayor to execute the required documents.

15. CONTRACT – consider approval of Job Order Contract (JOC) - Task Order No. 43 Contract No. 2013-7003-0180 with CS Construction, Inc. in an amount not to exceed $996,264.25 for the Neighborhood Streetlight Rehabilitation Project, Project No. ST148, and authorize the Mayor to execute the required documents.

16. CONTRACT – consider:

a) approval of Job Order Contract (JOC) - Task Order No. 40 Contract No. 2014-7008-0240 with CS Construction, Inc. in an amount not to exceed $208,311.10 for the Traffic Signal at Seville Boulevard and Higley Road, Project No. TS176, and authorize the Mayor to execute the required documents; and

b) authorize a FY2016 CIP Contingency Transfer in the amount of $30,000 and use the Signal System Development Fee Fund as the designated revenue source.

17. CONTRACT - consider finding that no written notices objecting to the acts or proceedings were filed with the Town pursuant to A.R.S. § 48-584 (E) within 15 days of the publication of the notice of award of the contracts for FY2016 improvements in Parkway Improvement District Nos. 07-03, 07-04, 07-09 and 07-11, and authorize the Mayor to execute the required documents as follows:

a) Contract No. 2015-8003-0673 with Somerset Contracting, LLC in an amount not to exceed $202,127.82 for PK NO. 07-03 Park Village;

b) Contract No. 2015-8003-0674 with Somerset Contracting, LLC in an amount not to exceed $42,023.80 for PK NO. 07-04 Spring Meadows;

c) Contract No. 2015-8003-0675 with Somerset Contracting, LLC in an amount not to exceed $31,281.32 for PK NO. 07-09 Morning Ridge; and

d) Contract No. 2015-8003-0676 with Somerset Contracting, LLC in an amount not to exceed $15,435.60 for PK NO. 07-11 Cassia Place.

18. CONTRACT – consider :

a) approval of Contract No. 2015-1105-0652 with Intergraph in an amount not to exceed $193,000 for Police Computer Aided Dispatch and Records Management suite of software and authorize the Mayor to execute the required documents; and

b) authorize a FY2016 General Fund Contingency Transfer in the amount of $28,000.

19. CONTRACT – consider approval of expenditures under Contract No. 2015-1105-0497 with Sentinel Technologies, Inc. in an amount not to exceed $323,000 for FY2016 for IT network equipment and services and authorize the Mayor to execute the required documents.

21. BUDGET - consider authorization of a FY2016 Contingency Transfer in the amount of $117,981 with the General Fund as the designated revenue source for upgrades to the roof at the Public Works Facility.

22. FINAL PLAT S14-04 - consider approval of a replat of The Enclave - Via Bella located at the northeast corner of Higley Road and Houston Avenue.

23. FINAL PLAT SP1470 - consider approval of the final plat for Light of Christ Lutheran Church located at north of the northeast corner of Chandler Heights and Greenfield Roads.

24. FINAL PLAT S611 - consider approval of the final plat for Temple View Estates located east of the northeast corner of Greenfield and Pecos Roads.

25. LIQUOR LICENSE – conduct hearing and consider approval of acquisition of control for the Series 12 Restaurant Liquor License for MOD Pizza located at 2904 East San Tan Village Parkway #101.

26. LIQUOR LICENSE – conduct hearing and consider approval of an acquisition of control for the Series 12 Restaurant Liquor License Desert Babe's Sports Grill located at 1686 North Higley Road #101.

27. PERMANENT EXTENSION OF PREMISES – consider approval of a permanent extension of premises for House of Brews located at 825 South Cooper Road, #B-5.

28. BOARDS AND COMMISSIONS - consider acceptance of the resignation of Bob Steiger from the Town of Gilbert, Arizona Water Resources Municipal Property Corporation effective June 24, 2015.

29. BOARDS AND COMMISSIONS – consider motion to:

a) accept the resignation of Cathy Chlarson from the Gilbert Educational Cable Access Governing Board effective May 26, 2015; and

b) appoint Dr. Charles Nwankwo to fill the remainder of the term as a regular member ending March 19, 2018.

30. MINUTES – consider approval of the minutes of June 2, 2015 Study Session and June 4, 2015 Regular Meeting.

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 7:00 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.

31. LIQUOR LICENSE – conduct hearing and consider approval of a Series 12 Restaurant Liquor License for Yanagi Sushi located at 884 West Warner Road, Suite B04.

32. ZONING Z15-08 - conduct hearing and consider approval of the findings and adoption of an Ordinance amending Ordinance Nos. 1403, 1629, and 2321 pertaining to the San Tan Estates Planned Area Development (PAD) by removing from the San Tan Estates PAD approximately 24.93 acres of real property consisting of approximately 24.93 acres of Shopping Center (SC) zoning district, all with a Planned Area Development overlay zoning district, generally located at the southeast corner of Val Vista Drive and Queen Creek Road; approving the Development Plan for the DeRito Spectrum Planned Area Development; and changing the zoning classification of said real property from 24.93 acres of Shopping Center (SC) district, all with a Planned Area Development overlay zoning district to 24.93 acres of Shopping Center (SC) zoning district, all with a Planned Area Development overlay zoning district, as shown on the map which is available for viewing in the Planning and Development Services Office; and to modify the development regulations as follows: to increase the maximum size for a single use or user from 75,000 square feet to 160,000 square feet, allow for building height of up to three stories and 35', and require separation of 20' between three-story buildings. The effect of the rezoning will be to create a development plan and allow for increased square footage for a congregate living facility and allow increased stories, but not in excess of the existing SC height allowance of 35 feet.

33. ZONING Z15-10 - conduct hearing and consider approval of the findings and adoption of an Ordinance amending Ordinance Nos. 427, 617, 725, 1287, 1689, 1708 and 2430 to amend the conditions of development within the Settler's Point Planned Area Development (PAD) for approximately 14.4 acres of real property generally located north of Civic Center Drive and west of Gilbert Road, consisting of approximately 14.4 acres of Multi-Family / Medium (MF/M) zoning district with a Planned Area Development overlay zoning district as shown on the exhibit (map), which is available for viewing in the Planning and Development Services Office. The request is to amend the conditions of development as follows: decrease allowed height from four-story to three-story with maximum height of 46', and allow access through commercially zoned property. The effect this amendment is to disallow four-story development and ensure residential access through commercially zoned property.

34. GENERAL PLAN GP15-02/ ZONING Z15-04 – conduct hearing and consider:

a) adoption of a Resolution approving a Minor General Plan amendment to change the land use classification of approximately 6.02 acres of real property generally located at the southwest corner of Val Vista Drive and Germann Road from Shopping Center (SC) land use classification to General Commercial (GC) land use classification. The effect of this amendment will be to change the plan of development for the property to allow increased intensity of development; and

b) approval of the findings and adoption of an Ordinance amending Ordinance No. 2299 and rezone approximately 6.02 acres of real property within the Villages at Val Vista Planned Area Development (PAD) generally located at the southwest corner of Val Vista Drive and Germann Road from approximately 6.02 acres of Shopping Center (SC) with a Planned Area Development overlay zoning district to approximately 6.02 acres of General Commercial (GC) with a Planned Area Development overlay zoning district as shown on the exhibit (map), which is available for viewing in the Planning and Development Services Office, and to amend conditions of

development in the Villages at Val Vista Planned Area Development (PAD) as follows: eliminate side yard setback adjacent to non-residential uses, reduce the rear set back from 75' to 20' for buildings adjacent to residential uses, and reduce landscaping setback adjacent to residential uses from 40' to 10'. The effect of the rezoning will be increase intensity and the square footage allowed for a single user, the modifications requested will decrease building and landscape setbacks to commercial and residential land uses.

35. BUDGET - conduct hearing and consider adoption of an Ordinance setting the Secondary Property Tax Levy for FY2015-16 at $21,221,243 to partially meet the current debt service requirements of the Town; the remaining debt service to be paid from fund balance.

35A. HUMAN SERVICES - consider approval of:

a) the Gilbert Wellness & Resource Center Proposal; and

b) an Amendment to the 2015-2020 Community Development Block Grant (CDBG) Five year Consolidated Plan to Renovate Page Park Center for the Center operations.

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.

36. BOARDS, COMMISSIONS, AND COMMITTEES - reports from Council Liaisons for the:

a) Subcommittee on Board and Commission Application Screening, Interview, and Selection
b) Other Council Subcommittees
c) Design Review Board
d) Environmental and Energy Conservation Advisory Board
e) Gilbert Educational Cable Access Governing Board
f) Arts and Culture Board
g) Human Relations Commission
h) Industrial Development Authority
i) Mayor’s Youth Advisory Committee
j) Parks, Recreation and Library Services Advisory Board
k) Planning Commission
l) Redevelopment Commission
m) Gilbert Public Facilities MPC
n) Gilbert Water Resources MPC
o) Gilbert Self-Insured Trust Fund
p) Regional Meetings
q) 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.

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.

Office of the Mayor
Town of Gilbert

3A

Proclamation

WHEREAS, parks and recreation programs are an integral part of community throughout this country, including the Town of Gilbert; and

WHEREAS, our parks and recreations are vitally important to establishing and maintaining the quality of life in our communities, ensuring the health of all citizens, and contributing to the economic and environmental well-being of a community and region; and

WHEREAS, parks and recreation programs build healthy, active communities that aid in the prevention of chronic disease, provide therapeutic recreation services for those who are mentally or physically disabled, and also improve the mental and emotional health of all citizens; and

WHEREAS, parks and recreation programs increase a community's economic prosperity through increased property values, expansion of the local tax base, increased tourism, the attraction and retention of businesses, and crime reduction; and

WHEREAS, parks and recreation areas are fundamental to the environment well-being of our community; and

WHEREAS, parks and natural recreation areas improve water quality, protect groundwater, prevent flooding, improve the quality of the air we breathe, provide vegetative buffers to development, and produce habitat for wildlife; and

WHEREAS, our parks and recreation areas ensure the ecological beauty of our community and provide a place for children and adults to connect with nature and recreate outdoors; and

WHEREAS, the U.S. House of Representatives has designated July as Parks and Recreation Month; and

WHEREAS, the Town of Gilbert recognizes the benefits derived from parks and recreation resources;

NOW THEREFORE, I, John W. Lewis, Mayor of the Town of Gilbert, do hereby proclaim July 2015 is recognized as Parks and Recreation Month in Gilbert, Arizona.

In witness thereof, I hereby set my hand and affix the Official Seal of the Office of the Mayor, Town of Gilbert, Arizona, this 25th day of June 2015.

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John W. Lewis, Mayor

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: L. Michael Hamblin, Town Attorney, 503-6027

MEETING DATE: June 25, 2015

SUBJECT: Settlement and Release Agreement with M.A. Mortenson Co.

STRATEGIC INITIATIVE: Infrastructure

Ensuring quality of Town recreational facilities.

RECOMMENDED MOTION

A motion to authorize the Town Manager to enter into a settlement and release agreement with M.A. Mortenson Co. to settle all claims in *Town of Gilbert v. M.A. Mortenson Co.*, Maricopa County Superior Court Case No. CV2013-092379.

BACKGROUND/DISCUSSION

The Elliot District Park Big League Dreams Sports Park was built in 2007 under a design-build agreement with the M.A. Mortenson Company ("Mortenson"). In August 2013, the Town filed suit in Maricopa County Superior Court alleging design and construction defects in the facility. On June 3, and 4, 2015, the Town participated in mediation with Mortenson and reached a tentative agreement to settle this matter for $13.5 million.

Staff and legal counsel are in support of the proposed settlement and seek authority to allow the Town Manager to enter into the proposed settlement and release with Mortenson.

This matter has been reviewed by Michael Hamblin, Town Attorney.

FINANCIAL IMPACT

These funds will be used for necessary repairs at Elliot District Park and reimbursement for prior safety related construction.

Financial impact reviewed by Laura Lorenzen, Management and Budget Analyst.

STAFF RECOMMENDATION

Staff recommends a motion authorizing the Town Manager to enter into a settlement and release agreement with M.A. Mortenson Co. to settle all claims in *Town of Gilbert v. M.A. Mortenson Co.*, Maricopa County Superior Court Case No. CV2013-092379.

Respectfully submitted,

L. Michael Hamblin
Town Attorney

Approved By	Approval Date
Michael Hamblin	6/11/2015 3:21 PM
Michael Hamblin	6/11/2015 3:21 PM
Laura Lorenzen	6/15/2015 10:48 AM

DRAFT

DRAFT

Appreciation
Mary Jo Kuzmick

As Mayor of the Town of Gilbert, it is my distinct pleasure to express sincere appreciation to Crime Prevention Specialist Mary Jo Kuzmick upon her retirement from the Town of Gilbert. Since 1993, Mary Jo has served the Town admirably in many roles. It is with immense gratitude that we recognize and commend her for her extensive service.

Mary Jo began her career with the Town of Gilbert as a Recreation Coordinator. She was responsible for the *Leisure Pursuits* publication, outdoor recreation programs, town-wide special events, Hershey Track and Field Program, concerts in the park, and the Silver Buckle Horse Show Series. In 2002, Mary Jo was reclassified to Recreation Supervisor. In 2006, Mary Jo joined the Gilbert Police Department as a Crime Prevention Specialist where she educated citizens and business owners on how to protect themselves, their families, and their property.

Ms. Kuzmick has exhibited true professionalism and dedication to her work, which has reflected great credit upon herself and the Town. In her career, Mary Jo has received numerous letters of commendation for outstanding service to the community, and has been the recipient of several "On the Spot" recognitions. She served eight years as Board Member for the Arizona Crime Prevention Association, and many years in support of the Gilbert Feeding Families Committee.

Mary Jo retires from the Town of Gilbert having earned the admiration and respect of her colleagues for her steadfast dedication to public service. She has cared deeply for her work and for her community, and will be remembered as having a public servant's heart, serving with kindness and graciousness.

As Mary Jo brings to close her 22 years of distinguished service with the Town of Gilbert, we enthusiastically thank her for her leadership and commitment to serving our community. Mary Jo's wisdom, advice and friendship have contributed to the betterment of the community, and strengthened the Town of Gilbert Recreation and Police Departments.

On behalf of the Town Council and the citizens of our community, it is with respect and gratefulness that I convey deep appreciation to Mary Jo Kuzmick for her outstanding contributions and hard work.

In Witness Whereof, I have hereunto set my hand and have caused the Official Seal of the Town of Gilbert to be affixed this 25th day of June, 2015.

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John W. Lewis, Mayor

Case Study 25

Parkway Improvement Districts Water Conservation Program

Town of Gilbert, Arizona

Program Overview

Eleven Gilbert neighborhoods are organized into separate Parkway Improvement Districts (PKIDs) to maintain their own common areas such as parks, retention areas, entryways, and street rights-of-way. The PKIDs include 39.8 acres of turf and 19.8 acres of decomposed granite planted areas.

Partnerships between PKID neighborhoods and Gilbert have resulted in changes to landscaping, playground enhancements, and improvements requested by residents. The PKID conservation program has included water budgeting for irrigation and turf conversion to low-water-use plant material and the retrofitting/replacement of aging irrigation systems to increase efficiency, requiring less water while still maintaining the health of the landscape plant material.

In 2009, the Water Conservation Office and Parks Department personnel partnered to explore whether there were any potential water savings at the PKIDs. The landscape water requirement was calculated based on the square footage of the irrigated areas for each of the PKID communities and compared to historical water use. This allowed consumption to be compared to the anticipated requirement, rather than just what had been used in the past.

A monthly meeting was established to monitor water consumption and identify anomalies at each PKID community. When unexpected water consumption was detected, individual meters and the corresponding irrigation systems were inspected and corrective actions were determined.

In addition to the enhanced water management program already in place, an improvement program included the conversion of 145,716 square feet of turf to low-water-use plant material, and the retrofitting/ replacement of aging irrigation systems was developed to increase efficiency while maintaining the health of the landscape plant material.

Agency
Arizona Coalition Partners

Project Status
2009 – Ongoing

Targeted Use Sector
Commercial & Industrial Irrigation

Estimated Annual Savings
76.7 acre-feet per year

Estimated Annual Cost
$6,360

Estimated Unit Water Cost
$83 per acre-foot per year

Key Program Elements

- Potential water savings from irrigation was tracked by in-house trained personnel, which allowed more control in implementing the program
- Healthy landscape has been maintained while enhancing irrigation efficiency
- Staff performance and service to residents has improved significantly because problems are now more thoroughly identified and investigated

Ryan Morasch, Senior Grounds Maintenance Worker, improving landscape irrigation to achieve the water use reductions.
Source: Town of Gilbert

Main Program Elements

Costs

While Gilbert owns the common area properties, State law requires the Town to levy taxes on all homes in the PKIDs to fund annual expenses to maintain and improve these areas.

PKID projects are funded by taxing neighborhood property owners. The funds for operation and maintenance of the PKID are collected as a special

assessment tax district based on the property tax bill. The annual budget amount is developed by staff (including any input from the neighborhood) and then adopted by the Council. An annual mailing to every address in each PKID informs residents about the proposed assessment and the budget. The annual labor cost to run and compile the reports and the Park's personnel time to attend the meetings is estimated to be $6,360. This amount includes salaries only (if full benefit packages were included, it would be approximately double). The operational cost is still considered to be very low.

Implementation Resources

While neighborhoods that are PKIDs may have covenants, codes, and restrictions (CC&Rs), most do not have homeowners associations (HOAs) that are organized to enforce them. As with all land CC&Rs, PKID CC&Rs may be enforced by private individuals. Unlike HOAs, PKID neighborhoods do not own common property and do not hire property management companies to maintain their neighborhoods. The Gilbert Community Services hires and oversees contractors who bid for individual contracts for each of the 11 neighborhoods.

Level of Participation

The eleven Gilbert neighborhoods participating are Cassia Place, Circle G Meadows II, Circle G Meadows III, Circle Ranches VI, Circle Ranches VII, Madera Park, Morning Ridge, Park Village, Spring Meadows, Templeton Place, and Val Vista Park.

Program Outcomes

Water Savings

The calculated water requirement for landscape, based on the square footage for all of the PKIDs, was 49,482,000 gallons per year. The calculated expected water requirements are based on historical weather to account for yearly weather fluctuations and to account for irrigation system hardware malfunctions. The goal is to be within 20 percent of these calculated water requirements. Being within 10 percent of these calculated water requirements is considered to be exceptional landscape water management.

The table below shows the estimated savings by calendar year since program inception.

Year[1]	Water Require-ments[2]	Water Used[2]	Over-irrigation[3]	Water Savings[4]
2010	49.5	55.9	13%	-27%
2011	49.4	50.4	2%	-34%
2012	49.4	51.9	5%	-32%
2013	46.5	47.9	3%	-37%

Notes:
[1] Calendar year
[2] Millions of gallons
[3] Deviation from water requirement estimate
[4] Savings from 2009 water use level

In 2009, 76,552 million gallons of water were used to irrigate the PKID landscapes. The enhanced PKID landscape water management partnership between the Parks Department and the Water Conservation Office has saved a total of 100.2 million gallons from 2010 through 2013. The bulk of the savings (97 percent) was realized by measuring and monitoring water use, as well as quick response to spikes in water use identified in the monthly update meetings. A small portion of the savings can be attributed to the conversion of turf to xeriscape in 2013. In the first year, water use was reduced to be within the standards for effective landscape water management. In the next three years, water use has been managed well into the standards for exceptional landscape water management.

Program Challenges

- Overlap with other conservation programs such as turf conversion and irrigation system upgrades that changed the planned water requirements and resulted in unexpected changes in water demand made quantification of water savings tricky.
- Program effectiveness to reduce water consumption may be less when landscape maintenance is contracted out, as it normally includes the programming of irrigation controllers and the irrigation inspection.

Sources

- Jeff Lee, Water Conservation Specialist; Town of Gilbert
- Gilbert, Arizona PKID process, retrieved from: http://www.gilbertaz.gov/departments/development-services/engineering-services/pkid/pkid-process

TOWN OF GILBERT, ARIZONA

CERTIFICATE OF RECOGNITION

PRESENTED TO

RYAN MORASCH

For your excellent work conserving Gilbert's water supplies, and in particular working closely with the Water Conservation staff to reduce water use in those areas by more than 100 million gallons over a four year period. Having been recognize by the Bureau of Reclamation as an exemplary case study that should be modeled by others also wishing to conserve water, Gilbert is grateful to have such an innovative team working on its behalf.

As Mayor of the Town of Gilbert, and on behalf of the Town Council, I commend Ryan for his participation and leadership in water conservation.

John W. Lewis, Mayor

Date

Town of Gilbert, Arizona

Certificate of Recognition

Presented To

Rick Acuña

For your excellent work conserving Gilbert's water supplies, and in particular working closely with the Water Conservation staff to reduce water use in those areas by more than 100 million gallons over a four year period. Having been recognize by the Bureau of Reclamation as an exemplary case study that should be modeled by others also wishing to conserve water, Gilbert is grateful to have such an innovative team working on its behalf.

As Mayor of the Town of Gilbert, and on behalf of the Town Council, I commend Rick for his participation and leadership in water conservation.

John W. Lewis, Mayor

Date

Town of Gilbert, Arizona

Certificate of Recognition

Presented To

Cody Brooks

For your excellent work conserving Gilbert's water supplies, and in particular working closely with the Water Conservation staff to reduce water use in those areas by more than 100 million gallons over a four year period. Having been recognize by the Bureau of Reclamation as an exemplary case study that should be modeled by others also wishing to conserve water, Gilbert is grateful to have such an innovative team working on its behalf.

As Mayor of the Town of Gilbert, and on behalf of the Town Council, I commend Cody for his participation and leadership in water conservation.

John W. Lewis, Mayor

Date

Town of Gilbert, Arizona

Certificate of Recognition

Presented To

Jeff Lee

For your excellent work conserving Gilbert's water supplies, and in particular working closely with the Parkway Improvement District staff to reduce water use in those areas by more than 100 million gallons over a four year period. Having been recognize by the Bureau of Reclamation as an exemplary case study that should be modeled by others also wishing to conserve water, Gilbert is grateful to have such an innovative team working on its behalf.

As Mayor of the Town of Gilbert, and on behalf of the Town Council, I commend Jeff for his participation and leadership in water conservation.

John W. Lewis, Mayor

Date

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Håkon Johanson, Water Resource Manager, 503-6902

MEETING DATE: June 25, 2015

SUBJECT: Consider renewal of Contract 2001-1003-0033 with Amendment 1; Granite Reef Underground Storage Project IGA Agreement

STRATEGIC INITIATIVE: Infrastructure

RECOMMENDED MOTION

A motion to approve renewal of Contract 2001-1003-0033 with Amendment 1 and authorize the Mayor to execute the required documents.

BACKGROUND/DISCUSSION

In 1992, Salt River Project and six municipalities, entered into an IGA for the Granite Reef Underground Storage Project (GRUSP). GRUSP is located on the Salt River Pima Maricopa Indian Community land (SRPMIC). SRP and SRPMIC have a contract allowing SRP to run a water storage facility on SRPMIC leased land. Several municipalities have entered into an IGA with SRP to share the capital and operating costs of the storage project. The costs were allocated based on buying into the system.

The old lease expired in 2013, and SRP has been negotiating an extension. The Town of Gilbert controls 3.44% of the annual capacity to store water in GRUSP. The total storage volume changes each year, but Gilbert has right of first refusal for storage of up to 3.44% of that volume.

This is a critical piece of Gilbert's ability to effectively manage its water resource portfolio and maximize the use of this precious resource. After Gilbert stores water underground, it can either recover that water through another well, or leave the credit in the ground until a need arises to use it at a future date.

The Contract was reviewed for form by Assistant Town Attorney Jack Vincent.

The Contract was reviewed by Jason Harris, Contract Specialist, Purchasing.

FINANCIAL IMPACT

The contract renewal extends the existing agreement for 20 years and expenses are only incurred when Gilbert uses the water storage facility. Facility expenses fall within existing budget allocations, no additional funding is required.

The financial impact was reviewed by Cris Parisot, Management & Budget Analyst.

STAFF RECOMMENDATION

Staff recommends approval of this contract renewal with amendment 1.

Respectfully submitted,

Håkon Johanson
Water Resource Manager

Approved By	Approval Date
Marc Skocypec	6/15/2015 9:45 AM
Jack Vincent	6/15/2015 10:29 AM
Cris Parisot	6/15/2015 9:51 AM
Douglas Boyer	6/15/2015 11:00 AM

AMENDMENT NO. 1

TO THE GRANITE REEF UNDERGROUND STORAGE PROJECT INTERGOVERNMENTAL AGREEMENT AMONG SALT RIVER VALLEY WATER USERS' ASSOCIATION, SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT AND THE MUNICIPAL CORPORATIONS OF CHANDLER, GILBERT, MESA, PHOENIX, SCOTTSDALE, AND T E M P E

This Amendment No. 1 ("Amendment"), dated this 2nd day of April, 2015, hereby amends the *Granite Reef Underground Storage Project Intergovernmental Agreement Among Salt River Valley Users' Association, Salt River Project Agricultural Improvement and Power District and the Municipal Corporations of Chandler, Gilbert, Mesa, Phoenix, Scottsdale, and Tempe* ("IGA") dated February 26, 1993. Capitalized terms used in this Amendment and not otherwise defined shall have the meanings set forth in the IGA.

RECITALS:

WHEREAS, the Granite Reef Underground Storage Project ("GRUSP") was authorized by this IGA and the parties have been operating this GRUSP for twenty years; and

WHEREAS, the IGA identified the term of the Agreement in Section 5.1 as "through the initial term of the land lease; and through any renewals or extensions of such land lease or any new land lease(s) recommended by the GRUSP Committee and for which this Agreement is amended to extend its term pursuant to Section 9.5.7"; and

WHEREAS, the renewed Land Lease for GRUSP has a twenty (20) year term, which has begun on September 9, 2013 and which will end on December 30, 2032 with an option to renew upon expiration, for a term not to exceed twenty (20) years; and

WHEREAS, the Participants agreed at the July 14, 2014 GRUSP Committee meeting that the term of the IGA should be amended according to the IGA.

WHEREAS, by letter dated October 16, 1996 Salt River Project confirmed the conveyance of 13.28% of the GRUSP entitlement to the City of Chandler, and the parties want to incorporate that instrument of conveyance as Exhibit I to the GRUSP IGA; and

WHEREAS, the parties also want to amend Exhibit C to reflect the changes in Chandler's GRUSP entitlement from 6.72% to 20.00%, and in SRP's GRUSP entitlement from 33.59% to 20.31% as a result of the SRP's conveyance to Chandler; and

WHEREAS, the parties also want to amend Exhibit C to reflect the changes in Scottsdale's GRUSP entitlement from 2.16% to 3.285%, and in Phoenix' GRUSP entitlement from 26.88% to 25.755% as a result of Phoenix' conveyance of 1.125% of the GRUSP entitlement to Scottsdale.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein and other good and valuable consideration, the parties do hereby agree as follows:

AGREEMENT:

1. The term of the IGA is hereby amended to be in effect through the extended term of the Land Lease to December 31, 2032, and through any renewals or extensions of such land lease or any new land lease(s) recommended by the GRUSP Committee and for which this Agreement is amended to extend its term pursuant to Section 9.5.7.

2. Section 4.13 is hereby deleted in its entirety and replaced with a new Section 4.13 to read as follows:

"4.13 LAND LEASE:

The land lease for the GRUSP entered into between the Salt River Pima Maricopa Indian Community (SRPMIC) as Lessor and District as Lessee, attached hereto as Exhibit B, entitled: "BUSINESS LEASE B-245 BETWEEN THE SALT RIVER PIMA MARICOPA INDIAN COMMUNITY ("Lessor") and THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT ("Lessee") and dated November 20, 2013."

3. Exhibit B is hereby deleted in its entirety and replaced by the attached "Exhibit B (Revised April 16, 2015)."

4. Exhibit C is hereby deleted in its entirety and replaced with the attached "Exhibit C" with footnote "RSS 1-12-05."

5. The October 16, 1996 letter from Paul A. Cherrington, Salt River Project, to Karen Barfoot, Acting City Engineer, City of Chandler, Re: GRUSP Conveyance Agreement, attached hereto is incorporated hereby as Exhibit I to the GRUSP IGA.

6. Except as modified by this Amendment, all terms of this IGA shall remain in full force and effect.

7. This Amendment shall become effective upon execution by the Parties, and shall remain in effect throughout the term of the GRUSP IGA.

IN WITNESS WHEREOF, the parties have executed this *Amendment No. 1 to* the *Granite Reef Underground Storage Project Intergovernmental Agreement Among Salt River Valley Users' Association, Salt River Project Agricultural Improvement and Power District and the Municipal Corporations of Chandler, Gilbert, Mesa, Phoenix, Scottsdale, and Tempe* as of the date first set forth above.

Attest and Countersign

SALT RIVER VALLEY WATER USERS' ASSOCIATION

_____

Secretary

By _____

President

APPROVED AS TO FORM AND WITHIN THE POWER AND AUTHORITY GRANTED UNDER THE LAWS OF THE STATE OF ARIZONA TO THE SALT RIVER VALLEY WATER USERS' ASSOCIATION

_____

Attest and Countersign

CITY OF CHANDLER

_____

City Clerk

By _____

Title:

APPROVED AS TO FORM AND WITHIN
THE POWER AND AUTHORITY GRANTED
UNDER THE LAWS OF THE STATE OF
ARIZONA TO THE CITY OF CHANDLER

_____

City Attorney

Attest and Countersign

TOWN OF GILBERT

_____
Town Clerk

By _____
Title:

APPROVED AS TO FORM AND WITHIN
THE POWER AND AUTHORITY GRANTED
UNDER THE LAWS OF THE STATE OF
ARIZONA TO THE TOWN OF GILBERT

_____
Town Attorney

Attest and Countersign

CITY OF MESA

_____

City Clerk

By _____

Title:

APPROVED AS TO FORM AND WITHIN
THE POWER AND AUTHORITY GRANTED
UNDER THE LAWS OF THE STATE OF
ARIZONA TO THE CITY OF MESA

_____

City Attorney

Attest and Countersign

CITY OF PHOENIX

_____

City Clerk

By _____

Title:

APPROVED AS TO FORM AND WITHIN
THE POWER AND AUTHORITY GRANTED
UNDER THE LAWS OF THE STATE OF
ARIZONA TO THE CITY OF PHOENIX

_____

City Attorney

Attest and Countersign

CITY OF SCOTTSDALE

_____

City Clerk

By _____

Title:

APPROVED AS TO FORM AND WITHIN
THE POWER AND AUTHORITY GRANTED
UNDER THE LAWS OF THE STATE OF
ARIZONA TO THE CITY OF SCOTTSDALE

_____

City Attorney

Attest and Countersign

CITY OF TEMPE

_____

City Clerk

By _____

Title:

APPROVED AS TO FORM AND WITHIN
THE POWER AND AUTHORITY GRANTED
UNDER THE LAWS OF THE STATE OF
ARIZONA TO THE CITY OF TEMPE

_____

City Attorney

EXHIBIT B

BUSINESS LEASE B-245

BETWEEN

THE

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

("Lessor")

and

THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT

AND POWER DISTRICT

("Lessee")

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"F" Paragraph 18.0 of the Salt River Pima-Maricopa Indian Water Rights Settlement Agreement of 1988

BUSINESS LEASE B-245

THIS BUSINESS LEASE B-245 (this "Lease") is dated as of the 20th day of November, 2013 and is by and between THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, hereinafter referred to as "Lessor," and the Salt River Project Agricultural Improvement and Power District, an Arizona Agricultural Improvement and Power District established pursuant to Arizona Revised Statutes 48-2301 et. seq., hereinafter referred to as "Lessee" or "SRP", and is made under the provisions of the Act of November 2, 1966 (80 Stat. 1112, 1113) (25 U.S.C. §§ 416 to 416i), as the same may be amended or superseded from time to time, and as supplemented by Part 162—Leases and Permits, of the Code of Federal Regulations, Title 25 - Indians, as the same may be amended or superseded from time to time (and as the same may be waived by the Secretary for the benefit of SRPMIC), relative to business leases on Indian lands, all of which by reference are made a part hereof.

1. **Definitions.**

For the purpose of this Lease, the following terms shall have meanings set forth in this Article 1. Any citations in this Lease to provisions such as statutes, regulations and ordinances or other law, or sections, refer to such statutes, regulations and ordinances or other law, or sections, as the same may be amended, replaced, superseded or otherwise modified from time to time. Any direct references to names of SRPMIC positions or to SRPMIC entities such as departments, divisions, and enterprises, shall be inclusive of any such position or entity if renamed, reorganized, or succeeded.

A. Additional Rent: All sums other than Base Rent that this Lease requires Lessee to pay Lessor, whether or not expressly called Additional Rent, including without limitation Operational Rent.

B. Reserved

C. Approved Depository: As defined in Article 41G.

D. Reserved.

E. Archaeological Compliance: As defined in Article 50B.

F. Archaeological Resource: As defined in Article 50B.

G. Base Index: As defined in Article 5 (as adjusted and deemed amended from time to time).

H. Base Rent: As defined in Article 5.

I. Base Rent Adjustment Date: As defined in Article 5

J. CFR: The Code of Federal Regulations.

K. CP: As defined in Article 50B.

L. Casualty: Any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting any or all improvements to the Leased Premises, whether or not insured or insurable.

M. Recharge Facility: The Granite Reef Underground Storage Project established pursuant to Arizona Revised Statutes Title 45, Chapter 3.1 and consisting of infiltration basins, a water delivery canal and water control structures.

N. EPNR: As defined in Article 50B.

O. Environmental Laws: As defined in Article 50B.

P. Governmental Authority: Any federal or SRPMIC governmental or quasi-governmental entity, regardless of how constituted, having or claiming jurisdiction over the Leased Premises or any portion thereof, or over the design, planning, construction, use, operation, maintenance or occupancy of all or any portion of the Leased Premises.

Q. Hazardous Materials Laws: As defined in Article 50C.

R. Hazardous Materials: As defined in Article 50C.

S. ILCA Applicable Percentage: As defined in 25 U.S.C. § 2218 (a section in the Indian Land Consolidation Act), as the same may be amended or superseded from time to time.

T. Lease: This Business Lease B-245.

U. Lease Term: As defined in Article 3.

V. Lease Year: Each period of twelve (12) consecutive months, commencing on each January 1 and ending on the next succeeding December 31, except that the first Lease Year shall begin on the Term Commencement Date and shall end at midnight on the next succeeding December 31 which is at least twelve (12) months after the Term Commencement Date (*i.e.*, the first Lease Year may consist of more than twelve (12) months, and the final Lease Year may consist of less than twelve (12) months).

W. Leased Premises or Premises: That certain real property consisting of approximately three hundred forty five (345) acres located east of the Gilbert Road alignment between the Indian School Road and Thomas Road alignments and being part of Sections 28, 29 and 30, Township 2 North, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, and all easements and rights-of-way appurtenant thereto. The legal description and total acreage of the Leased Premises is attached hereto as Exhibit "C." In addition, a survey of the Leased Premises is also attached as an additional part of Exhibit "C."

X. Legal Requirements: All statutes, laws, rules, orders, regulations, policies, procedures, standards, taxes, ordinances and general police powers (including without

limitation judicial powers, judgments, decrees and injunctions) of SRPMIC and applicable federal governmental entities, whether now or hereafter enacted and enforced, including without limitation any of the same which may (i) require repairs, modifications or alterations in or to any portion of the Leased Premises, or (ii) in any way limit, restrict or impose conditions upon the use of the Leased Premises, and all covenants, agreements, restrictions and encumbrances contained in any instruments (including without limitation CC&Rs), either of record or known to Lessee (other than encumbrances created by Lessor after the date of this Lease without the consent of Lessee), at any time in force or effect pertaining to the Leased Premises or any portion thereof or interest therein.

Y. Lessee: Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona.

Z. Lessor: Salt River Pima-Maricopa Indian Community.

AA. Public Liability Insurance: As defined in Article 13.

BB. MSDS: As defined in Article 50C(3).

CC. On-Site Infrastructure: As defined in Article 16B.

DD. Partial Taking: As defined in Article 22A.

EE. Person: An individual, corporation, limited liability company, partnership, joint venture, association, firm, joint stock company, trust, unincorporated association, governmental entity, agency or subdivision, or other legal person or entity.

FF. Price Index: The consumer price index compiled and published by the United States Department of Labor, Bureau of Labor Statistics, designated Consumer Price Index - U.S. City Average All Urban Consumers (CPI-U) 1982 to 1984 = 100, all items, for the month of December each year or, if said consumer price index ceases to be published and there is no successor index, a reasonably equivalent index published by an authoritative third party that SRPMIC reasonably designates. The Price Index for any date means the Price Index last published before the calendar month that includes such date.

GG. Prime Rate: The rate of interest regularly published in the Wall Street Journal under "Money Rates" as the "Prime Rate" and defined therein as the base rate on corporate loans posted by at least 75% of the nation's thirty (30) largest banks, or if such rate is no longer published, then a reasonably equivalent rate published by an authoritative third party that SRPMIC reasonably designates.

HH. Property Insurance: Insurance providing coverage for all improvements and fixtures now or hereafter located on the Leased Premises, against loss, damage, or destruction by fire and other hazards. At the time, such insurance shall include: coverage for explosion of steam and pressure boilers and similar apparatus located on the Leased Premises; an "increased cost of construction" endorsement; and an endorsement covering demolition and cost of debris removal.

II. Qualified Member Business: A business owned by an enrolled SRPMIC member, in which that enrolled SRPMIC member owns a majority interest of the company and has direct control of day-to-day management of that company; and such business must meet the minimum qualifications necessary to provide goods and/or services of any kind with respect to the construction and operation of buildings, grounds or equipment upon the Leased Premises.

JJ. Remedial Work: As defined in Article 50C(3).

KK. Removable Personal Property: All personal property, of every kind and nature, belonging to Lessee or anyone claiming through Lessee (excluding in all events, however, fixtures incorporated into the Leased Premises, including without limitation boilers, compactors, compressors, conduits, ducts, elevators, engines, equipment, window shades, escalators, fittings, heating, ventilating and air conditioning systems, machinery and pipes) that may be removed from the Leased Premises without material damage, or material adverse impact to the functionality of, to the Leased Premises or any building or other improvement located on the Leased Premises and without adversely affecting: (a) the structural integrity of the Leased Premises or any building or other improvement located on the Leased Premises; (b) any electrical, plumbing, mechanical, or other system in the Leased Premises or any building or other improvement located on the Leased Premises; (c) the present or future operation of any such system; or (d) the present or future provision of any utility service to the Leased Premises. Removable Personal Property includes items such as furniture, movable equipment, telephone, telecommunications and facsimile transmission equipment, point of sale equipment, televisions, radios, and computer systems and peripherals.

LL. Rent: Base Rent.

MM. Required Consent: Any governmental approval or other consent, license, grant, authorization or agreement from any Governmental Authority or any public or private provider of public utility services, the procurement or maintenance of which may reasonably be necessary, desirable or appropriate as a condition or prerequisite to the proper development, improvement, use, occupancy or operation of all or any portion of the Leased Premises in accordance with this Lease.

NN. Restoration: After a casualty or condemnation loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration, and safeguarding of the damaged or remaining improvements, substantially consistent with their condition before the loss.

OO. Review Date: As defined in Article 5B.

PP. SRPMIC: The Salt River Pima-Maricopa Indian Community, a federally recognized Indian tribe with a self-governance compact pursuant to the Indian Self-Determination and Education Assistance Act, as amended.

QQ. SRPMIC Infrastructure: As defined in Article 16B.

RR. Secretary: The Secretary of the Interior, United States Department of the Interior or his or her authorized representative, including SRPMIC in exercise of its self-governance compact pursuant to the Indian Self-Determination and Education Assistance Act, as amended.

SS. Security: Cash in the amount of not less than one year's rental plus an additional amount deemed adequate to insure Lessee's compliance with Lease terms and/or (as required by Lessor and SRPMIC) a Guaranty in the form as may be required by SRPMIC, duly executed and acknowledged by an individual or entity approved by SRPMIC (which approval shall not be unreasonably withheld if Lessee and such proposed guarantor demonstrate to SRPMIC's reasonable satisfaction that the proposed guarantor has a net worth, determined in accordance with generally accepted accounting principles consistently applied, of at least $25 million, but which approval may otherwise be withheld in SRPMIC's sole and absolute discretion) and with blanks and notary blocks appropriately completed to SRPMIC's reasonable satisfaction.

TT. Term Commencement Date: As defined in Article 3.

UU. Total Taking: As defined in Article 22A.

VV. Treasurer: As defined in Article 10A.

WW. Unavoidable Delay: As defined in Article 35.

XX. Waiver of Subrogation: As defined in Article 41D.

2. Demise of Leased Premises.

For and in consideration of the rents and agreements hereinafter set forth, Lessor hereby leases the Leased Premises to Lessee, and Lessee hereby leases and accepts the Leased Premises from Lessor.

3. Lease Term and Termination.

A. The term of this Lease shall be approximately twenty (20) years (the "Lease Term") beginning the earlier of either the date this Lease is approved by the Secretary or September 9, 2013 (the "Term Commencement Date"), and ending on December 31, 2032. If said approval is not granted in writing by the Secretary within ninety (90) days after final approval of this Lease by the SRPMIC Council, then this Lease may be canceled by either party by a writing addressed and delivered to the other party. Upon receipt of the Secretary's written approval of this Lease, a copy thereof showing the date of approval by the Secretary shall be attached to this Lease as Exhibit "D."

B. Lessee shall have the option to renew this Lease ("Renewal Term") upon expiration of this Lease Term provided the Renewal Term does not exceed twenty (20) years. Notice of the exercise of the option to renew shall be delivered in writing to Lessor and Secretary no later than twelve (12) months prior to the expiration of this Lease Term. Should the proposed Renewal Term exceed twenty (20) years based on any subsequent underground

water storage facility permit issued by the Arizona Department of Water Resources to the Lessee, Lessor agrees to reasonably consider such a proposed Renewal Term and any proposed Renewal shall be subject to negotiation and acceptance by SRPMIC for length of the proposed Renewal Term and Rents. All other terms and conditions of this Lease shall remain the same during the Renewal Term, but in no event shall the total of the initial term and renewal term of this Lease exceed sixty-five (65) years.

C. Lessee may terminate this lease at the end of any Lease Year with not less than one hundred eighty (180) days prior written notice to the Lessor and Secretary. Such notice shall be issued at least 180 days before the end of the lease year and after the Article 5 Rent payment for that lease year has been issued. If this Article 3C termination is invoked by the Lessee, any prepaid Rents shall not be refundable. No early termination shall be effective until such time as a performance bond acceptable by SRPMIC is issued by the Lessee, as required pursuant to Article 32(h) herein.

D. Within one hundred and twenty (120) days of the approval of this Lease or earlier, Lessee shall deliver to Lessor As-Builts for the Leased Premises showing all improvements made to the Leased Premisies since the Secretary's Approval Date (March 9, 1993) of prior Business Lease B-244 LTRO Docket No. 615-024093 as renewed by SRP's letter dated February 7, 2002. Such As-Builts shall be affixed to this Lease as Exhibit "B1".

4. Permitted Uses.

The purpose of this Lease is to allow for non-residential development of the Leased Premises consistent with the intent expressed in Paragraph 18.0 of the Salt River Pima-Maricopa Indian Water Rights Settlement Agreement of 1988, attached as Exhibit "F", providing for the cooperation between Lessor and Lessee in developing facilities for the recharge and/or underground storage and recovery of water, and to provide Lessee the ability to operate such facilities for its benefit and, as operating agent, for the benefit of the municipal corporations of Chandler, Gilbert, Mesa, Phoenix, Scottsdale and Tempe and such other entities. The development and use of the Leased Premises will be consistent with, and a continuation of, the use under Business Lease B-244 LTRO Docket No. 615-024093 as renewed by SRP's letter dated February 7, 2002 and as provided in this Lease and/or otherwise approved by SRPMIC, the permitted uses described in the immediately following sentence, and with the zoning ordinances and other Legal Requirements of SRPMIC. The permitted use is only for the purpose of a Recharge Facility, as allowed by the zoning code for the zone applicable to the Leased Premises and as amended by any variances, special or conditional uses, or other similar conditions placed on the development by SRPMIC through SRPMIC's zoning, development or planning processes. Lessee shall develop all of the structures on the Leased Premises. If Lessee uses the Leased Premises for any use inconsistent with the provisions of this Article 4 without the prior written permission of Lessor and SRPMIC, such misuse shall constitute a default and a breach of this Lease. Lessee agrees not to use or cause to be used any part of the Leased Premises for any unlawful conduct or purpose. Lessee further covenants and agrees that it will not commit or permit on the Leased Premises any act that causes waste or a nuisance or which creates a hazard to health of persons or to property, wherever such persons or property may be. Any use of the

Leased Premises not expressly contemplated by the definition of Buildings or the As-Builts attached hereto as Exhibit "B" (including uses reasonably ancillary to such expressly contemplated uses), must be approved in advance in writing by SRPMIC.

5. Rent.

Unless otherwise expressly provided herein or unless otherwise specified by SRPMIC in writing, all monies payable under this Lease as Rent or otherwise shall be paid without notice, demand, offset, defense, claim, counterclaim, reduction, or deduction of any kind whatsoever, in lawful money of the United States of America and shall be payable to **Finance Department, Salt River Pima-Maricopa Indian Community, 10005 E. Osborn Road, Scottsdale, Arizona 85256**, which shall receive all payments for and on behalf of Lessor, each of whom hereby acknowledge that such payment shall constitute payment in fact and each of whom hereby irrevocably, for the Lease Term, designates SRPMIC as its agent and attorney-in-fact for the receipt of such payments. SRPMIC shall be responsible for the distribution of such payments to the Lessor. Lessor agrees that no enforcement action or default against Lessee shall be made by or on behalf of Lessor in the event SRPMIC fails to pay any sum due to Lessor herein, where such sums have been tendered by Lessee to SRPMIC in accordance with the provisions of this Article 5.

A. Base Rent. Lessee shall pay to Lessor the following sums during the Lease Term, as the same shall be adjusted in accordance with Article 5B, as "Base Rent":

Initial Term, from Term Commencement Date through December 31, 2032. Base rents shall be at the appraised value of $258,500.00 annually ($749.43 per acre), paid by Lessee as follows:

Base Rent for the entire first Lease Year shall be paid in advance within ten (10) days of the Term Commencement Date; and commencing in the second Lease Year, and continuing thereafter, Base Rent shall be paid annually, in advance on January 2, of each lease year without notice or demand and without any reduction, abatement, counterclaim or set-off. Base Rents payable in any year subject to adjustment by the Price Index pursuant to Article 5 B shall be payable thirty (30) business days after the Price Index is released and/or published by the appropriate agency responsible for that Price Index. If the first Lease Year is longer than twelve (12) months, then Base Rent for the first Lease Year shall be equal to the amount indicated above multiplied by (i) one (1), plus (ii) the result of dividing a fraction, the numerator of which is the number of days from the Term Commencement Date through and including the next following December 31, and the denominator of which is 365. If the Lease Term terminates on a day other than the last day of the month, Base Rent for the last Lease Year shall be prorated to the date of termination on a per diem basis. The total acreage of the Leased Premises shown on Exhibit "C" attached hereto shall be binding upon the parties for the purpose of calculating Base Rent.

B. Base Rent Adjustments.

Base Rent for the then commencing Lease Year shall be reviewed and adjusted at the beginning of the fifth (5th) Lease Year and at the beginning of every fifth (5th) Lease Year thereafter (each such date, a "Review Date") during the Lease Term based on positive changes in the Price Index. The "Base Index" for the adjustment shall be: (a) for the first Review Date, the Price Index for

December of the calendar year preceeding the year in which the Term Commencement Date occurs; and (b) for Review Dates after the first 5 year Review Date, the Price Index for the most recent Review Date. On each Review Date, Base Rent (as previously adjusted and deemed amended pursuant to Article 5B) shall be increased by any positive percentage change reflected in the Price Index when compared to the applicable Base Index. The formula for adjustment shall be:

$$\text{Adjusted Base Rent} = \frac{\$\text{Base Rent (as adjusted/amended)} \times \text{Price Index for Review Date}}{\text{Base Index}}$$

Should the Price Index be modified so that the Base Index and Price Index for the then current Review Date are based on different base periods, the Base Index shall be adjusted to conform to the new base period of the modified Price Index and the adjustment formula will remain the same. In no event shall Base Rent decrease from one Lease Year to the next by application of the foregoing formula. The minimum Base Rent Adjustment, regardless of the Review Date Price Index change, shall be a five percent (5%) increase over the Base Rent payable immediately prior to the then current Review Date. In no event shall an adjustment in Base Rent pursuant to this Article 5B exceed twenty percent (20%) over the Base Rent payable immediately prior to the then current Review Date.

C. Renewal Term Base Rents Adjustments. Base Rents in the Renewal Term will adjust according to Article 5 B and the Price Index adjustments shall continue uninterrupted as calculated from the original Term Commencement Date.

D. Percentage Rent. NO PERCENTAGE RENTS

E. Development Subleases. NO DEVELOPMENT SUBLEASES

F. Timely Payment. Except as otherwise expressly provided in this Article 5, all Rent shall be due and payable in advance without notice or demand on January 2nd and shall be deemed delinquent if not paid on or before ten calendar days after due. Delinquent Rent shall bear interest at the Prime Rate plus five (5) percentage points from the date due until paid in full with interest, but this provision shall not be construed to relieve Lessee from its obligation to make timely Rent payments, nor of the operation of the provisions of this Lease relating to default. On each Base Rent payment date, Lessee shall pay to the Treasurer of SRPMIC as an administrative fee an amount equal to three (3%) percent of Base Rent then payable.

6. Improvements and Completion of Development.

All buildings and improvements developed on the Leased Premises shall be constructed in accordance with the quality standards and provisions set forth on Exhibit "E" attached hereto.

7. Title to Recharge Facility and Improvements.

Lessee's improvements located in, on or at the Leased Premises or otherwise constituting part of the Leased Premises shall during the Lease Term be owned by, and belong to, Lessee. All benefits and burdens of ownership of the foregoing, including title, depreciation, tax credits and all other tax items, shall be and remain in Lessee during the Lease Term. Notwithstanding

the foregoing, upon expiration or earlier termination of the Lease Term all such improvements shall either, at Lessor's election, become Lessor's property or shall be removed by Lessee, all in accordance with Article 32.

8. Construction, Maintenance, Repair, Alteration.

A. Improvements Generally. All improvements placed on the Leased Premises shall be constructed in a good and workmanlike manner and in compliance with all Legal Requirements at the sole cost and expense of Lessee.

B. Alterations or Additions. Lessee shall have the right at any time during the Lease Term to make alterations or additions to improvements (other than SRPMIC Infrastructure) on the Leased Premises so long as the general character and nature of said improvements remains consistent with the plan of development contemplated hereby; provided (without limiting Lessee's obligation to comply with all Legal Requirements), plans and specifications for all work that adds, modifies or deletes structural components or life safety systems shall be submitted, at Lessee's expense, to SRPMIC for review and approval; and provided further, before Lessee commences any alterations or additions the estimated cost of which exceeds Two Hundred and Fifty Thousand and No/100 Dollars ($250,000), Lessee shall provide Lessor and SRPMIC such assurances of completion (including security, bonds, and creditworthy guaranties of completion) as SRPMIC may reasonably require. The requirements under this Article 8 exclude the regular and customary maintenance and repair activities of the Recharge Facility.

C. Construction. Any construction commenced by Lessee on the Leased Premises during the Lease Term shall be completed with reasonable diligence and within a reasonable time. Lessee shall pay for all such construction when and as required by the parties that perform such construction. All improvements that Lessee constructs on the Leased Premises shall become part of the Leased Premises. To the extent that Lessee obtains plans and specifications or surveys (including working plans and specifications and "as-built" plans and specifications and surveys) for any construction, Lessee shall promptly give SRPMIC a copy. Lessee shall cause its agreements with professionals to permit these deliveries, which are for Lessor information only except to the extent, if any, this Lease otherwise expressly states.

D. Removal or Demolition. Except as set forth in Article 41 below, removal or demolition of any improvements, or alterations or additions to any improvements not permitted by the foregoing provisions of this Article 8, shall not be made without the prior written consent of Lessor and SRPMIC, which consent and approval shall not be unreasonably withheld or delayed. Lessee shall prepare and submit to Lessor and SRPMIC its plans for removal or demolition of improvements, or alterations or additions not permitted by the foregoing provisions of this Article 8. Unless earlier approved, or rejected in writing, such plans shall be deemed approved by Lessor and SRPMIC (any such deemed approval by SRPMIC relating only to SRPMIC's capacity as administrator of this Lease, and not to SRPMIC's regulatory capacity) thirty (30) days following submission.

E. Maintenance and Repair. Lessee shall at all times during the Lease Term and at Lessee's sole cost and expense, keep and maintain the Leased Premises and all improvements thereon in good condition and repair, reasonable wear and tear and casualty damage (governed by other provisions of this Lease) excepted, without deferred maintenance, and in compliance with all Legal Requirements. Without limiting the generality of the foregoing, Lessee's obligation to maintain the Leased Premises includes an obligation to make all repairs that the Leased Premises may require from time to time during the Lease Term, whether structural or nonstructural, foreseen or unforeseen, capital or operating.

9. Liens.

Without limiting the generality of other provisions of this Lease, except for Approved Encumbrances created strictly in accordance with this Lease and SRPMIC and applicable federal law, no real property interest within the jurisdictional boundaries of the Salt River Pima-Maricopa Indian Community (as defined in Article 1 of the Constitution of SRPMIC, sometimes referred to in this Lease as land within the sovereign and jurisdictional boundaries of the Salt River Pima-Maricopa Indian Community), including without limitation the Leased Premises, may be liened under any federal or state law, including but not limited to mechanics' and materialmen's liens, equitable liens, deeds of trust or mortgages. Nothing contained in this Lease is or shall be construed as (1) a waiver of immunity of trust or restricted property from mechanics' or materialmen's or other liens, or (2) an obligation of the Secretary or Lessor to post non-responsibility notices while the Leased Premises are in a trust or restricted status.

10. Rental Bond; Security.

A. Security. Subject to Article 11 hereof, upon Lessee's execution of this Lease, in lieu of the surety bond required by, and (together with other provisions of this Lease which assure performance by Lessee of Lessee's obligations under and related to this Lease) in satisfaction otherwise of the requirements of, 25 CFR § 162.434 Lessee shall deposit with the SRPMIC Treasurer (the "Treasurer") the Security as security for the payment of Rent and Lessee's performance and observance of this Lease. Execution of this Lease by Lessee shall be incomplete and invalid for all purposes, and neither Lessor nor the Secretary shall have any obligation to Lessee hereunder or otherwise, unless and until the Security is paid to the Treasurer. Lessor may deduct from the Security an amount equal to: (a) any Rent that Lessee fails to pay; (b) all sums that Lessor expends as the result of a Lessee default; and (c) an amount equal to costs of recovering possession, and any and all other damages legally recoverable by Lessor, together with out-of-pocket costs and expenses incurred by Lessor, resulting from a Lessee default. At the expiration of this Lease, if Lessee is not in default or otherwise liable to Lessor, the unapplied balance of the Security shall be returned to Lessee. Lessee shall have no right to apply any portion of the Security against any of Lessee's obligations to pay any Rent hereunder. If at any time Lessor applies part or all of the Security, Lessee shall pay to the Treasurer the amount so applied, thereby increasing the amount of the Security, so that the Treasurer shall have on hand the full original Security at all times.

B. Alternate Security. With Lessor's approval, which shall not be withheld, delayed or conditioned if the form and substance of the proffered replacement security is reasonably equivalent to the Security, and provided that no uncured Lessee default exists,

Lessee may replace the Security with (or deposit in lieu of the Security) a surety bond or an irrevocable commercial standby letter of credit for the amount of the Security, provided that: (a) the form and substance of such bond or letter of credit, as applicable, are reasonably satisfactory to Lessor; (b) such bond or letter of credit is payable upon Lessor's presentation of the original of such bond or letter of credit together with a sight draft to the issuer, accompanied by Lessor's signed statement that Lessor is entitled to draw on such bond or letter of credit; (c) the issuer has a credit rating of AA or higher; and (d) the issuer maintains an office or branch in Maricopa County, Arizona. In addition to the foregoing, any such letter of credit shall provide for its: (i) continuance for at least one year from issuance; and (ii) to the extent reasonably obtainable by Lessee at no additional cost, automatic extension for additional periods of one year from initial expiry date and each subsequent expiry date, unless the issuer gives Lessor notice of its intention not to renew such letter of credit not less than 60 days before such expiry date. Corporate surety bonds shall be in continuous form.

11. Rental Bond Security Waiver.

Upon execution of this Lease, Lessor and the Secretary agree to waive the Article 10 Rental Bond Security requirement, but reserve the right to reinstate such requirement and Lessee agrees to comply with said requirement by posting the appropriate Rental Bond within ten (10) business days after written notice thereof by Lessor to Lessee.

12. Performance Bond.

Before beginning construction or undertaking any material renovations of any Recharge Facility or other improvements on the Leased Premises, Lessee agrees to provide either (a) a payment and performance bond covering faithful performance of all contracts for construction and payment of obligations arising thereunder as security to guarantee completion of such Recharge Facility and other improvements or renovations and payment in full of claims of all persons for work performed on, or materials furnished for, such construction or renovations, in form and substance, and issued by an issuer, reasonably acceptable to Lessor, or (b) such other security therefor as may be reasonably acceptable to Lessor. Upon request by the Lessee, the Performance Bond requirement may be waived by the Lessor and Secretary. Should a waiver of the Performance Bond requirement be granted, Lessor and Secretary may later reinstate such requirement, and Lessee shall comply with said requirement.

13. Public Liability Insurance.

At all times during the Lease Term, and during any remediation period pursuant to Article 32, Lessee shall carry at least the following insurance or provide through a self-insured program:

1. Comprehensive general liability insurance coverage including premises, operations, products, completed operations, and contractual liability coverage in the amount no less than $1,000,000 per occurrence, $1,000,000 personal injury and advertising injury, $2,000,000 products and completed operations aggregate and $2,000,000 general aggregate.

2. Automobile liability insurance for all motor vehicles operated by or for Lessee, including owned, hired, and non-owned autos, with minimum combined single limit for bodily injury and property damage of $1,000,000 for each occurrence.
3. Workers compensation insurance as required by the laws of the State of Arizona with minimum employer's liability and occupational disease limits of $500,000 to cover all employees.
4. Umbrella policy with limits of not less than $2,000,000 per occurrence, to extend over the comprehensive general liability, automobile liability, employers liability and occupational disease, and professional liability (if applicable).

All policies shall be written to protect Lessee, Lessor, SRPMIC and the Secretary by naming Lessor, SRPMIC and the Secretary as additional insureds, and shall also be endorsed as primary coverage with respect to any other insurance which may be carried by Lessor unless provide by self-insurance. Liability insurance policies shall contain contractual liability coverage for Lessee's indemnity obligations under this Lease, to the extent covered by customary contractual liability insurance coverage. Lessee's failure to obtain such contractual liability coverage shall not relieve Lessee from any indemnity obligation under this Lease. Lessee hereby waives any and all rights of recovery from Lessor, or Lessor's affiliates, their respective directors, officers, employees and agents, for any loss or damage (including consequential loss) resulting from any of the perils insured against by Lessee's insurers except for gross and wilful misconduct on behalf of SRPMIC. Lessee shall have its insurers endorse to its policies a waiver of subrogation unless provided by self-insurance. Unless otherwise required by the Secretary, the evidence of insurance shall be in the form of an insurance certificate showing the required coverage and containing the undertaking of the insurer to give notice to the Secretary, Lessor and SRPMIC, as certificate holders, at least 30 days (ten days in case of non-payment of premium) before a cancellation of any of the listed insurance policies or a letter of self-insurance.

Any self-insurance as referenced in this Article 13 shall be subject to approval and acceptance by Lessor and must be submitted on or before execution of this Lease and prior to any Renewal Period. Proof of insurance or proof of self-insurance shall be submitted to Lessor either with the Rent due under Article 5, or within five (5) days of the anniversary of such insurance, or within five (5) days of any change in such insurance. Lessee shall immediately notify SRPMIC in writing of any incident, occurrence, injury, or situation in connection with the Leased Premises, which may give rise to any claim or loss in excess of $100,000 under any of the aforementioned insurance coverage.

So long as SRP is the tenant under this Lease, SRP may provide coverage against risks through a self-insurance program, which may utilize insurance carriers non-admitted in the State of Arizona, where such self-insurance program is in compliance with applicable laws and approved by the State of Arizona (the "Risk Management Program") in lieu of procuring the insurance policies described in this Article 13 and Article 41 herein and coverage of such risks under the SRP's Risk Management Program shall be deemed in full compliance with all insurance requirements hereunder. SRP shall have the right to self-insure public liability and property losses in lieu of procuring Public Liability and Property Insurance policies described in Article 13 and Article 41 herein in which case SRP shall bear all such public liability and property losses such that SRPMIC shall have equivalent protection to that which would have been afforded by a commercial property insurance policy. SRP shall document proof of insurance for such self-insurance, including the approval of such self insurance by the State of Arizona where

applicable, in the same manner otherwise required by this Article 13 and Article 41 herein. To the extent that SRP's Risk Management Program does not provide additional insured status for SRPMIC and the Secretary, SRP hereby covenants and agrees that it will defend, indemnify, and hold harmless SRPMIC and the Secretary against claims and liabilities to the same extent that the SRPMIC and the Secretary would have been protected as additional insureds under commercial insurance policies of the type and with the coverages specified above in this Article 13 and Article 41 herein.

14. Sublease, Assignment, Transfer.

Lessee shall not sublease, assign or transfer all or any part of its interest in this Lease. Any purported sublease, assignment or other transfer shall be void and shall constitute a breach of this Lease.

15. Reporting Requirements.

Prior to the end of each month, Lessee will provide to SRPMIC Community Water Resources Manager ("Manager"), or to Manager's designee, monthly reports ("Water Report" per Exhibit "A") documenting the previous month's recharge quantities, and monitoring well groundwater levels in relation to the lowest Salt River Landfill cell elevation. Lessee will also submit to SRPMIC Community Water Resources Manager, or to Manager's designee, a formal letter requesting approval to recharge a given amount of water in the following month ("Recharge Request"). SRPMIC will reasonably approve such Recharge Requests and provide written approval of the Recharge Request within 10 business days of receipt. SRPMIC denial of any such Recharge Request will only occur under extraordinary circumstances.

The Water Report shall consist of the following elements:

1. Water inflows to GRUSP for 20__ (current year)
2. Projected and actual GRUSP recharge for January through December 20__ (current year)
3. Water level data for (the month prior date of report).
4. Groundwater withdrawal for (the month prior date of report).
5. Weather/Runoff Summary
6. Request for recharge at GRUSP for (the month following date of report).

Requirements of the Water Report are subject to change with reasonable notice to Lessee from Lessor.

16. Agreements for Utility Facilities.

A. Reservation of Rights. Without limiting the generality of other provisions of this Lease, Lesseehereby acknowledges and agrees that Lessor reserves the right under Chapter 17, Section 17-5.1(b) of the SRPMIC Code of Ordinances to be the provider, either through its own resources or by contract with other governmental or private entities, of all utility services furnished to the Leased Premises, including without limitation gas, water, electric, telecommunications, telephone, television, cable, fiber optics, solid waste disposal and

sewer facilities. As of the date hereof, the local access provider for telephone voice, data services and other telecommunications facilities within the boundaries of SRPMIC is Saddleback Communications (Contact: Operations Manager for information at 480-850-7000). Saddleback is the exclusive provider of local telephone services (including assignment and porting of telephone numbers) and transport services within SRPMIC. Microwave bypass is not permitted. The delivery of water to the Recharge Facility is exempt from provisions of this Article 16.

B. Facilities to be installed by Lessee. Lessee shall construct and install within the Leased Premises at Lessee's sole cost and expense all on-site utility (including without limitation storm and sanitary sewer, water, electric, gas, fiber optics, telephone and television), transportation (including without limitation driveways and parking facilities) and other infrastructure required to serve, and solely serving, the Recharge Facility ("On-Site Infrastructure"). In addition, Lessee shall construct and install, both within and outside the Leased Premises, certain utility, transportation and other infrastructure required to extend existing utility mains and public streets ("SRPMIC Infrastructure") to serve the Leased Premises (by connection to the On-Site Infrastructure) and other property. Design, capacity and construction of all such On-Site Infrastructure and SRPMIC Infrastructure shall be in accordance with all Legal Requirements, the other terms and conditions of this Lease. During the Lease Term, Lessee shall be responsible, at Lessee's sole cost and expense, for the construction, maintenance, operation, repair, replacement and any other cost or expense related to SRPMIC Infrastructure and On-Site Infrastructure; provided, however, that SRPMIC shall be entitled, at SRPMIC's election, at any time during the Lease Term or upon expiration of the Lease Term or earlier termination of this Lease to have any or all SRPMIC Infrastructure, together with rights-of-way therefor, dedicated to SRPMIC, in which event SRPMIC shall thereafter be responsible for the construction, maintenance, operation, repair, and replacement of SRPMIC Infrastructure in accordance with applicable Legal Requirements. Lessor, and SRPMIC and the Secretary by their approval of this Lease, but subject to SRPMIC's rights with respect to SRPMIC Infrastructure and On-Site Infrastructure as provided herein, and by applicable Legal Requirements, hereby and thereby grant to Lessee the right to install and operate On-Site Infrastructure and SRPMIC Infrastructure located within the Leased Premises, including without limitation sewer, water, electric, gas, fiber optics, telephone and television, as provided in this Article 16B.

17. Rights-of-Way for Roadway and Utility Facilities.

Lessee hereby consents to the granting and dedication of rights-of-way and easements (and related surveying) over, under, across, within, between and among the various allotments that collectively are the Leased Premises, for On-Site Infrastructure, SRPMIC Infrastructure and as necessary (as reasonably determined by SRPMIC) to provide access or utilities to property outside the Leased Premises or to any portion of the Leased Premises upon or after expiration or earlier termination of the Lease Term. Any right-of-way dedication or easement granted pursuant to this Article 17 shall be permanent in nature unless otherwise agreed to by SRPMIC in its sole and absolute discretion in the case of right-of-way dedications for SRPMIC Infrastructure or to provide access or utilities to property outside the Leased Premises or to any portion of the Leased Premises upon or after expiration or earlier termination of the Lease Term, or unless otherwise agreed to by the SRPMIC, who is benefited by the easement in the case of

easements for On-Site Infrastructure; provided, that easements for On-Site Infrastructure granted pursuant to this Article 17 shall terminate upon expiration of the Lease Term or earlier termination of this Lease, if Lessor elects (pursuant to Article 32) to require Lessee to restore the Leased Premises During the Lease Term, Lessor and Lessee shall have the right by mutual agreement, to relocate any right-of-way within the Leased Premises. While it is intended that consents, grants and dedications provided for by this Article 17 shall be self operative, Lessee, Lessor has executed or agrees to execute, acknowledge and deliver to SRPMIC and/or Lessee such instruments or documents reasonably necessary to effectuate the provisions of this Article 17. Such rights-of-way and easements granted pursuant to this Article 17 are subject to the approval of the Secretary in accordance with the approved general development plan and pursuant to the Act of February 5, 1948 (62 Stat. 17) (25 U.S.C. §§ 323-28), and any amendments thereto, as supplemented by regulations of the Secretary applicable thereto. Such grants of rights-of-way and easements in accordance with the approved general development plan are also approved by the SRPMIC Council by its approval of this Lease.

18. Encumbrance.

Lessee shall not encumber Lessee's interest in this Lease or the leasehold which is created thereby.

19. Liens, Taxes, Assessments, Utility Charges.

A. Taxing Authority. Without limiting the generality of other provisions of this Lease, Lessee, for itself and its successors and assigns (including without limitation Sublessees) acknowledges, understands and agrees that: (i) Lessor is a taxing authority and may now and in the future impose and assess taxes on Lessee, any Sublessee, their property, and their businesses; (ii) taxing authority is an essential attribute of Lessor's sovereignty; and (iii) Lessor makes no representations whatsoever as to any tax advantages that may be gained by entering into this Lease, although such advantages may exist from time to time. Lessee shall make its own independent investigation and inquiry as to any and all tax matters of material concern to Lessee in entering into this Lease and review and understand the relevant provisions of applicable law. Any excise, transaction, sales or privilege tax (except income tax) now or hereafter levied or imposed upon Lessor on account of, attributed to or measured by rent or other charges payable by Lessee under this Lease shall be paid by Lessee to Lessor along with said rent and other charges otherwise payable by Lessee.

B. Claims and Taxes. Lessee shall pay, when and as the same become due and payable, all taxes, assessments, licenses, fees and other like charges levied or accruing during the Lease Term upon or against the Leased Premises, all interests therein and property thereon, for which either Lessee may become liable. Upon written request, Lessee shall furnish to Lessor written evidence, duly certified, that any and all taxes required to be paid by Lessee have been paid, satisfied or otherwise discharged. Lessee shall have the right to contest any claim, tax or assessment against the Leased Premises or any interests therein and property thereon by posting bonds to prevent enforcement of any lien resulting therefrom. Lessee agrees to indemnify, protect and hold harmless Lessor and the Leased Premises and all interests therein and improvements thereon from any and all claims, taxes, assessments and like charges and from any lien therefor or sale or other proceedings to enforce payment thereof,

and all costs in connection therewith. SRPMIC shall promptly execute and deliver for filing any appropriate documents with reference to the State real estate tax exemption of the Leased Premises when so requested by Lessee.

C. Utility Charges. Lessee shall pay all charges for water, sewer, gas, electricity, telephone and other utility services supplied to the Leased Premises as the same shall become due.

D. Liens Claimed for Work Performed. Without limiting other provisions of this Lease (including without limitation Article 9), Lessee shall not permit any lien related to any work performed, materials furnished, or obligations incurred by Lessee to be claimed, asserted or enforced against the Leased Premises, or any part thereof.

20. Lessor's Paying Claims.

Lessor shall have the right to pay any lien or charge payable by Lessee under this Lease, or settle any action therefor, if Lessee, after written notice from Lessor, fails to pay or post bonds against enforcement. All costs and other expenses incurred by Lessor in so doing shall be paid to Lessor by Lessee upon demand, with interest from the date of payment until repaid at the rate of interest five (5) percentage points greater than the Prime Rate. Failure to make such repayment on written demand shall constitute a breach of this Lease.

21. Claim or Assessment of State Taxes; Other Tax Matters.

A. Lessee shall forthwith notify the **Office of the Treasurer, Salt River Pima-Maricopa Indian Community, 10005 E. Osborn Road, Scottsdale, Arizona 85256,** and the **Office of General Counsel, Salt River Pima-Maricopa Indian Community, 10005 E. Osborn Road, Scottsdale, Arizona 85256**, of any claim or assessment of taxes against the Leased Premises by the State of Arizona or any of its political subdivisions or municipalities, and will forthwith send to the Office of the Treasurer of SRPMIC and the Office of General Counsel of SRPMIC copies of all notices or other documents received by it in connection with any such claim or assessment of taxes.

B. Lessee will make no payment of taxes or assessments referred to in Article 21A without prior written approval of Lessor, unless such payment is made under protest that there is no right to assess or claim such taxes.

C. Lessee will cooperate in any action undertaken by Lessor in regard to any claim or assessment of such taxes and will further cooperate with SRPMIC and Lessor in any litigation resulting from a payment under protest as set out in Article 21B above. Such cooperation, however, shall not require or subject Lessee to any additional cost or expense except those provided for under this Lease, and any such litigation shall be undertaken by and the expenses thereof shall be borne exclusively by Lessor. In addition, Lessee shall not be obligated to be a party initiating such action or litigation brought by or Lessor without its written consent thereto.

D. Lessee is responsible for collecting and remitting to Lessor all taxes imposed on it under applicable SRPMIC ordinances. Lessee acknowledges, understands and agrees that taxes owed to SRPMIC shall not be adjusted or abated if Lessee mistakenly pays taxes to another jurisdiction.

E. For purposes of Subparagraphs 21A, 21B and 21C, "taxes" shall mean taxes, including transaction privilege, ad valorem, leasehold, possessory interest, excise or other taxes sought to be assessed or collected by the State of Arizona or any of its political subdivisions.

F. Nothing contained in this Lease shall be deemed to constitute a waiver of applicable laws providing tax immunity to trust or restricted Indian property or any interest therein or income therefrom.

22. Eminent Domain.

A. Definition of Terms. The term "Total Taking" means the taking by a Governmental Authority of the entire Leased Premises in fee under the power of eminent domain or a voluntary transfer in lieu thereof, or the taking by a Governmental Authority of less than the entire Leased Premises in fee under the power of eminent domain or a voluntary transfer in lieu thereof that renders the portion of the Leased Premises remaining not economically viable. The term "Partial Taking" means any other taking by a Governmental Authority of less than the entire Leased Premises in fee under the power of eminent domain (or a voluntary transfer in lieu thereof) that does not render the portion of the Leased Premises remaining not economically viable.

B. Total Taking. In case of a Total Taking, the leasehold estate of Lessee and its liability for payment of Rent of every kind whatsoever (except then accrued but unpaid Rent) shall cease and terminate as of the date possession of the Leased Premises shall be so taken.

C. Partial Taking. In case of a Partial Taking, this Lease shall terminate as to the portion of the Leased Premises so taken as of the date on which possession of said portion is taken, but this Lease shall continue in full force and effect as to the remainder of the Leased Premises. Thereafter, each ensuing installment of Base Rent shall be abated in the ratio that the value of the Leased Premises taken as unimproved real property being put to its highest and best use bears to the total value of the Leased Premises as unimproved real property being put to its highest and best use prior to such taking.

D. Refund of Advance Rentals. There shall be no refund of Base Rent paid in advance because of either a Total or Partial Taking of the Leased Premises. However, in the event of an overpayment of Base Rent due to a Partial Taking (determined with reference to the abatement of Base Rent in Article 22C above), any such overpayment shall be credited toward future payments of Base Rent as the same become due.

E. Allocation of Awards. In the event of a Partial Taking, any condemnation award shall be used first for any necessary Restoration of the remaining portion of the Leased

Premises and shall, if requested by Lessor or Lessee, be paid to an Approved Depository pending expenditure, and disbursed in accordance with the procedures set forth in Article 41. Any remainder after any necessary Restoration shall be disbursed as follows: In the event of either a Partial or Total Taking of the Leased Premises, Lessor shall be entitled to that portion of the entire award made with respect to the then discounted present value of the Base Rent and Additional Rent payable under this Lease for the remainder of the Lease Term, and the then discounted present value of the residual value of the Leased Premises to the Lessor upon termination of this Lease. Lessee shall be entitled to that portion of the entire award made with respect to the taking of the improvements erected on the Leased Premises by Lessee and with respect to Lessee's leasehold interest in the Leased Premises (which interest shall be the total value of the Leased Premises minus Lessor's interest in the Leased Premises as set forth above). All compensation and damages awarded for the taking of the Leased Premises or the improvements or any portion thereof shall, except as otherwise herein provided, and except as to such compensation as may be deemed "relocation benefits," belong to and be the sole property of Lessor.

F. Taking for a Term. In case the Leased Premises or any portion thereof are taken for a term of years, then Lessee shall remain bound by all of the terms and provisions of this Lease and shall be entitled to the entire award made in connection with such taking, except such part, if any, as is allocable to a period beyond the Lease Term.

G. Voluntary Conveyance. A voluntary conveyance by Lessor to a Governmental Authority under a threat of a taking under the power of eminent domain, in lieu of formal proceedings, shall be deemed to be a taking within the meaning of this Article 22.

23. Confidentiality.

Lessor, Lessee and the Secretary mutually agree to hold confidential the information supplied by Lessor or Lessee pursuant to the terms of this Lease or other documents or information reasonably deemed by Lessor or Lessee to contain or constitute trade secret or proprietary information, and designated as such in writing.

24. Default.

Time is of the essence of this Lease. Lessor may act pursuant to 25 CFR 162.465 and other provisions or as amended, (1) Should Lessee default in any payment of Rent or fail to post any bond, or maintain insurance, permits or licenses, as required by the terms of this Lease, and if such default shall continue uncured for the period of ten (10) business days after written notice thereof by Lessor to Lessee (provided in no event shall Lessor be required to give this notice more than two times in any Lease Year, and upon any third or subsequent such default in any Lease Year, Lessee shall have no right to notice and a cure period); or (2) should Lessee breach any other covenant of this Lease, and if the breach of such other covenant shall continue uncured for a period of twenty (20) business days after written notice thereof by SRPMIC to Lessee (or if such breach of such other covenant cannot be cured with due diligence within twenty (20) business days, if Lessee shall not (x) within ten (10) business days from Lessor's notice advise Lessor of Lessee's intention to take all necessary steps to cure such default, y) duly commence such cure within such period, and then diligently prosecute such cure to completion, and (z)

complete such cure within a reasonable time under the circumstances (not to exceed, in any event, 45 days)): then the Lessor may, without limiting other remedies available (including without limitation an action(s) for damages or injunctive relief), in Lessor's discretion either:

1. Proceed by any available means to enforce collection or to enforce any other provision of this Lease; or
2. Re-enter the Leased Premises and remove all persons and property therefrom, excluding Sublessees that are not in default of their Approved Subleases beyond any applicable cure period and property belonging to such Sublessees, without being liable for damages or guilty of trespass, and

(a) Collect the income from the Leased Premises and otherwise operate (including through a property manager) or re-let the Leased Premises, without terminating this Lease, but without prejudice to the right to terminate this Lease at any time thereafter, and without invalidating any right of Lessor or any obligation of Lessee hereunder. The terms and conditions of any such operation or re-letting shall be at the discretion of Lessor, who shall have the right to act as they reasonably deem advisable. If a sufficient sum is not thus realized to pay Lessor all amounts due hereunder from time to time thereafter, Lessee shall pay to Lessor monthly, when due, any deficiency, and Lessor may take collection action thereafter from time to time (including without limitation, monthly) in its discretion to recover monthly deficiencies that arise; or

Any action taken or suffered by Lessee as a debtor under any insolvency or bankruptcy act shall constitute a breach of this Lease. In such event, Lessor shall have the options set forth above in this Article 24.

Without limiting the foregoing or any other remedy available at law or otherwise to Lessor, any such remedy may be pursued regardless of the initiation and pendency of an arbitration or other legal proceeding pursuant to Article 37, except only in the event Lessor is expressly ordered by the arbitrator(s) or court with jurisdiction pursuant to Article 37 (but not otherwise) to cease or forbear from the exercise of such remedies pending further proceedings under Article 37. Without limiting Article 37 or Lessee's waiver of any appeal right under 25 CFR Part 2 (or otherwise, except only as expressly provided in Article 37) set forth in Article 37, Lessee shall not have any right to appeal under 25 CFR Part 2 from, arising out of or relating to exercise of any Lessor remedy provided for in this Lease. Lessor may change the locks and other security devices providing admittance to the Leased Premises. No failure by Lessor to insist upon strict performance of any covenant, agreement, term, or condition of this Lease or to exercise any right or remedy upon a Lessee default, and no acceptance of full or partial Rent or receipt of the income from or proceeds of re-letting the Leased Premises during continuance of any such default, shall waive any such default or such covenant, agreement, term, or condition. No covenant, agreement, term, or condition of this Lease to be performed or complied with by Lessee, and no Lessee default, shall be modified or waived except by a written instrument executed by Lessor, and no approval, consent, election, direction or other discretionary action of Lessor under or pursuant to this Lease shall be effective except by a written instrument executed by. No waiver of any Lessee default shall modify this Lease; rather, each and every covenant,

agreement, term, and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent Lessee default of such covenant, agreement, term or condition of this Lease. No re-entry by Lessor shall absolve or discharge Lessee from liability under this Lease. No receipt of money by Lessor from Lessee or Sublessees or from re-letting after termination of this Lease, or after the giving of any notice of termination of this Lease, shall reinstate, continue, or extend this Lease or affect any notice theretofore given to Lessee, or waive any right of Lessor. After service of notice to terminate this Lease or the commencement of arbitration or other proceedings, or after final order or judgment for possession, Lessor may demand, receive, and collect any moneys due or thereafter falling due from Lessee and Sublessees without in any manner affecting such notice, proceeding, order, suit or judgment. Lessor may recover from Lessee all damages Lessor incurs by reason of Lessee's default, including reasonable costs of recovering possession, reletting or operating the Leased Premises, and reimbursement of Lessor's reasonable costs and expenses incurred in connection with or as a direct or indirect result of Lessee's default, including without limitation attorneys' fees and other legal costs and bank fees for dishonored checks. Such damages may include, at Lessor's election, either (a) the present value, calculated at the then current target federal funds rate promulgated by the Federal Open Market Committee (or if such rate is no longer available, then a reasonably equivalent rate published by an authoritative third party that SRPMIC reasonably designates), of the excess of the total Base Rent under this Lease over the fair market rental value of the Leased Premises for the balance of the Lease Term; or (b) the Rent payable to Lessor provided for in this Lease, when and as due and payable under this Lease. Lessor may recover such damages at any time after Lessee's default, including after expiration of the Lease Term. In no event shall Lessee be entitled to any surplus resulting from reletting or Lessor's receipt of net income of the Leased Premises. Notwithstanding any law to the contrary, Lessor need not commence separate actions to enforce Lessee's obligations for each month's Rent not paid, or each month's accrual of damages for Lessee's default, but may bring and prosecute a single combined action for all such Rent and damages. Upon any termination of this Lease, to the extent that Lessor or any third party holds any casualty or condemnation proceeds (and/or deposits by Lessee) to be applied to Restoration, they shall be applied solely as Lessor directs, including as a payment toward any sums then payable to Lessor. Lessor shall be entitled to injunctive relief enjoining Lessee from continuing any default or from committing any threatened default. Lessee specifically and expressly acknowledges that damages would not constitute an adequate remedy for any nonmonetary Lessee default. Upon any default by Lessee hereunder, Lessor shall have all of the rights described in Article 10 with respect to the Security.

25. Attorney's Fees.

If an action shall be brought to enforce performance of any of the covenants and conditions of this Lease pursuant to the arbitration provisions set forth in Article 37 below (or in Tribal Court or in United States District Court if and to the extent expressly permitted by Article 37), the losing party shall pay such reasonable attorney's fees of the prevailing party as may be determined and fixed by the arbitration panel (or such court) as a part of the costs in any such action.

26. Holding Over.

Holding over by the Lessee after the termination or expiration of this Lease shall not constitute a renewal or extension of this Lease or give the Lessee any rights in or to the Leased Premises. Lessee agrees to remove all Removable Personal Property prior to the termination or expiration of this Lease; provided, however, that if this Lease is terminated prior to the expiration date, Lessee shall have thirty (30) days after the termination date to remove all Removable Personal Property. Should Lessee fail to remove any Removable Personal Property within the specified time, Lessor shall have the right to remove it and dispose of it or have it stored, all at the Lessee's expense. If for any reason Lessee remains in the Leased Premises after expiration or earlier termination of the Lease Term, then Lessor will suffer injury that is substantial, difficult, or impossible to measure accurately. Therefore, if Lessee remains in the Leased Premises after expiration or earlier termination of the Lease Term, for any reason or no reason, then in addition to any other rights or remedies of Lessor, Lessee shall pay to Lessor, as liquidated damages and not as a penalty, for each month (prorated daily for partial months) during which Lessee holds over after expiration or earlier termination of the Lease Term, a sum equal to: 120% (for the first month or partial month of holding over), 133% (for the second month or partial month of holding over), and 150% (for each subsequent month or partial month of holding over) times the monthly Rent, including Additional Rent, payable under this Lease during the Lease Year preceding expiration or earlier termination of the Lease Term. The Lessor's receipt and acceptance of any compensation owed to the Lessor during any remediation period, or after termination or expiration of the Lease shall not be construed or deemed to be a waiver or cure as to any violation or breach of the Lease.

27. No Partnership.

Nothing in this Lease shall be construed as creating a partnership between the parties hereto.

28. SRPMIC as Lease Administrator.

Both the Lessor and the Lessee acknowledge (i) that the SRPMIC is a federally recognized Indian tribe that exercises governmental authority over the Leased Premises, and (ii) that the SRPMIC has signed a self-governance compact under which the SRPMIC exercises administrative authority over the parties and this Lease (unless and until that authority is retroceded to or rescinded and taken back by the Secretary). No action or inaction of the SRPMIC taken under the authority of the SRPMIC's self governance compact shall limit, bind or restrict the SRPMIC in any way in exercising its governmental (including without limitation its regulatory) authority over the Lessee or the Lease PremisesForce

29. Lessee's Obligations to the United States and SRPMIC.

While the Leased Premises are held in trust by the United States or subject to a restriction against alienation imposed by the United States, all of the Lessee's obligations under this Lease, and the obligations of Lessee's sureties, are to the United States and the Secretary as well as to Lessor.

30. Payments and Notices.

Except as otherwise expressly provided in this Lease, all notices, payments and demands shall be sent to the parties at the address set forth in this Article 30 or to such addresses as the parties may hereafter designate in writing:

For Lessor:

Director, Community Development Department
Salt River Pima-Maricopa Indian Community
10005 East Osborn Road
Scottsdale, AZ 85256

with a copy to:

Office of the General Counsel
Salt River Pima-Maricopa Indian Community
10005 East Osborn Road
Scottsdale, AZ 85256

Payments to the Community:

Salt River Pima-Maricopa Indian Community
Finance Department
10005 East Osborn Road
Scottsdale, AZ 85256

For Lessee:

Corporate Secretary
Salt River Project Agricultural Improvement and Power District
Mail Station PAB 215
P.O. Box 52025
Phoenix, Arizona 85072-2025

with a copy to:
Associate General Manager and Chief Resources Executive
Mail Station PAB 232
P.O. Box 52025
Phoenix, Arizona 85072-2025

For Secretary:

Superintendent, Salt River Agency
Bureau of Indian Affairs
10000 East McDowell
Scottsdale, AZ 85256

Notice, demands and payments shall be (i) delivered by Federal Express or other overnight (one-night) courier service, in which case they shall be deemed delivered on the date of delivery (or when delivery has been attempted twice, as evidenced by the written report of the courier service), (ii) delivered in person or by messenger, in which case they shall be deemed delivered on the date of delivery (or when delivery has been attempted twice, as evidenced by the written

report of the messenger service), or (iii) sent by certified or registered mail, return receipt requested, in which case they shall be deemed delivered seventy-two (72) hours after deposit in the mail or on the date actually received, whichever occurs first. Any party may change its address by notice in compliance with this Article 30. Notice of such a change shall be effective upon delivery as aforesaid. Any party giving a notice may request the recipient to acknowledge receipt of such notice. The recipient shall promptly comply with any such request, but failure to do so shall not limit the effectiveness of any notice. Any attorney may give any notice on behalf of its client.

31. Inspection.

The Secretary and Lessor, and their respective authorized representatives, shall have the right, at any reasonable times during the Lease Term, to enter upon the Leased Premises, or any part thereof, to: (a) ascertain whether Lessee is complying with this Lease; (b) cure Lessee's defaults; (c) inspect the Leased Premises and any construction; (d) perform such tests, borings, and other analyses as Lessor or the Secretary determines may be necessary or appropriate relating to (non)compliance with any Legal Requirement or Environmental Law; or (e) for other reasonable purposes. In entering the Leased Premises, the Secretary, and Lessor, and their respective designees, shall not unreasonably interfere with operations on the Leased Premises; provided, that in an emergency (as reasonably determined by Lessor), including without limitation if Lessor Infrastructure shall be damaged, destroyed or in need of immediate repair, Lessor may, at any time, after reasonable (under the circumstances) attempts to notify Lessee and agree upon necessary action, or without notice if Lessee cannot immediately be reached, enter the Leased Premises and, at Lessee's cost and expense, take any and all action reasonably deemed necessary by SRPMIC.

32. Delivery of Leased Premises.

Upon expiration of the Lease Term or earlier termination of this Lease:

(a) all improvements, fixtures and other property, except Removable Personal Property, shall automatically without further action become Lessor's property (Lessee shall, however, if requested by Lessor execute any instrument or document reasonably required by Lessor to evidence vesting of title to such property in Lessor.);

(b) at Lessor's election, Lessee shall (i) deliver to Lessor possession of the Leased Premises in good condition and repair, reasonable wear and tear and casualty damage (governed by other provisions of this Lease) excepted, without deferred maintenance, and in compliance with all Legal Requirements,or (ii) remove, at Lessee's sole cost and expense, all improvements within the Leased Premises and restore the Leased Premises to substantially the same condition as existed on the Secretary's Approval Date (March 9, 1993) of prior Business Lease B-244 LTRO Docket No. 615-024093 as renewed by SRP's letter dated February 7, 2002.

(c) Lessee shall surrender any right, title, or interest in and to the Leased Premises and deliver such evidence and confirmation thereof as Lessor reasonably requires;

(d) Lessee shall deliver the Leased Premises free and clear of all encumbrances, except (1) encumbrances that existed immediately prior to the Secretary's Approval Date (March 9, 1993) of prior Business Lease B-244 LTRO Docket No. 615-024093 as renewed by SRP's letter dated February 7, 2002., (2) encumbrances expressly consented to in writing by Lessor and SRPMIC and, by the express terms of any such consent, permitted to remain in effect following expiration of the Lease Term or earlier termination of this Lease, and (3) liens that Lessor or any of their agents caused;

(e) Lessee shall assign to Lessor, without recourse, and give Lessor copies or originals of, all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Leased Premises;

(f) the parties shall cooperate to achieve an orderly transition of operations from Lessee to Lessor without interruption, including delivery of such books and records (or copies thereof) as Lessor reasonably requires; and

(g) Lessee shall assign to Lessor, and Lessor shall reimburse Lessee for, all utility and other service provider deposits for the Leased Premises. Notwithstanding anything to the contrary in this Article 32, provided that Lessee is not then in default of an obligation under this Lease, Lessee may remove any Removable Personal Property, but Lessee must do so, if at all, before expiration of the Lease Term or earlier termination of this Lease. Lessee shall repair any damage resulting from or incident to such removal. Removable Personal Property not removed before expiration of the Lease Term or earlier termination of this Lease shall be deemed abandoned and may be dealt with in Lessor's discretion, at Lessee's expense.

(h) If requested by Lessor not sooner than the earlier of (a) three (3) years prior to the scheduled expiration of the Lease Term, or (b) upon the occurrence of a Lessee default under this Lease during or after the ten (10th) Lease Year which is not cured within any applicable cure period, or (c) upon Lessee's exercise of the within Article 3C "early termination", or (d) upon Lessee's failure to timely exercise or decision not to exercise the Renewal Term under the within Article 3A, Lessee shall within thirty (30) days of receipt of Notice from Lessor provide either (1) a payment and performance bond covering faithful performance of Lessee's obligation under clause (b)(ii) of this Article 32 to restore the Leased Premises to substantially the same condition as existed on the Secretary's Approval Date (March 9, 1993) of prior Business Lease B-244 LTRO Docket No. 615-024093 as renewed by SRP's letter dated February 7, 2002, to guarantee such restoration and payment in full of claims of all persons for work performed in connection with such restoration, in form and substance, and issued by an issuer, reasonably acceptable to Lessor, or (2) such other security therefor as may be reasonably acceptable to Lessor.

33. Lease Binding.

This Lease and the covenants, conditions and restrictions hereof shall extend to and be binding upon the successors, heirs, assigns, executors, and administrators of the parties hereto.

34. Interest of Member of Congress.

No member of, or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom, but this provision shall not be construed to extend to this Lease if made with a corporation or company for its general benefit.

35. Force Majeure.

Whenever under this Lease a time is stated within which or by which original construction, repairs or reconstruction of improvements shall be completed, and if during such period a general or sympathetic strike or lockout (but only to the extent such actions affect similar premises at that time and do not result from an act or omission of Lessee), war or rebellion, or some other event occurs or fails to occur beyond Lessee's power to control, despite Lessee's diligent efforts, or if Lessee is unable, despite Lessee's diligent efforts, to obtain any Required Consent, the period of delay so caused ("Unavoidable Delay") shall be added to the period allowed herein for the completion of such work. Unavoidable Delay shall exclude delay caused by Lessee's financial condition, illiquidity, or insolvency, or failure to pay money owed or claimed owed. If Lessee claims Unavoidable Delay it shall notify Lessor and SRPMIC: (a) within 30 days after Lessee knows of any such Unavoidable Delay; and (b) within 10 days after such Unavoidable Delay ceases to exist. To be effective, any such notice must describe the Unavoidable Delay in reasonable detail.

36. Laws and Ordinances of SRPMIC; Sovereign Immunity.

A. The Leased Premises are located within the sovereign and jurisdictional boundaries of the Salt River Pima-Maricopa Indian Community, and are subject to the statutes, laws, rules, orders, regulations, policies, procedures, standards, taxes, ordinances and general police powers (including without limitation judicial powers) of SRPMIC. Lessee shall comply with all statutes, laws, rules, orders, regulations, policies, procedures, standards, taxes and ordinances of SRPMIC currently in place or hereafter from time to time adopted by SRPMIC, all as the same may be adopted, amended, modified, replaced or superseded from time to time. Without limiting the generality of the foregoing, Lessee acknowledges and agrees that:

i. All persons occupying and/or doing business at the Leased Premises are required to obtain a SRPMIC Business License and Tax Permit pursuant to Chapter 15, Section 15-21 and other provisions of SRPMIC's Code of Ordinances;

ii. All persons occupying and/or doing business at the Leased Premises must use SRPMIC's solid waste disposal provider pursuant to SRPMIC's Code of Ordinances;

iii. SRPMIC has exclusive development, zoning and building permit authority over the Leased Premises;

iv. Construction and development of the Leased Premises and any maintenance, repairs and/or alterations thereto are subject to all applicable SRPMIC legal requirements and requirements imposed by this Lease; and

v. All construction plans, permits and applications for permits must be submitted to and obtained from SRPMIC.

B. Lessee, for itself and its employees, agents, sublessees and other successors and assigns, and their respective employees, agents, subsublessees and other successors and assigns, agrees to abide by all Legal Requirements of SRPMIC now in force and effect, or those that may be hereafter in force and effect, and recognizes that the Salt River Pima Maricopa Indian Community has reserved to itself all of its governmental authority, and its right to exercise its dominion and control over the transactions and activities on the land subject to this Lease.

C. Lessee acknowledges that SRPMIC is a federally recognized Indian tribe, and is generally immune from legal action. Nothing in this Lease (including without limitation any citation to Arizona or other state law), or in any related agreement, consent, exhibit, document or undertaking, and no action by SRPMIC in furtherance of its regulatory authority over Lessee and the Leased Premises: (i) shall limit, qualify, diminish, waive, impair or otherwise adversely affect the sovereignty, adjudicatory and regulatory jurisdiction, or sovereign immunity of the Salt River Pima-Maricopa Indian Community, or any of its entities, enterprises, affiliates or subdivisions, or the jurisdiction exercised by the Salt River Pima-Maricopa Indian Community Courts, except only if, as and to the extent expressly agreed to in writing by SRPMIC; (ii) is or shall be construed as consent or agreement by Lessor or SRPMIC to the jurisdiction of any federal, state or municipal court, except only if, as and to the extent expressly agreed to in writing by SRPMIC; or (iii) shall be construed as or result in an application of any state statutory or regulatory law or common law or police power (including without limitation judicial power) to (A) Lessor or SRPMIC, or (B) any right, title, interest, power, consent, authority, obligation or liability of Lessor or SRPMIC, or (iii) the immunity or sovereignty of SRPMIC, except only if, as and to the extent expressly agreed to in writing by SRPMIC.

37. <u>Arbitration.</u>

A. Any controversy or claim between Lessor and Lessee arising out of or relating to this Lease, or the breach thereof, except (i) claims for money damages in a sum of less than Twenty-five Thousand and No/100 Dollars ($25,000.00), (ii) actions for *mandamus*, an injunction or an order for specific performance, and (iii) claims that a lien exists or ought to exist on Lessor's interest in the Leased Premises, shall be settled by arbitration administered by the American Arbitration Association (or such other private service as may be mutually agreed to by Lessor and Lessee) in accordance with the Commercial Arbitration Rules of the American Arbitration Association (or such other rules as may be adopted, or as such rules may be modified, by agreement between Lessor and Lessee), except as such rules may contemplate state court jurisdiction, and judgment on the award rendered by the arbitrator(s) may be entered in United States District Court for the District of Arizona. The place of arbitration shall be within, or within fifty (50) miles of, the jurisdictional boundaries of the Salt River Pima-

Maricopa Indian Community. The United States Arbitration Act (Title 9 United States Code) shall govern the interpretation, enforcement, and proceedings pursuant to this arbitration clause. Reference is made to 25 U.S.C. § 416a.(c), the terms of which are incorporated herein by this reference. Except as the parties may agree otherwise, any such binding arbitration shall be conducted, upon the request of either Lessor or Lessee, before three (3) arbitrators designated by the American Arbitration Association. Any arbitrators designated to act under this Lease shall make their award in strict conformity with said rules and this Lease, and shall have no power to depart from or change any of the provisions thereof except as provided herein or as the parties may expressly agree otherwise in writing.

B. Jurisdiction of any controversy or claim between Lessor and Lessee arising out of or relating to this Lease, or the breach thereof, involving (i) claims for money damages in a sum of less than Twenty-five Thousand and No/100 Dollars ($25,000.00), or (ii) actions for *mandamus*, an injunction or an order for specific performance, shall lie exclusively in SRPMIC Court. Claims that a lien exists or ought to exist on Lessor's, any Allotted Landowner's or the United States' interest in the Leased Premises are barred, Lessee, for itself and all Persons now or hereafter claiming rights or interests in or related to the Leased Premises through Lessee, acknowledging again that no real property within the sovereign and jurisdictional boundaries of SRPMIC, including without limitation the Leased Premises, may be liened, including but not limited to mechanics' and materialmen's liens, equitable liens, deeds of trust or mortgages.

C. Lessee, for itself and any person claiming through Lessee, including without limitation Sublessees and Approved Encumbrancers, hereby irrevocably waives any right of appeal under 25 CFR Part 2 (Appeals From Administrative Actions) or any other federal regulation or statute, from, arising out of or relating to any determination, decision, action, inaction or other matter arising out of or relating to this Lease or the Leased Premises, and any such appeal shall be barred. Arbitration or other action expressly provided for in this Article 37 shall be the sole, exclusive and final means of resolving any controversy, claim or other matter arising out of or relating to this Lease.

38. Employment and Procurement Preference.

Without limiting other provisions of this Lease, Lessee acknowledges, understands and agrees that Chapter 17, Section 17-5.1(a) of SRPMIC's Code of Ordinances requires that Lessee comply with the Indian employment and procurement preference provisions of this Article 38. Generally (and without limiting said provisions), the following provisions impose requirements relating to (i) hiring, promotion and training of qualified members of SRPMIC and qualified members of other federally recognized Indian tribes, and (ii) buying materials, goods and services from business enterprises owned by or which are divisions of SRPMIC, and (iii) buying materials, goods and services from Certified Community - Member owned Businesses. Lessee shall make its own independent investigation and inquiry as to any and all such employment and procurement preference matters and Lessee's compliance therewith in connection with its construction of, and intended business operations to be conducted at, the Leased Premises, as well as all other performance required by Lessee under this Lease.

A. Employment Preference. Qualified members of SRPMIC and qualified members of other federally recognized Indian Tribes shall receive preferences in hiring and in all other aspects of employment, including without limitation promotions, in connection with construction and operation of the improvements to be developed, and the businesses to be located, on the Leased Premises as contemplated by this Lease.

(1) Lessee shall notify the SRPMIC Jobs and Underfill Coordinator of the Human Resources Department of all job openings for which the position is permanently based or located within the Leased Premises. All required qualifications for such job openings shall also be reported to SRPMIC.

(2) Lessee shall not employ or promote any person who is not a member of SRPMIC without giving the Community Jobs and Underfill Coordinator of the Human Resources Department of SRPMIC three (3) business days' prior written notice, together with the required qualifications for any open position, so that a qualified member of SRPMIC may be referred for employment or promotion.

(3) The purpose and intent of the employment preference provisions of this Article 38 are that if there are two (2) or more persons substantially equally qualified for a job opening, and one of such persons is a member of SRPMIC, or a member of another federally recognized Indian tribe, the qualified person who is a member of the SRPMIC, or a member of another federally recognized Indian tribe, shall be selected. If no such qualified member of SRPMIC or another federally recognized Indian tribe, has applied for the job opening, any other qualified person may be selected for employment. It is not the intent and purpose of this Article 38 to establish quotas. Further, Lessee shall not be required to discharge existing employees in order to create job openings, it being the purpose and intent hereof that the employment preference provisions of this Article 38 apply only with respect to job openings and newly created positions.

(4) Lessee shall report on a quarterly basis the following employment information to the Community Jobs and Underfill Coordinator of the Human Resources Department of SRPMIC no later than January 15, April 15, July 15, and October 15 of each year in separate categories: a) the initials of the employees that are designated a SRPMIC member, or a member of a federally recognized Indian tribe, b) employee title or position, c) the total number of individuals that are employed by the organization (on the Leased Premises) segregated into each pay grade, and d) the number of promotions/demotions, job reclassifications, terminations, merit increases and the number of denied merit increases that occurred at the organization (on the Leased Premises) for the past quarter. Lessee shall provide additional information, such as employee name and general wage information upon official written request of the SRPMIC.

(5) In the event it is determined by the Director of the Human Resources Department of SRPMIC that Lessee has committed a violation of a provision of this Article 38(A)(1) or (2), such a violation shall not be considered a breach or default of this Lease unless it has been determined in a procedure under Article 37 hereof that the violation is part of a pattern or practice of such violations; rather, in such event, a fine, in an amount not to exceed Two Thousand Five Hundred and No/100 Dollars ($2,500.00) per occurrence, may be imposed upon Lessee, which fine shall be paid to SRPMIC to support job training.

B. Procurement Preference. SRPMIC shall semi-annually notify Lessee, in writing, of Certified Community - Member owned Businesses offering goods and/or services, including without limitation the providing of services of any kind with respect to the construction and operations of buildings, grounds or equipment upon the Leased Premises. It shall thereafter be the policy of Lessee in connection with the improvements to be developed on the Leased Premises that prior to contracting with any business enterprise which is not a Certified Community - Member owned Businesses for services with respect to the construction and operation of the Leased Premises, including without limitation the buildings, grounds or equipment, Lessee shall give to the **Community Development Department Director, Salt River Pima-Maricopa Indian Community, 10005 E. Osborn Road, Scottsdale, Arizona 85256** the same notice of contracting opportunity and required qualifications as is given by Lessee in the ordinary course of business.

(1) The purpose and intent of this subsection is to provide that if there are two (2) or more substantially equally qualified bidders or contractors offering goods or services, and one of such businesses is a Certified Community - Member owned Businesses, then the Certified Community - Member owned Businesses shall be selected. If no such Certified Community - Member owned Businesses has responded, any other qualified business may be selected for the providing of the good or service. It is not the intent and purpose of this Article 38 to establish quotas.

(2) Lessee shall report the following procurement information to the Community Development Department on January 1 and July 15 of each year designating the following: 1) the number of contracts awarded for goods and services, 2) the number of Certified Community - Member owned Businesses who bid on projects, including what category of goods or services these bids occurred in, and 3) the number of Certified Community - Member owned Businesses awarded a contract by the Lessee.

(3) In the event it is determined by the Director of the Community Development Department that the Lessee has committed a violation of a provision of this Article 38B, such a violation shall not be considered a breach or default of this Lease unless it has been determined in a procedure under Article 37 hereof that the violation is part of a pattern or practice of such violations; rather, in such event, a fine, in an amount not to exceed Two Thousand Five Hundred and No/100 Dollars ($2,500.00) per occurrence, may be imposed upon Lessee, which fine shall be paid to SRPMIC to support job training and enterprise.

C. SRPMIC Suppliers. Lessee agrees to specify and purchase, and require its contractors, subcontractors and material suppliers to specify and purchase, from Salt River Sand & Rock Company, Phoenix Cement Company, or other business enterprises owned by or which are divisions of SRPMIC as designated in writing by SRPMIC ("SRPMIC Suppliers") (1) sand and gravel, (2) cement, (3) asphaltic paving materials, (4) fly ash, (5) concrete, and (6) landfill services, and such other goods and services which can be supplied by SRPMIC Suppliers as designated in writing by SRPMIC (referred to below in this Article 38C as the "product" and/or "services") in connection with the improvements to be developed on the Leased Premises to the extent and on the condition that quantity, quality, specifications, cost and availability of the product available from SRPMIC Suppliers are equivalent to or better than those which are required by Lessee and available from other suppliers. The contracts

under which the product or services are purchased from SRPMIC Suppliers shall provide equivalent or better terms and conditions, including but not limited to bonds, penalties, and enforceability, as would be available in a contract for the purchase of equivalent product or services from other suppliers. In the event a SRPMIC Supplier fails to comply in all material respects with the terms and conditions of a contract for the sale of product or services entered into pursuant to this Article 38C and is so notified in writing by Lessee or by Lessee's contractor or subcontractor specifying the lack of compliance, and fails to promptly thereafter cure said failure to comply, Lessee's contractor's or subcontractor's obligation to purchase product or services from said SRPMIC Supplier under said contract shall cease. Any dispute arising under this Article 38C shall be subject to binding arbitration under the provisions of Article 37. No single violation of this Article 38C shall be considered a breach or default of this Lease but shall be subject to a fine on a finding of liability by an arbitrator under the provisions of Article 37 hereof in an amount equal to ten percent (10%) of the contract price but in no event more than Fifty Thousand and No/100 Dollars ($50,000.00) per contract, to be paid by Lessee to SRPMIC to support job training.

D. Acknowledgement. Lessee acknowledges that one of the basic factors motivating Lessor to enter into, and SRPMIC's and the Secretary's consent to, this Lease, is the substantial and persistent unemployment and underemployment that exists within SRPMIC, and the expectation that Lessee's development of the Leased Premises will provide more than a temporary alleviation of such unemployment and underemployment. Lessee makes the covenants set forth in this Article 38 for itself, and for its contractors (and their subcontractors and material suppliers), agents, and Sublessees and other successors and assigns.

39. Validity.

This Lease and any amendments to this Lease shall not be valid or binding upon either Lessor or Lessee until approved by the Secretary.

40. Indemnification.

Lessee shall indemnify and hold harmless Lessor and the United States, and their respective members, officers, agents and employees, from and against any and all loss, damage or injury of any kind whatsoever to person or property of Lessee or any other person whomsoever, caused by Lessee's use of the Leased Premises or by any defect in any structure or other improvement erected thereon, or arising from injury, accident, fire or other casualty on the Leased Premises.. Lessee hereby waives any and all claims against Lessor and the United States arising from the condition of the Leased Premises and agrees to hold Lessor and the United States free and harmless from any liability whatsoever for any loss, damage or injury arising from Lessee's use of the Leased Premises, together with all costs and expenses in connection therewith. Lessee expressly acknowledges, understands and agrees that the provisions of this Article 40 shall survive the expiration of the Lease Term or earlier termination of this Lease. For purposes of this Article 40, "Lessee" shall mean and include Lessee, and their respective employees, representatives, agents, contractors, invitees and all persons holding under Lessee, and the respective managers, directors, officers and members of each of the foregoing; and the term "Lessor" shall mean and include the past, present and future members, employees,

representatives, and agents of the SRPMIC and /or owners of the Leased Premises and their respective beneficiaries, trustees, employees, agents, successors and assigns.

41. Property Insurance; Restoration.

A. Lessee shall, at its sole expense, during the Lease Term, maintain Property Insurance (or its then reasonably available equivalent). Without limiting other provisions of this Lease (including without limitation Article 13), all insurance policies this Lease requires shall be issued by carriers that: (a) have a financial strength and size rating and category of "A XII" or better based on the latest edition of Best's Insurance Reports—Property/Casualty Edition (or its equivalent if such publication ceases to be published) according to AM Best (b) are lawfully doing business in the State of Arizona. Lessee may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Leased Premises, which amount(s) shall equal or exceed the amount(s) required by this Lease and shall not be reduced for claims made for other properties, and (ii) such policy otherwise complies with this Lease.

B. All insurance policies this Lease requires shall contain (by endorsement or otherwise) the following provisions (in addition to any provisions required elsewhere in this Lease, including without limitation in Article 13):

(1) Property Insurance policies shall name Lessee as loss payee as its interest may appear. Notwithstanding anything to the contrary, all Property Insurance proceeds shall be paid and applied as this Lease provides.

(2) All policies shall be written as primary policies not contributing to or in excess of any coverage that Lessor may carry unless provided by self-insurance.

(3) The insurance carrier shall give Lessor prior notice of cancellation or nonrenewal consistent with the requirements of Article 13 unless provided by self-insurance.

C. On the Term Commencement Date, and no later than 20 days after any liability insurance required by Article 13 ("Liability Insurance") or Property Insurance expires or is cancelled, Lessee shall deliver to Lessor and the Secretary certificates of insurance or letter of self-insurance evidencing Lessee's maintenance of all Liability Insurance and Property Insurance this Lease requires.

D. Each policy of Property Insurance shall contain a provision, or endorsement, by which the carrier agrees to waive rights of recovery by way of subrogation against either party to this Lease for any loss such policy covers (a "Waiver of Subrogation"), if not already in the policy. To the extent, and only to the extent, that Property Insurance includes a Waiver of Subrogation, the parties release each other, and their respective authorized representatives, from any claims for damage to any person or the Leased Premises that are caused by or result from risks insured against under such insurance policies.

E. If either party becomes aware of any Casualty or any actual, threatened, or contemplated condemnation, then such party shall promptly notify the other.

F. If any Casualty occurs, then: (a) no Rent shall abate; (b) this Lease shall not terminate or be impaired; and (c) Lessee shall undertake Restoration with reasonable promptness regardless of cost.

G. Lessee shall have the sole right and authority to adjust any insurance claim.

H. "Self-insurance" as referenced in this Article 41 is subject to the terms and conditions for self-insurance as contained in the within Article 13. Proof of insurance for this Article 41 shall be documented by Lessee to the SRPMIC as required in the within Article 13.

42. Reserved

43. Plans and Designs

Attached hereto as Exhibit "B1" is a copy of the As-Built Site Plan. Lessor and Lessee acknowledge that additional development of the Leased Premises may be desired or necessary. In such an event, a copy of the Conceptual Site Plan for additional development of the Leased Premises will be attached as Exhibit "B2". Lessor and the Lessee acknowledge that the Conceptual Site Plan is tentative and a final site plan will be submitted to Lessor for their approval prior to any construction on the Leased Premises. Following approval by Lessor of the final site plan and before any comprehensive plans for building improvements are submitted to Lessor, Lessee shall submit to Lessor for approval total site grading, drainage, utility, roadway, signage and any other required plans. Before beginning any construction whatsoever on the Leased Premises, Lessee shall submit to Lessor comprehensive plans for the improvements then proposed, which may be submitted in phases. Lessor does not, however, assume any responsibility whatsoever for the detailed design of any structure of structures, or for any violation of any applicable Legal Requirements. No material change will be made in plans or buildings after original approval without the further approval of Lessor. Lessee shall be responsible for securing all necessary building, use and other permits.

44. Title Insurance.

A. Title Insurance. At Lessee's option, prior to or contemporaneous with the Term Commencement Date, Lessee may obtain, at its expense, a leasehold policy of title insurance, assuring the conveyance of a valid leasehold interest in the Leased Premises to Lessee, and insuring Lessee's interest in the Leased Premises in a sum deemed necessary by Lessee. Any and all Lessee due diligence, including without limitation any Lessee inquiry into the status of title to the Leased Premises, the availability of utilities, applicable Legal Requirements, or any other matter, shall occur prior to the Term Commencement Date.

B. Condition of Leased Premises. Lessee acknowledges and agrees that (i) it has had an opportunity to inspect the Leased Premises and investigate all matters relevant to Lessee's proposed development on the Leased Premises, (ii) except as expressly set forth

herein or in the Development Agreement, neither Lessor nor SRPMIC has made any representations regarding the condition of the Leased Premises or Lessee's proposed development on the Leased Premises, and Lessee is entering into this Lease in reliance solely and exclusively upon its own independent investigations, (iii) Lessee accepts the Leased Premises "as is," with all faults and defects, whether latent or patent, or known or unknown, and (iv) in no event shall Lessee, except as may be expressly provided in this Lease, have the unilateral right to terminate this Lease after the Term Commencement Date. Without limiting other provisions of this Lease, Lessee, for itself and all Sublessees, Approved Encumbrancers, and other successors and assigns of Lessee, and all of their officers, directors, shareholders, members or other owners, employees, agents and contractors, hereby fully and irrevocably releases and discharges Lessor, all Spokespersons, and SRPMIC, and their employees, agents, officers, directors, members and attorneys, from any and all claims, known or unknown, foreseeable or unforeseeable, past, present or future, arising from or in any way related to the condition of the Leased Premises.

45. Quiet Enjoyment.

Lessor warrants to Lessee as follows:

A. That Lessor is the owner of equitable title to the Leased Premises, with fee title held in trust by the United States;

B. Lessor has good right to lease the Leased Premises to Lessee for the purposes expressly permitted hereunder and for the Lease Term, subject to the approval of the Secretary; and

C. That if Lessee punctually and otherwise strictly in accordance with the terms and conditions of this Lease performs the obligations herein contained to be performed by Lessee, and so long as this Lease has not been terminated, Lessee shall have and enjoy, during the Lease Term, subject to the terms of this Lease, the quiet and undisturbed use, possession and enjoyment of the Leased Premises without molestation, hindrance, or disturbance by or from Lessor or anyone claiming by or through Lessor or having title to the Leased Premises paramount to Lessor. Lessor shall not grant to any other party the privilege or right to use the Leased Premises or any other property in proximity thereto, controlled by Lessor, for purposes that cause or result in interference with Lessee's right to use the Leased Premises in accordance with this Lease. Such "property in proximity thereto" shall be deemed to be property up to three hundred (300) feet from the exterior of the lease boundaries, excluding adjacent i) public rights of way, ii) public easements, iii) approved cross access easements, and iv) any SRPMIC approved infrastructure exsiting prior to the execution date of this Lease. Lessor shall indemnify Lessee and hold harmless from any and all claims, demands, costs and liabilities directly or indirectly resulting from or caused by any third party claiming any title to or right of possession of the Leased Premises or any right to receive any portion of the rent to be paid by Lessee hereunder.

46. Severability.

If any term or provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable (except those which would substantially alter Lessee's obligations to develop the Leased Premises or pay Rent in accordance with this Lease), the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby. Each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

47. Multiple Counterparts.

This Lease may be executed in any number of counterparts, and when so executed, all such counterparts shall constitute a single instrument binding upon all parties hereto notwithstanding the fact that all parties are not signatory to the original or to the same counterpart. The parties hereto agree that the signature pages from one or more counterparts may be removed from such counterparts and such signature pages may be attached to a single instrument so that the signature of all parties may be physically attached to a single counterpart of this Lease.

48. Companies Bonding and Insuring.

All corporate surety bonds provided by Lessee in accordance with the provisions of this Lease shall be furnished by companies holding Certificates of Authority from the Secretary of the Treasury as acceptable sureties of federal bonds.

49. Estoppel Certificates.

Lessor and Lessee shall, within thirty (30) days after receipt of a written request therefor from the other, the other's surety, or an Approved Encumbrancer, and at no cost or expense to the party requesting the same, execute, have acknowledged and deliver to the requesting party a statement in writing certifying, if true and correct (and if not true and correct, so stating and specifying in reasonable detail the reason the statement is not true and correct): (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, identifying such modifications and certifying that this Lease, as modified, is in full force and effect); (b) the dates to which rentals hereunder have been paid; (c) that the party delivering the statement is not in default under any term, covenant or provision of this Lease, and that the other party (to the delivering party's knowledge) is not in default under any term, covenant or provision of this Lease (or, if a party is in default, specifying each such default); (d) the notice address of the delivering party; and (e) such other statements reasonably requested in the request (and customarily requested in similar requests) as may be true and correct. Lessor and Lessee acknowledge that any such statement so delivered may be relied upon by any third party dealing with Lessor, Lessee, SRPMIC or the Secretary, this Lease or the Leased Premises.

50. Environmental and Cultural Protection Requirements.

Lessee shall strictly comply with all SRPMIC and applicable federal Environmental Laws. Lessee is responsible for any costs incurred in effecting such compliance with Environmental Laws regarding this Lease, and for securing all necessary permits for any activity approved under the terms of this Lease. Environmental mitigation measures required by any Governmental Authority having regulatory jurisdiction over the Leased Premises shall be strictly adhered to by Lessee.

A. Cultural Resources. Lessee acknowledges the particular relevance and applicability of federal and SRPMIC laws pertaining to the protection and preservation of historic and archaeological resources on Indian lands, which are widespread with this boundaries of SRPMIC. Such laws include, without limitation, the National Historic Preservation Act of 1966, the Archaeological Resources Protection Act of 1979, the Native American Graves Protection and Repatriation Act of 1991, and SRPMIC's Antiquities Ordinance of 1986, SRO 102-86 (Chapter 19, Section 19-1 through 19-10 of the SRPMIC Code of Ordinances). Lessee agrees to strictly comply with such laws in connection with its development and use of the Leased Premises and otherwise, and further agrees to notify CP immediately upon the discovery or reasonable suspicion of the presence of archaeological resources within the Leased Premises.

Lessee further acknowledges and accepts sole financial responsibility for all survey, testing, and/or data recovery necessary to ensure compliance with the aforementioned legislation, which must be accomplished as a condition precedent to approval of this Lease by SRPMIC. Any subcontractor hired by Lessee must secure appropriate permits from the CP Staff Archaeologist prior to conducting work.

B. Definitions.

(1) "Archaeological Compliance" means adhering to the appropriate level of survey, testing, and/or data recovery set forth under the implementing regulations of the National Historic Preservation Act of 1966, as amended (36 CFR § 800).

(2) "Archaeological Resource" means any material remains of past human life or activities which are of archaeological interest and shall include, but not be limited to: pottery, basketry, bottles, weapons, weapon projectiles, stone tools, structures or portions of structures, pit houses, canals, rock paintings, rock carvings, intaglios, graves, human skeletal remains, or any portion or piece of any of the foregoing items.

(3) "CP" means SRPMIC's division(s) responsible from time to time for cultural resources.

(4) "EPNR" means SRPMIC's division(s) responsible from time to time for environmental protection and management of natural resources.

(5) "Environmental Laws" means any SRPMIC or applicable federal environmental statute, common law duty, regulation, policy, procedure, standard or ordinance now in effect or that may be promulgated in the future, as such statutes, regulations, standards

and ordinances may be amended from time to time, that deal with the regulation or protection or pollution of the environment, including the ambient air, groundwater, surface water, and land use, including sub-strata land, and including but not limited to the following: the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Clean Water Act, 33 U.S.C. § 1251 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the National Environmental Policy Act ("NEPA"); the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"); and any amendments to or replacements of the foregoing.

C. Hazardous Materials.

(I) Definitions.

(a) "Hazardous Materials Laws" means: all laws, ordinances, rules, decrees, orders, standards, procedures, policies or regulations of any federal or SRPMIC governmental authority relating to hazardous substances, hazardous materials, hazardous waste, or toxic substances, including but not limited to Environmental Laws, and any amendments to the foregoing.

(b) "Hazardous Materials" means: substances that, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious, irreversible, or incapacitating illness. These include, without limitation: (1) hazardous materials, hazardous wastes, and hazardous substances as those or similar terms are defined under any Environmental Laws; (2) petroleum and petroleum products, including crude oil and any fractions thereof; (3) natural gas, synthetic gas, and any mixture thereof; (4) asbestos and/or any material which contains any hydrated mineral silicate, including but not limited to chrysolite, amosite, crocidolite, tremolite, anthopylite and/or actinolite, whether friable or non-friable; (5) PCBs or PCB-containing materials or fluids; (6) radon; (7) explosives; (8) radioactive materials; (9) toxic substances; (10) poly-chlorinated biphenyls and similar materials; and (11) any other substance or material with respect to which any federal, state, local or SRPMIC Environmental Laws or governmental agency requires environmental investigation, monitoring, regulation or remediation.

(c) Any reference in this Lease to a specific statute, common law duty, regulation, policy, procedure, standard or ordinance includes any amendment thereto or any successor statute, common law duty, regulation, policy, procedure, standard or ordinance.

(2) Use. Lessee shall not allow any Hazardous Material to be used, generated, released, stored or disposed of on the Leased Premises, except: (i) such Hazardous Materials as are (a) used in the construction, repair or maintenance of the Leased Premises, (b) used in normal commercial or retail applications, or (c) sold as retail consumer products; (ii) such use or other activity as is in strict compliance with the provisions of this Article 50; and

(iii) if Lessee gives prior notification of such use to EPNR, which may require periodic reporting by Lessee of such use.

(3) Compliance with Laws. Lessee's use of and other activities involving Hazardous Materials on the Leased Premises shall be in strict compliance with all Hazardous Materials Laws and Environmental Laws. Lessee shall obtain and maintain in full force and effect all permits, licenses and other governmental approvals required for Lessee's use of Hazardous Materials on the Leased Premises under such Hazardous Materials Laws and shall comply with all terms and conditions thereof. Upon request, Lessee shall deliver to SRPMIC copies of, or allow SRPMIC to inspect, all such permits, licenses and approvals. Lessee, at Lessee's sole costs and expense, shall perform any monitoring, investigation, clean-up, removal and other remedial work (collectively, "Remedial Work") required as a result of any release or discharge of Hazardous Materials on the Leased Premises or any violation of Hazardous Materials Laws by Lessee, any Sublessee, or any of their agents, employees or contractors. Lessee shall bear all costs and expenses incurred in connection with or for any required monitoring, investigation, clean-up, removal or other remedial work (including without limitation mitigation and remeditation), using only qualified licensed contractors acting strictly in accordance with then current best management practices approved by EPNR for the contaminant involved. All Material Safety Data Sheets ("MSDS") must be kept upon the Leased Premises and made available for inspection upon demand by SRPMIC. Lessee will promptly supply MSDS to EPNR upon the receipt of the MSDS sheets from the supplier.

(4) Compliance with Insurance Requirements. Lessee shall comply with the requirements of its insurers regarding the use of Hazardous Materials at the Leased Premises and with such insurers' recommendations based upon prudent industry practices regarding management of Hazardous Materials.

(5) Notice; Reporting. Lessee shall notify EPNR immediately (or no later than 9 a.m. the next business day if the incident occurs on a weekend or holiday) by fax ((480) 362-7584) and telephone (EPNR Manager: (480) 362-7625 or (480) 362-7609) confirmed by written notice to **Salt River Pima-Maricopa Indian Community, ATTN: EPNR, 10005 E. Osborn Road, Scottsdale, Arizona 85256** within two (2) days after any of the following: (a) a release or discharge by Lessee or any other Person of any Hazardous Materials at or near the Leased Premises, and in the event of such release or discharge **in addition to the foregoing fax, telephonic and written notices, Lessee shall immediately call 911 (or its successor) and identify the incident as occurring on the Salt River Pima-Maricopa Indian Community**; (b) Lessee's receipt of any order of a governmental agency requiring any Remedial Work pursuant to any violation by Lessee or any other Person of Hazardous Materials Laws impacting or potentially impacting the Leased Premises or any other land within the sovereign and jurisdictional boundaries of SRPMIC; (c) Lessee's receipt of any notice of violation by any other Person of any Hazardous Materials Law impacting or potentially impacting the Leased Premises or any other land within the sovereign and jurisdictional boundaries of SRPMIC, or Lessee's receipt of any notice of violation by Lessee of any Hazardous Materials Law; (d) Lessee's receipt of notice of any claims made by any third party against Lessee or any other Person relating to any loss or injury resulting from the generation, release, storage or disposal at the Leased Premises by Lessee or any other Person of Hazardous Materials; or (e) delivery to the

Leased Premises of Hazardous Materials from any source, to the extent the same is required to be reported pursuant to the manifest requirements of 40 CFR § 261.

(6) Termination; Expiration. Upon the termination or expiration of this Lease, Lessee shall remove from the Leased Premises any equipment, improvements or storage facilities installed by Lessee and utilized by Lessee in connection with any Hazardous Materials and shall clean up, detoxify, repair, remediate, and otherwise restore the Leased Premises to a condition such that Hazardous Materials generated, released, stored or disposed of by Lessee on the Leased Premises, if any, are not present in concentrations requiring Remedial Work under Hazardous Materials Laws. Without limiting any other requirement of this Lease, Lessee, at Lessee's sole cost and expense, shall strictly comply with all SRPMIC and applicable federal regulations in connection with any work referred to in the immediately preceding sentence, using only qualified licensed contractors acting strictly in accordance with then current best management practices approved by EPNR for the contaminant involved.

D. Water Pollution Prevention.

(1) Requirements. Lessee shall comply with all Phase II stormwater requirements, including without limitation obtaining National Pollutant Discharge Elimination System ("NPDES") permits. Lessee shall submit a Notice of Intent, in form and substance satisfactory, to United States Environmental Protection Agency ("USEPA") and the EPNR Water Quality Program, describing to the satisfaction of the regulatory authorities Lessee's proposed control measures. Once construction of the project is complete, Lessee shall submit a Notice of Termination to the USEPA and to the EPNR Water Quality Program. The EPNR Water Quality Program is charged with performing inspections on construction sites as needed to ensure Lessee's compliance with best management practices approved by EPNR.

(2) Discharge or Spillage. Lessee's approved activities shall be performed by methods that are designed to preclude or prevent the discharge or accidental spillage of pollutants, as defined by the Clean Water Act (33 U.S.C. § 1362(6)), into flowing or dry watercourses, lakes, ponds, wetlands, or any other waters, or underground water sources within the Leased Premises. Lessee shall not deposit or stockpile excavated, construction or industrial materials or debris within fifty (50) feet of any watercourses within the Leased Premises.

(3) Stormwater Runoff. Lessee agrees to design and operate its business or approved activity in such a way that stormwater runoff is contained and controlled as required by SRPMIC. Lessee shall operate consistently with current and approved best management practices approved by EPNR on site. Lessee shall comply with all applicable Environmental Laws pertaining to runoff, including but not limited to all applicable provisions pertaining to industrial stormwater runoff in 33 U.S.C. § 1342(p). Lessee shall submit to EPNR for review and approval Lessee's stormwater pollution prevention plan, together with all permits, designs, and approvals required by applicable laws or regulations.

E. Solid Waste Disposal; Storage of Industrial Liquids.

(1) Solid Waste. It shall be Lessee's responsibility to arrange for disposal of all solid waste (as defined by 42 U.S.C. § 6903(27)) generated by Lessee or generated within the Leased Premises in a manner consistent with SRPMIC and applicable federal Environmental Laws, including but not limited to 42 U.S.C. § 6901 et seq. and applicable CFR provisions. Open dumping, burial, or stockpiling of solid waste within the Leased Premises is strictly prohibited. Lessee shall contain organic solid waste subject to decomposition so as to prevent access by birds, animals or other disease vectors, and shall arrange for haulage of all solid waste no less than once per week to the Salt River Commercial Landfill or its successor. Lessee shall not suffer or permit any waste generated off of the Leased Premises to enter, or be stored or disposed of on, the Leased Premises.

(2) Storage of Industrial Liquids. In the event SRPMIC and any Governmental Authority with jurisdiction all give explicit written approval for Lessee to store regulated substances in above ground or underground storage tanks, Lessee shall comply strictly with all applicable (including without limitation SRPMIC) Environmental and Hazardous Materials Laws and all implementing regulations thereto. Any proposed construction of such storage tanks by Lessee within the Leased Premises shall be disclosed to Lessor and EPNR prior to the execution of this Lease. Lessee shall provide to EPNR tank design, construction plans, emergency control designs, and other documents and information required by EPNR, prior to construction or installation of any above ground or underground storage tanks. In addition to the foregoing, no storage tank shall be located within fifty (50) feet of any waterway, dry or flowing, and all such storage tanks shall be placed within separate secondary protective, impermeable containment whose performance equals or exceeds such liner as required by 40 CFR § 258.40. Lessee shall submit to EPNR all underground storage tank spill mitigation plans and pollution prevention measures, as well as compliance review.

F. Indemnification.

(1). Lessee shall protect, indemnify, defend and hold harmless SRPMIC and the Secretary for, from and against any and all losses, claims, costs, fees, expenses, suits, damages, attorneys fees, judgments, actions, investigation costs, remediation costs, consulting fees, proceedings and liabilities in any way arising out of or from or in connection with:

(a) any breach by Lessee of any provisions of this Article 50; or

(b) the use, generation, storage, release, disposal or transportation of Hazardous Materials by Lessee, any Sublessee or either of their agents, contractors, employees, or licensees; or

(c) release, or disposal of any Hazardous Material at or from the Leased Premises; or

(d) the operation or violation of any Environmental Law at the Leased Premises; or

(e) any environmental claim in connection with the use of the Leased Premises.

(2) The indemnification and waiver shall be binding upon the successors and assigns of Lessee and inure to the benefit of the SRPMIC and the Secretary and their directors, officers, employees and agents, and successors and assigns.

G. Entry and Inspection. SRPMIC, the Secretary and their agents, employees and contractors, shall have the right, but not the obligation, to enter the Leased Premises at any time, to inspect the Leased Premises and Lessee's compliance with the terms and conditions of this Article 50. The foregoing notwithstanding, SRPMIC, the Secretary and their agents, employees and contractors shall have the right without prior notice to Lessee to inspect the areas of the Leased Premises that are open to the public at any time the areas are open to the public. Any such entry shall be conducted in a manner that minimizes disruption of Lessee's business on the Leased Premises.

H. Survival of This Section. Lessee agrees that the obligations of Lessee, and of its successors and assigns, under this Article 50 shall survive the expiration of the Lease term or earlier termination of this Lease.

51. Short Form of Lease.

Upon the request of Lessee or Lessor, the parties shall enter into a Short Form of Lease which shall contain only such language as is necessary to meet the requirements for recording at the appropriate recording offices and such other language as the parties agree to include therein.

52. Security Personnel.

Lessee and may employ unarmed security personnel to patrol their respective leasehold premises within the Leased Premises as may be required by their business operations. In the event that Lessee require, by virtue of their general policy and business circumstances, that their security personnel be armed, they may request the proper authority from SRPMIC for permission to maintain armed security personnel. The decision of the applicable SRPMIC authority in response to such a request shall be final and any permission may be conditioned on requirements of training and licensing.

53. Governing Law.

This Lease shall be construed in accordance with SRPMIC and applicable federal law, and, to the extent not in conflict therewith, in accordance with Arizona common law; provided, however, that the foregoing shall in no event subject Lessor to the jurisdiction of any state or federal courts and in no way supersedes or diminishes the agreements set forth in Article 36 above or elsewhere in this Lease.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease as of the date and year first above written.

LESSEE: _____

PRESIDENT

LESSOR: _____

Martin Harvier - Vice President

Approved as to Form
Office of the General Counsel

Reviewed by SRPMC Legal Services Dept.
(Signed Name)
(Printed Name)
Date: 9/24/13

STATE OF ARIZONA)
) ss
County of Maricopa)

On this 20th day of November, 2013, before me personally appeared Martin Harvier, who acknowledged himself to be the Vice President of Salt River Pima Maricopa Indian Community, and that he, as such officer being authorized to do so, executed the foregoing instrument for the purposes therein contained, on behalf thereof.

Lisa R. Fulwilder
Notary Public

My Commission Expires:

April 12, 2016

Lisa R. Fulwilder
Notary Public - Arizona
Maricopa County
My Commission Expires
April 12, 2016

STATE OF ARIZONA)
) ss
County of Maricopa)

On this 24th day of September, 2013, before me personally appeared David Rousseau, to me known to be the person who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Evan T. Hallock
Notary Public

My Commission Expires:

July 4, 2016

EVAN T. HALLOCK
Notary Public - State of Arizona
MARICOPA COUNTY
My Commission Expires
July 4, 2016

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs
Salt River Field Office
10000 East McDowell Road
Scottsdale, AZ 85256

THE WITHIN BUSINESS LEASE B-245 BETWEEN THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY ("Lessor") and THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT ("Lessee") is hereby approved in accordance with the Lease and pursuant to authority delegated to the Assistant Secretary – Indian Affairs by 209 DM 8, to the Director of BIA by 230 DM 1, to the Western Regional Director by 3 IAM 4, and to the Superintendent by historic Phoenix Area Re-Delegation Documents in 10 BIAM.

George Patton

Superintendent, Salt River Field Office
Bureau of Indian Affairs
Department of the Interior

DEC 0 6 2013

Date of Approval

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 6 day of December, 2013, by George Patton, the authorized representative of the Secretary of the Interior, United States Department of the Interior, for and on behalf thereof.

Nathan Kehr

Notary Public

My Commission Expires:

November 8, 2017

NATHAN KEHR
Notary Public - Arizona
Maricopa County
My Comm. Expires Nov 8, 2017

EXHIBIT "E"

CONSTRUCTION QUALITY STANDARDS

The construction undertaken under this Lease shall conform to the building codes and vision statement requirements of SRPMIC.

The construction standards will be consistent with the quality as built by the Lessee within the Lease premises under prior Business Lease B-244 LTRO Docket No. 615-024093.

EXHIBIT "F"

Paragraph 18.0 of the Salt River Pima-Maricopa Indian Water Rights Settlement Agreement of 1988

18.0 RECHARGE ARRANGEMENTS

SRP, the Cities, and the SRPMIC will cooperate in studying the location of potential sites for water related underground storage and recovery facilities or recharge facilities on SRP, City, State of Arizona, Federal and SRPMIC lands. The SRPMIC will provide reasonable access to the SRPMIC Reservation for the purpose of conducting such a study to the extent that such a study does not unreasonably interfere with SRPMIC land use and does not unreasonably damage SRPMIC land. If the study determines that a potential site on the SRPMIC Reservation is appropriate for recharge use, and such use will not unreasonably interfere with SRPMIC land use and the facilities are operated as comprehensive projects among the parties, the parties identified in this Paragraph 18.0 will negotiate in good faith for the use of necessary land for the location, construction and operation of such a facility.

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY
EXCEPTION CHECKLIST FOR BIA CATEGORICAL EXCLUSIONS

PROJECT: Economic Development Division **DATE: 05/24/12**

Nature of Action: Lease for Granite Reef Underground Storage Project, (SRP) on the Salt River Pima-Maricopa Indian Community Lands. The property is located on tribal land which is Gilbert Rd, between Indian School (alignment) and Thomas Rd (alignment), in Sections 28, 29 & 30, Township 2 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa, County, Arizona, containing 344.931 acres more or less.

516 DM 10.5 M(3)
Exclusion Category and number: 516 DM10 – 10.5M(3)

Evaluation of Exceptions to use of Categorical Exclusion:

1.	This Action would have significant adverse effects on public health or safety.	NO X YES____
2.	This action would have an adverse effect on unique geographical features such as wetlands, wild or scenic rivers, refugees, floodplains, rivers placed on the nationwide river inventory, or prime or unique farmlands.	NO X YES____
3.	This action will have highly controversial environmental effects.	NO X YES____
4.	This action will have highly uncertain environmental effects or involve unique or unknown environmental risks.	NO X YES____
5.	This action will establish a precedent for future actions.	NO X YES____
6.	This action is related to other actions with the individually insignificant but cumulatively significant environmental effects.	NO X YES____
7.	This action will affect properties listed or eligible for listing in the National Register of Historic Places.	NO X YES____
8.	This action will affect a species listed, or proposed to be listed as endangered or threatened.	NO X YES____
9.	This action threatens to violate Federal, State, Local or Tribal law or requirements imposed for the protection of the natural or human environment	NO X YES____
10.	This action will have a disproportionately high and adverse effect on low income or minority populations.	NO X YES____

11. This action will limit access to and ceremonial use of Indian sacred Sites on federal lands by Indian religious practitioners, or significantly Adversely affect the physical integrity of such sacred sites. NO X YES____

12. This action will contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area, or may promote the introduction growth or expansion of the range of such species. NO X YES____

A "YES" to any of the above exceptions will require that an EA be prepared.

NEPA Action --- CE____X____ EA _____

Preparer's Name and Title: Angela Cruz Date: 5-24-12

Angela Cruz, Environmental Specialist-NEPA

Archaeologist Concurrence with item 7: Tom Wright Date: 6-4-12

Tom Wright, Staff Archaeologist SRP-MIC

Concur: George Patton Date: DEC 06 2013

Superintendent

Concur: Deborah Reik Date: 11-27-2013

Agency Environmental Coordinator

Maricopa County

COMMON NAME	SCIENTIFIC NAME	STATUS	DESCRIPTION	COUNTY	ELEVATION	HABITAT	COMMENTS
Arizona cliffrose	*Purshia subintegra*	Endangered	Evergreen shrub of the rose family (Roseaceae). Bark pale gray and shreddy. Young twigs covered with dense hairs. Leaves have 1-5 lobes and edges curl downward (revolute). Flowers: 5 petals, white or yellow <0.5 inches long.	Graham, Maricopa, Mohave, Yavapai	< 4,000 ft	White limestone soils derived from tertiary lakebed deposits.	Occurs in central Arizona at Horseshoe Lake, in the Burro Creek drainage, and near Cottonwood in the Verde Valley.
California Least Tern	*Sterna antillarum browni*	Endangered	Smallest of the North American terns. Body length is 21-24 cm (8-9 inches) with a wingspan of 45-51 cm (18-20 inches). Has black crown and loral stripe on head, snowy white forehead and underside, and gray upperparts. Outer two primaries black, yellow or orange bill with black tip, and orange legs. Males have a wider dark loral stripe but sexes mostly distinguished by behavior.	Maricopa, Mohave, Pima	< 2,000 ft	Open, bare or sparsely vegetated sand, sandbars, gravel pits, or exposed flats along shorelines of inland rivers, lakes, reservoirs, or drainage systems.	Breeding occasionally documented in Arizona; migrants may occur more frequently. Feeds primarily on fish in shallow waters and secondarily on invertebrates. Nests in a simple scrape on sandy or gravelly soil.
Desert pupfish	*Cyprinodon macularius*	Endangered	Small (2 inches) smoothly rounded body shape with narrow vertical bars on the sides. Breeding males blue on head and sides with yellow on tail. Females and juveniles tan to olive colored back and silvery sides.	Cochise, Graham, Maricopa, Pima, Pinal, Santa Cruz, Yavapai	< 4,000 ft	Shallow springs, small streams, and marshes. Tolerates saline and warm water.	Two subspecies are recognized: Desert Pupfish (C.m. macularis) and Quitobaquito Pupfish (C.m. eremus). Critical habitat includes Quitobaquito Springs, Pima County, portions of San Felipe Creek, Carrizo Wash, and Fish Creek Wash, Imperial County, California.
Gila topminnow	*Poeciliopsis occidentalis occidentalis*	Endangered	Small (2 inches), guppy-like, live bearing, lacks dark spots on its fins. Breeding males are jet black with yellow fins.	Cochise, Gila, Graham, La Paz, Maricopa, Pima, Pinal, Santa Cruz, Yavapai	< 4,500 ft	Small streams, springs, and cienegas vegetated shallows.	Species historically also occurred in backwaters of large rivers but is currently isolated to small streams and springs.

COMMON NAME	SCIENTIFIC NAME	STATUS	DESCRIPTION	COUNTY	ELEVATION	HABITAT	COMMENTS
Lesser long-nosed bat	*Leptonycteris curasoae yerbabuenae*	Endangered	Elongated muzzle, small leaf nose, and long tongue. Yellowish brown or gray above and cinnamon brown below. Tail minute and appears to be lacking. Easily disturbed.	Cochise, Gila, Graham, Greenlee, Maricopa, Pima, Pinal, Santa Cruz, Yuma	1,600-11,500 ft	Desert scrub habitat with agave and columnar cacti present as food plants.	Day roosts in caves and abandoned tunnels. Forages at night on nectar, pollen, and fruit of paniculate agaves and columnar cacti. This species is migratory and is present in Arizona usually from April to September and south of the border the remainder of the year.
Mexican spotted owl	*Strix occidentalis lucida*	Threatened	Medium sized with dark eyes and no ear tufts. Brownish and heavily spotted with white or beige.	Apache, Cochise, Coconino, Gila, Graham, Greenlee, Maricopa, Mohave, Navajo, Pima, Pinal, Santa Cruz, Yavapai	4,100-9,000 ft	Nests in canyons and dense forests with multi-layered foliage structure.	Generally nest in older forests of mixed conifer or ponderosa pine/gambel oak type, in canyons, and use variety of habitats for foraging. Sites with cool microclimates appear to be of importance or are preferred. Critical habitat was finalized on August 31, 2004 (69 FR 53182) in Arizona in Apache, Cochise, Coconino, Gila, Graham, Greenlee, Maricopa, Navajo, Pima, Pinal, Santa Cruz, and Yavapai counties.
Razorback sucker	*Xyrauchen texanus*	Endangered	Large, up to 3 feet long and up to 6 lbs, high sharp-edged keel-like hump behind the head. Head flattened on top. Olive-brown above to yellowish below.	Coconino, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Pinal, Yavapai, Yuma	< 6,000 ft	Riverine and lacustrine areas, generally not in fast moving water and may use backwaters.	Big River fish also found in Horseshoe reservoir (Maricopa County). Critical habitat includes the 100-year floodplain of the river through the Grand Canyon from confluence with Paria River to Hoover Dam; Hoover Dam to Davis Dam; Parker Dam to Imperial Dam. Also Gila River from Arizona/New Mexico border to Coolidge Dam; and Salt River from Hwy 60/SR77 Bridge to Roosevelt Dam; Verde River from FS boundary to Horseshoe Lake (59 FR 13374).
Sonoran pronghorn	*Antilocapra americana sonoriensis*	Endangered	Upperparts tan; underparts, rump, and two bands across the neck are white. Male has two black cheek pouches. Hoofed with slightly curved black horns having a single prong. Smallest and palest of the pronghorn subspecies.	Maricopa, Pima, Yuma	2,000-4,000 ft	Broad intermountain alluvial valleys with creosote-bursage and palo verde-mixed cacti associations.	Typically, bajadas are used as fawning areas and sandy dune areas provide food seasonally. Cacti (jumping cholla) appears to make up substantial part of diet. This subspecies also occurs in Mexico.

COMMON NAME	SCIENTIFIC NAME	STATUS	DESCRIPTION	COUNTY	ELEVATION	HABITAT	COMMENTS
Southwestern willow flycatcher	*Empidonax traillii extimus*	Endangered	Small passerine (about 6 inches) grayish-green back and wings, whitish throat, light olive-gray breast and pale yellowish belly. Two wingbars visible. Eye-ring faint or absent.	Apache, Cochise, Coconino, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Navajo, Pima, Pinal, Santa Cruz, Yavapai, Yuma	< 8,500 ft	Cottonwood/willow and tamarisk vegetation communities along rivers and streams.	Riparian-obligate bird that occupies migratory/breeding habitat from late April-Sept. Critical habitat was finalized on October 19, 2005 in Apache, Cochise, Gila, Graham, Greenlee, Maricopa, Mohave, Pima, Pinal, and Yavapai counties (70 FR 60886). Revised critical habitat was proposed August 15, 2011 (76 FR 50542) and includes river segments in counties currently designated plus those in La Paz, Santa Cruz, and Yuma counties. The 2005 critical habitat designation remains in effect until the current proposal is finalized. Training seminar/permits required for those conducting call playback surveys.
Woundfin	*Plagopterus argentissimus*	Endangered	Small (4 inches) silver minnow with fairly large fins and a sharp dorsal fin spine.	Maricopa, Mohave	< 4,500 ft	Inhabits shallow, warm, turbid, fast-flowing water. Tolerates high salinity.	Native population only in Virgin River. Designated critical habitat includes the Virgin River and its 100-year floodplain (65 FR 4140). Experimental non-essential populations (50 FR 30188) designated in portions of the Verde, Gila, San Francisco, and Hassayampa rivers and Tonto Creek. Species also occurs in Washington County, UT and Clark County, NV.
Yuma clapper rail	*Rallus longirostris yumanensis*	Endangered	Water bird with long legs and short tail. Long, slender decurved bill. Mottled brown or gray on its rump. Flanks and undersides are dark gray with narrow vertical stripes producing a barring effect.	Gila, La Paz, Maricopa, Mohave, Pinal, Yuma	< 4,500 ft	Fresh water and brackish marshes.	Species is associated with dense emergent riparian vegetation. Requires wet substrate (mudflat, sandbar) with dense herbaceous or woody vegetation for nesting and foraging. Channelization and marsh destruction are primary sources of habitat loss.

COMMON NAME	SCIENTIFIC NAME	STATUS	DESCRIPTION	COUNTY	ELEVATION	HABITAT	COMMENTS
Desert tortoise, Sonoran population	*Gopherus agassizii*	Candidate	Large herbivorous reptile with domed shell and round stumpy hind legs. The carapace is a dull brown or grey color and the plastron is unhinged, often pale yellow in coloration. Sonoran desert tortoises generally have a flatter carapace than tortoises in the Mohave population. Active in spring and during the monsoon; dormant in winter and mid-summer months.	Cochise, Gila, Graham, La Paz, Maricopa, Mohave, Pima, Pinal, Santa Cruz, Yavapai, Yuma	< 7,800 ft	Primarily rocky (often steep) hillsides and bajadas of Mohave and Sonoran desertscub but may encroach into desert grassland, juniper woodland, interior chaparral habitats, and even pine communities. Washes and valley bottoms may be used in dispersal.	Desert tortoises that occur east and south of the Colorado River in Arizona are referred to as the Sonoran population. Individuals are found throughout their historic range; but populations are becoming increasingly fragmented due to threats to their habitat in valley bottoms, which are used for dispersal and exchange of genetic material.
Roundtail chub	*Gila robusta*	Candidate	Member of the minnow family Cyprinidae and characterized by streamlined body shape. Color usually olive gray with silvery sides and a white belly. Breeding males develop red or orange coloration on the lower half of the cheeks and on the bases of paired fins. Individuals may reach 49.0 cm (19.3 in) but usually average 25-30 cm (9.8 - 11.8 in).	Apache, Coconino, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Navajo, Pinal, Yavapai	1,000-7,500 ft.	Cool to warm waters of rivers and streams, often occupy the deepest pools and eddies of large streams.	Historical range of roundtail chub included both the upper and lower Colorado River basins. A 2009 status review determined that the lower Colorado River basin roundtail chub population segment (Arizona and New Mexico) qualifies as a distinct vertebrate population segment (DPS). Populations in the Little Colorado, Bill Williams, and Gila River basins are considered candidate species.
Sprague's pipit	*Anthus spragueii*	Candidate	Small, sparrow-sized bird (10-15 cm in length), with buff and blackish streaking on the crown, nape, and underparts. Has a short bill with a blackish upper mandible, a buffy face with a large eye ring, white outer tail feathers and pale to yellowish legs.	Cochise, Maricopa, La Paz, Santa Cruz, Yuma	<5,000 ft	Strong preference to native grasslands with vegetation of intermediate height and lacking woody shrubs.	Rare in Arizona. Few individuals of this elusive species have been sighted during October through March. Native grass fields are rare in Arizona but cultivated, dry Bermuda grass, alfalfa fields mixed with patches of dry grass, or fallow fields appear to support the species during wintering. They will not use mowed or burned areas until the vegetation has had a chance to grow. There are no breeding records in Arizona.

COMMON NAME	SCIENTIFIC NAME	STATUS	DESCRIPTION	COUNTY	ELEVATION	HABITAT	COMMENTS
Tucson shovel-nosed snake	*Chionactis occipitalis klauberi*	Candidate	Small snake (10-17 inches total length) in the family Colubridae, with a shovel-shaped snout and an inset lower jaw. Overall coloring mimics coral snakes, with pale yellow to cream-colored body, 21 or more black or brown saddle-like bands across the back, and orange-red saddle-like bands in between. The subspecies is distinguished from the other subspecies in that these secondary orange-red crossbands are suffused with dark pigment, making them appear brown or partly black, and the black and red crossbands do not encircle the entire body.	Maricopa, Pima, Pinal	785-1,662 ft	Sonoran Desertscrub; associated with soft, sandy soils having sparse gravel.	Found in creosote-mesquite floodplain environments, finds refuge under desert shrubs,active during crepuscular (dawn and dusk) and daylight hours.
Yellow-billed cuckoo	*Coccyzus americanus*	Candidate	Medium-sized bird with a slender, long-tailed profile, slightly down-curved bill that is blue-black with yellow on the lower half. Plumage is grayish-brown above and white below, with rufous primary flight feathers.	Apache, Cochise, Coconino, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Navajo, Pima, Pinal, Santa Cruz, Yavapai, Yuma	< 6,500 ft	Large blocks of riparian woodlands (cottonwood, willow, or tamarisk galleries).	Neotropical migrant that winters primarily in South America and breeds primarily in the U.S. (but also in southern Canada and northern Mexico). As a migrant it is rarely detected; can occur outside of riparian areas. Cuckoos are found nesting statewide, mostly below 5,000 feet in central, western, and southeastern Arizona. Concern for cuckoos are primarily focused upon alterations to its nesting and foraging habitat. Nesting cuckoos are associated with relatively dense, wooded, streamside riparian habitat, with varying combinations of Fremont cottonwood, willow, velvet ash, Arizona walnut, mesquite, and tamarisk. Some cuckoos have also been detected nesting in velvet mesquite, netleaf hackberry, Arizona sycamore, Arizona alder, and some exotic neighborhood shade trees.

COMMON NAME	SCIENTIFIC NAME	STATUS	DESCRIPTION	COUNTY	ELEVATION	HABITAT	COMMENTS
American peregrine falcon	*Falco peregrinus anatum*	Delisted	A crow-sized falcon with slate blue-gray on the back and wings, and white on the underside; a black head with vertical "bandit's mask" pattern over the eyes; long pointed wings; and a long wailing call made during breeding. Very adept flyers and hunters, reaching diving speeds of 200 mph.	Apache, Cochise, Coconino, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Navajo, Pima, Pinal, Santa Cruz, Yavapai, Yuma	3,500-9,000 ft	Areas with rocky, steep cliffs, primarily near water, where prey (primarily shorebirds, songbirds, and waterfowl) concentrations are high. Nests are found on ledges of cliffs, and sometimes on man-made structures such as office towers and bridge abutments.	Species recovered with over 1,650 breeding birds in the US and Canada.
Arizona agave	*Agave arizonica*	Delisted	Member of the agave family. Has rosettes of bright green leaves, 17-24cm long and 2-4cm wide, broadest in the middle. Flowers are small, pale yellow, and jar shaped.	Gila, Maricopa, Yavapai	3,600-5,800 ft	Occurs on open slopes in chaparral or juniper grasslands. Prefers shallow, cobbled, and gravelly soils on steep slopes.	Arizona agave is a hybrid produced by a crossing of two other common agave species (A. chrysantha x A. toumeyana ssp. toumeyana).
Bald eagle	*Haliaeetus leucocephalus*	Delisted	Large, adults have white head and tail. Height 28 to 38 inches; wingspan 66 to 96 inches. Juveniles and subadults are dark brown with varying degrees of white mottling on chest, wings, and head.	Apache, Coconino, Gila, Graham, La Paz, Maricopa, Mohave, Pinal, and Yavapai	Varies	Large trees or cliffs near water (reservoirs, rivers, and streams) with abundant prey.	Nationwide and throughout the State of Arizona, the bald eagle is currently not listed under the Endangered Species Act. On September 30, 2010, the U.S. District Court dissolved an injunction that led to the bald eagle in the Sonoran Desert Area of central Arizona being placed on the Endangered Species list in 2008. This determination is presently (January 2011) under judicial consideration. Bald eagles are protected under the Bald and Golden Eagle Protection Act (Eagle Act) and other Federal and state statutes. The word "disturb" under the Eagle Act was recently clarified, as well as the implementation of new regulations requiring permits to incidentally "take" eagles. Retrieve more information on management and life history at http://SWBEMC.org.

COMMON NAME	SCIENTIFIC NAME	STATUS	DESCRIPTION	COUNTY	ELEVATION	HABITAT	COMMENTS
California brown pelican	*Pelecanus occidentalis californicus*	Delisted	Large, dark gray-brown water bird with webbed feet, pouch underneath its long bill, and wingspan of 7 ft. Adults have a white head and neck, brownish black breast, and silver gray upper parts.	Gila, La Paz, Maricopa, Mohave, Pinal, Yuma	Varies	Coastal land and islands; species found occasionally around Arizona's lakes and rivers.	Considered an uncommon transient in Arizona. Most observations recorded along the Colorado River and in the Gila Valley. Individuals known to wander up from Mexico in summer and fall. No breeding has been documented in Arizona. Delisted on November 17, 2009 (74 FR 59444).

SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY
10,005 E Osborn Road
Scottsdale, AZ 85256

RESOLUTION NO.: SR-3205-2014

A RESOLUTION TO APPROVE BUSINESS LEASE B-245 BETWEEN THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY ("LESSOR") AND THE SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT ("LESSEE") FOR THE LEASE AND DEVELOPMENT OF APPROXIMATELY 350.0 ACRES MORE OR LESS OF TRIBAL LAND LOCATED WITHIN THE EXTERIOR BOUNDARIES OF THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY.

WHEREAS, the Salt River Pima-Maricopa Indian Community ("SRPMIC" or "Community") Council has the authority under Article VII, Section 1(d)(2) and 1(d)(5) of the SRPMIC Constitution to "lease and otherwise grant to private persons and public bodies the right to use tribal lands" and to "provide for the proper use and development and prevent the misuse of the lands and other public property of the…Community"; and

WHEREAS, Sections 17-5 and 17-6 of the SRPMIC Code of Ordinances require that the Land Management Board ("LMB") and SRPMIC Council review, hold public hearings, and approve any contract, lease or other instrument affecting the use and disposition of lands within the SRPMIC; and

WHEREAS, Section 17-5(e) of the SRPMIC Code of Ordinances, and Resolution No. SR-2680-2008 authorize the SRPMIC Council to waive the formal LMB review, public hearing, and recommendation process if the SRPMIC Council determines that adequate public hearing and notice has occurred or will occur, and if the SRPMIC Council by resolution sets out the facts that it has found and the conclusions it has drawn which support such waiver; and

WHEREAS, the Community and the Salt River Project Agricultural Improvement and Power District ("SRP") have completed negotiations and have reached an agreement for the lease and development of approximately 350.0 acres more or less of Tribal land located within the exterior boundaries of the Community, and being part of Sections 28, 29 and 30, Township 2 North, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona (the "Leased Premises"), with an additional setback of three hundred (300) feet from the exterior of the Leased Premises boundary, excluding adjacent i) public rights of way, ii) public easements, iii) approved cross access easements, and iv) any SRPMIC approved infrastructure existing prior to the execution date of this Lease; and

WHEREAS, SRP will use the Leased Premises for the recharge and/or underground storage and recovery of water for an initial lease term of approximately nineteen years

from September 9, 2013, through December 31, 2032, with an option to renew for an additional twenty (20) years or longer as may be negotiated between the Community and SRP, but in no event shall the total of the initial term and renewal term of this Lease exceed sixty-five (65) years.; and

WHEREAS, the Leased Premises was previously leased by SRP pursuant to Business Lease B-244 for the existing use known as the "Salt River Project Recharge" and/or the "Granite Reef Underground Storage Project (GRUSP)", and previous Business Lease B-244 was formally reviewed with public hearings held by the LMB in November 1992 and the SRPMIC Council in December 1992; and

WHEREAS, the parties to Business Lease B-245 remain the same as in the former Business Lease B-244, and the use and location of the Leased Premises remain substantially the same; and

WHEREAS, the SRPMIC Council has determined that adequate public notice has occurred when the former Business Lease B-244 was approved and that the GRUSP has been in continuous operation at the Leased Premises since 1993; and

WHEREAS, Business Lease B-245 contains a limited waiver of sovereign immunity under Article 37 for purposes of arbitration, which states: "[a]ny controversy or claim between Lessor and Lessee arising out of or relating to this Lease, or the breach thereof, except (i) claims for money damages in a sum of less than Twenty-five Thousand and No/100 Dollars ($25,000.00), (ii) actions for mandamus, an injunction or an order for specific performance, and (iii) claims that a lien exists or ought to exist on Lessor's interest in the Leased Premises, shall be settled by arbitration administered by the American Arbitration Association (or such other private service as may be mutually agreed to by Lessor and Lessee) in accordance with the Commercial Arbitration Rules of the American Arbitration Association (or such other rules as may be adopted, or as such rules may be modified, by agreement between Lessor and Lessee), except as such rules may contemplate state court jurisdiction, and judgment on the award rendered by the arbitrator(s) may be entered in United States District Court for the District of Arizona. The place of arbitration shall be within, or within fifty (50) miles of, the jurisdictional boundaries of the Salt River Pima-Maricopa Indian Community. The United States Arbitration Act (Title 9 United States Code) shall govern the interpretation, enforcement, and proceedings pursuant to this arbitration clause. Reference is made to 25 U.S.C. § 416a.(c), the terms of which are incorporated herein by this reference. Except as the parties may agree otherwise, any such binding arbitration shall be conducted, upon the request of either Lessor or Lessee, before three (3) arbitrators designated by the American Arbitration Association. Any arbitrators designated to act under this Lease shall make their award in strict conformity with said rules and this Lease, and shall have no power to depart from or change any of the provisions thereof except as provided herein or as the parties may expressly agree otherwise in writing"; and

WHEREAS, in order to facilitate an expedited SRPMIC review process, the Community Development Department, and the Office of General Counsel recommend that the Community Council through this resolution waive LMB and SRPMIC Council review, public hearing and approval requirements as provided in Sections 17-5(d) and 17-6(d) of the SRPMIC Code of Ordinances and delegate to the President or the Vice-President approval authority over *future* substitute leases, assignments, ground subleases, subleases, development agreements, financial and security agreements, nondisturbance and attornment agreements, short form memoranda of sublease, space leases, encumbrance documents, or other required ancillary documents as may be submitted to the Community for signature under the authority of Lease B-245; and

WHEREAS, the SRPMIC Council has considered the recommendations of the Community Development Department, and the Office of General Counsel and determined that it is in the best interest of the Community to approve Business Lease B-245.

NOW THEREFORE BE IT RESOLVED that the SRPMIC Council hereby approves Business Lease B-245, between the Salt River Pima-Maricopa Indian Community and the Salt River Project Agricultural Improvement and Power District for the lease and development of approximately 350.0 acres more or less of Tribal land located within the exterior boundaries of the Community, and being part of Sections 28, 29 and 30, Township 2 North, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, with an additional setback of three hundred (300) feet from the exterior of the Leased Premises boundary, excluding adjacent i) public rights of way, ii) public easements, iii) approved cross access easements, and iv) any SRPMIC approved infrastructure existing prior to the execution date of this Lease.

BE IT FURTHER RESOLVED that in accordance with Section 17-5(e), the SRPMIC Council hereby waives the application of Section 17-5 and 17-6 of the SRPMIC Code of Ordinances and determines that through its findings and conclusions herein that adequate public hearing and notice has occurred as to the use of the Leased Premises.

BE IT FURTHER RESOLVED that the Community hereby agrees to a limited waiver of sovereign immunity for purposes of arbitration in accordance with Article 37 of Business Lease B-245.

BE IT FURTHER RESOLVED that pursuant to SRPMIC Chapter 17, Section 17-5(a) of the Code of Ordinances of the Community, the SRPMIC Council hereby waives the procedures of Section 17-5 for the following *future* documents and hereby authorizes the President or the Vice-President to execute on behalf of the Community any future substitute leases, assignments, ground subleases, subleases, development agreements, financial and security agreements, nondisturbance and attornment agreements, short form memoranda of sublease, space leases, encumbrance documents and other required ancillary documents as

may be submitted to the Community for signature under the authority of the Lease B-245.

BE IT FURTHER RESOLVED that the Community Development Department and the Office of General Counsel shall fully carry out and implement its internal process for the legal and business review of each of the above mentioned documents prior to such documents being submitted to the President or Vice-President for execution.

BE IT FINALLY RESOLVED that the President or the Vice-President is hereby authorized and directed to take any such action as may be reasonable and necessary to and in aid of carrying out the purpose and intent of this Resolution.

C_E_R_T_I_F_I_C_A_T_I_O_N

Pursuant to the authority contained in Article VII, Section 1(c)(7) and Section 1(d)(5) of the Constitution of the Salt River Pima-Maricopa Indian Community (as amended), ratified by the Tribe on February 28, 1990, and approved by the Secretary of the Interior on March 19, 1990, the foregoing resolution was adopted this 13th day of November 2013, in a duly called meeting of the Community Council in Salt River, Arizona, at which a quorum of 8 members was present, by a vote of 7 for; 1 opposed; 0 abstaining; and 1 excused.

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY COUNCIL

Martin Harvier

Martin Harvier, Vice President

ATTEST:

Erica Harvier

Erica Harvier, Secretary

Approved as to Form by the Office of the General Counsel
Niccole L. King
October 24, 2013
Niccole L. King

Salt River
Pima-Maricopa Indian Community
10,005 East Osborn Road, Scottsdale, Arizona 85256

CERTIFICATE OF COMPLIANCE

AUTHORITY: Memorandum of Understanding between the Salt River Pima-Maricopa Indian Community and the Bureau of Indian Affairs. Signed: June 19, 1997

I, the Salt River Pima-Maricopa Indian Community ("SRPMIC") President, as authorized by the SRPMIC Council, hereby certify that Business Lease B-245 between the SRPMIC and the Salt River Project Agricultural Improvement and Power District has been approved by the SRPMIC Council, pursuant to Resolution Number SR-3205-2014.

I further certify that Business Lease B-245 has been prepared and completed in accordance with the Memorandum of Understanding between the SRPMIC and the Bureau of Indian Affairs signed into effect June 19, 1997. The lease documents have been completed in compliance with the applicable provisions of the federal leasing statutes, 25 USC § 415 & 416; and the SRPMIC's Zoning Ordinance Number SRO 74-82, Development Ordinance Number SRO 25-74, Environmental Protection Ordinance Number SRO Number 180-95, and Antiquities Ordinance Number SRO 102-86.

Stacey Gubser
Director, Community Development Department

11/18/13
Date

Diane Enos, President
Salt River Pima-Maricopa Indian Community

11/20/13
Date

EXHIBIT "A"

WATER REPORT

P. O. Box 52025
Phoenix, AZ 85072-2025
(602) 236-5900
www.srpnet.com

April 23, 2013

Mike Byrd
Water Resources Division Manager
Salt River Pima-Maricopa Indian Community
10005 E. Osborn Rd.
Scottsdale, AZ 85256-9722

Reference: GRUSP Information Request

Dear Mike:

Enclosed please find the six items listed below as requested previously by SRPMIC.

1. Water inflows to GRUSP for 2013
2. Projected and actual GRUSP recharge for January 2013 through December 2013
3. Water level data for March 2013
4. Groundwater withdrawal for March 2013
5. Weather/Runoff Summary
6. Request for recharge at GRUSP for May 2013

If you have any questions please feel free to give me a call.

Sincerely,

Bob Pane
Manager, Groundwater Resources & Geohydrology

cc: Kyle Tilghman, SRP
Doug Toy-Chandler
Cliff Neal-Phoenix
Marcus Boykin SRPMIC
Mark Freebury, SRP
Kathy Rall-Gilbert
Beth Miller-Scottsdale
Dave Roberts, SRP
Kathryn Sorensen-Mesa
Eric Kamienski-Tempe

WATER INFLOWS TO GRUSP FOR 2013
(Data from SRP Water Contract Accounting)

	GRUSP Measurements		
	1	2	3
Month	SRP Delivery Weir	Mesa Effluent	Total Delivery
Jan-2013	895.79	596.74	1,492.53
Feb-2013	550.53	699.59	1,250.12
Mar-2013	565.00	800.51	1,365.51
Total AF	**2,011.32**	**2,096.84**	**4,108.16**

ITEM 2

PROJECTED AND ACTUAL MONTHLY GRUSP RECHARGE
JANUARY THROUGH DECEMBER 2013
(in acre feet)

GRUSP Capacity	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
Projected Recharge (AF)	4000	4000	4000	4000									
Actual Recharge (AF)	1493	1250	1366										
Total Recharge To Date (AF)	1493	2743	4108										

ITEM 3

MONTHLY GROUNDWATER LEVELS OF GRUSP MONITOR WELLS
MARCH 2013

Well Id	Read Date	Result	Prior	Prior Date	Unit
29 9E5.5N	3/14/2013		178.23	12/20/2012	
30E5.9N	3/14/2013		149.30	12/20/2012	
33.1E7.3N	3/14/2013	191.30	184.15	12/20/2012	Feet
33.3E7.5N	3/14/2013	195.86	190.00	12/20/2012	Feet
A(1-6) 3ada	3/14/2013	289.84	288.48	12/20/2012	Feet
MESA NE-1	3/14/2013	117.71	118.25	2/14/2013	Feet
KASER CITRUS-R	3/14/2013	137.70		12/20/2012	Feet
MESA FF-2	3/14/2013		254.20	12/20/2012	
MESA FF-8	3/14/2013	180.22	178.28	12/20/2012	Feet
RCMWGR-1	3/14/2013	162.91	163.25	2/14/2013	Feet
RCMWGR-2	3/14/2013	119.45	119.80	2/14/2013	Feet
RCMWGR-3	3/14/2013	107.92	107.75	3/7/2013	Feet
RCMWGR-7	3/14/2013	113.94	113.65	2/14/2013	Feet
RWCD 1/4-17/6W	3/14/2013	180.10	177.60	12/20/2012	Feet
RWCD 3 - 3/4W	3/14/2013	243.90	245.39	12/20/2012	Feet
SRPMICLF-1	3/14/2013	137.39	137.17	3/7/2013	Feet
SRPMICLF-3R	3/14/2013	151.41	151.20	2/14/2013	Feet
SRPMICLF-TC-3	3/14/2013	98.91	95.40	2/14/2013	Feet
SRPMICLF-TC-E	3/14/2013	142.96	139.88	2/14/2013	Feet

(This month's letter includes several wells not normally reported due to the sampling date falling on the Quarterly Monitoring Schedule sampling date).

ITEM 3

WELL ELEVATION *(FT)

RCMWGR-1	1302.7
RCMWGR-2	1276.3
RCMWGR-3	1265.1
RCMWGR-4	1265.5
RCMWGR-5	1266.9
RCMWGR-6	1260.1
RCMWGR-7	1256.4
SRLFMW-1	1281.0
SRLFMW-2	Abandoned
SRLFMW-3R	1292.8
SRLFMW-4	Abandoned
TCLFMW-3	1235.2
East Well	1276.6
West Well	1273.6

- Per 2011 Survey by SRP Survey Department. (Elevations – NAVD-88)

ITEM 4

GROUNDWATER WITHDRAWLS (AF)
MARCH 2013

CITY OF MESA WELLS

WELL	WITHDRAWLS (AF)
FF-2	76.73
FF-8	0.0

ITEM 4

GROUNDWATER WITHDRAWLS (AF)

MARCH 2013

GRUSP PUMPS MARCH 2013

PUMP#	3101	3104	3107	3110	3113	3116	3119	3122	3125	3201	3204	3207	3210	3213	3216	3219	4101	4104	
COORD	33.3E-7.5N	33.1E-7.3N	32.8E-7.2N	32.3E-7.0N	31.8E-6.5N	30.5E-6.0N	30.0E-5.9N	29.5E-5.7N	28.8E-5.0N	26.9E-5N	27.9E-5N	28.0E-5.5N	28.0E-6.0N	29.0E-6.0N	28.5E-5N	28.6E-5.5N	29.9E-5.5N	30.5E-5.0N	TOTALS
1	0	0	0	18.1	2.13	7.29	17.01	18.54	1.59	0	0	0	0	0	0	0	9.26	12.59	86.51
2	0	0	0	9.33	8.34	5.3	8.82	9.65	10.02	0	0	0	0	0	0	0	17.7	12.59	81.75
3	0	0	0	18.1	17.4	0	10.15	8.27	2.15	0	0	0	0	0	0	0	17.7	9.22	82.99
4	0	0	0	18.1	17.4	0	7.11	0	12.4	6.19	5.68	0	0	0	0	0	4.74	9.79	81.41
5	0	0	0	18.1	6.45	8.78	8.36	16.41	12.4	3.61	3.33	0	0	0	0	0	16.82	11.62	105.88
6	0	0	0	18.1	16.59	4.34	0	18.54	12.4	15.68	0.17	0	0	0	0	0	17.7	12.59	116.11
7	0	0	0	18.1	17.4	3.58	1.39	18.54	8.71	10.52	0	0	0	0	0	0	17.7	12.59	108.53
8	0	0	0	12.57	7.06	0.89	4.48	10.59	0	0	0	0	0	0	0	0	8.61	6.95	51.15
9	0	0	0	5.1	4.76	2.08	2.26	0	1.37	0	0	0	0	0	0	0	0	0.68	16.25
10	0	0	0	10.44	9.96	4.9	14.11	10.39	0	0	0	0	0	0	0	0	0	0	49.8
11	0	0	0	11.7	5.28	2.09	3.6	3.93	7.51	0	0	0	0	0	0	0	12.22	1.5	47.83
12	0	0	0	18.1	17.4	9.52	17.01	9.03	6.85	0	0	0	0	0	0	0	17.7	0	95.61
13	0	0	0	18.1	17.4	9.52	17.01	0	7.09	0	0	0	0	0	0	0	17.7	0	86.82
14	0	0	0	18.1	4.67	9.52	17.01	0	0	0	0	0	0	0	0	0	17.7	0	67
15	0	0	0	18.1	11.49	9.52	17.01	0	0.53	0	0	0	0	0	0	0	17.7	0	74.35
16	0	0	0	18.1	17.4	9.52	17.01	0	12.4	0	0	0	0	0	0	0	4.72	11.65	90.8
17	0	0	0	18.1	17.4	9.52	17.01	2.86	12.4	0	0	0	0	0	0	0	0	9.67	86.96
18	0	0	0	18.1	17.4	9.52	17.01	16.43	10.03	0	0	0	0	0	0	0	1.57	12.59	102.65
19	0	0	0	2.25	15.05	9.52	11.59	9.41	0.24	0	0	0	0	0	0	0	0	12.59	60.65
20	0	0	0	11.23	10.48	3.15	4.95	2.14	10.46	0	0	0	0	0	0	0	6.26	12.59	61.26
21	0	0	0	18.1	17.4	0	6.55	12.8	8.56	0	0	0	0	0	0	0	17.7	12.59	93.7
22	0	0	0	15.32	17.4	6.37	0.21	0	0	0	0	0	0	0	0	0	17.7	12.59	69.59
23	0	0	0	18.1	17.4	8.19	0	0	5.61	0	0	0	0	0	0	0	15.5	12.59	77.39
24	0	0	0	13.76	17.4	0	11.46	6.16	1.57	6.05	5.56	0	0	0	0	0	17.7	0.45	80.11
25	0	0	0	18.1	17.4	5.81	17.01	13.77	9.86	16.81	15.47	0	0	5.55	6.31	0	17.7	2.27	146.06
26	0	0	0	18.1	17.4	0	17.01	18.54	0	16.81	15.47	0	0	13.98	16.86	0	17.7	12.59	164.46
27	0	0	0	18.1	17.4	3.02	17.01	18.54	0	16.81	15.47	0	0	13.98	16.86	0	17.7	12.59	167.48
28	0	0	0	2.44	17.4	2.78	17.01	18.54	2.66	16.81	15.47	0	0	13.98	16.86	0	17.7	12.59	154.24
29	0	0	0	18.1	17.4	7.24	17.01	18.54	12.4	15.64	15.47	0	0	13.98	16.86	0	17.7	12.59	182.93
30	0	0	0	17.03	7.51	4.56	17.01	18.54	12.4	0	15.47	0	0	13.98	16.86	0	17.7	12.59	153.65
31	0	0	0	0.39	0	0	17.01	18.54	1.1	0	15.47	0	0	13.98	16.86	0	17.7	12.59	113.64
TOTALS	0	0	0	455.46	405.57	155.53	350.19	298.7	182.71	124.93	123.03	0	0	89.43	107.47	0	398.3	265.24	2957.56

ITEM 5

WEATHER SUMMARY

MARCH 2013

1. Precipitation (inches)

	March	Month Normal	% Normal	YTD	YTD Normal	% Normal	YTD Last Year
Watershed	1.54	2.35	66	5.33	6.55	81	1.91
Sky Harbor	0.85	1.07	79	2.55	2.67	96	0.25

2. Stream flow (acre-feet)

	March	% Median	YTD	% Median	YTD Last Year
Total	172,922	96	367,036	92	132,050
Salt	79,116	69	138,572	68	74,470
Tonto	35,732	232	67,406	176	5,158
Verde	58,074	98	161,058	111	52,048

3. Reservoirs (acre-feet)

	April 1st	% Capacity	% Median	Last Year	Difference Last Year
Total	1,447,378	63	84	1,536,120	-88,742
Salt	1,222,041	60	84	1,455,045	-233,004
Verde	225,337	78	96	81,075	144,262

4. Demand and Water Use (acre-feet)

	March	% Median	YTD	% Median	Last Year	Difference to Last Year	YTD Last Year	YTD Diff to Last Year
Total	55,916	60	113,172	60	54,194	1,722	126,792	-13,620
Pumps	19,669	587	42,614	277	4,764	14,905	19,534	23,080
Salt	13,302	36	33,033	50	43,188	-29,886	53,825	-20,792
Verde	21,984	73	34,179	41	6,242	15,742	53,433	-19,254
GSF	0		0				0	
CAP	961		3,346				0	

** The above data are preliminary and subject to revision.

ITEM 6
REQUEST FOR RECHARGE AT GRUSP (LETTER) FOR
MAY 2013

P. O. Box 52025
Phoenix, AZ 85072-2025
(602) 236-5900
www.srpnet.com

April 23, 2013

Mike Byrd
Water Resources Division Manager
Salt River Pima-Maricopa Indian Community
10005 E. Osborn Rd.
Scottsdale, AZ 85256-9722

Re: GRUSP

Dear Mike:

This letter is to notify you that the GRUSP participants request a delivery of 4000 acre feet to recharge at the facility in May 2013; the same request as April 2013. The landfill water levels continue to be favorable, providing 40.7 feet of separation between water and the deepest refuse cell as of April 18, 2013.

SRP continues to carefully monitor weather conditions. As in the past, we plan to operate our water resources system, of which the GRUSP facility is a part, in a safe responsible manner to avoid adverse impacts.

If you have any questions please contact me at 602-236-2511.

Sincerely,

Bob Pane
Manager, Groundwater Resources & Geohydrology

cc: Doug Toy-Chandler
Cliff Neal-Phoenix
Marcus Boykin, SRPMIC
Kyle Tighlman, SRP
Kathy Rall-Gilbert
Beth Miller-Scottsdale
Mark Freebury, SRP
Kathryn Sorensen-Mesa
Eric Kamienski-Tempe
Dave Roberts, SRP

EXHIBIT C

GRANITE REEF UNDERGROUND STORAGE PROJECT

STORAGE ENTITLEMENTS

Participant	Storage Entitlement %
Association (SRVWUA)	20.310%*
Chandler	20.000%*
Gilbert	3.440%
Mesa	24.860%
Phoenix	25.755%**
Scottsdale	3.285%**
Tempe	2.350%

* New entitlements shown pursuant to 1993 agreement between SRVWUA and Chandler.

** New entitlements shown pursuant to 1999 agreement between Phoenix and Scottsdale.

EXHIBIT I

SALT RIVER PROJECT
P.O. Box 52025
Mail Station PAB103
Phoenix, AZ 85072-2025
Phone: (602) 236-2460
Fax: (602) 236-5034
Internet: pacherri@srp.gov

Paul A. Cherrington
Water Engineering and Transmission

October 17, 1996

Ms. Karen Barfoot
Acting City Engineer
City of Chandler
200 East Commonwealth Avenue
Chandler, Arizona 85224

Re: **GRUSP Conveyance Agreement**

Dear Ms. Barfoot:

Pursuant to section 7.1 of the Agreement For Conveyance of GRUSP Storage Entitlement Between Salt River Valley Water Users' Association And City of Chandler (executed on August 25, 1993), this letter is to confirm the conveyance of 13.28% of GRUSP entitlement from SRP to Chandler, effective immediately. This changes Chandler's GRUSP entitlement from 6.72% to 20.00%, and changes SRP's GRUSP entitlement from 33.59% to 20.31%.

If you have any questions on this conveyance, please call me at the number above, or call Richard Siegel at 236-2277.

Sincerely,

Paul A. Cherrington

Paul A. Cherrington

c: Ms. Dee Fuerst, City of Chandler
Mr. Kim Neill, City of Chandler
GRUSP Authorized Representatives

PAC/RSS/rss

CHAND4.LET

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: John Olsen, Tax Compliance Manager, 503-6991

MEETING DATE: June 25, 2015

SUBJECT: Intergovernmental Agreement with Arizona Department of Revenue related to Uniform Administration of the Town's Transaction Privilege Tax – Contract No. 2015-1304-0764

STRATEGIC INITIATIVE: Financial Plan

Intergovernmental Agreement provides for Arizona Department of Revenue to administer Town of Gilbert Privilege Tax; Gilbert Privilege Tax provides approximately 60% of all Town General Fund monies.

RECOMMENDED MOTION

A motion to approve the Intergovernmental Agreement between the Town of Gilbert and the State of Arizona authorizing Arizona Department of Revenue to administer Town of Gilbert municipal privilege and affiliated excise taxes; and to authorize the Mayor to execute the required documents.

BACKGROUND/DISCUSSION

This intergovernmental agreement (IGA) was negotiated with the Department of Revenue (DOR) by town representatives that included a finance director, a tax administrator, and two attorneys, along with assistance from the League of Arizona Cities and Towns. Additionally, several attorneys and tax experts from many cities and towns reviewed and commented on the language during the process, resulting in a document that provides the maximum level of information and assurances for the cities possible.

Local Transaction Privilege Tax (TPT) administration is governed by A.R.S. § 42-6001. This statute was recently modified for the purpose of tax simplification with the passage of House Bill 2111 in 2013 and House Bill 2389 in 2014. This statute now requires the Arizona Department of

Revenue (DOR) to administer the transaction privilege and use taxes imposed by all cities and towns and to enter into a new inter-governmental agreement (IGA) with each city and town to reflect these changes and clearly define the working relationship between DOR and Arizona cities and towns.

State administration for the current self-collecting cities is predicated on DOR having the capability to provide an electronic means for collecting and distributing detailed taxpayer information including specific gross receipts and deductions by classification and by business location. This IGA intends to cover all aspects of administration after DOR takes over for all cities and towns, but it also includes language allowing self-collecting cities to continue their own tax and license programs until such time that DOR is able to perform the administrative functions documented in statute.

Although tax simplification will have the greatest impact on those cities and towns that are currently self-collecting local taxes, there are also considerable improvements for cities and towns in the State collection program as a result of simplification, particularly in the form of receiving much more detailed taxpayer data.

The IGA covers all aspects of local tax administration. First and foremost, the IGA addresses confidentiality, including the authorized handling of confidential taxpayer information, expectations for the discreet use of taxpayer data to prevent unauthorized disclosure, and the process we will follow in the event of a disclosure. There is also clarified and simplified guidance on the use of aggregated taxpayer data for public reporting and analysis.

The IGA includes clear direction regarding the sharing of general taxpayer license information, legal interpretations and written guidance, rate and fee tables, and any other pertinent tax information that needs to be shared between the cities and towns and DOR.

Importantly, the IGA identifies exactly which license and tax return data fields must be provided by DOR, and identifies in detail a series of new reports DOR will soon provide to all cities, both of which will serve to greatly expand the data available to the city for analysis purposes.

The first changes related to tax simplification that went into effect were new rules dealing with auditing, which DOR and the cities began following in January 2015. The IGA formalizes both the concepts included in statute and the main concepts used in practice by auditors in the field.

Key factors include a commitment to audit for all jurisdictions whenever any audit is being done; the continued authority for any city or town to perform an audit of a taxpayer that is engaged in business only in their town; the general guidance that DOR will lead all multi-jurisdictional

audits, coupled with the option for DOR to delegate actual audit performance to a city or town when circumstances indicate it would be the most efficient means of completing the audit.

The IGA also provides guidance for handling voluntary disclosure by taxpayers, closing agreements in lieu of litigation, and sets up the responsibilities and authorities of both parties in terms of code or statute interpretations and legal support for protests.

Most importantly, the new IGA provides for a formal review process using the new "State and Local Uniformity Group" made up of four city and four DOR tax experts who will work together to iron out any problems or conflicts between the cities and the State.

The terms of this IGA run an annual basis from July 1, 2015 through June 30, 2016 and it renews automatically each year. Either party has the right to reopen and renegotiate the terms according to provisions within the agreement.

The Intergovernmental Agreement was reviewed for form by Attorney Jack Vincent.

FINANCIAL IMPACT

This agreement will not result in any budgetary impact to the Town.

The financial impact was reviewed by Mary Vinzant, Budget Analyst.

STAFF RECOMMENDATION

Staff recommends approval of this intergovernmental agreement.

Respectfully submitted,

John Olsen
Tax Compliance Manager

Approved By	Approval Date
Cindi Mattheisen	6/4/2015 2:59 PM
Jack Vincent	6/8/2015 4:08 PM
Mary Vinzant	6/9/2015 3:41 PM

INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA AND THE TOWN OF GILBERT

THIS AGREEMENT is entered into this 25th day of June, 2015, by and between the Arizona Department of Revenue, hereinafter referred to as Department, and the Town of Gilbert, an Arizona municipal corporation, hereinafter referred to as City/Town. This Agreement shall supersede and replace all previous intergovernmental agreements, including amendments thereto, entered into by the Department and City/Town regarding the administration, collection, audit and/or licensing of transaction privilege tax, use tax, severance tax, jet fuel excise and use taxes and rental occupancy taxes imposed by the State, cities or towns.

R E C I T A L S

WHEREAS, Title 11, Chapter 7, Article 3 (A.R.S. § 11-952) authorizes two or more public agencies to enter into intergovernmental agreements to contract for services, if authorized by their legislative or governing bodies.

WHEREAS, A.R.S. § 42-6001 et seq. was amended effective January 1, 2015 to provide that the Department shall collect and administer any transaction privilege and affiliated excise taxes imposed by any city or town in Arizona and that the Department and each city or town shall enter into an intergovernmental contract or agreement pursuant to A.R.S. § 11-952 to provide a uniform method of administration, collection, audit and licensing of transaction privilege and affiliated excise taxes imposed by the State, cities or towns.

WHEREAS, City/Town has taken appropriate action by ordinance, resolution or otherwise, pursuant to the laws applicable to the governing body of City/Town, to approve and authorize City/Town to enter into this Agreement.

A G R E E M E N T

NOW, THEREFORE, in consideration of the foregoing, the Department and City/Town enter into this intergovernmental agreement as follows:

1. <u>Definitions</u>

1.1 A.R.S. means the Arizona Revised Statutes.

1.2 Adoption of an Ordinance means final approval by majority vote of the City/Town council.

1.3 Audit means a review to determine the correct amount of tax owed by a taxpayer and includes, but is not limited to, desk reviews and reviews of claims for refund.

1.4 Closing Agreement means an agreement to compromise or settle a tax liability.

1.5 Confidential Information means all such information as defined in A.R.S. § 42-2001.

1.6 **Confidentiality Standards** means the standards set forth in Appendix A or such other written standards mutually agreed to by the Department and City/Town.

1.7 **Federal Tax Information** means federal return or return information the Department receives from the Internal Revenue Service including any information created by the Department derived from that information. Documents obtained from a taxpayer or State records are not considered Federal Tax Information.

1.8 **Model City Tax Code** means the document defined in A.R.S. § 42-6051. The official copy of the Model City Tax Code is published at modelcitytaxcode.az.gov.

1.9 **Modification** means a change to an assessment required or authorized by statute.

1.10 **Municipal Tax(es)** means transaction privilege and affiliated excise taxes, including use tax, severance tax, jet fuel excise and use tax, and rental occupancy tax, imposed by City/Town in accordance with the Model City Tax Code. Unless the context provides otherwise, this definition includes tax, license fees, penalties, interest and other similar charges.

1.11 **State** means the State of Arizona.

1.12 **State and Local Uniformity Group** ("SLUG") means an advisory group comprised of four representatives from municipal taxing jurisdictions and four representatives of the Department as set forth in Section 13 below.

1.13 **Taxpayer Information** means information protected from disclosure pursuant to Model City Tax Code § 510.

2. Disclosure of Information by City/Town to Department

2.1 **Qualified Recipients of Information:** The Department shall provide a list of the names and job titles of Department employees authorized to request and receive Taxpayer Information from City/Town. The Department shall inform City/Town of any additions, deletions or changes to this list within fifteen calendar days after the change occurs and shall provide an updated list at least annually. This information shall be sent via email to City/Town at SalesTax@GilbertAZ.gov. The City/Town will not disclose Taxpayer Information to a Department employee whose name is not included on this list. City/Town may contact the Department with any questions related to qualified recipients by contacting the Cities Unit at CitiesUnit@azdor.gov.

2.2 **Use of Information:** Any Taxpayer Information released by City/Town to the Department may only be used by the Department for tax administration and collection purposes, and may not be disclosed to the public in any manner that does not comply with the Model City Tax Code. All Taxpayer Information shall be stored and destroyed in accordance with the Confidentiality Standards.

2.3 **Municipal Ordinance:**

(a) City/Town shall provide the Department with a copy of its Municipal Tax code or any City/Town ordinances imposing the taxes to be collected hereunder within ten calendar days of a request for such information from the Department. This information shall be sent via email to the Cities Unit at CitiesUnit@azdor.gov.

(b) City/Town shall provide the Department with a copy of any ordinance adopted by City/Town after execution of this Agreement that imposes or modifies the Municipal Taxes to be collected hereunder, including a new or different tax rate as defined by A.R.S. § 42-6053(E), within ten calendar days of Adoption of an Ordinance. This information shall be sent via email to the Cities Unit at CitiesUnit@azdor.gov. No such ordinance shall take effect on a date other than the first day of the month that is at least sixty calendar days after city/town provides notice to the Department unless City/Town and the Department agree otherwise. The Department shall add the change to the official copy of the Model City Tax Code within ten business days of receipt of notice from City/Town. City/Town is responsible for confirming the change has been made. Pursuant to A.R.S. § 42-6053(E)(2), changes in tax rates have no effect unless reflected in the official copy of the Model City Tax Code.

(c) Within fifteen calendar days following the adoption of an annexation ordinance, one copy of the ordinance and notification of the effective date of such ordinance shall be sent to the Department via email at GIS@azdor.gov. City/Town shall also include with the notice a list of businesses City/Town knows to be located in the annexed area. The Department shall not be obligated to begin collection of Municipal Tax any sooner than the first day of the month that is at least sixty calendar days after the date the Department received notice from City/Town of the annexation.

2.4 Development and Impact Fees: Upon request, City/Town shall provide to the Department any information regarding development and impact fees to assist the Department with the auditing of taxpayers and billing and collection of taxes.

2.5 Audits: Upon request by the Department, City/Town shall allow inspections and copies of any City/Town tax audits.

2.6 Other Information: City/Town shall also provide other relevant information necessary for tax administration and collection purposes as requested by the Department.

2.7 Statutory Authority: The disclosure of confidential City/Town tax information is governed by Model City Tax Code Section 510.

3. Disclosure of Information by Department to City/Town.

3.1 Qualified Recipients of Information: City/Town shall provide a list of the names and job titles of City/Town employees and any independent auditors acting on behalf of City/Town authorized to receive Confidential Information. City/Town shall inform the Department of any additions, deletions or changes to this list within fifteen calendar days after the change occurs and shall provide an updated list at least annually. This information shall be sent via email to the Cities Unit at CitiesUnit@azdor.gov. The Department will not disclose any Confidential Information to a City/Town employee or independent auditor whose name is not included on this list. The Department may contact City/Town with any questions related to qualified recipients by contacting SalesTax@GilbertAZ.gov.

3.2 Suspension of Information: The Department will not withhold Confidential Information from City/Town so long as City/Town complies with A.R.S. § 42-2001 et seq. and the Confidentiality Standards.

(a) If the Department has information to suggest City/Town, or any of its duly authorized representatives, has violated A.R.S. § 42-2001 or the Confidentiality Standards, the Department will send written notice to City/Town detailing the alleged breach as understood by the Department and requesting a response to the allegation within twenty calendar days of the date of the letter.

(b) The Department will review the written response from City/Town and consider the information contained therein and all relevant circumstances surrounding the alleged violation before making a written determination as to whether a suspension of information is warranted and the length of the suspension.

(c) If City/Town is dissatisfied with the Department's determination it may within ten calendar days, submit a written request to SLUG requesting the group review the determination.

(d) If the Department has information to suggest City/Town has violated the Confidentiality Standards, the Department may inspect City/Town's records, facilities, and equipment to confirm whether there has been a violation.

3.3 Information to be Provided: Within the restrictions outlined in this Section, the Department shall provide all of the information detailed in Appendix B, which may be modified by the mutal agreement of the parties. The Department shall not provide Federal Tax Information to City/Town. In addition to the information detailed in Appendix B, City/Town may obtain upon request:

(a) Inspections and/or copies of Department tax audits, including all information related to all cities and towns included in the tax audit; and

(b) Other relevant information necessary for tax administration and collection purposes, including all information necessary to verify City/Town received all revenues collected by the Department on behalf of City/Town.

3.4 Storage and Destruction of Confidential Information: All Confidential Information provided by the Department to City/Town shall be stored, protected, and destroyed in accordance with the Confidentiality Standards.

3.5 Statutory Authority: The Department may disclose Confidential Information to City/Town pursuant to A.R.S. § 42-2003(H) if the information relates to a taxpayer who is or may be taxable by a county, city or town. Any Confidential Information released to City/Town:

(a) May only be used for internal tax administration purposes as defined in A.R.S. § 42-2001(4); and

(b) May not be disclosed to the public in any manner that does not comply with the Confidentiality Standards.

A.R.S. § 42-2003(H)(2) provides that any release of Confidential Information that violates the Confidentiality Standards will result in the immediate suspension of any rights of City/Town to receive taxpayer information pursuant to A.R.S. § 42-2003(H).

3.6 Specificity of Data: A.R.S. § 42-6001 provides that taxpayers shall file and pay Municipal Taxes to the Department if the Department has developed the electronic and nonelectronic tools necessary to capture data with sufficient specificity to meet the needs of all taxing jurisdictions, including specific data regarding each tax classification and any corresponding deductions at each business location of the taxpayer. Pursuant to A.R.S. § 42-5015, the electronic system utilized by the Department must be able to capture data with sufficient specificity to meet the needs of the taxing jurisdiction. The Department and City/Town agree that JT2 and TPT2 (as summarized in Appendix C) are required to meet the specificity needs of City/Town.

(a) Non-Program City/Town: If City/Town performed its own Municipal Tax administration, collection, and licensing prior to July 1, 2015, then if the Department is unable to commit by September 1, 2015 that the data detail behind the JT2 and TPT2 will be provided to City/Town beginning and from January 1, 2016, the following shall take place:

(1) The term of the agreement entered into by the Department and City/Town pertaining to City/Town performing municipal licensing services on behalf of the Department shall be extended for one (1) year; and

(2) All provisions in this Agreement pertaining to the administration, collection, and licensing of Municipal Taxes shall not go into effect until such time as the Department is able to meet the requirements of A.R.S. § 42-6001 and A.R.S. § 42-5015, however all language in this Agreement related to audit functions shall remain in full force and effect.

(b) Program Cities/Towns: If the Department performed Municipal Tax administration, collection and licensing for City/Town prior to July 1, 2015,

then if the Department is unable to commit by September 1, 2015 that the data detail behind the JT2 and TPT2 will be provided to City/Town beginning and from January 1, 2016, the Department will contintinue to perform those functions. The continued provision of such service, however, shall not be deemed waiver of any legal rights or remedies afforded to City/Town including, but not limited to, a failure to meet the requirements of A.R.S. § 42-6001 and A.R.S. § 42-5015.

4. <u>Audit</u>.

The Department shall administer the audit functions for City/Town in accordance with the following provisions.

4.1 **Training**: All auditors and supervisors shall be trained in accordance with the policies of the Department. Auditors who have not completed the training may only work in connection with a trained auditor and cannot be the only auditor assigned to the audit. The Department shall:

(a) Provide audit training at least three times per year, or more frequently if there is a demonstrated need, and be responsible for its costs of the training and any associated materials;

(b) Provide additional training when practical;

(c) Notify City/Town of any training sessions at least thirty calendar days before the date of the training session;

(d) Provide copies of State tax statutes, audit reference materials and audit procedures and manuals;

(e) Permit City/Town auditors and supervisors to attend any scheduled training as space permits at designated training location: and

(f) Provide additional training as needed to inform auditors and supervisors regarding changes in State law or Department policy.

4.2 Conflict of Interest: An auditor or supervisor trained and authorized to conduct an audit may not conduct any of the following prohibited acts:

(a) Represent a taxpayer in any tax matter against the Department or City/Town while employed or in an independent contractor relationship with the Department or City/Town.

(b) Attempt to use his/her official position to secure any valuable thing or valuable benefit for himself/herself or his/her family members.

(c) Represent a taxpayer before the Department or City/Town concerning any matter in which he/she personally participated for a period of one year after he/she ends employment or the independent contractor relationship with the Department or City/Town.

(d) Use information he/she acquires in the course of the official duties as an auditor or supervisor in a manner inconsistent with his/her official duties without prior written approval from the Department.

(e) For a period of one year after he/she ends employment or an independent contractor relationship with the Department or City/Town, work in the same firm as a person who represents a taxpayer against the Department or City/Town unless the firm institutes formal barriers to prevent any sharing of information between the trained auditor or supervisor and the remainder of the firm.

The Department may revoke an individual's authority to audit and prohibit the use of any auditor or supervisor who violates this provision.

4.3 Audits and Refunds:

(a) City/Town may conduct an audit of a taxpayer engaged in business only in City/Town. Before commencing such audit, City/Town shall notify the Department to ensure the taxpayer is not already scheduled for an audit. The Department will provide City/Town with a written response within fifteen calendar days of the notice from City/Town.

(b) Except as permitted below, the Department shall conduct all audits of taxpayers having locations in two or more cities or towns. A City/Town auditor may participate in any audit City/Town requested the Department to perform.

(c) City/Town shall notify the Department if it wants an audit of a taxpayer having locations in two or more Arizona cities or towns and whose primary business activity is in the following business classifications taxable by City/Town, but not a taxable activity under State law:

1. Residential rentals;
2. Commercial rentals;
3. Speculative Builders; or
4. Advertising.

The Department will authorize such audits, to be overseen by the Department, unless there is already an audit of the taxpayer scheduled, or the Department determines the audit selection is discriminatory, an abuse of process or poses other similar defects. The Department will notify City/Town of its determination within thirty calendar days. No initial audit contact may occur between City/Town and a taxpayer until the Department approves the audit notice.

(d) City/Town may request the Department conduct an audit of a taxpayer having locations in two or more Arizona cities or towns and whose primary business

is subject to both city and state tax. The request must be made using the Department's audit request form. Copies of the form can be obtained from the Department's TPT Hub Unit at HubUnit@azdor.gov. The Department shall notify City/Town of the decision regarding the request within thirty calendar days of receipt of the request.

(e) The Department may deny a request for an audit for the following reasons:

1. An audit is already scheduled or planned for the taxpayer within six months of the request;
2. The requested audit would interfere with strategic tax administration planning;
3. The audit selection is discriminatory, an abuse of process or poses other similar defects;
4. The request lacks sufficient information for the Department to determine whether it is appropriate;
5. The Taxpayer was audited within the previous two years;
6. The Department lacks sufficient resources to conduct the audit; or
7. The scope or subject of the audit does not justify the use of Department resources.

(f) If the Department denies a request to conduct an audit because it either lacks resources to conduct the audit itself or the scope or subject of the audit does not justify the use of Department resources then City/Town shall notify the Department if it wants to conduct the audit under the supervision of the Department. No initial audit contact may occur between City/Town and a taxpayer until the Department appoints someone to supervise the audit.

(g) Any decision by the Department denying City/Town's request to conduct any audit may be referred to SLUG in accordance with Section 13 of this Agreement.

(h) All audits conducted by City/Town shall be in accordance with standard audit procedures defined in the Department audit manual. All auditors shall be trained in accordance with Section 4.1 above.

(i) The Department may appoint a manager to supervise any audit conducted by City/Town.

(j) All audits shall include all taxing jurisdictions in the State regardless of which jurisdiction's auditors participate in the audit. All desk reviews must include all taxing jurisdictions for which there is information available.

(k) The Department shall issue all audit assessments on behalf of all taxing jurisdictions in a single notice to the taxpayer.

(l) The Department shall issue Modifications to audit assessments on behalf of all taxing jurisdictions in a single notice to the taxpayer.

4.4 Claims for Refund:

(a) When a taxpayer files a request for refund, including refunds requested by filing amended returns, the Department shall process the request and review it for mathematical errors or for the failure of the taxpayer to properly compute the tax based on the taxable income reported on the return or refund request.

(b) The Department will notify City/Town of all refund requests that are processed involving City/Town's Municipal Taxes within thirty calendar days of processing the refund. City/Town may request an audit of the taxpayer as set forth in Section 4.3 above. .

(c) The Department may assign an auditor to review requests for refunds. The Department will notify City/Town, within thirty calendar days of initiating a review, of all refunds under review by an auditor pertaining to a taxpayer who engages in business within City/Town's taxing jurisdiction and may request that City/Town assign an auditor to assist with such reviews.

(d) City/Town is responsible for payment of all amounts to be refunded to taxpayers for Municipal Tax incorrectly paid to City/Town. The Department may offset a remittance to City/Town under this Agreement to cover the amounts of allowed refunds. If there are insufficient funds available to pay the refund, City/Town must pay the Department within sixty days of written demand from the Department.

(e) The Department shall issue refund approvals/denials on behalf of all taxing jurisdictions in a single notice to the taxpayer. City/Town may request copies of such determinations.

4.5 Protests: Taxpayer protests of audit assessments and desk review assessments and refund denials shall be directed to the Department. Appeals of audit assessments, desk review assessments and refund denials shall be administered pursuant to Title 42, Chapter 1, Article 6, Arizona Revised Statutes. Upon request, the Department shall notify City/Town of any appeals within 30 days of receipt of the protest.

4.6 Notice of Resolution: The Department shall notify City/Town when a protest is resolved, including information concerning the resolution of the protest, within 30 days after the resolution of a protest.

4.7 Status Reports: The Department shall keep SLUG apprised of the status of each protested matter involving the imposition of Municipal Taxes. City/Town may request to be on a distribution list for monthly status reports by contacting the Department's Cities Unit.

5. Voluntary Disclosure Agreements

The Department may enter into a voluntary disclosure agreement with a taxpayer. A voluntary disclosure agreement may limit the years subject to audit and waive penalties. City/Town may request to be kept informed of voluntary disclosure agreements involving City/Town Municipal Tax. If City/Town makes that request, the Department will notify City/Town of the Department's intent to enter into an agreement and the Department will provide the taxpayer's identity within thirty calendar days of disclosure. City/Town may request an audit of a taxpayer subject to a voluntary disclosure agreement pursuant to Section 4.3 above.

6. License Compliance

6.1 License Issuance and Renewal: The Department shall issue new Municipal Tax licenses and renew such licenses for City/Town Municipal Tax. The Department of Revenue shall provide City/Town with information about all persons obtaining and renewing tax licenses as set forth in Appendix B.

6.2 License Checks: The Department and City/Town shall coordinate efforts to conduct tax license compliance checks through canvassing and other compliance methods.

6.3 Confidentiality: Any tax license information City/Town obtains from the Department is considered Confidential Information and may only be disclosed as authorized by A.R.S. § 42-2003. Any tax license information City/Town obtains through its own efforts may be disclosed as allowed by applicable City/Town laws.

6.4 Changes to License Fees: Within fifteen calendar days following the Adoption of an Ordinance (or official acknowledgment of approval of an ordinance by voters in an election of a charter city) issuing or modifying a tax license fee, one copy of the ordinance and notification of the effective date of such ordinance shall be sent to the Department via email at CitiesUnit@azdor.gov. The Department shall not be obligated to begin collection of the new or modified fee any sooner than sixty calendar days after the date the Department received the ordinance from City/Town. Notice of an ordinance concerning a renewal tax license fee must be received by the Department by July 31 in order to be collected the following calendar year.

7. Closing Agreements

7.1 **Approval** - The Department shall notify City/Town before entering into a Closing Agreement related to the tax levied and imposed by City/Town. The Department shall seek approval from either City/Town or SLUG before entering into such Closing Agreement. If the Closing Agreement concerns only City/Town, then the Department will attempt to obtain approval from City/Town first, and will only seek approval from SLUG if City/Town is unresponsive or the Department and City/Town cannot reach an agreement. Approval and notice is not required for Modifications of assessments.

7.2 **Litigation** - During the course of litigation, the Department shall seek a range of settlement authority from City/Town or SLUG, unless the circumstances prevent such action. The Department may also request a telephonic meeting of SLUG if time and circumstances require immediate action.

8. Responsibility for Representation in Litigation.

8.1 Administrative Proceedings: The Department shall be responsible for coordinating the litigation and defending the assessment or refund denial in any administrative appeals before the Office of Administrative Hearings or the Director of the Department regardless of who conducted the audit. The Department shall be reasonably diligent in defending the interests of City/Town and City/Town shall assist in such representation as may be requested by the Department.

8.2 Further Appeals: The Arizona Attorney General is responsible for defending the assessment or refund denial at the Board of Tax Appeals, the Arizona Tax Court and all higher courts. City/Town shall assist the Attorney General in such representation and litigation as requested by the Attorney General's Office.

8.3 Mutual Cooperation: The Department and City/Town agree they shall cooperate in the appeal and litigation processes and shall ensure their auditors, supervisors, and other necessary employees are available to assist the Department and the Attorney General for informal interviews, providing documents and computer records, preparing for depositions, attending depositions and trial as witnesses, and assisting in trial/hearing preparation as needed.

8.4 Administrative Decisions: The Department shall provide a copy of any and all administrative hearing level decisions, including Director's decisions issued by the Department to all jurisdictions on a distribution list. City/Town may request to be on the distribution list by contacting the Department's Cities Unit. Administrative decisions are Confidential Information and must be stored and destroyed in accordance with the Confidentiality Standards.

9. Collection of Municipal Taxes

9.1 **Tax Returns:** Taxpayers who are subject to City/Town Municipal Taxes shall pay such taxes to the Department. Tax payments shall be accompanied by a return prepared by taxpayer on a form prescribed by the Department.

9.2 **Collection:** The Department shall collect any Municipal Tax imposed by City/Town recorded on the Department's tax accounting system. Amounts the Department collects for delinquent City/Town Municipal Tax accounts after the termination of this Agreement shall be forwarded to City/Town.

9.3 **Remittance:** All amounts collected by the Department for Municipal Taxes under this Agreement shall be remitted to City/Town weekly on the basis of actual collections. The Department shall initiate the electronic payment by noon on the Monday after the end of the week in which the collections were made. Remittance shall be made in the form of immediately available funds transferred electronically to the bank account designated by City/Town.

9.4 **Abatement:** The Department, with the approval of the Attorney General, may abate tax under certain circumstances. During the ordinary course of business, the Department may determine for various reasons that certain accounts shall be closed or cancelled. The Department shall seek input from City/Town or SLUG before abating tax or closing accounts. The Department may request a telephonic meeting of SLUG if time and circumstances require immediate action.

9.5 **Funds Owed to City/Town:** At all times and under all circumstances payments remitted by a taxpayer to the Department for City/Town Municipal Taxes will be considered property of City/Town. The Department may not retain or fail to remit such funds to City/Town for any reason not specifically set forth in this Agreement including, but not limited to, during the course of a dispute between City/Town and the Department.

10. Financing Collection of Taxes.

The costs incurred by the Department in administering this Agreement shall be financed through the State general fund appropriation to the Department.

11. Inter-Jurisdictional Transfers.

All inter-jurisdictional transfers of Municipal Tax monies by the Department shall be handled in the following manner:

11.1 **Requests:** Requests for inter-jurisdictional transfers shall be made to the Department. The Department will review the request and will not automatically accept the request.

11.2 **Notice:** The Department shall notify City/Town and any other city or town implicated in the requested transfer a minimum of thirty calendar days prior to any inter-jurisdictional transfer of money.

11.3 Dispute Resolution: Any city or town subject to an inter-jurisdictional transfer shall resolve any dispute over the allocation of the tax in accordance with A.R.S. § 42-6003 and the Department shall transfer the funds subject to an inter-jurisdictional transfer in accordance with the agreed upon allocation in a timely manner.

12. Educational Outreach.

City/Town may conduct, at its own expense, educational outreach to taxpayers who are conducting business activities within City/Town's taxing jurisdiction concerning the Model City Tax Code and the collection and administration of Municipal Taxes. Educational outreach shall be consistent with applicable law and Department written guidance. Upon request, City/Town shall provide information to the Department concerning such educational outreach efforts.

13. SLUG.

The Department shall create an advisory group to help resolve issues

13.1 Members: The members shall consist of four seats representing municipal taxing jurisdictions and four seats representing the Department. Member seats may be split so some people fill the position for only certain issues, such as audit selection or collection abatement. There shall also be a list of alternate members, who may be asked by a regular member who is unable to attend a meeting to take that member's place at a SLUG meeting.

13.2 Selection: The Director of the Department shall appoint people to serve as members of SLUG. Municipal taxing jurisdictions shall nominate members from municipal taxing jurisdictions. All members shall serve for a period of one year unless they resign at an earlier date. Members may be appointed to serve consecutive terms. Members appointed to fill vacancies shall serve for the time remaining on the term.

13.3 Meetings: SLUG shall meet on a regular basis and at least monthly unless the members agree to cancel the meetings due to a lack of agenda items. It can schedule additional meetings as necessary to timely discuss issues presented. Alternate members may attend meetings, but cannot participate in any discussion or voting, unless filling the seat of a regular member.

13.4 Issues: City/Town may refer issues to SLUG involving the following:

(a) Decisions by the Department to not audit a taxpayer;

(b) Amendments to Department audit procedures or manuals;

(c) Closing Agreements or a range of settlement authority;

(d) Abatement or account closure in collections;

(e) Suspension of disclosure of information from the Department; and

(f) Other issues as authorized by the Director of the Department or agreed upon by the parties.

13.5 **Recommendations**: SLUG shall make recommendations to the Director of the Department. If the recommendation is approved by at least five members of SLUG, the Director will accept the recommendation of SLUG. If SLUG cannot reach a recommendation agreeable to at least five members of the group, the Director may act as he deems to be in the best interests of all parties.

13.6 **Voting**: Voting shall be by secret ballot.

13.7 **Procedures: SLUG** may develop procedures concerning the operation of the group as long as they are not inconsistent with this Agreement.

14. Funding of Additional Auditors by City/Town.

14.1 **Funding**: At the sole discretion of City/Town, City/Town may contribute funding to the Department to pay for additional auditors to assist the Department in the performance of audits of Municipal Tax owed to City/Town. Such additional auditors funded by City/Town shall at all times be deemed to be employees of the Department and under no circumstances shall be deemed to be employees or agents of City/Town. It is the parties' intention that City/Town funding be used to increase the capabilities of the Department to perform Municipal Tax audits and not to subsidize or replace State funding required for audit and collection of taxes.

14.2 **Use of Funds:** City/Town funding for additional auditors under this Section shall be used to fund the auditors' salaries and employee related expenses and shall not be used to pay for Department office space, utilities, equipment, supplies, or similar kinds of overhead.

14.3 **Pool of Funds:** The Department may pool any City/Town funding with any other similar funding provided by other municipal taxing jurisdictions to pay for additional auditors. The Department shall separately account for such funds in its annual budget.

14.4 **Accounting:** The Department shall provide an annual accounting to City/Town, by August 31 each year describing how City/Town funding was used during the prior fiscal year.

15. Satellite Offices for Department Auditors.

15.1 **Funding**: City/Town, at its own expense and at its sole discretion, may provide one or more satellite offices and associated amenities for use by Department employees to provide audit and/or customer service to taxpayers. Use of such facilities by Department employees shall be at the sole discretion of the Department. Nothing in this section shall require the Department to make use of such facilities provided by City/Town.

15.2 **Requirements:** Any Department employee using a City/Town satellite office must meet reasonable requirements of City/Town related to the use of the facility. City/Town shall be responsible for notifying the Department of any concerns, and the Department shall be responsible for taking appropriate actions to resolve those concerns.

15.3 **Termination:** Once a satellite office is established, City/Town shall provide at least 180 calendar days written notice to the Department prior to the termination or relocation of a satellite office. The Department may discontinue the use of a satellite office at any time upon notice to City/Town and shall promptly remove all Department property.

15.4 **License:** All requirements of City/Town and the Department related to the satellite office shall be outlined in a mutually acceptable form of license and subject to separate approval.

16. Non-availability of Funds.

Every payment obligation of the Department and the City/Town pursuant to this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation, except for the rendering of funds to City/Town paid by a taxpayer for Municipal Taxes or tax license fees of City/Town. If funds are not appropriated, allocated and available or if the appropriation is changed resulting in funds no longer being available for the continuance of this Agreement, this Agreement may be terminated at the end of the period for which funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this Section. The termination of this Agreement shall not entitle the Department to retain any Municipal Tax collected on behalf of City/Town pursuant to this Agreement.

17. Waiver.

Nothing in this Agreement should be interpreted as City/Town relinquishing its legal rights under the Arizona Constitution or other applicable law, nor that City/Town is conceding the

administration and collection of its Municipal Tax is not of a local interest or should not be under local control.

18. <u>Cancellation</u>

The requirements of A.R.S. § 38-511 apply to this Agreement. The Department or City/Town may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Department or City/Town is, at any time while this Agreement or any extension is in effect, an employee, agent or consultant of the other party with respect to the subject matter of this Agreement.

19. <u>Notice</u>.

(a) When any Notice to City/Town is required under the terms of this Agreement, such Notice shall be mailed to City/Town at the following address, directed to the attention of:

Finance Director, Town of Gilbert

50 E Civic Center Dr, 2nd Floor

Gilbert, AZ 85296

(b) When any Notice to the Department is required under the terms of this Agreement, such Notice shall be mailed to:

Arizona Department of Revenue
Attn: Director, Division Code 20
1600 W. Monroe
Phoenix, AZ 85007

Notice to the Department's Hub Unit or City Unit may be mailed to:

Arizona Department of Revenue
Division Code 16
1600 W. Monroe
Phoenix, AZ 85007

20. <u>Non-discrimination.</u>

The Department and City/Town shall comply with Executive Order 2009-9, which mandates all persons, regardless of race, color, religion, sex, age, or national origin, shall have equal access to employment opportunities, and all other applicable State and Federal employment laws, rules,

and regulations, including the Americans with Disabilities Act. The Department and City/Town shall take affirmative action to ensure applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, national origin or disability.

21. Compliance with Immigration Laws and A.R.S. § 41-4401.

21.1 The Department and City/Town shall comply with all Federal immigration laws and regulations relating to employees and warrants compliance with A.R.S. § 23-214(A) which reads in part: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the e-verify program."

21.2 A breach of compliance with immigration laws and regulations shall be deemed a material breach of this Agreement and may be grounds for the immediate termination of this Agreement.

21.3 The Department and City/Town retain the legal right to inspect the papers of any employee who works on the Agreement to ensure the Department and City/Town is complying with the applicable Federal immigration laws and regulations and State statutes as set forth above.

22. Audit of Records.

City/Town and the Department shall retain all data, books, and other records ("Records") relating to this Agreement for at least six (6) years (a) after termination of this Agreement, and (b) following each annual renewal thereof. All Records shall be subject to inspection by audit by the State at reasonable times. Upon request, the Department and City/Town shall produce any or all such records. This Agreement is subject to A.R.S. §§ 35-214 and -215.

23. Amendments.

Any amendments to or modifications of this Agreement must be executed in writing in accordance with the provisions of this Agreement.

24. Mutual Cooperation.

In the event of a disagreement between the parties with regard to the terms, provisions and requirements of this Agreement or in the event of the occurrence of any circumstances bearing upon or affecting this Agreement, parties hereby agree to mutually cooperate in order to resolve the said disagreement or deal with the said circumstance.

25. Arbitration.

To the extent required by A.R.S. § 12-1518(B) and as provided for in A.R.S. § 12-133, the parties agree to resolve any dispute arising out of this Agreement by arbitration. The parties agree that any lawsuit filed by City/Town relating to the issues outlined in Section 17 of this Agreement is not considered to be a dispute arising out of this Agreement.

26. Implementation.

The implementation and execution of the provisions of this Agreement shall be the responsibility of the Director of the Department or his representative and the Mayor his/her designee, or another party with designated authority pursuant to applicable law or City/Town charter on behalf of City/Town.

27. Limitations.

Nothing in this Agreement shall be construed as limiting or expanding the statutory responsibilities of the parties in performing functions beyond those granted to them by law, or as requiring the parties to expend any sum in excess of their appropriations.

28. Duration.

28.1 The term of this Agreement shall be from July 1, 2015 through June 30, 2016. This Agreement shall automatically be renewed for successive one year terms thereafter unless either party shall terminate this Agreement by notice, in writing, no later than sixty calendar days prior to the expiration of the term then in effect.

28.2 If State legislation enacted subsequent to the date of this Agreement substantially affects the performance of this Agreement by either party or substantially diminishes the benefits either party would receive under this Agreement, either party may then terminate this Agreement by giving at least thirty calendar days' notice to the other party. The termination will become effective immediately upon the expiration of the notice period unless otherwise agreed to by the parties.

28.3 Notwithstanding any provision to the contrary herein, both parties may by mutual agreement provide for the termination of this contract upon such terms and at such time as is mutually agreeable to them.

28.4 Any notice of termination shall be mailed and served on the other party in accordance with Section 19 of this Agreement.

28.5 During the term of this Agreement, the terms and conditions of this Agreement will undergo an annual review to be completed no later than March 1st of each year. The review will be performed by a committee made up of equal parts representatives of the Department and representatives of the municipal taxing

jurisdictions entering into an IGA with the Department for the administration and collection of Municipal Taxes.

29. Choice of Law.

The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Agreement, and any disputes arising from this Agreement.

30. Entire Agreement.

This document, including other documents referred herein, and any approved subcontracts, amendments and modifications made thereto, shall constitute the entire Agreement between the parties and shall supersede all other understandings, oral or written.

31. Signature Authority.

31.1 By signing below, the signer certifies he or she has the authority to enter into this Agreement on behalf of his or her respective party, and he or she has read the foregoing and agrees to accept the provisions herein on said party's behalf.

31.2 This Intergovernmental Agreement may be executed in counterpart.

Signature Date	Signature Date
Typed Name and Title	Typed Name and Title John W. Lewis, Mayor
Entity Name	Entity Name Town of Gilbert
Address	Address 50 E Civic Center Dr, 2nd Floor
City State Zip	City State Zip Gilbert, AZ 85296
RESERVED FOR THE ATTORNEY GENERAL:	**RESERVED FOR CITY/TOWN ATTORNEY:**
This agreement between public agencies has been reviewed pursuant to A.R.S. § 11-952 by the undersigned Assistant Attorney General who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the Arizona Department of Revenue represented by the Attorney General. **MARK BRNOVICH** The Attorney General _____ Signature Assistant Attorney General Date: _____	APPROVED AS TO FORM AND AUTHORITY: BY:_____ CITY/TOWN ATTORNEY Date: _____

APPENDIX A

ARIZONA DEPARTMENT OF REVENUE CONFIDENTIALITY REQUIREMENTS

1. Confidential Information

1.1 Confidential Information is defined in A.R.S § 42-2001. Confidential Information may not be disclosed except as provided by statute. A.R.S. § 42-2001(B).

1.2 License information obtained from the Department of Revenue is Confidential Information and may only be disclosed as authorized by A.R.S. § 42-2003. License information obtained from other sources is not Confidential Information.

1.3 Information about a taxpayer's identity obtained from the Department of Revenue is Confidential information and may only be disclosed as authorized by A.R.S. § 42-2003. Identity information obtained from other sources is not Confidential Information.

1.4 Confidential Information includes information about a single taxpayer and also aggregated information about a group of identified or identifiable taxpayers. Aggregated information from fewer than three taxpayers in a grouping on a statewide basis or fewer than ten taxpayers in a grouping for an area that is less than state level (city or town) may be Confidential Information. Such information may not be released unless the City/Town Administrator reviews the relevant information concerning the aggregate data and makes a determination in writing that the aggregate data does not reveal information about any specific taxpayer. Such determination should take into consideration the following:

a. The proportionality of the tax information applicable to individual members of the group of taxpayers; no individual taxpayer's information should be discernable due to its relative size/taxable sales, compared to other members of the group;

b. The total aggregated tax information; the aggregate information cannot allow viewers to draw conclusions about individual taxpayers (e.g., there are 6 car dealers in the city and the total aggregate sales were $900,000 and none of them reported individual sales above the $20,000 mark, which would have qualified for the lower tax rate on large purchases)

c. Any other factor that could cause the aggregate data to be used to determine information specific to a single taxpayer.

2. Protecting Information

2.1 City/Town must identify all places, both physical and logical, where Confidential Information is received, processed and stored and create a plan to adequately secure those areas.

2.2 Confidential Information must be protected during transmission, storage, use, and destruction. City/Town must have policies and procedures to document how it protects its information systems, including Confidential Information contained therein. An example of appropriate protection standards is set forth in National Institute of Standards and Technology Special Publication 800-53. The publication may be found at http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf

2.3 Employees are prohibited from inspecting information unless they have a business reason for the information. Browsing information concerning friends, neighbors, family members, or people in the news is strictly prohibited.

2.4 All removable media, including paper and CDs, containing Confidential Information must be secured when not in use and after normal business hours by placing all materials in a locked drawer or cabinet. During use, Confidential Information must be protected so that it is not visible to members of the public or anyone without a business need for the information.

2.5 All individuals accessing or storing Confidential Information from an alternative work site must enter into a signed agreement that specifies how the Confidential Information will be protected while at that site. Only trusted employees shall be permitted to access Confidential Information from alternative sites. Confidential Information may not be accessed while in public places such as restaurants, lounges, or pools.

2.6 Confidential Information may not be sent outside the local area network by unencrypted email. City/Town is responsible for ensuring in-flight email communications containing Confidential Information are sent through a secure process. This may include encryption of the email message, a secure mailbox controlled by City/Town, an encrypted point-to-point tunnel between the correspondents or use of Transport Layer Security (TLS) between correspondents. The acceptable encryption algorithms are set forth in the standards attached as Exhibit 1, which may be updated to accommodate changed technology.

2.7 Confidential Information may not be discussed in elevators, restrooms, the cafeteria, or other public areas. Terminals should be placed in such a manner that prohibits public viewing of Confidential Information.

2.8 When transporting confidential materials the materials should be covered so that others cannot see the Confidential Information. When sending Confidential Information by fax a cover sheet should always be used.

2.9 Any person with unsupervised access to Confidential Information shall receive training on the confidentiality laws and requirements to protect such information before being given access to such Information and annually thereafter. They must sign certificates after the training acknowledging that they understand their responsibilities. City/Town must keep records to document this training and certification.

3. Disclosure of Information

3.1 Confidential Information may only be disclosed as permitted by A.R.S. § 42-2003.

3.2 Confidential Information is confidential by statute and, therefore, does not have to be disclosed in response to a public records request. A state agency may deny inspection of public records if the records are confidential by statute. *Berry v. State,* 145 Ariz. 12, 13 699 P.2d 387, 388 (App. 1985).

3.3 A taxpayer may designate a person to whom Confidential Information may be disclosed by completing a Department of Revenue Form 285, or such other form that contains the information included in the Form 285. City/Town may contact the Department of Revenue's Disclosure Officer if there are any questions concerning this requirement.

Disposal of Information

4.1 All removable media containing Confidential Information must be returned to the Department of Revenue or sanitized before disposal or release from the control of City/Town.

4.2 Confidential Information may be destroyed by shredding or burning the materials when no longer needed. Confidential Information may not be disposed of by placing the materials in the garbage or recycle bins. Destruction of Confidential Information may be performed by a third party vendor. City/Town must take appropriate actions to protect the Confidential Information in transit and storage before it is destroyed, such as periodic inspections of the vendor.

4.3 Computer system components and devices such as copiers and scanners that have been used to store or process Confidential Information may not be repurposed for non-tax administration uses unless the memory or hard drive of the device is sanitized to ensure under no circumstances Confidential Information can be restored or recovered.

EXHIBIT 1

ENCRYPTION STANDARDS

1.0 Acceptable Encryption Algorithms – The following encryption algorithms are considered acceptable for use in information systems to protect the transmission or storage of Confidential Information and system access.

1.1.1 Acceptable Security Strength – the security strength of an encryption algorithm is a projection of the time frame during which the algorithm and the key length can be expected to provide adequate security. The security strength of encryption algorithms is measured in bits, a measure of the difficulty of discovering the key.

a. The current minimum key strength for Confidential Information is 112 bits.

1.1.2 Symmetric Encryption Algorithms – The following symmetric encryption algorithms are considered acceptable for use.

Algorithm	Reference	Acceptable Key Strengths
Advanced Encryption Standard (AES)	FIPS 197	128, 192 or 256 bits
Triple Data Encryption Algorithm (TDEA) (three key 3DES)	SP 800-67	168 bits

1.1.3 Key Agreement Schemes – The following key agreement schemes are considered acceptable for use

Key Agreement Scheme	Reference	Acceptable Key Strengths Finite Fields	 Elliptical Curves
Diffie-Hellman (DH) or MOV	SP 800-56A SP 800-135	P = 2048 Q = 224 or 256	N: 224-255 and H=14 N: 256-383 and H=16 N: 384-511 and H=24 N: 512+ and H=32
RSA – based	SP 800-131A	N = 2048	

1.1.4 Hash Functions – The following hash functions are considered acceptable for use

Digital Signature Generation	Digital Signature Verification	Non-digital signature generation applications
SHA-224 SHA-256 SHA-384	SHA-224 SHA-256 SHA-384	SHA-1 SHA-224 SHA-256

SHA-512	SHA-512	SHA-384 SHA-512

1.1.5 Digital Signature Algorithms – The following digital signature algorithms are considered acceptable for use.

Digital Signature Algorithm	FIPS Publication	Digital Signature Generation Settings	Digital Signature Verification Settings	Relative Strengths
Digital Signature Standard (DSA)	FIPS 186-4	p>= 2048 q = 224	p>= 2048 q = 224	>= 112 bits
RSA Digital Signature	FIPS 186-4	2048	2048	>= 112 bits
ECDSA	FIPS 186-4	224	224	>= 112 bits

1.1.6 Message Signature Algorithms – The following digital signature algorithms are considered acceptable for use.

Hash Algorithms	Hash Generation	Hash Verification
HMAC	>= 112 bits	>= 112 bits
CMAC	AES, 3DES	AES, 3DES
CCM and GCM/GMAC	AES	AES

APPENDIX B

From the effective date of this Agreement until the new functionalities set forth below are implemented, the Department of Revenue will provide the following reports:

City Payment Journal Detail;
City Payment Journal Summary;
New License Report

Within 30 days after the first month's implementation of the JT2, the Department of Revenue will provide a new License Report and License Update Report containing at least the following fields:

NEW LICENSE REPORT AND LICENSE UPDATE REPORT

Fields displayed:

- Region Code
- Run Date
- Report Start Date
- Report End Date
- Update Date
- ID Type
- ID
- Account ID
- Entity Name
- Ownership Type
- License ID
- OTO/Applied For indicator
- Bankruptcy Indicator
- Filing Frequency
- Issue Date
- Account Start Date
- Business Start Date
- Arizona Start Date
- Doc Loc Nbr
- Accounting Method
- Close Date
- Close Code
- Business Description
- NAICS1
- NAICS2
- NAICS3
- NAICS4
- Mailing Street1
- Mailing Street2
- Mailing Street3
- Mailing City

- Mailing State
- Mailing ZIP
- Mailing Country
- Mailing Phone Number
- Mailing Address Add date
- Mailing Address End Date
- Audit Street1
- Audit Street 2
- Audit Street 3
- Audit City
- Audit State
- Audit Zip
- Audit Country
- Audit Phone Number
- Audit Address Add Date
- Audit Address End Date
- Location Code
- Business Codes
- Location Name (DBA)
- Number of Units
- Location Street 1
- Location Street 2
- Location Street 3
- Location City
- Location State
- Location Zip
- Location Country
- Location Phone Number
- Location Start Date
- Location End Date
- Primary Location Street 1
- Primary Location Street 2
- Primary Location Street 3
- Primary Location City
- Primary Location State
- Primary Location Zip Code
- Primary Location Country
- Primary Location Phone Number
- Primary Location Start Date
- Primary Location End Date
- Owner Name
- Owner Title
- Owner Name 2
- Owner Title 2
- Owner Name 3
- Owner Title 3

Within 30 days of the implementation of the TPT2, the Department of Revenue will provide the following reports with at least the fields indicated below:

CITY PAYMENT JOURNAL

- Run Date
- Report Start Date
- Report End Date
- GL Accounting Period
- Period End Date
- Payment received date
- Return received date
- Payment process date
- Return process date
- Filing Frequency
- License ID
- Entity Name
- Location Code
- Location Name (DBA)
- Location Street 1
- Location Street 2
- Location Street 3
- Location City
- Location State
- Location Zip
- Location Country
- NAICS
- Business Code
- Doc Loc Nbr
- Pmt Loc Nbr
- Gross Receipts
- Total Deductions
- Tax or Fee Collected
- P & I Collected
- Audit Collections
- Tran Type
- Tran Subtype
- Rev Type

CITY PAYMENT JOURNAL SUMMARY

- Region Code
- Run Date
- Report Start Date
- Report End Date
- GL Accounting Period
- Business Code
- Number of Accounts

- Collections

Within 30 days after the first month's implementation of the TPT2, the following reports with at least the fields indicated below:

NO MONEY REPORT

- Region Code
- GL Accounting Period
- Period End Date
- Payment received date
- Return received date
- Payment process date
- Return process date
- Filing Frequency
- License ID
- Entity Name
- Location Code
- Location Name (DBA)
- Location Street 1
- Location Street 2
- Location Street 3
- Location City
- Location State
- Location Zip
- Location Country
- NAICS
- Business Code
- Doc Loc Nbr
- Pmt Loc Nbr
- Gross Receipts
- Total Deductions
- Tax or Fee Collected
- P & I Collected
- Audit Collections
- Tran Type
- Tran Subtype

DEDUCTION REPORT

- Region Code
- Run Date
- Report Start Date
- Report End Date
- GL Accounting Period
- Period End Date
- License ID
- Entity Name

- Location Code
- Location Name (DBA)
- Business Code
- Doc Loc Nbr
- Deduction Code
- Deduction Amount
- Tran Type
- Tran Subtype
- Rev Type

Within 30 days after taxes (subject to fund distributions) are collected, the Department of Revenue will provide the following report with at least the fields indicated below:

FUND DISTRIBUTION REPORT

- Region Code
- Run Date
- Report Start Date
- Report End Date
- GL Accounting Period
- Period End Date
- Payment Received Date
- Return Received Date
- Payment Processed Date
- Return Processed Date
- License ID
- Entity Name
- Location Code
- Location Name (DBA)
- Business Code
- Doc Loc Nbr
- Fund Allocation Code
- Amount Distributed

FUND DISTRIBUTION SUMMARY REPORT

- Region Code
- Run Date
- Report Start Date
- Report End Date
- GL Accounting Period
- Fund Allocation Code
- Amount Distributed

ARIZONA JOINT TAX APPLICATION (JT-2)

License & Registration
ARIZONA DEPARTMENT OF REVENUE
PO BOX 29032
Phoenix, AZ 85038-9032

IMPORTANT! Incomplete applications WILL NOT BE PROCESSED.

- Please read form instructions while completing the application. Additional information and forms available at www.azdor.gov
- Required information is designated with an asterisk (*).
- Return completed application AND applicable license fee(s) to address shown at left.
- For licensing questions regarding transaction privilege tax, call Taxpayer Information & Assistance: (602) 542-4576

You can file and pay for this application online at www.AZTaxes.gov. It is fast and secure.

SECTION A: Business Information

1* Federal Employer Identification No. or Social Security No.
if sole proprietor without employees

2* License Type – *Check all that apply:*
☐ Transaction Privilege Tax (TPT) ☐ Use Tax
☐ Withholding/Unemployment Tax (*if hiring employees*) ☐ TPT for Cities ONLY

3* Type of Organization/Ownership – *Tax exempt organizations must attach a copy of the Internal Revenue Service's letter of determination.*
☐ Individual/Sole Proprietorship ☐ Subchapter S Corporation ☐ Government ☐ Joint Venture
☐ Corporation ☐ Association ☐ Estate ☐ Receivership
State of Inc. ☐ ☐ Partnership ☐ Trust
Date of Inc. M M D D Y Y Y Y ☐ Limited Liability Company ☐ Limited Liability Partnership

4* Legal Business Name

5* Mailing Address – number and street | City | State | ZIP Code

County/Region | Country

6* Business Phone No. (*with area code*) | 7 Email Address | 8 Fax Number (*with area code*)

9* Description of Business: *Describe merchandise sold or taxable activity.*

10* **NAICS Codes:** Available at www.azdor.gov

11* Did you acquire or change the legal form of an existing business?
☐ No ☐ Yes ➔ You must complete Section F.

12* Are you a construction contractor?
☐ No ☐ Yes *(see bonding requirements)*

BONDING REQUIREMENTS: Prior to the issuance of a Transaction Privilege Tax license, new or out-of-state contractors are required to post a Taxpayer Bond for Contractors unless the contractor qualifies for an exemption from the bonding requirement. The primary type of contracting being performed determines the amount of bond to be posted. Bonds may also be required from applicants who are delinquent in paying Arizona taxes or have a history of delinquencies. Refer to the publication, Taxpayer Bonds, available online at www.azdor.gov or in Arizona Department of Revenue offices.

WITHHOLDING LICENSE ONLY

13* Withholding Physical Location
Number and street (*Do not use PO Box, PMB or route numbers*) | City | State | ZIP Code

County/Region | Country

Continued on page 2 ➔

FINAL

FOR AGENCY USE ONLY		
☐ New	ACCOUNT NUMBER	DLN
☐ Change	START	TRANSACTION PRIVILEGE TAX
☐ Revise	S/E DATE	WITHHOLDING / SSN / EIN
☐ Reopen	COMPLETED DATE	EMPLOYEE'S NAME
	LIABILITY	LIABILITY ESTABLISHED

CASHIER'S STAMP ONLY. DO NOT MARK IN THIS AREA.

ADOR 10196 (7/15)

Name (as shown on page 1)	FEIN or SSN (as shown on page 1)

SECTION B: Identification of Owners, Partners, Corporate Officers Members/Managing Members or Officials of this Employing Unit

If you need more space, attach Additional Owner, Partner, Corporate Officer(s) form available at www.azdor.gov. If the owner, partners, corporate officers or combination of partners or corporate officers, members and/or managing members own more than 50% of or control another business in Arizona, attach a list of the businesses, percentages owned and unemployment insurance account numbers or provide a Power of Attorney (Form 285) which must be filled out and signed by an authorized corporate officer.

Owner 1	*Social Security No.	*Title	*Last Name	First Name	Middle Intl.
	*Street Address		*City	*State	* % Owned
	*ZIP Code	*County	*Phone Number (*with area code*)	*Country	
Owner 2	*Social Security No.	*Title	*Last Name	First Name	Middle Intl.
	*Street Address		*City	*State	* % Owned
	*ZIP Code	*County	*Phone Number (*with area code*)	*Country	
Owner 3	*Social Security No.	*Title	*Last Name	First Name	Middle Intl.
	*Street Address		*City	*State	* % Owned
	*ZIP Code	*County	*Phone Number (*with area code*)	*Country	

SECTION C: Transaction Privilege Tax (TPT)

1* Date Business Started in Arizona M M D D Y Y Y Y

2* Date Sales Began M M D D Y Y Y Y

3 What is your anticipated annual income for your first twelve months of business?

4 Filing Frequency ☐ Monthly ☐ Quarterly ☐ Seasonal ☐ Annual If seasonal filer, *check the months for which you intend to do business:*

☐ JAN ☐ FEB ☐ MAR ☐ APR ☐ MAY ☐ JUN ☐ JUL ☐ AUG ☐ SEP ☐ OCT ☐ NOV ☐ DEC

5 Does your business sell tobacco products? ☐ Yes ➔ ☐ Retailer OR ☐ Distributor

6 TPT Filing Method ☐ Cash Receipts ☐ Accrual

7 Does your business sell new motor vehicle tires or vehicles? ☐ Yes ➔ You will have to file Motor Vehicle Tire Fee form available at www.azdor.gov

8* Tax Records Physical Location – number and street (*Do not use PO Box, PMB or route numbers*) City State ZIP Code

County Country

9* Name of Contact * Phone Number (*with area code*) Extension

SECTION D: Transaction Privilege Tax (TPT) Physical Location

1* Business Name, "Doing Business As" or Trade Name at this Physical Location

2* Physical Location of Business or Commercial/Residential Rental Number and street (*Do not use PO Box, PMB or route numbers*) City State ZIP Code

County/Region Country

Residential Rental Only – Number of Units Reporting City *(if different than the physical location city)*

3* Additional County/Region Indian Reservation: County/Region and Indian Reservation Codes available at www.azdor.gov

County/ Region					City				

Business Codes (Include all codes that apply): See instructions. Complete list available at www.azdor.gov

State/ County					City				

If you need more space, attach Additional Business Locations form available at www.azdor.gov

FINAL

Name (as shown on page 1)	FEIN or SSN (as shown on page 1)

SECTION E: Withholding & Unemployment Tax Applicants

1* *Regarding THIS application*, Date Employees First Hired in Arizona M M D D Y Y Y Y	**2** Are you liable for Federal Unemployment Tax? ☐ Yes ➔ First year of liability: Y Y Y Y
3 Are individuals performing services that are excluded from withholding or unemployment tax? ☐ Yes ➔ *Describe services:*	**4** Do you have an IRS ruling that grants an exclusion from Federal Unemployment Tax? ☐ Yes ➔ *Attach a copy of the Ruling Letter.*

5 Do you have, or have you previously had, an Arizona unemployment tax number?
☐ No
☐ Yes ➔ Business Name: _____ Unemployment Tax Number: _____

	Hired Year	Hired Quarter	Paid Year	Paid Quarter
6 First calendar quarter Arizona employees were/will be hired and paid (indicate quarter as 1, 2, 3, 4):	Y Y Y Y	Q	Y Y Y Y	Q

	Year	Quarter
7 When did/will you first pay a total of $1,500 or more gross wages in a calendar quarter? *(indicate quarter as 1, 2, 3, 4)* Exceptions: $20,000 gross cash wages Agricultural: $1,000 gross cash wages Domestic/Household: not applicable to 501(c)(3) Non-Profit.	Y Y Y Y	Q
8 When did/will you first reach the 20th week of employing 1 or more individuals for some portion of a day in each of 20 different weeks in the same calendar year? *(indicate quarter as 1, 2, 3, 4)* Exceptions: 10 or more individuals Agricultural; 4 or more individuals 501(c)(3) Non-Profit; not applicable to Domestic/Household.	Y Y Y Y	Q

SECTION F: Acquired Business Information

If you answered "Yes" to Section A, question 11, you must complete Section F.

1* Did you acquire or change all or part of an existing business? ☐ All ☐ Part	**2*** Date of Acquisition M M D D Y Y Y Y	**3*** EIN of Business Under Previous Owner
4* Previous Owner's Telephone Number	**5*** Name of Business Under Previous Owner	**6*** Name of Previous Owner
7* Did you change the legal form of all or part of the Arizona operations of your existing business? (e.g., change from sole proprietor to corporation or etc.) ☐ All ☐ Part	**8*** Date of Change M M D D Y Y Y Y	**9*** EIN of Previous Legal Form

SECTION G: AZTaxes.gov Security Administrator (authorized users)

By electing to register for www.AZTaxes.gov, you can have online access to account information, file and pay Arizona transaction privilege, use, and withholding taxes. You may also designate authorized users to access these services. Please provide the name of the authorized user for AZTaxes.gov.

Name of Authorized User
Title
Email Address
Phone Number (*with area code*)

SECTION H: Required Signatures

This application must be signed by either a sole owner, at least two partners, managing member or corporate officer legally responsible for the business, trustee or receiver or representative of an estate that has been listed in Section B.

Under penalty of perjury I (we), the applicant, declare that the information provided on this application is true and correct. I (we) hereby authorize the security administrator, if one is listed in Section G, to access the AZTaxes.gov site for the business identified in Section A. This authority is to remain in full force and effect until the Arizona Department of Revenue has received written termination notification from an authorized officer.

1 Print or Type Name	**2** Print or Type Name
Title	Title
Date	Date
Signature	Signature

This application must be completed, signed, and returned as provided by A.R.S. § 23-722.

Equal Opportunity Employer/Program

This application available in alternative formats at Unemployment Insurance Tax Office.

PLEASE COMPLETE SECTION I: STATE/COUNTY & CITY LICENSE FEE WORKSHEET TO CALCULATE AND REMIT TOTAL AMOUNT DUE WITH THIS APPLICATION.

FINAL

Name (as shown on page 1)	FEIN or SSN (as shown on page 1)

SECTION I: State/County & City License Fee Worksheet

ALL FEES ARE SUBJECT TO CHANGE. Check for updates at azdor.gov.

To calculate **CITY FEE:** Multiply **No. of Locations** by the **License Fee** and enter sum in **License Subtotal**.

City/Town	Code	No. of Loc's	License Fee	License Subtotal	City/Town	Code	No. of Loc's	License Fee	License Subtotal	City/Town	Code	No. of Loc's	License Fee	License Subtotal
Apache Junction	AJ		$50.00		Goodyear	GY		$5.00		Sahuarita	SA		$5.00	
Avondale	AV		$40.00		Guadalupe	GU		$2.00		San Luis	SU		$2.00	
Benson	BS		$5.00		Hayden	HY		$5.00		Scottsdale	SC		$50.00	
Bisbee	BB		$1.00		Holbrook	HB		$1.00		Sedona	SE		$2.00	
Buckeye	BE		$2.00		Huachuca City	HC		$2.00		Show Low	SL		$2.00	
Bullhead City	BH		$2.00		Jerome	JO		$2.00		Sierra Vista	SR		$1.00	
Camp Verde	CE		$2.00		Kearny	KN		$2.00		Snowflake	SN		$2.00	
Carefree	CA		$10.00		Kingman	KM		$2.00		Somerton	SO		$2.00	
Casa Grande	CG		$2.00		Lake Havasu	LH		$5.00		South Tucson	ST		$2.00	
Cave Creek	CK		$20.00		Litchfield Park	LP		$2.00		Springerville	SV		$5.00	
Chandler	CH		$50.00		Mammoth	MH		$2.00		St. Johns	SJ		$2.00	
Chino Valley	CV		$2.00		Marana	MA		$5.00		Star Valley	SY		$2.00	
Clarkdale	CD		$2.00		Maricopa	MP		$2.00		Superior	SI		$2.00	
Clifton	CF		$2.00		Mesa	ME		$30.00		Surprise	SP		$10.00	
Colorado City	CC		$2.00		Miami	MM		$2.00		Taylor	TL		$2.00	
Coolidge	CL		$2.00		Nogales	NO		$25.00		Tempe	TE		$50.00	
Cottonwood	CW		$2.00		Oro Valley	OR		$12.00		Thatcher	TC		$2.00	
Dewey/Humboldt	DH		$2.00		Page	PG		$2.00		Tolleson	TN		$2.00	
Douglas	DL		$5.00		Paradise Valley	PV		$2.00		Tombstone	TS		$1.00	
Duncan	DC		$2.00		Parker	PK		$2.00		Tucson	TU		$45.00	
Eagar	EG		$10.00		Patagonia	PA		$25.00		Tusayan	TY		$2.00	
El Mirage	EM		$15.00		Payson	PS		$2.00		Wellton	WT		$2.00	
Eloy	EL		$10.00		Peoria	PE		$50.00		Wickenburg	WB		$2.00	
Flagstaff	FS		$46.00		Phoenix	PX		$50.00		Willcox	WC		$25.00	
Florence	FL		$2.00		Pima	PM		$2.00		Williams	WL		$2.00	
Fountain Hills	FH		$2.00		Pinetop/Lakeside	PP		$2.00		Winkelman	WM		$2.00	
Fredonia	FD		$10.00		Prescott	PR		$25.00		Winslow	WS		$10.00	
Gila Bend	GI		$2.00		Prescott Valley	PL		$2.00		Youngtown	YT		$10.00	
Gilbert	GB		$2.00		Quartzsite	QZ		$2.00		Yuma	YM		$2.00	
Glendale	GE		50.00		Queen Creek	QC		$2.00						
Globe	GL		$2.00		Safford	SF		$2.00						
Subtotal City License Fees (column 1)			$		Subtotal City License Fees (column 2)			$		Subtotal City License Fees (column 3)			$	

AA TOTAL City License Fee(s) (column 1 + 2 + 3) ..... $

	No. of Loc's	Fee per Location	TOTAL
BB TOTAL State License Fee(s): Calculate by multiplying number of business locations by $12.00		**$12.00**	$

Residential Rental License Fees - Multiply the number of units per locations by $2.00 ($50.00 Annual Cap per license).	No. of Units	No. of Loc's	City Fee
Residential Rental License-Chandler			$
Residential Rental License-Phoenix			$
Residential Rental License-Scottsdale			$

ONLY CHANDLER, PHOENIX, and SCOTTSDALE need to use this section, and NOT the fee chart above, to calculate license fee(s). The amount for each city CANNOT EXCEED $50.00

CC TOTAL City Residential Rental License Fees (Add Chandler, Phoenix, & Scottsdale) ..... $

DD TOTAL DUE (Add lines AA + BB + CC) ..... $

- Make check payable to Arizona Department of Revenue.
- Include FEIN or SSN on payment.
- Do not send cash.
- License will not be issued without full payment of fee.

TRANSACTION PRIVILEGE, USE, AND SEVERANCE TAX RETURN - (TPT-2)

Arizona Department of Revenue
PO Box 29010 - Phoenix, AZ 85038-9010
For assistance out of state or in the Phoenix area: (602) 255-2060 or
Statewide, toll free area codes 520 and 928: (800) 843-7196

TPT-2 return is due the 20th day of the month following the month in which the transactions were conducted

TAXPAYER IDENTIFICATION NUMBER ☐ SSN ☐ EIN	
LICENSE NUMBER	
PERIOD BEGINNING M M D D Y Y Y Y	PERIOD ENDING M M D D Y Y Y Y
REVENUE USE ONLY. DO NOT MARK IN THIS AREA	
POSTMARK DATE	RECEIVED DATE

TAXPAYER INFORMATION

☐ AMENDED RETURN ☐ FINAL RETURN (Cancel License) ☐ CHECK HERE AND SIGN BELOW IF YOU HAVE NO GROSS RECEIPTS TO REPORT

BUSINESS NAME		
C/O		
MAILING ADDRESS		
CITY	STATE	ZIP CODE
☐ ADDRESS CHANGED (MAILING ADDRESS ONLY)	BUSINESS PHONE NUMBER	

AA	NET AZ/COUNTY TAX (PAGE 2, LINE MM, COLUMN (M))	
BB	NET CITY TAX (PAGE 3, LINE RR, COLUMN (M))	
CC	NET TAX DUE ON THIS RETURN (LINE AA + LINE BB = LINE CC)	
DD	TPT ESTIMATED PAYMENTS TO BE USED ON THIS RETURN (JUNE RETURN ONLY, DUE IN JULY)	
EE	TAX DUE NET OF TPT ESTIMATED PAYMENTS (LINE CC - LINE DD = LINE EE)	
FF	TOTAL AMOUNT REMITTED WITH THIS RETURN	$

NOTE: A TRANSACTION DETAIL PAGE IS REQUIRED OR THE RETURN WILL NOT PROCESS CORRECTLY AND PENALTIES MAY APPLY.

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

☐ The taxpayer designates the individual listed below as the person to contact to schedule an audit of this return and authorize the disclosure of confidential information to this individual.

TAXPAYER PRINTED NAME

TAXPAYER SIGNATURE DATE PAID PREPARER'S SIGNATURE (OTHER THAN TAXPAYER)

TAXPAYER PHONE NO. TITLE PAID PREPARER'S TIN PAID PREPARER'S PHONE NO.

PLEASE MAKE CHECK PAYABLE TO ARIZONA DEPARTMENT OF REVENUE

TRANSACTION PRIVILEGE, USE, AND SEVERANCE TAX RETURN - (TPT-2)

LICENSE NUMBER: _____

STATE (AZ) /COUNTY TRANSACTION DETAIL (See Table 1 on the Tax Rate Table, www.azdor.gov)

	(A)	(B) REG. CODE	(C) NAME OF REGION	(D) BUS. CODE	(E) DESC. OF BUS. ACTIVITY	(F) GROSS RECEIPTS	(G) DEDUCTIONS **FROM SCHEDULE A**	(H) **(F) - (G) = (H)** NET TAXABLE	(I) AZ / COUNTY TAX RATE	(J) **(H) X (I) = (J)** TOTAL TAX	(K) ACCTNG CREDIT RATE	(L) **(H) X (K) = (L)** ACCOUNTING CREDIT	(M) **(J) - (L) = (M)** AZ/COUNTY TAX DUE
1													
2													
3													
4													
5													
6													
7													
8													
9													
10													
11													
12													
13													
14													
15													
16													
17													
18													
19													
20													
21													
22													
23													
24													
25													
GG	**SUBTOTAL**												
HH	**TOTALS FROM ADDITIONAL AZ/COUNTY PAGE(S)**												
II	**TOTAL (LINE GG + LINE HH = LINE II)**												
JJ	**EXCESS TAX COLLECTED**												
KK	**EXCESS TAX ACCOUNTING CREDIT: (SEE INSTRUCTIONS)**												
LL	**NET AZ/COUNTY EXCESS TAX COLLECTED (LINE JJ, COLUMN (M) - LINE KK, COLUMN (M))**												
MM	**NET AZ/COUNTY TAX (LINE II, COLUMN (M) + LINE LL, COLUMN (M))**												

FINAL

TRANSACTION PRIVILEGE, USE, AND SEVERANCE TAX RETURN - (TPT-2)

LICENSE NUMBER: _____

CITY TRANSACTION DETAIL (See Table 2 on the Tax Rate Table, www.azdor.gov)

	(A) LOC. CODE	(B) CITY CODE	(C) NAME OF CITY	(D) BUS. CODE	(E) DESC. OF BUS. ACTIVITY	(F) GROSS RECEIPTS	(G) DEDUCTIONS **FROM SCHEDULE A**	(H) **(F) - (G) = (H)** NET TAXABLE	(I) CITY TAX RATE	(J) **(H) X (I) = (J)** TOTAL TAX	(K)	(L) CITY CREDIT	(M) **(J) - (L) = (M)** CITY TAX DUE
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24													
25													
NN	**CITY SUBTOTAL**												
OO	**CITY SUBTOTALS FROM ADDITIONAL CITY PAGE(S)**												
PP	**CITY TOTAL (LINE NN + LINE OO = LINE PP)**												
QQ	**CITY EXCESS TAX COLLECTED**												
RR	**NET CITY TAX (LINE PP, COLUMN (M) + LINE QQ, COLUMN (M))**												

FINAL

TRANSACTION PRIVILEGE, USE, AND SEVERANCE TAX RETURN - (TPT-2)
ADDITIONAL TRANSACTIONS

LICENSE NUMBER: _____

STATE (AZ) /COUNTY TRANSACTION DETAIL (See Table 1 on the Tax Rate Table, www.azdor.gov)

	(A)	(B) REG. CODE	(C) NAME OF REGION	(D) BUS. CODE	(E) DESC. OF BUS. ACTIVITY	(F) GROSS RECEIPTS	(G) DEDUCTIONS **FROM SCHEDULE A**	(H) **(F) - (G) = (H)** NET TAXABLE	(I) AZ / COUNTY TAX RATE	(J) **(H) X (I) = (J)** TOTAL TAX	(K) ACCTNG CREDIT RATE	(L) **(H) X (K) = (L)** ACCOUNTING CREDIT	(M) **(J) - (L) = (M)** AZ/COUNTY TAX DUE
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19													
20													
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23													
24													
25													
AZ/COUNTY SUBTOTAL						$	$					$	$

ADD SUBTOTALS OF AZ/COUNTY ADDITIONAL TRANSACTIONS TO THE 2ND PAGE OF RETURN

FINAL

TRANSACTION PRIVILEGE, USE, AND SEVERANCE TAX RETURN - (TPT-2)
ADDITIONAL TRANSACTIONS

LICENSE NUMBER: _____

CITY TRANSACTION DETAIL (See Table 2 on the Tax Rate Table, www.azdor.gov)

	(A) LOC. CODE	(B) CITY CODE	(C) NAME OF CITY	(D) BUS. CODE	(E) DESC. OF BUS. ACTIVITY	(F) GROSS RECEIPTS	(G) DEDUCTIONS **FROM SCHEDULE A**	(H) **(F) - (G) = (H)** NET TAXABLE	(I) CITY TAX RATE	(J) **(H) X (I) = (J)** TOTAL TAX	(K)	(L) CITY CREDIT	(M) **(J) - (L) = (M)** CITY TAX DUE
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CITY SUBTOTAL						$	$					$	$

ADD SUBTOTALS OF CITY ADDITIONAL TRANSACTIONS TO THE 3RD PAGE OF RETURN

FINAL

STATE (AZ) /COUNTY DEDUCTIONS DETAIL

	(A)	(B) REGION CODE	(C) BUSINESS CODE	(D) DEDUCTION CODE	(E) DEDUCTION AMOUNT	(F) DESCRIPTION OF DEDUCTION CODE
1					$	
2					$	
3					$	
4					$	
5					$	
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7					$	
8					$	
9					$	
10					$	
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25					$	
26					$	
27					$	
28					$	
29					$	
30					$	
31					$	
32					$	
33					$	
34					$	
35					$	

AA	SUBTOTAL OF DEDUCTIONS.....	$
BB	DEDUCTION TOTALS FROM ADDITIONAL AZ/COUNTY PAGE(S) ...	$
CC	TOTAL DEDUCTIONS (LINE AA + LINE BB = LINE CC).....	$

TOTAL MUST EQUAL TOTAL ON PAGE 2, LINE II, COLUMN G

FINAL

TPT-2 – SCHEDULE A DEDUCTIONS – CITY
TRANSACTION PRIVILEGE, USE, AND SEVERANCE TAX

LICENSE NUMBER: _____ Page _____ of _____

CITY DEDUCTIONS DETAIL

	(A) LOCATION CODE	(B) CITY CODE	(C) BUSINESS CODE	(D) DEDUCTION CODE	(E) DEDUCTION AMOUNT	(F) DESCRIPTION OF DEDUCTION CODE
1					$	
2					$	
3					$	
4					$	
5					$	
6					$	
7					$	
8					$	
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29					$	
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33					$	
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35					$	

AA	SUBTOTAL OF DEDUCTIONS.....	$
BB	DEDUCTION TOTALS FROM ADDITIONAL CITY PAGE(S).....	$
CC	TOTAL DEDUCTIONS (LINE AA + LINE BB = LINE CC).....	$

TOTAL MUST EQUAL TOTAL ON PAGE 3, LINE PP, COLUMN G

ADOR 10872 (5/15)

FINAL

STATE OF ARIZONA

Department of Revenue

Arizona Department of Revenue
Program Cities Unit

Tom Johnson
Assistant Director

Vivian Soza
Administrator

May 26, 2015

Cindi Mattheisen
Finance Director
Town of Gilbert
50 E Civic Center Dr
Gilbert, AZ 85296

RE: Termination of Intergovernmental Agreement

Dear Cindi Mattheisen:

The Arizona Department of Revenue hereby provides notice that it elects to terminate the existing Intergovernmental Agreement with Town of Gilbert, including all modifications thereto, at the end of its current term, June 30, 2015. The Department would like to enter into a new Agreement with Town of Gilbert effective July 1, 2015. The new Agreement will be mailed to you soon.

Please contact me at (602) 716-6388 if you have any questions.

Sincerely,

Vivian Soza

Vivian Soza
Program Cities Unit
CitiesUnit@azdor.gov

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Kurt Sharp, Special Assistant to the Mayor, 503-6771

MEETING DATE: June 25, 2015

SUBJECT: Intergovernmental Agreement with Mesa Housing Authority for the Housing Choice Voucher Veteran Affairs Supportive Housing Program

STRATEGIC INITIATIVE: Community Livability

The purpose of the vouchers is to provide homeless veterans with rental assistance that includes case management and community support services provided by the U.S. Department of Veteran Affairs in order to allow veterans to stay stable and housed in their community.

RECOMMENDED MOTION

A motion to approve an Intergovernmental Agreement between Mesa Housing Authority and Town of Gilbert for the Housing Choice Voucher Veteran Affairs Supportive Housing Program and authorize the Mayor to sign the required documents. Contract #2015-1001-0765

BACKGROUND/DISCUSSION

Mesa Mayor John Giles, in collaboration with Congressman Matt Salmon's office, has asked the Mayors of Gilbert, Chandler and Queen Creek to join Mesa in an initiative to end east valley veteran homelessness. The purpose of the initiative is to allow homeless veterans to stay in their own communities and use a Housing Choice Voucher through the Veteran Affairs Supportive Housing Program (VASH) in a city or town other than Phoenix or Mesa. Currently, the vouchers are only redeemable in Phoenix and Mesa, as they are the only valley cities currently participating in the VASH Program with the U.S. Department of Housing and Urban Development.

The vouchers provide homeless veterans with rental assistance that includes case management and community support services provided by the U.S. Department of Veterans Affairs in order to allow veterans to stay stable and housed in their community. If the Town of Gilbert enters into

an IGA with Mesa, homeless veterans will be able to redeem the Housing Choice vouchers in Gilbert. The vouchers can be redeemed at any rental property, as long as the housing unit passes a quality standards inspection and a contract with the landlord is established.

The vouchers are used like cash and participants are in charge of their own lease. After homeless veteran eligibility is determined by a participating Veteran Affairs Medical Center, VASH program participants must be screened by the Mesa Housing Authority for income eligibility and to ensure participants are not registered sex offenders.

Both Chandler and Queen Creek are anticipated to sign an IGA with Mesa for this initiative.

The Intergovernmental Agreement was reviewed for form by Attorney Jack Vincent.

The Intergovernmental Agreement was reviewed by Doug Boyer, Purchasing Manager.

FINANCIAL IMPACT

There will be no fiscal impact to the Town of Gilbert under the proposed IGA. Mesa Housing Authority will administer the VASH program including certifications and inspections. Gilbert will have no responsibility for compliance with VASH. The Town would need to approve the IGA for the purpose of allowing VASH participants to lease units in our jurisdiction.

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

STAFF RECOMMENDATION

Staff recommends approval.

Respectfully submitted,

Kurt Sharp
Special Assistant to the Mayor

Approved By	Approval Date
Kurt Sharp	6/12/2015 9:58 AM
Jack Vincent	6/15/2015 9:52 AM
Laura Lorenzen	6/15/2015 10:55 AM

INTERGOVERNMENTAL AGREEMENT
FOR THE HOUSING CHOICE VOUCHER
VETERAN AFFAIRS SUPPORTIVE HOUSING PROGRAM
BETWEEN THE MESA HOUSING AUTHORITY
AND THE TOWN OF GILBERT

This Intergovernmental Agreement ("Agreement") is entered into this 25th day of June, 2015, between the City of Mesa, an municipal corporation whose principal place of business is located at 20 E. Main Street, Mesa, AZ 85211, on behalf of the Mesa Housing Authority ("MHA"), and the Town of Gilbert ("GILBERT") whose principal place of business is located at 50 E. Civic Center Drive, Gilbert, AZ 85296. The Parties to this Agreement may be referred to collectively as the "parties" and individually as a "party".

RECITALS

WHEREAS, MHA administers the U.S. Department of Housing and Urban Development ("HUD") Housing Choice Voucher ("HCV") Veteran Affairs Supportive Housing ("VASH") program which combines voucher rental assistance for homeless veterans and their families with case management and clinical services provided by the Department of Veteran Affairs medical center and clinics;

WHEREAS, on occasion VASH program participants may desire to lease housing outside the jurisdiction of their respective public housing authority;

WHEREAS, representatives of MHA and GILBERT believe it would be mutually beneficial to their programs and participants to accommodate participant requests to lease outside the jurisdiction of the public housing authority; and

WHEREAS, pursuant to Arizona Revised Statutes ("A.R.S") Section 11-952, the parties are empowered to enter into agreements to contract for services or jointly exercise any powers common to the contracting parties and may enter into agreements with one another for joint or cooperative action or may form a separate legal entity, including a nonprofit corporation, to contract for or perform some or all of the services specified in the contract or agreement or exercise those powers jointly held by the contracting parties.

NOW, THEREFORE, the parties, in consideration of the mutual covenants and promises contained in this Agreement agree to the below Terms & Conditions.

TERMS & CONDITIONS

1. PURPOSE

The purpose of this Agreement is for GILBERT to contract with the MHA to allow MHA VASH participants ("Participants") to lease housing in the jurisdiction of GILBERT.

2. COMPENSATION

There will be no compensation for any services described in this Agreement.

3. TERM

The term of this Agreement shall begin on the date first written above and will remain in effect through June 30, 2017 unless terminated as provided herein. If agreed by the parties, this Agreement may be extended two times for a period of one year each time.

4. OBLIGATIONS OF THE MHA

a. MHA will perform all VASH contract administration duties associated with its VASH program requirements and the City of Mesa Housing Authority Housing Choice Voucher ("HCV") Administrative Plan.

b. For those Participants who would normally exercise the portability feature of a VASH housing choice voucher ("Voucher") if they desired to live within the jurisdiction of GILBERT, MHA will administer the Voucher while the Participant lives outside of the MHA jurisdiction, but within the jurisdiction of GILBERT.

c. Duties shall include those duties within the normal course and scope of MHA's VASH program which include, but are not limited to, conducting Housing Quality Standard inspections ("HQS Inspection") and contracting with owners of the properties where Participants will lease property.

5. OBLIGATIONS OF THE GILBERT

GILBERT will allow Participants to reside in the jurisdiction of GILBERT without interference in MHA's VASH program or with Participants' receipt of services. GILBERT will have no power or obligation related to MHA's VASH program. It is the understanding of the parties that the MHA's VASH program will be under the sole authority and responsibility of MHA. GILBERT will not interfere with MHA's VASH program or with Participants' receipt of services.

6. TERMINATION FOR CONVENIENCE

During the term of this Agreement, either party may terminate this Agreement upon thirty (30) days' prior written notice (the "Notice of Termination,"). The Notice of Termination shall specify the date upon which such termination becomes effective.

7. TERMINATION

Upon termination of this Agreement for any reason, any Participants residing in the jurisdiction of GILBERT shall be permitted to continue to live in the GILBERT jurisdiction under the terms of this Agreement until the Participant's lease terminates at which time the Participant will be required by MHA to move unless the Participant's Voucher is ported to GILBERT resulting in Participant no longer being a part of the MHA VASH program, but rather a part of the GILBERT's regular HCV program.

8. SUBCONTRACTING

GILBERT acknowledges MHA subcontracts for HQS Inspection services. Any further subcontracting will not be permitted without the written notification from MHA to GILBERT within a reasonable time prior to contract execution.

9. ASSIGNMENT

Neither party shall assign this Agreement, in whole nor in part, without the prior written consent of the other party; any attempted assignment without such consent, will be null and void.

10. INDEMNIFICATION

MHA and GILBERT shall indemnify, defend, save and hold harmless the other party and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, in whole or in part, by the negligent or willful acts or omissions of each party or any of its owners, officers, directors, agents, employees or subcontractors.

11. INDEPENDENT CONTRACTOR STATUS

The relationship of the parties is that of independent contractors. Accordingly, the employees of each party is not entitled to any benefits provided to employees of the other party including, but not limited to, health benefits, enrollment in a retirement system, paid time off or other rights afforded the other party's employees. If any employees or subcontractors of a party assert a claim for wages or other employment benefits against the other party, the party's employees or subcontractors who asserted the claim will defend, indemnify and hold harmless the other party from all such claims.

12. SEVERABILITY

If any provision of this Agreement is held invalid or unenforceable, the remaining provisions shall continue valid and enforceable to the full extent permitted by law. Any changes in the governing laws, rules and regulations during the term of this Agreement shall apply, but do not require an amendment to the Agreement.

13. SURVIVING PROVISIONS

All provisions which, by the terms of reasonable interpretation, set forth rights and obligations that extend beyond termination of this Agreement will survive and remain in full force and effect. Termination of the Agreement will not release any party from any liability or obligation arising prior to the date of termination.

14. INTERPRETATION

No provision of this Agreement is to be interpreted for or against either party because that party or that party's legal representative drafted such provision, but this Agreement is to be construed as if drafted by all parties hereto.

15. COMPLIANCE WITH LAWS

MHA and GILBERT shall comply with all federal, state and local laws, rules, regulations, standards, and executive orders, applicable to this Agreement and HCV-VASH including, but limited to, those specifically set forth in this Section. The laws and regulations of the State of

Arizona shall govern the rights of the parties' performance of this Agreement and any dispute hereunder. Any action relating to this Agreement shall be commenced and maintained in a court of competent jurisdiction in Maricopa County, Arizona.

A. This Agreement is subject to cancellation by either party pursuant to A.R.S. § 38-511.

B. This Agreement is subject to the conflict of interest requirements set forth in A.R.S. § 38-504.

C. To the extent provisions of A.R.S. § 41-4401 are applicable to this Agreement:

1. Each party warrants it is in compliance with A.R.S. § 23-214(A).

2. Each contractor and subcontractor shall warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214(A). The provisions of this Subsection C must be included in any contract either party enters into with any and all of its contractors or subcontractors who provide services under this Agreement.

3. A breach of a warranty under Subsection C shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of the Agreement.

4. Each party 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 in this Subsection C.

16. PROVISIONS REQUIRED BY LAW

Any provision required by law to be in this Agreement is part of this Agreement as if fully stated herein.

17. WAIVER

No breach of any provision hereof can be waived unless in writing. Waiver of any one breach of any provision shall not be deemed to be a waiver of any breach of the same or any other provision hereof.

18. ENTIRE AGREEMENT

This Agreement supersedes any and all other agreements between parties, constitutes the entire understanding and agreement of the parties.

IN WITNESS WHEREOF, this Agreement for services is hereby agreed to by the parties. The parties and their representatives signing this Agreement are duly authorized agents of the parties and have full authority to enter into this Agreement on behalf of the parties. This Agreement will be in full force and effect only after it has been approved and executed by the duly authorized party representatives.

City of Mesa on behalf of the Mesa Housing Authority
(Referred to as "MHA" in this Agreement)

By: _____

Title: _____

Date: _____

The Town of Gilbert
(Referred to as "GILBERT" in this Agreement)

By: _____

Title: _____

Date: _____

Attested By: _____
City Clerk

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with the requirements of Arizona Revised Statutes § 11-952(D), each of the undersigned attorneys acknowledge: (1) that they have reviewed the above Agreement on behalf of their respective clients; and (2) that, as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

_____
Attorney for City of Mesa
Date: _____

_____
Attorney for Town of Gilbert
Date: _____

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Kenneth C. Morgan, PE, Public Works Director, 480-503-6516

MEETING DATE: June 25, 2015

SUBJECT: Amendment to the Intergovernmental Agreement with the City of Chandler, Arizona for the expansion of the SanTan Vista Water Treatment Plant - Contract No. 2015-7009-0767

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's strategic initiative for Infrastructure as it expands the capacity of the San Tan Vista Water Treatment Plant to meet a portion of the existing and future water needs of the collaborating agencies.

RECOMMENDED MOTION

A motion to approve an Amendment to an Intergovernmental Agreement with the City of Chandler, Arizona regarding the expansion of the San Tan Vista Water Treatment Plant, CIP # WA070, and authorize the Mayor to execute the required documents.

BACKGROUND/DISCUSSION

The expansion of the San Tan Vista Water Treatment Plant incorporates Phase II improvements that will increase the capacity of the facility to 48 MGD. The Town of Gilbert will have 12 MGD of the 24 MGD being added. The plant is a joint facility with the City of Chandler. Gilbert is the lead agency and operates the plant. The scope of the project and its priority is in coordination with the 2012 Integrated Water Resources Master Plan. The Town of Gilbert's planned participation and cost share are documented in the FY2016-25 Capital Improvement Plan (CIP) referenced as CIP NO. WA070. The intent of the amendment to the agreement is to identify the responsibilities and roles of Chandler and Gilbert during the design, construction, and operation of the expanded facility. The amended agreement further defines the cost share of Chandler and Gilbert during the respective phases as well.

The Amendment to the Intergovernmental Agreement was reviewed for form by Susan Goodwin, Special Counsel.

FINANCIAL IMPACT

This project is included in the FY 2016-2025 Capital Improvement Plan, as project number WA070. Total project costs are estimated at $81,748,000.
The financial impact was reviewed by Cris Parisot, Management and Budget Analyst.

STAFF RECOMMENDATION

Staff has coordinated with representatives from the City of Chandler to develop and/or modify the mutual promises and agreements and recommends the approval of the Amendment to the IGA.

Respectfully submitted,

Kenneth C. Morgan, PE
Public Works Director

Approved By	Approval Date
Kenneth Morgan	6/11/2015 3:20 PM
Jack Vincent	6/15/2015 11:30 AM
Cris Parisot	6/15/2015 11:58 AM

AMENDMENT NO. 1
TO
INTERGOVERNMENTAL AGREEMENT CONCERNING THE DESIGN, CONSTRUCTION AND OPERATION OF A JOINT CAP WATER TREATMENT PLANT BETWEEN THE TOWN OF GILBERT AND THE CITY OF CHANDLER

This Amendment to the Intergovernmental Agreement Concerning the Design, Construction and Operation of a Joint CAP Water Treatment Plant between the Town of Gilbert, Arizona and the City of Chandler, Arizona is entered into this ___ day of _____, 2015, by and between the Town of Gilbert, an Arizona municipal corporation ("Gilbert") and the City of Chandler, an Arizona municipal corporation ("Chandler") to amend the Intergovernmental Agreement dated _____ ("Agreement").

RECITALS:

1. Gilbert and Chandler entered into the Agreement related to the design, construction and operation of a Joint CAP Water Treatment Plant, now known as the San Tan Vista Water Treatment Plant ("Project").

2. Phase I of the Project has been completed and is in operation; the Parties are planning for the design, construction and operation of Phase II of the Project.

3. Gilbert and Chandler desire to amend the Agreement as hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing premises and mutual promises and agreements of the parties, Gilbert and Chandler agree to amend the Agreement as follows (deleted language in ~~strikeout~~; added language CAPITALIZED):

1. The List of Exhibits is amended to read as follows:

LIST OF EXHIBITS

~~Exhibit A - Base Staff Level~~
Exhibit ~~B~~A - Fixed Cost Items
Exhibit ~~C~~B - Operating Fee
Exhibit ~~D~~C - Legal Description
Exhibit ~~E~~D - Non-Revocable Permit: Chandler Finished Water Line
EXHIBIT E ALLOCATION OF COSTS

2. Article I Definitions is amended to amend the definition of "Base Staff Level" to read as follows:

"Base Staff Level" shall mean staffing the Joint Plant at the levels ~~set forth in **Exhibit** A~~ AS DETERMINED BY THE COMMITTEE. ~~Any change to the Base Staff Level shall first be approved by the SWTP Committee, unless such change is necessary to comply with either a Change of Law or a change in the design of~~

~~the Joint Plant. Any dispute as to whether a change to the Base Staff Level is necessary to comply with either a Change of Law or a change in design of the Joint Plant shall be subject to the dispute resolution provisions set forth in Article XV of this Agreement. Except as expressly set forth to the contrary elsewhere in this Agreement, the positions identified in **Exhibit** A comprising Base Staff Level shall be employed to provide services exclusively and directly relating to the operation and maintenance of the Joint Plant.~~

3. Article I Definitions is amended to amend the definition of "Capital Improvement" to read as follows:

> *"Capital Improvement"* shall mean the acquisition, repair, and/or replacement of, or improvement to, equipment or structures that are part of the Joint Plant after completion of Phase I or, as applicable, Phase II, whose unit costs (as to any single item or function) is greater than ~~Five~~ FIFTY Thousand Dollars ($~~5,000.00~~ 50,000.00), as adjusted each Adjustment Date by the Capital Adjustment or as periodically adjusted by the SWTP Committee.

4. Article I Definitions is amended to amend the definition of "Chandler Pumping Cost" to read as follows:

> *"Chandler Pumping Cost"* shall mean the pumping cost associated with the operation of the Chandler Finished Water Line Pumps. THESE COSTS HAVE BEEN SEPARATED AND ARE INVOICED BASED ON THE RESPECTIVE METER COSTS AS WELL AS EACH PARTY'S SHARE OF THE JOINT COSTS.

5. Article I Definitions is amended to amend the definition of "Excluded Costs" to read as follows:

> *"Excluded Costs"* shall mean the following, WHICH ARE EXCLUDED FROM ADMINISTRATIVE/OVERHEAD COSTS, BUT INCLUDED IN DIRECT COSTS: [Balance of the definition unchanged.]

6. Article I Definitions is amended to add the definition of "Joint Finished Water Reservoir" to read as follows:

> *"JOINT FINISHED WATER RESERVOIR"* SHALL MEAN THE RESERVOIRS CONSTRUCTED FOR THE PURPOSE OF STORING FINISHED WATER FOR GILBERT AND CHANDLER.

7. Article I Definitions is amended to amend the definition of "Phase I" to read as follows:

> *"Phase I"* shall mean the first phase of ~~an intended~~ THE two-phase construction of the Joint Plant resulting in an initial Joint Plant Treatment Capacity of 24 MGD. ~~The component elements of Phase I will be specifically~~

~~set forth in the scope of design to be agreed on by the SWTP Committee.~~ CONSTRUCTION OF PHASE I IS NOW COMPLETE.

8. Article II General Agreement Provisions, Section 2.3 is amended to read as follows:

2.3 AUTHORIZED REPRESENTATIVES. Within thirty (30) calendar days of the Effective Date, the City Manager for Chandler and the Town Manager for Gilbert shall each appoint an Authorized Representative and an alternate Authorized Representative to administer the provisions of this Agreement for which the Authorized Representatives have responsibility, and notify each other of those appointments IN WRITING. The alternate Authorized Representative shall act only when the Authorized Representative is absent or otherwise unable to perform his or her duties under this Agreement. Any decision or agreement required to be made or entered into by a Party's Authorized Representative shall be binding on a Party only if it is in writing and signed by the Party's Authorized Representative. Each Party shall immediately notify the other Party of any change in the identity of its Authorized Representative or alternative Authorized Representative. The Authorized Representatives shall also provide to each other a point of contact that can be reached in case of emergency or during times outside of normal business hours. The Parties shall notify each other of any change in emergency contact person information IN WRITING.

9. Article IV Design and Construction of Initial Joint Plant Components is amended to add new Section 4.4 to read as follows:

4.4 JOINT FINISHED WATER RESERVOIR. IN CONSIDERATION OF THE COSTS PAID BY CHANDLER FOR THE JOINT FINISHED WATER RESERVOIR, CHANDLER SHALL HAVE A RIGHT TO 3,000,000 GALLONS OF CAPACITY FOR STORAGE OF FINISHED WATER IN THE JOINT FINISHED WATER RESERVOIR.

Renumber existing Section 4.4 to be Section 4.5.

10. Article VI Design and Construction of Phase II, Section 6.1 is amended to read as follows:

PAYMENT FOR DESIGN AND CONSTRUCTION. Subject to Section 4.4, 6.6 and 6.7, and Section 7.3 of this Agreement, each Party shall have an equal percentage of Treatment Capacity in Phase II and all Capital Costs incurred in the design and construction of Phase II shall be shared SHALL BE SHARED IN ACCORDANCE WITH THE PERCENTAGES SET FORTH IN EXHIBIT E. Gilbert shall invoice Chandler for Chandler's portion of such costs as they are incurred, and Chandler shall pay the invoice amount within thirty (30) days of invoice, while noting any disputed item.

11. Article VI Design and Construction of Phase II, Section 6.2 is amended to read as follows:

6.2 BUDGETED COST. The Budgeted Cost for the design and construction of Phase II is ~~Sixty-Two~~ EIGHTY-THREE Million ~~Two Hundred Thousand~~ Dollars (~~$62,200,000~~ 83,000,000).

12. Article VI Design and Construction of Phase II, Section 6.5.1is amended to read as follows:

6.5.1 DATE TO COMMIT. Unless an alternative date is adopted by the SWTP Committee, the Parties shall either HAVE approveD the design and construction of Phase II at the Budgeted Cost for Phase II, or such other amount separately approved by each Party's Council, or indicate that they will either not participate in Phase II or only participate in Phase II in a limited manner, by April, 2011 AND HAVE BY THIS AMENDMENT NO. 1 APPROVED THEIR RESPECTIVE PARTICIPATION AS SET FORTH IN THIS AMENDMENT.

13. Article XI CAP Water, Section 11.1 is amended to read as follows:

11.1 QCID TURNOUT. The Parties ~~hope to utilize the QCID Turnout to divert CAP Water to the Joint Water Transmission Line and agree to initiate negotiations with those entities that own and control the QCID Turnout to~~ HAVE reachED an agreement permitting the use of the QCID Turnout. ~~that includes the following terms:~~

~~Grants authority to the Parties, through the Lead Agent, to directly order CAP Water delivery at the QCID Turnout in the manner set forth in this Article;~~

~~Does not require the Parties to order CAP Water delivery at the QCID Turnout on behalf of any other entity, including QCID;~~

~~Provides an equitable, fixed division of all future maintenance and repair costs needed for continued use of the QCID Turnout;~~
~~Provides a reasonable, fixed cost or fee for use of the QCID Turnout;~~

~~Sets forth the Parties responsibility for any improvements to the QCID Turnout necessary for use by the Parties; and~~

~~(f) Grants a non-revocable, perpetual right to use the QCID Turnout on the agreed upon terms at all times that the Parties, or either Party, owns and operates the Joint Plant or any replacement CAP Water treatment plant.~~

14. Article XI CAP Water, Section 11.2 is deleted.

15. Article XIII Insurance, Section 13.2 is amended to read as follows:

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13.2 GILBERT LIABILITY INSURANCE REQUIREMENTS. Gilbert shall maintain Commercial General and Umbrella Liability ("CGL") insurance with a limit of not less than Twenty Million Dollars ($20,000,000) per occurrence from the Effective Date. The CGL insurance shall be written on ISO occurrence form CG 00 01 12 04 (or substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, product-completed operations, personal injury, liability assumed under the indemnification provisions of this Agreement and liability assumed under an insured contract, including the tort liability of another assumed in a business contract. The general aggregate limit shall apply separately to this Agreement. ~~After the completion of Phase I, Gilbert shall maintain or make available, in addition to the Twenty Million Dollars ($20,000,000) of existing CGL insurance, an additional Ten Million Dollars ($10,000,000) of CGL coverage for a total of Thirty Million Dollars ($30,000,000) of CGL coverage. All or a portion of the additional Ten Million Dollars ($10,000,000) CGL coverage required after completion of Phase I may be satisfied by Gilbert through appropriate reserves provided that Chandler is not in any way charged a fee or assigned a portion of the costs associated with such reserve and Chandler is fully indemnified by Gilbert for any liability that would be normally covered by CGL insurance up to the Thirty Million Dollars ($30,000,000) coverage required herein. Gilbert shall notify Chandler before utilizing a reserve for all or a portion of the additional Ten Million Dollars ($10,000,000) CGL coverage requirement and provide documentation as to the adequacy of the reserve established.~~

16. Article XIII Insurance is amended to add new Section 13.10 to read as follows:

13.10. CONTRACTOR'S INSURANCE REQUIREMENTS. AT A MINIMUM, GILBERT SHALL REQUIRE THE CONTRACTOR FOR CONSTRUCTION OF PHASE II TO MAINTAIN COMMERCIAL GENERAL AND UMBRELLA LIABILITY INSURANCE WITH A LIMIT OF NOT LESS THAN TWENTY-FIVE MILLION DOLLARS ($25,000,000) PER OCCURRENCE, TWENTY-FIVE MILLION DOLLARS ($25,000,000) GENERAL AGGREGATE LIMIT ON A PER PROJECT BASIS, AND TWENTY-FIVE MILLION DOLLARS ($25,000,000) PRODUCTS AND COMPLETED OPERATIONS ANNUAL AGGREGATE. IN ADDITION, GILBERT SHALL REQUIRE THE CONTRACTOR TO MAINTAIN A POLLUTION LEGAL LIABILITY POLICY WITH MINIMUM LIMITS OF FIVE MILLION DOLLARS ($5,000,000) PER LOSS AND FIVE MILLION DOLLARS ($5,000,000) PRODUCTS AND COMPLETED OPERATIONS ANNUAL AGGREGATE. ALL POLICIES SHALL BE EFFECTIVE FROM THE DATE OF NOTICE TO PROCEED WITH CONSTRUCTION.

17. Exhibit A shall be deleted in its entirety. References in the Agreement to Exhibits B, C and D shall be replaced with references to Exhibits A, B and C respectively. Exhibit A (Fixed Cost Items) and Exhibit B (Operating Fee) are hereby revised as set forth on attached Exhibits A and B. Exhibit E (Allocation of Costs) is hereby added to the Agreement.

All other provisions of the Agreement shall remain unchanged.

IN WITNESS WHEREOF, the Parties have executed this Amendment to the Agreement as of the day first above written.

TOWN OF GILBERT:	CITY OF CHANDLER:
By: _____	_____
Its: _____	_____
ATTEST:	ATTEST:
_____	_____
Catherine Templeton, Town Clerk	_____, City Clerk
APPROVED AS TO FORM:	APPROVED AS TO FORM:
_____	_____
L. Michael Hamblin Town Attorney	Kay Bigelow City Attorney

EXHIBIT A
FIXED COST ITEMS

Town of Gilbert
SanTan Vista WTP IGA
Fixed Costs Analysis

Category	Amount in IGA	Revised Estimate
Supplies	$ 52,630	$ 46,020
Professional Services	31,990	14,510
Maintenance Services	149,680	102,890
Insurance	75,820	68,000
Utilities and Permits	22,800	88,120
Rentals	3,660	28,470
Employee Development	12,200	6,900
Purchased Services*	-	43,860
TOTAL FIXED COST ITEMS	**$ 348,780**	**$ 398,770**

* This was not included as a category in Exhibit B in the IGA and will replace Overhead costs.

EXHIBIT B

OPERATING FEE

I. PHASE I. *Phase 1 is complete. The adjusted Operating Fee is based on the average of the three most recent years in operation and will be comprised of the following:*

(a) A Fixed Cost Fee of $199,385.00, as adjusted every ten (10) years by the Fixed Cost Fee Adjustment and, when applicable, the Insurance Cost Adjustment calculated annually.

II. PHASE II. After completion of Phase II, the Operating Fee shall be $398,770, as adjusted each Year by the Operating Fee Adjustment, and be comprised of the following:

(a) A Fixed Cost Fee of $399,770, as adjusted every ten (10) years by the Fixed Cost Fee Adjustment and, when applicable, the Insurance Cost Adjustment calculated annually.

III. MODIFICATIONS. The Operating Fee is based on the assumption that Chandler and Gilbert each have fifty percent (50%) of the Treatment Capacity. As such, the Operating Fee shall be proportionally adjusted, as necessary, if the Parties do not have equal Treatment Capacity so that each Party is responsible for its proportionate share of Fixed Costs.

EXHIBIT E

ALLOCATION OF COSTS FOR PHASE 2

	Financial Responsibilities	
Description of Work	**Chandler, %**	**Gilbert, %**
Pre-Design, Design, and Construction Phase Engineering (B&V)	50	50
Pre-Construction Services (Sundt)	50	50
Construction (Sundt)		
• Site Work, Yard Piping,	50	50
• Raw Water Metering, Mixing and Control	50	50
• Sand Ballasted Flocculation Basins/Trains	50	50
• Ozone Contact Basins/ Trains	50	50
• Filters	50	50
• Finished Water Storage	0	100
• Gilbert Finished Water Pumping	0	100
• Chandler Finished Water Pumping, Surge, and Electrical	100	0
• Wash Water Recovery and Treatment	50	50
• Solids Handling Facilities	50	50
• Chemical Facilities	50	50
• SCADA/I&C	50	50
• Ozone Facilities	50	50
• Electrical	50	50
• All other Miscellaneous Work	50	50
Gilbert Program Management Contract	0	100

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: L. Michael Hamblin, Town Attorney, 503-6027

MEETING DATE: April 14, 2015

SUBJECT: IGA With Maricopa County Related to Construction of ST112

STRATEGIC INITIATIVE: Infrastructure

The proposed IGA divides responsibility for the acquisition of right of way, design, construction, and eventual ownership of property improved along Val Vista Drive as part of ST112, which will improve an important roadway in the Town to major arterial standards.

RECOMMENDED MOTION

A motion to approve an intergovernmental agreement for the necessary property acquisition, design, construction, and ownership of improvements to Val Vista Drive from Appleby to Riggs Road, and authorizing the Mayor to execute the necessary documents.

BACKGROUND/DISCUSSION

ST112 is a Capital Improvement Project ("the Project") for the improvement of Val Vista Drive from Appleby Road to Riggs Road to major arterial standards. The work will include, among other things, improvements to traffic signals, waterline adjustments and stubs, relocation of private irrigation facilities such as Roosevelt Water Conservation District lateral crossings, and coordination of other utility facility relocations.

The Project area includes lands falling partly under the jurisdiction of Gilbert and partly under the jurisdiction of Maricopa County ("the County"). Gilbert does not have authority to exercise its powers of condemnation over lands that are not within its boundaries, so if private property owners falling within the jurisdiction of the County refuse to settle with the Town for the purchase of right of way, then it must rely on the County to condemn the property on the Town's behalf. Given the need for cooperation on the Project, the proposed Intergovernmental Agreement ("IGA") describes the division of responsibilities between the Town and the County.

To wit, Gilbert will assume full responsibility for financing, designing, and constructing the Project. Under the IGA, Gilbert agrees to reimburse the County for the costs it incurs on the Town's behalf. If, however, the County reaches a non-judgment settlement for the acquisition of property in excess of 30% of appraised value, such reimbursement must be specifically approved by the Town Council. The IGA also provides that, upon the completion of the Project, Gilbert will complete the annexation and take full ownership and control over the improved areas.

The IGA was reviewed for form by Jack Vincent, Assistant Town Attorney.

FINANCIAL IMPACT

There is no financial impact associated with the execution of the proposed intergovernmental agreement.

The financial impact was reviewed by Cris Parisot, Management & Budget Analyst.

STAFF RECOMMENDATION

Staff recommends approval of the proposed intergovernmental agreement for the reasons stated above.

Respectfully submitted,

L. Michael Hamblin
Town Attorney

Approved By	Approval Date
Jack Vincent	6/15/2015 8:33 AM
Jack Vincent	6/15/2015 8:33 AM
Cris Parisot	6/15/2015 9:35 AM

INTERGOVERNMENTAL AGREEMENT

BETWEEN MARICOPA COUNTY AND TOWN OF GILBERT

FOR IMPROVEMENTS TO VAL VISTA DRIVE:

FROM RIGGS ROAD TO APPLEBY ROAD

#TT 517

(C-64-16- ___ - M-00)

This Intergovernmental Agreement ("**Agreement**") is between the County of Maricopa, a political subdivision of the State of Arizona ("**County**") and the Town of Gilbert, a municipal corporation ("**Town**"). The County and Town are collectively referred to as the **Parties** or individually as a **Party**.

STATUTORY AUTHORIZATION

1. A.R.S. Section 11-251 and Sections 28-6701 *et seq.* authorize the County to lay out, maintain, control and manage public roads within the County.

2. A.R.S. Sections 11-951 *et seq.* authorize public agencies to enter into Intergovernmental Agreements for the provision of services or for joint or cooperative action.

3. A.R.S. Section 9-240 authorizes the Town to lay out and improve new streets, avenues and alleys.

BACKGROUND

4. Val Vista Drive from Riggs Road to Appleby Road (Project) is located in southeastern Maricopa County and is partly under the jurisdiction of the County and partly under the jurisdiction of the Town.

5. The Town is currently developing design plans to improve the Project under the Town's CIP Project No. ST112.

6. When completed, the Project will improve Val Vista Drive from Riggs Road to Appleby Road to major arterial standards, which will ultimately consist of: three travel lanes and a bicycle lane in each direction; a raised, landscaped median with turn lanes at appropriate locations; storm drainage facilities; median street lighting; conversion of traffic signals at Ocotillo Road and at Chandler Heights Road from temporary span wire to permanent, fully developed signals; waterline adjustments and stubs as necessary for the water distribution system; relocation of private irrigation facilities, Roosevelt Water Conservation District (RWCD) lateral crossings and coordination of other utility facility relocations; and modification of signing and pavement marking beyond the project limits to accommodate the change in conditions.

7. The Project will be a Major Arterial and designed to the Town standards.

PURPOSE OF THE AGREEMENT

8. The purpose of this Agreement is to identify and define the responsibilities of the County and the Town for the Project, including cost sharing, design, construction, construction management, rights-of-way acquisition, utility relocation, and annexation of the Project and Project Area.

9. **Responsibilities of the County:**

9.1 The County shall issue no fee permits to the Town for the Project and related work conducted within the County's jurisdictional boundaries.

9.2 The County shall assist with the acquisition of right-of-way in fee and related easements within the County's jurisdiction necessary for the Project, as requested by the Town, and shall, as needed, authorize the County's Legal Representative (which may be the County Attorney's Office or outside counsel, depending upon availability of resources within the County Attorney's Office) to initiate, prosecute and perform all acts in the manner required by law to condemn property and obtain an Order of Immediate Possession in the County that is deemed necessary for the Project ("Real Estate Support"). When a property to be acquired extends into both municipal and county jurisdiction, the County and the Town shall confer and attempt to develop a plan whereby all the needed property can be acquired in a single action, rather than have two litigations proceed at the same time against an owner.

9.3 The County shall provide Real Estate Support within a realistic timeframe as determined by the accessibility of available agents and timely delivery of right-of-way requirements and related easements being provided by the Town design.

9.4 The County shall determine whether the method of compensation by the Town for the costs that is prescribed in Paragraphs 10.6.1 through 10.6.5 shall be direct payment by the Town to the County's vendor or shall be a reimbursement to the County.

9.5 The County shall invoice the Town on a monthly basis for any expenses that are not subject to direct payment.

9.6 The County shall provide invoice notification that includes an itemization of expenses being requested for payment.

9.7 At the time of the Town's request pursuant to Paragraph 10.2.3, the County shall assume all responsibility for the management of the acquisition, in accordance with the statutes, policies, and procedures that govern the County's ability to acquire the land rights. The County shall, ten days prior to concluding any settlement or purchase of property or property rights necessary for the Project, seek and duly consider the Town Engineer's written comments with regards to such proposed settlement or purchase; provided, however, that the County shall retain final decision-making authority with regard to same.

9.8 The County shall consent to and approve the annexation by the Town of all the Project Area located within the unincorporated area of the County that is improved as part of the Project, including, but not limited to, such additional property needed for the Project as is acquired by the County for public roadway, whether by purchase, condemnation or dedication.

10. Responsibilities of the Town:

10.1 The Town shall act as the lead agency for the Project.

10.2 The Town shall conduct right-of-way related activities that include, but are not limited to, the following:

10.2.1 The Town shall identify required right-of-way, parcel numbers and property owners.

10.2.2 The Town shall be responsible for contacting property owners, submitting an offer to property owners for the acquisition of the right-of-way, negotiating with property owners for the acquisition of right-of-way and paying property owners for the right-of-way. If the Town's negotiations result in the successful acquisition of all or a portion of the needed right-of-way, the Town shall also be responsible for all escrow fees and related costs. The Town shall conduct all activities required pursuant to Section 10.2.2 in a timely manner in order for it to comply with the requirements of Section 10.2.4.

10.2.3 If the Town is unsuccessful in acquiring all required right-of-way from property owners, the Town shall, at least seven (7) months prior to the Town needing access to the required right-of-way to begin construction, request the County commence condemnation proceedings to acquire the right-of-way and related easements needed for the Project. The Town acknowledges that the County needs at least five (5) months prior to construction to begin condemnation proceedings due to statutory requirements, time needed to complete necessary tasks and potential staff constraints. The five (5) month timeline is contingent on adequate staffing for County Facilities Management Department's Real Estate Division, Maricopa County Attorney's Office and by all information provided by the Town to the County being current and sufficient to proceed on with acquisition/condemnation processing.

10.2.4 At the time of the Town's request pursuant to Paragraph 10.2.3, the Town shall provide to the County recordable legal descriptions, maps, and exhibits required by the County to complete right-of-way acquisitions.

10.2.5 At the time of the Town's request pursuant to Paragraph 10.2.3, the Town shall cease and desist all contact with the property owners, and shall convey to the County all responsibility for the management of the necessary right-of-way acquisitions or condemnation for the Project.

10.2.6 The Town shall refer any and all escalation of questions and concerns with the acquisition of the Project to the management of the County Facilities Management Department's Real Estate Division.

10.2.7 The Town shall provide any information requested by the County as to its proposed construction or related issues in order to assist in the County's acquisition of the property.

10.3 The Town shall conduct utility coordination and relocation activities.

10.4 The Town shall manage the design and construction of the Project, and the Town Engineer (or his/her designees) shall, within ten (10) days, provide written comments to the County with regard to any proposed settlement or purchase of property or property interests as contemplated by Paragraph 9.6.

10.5 The Town shall be solely responsible for all costs and fees associated with the Project, including but not limited to attorney's fees and costs.

10.6 The Town shall pay directly to the County's vendor or reimburse the County as determined pursuant to Paragraph 9.4 of the this Agreement for all expenses incurred by the County for Real Estate Support, including, but not limited to:

10.6.1 Title Examinations and Reports
10.6.2 Property Appraisals
10.6.3 Cost of acquisition of property or easements, including escrow and closing costs
10.6.4 Cost of condemnation proceedings if needed
10.6.5 All related attorney's fees and costs provided by Maricopa County

10.7 Notwithstanding the provisions of section 10.6, above, reimbursement to the County for the stipulated cost of acquisition of property or easements in excess of 30% of the County's most current appraised fair market value shall require authorization by the Gilbert Town Council.

10.8 Notwithstanding the provisions of section 10.7 above, the Town, at the County discretion and pursuant to Paragraph 9.4, shall pay directly to the County's vendor or reimburse the County directly for the full cost of acquisition as determined by any non-stipulated judgment entered in a condemnation case filed by Maricopa County pursuant to the terms of this Agreement.

10.9 The Town shall pay County for any expenses incurred after receiving an itemized invoice related to the acts performed pursuant to this Agreement.

10.10 The Town shall remit all authorized payments as identified in this Agreement within thirty (30) days of the receipt of an invoice.

10.11 Upon issuance of the construction contract notice to proceed, the Town shall assume responsibility and liability for construction, operation, maintenance and other aspects of the Project until annexation is complete.

10.12 Upon completion of the Project, the Town shall assume all rights of ownership and responsibility for operation and maintenance of the Project Area and shall complete the annexation of the Project and Project Area within ninety (90) days or such time as can legally be annexed.

GENERAL TERMS AND CONDITIONS

11. By entering into this Agreement, the Parties agree that to the extent permitted by law, each Party will indemnify, defend and save the other Parties harmless, including any of the Parties' departments, agencies, officers, employees, elected officials or agents, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the negligent performance or nonperformance by the indemnifying Party of any of the provisions of this Agreement. By entering into this Agreement, each Party indemnifies the other against all liability, losses and damages of any nature for or on account of any injuries or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or nonperformance of this Agreement, except such injury or damage as shall have been caused or contributed to by the negligence of that other Party. The damages which are the subject of this indemnity shall include but not be limited to the damages incurred by any Party, its departments, agencies, officers, employees, elected officials or agents. In the event of an action, the damages which are the subject of this indemnity shall include costs, expenses of litigation and reasonable attorney's fees.

12. This Agreement shall become effective as of the date it is approved by the Maricopa County Board of Supervisors and remain in full force and effect until all stipulations previously indicated have been satisfied except that it may be amended upon written Agreement by all Parties. Any Party may terminate this Agreement upon furnishing the other Party with a written notice at least thirty (30) days prior to the effective termination date.

13. This Agreement shall be subject to the provisions of A.R.S. Section 38-511.

14. The Parties warrant that they are in compliance with A.R.S. Section 41-4401 and further acknowledge that:

14.1 Any contractor or subcontractor who is contracted by a Party to perform work on the Project shall warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. Section 23-214(A), and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer.

14.2 Any breach of the warranty, shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.

14.3 The Parties retain the legal right to inspect the papers of any contractor or subcontractor employee who works on the Project to ensure that the contractor or subcontractor is complying with the warranty above and that the contractor agrees to make all papers and employment records of said employee available during normal working hours in order to facilitate such an inspection.

14.4 Nothing in this Agreement shall make any contractor or subcontractor an agent or employee of the Parties to this Agreement.

15. Each Party to this Agreement warrants that neither it nor any contractor or vendor under contract with the Party to provide goods or services toward the accomplishment of the objectives of this Agreement is suspended or debarred by any federal agency which has provided funding that will be used in the Project described in this Agreement.

16. Each of the following shall constitute a material breach of this Agreement and an event of default ("Default") hereunder: A Party's failure to observe or perform any of the material covenants, conditions or provisions of this Agreement to be observed or performed by that Party ("Defaulting Party"), where such failure shall continue for a period of thirty (30) days after the Defaulting Party receives written notice of such failure from the non-defaulting party provided, however, that such failure shall not be a Default if the Defaulting Party has commenced to cure the Default within such thirty (30) day period and thereafter is diligently pursuing such cure to completion, but the total aggregate cure period shall not exceed ninety (90) days unless the Parties agree in writing that additional time is reasonably necessary under such circumstances to cure such default. In the event a Defaulting Party fails to perform any of its material obligations under this Agreement and is in Default pursuant to this Section, the non-defaulting party, at its option, may terminate this Agreement. Further, upon the occurrence of any Default and at any time thereafter, the non-defaulting party may, but shall not be required to, exercise any remedies now or hereafter available to it at law or in equity.

17. All notices required under this agreement to be given in writing shall be sent to:

Maricopa County Department of Transportation
Attn: Intergovernmental Relations
2901 W. Durango Street
Phoenix, Arizona 85009

Town of Gilbert
Attn: Town Manager
50 E. Civic Center Drive
Gilbert, Arizona 85296

All notices required or permitted by this Agreement or applicable law shall be in writing and may be delivered in person (by hand or courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, and shall be deemed sufficiently given if served in a manner specified in this paragraph. Either Party may by written notice to the other specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail, the notice shall be deemed given 72 hours after the notice is addressed as required in this paragraph and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the notice to the Postal Service or courier.

18. This Agreement does not imply authority to perform any tasks, or accept any responsibility, not expressly stated in this Agreement.

19. This Agreement does not create a duty or responsibility unless the intention to do so is clearly and unambiguously stated in this Agreement.

20. This Agreement does not grant authority to control the subject roadway, except to the extent necessary to perform the tasks expressly undertaken pursuant to this Agreement.

21. Any funding provided for in this Agreement, other than in the current fiscal year, is contingent upon being budgeted and appropriated by the Maricopa County Board of Supervisors and the Town Council in such fiscal year. This Agreement may be terminated by any Party at the end of any fiscal year due to non-appropriation of funds.

22. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assignees. Neither Party shall assign its interest in this Agreement without the prior written consent of the other Party.

23. This Agreement and all Exhibits attached to this Agreement set forth all of the covenants, promises, agreements, conditions and understandings between the Parties to this Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between the Parties other than as set forth in this Agreement, and those agreements which are executed contemporaneously with this Agreement. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the party drafting this Agreement. This Agreement cannot be modified or changed except by a written instrument executed by all of the Parties hereto. Each party has reviewed this Agreement and has had the opportunity to have it reviewed by legal counsel.

24. The waiver by any Party of any right granted to it under this Agreement is not a waiver of any other right granted under this Agreement, nor may any waiver be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.

25. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision shall be invalid or prohibited under the law, such provision shall be ineffective to the extent of such prohibition or invalidation but shall not invalidate the remainder of such provision or the remaining provisions.

26. Except as otherwise provided in this Agreement, all covenants, agreements, representations and warranties set forth in this Agreement or in any certificate or instrument executed or delivered pursuant to this Agreement shall survive the expiration or earlier termination of this Agreement for a period of one (1) year.

27. Nothing contained in this Agreement shall create any partnership, joint venture or other agreement between the Parties hereto. Except as expressly provided in this Agreement, no term or provision of this Agreement is intended or shall be for the benefit of any person or entity not a party to this Agreement, and no such other person or entity shall have any right or cause of action under this Agreement.

28. Time is of the essence concerning this Agreement. Unless otherwise specified in this Agreement, the term “day” as used in this Agreement means calendar day. If the date for performance of any obligation under this Agreement or the last day of any time period provided in this Agreement falls on a Saturday, Sunday or legal holiday, then the date for performance or time period shall expire at the close of business on the first day thereafter which is not a Saturday, Sunday or legal holiday.

29. Sections and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

30. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument. Faxed, copied and scanned signatures are acceptable as original signatures.

31. The Parties agree to execute and/or deliver to each other such other instruments and documents as may be reasonably necessary to fulfill the covenants and obligations to be performed by such party pursuant to this Agreement.

32. The Parties hereby agree that the venue for any claim arising out of or in any way related to this Agreement shall be Maricopa County, Arizona.

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

End of Agreement - Signature Page Follows

IN WITNESS WHEREOF, the Parties have executed this Agreement.

MARICOPA COUNTY

Recommended by:

_____
Jennifer Toth, P.E. Date

Approved and Accepted by:

_____		_____	
Steve Chucri, Chairman Board of Supervisors	Date	John Lewis Mayor	Date

Attest by:

_____		_____	
Fran McCarroll Clerk of the Board	Date	Town Clerk	Date

APPROVAL OF ATTORNEYS

I hereby state that I have reviewed the proposed Intergovernmental Agreement and declare the Agreement to be in proper form and within the powers and authority granted to the Parties by their respective governing bodies under the laws of the State of Arizona.

_____		_____	
Deputy County Attorney	Date	Town Attorney	Date

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Jack Vincent, Assistant Town Attorney, 503-6107

MEETING DATE: June 25, 2015

SUBJECT: Telecommunication License Agreement with Teleport Communications America, LLC for use of Right-of –Way (Contract #2015-1004-0734)

STRATEGIC INITIATIVE: Infrastructure

Provide a Telecommunication System License Agreement for use with Town projects.

RECOMMENDED MOTION

A motion to approve the Telecommunications System License Agreement with Teleport Communications America, LLC, for use of right-of-way.

BACKGROUND/DISCUSSION

Teleport Communications America, LLC, ("TCA") filed an application to use certain Town right-of-way for its telecommunications system. The location of the proposed facilities is set forth in Exhibit A of the proposed License Agreement. A.R.S. § 9-583 authorizes the Town to issue licenses for the use of public right-of-way and prohibits the Town from adopting ordinances that have the effect of prohibiting the ability of any telecommunications corporation to provide telecommunications service in the Town. Nevertheless, the Town has the right to manage its rights-of-way and exercise other police powers.

Telecommunication licenses must be issued in a competitively neutral and nondiscriminatory basis to telecommunications providers. The statute puts limits on the fees the Town may impose for the use of the right-of-way based on whether the telecommunication use is intrastate versus interstate. The application of TCA is for an interstate use. Therefore, compensation to the Town for the use of the right-of-way will be $1.47 per linear foot annually.

The license sets forth the rights-of-way that will be used by TCA. It may use facilities of other telecommunications corporations so long as that telecommunications corporation has a license from the Town. If TCA wants to use additional right-of-way, it must apply to the Town Engineer. Construction in the right-of-way is subject to Municipal Code Section 10-5, which governs all persons who work in the right-of-way. A performance bond and insurance are required. The term of the license is for five years and shall be renewed for an additional term of five years unless terminated for failure to comply with the license.

The license also obligates TCA, at the Town's option, to install additional conduit along the route of its new line for future Town use and ownership. The license agreement requires that the Town reimburse TCA for the incremental cost of that additional conduit.

The Telecommunications System License was reviewed for form by Jack A. Vincent, Assistant Town Attorney.

FINANCIAL IMPACT

The License provides that TCA shall pay the Town an annual fee of $1.47 per linear feet of right-of-way.

Financial impact section reviewed by Laura Lorenzen, Management and Budget Analyst.

STAFF RECOMMENDATION

Staff recommends approval of the Telecommunications System License Agreement with TCA.

Respectfully submitted,

Jack Vincent
Assistant Town Attorney

Attachments and Enclosures: Telecommunications System License

Approved By	Approval Date
Michael Hamblin	5/21/2015 4:55 PM
Jack Vincent	6/15/2015 8:13 AM
Laura Lorenzen	5/26/2015 8:48 AM

TELECOMMUNICATIONS SYSTEM
LICENSE AGREEMENT
(Town of Gilbert – _____)

This License is dated this _____ day of May, 2015, and is issued by the Town of Gilbert, Arizona, a political subdivision of the State of Arizona to Teleport Communications America, LLC, a Delaware limited liability company and telecommunications business.

WHEREAS, the Town of Gilbert has authority pursuant to A.R.S. § 9-501 and A.R.S. § 9-581 et. seq., to issue licenses to use the public rights-of-way and easements within the Town for a telecommunications system; and

WHEREAS, Teleport Communications America, LLC has applied to the Town of Gilbert for a license for the use, installation, placement, operation and maintenance of a telecommunications system network in, on, under, upon, along and across certain public rights-of-way and easements within the Town of Gilbert; and

WHEREAS, Teleport Communications America, LLC may desire to use as part of its network, fiberoptics and other facilities owned by other companies in public rights-of-way and easements within the Town of Gilbert; and

WHEREAS, the issuance of such a Telecommunications System License to Teleport Communications America, LLC will benefit residents of the Town of Gilbert;

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF GILBERT, ARIZONA, ISSUES A TELECOMMUNICATIONS SYSTEM LICENSE TO Teleport Communications America, LLC, A TELECOMMUNICATIONS COMPANY, UNDER THE TERMS AND CONDITIONS SET FORTH HEREIN.

1. LICENSE GRANTED.

1.1 License Area. There is hereby granted by the Town of Gilbert, a political subdivision of the State of Arizona ("Town") to Teleport Communications America, LLC, a Delaware limited liability company, ("Licensee"), the right, privilege and non-exclusive License to use, construct, install, operate and maintain a telecommunication system network, including all necessary cables, conduit, appurtenances and related facilities (collectively referred to herein as "Network") in, under, along, over and across the public rights-of-way and easements of the Town of Gilbert, including any future annexations by the Town, subject to the terms and conditions of this License, the Gilbert Municipal Code, including Chapter 19 Telecommunications Service, and Unified Land Development Code and any amendments thereto, the Town's police powers and taxing authority, together with all applicable federal and state laws and regulations. For the purpose of this License, the Network does not include a cable system, open video system, or any other system providing multichannel video service, all as defined in Title VI of the Federal Communications Act of

1934. This grant does not affect Licensee's obligation to obtain any other business license or permit which might be required by the Town Code or applicable law.

1.2 Others' Facilities. Licensee may use or lease facilities of other persons as part of its Network, provided however, that such facilities are lawfully constructed, installed, operated and maintained in the public rights-of-way in compliance with the Gilbert Municipal Code and Unified Land Development Code, state and any other applicable laws. Licensee shall provide the Town with the current name of the person and responsible officer thereof, local business address, and telephone number, and a general description and location of the other persons' facilities that will be used as part of Licensee's Network. Nothing herein shall be construed to grant any person other than Licensee a telecommunications or fiber optics communications system license.

1.3. Initial Service Routes. Licensee's Initial Service Routes shall consist of those routes identified in **ExhibitA** attached hereto, which routes may include some facilities owned by other persons. Licensee may construct a Network including facilities, cables, and appurtenances along the Initial Routes generally depicted in Exhibit A, and as will be more specifically depicted on Construction and As-Built Drawings provided to the Town by Licensee.

1.4. Expanded Service Routes. At any time during the term of this License, Licensee may apply to the Town Engineer and having complied with the terms and conditions of this License and having received Town Engineer's approval, which shall not be unreasonably withheld or delayed, Licensee may expand or extend (construct, install, upgrade and operate) its Network within the Town of Gilbert. Any expansions or extensions shall be at all times governed by the terms and conditions of this License. Licensee shall immediately prepare a new Exhibit A to this License showing all service routes, including the expansions, which shall be attached to this License and replace the existing Exhibit A, upon receiving the Town Engineer's approval of the new routes.

1.5 Intra-State Services. If in the future, Licensee offers intra-state services in the Town of Gilbert, this License will automatically be converted to a dual license for an inter-state and intra-state telecommunications network. In that event, the parties agree that the Town may amend the License as may be permitted by and consistent with state laws and Town ordinances, following good faith negotiations with Licensee, within a reasonable time. Licensee shall notify the Town at least one hundred twenty (120) days before commencement of offering intra-state telecommunications services in the Town of Gilbert.

2. CONDITIONS RELATED TO MANAGEMENT OF PUBLIC RIGHTS-OF-WAY AND EASEMENTS.

2.1 Gilbert Rights-of-Way Regulations. Licensee shall comply with all requirements of Section 10-5 of the Gilbert Municipal Code, as may be amended from time to time, and any other ordinances related to work in the public rights-of-way and easements, in addition to all terms and conditions of this License.

2.2 Plans; Construction Schedule. Construction of the Initial Service Routes shall commence within twelve (12) months from the effective date of this License. Plans and Construction Schedule shall be addressed under Section 10-5 of the Gilbert Municipal Code.

2.3 Underground Installation. Except as otherwise provided herein or permitted by the Town, all of Licensee's Network within the Town shall be underground and shall meet the standard specifications and reasonable requirements of the Town.

2.4. Coordination of Underground Installation. Licensee shall coordinate its installations with developers and other utilities to install facilities underground in a common trench and at the same time, per Gilbert Municipal Code Section 10-5. All installations shall be in conduit approved by the Town Engineer. Any expenses for trenching or conduit other than that required for Licensee's use will be shared pro-rata among all parties located in the trench or conduit, with payment and other terms and conditions of said joint occupancy to be agreed upon by the parties.

2.5. Reimbursement for Reduction in Service Life. Upon completion of construction and prior to the release of any performance bond posted for construction purposes, Licensee agrees to reimburse Town for all reasonable costs arising from reduction in service life of any public road, resulting from pavement cuts of the Licensee considering the criteria set forth in Section 10-5 of the Gilbert Municipal Code if amended to require such reimbursement.

2.6. Blue Stake; As-Built Drawings; Local Agent. Licensee shall participate as a member of Arizona Blue Stake Center and other organizations to assist with the proper location and identification of its underground facilities, and shall comply with Arizona Revised Statutes Section 40-360.21 et. seq. Licensee shall maintain As-Built Drawings of its facilities located within the public rights-of-way and easements of the Town, and furnish a copy of the same to the Town upon request. Licensee shall maintain a local agent within Maricopa County, who is familiar with Licensee's facilities and is able to assist the Town and others using the public rights-of-way and easements in obtaining accurate information regarding Licensee's facilities.

2.7. Electronic Mapping. Licensee will provide the Town with accurate and current records of Licensee's As-Built facilities in an electronic format compatible with the Town electronic mapping system. Upon completion of the Initial Service Routes and again after completion of any Expanded Service

Routes, Licensee agrees to reimburse the Town for Town's reasonable costs of updating Town's electronic mapping format to show accurate location of Licensee's facilities in the public rights-of-way and easements.

2.8. Emergencies.

2.8.1 In case of a public emergency posing an immediate threat to the lives or property of Town residents, Town reserves the right to perform work in the public rights-of-way and easements, which work may damage or destroy Licensee's facilities, without any prior notice to Licensee, if such action is deemed reasonably necessary by the Town Manager, Fire Chief, Police Chief, Town Engineer, Public Works Director, and/or any of their designees. Licensee shall be responsible for costs of repair of any of its facilities damaged in such an emergency event. If Licensee is required to make repairs of an emergency nature, Licensee will notify the Town prior to such repairs, if practicable, and will obtain necessary permits in a reasonable time after notification.

2.8.2 A public emergency shall be any condition which, in the opinion of any of the officials named in Paragraph 2.8.1, poses an immediate threat to the lives or property of any person in the Town, caused by any natural or man-made disaster, including, but not limited to storms, floods, fire, accidents, explosions, major water main breaks, hazardous material spills.

3. PERFORMANCE BOND.

3.1 At least thirty (30) days before commencing any construction work under this License, Licensee shall post a performance bond in the amount of One Hundred Thousand Dollars ($100,000) in favor of the Town as security for the Licensee's faithful performance of all provisions of this License, including but not limited to the payment of any claims, liens, taxes due, penalties, cost of removal or abandonment of any property by Licensee. This bond shall remain in effect during construction of Licensee's Initial Service Routes. After completion of the Initial Service Routes, upon written approval of the Town, provided there are no outstanding claims against Licensee resulting from said construction, Licensee may replace the bond in the amount of One Hundred Thousand Dollars ($100,000) with a bond in the amount of Fifty Thousand Dollars ($50,000) as security for the Licensee's faithful performance of all provisions of this License, including but not limited to the payment of any claims, liens, taxes due, penalties, cost of removal or abandonment of any property by Licensee. Town may request an additional bond in the same or greater amount during construction by Licensee in the Expanded Service Routes. Upon written approval of the Town, the performance bond may be canceled no later than ninety (90) days after expiration of the term of this License, provided there is no outstanding default on the part of Licensee.

3.2 Town may draw upon the performance bond if, after giving Licensee thirty (30) days notice and an opportunity to cure any default under this License, Licensee fails to cure any default. Within thirty (30) days after notice to Licensee that any amount has been withdrawn from the bond, Licensee shall restore the bond to its initial amount. A performance bond shall not be construed to limit the liability of Licensee.

4. INSURANCE.

4.1 Minimum Insurance. Licensee shall at all times during the term hereof, at its own cost and expense, carry and maintain, for the mutual benefit of the Town and Licensee, the following minimum insurance:

4.1.1. Commercial General Liability. Commercial general liability insurance with an unimpaired limit of One Million Dollars ($1,000,000) for each occurrence and a One Million Dollars ($1,000,000) general aggregate limit per policy year. The policy shall cover liability arising from premises, operations, independent contractors, products, completed operations, personal injury, bodily injury, advertising injury and liability assumed under an "insured contract" including this License. The policy will cover Licensee's liability under the indemnity provisions of this License. The protection under the policy shall at a minimum meet or exceed Insurance Service Office, Inc. Form CG 00 01 10 93. (The policy does contain a "separation of insureds" clause.)

4.1.2. Automobile Liability. Commercial business automobile liability insurance with a limit of One Million Dollars ($1,000,000) for each occurrence covering any and all owned, hired, and non-owned vehicles assigned to or used in any away in connection with Licensee's use of the License Area. Coverage must be at least as broad as Insurance Service Office, Inc. Policy Form CA00 01 12 93. (Such insurance does cover hazards of motor vehicle use for loading and off loading.)

4.1.3. Workers' Compensation. Such workers' compensation and similar insurance as is required by law and employer's liability insurance with a minimum limit of Five Hundred Thousand Dollars ($500,000) for each employee, One Million Dollars ($1,000,000) policy limit.

4.1.4. Other Insurance. Any other insurance Town may reasonably require before approval and related to construction of any Expanded Service Routes for the protection of Town and Town's agents, officials, representatives, officers, directors, and employees (collectively "Additional Insureds"), the License Area, surrounding property, Licensee, or the activities carried on or about the License Area. Such insurance shall be limited to insurance a reasonable person owning, leasing, designing, constructing, occupying, or operating similar facilities could reasonably purchase.

4.2 Form of Insurance. All insurance policies shall meet the following requirements:

4.2.1. All policies except workers' compensation must name the Town, its agents, officials, representatives, officers, and employees as Additional Insureds. Licensee shall cause coverage for Additional Insureds to be incorporated into each insurance policy via endorsement equivalent to Insurance Services Office, Inc. Commercial General Liability Additional Insured, Form B. Town may give Licensee notice of Town's election from time to time that any or all the Additional Insureds not be named as Additional Insureds with respect to specific insurance coverages.

4.2.2. All policies must provide Town with thirty (30) days prior notice of any cancellation, reduction or other change in coverage.

4.2.3. All policies shall require that notices be given to Town as provided for notices to Town under this License.

4.2.4. The insurer's duty to notify Town of changes in coverage shall not include phrases such as "endeavor to" or "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives."

4.2.5. All policies must clearly show, by formal endorsement or otherwise, that all coverage required by this License is provided.

4.2.6. All insurance policies shall contain a waiver of any transfer rights of recovery (subrogation) against Town and all other Additional Insureds. No deductible or "self-insured" amount shall exceed Two Hundred Fifty Thousand Dollars ($250,000). Licensee shall be solely responsible for any self-insurance amount of deductible. Town may require Licensee from time to time to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional letter of credit.

4.3. Insurance Certificates. Licensee shall evidence all insurance by furnishing to Town certificates of insurance. Certificates must evidence that the policy referenced by the certificate is in full force and effect and that the policy satisfies each requirement of this License applicable to the policy. For example, certificates must indicate that Town and the other Additional Insureds are additional insureds. Certificates must be in a form acceptable to the Town. All certificates are in addition to the actual policies and endorsements required. Licensee shall provide Town with a renewal certificate of the required insurance coverage at least ten (10) days prior to any expiration date.

4.4. Acceptable Insurers. All insurance policies shall be issued by insurers acceptable to the Town. At a minimum, all insurers shall be duly licensed (or qualified unlicensed non-admitted insurer) by the State of Arizona, Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of A IX, and all insurance maintain a rating of A-.

4.5. Primary Insurance. Licensee's insurance shall be the primary insurance. Any insurance or self-insurance maintained by the Town shall not contribute to Licensee's insurance.

4.6. Insurance to be Provided by Others. Any contractors or other persons occupying, working on or about, or using the License Area pursuant to this License must also provide for the protection of Town and all other Additional Insureds and maintain in effect all of the insurance and indemnification required by this License.

5. INDEMNIFICATION.

5.1. Indemnity. In addition to all other obligations hereunder, to the full extent permitted by law, throughout the term of this License and until all obligations and performances under or related to this License are satisfied and all matters described in this paragraph are completely resolved, Licensee and all other persons using, acting, working or claiming through or for Licensee or this License shall jointly and severally pay, indemnify, defend and hold harmless Town and all other Additional Insureds from and against any and all claims or harm resulting from Licensee's acts or omissions related to its use of the License Area and this License. Without limitation, such claims include any and all allegations, demands, proceedings, liabilities, obligations, suits, actions, claims (including without limitation, claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all reasonable attorney fees, court costs, and the cost of appellate proceedings) which may arise out of any use by Licensee of the License Area or Town's property related to this License or any actions, acts, errors, mistakes or omissions relating to work or services in the performance of or related to this License, including any injury or damages or cause claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the License Area or surrounding areas related to this License except to the extent such claims, liability, harm or damages are caused by Town or any other Additional Insured.

5.2 Town expressly disclaims any representation that required insurance is adequate to protect any person or property against any risks related to the License Area. Licensee's obligations to indemnify do not diminish in any way Licensee's obligations to insure; and Licensee's obligations to insure do not diminish in any way Licensee's obligations to indemnify. Licensee's obligations

to indemnify and provide insurance are in addition to, and do not limit, any and all other liabilities or obligations of Licensee under or connected with this License.

5.3 The indemnity obligations of this License shall survive any termination or expiration of this License.

6. RISK OF LOSS.

Town is not required to carry any insurance covering or affecting the License Area or use of Town's property related to this License. Licensee assumes the risk of any and all loss, damage or claims related to Licensee's use of the License Area or Town's or Licensee's property throughout the term hereof, except as set forth in Paragraph 5. Nothing herein shall be construed to waive any of Licensee's rights to pursue claims against third parties.

7. INSPECTION OF RECORDS.

Licensee's books and records relevant to this License shall be subject to inspection by duly authorized officers or representatives of the Town at reasonable times.

8. COMPENSATION.

8.1 Costs. Licensee shall pay all fees and amounts which the Town is permitted by law to charge for or related to this License, including without limitation, lawful right of way permit fees, and reasonable costs associated with restoration of damage caused to public rights-of-ways and easements. The parties recognize that new services and technology are evolving rapidly. In the event that in the future Licensee desires to offer services over its Network not defined as "telecommunications" under A.R.S. § 9-581 et. seq., Licensee agrees to pay for use of the public rights-of-way and easements owned by the Town to the extent allowed by law and the parties agree to negotiate in good faith to amend this License accordingly. Nothwithstanding the above, Licensee shall not be required to pay any fees or costs not assessed against other similar telecommunications companies in the Town, consistent with the requirements of the 1996 Telecommunications Act.

8.2 Annual Fee (Inter-state Telecommunications). Licensee shall pay to the Town an Annual Fee of One Dollar and Forty-Seven Cents ($1.47) per linear foot of trench in the public rights of-way and/or public utility easements owned by Town, in which Licensee has placed facilities that carry interstate traffic between and among the Licensee's interstate points of presence exclusive of facilities used by the local network and the portion of the interstate network that carries intrastate calls ("Lineal Feet") adjusted by the Consumer Price Index ("CPI") as set forth in Paragraph 8.2.3.

8.2.1 The first Annual Fee owed, if any, shall be calculated based on the number of Lineal Feet constructed as part of the Initial Service Routes identified in Exhibit A. Thereafter, the Annual Fee shall be calculated based on the number of Lineal Feet depicted in the As Built Drawings, including any Expanded Routes, less any distance removed or abandoned during the prior year.

8.2.2 The Annual Fee shall be due and payable within thirty (30) days after the effective date of this License, and on the same date in every year thereafter. If the Annual Fee is not paid on or before the due date, interest of one percent (1.0%) per month will accrue on the amount due and owed to Town.

8.2.3 CPI Adjustment. The charge per Lineal Foot used in calculating the Annual Fee shall be adjusted on July 1st of each year by an amount equal to the percentage change in the U.S. Department of Labor, Bureau of Labor Statistics (Western Region Consumer Price Index ("CPI") for all Urban Customers 1993-1995=100) from the previous year (date of July 1st). In the event that such publication is discontinued, the Parties will agree upon an inflation index that most closely resembles the Western Region CPI.

8.2.4 Auditing. The Town shall have the right upon ten (10) days advance notice and during Licensee's normal business hours to inspect the Licensee's records related to this License and shall have the right to audit any amount determined to be payable under Paragraph 8.2, provided, however, that such audit shall take place within 36 months following the date the Annual Fee is due and payable. Any additional amount due to the Town as a result of the audit shall be paid within thirty (30) days following written notice to the Licensee by Town, said notice shall include a copy of the audit report; provided, however, that Licensee shall not be required to pay such deficiency until thirty (30) days after completion of an administrative review process agreed upon by the parties or non-binding outside arbitration procedure under Paragraph 19.2.

8.3 Transaction Privilege Taxes (Intra-state Telecommunications). Licensee shall pay all transaction privilege taxes owed to Town.

8.4 Conduit and Town Manholes

8.4.1 Town Conduit. At the option of the Town, Licensee agrees to construct and install at its reasonable incremental costs to be paid by the Town to Licensee, a conduit system for the Town as described herein ("Town Conduit"). The Town shall own and have the right to use the Town Conduit in perpetuity. The rights and obligations of this Paragraph 8.4 shall survive any termination, cancellation, expiration, revocation, assignment, lease, sale or transfer of the License, unless caused due to material default of the Town in its obligations herein.

8.4.2 Location. Town Conduit shall be installed concurrently with Licensee's installation of conduit for its own Network. Town Engineer shall review the plans submitted by Licensee, and Licensee's permits shall be issued to include its Network and the Town Conduit. Town Conduit shall be placed along certain stretches of Licensee's Initial Service Routes as shown in Exhibit A of the License; in addition, Licensee shall install Town Conduit along any Expanded Service Routes at the option of the Town. Licensee shall have no obligation to install Town Conduit in an alternate trench or where Licensee is merely pulling fiber optic cable through existing conduit. Licensee may request alternative routes other than those identified in Exhibit A prior to construction, which must be approved by the Town Engineer; provided, however, in that event: 1) Town shall have no obligation to pay any incremental costs of construction already incurred by Licensee for Town Conduit rendered unusable for a governmental use within a reasonable time by the Town by such change in routes; and 2) Town shall elect whether or not Town Conduit will be constructed and installed along the new routes.

8.4.3 Town Manholes. Licensee shall construct and install for the Town, at its reasonable incremental costs to be paid by the Town to Licensee, manholes/handholes ("Town Manholes") at locations agreed upon by the parties, and connect the Town Conduit to and from such Town Manholes. The placement of the Town Manholes shall be specified by the Town within ten (10) days after Licensee's complete construction plans are submitted to Town.

8.4.4 Specifications; Inspections. Products and construction provided by Licensee for the Town Conduit and Town Manholes are to be of the same quality and specifications as that used in construction of Licensee's Network. Town Conduit shall be one (1) 1.9 inch OD SDR11 conduit. Town Manholes shall meet the specifications described in **Exhibit B.** Town shall have the right to observe and inspect the installation and construction of Town Conduit and Town Manholes.

8.4.5 Transfer of Town Conduit. After installation of the Town Conduit is completed by Licensee, Licensee shall provide Town with As-Built Drawings and certified test reports prepared by a reputable company showing that the Town Conduit is usable and acceptable for fiber optical strands. Within ten (10) business days after receipt of said drawings and reports, Town shall notify Licensee in writing whether Town accepts or rejects for cause, the Town Conduit. Any rejection for cause shall set forth the reasons for such rejection and a "punch list" for remedying the situation. Any failure of the Town to timely respond in writing shall be deemed an acceptance of the Town Conduit. In the event of rejection for cause, Licensee shall promptly make such repairs as are reasonably required to make the Town Conduit usable by the Town, notify the Town when such repairs are complete, and provide Town with certified test results again, which will have the effect of triggering the same notification and correction processes described above until Town acceptance is achieved. Upon Town final acceptance, Licensee shall assign and transfer to the Town free and clear of any

lien claims, any and all of its rights and obligations with respect to the Town Conduit, and Town shall immediately accept and assume all such rights and obligations (the "Transfer"). Licensee shall warranty the Town Conduit for one (1) year after the Transfer.

8.4.5 Incremental Costs. The Town will be given the opportunity to review and the parties will agree upon reasonable incremental costs (on a per unit basis) prior to construction. The incremental costs will not be substantially more than those estimates set forth as follows:

Incremental costs associated with installing one additional conduit and associated handholes or manholes for the Town of Gilbert ready to use are:

Cost per foot for SDR 11 O.D. 1.9"	$29.80
Cost per Manhole (Concrete) 4' x 4'	$4,890.00
Cost per Handhole (Fiber glass) 4'x 4'	$5,500.00
Cost per Handhole (Fiber glass) 30" x 60" x 30"	$4,600.00

Notes:
1. All prices include permanent materials, installation, conduit ready to use.
2. The specifications for the manhole and handholes are attached as Exhibit B.
3. Licensee will assist Town in obtaining any County permit required for location of Town Conduit along Initial Routes that may pass through Maricopa County rights-of-way.

Following completion of construction and acceptance of the Town Conduit and Town Manhole by the Town, an invoice and accounting of incremental costs will be provided to Town. At the sole option of Town, the incremental costs shall be paid by Town directly to Licensee or offset from any Annual Fee owed to Town.

8.4.6 Maintenance and Repair of Town Conduit and Town Manholes Following the Transfer: (a) Licensee shall have no obligation to maintain and/or repair all or any portion of the Town Conduit and Town Manholes, except to the extent any damage or need for repair is caused by the acts of Licensee, its employees, contractors or agents; and (b) the Town shall be responsible for any and all taxes, fees and assessments relating to the ownership, use and maintenance of the Town Conduit and Town Manholes; and (c) Licensee shall indemnify, defend, and hold harmless Town and all other Additional Insureds from and against any and all liability, claims, actions, cause of action, expenses or demands whatsoever against any of them, including any injury to or

death of any person or damage to property, or other liability of any nature, arising out of and caused by Licensee's acts or omissions related to its construction and installation of the Town Conduit and Town Manholes; and (d) Town shall indemnify, defend, and hold harmless Licensee and its officers, directors, shareholders, agents, employees and volunteers against any and all liability, claims, actions, cause of action, expenses or demands whatsoever against any of them, including any injury to or death of any person or damage to property or other liability of any nature, arising out of and caused by the Town's ownership, use, maintenance and repair of the Town Conduit and Town Manholes.

9. TERM OF LICENSE.

The right, privilege and License granted herein shall continue and exist for a period of five (5) years from the effective date hereof and shall be renewed for an additional term of five (5) years, unless sooner terminated under Paragraph 13, below (Termination of License). Renewal shall not be unreasonably withheld or denied by the Town.

10. NON-EXCLUSIVE LICENSE.

This License is not exclusive, and shall not be construed to prevent the Town from granting other like or similar licenses, grants or privilege to any other person, firm or corporation, or to deny or lessen the powers and privileges granted Town under the Constitution and laws of the State of Arizona.

11. NON-ASSIGNMENT.

11.1. Licensee shall provide Town with sixty (60) days prior written notice of any proposed assignment or transfer of this License. This License shall not be assigned or transferred, except upon written consent of the Town Council, which consent shall not be unreasonably withheld or delayed; provided, however, that Licensee may assign or transfer the License without such notice or consent to a financially viable parent, subsidiary, successor or affiliate, or a commercial lending institution as security for financing purposes. For purposes of determining whether an assignment or transfer has occurred, a change in ownership of fifty-one percent (51%) of the stock ownership of Licensee shall constitute an assignment, and a change in actual working control shall constitute a transfer. In the event of any proposed transfer for which consent of the Town Council is required, Licensee agrees to reimburse the Town for its reasonable expenses incurred in reviewing such proposed transfer or assignment, which shall not exceed the amount of Two Thousand Five Hundred Dollars ($2,500).

11.2. The Town Council may review the financial and technical abilities of the prospective assignee or transferee to carry out the remaining term of this License.

11.3. Licensee shall provide a written notice of any assignment or transfer to the Town, which shall include a written acceptance of Licensee's obligations hereunder by the assignee or transferee.

11.4 Licensee may sell, lease, grant an Indefeasible Right to Use ("IRU") or otherwise transfer all or any portion of its Network without consent from the Town Council, provided that Licensee remains responsible for all of the terms and conditions of this License for the Network unless and until consent for assignment or transfer from the Town Council is obtained.

12. LIQUIDATED DAMAGES.

Town reserves the right, as a condition of any future construction permit issued under Section 10-5 of Gilbert Municipal Code, to require liquidated damages for any delay or non performance in construction of the Network, not to exceed Two Hundred Dollars ($200) per day, where the Town Engineer reasonably determines that such penalties are reasonably required to ensure timely performance of construction work, considering the criteria set forth in Section 10-5 if amended to allow liquidated damages. No liquidated damages shall apply in the event of delay or nonperformance caused by an emergency as defined in paragraph 2.8.2.

13. TERMINATION OF LICENSE.

13.1. Grounds for Termination. The License granted hereunder may be terminated prior to its expiration date by the Town if the Town Council finds that Licensee has failed to comply with the material terms and conditions of this License. Repeated failure and/or unreasonable delay in taking corrective action requested by the Town is also grounds for termination of this License.

13.2. Opportunity for Cure. The Town Manager or Town Engineer will provide Licensee with written notice of any failure to comply with the material terms and conditions of this License, and demanding cure of such default. The Town may request cure within a specified reasonable time. If Licensee fails to cure such default within the specified reasonable time or within sixty (60) days when no reasonable time has been specified, the Town Manager may place a request for termination of this License upon the next regular Town Council meeting agenda for a public hearing on the matter. Following a public hearing, the Town Council may declare the License is terminated for just cause, suspend operation of the License pending cure, or may set a reasonable period of time for cure of any default.

14. SERVICE OF NOTICE.

All notices required under this License shall be in writing and will be deemed served when delivered to the persons listed below during ordinary business hours or on the date of delivery when served by U.S. mail, registered or certified return receipt requested, or other person hereafter designated by notice to the other party:

To the Licensee:	With a Copy to:
General Counsel	Right of Way Manager
_____	_____
_____	_____
_____	_____

To the Town:

Town Manager
Town of Gilbert
50 E. Civic Center Drive
Gilbert, Arizona 85296

.

15. CONDEMNATION BY TOWN.

There is hereby reserved to the Town the right to acquire the property of Licensee utilized in the conduct of this License by the exercise of the right of eminent domain in accordance with the conditions set forth in the Arizona Revised Statutes. Nothing herein shall be construed to limit any rights of eminent domain of Licensee.

16. ACCEPTANCE OF LICENSE TERMS AND CONDITIONS.

This License shall become effective when written acceptance thereof has been filed by Licensee with the Town Clerk of the Town of Gilbert. By accepting this License, Licensee covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by the Code and Unified Land Development Code of the Town and this License.

17. REMOVAL OR ABANDONMENT AT EXPIRATION.

Upon the expiration, cancellation or termination of this License, Licensee at its own expense shall remove its Network facilities, cables, and appurtenances located in the public rights-of-way and easements within the Town to Town's

satisfaction, except nothing herein shall require Licensee to remove any facilities, cables or appurtenances that are a part of another person's system and otherwise lawfully permitted to remain in place under any current license to use the public rights-of-way. In lieu of removal which the Town is entitled to require hereunder, Town at its option may permit the improvements to be abandoned in place pursuant to the directions and specifications of the Town Engineer. Unless rejected by Town, any such facilities which the Town is entitled to require to be removed hereunder and which are not removed within one hundred twenty (120) days, automatically shall become the property of Town.

18. WAIVER.

Neither party shall be excused from complying with any of the terms and conditions of this License by any failure of the other party upon any one or more occasions to insist or to seek compliance with any such terms or conditions.

19. LEGAL ACTION; ARBITRATION.

19.1 In the event any legal proceeding is brought to construe any term or provision of this License, to enforce the terms of this License, 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.

19.2 If any dispute arises between the parties regarding the amount of construction permit fees and/or the Annual Fee owed to Town by Licensee for its use of the public rights-of-ways within the License Area, the Town shall establishing a non-binding outside arbitration procedure to attempt to resolve disputes over the amount of such fees due before the dispute is submitted to a court for resolution. The arbitrator selected will be mutually agreeable to both parties, and each party will bear its own expenses.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF GILBERT, ARIZONA, this _____ day of _____, 2015.

_____
John W. Lewis
MAYOR

ATTEST:

_____
Catherine A. Templeton
Town Clerk

APPROVED AS TO FORM:

_____
L. Michael Hamblin
Town Attorney

ACCEPTANCE:

TELEPORT COMMUNICATIONS AMERICA, LLC **[**

By:_____

Its:_____

SUBSCRIBED AND SWORN TO BEFORE ME this ____ day of _____, 2015, by _____.

_____
Notary Public

My Commission Expires:

_____

578/-64/forms/telecomlicense(revised6-20-01).doc

Exhibit A

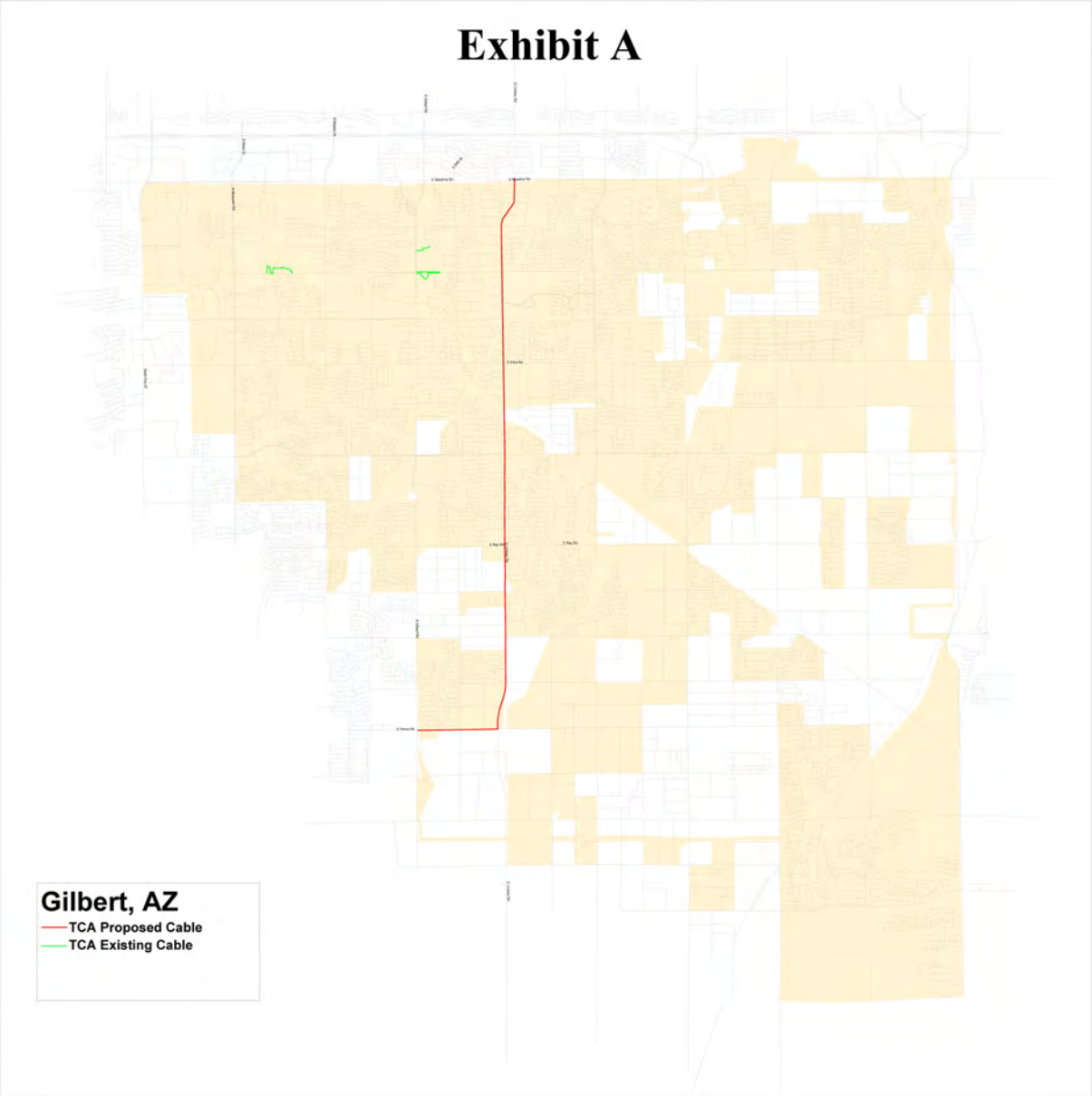
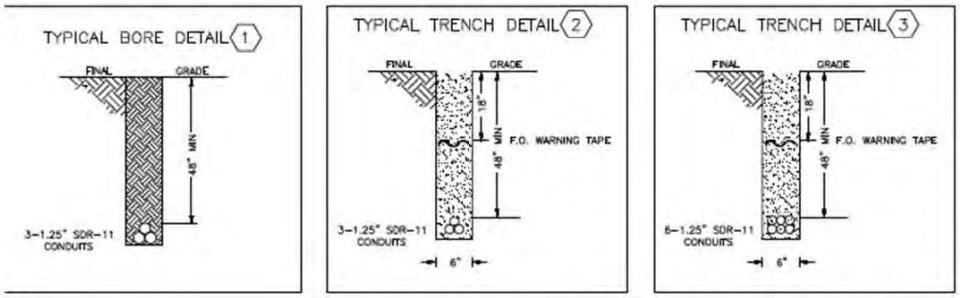
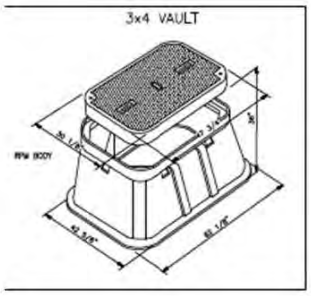


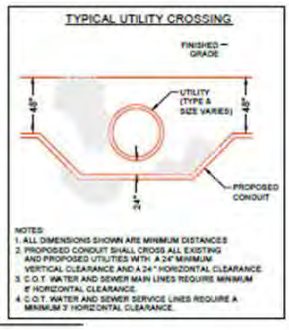
Exhibit B

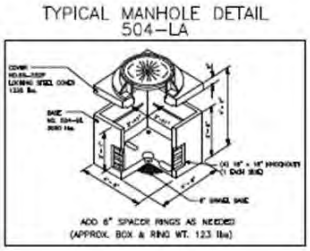
PHASE 3

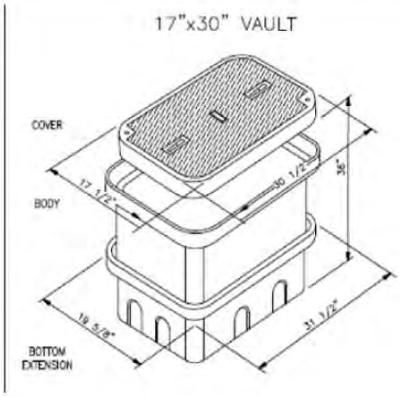
DETAILS











GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Mark Kramer, IT Director, 480-503-6898

MEETING DATE: June 25, 2015

SUBJECT: Wireless Communication Facility Lease Agreement with STC Five LLC at Fire Station 2, 2855 E Guadalupe Rd.

STRATEGIC INITIATIVE: Community Livability

Wireless communications facilities provide a valuable communication service to the businesses and residents of the Town.

RECOMMENDED MOTION

A motion to approve contract 2015-1105-0677, wireless communications lease agreement with STC Five LLC for approximately 1,680 SF of property for $2,015.99 per month at 2855 E Guadalupe Rd., increasing 3% per year until October, 2021. Rent will increase 20% in October 2021 and then rent will increase 3% per year thereafter. A $10,000 signing bonus will be paid to the Town upon contract execution.

BACKGROUND/DISCUSSION

The Town of Gilbert has an existing agreement with the STC Five LLC at this location that originated in 1996 and the final renewal will expire in 2021. The location is of strategic importance to STC Five LLC and they desire to have a long term lease so the company can attract wireless communication providers and can in turn commit to long term leases at the site. Therefore, STC Five LLC has incentivized the renewal of the lease with a signing bonus and a 20% lease increase in 2021.

The lease agreement was reviewed by Jack Vincent, Assistant Town Attorney.

FINANCIAL IMPACT

The lease agreement will generate $2,015.99 revenue monthly and will increase 3% annually until 2021. Rent will increase 20% in 2021. Rent will increase 3% annually for the remaining term of the lease agreement.

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

STAFF RECOMMENDATION

Staff recommends approving contract 2015-1105-0677, wireless communications lease agreement with STC Five LLC for approximately 1,680 SF of property for $2,015.99 per month at 2855 E Guadalupe Rd., increasing 3% per year until October, 2021. Rent will increase 20% in October 2021 and then rent will increase 3% per year thereafter. A $10,000 signing bonus will be paid to the Town upon contract execution.

Respectfully submitted,

Mark Kramer
IT Director

Approved By	Approval Date
Mark Kramer	6/15/2015 7:11 AM
Jack Vincent	6/15/2015 9:40 AM
Laura Lorenzen	6/15/2015 10:52 AM
Douglas Boyer	6/15/2015 12:20 PM

AMENDED AND RESTATED STANDARD LAND LEASE AGREEMENT

Gilbert Contract #_____

Tenant Site Name: Monument; 2855 E. Guadalupe Road, Site #879271

THIS AMENDED AND RESTATED STANDARD LAND LEASE AGREEMENT ("Lease") is entered into this _____, day of _____, 2015 ("the Effective Date") by and between the Town of Gilbert, Arizona, a municipal corporation (hereinafter "Landlord") and STC Five LLC, a Delaware limited liability company, by and through its attorney in fact, Global Signal Acquisitions II LLC, a Delaware limited liability company (hereinafter "Tenant").

RECITALS:

A. The Town of Gilbert is the successor in interest to the original Landlord and STC Five LLC is successor in interest to the original Tenant under that certain PCS Site Agreement dated October 3, 1996 and memorialized in the records of the Maricopa County Recorder at instrument no. 2000-0768284 by a Certificate For Recording of Memorandum of PCS Site Agreement dated September 21, 2000, as amended by that certain Amendment to PCS Site Agreement dated October 28, 1998, and further amended by that certain Amendment to PCS Site Agreement dated November 1, 2000, and further amended by that certain Second Amendment to PCS Site Agreement dated June 19, 2001 ("Original Lease"); and

B. Tenant has constructed and maintains a monopole approximately sixty-six (66) feet in height on the land leased from Landlord, which is currently used by three (3) wireless communications providers;

C. The Original Lease has one remaining renewal term and will terminate on October 1, 2021 unless sooner renewed;

D. The parties hereto desire to renew and amend the Original Lease, as set forth herein.

NOW THEREFORE, the parties agree as follows:

AGREEMENT:

1. Granting Clause. From and after the Effective Date of this Lease, the Original Lease is replaced by this Amended and Restated Standard Land Lease Agreement. In consideration of Tenant's obligation to pay rent as herein provided and of the other terms, covenants and conditions hereof, Landlord Leases to Tenant, and Tenant takes from Landlord, the Premises for the Term hereof.

2. Definitions and Key Provisions. In this Lease the following terms shall be defined as:

Premises:	The parcel of land located at 2855 E. Guadalupe Road, in Gilbert, Arizona depicted on **Exhibit "A"** attached hereto. The Premises consists of approximately 1,680 square feet. The Premises is zoned Municipal-Industrial.
Easement:	The easement depicted on **Exhibit "C"** attached hereto.
Property:	Collectively the Premises and the Easement.

Permitted Use:	Construction, maintenance and operation of a communications facility with related antenna structures, buildings and uses incidental thereto including without limitation the antenna structure and appurtenances ("Improvements") described on **Exhibit "B",** which may be amended from time to time consistent with this Agreement.
Term:	Initial Term: The Initial Term shall commence on the Effective Date ("the Rental Commencement Date") and continue through October 1, 2016 unless sooner terminated as provided herein. Renewal Term: Five (5) additional renewal terms of five (5) years each, resulting in a final expiration date of October 1, 2041.
Rental Commencement Date:	Same as Effective Date
Governmental Consents:	All of the certificates, permits and other approvals that may be required by any federal, state or local governmental authority to allow the Permitted Use, including without limitation, zoning approvals, site plan review, platting approval and building permits.
Rent:	Rent consists of monthly rent, plus any additional rent and rent increases as specified herein.

3. Rent.

3.1 Tenant shall pay monthly Rent to Landlord in the amount set forth herein, in advance on or before the first day of each month at the address of Landlord as provided herein.

3.2 Initial Base Rent. On the first day of the month following the Effective Date and continuing through October 1, 2015, Tenant shall pay rent of Two Thousand Fifteen and 99/100 Dollars ($2,015.99) per month, resulting in annual rent of Twenty-Four Thousand One Hundred Ninety-One and 88/100 Dollars ($24,191.88).

3.3 Regular Rent Adjustment. Base Rent and any Additional Rent, shall be increased by 3% annually on October 2.

3.4 First Adjustment of Base Rent. On October 2, 2021, the base rent shall be increased by twenty percent (20%) of the base rent in effect for the immediately preceding year. This rent increase replaces and is in lieu of the Regular Rent Adjustment scheduled to occur on the same date pursuant to Section 3.3 above. Regular Rent Adjustments shall continue in subsequent years.

4. Renewal Terms.

4.1 The Lease shall be automatically renewed for any subsequent Renewal Term unless the Lease has been terminated pursuant to the terms of Paragraph 19 (Termination) below.

4.2 In the event Tenant desires to lease the Premises beyond the last Renewal Term, it shall endeavor to notify Landlord of such desire at least nine (9) months prior expiration of the Lease. Any new lease must be mutually agreed upon.

5. Permitted Use & Improvements.

5.1 Tenant may use the Property for the Permitted Use only. Tenant may, at its expense, construct such improvements on the Property as Tenant determines from time to time to be necessary for such Permitted Use, including but not limited to a security fence around the perimeter of the Property and the improvements or relevant portion thereof as determined by Tenant. Any such improvements shall remain the property of Tenant and may be removed by Tenant upon the expiration or earlier termination of this Lease.

5.2 Tenant shall notify Landlord prior to replacing, upgrading, or relocating Improvements. Tenant may replace, upgrade, or relocate improvements on the Property provided that: i) any material change is approved in writing by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, and if Landlord does not respond in writing to Tenant within thirty (30) days following Tenant's request for approval, such request will be deemed to have been approved by Landlord; ii) Tenant obtains any other approval required by this Agreement, the Gilbert Use/Administrative Use Permit, Municipal Code, Land Development (Zoning) Code, or Design Review requirements; and iii) such changes do not materially interfere with any other existing uses.

6. Access Easement. Landlord hereby grants to Tenant, for the Term of and as an appurtenance to this Lease, a non-exclusive easement for continuous, uninterrupted (i) pedestrian and vehicular ingress and egress and (ii) the installation and maintenance of utility wires, poles, cables, conduits and pipes over, under or along the easement (the "Easement Area") from the Premises to the nearest public right-of-way as depicted on **Exhibit "C."** In the event any public utility is unable to use the Easement Area, Landlord agrees to grant, at no additional cost to Tenant, such additional easements to Tenant or such utility company as may be necessary to accommodate the Permitted Use. Tenant acknowledges that portions of the Easement Area include the primary ingress and egress driveway for the neighboring Town of Gilbert fire station. Under no circumstances shall Tenant's use of the Easement Area interfere with the ability of emergency personnel to move equipment and vehicles through the Easement Area. When reasonably possible, Tenant shall also contact the Town of Gilbert Fire Department (480-503-6300) at least 24 hours before conducting any work or maintenance on the Premises.

7. Maintenance, Utilities & Taxes. Tenant shall maintain the Premises in a reasonable condition. If permitted by the local utility company servicing the Property, Tenant shall furnish and install an electrical meter or submeter at the Property to measure its consumption and shall pay its utilities directly to the utility provider. Landlord shall, prior to delinquency, pay all real property taxes (both general and special), assessments, or governmental charges levied or assessed against the Property. Tenant shall pay the proportionate share of any documented increase in real property taxes assessed on the Premises based on Tenant's use. Tenant shall pay all personal property taxes levied or assessed against equipment and other personal property of Tenant located on the Property.

8. Quiet Enjoyment. Landlord covenants that upon Tenant's paying rent and performing all of the covenants and conditions set forth in this Lease, Landlord shall peaceably and quietly have, hold and enjoy the Property for the term provided in this Lease.

9. Compliance with Laws. Tenant shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities pertaining to the Property, including without limitation applicable environmental and health and safety related laws ("Laws"), to the extent such laws relate to Tenant's use of the Property. Landlord shall comply with all such laws which relate to the ownership of the Property.

10. Warranties. Landlord warrants and covenants: (a) Landlord has good marketable title to the Property; (b) that there are no liens, judgments or impediments of title with respect to the Property or affecting Landlord's title to the same; (c) that there are no covenants, conditions or restrictions

affecting the Property which could prevent the Permitted Use of the Property; (d) that the zoning of the Property allows the Permitted Use as a non-conforming use so long as the conditions of the current Maricopa County Special Use Permit are satisfied; (e) that neither Landlord nor any affiliate thereof will use any property adjacent to the Property for any use which materially interferes with Tenant's Permitted Use; and (f) that Landlord and the undersigned have full power and authority to execute and deliver this Lease and to perform and carry out all covenants and obligations to be performed and carried out by Landlord hereunder. In the event Landlord does not have clear title or authority as set forth herein or there are liens, judgments or impediments to Tenant's use, or there are other breaches of Landlord's warranties, covenants or performance hereunder and such breaches are not cured by Landlord within ten (10) days of Tenant's notice to Landlord thereof, Tenant may (i) withhold rental payments until such time as Landlord demonstrates that Landlord has clear title or authority and there are no liens, judgments or impediments to Tenant's Use, or otherwise cures said breach, or (ii) terminate this Lease.

11. Indemnity.

11.1 Disclaimer of Liability. Landlord shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Tenant's construction, maintenance, repair, use, operation, condition or dismantling of the Premises, unless such injury or damage is caused by the negligence of Landlord, its employees, agents, or contractors.

11.2 Tenant shall, at its sole cost and expense, indemnify and hold harmless Landlord, its officers, boards, commissions, employees, agents, and contractors (hereinafter referred to as "Indemnitees"), from and against any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants) imposed or asserted against Indemnitees by reason of:

(a) any act or omission of Tenant, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, use or condition of the Premises or the Tenant's failure to comply with any federal, state or local statute, ordinance or regulation.

(b) any claim or lien arising out of work, labor, materials or supplies provided or supplied to Tenant, its contractors or subcontractors, for the installation, construction, operation, maintenance or use of the Premises and, upon the written request of Landlord, Tenant shall cause such claim or lien covering Landlord's property to be discharged or bonded within thirty (30) days following such request.

(c) any financing or securities offering by Tenant or its affiliates for violations of the common law or any laws, statutes, or regulations of the State of Arizona or United States, including those of the Federal Securities and Exchange Commission, whether by Tenant or otherwise.

11.3 Tenant's obligation to indemnify Indemnitees under this Lease shall not extend to claims, losses, and other matters covered hereunder to the extent caused by the negligence or willful misconduct of one or more Indemnitees.

11.4 Nothing herein shall be construed to waive Tenant's rights to seek recovery against Landlord for Landlord's gross negligence caused to Tenant's operations, except Landlord shall not be liable for lost profits or revenues. In addition, nothing herein shall be construed to waive Tenant's rights to seek recovery against third persons for any damages caused to property or injury to persons, in, upon or about the Premises by such other persons.

12. Regulated/Hazardous Substances Indemnification.

12.1 Applicable Laws. Tenant recognizes that assuring protection of public health, welfare and the environment from activities upon the Property during the Lease Term is an important consideration for Landlord and during the Lease Term the federal, state and local laws, rules, regulations and ordinances relating to pollution, protection of the environment, public health, safety or industrial hygiene (hereinafter referred to as the **"Applicable Laws"**) will change. Tenant warrants that throughout the Lease Term, Tenant will maintain compliance with all Applicable Laws.

12.2 Regulated Substances. Tenant further warrants, unless disclosed and agreed to by Landlord, that no liquid, solid, semi-solid or gaseous Regulated Substances as defined herein which are, or during the Lease Term may become, subject to regulation under Applicable Laws will be used on the Property. **"Regulated Substances"** include, but are not limited to, any and all substances, materials or wastes regulated under the Resource Conservation and Recovery Act, 43 U.S.C. § 8909, *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Arizona Hazardous Waste Management Act, A.R.S. § 49-921, *et seq.*; the Arizona Underground Storage Tank Regulation Act, A.R.S. § 49-101 *et seq.*; and the rules and regulations adopted and guidelines promulgated pursuant to the Applicable Laws.

12.3 Discharges and Emissions. In addition to the other requirements of this Paragraph 12, Tenant shall not release, discharge, leak or emit, or permit to be released, discharged, leaked or emitted into the atmosphere, ground, soil, sewer system, surface water or groundwater any substance if such substance (as reasonably determined by Landlord, or any governmental authority) does or may pollute or contaminate the same, or may adversely affect: i) the environment, ii) the health, welfare or safety of persons whether located on the Property or elsewhere, or iii) the condition, value, use or enjoyment of the Property or any other real or personal property.

12.4 Permits. Tenant has or will timely obtain, maintain and comply with all provisions of all permits, licenses and other authorizations which are required under the Applicable Laws (hereinafter referred to as the **"Permits"**).

12.5 Notices Required. Tenant shall immediately notify Landlord, orally and in writing, of any allegations by any governmental authority or other person or entity of any event of non-compliance with the applicable laws or permits of this Section. Tenant shall also immediately notify Landlord orally and in writing, of any allegations by any governmental authority or other person or entity, of any events, conditions, circumstances, activities, practices, incidents, actions or plans which may interfere with or prevent continued compliance with Applicable Laws, Permits or the provisions of this Section, or which may give rise to any common law or legal liability , or otherwise form the basis of any claim, action, suit proceeding, hearing or investigation, based on or related to the generation, manufacture, distribution, use, treatment, storage, disposal, transport, or handling, or the emission, discharge, release or threatened release into the environment, of any pollutant, contaminant or Regulated Substance.

12.6 Landlord Inspections. Landlord, or its authorized representative, agent or contractor, shall have the right, upon reasonable notice, to inspect the Property and to review and copy documents, records, and data maintained by Tenant relating to substances used and stored on the Property or disposed of, released or otherwise removed from the Property, in order to assure itself that Tenant is in compliance with the provisions of this Paragraph 12. In addition, Landlord shall have the right, at its expense, to perform periodic environmental inspections as Landlord deems necessary using the services of a qualified and duly licensed environmental engineer approved by Tenant whose approval thereof may not be unreasonably withheld. The said engineer shall conduct such sampling and testing of soils, water, substances and emissions as Landlord deems necessary to assure itself that Tenant is in compliance with the provisions of this Section.

12.7 Reimbursement of Landlord Costs; Remediation. In the event the results of the inspection indicate a need for further testing and/or remediation as a result of Tenant's use of the Property in order to comply with ADEQ or EPA remediation standards or guidelines, then Tenant hereby agrees to reimburse Landlord for its reasonable inspection costs and to pay for such additional testing and remediation as will be required as a consequence of Tenant's use of the Property. Should remediation be required as a consequence of Tenant's use of the Property, Tenant shall immediately undertake such remediation as is necessary to restore the condition of the Property and shall diligently pursue such work to completion. Tenant's failure to timely perform its obligations under this Paragraph shall be considered a material breach of this Lease, and Tenant's obligations under this Paragraph shall continue beyond the expiration or termination hereof. Nothing in this Paragraph shall constitute a waiver of any right of Tenant, including without limitation, the right to receive contribution from any individual or entity responsible for contamination of any part of the Property.

12.8 Termination. Any instance of non-compliance with Applicable Laws, Permits or the provisions of this Paragraph shall be grounds for immediate termination of this Lease by Landlord.

12.9 Indemnification. To the fullest extent permitted by law, Tenant agrees to indemnify, defend and hold Landlord harmless for any costs of legally required remediation of environmental contamination and from any claims, demands, actions, suits, proceedings, hearings, investigations, responsibility, liability, orders, injunctions, judgments, fines, damages and losses of any nature whatsoever, arising out of or relating in any way to Tenant's present or future use of, or activities or operations on or at, the Property, inclusive of, but not limited to, those arising from the activities of any subtenants or contractors whether performing work for Tenant or any subtenant or arising from or relating to any breach of the provisions of this Paragraph. Tenant also agrees to indemnify and hold Landlord harmless any costs and expenses incurred in connection therewith, including without limitation, any attorneys' and expert witness fees, investigation, clean up, removal, disposal, remedial, corrective, or mitigating action costs, fines and penalties related in any way to Tenant's use of the Property. These indemnities shall survive the termination of this Lease.

13. Insurance.

13.1 Coverage. During the term of the Lease Agreement, Tenant shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance.

13.1.1 Worker's compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of One Hundred Thousand Dollars ($100,000) for each accident.

13.1.2 Comprehensive commercial general liability insurance with minimum limits of Two Million Dollars ($2,000,000) as the combined single limit for each occurrence of bodily injury, personal injury and property damage. The policy shall provide blanket contractual liability insurance for all written contracts, and shall include coverage for products and completed operations liability, independent contractor's liability; coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage.

13.1.3 Automobile liability insurance covering all owned, hired, and non-owned vehicles in use by Tenant, its employees and agents, with personal protection insurance and property protection insurance to comply with the provisions of state law with minimum limits of Two Million Dollars ($2,000,000) as the combined single limit for each occurrence for bodily injury and property damage.

13.1.4 At the start of and during the period of any construction, builders all-risk insurance, together with an installation floater or equivalent property coverage covering cables, materials, machinery and supplies of any nature whatsoever which are to be used in or incidental to the installation of the monopole. Upon completion of the installation of the monopole, Tenant shall substitute for the foregoing

insurance policies of fire, extended coverage and vandalism and malicious mischief insurance on the Premises. The amount of insurance at all times shall be representative of the insurable values installed or constructed.

13.1.5 Business interruption insurance coverage in an amount sufficient to cover such loss of revenues, for the period of time which it would take, under normal circumstances, to repair or replace that part(s) of the Premises which is damaged and caused the loss of revenue.

13.1.6 All policies other than those for Worker's Compensation shall be written on an occurrence and not on a "claims made" basis.

13.1.7 The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

13.2. Additional Insureds. All Tenant's policies, except for business interruption and worker's compensation, builder's risk, installation floater, and fire and extended coverage policies, shall name Gilbert and its agents as additional insureds (herein referred to as the "Additional Insureds"). Each policy which is to be endorsed to add Additional Insureds hereunder, shall contain cross-liability wording, as follows:

> In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder.

13.3. Evidence of Insurance. Current certificates of insurance for each insurance policy required to be obtained by Tenant in compliance with this Paragraph shall be filed and maintained with Gilbert within thirty (30) days of the Term Commencement Date and within ten (10) days of any renewal or change in such policies. If Gilbert is not provided current certificates and must request an updated certificate, Tenant shall pay an administrative fee of Twenty-Five Dollars and 00/100 ($25.00) for each certificate so requested.

13.4 Notice of Claims. Tenant shall immediately advise Landlord of any claim or litigation that may result in liability to Landlord.

13.5. Cancellation of Policies of Insurance. Tenant shall endeavor to include the following endorsement in all insurance policies maintained pursuant to this Lease Agreement:

> At least sixty (60) days prior written notice shall be given to the Town of Gilbert by the insurer of any intention not to renew such policy or to cancel, replace or materially alter same, except for cancellation for nonpayment of premium, such notice to be given by registered mail to the parties to the Lease.

13.6. Insurance Companies. All insurance shall be affected under valid and enforceable policies, insured by insurers licensed to do business by the State of Arizona, with an A - VII or better rating in "A. M. Best Insurance Guide."

13.7. Contractors. Tenant shall require that each and every contractor and subcontractor who performs work on the Premises carry, in full force and effect, workers' compensation, comprehensive public liability and automobile liability insurance coverage of the type which Tenant is required to obtain under the terms of this Paragraph with appropriate limits of insurance, except that policies carried by Tenant's contractors and subcontractors shall not be required to name Gilbert and its agents as additional insureds.

14. Subordination. If the Property is presently encumbered with a mortgage or deed of trust, Landlord shall immediately after execution of this Lease deliver to Tenant a non-disturbance agreement in the form attached hereto as **Exhibit "D."** If the Property is hereafter encumbered with a mortgage or deed of trust, Tenant agrees to execute a non-disturbance agreement with Landlord's lender, in the form attached hereto.

15. Eminent Domain. If the whole of the Property, or such portion thereof as will make it unusable tor the Permitted Use, be condemned by any legally constituted authority for any public use or purpose, then at Tenant's option this Lease shall terminate from the date when possession thereof is taken by public authorities, and rental shall be accounted for as between Landlord and Tenant as of that date. Such termination, however, shall be without prejudice to the right of either Landlord or Tenant to recover from the condemnor compensation for damage caused by such condemnation.

16. Notices. All notices required to be given hereunder shall be in writing, and shall be served in person upon the party to be notified or upon its agent, or shall be mailed by certified or registered mail, or deposited with a nationally recognized overnight carrier, postage prepaid, to the address shown on the signature page of this Lease. Any notice mailed in the manner set forth in this Paragraph shall be deemed received by the party to whom it is addressed when personally served or when deposited in such manner with the U.S. Postal Service or said overnight carrier. Either party shall have the right to change its address for notices by giving the other party ten (10) days advance notice (in accordance with this Paragraph) of such change. Notice addresses:

(a) For Landlord:

Attention: Town Manager
Town of Gilbert
50 E. Civic Center Drive
Gilbert, Arizona 85234

(b) For Tenant:

STC Five LLC
c/o Crown Castle USA Inc.
E. Blake Hawk, General Counsel
Attn: Legal Department
2000 Corporate Drive
Canonsburg, PA 15317

17. Assignment and Subletting.

17.1 Assignment. Tenant may assign all of its rights, duties and obligations under this Lease, or sublet all or any portion of the Premises: (i) to any entity controlled by, controlling, or under common control with Tenant; (ii) to any entity which acquires all or substantially all of Tenant's assets in Phoenix by reason of a merger, acquisition or other business reorganization; or (iii) provided Tenant obtains Landlord's consent, to a third party. Landlord agrees not to withhold, condition or delay such consent if to do so would be commercially unreasonable. In the event of any assignment of this Lease by Tenant, Tenant shall be and is hereby relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after said assignment provided that Assignee has assumed all such liability, if any. Notwithstanding the foregoing, Landlord agrees that Tenant may from time to time assign the Property in whole or in part to a third party provided Tenant remains liable for the terms and obligations of this Lease following such assignment. Landlord may assign this Lease in connection with the sale or financing of the Property. Provided, however, no such assignment may impose upon Tenant any obligations greater

than set forth in the Lease or preclude Tenant from dealing solely and directly with Landlord in all matters pertaining to this Lease, including without limitation, the negotiation of amendments to the Lease.

17.2 Subletting. Provided that any sublease does not or will not materially interfere with Landlord's use of the Tenant's communications facility for Landlord's purposes as provided for in this Agreement, Landlord agrees that Tenant may from time to time sublease portions of the Premises and/or its communications facility to other communications-related users ("Permitted Subtenants"). Permitted Subtenants may negotiate to lease ground space outside the leased Premises which they require and arrange for access (if required separate from the Easement Area) directly from the property owner(s). Nothing herein shall be construed to require Landlord to lease additional ground space or grant additional easements. Permitted Subtenants using the leased Premises shall pay rental for use of the Premises directly to Tenant for its sole use and enjoyment.

18. Holding Over. Subject to Paragraph 19 (Termination), if Tenant holds over or occupies the Property after the termination of this Lease or demand by Landlord to vacate, Tenant shall pay Landlord monthly rent for each month of such holding over a sum equal to one hundred ten percent (110%) of the monthly rent applicable hereunder at the expiration of the preceding Term (prorated on a daily basis). Nothing herein shall be construed to limit Landlord from exercising any remedies available at law.

19. Termination.

19.1 Early Termination by Tenant. Tenant shall have the right to terminate this Lease, without penalty or further liability for rent after the termination date upon giving written notice thereof to Landlord at least ninety (90) days prior to the termination date.

19.2 Termination by Landlord. At any time after October 1, 2021, Landlord may terminate the Lease, without penalty or further liability to Tenant, upon one (1) year written notice to Tenant where termination is sought to accomplish a governmental purpose, including but not limited to economic development.

19.3 Either party may terminate this Lease at any time, following written notice and reasonable opportunity to cure a material default of the other party as set forth in Paragraph 22 (Default).

19.4 If Tenant is adjudicated as bankrupt or makes any assignment of the Lease for the benefit of creditors, Tenant shall be deemed in default and this Lease by may be terminated by Landlord.

20. Bankruptcy. Any person or entity to which this Lease is assigned or transferred as part of any bankruptcy proceeding shall be deemed without further act to have assumed all of the liabilities and obligations of Tenant arising under this Lease on and after the date of such assignment. Any such assignee or transferee shall upon demand execute and deliver to Landlord an instrument confirming such assumption or transference. Any monies or other considerations payable or otherwise to be delivered in connection with such assignment or transference shall be paid to Landlord, shall be the exclusive property of Landlord, and shall not constitute "property" of the Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid to Landlord.

21. Condition of Property on Termination; Removal of Equipment. Upon termination or expiration of the Lease, Tenant shall remove from the Property Tenant's Facilities (building, antenna structure, fixtures and all personal property to a depth three feet (3') below grade), and shall deliver possession of the Property to Landlord in substantially similar condition as its original condition prior to construction of the original facility, reasonable wear and tear excepted. If such time for removal causes Tenant to remain on the Property after termination of this Lease, Tenant shall pay Landlord rent at the

previously existing Annual Rate (prorated on a daily basis) until final removal of such property. Notwithstanding the foregoing, if the Tenant has failed to vacate the Property within three (3) months from termination or expiration, then, after thirty (30) days written notice, Landlord may remove the Tenant property and Tenant shall be liable for costs of removal and delivery to Tenant in addition to any other remedies available at law.

22. Default by Tenant or Landlord.

22.1 In the event of a default by Tenant, Landlord shall notify Tenant in writing of the default. If Tenant fails to cure within thirty (30) days after the date of the notice, or other reasonable time period, in addition to and not exclusive of any other remedy available to Landlord by operation of law, Landlord shall have the right, at its option, to terminate the Lease and Tenant shall pay Landlord a sum of money equal to the total of: (i) the amount of the unpaid rent accrued through the date of termination; and (ii) any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under the Lease.

22.2 In the event of any default by Tenant, Landlord may at any time, after notice, cure the default for the account of and at the expense of the Tenant. If Landlord is compelled to pay or elects to pay any sum of money or to do any act which will require the payment of any sum of money or is compelled to incur any expense, including reasonable attorney fees in instituting, prosecuting or defending any action to enforce Landlord's rights under this Lease, the sums so paid by Landlord, with all interest, costs and damages shall be deemed to be additional rent and shall be due from the Tenant to Landlord on the first day of the month following the incurring of the respective expenses.

22.3 In the event of a default by Landlord, Tenant shall notify Landlord in writing of the default. If Landlord fails to cure within thirty (30) days after the date of the notice, or other reasonable time period, Tenant shall have the right at its option to: (i) terminate the Lease effective immediately; (ii) take any actions that are consistent with Tenant's rights; (iii) sue for injunctive relief, and/or sue for specific performance, (iv) and/or sue for damages; provided, however, Landlord shall not be liable for any lost profits or special damages.

22.4 Delay in curing a default other than non-payment of rent will be excused if due to causes beyond the reasonable control of the defaulting party or if the defaulting party has commenced a cure and continues diligent efforts to complete the cure.

23. Interference. Landlord and any other tenants of the Property of which the Premises is a part will be permitted to install only such equipment that is of the type and frequency which will not cause material interference to Tenant. In the event of any such material interference, Landlord will cause the party causing the interference to take all steps necessary to correct and eliminate the interference.

24. Miscellaneous.

24.1 Entire Agreement; Successors. This Lease contains the complete agreement between the parties, and cannot be changed except by the written agreement of Landlord and Tenant. There are no representations, covenants, warranties, promises, agreements, conditions or undertakings, oral or written, between Landlord and Tenant other than herein set forth. Except as otherwise provided herein, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless in writing and signed by both parties. All rights and liabilities herein given or imposed upon the respective parties hereto shall bind and inure to the respective heirs, successors, administrators, executors and assigns of the parties.

24.2 Captions; Gender & Number. The paragraph captions of this Lease are for convenience only and shall not be considered a part hereof. Words of any gender used in this Lease shall

be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context otherwise requires.

24.3 No Partnership. Neither party shall, in any way or for any purpose, become a partner, employer, principal, master, agent or joint venturer of or with the other party.

24.4 Force Majeure; Frustration of Purpose; Additional Grounds for Termination. If Tenant shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, labor troubles, inability to procure material, failure of power, governmental laws or regulations, riots, insurrection, war or other reason of a like nature, not the fault of Tenant, the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Tenant's ability to use the Property and its obligations hereunder are contingent upon Tenant obtaining after the execution date of this Lease, all Governmental Consents. Landlord shall cooperate with Tenant in its effort to obtain such approvals and Landlord shall take no action which would adversely affect the status of the Property with respect to the Permitted Use thereof by Tenant. If a subdivision of Landlord's property is required, Landlord at Landlord's expense shall proceed with due diligence to obtain approval of a plat to allow the Permitted Use, including without limitation, zoning approvals, site plan review, platting approval and building permits for said subdivision. If any of such applications are rejected, or if any certificate, permit, license or approval issued to Tenant is canceled, expires, lapses, or is otherwise withdrawn or terminated by any governmental authority, or soil or other tests are found to be unsatisfactory so that Tenant in Tenant's sole discretion will be unable to use the Property for the Permitted use, or should Tenant determine that the Property is no longer compatible for the Permitted use, then in any of such events Tenant shall have the right to terminate this Lease by thirty (30) days written notice to Landlord. All rentals paid to said termination date shall be retained by Landlord. Upon such termination, neither party shall have any further obligations hereunder.

24.5 Landlord's Lien. Landlord waives its right to lien (whether contractual or statutory) Tenant's equipment and fixtures which are now or hereafter located on the Property.

24.6 Attorney's Fees. If either party institutes a lawsuit to enforce its rights hereunder, upon final, non-appealable judgment, the losing party shall pay the prevailing party's reasonable attorney's fees as determined by the court.

24.7 Brokers. Each party represents and warrants to the other that it has engaged no broker or finder and that no claims for brokerage commissions or finders' fees will arise in connection with this Lease, and each party agrees-to indemnify and hold the other party harmless from any loss or liability (including attorney's fees) arising from any such claims.

24.8 Memorandum of Lease. Landlord agrees to execute a Memorandum of Lease in substantially the form attached hereto as **Exhibit "E"** which Tenant may record with the appropriate office for recording of real estate documents in the County in which the Property is located.

24.9 Exhibits. The exhibits listed below and attached to this Lease are incorporated herein by reference as if fully set forth herein.

(a) **Exhibit "A"** – Description of Premises
(b) **Exhibit "B"** – Description of Improvements
(c) **Exhibit "C"** – Description of Easement
(d) **Exhibit "D"** – Non-disturbance Agreement
(e) **Exhibit "E"** – Memorandum of Lease·

24.10 Applicable Law. This Lease shall be governed by the laws of the State in which the Property is located.

24.11 Partial Invalidity. If this Lease is litigated, should any provision hereof be held invalid, the remainder of the provisions hereof shall remain in full force and effect as written.

24.12 Conditional Signing Bonus. Tenant will pay to Landlord a one-time amount of Ten Thousand and 00/100 Dollars ($10,000.00) for the full execution of this Lease, within sixty (60) days of the full execution of this Lease (the "Conditional Signing Bonus"). In the event that this Lease (and any applicable memorandum) is not fully executed by both Landlord and Tenant for any reason, Tenant shall have no obligation to pay the Conditional Signing Bonus to Landlord.

[Execution Pages Follow]

IN WITNESS WHEREOF, Landlord and Tenant have signed this Lease on the dates indicated below. The date of the last party to sign shall be referred to as the "Execution Date."

LANDLORD:

TOWN OF GILBERT

By:_____
Hon. John W. Lewis, Mayor

Attest:

By:_____
Catherine A. Templeton, Town Clerk

Approved as to Form:

By:_____
Jack A. Vincent
Assistant Town Attorney

TENANT:

STC FIVE LLC,
a Delaware limited liability company

By: Global Signal Acquisitions II LLC, a Delaware limited liability company
Its: Attorney In Fact

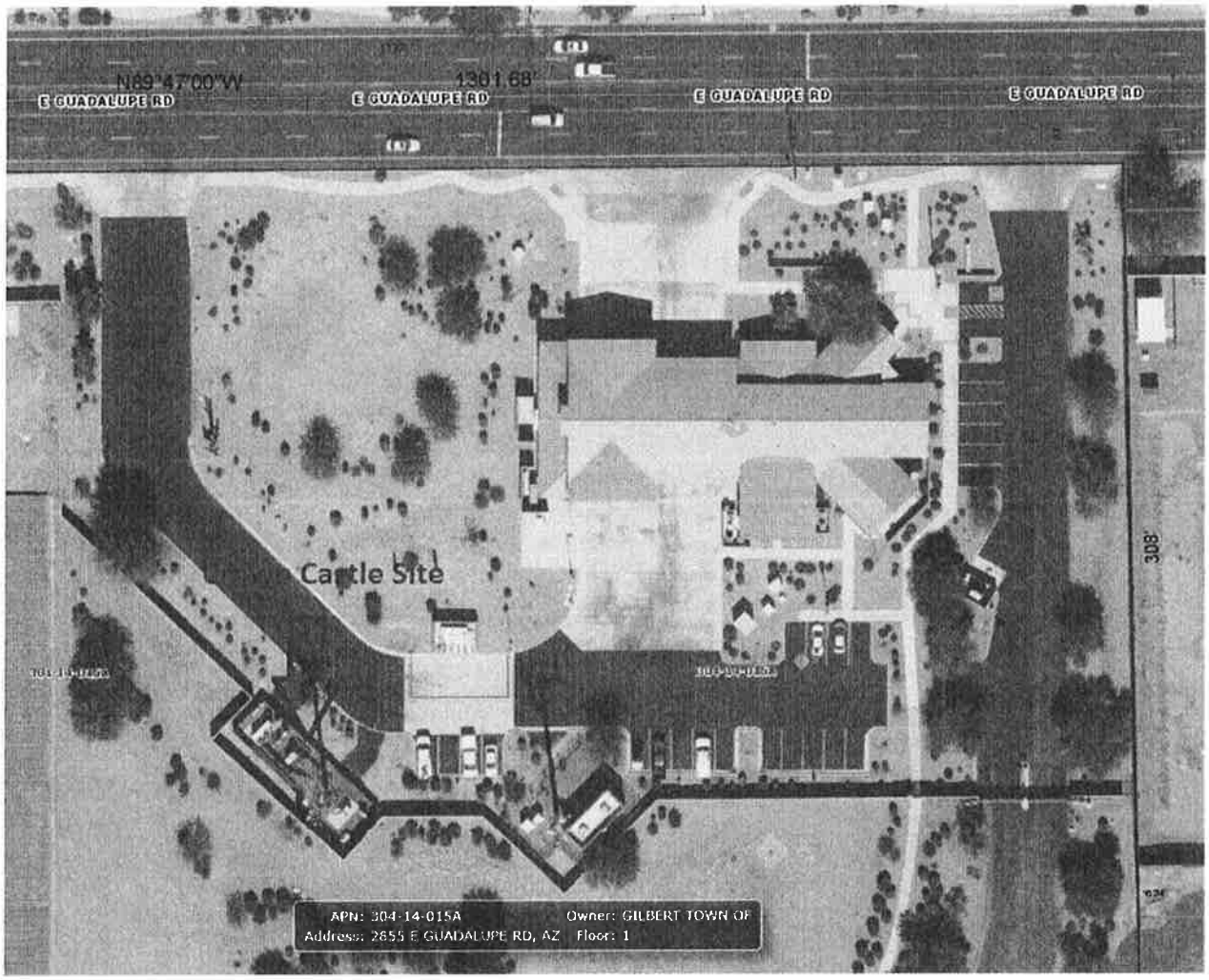
By:_____
Name: Lisa A. Sedgwick
Title: RET Manager
6-5-15

Site Name: Monument
Business Unit #: 879271

EXHIBIT A

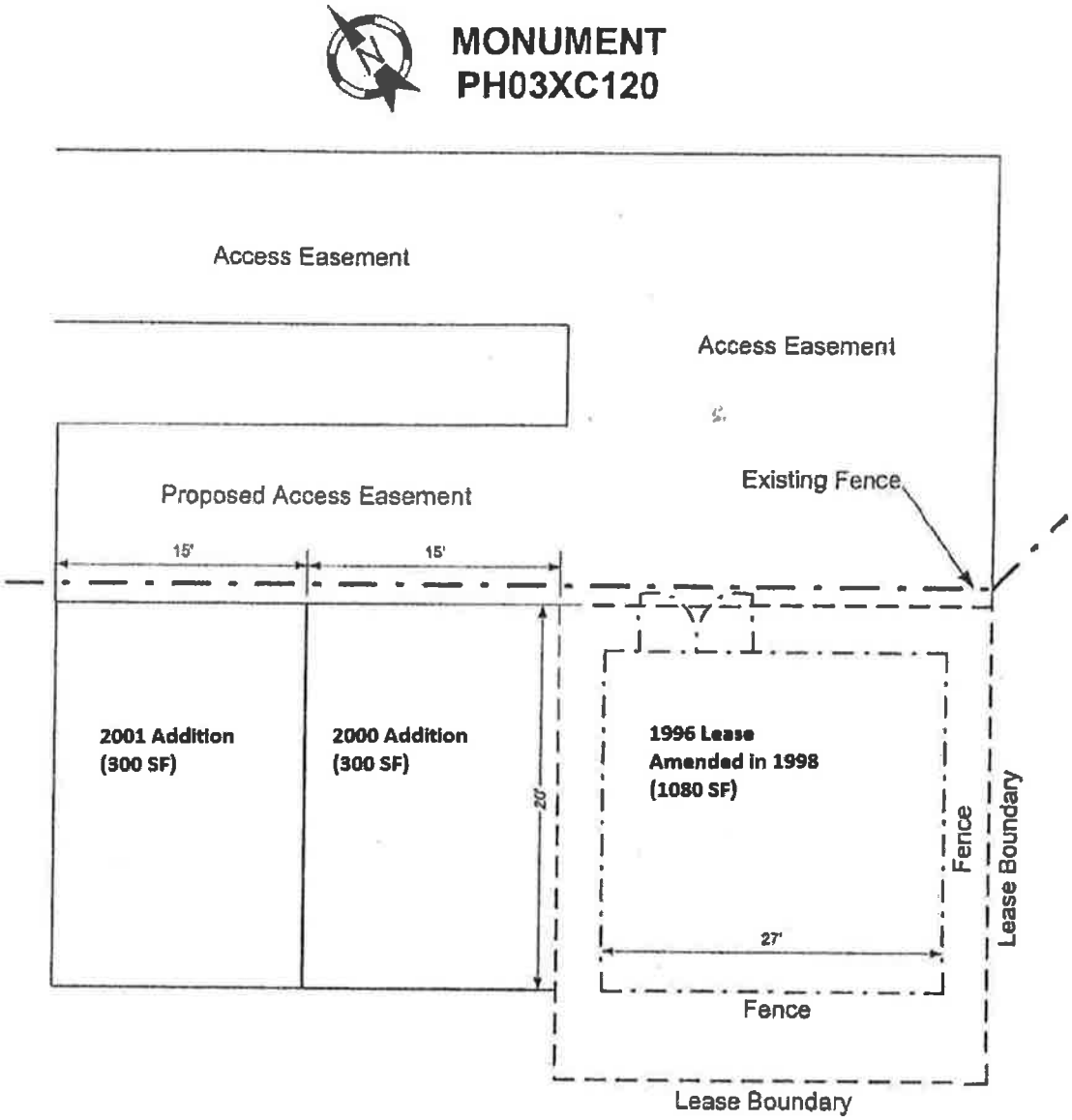
(Description of Premises)

Vicinity Map



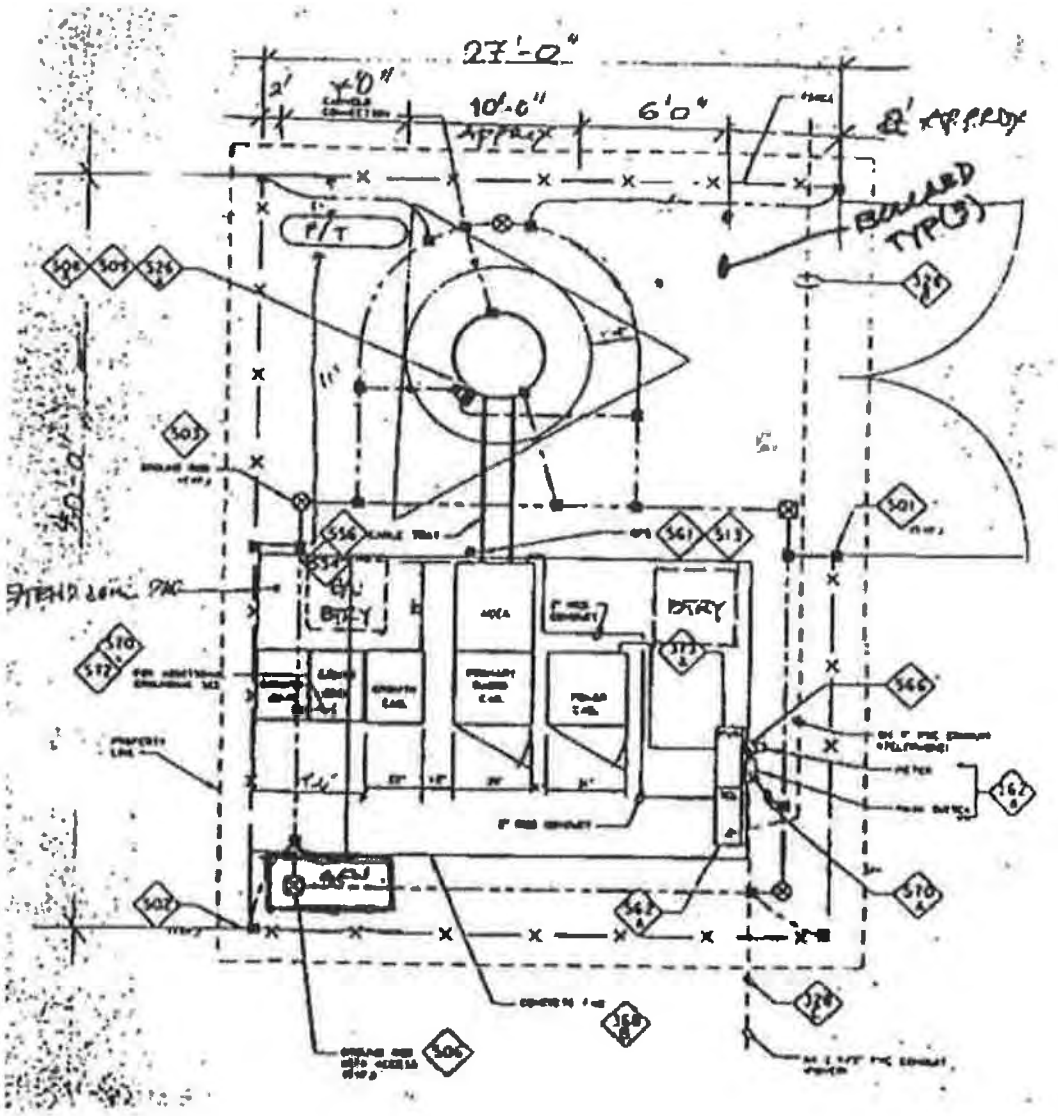
Site Name: Monument
Business Unit #: 879271

The premises are comprised of 1680 sf.



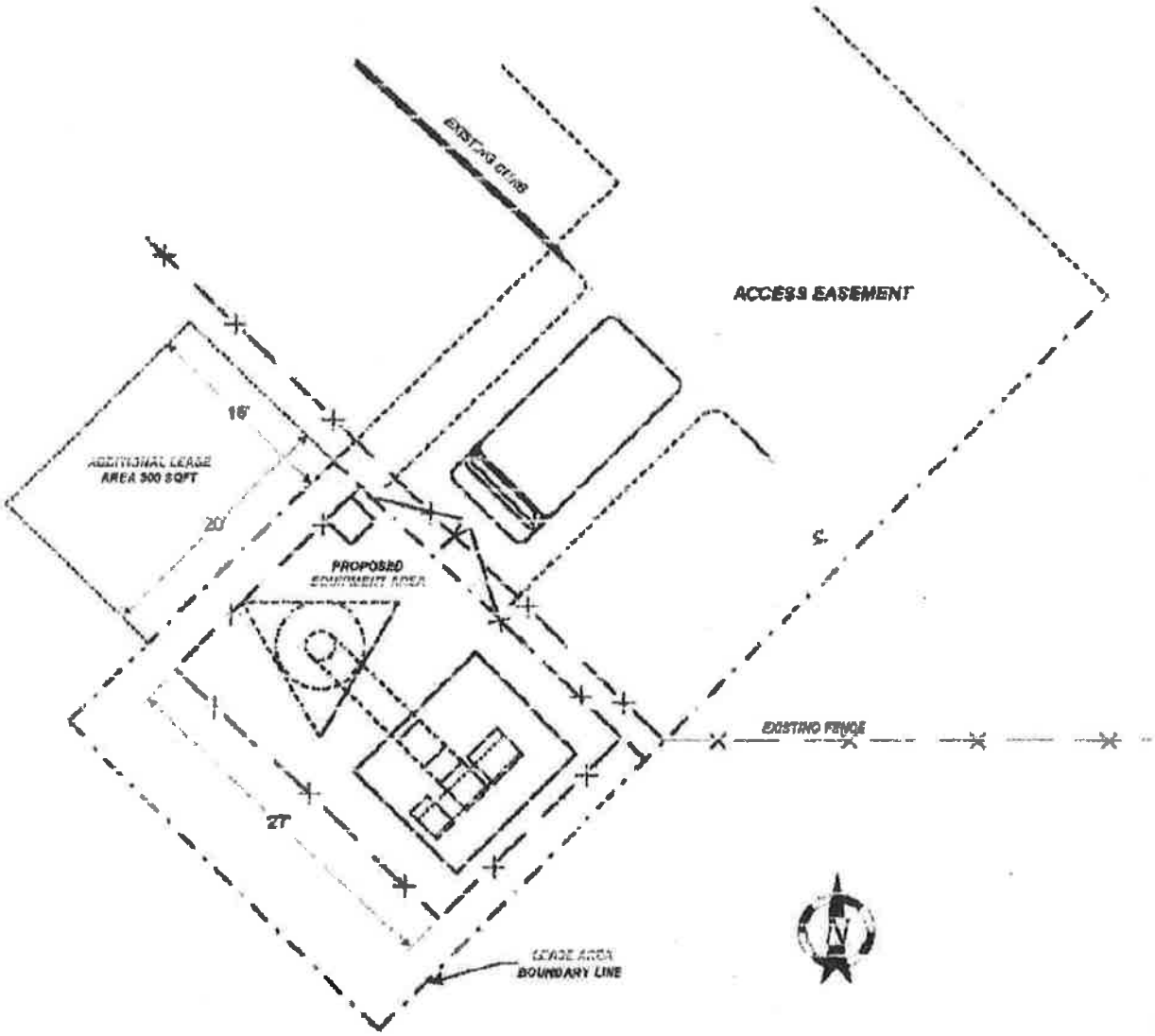
Site Name: Monument
Business Unit #: 879271

The original lease dated October 1996 indicated the lease was for 900 sf. The 1996 agreement did not include an exhibit. The lease was amended in October 1998 to be an area of 1080 sf (27 ft x 40 ft).



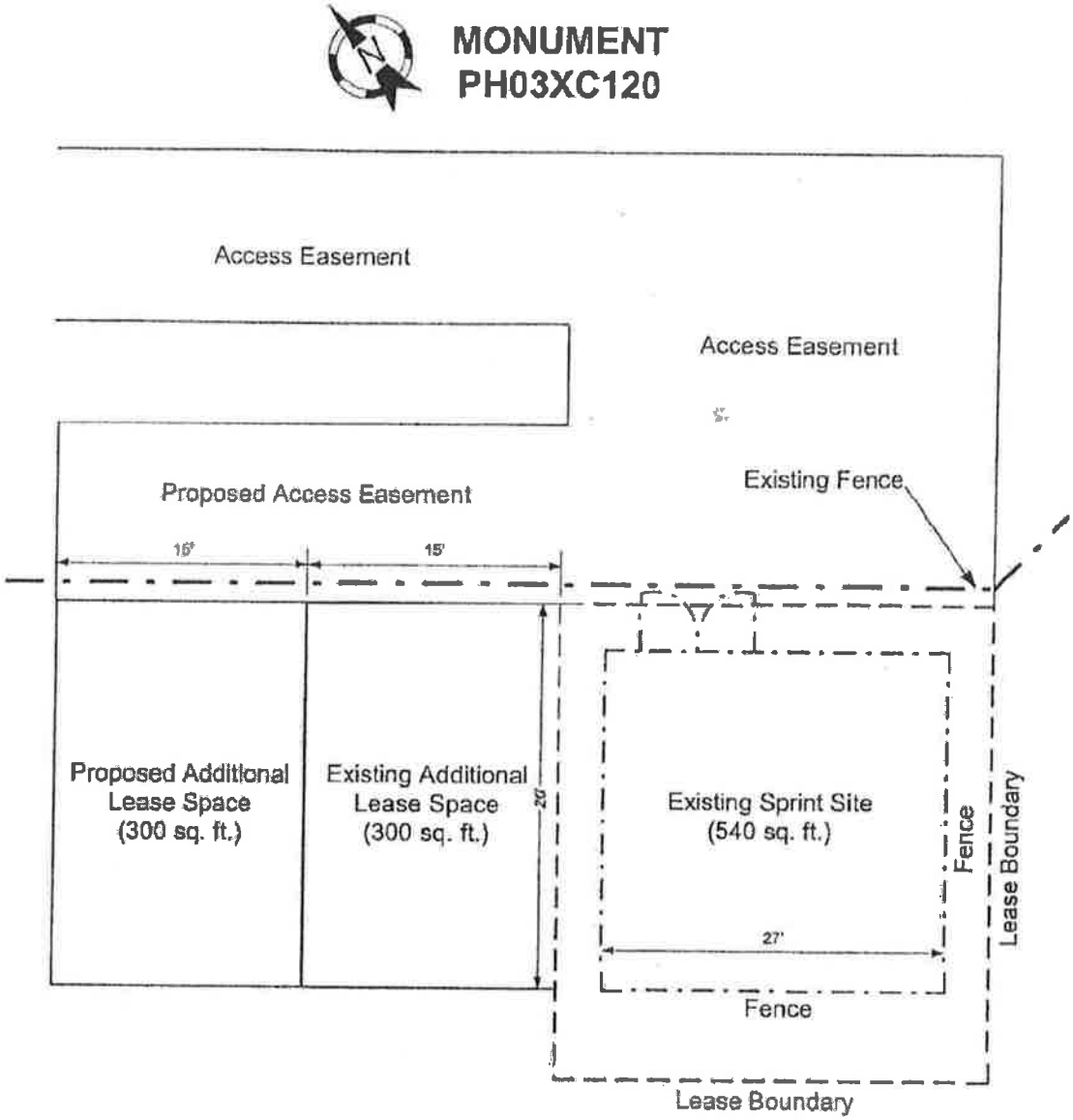
Site Name: Monument
Business Unit #: 879271

The lease was amended in November 2000 to add an area of 300 sf (15 ft / 20 ft).



Site Name: Monument
Business Unit #: 879271

The lease was amended in June 2001 to add an area of 300 sf (15 ft / 20 ft).



Site Name: Monument
Business Unit #: 879271

EXHIBIT B

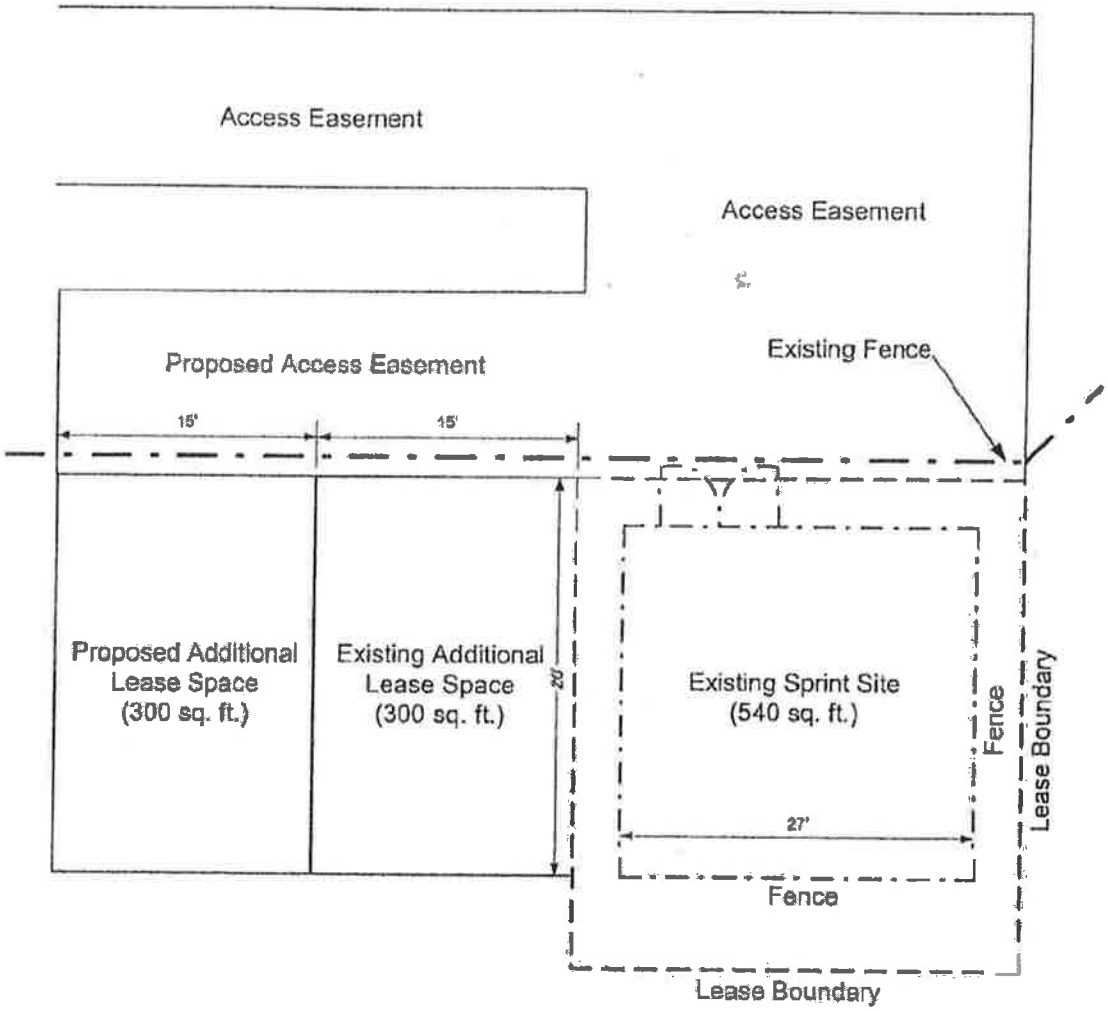
(Description of Improvements)

NOT APPLICABLE

EXHIBIT C

(Description of Easement)

MONUMENT
PH03XC120



Site Name: Monument
Business Unit #: 879271

EXHIBIT D

(Subordination Nondisturbance Agreement)

NOT APPLICABLE

EXHIBIT E

(Memorandum of Lease)

WHEN RECORDED RETURN TO:

Prepared by:
Shustak & Partners, P.C.
401 West "A" Street, Suite 2330
San Diego, CA 92101

Space above this line for Recorder's Use

A.P.N. 304-140-015A

Prior Recorded Documents in Maricopa, California:
Recorded on October 5, 2000, at #2000-0768284
Recorded on July 31, 2002, at #2002-0776294

MEMORANDUM OF AMENDED AND RESTATED
STANDARD LAND LEASE AGREEMENT

This Memorandum of Amended and Restated Standard Land Lease Agreement is made effective this _____ day of _____, 2015 by and between the Town of Gilbert, Arizona, a municipal corporation ("Landlord") and STC Five LLC, a Delaware limited liability company, by and through its attorney in fact, Global Signal Acquisitions II LLC, a Delaware limited liability company ("Tenant").

1. Landlord and Tenant have entered into an Amended and Restated Standard Land Lease Agreement dated _____, 2015 (the "Lease") whereby Tenant leased certain real property, together with access and utility easements, located in Maricopa County, California from Landlord (the "Premises"), all located within certain real property owned by Landlord (the "Property"). The Property, of which the Premises are a part, is more particularly described in Exhibit A attached hereto.

2. The Premises may be used for the purpose of constructing, maintaining and operating a communications facility, including tower structures, equipment shelters, cabinets,

meter boards, utilities, antennas, equipment, any related improvements and structures and uses incidental thereto.

3. The initial term of the Lease shall commence on _____, 2015 and expire on October 1, 2016 (the "Initial Term"), with the right of Tenant to extend the Lease for five (5) additional renewal terms of five (5) years each, with the final extension expiring on October 1, 2041.

4. The terms, covenants and provisions of the Lease shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of Landlord and Tenant.

5. This Memorandum does not contain the social security number of any person.

6. A copy of the Lease is on file with Landlord and Tenant.

[Execution pages follow]

IN WITNESS WHEREOF, hereunto and to duplicates hereof, Landlord has caused this Memorandum to be duly executed on the day and year first written above.

LANDLORD:

TOWN OF GILBERT

By:_____
Hon. John W. Lewis, Mayor

Attest:

By:_____
Catherine A. Templeton, Town Clerk

Approved as to Form:

By:_____
Jack A. Vincent
Assistant Town Attorney

[Acknowledgment appears on following page]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, _____, Notary Public,

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

_____
SIGNATURE OF NOTARY PUBLIC

(Seal)

[Tenant Execution Page Follows]

IN WITNESS WHEREOF, hereunto and to duplicates hereof, Tenant has caused this Memorandum to be duly executed on the day and year first written above.

TENANT:

STC FIVE LLC,
a Delaware limited liability company

By: Global Signal Acquisitions II LLC,
a Delaware limited liability company
Its: Attorney in Fact

By: _____
Print Name: _____
Title: _____

State of Texas

County of _____

Before me, _____, a Notary Public, on this day personally appeared _____, _____ of **Global Signal Acquisitions II LLC,** a Delaware limited liability company, as Attorney in Fact for **STC FIVE LLC,** known to me (or proved to me on the oath of _____ or through driver's license, state id card, resident id card, military id card, or passport) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she/he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 20___.

_____

(Personalized Seal) Notary Public's Signature

EXHIBIT A

(Legal Description of the Property)

A portion of the North half of Section Ten (10), Township One (1) South, Range Six (6) East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Northeast corner of said Section Ten (10), from which the East quarter corner of said Section Ten (10) bears South 00°1'58" West (an assumed bearing) for a distance of 2,639.88 feet; thence South 00°11' 58" West along the East line of said Section Ten (10), for a distance of 362.83 feet to the POINT OF BEGINNING; thence continuing South 00°11'58" West, along said East line for a distance of 387.50 feet; thence North 88°56'23" West, leaving said East line for a distance of 619.50 feet; thence South 00°1'58" West, for a distance of 570.06 feet to a point on the North line of SUBURBAN RANCHETTES as recorded in Book 140 of Maps, Page 40, Maricopa County Records: thence North 88°56'23" West along said North line, for a distance of 1,981.58 feet; thence North 00°06'04" East, for a distance of 106.07 feet; thence North 89°*09'*05" West, for a distance of 120.15 feet to a point on the East line of the Eastern Canal; thence North 04°12'22" West, along said East line, for a distance of 655.90 feet; thence North 00°00'13" East, along said East line, for a distance of 76.65 feet; thence North 08°58'52" East, along said East line for a distance of 73.99 feet; thence North 12°26'55" East, along said East line, for a distance of 420.37 feet to a point on the North line of Section Ten (10); thence South 88°55'46" East, along said North line of Section Ten (10), for a distance of 68.22 feet to the North quarter corner of said Section Ten (10): thence South 88°55'07" East along said North line of said Section Ten (10), for a distance of 981.14 feet to a point on the West line of the East 320.5 feet of the Northwest quarter of the Northeast quarter of said Section Ten (10); thence South 00°09'01" West, along said West line for a distance of 363.43 feet to a point on the North line of the South 957.00 feet of the North half of the Northeast quarter of said Section Ten (10); thence South 88°56'23" East, along said North line for a distance of 1,621.90 feet to the POINT OF BEGINNING.

WHEN RECORDED RETURN TO:

Prepared by:
Shustak & Partners, P.C.
401 West "A" Street, Suite 2330
San Diego, CA 92101

Space above this line for Recorder's Use

A.P.N. 304-140-015A

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2. The Premises may be used for the purpose of constructing, maintaining and operating a communications facility, including tower structures, equipment shelters, cabinets,

meter boards, utilities, antennas, equipment, any related improvements and structures and uses incidental thereto.

3. The initial term of the Lease shall commence on _____, 2015 and expire on October 1, 2016 (the "Initial Term"), with the right of Tenant to extend the Lease for five (5) additional renewal terms of five (5) years each, with the final extension expiring on October 1, 2041.

4. The terms, covenants and provisions of the Lease shall extend to and be binding upon the respective executors, administrators, heirs, successors and assigns of Landlord and Tenant.

5. This Memorandum does not contain the social security number of any person.

6. A copy of the Lease is on file with Landlord and Tenant.

[Execution Pages Follow]

IN WITNESS WHEREOF, hereunto and to duplicates hereof, Landlord has caused this Memorandum to be duly executed on the day and year first written above.

LANDLORD:

TOWN OF GILBERT

By:_____
Hon. John W. Lewis, Mayor

Attest:

By:_____
Catherine A. Templeton, Town Clerk

Approved as to Form:

By:_____
Jack A. Vincent
Assistant Town Attorney

[Acknowledgment appears on following page]

Site Name: Monument
Business Unit #: 879271

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, _____, Notary Public,

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

_____
SIGNATURE OF NOTARY PUBLIC

(Seal)

[Tenant Execution Page Follows]

IN WITNESS WHEREOF, hereunto and to duplicates hereof, Tenant has caused this Memorandum to be duly executed on the day and year first written above.

TENANT:

STC FIVE LLC,
a Delaware limited liability company

By: Global Signal Acquisitions II LLC,
a Delaware limited liability company
Its: Attorney in Fact

By: _____
Print Name: Lisa A. Sedgwick
Title: RET Manager

State of Texas

County of HARRIS

Before me, Carolyn T. Moores, a Notary Public, on this day personally appeared Lisa A Sedgwick, RET Manager of **Global Signal Acquisitions II LLC,** a Delaware limited liability company, as Attorney in Fact for **STC FIVE LLC,** known to me (or proved to me on the oath of _____ or through driver's license, state id card, resident id card, military id card, or passport) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she/he executed the same for the purposes and consideration therein expressed. Personally Known to me

Given under my hand and seal of office this 5 day of June, 20 15.

CAROLYN T MOORES
MY COMMISSION EXPIRES
August 26, 2017

(Personalized Seal)

Carolyn T Moores
Notary Public's Signature

Site Name: Monument
Business Unit #: 879271

EXHIBIT A

(Legal Description of the Property)

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COMMENCING at the Northeast corner of said Section Ten (10), from which the East quarter corner of said Section Ten (10) bears South 00°1'58" West (an assumed bearing) for a distance of 2,639.88 feet; thence South 00°11' 58" West along the East line of said Section Ten (10), for a distance of 362.83 feet to the POINT OF BEGINNING; thence continuing South 00°11'58" West, along said East line for a distance of 387.50 feet; thence North 88°56'23" West, leaving said East line for a distance of 619.50 feet; thence South 00°1'58" West, for a distance of 570.06 feet to a point on the North line of SUBURBAN RANCHETTES as recorded in Book 140 of Maps, Page 40, Maricopa County Records: thence North 88°56'23" West along said North line, for a distance of 1,981.58 feet; thence North 00°06'04" East, for a distance of 106.07 feet; thence North 89°*09'*05" West, for a distance of 120.15 feet to a point on the East line of the Eastern Canal; thence North 04°12'22" West, along said East line, for a distance of 655.90 feet; thence North 00°00'13" East, along said East line, for a distance of 76.65 feet; thence North 08°58'52" East, along said East line for a distance of 73.99 feet; thence North 12°26'55" East, along said East line, for a distance of 420.37 feet to a point on the North line of Section Ten (10); thence South 88°55'46" East, along said North line of Section Ten (10), for a distance of 68.22 feet to the North quarter corner of said Section Ten (10): thence South 88°55'07" East along said North line of said Section Ten (10), for a distance of 981.14 feet to a point on the West line of the East 320.5 feet of the Northwest quarter of the Northeast quarter of said Section Ten (10); thence South 00°09'01" West, along said West line for a distance of 363.43 feet to a point on the North line of the South 957.00 feet of the North half of the Northeast quarter of said Section Ten (10); thence South 88°56'23" East, along said North line for a distance of 1,621.90 feet to the POINT OF BEGINNING.

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Cindi Mattheisen, Finance & Management Services Director, 503-6856

MEETING DATE: June 25, 2015

SUBJECT: Agreement No. 2015-1302-0763 with PFM Asset Management LLC for Investment Management Services

STRATEGIC INITIATIVE: Financial Plan

Utilizing the services of a professional investment advisory firm helps the Town to safely maximize investment earnings on the Town's idle cash.

RECOMMENDED MOTION

A motion to replace Agreement No. 2010-1104-0290 with Agreement No. 2015-1302-0763 with PFM Asset Management LLC pursuant to a Cooperative Purchasing Contract for continued investment management services.

BACKGROUND/DISCUSSION

The Town of Gilbert ("Gilbert") entered into a cooperative purchasing contract with PFM Asset Management LLC (PFM) on June 9, 2010 for investment management services. The current contract ends June 30, 2015, but the terms of the cooperative purchasing contract would allow an extension for a supplemental period up to a maximum of 3 additional years.

Gilbert's objectives in hiring an investment advisor were to maintain the preservation of its investment funds, earn higher returns through active rather than passive management, and to receive other related advisory services through this engagement.

Some of the key factors why Gilbert selected PFM are briefly summarized below:

- PFM is an independent investment advisor that specializes in the management of funds for public agencies. It has 39 offices nationwide including in Phoenix and Chandler.

- PFM has a significant presence in the industry, managing $56 billion of public sector assets nationwide, of which $2.5 billion is in Arizona.

- PFM displays a clear presence in our region with nearby clients including the cities of Scottsdale, Chandler, Mesa, Tempe, Tucson, Flagstaff, Surprise, Maricopa, Paradise Valley and Goodyear, as well as the University of Arizona and Arizona State University.

- The account team assigned to Gilbert has an average of 25 years of investment experience.

- PFM has an internal Credit Committee that adheres to a very stringent credit process. The firm avoided the credit pitfalls that befell other firms and public agencies during the financial crisis.

- PFM is willing to meet with Gilbert as frequently as needed, usually monthly, to ensure the Gilbert's investment objectives are being met.

At the inception of the engagement, PFM worked closely with Gilbert staff to understand Gilbert's investment policies and to establish an investment strategy that focused on safety of principal, while providing sufficient liquidity to meet Gilbert's ongoing cash flow needs and enhancing the portfolio's return. PFM has structured a diversified, high-quality portfolio designed to perform well despite the challenging rate environment.

PFM currently manages approximately $264 million or 65% of the Town's total investment portfolio. The other 35% of the Town's investments include participation in the Arizona State Treasurer's Local Government Investment Pool (LGIP) and investments in the Certificate of Deposit Account Registry Service (CDARS) program. The PFM-managed portfolio has outperformed the benchmark (Merrill Lynch 1-3 Year U.S. Treasury Index) by over $890,000 (net of fees) since inception in December, 2010.

The contract with PFM is a non-exclusive contract; therefore, the Town may also obtain investment management services from another firm if an opportunity arises and it is deemed in the Town's best interest to do so.

Due Diligence:

Staff also researched other communities who recently went through either a formal RFP or informal due diligence process. Casa Grande, Paradise Valley, and Surprise all recently went through a due diligence process and PFM was selected in all cases.

The agreement was reviewed for form by Assistant Attorney Jack Vincent.

The agreement was reviewed by Doug Boyer, Purchasing Administrator.

FINANCIAL IMPACT

Under the current Agreement, PFM's fees have been 9.0 basis points (0.09%) per year on the first $100 million of assets under management and 6 basis points (.06%) per year on assets greater than $100 million. However, PFM has offered the Town under this Agreement the following fee structure:

- 9 basis points on first $100 million (0.09%)
- 6 basis points on assets from $100-200 million (0.06%)
- 4 basis points on assets from $200-300 million (0.04%)
- 3 basis points on assets greater than $300 million (0.03%)

Given the current size of the investment portfolio managed by PFM, the annual fee under the new fee structure would be approximately 6.6 basis points (0.066%), down from 7.5 basis points (0.075%).

The fees incurred for this service will be deducted from the investment income generated from the portfolio securities. Therefore, there will be no expenditure budget implications.

The financial impact was reviewed by Mary Vinzant, Management & Budget Analyst

STAFF RECOMMENDATION

Staff recommends approval of Agreement No. 2015-1302-0763 with PFM Asset Management LLC for investment management services.

Respectfully submitted,

Cindi Mattheisen
Finance & Management Services Director

Approved By	Approval Date
Cindi Mattheisen	6/15/2015 8:40 AM
Jack Vincent	6/15/2015 10:03 AM
Mary Vinzant	6/15/2015 9:25 AM
Douglas Boyer	6/15/2015 12:05 PM

AGREEMENT
TO PROVIDE SERVICES/SUPPLIES PURSUANT TO A
COOPERATIVE PURCHASING CONTRACT
Contract No. 2015-1302-0763

This Agreement is made and entered into by and between the Town of Gilbert, Arizona, a municipal corporation, hereinafter designated as "Gilbert" and **PFM Asset Management, L.L.C,** hereinafter designated as the "Contractor."

Recitals:

A. Contractor has contracted with the City of Surprise to provide Investment Management Services pursuant to **Contract No. COS10-022** (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:

Investment Management Services

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 Surprise 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. Completion of Work. The Contractor shall complete all work set forth in the Scope of Work on or before June 30, 2018.

3. Payment. 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, 2015, 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, 2018.

6. Certificates of Insurance. All insurance provisions of the Cooperative Purchasing Contract shall apply, including without limitation, the requirement to name the Town as an additional insured. Prior to commencing work under this Contract, Contractor shall furnish the Town with Certificates of Insurance, or formal endorsements as required by the Contract, issued by the Contractor's insurer(s) as evidence that policies providing the required coverages, conditions and limits required by this Contract are in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names this _____ day of _____, 2015.

TOWN OF GILBERT:

By: _____
Mayor

ATTEST:

_____
Town Clerk

APPROVED AS TO FORM:

_____
L. Michael Hamblin
Town Attorney

CONTRACTOR:

By: _____
Title: _____

EXHIBIT A
CONTRACT OF OTHER GOVERNMENTAL ENTITY

City of Surprise, Arizona
Notice of Request for Proposal

Request for Proposal No:	**COS10-022**	Proposal Due Date:	**March 16, 2010**
Materials and/or Services:	**Investment Management Services**	Proposal Time:	2:00 P.M. MST
		Contact:	**Art Urquidez**
		E-mail:	**art@surpriseaz.com**
Project No:	Location: City of Surprise, Purchasing Division Mailing Address: 16000 N. Civic Center Plaza Surprise, Arizona 85374	Phone:	(623) 222-3720

PROSPECTIVE OFFERORS CONFERENCE: NONE

In accordance with City of Surprise Procurement Code, competitive sealed proposals for the material or services specified will be received by the City of Surprise Purchasing Division at the specified location until the date and time cited above. Proposals shall be in the actual possession of the City of Surprise Purchasing Division on or prior to the exact date and time indicated above. Late proposals will not be considered. ***Proposals shall be submitted in a sealed envelope with the Request for Proposal number and the offeror's name and address clearly indicated on the front of the envelope.*** All proposals shall be completed in ink or typewritten. Offerors are strongly encouraged to carefully read the *entire* Request for Proposal Package.

OFFER

To the City of Surprise: The undersigned on behalf of the entity, firm, company, partnership, or other legal entity listed below offers on its behalf to the City a proposal that contains all terms, conditions, specifications and amendments in the Notice of Request for Proposal issued by the City. Any exception to the terms contained in the Notice of Request for Proposal must be specifically indicated in writing and are subject to the approval of the City prior to acceptance. The signature below certifies your understanding and compliance with:

1. If awarded a contract in response to this RFP, Respondent will be able and willing to execute a contract with the understanding that the scope and compensation provisions will be negotiated and included in the final document.
2. If awarded a contract in response to this RFP, Respondent will be able and willing to comply with the insurance and indemnification requirements.
3. If awarded a contract in response to this RFP, Respondent will be able and willing to comply with all representations made by Respondent in Respondent's Proposal and during Proposal process.
4. If awarded a contract, in response to this RFP, Respondent accepts the City of Surprise Standard Terms and Conditions (form COS100), which shall only be revised by written addendum and
5. Respondent acknowledges that further negotiations may be required to define the scope, price, terms or other specifications of the Offer prior to contract award and that the City of Surprise may end negotiations at any time and not accept the Offer.

For clarification of this offer contact:

Name: Lauren Brant

Telephone: 602-387-5187 Fax: 415-982-4513

PFM Asset Management LLC
Company Name

Authorized Signature for Offer

2375 E.Camelback Road
Address

Lauren Brant
Printed Name

Phoenix AZ 85016
City State Zip Code

Managing Director
Title

COS 200 (02/08)

COS10-022
Investment Management Services

ACCEPTANCE OF OFFER AND CONTRACT AWARD (For City of Surprise Use Only)

Your offer is hereby accepted. The Contractor is now bound to sell the materials and/or services listed by the attached award notice based upon the solicitation, including all terms conditions, specifications, amendments, etc., and the Contractor's offer as accepted by the City. The Contractor is hereby cautioned not to commence any billable work or provide any material, service or construction under this contract until Contractor receives an executed ***Purchase Order.***

Attested by:

Sherry Aguilar, City Clerk

City of Surprise, Arizona. Effective Date: _____

For City Internal Use only:
Signature for Scope/Content approval:

Department Director 5/10/10 Scott McCarty

Signature for Procurement/Budget Approval:

Purchasing Manager

Approved as to form:

Michael D. Bailey, City Attorney

CC

COS10-022
Contract Number

Awarded on 5-15-10

Official File

Mark Coronado, City Manager

City Seal

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SURPRISE
ARIZONA

SOLICITATION NO. COS 10-022
AMENDMENT NO. 1

Purchasing Division
16000 N. Civic Center Plaza
Surprise, Arizona 85374

Item #1: Revise Paragraph 35, Standard Terms and Conditions:
Section 35. Funding
Contractor understands that the continuation of this Agreement after the close of any given fiscal year of Surprise, which ends on June 30, shall be subject to the budget of Surprise providing for the contract item as an expenditure. Surprise cannot assure that the budget item for funding this Agreement will be approved in the future, as such assurance would be a legislative and policy determination of the City Council at the time of the adoption of the budget. Should the funding of the Agreement not be approved by City Council, Surprise will promptly notify the Contractor of such failure to approve, and Surprise may terminate this Agreement as of the close of its fiscal year. Surprise represents that it intends to pay all monies due, if such funds have been legally appropriated.

Item #2: Revise Paragraph 28, Special Terms and Conditions as follows:
Section 28. Confidentiality of Records
The contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that information contained in its records or obtained from the City or from others in carrying out its functions under the contract shall not be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the contract or as otherwise required by law. Persons requesting such information should be referred to the City. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of contractor as needed for the performance of duties under the contract, or as otherwise required by law.

Item #3: Add Paragraph 33, Special Terms and Conditions as follows:
SECTION 33. INVESTMENT ADVISOR PROVISIONS
(a) Services of Contractor. The City hereby engages the Contractor to serve as investment advisor under the terms of this Contract with respect to the funds described in this Contract and such other funds as the City may from time to time assign by written notice to the Contractor (collectively the "Managed Funds"), and the Contractor accepts such appointment. In connection therewith, the Contractor will provide investment research and supervision of the City's Managed Funds investments and conduct a continuous program of investment, evaluation and, when appropriate, sale and reinvestment of the City's Managed Funds assets. The Contractor shall continuously monitor investment opportunities and evaluate investments of the City's Managed Funds. The Contractor shall furnish the City with statistical information and reports with respect to investments of the Managed Funds. The Contractor shall place all orders for the purchase, sale, loan or exchange of portfolio securities for the City's account with brokers or dealers recommended by the Contractor and/or the City, and to that end the Contractor is authorized as agent of the City to give instructions to the depository designated by the City as its custodian as to deliveries of securities and payments of cash for the account of the City. In connection with the selection of such brokers and dealers and the placing of such orders, the Contractor is directed to seek for the City the most favorable

execution and price, the determination of which may take into account, subject to any applicable laws, rules and regulations, whether statistical, research and other information or services have been or will be furnished to the Contractor by such brokers and dealers. The depository designated by the City shall have custody of cash, assets and securities of the City. The Contractor shall not take possession of or act as custodian for the cash, securities or other assets in the Managed Funds and shall have no responsibility in connection therewith. Authorized investments shall include only those investments which are currently authorized by the state investment statutes and the bond covenants and as supplemented by such other written instructions as may from time to time be provided by the City to the Contractor. The Contractor shall be entitled to rely upon the City's written advice with respect to anticipated drawdowns of Managed Funds. The Contractor will observe the instructions of the City with respect to broker/dealers who are approved to execute transactions involving the City's Managed Funds and in the absence of such instructions will engage broker/dealers which the Contractor reasonably believes to be reputable, qualified and financially sound.

(b) Pool Compensation. Assets invested by the Contractor under the terms of this Contract may from time to time be invested in a money market mutual fund or local government investment pool managed by the Contractor (either, a "Pool") or in individual securities. Average daily net assets subject to the fees described in this Contract shall not take into account any funds invested in the Pool. Expenses of the Pool, including compensation for the Contractor and the Pool custodian, are described in the relevant prospectus or information statement and are paid from the Pool.

(c) Other Compensation. If and to the extent that the City shall request the Contractor to render services other than those to be rendered by the Contractor under this Contract, such additional services shall be compensated separately on terms to be agreed upon between the Contractor and the City.

(d) Expenses. The Contractor shall furnish at its own expense all necessary administrative services, office space, equipment, clerical personnel, telephone and other communication facilities, investment advisory facilities, and executive and supervisory personnel for managing the Managed Funds. Except as expressly provided otherwise herein, the City shall pay all of its own expenses including, without limitation, taxes, commissions, fees and expenses of the City's independent auditors and legal counsel, if any, brokerage and other expenses connected with the execution of portfolio security transactions, insurance premiums, fees and expenses of the Custodian of the Managed Funds including safekeeping of funds and securities and the keeping of books and accounts.

(e) Registered Advisor; Duty of Care. The Contractor hereby represents it is a registered investment advisor under the Investment Advisers Act of 1940. The Contractor shall immediately notify the City if at any time during the term of this Contract it is not so registered or if its registration is suspended. The Contractor agrees to perform its duties and responsibilities under this Contract with reasonable care. The federal securities laws impose penalties under certain circumstances on persons who are required to act in good faith. Nothing herein shall in any way constitute a waiver or limitation of any rights which the City or the Contractor may have under any federal securities laws. The City hereby authorizes the Contractor to sign I.R.S. Form W-9 on behalf of the City and to deliver such form to broker-dealers or others from time to time as required in connection with securities transactions pursuant to this Contract.

(f) Contractor's Other Clients. The City understands that the Contractor performs investment advisory services for various other clients which may include investment companies, commingled

trust funds and/or individual portfolios. The City agrees that the Contractor, in the exercise of its professional judgment, may give advice or take action with respect to any of its other clients which may differ from advice given or the timing or nature of action taken with respect to the City's Managed Funds accounts. The Contractor shall not have any obligation to purchase, sell or exchange any security for the City's Managed Funds solely by reason of the fact that the Contractor, its principals, affiliates, or employees may purchase, sell or exchange such security for the account of any other client or for itself or its own accounts.

(g) Disciplinary Actions. The Contractor shall promptly give notice to the City if the Contractor shall have been found to have violated any state or federal securities law or regulation in any criminal action or civil suit in any state or federal court or in any disciplinary proceeding before the Securities and Exchange Commission or any other agency or department of the United States, any registered securities exchange, FINRA, or any regulatory authority of any State based upon the performance of services as an investment advisor.

(h) Books. The Contractor shall maintain appropriate records of all its activities under this Contract. The Contractor shall provide the City with a monthly statement showing deposits, withdrawals, purchases and sales (or maturities) of investments, earnings received, and the value of assets held on the last business day of the month. The statement shall be in the format and manner that is mutually agreed upon by the Contractor and the City.

(i) Disclosure Statement. The Contractor warrants that it has delivered to the City, at least five business days prior to the execution of this Contract, the Contractor's current Securities and Exchange Commission Form ADV, Part II (disclosure statement). The City acknowledges receipt of such disclosure statement at least five business days prior to the execution of this Contract.

Item #4: Add Paragraph 34, Special Terms and Conditions as follows:
Section 34. Risk
Contractor cannot guarantee the future performance of City's account(s), promise any specific level of performance, or promise that Contractor's investment decisions, strategies or overall management of City's account(s) will be successful. The investment decisions Contractor will make for City are subject to various market, currency, economic, political and business risks, and will not necessarily be profitable. In managing City's account(s), Contractor will not consider any other securities, cash or other investments City owns unless City has told Contractor to do so in City's written instructions to Contractor. Except as may otherwise be provided by law, Contractor will not be liable to City for any loss (i) that City may suffer as a result of losses caused by conditions and events beyond its control such as war, strikes, natural disasters, new government restrictions, market fluctuations, communications disruptions, etc.; (ii) caused by following City's instructions; or (iii) caused by the Custodian, any broker or dealer to which Contractor directs transactions for City's account(s) or by any other third person. Federal and state securities laws impose liabilities under certain circumstances on persons who act in good faith, and this agreement does not waive or limit City's rights under those laws.

Item #5: Other Terms Unmodified. Except as provided in this Amendment, all provisions, terms, and conditions of the Agreement shall remain unmodified and in effect.

[SIGNATURES ON FOLLOWING PAGE]

EXCEPT AS PROVIDED HEREIN, ALL TERMS AND CONDITIONS OF THE RFP REMAIN UNCHANGED.

Offeror hereby acknowledges receipt and understanding of this RFP/contract amendment

This amendment is hereby executed this 6th day of May, 2010.

PFM Asset Management LLC
Name of Company / Agency

Signature
Date 5/4/10

Purchasing Division
City of Surprise

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STANDARD TERMS AND CONDITIONS

Purchasing Division
16000 N. Civic Center Plaza
Surprise, Arizona 85374
Phone: (623) 222-3700
Fax: (623) 222-3701

THE FOLLOWING TERMS AND CONDITIONS ARE AN EXPLICIT PART OF THE SOLICITATION AND ANY RESULTANT CONTRACT.

1. **CERTIFICATION:** By signature in the Offer section of the Offer and Contract Award page, the Vendor certifies:

   a. The submission of the offer did not involve collusion or other anti-competitive practices.

   b. The Vendor shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11456.

   c. The Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor, or service to a public servant in connection with the submitted offer. Failure to sign the offer, or signing it with a false statement, shall void the submitted offer or any resulting contracts, and the vendor may be debarred.

2. **GRATUITIES:** The City may, by written notice to the Contractor, cancel this contract if it is found by the City that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City with a view toward securing an order, securing favorable treatment with respect to the awarding, amending, or the making of any determinations with respect to the performing of such order. In the event this contract is cancelled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity. Paying the expense of normal business meals which are generally made available to all eligible city government customers shall not be prohibited by this paragraph.

3. **APPLICABLE LAW:** In the performance of this agreement, contractors shall abide by and conform to any and all laws of the United States, State of Arizona and City of Surprise including but not limited to federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal or state laws applicable to this agreement.

   Contractor warrants, for the term of this agreement and for six months thereafter, that is has fully complied with the requirements of the Immigration Reform and Control Act of 1986 and all related or similar legal authorities.

   This contract shall be governed by the City and Contractor shall have all remedies afforded each by the Uniform Commercial Code, as adopted in the State of Arizona, except as otherwise provided in this contract or in statutes pertaining specifically to the City. This contract shall be governed by the laws of the State of Arizona and suit pertaining to this contract may be brought only in courts in the State of Arizona.

   This contract is subject to the provisions of ARS §38-511; the City may cancel this contract without penalty or further obligations by the City or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City or any of its departments or agencies, is at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

4. **LEGAL REMEDIES:** All claims and controversies shall be subject to resolution according to the terms of the City of Surprise Procurement Code.

5. **CONTRACT:** The contract between the City and the Contractor shall consist of (1) the Solicitation, including instructions, all terms and conditions, specifications, scopes of work, attachments, and any amendments thereto, and (2) the offer submitted by the Vendor in response to the solicitation. In the event of a conflict in language between the Solicitation and the Offer, the provisions and requirements in the Solicitation shall govern. However, the City reserves the right to clarify, in writing, any contractual terms with the concurrence of the Contractor, and

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16000 N. Civic Center Plaza
Surprise, Arizona 85374
Phone: (623) 222-3700
Fax: (623) 222-3701

such written contract shall govern in case of conflict with the applicable requirements stated in the Solicitation or the Vendor's offer. The Solicitation shall govern in all other matters not affected by the written contract.

6. **CONTRACT AMENDMENTS:** This contract may be modified only by a written Contract Amendment (COS Form 350) signed by persons duly authorized to enter into contracts on behalf of the City and the Contractor.

7. **CONTRACT APPLICABILITY:** The Offeror shall substantially conform to the terms, conditions, specifications and other requirements found within the text of this specific Solicitation. All previous agreements, contracts, or other documents, which have been executed between the Offeror and the City, are not applicable to this Solicitation or any resultant contract.

8. **PROVISIONS REQUIRED BY LAW:** Each and every provision of law and any clause required by law to be in the contract will be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the contract will forthwith be physically amended to make such insertion or correction.

9. **SEVERABILITY:** The provisions of this contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the contract which may remain in effect without the invalid provision or application.

10. **RELATIONSHIP TO PARTIES:** It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Contractor is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and that the Contractor should make arrangements to directly pay such expenses, if any.

11. **INTERPRETATION-PAROL EVIDENCE:** This contract represents the entire agreement of the Parties with respect to its subject matter, and all pervious agreements, whether oral or written, entered into prior to this contract are hereby revoked and superseded by this contract. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this contact. This contract may not be changed, modified or rescinded except as provided for herein, absent a written agreement signed by both Parties. Any attempt at oral modification of this contract shall be void and of no effect.

12. **ASSIGNMENT-DELEGATION:** No right or interest in this contract shall be assigned by Contractor without prior written permission of the City and no delegation of any duty of Contractor shall be made without prior written permission of the City.

13. **SUBCONTRACTS:** No subcontract shall be entered into by the contractor with any other party to furnish any of the material, service or construction specified herein without the advance written approval of the City. The prime contractor shall itemize all sub-contractors which shall be utilized on the project. Any substitution of sub-contractors by the prime contractor shall be approved by the City and any cost savings will be reduced from the prime contractor's bid amount. All subcontracts shall comply with Federal and State laws and regulations which are applicable to the services covered by the subcontract and shall include all the terms and conditions set forth herein which shall apply with equal force to the subcontract and if the Subcontractor were the Contractor referred to herein. The Contractor is responsible for contract performance whether or not Subcontractors are used.

14. **RIGHTS AND REMEDIES:** No provision in this document or in the vendor's offer shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of contract. The failure of the City to insist upon the strict performance of any term or condition of the contract or to exercise or delay the exercise of any right or remedy provided in the

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Fax: (623) 222-3701

contract, or by law, or the City's acceptance of and payment for materials or services, shall not release the Contractor from any responsibilities or obligations imposed by this contract or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of the Contract.

15. **INDEMNIFICATION:** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the City, its agents, representatives, 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, or destruction of property including loss of use resulting there from, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable.

    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 paragraph.

16. **OVERCHARGES BY ANTITRUST VIOLATIONS:** The City maintains that, in practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the City any and all claims for such overcharges as to the goods and services used to fulfill the Contract.

17. **FORCE MAJEURE:** Except for payment for sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force Majeure. The term *"force majeure"* means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God: acts of the public enemy; war; acts of terror, hate crimes affecting public order; riots; strikes; mobilization; labor disputes; civil disorders; fire; floods; lockouts, injunctions-intervention-acts, or failures or refusals to act by government authority; events or obstacles resulting from a governmental authority's response to the foregoing; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with this Contract.

    Force majeure shall not include the following occurrences:

    a. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences.

    b. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this Force Majeure term and Condition.

    Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure. If either party is delayed at any time in the progress of the work by force majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand delivered or mailed

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Fax: (623) 222-3701

Certified-Return Receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing. The time of completion shall be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with this contract.

18. **RIGHT TO ASSURANCE:** Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

19. **RIGHT TO AUDIT RECORDS:** The City may, at reasonable times and places, audit the books and records of any Contractor as related to any contract held with the City.

20. **RIGHT TO INSPECT PLANT:** The City may, at reasonable times, inspect the part of the plant or place of business of a Contractor or Subcontractor which is related to the performance of any contract as awarded or to be awarded.

21. **WARRANTIES:** Contractor warrants that all material, service or construction delivered under this contract shall conform to the specifications of this contract. Unless otherwise stated in Contractor's response, the City is responsible for selecting items, their use, and the results obtained from any other items used with the items furnished under this contract. Mere receipt of shipment of the material/service specified and any inspection incidental thereto by the City shall not alter or affect the obligations of the Contractor or the rights of the City under the foregoing warranties. Additional warranty requirements may be set forth in the solicitation.

22. **INSPECTION:** All material and/or services are subject to final inspection and acceptance by the City. Materials and/or services failing to conform to the specifications of this Contract will be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. The City may elect by a written determination to do any or all:

    a. Waive the non-conformance.
    b. Stop the work immediately.
    c. Bring material into compliance.

23. **TITLE AND RISK OF LOSS:** The title and risk of loss of material and/or service shall not pass to the City until the City actually receives the material or service at the point of delivery, unless otherwise provided within this Contract.

24. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender of materials shall fully comply with all provisions of the Contract. If a tender is made which does not fully conform, this shall constitute a breach of the Contract as a whole.

25. **DEFAULT IN ONE INSTALLMENT TO CONSTITUTE TOTAL BREACH:** Contractor shall deliver conforming materials in each installment of lot of this Contract and may not substitute nonconforming materials. Delivery of nonconforming materials or a default of any nature, at the option of the City, shall constitute a breach of the Contract as a whole.

26. **SHIPMENT UNDER RESERVATION PROHIBITED:** Contractor is not authorized to ship materials under reservation and no tender of a bill of lading will operate as a tender of the materials.

27. **LIENS:** All materials, service or construction shall be free of all liens, and if the City requests, a formal release of all liens shall be delivered to the City.

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28. **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 Contract.

29. **PATENTS AND COPYRIGHTS:** All services, information, computer program elements, reports and other deliverables, which may be patented or copyrighted and created under this contract are the property of the City and shall not be used or released by the Contractor or any other person except with the prior written permission of the City.

30. **PREPARATION OF SPECIFICATIONS BY PERSONS OTHER THAN CITY PERSONNEL:** All specifications shall seek to promote overall economy for the purposes intended and encourage competition and not be unduly restrictive in satisfying the City's needs. No person preparing specifications shall receive any direct or indirect benefit from the utilization of specifications, other than fees paid for the preparation of specifications.

31. **COST OF BID/PROPOSAL PREPARATION:** The City shall not reimburse the cost of developing presenting or providing any response to this solicitation. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.

32. **PUBLIC RECORD:** All offers submitted in response to this solicitation shall become the property of the City and shall become a matter of public record available for review, subsequent to the award notification, in accordance with the City's Procurement Code.

33. **ADVERTISING:** Contractor shall not advertise or publish information concerning this Contract, without prior written consent of the City.

34. **DELIVERY ORDERS:** The City shall issue a Purchase Order for the material and/or services covered by this contract. All such documents shall reference the contract number as indicated on the Offer and Contract Award (COS Form 200).

35. **FUNDING:** Contractor understands that the continuation of this Agreement after the close of any given fiscal year of Surprise, which ends on June 30, shall be subject to the budget of Surprise providing for the contract item as an expenditure. Surprise cannot assure that the budget item for funding this Agreement will be approved in the future, as such assurance would be a legislative and policy determination of the City Council at the time of the adoption of the budget. Should the funding of the Agreement not be approved by City Council, Surprise may terminate this Agreement as of the close of its fiscal year. Surprise represents that it intends to pay all monies due, if such funds have been legally appropriated.

36. **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 services and correct invoice.

37. **COMPLIANCE WITH FEDERAL IMMIGRATION LAWS AND REGULATIONS:** Contractor warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214.A. Contractor acknowledges that pursuant to A.R.S. § 41-4401 and effective September 30, 2008, a breach of this warranty is a material breach of this contract subject to penalties up to and including termination of this contract, and that the City retains the legal right to inspect the papers of any employee who works on the contract to ensure compliance with this warranty.

38. **PROHIBITION ON IRAN INVESTMENTS.** As required by A.R.S. §§ 35-391.06 and 35-393.06, Contractor certifies that it does not have a scrutinized business operation in either Sudan or Iran.

SPECIAL TERMS AND CONDITIONS

Solicitation Number: COS10-022

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1. **Purpose:** Pursuant to provisions of the City Procurement Code, the City of Surprise, Purchasing Division intends to establish a contract for Investment Management Services.

2. **Authority:** This Solicitation as well as any resultant contract is issued under the authority of the City Purchasing Division Manager. No alteration of any resultant contract may be made without the express written approval of the City Purchasing Division Manager in the form of an official contract amendment. Any attempt to alter any contract without such approval is a violation of the contract and the City Procurement Code. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.

3. **Offer Acceptance Period:** In order to allow for an adequate evaluation, the City requires an offer in response to this Solicitation to be valid and irrevocable for one hundred twenty (120) days after the opening time and date.

4. **Eligible Agencies:** Any contract resulting from this Solicitation shall be for the exclusive use of the City of Surprise.

5. **Cooperative Purchasing:** Any contract resulting from this solicitation shall be for the use of the City of Surprise. In addition, specific eligible political subdivisions and nonprofit educational or public health institutions may also participate at their discretion. In order to participate in any resultant contract, a political subdivision or nonprofit educational or public health institution must have been invited to participate in this specific solicitation and the contractor must be in agreement with the cooperative transaction. In addition to cooperative purchasing, any eligible agency may elect to participate (piggyback) on any resultant contract; the specific eligible political subdivision, nonprofit educational or public health institution and the contractor must be in agreement.

   Any orders placed to the successful contractor will be placed by the specific agencies participating in this purchase. Payment for purchases made under this agreement will be the sole responsibility of each participating agency. The City shall not be responsible for any disputes arising out of transactions made by others.

6. **Contract Type:** Firm Fixed Price

7. **Term of Contract:** The term of any resultant contract shall commence on the date of award and shall continue for a period of three (3) years thereafter, unless terminated, cancelled or extended as otherwise provided herein.

8. **Contract Extension:** By mutual written contract amendment, any resultant contract may be extended for supplemental periods of up to a maximum of sixty (60) months.

9. **Affirmative Action Report:** It is the policy of the City of Surprise that suppliers of goods or services to the City adhere to a policy of equal employment opportunity and demonstrate an affirmative effort to recruit, hire, and promote regardless of race, color, religion, gender, national origin, age or disability.

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10. **Proposal Format:** Proposals shall be submitted in one (1) original and six (6) copies on the forms and in the format as contained in the Request for Proposal Scope of Work, **Section VI. Required Information.** Proposals shall be on 8 1/2" & 11" paper with the text on one side only. All submittal information must contain data for only the local office(s) which will be performing the work. Submittals should be bound by staple or binder clip and should consist of paper only. All binders, plastic separators, non-recyclable material, etc., are discouraged. Submittals will not be evaluated on the aesthetic of the package.

11. **Interview Guidelines:** During the interview, which may be scheduled in the future, be prepared to discuss your firm's proposal, staff assignments, project approach and other pertinent information. The presentation shall be approximately 60 minutes, allowing 15 minutes for a question and answer session. The Consultant's Project/Team Manager shall lead the presentation team and answer questions on the behalf of the Consultant. If work involves a major sub-consultant, the firms Project/Team Manager's presence may also be requested (by the City) at the interview.

12. **Proposal Opening:** Proposals shall be submitted at the time and place designated in the request for proposals. All information contained in the proposals shall be deemed as exempt from public disclosure based on the City's need to avoid disclosure of contents prejudicial to competing offerors during the process of negotiation. The proposals shall not be open for public inspection until after contract award. PRICES SHALL NOT BE READ. After contract award, the successful proposal and the evaluation documentation shall be open for public inspection.

13. **Non-Exclusive Contract:** Any contract resulting from this Solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the City of Surprise. The City reserves the right to obtain like goods or services from another source when necessary. Off-Contract Purchase Authorization may only be approved by the City Purchasing Manager. Approval shall be at the discretion of the City Purchasing Manager and shall be conclusive, however, approval shall be granted only after a proper review and when deemed to be appropriate. Off-contract procurement shall be consistent with the City Procurement Code.

14. **Price Adjustment:** The City of Surprise Purchasing Office will review fully documented requests for price increases after any contract has been in effect for one (1) year. Any price increase adjustment will only be made at the time of contract extension and will be a factor in the extension review process. The City of Surprise Purchasing Division will determine whether the requested price increase or an alternate option, is in the best interest of the City. Any price adjustment will be effective upon the effective date of the contract extension.

15. **Price Reduction:** A price reduction adjustment may be offered at any time during the term of a contract and shall become effective upon notice.

16. **Discussions:** In accordance with the City of Surprise Procurement Code, after the initial receipt of proposals, discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award.

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17. **Insurance Requirements:** The Contractor, at Contractor's own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of A-, or approved unlicensed in the State of Arizona with policies and forms satisfactory to the City.

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 the City, constitute a material breach of this Contract.

The Contractor's insurance shall be primary insurance as respects the City, and any insurance or self-insurance maintained by the City shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect the City.

The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the City, its agents, representatives, directors, officers, and employees for any claims arising out of the Contractor's acts, errors, mistakes, omissions, work or service.

The insurance policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the City under such policies. The Contractor shall be solely responsible for the deductible and/or self-insured retention and the City, at its option, may require the Contractor to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit.

The City reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. The City shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of the City's right to insist on, strict fulfillment of Contractor's obligations under this Contract.

The insurance policies, except Workers' Compensation and Professional Liability, required by this Contract, shall name the City, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

18. **Required Insurance Coverage:**

a. Commercial General Liability

Contractor shall maintain Commercial General Liability insurance with a limit of not less than $1,000,000 for each occurrence with a $2,000,000 Products/Completed Operations Aggregate and a $2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but

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not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00011093 or any replacements thereof. The coverage shall not exclude X, C, U.

Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, nor any provision which would serve to limit third party action over claims.

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form B, CG 20101185, and shall include coverage for Contractor's operations and products and completed operations.

Any Contractor subletting any part of the work, services or operations awarded to the Contractor shall purchase and maintain, at all times during prosecution of the work, services or operations under this Contract, an Owner's and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of the Contractor's work, service or operations under this Contract. Coverage shall be on an occurrence basis with a limit not less than $1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues the Contractor's Commercial General Liability insurance.

b. Automobile Liability

Contractor shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than $1,000,000 each occurrence with respect to the Contractor's any owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and $5,000,000 per accident limits for bodily injury and property damage shall apply.

c. Workers' Compensation

The Contractor shall carry 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; and, Employer's Liability insurance of not less than $100,000 for each accident, $100,000 disease for each employee, and $500,000 disease policy limit.

In case any work is subcontracted, the Contractor will require the Subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of the Contractor.

19. **Certificates of Insurance:** Prior to commencing work or services under this

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Contract, Contractor shall furnish the City with Certificates of Insurance, or formal endorsements as required by the Contract, issued by Contractor's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Contract are in full force and effect.

In the event any insurance policy (ies) required by this contract is (are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the Contractor's work or services and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Contract, a renewal certificate must be sent to the City fifteen (15) days prior to the expiration date.

All Certificates of Insurance shall be identified with bid serial number and title. A $25.00 administrative fee will be assessed for all certificates received without the appropriate bid serial number and title.

20. **Cancellation and Expiration Notice:** Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the City.

21. **Evaluation:** In accordance with the City of Surprise Procurement Code, awards shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City, based upon the evaluation criteria listed below. The evaluation factors are listed in their relative order of importance.

    a. Relevant experience managing public sector funds.
    b. The experience, resources and qualifications of the investment advisor and individuals assigned to this account.
    c. Proposed fees and compensation.
    d. Investment philosophy and strategy and demonstrated investment performance.
    e. Ability to provide necessary portfolio accounting services according to the CFA Institute's "GIPS."
    f. Understanding of the scope of services required by the City of Surprise and ability to provide these services.

22. **Independent Contractor:**

    a. General

        i. The Contractor acknowledges that all services provided under this Agreement are being provided by him as an independent contractor, not as an employee or agent of the City Manager or the City of Surprise.

        ii. Both parties agree that this Agreement is nonexclusive and that Contractor is not prohibited from entering into other contracts nor prohibited from practicing his profession elsewhere.

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b. Liability

i. The City of Surprise shall not be liable for any acts of Contractor outside the scope of authority granted under this Agreement or as the result of Contractor's acts, errors, misconduct, negligence, omissions and intentional acts.

ii. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the City, its agents, representatives, 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, or destruction of property including loss of use resulting there from, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable.

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 paragraph.

c. Other Benefits

The Contractor is an independent contractor; therefore, the City Manager will not provide the Contractor with health insurance, life insurance, workmen's compensation, sick leave, vacation leave, or any other fringe benefits. Further, Contractor acknowledges that he is exempt from coverage of the Comprehensive Benefit and Retirement Act (COBRA). Any such fringe benefits shall be the sole responsibility of Contractor.

23. **Key Personnel:** It is essential that the Contractor provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The Contractor must agree to assign specific individuals to the key positions.

a. The Contractor agrees that, once assigned to work under this contract, key personnel shall not be removed or replaced without written notice to the City.

b. If key personnel are not available for work under this contract for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the City, and shall, subject to the concurrence of the City, replace such personnel with personnel of substantially equal ability and qualifications.

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24. **Ordering Process:** Upon award of a contract by the City of Surprise, Purchasing Division may procure the specific material and/or service awarded by the issuance of a purchase order to the appropriate contractor. The award of a contract shall be in accordance with the City of Surprise Procurement Code and all transactions and procedures required by the Code for public bidding have been complied with. A purchase order for the awarded material and/or service that cites a valid current contract is the only document required for the department to order and the contractor to delivery the material and/or service.

    Any attempt to represent any material and/or service not specifically awarded as being under contract with the City of Surprise is a violation of the contract and the City of Surprise Procurement Code. Any such action is subject to the legal and contractual remedies available to the City inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the contractor.

25. **Billing:** All billing notices to the City shall identify the specific item(s) being billed and the purchase order number. Items are to be identified by the name, model number, and/or serial number most applicable. Any purchase/delivery order issued by the requesting agency shall refer to the contract number resulting from this solicitation.

26. **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.

27. **Confidential Information:**

    a. If a person believes that a bid, proposal, offer, specification, or protest contains information that should be withheld, a statement advising the Purchasing Division Manager of this fact shall accompany the submission and the information shall be identified.

    b. The information identified by the person as confidential shall not be disclosed until the Purchasing Division Manager makes a written determination.

    c. The Purchasing Division Manager shall review the statement and information and shall determine in writing whether the information shall be withheld.

    d. If the Purchasing Division Manager determines to disclose the information, the Purchasing Division Manager shall inform the bidder in writing of such determination.

28. **Confidentiality of Records:** The contractor shall establish and maintain procedures and controls that are acceptable to the City for the purpose of assuring that information contained in its records or obtained from the City or from others in carrying out its functions under the contract shall not be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the contract. Persons requesting such information should be referred to the

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City. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of contractor as needed for the performance of duties under the contract.

29. **Multiple Awards:** In order to assure that any ensuing contracts will allow the City to fulfill current and future requirements, the City reserves the right to award contracts to multiple companies. The actual utilization of any contract will be at the sole discretion of the City. The fact that the City may make multiple awards should be taken into consideration by each potential contractor.

30. **Contract Termination:** Any contract entered into as a result of this Solicitation is for the convenience of the City and as such, may be terminated without default by the City by providing a written thirty (30) day notice of termination.

31. **Cancellation:** The City reserves the right to cancel the whole or any part of this contract due to failure by the contractor to carry out any obligation, term or condition of the contract. The City will issue written notice to the contractor for acting or failing to act as in any of the following:

    a. The contractor provides material that does not meet the specifications of the contract;

    b. The contractor fails to adequately perform the services set forth in the specifications of the contract;

    c. The contractor fails to complete the work required or to furnish the materials required within the time stipulated in the contract;

    d. The contractor fails to make progress in the performance of the contract and/or gives the City reason to believe that the contractor will not or cannot perform to the requirements of the contract.

    Upon receipt of the written notice of concern, the contractor shall have ten (10) days to provide a satisfactory response to the City. Failure on the part of the contractor to adequately address all issues of concern may result in the City resorting to any single or combination of the following remedies:

    a. Cancel any contract;

    b. Reserve all rights or claims to damage for breach of any covenants of the contract;

    c. Perform any test or analysis on materials for compliance with the specifications of the contract. If the results of any test or analysis find a material non-compliance with the specifications, the actual expense of testing shall be borne by the contractor;

    d. In case of default, the City reserves the right to purchase materials, or to complete the required work in accordance with the City Procurement Code. The City may recover any actual excess costs from the contractor by:

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i. Deduction from an unpaid balance;

ii. Collection against the bid and/or performance bond, or;

iii. Any combination of the above or any other remedies as provided by law.

32. **Default:** The City, by written notice of default to the contractor, may terminate the whole or any part of this contract in any one of the following circumstances:

a. If the contractor fails to make delivery of the supplies or to perform the services within the time specified; or

b. If the contractor fails to perform any of the other provisions of this contract, and fails to remedy the situation within a period of ten (10) days after receipt of notice.

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REQUEST FOR PROPOSALS FOR INVESTMENT MANAGEMENT SERVICES

I. GENERAL INFORMATION

The City of Surprise is currently seeking proposals from qualified firms interested in providing investment management services for the City of Surprise's investment portfolio. The City of Surprise desires to contract for services from a firm registered with the Securities and Exchange Commission (SEC) under the Investment Adviser's Act of 1940 who will act in a fiduciary capacity and presents performance numbers in accordance with the CFA Institute's Global Investment Performance Standards "GIPS." The Investment advisor will be required to manage the funds in accordance with the laws of the State of Arizona, the City of Surprise's Investment Policy, and other investment policies and procedures established by the City of Surprise.

The size of the City of Surprise's investment portfolio is approximately $75-$100 million. A copy of the current investment policy is provided.

The City of Surprise encourages all prospective investment advisors to examine this RFP carefully. Qualified advisors, as defined below, are requested to submit proposals to provide the services described in this RFP. The City of Surprise expects its investment advisor to be highly experienced, a leader and innovator in the management of investments, and is able to provide comprehensive investment advisory and portfolio accounting services.

The firm selected as the investment advisor and its affiliates will be restricted from selling to the City of Surprise, or buying from the City of Surprise, any securities to or from that firm's own inventory or account. The investment advisor shall act solely in a fiduciary capacity and shall not receive any fee or compensation based upon the purchase or sale of securities but, rather, the investment advisor will be compensated pursuant to the provision of its contract with the City of Surprise.

II. PROPOSAL PROCEDURES

A. SCHEDULE OF PROPOSAL

Issue RFP	February 25, 2010
Proposals Due	March 16, 2010
Interviews, if necessary	April 6, 2010
Selection Made	April 19, 2010
Contract Signed	May 3, 2010

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B. ADDITIONAL INFORMATION

Inquiries regarding this RFP shall be in written form only. All inquiries must include contact person, address and email address. Responses to questions will be provided to all prospective offers. Questions should be submitted to:

Arthur B. Urquidez
The City of Surprise
aurquidez@surpriseaz.com

C. PREPARATION OF PROPOSAL

Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.

D. NUMBER OF PROPOSAL COPIES

Seven (7) copies (One (1) original and six (6) copies)of the proposal shall be submitted.

E. SUBMISSION OF PROPOSALS

Proposal shall be submitted in a sealed envelope bearing the caption: Request for Proposal for Investment Management Services, COS10-022 and addressed to:

Arthur B. Urquidez

The City of Surprise

623-222-3720

16000 N. Civic Center Plaza

Surprise, AZ 85374

All proposals must be delivered to the above office on or before at 2:00 p.m. on March 16, 2010. **(Proposals received after the above date and time will not be considered.)** The City of Surprise is under no obligation to return proposals. All cost associated with a proposal will be borne by each proposer.

F. TIME AND LOCATION OF PROPOSER'S PRESENTATION

Selected proposers may be invited to interviewed. Those proposers will be notified to arrange specific times. The City of Surprise will not be responsible for any cost of the

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proposer's presentation.

G. EFFECTIVE PERIOD OF PROPOSALS

All proposals must state the period for which the proposal shall remain in effect. Such period shall not be less than 120 days from the proposal due date.

H. RIGHT OF REJECTION BY THE CITY OF SURPRISE

Notwithstanding any other provisions of this RFP, The City of Surprise reserves the right to award this contract to the investment advisor that best meets the requirements of the RFP, and not necessarily, to the lowest bidder. Further, The City of Surprise reserves the right to reject any or all proposals prior to execution of the contract, with no penalty to The City of Surprise.

I. AWARD OF CONTRACT

A proposer to whom a contract is awarded shall be required to enter into a written contract with The City of Surprise in a form approved by legal counsel for The City of Surprise. This RFP and the proposal, or any part thereof, may be incorporated into and made a part of the final contract. The City of Surprise reserves the right to negotiate the terms and conditions of the contract with the selected proposer.

J. CONTRACT TERM

It is the intent to award a contract for an initial three (3) year period with the option to renew it for two, one-year periods for a possible total of five years. The decision to renew the contract will be at the sole discretion of The City of Surprise.

III. MINIMUM QUALIFICATIONS

To be considered by The City of Surprise, proposing investment advisors must:

- Currently manage at least $10 billion of domestic fixed income assets for public entities. Assets for which periodic (daily, monthly or quarterly) advice is provided should be excluded from the calculation of funds under management.
- Manage a minimum of 5 portfolios comprising Arizona local agency assets.
- Be familiar with all applicable Arizona statutes with regard to qualified investments for public entities.
- Be registered with the Securities and Exchange Commission under the Investment Advisor's Act of 1940.

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- Be financially solvent and appropriately capitalized to be able to provide service for the duration of the contract.
- Have Errors & Omissions insurance coverage of at least $10 million.
- Adhere to the Code of Professional and Ethical Standards as described by the CFA Institute.

IV. SCOPE OF SERVICES

Specific responsibilities of the selected investment manager will include, but not be limited to the following:

A. Manage on a daily basis The City of Surprise's separate investment portfolios pursuant to the specific, stated investment objectives. Place all orders for the purchase and sale of securities, communicate settlement information to The City of Surprise's staff and coordinate security settlement.

B. Serve as a general resource to The City of Surprise's staff for information, advice and training regarding fixed income securities, investments.

C. Work with The City of Surprise staff to understand cash flow projections to ensure that the investment strategy is consistent with The City of Surprise's liquidity requirements.

D. Provide monthly statements with all the information required by the Arizona Revised Statutes and GASB. These reports must include a mark-to-market valuation. The selected investment manager must maintain accurate reports of investments including the diversity of investments and compliance with applicable investment policies of The City of Surprise and State of Arizona statutes.

E. Provide quarterly investment reports including a description of market conditions, investment strategies employed performance and suggested changes to investment strategy. The performance numbers shall be presented as required by the CFA Institute's "GIPS."

F. The investment advisor WILL NOT provide custodial services or security safekeeping.

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V. EVALUATION CRITERIA

The purpose of this RFP is to identify a firm to serve as the investment advisor to The City of Surprise. The firm that best meets the needs and requirements of the City of Surprise will be selected. The evaluation criteria that will be used to determine the successful proposer are listed below in order of importance.

A. Relevant experience managing public sector funds.

B. The experience, resources and qualifications of the investment advisor and individuals assigned to this account.

C. Proposed fees and compensation.

D. Investment philosophy and strategy and demonstrated investment performance.

E. Ability to provide necessary portfolio accounting services according to the CFA Institute's "GIPS."

F. Understanding of the scope of services required by the City of Surprise and ability to provide these services.

VI. REQUIRED INFORMATION

A. Firm Background

1. Describe the organization, date founded and ownership of your firm. Specify the number of years your organization has been providing investment management services.

2. Provide an organization chart showing the overall structure of your company and the position of asset management group within the company.

3. Describe any other business affiliations (e.g., subsidiaries, joint ventures, "soft dollar" arrangements with brokers).

4. Describe your firm's revenue sources (e.g., investment management, institutional research, etc.) and comment on your firm's financial condition.

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5. Is your firm a registered investment advisor under the Investment Advisor's Act of 1940? Please attach Part II of your most recent Form ADV.

6. Is your firm licensed to operate as a broker/dealer in the State of Arizona?

7. Describe any SEC, FINRA or any other regulatory censure or litigation involving your firm during the past ten years.

8. State the amount of fidelity bond coverage, errors and omissions, employee dishonesty, fiduciary liability insurance, or other fiduciary coverage your firm carries. Provide a Certificate of Insurance.

9. Does your firm adhere to the Code of Professional and Ethical Standards as described by the CFA Institute?

10. Provide a copy of your most recent audited annual report and/or 10K.

11. Discuss any plans to change the structure, organization, staffing levels, or technology systems of your organization that may affect the services covered by the RFP.

12. Describe your organization's philosophy regarding the growth of your business.

13. Discuss any related services your organization provides and any affiliates and/or subsidiaries that would be involved in providing services under your proposal.

B. Personnel

1. Identify the number of professionals employed by your firm, by classification. Indicate how many of these professionals are dedicated solely to providing investment management services to the public sector.

2. Please describe your proposed project team and provide biographical information, including role they will play, title and years at firm. Identify the primary portfolio manager and client contacts assigned to the City of Surprise's portfolio.

3. Will a primary contact be assigned to the City of Surprise's account? If so:
   a. From which area of the organization will the primary account come?
   b. What will be the primary responsibilities and authority of the primary contact?
   c. For how many customers is the person the primary contact?
   d. How often is the primary contact made available for client meetings?

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e. How is the company's account handled when our primary contact is not available?

4. Please describe your firm's compensation policies for investment professionals.

5. Have there been any personnel changes of senior leadership or portfolio managers within the past six months? If so, please describe.

C. Assets Under Management

1. Identify the types of accounts managed by your firm. Provide the total dollar amount and percentage managed (exclude accounts for which your services is providing periodic oversight or advice) for each of the following categories: public agency (excluding retirement funds), corporations, individuals, and other.

2. Indicate the amount of public sector operating fund assets your firm manages as well as the amount of bond proceeds assets.

3. For portfolios whose durations exceed one year, provide the percentage of assets under management for your latest reporting period using the table below.

U.S. Treasury securities	_____ %
Federal Agency obligations	_____ %
Corporate securities rated AAA-AA	_____ %
Corporate securities rated A	_____ %
Corporate securities rated BBB or lower	_____ %
Other	_____ %

4. What is the last date the firm held securities issued by the following firms in any client portfolios?

Firm	Last date in a Client's Portfolio
International Lease Finance	
AIG	
MBIA	
Washington Mutual	
Lehman Brothers	
Bear Stearns	

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5. Did the firm recommend the Reserve Primary Fund for any of its clients?

D. Investment Philosophy/Approach

1. Describe your firm's investment philosophy for public sector clients.

2. Please describe the maturity concentration, quality and sectors of current accounts similar to the City of Surprise's.

3. What are the primary strategies for adding value to portfolios (e.g., market timing, credit research, trading)?

4. Describe the process you would recommend for establishing the investment objectives and constraints for this account.

5. Describe your firm's in-house technical and research capabilities. Are outside sources used by the firm on a regular basis?

6. Describe your in-house credit review and risk control process. Does your firm assign credit research to specialists?

7. What process do you use for determining a permanent impairment of a security? How is an impairment communicated to the City of Surprise?

8. How will you handle fluctuating cash flows and the cash forecasting process?

9. Do you have or would you recommend there be policy restrictions with respect to maturity, sector, quality and coupon?

10. Provide your list of approved brokers/dealers. How are brokers/dealers selected? What process do you have in place to monitor brokers/dealers after they have been approved?

11. Describe your firm's experience in investing municipal bond proceeds and familiarity with U.S. Treasury arbitrage restrictions as they relate to the investment of proceeds of municipal bonds.

E. Portfolio Management

1. Are portfolios managed by teams or one individual?

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2. Primary client contact is delegated to which of your firm's professionals?

3. Describe procedures used to ensure that portfolios comply with client investment objectives, policies and bond resolutions.

4. Which of your organization's offices would service this account? What specific services would each office provide, i.e., portfolio management, customer service, research, compliance, etc.?

5. What are the hours of operation of the customer service unit (specify time zone)? What back-office support do you provide?

6. How does your institution handle inquiries requiring research and adjustments? Are there established turn-around times for research and adjustment items? If yes, specify.

7. During what hours are portfolio managers and customer service representatives accessible to the City of Surprise? By what means (e.g., e-mail, phone, Bloomberg) may the City of Surprise access them?

8. Does your institution have a formal quality assurance program for this service? If yes, describe.

9. How often would you hold performance review meetings at the City of Surprise's office? Who would represent the firm at these meetings?

10. Describe your back-office interface and coordination with the custodian.

F. Fees

All information regarding fees must be submitted in a separate sealed envelope. No mention of fees is to be made in the body of the proposal.

1. Please include a copy of your firm's fee schedule. State your fee in basis points for assets under management.

   a. Please indicate whether they include custodial fees.

   b. Is there a minimum annual fee?

   c. Are fees charged when there is no activity in the account?

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2. Please provide a statement of fees for such additional services as arbitrage rebate related services

G. References

Please provide five local agency client references, including length of time managing their assets, client name, address and phone number.

H. Reporting

1. Please describe how you typically report performance.

2. Please provide a performance composite showing performance for the past five years. The composite should consist of a minimum of five current accounts comprising securities that are permitted under the Arizona Revised Statutes. NO SAMPLE PORTFOLIOS. The duration of the composite should be comparable to the Merrill Lynch 1-3 Year U.S. Treasury Index. Provide information about the composition and duration of the data used, including the number of portfolios making up the composite, for your presentation of performance history. The composite should be prepared and presented in compliance with the CFA Institute's Global Investment Performance Standards (GIPS®).

3. Are you willing to develop reporting procedures in line with our needs and objectives, i.e., accessible, downloadable?

4. Are confirmations of investment transactions sent directly by the broker/dealer to the client?

7 How do you reconcile your reported returns with the custodian and/or client? How often? What items do you reconcile?

I. Implementation

1. Discuss all of the steps involved with the implementation process and your estimated timeline if the City of Surprise transfers a portion of its cash portfolio to your organization for management.

2. What is the average lead-time for opening an account? What are the critical factors that might impact lead-time?

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K. Disaster Recovery

1. Briefly describe your organization's disaster recovery plans. Include current estimates of time frames required to resume service in all functional areas, including systems, operations and client administration.

2 How often are contingency plans reviewed and tested? Briefly describe the testing methodology (e.g., simulated disaster with actual offsite system regeneration and recovery). When was the plan last tested?

3. How frequently are customer records backed up? Are backup transaction files stored in the same location as the primary copy? If not, where are those files stored?

4. Is there a "hot" alternate backup processing site? Describe its location and capabilities. What is the contingency plan if a "hot" backup site is not available and a disaster occurs that prevents all work from being processed on a same-day basis?

EXHIBIT B
SPECIFIC REQUIREMENTS/OPTIONS OF TOWN

Attached: N/A

Tiers: The Contractor, in an e-mail dated June 9, 2015, has offered, and the Town has accepted, the following Tier structure:

- 9 basis points on first $100mm (0.09%)
- 6 basis points on assets from $100-200mm (0.06%)
- 4 basis points on assets from $200-300mm (0.04%)
- 3 basis points on assets greater than $300mm (0.03%)

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: Town of Gilbert, Finance and Management Services Division, 50 E. Civic Center Drive, Gilbert, Arizona 85296

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: Cindi Mattheisen **Date:** 6-10-15

Department: Accounting

Cooperative Purchase Agreement with: PFM Asset Management, L.L.C.

Contracting Agency **City of Surprise** **Contract Number** **COS10-022**

Item(s) or Service Requested:

Investment Management Services

Account# 110100_ . 13020100 . 4501

Justification:

The City of Surprise, through formal competitive public bidding, has established an Investment Management Services contract, Based on the volume of purchases involved, per 2-357 (b) (2) of the Town Purchasing Code, a separate bidding process is not likely to result in a lower price for these services. Staff also performed additional due diligence by researching several other communities who recently went through either a formal RFP or an informal due diligence process. Casa Grande, Paradise Valley, and Surprise all recently went through a due diligence process and PFM was selected in all cases. PFM has also agreed to a multiple-tier fee structure as explained in the Council Communication which will result in slightly lower fees that we are currently incurring.

Agreement expiration date: June 30, 2018

Departmental Approval: Cindi Mattheisen Date: 6-10-15

Purchasing Officer Approval: Douglas E. Bayer Date: 6/15/15

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Ryan Blair, Project Manager, 480-503-6906

MEETING DATE: June 25, 2015

SUBJECT: Professional Services Contract with Hubbard Engineering for Project No. WA111

STRATEGIC INITIATIVE: Infrastructure

It provides a mechanism to expand and improve the water system to meet the needs of Gilbert's citizens

RECOMMENDED MOTION

- A motion to approve a Professional Engineering Services contract with Hubbard Engineering for the Gail Water Line Project, Project No. WA111, Contract No. 2015-7009-0761, in an amount not to exceed $24,000 and;

- Authorize a Water Fund Contingency Transfer in the amount of $68,000 and the mayor to execute the required documents.

BACKGROUND/DISCUSSION

The subject project represents the installation of 1025 feet of 8 inch water main providing the residents along Gail Drive (west of Recker Rd) adequate fire protection and an opportunity for a potable water source.

In May 2012, Town Council approved a construction contract with SDB contracting for the installation of a waterline along a segment of Gail Drive which was completed by September 2012. At that time, Gilbert Staff reported that the residents along a portion of Gail Drive, west of Recker Rd and south of the SR 202, had been receiving their water supply from a private water system and were at the time not interested in connecting to a public system. Later, Gilbert was informed that the owner/operator of the private water system had decided to discontinue

operation of the well thereby cutting off several residents from a water supply. Gilbert Staff was in communication with the owner of the private water system and was successful in delaying the shut down until the completion of this waterline project.

In November 2013, Council approved to offer a contract to those residents for the water system development fees as they decide to connect to the Town's water system. This agreement will be will be recorded as lien on the property and added to the owners' monthly utility bills. This same contract will be entered into with the two residents who are needing to connect into Gilbert's water system.

This project will continue the water line from where the previous project stopped and continue it south along 174th street and connect into a 16" water line providing a looped, redundant, water system. To cut down on costs internal staff has agreed to install the water line and the project will pay for parts.

This contract was reviewed for form by Special Counsel, Susan Goodwin

FINANCIAL IMPACT

Approval of this contract requires a Water Contingency Transfer in the amount of $68,000.

Accounting Codes: 210101.70090111.6602	WA111-7520-8011 Engineering	$24,000
	WA111-7520-8010 Legal	$2,000
	WA111-7510-8001 Internal CM	$5,000
	WA111-7540-8301 Construction	$37,000

The financial impact was reviewed by Cris Parisot, Office of Management & Budget Analyst.

STAFF RECOMMENDATION

Staff has reviewed the terms of the contract and contingency requests and recommends authorization.

Respectfully submitted,

Ryan Blair
Project Manager

Approved By	Approval Date
Eliana Hayes	6/16/2015 3:11 PM
Kenneth Morgan	6/17/2015 7:47 AM
Jack Vincent	6/17/2015 1:20 PM
Cris Parisot	6/17/2015 9:04 AM

ARCHITECTURAL/ENGINEERING (A/E) SERVICES CONTRACT FOR DESIGN-BID-BUILD (DBB) PROJECT

THIS CONTRACT is entered into as of this _____ day of _____, 20___, by and between the Town of Gilbert, Arizona, a municipal corporation, hereinafter referred to as the "GILBERT" and **Hubbard Engineering**, hereinafter referred to as the "A/E."

FOR THE PURPOSE of providing professional architectural or engineering services for the Town of Gilbert on the **Gail Water Line Project,** hereinafter referred to as the "Project," GILBERT and A/E do hereby mutually agree to the following:

1. SERVICES AND RESPONSIBILITIES

1.1 Retention of the A/E: In consideration of the mutual promises contained in this Agreement ("Services"), GILBERT engages the A/E 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 A/E 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. At a minimum, construction documents shall conform to the following standards: (i) all plans (of the same type) shall be drawn at the same scale, (ii) the correct information shall be shown the least number of times, (iii) all plans shall have the same orientation, (iv) consistent terminology shall be used between the plans and specifications, (v) vague notes (such as "see architectural" or "see structural") shall be avoided and cross references shall be specific, (vi) match line locations shall be consistent in all descriptions, (vii) wall sections on the same sheet shall be shown at relative elevations to each other and (viii) references to "by others" shall be avoided and specific responsibilities shall be set forth. Construction documents shall satisfy all applicable standards of the industry for complete documents necessary to construct a fully operational and functional facility. A/E shall take measures necessary to comply with this requirement prior to final submittal to GILBERT. Incomplete items shall be completed by the A/E at its cost.

1.3 Responsibility of the A/E

1.3.1 A/E hereby agrees that the specifications and Contract Documents prepared by A/E 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 specifications and contract documents and all other documents prepared by A/E shall be prepared in accordance with professional architectural or engineering standards, as applicable. Any review or approval of said specifications and Contract Documents does not diminish these requirements.

1.3.2 GILBERT's construction budget for this Project is $39,000. A/E 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. During design, A/E shall maintain cost controls to deliver the Project

within the construction budget. A/E shall complete the Schematic, Design Development, and Construction Documents, such that construction cost of the Project designed by A/E will not exceed the construction budget and shall not proceed from one phase to another unless the budget for the phase in is compliance with the construction budget or any approved revised construction budget. If at any time during the design of the Project it appears the cost of construction may exceed the construction budget, A/E shall immediately notify GILBERT. If the construction budget is exceeded, A/E shall value engineer the Project at no additional cost to GILBERT. As used herein, "cost of construction" shall mean the total cost or estimated cost to GILBERT of all elements of the Project designed or specified by A/E, but does not include the compensation of the A/E and the A/E's subcontractor or consultants.

1.3.3 If GILBERT retains a Construction Manager for the Project, A/E shall cooperate with the construction manager during the design phase in the performance of constructability reviews and value engineering studies. A/E shall incorporate construction manager's comments into the construction documents at no additional cost to GILBERT; provided however, that if A/E believes such comments should not be incorporated, A/E shall notify construction manager of the reason the comments were not incorporated. Nothing in this paragraph shall authorize construction manager to design the Project and A/E shall remain solely responsible for the design of the Project.

1.3.4 A/E shall perform the Services under this Agreement with the assistance of Computer Aided Design Drafting (CADD) Technology. A/E shall deliver to GILBERT, on request, the tape and/or his disc format and the name of the supplier of the software/hardware necessary to use the design file. In order to document exactly what CADD information was given to GILBERT, A/E and GILBERT shall each sign a "hard" copy of reproducible documents that depict this information at that time. GILBERT agrees to release A/E from all liability, damages, and/or for claims that arise due to any changes made to this information subsequent to it being given to GILBERT.

1.3.5 A/E shall procure and maintain during the course of this Agreement insurance coverage required by Paragraph 4 of this Agreement.

1.3.6 A/E shall designate **Craig R. Dyson** as Project Manager and all communications shall be directed to him. Key A/E Personnel are set forth in Exhibit B. "Key Personnel" includes the A/E 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 A/E shall first make a written request to and obtain the approval of GILBERT.

1.3.7 A/E's subcontracts are set forth in Exhibit B attached hereto and made a part hereof. Any modification to the list of Subcontractors on Exhibit B, either by adding, deleting or changing subcontractors, shall require the written consent of GILBERT.

1.3.8 A/E shall obtain its own legal, insurance and financial advice regarding A/E's legal, insurance and financial obligations under this Agreement.

1.3.9 A/E shall provide required reports on the progress of the Services and the design budget to GILBERT or, if a separate Construction Manager is retained by GILBERT, then such

reports shall be provided to the Construction Manager. A/E shall coordinate its activities with GILBERT's representative and Construction Manager, if any.

1.4 Responsibility of GILBERT

1.4.1 GILBERT shall cooperate with the A/E by placing at his disposal all available information concerning the site of the Project, including all previous plans, drawings, specifications, and design and construction standards; assistance in obtaining necessary access to public and private lands; legal, accounting, and necessary permits and approval of governmental authorities or other individuals. GILBERT agrees to obtain its own legal, insurance and financial advice GILBERT may require for the Project.

1.4.2 GILBERT shall provide A/E with the budget for the Project in order that preparation of the Contract Documents will be consistent with such budget.

1.4.3 GILBERT shall provide A/E with any technical requirements of GILBERT, which shall be incorporated into the specifications and Contract Documents.

1.4.4 GILBERT designates **Ryan Blair** as its Project Representative. 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.

2. CONTRACT TIME AND CONTRACT SUM

2.1 Contract Time: The Contract Time and any applicable schedule of Services are set forth in Exhibit C.

2.2 Contract Sum: The Basis of Compensation to A/E 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 twenty-three thousand, eight hundred fifty-five dollars ($23,855). 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 twenty-three thousand, eight hundred fifty-five dollars ($23,855) (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 A/E 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. All payment requests shall be certified by the A/E'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, by written change order, make changes in the Scope of Work. A form of change order is attached hereto as Exhibit E. If A/E believes a change in the Scope of Work has been ordered, A/E shall submit a request for a change order in writing within ten (10) days from the date of receipt by A/E of notice of the change. It is distinctly understood and agreed by the parties that no claim for extra services provided or materials furnished by A/E will be allowed by GILBERT except as provided herein nor shall A/E provide any services or furnish any materials not covered by this Agreement unless GILBERT first approves in writing.

4. INSURANCE REPRESENTATIONS AND REQUIREMENTS

4.1 General: A/E agrees to comply with all GILBERT ordinances and state and federal laws and regulations. Without limiting any obligations or liabilities of A/E, A/E 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 A/E. 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 A/E 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: A/E's insurance shall be primary insurance. All insurance, except Workers' Compensation and Professional Liability, shall provide 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 Workers' Compensation Insurance and 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 A/E. A/E 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. A/E shall be solely responsible for any such deductible or self-insured retention amount. GILBERT, at its option, may require A/E 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 Subcontractors: If any Services under this Agreement are subcontracted in any way, A/E shall execute written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting GILBERT and A/E. A/E shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

4.10 Evidence of Insurance: Prior to commencing any Services under this Agreement, A/E shall furnish GILBERT with Certificate(s) of Insurance, or formal endorsements as required by this Agreement, issued by A/E'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 of 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 the Town Risk Manager. If any of the above cited policies expire during the life of this Agreement, it shall be A/E'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:

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 or equivalent
C. Excess Liability-Follow Form to underlying insurance

4.10.2 A/E's insurance shall be primary insurance as respects performance of this Agreement.

4.10.3 All policies, except Workers' Compensation and Professional Liability, waive rights of recovery (subrogation) against GILBERT, its agents, representatives, officers, directors, officials and employees for any claims arising out of Services performed by A/E under this Agreement.

4.10.4 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.

4.10.5 Project descriptive information including:

A. Project Name
B. Project Number
C. Contract Number

4.11 Required Coverage

4.11.1 Commercial General Liability: A/E shall maintain "occurrence" form 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. 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 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 10 11 85 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: A/E shall maintain Professional Liability insurance covering errors and admissions arising out of the Services performed by A/E, or anyone employed by A/E, or anyone for whose acts, mistakes, errors and omissions A/E 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 A/E shall be required to submit Certificates of Insurance evidencing proper coverage is in effect as required above.

4.11.3 Vehicle Liability: A/E shall maintain Business Automobile Liability Insurance with a limit of $1,000,000 each occurrence on A/E's owned, hired, and non-owned vehicles assigned to or used in the performance of the A/E'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 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: A/E shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of A/E'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 A/E, 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 A/E to fulfill his contract obligations. Upon receipt of such notice, the A/E 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 A/E in performing this

Agreement, whether completed or in process. This Agreement may be terminated in whole or in part by the A/E in the event of substantial failure by GILBERT to fulfill its obligations.

6.2 Payment to A/E Upon Termination: If the Agreement is terminated, GILBERT shall pay the A/E 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 Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the A/E for Services to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the A/E of the A/E'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 A/E 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 A/E 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 A/E; however, any reuse without written verification or adaptation by A/E for the specific purpose intended will be at GILBERT's sole risk and without liability or legal exposure to A/E. Any verification or adaptation of the documents by A/E for other purposes than contemplated herein will entitle A/E 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 Contractor: A/E shall be an independent contractor and not an agent of GILBERT and shall direct and supervise the Services required by this Agreement and shall be responsible for all means, methods, techniques, sequences and proceedings associated with the Services and shall be responsible for the acts and omissions of its employees, agents and other persons performing any of the Services under a contract with the A/E.

7.6 Exclusive Use of Services – Confidentiality: The services agreed to be provided by A/E within this Agreement are for the exclusive use of GILBERT and A/E shall not engage in conflict of interest nor appropriate GILBERT work product or information for the benefit of any third parties without GILBERT consent.

7.7 Sole Agreement: There are no understandings or agreements except as herein expressly stated.

7.8 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.

7.9 Time is of the Essence: The timely completion of the Project is of critical importance to the economic circumstances of GILBERT.

7.10 Controlling Law: This Agreement is to be governed by the laws of the State of Arizona.

7.11 Immigration Law Compliance Warranty:

7.11.1 As required by A.R.S. § 41-4401, A/E hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). A/E further warrants that after hiring an employee, A/E verifies the employment eligibility of the employee through the E-Verify program.

7.11.2 If A/E 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.

7.11.3 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. A/E 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. A/E shall not be deemed in material breach of this Contract if the A/E 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).

7.11.4 Gilbert retains the legal right to inspect the papers of any A/E or subcontractor employee who works on the Contract to ensure that the A/E or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times.

7.11.5 If state law is amended, the parties may modify this paragraph consistent with state law.

7.12 Equal Treatment of Workers: A/E 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. A/E 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"). A/E shall

protect and indemnify GILBERT and its representatives against any claim or liability arising form or based on the violation of such, whether by A/E or its employees.

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:	A/E:
Patrick Banger Town Manager Town of Gilbert 50 East Civic Center Drive Gilbert, Arizona 85296	Craig Dyson Principal Hubbard Engineering 1201 S Alma School, Rd., Suite 12000 Mesa, AZ 85210

The address may be changed from time to time by either party by serving notices as provided above.

8. SUSPENSION OF WORK

8.1 Order to Suspend: GILBERT may order the A/E, 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 Sum: 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 A/E, or (2) for which a change order is executed.

9. INTERESTS AND BENEFITS

9.1 Conflict of Interest of A/E: The A/E 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 A/E 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 Non-Solicitation: A/E agrees that it has not employed or retained any company or person, other than a bona fide employee working for A/E, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this clause, GILBERT may terminate this Agreement without liability, or, in its discretion, deduct from the Contract Sum, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingency fee.

9.4 Notice Regarding A.R.S. § 38-511: Under Section 38-511, Arizona Revised Statutes, as amended, GILBERT may cancel any Agreement it is a party to within three (3) years after its execution and without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of GILBERT is, at any time while the Agreement or any extension thereof is in effect, an employee or agent of any other party to the Agreement in any capacity or a consultant to any other party to the Agreement with respect to the subject matter of the Agreement. In the event GILBERT elects to exercise its rights under Section 38-511, Arizona Revised Statutes, as amended, GILBERT agrees to immediately give notice thereof to the A/E.

10. ASSIGNABILITY

The A/E 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 A/E 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 A/E have executed this Agreement as of the date first written.

TOWN OF GILBERT

By: _____
John Lewis, Mayor

ATTEST:

_____
Catherine A. Templeton, CMC
Town Clerk

APPROVED AS TO FORM:

_____

ARCHITECT/ENGINEER

Hubbard Engineering
By: _____
Title: President

EXHIBIT A
ENGINEER SCOPE OF WORK
FOR DESIGN-BID-BUILD PROJECT (ATTACHED)

SCOPE OF PROFESSIONAL ENGINEERING SERVICES

Description

The Town of Gilbert (Client) has requested a proposal from Hubbard Engineering (Hubbard) to provide design, As-Built Plans and Engineer of Record services required to extend the existing water line in Gail Drive to the west end of the road and south along 174th Street to a point of connection with an existing 16" waterline. The length of the extension will be approximately 750 feet. Hubbard will also prepare the legal descriptions and exhibits for the required Ingress/Egress and Waterline Easements within the limits of this project.

This new waterline extension will be incorporated with the original Gail Drive Waterline Plans prepared by Hubbard and installed by the Town in 2012.

In addition to the new design services outlined above, this proposal includes services provided by Hubbard in spring 2014 related to the As-Built Survey and ATC/AOC applications and submittals to MCESD for the original waterline project.

In addition, Hubbard will prepare an As-Built Survey and Plans of the existing Gail Drive water line (installed in 2012) and prepare and submit the ATC and AOC applications to M.C.E.S.D. (Tasks S06, E07, E07 & E09),

This Scope of Services is in accordance with direction given by the Town during a meeting held on June 1, 2015.

Project Guidelines

The project design services must meet the following design guidelines:

- Town of Gilbert (Municipality and Client) Standards
- Maricopa County Environmental Services Department (MCESD)

Scope of Basic Services

Based on the assumptions listed and information provided by the Client, Hubbard proposes the following scope of services for the anticipated waterline (Project):

NEW DESIGN SERVICES

1. **Limited Topographic Survey – Task S01**
   1.1. Hubbard will provide a Limited Topographic Survey of 174th Street adjacent to parcel 304-28-008N and Gail Drive adjacent to parcels 304-28-008M & 304-28-008U as required for design of the new waterline. The final product of the topographic survey will be an electronic file of the topography in AutoCAD format. The topographic survey shall provide the following for design purposes:

1.1.1. Elevation shots taken on a along the anticipated alignment of the proposed waterline extending 20-feet to the north and south. These topographic shots will be taken on regular intervals to be utilized for design.
1.1.2. Field locate all visible above ground utilities.
1.1.3. Hubbard will locate all trees within the limits of the project. However, bushes and other vegetation will not be surveyed.
1.1.4. DTM 3-D Modeling of contour elevations across the site.
1.1.5. Use the required Municipal Bench Mark.

2. Waterline Plans – Task E02
   2.1. Hubbard will prepare water plan and profile sheets for the anticipated waterline and associated water meters for parcels 304-28-008N and 304-28-008M. In addition, if directed by the Town a service stub will be provided to parcel 304-28-326D.
   2.2. Hubbard will prepare water plan and profile sheets for the waterline along 174th Street from Gail Drive to the south end of parcel 304-28-008N at which point a connection to the existing 16" waterline will be made.
   2.3. Hubbard will provide an Engineer's Cost Estimate for the project.
   2.4. Hubbard will complete the as-built research for utilities located within the project vicinity. No utility location services (potholing) is anticipated and is therefore not included in this proposal.
   2.5. Hubbard will provide the Town with sealed copies of the plans in PDF format for review, approval and construction purposes.
   2.6. The Town will make all required submittals to the Town Engineering Department for review and approval.
   2.7. Hubbard will response to any review comments until the plans are approve for permitting and construction.

3. Water Line Extension Water Report – Task E03
   3.1 Hubbard will prepare a Final Water Report, summary format, in conformance with the Municipality and MCESD requirements.
   3.2 Hubbard will include a sealed, hardcopy of this report with the MCESD submittal. (See Task E04).
   3.3 Hubbard will make modifications to the report based upon comments received from the Municipality and/or MDESD until approval.

4. Water Line Extension A.T.C. Application and Submittal – Task E04
   4.1 Hubbard will prepare the MCESD Approval to Construct (ATC) application and coordinate with the Town of Gilbert all required authorizations, approvals and signatures.
   4.2 Hubbard will assemble the final application package and make the submittal to M.C.E.S.D. **NOTE:** It is understood the Town of Gilbert Town pay all required review fees directly to M.C.E.S.D.
   4.3 Hubbard will address all questions and make any required revisions until the A.T.C. is approved.
   4.4 Hubbard will secure the M.C.E.S.D. approval signature on a Mylar cover sheet. (NOTE: The cost for creating the Mylar is included in the fee for this task)

<u>NEW SURVEY / CONSTRUCTION SERVICES - Optional</u>

5. Engineer of Record Services – Task E05
   5.1. Hubbard will act as Engineer of Record for the Water Line Extension and will prepare the Certificate of Completion.

5.2. Hubbard will prepare MCESD Approval of Construction (AOC) application and coordinate with the Client to secure all required authorizations, approvals and signatures.
5.3. Hubbard will prepare the A.O.C. package and make the submittal to M.C.E.S.D.
5.4. Hubbard will address all questions and make any required revisions until the A.O.C. is approved

6. Easement Legal Descriptions and Exhibits – Task S06
   4.1 Hubbard will prepare up to three (3) legal Descriptions and Exhibits for Ingress/Egress and Waterline Easements required for installation of the new waterline. These documents will be in the format for previously prepared Gail Drive easements.
   4.2 Hubbard will provide PDF copies of the sealed documents. The Town's is responsible for securing the property owner's signature and recording the easements.

7. Construction Staking and As-Built Plans – Task S07
   4.1 Hubbard will provide Construction Staking Services of installation of up to 750 L.F. of waterline.
   4.2 Hubbard will conduct an As-Built field survey and prepare As-Built Plans for the project. PDF copies of the plans will be provided to the Town for their records.

PREVIOUSLY PROVIDED SERVICES

8. Prepare As-Built Plans for Existing Water Line – Task S08
   8.1. Hubbard will conduct a field survey to verify the location of the Gail Drive waterline extension (based on components visible on the surface).
   8.2. Hubbard will annotate the construction plans to document the results of the As-Built Field Survey.
   8.3. Hubbard will seal and sign the As-Built Certification on the cover sheet (C3.1) of the construction plans and provide PDF copies to the Town of Gilbert for their records.

9. Water Report for Existing Water Line – Task E09
   9.1 Hubbard will prepare a Final Water Report for the Existing Water Line, summary format, in conformance with the Municipality and MCESD requirements.
   9.2 Hubbard will include a sealed, hardcopy of this report with the MCESD submittal. (See Task E04).
   9.3 Hubbard will make modifications to the report based upon comments received from the Municipality and/or MDESD until approval.

10. A.T.C. Application and Submittal for Existing Water Line – Task E10
   10.1. Hubbard will prepare MCESD Approval to Construct (ATC) application and coordinate with the Client to secure all required authorizations, approvals and signatures.
   10.2. Hubbard will prepare the submittal package and make the actual submittal to M.C.E.S.D. **NOTE:** It is understood the Town pay all required review fees directly to M.C.E.S.D.
   10.3. Hubbard will address all questions and make any required revisions until the A.T.C. is approved.

11. A.O.C. Application and Submittal for Existing Water Line – Task E11
   11.1. Based on documentation provided by the Town of Gilbert, Hubbard will prepare MCESD Approval of Construction (AOC) application and coordinate with the Client to secure all required authorizations, approvals and signatures.
   11.2. Hubbard will prepare the A.O.C. package and make the actual submittal to M.C.E.S.D.
   11.3. Hubbard will address all questions and make any required revisions until the A.O.C. is approved.

EXHIBIT B
ENGINEER'S KEY PERSONNEL AND SUBCONTRACTORS

ENGINEER'S KEY PERSONNEL:

Project Manager/Principal:	Craig Dyson
Project Engineer:	Michael S Wolf, P.E.
Project Manager:	Brent R. Steffenhagen, P.E.
Project Survey Manager:	Adrian M. Burcham, R.L.S.

SUBCONTRACTORS:

EXHIBIT C
SCHEDULE OF WORK

Promptly after the execution of this Agreement, the ENGINEER shall prepare and submit for approval to GILBERT a Schedule of Work showing the order in which ENGINEER proposes to carry our ENGINEER'S work. The schedule shall apply to the completion of all services listed hereunder within the times established by this Agreement. The Schedule shall be in the form of a progress chart clearly delineating all important increments and review dates. ENGINEER shall update the Schedule of Work on a monthly basis and deliver to GILBERT along with the monthly billing.

1. ENGINEER shall complete all work and services required under the Pre-Design Services within 20 working days after written authorization from GILBERT to proceed.

2. ENGINEER shall complete all work and services required under the Design Services within 40 working days after receipt of a written authorization from GILBERT to proceed.

3. ENGINEER shall complete all work and services required under Bidding Phase within 60 working days after receipt of a written authorization from GILBERT to proceed.

4. ENGINEER shall complete all work and services required under Construction Phase within 100 working days after receipt of a written authorization from GILBERT to proceed. Excluded from this duration is the time associated with the construction document back-check stage.

5. ENGINEER shall proceed with all work and services required under the Post-Construction Phase, upon the commencement of construction, and shall continue through completion and acceptance of the Project by GILBERT.

The durations stated above exclude the review periods required by GILBERT and all other regulatory agencies.

All times to complete tasks set forth in this Exhibit are of the essence. If delays in schedules are imposed by GILBERT'S inability to comply with requested meeting schedules, ENGINEER shall maintain the right to request an adjustment in schedule if deemed necessary to meet the deadlines set forth in this Exhibit. If approved, such extensions shall be authorized in writing by GILBERT.

EXHIBIT D
PAYMENT SCHEDULE

A. COMPENSATION

1. The consideration of payment to ENGINEER, as provided herein shall be in full compensation for all of ENGINEER'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. Such amount shall be based upon the Schedule attached hereto

B. METHOD OF PAYMENT

1. Invoices shall be on a form and in the format provided by GILBERT and are to be submitted to GILBERT via GILBERT'S authorized representative.

2. Upon receipt and approval of ENGINEER'S invoices, GILBERT agrees to make payments within thirty days of receipt of the invoice as follows:

Phase	Cumulative Amount
	$23,855

C. REIMBURSABLE COSTS

ENGINEER will be reimbursed for expenses up to a maximum amount of $0. All reimbursable costs must be submitted with monthly bill. The items allowable for reimbursement are as follows:

TASK DESCRIPTION	PROJECTED HOURS							
	PRINCIPAL	PROJECT ENGINEER (P.E.)	ENGINEERING DESIGNER	CADD SENIOR DESIGNER	CADD DESIGNER	ADMINSTRATIVE SERVICES	TOTAL	Trips*
GAIL DRIVE WATERLINE EXTENSION								
Billing Rates	$150	$135	$95	$95	$80	$60		
Hubbard Engineering - Engineering Design Services								
NEW DESIGN SERVICES								
Task E02 -Waterline Extension Plans								
PE		6					6	
Designer			64				64	
Administrative						5	5	
Hours Subtotal	0	6	64	0	0	5	75	
Billing Rate	$150	$135	$95	$95	$80	$60		
Compensation	$0	$810	$6,080	$0	$0	$300	$7,190	0
Task E03 -Waterline Extnsion Water Report								
PE		1					1	
Designer			8				8	
Administrative						2	2	
Hours Subtotal	0	1	8	0	0	2	11	
Billing Rate	$150	$135	$95	$95	$80	$60		
Subtotal Compensation	$0	$135	$760	$0	$0	$120	$1,015	0
Task E04 - Waterline A.T.C. Application & Submittal								
PE		3					3	
Designer			5				5	
Administrative						2	2	
Hours Subtotal	0	3	5	0	0	2	10	
Billing Rate	$150	$135	$95	$95	$80	$60		
Subtotal Compensation	$0	$405	$475	$0	$0	$120	$1,000	0
ENGINEERING CONSTRUCTION SERVICES								
Task E05 - Engineer of Record Services								
PE		4					4	
Designer / Inspector			7				7	
Hours Subtotal	0	4	7	0	0	0	11	
Billing Rate	$150	$135	$95	$95	$80	$60		
Subtotal Compensation	$0	$540	$665	$0	$0	$0	$1,205	0
PREVIOUSLY PROVIDED SERVICES								
Task E09 - Water Reports for Existing Water Line								
PE		4					4	
Designer			12				12	
Administrative						4	4	
Hours Subtotal	0	4	12	0	0	4	20	
Billing Rate	$150	$135	$95	$95	$80	$60		
Subtotal Compensation	$0	$540	$1,140	$0	$0	$240	$1,920	0
Task E10 - A.T.C. for Existing Waterline								
PE		4					4	
Designer			5				5	
Administrative						3	3	
Hours Subtotal	0	4	5	0	0	3	12	
Billing Rate	$150	$135	$95	$95	$80	$60		
Subtotal Compensation	$0	$540	$475	$0	$0	$180	$1,195	0

TASK DESCRIPTION	PROJECTED HOURS							
	PRINCIPAL	PROJECT ENGINEER (P.E.)	ENGINEERING DESIGNER	CADD SENIOR DESIGNER	CADD DESIGNER	ADMINSTRATIVE SERVICES	TOTAL	Trips *
Task E11 - A.O.C. for Existing Waterline								
PE		1					1	
Designer			5				5	
Administrative						0	0	
Hours Subtotal	0	1	5	0	0	0	6	
Billing Rate	$150	$135	$95	$95	$80	$60		
Subtotal Compensation	$0	$135	$475	$0	$0	$0	$610	0
Total Hours - Civil Engineering	**0**	**23**	**106**	**0**	**0**	**16**	**145**	
Total Compensation - Civil Engineering	**0**	**$3,105**	**$10,070**	**$0**	**$0**	**$960**	**$14,135**	

Total Compensation - Civil Engineering:	**$14,135**
Total Compensation - Surveying: (See Page 3)	**$9,720**
COMBINED TOTAL COMPENSATION:	**$23,855**

(NOT TO EXCEED)

TASK DESCRIPTION	PROJECTED HOURS							
	PRINCIPAL	REGISTERED LAND SURVEYOR	SURVEY PROJECT MANAGER	SURVEY TECHNICIAN	1-MAN FIELD CREW	2-MAN FIELD CREW	TOTAL	Trips *
GAIL DRIVE WATERLINE EXTENSION								
Billing Rates	$150	$135	$85	$65	$75	$60		
Hubbard Engineering - Survey Services								
NEW DESIGN SERVICES								
Task S01 - Limited Topographic Survey								
Office Preparation			3	3				
Field Survey						8		
Process Field Information and Create CADD file				10				
Quality Control Review		1						
Topographic Survey - Hours Subtotal	0	1	3	13	0	8	25	
Billing Rate	$150	$135	$85	$65	$75	$125		
Survey - Compensation	$0	$135	$255	$845	$0	$1,000	$2,235	0
SURVEY CONSTRUCTION SERVICES								
Task S06 - Easement Legal Descriptions								
Legal Description and Exhibits			5					
Quality Control Review		8						
Topographic Survey - Hours Subtotal	0	8	5	0	0	0	13	
Billing Rate	$150	$135	$85	$65	$75	$125		
Survey - Compensation	$0	$1,080	$425	$0	$0	$0	$1,505	
Task S07 - Construction Staking and As-Built Plans								
Office Preparation		1	6	6				
Field Survey						16		
Process Field Information and Create CADD file				14				
Quality Control Review		4						
Topographic Survey - Hours Subtotal	0	5	6	20	0	16	47	
Billing Rate	$150	$135	$85	$65	$75	$125		
Survey - Compensation	$0	$675	$510	$1,300	$0	$2,000	$4,485	0
PREVIOUSLY PROVIDED SERVICES								
Task S08 - As-Built Survey & Plans - Exist. Waterline								
Office Preparation			2	1				
Field Survey					8			
Process Field Information and Create CADD file				6				
Quality Control Review		2						
Topographic Survey - Hours Subtotal	0	2	2	7	8	0	19	
Billing Rate	$150	$135	$85	$65	$75	$125		
Topographic Survey - Compensation	$0	$270	$170	$455	$600	$0	$1,495	0
Total Hours - Survey	**0**	**16**	**16**	**40**	**8**	**24**	**104**	
Total Compensation - Survey	**0**	**$2,160**	**$1,360**	**$2,600**	**$600**	**$3,000**	**$9,720**	

* Cost of "Trips" is included in "Coordination and Field Survey"

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

PROJECT:	Gail Water Line
DATE:	
OWNER:	Town of Gilbert
PROJECT NO:	N/A
CONTRACT NO:	2015-7009-0761
CONTRACT DATED:	
A/E:	Hubbard Engineering
PM/CM:	N/A

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.

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: John Kennedy, Parks and Recreation Manager, 503-6231

MEETING DATE: June 25, 2015

SUBJECT: Approval of Contract No 2015-5001-0396 with Chandler Christian Community Center for the Gilbert Senior Center in the amount of $137,000 and authorize the Mayor to execute the required documents.

STRATEGIC INITIATIVE: Community Livability

Providing educational, fitness and meal resources to the senior residents of Gilbert enhances community livabiity by meeting this essential core service.

RECOMMENDED MOTION

A motion to approve Contract No. 2015-5001-0396 with Chandler Christian Community Center for the Gilbert Senior Center in the amount of $137,000 and authorize the Mayor to execute the required documents.

BACKGROUND/DISCUSSION

At the November 21, 2013 Council meeting, Council approved funding the Gilbert Senior Center Program with general funds through the Town of Gilbert annual budget process. In FY 2013-2014, Chandler Christian Community Center (CCCC) became the contracted agency to provide congregate and home delivered meals as well as senior educational and recreational activities on behalf of the Town at the Gilbert Senior Center.

Area Agency on Aging has contracted with Chandler Christian Community Center as the regional senior service provider in Chandler, Gilbert and Queen Creek for the next five years. It is a requirement of Area Agency on Aging funding that the recipient city/town contribute financially to the program.

Currently Area Agency on Aging funds 39% of the Gilbert Senior Center budget, the Town's contribution is 30% and other funding, contributions and fees make up the remaining 31%. With the other funding included, the total projected number of services the CCCC will be able to provide through the Gilbert Senior Center is 16,000 nutritionally balanced meals served in a congregate setting, 8,500 home delivered meals, and 12,000 hours of services provided to Gilbert residents by June 30, 2016.

From July 1, 2014 through March 31, 2015 a total of 529 Gilbert seniors and home-bound elderly have been served 21,833 congregate or home delivered meals. In addition, 309 health and recreational activities have been hosted to promote social interaction and physical health.

As noted in the contract, the numbers anticipated for home delivered meals is less than last year (2,125 vs 2,450), but the congregate meals are higher based on actuals (4,000 vs 3,075) because the CCCC are seeing more people in a congregate setting and less needing home delivered meals based on demand. They currently do not have a waiting list for home delivered meals.

In addition, the contract is reflecting a change of 500 individuals served versus 98 since the number accounts for all people going to the center. The number was previously calculated as a fraction of those served by the percentage of Gilbert funds only.

It is anticipated that the hours of service will increase based on demand as the CCCC are seeing more people in the programs.

The contract was reviewed for form by Town Attorney Michael Hamblin.

The contract was reviewed by Diane Shannon, Contract Specialist, Purchasing.

FINANCIAL IMPACT

The funds for services have been budgeted in the general fund for FY16.

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

STAFF RECOMMENDATION

Staff recommends approval of Contract No. 2015-5001-0396 with Chandler Christian Community Center for the Gilbert Senior Center.

Respectfully submitted,

John Kennedy
Parks and Recreation Manager

Approved By	Approval Date
Rod Buchanan	6/11/2015 1:23 PM
Michael Hamblin	6/11/2015 3:23 PM
Laura Lorenzen	6/15/2015 10:37 AM
Douglas Boyer	6/15/2015 11:34 AM

ACCOUNTABILITY CONTRACT

Gilbert Contract #2015-5001-0396

This Agreement is entered into the __day of _____, 20__ by and between the Town of Gilbert, Arizona, an Arizona municipal corporation (hereinafter referred to as "Gilbert") and Chandler Christian Community Center (hereinafter referred to as "Contractor").

It is the finding of the Gilbert Council that Contractor is offering services that benefit the Gilbert community and Gilbert and should receive public funds in support of its facility, services and operations.

Now, therefore, in consideration of the mutual covenants between the parties, it is agreed as follows:

1. DURATION OF AGREEMENT: If funds for this Agreement are not budgeted by June 30, 2015, Gilbert may terminate this Agreement by giving written notice to Contractor. Otherwise, the duration of the Agreement shall be from July 1, 2015 until June 30, 2016.

2. SCOPE OF WORK: Contractor agrees to use funds received from Gilbert to provide congregate/home delivered meals and recreational, educational and health related activities and classes at the Gilbert Senior Center ("Services") meeting the criteria set forth in **Exhibit A** of this Agreement. Contractor also agrees to maintain accurate financial records to enable Gilbert to verify that the funds provided under this Agreement are expended in accordance with this Contract. Contractor shall be responsible for compliance with all applicable federal, state and local laws and regulations.

3. COMPENSATION: Gilbert shall compensate Contractor for the Services in the amount of $137,000. Such funds shall only be used for the purposes set forth in **Exhibit A**.

4. REPORTING: At the completion of the Services, Contractor shall submit to Gilbert an itemized report setting forth how the funds received from Gilbert were expended.

5. INSPECTION: Within five (5) days of receipt of a written request from Gilbert, Contractor agrees to open for inspection and to make available all financial records relating to the Services.

6. CONTRACT NONCOMPLIANCE: If Gilbert, in its sole discretion, determines Contractor is in breach of this Agreement, Gilbert shall give written notice to Contractor of the specific area of noncompliance. Contractor shall comply within 30 calendar days of the date of notice.

7. TERMINATION FOR CAUSE: If Contractor does not comply within 30 calendar days from the date of the notice of breach, Gilbert may terminate this Agreement. Contractor

shall immediately return to Gilbert all funds not spent for the services described in **Exhibit A**.

8. TERMINATION PURSUANT TO A.R.S. § 38-511: Gilbert may terminate this Agreement pursuant to A.R.S. § 38-511.

9. INDEMNIFICATION: Contractor agrees to hold harmless and indemnify Gilbert from any loss, damage, liability, cost, charge or expense, whether direct or indirect, including reasonable attorney's fees, and whether to any person or property to which Gilbert, its agents, employees or said parties may be subject to related to the Services, including, but not limited to, actions for bodily injury, illness, death or property damage.

10. INDEPENDENT CONTRACTOR: Contractor is an independent contractor and not an agent or employee of Gilbert. Contractor shall supervise and direct the Services using Contractor's best skill and attention. Contractor shall be solely responsible for all staffing, curriculum, scheduling, supplies, equipment for and transportation of participants to events for Services. Contractor shall be responsible to its employees, volunteers, Gilbert employees and other persons performing any services related to the Services as set forth in this Agreement.

11. ENTIRE AGREEMENT; AMENDMENTS: This Agreement represents the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be amended except through an appropriate writing signed by both parties.

12. ASSIGNMENT PROHIBITED: Contractor shall not assign any rights acquired hereby, without first obtaining the written consent of Gilbert.

13. INSURANCE: Contractor agrees that it will carry the following insurance coverage during the term of this Agreement:

    General Liability Insurance: $1,000,000.00 per occurrence.

    Contractor shall submit certificates evidencing compliance with the requirements of this Paragraph to Gilbert and warrants that such coverage(s) shall be maintained in full force and effect until Contractor is released from this Contract. Further, Gilbert is to be named as an additional insured with respect to the services to be performed under this Contract. The certificate(s) of insurance shall name Gilbert as an additional insured without offset against Gilbert's existing insurance and provide for a minimum of thirty (30) DAYS notice to Gilbert prior to cancellation, reduction in coverage or other substantial modification to the required certificate of insurance. The certificate of insurance shall set forth at least the following information:

    - Name and address of the insured;
    - A statement that Gilbert is named an additional insured;

- The location of the operations to which the insurance applies;
- The number of the policy and the type or types of insurance in force under it on the date of the certificate;
- Evidence of the amounts and types of coverage;
- The expiration date of the policy and the limit or limits of liability under it on the date of the certificate;
- A statement that all coverage is on an occurrence basis rather than a claims made basis;
- A statement that a minimum of thirty (30) days notice shall be given to Gilbert prior to cancellation, reduction in coverage, or other substantial modification to the required certificate;
- A signature of an authorized representative of the insurance company.

14. NO DISCRIMINATION: Neither Contractor nor its employees or agents will discriminate on the basis of race, religion, handicap, gender or national origin in providing the Services.

15. IMMIGRATION LAW 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 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. 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. § 3-214(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.

16. NOTICES: All notice provided for herein shall be hand delivered, delivered by overnight courier (e.g., Federal Express) or sent by certified or registered mail, return receipt requested, addressed to all parties hereto at the address designated for each party beside its signature or at such other address as the party who is to receive such notice may designate in writing. Notice shall be deemed completed upon: (i) such hand delivery or courier delivery or (ii) three (3) days after the deposit of same in a letter box or other means provided for the posting of mail, addressed to the party and with the proper amount of postage affixed thereto. Except as otherwise herein provided, actual receipt of notice shall not be required to effect notice hereunder.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names,

For Contractor

_____
(Signature)

_____
Title

_____
Address

_____
City Zip Code

_____
Telephone No.

For Gilbert

_____
Mayor

Gilbert Municipal Complex
50 E. Civic Center Drive
Gilbert, Arizona 85296
(480) 503-6000

Attest:

_____
Town Clerk

Approved as to Form:

_____
By: Michael Hamblin, Town Attorney

Exhibit A

Contractor will provide:

Unduplicated Project Beneficiaries (Individuals OR Households) to be assisted from July 1, 2015 through June 30, 2016 (Number and Type):

- 500 individuals
- 4,000 congregate meals
- 2,125 home delivered meals
- 3,000 hours of services

The Town of Gilbert has constructed and maintains the Gilbert Community Center (hereinafter "Facility") located at 130 North Oak Street to the benefit of the community, including meeting rooms for various programs, office spaces, and a kitchen to prepare and distribute congregate meals.

It is the finding by the Mayor and Council of Gilbert that the Contractor is offering services which are in the interest of the community in serving the elderly, and should receive public and federal funds in support of their services and operations.

Gilbert further designates the Contractor as the preferred delivery Contractor for operations of the programs and services at the Gilbert Senior Center, operated at the Gilbert Community Center. Gilbert agrees that it will not provide programs at the Gilbert Community Center which are duplicative of those administered by Contractor.

In recognition of this Agreement the Town hereby agrees to provide the following no charge facilities and services in support of contracted services provided by the Contractor:

1. Full building maintenance, including all structural, mechanical, electrical, and related permanent fixtures and components and responsibility for the large ice making machine and walk-in refrigerator/freezer;
2. Grounds maintenance, including parking lots, sidewalks, landscaping, and related improvements adjacent to the Community Center;
3. Custodial and general cleaning services for all interior spaces, except for the kitchen/dining area; however the Town of Gilbert agrees to perform cleaning for the dining area floor;
4. Payment of all utilities for spaces including gas, electric, phone, cable television, and trash collection;
5. Office space for Chandler Christian Community Center staff, and storage space for programmatic materials;
6. Provide program space and congregate meal spaces as follows:

Room	**Priority Use**	**Times**	**Days**
Oak	CCCC	8:00am-4:00pm	Monday-Friday
Maple	CCCC	8:00am-4:00pm	Monday-Friday
All other Rooms	Town of Gilbert	Open-Close	Monday-Sunday

However, priority room usage/schedules are subject to change, based on mutual agreement of both Chandler Christian Community Center and the Town of Gilbert to meet program/facility needs.

7. Provide no charge use of other space at the Community Center and Page Park, depending upon schedule and availability, in support of program efforts by Contractor for eligible persons and programs.

Contractor agrees to be financially responsible for:

1. All furnishings and maintenance of equipment in support of office functions;
2. All maintenance of Contractor owned equipment including but not limited to, kitchen support equipment, utensils, and food preparation equipment and small ice machine;
3. Custodial and general cleaning of the kitchen/dining area; Town of Gilbert agrees to perform cleaning for the dining area floor;
4. Hiring, managing, and scheduling staff to meet the general administrative and management support and appropriate personnel to prepare and serve the elderly nutritional services from the Center;
5. Staffing and providing the following services to eligible clients within the Gilbert area:
    a. Congregate meals and home delivered meals program for eligible persons;
    b. Support group services;
    c. Monitoring home-bound residents;
    d. Coordinate volunteer efforts;
    e. Reporting to all other funding agencies and services;
    f. Scheduling and coordinating social and recreational activities, which may include, wellness/exercise programs and leisure games/activities;
    g. May provide and coordinate transportation services for CCCC approved trips;
6. Meet with the designated Gilbert Recreation Coordinator in accordance with specified session timelines to schedule additional room needs (subject to availability). Contractor is responsible for all set up/tear down of Contractor program space within reserved timeframes;
7. Provide monthly reports to the Parks and Recreation Director through the Parks and Recreation Manager with a breakdown of the number of meals being served (home delivered and congregate), the number of programs/activities offered and number of participants attending all programs/ activities, i.e. a copy of the reports sent to the Area Agency on Aging;
8. Obtaining Liability insurance on the Facility with coverage of $1,000,000 per occurrence and $3,000,000 aggregate. Contractor shall, at Contractor's expense, obtain and keep in force during the term of this agreement a policy of comprehensive public liability insurance insuring Gilbert and Contractor against any liability arising out of the ownership, use occupancy or maintenance of the Premises and all areas appurtenant thereto. The limit of said insurance shall not, however, limit the liability of the Contractor hereunder. Contractor may carry said insurance under a blanket policy,

providing however, said insurance by Contractor shall have a protective liability endorsement attached thereto. If Contractor shall fail to procure and maintain same, but at the expense of Contractor. Insurance required hereunder, shall be in companies rated A+, AAA or better in "Best's Insurance Guide." Contractor shall deliver to Gilbert prior to occupancy of the Facility copies of policies of liability insurance required herein or certificates evidencing the existence and amounts of such insurance with loss payable clauses satisfactory to Gilbert. No policy shall be cancelable or subject to reduction of coverage except after ten (10) days' prior written notice to Gilbert;

9. Contractor Indemnification to Gilbert. Contractor shall indemnify and hold harmless Gilbert against and from any and all claims arising from Contractor's use of the Facility for the conduct of its business or from any activity, work, or other thing done, permitted or suffered by the Contractor in or about the Facility or New Facility, and shall further indemnify and hold harmless Gilbert against and from any and all claims arising from any breach or default in the performance of any obligation on Contractor's part to be performed under the terms of this Lease, or arising from any act or negligence of the Contractor, or any officer, agent, employee, guest or invitee of Contractor, and from all and against all costs, attorney's fees, expenses and liabilities incurred in or about any such claim or any action or proceeding brought thereon, and, in any case, action or proceeding being brought against Gilbert by reason of any such claim, Contractor upon notice from Gilbert shall defend the same at Contractor's expense by counsel reasonably satisfactory to Gilbert. Contractor as a material part of the consideration to Gilbert hereby assumes all risk of damage to property or injury to person, in, upon or about the Facility or New Facility, from any cause other than Gilbert' negligence, and Contractor hereby waives all claims and respect thereof against Gilbert;
10. Provide required workers compensation coverage for all staff at the facility and staff or providing program services;
11. Nothing in this Agreement shall be construed to make Contractor staff the financial responsibility of Gilbert.

Performance Measurement

Specific and measurable outcome(s) to achieve this year:

- Provide up to 500 low-income Gilbert older adults the opportunity to receive nutritionally balanced, affordable meals including 4,000 nutritionally balanced meals served in a congregate setting at the Gilbert Senior Center and 2,125 home delivered meals to those Gilbert residents who are homebound, frail, elderly or disabled.

- Offer 3,600 hours of social and recreational activities to enhance quality of life for Gilbert older adults;

- Have participation of 450 individuals in recreational and social programs.

BILLING INFORMATION

Requests for payment from the Contractor will be made as invoices to Parks and Recreation and may include hourly time sheets, canceled checks, and/or original receipts as necessary to verify the nature and type of administrative service expenditure. The Agency must maintain documentation of all related expenses and the ability to track expenses for Gilbert clients. Invoices may be based on per diem or unit costs and must include sufficient documentation of how this amount was determined.

Payment requests may only be made for services as described in the application. The description of the service being provided may be referenced in the proposal for this project on file in the Town of Gilbert, Parks and Recreation Department during the time this agreement is in effect.

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Curtis Yardley, Streets Manager, 480-503-6428

MEETING DATE: June 25, 2015

SUBJECT: New contract #2015-4106-0711 for Minor Concrete Repair with Degan Construction, LLC

STRATEGIC INITIATIVE: Infrastructure

Supports town's Long Range Infrastructure Plan as well as maintenance of all concrete repairs within the town's right of way.

RECOMMENDED MOTION

Motion to approve contract for Minor Concrete Repair with Degan Construction, LLC, in an amount not to exceed $800,000; and authorize the mayor to execute the required documents.

BACKGROUND/DISCUSSION

The town of Gilbert solicited an Invitation for Bid (IFB) on April 29, 2015 and emailed over 4,000 firms registered with ProcureAZ. This cooperative solicitation includes four other agencies: City of Surprise, Chandler Unified School District, Apache Junction Unified School District, and Pinal County. Each participating agency will be responsible for their own execution and award of contract. Upon bid opening held at 11:00AM on May 19, 2015, the following firms submitted bids:

Degan Construction, LLC	$799,156.37
R K Sanders Inc.	$928,896.14
Talis Construction Corporation	$1,732,329.08

The contracts were reviewed for form by Attorney Michael Hamblin.

The agreement was reviewed by Doug Boyer, Purchasing Administrator.

FINANCIAL IMPACT

The total amount of $800,000 has been budgeted in FY16 for this service as follows:
120200.41060403.5357 $800,000

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

STAFF RECOMMENDATION

Staff recommends approval of motion to approve contract for Minor Concrete Repair with Degan Construction, LLC, effective July 1, 2015 and terminating June 30, 2016 with option to renew.

Respectfully submitted,

Curtis Yardley
Streets Manager

Attachments and Enclosures:

Contract 2015-4106-0711, Degan Construction, LLC

Approved By	Approval Date
Kenneth Morgan	6/11/2015 9:25 AM
Jack Vincent	6/15/2015 11:13 AM
Cris Parisot	6/15/2015 9:38 AM
Douglas Boyer	6/15/2015 11:48 AM

ATTACHMENT 5
AGREEMENT FOR SERVICES
Contract No. 2015-4106-0711

THIS Agreement is entered into as of this _____ day of _____, 20___, by and between Gilbert, Arizona, a municipal corporation, hereinafter referred to as the "Gilbert" and Degan Construction, LLC, hereinafter referred to as the "Contractor."

FOR THE PURPOSE of providing minor concrete repair services for Gilbert, Gilbert and Contractor do hereby mutually agree to the following:

1. SERVICES AND RESPONSIBILITIES

1.1 Retention of the Contractor. In consideration of the mutual promises contained in this Agreement, Gilbert engages the Contractor to render services set forth herein, in accordance with all the terms and conditions contained in this Agreement.

1.2 Scope of Services. The Contractor 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 is set forth in the Bid Documents and Contractor's bid, which are attached hereto as **Exhibit A**.

1.3 Responsibility of the Contractor.

1.3.1 Contractor hereby agrees that the documents and reports prepared by Contractor will fulfill the purposes of the Contract, 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 Contractor 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 Contractor shall tour the Services site and become familiar with existing conditions, including utilities, prior to commencing the Services and notify Gilbert of any constraints associated with the Services site.

1.3.3 Contractor shall procure and maintain during the course of this Agreement insurance coverage required by Paragraph 4 of this Agreement.

1.3.4 Contractor shall designate Denver Whetten as Contractor Representative and all communications shall be directed to him. Key Contractor Personnel are set forth in Exhibit B. "Key Personnel" includes the Contractor employee who will place his license number and signature on key documents and those employees who have significant responsibilities regarding the Services and Contract.] Prior to changing such designation Contractor shall first obtain the approval of Gilbert.

1.3.5 Contractor's subcontracts are set forth in **Exhibit B** attached hereto and made a part hereof. Any modification to the list of Subcontractors on **Exhibit B**, either by adding, deleting or changing subcontractors, shall require the written consent of Gilbert.

1.3.6 Contractor shall obtain its own legal, insurance and financial advice regarding Contractor's legal, insurance and financial obligations under this Agreement.

1.3.7 Contractor shall coordinate its activities with Gilbert's representative and submit its reports to Gilbert's representative.

1.3.8 Contractor 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. Contractor shall provide and pay for and insure for all equipment necessary for the Services.

1.3.9 Contractor 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. Contractor shall pay all applicable taxes. Contractor 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 Contractor by placing at his disposal all available information concerning the Services.

1.4.2 Gilbert designates Kory Parker as its Contract Representative. All communications to Gilbert shall be through its Contract Representative.

1.5 Contract Term; Renewal. If funds for this Contract are not appropriated or budgeted by July 1, Gilbert may terminate this contract by giving written notice to Contractor. Otherwise, the Contract commences upon execution of the Contract and continues through June 30, 2016. The Contract may be automatically renewed for up to four (4) additional one-year terms upon mutual agreement of the parties. The Contract may be renewed upon written approval of Gilbert's Purchasing Officer if: (1) the renewal Contract amount does not exceed $100,000; or (2) the original prices remain in effect during the renewal term; or (3) the contract unit pricing does not increase or the contract unit pricing is adjusted pursuant to the terms and conditions of the Contract.
If at least 60 days prior to the end of the original term the Contractor requests a price adjustment, Contractor shall submit evidence of increased costs to the Contractor. Any price adjustment shall be in the sole discretion of Gilbert and shall not exceed the amount of increased cost to the Contractor. Price adjustment requests shall be a factor in the Contract extension review process. A price adjustment less than 3% of the original contract price may be approved by the Purchasing Officer. The Gilbert Council must approve renewal in all other cases. Any renewal shall be in writing and shall expressly state the prices for the services during the renewal term. Any renewal shall be contingent on funds being appropriated or budgeted for the renewal term.

1.6 Schedule of Services. The Schedule of Services is set forth in **Exhibit C**. If this Contract is renewed, a new Schedule of Services shall be mutually agreed upon.

2. COMPENSATION AND METHOD OF PAYMENT

2.1 Compensation. All compensation for complete and satisfactory completion of services rendered by Contractor, including its subcontractor(s), shall be set forth in **Exhibit D**.

2.2 Method of Payment. Method of payment shall be set forth in **Exhibit D**. If payment is to be made monthly, Contractor shall prepare monthly invoices and progress reports which clearly indicate the progress to date and the amount of compensation due by virtue of that progress. All invoices shall be for services completed and accepted by Gilbert.

2.3 Invoices. Gilbert reserves the right to deduct up to ten percent (10%) from the invoiced amount for any invoice submitted more than sixty (60) days after the Services are completed. Invoices for the month of June shall be submitted on or before August 1st. Invoices submitted after the close out of the fiscal year (August 1st) may not be paid by Gilbert.

2.3 The Contractor shall provide to Gilbert its completed W-9 Form prior to receipt of any Compensation.

2.4 Taxes. Contractor will be responsible for and shall pay all sales, consumer, use, and other taxes. When equipment, materials or services generally taxable to the Contractor are eligible for a tax exemption, credit or deduction due to the nature of the item, at Contractor's request, Gilbert will assist Contractor in applying for and obtaining the same.

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 Contractor'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 Contractor for adjustment under this clause must be submitted in writing within thirty (30) days from the date of receipt by the Contractor 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 Contractor will be allowed by Gilbert except as provided herein nor shall Contractor 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. 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.

3.2.2 Emergency Contact. 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 a 24 hour/7 days a week basis so that effective response can be initiated. Contractor'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.

4. INSURANCE REPRESENTATIONS AND REQUIREMENTS

4.1 General. Contractor agrees to comply with all Gilbert ordinances and state and federal laws and regulations. Without limiting any obligations or liabilities of Contractor, Contractor 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 Contractor. 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 Contractor 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. Contractor'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, including Workers' Compensation Insurance, 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 Contractor. Contractor 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. Contractor shall be solely responsible for any such deductible or self insured retention amount. Gilbert, at its option, may require Contractor 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 Subcontractors. If any Services under this Agreement are subcontracted in any way, Contractor shall execute written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting Gilbert and Contractor. Contractor shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

4.10 Evidence of Insurance. Prior to commencing any Services under this Agreement, Contractor shall furnish Gilbert with Certificate(s) of Insurance, or formal endorsements as required by this Agreement, issued by Contractor'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's Risk Manager. If any of the above cited policies expire during the life of this Agreement, it shall be Contractor'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:

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 or equivalent.

c. Excess Liability-Follow Form to underlying insurance.

4.10. Contractor's insurance shall be primary insurance as respects performance of this Agreement.

4.10.3 All policies, including Workers' Compensation, waive rights of recovery (subrogation) against Gilbert, its agents, representatives, officers, directors, officials and employees for any claims arising out of Services performed by Contractor under this Agreement.

4.10.4 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: Contractor 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. 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 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 10 11 85 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: N/A

4.11.3 Vehicle Liability: Contractor shall maintain Business Automobile Liability Insurance with a limit of $1,000,000 each occurrence on Contractor's owned, hired, and non-

owned vehicles assigned to or used in the performance of the Contractor'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 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: Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor'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, the Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless Gilbert, its agents, officers, officials and employees from and against all demands, claims, proceedings, suits, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), and all claim adjustment and handling expenses, relating to, arising out of, or alleged to have resulted from acts, errors, mistakes, omissions, Services caused in whole or in part by the Contractor, its agents, employees or any tier of Contractor's subcontractors related to the Services in the performance of this Agreement. Contractor's duty to defend, hold harmless and indemnify Gilbert, its agents, officers, 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, or destruction of property including loss of use of resulting therefrom, caused in whole or in part by Contractor's acts, errors, mistakes, omissions, Services in the performance of this Agreement including any employee of the Contractor, any tier of Contractor's subcontractor or any other person for whose acts, errors, mistakes, omissions, Services the Contractor may be legally liable including Gilbert. Such indemnity does not extend to Gilbert's negligence.

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 Contractor, 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 Contractor to fulfill his contract obligations. Upon receipt of such notice, the Contractor 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 Contractor in performing this Agreement, whether completed or in process. This Agreement may be terminated in whole or in part by the Contractor in the event of substantial failure by Gilbert to fulfill its obligations.

6.2 Payment to Contractor Upon Termination. If the Agreement is terminated, Gilbert shall pay the Contractor 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 Subcontractors, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for Services to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor'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 Contractor 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 Contractor involving transactions related to this Agreement.

7.3 Ownership of Document and Other Data. Original documents 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 Contractor; however, any reuse without written verification or adaptation by Contractor for the specific purpose intended will be at Gilbert's sole risk and without liability or legal exposure to Contractor. Any verification or adaptation of the documents by Contractor for other purposes than contemplated herein will entitle Contractor 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 Contractor. This Contract does not create an employee/employer relationship between the parties. It is the parties' intention that the Contractor will be an

independent contractor 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 Contractor 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 Contractor and Gilbert, and Gilbert will not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages and/or overtime premiums. [FOR SOLE PROPRIETORS ONLY: The Contractor 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, 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 Contract, 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.

7.7 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 the work. 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.

7.8 Exclusive Use of Services - Confidentiality. The services agreed to be provided by Contractor within this Agreement are for the exclusive use of Gilbert and Contractor shall not engage in conflict of interest nor appropriate Gilbert work product or information for the benefit of any third parties without Gilbert's consent.

7.09 Sole Agreement. There are no understandings or agreements except as herein expressly stated.

7.10 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:	CONTRACTOR:
Town Manager	Denver Whetten
Town of Gilbert	Degan Construction, LLC
50 East Civic Center Drive	1402 North 24th Avenue
Gilbert, Arizona 85296	Phoenix, Arizona 85009

The address may be changed from time to time by either party by serving notices as provided above.

7.11 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 Contractor, 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 Contractor, 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 Contractor. The Contractor 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 Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed.

9.2 Interest of Gilbert's 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 Contractor 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.

IN WITNESS WHEREOF, Gilbert and the Contractor have executed this Agreement as of the date first written.

TOWN OF GILBERT

By: _____
John W. Lewis, Mayor

CONTRACTOR

By: _____
Title: _____

ATTEST:

By: _____
Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

By: _____
L. Michael Hamblin
Town Attorney

EXHIBIT A
SCOPE OF WORK

3.1 Specifications

All work done under this contract shall be accomplished in accordance with the Maricopa Association of Governments Standard Specifications and Standard Detail for Public Works Construction and the Town of Gilbert Supplement thereto except as modified in these Special Provisions.

In the event of any conflict between these Project Specifications and the requirements of the above referenced specifications, codes and regulations, these Project Specifications shall prevail. All bids to receive considerations shall be made in accordance with the General Conditions of the Standard Specifications as set forth hereinafter.

3.2 Irregular Bids

Proposals may be considered irregular and may be rejected if any of the unit prices quoted in the bidding schedule is unbalanced, either above or below the amount of a reasonable bid price to the potential detriment of the Town.

3.3 Contractor's Construction Schedule

Within ten (10) days after execution of the contract, the Contractor shall furnish the Town Street Department with a proposed Construction Schedule, indicating dates of commencement and completion of all major activities required in the contract. During construction, the Contractor shall maintain and revise the construction schedule to reflect changes or conditions encountered in the construction work. The Town in its sole discretion shall approve the construction schedule and any proposed changes thereto.

3.4 Contractor's Representative

The Contractor shall at all times be present at the work in person or represented by a foreman or other properly designated agent. Instructions and information given by the Engineer to the Contractor's foreman or agent on the work shall be considered as having been given to the Contractor.

3.5 Relocation of Utilities

Except as otherwise provided in the plans or project specifications, all utilities in conflict with the new work will be relocated by the owner thereof. The Street Superintendent will decide if relocation is required and will notify the owner of the utility if needed.

3.6 Miscellaneous Removal and Relocations

Miscellaneous removals and relocations shall be construed to mean the removal of all unsuitable materials whether designated or implied by the plans and specifications, and shall

include but not be limited to the removal of such items as pipes, concrete, asphalt, block, brick, rock, metal, etc. of every nature and description, unless such items are specifically designated in a separate bid item. Also, certain items require temporary removal and reinstallation such as mailbox stands, sign posts, landscape irrigation lines, etc., and are included in this category.

3.7 Excess Materials

Excess or unsuitable material, broken asphaltic concrete and broken Portland cement concrete shall be disposed of by the Contractor. The Contractor shall, prior to commencement of the work, submit a letter to the Town Representative stating the location of disposal site(s) for all excess material and certifying that he has obtained the property owner's permission for the disposal of all surplus material.

3.8 Cleanup

The Contractor shall, upon completion of the work, remove all temporary construction facilities, debris, and unused materials provided for in the work, and put the work site of the work and public right-of-way in a neat and clean condition. No special payment will be made for this item. Contractor shall restore any damaged Town property or private property to its original conditions as determined by the Town.

3.9 Approximate Quantities

It is expressly understood and agreed by the parties hereto that the quantities of the various classes of work to be done and material to be furnished under this Contract, which have been estimated, as stated in the Invitation for Bids, are only approximate and are to be used solely for the purpose of comparing, on a consistent basis, the bids offered for the work under this Contract, and the Contractor further agrees that the Town of Gilbert will not be held responsible if any claim for damages or for loss of profits because of a difference between the quantities of the various classes of work as estimated and the work actually done.

If any error, omission, or misstatement is found to occur in the estimated quantities, the same shall not invalidate this Contract or release the Contractor from the execution and completion of the whole or any part of the work in accordance with the specifications and the plans herein mentioned, and for the prices herein agreed upon and fixed therefore, or excuse him from any of the obligations or liabilities hereunder, or entitle him to any damages or compensation except as may be provided for in the Contract.

3.10 Miscellaneous Work and Allowances

The following items will be included in the work with no direct payment allowed. Payment shall be included in the bid amount and payment for other items for which direct payment is made.

1. Contractor's expenses for but not limited to mobilization, job site office, storage facilities, traffic control and public safety devices, sanitary facilities, utilities and telephone.
2. Cleanup including day to day cleanup, and restoration of any damaged property.

3. Notification to residents adjacent to this project prior to start of construction, which would affect them.

4. Water required for compaction or dust control.

5. Miscellaneous removals and relocations not otherwise specified in the Technical Provisions.

6. Removal of tree roots six (6") inches or less in diameter to include disposal fees and man hours for removal. A Change Order will need to be submitted for any tree roots greater than six (6") diameter, or for any trees, walls, or fences that need to be removed & replaced.

7. Trimming of trees and bushes for the purpose of concrete replacement.

8. Relocation and/or replacement of plant material and relocation and/or repair of irrigation equipment to meet or exceed conditions existing prior to Contractor beginning work.

9. Scupper tops on the work location list do not have handrails. If an area with handrails needing replacement occurs, a Change Order can be submitted.

3.11 Supervision by Contractor

The Contractor will supervise and direct the work. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor will employ and maintain on the work a qualified supervisor or superintendent who shall have been designated in writing by the Contractor as the Contractor's representative at the site. The supervisor shall have full authority to act on behalf of the Contractor and all communications given to the supervisor shall be as binding as if given to the Contractor. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the work.

3.12 Protection of Finished or Partially Finished Work

The Contractor shall properly guard and protect all finished or partially finished work, including the use of steel plates if and when needed or town representative deems needed. and shall be responsible for the same until that phase is completed and accepted by the Town's Street Department. Estimate or partial payment of work so completed shall not release the Contractor from such responsibility but he shall turn over the entire work in full accordance with these specifications before final payment can be made.

3.13 Quality Control

All material shall be new and of the specified quality and equal to the accepted samples, if samples have been submitted. All work shall be done and completed in a thorough, workmanlike manner, notwithstanding any omission from these Contract Documents; and it shall be the duty of the Contractor to call the Street Superintendent's attention to apparent errors or omissions and request instruction before proceeding with the work.

The Street Superintendent may, by appropriate instruction, correct errors and supply omissions, which instructions shall be as binding upon the Contractor as though contained in the original contract documents.

At the option of the Street Superintendent, materials to be supplied under this Contract will be tested and/or inspected either at their place of origin or at the site of the work. The Contractor shall give the Street Superintendent written notification well in advance of actual readiness of materials to be tested and/or inspected at point of origin. Satisfactory tests and inspections at the point of origin shall not be construed as a final acceptance of the material nor shall it preclude re-testing or re-inspection at the site of the work.

3.14 Change Orders

In the event that significant changes in the scope of the work, and/or changes in the quantities due to contingencies of construction become necessary, such changes shall be made in accordance with Section 104 of General Conditions in the MAG Uniform Standard Specifications.

3.15 Notification of Property Owners

All property owners that may be affected by the proposed construction activities shall be notified of scope and duration of the construction activities by the Contractor prior to start of construction. Written notice will be given 48-72 hours in advance. Pre-construction general notifications to all residents required when going into subdivision for upgrade concrete work.

3.16 Access

Access shall be maintained to adjacent businesses at all times during construction. Where property has more than one point of access, no more than one access shall be restricted or closed at any one time. Access to adjacent private driveways shall be maintained during all non-working hours.

3.17 Measurement and Payment

Payment for various items in the bid will be made at the unit price bid and shall be compensation in full for furnishing all materials, labor, tools, equipment and appurtenances necessary to complete the work in a satisfactory manner as specified. Quantities are approximate and are used solely for the purpose of comparing proposals and establishing unit prices.

3.18 Phone Numbers

Town of Gilbert:

Pavement Maintenance Field Supervisor	Kory Parker	480-503-6478
Town of Gilbert Pavement Maintenance Technician	Jimmy Fitch	480-503-6472
Town of Gilbert Street Superintendent	Curtis Yardley	480-503-6428
Town of Gilbert Traffic Technician	Tad Fagerholm	480-503-6940

3.19 Traffic Control

Traffic control shall be done by the Contractor in accordance with the Manual on Uniform Traffic Control Devices (MUTCD) Traffic control plans shall be submitted to the Senior Traffic Technician for approval. Contractor shall be responsible for all traffic control costs & shall be included in the unit price.

The Contractor shall submit a Traffic Control Plan and Phasing Plan for review at the pre-construction meeting. The Traffic Control Plan(s) shall address all anticipated phases of construction. Included in this plan will be a list of all roads that service schools. All Traffic Control Plans shall be computer generated. Construction shall not commence without an approved Traffic Control Plan and permits to work in the rights-of-way.

All flaggers shall be properly trained and certified prior to their assignment on the project by the following acceptable certification sources: International Municipal Signal Association (IMSA), American Traffic Safety Services Association (ATSSA), and Local Technical Assistance Program (LTAP). Proof of certification shall be submitted with the Traffic Control Plan.

A uniformed, off-duty, Town of Gilbert Law Enforcement Officer is required at all major intersections and at other locations where restrictions are present, pursuant to Section 10-5 of the Gilbert Municipal Code.

3.20 Uniformed Police Officers

During the course of construction, it will be required to have at least two (2) uniformed, off-duty Town of Gilbert Law Enforcement Officers present to facilitate traffic control as needed. Uniformed police officers will be paid for by the Town. Scheduling will be done by Contractor and daily time sheets turned over to the Street Dept. representative. The payment for police officers will be straight reimbursement; contractor is not permitted to add mark up for off-duty officers. One **must call 48 hours in advance** and talk to **Lisa Gibbons at 480-262-0745**. You can also request officers on the Town web site. Cancellations of scheduled jobs with less than **24 hours** scheduled notice are subject to a **3 hour** minimum charge. The Town of Gilbert will not pay reimbursements on any foreseen scheduling problems that could have been avoided by contractor; unforeseen problems will be considered.

3.21 Temporary Barricades

Temporary barricades shall be regulated in accordance with the Manual of Uniform Traffic Control Devices. No additional payments will be made for temporary barricades, but it will be considered a subsidiary item to those items for which payment is made.

3.22 Access

At a minimum, local access to business, residences, schools, and parks shall be maintained at all times for local and emergency traffic. If only one driveway exists for access, then construction shall only impede one half of the driveway at a time. Access for refuse service shall be maintained at all alleys and commercial driveways. Contractor shall provide steel plates if necessary for access, at no additional cost, including when town representative deems so needed.

3.23 Location and Schedule

The work in this contract is primarily on arterial and collector streets in the Town of Gilbert. Contractor shall provide the work requested by the Town. The amount of work planned for Calendar Year (CY) 2015-2016 as described in Exhibit D Payment Schedule.

Some weekend work may be required due to heavy daytime traffic. Work shall commence upon issuance of the Notice to Proceed.

Approximate locations of concrete repair work are shown on plans that will be provided by the Town. Adjustment shall be as required and actual quantities may be more or less than indicated. Additional work locations will be provided by the Pavement Maintenance Technician and scheduled with the Contractor. The Town of Gilbert reserves the right to increase or decrease the scope of work without an adjustment in unit price.

3.24.2 Removal and Replacement Concrete curbing, Side walks ,Valley gutters , Driveways, Aprons and Ramps

Removal of existing improvements such as curb, gutter, sidewalk, AC pavement and other items necessary for the improvements shall conform to the provisions of Section 350 of the MAG Specifications. Portland cement concrete curbs, gutters, valley gutters, driveways, aprons, and sidewalks shall be saw-cut at match lines and removal per section 601.2.7. Asphalt concrete pavement designed for removal shall be cut in accordance with Section 356 of MAG Specifications. Backfill and compaction of all excavated areas shall be to the densities as prescribed in Section 301 of MAG Specifications. All surplus material shall be immediately hauled from the job site and disposed in accordance with Section 205 of the MAG Specifications. Payment shall be made at the contract unit prices per linear foot for removal and replacement of curb and gutter, per square foot for removal and replacement of sidewalk, valley gutter, aprons and driveways, per square yard for removal and replacement of A.C. pavement and shall be full compensation for the item complete.

Concrete curb and gutter shall conform to Section 340 and 725 of the MAG Specification. The sub grade shall be constructed and compacted true to line and grade as specified in section 301 of the MAG Specifications. All soft or unsuitable material shall be removed to a depth of not less than 6 inches below sub grade elevation and replaced with material suitable to Town inspector. The curb and gutter shall be measured in linear feet complete and in place true to line and grade and shall be full compensation for this item. Payment shall be made at the contract unit price per linear foot complete and in place.

Concrete Sidewalk and bike path shall conform to MAG Specifications. The sidewalk, bike path and slab shall be measured and paid for by the square foot and shall be based on site measurements taken by Town of Gilbert inspector. Any changes in field measurements will need to be approved by Town of Gilbert inspector. Concrete shall be Class B, conforming to the applicable requirements of Section 725.

Sub grade shall be constructed and compacted true to grades and lines as shown on plans and as specified in Section 301 of the MAG Specifications. All soft or unsuitable material shall be removed to the depth of not less than 6" below sub grade elevation and replaced with material satisfactory to the Town inspector. Finishing and curing of the concrete shall be done in a manor specified in Section 505 of the MAG Specifications.

Concrete valley gutters, driveways, and aprons shall conform to provisions of Sections 340 and 725 of the MAG Specifications.

The sub grade shall be constructed and compacted true to line and grade as specified in Section 301 of the MAG Specifications all soft or unsuitable material shall be removed to the depth of not less than 6" and replaced with material satisfactory to the inspector. Payment shall be made at the contract unit price per square foot complete in place.

Concrete sidewalk ramps shall conform to the provisions of Section 340 and 725 of the MAG Specifications, MAG Standard Details, 234, 235-1, 235-2, 235-3, 235-4, 235-5. To include detectable warning plates as determined by MAG spec section 340.3.6 Detectable warnings Payment shall be made at the contract unit price per square foot complete and in place.

Asphalt concrete replacement shall conform to Sections 321 and 336 of the MAG Specifications. The depth shall match or exceed the existing A.C. and A.B.C.

3.25 Insurance

Contractor shall purchase and maintain all insurance required by the contract attached to these Contract Documents.

3.26 Payment

Payment will be made on a monthly basis within thirty days after receipt of an itemized invoice from the Contractor, in the amount as specified in the bid, plus any amounts authorized by change order. Invoices shall not be submitted prior to completion of the work for that month.

3.27 Default

Town may terminate the Contract for any of the following reasons:

3.27.1 Failure to perform the work set forth in the Scope of Work.

3.27.2 Failure to maintain insurance coverage required by the Contract.

3.27.3 Failure to maintain the Bidder qualifications set forth in the contract documents.

EXHIBIT B
CONTRACTOR'S KEY PERSONNEL AND SUBCONTRACTORS

KEY PERSONNEL:
Denver Whetten, President
Ken Nelson, Vice President/CFO
Jesus Jaramillo

SUBCONTRACTORS: NONE

In accordance with the provisions of Section 108.2 of the "Maricopa Association of Governments Uniform Standard Specifications for Public Works Construction", the bidder shall provide the information listed below regarding proposed subcontractors. Failure to provide complete and accurate information may disqualify the bid.

NAME AND ADDRESS:	% OF TOTAL CONTRACT:	TYPE OF WORK:

EXHIBIT C
SCHEDULE OF SERVICES

Work is anticipated to commence in July 2015 and thereafter as-needed.

EXHIBIT D
PAYMENT SCHEDULE

A. Compensation

1. The consideration of payment to Contractor, as provided herein shall be in full compensation for all of Contractor's work incurred in the performance hereof, including offices, travel, per diem or any other direct or indirect expenses incident to providing the services.

Description **Amount**

MINOR CONCRETE REPAIRS - ARTERIALS & COLLECTOR STREETS

Revised 5/11/2015

PRICING

LN	DESCRIPTION	Unit	ESTIMATED QTY.	UNIT PRICE	TOTAL
1	R&R Rolled Curb & Gutter Per MAG Detail	LF	200	$ 24.00	$4,800.00
2	R&R Vertical Curb & Gutter Per MAG Detail	LF	3,307.83	$ 23.75	$78,567.58
3	R&R Single Curb Per MAG Detail	LF	200	$ 24.00	$4,800.00
4	R&R Ribbon Curb Per MAG Detail	LF	200	$ 24.00	$4,800.00
5	R&R Sidewalk Per MAG Detail	SF	17,291.55	$ 5.50	$95,103.53
6	R&R Valley Gutter Per MAG Detail	SF	841.52	$ 7.50	$6,311.40
7	R&R Apron Per MAG Detail	SF	3,748.89	$ 7.00	$26,242.23
8	R&R Handicap Ramp Per MAG Detail 235 (plus No. 4 reinf bars)	SF	18,698.55	$ 7.50	$140,239.13
9	R&R Driveway Entrance Per MAG Detail	SF	2,170.53	$ 5.75	$12,480.55
10	R&R Scupper Top Per MAG Detail	SF	246.50	$ 22.00	$5,423.00
11	R&R Top of Catch Basin	SF	467.31	$ 22.00	$10,280.82
12	R&R AC Pavement Per MAG Detail	SY	500	$ 7.00	$3,500.00
13	Concrete Pole Apron Behind Ramp, TOG Det. 103	SF	293.65	$ 5.50	$1,615.08

TRAFFIC CONTROL IS INCLUDED IN BID PRICE

TOTAL - THIS PAGE	$394,163.30
TOTAL - RESIDENTIAL WORK (MINOR CONCRETE)	$404,993.07
GRAND TOTAL	$799,156.37
[1]PARTICIPATING AGENCY:	All

NOTES

1. If unit price for the above items is different for each of the participating agencies in this solicitation, please provide separate Exhibit D (pricing) for each of the respective agencies, else unit pricing for each of the participating agencies shall be considered the same, regardless of contracting agency. Each participating agency will be responsible for their own execution and award of contract. Each of the municipal parties reserve the right to reject any or all bids, waive any informality in a bid or to withhold the award for any reason.
2. Determination of lowest responsive and responsible bidder shall be based on unit price given for the Town of Gilbert. Gilbert's estimated quantities for FY16 have been provided above for bidder's reference.
3. Do NOT include taxes in the above pricing. Applicable taxes will be determined and paid for upon completion of work.

MINOR CONCRETE REPAIRS - RESIDENTIAL					
					Revised 5/11/2015
PRICING					
ITEM	DESCRIPTION	Unit	ESTIMATED QTY.	UNIT PRICE	TOTAL
1	R&R Rolled Curb & Gutter Per MAG Detail	LF	1,158.98	$24.00	$27,815.52
2	R&R Vertical Curb & Gutter Per MAG Detail	LF	3,512.49	$23.50	$82,543.52
3	R&R Single Curb Per MAG Detail	LF	200	$24.00	$4,800.00
4	R&R Ribbon Curb Per MAG Detail	LF	514.24	$24.00	$12,341.76
5	R&R Sidewalk Per MAG Detail	SF	24,978.33	$5.00	$124,891.65
6	R&R Valley Gutter Per MAG Detail	SF	2,363.44	$7.50	$17,725.80
7	R&R Apron Per MAG Detail	SF	4,694.66	$6.50	$30,515.29
8	R&R Handicap Ramp Per MAG Detail 235 (plus No. 4 reinf bars)	SF	10,616.23	$7.00	$74,313.61
9	R&R Driveway Entrance Per MAG Detail	SF	1,239.07	$5.75	$7,124.65
10	R&R Scupper Top Per MAG Detail	SF	659.37	$22.00	$14,506.14
11	R&R Top of Catch Basin	SF	200	$22.00	$4,400.00
12	R&R AC Pavement Per MAG Detail	SY	573.59	$7.00	$4,015.13

TRAFFIC CONTROL IS INCLUDED IN BID PRICE

TOTAL - THIS PAGE $404,993.07

*PARTICIPATING AGENCY: All

NOTES

1. If unit price for the above items is different for each of the participating agencies in this solicitation, please provide separate Exhibit D (pricing) for each of the respective agencies, else unit pricing for each of the participating agencies shall be considered the same, regardless of contracting agency. Each participating agency will be responsible for their own execution and award of contract. Each of the municipal parties reserve the right to reject any or all bids, waive any informality in a bid or to withhold the award for any reason.
2. Determination of lowest responsive and responsible bidder shall be based on unit price given for the Town of Gilbert. Gilbert's estimated quantities for FY16 have been provided above for bidder's reference.
3. Do NOT include taxes in the above pricing. Applicable taxes will be determined and paid for upon completion of work.

B. Method of Payment

Invoices shall be on a form and in the format provided by Gilbert and are to be submitted to Gilbert's authorized representative.

EXHIBIT D
PRICING

MINOR CONCRETE REPAIRS - ARTERIALS & COLLECTOR STREETS					
PRICING					
LN	DESCRIPTION	Unit	ESTIMATED QTY.	UNIT PRICE	TOTAL
1	R&R Rolled Curb & Gutter Per MAG Detail	LF	200		
2	R&R Vertical Curb & Gutter Per MAG Detail	LF	3,307.83		
3	R&R Single Curb Per MAG Detail	LF	200		
4	R&R Ribbon Curb Per MAG Detail	LF	200		
5	R&R Sidewalk Per MAG Detail	SF	17,291.55		
6	R&R Valley Gutter Per MAG Detail	SF	841.52		
7	R&R Apron Per MAG Detail	SF	3,748.89		
8	R&R Handicap Ramp Per MAG Detail 235 (plus No. 4 reinf bars)	SF	18,698.55		
9	R&R Driveway Entrance Per MAG Detail	SF	2,170.53		
10	R&R Scupper Top Per MAG Detail	SF	246.50		
11	R&R Top of Catch Basin	SF	467.31		
12	R&R AC Pavement Per MAG Detail	SY	500		
13	Concrete Pole Apron Behind Ramp, TOG Det. 103	SF	293.65		

MINOR CONCRETE REPAIRS - RESIDENTIAL					
PRICING					
ITEM	DESCRIPTION	Unit	ESTIMATED QTY.	UNIT PRICE	TOTAL
1	R&R Rolled Curb & Gutter Per MAG Detail	LF	1,158.98		
2	R&R Vertical Curb & Gutter Per MAG Detail	LF	3,512.49		
3	R&R Single Curb Per MAG Detail	LF	200		
4	R&R Ribbon Curb Per MAG Detail	LF	514.24		
5	R&R Sidewalk Per MAG Detail	SF	24,978.33		
6	R&R Valley Gutter Per MAG Detail	SF	2,363.44		
7	R&R Apron Per MAG Detail	SF	4,694.66		
8	R&R Handicap Ramp Per MAG Detail 235 (plus No. 4 reinf bars)	SF	10,616.23		
9	R&R Driveway Entrance Per MAG Detail	SF	1,239.07		
10	R&R Scupper Top Per MAG Detail	SF	659.37		
11	R&R Top of Catch Basin	SF	200		
12	R&R AC Pavement Per MAG Detail	SY	573.59		

Note: Unit Prices SHALL <u>INCLUDE</u> traffic control.

GILBERT, IN ITS DISCRETION MAY ORDER EXTRA WORK, ALTER OR DELETE ANY PORTION OF THE WORK. THE TOWN IN ANY RENEWAL CONTRACT WILL DESIGNATE THE NEW ROADS AND AREAS FOR THE WORK TO BE PERFORMED. THE ABOVE MEASUREMENTS ARE APPROXIMATE; FINAL PAYMENT WILL BE MADE FROM THE FIELD MEASUREMENTS AFTER COMPLETION OF LOCATION(S)

NOTE: ADDITIONAL QUANTITIES MAY BE ADDED TO THE ABOVE QUANTITIES CONTINGENT UPON TOWN COUNCIL ADOPTION OF THE FISCAL YEAR 2016 BUDGET ANTICIPATED IN JUNE 2015.

EXHIBIT D1
CONTRACTOR'S AFFADAVIT
REGARDING SETTLEMENT OF CLAIMS

Contract No./Name _____

To the Town of Gilbert, Arizona

This is to certify that all lawful claims for materials, rental of equipment and labor used in connection with the performance of the above service, whether by subcontractor or claimant, in person, have been duly discharged.

The undersigned, for the consideration of $ _____, as set out in the final pay estimate, as full and complete payment under the terms of the Contract, hereby waives and relinquishes any and all further claims or right of lien under, in connection with, or as a result of the above described project. The undersigned further agrees to indemnify and save harmless the Town of Gilbert against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever which said Town may suffer arising out of the failure of the undersigned to pay for all labor, performance and materials furnished for the performance of said project.

Signed and dated at _____, this _____ day of _____, 20_____.

_____
Contractor

_____
By

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing instrument was subscribed and sworn to before me this _____ day of _____, 20____.

_____
Notary Public

_____
My Commission Expires

Services IFB
Form No. 1.3.4
Revised August 2, 2013

EXHIBIT E
CHANGE ORDER

CHANGE ORDER NO. _____

Distribution: GILBERT [ ]
CONTRACTOR [ ]
OTHER [ ]

PROJECT: _____ DATE:
OWNER: Town of Gilbert
CONTRACTOR:
AGREEMENT DATED:

CHANGES: The Agreement is changed as follows:

Not valid until signed by both Gilbert and Contractor.
Signature of Contractor indicates acceptance.

The original compensation was _____

Net change by previously authorized Change Orders_____

The compensation prior to this Change Order was _____

The compensation will be increased by this Change Order in the amount of
_____

The new compensation under the Agreement including this Change Order will be
_____

The Contract Time will increase by _____

ACCEPTANCE STATUS:

_____	_____
Contractor	Town of Gilbert
By _____	By _____
Date _____	Date _____

Services IFB
Form No. 1.3.4
Revised August 2, 2013

CONTRACT BOND

STATUTORY PERFORMANCE BOND PURSUANT TO
TITLE 34, CHAPTER 2, ARTICLE 2, OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the CONTRACT amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter "Principal"), and _____, a corporation organized and existing under the laws of the State of _____, duly licensed in and holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the department of Insurance pursuant to Title 20, Chapter 2, Article 1, (hereinafter "Surety"), as Surety are held and firmly bound unto Gilbert, County of Maricopa, State of Arizona in the amount of _____ Dollars ($_____), for the payment of which, the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written CONTRACT with _____ (municipality), entitled _____.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the CONTRACT during the original term of the CONTRACT and any extension of the CONTRACT with or without notice to the Surety, and during the life of the guaranty required under the CONTRACT, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the CONTRACT that may hereinafter be made, notice of which modifications to the Surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this Agreement.

The prevailing party in a suit on this Bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

This Bond shall not be executed by an individual surety or sureties, even if the requirements of A.R.S. Section 7-101 are satisfied.

Witness our hands this _____ day of _____, 20___.

_____
PRINCIPAL SEAL
By _____

Address of Surety:

_____ _____
SURETY SEAL
By _____ _____

Address of Agent:

_____ _____
AGENT OF RECORD
By _____ _____
*Attach Power of Attorney

LABOR AND MATERIALS BOND
STATUTORY PAYMENT BOND PURSUANT TO
TITLE 34, CHAPTER 2, ARTICLE 2, OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the CONTRACT amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter "Principal"), as Principal and _____, a corporation organized and existing under the laws of the State of _____, duly licensed in and holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, (hereinafter "Surety"), as Surety are held and firmly bound unto Gilbert, County of Maricopa, State of Arizona in the amount of _____ Dollars ($_____), for the payment of which the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written CONTRACT with Gilbert, entitled _____.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all monies due to all persons supplying labor or MATERIALS to the Principal or the Principal's SUBCONTRACTORS in the prosecution of the WORK provided for in the CONTRACT, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this Agreement.

The prevailing party in a suit on this Bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

This Bond shall not be executed by an individual surety or sureties, even if the requirements of A.R.S. Section 7-101 are satisfied.

Witness our hands this _____ day of _____, 20___.

_____
PRINCIPAL SEAL
By _____

Address of Surety:

_____
SURETY SEAL
By _____

_____

_____

Address of Agent:

_____
AGENT OF RECORD
By _____

_____

_____

*Attach Power of Attorney

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Ryan Blair, Project Manager, 480-503-6906

MEETING DATE: June 25, 2015

SUBJECT: Approval of Job Order Contract Task Order 43 with CS Construction for the ST148 Project

STRATEGIC INITIATIVE: Infrastructure

This project improves the Streetlight System and safety of the traveling public and Gilbert's citizens

RECOMMENDED MOTION

A motion to approve Job Order Contract (JOC) - Task Order No. 43 with CS Construction, Inc. for the Neighborhood Streetlight Rehabilitation Project, CIP No. ST148, contract no. 2013-7003-0180, in an amount not to exceed $996,264.25 and authorize the mayor to execute the required documents.

BACKGROUND/DISCUSSION

This project is included in the FY 2016-25 Capital Improvement Plan (CIP) and provides for the removal and replacement of deteriorating streetlight poles with the Town's current streetlight standard. The scope related to this Task Order No. 43, the 4th Task Order to be recommended for approval under CIP Project ST148, includes the following:

- Collector streets: remove and replace 227 collector and residential streetlight poles at various locations in Val Vista Lakes Subdivision.

The overall scope of ST148 included removing and replacing approximately 700 aging streetlights in the Islands subdivision, as well as the arterial streetlights where cracks were identified. In May 2013, staff conducted a Request for Qualifications (RFQ) for a JOC on this

project. Upon review of the RFQs and the Technical Submittal, CS Construction was selected as the most qualified and competitive bidder for this project.

On August 1st, 2013, Council approved a Master JOC with CS Construction, Inc. (CS). This JOC authorizes staff to execute individual Task Orders pursuant to the scope of services and unit prices set forth in the Master JOC Contract.

This Task Order encompasses work in the Val Vista Lakes Subdivision. Val Vista Lakes subdivision has been ranked No. 2 for deteriorated poles falling over. This will be the second task order issued for Val Vista Lakes.

The Contract was reviewed for form by Susan Goodwin, Special Counsel.

FINANCIAL IMPACT

This project is included in the FY 2016-25 CIP as Project No. ST148 and is funded through the Streets Fund. The proposed Task Order No. 43 is for $996,264.25. The total FY16 construction services budget for this project is $1,005,000.

Summary of Contract Activity

JOC – Task Order No. 43	$996,264.25	06/25/15Approval Pending

Project Accounting Codes: ST148-7540-8103

The financial impact was reviewed by Cris Parisot, Management and Budget Analyst

STAFF RECOMMENDATION

Staff has reviewed the cost associated with this work and finds that it meets Gilbert's expectations for the services, and recommends approval of the JOC – Task Order No. 43 services.

Respectfully submitted,

Ryan Blair
Project Manager

Approved By	Approval Date
Eliana Hayes	6/10/2015 1:24 PM
Kenneth Morgan	6/11/2015 9:17 AM
Jack Vincent	6/15/2015 11:31 AM
Cris Parisot	6/15/2015 9:01 AM

Town of Gilbert
JOC - Job Order Task No. 43
JOC Contract
for
Street Light Rehabilitation

Date:	05/28/2015
Project Numbers:	ST148
Contract No:	2013-7003-0180
Traffic Signal Package No.:	JOC - Task No.43
Contractor Name:	CS Construction, Inc.
Contractor Address:	22023 North 20th Avenue Phoenix, Arizona 85027

Location and Scope of Work:

1. Collector streets:
   1.1 Install 227 Collector/Residential Street Light Poles and foundations in Val Vista Lakes.

2. Cost difference of 227 of the 73 W GE ERS1 LED Light fixtures

3. Town Controlled Allowance ($10,000)

Total Cost for Task Order 43: **$996,264.25**
Cost estimate attached under "Cost Breakdown".
Completion Date:12/31/2015 115 working days from the day of issuance of NTP.

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: 5/29/15
Ross T. Genenbacher – CS Construction, Inc.

Approved By: 6/1/15
Authorized Town Representative (Ryan Blair)

Approved By:
John Lewis – Town of Gilbert

Special Conditions

For

Street Light Rehabilitation

GILBERT
ARIZONA

April 2013

Town of Gilbert

Registered Professional Engineer (Civil)
CERTIFICATE NO.
47951
EDGAR
MEDINA
Date Signed 7/22/13
ARIZONA, U.S.A.
Expires 6/30/14

Table of Contents

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480.1 DESCRIPTION OF WORK: 1

480.2 ANTICIPATED LOCATIONS AND PHASING: 1

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480.4.4 Painting 2

APPENDIX A STREET LIGHT LOCATION EXHIBITS

APPENDIX B STREET LIGHT POLE DETAILS

SECTION 480 - STREET LIGHTS

Add this section to the MAG Standard Specifications:

480.1 DESCRIPTION OF WORK:

The work under this section shall be to furnish and install street lights complete of the type found on arterial, collector and residential streets in accordance with the Town of Gilbert Standard Details and these specifications. Items of work shall also include the removal of existing street lights in some locations and the preparation and painting of existing street lights.

480.2 ANTICIPATED LOCATIONS AND PHASING:

Tentative locations are as follows:

Phase I:

Approximately 34 median arterial street lights located along Higley Road between Queen Creek and Ocotillo Roads and street lights along Queen Creek Road between the Eastern Maricopa Floodway and approximately 200 feet east of Higley Road (street lights were removed as part of Town of Gilbert Project ST052).

Approximately 172 median arterial street lights at various locations per attached Exhibit No. I.

Approximately 27 behind curb arterial street lights at various locations per attached Exhibit No. 2.

Phase II:

Approximately 114 collector street lights at various locations per attached Exhibit No. 2.

Phase III:

Approximately 386 residential street lights at various locations per attached Exhibit No. 2.

Locations, phases, installation priorities and quantities are for reference and information only. They are subject to change based on final coordination and determination by the Town of Gilbert.

480.3 COMPLETION OF WORK:

The length of time for the completion of work for the various phases shall be as follows:

Phase I shall be completed within 4 months from Notice to Proceed (NTP).

Phase II shall be completed within 3 months from NTP.

Phase III shall be completed within 6 months from NTP.

Each phase will have separate NTP.

480.4 OTHER REQUIREMENTS:

480.4.1 Completion Time and Identification

Once the existing street light is removed the Contractor shall install new energized street light complete within 4 calendar days.

Contractor shall provide Global Positioning System (GPS) coordinates for every installed street light pole.

480.4.2 Salvage

Contractor shall salvage all removed luminaries and dispose of all poles that are removed.

Contractor shall deliver all salvaged luminaries to the Public Works Facility at 4760 South Greenfield Road, Gilbert, AZ 85297.

480.4.3 Power Connection

Contractor shall provide new wire from j-box to pole for every pole.

J-boxes shall be installed at every location unless there is an existing j-box that can be used.

J-boxes shall be provided by the Contractor.

Poles with no j-box shall be powered down by the Contractor in coordination with the Town of Gilbert and/or the appropriate utility agency.

Powering down poles with j-boxes prior to removal shall be done by the Contractor.

480.4.4 Painting

This specification can be used for all galvanized and previously painted poles.

Initial Coating System Application

Surface Preparation: Scarify existing surface to remove any sheen. This can be accomplished by several different methods such as an acid etching process or heavy grit sand paper. Be careful to check pH levels after any acid etching as this may cause adhesion problems. A test patch can also be applied to verify adhesion on any previously painted poles.

Prime Coat: Tnemec Series N27 (desired color) F.C. Typoxy, 1 coat, 3.0-5.0 mils dry film thickness (DFT).

Finish Coat: Tnemec Series 73-IN03 (dark bronze) Endura-Shield, 1 coat, 2.0-3.0 mils DFT.

Top Coat: Tnemec Series 76-76 (clear, high gloss) Endura-Clear, 1 coat, 1.0-1.5 mils DFT.

Field Touch-Up (after any period of exterior exposure).

Surface Preparation: Scarify existing surface with a heavy grit sand paper to provide proper profile. All surfaces must be clean, dry, sound and free of all oil, grease and other contaminants.

Finish Coat: Tnemec Series 73-IN03 (dark bronze) Endura-Shield, 1 coat, 2.0-3.0 mils DFT.

Top Coat: Tnemec Series 76-76 (clear, high gloss) Endura-Clear, 1 coat, 1.0-1.5 mils DFT.

APPENDIX A OF SPECIAL CONDITIONS
STREET LIGHT LOCATION EXHIBITS

APPENDIX A

OF SPECIAL CONDTIONS

ARTERIAL Streetlight Poles

	Location	Behind Curb/Medien	Pole Number
1	Ocotillo-Higley to Recker	South	G1259480
2		South	G1259482
3		South	G1259484
4		South	G1259488
5		South	G1259494
6		South	G1259498
7		North	G1259465
8		North	G1259467
9		North	G1259473
10		North	G1259477
11		North	G1259479
12		North	G1259481
13		North	G1259483
14		North	G1259485
15		North	G1259487
16		North	G1259493
17		North	G1259495
18		North	G1259497
19		North	G1259499
20	Val Vista- Riggs to Ch. Heights	Center	G1256861
21		Center	G1256867
22		Center	G1256869
23	Higley- Riggs to Ch. Heights	Center	G1221261
24		Center	G1221563
25		Center	G1221567
26		Center	G1221571
27		Center	G1221577
28		Center	G1221581
29		Center	G1221583
30		Center	G1221585
31		Center	G1213615
32		Center	G1213617
33		Center	G1213619
34		Center	G1213629
35	Riggs- 18th St to Higley	North	G1235188
36	Ch. Heights- Higley to Greenfield	North	G1250892
37		North	G1250891
38		North	G1250889
39		North	G1250888
40		North	G1250887
41	Queen Creek- Higley to Greenfield	Center	G1261825
42		Center	G1261822
43	Power- Queen Creek to Germann	Center	G1201982
44		Center	G1201980

	Power- Queen Creek to Germann (CONTINUED)		
45		Center	G1201978
46		Center	G1201976
47		Center	G1201974
48		Center	G1200888
49		Center	G1200886
50		Center	G1200882
51		Center	G1200880
52		Center	G1200878
53		Center	G1200874
54		Center	G1200872
55		Center	G1200860
56		Center	G1200858
57		Center	G1200856
58		Center	G1200854
59	Pecos- Recker to Power	Center	G1230303
60		Center	G1230307
61		Center	G1230313
62		Center	G1230315
63		Center	G1244371
64		Center	G1244369
65		Center	G1244361
66		Center	G1244353
67		Center	G1244351
68		Center	G1244349
69		Center	G1244347
70		Center	G1244343
71		Center	G1244341
72		Center	G1244339
73		Center	G1244337
74		Center	G1244333
75		Center	G1244331
76		Center	G1244327
77		Center	G1244325
78	Germann- Ranch House to Higley	Center	G227070
79		Center	G211089
80		Center	G211087
81		Center	G211085
82		Center	G211079
83		Center	G211073
84		Center	G1230537
85		Center	G1230527
86		Center	G1183774
87	Germann- Higley to Greenfield	Center	G261366
88		Center	G261350
89		Center	G261348
90		Center	G261346
91		Center	G261344
92	Pecos- Lindsay to Val Vista	South	G1196714
93	San Tan Vill. Pkwy. - Ray to Williams Field	Center	G1227382
94		Center	G1227384
95		Center	G1227392
96		Center	G1227394

	San Tan Vill. Pkwy. - Ray to Williams Field (CONT)		
97		Center	G1227409
98		Center	G1227411
99		Center	G1227414
100		Center	G1227426
101		Center	G1227434
102		Center	G1227437
103		Center	G1227446
104		Center	G1227449
105		Center	G1227451
106		Center	G1227457
107		Center	G1227467
108	San Tan Vill. Pkwy. - Williams Field To Pecos	Center	G1227476
109		Center	G1227478
110		Center	G1227486
111		Center	G1227492
112		Center	G1227559
113		Center	G1227561
114	Market - Pecos to Williams Field	Center	G1227543
115		Center	G1227541
116		Center	G1227539
117		Center	G1227537
118		Center	G1227529
119		Center	G1227525
120		Center	G1227966
121	Ray - Greenfield to Val Vista	Center	G1232179
122		Center	G1218070
123		Center	G1218068
124		Center	G1218064
125		Center	G1218062
126		Center	G1218060
127		Center	
128	Val Vista - Williams Field to Pecos	Center	G1238571
129		Center	G1238575
130	Val Vista - Pecos to Germann	Center	G1260239
131	Ray - Recker to Power	Center	G1196445
132		Center	G1224087
133	Ray - Ray to Warner	East	G1196427
134	Mercy Road- Pecos to Val Vista	Center	G1234100
135		Center	G1234098
136		Center	G1234094
137		Center	G1234092
138		Center	G1234090
139		Center	G1234086
140		Center	G1234082
141		Center	G1234076
142		Center	G1234074
143		Center	G1234068
144		Center	G1235906
145		Center	G1235902

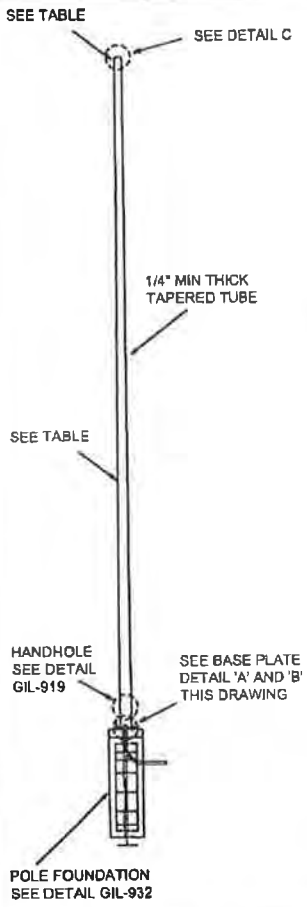
	Mercy Road- Pecos to Val Vista (CONT)		
146		Center	G1235898
147		Center	G1235896
148		Center	G1235894
149		Center	G1235886
150	Higley - Warner to Elliot	East	G1210853
151		East	G1210854
152		East	G1210855
153		Center	G1229582
154		Center	G1229580
155		Center	G1229578
156		Center	G1228572
157		Center	G1228568
158		Center	G1228566
159		Center	G1228564
160	Recker- Elliot to Guad	Center	G1244086
161		Center	G1244081
162		Center	G1244079
163		Center	G1244077
164		Center	G1244073
165		Center	G1244071
166		Center	G1244067
167		Center	G1244065
168	Elliot- Higley to Recker	Center	G225390
169		Center	G1254389
170		Center	G1254391
171		Center	G1254393
172		Center	G1254395
173		Center	G1254397
174		Center	G1254403
175		Center	G1254405
176		Center	G1254407
177		Center	G1254408
178		Center	G1254411
179		Center	G1254417
180		Center	G1254419
181		Center	G1254421
182		Center	G1254425
183		Center	
184		Center	
185	Elliot- Greenfield to Higley	Center	G1229535
186		Center	G1229543
187		Center	G1229545
188		Center	G1229547
189		Center	G1229553
190		Center	G1229555
191		Center	G1229557
192		Center	G1229559

APPENDIX A
OF SPECIAL CONDTIONS

Collector and Residential Streetlight Poles		
	Subdivision	# of Street Lights
1	Martinique III @ the Islands	9
2	Island Patio Homes Amended (A)	19
3	Island Patio Homes Amended (B)	15
4	Tres Vistas at the Islands	5
5	Shores at the Islands Unit 5	2
6	Shores at the Islands Unit 1	2
7	Shores at the Islands Units 2, 3 and 4	8
8	Lake Mirage	6
9	Desert Shores at the Islands	9
10	Bayview	25
11	Harbor Point	15
12	Windhaven	13
13	Catalina Bay at the Islands Unit IV	9
14	Costain at The Islands Replat	16
15	Islands Parcel 30B	2
16	Charter Point at the Islands	5
17	Newport	22
18	Bella Lago	0
19	Seaport Village	6
22	Parcel 31 at The Islands Amended	12
23	Bayview Unit II	27
24	Windhaven Unit III	49
25	Trade Winds at The Islands	18
26	Martinque II at the Islands	12
27	Merit Homes at the Islands	13
28	Catalina Bay at the Islands	14

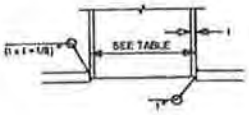
29	Catalina Bay at the Islands Unit II	8
30	Catalina Bay at the Islands Unit III	11
31	Key Harbor at the Islands	16
32	Windhaven Unit II Amended	18
	COLLECTORS	
33	Islands Drive Loop- Warner South	41
34	South Islands Dr. Loop- Elliot to Warner	66
35	West Mesquite Dr.	7
	Total	**500**

APPENDIX B OF SPECIAL CONDITIONS
STREET LIGHT POLE DETAILS

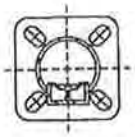


DATA TABLE

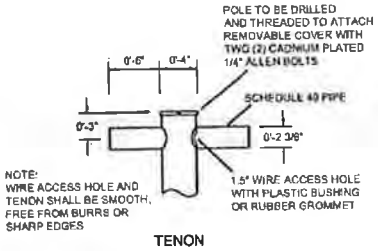
LOCATION	LUMINAIRE MTG. HGT.	POLE HGT	HANDHOLE HGT	BASE O.D. PIPE	TOP O.D. PIPE	MAST ARM LENGTH	ARM RISE	GROUNDING DETAIL	FOUNDATION TYPE
RESIDENTIAL & COLLECTOR	32'-0"	32'-0"	1'-0"	0'-8 1/2"	0'-4"	TENON & BOX		GIL-941 GIL-942	GIL-932
MINOR ARTERIAL	40'-0"	32'-0"	1'-0"	0'-8 1/2"	0'-4"	SEE NOTE 8	8'-0"	GIL-941 GIL-942	GIL-932
MAJOR ARTERIAL	40'-0"	40'-0"	1'-6"	0'-9 5/8"	0'-4"	TENON & BOX		GIL-941 GIL-942	GIL-932



BASE PLATE DETAIL 'A'



BASE PLATE DETAIL 'B'

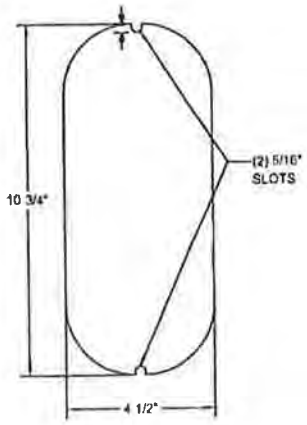


TENON DETAIL 'C'

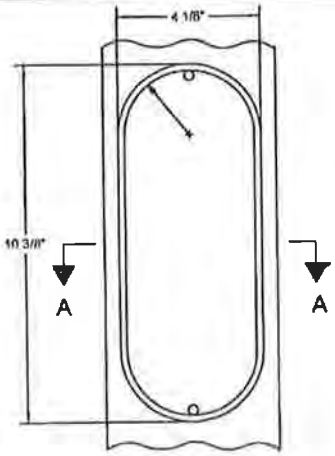
NOTES:

1. ALL WELDS SHALL BE GROUND SMOOTH, AND ALL BURRS AND SHARP EDGES SHALL BE REMOVED PRIOR TO PAINTING
2. ALL HARDWARE IS TO BE FURNISHED WITH POLE. HARDWARE SHALL BE CORROSION RESISTANT.
3. SURFACES TO BE PAINTED SHALL BE CLEANED OF ALL RUST, SCALE, FOREIGN MATTER, OIL AND GREASE
4. PRIMER COAT IS TO BE TNEMEC SERIES N27 (DARK BRONZE) F.C. TYPOXY, OR APPROVED EQUIVALENT, APPLIED TO ENTIRE POLE. MINIMUM DRY COAT THICKNESS TO BE 3-5 MILS.
5. FINISH COAT SHALL BE TNEMEC SERIES 73-IN03 (DARK BRONZE) ENDURA-SHIELD, OR APPROVED EQUIVALENT. MINIMUM DRY COAT THICKNESS TO BE 2-3 MILS.
6. INSTALL GROUNDING CONNECTOR, ILSCO TA6-S OR EQUIVALENT WITH 1/4" ROUNDHEAD ALLEN DRIVE MACHINE SCREW AND NUT
7. SEE DETAIL GIL-919 FOR REINFORCED HAND HOLE DETAIL.
8. BASE PLATE SHALL BE 1" X 12" X 12" WITH 1-1/4" ELONGATED HOLES ON 12-1/2" B.C.
9. SEE DETAIL GIL-921 FOR MINOR ARTERIAL MAST ARM LENGTH.
10. ALL SUBMITTALS SHALL BE SEALED BY A LICENSED PROFESSIONAL ENGINEER.
11. A STAINLESS STEEL TAG SHALL BE PERMANENTLY ATTACHED TO THE POLE ABOVE THE HAND HOLE STATING THE MANUFACTURER'S NAME AND DATE MANUFACTURED

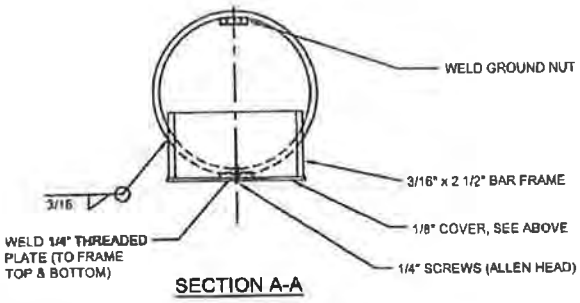
	STANDARD DETAIL	STREET LIGHT STANDARD ROUND TAPERED POLE	APPROVED Michael A. Gillespie TCM. ENGINEER 3-18-13 DATE	DETAIL NO. GIL-901



HANDHOLE COVER
(TUBE & FRAME NOT SHOWN)



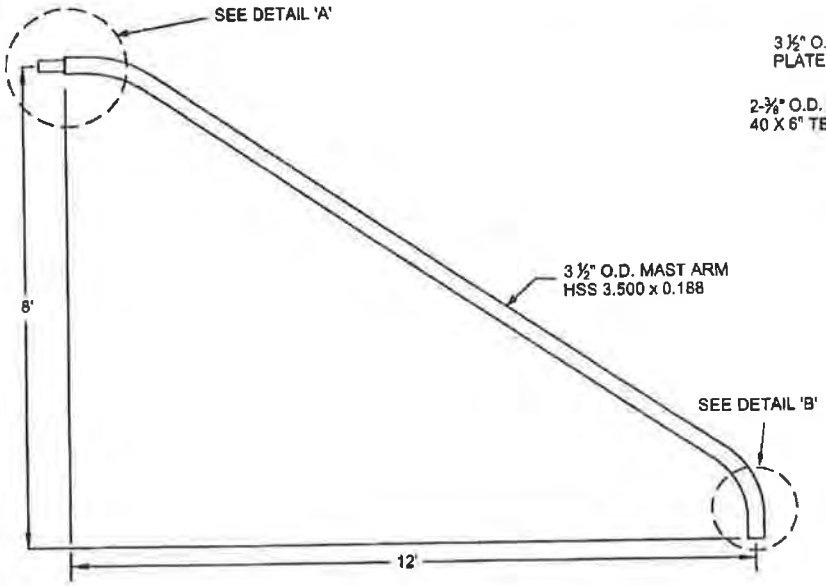
POLE ELEVATION

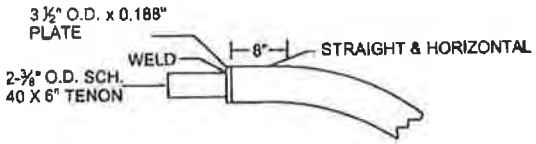


SECTION A-A

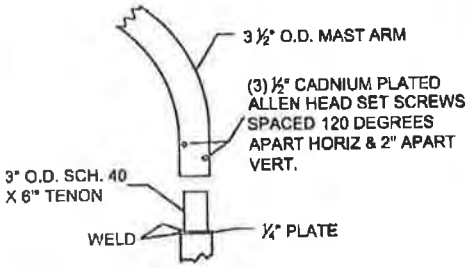
*SEE POLE DETAIL FOR HEIGHT OF HAND HOLE ABOVE FINISHED GRADE.

GILBERT	STANDARD DETAIL	POLE HANDHOLE DETAIL 4 1/8" x 10 3/8" REINFORCED	APPROVED Michael A. Gillespie TOWN ENGINEER 5-18-18 DATE	DETAIL NO. GIL-919





DETAIL 'A'

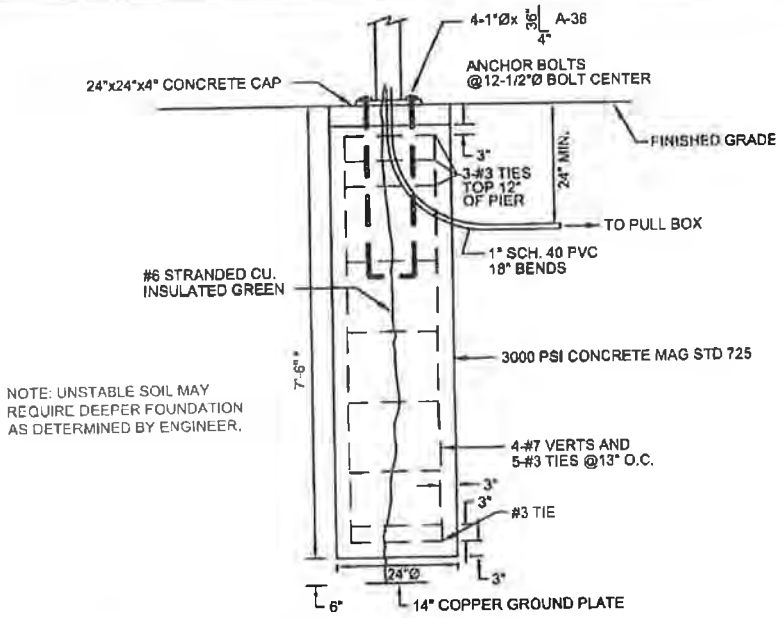


DETAIL 'B'

NOTES:

1. ALL WELDS SHALL BE GROUND SMOOTH AND ALL BURRS AND SHARP EDGES SHALL BE REMOVED PRIOR TO PAINTING
2. SURFACES TO BE PAINTED SHALL BE CLEANED OF ALL RUST, SCALE, FOREIGN MATERIAL OIL AND GREASE.
3. PRIMER COAT SHALL BE TNEMEC SERIES N27 (DARK BRONZE) F.C. TYPOXY OR APPROVED EQUIVALENT.
4. FINISH COAT SHALL BE TNEMEC 73-IN03 (DARK BRONZE) ENDURA-SHIELD OR APPROVED EQUIVALENT
5. USE WITH MINOR ARTERIAL ROUND POLE AS APPROVED TO MATCH EXISTING.SEE DETAIL NO. GIL-901

	STANDARD DETAIL	12' x 8' HIGH RISE ARM	APPROVED Michael A. Gillespie TOWN ENGINEER 3-18-13 DATE	DETAIL NO GIL-921



NOTE: UNSTABLE SOIL MAY REQUIRE DEEPER FOUNDATION AS DETERMINED BY ENGINEER.

NOTES:

1. REINF A615 GRADE 60 EXCEPT #3 GRADE 40.
2. TOP OF FOUNDATION SHALL BE FINISHED WITH A SMOOTH SURFACE WITH A 1/2" ROUND EDGE.
3. POLE FOUNDATION SHALL CURE FOR 72 HOURS BEFORE INSTALLING LIGHT POLES.
4. ALL FINISHED POLE FOUNDATIONS SHALL BE AT SIDEWALK GRADE OR TOP OF CURB WHEN IN MEDIAN.
5. ANCHOR BOLTS SHALL BE FULLY GALVANIZED PER ASTM A-135.
6. CONCRETE PLACEMENT SHALL FOLLOW MAG SPECIFICATIONS.
7. DO NOT FREEFALL CONCRETE IN EXCESS OF 5'.
8. A VIBRATOR SHALL BE USED TO DISTRIBUTE CONCRETE & REDUCE AIR VOIDS.
9. MAXIMUM SLUMP SHALL NOT EXCEED 5".
10. CAP SHALL BE POURED SEPARATELY WITH MIN 2500 PSI CONCRETE, MAG STD 725.
11. FOR FUSING & GROUNDING SEE DETAILS GIL-941 & GIL-942.
12. *DEPTH OF FOUNDATION SHALL BE VERIFIED BY INSPECTOR PRIOR TO POURING.

	STANDARD DETAIL	CONCRETE FOUNDATION DETAIL	APPROVED Michael A. Villegas TOWN ENGINEER 3-18-13 DATE	DETAIL NO. GIL-932

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Ryan Blair, Project Manager, 480-503-6906

MEETING DATE: June 25, 2015

SUBJECT: Approval of Job Order Contract (JOC) Task Order No. 40 with CS Construction for CIP No. TS176 Traffic Signal

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's strategic initiative for Infrastructure as it improves the traffic signal system to meet the needs of Gilbert's citizens.

RECOMMENDED MOTION

- A motion to approve the Job Order Contract (JOC) - Task Order No. 40 with CS Construction, Inc. for the Traffic Signal at Seville Boulevard and Higley Road, CIP No. TS176, Contract No. 2014-7008-0240, in an amount not to exceed $208,311.10 and;

- Authorize a FY 2016 CIP contingency transfer in the amount of $30,000, with the use of the Signal SDF Fund as the designated revenue source, and authorize the mayor to execute the required documents.

BACKGROUND/DISCUSSION

This project is included in the FY 2015-19 Capital Improvement Plan (CIP) and provides for the design and installation of the traffic signal at Seville Boulevard and Higley Road.

Upon review of the level of scope associated with this type of infrastructure replacement, it was determined that Job Order Contracting (JOC) delivery method will be utilized for this project.

At the August 1st, 2013 Council meeting, the Master Job Order Contract with CS Construction was approved, which authorizes staff to execute individual Task Orders pursuant to the scope of services and unit prices set forth in the master contract.

The scope for this JOC Task Order No.40 includes a complete traffic signal installation at the intersection of Seville Boulevard and Higley Road and a left turn lane off of Seville Boulevard. During the pre-scoping with the Traffic Engineer it was determined that a left turn lane would be needed off of Seville Boulevard to help with the traffic flow of this intersection which was not captured in the original budget of this project. For this reason, we are asking for contingency funds to cover the cost of the left turn lane.

The Contract was reviewed for form by Susan Goodwin, Special Counsel.

FINANCIAL IMPACT

This project is included in the FY 2015-19 CIP as Project No. TS176 and is funded through Signal SDF Funds. The proposed Task Order No. 40 in the amount of $208,311.10 is not within the remaining FY15 construction project budget. Approval of this contract requires an FY 2016 CIP Contingency Transfer in the amount of $30,000 and the use of the Signal SDF Fund as the designated revenue source.

Project Accounting Codes: TS176-7540-8152 130201.70080176.6403

The financial impact was reviewed by Cris Parisot, Management and Budget Analyst

STAFF RECOMMENDATION

Staff has reviewed the cost associated with this work and finds that they meet Gilbert's expectations for the services, and recommends approval of the Job Order Contracting – Task Order No. 40 services.

Respectfully submitted,

Ryan Blair
Project Manager

Approved By	Approval Date
Eliana Hayes	6/10/2015 4:46 PM
Kenneth Morgan	6/11/2015 9:19 AM
Jack Vincent	6/15/2015 11:30 AM
Cris Parisot	6/15/2015 9:41 AM

Town of Gilbert
JOC - Job Order Task No. 40
JOC Contract
for
Street Light Rehabilitation

Date:	06/2/2015
Project Numbers:	TS176
Contract No:	2013-7003-0180
Traffic Signal Package No.:	JOC - Task No.40
Contractor Name:	CS Construction, Inc.
Contractor Address:	22023 North 20th Avenue Phoenix, Arizona 85027

Location and Scope of Work:

1. To Install a Traffic Signal at Seville Boulevard and Higley Road

2. Town Controlled Allowance ($5,000)

Total Cost for Task Order 40: **$208,311.10**
Cost estimate attached under "Cost Breakdown".
Completion Date: 90 working days from the day of issuance of NTP.

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: _____ 6/3/15
Ross T. Genenbacher – CS Construction, Inc.

Approved By: Ryan Blair 6/3/15
Authorized Town Representative (Ryan Blair)

Approved By: _____
John Lewis – Town of Gilbert

PROPOSAL #3 - OPTION B

CS CONSTRUCTION, INC.

22023 N. 20TH AVE., SUITE A
PHOENIX, AZ 85027
CONTACT: ROSS GENENBACHER
PHONE: 623-889-7650
FAX: 623-889-7651

TO:	TOWN OF GILBERT	PROJECT NAME:	HIGLEY & SEVILLE
ATTN:	RYAN BLAIR	PROJECT NO.	TS176
BID DATE:	JUNE 2, 2015	TASK ORDER:	40

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
5	Remove Existing Pull Box	4.00	EA	75.00	300.00
6	Relocate Street Light	1.00	EA	1,940.40	1,940.40
7	Relocate Junction Box	1.00	EA	300.00	300.00
14	Install Tesco Meter Pedestal & Foundation	1.00	EA	3,603.60	3,603.60
15	Foundation (A Pole)	1.00	EA	693.00	693.00
16	Foundation (W Pole)	1.00	EA	1,940.40	1,940.40
17	Foundation (Q Pole)	1.00	EA	1,940.40	1,940.40
18	Foundation (K Pole)	1.00	EA	1,940.40	1,940.40
19	Foundation (J Pole)	1.00	EA	1,940.40	1,940.40
20	Foundation (Push Button Post)	3.00	EA	415.80	1,247.40
21	Install A Pole (12')	1.00	EA	554.40	554.40
22	Install W Pole	1.00	EA	1,247.40	1,247.40
23	Install Q Pole	1.00	EA	1,247.40	1,247.40
24	Install K Modified Pole	1.00	EA	1,247.40	1,247.40
25	Install J Modified Pole	1.00	EA	1,247.40	1,247.40
26	Install Push Button Post	3.00	EA	415.80	1,247.40
27	Install 30' SMA	2.00	EA	831.60	1,663.20
28	Install 55' SMA	1.00	EA	1,871.10	1,871.10
29	Install 65' SMA	1.00	EA	1,871.10	1,871.10
30	Install Controller Cabinet & Foundation	1.00	EA	5,821.20	5,821.20
31	Install 20' LMA	2.00	EA	554.40	1,108.80
32	Install F Head	14.00	EA	471.24	6,597.36
33	Install Q Head	5.00	EA	498.96	2,494.80
34	Install Man/Hand	8.00	EA	207.90	1,663.20
35	Install Audible Pedestrian Push Buttons w/ Sign	8.00	EA	103.95	831.60
36	Install Type II	11.00	EA	55.44	609.84
37	Install Type IV	1.00	EA	138.60	138.60
38	Install Type V	4.00	EA	152.46	609.84
39	Install Type VII	6.00	EA	207.90	1,247.40
40	F & I Strobecom II Emergency Pre-Emption	1.00	LS	8,731.80	8,731.80
41	Furnish & Install Peek (4) Camera Video Detection	1.00	LS	18,000.00	18,000.00
42	Furnish & Install CCTV Camera & Cables	1.00	EA	6,500.00	6,500.00

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
43	No. 7 w/ Extension	4.00	EA	693.00	2,772.00
44	No. 9 Vault	1.00	EA	4,851.00	4,851.00
45	(2) 4" PVC (TRENCH)	10.00	LF	63.53	635.30
46	(2) 4" PVC (DIRECTIONAL DRILL)	455.00	LF	55.44	25,225.20
47	(1) 4" PVC (TRENCH)	40.00	LF	42.74	1,709.60
48	(1) 2.5" PVC (TRENCH)	210.00	LF	24.95	5,239.50
49	(1) 2" PVC (TRENCH)	60.00	LF	23.56	1,413.60
50	Conductors (4 Leg Intersection)	1.00	LS	9,009.00	9,009.00
51	F & I Illuminated Street Name Signs	4.00	EA	6,375.60	25,502.40
52	Paint A Pole	1.00	EA	450.45	450.45
53	Paint W Pole	1.00	EA	1,081.71	1,081.71
54	Paint Q Pole	1.00	EA	1,081.08	1,081.08
55	Paint K Modified Pole	1.00	EA	1,081.08	1,081.08
56	Paint J Modified Pole	1.00	EA	1,081.08	1,081.08
57	Paint Push Button Post	3.00	EA	450.45	1,351.35
58	Paint 20' Mast Arm	2.00	EA	526.68	1,053.36
59	Paint 30' Mast Arm	2.00	EA	727.65	1,455.30
60	Paint 55' Mast Arm	1.00	EA	1,224.30	1,224.30
61	Paint 65' Mast Arm	1.00	EA	1,224.30	1,224.30
62	Furnish & Install Cooper LED Luminaires	2.00	EA	900.00	1,800.00
63	Obliterate Pavement marking (Stripe)	230.00	LF	9.00	2,070.00
64	White Extruded Thermoplastic (0.090")	3,440.00	LF	0.65	2,236.00
65	Yellow Extruded Thermoplastic (0.090")	120.00	LF	0.65	78.00
66	Extruded Thermoplastic Symbol (Alkyd) (0.090")	1.00	EA	300.00	300.00
67	RPM, Type D	10.00	EA	6.00	60.00
68	RPM, Type G	20.00	EA	6.00	120.00
69	RMP, Type BB	1.00	EA	6.00	6.00
70	Permanent Pavement Marking (White)	3,440.00	LF	0.55	1,892.00
71	Permanent Pavement Marking (Yellow)	120.00	LF	0.55	66.00
72	Permanent Pavement Marking (Arrow Symbol)	1.00	EA	75.00	75.00
73	Paint Bull Nose	1.00	EA	115.00	115.00
74	Foundation for Sign Post (Concrete)	5.00	EA	135.00	675.00
75	Remove Sign Panel, Post & Foundation	2.00	EA	65.00	130.00
76	Remove & Reinstall Sign	1.00	EA	80.00	80.00
77	Warning Signs (36" x 36")	45.00	SF	25.00	1,125.00
78	Sign Post	50.00	LF	8.25	412.50
79	Wireless Radio System	1.00	LS	4,830.00	4,830.00
80	Traffic Control	1.00	LS	6,500.00	6,500.00
81	Survey	1.00	LS	850.00	850.00
82	Allowance	1.00	AL	5,000.00	5,000.00
	SUBTOTAL				**$198,259.35**
	SALES TAX = .65 X 7.80% = 5.07%	1.00	LS	10,051.75	10,051.75

GRAND TOTAL **$208,311.10**

As per plans and specs, we have prepared a proposal on the above referenced project. We propose to furnish all labor, equipment, supervision, and materials to complete the above items for the indicated price.

The following addenda were considered in the above price: 100% Submittal

Notes:
1. Off-Duty Police Officers will be scheduled through CSCI and billed to the Town's account.
2. Traffic Control for Asphalt & Concrete work is not included. Survey for Asphalt & Concrete work is not included.

Thank you for the opportunity to bid this work. We hope that we may be of service.

Sincerely,
CS CONSTRUCTION, INC.

Ross T. Genenbacher

Digitally signed by Ross T. Genenbacher
DN: cn=Ross T. Genenbacher, o=CS Construction, Inc., ou, email=rgenenbacher@cscompanies.com, c=US
Date: 2015.06.02 09:44:32 -07'00'

Ross T. Genenbacher
Division Manager

Special Conditions
For

Traffic Signals

GILBERT
ARIZONA

April 2013

Town of Gilbert

Registered Professional Engineer (Civil)
CERTIFICATE NO.
47951
EDGAR
MEDINA
Date Signed 7/22/13
ARIZONA, U.S.A.
Expires 6/30/14

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SECTION 470 - TRAFFIC SIGNALS

Add this section to the MAG Standard Specifications:

470.1 DESCRIPTION OF WORK:

The work under this section shall consist of installing (and sometimes furnishing) both temporary and permanent traffic signals including various appurtenant items. Items of work also include miscellaneous removal items, removal and reinstallation of various traffic signal items, installation of electric meter pedestals, signal pole foundations, luminaries, preemption devices, video detection cameras, illuminated street signs, conduits and conductors, loop detectors, trenching and directional bores, slurry backfill, utility potholes and painting. All work in this section shall be performed in accordance with the Town of Gilbert Standard Details, the ADOT Traffic Signal and Lighting Standard Drawings, the ADOT Standard Specifications for Road and Bridge Construction, the City of Mesa Standard Details and the MAG Uniform Standard Specifications and Details for Public Works Construction.

470.2 PAINTING:

This specification can be used for all galvanized and previously painted poles.

Initial Coating System Application

Surface Preparation: Scarify existing surface to remove any sheen. This can be accomplished by several different methods such as an acid etching process or heavy grit sand paper. Be careful to check pH levels after any acid etching as this may cause adhesion problems. A test patch can also be applied to verify adhesion on any previously painted poles.

Prime Coat: Tnemec Series N27 (desired color) F.C. Typoxy, 1 coat, 3.0-5.0 mils dry film thickness (DFT).

Finish Coat: Tnemec Series 73-IN03 (dark bronze) Endura-Shield, 1 coat, 2.0-3.0 mils DFT.

Top Coat: Tnemec Series 76-76 (clear, high gloss) Endura-Clear, 1 coat, 1.0-1.5 mils DFT.

Field Touch-Up (after any period of exterior exposure).

Surface Preparation: Scarify existing surface with a heavy grit sand paper to provide proper profile. All surfaces must be clean, dry, sound and free of all oil, grease and other contaminants.

Finish Coat: Tnemec Series 73-IN03 (dark bronze) Endura-Shield, 1 coat, 2.0-3.0 mils DFT.

Top Coat: Tnemec Series 76-76 (clear, high gloss) Endura-Clear, 1 coat, 1.0-1.5 mils DFT.

APPENDIX A OF SPECIAL CONDITIONS
TESCO METER PEDESTAL DRAWING

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Brian Border, P.E., Project Coordinator, 480-503-6937

MEETING DATE: June 25, 2015

SUBJECT: Report on Notices (Objections), and Authorize Execution of Contracts for FY2016 Improvements in Parkway Improvement District Nos. 07-03, 07-04, 07-09 & 07-11, and award contract Nos. 2015-8003-0673, 2015-8003-0674, 2015-8003-0675 and 2015-8003-0676.

STRATEGIC INITIATIVE: Community Livability

These projects support Gilbert's Community Livability as they provide aesthetic amenities to the PKID neighborhoods and surrounding areas.

RECOMMENDED MOTION

A motion to find that no written notices objecting to the acts or proceedings were filed with the Town pursuant to A.R.S. § 48-584 (E) within 15 days of the publication of the notice of award of the contracts for FY16 improvements in Parkway Improvement District Nos. 07-03, 07-04, 07-09 and 07-11, and award Contract Nos. 2015-8003-0673, 2015-8003-0674, 2015-8003-0675 and 2015-8003-0676.

BACKGROUND/DISCUSSION

Gilbert formed eleven (11) Parkway Improvement Districts (PKIDs) for purposes of installing new irrigation systems, landscaping, and making other improvements to the retention basin/park areas in residential neighborhoods. Gilbert Town Council has previously approved plans for improvements. The Improvements are intended to be made in phases over the next few years. The Landscape Architect retained by Gilbert, DM Designs, LLC prepared new plans and specifications for the FY2016 work which divides the work into four (4) separate bid packages to provide maximum flexibility to award the scope of work.

The lowest responsive and responsible bidders are as follows:

PK NO. 07-03	Somerset Contracting, LLC	$ 202,127.82 (Total Bid)

PK NO. 07-04	Somerset Contracting, LLC	$ 42,023.80
PK NO. 07-09	Somerset Contracting, LLC	$ 31,281.32
PK NO. 07-11	Somerset Contracting, LLC	$ 15,435.60

As required by statute, a Notice of Award of Contracts was published twice on May 21 and May 28, 2015 as follows:

"At any time within fifteen (15) days from the first publication any person having an interest in a lot liable to assessment, claiming that any of the acts or proceedings were irregular, illegal or faulty, may have filed with the Town Clerk a written notice specifying in what respects the acts and proceedings were irregular, illegal or faulty. A.R.S. § 48-584.E. If the Town Council finds any objection well taken, it may abandon the proceedings, or correct or modify any portion thereof, and proceed as in the first instance."

The deadline for filing any notices (objections) with the Town Clerk was June 5, 2015 by 6:00 p.m. The following is a report on the Notices (objections) for each District:

- No Notices (objections) were received as of June 5, 2015 by 6:00 p.m.

The Contracts were reviewed for form by Special Counsel Susan Goodwin.

FINANCIAL IMPACT

Each neighborhood determined the amount they wanted to allocate towards FY2016 improvements during the budget process in the winter of 2014-2015. The cost of these improvements is assessed in the home owner's property tax bill.

The following table shows the budget for each District compared to the low bid amount. Please see attached bid minutes for the complete bid results.

PKID	NAME	CONTRACT #	BUDGET	BID
07-03	Park Village	2015-8003-0673	$207,000	$202,127.82
07-04	Spring Meadows	2015-8003-0674	$47,500	$42,023.80
07-09	Morning Ridge	2015-8003-0675	$36,000	$31,281.32
07-11	Cassia Place	2015-8003-0676	$19,000	$15,435.60

Project Accounting Codes:
PKID 07-03 Project Acct Code: pk703-0054-0227
PKID 07-04 Project Acct Code: pk704-0054-0227
PKID 07-09 Project Acct Code: pk709-0054-0227
PKID 07-11 Project Acct Code: pk711-0054-0227

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

STAFF RECOMMENDATION

Staff recommends Mayor and Council find that no written Notices were received, and authorize execution of the Contracts for FY2016 Improvements in Parkways Improvement Districts, as previously awarded.

Respectfully submitted,

Brian Border, P.E.
Project Coordinator

Attachments and Enclosures: None

Approved By	Approval Date
Eliana Hayes	6/10/2015 1:58 PM
Kenneth Morgan	6/11/2015 9:11 AM
Laura Lorenzen	6/15/2015 10:27 AM

CONSTRUCTION SERVICES CONTRACT
FY16 PKID Park Village

Project: **Park Village FY16 Landscape Improvements**
Contract No.: **2015-8003-0673**
Date: **March 31, 2015**

CONSTRUCTION SERVICES CONTRACT
FOR DESIGN-BID-BUILD (DBB) PROJECT

THIS CONTRACT, made and entered into this _____ day of _____, 20_____, by and between the Town of Gilbert, Arizona, a municipal corporation organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated "GILBERT" and Somerset Contracting, a limited liability corporation, hereinafter designated the "CONTRACTOR."

GILBERT and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

1.0 CONSTRUCTION SERVICES

1.1 CONTRACTOR shall complete all work as specified or indicated in the Contract Documents. The work is known as and is hereinafter referred to as the Park Village FY 16 Landscape Improvements Project and is generally described as follows: Landscape planting and irrigation improvements in the Emerald Bay Drive basin in accordance with the Contract Documents. The full scope of work is described in detail in the Contract Documents.

1.2 CONTRACTOR shall complete, provide and perform, or cause to be performed, all work in a proper and workmanlike manner, with appropriate consideration for public safety and convenience, consistent with the highest standards of professional and construction practices and in full compliance with, and as required by or pursuant to, this Contract, and with the greatest economy, efficiency, and expediency consistent therewith all as more particularly described in the Contract Documents.

2.0 CONTRACT TIME

2.1 CONTRACTOR shall submit to GILBERT, on or before the effective date of this Contract, a Critical Path Method (CPM) Construction Progress Schedule in Primavera compatible format, resource and cost loaded, indicating the times for starting and completing the various stages of the Work, including any Milestones specified in this Contract and as more fully described in the General Conditions and other Contract Documents. Revisions/updates to the CPM schedule shall be submitted to accurately reflect plans for completion of the work, but no less frequently than monthly.

2.2 Time is of the Essence. All of the time limits for Milestones, if any, for Substantial Completion and for Final Completion and readiness for final payments as stated in the Contract Documents, are of the essence for the Contract.

2.3 The Work shall be substantially complete within 50 working days after the date when the Contract Times commence to run as provided in the Notice to Proceed, and all Work shall be finally completed and ready for final payment in accordance with the Notice to Proceed within 60 working days after the date when the Contract Times commences to run.

2.4 Failure of CONTRACTOR to perform any covenant or condition contained in the Contract Documents within the time periods specified herein, shall constitute a material breach of this Contract entitling GILBERT to terminate the Contract unless CONTRACTOR applies for and receives an extension of time, in accordance with the procedures set forth in the Contract Documents.

2.5 Failure of GILBERT to insist upon the performance of any covenant or condition within the time periods specified herein, shall not constitute a waiver of CONTRACTOR'S duty to perform every other covenant or condition within the designated periods, unless a specific waiver is granted in writing for each such covenant or condition.

2.6 GILBERT's agreement to waive a specific time provision or to extend the time for performance shall not constitute a waiver of any other time provisions contained in the Contract Documents. Failure of CONTRACTOR to complete performance promptly within the additional time authorized in the waiver or extension of time agreement shall constitute a material breach of this Contract entitling GILBERT to all the remedies set forth herein or provided by law.

3.0 LIQUIDATED AND SPECIAL DAMAGES

3.1 It is hereby agreed that the amounts per day set forth herein in paragraph 3.1.1 are reasonable estimates of such liquidated damages and that said amounts do in fact bear a reasonable relationship to the damage that would be sustained by GILBERT, and CONTRACTOR agrees to pay such liquidated damages as herein provided.

3.1.1 GILBERT and CONTRACTOR recognize that time is of the essence for this Contract and that GILBERT will suffer financial loss, in addition to and apart from the costs described in Paragraph 3.2, if the Work and/or portions of the Work are not performed and completed within the times specified, plus any extensions thereof allowed in accordance within the Contract Documents. GILBERT and CONTRACTOR also recognize the delays, expense, and difficulties involved in proving, through legal or arbitration proceedings, the actual loss suffered by GILBERT if the Work or portion of the Work is not completed on time. Accordingly, instead of requiring any such proof, GILBERT and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay GILBERT liquidated damages per MAG Section 108.9 for each working day that expires after the time specified for substantial completion, until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by GILBERT, CONTRACTOR shall pay GILBERT liquidated damages per MAG Section 108.9 for each working day that expires after the time specified for Final Completion and readiness for final payment.

3.2 Special Damages: In addition to the amounts provided for liquidated damages, CONTRACTOR shall pay GILBERT the actual costs reasonably incurred by GILBERT for GILBERT's PM/CM, if applicable, the Project Engineer and for engineering and inspection forces employed on the Work for each working day that expires after the time specified for Final Completion, including any extensions thereof made in accordance with the Contract Documents, until the Work is finally complete. The rate for inspection services for this contract is $150.00 per hour. The rate for the work by the Project Engineer for this Contract is $ 150.00 per hour. The rate for work by GILBERT PM/CM, if applicable, is $ 150.00 per hour. Each of these hourly rates is calculated at time and one half for work required to be performed during other than normal business hours.

3.3 GILBERT may withhold and deduct from any payment due to CONTRACTOR the amount of liquidated damages, special damages, and other costs, such as CONTRACTOR'S failed testing costs or damages to other GILBERT property, from any moneys due CONTRACTOR under the Contract.

4.0 CONTRACT PRICE

GILBERT shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents, an amount in current funds not to exceed the sum of two hundred and two thousand one hundred twenty seven dollars and eighty two cents ($202,127.82) as more specifically set forth in CONTRACTOR'S bid, and any additional amounts agreed to pursuant to valid CHANGE ORDER, approved by GILBERT.

5.0 CONTRACT DOCUMENTS

The following documents are pertinent to the Project:

5.1 This Contract (pages 1 to 7, inclusive).

5.2 Addenda consisting of Numbers N/A to N/A inclusive.

5.3 The project Specifications dated N/A entitled N/A Project.

5.4 The project Drawings comprised of a set entitled Parkway Improvement District 07-03 Park Village and dated 2/28/15.

5.5 Performance Bond (page F-1 to F-2) and Payment Bond (page G-1 to G-2).

5.6 The approved CPM Construction Schedule dated N/A.

5.7 The project General Conditions (pages 1 to 102, inclusive).

5.8 The project Supplementary Conditions (pages N/A to N/A) inclusive.

5.9 Notice to Proceed dated _____.

5.10 CONTRACTOR'S List of Subcontractors (pages A-6 to A-7) inclusive.

5.11 CONTRACTOR'S Schedule of Manufacturers and Suppliers of Major Equipment and Material Items (page A-6).

5.12 The following which may be delivered or issued after the Effective Date of this Contract and are not attached hereto:

A. Written Attachments
B. Work Change Directives
C. Change Order(s)

6.0 MISCELLANEOUS

6.1 This Agreement shall inure to the benefit of, and shall be binding upon GILBERT and CONTRACTOR and their respective successors and assigns.

6.2 This Agreement may not be amended or any of its terms modified without the written consent of GILBERT and CONTRACTOR.

6.3 This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

6.4 This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

6.5 CONTRACTOR agrees he is an independent contractor and not an agent or employee of GILBERT. CONTRACTOR shall supervise and direct the WORK to be done, using his best skill and attention. CONTRACTOR shall be solely responsible for all construction means, methods, techniques, sequences, procedures and for coordinating all portions of the WORK, required by the CONTRACT DOCUMENTS. CONTRACTOR shall be responsible to GILBERT for the acts and omissions of his employees, SUBCONTRACTORS and their agents and employees, and other persons performing any of the WORK under any CONTRACT DOCUMENTS.

6.6 Should litigation be necessary to enforce any term or provision of this CONTRACT, or to collect any damages claimed or portion of the amount payable under this CONTRACT, then all litigation and collection expenses, witness fees, court costs, and attorney's fees shall be paid to the prevailing party. Nothing herein shall preclude non-binding arbitration if they so elect in the event of a dispute hereunder.

6.7 Under Section 38-511, Arizona Revised Statutes, as amended, GILBERT may cancel any CONTRACT it is a party to within three years after its execution and without penalty or further obligation, if any person significantly involved in 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 elects to exercise its rights under Section 38-511, Arizona Revised Statutes, as amended, GILBERT agrees to immediately give notice thereof to CONTRACTOR.

6.8 All notices and demands required or permitted by this CONTRACT shall be in writing and shall be deemed to have been given or properly served when (1) sent by Certified Mail (postage fully prepaid) to the respective address below or to such other address as may be furnished by either party pursuant to this Section; (2) delivered personally to the authorized representative of the parties to this CONTRACT; or (3) if given by telefacsimile, when addressed and transmitted to the respective telefacsimile number as specified below or to such other address or telefacsimile number as may be furnished by either party to the other pursuant to this Section, and the appropriate confirmation of transmittal is received. Any party giving notice or demand by telefacsimile immediately shall send the other party a copy of such notice or demand by Certified Mail (postage fully prepaid) to the respective address below or to such other address as may be furnished by either party pursuant to this Section.

GILBERT:	CONTRACTOR:
Kenneth Morgan, P.E. Public Works Director/Interim Town Engineer Town of Gilbert 50 East Civic Center Drive Gilbert, Arizona 85296	Michael Ricci Project Manager Somerset Contracting 19051 South Arizona Avenue Chandler, Arizona 85286

6.9 No amendment or waiver of any provision of these CONTRACT DOCUMENTS nor consent to any departure by GILBERT shall be effective unless the same shall be in writing and signed by GILBERT. Such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

6.10 No waiver by GILBERT of any default or breach by CONTRACTOR shall be deemed to be or constitute a waiver of any other or subsequent default or breach. GILBERT specifically reserves and shall have all rights and remedies available to it under the provisions of the CONTRACT DOCUMENTS.

6.11 <u>Immigration Law Compliance Warranty</u>:

6.11.1 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.

6.11.2 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.

6.11.3 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. 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).

6.11.4 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.

6.11.5 If state law is amended, the parties may modify this paragraph consistent with state law.

6.12 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 the WORK. 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 form or based on the violation of such, whether by CONTRACTOR or its employees.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day and year first written above.

TOWN OF GILBERT

By: _____
John W. Lewis
Mayor

ATTEST:

_____
Catherine A. Templeton, CMC
Town Clerk

APPROVED AS TO FORM:

_____
Susan Goodwin
Curtis, Goodwin, Sullivan, Udall & Schwab, PLC
Special Counsel

CONTRACTOR

_____

By:_____

Title:_____

TOWN OF GILBERT

CONSTRUCTION GENERAL CONDITIONS

For

Project Name: Park Village FY16 Landscape Improvements
Contract No: 2015-8003-0673
Date: March 31, 2015

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PART I

GENERAL CONDITIONS

INFORMATION FOR BIDDERS AND BIDDING REQUIREMENTS

1.1 ELIGIBILITY AND PREFERENCE

Contracting with CONTRACTORS and SUBCONTRACTORS under the CONTRACT DOCUMENTS shall be governed by the provisions of Title 34 of the Arizona Revised Statutes, as amended.

1.1.2 Eligibility of CONTRACTOR

1.1.2.1 The BIDDER must have a minimum of five (5) years' experience in similar projects. A "similar project" is one that is similar in both nature and scope to this PROJECT. At least two (2) of the BIDDER'S Key Personnel must have a minimum of three (3) years' experience in similar projects. The BIDDER must demonstrate successful completion of at least two (2) similar projects, one of which must have a dollar value of at least seventy-five percent (75%) of the total bid for this PROJECT as set forth in the Bid Schedule, both within the past five (5) years. Total bid price does not include any GILBERT allowances identified. The BIDDER must demonstrate that it has an experienced employee who will serve as the scheduler, who is dedicated to this PROJECT, and who has successfully employed scheduling techniques appropriate for this PROJECT. "Key Personnel" is defined as individuals who will be directly assigned to this PROJECT and includes, but is not limited to, the owner, the Principals of the BIDDER, the Project Manager, the Project Superintendent, the scheduler, the BIDDER'S construction engineer, and supervisory personnel such as the foremen who will be directly assigned to this PROJECT. Resumes of Key Personnel shall be submitted upon request by GILBERT. "Successful completion" means completion of a project within the established schedule and budget.

1.1.2.2 **If requested by GILBERT**, the three apparent lowest BIDDERS shall submit the following documentation for GILBERT'S review and GILBERT may base its award of a CONTRACT on the information submitted:

A. Evidence of loss history and underwriting criteria

B. BIDDER'S safety program, including Experience Modifier (EMR)

C. List of SUBCONTRACTORS

D. CPA certified audits for the past three fiscal years of operations

E. List of references

F. Similar documents deemed necessary by GILBERT

The documents shall be submitted to GILBERT no later than 72 hours

following the request of GILBERT.

1.1.2.3 GILBERT may also conduct any investigation it deems necessary to determine the BIDDER'S ability to perform the WORK required by the CONTRACT DOCUMENTS. The purpose for requiring these documents is to assist GILBERT in evaluating the ability of a potential CONTRACTOR to perform the WORK in accordance with the CONTRACT DOCUMENTS in a safe manner.

1.1.2.4 References provided by CONTRACTOR are an integral part of BIDDER'S qualifications. References must be accurate. BIDDER authorizes GILBERT'S representative to verify any and all information from references contained herein and hereby releases all those concerned providing information as a reference from any liability in connection with any information they give.

1.2 PRE-BID CONFERENCE

A pre-bid conference will be held on April 13, 2015 at 4:00 p.m. in Room 300, Gilbert Municipal Center, 50 East Civic Center Drive, Gilbert, Arizona 85296. It is highly recommended that BIDDERS, CONTRACTORS, and other interested parties attend this conference that will be conducted by GILBERT to answer questions. BIDDER responsibility issues will be discussed, along with PROJECT requirements.

1.3 SUBMITTING BIDS

Bids to receive consideration shall be made in accordance with the following instructions:

1.3.1 Before submitting a bid, BIDDERS shall carefully examine the PLANS, read the SPECIFICATIONS and all other CONTRACT DOCUMENTS, visit the site of the WORK, fully inform themselves as to all existing conditions and limitations, and shall include sums in the bid covering the cost of each item included in the CONTRACT.

1.3.2 BIDDER shall include in the CONTRACT SUM all applicable taxes, permit fees and other costs to BIDDER.

1.3.3 BIDDER shall include in the total bid price all CONTRACTOR's allowances stated in the BID SCHEDULE of the CONTRACT DOCUMENTS.

Any required allowances are set forth in the BID SCHEDULE. Unless otherwise provided in the CONTRACT DOCUMENTS:

1.3.3.1 Allowances shall cover the cost to the CONTRACTOR (less any applicable trade discount) of the MATERIALS including equipment required by the allowance, delivered at the site, and all applicable taxes, overhead, profit handling and other General Condition costs, unless Bid Unit Rates are available in the Bid Schedule. Unit Bid Rates from the Bid Schedule shall be used to determine the cost of a change to be paid from an Allowance, when applicable.

1.3.3.2 Any remaining Allowance Amount shall be returned to GILBERT at the end of the

project by deductive change order.

1.3.3.3 Whenever the cost is more or less than the allowance, the CONTRACT PRICE shall be adjusted accordingly by CHANGE ORDER, the amount of which will recognize changes, if any, overhead, profit and other expenses.

1.3.4 Lump Sum and Unit Prices bid shall include overhead, profit, taxes, handling and other General Condition costs.

1.3.5 No bid will be considered unless it is made upon the bid forms contained in the book of CONTRACT DOCUMENTS. No bid shall be considered which is deemed as an irregular bid or which fails to conform in all material respects to the PLANS, SPECIFICATIONS and CONTRACT DOCUMENTS. Bids may be deemed irregular and may be considered non-responsive for any of the following reasons:

1.3.5.1 If the bid is on a form other than that furnished by GILBERT or if the form is altered.

1.3.5.2 If the BIDDER does not supply, or has improper or inadequate state contractor's license(s), to perform the WORK.

1.3.5.3 If there are unauthorized additions, statements, interlineations, alterations, conditional or alternate bids or other irregularities of any kind.

1.3.5.4 If the BIDDER adds any provisions reserving the right to accept or reject an AWARD or to enter into a CONTRACT pursuant to an AWARD.

1.3.5.5 If the BIDDER fails to submit any document listed in Section 1.3.1.10 or, when requested, the BIDDER fails to submit any documents or information pursuant to Sections 1.1.2 and 1.1.2.2.

1.3.5.6 If numbers are not stated both in writing and in figures where so required. In case of a difference in written words and figures in a bid, the amount stated in written words shall govern unless obviously in error.

1.3.5.7 If the bid contains a summary or restatement of the WORK to be done.

1.3.6 No oral or telephonic bids will be considered.

1.3.7 Bids shall be delivered to the office of Town Clerk, 50 East Civic Center Drive, Gilbert, Arizona on or before the day and hour set for the opening of bids in the Notice and Call for Bids as published. Bids shall be submitted in a sealed envelope, which shall be marked as indicated in the Notice and Call for Bids. It is the sole responsibility of the BIDDER to see that his bid is received in proper time. Any bids received after the scheduled closing time for receipt of bids will be returned to the BIDDER unopened.

1.3.8 Each and every provision of law and clause required by law to be inserted in the CONTRACT shall be deemed to be inserted so that the CONTRACT shall be read and enforced as though it were included therein.

1.3.9 BIDDERS shall familiarize themselves with the provisions of the laws, codes and regulations

of the State of Arizona, Maricopa County, local agencies and municipalities that have jurisdiction at the location of the SITE. CONTRACTORS shall comply with, and require all SUBCONTRACTORS to comply with, all state and local contractor's license laws.

1.3.10 **BID SUBMITTAL: The following documents shall be submitted with the bid:**

A. Completed and signed Bid Forms

B. Bid Bond

C. No Collusion Affidavit

D. Authorized Signature Form

E. Bidder's Questionnaire

F. Copy(s) of Bidder's State of Arizona Contractor's License(s).

1.3.11 Bids must remain valid for 120 days following bid opening.

1.4 BID SECURITY

Each bid shall be accompanied by a certified check, cashier's check or bid bond from a surety company holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1 of the Arizona Revised Statutes, and any amendments thereto. The bonds shall be made payable and acceptable to GILBERT. The bid bond shall be for an amount equal to at least ten percent (10%) of the bid, payable without condition to GILBERT as a guarantee that the BIDDER, if awarded the CONTRACT, will promptly execute such CONTRACT in accordance with the bid and in manner and form required by these CONTRACT DOCUMENTS and will furnish good and sufficient bond for the faithful performance of the same. The surety bond shall not be executed by an individual surety or sureties. The check or bid bond of the successful BIDDER will be retained until the CONTRACT is signed and satisfactory bonds and certificates of insurance furnished, or other disposition made thereof. The check or bid bond of the BIDDERS whose proposal are not accepted by the Town of Gilbert Council will be returned promptly.

1.5 SPECIAL NOTICE

BIDDERS are required to inform themselves fully of the conditions relating to construction and labor under which the WORK will be or is now being performed.

1.6 WITHDRAWAL OF BID

Any BIDDER may withdraw or revise his bid by telegraphic or written request (but not electronic mail), at any time prior to the expiration of the time for the opening of bids as set forth in the Notice and Call for Bids. Any withdrawal or revision must be done on a copy of the bid form and must be signed by the person indicated on the Authorized Signature Form.

1.7 INTERPRETATION OF PLANS AND DOCUMENTS

1.7.1 If any person contemplating submitting a bid for the proposed WORK is in doubt as to the true meaning of any part of the PLANS, SPECIFICATIONS or other CONTRACT DOCUMENTS, or finds discrepancies in or omissions from the PLANS or SPECIFICATIONS, he may submit to Brian Border via email (Brian.Border@gilbertaz.gov) a written request for an interpretation or correction thereof. The request must be made via email and delivered to Brian Border **by 6:00 pm on April 15, 2015**. Any interpretation or correction of the CONTRACT DOCUMENTS will be made only by ADDENDUM. A copy of such ADDENDUM will be posted on the Town of Gilbert website. CONTRACTOR is responsible for acknowledging all ADDENDA in his bid. GILBERT will not be responsible for any other explanations or interpretations of the CONTRACT DOCUMENTS.

1.7.2 Should conflicts occur in or between Drawings and SPECIFICATIONS, CONTRACTOR is deemed to have estimated the more expensive of the two unless he has asked for and obtained a written decision as required in Section 1.7.1 before submission of his bid as to which method or MATERIALS will be required.

1.8 SUBSTITUTION OF MATERIAL OR EQUIPMENT

1.8.1 Where an item or MATERIAL is specified by a trade or manufacturer's name, it is done for the purpose of establishing a basis of quality, and not for the purpose of limiting competition. ENGINEER'S intent is to consider alternative products which have the desired essential characteristics. ENGINEER will consider any such product offered. Requests for approval of alternative products shall be made through BIDDERS bidding as prime contractors. No approvals for substitutions will be granted directly to suppliers, distributors, or subcontractors. Pursuant to A.R.S. § 34-104-C, the following procedures will be used:

1.8.1.2 BIDDERS desiring to submit alternative product proposals for prior approval of ENGINEER shall submit such proposals to ENGINEER at least eight (8) working days prior to the original deadline for receiving bids, or any published extension thereof. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute, including drawings, cuts, performance and test data, and any other information necessary for an evaluation. A statement setting forth any changes in other MATERIALS, equipment or other work that incorporation of the substitute would require shall be included. ENGINEER will consider such request and either approve or reject all alternative product proposals submitted.

If, by the close of the fifth day prior to the deadline for receiving bids, ENGINEER has approved any alternative product proposals, the BIDDING DOCUMENTS shall be modified to include the alternative products. ENGINEER shall publish the modification in the same manner as the original BIDDING DOCUMENTS at least five days prior to the deadline for receiving bids. ENGINEER'S decision of approval or disapproval of a proposed substitute shall be final. After the AWARD of CONTRACT, the equivalency evaluations conducted during the bidding period may be reviewed by appointment with ENGINEER.

1.8.2 Whenever an item of MATERIAL or piece of equipment is specified with at least two named manufactures and is followed by the words "No other manufacturers will be considered", only the listed manufacturers will be considered by GILBERT and ENGINEER.

1.8.3 Whenever an item of MATERIAL or piece of equipment is specified with a named manufacturer, an "or equal" manufacturer shall apply whether the term "or equal" is listed or not listed within the SPECIFICATIONS.

1.9 ADDENDA

Any ADDENDA issued during the time of bidding, shall become a part of the documents used by the BIDDER for the preparation of his bid, shall be covered by the bid and shall be made a part of the CONTRACT DOCUMENTS. It is the sole responsibility of the BIDDER to ensure that they have received and reviewed all ADDENDA, and that receipt of such ADDENDA is duly acknowledged on the Bid Form.

1.10 AWARD OR REJECTION OF BIDS

1.10.1 The CONTRACT will be awarded to the lowest responsible BIDDER determined from the Base Bid, plus any combination of Bid Alternates that GILBERT may select, which comply with these instructions and with the Notice and Call for Bids. GILBERT, however, reserves the right to accept or reject any or all bids, to waive any informality or irregularity in the bids received or to withhold the AWARD for any reason GILBERT determines. Bids will be received until the time and date designated in the Notice and Call for Bids. Bids received after the designated time set will be returned to the BIDDERS unopened.

1.10.2 Bids shall be opened in public and the amount of the bid read aloud. After the bid opening, GILBERT shall analyze the bids and notify all BIDDERS of the name of the apparent low bidder or (2) if the analysis results in a recommendation to award the CONTRACT to a BIDDER other than the apparent low BIDDER, the BIDDER who's recommended for award of the CONTRACT. This will be done by issuing a Notice of Apparent Lowest Responsible Bidder. Such notice shall be given at least four (4) days prior to the date set for the AWARD of the CONTRACT.

1.11 BIDDERS INTERESTED IN MORE THAN ONE BID

No person, firm, or corporation shall be allowed to make, file or to be interested in more than one (1) bid for the same WORK unless alternate bids are called for. A person, firm, or corporation who has submitted a subproposal to a BIDDER, or who quoted prices on MATERIALS to a BIDDER, is not thereby disqualified from submitting a subproposal or quoting prices to other BIDDERS, but must quote the same subproposal or price to all BIDDERS.

1.12 CONTRACT AND BONDS

1.12.1 The successful BIDDER shall execute and deliver a CONTRACT in the prescribed form and

shall furnish the required bonds within ten (10) days after issuance of a written Notice of Award or his BID SECURITY shall be forfeited as provided elsewhere herein.

1.12.2 The successful BIDDER, simultaneously with the execution of the CONTRACT, will be required to furnish a PAYMENT BOND in an amount equal to one hundred percent (100%) of the CONTRACT SUM and a PERFORMANCE BOND in an amount equal to one hundred percent (100%) of the CONTRACT SUM.

1.12.3 The form of CONTRACT that the successful BIDDER as CONTRACTOR will be required to execute and the forms of bonds which he will be required to furnish along with a form of insurance certificate are included in the CONTRACT DOCUMENTS. The CONTRACT, the bonds and the insurance certificate will be executed in five (5) original counterparts.

1.12.4 Bonding companies and insurance carriers shall be "Best Rated A" or better by the A.M. Best Company or comparable rating as determined at the sole discretion of GILBERT. Each bond shall be executed by a surety (bonding company) duly licensed in and possessing a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance, pursuant to Title 20, Chapter 2, Article 11 and acceptable to GILBERT. The Surety Bond shall not be executed by an individual surety or sureties. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in the State of Arizona. The Bonds shall have attached thereto a certified copy of Power of Attorney for the signed official executing the bonds.

1.13 ASSIGNMENT OF CONTRACT

No assignment by CONTRACTOR of any CONTRACT to be entered into hereunder, or any part thereof, or of funds to be received there under by CONTRACTOR, will be recognized by GILBERT unless such assignment has had prior approval of GILBERT and the Surety has been given due notice of such assignment in writing and has consented thereto in writing.

1.14 PLANS AND SPECIFICATIONS TO SUCCESSFUL BIDDER

The successful BIDDER may obtain five (5) sets of PLANS and SPECIFICATIONS for this PROJECT at no extra cost.

1.15 CONTRACT TIME

CONTRACTOR shall commence WORK under the CONTRACT on the day indicated in the NOTICE TO PROCEED or within ten (10) working days thereafter and shall fully complete all WORK under the CONTRACT within 60 consecutive working days in accordance with Section 9.2. CONTRACTOR shall achieve SUBSTANTIAL COMPLETION within 50 working days after the date of the NOTICE TO PROCEED and FINAL COMPLETION within 60 working days in accordance with Section 9.2. No WORK shall commence prior to issuance of a NOTICE TO PROCEED, including mobilization on site. CONTRACTOR shall at all times during the continuance of the CONTRACT prosecute the WORK with such force and

equipment as are sufficient to complete it within the time specified.

1.16 NOTICE OF REQUIREMENT OF COMPLIANCE WITH PERMIT CONDITIONS

This PROJECT includes work that will affect facilities of various agencies, including Town of Gilbert. Applicable licenses, permits and specifications are bound herein and CONTRACTOR shall comply with all such specifications and permit conditions.

1.17 ENGINEER

1.17.1 This PROJECT will be coordinated by an ENGINEER, who will report the progress of the WORK and compliance with the CONTRACT DOCUMENTS to GILBERT. Generally, ENGINEER will (1) oversee the progress of the WORK, (2) receive submittals, requests for information and other information from CONTRACTOR, (3) make recommendations to GILBERT regarding CHANGE ORDERS and request for extensions of time, (4) make recommendations to GILBERT regarding requests for payment, (5) maintain PROJECT records, (6) determine SUBSTANTIAL and FINAL COMPLETION of the PROJECT, and (7) do other tasks related to the coordination of the WORK.

1.17.2 ENGINEER will review and approve shop drawings, make interpretations of the CONTRACT DOCUMENTS and make determinations regarding substitution of methods and MATERIALS. Other duties are set forth in the CONTRACT DOCUMENTS. Drawings and SPECIFICATIONS and copies thereof furnished by ENGINEER are and shall remain the property of GILBERT. They are to be used only with respect to this PROJECT and are not to be used on any other PROJECT.

1.17.3 ENGINEER will be GILBERT'S REPRESENTATIVE during the construction and until final payment to the CONTRACTOR is made. ENGINEER will advise and consult with GILBERT. All instructions to CONTRACTOR shall be forwarded through ENGINEER. ENGINEER will have the authority to act on behalf of GILBERT only to the extent provided in the CONTRACT DOCUMENTS. CONTRACTOR shall not be relieved from CONTRACTOR'S obligations to perform the WORK in accordance with the CONTRACT DOCUMENTS either by the activities or duties of ENGINEER MANAGER in its administration of the CONTRACT, or by inspections, tests or approvals required.

1.18 SEPARATE CONTRACTS

Separate CONTRACTS may be let by GILBERT to perform other or additional work on or near the WORK covered by this CONTRACT. CONTRACTOR shall be responsible for coordinating the sequencing of the WORK under those separate CONTRACT'S identified/listed in the SUPPLEMENTAL CONDITIONS of the CONTRACT DOCUMENTS. The bid shall include an amount for the administration of the sequencing of these CONTRACTS. The requirements of Section 5.8 shall apply.

1.19 BID PROTESTS

The protest policy of the Town of Gilbert is available at the Town Clerk's office at 50 E. Civic Center Drive, Gilbert, Arizona 85296.

PART II

GENERAL CONDITIONS

DEFINITIONS

Wherever in these SPECIFICATIONS, or in other CONTRACT DOCUMENTS, the following terms are used, the intent and meaning shall be interpreted as shown below. Additional definitions and abbreviations pertaining to this PROJECT will be found in the SUPPLEMENTAL CONDITIONS.

2.1 DEFINITIONS

2.1.1 ADDENDUM: A written and/or graphic supplement to any of the CONTRACT DOCUMENTS issued, in writing, after ADVERTISEMENT of but prior to the opening of the bids for a CONTRACT.

2.1.2 ADVERTISEMENT: The public announcement, as required by law, inviting bids for WORK to be performed or MATERIALS to be furnished.

2.1.3 AWARD: The formal action of GILBERT Town Council in accepting a bid.

2.1.4 BID SECURITY: Refers to the certified check, cashier's check or surety bond which is required to be submitted with the bid to insure execution of the CONTRACT and the furnishing of the required bonds and insurance certificates.

2.1.5 BIDDER: Any individual, firm, partnership, or corporation submitting a bid for the work contemplated, acting directly or through a duly authorized agent.

2.1.6 CHANGE ORDER: A written order issued by GILBERT directing CONTRACTOR to make changes in the WORK or to perform extra work, and setting forth conditions for payment and adjustment in time of completion.

2.1.7 CLERK: The duly authorized person who performs the duties of Clerk of the Town of GILBERT.

2.1.8 CONTRACT: The written instrument executed by CONTRACTOR and GILBERT by which CONTRACTOR is bound to furnish all labor, equipment and MATERIALS, to perform the WORK specified and by which GILBERT is obligated to compensate CONTRACTOR therefore at the prices set forth therein. The CONTRACT DOCUMENTS are herewith by reference made a part of the CONTRACT as if fully set forth therein.

2.1.9 CONTRACT DOCUMENTS: The words "CONTRACT DOCUMENTS" include the Notice and Call for Bids, Information for BIDDERS and Bidding Requirements, General Conditions, SUPPLEMENTAL CONDITIONS, SPECIFICATIONS, Bid, CONTRACT, CONSTRUCTION SCHEDULE, PAYMENT BOND, PERFORMANCE BOND, PLANS, ENGINEER'S INSTRUCTION BULLETINS and all ADDENDA and Modifications thereto.

A Modification is (1) a written amendment to the CONTRACT signed by both parties, (2) a CHANGE ORDER, (3) a written interpretation issued by ENGINEER, or (4) a written order for a minor change in the WORK issued by ENGINEER.

2.1.10 CONTRACT SCHEDULE: The schedule produced by CONTRACTOR in response to the requirements of Section 5.1.

2.1.11 CONTRACT SUM: The total amount payable by GILBERT to CONTRACTOR for the performance of the WORK under the CONTRACT DOCUMENTS. The CONTRACT SUM is the amount stated in the CONTRACT and adjusted by any CHANGE ORDER issued pursuant to the CONTRACT DOCUMENTS.

2.1.12 CONTRACT TIME: The time set forth in the CONTRACT for completion of the WORK required by the CONTRACT DOCUMENTS.

2.1.13 CONTRACTOR: The individual, firm, partnership or corporation that has entered into a CONTRACT with GILBERT for the WORK. CONTRACTOR is required by law to be licensed in the classification of the WORK to be performed and will perform work or render services as a prime contractor.

2.1.14 DAYS: Unless otherwise designated, days will be understood to mean calendar days.

2.1.15 ENGINEER: The Architectural or Engineering firm designated by GILBERT to prepare PLANS and SPECIFICATIONS for the WORK, to make interpretations of the CONTRACT DOCUMENTS, to review and approve shop drawings and to perform other duties as set forth in the CONTRACT between GILBERT and ENGINEER. ENGINEER shall oversee the construction of the PROJECT.

2.1.16 FINAL COMPLETION: The date, more fully described in Section 9.2.2, when all items of the WORK are completely finished with no items of any scope outstanding or remaining to be completed, and all known defective work has been corrected. This is the date that initiates the Warranty period.

2.1.17 GILBERT: Town of Gilbert, Arizona.

2.1.18 GILBERT'S REPRESENTATIVE OR GILBERT'S AGENT: The authorized representative of GILBERT, assigned to the PROJECT WORK, the PROJECT Site or any part thereof during the performance of the WORK by CONTRACTOR and until final acceptance.

2.1.19 IMPROVEMENTS: Means the same as "WORK."

2.1.20 INITIAL CONTRACT SCHEDULE: The schedule prepared by CONTRACTOR in accordance with Section 5.1 and which includes the MILESTONE AND COMPLETION DATES specified in the CONTRACT DOCUMENTS.

2.1.21 MATERIALS: The word "MATERIALS" includes, in addition to material incorporated in the PROJECT, equipment and other supplies used in the performance of the WORK.

2.1.22 NOTICE OF APPARENT LOWEST RESPONSIBLE BIDDER: The notice given to inform all bidders of GILBERT staff's determination of the lowest responsible BIDDER and its recommendation for AWARD of the CONTRACT.

2.1.23 NOTICE OF AWARD: The notice given to inform the successful BIDDER of the AWARD of the CONTRACT.

2.1.24 NOTICE TO PROCEED: A directive issued by GILBERT authorizing CONTRACTOR to start the WORK or IMPROVEMENTS required in the CONTRACT.

2.1.25 PAYMENT BOND: A bond furnished by CONTRACTOR and an acceptable surety, in compliance with the requirements set forth in the CONTRACT DOCUMENTS, for the purpose of guaranteeing that CONTRACTOR promptly pays all monies due persons supplying labor or material to be used in prosecution of the CONTRACT.

2.1.26 PERFORMANCE BOND: A bond furnished by CONTRACTOR and an acceptable surety, in compliance with the requirements set forth in the CONTRACT DOCUMENTS, for the purpose of guaranteeing the faithful performance and completion of the WORK covered by the CONTRACT.

2.1.27 PLANS: All approved drawings or reproductions thereof pertaining to details of the WORK and which are made a part of the CONTRACT DOCUMENTS.

2.1.28 PROJECT: Means the same as "WORK" as defined below.

2.1.29 SITE: The area on which WORK is to be done as described in the CONTRACT DOCUMENTS.

2.1.30 SUPPLEMENTAL CONDITIONS: Those terms and conditions applicable to the WORK which are specifically set forth in the SUPPLEMENTAL CONDITIONS section of the CONTRACT DOCUMENTS.

2.1.31 SPECIFICATIONS: The descriptions, directions, provisions and requirements for performing the WORK as contained in the CONTRACT DOCUMENTS.

2.1.32 SUBCONTRACTOR: Those having a CONTRACT with CONTRACTOR for the performance of any WORK required by the CONTRACT DOCUMENTS.

2.1.33 SUBSTANTIAL COMPLETION: The date, more fully described in Section 9.2.1, when ENGINEER certifies, in writing, GILBERT may use or occupy the PROJECT or a designated portion thereof.

2.1.34 WORK: The word "WORK", "IMPROVEMENTS" or "PROJECT" includes any or all of the IMPROVEMENTS mentioned and authorized to be made, and the construction, reconstruction, and repair of all or any portion of such IMPROVEMENTS, and all labor, services, incidental expenses and material necessary or incidental thereto.

2.1.35 WORK DIRECTIVE: Supplemental drawings or instructions, which may be issued as necessary from time to time to make clear or define in greater detail the intent of the drawings and SPECIFICATIONS. A CHANGE ORDER shall accompany a WORK DIRECTIVE if extra cost and/or time are known to be involved.

2.1.36 WORKING DAYS: Working days are exclusive of Saturday, Sunday and GILBERT recognized legal holidays. In the event of a change, CONTRACTOR shall notify ENGINEER.

PART III

GENERAL CONDITIONS

AWARD AND EXECUTION OF CONTRACT

3.1 AWARD

3.1.1 As soon as practicable after the date of opening the bids, the GILBERT Town Council will AWARD the CONTRACT to the lowest responsible and responsive BIDDER or will reject all bids.

3.1.2 A NOTICE OF AWARD will be sent to the successful BIDDER by certified mail and shall be considered issued on the day sent.

3.1.3 The low bid will be determined by the lowest net total from a fully qualified and responsible BIDDER arrived at by combining the BIDDER'S lump sum and unit price totals or lump sum base bid price and the bid prices of the alternates that are selected and accepted by GILBERT. GILBERT may accept or reject any or all alternates.

3.2 EXECUTION OF CONTRACT

3.2.1 The successful BIDDER shall, within the time specified in Information for Bidders and Bidding Requirements, execute the CONTRACT, and shall file insurance policies and/or certificates of insurance as required herein. If CONTRACTOR fails or refuses to enter into the CONTRACT within the time stated, GILBERT may declare a forfeiture of his BID SECURITY as liquidated damages for failure to enter into the CONTRACT.

3.2.2 Execution of the CONTRACT by CONTRACTOR is a representation that CONTRACTOR has visited the SITE, become familiar with the local conditions under which the WORK is to be performed, and has correlated personal observations with the requirements of the CONTRACT DOCUMENTS.

3.3 CONTRACTOR'S INSURANCE

3.3.1 General: CONTRACTOR agrees to comply with all GILBERT ordinances and state and federal laws and regulations. Without limiting any obligations or liabilities of CONTRACTOR, CONTRACTOR shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A or above with policies and forms satisfactory to GILBERT. Failure to maintain insurance as specified may result in termination of this CONTRACT at GILBERT’S option.

3.3.2 No Representation of Coverage Adequacy: By requiring insurance herein, GILBERT does not represent that coverage and limits will be adequate to protect CONTRACTOR. GILBERT reserves the right to review any and all of the insurance policies and/or endorsements cited in

this CONTRACT but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in the CONTRACT DOCUMENTS or failure to identify any insurance deficiency shall not relieve CONTRACTOR from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of the CONTRACT.

3.3.3 Additional Insured: All insurance coverage and self insured retention or deductible portions, except Workers Compensation Insurance, shall name, to the fullest extent permitted by law for claims arising out of the performance of the CONTRACT, GILBERT, ENGINEER, their agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this CONTRACT DOCUMENTS.

3.3.4 Coverage Term: All insurance required herein shall be maintained in full force and effect until all WORK or services required to be performed under the terms of subject CONTRACT is satisfactorily performed, completed and formally accepted by GILBERT, unless specified otherwise in this CONTRACT DOCUMENTS.

3.3.5 Primary Insurance: CONTRACTOR'S insurance shall be primary insurance as respects performance of subject CONTRACT and in the protection of GILBERT as an Additional Insured.

3.3.6 Occurrence Basis: All insurance coverage shall be on an occurrence basis and not a claims made basis.

3.3.7 Waiver: All policies, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against GILBERT, its agents, representatives, officers, directors, officials and employees for any claims arising out of the WORK. CONTRACTOR shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

3.3.8 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. CONTRACTOR shall be solely responsible for any such deductible or self-insured retention amount. GILBERT, at its option, may require CONTRACTOR to secure payment or such deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

3.3.9 Use of Subcontractors: If any WORK under the CONTRACT DOCUMENTS is subcontracted in any way, CONTRACTOR shall execute a written agreement with SUBCONTRACTOR containing the same Indemnification Clause and Insurance Requirements set forth herein protecting GILBERT and CONTRACTOR. CONTRACTOR shall be responsible for executing the agreement with SUBCONTRACTOR and obtaining Certificates of Insurance verifying the insurance requirements.

3.3.10 Evidence of Insurance: Prior to commencing any WORK under the CONTRACT DOCUMENTS, CONTRACTOR shall furnish GILBERT with Certificate(s) of Insurance, or formal endorsements as required by the CONTRACT DOCUMENTS, issued by CONTRACTOR'S insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage, conditions, and limits of coverage specified in the CONTRACT DOCUMENTS and that such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as evidence of coverage, GILBERT shall reasonably rely upon the 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 CONTRACT. Such certificates shall identify the PROJECT. If any of the above-cited policies expire during the life of the CONTRACT, it shall be CONTRACTOR'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:

3.3.10.1 GILBERT, and ENGINEER, their agents, representatives, officers, directors, officials and employees are Additional Insured's 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 or equivalent.

C. Excess Liability – Follow Form to underlying insurance as required.

3.3.10.2 CONTRACTOR'S insurance shall be primary insurance as respects performance of CONTRACT.

3.3.10.3 All policies, including Workers Compensation, waive rights of recovery (subrogation) against GILBERT, its agents, representatives, officers, directors, officials and employees for any claims arising out of WORK performed by CONTRACTOR under the CONTRACT DOCUMENTS.

3.3.10.4 Certificate shall cite 30 day advance notice cancellation provision.

3.3.10.5 Project descriptive information including:

A. CIP Project Name

B. CIP Project Number

C. Contract Number

3.3.11 REQUIRED COVERAGE:

3.3.11.1 Commercial General Liability: CONTRACTOR shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than $3,000,000 for each occurrence, $3,000,000 Products and Completed Operations Annual Aggregate, and a $3,000,000 General Aggregate Limit on a per project basis endorsed by means of ISO Endorsement CC-2503 1185 or equivalent. 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 Offices, Inc. policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this CONTRACT, GILBERT, ENGINEER, their agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under Insurance Service Offices, Inc. Commercial General Liability Additional Insured Endorsement form CG 20 10 11 85, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in GILBERT, but only with respect to liability arising out of "your work" for that insured by or for you." CONTRACTOR, its successors and or assigns, is required to maintain Commercial General Liability insurance as specified hereunder for a minimum period of three (3) years following completion and acceptance of subject WORK. CONTRACTOR shall submit Certificate of Insurance evidencing such Commercial General Liability insurance during said three year period containing all of the insurance requirements set forth herein including naming GILBERT, ENGINEER, their agents, representatives, officers, directors, officials and employees as Additional Insured as required. 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.

3.3.11.2 Vehicle Liability: CONTRACTOR shall maintain Business Automobile Liability insurance with a limit of $3,000,000 each occurrence on CONTRACTOR'S owned, hired, and non-owned vehicles assigned to or used in the performance of the WORK. 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. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of the WORK, an MCS 90 endorsement is required providing $5,000,000 per occurrence limits of liability for bodily injury and property damage. To the fullest extent allowed by law, for claims arising out of the performance of this CONTRACT, GILBERT, ENGINEER, their agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under the Insurance Service Officers, Inc. Business Auto policy Designated Insured Endorsement form CA 20 48 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.

3.3.11.3 Worker's Compensation Insurance: CONTRACTOR shall maintain Worker Compensation Insurance to cover obligations imposed by federal and state statutes having jurisdiction of CONTRACTOR'S employees engaged in the performance of the WORK and shall also maintain Employers 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.

3.3.11.4 Builder's "All Risk": CONTRACTOR shall maintain Builder's "All Risk" Insurance in an amount not less than one hundred percent (100%) of the CONTRACT price. Such policy shall include coverage for fire, lightening, vandalism, malicious mischief, riot, civil commotion, smoke, sprinkler leakage, water damage, windstorm, hail, earthquake, landslide, flood and collapse or loss due to the results of faulty workmanship during the CONTRACT TIME and until Final Acceptance of the WORK by GILBERT. On pipeline and similar Projects where fire hazard is negligible or nonexistent, GILBERT may waive the requirement for fire insurance and/or accept the installation waiver.

3.3.11.5 Railroad Protection Liability: If the WORK involves a railroad right-of-way (as described in the SUPPLEMENTAL CONDITIONS) Railroad Protective Liability Insurance coverage is required in the amounts set forth in the SUPPLEMENTAL CONDITIONS.

3.4 REQUIREMENT OF CONTRACT BONDS

3.4.1 Concurrently with the execution of the CONTRACT, CONTRACTOR shall furnish GILBERT the following bonds, which shall become binding upon the AWARD of the CONTRACT to CONTRACTOR:

3.4.1.1 A PERFORMANCE BOND in conformance with Section 1.12 and in an amount equal to the full CONTRACT SUM conditioned upon the faithful performance of the CONTRACT in accordance with PLANS, SPECIFICATIONS and Conditions thereof. Such bond shall be solely for the protection of GILBERT. The Performance Bond shall remain in force the greater of (a) two years after FINAL COMPLETION of the WORK, or (b) until the expiration of all warranties and guarantees as required by the CONTRACT.

3.4.1.2 A PAYMENT BOND in conformance with Section 1.12 and in an amount equal to the full CONTRACT SUM solely for the protection of the claimants supplying labor or MATERIALS to CONTRACTOR or his SUBCONTRACTORS in the prosecution of the WORK provided for in such CONTRACT. The Payment Bond shall remain in effect for at least one year after FINAL COMPLETION of the WORK.

3.4.2 Each such bond shall include a provision allowing the prevailing party in a suit on such bond to recover as a part of this judgment such reasonable attorney's fees as may be fixed by a judge of the court.

3.4.3 Each such bond shall be executed by a surety company or companies holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1 of the Arizona Revised Statutes and any amendments thereto. The bonds shall be made payable and acceptable to GILBERT. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in this State and the bonds shall have attached thereto a certified copy of the Power of Attorney of

the signing official.

3.5 INDEMNIFICATION OF GILBERT AGAINST LIABILITY

3.5.1 To the fullest extent permitted by law, CONTRACTOR, 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 CONTRACTOR or other persons employed or used by the CONTRACTOR in the performance of this Agreement. CONTRACTOR'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 CONTRACTOR'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 CONTRACTOR or used by CONTRACTOR in the performance of this Agreement.

3.5.2 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.

3.6 SAFETY WARRANTY

3.6.1 CONTRACTOR shall provide and maintain in a neat, sanitary condition such accommodations for the use of his employees as may be necessary to comply with the requirements and regulations of the Arizona State Department of Health or as specified by the Maricopa County Health Department, Sanitary Code. CONTRACTOR shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on his own responsibility or as ENGINEER may determine, reasonably necessary to protect the life and the health of employees on the job, the safety of the public and to protect property in connection with the performance of the WORK. Precaution shall be exercised by CONTRACTOR at all times for the protection of persons (including employees and GILBERT representatives) and property. CONTRACTOR shall comply with the provisions of all applicable laws, pertaining to such protection including all Federal and State occupational safety and health acts, and standards and regulations promulgated hereunder.

3.6.2 CONTRACTOR warrants that CONTRACTOR is aware of and understands the hazards presented to persons, property and the environment relating to and arising out of the WORK. In the event CONTRACTOR or any of CONTRACTOR'S SUBCONTRACTORS are working or operating in an unsafe manner, CONTRACTOR shall immediately take full and appropriate steps to assure the safety of those working in the job site. CONTRACTOR acknowledges GILBERT'S right under this CONTRACT to stop work if GILBERT determines the WORK is not proceeding in a safe manner and may result in injury to persons or property. GILBERT and ENGINEER shall not be liable for the costs incurred by CONTRACTOR if the WORK is

stopped for safety reasons. The ENGINEER, with GILBERT approval, shall issue a stop work order until the violation ceases. The ENGINEER shall immediately notify CONTRACTOR in writing of the reasons WORK was stopped.

3.7 NOTICE TO PROCEED

CONTRACTOR or SUBCONTRACTORS shall not start WORK on any part of the PROJECT until NOTICE TO PROCEED has been issued by GILBERT. The NOTICE TO PROCEED will be sent to CONTRACTOR by certified mail or delivered to him in person. The date for the official start of the CONTRACT will be set forth in the NOTICE TO PROCEED. The NOTICE TO PROCEED shall not be issued until the CONTRACT has been executed and all insurance, bonds and other required documents have been submitted to GILBERT.

PART IV

GENERAL CONDITIONS

COMMENCEMENT, PROSECUTION AND PROGRESS

4.1 COMMENCEMENT

4.1.1 Within ten (10) working days after the NOTICE OF AWARD, a pre-construction conference will be held to establish a working understanding among the parties as to the WORK and to discuss the schedules referred to in Section 5.1, procedures for handling submittals, processing Applications for Payment, and maintaining required records.

4.1.1.1 The conference shall be attended by: CONTRACTOR and his superintendent, Principal SUBCONTRACTORS, Representatives of principal suppliers and manufacturers as appropriate, ENGINEER, Representatives of GILBERT, Others as requested by CONTRACTOR, GILBERT, or ENGINEER.

4.1.1.2 The purpose of the conference is to designate responsible personnel and establish a working relationship. Matters requiring coordination will be discussed and procedures for handling such matters established. The agenda will include but not be limited to:

A. Discussion of CONTRACTOR'S INITIAL CONTRACT SCHEDULE (See Section 5.1).

B. Transmittal, review, and distribution of CONTRACTOR'S submittals.

C. Processing applications for payment.

D. Maintaining record documents.

E. Critical work sequencing.

F. ENGINEER’S INSTRUCTION BULLETINS and CHANGE ORDERS.

G. Use of premises, office and storage areas, security, housekeeping, and GILBERT'S needs.

H. Major equipment deliveries and priorities.

I. CONTRACTOR'S Safety Program.

4.1.1.3 ENGINEER will preside at the conference and will arrange for keeping the minutes and distributing the minutes to all persons in attendance.

4.1.2 CONTRACTOR shall commence WORK on or before the tenth (10th) day after the date set forth in the NOTICE TO PROCEED, and shall complete all WORK under the CONTRACT within the CONTRACT TIME. The NOTICE TO PROCEED will be issued no later than thirty (30) DAYS after the NOTICE OF AWARD unless otherwise agreed upon in writing, or as may be specified in the SUPPLEMENTAL CONDITIONS.

4.2 SUBCONTRACTORS

4.2.1 Subcontracts shall be in accordance with, and CONTRACTOR shall be bound by, the following provisions:

4.2.1.1 All subcontracts shall be subject to review and acceptance by GILBERT.

4.2.1.2 All subcontracts shall be in writing and shall provide that all WORK to be performed hereunder shall be performed in accordance with the terms of the CONTRACT.

4.2.1.3 True copies of any and all subcontracts shall be furnished to GILBERT; however, prices may be omitted.

4.2.1.4 The subcontracting of any part of the WORK will in no way relieve CONTRACTOR of his responsibility or liability or obligation under the CONTRACT.

4.2.1.5 All subcontracts and purchase orders for equipment shall state guaranteed delivery dates, at such times as determined by CONTRACTOR, which will allow CONTRACTOR to complete the PROJECT within the CONTRACT TIME.

4.2.2 If GILBERT or ENGINEER has reasonable objection to any proposed SUBCONTRACTOR, CONTRACTOR shall submit a substitute to whom GILBERT and ENGINEER have no reasonable objection, and the CONTRACT SUM shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate CHANGE ORDER shall be issued.

4.2.3 CONTRACTOR shall make no substitution for any SUBCONTRACTOR, person or entity previously selected if GILBERT or ENGINEER make reasonable objection to such substitution.

4.3 CONTRACTOR'S REPRESENTATIVE AND EMERGENCIES

4.3.1 CONTRACTOR shall at all times be present at the WORK in person or represented by a competent superintendent who shall supervise and direct the WORK and shall be authorized by CONTRACTOR to receive and fulfill instructions from ENGINEER.

4.3.2 CONTRACTOR shall supervise and direct the WORK. He shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall employ and maintain on the SITE a qualified supervisor or superintendent who shall be designated in writing by CONTRACTOR as CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of CONTRACTOR and all communications given to the supervisor shall be as binding as if given to CONTRACTOR. The supervisor shall be present on the SITE at all times as required to perform adequate supervision and coordination of the WORK.

4.3.3 Emergencies that may arise during the progress of the WORK may require special effort or require extra shifts of men to continue the WORK beyond normal working hours. CONTRACTOR shall be prepared in case of such emergencies from whatever cause, to do all necessary WORK promptly.

4.4 CONTRACT DOCUMENTS

4.4.1 CONTRACTOR shall keep at the SITE a copy of the CONTRACT DOCUMENTS and shall at all times give ENGINEER access thereto.

4.4.2 The documents that make up the CONTRACT DOCUMENTS are intended to be complete and complementary, and to prescribe a complete WORK which CONTRACTOR shall perform in a manner acceptable to ENGINEER and in full compliance with the terms of the CONTRACT. CONTRACTOR shall provide GILBERT with a complete and operable WORK, even though the PLANS and SPECIFICATIONS may not specifically call out all items or items of work required of CONTRACTOR to complete his task. If any omissions are made of information necessary to carry out the full intent and meaning of the CONTRACT DOCUMENTS, CONTRACTOR shall immediately notify ENGINEER, who shall immediately notify GILBERT. ENGINEER will make the necessary corrections for furnishing of detailed instructions. In case of discrepancies, the more stringent requirement shall govern.

4.4.3 Any drawings or PLANS listed anywhere in the SPECIFICATIONS or ADDENDA thereto shall be regarded as a part thereof and of the CONTRACT. Anything mentioned in these SPECIFICATIONS and not indicated on the PLANS and not mentioned in these SPECIFICATIONS shall be of the same force and effect as if indicated or mentioned in both.

4.4.4 CONTRACTOR shall perform the WORK in accordance with the lines, grades, cross sections, and dimensions indicated on the PLANS and detailed drawings.

4.4.5 Unless otherwise specified in the SUPPLEMENTAL CONDITIONS, CONTRACTOR shall furnish all MATERIALS, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and incidentals, including, but not limited to, dust and traffic control measures, and to perform all WORK involved in executing the CONTRACT in a satisfactory and workmanlike manner within the CONTRACT TIME.

4.4.6 Anything in the CONTRACT DOCUMENTS notwithstanding, CONTRACTOR accepts the responsibility of constructing a watertight, weathertight PROJECT.

4.5 ERRORS AND OMISSIONS

The PLANS are presumed to be correct, but CONTRACTOR shall be required to check carefully all dimensions before beginning the WORK. If any errors or omissions are discovered, ENGINEER shall be so notified in writing. ENGINEER shall immediately notify GILBERT who will then make such corrections, and interpretations as may be deemed necessary for fulfilling the intent of the PLANS and SPECIFICATIONS and shall issue appropriate ENGINEER'S INSTRUCTION BULLETINS. Any such adjustments made by

CONTRACTOR without prior review and acceptance shall be at his own risk. The settlement of any complication or disputed expenses arising from such adjustment shall be made by CONTRACTOR at his own expense.

4.6 QUALIFICATIONS FOR EMPLOYMENT

4.6.1 No person under the age of sixteen (16) years for normal occupations, no person under the age of eighteen (18) years in hazardous occupations and no person currently serving a sentence in a penal or correctional institution shall be employed to perform any WORK under this CONTRACT. Each person working must provide proof of United States citizenship or legal work identification.

4.6.2 Immigration Law Compliance Warranty

4.6.2.1 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.

4.6.2.2 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.

4.6.2.3 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. 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).

4.6.2.4 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.

4.6.2.5 If state law is amended, the parties may modify this paragraph consistent with state law.

4.6.3 Equal Treatment of Workers

4.6.3.1 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 the WORK. 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 form or based on the violation of such, whether by CONTRACTOR or its employees.

4.7 CHARACTER OF WORKERS

4.7.1 CONTRACTOR shall have in place and enforce a drug-free workplace policy which complies with the requirements of the Drug-Free Workplace Act.

4.7.2 CONTRACTOR shall at all times employ sufficient labor and equipment for prosecuting the several classes of WORK to full completion in the manner and time required by the CONTRACT DOCUMENTS.

4.7.3 All workmen shall be competent and have sufficient skill, knowledge and experience in their class of work and in the operation of equipment required to perform all WORK properly and satisfactorily.

4.7.4 CONTRACTOR shall at all times enforce strict discipline and good order among its workmen and shall not permit the use of alcohol or controlled substances (without a medical authorization) at the SITE.

4.7.5 Any person employed by CONTRACTOR or any SUBCONTRACTOR who, in the opinion of ENGINEER does not perform his work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of ENGINEER be removed from the WORK by CONTRACTOR or SUBCONTRACTOR employing such persons, and shall not be employed again in any portion of the WORK without the approval of ENGINEER. CONTRACTOR or SUBCONTRACTOR shall hold GILBERT harmless from damages or claims for compensation that may occur in the enforcement of this section.

4.7.6 Should CONTRACTOR or SUBCONTRACTOR fail to remove such person as required above, or fail to furnish suitable and sufficient personnel for the proper prosecution of the WORK, GILBERT may suspend the WORK by written notice until such orders are complied with.

4.8 MAINTENANCE OF TRAFFIC

4.8.1 CONTRACTOR shall submit a Traffic Control Plan to GILBERT'S traffic engineer in accordance with Section 10-5(b) of the Gilbert Municipal Code. No work shall begin until a Traffic Control Plan has been approved, unless authorized in writing by the ENGINEER. CONTRACTOR shall coordinate with the various agencies both commercial and public, involved in the collection and removal of trash and garbage, so that adequate services are maintained.

4.8.2 The CONTRACTOR will coordinate and schedule off-duty police officers with the Town of Gilbert as a part of the CONTRACTOR's traffic control work. GILBERT will pay for the officers directly with no payment to the CONTRACTOR for this item. The CONTRACTOR will be required to present an overall estimate of off duty officer hours required with the submission of his master schedule for the project. Officers charge a minimum of four hours to the project if scheduled. In the event that the CONTRACTOR fails to prosecute the work in a timely and orderly fashion, GILBERT shall notify the CONTRACTOR and reserves the right to negotiate a corresponding deductive change order with the CONTRACTOR based upon the cost of $65/hour/officer that GILBERT will incur for the off duty officers.

4.8.3 Safe and adequate pedestrian and vehicular access shall be provided and maintained to fire hydrants, commercial and industrial establishments, churches, schools, parking lots, motels, hospitals, fire stations, police stations, residential properties and establishments of a similar nature.

4.8.4 Grading operations, roadway excavation and fill construction shall be conducted and maintained in such a manner as to provide a reasonably satisfactory and safe surface for vehicular and pedestrian traffic. When rough grading is completed, the roadbed shall be brought to and maintained in a reasonably smooth condition, satisfactory and safe for vehicular traffic at the posted speed limit. Pedestrian walkways shall be provided and maintained in a like manner. CONTRACTOR shall accomplish any additional grading operations and/or repairs, including barricade replacement or repairs during working and non-working periods which, in the opinion of ENGINEER, are required.

4.8.5 In the event of abnormal weather conditions, such as windstorms and rainstorms, CONTRACTOR shall immediately inspect his WORK area and take all necessary actions to insure that public access and safety are maintained.

4.8.6 CONTRACTOR shall provide ENGINEER with the emergency phone number of his representatives.

4.9 CLEANUP AND DUST CONTROL

4.9.1 Throughout all phases of construction, including suspension of WORK, and until final acceptance of the PROJECT, CONTRACTOR shall keep the WORK area clean and free from rubbish, excess material and debris generated by construction activities.

4.9.2 CONTRACTOR shall take whatever steps, procedures or means required to prevent any dust nuisance due to his construction operations. The dust control measures shall be maintained at all times to the satisfaction of ENGINEER and in accordance with the requirements of the Maricopa County Bureau of Air Control Rules and Regulations.

4.9.3 Failure of CONTRACTOR to comply with ENGINEER'S cleanup orders may result in an order to suspend WORK until the condition is corrected. No additional compensation or time will be allowed as a result of such suspension and ENGINEER has the authority to take such other measures as may be necessary to remedy the situation.

4.10 SANITATION

4.10.1 CONTRACTOR shall provide suitable and adequate sanitary conveniences for the use of all persons employed on the PROJECT. All sanitary conveniences shall conform to the regulations of the public authority having jurisdiction over such matters. At the completion of the PROJECT, all such sanitary conveniences shall be removed and the premises left in a sanitary condition.

4.10.2 CONTRACTOR shall cooperate with and follow directions of the Arizona Department of Public Health Services and the Maricopa County Health Department with respect to sanitation facilities. State and County Public Health Service representatives shall have access to the WORK wherever it is in preparation or progress, and CONTRACTOR shall provide proper facilities for such access and inspection.

4.11 WATER

4.11.1 CONTRACTOR and each SUBCONTRACTOR shall supply adequate pure cool drinking water with individual drinking cups for the use of employees on this construction. The quality of drinking water shall meet all applicable federal, state and local standards for drinking water.

4.11.2 It shall be the responsibility of CONTRACTOR to provide and maintain, at his own expense, an adequate supply of water for his use for construction and to install and maintain necessary supply connections and piping for same. Before final acceptance of the completed PROJECT, all temporary connections and piping installed by CONTRACTOR shall be removed.

4.11.3 CONTRACTOR shall apply for a fire hydrant meter and pay for all construction water used at the current rates charged by GILBERT, if CONTRACTOR desires to obtain water from the distribution system at any point.

4.12 CONSTRUCTION STAKING

4.12.1 Construction staking will be made by CONTRACTOR in accordance with the technical requirements of Section 105.8 of the MAG Specifications unless otherwise provided in the SUPPLEMENTAL CONDITIONS. CONTRACTOR shall provide and pay for all building layout staking, including elevations and all other PROJECT staking.

4.12.2 Replacement of construction stakes that have been knocked out due to CONTRACTOR'S WORK or lack of WORK, weather conditions, traffic, vandalism or utility contractors will be done at CONTRACTOR'S expense.

4.13 BLUE STAKE

CONTRACTOR is required to notify Blue Stake (263-1100) prior to the excavation of any material in accordance with A.R.S. § 40-360.22. CONTRACTOR shall directly contact

GILBERT for marking of electrical for traffic signals, sprinkler and irrigation facilities.

4.14 UTILITIES SHOWN ON THE PLANS

4.14.1 Regardless of what utilities are shown on the PLANS, it shall be CONTRACTOR'S responsibility to verify these locations and any additional lines which may exist through consulting with GILBERT, utility companies and/or "Blue Stake."

4.14.2 Existing utilities are indicated on PROJECT PLANS in accordance with the best information available. CONTRACTOR shall notify all owners of utilities when his WORK is in progress and shall make such arrangements as are necessary to make any emergency repair to any utility, in a manner satisfactory to GILBERT of a damaged utility line, including individual or house service utility lines.

4.14.3 No extra compensation will be made for the repair of any individual or house service utility or utility lines damaged by CONTRACTOR'S labor forces or equipment, nor for any damage incurred through neglect or failure to provide protective barriers, lights and other devices or means required to protect such existing utilities.

4.14.4 CONTRACTOR shall expose all sanitary and storm sewers, water, gas, electric, telephone utility lines, and other underground structures that might interfere with the WORK, in order to permit survey location prior to construction.

4.14.5 CONTRACTOR shall assume full responsibility for damages to any underground facility/utility properly shown on the Plans or properly located by the Utility owner, as a result of failing to obtain information as to its location, failing to excavate in a careful and prudent manner (as defined in MAG Spec's), or failing to take measures for protection of the facilities/utilities. The Contractor is liable to the owner of the Underground Facility/Utility for the total cost of the repair.

4.15 UTILITIES NOT SHOWN ON THE PLANS

4.15.1 If utility lines are encountered which are not shown on the PLANS, and not located, or incorrectly located by the Utility owner, other than individual or house service utility lines, and these lines are damaged or work is required to clear same, then MAG Spec Section 109.8 and A.R.S. § 40-360 shall apply.

4.15.2 The work necessary for the raising, lowering, or relocating of any such utility shall be at the Utility owner's expense. The necessary WORK may be done by the Utility owner or by CONTRACTOR, or as a collaborative effort, at the option of the Utility owner. All WORK shall be in accordance with the standards of GILBERT and the Utility owner.

4.15.3 In most cases, individual or house service utility lines are not shown on the PLANS. It shall be CONTRACTOR'S responsibility to locate and protect these individual or house services. If, due to CONTRACTOR'S operations, any of these lines are damaged, he shall repair or replace

these lines in a manner satisfactory to the owner of the utility at no extra cost to GILBERT. In addition, the cost of location, protection, and working around these individual or house service utility lines shall be included in CONTRACTOR'S bid for the WORK under this CONTRACT.

4.16 DRIVEWAYS AND WALKS

4.16.1 Inconvenience caused by digging across driveways and sidewalks shall be kept to a minimum by restoring the serviceability of the drive or sidewalk as soon as possible. At least 24 hours in advance of blocking driveways, CONTRACTOR shall notify the property owner. CONTRACTOR shall replace or repair any damage done to driveways and walks to not less than the condition existing prior to CONTRACTOR'S WORK. If it is necessary to leave an excavation open across driveways or sidewalks, CONTRACTOR shall provide temporary relief in the form of steel plates over the excavation.

4.16.2 Temporary paving replacement in front of business establishments shall be placed immediately following backfill and shall remain in place until the condition of the backfill is suitable for permanent pavement replacement.

4.16.3 Direct access shall be provided at all times to fire engine hoses, fire hydrants, hospitals, police stations, and at all other agencies or services where emergencies may require immediate access to same.

4.17 TREES AND SHRUBBERY

4.17.1 All trees and shrubbery within the right-of-way or easements shall be protected by CONTRACTOR insofar as practicable. No trees or shrubbery shall be removed without the prior approval of GILBERT.

4.17.2 In the event shrubbery or trees must be trimmed or removed, CONTRACTOR shall notify the property owner to do so within a reasonable time prior to construction. All shrubbery or trees not removed by the property owner shall be trimmed or removed by CONTRACTOR and hauled from the job at CONTRACTOR'S expense.

4.17.3 All trees, shrubs, hedges, brush, etc., designated on the PLANS, or by ENGINEER for removal, shall be completely removed and disposed of as indicated on the PLANS or specified.

4.18 IRRIGATION DITCHES AND STRUCTURES

CONTRACTOR shall contact the owners of any ditches, irrigation lines, and appurtenances which interfere with the WORK and shall make arrangements for dry-up or scheduling of water deliveries. CONTRACTOR shall be liable for any damage due to irrigation facilities damaged by his operations and shall repair such damaged facilities to an "equal or better than" original condition.

4.19 ROADS AND FENCES

4.19.1 Streets and roads subjected to interference by the prosecution of this WORK shall be kept open in compliance with Section 4.9 and maintained by CONTRACTOR until the WORK is completed.

4.19.2 All fences located in easements, when damaged or temporarily removed, shall be restored to a condition equal to or better than the original condition. Such fences shall be restored at CONTRACTOR'S expense.

4.20 PROTECTION OF WORK AND CLEANING UP

4.20.1 CONTRACTOR shall be responsible for the protection of all WORK until its completion and final acceptance, and he shall at his own expense, replace damaged or lost material, or repair damaged parts of the WORK, and CONTRACTOR and his Sureties shall be liable therefore.

4.20.2 CONTRACTOR shall remove from the vicinity of the completed WORK all plant, surplus material or equipment belonging to him or used under his direction during construction. All surplus excavated material, concrete, plaster and debris of all kinds shall be removed from GILBERT'S premises, streets or portions of building or property at or adjacent to the site of the WORK excepting that select material which may be required for refilling or grading the surface. Salvage material shall be stored at areas designated by ENGINEER. Where an area is indicated to be "cleared", all the weeds, vegetation, shrubs and trees shall be removed unless they are specifically noted not to be removed.

4.21 METHODS AND EQUIPMENT

4.21.1 The methods and equipment adopted by CONTRACTOR shall be such as will secure a satisfactory quality of WORK and will enable CONTRACTOR to complete the WORK in the time agreed upon. The selection and use of these methods and equipment is the responsibility of CONTRACTOR.

4.21.2 When the SPECIFICATIONS state the construction shall be performed by the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by ENGINEER. If CONTRACTOR desires to use a method or type of equipment other than those specified, he may make that request to GILBERT, who shall immediately forward the request to ENGINEER. The request shall be in writing and shall include a full description of the methods and equipment proposed to be used and an explanation of the reasons for desiring to make the change. If approval is given, it will be on the condition that CONTRACTOR will be fully responsible for producing construction work that performs the equivalent or better function as the original specifications.. Approval by GILBERT does not guarantee acceptance of the final Work, which will be determined by ENGINEER after evaluating whether equivalent or better function as the original specifications was or will be achieved. If, after trial use of the substituted methods or equipment, ENGINEER determines that the WORK produced does not meet the SPECIFICATIONS, CONTRACTOR shall discontinue the use of the substitute method or equipment and shall complete the remaining construction with the specified methods, equipment and quality, or take such other corrective action as ENGINEER may direct. No change will be made in basis of payment of the

construction items involved nor in the CONTRACT TIME as result of authorizing a change in methods or equipment under these provisions. CONTRACTOR may appeal a decision of ENGINEER under this Section to the GILBERT'S REPRESENTATIVE. Any such appeal must be made in writing within forty-eight (48) hours of ENGINEER'S decision or the right to appeal is waived.

4.22 SUSPENSION OF WORK

In case of suspension of WORK from any cause whatever, CONTRACTOR shall be responsible for the protection of all MATERIALS and equipment. CONTRACTOR shall provide suitable drainage and erect temporary structures where necessary to protect the MATERIALS and equipment.

4.23 DELAYS AND EXTENSION OF TIME

4.23.1 If CONTRACTOR finds it impossible for reasons beyond his control to complete the WORK within the CONTRACT TIME as specified or as extended, he shall immediately submit a written request to ENGINEER for an extension of time setting forth therein the reasons that he believes will justify the granting of his request. CONTRACTOR'S plea that insufficient time was specified is not a valid reason for extension of time. If ENGINEER finds that the WORK was delayed because of conditions beyond the control and through no fault of CONTRACTOR, he may extend the CONTRACT TIME in such amount as the conditions justify. The extended CONTRACT TIME shall be non-compensable and shall be in full force and affect the same as though it were the original CONTRACT TIME.

4.23.2 In setting the CONTRACT TIME, it has been assumed that up to 3 WORKING DAYS may be lost as a result of weather conditions which will slow down the normal progress of WORK; therefore, no extensions in CONTRACT TIME will be allowed for the first 3 WORKING DAYS lost due to bad weather conditions. Attention is directed to the nearest weather bureau station in the vicinity of the WORK for determining the extremes of temperature, wind velocities and the amount and intensity of precipitation that can be expected.

4.23.3 To receive consideration, a request for extension of time must be made in writing to ENGINEER stating the reason for said request, and such request must be received by ENGINEER within forty-eight (48) hours following the end of the delay-causing condition.

4.23.4 ENGINEER shall ascertain the facts and extent of the delay, and its findings of the facts thereon shall be final and conclusive.

4.23.5 An extension of time may be granted by GILBERT after the expiration of the time originally fixed in the CONTRACT or as previously extended, and the extension so granted shall be deemed to commence and be effective from the date of such expiration. Any extension of time shall not release the sureties upon any bond required under the CONTRACT.

4.23.6 GILBERT'S or ENGINEER'S liability for delay from any cause shall be limited to granting a time extension to CONTRACTOR and there is no other obligation, expressed or implied, on the part of GILBERT or ENGINEER to CONTRACTOR for delay from any cause. An

extension of CONTRACT TIME shall not release the sureties of their obligations, which shall remain in full force until the discharge of the CONTRACT.

4.24 GILBERT'S RIGHT TO CARRY OUT THE WORK

If CONTRACTOR defaults or neglects to carry out the WORK in accordance with the CONTRACT DOCUMENTS, and fails within ten (10) working days after receipt of written notice from GILBERT to commence and continue correction of such default or neglect with diligence and promptness, GILBERT may without prejudice to any other remedy GILBERT may have, make good such deficiencies. In such case an appropriate CHANGE ORDER shall be issued deducting from the payments then or thereafter due CONTRACTOR the cost of correcting such deficiencies, including compensation for ENGINEER'S additional services made necessary by such default, neglect or failure. If the payment then or thereafter due CONTRACTOR is not sufficient to cover such amount, CONTRACTOR shall pay the difference to GILBERT.

4.25 TERMINATION FOR BREACH OF CONTRACT

4.25.1 If CONTRACTOR refuses or fails to prosecute the WORK or any separable part thereof in accordance with the PLANS AND SPECIFICATIONS or with such diligence as will ensure its completion within the time specified herein, or an extension thereof, or fails to complete such WORK within time, or if he or any of his SUBCONTRACTOR(S) should violate any of the provisions of the CONTRACT, GILBERT may terminate this CONTRACT.

4.25.2 In the event of any such termination, GILBERT shall immediately serve written notice thereof upon the Surety and CONTRACTOR, and the Surety shall have the right to take over and perform the CONTRACT; provided however, that if the Surety within fifteen (15) DAYS after the serving upon it of a notice of termination does not give GILBERT written notice of its intention to take over and perform the CONTRACT and does not commence performance thereof within thirty (30) DAYS from the date of serving said notice, GILBERT may take over the WORK and prosecute the same to completion by CONTRACT or by any other method GILBERT may deem advisable. GILBERT may, without liability for so doing, take possession of and utilize in completing the WORK such MATERIALS, appliances, plants and other property belonging to CONTRACTOR that may be on the site of the WORK and be necessary therefore. For any portion of such WORK that GILBERT elects to complete by furnishing employees, MATERIALS, tools and equipment, GILBERT shall be compensated for such in accordance with the schedule of compensation for force account work in the section on payment for changes in the WORK.

4.25.3 The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to GILBERT.

PART V

GENERAL CONDITIONS

CONTROL OF WORK

5.1 TIME OF WORK

5.1.1 Initial Contract Schedule

5.1.1.1 Prior to the preconstruction meeting, CONTRACTOR shall furnish to ENGINEER one hard copy and one copy in electronic format of an INITIAL CONTRACT SCHEDULE.

5.1.1.2 The INITIAL CONTRACT SCHEDULE shall be based on and incorporate the CONTRACT Milestone and Completion Dates specified in the CONTRACT DOCUMENTS.

5.1.1.3 The INITIAL CONTRACT SCHEDULE shall indicate the detailed plan for the work to be completed in the first ninety (90) days of the CONTRACT; details of planned mobilization of plant and equipment; sequence of early operations; and procurement of MATERIALS and equipment. WORK beyond ninety (90) days shall be shown in summary form.

5.1.1.4 The INITIAL CONTRACT SCHEDULE shall be a time-scaled, resource loaded Critical Path Method (CPM) type schedule, prepared in a Primavera compatible software.

5.1.1.5 **VERTICAL PROJECTS -** The INITIAL CONTRACT SCHEDULE shall be cost loaded. The accepted cost loaded schedule will be used as a basis for monthly progress payments until acceptance of the CONTRACT SCHEDULE. Use of the INITIAL CONTRACT SCHEDULE for progress payments shall not exceed 30 days.

5.1.1.6 **HORIZONTAL PROJECTS** – The Bid Schedule will be used as a basis for monthly progress payments.

5.1.1.7 Overall time of completion and time of completion for each milestone shown on the INITIAL CONTRACT SCHEDULE shall adhere to the times in the SUPPLEMENTAL CONDITIONS, unless an earlier (advanced) initial time of completion is requested by CONTRACTOR and agreed to by ENGINEER. Any such agreement shall be formalized by a CHANGE ORDER.

5.1.1.8 ENGINEER will review the INITIAL CONTRACT SCHEDULE for conformance with the requirements of the CONTRACT DOCUMENTS. ENGINEER will return the INITIAL CONTRACT SCHEDULE with comments within five (5) working days after receiving it from CONTRACTOR.

5.1.2 Contract Schedule Development

5.1.2.1 Within fifteen (15) working days after receiving the NOTICE TO PROCEED, CONTRACTOR shall submit a detailed proposed CONTRACT SCHEDULE presenting an orderly and realistic plan for completion of the WORK, in conformance with the requirements of the CONTRACT DOCUMENTS.

5.1.2.2 The proposed CONTRACT SCHEDULE shall furnish or comply with the following requirements:

VERTICAL PROJECTS

A. A time scaled cost loaded CPM type schedule.

B. No activity on the schedule shall have a duration longer than ten (10) working days, with the exception of fabrication and procurement activities, unless otherwise approved by ENGINEER if the PROJECT is a horizontal project (road, sewer, water improvements). Activity durations shall be the total number of actual days required to perform that activity including consideration of weather impact on completion of that activity.

C. Procurement of major equipment, through receipt and inspection at the SITE, identified as a separate activity.

D. GILBERT furnished MATERIALS and equipment if any, identified as separate activities.

E. Dependencies (or relationships) between activities.

F. Processing/approval of submittals and shop drawings for major equipment. Activities that are dependent on submittal acceptance and/or MATERIAL delivery shall not be scheduled to start earlier than the expected acceptance or delivery dates.

G. The total cost of performing each activity. This cost shall be the total of labor, material, equipment, including overhead and profit. The sum of the cost for activities shall equal the total contract value.

H. Ten (10) working days for developing punch list(s), completion of punch list items, and final clean up for the WORK or any designated portion thereof. No other critical activities shall be scheduled during this period.

I. Interface with the WORK of other contractors (or entities).

HORIZONTAL PROJECTS

A. A time scaled cost loaded CPM type schedule.

B. No activity on the schedule shall have a duration longer than ten (10) working days, with the exception of fabrication and procurement activities, unless otherwise approved by ENGINEER. Activity durations shall be the

total number of actual days required to perform that activity including consideration of weather impact on completion of that activity.

C. Procurement of major equipment, through receipt and inspection at the SITE, identified as a separate activity.

D. GILBERT furnished MATERIALS and equipment if any, identified as separate activities.

E. Dependencies (or relationships) between activities.

F. Processing/approval of submittals and shop drawings for major equipment. Activities that are dependent on submittal acceptance and/or MATERIAL delivery shall not be scheduled to start earlier than the expected acceptance or delivery dates.

G. Ten (10) working days for developing punch list(s), completion of punch list items, and final clean up for the WORK or any designated portion thereof. No other critical activities shall be scheduled during this period.

H. Interface with the WORK of other contractors (or entities).

5.1.2.3 CONTRACTOR shall submit to ENGINEER one hard copy and one copy in electronic format of the CONTRACT SCHEDULE.

5.1.2.4 ENGINEER will review the proposed CONTRACT SCHEDULE for conformance with the requirements of the CONTRACT DOCUMENTS. Within five (5) working days after receipt, ENGINEER will accept the CONTRACT SCHEDULE or will return it with comments. If the proposed CONTRACT SCHEDULE is not accepted, CONTRACTOR shall revise the schedule to incorporate comments and resubmit the schedule for acceptance within five (5) working days after receiving it. The accepted schedule shall become the CONTRACT SCHEDULE. Schedules showing a completion date earlier than the contract date will not be accepted.

5.1.2.5 The CONTRACT SCHEDULE shall be the basis for evaluating job progress, payment requests, and time extension requests. The responsibility for developing the CONTRACT SCHEDULE and monitoring actual progress as compared to the schedule rests with CONTRACTOR.

5.1.2.6 Failure of the CONTRACT SCHEDULE to include any element of the WORK or any inaccuracy in the CONTRACT SCHEDULE will not relieve CONTRACTOR from responsibility for accomplishing all the WORK in accordance with the CONTRACT

5.1.2.7 Acceptance of the CONTRACT SCHEDULE will not relieve CONTRACTOR of the responsibility for accomplishing the WORK in accordance with the CONTRACT.

5.1.3 <u>Monthly Updates</u>

5.1.3.1 CONTRACTOR shall submit to ENGINEER each month an up-to-date status report of the work. The status report shall include:

A. CONTRACTOR'S estimated percentage complete for each activity not yet complete.

B. Actual start/finish dates for activities as appropriate.

C. Identification of processing errors, if any on the previous update reports.

D. Revisions, if any, to the assumed activity durations including revisions for weather impact for any activities due to the effect of the previous update on the schedule.

E. Identification of activities that are affected by proposed CHANGE ORDERS issued during the update period.

F. Resolution of conflict between actual work progress and schedule logic. When out of sequence activities develop in the CONTRACT SCHEDULE because of actual construction progress, CONTRACTOR shall submit revision to schedule logic to conform to current status and direction.

5.1.3.2 ENGINEER will review the updated information and meet with CONTRACTOR each week at the SITE to determine the status of the WORK. If agreement cannot be reached on any issue, CONTRACTOR will use ENGINEER'S determination in the processing of the update.

5.1.3.3 CONTRACTOR will incorporate ENGINEER'S review comments and submit two (2) copies of the report.

5.1.3.4 Progress payments pursuant to the CONTRACT will be based on the update of the CONTRACT SCHEDULE.

5.1.4 Schedule Revisions

5.1.4.1 If the sequence of construction differs significantly, as determined by ENGINEER, from the CONTRACT SCHEDULE, CONTRACTOR shall submit within five (5) working days a revised schedule to ENGINEER for acceptance.

5.1.4.2 When a proposed CHANGE ORDER is issued which has the potential to impact specified completion dates, the CHANGE ORDER request shall include a description of the impact of such changes. If approved, it shall be incorporated into the CONTRACT SCHEDULE. Time extensions will be considered only to the extent there is insufficient remaining float to accommodate these changes, and pursuant to Section 6 of the CONTRACT DOCUMENTS.

5.1.4.3 Should CONTRACTOR, after acceptance of the CONTRACT SCHEDULE, intend to change its plan of construction, it shall submit its requested revisions to ENGINEER, along with a written statement of the revision, including a description of the logic for rescheduling the work, methods of maintaining adherence to intermediate milestones and other specific dates and the reasons for the revisions. If the requested changes are acceptable to ENGINEER, they will be incorporated into the CONTRACT SCHEDULE in the next reporting period.

5.1.4.4 Schedule revisions shall be submitted at least five (5) working days prior to the date of submission of update information. ENGINEER will have five (5) working days to review the revisions.

5.1.5 Contract Schedule Reports

CONTRACTOR shall submit two (2) copies of the following reports for the proposed CONTRACT SCHEDULE, CONTRACT SCHEDULE monthly updates, CONTRACT SCHEDULE revisions and recovery schedules:

5.1.5.1 **VERTICAL PROJECTS**

A. Schedule Logic Report listing the activities, their early/late and actual start and finish dates, duration, float and the logic relationship of activities sorted by early start.

B. A Cost Report listing each activity and its associated cost, percentage of work accomplished, earned value to date, previous payments and amount earned for the update period.

C. A narrative report with the updated progress analysis, which shall include a description of problem areas, current and anticipated delaying factors and their impact, an explanation of corrective action taken and proposed revisions for recovery. Narrative report on proposed CONTRACT SCHEDULE will outline CONTRACTOR'S overall plan, strategy, crew movement and utilization, and other considerations in developing the schedule.

5.1.5.2 **HORIZONTAL PROJECTS**

A. CPM Schedule Report listing the activities, their early/late and actual start finish dates, duration, float and the logic relationship of activities sorted by early start.

B. CONTRACTOR shall provide all the schedule files in Primavera compatible format on CD.

5.1.6 Short Interval Schedules

CONTRACTOR shall prepare a Short Interval Schedule (SIS) to be used throughout the duration of WORK. The SIS shall include all current activities and projected activities for the succeeding two (2) weeks. The SIS shall include actual start/finish dates for the preceding one (1) week. Eight copies of the SIS shall be submitted to ENGINEER at the weekly construction meeting. CONTRACTOR shall participate in short interval scheduling coordination during the weekly construction meetings.

5.1.7 Time of Essence

Time is of the essence of this CONTRACT. CONTRACTOR shall, to the fullest extent possible, carry on the various classes or parts of the WORK concurrently, and shall not defer construction of any portion of the Work in favor of any other portion of the WORK, without the express approval of ENGINEER.

5.1.8 Date of Completion

CONTRACTOR shall fully and satisfactorily complete the WORK within the CONTRACT TIME. The date of completion is defined in Section 9.2.

5.1.9 Responsibility for Completion

5.1.9.1 CONTRACTOR shall furnish sufficient manpower, MATERIALS, facilities and equipment and shall work sufficient hours, including night shifts, overtime operations, Saturdays, Sundays and holidays as may be necessary to insure the prosecution and completion of the WORK in accordance with the accepted CONTRACT SCHEDULE. If work on the critical path is seven days or more behind the currently updated CONTRACT SCHEDULE and it becomes apparent that the WORK will not be completed within the CONTRACT TIME, CONTRACTOR will implement whatever steps it deems necessary to make up all lost time. If CONTRACTOR'S solution is not successful, it will make further attempts using the following sequence of events:

A. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities.

B. If the above cannot be achieved then:

- CONTRACTOR shall increase manpower in such quantities and crafts as will substantially eliminate, in the judgment of the ENGINEER, the backlog of work; or increase the number of working hours, shifts per working day, working days per week or the amount of equipment or any combination of the foregoing sufficiently to substantially eliminate in the judgment of the ENGINEER the backlog of work.
- In addition, ENGINEER may require the CONTRACTOR to submit a recovery schedule demonstrating its program and proposed plan to make up a lag in scheduled progress and to ensure completion of the WORK within the CONTRACT TIME. If the ENGINEER finds the proposed recovery schedule unacceptable, it may require CONTRACTOR to submit a new plan. If the actions taken by CONTRACTOR or the second plan proposed are unsatisfactory, ENGINEER may require the CONTRACTOR to take any of the actions set forth in the previous paragraph without additional cost to GILBERT to make up the lag in scheduled progress.

5.1.9.2 Failure of CONTRACTOR to comply with the requirements of this Section 5.1.9 shall be considered grounds for a determination by GILBERT, that CONTRACTOR is failing to prosecute the WORK with such diligence as will ensure its completion within the time specified.

5.1.10 Daily Reports

CONTRACTOR shall submit a Daily Activity Report no later than 9:00 a.m. the following work day to ENGINEER for each workday including weekends and holidays, when worked.

5.1.11 Payments Withheld

Progress Payments may be withheld in whole or in part should CONTRACTOR fail to comply with the requirements of this Section 5.1.

5.2 ENGINEER TO INTERPRET CONTRACT DOCUMENTS

ENGINEER will decide all questions which may arise as to the interpretation of the PLANS AND SPECIFICATIONS. CONTRACTOR may appeal a decision of ENGINEER made pursuant to this paragraph to GILBERT'S REPRESENTATIVE. Such appeal must be made in writing within forty-eight (48) hours of ENGINEER'S decision or the right to appeal is waived.

5.3 FORMAL PROTEST

5.3.1 If CONTRACTOR considers any WORK demanded of him to be outside the requirements of the CONTRACT, or if he considers any instruction, ruling, or decision of ENGINEER to be unfair, he shall, within forty-eight (48) hours after any such demand is made, or instruction, ruling or decision is given, file a written protest stating clearly and in detail his objections and the reasons therefore. Except for such protests as are made of record in the manner and within the time above stated, CONTRACTOR shall be deemed to have waived and does hereby waive all claims for extra WORK, damages and extensions of time resulting from demands, instructions, rulings and decisions of ENGINEER. If the protest is against a demand, instruction, ruling or decision of ENGINEER, it shall be filed with GILBERT'S REPRESENTATIVE.

5.3.2 Upon receipt of a protest from CONTRACTOR of a decision of ENGINEER, GILBERT'S REPRESENTATIVE shall review the demands, instructions, rulings, or decisions objected to and shall promptly advise CONTRACTOR in writing of his final decision, which shall be binding. Upon receipt of a protest from CONTRACTOR of a decision of GILBERT'S REPRESENTATIVE, the Town Manager shall review the demands, instructions, rulings, or decisions objected to and shall promptly advise CONTRACTOR in writing of his final decision, which shall be binding.

5.3.3 CONTRACTOR shall continue work on the Project during the review of the formal protest.

5.4 PLANS

5.4.1 The CONTRACT PLANS consist of general drawings. These indicate such details as are necessary to give a comprehensive idea of the construction contemplated. All authorized alterations affecting the requirements and information given on the CONTRACT PLANS shall be in writing. The CONTRACT PLANS shall be supplemented by such working or shop drawings prepared by CONTRACTOR as are necessary to adequately control the WORK. No change shall be made by CONTRACTOR in any working or shop drawing after it has been accepted by ENGINEER.

5.4.2 CONTRACTOR shall keep a current copy of the PLANS and SPECIFICATIONS at the jobsite, and shall at all times give ENGINEER access thereto. A current copy of PLANS and SPECIFICATIONS shall include red-line drawings, all ADDENDA, CHANGE ORDERS, ENGINEER INSTRUCTION BULLETINS, and any other approved change made to the PLANS and SPECIFICATIONS. Any drawings or PLANS listed in the SPECIFICATIONS shall be regarded as a part thereof and ENGINEER will furnish from time to time such additional drawings, PLANS, profiles, and information as he may consider necessary for CONTRACTOR'S guidance.

5.4.3 All authorized alterations affecting the requirements and information given on the accepted PLANS shall be in writing. No changes shall be made of any plan or drawing after the same has been accepted by ENGINEER except by consent of ENGINEER in writing.

5.5 CONFORMITY WITH PLANS AND ALLOWABLE DEVIATIONS

Finished surfaces in all cases shall conform with lines, grades, cross sections, and dimensions shown on the accepted PLANS. Allowable deviations, other than specified tolerances, from the accepted PLANS and working drawings will in all cases be determined by ENGINEER.

5.6 COORDINATION AND INTERPRETATION OF PLANS AND SPECIFICATIONS

5.6.1 The documents which make up the CONTRACT DOCUMENTS are essential parts of the CONTRACT, and a requirement occurring in one is as binding as though occurring in all. They are intended to be coordinated and to describe and provide for a complete WORK.

5.6.2 Should it appear that the WORK to be done or any of the matters relative thereto are not sufficiently detailed or explained in these CONTRACT DOCUMENTS, CONTRACTOR shall promptly notify ENGINEER. ENGINEER shall follow the procedures set forth in Section 4.5.1. In the event of any discrepancy between any drawing and the figures written thereon, the figures shall be taken as correct.

5.6.3 In the event of there being a conflict between one CONTRACT DOCUMENT and any of the other CONTRACT DOCUMENTS, the more stringent requirement shall apply.

5.6.4 CONTRACTOR shall not take advantage of any apparent error or omission in the PLANS or

SPECIFICATIONS. In the event CONTRACTOR discovers such an error or omission, he shall immediately notify ENGINEER. ENGINEER shall proceed as prescribed in Section 4.5.1 of the CONTRACT DOCUMENTS.

5.7 ORDER OF WORK

5.7.1 When required by the CONTRACT DOCUMENTS, CONTRACTOR shall follow the sequence of operations as set forth therein. Full compensation for conforming with such requirements will be considered as included in the prices paid for CONTRACT items of WORK and no additional compensation will be allowed there for.

5.7.2 The organization of the SPECIFICATIONS into divisions and articles and the arrangement of drawings shall not control CONTRACTOR in dividing the WORK among SUBCONTRACTORS or in establishing the extent of WORK to be performed by any trade.

5.8 COOPERATION BETWEEN CONTRACTORS

5.8.1 GILBERT reserves the right to CONTRACT for and perform other or additional WORK on or near the WORK covered by the CONTRACT.

5.8.2 When separate contracts are let within the limits of any one PROJECT, each CONTRACTOR shall conduct his work so as not to interfere with or hinder the progress or completion of the WORK being performed by other CONTRACTORS. CONTRACTORS working on the same PROJECT shall cooperate with each other as directed.

5.8.3 Each CONTRACTOR involved shall assume all liability, financial or otherwise, in connection with his CONTRACT and shall protect and save harmless GILBERT from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced by him because of the presence and operations of other CONTRACTORS working within the limits of the same PROJECT.

5.8.4 CONTRACTOR shall arrange his WORK and shall place and dispose of the MATERIALS being used so as not to interfere with the operations of the other CONTRACTORS within the limits of the same PROJECT. He shall join his WORK with that of others in an acceptable manner and shall perform it in proper sequence to that of the others.

5.8.5 GILBERT will not honor any claim for extra compensation due to delays, extra WORK, or extension of time caused by any other CONTRACTORS working within the limits of the same PROJECT.

5.9 INSPECTION

5.9.1 CONTRACTOR shall furnish ENGINEER with every reasonable facility for ascertaining whether the WORK as performed is in accordance with the requirements and intent of the SPECIFICATIONS and CONTRACT. ENGINEER shall be permitted to inspect all MATERIALS and each part or detail of the WORK at any time for the purpose of expediting

and facilitating the progress of the WORK. ENGINEER shall be furnished with such information and assistance by CONTRACTOR as required to make a complete and detailed inspection. Should any WORK be covered up before acceptance or consent of ENGINEER, it must, if required by ENGINEER, uncovered for examination at CONTRACTOR'S expense. The direct control shall be solely the responsibility of CONTRACTOR'S foremen and superintendent.

5.9.2 When the United States government is to pay a portion of the cost of the WORK covered by the CONTRACT, the WORK shall be subject to the inspection of the representatives of the U.S. government. Such inspection shall in no sense make the U.S. government a party to this CONTRACT and will in no way interfere with the rights of either party under this CONTRACT.

5.9.3 The inspection of the WORK shall not relieve CONTRACTOR of any of his obligations to fulfill his CONTRACT as herein provided. Any unsuitable or defective MATERIALS and WORK may be rejected notwithstanding that such WORK and MATERIALS may have been previously overlooked and accepted or estimated for payment. Unsuitable or defective MATERIALS shall be removed from the site within three (3) days of such rejection.

5.10 LINES AND GRADES

Profiles and elevations are indicated on the PLANS. All WORK under this CONTRACT shall be built in accordance with the lines and grades indicated on the PLANS. These lines and grades may be modified as provided in Part VI (Changes in the Work) in the CONTRACT. The establishment of the lines and grades shall be set forth under these GENERAL CONDITIONS, as modified by the SUPPLEMENTAL CONDITIONS. CONTRACTOR shall verify all vertical and horizontal controls using the nearest benchmark.

5.11 USE OF SITE

5.11.1 CONTRACTOR shall confine operations at the site to areas permitted by law, ordinances, permits and the CONTRACT DOCUMENTS, and shall not unreasonably encumber the site with any MATERIALS or equipment.

5.11.2 CONTRACTOR shall coordinate all of the CONTRACT'S operations with, and secure approval from, ENGINEER before using any portion of the site.

5.12 SEPARATE CONTRACTS TO GILBERT

5.12.1 If any part of CONTRACTOR'S WORK depends on proper execution or results of WORK performed by GILBERT or any separate CONTRACTOR, CONTRACTOR shall, prior to proceeding with the WORK, promptly report to ENGINEER any apparent discrepancies or defects in such other WORK that render it unsuitable for such proper execution and results. Failure of CONTRACTOR so to report shall constitute an acceptance of GILBERT'S or separate CONTRACTOR'S WORK as fit and proper to receive the WORK, except as to defects which may subsequently become apparent in such WORK by others.

5.12.2 Should CONTRACTOR wrongfully cause damage to the WORK or property of GILBERT, or to other WORK or property on the site, CONTRACTOR shall promptly remedy such damage.

5.12.3 Should CONTRACTOR wrongfully delay or cause damage to the WORK or property of any separate CONTRACTOR, CONTRACTOR shall, upon due notice, promptly attempt to settle with such other CONTRACTOR by agreement, or otherwise to resolve the dispute.

5.13 TESTS

5.13.1 If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the WORK to be inspected, tested or approved, CONTRACTOR shall give ENGINEER timely notice of its readiness so ENGINEER may observe such inspection, testing or approval. CONTRACTOR shall bear all costs of such inspections, test or approvals conducted by public authorities. GILBERT shall reserve the right to conduct additional tests and inspections, and, unless otherwise provided, GILBERT shall bear all costs of other inspections, tests or approvals.

5.13.2 Required certificates of inspection, testing or approval shall be secured by CONTRACTOR and CONTRACTOR shall promptly deliver them to ENGINEER.

PART VI

GENERAL CONDITIONS

CHANGES IN THE WORK

6.1 CHANGES IN THE WORK

6.1.1 GILBERT, without invalidating the CONTRACT and without notification of sureties, may order extra WORK, make changes by altering, or delete any portion of the WORK as specified herein, or as deemed necessary or desirable by GILBERT. All such WORK shall be executed under the conditions of the original CONTRACT except that any claim for extension of time and additional cost caused thereby shall be adjusted at the time of ordering such change or extra WORK.

6.1.2 In giving instructions, ENGINEER shall have authority to make minor changes in the WORK, not involving extra cost, and not inconsistent with the purposes of the WORK. No extra WORK or change shall be made unless in pursuance of a written order by GILBERT. Any claim for an addition to the CONTRACT SUM shall not be valid unless the change was so ordered, except in an emergency endangering life or property. If CONTRACTOR claims that any instructions involve extra cost under the CONTRACT, he shall within forty-eight (48) hours after the receipt of such instructions, provide notice to ENGINEER of such claim, and before proceeding to execute the WORK, except in an emergency endangering life or property, and the procedure shall then be as provided to approve CHANGE ORDERS.

6.1.3 It is mutually understood that it is inherent in the nature of municipal construction that some changes in the PLANS and SPECIFICATIONS may be necessary during the course of construction to adjust them to field conditions, and that it is of the essence of the CONTRACT to recognize a normal and expected margin of change. GILBERT shall have the right to make such changes in the PLANS and the character of the WORK as may be necessary or desirable to insure the completion of the WORK in the most satisfactory manner without invalidating the CONTRACT.

6.1.4 Changes shall be incorporated in the written CHANGE ORDER issued by GILBERT, which shall be written so as to indicate acceptance on the part of CONTRACTOR as evidenced by his signature.

6.2 PRICING OF CHANGES

6.2.1 If a CHANGE ORDER provides for an adjustment to the CONTRACT SUM, the adjustment shall be based on one of the following methods:

6.2.1.1 Where the WORK involved is covered by unit prices contained in the Bid Schedule, by application of the unit prices to the quantities of the items involved, as mutually agreed to by the CONTRACTOR and the ENGINEER.

6.2.1.2 By mutual acceptance of a unit price not contained in the Bid Schedule, or mutual acceptance of a lump sum price. The CONTRACTOR shall furnish ENGINEER with an itemized cost breakdown together with supporting data including the quantities used in computing the unit price and/or lump sum price of the WORK.

6.2.1.3 Only when methods A and B above are exhausted, then on the basis of the Cost of Work plus a CONTRACTOR'S Fee for overhead and profit, as described below. (Cost Plus Basis).

6.2.1.4 Whenever the cost of any work is to be determined on a Cost Plus Basis, CONTRACTOR will submit on forms acceptable to the ENGINEER, daily work sheets showing an itemized breakdown together with supporting data used to arrive at a final cost for the WORK. No payment will be made for work not verified by the ENGINEER. Final cost for the Change in the WORK shall be reflected and formalized in a Change Order.

6.2.2 Allowable costs for any CHANGE ORDER shall be limited to the following:

6.2.2.1 Costs of labor, including social security, Medicare and unemployment insurance, fringe benefits available to CONTRACTOR'S employees generally.

6.2.2.2 Costs of first line supervision labor, including labor burden as described in Section6.2.2 A. "First Line Supervision" shall mean a working foreman or lead craft worker other than the PROJECT superintendent.

6.2.2.3 Actual cost of the PROJECT superintendent associated with any period of compensable delay caused by issuance of the CHANGE ORDER. In the absence of a compensable delay, all of the PROJECT superintendent's time is considered to have been paid for as part of the overhead.

6.2.2.4 Actual costs of MATERIALS, including sales tax and delivery.

6.2.2.5 Rental costs of machinery and equipment, based on the latest "schedule of equipment rates" used by the Arizona Department of Transportation, exclusive of small tools, whether rented from CONTRACTOR or others.

6.2.2.6 Overhead and profit as specified below. "Overhead" shall include the following: Preparation of all paperwork related to changes in the WORK, including field review, estimating and cost breakdown; coordination and supervision, both office and field, including the PROJECT superintendent; vehicles, including gas and maintenance; small tools, incidentals and consumables; engineering, detailing, and revisions to shop drawings and record drawings; general office expense; extended and unabsorbed home office overhead; warranty; costs of bonds, liability insurance, and all taxes; and all other expenses not specifically included in Section 6.2.2.1

6.2.3 Upon receipt of a proposed CHANGE ORDER, CONTRACTOR shall promptly proceed with the change in the WORK and advise ENGINEER within five (5) working days of CONTRACTOR'S agreement or disagreement with the method, if any, provided in the proposed CHANGE ORDER for determining the proposed adjustment in the CONTRACT SUM or CONTRACT TIME. Failure to return the CHANGE ORDER to ENGINEER within

five (5) working days indicates CONTRACTOR'S AGREEMENT therewith, including adjustment in CONTRACT SUM and CONTRACT TIME or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a CHANGE ORDER.

6.2.4 If CONTRACTOR disagrees with the method for adjustment in the CONTRACT SUM, the adjustment shall be determined by ENGINEER on the basis of any of the methods described in Sections 6.2.1.1 through 6.2.1.4.

6.2.5 Overhead and Profit for actual cost of work performed by the Contractor and/or his Sub-Contractor, shall be determined in accordance with MAG Section 109.5. Cumulative total markup for all tiers of CONTRACTORS and SUBCONTRACTORS shall not exceed thirty percent (30%).

6.2.6 If the net value of a change results in a credit from CONTRACTOR or SUBCONTRACTOR, the credit shall be the actual net cost, plus five percent (5%) for overhead and profit. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to the change.

6.3 COST PLUS ADJUSTMENT

6.3.1 Record Keeping. In the event that the pricing method selected is the "cost plus" method described in Sections 6.2.1.3 and 6.2.1.4, CONTRACTOR shall keep and present daily, in such form as ENGINEER may prescribe, an itemized accounting together with appropriate supporting data of the labor, materials, and equipment used during that DAY. All labor shall be recorded on separate time sheets clearly identified with the CHANGE ORDER number and scope of extra work involved. These time sheets shall be signed daily by ENGINEER. No costs will be allowed for time not recorded and signed the same day the work takes place. CONTRACTOR and ENGINEER shall discuss and attempt to resolve any disputed concerning CONTRACTOR'S daily records at the time the report is submitted.

6.3.2 Reconciliation. CONTRACTOR shall on a monthly basis accompanying the progress payment request submit a reconciliation for all WORK performed under a cost plus CHANGE ORDER during the period of the progress payment. A final reconciliation shall be submitted within 30 days after the WORK of the CHANGE ORDER is completed. The reconciliation shall recap all costs and appropriate markups for the period. No costs will be allowed for work not included in a reconciliation within the time periods specified.

6.4 EFFECT ON SURETIES

6.4.1 All changes authorized by the CONTRACT DOCUMENTS may be made without notice to or consent of the sureties on the CONTRACT bonds, and shall not reduce the sureties' liability on the bonds.

6.4.2 GILBERT reserves the right to require additional payment or performance bonds to secure a CHANGE ORDER.

PART VII

GENERAL CONDITIONS

MATERIALS AND WORKMANSHIP

7.1 GENERAL

7.1.1 All equipment, MATERIALS, and articles incorporated in the WORK covered by this CONTRACT shall be new and subject to review and acceptance by ENGINEER unless otherwise specifically provided for in the CONTRACT DOCUMENTS.

7.1.2 Where equipment, MATERIALS, or articles are referred to in the SPECIFICATIONS as "or equal to" any particular standard, ENGINEER shall decide the question of equality.

7.1.3 Wherever any standard published specification is referred to, the latest edition or revision, including all amendments, shall be used unless otherwise specified. MATERIALS of a general description shall be the best of their several kinds, free from defects, and adapted to the use for which provided. The physical characteristics of all MATERIALS not particularly specified shall conform to the latest standards published by the American Society for Testing and Materials, where applicable. All material shall be new and of the specified quality and equal to the accepted samples, if samples have been submitted.

7.1.4 All WORK shall be done and completed in a thorough, workmanlike manner in conformance with the CONTRACT DOCUMENTS. ENGINEER shall have the authority to reject WORK not in conformance with the CONTRACT DOCUMENTS.

7.1.5 In the event CONTRACTOR discovers any omission from these SPECIFICATIONS or from the PLANS, it shall be the duty of CONTRACTOR to call ENGINEER'S attention to apparent errors or omissions and request instructions before proceeding with the WORK. ENGINEER shall, by appropriate instructions, correct errors and/or omissions, which instructions shall be as binding upon CONTRACTOR as though contained in the original SPECIFICATIONS or PLANS.

7.1.6 CONTRACTOR may appeal a decision of ENGINEER made pursuant to Section 7.1 to GILBERT'S REPRESENTATIVE. Such appeal must be made in writing within forty-eight (48) hours of ENGINEER'S decision or the right to appeal is waived.

7.2 SUBSTITUTION OF MATERIAL OR EQUIPMENT

Substitution of material or equipment shall only be made pursuant to Section 1.8.

7.3 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

7.3.1 Shop drawings are drawings, diagrams, schedules and other data specially prepared for the WORK by CONTRACTOR or any SUBCONTRACTOR, manufacturer, supplier or distributor

to illustrate some portion of the WORK.

7.3.2 Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by CONTRACTOR to illustrate a material, product or system for some portion of the WORK.

7.3.3 Samples are physical examples that illustrate MATERIALS, equipment or workmanship, and establish standards by which the WORK will be judged.

7.3.4 All MATERIALS to be incorporated in the WORK shall be subject to sampling, testing and acceptance. Samples furnished by CONTRACTOR shall be representative of the MATERIALS to be used. ENGINEER may select samples or may require that samples be delivered to and tested at a laboratory designated by ENGINEER at no additional cost to GILBERT.

7.3.5 CONTRACTOR shall prepare, review, approve and submit to ENGINEER, with reasonable promptness and in such sequence as to cause no delay in the WORK or in the WORK of GILBERT or any separate CONTRACTOR all shop drawings, product data and samples required by the CONTRACT DOCUMENTS. CONTRACTOR shall cooperate with ENGINEER in the coordination of the shop drawings, product data and samples with those of other separate CONTRACTORS.

7.3.6 By preparing, approving and submitting shop drawings, product data and samples, CONTRACTOR represents that CONTRACTOR has determined and verified all MATERIALS, field measurements and field construction criteria related thereto, or will do so with reasonable promptness, and has checked and coordinated the information contained within such submittals with the requirements of the WORK, the PROJECT and the CONTRACT DOCUMENTS.

7.3.7 ENGINEER will review and approve or take other appropriate action upon CONTRACTOR'S submittals such as shop drawings, product data and samples for conformance with the SPECIFICATIONS. ENGINEER'S approval of the specific item shall not indicate approval of an assembly of which the item is a component.

7.3.8 All sampling and testing of MATERIALS shall be done in accordance with the latest designated standard methods AASHTO or ASTM, or in accordance with special methods designated in the SPECIFICATIONS. CONTRACTOR shall pay for all material testing required.

7.4 MATERIALS FURNISHED BY GILBERT

All MATERIALS and/or services to be furnished by GILBERT are indicated in the SUPPLEMENTAL CONDITIONS. The cost of CONTRACTOR handling and placing GILBERT-furnished MATERIALS shall be included in the CONTRACT price.

7.5 STORAGE OF MATERIALS

7.5.1 CONTRACTOR shall provide proper storage facilities and exercise such measures as will insure the preservation of the specified quality and fitness of all MATERIALS and equipment to be used in the WORK. Stored MATERIALS shall be located so as to provide reasonable access for inspection. That portion of the right-of-way not required for public travel may be used for storage purposes unless prohibited by the other provisions of the PROJECT SPECIFICATIONS. Any additional space required shall be provided by CONTRACTOR at no cost to GILBERT. Protection of MATERIALS and equipment stored on the site shall be the responsibility of CONTRACTOR. GILBERT reserves the right to direct CONTRACTOR to provide proper means of protection for MATERIALS if such is deemed advisable by ENGINEER; however, the exercise of or failure to exercise this right shall not be deemed to relieve CONTRACTOR of his primary responsibility for protecting the material and equipment. CONTRACTOR shall provide suitable warehouses or other adequate means of protection for such of the MATERIALS and equipment as require storage or protection. CONTRACTOR shall store and care for the material and equipment in the most suitable manner to protect them from distortion, rain, dust, or other damage. Contractor shall maintain all material and equipment in accordance with the manufacturer's instructions. The cost of replacing any material or equipment damaged in storage shall be borne by CONTRACTOR, and the fact that material or equipment has been damaged after partial payment has been made shall not relieve CONTRACTOR of his primary responsibility. No motor shall be left uncovered or unprotected.

7.5.2 Payments for MATERIALS or equipment stored off the site shall be conditioned upon submission by CONTRACTOR of bills of sale to establish GILBERT'S title to such MATERIALS or equipment and certificate of insurance for storage in a bonded warehouse.

7.6 REJECTED MATERIALS AND WORK

ENGINEER shall have the authority to reject MATERIALS which do not conform to the CONTRACT DOCUMENTS. Rejected MATERIALS shall be removed immediately from the site of the WORK unless otherwise permitted by ENGINEER. No rejected MATERIALS, the defects of which have been subsequently corrected, shall be used unless accepted by ENGINEER. If CONTRACTOR fails to remove and replace rejected material, GILBERT has authority to do so and to deduct the cost thereof from any monies due or to become due CONTRACTOR.

7.7 GUARANTEE OF WORK - WARRANTY

7.7.1 CONTRACTOR warrants to GILBERT that all MATERIALS and equipment furnished under this CONTRACT will be new unless otherwise specified and that all WORK will be of good quality, free from faults and defects and in conformance with the CONTRACT DOCUMENTS. All WORK not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by GILBERT or ENGINEER, CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of MATERIALS and equipment. This warranty is not limited by any other provisions of the

CONTRACT DOCUMENTS.

7.7.2 CONTRACTOR shall promptly correct all WORK rejected as defective or as failing to conform to the CONTRACT DOCUMENTS whether observed before or after acceptance and whether or not fabricated, installed or completed. CONTRACTOR shall bear all costs of correcting such rejected WORK, including compensation for the additional services of ENGINEER made necessary thereby.

7.7.3 If, within one year after the date of final acceptance by GILBERT of all WORK required by the CONTRACT DOCUMENTS or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the CONTRACT DOCUMENTS, any of the WORK is found to be defective or not in accordance with the CONTRACT DOCUMENTS, CONTRACTOR shall correct it promptly after receipt of written notice from GILBERT to do so unless GILBERT has previously given CONTRACTOR a written acceptance of such condition. This obligation shall survive termination of the CONTRACT, but it shall in no way limit the warranty set forth in Section 7.7.1. GILBERT shall give the notice required herein promptly after discovery of the condition.

7.7.4 CONTRACTOR shall remove from the site all portions of the WORK which are defective or non-conforming and which have not been corrected unless removal is waived by GILBERT.

7.7.5 If CONTRACTOR does not proceed with the correction of such defective or non-conforming WORK within a reasonable time fixed by written notice from ENGINEER, GILBERT may remove it and may store the MATERIALS or equipment at the expense of CONTRACTOR. If CONTRACTOR does not pay the cost of such removal and storage within ten (10) working days thereafter, GILBERT may upon ten (10) additional working days written notice sell such MATERIALS and equipment at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by CONTRACTOR including, but not limited to, compensation for ENGINEER'S additional services made necessary thereby. If the proceeds of sale do not cover all such costs, the amount to be paid by GILBERT to CONTRACTOR under the CONTRACT shall be reduced by the deficiency. If payments then due to CONTRACTOR are insufficient to cover deficiency, CONTRACTOR shall pay the difference to GILBERT.

7.7.6 CONTRACTOR shall bear the costs of making good all WORK of GILBERT or separate CONTRACTORS destroyed or damaged by CONTRACTOR'S correction or removal of defective WORK.

7.7.7 Nothing contained in this Section 7.7 shall be construed to establish a period of limitation with respect to any other obligation that CONTRACTOR might have under the CONTRACT DOCUMENTS. The establishment of the time period of one year after final acceptance or such longer period of time as may be prescribed by law or by the terms of any warranty required by the CONTRACT DOCUMENTS relates only to the specific obligation of CONTRACTOR to correct the WORK and has no relationship to the time within which CONTRACTOR'S obligation to comply with the CONTRACT DOCUMENTS may be sought to be enforced. Nor the time within which proceedings may be commenced to establish CONTRACTOR'S liability with respect to CONTRACTOR'S obligations other than specifically to correct the WORK.

7.7.8 In the event it is necessary for GILBERT to file suit to enforce any liability of CONTRACTOR, GILBERT shall be entitled to recover from CONTRACTOR, a reasonable sum as and for costs and attorneys fees, in addition to all other amounts found due and owing.

7.8 NO EXERCISE OF AUTHORITY BY ENGINEER

Neither ENGINEER'S authority to act under this Part VII nor any decision made by him in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of ENGINEER to CONTRACTOR, any SUBCONTRACTOR, any of their agents or employees or any other person performing any of the WORK.

PART VIII

GENERAL CONDITIONS

LEGAL RELATIONS AND RESPONSIBILITY

8.1 LAWS TO BE OBSERVED

8.1.1 CONTRACTOR is presumed to know, and at all times shall observe and comply with, all federal and state laws and local ordinances, including but not limited to (1) Workers' Compensation, occupation diseases, and unemployment compensation laws together with the payment of all premiums and taxes therefore; (2) all laws, ordinances, and regulations in any manner affecting the conduct of the WORK; and (3) all environmental laws and regulations and shall indemnify and save harmless GILBERT and its representatives against any claim arising from the violation of such laws, bylaws, ordinances, or regulations by CONTRACTOR, SUBCONTRACTORS and their employees and agents. CONTRACTOR'S particular attention is drawn, but not limited to, the laws in paragraphs 8.2, 8.3, 8.4, 8.5 and 8.15.

8.1.2 If CONTRACTOR performs any WORK knowing it to be contrary to such laws, ordinances and regulations, CONTRACTOR shall assume full responsibility therefore and shall bear all costs attributable thereto.

8.2 HOURS OF LABOR

All CONTRACTS made by or on behalf of the State of Arizona, or any of its political subdivisions, with any person for the performance of any WORK, or the furnishing of any material manufactured within the State, shall comply with the Fair Labor Standards Act and Section 23-391, Arizona Revised Statutes, as amended.

8.3 ALIEN LABOR

A person not a legal alien, citizen or ward of the United States shall not be employed upon or in connection with any state, county or municipal works or employment; provided that nothing herein shall be construed to prevent the working of prisoners by the state or by any county or municipality thereof on street or road work or other public work.

8.4 LABOR DISCRIMINATION

8.4.1 Attention is directed to Arizona Revised Statutes, Title 41, Chapter 9, Article 4, as amended, entitled "Discrimination in Employment."

8.4.2 When federal funds are to pay a portion of the cost of this PROJECT, then the BIDDER shall also comply with applicable paragraphs in the SUPPLEMENTAL CONDITIONS.

8.5 PERMITS AND LICENSES

Except as otherwise provided in the CONTRACT DOCUMENTS, it is the duty of CONTRACTOR to procure all permits and licenses. There will be no charge to CONTRACTOR for any necessary GILBERT permits and inspections.

8.6 PATENTED DEVICES, MATERIALS, AND PROCESSES

CONTRACTOR shall indemnify and save harmless GILBERT and its duly authorized representatives from all liabilities, judgments, costs, damages and expenses which may result from the infringement of any patents, trademarks or copyrights by reason of the use of any proprietary MATERIALS, devices, equipment or processes incorporated in or used in the performance of the WORK under this CONTRACT.

8.7 SURVEY LAND MONUMENTS

Survey land monuments and property marks shall not be moved or otherwise disturbed by CONTRACTOR until an authorized agent, of the agency having jurisdiction over the land monuments or property marks setting, has witnessed or otherwise referenced their location, and only then in accordance with the requirements of the agency having jurisdiction.

8.8 PROTECTION OF PERSON AND PROPERTY

8.8.1 CONTRACTOR shall adopt every practical means and comply with all laws, ordinances and regulations in order to minimize interferences to traffic and inconveniences, discomfort and damage to the public, including the provision of adequate dust control measures. All obstructions to traffic shall be guarded.

8.8.2 If an unsafe condition arises or exists during the progress of the WORK, or if GILBERT has reason to believe that an unsafe condition exists, CONTRACTOR shall suspend the WORK wholly or in part for such period as may be necessary to correct the unsafe condition.

8.8.3 Neither CONTRACTOR nor the SUBCONTRACTOR shall trespass upon private property. CONTRACTOR shall be responsible for all injury or damage to persons or property, directly or indirectly, resulting from operations of CONTRACTOR or SUBCONTRACTORS completing this WORK.CONTRACTOR shall ensure that both CONTRACTOR and SUBCONTRACTORS comply with the laws and regulations of GILBERT, county and state relating to the safety of persons and property. CONTRACTOR will be held responsible and required to make good any injury or damage to persons or property caused by CONTRACTOR or SUBCONTRACTORS or any agent or employee of either during the progress of the WORK and until its final acceptance.

8.8.4 CONTRACTOR shall protect against injury or damage to any pipes, sewer conduits, electrical conduits, lawns, gardens, shrubbery, trees, fences or other structures or property, public and/or private, encountered in this WORK except as stipulated elsewhere herein. CONTRACTOR shall be responsible and liable for any injury or damage or repair to such pipe, structures and property.

8.9 CONSTRUCTION SAFETY PROGRAM AND REGULATIONS

The Arizona Occupational Safety and Health Act and the conditions set forth in the Occupation Safety and Health Standards (OSHA) shall constitute the outline for the safety program to be adhered to during the course of the PROJECT. CONTRACTOR shall keep a copy of these publications available at the jobsite for reference, as well as a copy of CONTRACTOR'S safety program.

8.10 PROTECTION OF ANTIQUITIES

8.10.1 Attention is called to state and federal laws pertaining to the protection and preservation of sites or objects of archaeological, paleontological or historic interest and endangered species.

8.10.2 It shall be a provision of every CONTRACT that when features of archaeological, paleontological or historic interest are encountered or unearthed in the excavation of material pits, the roadway prism, or other excavation, CONTRACTOR shall stop work in the immediate vicinity of such feature, protect it from damage or disturbance, and report promptly to the Director of the Arizona State Museum and ENGINEER. When a possible endangered or threatened species is discovered, CONTRACTOR shall stop work and report promptly to ENGINEER.

8.10.3 WORK shall not be resumed in the immediate area until CONTRACTOR is advised by the authorities having jurisdiction that study or removal of the feature or features has been completed. CONTRACTOR will be allowed an appropriate CONTRACT time extension as provided in these General Conditions for construction time lost.

8.11 CONTINGENCIES

All loss or damage arising from obstruction or difficulties which may be encountered in the prosecution of the WORK, from the action of the elements or from any act or omission on the part of CONTRACTOR, SUBCONTRACTOR or any person or agent employed by him shall be borne by CONTRACTOR.

8.12 NON-RESPONSIBILITY OF GILBERT

Indebtedness incurred for any cause in connection with this WORK must be paid by CONTRACTOR, and GILBERT is hereby relieved at all times from any indebtedness or claim other than payments under terms of the CONTRACT.

8.13 PROPERTY RIGHTS IN MATERIAL

Nothing in the CONTRACT shall be construed as vesting in CONTRACTOR any right of property in the MATERIAL used after they have been attached or affixed to the WORK or the soil and accepted. All such MATERIALS shall become the property of GILBERT upon being so attached or affixed.

8.14 PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK

CONTRACTOR shall properly guard and protect all finished or partially finished WORK, and shall be responsible for the same until that phase is completed and accepted by GILBERT. Estimate or partial payment of WORK so completed shall not release CONTRACTOR from such responsibility, but he shall turn over the entire WORK in full in accordance with the SPECIFICATIONS before final payment can be made.

8.15 ADMINISTRATIVE CLAIMS

Prior to the commencement of litigation related to payment, the WORK or the CONTRACT DOCUMENTS, CONTRACTOR shall file an Administrative Claim with GILBERT. Such Notice shall be filed within 180 DAYS of the accrual of the cause of action. Otherwise any claim by CONTRACTOR against GILBERT, its officers or employees shall be barred.

PART IX

GENERAL CONDITIONS

COMPLETION OF WORK, LIQUIDATED DAMAGES AND FINAL ACCEPTANCE

9.1 FAILURE TO COMPLETE WORK WITHIN TIME FOR COMPLETION AND LIQUIDATED DAMAGES

9.1.1 It is hereby understood and mutually agreed by and between CONTRACTOR and GILBERT, that the date of beginning, rate of progress and the time for completion of the WORK to be done hereunder are essential conditions of this CONTRACT; and it is further mutually understood and agreed that the WORK embraced in this CONTRACT shall be complete on or before the dates set forth in Section 9.2 of this CONTRACT. CONTRACTOR agrees that said WORK shall be prosecuted regularly, diligently and uninterruptedly at such rate of time he specified. It is expressly understood and agreed, by and between CONTRACTOR and GILBERT that the time for completion of the WORK shall be in the time as identified in these CONTRACT DOCUMENTS.

9.1.2 For each working day that any part of the WORK remains uncompleted after the expiration of the time specified and/or allowed for completion of the WORK stipulated in the CONTRACT or ordered after the CONTRACT is signed, the sum per day set forth in Section 9.2 shall be deducted from any monies due CONTRACTOR, or if no money is due CONTRACTOR, GILBERT shall have the right to recover said sum or sums from CONTRACTOR, from the Surety, or both.

9.1.3 It shall be understood that the time to complete the PROJECT, beyond the contractual date of completion, is in itself prima facie evidence of actual damages incurred, and the amount of these deductions are to cover the liquidated damages caused by the loss of use, or limited use, of the facility and other additional GILBERT incurred losses, or expenses, due to the failure of CONTRACTOR to complete the WORK within the time specified.

9.1.4 The liquidated damages amounts set within Section 9.2 are fixed and agreed upon by and between CONTRACTOR and GILBERT because of the impracticability and extreme difficulty of fixing and asserting the actual damages GILBERT would in such event sustain, and said amounts are agreed to be the amount of damages which GILBERT would sustain, and said amounts may be retained from time to time by GILBERT from current periodical estimates.

9.1.5 It is further agreed that time is of the essence of each and every portion of this CONTRACT and of the SPECIFICATIONS where a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the CONTRACT an additional time is allowed as set forth in Section 4.243 of these CONTRACT DOCUMENTS for the completion of any WORK, the new time limit fixed by such extension shall be of the essence of this CONTRACT.

9.1.6 CONTRACTOR shall not be assessed with liquidated damages during any delay in the completion of the WORK where an extension of time has been granted by GILBERT pursuant to Section 4.243.

9.2 COMPLETION/LIQUIDATED DAMAGES

9.2.1 Substantial Completion: The date of SUBSTANTIAL COMPLETION of the WORK, or designated portion thereof, is the date certified in writing by ENGINEER when construction is sufficiently complete, in accordance with the CONTRACT DOCUMENTS as they may have been modified by any CHANGE ORDERS agreed to by the parties, so that GILBERT may use or occupy the PROJECT, or a designated portion thereof, for the purpose for which it was intended. Certification of a designated portion of the WORK by ENGINEER as being Substantially Complete and occupancy of that portion thereafter by GILBERT shall neither release or otherwise operate to excuse CONTRACTOR from his duty to complete the remainder of the WORK within the CONTRACT TIME including liability for liquidated damages.

Time is of the essence and GILBERT will suffer financial damages due to CONTRACTOR'S failure to substantially complete the WORK within thirty (30) DAYS following receipt of the NOTICE TO PROCEED. Liquidated damages of $280 per day will be assessed CONTRACTOR for working each day beyond that time that CONTRACTOR fails to achieve SUBSTANTIAL COMPLETION.

9.2.2 Final Completion: The FINAL COMPLETION Date is the date when all items of the WORK are completely finished with no items of any scope outstanding or remaining to be completed, and all known defective work has been corrected. This is the date upon which the warranty period commences.

Time is of the essence and GILBERT will suffer financial damages due to CONTRACTOR'S failure to reach FINAL COMPLETION of the WORK within ten (10) DAYS after the date of SUBSTANTIAL COMPLETION. Liquidated damages of $280 per day will be assessed CONTRACTOR for each working day beyond that time that CONTRACTOR fails to achieve FINAL COMPLETION.

9.3 FINAL CLEANING UP

At completion of the WORK and prior to final acceptance by GILBERT, a thorough cleaning of the areas affected shall be carried out by CONTRACTOR. The following list is not inclusive, but to act as a guideline:

9.3.1 VERTICAL PROJECTS

9.3.1.1 Removal of all paint spots, stains, rubbish, debris, tools and equipment from all areas and broom clean. Steam clean all carpets and mop floors.

9.3.1.2 Cleaning interior and exterior of the buildings, including all windows in any area affected by the WORK.

9.3.1.3 Brush off, broom sweep, dust and clean ledges, stairs, doors, hardware, and any adjoining rooms or areas that were affected by the WORK.

9.3.1.4 Clear grounds and exterior paved areas and walks of all construction debris, dirt and dust and repair any SITE areas damaged during the course of construction.

Prior to final acceptance, CONTRACTOR shall conduct an inspection of sight-exposed surfaces, and all WORK areas, to verify that the entire WORK is clean. In the event CONTRACTOR fails to do so, GILBERT, may cause this WORK to be done at CONTRACTOR'S expense.

9.3.2 **HORIZONTAL PROJECTS**

9.3.2.1 Wash down, brush off, broom sweep, and clean all areas that were affected by the WORK.

9.3.2.2 Clear landscaped areas, paved areas, and walks of all construction debris, dirt and dust and repair any and all damaged which occurred during the course of construction, and post construction activities.

9.4 RECORD DRAWINGS

CONTRACTOR shall provide accurate data and field notes on red-line construction record drawings as construction progresses, for preparation of the "As-Built" drawings by ENGINEER.

9.5 COMPLETION AND INSPECTION

9.5.1 Notice of punch list inspection: When CONTRACTOR believes that the WORK is complete, it shall request in writing a punch list inspection. Within five (5) working days of the receipt of such request, ENGINEER 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 shall again request a punch list inspection. CONTRACTOR shall be present at the punch list inspection. The purpose of the punch list inspection is to determine whether the WORK has been completed in accordance with the CONTRACT DOCUMENTS, including all CHANGE ORDERS and all interpretations and instructions previously issued. If CONTRACTOR fails to attend any punch list inspection, CONTRACTOR shall be charged for the cost of ENGINEER and other design professionals who attended the punch list inspection.

9.5.2 Punch list. ENGINEER shall notify CONTRACTOR in writing of any deficiencies to be remedied prior to final acceptance, by preparing a written list, known in the industry as a punch list. CONTRACTOR shall remedy all items shown on the punch list prior to final acceptance. 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 ENGINEER. GILBERT reserves the right to require compliance with the CONTRACT DOCUMENTS, notwithstanding the issuance of a punch list or the completion by CONTRACTOR of all items on the punch list.

9.6 FINAL ACCEPTANCE

9.6.1 After all WORK under the CONTRACT DOCUMENTS has been completed, as determined by ENGINEER, including WORK found to be incomplete pursuant to Section 9.5, ENGINEER will recommend in writing to GILBERT that final acceptance of the entire WORK under this CONTRACT be made as of the date of ENGINEER'S final inspection. GILBERT will make final acceptance in writing promptly after receiving ENGINEER'S recommendation unless GILBERT has reason to believe the WORK in not ready for final acceptance.

9.6.2 Unless otherwise specified in either Section 9.2 or under SUPPLEMENTAL CONDITIONS, no partial acceptance of any portion of the WORK will be made and no acceptance other than the final acceptance to the overall completed PROJECT will be made. No inspection or acceptance pertaining to specific parts of the WORK shall be construed as final acceptance of any part until the overall final acceptance is made by GILBERT.

PART X

GENERAL CONDITIONS

PAYMENTS TO CONTRACTORS

10.1 GENERAL

10.1.1 The basis of payment for construction of a PROJECT shall be in full for all WORK actually performed in accordance with the PLANS and SPECIFICATIONS, and shall include all labor and MATERIALS incorporated in the completed WORK.

10.1.2 Application for payment shall be made on GILBERT approved payment application form and accompanied by a cover letter in a format approved by GILBERT.

10.1.3 In the event of a dispute over any amounts owed, GILBERT shall pay the undisputed amount and proceed in good faith to resolve the dispute. Pending final resolution of the dispute, CONTRACTOR shall proceed diligently with performance of the CONTRACT and GILBERT shall continue to make payments in accordance with the CONTRACT DOCUMENTS to the extent such payments are undisputed by GILBERT.

10.2 PARTIAL PAYMENT

10.2.1 Once each month GILBERT will make a partial payment to CONTRACTOR on the basis of a duly certified and approved estimate prepared by CONTRACTOR and accepted by ENGINEER for WORK completed through the last day of the preceding calendar month. If requested by the ENGINEER, CONTRACTOR shall provide supporting data substantiating its corrections. The estimate will cover the WORK performed by CONTRACTOR during the preceding calendar month plus the invoice cost of MATERIAL suitably stored at the site of the PROJECT if CONTRACTOR desires payment for MATERIAL stored. Until final completion and final acceptance, retainage from progress payments to CONTRACTOR shall be ten percent (10%) of each payment. After the CONTRACT is fifty percent (50%) complete, however, one-half of the amount retained shall be paid to CONTRACTOR and the remaining retention shall be five percent (5%) of each payment provided CONTRACTOR is making satisfactory progress on the PROJECT as determined by GILBERT; otherwise, retention shall remain at ten percent (10%). The partial payment shall be paid on or before ten (10) working days after the certified and approved estimate of the WORK is received by GILBERT.

10.2.2 Cost of MATERIAL properly stored will be based on vendors' invoices that shall be listed by CONTRACTOR. A copy of each such invoice shall accompany the first estimate in which payment is requested for MATERIAL covered by the invoice. This list shall be revised and brought up-to-date by CONTRACTOR for each estimate. The revised list shall show the total amount of each invoice, the invoice amount that has been incorporated in the WORK, and the remaining invoice amount that is stored for which payment is required that month. Only those MATERIALS that will become an integral part of the final completed PROJECT may be included for partial payment as MATERIAL stored. Partial payments for jobsite delivered

material or equipment will in no way reduce CONTRACTOR'S responsibility for such MATERIAL or equipment until it has been installed.

10.2.3 **VERTICAL PROJECTS** Schedule of Values: Not later than five (5) working days before the first Application for Payment, CONTRACTOR shall submit to ENGINEER a schedule of values reflecting, as nearly as reasonably possible, the actual values of the various components of the WORK. CONTRACTOR shall provide separate line items for CONTRACTOR'S overhead and profit, supervision, insurance, bonds, allowances, and taxes. CONTRACTOR shall prepare the Schedule of Values on a form essentially equal to AIA Document G702/G703, or other as approved by the PM/CM. If requested by ENGINEER, CONTRACTOR shall provide supporting data substantiating its correctness.

10.2.4 No partial payment shall be made until updated red-line construction record drawings are reviewed and approved by the ENGINEER, through the date for which partial payment is requested, reviewed, and determined to reflect actual WORK in place.

10.3 PAYMENT OF ITEMS IN BID

10.3.1 Only those items listed in the Bid are pay items.

10.3.2 Compensation for all WORK necessary for the completion of the PROJECT shall be included by the BIDDER in the price bid for the items shown in the Bid.

10.4 PAYMENT FOR "EXTRA WORK" AND FOR "CHANGES IN THE WORK"

Payment for changes in the WORK and for claims for extra WORK will be made as stated in Part VI of these GENERAL CONDITIONS.

10.5 ASSIGNMENT OF PAYMENTS

10.5.1 Claims for monies due or to become due CONTRACTOR may be assigned to a bank, trust company, or other financial institution, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment may be made to one (1) party as agent or trustee for two (2) or more parties participating in such financing.

10.5.2 No assignment by CONTRACTOR of any CONTRACT to be entered into hereunder, or of any part thereof, or of funds to be received thereunder by CONTRACTOR will be recognized by GILBERT unless such assignment has had prior consent of GILBERT and the surety has been given notice of such assignment in writing and has consented thereto in writing.

10.6 FINAL PAYMENT AND CONTRACT CLOSEOUT

10.6.1 When CONTRACTOR determines that the CONTRACT is complete and all items on the punch list have been satisfied, or contends that such items are not required by the CONTRACT DOCUMENTS, CONTRACTOR shall submit a request for final payment. No final payment shall be made until all WORK has been finally accepted.

10.6.2 Simultaneously with CONTRACTOR'S request for final payment, CONTRACTOR shall submit the following items to ENGINEER:

10.6.2.1 Red-line construction record drawings

10.6.2.2 Warranties

10.6.2.3 Three sets of documentation completely covering the operation and maintenance of the mechanical and electrical installation and all other equipment required by the SUPPLEMENTAL CONDITIONS to be furnished with such manuals. The documentation shall include charts, diagrams, performance curves, catalog information, lubrication manuals, and details pertaining to the functioning of various items of equipment. The documentation shall be divided logically into "systems" on the basis of operation, without respect to trades, subcontractors or arbitrary specifications sections. The relationship of the "systems" shall be clearly a concisely detailed.

10.6.3 Other items required by the SUPPLEMENTAL CONDITIONS.

10.6.4 Upon receipt of the submittals required in Section 10.6.2, ENGINEER shall prepare a written estimate of the sum due to CONTRACTOR. This estimate 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. ENGINEER 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 from the CONTRACT DOCUMENTS, and estimating the cost of correction of such deviations. ENGINEER'S statement shall be transmitted to GILBERT along with CONTRACTOR'S request for final payment. ENGINEER shall provide a copy of the statement of final inspection and ENGINEER'S estimate of the sum due to CONTRACTOR.

10.6.5 If CONTRACTOR contests the estimate of sums due prepared by ENGINEER, within five (5) working days following delivery to CONTRACTOR of ENGINEER'S estimate of the sum due, CONTRACTOR shall file its protest in writing with the GILBERT Town Clerk, setting forth in detail all grounds alleged by him to justify an adjustment to ENGINEER'S final estimate. Failure to file a protest within the five (5) working days specified above shall constitute a waiver and acceptance by CONTRACTOR of ENGINEER'S estimate.

10.6.6 Neither acceptance of, nor payment for, the WORK or any part thereof, nor any extension of time, nor any possession taken by GILBERT shall operate as a waiver of any of the provisions of the CONTRACT DOCUMENTS, nor shall a waiver of any breach of the contract be held to be a waiver of any other or subsequent breach. Acceptance by GILBERT shall not be deemed an acceptance of latent defects, nor shall it constitute a waiver of any of the provisions of the CONTRACT DOCUMENTS.

10.7 USE OF GILBERT'S ALLOWANCE

10.7.1 The CONTRACT SUM includes a GILBERT allowance which is not a part of the total bid price. This allowance is to be used at the sole discretion of GILBERT for the completion of unspecified work not covered by other bid items. Authorization for work under this bid item shall be made by the CONSTRUCTION MANAGER and GILBERT prior to the start of such work. The Allowance Authorization Form attached to these General Conditions shall be executed by the CONTRACTOR, PM/CM and GILBERT prior to start of such work.

10.7.2 When applicable unit costs from the bid schedule can be used, the CONTRACTOR shall be bound by these costs for the additional work compensated through the allowance; otherwise the cost of allowance work shall be estimated in the same manner as a change order in accordance with Section 6.2 of the General Conditions.

10.7.3 After the additional work is approved, the CONTRACTOR may invoice the cost of such work in accordance with the payment process in the General Conditions.

10.7.4 Any unused part of the GILBERT allowance shall be retained by GILBERT at the end of the project via a deductive change order.

BID FORM

FOR: TOWN OF GILBERT
50 East Civic Center Drive
Gilbert, Arizona 85296

Bid of Sonrose Contracting dba Sonrose Landscape

CONTRACTOR'S License No. 294494/179026/252312

A corporation organized and existing under the laws of the State of Arizona; or a partnership consisting of _____, partners; or an individual conducting business as hereinafter called the BIDDER.

TO: THE HONORABLE MAYOR AND COUNCIL
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296

The undersigned acknowledges that he has received and familiarized himself with the following:

CONTRACT DOCUMENTS
PROJECT MANUAL AND DETAILS
DRAWINGS
ADDENDA No. N/A dated _____; No. ____ dated _____
No. ____ dated _____; No. ____ dated _____
No. ____ dated _____; No. ____ dated _____

The undersigned further acknowledges that he has visited the site and has familiarized himself with local conditions affecting the cost of the WORK at the place where the WORK is to be done. The undersigned further acknowledges that if his bid is accepted he shall be bound by the terms of the CONTRACT DOCUMENTS.

In submitting this Bid, the undersigned agrees:

1. To furnish all material, labor, tools, expendable and construction equipment, and all utility and transportation services necessary to furnish and install, in a workmanlike manner, all WORK at the PROJECT listed herein in strict conformity with the Construction Documents prepared by Town of Gilbert for the consideration hereinafter set forth.

2. To hold his Bid open for not less than one hundred twenty days (120) DAYS after the receipt of Bids and to accept the provisions of the instructions to BIDDERS regarding disposition of BID SECURITY.

3. To enter into and execute a CONTRACT if awarded on the basis of this Bid within ten (10) days after AWARD of the Bid, and to furnish a PERFORMANCE BOND, a Labor & Material PAYMENT BOND and certificates of insurance in accord with the General Conditions and General Requirements of this CONTRACT and to deliver executed Bonds and Insurance Certificates to GILBERT'S representative within ten (10) DAYS following the issuance of the NOTICE OF AWARD.

4. To utilize the subcontractors and suppliers attached to this Bid Form unless authorized by GILBERT to substitute another subcontractor or supplier.

5. To achieve substantial completion and final completion within the time period stated in the CONTRACT DOCUMENTS taken from the date of NOTICE TO PROCEED or the date otherwise established for the commencement of WORK.

6. The undersigned agrees that time is of the essence and GILBERT will suffer financial damages due to CONTRACTOR'S failure to complete the WORK within the CONTRACT TIME. The liquidated damages shall be as follows for each working day beyond the CONTRACT TIME for which CONTRACTOR shall fail to complete the WORK:

Substantial completion - $_____ per working day
Final completion - $_____ per working day } Per HAG

7. The undersigned has attached the required BID SECURITY and other items required in the Instructions to BIDDERS. The BID SECURITY shall become the property of Town of Gilbert, Arizona, <u>as liquidated damages for the delay and additional WORK caused thereby in the event the CONTRACT and Bonds are not executed within the time set forth above</u>.

NAME OF BIDDER: Somerset Contracting dba Somerset Landscape

TOWN OF GILBERT
BID SCHEDULE

Base Bid

No.	Description	Est. Qty.	Unit	Unit Price	Extended Price
1	Remove Existing Tree Stumps	6	Each	88.50	531.00
2	Remove Existing Tree	1	Each	495.00	495.00
3	Remove Existing Shrubs	138	Each	6.60	910.80
4	Remove Existing Tree Saplings	12	Each	88.50	1062.00
5	Remove Existing Concrete Header	120	L.F.	3.25	390.00
6	Remove Existing Concrete Sidewalk	962	S.F.	3.25	3126.50
7	Remove Existing Volleyball Court	1	L.S.	4492.85	4492.85
8	Existing Irrigation System Salvage/Removals	1	L.S.	2640.82	2640.82
9	Remove Soil/Expose Concrete Header	1	L.S.	1952.84	1952.84
10	Fine Grading Along Walk and Curb	1	L.S.	7628.40	7628.40
11	24" Box Trees	22	Each	192.00	4224.00
12	15 Gallon Shrubs	11	Each	84.00	924.00
13	5 Gallon Shrubs	441	Each	16.80	7408.80
14	1 Gallon Shrubs	136	Each	7.75	1054.00
15	Turf Restoration/Soil (Sod at Volleyball Court)	3,580	S.F.	.75	2685.00
16	Turf Restoration (By Seed)	190,710	S.F.	.28	53398.80
17	Decomposed Granite (Material)	370	Ton	38.00	14060.00
18	Decomposed Granite (Install)	370	Ton	14.80	5476.00
19	Concrete Header	120	L.F.	6.85	822.00
20	New Bench per Plan	2	Each	1495.00	2990.00
21	12" Height Above Grade Pavestone Type Retaining Wall	36	L.F.	34.92	1257.12
22	Concrete Sidewalk	995	S.F.	4.95	4925.25
23	River Rock Restoration	1	L.S.	2641.52	2641.52
24	Irrigation System	1	L.S.	64841.40	64841.40

TOTAL BASE BID PRICE (Items 1-24 Inclusive) $189938.10
(In Numbers)

One hundred eighty nine thousand nine hundred thirty eight Dollars
(In Words)

10/100 Cents

Add Alternate 1

No.	Description	Est. Qty.	Unit	Unit Price	Extended Price
1	Provide and Install 100W HPS Luminaire, Pole and Foundation (Match Existing)	1	Each	9200.00	9200.00
2	Install Conduit to Existing Pull Box	1	Each	1600.00	1600.00
3	Trench and Install 1" SCH. 40 PVC Conduit with all wiring to Meter Pedestal	240	L.F.	4.62	1108.80
4	Photocell Mounted on Pole with Control Wiring	1	Each	280.92	280.92

TOTAL ADD ALTERNATE 1 BID PRICE (Items 1-4 Inclusive) $12189.72
(In Numbers)

Twelve thousand one hundred eighty nine Dollars
(In Words)

92/100 Cents

GILBERT'S ALLOWANCE AMOUNT $0.00 (In Numbers)
Zero Dollars Zero Cents (In Words)

CONTRACT SUM (total base bid price plus bid alternates plus GILBERT'S allowance)
$202127.82
(In Numbers)

Two hundred two thousand one hundred twenty seven Dollars 82/100 Cents
(In Words)

In evaluating Bids, discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

Bidders are required to fill in all blank spaces with an entry. Bids submitted with blank spaces may be considered "Non-Responsive".

Quantities shown in this bid schedule are approximate only, and are used for the purpose of bid comparison.

In submitting this Bid, it is understood that the right to reject any and all Bids and to waive irregularities in the Bidding has been reserved by GILBERT.

The undersigned hereby certifies that the information submitted herewith, including any attachment is true to the best of his knowledge and belief.

Dated this 21 day of April, 2015

Somerset Contracting dba Somerset Landscape
Name of BIDDER (Company)

19051 S. Arizona Ave
Address of BIDDER

Chandler AZ 85284
City, State, Zip Code

480 782 5296
Area Code/Telephone Number

480 922 8200
Fax Number

Michael Rice Project Manager
Authorized Officer/Title

Authorized Officer Signature

(I) (We), the undersigned (Corporate Secretary) (Partners), hereby certify that the above-named Officer is hereby authorized to execute all documents relative to this bid and the administration of this bid for and on behalf of the Company named above.

_____ or
Corporate Secretary (signature)

_____
Partner Signature

_____
Partner Signature

LIST OF SUBCONTRACTORS AND SUPPLIERS
To be submitted only if requested by Gilbert after bid opening

Provide the information requested below for those subcontractors and suppliers to whom the BIDDER intends to award a Subcontract greater than or equal to one percent (1%) of the Bid amount. If the BIDDER intends to self-perform a classification of WORK for which a specialty contractor's license is required, the BIDDER shall nominate itself in the spaces provided for that purpose, and the BIDDER shall furnish the BIDDER'S contractor's license number(s) for that classification. For each subcontractor, manufacturer, supplier, person, firm and corporation, the BIDDER shall enter, if available, the telephone number and required licensing information. Failure to provide this information if requested by GILBERT will be just cause for GILBERT to declare the BIDDER'S Bid non-responsive.

WORK TO BE PERFORMED	NOMINEE	CLASSIFICATION & LICENSE NUMBER	PERCENT OF BASE BID
1. Lighting	SEC Electric	198683	8%
2. Hercon Concrete			6%
3.			
4.			
5.			
6.			
7.			

EQUIPMENT/MATERIAL SUPPLIER – (list supplier and material or equipment to be provided)

1. Ewing Irrigation
2. Mountain Oaks
3. Western Tree
4. Cutting Edge
5.

Submitted by: Sonoran Contracting

(Bidder)

Signed By: _____

Name and Title: Michael Rice Project Manager

BID BOND
(Surety Bond)

KNOW ALL MEN BY THESE PRESENTS:

That we, Somerset Landscape LLC dba Somerset Contacting, (hereinafter "Principal"), and the U.S. Specialty Insurance Company, a corporation duly organized under the laws of the State of Texas, duly licensed in and holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, (hereinafter "Surety"), as Surety, are held and firmly bound unto Town of Gilbert, a municipal corporation as Obligee, in the sum of ten percent (10%) of the amount of the bid included in the proposal, submitted by the Principal to the Mayor and Council of Town of Gilbert, for the WORK described below, for the payment of which sum, well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, and administrators, successors and assigns, jointly and severally, firmly by these presents, and in conformance with A.R.S. § 34-201.

WHEREAS, the Principal is herewith submitting its Bid for
Park Village FY 16 Landscape Improvements - Contract No.: 2015-8003-0673
PKID 07-03 - Emerald Bay Basin Landscaping.

NOW, THEREFORE, if Town of Gilbert shall accept the Proposal of the Principal and the Principal shall enter into a CONTRACT with Town of Gilbert, in accordance with the terms of such proposal and give the Bonds and Certificates of Insurance as specified in the SPECIFICATIONS with good and sufficient surety for the faithful performance of the CONTRACT and for the prompt payment of labor and material furnished in the prosecution of the CONTRACT, or in the event of the failure of the Principal to enter into the CONTRACT and give the Bonds and Certificates of Insurance, if the Principal pays to Town of Gilbert the difference not to exceed the penalty of the bond between the amount specified in the Proposal and such larger amount for which Town of Gilbert may in good faith CONTRACT with another party to perform the WORK covered by the Proposal, then this obligation is void. Otherwise it remains in full force and effect provided, however, that this Bond is executed pursuant to the provisions of Section 34-201, Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions of the Section to the extent as if it were copied at length herein.

This Surety Bond shall not be executed by an individual surety or sureties, even if the requirements of A.R.S. Section 7-101 are satisfied.

Signed and sealed this 21 day of April, 20 15.

Somerset Landscape LLC dba Somerset Contacting
Principal

Title

Witness:

U.S. Specialty Insurance Company
Surety

Witness:

Title Diane L. Arment / Attorney-in-Fact

Ted Rarrick / witness

Address of Surety:

13403 Northwest Freeway

Houston, TX 77040-6094

* Attach Power of Attorney

POWER OF ATTORNEY

ERICAN CONTRACTORS INDEMNITY COMPANY UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY

NOW ALL MEN BY THESE PRESENTS: That American Contractors Indemnity Company, a California corporation, United States Surety Company, a Maryland corporation and U.S. Specialty Insurance Company, a Texas corporation (collectively, the "Companies"), do by these presents make, constitute and appoint:

Ted H. Rarrick or Diane L. Arment of Tempe Arizona

its true and lawful Attorney(s)-in-fact, each in their separate capacity if more than one is named above, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver **any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include riders, amendments, and consents of surety, providing the bond penalty does not exceed** *****Three Million***** **Dollars ($** **3,000,000.00** **).**
This Power of Attorney shall expire without further action on December 08, 2016. This Power of Attorney is granted under and by authority of the following resolutions adopted by the Boards of Directors of the Companies:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings, including any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts, and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, The Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 10th day of December, 2012.

AMERICAN CONTRACTORS INDEMNITY COMPANY UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY

Corporate Seals

State of California

County of Los Angeles SS:

Daniel P. Aguilar, Vice President

On 10th day of December, 2012, before me, Vanessa Wright, a notary public, personally appeared Daniel P. Aguilar, Vice President of American Contractors Indemnity Company, United States Surety Company and U.S. Specialty Insurance Company who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Signature _____ (Seal)

V. WRIGHT
Commission # 1998319
Notary Public - California
Los Angeles County
My Comm. Expires Dec 8, 2016

I, Jeannie Lee, Assistant Secretary of American Contractors Indemnity Company, United States Surety Company and U.S. Specialty Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Los Angeles, California this 21 day of April 2015

Corporate Seals

Bond No. Bid Bond
Agency No. 9718

Jeannie Lee, Assistant Secretary

AFFIDAVIT BY CONTRACTOR
CERTIFYING THAT THERE WAS
NO COLLUSION IN BIDDING FOR CONTRACT

STATE OF ARIZONA)
) ss.
Town of Gilbert)

MICHAEL RICCI
(Name of Individual)

BEING DULY SWORN, DEPOSES AND SAYS:

That he is Project Manager of Somerset Contracting
(Title) (Name of Business)

That pursuant to Section 34-253 of the Arizona Revised Statutes, he certifies as follows:

That neither he nor anyone associated with the said Somerset Contracting
(Name of Business)
has directly, or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this PROJECT.

AND FURTHER that Contractor has not expended nor will expend any money to influence any member of the Town Council of the Town of Gilbert, a GILBERT department or a GILBERT employee in connection with the award of this Contract.

(Signature)

Project Manager
(Title)

Somerset Contracting
(Name of Business)

SUBSCRIBED AND SWORN TO BEFORE ME this 20th day of April, 2015.

Notary Public

My commission expires:

March 27, 2018

JULIE GALAN
Notary Public - Arizona
Maricopa County
My Comm. Expires Mar 27, 2018

Form No. CIP2.4.1
Construction General Conditions without CM for DBB Projects
Revised March 27, 2015

C-1

BIDDERS' QUESTIONNAIRE
[To Be Submitted With Bid]

BIDDER'S RESPONSIBILITY
SUPPLEMENTAL EVALUATION CRITERIA

Organizational Information

BIDDER: Somerset Contracting LLC dba Somerset Landscape
(Bidder's name)

Submitted by:

Name of Organization: Somerset Contracting

Name of Individual: MICHAEL RICCI

Title: Project Manager

Address: 19051 S. ARIZONA AVE
Chandler, AZ 85286

Telephone: (480) 782 5296

Bidder's General Business Information

Check If: [✓] Corporation [ ] Partnership [ ] Joint Venture [ ] Sole Proprietorship

If Corporation:

a. Date and State of Incorporation:
AZ

b. List of Executive Officers:

Name	Title
BRIAN LEHMERMANN	PRESIDENT/CEO

_____

_____

_____

If Partnership:

a. Date and State of Organization:

_____

_____

b. List of Current General Partners:

Name	Title

c. Type of Partnership:

[ ] General [ ] Publicly Traded [ ] Limited
[ ] Other (describe): _____

If Joint Venture:

a. Date and State of Organization:

_____

_____

b. Name and Address of Owner or Owners:

_____

_____

_____

_____

Is your organization a member of a controlled group of corporations as defined in IRC Sec. 1563? [ ] Yes [X] No

If yes, show names and addresses of affiliated companies:

_____

_____

_____

Furnish the following information with respect to an accredited banking institution familiar with your organization:

Name of Bank: METRO PHOENIX BANK

Address: _____

_____

Account Manager: RICHARD STRUM

Telephone Number: ( ) _____

Similar Projects
(Use Separate Sheets as needed)

Provide information for at least TWO (2) similar projects successfully completed within the last FIVE (5) years. (See Section 1.1.2.)

BIDDER: SOMERSET CONTRACTING
(Bidder's name)

a. Name of Similar Project #1: VERRADO : Victory - VERRADO WAY

b. Contracting Party (Owner):
Name: DMB
Address: 7600 E. DOUBLETREE RANCH RD #300, SCOTTSDALE 85258
Telephone Number: (____) _____

c. If Joint Venture, names of each participant:

d. Contract Price: $410,850.00

e. Description of Similar Project #1: Landscape / Irrigation / Concrete / Deco Walls
(Briefly describe here, and attach a copy of the description in the Contract. Technical specifications may be requested by GILBERT.)

f. Construction Manager(s) during the Similar Project #1:
Name: Michael CARPEAU
Address: 7600 E. Doubletree Ranch Rd #300, Scottsdale, AZ 85258
Telephone Number: (623) 256 8212

g. Start date (notice to proceed issued): 11/15/14

h. Completion date provided for in the Contract: 1/30/15

i. Substantial completion date (approved by Owner): 1/11/15

j. Reasons why work was completed early, or why delays occurred:
Push for grand opening

k. Final price paid by Owner for the Similar Project #1: Still Completing Changes

l. If final price was 10% less or more than the original Contract Price, describe why:

m. Describe any large cost over-runs (claims in excess of $_____) disputed or contested by the Owner, the reasons for dispute, and ultimate resolution of the dispute:
None

n. Did Owner file a lawsuit against Bidder concerning performance?
Yes _____ No X If so, what was the result?

o. Following final payment on the Similar Project, has Bidder voluntarily or otherwise provided any additional work or repairs, or made any payments to the Owner to cure defects or fulfill warranties made to the Owner concerning the quality of the performance/or the work involved in the Similar Project? Describe:
No

p. Has your company undergone a major change in ownership, management, size, or expertise since the time of this Similar Project? Yes_____ No_____ Describe:
No

All answers should be complete and informative. Attach additional sheets if needed to give a full answer. GILBERT may in its discretion request Bidder to provide additional information concerning this Similar Project as part of its evaluation of the responsibility of the Bidder prior to award of the Contract.

Similar Projects
(Use Separate Sheets as needed)

Similar Project #2

BIDDER: Somerset Contracting
(Bidder's name)

a. Name of Similar Project #2: Verrado: Victory - Sunrise Lane

b. Contracting Party (Owner):
Name: DMB
Address: 7600 E. Doubletree Ranch Rd #300, Scottsdale AZ 85258
Telephone Number: ( )

c. If Joint Venture, names of each participant:

d. Contract Price: $340,052.00

e. Description of Similar Project #2: Landscape / Irrigation
Salvage Tree
(Briefly describe here, and attach a copy of the description in the Contract. Technical specifications may be requested by GILBERT.)

f. Construction Manager(s) during the Similar Project #2:
Name: Mike Campeau
Address: 7600 E. Doubletree Ranch Rd, #300, Scottsdale, 85258
Telephone Number: (623) 256 8212

g. Start date (notice to proceed issued): 11/15/14

h. Completion date provided for in the Contract: 1/30/15

i. Substantial completion date (approved by Owner): 1/11/15

j. Reasons why work was completed early, or why delays occurred:
Push for grand opening

k. Final price paid by Owner for the Similar Project #2: Still Completing Changes

l. If final price was 10% less or more than the original Contract Price, describe why:

_____

_____

m. Describe any large cost over-runs (claims in excess of $_____) disputed or contested by the Owner, the reasons for dispute, and ultimate resolution of the dispute:

None

_____

n. Did Owner file a lawsuit against Bidder concerning performance?
Yes _____ No X If so, what was the result? _____

_____

o. Following final payment on the Similar Project, has Bidder voluntarily or otherwise provided any additional work or repairs, or made any payments to the Owner to cure defects or fulfill warranties made to the Owner concerning the quality of the performance/or the work involved in the Similar Project? Describe:

No

_____

p. Has your company undergone a major change in ownership, management, size, or expertise since the time of this Similar Project? Yes_____ No_____ Describe:

No

_____

All answers should be complete and informative. Attach additional sheets if needed to give a full answer. GILBERT may in its discretion request Bidder to provide additional information concerning this Similar Project as part of its evaluation of the responsibility of the Bidder prior to award of the Contract

Personnel/Subcontractor Qualifications

BIDDER: Somerset Contracting
(Bidder's name)

a. List details of the construction experience of the Key Personnel (as defined in Paragraph 1.1.2 of the Contract Documents) directly involved in construction activities:

Project Manager: 25 yrs exp. Michael Rice
Superintendent: 30 yrs exp Cielo Morales

b. Does Bidder have an adequate workforce to complete the Work if awarded the Contract? Describe, including general types of work performed with your own work force:

YES. All work performed in-house except large concrete + electrical

c. What additional personnel may need to be hired by Bidder as employees, if awarded the Contract?

None. Work force adequate to complete projects

d. What other major projects is Bidder currently under contract to perform? (Describe the projects, completion dates)

Verrado: Bulldozer wash - I-10 $610,000.00 Aug 2015
Verrado: Ph III S Lucas Trails $745,000.00 Sept 2015
Verrado: Ph II W Lucas Trails $422,000.00 Holding

e. Are subcontractors proposed by Bidder ready, willing, and able to perform the work? Yes X No_____. (GILBERT may request additional information concerning subcontractors' past performance, personnel, equipment, licenses, and other pending projects)

f. If proposed subcontractors are not available, how does Bidder propose to replace the subcontractors? Never have had this problem with any subcontractors

g. If Bidder requires additional or replacement personnel and/or subcontractors to complete the Work, and there is a labor shortage due to high volume of construction occurring in the Phoenix metropolitan area, is Bidder able to complete the Work on time, as required by the Contract Documents? Yes__X__ No_____. Please describe. (GILBERT does not consider mere labor shortage to qualify as force majeure.)

Somerset has sufficient labor force to complete work on time

h. Has any corporate officer, partner, joint venture participant or proprietor ever failed to complete a construction contract awarded to him or her in their own name or when acting as a principle of another organization? Yes_____ No _X_. If yes, described circumstances: _____

Equipment

BIDDER: Somerset Contracting
(Bidder's name)

a. Does Bidder own equipment necessary to complete the work if awarded the Contract?
Explain: YES

b. Will any equipment need to be rented or leased by Bidder? Explain: YES
On as needed basis for specialty equipment.

TOWN OF GILBERT, ARIZONA
AUTHORIZED SIGNATURE FORM

WHEREAS, the Town of Gilbert requires that CONTRACTOR execute documents necessary for the prompt and efficient execution of the documents related to the CONTRACT;

NOW, THEREFORE, on behalf of the CONTRACTOR I hereby declare that Michael Ricci
(name(s) of persons authorized)

is/are authorized to execute and sign on behalf of the CONTRACTOR the following documents:

1. The CONTRACT
2. The Bond
3. Payrolls
4. Claims
5. CHANGE ORDERS
6. All other papers necessary for the conduct of the corporation's affairs and the execution of the CONTRACT

for the duration of the CONTRACT or until written notice of revocation has been given, whichever occurs first.

In the event CONTRACTOR is governed by a board of Directors, a copy of the Resolution of the Board granting authority to said person(s) is attached hereto, and I hereby verify that such Resolution remains in full force and effect

Name

CFO
Title

(Seal of Corporation)

STATE OF Arizona)
) ss.
County of Maricopa)

This Authorized Signature Form was acknowledged before me this 21st day of April, 20 15 by Jason Lamb,

who appeared before the undersigned Notary Public, and stated that he/she executed such instrument on behalf of _____ for the purpose therein expressed.

Kimberly Poulter
Notary Public

My Commission Expires:

December 22, 2015

KIMBERLY POULTER
NOTARY PUBLIC - ARIZONA
Pinal County
My Commission Expires
December 22, 2015

[IF APPLICABLE: ATTACH RESOLUTION]

PERFORMANCE BOND

STATUTORY PERFORMANCE BOND PURSUANT TO
TITLE 34, CHAPTER 2, ARTICLE 2,
OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the CONTRACT amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter "Principal"), and _____, a corporation organized and existing under the laws of the State of _____, duly licensed in and holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the department of Insurance pursuant to Title 20, Chapter 2, Article 1, (hereinafter "Surety"), as Surety are held and firmly bound unto Town of Gilbert, County of Maricopa, State of Arizona in the amount of _____ Dollars ($_____), for the payment of which, the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written CONTRACT with Town of Gilbert, entitled _____.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the CONTRACT during the original term of the CONTRACT and any extension of the CONTRACT with or without notice to the Surety, and during the life of the guaranty required under the CONTRACT, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the CONTRACT that may hereinafter be made, notice of which modifications to the Surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this Agreement.

The prevailing party in a suit on this Bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

This Bond shall not be executed by an individual surety or sureties, even if the requirements of A.R.S. Section 7-101 are satisfied.

Witness our hands this _____ day of _____, 20___.

_____
PRINCIPAL SEAL

By_____

_____
SURETY SEAL

By _____

Address of Surety:

_____

_____

_____
AGENT OF RECORD

_____
AGENT ADDRESS

* attach Power of Attorney

LABOR AND MATERIALS BOND

STATUTORY PAYMENT BOND PURSUANT TO
TITLE 34, CHAPTER 2, ARTICLE 2,
OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the CONTRACT amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter "Principal"), as Principal and _____, a corporation organized and existing under the laws of the State of _____, duly licensed in and holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, (hereinafter "Surety"), as Surety are held and firmly bound unto Town of Gilbert, County of Maricopa, State of Arizona in the amount of _____ Dollars ($_____), for the payment of which the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written CONTRACT with Town of Gilbert, entitled _____.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all monies due to all persons supplying labor or MATERIALS to the Principal or the Principal's SUBCONTRACTORS in the prosecution of the WORK provided for in the CONTRACT, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this Agreement.

The prevailing party in a suit on this Bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

This Bond shall not be executed by an individual surety or sureties, even if the requirements of A.R.S. Section 7-101 are satisfied.

Witness our hands this _____ day of _____, 20___.

_____
PRINCIPAL SEAL

By _____

_____
SURETY SEAL

By _____

Address of Surety:

_____

_____

_____
AGENT OF RECORD

_____
AGENT ADDRESS

* Attach Power of Attorney

NOTICE TO PROCEED

DATE:

TO:

Subject: NOTICE TO PROCEED AND RETURN OF EXECUTED CONTRACT
Project Name:

Contract No.:	Project Number:
Contract Amount: $	Liquidated Damages: $ __/day
Effective Date:	Substantial Completion Date:
P.O. Number:	Final Completion Date:
Council Approval:	Item Number:

This letter serves as _____, NOTICE TO PROCEED with performance of the above-referenced project contract.

A fully executed and approved copy of the contract and the project's purchase order are enclosed for your files. Also attached is a Notice-to-Proceed CD containing forms required for project completion and a Purchase order. Please indicate the above-referenced contract number and project number on all correspondence. Failure to do so may cause unnecessary delays.

When submitting payment requests, the following information is needed:

1. Cover Letter transmitting the Pay Application, an updated cash flow, updated schedule and a summary of the project status.
2. A completed "Application and Certification for Payment", on approved GILBERT format.
3. A clear, detailed billing invoice, indicating the Contract Number, Project Number and Purchase Order Number referenced above.

If you have any questions please contact Capital Projects at (480) 503-____.

Sincerely,

Capital Projects Program Manager

ACCEPTANCE OF NOTICE

Receipt of the foregoing NOTICE TO PROCEED is hereby acknowledged by _____, this ____ day of _____, 20__.

By _____

Title _____

CHANGE ORDER NO. _____
(Contractor)

PROJECT:
DATE:
OWNER: Town of Gilbert
PROJECT NO:
CONTRACT NO:
CONTRACTOR:
CONTRACT DATED:
PM/CM (Name)

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:

PM/CM _____
(Name) (Date)

CONTRACTOR: _____
(Name) (Date)

GILBERT: _____
(Name) (Date)

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

Contractor agrees that the adjustment of the Contract Price and Contract Time reflected in this Change Order represents the entire and complete adjustment of the Contract Price and Contract Time for the changes set forth in this Change Order. The adjustment of the Contract Price includes all direct costs of labor materials, services and equipment to complete such changes as well as any and all indirect costs of impacts, delays, interference or hindrances in performing, providing and completing the changes set forth in this Change Order. The adjustment of the Contract Time includes all adjustments of time necessary to perform, provide and complete the changes set forth in this Change Order and any and all impacts, delays, interference or hindrances in performing, providing and completing the changes.

TOWN OF GILBERT, ARIZONA
CONTRACTOR'S AFFIDAVIT
REGARDING SETTLEMENT OF CLAIMS

PROJECT _____
_____

To Town of Gilbert, Arizona
Building Department:

The undersigned hereby certifies that (1) all lawful claims for MATERIALS, rental of equipment and labor used in connection with the construction of the above PROJECT, whether by SUBCONTRACTOR or claimant in person, have been duly discharged; and (2) to the best of undersigned's knowledge, there are not any disputed or unresolved claims of any type for MATERIALS, equipment or labor in connection with this PROJECT.

The undersigned, for the consideration of $_____, as set out in the final pay estimate, as full and complete payment under the terms of the CONTRACT, hereby waives and relinquishes any and all further claims or right of lien under, in connection with, or as a result of the above-described PROJECT. The undersigned further agrees to indemnify and save harmless Town of Gilbert against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever, which said GILBERT may suffer arising out of the failure of the undersigned to pay for all labor performance and MATERIALS furnished for the performance of said installation.

Signed and dated at _____, this _____ day of _____, 20____.

_____
CONTRACTOR
By _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was subscribed and sworn to before me this ____ day of _____, 20____.

_____
Notary Public

My Commission Expires:

_____

SUPPLEMENTAL CONDITIONS

1. A CONTRACT shall be awarded to the lowest responsible, responsive bidder. Contract award is currently scheduled for June 2015. In no case shall a NOTICE TO PROCEED be issued before July 1, 2015. Additionally, GILBERT reserves the right to issue a NOTICE TO PROCEED such that the PROJECT will begin in the fall or spring seasons which are optimal for landscape planting.

TECHNICAL SPECIFICATIONS

Improvements are being installed in phases. Only FY15-16 improvements are included in this bid package. Phasing limits in large part are determined by irrigation system layout. There may be some overlap in phasing areas depending on locations of water meters and controllers, in order to provide irrigation to new improvements while maintaining irrigation service to existing areas designated for improvements under future phases. Locations, layouts, and condition of existing irrigation systems as it interfaces with FY15-16 work will need to be field verified.

Description of FY15-16 work for Park Village (PKID #07-3) follows.

Park Village FY15-16 Landscape and Irrigation Improvements

General description: Landscape planting, turf and irrigation for the Park/ Basin area on N. Emerald Bay Drive as shown on the plans. The Town reserves the right to reduce the scope of work or eliminate some items in this contract.

Work includes:

- Preservation and protection of existing plantings, irrigation system, pavements, walls, or other structures to remain.
- Restoration of all pavements, curbs, walls, structures, landscaping, irrigation, rock ground cover and other surfaces or features to remain which are disturbed as a result of work under this project phase.
- Maintaining existing irrigation service to areas improved under other phases and existing areas to remain.
- Removal of the existing volleyball court header, posts and sand.
- Removal of existing shrubs, trees and stumps not indicated to remain.
- Grading to expose existing header covered by soil and turf.
- Fine grading /excavation along the edge of the walk and curb to allow for granite installation. Any excavated material shall be uniformly spread to blend in adjacent landscape areas or used for repair of erosion damage as applicable. No import soil is required.
- New tree and shrub plantings as indicated on plans.
- Provide and install sod mix for volleyball court fill, roll or water settle before sod installation. Provide and install sod to be level with adjacent turf area.
- Providing and installing decomposed granite in all landscape areas to provide a 2” minimum depth in landscape planting areas and 1” below curbs or adjacent pavement.
- Abandonment of the portions of the existing irrigation system no longer in use in this phase of improvements. At grade or above grade components to be removed/ salvaged as noted on plans. Below grade components can be abandoned in place providing there is no conflict with new improvements.
- Maintain/restore connections to portions of the existing irrigation system to remain or improved under other phases.
- Unless otherwise noted or approved, all extra materials, debris, or materials removed as part of work under this project and not intended for reuse shall be disposed legally offsite.

- Using the existing water meter and backflow preventer, existing controller, install new irrigation for the landscaping in this FY15-16 phase of work including but not limited to a new controller, mainline, valve assemblies, wiring, lateral piping, drip irrigation emitters and turf spray heads as indicated on plans.
- Restore River Run Rock areas. Includes salvage and reinstallation of existing, relocation of existing, and supplementation as required.
- Remove existing concrete header as per plan and dispose of properly. Replace with new as required. Extent of concrete header removal and replacement to be determined after grading to expose existing header. Linear feet of header removal and replacement to be determined by Town of Gilbert representative.
- Provide and install new benches and trash receptacle as shown on plans and per manufactures specifications.
- Install Pavestone type retaining wall as per plan. Wall to reduce slope adjacent to existing sidewalk with 12” above grade height on the face of each stepped wall.

<u>Add Alternate 1 Park Village FY15-16 Lighting Improvements</u>
General description: Lighting for Park Playground area on the east side of North Emerald Bay Drive as shown on the plans. The Town reserves the right to reduce the scope of work or eliminate some items in this contract.

Work includes:
- Preservation and protection of existing plantings, irrigation system, pavements, walls, or other structures to remain.
- Restoration of all pavements, curbs, walls, structures, landscaping, irrigation and other surfaces or features to remain which are disturbed as a result of work under this project phase.
- Install new lighting system for the FY15-16 project as indicated.
- Unless otherwise noted or approved, all extra materials, debris, or materials removed as part of work under this project and not intended for reuse shall be disposed legally offsite.

CONSTRUCTION SERVICES CONTRACT
FY16 PKID Spring Meadows

Project: **Spring Meadows FY16 Landscape Improvements**
Contract No.: **2015-8003-0674**
Date: **March 31, 2015**

CONSTRUCTION SERVICES CONTRACT
FOR DESIGN-BID-BUILD (DBB) PROJECT

THIS CONTRACT, made and entered into this _____ day of _____, 20_____, by and between the Town of Gilbert, Arizona, a municipal corporation organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated "GILBERT" and Somerset Contracting, a limited liability corporation, hereinafter designated the "CONTRACTOR."

GILBERT and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

1.0 CONSTRUCTION SERVICES

1.1 CONTRACTOR shall complete all work as specified or indicated in the Contract Documents. The work is known as and is hereinafter referred to as the Spring Meadows FY 16 Landscape Improvements Project and is generally described as follows: Landscape and irrigation improvements in the Saratoga Street basin in accordance with the Contract Documents. The full scope of work is described in detail in the Contract Documents.

1.2 CONTRACTOR shall complete, provide and perform, or cause to be performed, all work in a proper and workmanlike manner, with appropriate consideration for public safety and convenience, consistent with the highest standards of professional and construction practices and in full compliance with, and as required by or pursuant to, this Contract, and with the greatest economy, efficiency, and expediency consistent therewith all as more particularly described in the Contract Documents.

2.0 CONTRACT TIME

2.1 CONTRACTOR shall submit to GILBERT, on or before the effective date of this Contract, a Critical Path Method (CPM) Construction Progress Schedule in Primavera compatible format, resource and cost loaded, indicating the times for starting and completing the various stages of the Work, including any Milestones specified in this Contract and as more fully described in the General Conditions and other Contract Documents. Revisions/updates to the CPM schedule shall be submitted to accurately reflect plans for completion of the work, but no less frequently than monthly.

2.2 Time is of the Essence. All of the time limits for Milestones, if any, for Substantial Completion and for Final Completion and readiness for final payments as stated in the Contract Documents, are of the essence for the Contract.

2.3 The Work shall be substantially complete within 40 working days after the date when the Contract Times commence to run as provided in the Notice to Proceed, and all Work shall be finally completed and ready for final payment in accordance with the Notice to Proceed within 50 working days after the date when the Contract Times commences to run.

2.4 Failure of CONTRACTOR to perform any covenant or condition contained in the Contract Documents within the time periods specified herein, shall constitute a material breach of this Contract entitling GILBERT to terminate the Contract unless CONTRACTOR applies for and receives an extension of time, in accordance with the procedures set forth in the Contract Documents.

2.5 Failure of GILBERT to insist upon the performance of any covenant or condition within the time periods specified herein, shall not constitute a waiver of CONTRACTOR'S duty to perform every other covenant or condition within the designated periods, unless a specific waiver is granted in writing for each such covenant or condition.

2.6 GILBERT's agreement to waive a specific time provision or to extend the time for performance shall not constitute a waiver of any other time provisions contained in the Contract Documents. Failure of CONTRACTOR to complete performance promptly within the additional time authorized in the waiver or extension of time agreement shall constitute a material breach of this Contract entitling GILBERT to all the remedies set forth herein or provided by law.

3.0 LIQUIDATED AND SPECIAL DAMAGES

3.1 It is hereby agreed that the amounts per day set forth herein in paragraph 3.1.1 are reasonable estimates of such liquidated damages and that said amounts do in fact bear a reasonable relationship to the damage that would be sustained by GILBERT, and CONTRACTOR agrees to pay such liquidated damages as herein provided.

3.1.1 GILBERT and CONTRACTOR recognize that time is of the essence for this Contract and that GILBERT will suffer financial loss, in addition to and apart from the costs described in Paragraph 3.2, if the Work and/or portions of the Work are not performed and completed within the times specified, plus any extensions thereof allowed in accordance within the Contract Documents. GILBERT and CONTRACTOR also recognize the delays, expense, and difficulties involved in proving, through legal or arbitration proceedings, the actual loss suffered by GILBERT if the Work or portion of the Work is not completed on time. Accordingly, instead of requiring any such proof, GILBERT and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay GILBERT liquidated damages per MAG Section 108.9 for each working day that expires after the time specified for substantial completion, until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by GILBERT, CONTRACTOR shall pay GILBERT liquidated damages per MAG Section 108.9 for each working day that expires after the time specified for Final Completion and readiness for final payment.

3.2 Special Damages: In addition to the amounts provided for liquidated damages, CONTRACTOR shall pay GILBERT the actual costs reasonably incurred by GILBERT for GILBERT's PM/CM, if applicable, the Project Engineer and for engineering and inspection forces employed on the Work for each working day that expires after the time specified for Final Completion, including any extensions thereof made in accordance with the Contract Documents, until the Work is finally complete. The rate for inspection services for this contract is $150.00 per hour. The rate for the work by the Project Engineer for this Contract is $ 150.00 per hour. The rate for work by GILBERT PM/CM, if applicable, is $ 150.00 per hour. Each of these hourly rates is calculated at time and one half for work required to be performed during other than normal business hours.

3.3 GILBERT may withhold and deduct from any payment due to CONTRACTOR the amount of liquidated damages, special damages, and other costs, such as CONTRACTOR'S failed testing costs or damages to other GILBERT property, from any moneys due CONTRACTOR under the Contract.

4.0 CONTRACT PRICE

GILBERT shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents, an amount in current funds not to exceed the sum of forty two thousand twenty three dollars and eighty cents ($42,023.80) as more specifically set forth in CONTRACTOR'S bid, and any additional amounts agreed to pursuant to valid CHANGE ORDER, approved by GILBERT.

5.0 CONTRACT DOCUMENTS

The following documents are pertinent to the Project:

5.1 This Contract (pages 1 to 7, inclusive).

5.2 Addenda consisting of Numbers N/A to N/A inclusive.

5.3 The project Specifications dated N/A entitled N/A Project.

5.4 The project Drawings comprised of a set entitled Parkway Improvement District 07-04 Spring Meadows and dated 2/28/15.

5.5 Performance Bond (page F-1 to F-2) and Payment Bond (page G-1 to G-2).

5.6 The approved CPM Construction Schedule dated N/A.

5.7 The project General Conditions (pages 1 to 102, inclusive).

5.8 The project Supplementary Conditions (pages N/A to N/A) inclusive.

5.9 Notice to Proceed dated _____.

5.10 CONTRACTOR'S List of Subcontractors (pages A-6 to A-7) inclusive.

5.11 CONTRACTOR'S Schedule of Manufacturers and Suppliers of Major Equipment and Material Items (page A-6).

5.12 The following which may be delivered or issued after the Effective Date of this Contract and are not attached hereto:

A. Written Attachments
B. Work Change Directives
C. Change Order(s)

6.0 MISCELLANEOUS

6.1 This Agreement shall inure to the benefit of, and shall be binding upon GILBERT and CONTRACTOR and their respective successors and assigns.

6.2 This Agreement may not be amended or any of its terms modified without the written consent of GILBERT and CONTRACTOR.

6.3 This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

6.4 This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

6.5 CONTRACTOR agrees he is an independent contractor and not an agent or employee of GILBERT. CONTRACTOR shall supervise and direct the WORK to be done, using his best skill and attention. CONTRACTOR shall be solely responsible for all construction means, methods, techniques, sequences, procedures and for coordinating all portions of the WORK, required by the CONTRACT DOCUMENTS. CONTRACTOR shall be responsible to GILBERT for the acts and omissions of his employees, SUBCONTRACTORS and their agents and employees, and other persons performing any of the WORK under any CONTRACT DOCUMENTS.

6.6 Should litigation be necessary to enforce any term or provision of this CONTRACT, or to collect any damages claimed or portion of the amount payable under this CONTRACT, then all litigation and collection expenses, witness fees, court costs, and attorney's fees shall be paid to the prevailing party. Nothing herein shall preclude non-binding arbitration if they so elect in the event of a dispute hereunder.

6.7 Under Section 38-511, Arizona Revised Statutes, as amended, GILBERT may cancel any CONTRACT it is a party to within three years after its execution and without penalty or further obligation, if any person significantly involved in 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 elects to exercise its rights under Section 38-511, Arizona Revised Statutes, as amended, GILBERT agrees to immediately give notice thereof to CONTRACTOR.

6.8 All notices and demands required or permitted by this CONTRACT shall be in writing and shall be deemed to have been given or properly served when (1) sent by Certified Mail (postage fully prepaid) to the respective address below or to such other address as may be furnished by either party pursuant to this Section; (2) delivered personally to the authorized representative of the parties to this CONTRACT; or (3) if given by telefacsimile, when addressed and transmitted to the respective telefacsimile number as specified below or to such other address or telefacsimile number as may be furnished by either party to the other pursuant to this Section, and the appropriate confirmation of transmittal is received. Any party giving notice or demand by telefacsimile immediately shall send the other party a copy of such notice or demand by Certified Mail (postage fully prepaid) to the respective address below or to such other address as may be furnished by either party pursuant to this Section.

GILBERT:	CONTRACTOR:
Kenneth Morgan, P.E. Public Works Director/Interim Town Engineer Town of Gilbert 50 East Civic Center Drive Gilbert, Arizona 85296	Michael Ricci Project Manager Somerset Contracting 19051 South Arizona Avenue Chandler, Arizona 85286

6.9 No amendment or waiver of any provision of these CONTRACT DOCUMENTS nor consent to any departure by GILBERT shall be effective unless the same shall be in writing and signed by GILBERT. Such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

6.10 No waiver by GILBERT of any default or breach by CONTRACTOR shall be deemed to be or constitute a waiver of any other or subsequent default or breach. GILBERT specifically reserves and shall have all rights and remedies available to it under the provisions of the CONTRACT DOCUMENTS.

6.11 <u>Immigration Law Compliance Warranty</u>:

6.11.1 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.

6.11.2 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.

6.11.3 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. 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).

6.11.4 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.

6.11.5 If state law is amended, the parties may modify this paragraph consistent with state law.

6.12 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 the WORK. 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 form or based on the violation of such, whether by CONTRACTOR or its employees.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day and year first written above.

TOWN OF GILBERT

By: _____
Doug Boyer, CPM
Purchasing Administrator

ATTEST:

_____
Catherine A. Templeton, CMC
Town Clerk

APPROVED AS TO FORM:

_____
Susan Goodwin
Curtis, Goodwin, Sullivan, Udall & Schwab, PLC
Special Counsel

CONTRACTOR

_____

By:_____

Title:_____

TOWN OF GILBERT

CONSTRUCTION GENERAL CONDITIONS

For

Project Name: Spring Meadows FY16 Landscape Improvements
Contract No: 2015-8003-0674
Date: March 31, 2015

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PART I

GENERAL CONDITIONS

INFORMATION FOR BIDDERS AND BIDDING REQUIREMENTS

1.1 ELIGIBILITY AND PREFERENCE

Contracting with CONTRACTORS and SUBCONTRACTORS under the CONTRACT DOCUMENTS shall be governed by the provisions of Title 34 of the Arizona Revised Statutes, as amended.

1.1.2 Eligibility of CONTRACTOR

1.1.2.1 The BIDDER must have a minimum of five (5) years' experience in similar projects. A "similar project" is one that is similar in both nature and scope to this PROJECT. At least two (2) of the BIDDER'S Key Personnel must have a minimum of three (3) years' experience in similar projects. The BIDDER must demonstrate successful completion of at least two (2) similar projects, one of which must have a dollar value of at least seventy-five percent (75%) of the total bid for this PROJECT as set forth in the Bid Schedule, both within the past five (5) years. Total bid price does not include any GILBERT allowances identified. The BIDDER must demonstrate that it has an experienced employee who will serve as the scheduler, who is dedicated to this PROJECT, and who has successfully employed scheduling techniques appropriate for this PROJECT. "Key Personnel" is defined as individuals who will be directly assigned to this PROJECT and includes, but is not limited to, the owner, the Principals of the BIDDER, the Project Manager, the Project Superintendent, the scheduler, the BIDDER'S construction engineer, and supervisory personnel such as the foremen who will be directly assigned to this PROJECT. Resumes of Key Personnel shall be submitted upon request by GILBERT. "Successful completion" means completion of a project within the established schedule and budget.

1.1.2.2 **If requested by GILBERT**, the three apparent lowest BIDDERS shall submit the following documentation for GILBERT'S review and GILBERT may base its award of a CONTRACT on the information submitted:

A. Evidence of loss history and underwriting criteria

B. BIDDER'S safety program, including Experience Modifier (EMR)

C. List of SUBCONTRACTORS

D. CPA certified audits for the past three fiscal years of operations

E. List of references

F. Similar documents deemed necessary by GILBERT

The documents shall be submitted to GILBERT no later than 72 hours

following the request of GILBERT.

1.1.2.3 GILBERT may also conduct any investigation it deems necessary to determine the BIDDER'S ability to perform the WORK required by the CONTRACT DOCUMENTS. The purpose for requiring these documents is to assist GILBERT in evaluating the ability of a potential CONTRACTOR to perform the WORK in accordance with the CONTRACT DOCUMENTS in a safe manner.

1.1.2.4 References provided by CONTRACTOR are an integral part of BIDDER'S qualifications. References must be accurate. BIDDER authorizes GILBERT'S representative to verify any and all information from references contained herein and hereby releases all those concerned providing information as a reference from any liability in connection with any information they give.

1.2 PRE-BID CONFERENCE

A pre-bid conference will be held on April 13, 2015 at 4:00 p.m. in Room 300, Gilbert Municipal Center, 50 East Civic Center Drive, Gilbert, Arizona 85296. It is highly recommended that BIDDERS, CONTRACTORS, and other interested parties attend this conference that will be conducted by GILBERT to answer questions. BIDDER responsibility issues will be discussed, along with PROJECT requirements.

1.3 SUBMITTING BIDS

Bids to receive consideration shall be made in accordance with the following instructions:

1.3.1 Before submitting a bid, BIDDERS shall carefully examine the PLANS, read the SPECIFICATIONS and all other CONTRACT DOCUMENTS, visit the site of the WORK, fully inform themselves as to all existing conditions and limitations, and shall include sums in the bid covering the cost of each item included in the CONTRACT.

1.3.2 BIDDER shall include in the CONTRACT SUM all applicable taxes, permit fees and other costs to BIDDER.

1.3.3 BIDDER shall include in the total bid price all CONTRACTOR's allowances stated in the BID SCHEDULE of the CONTRACT DOCUMENTS.

Any required allowances are set forth in the BID SCHEDULE. Unless otherwise provided in the CONTRACT DOCUMENTS:

1.3.3.1 Allowances shall cover the cost to the CONTRACTOR (less any applicable trade discount) of the MATERIALS including equipment required by the allowance, delivered at the site, and all applicable taxes, overhead, profit handling and other General Condition costs, unless Bid Unit Rates are available in the Bid Schedule. Unit Bid Rates from the Bid Schedule shall be used to determine the cost of a change to be paid from an Allowance, when applicable.

1.3.3.2 Any remaining Allowance Amount shall be returned to GILBERT at the end of the

project by deductive change order.

1.3.3.3 Whenever the cost is more or less than the allowance, the CONTRACT PRICE shall be adjusted accordingly by CHANGE ORDER, the amount of which will recognize changes, if any, overhead, profit and other expenses.

1.3.4 Lump Sum and Unit Prices bid shall include overhead, profit, taxes, handling and other General Condition costs.

1.3.5 No bid will be considered unless it is made upon the bid forms contained in the book of CONTRACT DOCUMENTS. No bid shall be considered which is deemed as an irregular bid or which fails to conform in all material respects to the PLANS, SPECIFICATIONS and CONTRACT DOCUMENTS. Bids may be deemed irregular and may be considered non-responsive for any of the following reasons:

1.3.5.1 If the bid is on a form other than that furnished by GILBERT or if the form is altered.

1.3.5.2 If the BIDDER does not supply, or has improper or inadequate state contractor's license(s), to perform the WORK.

1.3.5.3 If there are unauthorized additions, statements, interlineations, alterations, conditional or alternate bids or other irregularities of any kind.

1.3.5.4 If the BIDDER adds any provisions reserving the right to accept or reject an AWARD or to enter into a CONTRACT pursuant to an AWARD.

1.3.5.5 If the BIDDER fails to submit any document listed in Section 1.3.1.10 or, when requested, the BIDDER fails to submit any documents or information pursuant to Sections 1.1.2 and 1.1.2.2.

1.3.5.6 If numbers are not stated both in writing and in figures where so required. In case of a difference in written words and figures in a bid, the amount stated in written words shall govern unless obviously in error.

1.3.5.7 If the bid contains a summary or restatement of the WORK to be done.

1.3.6 No oral or telephonic bids will be considered.

1.3.7 Bids shall be delivered to the office of Town Clerk, 50 East Civic Center Drive, Gilbert, Arizona on or before the day and hour set for the opening of bids in the Notice and Call for Bids as published. Bids shall be submitted in a sealed envelope, which shall be marked as indicated in the Notice and Call for Bids. It is the <u>sole</u> responsibility of the BIDDER to see that his bid is received in proper time. Any bids received after the scheduled closing time for receipt of bids will be returned to the BIDDER unopened.

1.3.8 Each and every provision of law and clause required by law to be inserted in the CONTRACT shall be deemed to be inserted so that the CONTRACT shall be read and enforced as though it were included therein.

1.3.9 BIDDERS shall familiarize themselves with the provisions of the laws, codes and regulations

of the State of Arizona, Maricopa County, local agencies and municipalities that have jurisdiction at the location of the SITE. CONTRACTORS shall comply with, and require all SUBCONTRACTORS to comply with, all state and local contractor's license laws.

1.3.10 **BID SUBMITTAL: The following documents shall be submitted with the bid:**

A. Completed and signed Bid Forms

B. Bid Bond

C. No Collusion Affidavit

D. Authorized Signature Form

E. Bidder's Questionnaire

F. Copy(s) of Bidder's State of Arizona Contractor's License(s).

1.3.11 Bids must remain valid for 120 days following bid opening.

1.4 BID SECURITY

Each bid shall be accompanied by a certified check, cashier's check or bid bond from a surety company holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1 of the Arizona Revised Statutes, and any amendments thereto. The bonds shall be made payable and acceptable to GILBERT. The bid bond shall be for an amount equal to at least ten percent (10%) of the bid, payable without condition to GILBERT as a guarantee that the BIDDER, if awarded the CONTRACT, will promptly execute such CONTRACT in accordance with the bid and in manner and form required by these CONTRACT DOCUMENTS and will furnish good and sufficient bond for the faithful performance of the same. The surety bond shall not be executed by an individual surety or sureties. The check or bid bond of the successful BIDDER will be retained until the CONTRACT is signed and satisfactory bonds and certificates of insurance furnished, or other disposition made thereof. The check or bid bond of the BIDDERS whose proposal are not accepted by the Town of Gilbert Council will be returned promptly.

1.5 SPECIAL NOTICE

BIDDERS are required to inform themselves fully of the conditions relating to construction and labor under which the WORK will be or is now being performed.

1.6 WITHDRAWAL OF BID

Any BIDDER may withdraw or revise his bid by telegraphic or written request (but not electronic mail), at any time prior to the expiration of the time for the opening of bids as set forth in the Notice and Call for Bids. Any withdrawal or revision must be done on a copy of the bid form and must be signed by the person indicated on the Authorized Signature Form.

1.7 INTERPRETATION OF PLANS AND DOCUMENTS

1.7.1 If any person contemplating submitting a bid for the proposed WORK is in doubt as to the true meaning of any part of the PLANS, SPECIFICATIONS or other CONTRACT DOCUMENTS, or finds discrepancies in or omissions from the PLANS or SPECIFICATIONS, he may submit to Brian Border via email (Brian.Border@gilbertaz.gov) a written request for an interpretation or correction thereof. The request must be made via email and delivered to Brian Border **by 6:00 pm on April 15, 2015**. Any interpretation or correction of the CONTRACT DOCUMENTS will be made only by ADDENDUM. A copy of such ADDENDUM will be posted on the Town of Gilbert website. CONTRACTOR is responsible for acknowledging all ADDENDA in his bid. GILBERT will not be responsible for any other explanations or interpretations of the CONTRACT DOCUMENTS.

1.7.2 Should conflicts occur in or between Drawings and SPECIFICATIONS, CONTRACTOR is deemed to have estimated the more expensive of the two unless he has asked for and obtained a written decision as required in Section 1.7.1 before submission of his bid as to which method or MATERIALS will be required.

1.8 SUBSTITUTION OF MATERIAL OR EQUIPMENT

1.8.1 Where an item or MATERIAL is specified by a trade or manufacturer's name, it is done for the purpose of establishing a basis of quality, and not for the purpose of limiting competition. ENGINEER'S intent is to consider alternative products which have the desired essential characteristics. ENGINEER will consider any such product offered. Requests for approval of alternative products shall be made through BIDDERS bidding as prime contractors. No approvals for substitutions will be granted directly to suppliers, distributors, or subcontractors. Pursuant to A.R.S. § 34-104-C, the following procedures will be used:

1.8.1.2 BIDDERS desiring to submit alternative product proposals for prior approval of ENGINEER shall submit such proposals to ENGINEER at least eight (8) working days prior to the original deadline for receiving bids, or any published extension thereof. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute, including drawings, cuts, performance and test data, and any other information necessary for an evaluation. A statement setting forth any changes in other MATERIALS, equipment or other work that incorporation of the substitute would require shall be included. ENGINEER will consider such request and either approve or reject all alternative product proposals submitted.

If, by the close of the fifth day prior to the deadline for receiving bids, ENGINEER has approved any alternative product proposals, the BIDDING DOCUMENTS shall be modified to include the alternative products. ENGINEER shall publish the modification in the same manner as the original BIDDING DOCUMENTS at least five days prior to the deadline for receiving bids. ENGINEER'S decision of approval or disapproval of a proposed substitute shall be final. After the AWARD of CONTRACT, the equivalency evaluations conducted during the bidding period may be reviewed by appointment with ENGINEER.

1.8.2 Whenever an item of MATERIAL or piece of equipment is specified with at least two named manufactures and is followed by the words "No other manufacturers will be considered", only the listed manufacturers will be considered by GILBERT and ENGINEER.

1.8.3 Whenever an item of MATERIAL or piece of equipment is specified with a named manufacturer, an "or equal" manufacturer shall apply whether the term "or equal" is listed or not listed within the SPECIFICATIONS.

1.9 ADDENDA

Any ADDENDA issued during the time of bidding, shall become a part of the documents used by the BIDDER for the preparation of his bid, shall be covered by the bid and shall be made a part of the CONTRACT DOCUMENTS. It is the sole responsibility of the BIDDER to ensure that they have received and reviewed all ADDENDA, and that receipt of such ADDENDA is duly acknowledged on the Bid Form.

1.10 AWARD OR REJECTION OF BIDS

1.10.1 The CONTRACT will be awarded to the lowest responsible BIDDER determined from the Base Bid, plus any combination of Bid Alternates that GILBERT may select, which comply with these instructions and with the Notice and Call for Bids. GILBERT, however, reserves the right to accept or reject any or all bids, to waive any informality or irregularity in the bids received or to withhold the AWARD for any reason GILBERT determines. Bids will be received until the time and date designated in the Notice and Call for Bids. Bids received after the designated time set will be returned to the BIDDERS unopened.

1.10.2 Bids shall be opened in public and the amount of the bid read aloud. After the bid opening, GILBERT shall analyze the bids and notify all BIDDERS of the name of the apparent low bidder or (2) if the analysis results in a recommendation to award the CONTRACT to a BIDDER other than the apparent low BIDDER, the BIDDER who's recommended for award of the CONTRACT. This will be done by issuing a Notice of Apparent Lowest Responsible Bidder. Such notice shall be given at least four (4) days prior to the date set for the AWARD of the CONTRACT.

1.11 BIDDERS INTERESTED IN MORE THAN ONE BID

No person, firm, or corporation shall be allowed to make, file or to be interested in more than one (1) bid for the same WORK unless alternate bids are called for. A person, firm, or corporation who has submitted a subproposal to a BIDDER, or who quoted prices on MATERIALS to a BIDDER, is not thereby disqualified from submitting a subproposal or quoting prices to other BIDDERS, but must quote the same subproposal or price to all BIDDERS.

1.12 CONTRACT AND BONDS

1.12.1 The successful BIDDER shall execute and deliver a CONTRACT in the prescribed form and

shall furnish the required bonds within ten (10) days after issuance of a written Notice of Award or his BID SECURITY shall be forfeited as provided elsewhere herein.

1.12.2 The successful BIDDER, simultaneously with the execution of the CONTRACT, will be required to furnish a PAYMENT BOND in an amount equal to one hundred percent (100%) of the CONTRACT SUM and a PERFORMANCE BOND in an amount equal to one hundred percent (100%) of the CONTRACT SUM.

1.12.3 The form of CONTRACT that the successful BIDDER as CONTRACTOR will be required to execute and the forms of bonds which he will be required to furnish along with a form of insurance certificate are included in the CONTRACT DOCUMENTS. The CONTRACT, the bonds and the insurance certificate will be executed in five (5) original counterparts.

1.12.4 Bonding companies and insurance carriers shall be "Best Rated A" or better by the A.M. Best Company or comparable rating as determined at the sole discretion of GILBERT. Each bond shall be executed by a surety (bonding company) duly licensed in and possessing a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance, pursuant to Title 20, Chapter 2, Article 11 and acceptable to GILBERT. The Surety Bond shall not be executed by an individual surety or sureties. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in the State of Arizona. The Bonds shall have attached thereto a certified copy of Power of Attorney for the signed official executing the bonds.

1.13 ASSIGNMENT OF CONTRACT

No assignment by CONTRACTOR of any CONTRACT to be entered into hereunder, or any part thereof, or of funds to be received there under by CONTRACTOR, will be recognized by GILBERT unless such assignment has had prior approval of GILBERT and the Surety has been given due notice of such assignment in writing and has consented thereto in writing.

1.14 PLANS AND SPECIFICATIONS TO SUCCESSFUL BIDDER

The successful BIDDER may obtain five (5) sets of PLANS and SPECIFICATIONS for this PROJECT at no extra cost.

1.15 CONTRACT TIME

CONTRACTOR shall commence WORK under the CONTRACT on the day indicated in the NOTICE TO PROCEED or within ten (10) working days thereafter and shall fully complete all WORK under the CONTRACT within 50 consecutive working days in accordance with Section 9.2. CONTRACTOR shall achieve SUBSTANTIAL COMPLETION within 40 working days after the date of the NOTICE TO PROCEED and FINAL COMPLETION within 50 working days in accordance with Section 9.2. No WORK shall commence prior to issuance of a NOTICE TO PROCEED, including mobilization on site. CONTRACTOR shall at all times during the continuance of the CONTRACT prosecute the WORK with such force and

equipment as are sufficient to complete it within the time specified.

1.16 NOTICE OF REQUIREMENT OF COMPLIANCE WITH PERMIT CONDITIONS

This PROJECT includes work that will affect facilities of various agencies, including Town of Gilbert. Applicable licenses, permits and specifications are bound herein and CONTRACTOR shall comply with all such specifications and permit conditions.

1.17 ENGINEER

1.17.1 This PROJECT will be coordinated by an ENGINEER, who will report the progress of the WORK and compliance with the CONTRACT DOCUMENTS to GILBERT. Generally, ENGINEER will (1) oversee the progress of the WORK, (2) receive submittals, requests for information and other information from CONTRACTOR, (3) make recommendations to GILBERT regarding CHANGE ORDERS and request for extensions of time, (4) make recommendations to GILBERT regarding requests for payment, (5) maintain PROJECT records, (6) determine SUBSTANTIAL and FINAL COMPLETION of the PROJECT, and (7) do other tasks related to the coordination of the WORK.

1.17.2 ENGINEER will review and approve shop drawings, make interpretations of the CONTRACT DOCUMENTS and make determinations regarding substitution of methods and MATERIALS. Other duties are set forth in the CONTRACT DOCUMENTS. Drawings and SPECIFICATIONS and copies thereof furnished by ENGINEER are and shall remain the property of GILBERT. They are to be used only with respect to this PROJECT and are not to be used on any other PROJECT.

1.17.3 ENGINEER will be GILBERT'S REPRESENTATIVE during the construction and until final payment to the CONTRACTOR is made. ENGINEER will advise and consult with GILBERT. All instructions to CONTRACTOR shall be forwarded through ENGINEER. ENGINEER will have the authority to act on behalf of GILBERT only to the extent provided in the CONTRACT DOCUMENTS. CONTRACTOR shall not be relieved from CONTRACTOR'S obligations to perform the WORK in accordance with the CONTRACT DOCUMENTS either by the activities or duties of ENGINEER MANAGER in its administration of the CONTRACT, or by inspections, tests or approvals required.

1.18 SEPARATE CONTRACTS

Separate CONTRACTS may be let by GILBERT to perform other or additional work on or near the WORK covered by this CONTRACT. CONTRACTOR shall be responsible for coordinating the sequencing of the WORK under those separate CONTRACT'S identified/listed in the SUPPLEMENTAL CONDITIONS of the CONTRACT DOCUMENTS. The bid shall include an amount for the administration of the sequencing of these CONTRACTS. The requirements of Section 5.8 shall apply.

1.19 BID PROTESTS

The protest policy of the Town of Gilbert is available at the Town Clerk's office at 50 E. Civic Center Drive, Gilbert, Arizona 85296.

PART II

GENERAL CONDITIONS

DEFINITIONS

Wherever in these SPECIFICATIONS, or in other CONTRACT DOCUMENTS, the following terms are used, the intent and meaning shall be interpreted as shown below. Additional definitions and abbreviations pertaining to this PROJECT will be found in the SUPPLEMENTAL CONDITIONS.

2.1 DEFINITIONS

2.1.1 ADDENDUM: A written and/or graphic supplement to any of the CONTRACT DOCUMENTS issued, in writing, after ADVERTISEMENT of but prior to the opening of the bids for a CONTRACT.

2.1.2 ADVERTISEMENT: The public announcement, as required by law, inviting bids for WORK to be performed or MATERIALS to be furnished.

2.1.3 AWARD: The formal action of GILBERT Town Council in accepting a bid.

2.1.4 BID SECURITY: Refers to the certified check, cashier's check or surety bond which is required to be submitted with the bid to insure execution of the CONTRACT and the furnishing of the required bonds and insurance certificates.

2.1.5 BIDDER: Any individual, firm, partnership, or corporation submitting a bid for the work contemplated, acting directly or through a duly authorized agent.

2.1.6 CHANGE ORDER: A written order issued by GILBERT directing CONTRACTOR to make changes in the WORK or to perform extra work, and setting forth conditions for payment and adjustment in time of completion.

2.1.7 CLERK: The duly authorized person who performs the duties of Clerk of the Town of GILBERT.

2.1.8 CONTRACT: The written instrument executed by CONTRACTOR and GILBERT by which CONTRACTOR is bound to furnish all labor, equipment and MATERIALS, to perform the WORK specified and by which GILBERT is obligated to compensate CONTRACTOR therefore at the prices set forth therein. The CONTRACT DOCUMENTS are herewith by reference made a part of the CONTRACT as if fully set forth therein.

2.1.9 CONTRACT DOCUMENTS: The words "CONTRACT DOCUMENTS" include the Notice and Call for Bids, Information for BIDDERS and Bidding Requirements, General Conditions, SUPPLEMENTAL CONDITIONS, SPECIFICATIONS, Bid, CONTRACT, CONSTRUCTION SCHEDULE, PAYMENT BOND, PERFORMANCE BOND, PLANS, ENGINEER'S INSTRUCTION BULLETINS and all ADDENDA and Modifications thereto.

A Modification is (1) a written amendment to the CONTRACT signed by both parties, (2) a CHANGE ORDER, (3) a written interpretation issued by ENGINEER, or (4) a written order for a minor change in the WORK issued by ENGINEER.

2.1.10 CONTRACT SCHEDULE: The schedule produced by CONTRACTOR in response to the requirements of Section 5.1.

2.1.11 CONTRACT SUM: The total amount payable by GILBERT to CONTRACTOR for the performance of the WORK under the CONTRACT DOCUMENTS. The CONTRACT SUM is the amount stated in the CONTRACT and adjusted by any CHANGE ORDER issued pursuant to the CONTRACT DOCUMENTS.

2.1.12 CONTRACT TIME: The time set forth in the CONTRACT for completion of the WORK required by the CONTRACT DOCUMENTS.

2.1.13 CONTRACTOR: The individual, firm, partnership or corporation that has entered into a CONTRACT with GILBERT for the WORK. CONTRACTOR is required by law to be licensed in the classification of the WORK to be performed and will perform work or render services as a prime contractor.

2.1.14 DAYS: Unless otherwise designated, days will be understood to mean calendar days.

2.1.15 ENGINEER: The Architectural or Engineering firm designated by GILBERT to prepare PLANS and SPECIFICATIONS for the WORK, to make interpretations of the CONTRACT DOCUMENTS, to review and approve shop drawings and to perform other duties as set forth in the CONTRACT between GILBERT and ENGINEER. ENGINEER shall oversee the construction of the PROJECT.

2.1.16 FINAL COMPLETION: The date, more fully described in Section 9.2.2, when all items of the WORK are completely finished with no items of any scope outstanding or remaining to be completed, and all known defective work has been corrected. This is the date that initiates the Warranty period.

2.1.17 GILBERT: Town of Gilbert, Arizona.

2.1.18 GILBERT'S REPRESENTATIVE OR GILBERT'S AGENT: The authorized representative of GILBERT, assigned to the PROJECT WORK, the PROJECT Site or any part thereof during the performance of the WORK by CONTRACTOR and until final acceptance.

2.1.19 IMPROVEMENTS: Means the same as "WORK."

2.1.20 INITIAL CONTRACT SCHEDULE: The schedule prepared by CONTRACTOR in accordance with Section 5.1 and which includes the MILESTONE AND COMPLETION DATES specified in the CONTRACT DOCUMENTS.

2.1.21 MATERIALS: The word "MATERIALS" includes, in addition to material incorporated in the PROJECT, equipment and other supplies used in the performance of the WORK.

2.1.22 NOTICE OF APPARENT LOWEST RESPONSIBLE BIDDER: The notice given to inform all bidders of GILBERT staff's determination of the lowest responsible BIDDER and its recommendation for AWARD of the CONTRACT.

2.1.23 NOTICE OF AWARD: The notice given to inform the successful BIDDER of the AWARD of the CONTRACT.

2.1.24 NOTICE TO PROCEED: A directive issued by GILBERT authorizing CONTRACTOR to start the WORK or IMPROVEMENTS required in the CONTRACT.

2.1.25 PAYMENT BOND: A bond furnished by CONTRACTOR and an acceptable surety, in compliance with the requirements set forth in the CONTRACT DOCUMENTS, for the purpose of guaranteeing that CONTRACTOR promptly pays all monies due persons supplying labor or material to be used in prosecution of the CONTRACT.

2.1.26 PERFORMANCE BOND: A bond furnished by CONTRACTOR and an acceptable surety, in compliance with the requirements set forth in the CONTRACT DOCUMENTS, for the purpose of guaranteeing the faithful performance and completion of the WORK covered by the CONTRACT.

2.1.27 PLANS: All approved drawings or reproductions thereof pertaining to details of the WORK and which are made a part of the CONTRACT DOCUMENTS.

2.1.28 PROJECT: Means the same as "WORK" as defined below.

2.1.29 SITE: The area on which WORK is to be done as described in the CONTRACT DOCUMENTS.

2.1.30 SUPPLEMENTAL CONDITIONS: Those terms and conditions applicable to the WORK which are specifically set forth in the SUPPLEMENTAL CONDITIONS section of the CONTRACT DOCUMENTS.

2.1.31 SPECIFICATIONS: The descriptions, directions, provisions and requirements for performing the WORK as contained in the CONTRACT DOCUMENTS.

2.1.32 SUBCONTRACTOR: Those having a CONTRACT with CONTRACTOR for the performance of any WORK required by the CONTRACT DOCUMENTS.

2.1.33 SUBSTANTIAL COMPLETION: The date, more fully described in Section 9.2.1, when ENGINEER certifies, in writing, GILBERT may use or occupy the PROJECT or a designated portion thereof.

2.1.34 WORK: The word "WORK", "IMPROVEMENTS" or "PROJECT" includes any or all of the IMPROVEMENTS mentioned and authorized to be made, and the construction, reconstruction, and repair of all or any portion of such IMPROVEMENTS, and all labor, services, incidental expenses and material necessary or incidental thereto.

2.1.35 WORK DIRECTIVE: Supplemental drawings or instructions, which may be issued as necessary from time to time to make clear or define in greater detail the intent of the drawings and SPECIFICATIONS. A CHANGE ORDER shall accompany a WORK DIRECTIVE if extra cost and/or time are known to be involved.

2.1.36 WORKING DAYS: Working days are exclusive of Saturday, Sunday and GILBERT recognized legal holidays. In the event of a change, CONTRACTOR shall notify ENGINEER.

PART III

GENERAL CONDITIONS

AWARD AND EXECUTION OF CONTRACT

3.1 AWARD

3.1.1 As soon as practicable after the date of opening the bids, the GILBERT Town Council will AWARD the CONTRACT to the lowest responsible and responsive BIDDER or will reject all bids.

3.1.2 A NOTICE OF AWARD will be sent to the successful BIDDER by certified mail and shall be considered issued on the day sent.

3.1.3 The low bid will be determined by the lowest net total from a fully qualified and responsible BIDDER arrived at by combining the BIDDER'S lump sum and unit price totals or lump sum base bid price and the bid prices of the alternates that are selected and accepted by GILBERT. GILBERT may accept or reject any or all alternates.

3.2 EXECUTION OF CONTRACT

3.2.1 The successful BIDDER shall, within the time specified in Information for Bidders and Bidding Requirements, execute the CONTRACT, and shall file insurance policies and/or certificates of insurance as required herein. If CONTRACTOR fails or refuses to enter into the CONTRACT within the time stated, GILBERT may declare a forfeiture of his BID SECURITY as liquidated damages for failure to enter into the CONTRACT.

3.2.2 Execution of the CONTRACT by CONTRACTOR is a representation that CONTRACTOR has visited the SITE, become familiar with the local conditions under which the WORK is to be performed, and has correlated personal observations with the requirements of the CONTRACT DOCUMENTS.

3.3 CONTRACTOR'S INSURANCE

3.3.1 General: CONTRACTOR agrees to comply with all GILBERT ordinances and state and federal laws and regulations. Without limiting any obligations or liabilities of CONTRACTOR, CONTRACTOR shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A or above with policies and forms satisfactory to GILBERT. Failure to maintain insurance as specified may result in termination of this CONTRACT at GILBERT'S option.

3.3.2 No Representation of Coverage Adequacy: By requiring insurance herein, GILBERT does not represent that coverage and limits will be adequate to protect CONTRACTOR. GILBERT reserves the right to review any and all of the insurance policies and/or endorsements cited in

this CONTRACT but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in the CONTRACT DOCUMENTS or failure to identify any insurance deficiency shall not relieve CONTRACTOR from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of the CONTRACT.

3.3.3 Additional Insured: All insurance coverage and self insured retention or deductible portions, except Workers Compensation Insurance, shall name, to the fullest extent permitted by law for claims arising out of the performance of the CONTRACT, GILBERT, ENGINEER, their agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this CONTRACT DOCUMENTS.

3.3.4 Coverage Term: All insurance required herein shall be maintained in full force and effect until all WORK or services required to be performed under the terms of subject CONTRACT is satisfactorily performed, completed and formally accepted by GILBERT, unless specified otherwise in this CONTRACT DOCUMENTS.

3.3.5 Primary Insurance: CONTRACTOR'S insurance shall be primary insurance as respects performance of subject CONTRACT and in the protection of GILBERT as an Additional Insured.

3.3.6 Occurrence Basis: All insurance coverage shall be on an occurrence basis and not a claims made basis.

3.3.7 Waiver: All policies, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against GILBERT, its agents, representatives, officers, directors, officials and employees for any claims arising out of the WORK. CONTRACTOR shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

3.3.8 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. CONTRACTOR shall be solely responsible for any such deductible or self-insured retention amount. GILBERT, at its option, may require CONTRACTOR to secure payment or such deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

3.3.9 Use of Subcontractors: If any WORK under the CONTRACT DOCUMENTS is subcontracted in any way, CONTRACTOR shall execute a written agreement with SUBCONTRACTOR containing the same Indemnification Clause and Insurance Requirements set forth herein protecting GILBERT and CONTRACTOR. CONTRACTOR shall be responsible for executing the agreement with SUBCONTRACTOR and obtaining Certificates of Insurance verifying the insurance requirements.

3.3.10 Evidence of Insurance: Prior to commencing any WORK under the CONTRACT DOCUMENTS, CONTRACTOR shall furnish GILBERT with Certificate(s) of Insurance, or formal endorsements as required by the CONTRACT DOCUMENTS, issued by CONTRACTOR'S insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage, conditions, and limits of coverage specified in the CONTRACT DOCUMENTS and that such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as evidence of coverage, GILBERT shall reasonably rely upon the 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 CONTRACT. Such certificates shall identify the PROJECT. If any of the above-cited policies expire during the life of the CONTRACT, it shall be CONTRACTOR'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:

3.3.10.1 GILBERT, and ENGINEER, their agents, representatives, officers, directors, officials and employees are Additional Insured's 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 or equivalent.

C. Excess Liability – Follow Form to underlying insurance as required.

3.3.10.2 CONTRACTOR'S insurance shall be primary insurance as respects performance of CONTRACT.

3.3.10.3 All policies, including Workers Compensation, waive rights of recovery (subrogation) against GILBERT, its agents, representatives, officers, directors, officials and employees for any claims arising out of WORK performed by CONTRACTOR under the CONTRACT DOCUMENTS.

3.3.10.4 Certificate shall cite 30 day advance notice cancellation provision.

3.3.10.5 Project descriptive information including:

A. CIP Project Name

B. CIP Project Number

C. Contract Number

3.3.11 REQUIRED COVERAGE:

3.3.11.1 Commercial General Liability: CONTRACTOR shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than $3,000,000 for each occurrence, $3,000,000 Products and Completed Operations Annual Aggregate, and a $3,000,000 General Aggregate Limit on a per project basis endorsed by means of ISO Endorsement CC-2503 1185 or equivalent. 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 Offices, Inc. policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this CONTRACT, GILBERT, ENGINEER, their agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under Insurance Service Offices, Inc. Commercial General Liability Additional Insured Endorsement form CG 20 10 11 85, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in GILBERT, but only with respect to liability arising out of "your work" for that insured by or for you." CONTRACTOR, its successors and or assigns, is required to maintain Commercial General Liability insurance as specified hereunder for a minimum period of three (3) years following completion and acceptance of subject WORK. CONTRACTOR shall submit Certificate of Insurance evidencing such Commercial General Liability insurance during said three year period containing all of the insurance requirements set forth herein including naming GILBERT, ENGINEER, their agents, representatives, officers, directors, officials and employees as Additional Insured as required. 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.

3.3.11.2 Vehicle Liability: CONTRACTOR shall maintain Business Automobile Liability insurance with a limit of $3,000,000 each occurrence on CONTRACTOR'S owned, hired, and non-owned vehicles assigned to or used in the performance of the WORK. 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. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of the WORK, an MCS 90 endorsement is required providing $5,000,000 per occurrence limits of liability for bodily injury and property damage. To the fullest extent allowed by law, for claims arising out of the performance of this CONTRACT, GILBERT, ENGINEER, their agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under the Insurance Service Officers, Inc. Business Auto policy Designated Insured Endorsement form CA 20 48 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.

3.3.11.3 Worker's Compensation Insurance: CONTRACTOR shall maintain Worker Compensation Insurance to cover obligations imposed by federal and state statutes having jurisdiction of CONTRACTOR'S employees engaged in the performance of the WORK and shall also maintain Employers 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.

3.3.11.4 Builder's "All Risk": CONTRACTOR shall maintain Builder's "All Risk" Insurance in an amount not less than one hundred percent (100%) of the CONTRACT price. Such policy shall include coverage for fire, lightening, vandalism, malicious mischief, riot, civil commotion, smoke, sprinkler leakage, water damage, windstorm, hail, earthquake, landslide, flood and collapse or loss due to the results of faulty workmanship during the CONTRACT TIME and until Final Acceptance of the WORK by GILBERT. On pipeline and similar Projects where fire hazard is negligible or nonexistent, GILBERT may waive the requirement for fire insurance and/or accept the installation waiver.

3.3.11.5 Railroad Protection Liability: If the WORK involves a railroad right-of-way (as described in the SUPPLEMENTAL CONDITIONS) Railroad Protective Liability Insurance coverage is required in the amounts set forth in the SUPPLEMENTAL CONDITIONS.

3.4 REQUIREMENT OF CONTRACT BONDS

3.4.1 Concurrently with the execution of the CONTRACT, CONTRACTOR shall furnish GILBERT the following bonds, which shall become binding upon the AWARD of the CONTRACT to CONTRACTOR:

3.4.1.1 A PERFORMANCE BOND in conformance with Section 1.12 and in an amount equal to the full CONTRACT SUM conditioned upon the faithful performance of the CONTRACT in accordance with PLANS, SPECIFICATIONS and Conditions thereof. Such bond shall be solely for the protection of GILBERT. The Performance Bond shall remain in force the greater of (a) two years after FINAL COMPLETION of the WORK, or (b) until the expiration of all warranties and guarantees as required by the CONTRACT.

3.4.1.2 A PAYMENT BOND in conformance with Section 1.12 and in an amount equal to the full CONTRACT SUM solely for the protection of the claimants supplying labor or MATERIALS to CONTRACTOR or his SUBCONTRACTORS in the prosecution of the WORK provided for in such CONTRACT. The Payment Bond shall remain in effect for at least one year after FINAL COMPLETION of the WORK.

3.4.2 Each such bond shall include a provision allowing the prevailing party in a suit on such bond to recover as a part of this judgment such reasonable attorney's fees as may be fixed by a judge of the court.

3.4.3 Each such bond shall be executed by a surety company or companies holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1 of the Arizona Revised Statutes and any amendments thereto. The bonds shall be made payable and acceptable to GILBERT. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in this State and the bonds shall have attached thereto a certified copy of the Power of Attorney of

the signing official.

3.5 INDEMNIFICATION OF GILBERT AGAINST LIABILITY

3.5.1 To the fullest extent permitted by law, CONTRACTOR, 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 CONTRACTOR or other persons employed or used by the CONTRACTOR in the performance of this Agreement. CONTRACTOR'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 CONTRACTOR'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 CONTRACTOR or used by CONTRACTOR in the performance of this Agreement.

3.5.2 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.

3.6 SAFETY WARRANTY

3.6.1 CONTRACTOR shall provide and maintain in a neat, sanitary condition such accommodations for the use of his employees as may be necessary to comply with the requirements and regulations of the Arizona State Department of Health or as specified by the Maricopa County Health Department, Sanitary Code. CONTRACTOR shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on his own responsibility or as ENGINEER may determine, reasonably necessary to protect the life and the health of employees on the job, the safety of the public and to protect property in connection with the performance of the WORK. Precaution shall be exercised by CONTRACTOR at all times for the protection of persons (including employees and GILBERT representatives) and property. CONTRACTOR shall comply with the provisions of all applicable laws, pertaining to such protection including all Federal and State occupational safety and health acts, and standards and regulations promulgated hereunder.

3.6.2 CONTRACTOR warrants that CONTRACTOR is aware of and understands the hazards presented to persons, property and the environment relating to and arising out of the WORK. In the event CONTRACTOR or any of CONTRACTOR'S SUBCONTRACTORS are working or operating in an unsafe manner, CONTRACTOR shall immediately take full and appropriate steps to assure the safety of those working in the job site. CONTRACTOR acknowledges GILBERT'S right under this CONTRACT to stop work if GILBERT determines the WORK is not proceeding in a safe manner and may result in injury to persons or property. GILBERT and ENGINEER shall not be liable for the costs incurred by CONTRACTOR if the WORK is

stopped for safety reasons. The ENGINEER, with GILBERT approval, shall issue a stop work order until the violation ceases. The ENGINEER shall immediately notify CONTRACTOR in writing of the reasons WORK was stopped.

3.7 NOTICE TO PROCEED

CONTRACTOR or SUBCONTRACTORS shall not start WORK on any part of the PROJECT until NOTICE TO PROCEED has been issued by GILBERT. The NOTICE TO PROCEED will be sent to CONTRACTOR by certified mail or delivered to him in person. The date for the official start of the CONTRACT will be set forth in the NOTICE TO PROCEED. The NOTICE TO PROCEED shall not be issued until the CONTRACT has been executed and all insurance, bonds and other required documents have been submitted to GILBERT.

PART IV

GENERAL CONDITIONS

COMMENCEMENT, PROSECUTION AND PROGRESS

4.1 COMMENCEMENT

4.1.1 Within ten (10) working days after the NOTICE OF AWARD, a pre-construction conference will be held to establish a working understanding among the parties as to the WORK and to discuss the schedules referred to in Section 5.1, procedures for handling submittals, processing Applications for Payment, and maintaining required records.

4.1.1.1 The conference shall be attended by: CONTRACTOR and his superintendent, Principal SUBCONTRACTORS, Representatives of principal suppliers and manufacturers as appropriate, ENGINEER, Representatives of GILBERT, Others as requested by CONTRACTOR, GILBERT, or ENGINEER.

4.1.1.2 The purpose of the conference is to designate responsible personnel and establish a working relationship. Matters requiring coordination will be discussed and procedures for handling such matters established. The agenda will include but not be limited to:

A. Discussion of CONTRACTOR'S INITIAL CONTRACT SCHEDULE (See Section 5.1).

B. Transmittal, review, and distribution of CONTRACTOR'S submittals.

C. Processing applications for payment.

D. Maintaining record documents.

E. Critical work sequencing.

F. ENGINEER’S INSTRUCTION BULLETINS and CHANGE ORDERS.

G. Use of premises, office and storage areas, security, housekeeping, and GILBERT'S needs.

H. Major equipment deliveries and priorities.

I. CONTRACTOR'S Safety Program.

4.1.1.3 ENGINEER will preside at the conference and will arrange for keeping the minutes and distributing the minutes to all persons in attendance.

4.1.2 CONTRACTOR shall commence WORK on or before the tenth (10th) day after the date set forth in the NOTICE TO PROCEED, and shall complete all WORK under the CONTRACT within the CONTRACT TIME. The NOTICE TO PROCEED will be issued no later than thirty (30) DAYS after the NOTICE OF AWARD unless otherwise agreed upon in writing, or as may be specified in the SUPPLEMENTAL CONDITIONS.

4.2 SUBCONTRACTORS

4.2.1 Subcontracts shall be in accordance with, and CONTRACTOR shall be bound by, the following provisions:

4.2.1.1 All subcontracts shall be subject to review and acceptance by GILBERT.

4.2.1.2 All subcontracts shall be in writing and shall provide that all WORK to be performed hereunder shall be performed in accordance with the terms of the CONTRACT.

4.2.1.3 True copies of any and all subcontracts shall be furnished to GILBERT; however, prices may be omitted.

4.2.1.4 The subcontracting of any part of the WORK will in no way relieve CONTRACTOR of his responsibility or liability or obligation under the CONTRACT.

4.2.1.5 All subcontracts and purchase orders for equipment shall state guaranteed delivery dates, at such times as determined by CONTRACTOR, which will allow CONTRACTOR to complete the PROJECT within the CONTRACT TIME.

4.2.2 If GILBERT or ENGINEER has reasonable objection to any proposed SUBCONTRACTOR, CONTRACTOR shall submit a substitute to whom GILBERT and ENGINEER have no reasonable objection, and the CONTRACT SUM shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate CHANGE ORDER shall be issued.

4.2.3 CONTRACTOR shall make no substitution for any SUBCONTRACTOR, person or entity previously selected if GILBERT or ENGINEER make reasonable objection to such substitution.

4.3 CONTRACTOR'S REPRESENTATIVE AND EMERGENCIES

4.3.1 CONTRACTOR shall at all times be present at the WORK in person or represented by a competent superintendent who shall supervise and direct the WORK and shall be authorized by CONTRACTOR to receive and fulfill instructions from ENGINEER.

4.3.2 CONTRACTOR shall supervise and direct the WORK. He shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall employ and maintain on the SITE a qualified supervisor or superintendent who shall be designated in writing by CONTRACTOR as CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of CONTRACTOR and all communications given to the supervisor shall be as binding as if given to CONTRACTOR. The supervisor shall be present on the SITE at all times as required to perform adequate supervision and coordination of the WORK.

4.3.3 Emergencies that may arise during the progress of the WORK may require special effort or require extra shifts of men to continue the WORK beyond normal working hours. CONTRACTOR shall be prepared in case of such emergencies from whatever cause, to do all necessary WORK promptly.

4.4 CONTRACT DOCUMENTS

4.4.1 CONTRACTOR shall keep at the SITE a copy of the CONTRACT DOCUMENTS and shall at all times give ENGINEER access thereto.

4.4.2 The documents that make up the CONTRACT DOCUMENTS are intended to be complete and complementary, and to prescribe a complete WORK which CONTRACTOR shall perform in a manner acceptable to ENGINEER and in full compliance with the terms of the CONTRACT. CONTRACTOR shall provide GILBERT with a complete and operable WORK, even though the PLANS and SPECIFICATIONS may not specifically call out all items or items of work required of CONTRACTOR to complete his task. If any omissions are made of information necessary to carry out the full intent and meaning of the CONTRACT DOCUMENTS, CONTRACTOR shall immediately notify ENGINEER, who shall immediately notify GILBERT. ENGINEER will make the necessary corrections for furnishing of detailed instructions. In case of discrepancies, the more stringent requirement shall govern.

4.4.3 Any drawings or PLANS listed anywhere in the SPECIFICATIONS or ADDENDA thereto shall be regarded as a part thereof and of the CONTRACT. Anything mentioned in these SPECIFICATIONS and not indicated on the PLANS and not mentioned in these SPECIFICATIONS shall be of the same force and effect as if indicated or mentioned in both.

4.4.4 CONTRACTOR shall perform the WORK in accordance with the lines, grades, cross sections, and dimensions indicated on the PLANS and detailed drawings.

4.4.5 Unless otherwise specified in the SUPPLEMENTAL CONDITIONS, CONTRACTOR shall furnish all MATERIALS, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and incidentals, including, but not limited to, dust and traffic control measures, and to perform all WORK involved in executing the CONTRACT in a satisfactory and workmanlike manner within the CONTRACT TIME.

4.4.6 Anything in the CONTRACT DOCUMENTS notwithstanding, CONTRACTOR accepts the responsibility of constructing a watertight, weathertight PROJECT.

4.5 ERRORS AND OMISSIONS

The PLANS are presumed to be correct, but CONTRACTOR shall be required to check carefully all dimensions before beginning the WORK. If any errors or omissions are discovered, ENGINEER shall be so notified in writing. ENGINEER shall immediately notify GILBERT who will then make such corrections, and interpretations as may be deemed necessary for fulfilling the intent of the PLANS and SPECIFICATIONS and shall issue appropriate ENGINEER'S INSTRUCTION BULLETINS. Any such adjustments made by

CONTRACTOR without prior review and acceptance shall be at his own risk. The settlement of any complication or disputed expenses arising from such adjustment shall be made by CONTRACTOR at his own expense.

4.6 QUALIFICATIONS FOR EMPLOYMENT

4.6.1 No person under the age of sixteen (16) years for normal occupations, no person under the age of eighteen (18) years in hazardous occupations and no person currently serving a sentence in a penal or correctional institution shall be employed to perform any WORK under this CONTRACT. Each person working must provide proof of United States citizenship or legal work identification.

4.6.2 Immigration Law Compliance Warranty

4.6.2.1 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.

4.6.2.2 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.

4.6.2.3 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. 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).

4.6.2.4 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.

4.6.2.5 If state law is amended, the parties may modify this paragraph consistent with state law.

4.6.3 Equal Treatment of Workers

4.6.3.1 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 the WORK. 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 form or based on the violation of such, whether by CONTRACTOR or its employees.

4.7 CHARACTER OF WORKERS

4.7.1 CONTRACTOR shall have in place and enforce a drug-free workplace policy which complies with the requirements of the Drug-Free Workplace Act.

4.7.2 CONTRACTOR shall at all times employ sufficient labor and equipment for prosecuting the several classes of WORK to full completion in the manner and time required by the CONTRACT DOCUMENTS.

4.7.3 All workmen shall be competent and have sufficient skill, knowledge and experience in their class of work and in the operation of equipment required to perform all WORK properly and satisfactorily.

4.7.4 CONTRACTOR shall at all times enforce strict discipline and good order among its workmen and shall not permit the use of alcohol or controlled substances (without a medical authorization) at the SITE.

4.7.5 Any person employed by CONTRACTOR or any SUBCONTRACTOR who, in the opinion of ENGINEER does not perform his work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of ENGINEER be removed from the WORK by CONTRACTOR or SUBCONTRACTOR employing such persons, and shall not be employed again in any portion of the WORK without the approval of ENGINEER. CONTRACTOR or SUBCONTRACTOR shall hold GILBERT harmless from damages or claims for compensation that may occur in the enforcement of this section.

4.7.6 Should CONTRACTOR or SUBCONTRACTOR fail to remove such person as required above, or fail to furnish suitable and sufficient personnel for the proper prosecution of the WORK, GILBERT may suspend the WORK by written notice until such orders are complied with.

4.8 MAINTENANCE OF TRAFFIC

4.8.1 CONTRACTOR shall submit a Traffic Control Plan to GILBERT'S traffic engineer in accordance with Section 10-5(b) of the Gilbert Municipal Code. No work shall begin until a Traffic Control Plan has been approved, unless authorized in writing by the ENGINEER. CONTRACTOR shall coordinate with the various agencies both commercial and public, involved in the collection and removal of trash and garbage, so that adequate services are maintained.

4.8.2 The CONTRACTOR will coordinate and schedule off-duty police officers with the Town of Gilbert as a part of the CONTRACTOR's traffic control work. GILBERT will pay for the officers directly with no payment to the CONTRACTOR for this item. The CONTRACTOR will be required to present an overall estimate of off duty officer hours required with the submission of his master schedule for the project. Officers charge a minimum of four hours to the project if scheduled. In the event that the CONTRACTOR fails to prosecute the work in a timely and orderly fashion, GILBERT shall notify the CONTRACTOR and reserves the right to negotiate a corresponding deductive change order with the CONTRACTOR based upon the cost of $65/hour/officer that GILBERT will incur for the off duty officers.

4.8.3 Safe and adequate pedestrian and vehicular access shall be provided and maintained to fire hydrants, commercial and industrial establishments, churches, schools, parking lots, motels, hospitals, fire stations, police stations, residential properties and establishments of a similar nature.

4.8.4 Grading operations, roadway excavation and fill construction shall be conducted and maintained in such a manner as to provide a reasonably satisfactory and safe surface for vehicular and pedestrian traffic. When rough grading is completed, the roadbed shall be brought to and maintained in a reasonably smooth condition, satisfactory and safe for vehicular traffic at the posted speed limit. Pedestrian walkways shall be provided and maintained in a like manner. CONTRACTOR shall accomplish any additional grading operations and/or repairs, including barricade replacement or repairs during working and non-working periods which, in the opinion of ENGINEER, are required.

4.8.5 In the event of abnormal weather conditions, such as windstorms and rainstorms, CONTRACTOR shall immediately inspect his WORK area and take all necessary actions to insure that public access and safety are maintained.

4.8.6 CONTRACTOR shall provide ENGINEER with the emergency phone number of his representatives.

4.9 CLEANUP AND DUST CONTROL

4.9.1 Throughout all phases of construction, including suspension of WORK, and until final acceptance of the PROJECT, CONTRACTOR shall keep the WORK area clean and free from rubbish, excess material and debris generated by construction activities.

4.9.2 CONTRACTOR shall take whatever steps, procedures or means required to prevent any dust nuisance due to his construction operations. The dust control measures shall be maintained at all times to the satisfaction of ENGINEER and in accordance with the requirements of the Maricopa County Bureau of Air Control Rules and Regulations.

4.9.3 Failure of CONTRACTOR to comply with ENGINEER'S cleanup orders may result in an order to suspend WORK until the condition is corrected. No additional compensation or time will be allowed as a result of such suspension and ENGINEER has the authority to take such other measures as may be necessary to remedy the situation.

4.10 SANITATION

4.10.1 CONTRACTOR shall provide suitable and adequate sanitary conveniences for the use of all persons employed on the PROJECT. All sanitary conveniences shall conform to the regulations of the public authority having jurisdiction over such matters. At the completion of the PROJECT, all such sanitary conveniences shall be removed and the premises left in a sanitary condition.

4.10.2 CONTRACTOR shall cooperate with and follow directions of the Arizona Department of Public Health Services and the Maricopa County Health Department with respect to sanitation facilities. State and County Public Health Service representatives shall have access to the WORK wherever it is in preparation or progress, and CONTRACTOR shall provide proper facilities for such access and inspection.

4.11 WATER

4.11.1 CONTRACTOR and each SUBCONTRACTOR shall supply adequate pure cool drinking water with individual drinking cups for the use of employees on this construction. The quality of drinking water shall meet all applicable federal, state and local standards for drinking water.

4.11.2 It shall be the responsibility of CONTRACTOR to provide and maintain, at his own expense, an adequate supply of water for his use for construction and to install and maintain necessary supply connections and piping for same. Before final acceptance of the completed PROJECT, all temporary connections and piping installed by CONTRACTOR shall be removed.

4.11.3 CONTRACTOR shall apply for a fire hydrant meter and pay for all construction water used at the current rates charged by GILBERT, if CONTRACTOR desires to obtain water from the distribution system at any point.

4.12 CONSTRUCTION STAKING

4.12.1 Construction staking will be made by CONTRACTOR in accordance with the technical requirements of Section 105.8 of the MAG Specifications unless otherwise provided in the SUPPLEMENTAL CONDITIONS. CONTRACTOR shall provide and pay for all building layout staking, including elevations and all other PROJECT staking.

4.12.2 Replacement of construction stakes that have been knocked out due to CONTRACTOR'S WORK or lack of WORK, weather conditions, traffic, vandalism or utility contractors will be done at CONTRACTOR'S expense.

4.13 BLUE STAKE

CONTRACTOR is required to notify Blue Stake (263-1100) prior to the excavation of any material in accordance with A.R.S. § 40-360.22. CONTRACTOR shall directly contact

GILBERT for marking of electrical for traffic signals, sprinkler and irrigation facilities.

4.14 UTILITIES SHOWN ON THE PLANS

4.14.1 Regardless of what utilities are shown on the PLANS, it shall be CONTRACTOR'S responsibility to verify these locations and any additional lines which may exist through consulting with GILBERT, utility companies and/or "Blue Stake."

4.14.2 Existing utilities are indicated on PROJECT PLANS in accordance with the best information available. CONTRACTOR shall notify all owners of utilities when his WORK is in progress and shall make such arrangements as are necessary to make any emergency repair to any utility, in a manner satisfactory to GILBERT of a damaged utility line, including individual or house service utility lines.

4.14.3 No extra compensation will be made for the repair of any individual or house service utility or utility lines damaged by CONTRACTOR'S labor forces or equipment, nor for any damage incurred through neglect or failure to provide protective barriers, lights and other devices or means required to protect such existing utilities.

4.14.4 CONTRACTOR shall expose all sanitary and storm sewers, water, gas, electric, telephone utility lines, and other underground structures that might interfere with the WORK, in order to permit survey location prior to construction.

4.14.5 CONTRACTOR shall assume full responsibility for damages to any underground facility/utility properly shown on the Plans or properly located by the Utility owner, as a result of failing to obtain information as to its location, failing to excavate in a careful and prudent manner (as defined in MAG Spec's), or failing to take measures for protection of the facilities/utilities. The Contractor is liable to the owner of the Underground Facility/Utility for the total cost of the repair.

4.15 UTILITIES NOT SHOWN ON THE PLANS

4.15.1 If utility lines are encountered which are not shown on the PLANS, and not located, or incorrectly located by the Utility owner, other than individual or house service utility lines, and these lines are damaged or work is required to clear same, then MAG Spec Section 109.8 and A.R.S. § 40-360 shall apply.

4.15.2 The work necessary for the raising, lowering, or relocating of any such utility shall be at the Utility owner's expense. The necessary WORK may be done by the Utility owner or by CONTRACTOR, or as a collaborative effort, at the option of the Utility owner. All WORK shall be in accordance with the standards of GILBERT and the Utility owner.

4.15.3 In most cases, individual or house service utility lines are not shown on the PLANS. It shall be CONTRACTOR'S responsibility to locate and protect these individual or house services. If, due to CONTRACTOR'S operations, any of these lines are damaged, he shall repair or replace

these lines in a manner satisfactory to the owner of the utility at no extra cost to GILBERT. In addition, the cost of location, protection, and working around these individual or house service utility lines shall be included in CONTRACTOR'S bid for the WORK under this CONTRACT.

4.16 DRIVEWAYS AND WALKS

4.16.1 Inconvenience caused by digging across driveways and sidewalks shall be kept to a minimum by restoring the serviceability of the drive or sidewalk as soon as possible. At least 24 hours in advance of blocking driveways, CONTRACTOR shall notify the property owner. CONTRACTOR shall replace or repair any damage done to driveways and walks to not less than the condition existing prior to CONTRACTOR'S WORK. If it is necessary to leave an excavation open across driveways or sidewalks, CONTRACTOR shall provide temporary relief in the form of steel plates over the excavation.

4.16.2 Temporary paving replacement in front of business establishments shall be placed immediately following backfill and shall remain in place until the condition of the backfill is suitable for permanent pavement replacement.

4.16.3 Direct access shall be provided at all times to fire engine hoses, fire hydrants, hospitals, police stations, and at all other agencies or services where emergencies may require immediate access to same.

4.17 TREES AND SHRUBBERY

4.17.1 All trees and shrubbery within the right-of-way or easements shall be protected by CONTRACTOR insofar as practicable. No trees or shrubbery shall be removed without the prior approval of GILBERT.

4.17.2 In the event shrubbery or trees must be trimmed or removed, CONTRACTOR shall notify the property owner to do so within a reasonable time prior to construction. All shrubbery or trees not removed by the property owner shall be trimmed or removed by CONTRACTOR and hauled from the job at CONTRACTOR'S expense.

4.17.3 All trees, shrubs, hedges, brush, etc., designated on the PLANS, or by ENGINEER for removal, shall be completely removed and disposed of as indicated on the PLANS or specified.

4.18 IRRIGATION DITCHES AND STRUCTURES

CONTRACTOR shall contact the owners of any ditches, irrigation lines, and appurtenances which interfere with the WORK and shall make arrangements for dry-up or scheduling of water deliveries. CONTRACTOR shall be liable for any damage due to irrigation facilities damaged by his operations and shall repair such damaged facilities to an "equal or better than" original condition.

4.19 ROADS AND FENCES

4.19.1 Streets and roads subjected to interference by the prosecution of this WORK shall be kept open in compliance with Section 4.9 and maintained by CONTRACTOR until the WORK is completed.

4.19.2 All fences located in easements, when damaged or temporarily removed, shall be restored to a condition equal to or better than the original condition. Such fences shall be restored at CONTRACTOR'S expense.

4.20 PROTECTION OF WORK AND CLEANING UP

4.20.1 CONTRACTOR shall be responsible for the protection of all WORK until its completion and final acceptance, and he shall at his own expense, replace damaged or lost material, or repair damaged parts of the WORK, and CONTRACTOR and his Sureties shall be liable therefore.

4.20.2 CONTRACTOR shall remove from the vicinity of the completed WORK all plant, surplus material or equipment belonging to him or used under his direction during construction. All surplus excavated material, concrete, plaster and debris of all kinds shall be removed from GILBERT'S premises, streets or portions of building or property at or adjacent to the site of the WORK excepting that select material which may be required for refilling or grading the surface. Salvage material shall be stored at areas designated by ENGINEER. Where an area is indicated to be "cleared", all the weeds, vegetation, shrubs and trees shall be removed unless they are specifically noted not to be removed.

4.21 METHODS AND EQUIPMENT

4.21.1 The methods and equipment adopted by CONTRACTOR shall be such as will secure a satisfactory quality of WORK and will enable CONTRACTOR to complete the WORK in the time agreed upon. The selection and use of these methods and equipment is the responsibility of CONTRACTOR.

4.21.2 When the SPECIFICATIONS state the construction shall be performed by the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by ENGINEER. If CONTRACTOR desires to use a method or type of equipment other than those specified, he may make that request to GILBERT, who shall immediately forward the request to ENGINEER. The request shall be in writing and shall include a full description of the methods and equipment proposed to be used and an explanation of the reasons for desiring to make the change. If approval is given, it will be on the condition that CONTRACTOR will be fully responsible for producing construction work that performs the equivalent or better function as the original specifications.. Approval by GILBERT does not guarantee acceptance of the final Work, which will be determined by ENGINEER after evaluating whether equivalent or better function as the original specifications was or will be achieved. If, after trial use of the substituted methods or equipment, ENGINEER determines that the WORK produced does not meet the SPECIFICATIONS, CONTRACTOR shall discontinue the use of the substitute method or equipment and shall complete the remaining construction with the specified methods, equipment and quality, or take such other corrective action as ENGINEER may direct. No change will be made in basis of payment of the

construction items involved nor in the CONTRACT TIME as result of authorizing a change in methods or equipment under these provisions. CONTRACTOR may appeal a decision of ENGINEER under this Section to the GILBERT'S REPRESENTATIVE. Any such appeal must be made in writing within forty-eight (48) hours of ENGINEER'S decision or the right to appeal is waived.

4.22 SUSPENSION OF WORK

In case of suspension of WORK from any cause whatever, CONTRACTOR shall be responsible for the protection of all MATERIALS and equipment. CONTRACTOR shall provide suitable drainage and erect temporary structures where necessary to protect the MATERIALS and equipment.

4.23 DELAYS AND EXTENSION OF TIME

4.23.1 If CONTRACTOR finds it impossible for reasons beyond his control to complete the WORK within the CONTRACT TIME as specified or as extended, he shall immediately submit a written request to ENGINEER for an extension of time setting forth therein the reasons that he believes will justify the granting of his request. CONTRACTOR'S plea that insufficient time was specified is not a valid reason for extension of time. If ENGINEER finds that the WORK was delayed because of conditions beyond the control and through no fault of CONTRACTOR, he may extend the CONTRACT TIME in such amount as the conditions justify. The extended CONTRACT TIME shall be non-compensable and shall be in full force and affect the same as though it were the original CONTRACT TIME.

4.23.2 In setting the CONTRACT TIME, it has been assumed that up to 3 WORKING DAYS may be lost as a result of weather conditions which will slow down the normal progress of WORK; therefore, no extensions in CONTRACT TIME will be allowed for the first 3 WORKING DAYS lost due to bad weather conditions. Attention is directed to the nearest weather bureau station in the vicinity of the WORK for determining the extremes of temperature, wind velocities and the amount and intensity of precipitation that can be expected.

4.23.3 To receive consideration, a request for extension of time must be made in writing to ENGINEER stating the reason for said request, and such request must be received by ENGINEER within forty-eight (48) hours following the end of the delay-causing condition.

4.23.4 ENGINEER shall ascertain the facts and extent of the delay, and its findings of the facts thereon shall be final and conclusive.

4.23.5 An extension of time may be granted by GILBERT after the expiration of the time originally fixed in the CONTRACT or as previously extended, and the extension so granted shall be deemed to commence and be effective from the date of such expiration. Any extension of time shall not release the sureties upon any bond required under the CONTRACT.

4.23.6 GILBERT'S or ENGINEER'S liability for delay from any cause shall be limited to granting a time extension to CONTRACTOR and there is no other obligation, expressed or implied, on the part of GILBERT or ENGINEER to CONTRACTOR for delay from any cause. An

extension of CONTRACT TIME shall not release the sureties of their obligations, which shall remain in full force until the discharge of the CONTRACT.

4.24 GILBERT'S RIGHT TO CARRY OUT THE WORK

If CONTRACTOR defaults or neglects to carry out the WORK in accordance with the CONTRACT DOCUMENTS, and fails within ten (10) working days after receipt of written notice from GILBERT to commence and continue correction of such default or neglect with diligence and promptness, GILBERT may without prejudice to any other remedy GILBERT may have, make good such deficiencies. In such case an appropriate CHANGE ORDER shall be issued deducting from the payments then or thereafter due CONTRACTOR the cost of correcting such deficiencies, including compensation for ENGINEER'S additional services made necessary by such default, neglect or failure. If the payment then or thereafter due CONTRACTOR is not sufficient to cover such amount, CONTRACTOR shall pay the difference to GILBERT.

4.25 TERMINATION FOR BREACH OF CONTRACT

4.25.1 If CONTRACTOR refuses or fails to prosecute the WORK or any separable part thereof in accordance with the PLANS AND SPECIFICATIONS or with such diligence as will ensure its completion within the time specified herein, or an extension thereof, or fails to complete such WORK within time, or if he or any of his SUBCONTRACTOR(S) should violate any of the provisions of the CONTRACT, GILBERT may terminate this CONTRACT.

4.25.2 In the event of any such termination, GILBERT shall immediately serve written notice thereof upon the Surety and CONTRACTOR, and the Surety shall have the right to take over and perform the CONTRACT; provided however, that if the Surety within fifteen (15) DAYS after the serving upon it of a notice of termination does not give GILBERT written notice of its intention to take over and perform the CONTRACT and does not commence performance thereof within thirty (30) DAYS from the date of serving said notice, GILBERT may take over the WORK and prosecute the same to completion by CONTRACT or by any other method GILBERT may deem advisable. GILBERT may, without liability for so doing, take possession of and utilize in completing the WORK such MATERIALS, appliances, plants and other property belonging to CONTRACTOR that may be on the site of the WORK and be necessary therefore. For any portion of such WORK that GILBERT elects to complete by furnishing employees, MATERIALS, tools and equipment, GILBERT shall be compensated for such in accordance with the schedule of compensation for force account work in the section on payment for changes in the WORK.

4.25.3 The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to GILBERT.

PART V

GENERAL CONDITIONS

CONTROL OF WORK

5.1 TIME OF WORK

5.1.1 Initial Contract Schedule

5.1.1.1 Prior to the preconstruction meeting, CONTRACTOR shall furnish to ENGINEER one hard copy and one copy in electronic format of an INITIAL CONTRACT SCHEDULE.

5.1.1.2 The INITIAL CONTRACT SCHEDULE shall be based on and incorporate the CONTRACT Milestone and Completion Dates specified in the CONTRACT DOCUMENTS.

5.1.1.3 The INITIAL CONTRACT SCHEDULE shall indicate the detailed plan for the work to be completed in the first ninety (90) days of the CONTRACT; details of planned mobilization of plant and equipment; sequence of early operations; and procurement of MATERIALS and equipment. WORK beyond ninety (90) days shall be shown in summary form.

5.1.1.4 The INITIAL CONTRACT SCHEDULE shall be a time-scaled, resource loaded Critical Path Method (CPM) type schedule, prepared in a Primavera compatible software.

5.1.1.5 **VERTICAL PROJECTS -** The INITIAL CONTRACT SCHEDULE shall be cost loaded. The accepted cost loaded schedule will be used as a basis for monthly progress payments until acceptance of the CONTRACT SCHEDULE. Use of the INITIAL CONTRACT SCHEDULE for progress payments shall not exceed 30 days.

5.1.1.6 **HORIZONTAL PROJECTS** – The Bid Schedule will be used as a basis for monthly progress payments.

5.1.1.7 Overall time of completion and time of completion for each milestone shown on the INITIAL CONTRACT SCHEDULE shall adhere to the times in the SUPPLEMENTAL CONDITIONS, unless an earlier (advanced) initial time of completion is requested by CONTRACTOR and agreed to by ENGINEER. Any such agreement shall be formalized by a CHANGE ORDER.

5.1.1.8 ENGINEER will review the INITIAL CONTRACT SCHEDULE for conformance with the requirements of the CONTRACT DOCUMENTS. ENGINEER will return the INITIAL CONTRACT SCHEDULE with comments within five (5) working days after receiving it from CONTRACTOR.

5.1.2 Contract Schedule Development

5.1.2.1 Within fifteen (15) working days after receiving the NOTICE TO PROCEED, CONTRACTOR shall submit a detailed proposed CONTRACT SCHEDULE presenting an orderly and realistic plan for completion of the WORK, in conformance with the requirements of the CONTRACT DOCUMENTS.

5.1.2.2 The proposed CONTRACT SCHEDULE shall furnish or comply with the following requirements:

VERTICAL PROJECTS

A. A time scaled cost loaded CPM type schedule.

B. No activity on the schedule shall have a duration longer than ten (10) working days, with the exception of fabrication and procurement activities, unless otherwise approved by ENGINEER if the PROJECT is a horizontal project (road, sewer, water improvements). Activity durations shall be the total number of actual days required to perform that activity including consideration of weather impact on completion of that activity.

C. Procurement of major equipment, through receipt and inspection at the SITE, identified as a separate activity.

D. GILBERT furnished MATERIALS and equipment if any, identified as separate activities.

E. Dependencies (or relationships) between activities.

F. Processing/approval of submittals and shop drawings for major equipment. Activities that are dependent on submittal acceptance and/or MATERIAL delivery shall not be scheduled to start earlier than the expected acceptance or delivery dates.

G. The total cost of performing each activity. This cost shall be the total of labor, material, equipment, including overhead and profit. The sum of the cost for activities shall equal the total contract value.

H. Ten (10) working days for developing punch list(s), completion of punch list items, and final clean up for the WORK or any designated portion thereof. No other critical activities shall be scheduled during this period.

I. Interface with the WORK of other contractors (or entities).

HORIZONTAL PROJECTS

A. A time scaled cost loaded CPM type schedule.

B. No activity on the schedule shall have a duration longer than ten (10) working days, with the exception of fabrication and procurement activities, unless otherwise approved by ENGINEER. Activity durations shall be the

total number of actual days required to perform that activity including consideration of weather impact on completion of that activity.

C. Procurement of major equipment, through receipt and inspection at the SITE, identified as a separate activity.

D. GILBERT furnished MATERIALS and equipment if any, identified as separate activities.

E. Dependencies (or relationships) between activities.

F. Processing/approval of submittals and shop drawings for major equipment. Activities that are dependent on submittal acceptance and/or MATERIAL delivery shall not be scheduled to start earlier than the expected acceptance or delivery dates.

G. Ten (10) working days for developing punch list(s), completion of punch list items, and final clean up for the WORK or any designated portion thereof. No other critical activities shall be scheduled during this period.

H. Interface with the WORK of other contractors (or entities).

5.1.2.3 CONTRACTOR shall submit to ENGINEER one hard copy and one copy in electronic format of the CONTRACT SCHEDULE.

5.1.2.4 ENGINEER will review the proposed CONTRACT SCHEDULE for conformance with the requirements of the CONTRACT DOCUMENTS. Within five (5) working days after receipt, ENGINEER will accept the CONTRACT SCHEDULE or will return it with comments. If the proposed CONTRACT SCHEDULE is not accepted, CONTRACTOR shall revise the schedule to incorporate comments and resubmit the schedule for acceptance within five (5) working days after receiving it. The accepted schedule shall become the CONTRACT SCHEDULE. Schedules showing a completion date earlier than the contract date will not be accepted.

5.1.2.5 The CONTRACT SCHEDULE shall be the basis for evaluating job progress, payment requests, and time extension requests. The responsibility for developing the CONTRACT SCHEDULE and monitoring actual progress as compared to the schedule rests with CONTRACTOR.

5.1.2.6 Failure of the CONTRACT SCHEDULE to include any element of the WORK or any inaccuracy in the CONTRACT SCHEDULE will not relieve CONTRACTOR from responsibility for accomplishing all the WORK in accordance with the CONTRACT

5.1.2.7 Acceptance of the CONTRACT SCHEDULE will not relieve CONTRACTOR of the responsibility for accomplishing the WORK in accordance with the CONTRACT.

5.1.3 <u>Monthly Updates</u>

5.1.3.1 CONTRACTOR shall submit to ENGINEER each month an up-to-date status report of the work. The status report shall include:

A. CONTRACTOR'S estimated percentage complete for each activity not yet complete.

B. Actual start/finish dates for activities as appropriate.

C. Identification of processing errors, if any on the previous update reports.

D. Revisions, if any, to the assumed activity durations including revisions for weather impact for any activities due to the effect of the previous update on the schedule.

E. Identification of activities that are affected by proposed CHANGE ORDERS issued during the update period.

F. Resolution of conflict between actual work progress and schedule logic. When out of sequence activities develop in the CONTRACT SCHEDULE because of actual construction progress, CONTRACTOR shall submit revision to schedule logic to conform to current status and direction.

5.1.3.2 ENGINEER will review the updated information and meet with CONTRACTOR each week at the SITE to determine the status of the WORK. If agreement cannot be reached on any issue, CONTRACTOR will use ENGINEER'S determination in the processing of the update.

5.1.3.3 CONTRACTOR will incorporate ENGINEER'S review comments and submit two (2) copies of the report.

5.1.3.4 Progress payments pursuant to the CONTRACT will be based on the update of the CONTRACT SCHEDULE.

5.1.4 Schedule Revisions

5.1.4.1 If the sequence of construction differs significantly, as determined by ENGINEER, from the CONTRACT SCHEDULE, CONTRACTOR shall submit within five (5) working days a revised schedule to ENGINEER for acceptance.

5.1.4.2 When a proposed CHANGE ORDER is issued which has the potential to impact specified completion dates, the CHANGE ORDER request shall include a description of the impact of such changes. If approved, it shall be incorporated into the CONTRACT SCHEDULE. Time extensions will be considered only to the extent there is insufficient remaining float to accommodate these changes, and pursuant to Section 6 of the CONTRACT DOCUMENTS.

5.1.4.3 Should CONTRACTOR, after acceptance of the CONTRACT SCHEDULE, intend to change its plan of construction, it shall submit its requested revisions to ENGINEER, along with a written statement of the revision, including a description of the logic for rescheduling the work, methods of maintaining adherence to intermediate milestones and other specific dates and the reasons for the revisions. If the requested changes are acceptable to ENGINEER, they will be incorporated into the CONTRACT SCHEDULE in the next reporting period.

5.1.4.4 Schedule revisions shall be submitted at least five (5) working days prior to the date of submission of update information. ENGINEER will have five (5) working days to review the revisions.

5.1.5 Contract Schedule Reports

CONTRACTOR shall submit two (2) copies of the following reports for the proposed CONTRACT SCHEDULE, CONTRACT SCHEDULE monthly updates, CONTRACT SCHEDULE revisions and recovery schedules:

5.1.5.1 **VERTICAL PROJECTS**

A. Schedule Logic Report listing the activities, their early/late and actual start and finish dates, duration, float and the logic relationship of activities sorted by early start.

B. A Cost Report listing each activity and its associated cost, percentage of work accomplished, earned value to date, previous payments and amount earned for the update period.

C. A narrative report with the updated progress analysis, which shall include a description of problem areas, current and anticipated delaying factors and their impact, an explanation of corrective action taken and proposed revisions for recovery. Narrative report on proposed CONTRACT SCHEDULE will outline CONTRACTOR'S overall plan, strategy, crew movement and utilization, and other considerations in developing the schedule.

5.1.5.2 **HORIZONTAL PROJECTS**

A. CPM Schedule Report listing the activities, their early/late and actual start finish dates, duration, float and the logic relationship of activities sorted by early start.

B. CONTRACTOR shall provide all the schedule files in Primavera compatible format on CD.

5.1.6 Short Interval Schedules

CONTRACTOR shall prepare a Short Interval Schedule (SIS) to be used throughout the duration of WORK. The SIS shall include all current activities and projected activities for the succeeding two (2) weeks. The SIS shall include actual start/finish dates for the preceding one (1) week. Eight copies of the SIS shall be submitted to ENGINEER at the weekly construction meeting. CONTRACTOR shall participate in short interval scheduling coordination during the weekly construction meetings.

5.1.7 Time of Essence

Time is of the essence of this CONTRACT. CONTRACTOR shall, to the fullest extent possible, carry on the various classes or parts of the WORK concurrently, and shall not defer construction of any portion of the Work in favor of any other portion of the WORK, without the express approval of ENGINEER.

5.1.8 Date of Completion

CONTRACTOR shall fully and satisfactorily complete the WORK within the CONTRACT TIME. The date of completion is defined in Section 9.2.

5.1.9 Responsibility for Completion

5.1.9.1 CONTRACTOR shall furnish sufficient manpower, MATERIALS, facilities and equipment and shall work sufficient hours, including night shifts, overtime operations, Saturdays, Sundays and holidays as may be necessary to insure the prosecution and completion of the WORK in accordance with the accepted CONTRACT SCHEDULE. If work on the critical path is seven days or more behind the currently updated CONTRACT SCHEDULE and it becomes apparent that the WORK will not be completed within the CONTRACT TIME, CONTRACTOR will implement whatever steps it deems necessary to make up all lost time. If CONTRACTOR'S solution is not successful, it will make further attempts using the following sequence of events:

A. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities.

B. If the above cannot be achieved then:

- CONTRACTOR shall increase manpower in such quantities and crafts as will substantially eliminate, in the judgment of the ENGINEER, the backlog of work; or increase the number of working hours, shifts per working day, working days per week or the amount of equipment or any combination of the foregoing sufficiently to substantially eliminate in the judgment of the ENGINEER the backlog of work.
- In addition, ENGINEER may require the CONTRACTOR to submit a recovery schedule demonstrating its program and proposed plan to make up a lag in scheduled progress and to ensure completion of the WORK within the CONTRACT TIME. If the ENGINEER finds the proposed recovery schedule unacceptable, it may require CONTRACTOR to submit a new plan. If the actions taken by CONTRACTOR or the second plan proposed are unsatisfactory, ENGINEER may require the CONTRACTOR to take any of the actions set forth in the previous paragraph without additional cost to GILBERT to make up the lag in scheduled progress.

5.1.9.2 Failure of CONTRACTOR to comply with the requirements of this Section 5.1.9 shall be considered grounds for a determination by GILBERT, that CONTRACTOR is failing to prosecute the WORK with such diligence as will ensure its completion within the time specified.

5.1.10 Daily Reports

CONTRACTOR shall submit a Daily Activity Report no later than 9:00 a.m. the following work day to ENGINEER for each workday including weekends and holidays, when worked.

5.1.11 Payments Withheld

Progress Payments may be withheld in whole or in part should CONTRACTOR fail to comply with the requirements of this Section 5.1.

5.2 ENGINEER TO INTERPRET CONTRACT DOCUMENTS

ENGINEER will decide all questions which may arise as to the interpretation of the PLANS AND SPECIFICATIONS. CONTRACTOR may appeal a decision of ENGINEER made pursuant to this paragraph to GILBERT'S REPRESENTATIVE. Such appeal must be made in writing within forty-eight (48) hours of ENGINEER'S decision or the right to appeal is waived.

5.3 FORMAL PROTEST

5.3.1 If CONTRACTOR considers any WORK demanded of him to be outside the requirements of the CONTRACT, or if he considers any instruction, ruling, or decision of ENGINEER to be unfair, he shall, within forty-eight (48) hours after any such demand is made, or instruction, ruling or decision is given, file a written protest stating clearly and in detail his objections and the reasons therefore. Except for such protests as are made of record in the manner and within the time above stated, CONTRACTOR shall be deemed to have waived and does hereby waive all claims for extra WORK, damages and extensions of time resulting from demands, instructions, rulings and decisions of ENGINEER. If the protest is against a demand, instruction, ruling or decision of ENGINEER, it shall be filed with GILBERT'S REPRESENTATIVE.

5.3.2 Upon receipt of a protest from CONTRACTOR of a decision of ENGINEER, GILBERT'S REPRESENTATIVE shall review the demands, instructions, rulings, or decisions objected to and shall promptly advise CONTRACTOR in writing of his final decision, which shall be binding. Upon receipt of a protest from CONTRACTOR of a decision of GILBERT'S REPRESENTATIVE, the Town Manager shall review the demands, instructions, rulings, or decisions objected to and shall promptly advise CONTRACTOR in writing of his final decision, which shall be binding.

5.3.3 CONTRACTOR shall continue work on the Project during the review of the formal protest.

5.4 PLANS

5.4.1 The CONTRACT PLANS consist of general drawings. These indicate such details as are necessary to give a comprehensive idea of the construction contemplated. All authorized alterations affecting the requirements and information given on the CONTRACT PLANS shall be in writing. The CONTRACT PLANS shall be supplemented by such working or shop drawings prepared by CONTRACTOR as are necessary to adequately control the WORK. No change shall be made by CONTRACTOR in any working or shop drawing after it has been accepted by ENGINEER.

5.4.2 CONTRACTOR shall keep a current copy of the PLANS and SPECIFICATIONS at the jobsite, and shall at all times give ENGINEER access thereto. A current copy of PLANS and SPECIFICATIONS shall include red-line drawings, all ADDENDA, CHANGE ORDERS, ENGINEER INSTRUCTION BULLETINS, and any other approved change made to the PLANS and SPECIFICATIONS. Any drawings or PLANS listed in the SPECIFICATIONS shall be regarded as a part thereof and ENGINEER will furnish from time to time such additional drawings, PLANS, profiles, and information as he may consider necessary for CONTRACTOR'S guidance.

5.4.3 All authorized alterations affecting the requirements and information given on the accepted PLANS shall be in writing. No changes shall be made of any plan or drawing after the same has been accepted by ENGINEER except by consent of ENGINEER in writing.

5.5 CONFORMITY WITH PLANS AND ALLOWABLE DEVIATIONS

Finished surfaces in all cases shall conform with lines, grades, cross sections, and dimensions shown on the accepted PLANS. Allowable deviations, other than specified tolerances, from the accepted PLANS and working drawings will in all cases be determined by ENGINEER.

5.6 COORDINATION AND INTERPRETATION OF PLANS AND SPECIFICATIONS

5.6.1 The documents which make up the CONTRACT DOCUMENTS are essential parts of the CONTRACT, and a requirement occurring in one is as binding as though occurring in all. They are intended to be coordinated and to describe and provide for a complete WORK.

5.6.2 Should it appear that the WORK to be done or any of the matters relative thereto are not sufficiently detailed or explained in these CONTRACT DOCUMENTS, CONTRACTOR shall promptly notify ENGINEER. ENGINEER shall follow the procedures set forth in Section 4.5.1. In the event of any discrepancy between any drawing and the figures written thereon, the figures shall be taken as correct.

5.6.3 In the event of there being a conflict between one CONTRACT DOCUMENT and any of the other CONTRACT DOCUMENTS, the more stringent requirement shall apply.

5.6.4 CONTRACTOR shall not take advantage of any apparent error or omission in the PLANS or

SPECIFICATIONS. In the event CONTRACTOR discovers such an error or omission, he shall immediately notify ENGINEER. ENGINEER shall proceed as prescribed in Section 4.5.1 of the CONTRACT DOCUMENTS.

5.7 ORDER OF WORK

5.7.1 When required by the CONTRACT DOCUMENTS, CONTRACTOR shall follow the sequence of operations as set forth therein. Full compensation for conforming with such requirements will be considered as included in the prices paid for CONTRACT items of WORK and no additional compensation will be allowed there for.

5.7.2 The organization of the SPECIFICATIONS into divisions and articles and the arrangement of drawings shall not control CONTRACTOR in dividing the WORK among SUBCONTRACTORS or in establishing the extent of WORK to be performed by any trade.

5.8 COOPERATION BETWEEN CONTRACTORS

5.8.1 GILBERT reserves the right to CONTRACT for and perform other or additional WORK on or near the WORK covered by the CONTRACT.

5.8.2 When separate contracts are let within the limits of any one PROJECT, each CONTRACTOR shall conduct his work so as not to interfere with or hinder the progress or completion of the WORK being performed by other CONTRACTORS. CONTRACTORS working on the same PROJECT shall cooperate with each other as directed.

5.8.3 Each CONTRACTOR involved shall assume all liability, financial or otherwise, in connection with his CONTRACT and shall protect and save harmless GILBERT from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced by him because of the presence and operations of other CONTRACTORS working within the limits of the same PROJECT.

5.8.4 CONTRACTOR shall arrange his WORK and shall place and dispose of the MATERIALS being used so as not to interfere with the operations of the other CONTRACTORS within the limits of the same PROJECT. He shall join his WORK with that of others in an acceptable manner and shall perform it in proper sequence to that of the others.

5.8.5 GILBERT will not honor any claim for extra compensation due to delays, extra WORK, or extension of time caused by any other CONTRACTORS working within the limits of the same PROJECT.

5.9 INSPECTION

5.9.1 CONTRACTOR shall furnish ENGINEER with every reasonable facility for ascertaining whether the WORK as performed is in accordance with the requirements and intent of the SPECIFICATIONS and CONTRACT. ENGINEER shall be permitted to inspect all MATERIALS and each part or detail of the WORK at any time for the purpose of expediting

and facilitating the progress of the WORK. ENGINEER shall be furnished with such information and assistance by CONTRACTOR as required to make a complete and detailed inspection. Should any WORK be covered up before acceptance or consent of ENGINEER, it must, if required by ENGINEER, uncovered for examination at CONTRACTOR'S expense. The direct control shall be solely the responsibility of CONTRACTOR'S foremen and superintendent.

5.9.2 When the United States government is to pay a portion of the cost of the WORK covered by the CONTRACT, the WORK shall be subject to the inspection of the representatives of the U.S. government. Such inspection shall in no sense make the U.S. government a party to this CONTRACT and will in no way interfere with the rights of either party under this CONTRACT.

5.9.3 The inspection of the WORK shall not relieve CONTRACTOR of any of his obligations to fulfill his CONTRACT as herein provided. Any unsuitable or defective MATERIALS and WORK may be rejected notwithstanding that such WORK and MATERIALS may have been previously overlooked and accepted or estimated for payment. Unsuitable or defective MATERIALS shall be removed from the site within three (3) days of such rejection.

5.10 LINES AND GRADES

Profiles and elevations are indicated on the PLANS. All WORK under this CONTRACT shall be built in accordance with the lines and grades indicated on the PLANS. These lines and grades may be modified as provided in Part VI (Changes in the Work) in the CONTRACT. The establishment of the lines and grades shall be set forth under these GENERAL CONDITIONS, as modified by the SUPPLEMENTAL CONDITIONS. CONTRACTOR shall verify all vertical and horizontal controls using the nearest benchmark.

5.11 USE OF SITE

5.11.1 CONTRACTOR shall confine operations at the site to areas permitted by law, ordinances, permits and the CONTRACT DOCUMENTS, and shall not unreasonably encumber the site with any MATERIALS or equipment.

5.11.2 CONTRACTOR shall coordinate all of the CONTRACT'S operations with, and secure approval from, ENGINEER before using any portion of the site.

5.12 SEPARATE CONTRACTS TO GILBERT

5.12.1 If any part of CONTRACTOR'S WORK depends on proper execution or results of WORK performed by GILBERT or any separate CONTRACTOR, CONTRACTOR shall, prior to proceeding with the WORK, promptly report to ENGINEER any apparent discrepancies or defects in such other WORK that render it unsuitable for such proper execution and results. Failure of CONTRACTOR so to report shall constitute an acceptance of GILBERT'S or separate CONTRACTOR'S WORK as fit and proper to receive the WORK, except as to defects which may subsequently become apparent in such WORK by others.

5.12.2 Should CONTRACTOR wrongfully cause damage to the WORK or property of GILBERT, or to other WORK or property on the site, CONTRACTOR shall promptly remedy such damage.

5.12.3 Should CONTRACTOR wrongfully delay or cause damage to the WORK or property of any separate CONTRACTOR, CONTRACTOR shall, upon due notice, promptly attempt to settle with such other CONTRACTOR by agreement, or otherwise to resolve the dispute.

5.13 TESTS

5.13.1 If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the WORK to be inspected, tested or approved, CONTRACTOR shall give ENGINEER timely notice of its readiness so ENGINEER may observe such inspection, testing or approval. CONTRACTOR shall bear all costs of such inspections, test or approvals conducted by public authorities. GILBERT shall reserve the right to conduct additional tests and inspections, and, unless otherwise provided, GILBERT shall bear all costs of other inspections, tests or approvals.

5.13.2 Required certificates of inspection, testing or approval shall be secured by CONTRACTOR and CONTRACTOR shall promptly deliver them to ENGINEER.

PART VI

GENERAL CONDITIONS

CHANGES IN THE WORK

6.1 CHANGES IN THE WORK

6.1.1 GILBERT, without invalidating the CONTRACT and without notification of sureties, may order extra WORK, make changes by altering, or delete any portion of the WORK as specified herein, or as deemed necessary or desirable by GILBERT. All such WORK shall be executed under the conditions of the original CONTRACT except that any claim for extension of time and additional cost caused thereby shall be adjusted at the time of ordering such change or extra WORK.

6.1.2 In giving instructions, ENGINEER shall have authority to make minor changes in the WORK, not involving extra cost, and not inconsistent with the purposes of the WORK. No extra WORK or change shall be made unless in pursuance of a written order by GILBERT. Any claim for an addition to the CONTRACT SUM shall not be valid unless the change was so ordered, except in an emergency endangering life or property. If CONTRACTOR claims that any instructions involve extra cost under the CONTRACT, he shall within forty-eight (48) hours after the receipt of such instructions, provide notice to ENGINEER of such claim, and before proceeding to execute the WORK, except in an emergency endangering life or property, and the procedure shall then be as provided to approve CHANGE ORDERS.

6.1.3 It is mutually understood that it is inherent in the nature of municipal construction that some changes in the PLANS and SPECIFICATIONS may be necessary during the course of construction to adjust them to field conditions, and that it is of the essence of the CONTRACT to recognize a normal and expected margin of change. GILBERT shall have the right to make such changes in the PLANS and the character of the WORK as may be necessary or desirable to insure the completion of the WORK in the most satisfactory manner without invalidating the CONTRACT.

6.1.4 Changes shall be incorporated in the written CHANGE ORDER issued by GILBERT, which shall be written so as to indicate acceptance on the part of CONTRACTOR as evidenced by his signature.

6.2 PRICING OF CHANGES

6.2.1 If a CHANGE ORDER provides for an adjustment to the CONTRACT SUM, the adjustment shall be based on one of the following methods:

6.2.1.1 Where the WORK involved is covered by unit prices contained in the Bid Schedule, by application of the unit prices to the quantities of the items involved, as mutually agreed to by the CONTRACTOR and the ENGINEER.

6.2.1.2 By mutual acceptance of a unit price not contained in the Bid Schedule, or mutual acceptance of a lump sum price. The CONTRACTOR shall furnish ENGINEER with an itemized cost breakdown together with supporting data including the quantities used in computing the unit price and/or lump sum price of the WORK.

6.2.1.3 Only when methods A and B above are exhausted, then on the basis of the Cost of Work plus a CONTRACTOR'S Fee for overhead and profit, as described below. (Cost Plus Basis).

6.2.1.4 Whenever the cost of any work is to be determined on a Cost Plus Basis, CONTRACTOR will submit on forms acceptable to the ENGINEER, daily work sheets showing an itemized breakdown together with supporting data used to arrive at a final cost for the WORK. No payment will be made for work not verified by the ENGINEER. Final cost for the Change in the WORK shall be reflected and formalized in a Change Order.

6.2.2 Allowable costs for any CHANGE ORDER shall be limited to the following:

6.2.2.1 Costs of labor, including social security, Medicare and unemployment insurance, fringe benefits available to CONTRACTOR'S employees generally.

6.2.2.2 Costs of first line supervision labor, including labor burden as described in Section6.2.2 A. "First Line Supervision" shall mean a working foreman or lead craft worker other than the PROJECT superintendent.

6.2.2.3 Actual cost of the PROJECT superintendent associated with any period of compensable delay caused by issuance of the CHANGE ORDER. In the absence of a compensable delay, all of the PROJECT superintendent's time is considered to have been paid for as part of the overhead.

6.2.2.4 Actual costs of MATERIALS, including sales tax and delivery.

6.2.2.5 Rental costs of machinery and equipment, based on the latest "schedule of equipment rates" used by the Arizona Department of Transportation, exclusive of small tools, whether rented from CONTRACTOR or others.

6.2.2.6 Overhead and profit as specified below. "Overhead" shall include the following: Preparation of all paperwork related to changes in the WORK, including field review, estimating and cost breakdown; coordination and supervision, both office and field, including the PROJECT superintendent; vehicles, including gas and maintenance; small tools, incidentals and consumables; engineering, detailing, and revisions to shop drawings and record drawings; general office expense; extended and unabsorbed home office overhead; warranty; costs of bonds, liability insurance, and all taxes; and all other expenses not specifically included in Section 6.2.2.1

6.2.3 Upon receipt of a proposed CHANGE ORDER, CONTRACTOR shall promptly proceed with the change in the WORK and advise ENGINEER within five (5) working days of CONTRACTOR'S agreement or disagreement with the method, if any, provided in the proposed CHANGE ORDER for determining the proposed adjustment in the CONTRACT SUM or CONTRACT TIME. Failure to return the CHANGE ORDER to ENGINEER within

five (5) working days indicates CONTRACTOR'S AGREEMENT therewith, including adjustment in CONTRACT SUM and CONTRACT TIME or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a CHANGE ORDER.

6.2.4 If CONTRACTOR disagrees with the method for adjustment in the CONTRACT SUM, the adjustment shall be determined by ENGINEER on the basis of any of the methods described in Sections 6.2.1.1 through 6.2.1.4.

6.2.5 Overhead and Profit for actual cost of work performed by the Contractor and/or his Sub-Contractor, shall be determined in accordance with MAG Section 109.5. Cumulative total markup for all tiers of CONTRACTORS and SUBCONTRACTORS shall not exceed thirty percent (30%).

6.2.6 If the net value of a change results in a credit from CONTRACTOR or SUBCONTRACTOR, the credit shall be the actual net cost, plus five percent (5%) for overhead and profit. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to the change.

6.3 COST PLUS ADJUSTMENT

6.3.1 Record Keeping. In the event that the pricing method selected is the "cost plus" method described in Sections 6.2.1.3 and 6.2.1.4, CONTRACTOR shall keep and present daily, in such form as ENGINEER may prescribe, an itemized accounting together with appropriate supporting data of the labor, materials, and equipment used during that DAY. All labor shall be recorded on separate time sheets clearly identified with the CHANGE ORDER number and scope of extra work involved. These time sheets shall be signed daily by ENGINEER. No costs will be allowed for time not recorded and signed the same day the work takes place. CONTRACTOR and ENGINEER shall discuss and attempt to resolve any disputed concerning CONTRACTOR'S daily records at the time the report is submitted.

6.3.2 Reconciliation. CONTRACTOR shall on a monthly basis accompanying the progress payment request submit a reconciliation for all WORK performed under a cost plus CHANGE ORDER during the period of the progress payment. A final reconciliation shall be submitted within 30 days after the WORK of the CHANGE ORDER is completed. The reconciliation shall recap all costs and appropriate markups for the period. No costs will be allowed for work not included in a reconciliation within the time periods specified.

6.4 EFFECT ON SURETIES

6.4.1 All changes authorized by the CONTRACT DOCUMENTS may be made without notice to or consent of the sureties on the CONTRACT bonds, and shall not reduce the sureties' liability on the bonds.

6.4.2 GILBERT reserves the right to require additional payment or performance bonds to secure a CHANGE ORDER.

PART VII

GENERAL CONDITIONS

MATERIALS AND WORKMANSHIP

7.1 GENERAL

7.1.1 All equipment, MATERIALS, and articles incorporated in the WORK covered by this CONTRACT shall be new and subject to review and acceptance by ENGINEER unless otherwise specifically provided for in the CONTRACT DOCUMENTS.

7.1.2 Where equipment, MATERIALS, or articles are referred to in the SPECIFICATIONS as "or equal to" any particular standard, ENGINEER shall decide the question of equality.

7.1.3 Wherever any standard published specification is referred to, the latest edition or revision, including all amendments, shall be used unless otherwise specified. MATERIALS of a general description shall be the best of their several kinds, free from defects, and adapted to the use for which provided. The physical characteristics of all MATERIALS not particularly specified shall conform to the latest standards published by the American Society for Testing and Materials, where applicable. All material shall be new and of the specified quality and equal to the accepted samples, if samples have been submitted.

7.1.4 All WORK shall be done and completed in a thorough, workmanlike manner in conformance with the CONTRACT DOCUMENTS. ENGINEER shall have the authority to reject WORK not in conformance with the CONTRACT DOCUMENTS.

7.1.5 In the event CONTRACTOR discovers any omission from these SPECIFICATIONS or from the PLANS, it shall be the duty of CONTRACTOR to call ENGINEER'S attention to apparent errors or omissions and request instructions before proceeding with the WORK. ENGINEER shall, by appropriate instructions, correct errors and/or omissions, which instructions shall be as binding upon CONTRACTOR as though contained in the original SPECIFICATIONS or PLANS.

7.1.6 CONTRACTOR may appeal a decision of ENGINEER made pursuant to Section 7.1 to GILBERT'S REPRESENTATIVE. Such appeal must be made in writing within forty-eight (48) hours of ENGINEER'S decision or the right to appeal is waived.

7.2 SUBSTITUTION OF MATERIAL OR EQUIPMENT

Substitution of material or equipment shall only be made pursuant to Section 1.8.

7.3 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

7.3.1 Shop drawings are drawings, diagrams, schedules and other data specially prepared for the WORK by CONTRACTOR or any SUBCONTRACTOR, manufacturer, supplier or distributor

to illustrate some portion of the WORK.

7.3.2 Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by CONTRACTOR to illustrate a material, product or system for some portion of the WORK.

7.3.3 Samples are physical examples that illustrate MATERIALS, equipment or workmanship, and establish standards by which the WORK will be judged.

7.3.4 All MATERIALS to be incorporated in the WORK shall be subject to sampling, testing and acceptance. Samples furnished by CONTRACTOR shall be representative of the MATERIALS to be used. ENGINEER may select samples or may require that samples be delivered to and tested at a laboratory designated by ENGINEER at no additional cost to GILBERT.

7.3.5 CONTRACTOR shall prepare, review, approve and submit to ENGINEER, with reasonable promptness and in such sequence as to cause no delay in the WORK or in the WORK of GILBERT or any separate CONTRACTOR all shop drawings, product data and samples required by the CONTRACT DOCUMENTS. CONTRACTOR shall cooperate with ENGINEER in the coordination of the shop drawings, product data and samples with those of other separate CONTRACTORS.

7.3.6 By preparing, approving and submitting shop drawings, product data and samples, CONTRACTOR represents that CONTRACTOR has determined and verified all MATERIALS, field measurements and field construction criteria related thereto, or will do so with reasonable promptness, and has checked and coordinated the information contained within such submittals with the requirements of the WORK, the PROJECT and the CONTRACT DOCUMENTS.

7.3.7 ENGINEER will review and approve or take other appropriate action upon CONTRACTOR'S submittals such as shop drawings, product data and samples for conformance with the SPECIFICATIONS. ENGINEER'S approval of the specific item shall not indicate approval of an assembly of which the item is a component.

7.3.8 All sampling and testing of MATERIALS shall be done in accordance with the latest designated standard methods AASHTO or ASTM, or in accordance with special methods designated in the SPECIFICATIONS. CONTRACTOR shall pay for all material testing required.

7.4 MATERIALS FURNISHED BY GILBERT

All MATERIALS and/or services to be furnished by GILBERT are indicated in the SUPPLEMENTAL CONDITIONS. The cost of CONTRACTOR handling and placing GILBERT-furnished MATERIALS shall be included in the CONTRACT price.

7.5 STORAGE OF MATERIALS

7.5.1 CONTRACTOR shall provide proper storage facilities and exercise such measures as will insure the preservation of the specified quality and fitness of all MATERIALS and equipment to be used in the WORK. Stored MATERIALS shall be located so as to provide reasonable access for inspection. That portion of the right-of-way not required for public travel may be used for storage purposes unless prohibited by the other provisions of the PROJECT SPECIFICATIONS. Any additional space required shall be provided by CONTRACTOR at no cost to GILBERT. Protection of MATERIALS and equipment stored on the site shall be the responsibility of CONTRACTOR. GILBERT reserves the right to direct CONTRACTOR to provide proper means of protection for MATERIALS if such is deemed advisable by ENGINEER; however, the exercise of or failure to exercise this right shall not be deemed to relieve CONTRACTOR of his primary responsibility for protecting the material and equipment. CONTRACTOR shall provide suitable warehouses or other adequate means of protection for such of the MATERIALS and equipment as require storage or protection. CONTRACTOR shall store and care for the material and equipment in the most suitable manner to protect them from distortion, rain, dust, or other damage. Contractor shall maintain all material and equipment in accordance with the manufacturer's instructions. The cost of replacing any material or equipment damaged in storage shall be borne by CONTRACTOR, and the fact that material or equipment has been damaged after partial payment has been made shall not relieve CONTRACTOR of his primary responsibility. No motor shall be left uncovered or unprotected.

7.5.2 Payments for MATERIALS or equipment stored off the site shall be conditioned upon submission by CONTRACTOR of bills of sale to establish GILBERT'S title to such MATERIALS or equipment and certificate of insurance for storage in a bonded warehouse.

7.6 REJECTED MATERIALS AND WORK

ENGINEER shall have the authority to reject MATERIALS which do not conform to the CONTRACT DOCUMENTS. Rejected MATERIALS shall be removed immediately from the site of the WORK unless otherwise permitted by ENGINEER. No rejected MATERIALS, the defects of which have been subsequently corrected, shall be used unless accepted by ENGINEER. If CONTRACTOR fails to remove and replace rejected material, GILBERT has authority to do so and to deduct the cost thereof from any monies due or to become due CONTRACTOR.

7.7 GUARANTEE OF WORK - WARRANTY

7.7.1 CONTRACTOR warrants to GILBERT that all MATERIALS and equipment furnished under this CONTRACT will be new unless otherwise specified and that all WORK will be of good quality, free from faults and defects and in conformance with the CONTRACT DOCUMENTS. All WORK not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by GILBERT or ENGINEER, CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of MATERIALS and equipment. This warranty is not limited by any other provisions of the

CONTRACT DOCUMENTS.

7.7.2 CONTRACTOR shall promptly correct all WORK rejected as defective or as failing to conform to the CONTRACT DOCUMENTS whether observed before or after acceptance and whether or not fabricated, installed or completed. CONTRACTOR shall bear all costs of correcting such rejected WORK, including compensation for the additional services of ENGINEER made necessary thereby.

7.7.3 If, within one year after the date of final acceptance by GILBERT of all WORK required by the CONTRACT DOCUMENTS or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the CONTRACT DOCUMENTS, any of the WORK is found to be defective or not in accordance with the CONTRACT DOCUMENTS, CONTRACTOR shall correct it promptly after receipt of written notice from GILBERT to do so unless GILBERT has previously given CONTRACTOR a written acceptance of such condition. This obligation shall survive termination of the CONTRACT, but it shall in no way limit the warranty set forth in Section 7.7.1. GILBERT shall give the notice required herein promptly after discovery of the condition.

7.7.4 CONTRACTOR shall remove from the site all portions of the WORK which are defective or non-conforming and which have not been corrected unless removal is waived by GILBERT.

7.7.5 If CONTRACTOR does not proceed with the correction of such defective or non-conforming WORK within a reasonable time fixed by written notice from ENGINEER, GILBERT may remove it and may store the MATERIALS or equipment at the expense of CONTRACTOR. If CONTRACTOR does not pay the cost of such removal and storage within ten (10) working days thereafter, GILBERT may upon ten (10) additional working days written notice sell such MATERIALS and equipment at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by CONTRACTOR including, but not limited to, compensation for ENGINEER'S additional services made necessary thereby. If the proceeds of sale do not cover all such costs, the amount to be paid by GILBERT to CONTRACTOR under the CONTRACT shall be reduced by the deficiency. If payments then due to CONTRACTOR are insufficient to cover deficiency, CONTRACTOR shall pay the difference to GILBERT.

7.7.6 CONTRACTOR shall bear the costs of making good all WORK of GILBERT or separate CONTRACTORS destroyed or damaged by CONTRACTOR'S correction or removal of defective WORK.

7.7.7 Nothing contained in this Section 7.7 shall be construed to establish a period of limitation with respect to any other obligation that CONTRACTOR might have under the CONTRACT DOCUMENTS. The establishment of the time period of one year after final acceptance or such longer period of time as may be prescribed by law or by the terms of any warranty required by the CONTRACT DOCUMENTS relates only to the specific obligation of CONTRACTOR to correct the WORK and has no relationship to the time within which CONTRACTOR'S obligation to comply with the CONTRACT DOCUMENTS may be sought to be enforced. Nor the time within which proceedings may be commenced to establish CONTRACTOR'S liability with respect to CONTRACTOR'S obligations other than specifically to correct the WORK.

7.7.8 In the event it is necessary for GILBERT to file suit to enforce any liability of CONTRACTOR, GILBERT shall be entitled to recover from CONTRACTOR, a reasonable sum as and for costs and attorneys fees, in addition to all other amounts found due and owing.

7.8 NO EXERCISE OF AUTHORITY BY ENGINEER

Neither ENGINEER'S authority to act under this Part VII nor any decision made by him in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of ENGINEER to CONTRACTOR, any SUBCONTRACTOR, any of their agents or employees or any other person performing any of the WORK.

PART VIII

GENERAL CONDITIONS

LEGAL RELATIONS AND RESPONSIBILITY

8.1 LAWS TO BE OBSERVED

8.1.1 CONTRACTOR is presumed to know, and at all times shall observe and comply with, all federal and state laws and local ordinances, including but not limited to (1) Workers' Compensation, occupation diseases, and unemployment compensation laws together with the payment of all premiums and taxes therefore; (2) all laws, ordinances, and regulations in any manner affecting the conduct of the WORK; and (3) all environmental laws and regulations and shall indemnify and save harmless GILBERT and its representatives against any claim arising from the violation of such laws, bylaws, ordinances, or regulations by CONTRACTOR, SUBCONTRACTORS and their employees and agents. CONTRACTOR'S particular attention is drawn, but not limited to, the laws in paragraphs 8.2, 8.3, 8.4, 8.5 and 8.15.

8.1.2 If CONTRACTOR performs any WORK knowing it to be contrary to such laws, ordinances and regulations, CONTRACTOR shall assume full responsibility therefore and shall bear all costs attributable thereto.

8.2 HOURS OF LABOR

All CONTRACTS made by or on behalf of the State of Arizona, or any of its political subdivisions, with any person for the performance of any WORK, or the furnishing of any material manufactured within the State, shall comply with the Fair Labor Standards Act and Section 23-391, Arizona Revised Statutes, as amended.

8.3 ALIEN LABOR

A person not a legal alien, citizen or ward of the United States shall not be employed upon or in connection with any state, county or municipal works or employment; provided that nothing herein shall be construed to prevent the working of prisoners by the state or by any county or municipality thereof on street or road work or other public work.

8.4 LABOR DISCRIMINATION

8.4.1 Attention is directed to Arizona Revised Statutes, Title 41, Chapter 9, Article 4, as amended, entitled "Discrimination in Employment."

8.4.2 When federal funds are to pay a portion of the cost of this PROJECT, then the BIDDER shall also comply with applicable paragraphs in the SUPPLEMENTAL CONDITIONS.

8.5 PERMITS AND LICENSES

Except as otherwise provided in the CONTRACT DOCUMENTS, it is the duty of CONTRACTOR to procure all permits and licenses. There will be no charge to CONTRACTOR for any necessary GILBERT permits and inspections.

8.6 PATENTED DEVICES, MATERIALS, AND PROCESSES

CONTRACTOR shall indemnify and save harmless GILBERT and its duly authorized representatives from all liabilities, judgments, costs, damages and expenses which may result from the infringement of any patents, trademarks or copyrights by reason of the use of any proprietary MATERIALS, devices, equipment or processes incorporated in or used in the performance of the WORK under this CONTRACT.

8.7 SURVEY LAND MONUMENTS

Survey land monuments and property marks shall not be moved or otherwise disturbed by CONTRACTOR until an authorized agent, of the agency having jurisdiction over the land monuments or property marks setting, has witnessed or otherwise referenced their location, and only then in accordance with the requirements of the agency having jurisdiction.

8.8 PROTECTION OF PERSON AND PROPERTY

8.8.1 CONTRACTOR shall adopt every practical means and comply with all laws, ordinances and regulations in order to minimize interferences to traffic and inconveniences, discomfort and damage to the public, including the provision of adequate dust control measures. All obstructions to traffic shall be guarded.

8.8.2 If an unsafe condition arises or exists during the progress of the WORK, or if GILBERT has reason to believe that an unsafe condition exists, CONTRACTOR shall suspend the WORK wholly or in part for such period as may be necessary to correct the unsafe condition.

8.8.3 Neither CONTRACTOR nor the SUBCONTRACTOR shall trespass upon private property. CONTRACTOR shall be responsible for all injury or damage to persons or property, directly or indirectly, resulting from operations of CONTRACTOR or SUBCONTRACTORS completing this WORK.CONTRACTOR shall ensure that both CONTRACTOR and SUBCONTRACTORS comply with the laws and regulations of GILBERT, county and state relating to the safety of persons and property. CONTRACTOR will be held responsible and required to make good any injury or damage to persons or property caused by CONTRACTOR or SUBCONTRACTORS or any agent or employee of either during the progress of the WORK and until its final acceptance.

8.8.4 CONTRACTOR shall protect against injury or damage to any pipes, sewer conduits, electrical conduits, lawns, gardens, shrubbery, trees, fences or other structures or property, public and/or private, encountered in this WORK except as stipulated elsewhere herein. CONTRACTOR shall be responsible and liable for any injury or damage or repair to such pipe, structures and property.

8.9 CONSTRUCTION SAFETY PROGRAM AND REGULATIONS

The Arizona Occupational Safety and Health Act and the conditions set forth in the Occupation Safety and Health Standards (OSHA) shall constitute the outline for the safety program to be adhered to during the course of the PROJECT. CONTRACTOR shall keep a copy of these publications available at the jobsite for reference, as well as a copy of CONTRACTOR'S safety program.

8.10 PROTECTION OF ANTIQUITIES

8.10.1 Attention is called to state and federal laws pertaining to the protection and preservation of sites or objects of archaeological, paleontological or historic interest and endangered species.

8.10.2 It shall be a provision of every CONTRACT that when features of archaeological, paleontological or historic interest are encountered or unearthed in the excavation of material pits, the roadway prism, or other excavation, CONTRACTOR shall stop work in the immediate vicinity of such feature, protect it from damage or disturbance, and report promptly to the Director of the Arizona State Museum and ENGINEER. When a possible endangered or threatened species is discovered, CONTRACTOR shall stop work and report promptly to ENGINEER.

8.10.3 WORK shall not be resumed in the immediate area until CONTRACTOR is advised by the authorities having jurisdiction that study or removal of the feature or features has been completed. CONTRACTOR will be allowed an appropriate CONTRACT time extension as provided in these General Conditions for construction time lost.

8.11 CONTINGENCIES

All loss or damage arising from obstruction or difficulties which may be encountered in the prosecution of the WORK, from the action of the elements or from any act or omission on the part of CONTRACTOR, SUBCONTRACTOR or any person or agent employed by him shall be borne by CONTRACTOR.

8.12 NON-RESPONSIBILITY OF GILBERT

Indebtedness incurred for any cause in connection with this WORK must be paid by CONTRACTOR, and GILBERT is hereby relieved at all times from any indebtedness or claim other than payments under terms of the CONTRACT.

8.13 PROPERTY RIGHTS IN MATERIAL

Nothing in the CONTRACT shall be construed as vesting in CONTRACTOR any right of property in the MATERIAL used after they have been attached or affixed to the WORK or the soil and accepted. All such MATERIALS shall become the property of GILBERT upon being so attached or affixed.

8.14 PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK

CONTRACTOR shall properly guard and protect all finished or partially finished WORK, and shall be responsible for the same until that phase is completed and accepted by GILBERT. Estimate or partial payment of WORK so completed shall not release CONTRACTOR from such responsibility, but he shall turn over the entire WORK in full in accordance with the SPECIFICATIONS before final payment can be made.

8.15 ADMINISTRATIVE CLAIMS

Prior to the commencement of litigation related to payment, the WORK or the CONTRACT DOCUMENTS, CONTRACTOR shall file an Administrative Claim with GILBERT. Such Notice shall be filed within 180 DAYS of the accrual of the cause of action. Otherwise any claim by CONTRACTOR against GILBERT, its officers or employees shall be barred.

PART IX

GENERAL CONDITIONS

COMPLETION OF WORK, LIQUIDATED DAMAGES AND FINAL ACCEPTANCE

9.1 FAILURE TO COMPLETE WORK WITHIN TIME FOR COMPLETION AND LIQUIDATED DAMAGES

9.1.1 It is hereby understood and mutually agreed by and between CONTRACTOR and GILBERT, that the date of beginning, rate of progress and the time for completion of the WORK to be done hereunder are essential conditions of this CONTRACT; and it is further mutually understood and agreed that the WORK embraced in this CONTRACT shall be complete on or before the dates set forth in Section 9.2 of this CONTRACT. CONTRACTOR agrees that said WORK shall be prosecuted regularly, diligently and uninterruptedly at such rate of time he specified. It is expressly understood and agreed, by and between CONTRACTOR and GILBERT that the time for completion of the WORK shall be in the time as identified in these CONTRACT DOCUMENTS.

9.1.2 For each working day that any part of the WORK remains uncompleted after the expiration of the time specified and/or allowed for completion of the WORK stipulated in the CONTRACT or ordered after the CONTRACT is signed, the sum per day set forth in Section 9.2 shall be deducted from any monies due CONTRACTOR, or if no money is due CONTRACTOR, GILBERT shall have the right to recover said sum or sums from CONTRACTOR, from the Surety, or both.

9.1.3 It shall be understood that the time to complete the PROJECT, beyond the contractual date of completion, is in itself prima facie evidence of actual damages incurred, and the amount of these deductions are to cover the liquidated damages caused by the loss of use, or limited use, of the facility and other additional GILBERT incurred losses, or expenses, due to the failure of CONTRACTOR to complete the WORK within the time specified.

9.1.4 The liquidated damages amounts set within Section 9.2 are fixed and agreed upon by and between CONTRACTOR and GILBERT because of the impracticability and extreme difficulty of fixing and asserting the actual damages GILBERT would in such event sustain, and said amounts are agreed to be the amount of damages which GILBERT would sustain, and said amounts may be retained from time to time by GILBERT from current periodical estimates.

9.1.5 It is further agreed that time is of the essence of each and every portion of this CONTRACT and of the SPECIFICATIONS where a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the CONTRACT an additional time is allowed as set forth in Section 4.243 of these CONTRACT DOCUMENTS for the completion of any WORK, the new time limit fixed by such extension shall be of the essence of this CONTRACT.

9.1.6 CONTRACTOR shall not be assessed with liquidated damages during any delay in the completion of the WORK where an extension of time has been granted by GILBERT pursuant to Section 4.243.

9.2 COMPLETION/LIQUIDATED DAMAGES

9.2.1 Substantial Completion: The date of SUBSTANTIAL COMPLETION of the WORK, or designated portion thereof, is the date certified in writing by ENGINEER when construction is sufficiently complete, in accordance with the CONTRACT DOCUMENTS as they may have been modified by any CHANGE ORDERS agreed to by the parties, so that GILBERT may use or occupy the PROJECT, or a designated portion thereof, for the purpose for which it was intended. Certification of a designated portion of the WORK by ENGINEER as being Substantially Complete and occupancy of that portion thereafter by GILBERT shall neither release or otherwise operate to excuse CONTRACTOR from his duty to complete the remainder of the WORK within the CONTRACT TIME including liability for liquidated damages.

Time is of the essence and GILBERT will suffer financial damages due to CONTRACTOR'S failure to substantially complete the WORK within thirty (30) DAYS following receipt of the NOTICE TO PROCEED. Liquidated damages of $280 per day will be assessed CONTRACTOR for working each day beyond that time that CONTRACTOR fails to achieve SUBSTANTIAL COMPLETION.

9.2.2 Final Completion: The FINAL COMPLETION Date is the date when all items of the WORK are completely finished with no items of any scope outstanding or remaining to be completed, and all known defective work has been corrected. This is the date upon which the warranty period commences.

Time is of the essence and GILBERT will suffer financial damages due to CONTRACTOR'S failure to reach FINAL COMPLETION of the WORK within ten (10) DAYS after the date of SUBSTANTIAL COMPLETION. Liquidated damages of $280 per day will be assessed CONTRACTOR for each working day beyond that time that CONTRACTOR fails to achieve FINAL COMPLETION.

9.3 FINAL CLEANING UP

At completion of the WORK and prior to final acceptance by GILBERT, a thorough cleaning of the areas affected shall be carried out by CONTRACTOR. The following list is not inclusive, but to act as a guideline:

9.3.1 VERTICAL PROJECTS

9.3.1.1 Removal of all paint spots, stains, rubbish, debris, tools and equipment from all areas and broom clean. Steam clean all carpets and mop floors.

9.3.1.2 Cleaning interior and exterior of the buildings, including all windows in any area affected by the WORK.

9.3.1.3 Brush off, broom sweep, dust and clean ledges, stairs, doors, hardware, and any adjoining rooms or areas that were affected by the WORK.

9.3.1.4 Clear grounds and exterior paved areas and walks of all construction debris, dirt and dust and repair any SITE areas damaged during the course of construction.

Prior to final acceptance, CONTRACTOR shall conduct an inspection of sight-exposed surfaces, and all WORK areas, to verify that the entire WORK is clean. In the event CONTRACTOR fails to do so, GILBERT, may cause this WORK to be done at CONTRACTOR'S expense.

9.3.2 **HORIZONTAL PROJECTS**

9.3.2.1 Wash down, brush off, broom sweep, and clean all areas that were affected by the WORK.

9.3.2.2 Clear landscaped areas, paved areas, and walks of all construction debris, dirt and dust and repair any and all damaged which occurred during the course of construction, and post construction activities.

9.4 RECORD DRAWINGS

CONTRACTOR shall provide accurate data and field notes on red-line construction record drawings as construction progresses, for preparation of the "As-Built" drawings by ENGINEER.

9.5 COMPLETION AND INSPECTION

9.5.1 Notice of punch list inspection: When CONTRACTOR believes that the WORK is complete, it shall request in writing a punch list inspection. Within five (5) working days of the receipt of such request, ENGINEER 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 shall again request a punch list inspection. CONTRACTOR shall be present at the punch list inspection. The purpose of the punch list inspection is to determine whether the WORK has been completed in accordance with the CONTRACT DOCUMENTS, including all CHANGE ORDERS and all interpretations and instructions previously issued. If CONTRACTOR fails to attend any punch list inspection, CONTRACTOR shall be charged for the cost of ENGINEER and other design professionals who attended the punch list inspection.

9.5.2 Punch list. ENGINEER shall notify CONTRACTOR in writing of any deficiencies to be remedied prior to final acceptance, by preparing a written list, known in the industry as a punch list. CONTRACTOR shall remedy all items shown on the punch list prior to final acceptance. 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 ENGINEER. GILBERT reserves the right to require compliance with the CONTRACT DOCUMENTS, notwithstanding the issuance of a punch list or the completion by CONTRACTOR of all items on the punch list.

9.6 FINAL ACCEPTANCE

9.6.1 After all WORK under the CONTRACT DOCUMENTS has been completed, as determined by ENGINEER, including WORK found to be incomplete pursuant to Section 9.5, ENGINEER will recommend in writing to GILBERT that final acceptance of the entire WORK under this CONTRACT be made as of the date of ENGINEER'S final inspection. GILBERT will make final acceptance in writing promptly after receiving ENGINEER'S recommendation unless GILBERT has reason to believe the WORK in not ready for final acceptance.

9.6.2 Unless otherwise specified in either Section 9.2 or under SUPPLEMENTAL CONDITIONS, no partial acceptance of any portion of the WORK will be made and no acceptance other than the final acceptance to the overall completed PROJECT will be made. No inspection or acceptance pertaining to specific parts of the WORK shall be construed as final acceptance of any part until the overall final acceptance is made by GILBERT.

PART X

GENERAL CONDITIONS

PAYMENTS TO CONTRACTORS

10.1 GENERAL

10.1.1 The basis of payment for construction of a PROJECT shall be in full for all WORK actually performed in accordance with the PLANS and SPECIFICATIONS, and shall include all labor and MATERIALS incorporated in the completed WORK.

10.1.2 Application for payment shall be made on GILBERT approved payment application form and accompanied by a cover letter in a format approved by GILBERT.

10.1.3 In the event of a dispute over any amounts owed, GILBERT shall pay the undisputed amount and proceed in good faith to resolve the dispute. Pending final resolution of the dispute, CONTRACTOR shall proceed diligently with performance of the CONTRACT and GILBERT shall continue to make payments in accordance with the CONTRACT DOCUMENTS to the extent such payments are undisputed by GILBERT.

10.2 PARTIAL PAYMENT

10.2.1 Once each month GILBERT will make a partial payment to CONTRACTOR on the basis of a duly certified and approved estimate prepared by CONTRACTOR and accepted by ENGINEER for WORK completed through the last day of the preceding calendar month. If requested by the ENGINEER, CONTRACTOR shall provide supporting data substantiating its corrections. The estimate will cover the WORK performed by CONTRACTOR during the preceding calendar month plus the invoice cost of MATERIAL suitably stored at the site of the PROJECT if CONTRACTOR desires payment for MATERIAL stored. Until final completion and final acceptance, retainage from progress payments to CONTRACTOR shall be ten percent (10%) of each payment. After the CONTRACT is fifty percent (50%) complete, however, one-half of the amount retained shall be paid to CONTRACTOR and the remaining retention shall be five percent (5%) of each payment provided CONTRACTOR is making satisfactory progress on the PROJECT as determined by GILBERT; otherwise, retention shall remain at ten percent (10%). The partial payment shall be paid on or before ten (10) working days after the certified and approved estimate of the WORK is received by GILBERT.

10.2.2 Cost of MATERIAL properly stored will be based on vendors' invoices that shall be listed by CONTRACTOR. A copy of each such invoice shall accompany the first estimate in which payment is requested for MATERIAL covered by the invoice. This list shall be revised and brought up-to-date by CONTRACTOR for each estimate. The revised list shall show the total amount of each invoice, the invoice amount that has been incorporated in the WORK, and the remaining invoice amount that is stored for which payment is required that month. Only those MATERIALS that will become an integral part of the final completed PROJECT may be included for partial payment as MATERIAL stored. Partial payments for jobsite delivered

material or equipment will in no way reduce CONTRACTOR'S responsibility for such MATERIAL or equipment until it has been installed.

10.2.3 **VERTICAL PROJECTS** Schedule of Values: Not later than five (5) working days before the first Application for Payment, CONTRACTOR shall submit to ENGINEER a schedule of values reflecting, as nearly as reasonably possible, the actual values of the various components of the WORK. CONTRACTOR shall provide separate line items for CONTRACTOR'S overhead and profit, supervision, insurance, bonds, allowances, and taxes. CONTRACTOR shall prepare the Schedule of Values on a form essentially equal to AIA Document G702/G703, or other as approved by the PM/CM. If requested by ENGINEER, CONTRACTOR shall provide supporting data substantiating its correctness.

10.2.4 No partial payment shall be made until updated red-line construction record drawings are reviewed and approved by the ENGINEER, through the date for which partial payment is requested, reviewed, and determined to reflect actual WORK in place.

10.3 PAYMENT OF ITEMS IN BID

10.3.1 Only those items listed in the Bid are pay items.

10.3.2 Compensation for all WORK necessary for the completion of the PROJECT shall be included by the BIDDER in the price bid for the items shown in the Bid.

10.4 PAYMENT FOR "EXTRA WORK" AND FOR "CHANGES IN THE WORK"

Payment for changes in the WORK and for claims for extra WORK will be made as stated in Part VI of these GENERAL CONDITIONS.

10.5 ASSIGNMENT OF PAYMENTS

10.5.1 Claims for monies due or to become due CONTRACTOR may be assigned to a bank, trust company, or other financial institution, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment may be made to one (1) party as agent or trustee for two (2) or more parties participating in such financing.

10.5.2 No assignment by CONTRACTOR of any CONTRACT to be entered into hereunder, or of any part thereof, or of funds to be received thereunder by CONTRACTOR will be recognized by GILBERT unless such assignment has had prior consent of GILBERT and the surety has been given notice of such assignment in writing and has consented thereto in writing.

10.6 FINAL PAYMENT AND CONTRACT CLOSEOUT

10.6.1 When CONTRACTOR determines that the CONTRACT is complete and all items on the punch list have been satisfied, or contends that such items are not required by the CONTRACT DOCUMENTS, CONTRACTOR shall submit a request for final payment. No final payment shall be made until all WORK has been finally accepted.

10.6.2 Simultaneously with CONTRACTOR'S request for final payment, CONTRACTOR shall submit the following items to ENGINEER:

10.6.2.1 Red-line construction record drawings

10.6.2.2 Warranties

10.6.2.3 Three sets of documentation completely covering the operation and maintenance of the mechanical and electrical installation and all other equipment required by the SUPPLEMENTAL CONDITIONS to be furnished with such manuals. The documentation shall include charts, diagrams, performance curves, catalog information, lubrication manuals, and details pertaining to the functioning of various items of equipment. The documentation shall be divided logically into "systems" on the basis of operation, without respect to trades, subcontractors or arbitrary specifications sections. The relationship of the "systems" shall be clearly a concisely detailed.

10.6.3 Other items required by the SUPPLEMENTAL CONDITIONS.

10.6.4 Upon receipt of the submittals required in Section 10.6.2, ENGINEER shall prepare a written estimate of the sum due to CONTRACTOR. This estimate 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. ENGINEER 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 from the CONTRACT DOCUMENTS, and estimating the cost of correction of such deviations. ENGINEER'S statement shall be transmitted to GILBERT along with CONTRACTOR'S request for final payment. ENGINEER shall provide a copy of the statement of final inspection and ENGINEER'S estimate of the sum due to CONTRACTOR.

10.6.5 If CONTRACTOR contests the estimate of sums due prepared by ENGINEER, within five (5) working days following delivery to CONTRACTOR of ENGINEER'S estimate of the sum due, CONTRACTOR shall file its protest in writing with the GILBERT Town Clerk, setting forth in detail all grounds alleged by him to justify an adjustment to ENGINEER'S final estimate. Failure to file a protest within the five (5) working days specified above shall constitute a waiver and acceptance by CONTRACTOR of ENGINEER'S estimate.

10.6.6 Neither acceptance of, nor payment for, the WORK or any part thereof, nor any extension of time, nor any possession taken by GILBERT shall operate as a waiver of any of the provisions of the CONTRACT DOCUMENTS, nor shall a waiver of any breach of the contract be held to be a waiver of any other or subsequent breach. Acceptance by GILBERT shall not be deemed an acceptance of latent defects, nor shall it constitute a waiver of any of the provisions of the CONTRACT DOCUMENTS.

10.7 USE OF GILBERT'S ALLOWANCE

10.7.1 The CONTRACT SUM includes a GILBERT allowance which is not a part of the total bid price. This allowance is to be used at the sole discretion of GILBERT for the completion of unspecified work not covered by other bid items. Authorization for work under this bid item shall be made by the CONSTRUCTION MANAGER and GILBERT prior to the start of such work. The Allowance Authorization Form attached to these General Conditions shall be executed by the CONTRACTOR, PM/CM and GILBERT prior to start of such work.

10.7.2 When applicable unit costs from the bid schedule can be used, the CONTRACTOR shall be bound by these costs for the additional work compensated through the allowance; otherwise the cost of allowance work shall be estimated in the same manner as a change order in accordance with Section 6.2 of the General Conditions.

10.7.3 After the additional work is approved, the CONTRACTOR may invoice the cost of such work in accordance with the payment process in the General Conditions.

10.7.4 Any unused part of the GILBERT allowance shall be retained by GILBERT at the end of the project via a deductive change order.

BID FORM

FOR: TOWN OF GILBERT
50 East Civic Center Drive
Gilbert, Arizona 85296

Bid of Somerset Contracting dba Somerset Landscape

CONTRACTOR'S License No. 294494/179026/252312

A corporation organized and existing under the laws of the State of Arizona; or a partnership consisting of _____, partners; or an individual conducting business as hereinafter called the BIDDER.

TO: THE HONORABLE MAYOR AND COUNCIL
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296

The undersigned acknowledges that he has received and familiarized himself with the following:

CONTRACT DOCUMENTS
PROJECT MANUAL AND DETAILS
DRAWINGS
ADDENDA No. N/A dated _____; No. ____ dated _____
No. ____ dated _____; No. ____ dated _____
No. ____ dated _____; No. ____ dated _____

The undersigned further acknowledges that he has visited the site and has familiarized himself with local conditions affecting the cost of the WORK at the place where the WORK is to be done. The undersigned further acknowledges that if his bid is accepted he shall be bound by the terms of the CONTRACT DOCUMENTS.

In submitting this Bid, the undersigned agrees:

1. To furnish all material, labor, tools, expendable and construction equipment, and all utility and transportation services necessary to furnish and install, in a workmanlike manner, all WORK at the PROJECT listed herein in strict conformity with the Construction Documents prepared by Town of Gilbert for the consideration hereinafter set forth.

2. To hold his Bid open for not less than one hundred twenty days (120) DAYS after the receipt of Bids and to accept the provisions of the instructions to BIDDERS regarding disposition of BID SECURITY.

3. To enter into and execute a CONTRACT if awarded on the basis of this Bid within ten (10) days after AWARD of the Bid, and to furnish a PERFORMANCE BOND, a Labor & Material PAYMENT BOND and certificates of insurance in accord with the General Conditions and General Requirements of this CONTRACT and to deliver executed Bonds and Insurance Certificates to GILBERT'S representative within ten (10) DAYS following the issuance of the NOTICE OF AWARD.

4. To utilize the subcontractors and suppliers attached to this Bid Form unless authorized by GILBERT to substitute another subcontractor or supplier.

5. To achieve substantial completion and final completion within the time period stated in the CONTRACT DOCUMENTS taken from the date of NOTICE TO PROCEED or the date otherwise established for the commencement of WORK.

6. The undersigned agrees that time is of the essence and GILBERT will suffer financial damages due to CONTRACTOR'S failure to complete the WORK within the CONTRACT TIME. The liquidated damages shall be as follows for each working day beyond the CONTRACT TIME for which CONTRACTOR shall fail to complete the WORK:

Substantial completion - $_____ per working day
Final completion - $_____ per working day

7. The undersigned has attached the required BID SECURITY and other items required in the Instructions to BIDDERS. The BID SECURITY shall become the property of Town of Gilbert, Arizona, as liquidated damages for the delay and additional WORK caused thereby in the event the CONTRACT and Bonds are not executed within the time set forth above.

NAME OF BIDDER: Somerset Contracting dba Somerset Landscape

TOWN OF GILBERT
BID SCHEDULE

No.	Description	Est. Qty.	Unit	Unit Price	Extended Price
1	Remove Existing Turf	16,470	S.F.	.34	5597.80
2	Existing Irrigation System Salvage/Removals	1	L.S.	1480.00	1480.00
3	Fine Grading Along Walk and Curb	1	L.S.	658.80	658.80
4	24" Box Trees	10	Each	192.00	1920.00
5	5 Gallon Shrubs	143	Each	16.80	2402.40
6	1 Gallon Shrubs	84	Each	7.75	651.00
7	Decomposed Granite (Material)	138	Ton	38.00	5244.00
8	Decomposed Granite (Install)	138	Ton	14.80	2042.40
9	River Rock Restoration (includes salvage and relocating existing, supplementation as required)	1	L.S.	1420.00	1420.00
10	Concrete Header	770	L.F.	6.85	5274.50
11	New Bench per Plan	2	Each	1495.00	2990.00
12	New Trash Receptacle per Plan	1	Each	482.50	482.50
13	Irrigation System	1	L.S.	11858.40	11858.40

TOTAL BID PRICE (Items 1-13 Inclusive) $ 42023.80
(In Numbers)

Forty two thousand & twenty three Dollars
(In Words)

80/100 Cents

GILBERT'S ALLOWANCE AMOUNT $0.00 (In Numbers)
Zero Dollars Zero Cents (In Words)

CONTRACT SUM (total bid price plus GILBERT'S allowance) $ 42023.80
(In Numbers)

Forty two thousand twenty three Dollars 80/100 Cents
(In Words)

In evaluating Bids, discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

Bidders are required to fill in all blank spaces with an entry. Bids submitted with blank spaces may be considered "Non-Responsive".

Quantities shown in this bid schedule are approximate only, and are used for the purpose of bid comparison.

In submitting this Bid, it is understood that the right to reject any and all Bids and to waive irregularities in the Bidding has been reserved by GILBERT.

The undersigned hereby certifies that the information submitted herewith, including any attachment is true to the best of his knowledge and belief.

Dated this 21 day of April, 2015

Sonrise Contracting dba Sonrise Landscape
Name of BIDDER (Company)

19051 S. Arizona Avenue
Address of BIDDER

Chandler AZ 85286
City, State, Zip Code

480 782 5296
Area Code/Telephone Number

480 922 8200
Fax Number

Michael Ricci Project Manager
Authorized Officer/Title

Authorized Officer Signature

(I) (We), the undersigned (Corporate Secretary) (Partners), hereby certify that the above-named Officer is hereby authorized to execute all documents relative to this bid and the administration of this bid for and on behalf of the Company named above.

_____ or
Corporate Secretary (signature)

_____
Partner Signature

_____
Partner Signature

LIST OF SUBCONTRACTORS AND SUPPLIERS
To be submitted only if requested by Gilbert after bid opening

Provide the information requested below for those subcontractors and suppliers to whom the BIDDER intends to award a Subcontract greater than or equal to one percent (1%) of the Bid amount. If the BIDDER intends to self-perform a classification of WORK for which a specialty contractor's license is required, the BIDDER shall nominate itself in the spaces provided for that purpose, and the BIDDER shall furnish the BIDDER'S contractor's license number(s) for that classification. For each subcontractor, manufacturer, supplier, person, firm and corporation, the BIDDER shall enter, if available, the telephone number and required licensing information. Failure to provide this information if requested by GILBERT will be just cause for GILBERT to declare the BIDDER'S Bid non-responsive.

WORK TO BE PERFORMED	NOMINEE	CLASSIFICATION & LICENSE NUMBER	PERCENT OF BASE BID
1.			
2.			
3.			
4.			
5.			
6.			
7.			

EQUIPMENT/MATERIAL SUPPLIER – (list supplier and material or equipment to be provided)

1. Existing Irrigation
2. Mountain States
3. Western Tree
4. Cutting Edge
5.

Submitted by: Sonoset Contracting

(Bidder)

Signed By: _____

Name and Title: MICHAEL RICE Project Manager

BID BOND
(Surety Bond)

KNOW ALL MEN BY THESE PRESENTS:

That we, Somerset Landscape LLC dba Somerset Contracting, (hereinafter "Principal"), and the U.S. Specialty Insurance Company, a corporation duly organized under the laws of the State of Texas, duly licensed in and holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, (hereinafter "Surety"), as Surety, are held and firmly bound unto Town of Gilbert, a municipal corporation as Obligee, in the sum of ten percent (10%) of the amount of the bid included in the proposal, submitted by the Principal to the Mayor and Council of Town of Gilbert, for the WORK described below, for the payment of which sum, well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, and administrators, successors and assigns, jointly and severally, firmly by these presents, and in conformance with A.R.S. § 34-201.

WHEREAS, the Principal is herewith submitting its Bid for
Spring Meadows FY16 Landscape Improvements - Contract No.: 2015-8003-0674

PKID 07-04 Saratoga Street Basin Landscaping.

NOW, THEREFORE, if Town of Gilbert shall accept the Proposal of the Principal and the Principal shall enter into a CONTRACT with Town of Gilbert, in accordance with the terms of such proposal and give the Bonds and Certificates of Insurance as specified in the SPECIFICATIONS with good and sufficient surety for the faithful performance of the CONTRACT and for the prompt payment of labor and material furnished in the prosecution of the CONTRACT, or in the event of the failure of the Principal to enter into the CONTRACT and give the Bonds and Certificates of Insurance, if the Principal pays to Town of Gilbert the difference not to exceed the penalty of the bond between the amount specified in the Proposal and such larger amount for which Town of Gilbert may in good faith CONTRACT with another party to perform the WORK covered by the Proposal, then this obligation is void. Otherwise it remains in full force and effect provided, however, that this Bond is executed pursuant to the provisions of Section 34-201, Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions of the Section to the extent as if it were copied at length herein.

This Surety Bond shall not be executed by an individual surety or sureties, even if the requirements of A.R.S. Section 7-101 are satisfied.

Signed and sealed this 21 day of April, 20 15.

Somerset Landscape LLC dba Somerset Contracting
Principal

Title

Witness:

U.S. Specialty Insurance Company
Surety

Witness:

Title Diane L. Arment / Attorney-in-Fact

Ted Rarrick / Witness

Address of Surety:

13403 Northwest Freeway

Houston, TX 77040-6094

* Attach Power of Attorney

POWER OF ATTORNEY

AMERICAN CONTRACTORS INDEMNITY COMPANY UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY

KNOW ALL MEN BY THESE PRESENTS: That American Contractors Indemnity Company, a California corporation, United States Surety Company, a Maryland corporation and U.S. Specialty Insurance Company, a Texas corporation (collectively, the "Companies"), do by these presents make, constitute and appoint:

Ted H. Rarrick or Diane L. Arment of Tempe Arizona

its true and lawful Attorney(s)-in-fact, each in their separate capacity if more than one is named above, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver **any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include riders, amendments, and consents of surety, providing the bond penalty does not exceed** *****Three Million***** **Dollars ($** **3,000,000.00** **).** This Power of Attorney shall expire without further action on December 08, 2016. This Power of Attorney is granted under and by authority of the following resolutions adopted by the Boards of Directors of the Companies:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings, including any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts, and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, The Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 10th day of December, 2012.

AMERICAN CONTRACTORS INDEMNITY COMPANY UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY

Corporate Seals

AMERICAN CONTRACTORS INDEMNITY CO. INCORPORATED SEPT. 25, 1990 CALIFORNIA — UNITED STATES SURETY COMPANY — U.S. Specialty Insurance Company

Daniel P. Aguilar, Vice President

State of California

County of Los Angeles SS:

On 10th day of December, 2012, before me, Vanessa Wright, a notary public, personally appeared Daniel P. Aguilar, Vice President of American Contractors Indemnity Company, United States Surety Company and U.S. Specialty Insurance Company who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Signature V. Wright (Seal)

V. WRIGHT
Commission # 1998319
Notary Public - California
Los Angeles County
My Comm. Expires Dec 6, 2016

I, Jeannie Lee, Assistant Secretary of American Contractors Indemnity Company, United States Surety Company and U.S. Specialty Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Los Angeles, California this 21 day of April 2015

Corporate Seals

Bond No. Bid Bond
Agency No. 9718

AMERICAN CONTRACTORS INDEMNITY CO. INCORPORATED SEPT. 25, 1990 CALIFORNIA — UNITED STATES SURETY COMPANY — U.S. Specialty Insurance Company

Jeannie Lee, Assistant Secretary

AFFIDAVIT BY CONTRACTOR
CERTIFYING THAT THERE WAS
NO COLLUSION IN BIDDING FOR CONTRACT

STATE OF ARIZONA)
) ss.
Town of Gilbert)

MICHAEL RICCI
(Name of Individual)

BEING DULY SWORN, DEPOSES AND SAYS:

That he is Project Manager (Title) of Somerset Contracting (Name of Business)

That pursuant to Section 34-253 of the Arizona Revised Statutes, he certifies as follows:

That neither he nor anyone associated with the said Somerset Contracting (Name of Business) has directly, or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this PROJECT.

AND FURTHER that Contractor has not expended nor will expend any money to influence any member of the Town Council of the Town of Gilbert, a GILBERT department or a GILBERT employee in connection with the award of this Contract.

(Signature)

Project Manager
(Title)

Somerset Contracting
(Name of Business)

SUBSCRIBED AND SWORN TO BEFORE ME this 20th day of April, 2015.

Notary Public

My commission expires:

March 27, 2018

JULIE GALAN
Notary Public - Arizona
Maricopa County
My Comm. Expires Mar 27, 2018

Form No. CIP2.4.1
Construction General Conditions without CM for DBB Projects
Revised March 27, 2015

BIDDERS' QUESTIONNAIRE
[To Be Submitted With Bid]

BIDDER'S RESPONSIBILITY
SUPPLEMENTAL EVALUATION CRITERIA

Organizational Information

BIDDER: Somerset Contracting LLC dba Somerset Landscape
(Bidder's name)

Submitted by:

Name of Organization: Somerset Contracting

Name of Individual: MICHAEL RICCI

Title: Project Manager

Address: 19051 S. ARIZONA AVE
CHANDLER, AZ 85286

Telephone: (480) 782 5296

Bidder's General Business Information

Check If: [✓] Corporation [ ] Partnership [ ] Joint Venture [ ] Sole Proprietorship

If Corporation:

a. Date and State of Incorporation:
AZ

b. List of Executive Officers:

Name	Title
BRIAN LEHMERMANN	PRESIDENT/CEO

_____

_____

_____

If Partnership:

a. Date and State of Organization:

_____

_____

b. List of Current General Partners:

Name	Title

c. Type of Partnership:

[ ] General [ ] Publicly Traded [ ] Limited
[ ] Other (describe): _____

If Joint Venture:

a. Date and State of Organization:

_____

_____

b. Name and Address of Owner or Owners:

_____

_____

_____

_____

Is your organization a member of a controlled group of corporations as defined in IRC Sec. 1563? [ ] Yes [X] No

If yes, show names and addresses of affiliated companies:

_____

_____

_____

Furnish the following information with respect to an accredited banking institution familiar with your organization:

Name of Bank: METRO PHOENIX BANK

Address: _____

_____

Account Manager: RICHARD STRUM

Telephone Number: ( ) _____

Similar Projects
(Use Separate Sheets as needed)

Provide information for at least TWO (2) similar projects successfully completed within the last FIVE (5) years. (See Section 1.1.2.)

BIDDER: SOMERSET CONTRACTING
(Bidder's name)

a. Name of Similar Project #1: VERRADO : Victory - VERRADO WAY

b. Contracting Party (Owner):
Name: DMB
Address: 7000 E. DOUBLETREE RANCH RD #300, SCOTTSDALE 85258
Telephone Number: (____) _____

c. If Joint Venture, names of each participant:

d. Contract Price: $410,850.00

e. Description of Similar Project #1: Landscape/Irrigation/ Concrete/ Deco Walls
(Briefly describe here, and attach a copy of the description in the Contract. Technical specifications may be requested by GILBERT.)

f. Construction Manager(s) during the Similar Project #1:
Name: Michael CALHOUN
Address: 7000 E. Doubletree Ranch Rd #300, Scottsdale, AZ 85258
Telephone Number: (623) 256 8212

g. Start date (notice to proceed issued): 11/15/14

h. Completion date provided for in the Contract: 1/30/15

i. Substantial completion date (approved by Owner): 1/11/15

j. Reasons why work was completed early, or why delays occurred:
Push for grand opening

k. Final price paid by Owner for the Similar Project #1: Still Completing Changes

l. If final price was 10% less or more than the original Contract Price, describe why:

m. Describe any large cost over-runs (claims in excess of $_____) disputed or contested by the Owner, the reasons for dispute, and ultimate resolution of the dispute:
None

n. Did Owner file a lawsuit against Bidder concerning performance?
Yes _____ No X If so, what was the result?

o. Following final payment on the Similar Project, has Bidder voluntarily or otherwise provided any additional work or repairs, or made any payments to the Owner to cure defects or fulfill warranties made to the Owner concerning the quality of the performance/or the work involved in the Similar Project? Describe:
No

p. Has your company undergone a major change in ownership, management, size, or expertise since the time of this Similar Project? Yes_____ No_____ Describe:
No

All answers should be complete and informative. Attach additional sheets if needed to give a full answer. GILBERT may in its discretion request Bidder to provide additional information concerning this Similar Project as part of its evaluation of the responsibility of the Bidder prior to award of the Contract.

Similar Projects
(Use Separate Sheets as needed)

Similar Project #2

BIDDER: Somerset Contracting
(Bidder's name)

a. Name of Similar Project #2: Veranda: Victory - Sunrise Lane

b. Contracting Party (Owner):
Name: DMB
Address: 7600 E. Doubletree Ranch Rd #300, Scottsdale AZ 85258
Telephone Number: (____) _____

c. If Joint Venture, names of each participant:

d. Contract Price: $340,052.00

e. Description of Similar Project #2: Landscape / Irrigation
Salvage Tree
(Briefly describe here, and attach a copy of the description in the Contract. Technical specifications may be requested by GILBERT.)

f. Construction Manager(s) during the Similar Project #2:
Name: Mike Campeau
Address: 7600 E. Doubletree Ranch Rd, #300, Scottsdale 85258
Telephone Number: (623) 256 8212

g. Start date (notice to proceed issued): 11/15/14

h. Completion date provided for in the Contract: 1/30/15

i. Substantial completion date (approved by Owner): 1/11/15

j. Reasons why work was completed early, or why delays occurred:
Push for Grand opening

k. Final price paid by Owner for the Similar Project #2: Still Completing Changes

l. If final price was 10% less or more than the original Contract Price, describe why:

_____

_____

m. Describe any large cost over-runs (claims in excess of $_____) disputed or contested by the Owner, the reasons for dispute, and ultimate resolution of the dispute:

None

_____

n. Did Owner file a lawsuit against Bidder concerning performance?
Yes _____ No X If so, what was the result? _____

_____

o. Following final payment on the Similar Project, has Bidder voluntarily or otherwise provided any additional work or repairs, or made any payments to the Owner to cure defects or fulfill warranties made to the Owner concerning the quality of the performance/or the work involved in the Similar Project? Describe:

No

_____

p. Has your company undergone a major change in ownership, management, size, or expertise since the time of this Similar Project? Yes_____ No_____ Describe:

No

_____

All answers should be complete and informative. Attach additional sheets if needed to give a full answer. GILBERT may in its discretion request Bidder to provide additional information concerning this Similar Project as part of its evaluation of the responsibility of the Bidder prior to award of the Contract

Personnel/Subcontractor Qualifications

BIDDER: Somerset Contracting
(Bidder's name)

a. List details of the construction experience of the Key Personnel (as defined in Paragraph 1.1.2 of the Contract Documents) directly involved in construction activities:

Project Manager: 25 yrs exp. Michael Ricci
Superintendent: 30 yrs exp Cirilo Morales

b. Does Bidder have an adequate workforce to complete the Work if awarded the Contract? Describe, including general types of work performed with your own work force:

Yes. All work performed in-house except large concrete & electrical

c. What additional personnel may need to be hired by Bidder as employees, if awarded the Contract?

None. Work force adequate to complete projects

d. What other major projects is Bidder currently under contract to perform? (Describe the projects, completion dates)

Verrado: Bulldozer wash - I-10 $610,000.00 Aug 2015
Verrado: Ph III S Lucas Trails $745,000.00 Sept 2015
Verrado: Ph II W Lucas Trails $422,800.00 Holding

e. Are subcontractors proposed by Bidder ready, willing, and able to perform the work? Yes X No_____. (GILBERT may request additional information concerning subcontractors' past performance, personnel, equipment, licenses, and other pending projects)

f. If proposed subcontractors are not available, how does Bidder propose to replace the subcontractors? Never have had this problem with my subcontractors

g. If Bidder requires additional or replacement personnel and/or subcontractors to complete the Work, and there is a labor shortage due to high volume of construction occurring in the Phoenix metropolitan area, is Bidder able to complete the Work on time, as required by the Contract Documents? Yes X No_____. Please describe. (GILBERT does not consider mere labor shortage to qualify as force majeure.)

Sameesh has sufficient labor force to complete work on time

h. Has any corporate officer, partner, joint venture participant or proprietor ever failed to complete a construction contract awarded to him or her in their own name or when acting as a principle of another organization? Yes_____ No X. If yes, described circumstances: _____

Equipment

BIDDER: Somerset Contracting
(Bidder's name)

a. Does Bidder own equipment necessary to complete the work if awarded the Contract?
Explain: YES

b. Will any equipment need to be rented or leased by Bidder? Explain: YES
On as needed basis for specialty equipment.

TOWN OF GILBERT, ARIZONA
AUTHORIZED SIGNATURE FORM

WHEREAS, the Town of Gilbert requires that CONTRACTOR execute documents necessary for the prompt and efficient execution of the documents related to the CONTRACT;

NOW, THEREFORE, on behalf of the CONTRACTOR I hereby declare that

_____
(name(s) of persons authorized)

is/are authorized to execute and sign on behalf of the CONTRACTOR the following documents:

1. The CONTRACT
2. The Bond
3. Payrolls
4. Claims
5. CHANGE ORDERS
6. All other papers necessary for the conduct of the corporation's affairs and the execution of the CONTRACT

for the duration of the CONTRACT or until written notice of revocation has been given, whichever occurs first.

In the event CONTRACTOR is governed by a board of Directors, a copy of the Resolution of the Board granting authority to said person(s) is attached hereto, and I hereby verify that such Resolution remains in full force and effect

Name

CFO
Title

(Seal of Corporation)

STATE OF Arizona)
) ss.
County of Maricopa)

This Authorized Signature Form was acknowledged before me this 21st day of April, 20 15 by Jason Lamb,

who appeared before the undersigned Notary Public, and stated that he/she executed such instrument on behalf of _____ for the purpose therein expressed.

Kimberly Poulter
Notary Public

My Commission Expires:

December 22, 2015

KIMBERLY POULTER
NOTARY PUBLIC - ARIZONA
Pinal County
My Commission Expires
December 22, 2015

[IF APPLICABLE: ATTACH RESOLUTION]

PERFORMANCE BOND

STATUTORY PERFORMANCE BOND PURSUANT TO
TITLE 34, CHAPTER 2, ARTICLE 2,
OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the CONTRACT amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter "Principal"), and _____, a corporation organized and existing under the laws of the State of _____, duly licensed in and holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the department of Insurance pursuant to Title 20, Chapter 2, Article 1, (hereinafter "Surety"), as Surety are held and firmly bound unto Town of Gilbert, County of Maricopa, State of Arizona in the amount of _____ Dollars ($_____), for the payment of which, the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written CONTRACT with Town of Gilbert, entitled _____.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the CONTRACT during the original term of the CONTRACT and any extension of the CONTRACT with or without notice to the Surety, and during the life of the guaranty required under the CONTRACT, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the CONTRACT that may hereinafter be made, notice of which modifications to the Surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this Agreement.

The prevailing party in a suit on this Bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

This Bond shall not be executed by an individual surety or sureties, even if the requirements of A.R.S. Section 7-101 are satisfied.

Witness our hands this _____ day of _____, 20___.

_____
PRINCIPAL SEAL

By_____

_____
SURETY SEAL

By _____

Address of Surety:

_____

_____

_____
AGENT OF RECORD

_____
AGENT ADDRESS

* attach Power of Attorney

LABOR AND MATERIALS BOND

STATUTORY PAYMENT BOND PURSUANT TO
TITLE 34, CHAPTER 2, ARTICLE 2,
OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the CONTRACT amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter "Principal"), as Principal and _____, a corporation organized and existing under the laws of the State of _____, duly licensed in and holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, (hereinafter "Surety"), as Surety are held and firmly bound unto Town of Gilbert, County of Maricopa, State of Arizona in the amount of _____ Dollars ($_____), for the payment of which the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written CONTRACT with Town of Gilbert, entitled _____.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all monies due to all persons supplying labor or MATERIALS to the Principal or the Principal's SUBCONTRACTORS in the prosecution of the WORK provided for in the CONTRACT, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this Agreement.

The prevailing party in a suit on this Bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

This Bond shall not be executed by an individual surety or sureties, even if the requirements of A.R.S. Section 7-101 are satisfied.

Witness our hands this _____ day of _____, 20___.

_____
PRINCIPAL SEAL

By _____

_____
SURETY SEAL

By _____

Address of Surety:

_____

_____

_____
AGENT OF RECORD

_____
AGENT ADDRESS

* Attach Power of Attorney

NOTICE TO PROCEED

DATE:

TO:

Subject: NOTICE TO PROCEED AND RETURN OF EXECUTED CONTRACT
Project Name:

Contract No.:	Project Number:
Contract Amount: $	Liquidated Damages: $ __/day
Effective Date:	Substantial Completion Date:
P.O. Number:	Final Completion Date:
Council Approval:	Item Number:

This letter serves as _____, NOTICE TO PROCEED with performance of the above-referenced project contract.

A fully executed and approved copy of the contract and the project's purchase order are enclosed for your files. Also attached is a Notice-to-Proceed CD containing forms required for project completion and a Purchase order. Please indicate the above-referenced contract number and project number on all correspondence. Failure to do so may cause unnecessary delays.

When submitting payment requests, the following information is needed:

1. Cover Letter transmitting the Pay Application, an updated cash flow, updated schedule and a summary of the project status.
2. A completed "Application and Certification for Payment", on approved GILBERT format.
3. A clear, detailed billing invoice, indicating the Contract Number, Project Number and Purchase Order Number referenced above.

If you have any questions please contact Capital Projects at (480) 503-____.

Sincerely,

Capital Projects Program Manager

ACCEPTANCE OF NOTICE

Receipt of the foregoing NOTICE TO PROCEED is hereby acknowledged by _____, this ____ day of _____, 20__.

By _____

Title _____

CHANGE ORDER NO. _____
(Contractor)

PROJECT:
DATE:
OWNER: Town of Gilbert
PROJECT NO:
CONTRACT NO:
CONTRACTOR:
CONTRACT DATED:
PM/CM (Name)

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:

PM/CM _____
(Name) (Date)

CONTRACTOR: _____
(Name) (Date)

GILBERT: _____
(Name) (Date)

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

Contractor agrees that the adjustment of the Contract Price and Contract Time reflected in this Change Order represents the entire and complete adjustment of the Contract Price and Contract Time for the changes set forth in this Change Order. The adjustment of the Contract Price includes all direct costs of labor materials, services and equipment to complete such changes as well as any and all indirect costs of impacts, delays, interference or hindrances in performing, providing and completing the changes set forth in this Change Order. The adjustment of the Contract Time includes all adjustments of time necessary to perform, provide and complete the changes set forth in this Change Order and any and all impacts, delays, interference or hindrances in performing, providing and completing the changes.

TOWN OF GILBERT, ARIZONA
CONTRACTOR'S AFFIDAVIT
REGARDING SETTLEMENT OF CLAIMS

PROJECT _____
_____

To Town of Gilbert, Arizona
Building Department:

The undersigned hereby certifies that (1) all lawful claims for MATERIALS, rental of equipment and labor used in connection with the construction of the above PROJECT, whether by SUBCONTRACTOR or claimant in person, have been duly discharged; and (2) to the best of undersigned's knowledge, there are not any disputed or unresolved claims of any type for MATERIALS, equipment or labor in connection with this PROJECT.

The undersigned, for the consideration of $_____, as set out in the final pay estimate, as full and complete payment under the terms of the CONTRACT, hereby waives and relinquishes any and all further claims or right of lien under, in connection with, or as a result of the above-described PROJECT. The undersigned further agrees to indemnify and save harmless Town of Gilbert against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever, which said GILBERT may suffer arising out of the failure of the undersigned to pay for all labor performance and MATERIALS furnished for the performance of said installation.

Signed and dated at _____, this _____ day of _____, 20____.

_____
CONTRACTOR
By _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was subscribed and sworn to before me this ____ day of _____, 20____.

_____
Notary Public

My Commission Expires:

_____

SUPPLEMENTAL CONDITIONS

1. A CONTRACT shall be awarded to the lowest responsible, responsive bidder. Contract award is currently scheduled for June 2015. In no case shall a NOTICE TO PROCEED be issued before July 1, 2015. Additionally, GILBERT reserves the right to issue a NOTICE TO PROCEED such that the PROJECT will begin in the fall or spring seasons which are optimal for landscape planting.

TECHNICAL SPECIFICATIONS

Spring Meadows FY15-16 Improvements March 2015

Improvements are being installed in phases. Only FY15-16 improvements are included in this bid package. Phasing limits in large part are determined by irrigation system layout. There may be some overlap in phasing areas depending on locations of water meters and controllers, in order to provide irrigation to new improvements while maintaining irrigation service to existing areas designated for improvements under future phases. Locations, layouts, and condition of existing irrigation systems as it interfaces with FY15-16 work will need to be field verified.

Description of FY15-16 work for Spring Meadows (PKID #07-4) follows.

Spring Meadows FY15-16 Landscape and Irrigation Improvements

General description: Landscape planting, turf and irrigation for the Park/ Basin area on E. Saratoga Street as shown on the plans. The Town reserves the right to reduce the scope of work or eliminate some items in this contract.

Work includes:

- Preservation and protection of existing plantings, irrigation system, pavements, walls, or other structures to remain.
- Restoration of all pavements, curbs, walls, structures, landscaping, irrigation, rock ground cover and other surfaces or features to remain which are disturbed as a result of work under this project phase.
- Maintaining existing irrigation service to areas improved under other phases and existing areas to remain.
- Removal of existing turf as shown and noted on plans not indicated to remain.
- Fine grading /excavation along the edge of the walk and curb to allow for granite installation. Any excavated material shall be uniformly spread to blend in adjacent landscape areas or used for repair of erosion damage as applicable. No import soil is required.
- New tree and shrub plantings as indicated on plans.
- Install new concrete header per details and as shown on plans. Layout to be approved by Town of Gilbert representative before installation.
- Providing and installing decomposed granite in all landscape areas to provide a 2” minimum depth in landscape planting areas and 1” below curbs or adjacent pavement.
- Abandonment of the portions of the existing irrigation system no longer in use in this phase of improvements. At grade or above grade components to be removed/ salvaged as noted on plans. Below grade components can be abandoned in place providing there is no conflict with new improvements.
- Maintain/restore connections to portions of the existing irrigation system to remain or improved under other phases.
- Unless otherwise noted or approved, all extra materials, debris, or materials removed as part of work under this project and not intended for reuse shall be disposed legally offsite.

- Using the existing water meter and backflow preventer, install new irrigation for the landscaping in this FY15-16 phase of work including but not limited to a new controller, mainline, valve assemblies, wiring, lateral piping, drip irrigation emitters and turf spray heads as indicated on plans.
- Restore River Run Rock areas. Includes salvage and reinstallation of existing, relocation of existing, and supplementation for river rock around headwall as shown.
- Provide and install new benches and trash receptacle as shown on plans and per manufactures specifications.

CONSTRUCTION SERVICES CONTRACT
FY16 PKID Morning Ridge

Project: **Morning Ridge FY16 Landscape Improvements**
Contract No.: **2015-8003-0675**
Date: **March 31, 2015**

CONSTRUCTION SERVICES CONTRACT
FOR DESIGN-BID-BUILD (DBB) PROJECT

THIS CONTRACT, made and entered into this _____ day of _____, 20_____, by and between the Town of Gilbert, Arizona, a municipal corporation organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated "GILBERT" and Somerset Contracting, a limited liability corporation, hereinafter designated the "CONTRACTOR."

GILBERT and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

1.0 CONSTRUCTION SERVICES

1.1 CONTRACTOR shall complete all work as specified or indicated in the Contract Documents. The work is known as and is hereinafter referred to as the Morning Ridge FY 16 Landscape Improvements Project and is generally described as follows: Landscape and irrigation improvements in the Silver Creek Road basin in accordance with the Contract Documents. The full scope of work is described in detail in the Contract Documents.

1.2 CONTRACTOR shall complete, provide and perform, or cause to be performed, all work in a proper and workmanlike manner, with appropriate consideration for public safety and convenience, consistent with the highest standards of professional and construction practices and in full compliance with, and as required by or pursuant to, this Contract, and with the greatest economy, efficiency, and expediency consistent therewith all as more particularly described in the Contract Documents.

2.0 CONTRACT TIME

2.1 CONTRACTOR shall submit to GILBERT, on or before the effective date of this Contract, a Critical Path Method (CPM) Construction Progress Schedule in Primavera compatible format, resource and cost loaded, indicating the times for starting and completing the various stages of the Work, including any Milestones specified in this Contract and as more fully described in the General Conditions and other Contract Documents. Revisions/updates to the CPM schedule shall be submitted to accurately reflect plans for completion of the work, but no less frequently than monthly.

2.2 Time is of the Essence. All of the time limits for Milestones, if any, for Substantial Completion and for Final Completion and readiness for final payments as stated in the Contract Documents, are of the essence for the Contract.

2.3 The Work shall be substantially complete within 30 working days after the date when the Contract Times commence to run as provided in the Notice to Proceed, and all Work shall be finally completed and ready for final payment in accordance with the Notice to Proceed within 40 working days after the date when the Contract Times commences to run.

2.4 Failure of CONTRACTOR to perform any covenant or condition contained in the Contract Documents within the time periods specified herein, shall constitute a material breach of this Contract entitling GILBERT to terminate the Contract unless CONTRACTOR applies for and receives an extension of time, in accordance with the procedures set forth in the Contract Documents.

2.5 Failure of GILBERT to insist upon the performance of any covenant or condition within the time periods specified herein, shall not constitute a waiver of CONTRACTOR'S duty to perform every other covenant or condition within the designated periods, unless a specific waiver is granted in writing for each such covenant or condition.

2.6 GILBERT's agreement to waive a specific time provision or to extend the time for performance shall not constitute a waiver of any other time provisions contained in the Contract Documents. Failure of CONTRACTOR to complete performance promptly within the additional time authorized in the waiver or extension of time agreement shall constitute a material breach of this Contract entitling GILBERT to all the remedies set forth herein or provided by law.

3.0 LIQUIDATED AND SPECIAL DAMAGES

3.1 It is hereby agreed that the amounts per day set forth herein in paragraph 3.1.1 are reasonable estimates of such liquidated damages and that said amounts do in fact bear a reasonable relationship to the damage that would be sustained by GILBERT, and CONTRACTOR agrees to pay such liquidated damages as herein provided.

3.1.1 GILBERT and CONTRACTOR recognize that time is of the essence for this Contract and that GILBERT will suffer financial loss, in addition to and apart from the costs described in Paragraph 3.2, if the Work and/or portions of the Work are not performed and completed within the times specified, plus any extensions thereof allowed in accordance within the Contract Documents. GILBERT and CONTRACTOR also recognize the delays, expense, and difficulties involved in proving, through legal or arbitration proceedings, the actual loss suffered by GILBERT if the Work or portion of the Work is not completed on time. Accordingly, instead of requiring any such proof, GILBERT and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay GILBERT liquidated damages per MAG Section 108.9 for each working day that expires after the time specified for substantial completion, until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by GILBERT, CONTRACTOR shall pay GILBERT liquidated damages per MAG Section 108.9 for each working day that expires after the time specified for Final Completion and readiness for final payment.

3.2 Special Damages: In addition to the amounts provided for liquidated damages, CONTRACTOR shall pay GILBERT the actual costs reasonably incurred by GILBERT for GILBERT's PM/CM, if applicable, the Project Engineer and for engineering and inspection forces employed on the Work for each working day that expires after the time specified for Final Completion, including any extensions thereof made in accordance with the Contract Documents, until the Work is finally complete. The rate for inspection services for this contract is $150.00 per hour. The rate for the work by the Project Engineer for this Contract is $ 150.00 per hour. The rate for work by GILBERT PM/CM, if applicable, is $ 150.00 per hour. Each of these hourly rates is calculated at time and one half for work required to be performed during other than normal business hours.

3.3 GILBERT may withhold and deduct from any payment due to CONTRACTOR the amount of liquidated damages, special damages, and other costs, such as CONTRACTOR'S failed testing costs or damages to other GILBERT property, from any moneys due CONTRACTOR under the Contract.

4.0 CONTRACT PRICE

GILBERT shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents, an amount in current funds not to exceed the sum of thirty one thousand two hundred eighty one dollars and thirty two cents ($31,281.32) as more specifically set forth in CONTRACTOR'S bid, and any additional amounts agreed to pursuant to valid CHANGE ORDER, approved by GILBERT.

5.0 CONTRACT DOCUMENTS

The following documents are pertinent to the Project:

5.1 This Contract (pages 1 to 7, inclusive).

5.2 Addenda consisting of Numbers N/A to N/A inclusive.

5.3 The project Specifications dated N/A entitled N/A Project.

5.4 The project Drawings comprised of a set entitled Parkway Improvement District 07-09 Morning Ridge and dated 2/28/15.

5.5 Performance Bond (page F-1 to F-2) and Payment Bond (page G-1 to G-2).

5.6 The approved CPM Construction Schedule dated N/A.

5.7 The project General Conditions (pages 1 to 102, inclusive).

5.8 The project Supplementary Conditions (pages N/A to N/A) inclusive.

5.9 Notice to Proceed dated _____.

5.10 CONTRACTOR'S List of Subcontractors (pages A-6 to A-7) inclusive.

5.11 CONTRACTOR'S Schedule of Manufacturers and Suppliers of Major Equipment and Material Items (page A-6).

5.12 The following which may be delivered or issued after the Effective Date of this Contract and are not attached hereto:

A. Written Attachments
B. Work Change Directives
C. Change Order(s)

6.0 MISCELLANEOUS

6.1 This Agreement shall inure to the benefit of, and shall be binding upon GILBERT and CONTRACTOR and their respective successors and assigns.

6.2 This Agreement may not be amended or any of its terms modified without the written consent of GILBERT and CONTRACTOR.

6.3 This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

6.4 This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

6.5 CONTRACTOR agrees he is an independent contractor and not an agent or employee of GILBERT. CONTRACTOR shall supervise and direct the WORK to be done, using his best skill and attention. CONTRACTOR shall be solely responsible for all construction means, methods, techniques, sequences, procedures and for coordinating all portions of the WORK, required by the CONTRACT DOCUMENTS. CONTRACTOR shall be responsible to GILBERT for the acts and omissions of his employees, SUBCONTRACTORS and their agents and employees, and other persons performing any of the WORK under any CONTRACT DOCUMENTS.

6.6 Should litigation be necessary to enforce any term or provision of this CONTRACT, or to collect any damages claimed or portion of the amount payable under this CONTRACT, then all litigation and collection expenses, witness fees, court costs, and attorney's fees shall be paid to the prevailing party. Nothing herein shall preclude non-binding arbitration if they so elect in the event of a dispute hereunder.

6.7 Under Section 38-511, Arizona Revised Statutes, as amended, GILBERT may cancel any CONTRACT it is a party to within three years after its execution and without penalty or further obligation, if any person significantly involved in 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 elects to exercise its rights under Section 38-511, Arizona Revised Statutes, as amended, GILBERT agrees to immediately give notice thereof to CONTRACTOR.

6.8 All notices and demands required or permitted by this CONTRACT shall be in writing and shall be deemed to have been given or properly served when (1) sent by Certified Mail (postage fully prepaid) to the respective address below or to such other address as may be furnished by either party pursuant to this Section; (2) delivered personally to the authorized representative of the parties to this CONTRACT; or (3) if given by telefacsimile, when addressed and transmitted to the respective telefacsimile number as specified below or to such other address or telefacsimile number as may be furnished by either party to the other pursuant to this Section, and the appropriate confirmation of transmittal is received. Any party giving notice or demand by telefacsimile immediately shall send the other party a copy of such notice or demand by Certified Mail (postage fully prepaid) to the respective address below or to such other address as may be furnished by either party pursuant to this Section.

GILBERT:	CONTRACTOR:
Kenneth Morgan, P.E. Public Works Director/Interim Town Engineer Town of Gilbert 50 East Civic Center Drive Gilbert, Arizona 85296	Michael Ricci Project Manager Somerset Contracting 19051 South Arizona Avenue Chandler, Arizona 85286

6.9 No amendment or waiver of any provision of these CONTRACT DOCUMENTS nor consent to any departure by GILBERT shall be effective unless the same shall be in writing and signed by GILBERT. Such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

6.10 No waiver by GILBERT of any default or breach by CONTRACTOR shall be deemed to be or constitute a waiver of any other or subsequent default or breach. GILBERT specifically reserves and shall have all rights and remedies available to it under the provisions of the CONTRACT DOCUMENTS.

6.11 <u>Immigration Law Compliance Warranty</u>:

6.11.1 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.

6.11.2 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.

6.11.3 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. 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).

6.11.4 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.

6.11.5 If state law is amended, the parties may modify this paragraph consistent with state law.

6.12 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 the WORK. 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 form or based on the violation of such, whether by CONTRACTOR or its employees.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day and year first written above.

TOWN OF GILBERT

By: _____
Doug Boyer, CPM
Purchasing Administrator

ATTEST:

_____
Catherine A. Templeton, CMC
Town Clerk

APPROVED AS TO FORM:

_____
Susan Goodwin
Curtis, Goodwin, Sullivan, Udall & Schwab, PLC
Special Counsel

CONTRACTOR

_____

By:_____

Title:_____

TOWN OF GILBERT

CONSTRUCTION GENERAL CONDITIONS

For

Project Name: Morning Ridge FY16 Landscape Improvements
Contract No: 2015-8003-0675
Date: March 31, 2015

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PART I

GENERAL CONDITIONS

INFORMATION FOR BIDDERS AND BIDDING REQUIREMENTS

1.1 ELIGIBILITY AND PREFERENCE

Contracting with CONTRACTORS and SUBCONTRACTORS under the CONTRACT DOCUMENTS shall be governed by the provisions of Title 34 of the Arizona Revised Statutes, as amended.

1.1.2 Eligibility of CONTRACTOR

1.1.2.1 The BIDDER must have a minimum of five (5) years' experience in similar projects. A "similar project" is one that is similar in both nature and scope to this PROJECT. At least two (2) of the BIDDER'S Key Personnel must have a minimum of three (3) years' experience in similar projects. The BIDDER must demonstrate successful completion of at least two (2) similar projects, one of which must have a dollar value of at least seventy-five percent (75%) of the total bid for this PROJECT as set forth in the Bid Schedule, both within the past five (5) years. Total bid price does not include any GILBERT allowances identified. The BIDDER must demonstrate that it has an experienced employee who will serve as the scheduler, who is dedicated to this PROJECT, and who has successfully employed scheduling techniques appropriate for this PROJECT. "Key Personnel" is defined as individuals who will be directly assigned to this PROJECT and includes, but is not limited to, the owner, the Principals of the BIDDER, the Project Manager, the Project Superintendent, the scheduler, the BIDDER'S construction engineer, and supervisory personnel such as the foremen who will be directly assigned to this PROJECT. Resumes of Key Personnel shall be submitted upon request by GILBERT. "Successful completion" means completion of a project within the established schedule and budget.

1.1.2.2 **If requested by GILBERT**, the three apparent lowest BIDDERS shall submit the following documentation for GILBERT'S review and GILBERT may base its award of a CONTRACT on the information submitted:

A. Evidence of loss history and underwriting criteria

B. BIDDER'S safety program, including Experience Modifier (EMR)

C. List of SUBCONTRACTORS

D. CPA certified audits for the past three fiscal years of operations

E. List of references

F. Similar documents deemed necessary by GILBERT

The documents shall be submitted to GILBERT no later than 72 hours

following the request of GILBERT.

1.1.2.3 GILBERT may also conduct any investigation it deems necessary to determine the BIDDER'S ability to perform the WORK required by the CONTRACT DOCUMENTS. The purpose for requiring these documents is to assist GILBERT in evaluating the ability of a potential CONTRACTOR to perform the WORK in accordance with the CONTRACT DOCUMENTS in a safe manner.

1.1.2.4 References provided by CONTRACTOR are an integral part of BIDDER'S qualifications. References must be accurate. BIDDER authorizes GILBERT'S representative to verify any and all information from references contained herein and hereby releases all those concerned providing information as a reference from any liability in connection with any information they give.

1.2 PRE-BID CONFERENCE

A pre-bid conference will be held on April 13, 2015 at 4:00 p.m. in Room 300, Gilbert Municipal Center, 50 East Civic Center Drive, Gilbert, Arizona 85296. It is highly recommended that BIDDERS, CONTRACTORS, and other interested parties attend this conference that will be conducted by GILBERT to answer questions. BIDDER responsibility issues will be discussed, along with PROJECT requirements.

1.3 SUBMITTING BIDS

Bids to receive consideration shall be made in accordance with the following instructions:

1.3.1 Before submitting a bid, BIDDERS shall carefully examine the PLANS, read the SPECIFICATIONS and all other CONTRACT DOCUMENTS, visit the site of the WORK, fully inform themselves as to all existing conditions and limitations, and shall include sums in the bid covering the cost of each item included in the CONTRACT.

1.3.2 BIDDER shall include in the CONTRACT SUM all applicable taxes, permit fees and other costs to BIDDER.

1.3.3 BIDDER shall include in the total bid price all CONTRACTOR's allowances stated in the BID SCHEDULE of the CONTRACT DOCUMENTS.

Any required allowances are set forth in the BID SCHEDULE. Unless otherwise provided in the CONTRACT DOCUMENTS:

1.3.3.1 Allowances shall cover the cost to the CONTRACTOR (less any applicable trade discount) of the MATERIALS including equipment required by the allowance, delivered at the site, and all applicable taxes, overhead, profit handling and other General Condition costs, unless Bid Unit Rates are available in the Bid Schedule. Unit Bid Rates from the Bid Schedule shall be used to determine the cost of a change to be paid from an Allowance, when applicable.

1.3.3.2 Any remaining Allowance Amount shall be returned to GILBERT at the end of the

project by deductive change order.

1.3.3.3 Whenever the cost is more or less than the allowance, the CONTRACT PRICE shall be adjusted accordingly by CHANGE ORDER, the amount of which will recognize changes, if any, overhead, profit and other expenses.

1.3.4 Lump Sum and Unit Prices bid shall include overhead, profit, taxes, handling and other General Condition costs.

1.3.5 No bid will be considered unless it is made upon the bid forms contained in the book of CONTRACT DOCUMENTS. No bid shall be considered which is deemed as an irregular bid or which fails to conform in all material respects to the PLANS, SPECIFICATIONS and CONTRACT DOCUMENTS. Bids may be deemed irregular and may be considered non-responsive for any of the following reasons:

1.3.5.1 If the bid is on a form other than that furnished by GILBERT or if the form is altered.

1.3.5.2 If the BIDDER does not supply, or has improper or inadequate state contractor's license(s), to perform the WORK.

1.3.5.3 If there are unauthorized additions, statements, interlineations, alterations, conditional or alternate bids or other irregularities of any kind.

1.3.5.4 If the BIDDER adds any provisions reserving the right to accept or reject an AWARD or to enter into a CONTRACT pursuant to an AWARD.

1.3.5.5 If the BIDDER fails to submit any document listed in Section 1.3.1.10 or, when requested, the BIDDER fails to submit any documents or information pursuant to Sections 1.1.2 and 1.1.2.2.

1.3.5.6 If numbers are not stated both in writing and in figures where so required. In case of a difference in written words and figures in a bid, the amount stated in written words shall govern unless obviously in error.

1.3.5.7 If the bid contains a summary or restatement of the WORK to be done.

1.3.6 No oral or telephonic bids will be considered.

1.3.7 Bids shall be delivered to the office of Town Clerk, 50 East Civic Center Drive, Gilbert, Arizona on or before the day and hour set for the opening of bids in the Notice and Call for Bids as published. Bids shall be submitted in a sealed envelope, which shall be marked as indicated in the Notice and Call for Bids. It is the <u>sole</u> responsibility of the BIDDER to see that his bid is received in proper time. Any bids received after the scheduled closing time for receipt of bids will be returned to the BIDDER unopened.

1.3.8 Each and every provision of law and clause required by law to be inserted in the CONTRACT shall be deemed to be inserted so that the CONTRACT shall be read and enforced as though it were included therein.

1.3.9 BIDDERS shall familiarize themselves with the provisions of the laws, codes and regulations

of the State of Arizona, Maricopa County, local agencies and municipalities that have jurisdiction at the location of the SITE. CONTRACTORS shall comply with, and require all SUBCONTRACTORS to comply with, all state and local contractor's license laws.

1.3.10 **BID SUBMITTAL: The following documents shall be submitted with the bid:**

A. Completed and signed Bid Forms

B. Bid Bond

C. No Collusion Affidavit

D. Authorized Signature Form

E. Bidder's Questionnaire

F. Copy(s) of Bidder's State of Arizona Contractor's License(s).

1.3.11 Bids must remain valid for 120 days following bid opening.

1.4 BID SECURITY

Each bid shall be accompanied by a certified check, cashier's check or bid bond from a surety company holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1 of the Arizona Revised Statutes, and any amendments thereto. The bonds shall be made payable and acceptable to GILBERT. The bid bond shall be for an amount equal to at least ten percent (10%) of the bid, payable without condition to GILBERT as a guarantee that the BIDDER, if awarded the CONTRACT, will promptly execute such CONTRACT in accordance with the bid and in manner and form required by these CONTRACT DOCUMENTS and will furnish good and sufficient bond for the faithful performance of the same. The surety bond shall not be executed by an individual surety or sureties. The check or bid bond of the successful BIDDER will be retained until the CONTRACT is signed and satisfactory bonds and certificates of insurance furnished, or other disposition made thereof. The check or bid bond of the BIDDERS whose proposal are not accepted by the Town of Gilbert Council will be returned promptly.

1.5 SPECIAL NOTICE

BIDDERS are required to inform themselves fully of the conditions relating to construction and labor under which the WORK will be or is now being performed.

1.6 WITHDRAWAL OF BID

Any BIDDER may withdraw or revise his bid by telegraphic or written request (but not electronic mail), at any time prior to the expiration of the time for the opening of bids as set forth in the Notice and Call for Bids. Any withdrawal or revision must be done on a copy of the bid form and must be signed by the person indicated on the Authorized Signature Form.

1.7 INTERPRETATION OF PLANS AND DOCUMENTS

1.7.1 If any person contemplating submitting a bid for the proposed WORK is in doubt as to the true meaning of any part of the PLANS, SPECIFICATIONS or other CONTRACT DOCUMENTS, or finds discrepancies in or omissions from the PLANS or SPECIFICATIONS, he may submit to Brian Border via email (Brian.Border@gilbertaz.gov) a written request for an interpretation or correction thereof. The request must be made via email and delivered to Brian Border **by 6:00 pm on April 15, 2015**. Any interpretation or correction of the CONTRACT DOCUMENTS will be made only by ADDENDUM. A copy of such ADDENDUM will be posted on the Town of Gilbert website. CONTRACTOR is responsible for acknowledging all ADDENDA in his bid. GILBERT will not be responsible for any other explanations or interpretations of the CONTRACT DOCUMENTS.

1.7.2 Should conflicts occur in or between Drawings and SPECIFICATIONS, CONTRACTOR is deemed to have estimated the more expensive of the two unless he has asked for and obtained a written decision as required in Section 1.7.1 before submission of his bid as to which method or MATERIALS will be required.

1.8 SUBSTITUTION OF MATERIAL OR EQUIPMENT

1.8.1 Where an item or MATERIAL is specified by a trade or manufacturer's name, it is done for the purpose of establishing a basis of quality, and not for the purpose of limiting competition. ENGINEER'S intent is to consider alternative products which have the desired essential characteristics. ENGINEER will consider any such product offered. Requests for approval of alternative products shall be made through BIDDERS bidding as prime contractors. No approvals for substitutions will be granted directly to suppliers, distributors, or subcontractors. Pursuant to A.R.S. § 34-104-C, the following procedures will be used:

1.8.1.2 BIDDERS desiring to submit alternative product proposals for prior approval of ENGINEER shall submit such proposals to ENGINEER at least eight (8) working days prior to the original deadline for receiving bids, or any published extension thereof. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute, including drawings, cuts, performance and test data, and any other information necessary for an evaluation. A statement setting forth any changes in other MATERIALS, equipment or other work that incorporation of the substitute would require shall be included. ENGINEER will consider such request and either approve or reject all alternative product proposals submitted.

If, by the close of the fifth day prior to the deadline for receiving bids, ENGINEER has approved any alternative product proposals, the BIDDING DOCUMENTS shall be modified to include the alternative products. ENGINEER shall publish the modification in the same manner as the original BIDDING DOCUMENTS at least five days prior to the deadline for receiving bids. ENGINEER'S decision of approval or disapproval of a proposed substitute shall be final. After the AWARD of CONTRACT, the equivalency evaluations conducted during the bidding period may be reviewed by appointment with ENGINEER.

1.8.2 Whenever an item of MATERIAL or piece of equipment is specified with at least two named manufactures and is followed by the words "No other manufacturers will be considered", only the listed manufacturers will be considered by GILBERT and ENGINEER.

1.8.3 Whenever an item of MATERIAL or piece of equipment is specified with a named manufacturer, an "or equal" manufacturer shall apply whether the term "or equal" is listed or not listed within the SPECIFICATIONS.

1.9 ADDENDA

Any ADDENDA issued during the time of bidding, shall become a part of the documents used by the BIDDER for the preparation of his bid, shall be covered by the bid and shall be made a part of the CONTRACT DOCUMENTS. It is the sole responsibility of the BIDDER to ensure that they have received and reviewed all ADDENDA, and that receipt of such ADDENDA is duly acknowledged on the Bid Form.

1.10 AWARD OR REJECTION OF BIDS

1.10.1 The CONTRACT will be awarded to the lowest responsible BIDDER determined from the Base Bid, plus any combination of Bid Alternates that GILBERT may select, which comply with these instructions and with the Notice and Call for Bids. GILBERT, however, reserves the right to accept or reject any or all bids, to waive any informality or irregularity in the bids received or to withhold the AWARD for any reason GILBERT determines. Bids will be received until the time and date designated in the Notice and Call for Bids. Bids received after the designated time set will be returned to the BIDDERS unopened.

1.10.2 Bids shall be opened in public and the amount of the bid read aloud. After the bid opening, GILBERT shall analyze the bids and notify all BIDDERS of the name of the apparent low bidder or (2) if the analysis results in a recommendation to award the CONTRACT to a BIDDER other than the apparent low BIDDER, the BIDDER who's recommended for award of the CONTRACT. This will be done by issuing a Notice of Apparent Lowest Responsible Bidder. Such notice shall be given at least four (4) days prior to the date set for the AWARD of the CONTRACT.

1.11 BIDDERS INTERESTED IN MORE THAN ONE BID

No person, firm, or corporation shall be allowed to make, file or to be interested in more than one (1) bid for the same WORK unless alternate bids are called for. A person, firm, or corporation who has submitted a subproposal to a BIDDER, or who quoted prices on MATERIALS to a BIDDER, is not thereby disqualified from submitting a subproposal or quoting prices to other BIDDERS, but must quote the same subproposal or price to all BIDDERS.

1.12 CONTRACT AND BONDS

1.12.1 The successful BIDDER shall execute and deliver a CONTRACT in the prescribed form and

shall furnish the required bonds within ten (10) days after issuance of a written Notice of Award or his BID SECURITY shall be forfeited as provided elsewhere herein.

1.12.2 The successful BIDDER, simultaneously with the execution of the CONTRACT, will be required to furnish a PAYMENT BOND in an amount equal to one hundred percent (100%) of the CONTRACT SUM and a PERFORMANCE BOND in an amount equal to one hundred percent (100%) of the CONTRACT SUM.

1.12.3 The form of CONTRACT that the successful BIDDER as CONTRACTOR will be required to execute and the forms of bonds which he will be required to furnish along with a form of insurance certificate are included in the CONTRACT DOCUMENTS. The CONTRACT, the bonds and the insurance certificate will be executed in five (5) original counterparts.

1.12.4 Bonding companies and insurance carriers shall be "Best Rated A" or better by the A.M. Best Company or comparable rating as determined at the sole discretion of GILBERT. Each bond shall be executed by a surety (bonding company) duly licensed in and possessing a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance, pursuant to Title 20, Chapter 2, Article 11 and acceptable to GILBERT. The Surety Bond shall not be executed by an individual surety or sureties. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in the State of Arizona. The Bonds shall have attached thereto a certified copy of Power of Attorney for the signed official executing the bonds.

1.13 ASSIGNMENT OF CONTRACT

No assignment by CONTRACTOR of any CONTRACT to be entered into hereunder, or any part thereof, or of funds to be received there under by CONTRACTOR, will be recognized by GILBERT unless such assignment has had prior approval of GILBERT and the Surety has been given due notice of such assignment in writing and has consented thereto in writing.

1.14 PLANS AND SPECIFICATIONS TO SUCCESSFUL BIDDER

The successful BIDDER may obtain five (5) sets of PLANS and SPECIFICATIONS for this PROJECT at no extra cost.

1.15 CONTRACT TIME

CONTRACTOR shall commence WORK under the CONTRACT on the day indicated in the NOTICE TO PROCEED or within ten (10) working days thereafter and shall fully complete all WORK under the CONTRACT within 40 consecutive working days in accordance with Section 9.2. CONTRACTOR shall achieve SUBSTANTIAL COMPLETION within 30 working days after the date of the NOTICE TO PROCEED and FINAL COMPLETION within 40 working days in accordance with Section 9.2. No WORK shall commence prior to issuance of a NOTICE TO PROCEED, including mobilization on site. CONTRACTOR shall at all times during the continuance of the CONTRACT prosecute the WORK with such force and

equipment as are sufficient to complete it within the time specified.

1.16 NOTICE OF REQUIREMENT OF COMPLIANCE WITH PERMIT CONDITIONS

This PROJECT includes work that will affect facilities of various agencies, including Town of Gilbert. Applicable licenses, permits and specifications are bound herein and CONTRACTOR shall comply with all such specifications and permit conditions.

1.17 ENGINEER

1.17.1 This PROJECT will be coordinated by an ENGINEER, who will report the progress of the WORK and compliance with the CONTRACT DOCUMENTS to GILBERT. Generally, ENGINEER will (1) oversee the progress of the WORK, (2) receive submittals, requests for information and other information from CONTRACTOR, (3) make recommendations to GILBERT regarding CHANGE ORDERS and request for extensions of time, (4) make recommendations to GILBERT regarding requests for payment, (5) maintain PROJECT records, (6) determine SUBSTANTIAL and FINAL COMPLETION of the PROJECT, and (7) do other tasks related to the coordination of the WORK.

1.17.2 ENGINEER will review and approve shop drawings, make interpretations of the CONTRACT DOCUMENTS and make determinations regarding substitution of methods and MATERIALS. Other duties are set forth in the CONTRACT DOCUMENTS. Drawings and SPECIFICATIONS and copies thereof furnished by ENGINEER are and shall remain the property of GILBERT. They are to be used only with respect to this PROJECT and are not to be used on any other PROJECT.

1.17.3 ENGINEER will be GILBERT'S REPRESENTATIVE during the construction and until final payment to the CONTRACTOR is made. ENGINEER will advise and consult with GILBERT. All instructions to CONTRACTOR shall be forwarded through ENGINEER. ENGINEER will have the authority to act on behalf of GILBERT only to the extent provided in the CONTRACT DOCUMENTS. CONTRACTOR shall not be relieved from CONTRACTOR'S obligations to perform the WORK in accordance with the CONTRACT DOCUMENTS either by the activities or duties of ENGINEER MANAGER in its administration of the CONTRACT, or by inspections, tests or approvals required.

1.18 SEPARATE CONTRACTS

Separate CONTRACTS may be let by GILBERT to perform other or additional work on or near the WORK covered by this CONTRACT. CONTRACTOR shall be responsible for coordinating the sequencing of the WORK under those separate CONTRACT'S identified/listed in the SUPPLEMENTAL CONDITIONS of the CONTRACT DOCUMENTS. The bid shall include an amount for the administration of the sequencing of these CONTRACTS. The requirements of Section 5.8 shall apply.

1.19 BID PROTESTS

The protest policy of the Town of Gilbert is available at the Town Clerk's office at 50 E. Civic Center Drive, Gilbert, Arizona 85296.

PART II

GENERAL CONDITIONS

DEFINITIONS

Wherever in these SPECIFICATIONS, or in other CONTRACT DOCUMENTS, the following terms are used, the intent and meaning shall be interpreted as shown below. Additional definitions and abbreviations pertaining to this PROJECT will be found in the SUPPLEMENTAL CONDITIONS.

2.1 DEFINITIONS

2.1.1 ADDENDUM: A written and/or graphic supplement to any of the CONTRACT DOCUMENTS issued, in writing, after ADVERTISEMENT of but prior to the opening of the bids for a CONTRACT.

2.1.2 ADVERTISEMENT: The public announcement, as required by law, inviting bids for WORK to be performed or MATERIALS to be furnished.

2.1.3 AWARD: The formal action of GILBERT Town Council in accepting a bid.

2.1.4 BID SECURITY: Refers to the certified check, cashier's check or surety bond which is required to be submitted with the bid to insure execution of the CONTRACT and the furnishing of the required bonds and insurance certificates.

2.1.5 BIDDER: Any individual, firm, partnership, or corporation submitting a bid for the work contemplated, acting directly or through a duly authorized agent.

2.1.6 CHANGE ORDER: A written order issued by GILBERT directing CONTRACTOR to make changes in the WORK or to perform extra work, and setting forth conditions for payment and adjustment in time of completion.

2.1.7 CLERK: The duly authorized person who performs the duties of Clerk of the Town of GILBERT.

2.1.8 CONTRACT: The written instrument executed by CONTRACTOR and GILBERT by which CONTRACTOR is bound to furnish all labor, equipment and MATERIALS, to perform the WORK specified and by which GILBERT is obligated to compensate CONTRACTOR therefore at the prices set forth therein. The CONTRACT DOCUMENTS are herewith by reference made a part of the CONTRACT as if fully set forth therein.

2.1.9 CONTRACT DOCUMENTS: The words "CONTRACT DOCUMENTS" include the Notice and Call for Bids, Information for BIDDERS and Bidding Requirements, General Conditions, SUPPLEMENTAL CONDITIONS, SPECIFICATIONS, Bid, CONTRACT, CONSTRUCTION SCHEDULE, PAYMENT BOND, PERFORMANCE BOND, PLANS, ENGINEER'S INSTRUCTION BULLETINS and all ADDENDA and Modifications thereto.

A Modification is (1) a written amendment to the CONTRACT signed by both parties, (2) a CHANGE ORDER, (3) a written interpretation issued by ENGINEER, or (4) a written order for a minor change in the WORK issued by ENGINEER.

2.1.10 CONTRACT SCHEDULE: The schedule produced by CONTRACTOR in response to the requirements of Section 5.1.

2.1.11 CONTRACT SUM: The total amount payable by GILBERT to CONTRACTOR for the performance of the WORK under the CONTRACT DOCUMENTS. The CONTRACT SUM is the amount stated in the CONTRACT and adjusted by any CHANGE ORDER issued pursuant to the CONTRACT DOCUMENTS.

2.1.12 CONTRACT TIME: The time set forth in the CONTRACT for completion of the WORK required by the CONTRACT DOCUMENTS.

2.1.13 CONTRACTOR: The individual, firm, partnership or corporation that has entered into a CONTRACT with GILBERT for the WORK. CONTRACTOR is required by law to be licensed in the classification of the WORK to be performed and will perform work or render services as a prime contractor.

2.1.14 DAYS: Unless otherwise designated, days will be understood to mean calendar days.

2.1.15 ENGINEER: The Architectural or Engineering firm designated by GILBERT to prepare PLANS and SPECIFICATIONS for the WORK, to make interpretations of the CONTRACT DOCUMENTS, to review and approve shop drawings and to perform other duties as set forth in the CONTRACT between GILBERT and ENGINEER. ENGINEER shall oversee the construction of the PROJECT.

2.1.16 FINAL COMPLETION: The date, more fully described in Section 9.2.2, when all items of the WORK are completely finished with no items of any scope outstanding or remaining to be completed, and all known defective work has been corrected. This is the date that initiates the Warranty period.

2.1.17 GILBERT: Town of Gilbert, Arizona.

2.1.18 GILBERT'S REPRESENTATIVE OR GILBERT'S AGENT: The authorized representative of GILBERT, assigned to the PROJECT WORK, the PROJECT Site or any part thereof during the performance of the WORK by CONTRACTOR and until final acceptance.

2.1.19 IMPROVEMENTS: Means the same as "WORK."

2.1.20 INITIAL CONTRACT SCHEDULE: The schedule prepared by CONTRACTOR in accordance with Section 5.1 and which includes the MILESTONE AND COMPLETION DATES specified in the CONTRACT DOCUMENTS.

2.1.21 MATERIALS: The word "MATERIALS" includes, in addition to material incorporated in the PROJECT, equipment and other supplies used in the performance of the WORK.

2.1.22 NOTICE OF APPARENT LOWEST RESPONSIBLE BIDDER: The notice given to inform all bidders of GILBERT staff's determination of the lowest responsible BIDDER and its recommendation for AWARD of the CONTRACT.

2.1.23 NOTICE OF AWARD: The notice given to inform the successful BIDDER of the AWARD of the CONTRACT.

2.1.24 NOTICE TO PROCEED: A directive issued by GILBERT authorizing CONTRACTOR to start the WORK or IMPROVEMENTS required in the CONTRACT.

2.1.25 PAYMENT BOND: A bond furnished by CONTRACTOR and an acceptable surety, in compliance with the requirements set forth in the CONTRACT DOCUMENTS, for the purpose of guaranteeing that CONTRACTOR promptly pays all monies due persons supplying labor or material to be used in prosecution of the CONTRACT.

2.1.26 PERFORMANCE BOND: A bond furnished by CONTRACTOR and an acceptable surety, in compliance with the requirements set forth in the CONTRACT DOCUMENTS, for the purpose of guaranteeing the faithful performance and completion of the WORK covered by the CONTRACT.

2.1.27 PLANS: All approved drawings or reproductions thereof pertaining to details of the WORK and which are made a part of the CONTRACT DOCUMENTS.

2.1.28 PROJECT: Means the same as "WORK" as defined below.

2.1.29 SITE: The area on which WORK is to be done as described in the CONTRACT DOCUMENTS.

2.1.30 SUPPLEMENTAL CONDITIONS: Those terms and conditions applicable to the WORK which are specifically set forth in the SUPPLEMENTAL CONDITIONS section of the CONTRACT DOCUMENTS.

2.1.31 SPECIFICATIONS: The descriptions, directions, provisions and requirements for performing the WORK as contained in the CONTRACT DOCUMENTS.

2.1.32 SUBCONTRACTOR: Those having a CONTRACT with CONTRACTOR for the performance of any WORK required by the CONTRACT DOCUMENTS.

2.1.33 SUBSTANTIAL COMPLETION: The date, more fully described in Section 9.2.1, when ENGINEER certifies, in writing, GILBERT may use or occupy the PROJECT or a designated portion thereof.

2.1.34 WORK: The word "WORK", "IMPROVEMENTS" or "PROJECT" includes any or all of the IMPROVEMENTS mentioned and authorized to be made, and the construction, reconstruction, and repair of all or any portion of such IMPROVEMENTS, and all labor, services, incidental expenses and material necessary or incidental thereto.

2.1.35 WORK DIRECTIVE: Supplemental drawings or instructions, which may be issued as necessary from time to time to make clear or define in greater detail the intent of the drawings and SPECIFICATIONS. A CHANGE ORDER shall accompany a WORK DIRECTIVE if extra cost and/or time are known to be involved.

2.1.36 WORKING DAYS: Working days are exclusive of Saturday, Sunday and GILBERT recognized legal holidays. In the event of a change, CONTRACTOR shall notify ENGINEER.

PART III

GENERAL CONDITIONS

AWARD AND EXECUTION OF CONTRACT

3.1 AWARD

3.1.1 As soon as practicable after the date of opening the bids, the GILBERT Town Council will AWARD the CONTRACT to the lowest responsible and responsive BIDDER or will reject all bids.

3.1.2 A NOTICE OF AWARD will be sent to the successful BIDDER by certified mail and shall be considered issued on the day sent.

3.1.3 The low bid will be determined by the lowest net total from a fully qualified and responsible BIDDER arrived at by combining the BIDDER'S lump sum and unit price totals or lump sum base bid price and the bid prices of the alternates that are selected and accepted by GILBERT. GILBERT may accept or reject any or all alternates.

3.2 EXECUTION OF CONTRACT

3.2.1 The successful BIDDER shall, within the time specified in Information for Bidders and Bidding Requirements, execute the CONTRACT, and shall file insurance policies and/or certificates of insurance as required herein. If CONTRACTOR fails or refuses to enter into the CONTRACT within the time stated, GILBERT may declare a forfeiture of his BID SECURITY as liquidated damages for failure to enter into the CONTRACT.

3.2.2 Execution of the CONTRACT by CONTRACTOR is a representation that CONTRACTOR has visited the SITE, become familiar with the local conditions under which the WORK is to be performed, and has correlated personal observations with the requirements of the CONTRACT DOCUMENTS.

3.3 CONTRACTOR'S INSURANCE

3.3.1 General: CONTRACTOR agrees to comply with all GILBERT ordinances and state and federal laws and regulations. Without limiting any obligations or liabilities of CONTRACTOR, CONTRACTOR shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A or above with policies and forms satisfactory to GILBERT. Failure to maintain insurance as specified may result in termination of this CONTRACT at GILBERT'S option.

3.3.2 No Representation of Coverage Adequacy: By requiring insurance herein, GILBERT does not represent that coverage and limits will be adequate to protect CONTRACTOR. GILBERT reserves the right to review any and all of the insurance policies and/or endorsements cited in

this CONTRACT but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in the CONTRACT DOCUMENTS or failure to identify any insurance deficiency shall not relieve CONTRACTOR from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of the CONTRACT.

3.3.3 Additional Insured: All insurance coverage and self insured retention or deductible portions, except Workers Compensation Insurance, shall name, to the fullest extent permitted by law for claims arising out of the performance of the CONTRACT, GILBERT, ENGINEER, their agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this CONTRACT DOCUMENTS.

3.3.4 Coverage Term: All insurance required herein shall be maintained in full force and effect until all WORK or services required to be performed under the terms of subject CONTRACT is satisfactorily performed, completed and formally accepted by GILBERT, unless specified otherwise in this CONTRACT DOCUMENTS.

3.3.5 Primary Insurance: CONTRACTOR'S insurance shall be primary insurance as respects performance of subject CONTRACT and in the protection of GILBERT as an Additional Insured.

3.3.6 Occurrence Basis: All insurance coverage shall be on an occurrence basis and not a claims made basis.

3.3.7 Waiver: All policies, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against GILBERT, its agents, representatives, officers, directors, officials and employees for any claims arising out of the WORK. CONTRACTOR shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

3.3.8 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. CONTRACTOR shall be solely responsible for any such deductible or self-insured retention amount. GILBERT, at its option, may require CONTRACTOR to secure payment or such deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

3.3.9 Use of Subcontractors: If any WORK under the CONTRACT DOCUMENTS is subcontracted in any way, CONTRACTOR shall execute a written agreement with SUBCONTRACTOR containing the same Indemnification Clause and Insurance Requirements set forth herein protecting GILBERT and CONTRACTOR. CONTRACTOR shall be responsible for executing the agreement with SUBCONTRACTOR and obtaining Certificates of Insurance verifying the insurance requirements.

3.3.10 Evidence of Insurance: Prior to commencing any WORK under the CONTRACT DOCUMENTS, CONTRACTOR shall furnish GILBERT with Certificate(s) of Insurance, or formal endorsements as required by the CONTRACT DOCUMENTS, issued by CONTRACTOR'S insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage, conditions, and limits of coverage specified in the CONTRACT DOCUMENTS and that such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as evidence of coverage, GILBERT shall reasonably rely upon the 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 CONTRACT. Such certificates shall identify the PROJECT. If any of the above-cited policies expire during the life of the CONTRACT, it shall be CONTRACTOR'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:

3.3.10.1 GILBERT, and ENGINEER, their agents, representatives, officers, directors, officials and employees are Additional Insured's 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 or equivalent.

C. Excess Liability – Follow Form to underlying insurance as required.

3.3.10.2 CONTRACTOR'S insurance shall be primary insurance as respects performance of CONTRACT.

3.3.10.3 All policies, including Workers Compensation, waive rights of recovery (subrogation) against GILBERT, its agents, representatives, officers, directors, officials and employees for any claims arising out of WORK performed by CONTRACTOR under the CONTRACT DOCUMENTS.

3.3.10.4 Certificate shall cite 30 day advance notice cancellation provision.

3.3.10.5 Project descriptive information including:

A. CIP Project Name

B. CIP Project Number

C. Contract Number

3.3.11 REQUIRED COVERAGE:

3.3.11.1 Commercial General Liability: CONTRACTOR shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than $3,000,000 for each occurrence, $3,000,000 Products and Completed Operations Annual Aggregate, and a $3,000,000 General Aggregate Limit on a per project basis endorsed by means of ISO Endorsement CC-2503 1185 or equivalent. 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 Offices, Inc. policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this CONTRACT, GILBERT, ENGINEER, their agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under Insurance Service Offices, Inc. Commercial General Liability Additional Insured Endorsement form CG 20 10 11 85, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in GILBERT, but only with respect to liability arising out of "your work" for that insured by or for you." CONTRACTOR, its successors and or assigns, is required to maintain Commercial General Liability insurance as specified hereunder for a minimum period of three (3) years following completion and acceptance of subject WORK. CONTRACTOR shall submit Certificate of Insurance evidencing such Commercial General Liability insurance during said three year period containing all of the insurance requirements set forth herein including naming GILBERT, ENGINEER, their agents, representatives, officers, directors, officials and employees as Additional Insured as required. 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.

3.3.11.2 Vehicle Liability: CONTRACTOR shall maintain Business Automobile Liability insurance with a limit of $3,000,000 each occurrence on CONTRACTOR'S owned, hired, and non-owned vehicles assigned to or used in the performance of the WORK. 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. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of the WORK, an MCS 90 endorsement is required providing $5,000,000 per occurrence limits of liability for bodily injury and property damage. To the fullest extent allowed by law, for claims arising out of the performance of this CONTRACT, GILBERT, ENGINEER, their agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under the Insurance Service Officers, Inc. Business Auto policy Designated Insured Endorsement form CA 20 48 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.

3.3.11.3 Worker's Compensation Insurance: CONTRACTOR shall maintain Worker Compensation Insurance to cover obligations imposed by federal and state statutes having jurisdiction of CONTRACTOR'S employees engaged in the performance of the WORK and shall also maintain Employers 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.

3.3.11.4 Builder's "All Risk": CONTRACTOR shall maintain Builder's "All Risk" Insurance in an amount not less than one hundred percent (100%) of the CONTRACT price. Such policy shall include coverage for fire, lightening, vandalism, malicious mischief, riot, civil commotion, smoke, sprinkler leakage, water damage, windstorm, hail, earthquake, landslide, flood and collapse or loss due to the results of faulty workmanship during the CONTRACT TIME and until Final Acceptance of the WORK by GILBERT. On pipeline and similar Projects where fire hazard is negligible or nonexistent, GILBERT may waive the requirement for fire insurance and/or accept the installation waiver.

3.3.11.5 Railroad Protection Liability: If the WORK involves a railroad right-of-way (as described in the SUPPLEMENTAL CONDITIONS) Railroad Protective Liability Insurance coverage is required in the amounts set forth in the SUPPLEMENTAL CONDITIONS.

3.4 REQUIREMENT OF CONTRACT BONDS

3.4.1 Concurrently with the execution of the CONTRACT, CONTRACTOR shall furnish GILBERT the following bonds, which shall become binding upon the AWARD of the CONTRACT to CONTRACTOR:

3.4.1.1 A PERFORMANCE BOND in conformance with Section 1.12 and in an amount equal to the full CONTRACT SUM conditioned upon the faithful performance of the CONTRACT in accordance with PLANS, SPECIFICATIONS and Conditions thereof. Such bond shall be solely for the protection of GILBERT. The Performance Bond shall remain in force the greater of (a) two years after FINAL COMPLETION of the WORK, or (b) until the expiration of all warranties and guarantees as required by the CONTRACT.

3.4.1.2 A PAYMENT BOND in conformance with Section 1.12 and in an amount equal to the full CONTRACT SUM solely for the protection of the claimants supplying labor or MATERIALS to CONTRACTOR or his SUBCONTRACTORS in the prosecution of the WORK provided for in such CONTRACT. The Payment Bond shall remain in effect for at least one year after FINAL COMPLETION of the WORK.

3.4.2 Each such bond shall include a provision allowing the prevailing party in a suit on such bond to recover as a part of this judgment such reasonable attorney's fees as may be fixed by a judge of the court.

3.4.3 Each such bond shall be executed by a surety company or companies holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1 of the Arizona Revised Statutes and any amendments thereto. The bonds shall be made payable and acceptable to GILBERT. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in this State and the bonds shall have attached thereto a certified copy of the Power of Attorney of

the signing official.

3.5 INDEMNIFICATION OF GILBERT AGAINST LIABILITY

3.5.1 To the fullest extent permitted by law, CONTRACTOR, 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 CONTRACTOR or other persons employed or used by the CONTRACTOR in the performance of this Agreement. CONTRACTOR'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 CONTRACTOR'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 CONTRACTOR or used by CONTRACTOR in the performance of this Agreement.

3.5.2 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.

3.6 SAFETY WARRANTY

3.6.1 CONTRACTOR shall provide and maintain in a neat, sanitary condition such accommodations for the use of his employees as may be necessary to comply with the requirements and regulations of the Arizona State Department of Health or as specified by the Maricopa County Health Department, Sanitary Code. CONTRACTOR shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on his own responsibility or as ENGINEER may determine, reasonably necessary to protect the life and the health of employees on the job, the safety of the public and to protect property in connection with the performance of the WORK. Precaution shall be exercised by CONTRACTOR at all times for the protection of persons (including employees and GILBERT representatives) and property. CONTRACTOR shall comply with the provisions of all applicable laws, pertaining to such protection including all Federal and State occupational safety and health acts, and standards and regulations promulgated hereunder.

3.6.2 CONTRACTOR warrants that CONTRACTOR is aware of and understands the hazards presented to persons, property and the environment relating to and arising out of the WORK. In the event CONTRACTOR or any of CONTRACTOR'S SUBCONTRACTORS are working or operating in an unsafe manner, CONTRACTOR shall immediately take full and appropriate steps to assure the safety of those working in the job site. CONTRACTOR acknowledges GILBERT'S right under this CONTRACT to stop work if GILBERT determines the WORK is not proceeding in a safe manner and may result in injury to persons or property. GILBERT and ENGINEER shall not be liable for the costs incurred by CONTRACTOR if the WORK is

stopped for safety reasons. The ENGINEER, with GILBERT approval, shall issue a stop work order until the violation ceases. The ENGINEER shall immediately notify CONTRACTOR in writing of the reasons WORK was stopped.

3.7 NOTICE TO PROCEED

CONTRACTOR or SUBCONTRACTORS shall not start WORK on any part of the PROJECT until NOTICE TO PROCEED has been issued by GILBERT. The NOTICE TO PROCEED will be sent to CONTRACTOR by certified mail or delivered to him in person. The date for the official start of the CONTRACT will be set forth in the NOTICE TO PROCEED. The NOTICE TO PROCEED shall not be issued until the CONTRACT has been executed and all insurance, bonds and other required documents have been submitted to GILBERT.

PART IV

GENERAL CONDITIONS

COMMENCEMENT, PROSECUTION AND PROGRESS

4.1 COMMENCEMENT

4.1.1 Within ten (10) working days after the NOTICE OF AWARD, a pre-construction conference will be held to establish a working understanding among the parties as to the WORK and to discuss the schedules referred to in Section 5.1, procedures for handling submittals, processing Applications for Payment, and maintaining required records.

4.1.1.1 The conference shall be attended by: CONTRACTOR and his superintendent, Principal SUBCONTRACTORS, Representatives of principal suppliers and manufacturers as appropriate, ENGINEER, Representatives of GILBERT, Others as requested by CONTRACTOR, GILBERT, or ENGINEER.

4.1.1.2 The purpose of the conference is to designate responsible personnel and establish a working relationship. Matters requiring coordination will be discussed and procedures for handling such matters established. The agenda will include but not be limited to:

A. Discussion of CONTRACTOR'S INITIAL CONTRACT SCHEDULE (See Section 5.1).

B. Transmittal, review, and distribution of CONTRACTOR'S submittals.

C. Processing applications for payment.

D. Maintaining record documents.

E. Critical work sequencing.

F. ENGINEER’S INSTRUCTION BULLETINS and CHANGE ORDERS.

G. Use of premises, office and storage areas, security, housekeeping, and GILBERT'S needs.

H. Major equipment deliveries and priorities.

I. CONTRACTOR'S Safety Program.

4.1.1.3 ENGINEER will preside at the conference and will arrange for keeping the minutes and distributing the minutes to all persons in attendance.

4.1.2 CONTRACTOR shall commence WORK on or before the tenth (10th) day after the date set forth in the NOTICE TO PROCEED, and shall complete all WORK under the CONTRACT within the CONTRACT TIME. The NOTICE TO PROCEED will be issued no later than thirty (30) DAYS after the NOTICE OF AWARD unless otherwise agreed upon in writing, or as may be specified in the SUPPLEMENTAL CONDITIONS.

4.2 SUBCONTRACTORS

4.2.1 Subcontracts shall be in accordance with, and CONTRACTOR shall be bound by, the following provisions:

4.2.1.1 All subcontracts shall be subject to review and acceptance by GILBERT.

4.2.1.2 All subcontracts shall be in writing and shall provide that all WORK to be performed hereunder shall be performed in accordance with the terms of the CONTRACT.

4.2.1.3 True copies of any and all subcontracts shall be furnished to GILBERT; however, prices may be omitted.

4.2.1.4 The subcontracting of any part of the WORK will in no way relieve CONTRACTOR of his responsibility or liability or obligation under the CONTRACT.

4.2.1.5 All subcontracts and purchase orders for equipment shall state guaranteed delivery dates, at such times as determined by CONTRACTOR, which will allow CONTRACTOR to complete the PROJECT within the CONTRACT TIME.

4.2.2 If GILBERT or ENGINEER has reasonable objection to any proposed SUBCONTRACTOR, CONTRACTOR shall submit a substitute to whom GILBERT and ENGINEER have no reasonable objection, and the CONTRACT SUM shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate CHANGE ORDER shall be issued.

4.2.3 CONTRACTOR shall make no substitution for any SUBCONTRACTOR, person or entity previously selected if GILBERT or ENGINEER make reasonable objection to such substitution.

4.3 CONTRACTOR'S REPRESENTATIVE AND EMERGENCIES

4.3.1 CONTRACTOR shall at all times be present at the WORK in person or represented by a competent superintendent who shall supervise and direct the WORK and shall be authorized by CONTRACTOR to receive and fulfill instructions from ENGINEER.

4.3.2 CONTRACTOR shall supervise and direct the WORK. He shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall employ and maintain on the SITE a qualified supervisor or superintendent who shall be designated in writing by CONTRACTOR as CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of CONTRACTOR and all communications given to the supervisor shall be as binding as if given to CONTRACTOR. The supervisor shall be present on the SITE at all times as required to perform adequate supervision and coordination of the WORK.

4.3.3 Emergencies that may arise during the progress of the WORK may require special effort or require extra shifts of men to continue the WORK beyond normal working hours. CONTRACTOR shall be prepared in case of such emergencies from whatever cause, to do all necessary WORK promptly.

4.4 CONTRACT DOCUMENTS

4.4.1 CONTRACTOR shall keep at the SITE a copy of the CONTRACT DOCUMENTS and shall at all times give ENGINEER access thereto.

4.4.2 The documents that make up the CONTRACT DOCUMENTS are intended to be complete and complementary, and to prescribe a complete WORK which CONTRACTOR shall perform in a manner acceptable to ENGINEER and in full compliance with the terms of the CONTRACT. CONTRACTOR shall provide GILBERT with a complete and operable WORK, even though the PLANS and SPECIFICATIONS may not specifically call out all items or items of work required of CONTRACTOR to complete his task. If any omissions are made of information necessary to carry out the full intent and meaning of the CONTRACT DOCUMENTS, CONTRACTOR shall immediately notify ENGINEER, who shall immediately notify GILBERT. ENGINEER will make the necessary corrections for furnishing of detailed instructions. In case of discrepancies, the more stringent requirement shall govern.

4.4.3 Any drawings or PLANS listed anywhere in the SPECIFICATIONS or ADDENDA thereto shall be regarded as a part thereof and of the CONTRACT. Anything mentioned in these SPECIFICATIONS and not indicated on the PLANS and not mentioned in these SPECIFICATIONS shall be of the same force and effect as if indicated or mentioned in both.

4.4.4 CONTRACTOR shall perform the WORK in accordance with the lines, grades, cross sections, and dimensions indicated on the PLANS and detailed drawings.

4.4.5 Unless otherwise specified in the SUPPLEMENTAL CONDITIONS, CONTRACTOR shall furnish all MATERIALS, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and incidentals, including, but not limited to, dust and traffic control measures, and to perform all WORK involved in executing the CONTRACT in a satisfactory and workmanlike manner within the CONTRACT TIME.

4.4.6 Anything in the CONTRACT DOCUMENTS notwithstanding, CONTRACTOR accepts the responsibility of constructing a watertight, weathertight PROJECT.

4.5 ERRORS AND OMISSIONS

The PLANS are presumed to be correct, but CONTRACTOR shall be required to check carefully all dimensions before beginning the WORK. If any errors or omissions are discovered, ENGINEER shall be so notified in writing. ENGINEER shall immediately notify GILBERT who will then make such corrections, and interpretations as may be deemed necessary for fulfilling the intent of the PLANS and SPECIFICATIONS and shall issue appropriate ENGINEER'S INSTRUCTION BULLETINS. Any such adjustments made by

CONTRACTOR without prior review and acceptance shall be at his own risk. The settlement of any complication or disputed expenses arising from such adjustment shall be made by CONTRACTOR at his own expense.

4.6 QUALIFICATIONS FOR EMPLOYMENT

4.6.1 No person under the age of sixteen (16) years for normal occupations, no person under the age of eighteen (18) years in hazardous occupations and no person currently serving a sentence in a penal or correctional institution shall be employed to perform any WORK under this CONTRACT. Each person working must provide proof of United States citizenship or legal work identification.

4.6.2 Immigration Law Compliance Warranty

4.6.2.1 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.

4.6.2.2 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.

4.6.2.3 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. 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).

4.6.2.4 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.

4.6.2.5 If state law is amended, the parties may modify this paragraph consistent with state law.

4.6.3 Equal Treatment of Workers

4.6.3.1 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 the WORK. 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 form or based on the violation of such, whether by CONTRACTOR or its employees.

4.7 CHARACTER OF WORKERS

4.7.1 CONTRACTOR shall have in place and enforce a drug-free workplace policy which complies with the requirements of the Drug-Free Workplace Act.

4.7.2 CONTRACTOR shall at all times employ sufficient labor and equipment for prosecuting the several classes of WORK to full completion in the manner and time required by the CONTRACT DOCUMENTS.

4.7.3 All workmen shall be competent and have sufficient skill, knowledge and experience in their class of work and in the operation of equipment required to perform all WORK properly and satisfactorily.

4.7.4 CONTRACTOR shall at all times enforce strict discipline and good order among its workmen and shall not permit the use of alcohol or controlled substances (without a medical authorization) at the SITE.

4.7.5 Any person employed by CONTRACTOR or any SUBCONTRACTOR who, in the opinion of ENGINEER does not perform his work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of ENGINEER be removed from the WORK by CONTRACTOR or SUBCONTRACTOR employing such persons, and shall not be employed again in any portion of the WORK without the approval of ENGINEER. CONTRACTOR or SUBCONTRACTOR shall hold GILBERT harmless from damages or claims for compensation that may occur in the enforcement of this section.

4.7.6 Should CONTRACTOR or SUBCONTRACTOR fail to remove such person as required above, or fail to furnish suitable and sufficient personnel for the proper prosecution of the WORK, GILBERT may suspend the WORK by written notice until such orders are complied with.

4.8 MAINTENANCE OF TRAFFIC

4.8.1 CONTRACTOR shall submit a Traffic Control Plan to GILBERT'S traffic engineer in accordance with Section 10-5(b) of the Gilbert Municipal Code. No work shall begin until a Traffic Control Plan has been approved, unless authorized in writing by the ENGINEER. CONTRACTOR shall coordinate with the various agencies both commercial and public, involved in the collection and removal of trash and garbage, so that adequate services are maintained.

4.8.2 The CONTRACTOR will coordinate and schedule off-duty police officers with the Town of Gilbert as a part of the CONTRACTOR's traffic control work. GILBERT will pay for the officers directly with no payment to the CONTRACTOR for this item. The CONTRACTOR will be required to present an overall estimate of off duty officer hours required with the submission of his master schedule for the project. Officers charge a minimum of four hours to the project if scheduled. In the event that the CONTRACTOR fails to prosecute the work in a timely and orderly fashion, GILBERT shall notify the CONTRACTOR and reserves the right to negotiate a corresponding deductive change order with the CONTRACTOR based upon the cost of $65/hour/officer that GILBERT will incur for the off duty officers.

4.8.3 Safe and adequate pedestrian and vehicular access shall be provided and maintained to fire hydrants, commercial and industrial establishments, churches, schools, parking lots, motels, hospitals, fire stations, police stations, residential properties and establishments of a similar nature.

4.8.4 Grading operations, roadway excavation and fill construction shall be conducted and maintained in such a manner as to provide a reasonably satisfactory and safe surface for vehicular and pedestrian traffic. When rough grading is completed, the roadbed shall be brought to and maintained in a reasonably smooth condition, satisfactory and safe for vehicular traffic at the posted speed limit. Pedestrian walkways shall be provided and maintained in a like manner. CONTRACTOR shall accomplish any additional grading operations and/or repairs, including barricade replacement or repairs during working and non-working periods which, in the opinion of ENGINEER, are required.

4.8.5 In the event of abnormal weather conditions, such as windstorms and rainstorms, CONTRACTOR shall immediately inspect his WORK area and take all necessary actions to insure that public access and safety are maintained.

4.8.6 CONTRACTOR shall provide ENGINEER with the emergency phone number of his representatives.

4.9 CLEANUP AND DUST CONTROL

4.9.1 Throughout all phases of construction, including suspension of WORK, and until final acceptance of the PROJECT, CONTRACTOR shall keep the WORK area clean and free from rubbish, excess material and debris generated by construction activities.

4.9.2 CONTRACTOR shall take whatever steps, procedures or means required to prevent any dust nuisance due to his construction operations. The dust control measures shall be maintained at all times to the satisfaction of ENGINEER and in accordance with the requirements of the Maricopa County Bureau of Air Control Rules and Regulations.

4.9.3 Failure of CONTRACTOR to comply with ENGINEER'S cleanup orders may result in an order to suspend WORK until the condition is corrected. No additional compensation or time will be allowed as a result of such suspension and ENGINEER has the authority to take such other measures as may be necessary to remedy the situation.

4.10 SANITATION

4.10.1 CONTRACTOR shall provide suitable and adequate sanitary conveniences for the use of all persons employed on the PROJECT. All sanitary conveniences shall conform to the regulations of the public authority having jurisdiction over such matters. At the completion of the PROJECT, all such sanitary conveniences shall be removed and the premises left in a sanitary condition.

4.10.2 CONTRACTOR shall cooperate with and follow directions of the Arizona Department of Public Health Services and the Maricopa County Health Department with respect to sanitation facilities. State and County Public Health Service representatives shall have access to the WORK wherever it is in preparation or progress, and CONTRACTOR shall provide proper facilities for such access and inspection.

4.11 WATER

4.11.1 CONTRACTOR and each SUBCONTRACTOR shall supply adequate pure cool drinking water with individual drinking cups for the use of employees on this construction. The quality of drinking water shall meet all applicable federal, state and local standards for drinking water.

4.11.2 It shall be the responsibility of CONTRACTOR to provide and maintain, at his own expense, an adequate supply of water for his use for construction and to install and maintain necessary supply connections and piping for same. Before final acceptance of the completed PROJECT, all temporary connections and piping installed by CONTRACTOR shall be removed.

4.11.3 CONTRACTOR shall apply for a fire hydrant meter and pay for all construction water used at the current rates charged by GILBERT, if CONTRACTOR desires to obtain water from the distribution system at any point.

4.12 CONSTRUCTION STAKING

4.12.1 Construction staking will be made by CONTRACTOR in accordance with the technical requirements of Section 105.8 of the MAG Specifications unless otherwise provided in the SUPPLEMENTAL CONDITIONS. CONTRACTOR shall provide and pay for all building layout staking, including elevations and all other PROJECT staking.

4.12.2 Replacement of construction stakes that have been knocked out due to CONTRACTOR'S WORK or lack of WORK, weather conditions, traffic, vandalism or utility contractors will be done at CONTRACTOR'S expense.

4.13 BLUE STAKE

CONTRACTOR is required to notify Blue Stake (263-1100) prior to the excavation of any material in accordance with A.R.S. § 40-360.22. CONTRACTOR shall directly contact

GILBERT for marking of electrical for traffic signals, sprinkler and irrigation facilities.

4.14 UTILITIES SHOWN ON THE PLANS

4.14.1 Regardless of what utilities are shown on the PLANS, it shall be CONTRACTOR'S responsibility to verify these locations and any additional lines which may exist through consulting with GILBERT, utility companies and/or "Blue Stake."

4.14.2 Existing utilities are indicated on PROJECT PLANS in accordance with the best information available. CONTRACTOR shall notify all owners of utilities when his WORK is in progress and shall make such arrangements as are necessary to make any emergency repair to any utility, in a manner satisfactory to GILBERT of a damaged utility line, including individual or house service utility lines.

4.14.3 No extra compensation will be made for the repair of any individual or house service utility or utility lines damaged by CONTRACTOR'S labor forces or equipment, nor for any damage incurred through neglect or failure to provide protective barriers, lights and other devices or means required to protect such existing utilities.

4.14.4 CONTRACTOR shall expose all sanitary and storm sewers, water, gas, electric, telephone utility lines, and other underground structures that might interfere with the WORK, in order to permit survey location prior to construction.

4.14.5 CONTRACTOR shall assume full responsibility for damages to any underground facility/utility properly shown on the Plans or properly located by the Utility owner, as a result of failing to obtain information as to its location, failing to excavate in a careful and prudent manner (as defined in MAG Spec's), or failing to take measures for protection of the facilities/utilities. The Contractor is liable to the owner of the Underground Facility/Utility for the total cost of the repair.

4.15 UTILITIES NOT SHOWN ON THE PLANS

4.15.1 If utility lines are encountered which are not shown on the PLANS, and not located, or incorrectly located by the Utility owner, other than individual or house service utility lines, and these lines are damaged or work is required to clear same, then MAG Spec Section 109.8 and A.R.S. § 40-360 shall apply.

4.15.2 The work necessary for the raising, lowering, or relocating of any such utility shall be at the Utility owner's expense. The necessary WORK may be done by the Utility owner or by CONTRACTOR, or as a collaborative effort, at the option of the Utility owner. All WORK shall be in accordance with the standards of GILBERT and the Utility owner.

4.15.3 In most cases, individual or house service utility lines are not shown on the PLANS. It shall be CONTRACTOR'S responsibility to locate and protect these individual or house services. If, due to CONTRACTOR'S operations, any of these lines are damaged, he shall repair or replace

these lines in a manner satisfactory to the owner of the utility at no extra cost to GILBERT. In addition, the cost of location, protection, and working around these individual or house service utility lines shall be included in CONTRACTOR'S bid for the WORK under this CONTRACT.

4.16 DRIVEWAYS AND WALKS

4.16.1 Inconvenience caused by digging across driveways and sidewalks shall be kept to a minimum by restoring the serviceability of the drive or sidewalk as soon as possible. At least 24 hours in advance of blocking driveways, CONTRACTOR shall notify the property owner. CONTRACTOR shall replace or repair any damage done to driveways and walks to not less than the condition existing prior to CONTRACTOR'S WORK. If it is necessary to leave an excavation open across driveways or sidewalks, CONTRACTOR shall provide temporary relief in the form of steel plates over the excavation.

4.16.2 Temporary paving replacement in front of business establishments shall be placed immediately following backfill and shall remain in place until the condition of the backfill is suitable for permanent pavement replacement.

4.16.3 Direct access shall be provided at all times to fire engine hoses, fire hydrants, hospitals, police stations, and at all other agencies or services where emergencies may require immediate access to same.

4.17 TREES AND SHRUBBERY

4.17.1 All trees and shrubbery within the right-of-way or easements shall be protected by CONTRACTOR insofar as practicable. No trees or shrubbery shall be removed without the prior approval of GILBERT.

4.17.2 In the event shrubbery or trees must be trimmed or removed, CONTRACTOR shall notify the property owner to do so within a reasonable time prior to construction. All shrubbery or trees not removed by the property owner shall be trimmed or removed by CONTRACTOR and hauled from the job at CONTRACTOR'S expense.

4.17.3 All trees, shrubs, hedges, brush, etc., designated on the PLANS, or by ENGINEER for removal, shall be completely removed and disposed of as indicated on the PLANS or specified.

4.18 IRRIGATION DITCHES AND STRUCTURES

CONTRACTOR shall contact the owners of any ditches, irrigation lines, and appurtenances which interfere with the WORK and shall make arrangements for dry-up or scheduling of water deliveries. CONTRACTOR shall be liable for any damage due to irrigation facilities damaged by his operations and shall repair such damaged facilities to an "equal or better than" original condition.

4.19 ROADS AND FENCES

4.19.1 Streets and roads subjected to interference by the prosecution of this WORK shall be kept open in compliance with Section 4.9 and maintained by CONTRACTOR until the WORK is completed.

4.19.2 All fences located in easements, when damaged or temporarily removed, shall be restored to a condition equal to or better than the original condition. Such fences shall be restored at CONTRACTOR'S expense.

4.20 PROTECTION OF WORK AND CLEANING UP

4.20.1 CONTRACTOR shall be responsible for the protection of all WORK until its completion and final acceptance, and he shall at his own expense, replace damaged or lost material, or repair damaged parts of the WORK, and CONTRACTOR and his Sureties shall be liable therefore.

4.20.2 CONTRACTOR shall remove from the vicinity of the completed WORK all plant, surplus material or equipment belonging to him or used under his direction during construction. All surplus excavated material, concrete, plaster and debris of all kinds shall be removed from GILBERT'S premises, streets or portions of building or property at or adjacent to the site of the WORK excepting that select material which may be required for refilling or grading the surface. Salvage material shall be stored at areas designated by ENGINEER. Where an area is indicated to be "cleared", all the weeds, vegetation, shrubs and trees shall be removed unless they are specifically noted not to be removed.

4.21 METHODS AND EQUIPMENT

4.21.1 The methods and equipment adopted by CONTRACTOR shall be such as will secure a satisfactory quality of WORK and will enable CONTRACTOR to complete the WORK in the time agreed upon. The selection and use of these methods and equipment is the responsibility of CONTRACTOR.

4.21.2 When the SPECIFICATIONS state the construction shall be performed by the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by ENGINEER. If CONTRACTOR desires to use a method or type of equipment other than those specified, he may make that request to GILBERT, who shall immediately forward the request to ENGINEER. The request shall be in writing and shall include a full description of the methods and equipment proposed to be used and an explanation of the reasons for desiring to make the change. If approval is given, it will be on the condition that CONTRACTOR will be fully responsible for producing construction work that performs the equivalent or better function as the original specifications.. Approval by GILBERT does not guarantee acceptance of the final Work, which will be determined by ENGINEER after evaluating whether equivalent or better function as the original specifications was or will be achieved. If, after trial use of the substituted methods or equipment, ENGINEER determines that the WORK produced does not meet the SPECIFICATIONS, CONTRACTOR shall discontinue the use of the substitute method or equipment and shall complete the remaining construction with the specified methods, equipment and quality, or take such other corrective action as ENGINEER may direct. No change will be made in basis of payment of the

construction items involved nor in the CONTRACT TIME as result of authorizing a change in methods or equipment under these provisions. CONTRACTOR may appeal a decision of ENGINEER under this Section to the GILBERT'S REPRESENTATIVE. Any such appeal must be made in writing within forty-eight (48) hours of ENGINEER'S decision or the right to appeal is waived.

4.22 SUSPENSION OF WORK

In case of suspension of WORK from any cause whatever, CONTRACTOR shall be responsible for the protection of all MATERIALS and equipment. CONTRACTOR shall provide suitable drainage and erect temporary structures where necessary to protect the MATERIALS and equipment.

4.23 DELAYS AND EXTENSION OF TIME

4.23.1 If CONTRACTOR finds it impossible for reasons beyond his control to complete the WORK within the CONTRACT TIME as specified or as extended, he shall immediately submit a written request to ENGINEER for an extension of time setting forth therein the reasons that he believes will justify the granting of his request. CONTRACTOR'S plea that insufficient time was specified is not a valid reason for extension of time. If ENGINEER finds that the WORK was delayed because of conditions beyond the control and through no fault of CONTRACTOR, he may extend the CONTRACT TIME in such amount as the conditions justify. The extended CONTRACT TIME shall be non-compensable and shall be in full force and affect the same as though it were the original CONTRACT TIME.

4.23.2 In setting the CONTRACT TIME, it has been assumed that up to 3 WORKING DAYS may be lost as a result of weather conditions which will slow down the normal progress of WORK; therefore, no extensions in CONTRACT TIME will be allowed for the first 3 WORKING DAYS lost due to bad weather conditions. Attention is directed to the nearest weather bureau station in the vicinity of the WORK for determining the extremes of temperature, wind velocities and the amount and intensity of precipitation that can be expected.

4.23.3 To receive consideration, a request for extension of time must be made in writing to ENGINEER stating the reason for said request, and such request must be received by ENGINEER within forty-eight (48) hours following the end of the delay-causing condition.

4.23.4 ENGINEER shall ascertain the facts and extent of the delay, and its findings of the facts thereon shall be final and conclusive.

4.23.5 An extension of time may be granted by GILBERT after the expiration of the time originally fixed in the CONTRACT or as previously extended, and the extension so granted shall be deemed to commence and be effective from the date of such expiration. Any extension of time shall not release the sureties upon any bond required under the CONTRACT.

4.23.6 GILBERT'S or ENGINEER'S liability for delay from any cause shall be limited to granting a time extension to CONTRACTOR and there is no other obligation, expressed or implied, on the part of GILBERT or ENGINEER to CONTRACTOR for delay from any cause. An

extension of CONTRACT TIME shall not release the sureties of their obligations, which shall remain in full force until the discharge of the CONTRACT.

4.24 GILBERT'S RIGHT TO CARRY OUT THE WORK

If CONTRACTOR defaults or neglects to carry out the WORK in accordance with the CONTRACT DOCUMENTS, and fails within ten (10) working days after receipt of written notice from GILBERT to commence and continue correction of such default or neglect with diligence and promptness, GILBERT may without prejudice to any other remedy GILBERT may have, make good such deficiencies. In such case an appropriate CHANGE ORDER shall be issued deducting from the payments then or thereafter due CONTRACTOR the cost of correcting such deficiencies, including compensation for ENGINEER'S additional services made necessary by such default, neglect or failure. If the payment then or thereafter due CONTRACTOR is not sufficient to cover such amount, CONTRACTOR shall pay the difference to GILBERT.

4.25 TERMINATION FOR BREACH OF CONTRACT

4.25.1 If CONTRACTOR refuses or fails to prosecute the WORK or any separable part thereof in accordance with the PLANS AND SPECIFICATIONS or with such diligence as will ensure its completion within the time specified herein, or an extension thereof, or fails to complete such WORK within time, or if he or any of his SUBCONTRACTOR(S) should violate any of the provisions of the CONTRACT, GILBERT may terminate this CONTRACT.

4.25.2 In the event of any such termination, GILBERT shall immediately serve written notice thereof upon the Surety and CONTRACTOR, and the Surety shall have the right to take over and perform the CONTRACT; provided however, that if the Surety within fifteen (15) DAYS after the serving upon it of a notice of termination does not give GILBERT written notice of its intention to take over and perform the CONTRACT and does not commence performance thereof within thirty (30) DAYS from the date of serving said notice, GILBERT may take over the WORK and prosecute the same to completion by CONTRACT or by any other method GILBERT may deem advisable. GILBERT may, without liability for so doing, take possession of and utilize in completing the WORK such MATERIALS, appliances, plants and other property belonging to CONTRACTOR that may be on the site of the WORK and be necessary therefore. For any portion of such WORK that GILBERT elects to complete by furnishing employees, MATERIALS, tools and equipment, GILBERT shall be compensated for such in accordance with the schedule of compensation for force account work in the section on payment for changes in the WORK.

4.25.3 The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to GILBERT.

PART V

GENERAL CONDITIONS

CONTROL OF WORK

5.1 TIME OF WORK

5.1.1 Initial Contract Schedule

5.1.1.1 Prior to the preconstruction meeting, CONTRACTOR shall furnish to ENGINEER one hard copy and one copy in electronic format of an INITIAL CONTRACT SCHEDULE.

5.1.1.2 The INITIAL CONTRACT SCHEDULE shall be based on and incorporate the CONTRACT Milestone and Completion Dates specified in the CONTRACT DOCUMENTS.

5.1.1.3 The INITIAL CONTRACT SCHEDULE shall indicate the detailed plan for the work to be completed in the first ninety (90) days of the CONTRACT; details of planned mobilization of plant and equipment; sequence of early operations; and procurement of MATERIALS and equipment. WORK beyond ninety (90) days shall be shown in summary form.

5.1.1.4 The INITIAL CONTRACT SCHEDULE shall be a time-scaled, resource loaded Critical Path Method (CPM) type schedule, prepared in a Primavera compatible software.

5.1.1.5 **VERTICAL PROJECTS -** The INITIAL CONTRACT SCHEDULE shall be cost loaded. The accepted cost loaded schedule will be used as a basis for monthly progress payments until acceptance of the CONTRACT SCHEDULE. Use of the INITIAL CONTRACT SCHEDULE for progress payments shall not exceed 30 days.

5.1.1.6 **HORIZONTAL PROJECTS** – The Bid Schedule will be used as a basis for monthly progress payments.

5.1.1.7 Overall time of completion and time of completion for each milestone shown on the INITIAL CONTRACT SCHEDULE shall adhere to the times in the SUPPLEMENTAL CONDITIONS, unless an earlier (advanced) initial time of completion is requested by CONTRACTOR and agreed to by ENGINEER. Any such agreement shall be formalized by a CHANGE ORDER.

5.1.1.8 ENGINEER will review the INITIAL CONTRACT SCHEDULE for conformance with the requirements of the CONTRACT DOCUMENTS. ENGINEER will return the INITIAL CONTRACT SCHEDULE with comments within five (5) working days after receiving it from CONTRACTOR.

5.1.2 Contract Schedule Development

5.1.2.1 Within fifteen (15) working days after receiving the NOTICE TO PROCEED, CONTRACTOR shall submit a detailed proposed CONTRACT SCHEDULE presenting an orderly and realistic plan for completion of the WORK, in conformance with the requirements of the CONTRACT DOCUMENTS.

5.1.2.2 The proposed CONTRACT SCHEDULE shall furnish or comply with the following requirements:

VERTICAL PROJECTS

A. A time scaled cost loaded CPM type schedule.

B. No activity on the schedule shall have a duration longer than ten (10) working days, with the exception of fabrication and procurement activities, unless otherwise approved by ENGINEER if the PROJECT is a horizontal project (road, sewer, water improvements). Activity durations shall be the total number of actual days required to perform that activity including consideration of weather impact on completion of that activity.

C. Procurement of major equipment, through receipt and inspection at the SITE, identified as a separate activity.

D. GILBERT furnished MATERIALS and equipment if any, identified as separate activities.

E. Dependencies (or relationships) between activities.

F. Processing/approval of submittals and shop drawings for major equipment. Activities that are dependent on submittal acceptance and/or MATERIAL delivery shall not be scheduled to start earlier than the expected acceptance or delivery dates.

G. The total cost of performing each activity. This cost shall be the total of labor, material, equipment, including overhead and profit. The sum of the cost for activities shall equal the total contract value.

H. Ten (10) working days for developing punch list(s), completion of punch list items, and final clean up for the WORK or any designated portion thereof. No other critical activities shall be scheduled during this period.

I. Interface with the WORK of other contractors (or entities).

HORIZONTAL PROJECTS

A. A time scaled cost loaded CPM type schedule.

B. No activity on the schedule shall have a duration longer than ten (10) working days, with the exception of fabrication and procurement activities, unless otherwise approved by ENGINEER. Activity durations shall be the

total number of actual days required to perform that activity including consideration of weather impact on completion of that activity.

C. Procurement of major equipment, through receipt and inspection at the SITE, identified as a separate activity.

D. GILBERT furnished MATERIALS and equipment if any, identified as separate activities.

E. Dependencies (or relationships) between activities.

F. Processing/approval of submittals and shop drawings for major equipment. Activities that are dependent on submittal acceptance and/or MATERIAL delivery shall not be scheduled to start earlier than the expected acceptance or delivery dates.

G. Ten (10) working days for developing punch list(s), completion of punch list items, and final clean up for the WORK or any designated portion thereof. No other critical activities shall be scheduled during this period.

H. Interface with the WORK of other contractors (or entities).

5.1.2.3 CONTRACTOR shall submit to ENGINEER one hard copy and one copy in electronic format of the CONTRACT SCHEDULE.

5.1.2.4 ENGINEER will review the proposed CONTRACT SCHEDULE for conformance with the requirements of the CONTRACT DOCUMENTS. Within five (5) working days after receipt, ENGINEER will accept the CONTRACT SCHEDULE or will return it with comments. If the proposed CONTRACT SCHEDULE is not accepted, CONTRACTOR shall revise the schedule to incorporate comments and resubmit the schedule for acceptance within five (5) working days after receiving it. The accepted schedule shall become the CONTRACT SCHEDULE. Schedules showing a completion date earlier than the contract date will not be accepted.

5.1.2.5 The CONTRACT SCHEDULE shall be the basis for evaluating job progress, payment requests, and time extension requests. The responsibility for developing the CONTRACT SCHEDULE and monitoring actual progress as compared to the schedule rests with CONTRACTOR.

5.1.2.6 Failure of the CONTRACT SCHEDULE to include any element of the WORK or any inaccuracy in the CONTRACT SCHEDULE will not relieve CONTRACTOR from responsibility for accomplishing all the WORK in accordance with the CONTRACT

5.1.2.7 Acceptance of the CONTRACT SCHEDULE will not relieve CONTRACTOR of the responsibility for accomplishing the WORK in accordance with the CONTRACT.

5.1.3 <u>Monthly Updates</u>

5.1.3.1 CONTRACTOR shall submit to ENGINEER each month an up-to-date status report of the work. The status report shall include:

A. CONTRACTOR'S estimated percentage complete for each activity not yet complete.

B. Actual start/finish dates for activities as appropriate.

C. Identification of processing errors, if any on the previous update reports.

D. Revisions, if any, to the assumed activity durations including revisions for weather impact for any activities due to the effect of the previous update on the schedule.

E. Identification of activities that are affected by proposed CHANGE ORDERS issued during the update period.

F. Resolution of conflict between actual work progress and schedule logic. When out of sequence activities develop in the CONTRACT SCHEDULE because of actual construction progress, CONTRACTOR shall submit revision to schedule logic to conform to current status and direction.

5.1.3.2 ENGINEER will review the updated information and meet with CONTRACTOR each week at the SITE to determine the status of the WORK. If agreement cannot be reached on any issue, CONTRACTOR will use ENGINEER'S determination in the processing of the update.

5.1.3.3 CONTRACTOR will incorporate ENGINEER'S review comments and submit two (2) copies of the report.

5.1.3.4 Progress payments pursuant to the CONTRACT will be based on the update of the CONTRACT SCHEDULE.

5.1.4 Schedule Revisions

5.1.4.1 If the sequence of construction differs significantly, as determined by ENGINEER, from the CONTRACT SCHEDULE, CONTRACTOR shall submit within five (5) working days a revised schedule to ENGINEER for acceptance.

5.1.4.2 When a proposed CHANGE ORDER is issued which has the potential to impact specified completion dates, the CHANGE ORDER request shall include a description of the impact of such changes. If approved, it shall be incorporated into the CONTRACT SCHEDULE. Time extensions will be considered only to the extent there is insufficient remaining float to accommodate these changes, and pursuant to Section 6 of the CONTRACT DOCUMENTS.

5.1.4.3 Should CONTRACTOR, after acceptance of the CONTRACT SCHEDULE, intend to change its plan of construction, it shall submit its requested revisions to ENGINEER, along with a written statement of the revision, including a description of the logic for rescheduling the work, methods of maintaining adherence to intermediate milestones and other specific dates and the reasons for the revisions. If the requested changes are acceptable to ENGINEER, they will be incorporated into the CONTRACT SCHEDULE in the next reporting period.

5.1.4.4 Schedule revisions shall be submitted at least five (5) working days prior to the date of submission of update information. ENGINEER will have five (5) working days to review the revisions.

5.1.5 Contract Schedule Reports

CONTRACTOR shall submit two (2) copies of the following reports for the proposed CONTRACT SCHEDULE, CONTRACT SCHEDULE monthly updates, CONTRACT SCHEDULE revisions and recovery schedules:

5.1.5.1 **VERTICAL PROJECTS**

A. Schedule Logic Report listing the activities, their early/late and actual start and finish dates, duration, float and the logic relationship of activities sorted by early start.

B. A Cost Report listing each activity and its associated cost, percentage of work accomplished, earned value to date, previous payments and amount earned for the update period.

C. A narrative report with the updated progress analysis, which shall include a description of problem areas, current and anticipated delaying factors and their impact, an explanation of corrective action taken and proposed revisions for recovery. Narrative report on proposed CONTRACT SCHEDULE will outline CONTRACTOR'S overall plan, strategy, crew movement and utilization, and other considerations in developing the schedule.

5.1.5.2 **HORIZONTAL PROJECTS**

A. CPM Schedule Report listing the activities, their early/late and actual start finish dates, duration, float and the logic relationship of activities sorted by early start.

B. CONTRACTOR shall provide all the schedule files in Primavera compatible format on CD.

5.1.6 Short Interval Schedules

CONTRACTOR shall prepare a Short Interval Schedule (SIS) to be used throughout the duration of WORK. The SIS shall include all current activities and projected activities for the succeeding two (2) weeks. The SIS shall include actual start/finish dates for the preceding one (1) week. Eight copies of the SIS shall be submitted to ENGINEER at the weekly construction meeting. CONTRACTOR shall participate in short interval scheduling coordination during the weekly construction meetings.

5.1.7 Time of Essence

Time is of the essence of this CONTRACT. CONTRACTOR shall, to the fullest extent possible, carry on the various classes or parts of the WORK concurrently, and shall not defer construction of any portion of the Work in favor of any other portion of the WORK, without the express approval of ENGINEER.

5.1.8 Date of Completion

CONTRACTOR shall fully and satisfactorily complete the WORK within the CONTRACT TIME. The date of completion is defined in Section 9.2.

5.1.9 Responsibility for Completion

5.1.9.1 CONTRACTOR shall furnish sufficient manpower, MATERIALS, facilities and equipment and shall work sufficient hours, including night shifts, overtime operations, Saturdays, Sundays and holidays as may be necessary to insure the prosecution and completion of the WORK in accordance with the accepted CONTRACT SCHEDULE. If work on the critical path is seven days or more behind the currently updated CONTRACT SCHEDULE and it becomes apparent that the WORK will not be completed within the CONTRACT TIME, CONTRACTOR will implement whatever steps it deems necessary to make up all lost time. If CONTRACTOR'S solution is not successful, it will make further attempts using the following sequence of events:

A. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities.

B. If the above cannot be achieved then:

- CONTRACTOR shall increase manpower in such quantities and crafts as will substantially eliminate, in the judgment of the ENGINEER, the backlog of work; or increase the number of working hours, shifts per working day, working days per week or the amount of equipment or any combination of the foregoing sufficiently to substantially eliminate in the judgment of the ENGINEER the backlog of work.
- In addition, ENGINEER may require the CONTRACTOR to submit a recovery schedule demonstrating its program and proposed plan to make up a lag in scheduled progress and to ensure completion of the WORK within the CONTRACT TIME. If the ENGINEER finds the proposed recovery schedule unacceptable, it may require CONTRACTOR to submit a new plan. If the actions taken by CONTRACTOR or the second plan proposed are unsatisfactory, ENGINEER may require the CONTRACTOR to take any of the actions set forth in the previous paragraph without additional cost to GILBERT to make up the lag in scheduled progress.

5.1.9.2 Failure of CONTRACTOR to comply with the requirements of this Section 5.1.9 shall be considered grounds for a determination by GILBERT, that CONTRACTOR is failing to prosecute the WORK with such diligence as will ensure its completion within the time specified.

5.1.10 Daily Reports

CONTRACTOR shall submit a Daily Activity Report no later than 9:00 a.m. the following work day to ENGINEER for each workday including weekends and holidays, when worked.

5.1.11 Payments Withheld

Progress Payments may be withheld in whole or in part should CONTRACTOR fail to comply with the requirements of this Section 5.1.

5.2 ENGINEER TO INTERPRET CONTRACT DOCUMENTS

ENGINEER will decide all questions which may arise as to the interpretation of the PLANS AND SPECIFICATIONS. CONTRACTOR may appeal a decision of ENGINEER made pursuant to this paragraph to GILBERT'S REPRESENTATIVE. Such appeal must be made in writing within forty-eight (48) hours of ENGINEER'S decision or the right to appeal is waived.

5.3 FORMAL PROTEST

5.3.1 If CONTRACTOR considers any WORK demanded of him to be outside the requirements of the CONTRACT, or if he considers any instruction, ruling, or decision of ENGINEER to be unfair, he shall, within forty-eight (48) hours after any such demand is made, or instruction, ruling or decision is given, file a written protest stating clearly and in detail his objections and the reasons therefore. Except for such protests as are made of record in the manner and within the time above stated, CONTRACTOR shall be deemed to have waived and does hereby waive all claims for extra WORK, damages and extensions of time resulting from demands, instructions, rulings and decisions of ENGINEER. If the protest is against a demand, instruction, ruling or decision of ENGINEER, it shall be filed with GILBERT'S REPRESENTATIVE.

5.3.2 Upon receipt of a protest from CONTRACTOR of a decision of ENGINEER, GILBERT'S REPRESENTATIVE shall review the demands, instructions, rulings, or decisions objected to and shall promptly advise CONTRACTOR in writing of his final decision, which shall be binding. Upon receipt of a protest from CONTRACTOR of a decision of GILBERT'S REPRESENTATIVE, the Town Manager shall review the demands, instructions, rulings, or decisions objected to and shall promptly advise CONTRACTOR in writing of his final decision, which shall be binding.

5.3.3 CONTRACTOR shall continue work on the Project during the review of the formal protest.

5.4 PLANS

5.4.1 The CONTRACT PLANS consist of general drawings. These indicate such details as are necessary to give a comprehensive idea of the construction contemplated. All authorized alterations affecting the requirements and information given on the CONTRACT PLANS shall be in writing. The CONTRACT PLANS shall be supplemented by such working or shop drawings prepared by CONTRACTOR as are necessary to adequately control the WORK. No change shall be made by CONTRACTOR in any working or shop drawing after it has been accepted by ENGINEER.

5.4.2 CONTRACTOR shall keep a current copy of the PLANS and SPECIFICATIONS at the jobsite, and shall at all times give ENGINEER access thereto. A current copy of PLANS and SPECIFICATIONS shall include red-line drawings, all ADDENDA, CHANGE ORDERS, ENGINEER INSTRUCTION BULLETINS, and any other approved change made to the PLANS and SPECIFICATIONS. Any drawings or PLANS listed in the SPECIFICATIONS shall be regarded as a part thereof and ENGINEER will furnish from time to time such additional drawings, PLANS, profiles, and information as he may consider necessary for CONTRACTOR'S guidance.

5.4.3 All authorized alterations affecting the requirements and information given on the accepted PLANS shall be in writing. No changes shall be made of any plan or drawing after the same has been accepted by ENGINEER except by consent of ENGINEER in writing.

5.5 CONFORMITY WITH PLANS AND ALLOWABLE DEVIATIONS

Finished surfaces in all cases shall conform with lines, grades, cross sections, and dimensions shown on the accepted PLANS. Allowable deviations, other than specified tolerances, from the accepted PLANS and working drawings will in all cases be determined by ENGINEER.

5.6 COORDINATION AND INTERPRETATION OF PLANS AND SPECIFICATIONS

5.6.1 The documents which make up the CONTRACT DOCUMENTS are essential parts of the CONTRACT, and a requirement occurring in one is as binding as though occurring in all. They are intended to be coordinated and to describe and provide for a complete WORK.

5.6.2 Should it appear that the WORK to be done or any of the matters relative thereto are not sufficiently detailed or explained in these CONTRACT DOCUMENTS, CONTRACTOR shall promptly notify ENGINEER. ENGINEER shall follow the procedures set forth in Section 4.5.1. In the event of any discrepancy between any drawing and the figures written thereon, the figures shall be taken as correct.

5.6.3 In the event of there being a conflict between one CONTRACT DOCUMENT and any of the other CONTRACT DOCUMENTS, the more stringent requirement shall apply.

5.6.4 CONTRACTOR shall not take advantage of any apparent error or omission in the PLANS or

SPECIFICATIONS. In the event CONTRACTOR discovers such an error or omission, he shall immediately notify ENGINEER. ENGINEER shall proceed as prescribed in Section 4.5.1 of the CONTRACT DOCUMENTS.

5.7 ORDER OF WORK

5.7.1 When required by the CONTRACT DOCUMENTS, CONTRACTOR shall follow the sequence of operations as set forth therein. Full compensation for conforming with such requirements will be considered as included in the prices paid for CONTRACT items of WORK and no additional compensation will be allowed there for.

5.7.2 The organization of the SPECIFICATIONS into divisions and articles and the arrangement of drawings shall not control CONTRACTOR in dividing the WORK among SUBCONTRACTORS or in establishing the extent of WORK to be performed by any trade.

5.8 COOPERATION BETWEEN CONTRACTORS

5.8.1 GILBERT reserves the right to CONTRACT for and perform other or additional WORK on or near the WORK covered by the CONTRACT.

5.8.2 When separate contracts are let within the limits of any one PROJECT, each CONTRACTOR shall conduct his work so as not to interfere with or hinder the progress or completion of the WORK being performed by other CONTRACTORS. CONTRACTORS working on the same PROJECT shall cooperate with each other as directed.

5.8.3 Each CONTRACTOR involved shall assume all liability, financial or otherwise, in connection with his CONTRACT and shall protect and save harmless GILBERT from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced by him because of the presence and operations of other CONTRACTORS working within the limits of the same PROJECT.

5.8.4 CONTRACTOR shall arrange his WORK and shall place and dispose of the MATERIALS being used so as not to interfere with the operations of the other CONTRACTORS within the limits of the same PROJECT. He shall join his WORK with that of others in an acceptable manner and shall perform it in proper sequence to that of the others.

5.8.5 GILBERT will not honor any claim for extra compensation due to delays, extra WORK, or extension of time caused by any other CONTRACTORS working within the limits of the same PROJECT.

5.9 INSPECTION

5.9.1 CONTRACTOR shall furnish ENGINEER with every reasonable facility for ascertaining whether the WORK as performed is in accordance with the requirements and intent of the SPECIFICATIONS and CONTRACT. ENGINEER shall be permitted to inspect all MATERIALS and each part or detail of the WORK at any time for the purpose of expediting

and facilitating the progress of the WORK. ENGINEER shall be furnished with such information and assistance by CONTRACTOR as required to make a complete and detailed inspection. Should any WORK be covered up before acceptance or consent of ENGINEER, it must, if required by ENGINEER, uncovered for examination at CONTRACTOR'S expense. The direct control shall be solely the responsibility of CONTRACTOR'S foremen and superintendent.

5.9.2 When the United States government is to pay a portion of the cost of the WORK covered by the CONTRACT, the WORK shall be subject to the inspection of the representatives of the U.S. government. Such inspection shall in no sense make the U.S. government a party to this CONTRACT and will in no way interfere with the rights of either party under this CONTRACT.

5.9.3 The inspection of the WORK shall not relieve CONTRACTOR of any of his obligations to fulfill his CONTRACT as herein provided. Any unsuitable or defective MATERIALS and WORK may be rejected notwithstanding that such WORK and MATERIALS may have been previously overlooked and accepted or estimated for payment. Unsuitable or defective MATERIALS shall be removed from the site within three (3) days of such rejection.

5.10 LINES AND GRADES

Profiles and elevations are indicated on the PLANS. All WORK under this CONTRACT shall be built in accordance with the lines and grades indicated on the PLANS. These lines and grades may be modified as provided in Part VI (Changes in the Work) in the CONTRACT. The establishment of the lines and grades shall be set forth under these GENERAL CONDITIONS, as modified by the SUPPLEMENTAL CONDITIONS. CONTRACTOR shall verify all vertical and horizontal controls using the nearest benchmark.

5.11 USE OF SITE

5.11.1 CONTRACTOR shall confine operations at the site to areas permitted by law, ordinances, permits and the CONTRACT DOCUMENTS, and shall not unreasonably encumber the site with any MATERIALS or equipment.

5.11.2 CONTRACTOR shall coordinate all of the CONTRACT'S operations with, and secure approval from, ENGINEER before using any portion of the site.

5.12 SEPARATE CONTRACTS TO GILBERT

5.12.1 If any part of CONTRACTOR'S WORK depends on proper execution or results of WORK performed by GILBERT or any separate CONTRACTOR, CONTRACTOR shall, prior to proceeding with the WORK, promptly report to ENGINEER any apparent discrepancies or defects in such other WORK that render it unsuitable for such proper execution and results. Failure of CONTRACTOR so to report shall constitute an acceptance of GILBERT'S or separate CONTRACTOR'S WORK as fit and proper to receive the WORK, except as to defects which may subsequently become apparent in such WORK by others.

5.12.2 Should CONTRACTOR wrongfully cause damage to the WORK or property of GILBERT, or to other WORK or property on the site, CONTRACTOR shall promptly remedy such damage.

5.12.3 Should CONTRACTOR wrongfully delay or cause damage to the WORK or property of any separate CONTRACTOR, CONTRACTOR shall, upon due notice, promptly attempt to settle with such other CONTRACTOR by agreement, or otherwise to resolve the dispute.

5.13 TESTS

5.13.1 If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the WORK to be inspected, tested or approved, CONTRACTOR shall give ENGINEER timely notice of its readiness so ENGINEER may observe such inspection, testing or approval. CONTRACTOR shall bear all costs of such inspections, test or approvals conducted by public authorities. GILBERT shall reserve the right to conduct additional tests and inspections, and, unless otherwise provided, GILBERT shall bear all costs of other inspections, tests or approvals.

5.13.2 Required certificates of inspection, testing or approval shall be secured by CONTRACTOR and CONTRACTOR shall promptly deliver them to ENGINEER.

PART VI

GENERAL CONDITIONS

CHANGES IN THE WORK

6.1 CHANGES IN THE WORK

6.1.1 GILBERT, without invalidating the CONTRACT and without notification of sureties, may order extra WORK, make changes by altering, or delete any portion of the WORK as specified herein, or as deemed necessary or desirable by GILBERT. All such WORK shall be executed under the conditions of the original CONTRACT except that any claim for extension of time and additional cost caused thereby shall be adjusted at the time of ordering such change or extra WORK.

6.1.2 In giving instructions, ENGINEER shall have authority to make minor changes in the WORK, not involving extra cost, and not inconsistent with the purposes of the WORK. No extra WORK or change shall be made unless in pursuance of a written order by GILBERT. Any claim for an addition to the CONTRACT SUM shall not be valid unless the change was so ordered, except in an emergency endangering life or property. If CONTRACTOR claims that any instructions involve extra cost under the CONTRACT, he shall within forty-eight (48) hours after the receipt of such instructions, provide notice to ENGINEER of such claim, and before proceeding to execute the WORK, except in an emergency endangering life or property, and the procedure shall then be as provided to approve CHANGE ORDERS.

6.1.3 It is mutually understood that it is inherent in the nature of municipal construction that some changes in the PLANS and SPECIFICATIONS may be necessary during the course of construction to adjust them to field conditions, and that it is of the essence of the CONTRACT to recognize a normal and expected margin of change. GILBERT shall have the right to make such changes in the PLANS and the character of the WORK as may be necessary or desirable to insure the completion of the WORK in the most satisfactory manner without invalidating the CONTRACT.

6.1.4 Changes shall be incorporated in the written CHANGE ORDER issued by GILBERT, which shall be written so as to indicate acceptance on the part of CONTRACTOR as evidenced by his signature.

6.2 PRICING OF CHANGES

6.2.1 If a CHANGE ORDER provides for an adjustment to the CONTRACT SUM, the adjustment shall be based on one of the following methods:

6.2.1.1 Where the WORK involved is covered by unit prices contained in the Bid Schedule, by application of the unit prices to the quantities of the items involved, as mutually agreed to by the CONTRACTOR and the ENGINEER.

6.2.1.2 By mutual acceptance of a unit price not contained in the Bid Schedule, or mutual acceptance of a lump sum price. The CONTRACTOR shall furnish ENGINEER with an itemized cost breakdown together with supporting data including the quantities used in computing the unit price and/or lump sum price of the WORK.

6.2.1.3 Only when methods A and B above are exhausted, then on the basis of the Cost of Work plus a CONTRACTOR'S Fee for overhead and profit, as described below. (Cost Plus Basis).

6.2.1.4 Whenever the cost of any work is to be determined on a Cost Plus Basis, CONTRACTOR will submit on forms acceptable to the ENGINEER, daily work sheets showing an itemized breakdown together with supporting data used to arrive at a final cost for the WORK. No payment will be made for work not verified by the ENGINEER. Final cost for the Change in the WORK shall be reflected and formalized in a Change Order.

6.2.2 Allowable costs for any CHANGE ORDER shall be limited to the following:

6.2.2.1 Costs of labor, including social security, Medicare and unemployment insurance, fringe benefits available to CONTRACTOR'S employees generally.

6.2.2.2 Costs of first line supervision labor, including labor burden as described in Section6.2.2 A. "First Line Supervision" shall mean a working foreman or lead craft worker other than the PROJECT superintendent.

6.2.2.3 Actual cost of the PROJECT superintendent associated with any period of compensable delay caused by issuance of the CHANGE ORDER. In the absence of a compensable delay, all of the PROJECT superintendent's time is considered to have been paid for as part of the overhead.

6.2.2.4 Actual costs of MATERIALS, including sales tax and delivery.

6.2.2.5 Rental costs of machinery and equipment, based on the latest "schedule of equipment rates" used by the Arizona Department of Transportation, exclusive of small tools, whether rented from CONTRACTOR or others.

6.2.2.6 Overhead and profit as specified below. "Overhead" shall include the following: Preparation of all paperwork related to changes in the WORK, including field review, estimating and cost breakdown; coordination and supervision, both office and field, including the PROJECT superintendent; vehicles, including gas and maintenance; small tools, incidentals and consumables; engineering, detailing, and revisions to shop drawings and record drawings; general office expense; extended and unabsorbed home office overhead; warranty; costs of bonds, liability insurance, and all taxes; and all other expenses not specifically included in Section 6.2.2.1

6.2.3 Upon receipt of a proposed CHANGE ORDER, CONTRACTOR shall promptly proceed with the change in the WORK and advise ENGINEER within five (5) working days of CONTRACTOR'S agreement or disagreement with the method, if any, provided in the proposed CHANGE ORDER for determining the proposed adjustment in the CONTRACT SUM or CONTRACT TIME. Failure to return the CHANGE ORDER to ENGINEER within

five (5) working days indicates CONTRACTOR'S AGREEMENT therewith, including adjustment in CONTRACT SUM and CONTRACT TIME or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a CHANGE ORDER.

6.2.4 If CONTRACTOR disagrees with the method for adjustment in the CONTRACT SUM, the adjustment shall be determined by ENGINEER on the basis of any of the methods described in Sections 6.2.1.1 through 6.2.1.4.

6.2.5 Overhead and Profit for actual cost of work performed by the Contractor and/or his Sub-Contractor, shall be determined in accordance with MAG Section 109.5. Cumulative total markup for all tiers of CONTRACTORS and SUBCONTRACTORS shall not exceed thirty percent (30%).

6.2.6 If the net value of a change results in a credit from CONTRACTOR or SUBCONTRACTOR, the credit shall be the actual net cost, plus five percent (5%) for overhead and profit. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to the change.

6.3 COST PLUS ADJUSTMENT

6.3.1 Record Keeping. In the event that the pricing method selected is the "cost plus" method described in Sections 6.2.1.3 and 6.2.1.4, CONTRACTOR shall keep and present daily, in such form as ENGINEER may prescribe, an itemized accounting together with appropriate supporting data of the labor, materials, and equipment used during that DAY. All labor shall be recorded on separate time sheets clearly identified with the CHANGE ORDER number and scope of extra work involved. These time sheets shall be signed daily by ENGINEER. No costs will be allowed for time not recorded and signed the same day the work takes place. CONTRACTOR and ENGINEER shall discuss and attempt to resolve any disputed concerning CONTRACTOR'S daily records at the time the report is submitted.

6.3.2 Reconciliation. CONTRACTOR shall on a monthly basis accompanying the progress payment request submit a reconciliation for all WORK performed under a cost plus CHANGE ORDER during the period of the progress payment. A final reconciliation shall be submitted within 30 days after the WORK of the CHANGE ORDER is completed. The reconciliation shall recap all costs and appropriate markups for the period. No costs will be allowed for work not included in a reconciliation within the time periods specified.

6.4 EFFECT ON SURETIES

6.4.1 All changes authorized by the CONTRACT DOCUMENTS may be made without notice to or consent of the sureties on the CONTRACT bonds, and shall not reduce the sureties' liability on the bonds.

6.4.2 GILBERT reserves the right to require additional payment or performance bonds to secure a CHANGE ORDER.

PART VII

GENERAL CONDITIONS

MATERIALS AND WORKMANSHIP

7.1 GENERAL

7.1.1 All equipment, MATERIALS, and articles incorporated in the WORK covered by this CONTRACT shall be new and subject to review and acceptance by ENGINEER unless otherwise specifically provided for in the CONTRACT DOCUMENTS.

7.1.2 Where equipment, MATERIALS, or articles are referred to in the SPECIFICATIONS as "or equal to" any particular standard, ENGINEER shall decide the question of equality.

7.1.3 Wherever any standard published specification is referred to, the latest edition or revision, including all amendments, shall be used unless otherwise specified. MATERIALS of a general description shall be the best of their several kinds, free from defects, and adapted to the use for which provided. The physical characteristics of all MATERIALS not particularly specified shall conform to the latest standards published by the American Society for Testing and Materials, where applicable. All material shall be new and of the specified quality and equal to the accepted samples, if samples have been submitted.

7.1.4 All WORK shall be done and completed in a thorough, workmanlike manner in conformance with the CONTRACT DOCUMENTS. ENGINEER shall have the authority to reject WORK not in conformance with the CONTRACT DOCUMENTS.

7.1.5 In the event CONTRACTOR discovers any omission from these SPECIFICATIONS or from the PLANS, it shall be the duty of CONTRACTOR to call ENGINEER'S attention to apparent errors or omissions and request instructions before proceeding with the WORK. ENGINEER shall, by appropriate instructions, correct errors and/or omissions, which instructions shall be as binding upon CONTRACTOR as though contained in the original SPECIFICATIONS or PLANS.

7.1.6 CONTRACTOR may appeal a decision of ENGINEER made pursuant to Section 7.1 to GILBERT'S REPRESENTATIVE. Such appeal must be made in writing within forty-eight (48) hours of ENGINEER'S decision or the right to appeal is waived.

7.2 SUBSTITUTION OF MATERIAL OR EQUIPMENT

Substitution of material or equipment shall only be made pursuant to Section 1.8.

7.3 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

7.3.1 Shop drawings are drawings, diagrams, schedules and other data specially prepared for the WORK by CONTRACTOR or any SUBCONTRACTOR, manufacturer, supplier or distributor

to illustrate some portion of the WORK.

7.3.2 Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by CONTRACTOR to illustrate a material, product or system for some portion of the WORK.

7.3.3 Samples are physical examples that illustrate MATERIALS, equipment or workmanship, and establish standards by which the WORK will be judged.

7.3.4 All MATERIALS to be incorporated in the WORK shall be subject to sampling, testing and acceptance. Samples furnished by CONTRACTOR shall be representative of the MATERIALS to be used. ENGINEER may select samples or may require that samples be delivered to and tested at a laboratory designated by ENGINEER at no additional cost to GILBERT.

7.3.5 CONTRACTOR shall prepare, review, approve and submit to ENGINEER, with reasonable promptness and in such sequence as to cause no delay in the WORK or in the WORK of GILBERT or any separate CONTRACTOR all shop drawings, product data and samples required by the CONTRACT DOCUMENTS. CONTRACTOR shall cooperate with ENGINEER in the coordination of the shop drawings, product data and samples with those of other separate CONTRACTORS.

7.3.6 By preparing, approving and submitting shop drawings, product data and samples, CONTRACTOR represents that CONTRACTOR has determined and verified all MATERIALS, field measurements and field construction criteria related thereto, or will do so with reasonable promptness, and has checked and coordinated the information contained within such submittals with the requirements of the WORK, the PROJECT and the CONTRACT DOCUMENTS.

7.3.7 ENGINEER will review and approve or take other appropriate action upon CONTRACTOR'S submittals such as shop drawings, product data and samples for conformance with the SPECIFICATIONS. ENGINEER'S approval of the specific item shall not indicate approval of an assembly of which the item is a component.

7.3.8 All sampling and testing of MATERIALS shall be done in accordance with the latest designated standard methods AASHTO or ASTM, or in accordance with special methods designated in the SPECIFICATIONS. CONTRACTOR shall pay for all material testing required.

7.4 MATERIALS FURNISHED BY GILBERT

All MATERIALS and/or services to be furnished by GILBERT are indicated in the SUPPLEMENTAL CONDITIONS. The cost of CONTRACTOR handling and placing GILBERT-furnished MATERIALS shall be included in the CONTRACT price.

7.5 STORAGE OF MATERIALS

7.5.1 CONTRACTOR shall provide proper storage facilities and exercise such measures as will insure the preservation of the specified quality and fitness of all MATERIALS and equipment to be used in the WORK. Stored MATERIALS shall be located so as to provide reasonable access for inspection. That portion of the right-of-way not required for public travel may be used for storage purposes unless prohibited by the other provisions of the PROJECT SPECIFICATIONS. Any additional space required shall be provided by CONTRACTOR at no cost to GILBERT. Protection of MATERIALS and equipment stored on the site shall be the responsibility of CONTRACTOR. GILBERT reserves the right to direct CONTRACTOR to provide proper means of protection for MATERIALS if such is deemed advisable by ENGINEER; however, the exercise of or failure to exercise this right shall not be deemed to relieve CONTRACTOR of his primary responsibility for protecting the material and equipment. CONTRACTOR shall provide suitable warehouses or other adequate means of protection for such of the MATERIALS and equipment as require storage or protection. CONTRACTOR shall store and care for the material and equipment in the most suitable manner to protect them from distortion, rain, dust, or other damage. Contractor shall maintain all material and equipment in accordance with the manufacturer's instructions. The cost of replacing any material or equipment damaged in storage shall be borne by CONTRACTOR, and the fact that material or equipment has been damaged after partial payment has been made shall not relieve CONTRACTOR of his primary responsibility. No motor shall be left uncovered or unprotected.

7.5.2 Payments for MATERIALS or equipment stored off the site shall be conditioned upon submission by CONTRACTOR of bills of sale to establish GILBERT'S title to such MATERIALS or equipment and certificate of insurance for storage in a bonded warehouse.

7.6 REJECTED MATERIALS AND WORK

ENGINEER shall have the authority to reject MATERIALS which do not conform to the CONTRACT DOCUMENTS. Rejected MATERIALS shall be removed immediately from the site of the WORK unless otherwise permitted by ENGINEER. No rejected MATERIALS, the defects of which have been subsequently corrected, shall be used unless accepted by ENGINEER. If CONTRACTOR fails to remove and replace rejected material, GILBERT has authority to do so and to deduct the cost thereof from any monies due or to become due CONTRACTOR.

7.7 GUARANTEE OF WORK - WARRANTY

7.7.1 CONTRACTOR warrants to GILBERT that all MATERIALS and equipment furnished under this CONTRACT will be new unless otherwise specified and that all WORK will be of good quality, free from faults and defects and in conformance with the CONTRACT DOCUMENTS. All WORK not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by GILBERT or ENGINEER, CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of MATERIALS and equipment. This warranty is not limited by any other provisions of the

CONTRACT DOCUMENTS.

7.7.2 CONTRACTOR shall promptly correct all WORK rejected as defective or as failing to conform to the CONTRACT DOCUMENTS whether observed before or after acceptance and whether or not fabricated, installed or completed. CONTRACTOR shall bear all costs of correcting such rejected WORK, including compensation for the additional services of ENGINEER made necessary thereby.

7.7.3 If, within one year after the date of final acceptance by GILBERT of all WORK required by the CONTRACT DOCUMENTS or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the CONTRACT DOCUMENTS, any of the WORK is found to be defective or not in accordance with the CONTRACT DOCUMENTS, CONTRACTOR shall correct it promptly after receipt of written notice from GILBERT to do so unless GILBERT has previously given CONTRACTOR a written acceptance of such condition. This obligation shall survive termination of the CONTRACT, but it shall in no way limit the warranty set forth in Section 7.7.1. GILBERT shall give the notice required herein promptly after discovery of the condition.

7.7.4 CONTRACTOR shall remove from the site all portions of the WORK which are defective or non-conforming and which have not been corrected unless removal is waived by GILBERT.

7.7.5 If CONTRACTOR does not proceed with the correction of such defective or non-conforming WORK within a reasonable time fixed by written notice from ENGINEER, GILBERT may remove it and may store the MATERIALS or equipment at the expense of CONTRACTOR. If CONTRACTOR does not pay the cost of such removal and storage within ten (10) working days thereafter, GILBERT may upon ten (10) additional working days written notice sell such MATERIALS and equipment at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by CONTRACTOR including, but not limited to, compensation for ENGINEER'S additional services made necessary thereby. If the proceeds of sale do not cover all such costs, the amount to be paid by GILBERT to CONTRACTOR under the CONTRACT shall be reduced by the deficiency. If payments then due to CONTRACTOR are insufficient to cover deficiency, CONTRACTOR shall pay the difference to GILBERT.

7.7.6 CONTRACTOR shall bear the costs of making good all WORK of GILBERT or separate CONTRACTORS destroyed or damaged by CONTRACTOR'S correction or removal of defective WORK.

7.7.7 Nothing contained in this Section 7.7 shall be construed to establish a period of limitation with respect to any other obligation that CONTRACTOR might have under the CONTRACT DOCUMENTS. The establishment of the time period of one year after final acceptance or such longer period of time as may be prescribed by law or by the terms of any warranty required by the CONTRACT DOCUMENTS relates only to the specific obligation of CONTRACTOR to correct the WORK and has no relationship to the time within which CONTRACTOR'S obligation to comply with the CONTRACT DOCUMENTS may be sought to be enforced. Nor the time within which proceedings may be commenced to establish CONTRACTOR'S liability with respect to CONTRACTOR'S obligations other than specifically to correct the WORK.

7.7.8 In the event it is necessary for GILBERT to file suit to enforce any liability of CONTRACTOR, GILBERT shall be entitled to recover from CONTRACTOR, a reasonable sum as and for costs and attorneys fees, in addition to all other amounts found due and owing.

7.8 NO EXERCISE OF AUTHORITY BY ENGINEER

Neither ENGINEER'S authority to act under this Part VII nor any decision made by him in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of ENGINEER to CONTRACTOR, any SUBCONTRACTOR, any of their agents or employees or any other person performing any of the WORK.

PART VIII

GENERAL CONDITIONS

LEGAL RELATIONS AND RESPONSIBILITY

8.1 LAWS TO BE OBSERVED

8.1.1 CONTRACTOR is presumed to know, and at all times shall observe and comply with, all federal and state laws and local ordinances, including but not limited to (1) Workers' Compensation, occupation diseases, and unemployment compensation laws together with the payment of all premiums and taxes therefore; (2) all laws, ordinances, and regulations in any manner affecting the conduct of the WORK; and (3) all environmental laws and regulations and shall indemnify and save harmless GILBERT and its representatives against any claim arising from the violation of such laws, bylaws, ordinances, or regulations by CONTRACTOR, SUBCONTRACTORS and their employees and agents. CONTRACTOR'S particular attention is drawn, but not limited to, the laws in paragraphs 8.2, 8.3, 8.4, 8.5 and 8.15.

8.1.2 If CONTRACTOR performs any WORK knowing it to be contrary to such laws, ordinances and regulations, CONTRACTOR shall assume full responsibility therefore and shall bear all costs attributable thereto.

8.2 HOURS OF LABOR

All CONTRACTS made by or on behalf of the State of Arizona, or any of its political subdivisions, with any person for the performance of any WORK, or the furnishing of any material manufactured within the State, shall comply with the Fair Labor Standards Act and Section 23-391, Arizona Revised Statutes, as amended.

8.3 ALIEN LABOR

A person not a legal alien, citizen or ward of the United States shall not be employed upon or in connection with any state, county or municipal works or employment; provided that nothing herein shall be construed to prevent the working of prisoners by the state or by any county or municipality thereof on street or road work or other public work.

8.4 LABOR DISCRIMINATION

8.4.1 Attention is directed to Arizona Revised Statutes, Title 41, Chapter 9, Article 4, as amended, entitled "Discrimination in Employment."

8.4.2 When federal funds are to pay a portion of the cost of this PROJECT, then the BIDDER shall also comply with applicable paragraphs in the SUPPLEMENTAL CONDITIONS.

8.5 PERMITS AND LICENSES

Except as otherwise provided in the CONTRACT DOCUMENTS, it is the duty of CONTRACTOR to procure all permits and licenses. There will be no charge to CONTRACTOR for any necessary GILBERT permits and inspections.

8.6 PATENTED DEVICES, MATERIALS, AND PROCESSES

CONTRACTOR shall indemnify and save harmless GILBERT and its duly authorized representatives from all liabilities, judgments, costs, damages and expenses which may result from the infringement of any patents, trademarks or copyrights by reason of the use of any proprietary MATERIALS, devices, equipment or processes incorporated in or used in the performance of the WORK under this CONTRACT.

8.7 SURVEY LAND MONUMENTS

Survey land monuments and property marks shall not be moved or otherwise disturbed by CONTRACTOR until an authorized agent, of the agency having jurisdiction over the land monuments or property marks setting, has witnessed or otherwise referenced their location, and only then in accordance with the requirements of the agency having jurisdiction.

8.8 PROTECTION OF PERSON AND PROPERTY

8.8.1 CONTRACTOR shall adopt every practical means and comply with all laws, ordinances and regulations in order to minimize interferences to traffic and inconveniences, discomfort and damage to the public, including the provision of adequate dust control measures. All obstructions to traffic shall be guarded.

8.8.2 If an unsafe condition arises or exists during the progress of the WORK, or if GILBERT has reason to believe that an unsafe condition exists, CONTRACTOR shall suspend the WORK wholly or in part for such period as may be necessary to correct the unsafe condition.

8.8.3 Neither CONTRACTOR nor the SUBCONTRACTOR shall trespass upon private property. CONTRACTOR shall be responsible for all injury or damage to persons or property, directly or indirectly, resulting from operations of CONTRACTOR or SUBCONTRACTORS completing this WORK.CONTRACTOR shall ensure that both CONTRACTOR and SUBCONTRACTORS comply with the laws and regulations of GILBERT, county and state relating to the safety of persons and property. CONTRACTOR will be held responsible and required to make good any injury or damage to persons or property caused by CONTRACTOR or SUBCONTRACTORS or any agent or employee of either during the progress of the WORK and until its final acceptance.

8.8.4 CONTRACTOR shall protect against injury or damage to any pipes, sewer conduits, electrical conduits, lawns, gardens, shrubbery, trees, fences or other structures or property, public and/or private, encountered in this WORK except as stipulated elsewhere herein. CONTRACTOR shall be responsible and liable for any injury or damage or repair to such pipe, structures and property.

8.9 CONSTRUCTION SAFETY PROGRAM AND REGULATIONS

The Arizona Occupational Safety and Health Act and the conditions set forth in the Occupation Safety and Health Standards (OSHA) shall constitute the outline for the safety program to be adhered to during the course of the PROJECT. CONTRACTOR shall keep a copy of these publications available at the jobsite for reference, as well as a copy of CONTRACTOR'S safety program.

8.10 PROTECTION OF ANTIQUITIES

8.10.1 Attention is called to state and federal laws pertaining to the protection and preservation of sites or objects of archaeological, paleontological or historic interest and endangered species.

8.10.2 It shall be a provision of every CONTRACT that when features of archaeological, paleontological or historic interest are encountered or unearthed in the excavation of material pits, the roadway prism, or other excavation, CONTRACTOR shall stop work in the immediate vicinity of such feature, protect it from damage or disturbance, and report promptly to the Director of the Arizona State Museum and ENGINEER. When a possible endangered or threatened species is discovered, CONTRACTOR shall stop work and report promptly to ENGINEER.

8.10.3 WORK shall not be resumed in the immediate area until CONTRACTOR is advised by the authorities having jurisdiction that study or removal of the feature or features has been completed. CONTRACTOR will be allowed an appropriate CONTRACT time extension as provided in these General Conditions for construction time lost.

8.11 CONTINGENCIES

All loss or damage arising from obstruction or difficulties which may be encountered in the prosecution of the WORK, from the action of the elements or from any act or omission on the part of CONTRACTOR, SUBCONTRACTOR or any person or agent employed by him shall be borne by CONTRACTOR.

8.12 NON-RESPONSIBILITY OF GILBERT

Indebtedness incurred for any cause in connection with this WORK must be paid by CONTRACTOR, and GILBERT is hereby relieved at all times from any indebtedness or claim other than payments under terms of the CONTRACT.

8.13 PROPERTY RIGHTS IN MATERIAL

Nothing in the CONTRACT shall be construed as vesting in CONTRACTOR any right of property in the MATERIAL used after they have been attached or affixed to the WORK or the soil and accepted. All such MATERIALS shall become the property of GILBERT upon being so attached or affixed.

8.14 PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK

CONTRACTOR shall properly guard and protect all finished or partially finished WORK, and shall be responsible for the same until that phase is completed and accepted by GILBERT. Estimate or partial payment of WORK so completed shall not release CONTRACTOR from such responsibility, but he shall turn over the entire WORK in full in accordance with the SPECIFICATIONS before final payment can be made.

8.15 ADMINISTRATIVE CLAIMS

Prior to the commencement of litigation related to payment, the WORK or the CONTRACT DOCUMENTS, CONTRACTOR shall file an Administrative Claim with GILBERT. Such Notice shall be filed within 180 DAYS of the accrual of the cause of action. Otherwise any claim by CONTRACTOR against GILBERT, its officers or employees shall be barred.

PART IX

GENERAL CONDITIONS

COMPLETION OF WORK, LIQUIDATED DAMAGES AND FINAL ACCEPTANCE

9.1 FAILURE TO COMPLETE WORK WITHIN TIME FOR COMPLETION AND LIQUIDATED DAMAGES

9.1.1 It is hereby understood and mutually agreed by and between CONTRACTOR and GILBERT, that the date of beginning, rate of progress and the time for completion of the WORK to be done hereunder are essential conditions of this CONTRACT; and it is further mutually understood and agreed that the WORK embraced in this CONTRACT shall be complete on or before the dates set forth in Section 9.2 of this CONTRACT. CONTRACTOR agrees that said WORK shall be prosecuted regularly, diligently and uninterruptedly at such rate of time he specified. It is expressly understood and agreed, by and between CONTRACTOR and GILBERT that the time for completion of the WORK shall be in the time as identified in these CONTRACT DOCUMENTS.

9.1.2 For each working day that any part of the WORK remains uncompleted after the expiration of the time specified and/or allowed for completion of the WORK stipulated in the CONTRACT or ordered after the CONTRACT is signed, the sum per day set forth in Section 9.2 shall be deducted from any monies due CONTRACTOR, or if no money is due CONTRACTOR, GILBERT shall have the right to recover said sum or sums from CONTRACTOR, from the Surety, or both.

9.1.3 It shall be understood that the time to complete the PROJECT, beyond the contractual date of completion, is in itself prima facie evidence of actual damages incurred, and the amount of these deductions are to cover the liquidated damages caused by the loss of use, or limited use, of the facility and other additional GILBERT incurred losses, or expenses, due to the failure of CONTRACTOR to complete the WORK within the time specified.

9.1.4 The liquidated damages amounts set within Section 9.2 are fixed and agreed upon by and between CONTRACTOR and GILBERT because of the impracticability and extreme difficulty of fixing and asserting the actual damages GILBERT would in such event sustain, and said amounts are agreed to be the amount of damages which GILBERT would sustain, and said amounts may be retained from time to time by GILBERT from current periodical estimates.

9.1.5 It is further agreed that time is of the essence of each and every portion of this CONTRACT and of the SPECIFICATIONS where a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the CONTRACT an additional time is allowed as set forth in Section 4.243 of these CONTRACT DOCUMENTS for the completion of any WORK, the new time limit fixed by such extension shall be of the essence of this CONTRACT.

9.1.6 CONTRACTOR shall not be assessed with liquidated damages during any delay in the completion of the WORK where an extension of time has been granted by GILBERT pursuant to Section 4.243.

9.2 COMPLETION/LIQUIDATED DAMAGES

9.2.1 Substantial Completion: The date of SUBSTANTIAL COMPLETION of the WORK, or designated portion thereof, is the date certified in writing by ENGINEER when construction is sufficiently complete, in accordance with the CONTRACT DOCUMENTS as they may have been modified by any CHANGE ORDERS agreed to by the parties, so that GILBERT may use or occupy the PROJECT, or a designated portion thereof, for the purpose for which it was intended. Certification of a designated portion of the WORK by ENGINEER as being Substantially Complete and occupancy of that portion thereafter by GILBERT shall neither release or otherwise operate to excuse CONTRACTOR from his duty to complete the remainder of the WORK within the CONTRACT TIME including liability for liquidated damages.

Time is of the essence and GILBERT will suffer financial damages due to CONTRACTOR'S failure to substantially complete the WORK within thirty (30) DAYS following receipt of the NOTICE TO PROCEED. Liquidated damages of $280 per day will be assessed CONTRACTOR for working each day beyond that time that CONTRACTOR fails to achieve SUBSTANTIAL COMPLETION.

9.2.2 Final Completion: The FINAL COMPLETION Date is the date when all items of the WORK are completely finished with no items of any scope outstanding or remaining to be completed, and all known defective work has been corrected. This is the date upon which the warranty period commences.

Time is of the essence and GILBERT will suffer financial damages due to CONTRACTOR'S failure to reach FINAL COMPLETION of the WORK within ten (10) DAYS after the date of SUBSTANTIAL COMPLETION. Liquidated damages of $280 per day will be assessed CONTRACTOR for each working day beyond that time that CONTRACTOR fails to achieve FINAL COMPLETION.

9.3 FINAL CLEANING UP

At completion of the WORK and prior to final acceptance by GILBERT, a thorough cleaning of the areas affected shall be carried out by CONTRACTOR. The following list is not inclusive, but to act as a guideline:

9.3.1 VERTICAL PROJECTS

9.3.1.1 Removal of all paint spots, stains, rubbish, debris, tools and equipment from all areas and broom clean. Steam clean all carpets and mop floors.

9.3.1.2 Cleaning interior and exterior of the buildings, including all windows in any area affected by the WORK.

9.3.1.3 Brush off, broom sweep, dust and clean ledges, stairs, doors, hardware, and any adjoining rooms or areas that were affected by the WORK.

9.3.1.4 Clear grounds and exterior paved areas and walks of all construction debris, dirt and dust and repair any SITE areas damaged during the course of construction.

Prior to final acceptance, CONTRACTOR shall conduct an inspection of sight-exposed surfaces, and all WORK areas, to verify that the entire WORK is clean. In the event CONTRACTOR fails to do so, GILBERT, may cause this WORK to be done at CONTRACTOR'S expense.

9.3.2 **HORIZONTAL PROJECTS**

9.3.2.1 Wash down, brush off, broom sweep, and clean all areas that were affected by the WORK.

9.3.2.2 Clear landscaped areas, paved areas, and walks of all construction debris, dirt and dust and repair any and all damaged which occurred during the course of construction, and post construction activities.

9.4 RECORD DRAWINGS

CONTRACTOR shall provide accurate data and field notes on red-line construction record drawings as construction progresses, for preparation of the "As-Built" drawings by ENGINEER.

9.5 COMPLETION AND INSPECTION

9.5.1 Notice of punch list inspection: When CONTRACTOR believes that the WORK is complete, it shall request in writing a punch list inspection. Within five (5) working days of the receipt of such request, ENGINEER 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 shall again request a punch list inspection. CONTRACTOR shall be present at the punch list inspection. The purpose of the punch list inspection is to determine whether the WORK has been completed in accordance with the CONTRACT DOCUMENTS, including all CHANGE ORDERS and all interpretations and instructions previously issued. If CONTRACTOR fails to attend any punch list inspection, CONTRACTOR shall be charged for the cost of ENGINEER and other design professionals who attended the punch list inspection.

9.5.2 Punch list. ENGINEER shall notify CONTRACTOR in writing of any deficiencies to be remedied prior to final acceptance, by preparing a written list, known in the industry as a punch list. CONTRACTOR shall remedy all items shown on the punch list prior to final acceptance. 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 ENGINEER. GILBERT reserves the right to require compliance with the CONTRACT DOCUMENTS, notwithstanding the issuance of a punch list or the completion by CONTRACTOR of all items on the punch list.

9.6 FINAL ACCEPTANCE

9.6.1 After all WORK under the CONTRACT DOCUMENTS has been completed, as determined by ENGINEER, including WORK found to be incomplete pursuant to Section 9.5, ENGINEER will recommend in writing to GILBERT that final acceptance of the entire WORK under this CONTRACT be made as of the date of ENGINEER'S final inspection. GILBERT will make final acceptance in writing promptly after receiving ENGINEER'S recommendation unless GILBERT has reason to believe the WORK in not ready for final acceptance.

9.6.2 Unless otherwise specified in either Section 9.2 or under SUPPLEMENTAL CONDITIONS, no partial acceptance of any portion of the WORK will be made and no acceptance other than the final acceptance to the overall completed PROJECT will be made. No inspection or acceptance pertaining to specific parts of the WORK shall be construed as final acceptance of any part until the overall final acceptance is made by GILBERT.

PART X

GENERAL CONDITIONS

PAYMENTS TO CONTRACTORS

10.1 GENERAL

10.1.1 The basis of payment for construction of a PROJECT shall be in full for all WORK actually performed in accordance with the PLANS and SPECIFICATIONS, and shall include all labor and MATERIALS incorporated in the completed WORK.

10.1.2 Application for payment shall be made on GILBERT approved payment application form and accompanied by a cover letter in a format approved by GILBERT.

10.1.3 In the event of a dispute over any amounts owed, GILBERT shall pay the undisputed amount and proceed in good faith to resolve the dispute. Pending final resolution of the dispute, CONTRACTOR shall proceed diligently with performance of the CONTRACT and GILBERT shall continue to make payments in accordance with the CONTRACT DOCUMENTS to the extent such payments are undisputed by GILBERT.

10.2 PARTIAL PAYMENT

10.2.1 Once each month GILBERT will make a partial payment to CONTRACTOR on the basis of a duly certified and approved estimate prepared by CONTRACTOR and accepted by ENGINEER for WORK completed through the last day of the preceding calendar month. If requested by the ENGINEER, CONTRACTOR shall provide supporting data substantiating its corrections. The estimate will cover the WORK performed by CONTRACTOR during the preceding calendar month plus the invoice cost of MATERIAL suitably stored at the site of the PROJECT if CONTRACTOR desires payment for MATERIAL stored. Until final completion and final acceptance, retainage from progress payments to CONTRACTOR shall be ten percent (10%) of each payment. After the CONTRACT is fifty percent (50%) complete, however, one-half of the amount retained shall be paid to CONTRACTOR and the remaining retention shall be five percent (5%) of each payment provided CONTRACTOR is making satisfactory progress on the PROJECT as determined by GILBERT; otherwise, retention shall remain at ten percent (10%). The partial payment shall be paid on or before ten (10) working days after the certified and approved estimate of the WORK is received by GILBERT.

10.2.2 Cost of MATERIAL properly stored will be based on vendors' invoices that shall be listed by CONTRACTOR. A copy of each such invoice shall accompany the first estimate in which payment is requested for MATERIAL covered by the invoice. This list shall be revised and brought up-to-date by CONTRACTOR for each estimate. The revised list shall show the total amount of each invoice, the invoice amount that has been incorporated in the WORK, and the remaining invoice amount that is stored for which payment is required that month. Only those MATERIALS that will become an integral part of the final completed PROJECT may be included for partial payment as MATERIAL stored. Partial payments for jobsite delivered

material or equipment will in no way reduce CONTRACTOR'S responsibility for such MATERIAL or equipment until it has been installed.

10.2.3 **VERTICAL PROJECTS** Schedule of Values: Not later than five (5) working days before the first Application for Payment, CONTRACTOR shall submit to ENGINEER a schedule of values reflecting, as nearly as reasonably possible, the actual values of the various components of the WORK. CONTRACTOR shall provide separate line items for CONTRACTOR'S overhead and profit, supervision, insurance, bonds, allowances, and taxes. CONTRACTOR shall prepare the Schedule of Values on a form essentially equal to AIA Document G702/G703, or other as approved by the PM/CM. If requested by ENGINEER, CONTRACTOR shall provide supporting data substantiating its correctness.

10.2.4 No partial payment shall be made until updated red-line construction record drawings are reviewed and approved by the ENGINEER, through the date for which partial payment is requested, reviewed, and determined to reflect actual WORK in place.

10.3 PAYMENT OF ITEMS IN BID

10.3.1 Only those items listed in the Bid are pay items.

10.3.2 Compensation for all WORK necessary for the completion of the PROJECT shall be included by the BIDDER in the price bid for the items shown in the Bid.

10.4 PAYMENT FOR "EXTRA WORK" AND FOR "CHANGES IN THE WORK"

Payment for changes in the WORK and for claims for extra WORK will be made as stated in Part VI of these GENERAL CONDITIONS.

10.5 ASSIGNMENT OF PAYMENTS

10.5.1 Claims for monies due or to become due CONTRACTOR may be assigned to a bank, trust company, or other financial institution, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment may be made to one (1) party as agent or trustee for two (2) or more parties participating in such financing.

10.5.2 No assignment by CONTRACTOR of any CONTRACT to be entered into hereunder, or of any part thereof, or of funds to be received thereunder by CONTRACTOR will be recognized by GILBERT unless such assignment has had prior consent of GILBERT and the surety has been given notice of such assignment in writing and has consented thereto in writing.

10.6 FINAL PAYMENT AND CONTRACT CLOSEOUT

10.6.1 When CONTRACTOR determines that the CONTRACT is complete and all items on the punch list have been satisfied, or contends that such items are not required by the CONTRACT DOCUMENTS, CONTRACTOR shall submit a request for final payment. No final payment shall be made until all WORK has been finally accepted.

10.6.2 Simultaneously with CONTRACTOR'S request for final payment, CONTRACTOR shall submit the following items to ENGINEER:

10.6.2.1 Red-line construction record drawings

10.6.2.2 Warranties

10.6.2.3 Three sets of documentation completely covering the operation and maintenance of the mechanical and electrical installation and all other equipment required by the SUPPLEMENTAL CONDITIONS to be furnished with such manuals. The documentation shall include charts, diagrams, performance curves, catalog information, lubrication manuals, and details pertaining to the functioning of various items of equipment. The documentation shall be divided logically into "systems" on the basis of operation, without respect to trades, subcontractors or arbitrary specifications sections. The relationship of the "systems" shall be clearly a concisely detailed.

10.6.3 Other items required by the SUPPLEMENTAL CONDITIONS.

10.6.4 Upon receipt of the submittals required in Section 10.6.2, ENGINEER shall prepare a written estimate of the sum due to CONTRACTOR. This estimate 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. ENGINEER 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 from the CONTRACT DOCUMENTS, and estimating the cost of correction of such deviations. ENGINEER'S statement shall be transmitted to GILBERT along with CONTRACTOR'S request for final payment. ENGINEER shall provide a copy of the statement of final inspection and ENGINEER'S estimate of the sum due to CONTRACTOR.

10.6.5 If CONTRACTOR contests the estimate of sums due prepared by ENGINEER, within five (5) working days following delivery to CONTRACTOR of ENGINEER'S estimate of the sum due, CONTRACTOR shall file its protest in writing with the GILBERT Town Clerk, setting forth in detail all grounds alleged by him to justify an adjustment to ENGINEER'S final estimate. Failure to file a protest within the five (5) working days specified above shall constitute a waiver and acceptance by CONTRACTOR of ENGINEER'S estimate.

10.6.6 Neither acceptance of, nor payment for, the WORK or any part thereof, nor any extension of time, nor any possession taken by GILBERT shall operate as a waiver of any of the provisions of the CONTRACT DOCUMENTS, nor shall a waiver of any breach of the contract be held to be a waiver of any other or subsequent breach. Acceptance by GILBERT shall not be deemed an acceptance of latent defects, nor shall it constitute a waiver of any of the provisions of the CONTRACT DOCUMENTS.

10.7 USE OF GILBERT'S ALLOWANCE

10.7.1 The CONTRACT SUM includes a GILBERT allowance which is not a part of the total bid price. This allowance is to be used at the sole discretion of GILBERT for the completion of unspecified work not covered by other bid items. Authorization for work under this bid item shall be made by the CONSTRUCTION MANAGER and GILBERT prior to the start of such work. The Allowance Authorization Form attached to these General Conditions shall be executed by the CONTRACTOR, PM/CM and GILBERT prior to start of such work.

10.7.2 When applicable unit costs from the bid schedule can be used, the CONTRACTOR shall be bound by these costs for the additional work compensated through the allowance; otherwise the cost of allowance work shall be estimated in the same manner as a change order in accordance with Section 6.2 of the General Conditions.

10.7.3 After the additional work is approved, the CONTRACTOR may invoice the cost of such work in accordance with the payment process in the General Conditions.

10.7.4 Any unused part of the GILBERT allowance shall be retained by GILBERT at the end of the project via a deductive change order.

BID FORM

FOR: TOWN OF GILBERT
50 East Civic Center Drive
Gilbert, Arizona 85296

Bid of Somerset Contracting dba Somerset Landscape

CONTRACTOR'S License No. 294494/179026/252312

A corporation organized and existing under the laws of the State of Arizona; or a partnership consisting of _____, partners; or an individual conducting business as hereinafter called the BIDDER.

TO: THE HONORABLE MAYOR AND COUNCIL
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296

The undersigned acknowledges that he has received and familiarized himself with the following:

CONTRACT DOCUMENTS
PROJECT MANUAL AND DETAILS
DRAWINGS
ADDENDA No. N/A dated _____; No. ____ dated _____
No. ____ dated _____; No. ____ dated _____
No. ____ dated _____; No. ____ dated _____

The undersigned further acknowledges that he has visited the site and has familiarized himself with local conditions affecting the cost of the WORK at the place where the WORK is to be done. The undersigned further acknowledges that if his bid is accepted he shall be bound by the terms of the CONTRACT DOCUMENTS.

In submitting this Bid, the undersigned agrees:

1. To furnish all material, labor, tools, expendable and construction equipment, and all utility and transportation services necessary to furnish and install, in a workmanlike manner, all WORK at the PROJECT listed herein in strict conformity with the Construction Documents prepared by Town of Gilbert for the consideration hereinafter set forth.

2. To hold his Bid open for not less than one hundred twenty days (120) DAYS after the receipt of Bids and to accept the provisions of the instructions to BIDDERS regarding disposition of BID SECURITY.

3. To enter into and execute a CONTRACT if awarded on the basis of this Bid within ten (10) days after AWARD of the Bid, and to furnish a PERFORMANCE BOND, a Labor & Material PAYMENT BOND and certificates of insurance in accord with the General Conditions and General Requirements of this CONTRACT and to deliver executed Bonds and Insurance Certificates to GILBERT'S representative within ten (10) DAYS following the issuance of the NOTICE OF AWARD.

4. To utilize the subcontractors and suppliers attached to this Bid Form unless authorized by GILBERT to substitute another subcontractor or supplier.

5. To achieve substantial completion and final completion within the time period stated in the CONTRACT DOCUMENTS taken from the date of NOTICE TO PROCEED or the date otherwise established for the commencement of WORK.

6. The undersigned agrees that time is of the essence and GILBERT will suffer financial damages due to CONTRACTOR'S failure to complete the WORK within the CONTRACT TIME. The liquidated damages shall be as follows for each working day beyond the CONTRACT TIME for which CONTRACTOR shall fail to complete the WORK:

Substantial completion - $_____ per working day
Final completion - $_____ per working day

7. The undersigned has attached the required BID SECURITY and other items required in the Instructions to BIDDERS. The BID SECURITY shall become the property of Town of Gilbert, Arizona, as liquidated damages for the delay and additional WORK caused thereby in the event the CONTRACT and Bonds are not executed within the time set forth above.

NAME OF BIDDER: Somerset Contracting dba Somerset Landscape

TOWN OF GILBERT
BID SCHEDULE

No.	Description	Est. Qty.	Unit	Unit Price	Extended Price
1	Remove Existing Turf	13,530	S.F.	.34	4600.20
2	Remove Existing Concrete Header	280	L.F.	3.25	910.00
3	Remove Existing Concrete Pads and Picnic Tables	1	L.S.	1890.00	1890.00
4	Existing Irrigation System Salvage/Removals	1	L.S.	1587.00	1587.00
5	Fine Grading Along Walk and Curb	1	L.S.	541.20	541.20
6	Turf Restoration/Soil (Sod at conc. pads)	202	S.F.	.75	151.50
7	Turf Restoration (By Seed)	39,544	S.F.	.28	11072.32
8	Concrete Header	510	L.F.	6.85	3493.50
9	Irrigation System	1	L.S.	7035.60	7035.60

TOTAL BID PRICE (Items 1-9 Inclusive) $ 31281.32
(In Numbers)

Thirty One thousand two hundred eighty one Dollars
(In Words)

32/100 Cents

GILBERT'S ALLOWANCE AMOUNT $0.00 (In Numbers)
Zero Dollars Zero Cents (In Words)

CONTRACT SUM (total bid price plus GILBERT'S allowance) $ 31281.32
(In Numbers)

Thirty One thousand two hundred eighty one Dollars 32/100 Cents
(In Words)

In evaluating Bids, discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

Bidders are required to fill in all blank spaces with an entry. Bids submitted with blank spaces

may be considered "Non-Responsive".

Quantities shown in this bid schedule are approximate only, and are used for the purpose of bid comparison.

In submitting this Bid, it is understood that the right to reject any and all Bids and to waive irregularities in the Bidding has been reserved by GILBERT.

The undersigned hereby certifies that the information submitted herewith, including any attachment is true to the best of his knowledge and belief.

Dated this 21 day of April, 2015

Somerset Contracting dba Somerset Landscape
Name of BIDDER (Company)

19051 S. Arizona Ave
Address of BIDDER

Chandler AZ 85286
City, State, Zip Code

480 782 5296
Area Code/Telephone Number

480 922 8200
Fax Number

Michael O'Rice Project Manager
Authorized Officer/Title

Authorized Officer Signature

(I) (We), the undersigned (Corporate Secretary) (Partners), hereby certify that the above-named Officer is hereby authorized to execute all documents relative to this bid and the administration of this bid for and on behalf of the Company named above.

_____ or
Corporate Secretary (signature)

_____
Partner Signature

_____
Partner Signature

LIST OF SUBCONTRACTORS AND SUPPLIERS
To be submitted only if requested by Gilbert after bid opening

Provide the information requested below for those subcontractors and suppliers to whom the BIDDER intends to award a Subcontract greater than or equal to one percent (1%) of the Bid amount. If the BIDDER intends to self-perform a classification of WORK for which a specialty contractor's license is required, the BIDDER shall nominate itself in the spaces provided for that purpose, and the BIDDER shall furnish the BIDDER'S contractor's license number(s) for that classification. For each subcontractor, manufacturer, supplier, person, firm and corporation, the BIDDER shall enter, if available, the telephone number and required licensing information. Failure to provide this information if requested by GILBERT will be just cause for GILBERT to declare the BIDDER'S Bid non-responsive.

WORK TO BE PERFORMED	NOMINEE	CLASSIFICATION & LICENSE NUMBER	PERCENT OF BASE BID
1.			
2.			
3.			
4.			
5.			
6.			
7.			

EQUIPMENT/MATERIAL SUPPLIER – (list supplier and material or equipment to be provided)

1. Irrigation
2. Cutting Edge
3.
4.
5.

Submitted by: Sonrise Contracting

(Bidder)

Signed By: _____

Name and Title: Michael Rice Project Manager

BID BOND
(Surety Bond)

KNOW ALL MEN BY THESE PRESENTS:

That we, Somerset Landscape LLC dba Somerset Contracting, (hereinafter "Principal"), and the U.S. Specialty Insurance Company, a corporation duly organized under the laws of the State of Texas, duly licensed in and holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, (hereinafter "Surety"), as Surety, are held and firmly bound unto Town of Gilbert, a municipal corporation as Obligee, in the sum of ten percent (10%) of the amount of the bid included in the proposal, submitted by the Principal to the Mayor and Council of Town of Gilbert, for the WORK described below, for the payment of which sum, well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, and administrators, successors and assigns, jointly and severally, firmly by these presents, and in conformance with A.R.S. § 34-201.

WHEREAS, the Principal is herewith submitting its Bid for
Morning Ridge FY 16 Landscape Improvements - Contract No.: 2015-8003-0675

PKID 07-09 - Silver Creek Road Basin Landscaping.

NOW, THEREFORE, if Town of Gilbert shall accept the Proposal of the Principal and the Principal shall enter into a CONTRACT with Town of Gilbert, in accordance with the terms of such proposal and give the Bonds and Certificates of Insurance as specified in the SPECIFICATIONS with good and sufficient surety for the faithful performance of the CONTRACT and for the prompt payment of labor and material furnished in the prosecution of the CONTRACT, or in the event of the failure of the Principal to enter into the CONTRACT and give the Bonds and Certificates of Insurance, if the Principal pays to Town of Gilbert the difference not to exceed the penalty of the bond between the amount specified in the Proposal and such larger amount for which Town of Gilbert may in good faith CONTRACT with another party to perform the WORK covered by the Proposal, then this obligation is void. Otherwise it remains in full force and effect provided, however, that this Bond is executed pursuant to the provisions of Section 34-201, Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions of the Section to the extent as if it were copied at length herein.

This Surety Bond shall not be executed by an individual surety or sureties, even if the requirements of A.R.S. Section 7-101 are satisfied.

Signed and sealed this 21 day of April, 2015.

Somerset Landscape LLC dba Somerset Contracting
Principal

Title

Witness:

U.S. Specialty Insurance Company
Surety

Witness:

Title Diane L. Arment / Attorney-in-Fact

Ted Rarrick / Witness

Address of Surety:

13403 Northwest Freeway

Houston, TX 77040-6094

* Attach Power of Attorney

POWER OF ATTORNEY

AMERICAN CONTRACTORS INDEMNITY COMPANY UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY

KNOW ALL MEN BY THESE PRESENTS: That American Contractors Indemnity Company, a California corporation, United States Surety Company, a Maryland corporation and U.S. Specialty Insurance Company, a Texas corporation (collectively, the "Companies"), do by these presents make, constitute and appoint:

Ted H. Rarrick or Diane L. Arment of Tempe Arizona

its true and lawful Attorney(s)-in-fact, each in their separate capacity if more than one is named above, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver **any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include riders, amendments, and consents of surety, providing the bond penalty does not exceed** *****Three Million***** **Dollars ($** **3,000,000.00** **).** This Power of Attorney shall expire without further action on December 08, 2016. This Power of Attorney is granted under and by authority of the following resolutions adopted by the Boards of Directors of the Companies:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings, including any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts, and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, The Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 10th day of December, 2012.

AMERICAN CONTRACTORS INDEMNITY COMPANY UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY

Corporate Seals

Daniel P. Aguilar, Vice President

State of California

County of Los Angeles SS:

On 10th day of December, 2012, before me, Vanessa Wright, a notary public, personally appeared Daniel P. Aguilar, Vice President of American Contractors Indemnity Company, United States Surety Company and U.S. Specialty Insurance Company who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Signature V. WRIGHT (Seal)

V. WRIGHT
Commission # 1998319
Notary Public - California
Los Angeles County
My Comm. Expires Dec 8, 2016

I, Jeannie Lee, Assistant Secretary of American Contractors Indemnity Company, United States Surety Company and U.S. Specialty Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Los Angeles, California this 21 day of April, 2015.

Corporate Seals

Jeannie Lee, Assistant Secretary

Bond No. Bid Bond
Agency No. 9718

AFFIDAVIT BY CONTRACTOR
CERTIFYING THAT THERE WAS
NO COLLUSION IN BIDDING FOR CONTRACT

STATE OF ARIZONA)
) ss.
Town of Gilbert)

MICHAEL RICCI
(Name of Individual)

BEING DULY SWORN, DEPOSES AND SAYS:

That he is Project Manager (Title) of Somerset Contracting (Name of Business)

That pursuant to Section 34-253 of the Arizona Revised Statutes, he certifies as follows:

That neither he nor anyone associated with the said Somerset Contracting (Name of Business) has directly, or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this PROJECT.

AND FURTHER that Contractor has not expended nor will expend any money to influence any member of the Town Council of the Town of Gilbert, a GILBERT department or a GILBERT employee in connection with the award of this Contract.

(Signature)

Project Manager
(Title)

Somerset Contracting
(Name of Business)

SUBSCRIBED AND SWORN TO BEFORE ME this 20th day of April, 2015.

Notary Public

My commission expires:

March 27, 2018

JULIE GALAN
Notary Public - Arizona
Maricopa County
My Comm. Expires Mar 27, 2018

Form No. CIP2.4.1
Construction General Conditions without CM for DBB Projects
Revised March 27, 2015

BIDDERS' QUESTIONNAIRE
[To Be Submitted With Bid]

BIDDER'S RESPONSIBILITY
SUPPLEMENTAL EVALUATION CRITERIA

Organizational Information

BIDDER: Somerset Contracting LLC dba Somerset Landscape
(Bidder's name)

Submitted by:

Name of Organization: Somerset Contracting

Name of Individual: MICHAEL RICCI

Title: Project Manager

Address: 19251 S. ARIZONA AVE
Chandler, AZ 85286

Telephone: (480) 782 5296

Bidder's General Business Information

Check If: [✓] Corporation [ ] Partnership [ ] Joint Venture [ ] Sole Proprietorship

If Corporation:

a. Date and State of Incorporation:
AZ

b. List of Executive Officers:

Name	Title
BRIAN LEMMERMAN	PRESIDENT/CEO

_____

_____

_____

If Partnership:

a. Date and State of Organization:

_____

_____

b. List of Current General Partners:

Name	Title

c. Type of Partnership:

[ ] General [ ] Publicly Traded [ ] Limited
[ ] Other (describe): _____

If Joint Venture:

a. Date and State of Organization:

_____

_____

b. Name and Address of Owner or Owners:

_____

_____

_____

_____

Is your organization a member of a controlled group of corporations as defined in IRC Sec. 1563? [ ] Yes [X] No

If yes, show names and addresses of affiliated companies:

_____

_____

_____

Furnish the following information with respect to an accredited banking institution familiar with your organization:

Name of Bank: METRO PHOENIX BANK

Address: _____

_____

Account Manager: RICHARD STRUM

Telephone Number: ( ) _____

Similar Projects
(Use Separate Sheets as needed)

Provide information for at least TWO (2) similar projects successfully completed within the last FIVE (5) years. (See Section 1.1.2.)

BIDDER: SOMERSET CONTRACTING
(Bidder's name)

a. Name of Similar Project #1: VERRADO : Victory - VERRADO WAY

b. Contracting Party (Owner):
Name: DHB
Address: 7600 E. DOUBLETREE RANCH RD #300, SCOTTSDALE 85258
Telephone Number: (____) _____

c. If Joint Venture, names of each participant:

d. Contract Price: $410,850.00

e. Description of Similar Project #1: Landscape/Irrigation/ Concrete/ Deco Walls
(Briefly describe here, and attach a copy of the description in the Contract. Technical specifications may be requested by GILBERT.)

f. Construction Manager(s) during the Similar Project #1:
Name: Michael CALHOUN
Address: 7600 E. Doubletree Ranch Rd #300, Scottsdale, AZ 85258
Telephone Number: (623) 256 8212

g. Start date (notice to proceed issued): 11/15/14

h. Completion date provided for in the Contract: 1/30/15

i. Substantial completion date (approved by Owner): 1/11/15

j. Reasons why work was completed early, or why delays occurred:
Push for grand opening

k. Final price paid by Owner for the Similar Project #1: Still Completing Changes

l. If final price was 10% less or more than the original Contract Price, describe why:

m. Describe any large cost over-runs (claims in excess of $_____) disputed or contested by the Owner, the reasons for dispute, and ultimate resolution of the dispute:
None

n. Did Owner file a lawsuit against Bidder concerning performance?
Yes _____ No _X_ If so, what was the result? _____

o. Following final payment on the Similar Project, has Bidder voluntarily or otherwise provided any additional work or repairs, or made any payments to the Owner to cure defects or fulfill warranties made to the Owner concerning the quality of the performance/or the work involved in the Similar Project? Describe:
No

p. Has your company undergone a major change in ownership, management, size, or expertise since the time of this Similar Project? Yes_____ No_____ Describe:
No

All answers should be complete and informative. Attach additional sheets if needed to give a full answer. GILBERT may in its discretion request Bidder to provide additional information concerning this Similar Project as part of its evaluation of the responsibility of the Bidder prior to award of the Contract.

Similar Projects
(Use Separate Sheets as needed)

Similar Project #2

BIDDER: Somerset Contracting
(Bidder's name)

a. Name of Similar Project #2: Veranda: Victory - Sunrise Lane

b. Contracting Party (Owner):
Name: DMB
Address: 7600 E. Doubletree Ranch Rd #300, Scottsdale AZ 85258
Telephone Number: (_____) _____

c. If Joint Venture, names of each participant:

d. Contract Price: $340,052.00

e. Description of Similar Project #2: Landscape / Irrigation
Salvage Tree
(Briefly describe here, and attach a copy of the description in the Contract. Technical specifications may be requested by GILBERT.)

f. Construction Manager(s) during the Similar Project #2:
Name: Mike Campeau
Address: 7600 E. Doubletree Ranch Rd, #300, Scottsdale, 85258
Telephone Number: (623) 256 8212

g. Start date (notice to proceed issued): 11/15/14

h. Completion date provided for in the Contract: 1/30/15

i. Substantial completion date (approved by Owner): 1/11/15

j. Reasons why work was completed early, or why delays occurred:
Push for Grand opening

k. Final price paid by Owner for the Similar Project #2: Still Completing Changes

l. If final price was 10% less or more than the original Contract Price, describe why:

_____

_____

m. Describe any large cost over-runs (claims in excess of $_____) disputed or contested by the Owner, the reasons for dispute, and ultimate resolution of the dispute:

None

_____

n. Did Owner file a lawsuit against Bidder concerning performance?
Yes _____ No X If so, what was the result? _____

_____

o. Following final payment on the Similar Project, has Bidder voluntarily or otherwise provided any additional work or repairs, or made any payments to the Owner to cure defects or fulfill warranties made to the Owner concerning the quality of the performance/or the work involved in the Similar Project? Describe:

No

_____

p. Has your company undergone a major change in ownership, management, size, or expertise since the time of this Similar Project? Yes_____ No_____ Describe:

No

_____

All answers should be complete and informative. Attach additional sheets if needed to give a full answer. GILBERT may in its discretion request Bidder to provide additional information concerning this Similar Project as part of its evaluation of the responsibility of the Bidder prior to award of the Contract

Personnel/Subcontractor Qualifications

BIDDER: Somerset Contracting
(Bidder's name)

a. List details of the construction experience of the Key Personnel (as defined in Paragraph 1.1.2 of the Contract Documents) directly involved in construction activities:

Project Manager: 25 yrs exp. Michael Rice
Superintendent: 30 yrs exp Cirilo Morales

b. Does Bidder have an adequate workforce to complete the Work if awarded the Contract? Describe, including general types of work performed with your own work force:

YES. All work performed in-house except Large Concrete & electrical

c. What additional personnel may need to be hired by Bidder as employees, if awarded the Contract?

None. Work force adequate to complete projects

d. What other major projects is Bidder currently under contract to perform? (Describe the projects, completion dates)

Verrado: Bulldozer wash - I-10 $610,000.00 Aug 2015
Verrado: Ph III S Lucas Trails $745,000.00 Sept 2015
Verrado: Ph III N Lucas Trails $422,000.00 Holding

e. Are subcontractors proposed by Bidder ready, willing, and able to perform the work? Yes X No_____. (GILBERT may request additional information concerning subcontractors' past performance, personnel, equipment, licenses, and other pending projects)

f. If proposed subcontractors are not available, how does Bidder propose to replace the subcontractors? Never have had this problem with my subcontractors

g. If Bidder requires additional or replacement personnel and/or subcontractors to complete the Work, and there is a labor shortage due to high volume of construction occurring in the Phoenix metropolitan area, is Bidder able to complete the Work on time, as required by the Contract Documents? Yes__X__ No_____. Please describe. (GILBERT does not consider mere labor shortage to qualify as force majeure.)

Somerset has sufficient labor forces to complete work on time

h. Has any corporate officer, partner, joint venture participant or proprietor ever failed to complete a construction contract awarded to him or her in their own name or when acting as a principle of another organization? Yes_____ No _X_. If yes, described circumstances: _____

Equipment

BIDDER: Somerset Contracting
(Bidder's name)

a. Does Bidder own equipment necessary to complete the work if awarded the Contract?
Explain: YES

b. Will any equipment need to be rented or leased by Bidder? Explain: YES
On as-needed basis for specialty equipment.

TOWN OF GILBERT, ARIZONA
AUTHORIZED SIGNATURE FORM

WHEREAS, the Town of Gilbert requires that CONTRACTOR execute documents necessary for the prompt and efficient execution of the documents related to the CONTRACT;

NOW, THEREFORE, on behalf of the CONTRACTOR I hereby declare that MICHAEL RICCI
(name(s) of persons authorized)

is/are authorized to execute and sign on behalf of the CONTRACTOR the following documents:

1. The CONTRACT
2. The Bond
3. Payrolls
4. Claims
5. CHANGE ORDERS
6. All other papers necessary for the conduct of the corporation's affairs and the execution of the CONTRACT

for the duration of the CONTRACT or until written notice of revocation has been given, whichever occurs first.

In the event CONTRACTOR is governed by a board of Directors, a copy of the Resolution of the Board granting authority to said person(s) is attached hereto, and I hereby verify that such Resolution remains in full force and effect

Name

CFO
Title

(Seal of Corporation)

STATE OF Arizona)
) ss.
County of Maricopa)

This Authorized Signature Form was acknowledged before me this 21st day of April, 20 15 by Jason Lamb,

who appeared before the undersigned Notary Public, and stated that he/she executed such instrument on behalf of _____ for the purpose therein expressed.

Kimberly Poulter
Notary Public

My Commission Expires:

December 22, 2015

KIMBERLY POULTER
NOTARY PUBLIC - ARIZONA
Pinal County
My Commission Expires
December 22, 2015

[IF APPLICABLE: ATTACH RESOLUTION]

PERFORMANCE BOND

STATUTORY PERFORMANCE BOND PURSUANT TO
TITLE 34, CHAPTER 2, ARTICLE 2,
OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the CONTRACT amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter "Principal"), and _____, a corporation organized and existing under the laws of the State of _____, duly licensed in and holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the department of Insurance pursuant to Title 20, Chapter 2, Article 1, (hereinafter "Surety"), as Surety are held and firmly bound unto Town of Gilbert, County of Maricopa, State of Arizona in the amount of _____ Dollars ($_____), for the payment of which, the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written CONTRACT with Town of Gilbert, entitled _____.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the CONTRACT during the original term of the CONTRACT and any extension of the CONTRACT with or without notice to the Surety, and during the life of the guaranty required under the CONTRACT, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the CONTRACT that may hereinafter be made, notice of which modifications to the Surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this Agreement.

The prevailing party in a suit on this Bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

This Bond shall not be executed by an individual surety or sureties, even if the requirements of A.R.S. Section 7-101 are satisfied.

Witness our hands this _____ day of _____, 20___.

_____
PRINCIPAL SEAL

By_____

_____
SURETY SEAL

By _____

Address of Surety:

_____

_____

_____
AGENT OF RECORD

_____
AGENT ADDRESS

* attach Power of Attorney

LABOR AND MATERIALS BOND

STATUTORY PAYMENT BOND PURSUANT TO
TITLE 34, CHAPTER 2, ARTICLE 2,
OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the CONTRACT amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter "Principal"), as Principal and _____, a corporation organized and existing under the laws of the State of _____, duly licensed in and holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, (hereinafter "Surety"), as Surety are held and firmly bound unto Town of Gilbert, County of Maricopa, State of Arizona in the amount of _____ Dollars ($_____), for the payment of which the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written CONTRACT with Town of Gilbert, entitled _____.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all monies due to all persons supplying labor or MATERIALS to the Principal or the Principal's SUBCONTRACTORS in the prosecution of the WORK provided for in the CONTRACT, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this Agreement.

The prevailing party in a suit on this Bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

This Bond shall not be executed by an individual surety or sureties, even if the requirements of A.R.S. Section 7-101 are satisfied.

Witness our hands this _____ day of _____, 20___.

_____
PRINCIPAL SEAL

By _____

_____
SURETY SEAL

By _____

Address of Surety:

_____

_____

_____
AGENT OF RECORD

_____
AGENT ADDRESS

* Attach Power of Attorney

NOTICE TO PROCEED

DATE:

TO:

Subject: NOTICE TO PROCEED AND RETURN OF EXECUTED CONTRACT
Project Name:

Contract No.:	Project Number:
Contract Amount: $	Liquidated Damages: $ __/day
Effective Date:	Substantial Completion Date:
P.O. Number:	Final Completion Date:
Council Approval:	Item Number:

This letter serves as _____, NOTICE TO PROCEED with performance of the above-referenced project contract.

A fully executed and approved copy of the contract and the project's purchase order are enclosed for your files. Also attached is a Notice-to-Proceed CD containing forms required for project completion and a Purchase order. Please indicate the above-referenced contract number and project number on all correspondence. Failure to do so may cause unnecessary delays.

When submitting payment requests, the following information is needed:

1. Cover Letter transmitting the Pay Application, an updated cash flow, updated schedule and a summary of the project status.
2. A completed "Application and Certification for Payment", on approved GILBERT format.
3. A clear, detailed billing invoice, indicating the Contract Number, Project Number and Purchase Order Number referenced above.

If you have any questions please contact Capital Projects at (480) 503-____.

Sincerely,

Capital Projects Program Manager

ACCEPTANCE OF NOTICE

Receipt of the foregoing NOTICE TO PROCEED is hereby acknowledged by _____, this ____ day of _____, 20__.

By _____

Title _____

CHANGE ORDER NO. _____
(Contractor)

PROJECT:
DATE:
OWNER: Town of Gilbert
PROJECT NO:
CONTRACT NO:
CONTRACTOR:
CONTRACT DATED:
PM/CM (Name)

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:

PM/CM _____
(Name) (Date)

CONTRACTOR: _____
(Name) (Date)

GILBERT: _____
(Name) (Date)

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

Contractor agrees that the adjustment of the Contract Price and Contract Time reflected in this Change Order represents the entire and complete adjustment of the Contract Price and Contract Time for the changes set forth in this Change Order. The adjustment of the Contract Price includes all direct costs of labor materials, services and equipment to complete such changes as well as any and all indirect costs of impacts, delays, interference or hindrances in performing, providing and completing the changes set forth in this Change Order. The adjustment of the Contract Time includes all adjustments of time necessary to perform, provide and complete the changes set forth in this Change Order and any and all impacts, delays, interference or hindrances in performing, providing and completing the changes.

TOWN OF GILBERT, ARIZONA
CONTRACTOR'S AFFIDAVIT
REGARDING SETTLEMENT OF CLAIMS

PROJECT _____
_____

To Town of Gilbert, Arizona
Building Department:

The undersigned hereby certifies that (1) all lawful claims for MATERIALS, rental of equipment and labor used in connection with the construction of the above PROJECT, whether by SUBCONTRACTOR or claimant in person, have been duly discharged; and (2) to the best of undersigned's knowledge, there are not any disputed or unresolved claims of any type for MATERIALS, equipment or labor in connection with this PROJECT.

The undersigned, for the consideration of $_____, as set out in the final pay estimate, as full and complete payment under the terms of the CONTRACT, hereby waives and relinquishes any and all further claims or right of lien under, in connection with, or as a result of the above-described PROJECT. The undersigned further agrees to indemnify and save harmless Town of Gilbert against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever, which said GILBERT may suffer arising out of the failure of the undersigned to pay for all labor performance and MATERIALS furnished for the performance of said installation.

Signed and dated at _____, this _____ day of _____, 20____.

_____
CONTRACTOR
By _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was subscribed and sworn to before me this ____ day of _____, 20____.

_____
Notary Public

My Commission Expires:

_____

SUPPLEMENTAL CONDITIONS

1. A CONTRACT shall be awarded to the lowest responsible, responsive bidder. Contract award is currently scheduled for June 2015. In no case shall a NOTICE TO PROCEED be issued before July 1, 2015. Additionally, GILBERT reserves the right to issue a NOTICE TO PROCEED such that the PROJECT will begin in the fall or spring seasons which are optimal for landscape planting.

TECHNICAL SPECIFICATIONS

Morning Ridge FY15-16 Improvements March 2015

Improvements are being installed in phases. Only FY15-16 improvements are included in this bid package. Phasing limits in large part are determined by irrigation system layout. There may be some overlap in phasing areas depending on locations of water meters and controllers, in order to provide irrigation to new improvements while maintaining irrigation service to existing areas designated for improvements under future phases. Locations, layouts, and condition of existing irrigation systems as it interfaces with FY15-16 work will need to be field verified.

Description of FY15-16 work for Morning Ridge (PKID #07-9) follows.

Morning Ridge FY15-16 Landscape and Irrigation Improvements

General description: Landscape planting, turf and irrigation for the Park/ Basin area on E. Silver Creek Road as shown on the plans. The Town reserves the right to reduce the scope of work or eliminate some items in this contract.

Work includes:

- Preservation and protection of existing plantings, irrigation system, pavements, walls, or other structures to remain.
- Restoration of all pavements, curbs, walls, structures, landscaping, irrigation, rock ground cover and other surfaces or features to remain which are disturbed as a result of work under this project phase.
- Maintaining existing irrigation service to areas improved under other phases and existing areas to remain.
- Removal of existing turf as shown and noted on plans not indicated to remain.
- Fine grading /excavation along the edge of the walk and curb to allow for granite installation. Any excavated material shall be uniformly spread to blend in adjacent landscape areas or used for repair of erosion damage as applicable. No import soil is required.
- Remove existing concrete header as noted on plans.
- Protect in place existing concrete header, drip irrigation and shrubs to remain.
- Install new concrete header per details and as shown on plans. Layout to be approved by Town of Gilbert representative before installation.
- Relocate and install decomposed granite in landscape area as noted to provide a 2” minimum depth in landscape planting areas and 1” below curbs or adjacent pavement.
- Abandonment of the portions of the existing irrigation system no longer in use in this phase of improvements. At grade or above grade components to be removed/ salvaged as noted on plans. Below grade components can be abandoned in place providing there is no conflict with new improvements.
- Maintain/restore connections to portions of the existing irrigation system to remain or improved under other phases.
- Unless otherwise noted or approved, all extra materials, debris, or materials removed as part of work under this project and not intended for reuse shall be disposed legally offsite.

- Using the existing water meter and backflow preventer, install new irrigation for the landscaping in this FY15-16 phase of work including but not limited to a new controller, mainline, valve assemblies, wiring, lateral piping, drip irrigation emitters and turf spray heads as indicated on plans.

CONSTRUCTION SERVICES CONTRACT
FY16 PKID Cassia Place

Project: **Cassia Place FY16 Landscape Improvements**
Contract No.: **2015-8003-0676**
Date: **March 31, 2015**

CONSTRUCTION SERVICES CONTRACT
FOR DESIGN-BID-BUILD (DBB) PROJECT

THIS CONTRACT, made and entered into this _____ day of _____, 20_____, by and between the Town of Gilbert, Arizona, a municipal corporation organized and existing under and by virtue of the laws of the State of Arizona, hereinafter designated "GILBERT" and Somerset Contracting, a limited liability corporation, hereinafter designated the "CONTRACTOR."

GILBERT and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

1.0 CONSTRUCTION SERVICES

1.1 CONTRACTOR shall complete all work as specified or indicated in the Contract Documents. The work is known as and is hereinafter referred to as the Cassia Place FY 16 Landscape Improvements Project and is generally described as follows: Landscape and irrigation improvements in the Red Rock Street basin in accordance with the Contract Documents. The full scope of work is described in detail in the Contract Documents.

1.2 CONTRACTOR shall complete, provide and perform, or cause to be performed, all work in a proper and workmanlike manner, with appropriate consideration for public safety and convenience, consistent with the highest standards of professional and construction practices and in full compliance with, and as required by or pursuant to, this Contract, and with the greatest economy, efficiency, and expediency consistent therewith all as more particularly described in the Contract Documents.

2.0 CONTRACT TIME

2.1 CONTRACTOR shall submit to GILBERT, on or before the effective date of this Contract, a Critical Path Method (CPM) Construction Progress Schedule in Primavera compatible format, resource and cost loaded, indicating the times for starting and completing the various stages of the Work, including any Milestones specified in this Contract and as more fully described in the General Conditions and other Contract Documents. Revisions/updates to the CPM schedule shall be submitted to accurately reflect plans for completion of the work, but no less frequently than monthly.

2.2 Time is of the Essence. All of the time limits for Milestones, if any, for Substantial Completion and for Final Completion and readiness for final payments as stated in the Contract Documents, are of the essence for the Contract.

2.3 The Work shall be substantially complete within 30 working days after the date when the Contract Times commence to run as provided in the Notice to Proceed, and all Work shall be finally completed and ready for final payment in accordance with the Notice to Proceed within 40 working days after the date when the Contract Times commences to run.

2.4 Failure of CONTRACTOR to perform any covenant or condition contained in the Contract Documents within the time periods specified herein, shall constitute a material breach of this Contract entitling GILBERT to terminate the Contract unless CONTRACTOR applies for and receives an extension of time, in accordance with the procedures set forth in the Contract Documents.

2.5 Failure of GILBERT to insist upon the performance of any covenant or condition within the time periods specified herein, shall not constitute a waiver of CONTRACTOR'S duty to perform every other covenant or condition within the designated periods, unless a specific waiver is granted in writing for each such covenant or condition.

2.6 GILBERT's agreement to waive a specific time provision or to extend the time for performance shall not constitute a waiver of any other time provisions contained in the Contract Documents. Failure of CONTRACTOR to complete performance promptly within the additional time authorized in the waiver or extension of time agreement shall constitute a material breach of this Contract entitling GILBERT to all the remedies set forth herein or provided by law.

3.0 LIQUIDATED AND SPECIAL DAMAGES

3.1 It is hereby agreed that the amounts per day set forth herein in paragraph 3.1.1 are reasonable estimates of such liquidated damages and that said amounts do in fact bear a reasonable relationship to the damage that would be sustained by GILBERT, and CONTRACTOR agrees to pay such liquidated damages as herein provided.

3.1.1 GILBERT and CONTRACTOR recognize that time is of the essence for this Contract and that GILBERT will suffer financial loss, in addition to and apart from the costs described in Paragraph 3.2, if the Work and/or portions of the Work are not performed and completed within the times specified, plus any extensions thereof allowed in accordance within the Contract Documents. GILBERT and CONTRACTOR also recognize the delays, expense, and difficulties involved in proving, through legal or arbitration proceedings, the actual loss suffered by GILBERT if the Work or portion of the Work is not completed on time. Accordingly, instead of requiring any such proof, GILBERT and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay GILBERT liquidated damages per MAG Section 108.9 for each working day that expires after the time specified for substantial completion, until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by GILBERT, CONTRACTOR shall pay GILBERT liquidated damages per MAG Section 108.9 for each working day that expires after the time specified for Final Completion and readiness for final payment.

3.2 Special Damages: In addition to the amounts provided for liquidated damages, CONTRACTOR shall pay GILBERT the actual costs reasonably incurred by GILBERT for GILBERT's PM/CM, if applicable, the Project Engineer and for engineering and inspection forces employed on the Work for each working day that expires after the time specified for Final Completion, including any extensions thereof made in accordance with the Contract Documents, until the Work is finally complete. The rate for inspection services for this contract is $150.00 per hour. The rate for the work by the Project Engineer for this Contract is $ 150.00 per hour. The rate for work by GILBERT PM/CM, if applicable, is $ 150.00 per hour. Each of these hourly rates is calculated at time and one half for work required to be performed during other than normal business hours.

3.3 GILBERT may withhold and deduct from any payment due to CONTRACTOR the amount of liquidated damages, special damages, and other costs, such as CONTRACTOR'S failed testing costs or damages to other GILBERT property, from any moneys due CONTRACTOR under the Contract.

4.0 CONTRACT PRICE

GILBERT shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents, an amount in current funds not to exceed the sum of fifteen thousand four hundred thirty five dollars and sixty cents ($15,435.60) as more specifically set forth in CONTRACTOR'S bid, and any additional amounts agreed to pursuant to valid CHANGE ORDER, approved by GILBERT.

5.0 CONTRACT DOCUMENTS

The following documents are pertinent to the Project:

5.1 This Contract (pages 1 to 7, inclusive).

5.2 Addenda consisting of Numbers N/A to N/A inclusive.

5.3 The project Specifications dated N/A entitled N/A Project.

5.4 The project Drawings comprised of a set entitled Parkway Improvement District 07-11 Cassia Place and dated 2/28/15.

5.5 Performance Bond (page F-1 to F-2) and Payment Bond (page G-1 to G-2).

5.6 The approved CPM Construction Schedule dated N/A.

5.7 The project General Conditions (pages 1 to 102, inclusive).

5.8 The project Supplementary Conditions (pages N/A to N/A) inclusive.

5.9 Notice to Proceed dated _____.

5.10 CONTRACTOR'S List of Subcontractors (pages A-6 to A-7) inclusive.

5.11 CONTRACTOR'S Schedule of Manufacturers and Suppliers of Major Equipment and Material Items (page A-6).

5.12 The following which may be delivered or issued after the Effective Date of this Contract and are not attached hereto:

A. Written Attachments
B. Work Change Directives
C. Change Order(s)

6.0 MISCELLANEOUS

6.1 This Agreement shall inure to the benefit of, and shall be binding upon GILBERT and CONTRACTOR and their respective successors and assigns.

6.2 This Agreement may not be amended or any of its terms modified without the written consent of GILBERT and CONTRACTOR.

6.3 This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

6.4 This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

6.5 CONTRACTOR agrees he is an independent contractor and not an agent or employee of GILBERT. CONTRACTOR shall supervise and direct the WORK to be done, using his best skill and attention. CONTRACTOR shall be solely responsible for all construction means, methods, techniques, sequences, procedures and for coordinating all portions of the WORK, required by the CONTRACT DOCUMENTS. CONTRACTOR shall be responsible to GILBERT for the acts and omissions of his employees, SUBCONTRACTORS and their agents and employees, and other persons performing any of the WORK under any CONTRACT DOCUMENTS.

6.6 Should litigation be necessary to enforce any term or provision of this CONTRACT, or to collect any damages claimed or portion of the amount payable under this CONTRACT, then all litigation and collection expenses, witness fees, court costs, and attorney's fees shall be paid to the prevailing party. Nothing herein shall preclude non-binding arbitration if they so elect in the event of a dispute hereunder.

6.7 Under Section 38-511, Arizona Revised Statutes, as amended, GILBERT may cancel any CONTRACT it is a party to within three years after its execution and without penalty or further obligation, if any person significantly involved in 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 elects to exercise its rights under Section 38-511, Arizona Revised Statutes, as amended, GILBERT agrees to immediately give notice thereof to CONTRACTOR.

6.8 All notices and demands required or permitted by this CONTRACT shall be in writing and shall be deemed to have been given or properly served when (1) sent by Certified Mail (postage fully prepaid) to the respective address below or to such other address as may be furnished by either party pursuant to this Section; (2) delivered personally to the authorized representative of the parties to this CONTRACT; or (3) if given by telefacsimile, when addressed and transmitted to the respective telefacsimile number as specified below or to such other address or telefacsimile number as may be furnished by either party to the other pursuant to this Section, and the appropriate confirmation of transmittal is received. Any party giving notice or demand by telefacsimile immediately shall send the other party a copy of such notice or demand by Certified Mail (postage fully prepaid) to the respective address below or to such other address as may be furnished by either party pursuant to this Section.

GILBERT:	CONTRACTOR:
Kenneth Morgan, P.E. Public Works Director/Interim Town Engineer Town of Gilbert 50 East Civic Center Drive Gilbert, Arizona 85296	Michael Ricci Project Manager Somerset Contracting 19051 South Arizona Avenue Chandler, Arizona 85286

6.9 No amendment or waiver of any provision of these CONTRACT DOCUMENTS nor consent to any departure by GILBERT shall be effective unless the same shall be in writing and signed by GILBERT. Such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

6.10 No waiver by GILBERT of any default or breach by CONTRACTOR shall be deemed to be or constitute a waiver of any other or subsequent default or breach. GILBERT specifically reserves and shall have all rights and remedies available to it under the provisions of the CONTRACT DOCUMENTS.

6.11 <u>Immigration Law Compliance Warranty</u>:

6.11.1 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.

6.11.2 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.

6.11.3 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. 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).

6.11.4 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.

6.11.5 If state law is amended, the parties may modify this paragraph consistent with state law.

6.12 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 the WORK. 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 form or based on the violation of such, whether by CONTRACTOR or its employees.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day and year first written above.

TOWN OF GILBERT

By: _____
Doug Boyer, CPM
Purchasing Administrator

ATTEST:

_____
Catherine A. Templeton, CMC
Town Clerk

APPROVED AS TO FORM:

_____
Susan Goodwin
Curtis, Goodwin, Sullivan, Udall & Schwab, PLC
Special Counsel

CONTRACTOR

_____

By:_____

Title:_____

TOWN OF GILBERT

CONSTRUCTION GENERAL CONDITIONS

For

Project Name: Cassia Place FY16 Landscape Improvements
Contract No: 2015-8003-0676
Date: March 31, 2015

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PART I

GENERAL CONDITIONS

INFORMATION FOR BIDDERS AND BIDDING REQUIREMENTS

1.1 ELIGIBILITY AND PREFERENCE

Contracting with CONTRACTORS and SUBCONTRACTORS under the CONTRACT DOCUMENTS shall be governed by the provisions of Title 34 of the Arizona Revised Statutes, as amended.

1.1.2 Eligibility of CONTRACTOR

1.1.2.1 The BIDDER must have a minimum of five (5) years' experience in similar projects. A "similar project" is one that is similar in both nature and scope to this PROJECT. At least two (2) of the BIDDER'S Key Personnel must have a minimum of three (3) years' experience in similar projects. The BIDDER must demonstrate successful completion of at least two (2) similar projects, one of which must have a dollar value of at least seventy-five percent (75%) of the total bid for this PROJECT as set forth in the Bid Schedule, both within the past five (5) years. Total bid price does not include any GILBERT allowances identified. The BIDDER must demonstrate that it has an experienced employee who will serve as the scheduler, who is dedicated to this PROJECT, and who has successfully employed scheduling techniques appropriate for this PROJECT. "Key Personnel" is defined as individuals who will be directly assigned to this PROJECT and includes, but is not limited to, the owner, the Principals of the BIDDER, the Project Manager, the Project Superintendent, the scheduler, the BIDDER'S construction engineer, and supervisory personnel such as the foremen who will be directly assigned to this PROJECT. Resumes of Key Personnel shall be submitted upon request by GILBERT. "Successful completion" means completion of a project within the established schedule and budget.

1.1.2.2 **If requested by GILBERT**, the three apparent lowest BIDDERS shall submit the following documentation for GILBERT'S review and GILBERT may base its award of a CONTRACT on the information submitted:

A. Evidence of loss history and underwriting criteria

B. BIDDER'S safety program, including Experience Modifier (EMR)

C. List of SUBCONTRACTORS

D. CPA certified audits for the past three fiscal years of operations

E. List of references

F. Similar documents deemed necessary by GILBERT

The documents shall be submitted to GILBERT no later than 72 hours

following the request of GILBERT.

1.1.2.3 GILBERT may also conduct any investigation it deems necessary to determine the BIDDER'S ability to perform the WORK required by the CONTRACT DOCUMENTS. The purpose for requiring these documents is to assist GILBERT in evaluating the ability of a potential CONTRACTOR to perform the WORK in accordance with the CONTRACT DOCUMENTS in a safe manner.

1.1.2.4 References provided by CONTRACTOR are an integral part of BIDDER'S qualifications. References must be accurate. BIDDER authorizes GILBERT'S representative to verify any and all information from references contained herein and hereby releases all those concerned providing information as a reference from any liability in connection with any information they give.

1.2 PRE-BID CONFERENCE

A pre-bid conference will be held on April 13, 2015 at 4:00 p.m. in Room 300, Gilbert Municipal Center, 50 East Civic Center Drive, Gilbert, Arizona 85296. It is highly recommended that BIDDERS, CONTRACTORS, and other interested parties attend this conference that will be conducted by GILBERT to answer questions. BIDDER responsibility issues will be discussed, along with PROJECT requirements.

1.3 SUBMITTING BIDS

Bids to receive consideration shall be made in accordance with the following instructions:

1.3.1 Before submitting a bid, BIDDERS shall carefully examine the PLANS, read the SPECIFICATIONS and all other CONTRACT DOCUMENTS, visit the site of the WORK, fully inform themselves as to all existing conditions and limitations, and shall include sums in the bid covering the cost of each item included in the CONTRACT.

1.3.2 BIDDER shall include in the CONTRACT SUM all applicable taxes, permit fees and other costs to BIDDER.

1.3.3 BIDDER shall include in the total bid price all CONTRACTOR's allowances stated in the BID SCHEDULE of the CONTRACT DOCUMENTS.

Any required allowances are set forth in the BID SCHEDULE. Unless otherwise provided in the CONTRACT DOCUMENTS:

1.3.3.1 Allowances shall cover the cost to the CONTRACTOR (less any applicable trade discount) of the MATERIALS including equipment required by the allowance, delivered at the site, and all applicable taxes, overhead, profit handling and other General Condition costs, unless Bid Unit Rates are available in the Bid Schedule. Unit Bid Rates from the Bid Schedule shall be used to determine the cost of a change to be paid from an Allowance, when applicable.

1.3.3.2 Any remaining Allowance Amount shall be returned to GILBERT at the end of the

project by deductive change order.

1.3.3.3 Whenever the cost is more or less than the allowance, the CONTRACT PRICE shall be adjusted accordingly by CHANGE ORDER, the amount of which will recognize changes, if any, overhead, profit and other expenses.

1.3.4 Lump Sum and Unit Prices bid shall include overhead, profit, taxes, handling and other General Condition costs.

1.3.5 No bid will be considered unless it is made upon the bid forms contained in the book of CONTRACT DOCUMENTS. No bid shall be considered which is deemed as an irregular bid or which fails to conform in all material respects to the PLANS, SPECIFICATIONS and CONTRACT DOCUMENTS. Bids may be deemed irregular and may be considered non-responsive for any of the following reasons:

1.3.5.1 If the bid is on a form other than that furnished by GILBERT or if the form is altered.

1.3.5.2 If the BIDDER does not supply, or has improper or inadequate state contractor's license(s), to perform the WORK.

1.3.5.3 If there are unauthorized additions, statements, interlineations, alterations, conditional or alternate bids or other irregularities of any kind.

1.3.5.4 If the BIDDER adds any provisions reserving the right to accept or reject an AWARD or to enter into a CONTRACT pursuant to an AWARD.

1.3.5.5 If the BIDDER fails to submit any document listed in Section 1.3.1.10 or, when requested, the BIDDER fails to submit any documents or information pursuant to Sections 1.1.2 and 1.1.2.2.

1.3.5.6 If numbers are not stated both in writing and in figures where so required. In case of a difference in written words and figures in a bid, the amount stated in written words shall govern unless obviously in error.

1.3.5.7 If the bid contains a summary or restatement of the WORK to be done.

1.3.6 No oral or telephonic bids will be considered.

1.3.7 Bids shall be delivered to the office of Town Clerk, 50 East Civic Center Drive, Gilbert, Arizona on or before the day and hour set for the opening of bids in the Notice and Call for Bids as published. Bids shall be submitted in a sealed envelope, which shall be marked as indicated in the Notice and Call for Bids. It is the <u>sole</u> responsibility of the BIDDER to see that his bid is received in proper time. Any bids received after the scheduled closing time for receipt of bids will be returned to the BIDDER unopened.

1.3.8 Each and every provision of law and clause required by law to be inserted in the CONTRACT shall be deemed to be inserted so that the CONTRACT shall be read and enforced as though it were included therein.

1.3.9 BIDDERS shall familiarize themselves with the provisions of the laws, codes and regulations

of the State of Arizona, Maricopa County, local agencies and municipalities that have jurisdiction at the location of the SITE. CONTRACTORS shall comply with, and require all SUBCONTRACTORS to comply with, all state and local contractor's license laws.

1.3.10 **BID SUBMITTAL: The following documents shall be submitted with the bid:**

A. Completed and signed Bid Forms

B. Bid Bond

C. No Collusion Affidavit

D. Authorized Signature Form

E. Bidder's Questionnaire

F. Copy(s) of Bidder's State of Arizona Contractor's License(s).

1.3.11 Bids must remain valid for 120 days following bid opening.

1.4 BID SECURITY

Each bid shall be accompanied by a certified check, cashier's check or bid bond from a surety company holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1 of the Arizona Revised Statutes, and any amendments thereto. The bonds shall be made payable and acceptable to GILBERT. The bid bond shall be for an amount equal to at least ten percent (10%) of the bid, payable without condition to GILBERT as a guarantee that the BIDDER, if awarded the CONTRACT, will promptly execute such CONTRACT in accordance with the bid and in manner and form required by these CONTRACT DOCUMENTS and will furnish good and sufficient bond for the faithful performance of the same. The surety bond shall not be executed by an individual surety or sureties. The check or bid bond of the successful BIDDER will be retained until the CONTRACT is signed and satisfactory bonds and certificates of insurance furnished, or other disposition made thereof. The check or bid bond of the BIDDERS whose proposal are not accepted by the Town of Gilbert Council will be returned promptly.

1.5 SPECIAL NOTICE

BIDDERS are required to inform themselves fully of the conditions relating to construction and labor under which the WORK will be or is now being performed.

1.6 WITHDRAWAL OF BID

Any BIDDER may withdraw or revise his bid by telegraphic or written request (but not electronic mail), at any time prior to the expiration of the time for the opening of bids as set forth in the Notice and Call for Bids. Any withdrawal or revision must be done on a copy of the bid form and must be signed by the person indicated on the Authorized Signature Form.

1.7 INTERPRETATION OF PLANS AND DOCUMENTS

1.7.1 If any person contemplating submitting a bid for the proposed WORK is in doubt as to the true meaning of any part of the PLANS, SPECIFICATIONS or other CONTRACT DOCUMENTS, or finds discrepancies in or omissions from the PLANS or SPECIFICATIONS, he may submit to Brian Border via email (Brian.Border@gilbertaz.gov) a written request for an interpretation or correction thereof. The request must be made via email and delivered to Brian Border **by 6:00 pm on April 15, 2015**. Any interpretation or correction of the CONTRACT DOCUMENTS will be made only by ADDENDUM. A copy of such ADDENDUM will be posted on the Town of Gilbert website. CONTRACTOR is responsible for acknowledging all ADDENDA in his bid. GILBERT will not be responsible for any other explanations or interpretations of the CONTRACT DOCUMENTS.

1.7.2 Should conflicts occur in or between Drawings and SPECIFICATIONS, CONTRACTOR is deemed to have estimated the more expensive of the two unless he has asked for and obtained a written decision as required in Section 1.7.1 before submission of his bid as to which method or MATERIALS will be required.

1.8 SUBSTITUTION OF MATERIAL OR EQUIPMENT

1.8.1 Where an item or MATERIAL is specified by a trade or manufacturer's name, it is done for the purpose of establishing a basis of quality, and not for the purpose of limiting competition. ENGINEER'S intent is to consider alternative products which have the desired essential characteristics. ENGINEER will consider any such product offered. Requests for approval of alternative products shall be made through BIDDERS bidding as prime contractors. No approvals for substitutions will be granted directly to suppliers, distributors, or subcontractors. Pursuant to A.R.S. § 34-104-C, the following procedures will be used:

1.8.1.2 BIDDERS desiring to submit alternative product proposals for prior approval of ENGINEER shall submit such proposals to ENGINEER at least eight (8) working days prior to the original deadline for receiving bids, or any published extension thereof. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute, including drawings, cuts, performance and test data, and any other information necessary for an evaluation. A statement setting forth any changes in other MATERIALS, equipment or other work that incorporation of the substitute would require shall be included. ENGINEER will consider such request and either approve or reject all alternative product proposals submitted.

If, by the close of the fifth day prior to the deadline for receiving bids, ENGINEER has approved any alternative product proposals, the BIDDING DOCUMENTS shall be modified to include the alternative products. ENGINEER shall publish the modification in the same manner as the original BIDDING DOCUMENTS at least five days prior to the deadline for receiving bids. ENGINEER'S decision of approval or disapproval of a proposed substitute shall be final. After the AWARD of CONTRACT, the equivalency evaluations conducted during the bidding period may be reviewed by appointment with ENGINEER.

1.8.2 Whenever an item of MATERIAL or piece of equipment is specified with at least two named manufactures and is followed by the words "No other manufacturers will be considered", only the listed manufacturers will be considered by GILBERT and ENGINEER.

1.8.3 Whenever an item of MATERIAL or piece of equipment is specified with a named manufacturer, an "or equal" manufacturer shall apply whether the term "or equal" is listed or not listed within the SPECIFICATIONS.

1.9 ADDENDA

Any ADDENDA issued during the time of bidding, shall become a part of the documents used by the BIDDER for the preparation of his bid, shall be covered by the bid and shall be made a part of the CONTRACT DOCUMENTS. It is the sole responsibility of the BIDDER to ensure that they have received and reviewed all ADDENDA, and that receipt of such ADDENDA is duly acknowledged on the Bid Form.

1.10 AWARD OR REJECTION OF BIDS

1.10.1 The CONTRACT will be awarded to the lowest responsible BIDDER determined from the Base Bid, plus any combination of Bid Alternates that GILBERT may select, which comply with these instructions and with the Notice and Call for Bids. GILBERT, however, reserves the right to accept or reject any or all bids, to waive any informality or irregularity in the bids received or to withhold the AWARD for any reason GILBERT determines. Bids will be received until the time and date designated in the Notice and Call for Bids. Bids received after the designated time set will be returned to the BIDDERS unopened.

1.10.2 Bids shall be opened in public and the amount of the bid read aloud. After the bid opening, GILBERT shall analyze the bids and notify all BIDDERS of the name of the apparent low bidder or (2) if the analysis results in a recommendation to award the CONTRACT to a BIDDER other than the apparent low BIDDER, the BIDDER who's recommended for award of the CONTRACT. This will be done by issuing a Notice of Apparent Lowest Responsible Bidder. Such notice shall be given at least four (4) days prior to the date set for the AWARD of the CONTRACT.

1.11 BIDDERS INTERESTED IN MORE THAN ONE BID

No person, firm, or corporation shall be allowed to make, file or to be interested in more than one (1) bid for the same WORK unless alternate bids are called for. A person, firm, or corporation who has submitted a subproposal to a BIDDER, or who quoted prices on MATERIALS to a BIDDER, is not thereby disqualified from submitting a subproposal or quoting prices to other BIDDERS, but must quote the same subproposal or price to all BIDDERS.

1.12 CONTRACT AND BONDS

1.12.1 The successful BIDDER shall execute and deliver a CONTRACT in the prescribed form and

shall furnish the required bonds within ten (10) days after issuance of a written Notice of Award or his BID SECURITY shall be forfeited as provided elsewhere herein.

1.12.2 The successful BIDDER, simultaneously with the execution of the CONTRACT, will be required to furnish a PAYMENT BOND in an amount equal to one hundred percent (100%) of the CONTRACT SUM and a PERFORMANCE BOND in an amount equal to one hundred percent (100%) of the CONTRACT SUM.

1.12.3 The form of CONTRACT that the successful BIDDER as CONTRACTOR will be required to execute and the forms of bonds which he will be required to furnish along with a form of insurance certificate are included in the CONTRACT DOCUMENTS. The CONTRACT, the bonds and the insurance certificate will be executed in five (5) original counterparts.

1.12.4 Bonding companies and insurance carriers shall be "Best Rated A" or better by the A.M. Best Company or comparable rating as determined at the sole discretion of GILBERT. Each bond shall be executed by a surety (bonding company) duly licensed in and possessing a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance, pursuant to Title 20, Chapter 2, Article 11 and acceptable to GILBERT. The Surety Bond shall not be executed by an individual surety or sureties. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in the State of Arizona. The Bonds shall have attached thereto a certified copy of Power of Attorney for the signed official executing the bonds.

1.13 ASSIGNMENT OF CONTRACT

No assignment by CONTRACTOR of any CONTRACT to be entered into hereunder, or any part thereof, or of funds to be received there under by CONTRACTOR, will be recognized by GILBERT unless such assignment has had prior approval of GILBERT and the Surety has been given due notice of such assignment in writing and has consented thereto in writing.

1.14 PLANS AND SPECIFICATIONS TO SUCCESSFUL BIDDER

The successful BIDDER may obtain five (5) sets of PLANS and SPECIFICATIONS for this PROJECT at no extra cost.

1.15 CONTRACT TIME

CONTRACTOR shall commence WORK under the CONTRACT on the day indicated in the NOTICE TO PROCEED or within ten (10) working days thereafter and shall fully complete all WORK under the CONTRACT within 40 consecutive working days in accordance with Section 9.2. CONTRACTOR shall achieve SUBSTANTIAL COMPLETION within 30 working days after the date of the NOTICE TO PROCEED and FINAL COMPLETION within 40 working days in accordance with Section 9.2. No WORK shall commence prior to issuance of a NOTICE TO PROCEED, including mobilization on site. CONTRACTOR shall at all times during the continuance of the CONTRACT prosecute the WORK with such force and

equipment as are sufficient to complete it within the time specified.

1.16 NOTICE OF REQUIREMENT OF COMPLIANCE WITH PERMIT CONDITIONS

This PROJECT includes work that will affect facilities of various agencies, including Town of Gilbert. Applicable licenses, permits and specifications are bound herein and CONTRACTOR shall comply with all such specifications and permit conditions.

1.17 ENGINEER

1.17.1 This PROJECT will be coordinated by an ENGINEER, who will report the progress of the WORK and compliance with the CONTRACT DOCUMENTS to GILBERT. Generally, ENGINEER will (1) oversee the progress of the WORK, (2) receive submittals, requests for information and other information from CONTRACTOR, (3) make recommendations to GILBERT regarding CHANGE ORDERS and request for extensions of time, (4) make recommendations to GILBERT regarding requests for payment, (5) maintain PROJECT records, (6) determine SUBSTANTIAL and FINAL COMPLETION of the PROJECT, and (7) do other tasks related to the coordination of the WORK.

1.17.2 ENGINEER will review and approve shop drawings, make interpretations of the CONTRACT DOCUMENTS and make determinations regarding substitution of methods and MATERIALS. Other duties are set forth in the CONTRACT DOCUMENTS. Drawings and SPECIFICATIONS and copies thereof furnished by ENGINEER are and shall remain the property of GILBERT. They are to be used only with respect to this PROJECT and are not to be used on any other PROJECT.

1.17.3 ENGINEER will be GILBERT'S REPRESENTATIVE during the construction and until final payment to the CONTRACTOR is made. ENGINEER will advise and consult with GILBERT. All instructions to CONTRACTOR shall be forwarded through ENGINEER. ENGINEER will have the authority to act on behalf of GILBERT only to the extent provided in the CONTRACT DOCUMENTS. CONTRACTOR shall not be relieved from CONTRACTOR'S obligations to perform the WORK in accordance with the CONTRACT DOCUMENTS either by the activities or duties of ENGINEER MANAGER in its administration of the CONTRACT, or by inspections, tests or approvals required.

1.18 SEPARATE CONTRACTS

Separate CONTRACTS may be let by GILBERT to perform other or additional work on or near the WORK covered by this CONTRACT. CONTRACTOR shall be responsible for coordinating the sequencing of the WORK under those separate CONTRACT'S identified/listed in the SUPPLEMENTAL CONDITIONS of the CONTRACT DOCUMENTS. The bid shall include an amount for the administration of the sequencing of these CONTRACTS. The requirements of Section 5.8 shall apply.

1.19 BID PROTESTS

The protest policy of the Town of Gilbert is available at the Town Clerk's office at 50 E. Civic Center Drive, Gilbert, Arizona 85296.

PART II

GENERAL CONDITIONS

DEFINITIONS

Wherever in these SPECIFICATIONS, or in other CONTRACT DOCUMENTS, the following terms are used, the intent and meaning shall be interpreted as shown below. Additional definitions and abbreviations pertaining to this PROJECT will be found in the SUPPLEMENTAL CONDITIONS.

2.1 DEFINITIONS

2.1.1 ADDENDUM: A written and/or graphic supplement to any of the CONTRACT DOCUMENTS issued, in writing, after ADVERTISEMENT of but prior to the opening of the bids for a CONTRACT.

2.1.2 ADVERTISEMENT: The public announcement, as required by law, inviting bids for WORK to be performed or MATERIALS to be furnished.

2.1.3 AWARD: The formal action of GILBERT Town Council in accepting a bid.

2.1.4 BID SECURITY: Refers to the certified check, cashier's check or surety bond which is required to be submitted with the bid to insure execution of the CONTRACT and the furnishing of the required bonds and insurance certificates.

2.1.5 BIDDER: Any individual, firm, partnership, or corporation submitting a bid for the work contemplated, acting directly or through a duly authorized agent.

2.1.6 CHANGE ORDER: A written order issued by GILBERT directing CONTRACTOR to make changes in the WORK or to perform extra work, and setting forth conditions for payment and adjustment in time of completion.

2.1.7 CLERK: The duly authorized person who performs the duties of Clerk of the Town of GILBERT.

2.1.8 CONTRACT: The written instrument executed by CONTRACTOR and GILBERT by which CONTRACTOR is bound to furnish all labor, equipment and MATERIALS, to perform the WORK specified and by which GILBERT is obligated to compensate CONTRACTOR therefore at the prices set forth therein. The CONTRACT DOCUMENTS are herewith by reference made a part of the CONTRACT as if fully set forth therein.

2.1.9 CONTRACT DOCUMENTS: The words "CONTRACT DOCUMENTS" include the Notice and Call for Bids, Information for BIDDERS and Bidding Requirements, General Conditions, SUPPLEMENTAL CONDITIONS, SPECIFICATIONS, Bid, CONTRACT, CONSTRUCTION SCHEDULE, PAYMENT BOND, PERFORMANCE BOND, PLANS, ENGINEER'S INSTRUCTION BULLETINS and all ADDENDA and Modifications thereto.

A Modification is (1) a written amendment to the CONTRACT signed by both parties, (2) a CHANGE ORDER, (3) a written interpretation issued by ENGINEER, or (4) a written order for a minor change in the WORK issued by ENGINEER.

2.1.10 CONTRACT SCHEDULE: The schedule produced by CONTRACTOR in response to the requirements of Section 5.1.

2.1.11 CONTRACT SUM: The total amount payable by GILBERT to CONTRACTOR for the performance of the WORK under the CONTRACT DOCUMENTS. The CONTRACT SUM is the amount stated in the CONTRACT and adjusted by any CHANGE ORDER issued pursuant to the CONTRACT DOCUMENTS.

2.1.12 CONTRACT TIME: The time set forth in the CONTRACT for completion of the WORK required by the CONTRACT DOCUMENTS.

2.1.13 CONTRACTOR: The individual, firm, partnership or corporation that has entered into a CONTRACT with GILBERT for the WORK. CONTRACTOR is required by law to be licensed in the classification of the WORK to be performed and will perform work or render services as a prime contractor.

2.1.14 DAYS: Unless otherwise designated, days will be understood to mean calendar days.

2.1.15 ENGINEER: The Architectural or Engineering firm designated by GILBERT to prepare PLANS and SPECIFICATIONS for the WORK, to make interpretations of the CONTRACT DOCUMENTS, to review and approve shop drawings and to perform other duties as set forth in the CONTRACT between GILBERT and ENGINEER. ENGINEER shall oversee the construction of the PROJECT.

2.1.16 FINAL COMPLETION: The date, more fully described in Section 9.2.2, when all items of the WORK are completely finished with no items of any scope outstanding or remaining to be completed, and all known defective work has been corrected. This is the date that initiates the Warranty period.

2.1.17 GILBERT: Town of Gilbert, Arizona.

2.1.18 GILBERT'S REPRESENTATIVE OR GILBERT'S AGENT: The authorized representative of GILBERT, assigned to the PROJECT WORK, the PROJECT Site or any part thereof during the performance of the WORK by CONTRACTOR and until final acceptance.

2.1.19 IMPROVEMENTS: Means the same as "WORK."

2.1.20 INITIAL CONTRACT SCHEDULE: The schedule prepared by CONTRACTOR in accordance with Section 5.1 and which includes the MILESTONE AND COMPLETION DATES specified in the CONTRACT DOCUMENTS.

2.1.21 MATERIALS: The word "MATERIALS" includes, in addition to material incorporated in the PROJECT, equipment and other supplies used in the performance of the WORK.

2.1.22 NOTICE OF APPARENT LOWEST RESPONSIBLE BIDDER: The notice given to inform all bidders of GILBERT staff's determination of the lowest responsible BIDDER and its recommendation for AWARD of the CONTRACT.

2.1.23 NOTICE OF AWARD: The notice given to inform the successful BIDDER of the AWARD of the CONTRACT.

2.1.24 NOTICE TO PROCEED: A directive issued by GILBERT authorizing CONTRACTOR to start the WORK or IMPROVEMENTS required in the CONTRACT.

2.1.25 PAYMENT BOND: A bond furnished by CONTRACTOR and an acceptable surety, in compliance with the requirements set forth in the CONTRACT DOCUMENTS, for the purpose of guaranteeing that CONTRACTOR promptly pays all monies due persons supplying labor or material to be used in prosecution of the CONTRACT.

2.1.26 PERFORMANCE BOND: A bond furnished by CONTRACTOR and an acceptable surety, in compliance with the requirements set forth in the CONTRACT DOCUMENTS, for the purpose of guaranteeing the faithful performance and completion of the WORK covered by the CONTRACT.

2.1.27 PLANS: All approved drawings or reproductions thereof pertaining to details of the WORK and which are made a part of the CONTRACT DOCUMENTS.

2.1.28 PROJECT: Means the same as "WORK" as defined below.

2.1.29 SITE: The area on which WORK is to be done as described in the CONTRACT DOCUMENTS.

2.1.30 SUPPLEMENTAL CONDITIONS: Those terms and conditions applicable to the WORK which are specifically set forth in the SUPPLEMENTAL CONDITIONS section of the CONTRACT DOCUMENTS.

2.1.31 SPECIFICATIONS: The descriptions, directions, provisions and requirements for performing the WORK as contained in the CONTRACT DOCUMENTS.

2.1.32 SUBCONTRACTOR: Those having a CONTRACT with CONTRACTOR for the performance of any WORK required by the CONTRACT DOCUMENTS.

2.1.33 SUBSTANTIAL COMPLETION: The date, more fully described in Section 9.2.1, when ENGINEER certifies, in writing, GILBERT may use or occupy the PROJECT or a designated portion thereof.

2.1.34 WORK: The word "WORK", "IMPROVEMENTS" or "PROJECT" includes any or all of the IMPROVEMENTS mentioned and authorized to be made, and the construction, reconstruction, and repair of all or any portion of such IMPROVEMENTS, and all labor, services, incidental expenses and material necessary or incidental thereto.

2.1.35 WORK DIRECTIVE: Supplemental drawings or instructions, which may be issued as necessary from time to time to make clear or define in greater detail the intent of the drawings and SPECIFICATIONS. A CHANGE ORDER shall accompany a WORK DIRECTIVE if extra cost and/or time are known to be involved.

2.1.36 WORKING DAYS: Working days are exclusive of Saturday, Sunday and GILBERT recognized legal holidays. In the event of a change, CONTRACTOR shall notify ENGINEER.

PART III

GENERAL CONDITIONS

AWARD AND EXECUTION OF CONTRACT

3.1 AWARD

3.1.1 As soon as practicable after the date of opening the bids, the GILBERT Town Council will AWARD the CONTRACT to the lowest responsible and responsive BIDDER or will reject all bids.

3.1.2 A NOTICE OF AWARD will be sent to the successful BIDDER by certified mail and shall be considered issued on the day sent.

3.1.3 The low bid will be determined by the lowest net total from a fully qualified and responsible BIDDER arrived at by combining the BIDDER'S lump sum and unit price totals or lump sum base bid price and the bid prices of the alternates that are selected and accepted by GILBERT. GILBERT may accept or reject any or all alternates.

3.2 EXECUTION OF CONTRACT

3.2.1 The successful BIDDER shall, within the time specified in Information for Bidders and Bidding Requirements, execute the CONTRACT, and shall file insurance policies and/or certificates of insurance as required herein. If CONTRACTOR fails or refuses to enter into the CONTRACT within the time stated, GILBERT may declare a forfeiture of his BID SECURITY as liquidated damages for failure to enter into the CONTRACT.

3.2.2 Execution of the CONTRACT by CONTRACTOR is a representation that CONTRACTOR has visited the SITE, become familiar with the local conditions under which the WORK is to be performed, and has correlated personal observations with the requirements of the CONTRACT DOCUMENTS.

3.3 CONTRACTOR'S INSURANCE

3.3.1 General: CONTRACTOR agrees to comply with all GILBERT ordinances and state and federal laws and regulations. Without limiting any obligations or liabilities of CONTRACTOR, CONTRACTOR shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona with an AM Best, Inc. rating of A or above with policies and forms satisfactory to GILBERT. Failure to maintain insurance as specified may result in termination of this CONTRACT at GILBERT'S option.

3.3.2 No Representation of Coverage Adequacy: By requiring insurance herein, GILBERT does not represent that coverage and limits will be adequate to protect CONTRACTOR. GILBERT reserves the right to review any and all of the insurance policies and/or endorsements cited in

this CONTRACT but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in the CONTRACT DOCUMENTS or failure to identify any insurance deficiency shall not relieve CONTRACTOR from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of the CONTRACT.

3.3.3 Additional Insured: All insurance coverage and self insured retention or deductible portions, except Workers Compensation Insurance, shall name, to the fullest extent permitted by law for claims arising out of the performance of the CONTRACT, GILBERT, ENGINEER, their agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this CONTRACT DOCUMENTS.

3.3.4 Coverage Term: All insurance required herein shall be maintained in full force and effect until all WORK or services required to be performed under the terms of subject CONTRACT is satisfactorily performed, completed and formally accepted by GILBERT, unless specified otherwise in this CONTRACT DOCUMENTS.

3.3.5 Primary Insurance: CONTRACTOR'S insurance shall be primary insurance as respects performance of subject CONTRACT and in the protection of GILBERT as an Additional Insured.

3.3.6 Occurrence Basis: All insurance coverage shall be on an occurrence basis and not a claims made basis.

3.3.7 Waiver: All policies, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against GILBERT, its agents, representatives, officers, directors, officials and employees for any claims arising out of the WORK. CONTRACTOR shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

3.3.8 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. CONTRACTOR shall be solely responsible for any such deductible or self-insured retention amount. GILBERT, at its option, may require CONTRACTOR to secure payment or such deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

3.3.9 Use of Subcontractors: If any WORK under the CONTRACT DOCUMENTS is subcontracted in any way, CONTRACTOR shall execute a written agreement with SUBCONTRACTOR containing the same Indemnification Clause and Insurance Requirements set forth herein protecting GILBERT and CONTRACTOR. CONTRACTOR shall be responsible for executing the agreement with SUBCONTRACTOR and obtaining Certificates of Insurance verifying the insurance requirements.

3.3.10 Evidence of Insurance: Prior to commencing any WORK under the CONTRACT DOCUMENTS, CONTRACTOR shall furnish GILBERT with Certificate(s) of Insurance, or formal endorsements as required by the CONTRACT DOCUMENTS, issued by CONTRACTOR'S insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverage, conditions, and limits of coverage specified in the CONTRACT DOCUMENTS and that such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as evidence of coverage, GILBERT shall reasonably rely upon the 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 CONTRACT. Such certificates shall identify the PROJECT. If any of the above-cited policies expire during the life of the CONTRACT, it shall be CONTRACTOR'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:

3.3.10.1 GILBERT, and ENGINEER, their agents, representatives, officers, directors, officials and employees are Additional Insured's 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 or equivalent.

C. Excess Liability – Follow Form to underlying insurance as required.

3.3.10.2 CONTRACTOR'S insurance shall be primary insurance as respects performance of CONTRACT.

3.3.10.3 All policies, including Workers Compensation, waive rights of recovery (subrogation) against GILBERT, its agents, representatives, officers, directors, officials and employees for any claims arising out of WORK performed by CONTRACTOR under the CONTRACT DOCUMENTS.

3.3.10.4 Certificate shall cite 30 day advance notice cancellation provision.

3.3.10.5 Project descriptive information including:

A. CIP Project Name

B. CIP Project Number

C. Contract Number

3.3.11 REQUIRED COVERAGE:

3.3.11.1 Commercial General Liability: CONTRACTOR shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than $3,000,000 for each occurrence, $3,000,000 Products and Completed Operations Annual Aggregate, and a $3,000,000 General Aggregate Limit on a per project basis endorsed by means of ISO Endorsement CC-2503 1185 or equivalent. 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 Offices, Inc. policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this CONTRACT, GILBERT, ENGINEER, their agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under Insurance Service Offices, Inc. Commercial General Liability Additional Insured Endorsement form CG 20 10 11 85, or equivalent, which shall read "Who is an Insured (Section II) is amended to include as an insured the person or organization shown in GILBERT, but only with respect to liability arising out of "your work" for that insured by or for you." CONTRACTOR, its successors and or assigns, is required to maintain Commercial General Liability insurance as specified hereunder for a minimum period of three (3) years following completion and acceptance of subject WORK. CONTRACTOR shall submit Certificate of Insurance evidencing such Commercial General Liability insurance during said three year period containing all of the insurance requirements set forth herein including naming GILBERT, ENGINEER, their agents, representatives, officers, directors, officials and employees as Additional Insured as required. 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.

3.3.11.2 Vehicle Liability: CONTRACTOR shall maintain Business Automobile Liability insurance with a limit of $3,000,000 each occurrence on CONTRACTOR'S owned, hired, and non-owned vehicles assigned to or used in the performance of the WORK. 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. If any hazardous material, as defined by any local, state or federal authority, is the subject, or transported, in the performance of the WORK, an MCS 90 endorsement is required providing $5,000,000 per occurrence limits of liability for bodily injury and property damage. To the fullest extent allowed by law, for claims arising out of the performance of this CONTRACT, GILBERT, ENGINEER, their agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under the Insurance Service Officers, Inc. Business Auto policy Designated Insured Endorsement form CA 20 48 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.

3.3.11.3 Worker's Compensation Insurance: CONTRACTOR shall maintain Worker Compensation Insurance to cover obligations imposed by federal and state statutes having jurisdiction of CONTRACTOR'S employees engaged in the performance of the WORK and shall also maintain Employers 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.

3.3.11.4 Builder's "All Risk": CONTRACTOR shall maintain Builder's "All Risk" Insurance in an amount not less than one hundred percent (100%) of the CONTRACT price. Such policy shall include coverage for fire, lightening, vandalism, malicious mischief, riot, civil commotion, smoke, sprinkler leakage, water damage, windstorm, hail, earthquake, landslide, flood and collapse or loss due to the results of faulty workmanship during the CONTRACT TIME and until Final Acceptance of the WORK by GILBERT. On pipeline and similar Projects where fire hazard is negligible or nonexistent, GILBERT may waive the requirement for fire insurance and/or accept the installation waiver.

3.3.11.5 Railroad Protection Liability: If the WORK involves a railroad right-of-way (as described in the SUPPLEMENTAL CONDITIONS) Railroad Protective Liability Insurance coverage is required in the amounts set forth in the SUPPLEMENTAL CONDITIONS.

3.4 REQUIREMENT OF CONTRACT BONDS

3.4.1 Concurrently with the execution of the CONTRACT, CONTRACTOR shall furnish GILBERT the following bonds, which shall become binding upon the AWARD of the CONTRACT to CONTRACTOR:

3.4.1.1 A PERFORMANCE BOND in conformance with Section 1.12 and in an amount equal to the full CONTRACT SUM conditioned upon the faithful performance of the CONTRACT in accordance with PLANS, SPECIFICATIONS and Conditions thereof. Such bond shall be solely for the protection of GILBERT. The Performance Bond shall remain in force the greater of (a) two years after FINAL COMPLETION of the WORK, or (b) until the expiration of all warranties and guarantees as required by the CONTRACT.

3.4.1.2 A PAYMENT BOND in conformance with Section 1.12 and in an amount equal to the full CONTRACT SUM solely for the protection of the claimants supplying labor or MATERIALS to CONTRACTOR or his SUBCONTRACTORS in the prosecution of the WORK provided for in such CONTRACT. The Payment Bond shall remain in effect for at least one year after FINAL COMPLETION of the WORK.

3.4.2 Each such bond shall include a provision allowing the prevailing party in a suit on such bond to recover as a part of this judgment such reasonable attorney's fees as may be fixed by a judge of the court.

3.4.3 Each such bond shall be executed by a surety company or companies holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1 of the Arizona Revised Statutes and any amendments thereto. The bonds shall be made payable and acceptable to GILBERT. The bonds shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in this State and the bonds shall have attached thereto a certified copy of the Power of Attorney of

the signing official.

3.5 INDEMNIFICATION OF GILBERT AGAINST LIABILITY

3.5.1 To the fullest extent permitted by law, CONTRACTOR, 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 CONTRACTOR or other persons employed or used by the CONTRACTOR in the performance of this Agreement. CONTRACTOR'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 CONTRACTOR'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 CONTRACTOR or used by CONTRACTOR in the performance of this Agreement.

3.5.2 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.

3.6 SAFETY WARRANTY

3.6.1 CONTRACTOR shall provide and maintain in a neat, sanitary condition such accommodations for the use of his employees as may be necessary to comply with the requirements and regulations of the Arizona State Department of Health or as specified by the Maricopa County Health Department, Sanitary Code. CONTRACTOR shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on his own responsibility or as ENGINEER may determine, reasonably necessary to protect the life and the health of employees on the job, the safety of the public and to protect property in connection with the performance of the WORK. Precaution shall be exercised by CONTRACTOR at all times for the protection of persons (including employees and GILBERT representatives) and property. CONTRACTOR shall comply with the provisions of all applicable laws, pertaining to such protection including all Federal and State occupational safety and health acts, and standards and regulations promulgated hereunder.

3.6.2 CONTRACTOR warrants that CONTRACTOR is aware of and understands the hazards presented to persons, property and the environment relating to and arising out of the WORK. In the event CONTRACTOR or any of CONTRACTOR'S SUBCONTRACTORS are working or operating in an unsafe manner, CONTRACTOR shall immediately take full and appropriate steps to assure the safety of those working in the job site. CONTRACTOR acknowledges GILBERT'S right under this CONTRACT to stop work if GILBERT determines the WORK is not proceeding in a safe manner and may result in injury to persons or property. GILBERT and ENGINEER shall not be liable for the costs incurred by CONTRACTOR if the WORK is

stopped for safety reasons. The ENGINEER, with GILBERT approval, shall issue a stop work order until the violation ceases. The ENGINEER shall immediately notify CONTRACTOR in writing of the reasons WORK was stopped.

3.7 NOTICE TO PROCEED

CONTRACTOR or SUBCONTRACTORS shall not start WORK on any part of the PROJECT until NOTICE TO PROCEED has been issued by GILBERT. The NOTICE TO PROCEED will be sent to CONTRACTOR by certified mail or delivered to him in person. The date for the official start of the CONTRACT will be set forth in the NOTICE TO PROCEED. The NOTICE TO PROCEED shall not be issued until the CONTRACT has been executed and all insurance, bonds and other required documents have been submitted to GILBERT.

PART IV

GENERAL CONDITIONS

COMMENCEMENT, PROSECUTION AND PROGRESS

4.1 COMMENCEMENT

4.1.1 Within ten (10) working days after the NOTICE OF AWARD, a pre-construction conference will be held to establish a working understanding among the parties as to the WORK and to discuss the schedules referred to in Section 5.1, procedures for handling submittals, processing Applications for Payment, and maintaining required records.

4.1.1.1 The conference shall be attended by: CONTRACTOR and his superintendent, Principal SUBCONTRACTORS, Representatives of principal suppliers and manufacturers as appropriate, ENGINEER, Representatives of GILBERT, Others as requested by CONTRACTOR, GILBERT, or ENGINEER.

4.1.1.2 The purpose of the conference is to designate responsible personnel and establish a working relationship. Matters requiring coordination will be discussed and procedures for handling such matters established. The agenda will include but not be limited to:

A. Discussion of CONTRACTOR'S INITIAL CONTRACT SCHEDULE (See Section 5.1).

B. Transmittal, review, and distribution of CONTRACTOR'S submittals.

C. Processing applications for payment.

D. Maintaining record documents.

E. Critical work sequencing.

F. ENGINEER’S INSTRUCTION BULLETINS and CHANGE ORDERS.

G. Use of premises, office and storage areas, security, housekeeping, and GILBERT'S needs.

H. Major equipment deliveries and priorities.

I. CONTRACTOR'S Safety Program.

4.1.1.3 ENGINEER will preside at the conference and will arrange for keeping the minutes and distributing the minutes to all persons in attendance.

4.1.2 CONTRACTOR shall commence WORK on or before the tenth (10th) day after the date set forth in the NOTICE TO PROCEED, and shall complete all WORK under the CONTRACT within the CONTRACT TIME. The NOTICE TO PROCEED will be issued no later than thirty (30) DAYS after the NOTICE OF AWARD unless otherwise agreed upon in writing, or as may be specified in the SUPPLEMENTAL CONDITIONS.

4.2 SUBCONTRACTORS

4.2.1 Subcontracts shall be in accordance with, and CONTRACTOR shall be bound by, the following provisions:

4.2.1.1 All subcontracts shall be subject to review and acceptance by GILBERT.

4.2.1.2 All subcontracts shall be in writing and shall provide that all WORK to be performed hereunder shall be performed in accordance with the terms of the CONTRACT.

4.2.1.3 True copies of any and all subcontracts shall be furnished to GILBERT; however, prices may be omitted.

4.2.1.4 The subcontracting of any part of the WORK will in no way relieve CONTRACTOR of his responsibility or liability or obligation under the CONTRACT.

4.2.1.5 All subcontracts and purchase orders for equipment shall state guaranteed delivery dates, at such times as determined by CONTRACTOR, which will allow CONTRACTOR to complete the PROJECT within the CONTRACT TIME.

4.2.2 If GILBERT or ENGINEER has reasonable objection to any proposed SUBCONTRACTOR, CONTRACTOR shall submit a substitute to whom GILBERT and ENGINEER have no reasonable objection, and the CONTRACT SUM shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate CHANGE ORDER shall be issued.

4.2.3 CONTRACTOR shall make no substitution for any SUBCONTRACTOR, person or entity previously selected if GILBERT or ENGINEER make reasonable objection to such substitution.

4.3 CONTRACTOR'S REPRESENTATIVE AND EMERGENCIES

4.3.1 CONTRACTOR shall at all times be present at the WORK in person or represented by a competent superintendent who shall supervise and direct the WORK and shall be authorized by CONTRACTOR to receive and fulfill instructions from ENGINEER.

4.3.2 CONTRACTOR shall supervise and direct the WORK. He shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall employ and maintain on the SITE a qualified supervisor or superintendent who shall be designated in writing by CONTRACTOR as CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of CONTRACTOR and all communications given to the supervisor shall be as binding as if given to CONTRACTOR. The supervisor shall be present on the SITE at all times as required to perform adequate supervision and coordination of the WORK.

4.3.3 Emergencies that may arise during the progress of the WORK may require special effort or require extra shifts of men to continue the WORK beyond normal working hours. CONTRACTOR shall be prepared in case of such emergencies from whatever cause, to do all necessary WORK promptly.

4.4 CONTRACT DOCUMENTS

4.4.1 CONTRACTOR shall keep at the SITE a copy of the CONTRACT DOCUMENTS and shall at all times give ENGINEER access thereto.

4.4.2 The documents that make up the CONTRACT DOCUMENTS are intended to be complete and complementary, and to prescribe a complete WORK which CONTRACTOR shall perform in a manner acceptable to ENGINEER and in full compliance with the terms of the CONTRACT. CONTRACTOR shall provide GILBERT with a complete and operable WORK, even though the PLANS and SPECIFICATIONS may not specifically call out all items or items of work required of CONTRACTOR to complete his task. If any omissions are made of information necessary to carry out the full intent and meaning of the CONTRACT DOCUMENTS, CONTRACTOR shall immediately notify ENGINEER, who shall immediately notify GILBERT. ENGINEER will make the necessary corrections for furnishing of detailed instructions. In case of discrepancies, the more stringent requirement shall govern.

4.4.3 Any drawings or PLANS listed anywhere in the SPECIFICATIONS or ADDENDA thereto shall be regarded as a part thereof and of the CONTRACT. Anything mentioned in these SPECIFICATIONS and not indicated on the PLANS and not mentioned in these SPECIFICATIONS shall be of the same force and effect as if indicated or mentioned in both.

4.4.4 CONTRACTOR shall perform the WORK in accordance with the lines, grades, cross sections, and dimensions indicated on the PLANS and detailed drawings.

4.4.5 Unless otherwise specified in the SUPPLEMENTAL CONDITIONS, CONTRACTOR shall furnish all MATERIALS, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and incidentals, including, but not limited to, dust and traffic control measures, and to perform all WORK involved in executing the CONTRACT in a satisfactory and workmanlike manner within the CONTRACT TIME.

4.4.6 Anything in the CONTRACT DOCUMENTS notwithstanding, CONTRACTOR accepts the responsibility of constructing a watertight, weathertight PROJECT.

4.5 ERRORS AND OMISSIONS

The PLANS are presumed to be correct, but CONTRACTOR shall be required to check carefully all dimensions before beginning the WORK. If any errors or omissions are discovered, ENGINEER shall be so notified in writing. ENGINEER shall immediately notify GILBERT who will then make such corrections, and interpretations as may be deemed necessary for fulfilling the intent of the PLANS and SPECIFICATIONS and shall issue appropriate ENGINEER'S INSTRUCTION BULLETINS. Any such adjustments made by

CONTRACTOR without prior review and acceptance shall be at his own risk. The settlement of any complication or disputed expenses arising from such adjustment shall be made by CONTRACTOR at his own expense.

4.6 QUALIFICATIONS FOR EMPLOYMENT

4.6.1 No person under the age of sixteen (16) years for normal occupations, no person under the age of eighteen (18) years in hazardous occupations and no person currently serving a sentence in a penal or correctional institution shall be employed to perform any WORK under this CONTRACT. Each person working must provide proof of United States citizenship or legal work identification.

4.6.2 Immigration Law Compliance Warranty

4.6.2.1 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.

4.6.2.2 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.

4.6.2.3 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. 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).

4.6.2.4 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.

4.6.2.5 If state law is amended, the parties may modify this paragraph consistent with state law.

4.6.3 Equal Treatment of Workers

4.6.3.1 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 the WORK. 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 form or based on the violation of such, whether by CONTRACTOR or its employees.

4.7 CHARACTER OF WORKERS

4.7.1 CONTRACTOR shall have in place and enforce a drug-free workplace policy which complies with the requirements of the Drug-Free Workplace Act.

4.7.2 CONTRACTOR shall at all times employ sufficient labor and equipment for prosecuting the several classes of WORK to full completion in the manner and time required by the CONTRACT DOCUMENTS.

4.7.3 All workmen shall be competent and have sufficient skill, knowledge and experience in their class of work and in the operation of equipment required to perform all WORK properly and satisfactorily.

4.7.4 CONTRACTOR shall at all times enforce strict discipline and good order among its workmen and shall not permit the use of alcohol or controlled substances (without a medical authorization) at the SITE.

4.7.5 Any person employed by CONTRACTOR or any SUBCONTRACTOR who, in the opinion of ENGINEER does not perform his work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of ENGINEER be removed from the WORK by CONTRACTOR or SUBCONTRACTOR employing such persons, and shall not be employed again in any portion of the WORK without the approval of ENGINEER. CONTRACTOR or SUBCONTRACTOR shall hold GILBERT harmless from damages or claims for compensation that may occur in the enforcement of this section.

4.7.6 Should CONTRACTOR or SUBCONTRACTOR fail to remove such person as required above, or fail to furnish suitable and sufficient personnel for the proper prosecution of the WORK, GILBERT may suspend the WORK by written notice until such orders are complied with.

4.8 MAINTENANCE OF TRAFFIC

4.8.1 CONTRACTOR shall submit a Traffic Control Plan to GILBERT'S traffic engineer in accordance with Section 10-5(b) of the Gilbert Municipal Code. No work shall begin until a Traffic Control Plan has been approved, unless authorized in writing by the ENGINEER. CONTRACTOR shall coordinate with the various agencies both commercial and public, involved in the collection and removal of trash and garbage, so that adequate services are maintained.

4.8.2 The CONTRACTOR will coordinate and schedule off-duty police officers with the Town of Gilbert as a part of the CONTRACTOR's traffic control work. GILBERT will pay for the officers directly with no payment to the CONTRACTOR for this item. The CONTRACTOR will be required to present an overall estimate of off duty officer hours required with the submission of his master schedule for the project. Officers charge a minimum of four hours to the project if scheduled. In the event that the CONTRACTOR fails to prosecute the work in a timely and orderly fashion, GILBERT shall notify the CONTRACTOR and reserves the right to negotiate a corresponding deductive change order with the CONTRACTOR based upon the cost of $65/hour/officer that GILBERT will incur for the off duty officers.

4.8.3 Safe and adequate pedestrian and vehicular access shall be provided and maintained to fire hydrants, commercial and industrial establishments, churches, schools, parking lots, motels, hospitals, fire stations, police stations, residential properties and establishments of a similar nature.

4.8.4 Grading operations, roadway excavation and fill construction shall be conducted and maintained in such a manner as to provide a reasonably satisfactory and safe surface for vehicular and pedestrian traffic. When rough grading is completed, the roadbed shall be brought to and maintained in a reasonably smooth condition, satisfactory and safe for vehicular traffic at the posted speed limit. Pedestrian walkways shall be provided and maintained in a like manner. CONTRACTOR shall accomplish any additional grading operations and/or repairs, including barricade replacement or repairs during working and non-working periods which, in the opinion of ENGINEER, are required.

4.8.5 In the event of abnormal weather conditions, such as windstorms and rainstorms, CONTRACTOR shall immediately inspect his WORK area and take all necessary actions to insure that public access and safety are maintained.

4.8.6 CONTRACTOR shall provide ENGINEER with the emergency phone number of his representatives.

4.9 CLEANUP AND DUST CONTROL

4.9.1 Throughout all phases of construction, including suspension of WORK, and until final acceptance of the PROJECT, CONTRACTOR shall keep the WORK area clean and free from rubbish, excess material and debris generated by construction activities.

4.9.2 CONTRACTOR shall take whatever steps, procedures or means required to prevent any dust nuisance due to his construction operations. The dust control measures shall be maintained at all times to the satisfaction of ENGINEER and in accordance with the requirements of the Maricopa County Bureau of Air Control Rules and Regulations.

4.9.3 Failure of CONTRACTOR to comply with ENGINEER'S cleanup orders may result in an order to suspend WORK until the condition is corrected. No additional compensation or time will be allowed as a result of such suspension and ENGINEER has the authority to take such other measures as may be necessary to remedy the situation.

4.10 SANITATION

4.10.1 CONTRACTOR shall provide suitable and adequate sanitary conveniences for the use of all persons employed on the PROJECT. All sanitary conveniences shall conform to the regulations of the public authority having jurisdiction over such matters. At the completion of the PROJECT, all such sanitary conveniences shall be removed and the premises left in a sanitary condition.

4.10.2 CONTRACTOR shall cooperate with and follow directions of the Arizona Department of Public Health Services and the Maricopa County Health Department with respect to sanitation facilities. State and County Public Health Service representatives shall have access to the WORK wherever it is in preparation or progress, and CONTRACTOR shall provide proper facilities for such access and inspection.

4.11 WATER

4.11.1 CONTRACTOR and each SUBCONTRACTOR shall supply adequate pure cool drinking water with individual drinking cups for the use of employees on this construction. The quality of drinking water shall meet all applicable federal, state and local standards for drinking water.

4.11.2 It shall be the responsibility of CONTRACTOR to provide and maintain, at his own expense, an adequate supply of water for his use for construction and to install and maintain necessary supply connections and piping for same. Before final acceptance of the completed PROJECT, all temporary connections and piping installed by CONTRACTOR shall be removed.

4.11.3 CONTRACTOR shall apply for a fire hydrant meter and pay for all construction water used at the current rates charged by GILBERT, if CONTRACTOR desires to obtain water from the distribution system at any point.

4.12 CONSTRUCTION STAKING

4.12.1 Construction staking will be made by CONTRACTOR in accordance with the technical requirements of Section 105.8 of the MAG Specifications unless otherwise provided in the SUPPLEMENTAL CONDITIONS. CONTRACTOR shall provide and pay for all building layout staking, including elevations and all other PROJECT staking.

4.12.2 Replacement of construction stakes that have been knocked out due to CONTRACTOR'S WORK or lack of WORK, weather conditions, traffic, vandalism or utility contractors will be done at CONTRACTOR'S expense.

4.13 BLUE STAKE

CONTRACTOR is required to notify Blue Stake (263-1100) prior to the excavation of any material in accordance with A.R.S. § 40-360.22. CONTRACTOR shall directly contact

GILBERT for marking of electrical for traffic signals, sprinkler and irrigation facilities.

4.14 UTILITIES SHOWN ON THE PLANS

4.14.1 Regardless of what utilities are shown on the PLANS, it shall be CONTRACTOR'S responsibility to verify these locations and any additional lines which may exist through consulting with GILBERT, utility companies and/or "Blue Stake."

4.14.2 Existing utilities are indicated on PROJECT PLANS in accordance with the best information available. CONTRACTOR shall notify all owners of utilities when his WORK is in progress and shall make such arrangements as are necessary to make any emergency repair to any utility, in a manner satisfactory to GILBERT of a damaged utility line, including individual or house service utility lines.

4.14.3 No extra compensation will be made for the repair of any individual or house service utility or utility lines damaged by CONTRACTOR'S labor forces or equipment, nor for any damage incurred through neglect or failure to provide protective barriers, lights and other devices or means required to protect such existing utilities.

4.14.4 CONTRACTOR shall expose all sanitary and storm sewers, water, gas, electric, telephone utility lines, and other underground structures that might interfere with the WORK, in order to permit survey location prior to construction.

4.14.5 CONTRACTOR shall assume full responsibility for damages to any underground facility/utility properly shown on the Plans or properly located by the Utility owner, as a result of failing to obtain information as to its location, failing to excavate in a careful and prudent manner (as defined in MAG Spec's), or failing to take measures for protection of the facilities/utilities. The Contractor is liable to the owner of the Underground Facility/Utility for the total cost of the repair.

4.15 UTILITIES NOT SHOWN ON THE PLANS

4.15.1 If utility lines are encountered which are not shown on the PLANS, and not located, or incorrectly located by the Utility owner, other than individual or house service utility lines, and these lines are damaged or work is required to clear same, then MAG Spec Section 109.8 and A.R.S. § 40-360 shall apply.

4.15.2 The work necessary for the raising, lowering, or relocating of any such utility shall be at the Utility owner's expense. The necessary WORK may be done by the Utility owner or by CONTRACTOR, or as a collaborative effort, at the option of the Utility owner. All WORK shall be in accordance with the standards of GILBERT and the Utility owner.

4.15.3 In most cases, individual or house service utility lines are not shown on the PLANS. It shall be CONTRACTOR'S responsibility to locate and protect these individual or house services. If, due to CONTRACTOR'S operations, any of these lines are damaged, he shall repair or replace

these lines in a manner satisfactory to the owner of the utility at no extra cost to GILBERT. In addition, the cost of location, protection, and working around these individual or house service utility lines shall be included in CONTRACTOR'S bid for the WORK under this CONTRACT.

4.16 DRIVEWAYS AND WALKS

4.16.1 Inconvenience caused by digging across driveways and sidewalks shall be kept to a minimum by restoring the serviceability of the drive or sidewalk as soon as possible. At least 24 hours in advance of blocking driveways, CONTRACTOR shall notify the property owner. CONTRACTOR shall replace or repair any damage done to driveways and walks to not less than the condition existing prior to CONTRACTOR'S WORK. If it is necessary to leave an excavation open across driveways or sidewalks, CONTRACTOR shall provide temporary relief in the form of steel plates over the excavation.

4.16.2 Temporary paving replacement in front of business establishments shall be placed immediately following backfill and shall remain in place until the condition of the backfill is suitable for permanent pavement replacement.

4.16.3 Direct access shall be provided at all times to fire engine hoses, fire hydrants, hospitals, police stations, and at all other agencies or services where emergencies may require immediate access to same.

4.17 TREES AND SHRUBBERY

4.17.1 All trees and shrubbery within the right-of-way or easements shall be protected by CONTRACTOR insofar as practicable. No trees or shrubbery shall be removed without the prior approval of GILBERT.

4.17.2 In the event shrubbery or trees must be trimmed or removed, CONTRACTOR shall notify the property owner to do so within a reasonable time prior to construction. All shrubbery or trees not removed by the property owner shall be trimmed or removed by CONTRACTOR and hauled from the job at CONTRACTOR'S expense.

4.17.3 All trees, shrubs, hedges, brush, etc., designated on the PLANS, or by ENGINEER for removal, shall be completely removed and disposed of as indicated on the PLANS or specified.

4.18 IRRIGATION DITCHES AND STRUCTURES

CONTRACTOR shall contact the owners of any ditches, irrigation lines, and appurtenances which interfere with the WORK and shall make arrangements for dry-up or scheduling of water deliveries. CONTRACTOR shall be liable for any damage due to irrigation facilities damaged by his operations and shall repair such damaged facilities to an "equal or better than" original condition.

4.19 ROADS AND FENCES

4.19.1 Streets and roads subjected to interference by the prosecution of this WORK shall be kept open in compliance with Section 4.9 and maintained by CONTRACTOR until the WORK is completed.

4.19.2 All fences located in easements, when damaged or temporarily removed, shall be restored to a condition equal to or better than the original condition. Such fences shall be restored at CONTRACTOR'S expense.

4.20 PROTECTION OF WORK AND CLEANING UP

4.20.1 CONTRACTOR shall be responsible for the protection of all WORK until its completion and final acceptance, and he shall at his own expense, replace damaged or lost material, or repair damaged parts of the WORK, and CONTRACTOR and his Sureties shall be liable therefore.

4.20.2 CONTRACTOR shall remove from the vicinity of the completed WORK all plant, surplus material or equipment belonging to him or used under his direction during construction. All surplus excavated material, concrete, plaster and debris of all kinds shall be removed from GILBERT'S premises, streets or portions of building or property at or adjacent to the site of the WORK excepting that select material which may be required for refilling or grading the surface. Salvage material shall be stored at areas designated by ENGINEER. Where an area is indicated to be "cleared", all the weeds, vegetation, shrubs and trees shall be removed unless they are specifically noted not to be removed.

4.21 METHODS AND EQUIPMENT

4.21.1 The methods and equipment adopted by CONTRACTOR shall be such as will secure a satisfactory quality of WORK and will enable CONTRACTOR to complete the WORK in the time agreed upon. The selection and use of these methods and equipment is the responsibility of CONTRACTOR.

4.21.2 When the SPECIFICATIONS state the construction shall be performed by the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by ENGINEER. If CONTRACTOR desires to use a method or type of equipment other than those specified, he may make that request to GILBERT, who shall immediately forward the request to ENGINEER. The request shall be in writing and shall include a full description of the methods and equipment proposed to be used and an explanation of the reasons for desiring to make the change. If approval is given, it will be on the condition that CONTRACTOR will be fully responsible for producing construction work that performs the equivalent or better function as the original specifications.. Approval by GILBERT does not guarantee acceptance of the final Work, which will be determined by ENGINEER after evaluating whether equivalent or better function as the original specifications was or will be achieved. If, after trial use of the substituted methods or equipment, ENGINEER determines that the WORK produced does not meet the SPECIFICATIONS, CONTRACTOR shall discontinue the use of the substitute method or equipment and shall complete the remaining construction with the specified methods, equipment and quality, or take such other corrective action as ENGINEER may direct. No change will be made in basis of payment of the

construction items involved nor in the CONTRACT TIME as result of authorizing a change in methods or equipment under these provisions. CONTRACTOR may appeal a decision of ENGINEER under this Section to the GILBERT'S REPRESENTATIVE. Any such appeal must be made in writing within forty-eight (48) hours of ENGINEER'S decision or the right to appeal is waived.

4.22 SUSPENSION OF WORK

In case of suspension of WORK from any cause whatever, CONTRACTOR shall be responsible for the protection of all MATERIALS and equipment. CONTRACTOR shall provide suitable drainage and erect temporary structures where necessary to protect the MATERIALS and equipment.

4.23 DELAYS AND EXTENSION OF TIME

4.23.1 If CONTRACTOR finds it impossible for reasons beyond his control to complete the WORK within the CONTRACT TIME as specified or as extended, he shall immediately submit a written request to ENGINEER for an extension of time setting forth therein the reasons that he believes will justify the granting of his request. CONTRACTOR'S plea that insufficient time was specified is not a valid reason for extension of time. If ENGINEER finds that the WORK was delayed because of conditions beyond the control and through no fault of CONTRACTOR, he may extend the CONTRACT TIME in such amount as the conditions justify. The extended CONTRACT TIME shall be non-compensable and shall be in full force and affect the same as though it were the original CONTRACT TIME.

4.23.2 In setting the CONTRACT TIME, it has been assumed that up to 3 WORKING DAYS may be lost as a result of weather conditions which will slow down the normal progress of WORK; therefore, no extensions in CONTRACT TIME will be allowed for the first 3 WORKING DAYS lost due to bad weather conditions. Attention is directed to the nearest weather bureau station in the vicinity of the WORK for determining the extremes of temperature, wind velocities and the amount and intensity of precipitation that can be expected.

4.23.3 To receive consideration, a request for extension of time must be made in writing to ENGINEER stating the reason for said request, and such request must be received by ENGINEER within forty-eight (48) hours following the end of the delay-causing condition.

4.23.4 ENGINEER shall ascertain the facts and extent of the delay, and its findings of the facts thereon shall be final and conclusive.

4.23.5 An extension of time may be granted by GILBERT after the expiration of the time originally fixed in the CONTRACT or as previously extended, and the extension so granted shall be deemed to commence and be effective from the date of such expiration. Any extension of time shall not release the sureties upon any bond required under the CONTRACT.

4.23.6 GILBERT'S or ENGINEER'S liability for delay from any cause shall be limited to granting a time extension to CONTRACTOR and there is no other obligation, expressed or implied, on the part of GILBERT or ENGINEER to CONTRACTOR for delay from any cause. An

extension of CONTRACT TIME shall not release the sureties of their obligations, which shall remain in full force until the discharge of the CONTRACT.

4.24 GILBERT'S RIGHT TO CARRY OUT THE WORK

If CONTRACTOR defaults or neglects to carry out the WORK in accordance with the CONTRACT DOCUMENTS, and fails within ten (10) working days after receipt of written notice from GILBERT to commence and continue correction of such default or neglect with diligence and promptness, GILBERT may without prejudice to any other remedy GILBERT may have, make good such deficiencies. In such case an appropriate CHANGE ORDER shall be issued deducting from the payments then or thereafter due CONTRACTOR the cost of correcting such deficiencies, including compensation for ENGINEER'S additional services made necessary by such default, neglect or failure. If the payment then or thereafter due CONTRACTOR is not sufficient to cover such amount, CONTRACTOR shall pay the difference to GILBERT.

4.25 TERMINATION FOR BREACH OF CONTRACT

4.25.1 If CONTRACTOR refuses or fails to prosecute the WORK or any separable part thereof in accordance with the PLANS AND SPECIFICATIONS or with such diligence as will ensure its completion within the time specified herein, or an extension thereof, or fails to complete such WORK within time, or if he or any of his SUBCONTRACTOR(S) should violate any of the provisions of the CONTRACT, GILBERT may terminate this CONTRACT.

4.25.2 In the event of any such termination, GILBERT shall immediately serve written notice thereof upon the Surety and CONTRACTOR, and the Surety shall have the right to take over and perform the CONTRACT; provided however, that if the Surety within fifteen (15) DAYS after the serving upon it of a notice of termination does not give GILBERT written notice of its intention to take over and perform the CONTRACT and does not commence performance thereof within thirty (30) DAYS from the date of serving said notice, GILBERT may take over the WORK and prosecute the same to completion by CONTRACT or by any other method GILBERT may deem advisable. GILBERT may, without liability for so doing, take possession of and utilize in completing the WORK such MATERIALS, appliances, plants and other property belonging to CONTRACTOR that may be on the site of the WORK and be necessary therefore. For any portion of such WORK that GILBERT elects to complete by furnishing employees, MATERIALS, tools and equipment, GILBERT shall be compensated for such in accordance with the schedule of compensation for force account work in the section on payment for changes in the WORK.

4.25.3 The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to GILBERT.

PART V

GENERAL CONDITIONS

CONTROL OF WORK

5.1 TIME OF WORK

5.1.1 Initial Contract Schedule

5.1.1.1 Prior to the preconstruction meeting, CONTRACTOR shall furnish to ENGINEER one hard copy and one copy in electronic format of an INITIAL CONTRACT SCHEDULE.

5.1.1.2 The INITIAL CONTRACT SCHEDULE shall be based on and incorporate the CONTRACT Milestone and Completion Dates specified in the CONTRACT DOCUMENTS.

5.1.1.3 The INITIAL CONTRACT SCHEDULE shall indicate the detailed plan for the work to be completed in the first ninety (90) days of the CONTRACT; details of planned mobilization of plant and equipment; sequence of early operations; and procurement of MATERIALS and equipment. WORK beyond ninety (90) days shall be shown in summary form.

5.1.1.4 The INITIAL CONTRACT SCHEDULE shall be a time-scaled, resource loaded Critical Path Method (CPM) type schedule, prepared in a Primavera compatible software.

5.1.1.5 **VERTICAL PROJECTS -** The INITIAL CONTRACT SCHEDULE shall be cost loaded. The accepted cost loaded schedule will be used as a basis for monthly progress payments until acceptance of the CONTRACT SCHEDULE. Use of the INITIAL CONTRACT SCHEDULE for progress payments shall not exceed 30 days.

5.1.1.6 **HORIZONTAL PROJECTS** – The Bid Schedule will be used as a basis for monthly progress payments.

5.1.1.7 Overall time of completion and time of completion for each milestone shown on the INITIAL CONTRACT SCHEDULE shall adhere to the times in the SUPPLEMENTAL CONDITIONS, unless an earlier (advanced) initial time of completion is requested by CONTRACTOR and agreed to by ENGINEER. Any such agreement shall be formalized by a CHANGE ORDER.

5.1.1.8 ENGINEER will review the INITIAL CONTRACT SCHEDULE for conformance with the requirements of the CONTRACT DOCUMENTS. ENGINEER will return the INITIAL CONTRACT SCHEDULE with comments within five (5) working days after receiving it from CONTRACTOR.

5.1.2 Contract Schedule Development

5.1.2.1 Within fifteen (15) working days after receiving the NOTICE TO PROCEED, CONTRACTOR shall submit a detailed proposed CONTRACT SCHEDULE presenting an orderly and realistic plan for completion of the WORK, in conformance with the requirements of the CONTRACT DOCUMENTS.

5.1.2.2 The proposed CONTRACT SCHEDULE shall furnish or comply with the following requirements:

VERTICAL PROJECTS

A. A time scaled cost loaded CPM type schedule.

B. No activity on the schedule shall have a duration longer than ten (10) working days, with the exception of fabrication and procurement activities, unless otherwise approved by ENGINEER if the PROJECT is a horizontal project (road, sewer, water improvements). Activity durations shall be the total number of actual days required to perform that activity including consideration of weather impact on completion of that activity.

C. Procurement of major equipment, through receipt and inspection at the SITE, identified as a separate activity.

D. GILBERT furnished MATERIALS and equipment if any, identified as separate activities.

E. Dependencies (or relationships) between activities.

F. Processing/approval of submittals and shop drawings for major equipment. Activities that are dependent on submittal acceptance and/or MATERIAL delivery shall not be scheduled to start earlier than the expected acceptance or delivery dates.

G. The total cost of performing each activity. This cost shall be the total of labor, material, equipment, including overhead and profit. The sum of the cost for activities shall equal the total contract value.

H. Ten (10) working days for developing punch list(s), completion of punch list items, and final clean up for the WORK or any designated portion thereof. No other critical activities shall be scheduled during this period.

I. Interface with the WORK of other contractors (or entities).

HORIZONTAL PROJECTS

A. A time scaled cost loaded CPM type schedule.

B. No activity on the schedule shall have a duration longer than ten (10) working days, with the exception of fabrication and procurement activities, unless otherwise approved by ENGINEER. Activity durations shall be the

total number of actual days required to perform that activity including consideration of weather impact on completion of that activity.

C. Procurement of major equipment, through receipt and inspection at the SITE, identified as a separate activity.

D. GILBERT furnished MATERIALS and equipment if any, identified as separate activities.

E. Dependencies (or relationships) between activities.

F. Processing/approval of submittals and shop drawings for major equipment. Activities that are dependent on submittal acceptance and/or MATERIAL delivery shall not be scheduled to start earlier than the expected acceptance or delivery dates.

G. Ten (10) working days for developing punch list(s), completion of punch list items, and final clean up for the WORK or any designated portion thereof. No other critical activities shall be scheduled during this period.

H. Interface with the WORK of other contractors (or entities).

5.1.2.3 CONTRACTOR shall submit to ENGINEER one hard copy and one copy in electronic format of the CONTRACT SCHEDULE.

5.1.2.4 ENGINEER will review the proposed CONTRACT SCHEDULE for conformance with the requirements of the CONTRACT DOCUMENTS. Within five (5) working days after receipt, ENGINEER will accept the CONTRACT SCHEDULE or will return it with comments. If the proposed CONTRACT SCHEDULE is not accepted, CONTRACTOR shall revise the schedule to incorporate comments and resubmit the schedule for acceptance within five (5) working days after receiving it. The accepted schedule shall become the CONTRACT SCHEDULE. Schedules showing a completion date earlier than the contract date will not be accepted.

5.1.2.5 The CONTRACT SCHEDULE shall be the basis for evaluating job progress, payment requests, and time extension requests. The responsibility for developing the CONTRACT SCHEDULE and monitoring actual progress as compared to the schedule rests with CONTRACTOR.

5.1.2.6 Failure of the CONTRACT SCHEDULE to include any element of the WORK or any inaccuracy in the CONTRACT SCHEDULE will not relieve CONTRACTOR from responsibility for accomplishing all the WORK in accordance with the CONTRACT

5.1.2.7 Acceptance of the CONTRACT SCHEDULE will not relieve CONTRACTOR of the responsibility for accomplishing the WORK in accordance with the CONTRACT.

5.1.3 <u>Monthly Updates</u>

5.1.3.1 CONTRACTOR shall submit to ENGINEER each month an up-to-date status report of the work. The status report shall include:

A. CONTRACTOR'S estimated percentage complete for each activity not yet complete.

B. Actual start/finish dates for activities as appropriate.

C. Identification of processing errors, if any on the previous update reports.

D. Revisions, if any, to the assumed activity durations including revisions for weather impact for any activities due to the effect of the previous update on the schedule.

E. Identification of activities that are affected by proposed CHANGE ORDERS issued during the update period.

F. Resolution of conflict between actual work progress and schedule logic. When out of sequence activities develop in the CONTRACT SCHEDULE because of actual construction progress, CONTRACTOR shall submit revision to schedule logic to conform to current status and direction.

5.1.3.2 ENGINEER will review the updated information and meet with CONTRACTOR each week at the SITE to determine the status of the WORK. If agreement cannot be reached on any issue, CONTRACTOR will use ENGINEER'S determination in the processing of the update.

5.1.3.3 CONTRACTOR will incorporate ENGINEER'S review comments and submit two (2) copies of the report.

5.1.3.4 Progress payments pursuant to the CONTRACT will be based on the update of the CONTRACT SCHEDULE.

5.1.4 Schedule Revisions

5.1.4.1 If the sequence of construction differs significantly, as determined by ENGINEER, from the CONTRACT SCHEDULE, CONTRACTOR shall submit within five (5) working days a revised schedule to ENGINEER for acceptance.

5.1.4.2 When a proposed CHANGE ORDER is issued which has the potential to impact specified completion dates, the CHANGE ORDER request shall include a description of the impact of such changes. If approved, it shall be incorporated into the CONTRACT SCHEDULE. Time extensions will be considered only to the extent there is insufficient remaining float to accommodate these changes, and pursuant to Section 6 of the CONTRACT DOCUMENTS.

5.1.4.3 Should CONTRACTOR, after acceptance of the CONTRACT SCHEDULE, intend to change its plan of construction, it shall submit its requested revisions to ENGINEER, along with a written statement of the revision, including a description of the logic for rescheduling the work, methods of maintaining adherence to intermediate milestones and other specific dates and the reasons for the revisions. If the requested changes are acceptable to ENGINEER, they will be incorporated into the CONTRACT SCHEDULE in the next reporting period.

5.1.4.4 Schedule revisions shall be submitted at least five (5) working days prior to the date of submission of update information. ENGINEER will have five (5) working days to review the revisions.

5.1.5 Contract Schedule Reports

CONTRACTOR shall submit two (2) copies of the following reports for the proposed CONTRACT SCHEDULE, CONTRACT SCHEDULE monthly updates, CONTRACT SCHEDULE revisions and recovery schedules:

5.1.5.1 **VERTICAL PROJECTS**

A. Schedule Logic Report listing the activities, their early/late and actual start and finish dates, duration, float and the logic relationship of activities sorted by early start.

B. A Cost Report listing each activity and its associated cost, percentage of work accomplished, earned value to date, previous payments and amount earned for the update period.

C. A narrative report with the updated progress analysis, which shall include a description of problem areas, current and anticipated delaying factors and their impact, an explanation of corrective action taken and proposed revisions for recovery. Narrative report on proposed CONTRACT SCHEDULE will outline CONTRACTOR'S overall plan, strategy, crew movement and utilization, and other considerations in developing the schedule.

5.1.5.2 **HORIZONTAL PROJECTS**

A. CPM Schedule Report listing the activities, their early/late and actual start finish dates, duration, float and the logic relationship of activities sorted by early start.

B. CONTRACTOR shall provide all the schedule files in Primavera compatible format on CD.

5.1.6 Short Interval Schedules

CONTRACTOR shall prepare a Short Interval Schedule (SIS) to be used throughout the duration of WORK. The SIS shall include all current activities and projected activities for the succeeding two (2) weeks. The SIS shall include actual start/finish dates for the preceding one (1) week. Eight copies of the SIS shall be submitted to ENGINEER at the weekly construction meeting. CONTRACTOR shall participate in short interval scheduling coordination during the weekly construction meetings.

5.1.7 Time of Essence

Time is of the essence of this CONTRACT. CONTRACTOR shall, to the fullest extent possible, carry on the various classes or parts of the WORK concurrently, and shall not defer construction of any portion of the Work in favor of any other portion of the WORK, without the express approval of ENGINEER.

5.1.8 Date of Completion

CONTRACTOR shall fully and satisfactorily complete the WORK within the CONTRACT TIME. The date of completion is defined in Section 9.2.

5.1.9 Responsibility for Completion

5.1.9.1 CONTRACTOR shall furnish sufficient manpower, MATERIALS, facilities and equipment and shall work sufficient hours, including night shifts, overtime operations, Saturdays, Sundays and holidays as may be necessary to insure the prosecution and completion of the WORK in accordance with the accepted CONTRACT SCHEDULE. If work on the critical path is seven days or more behind the currently updated CONTRACT SCHEDULE and it becomes apparent that the WORK will not be completed within the CONTRACT TIME, CONTRACTOR will implement whatever steps it deems necessary to make up all lost time. If CONTRACTOR'S solution is not successful, it will make further attempts using the following sequence of events:

A. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities.

B. If the above cannot be achieved then:

- CONTRACTOR shall increase manpower in such quantities and crafts as will substantially eliminate, in the judgment of the ENGINEER, the backlog of work; or increase the number of working hours, shifts per working day, working days per week or the amount of equipment or any combination of the foregoing sufficiently to substantially eliminate in the judgment of the ENGINEER the backlog of work.
- In addition, ENGINEER may require the CONTRACTOR to submit a recovery schedule demonstrating its program and proposed plan to make up a lag in scheduled progress and to ensure completion of the WORK within the CONTRACT TIME. If the ENGINEER finds the proposed recovery schedule unacceptable, it may require CONTRACTOR to submit a new plan. If the actions taken by CONTRACTOR or the second plan proposed are unsatisfactory, ENGINEER may require the CONTRACTOR to take any of the actions set forth in the previous paragraph without additional cost to GILBERT to make up the lag in scheduled progress.

5.1.9.2 Failure of CONTRACTOR to comply with the requirements of this Section 5.1.9 shall be considered grounds for a determination by GILBERT, that CONTRACTOR is failing to prosecute the WORK with such diligence as will ensure its completion within the time specified.

5.1.10 Daily Reports

CONTRACTOR shall submit a Daily Activity Report no later than 9:00 a.m. the following work day to ENGINEER for each workday including weekends and holidays, when worked.

5.1.11 Payments Withheld

Progress Payments may be withheld in whole or in part should CONTRACTOR fail to comply with the requirements of this Section 5.1.

5.2 ENGINEER TO INTERPRET CONTRACT DOCUMENTS

ENGINEER will decide all questions which may arise as to the interpretation of the PLANS AND SPECIFICATIONS. CONTRACTOR may appeal a decision of ENGINEER made pursuant to this paragraph to GILBERT'S REPRESENTATIVE. Such appeal must be made in writing within forty-eight (48) hours of ENGINEER'S decision or the right to appeal is waived.

5.3 FORMAL PROTEST

5.3.1 If CONTRACTOR considers any WORK demanded of him to be outside the requirements of the CONTRACT, or if he considers any instruction, ruling, or decision of ENGINEER to be unfair, he shall, within forty-eight (48) hours after any such demand is made, or instruction, ruling or decision is given, file a written protest stating clearly and in detail his objections and the reasons therefore. Except for such protests as are made of record in the manner and within the time above stated, CONTRACTOR shall be deemed to have waived and does hereby waive all claims for extra WORK, damages and extensions of time resulting from demands, instructions, rulings and decisions of ENGINEER. If the protest is against a demand, instruction, ruling or decision of ENGINEER, it shall be filed with GILBERT'S REPRESENTATIVE.

5.3.2 Upon receipt of a protest from CONTRACTOR of a decision of ENGINEER, GILBERT'S REPRESENTATIVE shall review the demands, instructions, rulings, or decisions objected to and shall promptly advise CONTRACTOR in writing of his final decision, which shall be binding. Upon receipt of a protest from CONTRACTOR of a decision of GILBERT'S REPRESENTATIVE, the Town Manager shall review the demands, instructions, rulings, or decisions objected to and shall promptly advise CONTRACTOR in writing of his final decision, which shall be binding.

5.3.3 CONTRACTOR shall continue work on the Project during the review of the formal protest.

5.4 PLANS

5.4.1 The CONTRACT PLANS consist of general drawings. These indicate such details as are necessary to give a comprehensive idea of the construction contemplated. All authorized alterations affecting the requirements and information given on the CONTRACT PLANS shall be in writing. The CONTRACT PLANS shall be supplemented by such working or shop drawings prepared by CONTRACTOR as are necessary to adequately control the WORK. No change shall be made by CONTRACTOR in any working or shop drawing after it has been accepted by ENGINEER.

5.4.2 CONTRACTOR shall keep a current copy of the PLANS and SPECIFICATIONS at the jobsite, and shall at all times give ENGINEER access thereto. A current copy of PLANS and SPECIFICATIONS shall include red-line drawings, all ADDENDA, CHANGE ORDERS, ENGINEER INSTRUCTION BULLETINS, and any other approved change made to the PLANS and SPECIFICATIONS. Any drawings or PLANS listed in the SPECIFICATIONS shall be regarded as a part thereof and ENGINEER will furnish from time to time such additional drawings, PLANS, profiles, and information as he may consider necessary for CONTRACTOR'S guidance.

5.4.3 All authorized alterations affecting the requirements and information given on the accepted PLANS shall be in writing. No changes shall be made of any plan or drawing after the same has been accepted by ENGINEER except by consent of ENGINEER in writing.

5.5 CONFORMITY WITH PLANS AND ALLOWABLE DEVIATIONS

Finished surfaces in all cases shall conform with lines, grades, cross sections, and dimensions shown on the accepted PLANS. Allowable deviations, other than specified tolerances, from the accepted PLANS and working drawings will in all cases be determined by ENGINEER.

5.6 COORDINATION AND INTERPRETATION OF PLANS AND SPECIFICATIONS

5.6.1 The documents which make up the CONTRACT DOCUMENTS are essential parts of the CONTRACT, and a requirement occurring in one is as binding as though occurring in all. They are intended to be coordinated and to describe and provide for a complete WORK.

5.6.2 Should it appear that the WORK to be done or any of the matters relative thereto are not sufficiently detailed or explained in these CONTRACT DOCUMENTS, CONTRACTOR shall promptly notify ENGINEER. ENGINEER shall follow the procedures set forth in Section 4.5.1. In the event of any discrepancy between any drawing and the figures written thereon, the figures shall be taken as correct.

5.6.3 In the event of there being a conflict between one CONTRACT DOCUMENT and any of the other CONTRACT DOCUMENTS, the more stringent requirement shall apply.

5.6.4 CONTRACTOR shall not take advantage of any apparent error or omission in the PLANS or

SPECIFICATIONS. In the event CONTRACTOR discovers such an error or omission, he shall immediately notify ENGINEER. ENGINEER shall proceed as prescribed in Section 4.5.1 of the CONTRACT DOCUMENTS.

5.7 ORDER OF WORK

5.7.1 When required by the CONTRACT DOCUMENTS, CONTRACTOR shall follow the sequence of operations as set forth therein. Full compensation for conforming with such requirements will be considered as included in the prices paid for CONTRACT items of WORK and no additional compensation will be allowed there for.

5.7.2 The organization of the SPECIFICATIONS into divisions and articles and the arrangement of drawings shall not control CONTRACTOR in dividing the WORK among SUBCONTRACTORS or in establishing the extent of WORK to be performed by any trade.

5.8 COOPERATION BETWEEN CONTRACTORS

5.8.1 GILBERT reserves the right to CONTRACT for and perform other or additional WORK on or near the WORK covered by the CONTRACT.

5.8.2 When separate contracts are let within the limits of any one PROJECT, each CONTRACTOR shall conduct his work so as not to interfere with or hinder the progress or completion of the WORK being performed by other CONTRACTORS. CONTRACTORS working on the same PROJECT shall cooperate with each other as directed.

5.8.3 Each CONTRACTOR involved shall assume all liability, financial or otherwise, in connection with his CONTRACT and shall protect and save harmless GILBERT from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced by him because of the presence and operations of other CONTRACTORS working within the limits of the same PROJECT.

5.8.4 CONTRACTOR shall arrange his WORK and shall place and dispose of the MATERIALS being used so as not to interfere with the operations of the other CONTRACTORS within the limits of the same PROJECT. He shall join his WORK with that of others in an acceptable manner and shall perform it in proper sequence to that of the others.

5.8.5 GILBERT will not honor any claim for extra compensation due to delays, extra WORK, or extension of time caused by any other CONTRACTORS working within the limits of the same PROJECT.

5.9 INSPECTION

5.9.1 CONTRACTOR shall furnish ENGINEER with every reasonable facility for ascertaining whether the WORK as performed is in accordance with the requirements and intent of the SPECIFICATIONS and CONTRACT. ENGINEER shall be permitted to inspect all MATERIALS and each part or detail of the WORK at any time for the purpose of expediting

and facilitating the progress of the WORK. ENGINEER shall be furnished with such information and assistance by CONTRACTOR as required to make a complete and detailed inspection. Should any WORK be covered up before acceptance or consent of ENGINEER, it must, if required by ENGINEER, uncovered for examination at CONTRACTOR'S expense. The direct control shall be solely the responsibility of CONTRACTOR'S foremen and superintendent.

5.9.2 When the United States government is to pay a portion of the cost of the WORK covered by the CONTRACT, the WORK shall be subject to the inspection of the representatives of the U.S. government. Such inspection shall in no sense make the U.S. government a party to this CONTRACT and will in no way interfere with the rights of either party under this CONTRACT.

5.9.3 The inspection of the WORK shall not relieve CONTRACTOR of any of his obligations to fulfill his CONTRACT as herein provided. Any unsuitable or defective MATERIALS and WORK may be rejected notwithstanding that such WORK and MATERIALS may have been previously overlooked and accepted or estimated for payment. Unsuitable or defective MATERIALS shall be removed from the site within three (3) days of such rejection.

5.10 LINES AND GRADES

Profiles and elevations are indicated on the PLANS. All WORK under this CONTRACT shall be built in accordance with the lines and grades indicated on the PLANS. These lines and grades may be modified as provided in Part VI (Changes in the Work) in the CONTRACT. The establishment of the lines and grades shall be set forth under these GENERAL CONDITIONS, as modified by the SUPPLEMENTAL CONDITIONS. CONTRACTOR shall verify all vertical and horizontal controls using the nearest benchmark.

5.11 USE OF SITE

5.11.1 CONTRACTOR shall confine operations at the site to areas permitted by law, ordinances, permits and the CONTRACT DOCUMENTS, and shall not unreasonably encumber the site with any MATERIALS or equipment.

5.11.2 CONTRACTOR shall coordinate all of the CONTRACT'S operations with, and secure approval from, ENGINEER before using any portion of the site.

5.12 SEPARATE CONTRACTS TO GILBERT

5.12.1 If any part of CONTRACTOR'S WORK depends on proper execution or results of WORK performed by GILBERT or any separate CONTRACTOR, CONTRACTOR shall, prior to proceeding with the WORK, promptly report to ENGINEER any apparent discrepancies or defects in such other WORK that render it unsuitable for such proper execution and results. Failure of CONTRACTOR so to report shall constitute an acceptance of GILBERT'S or separate CONTRACTOR'S WORK as fit and proper to receive the WORK, except as to defects which may subsequently become apparent in such WORK by others.

5.12.2 Should CONTRACTOR wrongfully cause damage to the WORK or property of GILBERT, or to other WORK or property on the site, CONTRACTOR shall promptly remedy such damage.

5.12.3 Should CONTRACTOR wrongfully delay or cause damage to the WORK or property of any separate CONTRACTOR, CONTRACTOR shall, upon due notice, promptly attempt to settle with such other CONTRACTOR by agreement, or otherwise to resolve the dispute.

5.13 TESTS

5.13.1 If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the WORK to be inspected, tested or approved, CONTRACTOR shall give ENGINEER timely notice of its readiness so ENGINEER may observe such inspection, testing or approval. CONTRACTOR shall bear all costs of such inspections, test or approvals conducted by public authorities. GILBERT shall reserve the right to conduct additional tests and inspections, and, unless otherwise provided, GILBERT shall bear all costs of other inspections, tests or approvals.

5.13.2 Required certificates of inspection, testing or approval shall be secured by CONTRACTOR and CONTRACTOR shall promptly deliver them to ENGINEER.

PART VI

GENERAL CONDITIONS

CHANGES IN THE WORK

6.1 CHANGES IN THE WORK

6.1.1 GILBERT, without invalidating the CONTRACT and without notification of sureties, may order extra WORK, make changes by altering, or delete any portion of the WORK as specified herein, or as deemed necessary or desirable by GILBERT. All such WORK shall be executed under the conditions of the original CONTRACT except that any claim for extension of time and additional cost caused thereby shall be adjusted at the time of ordering such change or extra WORK.

6.1.2 In giving instructions, ENGINEER shall have authority to make minor changes in the WORK, not involving extra cost, and not inconsistent with the purposes of the WORK. No extra WORK or change shall be made unless in pursuance of a written order by GILBERT. Any claim for an addition to the CONTRACT SUM shall not be valid unless the change was so ordered, except in an emergency endangering life or property. If CONTRACTOR claims that any instructions involve extra cost under the CONTRACT, he shall within forty-eight (48) hours after the receipt of such instructions, provide notice to ENGINEER of such claim, and before proceeding to execute the WORK, except in an emergency endangering life or property, and the procedure shall then be as provided to approve CHANGE ORDERS.

6.1.3 It is mutually understood that it is inherent in the nature of municipal construction that some changes in the PLANS and SPECIFICATIONS may be necessary during the course of construction to adjust them to field conditions, and that it is of the essence of the CONTRACT to recognize a normal and expected margin of change. GILBERT shall have the right to make such changes in the PLANS and the character of the WORK as may be necessary or desirable to insure the completion of the WORK in the most satisfactory manner without invalidating the CONTRACT.

6.1.4 Changes shall be incorporated in the written CHANGE ORDER issued by GILBERT, which shall be written so as to indicate acceptance on the part of CONTRACTOR as evidenced by his signature.

6.2 PRICING OF CHANGES

6.2.1 If a CHANGE ORDER provides for an adjustment to the CONTRACT SUM, the adjustment shall be based on one of the following methods:

6.2.1.1 Where the WORK involved is covered by unit prices contained in the Bid Schedule, by application of the unit prices to the quantities of the items involved, as mutually agreed to by the CONTRACTOR and the ENGINEER.

6.2.1.2 By mutual acceptance of a unit price not contained in the Bid Schedule, or mutual acceptance of a lump sum price. The CONTRACTOR shall furnish ENGINEER with an itemized cost breakdown together with supporting data including the quantities used in computing the unit price and/or lump sum price of the WORK.

6.2.1.3 Only when methods A and B above are exhausted, then on the basis of the Cost of Work plus a CONTRACTOR'S Fee for overhead and profit, as described below. (Cost Plus Basis).

6.2.1.4 Whenever the cost of any work is to be determined on a Cost Plus Basis, CONTRACTOR will submit on forms acceptable to the ENGINEER, daily work sheets showing an itemized breakdown together with supporting data used to arrive at a final cost for the WORK. No payment will be made for work not verified by the ENGINEER. Final cost for the Change in the WORK shall be reflected and formalized in a Change Order.

6.2.2 Allowable costs for any CHANGE ORDER shall be limited to the following:

6.2.2.1 Costs of labor, including social security, Medicare and unemployment insurance, fringe benefits available to CONTRACTOR'S employees generally.

6.2.2.2 Costs of first line supervision labor, including labor burden as described in Section6.2.2 A. "First Line Supervision" shall mean a working foreman or lead craft worker other than the PROJECT superintendent.

6.2.2.3 Actual cost of the PROJECT superintendent associated with any period of compensable delay caused by issuance of the CHANGE ORDER. In the absence of a compensable delay, all of the PROJECT superintendent's time is considered to have been paid for as part of the overhead.

6.2.2.4 Actual costs of MATERIALS, including sales tax and delivery.

6.2.2.5 Rental costs of machinery and equipment, based on the latest "schedule of equipment rates" used by the Arizona Department of Transportation, exclusive of small tools, whether rented from CONTRACTOR or others.

6.2.2.6 Overhead and profit as specified below. "Overhead" shall include the following: Preparation of all paperwork related to changes in the WORK, including field review, estimating and cost breakdown; coordination and supervision, both office and field, including the PROJECT superintendent; vehicles, including gas and maintenance; small tools, incidentals and consumables; engineering, detailing, and revisions to shop drawings and record drawings; general office expense; extended and unabsorbed home office overhead; warranty; costs of bonds, liability insurance, and all taxes; and all other expenses not specifically included in Section 6.2.2.1

6.2.3 Upon receipt of a proposed CHANGE ORDER, CONTRACTOR shall promptly proceed with the change in the WORK and advise ENGINEER within five (5) working days of CONTRACTOR'S agreement or disagreement with the method, if any, provided in the proposed CHANGE ORDER for determining the proposed adjustment in the CONTRACT SUM or CONTRACT TIME. Failure to return the CHANGE ORDER to ENGINEER within

five (5) working days indicates CONTRACTOR'S AGREEMENT therewith, including adjustment in CONTRACT SUM and CONTRACT TIME or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a CHANGE ORDER.

6.2.4 If CONTRACTOR disagrees with the method for adjustment in the CONTRACT SUM, the adjustment shall be determined by ENGINEER on the basis of any of the methods described in Sections 6.2.1.1 through 6.2.1.4.

6.2.5 Overhead and Profit for actual cost of work performed by the Contractor and/or his Sub-Contractor, shall be determined in accordance with MAG Section 109.5. Cumulative total markup for all tiers of CONTRACTORS and SUBCONTRACTORS shall not exceed thirty percent (30%).

6.2.6 If the net value of a change results in a credit from CONTRACTOR or SUBCONTRACTOR, the credit shall be the actual net cost, plus five percent (5%) for overhead and profit. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to the change.

6.3 COST PLUS ADJUSTMENT

6.3.1 Record Keeping. In the event that the pricing method selected is the "cost plus" method described in Sections 6.2.1.3 and 6.2.1.4, CONTRACTOR shall keep and present daily, in such form as ENGINEER may prescribe, an itemized accounting together with appropriate supporting data of the labor, materials, and equipment used during that DAY. All labor shall be recorded on separate time sheets clearly identified with the CHANGE ORDER number and scope of extra work involved. These time sheets shall be signed daily by ENGINEER. No costs will be allowed for time not recorded and signed the same day the work takes place. CONTRACTOR and ENGINEER shall discuss and attempt to resolve any disputed concerning CONTRACTOR'S daily records at the time the report is submitted.

6.3.2 Reconciliation. CONTRACTOR shall on a monthly basis accompanying the progress payment request submit a reconciliation for all WORK performed under a cost plus CHANGE ORDER during the period of the progress payment. A final reconciliation shall be submitted within 30 days after the WORK of the CHANGE ORDER is completed. The reconciliation shall recap all costs and appropriate markups for the period. No costs will be allowed for work not included in a reconciliation within the time periods specified.

6.4 EFFECT ON SURETIES

6.4.1 All changes authorized by the CONTRACT DOCUMENTS may be made without notice to or consent of the sureties on the CONTRACT bonds, and shall not reduce the sureties' liability on the bonds.

6.4.2 GILBERT reserves the right to require additional payment or performance bonds to secure a CHANGE ORDER.

PART VII

GENERAL CONDITIONS

MATERIALS AND WORKMANSHIP

7.1 GENERAL

7.1.1 All equipment, MATERIALS, and articles incorporated in the WORK covered by this CONTRACT shall be new and subject to review and acceptance by ENGINEER unless otherwise specifically provided for in the CONTRACT DOCUMENTS.

7.1.2 Where equipment, MATERIALS, or articles are referred to in the SPECIFICATIONS as "or equal to" any particular standard, ENGINEER shall decide the question of equality.

7.1.3 Wherever any standard published specification is referred to, the latest edition or revision, including all amendments, shall be used unless otherwise specified. MATERIALS of a general description shall be the best of their several kinds, free from defects, and adapted to the use for which provided. The physical characteristics of all MATERIALS not particularly specified shall conform to the latest standards published by the American Society for Testing and Materials, where applicable. All material shall be new and of the specified quality and equal to the accepted samples, if samples have been submitted.

7.1.4 All WORK shall be done and completed in a thorough, workmanlike manner in conformance with the CONTRACT DOCUMENTS. ENGINEER shall have the authority to reject WORK not in conformance with the CONTRACT DOCUMENTS.

7.1.5 In the event CONTRACTOR discovers any omission from these SPECIFICATIONS or from the PLANS, it shall be the duty of CONTRACTOR to call ENGINEER'S attention to apparent errors or omissions and request instructions before proceeding with the WORK. ENGINEER shall, by appropriate instructions, correct errors and/or omissions, which instructions shall be as binding upon CONTRACTOR as though contained in the original SPECIFICATIONS or PLANS.

7.1.6 CONTRACTOR may appeal a decision of ENGINEER made pursuant to Section 7.1 to GILBERT'S REPRESENTATIVE. Such appeal must be made in writing within forty-eight (48) hours of ENGINEER'S decision or the right to appeal is waived.

7.2 SUBSTITUTION OF MATERIAL OR EQUIPMENT

Substitution of material or equipment shall only be made pursuant to Section 1.8.

7.3 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

7.3.1 Shop drawings are drawings, diagrams, schedules and other data specially prepared for the WORK by CONTRACTOR or any SUBCONTRACTOR, manufacturer, supplier or distributor

to illustrate some portion of the WORK.

7.3.2 Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by CONTRACTOR to illustrate a material, product or system for some portion of the WORK.

7.3.3 Samples are physical examples that illustrate MATERIALS, equipment or workmanship, and establish standards by which the WORK will be judged.

7.3.4 All MATERIALS to be incorporated in the WORK shall be subject to sampling, testing and acceptance. Samples furnished by CONTRACTOR shall be representative of the MATERIALS to be used. ENGINEER may select samples or may require that samples be delivered to and tested at a laboratory designated by ENGINEER at no additional cost to GILBERT.

7.3.5 CONTRACTOR shall prepare, review, approve and submit to ENGINEER, with reasonable promptness and in such sequence as to cause no delay in the WORK or in the WORK of GILBERT or any separate CONTRACTOR all shop drawings, product data and samples required by the CONTRACT DOCUMENTS. CONTRACTOR shall cooperate with ENGINEER in the coordination of the shop drawings, product data and samples with those of other separate CONTRACTORS.

7.3.6 By preparing, approving and submitting shop drawings, product data and samples, CONTRACTOR represents that CONTRACTOR has determined and verified all MATERIALS, field measurements and field construction criteria related thereto, or will do so with reasonable promptness, and has checked and coordinated the information contained within such submittals with the requirements of the WORK, the PROJECT and the CONTRACT DOCUMENTS.

7.3.7 ENGINEER will review and approve or take other appropriate action upon CONTRACTOR'S submittals such as shop drawings, product data and samples for conformance with the SPECIFICATIONS. ENGINEER'S approval of the specific item shall not indicate approval of an assembly of which the item is a component.

7.3.8 All sampling and testing of MATERIALS shall be done in accordance with the latest designated standard methods AASHTO or ASTM, or in accordance with special methods designated in the SPECIFICATIONS. CONTRACTOR shall pay for all material testing required.

7.4 MATERIALS FURNISHED BY GILBERT

All MATERIALS and/or services to be furnished by GILBERT are indicated in the SUPPLEMENTAL CONDITIONS. The cost of CONTRACTOR handling and placing GILBERT-furnished MATERIALS shall be included in the CONTRACT price.

7.5 STORAGE OF MATERIALS

7.5.1 CONTRACTOR shall provide proper storage facilities and exercise such measures as will insure the preservation of the specified quality and fitness of all MATERIALS and equipment to be used in the WORK. Stored MATERIALS shall be located so as to provide reasonable access for inspection. That portion of the right-of-way not required for public travel may be used for storage purposes unless prohibited by the other provisions of the PROJECT SPECIFICATIONS. Any additional space required shall be provided by CONTRACTOR at no cost to GILBERT. Protection of MATERIALS and equipment stored on the site shall be the responsibility of CONTRACTOR. GILBERT reserves the right to direct CONTRACTOR to provide proper means of protection for MATERIALS if such is deemed advisable by ENGINEER; however, the exercise of or failure to exercise this right shall not be deemed to relieve CONTRACTOR of his primary responsibility for protecting the material and equipment. CONTRACTOR shall provide suitable warehouses or other adequate means of protection for such of the MATERIALS and equipment as require storage or protection. CONTRACTOR shall store and care for the material and equipment in the most suitable manner to protect them from distortion, rain, dust, or other damage. Contractor shall maintain all material and equipment in accordance with the manufacturer's instructions. The cost of replacing any material or equipment damaged in storage shall be borne by CONTRACTOR, and the fact that material or equipment has been damaged after partial payment has been made shall not relieve CONTRACTOR of his primary responsibility. No motor shall be left uncovered or unprotected.

7.5.2 Payments for MATERIALS or equipment stored off the site shall be conditioned upon submission by CONTRACTOR of bills of sale to establish GILBERT'S title to such MATERIALS or equipment and certificate of insurance for storage in a bonded warehouse.

7.6 REJECTED MATERIALS AND WORK

ENGINEER shall have the authority to reject MATERIALS which do not conform to the CONTRACT DOCUMENTS. Rejected MATERIALS shall be removed immediately from the site of the WORK unless otherwise permitted by ENGINEER. No rejected MATERIALS, the defects of which have been subsequently corrected, shall be used unless accepted by ENGINEER. If CONTRACTOR fails to remove and replace rejected material, GILBERT has authority to do so and to deduct the cost thereof from any monies due or to become due CONTRACTOR.

7.7 GUARANTEE OF WORK - WARRANTY

7.7.1 CONTRACTOR warrants to GILBERT that all MATERIALS and equipment furnished under this CONTRACT will be new unless otherwise specified and that all WORK will be of good quality, free from faults and defects and in conformance with the CONTRACT DOCUMENTS. All WORK not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by GILBERT or ENGINEER, CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of MATERIALS and equipment. This warranty is not limited by any other provisions of the

CONTRACT DOCUMENTS.

7.7.2 CONTRACTOR shall promptly correct all WORK rejected as defective or as failing to conform to the CONTRACT DOCUMENTS whether observed before or after acceptance and whether or not fabricated, installed or completed. CONTRACTOR shall bear all costs of correcting such rejected WORK, including compensation for the additional services of ENGINEER made necessary thereby.

7.7.3 If, within one year after the date of final acceptance by GILBERT of all WORK required by the CONTRACT DOCUMENTS or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the CONTRACT DOCUMENTS, any of the WORK is found to be defective or not in accordance with the CONTRACT DOCUMENTS, CONTRACTOR shall correct it promptly after receipt of written notice from GILBERT to do so unless GILBERT has previously given CONTRACTOR a written acceptance of such condition. This obligation shall survive termination of the CONTRACT, but it shall in no way limit the warranty set forth in Section 7.7.1. GILBERT shall give the notice required herein promptly after discovery of the condition.

7.7.4 CONTRACTOR shall remove from the site all portions of the WORK which are defective or non-conforming and which have not been corrected unless removal is waived by GILBERT.

7.7.5 If CONTRACTOR does not proceed with the correction of such defective or non-conforming WORK within a reasonable time fixed by written notice from ENGINEER, GILBERT may remove it and may store the MATERIALS or equipment at the expense of CONTRACTOR. If CONTRACTOR does not pay the cost of such removal and storage within ten (10) working days thereafter, GILBERT may upon ten (10) additional working days written notice sell such MATERIALS and equipment at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by CONTRACTOR including, but not limited to, compensation for ENGINEER'S additional services made necessary thereby. If the proceeds of sale do not cover all such costs, the amount to be paid by GILBERT to CONTRACTOR under the CONTRACT shall be reduced by the deficiency. If payments then due to CONTRACTOR are insufficient to cover deficiency, CONTRACTOR shall pay the difference to GILBERT.

7.7.6 CONTRACTOR shall bear the costs of making good all WORK of GILBERT or separate CONTRACTORS destroyed or damaged by CONTRACTOR'S correction or removal of defective WORK.

7.7.7 Nothing contained in this Section 7.7 shall be construed to establish a period of limitation with respect to any other obligation that CONTRACTOR might have under the CONTRACT DOCUMENTS. The establishment of the time period of one year after final acceptance or such longer period of time as may be prescribed by law or by the terms of any warranty required by the CONTRACT DOCUMENTS relates only to the specific obligation of CONTRACTOR to correct the WORK and has no relationship to the time within which CONTRACTOR'S obligation to comply with the CONTRACT DOCUMENTS may be sought to be enforced. Nor the time within which proceedings may be commenced to establish CONTRACTOR'S liability with respect to CONTRACTOR'S obligations other than specifically to correct the WORK.

7.7.8 In the event it is necessary for GILBERT to file suit to enforce any liability of CONTRACTOR, GILBERT shall be entitled to recover from CONTRACTOR, a reasonable sum as and for costs and attorneys fees, in addition to all other amounts found due and owing.

7.8 NO EXERCISE OF AUTHORITY BY ENGINEER

Neither ENGINEER'S authority to act under this Part VII nor any decision made by him in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of ENGINEER to CONTRACTOR, any SUBCONTRACTOR, any of their agents or employees or any other person performing any of the WORK.

PART VIII

GENERAL CONDITIONS

LEGAL RELATIONS AND RESPONSIBILITY

8.1 LAWS TO BE OBSERVED

8.1.1 CONTRACTOR is presumed to know, and at all times shall observe and comply with, all federal and state laws and local ordinances, including but not limited to (1) Workers' Compensation, occupation diseases, and unemployment compensation laws together with the payment of all premiums and taxes therefore; (2) all laws, ordinances, and regulations in any manner affecting the conduct of the WORK; and (3) all environmental laws and regulations and shall indemnify and save harmless GILBERT and its representatives against any claim arising from the violation of such laws, bylaws, ordinances, or regulations by CONTRACTOR, SUBCONTRACTORS and their employees and agents. CONTRACTOR'S particular attention is drawn, but not limited to, the laws in paragraphs 8.2, 8.3, 8.4, 8.5 and 8.15.

8.1.2 If CONTRACTOR performs any WORK knowing it to be contrary to such laws, ordinances and regulations, CONTRACTOR shall assume full responsibility therefore and shall bear all costs attributable thereto.

8.2 HOURS OF LABOR

All CONTRACTS made by or on behalf of the State of Arizona, or any of its political subdivisions, with any person for the performance of any WORK, or the furnishing of any material manufactured within the State, shall comply with the Fair Labor Standards Act and Section 23-391, Arizona Revised Statutes, as amended.

8.3 ALIEN LABOR

A person not a legal alien, citizen or ward of the United States shall not be employed upon or in connection with any state, county or municipal works or employment; provided that nothing herein shall be construed to prevent the working of prisoners by the state or by any county or municipality thereof on street or road work or other public work.

8.4 LABOR DISCRIMINATION

8.4.1 Attention is directed to Arizona Revised Statutes, Title 41, Chapter 9, Article 4, as amended, entitled "Discrimination in Employment."

8.4.2 When federal funds are to pay a portion of the cost of this PROJECT, then the BIDDER shall also comply with applicable paragraphs in the SUPPLEMENTAL CONDITIONS.

8.5 PERMITS AND LICENSES

Except as otherwise provided in the CONTRACT DOCUMENTS, it is the duty of CONTRACTOR to procure all permits and licenses. There will be no charge to CONTRACTOR for any necessary GILBERT permits and inspections.

8.6 PATENTED DEVICES, MATERIALS, AND PROCESSES

CONTRACTOR shall indemnify and save harmless GILBERT and its duly authorized representatives from all liabilities, judgments, costs, damages and expenses which may result from the infringement of any patents, trademarks or copyrights by reason of the use of any proprietary MATERIALS, devices, equipment or processes incorporated in or used in the performance of the WORK under this CONTRACT.

8.7 SURVEY LAND MONUMENTS

Survey land monuments and property marks shall not be moved or otherwise disturbed by CONTRACTOR until an authorized agent, of the agency having jurisdiction over the land monuments or property marks setting, has witnessed or otherwise referenced their location, and only then in accordance with the requirements of the agency having jurisdiction.

8.8 PROTECTION OF PERSON AND PROPERTY

8.8.1 CONTRACTOR shall adopt every practical means and comply with all laws, ordinances and regulations in order to minimize interferences to traffic and inconveniences, discomfort and damage to the public, including the provision of adequate dust control measures. All obstructions to traffic shall be guarded.

8.8.2 If an unsafe condition arises or exists during the progress of the WORK, or if GILBERT has reason to believe that an unsafe condition exists, CONTRACTOR shall suspend the WORK wholly or in part for such period as may be necessary to correct the unsafe condition.

8.8.3 Neither CONTRACTOR nor the SUBCONTRACTOR shall trespass upon private property. CONTRACTOR shall be responsible for all injury or damage to persons or property, directly or indirectly, resulting from operations of CONTRACTOR or SUBCONTRACTORS completing this WORK.CONTRACTOR shall ensure that both CONTRACTOR and SUBCONTRACTORS comply with the laws and regulations of GILBERT, county and state relating to the safety of persons and property. CONTRACTOR will be held responsible and required to make good any injury or damage to persons or property caused by CONTRACTOR or SUBCONTRACTORS or any agent or employee of either during the progress of the WORK and until its final acceptance.

8.8.4 CONTRACTOR shall protect against injury or damage to any pipes, sewer conduits, electrical conduits, lawns, gardens, shrubbery, trees, fences or other structures or property, public and/or private, encountered in this WORK except as stipulated elsewhere herein. CONTRACTOR shall be responsible and liable for any injury or damage or repair to such pipe, structures and property.

8.9 CONSTRUCTION SAFETY PROGRAM AND REGULATIONS

The Arizona Occupational Safety and Health Act and the conditions set forth in the Occupation Safety and Health Standards (OSHA) shall constitute the outline for the safety program to be adhered to during the course of the PROJECT. CONTRACTOR shall keep a copy of these publications available at the jobsite for reference, as well as a copy of CONTRACTOR'S safety program.

8.10 PROTECTION OF ANTIQUITIES

8.10.1 Attention is called to state and federal laws pertaining to the protection and preservation of sites or objects of archaeological, paleontological or historic interest and endangered species.

8.10.2 It shall be a provision of every CONTRACT that when features of archaeological, paleontological or historic interest are encountered or unearthed in the excavation of material pits, the roadway prism, or other excavation, CONTRACTOR shall stop work in the immediate vicinity of such feature, protect it from damage or disturbance, and report promptly to the Director of the Arizona State Museum and ENGINEER. When a possible endangered or threatened species is discovered, CONTRACTOR shall stop work and report promptly to ENGINEER.

8.10.3 WORK shall not be resumed in the immediate area until CONTRACTOR is advised by the authorities having jurisdiction that study or removal of the feature or features has been completed. CONTRACTOR will be allowed an appropriate CONTRACT time extension as provided in these General Conditions for construction time lost.

8.11 CONTINGENCIES

All loss or damage arising from obstruction or difficulties which may be encountered in the prosecution of the WORK, from the action of the elements or from any act or omission on the part of CONTRACTOR, SUBCONTRACTOR or any person or agent employed by him shall be borne by CONTRACTOR.

8.12 NON-RESPONSIBILITY OF GILBERT

Indebtedness incurred for any cause in connection with this WORK must be paid by CONTRACTOR, and GILBERT is hereby relieved at all times from any indebtedness or claim other than payments under terms of the CONTRACT.

8.13 PROPERTY RIGHTS IN MATERIAL

Nothing in the CONTRACT shall be construed as vesting in CONTRACTOR any right of property in the MATERIAL used after they have been attached or affixed to the WORK or the soil and accepted. All such MATERIALS shall become the property of GILBERT upon being so attached or affixed.

8.14 PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK

CONTRACTOR shall properly guard and protect all finished or partially finished WORK, and shall be responsible for the same until that phase is completed and accepted by GILBERT. Estimate or partial payment of WORK so completed shall not release CONTRACTOR from such responsibility, but he shall turn over the entire WORK in full in accordance with the SPECIFICATIONS before final payment can be made.

8.15 ADMINISTRATIVE CLAIMS

Prior to the commencement of litigation related to payment, the WORK or the CONTRACT DOCUMENTS, CONTRACTOR shall file an Administrative Claim with GILBERT. Such Notice shall be filed within 180 DAYS of the accrual of the cause of action. Otherwise any claim by CONTRACTOR against GILBERT, its officers or employees shall be barred.

PART IX

GENERAL CONDITIONS

COMPLETION OF WORK, LIQUIDATED DAMAGES AND FINAL ACCEPTANCE

9.1 FAILURE TO COMPLETE WORK WITHIN TIME FOR COMPLETION AND LIQUIDATED DAMAGES

9.1.1 It is hereby understood and mutually agreed by and between CONTRACTOR and GILBERT, that the date of beginning, rate of progress and the time for completion of the WORK to be done hereunder are essential conditions of this CONTRACT; and it is further mutually understood and agreed that the WORK embraced in this CONTRACT shall be complete on or before the dates set forth in Section 9.2 of this CONTRACT. CONTRACTOR agrees that said WORK shall be prosecuted regularly, diligently and uninterruptedly at such rate of time he specified. It is expressly understood and agreed, by and between CONTRACTOR and GILBERT that the time for completion of the WORK shall be in the time as identified in these CONTRACT DOCUMENTS.

9.1.2 For each working day that any part of the WORK remains uncompleted after the expiration of the time specified and/or allowed for completion of the WORK stipulated in the CONTRACT or ordered after the CONTRACT is signed, the sum per day set forth in Section 9.2 shall be deducted from any monies due CONTRACTOR, or if no money is due CONTRACTOR, GILBERT shall have the right to recover said sum or sums from CONTRACTOR, from the Surety, or both.

9.1.3 It shall be understood that the time to complete the PROJECT, beyond the contractual date of completion, is in itself prima facie evidence of actual damages incurred, and the amount of these deductions are to cover the liquidated damages caused by the loss of use, or limited use, of the facility and other additional GILBERT incurred losses, or expenses, due to the failure of CONTRACTOR to complete the WORK within the time specified.

9.1.4 The liquidated damages amounts set within Section 9.2 are fixed and agreed upon by and between CONTRACTOR and GILBERT because of the impracticability and extreme difficulty of fixing and asserting the actual damages GILBERT would in such event sustain, and said amounts are agreed to be the amount of damages which GILBERT would sustain, and said amounts may be retained from time to time by GILBERT from current periodical estimates.

9.1.5 It is further agreed that time is of the essence of each and every portion of this CONTRACT and of the SPECIFICATIONS where a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the CONTRACT an additional time is allowed as set forth in Section 4.243 of these CONTRACT DOCUMENTS for the completion of any WORK, the new time limit fixed by such extension shall be of the essence of this CONTRACT.

9.1.6 CONTRACTOR shall not be assessed with liquidated damages during any delay in the completion of the WORK where an extension of time has been granted by GILBERT pursuant to Section 4.243.

9.2 COMPLETION/LIQUIDATED DAMAGES

9.2.1 Substantial Completion: The date of SUBSTANTIAL COMPLETION of the WORK, or designated portion thereof, is the date certified in writing by ENGINEER when construction is sufficiently complete, in accordance with the CONTRACT DOCUMENTS as they may have been modified by any CHANGE ORDERS agreed to by the parties, so that GILBERT may use or occupy the PROJECT, or a designated portion thereof, for the purpose for which it was intended. Certification of a designated portion of the WORK by ENGINEER as being Substantially Complete and occupancy of that portion thereafter by GILBERT shall neither release or otherwise operate to excuse CONTRACTOR from his duty to complete the remainder of the WORK within the CONTRACT TIME including liability for liquidated damages.

Time is of the essence and GILBERT will suffer financial damages due to CONTRACTOR'S failure to substantially complete the WORK within thirty (30) DAYS following receipt of the NOTICE TO PROCEED. Liquidated damages of $280 per day will be assessed CONTRACTOR for working each day beyond that time that CONTRACTOR fails to achieve SUBSTANTIAL COMPLETION.

9.2.2 Final Completion: The FINAL COMPLETION Date is the date when all items of the WORK are completely finished with no items of any scope outstanding or remaining to be completed, and all known defective work has been corrected. This is the date upon which the warranty period commences.

Time is of the essence and GILBERT will suffer financial damages due to CONTRACTOR'S failure to reach FINAL COMPLETION of the WORK within ten (10) DAYS after the date of SUBSTANTIAL COMPLETION. Liquidated damages of $280 per day will be assessed CONTRACTOR for each working day beyond that time that CONTRACTOR fails to achieve FINAL COMPLETION.

9.3 FINAL CLEANING UP

At completion of the WORK and prior to final acceptance by GILBERT, a thorough cleaning of the areas affected shall be carried out by CONTRACTOR. The following list is not inclusive, but to act as a guideline:

9.3.1 VERTICAL PROJECTS

9.3.1.1 Removal of all paint spots, stains, rubbish, debris, tools and equipment from all areas and broom clean. Steam clean all carpets and mop floors.

9.3.1.2 Cleaning interior and exterior of the buildings, including all windows in any area affected by the WORK.

9.3.1.3 Brush off, broom sweep, dust and clean ledges, stairs, doors, hardware, and any adjoining rooms or areas that were affected by the WORK.

9.3.1.4 Clear grounds and exterior paved areas and walks of all construction debris, dirt and dust and repair any SITE areas damaged during the course of construction.

Prior to final acceptance, CONTRACTOR shall conduct an inspection of sight-exposed surfaces, and all WORK areas, to verify that the entire WORK is clean. In the event CONTRACTOR fails to do so, GILBERT, may cause this WORK to be done at CONTRACTOR'S expense.

9.3.2 **HORIZONTAL PROJECTS**

9.3.2.1 Wash down, brush off, broom sweep, and clean all areas that were affected by the WORK.

9.3.2.2 Clear landscaped areas, paved areas, and walks of all construction debris, dirt and dust and repair any and all damaged which occurred during the course of construction, and post construction activities.

9.4 RECORD DRAWINGS

CONTRACTOR shall provide accurate data and field notes on red-line construction record drawings as construction progresses, for preparation of the "As-Built" drawings by ENGINEER.

9.5 COMPLETION AND INSPECTION

9.5.1 Notice of punch list inspection: When CONTRACTOR believes that the WORK is complete, it shall request in writing a punch list inspection. Within five (5) working days of the receipt of such request, ENGINEER 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 shall again request a punch list inspection. CONTRACTOR shall be present at the punch list inspection. The purpose of the punch list inspection is to determine whether the WORK has been completed in accordance with the CONTRACT DOCUMENTS, including all CHANGE ORDERS and all interpretations and instructions previously issued. If CONTRACTOR fails to attend any punch list inspection, CONTRACTOR shall be charged for the cost of ENGINEER and other design professionals who attended the punch list inspection.

9.5.2 Punch list. ENGINEER shall notify CONTRACTOR in writing of any deficiencies to be remedied prior to final acceptance, by preparing a written list, known in the industry as a punch list. CONTRACTOR shall remedy all items shown on the punch list prior to final acceptance. 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 ENGINEER. GILBERT reserves the right to require compliance with the CONTRACT DOCUMENTS, notwithstanding the issuance of a punch list or the completion by CONTRACTOR of all items on the punch list.

9.6 FINAL ACCEPTANCE

9.6.1 After all WORK under the CONTRACT DOCUMENTS has been completed, as determined by ENGINEER, including WORK found to be incomplete pursuant to Section 9.5, ENGINEER will recommend in writing to GILBERT that final acceptance of the entire WORK under this CONTRACT be made as of the date of ENGINEER'S final inspection. GILBERT will make final acceptance in writing promptly after receiving ENGINEER'S recommendation unless GILBERT has reason to believe the WORK in not ready for final acceptance.

9.6.2 Unless otherwise specified in either Section 9.2 or under SUPPLEMENTAL CONDITIONS, no partial acceptance of any portion of the WORK will be made and no acceptance other than the final acceptance to the overall completed PROJECT will be made. No inspection or acceptance pertaining to specific parts of the WORK shall be construed as final acceptance of any part until the overall final acceptance is made by GILBERT.

PART X

GENERAL CONDITIONS

PAYMENTS TO CONTRACTORS

10.1 GENERAL

10.1.1 The basis of payment for construction of a PROJECT shall be in full for all WORK actually performed in accordance with the PLANS and SPECIFICATIONS, and shall include all labor and MATERIALS incorporated in the completed WORK.

10.1.2 Application for payment shall be made on GILBERT approved payment application form and accompanied by a cover letter in a format approved by GILBERT.

10.1.3 In the event of a dispute over any amounts owed, GILBERT shall pay the undisputed amount and proceed in good faith to resolve the dispute. Pending final resolution of the dispute, CONTRACTOR shall proceed diligently with performance of the CONTRACT and GILBERT shall continue to make payments in accordance with the CONTRACT DOCUMENTS to the extent such payments are undisputed by GILBERT.

10.2 PARTIAL PAYMENT

10.2.1 Once each month GILBERT will make a partial payment to CONTRACTOR on the basis of a duly certified and approved estimate prepared by CONTRACTOR and accepted by ENGINEER for WORK completed through the last day of the preceding calendar month. If requested by the ENGINEER, CONTRACTOR shall provide supporting data substantiating its corrections. The estimate will cover the WORK performed by CONTRACTOR during the preceding calendar month plus the invoice cost of MATERIAL suitably stored at the site of the PROJECT if CONTRACTOR desires payment for MATERIAL stored. Until final completion and final acceptance, retainage from progress payments to CONTRACTOR shall be ten percent (10%) of each payment. After the CONTRACT is fifty percent (50%) complete, however, one-half of the amount retained shall be paid to CONTRACTOR and the remaining retention shall be five percent (5%) of each payment provided CONTRACTOR is making satisfactory progress on the PROJECT as determined by GILBERT; otherwise, retention shall remain at ten percent (10%). The partial payment shall be paid on or before ten (10) working days after the certified and approved estimate of the WORK is received by GILBERT.

10.2.2 Cost of MATERIAL properly stored will be based on vendors' invoices that shall be listed by CONTRACTOR. A copy of each such invoice shall accompany the first estimate in which payment is requested for MATERIAL covered by the invoice. This list shall be revised and brought up-to-date by CONTRACTOR for each estimate. The revised list shall show the total amount of each invoice, the invoice amount that has been incorporated in the WORK, and the remaining invoice amount that is stored for which payment is required that month. Only those MATERIALS that will become an integral part of the final completed PROJECT may be included for partial payment as MATERIAL stored. Partial payments for jobsite delivered

material or equipment will in no way reduce CONTRACTOR'S responsibility for such MATERIAL or equipment until it has been installed.

10.2.3 **VERTICAL PROJECTS** Schedule of Values: Not later than five (5) working days before the first Application for Payment, CONTRACTOR shall submit to ENGINEER a schedule of values reflecting, as nearly as reasonably possible, the actual values of the various components of the WORK. CONTRACTOR shall provide separate line items for CONTRACTOR'S overhead and profit, supervision, insurance, bonds, allowances, and taxes. CONTRACTOR shall prepare the Schedule of Values on a form essentially equal to AIA Document G702/G703, or other as approved by the PM/CM. If requested by ENGINEER, CONTRACTOR shall provide supporting data substantiating its correctness.

10.2.4 No partial payment shall be made until updated red-line construction record drawings are reviewed and approved by the ENGINEER, through the date for which partial payment is requested, reviewed, and determined to reflect actual WORK in place.

10.3 PAYMENT OF ITEMS IN BID

10.3.1 Only those items listed in the Bid are pay items.

10.3.2 Compensation for all WORK necessary for the completion of the PROJECT shall be included by the BIDDER in the price bid for the items shown in the Bid.

10.4 PAYMENT FOR "EXTRA WORK" AND FOR "CHANGES IN THE WORK"

Payment for changes in the WORK and for claims for extra WORK will be made as stated in Part VI of these GENERAL CONDITIONS.

10.5 ASSIGNMENT OF PAYMENTS

10.5.1 Claims for monies due or to become due CONTRACTOR may be assigned to a bank, trust company, or other financial institution, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment may be made to one (1) party as agent or trustee for two (2) or more parties participating in such financing.

10.5.2 No assignment by CONTRACTOR of any CONTRACT to be entered into hereunder, or of any part thereof, or of funds to be received thereunder by CONTRACTOR will be recognized by GILBERT unless such assignment has had prior consent of GILBERT and the surety has been given notice of such assignment in writing and has consented thereto in writing.

10.6 FINAL PAYMENT AND CONTRACT CLOSEOUT

10.6.1 When CONTRACTOR determines that the CONTRACT is complete and all items on the punch list have been satisfied, or contends that such items are not required by the CONTRACT DOCUMENTS, CONTRACTOR shall submit a request for final payment. No final payment shall be made until all WORK has been finally accepted.

10.6.2 Simultaneously with CONTRACTOR'S request for final payment, CONTRACTOR shall submit the following items to ENGINEER:

10.6.2.1 Red-line construction record drawings

10.6.2.2 Warranties

10.6.2.3 Three sets of documentation completely covering the operation and maintenance of the mechanical and electrical installation and all other equipment required by the SUPPLEMENTAL CONDITIONS to be furnished with such manuals. The documentation shall include charts, diagrams, performance curves, catalog information, lubrication manuals, and details pertaining to the functioning of various items of equipment. The documentation shall be divided logically into "systems" on the basis of operation, without respect to trades, subcontractors or arbitrary specifications sections. The relationship of the "systems" shall be clearly a concisely detailed.

10.6.3 Other items required by the SUPPLEMENTAL CONDITIONS.

10.6.4 Upon receipt of the submittals required in Section 10.6.2, ENGINEER shall prepare a written estimate of the sum due to CONTRACTOR. This estimate 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. ENGINEER 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 from the CONTRACT DOCUMENTS, and estimating the cost of correction of such deviations. ENGINEER'S statement shall be transmitted to GILBERT along with CONTRACTOR'S request for final payment. ENGINEER shall provide a copy of the statement of final inspection and ENGINEER'S estimate of the sum due to CONTRACTOR.

10.6.5 If CONTRACTOR contests the estimate of sums due prepared by ENGINEER, within five (5) working days following delivery to CONTRACTOR of ENGINEER'S estimate of the sum due, CONTRACTOR shall file its protest in writing with the GILBERT Town Clerk, setting forth in detail all grounds alleged by him to justify an adjustment to ENGINEER'S final estimate. Failure to file a protest within the five (5) working days specified above shall constitute a waiver and acceptance by CONTRACTOR of ENGINEER'S estimate.

10.6.6 Neither acceptance of, nor payment for, the WORK or any part thereof, nor any extension of time, nor any possession taken by GILBERT shall operate as a waiver of any of the provisions of the CONTRACT DOCUMENTS, nor shall a waiver of any breach of the contract be held to be a waiver of any other or subsequent breach. Acceptance by GILBERT shall not be deemed an acceptance of latent defects, nor shall it constitute a waiver of any of the provisions of the CONTRACT DOCUMENTS.

10.7 <u>USE OF GILBERT'S ALLOWANCE</u>

10.7.1 The CONTRACT SUM includes a GILBERT allowance which is not a part of the total bid price. This allowance is to be used at the sole discretion of GILBERT for the completion of unspecified work not covered by other bid items. Authorization for work under this bid item shall be made by the CONSTRUCTION MANAGER and GILBERT prior to the start of such work. The Allowance Authorization Form attached to these General Conditions shall be executed by the CONTRACTOR, PM/CM and GILBERT prior to start of such work.

10.7.2 When applicable unit costs from the bid schedule can be used, the CONTRACTOR shall be bound by these costs for the additional work compensated through the allowance; otherwise the cost of allowance work shall be estimated in the same manner as a change order in accordance with Section 6.2 of the General Conditions.

10.7.3 After the additional work is approved, the CONTRACTOR may invoice the cost of such work in accordance with the payment process in the General Conditions.

10.7.4 Any unused part of the GILBERT allowance shall be retained by GILBERT at the end of the project via a deductive change order.

BID FORM

FOR: TOWN OF GILBERT
50 East Civic Center Drive
Gilbert, Arizona 85296

Bid of Somerset Contracting dba Somerset Landscape

CONTRACTOR'S License No. 194494 / 179026 / 252312

A corporation organized and existing under the laws of the State of Arizona; or a partnership consisting of _____, partners; or an individual conducting business as hereinafter called the BIDDER.

TO: THE HONORABLE MAYOR AND COUNCIL
Town of Gilbert
50 East Civic Center Drive
Gilbert, Arizona 85296

The undersigned acknowledges that he has received and familiarized himself with the following:

CONTRACT DOCUMENTS
PROJECT MANUAL AND DETAILS
DRAWINGS
ADDENDA No. ___ dated _____; No. ____ dated _____
No. ___ dated _____; No. ____ dated _____
No. ___ dated _____; No. ____ dated _____

The undersigned further acknowledges that he has visited the site and has familiarized himself with local conditions affecting the cost of the WORK at the place where the WORK is to be done. The undersigned further acknowledges that if his bid is accepted he shall be bound by the terms of the CONTRACT DOCUMENTS.

In submitting this Bid, the undersigned agrees:

1. To furnish all material, labor, tools, expendable and construction equipment, and all utility and transportation services necessary to furnish and install, in a workmanlike manner, all WORK at the PROJECT listed herein in strict conformity with the Construction Documents prepared by Town of Gilbert for the consideration hereinafter set forth.

2. To hold his Bid open for not less than one hundred twenty days (120) DAYS after the receipt of Bids and to accept the provisions of the instructions to BIDDERS regarding disposition of BID SECURITY.

3. To enter into and execute a CONTRACT if awarded on the basis of this Bid within ten (10) days after AWARD of the Bid, and to furnish a PERFORMANCE BOND, a Labor & Material PAYMENT BOND and certificates of insurance in accord with the General Conditions and General Requirements of this CONTRACT and to deliver executed Bonds and Insurance Certificates to GILBERT'S representative within ten (10) DAYS following the issuance of the NOTICE OF AWARD.

4. To utilize the subcontractors and suppliers attached to this Bid Form unless authorized by GILBERT to substitute another subcontractor or supplier.

5. To achieve substantial completion and final completion within the time period stated in the CONTRACT DOCUMENTS taken from the date of NOTICE TO PROCEED or the date otherwise established for the commencement of WORK.

6. The undersigned agrees that time is of the essence and GILBERT will suffer financial damages due to CONTRACTOR'S failure to complete the WORK within the CONTRACT TIME. The liquidated damages shall be as follows for each working day beyond the CONTRACT TIME for which CONTRACTOR shall fail to complete the WORK:

Substantial completion - $_____ per working day
Final completion - $_____ per working day } Per HAG

7. The undersigned has attached the required BID SECURITY and other items required in the Instructions to BIDDERS. The BID SECURITY shall become the property of Town of Gilbert, Arizona, as liquidated damages for the delay and additional WORK caused thereby in the event the CONTRACT and Bonds are not executed within the time set forth above.

NAME OF BIDDER: Somerset Contracting dba Somerset Landscape

TOWN OF GILBERT
BID SCHEDULE

No.	Description	Est. Qty.	Unit	Unit Price	Extended Price
1	Remove Existing Concrete Header	40	L.F.	3.25	130.00
2	Remove Existing Tree Roots Under Header	1	L.S.	885.00	885.00
3	Existing Irrigation System Salvage/Removals	1	L.S.	1480.00	1480.00
4	Turf Restoration (By Seed)	12,220	S.F.	.28	3421.60
5	Concrete Header	40	L.F.	8.85	354.00
6	Irrigation System	1	L.S.	9165.00	9165.00

TOTAL BID PRICE (Items 1-6 Inclusive) $15435.60 (In Numbers)

Fifteen thousand four hundred thirty five (In Words) Dollars

60/100 Cents

GILBERT'S ALLOWANCE AMOUNT $0.00 (In Numbers)
Zero Dollars Zero Cents (In Words)

CONTRACT SUM (total bid price plus GILBERT'S allowance) $15435.60 (In Numbers)

Fifteen thousand four hundred thirty five (In Words) Dollars 60/100 Cents

In evaluating Bids, discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

Bidders are required to fill in all blank spaces with an entry. Bids submitted with blank spaces may be considered "Non-Responsive".

Quantities shown in this bid schedule are approximate only, and are used for the purpose of bid comparison.

In submitting this Bid, it is understood that the right to reject any and all Bids and to waive irregularities in the Bidding has been reserved by GILBERT.

The undersigned hereby certifies that the information submitted herewith, including any attachment is true to the best of his knowledge and belief.

Dated this 21st day of April, 2015

Somerset Contracting dba Somerset Landscape
Name of BIDDER (Company)

19051 S Arizona Avenue
Address of BIDDER

Chandler AZ 85286
City, State, Zip Code

480 782 5296
Area Code/Telephone Number

480-922-8200
Fax Number

Michael C Ricci / Project Mgr
Authorized Officer/Title

Authorized Officer Signature

(I) (We), the undersigned (Corporate Secretary) (Partners), hereby certify that the above-named Officer is hereby authorized to execute all documents relative to this bid and the administration of this bid for and on behalf of the Company named above.

_____ or
Corporate Secretary (signature)

_____
Partner Signature

_____
Partner Signature

LIST OF SUBCONTRACTORS AND SUPPLIERS
To be submitted only if requested by Gilbert after bid opening

Provide the information requested below for those subcontractors and suppliers to whom the BIDDER intends to award a Subcontract greater than or equal to one percent (1%) of the Bid amount. If the BIDDER intends to self-perform a classification of WORK for which a specialty contractor's license is required, the BIDDER shall nominate itself in the spaces provided for that purpose, and the BIDDER shall furnish the BIDDER'S contractor's license number(s) for that classification. For each subcontractor, manufacturer, supplier, person, firm and corporation, the BIDDER shall enter, if available, the telephone number and required licensing information. Failure to provide this information if requested by GILBERT will be just cause for GILBERT to declare the BIDDER'S Bid non-responsive.

WORK TO BE PERFORMED	NOMINEE	CLASSIFICATION & LICENSE NUMBER	PERCENT OF BASE BID
1. Irrigation			
2.			
3.			
4.			
5.			
6.			
7.			

EQUIPMENT/MATERIAL SUPPLIER – (list supplier and material or equipment to be provided)

1. Irrigation - Existing Irrigation
2.
3.
4.
5.

Submitted by: Somerset Contracting

(Bidder)

Signed By: _____

Name and Title: Michael Ricci Project Manager

BID BOND
(Surety Bond)

KNOW ALL MEN BY THESE PRESENTS:

That we, Somerset Landscape LLC dba Somerset Contracting, (hereinafter "Principal"), and the U.S. Specialty Insurance Company, a corporation duly organized under the laws of the State of Texas, duly licensed in and holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, (hereinafter "Surety"), as Surety, are held and firmly bound unto Town of Gilbert, a municipal corporation as Obligee, in the sum of ten percent (10%) of the amount of the bid included in the proposal, submitted by the Principal to the Mayor and Council of Town of Gilbert, for the WORK described below, for the payment of which sum, well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, and administrators, successors and assigns, jointly and severally, firmly by these presents, and in conformance with A.R.S. § 34-201.

WHEREAS, the Principal is herewith submitting its Bid for
Cassia Place FY16 Landscape Improvements - Contract No.:2015-8003-0676

PKID 07-11 - Red Rock St Basin Landscaping.

NOW, THEREFORE, if Town of Gilbert shall accept the Proposal of the Principal and the Principal shall enter into a CONTRACT with Town of Gilbert, in accordance with the terms of such proposal and give the Bonds and Certificates of Insurance as specified in the SPECIFICATIONS with good and sufficient surety for the faithful performance of the CONTRACT and for the prompt payment of labor and material furnished in the prosecution of the CONTRACT, or in the event of the failure of the Principal to enter into the CONTRACT and give the Bonds and Certificates of Insurance, if the Principal pays to Town of Gilbert the difference not to exceed the penalty of the bond between the amount specified in the Proposal and such larger amount for which Town of Gilbert may in good faith CONTRACT with another party to perform the WORK covered by the Proposal, then this obligation is void. Otherwise it remains in full force and effect provided, however, that this Bond is executed pursuant to the provisions of Section 34-201, Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions of the Section to the extent as if it were copied at length herein.

This Surety Bond shall not be executed by an individual surety or sureties, even if the requirements of A.R.S. Section 7-101 are satisfied.

Signed and sealed this 21 day of April, 2015.

Somerset Landscape LLC dba Somerset Contracting
Principal

Title

Witness:

U.S. Specialty Insurance Company
Surety

Witness:

Title Diane L. Arment / Attorney-in-Fact

Ted Rarrick / Witness

Address of Surety:

13403 Northwest Freeway

Houston, TX 77040-6094

* Attach Power of Attorney

POWER OF ATTORNEY

ICAN CONTRACTORS INDEMNITY COMPANY UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY

OW ALL MEN BY THESE PRESENTS: That American Contractors Indemnity Company, a California corporation, United States rety Company, a Maryland corporation and U.S. Specialty Insurance Company, a Texas corporation (collectively, the "Companies"), do by these presents make, constitute and appoint:

Ted H. Rarrick or Diane L. Arment of Tempe Arizona

its true and lawful Attorney(s)-in-fact, each in their separate capacity if more than one is named above, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver **any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include riders, amendments, and consents of surety, providing the bond penalty does not exceed** _____ *****Three Million***** _____ **Dollars ($** **3,000,000.00** **).**
This Power of Attorney shall expire without further action on December 08, 2016. This Power of Attorney is granted under and by authority of the following resolutions adopted by the Boards of Directors of the Companies:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings, including any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts, and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, The Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 10th day of December, 2012.

AMERICAN CONTRACTORS INDEMNITY COMPANY UNITED STATES SURETY COMPANY U.S. SPECIALTY INSURANCE COMPANY

Corporate Seals

AMERICAN CONTRACTORS INDEMNITY CO. INCORPORATED SEPT. 25, 1990 CALIFORNIA — UNITED STATES SURETY COMPANY — U.S. Specialty Insurance Company

Daniel P. Aguilar, Vice President

State of California

County of Los Angeles SS:

On 10th day of December, 2012, before me, Vanessa Wright, a notary public, personally appeared Daniel P. Aguilar, Vice President of American Contractors Indemnity Company, United States Surety Company and U.S. Specialty Insurance Company who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

Signature V. WRIGHT (Seal)

V. WRIGHT
Commission # 1986319
Notary Public - California
Los Angeles County
My Comm. Expires Dec 8, 2016

I, Jeannie Lee, Assistant Secretary of American Contractors Indemnity Company, United States Surety Company and U.S. Specialty Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Los Angeles, California this 21 day of April 2015

Corporate Seals

Bond No. Bid Bond
Agency No. 9718

AMERICAN CONTRACTORS INDEMNITY CO. INCORPORATED SEPT. 25, 1990 CALIFORNIA — UNITED STATES SURETY COMPANY — U.S. Specialty Insurance Company

Jeannie Lee, Assistant Secretary

AFFIDAVIT BY CONTRACTOR
CERTIFYING THAT THERE WAS
NO COLLUSION IN BIDDING FOR CONTRACT

STATE OF ARIZONA)
) ss.
Town of Gilbert)

MICHAEL RICCI
(Name of Individual)

BEING DULY SWORN, DEPOSES AND SAYS:

That he is Project Manager of Somerset Contracting
(Title) (Name of Business)

That pursuant to Section 34-253 of the Arizona Revised Statutes, he certifies as follows:

That neither he nor anyone associated with the said Somerset Contracting
(Name of Business)
has directly, or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this PROJECT.

AND FURTHER that Contractor has not expended nor will expend any money to influence any member of the Town Council of the Town of Gilbert, a GILBERT department or a GILBERT employee in connection with the award of this Contract.

(Signature)

Project Manager
(Title)

Somerset Contracting
(Name of Business)

SUBSCRIBED AND SWORN TO BEFORE ME this 20th day of April, 2015.

Notary Public

My commission expires:

March 27, 2018

JULIE GALAN
Notary Public - Arizona
Maricopa County
My Comm. Expires Mar 27, 2018

Form No. CIP2.4.1
Construction General Conditions without CM for DBB Projects
Revised March 27, 2015

C-1

BIDDERS' QUESTIONNAIRE
[To Be Submitted With Bid]

BIDDER'S RESPONSIBILITY
SUPPLEMENTAL EVALUATION CRITERIA

Organizational Information

BIDDER: Somerset Contracting LLC dba Somerset Landscape
(Bidder's name)

Submitted by:

Name of Organization: Somerset Contracting

Name of Individual: MICHAEL RICCI

Title: Project Manager

Address: 19051 S. ARIZONA AVE
Chandler, AZ 85286

Telephone: (480) 782 5296

Bidder's General Business Information

Check If: [✓] Corporation [ ] Partnership [ ] Joint Venture [ ] Sole Proprietorship

If Corporation:

a. Date and State of Incorporation:
AZ

b. List of Executive Officers:

Name	Title
BRIAN LEMMERMAN	PRESIDENT/CEO

_____

_____

_____

If Partnership:

a. Date and State of Organization:

_____

_____

b. List of Current General Partners:

Name	Title

c. Type of Partnership:

[ ] General [ ] Publicly Traded [ ] Limited
[ ] Other (describe): _____

If Joint Venture:

a. Date and State of Organization:

_____

_____

b. Name and Address of Owner or Owners:

_____

_____

_____

_____

Is your organization a member of a controlled group of corporations as defined in IRC Sec. 1563? [ ] Yes [X] No

If yes, show names and addresses of affiliated companies:

_____

_____

_____

Furnish the following information with respect to an accredited banking institution familiar with your organization:

Name of Bank: METRO PHOENIX BANK

Address: _____

_____

Account Manager: RICHARD STRUCK

Telephone Number: ( ) _____

Similar Projects
(Use Separate Sheets as needed)

Provide information for at least TWO (2) similar projects successfully completed within the last FIVE (5) years. (See Section 1.1.2.)

BIDDER: SOMERSET CONTRACTING
(Bidder's name)

a. Name of Similar Project #1: VERRADO : Victory - VERRADO WAY

b. Contracting Party (Owner):
Name: DMB
Address: 7600 E. DOUBLETREE RANCH RD #300, SCOTTSDALE 85258
Telephone Number: (____) _____

c. If Joint Venture, names of each participant:

d. Contract Price: $410,850.00

e. Description of Similar Project #1: Landscape/Irrigation/ Concrete/ Deco Walls
(Briefly describe here, and attach a copy of the description in the Contract. Technical specifications may be requested by GILBERT.)

f. Construction Manager(s) during the Similar Project #1:
Name: Michael CARPRAU
Address: 7600 E. Doubletree Ranch Rd #300, Scottsdale, AZ 85258
Telephone Number: (623) 256 8212

g. Start date (notice to proceed issued): 11/15/14

h. Completion date provided for in the Contract: 1/30/15

i. Substantial completion date (approved by Owner): 1/11/15

j. Reasons why work was completed early, or why delays occurred:
Push for grand opening

k. Final price paid by Owner for the Similar Project #1: Still Completing Changes

l. If final price was 10% less or more than the original Contract Price, describe why:

m. Describe any large cost over-runs (claims in excess of $_____) disputed or contested by the Owner, the reasons for dispute, and ultimate resolution of the dispute:
None

n. Did Owner file a lawsuit against Bidder concerning performance?
Yes _____ No X If so, what was the result? _____

o. Following final payment on the Similar Project, has Bidder voluntarily or otherwise provided any additional work or repairs, or made any payments to the Owner to cure defects or fulfill warranties made to the Owner concerning the quality of the performance/or the work involved in the Similar Project? Describe:
No

p. Has your company undergone a major change in ownership, management, size, or expertise since the time of this Similar Project? Yes_____ No_____ Describe:
No

All answers should be complete and informative. Attach additional sheets if needed to give a full answer. GILBERT may in its discretion request Bidder to provide additional information concerning this Similar Project as part of its evaluation of the responsibility of the Bidder prior to award of the Contract.

Similar Projects
(Use Separate Sheets as needed)

Similar Project #2

BIDDER: Somerset Contracting
(Bidder's name)

a. Name of Similar Project #2: Veranda: Victory - Sunrise Lane

b. Contracting Party (Owner):
Name: DMB
Address: 7600 E. Doubletree Ranch Rd #300, Scottsdale AZ 85258
Telephone Number: ( )

c. If Joint Venture, names of each participant:

d. Contract Price: $340,052.00

e. Description of Similar Project #2: Landscape / Irrigation
Salvage Tree
(Briefly describe here, and attach a copy of the description in the Contract. Technical specifications may be requested by GILBERT.)

f. Construction Manager(s) during the Similar Project #2:
Name: Mike Campanie
Address: 7600 E. Doubletree Ranch Rd, #300, Scottsdale, 85258
Telephone Number: (623) 256 8212

g. Start date (notice to proceed issued): 11/15/14

h. Completion date provided for in the Contract: 1/30/15

i. Substantial completion date (approved by Owner): 1/11/15

j. Reasons why work was completed early, or why delays occurred:
Push for grand opening

k. Final price paid by Owner for the Similar Project #2: Still Completing Changes

l. If final price was 10% less or more than the original Contract Price, describe why:

_____

_____

m. Describe any large cost over-runs (claims in excess of $_____) disputed or contested by the Owner, the reasons for dispute, and ultimate resolution of the dispute:

None

_____

n. Did Owner file a lawsuit against Bidder concerning performance?
Yes _____ No X If so, what was the result? _____

_____

o. Following final payment on the Similar Project, has Bidder voluntarily or otherwise provided any additional work or repairs, or made any payments to the Owner to cure defects or fulfill warranties made to the Owner concerning the quality of the performance/or the work involved in the Similar Project? Describe:

No

_____

p. Has your company undergone a major change in ownership, management, size, or expertise since the time of this Similar Project? Yes_____ No_____ Describe:

No

_____

All answers should be complete and informative. Attach additional sheets if needed to give a full answer. GILBERT may in its discretion request Bidder to provide additional information concerning this Similar Project as part of its evaluation of the responsibility of the Bidder prior to award of the Contract

Personnel/Subcontractor Qualifications

BIDDER: Somerset Contracting
(Bidder's name)

a. List details of the construction experience of the Key Personnel (as defined in Paragraph 1.1.2 of the Contract Documents) directly involved in construction activities:

Project Manager: 25 yrs exp. Michael Ricci
Superintendent: 30 yrs exp Cirilo Morales

b. Does Bidder have an adequate workforce to complete the Work if awarded the Contract? Describe, including general types of work performed with your own work force:

Yes. All work performed in-house except large concrete & electrical

c. What additional personnel may need to be hired by Bidder as employees, if awarded the Contract?

None. Work force adequate to complete projects

d. What other major projects is Bidder currently under contract to perform? (Describe the projects, completion dates)

Verrado: Bulldozer wash - I-10 $610,000.00 Aug 2015
Verrado: Ph III S Lucas Trails $745,000.00 Sept 2015
Verrado: Ph III N Lucas Trails $422,000.00 Holding

e. Are subcontractors proposed by Bidder ready, willing, and able to perform the work? Yes X No____. (GILBERT may request additional information concerning subcontractors' past performance, personnel, equipment, licenses, and other pending projects)

f. If proposed subcontractors are not available, how does Bidder propose to replace the subcontractors? Never have had this problem with my subcontractors

g. If Bidder requires additional or replacement personnel and/or subcontractors to complete the Work, and there is a labor shortage due to high volume of construction occurring in the Phoenix metropolitan area, is Bidder able to complete the Work on time, as required by the Contract Documents? Yes X No_____. Please describe. (GILBERT does not consider mere labor shortage to qualify as force majeure.)

Sameesch has sufficient labor forces to complete work on time

h. Has any corporate officer, partner, joint venture participant or proprietor ever failed to complete a construction contract awarded to him or her in their own name or when acting as a principle of another organization? Yes_____ No X. If yes, described circumstances: _____

Equipment

BIDDER: Somerset Contracting
(Bidder's name)

a. Does Bidder own equipment necessary to complete the work if awarded the Contract?
Explain: YES

b. Will any equipment need to be rented or leased by Bidder? Explain: YES
On as needed basis for specialty equipment.

TOWN OF GILBERT, ARIZONA
AUTHORIZED SIGNATURE FORM

WHEREAS, the Town of Gilbert requires that CONTRACTOR execute documents necessary for the prompt and efficient execution of the documents related to the CONTRACT;

NOW, THEREFORE, on behalf of the CONTRACTOR I hereby declare that
Michael Ricci
(name(s) of persons authorized)

is/are authorized to execute and sign on behalf of the CONTRACTOR the following documents:

1. The CONTRACT
2. The Bond
3. Payrolls
4. Claims
5. CHANGE ORDERS
6. All other papers necessary for the conduct of the corporation's affairs and the execution of the CONTRACT

for the duration of the CONTRACT or until written notice of revocation has been given, whichever occurs first.

In the event CONTRACTOR is governed by a board of Directors, a copy of the Resolution of the Board granting authority to said person(s) is attached hereto, and I hereby verify that such Resolution remains in full force and effect

Name

CFO
Title

(Seal of Corporation)

STATE OF Arizona)
) ss.
County of Maricopa)

This Authorized Signature Form was acknowledged before me this 21st day of April, 2015 by Jason Lamb.

who appeared before the undersigned Notary Public, and stated that he/she executed such instrument on behalf of _____ for the purpose therein expressed.

Kimberly Poulter
Notary Public

My Commission Expires:

December 22, 2015
CP

KIMBERLY POULTER
NOTARY PUBLIC - ARIZONA
Pinal County
My Commission Expires
December 22, 2015

[IF APPLICABLE: ATTACH RESOLUTION]

PERFORMANCE BOND

STATUTORY PERFORMANCE BOND PURSUANT TO
TITLE 34, CHAPTER 2, ARTICLE 2,
OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the CONTRACT amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter "Principal"), and _____, a corporation organized and existing under the laws of the State of _____, duly licensed in and holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the department of Insurance pursuant to Title 20, Chapter 2, Article 1, (hereinafter "Surety"), as Surety are held and firmly bound unto Town of Gilbert, County of Maricopa, State of Arizona in the amount of _____ Dollars ($_____), for the payment of which, the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written CONTRACT with Town of Gilbert, entitled _____.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the CONTRACT during the original term of the CONTRACT and any extension of the CONTRACT with or without notice to the Surety, and during the life of the guaranty required under the CONTRACT, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the CONTRACT that may hereinafter be made, notice of which modifications to the Surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this Agreement.

The prevailing party in a suit on this Bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

This Bond shall not be executed by an individual surety or sureties, even if the requirements of A.R.S. Section 7-101 are satisfied.

Witness our hands this _____ day of _____, 20___.

_____
PRINCIPAL SEAL

By_____

_____
SURETY SEAL

By _____

Address of Surety:

_____

_____

_____
AGENT OF RECORD

_____
AGENT ADDRESS

* attach Power of Attorney

LABOR AND MATERIALS BOND

STATUTORY PAYMENT BOND PURSUANT TO
TITLE 34, CHAPTER 2, ARTICLE 2,
OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100% of the CONTRACT amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter "Principal"), as Principal and _____, a corporation organized and existing under the laws of the State of _____, duly licensed in and holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1, (hereinafter "Surety"), as Surety are held and firmly bound unto Town of Gilbert, County of Maricopa, State of Arizona in the amount of _____ Dollars ($_____), for the payment of which the Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written CONTRACT with Town of Gilbert, entitled _____.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all monies due to all persons supplying labor or MATERIALS to the Principal or the Principal's SUBCONTRACTORS in the prosecution of the WORK provided for in the CONTRACT, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this Bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this Agreement.

The prevailing party in a suit on this Bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the court.

This Bond shall not be executed by an individual surety or sureties, even if the requirements of A.R.S. Section 7-101 are satisfied.

Witness our hands this _____ day of _____, 20___.

_____
PRINCIPAL SEAL

By _____

_____
SURETY SEAL

By _____

Address of Surety:

_____

_____

_____
AGENT OF RECORD

_____
AGENT ADDRESS

* Attach Power of Attorney

NOTICE TO PROCEED

DATE:

TO:

Subject: NOTICE TO PROCEED AND RETURN OF EXECUTED CONTRACT
Project Name:

Contract No.:	Project Number:
Contract Amount: $	Liquidated Damages: $ __/day
Effective Date:	Substantial Completion Date:
P.O. Number:	Final Completion Date:
Council Approval:	Item Number:

This letter serves as _____, NOTICE TO PROCEED with performance of the above-referenced project contract.

A fully executed and approved copy of the contract and the project's purchase order are enclosed for your files. Also attached is a Notice-to-Proceed CD containing forms required for project completion and a Purchase order. Please indicate the above-referenced contract number and project number on all correspondence. Failure to do so may cause unnecessary delays.

When submitting payment requests, the following information is needed:

1. Cover Letter transmitting the Pay Application, an updated cash flow, updated schedule and a summary of the project status.
2. A completed "Application and Certification for Payment", on approved GILBERT format.
3. A clear, detailed billing invoice, indicating the Contract Number, Project Number and Purchase Order Number referenced above.

If you have any questions please contact Capital Projects at (480) 503-____.

Sincerely,

Capital Projects Program Manager

ACCEPTANCE OF NOTICE

Receipt of the foregoing NOTICE TO PROCEED is hereby acknowledged by _____, this ____ day of _____, 20__.

By _____

Title _____

CHANGE ORDER NO. _____
(Contractor)

PROJECT:
DATE:
OWNER: Town of Gilbert
PROJECT NO:
CONTRACT NO:
CONTRACTOR:
CONTRACT DATED:
PM/CM (Name)

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:

PM/CM _____
(Name) (Date)

CONTRACTOR: _____
(Name) (Date)

GILBERT: _____
(Name) (Date)

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

Contractor agrees that the adjustment of the Contract Price and Contract Time reflected in this Change Order represents the entire and complete adjustment of the Contract Price and Contract Time for the changes set forth in this Change Order. The adjustment of the Contract Price includes all direct costs of labor materials, services and equipment to complete such changes as well as any and all indirect costs of impacts, delays, interference or hindrances in performing, providing and completing the changes set forth in this Change Order. The adjustment of the Contract Time includes all adjustments of time necessary to perform, provide and complete the changes set forth in this Change Order and any and all impacts, delays, interference or hindrances in performing, providing and completing the changes.

TOWN OF GILBERT, ARIZONA
CONTRACTOR'S AFFIDAVIT
REGARDING SETTLEMENT OF CLAIMS

PROJECT _____
_____

To Town of Gilbert, Arizona
Building Department:

The undersigned hereby certifies that (1) all lawful claims for MATERIALS, rental of equipment and labor used in connection with the construction of the above PROJECT, whether by SUBCONTRACTOR or claimant in person, have been duly discharged; and (2) to the best of undersigned's knowledge, there are not any disputed or unresolved claims of any type for MATERIALS, equipment or labor in connection with this PROJECT.

The undersigned, for the consideration of $_____, as set out in the final pay estimate, as full and complete payment under the terms of the CONTRACT, hereby waives and relinquishes any and all further claims or right of lien under, in connection with, or as a result of the above-described PROJECT. The undersigned further agrees to indemnify and save harmless Town of Gilbert against any and all liens, claims of liens, suits, actions, damages, charges and expenses whatsoever, which said GILBERT may suffer arising out of the failure of the undersigned to pay for all labor performance and MATERIALS furnished for the performance of said installation.

Signed and dated at _____, this _____ day of _____, 20____.

_____
CONTRACTOR
By _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was subscribed and sworn to before me this ____ day of _____, 20____.

_____
Notary Public

My Commission Expires:

_____

SUPPLEMENTAL CONDITIONS

1. A CONTRACT shall be awarded to the lowest responsible, responsive bidder. Contract award is currently scheduled for June 2015. In no case shall a NOTICE TO PROCEED be issued before July 1, 2015. Additionally, GILBERT reserves the right to issue a NOTICE TO PROCEED such that the PROJECT will begin in the fall or spring seasons which are optimal for landscape planting.

TECHNICAL SPECIFICATIONS

Cassia Place FY15-16 Improvements March 2015

Improvements are being installed in phases. Only FY15-16 improvements are included in this bid package. Phasing limits in large part are determined by irrigation system layout. There may be some overlap in phasing areas depending on locations of water meters and controllers, in order to provide irrigation to new improvements while maintaining irrigation service to existing areas designated for improvements under future phases. Locations, layouts, and condition of existing irrigation systems as it interfaces with FY15-16 work will need to be field verified.

Description of FY15-16 work for Cassia Place (PKID #07-11) follows.

Cassia Place FY15-16 Landscape and Irrigation Improvements

General description: Landscape planting, turf and irrigation for the Park/ Basin area on E. Raleigh Bay Drive and N. Redrock Street as shown on the plans. The Town reserves the right to reduce the scope of work or eliminate some items in this contract.

Work includes:

- Preservation and protection of existing plantings, irrigation system, pavements, walls, or other structures to remain.
- Restoration of all pavements, curbs, walls, structures, landscaping, irrigation, rock ground cover and other surfaces or features to remain which are disturbed as a result of work under this project phase.
- Maintaining existing irrigation service to areas improved under other phases and existing areas to remain.
- Remove existing damaged section of concrete header as shown on plans and dispose of properly off site.
- Install new concrete header per details and as shown on plans.
- Abandonment of the portions of the existing irrigation system no longer in use in this phase of improvements. At grade or above grade components to be removed/ salvaged as noted on plans. Below grade components can be abandoned in place providing there is no conflict with new improvements.
- Maintain/restore connections to portions of the existing irrigation system to remain or improved under other phases.
- Unless otherwise noted or approved, all extra materials, debris, or materials removed as part of work under this project and not intended for reuse shall be disposed legally offsite.
- Using the existing water meter and backflow preventer, install new irrigation for the landscaping in this FY15-16 phase of work including but not limited to a new controller, mainline, valve assemblies, wiring, lateral piping, drip irrigation emitters and turf spray heads as indicated on plans.

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Eric Jensen, IT Applications Manager, 503-6915

MEETING DATE: June 25, 2015

SUBJECT: InterGraph Contract Renewal

STRATEGIC INITIATIVE: Infrastructure

RECOMMENDED MOTION

A. A motion to approve contract 2015-1105-0652 for the annual support and maintenance for the Intergraph, Police Computer Aided Dispatch and Records Management suite of software in the amount of $193,000;
B. A motion to authorize FY2016 General Fund contingency in the amount of $28,000;

And authorize the Mayor to execute the necessary documents.

BACKGROUND/DISCUSSION

Intergraph provides a suite of products to the Police Department. This suite provides Computer Aided Dispatch (CAD) as one of the primary tools that the police department uses when responding 911 and non-emergency requests. Mobile for Public Safety provides field mobilization for the officers when using their Mobile Data Computers (MDC's). Other Intergraph applications aid the police department with managing records and tracking interactions with the citizens.

The Intergraph suite of products have been utilized by the Town for over 10 years.

During the FY2016 budget process, $165,000 was allocated for goods and services provided by Intergraph. Due to a price increase from the vendor and additional services and licenses added during FY2015, the renewal for FY2016 is $193,000.

The contract was reviewed for form by Attorney Jack Vincent.
The contract was reviewed by Doug Boyer, Purchasing Administrator.

FINANCIAL IMPACT

The total financial impact is $193,000, part of which has been approved in the FY2016 budget ($165,000); the balance of $28,000 (covering additional maintenance and tax) is being requested as contingency funds.

This has been reviewed by Laura Lorenzen, Management and Budget Analyst.

STAFF RECOMMENDATION

Staff recommends approval of contract 2015-1105-0652 for the annual support and maintenance for the Intergraph, Police Computer Aided Dispatch and Records Management suite of software in the amount of $193,000 and approval of $28,000 in FY2016 General Fund contingency funds.

Respectfully submitted,

Eric Jensen
IT Applications Manager

Approved By	Approval Date
Mark Kramer	6/15/2015 10:06 AM
Jack Vincent	6/15/2015 10:29 AM
Laura Lorenzen	6/15/2015 12:16 PM
Douglas Boyer	6/15/2015 12:41 PM

MAINTENANCE QUOTATION SUMMARY

Quote: 1-B4I9S7
Service Level: Premium

Performance Period: 07/01/2015 through 06/30/2016
Billing Terms: PREPAID

Customer:

Gilbert AZ Town Of
ATTN: Eric Jensen
50 E Civic Center Drive
Gilbert, AZ 85296
USA

Billing Address:

Gilbert AZ Town Of
ATTN: Eric Jensen
50 E Civic Center Drive
Gilbert, AZ 85296
USA

Quotation Summary:

SW Maint	$176,865.48
Services	$500.00
Total Services Cost*	$177,365.48

*** Total is exclusive of applicable taxes. Applicable taxes will be added to the invoice.**

The maintenance services quoted herein are subject to the attached U.S. Maintenance Terms and Conditions. This agreement shall only become binding and effective upon the written acceptance by Intergraph. This quotation expires ninety (90) days from the date of issue by Intergraph.

THIS IS NOT AN INVOICE

Offered by: Intergraph Corporation
Security, Government & Infrastructure (SG&I) Division

Signature: *Trey Sampson*
Name: Trey Sampson
Maintenance Contract Administrator
Date: 06/15/2015
Email: trey.sampson@intergraph.com
Telephone: 256-730-2389
Fax: 256-730-5641

Accepted by:

Signature: _____
Name: _____
Title: _____
Date: _____
Email: _____
Telephone: _____
Fax: _____

Please mark one of the following options when submitting your acceptance:

☐ A Purchase Order will not be issued. Customer signature above constitutes notice to proceed with this agreement.

☐ A Purchase Order will be issued and shall reference the terms and conditions of above referenced quote.

Exhibit A

Security, Government & Infrastructure

Gilbert AZ Town Of
Account Nbr: MDC-2388
Quote: 1-B4I9S7- Gilbert AZ Town of Main 15-16

PO#:
Performance Period: 07/01/2015 through 06/30/2016
Service Level: Premium

Bill To:

Gilbert AZ Town Of
ATTN: Eric Jensen
50 E Civic Center Drive
Gilbert, AZ 85296
USA

Ship To:

Gilbert AZ Town Of
ATTN: Eric Jensen
50 E Civic Center Drive
Gilbert, AZ 85296
USA

Ln	Base Part	Description	Serial	Begin	End	Coverage	Mths	Qty	Monthly Cost	Total Cost
Site Number:	50000402									
1	IPS0001HAC	I/Executive for High Availability NL - Component		07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	$1,400.00	$16,800.00
2	IPS0002	I/Dispatcher	MME-1-ALDDO	07/01/2015	06/30/2016	Ph Supp with Upg's	12	9	$316.00	$34,128.00
3	IPS0003	I/Calltaker	1-213647616	07/01/2015	06/30/2016	Ph Supp with Upg's	12	4	$76.00	$3,648.00
4	IPS0004	I/Informer	1-18174131	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	$422.00	$5,064.00
5	IPS0004A	I/Informer to I/LEADS	1-18174141	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	$0.00	$0.00
7	IPS0009	I/Mobile Data Terminal	1-18223876	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	$844.00	$10,128.00
8	IPS0012	I/Page	1-18223892	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	$383.00	$4,596.00
9	IPS0015	I/Tracker	1-18223908	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	$477.00	$5,724.00
10	IPS0019	I/LEADS-Server	MME-1-AI3ZG	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	$401.00	$4,812.00
11	IPS0020	I/LEADS-Records Management System CC - Desktop Client	MME-1-AI49E	07/01/2015	06/30/2016	Ph Supp with Upg's	12	33	$30.00	$11,880.00
12	IPS0022	I/LEADS-Incident Based Reporting	1-18223924	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	$183.00	$2,196.00
13	IPS0026	I/LEADS-Jail Management System - Client	MME-1-AI4IQ	07/01/2015	06/30/2016	Ph Supp with Upg's	12	3	$20.00	$720.00
14	IPS0027	I/LEADS-Mugshot Capture System	1-18174092	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	$183.00	$2,196.00
15	IPS0030	I/LEADS-CAD Link	MME-1-AI3ZW	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	$0.00	$0.00

Exhibit A

Security, Government & Infrastructure

Gilbert AZ Town Of
Account Nbr: MDC-2388
Quote: 1-B4I9S7- Gilbert AZ Town of Main 15-16

PO#:
Performance Period: 07/01/2015 through 06/30/2016
Service Level: Premium

Ln	Base Part	Description	Serial	Begin	End	Coverage	Mths	Qty	Monthly Cost	Total Cost
16	IPS0031	I/Mgt. Analysis & Reporting Sys - Server	1-18223940	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	$477.00	$5,724.00
17	IPS0032	I/Mgt Analysis & Reporting Sys - Client	1-18223956	07/01/2015	06/30/2016	Ph Supp with Upg's	12	5	$21.00	$1,260.00
18	IPS0035	I/Backup	MME-1-ALDH0	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	$477.00	$5,724.00
19	IPS0080C	Mobile for Public Safety Component		07/01/2015	06/30/2016	Ph Supp with Upg's	12	60	$22.00	$15,840.00
20	IPS0042F	I/NetViewer - 25 users	MME-1-ALDHG	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	$765.00	$9,180.00
22	IPS0070A	CopLink Interface	1-292289231	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	$217.00	$2,604.00
23	IPS1163C	I/MapEditor CC - Component	17HU4BG50000402	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	$78.00	$936.00
24	IPSCUSTOM02	Livescan Fingerprint System Interface - Identix	1-18224775	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	$419.71	$5,036.52
25	IPSCUSTOMSVC	IPS Custom Services - Forms - Reports	MME-1-5RTCTW	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	$612.08	$7,344.96
26	GSPX5007C	GeoMedia Professional	18XZVA950000402	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	$208.00	$2,496.00
28	IPS0042	I/NetViewer - 5 users		07/01/2015	06/30/2016	Ph Supp with Upg's	12	2	$192.00	$4,608.00
32	IPSCUSTOM03	Informer-Customer Hyperlink Responses		07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	$350.00	$4,200.00
33	RMSCUSTOM15	Custom Interface- Brazos to I/Leads		01/01/2016	06/30/2016	Ph Supp with Upg's	6	1	$140.00	$840.00
						Subtotal for Site Number	50000402			$167,685.48
Site Number:	00075956									
21	IPS0050	I/InterCAD - First License	1-17892788	07/01/2015	06/30/2016	Ph Supp with Upg's	12	1	$765.00	$9,180.00
						Subtotal for Site Number	00075956			$9,180.00
Site Number:	BILL									
27	ESCROW	Annual Software Escrow Fee		07/01/2015	07/31/2015	Ph Supp with Upg's	1	1	$500.00	$500.00
						Subtotal for Site Number	BILL			$500.00

Exhibit A

Security, Government & Infrastructure

Gilbert AZ Town Of
Account Nbr: MDC-2388
Quote: 1-B4I9S7- Gilbert AZ Town of Main 15-16

PO#:
Performance Period: 07/01/2015 through 06/30/2016
Service Level: Premium

Ln	Base Part	Description	Serial	Begin	End	Coverage	Mths	Qty	Monthly Cost	Total Cost

Grand Total Excluding Tax $177,365.48

Security, Government & Infrastructure (SG&I)

U.S. Maintenance Terms and Conditions for Software

This document ("Terms and Conditions") and the Quote to which these Terms and Conditions are attached set forth the terms and conditions for the maintenance of software and related support services by Intergraph Corporation, doing business as the Security, Government and Infrastructure Division ("Intergraph") for Customer.

1. DEFINITIONS

1.1. "Affiliate" means any entity or person controlled by or under common control of Intergraph Corporation. For the purposes of this Agreement, the term "control" means ownership, directly or indirectly, of equity securities entitling the owner to exercise in the aggregate equal or more than twenty-five percent (25%) of the voting power of the entity in question. For the avoidance of doubt, any Affiliate of Intergraph Corporation is as well deemed an Affiliate of any other Affiliate of Intergraph Corporation; also Intergraph Corporation is an Affiliate of any of its Affiliates.

1.2. "Agreement" means (1) the binding contract incorporating these Terms and Conditions as well as the Quote submitted to Customer under Section 2 and/or, if applicable, (2) the binding contract incorporating a Quote submitted to Customer under Section 3.2 and/or Section 12.1 as well as the maintenance service contract terms and conditions referenced therein.

1.3. "Coverage Period" means the period of performance set forth in the Quote.

1.4. "Covered Products" means the software listed on the Quote for which Services are to be provided to Customer by Intergraph. Covered Products shall also include additional copies of the software (i) where the original software is already covered by the Agreement and (ii) for which additional licenses are purchased or otherwise obtained by Customer during the Coverage Period. Covered Products may include Software Products, as well as Third Party Software.

1.5. "Customer" means the entity or person purchasing Services.

1.6. "Quote" means a quotation for Services submitted to Customer by Intergraph or an authorized Intergraph partner, along with a product quotation at time of purchase of the product to be maintained. according to Section 2, or a quotation for Services submitted to Customer by Intergraph, according to, Section 3.2 and/or Section 12.1.

1.7. "Services" means the maintenance and support services for Covered Products that are further described in the Agreement.

1.8. "Software Product" includes Intergraph's or Intergraph's Affiliate's computer software and all of the contents of the files, disk(s), CD-ROM(s) or other media with which the software is provided, including any templates, data, printed materials, and "online" or electronic documentation, all copies, and any Updates of such Software Products. Software Products

are subject to all of the terms and conditions of the End-User License Agreement ("EULA") provided with the Software Product.

1.9. "Third Party Software" means computer software or other technology in which any person or entity, other than Intergraph or Intergraph's Affiliate, has any right, title or interest, including any restrictions or obligations (such as obligations to obtain consents or approvals and restrictions that may be eliminated only by obtaining such consents or approvals) applicable to the computer software or technology, but does not include software embedded in the Software Products by license from third parties. The use of Third Party Software is subject to all of the terms and conditions of the third party's software license or similar agreement ("SLA") provided with the Third Party Software.

1.10. "Update(s)" means any Upgrade, modified version, fix, patch and/or update of Covered Products. The use of Updates is subject to all of the terms and conditions of the EULA or SLA provided with Customer's current version of the Covered Products.

1.11. "Upgrade(s)" means each new release of Covered Products. Upgrades require a full installation and may be provided with a separate EULA or SLA. Any EULA or SLA delivered with the Upgrade will supersede any EULA or SLA associated with prior releases of the Covered Products.

2. AUTHORIZATION OF SERVICES

By either (a) returning a signed Quote; (b) submitting a signed purchase order referencing a Quote; (c) paying any charges as set forth on a Quote; or (d) accepting delivery of Services as set forth on a Quote, Customer authorizes Intergraph to provide the Services for Covered Products during the Coverage Period in accordance with the Agreement. The Services will be provided by Intergraph in accordance with the Scope of Coverage as set forth in Section 5. The Agreement shall only become binding and effective upon the written acceptance by Intergraph or the first delivery of the Services set forth in the Quote, whichever is earlier.

3. TERM

3.1. Term. This Agreement shall begin, retroactively (if applicable), on the first calendar day of the first month of the applicable Coverage Period, and shall expire at the end of the Coverage Period unless terminated earlier as provided in Section 18, or renewed by mutual agreement of the parties in accordance with Section 3.2. The Coverage Period shall be for whole months only.

3.2. Renewal. Approximately ninety (90) days prior to the expiration date of any Coverage Period, Intergraph will submit to Customer a renewal Quote that includes pricing for the upcoming Coverage Period. Section 2 shall apply mutatis mutandis to the formation of the Agreement based on the renewal Quote as well as the maintenance service contract terms and conditions referenced therein or made available to Customer together with the renewal Quote. If the Agreement is not entered into based on the renewal Quote as well as the maintenance service contract terms and conditions referenced therein, Intergraph, after the preceding Coverage Period has expired, shall be entitled to discontinue Services for the affected Covered Products, including access to system support or knowledge base, and/or end the ability of Customer to log or check support requests.

4. REINSTATEMENT OF MAINTENANCE SUPPORT COVERAGE

4.1. Lapse in Software Maintenance Coverage. To reinstate Services after any termination or suspension thereof, Customer must pay a reinstatement fee. The Coverage Period for any reinstated Services (the "Renewal Coverage Period") shall begin on the first day after the

expiration or termination of the last paid-in-full Coverage Period and extend until the next purchase anniversary date of the lapsed Covered Products. The reinstatement fee will equal twenty-five percent (25%) of the past due maintenance charges (rounded up to whole months only) for the Renewal Coverage Period, and shall be in addition to the total maintenance charges due for the Renewal Coverage Period, all calculated at the current maintenance list price. Upon request of Customer, Intergraph will provide a Quote for the Renewal Coverage Period, to include the reinstatement fee, which is applicable only for reinstatement made in the then-current month.

4.2. Failure to Obtain Maintenance Coverage. In the event Services were not purchased at the time that the Covered Product was originally purchased, in order to obtain Services, Customer must pay one hundred twenty-five percent (125%) of all maintenance payments from the date the original Covered Product was purchased up to the date the Services are actually purchased, plus one hundred percent (100%) of the remaining Coverage Period that expires upon the anniversary date of the original Covered Product purchase, all calculated at the current maintenance list price. The Coverage Period for such Covered Products will begin on the first day of the month in which the Covered Products were originally purchased.

5. SCOPE OF COVERAGE FOR SOFTWARE PRODUCTS

Services described in this Section apply to Software Products only. Services for Third Party Software are set forth in Section 10.

Intergraph offers two levels of Services for Software Products included in the Covered Products: Standard Support and Premium Support. Under both levels of Services, Intergraph shall provide reasonable commercial efforts to aid in the diagnosis and correction of defects in and provide general advice as to the use of the Software Products included in the Covered Products. The level of Services will be set forth on the Quote and will include the following:

5.1. **Standard Support:** Standard Support will include and be limited to the following:

5.1.1. Help Desk Support. Out-of-the-box functionality support via the Help Desk (telephone or eService via Intergraph's Customer Support Web Site where available at http://esupport.intergraph.com). Phone support for all priority levels of software errors is available on Monday through Friday from 8AM – 5PM at Customer's local time, excluding Intergraph-observed holidays. Local variances in support hours will be posted on the Customer Support Web Site or applicable local support website, or can be determined by contacting Customer's local Intergraph office.

5.1.2. Updates. Access to all available Updates of Software Products included in the Covered Products. Intergraph will notify Customer when Updates are made available for any Software Products for which Service has been purchased, by way of posting notices of such to the "Support Notices and Announcements" section on the Customer Support Web Site or applicable local support website or via direct notification by Intergraph. If applicable, Customer may also register on the Customer Support Web Site or applicable local support website to automatically receive email notifications when a new release of a Software Product is made available by Intergraph. Updates are shipped to Customer upon Customer request. Intergraph is not obligated to produce any Updates.

5.1.3. Knowledge Base. Twenty-four-hour-per-day/seven-day-per-week access to problem Knowledge Base, an on-line self-help tool.

5.2. **Premium Support:** Premium Support will include all of the features available under Standard Support. Additionally, when the software error is considered to be critical (meaning

production is down), then phone support is also available after-hours and on Intergraph-observed holidays.

Intergraph may not provide both levels of support for all Software Products in all countries. Customer may choose any level of Services offered, however all Software Products included in the Covered Products under the Agreement must have the same level of Services when available.

Services are only available for the current version and the one version prior to the current version of a particular Software Product. Services are limited to the specific Software Products listed on the Quote and functioning on the appropriate Intergraph-supported operating system.

6. MINIMUM SYSTEM REQUIREMENTS; CUSTOMER'S OBLIGATIONS

Performance of Services by Intergraph is specifically conditioned upon the following minimum system requirements and fulfillment by Customer of the following obligations (collectively, minimum system requirements and customer obligations hereinafter referred to as "Customer Obligations"):

6.1. Customer's hardware and operating system software must meet the minimum system requirements specified by Intergraph and made available to Customer upon request.
6.2. Customer's system must have input and output devices that enable the use of Intergraph's diagnostic programs and supplemental tests. The specifications of such devices shall be made available to Customer by Intergraph upon request.
6.3. Customer will be responsible for any required adjustments or updates to its hardware and/or operating system software required to accommodate Updates of Covered Products.
6.4. Customer will ensure availability of its own system technical support personnel so that Intergraph can fulfill its Service obligations.
6.5. When reporting problems to Intergraph's Help Desk, Customer will provide a complete problem description, along with all necessary documents and information that is available to Customer and required by Intergraph to diagnose and resolve the problem. Customer will grant all necessary access to all required systems as well as to the Covered Products, and any other reasonable assistance needed.
6.6. Customer will carry out any reasonable instructions on troubleshooting or circumvention of the problem provided by Intergraph through the Authorized Contact (as defined below in Section 8.1) immediately and in conformity with these instructions, and will install any necessary patches, defect corrections or new versions from Intergraph.
6.7. Customer is solely responsible for assuring the compatibility of non-Intergraph products with products provided by Intergraph.
6.8. Customer is solely responsible for ensuring its systems, software, and data are adequately backed up. Intergraph will not be liable for lost data.

In addition, Customer shall provide for any other requirements reasonably specified by Intergraph and related to the rendition of the Services to be met.

If Customer fails to fulfill its Customer Obligations, Intergraph is entitled to bill Intergraph's time and effort made necessary by Customer's failure at Intergraph's currently stated hourly rates.

7. EXCLUDED SOFTWARE SERVICES

Services for the following are outside the scope of this Agreement and may be available under separate agreement at an additional charge (collectively "Excluded Services"):

7.1. Installation of any Covered Product, Update, or interface software
7.2. Network configuration
7.3. Configuration or customization of Covered Products to customer requirements.
7.4. System-level tuning and optimization and system administration support

7.5. Programming or software development
7.6. Training
7.7. Services required because the Authorized Contact is not available or is not trained in accordance with Section 8
7.8. On-site Services
7.9. Services outside of the regular business hours associated with the applicable level of Services
7.10. Services required due to modifications of Covered Products by Customer. In the case of Intergraph software modules which assist in the creation and use of Customer software, the performance of Services under the Agreement is restricted to unmodified components of these Covered Products
7.11. Services required due to use other than in the ordinary manner intended for the Covered Products, or use in a manner that contravenes terms hereunder, or Customer's disregard of the installation and operating instructions according to the documentation provided with the Covered Products
7.12. Services required due to failure of software or hardware not supplied by Intergraph and not covered in the Agreement
7.13. Services required due to Customer's use of hardware or software that does not meet Intergraph specifications or failure of Customer to maintain or perform industry standard maintenance on Customer's hardware or software
7.14. Services required due to software or portions thereof that were incorrectly installed or configured, or use in an environment inconsistent with the support environment specified by Intergraph, or used with peripherals, operational equipment or accessories not conforming to Intergraph's specifications
7.15. Services required due to cases of force majeure, especially lightning strikes, fire or flood or other events not caused through Intergraph's fault.
7.16. Services required due to customer's failure to fulfill the Customer Obligations set forth in Section 6
7.17. Services required due to faulty or incomplete Customer data.

When ordered by Customer, Excluded Services or other software maintenance support services that are outside the scope of this Agreement will be billed by Intergraph according to the stated hourly rates and material prices in effect at the time such service is performed.

8. SYSTEM SUPPORT TECHNICIAN

8.1. Customer will appoint a minimum of two and a maximum of three contact people who are each authorized to make use of the Services ("Authorized Contacts").

8.2. Customer must make sure that the Authorized Contacts have adequate expertise and experience to make possible a targeted and professionally accurate description of malfunctions and make it possible for Intergraph to handle them efficiently. Authorized Contacts must have successfully completed Intergraph product training or complete it at the next available scheduled opportunity, for those products for which formal training is available. Customer will bear the cost of this training. Customer is obligated to select only those personnel for this task who are suitable for it by means of training and function, and who have knowledge of Customer's operating system, network, and hardware and software systems. Customer agrees to promptly notify Intergraph of any replacement of an Authorized Contact.

9. REMOTE ACCESS

Customer will permit Intergraph to electronically access Customer's system via SecureLink™. SecureLink™ is a tool for providing secure, auditable remote access to Customer's system in order for Intergraph support personnel ("Customer Support") to effectively troubleshoot critical or complex

problems and to expedite resolution of such issues. The Authorized Contacts should be available to assist Intergraph Customer Support as needed during this entire process. Customer Support will only access Customer's system with the knowledge and consent of Customer. For local variances specific to the use of remote access tools other than SecureLink™, Customer should contact the local Intergraph support office.

10. THIRD PARTY SOFTWARE

Support and Updates of Third Party Software shall be provided in the fashion and to the extent or duration that Intergraph is authorized to provide such by the third party manufacturer of the Third Party Software, and such Third Party Software Services may be subject to additional terms and conditions of the third party manufacturer of the Third Party Software.

Services and Updates for any Third Party Software that are not listed on the Quote must be obtained from the third party owner of the products or their designated representative.

11. REQUIRED COVERAGE

11.1. Multiple or Interdependent Licenses. Customer may not decline maintenance for individual licenses of a Covered Product for which Customer has multiple copies under Service at one site or for Covered Products that are being used interdependently at a single site, except in accordance with the relinquishment process described in Section 12.2.

11.2. Prerequisite Licenses. All prerequisite Intergraph software licenses that are necessary to operate the Covered Products for which Customer desires Services under the Agreement must also be included as Covered Products and listed on the Quote.

12. ADDITIONS AND REMOVALS OF COVERED PRODUCTS

12.1. Additions of Covered Products to Maintenance.

12.1.1. Additional Software Products from Intergraph. In the event Customer purchases additional licenses of Software Products from Intergraph during the term of this Agreement, Intergraph will provide Customer with a written extension Quote that reflects the additional licenses, the effective date of Service, and charges for the additional licenses, pursuant to the Agreement.

12.1.2. Additional Software Products from a third party. In the event Customer obtains additional licenses of Software Products from an authorized reseller or by any other means, Customer agrees to promptly notify Intergraph in writing about the newly acquired Software Products, and upon receipt of such notice, Intergraph will provide Customer with a written extension Quote that reflects the additional licenses, the effective date on which Intergraph may commence the Services with respect to the copies of the Software Product pertaining to the additional licenses, and the charges that would be due in return for these Services pursuant to the Agreement.

12.1.3. Section 2 shall apply mutatis mutandis to the formation of the Agreement based on the extension Quote submitted to Customer under Section 12.1.1 or Section 12.1.2 as well as the maintenance service contract terms and conditions referenced therein or made available to Customer together with the extension Quote. If the Agreement is not entered into based on the extension Quote as well as the maintenance service contract terms and conditions referenced therein, then the terms and conditions in Section 4 regarding reinstatement of Services will apply to the additional licenses of Software Products. If, however, the additional Software Products are multiple, interdependent, or prerequisite licenses as described in Section 11 above, Services

may not be declined, and Services and the appropriate monthly charges will begin on the effective date as shown on the extension Quote.

12.1.4. Additional Software Products via Software Transfer Policy. Customer shall purchase Services on all additional licenses of Software Products for a site obtained via software license transfer. Any such software license transfers shall be in accordance with the then-current Intergraph Software Transfer Policy and the EULA or other applicable Software License Agreement delivered with the Software Product.

12.2. Removal of Covered Products from Maintenance. Either party may provide written notice to the other party at least sixty (60) calendar days prior to the end of any Coverage Period of its intent to remove any individual Covered Products from the Agreement for the renewal period. Neither party may remove Covered Products except upon Agreement renewal. Customer may not remove from the Agreement individual software licenses of a Covered Product for which Customer has multiple copies under Service at one site or for Covered Products that are being used interdependently at a single site, unless Customer has first certified to Intergraph on a "Software Relinquishment Agreement" that the copies of the Covered Product for which Customer desires to cease Services (the "Relinquished Licenses") for the renewal Coverage Period have been uninstalled and removed from its system(s). Should Customer desire to reinstate Services for the Relinquished Licenses at a later date, Customer must re-purchase the licenses at the then current list price.

13. PAYMENT

13.1. Terms of Payment. Charges for Services are due and payable annually and in advance. For Customers desiring to pay quarterly and in advance instead of annually and in advance, Customer must request a revised Quote which shall include a convenience fee increase of fifteen percent (15%) of the total annual charges, which convenience fee Customer agrees to pay. The convenience fee shall be prorated and charged to the four quarterly invoices. All charges are due net thirty (30) calendar days from the date of invoice or prior to the beginning of the applicable Coverage Period, whichever is earlier. Charges for Covered Products added during a Coverage Period shall be prorated to the remaining months of the Coverage Period, in whole month increments only, and such charges shall be due and payable in full upon receipt of invoice.

13.2 Past Due Accounts. INTERGRAPH RESERVES THE RIGHT TO REFUSE SERVICE TO ANY CUSTOMER WHOSE ACCOUNT IS PAST DUE. At the discretion of Intergraph, Customers who have not paid any charges when due (i) under this Agreement, (ii) under any other agreement between the parties, or (iii) under any agreement between Intergraph and Customer's parent and/or subsidiary at least fifty percent (50%) owned by Customer, may not be rendered Services until all past due charges are paid in full. Additionally, Intergraph shall charge and Customer agrees to pay interest at the rate of two percent (2%) per month or the maximum amount allowed by law, whichever is less, for all amounts not received when due. The start of the Coverage Period shall not be postponed due to delayed payment of any charges. If Intergraph is required to use a collection agency or attorney to collect money owed by Customer, Customer agrees to pay the reasonable costs of collection. These collection costs include, but are not limited to, any collection agency's fees, reasonable attorneys' fees and court costs.

13.3 Customer's Responsibilities Concerning Invoice Questions. Subject to applicable law, if Customer intends to dispute a charge or request a credit, Customer must contact Intergraph within ten (10) calendar days of the date on the invoice. Customer waives any right to dispute a charge or receive a credit for a charge or Services that Customer does not report within such period.

14. CUSTOMER WARRANTIES

During the Coverage Period, Customer shall commit to the following:

14.1. Subject to Section 12.2, Customer warrants that for all Covered Products supported under the Agreement, all licenses of a Covered Product for which Customer has multiple copies in its possession and that are located at the site referenced on the Quote, and all prerequisite licenses necessary to operate Covered Products, are listed on the Quote. If all like Covered Products or prerequisite software licenses are not listed on the Quote, Customer agrees to notify Intergraph so that Intergraph may issue a revised Quote to Customer.

14.2. Customer warrants that Services provided herein shall be utilized only for the quantity of Covered Products licenses listed on the Quote.

14.3. Customer shall, and Customer shall cause each of Customer's employees and representatives to, comply with each and every term and condition of the EULA and/or SLA applicable to the Covered Products supported under the Agreement.

15. INTELLECTUAL PROPERTY

15.1. Software License. Any Upgrades furnished hereunder shall remain the property of Intergraph, Intergraph's Affiliate or applicable third party, and are licensed in accordance with the then current Intergraph EULA, EULA of Intergraph's Affiliate or third party SLA, which shall supersede any EULA or SLA associated with prior releases of the Software Products or Third Party Software. Upon Customer's request, Intergraph shall provide customer with such EULA or SLA. Upon Intergraph's request, Customer agrees to execute a EULA or SLA, as applicable, for Covered Products provided without an included EULA or SLA.

15.2. Confidential Information. Intergraph and Customer each acknowledge that they may be furnished with, receive, or otherwise have access to information of or concerning the other party which such party considers to be confidential, proprietary, a trade secret or otherwise restricted. As used in this Agreement "Confidential Information" shall mean all information, which may include third party information, in any form, furnished or made available directly or indirectly by one party to the other that is marked confidential, restricted, proprietary, or with a similar designation. The terms and conditions, and existence, of this Agreement shall be deemed Confidential Information. Confidential Information also shall include, whether or not designated "Confidential Information" (i) all specifications, designs, documents, correspondence, software, documentation, data and other materials and work products produced by either Intergraph or its subcontractors, and (ii) with respect to either party, all information concerning the operations, financial affairs and businesses, and relations with its employees and service providers.

Each party's Confidential Information shall remain the property of that party or relevant third party except as expressly provided otherwise by the other provisions of this Agreement. Customer and Intergraph shall each use at least the same degree of care, but in any event no less than a reasonable degree of care, to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own information of a similar nature.

The parties shall take reasonable steps to ensure that their respective employees comply with these confidentiality provisions. This Section shall not apply to any particular information which either party can demonstrate (i) was, at the time of disclosure to it,

generally publicly available; (ii) after disclosure to it, is published or otherwise becomes generally publicly available through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without restriction on disclosure; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further use or disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the disclosing party. In addition, a party shall not be considered to have breached its obligations by disclosing Confidential Information of the other party as required to satisfy any legal requirement of a competent government body provided that, immediately upon receiving any such request and to the extent that it may legally do so, such party advises the other party promptly and prior to making such disclosure in order that the other party may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information.

16. LIMITED WARRANTIES; WARRANTY DISCLAIMERS

16.1. Limited Warranties.

16.1.1. Intergraph Services Warranty. Intergraph warrants for a period of thirty (30) days from the date of Services that the Services provided pursuant to this Agreement, in the form of a defect correction and/or maintenance services, will be performed with reasonable skill and care in accordance with the requirements set forth herein, provided the Covered Products for which the Services are provided are used under normal conditions and in strict accordance with the terms and conditions herein. Customer agrees to promptly notify Intergraph of any unauthorized use, repair, or modification, or misuse, as well as suspected defects in any Services provided pursuant to this Agreement.

16.1.2. Intergraph Software Warranty. Intergraph warrants for a period of thirty (30) days from the date of shipment of any Software Product that, under normal use, software delivery media shall be free from defect in material or workmanship. Additional warranties for Software Products may be provided in the applicable Intergraph Terms and Conditions for Sale or other agreement between the parties governing the delivery of Software Products.

16.1.3. Pass-Through Third Party Warranties. Third Party Software is only warranted pursuant to a pass-through warranty to Customer from the applicable Third Party Software manufacturer and only to the extent warranted by the applicable Third Party Software manufacturer.

16.1.4. NO OTHER WARRANTIES. THE ABOVE LIMITED WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND REPRESENT THE FULL AND TOTAL OBLIGATION AND/OR LIABILITY OF INTERGRAPH. THE LIMITED WARRANTIES PROVIDE CUSTOMER WITH SPECIFIC LEGAL RIGHTS. CUSTOMER MAY HAVE OTHER RIGHTS, WHICH VARY JURISDICTION TO JURISDICTION. IF A GREATER WARRANTY IS MANDATED PURSUANT TO THE LAW HELD APPLICABLE TO THIS AGREEMENT, THEN INTERGRAPH WARRANTS THE SERVICES OR COVERED PRODUCTS TO THE MINIMUM EXTENT REQUIRED BY SAID LAW.

16.2. Remedies. In the event a warranted Service, Covered Product, or Update provided pursuant to this Agreement does not substantially comply with the limited warranties set forth in the Agreement, Intergraph's entire liability and Customer's exclusive remedy shall be, in Intergraph's sole and absolute discretion, either (i) providing of a Service, Covered Product,

or Update which conforms substantially with the warranty; or (ii) a refund of the purchase price of the particular warranted Service, Covered Product, or Update for the period of time that the warranted Service, Covered Product, or Update did not substantially conform to the limited warranties set forth in this Agreement.

Intergraph is acting on behalf of its suppliers for the sole purpose of disclaiming, excluding and/or limiting obligations and liability as provided in this Agreement, but in no other respects and for no other purpose.

16.3. WARRANTY DISCLAIMERS. ANY WARRANTIES HEREUNDER ARE VOID IF FAILURE OF A WARRANTED ITEM RESULTS DIRECTLY, OR INDIRECTLY, FROM AN UNAUTHORIZED MODIFICATION OF A WARRANTED ITEM; AN UNAUTHORIZED ATTEMPT TO REPAIR A WARRANTED ITEM; OR MISUSE OF A WARRANTED ITEM, INCLUDING WITHOUT LIMITATION, USE OF WARRANTED ITEM UNDER ABNORMAL OPERATING CONDITIONS OR WITHOUT ROUTINELY MAINTAINING A WARRANTED ITEM. CUSTOMER SHALL PROMPTLY NOTIFY INTERGRAPH OF ANY SUSPECTED DEFECTS IN COVERED PRODUCTS DELIVERY MEDIA. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INTERGRAPH AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, RELATING TO THE SERVICES, COVERED PRODUCTS, AND UPDATES PROVIDED PURSUANT TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. INTERGRAPH DOES NOT WARRANT THAT ANY SERVICES, COVERED PRODUCTS, AND UPDATES PROVIDED PURSUANT TO THIS AGREEMENT WILL MEET CUSTOMER'S REQUIREMENTS, AND UNDER NO CIRCUMSTANCES DOES INTERGRAPH WARRANT THAT ANY SERVICES, COVERED PRODUCTS, AND UPDATES WILL OPERATE UNINTERRUPTED OR ERROR FREE. IF ANY PART OF THIS DISCLAIMER OF EXPRESS OR IMPLIED WARRANTIES IS RULED INVALID, THEN INTERGRAPH DISCLAIMS EXPRESS OR IMPLIED WARRANTIES TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW.

17. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL INTERGRAPH OR ITS SUPPLIERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE OR PRODUCTION, LOSS OF REVENUE OR PROFIT, LOSS OF DATA, LOSS OF BUSINESS INFORMATION, BUSINESS INTERRUPTION, CLAIMS OF THIRD PARTIES OR ANY OTHER PECUNIARY LOSS ARISING OUT OF THIS AGREEMENT, EVEN IF INTERGRAPH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. INTERGRAPH'S ENTIRE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER TO INTERGRAPH DURING THE PAST TWELVE MONTHS UNDER THIS AGREEMENT AS OF THE DATE THE EVENT GIVING RISE TO THE CLAIM OCCURS. EXCEPT AS OTHERWISE PROVIDED BY APPLICABLE LAW, NO CLAIM, REGARDLESS OF FORM, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT MAY BE BROUGHT BY CUSTOMER MORE THAN TWO (2) YEARS FOLLOWING THE INITIAL EVENT GIVING RISE TO THE CAUSE OF ACTION. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE ABOVE LIMITATION MAY NOT APPLY TO CUSTOMER. IF ANY PART OF THIS SECTION IS HELD INVALID, THEN INTERGRAPH LIMITS ITS LIABILITY TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW.

18. TERMINATION

This Agreement may only be terminated prior to its expiration in the following ways:

18.1. Either party petitions for reorganization under the Bankruptcy Act or is adjudicated as bankrupt, or a receiver is appointed for the other party's business.

18.2. Customer fails to pay Intergraph any amount when due (i) under this Agreement; or (ii) under any other agreement between the parties.

18.3. Customer's license to the Covered Products for which Customer has purchased Services is terminated.

19. RESTRICTIONS

19.1. Non-Solicitation of Employees. Customer agrees that it will not, without the prior written consent of Intergraph, solicit or hire any Intergraph employee, or induce such employee to leave Intergraph's employment, directly or indirectly, during the term of this Agreement and for a period of twelve (12) months after the Agreement expires or is terminated. Customer agrees that a breach of this provision would cause actual and substantial damages to Intergraph such that it would be very difficult to calculate actual damages. Accordingly, any such breach will entitle Intergraph to recover liquidated damages from Customer in the amount equal to one (1) year of the affected employee's annual salary plus benefits for each such breach, as well as expenses, costs, and reasonable attorneys' fees incurred by Intergraph in seeking enforcement of this Agreement. Customer agrees that the foregoing amount is intended to be, and in fact is, a reasonable estimate of the actual damages that would be incurred by Intergraph if Customer were to breach this provision, and that this amount is not intended to be, and in fact is not, a penalty. In addition, Intergraph shall be entitled to equitable or injunctive relief to prevent further breaches. For purposes of this Section, the term "employee" means employees of Intergraph and/or any Intergraph subsidiary and/or any of Intergraph's subcontractors who directly support Customer.

19.2. United States Government Restricted Rights. If a Covered Product (including any Updates, documentation or technical data related to such Covered Products) is licensed, purchased, subscribed to or obtained, directly or indirectly, by or on behalf of a unit or agency of the United States Government, then this Section also applies.

19.2.1. For civilian agencies: The Covered Product was developed at private expense and is "restricted computer software" submitted with restricted rights in accordance with the Federal Acquisition Regulations ("FAR") 52.227-19 (a) through (d) (Commercial Computer Software – Restricted Rights).

19.2.2. For units of the Department of Defense ("DoD"): The Covered Product was developed at private expense and is "commercial computer software" submitted with restricted rights in accordance with the Defense Federal Acquisition Regulations ("DFARS") DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation).

19.2.3. Notice: The Covered Product is "commercial computer software" as defined in DFARS 252.227-7014 (Rights in Noncommercial Computer Software) and FAR 12.212 (Computer Software), which includes "technical data" as defined in DFARS 252.227-7015 (Technical Data) and FAR 12.211 (Technical Data). All use, modification, reproduction, release, performance, display or disclosure of this "commercial computer software" shall be in strict accordance with the manufacturer's standard commercial license, which is attached to and incorporated into the governing Government contract.

Intergraph and any applicable Third Party Software manufacturers are the manufacturers. This Covered Product is unpublished and all rights are reserved under the Copyright Laws of the United States.

19.3. Export Restrictions. All Software Products and all Third Party Software (including any Updates, documentation or technical data related to such software products) licensed, purchased, subscribed to or obtained, directly or indirectly, from Intergraph, its subsidiaries or distributors (collectively, "Export Controlled Products") are subject to the export control laws and regulations of the United States. Diversion contrary to United States law is prohibited. The Export Controlled Products, and the direct product thereof, shall not be exported or re-exported, directly or indirectly (including via remote access), under the following circumstances:

19.3.1. To Cuba, Iran, North Korea, Sudan, or Syria, or any national of these countries.

19.3.2. To any person or entity listed on any United States government denial list, including but not limited to, the United States Department of Commerce Denied Persons, Entities, and Unverified Lists (www.bis.doc.gov/complianceandenforcement/liststocheck.htm), the U.S. Department of Treasury Specially Designated Nationals List (www.treas.gov/offices/enforcement/ofac/), and the U.S. Department of State Debarred List (http://www.pmddtc.state.gov/compliance/debar.html).

19.3.3. To any entity if Customer knows, or has reason to know, the end use of the Export Controlled Product is related to the design, development, production, or use of missiles, chemical, biological, or nuclear weapons, or other unsafeguarded or sensitive nuclear uses.

19.3.4. To any entity if Customer knows, or has reason to know, that an illegal reshipment will take place.

Any questions regarding export or re-export of an Export Controlled Product should be addressed to Intergraph Corporation's Export Compliance Department, 19 Interpro Road, Madison, Alabama, United States 35758 or at exportcompliance@intergraph.com.

20. TAXES

All charges under this Agreement are exclusive of each and every country's federal, provincial, state, municipal, or other governmental, withholding, excise, sales, use, value added or other taxes, tariffs, custom duties and importing fees ("Taxes"). Customer shall be liable for, and shall indemnify and hold Intergraph harmless from and against, any and all Taxes. Taxes shall expressly exclude any federal, state, municipal, or other governmental income taxes, franchise taxes, business license fees and other like taxes measured by Intergraph's income, capital and/or assets. The total invoice amount for charges under this Agreement is subject to increase by the amount of any Taxes which Intergraph is required to withhold, collect, or pay regarding the transactions under this Agreement so that Intergraph receives the full amount of the charges on Intergraph's invoices. Any certificate to exempt the Agreement from tax liability or other documentary evidence of statutory exemption shall be obtained by Customer at Customer's expense.

21. GENERAL

21.1. Third Party Providers. Intergraph reserves the right to provide Services through a third party provider.

21.2. Entire Agreement. The Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. The Agreement supersedes any and all prior

discussions and/or representations, whether written or oral, relating to the subject matter of the Agreement and no reference to prior dealings may be used to in any way modify the expressed understandings of the Agreement. Intergraph does not accept any contradictory or additional terms and conditions, even by accepting a purchase order referencing different terms and conditions. The Agreement may be amended only by a written instrument signed by authorized representatives of both parties, and cannot be amended by subsequent purchase order or writing received from Customer without the express written consent of Intergraph. Any reproduction of the Agreement made by reliable means (for example, photocopy or facsimile) will be deemed an original.

21.3. Order of Precedence. In the event of a conflict between the documents that form the Agreement, the order of precedence will be as follows: (i) any addenda executed by Intergraph and Customer, with the latest addendum taking precedence over any earlier addenda; (ii) the Quote; and (iii) these Terms and Conditions.

21.4. Severability. Whenever possible, each provision of the Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. However, if any provision of the Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of the Agreement.

21.5. Headings. The various headings in these Terms and Conditions are inserted for convenience only and shall not affect the meaning or interpretation of these Terms and Conditions or any section or provision of these Terms and Conditions.

21.6. No Waiver. Any failure by either party to enforce performance of the Agreement shall not constitute a waiver of, or affect said party's right to avail itself of, such remedies as it may have for any subsequent breach of the terms of the Agreement.

21.7 Notices. Any notice or other communication ("Notice") required or permitted under the Agreement shall be in writing and either delivered personally or sent by overnight delivery, express mail, or certified or registered mail, postage prepaid, return receipt requested. A Notice delivered personally shall be deemed given only if acknowledged in writing by the person to whom it is given. A Notice sent by overnight delivery or express mail shall be deemed given twenty-four (24) hours after having been sent. A Notice that is sent by certified mail or registered mail shall be deemed given forty-eight (48) hours after it is mailed. If any time period in this Agreement commences upon the delivery of Notice to any one or more parties, the time period shall commence only when all of the required Notices have been deemed given. Intergraph's address for Notices is Intergraph Corporation, 19 Interpro Road, Madison, Alabama 35758, Attn: SG&I Contracts, M/S IW17A1.

21.8 Assignment. Neither party shall have the right to assign any of its rights nor delegate any of its obligations under this Agreement without the prior written consent of the other party, except that Intergraph may assign its rights and obligations under this Agreement, without Customer's approval, to (i) an entity which acquires all or substantially all of the assets of Intergraph or the Intergraph division providing a product or service under this Agreement; (ii) an entity which acquires all or substantially all of the Software Products or product line assets subject to this Agreement; or (iii) any subsidiary, affiliate or successor in a merger or acquisition of Intergraph. Any attempt by Customer to sublicense, assign or transfer any of Customer's rights or obligations under this Agreement, except as expressly provided in this Agreement, is void.

21.9 Force Majeure. Except for payment obligations under the Agreement, neither party shall be liable for any failure to perform or observe any of its obligations under this Agreement

for as long as and to the extent that such performance is prevented or hindered by any circumstances beyond its reasonable control. By way of example, and not limitation, such causes may include acts of God or public enemies; labor disputes; acts of local, state, or national governments or public agencies; utility or communications failure; fire; flood; epidemics; riots; or strikes. The time for performance of any right or obligation delayed by such events will be postponed for a period equal to the delay. If, however, a party is subject to a force majeure that endures for more than sixty (60) calendar days, the other party has a right to terminate the Agreement upon providing thirty (30) calendar days prior written notice to the party subject to the force majeure.

21.10 Governing Law. This Agreement shall for all purposes be construed and enforced under and in accordance with the laws of the State of Alabama and shall be deemed to have been accepted in Madison, Alabama, United States. The parties agree that any legal action or proceeding relating to this Agreement shall be instituted in the Circuit Court for Madison County, Alabama, or the United States District Court for the Northern District of Alabama, Northeastern Division. The parties agree to submit to the jurisdiction of and agree that venue is proper in these courts in any such legal action or proceedings. This Agreement shall not be governed by the conflict of law rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

21.11 Waiver of Jury Trial. Intergraph and Customer each hereby waive, to the fullest extent permitted by applicable law, any right either may have to a trial by jury for any legal proceeding arising, directly or indirectly, out of or relating to this Agreement.

21.12 Injunctive Relief; Cumulative Remedies. Customer acknowledges and agrees that a breach of the Agreement by Customer could cause irreparable harm to Intergraph for which monetary damages may be difficult to ascertain or may be an inadequate remedy. Customer agrees that Intergraph will have the right, in addition to its other rights and remedies, to seek and obtain injunctive relief for any breach of the Agreement by Customer, and Customer expressly waives any objection that Intergraph has or may have an adequate remedy at law with respect to any such breach. The rights and remedies set forth in this Agreement are cumulative and concurrent and may be pursued separately, successively or together.

21.13 Attorneys' Fees and Costs. In the event of any legal proceeding arising out of or relating to this Agreement, the prevailing party in such action shall be entitled to an award of its reasonable attorneys' fees and costs for all such legal proceedings, including for trial and all levels of appeal.

21.14 Governing Language. The controlling language of this Agreement is English. If Customer has received a translation into another language, it has been provided for Customer's convenience only.

21.15 Survival. The provisions of the Agreement which require or contemplate performance after the expiration or termination of the Agreement shall be enforceable notwithstanding said expiration or termination.

SGI-092410b

Security, Government & Infrastructure (SG&I)
ADDENDUM to the
U.S. Maintenance Terms and Conditions for Software

This Addendum ("Addendum") to the SG&I U.S. Maintenance Terms and Conditions for Software ("Terms and Conditions") consists of this cover page, the additional terms and conditions on the next page, and the additional Scopes of Coverage marked below (the "Additional Scopes"). This Addendum modifies the Agreement (comprised of the Terms and Conditions and the Quote) between Customer and Intergraph to include the Additional Scopes . By signing this Addendum the parties agree to be bound by the terms of this Addendum. Once signed, 1) the parties agree any reproduction of the Addendum made by reliable means (for example, photocopy or facsimile) is considered an original, and 2) the Agreement is subject to it.

This Addendum replaces all prior oral or written communications between the parties regarding the Additional Scopes. This Addendum shall only modify, alter or waive those specific provisions or language of the Terms and Conditions addressed or referred to herein regarding the Additional Scopes, with all other provisions of the Terms and Conditions remaining in full force and effect, and reflecting the continued intent of the parties for Services of Covered Products.

This Addendum shall be incorporated into the Terms and Conditions and construed and interpreted according to the entirety of the Terms and Conditions. This Addendum shall remain effective for the term of the Agreement, unless terminated earlier.

Scopes of Coverage
If checked below, the following Scopes of Coverage are made a part of the Agreement:

- ☐ System Optimization Funds
- ☒ Custom Interface Software Services
- ☐ Third Party Hardware Services

In witness whereof, the parties have hereto executed this Addendum as of the date of execution by Intergraph.

Intergraph Corporation, doing business as the, Security, Government & Infrastructure Division	***Gilbert AZ Town Of***
Signature: *Trey Sampson*	Signature:
Printed Name: Trey Sampson	Printed Name:
Title: Contract Administrator	Title:
Date: 06/15/2015	Date:

SGI-US-092410b-Addendum

DJA745010

ADDITIONAL TERMS AND CONDITIONS

The following additional terms and conditions apply to the items identified in this Addendum. In case of conflict between any of the parts of the Terms and Conditions, the order of precedence shall be as follows: 1) any addenda executed by the Customer and Intergraph, with the latest addendum taking precedence over any earlier addenda in which a conflict may appear; and 2) the unmodified Terms and Conditions.

Section 1, DEFINITIONS of the Terms and Conditions is modified by adding the following definitions:

1.12 "System Optimization Funds" means amount included on the Quote to cover expenses for services related to Customer's Intergraph system during the Coverage Period that are otherwise considered Excluded Services under the Agreement.

1.13 "Custom Interface Software" means one or more software interfaces previously developed by Intergraph for Customer that work in conjunction and function with specific Covered Products (the specific Covered Products hereinafter referred to as the "Interfaced Covered Products").

1.14 "Third Party Hardware" means the hardware products of any entity other than Intergraph Corporation that are listed on the Quote and for which services are offered.

Scope of Coverage for
System Optimization Funds

Upon Customer's request and prepayment of System Optimization Funds, Intergraph will establish an account for Customer's System Optimization Funds.

1. Designation of System Optimization Funds

Once payment is received by Intergraph, Intergraph will hold System Optimization Funds as advance payment for future purchases of goods and services not provided for under the Agreement, which may include installation of Upgrades, user group registration fees, upgrade of Custom Interface Software, and/or training and installation of Custom Interface Updates (as defined in part 1.(c) of the Scope of Coverage for Custom Interface Software Services).

2. Quote and Statement of Work for Use of System Optimization Funds

Upon the request of the Customer, Intergraph will provide to the Customer a quotation and statement of work detailing the scope of proposed services against which System Optimization Funds are to be applied.

3. Use of System Optimization Funds

If Customer accepts the quotation and statement of work by signing and returning to Intergraph the quotation and statement of work, Intergraph will deliver the proposed services detailed in the statement of work according to a mutually agreed schedule, and will credit the quoted amount against Customer's System Optimization Funds balance. In the event the accepted quotation exceeds the balance of System Optimization Funds held in account for Customer by Intergraph, Customer shall provide a purchase order to Intergraph for the amount of the quotation in excess of Customer's System Optimization Funds balance before Intergraph shall undertake any effort identified in the particular statement of work.

4. Expiration of System Optimization Funds

Unused System Optimization Funds expire on a three (3) year rolling basis from the date of receipt.

Scope of Coverage for
Custom Interface Software Services

1. CUSTOM INTERFACE SOFTWARE SERVICES

Intergraph will provide services for Custom Interface Software, subject to the following.

(a) Services are limited to Custom Interface Software listed on the Quote.

(b) Intergraph will provide Help Desk support to the Customer for Custom Interface Software commensurate with the level of Help Desk support of the Interfaced Covered Products.

(c) Intergraph will provide updates, upgrades, fixes, patches and/or enhancements for Custom Interface Software only to the extent required for Custom Interface Software to function with Updates of Interfaced Covered Products (such updates, upgrades, fixes, patches and enhancements of Custom Interface Software are referred to as the “Custom Interface Updates”).

2. EXCLUDED CUSTOM INTERFACE SOFTWARE SERVICES

Support for the following are outside of the scope of coverage for Custom Interface Software services and may be available through a separate agreement for which Intergraph will provide a quotation at Intergraph’s prevailing rates:

(a) Upgrades, updates, fixes and enhancements of Custom Interface Software that are requested by the Customer (other than those specified in Section 1.0., part (c) above).

(b) Upgrades, updates, fixes and enhancements of Custom Interface Software for the purpose of operating with third party software or systems.

(c) Installation of Custom Interface Software or Custom Interface Updates.

Scope of Coverage for
Third Party Hardware Services

THIRD PARTY HARDWARE SERVICES

Calls from Customer for Third Party Hardware services shall be passed by Intergraph directly to the third party manufacturer of the hardware or their designated service representative (the “Service Provider”). Third Party Hardware services are provided to the Customer by the Service Provider in accordance with the Service Provider’s support policies. Intergraph has no obligation for Third Party Hardware services other than to pass Customer’s support call to the Service Provider.

Services for any third party hardware that are not listed on the Quote must be obtained by Customer directly from the Service Provider.

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Emory A. Smith, IT Manager - Infrastructure, 503-6920

MEETING DATE: June 25, 2015

SUBJECT: Approval of expenditures for IT network equipment and services.

STRATEGIC INITIATIVE: Infrastructure

Build and maintain a strong and effective IT infrastructure to support Information Technology services.

RECOMMENDED MOTION

A motion to approve expenditures under existing contract 2015-1105-0497 with Sentinel Technologies, Inc. in FY2016 for IT network equipment and services not to exceed $323,000.

BACKGROUND/DISCUSSION

Contract 2015-1105-0497 links to State of Arizona contract ADSP012-00001223 with Sentinel Technologies, Inc. to provide network equipment and services. This contract expires May 20, 2016. The State of Arizona has determined that the pricing and discounts in this contract are competitive.

The following projects have been approved for FY2016:

Network Equipment Replacements per IT replacement policy	$ 153,000
Police Department Server Network Improvement	$ 55,000
Network Equipment Support and Maintenance	$ 115,000
TOTAL	$ 323,000

FINANCIAL IMPACT

Funds have been approved in the FY2016 budget for these projects as follows:

110100.11050200.5390	$ 208,000
110100.11050200.5401	$ 115,000
TOTAL	$ 323,000

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

STAFF RECOMMENDATION

Staff recommends approval of expenditures under existing contract 2015-1105-0497 with Sentinel Technologies, Inc. in FY2016 for IT network equipment and services not to exceed $323,000.

Respectfully submitted,

Emory A. Smith
IT Manager - Infrastructure

Approved By	Approval Date
Mark Kramer	6/9/2015 9:38 AM
Jack Vincent	6/15/2015 9:07 AM
Laura Lorenzen	6/15/2015 10:47 AM
Douglas Boyer	6/15/2015 10:33 AM

PURCHASE ORDER CONTRACT
(State of Arizona Bid List)
Contract No. 2015-1105-0497

This Purchase Order Contract is made and entered into by and between the Town of Gilbert, Arizona, a municipal corporation, hereinafter designated as the "Gilbert" and Sentinel Technologies, Inc.

RECITALS:

A. Contractor has contracted with the State of Arizona to provide Network Equipment and Services State Contract No. ADSPO12-00001223 (the "State Contract") and any amendments approved by the State; and

B. Pursuant to A.R.S. § 41-2631 et seq. and Gilbert Municipal Code § 2-357, Gilbert has authority to utilize state cooperative purchasing contracts and engage contractors under the terms thereof.

CONTRACTOR AND TOWN, FOR THE CONSIDERATION HEREINAFTER SET FORTH, PROMISE, COVENANT AND AGREE AS FOLLOWS:

1. Scope of Work. Contractor shall provide the items listed in the Purchase Order(s) submitted by Gilbert in accordance with the State Contract # ADSPO12-00001223 NETWORKdocuments as set forth on the State Procurement website, https://procure.az.gov as may be amended from time to time.

2. Specific Requirements of Gilbert. Contractor shall comply with all specific purchase and delivery requirements and/or options of Gilbert, as specified in the Purchase Order(s) submitted to Contractor.

3. Payment. Payment to the Contractor for the services or supplies provided shall be made in accordance with the price list and terms set forth in the State Contract.

4. Terms of State Contract Apply. All provisions of the State Contract documents, including any amendments, are incorporated in and shall apply to this Contract as though fully set forth herein.

5. Certificates of Insurance. All insurance provisions of the State Contract shall apply, including without limitation, the requirement to name all agencies eligible to use the State Contract as an additional insured. Prior to commencing work under this Contract, Contractor shall furnish Gilbert with a copy of the current Certificates of Insurance required by the State Contract.

6. Term; Renewal. Gilbert may terminate this contract by giving written notice to Contractor. Otherwise, this Purchase Order Contract shall commence upon approval and continue through May 10, 2015. All Purchase Orders must be issued by Gilbert prior to

expiration or termination of the underlying State Contract. The contract shall automatically renew coterminous with the underlying State Contract term.] 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 10TH day of NOVEMBER, 2014.

TOWN OF GILBERT:

By: _____
Purchasing ~~Supervisor~~
ADMINISTRATOR

_____
Jack Vincent
Assistant Town Attorney

CONTRACTOR: Sentinel Technologies, Inc

By: _____
Title: Director, Governance, Compliance & Contract

Form No. 1.3.10
Cooperative Purchasing Agreement (State)
Revised: August 22, 2013

EXHIBIT A
CONTRACT OF STATE OF ARIZONA

Solicitation No. ADSPO12-00001223

Offer and Acceptance

SOLICITATION NO.: ADSPO12-00001223

OFFFEROR:

State of Arizona
State Procurement Office
100 N 15th Ave., Suite 201
Phoenix, AZ 85007

OFFER

TO THE STATE OF ARIZONA:
The Undersigned hereby offers and agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications and amendments in the Solicitation and any written exceptions in the offer.

Arizona Transaction (Sales) Privilege Tax License No.: 07 405716-R

Federal Employer Identification No.: 36 3199 183

Email: kkoski@sentinel.com

Phone: 480-897-5954

Fax: 480-820-7275

Sentinel Technologies
Company Name

1941 W. Warner Ste.
Address

Tempe AZ 85284
City State Zip

Signature of Person Authorized to Sign Offer

Kevin Koski
Printed Name

Director of Sales - Southwest
Title

By signature in the Offer section above, the Offeror certifies:

1. The submission of the Offer did not involve collusion or other anticompetitive practices.
2. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, State Executive Order-2009-09 or A.R.S. §§ 41-1461 through 1465.
3. The Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
4. The Offeror certifies that the above referenced organization ___ IS/ ___ IS NOT a small business with less than 100 employees or has gross revenues of $4 million or less.
5. In accordance with A.R.S. §35-393, the offeror hereby certifies that the Offeror does not have scrutinized business operations in Iran.
6. In accordance with A.R.S. §35-391, the offeror hereby certifies that the Offeror does not have scrutinized business operations in Sudan.

ACCEPTANCE OF OFFER

The Offer is hereby accepted.

The Contractor is now bound to sell the materials or services listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc., and the Contractor's Offer as accepted by the State.

This Contract shall henceforth be referred to as Contract No. ADSPO12-024651. The Contractor has been cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, contact release document or written notice to proceed.

State of Arizona Awarded this 11th day of May 2012

Procurement Officer

Notice of Request for Proposal

In accordance with A.R.S. § 41-2534, competitive sealed proposals for the materials or services specified, will be received by the State Procurement Office **online** through the State's e-Procurement system, ProcureAZ (https://procure.az.gov) at the date and time posted in ProcureAZ. Proposals received by the correct time and date will be opened and the name of each offeror will be publically available. **Proposals must be in the actual possession of the State on or prior to the time and date and at the location indicated in the Notice. Late proposals will not be considered.**

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the appropriate Procurement Agency. Requests should be made as early as possible to allow time to arrange the accommodation. A person requiring special accommodations may contact the solicitation contact person responsible for this procurement as identified above.

OFFERORS ARE STRONGLY ENCOURAGED TO CAREFULLY READ THE ENTIRE SOLICITATION.

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	Offer and Acceptance		State of Arizona State Procurement Office 100 N 15th Ave., Suite 201 Phoenix, AZ 85007
	SOLICITATION NO.: ADSPO12-00001223	PAGE 3	
	OFFFEROR:	OF 38	

OFFER

TO THE STATE OF ARIZONA:

The Undersigned hereby offers and agrees to furnish the material, service or construction in compliance with all terms, conditions, specifications and amendments in the Solicitation and any written exceptions in the offer.

Arizona Transaction (Sales) Privilege Tax License No.:

_____

Federal Employer Identification No.:

_____ _____ _____

Email: _____

Phone: _____

Fax: _____

_____
Company Name

_____
Signature of Person Authorized to Sign Offer

_____
Address

_____
Printed Name

_____
City State Zip

_____
Title

By signature in the Offer section above, the Offeror certifies:

1. The submission of the Offer did not involve collusion or other anticompetitive practices.
2. The Offeror shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246, State Executive Order-2009-09 or A.R.S. §§ 41-1461 through 1465.
3. The Offeror has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer. Failure to provide a valid signature affirming the stipulations required by this clause shall result in rejection of the offer. Signing the offer with a false statement shall void the offer, any resulting contract and may be subject to legal remedies provided by law.
4. The Offeror certifies that the above referenced organization ___ **IS/** ___ **IS NOT** a small business with less than 100 employees or has gross revenues of $4 million or less.
5. In accordance with A.R.S. §35-393, the offeror hereby certifies that the Offeror does not have scrutinized business operations in Iran.
6. In accordance with A.R.S. §35-391, the offeror hereby certifies that the Offeror does not have scrutinized business operations in Sudan.

ACCEPTANCE OF OFFER

The Offer is hereby accepted.

The Contractor is now bound to sell the materials or services listed by the attached contract and based upon the solicitation, including all terms, conditions, specifications, amendments, etc., and the Contractor's Offer as accepted by the State.

This Contract shall henceforth be referred to as Contract No. _____. The Contractor has been cautioned not to commence any billable work or to provide any material or service under this contract until Contractor receives purchase order, contact release document or written notice to proceed.

State of Arizona
Awarded this _____ **day of** _____ **20** _____

_____
Procurement Officer

A. Purpose

The State of Arizona, its agencies, boards and commissions (State) as well as participating members of the State Purchasing Cooperative (Cooperative), have an ongoing requirement for various Products and Services as described herein. The purpose of the Solicitation is to conduct a competitive process, in accordance with Arizona Revised Statutes (ARS) 41-2501 et seq., to create a contract or contracts from which the State and its Cooperative members may acquire these Products and Services.

B. Background

Previously, the State had multiple contracts for multiple products that serviced the State of Arizona. Commonly known as local and wide area network equipment, internet firewall and URL filtering software, small telephone systems and certain unlicensed fixed wireless systems and related services. Each of these Contracts established a minimum set of product-specific, standards-based technology requirements and specifications for manufacturer's equipment to be included under a Contract award.

C. Objectives

Products and Services

The State desires to establish a Contract set for Data, Voice, and Multimedia Network-based, Network-embedded Products and Services to include all converged and traditional-separate voice, data, and video network products and services. Equipment shall be primarily designed, and defined by applicable industry standards, for transporting/receiving data (data, voice, and multimedia) between connection points, destinations or endpoints, rather than product-specific technology requirements, allowing for flexibility to accommodate open-standards-based products, new technologies, and next generation networks.

The objective of this RFP is to contract with network equipment and security related equipment Contractors to provide a full range of equipment, maintenance, training and services.

D. Technology

The State of Arizona is very aware of the changing networking/telecommunications industry, the evolution and improvement of network-based, network-embedded products and services, the expanding importance of networks and connectivity relative to the effective and efficient delivery of government services, and the State's goal of convergence. The State has adopted industry-wide, open standards and best practices where possible as well as moving towards Internet Protocol (IP) standards, services, and convergence. These standards have been incorporated into Statewide Policies, Standards and technology roadmaps.

E. Scope of Products and Services:

The Scope for Data, Voice, and Multimedia Network-based, Network-embedded Products and Services under this Contract includes all converged and traditional-separate voice, data, and video network products and services primarily designed, and defined by applicable industry standards, for transporting/receiving data (data, voice, and multimedia) between connection points, destinations or endpoints.

This scope does not include the single purchase of products and services primarily designed to store or process (compute) data, such as midrange or mainframe computer systems, or consumer electronic hardware, component parts and accessories.

1. The Data, Voice, and Multimedia Network-based, Network-embedded Products and Services under this Contract include:

1.1 The products and or services, including all labor, materials, transportation, equipment and other activities for, and reasonably incidental to the installation, integration, and implementation, including engineering analysis, design and configuration, of the manufacturer's product or service;

1.2 The software and/or hardware maintenance and support of the manufacturer's product or service; and

1.3 Ancillary services in conjunction with the implementation, or installation of a manufacturer's product.

2. The following Data, Voice, and Multimedia Network-based, Network-embedded Products and Services, are specifically included in this Contract are:

2.1 Networking products and services, such as routers, gateways, switches, modems, CSU/DSU, access devices, network servers, concentrators, network-embedded security solutions, caching and content management devices;

2.2 Network firewalls, filtering software, and security solutions;

2.3 Network Management Products such as management, monitoring, testing, analyzing, and traffic-simulating equipment;

2.4 Wireless Products such as IEEE 802.11x (Wireless Local Area Network (WLAN)), IEEE 802.15 (Wireless Personal Area Network (WPAN)), IEEE 802.16 (Wireless Metropolitan Area Network (WMAN)), and Fixed Wireless Equipment and related services, such as access points, transfer points, and controllers

2.5 Video and Audio conferencing equipment, other than audio and visual presentation and composing equipment including consumer electronics, designed to transmit multimedia data;

2.6 Telephony products and services, such as IP Telephony systems, PBX and key systems, voice mail and unified messaging systems, teleconferencing, call management systems including Automatic Call Distribution (ACD), Interactive Voice Response (IVR), Computer Telephony Integration (CTI), call accounting, and the associated end-user telephone devices, **other than** two-way radios;

2.7 Telephony management, monitoring, testing, analyzing, and traffic-simulating equipment; and

2.8 Services used in conjunction with the design and analysis, configuration, implementation, installation, training, maintenance, and support of Data, Voice, and Multimedia Network-based, Network-embedded products and services.

3. The following items specifically are not included in this Contract:

3.1 Building Wiring Systems (BWS) and structured cabling systems;

3.2 Microcomputer Hardware, PC Software and Related Services including desktop PC-based firewall and virtual private network (VPN) client-only products and services;

3.3 Fixed Wireless Systems and Related Services such as point-to-point and multi-point radios, cabling, antennas, towers, power, frequency coordination, licensing, designed to receive/transmit data;

3.4 General purpose UNIX Workstations & Servers;

3.5 Disaster Recovery Services;

3.6 Value-Added-Software not specifically designed to support and secure the transport of data (as defined above);

3.7 Radio Related Products and Services, including Public Safety Communication Equipment, 2-way radios, 900MHz Digital Microwave Radio Systems, and Digital Microwave Radio Equipment;

3.8 Disk Data Storage Hardware, including Network Attached Storage and Storage Area Network;

3.9 General Information Technology Research & Advisory Service and IT Consultant Services;

3.10 Video and Audio Products, such as audio and visual presentation and composing equipment, cameras, monitors, VCRs and consumer electronics; and

3.11 Carrier Services, both regulated and unregulated.

F. Product/Service Percent of List Price

The Contractor shall make available a complete family or product line at a "single percentage-of-list-price." The Contractor shall also make available a similar "single percentage-of-list-price" for maintenance within a complete family or product line. The Contractor may offer promotional or volume discounts at any time during the Contract such that the price is at or below the percent of list price within the Contract.

G. Technical Support

The Contractor shall provide and maintain a toll-free technical support telephone line, website or other communication mechanisms. The support shall be accessible to all Customers who wish to obtain competent technical assistance regarding the operation of Products supplied by the Contractor.

If requested by the Customer, the Contractor shall also provide on-site installation and troubleshooting and assistance services. These services shall be in addition to the maintenance and support mechanism referenced in Item H. The Contractor shall provide these services as an hourly expense, or if available as a value added component of any maintenance and support program (Item H), costs shall be incorporated into that Program's expense.

H. Maintenance

The Contractor shall offer a maintenance program for those Customers who choose or require these services. Maintenance programs shall be comprehensive enough to provide service to any Customer within the State of Arizona.

I. Service Pricing

Any services shall include coverage to all geographic regions within the State of Arizona. Service areas are divided into two sections, urban and rural illustrated in "Illustration I: Service Area Map". The Contractor may establish a single price for Rural areas and a single price for Urban areas. All cities specified as Rural shall consider the entire city as Rural regardless if any portion of the city is beyond the specified radius. The four urban areas are;

1. Flagstaff with a 20 mile radius from City Center,

2. Yuma with a 20 mile radius from City Center,

3. Tucson with a 25 mile radius from City Center, and

4. Phoenix with a 30 mile radius from City Center that includes the following outlying Cities;

4.1 Avondale,

4.2 Chandler,

4.3 El Mirage,

4.4 Glendale,

4.5 Goodyear,

4.6 Litchfield Park,

4.7 Mesa,

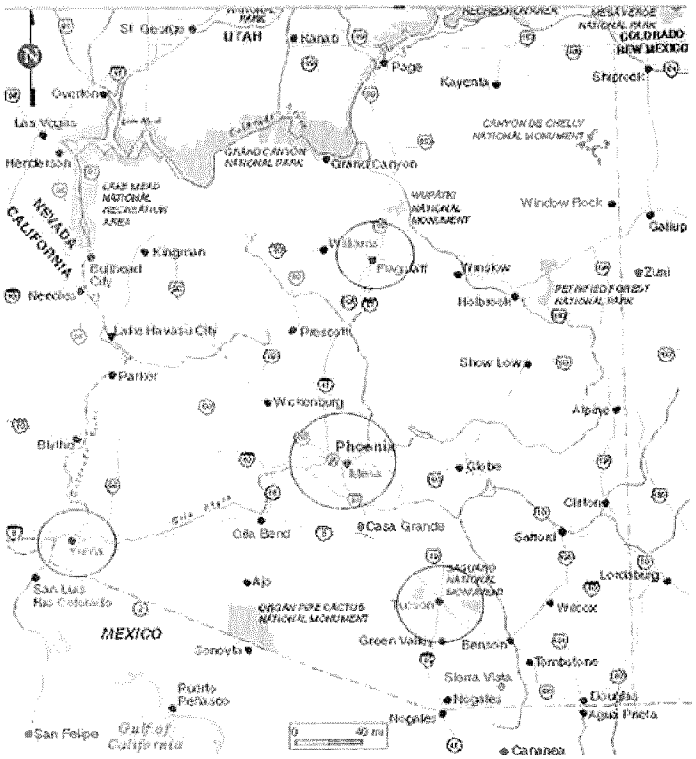
4.8 Peoria,

4.9 Scottsdale,

4.10 Tempe, and

4.11 Tolleson

Illustration I: Service Area Map (next page)



http://www.seds.org/~spider/spider/az/arizona.jpg

J. E-Rate Compliant

All Contractors must commit to participation in the Federal Communication Commission's E-rate discount program established under authority of the Federal Telecommunications Commission Act of 1996. Participation in, and implementation of, this program must be provided without the addition of any service or administration fee by the Contractor.

K. Online Catalog and Electronic Ordering System (Punch-Out)

Within six (6) months of award, the Contractor shall make available an online catalog to allow Authorized Purchasers to make equipment purchases from this Contract through the State's eProcurement System (ProcureAZ). The Contractor shall have a secured website for placing online orders. The features and functions of the online ordering catalog that is created for use by the State under this Contract shall include, but shall not be limited to the following:

1. Access by standard web browers;

2. Product information such as unit of measure, item status, price description and photos;

3. Item status inquiry functionality that provides stock availability;

4. Order tracking;

5. Help functionality;

6. Reflect current catalog and or price list and contract pricing;

7. Restricted to only those items that may be purchased under this Contract by being identified as core items or are within the general product categories established by this Contract; and

8. Shall not include any items that are specifically excluded from this Contract.

In the interim, the Contractor shall provide an electronic version of all contracted catalog/price lists for posting in ProcureAZ. The versions shall be in either; PDF, Excel, CSV or other agreed to formats.

1. PRE-OFFER CONFERENCE:

A Pre-Offer Conference will be held at the time and place indicated in the solicitation's 'Pre-Bid Conference' field as found within the State's e-Procurement system, ProcureAZ (https://procure.az.gov); attendance is not required. The purpose of the conference will be to clarify the contents of the solicitation in order to prevent any misunderstanding of the State of Arizona's position. Any doubt as to the requirements of the solicitation or any apparent omission or discrepancy should be presented to the State at the conference. The State of Arizona will then determine the appropriate action necessary, if any, and issue a written amendment to the solicitation if required. Oral statements or instructions will not constitute an amendment to the solicitation.

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, or this document in an alternative format, by contacting the State Procurement Office. Requests should be made as early as possible to allow sufficient time to arrange for accommodation.

2. INQUIRIES:

Any question related to this Request For Proposal shall be directed to Terri Johnson at terri.johnson@azdoa.gov. The Offeror shall not contact or ask questions of the Department for which the requirement is being procured. Questions should be submitted in writing when time permits. Any correspondence related to a solicitation should refer to the appropriate solicitation number, page and paragraph number.

3. PREPARATION OF PROPOSAL:

a. ELECTRONIC DOCUMENTS: This solicitation document is provided in an electronic format. Any unidentified alteration or modification to any solicitation documents, to any attachments, exhibits, forms, charts or illustrations contained herein shall be null and void. In those instances where modifications are identified, the original document published by the State shall take precedence. As provided in the Uniform Instructions to Offerors, Offerors are responsible for clearly identifying any and all changes or modifications to any solicitations document upon submission to the State.

b. ATTACHMENT FORMATS: All attachments shall be submitted in a format acceptable to the State. Acceptable formats include .doc (Microsoft Word document), .xls (Microsoft Excel spreadsheet), and .pdf (Adobe Acrobat portable document format). Prospective offerors that wish to submit attachments in other formats shall submit an inquiry to the Procurement Officer.

c. CONFIDENTIAL INFORMATION: If a person believes that any portion of a proposal, bid, offer, specification, protest or correspondence contains information that should be withheld, then the Procurement Officer shall be so advised in writing (Price is not confidential and will not be withheld). Such material shall be identified as confidential wherever it appears. The State, pursuant to A.C.R.R. R2-7-104, shall review all requests for confidentiality and provide a written determination. If the confidential request is denied, such information shall be disclosed as public information, unless the person utilizes the 'Protest' provision as noted in §41-2611 through §41-2616.

d. CONTRACT PAYMENT TERMS: Offerors must indicate the prompt payment terms that they will offer to the State (for example: 2/10 Net 30; 2/15 Net 30, etc.) At a minimum, offeror's payment terms shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days.

e. SUBCONTRACTORS: Supplemental to the Subcontractor provision in the Uniform Instructions, Offerors shall include with their list of proposed subcontractors, their contact information, certifications required for the performance of the Contract, as well as, the Subcontractor's proposed responsibilities under the Offeror's proposal.

4. SUBMISSION OF PROPOSAL:

a. OFFER SUBMISSION, DUE DATE AND TIME: With regards to Uniform Instructions, Section D "Submission of Offer", Item 1 "Sealed Envelope or Package"; offers in response to this solicitation shall be submitted within the State's e-Procurement system, **ProcureAZ (https://procure.az.gov).** Offers shall be received before the date/time listed in the solicitation's 'Bid Opening Date' field. Offers submitted outside ProcureAZ, or those that are received on or after the date/time stated in the 'Bid Opening Date' field, shall be rejected. Questions in this regard shall be directed to the Procurement Officer or to the ProcureAZ Help Desk (procure@azdoa.gov or 602-542-7600).

b. RESPONSIBILITY, RESPONSIVENESS AND ACCEPTABILITY: In accordance with A.R.S. 41-2534(G), A.A.C. R2-7-330 and R2-7-354, State shall consider the following in determining offerors' responsibility as well as the responsiveness and acceptability of their proposals. Offerors may not be considered responsible if they have been debarred from the practice of their profession that would otherwise be necessary in the provision of goods and services under any resulting contract. Offerors may not be considered responsible if they have had a contract with the State, within the last three-years, that was terminated for cause, due to breach or similar failure to comply with the terms of any such contract. Offerors may also not be considered responsible if there is factual evidence of their frequent and reoccurring failure to satisfy the terms of their agreements and contractual relationships, both with the State or other government entities. Factual evidence shall consist of any documented vendor performance reports, customer complaints and/or negative references.

c. Proposals may not be considered responsive and/or acceptable if they do not contain information sufficient to evaluate the proposal in accordance with the factors identified in the solicitation or other necessary proposal components. Necessary components include: an indication of the Offeror's intent to be bound, price proposal, solicitation amendments, bond and reference data as required.

d. PROPOSAL CONTENT The Offeror must make a firm commitment to provide services as required and proposed. The material contained in your proposal should be relevant to the service requirements stated in the solicitation and submitted in a sequence that reflects the scope of work portion of this document and information relevant to the designated evaluation criteria as stated herein. Failure to include the requested information may have a negative impact on the evaluation of the Offeror's proposal.

5. EVALUATION: In accordance with the Arizona Procurement code 41-2534, awards shall be made to the responsible Offeror(s) whose proposal is determined in writing to be the most advantageous to the State based upon the evaluation criteria listed below. The evaluation factors are listed in their relative order of importance.

a. Method of Approach (Methodology);

b. Capacity of Offeror;

c. Cost; and

d. Compliance to Terms, Conditions and Instructions.

6. OPENING: Proposals received by the correct time and date will be opened and the name of each offeror will be publically available. Proposals will not be subject to public inspection until after contract award.

7. CLARIFICATIONS: Upon receipt and opening of proposals submitted in response to this solicitation, the State may request oral or written clarifications, including demonstrations or questions and answers, for the sole purpose of information gathering or of eliminating minor informalities or correcting nonjudgmental mistakes in proposals. Clarifications shall not otherwise afford the offerors the opportunity to alter or change its proposal.

8. **DISCUSSIONS:** In accordance with A.R.S. 41-2534, after the initial receipt of proposals, the State may conduct discussions with those offerors who submit proposals determined by the State to be reasonably susceptible of being selected for award.

9. **FINAL PROPOSAL REVISIONS:** If discussions are conducted, the State shall issue a written request for Final Proposal Revisions. The request shall set forth the date, time and place for the submission of Final Proposal Revisions. Final Proposal Revisions shall be requested only once, unless the State makes a determination that it is advantageous to conduct further discussions.

10. **CONTRACT AWARD:** The State intends to award a firm-fixed price contract or contracts, unless otherwise indicated, resulting from this solicitation to the responsible Offeror(s) whose proposal represents the best value after evaluation in accordance with the factors and sub-factors identified in the solicitation. The State may reject any or all proposals if such action is in the State's best interest. The State may waive informalities and minor irregularities on proposals received. The Offeror's initial proposal should contain the Offeror's best terms from a price or cost and technical standpoint. The State reserves the right to conduct discussions (negotiations) if the procurement officer determines them to be necessary. If the procurement officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the procurement officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. The State reserves the right to make an award on any item for any quantity less than the quantity offered, at unit costs or prices offered, unless the Offeror specifies otherwise in the proposal. The State reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the State's best interest to do so. Any exchanges with Offerors after receipt of a proposal do not constitute a rejection of counteroffer by the State.

11. **PUBLIC RECORD:** All Proposals submitted in response to this Request For Proposal shall become the property of the State and shall become a matter of Public Record available for review, subsequent to the award notification, as provided for by the Arizona Procurement Code.

UNIFORM INSTRUCTIONS TO OFFERORS

A. Definition of Terms. As used in these Instructions, the terms listed below are defined as follows:

1. *"Attachment"* means any item the Solicitation requires an Offeror to submit as part of the Offer.

2. *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.

3. *"Contract Amendment"* means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.

4. *"Contractor"* means any person who has a Contract with the State.

5. *"Days"* means calendar days unless otherwise specified.

6. *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.

7. *"Offer"* means bid, proposal or quotation.

8. *"Offeror"* means a vendor who responds to a Solicitation.

9. *"Procurement Officer"* means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.

10. *"Solicitation"* means an Invitation for Bids ("IFB"), a Request for Proposals ("RFP"), or a Request for Quotations ("RFQ").

11. *"Solicitation Amendment"* means a written document that is signed by the Procurement Officer and issued for the purpose of making changes to the Solicitation.

12. *"Subcontract"* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

13. *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.

B. Inquiries

1. Duty to Examine. It is the responsibility of each Offeror to examine the entire Solicitation, seek clarification in writing (inquiries), and examine its' Offer for accuracy before submitting the Offer. Lack of care in preparing an Offer shall not be grounds for modifying or withdrawing the Offer after the Offer due date and time, nor shall it give rise to any Contract claim.

2. Solicitation Contact Person. Any inquiry related to a Solicitation, including any requests for or inquiries regarding standards referenced in the Solicitation shall be directed solely to the Solicitation contact person. The Offeror shall not contact or direct inquiries concerning this Solicitation to any other State employee unless the Solicitation specifically identifies a person other than the Solicitation contact person as a contact.

3. Submission of Inquiries. The Procurement Officer or the person identified in the Solicitation as the contact for inquiries except at the Pre-Offer Conference, require that an inquiry be submitted in writing. Any inquiry related to a Solicitation shall refer to the appropriate Solicitation number, page and paragraph. Do not place the Solicitation number on the outside of the envelope containing that inquiry, since it may then be identified

as an Offer and not be opened until after the Offer due date and time. The State shall consider the relevancy of the inquiry but is not required to respond in writing.

4. Timeliness. Any inquiry or exception to the solicitation shall be submitted as soon as possible and should be submitted at least seven days before the Offer due date and time for review and determination by the State. Failure to do so may result in the inquiry not being considered for a Solicitation Amendment.

5. No Right to Rely on Verbal Responses. An offeror shall not rely on verbal responses to inquiries. A verbal reply to an inquiry does not constitute a modification of the solicitation.

6. Solicitation Amendments. The Solicitation shall only be modified by a Solicitation Amendment.

7. Pre-Offer Conference. If a pre-Offer conference has been scheduled under this Solicitation, the date, time and location shall appear on the Solicitation cover sheet or elsewhere in the Solicitation. Offerors should raise any questions about the Solicitation or the procurement at that time. An Offeror may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the Solicitation shall be answered solely through a written Solicitation Amendment.

8. Persons With Disabilities. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Solicitation contact person. Requests shall be made as early as possible to allow time to arrange the accommodation.

C. Offer Preparation

1. Forms; No Facsimile, Telegraphic or Electronic Mail Offers. An Offer shall be submitted either on the forms provided in this Solicitation or their substantial equivalent. Any substitute document for the forms provided in this Solicitation must be legible and contain the same information requested on the forms, unless the solicitation indicates otherwise. A facsimile, telegraphic, mailgram or electronic mail Offer shall be rejected if submitted in response to requests for proposals or invitations for bids.

2. Typed or Ink; Corrections. The Offer shall be typed or in ink. Erasures, interlineations or other modifications in the Offer shall be initialed in ink by the person signing the Offer. Modifications shall not be permitted after Offers have been opened except as otherwise provided under applicable law.

3. Evidence of Intent to Be Bound. The Offer and Acceptance form within the Solicitation shall be submitted with the Offer and shall include a signature (or acknowledgement for electronic submissions, when authorized) by a person authorized to sign the Offer. The signature shall signify the Offeror's intent to be bound by the Offer and the terms of the Solicitation and that the information provided is true, accurate and complete. Failure to submit verifiable evidence of an intent to be bound, such as an original signature, shall result in rejection of the Offer.

4. Exceptions to Terms and Conditions. All exceptions included with the Offer shall be submitted in a clearly identified separate section of the Offer in which the Offeror clearly identifies the specific paragraphs of the Solicitation where the exceptions occur. Any exceptions not included in such a section shall be without force and effect in any resulting Contract unless such exception is specifically accepted by the Procurement Officer in a written statement. The Offeror's preprinted or standard terms will not be considered by the State as a part of any resulting contract.

   i. Invitation for Bids. An offer that takes exception to a material requirement of any part of the Solicitation, including terms and conditions, shall be rejected.

   ii. Request for Proposals. All exceptions that are contained in the Offer may negatively affect the State's proposal evaluation based on the evaluation criteria stated in the Solicitation or result in rejection of the Offer. An offer that takes exception to any material requirement of the solicitation may be rejected.

5. Subcontracts. Offeror shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Offer.

6. Cost of Offer Preparation. The State will not reimburse any Offeror the cost of responding to a Solicitation.

7. Solicitation Amendments. Each Solicitation Amendment shall be signed with an original signature by the person signing the Offer, and shall be submitted no later than the Offer due date and time. Failure to return a signed copy of a Solicitation Amendment may result in rejection of the Offer.

8. Federal Excise Tax. The State of Arizona is exempt from certain Federal Excise Tax on manufactured goods. Exemption Certificates will be provided by the State.

9. Provision of Tax Identification Numbers. Offerors are required to provide their Arizona Transaction Privilege Tax Number and/or Federal Tax Identification number in the space provided on the Offer and Acceptance Form.

9.1 Employee Identification. Offeror agrees to provide an employee identification number or social security number to the Department for the purposes of reporting to appropriate taxing authorities, monies paid by the Department under this contract. If the federal identifier of the offeror is a social security number, this number is being requested solely for tax reporting purposes and will be shared only with appropriate state and federal officials. This submission is mandatory under 26 U.S.C. § 6041A.

10. Identification of Taxes in Offer. The State of Arizona is subject to all applicable state and local transaction privilege taxes. All applicable taxes shall be included in the pricing offered in the solicitation. At all times, payment of taxes and the determination of applicable taxes are the sole responsibility of the contractor.

11. Disclosure. If the firm, business or person submitting this Offer has been debarred, suspended or otherwise lawfully precluded from participating in any public procurement activity, including being disapproved as a subcontractor with any Federal, state or local government, or if any such preclusion from participation from any public procurement activity is currently pending, the Offeror shall fully explain the circumstances relating to the preclusion or proposed preclusion in the Offer. The Offeror shall include a letter with its Offer setting forth the name and address of the governmental unit, the effective date of this suspension or debarment, the duration of the suspension or debarment, and the relevant circumstances relating to the suspension or debarment. If suspension or debarment is currently pending, a detailed description of all relevant circumstances including the details enumerated above shall be provided.

12. Solicitation Order of Precedence. In the event of a conflict in the provisions of this Solicitation, the following shall prevail in the order set forth below:

12.1 Special Terms and Conditions;
12.2 Uniform Terms and Conditions;
12.3 Statement of Work;
12.4 Specifications;
12.5 Attachments;
12.6 Exhibits;
12.7 Special Instructions to Offerors;
12.8 Uniform Instructions to Offerors;
12.9 Other documents referenced or included in the Solicitation.

13. Delivery. Unless stated otherwise in the Solicitation, all prices shall be F.O.B. Destination and shall include all freight, delivery and unloading at the destination(s).

14. Federal Immigration and Nationality Act. The Contractor shall comply with all federal, state, and local immigration laws and regulations relating to the immigration status of their employees during the term of the Contract. Further, the Contractor shall flow down this requirement to all subcontractors utilized during

the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records and inspect papers or any employee thereof to ensure compliance. Should the State determine that the contractor and or any subcontractors be found noncompliant, the State may pursue 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.

15. Offshore Performance of Work Prohibited. Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of the Contract. This provision applies to work performed by subcontractors at all tiers.

D. Submission of Offer

1. Sealed Envelope or Package. Each Offer shall be submitted to the submittal location identified in this Solicitation. Offers should be submitted in a sealed envelope or container. The envelope or container should be clearly identified with name of the Offeror and Solicitation number. The State may open envelopes or containers to identify contents if the envelope or container is not clearly identified.

2. Offer Amendment or Withdrawal. An Offer may not be amended or withdrawn after the Offer due date and time except as otherwise provided under applicable law.

3. Public Record. All Offers submitted and opened are public records and must be retained by the State. Offers shall be open to public inspection after Contract award, except for such Offers deemed to be confidential by the State. If an Offeror believes that information in its Offer should remain confidential, it shall indicate as confidential the specific information and submit a statement with its Offer detailing the reasons that the information should not be disclosed. Such reasons shall include the specific harm or prejudice which may result. The State shall determine whether the identified information is confidential pursuant to the Arizona Procurement Code.

4. Non-collusion, Employment, and Services. By signing the Offer and Acceptance Form or other official contract form, the Offeror certifies that:

   i. The Offeror did not engage in collusion or other anti-competitive practices in connection with the preparation or submission of its Offer; and

   ii. The Offeror does not discriminate against any employee or applicant for employment or person to whom it provides services because of race, color, religion, sex, national origin, or disability, and that it complies with all applicable Federal, state and local laws and executive orders regarding employment.

E. Evaluation

1. Unit Price Prevails. In the case of discrepancy between the unit price or rate and the extension of that unit price or rate, the unit price or rate shall govern.

2. Prompt Payment Discount. Prompt payment discounts of thirty (30) days or more set forth in an Offer shall be deducted from the offer for the purposes of evaluating that price.

3. Late Offers. An Offer received after the exact Offer due date and time shall be rejected.

4. Disqualification. A Offeror (including each of its' principals) who is currently debarred, suspended or otherwise lawfully prohibited from any public procurement activity shall have its offer rejected.

5. Offer Acceptance Period. An Offeror submitting an Offer under this Solicitation shall hold its Offer open for the number of days from the Offer due dates that is stated in the Solicitation. If the Solicitation does not specifically state a number of days for Offer acceptance, the number of days shall be one hundred-twenty (120). If a Best and Final Offer is requested pursuant to a Request for Proposals, an Offeror shall hold its Offer open for one hundred-twenty (120) days from the Best and Final Offer due date.

5.6 Waiver and Rejection Rights. Notwithstanding any other provision of the Solicitation, the State reserves the right to:

5.6.1 Waive any minor informality;
5.6.2 Reject any and all Offers or portions thereof; or
5.6.3 Cancel the Solicitation.

F. Award

1. Number or Types of Awards. The State reserves the right to make multiple awards or to award a Contract by individual line items or alternatives, by group of line items or alternatives, or to make an aggregate award, or regional awards, whichever is most advantageous to the State. If the Procurement Officer determines that an aggregate award to one Offeror is not in the State's best interest, "all or none" Offers shall be rejected.

2. Contract Inception. An Offer does not constitute a Contract nor does it confer any rights on the Offeror to the award of a Contract. A Contract is not created until the Offer is accepted in writing by the Procurement Officer's signature on the Offer and Acceptance Form. A notice of award or of the intent to award shall not constitute acceptance of an Offer.

3. Effective Date. The effective date of this Contract shall be the date that the Procurement Officer signs the Offer and Acceptance Form or other official contract form, unless another date is specifically stated in the Contract.

G. Protests

A protest shall comply with and be resolved according to Arizona Revised Statutes Title 41, Chapter 23, Article 9 and rules adopted thereunder. Protests shall be in writing and be filed with both the Procurement Officer of the purchasing agency and with the State Procurement Administrator. A protest of a Solicitation shall be received by the Procurement Officer before the Offer due date. A protest of a proposed award or of an award shall be filed within ten (10) days after the protester knows or should have known the basis of the protest. A protest shall include:

1.1 The name, address and telephone number of the protester;
1.2 The signature of the protester or its representative;
1.3 Identification of the purchasing agency and the Solicitation or Contract number;
1.4 A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
1.5 The form of relief requested.

H. Comments Welcome

The State Procurement Office periodically reviews the Uniform Instructions to Offerors and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

A. Purpose

Pursuant to provisions of the Arizona Procurement Code, A.R.S. 41-2501 Et Seq., the State of Arizona intends to establish a Contract for the materials or services as listed herein in service to the State.

B. Term of Contract

The term of any resultant Contract shall commence on date of award and shall continue for a period until July 1, 2012, thereafter, unless terminated, canceled or extended as otherwise provided herein.

C. Contract Extensions 5 Year Maximum

The Contract term is for the stated period subject to additional successive periods of twelve (12) months, or any portions thereof, per extension with a maximum aggregate including all extensions not to exceed five (5) years.

D. Contract Type

[x] Fixed Price
[ ] Cost Reimbursement

E. Eligible Agencies (Statewide)

This Contract shall be for the use of all State of Arizona departments, agencies, commissions and boards. In addition, eligible universities, political subdivisions and nonprofit educational or public health institutions may participate at their discretion. In order to participate in this contract, a university, political subdivision, or nonprofit educational or public health institution shall have entered into a Cooperative Purchasing Agreement with the Department of Administration, State Procurement Office as mandated by Arizona Revised Statutes § 41-2632.

F.Licenses

The 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.

G. Volume of Work

The State does not guarantee a specific amount of work either for the life of the Contract or on an annual basis.

H. Key Personnel

It is essential that the Contractor provide adequate experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this Contract. The Contractor must agree to assign specific individuals to the key positions if required.

1. The Contractor agrees that once assigned to work under this Contract, key personnel shall not be removed or replaced without written notice to the State.

2. Key personnel who are not available for work under this Contract for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the Contractor shall immediately notify the State, and shall, subject to the concurrence of the State, replace such personnel with personnel of substantially equal ability and qualifications.

I. Price Adjustment

Contractor prices accepted and subsequently awarded by a Contract shall remain in effect for a minimum of one (1) year. The Contractor may request a price adjustment, but the State will not review or approve an increase until the Contract has been in effect for one (1) year. The State will review any requested rate increase to determine whether such request is reasonable in relation to increased supplier or material costs. Contractor shall provide written justification for any price adjustment requested, including information contained in the Consumer Price Index or similar official cost analysis to support any requested price increase. Any price increase adjustment, if approved, will be effective upon execution of a written Contract amendment. Likewise, the Contractor shall offer the State a price adjustment reduction concurrent with reduced costs from their suppliers. Price reductions will become effective upon execution of a Contract amendment.

J. Price Reduction

Price reductions may be submitted to the state for consideration at any time during the Contract period. The Contractor shall offer the State a price reduction on the Contract product(s) concurrent with a published price reduction made to other customers. The State at its own discretion may accept a price reduction. The Contractor shall request, in writing, a price reduction. The Contractor shall request, in writing, a price reduction and provide the following:

1. A formal announcement from the manufacturer that the cost of the contract product has been reduced.

2. Documentation, i.e., published cost lists, from the manufacturer showing, to the satisfaction of the state, the actual cost reduction.

3. Documentation showing that the published cost reductions have been offered to other distributors.

K. Payment Procedures

The State will not make payments to any Entity, Group or individual other than the Contractor with the Federal Employer Identification (FEI) Number specified in the Contract. Contractor invoices requesting payment to any Entity, Group or individual other than the contractually specified Contractor shall be returned to the Contractor for correction.

The Contractor shall review and insure that the invoices for services provided show the correct Contractor name prior to sending them for payment.

If the Contractor Name and FEI Number change, the Contractor must complete an "Assignment and Agreement" form transferring contract rights and responsibilities to the new Contractor. The State must indicate consent on the form. A written Contract Amendment must be signed by both parties and a new W-9 form must be submitted by the new Contractor and entered into the system prior to any payments being made to the new Contractor.

L. Non-Exclusive Contract

Any Contract resulting from this solicitation shall be awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The State reserves the right to obtain like goods or services from another source when necessary, or when determined to be in the best interest of the State.

M. Information Disclosure

The Contractor shall establish and maintain procedures and controls that are acceptable to the State for the purpose of assuring that no information contained in its records or obtained from the state or from others in carrying out its functions under the contract will be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the State. The Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of the Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the State.

N. Employees of the Contractor

All employees of the Contractor employed in the performance of work under the Contract shall be considered employees of the Contractor at all times and not employees of the State. The Contractor shall comply with the Social Security Act, Workman's Compensation laws and Unemployment laws of the State of Arizona and all State, local and Federal legislation relevant to the Contractor's business.

O. Order Process

The award of a Contract shall be in accordance with the Arizona Procurement Code. Any attempt to represent any material and/or service not specifically awarded as being under Contract with the State is a violation of the Contract and the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the State inclusive of, but not limited to, contract cancellation, suspension and/or debarment of the Contractor.

P. Product Returns

Any Agency utilizing any resulting Contract may return any or all unused product(s), in the original container or package, to the Contractor for exchange, refund or credit at the current Contract price within thirty (30) days of initial delivery during the term of the Contract with no restocking fee. Proof of purchase will be attempted but shall not be required. A credit may be issued only if there is an existing sale pending. Credit to any Agency account will not be accepted after Contract expiration. Special order items may be returned with a restocking fee.

Q. Shipping Charges

All product shall be shipped FOB Destination and the Contractor shall retain title and control of all goods until they are delivered. Any shipping costs shall be quoted and billed as a separate line item and shall not be bundled in the product unit costs. Quotes shall show shipping costs as an estimate, if exact costs are not known at time of quotation. The State reserves the right to utilize other shipping carriers if the estimated costs for shipping are deemed to be excessive.

R. Secure Location Deliveries

The Contractor will be responsible for contacting the secure location (such as Arizona Department of Corrections) for security clearance, hours of operation, dress code, and other related rules when scheduling a delivery or service call. Lack of familiarity with the locations or policies will not relieve a Contractor of their responsibilities in fulfillment of the delivery, installation, maintenance/service agreement, and contract requirements.

S. Current Production

All materials bid must be in current production and parts must be available for a minimum of three (3) years from bid date.

T. Product Revision Requests

Contractors must submit updated price list(s) upon publication, or any other product model changes, addition of new products, product upgrades or services in a timely manner.

The Contractor agrees to delete obsolete and discontinued products from contract price lists in a timely manner. Major product model changes shall be incorporated into the Contract as soon as possible after product introduction, to be offered at the same rate of discount for the appropriate price list and its discount.

U. Warranty

All equipment supplied under this specification shall be fully guaranteed by the Contractor for a minimum period of ninety (90) days from the date of acceptance by the State. Any defects of design, workmanship, or materials, that would result in non-compliance with the Contract specification, shall be fully corrected by the Contractor (including parts and labor) without cost to the State. The written warranty shall be included with the delivered products.

V. Product Discontinuance

In the event that a product or groups of products are discontinued by a manufacturer, the State at its sole discretion may allow the Contractor to provide substitutes for the discontinued product(s) or allow the deletion of such products from the Contract. The request may be submitted at any time during the Contract period and shall be supplemented with the following information. Failure to supply any of the following information with the request may result in the State not considering the request.

A formal announcement from the Manufacturer stating that the product(s) have been discontinued.

Documentation from the Manufacturer that cites the effected products by item number and description.

Documentation from the Manufacturer that names the replacement product(s).

Documentation that provides clear evidence that the replacement product(s) meets or exceeds the specifications of the discontinued product(s) while remaining in the same product group(s) as the discontinued item, and;

Documentation confirming that the price for the replacement product(s) is the same as or less than the discontinued item.

Approval shall be in the form of a Contract Amendment and shall become effective on the date specified in the amendment. Upon approval by the State, the Contractor shall make available all electronic and hard catalog/price list updates to all eligible at no additional cost to the State.

W. Contractor Performance Report

Program management shall document Contractor performance, both exemplary and needing improvements where corrective action is needed or required. Copies of corrective action reports will be forwarded to the Procurement Office for review and any necessary follow-up. The Procurement Office may contact the Contractor upon receipt of the report and may request corrective action. The Procurement Office shall discuss the Contractor's suggested corrective action plan with the Procurement Specialist for approval of the plan.

X. Acceptance

Determination of the acceptability of services and or product shall be made by the sole judgment of the State. Acceptance shall be in writing; verbal acceptance for services or product will not be allowed. Services shall be completed in accordance with the Scope of Work, agreed to and accepted schedules, plans, and agreed to performance standards. Acceptance shall be one hundred percent (100%), which will be determined by the State. Acceptance criteria shall include, but not be limited to conformity to the scope of work, quality of workmanship and successfully performing all required tasks. Nonconformance to any of the stated acceptance and performance criteria of both services and or products as required shall result in a delay for payment. Payment shall not be made until nonconformance to the criteria is corrected as determined by the State.

Y. Authorization for Equipment and Services

Authorization for purchase of equipment and services shall be made only upon the issuance of a Purchase Order that is signed by an authorized agent. The Purchase Order will indicate the contract number and the dollar amount of funds authorized. The Contractor will not only be authorized to perform services up to the amount on the Purchase Order. The

State shall not have any legal obligation to pay for services in excess of the amount indicated on the Purchase Order. No further obligation for payment shall exist unless a) the Purchase Order is changed or modified with an official Change Order, and/or b) an additional Purchase Order is issued for purchase of services under this Contract.

Z. Usage

This Contract includes Data, Voice, and Multimedia Network-based, Network-embedded Products and Services, defined herein, may be used by State government and all Political Subdivisions (including the State's Universities, Community Colleges, K-12 School Districts, Counties, Cities, libraries, etc). State government entities (Mandatory Customers) are required to purchase Data, Voice, and Multimedia Network-based, Network-embedded Products and Services via the resulting Contract(s). All other entities (Permissive Customers) may but are not required to purchase their Data, Voice, and Multimedia Network-based, Network-embedded Products and Services needs via the resulting Contract(s).

AA. Administrative Fee

Contractor shall pay an Administrative Fee to the State in the amount of one percent (1%) of the total Contract sales. The Administrative Fee is calculated based on all sales transacted under the Contract, minus all taxes and any returns or credits. The Administrative Fee shall not be charged directly to the Customer, e.g., as a separate line item, a fee or a surcharge, but shall be included in the Contract's unit prices.

The Administrative Fee shall be submitted, along with a Quarterly Usage Report documenting all Contract sales, to the State Procurement Office within thirty (30) days following the end of each calendar quarter. For more information on the Quarterly Usage Report or the Administrative Fee, its calculation, submission or use, see the State Procurement Office's web site at http://spo.az.gov/Contractor_Resources/Admin_Fee.

At its option, the State may limit the applicability of the Administrative Fee to Contract sales from some customers and not to others, e.g., fee is only applicable to sales from members of the State Purchasing Cooperative and not sales to State Agencies. See the State's web site (above) for more information in this regard. The State will provide thirty (30) days written notice before exercising or changing this option.

Failure to remit Administrative Fees in a timely manner or remit fees inconsistent with the Contract's requirements may result in the State exercising its recourses available under the Contract including a third party audit of all Contract activity. Should an audit be conducted by the State, the Contractor shall reimburse the State for all costs associated with the audit up to $5,000 or one (1) percent of the Contract's estimated annual value, whichever is higher.

BB. Offshore Performance of Work Prohibited

Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. All services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

CC. Indemnification

The Contractor shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or

in part, by the negligent or wi[illegible] acts or omissions of Vendor or any of its owners, officers, directors, agents, employees or subcontractors. This indem[illegible] includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arisin[illegible] of the failure of such Vendor to conform to any federal, state or local law, statute, ordinance, rule, regulation or [illegible] decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Vendor from and against [illegible] and all claims. It is agreed that Vendor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this Contract, the Vendor agrees to waive all rig[illegible] of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the w[illegible] performed by the Contract Broker for the State of Arizona.

This indemnity shall not appl[illegible] Vendor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona

DD. Insurance Requirements

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The *insurance requirements* [illegible] are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this [illegible]. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the [illegible]ractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, [illegible] agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

MINIMUM SCOPE AND LIMITS OF INSURANCE: Contractor shall provide coverage with limits of liability not less than those stated below.

1. **Commercial General Liability - Occurrence Form**

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

- General Aggregate $2,000,000
- Products - Completed Operations Aggregate $1,000,000
- Personal and Advertising Injury $1,000,000
- Blanket Contractual Liability – Written and Oral $1,000,000
- Fire Legal Liability $ 50,000
- Each Occurrence $1,000,000

a. The policy shall be [illegible] to include the following additional insured language: ***"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor".***

b. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

2. **Business Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) $1,000,000

a. The policy shall be [illegible] to include the following additional insured language: **"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability**

arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor".

b. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

3. **Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	$ 500,000
Disease - Each Employee	$ 500,000
Disease - Policy Limit	$1,000,000

a. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

4. **Professional Liability (Errors and Omissions Liability)**

Each Claim	$1,000,000
Annual Aggregate	$2,000,000

a. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, the Contractor warrants that any retroactive date under the Policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

b. The Policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this Contract.

ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

1. The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required. Such additional insured shall be covered to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to **(State of Arizona Department Representative's Name & Address)** and shall be sent by certified mail, return receipt requested.

ACCEPTABILITY OF INSURERS: Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

VERIFICATION OF COVERAGE: Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to **(State of Arizona Department Representative's Name and Address)**. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT DIVISION.**

SUBCONTRACTORS: Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

APPROVAL: Any modification or variation from the *insurance requirements* in this Contract shall be made by the Department of Administration, Risk Management Division, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

EXCEPTIONS: In the event the contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

EE. Access Constraints and Requirements

Contractor access to State facilities and resources shall be properly authorized by State personnel, based on business need and will be restricted to least possible privilege. Upon approval of access privileges, the Contractor shall maintain strict adherence to policies, standards, and procedures. Policies / Standards, ADOA/ASET Policies / Procedures, and Arizona Revised Statutes (ARS) 28-447, 28-448, 28-450, 38-421, 13-2408, 13-2316, 41-770).

Failure of the Contractor, its employees or subcontractors to comply with policies, standards, and procedures including any person who commits an unlawful breach or harmful access (physical or virtual) will be subject to prosecution under all applicable state and federal laws.

Any and all recovery or restoration costs or other liabilities associated with an unlawful breach or harmful access shall be borne by the Contractor.

FF. Section 508 Compliance

Unless specifically excluded, any electronic or information technology offered to the State of Arizona under this Contract shall comply with A.R.S. § 41-2531 and § 41-2532 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.

GG. Health Insurance Portability and Accountability Act of 1996

The Contractor warrants that it is familiar with the requirements of HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of 2009, and accompanying regulations and will comply with all applicable HIPAA requirements in the course of this Contract. Contractor warrants that it will cooperate with the State in the course of performance of the Contract so that both the State and the Contractor will be in compliance with HIPAA, including cooperation and coordination with the Arizona Strategic Enterprise Technology (ASET) Group,

Statewide Information Security and Privacy Office (SISPO), Chief Privacy Officer and HIPAA Coordinator and other compliance officials required by HIPAA and its regulations. Contractor will sign any documents that are reasonably necessary to keep the State and Contractor in compliance with HIPAA, including but not limited to, business associate agreements

If requested, the Contractor agrees to sign a "Pledge to Protect Confidential Information" and to abide by the statements addressing the creation, use and disclosure of confidential information, including information designated as protected health information and all other confidential or sensitive information as defined in policy. In addition, if requested, Contractor agrees to attend or participate in job related HIPAA training that is. (1) intended to make the Contractor proficient in HIPAA for purposes of performing the services required and (2) presented by a HIPAA Privacy Officer or other person or program knowledgeable and experienced in HIPAA and who has been approved by the ASET/SISPO Chief Privacy Officer and HIPAA Coordinator.

HH. American Recovery and Reinvestment Act (ARRA) Requirements

The Contractor shall comply with American Recovery and Reinvestment Act (ARRA) funding provisions if applicable. The State will inform the Contractor of such provisions as they are identified and when applicable to this Contract. Requirements may include but not limited to, reporting responsibilities, declaration on internal purchase orders or other mechanisms regarding the utilization of ARRA funding.

UNIFORM TERMS AND CONDITIONS

1. ***Definition of Terms.*** As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

1.1 *"Attachment"* means any item the Solicitation requires the Offeror to submit as part of the Offer.

1.2 *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments

1.3 *"Contract Amendment"* means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.

1.4 *"Contractor"* means any person who has a Contract with the State.

1.5 *"Days"* means calendar days unless otherwise specified.

1.6 *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.

1.7 *"Gratuity"* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

1.8 *"Materials"* means all property including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.

1.9 *"Procurement Officer"* means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.

1.10 *"Services"* means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.

1.11 *"Subcontract"* means any contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract

1.12 *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.

1.13 *"State Fiscal Year"* means the period beginning with July 1 and ending June 30.

2 **Contract Interpretation**

2.1 Arizona Law. The Arizona laws applicable to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

2.2 Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.

2.3 Contract Order of Precedence: In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

2.3.1 Special Terms and Conditions;
2.3.2 Uniform Terms and Conditions;
2.3.3 Statement of Scope of Work;
2.3.4 Specifications;
2.3.5 Attachments;
2.3.6 Exhibits;
2.3.7 Documents referenced or included in the Solicitation.

2.4 Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

2.5 Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

2.6 No Parol Evidence. This Contract 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.

2.7 No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract 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.

3 **Contract administration and operation.**

3.1 Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to maintain all documents and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

3.2 Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules, regulations, including the Americans with Disabilities Act.

3.3 Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

3.4 Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's equipment, services, at reasonable times for inspection of the facilities or materials covered under the Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines noncompliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

3.5 Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form signed by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

3.6 Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

3.7 Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

3.8 Ownership of Intellectual Property.
Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of the contract shall own (for itself or on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor (s), agrees to execute any and all document(s) necessary to ensure that ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

3.9 Federal Immigration and Nationality Act. The Contractor shall comply with all federal, state, and local immigration laws and regulations relating to the immigration status of their employees during the term of the Contract. Further the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers or any employee thereof to ensure compliance. Should the State determine that the contractor and or any subcontractors be found noncompliant, the State may pursue 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.

3.10 E-Verify Requirements. In accordance with A.R.S. 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S. 23-214, Subsection A.

3.11 Scrutinized Business Operations. In accordance with A.R.S. 35-391 and A.R.S. 35-393, Contractor certifies that the Contractor does not have scrutinized business operations in Sudan or Iran.

4 Costs and Payments

4.1 Payments. Payments shall be made in accordance with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

4.2 Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at destination.

4.3 Applicable Taxes.

4.3.1 Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2 State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. The transaction privilege taxes apply to the sale and are the responsibility of the seller to remit the tax. Taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.3.3 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 the State 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.

4.3.4 IRS W9 Form. In order to receive payment the Contractor shall have a current IRS W9 Form on file with the State of Arizona, unless otherwise prohibited by law.

4.4 Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current State fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

4.5 Availability of Funds for the Current State fiscal year. Should the State Legislature enter back into session and reduce the appropriation for any goods and these goods or services are not funded, the State may take any of the following actions:

4.5.1 Accept a decrease in price offered by the contractor.
4.5.2 Cancel the Contract.
4.5.3 Cancel the contract and re-solicit the requirements.

5 Contract changes.

5.1 Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, whether by oral or written instruction, is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on such changes.

5.2 Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3 Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6 Risk and Liability.

6.1 Risk of Loss. The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss of nonconforming materials shall remain with the Contractor regardless of receipt.

6.2 Indemnification.

6.2.1 Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its' departments, agencies, boards and commissions shall be responsible for its' own negligence. Each party to this contract is responsible for its' own negligence.

6.2.2 Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its' officers, officials, agents, employees, or volunteers."

6.3 Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4 Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; acts of the federal government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes; mobilization; labor disputes, civil disorders; fire, flood; lockouts; injunctions-interventions-restraints; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2 Force Majeure shall not include the following occurrences:

6.4.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an overall condition of the market;

6.4.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3 Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses and permits.

6.4.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered by hand or certified return receipt and shall make a specific reference to this article, thereby invoking the provisions of this article. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4 Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5 Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7 **Warranties**

7.1 Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2 Quality. Unless otherwise specified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1 Of a quality to pass without objection in the trade under the Contract description;

7.2.2 Fit for the intended purposes for which the materials are used;

7.2.3 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4 Adequately contained, packaged and marked as the Contract may require; and

7.2.5 Conform to the written promises or affirmations of fact made by the Contractor.

7.3 Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4 Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5 Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable licenses and permit requirements.

7.6 Survival of Rights and Obligations After Contract Expiration or Termination.

7.6.1 Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or bound by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.6.2 Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination of the Contract, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8 **State's Contractual Remedies**

8.1 Right to Assurance. If the State has reasonable grounds to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of its intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2 Stop Work Order.

8.2.1 The State 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 period(s) of days indicated by the State 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.

8.2.2 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 Procurement Officer shall make an equitable adjustment in the delivery schedule or the contract price, or both, and the Contract shall be amended in writing accordingly.

8.3 Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

8.4 Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.5 Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9 **Contract Termination**

9.1 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

9.2 Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract or favorable treatment concerning the Contract, including the making of any determination or decision about performance. The State, 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 the Contractor.

9.3 Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the 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 a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately inform the State.

9.4 Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the State without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, place no further orders or enter into contracts, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials retained, in accordance with the affective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 apply.

9.5 Termination for Default.

9.5.1 In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3 The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6 Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10 **Contract Claims.** All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, as amended or adopted from time to time.

11 **Arbitration.** The parties to this contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41)

12 **Comments Welcome.** The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 N 15th Avenue, Suite 201, Phoenix, Arizona 85007.

Wireless Ethernet - Typically Layer 2 and/or Layer 3 devices capable of wireless transmission and reception of data packets:

1. Access Points capable of providing local device accessibility;
2. Point-to-point or Bridge;
3. Meshed configuration; and
4. Licensed or unlicensed spectrum use.

Security Equipment and Solutions - May include devices operating at any layer in the OSI model.

1. Packet inspection/filtering enforcement (ACL, Firewall, IDS, etc.);
2. Real time interpretation and response (Application Firewalls, IPS, etc.)
3. Content filtering and/or bandwidth limiting;
4. RAS solutions (VPN, SSL acceleration, etc.); and
5. Centralized monitoring and analysis, health and alerting systems.

Monitoring and Management Solutions - May include software or appliances operating at any layer in the OSI model:

1. Solutions should address the centralization and interpretation of data acquired from networked devices;
2. Solutions should be developed around commonly accepted methodologies and should make use of SNMP and/or TCP;
3. Solutions must enhance security, manageability, and accountability;
4. Solutions interface should be an intuitive GUI, with possible built in CLI and manual configuration abilities; and
5. Reporting and analysis tools must include canned reports for regulatory compliance with HIPAA, etc.

Other Network Centric Solutions - Will include many of the required network elements not listed above:

1. DNS, NAT, PAT, DHCP, and other IP Address management solutions;
2. Mobility and presence solutions;
3. Authentication solutions;
4. SIP and other collaboration communications and messaging solutions; and
5. Transcoders.

Telephony

Telephony products and services such as IP Telephony systems, PBX and key systems, voice mail and unified messaging systems, telephone switching, call management systems including Automatic Call Distribution (ACD), Interactive Voice Response (IVR), Computer Telephony Integration (CTI), call accounting, and the associated end-user telephone devices.

Multi-Function Solutions

Industry movement indicates that multi-function networking appliances are becoming the way of the future. List and describe any product lines that are converging into multi-function platforms. This may include technology areas that are not covered in areas 1 to 7 above. Each product should be listed with a note including the areas that are included and a short description of any other technological advantages gained through the aggregation of these technologies.
(i.e. Blade server chassis may have a built in Ethernet switch -- Routers may be capable of Firewall, IDS, and other abilities -- Storage arrays may include an Ethernet and/or Fiber channel switch -- etc.)

EXHIBIT B
SPECIFIC REQUIREMENTS/OPTIONS OF TOWN

Specifications: Per Purchase Order

Schedule of performance: Per Purchase Order

Delivery location: Per Purchase Order

Notices: All notices to Town shall be sent to:

Town Manager Office
50 E. Civic Center Drive
Gilbert, Arizona 85296

Attach: Certificate of Insurance

	Contract Amendment		State of Arizona State Procurement Office 100 N. 15TH Avenue, Suite 201 Phoenix, AZ 85007
	Contract No.: ADSPO12-024651	PAGE 1	
	Amendment No.: Three (03)		

CONTRACTOR:	STATE AGENCY:
Sentinel Technologies 1241 W. Warner Road Suite 112 Tempe, AZ 85284	AZ Department of Administration State Procurement Office 100 N. 15th Avenue, Suite 201 Phoenix, AZ 85007
CONTACT: Kevin Koski **PHONE:** 480.897.5954 **EMAIL:** kkoski@sentinel.com	**CONTACT:** Delia Walters **PHONE:** 602.542.9125 **EMAIL:** Delia.Walters@azdoa.gov

NETWORK EQUIPMENT AND SERVICES

In accordance with Uniform Terms and Conditions, Paragraph 5.1, Amendments and the Special Terms and Conditions Paragraph C. Contract Extensions five (5) Year Maximum, the Contract is extended for the period of May 11, 2015 to May 10, 2016.

All other terms, conditions and provisions remain unchanged.

This Contract Amendment is not binding against the State of Arizona unless signed by an authorized representative of the Contractor and then accepted in writing by an authorized representative of the State.

Contractor hereby acknowledges receipt and understanding of the above amendment.	The above referenced contract amendment is hereby executed this date by the State.
Kevin Koski 4/2/15 Signature Date	Delia A. Walters 04/02/2015 Signature Date
Kevin Koski Director of Sales-Southwest Printed/Typed Name and Title	Delia A. Walters Procurement Officer Printed/Typed Name and Title

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Howard Davis, Facilities Manager, 503-6424

MEETING DATE: June 25, 2015

SUBJECT: **A**uthorize a FY2016 General Fund contingency transfer in the amount of $117,981

STRATEGIC INITIATIVE: Infrastructure
Resurfacing the Public Works roof meets the strategic initiative of Gilbert's focus on longer-term infrastructure planning and meeting the best interests of Gilbert and is in alignment with the current LRIP philosophy.

RECOMMENDED MOTION

Motion to authorize a FY2016 General Fund contingency transfer in the amount of $117,981.

BACKGROUND/DISCUSSION

The underlying roof structure at the Public Works building is structurally solid and is expected to last 30+ years as long as an appropriate covering product such as foam is applied over the top to ensure water tightness. Recently, several leaks have occurred in the roof. As a result, the FY2015 approved budget included $86,938 for a single protective layer foam application with a 10 year warranty.

After review of work to be performed and the warranty, it was determined that a more suitable option is an upgraded roof product that allows for 50% additional foam thickness along with multiple protective layers on the surface. This treatment would extend the warranty an additional 5 years for a total of 15 years. The overall costs are similar over the anticipated lifespan of the roof. The single layer is appropriate for a short term option and the upgraded product is a better option for long term sustainability.

The upgraded roof will cost an additional $31,043 over the approved FY2015 budget amount of $86,938. The project costs are based on a competitively bid roofing contract through the City of

Tempe. The upgraded treatment costs are in alignment with the co-op pricing. Staff also solicited two other quotes for the work and the results of this additional pricing research confirmed that the co-op is the best pricing option.

FINANCIAL IMPACT

The budgeted funds of $86,938 for Contract No 2015-1102-0645 were not carried forward from FY2015 requiring a contingency request for the entire purchase amount of $117,981 for FY2016. It is anticipated that work will be completed before the end of August.

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

STAFF RECOMMENDATION

Staff recommends the approval of a FY2016 General Fund contingency transfer of $117, 981.

Respectfully submitted,

Howard Davis
Facilities Manager

Approved By	Approval Date
Rod Buchanan	6/16/2015 2:15 PM
Jack Vincent	6/17/2015 8:15 AM
Laura Lorenzen	6/16/2015 3:02 PM
Douglas Boyer	6/16/2015 4:16 PM

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Tom Condit, PE, Development Engineer, 503-6815

MEETING DATE: June 25, 2015

SUBJECT: S14-04: Approval of a Re-Plat of The Enclave - Via Bella, located at the northeast corner of Higley Road and Houston Avenue.

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's Infrastructure Strategic Initiative, as it allows for the logical extension of infrastructure services to serve the subject site.

RECOMMENDED MOTION

A motion to approve a Re-Plat of The Enclave - Via Bella, located at the northeast corner of Higley Road and Houston Avenue.

BACKGROUND/DISCUSSION

The "*The Enclave - Via Bella*" development is a proposed 10.9-acre residential subdivision at the northeast corner of Higley Road and Houston Avenue. This re-plat establishes 20 single family residential lots and 6 tracts that encompass common facilities such as landscape, pedestrian access, public utilities, private streets, and storm water retention basins. This re-plat also provides dedications for public utility and drainage easements. The easement dedications support the infrastructure that is needed for the development.

The following is an abbreviated history of Town actions associated with this property:

August 3, 2004	The Town Council adopted Ordinance No. 1586 (A04-9), which annexed the approximate property.
August 3, 2004	The Town Council adopted Ordinance No. 1587 (Z04-14) and rezoned the property from Maricopa County's R-43 zoning district to Town of Gilbert Rural Residential 1-35 (RI-35).

August 3, 2004	The Town Council approved Resolution No. 2518 (GP04-8) amending the General Plan Land Use designation from Residential> 2 - 3.5 DU/Acre to Residential> 1 - 2 DU/Acre.
October 10, 2006	The Town Council approved the Final Plat for The Enclave - Via Bella consisting of 10 lots, subsequently recorded on April 6, 2007.
May 22, 2007	The Town Council adopted Ordinance No. 1952 (Z07-31) changing the zoning designation RI-35 Rural Residential to Single Family-35 (SF -35).
May 7, 2014	The Planning Commission approved S14-04, a Preliminary Plat and Open Space Plan for 20 single family home lots (Lots 1-20) in the SF -10 zoning district with a PAD overlay.
June 5, 2014	The Town Council adopted Ordinance No. 2493 and rezoned the property from SF-35 to SF-10 zoning district with a PAD overlay.
March 26, 2015	The Town Council approved Z14-27, a request to amend Ordinance No. 2493 by reducing the side yard setbacks for Lots 1-20 of The Enclave - Via Bella.

FINANCIAL IMPACT

There is no direct financial impact on the Town associated with this re-plat approval. Approval of the re-plat will allow The Enclave - Via Bella developer to move forward with their plans to improve the property, which will include 20 single family residential units. This will have the indirect benefit of bringing new construction activity to the Town, increasing the Town's property and sales tax revenue base.

The financial impact was reviewed by Cris Parisot in the Office of Management and Budget.

STAFF RECOMMENDATION

The Engineering and Planning Divisions have reviewed the re-plat for The Enclave - Via Bella. All Town requirements have been addressed by the applicant. Staff therefore recommends approval of this plat by the Town Council.

Respectfully submitted,

Tom Condit, PE
Development Engineer

Approved By	Approval Date
Kenneth Morgan	6/11/2015 9:13 AM

RE-PLAT
OF
THE ENCLAVE - VIA BELLA

GILBERT, ARIZONA

A RE-PLAT OF LOTS 1-10 AND TRACT A-D INCLUSIVE OF THE FINAL PLAT OF THE ENCLAVE - VIA BELLA AS FILED IN BOOK 912, PAGE 12 RECORDS OF MARICOPA COUNTY, ARIZONA AND BEING A PORTION OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 1 SOUTH, RANGE 6 EAST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA

DEDICATION

STATE OF ARIZONA } SS
COUNTY OF MARICOPA

KNOW ALL MEN BY THESE PRESENTS:

THAT **K.HOVNANIAN LEGACY AT VIA BELLA, LLC, AN ARIZONA LIMITED LIABILITY COMPANY,** AS OWNER, HAS RE-SUBDIVIDED UNDER THE NAME "THE ENCLAVE – VIA BELLA" A RE-PLAT OF LOTS 1-10 AND TRACT A-D INCLUSIVE OF THE FINAL PLAT OF "THE ENCLAVE – VIA BELLA" AS FILED IN BOOK 912, PAGE 12 RECORDS OF MARICOPA COUNTY, ARIZONA AND A PORTION OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 1 SOUTH, RANGE 6 EAST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOWN AND RE-PLATTED HEREON AND HEREBY PUBLISHES THIS RE-PLAT AS AND FOR THE RE-PLAT OF SAID "THE ENCLAVE – VIA BELLA" AND HEREBY DECLARES THAT SAID RE-PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF THE STREETS, LOTS, TRACTS AND EASEMENTS CONSTITUTING SAME AND THAT EACH STREET, LOT, TRACT AND EASEMENT SHALL BE KNOWN BY THE NAME, NUMBER OR LETTER GIVEN TO EACH RESPECTIVELY ON SAID PLAT. **K.HOVNANIAN LEGACY AT VIA BELLA, LLC, AN ARIZONA LIMITED LIABILITY COMPANY,** AS OWNER, HEREBY DEDICATES TO THE TOWN OF GILBERT, FOR USE AS SUCH, PUBLIC UTILITY EASEMENT AS SHOWN ON THIS PLAT AND INCLUDED IN THE ABOVE DESCRIBED PREMISES.

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 INSTALLATION, MAINTENANCE, REPAIR AND REMOVAL OF NECESSARY UTILITIES. PUBLIC UTILITIES LOCATING UTILITY FACILITIES IN THE 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.

TRACTS A, B, C, D, E AND F ARE TO BE USED SOLELY FOR THE PURPOSES AS SHOWN IN THE TRACT TABLE HEREON. ALL TRACTS ARE TO BE OWNED AND MAINTAINED BY THE **VIA BELLA COMMUNITY ASSOCIATION, AN ARIZONA NON PROFIT CORPORATION.**

OWNER HEREBY GRANTS TO THE PUBLIC A NON-EXCLUSIVE EASEMENT OVER, UNDER, UPON AND ACROSS THE AREAS DESIGNATED AS PUBLIC UTILITY EASEMENTS AS SHOWN ON THIS RE-PLAT FOR THE PURPOSE OF INSTALLING, CONSTRUCTING, MAINTAINING, REPAIRING, REPLACING AND UTILIZING ALL PUBLIC UTILITIES AND PUBLIC SIDEWALKS.

OWNER'S WARRANT AND REPRESENT TO THE TOWN OF GILBERT TO BE THE SOLE OWNER'S 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.

THE OWNER OF EACH LOT SHALL BE RESPONSIBLE FOR MAINTENANCE OF THE STORMWATER DRAINAGE FACILITIES ON THEIR LOT, HOWEVER THE COMMUNITY ASSOCIATION SHALL HAVE THE RIGHT TO DO SUCH MAINTENANCE ON AN EMERGENCY BASIS AS FURTHER DEFINED BY THE COVENANTS, CODES, & RESTRICTIONS TO BE RECORDED FOR THIS DEVELOPMENT. SAID COVENANTS, CODES, & RESTRICTIONS FURTHER DEFINE THE ALLOWED USES WITHIN THE DRAINAGE EASEMENTS AS SHOWN ON THIS PLAT.

IN WITNESS WHEREOF:
K.HOVNANIAN LEGACY AT VIA BELLA, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, AS OWNER, HAS HEREUNTO CAUSED ITS NAME TO BE AFFIXED AND THE SAME TO BE ATTESTED TO BY THE SIGNATURES OF THE UNDERSIGNED OFFICER DULY AUTHORIZED THIS _____ DAY OF _____, 2015.

K.HOVNANIAN LEGACY AT VIA BELLA, LLC, AN ARIZONA LIMITED LIABILITY COMPANY

BY: _____
CHAD FULLER

ITS: VICE PRESIDENT AND LEGAL COUNSEL

ACKNOWLEDGMENT

STATE OF ARIZONA } SS
COUNTY OF MARICOPA

ON THIS _____ DAY OF _____, 2015, BEFORE ME, THE UNDERSIGNED OFFICER, PERSONALLY APPEARED CHAD FULLER WHO ACKNOWLEDGES HIMSELF TO BE THE VICE PRESIDENT AND CHIEF LEGAL OFFICER OF THE **K.HOVNANIAN LEGACY AT VIA BELLA, 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.

MY COMMISSION EXPIRES _____ NOTARY PUBLIC _____

VIA BELLA COMMUNITY ASSOCIATION RATIFICATION

BY THIS RATIFICATION GEORGE CANNON, DULY ELECTED PRESIDENT OF THE **VIA BELLA COMMUNITY ASSOCIATION, AN ARIZONA NON PROFIT CORPORATION,** ACKNOWLEDGES THE RESPONSIBILITIES DEDICATED HEREON.

BY: _____, ITS: PRESIDENT

ACKNOWLEDGMENT

STATE OF ARIZONA } SS
COUNTY OF MARICOPA

ON THIS _____ DAY OF _____, 2015, BEFORE ME, THE UNDERSIGNED OFFICER, PERSONALLY APPEARED, GEORGE CANNON, WHO ACKNOWLEDGES HIMSELF TO BE THE PRESIDENT OF THE **VIA BELLA COMMUNITY ASSOCIATION, AN ARIZONA NON PROFIT CORPORATION,** AND ACKNOWLEDGES AS SUCH OFFICER, BEING DULY AUTHORIZED TO DO SO, EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

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 _____, 2015.

K.HOVNANIAN LEGACY AT VIA BELLA, LLC, AN ARIZONA LIMITED LIABILITY COMPANY
OWNER

BY: _____

ITS: VICE PRESIDENT AND LEGAL COUNSEL

LEGAL DESCRIPTION

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 01 SOUTH, RANGE 06 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 2;

THENCE EAST A DISTANCE OF 96.84 FEET ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER OF SECTION 2;

THENCE NORTH 00 DEGREES, 00 MINUTES, 00 SECONDS, A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 45 DEGREES, 51 MINUTES, 32 SECONDS WEST A DISTANCE OF 47.38 FEET;

THENCE NORTH 1 DEGREE, 43 MINUTES, 30 SECONDS WEST A DISTANCE OF 457.57 FEET ALONG A LINE PARALLEL WITH THE WEST LINE OF SAID NORTHWEST QUARTER;

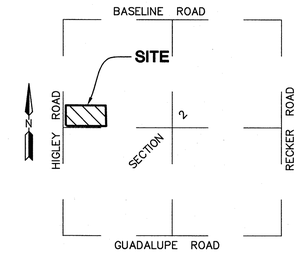
THENCE NORTH 90 DEGREES, 00 MINUTES, 00 SECONDS EAST A DISTANCE OF 970.63 FEET;

THENCE SOUTH 1 DEGREE 33 MINUTES 24 SECONDS EAST, 490.54 FEET;

THENCE SOUTH 90 DEGREES, 00 MINUTES, 00 SECONDS WEST A DISTANCE OF 936.18 FEET ALONG A LINE PARALLEL WITH THE SOUTH LINE OF SAID NORTHWEST QUARTER TO THE POINT OF BEGINNING.

NOTES:

1. THE VIA BELLA COMMUNITY 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.
2. CONSTRUCTION WITHIN PUBLIC UTILITY 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.
3. ALL SUBDIVISION BOUNDARY CORNERS ARE EXISTING AS NOTED ON THIS PLAT.
4. ELECTRICAL LINES SHALL BE CONSTRUCTED UNDERGROUND AS REQUIRED BY THE ARIZONA CORPORATION COMMISSION.
5. NO STRUCTURES SHALL BE CONSTRUCTED IN OR ACROSS DRAINAGE EASEMENTS, NOR SHALL OTHER IMPROVEMENTS OR ALTERATIONS BE MADE TO THE DRAINAGE EASEMENTS THAT ARE PART OF THE LOTS IN THE DEVELOPMENT WITHOUT AUTHORIZATION OF THE TOWN OF GILBERT.
6. 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.
7. THIS 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 APPLICABLE REGULATIONS.
8. ALL DRYWELLS SHOWN ON THIS PROJECT SHALL BE MAINTAINED BY THE COMMUNITY ASSOCIATION AND ARE TO BE REPLACED BY THE COMMUNITY 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. THE SUBJECT PROPERTY LIES WITHIN SHADED ZONE "X" WITH A DEFINITION OF: AREA OF MODERATE FLOOD HAZARD, USUALLY THE AREA BETWEEN THE LIMITS OF THE 100-YEAR AND 500-YEAR FLOODS. DESIGNATION DETERMINED BY FEMA FLOOD ZONE MAP 04013C3075H, PANEL NUMBER 3075 OF 4350, EFFECTIVE DATE SEPTEMBER 30, 2005.
10. ALL BUILDING SETBACKS SHALL COMPLY WITH COUNCIL ORDINANCE NO. 2493, AS AMENDED.
11. ALL STREETS WITHIN THIS SUBDIVISION ARE "PRIVATE STREET" AND ARE TO BE MAINTAINED AND REPAIRED BY THE VIA BELLA COMMUNITY ASSOCIATION.
12. THE PURPOSE OF THIS RE-PLAT IS TO ADD LOTS, TRACTS & NECESSARY EASEMENTS TO THIS SITE.
13. ALL UTILITIES SHALL BE CONSTRUCTED UNDERGROUND.
14. ALL COMMUNICATION LINES TO BE CONSTRUCTED UNDERGROUND AS REQUIRED BY ARIZONA CORPORATION COMMISSION.



VICINITY MAP
NOT TO SCALE

CLIENT/DEVELOPER

K.HOVNANIAN HOMES
20830 N.TATUM BLVD
SUITE 250
PHOENIX, ARIZONA 85050
PHONE: (602) 819-3349
CONTACT: GEORGE CANNON

SURVEYOR

HILGARTWILSON
2141 EAST HIGHLAND AVENUE
SUITE 250
PHOENIX, ARIZONA 85016
PHONE: (602) 490-0535
CONTACT: KIRK J. PANGUS, PS

SITE DATA

SITE CONTAINS 475,063.96 SQ.FT. OR 10.9059 ACRES GROSS & NET

SHEET INDEX

RP01	COVER SHEET, DEDICATION, NOTES
RP02	LOT & TRACT AREA TABLE, SHEET INDEX MAP
RP03-RP04	RE-PLAT

BASIS OF BEARING

BASIS OF BEARING IS N01°43'40"W ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 1 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOWN ON THE FINAL PLAT FOR THE ENCLAVE – VIA BELLA, AS RECORDED IN BOOK 912, PAGE 12, RECORDS OF MARICOPA COUNTY, ARIZONA.

APPROVAL

APPROVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF GILBERT, ARIZONA THIS

_____ DAY OF _____, 2015.

BY: _____ _____
MAYOR TOWN CLERK

APPROVED BY: _____ _____
TOWN OF GILBERT ENGINEER DATE

APPROVED BY: _____ _____
PLANNING MANAGER DATE

LAND SURVEYOR 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, 2014; 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.

BY: KIRK J. PANGUS, PS
RLS# 19344
HILGARTWILSON
2141 E. HIGHLAND AVENUE, SUITE 250
PHOENIX, ARIZONA 85016
P: (602) 490-0535
kpangus@hilgartwilson.com

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
19344
KIRK J.
PANGUS
05-08-2015
Date Signed
ARIZONA, U.S.A.
Expires 12/31/2015

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.

REV.:

HILGARTWILSON
ENGINEER | PLAN | SURVEY | MANAGE
2141 E. HIGHLAND AVE., STE. 250 | P: 602.490.0535 / F: 602.368.2436
PHOENIX, AZ 85016 www.hilgartwilson.com

THE ENCLAVE - VIA BELLA
HIGLEY ROAD & HOUSTON AVENUE
GILBERT, ARIZONA

RE-PLAT

HILGARTWILSON
PROJ NO.: 1405
DATE: JAN 2015
SCALE: AS SHOWN
DRAWN: DSP
DESIGNED: HW
APPROVED: KJP

DWG. NO.
RP01

SHT. 1 OF 4

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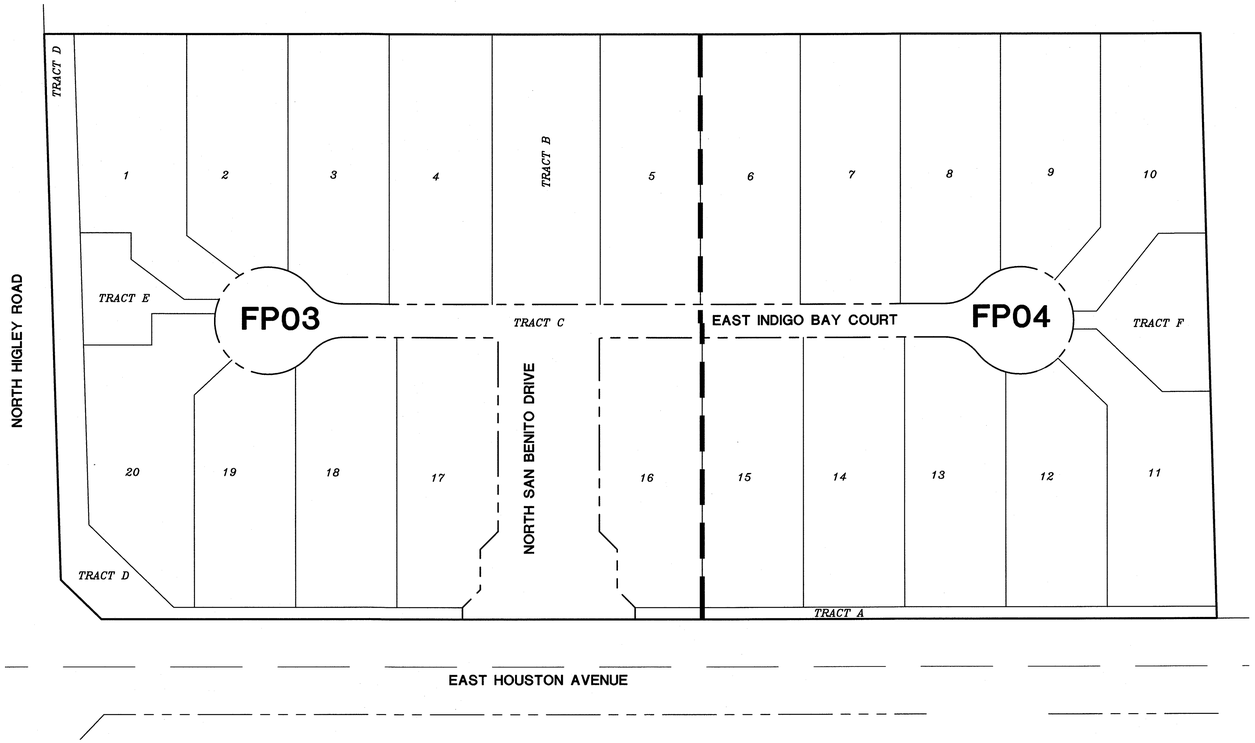
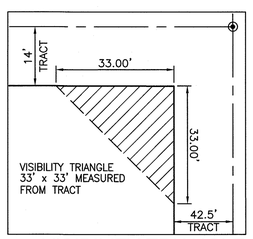


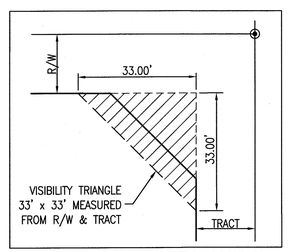
CURVE TABLE			
CURVE #	RADIUS	DELTA	LENGTH
C1	20.00'	14°28'51"	5.05'
C2	20.00'	14°26'47"	5.04'
C3	45.00'	284°27'33"	223.41'
C4	35.00'	52°13'49"	31.91'
C5	35.00'	52°13'44"	31.90'
C6	35.00'	52°14'00"	31.91'
C7	35.00'	52°13'55"	31.91'
C8	45.01'	191°34'08"	150.48'
C9	45.00'	15°54'24"	12.49'
C10	45.01'	19°11'09"	15.07'

LINE TABLE			LINE TABLE			LINE TABLE			LINE TABLE			LINE TABLE		
LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH
L1	N00°00'00"E	10.00'	L21	N00°00'00"W	10.78'	L41	S00°00'00"E	70.00'	L61	N00°00'00"E	70.00'	L81	N67°30'10"W	35.18'
L2	S00°00'00"E	10.00'	L22	N00°00'00"W	21.17'	L42	N00°00'00"W	22.00'	L62	S90°00'00"W	52.61'	L82	N67°30'10"W	35.18'
L3	S01°33'24"E	10.00'	L23	S68°04'27"W	33.96'	L43	N00°00'00"W	10.00'	L63	S00°00'00"E	70.00'	L83	S00°00'01"W	14.04'
L4	S90°00'00"W	19.83'	L24	N68°04'27"E	33.96'	L44	N00°00'00"W	38.00'	L64	N00°00'00"E	70.00'	L84	N00°00'00"E	10.82'
L5	N90°00'00"E	19.83'	L25	S00°00'00"E	26.91'	L45	N90°00'00"W	31.50'	L65	N90°00'00"W	53.89'	L85	S00°00'00"W	22.29'
L6	N38°29'47"E	14.02'	L26	N00°00'00"W	10.78'	L46	N90°00'00"W	31.50'	L66	S00°00'00"E	70.00'	L86	N90°00'00"W	45.69'
L7	N38°29'47"E	10.06'	L27	S00°00'00"E	28.81'	L47	S00°00'00"E	22.00'	L67	N00°00'00"E	19.50'	L87	S32°21'07"E	52.15'
L8	N57°30'16"W	43.65'	L28	S00°00'00"E	66.49'	L48	N00°00'00"E	10.00'	L68	N00°00'00"E	10.00'	L88	N32°21'07"W	23.89'
L9	N57°30'16"W	43.18'	L29	S90°00'00"W	52.50'	L49	S00°00'00"E	38.00'	L69	N00°00'00"E	40.50'	L89	S32°21'07"E	10.38'
L10	N41°06'27"E	10.33'	L30	S00°00'00"E	70.00'	L50	N00°00'00"E	70.00'	L70	N90°00'00"W	32.50'	L90	N32°21'07"W	17.88'
L11	N57°30'16"W	31.86'	L31	N00°00'00"W	23.80'	L51	S90°00'00"W	52.50'	L71	N90°00'00"W	32.50'	L91	N73°16'06"E	31.88'
L12	N57°30'16"W	31.86'	L32	N00°00'00"W	10.00'	L52	S00°00'00"E	70.00'	L72	S00°00'01"E	19.50'	L92	N52°56'28"W	12.39'
L13	N41°06'27"E	11.45'	L33	N00°00'00"W	36.20'	L53	N00°00'00"W	21.40'	L73	N00°00'00"E	10.00'	L93	N73°16'06"E	36.40'
L14	N41°06'27"E	10.11'	L34	N90°00'00"W	31.50'	L54	N00°00'00"W	10.00'	L74	S00°00'00"W	40.50'	L94	S52°56'28"E	21.55'
L15	N41°06'27"E	18.76'	L35	N90°00'00"W	31.50'	L55	N00°00'00"W	38.60'	L75	N00°00'00"W	70.00'	L95	N52°56'28"W	21.63'
L16	S41°06'27"W	40.33'	L36	S00°00'00"E	23.80'	L56	N90°00'00"W	31.50'	L76	N90°00'00"W	52.50'	L96	N73°16'06"E	54.56'
L17	N00°00'01"E	13.75'	L37	N00°00'00"E	10.00'	L57	N90°00'00"W	31.50'	L77	N00°00'00"E	30.71'	L97	N73°16'06"E	54.56'
L18	N89°59'59"W	39.90'	L38	N00°00'00"E	36.20'	L58	S00°00'00"E	21.40'	L78	S00°00'00"E	10.82'	L98	N90°00'00"E	29.49'
L19	N00°00'00"W	47.16'	L39	N00°00'00"E	70.00'	L59	N00°00'00"E	10.00'	L79	N00°00'00"W	25.41'	L99	S52°56'28"E	28.70'
L20	N00°00'00"W	15.21'	L40	S90°00'00"W	52.50'	L60	S00°00'00"E	38.60'	L80	S00°00'00"E	66.95'	L100	N52°56'28"W	12.39'

LINE TABLE			LINE TABLE			LINE TABLE			LINE TABLE			LINE TABLE		
LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH
L101	N52°56'28"W	14.64'	L121	N63°04'39"E	36.45'	L141	N00°06'59"W	53.52'	L161	S00°00'00"E	70.00'	L181	S00°00'00"E	10.74'
L102	S00°00'00"E	14.93'	L122	N00°00'00"E	34.30'	L142	S00°06'59"E	22.02'	L162	N90°00'00"E	52.51'	L182	S00°00'00"E	15.07'
L103	N00°00'00"E	11.47'	L123	N00°00'00"E	23.56'	L143	N00°06'59"W	10.00'	L163	N00°04'57"E	70.00'	L183	N00°00'00"E	45.67'
L104	S60°40'03"E	66.53'	L124	S00°00'00"E	69.08'	L144	S00°06'59"E	21.50'	L164	N00°04'57"E	35.08'	L184	N90°00'00"E	43.00'
L105	N60°40'03"W	57.70'	L125	N00°00'00"E	11.22'	L145	N89°53'01"E	32.58'	L165	N00°04'57"E	10.00'	L185	N00°00'00"E	13.00'
L106	S47°06'34"W	10.50'	L126	N90°00'00"E	52.50'	L146	N89°53'01"E	32.55'	L166	S00°04'57"W	24.93'	L186	N46°21'21"W	45.05'
L107	N47°06'34"E	12.72'	L127	N00°00'00"W	70.00'	L147	S00°00'00"E	38.57'	L167	S89°55'03"E	32.43'			
L108	N47°06'34"E	19.91'	L128	S00°00'00"E	41.00'	L148	S00°00'00"E	10.00'	L168	S89°55'03"E	32.44'			
L109	S60°40'03"E	26.91'	L129	N00°00'00"E	10.00'	L149	S00°00'00"E	21.44'	L169	S00°00'00"E	35.03'			
L110	S60°40'03"E	32.24'	L130	S00°00'01"E	19.00'	L150	S00°00'00"E	70.00'	L170	N00°00'00"E	10.00'			
L111	N17°19'11"E	12.22'	L131	N90°00'00"E	32.50'	L151	N90°00'00"E	52.50'	L171	S00°00'00"E	24.97'			
L112	S17°19'11"W	10.22'	L132	N90°00'00"W	32.50'	L152	N00°02'27"E	70.00'	L172	S00°00'00"E	70.00'			
L113	S17°19'11"W	25.69'	L133	S00°00'00"E	23.29'	L153	S00°02'27"W	38.04'	L173	N90°00'00"E	52.50'			
L114	S17°19'11"W	48.14'	L134	S00°00'00"E	10.00'	L154	N00°02'27"E	10.00'	L174	N00°00'00"E	64.52'			
L115	N90°00'00"E	49.95'	L135	S00°00'00"E	19.00'	L155	N00°02'27"E	21.97'	L175	S00°00'00"E	27.56'			
L116	N00°00'00"W	50.25'	L136	S00°00'00"E	52.29'	L156	S89°57'33"E	32.46'	L176	N00°00'00"E	10.74'			
L117	S00°00'00"E	22.87'	L137	N90°00'00"E	52.51'	L157	S89°57'33"E	32.47'	L177	S00°00'00"E	26.22'			
L118	N00°00'00"W	11.22'	L138	S00°00'00"W	51.66'	L158	N00°00'00"E	21.99'	L178	S68°33'39"E	34.92'			
L119	N00°00'00"W	16.17'	L139	N90°00'00"E	53.89'	L159	S00°00'00"E	10.00'	L179	N68°33'39"W	34.92'			
L120	N63°04'39"E	36.45'	L140	S00°00'00"E	52.88'	L160	S00°00'00"E	38.01'	L180	S00°00'00"E	19.86'			



1 VISIBILITY TRIANGLE
LOCAL STREET
N.T.S.
PER T.O.G. DTL 92
CONTROLLED INTERSECTION TO HAVE A
VISIBILITY SITELINE (25 MPH) PER T.O.G. DTL 93



2 VISIBILITY TRIANGLE
COLLECTOR ROAD
N.T.S.
CONTROLLED INTERSECTION TO HAVE A
VISIBILITY SITELINE (35 MPH) PER T.O.G. DTL 93

LOT TABLE	
LOT NO.	AREA (SQ.FT)
1	18,582
2	16,238
3	18,689
4	19,538
5	19,023
6	18,998
7	18,998
8	18,463
9	16,090
10	17,518
11	18,659
12	16,458
13	18,562
14	19,227
15	19,227
16	18,588
17	18,273
18	18,858
19	16,670
20	19,525

TOTAL LOT AREA = 366,182.68 SQ.FT OR 8.406 ACRES

TRACT TABLE		
TRACT	AREA (SQ.FT)	USE
TRACT A	4,880.67	LANDSCAPE, OPEN SPACE, DRAINAGE EASMENT, PUBLIC UTILITIES AND PEDESTRIAN ACCESS EASEMENT
TRACT B	20,506.25	LANDSCAPE, OPEN SPACE, PUE, VNAE, RETENTION, DRAINAGE EASEMENT, PUBLIC UTILITIES AND PEDESTRIAN ACCESS EASEMENT
TRACT C	50,736.30	PRIVATE ACCESSWAY, PUBLIC UTILITIES, DRAINAGE EASEMENT, LANDSCAPE, AMENITIES, FIRE APPARATUS AND PUBLIC SERVICE ACCESS EASEMENT
TRACT D	17,213.29	LANDSCAPE, OPEN SPACE, DRAINAGE EASEMENT, PUBLIC UTILITIES, AND PEDESTRIAN ACCESS EASEMENT
TRACT E	5,957.66	LANDSCAPE, OPEN SPACE, RETENTION, DRAINAGE EASEMENT, AND PUBLIC UTILITIES
TRACT F	9,587.12	LANDSCAPE, OPEN SPACE, RETENTION, DRAINAGE EASEMENT, AND PUBLIC UTILITIES

TOTAL TRACT AREA = 108,881.28 SQ.FT. OR 2.50 ACRES

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
19344
KIRK J.
PANGUS
05-08-2015
Signed
ARIZONA, U.S.A.
Expires 12/31/2015

REV.:

HILGARTWILSON
ENGINEER | PLAN | SURVEY | MANAGE
2141 E. HIGHLAND AVE., STE. 250
PHOENIX, AZ 85016
P: 602.490.0535 / F: 602.368.2436
www.hilgartwilson.com

THE ENCLAVE - VIA BELLA

HIGLEY ROAD & HOUSTON AVENUE
GILBERT, ARIZONA

RE-PLAT

HILGARTWILSON
PROJ NO.: 1405
DATE: JAN 2015
SCALE: AS SHOWN
DRAWN: DSP
DESIGNED: HW
APPROVED: KJP

DWG. NO.
RP02

SHT. 2 OF 4

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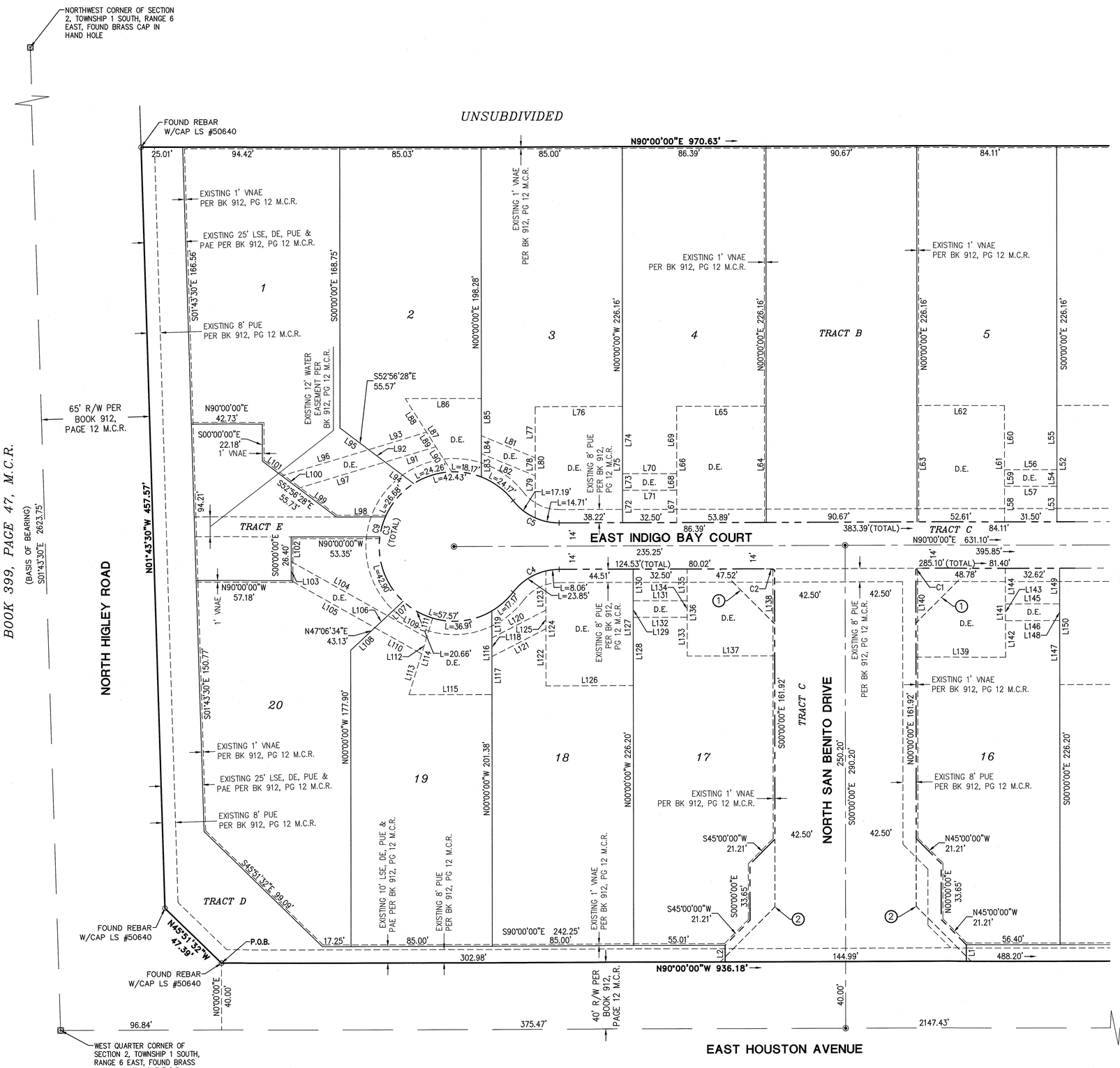
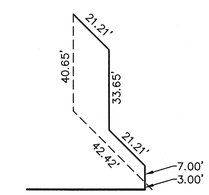


LEGEND

○	FOUND MONUMENT AS NOTED
⊡	FOUND BRASS CAP IN HAND HOLE
◎	FOUND BRASS CAP FLUSH
●	SET 1/2" REBAR W/ CAP, RLS #19344 OR AS NOTED
◉	EXISTING BRASS CAP FLUSH
———	BOUNDARY LINE
—— —— —	SECTION LINE
——— – ———	CENTER LINE
— — — — —	RIGHT OF WAY
———	PARCEL LINE
R/W	RIGHT-OF-WAY
P.U.E.	PUBLIC UTILITY EASEMENT
S.V.T.	SIGHT VISIBILITY TRIANGLE
V.N.A.E.	VEHICLE NON-ACCESS EASEMENT
L.S.E.	LANDSCAPE EASEMENT
D.E.	DRAINAGE EASEMENT
P.A.E.	PEDESTRIAN ACCESS EASEMENT
BK	BOOK
PG	PAGE
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
①	SITE VISIBILITY TRIANGLE (33'X33')(TYP.)
②	SITE VISIBILITY TRIANGLE (SEE DETAIL, THIS SHEET)



SIGHT VISIBILITY TRIANGLE DETAIL

NOTE:

1. SEE SHEET 2 FOR LINE, CURVE AND TRACT TABLES

REV.:

HILGARTWILSON
ENGINEER | PLAN | SURVEY | MANAGE
2141 E. HIGHLAND AVE., STE. 250
PHOENIX, AZ 85016
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www.hilgartwilson.com

THE ENCLAVE - VIA BELLA

HIGLEY ROAD & HOUSTON AVENUE
GILBERT, ARIZONA

RE-PLAT

HILGARTWILSON
PROJ NO.: 1405
DATE: JAN 2015
SCALE: AS SHOWN
DRAWN: DSP
DESIGNED: HW
APPROVED: KJP

DWG. NO.
RP03

SHT. 3 OF 4

U:\1400\1405\SURVEY\PLAT\1405-RP03.dwg 4/30/2015 2:25 PM

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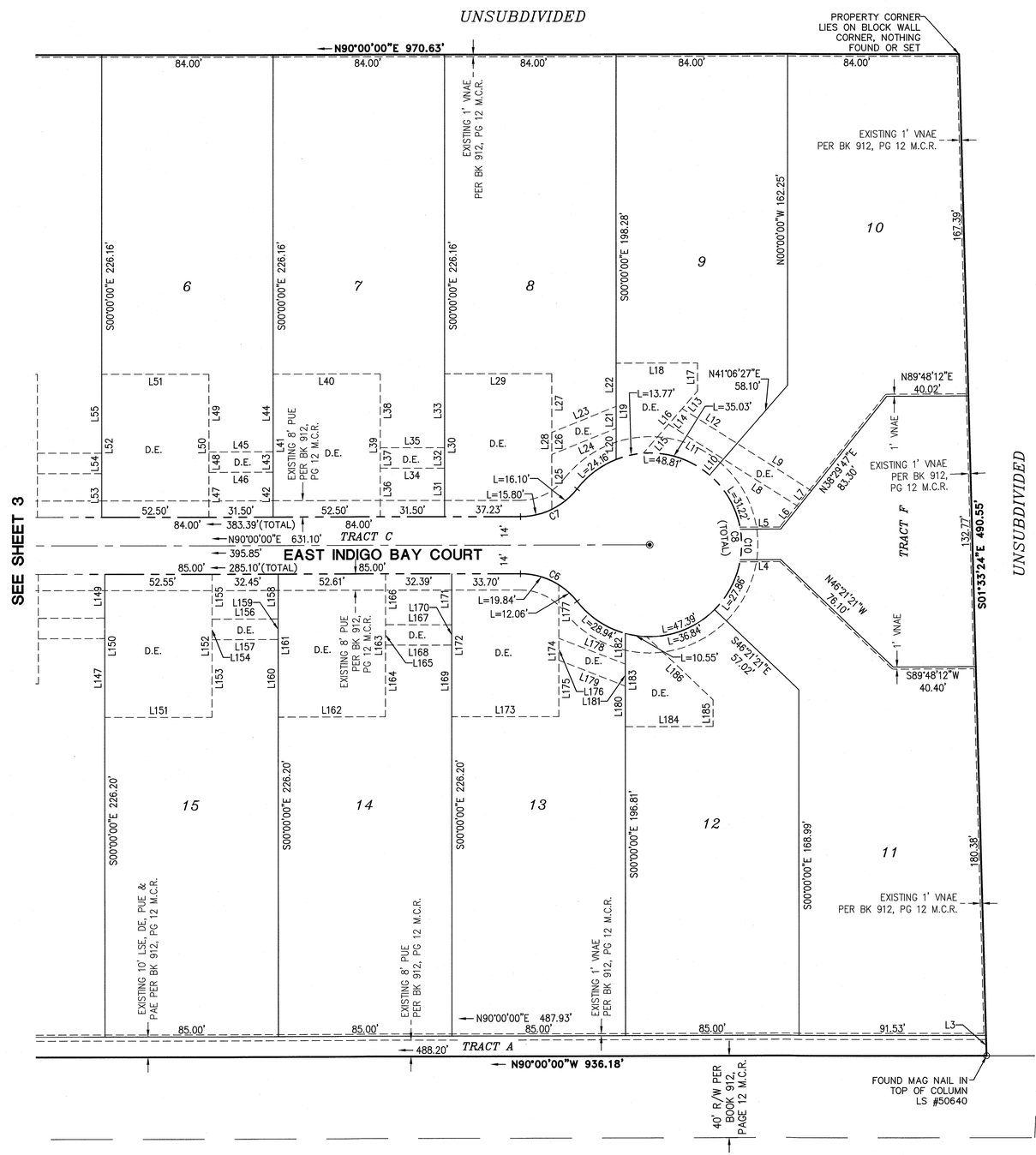

LEGEND

○	FOUND MONUMENT AS NOTED
⊡	FOUND BRASS CAP IN HAND HOLE
◎	FOUND BRASS CAP FLUSH
●	SET 1/2" REBAR W/ CAP, RLS #19344 OR AS NOTED
◉	EXISTING BRASS CAP FLUSH
———	BOUNDARY LINE
—— —— ——	SECTION LINE
——— – ———	CENTER LINE
—— – – – ——	RIGHT OF WAY
———	PARCEL LINE
R/W	RIGHT-OF-WAY
P.U.E.	PUBLIC UTILITY EASEMENT
S.V.T.	SIGHT VISIBILITY TRIANGLE
V.N.A.E.	VEHICLE NON-ACCESS EASEMENT
L.S.E.	LANDSCAPE EASEMENT
D.E.	DRAINAGE EASEMENT
P.A.E.	PEDESTRIAN ACCESS EASEMENT
BK	BOOK
PG	PAGE
M.C.R.	MARICOPA COUNTY RECORDS
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P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
①	SITE VISIBILITY TRIANGLE (33'X33')(TYP.)
②	SITE VISIBILITY TRIANGLE (SEE DETAIL, THIS SHEET)

NOTE:

1. SEE SHEET 2 FOR LINE, CURVE AND TRACT TABLES

N

30 0 30 60
SCALE FEET

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
19344
KIRK J. PANGUS
05-08-2015
Signed
ARIZONA, U.S.A.
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THE ENCLAVE - VIA BELLA

HIGLEY ROAD & HOUSTON AVENUE
GILBERT, ARIZONA

RE-PLAT

HILGARTWILSON

PROJ NO.:	1405
DATE:	JAN 2015
SCALE:	AS SHOWN
DRAWN:	DSP
DESIGNED:	HW
APPROVED:	KJP

DWG. NO.
RP04

SHT. 4 OF 4

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ENG-2015-00064_20150508_RP04_3RD

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GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Tom Condit, PE, Development Engineer, 503-6815

MEETING DATE: June 25, 2015

SUBJECT: SP1470: Approval of the Final Plat for Light of Christ Lutheran Church, located north of the northeast corner of Chandler Heights Road and Greenfield Road.

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's Infrastructure Strategic Initiative as it allows for the logical extension of infrastructure services to the subject site.

RECOMMENDED MOTION

A motion to approve the Final Plat for Light of Christ Lutheran Church, located north of the northeast corner of Chandler Heights Road and Greenfield Road.

BACKGROUND/DISCUSSION

The *Final Plat for Light of Christ Lutheran Church* is approximately 5.9 acres in size. The Final Plat dedicates easements for public utilities. On September 11 2014, the developers of the Light of Christ Lutheran Church received approval from the Design Review Board on their proposed project (Case DR14-19).

The following is an abbreviated history of Town actions associated with this property:

February 6, 2001	The Town Council adopted Ordinance No. 1320 (A00-08), annexing an area north of Chandler Heights Road on both sides of Greenfield Road. The subject site is located within this annexation area.
September 11, 2014	The Design Review Board approved Case No. DR14-19, the Light of Christ Lutheran Church project, for site plan, landscape plan, grading and drainage, elevations, lighting, signage, colors and materials.

FINANCIAL IMPACT

There is no direct financial impact on the Town associated with this Final Plat approval. Approval of this Final Plat will allow the owner of the land to move forward with the development of the property, including a proposed 15,829 square foot Place of Worship on the subject site. This will have the indirect benefit of bringing new construction activity and sales tax revenues to the Town.

The financial impact was reviewed by Cris Parisot in the Office of Management and Budget.

STAFF RECOMMENDATION

The Engineering Division has reviewed this Final Plat. 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 Engineer

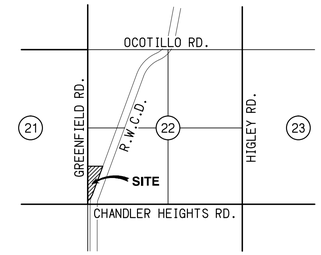
Approved By	Approval Date
Kenneth Morgan	6/15/2015 3:52 PM

FINAL PLAT

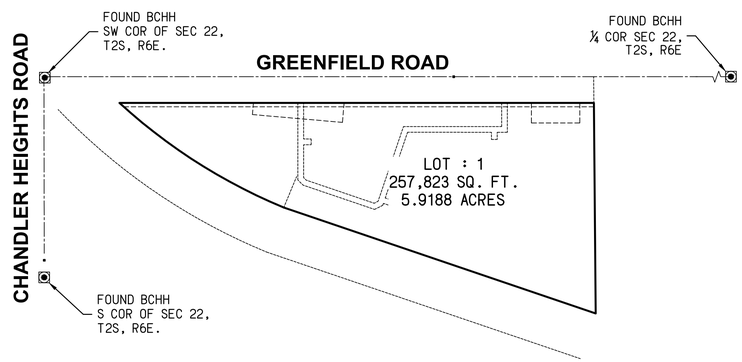
FOR

LIGHT OF CHRIST LUTHERAN CHURCH

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA



VICINITY MAP
SECTION 22, T2S, R6E
NOT TO SCALE



DEDICATION

STATE OF ARIZONA
COUNTY OF MARICOPA } SS

KNOW ALL MEN BY THESE PRESENTS:

THAT LIGHT OF CHRIST LUTHERAN CHURCH, AN ARIZONA NON-PROFIT CORPORATION, AND FIRST UNITED FUNDING, LLC, A MINNESOTA LIMITED LIABILITY COMPANY, AS OWNERS, HAS SUBDIVIDED UNDER THE NAME OF "LIGHT OF CHRIST LUTHERAN CHURCH", LOCATED IN THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY ARIZONA, AS SHOWN PLATTED HEREON STREETS AND EASEMENTS CONSTITUTING SAME AND THAT SAID LOTS AND STREETS SHALL BE KNOW BY NUMBER, LETTER OR NAME GIVEN EACH RESPECTIVELY.

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.

IN WITNESS WHEREOF: LIGHT OF CHRIST LUTHERAN CHURCH, AN ARIZONA NON-PROFIT CORPORATION, AND FIRST UNITED FUNDING, LLC, A MINNESOTA LIMITED LIABILITY COMPANY, AS OWNERS, HAVE HEREUNTO CAUSED THEIR COMPANY NAMES TO BE AFFIXED AND THE SAME TO BE ATTESTED BY SIGNATURES ON THE UNDERSIGNED, THEREUNTO DULY AUTHORIZED THIS _____ DAY OF _____ , 2015.

BY: LIGHT OF CHRIST LUTHERAN CHURCH, AN ARIZONA NON-PROFIT CORPORATION.

BY:_____ DATE:_____

ITS:_____

BY: FIRST UNITED FUNDING, L.L.C., A MINNESOTA LIMITED LIABILITY COMPANY,

BY:_____ DATE:_____

ITS:_____

ACKNOWLEDGEMENT

STATE OF _____
COUNTY OF _____ } SS

ON THIS _____ DAY OF _____ 2015, BEFORE ME, THE UNDERSIGNED, PERSONALLY APPEARED _____ WHO ACKNOWLEDGE SELF TO BE THE _____ OF LIGHT OF CHRIST LUTHERAN CHURCH, AN ARIZONA NON-PROFIT CORPORATION, AND BEING AUTHORIZED TO DO SO ON BEHALF OF SAID ENTITY, EXECUTED THE FOREGOING PLAT FOR THE PURPOSES THEREIN CONTAINED.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC DATE

MY COMMISSION EXPIRES:_____
DATE

ACKNOWLEDGEMENT

STATE OF _____
COUNTY OF _____ } SS

ON THIS _____ DAY OF _____ 2015, BEFORE ME, THE UNDERSIGNED, PERSONALLY APPEARED _____ WHO ACKNOWLEDGE SELF TO BE THE _____ OF FIRST UNITED FUNDING, L.L.C., A MINNESOTA LIMITED LIABILITY COMPANY, AND BEING AUTHORIZED TO DO SO ON BEHALF OF SAID ENTITY, EXECUTED THE FOREGOING PLAT FOR THE PURPOSES THEREIN CONTAINED.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC DATE

MY COMMISSION EXPIRES:_____
DATE

OWNER

LIGHT OF CHRIST LUTHERAN CHURCH
397 S. GILBERT ROAD, NO. 160
GILBERT, AZ 85296
PHONE: (480) 296.8221
CONTACT: DON TOLLE
EMAIL: dontolle@cox.net

ENGINEER / SURVEYOR

XCL ENGINEERING, L.L.C.
3115 S. PRICE RD. SUITE 121
CHANDLER, AZ 85248
PHONE: (480) 275-2711
CONTACT: OMAR CERVANTES, P.E.
EMAIL: ocervantes@xclengineering.com

NARRATIVE

THE PURPOSE OF THE PLAT IS TO CREATE A RECORD OF THE BOUNDARY FOR THE SITE BASED ON WARRANTY DEED DOCUMENT NO. 2014-0595956, M.C.R.

SHEET INDEX

FP01: DECLARATIONS AND APPROVALS
FP02: BOUNDARY AND SECTIONAL TIES.
FP03: EASEMENT LABELING.

NOTES:

1. CONSTRUCTION WITHIN PUBLIC UTILITY 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 TO BE CONSTRUCTED UNDERGROUND AS REQUIRED BY THE ARIZONA CORPORATION COMMISSION.
4. ALL COMMUNICATION LINES TO BE CONSTRUCTED UNDERGROUND AS REQUIRED BY THE ARIZONA CORPORATION COMMISSION.
5. 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.
6. NO STRUCTURES SHALL BE CONSTRUCTED IN OR ACROSS NOR SHALL IMPROVEMENTS OR ALTERATIONS BE MADE TO THE DRAINAGE FACILITIES THAT ARE PART OF THIS DEVELOPMENT WITHOUT WRITTEN AUTHORIZATION OF THE TOWN OF GILBERT.
7. ALL RETENTION BASIN MUST DRAIN ANY STORM EVENT UP TO AND INCLUDING THE 50-YEAR STORM WITHIN 36 HOURS. OWNER(S) OF ANY EXISTING BASIN FAILING TO MEET THIS REQUIREMENT MUST TAKE CORRECTIVE ACTION TO BRING BASIN TO COMPLIANCE.
8. ALL DRYWELLS SHOWN ON THIS PROJECT SHALL BE MAINTAINED BY THE OWNER(S) AND ARE TO BE REPLACE BY THE OWNER(S) WHEN THEY CEASE TO DRAIN SURFACE WATER IN A 36-HOUR PERIOD. REGULAR MAINTENANCE OF THE DRYWELL SETTLING CHAMBER IS REQUIRED TO ARCHIVE BEST OPERATION OF THE DRYWELL.

AREA:

NET AREA: 257,823 S.F. 5.9188 AC.

FLOOD ZONE

THIS SITE IS LOCATED WITHIN ZONE X AS SHOWN ON THE F.E.M.A. FLOOD INSURANCE RATE MAP (FIRM) 04013C3150L, PANEL 3150 OF 4425, DATED OCTOBER 16, 2013. FLOOD ZONE X IS DEFINED AS:

ZONES B, C, AND X ARE THE FLOOD INSURANCE RATE ZONES THAT CORRESPOND TO THE AREAS OUTSIDE THE 100-YEAR FLOODPLAINS, AREAS OF 100-YEAR SHEET FLOW FLOODING WHERE AVERAGE DEPTHS ARE LESS THAN 1 FOOT, AREAS OF 100-YEAR STREAM FLOODING WHERE THE CONTRIBUTING DRAINAGE AREAS IS LESS THAN 1 SQUARE MILE, OR AREAS PROTECTED FROM THE 100-YEAR FLOOD BY LEVEES. NO BFE'S OR DEPTHS ARE SHOWN WITHIN THIS ZONE.

BASIS OF BEARING

THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 22, WHICH BEARS NORTH 00 DEGREES 01 MINUTES 19 SECONDS WEST.

BENCHMARK

FOUND B.C.H.H. AT THE WEST CORNER OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 6 EAST. NAVD88 ELEVATION = 1303.508

CERTIFICATION

I HEREBY CERTIFY THAT THE SURVEY AND SUBDIVISION OF THE PREMISES PLATTED HEREON IS FROM SURVEY PREPARED BY D. JONES LAND SURVEYING & MAPPING INC. DURING THE MONTH OF MARCH 2010, AND THIS PLAT REPRESENTS THE SURVEY MADE. I FURTHER CERTIFY ALL EXTERIOR SECTION MONUMENTS SHOWN HEREON ACTUALLY EXIST AND THEIR LOCATION, SIZE AND MATERIAL ARE ACCURATELY SHOWN AND ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

RICHARD E. JONES
R.L.S. No. 27742
XCL ENGINEERING, L.L.C.
3115 S. PRICE ROAD, SUITE 121
CHANDLER, AZ 85248
PHONE: (602) 790-2267

CERTIFICATE NO. 27742 RICHARD E. JONES 6/10/15 DATE SIGNED ARIZONA, U.S.A. EXPIRES 3/31/2016

APPROVALS

APPROVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF GILBERT, ARIZONA THIS _____ DAY OF _____, 2015.

MAYOR DATE

ATTEST TOWN CLERK DATE

TOWN OF GILBERT, ENGINEER DATE

TOWN OF GILBERT, PLANNING MANAGER DATE

LEGAL DESCRIPTION

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, LYING WEST OF THE ROOSEVELT WATER CONSERVATION DISTRICT CANAL AS CONVEYED IN BOOK 189 OF DEEDS, PAGE 360, RECORDS OF MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 22;

THENCE NORTH 00 DEGREES 01 MINUTES 19 SECONDS WEST ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 22, A DISTANCE OF 1152.48 FEET;

THENCE NORTH 89 DEGREES 29 MINUTES 14 SECONDS EAST, 55.00 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING NORTH 89 DEGREES 29 MINUTES 14 SECONDS EAST, 441.45 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF THE ROOSEVELT WATER CONSERVATION DISTRICT CANAL (RWCD);

THENCE SOUTH 18 DEGREES 44 MINUTES 30 SECONDS WEST ALONG SAID RIGHT-OF-WAY A DISTANCE OF 690.62 FEET TO A POINT ON A 1176.67 FOOT RADIUS NON-TANGENT CURVE, CONCAVE TO THE NORTHWEST, A RADIAL FROM SAID POINT BEARS NORTH 67 DEGREES 31 MINUTES 54 SECONDS WEST;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 19 DEGREES 58 MINUTES 59 SECONDS, AN ARC LENGTH OF 410.40 FEET TO A POINT THAT IS 55.00 FEET EAST OF THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 22;

THENCE LEAVING SAID RWCD RIGHT-OF-WAY AND CONTINUING ON A LINE THAT IS PARALLEL TO AND 55.00 FEET EAST OF THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 22, NORTH 00 DEGREES 01 MINUTES 19 SECONDS WEST, 994.58 FEET TO THE POINT OF BEGINNING.

CONSENT TO EASEMENT

THE UNDERSIGNED CONSENTS TO THE UTILITY EASEMENT DESCRIBED ON THIS PLAT.

IN WITNESS WHEREOF, THIS CONSENT TO EASEMENT HAS BEEN EXECUTED AND DELIVERED THIS _____ DAY _____, 20___.

_____
BENEFICIARY TO DEED OF TRUST

BY: _____

ITS: _____

STATE OF ARIZONA
COUNTY OF MARICOPA } SS

ON THIS _____ DAY OF _____ 2015, BEFORE ME PERSONALLY APPEARED THE UNDERSIGNED _____, AN AUTHORIZED REPRESENTATIVE OF _____, A BENEFICIARY TO A RECORD DEED OF TRUST, 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 DOCUMENT.

NOTARY PUBLIC DATE

MY COMMISSION EXPIRES:_____
DATE

XCL ENGINEERING, LLC
3115 South Price Road,
Suite 121,
Chandler, AZ 85286
Ph: (480) 275-2711
www.xclengineering.com

CERTIFIED BY:

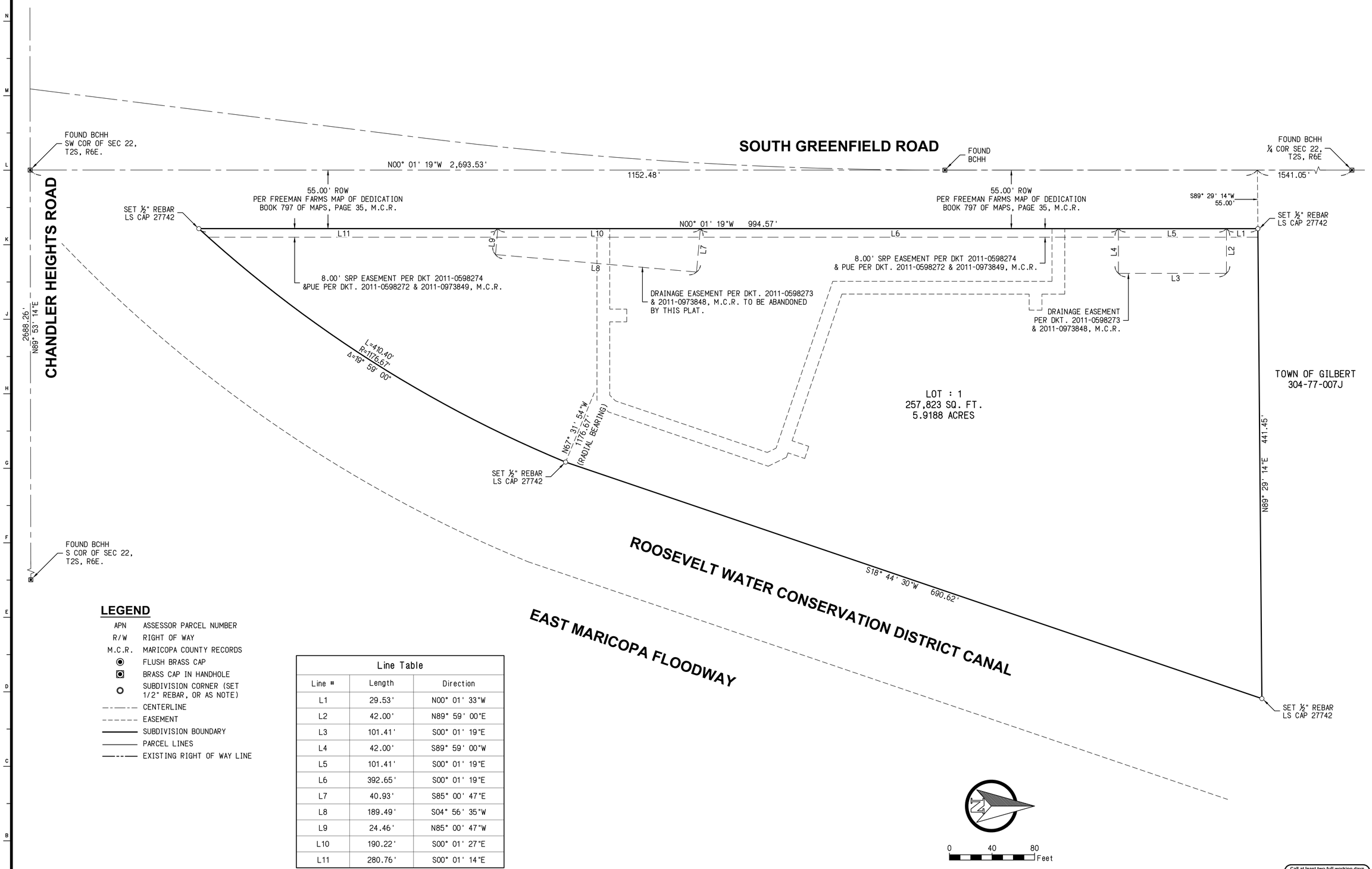
TITLE: FINAL PLAT

PROJECT: LIGHT OF CHRIST LUTHERAN CHURCH
GILBERT, ARIZONA

DATE: 04/21/2015 | SCALE:AS SHOWN | PROJ.No.: 14-0028

REV	DATE	DESCRIPTION

DRAWING No.
FP01
SHEET 1 OF 3



LEGEND

APN	ASSESSOR PARCEL NUMBER
R/W	RIGHT OF WAY
M.C.R.	MARICOPA COUNTY RECORDS
◉	FLUSH BRASS CAP
◙	BRASS CAP IN HANDHOLE
○	SUBDIVISION CORNER (SET 1/2" REBAR, OR AS NOTE)
—·—·—	CENTERLINE
- - - - -	EASEMENT
———	SUBDIVISION BOUNDARY
———	PARCEL LINES
—·—·—	EXISTING RIGHT OF WAY LINE

Line Table

Line #	Length	Direction
L1	29.53'	N00° 01' 33"W
L2	42.00'	N89° 59' 00"E
L3	101.41'	S00° 01' 19"E
L4	42.00'	S89° 59' 00"W
L5	101.41'	S00° 01' 19"E
L6	392.65'	S00° 01' 19"E
L7	40.93'	S85° 00' 47"E
L8	189.49'	S04° 56' 35"W
L9	24.46'	N85° 00' 47"W
L10	190.22'	S00° 01' 27"E
L11	280.76'	S00° 01' 14"E

XCL ENGINEERING, LLC
3115 South Price Road,
Suite 121,
Chandler, AZ 85286
Ph: (480) 275-2711
www.xclengineering.com

CERTIFIED BY:

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27742
RICHARD E.
JONES
6/10/15
ARIZONA U.S.A.
Expires 3/31/2016

TITLE: FINAL PLAT

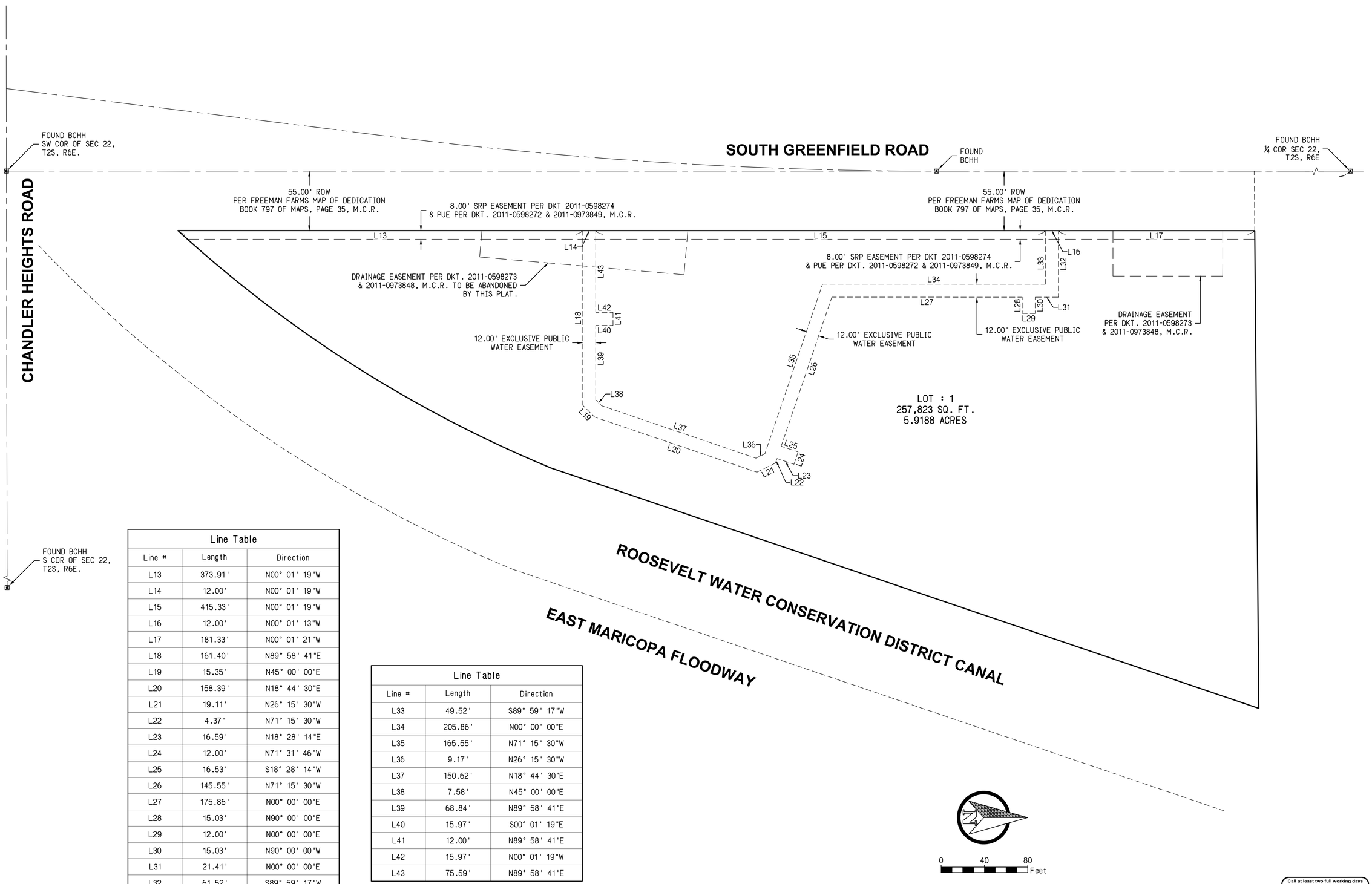
PROJECT: LIGHT OF CHRIST LUTHERAN CHURCH
GILBERT, ARIZONA

DATE: 04/21/2015 | SCALE: AS SHOWN | PROJ.No.: 14-0028

REV	DATE	DESCRIPTION

DRAWING No.
FP02
SHEET 2 OF 3

Call at least two full working days before you begin excavation
ARIZONA 811
Arizona Blue Stake, Inc.
Dial 8-1-1 or 1-800-STAKE-IT (782-5348)
In Maricopa County: (602)263-1100



Line Table		
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L14	12.00'	N00° 01' 19"W
L15	415.33'	N00° 01' 19"W
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CERTIFIED BY:
CERTIFICATE NO. 27742 RICHARD E. JONES 6/10/15 ARIZONA U.S.A. Expires 3/31/2016

TITLE: FINAL PLAT

PROJECT: LIGHT OF CHRIST LUTHERAN CHURCH
GILBERT, ARIZONA

DATE: 04/21/2015 | SCALE: AS SHOWN | PROJ.No.: 14-0028

REV	DATE	DESCRIPTION

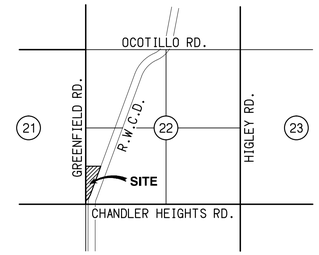
DRAWING No.
FP03
SHEET 3 OF 3

FINAL PLAT

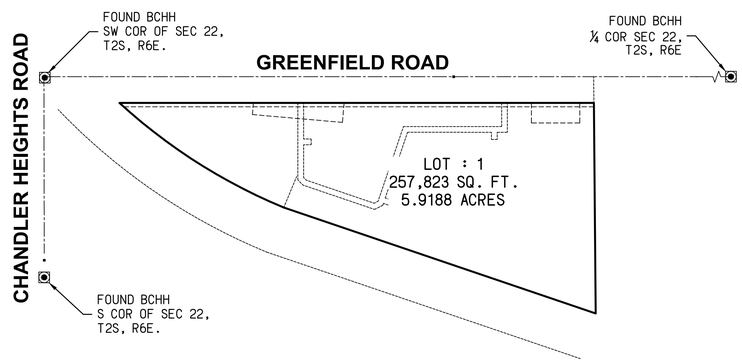
FOR

LIGHT OF CHRIST LUTHERAN CHURCH

A PORTION OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA



VICINITY MAP
SECTION 22, T2S, R6E
NOT TO SCALE



DEDICATION

STATE OF ARIZONA
COUNTY OF MARICOPA } SS

KNOW ALL MEN BY THESE PRESENTS:

THAT LIGHT OF CHRIST LUTHERAN CHURCH, AN ARIZONA NON-PROFIT CORPORATION, AND FIRST UNITED FUNDING, LLC, A MINNESOTA LIMITED LIABILITY COMPANY, AS OWNERS, HAS SUBDIVIDED UNDER THE NAME OF "LIGHT OF CHRIST LUTHERAN CHURCH", LOCATED IN THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY ARIZONA, AS SHOWN PLATTED HEREON STREETS AND EASEMENTS CONSTITUTING SAME AND THAT SAID LOTS AND STREETS SHALL BE KNOW BY NUMBER, LETTER OR NAME GIVEN EACH RESPECTIVELY.

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.

IN WITNESS WHEREOF: LIGHT OF CHRIST LUTHERAN CHURCH, AN ARIZONA NON-PROFIT CORPORATION, AND FIRST UNITED FUNDING, LLC, A MINNESOTA LIMITED LIABILITY COMPANY, AS OWNERS, HAVE HEREUNTO CAUSED THEIR COMPANY NAMES TO BE AFFIXED AND THE SAME TO BE ATTESTED BY SIGNATURES ON THE UNDERSIGNED, THEREUNTO DULY AUTHORIZED THIS _____ DAY OF _____ , 2015.

BY: LIGHT OF CHRIST LUTHERAN CHURCH, AN ARIZONA NON-PROFIT CORPORATION.

BY:_____ DATE:_____

ITS:_____

BY: FIRST UNITED FUNDING, L.L.C., A MINNESOTA LIMITED LIABILITY COMPANY,

BY:_____ DATE:_____

ITS:_____

ACKNOWLEDGEMENT

STATE OF _____
COUNTY OF _____ } SS

ON THIS _____ DAY OF _____ 2015, BEFORE ME, THE UNDERSIGNED, PERSONALLY APPEARED _____ WHO ACKNOWLEDGE SELF TO BE THE _____ OF LIGHT OF CHRIST LUTHERAN CHURCH, AN ARIZONA NON-PROFIT CORPORATION, AND BEING AUTHORIZED TO DO SO ON BEHALF OF SAID ENTITY, EXECUTED THE FOREGOING PLAT FOR THE PURPOSES THEREIN CONTAINED.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC DATE

MY COMMISSION EXPIRES:_____
DATE

ACKNOWLEDGEMENT

STATE OF _____
COUNTY OF _____ } SS

ON THIS _____ DAY OF _____ 2015, BEFORE ME, THE UNDERSIGNED, PERSONALLY APPEARED _____ WHO ACKNOWLEDGE SELF TO BE THE _____ OF FIRST UNITED FUNDING, L.L.C., A MINNESOTA LIMITED LIABILITY COMPANY, AND BEING AUTHORIZED TO DO SO ON BEHALF OF SAID ENTITY, EXECUTED THE FOREGOING PLAT FOR THE PURPOSES THEREIN CONTAINED.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC DATE

MY COMMISSION EXPIRES:_____
DATE

OWNER

LIGHT OF CHRIST LUTHERAN CHURCH
397 S. GILBERT ROAD, NO. 160
GILBERT, AZ 85296
PHONE: (480) 296.8221
CONTACT: DON TOLLE
EMAIL: dontolle@cox.net

ENGINEER / SURVEYOR

XCL ENGINEERING, L.L.C.
3115 S. PRICE RD. SUITE 121
CHANDLER, AZ 85248
PHONE: (480) 275-2711
CONTACT: OMAR CERVANTES, P.E.
EMAIL: ocervantes@xclengineering.com

NARRATIVE

THE PURPOSE OF THE PLAT IS TO CREATE A RECORD OF THE BOUNDARY FOR THE SITE BASED ON WARRANTY DEED DOCUMENT NO. 2014-0595956, M.C.R.

SHEET INDEX

FP01: DECLARATIONS AND APPROVALS
FP02: BOUNDARY AND SECTIONAL TIES.
FP03: EASEMENT LABELING.

NOTES:

1. CONSTRUCTION WITHIN PUBLIC UTILITY 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 TO BE CONSTRUCTED UNDERGROUND AS REQUIRED BY THE ARIZONA CORPORATION COMMISSION.
4. ALL COMMUNICATION LINES TO BE CONSTRUCTED UNDERGROUND AS REQUIRED BY THE ARIZONA CORPORATION COMMISSION.
5. 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.
6. NO STRUCTURES SHALL BE CONSTRUCTED IN OR ACROSS NOR SHALL IMPROVEMENTS OR ALTERATIONS BE MADE TO THE DRAINAGE FACILITIES THAT ARE PART OF THIS DEVELOPMENT WITHOUT WRITTEN AUTHORIZATION OF THE TOWN OF GILBERT.
7. ALL RETENTION BASIN MUST DRAIN ANY STORM EVENT UP TO AND INCLUDING THE 50-YEAR STORM WITHIN 36 HOURS. OWNER(S) OF ANY EXISTING BASIN FAILING TO MEET THIS REQUIREMENT MUST TAKE CORRECTIVE ACTION TO BRING BASIN TO COMPLIANCE.
8. ALL DRYWELLS SHOWN ON THIS PROJECT SHALL BE MAINTAINED BY THE OWNER(S) AND ARE TO BE REPLACE BY THE OWNER(S) WHEN THEY CEASE TO DRAIN SURFACE WATER IN A 36-HOUR PERIOD. REGULAR MAINTENANCE OF THE DRYWELL SETTLING CHAMBER IS REQUIRED TO ARCHIVE BEST OPERATION OF THE DRYWELL.

AREA:

NET AREA: 257,823 S.F. 5.9188 AC.

FLOOD ZONE

THIS SITE IS LOCATED WITHIN ZONE X AS SHOWN ON THE F.E.M.A. FLOOD INSURANCE RATE MAP (FIRM) 04013C3150L, PANEL 3150 OF 4425, DATED OCTOBER 16, 2013. FLOOD ZONE X IS DEFINED AS:

ZONES B, C, AND X ARE THE FLOOD INSURANCE RATE ZONES THAT CORRESPOND TO THE AREAS OUTSIDE THE 100-YEAR FLOODPLAINS, AREAS OF 100-YEAR SHEET FLOW FLOODING WHERE AVERAGE DEPTHS ARE LESS THAN 1 FOOT, AREAS OF 100-YEAR STREAM FLOODING WHERE THE CONTRIBUTING DRAINAGE AREAS IS LESS THAN 1 SQUARE MILE, OR AREAS PROTECTED FROM THE 100-YEAR FLOOD BY LEVEES. NO BFE'S OR DEPTHS ARE SHOWN WITHIN THIS ZONE.

BASIS OF BEARING

THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 22, WHICH BEARS NORTH 00 DEGREES 01 MINUTES 19 SECONDS WEST.

BENCHMARK

FOUND B.C.H.H. AT THE WEST CORNER OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 6 EAST. NAVD88 ELEVATION = 1303.508

CERTIFICATION

I HEREBY CERTIFY THAT THE SURVEY AND SUBDIVISION OF THE PREMISES PLATTED HEREON IS FROM SURVEY PREPARED BY D. JONES LAND SURVEYING & MAPPING INC. DURING THE MONTH OF MARCH 2010, AND THIS PLAT REPRESENTS THE SURVEY MADE. I FURTHER CERTIFY ALL EXTERIOR SECTION MONUMENTS SHOWN HEREON ACTUALLY EXIST AND THEIR LOCATION, SIZE AND MATERIAL ARE ACCURATELY SHOWN AND ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

RICHARD E. JONES
R.L.S. No. 27742
XCL ENGINEERING, L.L.C.
3115 S. PRICE ROAD, SUITE 121
CHANDLER, AZ 85248
PHONE: (602) 790-2267

CERTIFICATE NO. 27742 RICHARD E. JONES 6/18/15 ARIZONA U.S.A. Expires 3/31/2016

APPROVALS

APPROVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF GILBERT, ARIZONA THIS _____ DAY OF _____, 2015.

MAYOR DATE

ATTEST TOWN CLERK DATE

TOWN OF GILBERT, ENGINEER DATE

TOWN OF GILBERT, PLANNING MANAGER DATE

LEGAL DESCRIPTION

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, LYING WEST OF THE ROOSEVELT WATER CONSERVATION DISTRICT CANAL AS CONVEYED IN BOOK 189 OF DEEDS, PAGE 360, RECORDS OF MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 22;

THENCE NORTH 00 DEGREES 01 MINUTES 19 SECONDS WEST ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 22, A DISTANCE OF 1152.48 FEET;

THENCE NORTH 89 DEGREES 29 MINUTES 14 SECONDS EAST, 55.00 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING NORTH 89 DEGREES 29 MINUTES 14 SECONDS EAST, 441.45 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF THE ROOSEVELT WATER CONSERVATION DISTRICT CANAL (RWCD);

THENCE SOUTH 18 DEGREES 44 MINUTES 30 SECONDS WEST ALONG SAID RIGHT-OF-WAY A DISTANCE OF 690.62 FEET TO A POINT ON A 1176.67 FOOT RADIUS NON-TANGENT CURVE, CONCAVE TO THE NORTHWEST, A RADIAL FROM SAID POINT BEARS NORTH 67 DEGREES 31 MINUTES 54 SECONDS WEST;

THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 19 DEGREES 58 MINUTES 59 SECONDS, AN ARC LENGTH OF 410.40 FEET TO A POINT THAT IS 55.00 FEET EAST OF THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 22;

THENCE LEAVING SAID RWCD RIGHT-OF-WAY AND CONTINUING ON A LINE THAT IS PARALLEL TO AND 55.00 FEET EAST OF THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 22, NORTH 00 DEGREES 01 MINUTES 19 SECONDS WEST, 994.58 FEET TO THE POINT OF BEGINNING.

CONSENT TO EASEMENT

THE UNDERSIGNED CONSENTS TO THE UTILITY EASEMENT DESCRIBED ON THIS PLAT.

IN WITNESS WHEREOF, THIS CONSENT TO EASEMENT HAS BEEN EXECUTED AND DELIVERED THIS _____ DAY _____, 20___.

_____
BENEFICIARY TO DEED OF TRUST

BY: _____

ITS: _____

STATE OF ARIZONA
COUNTY OF MARICOPA } SS

ON THIS _____ DAY OF _____ 2015, BEFORE ME PERSONALLY APPEARED THE UNDERSIGNED _____, AN AUTHORIZED REPRESENTATIVE OF _____, A BENEFICIARY TO A RECORD DEED OF TRUST, 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 DOCUMENT.

NOTARY PUBLIC DATE

MY COMMISSION EXPIRES:_____
DATE

XCL ENGINEERING, LLC
3115 South Price Road,
Suite 121,
Chandler, AZ 85286
Ph: (480) 275-2711
www.xclengineering.com

CERTIFIED BY:

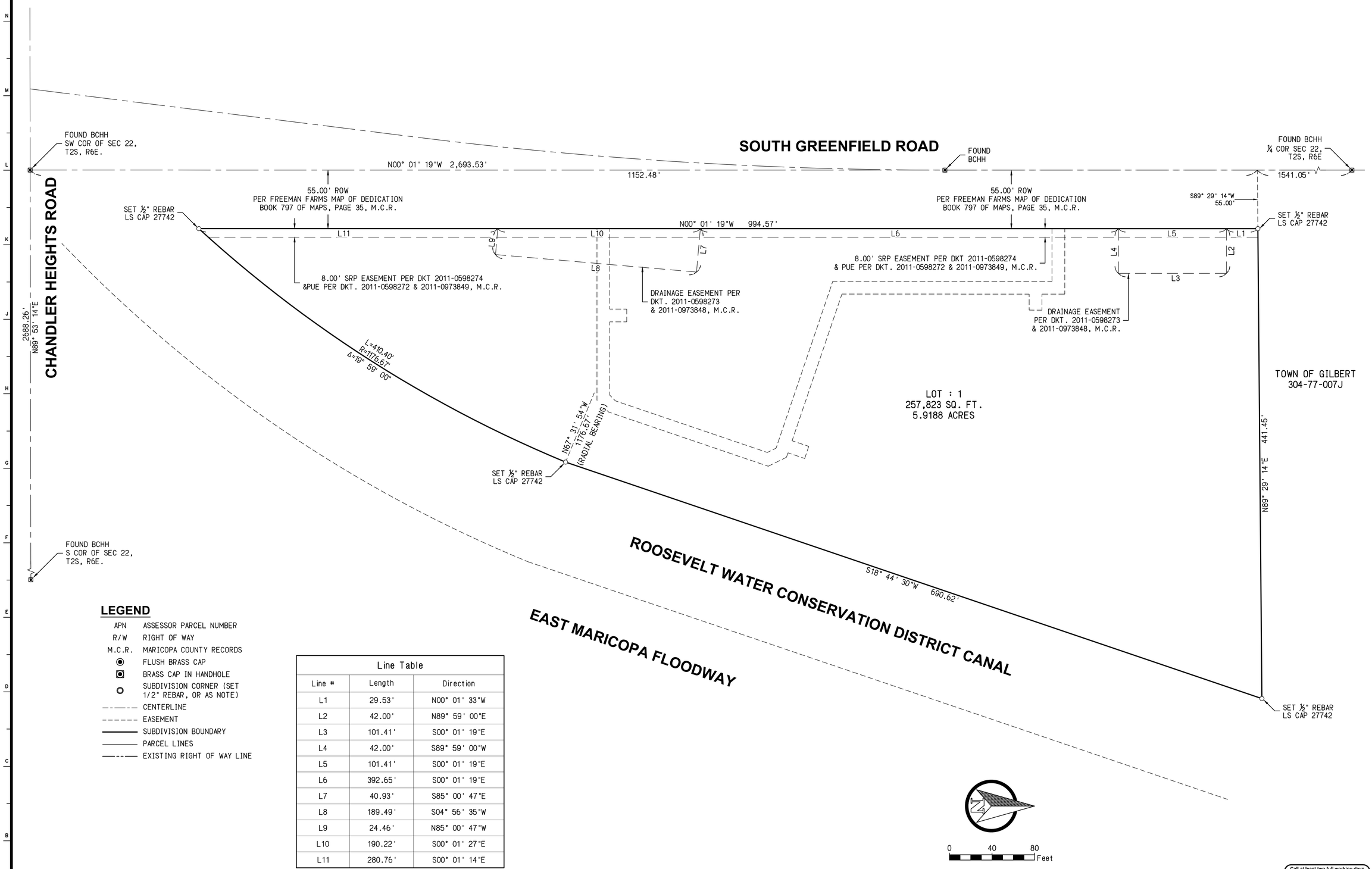
TITLE: FINAL PLAT

PROJECT: LIGHT OF CHRIST LUTHERAN CHURCH
GILBERT, ARIZONA

PROJ.No.: 14-0028
SCALE:AS SHOWN
DATE: 06/18/2015

REV	DATE	DESCRIPTION

DRAWING No.
FP01
SHEET 1 OF 3



LEGEND

APN	ASSESSOR PARCEL NUMBER
R/W	RIGHT OF WAY
M.C.R.	MARICOPA COUNTY RECORDS
◉	FLUSH BRASS CAP
◙	BRASS CAP IN HANDHOLE
○	SUBDIVISION CORNER (SET 1/2" REBAR, OR AS NOTE)
—·—·—	CENTERLINE
- - - - -	EASEMENT
———	SUBDIVISION BOUNDARY
———	PARCEL LINES
—·—·—	EXISTING RIGHT OF WAY LINE

Line Table

Line #	Length	Direction
L1	29.53'	N00° 01' 33"W
L2	42.00'	N89° 59' 00"E
L3	101.41'	S00° 01' 19"E
L4	42.00'	S89° 59' 00"W
L5	101.41'	S00° 01' 19"E
L6	392.65'	S00° 01' 19"E
L7	40.93'	S85° 00' 47"E
L8	189.49'	S04° 56' 35"W
L9	24.46'	N85° 00' 47"W
L10	190.22'	S00° 01' 27"E
L11	280.76'	S00° 01' 14"E

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www.xclengineering.com

CERTIFIED BY:

Registered Land Surveyor
CERTIFICATE NO.
27742
RICHARD E.
JONES
Date Signed 6/18/15
ARIZONA U.S.A.
Expires 3/31/2016

TITLE: FINAL PLAT

PROJECT: LIGHT OF CHRIST LUTHERAN CHURCH
GILBERT, ARIZONA

REV	DATE	DESCRIPTION

SCALE: AS SHOWN PROJ.No.: 14-0028

DATE: 06/18/2015

DRAWING No.
FP02
SHEET 2 OF 3

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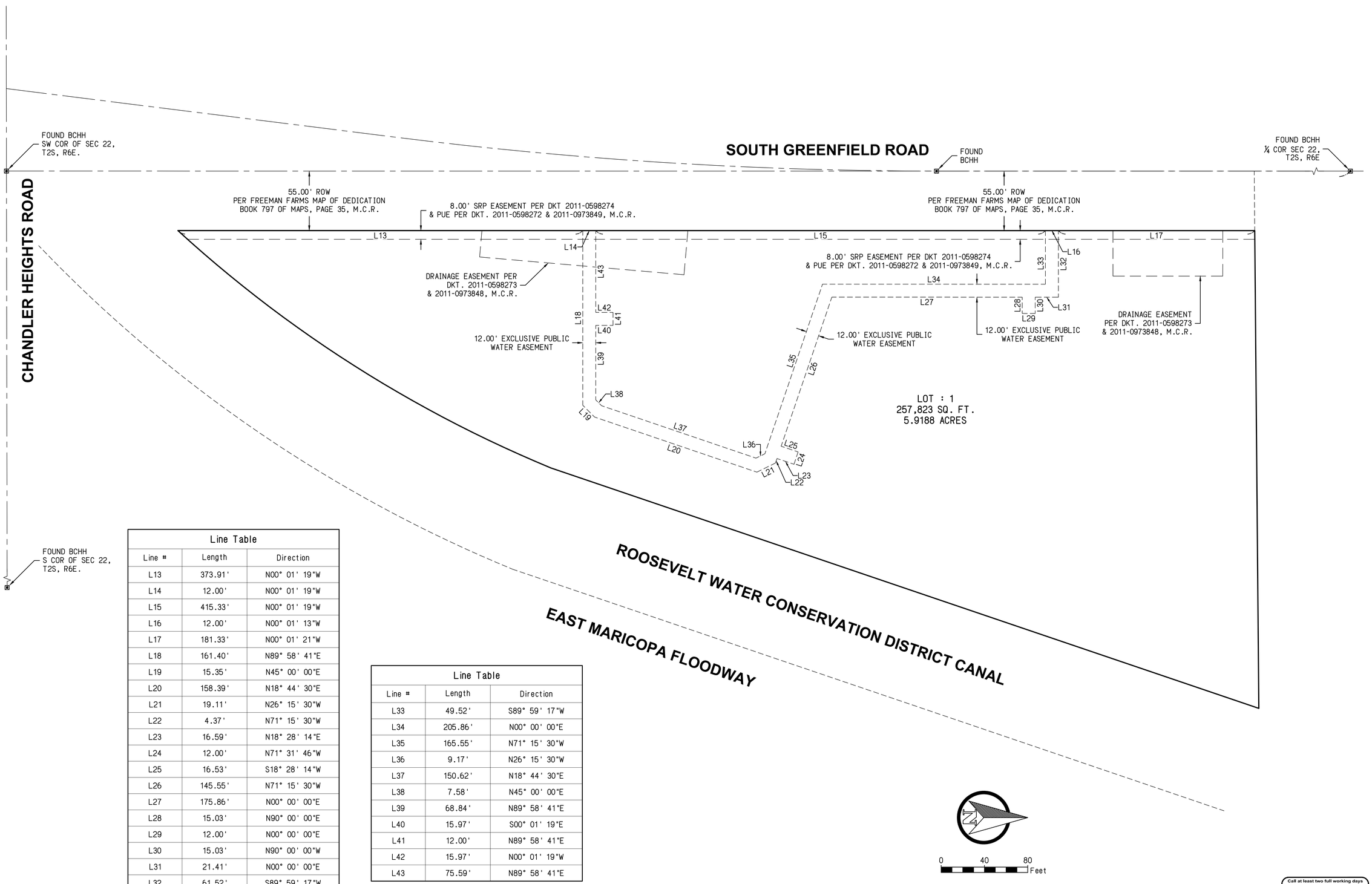

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TITLE: FINAL PLAT

PROJECT: LIGHT OF CHRIST LUTHERAN CHURCH
GILBERT, ARIZONA

DATE: 06/18/2015 | SCALE: AS SHOWN | PROJ.No.: 14-0028

REV	DATE	DESCRIPTION

DRAWING No.
FP03
SHEET 3 OF 3

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Tom Condit, PE, Development Engineer, 503-6815

MEETING DATE: June 25, 2015

SUBJECT: S611: Approval of the Final Plat for Temple View Estates, located east of the northeast corner of Greenfield and Pecos Roads.

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's Infrastructure Strategic Initiative as it allows for the logical extension of infrastructure to the subject site.

RECOMMENDED MOTION

A motion to approve the Final Plat for Temple View Estates, located east of the northeast corner of Greenfield and Pecos Roads.

BACKGROUND/DISCUSSION

The Temple View Estates subdivision is a proposed 6.2-acre residential subdivision located east of the northeast corner of Pecos Road and Greenfield Road. The final plat establishes 6 single family residential lots. The final plat also provides dedications for private streets and public utility easements. These private streets and easements support the infrastructure that is needed for the Temple View Estates subdivision.

The following is an abbreviated history of Town actions associated with this property:

July 10, 2007	The Town Council approved the annexation of this property by adopting Ordinance No. 1989 under case no. A07-18.
September 25, 2007	Town Council approved Ordinance No. 2036 under case no. Z07-23, rezoning the property from Maricopa County R1-43 to Town of Gilbert SF-43.

FINANCIAL IMPACT

There is no direct financial impact on the Town associated with this final plat approval. Approval of the Temple View Estates plat will allow the developer to move forward with their plan to develop the property, which includes 6 single family residential units. This will have the indirect benefit of bringing new construction activity to the Town, increasing the Town's property and sales tax revenue base.

The financial impact was reviewed by Cris Parisot in the Office of Management and Budget.

STAFF RECOMMENDATION

The Engineering Division has reviewed the final plat for Temple View Estates. While the Improvement Plans are not yet approved, all Town requirements shall be addressed prior to recordation of the final plat. Staff therefore recommends approval of this plat by the Town Council.

Respectfully submitted,

Tom Condit, PE
Development Engineer

Approved By	Approval Date
Kenneth Morgan	6/15/2015 3:50 PM

FINAL PLAT FOR
TEMPLE VIEW ESTATES

(A PRIVATE STREET SUBDIVISION)
LOCATED IN THE SOUTHWEST QUARTER OF SECTION 34,
TOWNSHIP 1 SOUTH, RANGE 6 EAST OF THE GILA AND SALT
RIVER BASELINE AND MERIDIAN, MARICOPA COUNTY, ARIZONA

DEDICATION:

STATE OF ARIZONA }
} SS
COUNTY OF MARICOPA }

KNOW ALL MEN BY THESE PRESENTS:

GRAYSON, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, AS OWNER, HAS SUBDIVIDED UNDER THE NAME OF "TEMPLE VIEW ESTATES", LOCATED IN THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 1 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASELINE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOWN PLATTED HEREON; AND HEREBY PUBLISHES THIS PLAT AS THE FINAL PLAT FOR "TEMPLE VIEW ESTATES". OWNER DECLARES THAT SAID PLAT SETS FORTH THE DIMENSIONS OF EACH LOT AND THAT EACH LOT SHALL BE KNOWN BY THE NUMBER GIVEN TO EACH. THE EASEMENTS ARE DEDICATED FOR THE PURPOSES SHOWN HEREON.

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 THE RESPONSIBLE FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE AND REPAIR OF THEIR UTILITY FACILITIES.

AN EASEMENT FOR INGRESS/EGRESS, WATER, PUBLIC UUTILITIES, EMERGENCY ACCESS, PUBLIC SERVICE ACCESS AND PEDESTRIAN ACCESS IS HEREBY GRANTED OVER THE AREA DESIGNATED HEREON AS "ACCESS EASEMENT".

OWNER WARRANTS AND REPRESENTS TO THE TOWN OF GILBERT TO BE THE SOLE OWNER OF THE PROPERTY COVERED HEREBY AND THAT 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, OF WHICH OWNER WILL RECORD NOT LATER THAT THE DATE ON WHICH THIS PLAT IS RECORDED.

IN WITNESS WHEREOF:

THAT GRAYSON, LLC, AS OWNER HAS HEREUNTO CAUSED ITS NAME TO BE SIGNED BY THE

UNDERSIGNED OFFICER THEREUNTO DULY AUTHORIZED THIS _____ DAY OF

_____, 2015

GRAYSON, LLC, AN ARIZONA LIMITED LIABILITY COMPANY

BY: _____

ITS: _____

ACKNOWLEDGEMENT:

STATE OF ARIZONA }
} SS
COUNTY OF MARICOPA }

ON THIS _____ DAY OF _____, 2015, BEFORE THE

UNDERSIGNED, PERSONALLY APPEARED _____, WHO ACKNOWLEDGE SELF TO BE THE PERSON WHOSE NAME IS SUBCRIBED TO THE INSTRUMENT WITHIN AND WHO EXECUTED THE FOREGOING INSTRUMENT FOOR THE PURPOSES THEREIN CONTAINED.

IN WITNESS THEREOF, I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL.

_____
NOTARY PUBLIC

MY COMMISSION EXPIRES _____

FLOOD PLAIN CERTIFICATION:

THE PROPERTY LIES IN SHADED ZONE X (AREAS OF 0.2% ANNUAL CHANCE FLOOD; AREAS OF 1% ANNUAL CHANCE FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOD OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE; AND AREAS PROTECTED BY LEVEES FROM 1% ANNUAL CHANCE FLOOD), ACCORDING TO FEDERAL EMERGENCY AGENCY FLOOD INSURANCE RATE MAP 04013C2765L, DATE OCTOBER 16, 2013

TRACT TABLE

TRACT	USE	AREA
"A"	P.U.E., A.E. LANDSCAPE, WALL	11,538 SQUARE FEET
NOT ALL OF THE EASEMENTS LISTED ENCOMPASS ALL OF THE TRACT.		

PARTIAL RELEASE AND RECONVEYANCE OF LIEN:

THE UNDERSIGNED, AS BENEFICIARY OF THAT CERTAIN TRUST DOCUMENT RECORDED IN DOCUMENT NO. _____ OF THE MARICOPA COUNTY RECORDER, MARICOPA COUNTY, ARIZONA, DESCRIBED AS A TRACT, IF ANY, BEING ALL THAT REAL PROPERTY IDENTIFIED AS PUBLIC STREETS IN THIS PLAT, IF APPLICABLE, IS RELEASED FROM THE LIEN AND SECURITY INTEREST OF THE DEED OF TRUST DATED AS OF _____, BY _____, AS TRUSTOR, TO BENEFICIARY AND _____, AS TRUSTEE. FURTHER, THE UNDERSIGNED CONSENTS TO THE DRAINAGE, RETENTION, UTILITY AND OTHER EASEMENTS FOR PUBLIC PURPOSES DESCRIBED ON THIS PLAT. THIS PARTIAL RELEASE SHALL IN NO WAY AFFECT OR OPERATE TO DISCHARGE THE LIEN OF THE DEED OF TRUST WITH RESPECT TO ANY OTHER OF THE PREMISES DESCRIBED ON THIS PLAT, BUT SHALL RELEASE THERE FROM ONLY THE REAL ESTATE WHICH IS DESCRIBED ABOVE. THE UNRELEASED REAL ESTATE COVERED BY THE DEED OF TRUST SHALL REMAIN AS SECURITY FOR THE PAYMENT OF THE INDEBTEDNESS AND THE FULL PERFORMANCE OF ALL OF THE COVENANTS AND OBLIGATIONS SECURED THEREBY.

IN WITNESS WHEREOF, THIS PARTIAL RELEASE AND RECONVEYANCE OF DEED OF TRUST HAS BEEN EXECUTED AND DELIVERED THIS _____ DAY OF _____, 2015.

_____
BENEFICIARY

BY _____

ITS: _____

_____
TRUSTOR

BY _____

ITS: _____

ACKNOWLEGDMENT:

STATE OF ARIZONA }
} SS
COUNTY OF MARICOPA }

ON THIS _____ DAY OF _____, 2015 BEFORE ME PERSONNALLY

APPEARED THE UNDERSIGNED _____, BENEFICIARY,

BY _____, ITS _____, WHOSE INDENTITY WAS PROVEN TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON WHO HE OR SHE CLAIMS TO BE, AND ACKNOWLEGED THAT HE OR SHE SIGNED THE ABOVE DOCUMENT.

_____
NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

TOWN OF GILBERT APPROVALS:

APPROVED BY THE TOWN OF GILBERT, ARIZONA THIS _____ DAY OF _____, 2015

BY: _____ _____
MAYOR DATE

ATTEST: _____ _____
TOWN CLERK DATE

APPROVED BY: _____ _____
PLANNING MANAGER DATE

APPROVED BY _____ _____
TOWN ENGINEER DATE

OWNER:

GRAYSON, LLC, AN
ARIZONA LIMITED LIABILITY
COMPANY

AREA:

275,089 SQUARE FEET OR 6.3125 ACRES

LEGAL DESCRIPTION:

THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 1 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA; EXCEPT THE EAST 220.03 FEET; AND EXCEPT THE SOUTH 33.00 FEET;

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 1 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

THENCE NORTH 89 DEGREES 21 MINUTES 56 SECONDS EAST, ASSUMED BEARING, ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 34, A DISTANCE OF 660.03 FEET TO SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 34;

THENCE NORTH 00 DEGREES 14 MINUTES 01 SECONDS EAST, ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 34, A DISTANCE OF 33.00 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING NORTH 00 DEGREES 14 MINUTES 01 SECONDS EAST, ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 34, A DISTANCE OF 625.48 FEET TO NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 34;

THENCE NORTH 89 DEGREES 22 MINUTES 32 SECONDS EAST, ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 34, A DISTANCE OF 439.69 FEET TO NORTHWEST CORNER OF THE EAST 220.03 FEET OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 34;

THENCE SOUTH 00 DEGREES 15 MINUTES 44 SECONDS EAST, ALONG THE WEST LINE OF THE EAST 220.03 FEET OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 34, A DISTANCE OF 625.40 FEET TO A POINT DISTANT 33.00 FEET NORTH OF THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 34;

THENCE SOUTH 89 DEGREES 21 MINUTES 56 SECONDS WEST, ALONG A LINE PARALLEL WITH AND 33.00 FEET NORTH OF THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 34, A DISTANCE OF 440.00 FEET TO THE POINT OF BEGINNING

BASIS OF BEARING:

THE BASIS OF BEARINGS IS THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 34, T. 1 S., R. 6 E. HAVING A BEARING OF N 89°21'56" E

SURVEYOR'S CERTIFICATION:

I, LLOYD E. PEW, HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR IN THE STATE OF ARIZONA, THAT THIS MAP CONSISTING OF TWO (2) SHEETS CORRECTLY REPRESENTS A SURVEY MADE UNDER MY DIRECTION DURING THE MONTH OF OCTOBER 2014, THAT THIS SURVEY IS TRUE AND COMPLETE AS SHOWN, THAT THE MONUMENTS SHOWN ACTUALLY EXIST OR WILL BE SET AS SHOWN, THAT THEIR POSITIONS ARE CORRECT AND ACCURATE AS SHOWN AND THAT SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

_____
LLOYD E. PEW, RLS #33866

LOCATION MAP

NOT TO SCALE

GENERAL NOTES:

1.) 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 APPLICABLE REGULATIONS.

2.) 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.

3.) ALL UTILITIES SHALL BE CONSTRUCTED UNDERGROUND.

4.) ELECTRIC LINES TO BE CONSTRUCTED UNDERGROUND AS REQUIRED BY THE ARIZONA CORPORATION COMMISSION.

5.) ALL COMMUNICATION LINES TO BE CONSTRUCTED UNDERGROUND AS REQUIRED BY THE ARIZONA CORPORATION COMMISSION.

6.) 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 AREAS.

7.) ON-LOT STORMWATER RETENTION IS REQUIRED IN THIS SUBDIVISION. NO STORMWATER SHALL DISCHARGE ONTO NEIGHBORING PROPERTIES OR STREETS.

8.) ALL MAINTENANCE OF INGRESS/EGRESS, UTILITY, DRAINAGE AND FIRE EASEMENTS SHALL BE THE RESPONSIBILITY OF THE HOMEOWNERS ASSOCIATION.

9.) NO STRUCTURES SHALL BE CONSTRUCTED IN OR ACROSS NOR SHALL OTHER IMPROVEMENTS OR OTHER ALTERATIONS BE MADE TO THE DRAINAGE FACILITIES THAT ARE PART OF THIS DEVELOPMENT WITHOUT WRITTEN AUTHORIZATION OF THE TOWN OF GILBERT.

10.) ALL RETENTION BASINS MUST DRAIN ANY STORM EVENT UP TO AND INCLUDING THE 50-YEAR STORM WITHIN 36 HOURS. OWNER(S) OF ANY BASIN FAILING TO MEET THIS REQUIREMENT MUST TAKE CORRECTIVE ACTION TO BRING THE BASIN INTO COMPLIANCE.

11.) ALL DRYWELLS SHOWN ON THIS PROJECT SHALL BE MAINTAINED BY THE OWNER(S) AND ARE TO BE REPLACED BY THE OWNER(S) WHEN THE 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.

12.) THE TEMPLE VIEW ESTATES HOMEOWNERS ASSOCIATION DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS WERE RECORDED IN DOC. _____, MARICOPA COUNTY RECORDS.

13.) ALL COMMON AREAS LISTED AS TRACTS, INCLUDING LANDSCAPED AREAS AND DRAINAGE FACILITIES, TO BE MAINTAINED BY THE HOMEOWNERS ASSOCIATION IN ACCORDANCE WITH APPROVED PLANS.

14.) NO ALTERATIONS SHALL BE MADE TO THE STORM WATER RETENTION AREAS THAT ARE A PART OF THESE PREMISES WITHOUT WRITTEN APPROVAL BY THE TOWN OF GILBERT.

15.) EACH LOT WILL BE REQUIRED TO SUBMIT AN INDIVIDUAL GRADING AND DRAINAGE PLAN WITH THE SUBMITTAL OF THE BUILDING PLANS. ON-LOT RETENTION MUST BE CERTIFIED.

EXPIRES 6/30/17

SHEET 1 OF 2 SHEETS

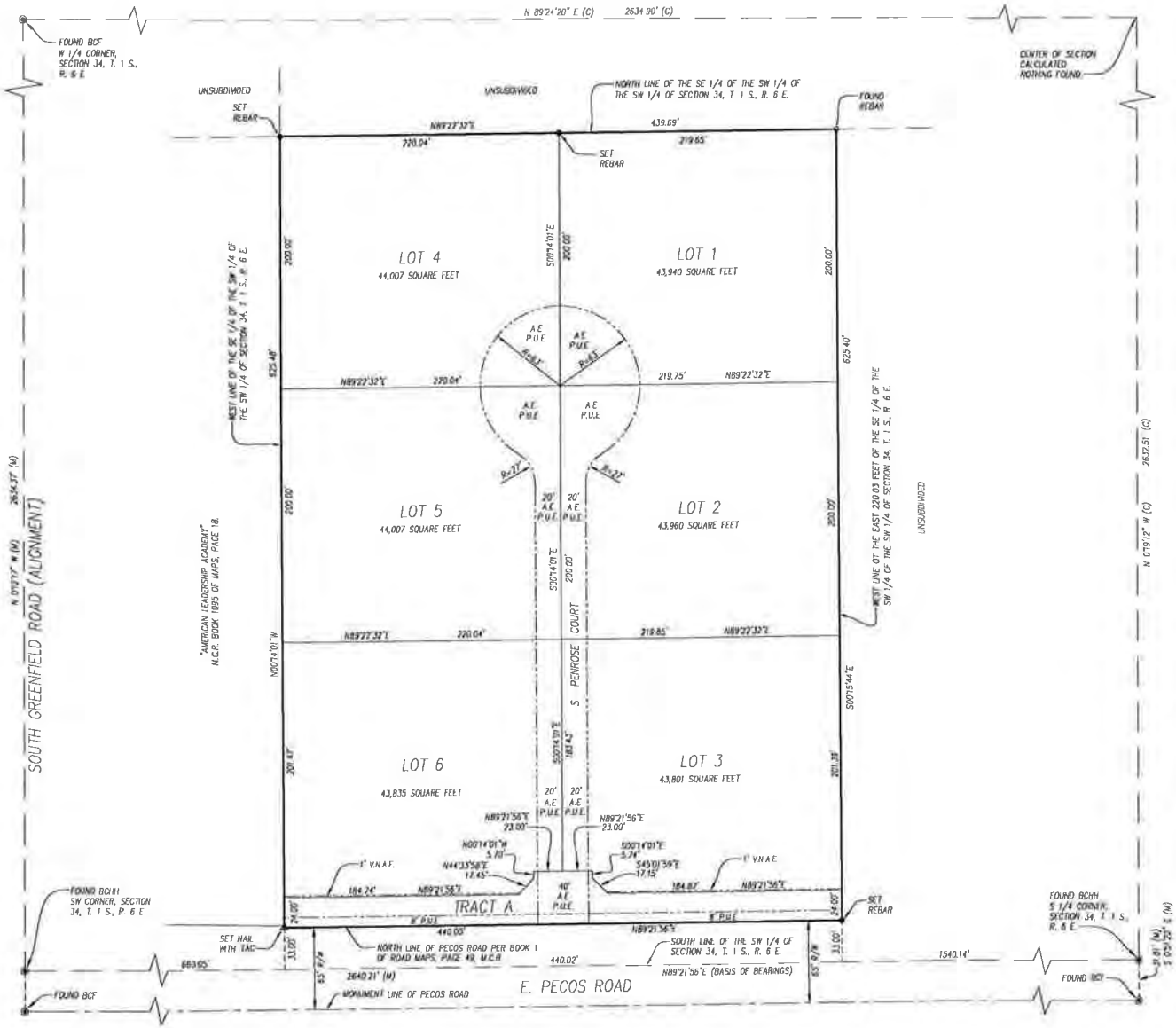
PEW LAND SURVEYING, LLC

P.O. Box 18211
Fountain Hills, AZ 85269
(480) 239-1807
E-mail: lpew@pew-ls.com
www.pew-ls.com

Project No.	14-061
Drawn by	LEP
Checked by	LEP
Date	5-14-15

FINAL PLAT FOR
TEMPLE VIEW ESTATES

LOCATED IN THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 1 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASELINE AND MERIDIAN, MARICOPA COUNTY, ARIZONA



LEGEND

- SET REBAR #33866
- FOUND REBAR
- FOUND BRASS CAP
- SET NAIL AND TAG #33866
- (M) MEASURED BEARING / DISTANCE
- (C) CALCULATED BEARING / DISTANCE
- M.C.R. MARICOPA COUNTY RECORDER
- A.E. ACCESS EASEMENT
- P.U.E. PUBLIC UTILITY EASEMENT
- V.N.A.E. VEHICULAR NON ACCESS EASEMENT
- BOUNDARY LINE
- LOT LINE
- SECTION LINE
- EASEMENT
- MONUMENT LINE

N

Scale in feet
0 40 80 120
SCALE: 1" = 40'

EXPIRES 6/30/17

SHEET 2 OF 2 SHEETS

PEW LAND SURVEYING, LLC

P.O. Box 18211
Fountain Hills, AZ 85269
(480) 239-1807
E-mail: lpew@pew-ls.com
www.pew-ls.com

Project No 14-061
Drawn by LEP
Checked by LEP
Date 5-14-15

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Cathy Templeton, Town Clerk, 503-6861

MEETING DATE: June 25, 2015

SUBJECT: Liquor License - Aquisition of Control MOD Pizza

STRATEGIC INITIATIVE: N/A

RECOMMENDED MOTION

A motion to recommend approval of the Acquisition of Control for MOD Pizza located at 2904 East San Tan Village Parkway #101.

BACKGROUND/DISCUSSION

Liquor licenses are governed by the Arizona Revised Statute, Title 4 Alcoholic Beverages. Once a license has been issued to an establishment certain changes must be reported with the Arizona Department of Liquor Licenses and Control. Those changes include agent change, acquisition of control, and restructuring.

Upon receipt of changes, Arizona Department of Liquor Licenses and Control submits the change to the Local Governing Body of the city or town. The Local Governing Body of the city, town or county may protest the acquisition of control within sixty days based on the capability, reliability and qualification of the person acquiring control.

An *Acquisition of Control* has been received for MOD Pizza. MOD Pizza currently has a Series 12 Restaurant Liquor License for 2904 East San Tan Village Parkway #101.

Council's recommendation will be forwarded to the Arizona Department of Liquor License & Control.

FINANCIAL IMPACT

There are no fees associated with this change.

STAFF RECOMMENDATION

Staff recommends approval.

Respectfully submitted,

Cathy Templeton
Town Clerk

Attachments/Enclosures:
Attachment 1 – Application

Approved By	Approval Date
Cathy Templeton	6/8/2015 2:07 PM

RECEIVED

45D

MAY 28 2015

TOWN OF GILBERT
CUSTOMER SERVICE CENTER

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
www.azliquor.gov
(602) 542-5141

6-25-15

APPLICATION FOR AGENT CHANGE - ACQUISITION OF CONTROL - RESTRUCTURE

'15 MAY 21 AM 8:13

Check Appropriate Box

- ☐ Agent Change — Complete Sections 1,2,3,4,6 (See Note 1 on back)
- ☒ Acquisition of Control — Complete Sections 1,2, (3,4 if changing Agent), 6
- ☐ Restructure — Complete Sections 1,2,(3,4 if changing Agent) ,5,6 (See Note 2 on back)

SECTION 1 (COMPLETE THIS SECTION FOR AGENT CHANGE, ACQUISITION OF CONTROL OR RESTRUCTURE)

1. Name (INDIVIDUAL OR EXISTING AGENT (if no agent change) OR NEW AGENT OR CORPORATE OFFICER OR L.L.C. CONTROLLING MEMBER)

Lewkowitz	Andrea	Dahlman	12079900
Last	First	Middle	Liquor License #

2. ☐ Corporation ☒ L.L.C. ☐ N/A: MOD Super Fast Pizza, LLC (Exactly as it appears on Articles of Inc. or Articles of Org.) Corp. File #: R-1899417-3

3. Business Name: MOD Pizza (Exactly as it appears on license)

4. Business Address: 2904 S. San Tan Village Pkwy, #101 (Do not use P.O. Box Number) Gilbert (City) Maricopa (COUNTY) 85295 (Zip)

5. Is the business located within the incorporated limits of the above city or town? ☒Yes ☐No

6. Mailing Address: 2600 N. Central Avenue, Suite 1775 Phoenix (City) AZ (State) 85004 (Zip)

7. Business Phone: (480) 241-6305 Residence Phone: ([redacted]

8. Does this transaction involve the sale of any portion of the corporate stock? ☒YES ☐NO ☐N/A If yes, submit a certified copy of minutes.

9. Has there been any change of officers? ☒YES ☐NO ☐N/A If yes, submit a certified copy of minutes.

SECTION 2 (COMPLETE THIS SECTION FOR AGENT CHANGE, ACQUISITION OF CONTROL OR RESTRUCTURE)

Each person listed in Section II must submit a personal questionnaire (Form LIC0101) and a Department approved fingerprint card which may be obtained at the Dept. A person appearing in both lists need only submit one questionnaire and fingerprint card.

1. List individual owner or partners or all directors, officers in corp., members in LLC:

Last	First	Middle	Title	Residence Address	City State Zip
See attached					

(ATTACH ADDITIONAL SHEET(S) IF NECESSARY)

2. List stockholders or controlling members owning 10% or more of Corp/LLC:

Last	First	Middle	% Owned	Residence Address	City State Zip
See attached					

(ATTACH ADDITIONAL SHEET(S) IF NECESSARY)

Disabled individuals requiring special accommodations please call the Department

1/7/2013

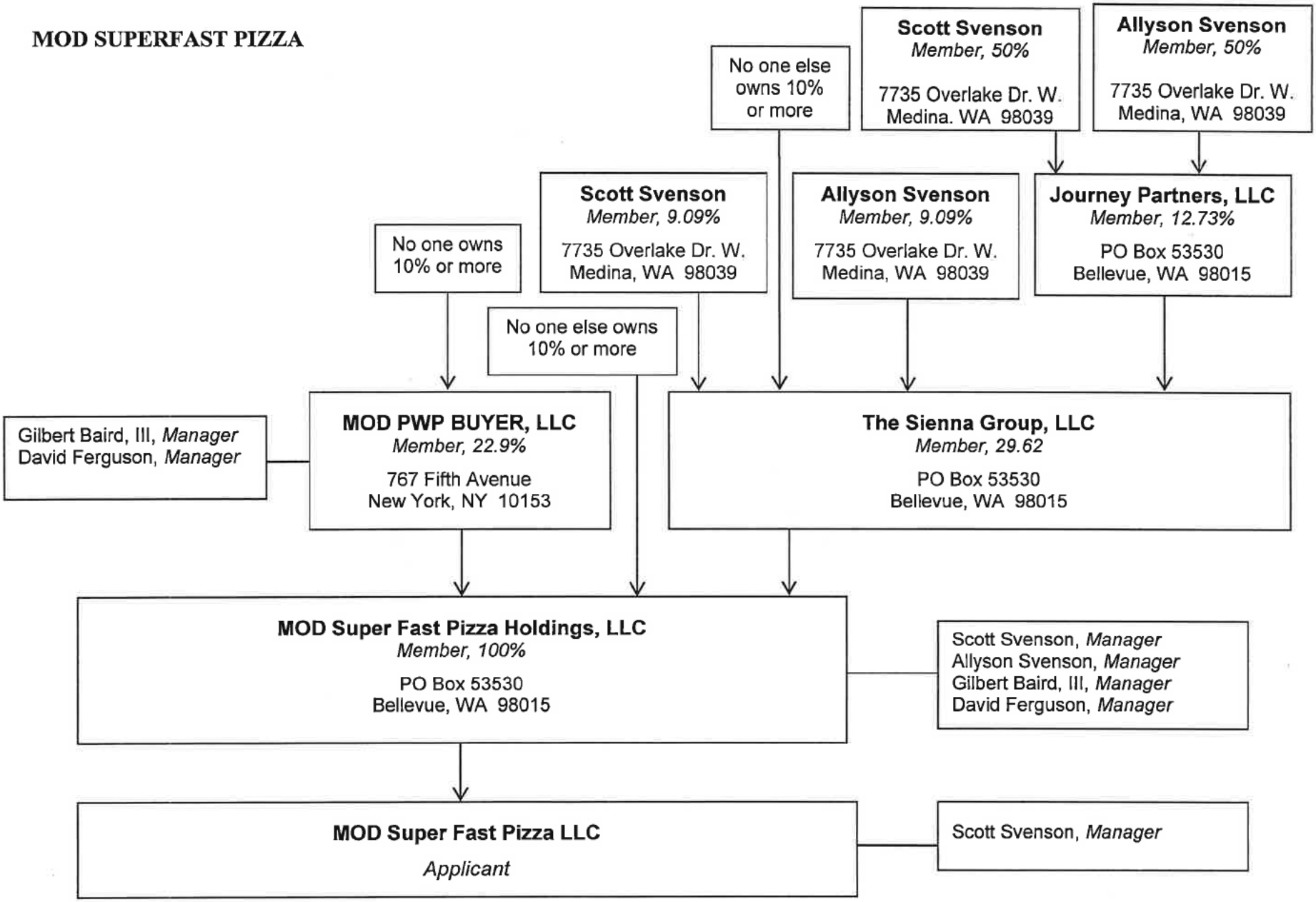
Date Received 05-21-15

CSR JB

51759

408802

MOD SUPERFAST PIZZA



SECTION 3 **(COMPLETE THIS SECTION FOR AGENT CHANGE)**

1. **If the corporation/L.L.C. is owned by another entity, ATTACH AN OWNERSHIP AND DIRECTOR / OFFICER / MEMBER DISCLOSURE for the parent entity. Attach additional sheets as necessary in order to disclose real people.**

   As an Agent, will you be physically present and operating the licensed premises? ☐ YES ☒ NO

   If you answered YES, you must provide proof of attendance of a Department approved Liquor Law Training Course within the last five years before your application for Agent can be submitted. If "no" a manager with approved training must be submitted.

SECTION 4 **(COMPLETE THIS SECTION FOR AGENT CHANGE)**
To be completed by the INDIVIDUAL OR EXISTING AGENT OR CORPORATE OFFICER OR L.L.C. CONTROLLING MEMBER:

1. License Number: _____ Date of last renewal: _____

2. Current Licensee or Agent: _____
   (Exactly as it appears on license) Last First Middle

I, _____, hereby consent to the agent appointment named herein and
(Print full name)
agree to immediately assign a new agent in the event of the death, resignation, or discharge of this agent. I also understand that if the background report shows that I, the corporation, or any officer, director, member, or stockholder have been convicted of a felony in the past five (5) years, I will immediately surrender the license to the Arizona Department of Liquor Licenses and Control and hereby waive all rights to appeal such action.

X_____ State of _____ County of _____
(Signature of INDIVIDUAL/ CORPORATE/CLUB OFFICER/MEMBER)

The foregoing instrument was acknowledged before me this

_____ day of _____, _____
Day Month Year

My commission expires on: _____

_____
(Signature of NOTARY PUBLIC)

SECTION 5 **(COMPLETE THIS SECTION FOR RESTRUCTURE)**

Is there more than one licensed premises involved? ☐ YES ☐ NO If yes, **SEPARATE APPLICATIONS** must be filed and fees paid for each license/location.

Type of current ownership:	**Type of new ownership:**
☐ J.T.W.R.O.S.	☐ J.T.W.R.O.S.
☐ INDIVIDU AL	☐ INDIVIDUAL
☐ PARTNERSHIP	☐ PARTNERSHIP
☐ CORPORATION	☐ CORPORATION
☐ LIMITED LIABILITY CO.	☐ LIMITED LIABILITY CO.
☐ TRUST	☐ TRUST
☐ OTHER Explain _____	☐ OTHER Explain _____

SECTION 6 **(COMPLETE THIS SECTION FOR AGENT CHANGE, ACQUISITION OF CONTROL OR RESTRUCTURE)**
To be completed by INDIVIDUAL OR EXISTING AGENT (if no agent change) OR NEW AGENT OR CORPORATE OFFICER OR L.L.C. CONTROLLING MEMBER as listed in Question 1 Section 1:

I, Andrea Dahlman Lewkowitz, hereby declare that I am the APPLICANT filing this application.
(Print full name)
have read the application and the contents and all statements are true, correct and complete.

X_____ State of Arizona County of Maricopa
(Signature of INDIVIDUAL OR AGENT)

The foregoing instrument was acknowledged before me this

19 day of May, 2015
Day Month Year

My commission expires on: 02/12/2017

AMY L SCHROFF
Notary Public - Arizona
Maricopa County
My Commission Expires
February 12, 2017

_____
(Signature of NOTARY PUBLIC)

NOTE 1: The fee for an agent change MUST be submitted with this application: $100.00 for the first application and $50.00 for each additional application, not to exceed $1,000.00. (A.R.S. 4-209.H)

NOTE 2: The $100.00 fee for restructure/acquisition of control MUST be submitted with this application. (A.R.S. 4-209.A)

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Cathy Templeton, Town Clerk, 503-6861

MEETING DATE: June 25, 2015

SUBJECT: Liquor Acquisition - Desert Babe's Sports Grill

STRATEGIC INITIATIVE: N/A

RECOMMENDED MOTION

A motion to recommend approval of the Acquisition of Control for Desert Babe's Sports Grill.

BACKGROUND/DISCUSSION

Liquor licenses are governed by the Arizona Revised Statute, Title 4 Alcoholic Beverages. Once a license has been issued to an establishment certain changes must be reported with the Arizona Department of Liquor Licenses and Control. Those changes include agent change, acquisition of control, and restructuring.

Upon receipt of changes, Arizona Department of Liquor Licenses and Control submits the change to the Local Governing Body of the city or town. The Local Governing Body of the city, town or county may protest the acquisition of control within sixty days based on the capability, reliability and qualification of the person acquiring control.

An *Acquisition of Control* has been received for Desert Babe's Sports Grill who currently has a Series 12 Restaurant Liquor License at 1686 North Higley Road #101.

Council's recommendation will be forwarded to the Arizona Department of Liquor License & Control.

FINANCIAL IMPACT

There are no fees associated with this change.

STAFF RECOMMENDATION

Staff recommends approval.

Respectfully submitted,

Cathy Templeton
Town Clerk

Approved By	Approval Date
Cathy Templeton	6/8/2015 2:04 PM

RECEIVED

OOD

TOWN OF GILBERT
CUSTOMER SERVICE CENTER

ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor
Phoenix AZ 85007-2934
www.azliquor.gov
(602) 542-5141

6-25-15

'15 MAY 14 Liq. Lic. PM 3:40

APPLICATION FOR AGENT CHANGE - ACQUISITION OF CONTROL - RESTRUCTURE

Check Appropriate Box

- ☐ Agent Change — Complete Sections 1,2,3,4,6 (See Note 1 on back)
- ☒ Acquisition of Control — Complete Sections 1,2, (3,4 if changing Agent), 6
- ☐ Restructure — Complete Sections 1,2,(3,4 if changing Agent) ,5,6 (See Note 2 on back)

SECTION 1 (COMPLETE THIS SECTION FOR AGENT CHANGE, ACQUISITION OF CONTROL OR RESTRUCTURE)

1. Name (INDIVIDUAL OR EXISTING AGENT (if no agent change) OR NEW AGENT OR CORPORATE OFFICER OR L.L.C. CONTROLLING MEMBER)

Last	First	Middle	Liquor License #
Nations	Randy	D.	12078900

2. ☒ Corporation ☐ L.L.C. ☐ N/A: JYH12 Pizza Inc (Exactly as it appears on Articles of Inc. or Articles of Org.) Corp. File #: 17069963
3. Business Name: DB's Sports Grill (Exactly as it appears on license)
4. Business Address: 1686 N Higley Rd #101 (Do not use P.O. Box Number) Gilbert (City) Maricopa (COUNTY) 85234 (Zip)
5. Is the business located within the incorporated limits of the above city or town? ☒Yes ☐No
6. Mailing Address: P O Box 2502 Chandler (City) AZ (State) 85244 (Zip)
7. Business Phone: (480) 807-2777 Residence Phone: [redacted]
8. Does this transaction involve the sale of any portion of the corporate stock? ☒YES ☐ NO ☐ N/A If yes, submit a certified copy of minutes.
9. Has there been any change of officers? ☒YES ☐NO ☐N/A If yes, submit a certified copy of minutes.

SECTION 2 (COMPLETE THIS SECTION FOR AGENT CHANGE, ACQUISITION OF CONTROL OR RESTRUCTURE)

Each person listed in Section II must submit a personal questionnaire (Form LIC0101) and a Department approved fingerprint card which may be obtained at the Dept. A person appearing in both lists need only submit one questionnaire and fingerprint card.

1. List individual owner or partners or all directors, officers in corp., members in LLC:

Last	First	Middle	Title	Residence Address	City State Zip
Ashbrook	Jeffrey	Mark	Pres Director	[redacted]	

(ATTACH ADDITIONAL SHEET(S) IF NECESSARY)

2. List stockholders or controlling members owning 10% or more of Corp/LLC:

Last	First	Middle	% Owned	Residence Address	City State Zip
Ashbrook	Jeffrey	Mark	95	[redacted]	
No one else owns 10% or more					

(ATTACH ADDITIONAL SHEET(S) IF NECESSARY)
Disabled individuals requiring special accommodations please call the Department

12/2/2014

Date Received 5/14/2015
CSR Jespaza

49626

364978

SECTION 3 **(COMPLETE THIS SECTION FOR AGENT CHANGE)**

1. **If the corporation/L.L.C. is owned by another entity, ATTACH AN OWNERSHIP AND DIRECTOR / OFFICER / MEMBER DISCLOSURE for the parent entity. Attach additional sheets as necessary in order to disclose real people.**

   As an Agent, will you be physically present and operating the licensed premises? ☐ YES ☒ NO

   If you answered YES, you must provide proof of attendance of a Department approved Liquor Law Training Course within the last five years before your application for Agent can be submitted. If "no" a manager with approved training must be submitted.

SECTION 4 **(COMPLETE THIS SECTION FOR AGENT CHANGE)**
To be completed by the INDIVIDUAL OR EXISTING AGENT OR CORPORATE OFFICER OR L.L.C. CONTROLLING MEMBER:

1. License Number: _____ Date of last renewal: _____

2. Current Licensee or Agent: _____
   (Exactly as it appears on license) Last First Middle

I, _____, hereby consent to the appointment of agent for this license.
(Print full name)

I agree to immediately assign a new agent in the event that I am unable to discharge the duties of agent for this license. I have not been convicted of a felony in the last five (5) years.

X_____
(Signature of INDIVIDUAL/ CORPORATE/CLUB OFFICER/MEMBER)

State of _____ County of _____
The foregoing instrument was acknowledged before me this
_____ day of _____, _____
Day Month Year

My commission expires on: _____

_____
(Signature of NOTARY PUBLIC)

SECTION 5 **(COMPLETE THIS SECTION FOR RESTRUCTURE)**

Is there more than one licensed premises involved? ☐ YES ☐ NO If yes, **SEPARATE APPLICATIONS** must be filed and fees paid for each license/location.

Type of current ownership:

- ☐ J.T.W.R.O.S.
- ☐ INDIVIDU AL
- ☐ PARTNERSHIP
- ☐ CORPORATION
- ☐ LIMITED LIABILITY CO.
- ☐ TRUST
- ☐ OTHER Explain _____

Type of new ownership:

- ☐ J.T.W.R.O.S.
- ☐ INDIVIDUAL
- ☐ PARTNERSHIP
- ☐ CORPORATION
- ☐ LIMITED LIABILITY CO.
- ☐ TRUST
- ☐ OTHER Explain _____

SECTION 6 **(COMPLETE THIS SECTION FOR AGENT CHANGE, ACQUISITION OF CONTROL OR RESTRUCTURE)**
To be completed by INDIVIDUAL OR EXISTING AGENT (if no agent change) OR NEW AGENT OR CORPORATE OFFICER OR L.L.C. CONTROLLING MEMBER as listed in Question 1 Section 1:

I, Randy D. Nations, hereby declare that I am the APPLICANT filing this application.
(Print full name)

have read the application and the contents and all statements are true, correct and complete.

X_____
(Signature of INDIVIDUAL OR AGENT)

State of Arizona County of Maricopa
The foregoing instrument was acknowledged before me this
5th day of May, 2015
Day Month Year

My commission expires on: _____

RHONDA J RODRIGUEZ
Notary Public - Arizona
Maricopa County
My Commission Expires
December 28, 2016

_____
(Signature of NOTARY PUBLIC)

NOTE 1: The fee for an agent change MUST be submitted with this application: $100.00 for the first application and $50.00 for each additional application, not to exceed $1,000.00. (A.R.S. 4-209.H)

NOTE 2: The $100.00 fee for restructure/acquisition of control MUST be submitted with this application. (A.R.S. 4-209.A)

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Cathy Templeton, Town Clerk, 503-6861

MEETING DATE: June 25, 2015

SUBJECT: Permanent Extension of Premises - House of Brews

STRATEGIC INITIATIVE: N/A

RECOMMENDED MOTION

A motion to recommend approval of a Permanent Extension of Premises for House of Brews located at 825 South Cooper Road, #B-5.

BACKGROUND/DISCUSSION

Nicolette Austen is requesting a Permanent Extension of Premises for House of Brews located at 825 South Cooper Road, #B-5. The extension of premises is required to allow use of the patio area. There is a valid building permit for the addition.

The Permanent Extension of Premises has been reviewed by Town staff and no adverse information has been received.

FINANCIAL IMPACT

The permanent extension of premises license fee is $50.

STAFF RECOMMENDATION

Staff feels such requests are solely Council's prerogative and offers no recommendation on this request.

Respectfully submitted,

Cathy Templeton
Town Clerk

Attachments and Enclosures:
Attachment 1 – Application for Extension of Premises/Patio Permit

Approved By	Approval Date
Cathy Templeton	6/16/2015 7:13 AM

29A

Arizona Department of Liquor Licenses and Control
800 W Washington 5th Floor
Phoenix AZ 85007-2934
www.azliquor.gov
(602) 542-5141

FOR DLLC USE ONLY
Date payment received: ____/____/____
CSR initials: _____

6-25-15

APPLICATION FOR EXTENSION OF PREMISES/PATIO PERMIT
This application must be returned to the Department of Liquor
(Notice: Allow 30-45 days to process permanent change of premises)

☒ Permanent change of area of service. **A NON-REFUNDABLE $50 FEE WILL APPLY.** Specific purpose for change: A PAD WAS POURED TO ENLARGE THE CURRENT PATIO AREA TO ACCOMODATE MORE OUTDOOR SEATING

☐ Temporary change for date(s) of: ___/___/___ through ___/___/___ List specific purpose for change:

1. Licensee's Name: AUSTEN (Last) NICOLETTE (First) ____ (Middle)
2. Mailing Address: 1265 W. BRUCE AVE (Street) GILBERT (City) AZ (State) 85233 (Zip)
3. Business Name: HOUSE OF BREWS License # ____
4. Business Address: 825 S. COOPER RD # B-5 (Street) GILBERT (City) AZ (State) 85233 (Zip)
5. Contact phone: (480) 540-7638 Business phone: (___) ____
6. Email: MYHOUSEOFBREWS@GMAIL.COM
7. Is extension of premises/patio complete?
   ☐ N/A ☐ Yes ☒ No If no, what is your estimated completion date? 8/1/15
8. Do you understand Arizona Liquor Laws and Regulations?
   ☒ Yes ☐ No
9. Does this extension bring your premises within 300 feet of a church or school?
   ☐ Yes ☒ No
10. Have you received approved Liquor Law Training?
    ☒ Yes ☐ No If yes, when does your Certificate expire? Date: 6/2/18
11. What security precautions will be taken to prevent liquor violations in the extended area?
    A SECURE 6 FOOT HIGH LOCKING BARRIER SURROUNDS THE AREA
12. **IMPORTANT**: ATTACH THE REVISED FLOOR PLAN CLEARLY DEPICTING YOUR LICENSED PREMISES AND WHAT YOU PROPOSE TO ADD.

52849

424105

☐ Barrier Exemption: an exception to the requirement of barriers surrounding a patio/outdoor serving area may be requested. Barrier exemptions are granted based on public safety, pedestrian traffic, and other factors unique to a licensed premise. List specific reasons for exemption:

_____

_____

Investigation Recommendation: ☐Approval ☐Disapproval by:_____ Date: ___/___/___

➲OBTAIN APPROVAL FROM LOCAL GOVERNING BODY BEFORE SUBMITTING TO THE DEPARTMENT➲

➲ After completing the application, please take this application to your local Board of Supervisors, City Council or Designate for their recommendation. This recommendation is not binding on the Department of Liquor.

This change in premises is RECOMMENDED by the local Board of Supervisors, City Council or Designate:

_____

(Authorized Signature) (Title) (Agency) Date

I, NICOLETTE AUSTEN, declare that I am the APPLICANT and, under penalty of perjury, making the foregoing certification: I have read this application and the contents and all statements are true, correct and complete.

(Print full name)

Glenn L. Bezuyen
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Commission Expires
January 05, 2017

x Nicolette Austen (Signature) | MEMBER (Title/ Position) | 6·15·15 (Date) | 480·540·7638 (Phone #)

The foregoing instrument was acknowledged before me this 14 (Day) JUNE (Month) 2015 (Year)

State AZ County of MARICOPA

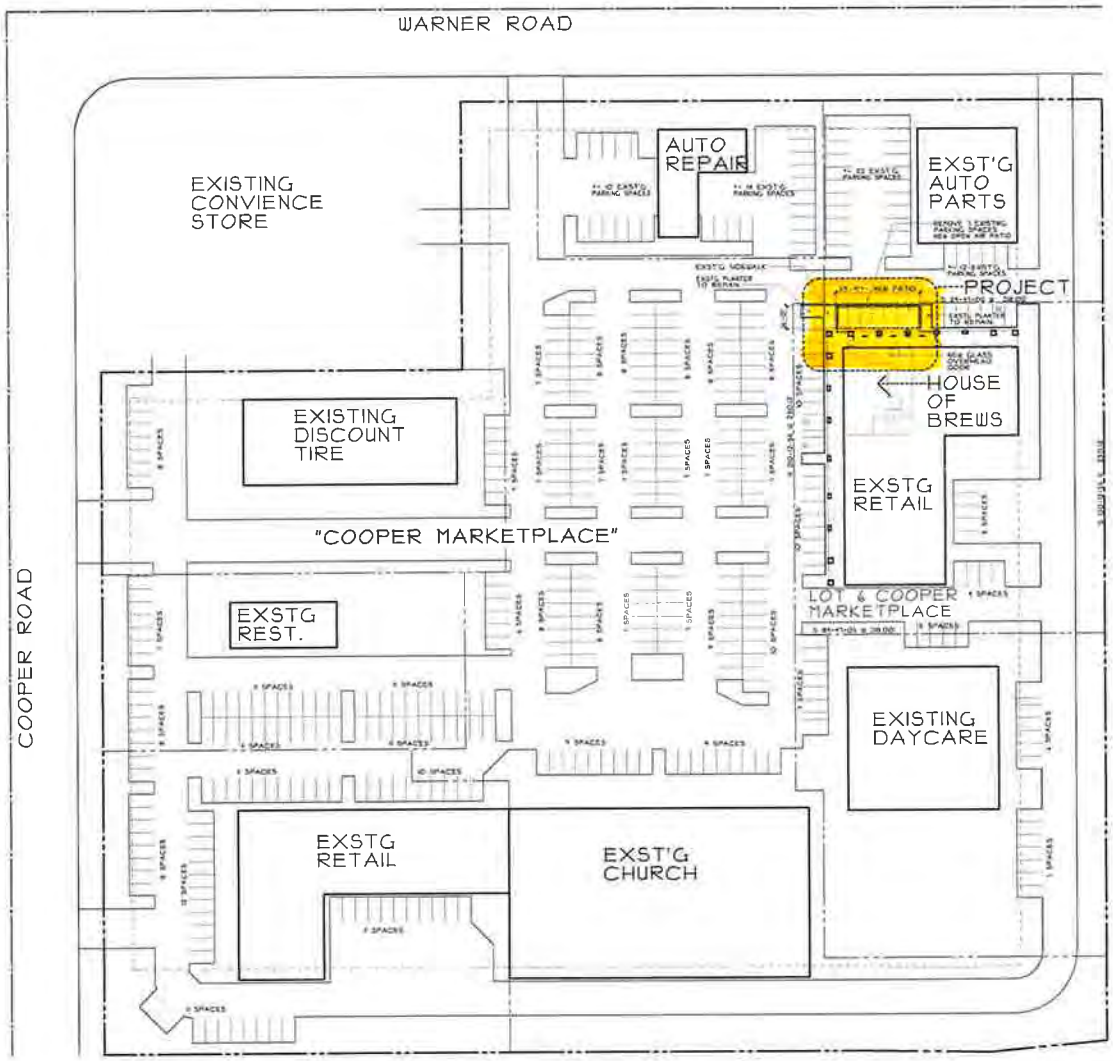
My Commission Expires on: 1·5·17 (Date)

Signature of Notary Public

Investigation Recommendation: ☐Approval ☐Disapproval by:_____ Date: ___/___/___

Director Signature required for Disapprovals _____ Date: ___/___/___

A PATIO REMODEL
HOUSE OF BREWS
825 SOUTH COOPER ROAD
GILBERT, ARIZONA 85233



SITE PLAN

SCALE 1" = 40'-0"

GRAPHIC SCALE FEET

20' 0 40' 120

PROJECT NOTES

A. ALL PRODUCTS LISTED BY ICBO APPROVED SHALL BE INSTALLED PER THE REPORT AND MANUFACTURERS WRITTEN INSTRUCTIONS. PRODUCT SUBSTITUTIONS FOR PRODUCTS LISTED SHALL ALSO HAVE ICBO APPROVED EVALUATION REPORTS OR BE APPROVED AND LISTED BY OTHER NATIONALLY RECOGNIZED TESTING AGENCIES

B. ELECTRICAL, PLUMBING AND MECHANICAL DRAWINGS ARE REVIEWED AND APPROVED BY CITY OF PHOENIX PLAN REVIEW PROCESS FOR COMMERCIAL CONSTRUCTION. CODE REQUIREMENTS STILL MUST BE SATISFIED. ENFORCEMENT SHALL BE PROVIDED BY THE CITY OF PHOENIX FIELD INSPECTORS

C. FIELD VERIFY ALL CONDITIONS AND DIMENSIONS. NOTIFY THE ARCHITECT IMMEDIATELY OF ANY DISCREPANCIES OR INACCURACIES

D. GOVERNING CONSTRUCTION CODES: ALL CONTRUCTION DOCUMENTS SHALL COMPLY WITH THE FOLLOWING CODES AND AMENDMENTS PER ADOPTING ORDINANCES
- 2012 INTERNATIONAL BUILDING CODE
- 2012 INTERNATIONAL PLUMBING CODE
- 2012 INTERNATIONAL MECHANICAL CODE
- 2011 NATIONAL ELECTRIC CODE
- 2006 INTERNATIONAL FIRE CODE
- 2012 INTERNATIONAL GREEN CONSTRN CODE
- 2012 INTERNATIONAL EXISTG BLDG CODE
- 2012 INTERNATIONAL FUEL GAS CODE
- 2010 ADA STANDARDS FOR ACCESSIBLE DESIGN ICC ANSI A117.1 - 2009

CONSTRUCT'N CODE DATA

2012 INTERNATIONAL BUILDING CODE

OCCUPANCY TYPE
- B - OFFICE AREAS
- A-2 RESTAURANT
- M - MERCANTILE
- NO CHANGES

CONSTRUCTION TYPE III-B
- WITH AUTOMATIC FIRE SPRINKLER PROTECTION SYSTEM
- NO CHANGES

ALLOWABLE AREA
- NO CHANGES

OCCUPANT LOAD (IBC TABLE 1004.1.2)
- NO CHANGES

EXIT WIDTH (IBC SECT 1005)
- NO CHANGES

PARKING CALCULATIONS

APPROXIMATELY 410 EXISTING PARKING SPACES

1 PARKING SPACES TO BE DELETED

APPROXIMATELY 403 PARKING SPACES TO REMAIN AFTER CONSTRUCTION

NO EXISTING ADA SPACES ARE BEING DELETED

PROJECT DESCRIPTION

A NEW PATIO ADDITION. REMOVE PARKING SPACES WHICH THE CONFLICT WITH THE NEW PATIO. ADD SITE WALLS AND GAS FIREPITS. TO CREATE ADDITIONAL EXTERIOR DINING SPACE

REMOVE A PORTION OF THE EXSTG STOREFRONT SYSTEM AND ADD A GLASS OVERHEAD GARAGE TYPE DOOR TO THE NEW PATIO

PROJECT

A PATIO REMODEL
HOUSE OF BREWS RESTAURANT
825 SOUTH COOPER ROAD
GILBERT, ARIZONA 85233

OWNER

MR. GLENN BEZUYEN
HOUSE OF BREWS
1345 WEST BRUCE AVENUE
GILBERT, ARIZONA 85233
(602) 1 [illegible] - 2198
GBEZUYEN@GMAIL.COM

ARCHITECT

BABOS DESIGN STUDIO
JAMES H. BABOS, ARCHITECT
2044 EAST NORWOOD STREET
MESA, ARIZONA 85203
(480) 461 - 3443
JBABOS@AOL.COM

PROJECT DATA

ZONING: GC

TAX PARCEL # APN 302-87-114

LOT AREA: (MET) 50,815.19 SQ. FT.

VICINITY MAP

NO SCALE

FIRE DEPT NOTE

EXISTING BUILDING IS EQUIPPED W/ AUTO FIRE SPRINKLER SYSTEM

EXISTING SYSTEM TO BE MODIFIED AS REQUIRED FOR NEW ROOFS AND AREAS

SPRINKLER SYSTEM SHALL BE INSTALLED AS PER NFPA STANDARD #13, SECT 903

CONSULTANTS

CIVIL ENGINEER
SURPLUS ENGINEERING SERVICES
2140 EAST DESERT COVE AVE
PHOENIX, ARIZONA 85028
602 - 493 - 0500
CONTACT: MR. ROB SURPLUS
RSURPLUS@CAMELPHOENIX.NET

ELECTRICAL ENGINEER
TONY WOO ENGINEERING
306 NORTH 6TH STREET, STE 102
PHOENIX, ARIZONA 85004
602 - 274 - 8042
CONTACT: MR. TONY WOO
TONY@TWOENGINEERING.COM

DESIGN PROFESSIONAL

THE REGISTERED DESIGN PROFESSIONAL IN RESPONSIBLE CHARGE AS DESIGNATED BY THE OWNER IS:

JAMES H. BABOS, ARCHITECT

COORDINATE ALL REQ'D SPECIAL INSPECTIONS WITH THE ARCHITECT

REVISIONS | BY

BABOS DESIGN STUDIO ARCHITECTS HEREBY EXPRESSLY RESERVES ITS COMMON LAW COPYRIGHT AND OTHER PROPERTY RIGHTS IN THESE CONSTRUCTION DOCUMENTS. THESE INSTRUMENT OF SERVICE FOR BABOS DESIGN STUDIO ARCHITECTS WERE PREPARED FOR USE SOLELY WITH THIS PROJECT AND ARE NOT TO BE REPRODUCED IN ANY FORM OR MANNER WHATSOEVER, NOR ARE THEY TO BE ASSIGNED TO ANY THIRD PARTY WITHOUT FIRST OBTAINING THE EXPRESS WRITTEN PERMISSION AND CONSENT OF BABOS DESIGN STUDIO ARCHITECTS.
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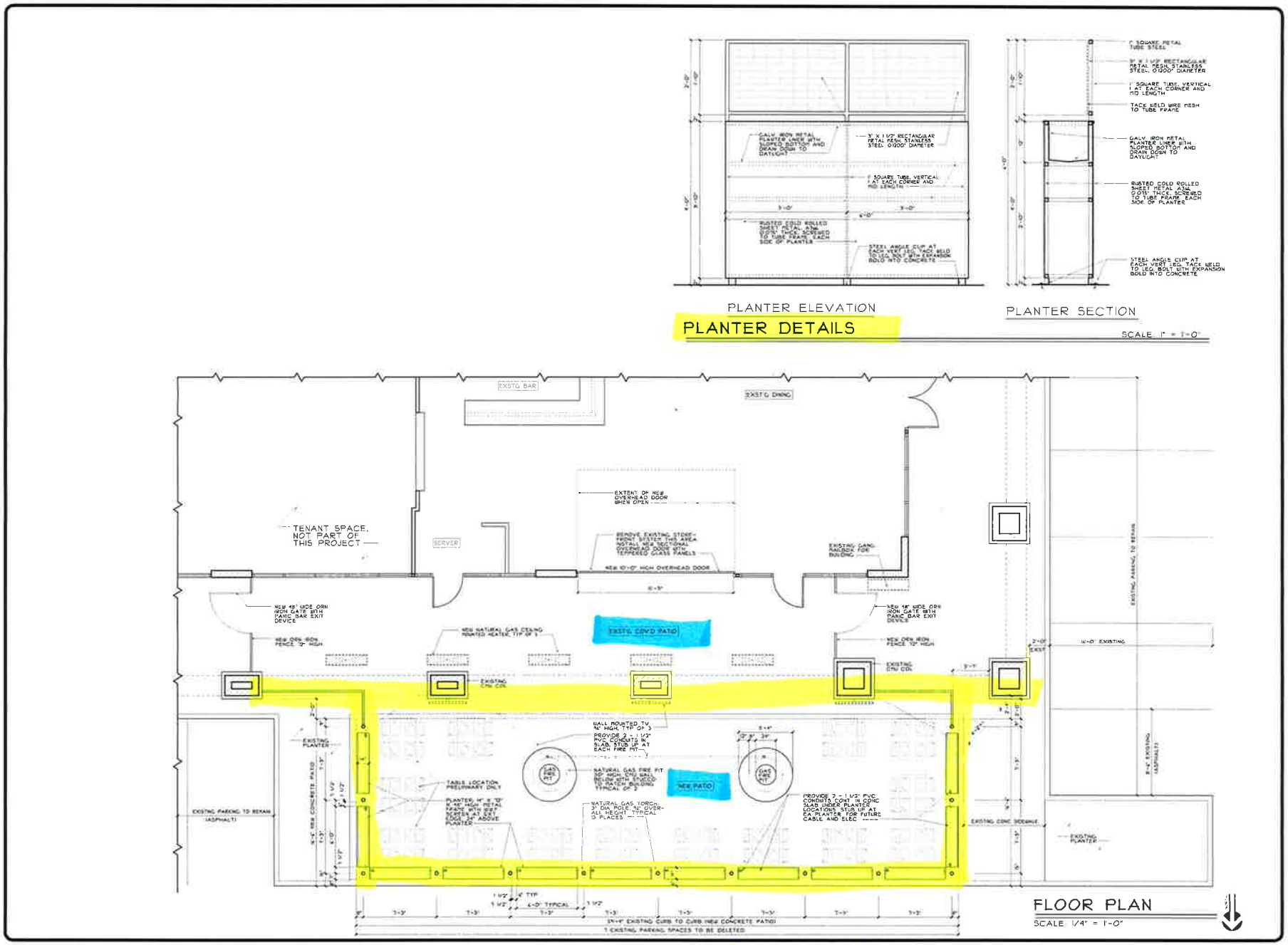
A PATIO REMODEL
HOUSE OF BREWS
825 SOUTH COOPER ROAD
GILBERT, ARIZONA 85233

EXPIRES: 03-31-2017

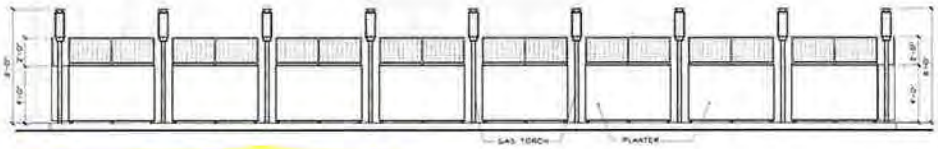
BABOS DESIGN STUDIO, L.L.C.
JAMES H. BABOS
ARCHITECT
2044 E. NORWOOD ST
MESA, ARIZONA 85203
(480) 461-3443
JBABOS@AOL.COM

DRAWN: SITE PLAN
CHECKED:
DATE: 03-02-16
SCALE: 1" = 40'-0"
JOB NO: 1605-HOB
SHEET: 1
OF 3 SHEETS



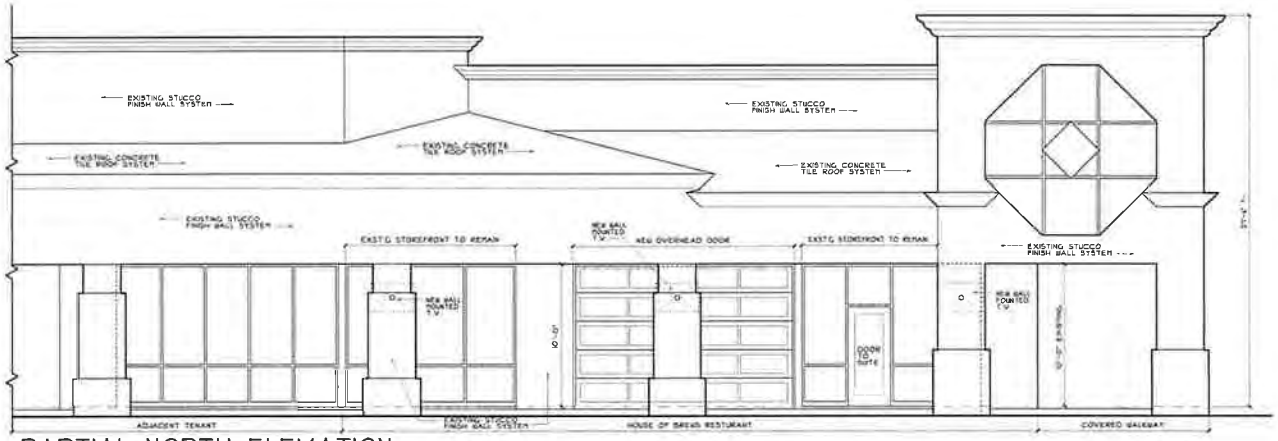
PROPOSED PATIO ADDITION

PROPOSED SECURE PATIO BARRIER



NORTH PATIO ELEVATION

SCALE 1/4" = 1'-0"



PARTIAL NORTH ELEVATION

SCALE 1/4" = 1'-0"

REVISIONS	BY

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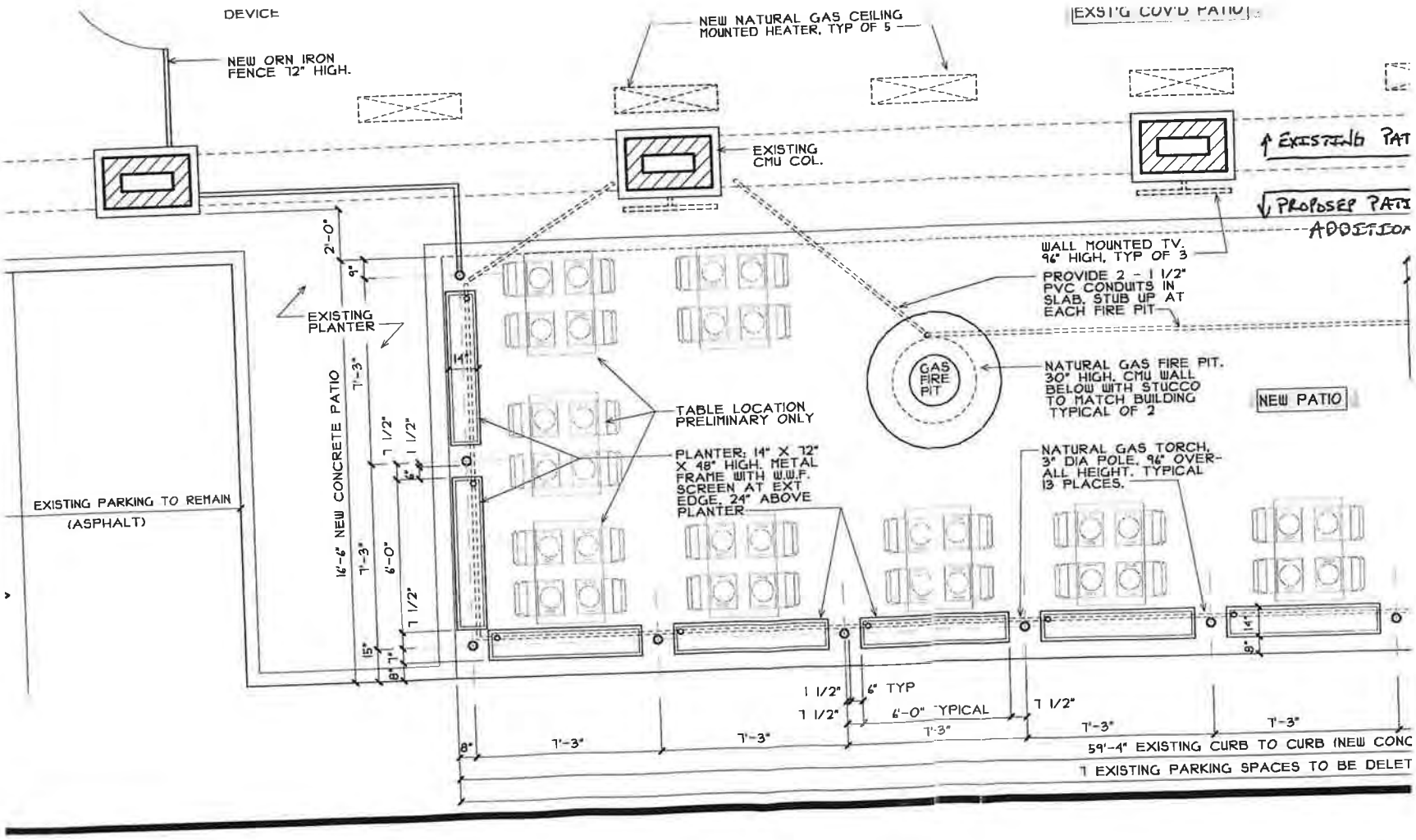
A PATIO REMODEL
HOUSE OF BREWS RESTAURANT
825 SOUTH COOPER ROAD
GILBERT, ARIZONA 85233

JAMES H. BABOS
ARIZONA
EXPIRES 03-31-2015

BABOS DESIGN STUDIO, L.L.C.
JAMES H. BABOS
ARCHITECT
2044 E. MONROE ST
TEMPE, ARIZONA 85281
480-941-3443
JBABOS@AOL.COM

DRAWN: ELEVATION DETAILS
CHECKED:
DATE: 03-02-15
SCALE: 1/4" = 1'-0"
JOB NO: 1509-08
SHEET 3 OF 3 SHEETS


DEVICE
NEW ORN IRON FENCE 72" HIGH.
NEW NATURAL GAS CEILING MOUNTED HEATER, TYP OF 5
EXISTING CMU COL.
EXISTING PLANTER
16'-6" NEW CONCRETE PATIO
EXISTING PARKING TO REMAIN (ASPHALT)
TABLE LOCATION PRELIMINARY ONLY
PLANTER; 14" X 72" X 48" HIGH. METAL FRAME WITH W.W.F. SCREEN AT EXT EDGE. 24" ABOVE PLANTER
WALL MOUNTED TV. 96" HIGH, TYP OF 3
PROVIDE 2 - 1 1/2" PVC CONDUITS IN SLAB. STUB UP AT EACH FIRE PIT
GAS FIRE PIT
NATURAL GAS FIRE PIT. 30" HIGH. CMU WALL BELOW WITH STUCCO TO MATCH BUILDING TYPICAL OF 2
NEW PATIO
NATURAL GAS TORCH. 3" DIA POLE. 96" OVER-ALL HEIGHT. TYPICAL 13 PLACES.
6" TYP
6'-0" TYPICAL
7'-3"
59'-4" EXISTING CURB TO CURB (NEW CONC
7 EXISTING PARKING SPACES TO BE DELET

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Robin Stoneman, Management Support Specialist, 503-6866

MEETING DATE: June 25, 2015

SUBJECT: Boards and Commission - Town of Gilbert, Arizona Water Resources Municipal Property Corporation

STRATEGIC INITIATIVE: Community Livability

This item supports the Strategic Initiative of Community Livability by encouraging public involvement in the decision-making process to assure Gilbert remains "Clean, Safe and Vibrant."

RECOMMENDED MOTION

A motion to accept the resignation of Bob Steiger from the Town of Gilbert, Arizona Water Resources Municipal Property Corporation effective June 24, 2015.

BACKGROUND/DISCUSSION

Bob Steiger submitted his resignation from the Town of Gilbert, Arizona Water Resources Municipal Property Corporation effective June 24, 2015. Recruitment will begin for this position after acceptance of his resignation.

FINANCIAL IMPACT

None.

STAFF RECOMMENDATION

Accept the resignation of Bob Steiger.

Respectfully submitted,

Robin Stoneman
Management Support Specialist

Approved By	Approval Date
Cathy Templeton	6/11/2015 4:01 PM

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Robin Stoneman, Management Support Specialist, 480-503-6866

MEETING DATE: June 25, 2015

SUBJECT: Boards and Commissions - Gilbert Educational Cable Access Governing Board

STRATEGIC INITIATIVE: Community Livability

This item supports the strategic initiative Community Livability by encouraging public involvement in the decision-making process to assure Gilbert remains "Clean, Safe and Vibrant."

RECOMMENDED MOTION

A motion to:

A) accept the resignation of Cathy Chlarson from the Gilbert Educational Cable Access Governing Board effective May 26, 2015; and

B) appoint Dr. Charles Nwankwo to fill the remainder of the term as a regular member ending March 19, 2018.

BACKGROUND/DISCUSSION

Cathy Chlarson submitted her resignation from the Gilbert Educational Cable Access Governing Board effective May 26, 2015. Chandler-Gilbert Community College has designated Dr. Charles Nwankwo, Vice President of Information Technology and Media Services, as their representative.

The Gilbert Educational Cable Access Governing Board is comprised of one person knowledgeable about cable television technical services, one educator (or designee) from the Gilbert Unified School District, one educator (or designee) from the Chandler Unified School District, one representative of the Chandler-Gilbert Community College, one representative of

Arizona State University, and one representative of the Town of Gilbert. All members serve three (3) year terms in accordance with the Code of Gilbert, Section 1-202(d); Membership; terms of office.

As a result of term expirations, staff contacted the member organizations to identify their representatives.

FINANCIAL IMPACT

The Clerk serves on this Board as Gilbert's representative. The Clerk's Office provides support to the Board in preparing and posting agendas, and taking minutes. The Board typically meets one or two times each year. The support provided is nominal and estimated to take less than four hours of staff time per year.

STAFF RECOMMENDATION

Accept the resignation of Cathy Chlarson and appoint Dr. Charles Nwankwo to fill the remainder of the term as a regular member.

Respectfully submitted,

Robin Stoneman
Management Support Specialist

Approved By	Approval Date
Cathy Templeton	6/4/2015 3:09 PM

MINUTES OF THE GILBERT TOWN COUNCIL IN SPECIAL MEETING FOR A STUDY SESSION, TUESDAY, JUNE 2, 2014 AT 4:00 P.M., 50 EAST CIVIC CENTER DRIVE, GILBERT, ARIZONA

COUNCIL PRESENT: Mayor John Lewis, Vice Mayor Jordan Ray, Councilmembers Eddie Cook, Jenn Daniels, Victor Petersen, Brigette Peterson, and Jared Taylor

COUNCIL ABSENT: None

STAFF PRESENT: Manager Patrick Banger, Deputy Manager Marc Skocypec, Town Clerk Catherine Templeton, Attorney Michael Hamblin, Management and Budget Director Dawn Marie Buckland, Management Support Analyst Melanie Dykstra, Senior Planner Amy Temes, Public Works Director Kenneth Morgan

CALL TO ORDER OF SPECIAL MEETING

The meeting began at 4:10 p.m. Mayor John Lewis welcomed Gilbert's new Native American Indian interns, Cora Tso and Skye Mike.

1. Presentation and discussion on the Gilbert Wellness & Resource Center, Building a Healthy Gilbert (behavioral health & substance use) and non-profit support.

Mayor Lewis welcomed Trinity Donovan, Chandler Christian Community Center, and Kathleen Dowler, Dignity Health.

Ms. Kathleen Dowler gave a presentation on the proposed Gilbert Wellness & Resource Center that would provide resources to Gilbert residents and demonstrates a strong model of collective impact between community, health care and government. She reviewed inaugural partners and initial services that would be provided.

Ms. Trinity Donovan advised the Gilbert Wellness & Resource Center would be located at Page Park Center and utilize a building that is currently underutilized. There is an opportunity to use Community Development Block Grant funds to upgrade the facility. Ms. Trinity Donovan said a draft of the business plan was presented and the item will move forward on the June 25 Council agenda. Ms. Trinity Donovan said this is a great opportunity.

Assistant to the Town Manager Andi Welsh provided an update on Mayor's Building a Healthy Gilbert forum. Community leaders came together to explore behavioral health and substance abuse. There were approximately 30 attendees representing a broad group. Key themes ranged from awareness to infrastructure to resources. The next step is to form a stakeholder group with goals tied to the themes identified.

Mayor John Lewis advised that the AZ Criminal Justice Commission has the ability to provide assistance and has volunteered to assist Gilbert. Others that will assist are Chandler I CAN,

DRAFT

Gilbert Police, medical, faith groups, school district hearing officers, and government agencies. Mayor John Lewis said the plan is to take 15 people and form three teams that would move forward for one year with quarterly meetings. A stakeholder group will be formed by August. Mayor John Lewis responded to a question on the goal and advised at this point there are no definite goals. It was suggested that formation of the group be moved up so that items could be addressed in the budget. Manager Patrick Banger said that is why we budget contingency.

Mayor John Lewis addressed Council and summarized recent discussions how the Needs Assessment showed basic needs were funded, that gaps exist, and he questioned what the appropriate amount is to give. Funding options were presented at the last meeting. Mayor John Lewis summarized discussions on enhancing support for victims of domestic violence, minimizing General Fund expenditures, finding/enhancing other non-General Fund sources, and that some Councilmembers see gaps and would like to do more. Mayor John Lewis said it is a challenge to come up with something that meets all gaps, shared feedback staff obtained on needs, and that a lot is tied to domestic violence. There was a message of the need for Gilbert leadership including formation of a stakeholder group to look at domestic violence. There is no funding today. Councilmember Cook thanked staff for support, discussed domestic violence, and volunteered to serve on the stakeholder group.

Vice Mayor Jordan Ray joined the meeting by telephone. The consensus of Council was that they could support the plans and Councilmember Eddie Cook proceeding.

Mayor John Lewis discussed a proposal to fund non-profits at $417,000 and this took into account all of the feedback he received. This would fill some of the gaps, fill basic needs, and take it a few steps. Mayor John Lewis said he was excited and spoke with two members of Council and discussed increasing Neighbor 2 Neighbor marketing efforts. And there were discussions on how to make it easier to donate. Mayor John Lewis discussed an idea to use the utility system records and make calls to residents. This idea was discussed with legal staff and there is a law that you cannot use utility information. Mayor John Lewis discussed buying lists or using lists from neighborhood communities and said there is still hope even though we cannot use certain resources. Mayor John Lewis said Share My Stamp continues to become popular and the trend shows it as a good source of funding and discussed other revenue sources from Parks & Recreation, and other ideas.

Mayor John Lewis asked for Council input. Vice Mayor Jordan Ray thanked Councilmember Eddie Cook for his leadership in domestic violence. He shares concerns that the funding hasn't been replaced with other funding and is still concerned over funding from General Fund. Vice Mayor Jordan Ray said he appreciates the funding and is leaning towards $417,000 because funds have not backfilled, there is more direction with the Needs Assessment, and he feels this is the best option.

Councilmember Eddie Cook said it is really important to look at prioritizing needs and he knows families in crisis, including domestic violence, was one of those items. Staff identified agencies and ranked with a percentage of domestic violence victims and the proposal is actually increasing funding for those agencies and provides assistance in domestic violence.

DRAFT

Councilmember Eddie Cook reported how they learned about other numbers yesterday that are much larger and show the real pain where there is lack of funding. He is taking the assignment to lead and although there are greater funds needed at this time and he supports the $417,000.

Mayor Johns Lewis said he asked whether specific volunteer support could be provided by For Our City and whether the request for funding would be lower. He feels volunteers are something the organizations would be willing to use.

Councilmember Victor Petersen said sometimes his votes are interpreted that he doesn't care and the reason he pushes for reductions is based on his principles. He is committed to creating as much voluntary support as possible and is happy to help with voluntary support. Councilmember Victor Petersen stated he supports the original plan.

Councilmember Taylor explained he is looking for a game changing plan which includes getting rid of food tax, taking what the five year stepdown of $147, 500 and adding Share My Stamp and Neighbor 2 Neighbor at $50,000 and then round up to $200,000. He would like a good commitment to growing Share My Stamp and Neighbor 2 Neighbor. The food tax going away would benefit everyone.

Councilmember Jenn Daniels felt the Needs Assessment helped look at the needs, where funding should be, and put priorities in order of families in crisis, elderly and youth, and crisis prevention. She discussed how a lot can be done before these things get to a crisis level. Councilmember Jenn Daniels supported $417,000, all the groups, and recognized there are also dollars needed.

Councilmember Brigette Peterson discussed the plan that was developed at the Council Retreat last August and the plan addressed needs. She said she agrees with what everyone said, she supports the $417,000, and it is a great way to balance the dollars and address the critical population in need.

Mayor John Lewis summarized that the consensus is to move forward with this plan and $417,000. He said they will ask about volunteer hours and there is need to follow-up on food tax. Mayor John Lewis reported the budget appropriation and two major contracts would be included on Thursday's agenda. The other contracts would be setup and with the funding limits of the Manager could sign off on those contracts.

2. Discussion of possible amendment to Policy No. 2015-02 Advertising, Sponsorship and Naming Rights policy.

Mayor John Lewis asked if Council would like to continue with the agenda item. Councilmember Eddie Cook said this was an idea to generate additional revenue but this is not as important as it was. The consensus of Council was to discuss this item at a future Study Session.

DRAFT

3. Review items scheduled for the Council Meeting of June 4, 2015 at which time items will be acted on or continued. Agenda items are detailed on the Council Meeting Agenda for June 4, 2015.

Mayor Lewis reviewed Council assignments for presentations, proclamations, and scouts for the meeting.

The following items for the June 4, 2015 meeting were reviewed and discussed:

12. SYSTEM DEVELOPMENT FEES - consider setting a public hearing on June 25, 2015, for consideration of the system development fees protest filed by Trilogy at Power Ranch Community Association.

Councilmember Eddie Cook asked if Council is under a gag order on this protest or if they can chat with residents of Trilogy.

Attorney Hamblin said Thursday Council will consider whether to entertain a hearing on June 25 but will not hear the case. Councilmember Eddie Cook asked if after that they can discuss the item. Attorney Michael Hamblin advised Council cannot discuss the item. Mayor John Lewis said he had calls but had not caught up with anyone. Attorney Michael Hamblin said since this is a quasi-judicial proceeding there cannot be discussions other than with Town staff on procedural matters.

13. GRANT – consider application and acceptance of Grant No. 2015-5002-0732 from Maricopa Association of Governments 2015 Design Assistance Program for improved signing, marking, and way-finding on the Gilbert trail system in the amount of $50,000.

Management Support Analyst Melanie Dykstra responded to a question about federal dollars and reviewed requirements, including using a consultant from an on call list through the Maricopa Association of Governments (MAG). This grant stays within the MAG operation and works through that process. Management Support Analyst Melanie Dykstra said the Town provides staff time and the data. Councilmember Taylor said he would do research to determine if he would support the item but generally supports the project.

29. APPEAL AP15-04 (DR15-09) - conduct hearing and consider appeal to the Gilbert Town Council from the Town of Gilbert Redevelopment Commission's approval of the site plan for District Lofts located at northwest corner of Cullumber Avenue and Oak Street. The property is zoned Multi-Family/Medium (MF-M) and is within the Heritage District overlay zoning district. The Town Council may uphold, reverse, or modify the decision of the Redevelopment Commission. If modified, the Town Council may impose conditions of development consistent with the standards set for the Heritage District overlay zoning district.

DRAFT

Senior Planner Temes provided an updated and advised they have been working with the neighbors. She reviewed the status of the four lots and advised Lot 3 is directly impacted but they have indicated support for the recent design as well as ingress and egress.

37. CAPITAL IMPROVEMENT PLAN - conduct hearing and consider adoption of the Town of Gilbert FY 2016-2025 Capital Improvement Program (CIP) and Infrastructure Improvement Plan (IIP).

40. BUDGET - conduct hearing and consider declaring June 25, 2015 as the date of public hearing and adoption of the FY2015 property tax levy and direct staff to submit an ordinance setting the secondary property tax levy for FY2015-16 at $21,221,243.

41. BUDGET - conduct hearing and consider adoption of the Final Budget of $615,009,220 for the period of July 1, 2015 to June 30, 2016.37. Budget/CIP Item; can have a list of projects that would never come back to Council again. Dawn Marie Buckland said preliminary glance was that there were none that would not come back. Presentation on the capital project list in 5 minutes on Thursday night. Cook asked to highlight identifying big ticket items related to non-departmental.

These items were discussed together and Mayor John Lewis asked the Councilmembers for comments.

Councilmember Victor Petersen discussed the tax levy, noticed a proposal to use some of fund balance to keep rate down, noted last year a five percent for delinquency was added, and said he understands, $1.6 million in contingency would be used. Management and Budget Director Dawn Marie Buckland discussed last year's delinquency rate and said toward the end of year it changed. This year a five percent delinquency factor was not added.

Councilmember Victor Petersen said he asked about the $1.6 million of fund balance that is restricted and said he understands funds can only be used to pay off voter approved debt. Management and Budget Director Dawn Marie Buckland explained use of the funds and how some funds are not subject to same restriction. Councilmember Victor Petersen said he understands some of the funds are assigned to a future large payment but others are restricted and unassigned. Councilmember Victor Petersen said he heard this is a tax cut and the levy is going up so it is hard to call tax cut. He proposed using a more fund balance so the rate would drop slightly and probably cut taxes and said if we are worried about the balance we could always collect five percent more than the obligation. Management and Budget Director Dawn Marie Buckland responded and discussed the ability to assign a reasonable delinquency factor but said you cannot continue to collect year after year. Councilmember Victor Petersen said fund balance can't be used for anything else and if we get through this year there is never a reason to raise the taxes.

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Councilmember Victor Petersen said then his understanding is wrong. Councilmember Jenn Daniels said it is not a specific five percent but what is needed. Discussion followed on the use of fund balance, reducing the tax, and that obligations have not changed and it will be a hard discussion.

Deputy Manager Skocypec responded to a question that someone does not want to go above $1.15 and said that is correct. The nexus to $1.15 is when the bonds went to the voters we promised them the $1.15 rate. The law changed that rate, now it floats, and in an effort not to exceed $1.15 fund balance was used. Management and Budget Director Dawn Marie Buckland explained staff also looked at availability of the fund balance to have an amount to respond to situations and the $1.6 million was within those numbers. Last year staff thought the rate would have to come back with $1.31 this year. Staff has been looking at options, changes in valuation from commercial activity, and the $1.31 went to $1.24 and then to $1.15 and still maintains a responsible fund balance.

Councilmember Jared Taylor asked why an $8 million fund balance. Management and Budget Director Dawn Marie Buckland discussed how funds were previously collected about six months before payment, how that cannot be done any longer, and if funds are exhausted there is no ability to restore them in future. Councilmember Jared Taylor asked what the right number of fund balance is given the models. Management and Budget Director Dawn Marie Buckland responded that staff can pull together information over the next few days but at the end of the day that becomes a policy decision. Deputy Manager Marc Skocypec said the change in law changed the strategy in how we approach debt and we have strategically tried to manage the funds to anticipate and buy down debt. State law has handcuffed the ability and need to be strategic. Deputy Manager Marc Skocypec said we do not want to come with capital needs and then say the rate needs to be $1.75. He concluded that staff can put basic information together but not a finite analysis and will provide high level analysis.

Councilmember Petersen asked for a summary of what changed between the preliminary and final budget. Management and Budget Director Dawn Marie Buckland said that the primary difference is fine tuning debt service, carry forward projects, and similar items. Staff will put together a summary. In response to a question, Management and Budget Director Dawn Marie Buckland advised what is before the Council is the entire budget.

Councilmember Jared Taylor asked about full-time equivalent (FTE) positions. Management and Budget Director Dawn Marie Buckland said the staff recommendation is what Council saw on May 15. Councilmember Jared Taylor said there were 10 positions he mentioned that could go away and he is not supporting a budget that has too many administrative costs. He discussed positions that are requested to support IT systems and that he cannot support those systems.

Councilmember Jared Taylor asked how much money is from each category of the tax

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changes. Management and Budget Director Dawn Marie Buckland explained where there are fewer than 10 taxpayers they cannot discuss the amounts but the combined total is $100,000. Councilmember Jared Taylor asked if that is meeting the objective. Councilmember Eddie Cook said the original goal was to reach $1 per resident and the combination of Item 40 has gone higher. Management and Budget Director Dawn Marie Buckland explained there are different ways to address property tax, they applied fund balance, and the total impact is about $7 per resident. Councilmember Eddie Cook said he is happy they could look at a lot of different things and is very happy.

Councilmember Jared Taylor presented his worksheet of positions, questioned the value of positions, and said he did not see some justification.

Councilmember Jenn Daniels said she doesn't feel she is able to decide on positions, the Council said to stay below 5.7 employees, and she is not intimately involved in day to day operations. She discussed setting the policy, letting administration manage, and pointed out how we have grown compared to population.

Councilmember Taylor said those are valid points but if they see things feedback is okay. He shared examples of a company looking at headcount and discussed Honeywell vs. Motorola. Councilmember Jenn Daniels commented she feels the check and balance is 5.7. A brief discussion followed on how Council would know what positions are needed.

Public Works Director Kenneth Morgan commented on the engineering modeler compared to the current use of a consultant and explained how this would be valuable in emergencies, allow real time to modeling, and be useful to Economic Development. He also discussed the Water Conservation Technician related to water reduction and the drought.

Mayor John Lewis said this is pretty tough and there was a lot of feedback. He feels Councilmember Jaren Taylor's comments were good, as well as the policy reminder. Management and Budget Director Dawn Marie Buckland explained how budget packages were put together and although you won't see a separate package she can direct Councilmember Jared Taylor to where justification is.

Councilmember Victor Petersen said he agrees, there is a certain amount of information, and the FTE count hasn't given him as much heartburn as the on-going costs.

Manager Patrick Banger said staff is happy to get more information on each position and highlight the information. Manager Patrick Banger explained how the budget goes through a lot of scrutiny and Gilbert is one of leaders in benchmarking. As staff built the budget they looked to create efficiencies and looked at what is contracted out that we feel can do better, more expediently, and more efficiently. Manager Patrick Banger

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continued to discuss the budget, output, and said behind the scenes many positions provide services. Manager Patrick Banger said all positions are scrubbed independently in departments, through the Executive Team, and through him and Deputy Manager Skocypec. He pointed out there have been no increases in utilities since 2008, we held the line on taxes and look to reduce taxes, and discussed metrics to make sure we are in alignment; and understand short and long term impact of positions.

4. Discussion on the efficiency and effectiveness of Study Sessions and Council Meetings.

No discussion.

The meeting ended at 6:12 p.m.

ATTEST:

_____ _____

John W. Lewis, Mayor Catherine A. Templeton, CMC, Town Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Study Session of the Town Council of the Town of Gilbert held on the 2nd day of June 2015. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 25th day of June, 2013.

_____

Catherine A. Templeton, CMC, Town Clerk

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MINUTES OF THE GILBERT TOWN COUNCIL IN REGULAR MEETING OF JUNE 4, 2015 AT 7:00 PM, MUNICIPAL CENTER, COUNCIL CHAMBERS, 50 EAST CIVIC CENTER DRIVE, GILBERT, ARIZONA

COUNCIL PRESENT:	Mayor John Lewis, Vice Mayor Jordan Ray, Councilmembers Eddie Cook, Jenn Daniels, Victor Petersen, Brigette Peterson and Jared Taylor
COUNCIL ABSENT:	none
STAFF PRESENT:	Manager Patrick Banger, Deputy Manager Marc Skocypec, Deputy Clerk Lisa Maxwell, Attorney Michael Hamblin, Digital Journalist Gardenia Lamadrid, Management Support Analyst Melanie Dykstra, Planner Amy Temes, Interim Traffic Engineer Leslie Bubke, and Management and Budget Director Dawn Marie Buckland,

AGENDA ITEM

CALL TO ORDER

Mayor John Lewis called the meeting to order at 7:07 p.m.

INVOCATION AND PLEDGE OF ALLEGIANCE

Councilmember Brigette Peterson introduced a Gilbert resident who led the Pledge of Allegiance. Pastor Hector Orellana, Desert Gateway Baptist Church gave the invocation.

ROLL CALL

Deputy Clerk Lisa Maxwell called roll and declared a quorum present.

PRESENTATIONS; PROCLAMATIONS

1. Pillar of the Month - Citizenship.

Councilmember Jordan Ray read the Pillar of the Month, Citizenship.

2. Presentation Gilbert Schools Rock! Winners and donation.

This presentation was postponed to a later date.

3. Proclamation declaring June 15-21, 2015 as Men’s Health Week.

Councilmember Jared Taylor read a proclamation declaring June 15-21, 2015 as Men’s Health Week, and presented the proclamation to Keith Lavender.

4. Proclamation declaring June 10, 2015 as Portugal Day in Gilbert.

Councilmember Victor Petersen read a proclamation declaring June 10, 2015 as Portugal Day in Gilbert and presented the proclamation to Domingos R. Santos, Jr., Honorary Consul of Portugal in Arizona.

4A. Proclamation declaring June 14-20, 2015 as United States Army Week.

Councilmember Eddie Cook read a proclamation declaring June 14-20, 2015 as United States Army Week.

5. Recognition of Dr. Denise Birdwell for her leadership as superintendent of the Higley Unified School District.

Councilmember Jenn Daniels recognized Dr. Denise Birdwell for her leadership as superintendent of the Higley Unified School District.

COMMUNICATIONS FROM CITIZENS

Paul Getty, non-Gilbert resident, spoke on Salt River Project (SRP) District boundaries. A large number of Gilbert residents have SRP as their electric utility but they are not located within SRP District boundaries. People outside the boundaries cannot vote to elect the Boardmembers who set the rates and policies that affect SRP customers. Mr. Getty asked for support for legislation to expand the SRP boundaries.

CONSENT CALENDAR

A MOTION was made by Vice Mayor Jordan Ray, seconded by Councilmember Eddie Cook, to approve Consent Items 6, 7, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26; and remove Consent Item 8, 9, 12 and 16A from the Consent Calendar. *Motion carried 7-0.*

6. INTERGOVERNMENTAL AGREEMENT – consider approval of Intergovernmental Agreement No. 2015-2106-0704 with Town of Queen Creek and Maricopa County for Improvements to Ocotillo Road between Recker and Power Roads, Project No. ST102, and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

7. INTERGOVERNMENTAL AGREEMENT – consider approval of Intergovernmental Agreement No. 2015-7008-0636 with Arizona Department of Transportation for the Design Concept Report and Environmental Services for the proposed Lindsay Road at State Route 202 Traffic Interchange, Project No. ST158, and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

8. INTERGOVERNMENTAL AGREEMENT – consider approval of an amendment to Intergovernmental Agreement No. 2015-4501-0672 with Regional Public Transportation Authority for the FY2016 Gilbert Transit, Dial-A-Ride and Alternative Transportation Services and authorize the Mayor to execute the required documents.

A MOTION was made by Councilmember Jenn Daniels, seconded by Councilmember Eddie Cook, to approve Item 8. *Motion carried 5-2 with Councilmembers Victor Petersen and Jared Taylor casting the dissenting votes.*

9. AGREEMENT – consider approval of License Renewal and Final Audit Settlement Agreement and Release related to Contract No. 2001-1003-0331 with Cox Communication, LLC and authorize the Mayor to execute the required documents.

Councilmember Jared Taylor said a section of the agreement with Cox Communications discusses a free lunch program extended to students in area school districts. Councilmember Jared Taylor asked if Cox Communications would extend the Connect to Compete internet service offer to students at public charter schools that are not within school district boundaries. Susan Anable, Cox Communications, said Cox Communications is not opposed to extending the program to charter school students who are eligible for the free lunch program.

Councilmember Jared Taylor noted for clarification his charter school is not located in Gilbert and it is not eligible for this program.

Town Attorney Michael Hamblin confirmed that the change requested was to add public charter schools to the first and fourth bullet points in Exhibit A, section 2.

A MOTION was made by Councilmember Jared Taylor, seconded by Councilmember Victor Petersen, to approve the License Renewal and Final Audit Settlement Agreement and Release related to Contract No. 2001-1003-0331 with Cox Communication, LLC amending Exhibit A Section 2, bullet points 1 and 4 to the Agreement to include eligible public charter schools. *Motion carried 7-0.*

10. AGREEMENTS – consider approval and authorize the Mayor to execute the required documents:

a) Interconnect Agreement No. 2015-7003-0431 with Union Pacific Railroad Company in an amount not to exceed $832,648 for the Cooper and Guadalupe Road Crossings, Project No. ST094;

b) Interconnect Agreement No. 2015-7003-0432 with Union Pacific Railroad Company in an amount not to exceed $1,090,517 for the Cooper and Guadalupe Road Crossings, Project No. ST094;

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c) Public Highway At-Grade Crossings Improvement Agreement No. 2015-7003-0433 with Union Pacific Railroad Company in an amount not to exceed $341,349 for the Guadalupe Road Intersection Improvements, Project No. ST094; and

d) Public Highway At-Grade Crossings Improvement Agreement No. 2015-7003-0434 with Union Pacific Railroad Company in an amount not to exceed $360,217 for the Guadalupe Road Intersection Improvements, Project No. ST094.

This item was approved with the Consent Calendar vote.

11. PROPERTY – consider approval of a settlement for the acquisition of right-of-way and easements; Parcel No. 302-14-618 for improvements to the Guadalupe and Gilbert Intersection Project, Project No. ST129.

This item was approved with the Consent Calendar vote.

12. SYSTEM DEVELOPMENT FEES - consider setting a public hearing on June 25, 2015, for consideration of the system development fees protest filed by Trilogy at Power Ranch Community Association.

A MOTION was made by Councilmember Victor Petersen, seconded by Councilmember Jared Taylor, to approve Item 12. *Motion carried 7-0.*

13. GRANT – consider application and acceptance of Grant No. 2015-5002-0732 from Maricopa Association of Governments 2015 Design Assistance Program for improved signing, marking, and way-finding on the Gilbert trail system in the amount of $50,000.

This item was approved with the Consent Calendar vote.

14. CONTRACT – consider:

a) approval of Repair Services Contract No. 2015-7003-0727 with RD Sanders Contracting LLC, in an amount not exceed $87,299.50 for Rome and Mercy Street Asphalt Repair and authorize the Mayor to execute the required documents; and

b) authorize a Street Fund Contingency Transfer in the amount of $92,300 and the use of the Street Fund as the designated revenue source.

This item was approved with the Consent Calendar vote.

15. CONTRACT – consider approval and authorize the Mayor to execute the required documents:

a) Amendment No. 1 to Contract No. 2005-4107-0147 with Severn Trent Services, Inc. for the operation and maintenance of the Neely Wastewater Reclamation Plant located at 402 North

Neely Street, allowing for renewal terms of no less than one, and no greater than five years, but maintaining the total possible contact duration of 15 years; and

b) Renewal No. 2 of Contract No. 2005-4107-0147 with Severn Trent Services, Inc. for a period of one year through June 30, 2016, for the operation and maintenance of the Neely Wastewater Reclamation Plant located at 402 North Neely Street.

This item was approved with the Consent Calendar vote.

16. CONTRACT – consider approval of Design Build Services Contract No. 2015-7012-0480 for Construction Phase No. 1 with Play It Safe Playgrounds and Park Equipment in an amount not to exceed $793,474.49 for construction services for the Playground Replacement, Project No. PR103, and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

16A. CONTRACT – consider approval of Fiscal Year 2015-2016 General Fund and Neighbor 2 Neighbor/Share My Stamp funds for human services contracts:

a) approve a total of $367,000 in General Funds and $50,000 in Neighbor 2 Neighbor/Share My Stamp funds for a total of $417,000 to provide non-profit support and allow the Gilbert Town Manager to execute contracts under $50,000;

b) approve Contract No. 2015-5003-0740 with the Gilbert Boys & Girls Club in the amount of $115,000 and authorize the Mayor to execute the required documents;

c) approve Contract No. 2015-5501-0743 with Chandler Christian Community Center in the amount of $123,000 and authorize the Mayor to execute the required documents; and

d) authorize a Contingency Transfer in the amount of $112,000 to provide FY2015-16 non-profit support.

Ginny Hildebrand, President and CEO of United Food Bank, thanked the Council for supporting non-profit organizations this year and in years past. She also appreciates the Town support in the Gilbert Feeding Families food drive.

Councilmember Jenn Daniels said she appreciates the leadership of the Mayor on this agenda item and the collaboration of staff. This is a difficult item every year and Councilmember Jenn Daniels believes Mayor John Lewis' leadership has made discussions this year move smoothly.

A MOTION was made by Councilmember Brigette Peterson, seconded by Councilmember Eddie Cook, to approve item 16A. *Motion carried 5-2 with Councilmembers Victor Petersen and Jared Taylor casting the dissenting votes.*

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17. FINAL PLAT S14-05 - consider approval of the final plat for Cooley Station Parcels 10 and 17 - Phase 2 located south and east of the intersection of Recker Road and Williams Field Road.

This item was approved with the Consent Calendar vote.

18. FINAL PLAT S14-09 - consider approval of the final plat for Enclave at North Shore located north and east of the intersection of McQueen Road and Elliot Road subject to administrative approval of the Open Space Plan for the project (PDA15-24).

This item was approved with the Consent Calendar vote.

19. FINAL PLAT SP1452 - consider approval of the final plat for Lots 5 & 6 at Rivulon - Phase 1 located along the south side of Rivulon Boulevard between Gilbert Road and Allen Avenue.

This item was approved with the Consent Calendar vote.

20. HUMAN RESOURCES - consider approval of the Self-Insurance Trust Fund for Health Insurance Benefits Board of Trustees recommendation for stop loss insurance coverage levels for the Town of Gilbert medical plan, purchase of FY2015-16 stop loss insurance coverage with Symetra, and authorize staff to execute necessary documents.

This item was approved with the Consent Calendar vote.

21. SPECIAL EVENT LIQUOR LICENSE – consider approval of a Special Event Liquor License for UNOM New Day Centers, Inc. for June 13, 2015 from 12am-4pm located at 1925 South Coronado Road.

This item was approved with the Consent Calendar vote.

22. SPECIAL EVENT LIQUOR LICENSE – consider approval of a Special Event Liquor License for UNOM New Day Centers, Inc. for June 27, 2015 from 12am-4pm located at 1925 South Coronado Road.

This item was approved with the Consent Calendar vote.

23. SPECIAL EVENT LIQUOR LICENSE – consider ratifying approval by the Mayor of a Special Event Liquor License for Life Animal Rescue for May 25, 2015 at The Farm at Agritopia located at 3000 East Ray Road.

This item was approved with the Consent Calendar vote.

24. LIQUOR LICENSE –consider approval of an acquisition of control the following licenses:

a) Safeway Food & Drug #1748, 5137 East Baseline Road, License No. 09070687;

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b) Safeway Food & Drug #1748, 5137 East Baseline Road, License No. 09070103;

c) Safeway Food & Drug #1534, 90 South Val Vista Drive, License No. 09070358; and

d) Safeway Food & Drug #1534, 90 South Val Vista Drive, License No. 09070540.

This item was approved with the Consent Calendar vote.

25. TEMPORARY EXTENSION OF PREMISES – consider approval of a temporary extension of premises for Desert Babe's Sports Grill located at 1686 North Higley Road #101 for events to be held on June 7, 14, 21, and 28, 2015.

This item was approved with the Consent Calendar vote.

26. MINUTES – consider approval of the minutes of the May 14, 2015 Regular Meeting.

This item was approved with the Consent Calendar vote.

PUBLIC HEARING

Mayor John Lewis opened the public hearing for items 27, 31, 32, 33, 35, 37, 38, and 39. No one wished to speak and Mayor John Lewis closed the public hearing.

A MOTION was made by Councilmember Eddie Cook, seconded by Councilmember Victor Petersen, to approve public hearing items 27, 31, 32, 33, 35, 37, 38, and 39. *Motion carried 7-0.*

27. LIQUOR LICENSE – conduct hearing and consider approval of a Series 10 Beer and Wine Store Liquor License for Quik Fill located at 831 East Warner Road.

This item was approved with the Public Hearing vote.

28. LIQUOR LICENSE – conduct hearing and consider approval of a Series 6 Bar Liquor License for Jester's Billiards located at 1515 North Gilbert Road, Suite 115-123.

Mayor John Lewis opened the Public Hearing.

Daryl Chester, owner of Jester’s Billiards, wants to change his liquor license from a Series 7 Beer and Wine Liquor License to a Series 6 Bar Liquor License so he can sell distilled spirits at his business.

Mayor John Lewis closed the Public Hearing.

A MOTION was made by Councilmember Eddie Cook, seconded by Councilmember Brigette Peterson, to recommend approval of a Series 6 Bar Liquor License for Jester's Billiards located at 1515 North Gilbert Road, Suite 115-123. *Motion carried 7-0.*

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29. APPEAL AP15-04 (DR15-09) - conduct hearing and consider appeal to the Gilbert Town Council from the Town of Gilbert Redevelopment Commission's approval of the site plan for District Lofts located at northwest corner of Cullumber Avenue and Oak Street. The property is zoned Multi-Family/Medium (MF-M) and is within the Heritage District overlay zoning district. The Town Council may uphold, reverse, or modify the decision of the Redevelopment Commission. If modified, the Town Council may impose conditions of development consistent with the standards set for the Heritage District overlay zoning district.

Mayor John Lewis opened the Public Hearing.

Planner Amy Temes gave a brief summary of the District Lofts project which meets the Code and Zoning requirements of the Heritage District. A resident across the street from this project appealed because headlights from cars leaving the development would shine directly into his home. The project applicant contacted all four homeowners across from the site to discuss options to mitigate the negative impact of traffic and headlights. Two residents declined mitigation and two residents accepted mitigation. There are four different options for entry and exit into the site. Staff supports option one for safety and traffic control reasons.

Doralise Machado-Liddell, Gilbert resident, questioned why the Town did not do a Traffic Impact Study for this project. The Town Traffic Engineer did not feel a study was justified for this project but Ms. Machado-Liddell said looking at Public Works standards a Traffic Impact Study was required. She requested the Town perform a Traffic Impact Study.

Marc Barlow, Gilbert resident and member of the Redevelopment Commission, visited the project site and talked to neighbors and in his view improvements need to be made before this project is approved in order to better accommodate children and the elderly in this neighborhood. The minimum width for sidewalks in the Heritage District guidelines is ten feet and wider sidewalks would be safer for the residents. Traffic on Cullumber Avenue is estimated to increase from 20 to 300 cars a day. Mr. Barlow believes this project needs further study to ensure the safety of residents.

Lyle Cady, Gilbert resident, lives directly across from the proposed project site. The developer has been generous in working to prevent headlights from shining in his home but the proposed landscaping will not eliminate all the light nor will it help ensure residents' safety from increased traffic. Mr. Cady believes the value of his home will decrease and his family will suffer from a lack of privacy with people looking directly into his home. He prefers option four which would move the exit from the site away from directly across from his home.

Brandon Ray, speaking on behalf of Trackside Lofts LLC, said this project is an upscale multi-family community. The design is consistent with General Plan and Zoning requirements. This development supports the Heritage District vision on a challenging, odd-shaped, in-fill site. The applicant worked with Mr. Cady on his concerns. The applicant recognizes there will be impact on the neighborhood and they believe they have developed an appropriate mitigation plan. They believe option one is safest solution for the neighborhood.

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Councilmember Eddie Cook said option one shows an additional exit only for public safety purposes. The question is whether residents of the property could use that exit as well as the main entrance/exit. The four different options for traffic entering and exiting the site were discussed. Interim Traffic Engineer Leslie Bubke said staff looked at the options in regards to safety concerns. One estimate showed 108 trips during peak hours and 100 trips is the number that triggers the need for a traffic study. Walking, biking, and taking a bus all count as trips so not all 108 trips would be in a car. Town standards allow the Traffic Engineer to make a judgement of whether or not a traffic study is needed.

Councilmember Victor Petersen asked if a Traffic Impact Study is required by our guidelines. He also asked if staff has the right to waive a study. Town Attorney Michael Hamblin said a Traffic Impact Study is a requirement and it can be waived by the Traffic Engineer if it is felt to be unnecessary.

Councilmember Victor Petersen asked about the sidewalk guidelines and whether those can be waived. Planner Amy Temes said the sidewalk width is a guideline. The Heritage District plan has ten-foot sidewalks in the commercial areas and areas with more intensive foot traffic. The pedestrian map for the area shows sidewalks on this street to be six feet. Staff believed since a six-foot sidewalk would be wider than the current older sidewalk it would be in keeping with the plans for that area and six-foot sidewalks were appropriate.

Councilmember Eddie Cook said the appeal was not about the width of the sidewalks but about lights from the project coming into a neighboring house. The intent of the appeal was to put a plan into place so the applicant could work with the neighboring homeowners on the light issue. If an agreement to mitigate the light problem could not be found then the applicant could look at moving the entrance/exit to the proposed project. Neighbors in an apartment complex west of the proposed site were opposed to moving the entrance/exit to the site.

Town Attorney Michael Hamblin said a Traffic Impact Study is a Code requirement based on the number of trips and it can be waived by the Town Traffic Engineer if he believes it is not necessary. A Traffic Impact Study cannot be imposed on a project if it does not meet the minimum number of trips. In regards to the sidewalk issue the Heritage District guidelines state sidewalks should be a minimum of ten feet. There is a bicycle and pedestrian circulation map that indicates sidewalks on this street should be a minimum of six feet. Councilmember Eddie Cook noted a Traffic Impact Study could still be performed but no matter the results it would not stop development on this site.

Ahysia Navano, Gilbert resident, speaking on behalf of her grandmother, Mrs. Figueroa, said her grandmother bought her house across the street from proposed development in 1964. She prefers option four because of safety concerns. There are lots of children and elderly in this neighborhood. They were approached about construction of a pony wall to mitigate some of the lights but it would have little effect.

Councilmember Eddie Cook said the applicant held a community meeting to talk with neighboring residents. His concern is this project will be there a long time and he wants to make sure all options were thoroughly considered. He asked for clarification on what the Cady family would accept if option one was chosen. Mr. Ray said he understands the Cady family preferred option four but they would accept mitigation if option one was selected.

Councilmember Victor Petersen agreed there are trade-offs no matter which option is selected. Council needs to decide which option has the least impact to the least people to the least degree. He believes option one is best and he is sorry Council cannot make everyone happy. His concern is making sure it is acceptable to waive the traffic study and to have six-foot sidewalk. Town Attorney Michael Hamblin said both are legally acceptable.

Councilmembers expressed their appreciation to the applicant and Town staff for their work with neighbors of the proposed development site. Mayor John Lewis asked if the applicant and residents could continue their dialogue. Town Attorney Michael Hamblin said any changes would have to come to the Council if Council voted for a particular option. There could be a change in the type of trees planted but Town staff could not move forward with option four if Council approved option one.

Mr. Cady read from correspondence he sent to the applicant where he stated his preference for option four. Mitigation is a last resort for them. He asked Council to reconsider approval of option four because he believes there are problems for the neighborhood with option one.

Planner Amy Temes went over the information she received from the applicant which detailed which options were preferred by the residents across the street from the project site. If option four was selected the majority of traffic would go down Oak street. This would affect residents of Paige Commons. Option one would split the traffic more evenly. The applicant would face significant costs if option four was chosen over option one. There were also safety concerns associated with option four.

Mayor John Lewis closed the Public Hearing.

A MOTION was made by Councilmember Victor Petersen, seconded by Councilmember Brigette Peterson, to reaffirm the Town of Gilbert Redevelopment Commission's approval of the site plan for District Lofts located at northwest corner of Cullumber Avenue and Oak Street. The property is zoned Multi-Family/Medium (MF-M) and is within the Heritage District overlay zoning district. *Motion carried 7-0.*

30. ZONING Z13-11 - conduct hearing and consider adoption of an Ordinance amending the Town of Gilbert Land Development Code, Chapter I Zoning Regulations, Division 2 Land Use Designations, Article 2.3 Commercial Districts, Section 2.303 Land Use Regulations, Table 2.303 Land Use Regulations - Commercial Districts, to require a Conditional Use Permit for Hospitals; Chapter I Zoning Regulations, Division 2 Land Use Designations, Article 2.5 Office Districts, Section 2.503 Land Use Regulations, Table 2.503 Land Use Regulations - Office, to modify the Conditional Use Permit requirement for Hospitals inside of a General Plan Growth

Area; Chapter I Zoning Regulations, Division 2 Land Use Designations, Article 2.6 Employment Districts, Section 2.603 Land Use Regulations, Table 2.603 Land Use Regulations - Employment Districts, to modify the Conditional Use Permit requirement for Hospitals inside of a General Plan Growth Area; Chapter I Zoning Regulations, Division 2 Land Use Designations, Article 2.7 Public Facility/ Institutional District, Section 2.702 Land Use Regulations, Table 2.702 Land Use Regulations - Public Facility/ Institutional District, to require a Conditional Use permit for Hospitals; Chapter I Zoning Regulations, Division 4 General Regulations, Article 4.5 Supplemental Use Regulations, to provide separation requirements for hospitals from certain other uses, to increase property owner public notice requirements for a hospital conditional use permit, and to provide regulations for hospitals that service court ordered evaluations; and to amend Division 6 Use Definitions, Article 6.1 Use Definitions, to revise the definition of "Hospital" to include facilities offering behavioral health services. The effect of this amendment will be to modify the conditional use permit requirement for hospitals in Commercial, Employment, Office and Public Facility/Institutional zoning districts, to require separation of hospitals from certain other land uses, to modify the property owner public notice requirement for a hospital conditional use permit, to regulate hospital services related to court ordered evaluation, or to clarify that the definition of "Hospital" includes behavioral health hospitals. The Town Council may modify, enhance or exclude some or all of the proposed hospital regulations described in the preceding statement of potential effect.

Mayor John Lewis opened the Public Hearing.

Amy Peterson, Gilbert resident, is in support of this item but did not wish to speak.

Mayor John Lewis said this item is the result of the tremendous efforts by citizens working with Town staff to bring this item forward to Council.

Councilmember Jared Taylor expressed appreciation for the efforts put into this item by Town staff and stakeholder groups.

Mayor John Lewis closed the Public Hearing.

A MOTION was made by Councilmember Victor Petersen, seconded by Councilmember Brigette Peterson, to approve the findings and adopt Ordinance No. 2534 for Z13-11, amending the amending the Town of Gilbert Land Development Code, Chapter I Zoning Regulations, Division 2 Land Use Designations, Article 2.3 Commercial Districts, Section 2.303 Land Use Regulations, Table 2.303 Land Use Regulations - Commercial Districts, to require a Conditional Use Permit for Hospitals; Chapter I Zoning Regulations, Division 2 Land Use Designations, Article 2.5 Office Districts, Section 2.503 Land Use Regulations, Table 2.503 Land Use Regulations - Office, to modify the Conditional Use Permit requirement for Hospitals inside of a General Plan Growth Area; Chapter I Zoning Regulations, Division 2 Land Use Designations, Article 2.6 Employment Districts, Section 2.603 Land Use Regulations, Table 2.603 Land Use Regulations - Employment Districts, to modify the Conditional Use Permit requirement for Hospitals inside of a General Plan Growth Area; Chapter I Zoning Regulations, Division 2 Land Use Designations, Article 2.7 Public Facility/ Institutional District, Section 2.702 Land Use

Regulations, Table 2.702 Land Use Regulations - Public Facility/ Institutional District, to require a Conditional Use permit for Hospitals; Chapter I Zoning Regulations, Division 4 General Regulations, Article 4.5 Supplemental Use Regulations, to provide separation requirements for hospitals from certain other uses, to increase property owner public notice requirements for a hospital conditional use permit, and to provide regulations for hospitals that service court ordered evaluations; and to amend Division 6 Use Definitions, Article 6.1 Use Definitions, to revise the definition of "Hospital" to include facilities offering behavioral health services. The effect of this amendment will be to modify the conditional use permit requirement for hospitals in Commercial, Employment, Office and Public Facility/Institutional zoning districts, to require separation of hospitals from certain other land uses, to modify the property owner public notice requirement for a hospital conditional use permit, to regulate hospital services related to court ordered evaluation, or to clarify that the definition of "Hospital" includes behavioral health hospitals. The Town Council may modify, enhance or exclude some or all of the proposed hospital regulations described in the preceding statement of potential effect. *Motion carried 7-0.*

31. ANNEXATION A15-01 – conduct hearing and consider adoption of Ordinance approving annexation of approximately 1.36 acres of real property located at the northwest corner of Power Road and Nunneley Road into the Town of Gilbert.

This item was approved with the Public Hearing vote.

32. ZONING Z15-01- conduct hearing and consider approval of the findings and adoption of an Ordinance rezoning approximately 2.14 acres of real property generally located at the northwest corner of Power Road and Nunneley Road from Maricopa County Airport District Two (AD-2) zoning district to Town of Gilbert Regional Commercial (RC) zoning district. The effect of the rezoning will be to allow for commercial development.

This item was approved with the Public Hearing vote. Ordinance No. 2536 was adopted.

33. GENERAL PLAN GP15-03/ ZONING Z15-07 – conduct hearing and consider:

a) adoption of a Resolution approving a Minor General Plan amendment to change the land use classification of approximately 5.04 acres of real property generally located at the northwest corner of Rome and Melrose Streets from 5.04 acres of Business Park Land Use Classification to 5.04 acres of General Office Land Use Classification. The effect of this amendment will be to change the plan of development for the property to allow for the development of a skilled nursing facility; and

b) approval of the findings and adoption of an Ordinance amending Ordinance No. 1813 pertaining to the Val Vista 160 and Germann Planned Area Development (PAD) by removing from the Val Vista 160 and Germann PAD approximately 5.04 acres of Business Park (BP zoning district, all with a Planned Area Development overlay zoning district, generally located at the northwest corner of Rome and Melrose Streets; approving the Development Plan for the Gilbert Skilled Nursing Planned Area Development; and changing the zoning classification of said real property from approximately 5.04 acres of Business Park (BP) zoning district, all with a

Planned Area Development overlay zoning district to approximately 5.04 acres of General Office (GO) zoning district, all with a Planned Area Development overlay zoning district, as shown on the exhibit (map), which is available for viewing in the Planning and Development Services Office, and to modify the development regulations as follows: decrease the rear building and landscape setback/buffer from 20' to 13'. The effect of the rezoning will be to allow for the development of a skilled nursing facility on the property and to decrease required setbacks.

This item was approved with the Public Hearing vote. Resolution 3803 and Ordinance 2537 were adopted.

34. CODE OF GILBERT - conduct hearing and consider adoption of an Ordinance amending the Code of Gilbert, Arizona, by amending Chapter 18, Cable Communications, Section 18-26 Payment of License Fee relating to payment of cable license fees and construction permit fees.

Mayor John Lewis opened the Public Hearing.

Councilmember Victor Petersen believes the law specifies a fee that is too high to charge for use of the Town's right-of-way. He had staff determine what the rate would need to be to retain revenues at the current amount. That rate is 4.8%.

Mayor John Lewis asked for clarification on whether a proposal to change the fee rate could be considered at this time. Town Attorney Michael Hamblin said based on the agenda language it would be appropriate to make that change tonight, if desired, and it would take effect in 30 days.

Vice Mayor Jordan Ray would like to look at rates in other jurisdictions and rates for comparable companies. Town Attorney Michael Hamblin said this rate would apply to anyone with a cable license in Town.

Mayor John Lewis said the Town wants to be fair to businesses but he would like more time to consider this proposal. Councilmember Victor Petersen said he would be fine with continuing the discussion at a future meeting. Town Attorney Michael Hamblin said Council approved the Settlement Agreement and Contract with Cox Communications already tonight and this is a part of that package. The Code of Gilbert can be amended with a lower fee at a future meeting if Council wishes but this item does need to move forward tonight.

Councilmember Victor Petersen would like to have a discussion of these fees added to the agenda of the September 22, 2015 Study Session.

Mayor John Lewis closed the Public Hearing

A MOTION was made by Councilmember Victor Petersen, seconded by Vice Mayor Jordan Ray, to adopt Ordinance No. 2538 amending the Code of Gilbert, Arizona, Chapter 18, Cable Communications, Section 18-26 Payment of License Fee relating to payment of cable license fees and construction permit fees. *Motion carried 7-0.*

35. AGREEMENT – conduct hearing and consider adoption of a Resolution approving a fifteen (15) year renewal of Cable License Agreement No. 2001-1003-0331 with Cox Communication, LLC through January 25, 2029.

This item was approved with the Public Hearing Vote.

36. CODE OF GILBERT - conduct hearing and consider adoption of an Ordinance amending the Code of Gilbert, Arizona, by amending Chapter 1, General Provisions, Article IV Boards, Commissions, and Committees, Division 1 Generally, Section 1-204 Meetings; Division 8 Human Relations Commission, Section 1-320 Creation and Section 1-321 Membership; Division 9 Environmental and Energy Conservation Advisory Board, Section 1-326 Creation and Purpose; and Division 10 Arts, Culture and Tourism, Section 1-331 Creation and Section 1-333 Powers and Duties.

Mayor John Lewis opened the Public Hearing.

Councilmember Jared Taylor said he appreciates work of the volunteers on the Town's Boards and Commissions. He requests Council look at a 2012 document addressing thoughts the members of the Human Relations Commission had concerning their purpose. At the Council retreat he hopes Council will give more direction to the Human Relations Commission.

Mayor John Lewis closed the Public Hearing

A MOTION was made by Jared Taylor, seconded by Victor Petersen, to adopt Ordinance No. 2539 amending the Code of Gilbert, Arizona, Chapter 1, General Provisions, Article IV Boards, Commissions, and Committees, Division 1 Generally, Section 1-204 Meetings; Division 8 Human Relations Commission, Section 1-320 Creation and Section 1-321 Membership; Division 9 Environmental and Energy Conservation Advisory Board, Section 1-326 Creation and Purpose; and Division 10 Arts, Culture and Tourism, Section 1-331 Creation and Section 1-333 Powers and Duties. *Motion carried 7-0.*

37. CAPITAL IMPROVEMENT PLAN - conduct hearing and consider adoption of the Town of Gilbert FY 2016-2025 Capital Improvement Program (CIP) and Infrastructure Improvement Plan (IIP).

This item was approved with the Public Hearing vote.

38. STREETLIGHT IMPROVEMENT DISTRICT- conduct hearing and consider adoption of an Ordinance relating to taxation levied upon the assessed valuation of the property within the Town of Gilbert subject to taxation, and within the Municipal Street Lighting Improvement District Nos. 85-01 through 85-10, 85-13 through 85-15, 85-17, 85-20 through 85-24, 86-01 through 86-11, 86-26, 87-01 through 87-06, 87-08 through 87-22, 87-24, 87-25, 87-27, 88-01 through 88-08, 89-01, 90-01 through 90-05, 91-01 through 91-07, 92-01 through 92-03, 92-05 through 92-09, 93-01 through 93-08, 93-10 through 93-16, 93-18, 93-20, 94-01 through 94-24, 94-26, 94-28 through 94-38, 95-01 through 95-26, 95-28 through 95-42, 96-01 through 96-17,

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96-19, 96-21 through 96-32, 97-01 through 97-06, 97-08, 97-10 through 97-21, 98-01, 98-03 through 98-09, 98-11 through 98-13, 98-15 through 98-18, 99-01 through 99-08, 00-01 through 00-14, 01-01 through 01-05 and 02-01 through 02-06, 03-01 through 03-10, 04-01 through 04-06, 04-08, 05-01 through 05-12, 06-01 through 06-17, 07-01 through 07-05, 07-07 through 07-10, 08-01 through 08-03, 10-03, 11-01 through 11-03, 12-01 through 12-04, 13-03 through 13-18, 14-01 through 14-02, 14-04, and 14-7 through 14-08 certain sum sufficient to raise the amount required for Street Lighting Improvement Districts, subject to maximum levy; and declaring an emergency.

This item was approved with the Public Hearing vote.

39. PARKWAY IMPROVEMENT DISTRICTS - conduct hearing and consider adoption of an Ordinance relating to taxation levied upon property within the Municipal Parkway Improvement District Nos. 07-01, 07-02, 07-03, 07-04, 88-05, 07-09, 07-10, and 07-11 sufficient to raise the amount required for parkway improvement districts for the period July 1, 2015 to June 30, 2016; and declaring an emergency.

This item was approved with the Public Hearing vote.

A MOTION was made by Vice Mayor Jordan Ray, seconded by Councilmember Victor Petersen, to reconsider Item 39. *Motion carried 7-0.*

Mayor John Lewis opened the Public Hearing.

Daleann Darren, Gilbert resident, asked for clarification on a mailing she received concerning maintenance improvements.

Management Support Analyst Melanie Dykstra said the Town oversees maintenance of 11 Parkway Improvement Districts. Property owners are assessed annually through their property taxes. The Town has increased mailings and emails to residents in these districts. The Town has also asked for residents to vote for improvements they would like to see in their neighborhood. This assessment is not new and it covers maintenance of common areas in neighborhoods that are maintained by the Town.

Councilmember Jenn Daniels said residents within Parkway Improvement Districts were invited to contact the Town to learn more about their specific neighborhood and what the Town maintains there.

Councilmember Victor Petersen noted that the Town is not required to get residents' input on improvements in their area but the Town does that and they do what the majority wants.

Mayor John Lewis closed the Public Hearing.

A MOTION was made by Councilmember Eddie Cook, seconded by Councilmember Jared Taylor, to adopt Ordinance No. 2541 relating to taxation levied upon property within the

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Municipal Parkway Improvement District Nos. 07-01, 07-02, 07-03, 07-04, 88-05, 07-09, 07-10, and 07-11 sufficient to raise the amount required for parkway improvement districts for the period July 1, 2015 to June 30, 2016; and declaring an emergency. *Motion carried 7-0.*

40. BUDGET - conduct hearing and consider declaring June 25, 2015 as the date of public hearing and adoption of the FY2015 property tax levy and direct staff to submit an ordinance setting the secondary property tax levy for FY2015-16 at $21,221,243.

Mayor John Lewis opened the Public Hearing.

Councilmember Victor Petersen is concerned about raising taxes on residents. He said the Town does not have a formal policy for the minimum fund balance in the debt services fund and there should be one. He would like staff to bring a policy to Council at the June 25, 2015 meeting. Councilmember Jenn Daniels would also like that policy but she believes the time of the Council retreat would be a better time to discuss such a policy since it would not be effective until FY2017. Town Manager Patrick Banger said staff needs time to consider all the options and draft a policy.

Councilmember Victor Petersen wants to avoid a property tax increase. The staff's proposal involves using some fund balance to decrease the amount paid by taxpayers. Still the tax rate and the total levy are both going up. Delinquency rates for the last ten years have been decreasing. Using a projected 4% delinquency rate until such time as all debt is paid there would still be more than enough money in the fund balance to make the debt payments. Councilmember Victor Petersen would rather err on the side of lower taxes and use the balance to make up debt payments if necessary.

There was discussion about this being a policy decision with many aspects for the Council to consider including future bond sales. Deputy Town Manager Marc Skocypec said the Town attempts to keep tax rates constant. This is a challenge with changing State laws. Councilmember Eddie Cook said he likes to make small changes and see what happens. Then additional small changes can be made later.

Councilmember Jenn Daniels said delinquency rates should be a part of this policy. She said $1.15 is a reasonable tax rate and this was the rate from 2002 through FY2014. With new State laws this was lower to $1.06 for FY2015. With current conditions the needed rate to pay debt is $1.24. Moving the rate to $1.15, the difference could be paid with fund balance. She does not believe the Town should do anything to compromise the AAA bond rating of the Town. There would be potential for a short term gain but in the long-term the Town finances might not be as healthy.

Councilmember Jared Taylor said given the option he is going to side with taxpayers. He believes Councilmember Victor Petersen has a responsible plan for reducing the tax rate. Councilmember Jared Taylor asked if it was possible to have two options at the June 25, 2015 meeting. Town Attorney Michael Hamblin said the Council has the choice of adopting a lower rate but not a higher rate. Deputy Town Manager Marc Skocypec said the higher levy would be

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published and the Council would have the option of adopting a lower levy. Publishing two different options may be confusing to citizens.

Councilmember Victor Petersen said he has not seen from staff a reason why using $1,600,000 from the fund balance is acceptable but $3,300,000 is not acceptable. His calculations conservatively use a delinquency rate of 4% and he does not add the future collection of those funds in his calculation.

Mayor John Lewis closed the Public Hearing.

A MOTION was made by Vice Mayor Jordan Ray, seconded by Councilmember Eddie Cook, to declare June 25, 2015 as the date of public hearing and adoption of the FY2015 property tax levy and direct staff to submit an ordinance setting the secondary property tax levy for FY2015-16 at $21,221,243.

A MOTION was made by Councilmember Victor Petersen, seconded by Councilmember Jared Taylor, to amend the motion to change the property tax levy amount to $19,500,000. *Motion failed 2-5 with Councilmembers Victor Petersen and Jared Taylor casting votes in favor.*

A vote was taken on the original motion. M*otion was approved 5-2 with Councilmembers Victor Petersen and Jared Taylor casting the dissenting votes.*

RECESS REGULAR MEETING AND CONVENE SPECIAL MEETING

A MOTION was made by Councilmember Eddie Cook, seconded by Councilmember Jared Taylor, to recess the Regular Meeting and reconvene in Special Meeting. *Motion carried 6-0. Councilmember Jenn Daniels was not present for the vote.*

Mayor John Lewis recessed the Regular Meeting and convened the public hearing in Special Meeting.

41. BUDGET - conduct hearing and consider adoption of the Final Budget of $615,009,220 for the period of July 1, 2015 to June 30, 2016.

Joe Geusic, Gilbert resident, said he believes the Mayor and every Councilmember stands up for the residents. He appreciates the work Council puts into running the Town. He wants the Council to be lean during good times and collect revenues needed. When there are bad times that money can then be re-invested in the community.

Councilmember Jenn Daniels said she is looking at challenges not only of today but challenges of the future. Council should enact sound policy and empower staff to provide services and in this case produce a budget within that framework. Councilmember Jenn Daniels appreciates the collaborative process that went into creating this budget.

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Councilmember Jared Taylor said approving a budget is one of the most important jobs of a Council. He said Councilmembers have differing opinions and he thinks this budget reflects what the majority of Council believes. Councilmember Jared Taylor has some exceptions with this budget and he thinks there is too much administrative costs in the budget. There has been progress but it has not gone far enough.

Vice Mayor Jordan Ray thanked staff for their hard work. He takes exception to the comments that the Town is paying more for the same levels of service. Council has added additional tasks and policies that take more staff time and staff is providing additional levels of services. The budget has increased to pay for those additional services and for the additional residents. Any suggestions to make staff changes should be made in July and not at the last minute before the budget is approved.

Councilmember Eddie Cook appreciates the updated statistics provided by the Office of Budget and Management that show how well the Town is serving their residents.

Councilmember Victor Petersen appreciates the Council dialogue and he commended Council for their efforts. He has concerns over on-going costs versus on-going revenues. He proposed removing the Fire Inspector Full Time Equivalent. He studied the correlation between high hazard inspections and the reduction of fires. Instead of adding an employee, he would like to see move low hazard inspectors to doing high hazard inspections.

Mayor John Lewis said Council can continue to question the budget in the future. He appreciates the work done by Budget and Management Director Dawn Marie Buckland to get the Town to a AAA bond rating.

Councilmember Brigette Peterson believes there have been increased levels of service in the past few years. She appreciates the process the staff goes through to develop the budget and she is comfortable with these numbers.

A MOTION was made by Councilmember Eddie Cook, seconded by Councilmember Brigette Peterson, to adopt the Final Budget of $615,009,220 for the period of July 1, 2015 to June 30, 2016.

A MOTION was made by Councilmember Victor Petersen, seconded by Councilmember Jared Taylor, to amend the motion to remove the Fire Inspector Full Time Equivalent from the budget. *Motion failed 2-5 with Councilmembers Victor Petersen and Jared Taylor casting Victor Petersen and Jared Taylor casting votes in favor*

A vote was taken on the original motion. M*otion was approved 5-2 with Councilmembers Victor Petersen and Jared Taylor casting the dissenting votes.*

ADJOURN SPECIAL MEETING AND RECONVENE REGULAR MEETING

A MOTION was made by Councilmember Victor Petersen, seconded by Councilmember Jared Taylor, to recess the Special Meeting and reconvene in Regular Meeting. *Motion carried 7-0.*

Mayor John Lewis adjourned the Special Meeting and reconvened the Regular Meeting.

ADMINISTRATIVE ITEMS

42. CODE OF GILBERT - discussion and direction to staff to proceed with amending the Gilbert Tax Code to eliminate two transaction privilege tax classifications and lower the tax rate to 0.0% on two additional classifications.

Councilmember Victor Petersen does not like the limitations placed by State law that in regards to setting tax rates. He would like to cut the rental tax rate but State law does not allow cutting just that category. He would like to reduce the overall transaction privilege tax rate from 1.5% to 1.49% with the effect of reducing overall revenues $485,000. Councilmember Jenn Daniels thanked Councilmember Eddie Cook for efforts to see this item through to this point.

A MOTION was made by Councilmember Victor Petersen, seconded by Councilmember Jared Taylor, to direct direction to staff to proceed with amending the Gilbert Tax Code to eliminate two transaction privilege tax classifications and lower the tax rate to 0.0% on two additional classifications. *Motion carried 7-0.*

43. COUNCIL ADMINISTRATION - consider acceptance of the 3rd Quarter Budget Report for FY2015.

A MOTION was made by Councilmember Jared Taylor, seconded by Councilmember Victor Petersen, to accept Quarter Budget Report for FY2015. *Motion carried 7-0.*

44. BOARDS, COMMISSIONS, AND COMMITTEES - reports from Council Liaisons for the:
a) Subcommittee on Board and Commission Application Screening, Interview, and Selection
b) Other Council Subcommittees
c) Design Review Board
d) Environmental and Energy Conservation Advisory Board
e) Gilbert Educational Cable Access Governing Board
f) Arts, Culture and Tourism Board
g) Human Relations Commission
h) Industrial Development Authority
i) Mayor’s Youth Advisory Committee
j) Parks, Recreation and Library Services Advisory Board
k) Planning Commission
l) Redevelopment Commission
m) Gilbert Public Facilities MPC
n) Gilbert Water Resources MPC
o) Gilbert Self-Insured Trust Fund

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p) Regional Meetings
q) Utility Board

None.

POLICY ITEMS

None.

FUTURE MEETINGS

No discussion.

COMMUNICATIONS

Report from the TOWN MANAGER on current events.

Manager Patrick Banger introduced Digital Journalist Gardinia Lamadrid who presented statistics on driving accidents in Gilbert. She shared a public service announcement showing the Town's latest safe driving campaign, Speed Down, Eyes Up, Drive Safely.

The weigh-in for the food donated during the Gilbert Feeding Families annual food drive will be held at 7:30 a.m. on Monday, June 8, 2015.

Management and Budget Director Dawn Marie Buckland extended appreciation to the Mayor, Council and staff for the opportunities she has had at the Town of Gilbert. Town Manager Patrick Banger thanked Management and Budget Director Dawn Marie Buckland for her years of service to the Town.

CNBC named Gilbert as the third best city for jobs in the United States.

Report from the COUNCIL on current events.

Councilmember Eddie Cook thanked Management and Budget Director Dawn Marie Buckland on behalf of the Council for the work she has done for the Town.

Councilmember Jared Taylor attended an event for the light-rail in Mesa. The project is running ahead of schedule and operation will begin in August. The light rail will be extended to Gilbert Road.

Councilmember Jared Taylor attended an event with Governor Ducey where he announced he is putting $2,200,000 into education.

Councilmember Brigette Petersen reiterated the finale for the Gilbert Feeding Families food drive will be Monday, June 8.

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Report from the MAYOR on current events.

None.

ADJOURN

Mayor John Lewis adjourned meeting at 10:52 p.m.

ATTEST:

_____ _____

John W. Lewis, Mayor Lisa Maxwell, 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 4th day of June 4, 2015. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____.

_____

Lisa Maxwell, CMC, Deputy Town Clerk

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GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Cathy Templeton, Town Clerk, 503-6861

MEETING DATE: June 25, 2015

SUBJECT: Liquor License - Yanagi Sushi

STRATEGIC INITIATIVE: N/A

RECOMMENDED MOTION

A motion to issue an order to recommend approval of a Series 12 Restaurant Liquor License for Yanagi Sushi located at 884 West Warner Road, Suite B04.

or

A motion to issue an order to recommend denial of a Series 12 Restaurant Liquor License for Yanagi Sushi located at 884 West Warner Road, Suite B04 for the following reasons (specific reasons for denial must be included).

or

A motion to make no recommendation on a Series 12 Restaurant Liquor License for Yanagi Sushi located at 884 West Warner Road, Suite B04 (*a "no recommendation" may result in a hearing; the hearing may be cancelled if the board or an aggrieved party does not request a hearing*).

BACKGROUND/DISCUSSION

Jennifer Miok Im Ho is requesting approval of a Series 12 Restaurant Liquor License for Yanagi Sushi located at 884 West Warner Road, Suite B04. *This is a new license.*

A Series 12 Restaurant 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. *Series 12 licenses*

are exempt from the 300 foot distance requirement from a church, a school building with any grades K-12 or a fenced recreational area adjacent to a school building.

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, Police Department, or from Maricopa County Environmental Services 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 R19-1-102 (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,

Cathy Templeton
Town Clerk

Attachments/Enclosures:

Attachment 1 – Arizona Department of Liquor Licenses & Control,
Rule R19-1-102

Attachment 2 – Liquor License Application

Attachment 1

R19-1-102. Granting a License for a Certain Location

Local governing authorities and the Department may consider the following criteria in determining whether public convenience requires, and that the best interest of the community will be substantially served by the issuance or transfer of a liquor license at a particular unlicensed location:

1. Petitions and testimony from persons in favor or opposed to the issuance of a license who reside in, own or lease property in close proximity.
2. The number and series of licenses in close proximity.
3. Evidence that all necessary licenses and permits have been obtained from the state and all governing bodies.
4. The residential and commercial population of the community and its likelihood of increasing, decreasing or remaining static.
5. Residential and commercial population density in close proximity.
6. Evidence concerning the nature of the proposed business, its potential market and its likely customers.
7. Effect on vehicular traffic in close proximity.
8. The compatibility of the proposed business with other activity in close proximity.
9. The effect or impact of the proposed premises on businesses or the residential neighborhood whose activities might be affected by granting the license.
10. The history for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant has received a detailed report(s) of such activity at least 20 days before the hearing by the board.
11. Comparison of hours of operation of the proposed premises to the existing businesses in close proximity.

Approved By	Approval Date
Cathy Templeton	6/8/2015 2:06 PM

TC 6-25

'15 APR 28 Liq. Lic. PM 2:02

26D

RECEIVED

TOWN OF GILBERT
CUSTOMER SERVICE CENTER

Arizona Department of Liquor Licenses and Control
800 West Washington, 5th Floor
Phoenix, Arizona 85007
www.azliquor.gov
602-542-5141

APPLICATION FOR LIQUOR LICENSE

TYPE OR PRINT WITH BLACK INK

Notice: Effective Nov. 1, 1997, All Owners, Agents, Partners, Stockholders, Officers, or Managers actively involved in the day to day operations of the business must attend a Department approved liquor law training course or provide proof of attendance within the last five years. See page 5 of the Liquor Licensing requirements.

SECTION 1 **This application is for a:**

- ☐ MORE THAN ONE LICENSE
- ☐ INTERIM PERMIT ***Complete Section 5***
- ☒ NEW LICENSE ***Complete Sections 2, 3, 4, 13, 14, 15, 16***
- ☐ PERSON TRANSFER (Bars & Liquor Stores ONLY) ***Complete Sections 2, 3, 4, 11, 13, 15, 16***
- ☐ LOCATION TRANSFER (Bars and Liquor Stores ONLY) ***Complete Sections 2, 3, 4, 12, 13, 15, 16***
- ☐ PROBATE/WILL ASSIGNMENT/DIVORCE DECREE ***Complete Sections 2, 3, 4, 9, 13, 16*** (fee not required)
- ☐ GOVERNMENT ***Complete Sections 2, 3, 4, 10, 13, 15, 16***

SECTION 2 **Type of ownership:**

- ☐ J.T.W.R.O.S. ***Complete Section 6***
- ☐ INDIVIDUAL ***Complete Section 6***
- ☐ PARTNERSHIP ***Complete Section 6***
- ☐ CORPORATION ***Complete Section 7***
- ☒ LIMITED LIABILITY CO. ***Complete Section 7***
- ☐ CLUB ***Complete Section 8***
- ☐ GOVERNMENT ***Complete Section 10***
- ☐ TRUST ***Complete Section 6***
- ☐ OTHER (Explain) _____

SECTION 3 **Type of license and fees** **LICENSE #(s):** 1207A249

1. Type of License(s): RESTAURANTS

2. Total fees attached: Department Use Only $ 172.00

APPLICATION FEE AND INTERIM PERMIT FEES (IF APPLICABLE) ARE NOT REFUNDABLE.

The fees allowed under A.R.S. 44-6852 will be charged for all dishonored checks.

SECTION 4 **Applicant** P1073778

1. Owner/Agent's Name: ☐ Mr. ☒ Ms. HO (Last) JENNIFER (First) MIOK IM (Middle)
(Insert one name ONLY to appear on license)

2. Corp./Partnership/L.L.C.: YANAGI, LLC B1054372
(Exactly as it appears on Articles of Inc. or Articles of Org.)

3. Business Name: YANAGI SUSHI
(Exactly as it appears on the exterior of premises)

4. Principal Street Location: 884 W WARNER RD STE B04 (Do not use PO Box Number) GILBERT (City) MARICOPA (County) 85233 (Zip)

5. Business Phone: Pending Daytime Phone: 808 - 429 - 1108 Email: ohanacoffee@gmail.com

6. Is the business located within the incorporated limits of the above city or town? ☐YES ☒NO

7. Mailing Address: 884 W WARNER RD STE B04 (City) GILBERT (State) AZ (Zip) 85233

8. Price paid for license only bar, beer and wine, or liquor store: Type _____ $_____ Type _____ $_____

DEPARTMENT USE ONLY

Fees: 100.00 Application | _____ Interim Permit | 50.00 Site Inspection | 22.00 Finger Prints | $ 172.00 **TOTAL OF ALL FEES**

Is Arizona Statement of Citizenship & Alien Status For State Benefits complete? ☒ YES ☐ NO

Accepted by: SG Date: 4/28/15 Lic. # 1207A249

1/7/2013 ***Disabled individuals requiring special accommodation, please call (602) 542-9027.**

1

52309

425438

SECTION 5 Interim Permit:

1. If you intend to operate business when your application is pending you will need an Interim Permit pursuant to A.R.S. 4-203.01.
2. There **MUST** be a valid license of the same type you are applying for currently issued to the location.
3. Enter the license number currently at the location._____
4. Is the license currently in use? ☐ YES ☐ NO If no, how long has it been out of use?_____

ATTACH THE LICENSE CURRENTLY ISSUED AT THE LOCATION TO THIS APPLICATION.

I, _____, declare that I am the CURRENT OWNER, AGENT, CLUB MEMBER, PARTNER,
(Print full name)
MEMBER, STOCKHOLDER, OR LICENSEE (circle the title which applies) of the stated license and location.

X_____
(Signature)

My commission expires on: _____

State of _____ County of_____

The foregoing instrument was acknowledged before me this

_____day of _____, _____
Day Month Year

_____
(Signature of NOTARY PUBLIC)

SECTION 6 Individual or Partnership Owners:

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE (FORM LIC0101), AN "APPLICANT" TYPE FINGERPRINT CARD, AND $22 PROCESSING FEE FOR EACH CARD.

1. Individual:

Last	First	Middle	% Owned	Mailing Address	City State Zip

Partnership Name: (Only the first partner listed will appear on license) _____

General-Limited	Last	First	Middle	% Owned	Mailing Address	City State Zip
☐ ☐						
☐ ☐						
☐ ☐						
☐ ☐						

) Y R A S S E C E N F I T

2. Is any person, other than the above, going to share in the profits/losses of the business? ☐ YES ☐ NO
If Yes, give name, current address and telephone number of the person(s). Use additional sheets if necessary.

Last	First	Middle	Mailing Address	City, State, Zip	Telephone#

SECTION 7 Corporation/Limited Liability Co.:

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE (FORM LIC0101), AN "APPLICANT" TYPE FINGERPRINT CARD, AND $22 PROCESSING FEE FOR EACH CARD.

☐ CORPORATION ***Complete questions 1, 2, 3, 5, 6, 7, and 8.***

☒ L.L.C. ***Complete 1, 2, 4, 5, 6, 7, and 8.***

1. Name of Corporation/L.L.C.: YANAGI, LLC
   (Exactly as it appears on Articles of Incorporation or Articles of Organization)
2. Date Incorporated/Organized: 01 / 07 / 2015 State where Incorporated/Organized: ARIZONA
3. AZ Corporation Commission File No.: _____ Date authorized to do business in AZ: _____
4. AZ L.L.C. File No: L - 1975084 - 4 Date authorized to do business in AZ: 01 / 16 / 2015
5. Is Corp./L.L.C. Non-profit? ☐ YES ☒NO
6. List all directors, officers and members in Corporation/L.L.C.:

Last	First	Middle	Title	Mailing Address	City State Zip
HO	JENNIFER	MIOK IM	MEMBER	[redacted]	

(ATTACH ADDITIONAL SHEET IF NECESSARY)

7. List stockholders who are controlling persons or who own 10% or more:

Last	First	Middle	% Owned	Mailing Address	City State Zip
HO	JENNIFER	MIOK IM	100%	[redacted]	

(ATTACH ADDITIONAL SHEET IF NECESSARY)

8. If the corporation/L.L.C. is owned by another entity, attach a percentage of ownership chart, and a director/officer/member disclosure for the parent entity. Attach additional sheets as needed in order to disclose personal identities of all owners.

SECTION 8 Club Applicants:

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE (FORM LIC0101), AN "APPLICANT" TYPE FINGERPRINT CARD, AND $22 PROCESSING FEE FOR EACH CARD.

1. Name of Club: _____ Date Chartered: _____
   (Exactly as it appears on Club Charter or Bylaws) (Attach a copy of Club Charter or Bylaws)
2. Is club non-profit? ☐ YES ☐ NO
3. List officer and directors:

Last	First	Middle	Title	Mailing Address	City State Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

SECTION 9 Probate, Will Assignment or Divorce Decree of an existing Bar or Liquor Store License:

1. Current Licensee's Name: _____
(Exactly as it appears on license) Last First Middle

2. Assignee's Name: _____
Last First Middle

3. License Type: _____ License Number: _____ Date of Last Renewal: _____

4. ATTACH TO THIS APPLICATION A CERTIFIED COPY OF THE WILL, PROBATE DISTRIBUTION INSTRUMENT, OR DIVORCE DECREE THAT SPECIFICALLY DISTRIBUTES THE LIQUOR LICENSE TO THE ASSIGNEE TO THIS APPLICATION.

SECTION 10 Government: (for cities, towns, or counties only)

1. Governmental Entity: _____

2. Person/designee: _____ _____
Last First Middle Contact Phone Number

A SEPARATE LICENSE MUST BE OBTAINED FOR EACH PREMISES FROM WHICH SPIRITUOUS LIQUOR IS SERVED.

SECTION 11 Person to Person Transfer:

Questions to be completed by CURRENT LICENSEE (Bars and Liquor Stores ONLY-Series 06,07, and 09).

1. Current Licensee's Name: _____ Entity: _____
(Exactly as it appears on license) Last First Middle (Indiv., Agent, etc.)

2. Corporation/L.L.C. Name: _____
(Exactly as it appears on license)

3. Current Business Name: _____
(Exactly as it appears on license)

4. Physical Street Location of Business: Street _____
City, State, Zip _____

5. License Type: _____ License Number: _____

6. If more than one license to be transfered: License Type: _____ License Number: _____

7. Current Mailing Address: Street _____
(Other than business)
City, State, Zip _____

8. Have all creditors, lien holders, interest holders, etc. been notified of this transfer? ☐ YES ☐ NO

9. Does the applicant intend to operate the business while this application is pending? ☐ YES ☐ NO If yes, complete Section 5 of this application, attach fee, and current license to this application.

10. I, _____, hereby authorize the department to process this application to transfer the
(print full name)
privilege of the license to the applicant, provided that all terms and conditions of sale are met. Based on the fulfillment of these conditions, I certify that the applicant now owns or will own the property rights of the license by the date of issue.

I, _____, declare that I am the CURRENT OWNER, AGENT, MEMBER, PARTNER
(print full name)
STOCKHOLDER, or LICENSEE of the stated license. I have read the above Section 11 and confirm that all statements are true, correct, and complete.

_____
(Signature of CURRENT LICENSEE)

State of _____ County of _____
The foregoing instrument was acknowledged before me this

_____ _____
Day Month Year

My commission expires on: _____

_____
(Signature of NOTARY PUBLIC)

SECTION 12 Location to Location Transfer: (Bars and Liquor Stores ONLY)

APPLICANTS CANNOT OPERATE UNDER A LOCATION TRANSFER UNTIL IT IS APPROVED BY THE STATE

1. Current Business: (Exactly as it appears on license) Name _____
   Address _____
2. New Business: (Physical Street Location) Name _____
   Address _____
3. License Type: _____ License Number: _____
4. If more than one license to be transferred: License Type: _____ License Number: _____
5. What date do you plan to move? _____ What date do you plan to open? _____

SECTION 13 Questions for all in-state applicants excluding those applying for government, hotel/motel, and restaurant licenses (series 5, 11, and 12):

A.R.S. § 4-207 (A) and (B) state that no retailer's license shall be issued for any premises which are at the time the license application is received by the director, within three hundred (300) horizontal feet of a church, within three hundred (300) horizontal feet of a public or private school building with kindergarten programs or grades one (1) through (12) or within three hundred (300) horizonal feet of a fenced recreational area adjacent to such school building. The above paragraph DOES NOT apply to:

a) Restaurant license (§ 4-205.02)
b) Hotel/motel license (§ 4-205.01)
c) Government license (§ 4-205.03)
d) Fenced playing area of a golf course (§ 4-207 (B)(5))

1. Distance to nearest school: 1.4 MILE ft. Name of school SHUMWAY ELEMENTARY SCHOOL
   Address 1325 N Shumway Ave Chandler, AZ 85225
   City, State, Zip
2. Distance to nearest church: 0.5 MILE ft. Name of church VINEYARD COMMUNITY CHURCH
   Address 601 S Cooper Rd Gilbert, AZ 85233
   City, State, Zip
3. I am the: ☒ Lessee ☐ Sublessee ☐ Owner ☐ Purchaser (of premises)
4. If the premises is leased give lessors: Name GECCMC 2004-C2 RETAIL 694, LLC
   Address 8120 E CACTUS RD STE 300 SCOTTSDALE, AZ 85260
   City, State, Zip

4a. Monthly rental/lease rate $ 3,516.93 What is the remaining length of the lease 5 yrs. 0 mos.

4b. What is the penalty if the lease is not fulfilled? $_____ or other ADDITIONAL SHEET CHAPTER 5.9
(give details - attach additional sheet if necessary)

5. What is the total **business** indebtedness for this license/location excluding the lease? $ 0.00
   Please list lenders you owe money to.

Last	First	Middle	Amount Owed	Mailing Address	City State	Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

6. What type of business will this license be used for (be specific)? JAPANESE AND KOREAN RESTAURANT

Operating Expenses, shall be Additional Rent which Tenant shall be obligated to pay. Landlord shall have the same remedies for default in the payment of Additional Rent as are available to Landlord in the case of a default in the payment of Base Rent. All charges to Tenant by Landlord accruing under this Lease, shall be considered as "Additional Rent" and be collectible in the same manner as all other components of Rent hereunder. Base Rent, Additional Rent and all other sums payable by Tenant to Landlord hereunder shall be collectively referred to herein as "Rent."

5.7 Tenant's Efforts. During the Term hereof, neither Tenant nor any person, firm, or corporation who or which controls or is controlled by Tenant, shall directly or indirectly, either individually or as a partner or stockholder or otherwise, own, operate, or become financially interested in any similar or competing business within a radius of five (5) miles from the outside boundary of the Shopping Center (which Tenant acknowledges is a reasonable area).

5.8 Taxes Payable by Tenant. Tenant shall be directly responsible for taxes upon, measured by or reasonably attributable to the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises or by the cost or value of any leasehold improvements made in or to the Premises by or for Tenant other than the initial improvements to be installed by Landlord, if any, regardless of whether title to such improvements is in Tenant or Landlord.

5.9 Late Fee / Default Interest. Any installment of Rent not paid when due and payable shall bear interest at eighteen percent (18%) per annum from the date due until paid and shall be subject to a late charge in the amount equal to five percent (5%) of the amount due. In the event any check, bank draft or negotiable instrument given for any payment under this Lease shall be dishonored at any time for any reason whatsoever not attributable to Landlord, Landlord shall be entitled, in addition to any other remedy that may be available, to an administrative charge of Two Hundred Fifty and 00/100 Dollars ($250.00). No late fee, default interest or the like chargeable by Landlord hereunder shall exceed those charges permitted by the applicable Legal Requirements.

5.10 First Month's Rent. The Base Rent installment and Operating Expense Rent installment due for the first full calendar month after the Rent Commencement Date (including applicable sales tax) and the Security Deposit shall be delivered to Landlord by Tenant with the delivery of this Lease to Landlord for execution.

6. OPERATING EXPENSES:

6.1 Operating Expense Rent. In addition to Base Rent, commencing on the Commencement Date and on or before the first day of each and every successive calendar month during the term hereof, without demand, setoff or deduction, Tenant shall pay Tenant's Percentage Share, as specified in **Paragraph 1.4**, of the Operating Expenses paid or incurred by Landlord in such year ("Operating

SECTION 13 - continued

7. Has a license or a transfer license for the premises on this application been denied by the state within the past one (1) year?

☐ YES ☒ NO If yes, attach explanation.

8. Does any spirituous liquor manufacturer, wholesaler, or employee have any interest in your business? ☐ YES ☒ NO

9. Is the premises currently licensed with a liquor license? ☐ YES ☒ NO If yes, give license number and licensee's name:

License #_____(exactly as it appears on license) Name _____

SECTION 14 Restaurant or hotel/motel license applicants:

1. Is there an existing restaurant or hotel/motel liquor license at the proposed location? ☐ YES ☒ NO
   If yes, give the name of licensee, Agent or a company name:

   _____ and license #: _____
   Last First Middle

2. If the answer to Question 1 is YES, you may qualify for an Interim Permit to operate while your application is pending; consult A.R.S. § 4-203.01; and complete SECTION 5 of this application.

3. All restaurant and hotel/motel applicants must complete a Restaurant Operation Plan (Form LIC0114) provided by the Department of Liquor Licenses and Control.

4. As stated in A.R.S. § 4-205.02.G.2, a restaurant is an establishment which derives at least 40 percent of its gross revenue from the sale of food. Gross revenue is the revenue derived from all sales of food and spirituous liquor on the licensed premises. By applying for this ☐ hotel/motel ☒ restaurant license, I certify that I understand that I must maintain a minimum of 40 percent food sales based on these definitions and have included the Restaurant Hotel/Motel Records Required for Audit (form LIC 1013) with this application.

   _____
   applicant's signature

   As stated in A.R.S § 4-205.02 (B), I understand it is my responsibility to contact the Department of Liquor Licenses and Control to schedule an inspection when all tables and chairs are on site, kitchen equipment, and, if applicable, patio barriers are in place on the licensed premises. With the exception of the patio barriers, these items are not required to be properly installed for this inspection. Failure to schedule an inspection will delay issuance of the license. If you are not ready for your inspection 90 days after filing your application, please request an extension in writing, specify why the extension is necessary, and the new inspection date you are requesting. To schedule your site inspection visit www.azliquor.gov and click on the "Information" tab.

   J. ho
   applicants initials

SECTION 15 Diagram of Premises: (Blueprints not accepted, diagram must be on this form)

1. Check **ALL** boxes that apply to your business:

   ☒ Entrances/Exits ☒ Liquor storage areas Patio: ☐ Contiguous
   ☐ Service windows ☐ Drive-in windows ☐ Non Contiguous

2. Is your licensed premises currently closed due to construction, renovation, or redesign? ☒ YES ☐ NO
   If yes, what is your estimated opening date? 07 / 01 / 2015
   month/day/year

3. Restaurants and hotel/motel applicants are required to draw a detailed floor plan of the kitchen and dining areas including the locations of all kitchen equipment and dining furniture. Diagram paper is provided on page 7.

4. The diagram (a detailed floor plan) you provide is required to disclose only the area(s) where spiritous liquor is to be sold, served, consumed, dispensed, possessed, or stored on the premises unless it is a restaurant (see #3 above).

5. Provide the square footage or outside dimensions of the licensed premises. Please do not include non-licensed premises, such as parking lots, living quarters, etc.

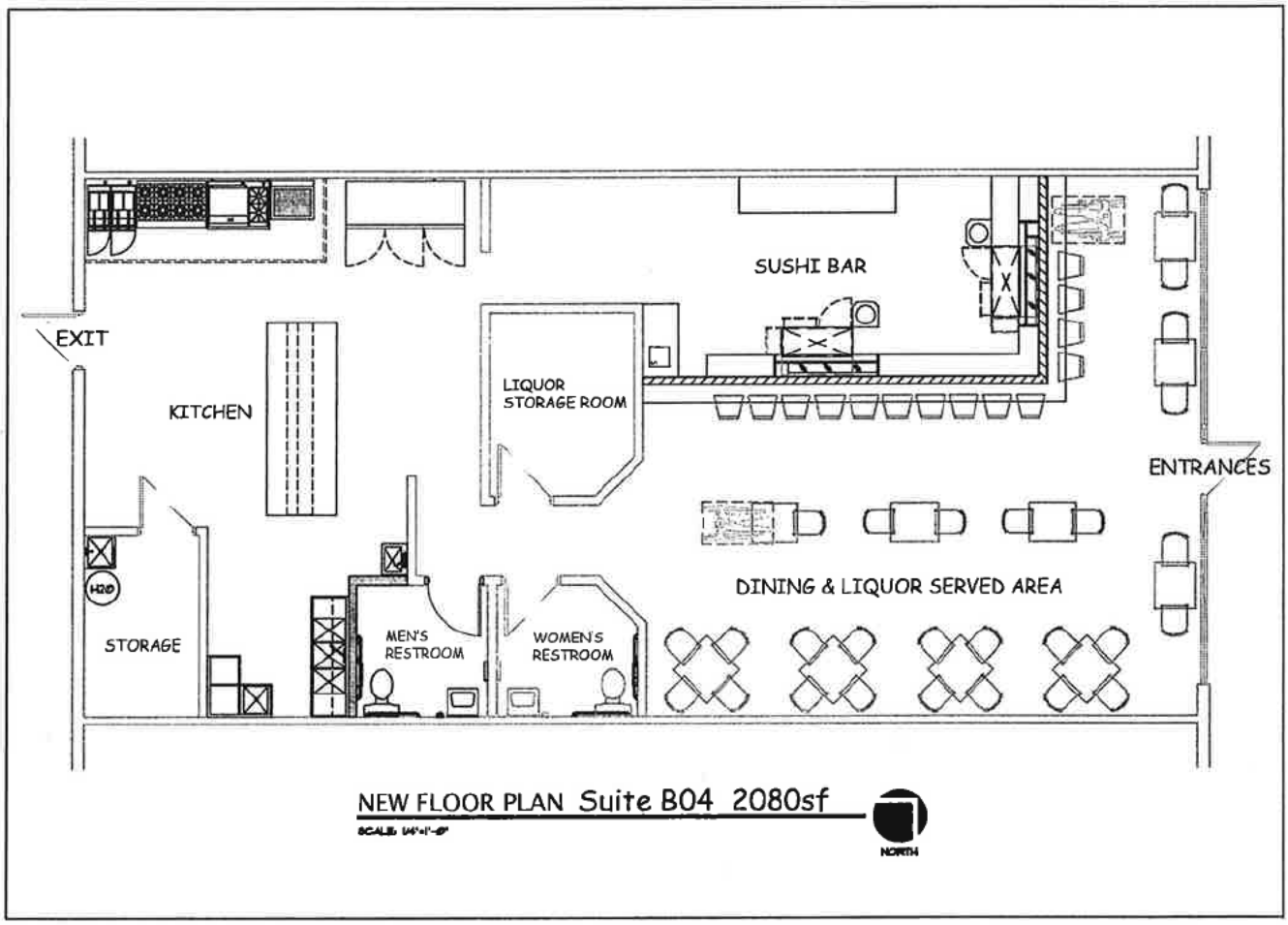
   As stated in A.R.S. § 4-207.01(B), I understand it is my responsibility to notify the Department of Liquor Licenses and Control when there are changes to boundaries, entrances, exits, added or deleted doors, windows or service windows,or increase or decrease to the square footage after submitting this initial drawing.

   J. ho
   applicants initials

SECTION 15 **Diagram of Premises**

4. In this diagram please show only the area where spirituous liquor is to be sold, served, consumed, dispensed, possessed or stored. It must show all entrances, exits, interior walls, bars, bar stools, hi-top tables, dining tables, dining chairs, the kitchen, dance floor, stage, and game room. Do not include parking lots, living quarters, etc. When completing diagram, North is up ↑.

If a legible copy of a rendering or drawing of your diagram of premises is attached to this application, please write the words "diagram attached" in box provided below.



SECTION 16 **Signature Block**

I, MIOKIM JENNIFER, HO, hereby declare that I am the OWNER/AGENT filing this
(print full name of applicant)

application as stated in Section 4, Question 1. I have read this application and verify all statements to be true, correct and complete.

X _____
(signature of applicant listed in Section 4, Question 1)

OFFICIAL SEAL
JONATHAN R. SPERRY
Notary Public - State of Arizona
PINAL COUNTY
My Comm. Expires Oct. 2, 2015

State of Arizona County of Maricopa

The foregoing instrument was acknowledged before me this

28 of April, 2015
Day Month Year

My commission expires on : 02 OCT 2015
Day Month Year

_____
signature of NOTARY PUBLIC

7

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Amy Temes, Senior Planner, (480) 503-6729

MEETING DATE: June 25, 2015

SUBJECT: Z15-08 - DeRito Spectrum - SEC Val Vista Drive & Queen Creek Road

STRATEGIC INITIATIVE: Community Livability

RECOMMENDED MOTION

Move to make the Findings of Fact and adopt the attached ordinance approving Z15-08 DeRito Spectrum.

BACKGROUND/DISCUSSION

Applicant/Owner

Company:	Burch & Cracchiolo	Company:	Ann Hughes Trust/DeRito
Name:	Brennan Ray	Name:	Doug Himmelberger
Address:	702 East Osborn Road Phoenix, AZ 85014	Address:	3200 E. Camelback Road, Suite 175 Phoenix, AZ 85018
Phone:	602-234-8794	Phone:	480-834-8500
Email:	bray@bcattorneys.com	Email:	doug.himmelberger@derito.com

Overview

DeRito Partners and Spectrum Retirement Communities have proposed a joint development on 24.93 gross / 19.88 net acres located at the southeast corner of Val Vista Drive and Queen Creek Road. DeRito is seeking to develop 13.88 net acres as a commercial retail shopping center. Spectrum is seeking to develop a 6 net acre congregate care facility.

History

Date	*Action*
June 24, 2002	Town Council approved Z00-28, San Tan Estates PAD, Ordinance No. 1403.

February 15, 2005	Town Council approved Z04-19, a modification to San Tan Estates PAD, Ordinance No. 1629.
March 24, 2011	Town council approved Z11-01, a modification to San Tan Estates in Ordinance No. 2321.
May 6, 2015	Planning Commission discussed Z15-08 at study session.
June 3, 2015	Planning Commission recommended approval 7-0.

Surrounding Land Use & Zoning Designations:

	Existing Land Use Classification	**Existing Zoning**
North	Residential >2 – 3.5	Queen Creek Road then Single Family - 35
South	Residential >2 – 3.5	East Chestnut/Key Biscayne then Single Family – 6 PAD
East	Public Facility / Institutional	East Chestnut/Key Biscayne then Public Facility / Institutional
West	Shopping Center and Residential >2 – 3.5	Val Vista Drive then Shopping Center PAD and Single Family – 7 PAD
Site	Shopping Center	Shopping Center PAD

General Plan

The project is consistent with the General Plan Land Use Classification. No General Plan amendment is necessary.

Rezoning

The Land Development Code (LDC) under Article 3.101C Planned Area Development Overlay Zoning District provides opportunities for development intensity greater than permitted by the base district regulations for affordable housing, senior housing and congregate living facilities. The applicant is requesting to modify the PAD to allow for an increase to the maximum user size. The proposal would increase the allowable square footage from 75,000 sq ft to 160,000 sq ft, an increase of 85,000 sq ft. The proposed project is on 6 net acres of the 24.93 gross acre site.

In addition to the request for additional square footage, the applicant is requesting an increase in building stories, but not building height. The height allowed within the Shopping Center zoning district is 35’/2-story. The applicant would like to request 35’/3-story. The 3-story portion of the building has been located as far north as possible on the congregate care facility portion per the request of the gated neighborhood to the south.

The congregate care facility is proposed to provide 170 units with 65 employees divided among various shifts. Transportation will be provided to the residents for appointments and activities. The proposed facility will include a fitness center, theater, library, beauty salon, dining, outdoor amenities, green house, garden and swimming pool. The memory care facility is secured.

The right-of-way of Key Biscayne Drive/Chestnut Lane is 80' wide. There is a minimum of 29'wide and a maximum of 54' wide landscape area along the south side of Chestnut Lane. In addition, there is a 30' wide landscape buffer between Chestnut Lane and the internal drive lane of the project. The internal drive lane is 30' wide and there is a minimum 15' wide landscape between the building and the drive lane for a total minimum distance of 184' to the closest property line.

The height of the two-story congregate care facility as proposed would be 26' to the ridge line. The height of a typical two-story home is approximately between 24'to 29'.

Site Development	**Land Development Code**	**Proposed PAD Modifications (SHOWN IN BOLD CAPS)**
Maximum Size of Use or User	75,000 sq ft	**160,000 SQFT**
Maximum Building Height	35'/2-story	35'/**3-STORY**
Minimum Front Building Setback	25'	25'
Minimum Side Building Setback Street	20'	20'
Minimum Side Setback to Residential	75'	75'
Minimum Side Setback to Nonresidential	15'	15'
Minimum Rear Building Setback Residential	75'	75'
Minimum Rear Building Setback Nonresidential	15'	15'
Minimum Front Landscape Area	25'	25'

Site Development	Land Development Code	Proposed PAD Modifications (SHOWN IN BOLD CAPS)
Minimum Side Landscape Area to Street	20’	20’
Minimum Side Landscape Area to Residential	30’	30’
Minimum Side Landscape Area to Nonresidential	15’	15’
Minimum Rear Landscape Area Residential	35’	35’
Minimum Rear Landscape Area Nonresidential	15’	15’
Separation Between Buildings 1-story	15’	15’
Separation Between Buildings 2-story	20’	20’
Separation Between Buildings 3 -story		**20’**
Total Landscape Area	15%	15%

PUBLIC NOTIFICATION AND INPUT

A notice of public hearing was published in a newspaper of general circulation in the Town, and an official notice was posted in all the required public places within the Town.

A neighborhood meeting was held on December 12, 2014. The adjacent residents asked questions regarding the following:

- Phasing – Residents do not want the project construction drawn out.
- Unit count, employee count, safety and services
- Concern the care facility residents will walk into the neighborhood and put children at risk
- Mixed use with uses that aren’t compatible, such as a gas station
- Two story vs three story
- Retail tenants
- Student foot traffic

- Confusion regarding the rezoning because it is changing to the same zoning
- Entitlements
- Reduction in property value
- Vacancy rates for retail

A second meeting was held during an HOA Board meeting to present depictions of the streetscape, landscape, sight lines, and building elevations. The discussions focused on the two and three story building components and the proximity to the gated main entry to San Tan Estates. Per the applicant, no opposition was expressed.

No new comments have been received.

SCHOOL DISTRICT

Staff did contact Perry High School to discuss the project. The Assistant Principal was concerned that the facility would be impacted by the noise, lights and traffic associated with the high school activities. The high school receives complaints from the neighborhood on a regular basis. The school is concerned with disrupting the facility and the complaints that it may trigger. The school intended to contact the district regarding this application. Staff has not received any comment from the School District.

PROPOSITION 207

An agreement to "Waive Claims for Diminution in Value" Pursuant to A.R.S. § 12-1134 was signed by the landowners of the subject site, in conformance with Section 5.201 of the Town of Gilbert Land Development Code. This waiver is located in the case file.

LEGAL REVIEW

The ordinance was reviewed for form by Attorney Jack Vincent.

FINANCIAL IMPACT

There are no outstanding monies owed by the land owner or developer per Engineering. Right-of-way dedications and improved streets are in place. Right-of-way landscape will be installed at the time of construction.

WATER IMPACT

The zoning is not changing. The proposed use would consume more water than some commercial uses. Reclaimed water is available at this site for landscape watering, but is not required. Use of potable water for landscape watering will limit the amount of water intensive landscaping to 20% of the total landscaped area. Use of reclaimed water will increase the allowable limit to 50%. The applicant has not submitted of Design Review so their proposed water sources and usage have not been reviewed.

STAFF RECOMMENDATION

Make the Findings of Fact and approve the attached ordinance approving Z15-08 DeRito Spectrum, subject to the conditions in the draft ordinance.

Respectfully submitted,

Amy Temes
Senior Planner

Attachments:

1. Notice of Public Hearing
2. Aerial Photo
3. Finding of Fact
4. Ordinance
   Exhibit 1 – Legal Description
   Exhibit 2 - Zoning Map
   Exhibit 3 - Development Plan
5. Overall Site Plan (for reference)
6. Congregate Care Site Plan (for reference)
7. Elevations (for reference)
8. Site Sections (for reference)
9. Minutes from a Planning Commission

Approved By	Approval Date
Catherine Lorbeer	6/11/2015 7:01 AM
Kyle Mieras	6/11/2015 10:23 AM
Jack Vincent	6/15/2015 8:57 AM
Cris Parisot	6/15/2015 9:47 AM

Notice of Public Hearing

PLANNING COMMISSION DATE: ***Wednesday, June 3, 2015* TIME: 6:00 PM***
TOWN COUNCIL DATE: ***Thursday, June 25, 2015* TIME: 7:00 PM***

LOCATION: Gilbert Municipal Center
Council Chambers
50 E. Civic Center Drive
Gilbert, Arizona 85296

*** Call Planning Department to verify date and time: (480) 503-6729**

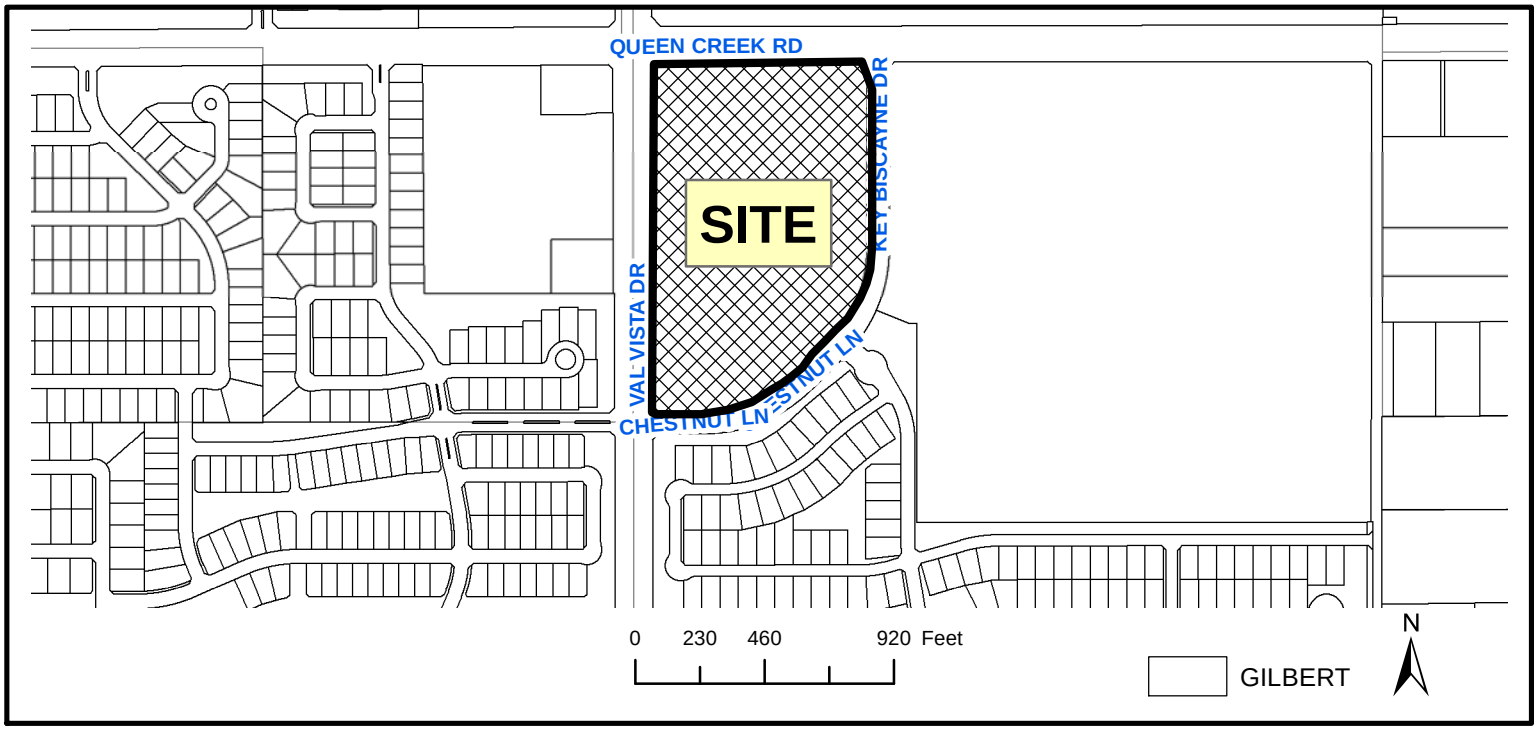
REQUESTED ACTION:

UP15-07: Request to approve a Conditional Use Permit for approximately 24.93 acres of real property located at the southeast corner of Val Vista Drive and Queen Creek Road to allow a Congregate Living Facility in the Shopping Center (SC) zoning district with a Planned Area Development overlay.

Z15-08: Request to amend Ordinance Nos. 1403, 1629, and 2321 pertaining to the San Tan Estates Planned Area Development (PAD) by removing from the San Tan Estates PAD approximately 24.93 acres of real property consisting of approximately 24.93 acres of Shopping Center (SC) zoning district, all with a Planned Area Development overlay zoning district, generally located at the southeast corner of Val Vista Drive and Queen Creek Road; approving the Development Plan for the DeRito Spectrum Planned Area Development; and changing the zoning classification of said real property from 24.93 acres of Shopping Center (SC) district, all with a Planned Area Development overlay zoning district to 24.93 acres of Shopping Center (SC) zoning district, all with a Planned Area Development overlay zoning district, as shown on the map which is available for viewing in the Planning and Development Services Office; and to modify the development regulations as follows: to increase the maximum size for a single use or user from 75,000 square feet to 160,000 square feet, allow for building height of up to three stories and 35', and require separation of 20' between three-story buildings. The effect of the rezoning will be to create a development plan and allow for increased square footage for a congregate living facility and allow increased stories, but not in excess of the existing SC height allowance of 35 feet.

* The application is available for public review at the Town of Gilbert Development Services division Monday - Thursday 7 a.m. - 6 p.m. Staff reports are available the Monday prior to the meeting at http://www.gilbertaz.gov/departments/development-services/planning-development/planning-commission

SITE LOCATION:



APPLICANT: Burch & Cracchiolo, P.A.
CONTACT: Brennan Ray
ADDRESS: 702 E. Osborn Rd, Ste. 200
Phoenix AZ 85014

TELEPHONE: (602) 234-8794
E-MAIL: bray@bcattorneys.com

Z15-08: DeRito Spectrum
Attachment 2 - Aerial
June 25, 2015

FINDING OF FACT
Z15-08 DERITO SPECTRUM

1. The proposed zoning amendment conforms to the General Plan and the Planned Area Development overlay zoning district.

2. All required public notice has been conducted in accordance with applicable state and local laws.

3. All required public meetings and hearings have been held in accordance with applicable state and local laws.

ORDINANCE NO. _____

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AMENDING THE OFFICIAL ZONING MAP OF GILBERT, ARIZONA BY AMENDING ORDINANCE NOS. 1403, 1629, AND 2321 PERTAINING TO THE SAN TAN ESTATES PAD PLANNED AREA DEVELOPMENT (PAD) BY REMOVING FROM THE SAN TAN ESTATES PAD REAL PROPERTY CONSISTING OF APPROXIMATELY 24.93 ACRES, LOCATED AT THE SOUTHEAST CORNER OF VAL VISTA DRIVE AND QUEEN CREEK ROAD, IN ZONING CASE Z15-08; APPROVING THE DEVELOPMENT PLAN FOR THE DERITO SPECTRUM PLANNED AREA DEVELOPMENT; AND CHANGING THE ZONING CLASSIFICATION OF SAID REAL PROPERTY FROM 24.93 ACRES OF TOWN OF GILBERT SHOPPING CENTER (SC) ZONING DISTRICT WITH A PLANNED AREA DEVELOPMENT OVERLAY ZONING DISTRICT TO 24.93 ACRES OF SHOPPING CENTER (SC), ZONING DISTRICT, ALL WITH A PLANNED AREA DEVELOPMENT OVERLAY ZONING DISTRICT, AND AMENDING CONDITIONS OF DEVELOPMENT AS FOLLOWS: INCREASE THE MAXIMUM SIZE FOR A SINGLE USE OR USER FROM 75,000 SQUARE FEET TO 160,000 SQUARE FEET, ALLOW BUILDING HEIGHTS OF UP TO THREE-STORIES AND 35', AND TO REQUIRE A SEPERATION OF 20' BETWEEN THREE-STORY BUILDINGS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR NON-SEVERABILITY; AND PROVIDING FOR PENALTIES

WHEREAS, the Town Council has determined that this amendment to the Official Zoning Map conforms with the Town of Gilbert General Plan, , any applicable Specific Area Plan, neighborhood, or other plan, and any overlay zoning district; and

WHEREAS, all required public notice was provided and all required public meetings and hearings were held in accordance with applicable state and local laws;

WHEREAS, by adoption of this Ordinance, the Town Council desires to permit development intensity greater than permitted by base district regulations for affordable housing, senior housing, and congregate living facilities.

NOW THEREFORE, BE IT ORDAINED by the Common Council of the Town of Gilbert, Arizona, as follows:

Section I. <u>In General</u>.

1. The Official Zoning Map of the Town of Gilbert is hereby amended by amending Ordinances Nos. 1403, 1629, and 2321 relating to the San Tan Estates PAD to remove from the San Tan Estates PAD property consisting of approximately 24.93 acres described in the

legal description, Exhibit 1, and as shown on the Zoning Exhibit (map) in Exhibit 2, both attached hereto and incorporated by reference herein.

2. The DeRito Spectrum Planned Area Development Plan, defined in Paragraph 4 herein and attached hereto as Development Plan, Exhibit 3, is hereby approved.

3. The Official Zoning Map of the Town of Gilbert, Arizona, is hereby amended by changing the zoning classification of property consisting of approximately 24.93 acres described in the legal description, Exhibit 1, and shown on the Zoning Exhibit (map) in Exhibit 2, from approximately 24.93 acres of Town of Gilbert Shopping Center (SC) zoning district, all with a PAD overlay zoning district to approximately 24.93 acres of Shopping Center (SC), all with a PAD overlay zoning district as shown on and in accordance with the Development Plan, Exhibit 3 hereto.

4. The following definitions shall apply:

a. "Project" shall mean the DeRito Spectrum PAD consisting of approximately 24.93 acres, located at the southeast corner of Val Vista Drive and Queen Creek Road.

b. "Development Plan" shall mean that certain document submitted pursuant to Section 3.104 of the Land Development Code, as follows:

Exhibit 3: Development Plan Exhibit of DeRito Spectrum Planned Area Development, dated June 25, 2015.

5. The Property described in Paragraph 2 of this Section shall be used and developed in accordance with the Development Plan and the Land Development Code of the Town of Gilbert. In addition to conformance with the Development Plan, development of the Property shall be subject to the following conditions:

a. At the written request of Gilbert, Developer shall dedicate all necessary easements for the roadway improvements, including easements for drainage and retention and temporary construction easements. Failure to dedicate said easements within thirty (30) days after the date of Gilbert's written request may result in the reversion of the zoning of the Property to the prior zoning classification.

b. Developer shall create a Property Owner's Association (POA) for the ownership, maintenance, landscaping, improvements and preservation of all common areas and open space areas, and landscaping within the rights-of-way.

c. Developer shall record easements to be owned by the POA for pedestrian, bicycle, multi-use or trail system purposes as determined by the final plat, at the time of final plat recordation, or earlier if required by the Town Engineer. In recognition of the

modifications to the underlying zoning regulations set forth herein, such easements shall be open to public access and use.

d. Prior to final plat approval, Developer shall pay for its proportional share of water and sewer mains benefitting the Property, as required by the Town Engineer.

e. The Project shall be developed in conformance with Gilbert's zoning requirements for the zoning districts and all development shall comply with the Town of Gilbert Land Development Code, except as modified by the following:

Site Development	**PAD Modifications (SHOWN IN CAPS)**
Maximum Size of Use or User	**160,000 SQFT**
Maximum Building Height	35'/**3-STORY**
Separation Between Buildings 3 -story	**20 FT**

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 Non-Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, then this entire ordinance is invalid and shall have no force or effect.

Section IV. Providing for Penalties.

Any person found responsible for violating this Ordinance shall be subject to the civil sanctions and habitual offender provisions set forth in Sections 5.1205 and 5.1206 of the Gilbert Land Development Code. Each day a violation continues, or the failure to perform any act or duty required by this zoning ordinance, the Zoning Code or by the Town of Gilbert Municipal Court continues, shall constitute a separate civil offense.

PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this _____ day of _____, 20__, by the following vote:

AYES: _____

NAYES: _____ ABSENT: _____

EXCUSED: _____ ABSTAINED: _____

APPROVED this ____ day of _____, 20__.

_____
John W. Lewis, Mayor

ATTEST:

_____
Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

_____
L. Michael Hamblin
Town Attorney
By _____

I, CATHERINE A. TEMPLETON, 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 _____, 20__, WAS POSTED IN FOUR PLACES ON THE _____ DAY OF _____, 20__.

_____
Catherine A. Templeton, Town Clerk

The following exhibits are attached hereto and incorporated herein:
1. Legal Description
2. Zoning Exhibit
3. Development Plan

SEC VAL VISTA DRIVE & QUEEN CREEK ROAD
GROSS SITE
GILBERT, ARIZONA

February 19, 2015
Job No.2014-044
Page 1 of 1

A PARCEL OF LAND SITUATED IN THE NORTHWEST QUARTER OF SECTION 16, TOWNSHIP 2 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 16, FROM WHICH THE NORTH QUARTER CORNER OF SAID SECTION 16 BEARS NORTH 89 DEGREES 57 MINUTES 24 SECONDS EAST, A DISTANCE OF 2674.71 FEET;

THENCE NORTH 89 DEGREES 57 MINUTES 24 SECONDS EAST, ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 16, ALSO BEING THE MONUMENT LINE OF QUEEN CREEK ROAD, A DISTANCE OF 875.00 FEET TO A POINT OF INTERSECTION WITH THE MONUMENT LINE OF SOUTH KEY BISCAYNE DRIVE;

THENCE SOUTH 00 DEGREES 01 MINUTES 03 SECONDS WEST, ALONG SAID MONUMENT LINE OF SOUTH KEY BISCAYNE DRIVE, A DISTANCE OF 731.63 FEET TO A POINT OF CURVATURE TO THE RIGHT HAVING A RADIUS OF 500.00 FEET;

THENCE CONTINUING ALONG SAID MONUMENT LINE OF SOUTH KEY BISCAYNE DRIVE, SOUTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 44 DEGREES 56 MINUTES 22 SECONDS, A DISTANCE OF 392.17 FEET;

THENCE SOUTH 44 DEGREES 57 MINUTES 24 SECONDS WEST, DEPARTING SAID MONUMENT LINE OF SOUTH KEY BISCAYNE DRIVE A DISTANCE OF 168.15 FEET TO A POINT ON THE MONUMENT LINE OF CHESTNUT LANE, SAID POINT BEING A POINT OF CURVATURE TO THE RIGHT HAVING A RADIUS OF 500.00 FEET;

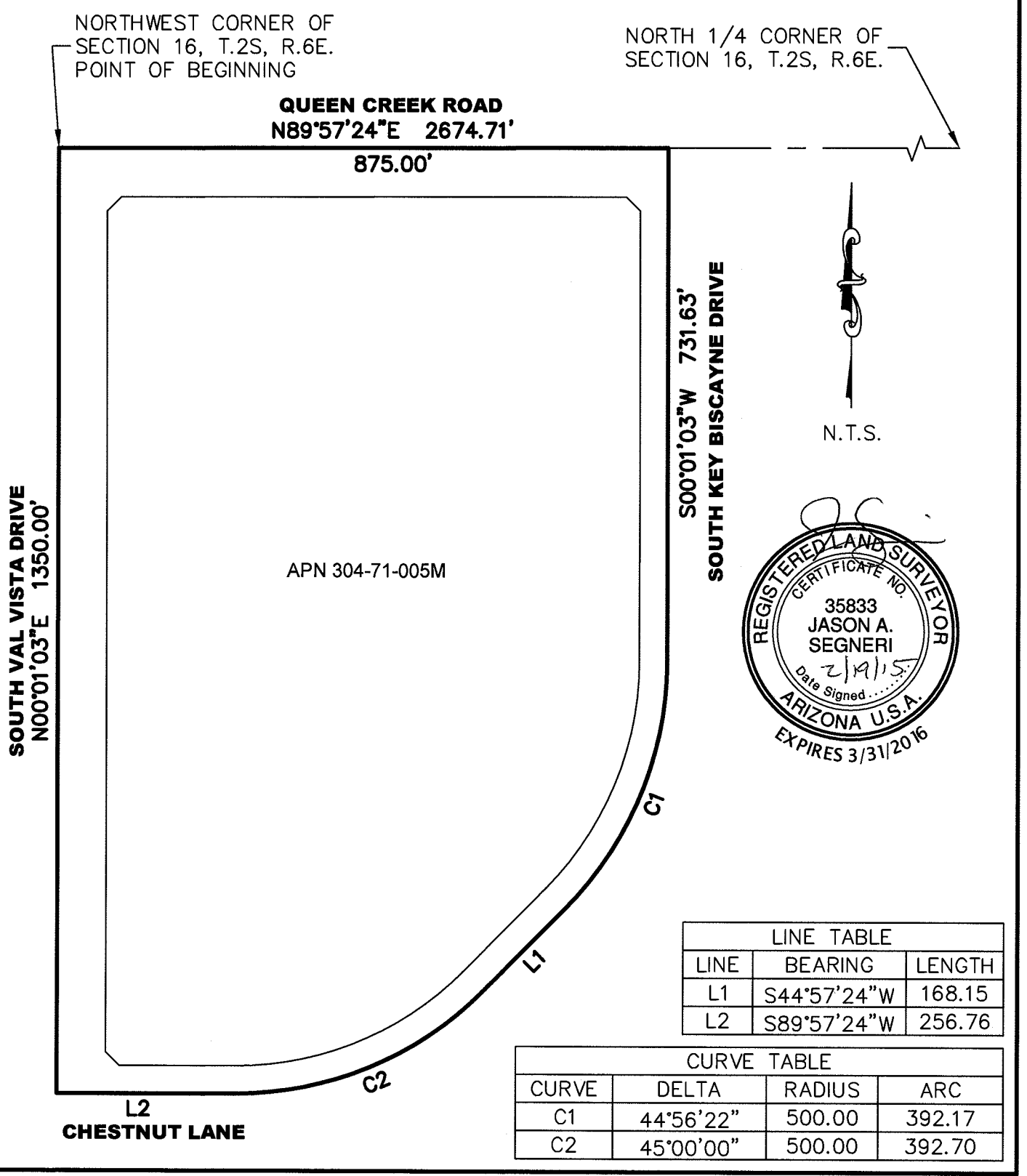
THENCE ALONG SAID MONUMENT LINE OF CHESTNUT LANE, SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 45 DEGREES 00 MINUTES 00 SECONDS, A DISTANCE OF 392.70 FEET;

THENCE SOUTH 89 DEGREES 57 MINUTES 24 SECONDS WEST, CONTINUING ALONG SAID MONUMENT LINE OF CHESTNUT LANE, A DISTANCE OF 256.76 FEET TO A POINT ON INTERSECTION WITH THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 16, ALSO BEING THE MONUMENT LINE OF SOUTH VAL VISTA DRIVE;

THENCE NORTH 00 DEGREES 01 MINUTES 03 SECONDS EAST, ALONG SAID WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 16 AND MONUMENT LINE OF SOUTH VAL VISTA DRIVE, A DISTANCE OF 1,350.00 FEET TO THE **POINT OF BEGINNING** OF THE PARCEL HEREIN DESCRIBED.

SAID PARCEL CONTAINS 1,085,912 SQUARE FEET OR 24.929 ACRES, MORE OR LESS.

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
35833
JASON A.
SEGNERI
Date Signed 2/19/15
ARIZONA U.S.A.
EXPIRES 3/31/2016



REGISTERED LAND SURVEYOR
CERTIFICATE NO.
35833
JASON A.
SEGNERI
2/19/15
Date Signed
ARIZONA U.S.A.
EXPIRES 3/31/2016

LINE TABLE		
LINE	BEARING	LENGTH
L1	S44°57'24"W	168.15
L2	S89°57'24"W	256.76

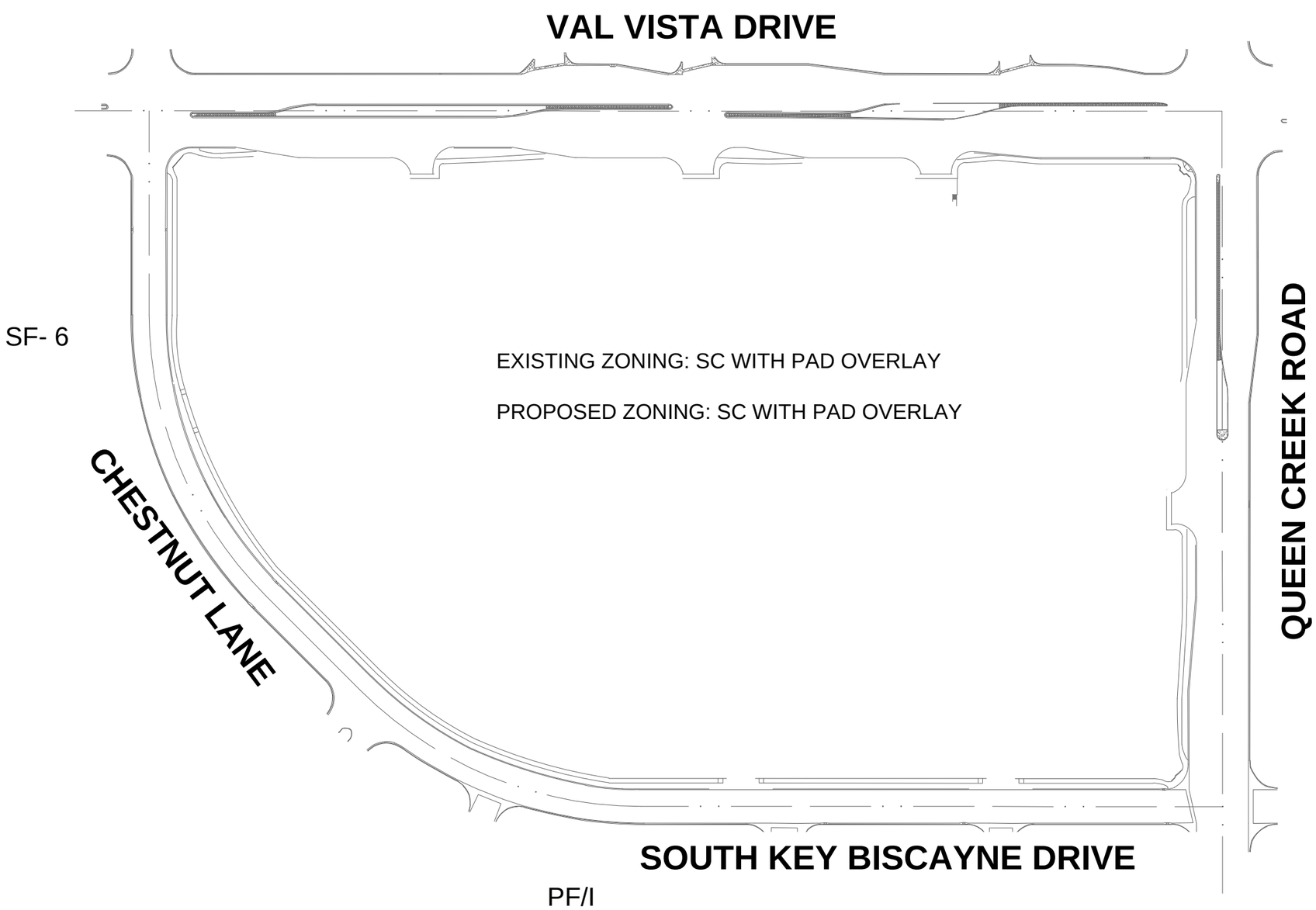
CURVE TABLE			
CURVE	DELTA	RADIUS	ARC
C1	44°56'22"	500.00	392.17
C2	45°00'00"	500.00	392.70

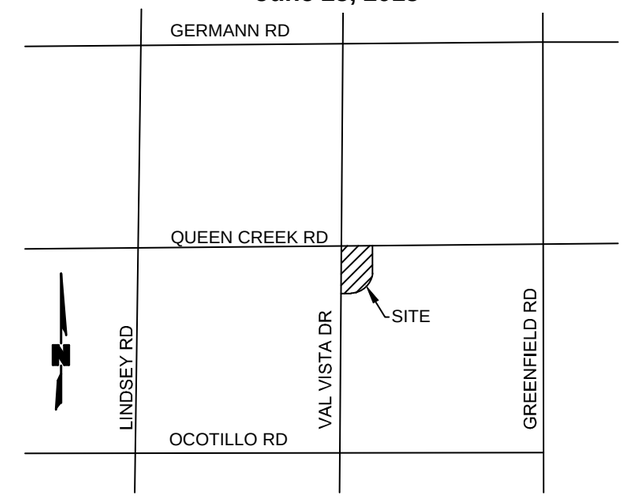
S|I|G
SURVEY INNOVATION GROUP, INC
Ph (480) 922 0780 *Land Surveying Services* Fx (480) 922 0781
7301 EAST EVANS ROAD, SCOTTSDALE, AZ 85260

SEC VAL VISTA DR. & QUEEN CREEK RD.
GROSS SITE
GILBERT, ARIZONA

JOB#2014-044	DWG: GROSS SITE EXHIBIT		DATE 2/19/15
SCALE: N.T.S.	DRAWN: RMH	CHK: JAS	SHEET 1 OF 1

Z15-08: DeRito Spectrum
Attachment 4 - Ordinance
Exhibit 2 - Zoning Map
June 25, 2015





VICINITY MAP
NTS

N

NOT TO SCALE

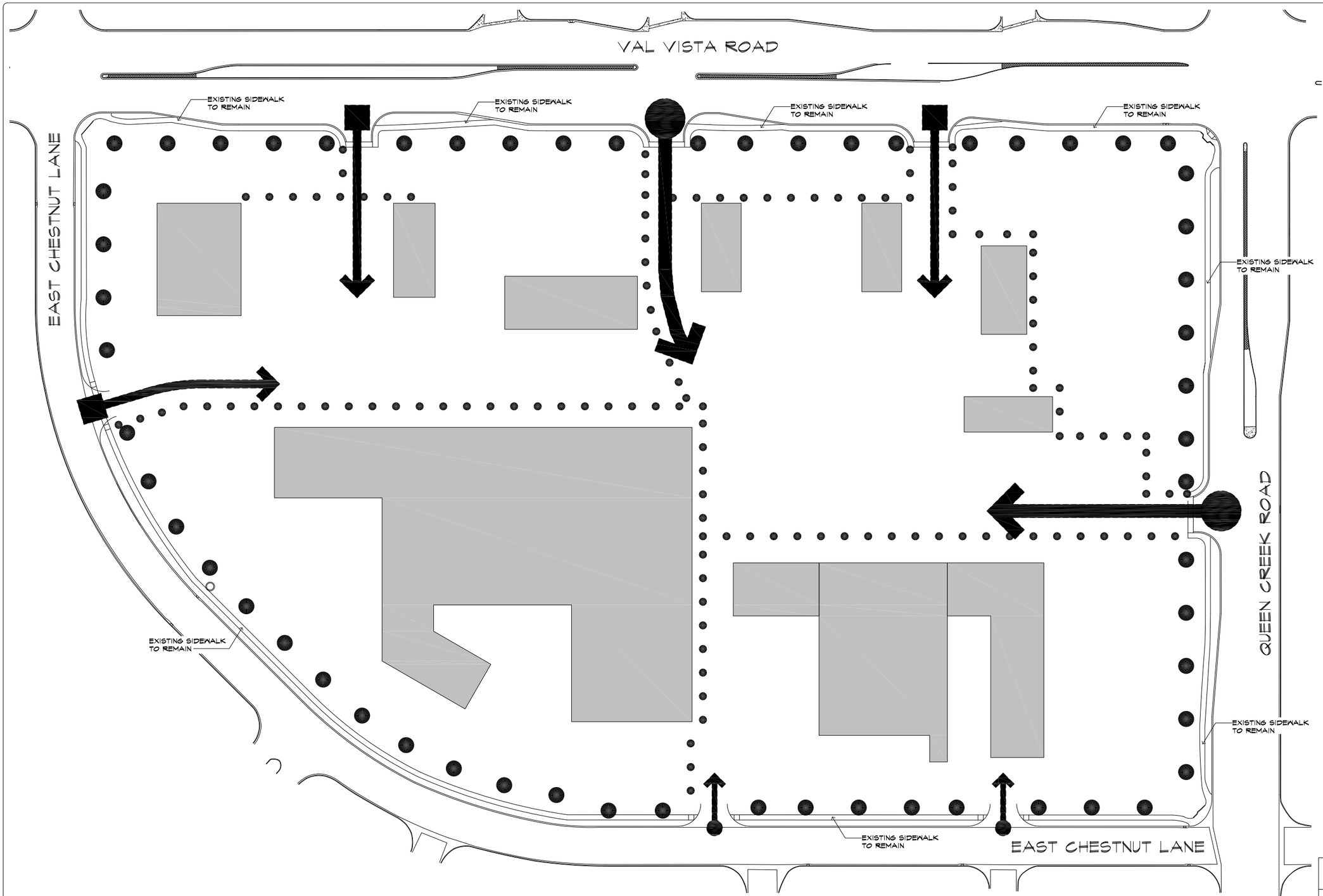
SITE DATA:

NET SITE AREA: (863,662 SF) 19.83 ACRES
GROSS SITE AREA: (1,085,912 SF) 24.93 ACRES

EXISTING ZONING: SHOPPING CENTER (SC) WITH PAD OVERLAY

PROPOSED ZONING: SC WITH PAD OVERLAY

PROJECT NO: 014-2396	ZONING EXHIBIT	OLSSON ASSOCIATES	EXHIBIT
DRAWN BY: ljs		7250 North 16th Street Suite 210 Phoenix, AZ 85020-5282 TEL 602.748.1000 FAX 602.748.1001	1
DATE: 4/1/15			



NET SITE AREA	(863,662 SQ. FT.)	19.83 ACRES
EXISTING ZONING:	SAN TAN ESTATES PLANNED AREA DEVELOPMENT SHOPPING CENTER	

LEGEND:

- POTENTIAL COMMERCIAL BUILDING
- PRIMARY ENTRANCE
- SECONDARY ENTRANCE
- MINOR ENTRANCE
- PERIMETER LANDSCAPING
- CONCEPTUAL PEDESTRIAN ROUTE

NOTE:
APPROXIMATE FINAL LOCATIONS TO BE DETERMINED DURING THE CONSTRUCTION DOCUMENT PHASE.

04.20.15

SCALE: 1" = 50'-0" (0' 5' 10' 20')

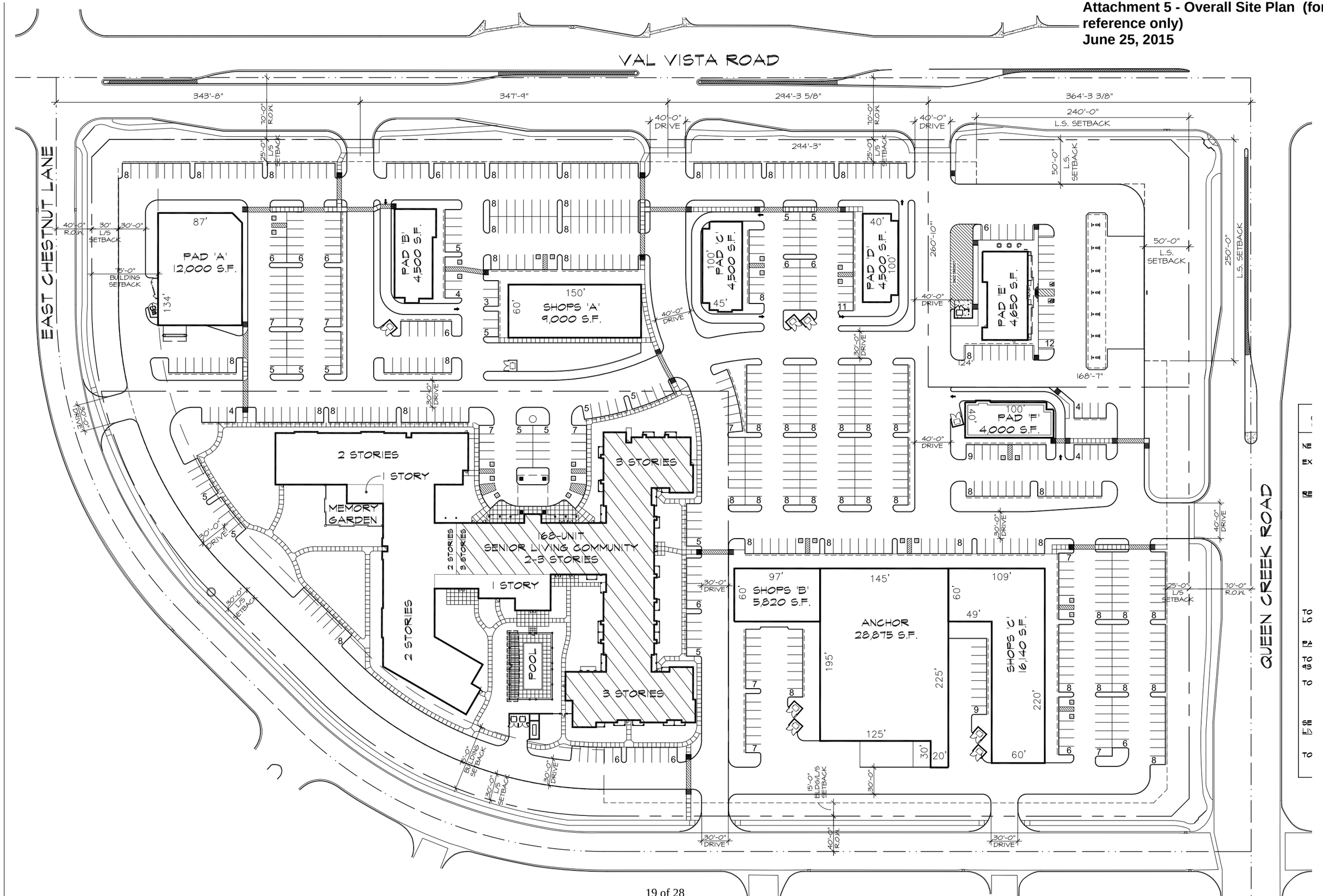
LEVEL4 STUDIO, L.L.C.
6868 N. 7TH AVE.
SUITE 209
PHOENIX I ARIZONA I 85013
L4S: #14424
+602.374.4920 T.
+602.374.4922 F.
WWW.L4STUDIO.COM

NORTH

CONCEPTUAL DEVELOPMENT PLAN
SEC VAL VISTA ROAD AND QUEEN CREEK ROAD
GILBERT, ARIZONA

DERITO LAND DEVELOPMENT, LLC
3200 EAST CAMELBACK ROAD, SUITE 175
PHOENIX, AZ 85018
PH: 602.834.8500 WWW.DERITO.COM

Z15-08: DeRito Spectrum
Attachment 5 - Overall Site Plan (for reference only)
June 25, 2015

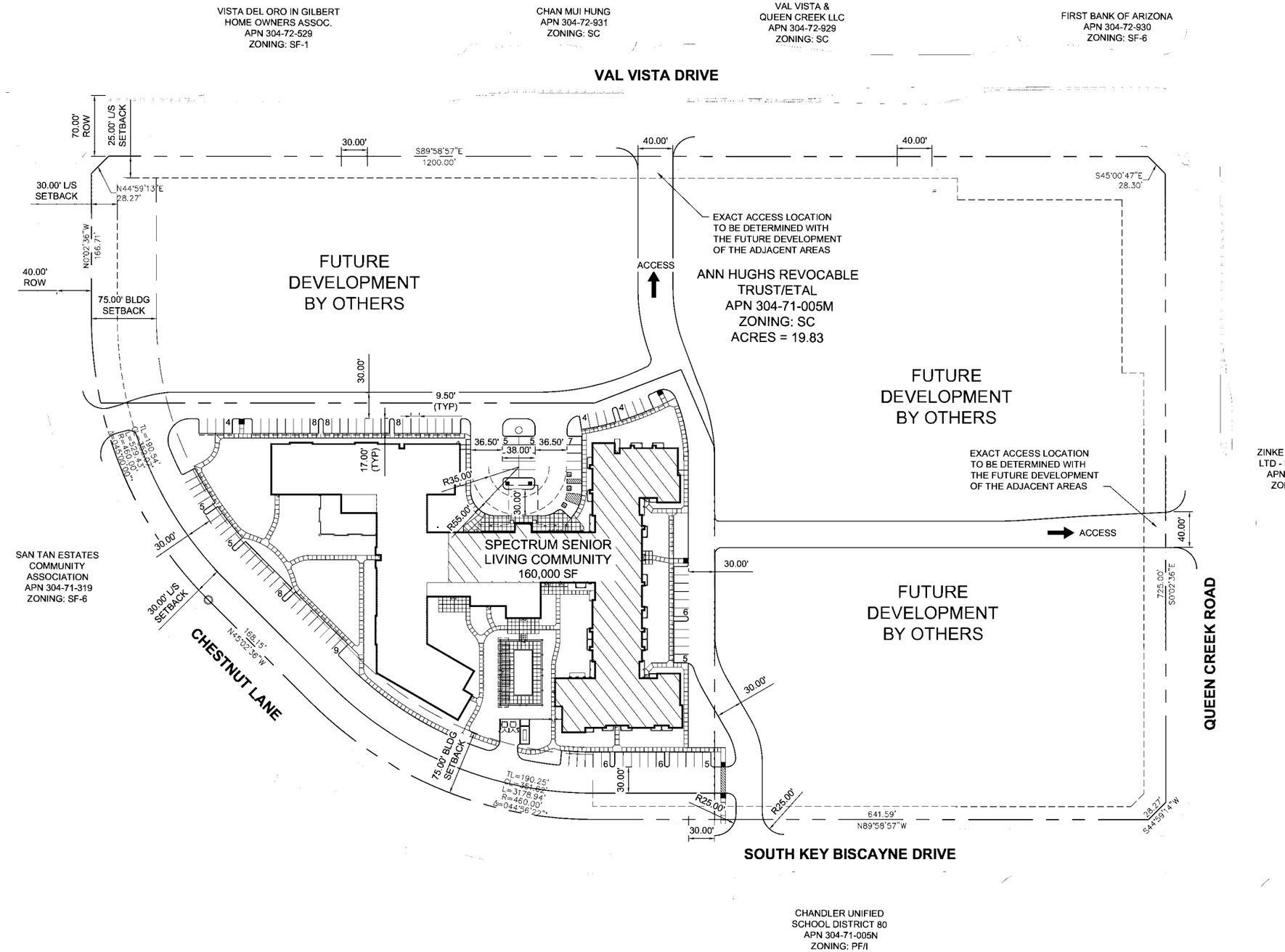


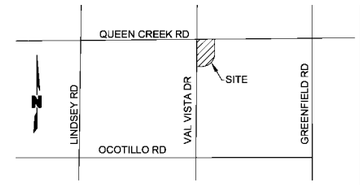
Z15-08: DeRito Spectrum
Attachment 6 - Congregate Care Site Plan
(for reference only)
June 25, 2015

PRELIMINARY SITE PLAN

SPECTRUM RETIREMENT DEVELOPMENT

A PORTION OF THE NORTHWEST QUARTER OF SECTION 16, TOWNSHIP 2 SOUTH, RANGE 6 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA





VICINITY MAP
NTS

DESIGN TEAM CONTACTS

OWNER/DEVELOPER
SPECTRUM RETIREMENT COMMUNITIES, LLC
200 SPRUCE STREET, SUITE 200
DENVER, CO 80230
PHONE: (303) 360-8812
FAX: (303) 360-8814
CONTACT: MIKE LONGFELLOW

ENGINEER
OLSSON ASSOCIATES
7250 NORTH 16TH STREET, SUITE 210
PHOENIX, ARIZONA 85020
PHONE: (602) 748-1000
FAX: (602) 748-1001
CONTACT: LEN SWARTZ

ARCHITECT
GASTINGER WALKER HARDEN+BEETRIPLETT BUCK
817 WYANDOTTE
KANSAS CITY, MO 64105
PHONE: (816) 569-0834
CONTACT: LAURA SCOTT

SITE DATA:

OVERALL NET SITE AREA ACRES	(863,662 SQ. FT.) 19.83
EXISTING ZONING:	SAN TAN ESTATES PLANNED AREA DEVELOPMENT/ SHOPPING CENTER (SC)
PROPOSED ZONING:	(SC WITH PAD OVERLAY)
SENIOR LIVING LAND AREA:	(261,487 SQ. FT.) 6.00 ACRES
BUILDING:	170 UNIT SENIOR LIVING
TOTAL BLDG S.F. (FLOORS 1-3):	160,000 SQ. FT
MAX BLDG HEIGHT:	35FT / 3 STORIES
MIN BLDG SETBACK:	75FT ALONG COLLECTOR ST
MIN LANDSCAPE SETBACK	30FT ALONG COLLECTOR ST
PARKING REQUIREMENTS:	
TOTAL REQUIRED: .5 PKG SPACE / UNIT (170)	85 SPACES
TOTAL PARKING PROVIDED:	108 SPACE

N
0' 30' 60' 120'
SCALE IN FEET

Call at least two full working days before you begin excavation.
ARIZONA 811 Arizona Blue Stake, Inc.
Dial 8-1-1 or 1-800-STAKE-IT (782-5348) In Maricopa County: (602) 263-1100

DWG: F:\Projects\014-2396_CMLD\Preliminary_Plans\014-2396-C1 PRELIM SITE.dwg USER: sscott
DATE: May 19, 2015 2:06pm XREFS: 014-2396-PBASE 014-2396-TBLK 014-2396-XBASE 014-2396-FBASE

OLSSC ASSOCIATES
7250 North 16th Street, Suite 210 Phoenix, AZ 85020-5262
TEL: 602.748.1000 FAX: 602.748.1001
www.olssonassociates.com

REV. NO.	DATE	REVISIONS DESCRIPTION

REVISIONS

PRELIMINARY SITE PLAN

SPECTRUM RETIREMENT DEVELOPMENT
SEC VAL VISTA ROAD AND QUEEN CREEK ROAD
GILBERT, ARIZONA
2015

drawn by: SS
designed by: FW
checked by: LS
project no.: 014-2396
date: 05.19.2015

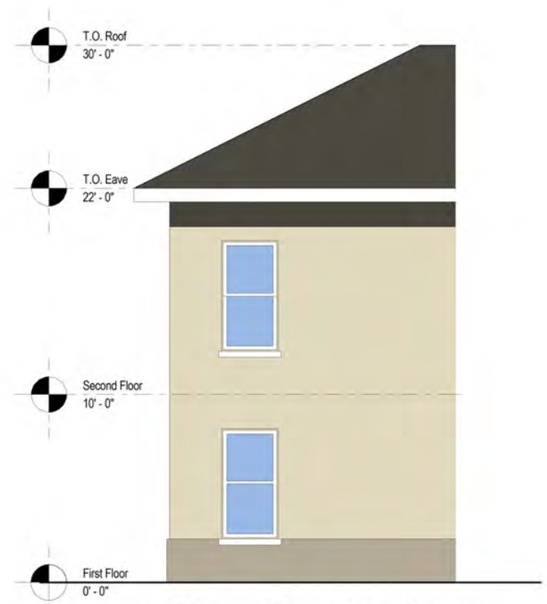
SHEET C1

Z15-08: DeRito Spectrum
Attachment 7 - Elevations (for reference only)
June 25, 2015

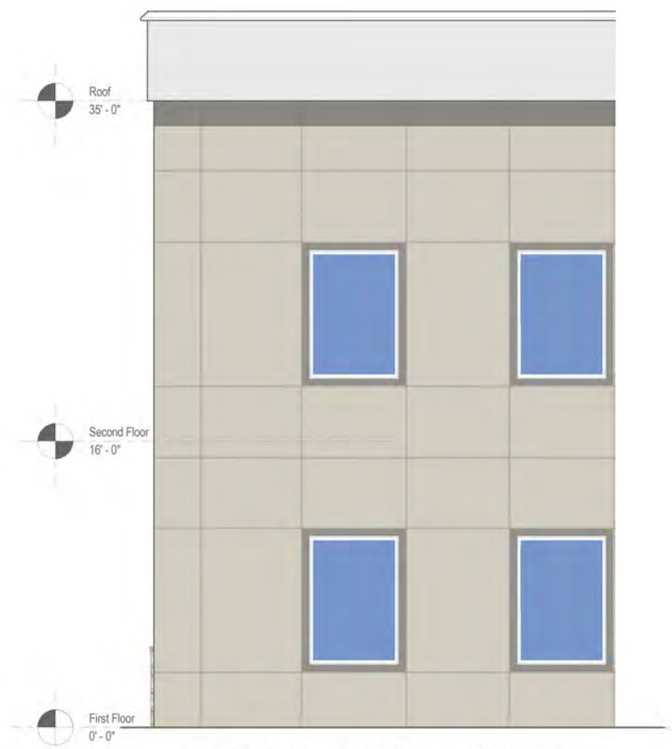
View in Front of Residential Privacy Wall

View from Residence Window

Enlarged West Elevation



Typical Two-Story Residence



Typical Commericial Building

Gilbert Senior Living
Spectrum Retirement

Elevation Comparison
9 February 2015

SPECTRUM RETIREMENT COMMUNITIES, LLC
OLSSON ASSOCIATES
Gastinger Walker Harden + BeeTriplett Buck
Architecture | Interior Design | Construction Management

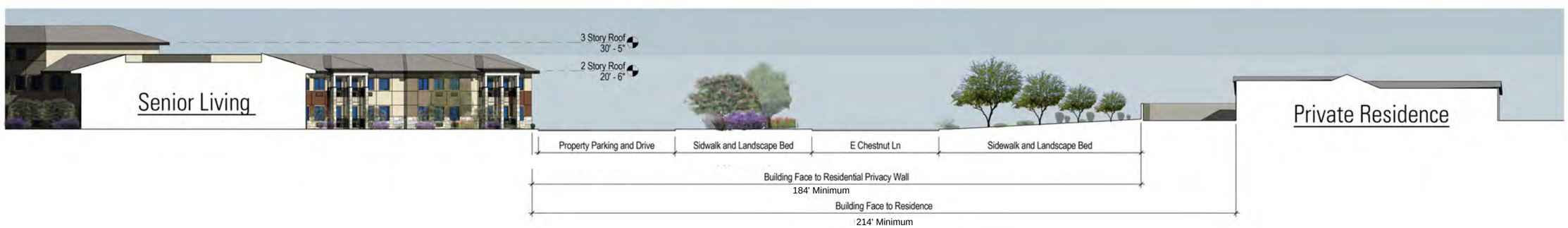
GIL 8

36' to Ridge

Site Plan

NORTH 0 40' 80' 160'

Typical Landscaping Along E Chestnut Ln



Site Section - Looking West 0 5' 10' 20'

Gilbert Senior Living
Spectrum Retirement

Site Section
9 February 2015

SPECTRUM RETIREMENT COMMUNITIES, LLC

OLSSON ASSOCIATES

Gastinger Walker Harden + BeeTriplett Buck
Architecture | Interior Design | Construction Management

GIL 5

TOWN OF GILBERT
PLANNING COMMISSION REGULAR MEETING
GILBERT MUNICIPAL CENTER, 50 E. CIVIC CENTER DRIVE, GILBERT ARIZONA
JUNE 3, 2015

COMMISSION PRESENT:	**Chairman Joshua Oehler** **Vice Chairman Kristofer Sippel** **Commissioner Brent Mutti** **Commissioner David Blaser** **Commissioner Carl Bloomfield** **Commissioner David Cavenee** **Commissioner Jennifer Wittmann**
COMMISSION ABSENT:	**None**
STAFF PRESENT:	**Planning Services Manager Linda Edwards** **Senior Planner Bob Caravona** **Senior Planner Amy Temes** **Planner Nichole McCarty** **Planner Nathan Williams**
ALSO PRESENT:	**Town Council Member Brigette Peterson** **Town Attorney Jack Vincent** **Recorder Margo Fry**

PLANNER	CASE	PAGE	VOTE
NATHAN WILLIAMS	S15-02	2	APPROVED
BOB CARAVONA	UP15-05	2	APPROVED
AMY TEMES	Z15-10	3	APPROVED
NICHOLE MCCARTY	GP15-01	3	CONTINUED
NICHOLE MCCARTY	Z15-02	3	CONTINUED
AMY TEMES	UP15-07	4	APPROVED
AMY TEMES	Z15-08	4	APPROVED
AMY TEMES	GP15-02	5	APPROVED
AMY TEMS	Z15-04	5	APPROVED

CALL TO ORDER:

Chairman Joshua Oehler called the meeting to order at 6:00 p.m.

ROLL CALL

Ms. Fry called roll and a quorum was determined to be present.

APPROVAL OF AGENDA

Chairman Oehler asked if there was a motion to approve the Agenda.

A motion was made by Vice Chairman Kristofer Sippel and seconded by Commissioner Jennifer Wittmann to approve the Agenda with the following changes: Move Items 9, GP15-01, 10, Z15-02, 11, UP15-07 to include staff report addendum, and item 12, Z15-08 to the Consent Agenda.

Motion carried 7– 0

COMMUNICATIONS FROM CITIZENS

At this time members of the public can comment on items not on the agenda. The Commission's response is limited to responding to criticism, asking staff to review a matter commented upon or asking that the matter be put on a future agenda.

Chairman Oehler asked if there was anyone present who wished to comment.

No one came forward.

PUBLIC HEARING (CONSENT)

Consent Public Hearing items will be heard at one Public Hearing. After the Consent Public Hearing, these items may be approved by a single motion. At the request of a member of the Commission or Staff, an item may be removed from the Consent Calendar and may be heard and acted upon separately. Other items on the agenda may be added to the Consent Public Hearing and approved under a single motion.

S15-02: LEGACY POINT AT SEVILLE: REQUEST TO APPROVE PRELIMINARY PLAT AND OPEN SPACE PLAN, FOR 61 HOME LOTS (LOTS 1-61) ON APPROXIMATELY 19.17 ACRES OF REAL PROPERTY GENERALLY LOCATED SOUTH OF THE SOUTHEAST CORNER OF CLUBHOUSE DRIVE AND CHANDLER HEIGHTS ROAD, IN THE SINGLE FAMILY RESIDENTIAL - 7 (SF-7) ZONING DISTRICT WITH A PLANNED AREA DEVELOPMENT (PAD) OVERLAY ZONING DISTRICT.

Move to approve the findings and S15-02, Legacy Point at Seville, approximately 19.17 acres consisting of 61 single family lots, generally located south of the southeast corner of Val Vista Drive and Riggs Road zoned Single Family – 10 (SF-10) with a Planned Area Development (PAD) overlay, subject to the following conditions:

1. The Final Plat for S15-02, Legacy Point at Seville shall be contingent upon and in substantial conformance with Exhibits 3, Development Plan and 4, Preliminary Plat approved by the Planning Commission at the June 3, 2015 public hearing and Exhibit 5, the Open Space Plan to be approved administratively by Gilbert Staff.

UP15-05: TRUWEST CREDIT UNION: A CONDITIONAL USE PERMITTO ALLOW A BANK, ON APPROXIMATELY 1.38 ACRES OF REALPROPERTY LOCATED AT 64 E. PECOS ROAD, EAST OF THENORTHEAST CORNER OF E. PECOS ROAD AND S. GILBERT ROAD, IN THE NEIGHBORHOOD COMMERCIAL (NC) ZONING DISTRICTWITH A PLANNED AREA DEVELOPMENT OVERLAY PAD).

Move to make the findings of fact and approve UP15-05 TruWest Credit Union: A request for a Conditional Use Permit to allow a bank in the Neighborhood Commercial (NC) zoning district with a Planned Development Overlay on 1.38 acres subject to conditions**:**

1. The Project shall be in substantial conformance with the site plan, landscape plan and elevations/ details shown on Exhibits 5, 6 and 7 noted under Attachments and Enclosures.

Z15-10: COMMONS AT THE SQUARE: REQUEST TO AMEND ORDINANCE NOS. 427, 617, 725, 1287, 1689, 1708 AND 2430 TO AMEND THE CONDITIONS OF DEVELOPMENT WITHIN THE SETTLER'S POINT PLANNED AREA DEVELOPMENT (PAD) FOR APPROXIMATELY 14.4 ACRES OF REAL PROPERTY GENERALLY LOCATED AT CIVIC CENTER DRIVE WEST OF GILBERT ROAD, CONSISTING OF APPROXIMATELY 14.4 ACRES OF MULTI-FAMILY / MEDIUM (MF/M) ZONING DISTRICT WITH A PLANNED AREA DEVELOPMENT OVERLAY.

For the following reasons: the development proposal conforms to the intent of the General Plan and can be appropriately coordinated with existing and planned development of the surrounding areas, and all required public notice and meetings have been held, the Planning Commission moves to recommend approval to the Town Council for Z15-10 rezoning of approximately 14.4 acres of real property within Settler's Point Planned Area Development (PAD) and generally located at the northwest corner of Gilbert Road and Civic Center Drive from approximately 14.4 acres of Multi Family / Medium (MF/M) with a Planned Area Development (PAD) overlay zoning district to approximately 14.4 acres of Multi Family / Medium (MF/M) with a Planned Area Development (PAD) overlay zoning district, subject to the following conditions:

1. **Tract C as shown in MCR Book 565 Page 02 is currently owned by the Gilbert Town Square Property Owners Association and reserved for drainage and a retention; therefore, the location of Buildings Types 6 and 7 along the Consolidated Canal on the Proposed Development Plan, Attachment 7, may need to be modified / relocated if Tract C cannot be released for development, as approved by the Gilbert Town Square Property Owners Association and the Town Engineer.**

	Proposed Modified Development Standards (IN CAPS)
Maximum Height	46'(ENTITLED) **3-STORY**
Access	**USE OF COMMERCIALLY ZONED PROPERTY TO PROVIDE PRIMARY VEHICULAR ACCESS TO A RESIDENTIAL USE IS PERMITTED**.

GP15-01: COPPER LANDING: REQUEST FOR MINOR GENERAL PLAN AMENDMENT TO CHANGE THE LAND USE CLASSIFICATION OF APPROXIMATELY 14.3 ACRES OF REAL PROPERTY GENERALLY LOCATED SOUTHEAST OF THE SOUTHEAST CORNER OF GUADALUPE AND MCQUEEN ROADS FROM COMMUNITY COMMERICAL TO RESIDENTIAL > 5-8 DU/AC LAND USE CLASSIFICATION.
Staff is requesting continuance to 7-1-15.

Z15-02: COPPER LANDING: REQUEST TO REZONE APPROXIMATELY 14.3 ACRES OF REAL PROPERTY GENERALLY LOCATED SOUTHEAST OF THE SOUTHEAST CORNER OF GUADALUPE AND MCQUEEN ROADS FROM COMMUNITY COMMERCIAL (CC) TO SINGLE FAMILY DETACHED (SF-D) ZONING DISTRICT WITH A PLANNED AREA DEVELOPMENT OVERLAY.
Staff is requesting continuance to 7-1-15.

UP15-07: DERITO SPECTRUM, A CONDITIONAL USE PERMIT TO ALLOW A CONGREGATE CARE FACILITY WITHIN THE SHOPPING CENTER ZONINGDISTRICT WITH APPROXIMATELY 24.93 ACRES OF REAL PROPERTY, LOCATED AT THE SOUTHEAST CORNER OR VAL VISTA DRIVE AND QUEEN CREEK ROAD, IN SHOPPING CENTER (SC) ZONING DISTRICT WITH A PLANNED AREA DEVELOPMENT OVERLAY.

Move to make the findings of fact and approve UP15-07 DeRito Spectrum, a Conditional Use Permit to allow a congregate care facility on 6 acres of 24.93 acres of property located at the southeast corner of Val Vista Drive and Queen Creek Roads in Shopping Center (SC) zoning district with a Planned Area Development overlay, subject to conditions**:**

1. The Project shall be in substantial conformance with the site plan under Attachment ~~#4~~**#5.**

2. The Use Permit approval is contingent upon the zoning approval at the June 25, 2015 Town Council hearing.

Z15-08: DERITO SPECTRUM, REQUEST TO AMEND ORDINANCE NOS. 1403, 1629 AND 2321 REZONING APPROXIMATELY 24.93 ACRES OF REAL PROPERTY WITHIN THE SAN TAN ESTATES PLANNED AREA DEVELOPMENT (PAD), GENERALLY LOCATED AT THE SOUTHEAST CORNER OF VAL VISTA DRIVE AND QUEEN CREEK ROAD FROM APPROXIMATELY 24.93 ACRES OF SHOPPING CENTER (SC) WITH A PLANNED AREA DEVELOPMENT OVERLAY ZONING DISTRICT TO APPROXIMATELY 24.93 ACRES OF SHOPPING CENTER (SC) WITH A PLANNED AREA DEVELOPMENT OVERLAY ZONING DISTRICT.

For the following reasons: the development proposal conforms to the intent of the General Plan and can be appropriately coordinated with existing and planned development of the surrounding areas, and all required public notice and meetings have been held, the Planning Commission moves to recommend approval to the Town Council for Z15-08 rezoning of approximately 24.93 acres of real property within San Tan Estates Planned Area Development (PAD) and generally located at the southwest corner of Val Vista Drive and Queen Creek Road from approximately 24.93 acres of Shopping Center (SC) with a Planned Area Development (PAD) overlay zoning district to approximately 24.93 acres of Shopping Center (SC) with a Planned Area Development (PAD) overlay zoning district subject to the following conditions:

a. At the written request of Gilbert, Developer shall dedicate all necessary easements for the roadway improvements, including easements for drainage and retention and temporary construction easements. Failure to dedicate said easements within thirty (30) days after the date of Gilbert's written request may result in the reversion of the zoning of the Property to the prior zoning classification.

b. Developer shall create a Property Owner's Association (POA) for the ownership, maintenance, landscaping, improvements and preservation of all common areas and open space areas, and landscaping within the rights-of-way.

c. Developer shall record easements to be owned by the POA for pedestrian, bicycle, multi-use or trail system purposes as determined by the final plat, at the time of final plat recordation, or earlier if required by the Town Engineer. In recognition of the modifications to the underlying zoning regulations set forth herein, such easements shall be open to public access and use.

d. Prior to final plat approval, Developer shall pay for its proportional share of water and sewer mains benefitting the Property, as required by the Town Engineer.

e. The Project shall be developed in conformance with Gilbert's zoning requirements for the zoning districts and all development shall comply with the Town of Gilbert Land Development Code, except as modified by the following:

Site Development	**Proposed PAD Modifications (SHOWN IN CAPS)**
Maximum Size of Use or User	**160,000 SQFT**
Maximum Building Height	35'/**3-STORY**
Separation Between Buildings 3 - story	**20'**

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Amy Temes, Senior Planner, (480) 503-6729

MEETING DATE: June 25, 2015

SUBJECT: Z15-10 - Commons at the Square - North of Civic Center Drive and West of Gilbert Road

STRATEGIC INITIATIVE: Community Livability

RECOMMENDED MOTION

Move to make the Findings of Fact and adopt the attached ordinance approving Z15-10.

BACKGROUND/DISCUSSION

Applicant/Owner

Company:	Burch & Cracchiolo	Company:	TAFC Illinois, LLC c/o Epoch Prop.
Name:	Ed Bull	Name:	Megan Wanek
Address:	702 E. Osborn Rd #200 Phoenix, AZ 85014	Address:	359 Carolina Ave, # 200 Winter Park, FL 32789
Phone:	602-234-9913	Phone:	407-644-9055 x150
Email:	ebull@bcattorneys.com	Email:	megan@epochpropoerties.com

Overview

The subject site is currently zoned Multi-Family/Medium (MF/M) with a Planned Area Development (PAD) Overlay. The project site is located within the Gilbert Town Square (GTS) PAD; a partially developed 66 acre mixed-use center having retail, restaurants, office and entertainment uses. The PAD approved in Ordinance No. 617 originally contained a 6 acre hotel site, which was removed with subsequent amendments. In 2013, the PAD was amended to allow for 14.4 acres of Multi-Family / Medium (MF/M) residential within the project. The project is currently entitled to 307 multi-family units at 46' / 4-story and approved for shared parking per AUP 13-07.

The applicant is maintaining the existing MF/M zoning. The primary reason for the rezoning is to amend the development plan, to reduce the height from 4-stories to 3-stories, and to permit the use of commercially zoned property as primary vehicular access to a residential use.

History

Date	***Action***
February 28, 1989	The Town Council adopted Ordinance No. 617 in rezoning case Z86-38 to amend the development plan of 160 acres of Settler's Point, and also rezoned 71 acres west of and adjacent to the Settler's Point PAD.
July 11, 2000	Town Council adopted Ordinance No. 1287 in rezoning case Z00-14 to amend zoning conditions related to signage in the Gilbert Town Square PAD.
March 8, 2006	Town Council approved case Z06-43(Ordinance No. 1708) amending a portion of the development plan of the Gilbert Town Square PAD.
April 3, 2013	The Planning Commission recommended approval of GP12-08 and Z12-22.
June 6, 2013	Town Council approved GP12-08 (Resolution No. 3168) and Z12-22 (Ordinance No. 2430) amending the land use classification and zoning of 14.4 acres within Gilbert Town Square from Shopping Center to Multi-Family / Medium.
July 3, 2013	AUP13-07 approval by Staff for shared parking
May 6, 2015	Planning Commission reviewed Z15-10 at study session.
June 3, 2015	Planning Commission recommend approved of UP15-07 contingent upon rezoning approval at the June 25, 2015 Town Council Public Meeting.
June 3, 2015	Planning Commission recommend approval of Z15-10 with an additional engineering condition with a vote of 7-0.

Surrounding Land Use & Zoning Designations:

	Existing Land Use Classification	**Existing Zoning**
North	Utility/Transportation Corridor, then Residential >3.5-5 DU/Acre	Public Facility/ Institutional, then Single Family-7 (SF-7)
South	Shopping Center	Shopping Center (SC) PAD
East	Shopping Center	Shopping Center (SC) PAD
West	Utility/Transportation Corridor, then Residential >3.5-5	Public Facility/ Institutional, then Single Family-7 (SF-7)
Site	Residential >14-25 DU/Acre	Multi-Family / Medium (MF/M) PAD

General Plan
The proposed project is in conformance with the General Plan land use category of Residential >14-25 DU/Acre. No amendment is necessary.

Rezoning
The property is zoned MF/M with a PAD overlay (Ordinance No. 2430). The applicant is seeking approval of an amendment to the development plan and to stipulate a **reduction** in maximum number of stories and allow for access into the site through a commercial property.

PAD Site Development Standards	**LDC**	**Ordinance No. 2430**	**Proposed Modifications (IN BOLD AND CAPS)**
Maximum Units	360 units	307 units	307 units (ENTITLED)
Maximum Height	40’	46’	46’(ENTITLED) **3-STORY**
Front Building Setback	30’	20’	20’
Front Landscape Area	20’	12’	12’
Side Building Setback	20’	20’	20’
Side Landscape Area	20’	20’	20’
Rear Building Setback	20’	20’	20’
Rear Landscape Area	20’	20’	20’
Minimum Open Space	40% of net	34% of net	34% of net
Accessory Structure	10’	10’	10’
Access	Use of commercially zoned property to provide primary vehicular access to a residential use is prohibited.	Approved but not expressly written	**USE OF COMMERCIALLY ZONED PROPERTY TO PROVIDE PRIMARY VEHICULAR ACCESS TO A RESIDENTIAL USE IS PERMITTED**.

Development Plan
The 2013 rezoning to allow Multi-Family within Gilbert Town Center was supported by the business owners within the commercial center. The zoning category is not being amended. The daily infusion of residents and visitors will help to revitalize the center, promote new development and create a true horizontal mixed use environment that promotes live, work and play. The tenants of the shopping center have expressed their support.

The Development Plan is being amended to reflect a change in building design, which results in reduced footprints size, with more buildings. The building redesign also allows the applicant to decrease the number of stories from 4 to 3. The applicant has chosen to maintain the 46’ height

allowance to have further building design flexibility. The project was previously approved as gated and is still depicted as such. All parking is accounted for on-site.

The Administrative Use Permit (AUP13-07) permits shared parking within the main commercial center parking lot is still valid. All required parking is accounted for on-site. A few diagonal visitor spaces along the main access drive may be utilized for the Townhouse style product. The townhome garages directly access the unit living space. All garage access is interior to the complex and will not be located along the main entry drive. The stacked flat apartment buildings are three stories with garages that do not necessarily have direct unit access. The units are single level with exterior walk-up to front doors that are interior to the project. The carriage units apartments are two story buildings with direct garage access to single level living spaces above. The carriage units are predominately located along the canal.

It is the objective of this project to have integrated mixed use so that the residents walk to the businesses within the center. The project is an integrated gated complex with unobtrusive cohesive fencing designed to blend with the architectural environment and provided thoughtful pedestrian access points. Details of the architecture, landscape and fencing is not required for approval of this zoning amendment. The project landscape along the canal will be developed as part of the design review providing shade, security lighting and pedestrian connectivity via gates.

Number of Stories

The previously approved development included 2, 3 and 4-story buildings up to 46' in height. On the existing approved development plan, the 2 and 3 story buildings were approximately 90' x 208' (14,500 sq ft). The 2 story building was approximately 133' to the nearest residential lot. The closest 3 story building was approximately 215' from the nearest residential lot. The closest 4 story building was typically 94 x 204' straight (19,200 sq ft) or 413' in an L shape (38,800 sq ft) and was located 310' from the nearest residential property across the canal.

The new Development Plan's 2 story carriage units are approximately 26' x 54' (1,400 sq ft) and are located 130' from the closest residential property across the canal. The closest 3 story buildings to the residential lots are located behind the carriage units are 77' x 133' (10,200 sq ft) and 220' from the nearest residential property across the canal.

The distances from the 2 and 3 story apartment buildings to the residential lot lines are similar to what was previously approved for 2 and 3 story buildings. Staff will note that there are more buildings proposed, but they are significantly smaller than the previously approved footprints.

Commons at the Square has offered to limit building height to 3 stories. This proposed modification is more restrictive than what was previously approved**.**

Property Access
As with the approved Development Plan, primary access to and from the Commons at the Square will be provided by Civic Center Drive. Civic Center Drive is a private drive and is zoned Shopping Center (SC). Civic Center Drive functions as a primary and iconic street within Gilbert Town Square and provides the public direct access to/from Gilbert Road and the entire Gilbert Town Square development, including the proposed Commons at the Square site. Civic Center Drive is the functional equivalent to a Town dedicated collector street. Staff has requested the minor modification in order to clarify that primary access for residential will be through a commercial property as part of this mixed use development.

PUBLIC NOTIFICATION AND INPUT

A notice of public hearing was published in a newspaper of general circulation in the Town, and an official notice was posted in all the required public places within the Town.

Staff has received no comment since the neighborhood meeting. At the neighborhood meeting was held March 25, 2014, the public made the following comments:

- Would like to see the entire project built out.
- The owners of businesses who attended the meetings were very excited to get built-in bodies with a mixed use development into the area.
- Why isn't the triangle to the north of the development included? (it is under different ownership and not available for purchase)
- Is the project a rental community? (yes)
- Will there be patios or balconies on the units facing the canal? (there will most likely not be patios because the living space is up above and not on the first floor as previously designed.)
- How can the neighbors continue to find out information regarding the project? (The applicant has agreed to start a website once they get up and going so that they can stay in touch with the neighbors as to the construction progress.)

School District

The School District had no comments

PROPOSITION 207

An agreement to "Waive Claims for Diminution in Value" Pursuant to A.R.S. § 12-1134 was signed by the landowners of the subject site, in conformance with Section 5.201 of the Town of Gilbert Land Development Code. This waiver is located in the case file.

LEGAL REVIEW

The ordinance was reviewed by Jack Vincent.

FINANCIAL IMPACT

There are no monies owed or buy-ins for this project.

WATER IMPACT

The amendments to the development standards do not have any impact of water usage.

STAFF RECOMMENDATION

Make the Findings of Fact and adopt the attached ordinance approving for Z15-10, Commons at the Square, subject to the condition in the draft ordinance.

Respectfully submitted,
Amy Temes
Senior Planner

Attachments:

1. Notice of Public Hearing
2. Aerial Photo
3. Ordinance No.2430 Development Plan
4. Ordinance No.2430 Development Plan Enlargement
5. Finding of Fact
6. Ordinance
   Exhibit 1 – Legal Description
   Exhibit 2 - Zoning Map
   Exhibit 3 - Development Plan
7. Site Plan Overlay
8. View Analysis
9. Minutes from a Planning Commission June 3, 2015

Approved By	Approval Date
Catherine Lorbeer	6/11/2015 7:03 AM
Kyle Mieras	6/11/2015 10:17 AM
Jack Vincent	6/15/2015 8:56 AM
Cris Parisot	6/15/2015 8:50 AM

Notice of Public Hearing

PLANNING COMMISSION DATE: ***Wednesday, June 3, 2015* TIME: 6:00 PM***
TOWN COUNCIL DATE: ***Thursday, June 25, 2015* TIME: 7:00 PM***

LOCATION: Gilbert Municipal Center
Council Chambers
50 E. Civic Center Drive
Gilbert, Arizona 85296

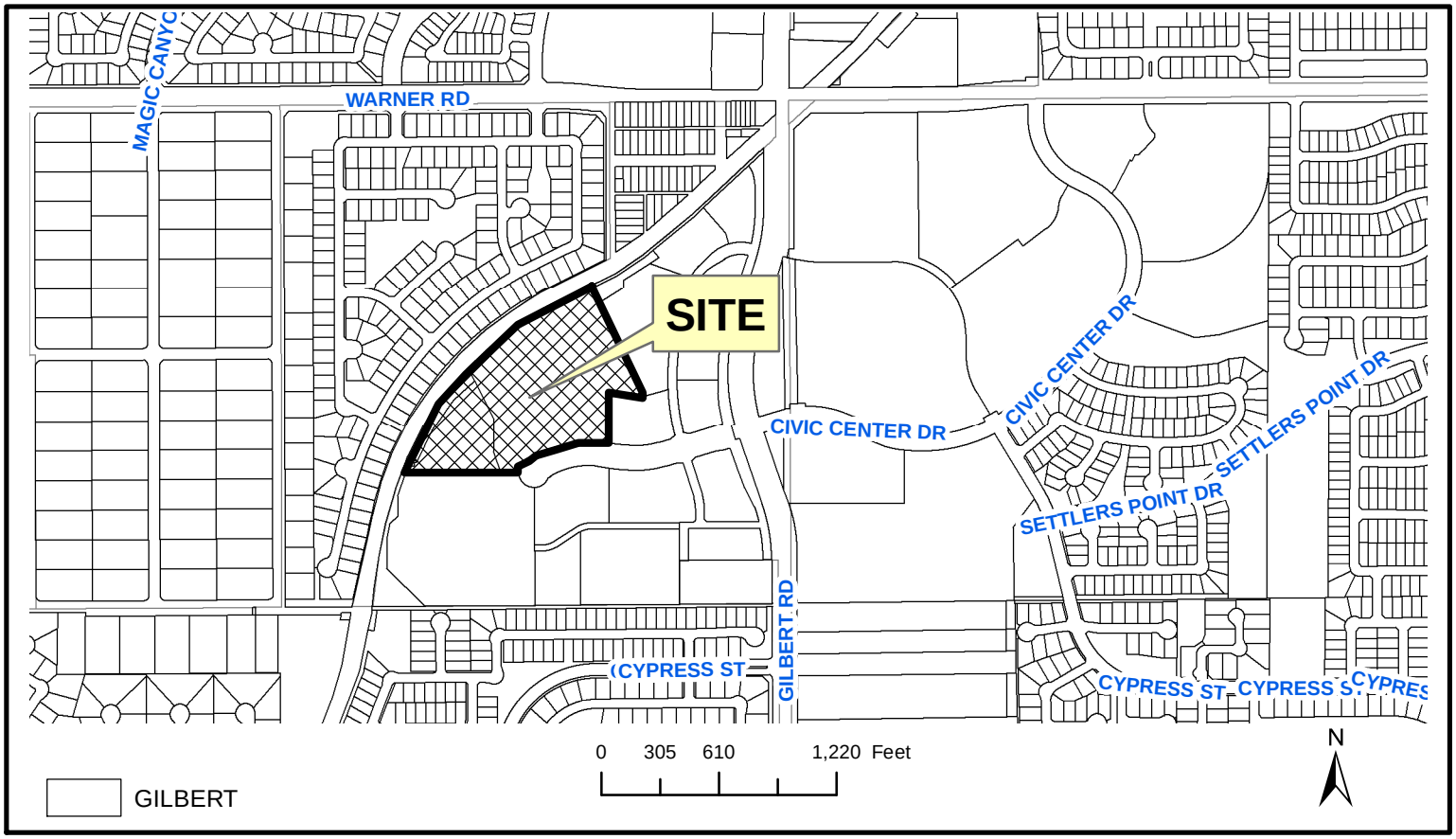
*** Call Planning Department to verify date and time: (480) 503-6729**

REQUESTED ACTION:

Z15-10, Commons at the Square: Request to amend Ordinance Nos. 427, 617, 725, 1287, 1689, 1708 and 2430 to amend the conditions of development within the Settler's Point Planned Area Development (PAD) for approximately 14.4 acres of real property generally located north of Civic Center Drive and west of Gilbert Road, consisting of approximately 14.4 acres of Multi-Family / Medium (MF/M) zoning district with a Planned Area Development overlay zoning district as shown on the exhibit (map), which is available for viewing in the Planning and Development Services Office. The request is to amend the conditions of development as follows: decrease allowed height from four-story to three-story with maximum height of 46', and allow access through commercially zoned property. The effect this amendment is to disallow four-story development and ensure residential access through commercially zoned property.

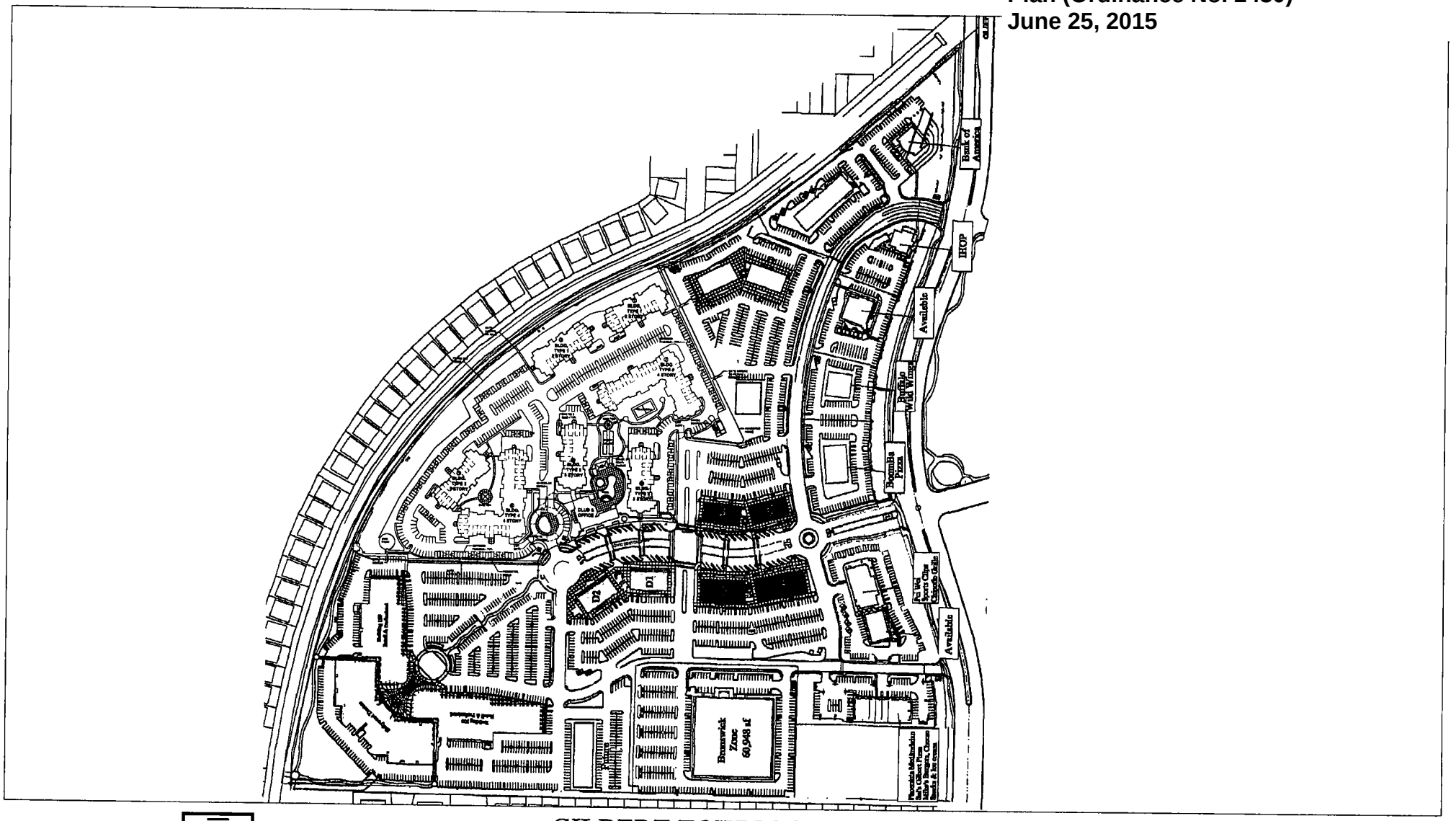
* The application is available for public review at the Town of Gilbert Development Services division Monday - Thursday 7 a.m. - 6 p.m. Staff reports are available the Monday prior to the meeting at http://www.gilbertaz.gov/departments/development-services/planning-development/planning-commission

SITE LOCATION:



APPLICANT: Burch & Cracchiolo, P.A. ***TELEPHONE: (602) 234-9913***
CONTACT: Ed Bull ***E-MAIL: ebull@bcattorneys.com***
ADDRESS: 702 E Osborn Road, Suite 200
Phoenix, AZ 85014

Z15-10: Commons at the Square
Attachment 2 -Aerial
June 25, 2015



GILBERT TOWN SQUARE
PROPOSED DEVELOPMENT PLAN

Town of Gilbert, AZ
for
MRED GTS, LLC
23 January 2013 Proj.No:12-027

ENTASIS DESIGN ARCHITECTS
5380 Village Dr., Ste. #203
Concord, NC 28027
(704) 786-2328[p]
(704) 786-2332 [f]

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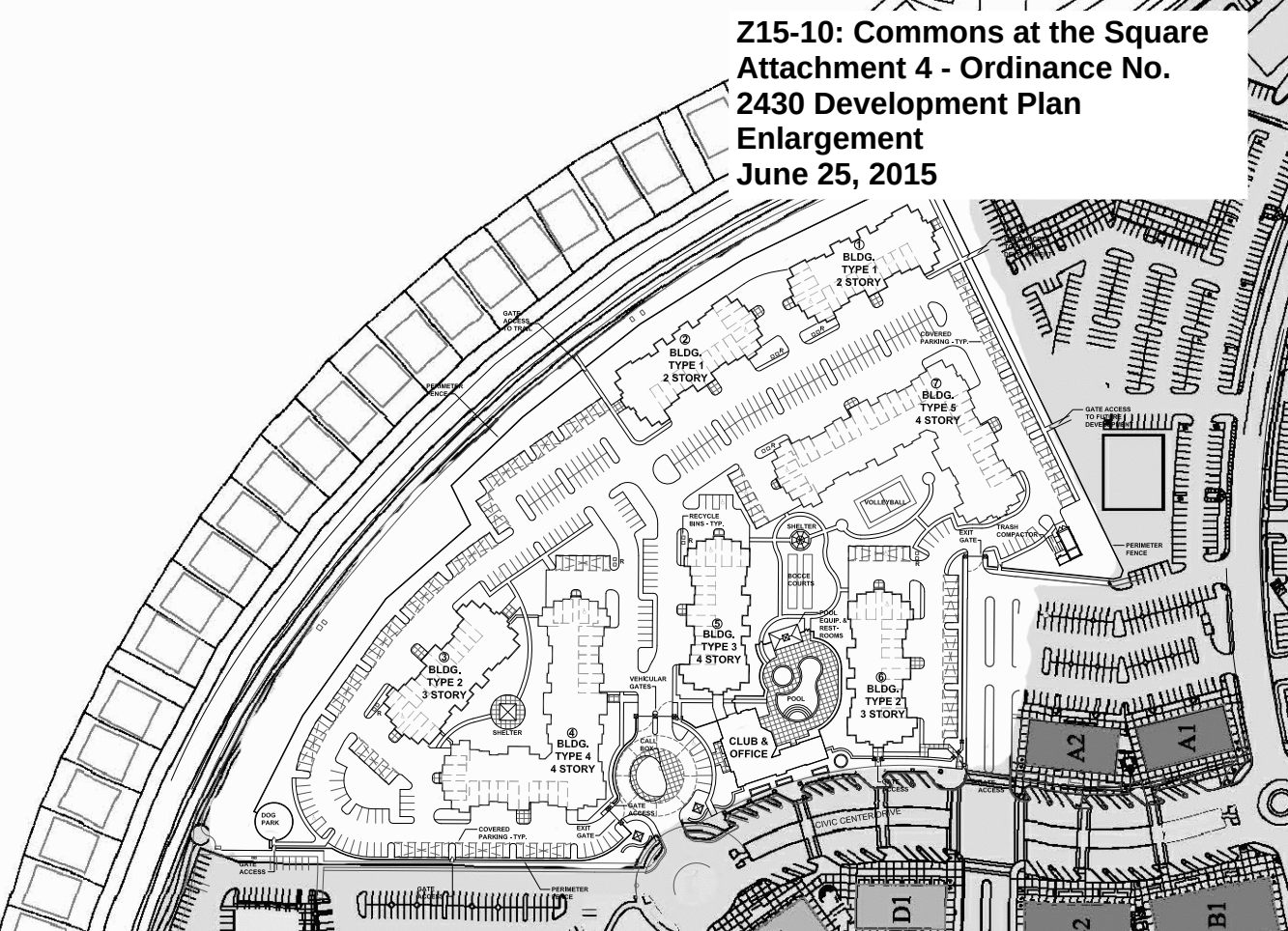
Case #: GP12-08 / Z12-22
Attachment 4: Zoning Ordinance Exhibit 3 Development Plan
June 6, 2013

Z15-10: Commons at the Square
Attachment 4 - Ordinance No. 2430 Development Plan Enlargement
June 25, 2015



FINDING OF FACT
Z15-08 COMMONS AT THE SQUARE

1. The proposed zoning amendment conforms to the General Plan and the Planned Area Development overlay zoning district.

2. All required public notice has been conducted in accordance with applicable state and local laws.

3. All required public meetings and hearings have been held in accordance with applicable state and local laws.

ORDINANCE NO. _____

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AMENDING THE OFFICIAL ZONING MAP OF THE TOWN OF GILBERT, ARIZONA, BY AMENDING ORDINANCE NOS. 427, 617, 725, 1287, 1689, 1708 AND 2430 PERTAINING TO THE SETTLER'S POINT PLANNED AREA DEVELOPMENT (PAD) IN ZONING CASE Z15-10 BY AMENDING CONDITIONS OF DEVELOPMENT FOR APPROXIMATELY 14.4 ACRES OF REAL PROPERTY GENERALLY LOCATED NORTH OF CIVIC CENTER DRIVE AND WEST OF GILBER ROAD IN ZONING CAS Z15-10, AS FOLLOWS: DECREASING ALLOWED HEIGHT FROM FOUR-STORY TO THREE-STORY WITH A MAXIMUM HEIGHT OF 46', AND TO ALLOW ACCESS THROUGH COMMERCIALLY ZONED PROPERTY; AND RESTATING AND INCORPORATING THE PROVISIONS OF ORDINANCE(S) NOS. 427, 617, 725, 1287, 1689, 1708 AND 2340 HEREIN; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR NON-SEVERABILITY; AND PROVIDING FOR PENALTIES.

WHEREAS, by adoption of this Ordinance, the Town Council desires to amend conditions of development relating to the development of certain parcels within the Settler's Point Planned Area Development (PAD) pursuant to the Town of Gilbert Zoning Code requirements for a Planned Area Development to permit unique or mixed-use development; and

WHEREAS, the Town Council has determined that this amendment to the Official Zoning Map and the Planned Area Development conditions of development conforms with the Town of Gilbert General Plan, any applicable Specific Area Plan, neighborhood, or other plan, and any overlay zoning district; and

WHEREAS, all required public notice was provided and all required public meetings and hearings were held in accordance with applicable state and local laws; and

WHEREAS, the Settler's Point PAD was created by Ordinance Nos. 427, 617, 725, 1287, 1689, 1708 and 2430, pursuant to the provisions of the Town of Gilbert Unified Land Development Code, which was repealed February 1, 2005; and

WHEREAS, pursuant to the adoption of the Town of Gilbert Land Development Code and the Official Zoning Map, the underlying zoning classifications of the Settler's Point PAD were amended to Shopping Center (SC),; and

WHEREAS, that certain document entitled Exhibit 3: Amended Development Plan of the _Settler's Point Planned Area Development, dated June 25, 2015 is attached hereto and incorporated by this reference. attached hereto and incorporated by this reference.

NOW THEREFORE, BE IT ORDAINED by the Common Council of the Town of Gilbert, Arizona, as follows:

Section I. In General.

1. Ordinances Nos. 427, 617, 725, 1287, 1689, 1708 and 2340 relating to the Settler's PAD located north of Civic Center Drive and west of Gilbert Road, as described in the legal description, Exhibit 1, and as shown on the Zoning Exhibit (map) in Exhibit 2, both attached hereto and incorporated herein by this reference (the "Property"), are amended by changing the conditions of development as set forth in this ordinance.

2. Ordinances Nos. 427, 617, 725, 1287, 1689, 1708 and 2430 relating to the Settler's PAD are amended by amending Exhibit O, attached hereto and incorporated herein, and making that Exhibit part of the development Plan for the Settler's Point PAD, as set forth in or attached to Ordinance Nos. 427, 617, 725, 1287, 1689, 1708 and 2430, to read as follows:

EXHIBIT O: Amended Development Plan of the Settler's Point PAD, amending Commons at the Square Proposed Development Plan (Exhibit N to Ordinance No 1708), dated June 25, 2015.

3. All dedications, development requirements and development conditions set forth in Ordinance Nos. 427, 617, 725, 1287, 1689, 1708 and 2430 relating to the Settler's Point PAD are incorporated herein and shall remain in full force and effect except as by amending condition 30 adding new condition 31 to read as follows (additions shown in ALL CAPS, deletions shown in strikeout):

26. The zoning for the subject parcel shall be Multi-Family Medium Density (MF/M) with a Planned Area Development overlay zoning district as shown on the Zoning Exhibit Site Plan for the Gilbert Town Square Phase 1 Except as provided in Paragraph 1, above. Said project shall be developed in conformance with the Town's zoning requirements for said districts, except as modified by these Conditions, and the applicable conditions of the Ordinance Nos. 427, 617, 725, 1287, 1689, 1708 and 2430.

***

29. The maximum number of Multi-Family dwelling Units shall be three hundred seven (307).

30 The Multi-Family property shall be developed in conformance with Gilbert's zoning requirements for the Multi-Family/Medium zoning districts and all development shall comply with the Town of Gilbert Land Development Code, except as modified by the following:

Development Standard	**MF/M PAD**
MAXIMUM HEIGHT	46 ft. **3-STORY**
Minimum Perimeter	20 ft.

Building Setback - Front	
Minimum Perimeter Landscape area - Front	12 feet in depth
Minimum Common Open Space	34% of Net Site
ACCESS	**USE OF COMMERCIALLY ZONED PROPERTY TO PROVIDE PRIMARY VEHICULAR ACCESS TO A RESIDENTIAL USE IS PERMITTED.**

31. **APPROXIMATELY 1.54 ACRES OF TRACT "C" HAS BEEN PRIVATELY TRANSFERRED FROM THE POA TO THE DEVELOPER, VIA AN AMENDMENT TO THE CC&RS SIGNED IN 2006. REGARDLESS OF THIS LAND REASSIGNMENT, THE DEVELOPER MUST COMPLETE A COMPREHENSIVE DRAINAGE REPORT UPDATE TO ENSURE THE NECESSARY RETENTION ORIGINALLY PROVIDED BY "TRACT C" IS STILL BEING PROVIDED TO EVERY AFFECTED GILBERT TOWNE SQUARE PROPERTY OWNER (INCLUDING THE POA). A COMPREHENSIVE DRAINAGE REPORT UPDATE, FULLY IDENTIFYING THE DRAINAGE / RETENTION REQUIREMENTS FOR THE AFFECTED PARCELS, MUST BE APPROVED BY THE TOWN ENGINEER PRIOR TO RECORDATION OF THE FINAL PLAT FOR THE PROJECT.**

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 Non-Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, then this entire ordinance is invalid and shall have no force or effect.

Section III. Providing for Penalties.

Any person found responsible for violating this Ordinance shall be subject to the civil sanctions and habitual offender provisions set forth in Sections 5.1205 and 5.1206 of the Gilbert Land Development Code. Each day a violation continues, or the failure to perform any act or duty required by this zoning ordinance, the Zoning Code or by the Town of Gilbert Municipal Court continues, shall constitute a separate civil offense.

PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this _____ day of _____, 20__, by the following vote:

AYES: _____

NAYES: _____ ABSENT: _____

EXCUSED: _____ ABSTAINED: _____

APPROVED this ____ day of _____, 20__.

_____
John W. Lewis, Mayor

ATTEST:

_____
Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

_____
L. Michael Hamblin
Town Attorney

By _____

I, CATHERINE A. TEMPLETON, 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 _____, 20__, WAS POSTED IN FOUR PLACES ON THE __ DAY OF _____, 20__.

_____
Catherine A. Templeton, Town Clerk

The following exhibits are attached hereto and incorporated herein:
1. Legal Description
2. Zoning Exhibit (Map)
3. Exhibit O Amended Development Plan of the Settler's Point PAD dated June 25, 2015

EXHIBIT "A"
LEGAL DESCRIPTION
Page 1 of 4

PARCEL NO. 1:

A parcel of land being a part of Lot 6D of the Re-Plat of Lot 6C of "Gilbert Town Square Lot 6, Lot Split" as shown on Plat Book 811 at Page 22 with Recording No, 2006-0166978, records of Maricopa County, Arizona, and said parcel being a part of Tract C of the Final Plat for Gilbert Town Square as shown in Plat Book 565 at Page 02 with Recording No. 2001-0511756, records of Maricopa County, Arizona, situated in the Northeast one-quarter of Section 24, Township 1 South, Range 5 East, of the Gila and Salt River Meridian, Town of Gilbert, County of Maricopa, more particularly described as follows:

BEGINNING at the Northwest corner of Lot 6B of the Re-Plat of Lot 6C of "Gilbert Town Square Lot 6, Lot Split" as shown on Plat Book 670 at Page 41 with Recording No. 2004-0146110, records of Maricopa County, Arizona;

THENCE South 00 Degrees 26 Minutes 36 Seconds East, along the common boundary line of said Lot 6D and said Lot6B a distance of 254.39 feet to a point on the Northerly boundary line of Tract A as shown on said Final Plat of Gilbert Town Square, said course being the Basis of Bearing hereof;

THENCE departing said common boundary line of said Lot 6D and said Lot 6B and along said Northerly boundary of said Tract A the following four (4) courses,

1) THENCE North 82 Degrees 44 Minutes 21 Seconds West a distance of 38.49 feet to a point of tangent curve;

2) THENCE 341.26 feet along said tangent curve to the left concaving southerly having a radius of 514.00 feet, a central angle of 38 Degrees 02 Minutes 24 Seconds subtending chord bearing South 78 Degrees 14 Minutes 27 Seconds West and a chord distance of 335.02 feet to a point of tangency;

3) THENCE South 59 Degrees 13 Minutes 15 Seconds West a distance of 13.70 feet to a point of non-tangent curve;

J.G. ELLIS
LAND SURVEYING SERVICES, INC.
3238 NORTH 81ST PLACE
SCOTTSDALE, ARIZONA 85251
Phone 480-970-6265 Fax 480-970-6271
E-mail jgsurvey@aol.com

4) THENCE 134.79 feet along said non-tangent curve to the left concaving Southeast having a radius of 80.00 feet, a central angle of 96 Degrees 32 Minutes 21 Seconds subtending chord bearing of South 47 Degrees 49 Minutes 34 Seconds West a chord distance of 119.41 feet to the Northeast corner of Lot 5 of said Final Plat of Gilbert Town Square;

THENCE South 89 Degrees 33 Minutes 24 Seconds West along the boundary line common to said Lot 5 and said Lot 6D a distance of 94.07 feet;

THENCE North 18 Degrees 51 Minutes 23 Seconds West departing said common boundary line a distance of 110.40 feet;

THENCE North 01 Degrees 18 Minutes 37 Seconds East a distance of 166.45 feet;

THENCE North 11 Degrees 05 Minutes 52 Seconds West a distance of 8.99 feet;

THENCE North 26 Degrees 59 Minutes 33 Seconds West a distance of 221.59 feet to a point on the common boundary line of said Lot 6D and said Tract C;

THENCE North 26 Degrees 59 Minutes 33 Seconds West departing said common boundary line a distance of 58.05 feet to a point on the common boundary line of said Tract C and Tract B of said Final Plat of Gilbert Town Square;

THENCE along said common boundary line the following five (5) courses:

1) THENCE North 41 Degrees 26 Minutes 37 Seconds East a distance of 5.36 feet;

2) THENCE North 45 Degrees 34 Minutes 06 Seconds East a distance of 126.83 feet;

3) THENCE North 50 Degrees 51 Minutes 37 Seconds East a distance of 199.02 feet;

4) THENCE North 57 Degrees 04 Minutes 37 Seconds East a distance of 161.71 feet;

5) THENCE North 63 Degrees 25 Minutes 07 Seconds East a distance of 278.10 feet;

THENCE South 26 Degrees 37 Minutes 42 Seconds East departing said common boundary line a distance of 87.03 feet to a point on said common boundary line of said Lot 6D and said Tract C;

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E-mail jgsurvey@aol.com

THENCE South 26 Degrees 37 Minutes 42 Seconds East departing said common boundary line a distance of 507.27 feet;

THENCE South 19 Degrees 37 Minutes 10 Seconds West a distance of 39.44 feet to the Northerly boundary line of Lot 6B;

THENCE North 85 Degrees 02 Minutes 54 Seconds West along the Northerly boundary line of said Lot 6B a distance of 167.61 feet to the POINT OF BEGINNING.

PARCEL NO. 2

A parcel of land being part of Lot 6D of the Re-Plat of Lot 6C of "Gilbert Town Square of Lot 6, Lot Split" as shown on Plat recorded in Book 811 of Maps, Page 22 with Recording No. 2006-0166978, Records of Maricopa County, Arizona, situated in the Northeast one-quarter of Section 24, Township 1 South, Range 5 East, of the Gila and Salt River Base and Meridian, Town of Gilbert, County of Maricopa, more particularly described as follows:

BEGINNING at the Southwest corner of Said Lot 6D of the Re-Plat of Lot 6C of "Gilbert Town Square Lot 6, Lot Split", said corner also being the Northwest corner of Lot 5 of "Final Plat for Gilbert Town Square" as shown on plat recorded in Book 565 of Maps, Page 2, records of Maricopa County, Arizona;

THENCE along the common boundary line of said Lot 6D and Tract "C: of said "Final Plat of Gilbert Town Square", the following seven (7) courses and distances;

1) THENCE North 19 degrees 13 minutes 17 seconds East, a distance of 37.70 feet to an angle point;

2) THENCE North 89 degrees 33 minutes 24 seconds East, a distance of 32.87 feet to an angle point;

3) THENCE North 00 degrees 18 minutes 46 seconds West, a distance of 17.54 feet to an angle point;

4) THENCE North 89 degrees 41 minutes 14 seconds East, a distance of 10.00 feet to an angle point;

J.G. ELLIS
LAND SURVEYING SERVICES, INC.
3238 NORTH 81ST PLACE
SCOTTSDALE, ARIZONA 85251
Phone 480-970-6265 Fax 480-970-6271
E-mail jgsurvey@aol.com

5) THENCE North 26 degrees 08 minutes 39 seconds East, a distance of 190.40 feet to an angle point;

6) THENCE North 34 degrees 42 minutes 07 seconds East, a distance of 191.02 feet to an angle point;

7) THENCE North 48 degrees 02 minutes 42 seconds East, a distance of 148.91 feet to an angle point;

THENCE departing said common boundary line of said Lot 6D and said Tract "C" South 26 degrees 59 minutes 33 seconds East, a distance of 221.59 feet to an angle point;

THENCE South 11 degrees 05 minutes 52 seconds East, a distance of 8.99 feet to an angle point;

THENCE South 01 degrees 18 minutes 37 seconds West, a distance of 166.45 feet;

THENCE South 18 degrees 51 minutes 23 seconds East, a distance of 110.40 feet to a point on the North line of said Lot 5 of "Final Plat of Gilbert Town Center" for the Southeast corner of this Tract;

THENCE South 89 degrees 33 minutes 24 seconds west, along the North line of said Lot 5 of "Final Plat of Gilbert Town Center", a distance of 492.77 feet, to the POINT OF BEGINNING.

PARCEL NO. 3:

Nonexclusive easements for ingress and egress, parking, utilities and other purposes by or pursuant to that certain "Declaration of Reciprocal Easements and of Covenants and Restrictions for Gilbert Town Square" recorded April 19, 2002, in Document No. 20020403617, and in the First Amendment thereto recorded April 7, 2006, in Document No. 20060469147, re-recorded October 19, 2007, in Document No. 20071138259, and in the Second Amendment thereto recorded July 19, 2013, in Document No. 20130658360, and in Seventh Supplementary Declaration thereto recorded July 19, 2013 in Document No. 20130658361 Official Records of Maricopa County, Arizona.

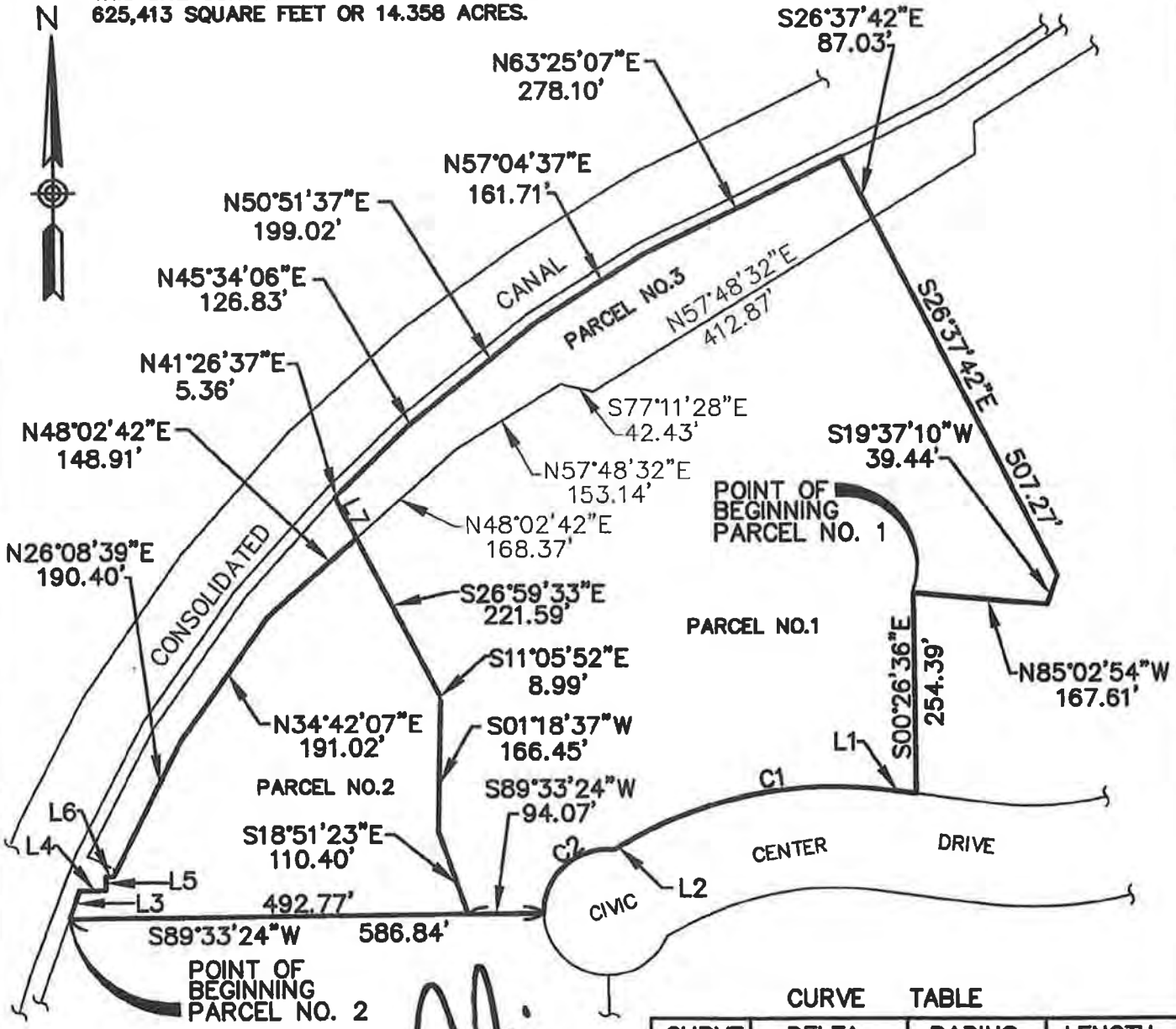
REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27233
JAMES G.
ELLIS
DATE SIGNED 4/15/15
ARIZONA U.S.A.
Expires 06/30/17

J.G. ELLIS
LAND SURVEYING SERVICES, INC.
3238 NORTH 81ST PLACE
SCOTTSDALE, ARIZONA 85251
Phone 480-970-6265 Fax 480-970-6271
E-mail jgsurvey@aol.com

EXHIBIT "B"

A PORTION OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE & MERIDIAN.

THIS SITE CONTAINS A COMPUTED AREA OF 625,413 SQUARE FEET OR 14.358 ACRES.



BOUNDARY LINE TABLE

LINE	BEARING	DISTANCE
L1	N82°44'21"W	38.49'
L2	S59°13'15"W	13.70'
L3	N19°13'17"E	37.70'
L4	N89°33'24"E	32.87'
L5	N00°18'46"W	17.54'
L6	N89°41'14"E	10.00'
L7	N26°59'33"W	58.05'

REGISTERED LAND SURVEYOR
CERTIFICATE NO. 22233
JAMES G. ELLIS
Date Signed 4/15/15
ARIZONA, U.S.A.

EXPIRES 6/30/17

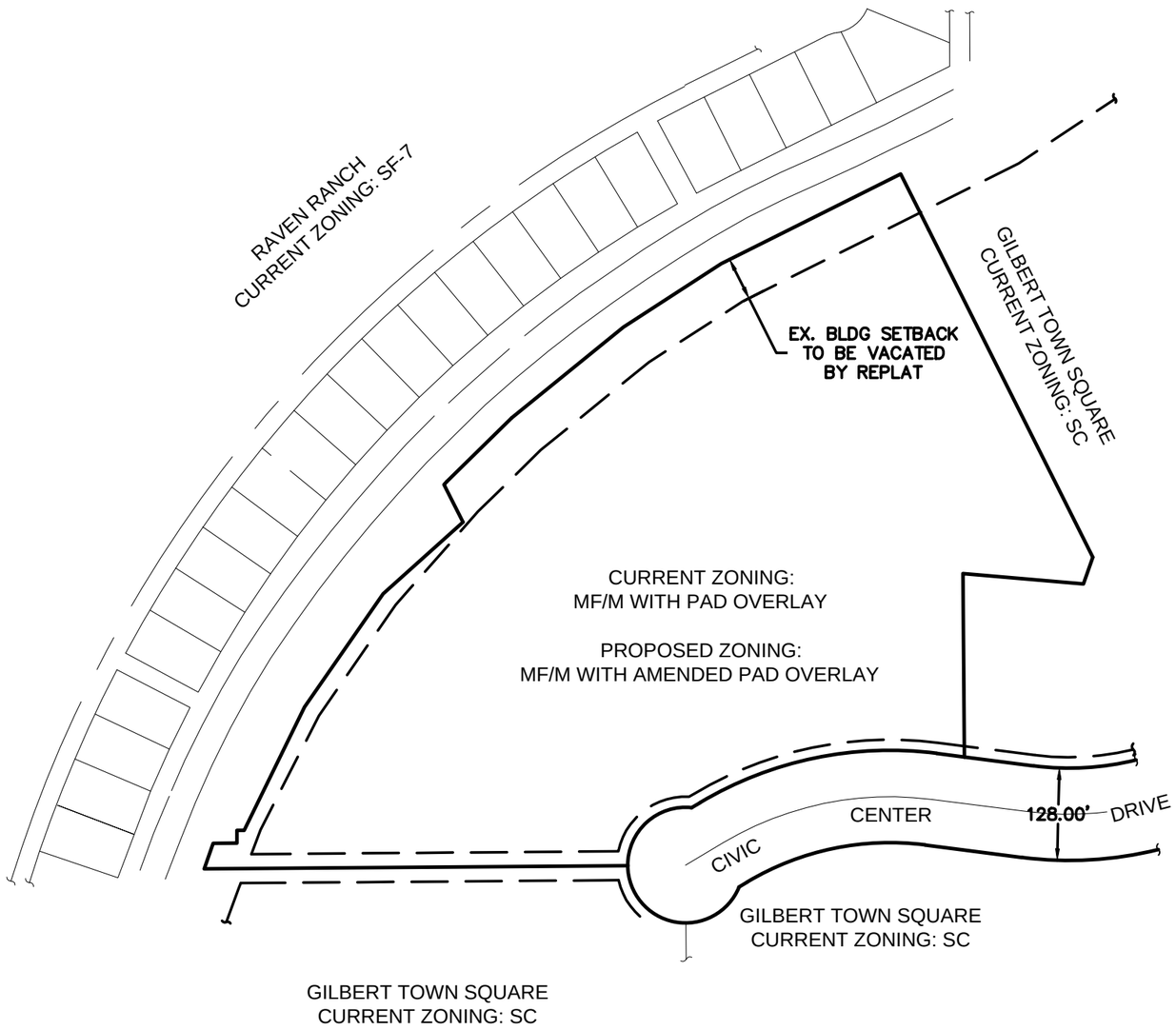
CURVE TABLE

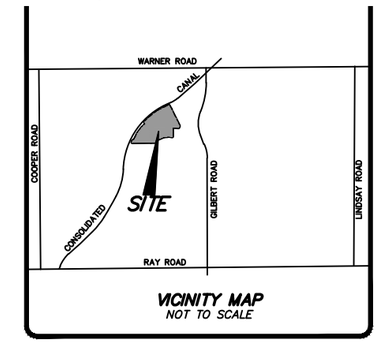
CURVE	DELTA	RADIUS	LENGTH
C1	38°02'24"	514.00'	341.26'
C2	96°32'21"	80.00'	134.79'

EXHIBIT B

J.G. ELLIS LAND SURVEYING SERVICES, INC.
3238 NORTH 81ST PLACE
SCOTTSDALE, AZ 85251
PH. (480) 970-6265
FAX (480) 970-6271

SCALE: 1"=200'
04-15-15
PROJECT NO. 02-44-01
SHEET 1 OF 1





PROJECT DATA TABLE

GROSS AREA	625,413 S.F. (14.358 AC.)
NET AREA	625,413 S.F. (14.358 AC.)
CURRENT ZONING	MF/M WITH PAD OVERLAY
PROPOSED ZONING	MF/M WITH AMENDED PAD OVERLAY

LEGEND

———	PROPERTY LINE
- - - - - -	EASEMENT LINE

200 0 100 200 400

1" = 200'

NO.	DATE	REVISION	APPROVAL

BURY
7047 East Greenway, Suite 250
Scottsdale, Arizona 85254
Tel. (480) 659-3452
ABTR # 17057
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ZONING EXHIBIT

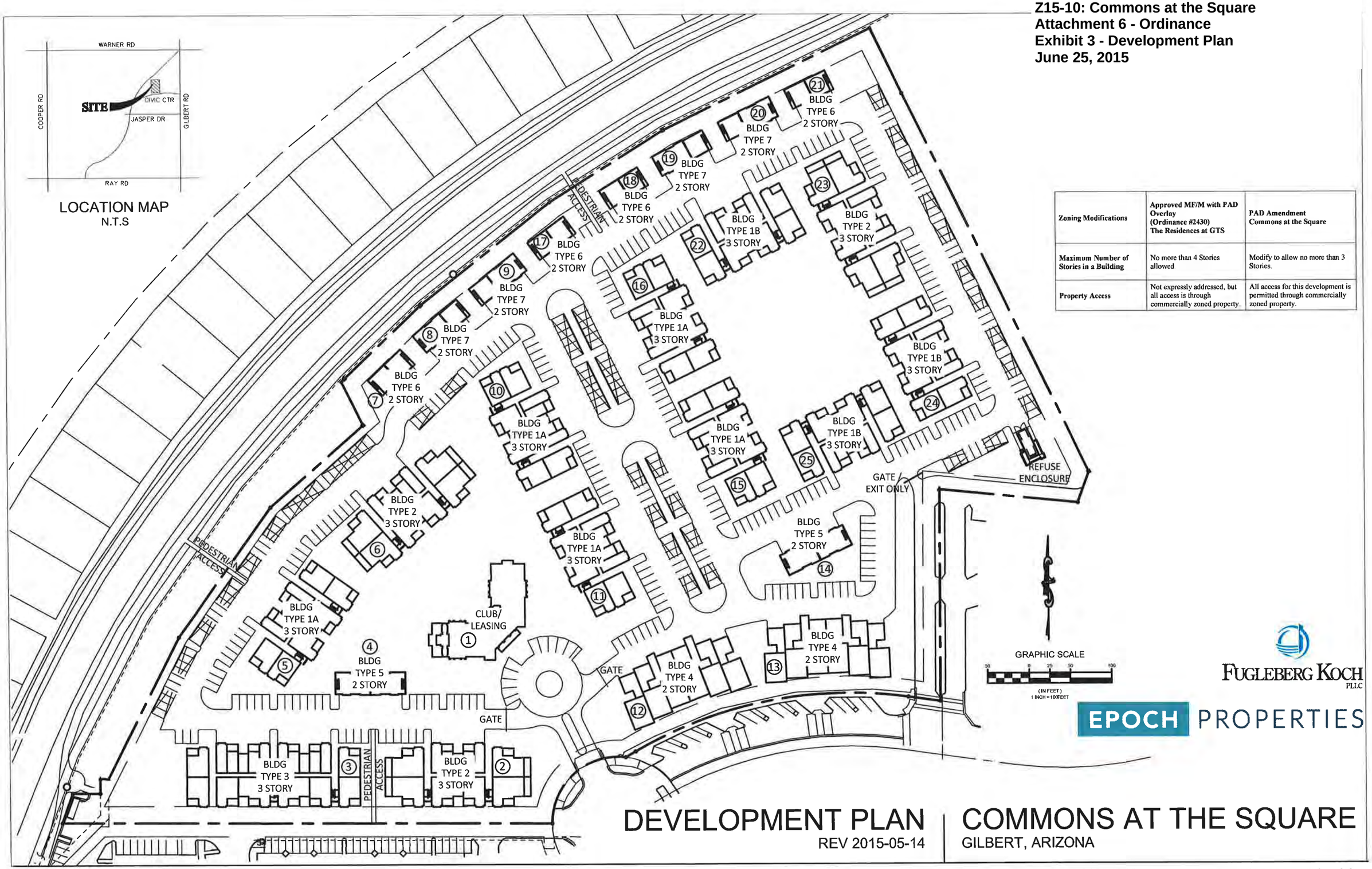
COMMONS AT THE SQUARE

TOWN OF GILBERT, ARIZONA

DRAWN BY: JJB
DESIGNED BY:
QA / QC:
PROJECT NO.: 101247006

SHEET 1 OF 1

G:\101247\10006\CD Exhibits\101247006 EXH ZONING.dwg modified by jbohl on Apr 21, 15 12:02 PM



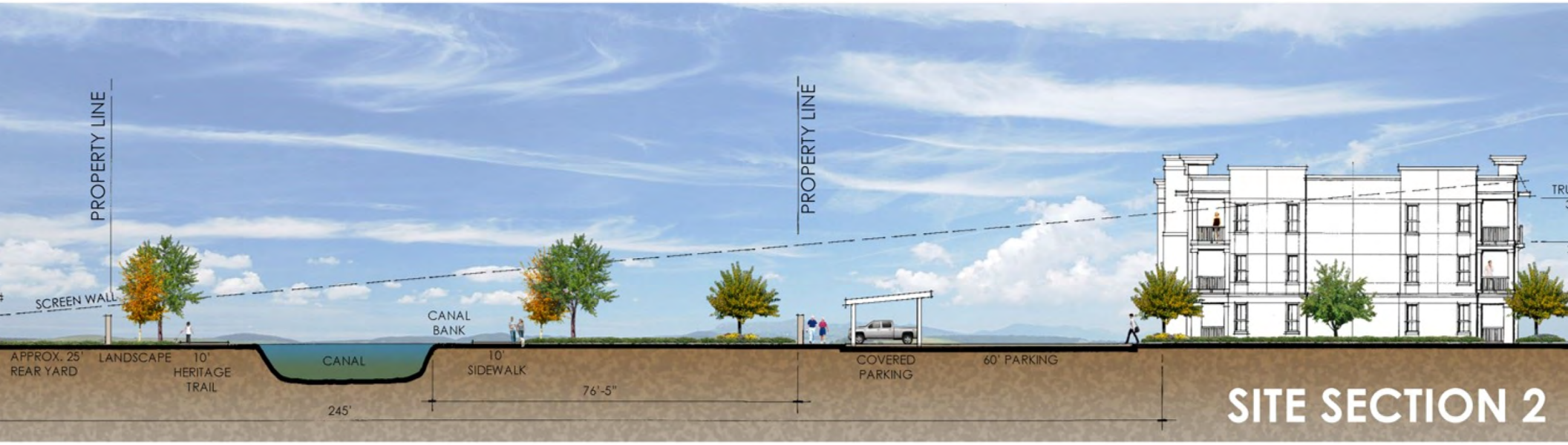
Zoning Modifications	**Approved MF/M with PAD Overlay (Ordinance #2430) The Residences at GTS**	**PAD Amendment Commons at the Square**
Maximum Number of Stories in a Building	No more than 4 Stories allowed	Modify to allow no more than 3 Stories.
Property Access	Not expressly addressed, but all access is through commercially zoned property.	All access for this development is permitted through commercially zoned property.

Z15-10: Commons at the Square
Attachment 7 - Site Plan Overlay
June 25, 2015

SITE SECTION 1
Carriage Unit
2 story

SITE SECTION 2
Apartment Home
3 story

ADJACENT VIEWS



RG KOCH EPOCH PROPERTIES

GILBERT APARTMENTS
EPOCH Properties

SITE SECTIONS
Arizona

TOWN OF GILBERT
PLANNING COMMISSION REGULAR MEETING
GILBERT MUNICIPAL CENTER, 50 E. CIVIC CENTER DRIVE, GILBERT ARIZONA
JUNE 3, 2015

COMMISSION PRESENT:	**Chairman Joshua Oehler** **Vice Chairman Kristofer Sippel** **Commissioner Brent Mutti** **Commissioner David Blaser** **Commissioner Carl Bloomfield** **Commissioner David Cavenee** **Commissioner Jennifer Wittmann**
COMMISSION ABSENT:	**None**
STAFF PRESENT:	**Planning Services Manager Linda Edwards** **Senior Planner Bob Caravona** **Senior Planner Amy Temes** **Planner Nichole McCarty** **Planner Nathan Williams**
ALSO PRESENT:	**Town Council Member Brigette Peterson** **Town Attorney Jack Vincent** **Recorder Margo Fry**

PLANNER	CASE	PAGE	VOTE
NATHAN WILLIAMS	S15-02	2	APPROVED
BOB CARAVONA	UP15-05	2	APPROVED
AMY TEMES	Z15-10	3	APPROVED
NICHOLE MCCARTY	GP15-01	3	CONTINUED
NICHOLE MCCARTY	Z15-02	3	CONTINUED
AMY TEMES	UP15-07	4	APPROVED
AMY TEMES	Z15-08	4	APPROVED
AMY TEMES	GP15-02	5	APPROVED
AMY TEMS	Z15-04	5	APPROVED

CALL TO ORDER:

Chairman Joshua Oehler called the meeting to order at 6:00 p.m.

ROLL CALL

Ms. Fry called roll and a quorum was determined to be present.

APPROVAL OF AGENDA

Chairman Oehler asked if there was a motion to approve the Agenda.

A motion was made by Vice Chairman Kristofer Sippel and seconded by Commissioner Jennifer Wittmann to approve the Agenda with the following changes: Move Items 9, GP15-01, 10, Z15-02, 11, UP15-07 to include staff report addendum, and item 12, Z15-08 to the Consent Agenda.

Motion carried 7– 0

COMMUNICATIONS FROM CITIZENS

At this time members of the public can comment on items not on the agenda. The Commission's response is limited to responding to criticism, asking staff to review a matter commented upon or asking that the matter be put on a future agenda.

Chairman Oehler asked if there was anyone present who wished to comment.

No one came forward.

PUBLIC HEARING (CONSENT)

Consent Public Hearing items will be heard at one Public Hearing. After the Consent Public Hearing, these items may be approved by a single motion. At the request of a member of the Commission or Staff, an item may be removed from the Consent Calendar and may be heard and acted upon separately. Other items on the agenda may be added to the Consent Public Hearing and approved under a single motion.

S15-02: LEGACY POINT AT SEVILLE: REQUEST TO APPROVE PRELIMINARY PLAT AND OPEN SPACE PLAN, FOR 61 HOME LOTS (LOTS 1-61) ON APPROXIMATELY 19.17 ACRES OF REAL PROPERTY GENERALLY LOCATED SOUTH OF THE SOUTHEAST CORNER OF CLUBHOUSE DRIVE AND CHANDLER HEIGHTS ROAD, IN THE SINGLE FAMILY RESIDENTIAL - 7 (SF-7) ZONING DISTRICT WITH A PLANNED AREA DEVELOPMENT (PAD) OVERLAY ZONING DISTRICT.

Move to approve the findings and S15-02, Legacy Point at Seville, approximately 19.17 acres consisting of 61 single family lots, generally located south of the southeast corner of Val Vista Drive and Riggs Road zoned Single Family – 10 (SF-10) with a Planned Area Development (PAD) overlay, subject to the following conditions:

1. The Final Plat for S15-02, Legacy Point at Seville shall be contingent upon and in substantial conformance with Exhibits 3, Development Plan and 4, Preliminary Plat approved by the Planning Commission at the June 3, 2015 public hearing and Exhibit 5, the Open Space Plan to be approved administratively by Gilbert Staff.

UP15-05: TRUWEST CREDIT UNION: A CONDITIONAL USE PERMITTO ALLOW A BANK, ON APPROXIMATELY 1.38 ACRES OF REALPROPERTY LOCATED AT 64 E. PECOS ROAD, EAST OF THENORTHEAST CORNER OF E. PECOS ROAD AND S. GILBERT ROAD, IN THE NEIGHBORHOOD COMMERCIAL (NC) ZONING DISTRICTWITH A PLANNED AREA DEVELOPMENT OVERLAY PAD).

Move to make the findings of fact and approve UP15-05 TruWest Credit Union: A request for a Conditional Use Permit to allow a bank in the Neighborhood Commercial (NC) zoning district with a Planned Development Overlay on 1.38 acres subject to conditions**:**

1. The Project shall be in substantial conformance with the site plan, landscape plan and elevations/ details shown on Exhibits 5, 6 and 7 noted under Attachments and Enclosures.

Z15-10: COMMONS AT THE SQUARE: REQUEST TO AMEND ORDINANCE NOS. 427, 617, 725, 1287, 1689, 1708 AND 2430 TO AMEND THE CONDITIONS OF DEVELOPMENT WITHIN THE SETTLER'S POINT PLANNED AREA DEVELOPMENT (PAD) FOR APPROXIMATELY 14.4 ACRES OF REAL PROPERTY GENERALLY LOCATED AT CIVIC CENTER DRIVE WEST OF GILBERT ROAD, CONSISTING OF APPROXIMATELY 14.4 ACRES OF MULTI-FAMILY / MEDIUM (MF/M) ZONING DISTRICT WITH A PLANNED AREA DEVELOPMENT OVERLAY.

For the following reasons: the development proposal conforms to the intent of the General Plan and can be appropriately coordinated with existing and planned development of the surrounding areas, and all required public notice and meetings have been held, the Planning Commission moves to recommend approval to the Town Council for Z15-10 rezoning of approximately 14.4 acres of real property within Settler's Point Planned Area Development (PAD) and generally located at the northwest corner of Gilbert Road and Civic Center Drive from approximately 14.4 acres of Multi Family / Medium (MF/M) with a Planned Area Development (PAD) overlay zoning district to approximately 14.4 acres of Multi Family / Medium (MF/M) with a Planned Area Development (PAD) overlay zoning district, subject to the following conditions:

1. **Tract C as shown in MCR Book 565 Page 02 is currently owned by the Gilbert Town Square Property Owners Association and reserved for drainage and a retention; therefore, the location of Buildings Types 6 and 7 along the Consolidated Canal on the Proposed Development Plan, Attachment 7, may need to be modified / relocated if Tract C cannot be released for development, as approved by the Gilbert Town Square Property Owners Association and the Town Engineer.**

	Proposed Modified Development Standards (IN CAPS)
Maximum Height	46'(ENTITLED) **3-STORY**
Access	**USE OF COMMERCIALLY ZONED PROPERTY TO PROVIDE PRIMARY VEHICULAR ACCESS TO A RESIDENTIAL USE IS PERMITTED**.

GP15-01: COPPER LANDING: REQUEST FOR MINOR GENERAL PLAN AMENDMENT TO CHANGE THE LAND USE CLASSIFICATION OF APPROXIMATELY 14.3 ACRES OF REAL PROPERTY GENERALLY LOCATED SOUTHEAST OF THE SOUTHEAST CORNER OF GUADALUPE AND MCQUEEN ROADS FROM COMMUNITY COMMERICAL TO RESIDENTIAL > 5-8 DU/AC LAND USE CLASSIFICATION.
Staff is requesting continuance to 7-1-15.

Z15-02: COPPER LANDING: REQUEST TO REZONE APPROXIMATELY 14.3 ACRES OF REAL PROPERTY GENERALLY LOCATED SOUTHEAST OF THE SOUTHEAST CORNER OF GUADALUPE AND MCQUEEN ROADS FROM COMMUNITY COMMERCIAL (CC) TO SINGLE FAMILY DETACHED (SF-D) ZONING DISTRICT WITH A PLANNED AREA DEVELOPMENT OVERLAY.
Staff is requesting continuance to 7-1-15.

UP15-07: DERITO SPECTRUM, A CONDITIONAL USE PERMIT TO ALLOW A CONGREGATE CARE FACILITY WITHIN THE SHOPPING CENTER ZONINGDISTRICT WITH APPROXIMATELY 24.93 ACRES OF REAL PROPERTY, LOCATED AT THE SOUTHEAST CORNER OR VAL VISTA DRIVE AND QUEEN CREEK ROAD, IN SHOPPING CENTER (SC) ZONING DISTRICT WITH A PLANNED AREA DEVELOPMENT OVERLAY.

Move to make the findings of fact and approve UP15-07 DeRito Spectrum, a Conditional Use Permit to allow a congregate care facility on 6 acres of 24.93 acres of property located at the southeast corner of Val Vista Drive and Queen Creek Roads in Shopping Center (SC) zoning district with a Planned Area Development overlay, subject to conditions**:**

1. The Project shall be in substantial conformance with the site plan under Attachment ~~#4~~**#5.**

2. The Use Permit approval is contingent upon the zoning approval at the June 25, 2015 Town Council hearing.

Z15-08: DERITO SPECTRUM, REQUEST TO AMEND ORDINANCE NOS. 1403, 1629 AND 2321 REZONING APPROXIMATELY 24.93 ACRES OF REAL PROPERTY WITHIN THE SAN TAN ESTATES PLANNED AREA DEVELOPMENT (PAD), GENERALLY LOCATED AT THE SOUTHEAST CORNER OF VAL VISTA DRIVE AND QUEEN CREEK ROAD FROM APPROXIMATELY 24.93 ACRES OF SHOPPING CENTER (SC) WITH A PLANNED AREA DEVELOPMENT OVERLAY ZONING DISTRICT TO APPROXIMATELY 24.93 ACRES OF SHOPPING CENTER (SC) WITH A PLANNED AREA DEVELOPMENT OVERLAY ZONING DISTRICT.

For the following reasons: the development proposal conforms to the intent of the General Plan and can be appropriately coordinated with existing and planned development of the surrounding areas, and all required public notice and meetings have been held, the Planning Commission moves to recommend approval to the Town Council for Z15-08 rezoning of approximately 24.93 acres of real property within San Tan Estates Planned Area Development (PAD) and generally located at the southwest corner of Val Vista Drive and Queen Creek Road from approximately 24.93 acres of Shopping Center (SC) with a Planned Area Development (PAD) overlay zoning district to approximately 24.93 acres of Shopping Center (SC) with a Planned Area Development (PAD) overlay zoning district subject to the following conditions:

a. At the written request of Gilbert, Developer shall dedicate all necessary easements for the roadway improvements, including easements for drainage and retention and temporary construction easements. Failure to dedicate said easements within thirty (30) days after the date of Gilbert's written request may result in the reversion of the zoning of the Property to the prior zoning classification.

b. Developer shall create a Property Owner's Association (POA) for the ownership, maintenance, landscaping, improvements and preservation of all common areas and open space areas, and landscaping within the rights-of-way.

c. Developer shall record easements to be owned by the POA for pedestrian, bicycle, multi-use or trail system purposes as determined by the final plat, at the time of final plat recordation, or earlier if required by the Town Engineer. In recognition of the modifications to the underlying zoning regulations set forth herein, such easements shall be open to public access and use.

d. Prior to final plat approval, Developer shall pay for its proportional share of water and sewer mains benefitting the Property, as required by the Town Engineer.

e. The Project shall be developed in conformance with Gilbert's zoning requirements for the zoning districts and all development shall comply with the Town of Gilbert Land Development Code, except as modified by the following:

Site Development	**Proposed PAD Modifications (SHOWN IN CAPS)**
Maximum Size of Use or User	**160,000 SQFT**
Maximum Building Height	35'/**3-STORY**
Separation Between Buildings 3 - story	**20'**

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Amy Temes, Senior Planner, (480) 503-6729

MEETING DATE: June 25, 2015

SUBJECT: GP15-02/Z15-04 - Villages at Val Vista

STRATEGIC INITIATIVE: Economic Development

RECOMMENDED MOTION

A. Move to adopt the attached Resolution approving GP15-02; Villages at Val Vista, and

B. Move to make the Findings of Fact and adopt the attached Ordinance approving Z15-04.

BACKGROUND/DISCUSSION

Applicant/Owner

Company:	Beus Gilbert	Company:	SWC Germann and V.V., LLC
Name:	Paul Gilbert	Name:	
Address:	701 North 44th Street Phoenix, AZ 85008	Address:	1110 E. Missouri, Suite 700 Phoenix, AZ 85016
Phone:	480-429-3002	Phone:	602-263-7626
Email:	pgilbert@beusgilbert.com	Email:	lisa@dmxphx.com

Overview

The applicant has requested to amend the General Plan and rezone this 6 acre property from Shopping Center (SC) to General Commercial (GC). The applicant wishes to construct a 102,000 square foot personal storage facility. Personal storage is allowed within the Shopping Center zoning district, but not larger than a 75,000 square foot single user or stand-alone building. The intent of the Land Development Code size restriction is to ensure appropriate scale and compatibility with surrounding less intense uses.

History

Date	*Action*
January 8, 1975	The Town Council approved Ordinance No. 174 for annexation A74-07 (strip annexation).
September 18, 1984	The Town Council approved Ordinance No. 396 (A84-06) to annex the approximate 80 acre site to the Town of Gilbert.
January 16, 1985	The Town Council approved Ordinance No. 419 rezoning the site from Maricopa County Rural-43 to Town of Gilbert R1-43 in case Z84-57.
March 3, 2005	Town Council adopted the Land Development Code by approving Ordinance No. 1625. With the adoption of the LDC, the site was zoned Single Family-35(SF-35) and Single Family-15(SF-15).
April 26, 2005	A portion of this site was rezoned from Single Family-35 to Single Family-15 (SF-15) in zoning case number Z05-03 for Avalon Estates.
May 27, 2008	Town Council approved a Minor General Plan Amendment changing the land use classification from Residential >1-2 DU/Acre to Community Commercial and Residential >5-8 DU/Acre with a Zoning reclassification from Single Family-15 (SF-15) and Single Family-35 (SF-35) to Single Family/Detached (SF/D) and Community Commercial (CC) with a PAD overlay.
August 4, 2010	Planning Commission recommended approval of GP10-02 and Z10-07 Villages at Val Vista GP10-02, a request to change the General Plan land use classification of approximately 65 acres from approximately 49.8 acres of Residential >5-8 DU/Acre and 15.2 acres of Community Commercial (CC) to approximately 50 acres of Residential > 3.5-5 DU/Acres and 15 acres Shopping Center (SC) and to rezone approximately 65 acres from 49.8 acres of Single Family Detached (SF-D) and 15.2 acres of Community Commercial (CC) zoning districts with a Planned Area Development (PAD) overlay to 50 acres of Single Family - Detached (SF-D) and 15 acres of Shopping Center (SC) zoning districts with a PAD overlay.
August 19, 2010	Town Council approved GP10-02 and Z10-07 Villages at Val Vista, a request to change the General Plan land use classification of approximately 65 acres from approximately 49.8 acres of Residential >5-8 DU/Acre and 15.2 acres of Community Commercial (CC) to approximately 50 acres of Residential > 3.5-5 DU/Acre and 15 acres Shopping Center (SC) and to rezone approximately 65 acres from 49.8 acres of Single Family Detached (SF-D) and 15.2 acres of Community Commercial (CC) zoning districts with a Planned Area Development (PAD) overlay to 50 acres of Single Family - Detached (SF-D) and 15 acres of Shopping Center (SC) zoning districts with a PAD overlay.

April 1, 2015	Planning Commission discussed GP15-02 and Z15-04 at study session
April 14, 2015	Design Review Board discussed DR15-11, Public Storage at study session.
June 3, 2015	Planning Commission recommended approval with a 4-3 vote.

Surrounding Land Use & Zoning Designations:

	Existing Land Use Classification	**Existing Zoning**
North	Regional Commercial	Germann Road then Regional Commercial
South	Shopping Center	Shopping Center PAD
East	Residential >2-3.5 DU/Acre	Val Vista Drive then Single Family -15
West	Residential >3.5 – 5 DU/Acre	Single Family – Detached PAD
Site	Shopping Center	Shopping Center PAD

General Plan

Val Vista Drive and Germann Road is the most highly traveled/busy intersection in the Town of Gilbert. The applicant states that the proposed land use category provides a buffer (i.e., visual, noise, traffic, and light) for the neighborhood and the adjacent school(s) from the road. The applicant believes that the project meets the following:

Conformance with the General Plan

- Manages growth to achieve an efficient, orderly and sustainable community.
- Promotes commercial, retail, and employment land uses that are compatible with adjacent land uses and meet economic goals.
- Locates commercial and retail uses adjacent to residential uses in appropriate intensities to serve local, community and regional markets.
- The proposed design, height, and intensity of the use is more compatible with the adjacent neighborhood and fulfills a need for the local area as well as regionally.
- Coordinates infrastructure financing and capital improvements with existing and projected development activity.
- Encourages residential/non-residential land use transitions that minimize negative impacts of commercial and industrial uses on adjacent residential uses.
- Encourages developers to design attractive and functional retail and service facilities that serve the needs of residents, visitors and businesses.
- Encourages developers to de-emphasize the view of parking lots from public streets by placing buildings toward the front of the site and reducing the expanse of parking fields by breaking fields into smaller clusters. Discourage the siting of gas pumps, drive-through windows or similar uses along street frontages.

- Encourages developers to design neighborhood retail and office uses to respect residential scale and character.
- Encourages use of scale, style and color schemes that are appropriate to the context of residential developments in the surroundings.
- Encourages the use of site planning and building materials/design as primary methods of noise attenuation.
- Protects residential uses and other noise sensitive land uses from exposure to high noise levels and limits residential and other noise sensitive uses from encroachment into areas subject to high noise levels.

Rezoning

Development Standard	**SC (Land Development Code)**	**GC (Land Development Code)**	**Proposed GC Modifications**
Size	75,000	no restriction	
Height	35/2	45	
Building Setback Front	25' Front/Address from Germann Rd.	25'	25'
Building Setback Side to Non-residential	15' from Val Vista Academy	20'	**0' to Val Vista Academy and Primrose Preschool (Gilbert's policy has waived interior setbacks to commercial)**
Building Setback Side to Street	20' from Val Vista Dr. /Granite St.	20'	20'
Building Setback Rear Residential	75'	75'	**20'**
Landscape Front	50 x 250' at arterial intersection 25' along Germann Rd.	25'	50 x 250' at arterial intersection 25' along Germann Rd.
Landscape Side to Street	20'	20'	20'
Landscape Side to Non-residential	15'	20'	**0' to Val Vista Academy (Gilbert's policy has waived interior setbacks to commercial)**
Landscape Setback Rear Residential.	35'	40'	**10'**
Building Separation	15'	15'	15'
Landscape %	15%	15%	19.8%

The personal storage land use is allowed within both the Shopping Center (SC) and General Commercial (GC) zoning districts. The SC zoning district restricts a single use or user to 75,000 square feet. The intent of the Code is to limit the size and intensity of a project when adjacent to neighborhoods or smaller scale projects within less intense adjacent zoning districts. The applicant wishes to construct a facility larger than the current maximum allowed within SC. The applicant indicated that if the property was not rezoned that they would be allowed, by right, to construct a two story Public Storage facility on the west end of the property and would need to

utilize the access on Granite Street for public circulation instead of emergency only access. Staff will note that it was the intent of the original PAD design that the commercial property have full access to Granite Street for neighborhood access.

In 2010, the Villages at Val Vista was rezoned from 49.8 acres of Single Family Detached (SF-D) and 15.2 acres of Community Commercial (CC) zoning districts with a PAD overlay to 50 acres of Single Family - Detached (SF-D) and 15 acres of Shopping Center (SC) zoning with a PAD overlay. The increase in commercial intensity was to allow for a wider range of permitted uses and to allow for a slightly larger use. Since the original approval, a school was built adjacent to the neighborhood and another infill smaller school was recently approved on the parcel between the existing school and the proposed Personal Storage use. The schools have sidewalk access to the south as part of the PAD requirement for land use connectivity.

The rezoning request proposes a walled personal property storage facility. The applicant wishes to deviate from standards and locate the project perimeter wall 10', instead of 40', from the HOA landscape tract and the Granite St. right-of-way. The HOA landscape tract with the 10' landscape request would equal approximately 24' of landscape to the perimeter wall. The applicant has added 3' wide of landscape on the inside of the wall and relocated the building across an internal drive aisle. The applicant believes this is a better transition from the 14' of existing landscape than to jog 40' back from the existing charter school fence line.

The applicant has requested a building setback of 20' from the property line instead of the required 75'. This minimum setback condition exists closest to the Granite Street and Germann Road intersection (Building #1) and the building along the southern property line (Building #4) adjacent to the charter school. The buildings centered in the project (Buildings #2 and #3) are setback approximately 60' from the ROW (14' of the HOA landscape tract, 10' of landscape, 3' of internal landscape and the remainder as the internal drive aisle). The existing curb cut is proposed for emergency access only, thereby eliminating traffic on this neighborhood street. Furthermore, the applicant wishes to locate the southernmost (Building #4) and easternmost roll-up door storage (Building #5) buildings on the southern and eastern property lines respectively. This would require removing Val Vista Academy's and the Primrose Preschool's fencing and allowing the building walls to serve as the separation fence. The 0' setback would prevent the creation of an unused, difficult to see, difficult to maintain open space between the existing school chain link fence and the wall of the storage facility. Primrose Preschool has provided a letter of support. The applicant states that the charter school is not opposed to the proposal and has written a letter of support. The HOA for Villages at Val Vista has just been turned over to the residents.

Applicant's Justification for Rezoning/Modification Request

The Planning Commission expressed reservations about the modifications requested, specifically as they related to Granite Street. The Design Review Board discussed the Public Storage project at the April 14, 2015 study session and a Board Member stated that they had concerns about such a large use being proposed on this predominant corner in South Gilbert. The DRB member did not believe that it was an appropriate location for such a large use that was typically located behind commercial centers with a small window to the street or in industrial areas.

Below is the applicant's reasoning for the rezoning/modification request:

1. The residential homes are more than 75' away from the project's west property line.
2. The proposed user (Public Storage) will be 1-story and is a less intense use. The General Commercial (GC) district allows for 45' of height.
3. The existing homes side onto Granite Street and they are 2-stories.
4. Existing street/landscape easement separates the homes from the subject property. The Land Development Code makes no allowances for <u>rear yard street</u> setback as it does for <u>a side yard street</u> setback, which would allow for 20' adjacent to Granite.
5. No access to Granite Street aside for emergency vehicles.
6. The entire property is being developed in a single phase and not parceled off. If parceled up then the setbacks could be much less along Granite (i.e., 20' for street side yard setback) with Germann Road possibly becoming the front yard for a pad building.
7. There is an existing landscape tract (i.e., approx. 14') for the Villages along with the proposed 14' (i.e., 10' to the 1'wall and 3' landscape inside the wall) area provides approximately 28' landscape setback, which is twelve feet shy of the 40' required in GC. The landscape setback jogs out by the charter school and by the corner of Germann and Granite (i.e., the landscape setback jogs out to 20' at those locations).
8. The majority of the buildings are setback further than 20'.
9. The required 40' landscape setback would create a larger jog between Public Storage's property and the charter school property. The landscape setback proposed is a better transition.
10. The 75' required building setback is extreme and is a hardship on the property and doesn't take into account the existing right-of-way. A design for another use would push parking areas, lighting, and trucking (i.e. "back-of-house uses") closer towards the residences and would necessitate the Granite Street driveway to remain a full access drive.
11. The low scale buildings, design, access, and lighting, as proposed by Public Storage, provides a better transition and buffer with less pavement, less noise, and more security adjacent to residential homes.

Safety

The Planning Commission and the neighbors expressed safety concerns about the uses/users of the personal storage facility. Staff contacted the Gilbert Police Department and requested police reports regarding personal storage facilities. The information provided showed that in a 10 year period only 6 calls that were directly related to police reports have been filed in the Town of Gilbert.

4	*Burglary*	*Stolen checks (1), content missing (2), person was seen with bolt cutters trying to access the property (3), Dumping and suspect behavior (4).*
1	*Trespassing*	*Suspect behavior.**
1	*Domestic Violence*	*Existing domestic situation with attempted assault **

Other calls, not listed, occurred in front or near a mini storage and the location was used as a reference point.

PUBLIC NOTIFICATION AND INPUT

A notice of public hearing was published in a newspaper of general circulation in the Town, and an official notice was posted in all the required public places within the Town.

A neighborhood meeting was held November 6, 2014 prior to project submittal with approximately 50 neighbors attending. The request originally showed less landscape along Granite Street, a small strip of landscape between the storage building and the school, and full access for the facility off of Granite Street. A majority of the neighbors were opposed and shared views, including but not limited to:

- the industrial-like use in a neighborhood setting
- the size/height, ingress and egress to Granite Street
- safety due to the uses and users adjacent to a school and a neighborhood
- the entry to their neighborhood being a large walled facility
- the colors
- a huge walled facility at a major entry into south Gilbert
- the lack of services they feel should be provided to the homes in the area
- their expectation of service oriented uses at this location based on the PAD approval and builder sales

In response, the applicant walked the neighborhood discussing the project with the neighbors. The applicant indicates that they believe many residents are now in support of the project with the modifications as represented.

Staff has received comment from the some neighbors. The correspondence is attached. The neighborhood concerns from the Planning Commission meeting and correspondence are summarized below:

- An extremely large facility being built directly beside our neighborhood (scale of project too large)
- Risks from re-zoning from SC to GC if Public Storage pulls out.
- The setbacks to the west should be maintained per Code.
- Every time the property is rezoned, the residential density goes down and the commercial zoning goes up in intensity.
- The building is too close to the street.
- There is enough personal storage in the area; we need services.
- A wider spectrum of services is needed not a single large user.
- The wall may block the view from the street, but the two story homes will be able to see in.
- The use is not appropriate next to schools.
- Lower property value with an industrial like use next door.

SCHOOLS

The Public School Districts had no comments.

Val Vista Academy Charter School has indicated support for the project via a letter.

Primrose Preschool was designed in coordination with this project and has written a letter of support.

PROPOSITION 207

An agreement to "Waive Claims for Diminution in Value" Pursuant to A.R.S. § 12-1134 was signed by the landowners of the subject site, in conformance with Section 5.201 of the Town of Gilbert Land Development Code. This waiver is located in the case file.

LEGAL REVIEW

The resolution attached was reviewed for form by Attorney Jack Vincent.
The ordinance attached was reviewed for form by Attorney Jack Vincent.

FINANCIAL IMPACT

The project will complete right-of-way improvements for Germann Road. Sewer and water buy-in associated with the property may be required with the construction of this project, if applicable.

Reimbursements for the Val Vista Road Capital Improvement Project No ST124 will be required with the construction of this project. This project was completed in 2010, and identified that future development would be required to reimburse the Town for the appropriate costs; currently estimated at $88,198.47.

WATER IMPACT

The change in commercial zoning from Shopping Center to General Commercial will nominally impact water requirements. The use proposed is a low water use.

PLANNING COMMISSION RECOMMENDATION

The Planning Commission discussed this case at the June 3, 2015 public hearing. The Planning Commission voted 4-3 to recommend approval. Those in support felt the project reflected input from the residents, was a good use near residential, it was an approved use except for size, it was one story and only emergency access was permitted on Granite Street. Those in opposition felt public storage areas could become undesirable pseudo-workshops, that the zoning should remain to attract smaller retail users, and the proposed structure was too large for the parcel. A stipulation was added restricting the building to a single story.

STAFF RECOMMENDATION

A. Adopt the attached resolution approving GP15-02, a minor General Plan Amendment to change the land use classification; and

B. Make the Findings of Fact and adopt the attached ordinance approving Z15-04, subject to the conditions in the draft ordinance.

Respectfully submitted,
Amy Temes
Senior Planner

Attachments:

1. Notice of Public Hearing
2. Aerial Photo
3. Resolution
   Exhibit 1 Legal Description
   Exhibit 2 General Plan Map
4. Finding of Fact
5. Ordinance
   Exhibit 1 – Legal Description
   Exhibit 2 - Zoning Map

Exhibit 3 - Development Plan

6. Elevations and Details (for reference)
7. Cross Section (for reference)
8. Planning Commission Meeting Minutes
9. Correspondence

Approved By	Approval Date
Catherine Lorbeer	6/11/2015 7:21 AM
Kyle Mieras	6/11/2015 10:09 AM
Jack Vincent	6/15/2015 8:53 AM
Cris Parisot	6/15/2015 11:49 AM

Notice of Public He

PLANNING COMMISSION DATE: ***Wednesday, June 3, 2015* TIME: 6:00 PM***
TOWN COUNCIL DATE: ***Thursday, June 25, 2015* TIME: 7:00 PM***

LOCATION: Gilbert Municipal Center
Council Chambers
50 E. Civic Center Drive
Gilbert, Arizona 85296

*** Call Planning Department to verify date and time: (480) 503-6729**

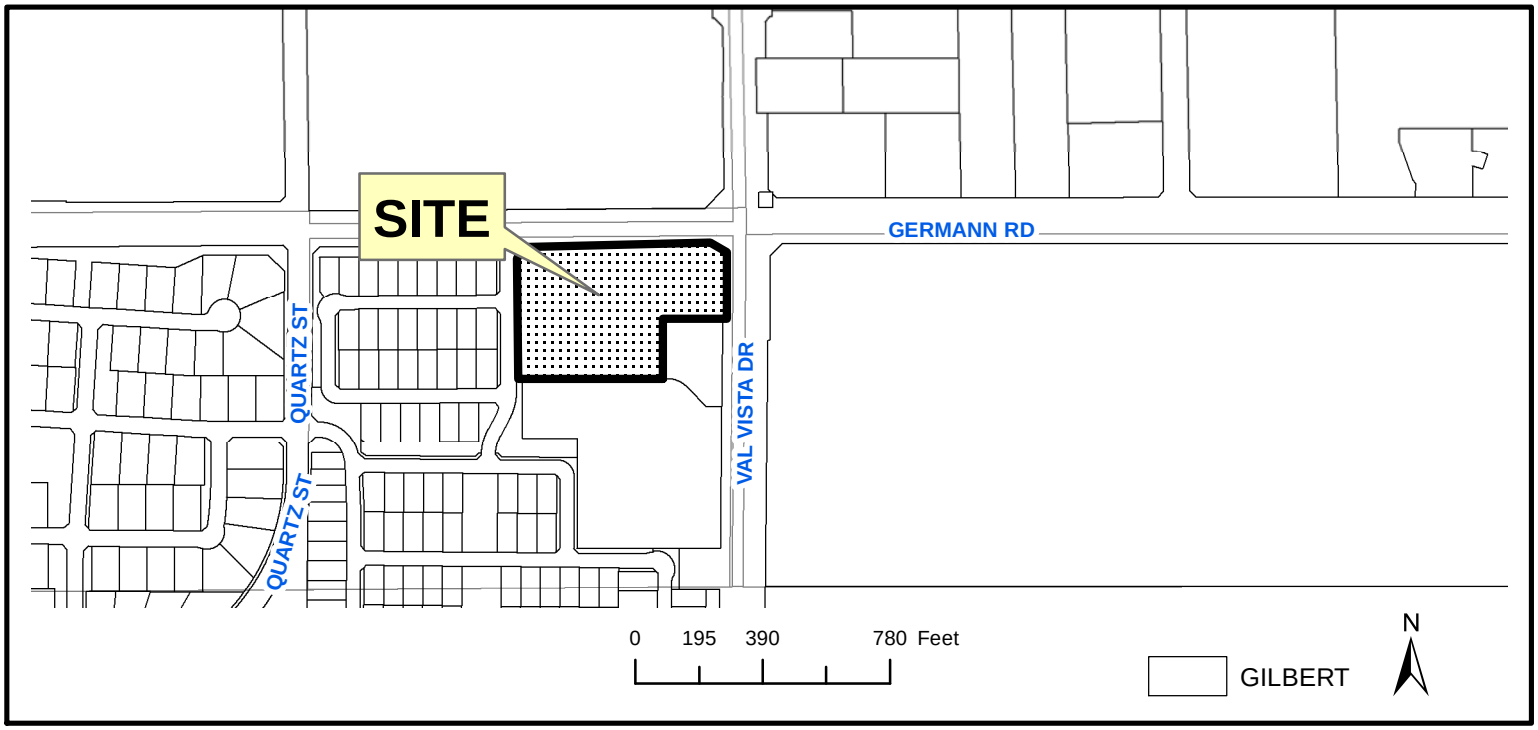
REQUESTED ACTION:

GP15-02: Request for Minor General Plan Amendment to change the land use classification of approximately 6.02 acres of real property generally located at the southwest corner of Val Vista Drive and Germann Road from Shopping Center (SC) land use classification to General Commercial (GC) land use classification. The effect of this amendment will be to change the plan of development for the property to allow increased intensity of development.

Z15-04: Request to amend Ordinance No. 2299 and rezone approximately 6.02 acres of real property within the Villages at Val Vista Planned Area Development (PAD) generally located at the southwest corner of Val Vista Drive and Germann Road from approximately 6.02 acres of Shopping Center (SC) with a Planned Area Development overlay zoning district to approximately 6.02 acres of General Commercial (GC) with a Planned Area Development overlay zoning district as shown on the exhibit (map), which is available for viewing in the Planning and Development Services Office, and to amend conditions of development in the Villages at Val Vista Planned Area Development (PAD) as follows: eliminate side yard setback adjacent to non-residential uses, reduce the rear set back from 75' to 20' for buildings adjacent to residential uses, and reduce landscaping setback adjacent to residential uses from 40' to 10'. The effect of the rezoning will be increase intensity and the square footage allowed for a single user, the modifications requested will decrease building and landscape setbacks to commercial and residential land uses.

* The application is available for public review at the Town of Gilbert Development Services division Monday - Thursday 7 a.m. - 6 p.m. Staff reports are available the Monday prior to the meeting at http://www.gilbertaz.gov/departments/development-services/planning-development/planning-commission

SITE LOCATION:



APPLICANT: Beus Gilbert PLLC
CONTACT: Paul E Gilbert
ADDRESS: 701 N 44th Street
Phoenix, AZ 85008

TELEPHONE: (480) 429-3002
E-MAIL: pgilbert@beusgilbert.com

GP15-02 and Z15-04: Villages at Val Vista Public Storage
Attachment 2 - Aerial
June 25, 2015

RESOLUTION NO. _____

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AMENDING THE GILBERT GENERAL PLAN LAND USE MAP AS DESCRIBED IN CASE GP15-02, VILLAGES AT VAL VISTA, FOR THE REAL PROPERTY GENERALLY LOCATED AT THE SOUTHWEST CORNER OF VAL VISTA DRIVE AND GERMANN ROAD BY CHANGING THE LAND USE CLASSIFICATION OF APPROXIMATELY 6.02 ACRES OF SHOPPING CENTER TO 6.02 ACRES OF GENERAL COMMERCIAL; AND PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS.

WHEREAS, The Town of Gilbert has solicited and received public input regarding the proposed amendment to the General Plan through notice and public hearings as required by law; and

WHEREAS, the Common Council of the Town of Gilbert has received a recommendation from the Town of Gilbert Planning Commission regarding the proposed land use map change;

NOW THEREFORE, BE IT RESOLVED by the Common Council of the Town of Gilbert, Arizona, that the Land Use Map of the General Plan of the Town of Gilbert, Arizona, is hereby amended for approximately 6.02 acres of real property generally located at the southwest corner of Val Vista Drive and Germann Roads, as described in the legal description, Exhibit 1, changing the land use classification from Shopping Center to General Commercial, as shown on the General Plan (map), Exhibit 2, both of which are attached hereto and incorporated herein by this reference.

BE IT FURTHER RESOLVED that all resolutions and parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this _____ day of _____, 20__.

_____
John W. Lewis, Mayor

ATTEST:

_____
Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

_____
L. Michael Hamblin
Town Attorney

The following exhibits are attached hereto and incorporated herein:

1. Legal Description
2. General Plan Exhibit (map)

LEGAL DESCRIPTION: APN#304-57-897

Lot 1 of the Final Plat for Arizona Ball Charter School as rec of Maricopa County, Arizona also being a portion of the Northeast quarter of Section 8, Township 2 South, Range 6, East of the Gila and Salt River Meridian, Maricopa County, Arizona;

EXCEPT the following described parcel of land;

COMMENCING at a found Town of Gilbert brass cap in hand hole accepted as the Northeast corner of said Section 8 from which a found Town of Gilbert brass cap in hand hole accepted as the East quarter corner thereof bears South 00°54'45" West, 2646.59 feet;

Thence South 00°54'45" West, 91.20 feet along the east line of said Northeast Quarter;

Thence leaving said east line, North 89°05'15" West, 70.00 feet to the Northeast corner of said Lot 1;

Thence South 00°54'45" West, 226.98 feet along the east line of said Lot 1 to the POINT OF BEGINNING;

Thence continuing along said east line, South 00°54'45" West, 252.82 feet to the southeast corner of said Lot 1;

Thence North 89°05'15" West, 46.18 feet along the south line of said Lot 1;

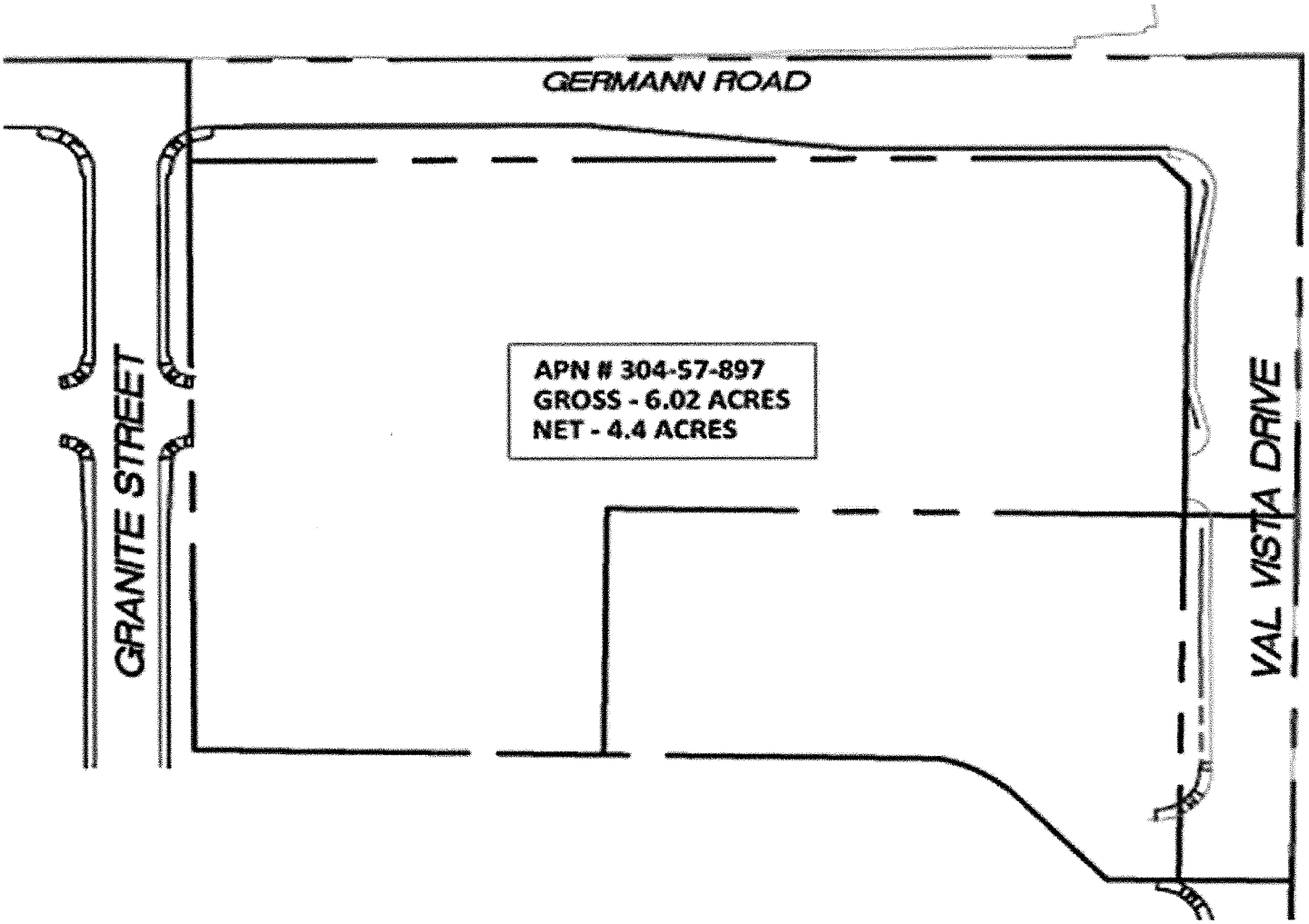
Thence continuing along said south line and westerly along said curve, through a central angle of 32°52'56", an arc length of 55.76 feet to a non-tangent line;

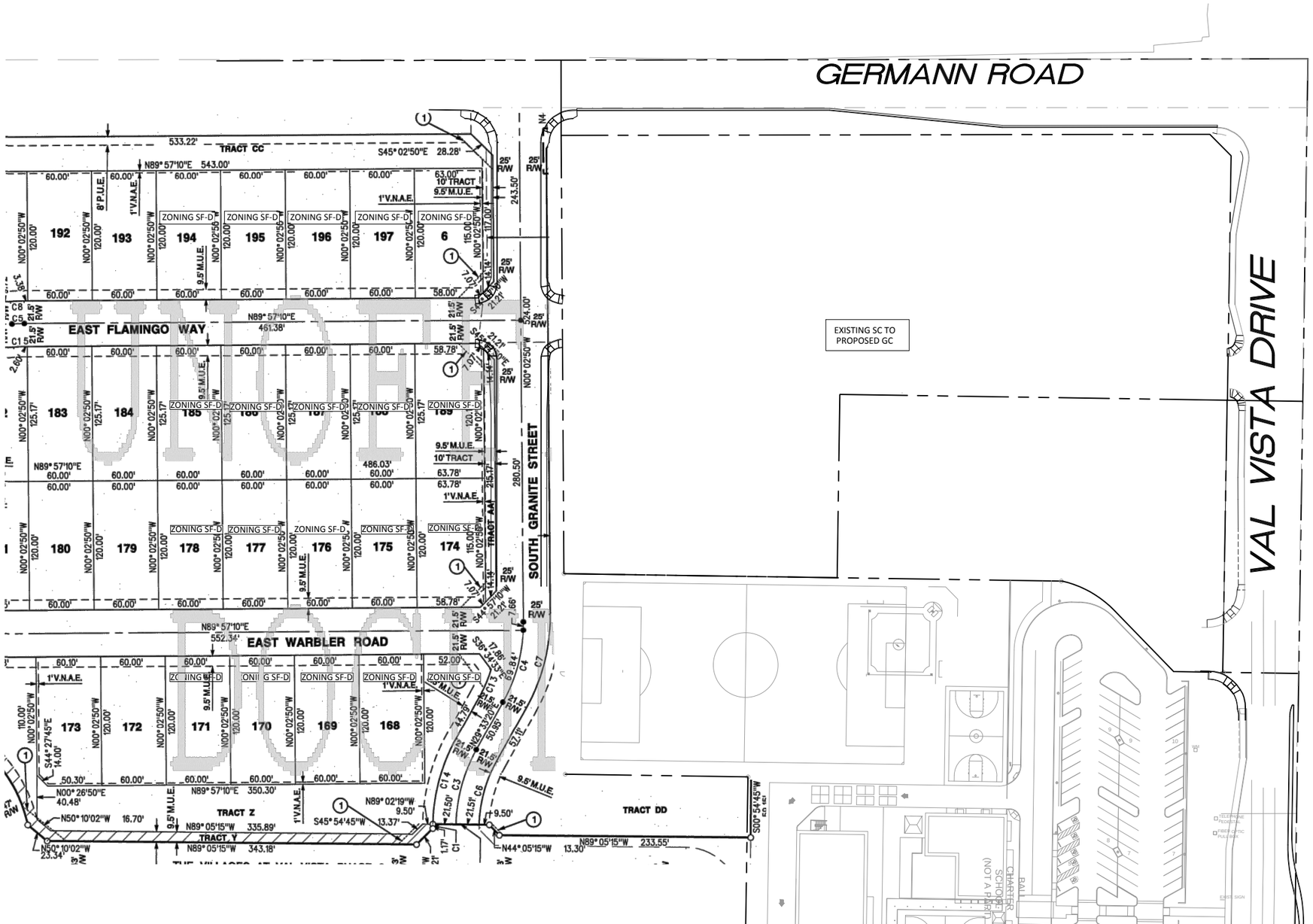
Thence continuing along said south line, North 89°05'15" West, 209.29 feet;

Thence leaving said south line, North 00°54'45" East, 170.30 feet;

Thence South 89°05'15" East, 360.00 feet to the POINT OF BEGINNING.

MAP OF SITE: APN#304-57-897



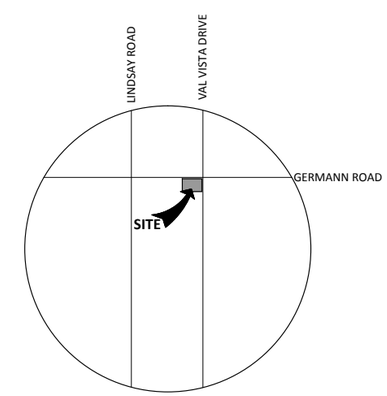


GENERAL PLAN MINOR AMENDMENT

SCALE: 1"=50'-0"

NORTH

0' 20' 40' 80'



VICINITY MAP

SCALE: N.T.S.

NORTH

PUBLIC STORAGE
SWC GERMANN & VAL VISTA
GILBERT, ARIZONA
DATE: 02-10-15

EX-1

RKAA# 14200.00

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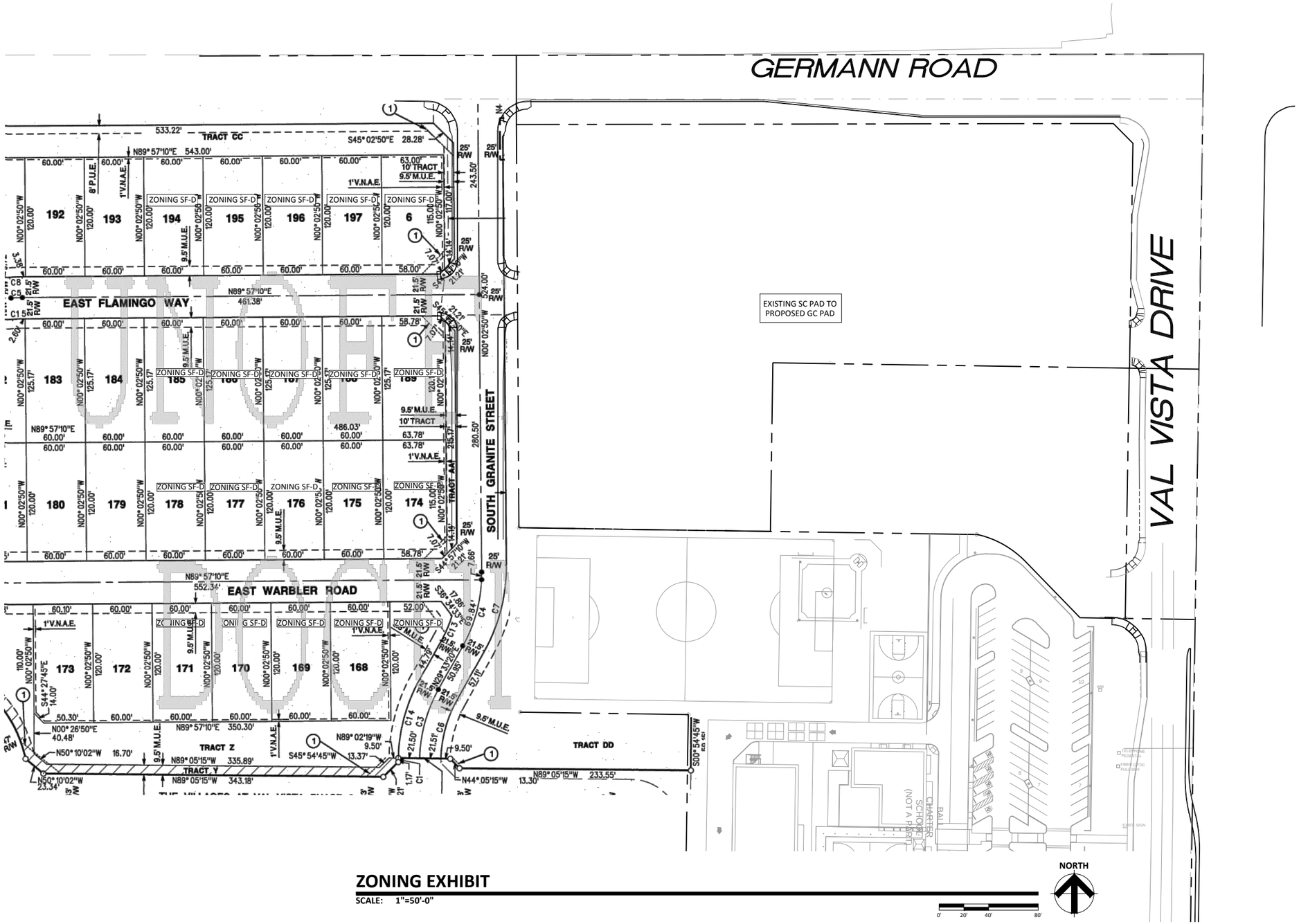
RKAA ARCHITECTS, INC

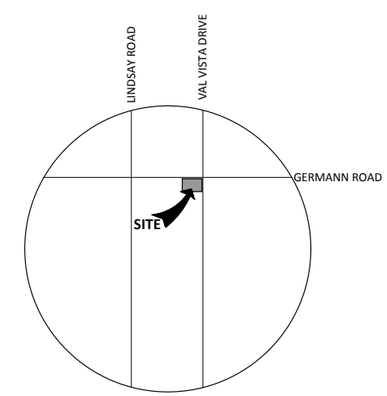
PM: MARALYCE CORBETT
PHONE: 602-955-3900 X. 116
EMAIL: MCORBETT@RKAA.COM

PM: MARALYCE CORBETT
PHONE: 602-955-3900 X. 116
EMAIL: MCORBETT@RKAA.COM

SITE DATA	
EXISTING ZONING	SC PAD - REZONE TO GC PAD
PARCEL#	304-57-897
SITE AREA TOTAL	193,192 S.F. (4.44 ACRES) = NET
	262,542 S.F. (6.02 ACRES) = GROSS
LOT COVERAGE	102,952/193,192=53.2%
PROPOSED USE	STORAGE: PERSONNEL PROPERTY
MAX BUILDING HEIGHT	45'
PROPOSED BUILDING HEIGHT	27'-8"
PROJECT DESCRIPTION	PROPOSED SELF STORAGE FACILITY WITH MANAGERS RESIDENCE
ZONING SETBACKS	
FRONT	25' LANDSCAPE
SIDE YARD	20' BUILDING/LANDSCAPE: REQUESTING 0 SETBACK
REAR	20' BUILDING/LANDSCAPE: REQUESTING 0 SETBACK



ZONING EXHIBIT
SCALE: 1"=50'-0"



VICINITY MAP
SCALE: N.T.S.

NORTH

PUBLIC STORAGE
SWC GERMANN & VAL VISTA
GILBERT, ARIZONA
DATE: 02-10-15

ZEX-1

RKAA# 14200.00

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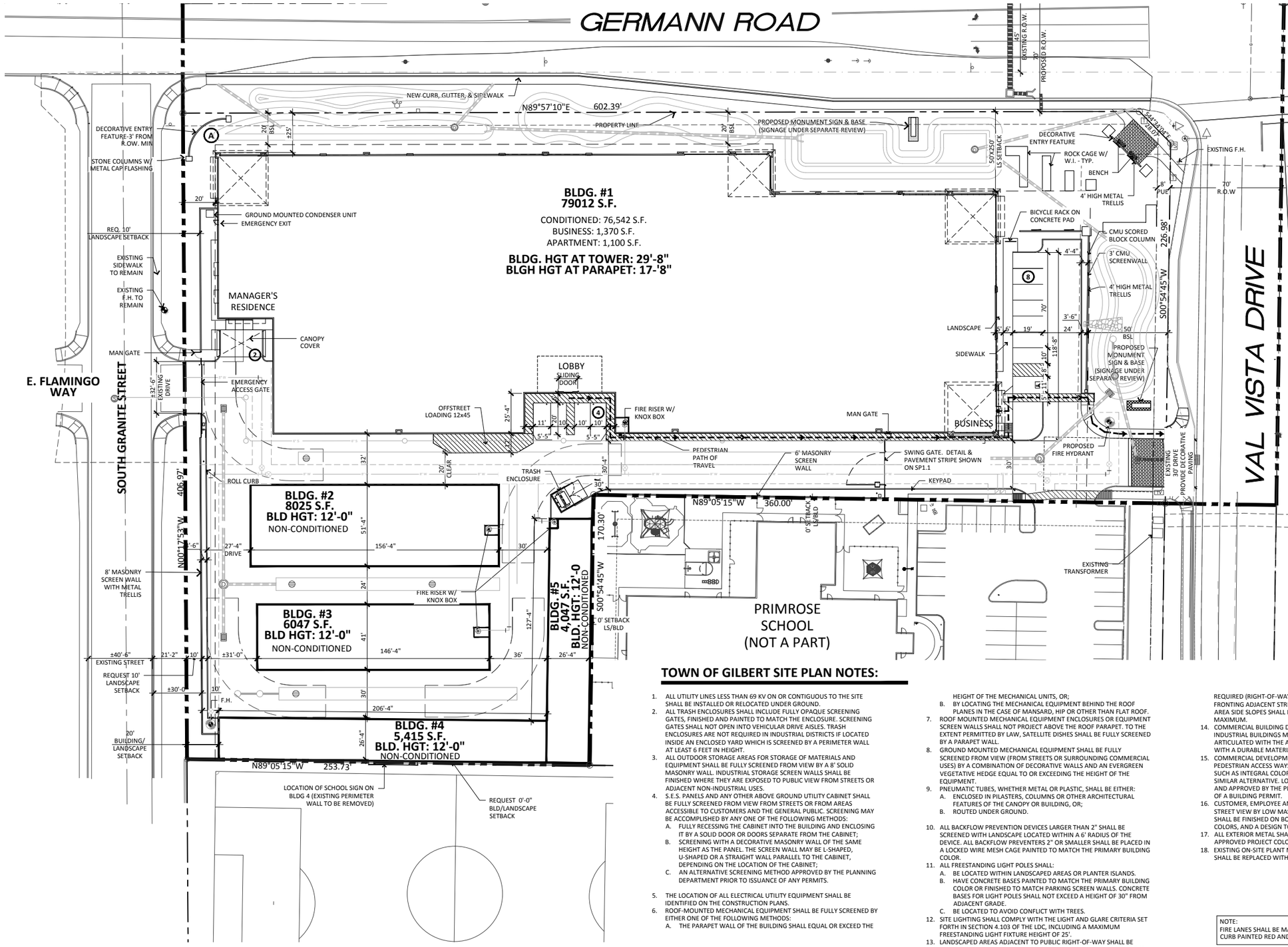
RKAA ARCHITECTS, INC

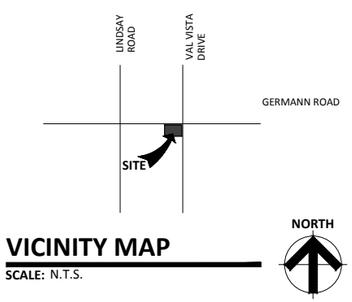
GP15-02 and Z15-04: Villages at Val Vista Public Storage
Attachment 5 - Development Plan
June 3, 2015



EXISTING ZONING	SC PAD - REZONE TO GC PAD
PLANNED AREA DEVELOPMENT OVERLAY (PAD) TO REMAIN	
PARCEL#	304-57-897
SITE AREA TOTAL	193,192 S.F. (4.44 ACRES) = NET
	262,542 S.F. (6.02 ACRES) = GROSS
LOT COVERAGE	102,952/193,192=53.2%
PROPOSED USE	STORAGE: PERSONNEL PROPERTY
MAX BUILDING HEIGHT	45'
PROPOSED BUILDING HEIGHT	29'-8"
PROJECT DESCRIPTION	PROPOSED SELF STORAGE FACILITY WITH MANAGERS RESIDENCE
ZONING: BLDG/LANDSCAPE SETBACKS	
FRONT (VAL VISTA)	50' BLDG/LS REQ.
SIDE YARD (GRANITE STREET & GERMANN ROAD)	20' BLDG/LS: 20' BLDG/10' LS*
*GRANITE STREET REQUESTED DEVIATION DISTANCE TO BLOCK WALL 10'. 20' OF BLDG SETBACK MAINTAINED	
REAR (ADJACENT TO VAL VISTA ACADEMY)	20' BLDG/LS REQ: 0' BLDG/LS SETBACK PROVIDED: REQUESTING 0' SETBACK
PARKING CALCULATION	
TOTAL PARKING REQUIRED	STORAGE W/ 1 DWELLING UNIT = 8 SPACES PLUS 2 COVERED SPACES PER DWELLING UNIT : 10 SPACES REQUIRED
TOTAL PARKING PROVIDED	14 SPACES PROVIDED
BIKE PARKING REQ/PROVIDED	1 SPACE REQ/5 PROVIDED

BUILDING DATA

LOCATION	OFFICE/APT	COND. STORAGE	NON-COND. STORAGE	SUBTOTAL
BUILDING #1	2,470 S.F.	76,542 S.F.		79012
BUILDING #2			8,025 S.F.	8025
BUILDING #3			6,047 S.F.	6047
BUILDING #4			5,415 S.F.	5415
BUILDING #5			4,047 S.F.	4047
SUBTOTAL		76542 S.F.	23534 S.F.	
NET RENTABLE CALC		70%	95%	
SUBTOTAL NRSF		53,579 S.F.	22,357 S.F.	75936
TOTAL BLD SF				102546



VICINITY MAP
SCALE: N.T.S.

TOWN OF GILBERT SITE PLAN NOTES:

1. ALL UTILITY LINES LESS THAN 69 KV ON OR CONTIGUOUS TO THE SITE SHALL BE INSTALLED OR RELOCATED UNDER GROUND.
2. ALL TRASH ENCLOSURES SHALL INCLUDE FULLY OPAQUE SCREENING GATES, FINISHED AND PAINTED TO MATCH THE ENCLOSURE. SCREENING GATES SHALL NOT OPEN INTO VEHICULAR DRIVE AISLES. TRASH ENCLOSURES ARE NOT REQUIRED IN INDUSTRIAL DISTRICTS IF LOCATED INSIDE AN ENCLOSED YARD WHICH IS SCREENED BY A PERIMETER WALL AT LEAST 6 FEET IN HEIGHT.
3. ALL OUTDOOR STORAGE AREAS FOR STORAGE OF MATERIALS AND EQUIPMENT SHALL BE FULLY SCREENED FROM VIEW BY A 8' SOLID MASONRY WALL. INDUSTRIAL STORAGE SCREEN WALLS SHALL BE FINISHED WHERE THEY ARE EXPOSED TO PUBLIC VIEW FROM STREETS OR ADJACENT NON-INDUSTRIAL USES.
4. S.E.S. PANELS AND ANY OTHER ABOVE GROUND UTILITY CABINET SHALL BE FULLY SCREENED FROM VIEW FROM STREETS OR FROM AREAS ACCESSIBLE TO CUSTOMERS AND THE GENERAL PUBLIC. SCREENING MAY BE ACCOMPLISHED BY ANY ONE OF THE FOLLOWING METHODS:
   A. FULLY RECESSING THE CABINET INTO THE BUILDING AND ENCLOSING IT BY A SOLID DOOR OR DOORS SEPARATE FROM THE CABINET;
   B. SCREENING WITH A DECORATIVE MASONRY WALL OF THE SAME HEIGHT AS THE PANEL. THE SCREEN WALL MAY BE L-SHAPED, U-SHAPED OR A STRAIGHT WALL PARALLEL TO THE CABINET, DEPENDING ON THE LOCATION OF THE CABINET;
   C. AN ALTERNATIVE SCREENING METHOD APPROVED BY THE PLANNING DEPARTMENT PRIOR TO ISSUANCE OF ANY PERMITS.
5. THE LOCATION OF ALL ELECTRICAL UTILITY EQUIPMENT SHALL BE IDENTIFIED ON THE CONSTRUCTION PLANS.
6. ROOF-MOUNTED MECHANICAL EQUIPMENT SHALL BE FULLY SCREENED BY EITHER ONE OF THE FOLLOWING METHODS:
   A. THE PARAPET WALL OF THE BUILDING SHALL EQUAL OR EXCEED THE HEIGHT OF THE MECHANICAL UNITS, OR;
   B. BY LOCATING THE MECHANICAL EQUIPMENT BEHIND THE ROOF PLANES IN THE CASE OF MANSARD, HIP OR OTHER THAN FLAT ROOF.
7. ROOF MOUNTED MECHANICAL EQUIPMENT ENCLOSURES OR EQUIPMENT SCREEN WALLS SHALL NOT PROJECT ABOVE THE ROOF PARAPET. TO THE EXTENT PERMITTED BY LAW, SATELLITE DISHES SHALL BE FULLY SCREENED BY A PARAPET WALL.
8. GROUND MOUNTED MECHANICAL EQUIPMENT SHALL BE FULLY SCREENED FROM VIEW (FROM STREETS OR SURROUNDING COMMERCIAL USES) BY A COMBINATION OF DECORATIVE WALLS AND AN EVERGREEN VEGETATIVE HEDGE EQUAL TO OR EXCEEDING THE HEIGHT OF THE EQUIPMENT.
9. PNEUMATIC TUBES, WHETHER METAL OR PLASTIC, SHALL BE EITHER:
   A. ENCLOSED IN PILASTERS, COLUMNS OR OTHER ARCHITECTURAL FEATURES OF THE CANOPY OR BUILDING, OR;
   B. ROUTED UNDER GROUND.
10. ALL BACKFLOW PREVENTION DEVICES LARGER THAN 2" SHALL BE SCREENED WITH LANDSCAPE LOCATED WITHIN A 6' RADIUS OF THE DEVICE. ALL BACKFLOW PREVENTERS 2" OR SMALLER SHALL BE PLACED IN A LOCKED WIRE MESH CAGE PAINTED TO MATCH THE PRIMARY BUILDING COLOR.
11. ALL FREESTANDING LIGHT POLES SHALL:
   A. BE LOCATED WITHIN LANDSCAPED AREAS OR PLANTER ISLANDS.
   B. HAVE CONCRETE BASES PAINTED TO MATCH THE PRIMARY BUILDING COLOR OR FINISHED TO MATCH PARKING SCREEN WALLS. CONCRETE BASES FOR LIGHT POLES SHALL NOT EXCEED A HEIGHT OF 30" FROM ADJACENT GRADE.
   C. BE LOCATED TO AVOID CONFLICT WITH TREES.
12. SITE LIGHTING SHALL COMPLY WITH THE LIGHT AND GLARE CRITERIA SET FORTH IN SECTION 4.103 OF THE LDC, INCLUDING A MAXIMUM FREESTANDING LIGHT FIXTURE HEIGHT OF 25'.
13. LANDSCAPED AREAS ADJACENT TO PUBLIC RIGHT-OF-WAY SHALL BE MOUNDED AND NATURALLY CONTOURED. NO MORE THAN 50% OF THE REQUIRED (RIGHT-OF-WAY AND LANDSCAPING TRACTS) LANDSCAPING FRONTING ADJACENT STREETS MAY BE USED FOR RETENTION. RETENTION AREA SIDE SLOPES SHALL BE VARIED, AND NO SLOPE SHALL EXCEED A 4:1 MAXIMUM.
14. COMMERCIAL BUILDING DOWNSPOUTS SHALL BE INTERNALIZED. INDUSTRIAL BUILDINGS MAY USE EXPOSED DOWNSPOUTS IF ARTICULATED WITH THE ARCHITECTURE OF THE BUILDING AND BUILT WITH A DURABLE MATERIAL SUCH AS STEEL.
15. COMMERCIAL DEVELOPMENT VEHICULAR ACCESS POINTS AND PEDESTRIAN ACCESS WAYS SHALL INCLUDE SPECIAL PAVING TREATMENT SUCH AS INTEGRAL COLORED STAMPED CONCRETE, BOAMANITE, OR SIMILAR ALTERNATIVE. LOCATION AND MATERIAL SHALL BE REVIEWED AND APPROVED BY THE PLANNING DEPARTMENT PRIOR TO THE ISSUANCE OF A BUILDING PERMIT.
16. CUSTOMER, EMPLOYEE AND VISITOR PARKING SHALL BE SCREENED FROM STREET VIEW BY LOW MASONRY WALLS. THE PARKING SCREEN WALLS SHALL BE FINISHED ON BOTH SIDES USING THE SAME MATERIALS AND COLORS, AND A DESIGN TO COMPLEMENT THAT OF THE MAIN BUILDING.
17. ALL EXTERIOR METAL SHALL BE FINISHED OR PAINTED TO MATCH THE APPROVED PROJECT COLORS.
18. EXISTING ON-SITE PLANT MATERIAL DAMAGED DURING CONSTRUCTION SHALL BE REPLACED WITH COMPARABLE SPECIES AND SIZE.

NOTE:
FIRE LANES SHALL BE MARKED BY SIGNS PER TOG DETAIL #63 AND/OR CURB PAINTED RED AND LABELED "FIRE LANE NO PARKING"

SITE PLAN
SCALE: 1"=30'-0"

NORTH

0' 15' 30' 60'

Public Storage

PUBLIC STORAGE
SWC GERMANN & VAL VISTA
GILBERT, ARIZONA
DATE: 04-27-15

SP-1

RKAA# 14200.00

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RKAA ARCHITECTS, INC

PROJECT NARRATIV

Requesting a Proposed Minor General Plan Amendment and Rezoning to General Commercial (GC) for Neighborhood Min-Storage Facility. Southwest Corner of Val Vista Drive and Germann Road. Approximately 6.02 Gross Acres.

The subject property above is currently in escrow to be purchased by Public Storage. The property consists of approximately 6.02 gross acres and located at the southwest corner of Val Vista Drive and Germann Road. Our request will be for the Town of Gilbert to approve a Minor General Plan Amendment and Rezoning requests from Shopping Center (SC) land use/zoning designations to General Commercial (GC) land use/zoning designations top allow for a proposed compatible neighborhood mini-storage facility by Public Storage. The need for GC zoning is due to the fact that the proposed total gross building square footage exceeds the SC zoning's building square footage's maximum allowance of 75,000 square feet. The proposed total gross area building square footage is 103,370 square feet, which is primarily associated with the interior hallways necessary for the enclosed/conditioned storage building. However, the net rentable square footage (i.e., usable space) is only slightly higher than that allowed in SC, which is proposed to be at 78,738 square feet or 3,738 square feet over the 75,000 square foot allowance.

The property also currently has a Planned Area Development (PAD) Overlay zoning designation, which will remain. The PAD will allow for some appropriate and strategically located building setback/landscape setback deviations at the southwest corner of the property specifically adjacent to the existing open space tract along Granite Street for the neighborhood (i.e., Tract DD – Villages at Val Vista Phase 3, which is an existing 20'-5" landscaped area) and Val Vista Academy's playing fields.

Those building setback/landscape setback deviations are:

Bldg./Landscape Setbacks:	**Required**	**Provided Bldg.**	**Provided Landscape**
Rear (Adj. to Val Vista Academy)	20'	**0'**	**0'**
Side (Granite Street)	20'	20'	**10'**

The main access to the property will be from Val Vista Drive via two (2) driveways with a secondary emergency access only solid gated entry to Granite Street located at the property's western property line. The total parking required is 10 spaces and they will be providing 16 total spaces. There will also be a caretakers unit associated with this proposed development. The neighborhood mini-storage facility will be developed in one phase.

The proposed Minor General Plan Amendment and Rezoning requests will be consistent with the character of the area, along with a continued strong emphasis placed on integrating the neighborhood mini-storage building/site designs with the existing residential subdivision as well as the existing/proposed users located at this commercial corner. Moreover, the location for a neighborhood mini-storage facility that is close to residential homes, as well as the freeway to

the north, will produce shorter vehicular trips for potential users and will provide an opportunity for combined trips with the ultimate full development of commercial/retail users at this major intersection.

CONFORMANCE WITH THE TOWN'S GENERAL PLAN.

The requests are consistent with and supported by several policies within the Town's General Plan.

CHAPTER 2 LAND USE AND GROWTH AREAS ELEMENT

Goal 3.0, Manage growth to achieve an efficient, orderly and sustainable community.

Policy 3.3 Classify land uses in a way that recognizes both the use of the property and the desired scale of the uses.

Val Vista Drive and Germann Road is a highly traveled/busy intersection. The proposed use provides a buffer (i.e., visual, noise, traffic, and light) for the neighborhood and the adjacent school(s). The limited amount of traffic associated with the proposed use and limited vehicular access will have no impact on the neighborhood, adjacent school(s), or to Val Vista Drive and Germann Road. There are large vacant areas currently zoned Regional Commercial, Community Commercial, and Business Park zoning districts with height allowances appropriately located across Germann Road, which will allow for higher intensity/mix of uses closer to the freeway and away from the adjacent neighborhood that will serve this area and beyond.

Goal 5.0, Promote commercial, retail, and employment land uses that are compatible with adjacent land uses and meet economic goals.

Policy 5.3 Locate commercial and retail uses adjacent to residential uses in appropriate intensities to serve local, community and regional markets.

The proposed design, height, and intensity of the use is more compatible with the adjacent neighborhood and fulfills a need for the local area as well as regionally.

Goal 8.0 Promote cost efficient and logical expansion of infrastructure.

Policy 8.2 Coordinate infrastructure financing and capital improvements with existing and projected development activity.

The proposed development of this corner will help complete a portion of Germann Road at this intersection (i.e., the southern portion) and allow for easier access/circulation from the adjacent neighborhood by both pedestrians (via the continuation of the sidewalk) and vehicles heading

east and north to the freeway. The Town is currently improving Germann Road from Val Vista Drive to Higley Road, which this will dovetail into.

CHAPTER 3 CIRCULATION ELEMENT

Goal 1.0, Create safe and efficient patterns of circulation.

Policy 1.1 Promote the safety of turning lanes and driveway curb cuts through access management.

The proposed development will utilize an existing decal lane and proposed curb cut along Val Vista Drive and not utilize an existing secondary access curb cut along Granite Street. The Granite Street cub cut will be utilized for emergency access only, which was requested by the neighborhood (and agreed by the developer – Public Storage) to eliminate cut-through traffic.

Policy 1.4 Utilize traffic calming devices and techniques to reduce speeds and minimize cut-through traffic in neighborhoods.

The Granite Street cub cut will not be utilized except for emergency access only, which was requested by the neighborhood in order to eliminate cut through traffic. The current zoning would allow traffic to utilize this existing curb cut potentially impacting the neighborhood with truck (delivery/refuse) and vehicle traffic.

CHAPTER 6 COMMUNITY DESIGN ELEMENT

Goal 1.0, Promote quality design for new development.

Policy 1.3 Encourage residential/non-residential land use transitions that minimize negative impacts of commercial and industrial uses on adjacent residential uses.

The proposed design (i.e., building elements and colors from the adjacent Meritage subdivision), height, and intensity (i.e., traffic, light, noise, and hours-of-operation) creates a more neighborhood friendly use and large enclosed building located on Germann and Val Vista buffers the neighborhood from vehicle noise/lights and future commercial/retail development that will occur north across Germann.

Goal 6.0, Encourage developers to design attractive and functional retail and service facilities that serve the needs of residents, visitors and businesses.

Policy 6.8 Encourage developers to de-emphasize the view of parking lots from public streets by placing buildings toward the front of the site and reducing the expanse of parking fields by breaking fields into smaller clusters. Discourage the siting of gas pumps, drive-through windows or similar uses along street frontages.

The proposed design of a large 1-storty enclosed building located (fronting) along Germann Road and the need for minimal parking for the use, allows for the elimination of parking fields, rows of drive-through uses, etc., which are typical of most retail shopping centers.

Goal 7.0, Encourage developers to design neighborhood retail and office uses to respect residential scale and character.

Policy 7.1 Encourage use of scale, style and color schemes that are appropriate to the context of residential developments in the surroundings.

The proposed design (i.e., building elements and colors from the adjacent Meritage subdivision), the height (1-story) with 2-story tower elements, streetscape enhances (i.e., low decorative walls and a new Meritage subdivision monument sign at Granite Street), and the solid 8' decorative block wall design (similar to Mertiage's walls) along with the opaque gate are respectful of the scale and style of the adjacent residential area.

CHAPTER 7 ENVIRONMENTAL PLANNING ELEMENT

Goal 7.0, Identify and attenuate noise sources and protect noise sensitive uses from high noise sources.

Policy 7.5 Encourage the use of site planning and building materials/design as primary methods of noise attenuation.

The proposed design of a large 1-storty enclosed block building located (fronting) along Germann Road buffers the noise from one of the busiest streets (Val Vista) as well as Germann. Moreover, the solid 8' decorative block wall with an opaque gate also buffers internal noise as opposed to, in the alternative, a loading dock area or open parking lot associated with typical retail shopping centers.

Policy 7.8 Protect residential uses and other noise sensitive land uses from exposure to high noise levels and limit residential and other noise sensitive uses from encroachment into areas subject to high noise levels.

The proposal for a large 1-storty enclosed block building maintains noise inside. Moreover, the limited number of "roll-up door" style buildings and the level of use associated with a storage facility will not generate excessive noise. The solid 8' decorative block wall with an opaque gate and landscaping will also help buffer any ambient noise onsite.

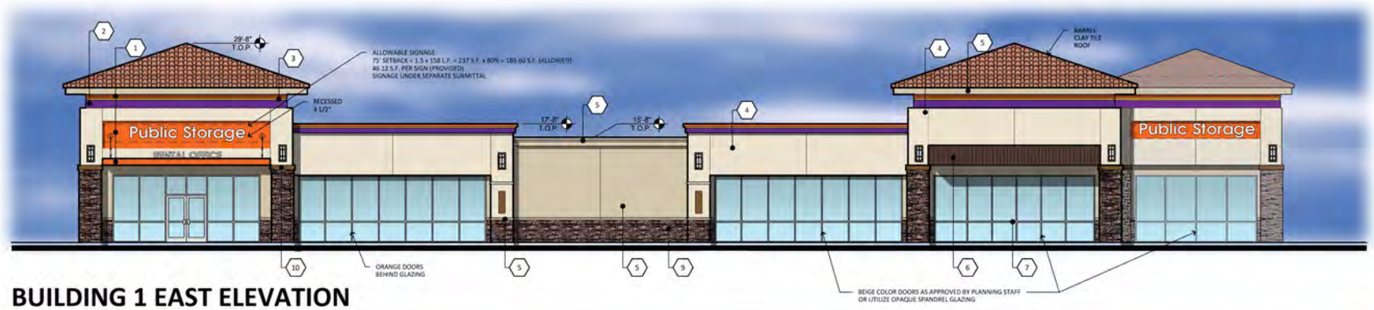
With that said, it is the primary desire of both the current property owner and Public Storage to develop a safe, clean, functional, and long term neighborhood mini-storage facility while continuing to be a responsible member of the Gilbert community.

We therefore respectfully request your consideration/input/approval regarding the proposed neighborhood mini-storage facility's Minor General Plan Amendment and Rezoning requests.

BUILDING 1 SOUTH ELEVATION

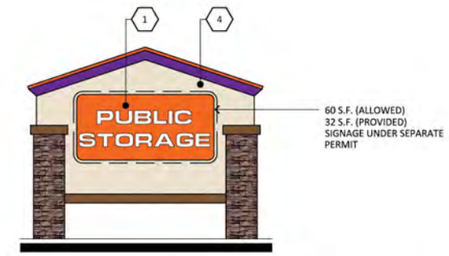
SCALE: 3/32" = 1'-0"

COLOR MATERIAL SCHEDULE BUILDING 1	
1	SHERWIN WILLIAMS: PUBLIC STORAGE "ORANGE"
2	SHERWIN WILLIAMS: PUBLIC STORAGE "PLUM"
3	SHERWIN WILLIAMS: PUBLIC STORAGE "YELLOW"
4	SHERWIN WILLIAMS: SW2060 "CASABLANCA"/FINE STUCCO FINISH
5	SHERWIN WILLIAMS: SW2059 "SAND"/FINE STUCCO FINISH
6	STANDING SEAM METAL AWNINGS: MBCI SIG 200 "KOKO BROWN"
7	ALUMINUM STOREFRONT "CLEAR ANODIZED FINISH"
8	ENTEGRA ROOF TILE "NEVADA CLAY"
9	CORONADO LEDGESTONE: QUICK STACK IN FOUR RIVERS
10	SHERWIN WILLIAMS "COBBLESTONE"/FINE STUCCO FINISH



BUILDING 1 EAST ELEVATION

SCALE: 3/32" = 1'-0"

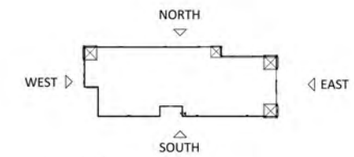


MONUMENT SIGN

SCALE: 1/4" = 1'-0"

BUILDING 1 WEST ELEVATION

SCALE: 3/32" = 1'-0"



KEY MAP

SCALE: N.T.S.

BUILDING 1 NORTH ELEVATION

SCALE: 3/32" = 1'-0"

Public Storage

GP15-02 and Z15-04: Villages at Val Vista
Public Storage
Attachment 7 - Elevations
June 3, 2015

PUBLIC STORAGE
SWC GERMANN AND VAL VISTA
GILBERT, ARIZONA
DATE: 04-29-2015 (PRELIMINARY)

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EL-1

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RKAA ARCHITECTS, INC

OVERALL WEST ELEVATION

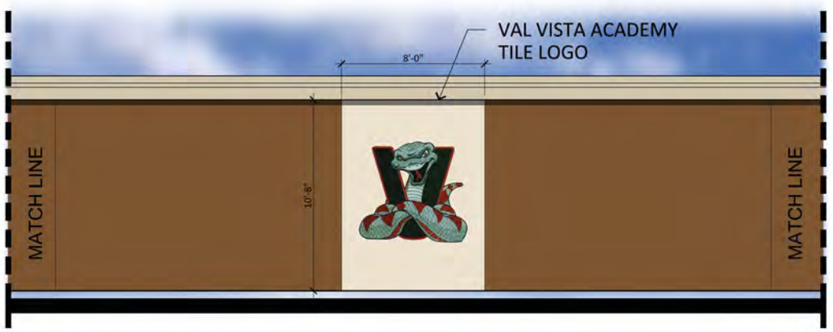
SCALE: N.T.S.

BUILDING 4 SOUTH ELEVATION

SCALE: N.T.S.

BUILDING 5 EAST ELEVATION

SCALE: N.T.S.



ENLARGED ELEVATION A

SCALE: 1/4" = 1'-0"

PUBLIC STORAGE
SWC GERMANN AND VAL VISTA
GILBERT, ARIZONA
DATE: 04-30-2015 (PRELIMINARY)

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EL-2

#14200.00

RKAA ARCHITECTS, INC

GP15-02 and Z15-04: Villages at Val Vista Public Storage
Attachment 8 Landscape Entry Feature
June 3, 2015

LANDSCAPE PLAN

SCALE: 1"=30'-0"

0' 15' 30' 60'

NORTH

VICINITY MAP

SCALE: N.T.S.

NORTH

LANDSCAPE LEGEND

EXISTING

NEW

- CERCIDIUM PRAECOX SONORAN PALO VERDE 24" BOX (MATCHING)
- PISTACHE CHINENSIS 'RED PUSH' RED PUSH PISTACHE 24" BOX
- TIPUANA TIPPU TIPPU TREE 24" BOX
- ULMUS PARVIFOLIA CHINESE ELM 24" BOX
- SOPHORA SECUNDIFLORA TEXAS MOUNTAIN LAUREL 24" BOX
- EXISTING SHRUBS TO REMAIN PROTECT 5 GALLON
- DODONEA VISCOSA 'PURPUREA' PURPLE HOP BUSH 5 GALLON
- LEUCOPHYLLUM 'CIMMERON' CIMMERON SAGE 5 GALLON
- TECOMA STANS YELLOW BELLS 5 GALLON
- HESPERALOE PARVIFLORA RED YUCCA 5 GALLON
- MUHLENBERGIA 'REGAL MIST' REGAL MIST DEER GRASS 5 GALLON
- LANTANA MONTEVIDENSIS TRAILING PURPLE LANTANA 1 GALLON
- LANTANA MONTEVIDENSIS 'GOLD MOUND' 1 GALLON
- MATCH ADJACENT VILLAGES @ VAL VISTA DECOMPOSED GRANITE 2" DEPTH IN ALL LANDSCAPE AREAS
- BOGAINVILLEA 'BARBARA KARST' BOUGAINVILLEA 5 GALLON TRAIN TO TRELLIS

RKAA ARCHITECTS, INC

PUBLIC STORAGE
SWC GERMANN & VAL VISTA
GILBERT, ARIZONA
DATE: 04-15-2015 (PRELIMINARY)

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RKAA# 14200.00

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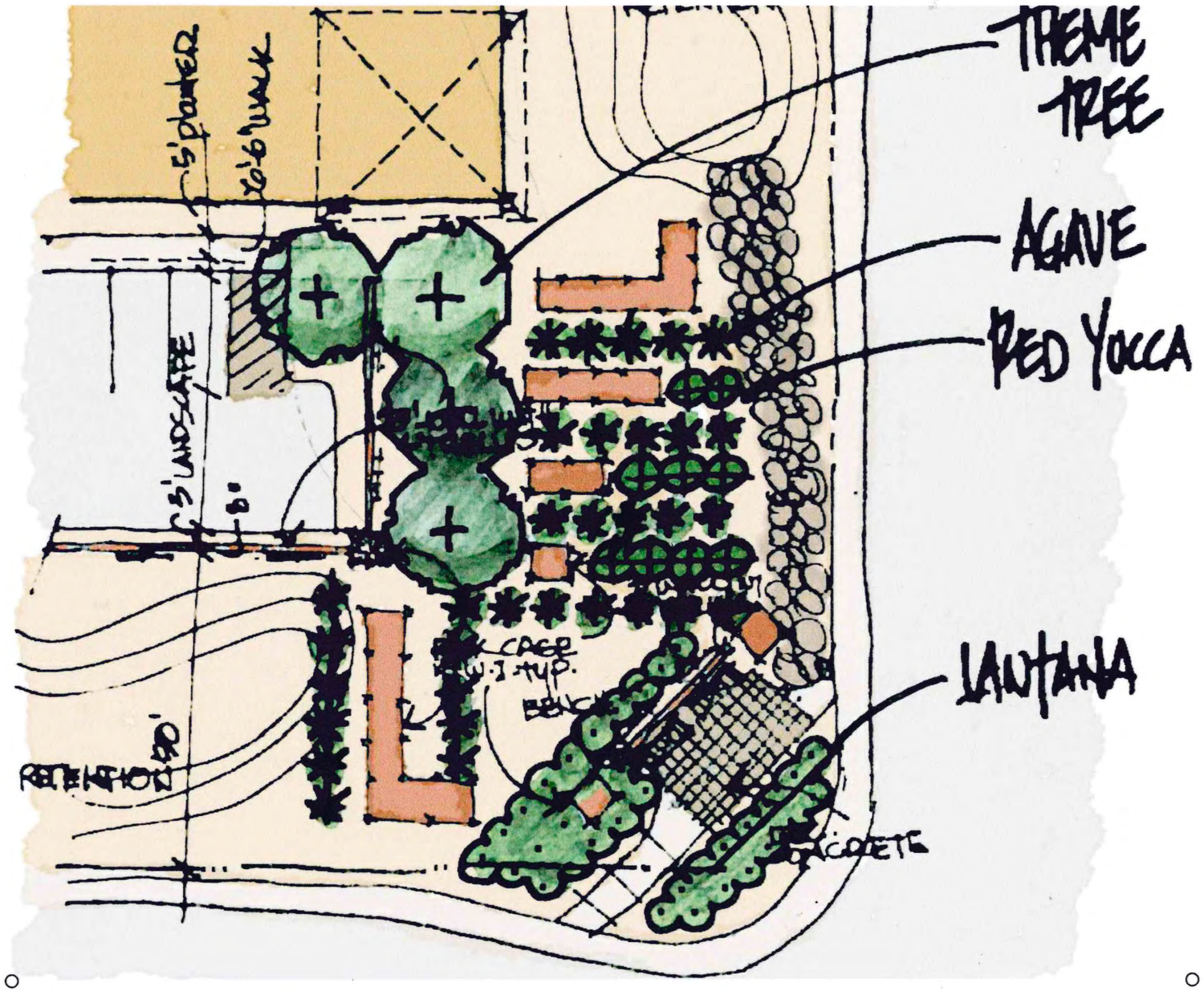

THEME TREE
AGAVE
RED YOCCA
LANTANA
5' planter
10' walk
5' LANDSCAPE
CASE
W.I. TYP.
RETENTION
ACOETE

TOWN OF GILBERT
PLANNING COMMISSION, REGULAR MEETING STUDY SESSION
GILBERT MUNICIPAL CENTER, 50 E. CIVIC CENTER DRIVE GILBERT ARIZONA
APRIL 1, 2015

COMMISSION PRESENT:	**Chairman Joshua Oehler** **Vice Chairman Kristofer Sippel** **Commissioner Brent Mutti** **Commissioner Jennifer Wittmann** **Commissioner David Blaser** **Commissioner Carl Bloomfield**
COMMISSION ABSENT:	**Commissioner David Cavenee** **Alternate Todd Hall**
STAFF PRESENT:	**Planning Services Manager Linda Edwards** **Principal Planner Katherine Lorbeer** **Senior Planner Amy Temes** **Senior Planner Bob Caravona** **Planner Nichole McCarty** **Planner Nathan Williams**
ALSO PRESENT:	**Town Council Member Brigette Peterson** **Town Attorney Jack Vincent** **Recorder Margo Fry**

CALL TO ORDER:

Chairman Joshua Oehler called the meeting to order at 5:00 p.m.

Review future plans for transit in Gilbert.

Town Traffic Engineer Erik Guderian stated that there had been some interest in transit among various committees and commissions within the Town and he wanted to give a brief overview of some things that had been happening as well as some short-term and long-term goals. There are 7 existing bus routes in the Town which are as follows:

Route 108 – Elliot Road
Route 112 – Arizona Avenue
Route 136 – Gilbert Road
Route 156 – Williams Field Road
Route 184 – Power Road
LINK – Arizona Avenue (Bus Rapid Transit)
Route 531 – Gilbert Express (Park-n-Ride along Gilbert Road)

The current overall operating budget is $4.7 million for transit with the majority being funded through the Public Transportation Fund. There are some Arizona lottery funds that pay for Dial-a-ride. In addition there is one rapid transit route that runs along Arizona Avenue and an express route that runs from the Gilbert park-and-ride in the Heritage District to downtown Phoenix. Mr. Guderian referred to the information in the following graphic from page 2 of the staff report:

Service ID	Service Name	Included in Option 1	Included in Option 2	Priority
A	McQueen	X	X	High
B	Val Vista	X	X	Medium
C	Power	X	X	Low
D	Baseline	X	X	High
E	Ray/Warner	X	X	Medium
F	Queen Creek	X	X	Low
G	Higley		X	Medium
H	Riggs		X	Low
I	Williams Field Express	X	X	Medium
J	Val Vista Express		X	Low
K	Power Express		X	Medium
L	Williams Field BRT	X	X	Medium
M	Gilbert BRT		X	Medium
N	Power BRT		X	Low
Circulators	All			Low
Park-and -Ride	Heritage District	X	X	High
Park-and -Ride	San Tan Village	X	X	High
Park-and -Ride	Cooley Station	X	X	High
Park-and -Ride	Queen Creek/Higley		X	High
	Commuter Rail			*
	HOV Lanes			*

**responsibility by others*

Mr. Guderian stated that over the years ridership has flattened out but that they were seeing an increase in ridership in Gilbert. Working extensively with surrounding communities the Gilbert Transportation Master Plan was just completed and adopted by Town Council in October 2014. MAG and Valley Metro have a study that is looking at the entire East Valley and planning out bus routes for the next 5, 10 and 20 years to make sure that the routes are in the proper place and are in place to be able to support higher forms of transit whether that be light rail or commuter rail. MAG performed a study in 2010 looking at commuter rail for the entire Phoenix region and ADOT has sort of built on that and is looking at inner-city rail that was built on the commuter rail line and would actually link up high speed rail between Phoenix and Tucson. The preferred line would run through Gilbert. A program called the Fiesta Downtown Chandler Transit Study is looking at a light rail extension from the existing light rail that runs along Main Street, most likely along Dobson road or Alma School in Mesa and coming over to Arizona Avenue to touch Gilbert and then go into Chandler. They were looking ahead 20 years and wanted to plan ahead based on land use, current decisions that are made and where those significant bus routes or corridors should be where they look at transit. Mr. Guderian said that a common comment when speaking with the public about vehicular, pedestrian and bike access and transit, transit was the most lacking in Gilbert, especially when you get South of the 202. They don't have a lot of density to support a lot of transit in that area but they looked at a line along Val Vista essentially running the entire length of Gilbert from Riggs to Baseline connecting with Mesa and also a line along Queen Creek in the future. Those are long-term priorities. Staff is currently working with Valley Metro to identify the routes with the highest transit propensity that could potentially be implemented in the next 5 years. There are several factors that need to be identified this can occur; the greatest factors being funding and fleet. The routes that are under full review are:

Route 120 – McQueen Road
Route 77 – Baseline Road

Mr. Guderian said that most people don't want to talk about bus routes but everybody wants to talk about light rail and commuter rail and when it will be put into Gilbert. Commuter rail is a heavier rail that actually runs along dedicated railroad tracks and has fewer stops. Light rail is fun to ride and makes many stops but is not a great commuter option. In Gilbert's General Plan and Transportation Master Plan there are stops identified in both the Heritage District and Cooley Station. The transitional step between having regular bus service and something like light rail or commuter rail is bus rapid transit which are higher frequency and many times branded buses and Gilbert will be looking at that. Gilbert's neighbors have identified Power road and Arizona Avenue as locations that may have that in the future. In Gilbert's Transportation Master Plan they identified the Pecos/Williams Field corridor to connect both Arizona Avenue and Power Road and over to the University and airport.

Commissioner Bloomfield asked if there was a CIP in place for Higley north of Warner.

Mr. Guderian responded that they will be under contract this month to begin widening Higley Road and will build 2 lanes in each direction along with the median.

Commissioner Blaser asked if staff had a best guess on timing for commuter rail for Gilbert.

Mr. Guderian said that it would be a regional effort as the Town doesn't have any funding identified for it. It would probably take a proposition to get funded. There is no specific date.

GP15-02 - Villages at Val Vista - Request for Minor General Plan Amendment to change the land use classification of approximately 6.02 acres of real property generally located at the southwest corner of Val Vista Drive and Germann Road from Shopping Center (SC) land use classification to General Commercial (GC) land use classification.

Z15-04 - Request to amend Ordinance No. 2299 and rezone approximately 6.02 acres of real property within the Villages at Val Vista Planned Area Development (PAD) generally located at the southwest corner of Val Vista Drive and Germann Road from approximately 6.02 acres of Shopping Center (SC) zoning district with a Planned Area Development overlay to approximately 6.02 acres of General Commercial (GC) zoning district with a Planned Area Development overlay.

Senior Planner Amy Temes stated that the project site was located at the southwest corner of Val Vista Drive and Germann Road and is part of the Villages at Val Vista. In 2010 they saw a General Plan amendment for rezoning on that piece of property. It included a housing development around it to the West and the South. An aerial map was displayed and it was pointed out that the homes have developed and part of the commercial property has now become Ball Charter School and also located adjacent to the site is Primrose Preschool which is in the building process. The site is important as it is a Gateway into South Gilbert. The applicant is requesting a General Plan Amendment from Shopping Center (SC) to General Commercial (GC) and asking for a rezone from SC PAD to GC PAD. Under SC, the applicant is intending to build a personal public storage facility which is allowed under SC zoning for up to 75,000 ft.^{2}. The applicant has indicated they would like to build a center of approximately 102,000 ft.^{2} so that would require going up to the next highest zoning category and GC does not restrict a single user or building to a specific square footage. There is a development plan and a few modifications that are being requested as part of the PAD. The site plan map was displayed. The entrance to this site will be off of Val Vista and is a shared entrance to Primrose Preschool. The main office would be at that location. Some of the design issues are what prompted the request for the modifications. The applicant has modified their plans in response to the neighborhood meeting. The applicant has gone out and talked to the neighbors about what they could do to bring their project into conformance to what the neighbors thought would be acceptable. Emails that were received from the neighbors prior to that may reflect different opinions when the case goes to public hearing. The elevations were displayed and it was noted that it was one story. If the applicant were to build

under SC zoning the odds are that they would do a two-story facility to leave enough land for other uses. Ms. Temes referred to the following information from page 4 and 5 of the staff report:

Development Standard	**Existing SC**	**Existing GC**	**Proposed GC Modifications**
Size	75,000	no restriction	
Height	35/2	45	
Building Setback Front	25' Front/Address from Germann Rd.	25'	
Building Setback Side to Street	20' from Val Vista Dr. /Granite St.	20'	
Building Setback Rear Residential	15' from Val Vista Academy	20'	**0' to Val Vista Academy (Gilbert's policy has waived interior setbacks to commercial)**
Landscape Front	50 x 250' at arterial intersection 25' along Germann Rd.	25'	
Landscape Side to Street	50 x 250' at arterial intersection 20' Val Vista Dr./Granite St.	20'	**10' to Granite St.**
Landscape Setback Rear Non-Res.	15'	20'	**0' to Val Vista Academy (Gilbert's policy has waived interior setbacks to commercial)**
Building Separation	15'	15'	
Landscape %	15%	15%	**Information requested**

Ms. Temes said that the neighbors indicated that they preferred not to have a building, even though the building was acting as a wall, that it not be located along the property line. There is a wall, 3 foot landscape area and then the drive aisle internal to the site. The modifications that occurred at the South property line adjacent to the charter school and Primrose Preschool are such that if you put a landscape area and leave a gap of landscape behind the building and adjacent to the chain link fence of the sports field you have somewhat of a no man's land. It is somewhat hard to patrol and maintain and is not of much use other than for retention. The applicant would like to have a 0 setback along that South property line and the East property line and the wall of the building would act as the boundary wall. Staff has requested that the applicant obtain a letter from the charter school stating that they agree to that and that the charter school fence would be taken down as the building is constructed. That is so they do not have the 2' footer gap between the fencing and the wall which is another area that is very difficult to maintain. Ms. Temes displayed each of the elevations. She pointed out where the emergency access point is located.

Commissioner Mutti asked if the letter from the school endorsing the zero building setbacks had been received.

Ms. Temes said that it had not been received to date.

Commissioner Mutti said that some of the emails that had been received from the neighbors contain concerns about undesirable elements that come with storage facilities and asked staff if there was any tangible or factual evidence of those concerns.

Planner Temes said that they had not received any complaints about storage facilities; however, she would put in a call to the police department for information regarding that and would forward that information to the Commissioners prior to the next hearing.

Commissioner Mutti noted that the southeast portion was not on the plan and that portion is what has the shared drive with the school. Was that shared drive part of the application?

Planner Temes responded that the school had it in their application to develop that part in conjunction with the developer and owner of the property so they could have their second means of access in and out of the school. If they are under development at the same time it will be a joint development but they expect Primrose Preschool to begin construction in the very near future. It is the primary access for the site.

Commissioner Mutti asked if there was any kind of justification being provided to warrant the reduction of the setback.

Ms. Temes said that the dimension came from the neighbors input that they like trees. Trees take between 5 and 10 feet depending on the size of the tree and they wanted landscape in that location. The applicant believed 10 feet was adequate and to do 20 feet was probably more than was needed to do what the neighbors were requesting. There is existing sidewalk and landscape along that area but the neighbors wanted a little bit more of a buffer.

Commissioner Mutti said that in reading the comments from the neighbors those that have some level of support for the project seem to object to a reduction in the landscape buffer.

Commissioner Wittmann asked if there was an average acreage size that is typically utilized for General Commercial.

Planner Temes said that she did not believe there was any requirement or restriction for GC.

Commissioner Wittmann asked if there was an estimate on the lot coverage amount. She said it felt as though the entire parcel was being absorbed by a building.

Planner Temes said that it is a mini storage and it was not common for a mini storage to have a large amount of landscape internal to their walled yard. They are meeting the landscape requirements in the other areas as the modifications requested. She said she did not believe that there was an issue in meeting those requirements.

Commissioner Wittmann said that she did not have any objection to the setback along the south and east property line adjacent to the school but did have some concern about the size of the facility. She said that typically they do not see those on a corner and she was not totally sold on the landscaping on the west side and the requests for the reduction. She did not currently see a reasonable justification for it.

Vice Chairman Sippel said that the reality is that a storage facility could go in this area that was 75,000 ft.^{2} or less and it could be 2 stories. He asked if there was any thought about what the applicant could do on the strength of the application going forward. He said they could conceivably come back with a design that fits within the current zoning and come back with a two-story 75,000 ft.^{2} structure that's 25 feet off of the property line and is massive. The current plan is one story and spread out. He said he was struggling with all of that.

Planner Temes said if they went with a 75,000 ft.^{2} unit it would primarily be on the Western end and odds are that access to Granite would need to be at full access and not just emergency access. The applicant is willing to commit to one story for this project.

Vice Chairman Sippel said he agrees with his fellow members in terms of the landscape on the west and to make it somewhat more robust. It needs to be one of the nicest storage facilities in Arizona because of the amount of traffic that it sees and because it is a central point into Gilbert.

Planner Temes said that there has been some discussion about enhancing the corner to more than the two walls that are shown to create an entry feature for the entire community that is reflective of the Villages at Val Vista open space plan. The applicant is looking into that.

Commissioner Blaser said that he would also like to see justification for the reduction in setbacks. He said he would be interested to see what it would look like if the zoning were left the same and they reduce the square footage to 75,000 ft.^{2} by right.

Chairman Oehler said that this was the first main intersection that you see when you come off the freeway going south and he would like to see a lot more put into the site and design of the building and that it not be just a big tower element with two little screen walls. He said that he felt they should also look at the parking. The parking meets the requirements but seems to be inadequate. He asked if they had a cross access agreement with the school.

Planner Temes said that they anticipate a cross access agreement of some type between the two properties, however, from a parking standpoint the applicant states that most people park in front of their rollup door stalls and there is also a loading stall for a large truck within the drive isle. Some people will also park along the drive isle. The project does meet the standards for the Town.

Chairman Oehler said when they come back he would like to see more attention paid to the design of the building and also how they deal with the landscaping on the side.

GP15-03 - Request for a Minor General Plan Amendment to change the land use classification of approximately 5.04 acres of real property generally located at the northwest corner of Rome and Melrose Streets from 5.04 acres of Business Park Land Use Classification to 5.04 acres of General Office Land Use Classification.

Z15-07 - Request to rezone approximately 5.04 acres of real property generally located at the northwest corner of Rome and Melrose Streets from Business Park (BP) zoning district with a Planned Area Development Overlay to General Office (GO) zoning district.

Senior Planner Amy Temes stated that they were looking at an approximately 5 acre site which is just south of the Mercy Gilbert Hospital between Val Vista and Germann Roads on the northeast corner. The Val Vista 160 & Germann Planned Area Development (PAD) was created in conjunction with Improvement District 20 (ID 20). The objective of these plans and improvements were to bring together numerous owners within a development area to create a cohesive plan with shared infrastructure. The PAD designated the zoning districts compatible with the hospital/medical oriented uses, which act as a buffer to the large lot neighborhoods to the east. The site plan was displayed and the various surrounding uses were pointed out. The applicant is requesting to change to from Business Park (BP) to General Office (GO) category. To the north and east is GO with BP to the west and to the south. Ms. Temes said that staff wanted to amend the applicants request to GO with a PAD overlay. She indicated the site plan and said that the reason was that the corner that she indicated on the map was 14.5' away from the property line and the requirement is 20'. For that purpose they need to ask for a PAD overlay so they can modify that one condition for building setback and landscape. Other than that the applicant meets all requirements in all categories. It is a skilled nursing facility of 3 stories and they are within the height requirement of the zoning district. This is an orthopedic recovery facility from the surgery Center in Phoenix. It is owned by the doctors who own the surgery center and they have facilities around the Valley where their patients go to do their rehab and recovery and it is solely for those orthopedic patients. The project is within the Central 202 Core Growth Area, which encourages development of intense uses that support Gilbert's target markets of Biotech, Life Sciences, Healthcare and Advanced Business Services. Economic Development is in

support of medical oriented businesses within close proximity to Gilbert Mercy Hospital. Skilled Nursing is considered a support use.

Commissioner Wittmann said that she thought this was exactly what they hoped would come into that area and that she was excited about that. The use is compatible with the surrounding uses and she had no concerns or issues with the change in the zoning or General Plan classification.

Commissioner Blaser asked for clarification between Business Park and General Office.

Planner Temes said that office uses were allowed in Business Park, office and light industrial. In General Office there is somewhat of a difference in the uses and the users. You will see more class A office buildings in GO where you typically find more class B or C office buildings in BP. Skilled nursing and congregate care are not allowed under the BP category in order to separate those uses out from some uses that may have odors or noises that are not compatible with recovery environments. She noted that the whole area is within the vertical overlay.

Z14-15-E - An amendment to the Town of Gilbert Land Development Code to amend Land Use Regulation Tables in all zoning districts, amend development regulations and site regulations in all zoning districts, amend sign regulations and subdivision regulations.

Principal Planner Catherine Lorbeer said that in July 2014 the Planning Commission initiated a comprehensive cleanup to the Land Development Code (LDC) and so far has reviewed four distinct batches of code amendments. The purpose of the update was to modernize and enhance the LDC so that staff can be more responsive to the customer without compromising the land use compatibility or the quality of development. Batch E is the 5th group of amendments and the proposed changes focus on the Design Review Board (DRB). Staff is proposing to add to the membership of the DRB more flexibility and adding any mix of the following would qualify as members of the board:

a. A civil engineer;

b. A landscape architect;

c. An architect other than a landscape architect;

d. A construction industry representative;

e. A business owner or real estate broker; and

f. A private citizen.

Ms. Lorbeer said that they looked for projects that might lend themselves to a staff level approval. They found that business expansions in the employment districts could benefit from Administrative Design Review. They also, at a staff level, review open space plans for smaller subdivisions so they wanted to add that reference to the administrative Design Review section. Ms. Lorbeer stated that the DRB recently approved a building expansion in Light Industrial which had a previously approved site plan and building design. She indicated the site plan on display and said that the proposed expansion was approximately 15,000 ft.^{2}, which is easily accommodated on the site. The design was consistent with the existing approved building. Staff is suggesting that building expansions be added to administrative design review and this would provide a pro-business enhancement in the employment zoning districts.

Commissioner Blaser said that he believed that the changes were positive. He asked for clarification of the mix of professions for the Design Review Board.

Ms. Lorbeer said that the DRB and the Council would like as much flexibility as possible depending on the interest from the community in serving on the Board. They would like to have a blend of design

professionals as well as people that have a stake in the industry to be able to participate. It is worded to be as flexible as possible.

Commissioner Mutti said that in section 5.602 there was an addition for part B where it talked about employment zoning districts additions regardless of size and asked if that opened the door too wide. The addition could be well above the actual original building.

Ms. Lorbeer said that staff wanted to see if the Commission was comfortable with having a large-scale expansion of an existing employment use or if there was some threshold.

Commissioner Mutti said that perhaps the addition could somehow be gauged to the size of the existing building and perhaps there is a limit that you can't more than double its size. Just so they don't have a 5000 ft.^{2} original building and they come in with a 50,000 ft.^{2} addition. That could happen under those terms.

Discussion of Regular Meeting agenda

Vice Chairman Sippel said that item 10, S14–12, item 11, UP14–12, and item 12, UP15–04 would be moved to the non-consent public hearing.

ADJOURN MEETING

Study Session Meeting adjourned at 6:00 p.m.

_____

Chairman Joshua Oehler

ATTEST:

_____

Recorder Margo Fry

HAND DELIVERED

May 1, 2015

Amy Temes
Senior Planner
Town of Gilbert
90 E Civic Center Drive
Gilbert, AZ 85296

RE: *Primrose School Franchising Company / Public Storage*
SWC Val Vista Drive & Germann Road, Gilbert
a) Design Review Application (PDR-2015-00011)
b) Rezoning Application (PZN-2015-0004)

Dear Ms. Temes:

This letter is to express Primrose School Franchising Company's ("Primrose") support of Application No.'s PDR-2015-00011 (Design Review) and PZN-2015-0004 (Rezoning) (the "Applications") regarding the Rezoning and Design Review approval of a parcel to accommodate a Public Storage Facility at the southwest corner of Val Vista Drive and Germann Road ("P.S. Parcel"). Primrose is purchasing a parcel of approximately 1.5 acres which is immediately south and adjacent to the P.S. Parcel. We recently received approval from the Gilbert Design Review Board (Application No. DR14-41) and submitted to the Town Construction Documents for Primrose School.

Primrose has reviewed the development plans submitted to the Town for the P.S. Parcel and fully supports the Applications and recommends that the Planning Commission, City Council and Design Review Board approve each Application. Primrose is in support of the proposed use for the P.S. Parcel in part because the development contemplates buildings and/or walls along the property lines separating our property from the P.S. Parcel. These buildings/walls will border Primrose's outdoor playground area and will provide an enhanced level of security for the children in our care using the playground. Not only will our playground area be screened and separated from the P.S. Parcel and the general public, but the low level of traffic generated by a storage facility and the secured nature of the P.S. Parcel development will minimize the number of vehicles using the common drives between parcels. Additionally, Primrose understands that if the rezoning is not approved by the Town, a seventy five thousand square foot (75,000 s.f.) storage facility could locate on the Property which would not provide the same protections mentioned above and may be of a lesser quality than now proposed by Public Storage.

For the reasons stated above, Primrose feels that nature and quality of the development proposed by Public Storage is compatible and will enhance the security of the children in our care as compared to other more intense commercial uses which are currently permitted by the existing zoning ordinance. Primrose views this proposed use as being compatible with our development plans.

Please contact the undersigned should you have any questions regarding Primrose's support of Public Storage's Rezoning and Design Review Applications.

Sincerely,

John Rosen
Vice President Real Estate & Development

cc: Linda Edwards, Planning Manager
Paul Gilbert, Beus Gilbert, PLLC
Gary Davidson

FINDING OF FACT
Z15-04 Villages at Val Vista Public Storage

1. The proposed zoning amendment conforms to the General Plan and the Planned Area Development overlay zoning district.

2. All required public notice has been conducted in accordance with applicable state and local laws.

3. All required public meetings and hearings have been held in accordance with applicable state and local laws.

ORDINANCE NO. _____

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AMENDING THE OFFICIAL ZONING MAP OF THE TOWN OF GILBERT, ARIZONA, BY AMENDING ORDINANCE NO. 2299 PERTAINING TO THE VILLAGES AT VAL VISTA PLANNED AREA DEVELOPMENT (PAD) BY REZONING APPROXIMATELY 6.02 ACRES OF REAL PROPERTY GENERALLY LOCATEDAT THE SOUTHWEST CORNER OF VAL VISTA DRIVE AND GERMANN ROAD, IN ZONING CASE Z15 -04, FROM APPROXIMATELY 6.02 ACRES OF TOWN OF GILBERT SHOPPING CENTER (SC) ZONING DISTRICT, ALL WITH A PLANNED AREA DEVELOPMENT OVERLAY DISTRICT TO 6.02 ACRES OF GENERAL COMMERCIAL (GC) ZONING DISTRICT, ALL WITH A PLANNED AREA DEVELOPMENT OVERLAY DISTRICT, AND AMENDING THE CONDITIONS OF DEVELOPMENT AS FOLLOWS: REDUCE SIDE YARD SETBACK ADJACENT TO NON-RESIDENTIAL USES, REDUCE THE REAR SET BACK FROM 75' TO 20' FOR BUILDINGS ADJACENT TO RESIDENTIAL USES, AND REDUCE LANDSCAPING SETBACK ADJACENT TO RESIDENTIAL USES FROM 40' TO 10'. THE EFFECT OF THE REZONING WILL BE INCREASE INTENSITY AND THE SQUARE FOOTAGE ALLOWED FOR A SINGLE USER; AND RESTATING AND INCORPORATING THE PROVISIONS OF ORDINANCE NO. 2299 HEREIN; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR NON-SEVERABILITY; AND PROVIDING FOR PENALTIES.

WHEREAS, by adoption of this Ordinance, the Town Council desires to amend conditions of development relating to the development of certain parcels within the Villages at Val Vista Planned Area Development (PAD) pursuant to the Town of Gilbert Zoning Code requirements for a Planned Area Development to allow for the development of General Commercial uses; and

WHEREAS, the Town Council has determined that this amendment to the Official Zoning Map and the Planned Area Development conditions of development conforms with the Town of Gilbert General Plan as amended, any applicable Specific Area Plan, neighborhood, or other plan, and any overlay zoning district; and

WHEREAS, all required public notice was provided and all required public meetings and hearings were held in accordance with applicable state and local laws; and

WHEREAS, that certain document entitled Exhibit 3: Amended Development Plan of the Villages at Val Vista Planned Area Development, dated June 25, 2015 is attached hereto and incorporated by this reference.

NOW THEREFORE, BE IT ORDAINED by the Common Council of the Town of Gilbert, Arizona, as follows:

Section I. In General.

1. The Official Zoning Map of the Town of Gilbert, Arizona is hereby amended by amending Ordinance No. 2299 relating to the Villages at Val Vista PAD by changing the zoning classification of real property consisting of approximately 6.02 acres located at the southwest corner of Val vista Drive and Germann Road (the "Property"), as described in the legal description, Exhibit 1, and as shown on the Zoning Exhibit (map) in Exhibit 2, both attached hereto and incorporated herein, from 6.02 acres of Town of Gilbert Shopping Center (SC) zoning district, all with a Planned Area Development Overlay District to 6.02 acres of General Commercial (GC) zoning district, all with a Planned Area Development Overlay District.

2. Ordinance No. 2299 relating to the Villages at Val Vista PADis amended by adding new Exhibit 3, attached hereto and incorporated herein, and making that Exhibit part of the Development Plan for the Villages at Val Vista PAD, as set forth in or attached to Ordinance No. 2299 to read as follows:

EXHIBIT 3: Amended Development Plan of the Villages at Val Vista PAD, dated June 25, 2015.**]**

3. Ordinance Nos. 2299 relating to the Villages at Val Vista PAD is further amended by restating and amending the development conditions for which development of the Property is conditioned, as set forth below (additions shown in ALL CAPS, deletions shown in ~~strikeout~~):

a. Dedication to the Town for Val Vista Drive and Germann Road rights-of-way that are adjacent to the Project shall be completed at the time of final plat recordation or sooner if required by the Town Engineer. Dedication of Val Vista Drive and Germann Road shall extend 70 feet from the centerline.

b. Construction of required off-site improvements to Val Vista Drive and Germann Road shall be required per the Phasing Plan Exhibit. No occupancy permits shall be issued within any phase of the Project until the corresponding improvements of that phase are complete. If the Town requests construction of the off-site improvements prior to the construction of a phase, in lieu of construction, the Developer may enter into a Reimbursement Development Agreement with the Town for payment by the Developer of Developer's pro rata share of the costs of the off-site improvements of that phase to satisfy the requirements of this condition.

c. Developer shall complete recordation of easements for pedestrian, bicycle, equestrian, multi-use or other public access trail system by the time of final plat recordation or sooner if required by the Town Engineer.

d. The Developer shall execute water and sewer buy-in agreements, whereby the developer shall pay for its proportional share of water and sewer mains prior to final plat approval.

e. Dedication to the Town of Gilbert for public utility easements adjacent to Val Vista Drive and Germann Road shall be completed prior to or at the time of recordation of the final plat or sooner if required by the Town Engineer.

f. A Development Reimbursement and Lien Agreement for required off-site improvements to Val Vista Drive adjacent to the Project shall be executed and provided to the Town prior to the effective date of this ordinance. Failure by Developer to execute a Development Reimbursement Agreement and Lien Agreement prior to the effective date of this ordinance may result in reversion of the zoning to the prior zoning classification. If Developer constructs the improvements, Gilbert shall release Developer from its obligations under the Development reimbursement Agreement.

g. The Project shall be developed in conformance with the Town's zoning requirements for the zoning districts and all development shall comply with the Town of Gilbert Land Development Code except as modified by the following:

Development Standard	SF-D	Shopping Center
Side Building Setback Adjacent to Residential	Per LDC	45'
Rear Building Setback Adjacent to Residential	Per LDC	45'
Side Landscape Setback Adjacent to Residential	Per LDC	20'
Rear Landscape Setback Adjacent to Residential	Per LDC	20'
4.109A.c Separation Fencing between residential and commercial uses	Not Required when adjacent to open space	Not required when adjacent to open space
Local Street Cross-Section	43' ROW	N/A

DEVELOPMENT STANDARDS	GENERAL COMMERCIAL MODIFICATIONS
BUILDING SETBACK SIDE TO NON-RESIDENTIAL	**0' TO VAL VISTA ACADEMY AND PRIMROSE PRESCHOOL**
BUILDING SETBACK REAR TO RESIDENTIAL	**20'**
LANDSCAPE SIDE TO NON-RESIDENTIAL	**0' TO VAL VISTA ACADEMY**
LANDSCAPE SETBACK	**10'**

TO REAR RESIDENTIAL.	
HEIGHT	**1-STORY**

h. The Developer shall create a new Homeowner's Association (HOA) or Property Owner's Association (POA) for the ownership, maintenance, landscaping, improvements and preservation of all common areas and open space areas and landscaping within the rights-of-ways.

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 Non-Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, then this entire ordinance is invalid and shall have no force or effect.

Section III. Providing for Penalties.

Any person found responsible for violating this Ordinance shall be subject to the civil sanctions and habitual offender provisions set forth in Sections 5.1205 and 5.1206 of the Gilbert Land Development Code. Each day a violation continues, or the failure to perform any act or duty required by this zoning ordinance, the Zoning Code or by the Town of Gilbert Municipal Court continues, shall constitute a separate civil offense.

PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this _____ day of _____, 20__, by the following vote:

AYES: _____

NAYES: _____ ABSENT: _____

EXCUSED: _____ ABSTAINED: _____

APPROVED this ____ day of _____, 20__.

_____
John W. Lewis, Mayor

ATTEST:

_____
Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

_____
L. Michael Hamblin
Town Attorney

I, CATHERINE A. TEMPLETON, 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 _____, 20__, WAS POSTED IN FOUR PLACES ON THE __ DAY OF _____, 20__.

_____
Catherine A. Templeton, Town Clerk

The following exhibits are attached hereto and incorporated herein:
1. Legal Description
2. Zoning Map
3. Amended Development Plan of the villages at Val Vista PAD

LEGAL DESCRIPTION: APN#304-57-897

Lot 1 of the Final Plat for Arizona Ball Charter School as rec of Maricopa County, Arizona also being a portion of the Northeast quarter of Section 8, Township 2 South, Range 6, East of the Gila and Salt River Meridian, Maricopa County, Arizona;

EXCEPT the following described parcel of land;

COMMENCING at a found Town of Gilbert brass cap in hand hole accepted as the Northeast corner of said Section 8 from which a found Town of Gilbert brass cap in hand hole accepted as the East quarter corner thereof bears South 00°54'45" West, 2646.59 feet;

Thence South 00°54'45" West, 91.20 feet along the east line of said Northeast Quarter;

Thence leaving said east line, North 89°05'15" West, 70.00 feet to the Northeast corner of said Lot 1;

Thence South 00°54'45" West, 226.98 feet along the east line of said Lot 1 to the POINT OF BEGINNING;

Thence continuing along said east line, South 00°54'45" West, 252.82 feet to the southeast corner of said Lot 1;

Thence North 89°05'15" West, 46.18 feet along the south line of said Lot 1;

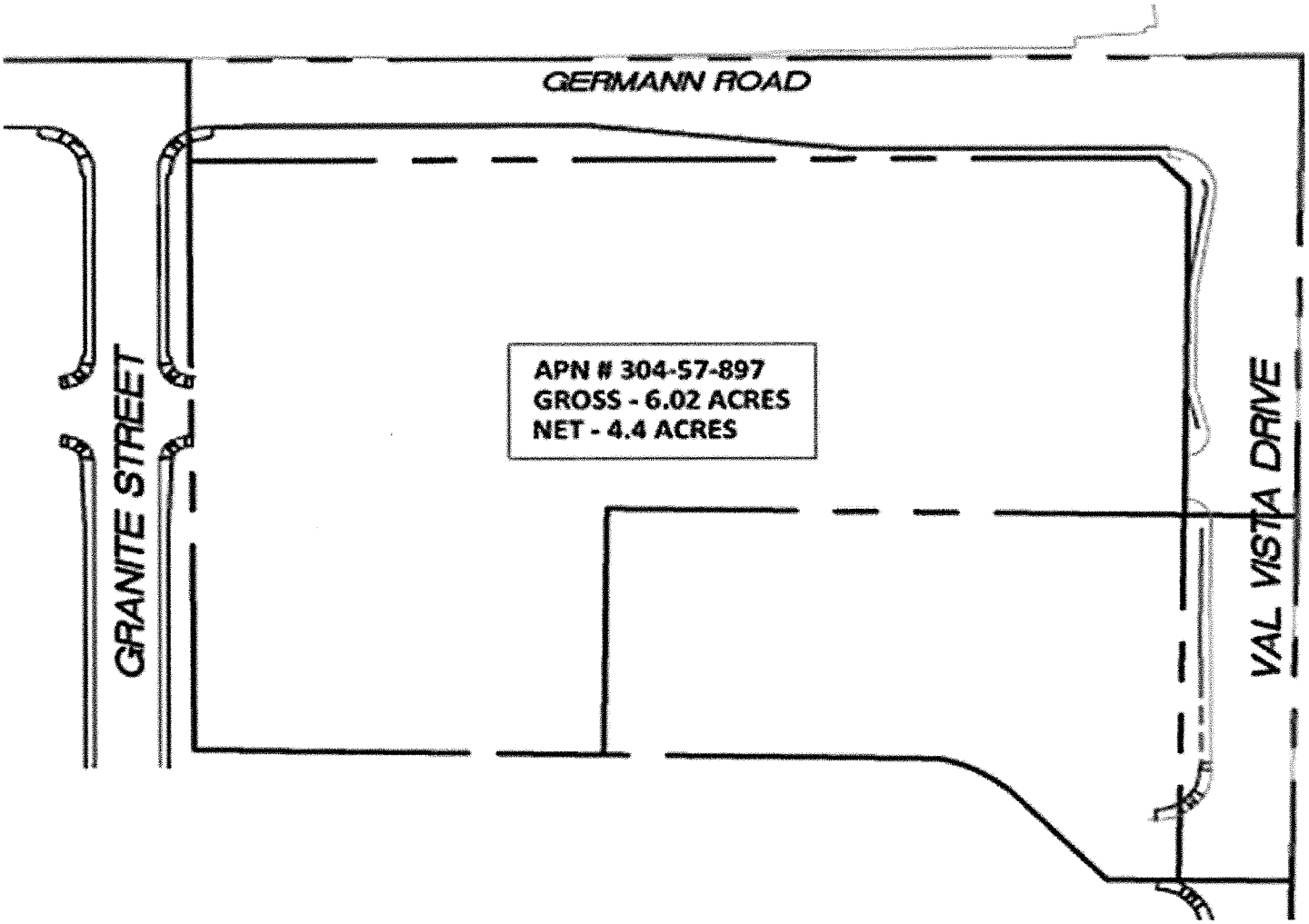
Thence continuing along said south line and westerly along said curve, through a central angle of 32°52'56", an arc length of 55.76 feet to a non-tangent line;

Thence continuing along said south line, North 89°05'15" West, 209.29 feet;

Thence leaving said south line, North 00°54'45" East, 170.30 feet;

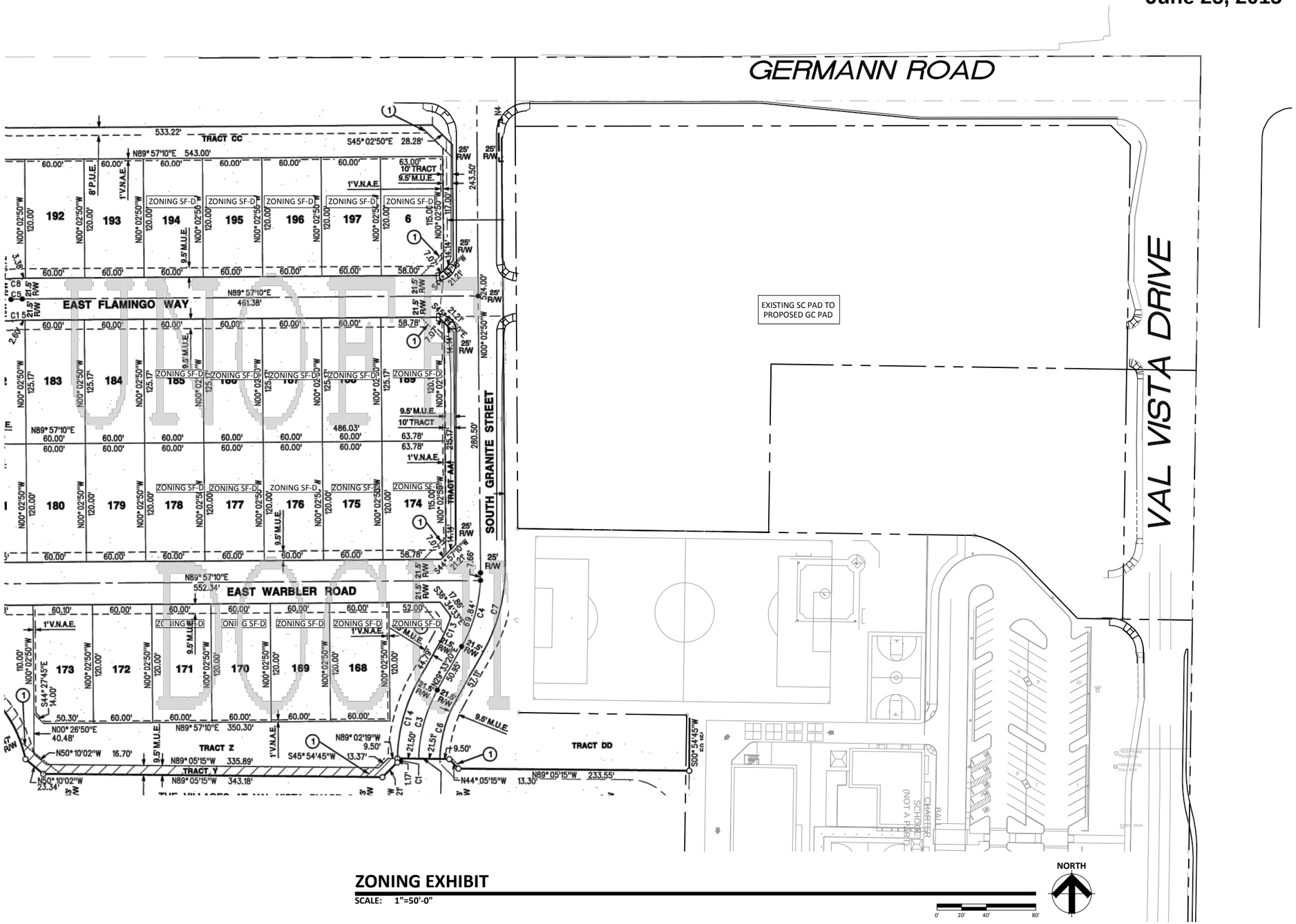
Thence South 89°05'15" East, 360.00 feet to the POINT OF BEGINNING.

MAP OF SITE: APN#304-57-897



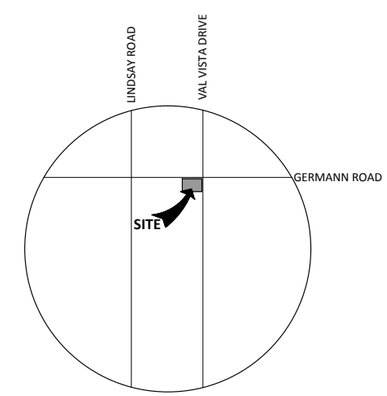
GP15-02 and Z15-04: Villages at Val Vista Public Storage
Attachment 5 - Ordinance
Exhibit 2 - Zoning Map
June 25, 2015

EXISTING ZONING	SC PAD - REZONE TO GC PAD
PARCEL#	304-57-897
SITE AREA TOTAL	193,192 S.F. (4.44 ACRES) = NET
	262,542 S.F. (6.02 ACRES) = GROSS
LOT COVERAGE	102,952/193,192=53.2%
PROPOSED USE	STORAGE: PERSONNEL PROPERTY
MAX BUILDING HEIGHT	45'
PROPOSED BUILDING HEIGHT	27'-8"
PROJECT DESCRIPTION	PROPOSED SELF STORAGE FACILITY WITH MANAGERS RESIDENCE
ZONING SETBACKS	
FRONT	25' LANDSCAPE
SIDE YARD	20' BUILDING/LANDSCAPE: REQUESTING 0 SETBACK
REAR	20' BUILDING/LANDSCAPE: REQUESTING 0 SETBACK



ZONING EXHIBIT

SCALE: 1"=50'-0"



VICINITY MAP

SCALE: N.T.S.

NORTH

PUBLIC STORAGE
SWC GERMANN & VAL VISTA
GILBERT, ARIZONA
DATE: 02-10-15

ZEX-1

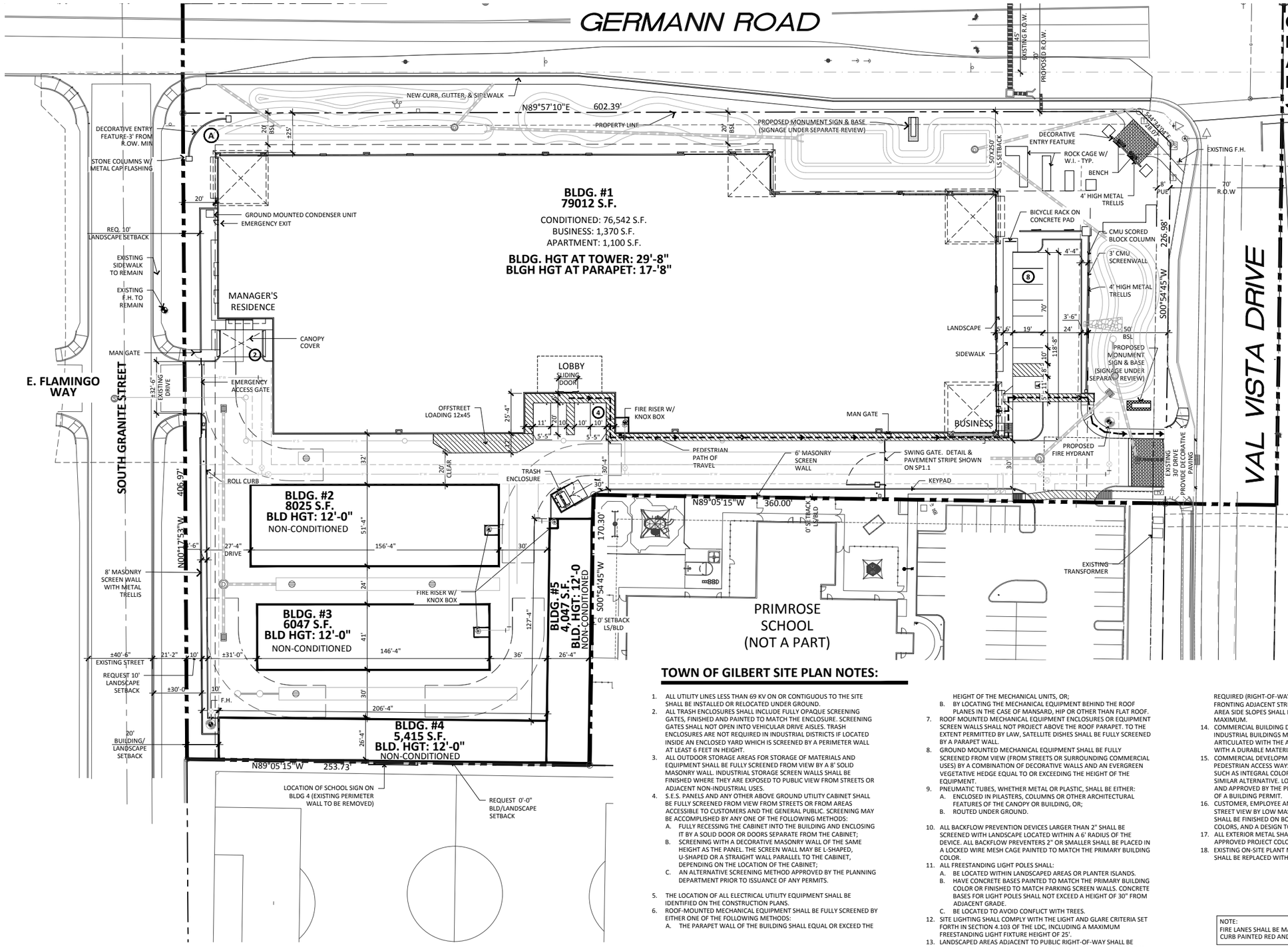
RKAA# 14200.00

© 2014 RKAA ARCHITECTS, INC. ALL RIGHTS RESERVED. THIS DRAWING IS AN INSTRUMENT OF SERVICE. IT IS THE PROPERTY OF RKAA ARCHITECTS, INC. AND MAY NOT BE DUPLICATED, USED OR DISCLOSED WITHOUT WRITTEN PERMISSION OF THE ARCHITECT.

RKAA ARCHITECTS, INC

ARCHITECT: DEVELOPER:

GP15-02 and Z15-04: Villages at Val Vista Public Storage
Attachment 5 - Ordinance
Exhibit 3 - Development Plan
June 25, 2015



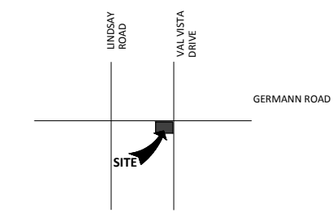
SITE PLAN
SCALE: 1"=30'-0"

PLANNED AREA DEVELOPMENT OVERLAY (PAD) TO REMAIN

PARCEL#	304-57-897
SITE AREA TOTAL	193,192 S.F. (4.44 ACRES) = NET
	262,542 S.F. (6.02 ACRES) = GROSS
LOT COVERAGE	102,952/193,192=53.2%
PROPOSED USE	STORAGE: PERSONNEL PROPERTY
MAX BUILDING HEIGHT	45'
PROPOSED BUILDING HEIGHT	29'-8"
PROJECT DESCRIPTION	PROPOSED SELF STORAGE FACILITY WITH MANAGERS RESIDENCE
ZONING: BLDG/LANDSCAPE SETBACKS	
FRONT (VAL VISTA)	50' BLDG/LS REQ.
SIDE YARD (GRANITE STREET & GERMANN ROAD)	20' BLDG/LS: 20' BLDG/10' LS*
*GRANITE STREET REQUESTED DEVIATION DISTANCE TO BLOCK WALL 10'. 20' OF BLDG SETBACK MAINTAINED	
REAR (ADJACENT TO VAL VISTA ACADEMY)	20' BLDG/LS REQ: 0' BLDG/LS SETBACK PROVIDED: REQUESTING 0' SETBACK
PARKING CALCULATION	
TOTAL PARKING REQUIRED	STORAGE W/ 1 DWELLING UNIT = 8 SPACES PLUS 2 COVERED SPACES PER DWELLING UNIT : 10 SPACES REQUIRED
TOTAL PARKING PROVIDED	14 SPACES PROVIDED
BIKE PARKING REQ/PROVIDED	1 SPACE REQ/5 PROVIDED

BUILDING DATA

LOCATION	OFFICE/APT	COND. STORAGE	NON-COND. STORAGE	SUBTOTAL
BUILDING #1	2,470 S.F.	76,542 S.F.		79012
BUILDING #2			8,025 S.F.	8025
BUILDING #3			6,047 S.F.	6047
BUILDING #4			5,415 S.F.	5415
BUILDING #5			4,047 S.F.	4047
SUBTOTAL		76542 S.F.	23534 S.F.	
NET RENTABLE CALC		70%	95%	
SUBTOTAL NRSF		53,579 S.F.	22,357 S.F.	75936
TOTAL BLD SF				102546



VICINITY MAP
SCALE: N.T.S.

NORTH

TOWN OF GILBERT SITE PLAN NOTES:

1. ALL UTILITY LINES LESS THAN 69 KV ON OR CONTIGUOUS TO THE SITE SHALL BE INSTALLED OR RELOCATED UNDER GROUND.
2. ALL TRASH ENCLOSURES SHALL INCLUDE FULLY OPAQUE SCREENING GATES, FINISHED AND PAINTED TO MATCH THE ENCLOSURE. SCREENING GATES SHALL NOT OPEN INTO VEHICULAR DRIVE AISLES. TRASH ENCLOSURES ARE NOT REQUIRED IN INDUSTRIAL DISTRICTS IF LOCATED INSIDE AN ENCLOSED YARD WHICH IS SCREENED BY A PERIMETER WALL AT LEAST 6 FEET IN HEIGHT.
3. ALL OUTDOOR STORAGE AREAS FOR STORAGE OF MATERIALS AND EQUIPMENT SHALL BE FULLY SCREENED FROM VIEW BY A 8' SOLID MASONRY WALL. INDUSTRIAL STORAGE SCREEN WALLS SHALL BE FINISHED WHERE THEY ARE EXPOSED TO PUBLIC VIEW FROM STREETS OR ADJACENT NON-INDUSTRIAL USES.
4. S.E.S. PANELS AND ANY OTHER ABOVE GROUND UTILITY CABINET SHALL BE FULLY SCREENED FROM VIEW FROM STREETS OR FROM AREAS ACCESSIBLE TO CUSTOMERS AND THE GENERAL PUBLIC. SCREENING MAY BE ACCOMPLISHED BY ANY ONE OF THE FOLLOWING METHODS:
   A. FULLY RECESSING THE CABINET INTO THE BUILDING AND ENCLOSING IT BY A SOLID DOOR OR DOORS SEPARATE FROM THE CABINET;
   B. SCREENING WITH A DECORATIVE MASONRY WALL OF THE SAME HEIGHT AS THE PANEL. THE SCREEN WALL MAY BE L-SHAPED, U-SHAPED OR A STRAIGHT WALL PARALLEL TO THE CABINET, DEPENDING ON THE LOCATION OF THE CABINET;
   C. AN ALTERNATIVE SCREENING METHOD APPROVED BY THE PLANNING DEPARTMENT PRIOR TO ISSUANCE OF ANY PERMITS.
5. THE LOCATION OF ALL ELECTRICAL UTILITY EQUIPMENT SHALL BE IDENTIFIED ON THE CONSTRUCTION PLANS.
6. ROOF-MOUNTED MECHANICAL EQUIPMENT SHALL BE FULLY SCREENED BY EITHER ONE OF THE FOLLOWING METHODS:
   A. THE PARAPET WALL OF THE BUILDING SHALL EQUAL OR EXCEED THE HEIGHT OF THE MECHANICAL UNITS, OR;
   B. BY LOCATING THE MECHANICAL EQUIPMENT BEHIND THE ROOF PLANES IN THE CASE OF MANSARD, HIP OR OTHER THAN FLAT ROOF.
7. ROOF MOUNTED MECHANICAL EQUIPMENT ENCLOSURES OR EQUIPMENT SCREEN WALLS SHALL NOT PROJECT ABOVE THE ROOF PARAPET. TO THE EXTENT PERMITTED BY LAW, SATELLITE DISHES SHALL BE FULLY SCREENED BY A PARAPET WALL.
8. GROUND MOUNTED MECHANICAL EQUIPMENT SHALL BE FULLY SCREENED FROM VIEW (FROM STREETS OR SURROUNDING COMMERCIAL USES) BY A COMBINATION OF DECORATIVE WALLS AND AN EVERGREEN VEGETATIVE HEDGE EQUAL TO OR EXCEEDING THE HEIGHT OF THE EQUIPMENT.
9. PNEUMATIC TUBES, WHETHER METAL OR PLASTIC, SHALL BE EITHER:
   A. ENCLOSED IN PILASTERS, COLUMNS OR OTHER ARCHITECTURAL FEATURES OF THE CANOPY OR BUILDING, OR;
   B. ROUTED UNDER GROUND.
10. ALL BACKFLOW PREVENTION DEVICES LARGER THAN 2" SHALL BE SCREENED WITH LANDSCAPE LOCATED WITHIN A 6' RADIUS OF THE DEVICE. ALL BACKFLOW PREVENTERS 2" OR SMALLER SHALL BE PLACED IN A LOCKED WIRE MESH CAGE PAINTED TO MATCH THE PRIMARY BUILDING COLOR.
11. ALL FREESTANDING LIGHT POLES SHALL:
   A. BE LOCATED WITHIN LANDSCAPED AREAS OR PLANTER ISLANDS.
   B. HAVE CONCRETE BASES PAINTED TO MATCH THE PRIMARY BUILDING COLOR OR FINISHED TO MATCH PARKING SCREEN WALLS. CONCRETE BASES FOR LIGHT POLES SHALL NOT EXCEED A HEIGHT OF 30" FROM ADJACENT GRADE.
   C. BE LOCATED TO AVOID CONFLICT WITH TREES.
12. SITE LIGHTING SHALL COMPLY WITH THE LIGHT AND GLARE CRITERIA SET FORTH IN SECTION 4.103 OF THE LDC, INCLUDING A MAXIMUM FREESTANDING LIGHT FIXTURE HEIGHT OF 25'.
13. LANDSCAPED AREAS ADJACENT TO PUBLIC RIGHT-OF-WAY SHALL BE MOUNDED AND NATURALLY CONTOURED. NO MORE THAN 50% OF THE REQUIRED (RIGHT-OF-WAY AND LANDSCAPING TRACTS) LANDSCAPING FRONTING ADJACENT STREETS MAY BE USED FOR RETENTION. RETENTION AREA SIDE SLOPES SHALL BE VARIED, AND NO SLOPE SHALL EXCEED A 4:1 MAXIMUM.
14. COMMERCIAL BUILDING DOWNSPOUTS SHALL BE INTERNALIZED. INDUSTRIAL BUILDINGS MAY USE EXPOSED DOWNSPOUTS IF ARTICULATED WITH THE ARCHITECTURE OF THE BUILDING AND BUILT WITH A DURABLE MATERIAL SUCH AS STEEL.
15. COMMERCIAL DEVELOPMENT VEHICULAR ACCESS POINTS AND PEDESTRIAN ACCESS WAYS SHALL INCLUDE SPECIAL PAVING TREATMENT SUCH AS INTEGRAL COLORED STAMPED CONCRETE, BOAMANITE, OR SIMILAR ALTERNATIVE. LOCATION AND MATERIAL SHALL BE REVIEWED AND APPROVED BY THE PLANNING DEPARTMENT PRIOR TO THE ISSUANCE OF A BUILDING PERMIT.
16. CUSTOMER, EMPLOYEE AND VISITOR PARKING SHALL BE SCREENED FROM STREET VIEW BY LOW MASONRY WALLS. THE PARKING SCREEN WALLS SHALL BE FINISHED ON BOTH SIDES USING THE SAME MATERIALS AND COLORS, AND A DESIGN TO COMPLEMENT THAT OF THE MAIN BUILDING.
17. ALL EXTERIOR METAL SHALL BE FINISHED OR PAINTED TO MATCH THE APPROVED PROJECT COLORS.
18. EXISTING ON-SITE PLANT MATERIAL DAMAGED DURING CONSTRUCTION SHALL BE REPLACED WITH COMPARABLE SPECIES AND SIZE.

NOTE:
FIRE LANES SHALL BE MARKED BY SIGNS PER TOG DETAIL #63 AND/OR CURB PAINTED RED AND LABELED "FIRE LANE NO PARKING"

NORTH

0' 15' 30' 60'

Public Storage

PUBLIC STORAGE
SWC GERMANN & VAL VISTA
GILBERT, ARIZONA
DATE: 04-27-15

SP-1

RKAA# 14200.00

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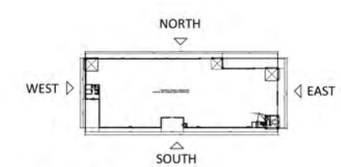
RKAA ARCHITECTS, INC

SOUTH ELEVATION BLDG 1 (OVERALL FOR REFERENCE)

SCALE: N.T.S.

NORTH ELEVATION BLDG 1 (OVERALL FOR REFERENCE)

SCALE: N.T.S.



KEY MAP

SCALE: N.T.S.

PUBLIC STORAGE
SWC GERMANN AND VAL VISTA
GILBERT, ARIZONA
DATE: 05-20-2015 (PRELIMINARY)

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EL-4

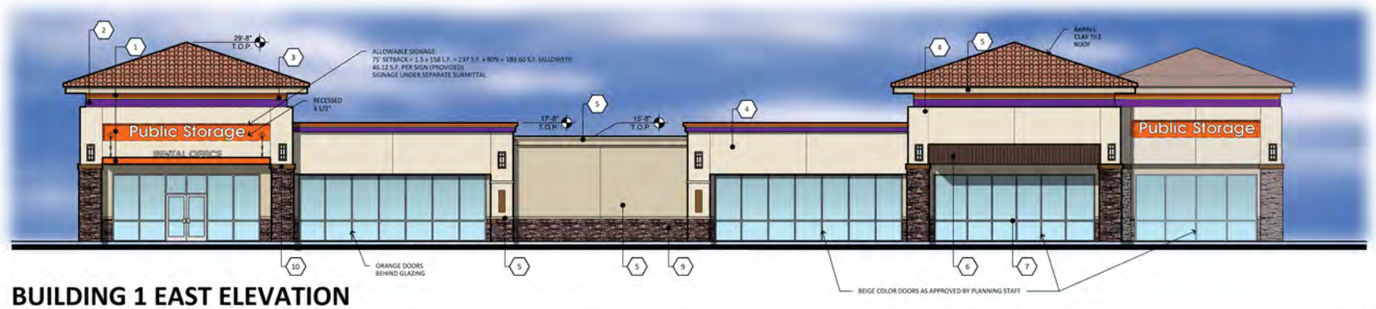
#14200.00

RKAA ARCHITECTS, INC

BUILDING 1 SOUTH ELEVATION

SCALE: 3/32" = 1'-0"

COLOR MATERIAL SCHEDULE BUILDING 1	
1	SHERWIN WILLIAMS: PUBLIC STORAGE "ORANGE"
2	SHERWIN WILLIAMS: PUBLIC STORAGE "PLUM"
3	SHERWIN WILLIAMS: PUBLIC STORAGE "YELLOW"
4	SHERWIN WILLIAMS: SW2060 "CASABLANCA"/FINE STUCCO FINISH
5	SHERWIN WILLIAMS: SW2059 "SAND"/FINE STUCCO FINISH
6	STANDING SEAM METAL AWNINGS: MBCI SIG 200 "KOKO BROWN"
7	ALUMINUM STOREFRONT "CLEAR ANODIZED FINISH"
8	ENTEGRA ROOF TILE "NEVADA CLAY"
9	CORONADO LEDGESTONE: QUICK STACK IN FOUR RIVERS
10	SHERWIN WILLIAMS "COBBLESTONE"/FINE STUCCO FINISH

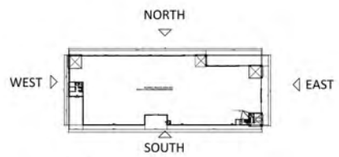


BUILDING 1 EAST ELEVATION

SCALE: 3/32" = 1'-0"

BUILDING 1 WEST ELEVATION

SCALE: 3/32" = 1'-0"



KEY MAP

SCALE: N.T.S.

BUILDING 1 NORTH ELEVATION

SCALE: 3/32" = 1'-0"

Public Storage

PUBLIC STORAGE
SWC GERMANN AND VAL VISTA
GILBERT, ARIZONA
DATE: 05-20-2015 (PRELIMINARY)

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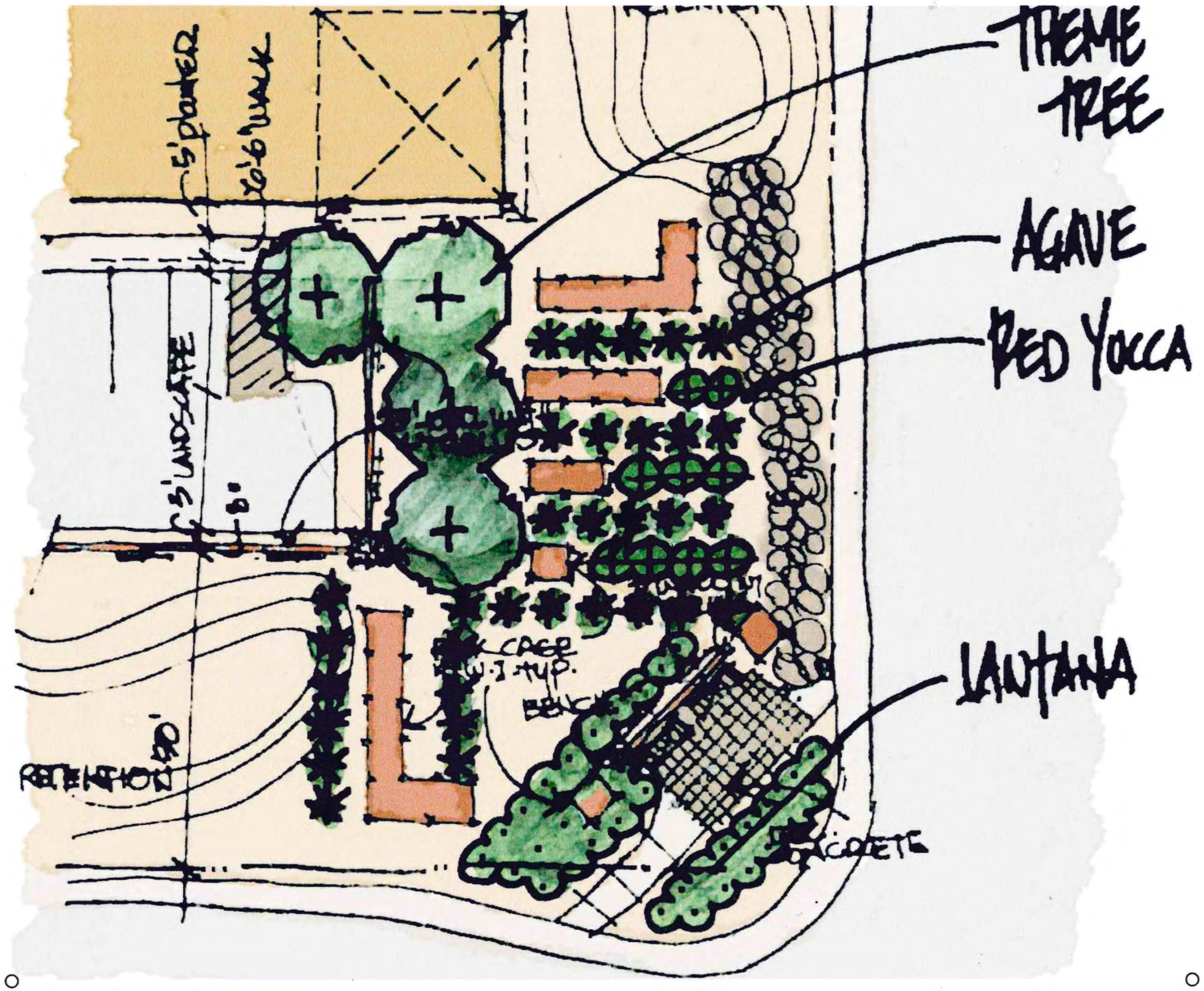
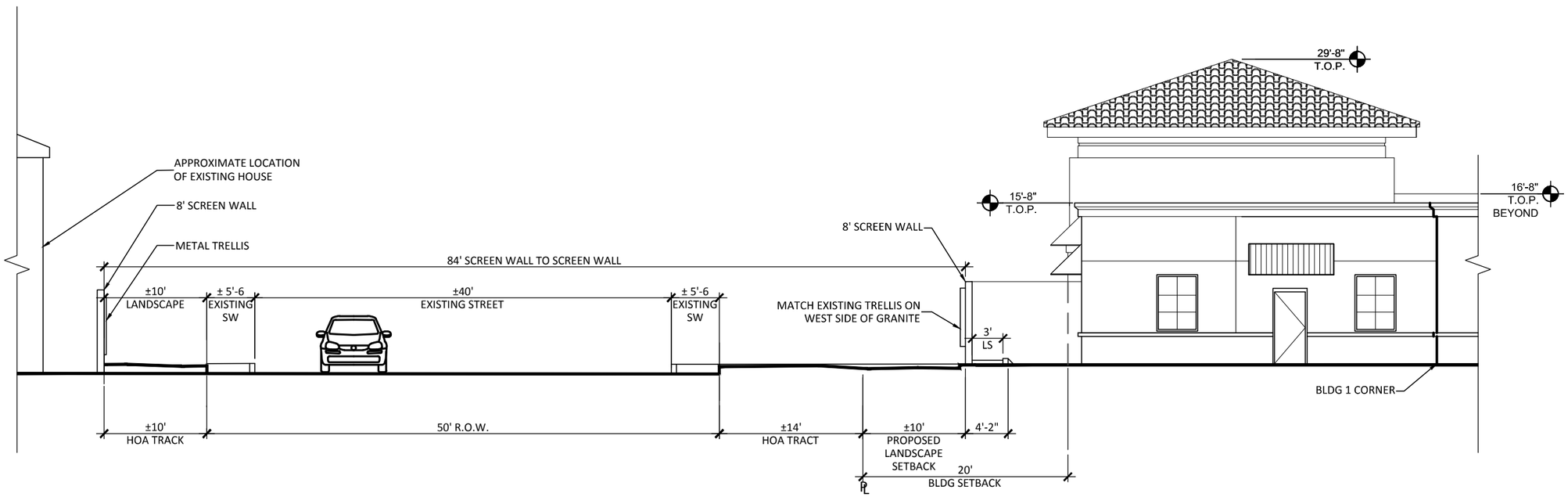
EL-1

#14200.00

RKAA ARCHITECTS, INC


THEME TREE
AGAVE
RED YOCCA
LANTANA
5' planter
10' walk
5' LANDSCAPE
CASE
W.I. TYP.
BENCH
RETENTION
ACOETE



STREET SECTION

SCALE: 3/32" = 1'-0"

THIS PLAN HAS BEEN PREPARED WITHOUT THE AID OF A SURVEY. ALL PROPERTY BOUNDARIES ARE ROUGH APPROXIMATIONS. THIS DRAWING IS TO BE USED FOR CONCEPTUAL PURPOSES ONLY AND IT IS NOT TO BE THE BASIS FOR ANY LEGALLY BINDING DOCUMENTATION.

PUBLIC STORAGE
SWC GERMANN AND VAL VISTA
GILBERT, ARIZONA
DATE: 05-21-2015

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STREET
SECTION
RKAA# 14200.00

RKAA ARCHITECTS, INC

TOWN OF GILBERT
PLANNING COMMISSION STUDY SESSION
GILBERT MUNICIPAL CENTER, 50 E. CIVIC CENTER DRIVE, GILBERT AZ
JUNE 3, 2015

COMMISSION PRESENT:	**Chairman Joshua Oehler** **Vice Chairman Kristofer Sippel** **Commissioner David Cavenee** **Commissioner Brent Mutti** **Commissioner David Blaser** **Commissioner Carl Bloomfield** **Commissioner Jennifer Wittmann**
COMMISSION ABSENT:	**None**
STAFF PRESENT:	**Planning Services Manager Linda Edwards** **Senior Planner Amy Temes** **Senior Planner Bob Caravona**
ALSO PRESENT:	**Town Council Member Brigette Peterson** **Town Attorney Jack Vincent** **Recorder Margo Fry**

CALL TO ORDER

Chairman Joshua Oehler called the meeting to order at 5:35 p.m.

Oath of Office

The Oath of Office for the Planning Commission was administered by Town Council Member Brigette Peterson to Commissioner David Blaser, Commissioner Carl Bloomfield and Commissioner Kristofer Sippel.

GP15-05: REQUEST FOR MINOR GENERAL PLAN AMENDMENT TO CHANGE THE LAND USE CLASSIFICATION OF APPROXIMATELY 16.73 ACRES OF REAL PROPERTY GENERALLY LOCATED EAST OF THE INTERSECTION OF COLORADO STREET AND DESERT LANE FROM GENERAL COMMERCIAL (GC) LAND USE CLASSIFICATION TO LIGHT INDUSTRIAL (LI) LAND USE CLASSIFICATION; AND,

Z15-11: REQUEST TO REZONE APPROXIMATELY 16.73 ACRES OF REAL PROPERTY GENERALLY LOCATED EAST OF THE INTERSECTION OF COLORADO STREET AND DESERT LANE FROM GENERAL COMMERCIAL (GC) ZONING DISTRICT TO LIGHT INDUSTRIAL (LI) ZONING DISTRICT.

Senior Planner Bob Caravona stated that this was an exciting project proposed for an area that has been laying fallow for a time with a General Commercial (GC) use. The applicant's request is for a General Plan Amendment from General Commercial to Light Industrial (LI). The property would need to be rezoned from GC to LI. The subject site is east of the intersection of Colorado Street and Desert Lane and is a 16 acre site that is improved with parking and serves some ancillary service to the body shop next door. The zoning is GC. A vicinity map was displayed and it was pointed out that the site was east of N. Arizona Ave. and south of Baseline which is two main arterial ways. The site was originally part of the Fiesta Tech PAD that was created. It is noteworthy at the request of the property owner, the underlying zoning of the 20 acre

parcel (includes the 16 acre subject property) site was previously rezoned from Multi-family (R-4) to Light Industry (I-2) with the adoption of Ordinance No. 894 on September 27, 1994. However, on March 3, 2005, the Town Council adopted the Land Development Code by approving Ordinance No. 1625 which also rezoned the subject site from Light Industry (I-2) to General Commercial (GC). With this application, the applicant desires to amend the general plan and change the zoning back to Light Industrial (LI). Photographs were displayed of the site and the surrounding properties. It was noted that the site is on a small street that doesn't have a great amount of traffic to generate retail or commercial business. A photo was displayed of the entrance which was treed with mature landscaping and looked like an employment center. The actual site doesn't fit the land use that is prescribed for it. The surrounding buildings are high tech design and the applicant has equal architecture. This is clean business, clean tech. An apartment complex is located next door. A neighborhood meeting was held on April 16, 2015 from 6 p.m. to 7 p.m. at the Gilbert Community Center's Willow Room. Notice of the meeting was sent to property owners within 300' and registered neighborhood associations within 1,000'. Two persons attended the meeting. One person, who lives in Mesa's across from Country Club Drive, learned of the meeting by walking past the posted site. He was curious about the project as this was along his jogging route. He did not indicate opposition to the project. The other person was a maintenance employee of the apartment complex directly south and adjacent to the site. He inquired about the development standards. The applicant proposes to develop an employment park with two buildings approximating 233,000 square feet square feet that could generate up to 400 new jobs for the Town of Gilbert. Maximum height would increases from 45' to 55' with Light Industrial (LI) zoning. Building side and rear setbacks to non-residential properties decrease from 20' to 15' and 20' to 0', respectively. Landscaping setbacks decrease with a zone change from General Commercial (GC) to Light Industrial (LI) as follows: front yard landscaping decreases from 25' to 20'; landscape residential decreases from 40' to 25'; landscape side non-residential / employment 20' to 15'; landscape setback rear non-residential/ employment 20' to 5'; and landscape area percentage drops from 15% to 0%. A pre-application has been received and the applicant is moving forward with revisions and designs to refine the proposal. A site plan was displayed and the access points were indicated. The proposal is compatible with the surrounding areas. A comparison table of development standards was displayed.

Commissioner Blaser asked if the developer had a tenant for the space as 400 jobs were mentioned in the presentation.

Planner Caravona said that the developer was in negotiation.

Commissioner Cavenee said that there appeared from the aerial to be some parking that may be utilized by an adjacent property.

Planner Caravona said that he believed the area was part of Earnhardt Auto.

Commissioner Wittmann said that the proposed use fits well within the area, especially since it does not have any frontage or visibility.

Commissioner Cavenee said that he thought it was a good use and blended well with the existing area and that he was supportive.

Discussion of Regular Meeting agenda

Vice Chairman Sippel announced that they would move items 11, UP15-07 and 12, Z15-08 to the Consent Agenda.

ADJOURN MEETING

Study Session Meeting adjourned at 5:50 p.m.

_____

Chairman Joshua Oehler

ATTEST:

_____

Recorder Margo Fry

Primrose Schools
The Leader in Educational Child Care®

HAND DELIVERED

May 1, 2015

Amy Temes
Senior Planner
Town of Gilbert
90 E Civic Center Drive
Gilbert, AZ 85296

RE: *Primrose School Franchising Company / Public Storage*
SWC Val Vista Drive & Germann Road, Gilbert
a) Design Review Application (PDR-2015-00011)
b) Rezoning Application (PZN-2015-0004)

Dear Ms. Temes:

This letter is to express Primrose School Franchising Company's ("Primrose") support of Application No.'s PDR-2015-00011 (Design Review) and PZN-2015-0004 (Rezoning) (the "Applications") regarding the Rezoning and Design Review approval of a parcel to accommodate a Public Storage Facility at the southwest corner of Val Vista Drive and Germann Road ("P.S. Parcel"). Primrose is purchasing a parcel of approximately 1.5 acres which is immediately south and adjacent to the P.S. Parcel. We recently received approval from the Gilbert Design Review Board (Application No. DR14-41) and submitted to the Town Construction Documents for Primrose School.

Primrose has reviewed the development plans submitted to the Town for the P.S. Parcel and fully supports the Applications and recommends that the Planning Commission, City Council and Design Review Board approve each Application. Primrose is in support of the proposed use for the P.S. Parcel in part because the development contemplates buildings and/or walls along the property lines separating our property from the P.S. Parcel. These buildings/walls will border Primrose's outdoor playground area and will provide an enhanced level of security for the children in our care using the playground. Not only will our playground area be screened and separated from the P.S. Parcel and the general public, but the low level of traffic generated by a storage facility and the secured nature of the P.S. Parcel development will minimize the number of vehicles using the common drives between parcels. Additionally, Primrose understands that if the rezoning is not approved by the Town, a seventy five thousand square foot (75,000 s.f.) storage facility could locate on the Property which would not provide the same protections mentioned above and may be of a lesser quality than now proposed by Public Storage.

3660 Cedarcrest Rd.| Acworth, GA 30101 | (ph) 770-529-4100 | (fax) 770-529-1551 | primroseschools.com

For the reasons stated above, Primrose feels that nature and quality of the development proposed by Public Storage is compatible and will enhance the security of the children in our care as compared to other more intense commercial uses which are currently permitted by the existing zoning ordinance. Primrose views this proposed use as being compatible with our development plans.

Please contact the undersigned should you have any questions regarding Primrose's support of Public Storage's Rezoning and Design Review Applications.

Sincerely,

John Rosen
Vice President Real Estate & Development

cc: Linda Edwards, Planning Manager
Paul Gilbert, Beus Gilbert, PLLC
Gary Davidson

Arizona Ball Charter Schools
Where Children Are the Priority
610 E. Bell Road, #2-436 Phoenix, AZ 85022 ballcharterschools.org

June 3, 2015

Ms. Amy Temes
Senior Planner
Town of Gilbert

VIA E-MAIL ONLY
amy.temes@gilbertaz.gov

Re: Public Storage Project
Southwest Corner of Germann & Val Vista

Dear Ms. Temes,

On behalf of the Board of Ball Charter Schools and Val Vista Academy, I wanted to express our support for the Public Storage location that is currently being reviewed by the Planning and Development Committee for the Town of Gilbert. We are currently working with the Developer and Public Storage concerning the ascetics and accouterments surrounding our common lot line and look forward to enjoying a mutually beneficial relationship with Public Storage and our School.

Sincerely,
Mike Dyer
Board Member
AZ Ball Charter Schools

Cc: Governing Board
Paul Gilbert, Esq.
Gary Davidson

From: Kevin
To: Amy Temes
Subject: Storage facility - SW corner Germann and Val Vista
Date: Wednesday, June 03, 2015 3:55:38 AM

Hi Amy,

Please read my comments below regarding opposition to the planned zoning changes and ordinance variance.

Setbacks are a big concern - particularly on the west side where it is adjacent to residential housing. Part of the justification provided by the planner states that the residential properties are already 75' from the west border of the storage facility. This is misleading - the 75' setback ordinance is not meant as an absolute distance, but rather an additional easement that complements existing barriers such as the street and landscape border already in place. Residents do not want a commercial facility that close to their property line. The requested variance is significant.

Bottom line - setbacks would not be needed if the facility adheres to the original SC classification. This enormous structure is simply not a fit, hence the current zoning of this plot. Major setback variances are required because the current plan simply exceeds the capacity of site.The original 75k sq ft limitation of the SC classification is appropriate. Current classifications and ordinances are in place for a good reason. This is an eyesore and clearly not a fit for the existing community.

There are also concerns about a storage facility being in such close proximity to the schools. Hazardous materials are frequently stored in these units. Management has no realistic way to strictly enforce items stored in these units. There are also concerns around large trucks with inexperienced drivers near the school and our children. This is especially true assuming a plan to accommodate the SC classification requirement is put forth, where the planner has stated Granite would likely become a designated entry / exit point. I tried researching statistics regarding storage facilities in such close proximities to schools - I couldn't find anything because it is clearly rarely - if ever done. I encourage members of the Planning Commission to look at a similar case in Rockville, MD now resulting in lawsuits. Rockville has proposed zoning changes barring self storage facilities from being located within 250 feet of a school. Perhaps wisdom in other communities can be leveraged and shared.

The planner cites land to the north as RC (Regional Commercial). This is not adjacent to residential - it is on the north side of Germann. Are there similar land plots nearby adjacent to schools and residential zoned as GC? Is this a "spot zoning" request?

As for support from the school (Primrose - not yet built), a letter of support was offered by the Vice President of Real Estate and Development. The actual educators may have a very different view than a real estate VP / developer. I have personally spoken to some of the educators at Val Vista Academy who are 100% against this. I am still gathering data and trying to compile in such a way that provides factual data while respecting the privacy of those that spoke in opposition (per their request). I have also requested feedback from Dr. Camille Casteel (Superintendent of CUSD) and Dr. Christina Kishimoto (Superintendent Gilbert USD) regarding their thoughts on a such a facility directly adjacent to a school. While Chandler or Gilbert public schools are not directly impacted by this development, feedback from highly respected members of our community should be considered valuable and pertinent. Additionally, I have circulated flyers in our community and have an online site where people can sign a petition.

Best Regard,

Kevin Holderbach
[redacted]

** Please do not post my personal contact information (address, phone) in the minutes or any publicly available

documents. This is provided so you have my contact information. All other aspects of this correspondence can be shared, which was the intent.

From: Roy McLaren
To: Amy Temes
Cc: Nichole McCarty; Roy McLaren
Subject: GP15-02 and Z15-04, SWC Val-Vista Dr. and Germann Rd. Applicant Public Storage
Date: Wednesday, June 03, 2015 12:33:21 AM

Hi Amy,

It was good meeting you and Nichole earlier this evening regarding GP15-02 and Z15-04, SWC Val-Vista Dr. and Germann Rd.

I have now had a chance to speak with some of my neighbors. It would indeed seem that I am far from alone with my strong concerns with Public Storage's intent to build a mini storage facility on the 6.02 acre site to the East of Villages of Val Vista phase 3 residential development. From those I spoke with the dominant view is that this type of development is completely incompatible primarily given its very close proximity to our residential community. There are other concerns as well which I think are well captured on pg 9 of your report, so I do not need to repeat them. My wife and I share in these concerns and oppose the planned development as a whole. It is our strong opinion that the proposed development by Public Storage does not in any way add value to the immediate and nearby community, but rather the opposite.

According to the proposed plan this will be a highly industrialized looking, more or less single function, commercial development involving at-least one extremely large mono-building greater than 100,000 sq ft and will be surrounded by a tall perimeter wall. In addition to this the plan includes design elements with strong, bright signature coloration of Public Storage. In terms of function, service, scale and appearance the planned development by Public Storage can be argued to be not fulfilling many aspects of the land use and community design element goals listed on pg's 3 and 4 of your report.

In addition, my wife and I specifically oppose GP15-02 and Z15-04 together with Public Storage's application to amend conditions of the Villages of Val Vista Planned Area Development to reduce setback requirements according to SC and GC zoning development code. Public Storage's justifications for these amendments on pg 9 are clearly insufficient. They are strictly from Public Storage's own point of view and solely reflect their own commercial interests and desire to maximize utilization of the site. Zoning development codes exist to prevent this type of exploitation that is driven by commercial self interest. I would also like to point out that the 2-story homes that side Granite Street are also particularly disadvantaged by the fact that they are closest to the development and look directly down into it from the 2nd floor. I would recommend that the opinions of home owners siding Granite Street be given higher weighting as they are by far the most impacted.

I would also like to take the opportunity to comment on the paragraph on pg 9 of your report stating that the applicant walked the neighborhood after a neighborhood meeting where the

majority of the approximately 50 attendees were opposed to the project. In particular this relates to the comment that the applicant now believes that many residents are now in support of the project with modifications as depicted in your report. My belief is that this move by the applicant was very calculated and strategic where their primary tactic was to emphasize how much worse it could be if they were not able to build according to their proposed plans or indeed if they even had to back out and "something else was built by someone else, whatever that may end up being". When my wife and I personally met with the applicant this line of argumentation was strongly emphasized by the applicant. Essentially a "better with the evil you know than the evil you don't know type of argumentation". I pointed out to the applicant that I would much prefer to see a development that actually adds value to the immediate and nearby community and with much less of a negative esthetic impact. When I gave some examples the applicant was very quick to highlight potential negatives with my suggestions of-course. At the end of the meeting with the applicant my wife and I did feel more informed, which helped admittedly, but we were certainly not supportive of the project as such and very much concerned. I believe that some of the argumentation provided by the applicant on pg 7 and 8 of your report uses exactly the same strategy. Fact remains that something of significantly greater value, wider function and service to the local community as well as overall esthetic and/or environmental compatibility with immediate community can be located at the site.

I very much hope that my views (that I also believe are shared by many of my neighbors) are taken into strong consideration.

Best Regards,

Roy McLaren

From: Roy Mclaren
To: Amy Temes
Subject: RE: GP15-02 and Z15-04, SWC Val-Vista Dr. and Germann Rd. Applicant Public Storage
Date: Monday, June 08, 2015 7:55:20 PM

Hi Amy,

Managed to discuss with my wife in more detail and here is our final feedback for Town Council meeting, see below.

Best Regards,

Roy

With reservations my wife and I have decided to approve Public Storage's application, GP15-02 and Z15-04 to re-zone together with proposed amendments to Villages of Val Vista PAD regarding setbacks.

Our reservations are, an extremely large facility being built directly beside our neighborhood (scale of project too large), risks from re-zoning from SC to GC if Public Storage pull out, and the applicants main method of persuasion throughout being that if we do not accept their application then the situation will be much worse for the neighborhood. The latter is actually the primary reason we are now supporting Public Storage's application as we want to minimize this risk. If we had concrete reason to suspect that this claim could not be substantiated then we would oppose their application.

Finally, we would like to point out that we do recognize that the applicant has clearly made efforts to take time to discuss the project with the neighborhood and accommodate neighborhood feedback into the design. This is very much appreciated and we hope that their willingness to accommodate further neighborhood feedback continues as their project moves forward.

Roy McLaren and Anna McLaren

GILBERT
ARIZONA

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Marc Skocypec, Deputy Town Manager, 503-6862

MEETING DATE: June 25, 2015

SUBJECT: Public Hearing and consideration of an ordinance setting the secondary property tax levy for FY2015-16 at $21,221,243

STRATEGIC INITIATIVE: Financial Plan

This report supports the Council's strategic initiative for a rolling five-year balanced financial plan by establishing a secondary property tax levy sufficient to make debt service payments for capital infrastructure.

RECOMMENDED MOTION

After public hearing, a motion to adopt the FY2016 property tax levy, and an ordinance setting the secondary property tax levy for FY2015-2016 at $21,221,243.

BACKGROUND/DISCUSSION

The Town of Gilbert has a secondary property tax that is required to be used solely on debt service to repay voter authorized debt. The Council is required to adopt the tax levy annually that supports required debt service costs through a process of public discussion and notification.

Previously collections in April could be applied to the October debt service payment, allowing for a consistent property tax levy when scheduled debt service payments fluctuated. House Bill 2347 from the 2013 Legislative Session requires municipalities to adopt a property tax levy based on the exact amount of scheduled debt service for the year, plus a reasonable amount for delinquencies and certain costs. Last fiscal year, Gilbert's one-year scheduled drop in debt service to $18,576,087.50 occurred at the same time new legislation restricted cities from collecting revenues in the year prior for the required debt service payment. Gilbert Council approved a one year reduction from $1.15 per $100 of assessed value (AV) to $1.0659.

The FY2016 scheduled General Obligation (GO) debt service is $22,814,500. Staff recommends restoring the effective property tax rate to $1.15 and utilizing fund balance for the remaining amount of required debt service. Assuming no delinquencies, restoring the property tax rate to $1.15 results in a levy of $21,221,243. FY2017 debt service is scheduled to be within the anticipated levy for the $1.15 rate.

Pursuant to discussions with Council on June 4, 2015 regarding the establishment of the levy and determining appropriate future uses of debt service fund balance, staff recommends waiting one year to fully realize the impacts of the new law and allow conditions to normalize before utilizing additional fund balance beyond the recommended amount in FY2016. In the interim, staff will analyze various options for the debt service fund, including a potential financial policy, and will report back to Council in 90 days.

Staff has been monitoring projected net secondary assessed valuation (AV) closely. After five consecutive declines in assessed values, FY2015 reflected the first year in which the Maricopa County Assessor valuations for properties within the Gilbert limits increased. Based on 2014 legislation, a single valuation will now be provided, and will be subject to a new legal requirement restricting the increase in assessed value to 5%. The historical change in net valuation is shown below:

Five-Year Net Secondary AV

Fiscal Year	**Assessed Value**	**Change - including new growth**
2010-11	2,297,228,317	(14.1%)
2011-12	1,861,193,961	(19.0%)
2012-13	1,675,360,422	(10.0%)
2013-14	1,594,806,737	(4.8%)
2014-15	1,829,471,839	14.7%
2015-16	1,845,325,449	0.9%

The legal and financial impact of the recommended property tax levy was reviewed by the Town's Bond Counsel, Michael Cafiso of Greenberg Traurig Law and by the Town's financial advisor, James Stricklin of Wedbush Securities, Inc.

FINANCIAL IMPACT

The debt service fund is self-supporting. As previously mentioned, all secondary property taxes collected can only be used to pay debt service on voter approved debt. House Bill 2347 from the 2013 Legislative Session requires municipalities to adopt a property tax levy based on the exact amount of scheduled debt service for the fiscal year, rather than adopt a tax rate.

The $22,814,500 debt service payment due in FY2016 would generate a rate of $1.24. The Gilbert Town Council is committed to maintaining exceptionally low tax rates. Accordingly, the proposed levy of $21,221,243 results in an effective rate of $1.15; fund balance would be utilized for the remaining debt service amount.

The recommended levy supports current G.O. debt service requirements; however, it may not be sufficient to support future scheduled parks and transportation projects identified in the current CIP.

The financial impact was reviewed by Mary Vinzant, Management & Budget Analyst.

STAFF RECOMMENDATION

Staff recommends after public hearing, a motion to adopt the recommended secondary property tax levy of $21,221,243, which supports outstanding debt service requirements for FY 2015-16.

Respectfully submitted,

Marc Skocypec
Deputy Town Manager

Attachments and Enclosures:
FY 2015-16 Property Tax Levy Ordinance

Approved By	Approval Date
Marc Skocypec	6/16/2015 6:58 AM
Jack Vincent	6/17/2015 8:14 AM
Mary Vinzant	6/16/2015 8:30 AM

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA, ADOPTING A SECONDARY PROPERTY TAX LEVY OF $21,221,243 FOR THE FISCAL YEAR JULY 1, 2015 TO JUNE 30, 2016; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR PENALTIES.

WHEREAS, the Town Council of the Town of Gilbert, Arizona conducted various public meetings on the annual budget for Fiscal Year July 1, 2015 to June 30, 2016; and

WHEREAS, the total annual debt service payment for FY 2016 for all issued voter approved bonds is $22,814,500, a portion of which will be paid through debt service fund balance; and

WHEREAS, State Law requires the Town to adopt a secondary property tax levy in an amount to support the annual debt service with a reasonable delinquency rate; and

WHEREAS, State Law provides the Town must adopt a tax ordinance before the third Monday of August, and report the taxing ordinance to Maricopa County.

NOW THEREFORE BE IT ORDAINED by the Mayor and Council of the Town of Gilbert, Arizona, that:

SECTION I. Tax Rate Adopted

The Fiscal Year 2015-16 secondary property tax levy shall be $21,221,243 to partially meet the current debt service requirements of the Town; the remaining debt service to be paid from fund balance.

SECTION II. Repeal of Conflicting Ordinances

All ordinances or 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.

SECTION IV. Providing for Penalties

Any person found guilty of violating any provision of this Ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed two thousand five hundred dollars ($2,500) or by imprisonment for a period not to exceed six (6) months, or both such fine and imprisonment. Each day that a violation continues shall be a separate offense punishable as herein described.

PASSED AND ADOPTED by the Mayor and Town Council of the Town of Gilbert, Maricopa County, Arizona, this 4th 25th day of June, 2015, by the following vote:

AYES: _____

NAYES: _____

ABSENT: _____

EXCUSED: _____ ABSTAINED: _____

APPROVED this 25th day of June, 2014.

_____
John W. Lewis, Mayor

ATTEST:

_____
Catherine Templeton, Town Clerk

APPROVED AS TO FORM:

_____
Michael Hamblin
Town Attorney

I, Catherine A. Templeton, do hereby certify that a true and correct copy of Ordinance No. _____ adopted by the Town of Gilbert Mayor and Council on the 4th day of June, 2015, was posted in three places on the ____ day of _____ 2015.

_____
Catherine A. Templeton, CMC
Town Clerk

FY 2016 Budget

Property Tax Levy Discussion

June 25, 2015

Stretch Taxpayer Dollars

Stretch Taxpayer Dollars

- Balance Interests
  - Minimize Interest Cost
  - Minimize Tax Rate Volatility
  - Infrastructure Needs

Stretch Taxpayer Dollars

Strategic Approach

Leverage

ROI

Strategic Approach

Leverage

FY	Total Obligation	Late Rate	Total w/Late	Total Levy	Use of Balance	Assessed Value	Tax Rate
FY 2006		2.71%		$14,395,300		$1,251,766,000	1.1500%
FY 2007		2.92%		$16,868,678		$1,466,841,566	1.1500%
FY 2008		4.15%		$27,257,550		$2,370,221,717	1.1500%
FY 2009		4.66%		$31,836,500		$2,768,391,194	1.1500%
FY 2010		4.14%		$30,739,000		$2,672,949,852	1.1500%
FY 2011		3.21%		$26,418,130		$2,297,228,317	1.1500%
FY 2012		2.40%		$21,403,731		$1,861,193,961	1.1500%
FY 2013		1.00%		$19,266,645		$1,675,360,422	1.1500%
FY 2014		1.17%		$18,340,277		$1,594,806,737	1.1500%
FY 2015		*5.00%*		$19,500,340		$1,829,471,839	1.0659%
FY 2016	$22,814,500	*0.00%*	$22,814,500	$19,500,000	$3,314,500	$1,845,325,449	1.0567%
FY 2017	$17,676,250	*4.00%*	*$18,383,300*	*$17,676,250*	*$707,050*	*$1,845,325,449*	*0.9579%*
FY 2018	$17,816,250	*4.00%*	*$18,528,900*	*$17,816,250*	*$712,650*	*$1,845,325,449*	*0.9655%*
FY 2019	$17,366,250	*4.00%*	*$18,060,900*	*$17,366,250*	*$694,650*	*$1,845,325,449*	*0.9411%*
FY 2020	$17,203,750	*4.00%*	*$17,891,900*	*$17,203,750*	*$688,150*	*$1,845,325,449*	*0.9323%*
FY 2021	$17,163,750	*4.00%*	*$17,850,300*	*$17,163,750*	*$686,550*	*$1,845,325,449*	*0.9301%*
FY 2022	$17,505,000	*4.00%*	*$18,205,200*	*$17,505,000*	*$700,200*	*$1,845,325,449*	*0.9486%*
FY 2023	$17,510,000	*4.00%*	*$18,210,400*	*$17,510,000*	*$700,400*	*$1,845,325,449*	*0.9489%*
				Total	$8,204,150		
				Available	$8,700,000		
				Excess	$495,850		

ASSESSMENT PER $1,000	$1.06	$1.15	$1.30
USE OF FUND BALANCE	$3.1M	$1.6M	0

Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Jessica Carnahan, Neighborhood & Outreach Services Supervisor, (480) 503-6893

MEETING DATE: June 25, 2015

SUBJECT: Gilbert Wellness & Resource Center

STRATEGIC INITIATIVE: Community Livability

This proposal is in alignment with the Community Livability Strategic Initiative by addressing community needs from the 2014 Community Needs Assessment.

RECOMMENDED MOTION

Motion to approve:

A: Acceptance of the Gilbert Wellness & Resource Center Proposal; and

B: Amendment to the 2015-2020 Community Development Block Grant (CDBG) Five-Year Consolidated Plan to utilize CDBG funds to renovate Page Park Center for the Gilbert Wellness & Resource Center operations.

BACKGROUND/DISCUSSION

Gilbert Wellness & Resource Center

In January 2015, Dignity Health approached the Town of Gilbert with a concept to establish a medical, dental and resource center for uninsured, underinsured and low-income adults and children. The collaborative model became an idea stemming from the 2014 Gilbert Community Needs Assessment and the 2014 Mercy Gilbert Medical Center Community Benefit Report as a way to meet gaps and needs in the community identified in both reports. A stakeholder group was formed with multiple non-profit organizations and interested parties to develop a proposal for establishing the Gilbert Wellness & Resource Center (Center).

The Center will be implemented in phases, with the first being a family resource center offering a one-stop shop for families to receive classes, resources, referrals, and benefit enrollment education. Chandler Christian Community Center (CCCC) would be the first partner to offer services and is proposing to act as the lead agency and the Town's management organization for daily operations of the facility.

Second phase services include preventative oral health for children, diabetes education and management, immunization clinic, children's vision and hearing screening clinic and community health education and support groups by Dignity Health. Southwest Behavioral Health will provide basic behavioral health services through counseling and support groups. Mission of Mercy will provide basic medical services such as well checks, sports physicals and minor illnesses/injuries. Finally, Goodwill will provide workshops on workforce readiness and employment support services.

All partners have made an initial commitment to participate in the facility by offering services at no, low cost or sliding scale and bring a cadre of experience, expertise and services for families and individuals in the Gilbert and surrounding communities.

Page Park Center

The proposed location for the Gilbert Wellness & Resource Center is Page Park Center, located in the Heritage District on the northwest corner of Oak Street and Bruce Ave. The 10,000 square foot facility was Gilbert's first library, which was built in 1964. Page Park Center is an ideal location as it is adjacent to the Gilbert Boys and Girls Club, Gilbert Community Center, Gilbert Senior Center, and Page Commons (a 55 and older apartment complex). It is anticipated that many of the service recipients will likely come from these nearby programs or facilities.

In addition, the facility is located in a defined priority area determined by the U.S. Department of Housing and Urban Development (HUD) and designated for use of Community Development Block Grant funds (CDBG).

The proposed services do not trigger a zoning change or require special use permits. Analysis is still underway regarding the total costs for renovation and an update and construction contract approval would be brought to Council prior to any expenditure or commitment of funds.

2015-2020 Community Development Block Grant Five Year Consolidated Plan

In April 2014, Council approved the HUD required Five-Year Consolidated Plan for use of CDBG funds. The plan included proposed projects utilizing CDBG funds such as infrastructure improvements, ADA compliance, purchase of a fire apparatus and park improvements. HUD allows changes or additions to the plan throughout the five years by submitting a Council approved amendment to the Plan.

Staff would submit an amendment to the Five-Year Consolidated Plan to include renovation of Page Park Center utilizing CDBG funds for use of the Gilbert Wellness & Resource Center

operations. Renovations to a public building for proposed services are an eligible use of CDBG funds.

Requirements of CDBG funds for renovating Page Park Center include releasing a Request for Proposals (sealed bids) for construction services, ADA compliance, Davis Bacon
Wage Compliance, Contractor Debarment, Section 3 Compliance and Federal Labor Standard Compliance.

FINANCIAL IMPACT

There is currently $495,000 in CDBG funds budgeted for the Gilbert Wellness & Resource Center in Fiscal Year 2015-2016; however, no commitment of CDBG funds will occur until final renovation costs are determined and approved by Council.

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

STAFF RECOMMENDATION

Staff recommends approval of the Gilbert Wellness & Resource Center proposal and approves the submission of an Amendment to the Gilbert 2015-2020 Five-Year Consolidated Plan for CDBG.

Respectfully submitted,

Jessica Carnahan
Neighborhood & Outreach Services Supervisor

Approved By	Approval Date
Mark Skocypec	6/16/2015 6:56 AM
Jack Vincent	6/17/2015 12:14 PM
Laura Lorenzen	6/17/2015 10:12 AM

Town of Gilbert, Arizona
Action Plan 2015-2016
Substantial Amendment

Executive Summary

The purpose of the Annual Action Plan is to update the Five Year Consolidated Plan and to provide the Town with a basis for assessment through the Consolidated Annual Performance and Evaluation Report (CAPER). This is a Substantial Amendment to the Town of Gilbert's Fiscal Year 2015-2016 Annual Action Plan and describes the activities it will undertake utilizing Fiscal Year 2015-2016 Community Development Block Grant funds (CDBG).

The Town of Gilbert is an entitlement city that annually receives a direct allocation of CDBG funds, which is used to support a variety of programs and activities, including Emergency and Minor Home Repair, Infrastructure, and Public Facility Improvements. In Fiscal Year 2015-2016, Gilbert received $829,797 in CDBG funds.

The Town of Gilbert is a participating jurisdiction that receives HOME entitlement funds through the Maricopa County HOME Consortium. Maricopa County serves as a lead agency for the HOME program administration for the Consortium member Cities of Avondale, Chandler, Tempe, Glendale, Peoria, Scottsdale, Surprise, the Town of Gilbert, and Maricopa County. The funds assist the Town in carrying out the Town's affordable housing strategies. Gilbert received $184,680 in HOME funds for Fiscal Year 2015-2016.

The Town of Gilbert hereby proposes to substantially amend the approved Community Development Block Grant (CDBG) and HOME Program Action Plan for Fiscal Year 2015-2016 and reallocate funding as follows:

CDBG 5 Year Plan - Funding Expenditures & Timeline
Total CDBG funding allocation per year: $829,797

	Year 1 (15'-16')		Year 2 (16' - 17')		Year 3 (17'-18')		Year 4 (18'-19)		Year 5 (19'-20')	
Administrative Costs	$165,959	20%	$165,959	20%	$165,959	20%	$165,959	20%	$165,959	20%
Emergency and minor home repair program	$250,000	30.10%	$250,000	30.10%	$250,000	30.10%	$250,000	30.10%	$250,000	30.10%
Heritage District Water/Sewer Replacement	$413,838 ($413,838)*	49.9%	$413,898	49.9%	$70,838	8.6%				

Gilbert Wellness & Resource Center	$413,838*	49.9%								
Fire Equipment					$343,000	41.3%				
Eligible Area Park Improvements							$413,898	49.9%		
ADA Compliance Improvements									$238,838	28.7%
Page Park Improvements									$175,000	21.2%
Total	**$829,797**	**100%**	**$829,797**	**100%**	**$829,797**	**100%**	**$829,797**	**100%**	**$829,797**	**100%**

**Indicates either new funded activity or change in the funded amount of a previously approved activity.*

Proposed CDBG funded Facility Improvement

The Town of Gilbert proposes reallocating $413,838 in Community Development Block Grant funding to renovate a Town-owned facility, Page Park Center, to be utilized as a community wellness and resource facility.

The new Gilbert Wellness & Resource Center will provide medical, dental and resource center services for uninsured, underinsured and low-income adults and children. The Center will be implemented in phases, with the first being a family resource center offering a one-stop shop for families to receive classes, resources, referrals, and benefit enrollment education. Second phase services include preventative oral health, diabetes education and management, immunization clinic, children's vision and hearing screening clinic and community health education and support groups, basic behavioral health services through counseling and support groups, basic medical services such as well checks, sports physicals and minor illnesses/injuries and regularly scheduled workshops on workforce readiness and employment support services.

Proposed phase I budget renovations include:

Fiscal year 2015-2016 CDBG funds:	$413,838
Fiscal year 2014-2015 CDBG rollover funds:	$ 81,600
Total budget:	$495,438

Heritage District Water and Sewer Replacement

The Town of Gilbert will still complete the Heritage District Water and Sewer Replacement program as proposed during Fiscal Year 2015-2016. However, Fiscal Year 2014-2015 CDBG funds will be utilized to complete Phase I of the project, therefore allowing Fiscal Year 2015-2016 CDBG funds to be utilized for the Gilbert Wellness and Resource Center project.

Gilbert Wellness & Resource Center
Proposal

I. Executive Summary

The proposed Gilbert Wellness & Resource Center utilizes a collaborative model of collective impact to address identified needs of the 2014 Gilbert Community Needs Assessment and provide on-going resources and services for the community. This facility will provide programming, including but not limited to a resource center, medical, dental and behavioral health services, through the commitment of service providers who bring a cadre of experience, expertise and services for families and individuals in the Gilbert and surrounding communities. The organizations proposing to provide services at Gilbert Wellness & Resource Center all have long histories of providing services in Arizona and the Phoenix Metropolitan Area in the East Valley. The Town of Gilbert, agencies, staff, and Boards are committed to increasing access to care for underserved populations.

Services will be offered in a Town of Gilbert vacant building located at Page Park. The Town will utilize approximately $495,000 in Community Development Block Grant (CDBG) funding to renovate and update the facility to accommodate the new Center and associated services.

Initial partners include:

- **Town of Gilbert**
- **Dignity Health**
  - Oral Health
  - Diabetes education and management
  - Immunization clinic
  - Children's vision and hearing screen clinic
  - Community education and support groups
- **Chandler Christian Community Center (CCCC)**
  - Family Resource Center
  - Community Action Program (CAP)
  - Child watch
  - Assistance with accessing benefits
  - General administration/scheduling
  - Food pantry/emergency needs (pending funding)
- **Southwest Behavioral Health Services**
  - Behavioral health services
- **Mission of Mercy**
  - Primary health care clinic
- **Goodwill**

- Employment services

This collaborative will provide culturally competent services in an informal and trusted setting that promotes positive parenting, healthy child and family development, and family and individual self-sufficiency.

II. Need

There are several reports, assessments, and data sources outlining the need for low-cost medical, dental and resource services in the Gilbert/Southeast Valley area. Below is an overview of the information.

Town of Gilbert Community Needs Assessment

In 2014 the Town of Gilbert commissioned The Williams Institute (TWI) to conduct a *Human Services Community Needs Assessment*. Through the collection of data, focus groups, interviews, and a dialogue group TWI provided over 20 recommendations to address community gaps and also refers to conditions of "prosperity for many, challenges at the margins."

Specifically, "for the less visible part of the population … (more than one-third of the Town population) [is] experiencing struggles and grave challenges, the needs are palpable." The Town of Gilbert's most-in-need populations were found to be reluctant to voice their needs "out of concern for what they perceive as a social stigma that accompanies not being able to measure up," (TWI, 2014). The report found:

- 14,000 Gilbert residents live below the federal poverty level
- More than 26,000 residents qualify as low income
- Over 10,000 students qualify for free/reduced lunch program
- 13,000 residents with chronic special needs
- Approximately 12 calls to the Police Department each week for suicides or attempted/threatened suicides and another 4 calls for emergency mental health issues, 28 domestic violence calls per week, and significant numbers of emergency room visits for alcohol and substance abuse issues.

The report rank orders the criticality of need for added services by population groups, as identified by human service recipients and providers participating in the study. Families and individuals in crisis ranked highest as having the greatest need for immediate assistance, while low/moderate income individuals and families ranked third highest in need.

Further details in the report recognize that the top 5 of 9 population groups, ranked in order of priority where:

1. Families (and individuals) in crisis
2. Mental health and substance abuse treatment services
3. Low/moderate income individuals and families
4. Elderly/seniors
5. Homeless individuals and families

The report also discovered five common themes to all population groups, which included:

1. **Centralized resource for information and referral**
2. Safe, affordable housing
3. Affordable, accessible transportation
4. **Access to basic necessities**
5. **Accessible health care to meet needs**

Below are a few of the recommendations that support the development of a community/family resource center that will include medical, dental and behavioral health services.

Recommendation # 3. Create a special division within the Town of Gilbert tasked to provide personalized and confidential human services/referrals to all residents in need within the community, staffed and administered by professional social workers who understand the unique needs of individuals and families living in Gilbert.

Recommendation # 8. Partner with local nonprofits to create a coordinated and robust volunteer corps for community engagement to address basic needs of residents.

Recommendation # 11. Provide health care guidance and accessibility.

Recommendation # 14. Prepare now for the aging of Gilbert citizens to be ready to meet the human services needs of increasing numbers of seniors in accordance with the Strategic Initiative to create a "Rolling Five-Year Balanced Financial Plan" that projects future needs and resources. The needs of this segment of the population constitute a future gap in human services.

Recommendation # 16. Develop widespread community support for veteran support services.

Partnership Recommendation # 1. Expand/expedite current partnerships and develop new agreements with existing service providers, providing a fair share of funding to

serve Gilbert residents in need through reciprocal funding arrangements or resource sharing.

Partnership Recommendation # 5. Develop regional partnerships to provide prevention services to all population groups in collaboration with nonprofits and faith communities.

Gilbert Police Department

The Gilbert Police Department tracks calls for service and breaks the information down by category. Below are calls for service in the mental health category from 2013-2015 (out of 374,220 calls for service during the 2-year time period.)

Calls for Mental Health Services	May 2013 – April 2014	May 2014 – April 2015
Mental Health related calls for service	896	823
Subjects who were making threats to harm themselves	404	438
Suicide attempt calls	198	163
Emergency mental health petitions	193	163
Mentally disturbed persons acting in a disruptive manner	80	59
Arrests for drug related offenses	1832	1614

Southeast Maricopa Regional Partnership Council's 2014 Needs and Assets Report

The *Southeast Maricopa Regional Partnership Council's 2014 Needs and Assets Report* (First Things First, 2014) found a total population of 211,167 in Gilbert including 21,817 children birth to age five: roughly 7% of these children are living in poverty. The Town of Gilbert contains one of the greatest proportions of households with young children in the region and is ranked second in growth in the population of children under age six. Further, "birthrate projections suggest a continued increase in the number of young children in this region over the next decade," (First Things First, 2014). This report also suggests a number of positive conditions for young children living in the Gilbert area, such as high median family income, adult educational achievement, enrollment in pre-school, availability of qualified early care and learning settings for children, appropriate prenatal care for expectant mothers and birth outcomes for infants, availability of health insurance coverage, and low unemployment. The Needs and Assets Report also acknowledges the existence of "pockets of high economic disadvantage in the region."

Dignity Health Community Health Needs Assessment Fiscal Years 2012-2015

For Dignity Health, caring for the community means extending services beyond the hospital setting and into the community. Services are provided to the broader community with particular attention to the needs of the underserved. The vision of Dignity Health is putting the mission into practice every day through the efforts of staff, volunteers, and community partners.

Mercy Gilbert Medical Center (MGMC) has intentionally grown the Community Benefit Department to better meet the needs of the underserved populations. Using information from the *Fiscal Years 2012-2015 Community Health Needs Assessment* (CHNA), community needs index, and inputs from key community members, needs are identified and community benefit programs are planned accordingly.

There are many factors in the MGMC community that need to be addressed in order to improve the health and wellbeing of the entire community, both broader and underserved. Challenges for the community include an increasing number of youth exhibiting risky behaviors and unemployment. Although Gilbert has a largely educated population with good income, there exist populations of uninsured, underinsured, and non-English speaking persons of all age groups. Within the community of Gilbert, there are populations that are indigent, with their primary source of income through day labor and seasonal work.

According to research findings, individuals lacking health insurance coverage, whether chronically uninsured or experiencing insurance gaps, tend to avoid seeking care for conditions until the condition worsens to an unmanageable state. For chronic conditions such as diabetes, asthma, or mental health, adults often skip medications or avoid filling prescriptions and subsequently visit the Emergency Department or are admitted to the hospital. Uninsured individuals are less likely to receive preventive care and more likely to receive duplicate tests. Strategies need to continue with a proactive focus on chronic disease management, increased access to education and services, and continuum of care components that will improve quality of life and decrease the need for extensive healthcare utilization.

According to the MGMC Community Benefit Implementation Plan, specific areas of need identified by stakeholders and the community to be addressed by the hospital include the following:

- Chronic Disease Self-Management
- Access to Care
- Obesity
- Mental Health
- Oral health

Other areas of priority include maternal and child health, pediatrics, adolescent pregnancy and risk behaviors, services for adult and senior populations, those with chronic diseases and meeting the needs of the underserved.

The report also states that through proactive prevention education, intervention, and treatment, community benefit programs can decrease cost by preventing admission, re-admission, and/or use of the emergency department. Community benefit programs also increase access to financial aid and community based resources. Effective partnerships and community based collaborations provide quality preventive and interventional services that ultimately reduce costs. In addition, many of the community outreach services MGMC offers to the community are grant funded, further containing costs for the system.

Analysis and Health Needs Identified from Community Health Needs Assessment

Infant Mortality

The Gilbert Primary Service Area (PSA) had 26.7% of the infant deaths in the state. The percentage of infant deaths to births by race/ethnicity was higher in the PSA than in the county and state. This high percentage may (in part) be due to the specialized services available in hospitals within the PSA that include perinatal services and neonatal intensive care services. Black or African American showed the highest rates of infant mortality in all geographic areas.

Children Emergency Room Visits and Mortality Rates

One quarter of the emergency room visits at MGMC were by children. The most frequent diagnoses for Emergency room visits of children at MGMC were related to injuries and poisonings. In addition, Arizona recorded over 947 deaths among children ages 0-17 in 2009. Deaths were from sudden infant death syndrome, motor vehicle accidents, drugs and alcohol, lack of supervision, and drowning. There were 122 home safety related deaths of which 55% were infants, 32% were children between the ages of 1 and 4.

Adolescent Pregnancy and Risk Behaviors

Although teen births at MGMC are less than the PSA, County, and State, mothers under the age of 20 were more likely to be paid by Arizona Health Care Cost Containment System. Unwed mothers were more likely to be Hispanic or Latino.

Adolescents in Arizona were more likely to engage in risky behaviors involving weapons, injuries, sexual behaviors, alcohol, drugs, and violence. Of the nine risky behaviors listed by the Center for Disease Control and Prevention (2009), Arizona was higher than the rest of the United States in nearly all categories. Risk factors include attempted suicide, carrying a weapon to school, and physically hurt on purpose by boyfriend or girlfriend. Deaths among adolescents age 15-19 were related to suicide

(20%), motor vehicle accidents (24%), homicide (27%), and firearms, drugs, and alcohol (58%).

Adult and Senior Population

Injuries

MGMC Non-Fatal Injuries (nearly 65% of adults), for which 90% were non-intentional, were related to falls, struck-by motor vehicle and overexertion. The top reason was falls, at a total of 2,307. There were 22 fatal injuries recorded at MGMC in 2009.

Mental Health

Adult mental health diagnoses were mostly due to "Other Psychoses" and "Organic Psychotic Conditions." These visits accounted for 75% of visits at MGMC and in the PSA.

Young adults were more likely to be seen for drug related mental health. Older adults were more likely to be seen for alcohol related conditions.

Chronic Disease

Diabetes

The number of hospital visits for diabetes increased with age and were mostly the result of adult-onset diabetes. Age categories with the highest admission rates were those between 35-45 and presumed to be related to adult onset Type II Diabetes.

Asthma

The age group with the highest percentage of admissions for asthma were those ages 35-44 (14.1%). By age, asthma related visits fluctuated across all age groups at MGMC and the PSA, denoting the chronic nature of the condition regardless of age.

High Blood Pressure

Nearly 1.3 million people in Arizona were diagnosed with high blood pressure in 2009. At MGMC, 43.1% of admissions for high blood pressure were for people over the age of 65.

Stroke/Transient Ischemic Attack

As with high blood pressure, the age group most frequently admitted for stroke was the senior population over the age of 65. Over 63% of stroke patients were over the age of 65.

Chest Pain

Chest pain was one of the most common reasons for emergency room visits. Those most affected by chest pain were the working population ages 25-54. This group represented 64% of visits to MGMC for chest pain.

Congestive Heart Failure (CHF)
The senior population over the age of 55 was more frequently admitted than any other age category. For MGMC, 72.9% of patients with CHF were over the age of 65.

Cancer

Mammogram/Cervical Cancer screening
Although Phoenix and Maricopa Arizona exceeded the Healthy People 2010 goal for women over the age of 40 to receive regular mammograms within two years, Phoenix and Maricopa, Arizona have not met the Health People 2020 goal of 81%. In addition, women on Arizona Health Care Cost Containment System (AHCCCS), Arizona's Medicaid agency, are less likely to comply with recommended cancer screenings. Phoenix, Maricopa, and Arizona are not meeting the Healthy People 2020 goal for a cervical screening every three years with an 81.9-83.3 rate. Women on AHCCCS had a rate of less than 23%.

Colorectal Cancer
Colorectal cancer is the second most deadly cancer in the U. S. Screening remains below the recommendations locally and through the state of Arizona. Although screenings were more likely via Sigmoidoscopy, the rate was only between 61% and 65%. Rates for AHCCCS patients were significantly lower at 31.2% compliance.

Prostate Cancer
Similar to mammogram, cervical, and colorectal screenings, rates for compliance with prostate cancer screenings (antigen testing) were less than the recommendation for both the insured and AHCCCS Population.

Cancer Rates
Maricopa County, Arizona has a higher incidence rate of cancer than Arizona. In 2008, the rates of all cancers in Maricopa County were 404.7 compared to 384.3 in the state of Arizona.

Based on these findings, Dignity Health set the following health priorities:

Mercy Gilbert Medical Center has identified the following health needs as priorities for FY2013-2015.

- Chronic Disease(Diabetes, heart disease, asthma congestive heart failure)
    - Disease Management
    - Reduction in admission
    - Reduction in readmission
- Access to medical primary and secondary prevention, health education, intervention, and treatment
- Oral Health
- Mental Health

- Obesity
- Transitional Care: Hospital to home
- Continuum of Care

According to the Arizona Alliance for Community Health Centers, from 2008-2012, there were 37,375 low income population residents (out of 212,455 residents) eligible for low income care. In 2013, only 1,498 residents accessed these services.

The Gilbert Wellness and Resource Center is exactly the kind of innovative partnership that meets some of the priority needs identified in the Community Health Needs Assessment, as well as, Gilbert's Community Needs Assessment. By providing services in one location for the uninsured, underinsured, and most vulnerable populations, costs on other community resources such as local hospitals, fire and police resources can be reduced instead of used as a primary way to receive assistance.

III. Facility Location

The proposed location for the Gilbert Wellness & Resource Center is the Page Park Center building, built in 1964, which held Gilbert's first library. This 10,000 square foot facility has been used for a variety of services throughout the years and is in an ideal location to provide a "one-stop shop" where underserved residents can receive resources, referrals and a variety of direct wellness services.

Page Park Center is located in Gilbert's Heritage District community close to downtown Gilbert. The facility is located directly adjacent to the Gilbert's Boys and Girls Club and Gilbert Senior Center, which provides convenient and direct access to services by Gilbert's most vulnerable populations, seniors and youth, both listed as priority populations in the 2014 Gilbert Community Needs Assessment. The Heritage District has access to public transportation to allow those without transportation to access services as well.

The Gilbert Downtown Heritage District holds the oldest housing stock and infrastructure in Gilbert, and is considered a "Low to Moderate Income Area" (LMA) as defined by the U.S. Department of Housing and Urban Development (HUD). This designation allows Gilbert to utilize federal Community Development Block Grant Funds (CDBG) for housing, infrastructure and public facility improvements to serve low-income neighborhoods and residents.

Gilbert proposes to utilize approximately $496,000 in CDBG funds to rehabilitate Page Park Center into the Gilbert Wellness & Resource Center. Proposed improvements include, but are not limited to, increasing energy efficiency of the building, ensuring all areas are ADA accessible and configuring internal space to allow for a wide variety of service organizations to be able to deliver direct services.

IV. Existing Services

In the Southeast Phoenix Metropolitan region, including Mesa, there are some low income medical, dental, or resource services. Existing service providers have either a youth or adult focus and do not necessarily provide all the resources or information service recipients may need.

The proposed partner agencies to provide services at the Gilbert Wellness & Resource Center are all committed to providing essential services to the community, which may have difficulty accessing health care or need assistance in other ways. By having a "one-stop shop" with a variety of services and assistance available, Gilbert residents and residents in surrounding communities of all ages can access resources in a convenient single location.

V. Partner Success

The proposed Gilbert Wellness & Resource Center utilizes a collaborative model of collective impact to address identified needs of the Gilbert needs assessment and provide on-going resources for the community. This collaborative will provide programming through the commitment of service providers who bring a cadre of experience, expertise and services for families and individuals in the Gilbert and surrounding communities.

Initial partners include:

- **Town of Gilbert**
- **Dignity Health**
- **Chandler Christian Community Center**
- **Southwest Behavioral Health Services**
- **Mission of Mercy**
- **Goodwill Central Arizona**

The collaborative will provide culturally competent services in an informal and trusted setting that promotes positive parenting, healthy child and family development, and family and individual self-sufficiency.

It is anticipated that once the facility is operational, additional service providers will be attracted to join the collaborative and provide additional services.

Dignity Health located in Phoenix's East Valley, comprised of Chandler Regional Medical Center and Mercy Gilbert Medical Center, along with the Dignity Health Foundation – East Valley, has been a leading force in increasing health and well-being for all who live in Maricopa County and surrounding areas. The Dignity Health Foundation - East Valley is a nonprofit 501(c)(3) organization with a strategic mission to raise financial support to

advance health care in the East Valley. The Foundation provides financial support for capital projects, equipment, programs and services for children, women, and senior citizens, and the care of uninsured or under-insured families at the hospital.

Dignity Health provides both intervention services and preventive care for the growing numbers of uninsured and underserved in our community. Dignity Health fulfills their mission by investing in more than 70 community benefit outreach programs that reach tens of thousands of Phoenix East Valley residents every year, participating in advocacy efforts and establishing partnerships in the community.

Chandler Christian Community Center (CCCC) strengthens families and communities through food boxes; senior nutrition; rent and utility assistance; parenting, health and literacy classes; homeless services; and other comprehensive programs and resources. CCCC has been providing assistance to those in need since 1966. Last year, over 16,000 unique individuals benefited from CCCC programs and services.

Southwest Behavioral Health is recognized as an innovative leader in behavioral health and has been providing an ever-expanding variety of behavioral health services since 1969.

Mission of Mercy has been providing community-based primary health care and prescription medications to Maricopa County's uninsured and underinsured sick, homeless and working poor since 1997. Mission of Mercy is 100% privately funded; receives no government funding and accepts no payment for their services.

Goodwill Central Arizona (Goodwill), founded in 1947, is a not-for-profit organization whose mission is to serve people with disabilities or those who would otherwise face obstacles to entering the workforce.

VI. Proposed Services

Individuals and families entering the resource center will be encouraged to make full use of educational, developmental and health-related assistance. Monthly activity calendars will be distributed at the front desk, through the partnering agency websites, Town of Gilbert, email, and throughout the community in events and through networking and partnerships.

The preliminary plan is to utilize the expertise of Chandler Christian Community Center (CCCC), to serve as the lead agency, acting as the Town's management organization for daily operations of the facility. A full-time administrative assistant would connect families and individuals visiting the center on a daily basis to services through various forms of assistance and will serve as a conduit for connecting multiple service providers in the center. A CCCC coordinator would be on-site to provide leadership and management continuity between the numerous organizations operating at the facility.

Additionally, through this partnership a variety of services will be made available to individuals and families:

Services that Help Support Family & Individual Health and Well-Being
Chandler Christian Community Center: **Family Resource Center**
Provides opportunities to enhance parent and child relationships through participation in developmentally appropriate activities and encourage parent-child bonding, early literacy, school readiness and community building, while also promoting learning through workshops and classes that provide information on a variety of topics promoting competencies • Benefits connection (SNAP [Supplemental Nutrition Assistance Program] and AHCCCS [Arizona Health Care Cost Containment System, Arizona's Medicaid agency] & Cash Assistance) utilizing the Health-e Arizona Plus website (Full-time Benefits Coordinator II) • Extensive information and linkages/referrals to other providers to address family/child needs (2 Full-time staff (Administrator & Family Resource Center Coordinator) • Early Childhood Literacy (Giggles, Squiggles & Squirms) in English/Spanish • On-site Child Watch to foster parent participation in classes • Story Time program providing free books to every child • Baby Brain Box incorporated into child watch and in classes • Supplemental Diaper and Formula distribution (pending future funding) • Raising a Reader, teaches parents to build an at-home literacy routine for their children • Evidence-based parenting programs targeting enhanced skills, literacy development and that build protective factors that increase health and well-being. • Nurturing Parenting, Abriendo Puertas and Raising a Reader
Chandler Christian Community Center: **Gilbert Community Action program (CAP)**
Provides emergency financial assistance to income eligible residents to prevent eviction or utility shut-offs. (2 full-time staff) • Family and individual case management and navigation services • Assistance to low income residents with emergency eviction assistance • Utility disconnect assistance • Employment and financial coaching
Chandler Christian Community Center: **Food Pantry**
• Pending future funding/partners – provides emergency hunger relief and ongoing supplemental food
Mission of Mercy: **Primary Health Care Clinic**
• Free healthcare and prescription medication to uninsured and underinsured • Provide patient education and awareness
Dignity Health: **Oral Health**
Provides preventative dental services for children ages 0 to 18 • Exams, professional cleanings, radiographic imaging, sealants, fluoride varnish treatments • Education to children and parents

Dignity Health: **Community Education**
Provides a variety of health education and support programs • Teen childbirth education • Teens 4 Teens Support Group • Prenatal Education and breast feeding support groups • Post-partum Depression support group • Car seat clinics
Dignity Health: **Community Wellness**
Provides a variety of programs offered to uninsured and underinsured children and adults • Monthly immunization clinic • Monthly children's vision and hearing screening with referral and assistance for follow up
Dignity Health: **Chronic Disease Management**
• Education and medical management for people with pre diabetes, Type 1 and Type 2 diabetes and gestational diabetes. • Chronic Disease Management workshops
Southwest Behavioral Health: **Behavioral Health Services**
Provides comprehensive behavioral health to adults, children and families receiving AHCCCS. A self-pay option with sliding scale in accordance with 2014 Federal Poverty Guidelines is available for persons who do not qualify for AHCCCS. • Assessment, Counseling, Resource Development, Case Management, Psychiatric Evaluation and Monitoring, Behavior Coaching and Psychological Assessments • Grant-funded services for individuals not qualifying for AHCCCS (pending future funding) • Outreach and education (pending future funding)
Services that Promote Social Skills and Connect Families and Individuals to Resources & Linkages to Additional Services
Chandler Christian Community Center
• Will maintain a library of printed resource and referral materials that families and individuals can access as needed. Materials will be extensive, available in multiple languages and address comprehensive child development and health topics. • Computer and internet access, including access to an electronic library of information covering topics such as parenting skills and early childhood development including social and emotional, language and literacy, cognitive, physical and motor development, and child health. • Early Childhood Playroom and playgroups that offer social support opportunities and encourage play between children age 0 to five, older siblings and their adult family members • Senior Nutrition Programs (for multi-generational families)
Goodwill
• Job skills development and employment assistance programs
All Partners
• A comfortable, inviting & welcoming, well-maintained environment that appeals to individuals, families and children.

VII. Proposed Funding Sources

Each provider is responsible for bringing their own expertise, staff, and necessary funding to provide their services. As noted below, funding for several of the services is already committed to this partnership, has been applied for, or will be in the future. There are some additional services being explored by various providers, which may be implemented during Phase II provided they find additional funding sources in which to support the services.

The table below indicates the organization, service and funding sources proposed for the Gilbert Wellness & Resource Center:

Organization	Services Provided	Funding Source	Funding Amount	Funding Status
Town of Gilbert	Operational Expenses Facility Renovations	Town of Gilbert General Fund CDBG	$35,000 $496,000	Pending Town Council Approval
Mission of Mercy	Primary health care clinic	Privately funded		
Southwest Behavioral Health Services	Behavioral health services for insured and self-pay populations	AHCCCS, sliding fee scale		
Dignity Health	Immunization clinic for children and adults	Federal Vaccines for Children and Federal Vaccines for Adults	$14,280	Pending
	Monthly children's vision and hearing screening clinic	Dignity Health/grants	$2,532	Pending
	Preventive dental care for children	Dignity Health Foundation/grants	$66,350	Pending
	Stanford curriculum Chronic Disease Self-Management workshop	Dignity Health Foundation	$3,500	Pending
	Community Education and Support groups	Dignity Health Foundation/grants		
	Gilbert Community	Town of Gilbert,	$410,401	Pending

Chandler Christian Community Center	Action Program (CAP)	Maricopa County, Valley of the Sun United Way		notification July 1, 2015
	Family Resource Center, Child Watch, Benefits Connection, General Admin/Scheduling	To be determined		

Mission of Mercy
Additional funding required if services expanded:
Expanded services in the East Valley beyond one clinic day per week would require the purchase of an additional mobile medical unit ($400,000 + annual operating expenses), a dedicated, full-time staff Medical Director and Nursing Director ($100,000 total), an increase in medications and supplies ($30,000) and additional administrative staff hours to launch a capital campaign and increase existing donor base and grant partnerships.

Southwest Behavioral Health
Additional funding required if services expanded:
Future funding could provide behavioral health services for low income persons who also do not qualify for AHCCCS or who are not able to afford the private pay rates even with the sliding scale. Additional funding could also be used to provide outreach and education for members of the community based on the needs assessment or programs requested by members of the community.

Dignity Health
Additional funding required if services expanded:
Prenatal education classes. Classes are supported by private pay and AHCCCS. Individual and group education and diabetes management.

Chandler Christian Community Center
Additional funding required if services expanded:
Additional funding could provide a limited Food Pantry (contingent on securing partners) which would provide emergency food boxes on site and supplemental food as needed.

VIII. Implementation and Timeline

Phase	Date	Task	Party Responsible
Phase 1	June 25, 2015	Town Council discussion & approval of concept	Town staff
Phase 2	July - September 2015	Space programming and design renovation	Town staff and Stakeholders
	September-December 2015	Complete design and bid project	Town staff
	January - June 2016	Building renovations	Town staff and Contractor
	June - July 2016	Partners transition into facility	Partners
Phase 3	July 2017	Conduct program evaluation	Town staff and Stakeholders
	September 2017	Progress report and program evaluation update to Town Council	Town staff and Stakeholders

Exhibit A
Initial Funding Sources

Organization	Services Provided	Target Population (Demographics, % or/and # of those served)	Frequency	Funding Source	Funding Amount ($)	Funding Status (i.e. confirmed/ applied/pending)
Town of Gilbert	Operational Expenses		$35,000	Pending Town Council Approval		
Mission of Mercy	primary health care clinic		1 day per week	privately funded		
Southwest Behavioral Health Services	behavioral health services for insured and self-pay populations		5 days per week	AHCCCS, sliding fee scale		
Dignity Health	Immunization clinic for children and adults programs.	200 children 0-18 and 100 adults annually. Uninsured and underinsured. Expect 85% to be Gilbert residents	One 2- hr day per month	Federal Vaccines for Children and Vaccines for Adults	$14,280	Pending
	Monthly children's vision and hearing screening clinic	100 children annually. Uninsured and underinsured. Expect 85% to be Gilbert residents	One 3-hour day per month	Dignity Health/grants	$2,532	Pending
	Preventive dental care for children	192 children age 0 - 18 annually. Low-income, uninsured. Expect 85% to be Gilbert residents	1 day per week	Dignity Health Foundation, grants	$66,350	Pending
	Stanford curriculum Chronic Disease Self-Management workshop	20 adults with a chronic condition or a care giver to someone with a chronic condition. Expect majority to be Gilbert residents	Unknown	Dignity Health Foundation	$3500	Pending
	Community Education and Support groups	100 Children and teens for 2 to 3 Think First injury prevention education 25 preteen/teens for 2 Safe Sitter course 30 Seniors for 2 Car Fit check clinics	Varied	Dignity Health Foundation, grants and operational budget	$3,500	50% confirmed

Chandler Christian Community Center	Gilbert Community Action Program (CAP)		5 days per week	Town of Gilbert, Maricopa County, Valley of the Sun United Way (?)	$410,401	Pending

Exhibit C
Additional Funding Required

Organization	Services Provided	Frequency	Funding Source
Mission of Mercy	primary health care clinic	2 - 5 days per week	privately funded
Southwest Behavioral Health Services	behavioral health services for uninsured and low-income populations	5 days per week	
	Outreach and Education		
Dignity Health	Preventive dental care for children	2 - 5 days per week	Foundation and Grants
	Certified Diabetes Educator	1-2 days per week	Foundation and Grants
	Community Education and Support Groups		Foundation and Grants
Chandler Christian Community Center	Family Resource Center	5 days per week	Funding to be determined
	Child Watch	5 days per week	Funding to be determined
	Benefits Connection	5 days per week	Funding to be determined
	General Admin/Scheduling	5 days per week	Funding to be determined
	Food Pantry/Emergency Needs	5 days per week	private donations/grants

Exhibit C
Initial Organizational Structure

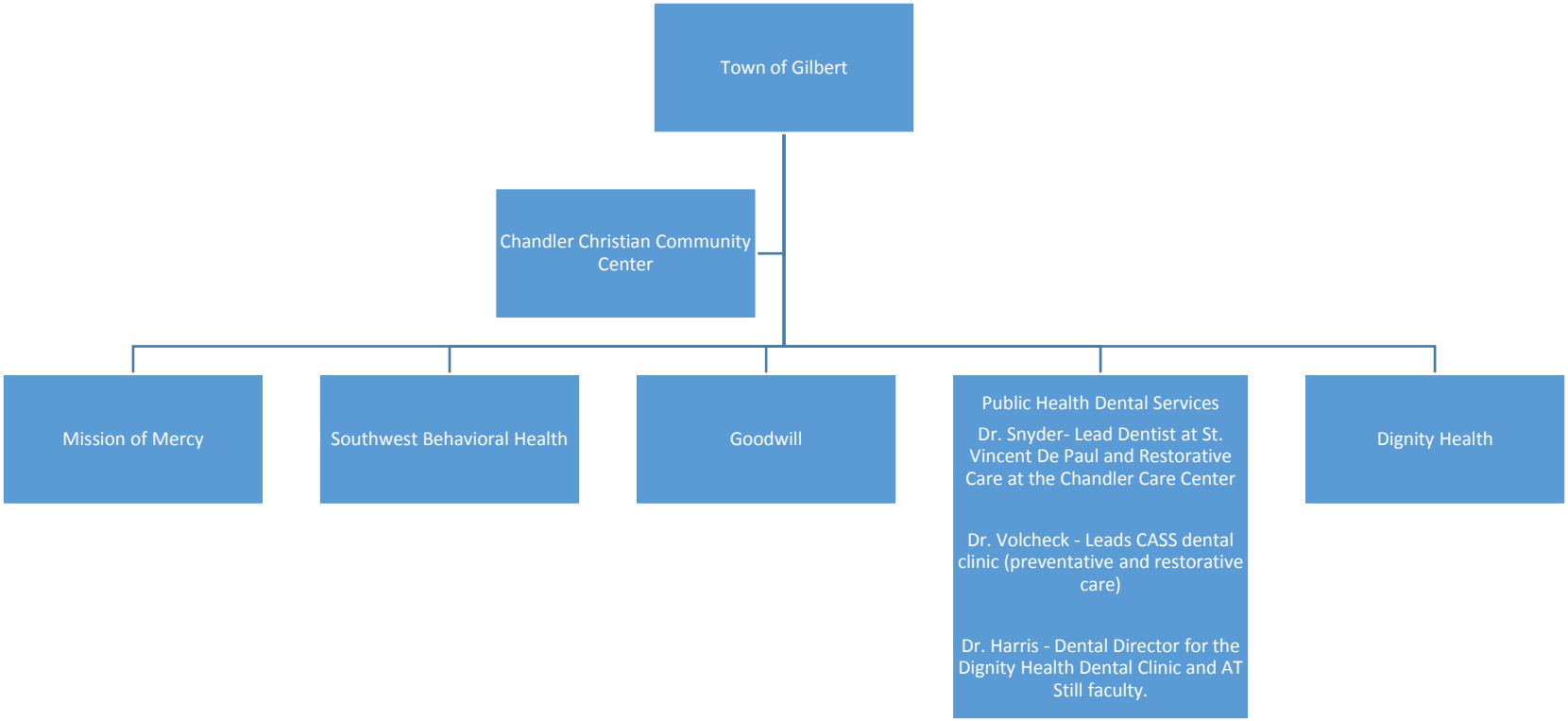

Exhibit C
Organizational Structure

Page Park Clinic Stakeholder List

First Name	Last Name	Organization	Title	Email
Dr. Michelle	Gross-Panaco	AT Still and Dignity Health	Dignity Health and AT Still	mgrosspanico@gmail.com
Dr. Kris	Volcheck	CASS Dental Clinic	Dentist, Dental Director	kvolcheck@cassaz.org
Katie	Kahl	Chandler Care Center	Executive Director	KAHLE.KATHRYN@cusd80.com
Trinity	Donovan	Chandler Christian Community Center	Chief Executive Officer	trinity@chandlerfoodbank.org
Lori	Tapia	Chandler Christian Community Center	Family Resource Center Director	lori@chandlerfoodbank.org
Shawna	Fellenz	Chandler Christian Community Center	Program Operations Director	shawna@chandlerfoodbank.org
Kathleen	Dowler	Dignity Health	Director, Community Integration	Kathleen.Dowler@DignityHealth.org
Jeanne	Cahill	Dignity Health	Manager of Center for Diabetes Management	Jeanne.cahill@dignityhealth.org
Megan	Miks	Dignity Health	Manager Oral Health Program	megan.miks@dignityhealth.org
Susan	Ohton	Dignity Health	Manager Community Wellness	susan.ohton@dignityhealth.org
Dr.	Zeidler	Dignity Health Emergency Services	Physician	Joshua.Zeidler@DignityHealth.org
Julie	Graham	Dignity Health	Community Outreach and Education	Julie.Graham@DignityHealth.org
Linda	Martin	Foundation for Senior Living	Vice President	LMartin@fsl.org
Jim	Jobusch	Gilbert Fire	Fire Chief	jim.jobusch@gilbertaz.gov
Tim	Dorn	Gilbert Police	Police Chief	tim.dorn@gilbertaz.gov
Devin	Del Palacio	Goodwill of Central Arizona	Community Experience Partner	Devin.delpalacio@goodwillaz.org
Dave	Engal	Hope Community Health Center	executive Director	engelda@cox.net
Patrick	Hernandez	Hope Community Health Center	Manager Clinical social Work	Patrick.Hernandez@DignityHealth.org
Saundra	Johnson	Keough Foundation	Executive Director	sjohnson@keoghhealth.org
Debbie	Holexa	Mesa Community College		deborah.marie.holexa@mesacc.edu
Debi	Sparks	Mesa Community College		deborah.sparks@mesacc.edu
Catherine	Amiot	Mission of Mercy	Executive Director	CAmiot@amissionofmercy.org
Dave	Liddle	Mission of Mercy		dliddle@amissionofmercy.org
Rachel	Oesterle	Mission of Mercy		Rachel.oesterle@gmail.com

Janice	Ertl	St. Vicent De Paul	Clinic Director, Virginia G. Piper Medical & Dental Clinic	JErtl@svdpaz.org
Dr. Ken	Snyder	St. Vincent De Paul	Dentist, Dental Director	KSnyder@svdpaz.org
Ed	McClelland	SW Behavioral Health Services		EdM@SBHSERVICES.ORG
Andi	Welsh	Town of Gilbert	Assistant to the Town Manager	andi.welsh@gilbertaz.gov
Jessica	Carnahan	Town of Gilbert	Neighborhood Services Supervisor	jessica.carnahan@gilbertaz.gov
Maria-Claudia	Tomany	St. Xavier University	Vice-Provost	tomany@sxu.edu
Kathleen	Sullivan	Gilbert Police Department	Youth, Family & Adult Resources	kathleen.sullivan@gilbertaz.gov

Date Revised: June 15, 2015