



COUNCIL MEETING AGENDA

December 2, 2014

Members may attend in person or by telephone.

John W. Lewis, *Mayor*
Eddie Cook, *Vice Mayor*

Ben Cooper
Victor Petersen
Jared Taylor

Jenn Daniels
Jordan Ray

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

**Special Meeting
5:00 PM**

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

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. Proclamation honoring deceased Councilmember Rainow Byrd-Baldwin and declaring December 2, 2014 as "Rainow Byrd-Baldwin Day" in the Town of Gilbert.
2. Recognition of Sergeant First Class Jasen D. Barcklay for receiving the Purple Heart.

3. Recognition of Gilbert residents inducted into the Arizona Veterans Hall of Fame.
4. Recognition of the Campo Verde High School Girls Swim and Dive Team for winning the state championship.
5. Presentation of the 12k's of Christmas "Spirit of Giving Award".

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.

6. AGREEMENT – consider approval of Lease Agreement No. 2015-2105-0529 with Saint Xavier University to occupy 1,474 square feet or 25.59% of the rentable building area in the Heritage Annex Building effective December 15, 2014 and authorize the Mayor to execute the required documents.

7. AGREEMENT – consider approval of Project Agreement No. 2015-7003-0510 with Maricopa Association of Governments for the Elliot and Cooper Roads Intersection Improvements, Project No. ST138, and authorize the Mayor to execute the required documents.

8. AGREEMENT – consider approval and authorize the Mayor to execute the required documents for:

a) Signal Interconnect Agreement Nos. 2015-7003-0431 and 2015-7003-0432 with Union Pacific Railroad Company in the amounts \$817,163 and \$1,063,054 for Cooper and Guadalupe Road Crossings respectively, Cooper and Guadalupe Road Intersection Improvements, Project No. ST094; and

b) Public Highway At-Grade Crossings Improvement Agreement Nos. 2015-7003-0433 and 2015-7003-0434 with Union Pacific Railroad Company in the amounts of \$334,304 and \$353,048 for Cooper and Guadalupe Road Crossings respectively, Cooper and Guadalupe Road Intersection Improvements, Project No. ST094.

9. AGREEMENT - consider authorizing:

a) the purchase of six vehicles pursuant to Cooperative Purchase Agreement No. 2012-1103-0222 with San Tan Ford in an amount not to exceed \$162,115 including taxes; and

b) a Wastewater Replacement Fund Contingency transfer in the amount of \$29,882.28, Water Fund Contingency transfer in the amount of \$3,167.73, and a Water Replacement Fund Contingency transfer in the amount of \$12,339.03.

10. CHANGE ORDER - consider:

a) approval of Change Order No. 1 to Contract No. 2014-7102-0325 with Haydon Building Corp increasing the contract amount by \$391,529.47 for Elliot District Park Safety Repairs Project, Project No. PR114.; and

b) authorizing a Contingency Transfer in the amount of \$391,530.

11. CHANGE ORDER – consider:

a) approval of Change Order No. 1 to Contract No. 2014-7102-0325 with Stanley Consultants increasing the contract amount by \$23,950 for CM/PM services, Elliot District Park Safety Repairs, Project No. PR114; and

b) authorize a General Fund Contingency Transfer in the amount of \$23,950.

12. PROPERTY ACQUISITION - consider authorization of:

a) payment in the amount of \$322,950, plus statutory interest, and real property transfer for the acquisition of right-of-way and public utility easement for the Williams Field and Higley Road Intersection Project to settle all claims in Gilbert v. LMT Investments, LLC; Torres, Maricopa County Superior Court Case No. CV2012-007163, and direct staff to prepare necessary documents; and

b) a CIP Contingency Transfer in the amount of \$402,933.76 and the use of Streets funds as the designated revenue source.

13. AGREEMENT- consider authorizing CIP Contingency transfer, using the Streets Fund as the designated revenue source, in the amount of \$237,690.37 for payment of the settlement agreement and legal expenses in Town of Gilbert v. DBNCH, Circle K Corporation, et al., Maricopa County Case No. CV2012-007164.

14. CONTRACT - consider approval of Construction Services Contract No. 2014-7009-0333 with MGC Contractors, Inc. in an amount not to exceed \$481,200 for the Arsenic Treatment Facility Relocation, Project No. WA097, and authorize the Mayor to execute the required documents.

15. CONTRACT – consider approval of Engineering Services Contract No. 2013-4106-0241 with Y.S. Mantri & Associates in an amount not to exceed \$254,051.88 for the Advanced Traffic Management System Phase IV Project, Project No. TS132, and authorize the Mayor to execute the required documents.

16. CONTRACTS - consider authorizing the Mayor to enter into legal services contracts with various selected law firms to provide outside counsel services to Gilbert on an as-needed basis as determined by the Town Attorney.

17. CHANGE ORDER – consider approval of Change Order No. 1 to Contract No. 2014-7012-0279 with Tri-Com Corporation for non-compensable time extension for fabrication and installation of custom built bus shelters in the Heritage District for the Downtown Transit Stops Project, Project No. RD114.

18. FINAL PLAT SP1363 - consider approval of a final plat for Crossroads at San Tan Village Apartments located at the southeast corner of Ray and Coronado Roads.

19. FINAL PLAT S14-03 - consider approval of the final plat for Paradise Cove at the Islands located south and east of the southeast corner of Warner and McQueen Roads.

20. FINAL PLAT SP1404 - consider approval of a Final Plat of Hampton Inn and Suites located at the southeast corner of Higley Road and Inverness Avenue.

21. MAP OF DEDICATION SP1354, SP1408 and SP1416- consider approval of the Map of Dedication for Rivulon Boulevard, Allen Avenue & Pecos Road located south and east of the intersection of Pecos and Gilbert Roads.

22. FINAL PLAT SP1408 and SP1416 - consider approval of the final plat for Rivulon - Phase 1 located at the northeast and northwest corners of Allen Avenue and the Santan Freeway.

23. STREETS - consider adoption of a Resolution approving a street name change in the Adora Trails - Parcel 13, S09-02 and authorize the Town Engineer to execute a Certificate of Correction.

24. FEES - consider adoption of a Resolution approving up to a 2.75% credit card merchant surcharge/check out fee in Development Services.

25. BOARDS AND COMMISSIONS – consider acceptance of the resignation of Karen Udall from the Human Relations Commission.

26. MINUTES - consider approval of the minutes of the Special Meeting of October 30, 2014, Regular Meeting of November 13, 2014 and Special Meeting of November 18, 2014.

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. New (Section Text)

27. LIQUOR LICENSE – conduct hearing and consider approval of a Series 12 Restaurant Liquor License for Jimmy's of Chicago located at 884 East Williams Field Road #102.

28. BONDS - conduct hearing and consider adoption of a Resolution authorizing the execution and delivery of a First Amendment to Series 2006 Ground Lease, a Series 2014 Town Lease, a Bond Purchase Agreement and a Series 2014 Continuing Disclosure Agreement; approving the execution and delivery by Town of Gilbert, Arizona, Public Facilities Municipal Property Corporation of such First Amendment, such Town Lease, such Bond Purchase Agreement, a Fourth Supplement to Trust Indenture, an Escrow Trust Agreement and a financial guaranty or related agreement necessary for credit enhancement; approving an Official Statement and the execution and circulation thereof; approving the issuance of not to exceed \$32,000,000 aggregate principal amount of Town of Gilbert, Arizona, Public Facilities Municipal Property Corporation revenue refunding bonds; delegating to the Manager or Director of Finance and Management Services of the Town the authority to determine various terms with respect to the bonds and the sale thereof and declaring an emergency.

29. PROPERTY ACQUISITION – conduct hearing and consider adoption of a Resolution approving the acquisition of a Temporary Construction and Drainage Easement, Parcel No. 302-15-001E for the Cooper and Guadalupe Intersection Project, Project No. ST094.

30. PROPERTY ACQUISITION – conduct hearing and consider approving the acquisition of an easement located within Parcel No. 310-10-088 for the Cooper and Guadalupe Intersection Project, Project No. ST094.

31. CODE OF GILBERT - conduct hearing and consider:

a) adoption of an ordinance amending the Code of Gilbert, Arizona, Chapter 42 Offenses and Abatement of Public Nuisances, Article IV Offenses Involving Public Safety, by repealing Section 42-114 Carrying Deadly Weapons in Town Buildings; Storage of Deadly Weapons related to carrying deadly weapons in Town Buildings so the Code conforms to State law; and

(b) approve Policy Statement No. 2014-09, Weapons in Gilbert Public Buildings.

32. CODE OF GILBERT - conduct hearing and consider adoption of an Ordinance amending the Code of Gilbert, Chapter 54 Streets, Sidewalks and Other Public Places, by amending Section 54-4 Reserved, so as to regulate the riding of bicycles and the use of roller skates, skateboards, roller blades, scooters, and other non-motorized, rolling devices, on

Town-owned properties where posted signage prohibits the same; and declaring an emergency.

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.

33. **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) Congress of Neighborhoods Committee
- d) Design Review Board
- e) Environmental and Energy Conservation Advisory Board
- f) Gilbert Educational Cable Access Governing Board
- g) Arts, Culture and Tourism Board
- h) Human Relations Commission
- i) Industrial Development Authority
- j) Mayor's Youth Advisory Committee
- k) Parks, Recreation and Library Services Advisory Board
- l) Planning Commission
- m) Redevelopment Commission
- n) Special Events Commission
- o) Gilbert Public Facilities MPC
- p) Gilbert Water Resources MPC
- q) Gilbert Self-Insured Trust Fund
- r) Regional Meetings
- s) 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.

Proclamation

WHEREAS, the Town Council and citizens of the Town of Gilbert are greatly saddened by the death of the honorable Rainow Byrd-Baldwin, former councilmember, on October 28, 2014 and wish to express gratitude and respect for the late councilmember; and

WHEREAS, Rainow Byrd-Baldwin, the first African-American to serve on the Gilbert Town Council, was appointed to the Council in June 1993 and served until July 1995. As a well-respected face of diversity for the Town, he was a strong voice conveying to diverse groups the positive aspects of Gilbert; and

WHEREAS, before his appointment to the Town Council, Rainow served on the Gilbert Economic Development Board, where he was known as a small-business advocate, and was a member of the governor's "Business Breakthrough for Minorities" program; and

WHEREAS, Rainow Byrd-Baldwin exemplified love for his family by being a great husband, father, and provider for his family, including wife Hazel and two children, Rainow, Jr. and Keith; and

WHEREAS, the Town of Gilbert has sustained a heartfelt loss with his death. He earned the respect, admiration and high regard of all who had the pleasure of knowing and working with him; and

WHEREAS, we are thankful for Rainow Byrd-Baldwin's service and presence in our community, and it is fitting that we set apart a special observance in recognition thereof.

NOW, THEREFORE, let it be known, that I, John W. Lewis, by virtue of the authority vested in me as Mayor of Gilbert, do hereby find it an honor to proclaim December 2, 2014 as "Rainow Byrd-Baldwin Day" in the Town of Gilbert.

BE IT FURTHER RESOLVED, that this Proclamation be made a part of the official minutes of the Town of Gilbert, Arizona, and that an official copy of this expression of our deepest sympathy be presented to his family.

In witness thereof, I hereby set my hand and affix the Official Seal of the Office of the Mayor, Town of Gilbert, Arizona, this 2nd day of December 2014.

John W. Lewis, Mayor



Council Communication

TO: Honorable Mayor and Councilmembers

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

MEETING DATE: December 2, 2014

SUBJECT: Agreement for Saint Xavier University to lease and occupy the Gilbert Heritage Annex Building. Agreement No. 2015-2105-0529

STRATEGIC INITIATIVE: Economic Development

Gilbert owns real property in the Gilbert Heritage District and desires that such real property be used for a private four-year liberal arts university to be operated by Saint Xavier University. The establishment, operation and maintenance of a university in the Heritage District will greatly enhance the educational opportunities for residents of Gilbert and residents in the region and will generate additional commercial activities in the Heritage District.

RECOMMENDED MOTION

A motion to approve Agreement No. 2015-2105-0529 with Saint Xavier University to use and occupy the Heritage Annex Building effective December 15, 2014.

BACKGROUND/DISCUSSION

Gilbert owns real property in the Gilbert Heritage District and desires that such real property be used for a private four-year liberal arts university to be operated by Saint Xavier University (SXU). The establishment, operation and maintenance of a university in the Heritage District will greatly enhance the educational opportunities for residents of Gilbert and residents in the region.

The Heritage Annex Building, located at 119 N. Gilbert Road, will serve to house the administrative offices of Saint Xavier University during the construction of the University's Gilbert Campus. The office space, approximately 1474 square feet, will allow Saint Xavier University administrative personnel to conduct meetings, interviews, conference calls and other

activities associated with enrolling students during the period of actual construction of the SXU Campus building.

Following potential approval by the Gilbert Town Council on December 2, 2014, the initial termination date of this agreement will be April 30, 2015 or four (4) months. The rental rate will be \$1 per month, during the term with the tenant assuming the financial responsibility for property improvements.

The agreement was reviewed by Assistant Town Attorney Jack Vincent.

FINANCIAL IMPACT

The rental rate will be \$1 per month, during the initial term of four (4) months with the tenant assuming the financial responsibility for property improvements.

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

STAFF RECOMMENDATION

Staff recommends approving the Agreement with Saint Xavier University to use and occupy the Heritage Annex Building for four (4) months effective December 10, 2014.

Respectfully submitted,

Dan Henderson, CEcD
Economic Development Director

Approved By

Dan Henderson
Jack Vincent
Laura Lorenzen

Approval Date

11/19/2014 9:49 AM
11/19/2014 10:35 AM
11/19/2014 11:47 AM

OFFICE LEASE

Between

TOWN OF GILBERT

and

SAINT XAVIER UNIVERSITY

Contract No. 2015-2105-0529

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LIST OF EXHIBITS

EXHIBIT "A" - Floor Plan with Premises Designated

BASIC LEASE INFORMATION

LEASE DATE: December 2, 2014

LESSOR: Town of Gilbert

Address: 50 E. Civic Center Dr.
Gilbert, AZ 85296
Attention: George Pettit, Town Manager

LESSEE:

Saint Xavier University
Address: 3700 West 103rd Street, Chicago, IL. 60655
92 W. Vaughn Ave., Gilbert, AZ 85296

PREMISES: 1474 square feet located on the North end of 119 W. Gilbert Road, Gilbert, Arizona, designated on Exhibit A; including all sidewalks, driveways, parking areas, and any areas presently or deemed in the future to be common areas of the building.

PROJECT:

The Heritage Annex Building, located at 119 N. Gilbert Road, will serve to house the administrative offices of Saint Xavier University during the construction of the University's Gilbert Campus.

RENTABLE AREA OF THE PROJECT: 5759 square feet (SEE SECTION 1.2)

LESSEE'S PRORATA SHARE OF RENTABLE AREA: 25.59%

TERM: Commencement Date: Following potential approval by the Gilbert Town Council on December 2, 2014.

Termination Date: April 30, 2015.

RENTAL RATE: \$1 per month, with the tenant assuming the financial responsibility for property improvements.

PERMITTED USE: Office space to afford Saint Xavier University administrative personnel space to conduct meetings, interviews, conference calls and other activities associated with the preparation of the SXU-Gilbert Campus during the period of actual construction of the Campus building.

SECURITY DEPOSIT: NONE

NOTICE PROVISION: Notice shall be delivered to:

LESSEE:

____Christine M. Wiseman, President
____Kathleen A. Rinehart, General Counsel & Secy. Of the Corporation
Saint Xavier University
3700 West 103rd Street
Chicago, IL. 60655

LESSOR: Town of Gilbert
50 E. Civic Center Drive
Gilbert, AZ 85296
Attention: ~~George Pettit~~, Patrick Banger, Town Manager

REQUIRED INSURANCE (Article 12):

Fire Damage Liability Endorsement—Two Hundred Fifty Thousand Dollars (\$250,000.00)

Commercial General Liability Insurance—Two Million Dollars Combined Single Limit (\$2,000,000.00)

All-Risk Insurance on Lessee's Personal Property—see Section 12.1.2 for required coverage

Lessee may self-insure any or all of the above insurance requirements

PARKING SPACES: Lessee shall be permitted 3 spaces on a non-exclusive basis for its employees, and a minimum of 7 spaces for customer parking, one of which shall be designated for handicap parking.

The foregoing Basic Lease Information is part of the Lease. Each reference in the Lease to any of the Basic Lease Information shall mean the respective information set forth above. In the event of a conflict, the Lease shall prevail. Lessee acknowledges that it has read and understands all of the provisions contained in the entire Lease and all Exhibits which are a part thereof, and agrees that the Lease, including the Basic Lease Information and all Exhibits, reflects the entire understanding and reasonable expectations of Lessor and Lessee regarding the Premises.

LESSEE INITIALS _____

LESSOR INITIALS _____

OFFICE LEASE

1. PREMISES.

1.1 Description, Agreement to Lease. On the terms and conditions contained herein, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor those premises referred to in the Basic Lease Information and designated on the floor plan(s) attached hereto as Exhibit "A" (the "Premises"). The Premises shall be that space within the limits of the Rental Area (as defined below) and with an upper boundary of the underside of the roof immediately above the Premises, and a lower boundary of the unfinished surface of the floor upon which the Premises are situated.

1.2 Rentable Area. The parties agree that the Premises will be deemed to contain a Rental Area comprised of the number of square feet designated in the Basic Lease Information, and the Project of which the Premises are a part (the "Building") will be deemed to contain a Rental Area comprised of the number of square feet designated in the Basic Lease Information.

2. TERM.

2.1 Term. Except as provided herein, the initial term of this Lease shall be for the period set forth in the Basic Lease Information.

2.2 Term Commencement Date. The initial term shall commence at 12:01 a.m. on the Commencement Date and shall end at 12:01 a.m. on the day following the Termination Date set forth in the Basic Lease Information. Should Lessee take possession of the Premises on a date other than the first day of a calendar month, the Commencement Date hereunder shall be deemed to be the first day of the next succeeding calendar month.

2.3 Confirmation of Commencement Date. If the term hereof commences as herein provided on other than the Commencement Date, the parties shall confirm in writing the date of the commencement of the term hereof and any adjustment to the Termination Date, which confirmation shall be attached hereto and made a part hereof.

2.4 Holding Over. If Lessee remains in possession of the Premises after the expiration or termination Term with Lessor's written consent, and no other lease is executed, Lessee shall be deemed a tenant on a month-to-month basis on the terms and conditions herein, but at the monthly rental equal to market value. Either Lessor or Lessee may terminate such month-to-month tenancy upon 30 days prior written notice.

3. RENTAL.

3.1 Base Rental. For each month of the term hereof, Lessee shall pay to Lessor as rental hereunder that sum identified as the monthly Base Rental in the Basic Lease Information.

3.2 Payment. Base Rental and all other sums payable pursuant to this Lease shall be paid, without deduction, offset except as set forth in Section 3.4 (Rental Abatement), prior notice or demand, to Lessor at the address set forth in the Basic Lease Information, or at such other place or to such other person as Lessor may from time to time designate by notice hereunder. All payments shall be made in lawful money of the United States of America.

3.3 Rental Taxes. Together with and in addition to any payment of rental or any other sums payable to or for the benefit of Lessor pursuant to this Lease, Lessee shall pay to Lessor any legally applicable excise, sales, occupancy, franchise, privilege, rental or transaction privilege tax levied by any governmental authority upon Lessor (except Lessor's income tax) as a result and to the extent of such payments hereunder or as a result of Lessee's use or occupancy of the Premises, and any taxes assessed or imposed in lieu of or in substitution for any of the foregoing taxes whether now existing or hereafter enacted.

4. Maintenance, Repairs, and Operating Expenses

4.1 Lessor's Obligations. Unless such maintenance or repairs are required because of any negligent or intentional act or omission of Lessee, its agents, employees, contractors, customers or invitees, Lessor shall, at its expense, maintain and repair or replace, as necessary, the roof, structural elements, support walls; plumbing and electrical wiring; heating, ventilating and air conditioning facilities; fire, life, and safety systems; the landscaping and parking lot; and the exterior (except Lessee's signs) of the Premises. Lessor shall also, at its expense, be responsible for other Operating Costs as defined below.

4.1.1 Definition of Operating Costs. The term "Operating Costs" for purposes of this Lease means all costs, expenses and fees now or hereafter incurred by Lessor in managing, maintaining, repairing and operating the Project and all parking facilities constituting a part of the Project, including, but not limited to, the following:

4.1.2 Real property taxes and assessments and any other taxes imposed or levied by any governmental entity upon the Project (including, without limitation, personal property taxes on equipment, fixtures and other property of Lessor used in connection with the operation and maintenance of the Project), and costs, expenses and fees (including attorneys' fees) incurred by Lessor in contesting any of said taxes.

4.1.3 Property management and building superintendent fees; the cost of security personnel and other services of independent contractors (including, without limitation, alarm and security service, maintenance of parking areas and other exterior portions of the Common areas, window cleaning, landscaping maintenance, atrium maintenance, maintenance of fountains and other water features and maintenance of decorative items and artwork); and wages, charges, taxes, fringe benefits or other labor costs for all on-site agents or employees engaged in the operation, maintenance, cleaning, repairing, decoration, security and management of the Project.

4.1.4 Equipment, supplies and materials (new or replacement) used in connection with the operation, maintenance, decoration, repairing and cleaning of the Project; the cost of water, sewer service, gas, electricity and other utilities and services for the Project (except telephone service for lessees, which shall be the obligation of each lessee, and any utilities to be paid by Lessee pursuant to the terms of this Lease); the cost of refuse, garbage and trash removal, collection and disposal; and the cost of pest control.

4.1.5 The cost of upkeep, repair, replacement and maintenance of all portions of the building and the Project, including the roof and structural elements thereof and any elevator, benches, plumbing, electrical, heating, ventilating and air conditioning systems; the cost of upkeep, repair, replacement and maintenance of all curbs, sidewalks, hallways, stairways, atrium areas, toilets and other common facilities; the cost of landscaping and landscape maintenance, repair and replacement; and the cost of cleaning and other care of the Project and the improvements comprising the same.

4.1.6 The cost of fire insurance with extended and/or "all risk" coverage, general public liability insurance, business interruption, rental income, workmen's compensation and all other insurance obtained from time to time by Lessor with respect to the Project.

4.1.7 Amortization of capital improvements made to the Project after the year in which the Project is substantially completed, which improvements are required to comply with applicable laws, rules and regulations or were undertaken with a reasonable expectation that they would result in a more efficient operation of the Project if Lessor reasonably determines that the cost to be incurred is justified in comparison with the savings to be achieved during the useful life of such improvement; provided that the cost of each such capital improvement, together with any financing charges incurred in connection therewith, shall be amortized over the useful life thereof and only that portion attributable to each Operating Year shall be included herein for such Operating Year.

"Operating Costs" shall not include real estate commissions paid in connection with the leasing of space within the Project; depreciation of the Building for tax purposes; payments of principal and interest on any mortgages, deeds of trust or other financing instruments relating to the financing of the Project; Lessor's income taxes and costs directly related to improving space for leasing within the Building.

4.2 Lessee's Obligations. Unless such maintenance or repairs are required because of any negligent or intentional act or omission of Lessor, its agents, employees, contractors or invitees, or are specifically designated above as the obligation of Lessor, Lessee shall, at its expense, maintain the interior of the Premises (including providing all consumable supplies such as light bulbs and janitorial materials), except those items set forth in Section 4.1. In addition, Lessee shall be responsible for all tenant improvements, which shall include the replacement or repair of all interior fixtures, surfaces, and finishes in reasonable need of repair or replacement. Lessee also shall be responsible for maintenance and repair of its electronic security wiring and equipment, refrigerators and small electric appliances, exterior signage, carpet cleaning, janitorial service. Lessee shall perform promptly, at its expense, all maintenance or repairs with respect to the Premises and the Project required because of any negligent or intentional acts or omissions of Lessee, its agents, employees, contractors, customers or invitees. Lessee shall perform such obligations regardless of whether or not: (i) such portions of the Premises requiring repair are reasonably or readily accessible, (ii) the means of making the required repairs are convenient or reasonable, or (iii) the need for such repairs occurs as a result of Lessee's use, the elements or the age of such portions of the Premises.

5. USE OF PREMISES.

5.1 Permitted Uses. Lessee shall not use or permit the use of the Premises for any purpose, except the purpose set forth in the Basic Lease Information, without the prior written consent of Lessor.

5.2 Compliance with Insurance Requirements. Lessee shall not engage in or permit any activity which will cause the cancellation or increase the existing premium rate of fire, liability or other insurance on or relating to the Premises or the Project. Lessee shall not sell or permit to remain in or about the Premises any article that may be prohibited by the standard or "All Risk" fire and extended coverage insurance policies to be maintained pursuant to this Lease. Lessee shall comply with all requirements pertaining to the use of the Premises necessary for maintenance of such fire and public liability insurance as Lessor may from time to time obtain for the Premises or the Project.

5.3 Waste, Nuisance, etc. Lessee shall not commit or permit any waste on the Premises nor in any manner deface or injure the Premises or the Project. Lessee shall not use the Premises for the protection, preparation, or distribution of pornographic materials or for other offensive or immoral purposes, or commit or permit on the Premises any offensive, noisy or dangerous activity or other nuisance, activity or thing which may disturb the quiet enjoyment or peaceable possession of any other tenant in the Project. Lessee shall not overload the floor of the Premises beyond the load limit established by Lessor. Lessee shall not employ any sound emitting device in or about the Premises that is audible outside the Premises, other than fire and burglar alarms.

5.4 Area Above Standard Finish Ceiling Line. Lessee shall have the right to use, enter into or cause to be entered into that portion of the Premises above the standard ceiling line without the prior written consent of Lessor. However, such use and entry shall be at Lessee's risk. Lessee shall indemnify, defend, and hold Lessor harmless from any and all costs, expenses (including attorneys' fees) and claims brought against Lessor by any party for damages arising from Lessee's acts or omissions.

5.5 Common Areas. Lessee shall be entitled to the non-exclusive use in common with Lessor, other tenants and occupants of the Project, and other parties authorized by Lessor, their respective employees, agents, contractors, customers and invitees, of such sidewalks, parking areas, and other common areas and facilities in the Project as Lessor shall from time to time designate for common use

5.6 Compliance with Laws. Lessee shall comply, at its expense, with all laws, ordinances, rules and regulations of any public authority at any time now or hereafter applicable to the Premises or any activity therein or use thereof, and shall, at its expense, construct and install any improvements which may be required from time to time by applicable laws, ordinances, rules and regulations as a result of Lessee's use or occupancy of the Premises.

5.7 Rules and Regulations. Lessee shall comply, and shall cause its employees, agents, contractors, customers and invitees to comply, with reasonable written rules and regulations that may be imposed upon the Project, and with such modifications and additions thereto as Lessor, in its reasonable discretion, may hereafter make for the Project.

5.8 Lessee Signs. Lessee, at Lessee's sole cost shall have the right to place Lessee's name and logo on the building, and upon the Project subject to Lessor's signage criteria and governmental requirements and approvals.

5.9 Hazardous Substances. Lessee agrees that it will not use or allow the Premises to be used for the storage, use, production, release, treatment or disposal of any "hazardous substance," as defined under either the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, *et seq.*, as amended from time to time) or any similar federal, State, or local law, rule or regulation now or hereafter existing, and Lessee shall otherwise comply at all times with all federal, State and local environmental laws, rules, and regulations. Lessee shall immediately notify Lessor of any hazardous substance on or about the Premises, any investigation by any governmental authority regarding hazardous substance, and any claims by third parties against Lessee relating to hazardous substances.

6. CONDITION OF PREMISES; CONSTRUCTION.

6.1 Condition of Premises. Lessee acknowledges, represents and agrees to the following: (i) Lessee shall be responsible for making its own inspection and investigation of the Premises, the Building and other portions of the Project, (ii)

Lessee shall be responsible for investigating and establishing the suitability of the Premises for Lessee's intended use thereof, and all zoning and regulatory matters pertinent thereto, (iii) Lessee is leasing the Premises "AS IS" based on its own inspection and investigation and not in reliance on any statement, representation, inducement or agreement of Lessor or its agents, employees or representatives.

7. BUILDING SERVICES.

7.1 Services. Lessor agrees to furnish to the Premises, during Lessee's normal business hours (as hereafter defined), water and electricity suitable for the intended use of the Premises, and heat and air conditioning required for the comfortable use and occupation of the Premises. Lessee's normal business hours are Monday-Friday from 7:00AM to 7:00PM, and on Saturday from 7:00AM to Noon.

7.2 Interruption of Services. Lessor shall not be liable for, nor shall Lessee be entitled to, any abatement or reduction of rental or other amounts due hereunder by reason of Lessor's failure to furnish any of the foregoing Building Services when such failure is caused by the acts of Lessee or other tenants of the Building or by any causes beyond the reasonable control of Lessor, including without limitation the following: weather, accidents, breakage, installing or remodeling improvements, repairs, strikes, lockouts or other labor disturbances or disputes of any character.

8. ALTERATIONS TO PREMISES.

8.1 Lessor's Prior Written Consent Required. Except as provided for on Exhibit "C", Lessee shall not make any alteration, addition or improvement to the Premises or to any fixture, wiring, plumbing, lighting, heating, air conditioning or other equipment therein without the prior written consent of Lessor if the amount of the work will exceed \$5000. Any alteration, addition or improvement to which Lessor consents or which is required by law shall be completed free of liens in good and workmanlike manner in accordance with plans, specifications and drawings approved in writing by Lessor, and in compliance with all applicable laws, regulations and codes. Lessee shall timely pay all costs and fees incurred by Lessee in connection with all alterations, additions and improvements permitted or required hereunder.

8.2 Alterations Become Part of Premises, All alterations, additions or improvements to the Premises by Lessee (including, without limitation, demolition of earlier improvements, construction or remodeling of interior walls, doors, ceilings, built-in cabinetwork and shelving, lunchroom facilities, and installation, remodeling or replacement of lighting, heating and air conditioning equipment, electrical and telephone circuits, draperies, carpets and other floor coverings, wall coverings, and interior glasswork), except Lessee's Property (as defined in Section 21), shall become part of the Premises and the property of Lessor immediately upon installation thereof. Any alteration, addition or improvement which Lessee is required or permitted to remove hereunder shall be removed at Lessee's expense immediately prior to the termination of this Lease, and Lessee shall promptly repair any damage to the Premises

caused by installation or removal of such alteration, addition or improvement.

9. LIENS. Lessee shall keep the Premises, the Building and the Project free of any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Lessee (or on behalf of Lessor if the same arise as a result of Lessor's performing an obligation of Lessee hereunder and Lessee fails to reimburse Lessor immediately for the cost thereof). If any such lien is filed, Lessee shall, within 10 days thereafter, cause the lien to be fully discharged by either paying the obligation secured thereby or obtaining and recording a payment bond in accordance with the provisions of Section 33-1004, Arizona Revised Statutes. Lessee is not authorized to act for or on behalf of Lessor as its agent, or otherwise, for the purpose of constructing any improvements to the Premises, and neither Lessor nor Lessor's interest in the Premises shall be subject to any obligations incurred by Lessee. Lessor shall be entitled to post on the Premises during the course of any construction by Lessee such notices of non-responsibility as Lessor deems appropriate for its protection. If Lessee fails to discharge fully any such lien within said 10-day period, Lessor may (but without obligation) pay the entire claim secured by such lien, and the amount so paid, together with reasonable attorneys' fees and costs incurred, shall be immediately due to Lessor, and Lessee shall pay the same to Lessor.

10. LESSOR'S ENTRY. Notwithstanding emergencies, Lessor, its employees, agents and contractors shall be entitled to enter the Premises upon reasonable notice and during Lessee's business hours for purposes of conducting any inspections thereof, posting non-responsibility notices, making repairs, additions or alterations thereto or to the Building, showing the Premises to any prospective purchaser, lessee, mortgagee or insurer, and taking necessary action in the event of any emergency. In connection with such entry, Lessor shall be entitled to erect such scaffolding and other necessary structures or equipment as reasonably required by the character of the work to be performed, provided that Lessor shall not unreasonably interfere with the conduct of Lessee's business. No entry by Lessor hereunder shall entitle Lessee to terminate this Lease or to a reduction or abatement of rental or other amounts owed by Lessee hereunder nor to any claims for damages. Lessor shall have the right to retain at all times keys to all doors within and into the Premises. Lessor shall be entitled to use in good faith any means to gain entry to the Premises in the event of an emergency.

11. LESSEE'S INDEMNITY; WAIVER. Lessee shall indemnify and hold Lessor harmless from and against any and all claims arising from Lessee's use of the Premises, or from the conduct of Lessee's business thereon or from any activity, work or things done, permitted or suffered by Lessee in or about the Premises, and shall further indemnify and hold harmless Lessor from and against any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease, or arising from any negligence or willful misconduct of the Lessee, or any of Lessee's agents, contractors, employees, customers or invitees, and from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. If any action or proceeding is threatened or commenced against Lessor by reason of any such claim, Lessee, upon notice from Lessor, shall defend the same at Lessee's expense through counsel satisfactory to Lessor.

12. INSURANCE.

12.1 Insurance. Lessee, at its sole cost and expense, shall procure and maintain during the term hereof:

12.1.1 Commercial general liability insurance providing coverage against claims for bodily injury, death, property damage, or fire damage liability occurring in, on or about the Premises, the adjoining sidewalks and passageways, or resulting from Lessee's use, occupancy or maintenance thereof, which policy shall name Lessor as additional insured parties. Such insurance shall be primary with respect to Lessor and shall be in the amount stated in the Basic Lease Information. Any commercial general liability insurance carried by Lessor shall apply in excess of the primary coverage required herein to be carried by Lessee.

12.1.2 Insurance on an "All-Risk" basis providing coverage against damage and destruction to Lessee's Property and any improvements, additions and other alterations to the Premises which Lessee installs or constructs in the amount of full replacement value. If such items are damaged or destroyed, Lessee shall bear all risk of loss with respect thereto. Lessee hereby waives as against Lessor any and all claims or demands whatsoever pertaining to damage, loss or injury caused by or resulting from fire or other perils, events or occurrences which are or could have been covered by insurance.

12.2 Notice of Insurance. All insurance provided for in this Article shall be effected under valid and enforceable policies issued by insurance companies rated not lower than "A" and in the Class XII Financial Size category in Best's Insurance Reports (current edition) and authorized to do business in the State of Arizona. Such policies shall not be invalidated due to any act or omission by Lessor, so long as any such act or omission does not amount to negligence on behalf of Lessor. The policies shall further be endorsed to indicate that such policies shall cover Lessee's obligations pursuant to Article XIII up to the limits of such policies. The insurance companies issuing such insurance shall agree to notify Lessor in writing of any cancellation, alteration or non-renewal of said insurance at least 60 days prior thereto. Lessee shall deliver to Lessor, within 30 days after execution of this Lease, certificates evidencing the insurance coverage required herein and confirming that the premiums therefore have been paid in full. Said certificates shall also include a footnote referring to this Lease and certifying that the policy or policies issued to Lessee comply with all of the provisions of this Article 14. If Lessee fails to obtain the insurance required herein and deliver said certificates to Lessor as provided above, Lessor shall be entitled, but without obligation, to obtain said policies at Lessee's expense. Lessee at its option may satisfy the insurance requirements of this Section 12 through its own self-insured retention program.

12.3 Waiver. Notwithstanding any other provisions in this Lease, Lessee and Lessor hereby waive any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, for loss of, or damage to, the waiving party or its property or the property of others under its control to the

extent that such loss or damage is insured against under any insurance policy in force at the time of such loss or damage. Lessee shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers of the waiver of subrogation set forth in this Lease and shall obtain, at Lessee's expense, an appropriate waiver of subrogation endorsement from the insurer. If the Premises, the Project or Lessee's Property are damaged or destroyed by fire or any other cause against which Lessee is required to maintain insurance pursuant to this Lease, Lessor shall not be liable to Lessee for any such damage or destruction.

13. DAMAGE OR DESTRUCTION.

13.1 Termination. If the Premises or any portion thereof are damaged or destroyed by any cause, Lessor shall reasonably determine, within 15 days after such casualty, whether it would take more than 120 days from the date of such damage or destruction to repair the same. If Lessor determines that greater than 120 days would be required to repair such damage or destruction, then either Lessor or Lessee shall be entitled to terminate this Lease by written notice to other party within said 15-day period, which termination shall be effective 10 days after receipt. The foregoing notwithstanding, if all or part of the Premises and/or the Project are damaged or destroyed and Lessor, upon inspection, reasonably determines that (i) the cost of repairing the Premises will exceed 10% of the replacement cost of the Premises and such damage is not covered by insurance maintained by or payable to Lessor, or (ii) the cost of repairing the Premises will exceed 25% of the replacement cost of the Premises and such damage occurs within the last 6 months of the term of this Lease (exclusive of any option periods), or (iii) the Building or the Project are damaged to an extent greater than 25% of their replacement values (whether or not the Premises are damaged or destroyed), then Lessor shall be entitled to terminate this Lease by written notice to Lessee given on or before 30 days after the occurrence of such casualty, which termination shall be effective 10 days after receipt.

13.2 Repair. If this Lease is not terminated as provided above, the damage to the Premises shall be repaired as follows:

13.2.1 Lessee shall promptly repair, at its expense, any damage to Lessee's Property and any improvements, additions and other alterations installed or constructed by Lessee.

13.2.2 Lessor shall have the option of repairing any damage caused by any act or neglect of Lessee or its employees, agents or invitees and shall charge to Lessee all costs and expenses incurred in connection therewith. Lessee shall pay the same within 5 days after presentment of a statement to Lessee indicating the amount thereof. If Lessor elects not to repair the damage, Lessee shall promptly repair the damage at its expense.

13.2.3 Lessor shall repair, at its expense, the damage not specified in subsections 13.2.1 and 13.2.2 above.

All repairs performed pursuant to this Section shall be performed in a good and workmanlike manner, in accordance with plans and specifications approved by Lessor, and in compliance with applicable laws, regulations and building codes. Lessor shall have the right to designate or approve the contractors performing repairs required to be made by Lessee and shall have the right to require Lessee to post such bonds as Lessor deems necessary.

14. CONDEMNATION.

14.1 Termination. If the Premises or any portion thereof are taken under power of eminent domain or conveyed by Lessor under the threat thereof (a "Condemnation"), this Lease shall automatically terminate as to the part so taken as of the date of Condemnation. If a portion of the floor area of the Premises, or all or a substantial portion of the parking area within the Project is taken by Condemnation, and Lessor determines that it would not be economically feasible to utilize the Premises for the purposes for which the same were being used at the time of said taking, then Lessor may terminate this Lease as of the date of condemnation by giving written notice thereof to Lessee on or before 20 days after said date. If more than 25% of the floor area of the Building and/or more than 25% of the land area of the entire Project is taken by Condemnation (regardless of whether or not any portion of the Premises is taken), then Lessor shall be entitled to terminate this Lease as of the date of Condemnation by written notice to Lessee on or before 20 days after said date.

14.2 Abatement of Rent. In the event of Condemnation of only a portion of the Premises, rental shall be reduced in proportion to the amount of Rentable Area taken.

14.3 Award. Lessor shall be entitled to the entire Condemnation award for any partial or entire taking of the Premises or the Project, including any award for the leasehold estate created hereby, and Lessee hereby waives any claim to such compensation as may be separately awarded to Lessee, in Lessee's own name, for any damages to Lessee's business and any costs incurred by Lessee in removing Lessee's Property.

14.4 Restoration. If only a part of the Premises is condemned and this Lease is not terminated pursuant hereto, then Lessor shall, in the exercise of reasonable diligence and its own cost, restore the Premises to its previous condition as nearly as is reasonably under the circumstances. In no event, however, shall Lessor be obligated to commence such restoration until it has received the entire Condemnation award and in no event shall Lessor be obligated to incur restoration expenses in an amount greater than such award, less costs, expenses and fees (including attorneys' fees and costs) incurred by Lessor in collecting such award.

14.5 Date of Condemnation. The date of Condemnation, for the purposes hereof, is the earlier of the date (i) possession of the Premises is delivered to the taking authority, or (ii) title is vested in the taking authority.

15. QUIET ENJOYMENT. If Lessee pays the rental and other sums payable hereunder and performs all of its other obligations hereunder, Lessor shall take no action to disturb Lessee's peaceable and quiet possession of the Premises during the term hereof. This covenant is a covenant as to title only and shall not extend to, and Lessor shall not be liable for, any disturbance, act, condition or damage caused by any other tenant in the Project or anyone not otherwise claiming by or through Lessor, nor to any disturbance, act or condition permitted to be taken by or on behalf of Lessor under this Lease.

16. ESTOPPEL CERTIFICATE. Upon receipt of a written request from Lessor, Lessee shall, from time to time, and within 20 days after receipt of such request, execute, acknowledge and deliver to Lessor a statement in writing (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the dates to which the rental and other charges are paid in advance, if any, (b) acknowledging that there are no uncured defaults on the part of Lessor, or specifying such defaults if any are claimed, and (c) certifying or acknowledging any other matters that Lessor may reasonably request for certification or acknowledgment. Any such statements may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the Premises, the Building, or the Project. Unless Lessee timely delivers the requested Estoppel Certificate to Lessor, it shall be deemed conclusively that; (i) this Lease is in full force and effect, without modification except as may be represented by Lessor, (ii) there are no uncured defaults in Lessor's performance, and (iii) not more than one month's rent has been paid in advance.

17. SUBORDINATION. This Lease shall also be subject and subordinate at all times to any lien of any mortgages, deeds of trust or other security instruments now or hereafter placed on or against the land and/or the Building and other improvements comprising the Project (and all extensions, modifications, renewals and refinancings thereof) without the necessity of executing and delivering any further instruments on the part of Lessee to effectuate such subordination. Lessee hereby agrees, at the written request of the purchaser of the Lessor's interest pursuant to such foreclosure or other proceedings, to attorn to such purchaser or, at such purchaser's option, to enter into a new lease for the balance of the term hereof upon the same terms and provisions as are contained in this Lease. Notwithstanding the foregoing, Lessee shall execute and deliver such further instrument or instruments evidencing such subordination of this Lease to the lien of any such mortgages, deeds of trust or other security instruments as may be requested by Lessor within 10 days after Lessee's receipt of such request. If Lessee fails, neglects or refuses to execute and deliver any such instruments within 10 days after receipt of written notice to do so together with the instruments to be executed by it, Lessee hereby irrevocably appoints Lessor, its successors and assigns, as the attorney-in-fact of Lessee to execute and deliver any and all such instruments for and on behalf of Lessee.

18. ASSIGNMENT AND SUBLETTING.

18.1 Lessor's Consent Required. Except to affiliated companies of Lessee, Lessee shall not convey, transfer, sublease, assign, hypothecate, encumber, or otherwise dispose of this Lease or any right, title or interest therein, whether voluntarily or by operation of law, without the prior written consent of Lessor, which shall not be unreasonably withheld or delayed; and any such assignment or subletting shall be void and/or shall terminate this Lease at the option of Lessor. The consent by Lessor to any assignment or other disposition shall not be construed as a consent to any other assignment or disposition.

18.2 No Release of Lessee. Regardless of whether Lessor's consent is granted, no subletting or assignment shall release Lessee of Lessee's obligations hereunder or alter the primary liability of Lessee to pay the rent and to perform all other obligations to be performed by Lessee hereunder. The acceptance of rent by Lessor from any other person shall not be deemed to be a waiver by Lessor of any provision hereof. Upon a default by any assignee or successor of Lessee in the performance of any of the terms hereof, Lessor may proceed directly against Lessee without the necessity of commencing or exhausting remedies against said assignee or successor.

18.3 No Merger. The voluntary or other surrender of this Lease by Lessee, a mutual cancellation of this Lease, or the termination of this Lease by Lessor pursuant to any provision contained herein, shall not operate as a merger, but, at Lessor's option, shall either terminate any or all existing assignments or subleases hereunder, or operate as an assignment to Lessor of any such assignments or subleases.

19. ABANDONMENT OF PREMISES. Lessee shall at all times during the term hereof occupy and use the Premises during normal business hours. If Lessee ceases to so occupy and use the Premises or abandons, vacates or surrenders the Premises or is dispossessed by process of law or otherwise, Lessee's Property remaining on the Premises shall be deemed abandoned and, at the option of Lessor, may be kept or disposed of by Lessor as provided in Section 21 hereof. The failure of Lessee to be open for business in the Premises for a period of 15 consecutive business days or longer, with rent unpaid, shall constitute an abandonment of the Premises.

20. LESSEE'S PROPERTY.

20.1 Lessee's Property. The term "Lessee's Property," as used in this Lease, is defined as any furniture, trade fixtures, equipment and personal property installed in, on or about the Premises by Lessee at Lessee's expense, such as freestanding cabinetwork and casework, metal storage units, signs, office machines, data processing equipment, security devices and chests, kitchen appliances, ice machines, and other items of personal property which are not attached or built in.

20.2 Removal. Unless Lessee is in default hereunder, Lessee may remove any of Lessee's Property immediately upon the expiration or termination of this Lease, and any of Lessee's Property remaining on the Premises upon such expiration or

termination shall, at Lessor's option, become the property of Lessor, or Lessor may dispose of same, as attorney-in-fact for and at the expense of Lessee, as Lessor may deem appropriate in its discretion and retain the proceeds therefrom. Lessee shall promptly repair, in a good and workmanlike manner, at its own expense, any damage to the Premises caused by the installation or removal of Lessee's Property.

20.3 Taxes. Lessee shall pay, prior to delinquency, all legally applicable taxes assessed against or levied upon Lessee's Property. Lessee shall cause Lessee's Property to be assessed and billed separately from the real property of which the Premises are a part. If any or all of Lessee's Property is assessed and taxed with said real property, Lessee shall pay to Lessor its share of such taxes, as determined by Lessor, within 10 days after delivery to Lessee of a statement in writing setting forth the amount due.

21. SURRENDER. Upon the expiration or termination of this Lease for any reason, Lessee shall immediately and peaceably surrender the Premises to Lessor in a safe and clean condition and in good order and repair, reasonable wear and tear excepted.

22. PARKING; RESERVED PARKING. Other than as may be provided in elsewhere this Lease, Lessor shall make available during Lessee's normal business hours a minimum of 7 parking spaces for the nonexclusive use of Lessee's customers, 1 of which shall be a designated handicap space; and 3 spaces for the exclusive use of Lessee's employees.

23. FORCE MAJEURE. If Lessor is delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, civil disorder, inability to procure materials, restrictive governmental laws or regulations or other cause without fault and beyond the reasonable control of Lessor (financial inability excepted), performance of such act shall be excused for the period of delay.

24. RIGHTS RESERVED BY LESSOR.

24.1 Lessor shall have the right to use the parking areas and other areas outside of the building within the Project for the promotion and marketing of space within the Project, or within property adjacent to the Project which may be developed by Lessor or an affiliate or subsidiary of Lessor, including without limitation, the right to maintain signs and other promotional devices on the Project.

24.2 Lessor shall have the right to construct additional improvements within the Project to improve and enhance the same, including without limitation, additional landscaping and other common facilities.

24.3 Lessor shall have the right to change the name of the building.

25. NOTICES. No notice, consent, approval or other communication given in connection herewith shall be validly given, made, delivered or served unless in writing

and sent by registered or certified United States mail, postage prepaid, to Lessor (or the Managing Agent if Lessor so designates in the Basic Lease Information) or Lessee, as the case may be, at the respective addresses set forth in the Basic Lease Information, or to such other addresses as either party hereto may from time to time designate in writing and deliver in accordance herewith to the other party. Notices, consents, approval or communications shall be deemed given or received 24 hours after deposit in the mail as hereinabove provided.

26. DEFAULTS; REMEDIES.

26.1 Defaults. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Lessee:

26.1.1 Lessee's abandoning the Premises, and rent is not paid.

26.1.2 Lessee's failure to make any payment of Base Rental or any other sum due under this Lease, together with interest thereon as herein provided, as and when due, where such failure shall continue for a period of 10 days after written notice thereof from Lessor to Lessee.

26.1.3 Lessee's failure to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, where such failure shall continue for a period of 20 days after written notice thereof from Lessor to Lessee.

26.1.4 To the extent that a declaration of default is not prohibited by law, (i) the making by Lessee of any general assignment, or general arrangement for the benefit of creditors; (ii) the filing by or against Lessee of a proceeding under state or federal insolvency and/or bankruptcy laws (unless, in the case of a petition filed against Lessee, the same is dismissed within 30 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease.

26.1.5 An assignment or subletting of the Premises without the written consent of Lessor as provided in the Lease.

26.2 Remedies. Upon any such default or breach by Lessee, Lessor shall be entitled to exercise the following rights and remedies at any time thereafter, with or without notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such default or breach (and Lessor shall be entitled to recover from Lessee all attorneys' fees and costs incurred by Lessor in enforcing its rights and remedies, regardless of whether legal proceedings are commenced):

26.2.1 Lessor shall have the immediate right of re-entry and may remove all persons and property from the Premises, without liability for damages sustained by reason of such removal. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Lessee. Should Lessor elect to re-enter as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice provided by law, it may either terminate this Lease to the same extent and with all the legal incidents as if the term hereof had expired by lapse of time, or it may from time to time, without termination of this Lease, relet the Premises or any part thereof. No such re-entry or taking possession of the Premises by Lessor shall be construed as an election on its part to terminate this Lease unless a written notice of such intention is given to Lessee. Notwithstanding any such reletting without termination, Lessor may, at any time thereafter, elect to terminate this Lease for such previous breach. Regardless of whether or not the Lease is terminated as provided above, Lessor shall be entitled to recover from Lessee all damages incurred by Lessor as a result of Lessee's default, including without limitation (i) the worth at the time of Lessee's default or all unpaid rent, operating expenses and other sums due from Lessee under this Lease through the date Lessor elects to re-enter the Premises and/or terminate this Lease, and all rent, operating expenses, and other sums due under this Lease after re-entry and/or termination through the end of this term of this Lease as set forth in Article 2, and (ii) all other amounts necessary to compensate Lessor for all detriment caused by Lessee's default. Lessor shall be entitled to receive a judgment for the full amount of such damages as may be reduced by any amounts received and applied by Lessor. In determining worth at the time of Lessee's default, a discount rate equal to 1% above the discount rate then in effect at the Federal Reserve Bank serving Phoenix shall be used.

26.2.2 Lessor shall have the right, but not the obligation, to render the performance required to cure such default or breach and to charge to Lessee all costs and expenses incurred in connection therewith (including a service fee equal to 10% of all sums expended by Lessor to cure the default or breach), together with interest thereon from the date incurred by Lessor at the rate provided below, and Lessee shall immediately pay the same upon presentment of a statement to Lessee.

26.2.3 No remedy herein conferred upon Lessor shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute, including, but not limited to, the right to maintain an action to recover all amounts due hereunder. Lessor may exercise its rights and remedies at anytime, in any order, to any extent, and as often as Lessor deems advisable.

26.2.4 In addition, to every other remedy available to Lessor, Lessor may, in the event of default as defined in this Article, obtain the appointment of a receiver in any court of competent jurisdiction, and the receiver may enter the Premises and take possession of Lessee's Property and any other personal property belonging to the Lessee and used in the conduct of Lessee's business in the Premises. Such entry or possession by said receiver shall not constitute an eviction of Lessee from the Premises or any portion thereof, and Lessee shall indemnify, defend

and hold Lessor harmless from any claim by any person arising out of or in anyway connected with the entry by said receiver in taking possession of the Premises and/or said personal property. Neither the application for the appointment of such receiver, nor the appointment of such receiver, shall be construed as an election on Lessor's part to terminate this Lease unless a written notice of such intention is given to Lessee.

26.3 No Waiver. No delay or omission of Lessor to exercise any right or power arising from any default shall impair any such right or power, and shall not be construed to be a waiver of any such default or an acquiescence therein. No waiver of a default shall be effective unless it is in writing. No written waiver by Lessor of any provision of this Lease or any breach by Lessee hereunder shall be deemed to be a waiver of any other provision hereof, or of any subsequent breach by Lessee of the same or any other provision. Lessor's consent to or approval of any act by Lessee requiring Lessor's consent or approval shall not be deemed to render unnecessary the procurement of Lessor's consent to or approval of any subsequent act of Lessee, whether or not similar to the act so consented to or approved.

26.4 Attorneys' Fees. If either party resorts to judicial proceedings to enforce any right under this Lease or to obtain relief for any default by the other party, the party prevailing in such proceedings shall be entitled to recover from the non-prevailing party the costs thereof, including reasonable attorneys' fees (as determined by the court).

27. LESSOR LIABILITY.

27.1 Default by Lessor. Lessor shall not be considered in default or breach of this Lease for the non-performance of any obligation imposed herein unless Lessee provides Lessor with written notice of said non-performance and:

27.1.1 If the same relates solely to the non-payment of money, Lessor fails to perform within 10 days after receipt of said written notice.

27.1.2 If the same does not relate solely to the non-payment of money, Lessor fails to commence performance within said 30-day period and to diligently continue such performance until the obligation is fulfilled.

If Lessor grants a security interest in this Lease to any person or entity and if Lessee has been notified in writing of the name and address of said lienholder, then Lessee shall simultaneously upon giving any notice of non-performance to Lessor deliver a copy of same to each such lienholder, by personal delivery or certified or registered United States mail, postage prepaid (notices sent by mail shall be deemed delivered upon receipt). Each such lienholder shall be entitled to perform such obligation within 45 days after the expiration of any period of time within which Lessor is entitled to perform such obligation.

27.2 Sale of Lessor's Interest. Upon any sale or conveyance of Lessor's interest in this Lease, Lessor shall be entirely relieved of all liability for Lessor's

obligations under this Lease accruing thereafter, and the assignee or purchaser shall be deemed without any further agreement between the parties or their successors in interest to have assumed all of the obligations of Lessor under this Lease accruing after such conveyance. This Lease shall not be affected by any such sale or conveyance and Lessee agrees to attorn to such successor in interest.

27.3 No Liability for Loss, Theft, Etc. Lessor and its agents shall not be liable to Lessee for any damage to property entrusted to Lessor's employees, agents or contractors, nor for loss of or damage to any property by theft, disappearance or otherwise, nor for any injury or damage to persons or property resulting from any cause whatsoever, including without limitation fire, explosion, falling plaster, steam, gas, electricity, any act or omission of co-tenants or other occupants of the Building or of adjoining or contiguous property or buildings, water or rain which may leak from any part of the Premises or the Building or from the pipes, tanks, appliances or plumbing works therein, or from the roof, street or subsurface, or from any other place. Lessor and its agents shall not be liable to Lessee for interference with the natural light, nor for any latent defect in the Premises or in the Project. Lessee shall give prompt notice to Lessor of any fire, accident or defect discovered within the Premises or the Project.

28. GENERAL.

28.1 Captions. The headings of the Articles and the Sections hereof are inserted for convenience only and shall not affect the construction of any of the provisions hereof.

28.2 Time of the Essence. Time is of the essence of this Lease.

28.3 No Partnership; No Third Party Rights. Nothing contained in this Lease shall create any partnership, joint venture or other arrangement between Lessor and Lessee. Except as expressly provided herein, no provision of this Lease is intended to benefit, and shall not benefit, any person not a part hereto and no such other person shall have any right or cause of action hereunder.

28.4 Entire Agreement. The Lease, Basic Lease Information, and Exhibit constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and shall not be changed or added to except in writing signed by all parties hereto. All prior and contemporaneous agreements, representations, statements and understandings of the parties, oral or written, that modify, amend or vary any of the terms of this Lease, are hereby superseded and merged herein.

28.5 Authority to Execute. Any individual executing this Lease on behalf of or as representative for a corporation, LLC, or other partnership or entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf thereof and that this Lease is binding thereon in accordance with its terms. If Lessee is a corporation or LLC, Lessee shall deliver to Lessor within 15 days after the execution hereof a certified copy of a resolution of the Board of Directors of said

corporation, or a member resolution of said LLC, authorizing or ratifying the execution and delivery of this Lease by the individuals executing and delivering same.

28.6 Arizona Law. This Lease shall be governed by the laws of Arizona.

28.7 Partial Invalidity. If any provision of this Lease is held by a court to be invalid, void or unenforceable, the remainder of this Lease shall remain in full force and effect and shall in no way be affected or invalidated.

28.8 Incorporation of Exhibits. All exhibits attached hereto shall be deemed a part of this Lease.

28.9 Binding on Successors and Assigns. Each of the provisions of this Lease shall bind, extend to, and inure to the benefit of the respective heirs, legal representatives, and successors and assigns of both Lessor and Lessee.

28.10 Impartial Interpretation. This Lease is the result of negotiations between Lessor and Lessee. The language in this Lease shall be construed as a whole according to its fair meaning and not strictly for or against either party.

28.11 Not Binding Until Signed. Submission of this instrument for examination shall not bind Lessor in any manner, and no lease or obligation shall arise until this instrument is executed and delivered by Lessor and Lessee.

29. BROKERS. Lessee and Lessor represent and warrants that neither party has retained a broker and there are no claims for brokerage commissions or finder's fees in connection with Lessee's execution of this Lease.

30. OTHER TERMS.

30.1 Special Termination Clause. Lessee has a franchise to provide electricity in a portion of the Town of Gilbert. In the future should Lessee lose, forfeit or sell its franchise to supply electricity in the Town of Gilbert, it shall have the right at any time thereafter to terminate the lease without penalty upon serving Lessor with notice of its intent thirty (30) days prior to the actual termination date.

30.2 Signage. Upon Lessor's approval, which will not be unreasonably withheld or delayed, Lessee at Lessee's sole cost may erect identification and/or directional signage that meets compliance with Lessor's sign standards in effect at the time an application is made. Lessee shall be responsible for all installation, maintenance, and removal of signage.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year hereinabove written.

LESSEE:

Saint Xavier University

By: _____
Name: Christine M. Wiseman, J.D.
Title: President
Date: _____

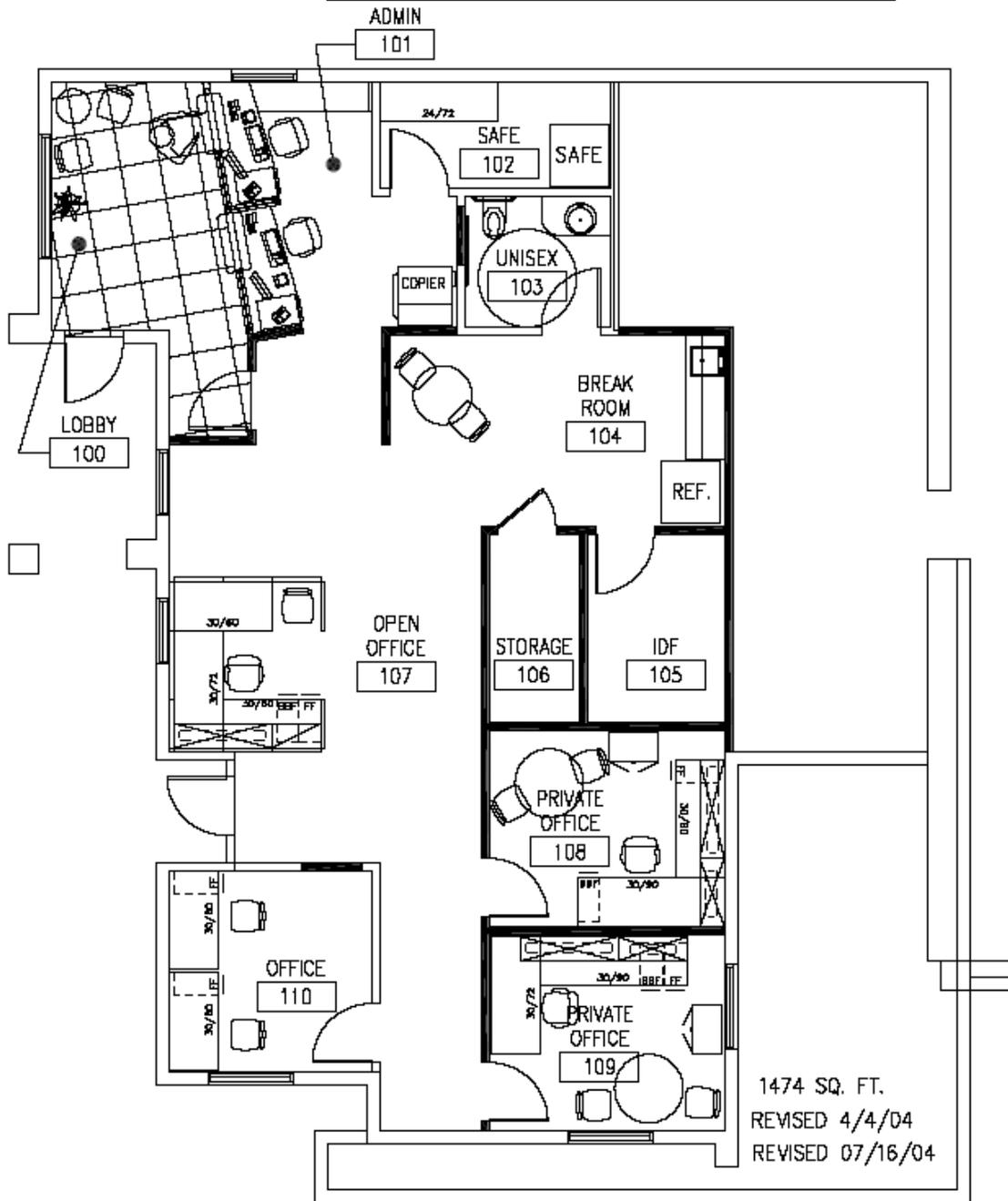
LESSOR:

The Town of Gilbert

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT "A"

FLOOR PLAN WITH PREMISES DESIGNATED



ARCHITECTURAL FLOOR PLAN

SCALE: 1/8"=1'-0"



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Lee Brush, Senior Project Manager, 503-6175

MEETING DATE: December 2, 2014

SUBJECT: Motion to approve the Project Agreement with the Maricopa Association of Governments for the Elliot and Cooper Roads Intersection Improvements, CIP Project No. ST138.

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's Infrastructure Strategic Initiative by investing in transportation infrastructure projects that will improve air quality and reduce vehicle congestion in Gilbert.

RECOMMENDED MOTION

A motion to approve the Project Agreement with the Maricopa Association of Governments related to Contract # 2015-7003-0510 for the Elliot and Cooper Roads intersection improvements, CIP Project No. ST138, and authorize the Mayor to execute the required documents.

BACKGROUND/DISCUSSION

Passage of Proposition 400 in 2004 created a ½ cent sales tax dedicated to regional transportation projects. The Town of Gilbert was able to secure funding for improvements to the intersection of Elliot and Cooper Roads as part of the Regional Transportation Plan making the project eligible for reimbursement through the Maricopa Association of Governments Arterial Life Cycle Program.

This project agreement is the document that provides the mechanism for reimbursement for the project by Proposition 400 funds through the Maricopa Association of Governments as the pass-through agency.

This project is included in the 2015-19 Capital Improvement Plan (CIP) and provides for the design and construction of the Elliot and Cooper Roads intersection in accordance with the MAG Regional Transportation Plan approved by voters as Proposition 400 in 2004. Improvements being made to reduce the congestion may include widening to accommodate dual left turn lanes in all four directions, additional through and right turn lanes, raised median, bike lanes, signal modifications and related drainage improvement.

The contract was reviewed for form by Special Council Susan Goodwin.

FINANCIAL IMPACT

This project is included in the 2015-19 CIP as Project No. ST138 and is funded through MAG Regional Transportation Program Arterial Fund.

Execution of this project agreement will allow Gilbert to submit project reimbursement requests up to a total of \$4,140,000 or 70% of the estimated total project costs, whichever is less, from the Proposition 400 funding. Project savings resulting from the actual reimbursement against the total programmed reimbursement amount will be reallocated to other future Town of Gilbert Proposition 400 Projects.

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

STAFF RECOMMENDATION

Staff recommends approval of the Maricopa Association of Governments Project Agreement related to CIP Project Number ST138.

Respectfully submitted,

Lee Brush
Senior Project Manager

Approved By

Kenneth Morgan
Jack Vincent
Cris Parisot

Approval Date

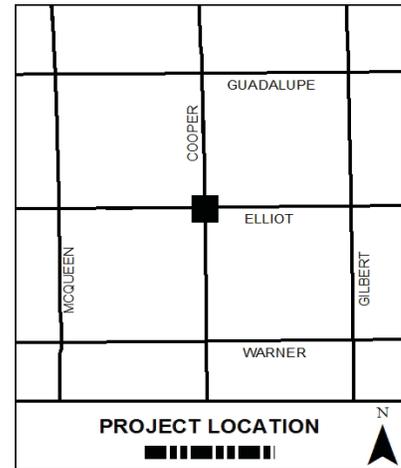
11/12/2014 5:04 PM
11/19/2014 9:03 AM
11/18/2014 11:14 AM

Elliot and Cooper Intersection

Project #: ST138 / 70030138

Project Description:

Intersection improvements at Elliot and Cooper Roads in accordance with the MAG Regional Transportation Plan approved by voters as Proposition 400 in 2004. Improvements being made to reduce congestion include widening to accommodate dual left turn lanes in all four directions, additional through and right turn lanes as justified by traffic studies, and related drainage improvements.



Financial Information:

- Total project costs will be offset by up to 70% reimbursement to a maximum of \$4,140,000 in Regional Transportation Plan (RTP) funds scheduled for payment in FY2016 and FY2017 (per the FY2014 MAG ALCP). The timing of RTP reimbursements may be adjusted by MAG based on funds availability.
- Prior to receipt of RTP funds, the project will be funded with prior year RTP reimbursements from previously completed projects totaling \$4,140,000.
- Maintenance costs are currently being evaluated for inclusion in the FY2016 Capital Improvement Program.

This project does not impact the SDF calculations.

Expenses: (1,000s)	Total	Prior Years:	Years					Years Beyond	
			2015	2016	2017	2018	2019	6-10	10 YRS
Professional Services	\$724	0	0	699	25	0	0	0	0
Construction Mgmt	\$517	0	0	415	102	0	0	0	0
Land/ROW	\$1,200	0	0	1,200	0	0	0	0	0
Construction	\$5,174	0	0	4,170	1,004	0	0	0	0
Total Expenses	\$7,615	0	0	6,484	1,131	0	0	0	0
<hr/>									
Sources: (1,000s)									
MAG RTP Arterial Fund	\$7,615	0	0	6,484	1,131	0	0	0	0
Total Sources	\$7,615	0	0	6,484	1,131	0	0	0	0

MARICOPA ASSOCIATION OF GOVERNMENTS
ARTERIAL LIFE CYCLE PROGRAM

PROJECT AGREEMENT

Elliot at Cooper Road Intersection Improvements

Project Agreement No. 15-ELT-30-03

RTP Project # AII-ELT-30-03

MAG TIP Project # GLB16-108DZ, GLB17-108DZ2, GLB16-108DRB, GLB16-108RWZ,
GLB16-108RRB, GLB16-107CZ, GLB17-108CZ, GLB17-108CRB

Town of Gilbert Capital Improvement Plan # ST138

This Agreement (Agreement) by and between the Maricopa Association of Governments (MAG) and the Town of Gilbert, an Arizona Municipal Corporation, will become effective on the day, which it is executed by the MAG Executive Director. MAG and the Town of Gilbert are referred to in this Agreement each individually as a “Party” and collectively as the “Parties”.

RECITALS

A. MAG is the regional planning agency for Maricopa County. MAG is governed by a regional council, which includes the mayor or chief executive of each member agency (Regional Council). Pursuant to state law, MAG has developed, and the necessary parties have approved, a twenty-year comprehensive, performance based, multimodal and coordinated Regional Transportation Plan (RTP) in the County. The arterial street component of the RTP includes major arterial streets and intersection improvements (Arterial Street Improvements) with a revenue allocation.

B. In November 2004, the voters of Maricopa County approved a transaction excise tax for the purpose of implementing the RTP. Federal Highway Administration (FHWA) Surface Transportation Program (STP) and Congestion Mitigation and Air Quality (CMAQ) Funds are also allocated to the MAG region and administered by the Arizona Department of Transportation (ADOT) and are eligible to be used to implement the RTP.

C. MAG is required by state law to adopt a program that provides for life cycle management for the funding and programming of the Arterial Street Improvements (Arterial Life Cycle Program). On August 27, 2014, the Regional Council approved the Arterial Life Cycle Program (ALCP), and on May 28, 2014 the Regional Council approved the ALCP Policies and Procedures. The May 28, 2014 Policies and Procedures, as they may from time to time be amended (henceforth, the “Policies and Procedures”), are incorporated into this Agreement as fully as if set forth in this Agreement. Copies of the Policies and Procedures are available from MAG. Capitalized terms that are not defined in this Agreement, have the meaning set forth in the Policies and Procedures.

D. Funds for ALCP are administered by the Arizona Department of Transportation (ADOT) through its Regional Arterial Road Fund (RARF) sub-account for arterial streets, and through allocations of Federal Highway Administration STP and CMAQ Funds that are allocated to the MAG region and administered by ADOT. Funds will be disbursed by ADOT once federal requirements are satisfied, as applicable, and upon the presentation of an invoice approved by MAG as provided in this Agreement.

E. The ALCP includes an arterial intersection improvement project on Elliot Road at Cooper Road (Project). The Project is described in greater detail in the Project Overview (Project Overview) submitted by the Town of Gilbert, dated August 27, 2014 and on file in the offices of the Town of Gilbert and MAG. The regional share in this agreement and the Project Overview are subject to change in the annually adjusted ALCP.

F. The Project will be designed and constructed in accordance with the standards adopted by the Town of Gilbert.

G. The regional reimbursement schedule for the Project are as follows:

Type of Work	Fiscal Year of Work	Regional Reimbursement	Type of Reimbursement Funds	Fiscal Year for Reimbursement
Design	2016/2017	\$492,100.00	RARF	2016
ROW	2016	\$840,000.00	RARF	2016
Construction	2016/2017	\$2,808,166.55	RARF	2017
Total Programmed for Reimbursement		\$4,140,266.55		

H. The regional reimbursement is expressed in 2014 dollars, and will be adjusted annually for inflation based on the current Regional Council approved ALCP. Adjusted costs will be incorporated into the ALCP and by reference into this Agreement. Cost adjustments, for inflation and as otherwise specifically provided in the Policies and Procedures, do not require a modification of this Agreement.

I. The Parties are authorized to enter into this agreement by the provisions of Arizona Revised Statutes Section 28-6301 et seq.

AGREEMENTS

NOW, THEREFORE, for good and sufficient consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. Purpose. The purpose of this Agreement is to identify and define the responsibilities of the Town of Gilbert and MAG for the design, acquisition of right of way, construction and financing of the Project, as established in the ALCP.

B. Responsibilities of the Parties.

1. MAG's Responsibilities. MAG agrees to:

- a. Administer the ALCP, pursuant to the Policies and Procedures;
- b. Provide to the Town of Gilbert the required format for submitting requests for payment, invoices, progress reports, and backup documentation;

- c. Review and approve invoices for projects to be reimbursed with Regional Area Road Funds or review and concur with invoices for projects to be reimbursed with federal funds, subject to the terms of this Agreement;
- d. Submit the approved Request for Payment form to ADOT for payment by ADOT to the Town of Gilbert. The payments from ADOT to the Town of Gilbert will be based on the reimbursement amounts and schedule as noted in the Recitals, Section G. The basis for payment to Town of Gilbert shall be reimbursement for costs in conformance with the ALCP and the Policies and Procedures.

2. Town of Gilbert's Responsibilities. The Town of Gilbert agrees to:

- a. Be responsible for all project costs and submit invoices to MAG for reimbursement. The Town of Gilbert will: 1) be responsible for the completion of all surveys, design, plans and specifications, including contractor selection documents; 2) conduct contractor selection process(es), award contract(s) for construction pursuant to the applicable laws, and provide necessary construction management and inspections, unless noted otherwise in an IGA; 3) if necessary, purchase or condemn right of way required for the completion of the Project, unless otherwise provided in an IGA; 4) be responsible for all utility relocations, and 5) review and approve invoices from its contractors and subcontractors before submitting an invoice to MAG;
- b. Abide by the Policies and Procedures throughout the completion of the Project.
- c. Be responsible for meeting all applicable federal requirements for the Project;
- d. Obtain appropriate indemnifications and insurance from all contractors and subcontractors involved in the Project;
- e. Be responsible for all Project costs in excess of the maximum amount of the regional funds allocated for the Project in the amount of \$4,140,266.55 (Allocated Regional Funds). The amount of funds to be paid to the Town of Gilbert pursuant to this Agreement will not exceed the Allocated Regional Funds. The allocated regional funds are expressed in 2014 dollar amounts, which may be adjusted annually for inflation pursuant to the procedure set forth in the Policies and Procedures and the current Regional Council approved ALCP;
- f. Provide invoices and progress reports to MAG pursuant to the project schedule provided in the Project Overview; and
- g. Otherwise comply with all requirements of this Agreement.
- h. Town of Gilbert's authorized representative to sign, approve and submit invoices to MAG is the Town of Gilbert's Town Engineer or designee.

C. Records and Audit Rights. The Town of Gilbert's work and accounting records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by MAG to substantiate charges and claims related to this Agreement shall be open to inspection and subject to

audit and/or reproduction by authorized representatives of MAG, the Arizona Department of Transportation and the Auditor General of the State of Arizona ("Auditors"), as applicable to the extent necessary to adequately permit evaluation and verification of the performance and cost of the work, and to conduct and prepare all audits and reports required by law. Auditors shall be afforded access, at reasonable times and places, to all of the Town of Gilbert's records and personnel, pursuant to the provisions of this Section, throughout the term of this Agreement, and for a period of five (5) years after last or final payment.

D. Term and Termination. The Agreement is valid through the payment of the final invoice for completion of construction, subject to earlier termination as specifically provided herein.

1. Termination by MAG. MAG reserves the right to terminate this Agreement in the event that MAG determines, in its reasonable discretion, that local or regional funds are not available to meet the Town of Gilbert's financial responsibilities in regard to the Project or in the event of an act of God or act of war or terror that makes continuation of work pursuant to this Agreement no longer in the public interest. MAG will give 60 days advance notice of such termination, unless such notice is impracticable, in which case MAG will provide such notice as is practicable under the circumstances. In the event of such termination, MAG will recommend to ADOT that it reimburse the Town of Gilbert as provided in this Agreement, for work satisfactorily performed to the date of termination.

MAG also reserves the right to terminate this Agreement in the following circumstances: 1) no Material Project Reimbursement Request ("MPRR") has been submitted to MAG for a period of at least eighteen (18) months from the date of the last Project Reimbursement Request (PRR), or the effective date of this Agreement, whichever is later; 2) no Substantial Project Reimbursement Request ("SPRR") has been submitted to MAG for a period of thirty (30) months from the date of the last PRR, or the effective date of this Agreement, whichever is later; or 3) in the event of a Substantial Project Change.

2. Termination by the Town of Gilbert. The Town of Gilbert reserves the right to terminate this Agreement in the event that the Town of Gilbert determines, in its reasonable discretion, that local funds are not available to meet the Town of Gilbert's financial responsibilities in regard to the Project or in the event of an act of God or act of war or terror that makes continuation of work pursuant to this Agreement no longer in the public interest. The Town of Gilbert will give 60 days advance notice of such termination, unless such notice is impracticable under these circumstances, in which case the Town of Gilbert will provide such notice, as is practicable.

3. Termination by Mutual Consent. The Parties may terminate this Agreement by mutual consent in the event that they determine that such termination is in furtherance of the goals of the Arterial Life Cycle Program and is in the best interests of the Parties.

4. In the event of termination pursuant to this Section "D," the Town of Gilbert agrees that it will leave the Project in condition that is safe for use by public.

E. Availability of Funds. Each Party's obligations under this Agreement are conditioned upon the availability of funds, appropriated or allocated, for the payment of such obligation. No liability shall accrue to MAG in the event MAG declines to review and/or approve invoices for payment on the

basis that funds are not available for payment of such invoices and MAG terminates the Agreement in accordance with section D.1.

- F. Indemnification. Each Party to this Agreement (Indemnitor) agrees to defend, indemnify and hold harmless the other Party, and such Party's officers, officials, employees, agents, and directors (collectively the Indemnitee) from and against any and all claims, demands, losses, liabilities, causes of action and costs (including expert witness fees, attorneys fees and costs of defense and appellate appeal) (collectively Claims), which may be imposed upon, incurred by or asserted against the Indemnitee, attributable (directly or indirectly) to, or arising in any manner by reason of, the negligence, error, or omission of any agent, officer, servant, or employee of the Indemnitor, or anyone for whom Indemnitor may be legally liable, in the performance of this Agreement.
- G. Conflict of Interest. This Agreement is subject to termination for conflict of interest, pursuant to the provisions of A.R.S. § 38-511.
- H. Ownership of Improvements upon Termination. Upon the expiration or other termination of this Agreement, ownership of the Project and the improvements constructed under this Agreement shall be vested in the Town of Gilbert.
- I. General Provisions.
1. INCORPORATION OF RECITALS. The Recitals are acknowledged by the Parties to be substantially true and correct, and hereby incorporated as agreements of the Parties.
 2. ENTIRE AGREEMENT. This Agreement constitutes the entire understanding of the Parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Agreement may not be modified or amended, except by a written document, signed by authorized representatives of each Party.
 3. OFFICIAL COPIES. Upon date of execution by the MAG Executive Director, the Town of Gilbert shall receive a signed copy of the agreement within 14 days of execution.
 4. ARIZONA LAW. This Agreement shall be governed and interpreted according to the laws of the State of Arizona.
 5. MODIFICATIONS. Except as otherwise specifically provided in this Agreement, any amendment, modification or variation from the terms of this Agreement shall be in writing and shall be effective only after written approval of all Parties.
 6. ATTORNEY'S FEES. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Agreement, or on account of any breach or default of this Agreement, the prevailing Party shall be entitled to received from the other Party reasonable attorneys' fees and reasonable costs and expenses, as determined by the arbitrator or court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable, whether or not such action is prosecuted to judgment.
 7. NOTICES. All notices or demands required to be given, pursuant to the terms of this Agreement, shall be given to the other Party in writing, delivered in person, sent by facsimile

transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested or deposited with any commercial air courier or express service at the addresses set forth below, or to such other address as the Parties may substitute by written notice, given in the manner prescribed in this paragraph.

If to the Town of Gilbert:

Town of Gilbert
Town Manager
50 East Civic Center Drive
Gilbert, AZ 85296-3401
Tel: (480) 503-6000
Fax: (480) 497-4943

If to MAG:

Executive Director
Maricopa Association of Governments
302 No. First Avenue, Suite 300
Phoenix, Arizona 85003
Tel: (602) 254-6300
Fax: (602) 254-6490

A notice shall be deemed received on the date delivered, if delivered by hand, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express services or, if mailed, three (3) working days (exclusive of United State Post Office holidays) after the notice is deposited in the United States mail as above provided, and on the delivery date indicated on receipt, if delivered by certified or registered mail. Any time period stated in a notice shall be computed from the time the notice is deemed received. Notices sent by facsimile transmission shall also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by facsimile transmission. E-mail is not an acceptable means for meeting the requirements of this section unless otherwise agreed in writing.

8. **FORCE MAJEURE.** Neither Party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures or power failures.
9. **ADVERTISING.** No advertising or publicity concerning MAG using any contractor's or subcontractor's services shall be undertaken without prior written approval of such advertising or publicity by MAG's Executive Director.
10. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Agreement shall be deemed to possess the full force and effect of the original.
11. **CAPTIONS.** The captions used in this Agreement are solely for the convenience of the Parties, do not constitute a part of this Agreement and are not to be used to construe or interpret this Agreement.

12. SEVERABILITY. If any term or provision of this Agreement shall be found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Agreement shall remain in full force and effect, and such term or provision shall be deemed to be deleted.
13. AUTHORITY. Each Party hereby warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to enter this Agreement. Each Party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.
14. E-VERIFY.
 - a. Warrant of Compliance. Pursuant to the provisions of A.R.S. §41-4401, each Party warrants to the other that it is in compliance with all Federal Immigration laws and regulations that relate to its employees and with the E-Verify Program under A.R.S. §23-214(A).
 - b. Breach of Warranty. A breach of this warranty by a Party or any of its subcontractors will be considered a material breach of this Agreement and may subject the breaching party to penalties up to and including termination of this Agreement or any subcontract.
 - c. Right to Inspect. Each Party retains the legal right to inspect the papers of any employee who works on this Agreement or any subcontractor to ensure compliance with the warranty given above.
 - d. Random Verification. Either Party may conduct a random verification of the employment records of the other to ensure compliance with this warranty.
 - e. Federal Employment Verification Provisions – No Material Breach. A Party will not be considered in material breach of this Agreement if it establishes that it has complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A).
 - f. Inclusion of Article in Other Contracts: The provisions of this Article must be included in any contract either Party enters into with any and all of its contractors or subcontractors who provide services pursuant to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by their duly authorized officers. (The order for obtaining the signatures is as follows: the MAG General Counsel, the appropriate representative of the Town of Gilbert, and the MAG Executive Director).

MAG:

Maricopa Association of Governments, an Arizona non-profit Corporation

Date

By: _____
Dennis Smith
Executive Director

Town of Gilbert:

Jurisdiction of Gilbert, an Arizona Municipal Corporation

Date

By: _____
Mayor John Lewis

ATTEST:

Cathy Templeton
City Clerk

Reviewed as to form:

Reviewed as to form:

By: _____
MAG General Counsel

By: _____
Attorney for Town of Gilbert



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: JACK GIERAK, SR. PROJECT MANAGER, 503-6176

MEETING DATE: December 2, 2014

SUBJECT: Motion to approve the Signal Interconnect Agreement Nos. 2015-7003-0431 and 2015-7003-0432 and Public Highway At-Grade Crossings Improvement Agreement Nos. 2015-7003-0433 and 2015-7003-0434 with Union Pacific Rail Road for two crossings at Cooper and Guadalupe Intersection, CIP ST094.

<p>STRATEGIC INITIATIVE: Infrastructure</p>
--

RECOMMENDED MOTION

Approval of the Signal Interconnect Agreements with Union Pacific Railroad Company in amounts \$817,163 and \$1,063,054 for Cooper and Guadalupe Road crossings respectively; and approval of Public Highway At-Grade Crossings Improvement Agreements with Union Pacific Railroad Company in amounts \$334,304 and \$353,048 for Cooper and Guadalupe Road crossings respectively for Cooper and Guadalupe Road Intersection improvements, CIP ST094.

BACKGROUND/DISCUSSION

This project is included in the 2015-19 Capital Improvement Program (CIP) and provides for the design and construction of the Cooper and Guadalupe intersection in accordance with the MAG Regional Transportation Plan approved by the voters as Proposition 400 in 2004, including additional through lanes in each direction, as justified by traffic studies. Additional improvements will include replacement of water line system within intersection limits, reconfiguration and improvements to drainage, street lighting, landscaping and upgrades to two existing Union Pacific Railroad (UPRR) crossings and gates modification. The scope will also include relocations of SRP irrigation, transmission and distribution lines due to conflicts with proposed improvements.

The roadway design of the intersection was completed in September 2014, in coordination with UPRR. The design involved modification to railroad scope components such as pre-emption timing, gates, flashers and improvements to at-grade crossings.

Approval of UPRR agreements will conclude the UPRR design, and is also important for the Arizona Corporation Commission (ACC) and UPRR approval process, which is in its final stage. Two evidentiary hearings were held in front of an administrative law judge for the ACC in August and October 2014, which was supported by a recommendation for approval from ACC staff, UPRR and Gilbert's staff. It is expected that the administrative law judge will issue an order on the application, following which the final approval will occur as part of a vote by the ACC Commission itself. That vote is expected in December of this year.

To facilitate the approval process, ACC Staff and UPRR have recommended that UPRR agreements be in place before the ACC commission vote. Approval of these agreements will also allow Gilbert to start pre-construction and schedule coordination with UPRR. The intention is to begin the construction phase in fiscal year 2016, pending FY2016 budget review (as mentioned below).

The contracts were reviewed for form by Attorney (Susan Goodwin).

FINANCIAL IMPACT

This project is included in the 2015-19 CIP as Project No. ST094 and is funded through MAG RTP Arterial Fund, 2006 Go Bond 08, 2007 Go Bond 08 and Water Fund. The total proposed contracts are in the amount of \$2,567,569 and there are sufficient funds in the existing budget to cover the cost of subject agreements. The total project budget is in the amount \$11,820,000. The budget of this project will require further reviews and potential revisions in FY2016.

Account Code: ST094-7540-8101

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

STAFF RECOMMENDATION

Staff recommends approval of these agreements.

Respectfully submitted,

Jack Gierak
Sr. Project Manager

Approved By

Kenneth Morgan
Jack Vincent
Cris Parisot

Approval Date

11/18/2014 5:26 PM
11/19/2014 10:04 AM
11/19/2014 8:19 AM

UPRR Folder No.: 2870-49

UPRR Audit No.: _____

PUBLIC HIGHWAY AT-GRADE CROSSING IMPROVEMENT AGREEMENT

Guadalupe Rd., – DOT No. 741815W
Mile Post 925.65 - Phoenix Subdivision
Gilbert, Maricopa County, Arizona

THIS AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 2014 ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 ("Railroad") and **CITY OF GILBERT**, a municipal corporation or political subdivision of the State of ~~California~~ **Arizona** to be addressed at 90 E. Civic Center Dr., Gilbert, Arizona 85269 ("Political Body").

RECITALS:

Presently, the Political Body utilizes the Railroad's property for the existing the existing Guadalupe Rd., at-grade public road crossing, DOT No. 741815W, at Railroad's Mile Post 925.65 (the "Roadway") on its Phoenix Subdivision in or near Gilbert, Maricopa County, Arizona.

The Political Body now desires to use and maintain additional Railroad property at the Roadway by widening the existing Guadalupe Rd., at-grade public road crossing. The existing aforementioned Guadalupe Rd., at-grade public road crossing, as improved to include the maintenance and use of additional Railroad property, is hereinafter the "Roadway," and where the Roadway crosses the Railroad's property is the "Crossing Area" in the location shown on the Railroad Location Print marked **Exhibit A**, attached hereto and hereby made a part hereof.

Under this Agreement, the Railroad will be granting the Political Body right to use and maintain the additional right of way to facilitate the reconstruction and widening of the existing Guadalupe Rd., at-grade public road crossing as described in the Survey Print and Legal Description marked **Exhibit A-1** attached hereto and hereby made a part hereof.

The Railroad and the City are entering into this Agreement to cover the above.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

ARTICLE 1.

The exhibits below are attached hereto and hereby made a part hereof.

Exhibit A	Railroad Location Print
Exhibit A-1	Survey print and Legal Description
Exhibit B	General Terms and Conditions
Exhibit C	Material and Force Estimate
Exhibit D	Railroad's Form of Contractor's Right of Entry Agreement

ARTICLE 2. EXHIBIT B

The General Terms and Conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.

ARTICLE 3. RAILROAD GRANTS RIGHT

For and in consideration **FORTY NINE THOUSAND FOUR HUNDRED DOLLARS (\$49,400.00)** to be paid by the Political Body to the Railroad upon the execution and delivery of this Agreement and in further consideration of the Political Body's agreement to perform and abide by the terms of this Agreement including all exhibits, the Railroad hereby grants to the Political Body the right to establish or construct or reconstruct, maintain, and repair the road crossing over and across the Crossing Area as described in the Survey Print and Legal Description marked **Exhibit A-1**. Please see Article 12 for future work and/or repair requirements.

ARTICLE 4. DEFINITION OF CONTRACTOR

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the City to perform any Project work on any portion of the Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

ARTICLE 5. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE

- A. Prior to Contractor performing any work within the Crossing Area and any subsequent maintenance and repair work, the City shall require the Contractor to:
- i. execute the Railroad's then current Contractor's Right of Entry Agreement
 - ii. obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
 - iii. provide such insurance policies, certificates, binders and/or endorsements to the Railroad.
- B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit D**, attached hereto and hereby made a part hereof. The City confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.
- C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

*Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690*

*Omaha, NE 68179-1690
UPRR Folder No. 2870-49*

- D. If the City's own employees will be performing any of the Project work, the City may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

ARTICLE 6. FEDERAL AID POLICY GUIDE

If the City will be receiving any federal funding for the Project, the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference.

ARTICLE 7. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD

The City agrees that no Project costs and expenses are to be borne by the Railroad. In addition, the Railroad is not required to contribute any funding for the Project.

ARTICLE 8. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO CITY; CITY'S PAYMENT OF BILLS

- A. The work to be performed by the Railroad, at the City's sole cost and expense, is described in the Railroad's Material and Force Account Estimate dated April 7, 2014, marked **Exhibit C**, attached hereto and hereby made a part hereof (the "Estimate"). As set forth in the Estimate, the Railroad's estimated cost for the Railroad's work associated with the Project is **\$303,648.00**.
- B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the City in the event the City does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate.
- C. The City acknowledges that the Estimate does not include any estimate of flagging or other protective service costs that are to be paid by the City or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the City or the Contractor as determined by the Railroad and the City. If it is determined that the Railroad will be billing the Contractor directly for such costs, the City agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.
- D. The Railroad shall send progressive billing to the City during the Project and final billing to the City within one hundred eighty (180) days after receiving written notice from the City that all Project work affecting the Railroad's property has been completed.
- D. The City agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, all actual costs of engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date of this Agreement), construction, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

ARTICLE 9. PLANS

- A. The City, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.
- B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.
- C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.
- D. The Railroad's review and approval of the Plans will in no way relieve the City or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the City or Contractor on the Plans is at the risk of the City and Contractor.

ARTICLE 10. NON-RAILROAD IMPROVEMENTS

- A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 8. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on Railroad's property.
- B. Upon Railroad's approval of submitted Non Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and City mutually agree in writing to:
 - i. deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Section 8B,
 - ii. deem the Non Railroad Facilities part of the Structure, and

iii. supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

iv.

ARTICLE 11. EFFECTIVE DATE; TERM; TERMINATION

- A. This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Roadway remains on the Railroad's property.
- B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the City in the event the City does not commence construction on the portion of the Project located on the Railroad's property within twelve (12) months from the Effective Date.
- C. If the Agreement is terminated as provided above, or for any other reason, the City shall pay to the Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final Project Plans.

ARTICLE 12. CONDITIONS TO BE MET BEFORE CITY CAN COMMENCE WORK

Neither the City nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- i. The Railroad and City have executed this Agreement.
- ii. The Railroad has provided to the City the Railroad's written approval of the Plans.
- iii. Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
- iv. Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad Representative named in the Contractor's Right of Entry Agreement.

ARTICLE 13. FUTURE PROJECTS

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Roadway shall not commence until Railroad and City agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

ARTICLE 14. ASSIGNMENT; SUCCESSORS AND ASSIGNS

- A. City shall not assign this Agreement without the prior written consent of Railroad.
- B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and City.

ARTICLE 15. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

If the City will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the City agrees that it is responsible in performing and completing all ARRA

reporting documents for the Project. The City confirms and acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directing from the federal government and, therefore,

- (i) the ARRA reporting requirements are the responsibility of the City and not of the Railroad, and
- (ii) the City shall not delegate any ARRA reporting responsibilities to the Railroad.

The City also confirms and acknowledges that

- (i) the Railroad shall provide to the City the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing, and
- (ii) such standard and customary billing and documentation from the Railroad provides the information needed by the City to perform and complete the ARRA reporting documents.

The Railroad confirms that the City and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in Section 11 of **Exhibit B** of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date first herein written.

UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID #94-6001323)

By: _____
DANIEL A. LEIS
General Director – Real Estate

ATTEST:

CITY OF GILBERT

By _____

By _____

Printed Name: _____

Title: _____

(SEAL)

Pursuant to Resolution/Order No. _____
dated: _____, 20____
hereto attached.

EXHIBIT A

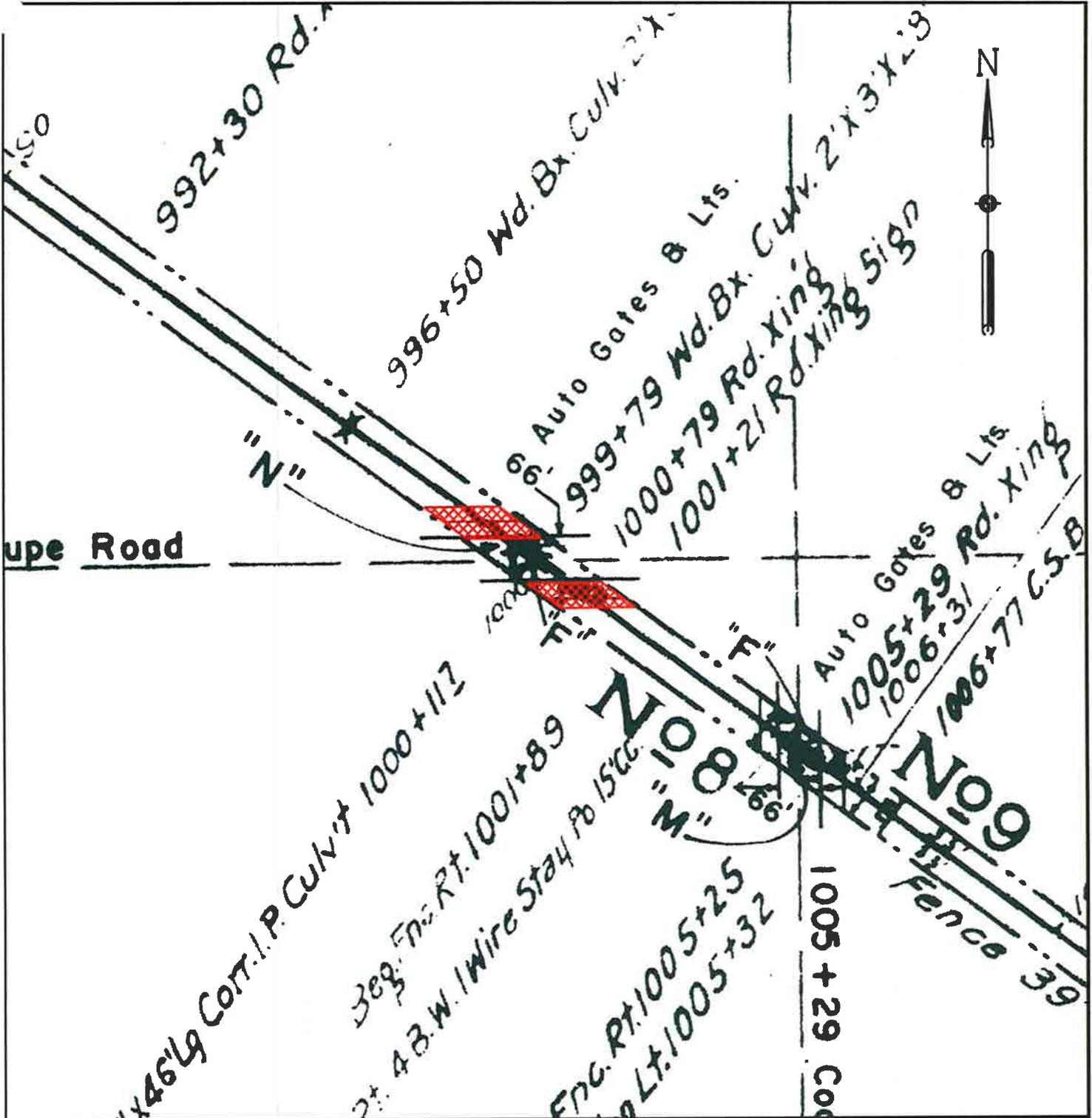
To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Railroad Location Print

EXHIBIT A-1

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Survey Print & Legal Description



SCALE: 1" = 200'
 LEGEND:

UPRRCO. R/W SHOWN

CROSSING AREA SHOWN

AREA: 9,227 sqft+-

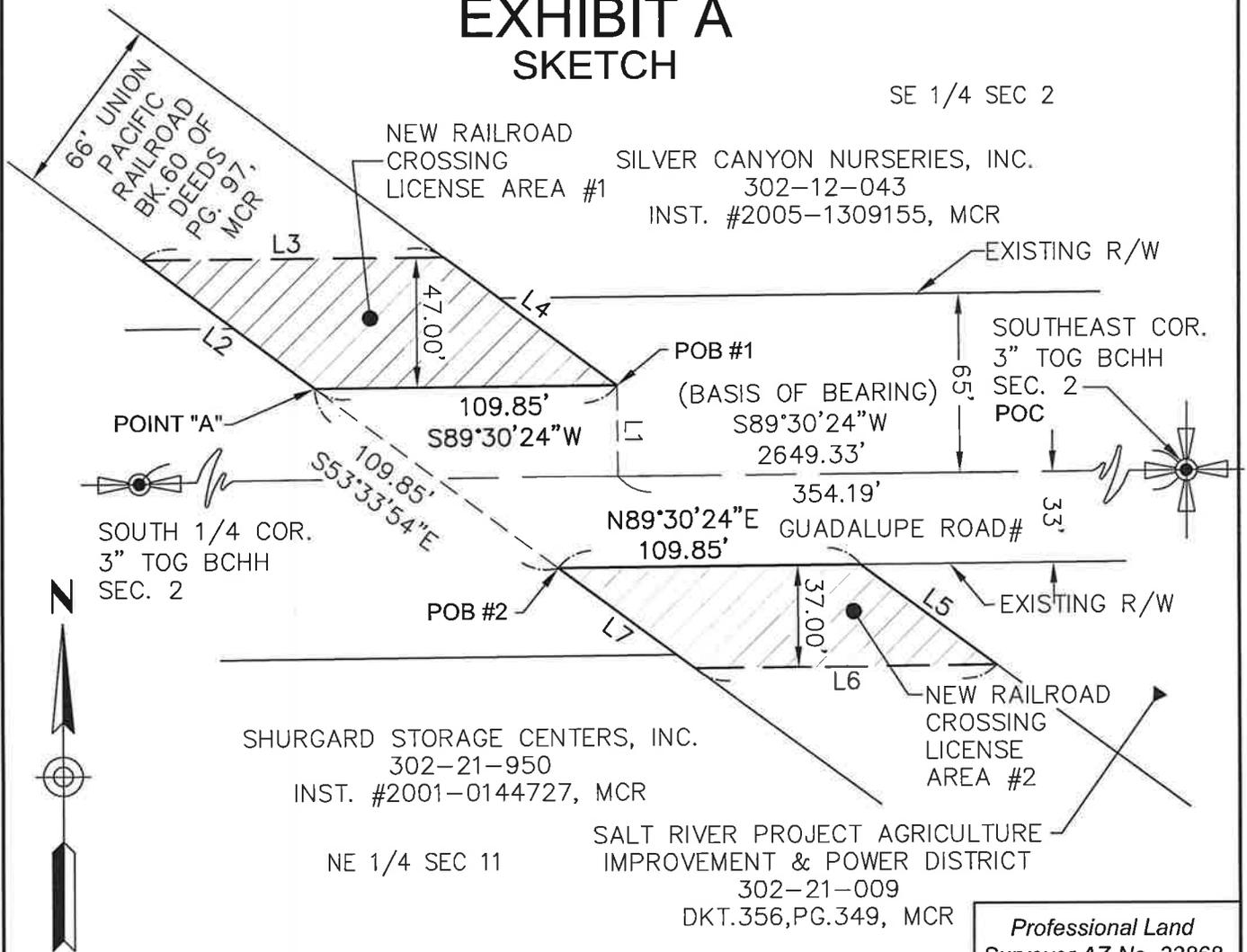
NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"
 UNION PACIFIC RAILROAD COMPANY

TO ACCOMPANY AGREEMENT WITH
 CITY OF GILBERT
 GILBERT, MARICOPA COUNTY, AZ
 M.P. 925.65 PHOENIX SUB
 SP AZ V 37 / 1
 OFFICE OF REAL ESTATE, OMAHA, NEBRASKA
 FILE: 2870-49 DATE: 5-8-2014

GUADALUPE ROAD UNION PACIFIC RAILROAD CROSSING LICENSE AREA EXHIBIT A SKETCH

SE 1/4 SEC 2



SCALE:
1"=60'

NE 1/4 #=RIGHT-OF-WAY REFERENCE
 SEC 11 #BK. 2 OF ROAD MAPS, PG. 15, MCR
 SE 1/4 #BK. 283, PG. 46, MCR
 SEC 2 #INST. #1985-0157267, MCR
 T. 1 S. #INST. #1988-0520674, MCR
 R. 5 E.

*Professional Land
Surveyor AZ No. 33868*

*(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>*

Ritoch-Powell & Associates, Inc.
 5727 N. 7th Street, Suite 120
 Phoenix, AZ 85014
 Ph: 602-263-1177
 Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR RAILROAD CROSSING LICENSE AREA



DATE: 3/27/14
 DSN: TAR
 DRN: MRS
 CHK: TAR

PROJECT NUMBER
ST094

SHEET 1 OF 5

GUADALUPE ROAD UNION PACIFIC RAILROAD CROSSING LICENSE AREA EXHIBIT A SKETCH

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N00°29'36"W	33.00'
L2	N53°33'54"W	78.23'
L3	N89°30'24"E	109.85'
L4	S53°33'54"E	78.23'
L5	S53°33'54"E	61.58'
L6	S89°30'24"W	109.85'
L7	N53°33'54"W	61.58'

NEW LICENSE AREA #1
= 5,162.97 S.F. (0.1185 AC)
NEW LICENSE AREA #2
= 4,064.47 S.F. (0.0933 AC)
TOTAL NEW LICENSE AREA
= 9,227.44 S.F. (0.2118 AC)

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EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR RAILROAD CROSSING LICENSE AREA



DATE: 3/27/14
DSN: TAR
DRN: MRS
CHK: TAR

PROJECT NUMBER
ST094

SHEET 2 OF 5

GUADALUPE ROAD UNION PACIFIC RAILROAD CROSSING LICENSE AREA EXHIBIT A LEGAL DESCRIPTION

RAILROAD CROSSING LICENSE AREA OVER THAT TRACT OF LAND AS CONVEYED TO UNION PACIFIC RAILROAD BY BOOK 60 OF DEEDS, PAGE 97, MARICOPA COUNTY RECORDS (MCR) LYING WITHIN THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 2 (3" TOWN OF GILBERT BRASS CAP IN HAND HOLE) FROM WHICH POINT THE SOUTH QUARTER CORNER THEREOF (3" TOWN OF GILBERT BRASS CAP IN HAND HOLE) BEARS S 89°30'24" W A DISTANCE OF 2649.33 FEET;

THENCE S 89°30'24" W, ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 354.19 FEET;

THENCE N 00°29'36" W, ACROSS THE RIGHT-OF-WAY OF GUADALUPE ROAD, A DISTANCE OF 33.00 FEET TO THE NORTH RIGHT-OF-WAY LINE INTERSECTION WITH THE EAST LINE OF SAID UNION PACIFIC RAILROAD, POINT OF BEGINNING (#1);

THENCE S 89°30'24" W, ALONG SAID NORTH RIGHT-OF-WAY LINE BEING 33.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 109.85 FEET TO THE NORTH RIGHT-OF-WAY LINE INTERSECTION WITH THE WEST LINE OF SAID UNION PACIFIC RAILROAD, SAID INTERSECTION TO BE KNOWN AS POINT "A";

THENCE N 53°33'54" W, ALONG SAID WEST LINE, A DISTANCE OF 78.23 FEET;

THENCE N 89°30'24" E, ACROSS SAID UNION PACIFIC RAILROAD BEING 80.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 109.85 FEET TO THE EAST LINE THEREOF;

THENCE S 53°33'54" E, ALONG SAID EAST LINE, A DISTANCE OF 78.23 FEET TO POINT OF BEGINNING (#1);

AND,

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Ritoch-Powell & Associates, Inc. 5727 N. 7th Street, Suite 120 Phoenix, AZ 85014 Ph: 602-263-1177 Fax: 602-277-6286	EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION FOR RAILROAD CROSSING LICENSE AREA								
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; padding: 2px;">DATE: 3/27/14</td> <td style="width: 70%; padding: 2px; text-align: center;">PROJECT NUMBER</td> </tr> <tr> <td style="padding: 2px;">DSN: TAR</td> <td style="padding: 2px; text-align: center;">ST094</td> </tr> <tr> <td style="padding: 2px;">DRN: MRS</td> <td style="padding: 2px;"></td> </tr> <tr> <td style="padding: 2px;">CHK: TAR</td> <td style="padding: 2px; text-align: center;">SHEET 3 OF 5</td> </tr> </table>	DATE: 3/27/14	PROJECT NUMBER	DSN: TAR	ST094	DRN: MRS		CHK: TAR	SHEET 3 OF 5
DATE: 3/27/14	PROJECT NUMBER								
DSN: TAR	ST094								
DRN: MRS									
CHK: TAR	SHEET 3 OF 5								

GUADALUPE ROAD UNION PACIFIC RAILROAD CROSSING LICENSE AREA EXHIBIT A LEGAL DESCRIPTION

RAILROAD CROSSING LICENSE AREA OVER THAT TRACT OF LAND AS CONVEYED TO UNION PACIFIC RAILROAD BY BOOK 60 OF DEEDS, PAGE 97, MARICOPA COUNTY RECORDS (MCR) LYING WITHIN THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT SAID POINT "A";

THENCE S 53°33'54" E, ACROSS THE RIGHT-OF-WAY OF GUADALUPE ROAD, A DISTANCE OF 109.85 FEET TO THE SOUTH RIGHT-OF-WAY LINE INTERSECTION WITH THE WEST LINE OF SAID UNION PACIFIC RAILROAD POINT OF BEGINNING (#2);

THENCE N 89°30'24" E, ALONG SAID SOUTH RIGHT-OF-WAY LINE BEING 33.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 109.85 FEET TO THE SOUTH RIGHT-OF-WAY LINE INTERSECTION WITH THE EAST LINE OF SAID UNION PACIFIC RAILROAD;

THENCE S 53°33'54" E, ALONG SAID EAST LINE, A DISTANCE OF 61.58 FEET;

THENCE S 89°30'24" W, ACROSS SAID UNION PACIFIC RAILROAD BEING 70.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 109.85 FEET TO A POINT ON THE WEST LINE THEREOF;

THENCE N 53°33'54" W, ALONG SAID WEST LINE, A DISTANCE OF 61.58 FEET TO POINT OF BEGINNING (#2).

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Ritoch-Powell & Associates, Inc.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR RAILROAD CROSSING LICENSE AREA



DATE: 3/27/14
DSN: TAR
DRN: MRS
CHK: TAR

PROJECT NUMBER
ST094

SHEET 4 OF 5

GUADALUPE ROAD UNION PACIFIC RAILROAD CROSSING LICENSE AREA EXHIBIT A LEGAL DESCRIPTION

THE ABOVE DESCRIBED LICENSE CONTAINS (AREA #1) 0.1185 ACRE OF LAND (5,162.97 S.F.) + (AREA #2) 0.0933 ACRE OF LAND (4,064.47 S.F.) = 0.2118 ACRE OF LAND (9,227.44 S.F.), MORE OR LESS, INCLUDING ANY EASEMENTS OF RECORD.

THE BASIS OF BEARING FOR THE ABOVE DESCRIPTION IS S 89°30'24" W FOR THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA AS SHOWN ON THE PLSS SUBDIVISION RECORD OF SURVEY—MARICOPA COUNTY GEODETIC DENSIFICATION AND CADASTRAL SURVEY RECORDED IN BOOK 669, PAGE 47, MARICOPA COUNTY RECORDS.

*Professional Land
Surveyor AZ No. 33868*

(Expires 6/30/14)
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<http://www.btr.state.az.us/>

Ritoch-Powell & Associates, Inc. 5727 N. 7th Street, Suite 120 Phoenix, AZ 85014 Ph: 602-263-1177 Fax: 602-277-6286	EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION FOR RAILROAD CROSSING LICENSE AREA								
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; padding: 2px;">DATE: 3/27/14</td> <td style="width: 70%; padding: 2px; text-align: center;">PROJECT NUMBER</td> </tr> <tr> <td style="padding: 2px;">DSN: TAR</td> <td style="padding: 2px; text-align: center;">ST094</td> </tr> <tr> <td style="padding: 2px;">DRN: MRS</td> <td style="padding: 2px;"></td> </tr> <tr> <td style="padding: 2px;">CHK: TAR</td> <td style="padding: 2px; text-align: center;">SHEET 5 OF 5</td> </tr> </table>	DATE: 3/27/14	PROJECT NUMBER	DSN: TAR	ST094	DRN: MRS		CHK: TAR	SHEET 5 OF 5
DATE: 3/27/14	PROJECT NUMBER								
DSN: TAR	ST094								
DRN: MRS									
CHK: TAR	SHEET 5 OF 5								

UPRR LICENSE AREA #1

NORTH: 860279.2218' EAST: 733218.1741'

SEGMENT #1 : LINE

COURSE: S89°30'24"W LENGTH: 109.85'
NORTH: 860278.2760' EAST: 733108.3281'

SEGMENT #2 : LINE

COURSE: N53°33'54"W LENGTH: 78.23'
NORTH: 860324.7376' EAST: 733045.3897'

SEGMENT #3 : LINE

COURSE: N89°30'24"E LENGTH: 109.85'
NORTH: 860325.6834' EAST: 733155.2356'

SEGMENT #4 : LINE

COURSE: S53°33'54"E LENGTH: 78.23'
NORTH: 860279.2218' EAST: 733218.1741'

PERIMETER: 376.15' AREA: 5,162.97 SQ. FT. (0.1185 ACRE)

ERROR CLOSURE: 0.0000' COURSE: N00°00'00"E

ERROR NORTH: 0.00000' EAST: 0.00000'

PRECISION 1: 376,160,000.00

*Professional Land
Surveyor AZ No. 33868*

(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.blr.state.az.us/>

UPRR LICENSE AREA #2

NORTH: 860213.0345' EAST: 733196.7058'

SEGMENT #1 : LINE

COURSE: N89°30'24"E LENGTH: 109.85'
NORTH: 860213.9803' EAST: 733306.5517'

SEGMENT #2 : LINE

COURSE: S53°33'54"E LENGTH: 61.58'
NORTH: 860177.4073' EAST: 733356.0947'

SEGMENT #3 : LINE

COURSE: S89°30'24"W LENGTH: 109.85'
NORTH: 860176.4615' EAST: 733246.2488'

SEGMENT #4 : LINE

COURSE: N53°33'54"W LENGTH: 61.58'
NORTH: 860213.0345' EAST: 733196.7058'

PERIMETER: 342.87' AREA: 4,064.47 SQ. FT. (0.0933 ACRE)
ERROR CLOSURE: 0.0000' COURSE: N00°00'00"E
ERROR NORTH: 0.00000' EAST: 0.00000'

PRECISION 1: 342,860,000.00

*Professional Land
Surveyor AZ No. 33868*

(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

EXHIBIT B

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
General Terms and Conditions

EXHIBIT B

TO PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT

GENERAL TERMS AND CONDITIONS

SECTION 1. CONDITIONS AND COVENANTS

- A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The City shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the City shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the City for the purpose of conveying electric power or communications incidental to the City's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the City to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.
- B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the City shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.
- C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The City shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the City at its own expense settles with and obtains releases from such nonparties.
- D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; and the right to cross the Crossing Area with all kinds of equipment.
- E. So far as it lawfully may do so, the City will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.
- F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Roadway and its appurtenances, or for the performance of any work in connection with the Project, the City will acquire all such other property and rights at its own expense and without expense to the Railroad.

SECTION 2. CONSTRUCTION OF ROADWAY

- A. The City, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.
- B. Except as may be otherwise specifically provided herein, the City, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Roadway and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right of way) and all necessary drainage facilities, guard rails or barriers, and right of way fences between the Roadway and the railroad tracks. Upon completion of the Project, the City shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.
- C. All construction work of the City upon the Railroad's property (including, but not limited to, construction of the Roadway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in compliance with the Plans, and other guidelines furnished by the Railroad.
- D. All construction work of the City shall be performed diligently and completed within a reasonable time. No part of the

Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the City. The City hereby assumes the risk of any such delays and agrees that no claims for damages on account of any delay shall be made against the Railroad by the State and/or the Contractor.

SECTION 3. INJURY AND DAMAGE TO PROPERTY

If the City, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the City is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the City at the City's own expense, or by the Railroad at the expense of the City, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

SECTION 4. RAILROAD MAY USE CONTRACTORS TO PERFORM WORK

The Railroad may contract for the performance of any of its work by other than the Railroad forces. The Railroad shall notify the City of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the City shall reimburse the Railroad for the amount of the contract.

SECTION 5. MAINTENANCE AND REPAIRS

- A. The City shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by and at the expense of the Railroad.
- B. If, in the future, the City elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, replaced with paving or some surfacing material other than timber planking, the Railroad, at the City's expense, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks through the Crossing Area, the City shall bear the expense of such repairs or replacement.

SECTION 6. CHANGES IN GRADE

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track(s) located within the Crossing Area, the City shall, at its own expense, conform the Roadway to conform with the change of grade of the trackage.

SECTION 7. REARRANGEMENT OF WARNING DEVICES

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either the Railroad, highway or both, the parties will apportion the expense incidental thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the City that the work will be performed in a safe manner and in conformity with the following standards:

- A. **Definitions.** All references in this Agreement to the City shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the City shall include work both within and outside of the Railroad's property.
- B. **Entry on to Railroad's Property by City.** If the City's employees need to enter Railroad's property in order to perform an inspection of the Roadway, minor maintenance or other activities, the City shall first provide at least ten (10) working days

advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the City, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the City's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of City's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.

C. Flagging.

- i. If the City's employees need to enter Railroad's property as provided in Paragraph B above, the City agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by City in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform City whether a flagman need be present and whether City needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill City for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, City agrees that City is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
- ii. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, City shall pay on the basis of the new rates and charges.
- iii. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though City may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, City must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, City will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

D. Compliance With Laws. The City shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The City shall use only such methods as are consistent with safety, both as concerns the City, the City's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The City (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the City to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the City shall reimburse, and to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The City further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

E. No Interference or Delays. The City shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or

signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

- F. **Supervision.** The City, at its own expense, shall adequately police and supervise all work to be performed by the City, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the City for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the City with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the City will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.
- G. **Suspension of Work.** If at any time the City's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the City is being or is about to be done or prosecuted without due regard and precaution for safety and security, the City shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.
- H. **Removal of Debris.** The City shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the City at the City's own expense or by the Railroad at the expense of the City. The City shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.
- I. **Explosives.** The City shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.
- J. **Excavation.** The City shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The City shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The City, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the City in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.
- K. **Drainage.** The City, at the City's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The City, at the City's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the City, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The City shall not obstruct or interfere with existing ditches or drainage facilities.
- L. **Notice.** Before commencing any work, the City shall provide the advance notice to the Railroad that is required under the Contractor's Right of Entry Agreement.
- M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. City shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency

calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the City. If it is, City will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

SECTION 9. INTERIM WARNING DEVICES

If at anytime it is determined by a competent authority, by the City, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the City shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed.

SECTION 10. OTHER RAILROADS

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

SECTION 11. BOOKS AND RECORDS

The books, papers, records and accounts of Railroad, so far as they relate to the items of expense for the materials to be provided by Railroad under this Project, or are associated with the work to be performed by Railroad under this Project, shall be open to inspection and audit at Railroad's offices in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of City for a period of three (3) years following the date of Railroad's last billing sent to City.

SECTION 12. REMEDIES FOR BREACH OR NONUSE

- A. If the City shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Roadway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the City will reimburse the Railroad for the expenses thereof.
- B. Nonuse by the City of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the City hereunder.
- C. The City will surrender peaceable possession of the Crossing Area and Roadway upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

SECTION 13. MODIFICATION - ENTIRE AGREEMENT

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the City and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the City shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the City and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

EXHIBIT C

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Railroad's Material & Force Account Estimate

DATE: 2014-11-03

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2015-05-02

DESCRIPTION OF WORK:
2014 RECOLLECT PROGRAM
PHOENIX SUBDIVISION
MP 925.65 DOT #741815W GUADALUPE ROAD
INSTALL 240 TF OF CROSSING SURFACE INCLUDING TIES, RAIL, OTM
PROJECT TO BE FUNDED 100% BY CITY OF GILBERT AZ

PID: 75528 AWO: 11767 MP, SUBDIV: 925.65, PHOENIX
SERVICE UNIT: 16 CITY: GILBERT STATE: AZ

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
ENGINEERING WORK							
ENGINEERING				9038		9038	9038
LABOR ADDITIVE 211%				19071		19071	19071
TOTAL ENGINEERING				28109		28109	28109
SIGNAL WORK							
LABOR ADDITIVE 211%				2660		2660	2660
SIGNAL				1260	5	1265	1265
TOTAL SIGNAL				3920	5	3925	3925
TRACK & SURFACE WORK							
BALAST	4.00	CL	6	3636		3642	3642
BILL PREP FEE				900		900	900
ENVIRONMENTAL - PERMITS				10		10	10
EQUIPMENT RENTAL				10000		10000	10000
FIELD WELD			4			4	4
FOREIGN LINE FREIGHT				1601		1601	1601
HOMELINE FREIGHT				900		900	900
LABOR ADDITIVE 211%				43976		43976	43976
MATERIAL CONTRACT OTHER				26137		26137	26137
OTM				2754		6663	9417
RAIL	640.00	LF	9212	13472		22684	22684
RDXING	240.00	TF	3078	54862		57940	57940
ROADWAY APPROACH WORK				25000		25000	25000
SALES TAX				3959		3959	3959
TRAFFIC CONTROL				25000		25000	25000
TRK-SURF, LIN				5562		5562	5562
WELD				3169	748	3917	3917
XTIE	181.00	EA	11310	19655		30965	30965
TOTAL TRACK & SURFACE				79071	192543	271614	271614
LABOR/MATERIAL EXPENSE				111100	192548		
RECOLLECTIBLE/UPRR EXPENSE						303648	0
ESTIMATED PROJECT COST							303648
EXISTING REUSEABLE MATERIAL CREDIT							0
SALVAGE NONUSEABLE MATERIAL CREDIT							0
RECOLLECTIBLE LESS CREDITS							

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

EXHIBIT D

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Contractor's Right of Entry Agreement

Folder No.: 2870-49
UPRR Audit No.:

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2014, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and

(Name of Contractor)

a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by the City of Gilbert ("City's ") to install safety upgrades, including lights, gates, and cantilevers, and to conduct surface improvements to existing Cooper Rd., and Guadalupe Rd., at-grade public road crossings with all or a portion of such work to be performed on property of Railroad in the vicinity of the Railroad's Mile Post on Cooper Rd., at 925.73 (DOT 741816D) and Guadalupe Rd., at Mile Post 925.65 (DOT 741815W) on its Phoenix Subdivision in or near Gilbert, Maricopa County, Arizona, as such location is in the general location shown on the Railroad Location Print marked **Exhibit A** attached hereto and hereby made a part hereof, which work is the subject of a contract dated June 2, 2014, between the Railroad and City.

The Railroad is willing to permit the Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is

limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C & D.

The General Terms and Conditions contained in **Exhibit B**, the Insurance Requirements contained in **Exhibit C**, and the Minimum Safety Requirements contained in **Exhibit D**, each attached hereto, are hereby made a part of this Agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.

- A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.
- B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

ALEXANDER POPOVICI
MGR IND & PUBLIC PRO
631 S 7TH STREET
PHOENIX, AZ 85034
(602) 322-2510

ADRIAN S. DOMINGUEZ
MGR TRACK MNTCE
631 S 7TH STREET
PHOENIX, AZ 85034
(402) 216-2366

- C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this Agreement and continue until this Agreement is terminated as provided in this Agreement or until the Contractor has completed all work on Railroad's property.

ARTICLE 6 - TERM; TERMINATION.

- A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until _____, unless sooner terminated as herein
(Expiration Date)

provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

- B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 7 - CERTIFICATE OF INSURANCE.

- A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.

- B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

*Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, MS 1690
Omaha, NE 68179-1690
UPRR Folder No.: 2870-49*

ARTICLE 8 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 9 - CROSSINGS.

No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

ARTICLE 10 - CROSSINGS; COMPLIANCE WITH MUTCD AND FRA GUIDELINES.

- A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

- B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such

noncompliance.

ARTICLE 11 - EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored or used on Railroad's property without the prior written approval of Railroad.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID #94-6001323)

By: _____
DAVID C. LAPLANTE
Senior Manager-Contracts

(Name of Contractor)

By _____
Printed Name: _____
Title: _____

EXHIBIT B

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

GENERAL TERMS & CONDITIONS

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

- A. Contractor agrees to notify the Railroad Representative at least thirty (30) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
- B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.

- A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.
- B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.
- B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

- A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in

Exhibit D, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

- B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.
- C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

- A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.
- B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.
- C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.
- D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.
- E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

EXHIBIT C

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

INSURANCE REQUIREMENTS

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

A. COMMERCIAL GENERAL LIABILITY INSURANCE. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

B. BUSINESS AUTOMOBILE COVERAGE INSURANCE. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided.

Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

D. RAILROAD PROTECTIVE LIABILITY INSURANCE. Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

E. UMBRELLA OR EXCESS INSURANCE. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

F. POLLUTION LIABILITY INSURANCE. Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least

\$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

OTHER REQUIREMENTS

- G.** All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I.** Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J.** Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L.** The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

I. CLOTHING

- A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- i. Waist-length shirts with sleeves.
 - ii. Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
 - iii. Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. PERSONAL PROTECTIVE EQUIPMENT

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- i. Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- ii. Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- iii. Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers
 - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- iv. Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. ON TRACK SAFETY

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- i. Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.

- ii. Wear an orange, reflectorized workwear approved by the Railroad Representative.
- iii. Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. EQUIPMENT

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - i. Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - ii. Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - iii. Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. GENERAL SAFETY REQUIREMENTS

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
 - i. Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - ii. Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - iii. In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - iv. Avoid walking or standing on a track unless so authorized by the employee in charge.
 - v. Before stepping over or crossing tracks, look in both directions first.
 - vi. Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

UPRR Folder No.: 2870-47

UPRR Audit No.: _____

PUBLIC HIGHWAY AT-GRADE CROSSING IMPROVEMENT AGREEMENT

Cooper Rd., – DOT No. 741816D
Mile Post 925.73 - Phoenix Subdivision
Gilbert, Maricopa County, Arizona

THIS AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 2014 ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 ("Railroad") and **CITY OF GILBERT**, a municipal corporation or political subdivision of the State of ~~California~~ **Arizona** to be addressed at 90 E. Civic Center Dr., Gilbert, Arizona 85269 ("Political Body").

RECITALS:

Presently, the Political Body utilizes the Railroad's property for the existing the existing Cooper Rd., at-grade public road crossing, DOT No. 741816D, at Railroad's Mile Post 925.73 (the "Roadway") on its Phoenix Subdivision in or near Gilbert, Maricopa County, Arizona.

The Political Body now desires to use and maintain additional Railroad property at the Roadway by widening the existing Cooper Rd., at-grade public road crossing. The existing aforementioned Cooper Rd., at-grade public road crossing, as improved to include the maintenance and use of additional Railroad property, is hereinafter the "Roadway," and where the Roadway crosses the Railroad's property is the "Crossing Area" in the location shown on the Railroad Location Print marked **Exhibit A**, attached hereto and hereby made a part hereof.

Under this Agreement, the Railroad will be granting the Political Body right to use and maintain the additional right of way to facilitate the reconstruction and widening of the existing Cooper Rd., at-grade public road crossing as described in the Survey Print and Legal Description marked **Exhibit A-1** attached hereto and hereby made a part hereof.

The Railroad and the City are entering into this Agreement to cover the above.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

ARTICLE 1.

The exhibits below are attached hereto and hereby made a part hereof.

Exhibit A	Railroad Location Print
Exhibit A-1	Survey print and Legal Description
Exhibit B	General Terms and Conditions
Exhibit C	Material and Force Estimate
Exhibit D	Railroad's Form of Contractor's Right of Entry Agreement

ARTICLE 2. EXHIBIT B

The General Terms and Conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.

ARTICLE 3. RAILROAD GRANTS RIGHT

For and in consideration **FORTY EIGHT THOUSAND ONE HUNDRED DOLLARS (\$48,100.00)** to be paid by the Political Body to the Railroad upon the execution and delivery of this Agreement and in further consideration of the Political Body's agreement to perform and abide by the terms of this Agreement including all exhibits, the Railroad hereby grants to the Political Body the right to establish or construct or reconstruct, maintain, and repair the road crossing over and across the Crossing Area as described in the Survey Print and Legal Description marked **Exhibit A-1**. Please see Article 12 for future work and/or repair requirements.

ARTICLE 4. DEFINITION OF CONTRACTOR

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the City to perform any Project work on any portion of the Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

ARTICLE 5. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE

- A. Prior to Contractor performing any work within the Crossing Area and any subsequent maintenance and repair work, the City shall require the Contractor to:
- i. execute the Railroad's then current Contractor's Right of Entry Agreement
 - ii. obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
 - iii. provide such insurance policies, certificates, binders and/or endorsements to the Railroad.
- B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit D**, attached hereto and hereby made a part hereof. The City confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.
- C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

*Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690*

*Omaha, NE 68179-1690
UPRR Folder No. 2870-47*

- D. If the City's own employees will be performing any of the Project work, the City may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

ARTICLE 6. FEDERAL AID POLICY GUIDE

If the City will be receiving any federal funding for the Project, the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference.

ARTICLE 7. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD

The City agrees that no Project costs and expenses are to be borne by the Railroad. In addition, the Railroad is not required to contribute any funding for the Project.

ARTICLE 8. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO CITY; CITY'S PAYMENT OF BILLS

- A. The work to be performed by the Railroad, at the City's sole cost and expense, is described in the Railroad's Material and Force Account Estimate dated April 7, 2014, marked **Exhibit C**, attached hereto and hereby made a part hereof (the "Estimate"). As set forth in the Estimate, the Railroad's estimated cost for the Railroad's work associated with the Project is **\$286,204.00**.
- B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the City in the event the City does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate.
- C. The City acknowledges that the Estimate does not include any estimate of flagging or other protective service costs that are to be paid by the City or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the City or the Contractor as determined by the Railroad and the City. If it is determined that the Railroad will be billing the Contractor directly for such costs, the City agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.
- D. The Railroad shall send progressive billing to the City during the Project and final billing to the City within one hundred eighty (180) days after receiving written notice from the City that all Project work affecting the Railroad's property has been completed.
- D. The City agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, all actual costs of engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date of this Agreement), construction, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

ARTICLE 9. PLANS

- A. The City, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.
- B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.
- C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.
- D. The Railroad's review and approval of the Plans will in no way relieve the City or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the City or Contractor on the Plans is at the risk of the City and Contractor.

ARTICLE 10. NON-RAILROAD IMPROVEMENTS

- A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 8. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on Railroad's property.
- B. Upon Railroad's approval of submitted Non Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and City mutually agree in writing to:
 - i. deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Section 8B,
 - ii. deem the Non Railroad Facilities part of the Structure, and

iii. supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

iv.

ARTICLE 11. EFFECTIVE DATE; TERM; TERMINATION

A. This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Roadway remains on the Railroad's property.

B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the City in the event the City does not commence construction on the portion of the Project located on the Railroad's property within twelve (12) months from the Effective Date.

C. If the Agreement is terminated as provided above, or for any other reason, the City shall pay to the Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final Project Plans.

ARTICLE 12. CONDITIONS TO BE MET BEFORE CITY CAN COMMENCE WORK

Neither the City nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- i. The Railroad and City have executed this Agreement.
- ii. The Railroad has provided to the City the Railroad's written approval of the Plans.
- iii. Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
- iv. Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad Representative named in the Contractor's Right of Entry Agreement.

ARTICLE 13. FUTURE PROJECTS

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Roadway shall not commence until Railroad and City agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

ARTICLE 14. ASSIGNMENT; SUCCESSORS AND ASSIGNS

A. City shall not assign this Agreement without the prior written consent of Railroad.

B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and City.

ARTICLE 15. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

If the City will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the City agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The City confirms and acknowledges that Section 1512 of the

ARRA provisions applies only to a "recipient" receiving ARRA funding directing from the federal government and, therefore,

- (i) the ARRA reporting requirements are the responsibility of the City and not of the Railroad, and
- (ii) the City shall not delegate any ARRA reporting responsibilities to the Railroad.

The City also confirms and acknowledges that

- (i) the Railroad shall provide to the City the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing, and
- (ii) such standard and customary billing and documentation from the Railroad provides the information needed by the City to perform and complete the ARRA reporting documents.

The Railroad confirms that the City and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in Section 11 of **Exhibit B** of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date first herein written.

UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID #94-6001323)

By: _____
DANIEL A. LEIS
General Director – Real Estate

ATTEST:

CITY OF GILBERT

By _____

By _____

Printed Name: _____

Title: _____

(SEAL)

Pursuant to Resolution/Order No. _____
dated: _____, 20____
hereto attached.

EXHIBIT A

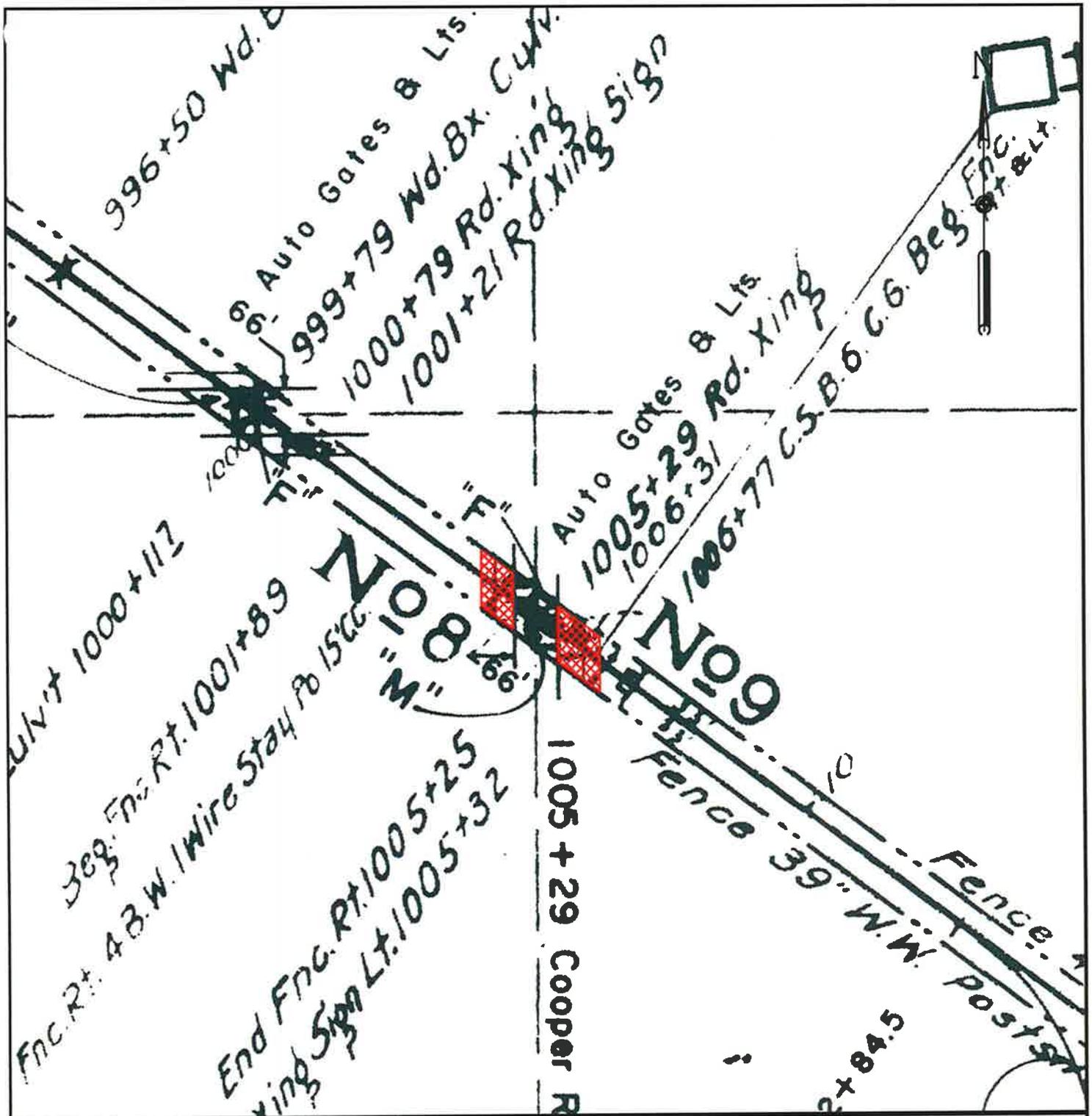
To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Railroad Location Print

EXHIBIT A-1

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Survey Print & Legal Description



SCALE: 1" = 200'

LEGEND:

UPRRCO. R/W SHOWN



CROSSING AREA SHOWN
AREA: 8984 sqft+-



NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

TO ACCOMPANY AGREEMENT WITH
CITY OF GILBERT

GILBERT, MARICOPA COUNTY, AZ

M.P. 925.73 PHOENIX SUB.

SP AZ V 37 / 1

OFFICE OF REAL ESTATE, OMAHA, NEBRASKA

FILE: 2870-47 DATE: 5-8-2014

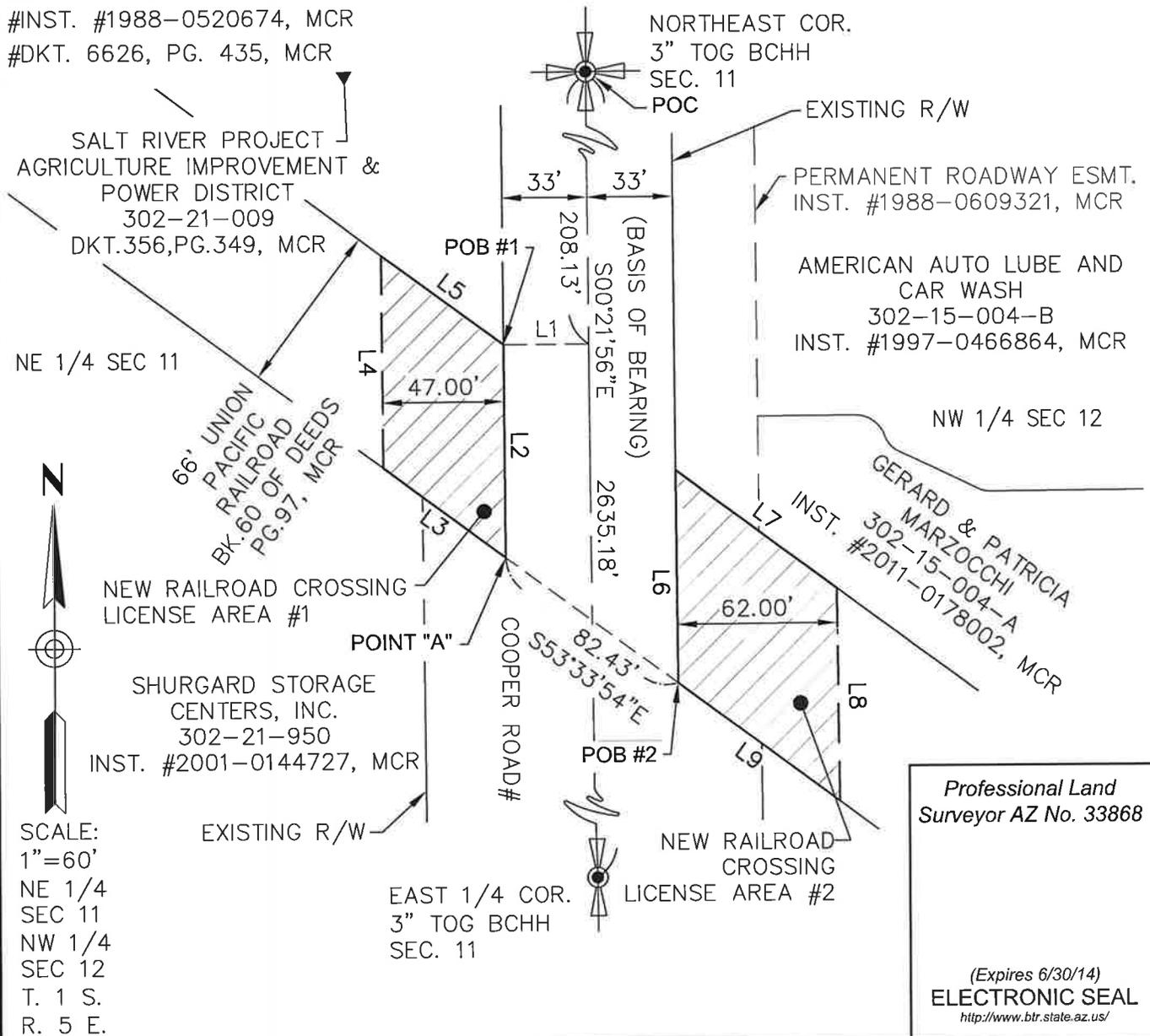
COOPER ROAD UNION PACIFIC RAILROAD CROSSING LICENSE AREA EXHIBIT A

#=RIGHT-OF-WAY REFERENCE

#BK. 2 OF ROAD MAPS, PG. 15, MCR **SKETCH**

#INST. #1988-0520674, MCR

#DKT. 6626, PG. 435, MCR



Professional Land
Surveyor AZ No. 33868

(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

SCALE:
1"=60'
NE 1/4
SEC 11
NW 1/4
SEC 12
T. 1 S.
R. 5 E.

<p>Ritoch-Powell & Associates, Inc. 5727 N. 7th Street, Suite 120 Phoenix, AZ 85014 Ph: 602-263-1177 Fax: 602-277-6286</p>	<p>EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION FOR RAILROAD CROSSING LICENSE AREA</p>					
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">DATE: 3/27/14</td> <td rowspan="4" style="width: 70%; text-align: center; vertical-align: middle;"> PROJECT NUMBER ST094 SHEET 1 OF 5 </td> </tr> <tr> <td>DSN: TAR</td> </tr> <tr> <td>DRN: MRS</td> </tr> <tr> <td>CHK: TAR</td> </tr> </table>	DATE: 3/27/14	PROJECT NUMBER ST094 SHEET 1 OF 5	DSN: TAR	DRN: MRS	CHK: TAR
DATE: 3/27/14	PROJECT NUMBER ST094 SHEET 1 OF 5					
DSN: TAR						
DRN: MRS						
CHK: TAR						

COOPER ROAD UNION PACIFIC RAILROAD CROSSING LICENSE AREA EXHIBIT A SKETCH

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S89°38'04"W	33.00'
L2	S00°21'56"E	82.43'
L3	N53°33'54"W	58.70'
L4	N00°21'56"W	82.43'
L5	S53°33'54"E	58.70'
L6	N00°21'56"W	82.43'
L7	S53°33'54"E	77.43'
L8	S00°21'56"E	82.43'
L9	N53°33'54"W	77.43'

NEW LICENSE AREA #1
= 3,873.99 S.F. (0.0889 AC)

NEW LICENSE AREA #2
= 5,110.37 S.F. (0.1173 AC)

TOTAL NEW LICENSE AREA
= 8,984.36 S.F. (0.2062 AC)

*Professional Land
Surveyor AZ No. 33868*

(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

Ritoch-Powell & Associates, Inc.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR RAILROAD CROSSING LICENSE AREA



DATE: 3/27/14
DSN: TAR
DRN: MRS
CHK: TAR

PROJECT NUMBER
ST094

SHEET 2 OF 5

COOPER ROAD UNION PACIFIC RAILROAD CROSSING LICENSE AREA

EXHIBIT A LEGAL DESCRIPTION

RAILROAD CROSSING LICENSE AREA OVER THAT TRACT OF LAND AS CONVEYED TO UNION PACIFIC RAILROAD BY BOOK 60 OF DEEDS, PAGE 97, MARICOPA COUNTY RECORDS (MCR) LYING WITHIN THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 11 (3" TOWN OF GILBERT BRASS CAP IN HAND HOLE) FROM WHICH POINT THE EAST QUARTER CORNER THEREOF (3" TOWN OF GILBERT BRASS CAP IN HAND HOLE) BEARS S 00°21'56" E A DISTANCE OF 2635.18 FEET;

THENCE S 00°21'56" E, ALONG THE EAST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 208.13 FEET;

THENCE S 89°38'04" W, ACROSS THE RIGHT-OF-WAY OF COOPER ROAD, A DISTANCE OF 33.00 FEET TO THE WEST RIGHT-OF-WAY LINE INTERSECTION WITH THE NORTH LINE OF SAID UNION PACIFIC RAILROAD, POINT OF BEGINNING (#1);

THENCE S 00°21'56" E, ALONG SAID WEST RIGHT-OF-WAY LINE BEING 33.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 82.43 FEET TO THE WEST RIGHT-OF-WAY LINE INTERSECTION WITH THE SOUTH LINE OF SAID UNION PACIFIC RAILROAD, SAID INTERSECTION TO BE KNOWN AS POINT "A";

THENCE N 53°33'54" W, ALONG SAID SOUTH LINE, A DISTANCE OF 58.70 FEET;

THENCE N 00°21'56" W, ACROSS SAID UNION PACIFIC RAILROAD BEING 80.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 82.43 FEET TO A POINT ON THE NORTH LINE THEREOF;

THENCE S 53°33'54" E, ALONG SAID NORTH LINE, A DISTANCE OF 58.70 FEET TO POINT OF BEGINNING (#1);

AND,

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Surveyor AZ No. 33868*

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Ritoch-Powell & Associates, Inc. 5727 N. 7th Street, Suite 120 Phoenix, AZ 85014 Ph: 602-263-1177 Fax: 602-277-6286	EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION FOR RAILROAD CROSSING LICENSE AREA								
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; padding: 2px;">DATE: 3/27/14</td> <td style="width: 70%; padding: 2px;">PROJECT NUMBER ST094</td> </tr> <tr> <td style="padding: 2px;">DSN: TAR</td> <td></td> </tr> <tr> <td style="padding: 2px;">DRN: MRS</td> <td></td> </tr> <tr> <td style="padding: 2px;">CHK: TAR</td> <td style="text-align: center; padding: 2px;">SHEET 3 OF 5</td> </tr> </table>	DATE: 3/27/14	PROJECT NUMBER ST094	DSN: TAR		DRN: MRS		CHK: TAR	SHEET 3 OF 5
DATE: 3/27/14	PROJECT NUMBER ST094								
DSN: TAR									
DRN: MRS									
CHK: TAR	SHEET 3 OF 5								

COOPER ROAD UNION PACIFIC RAILROAD CROSSING LICENSE AREA

EXHIBIT A LEGAL DESCRIPTION

RAILROAD CROSSING LICENSE AREA OVER THAT TRACT OF LAND AS CONVEYED TO UNION PACIFIC RAILROAD BY BOOK 60 OF DEEDS, PAGE 97, MARICOPA COUNTY RECORDS (MCR) LYING WITHIN THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT SAID POINT "A";

THENCE S 53°33'54" E, ACROSS THE RIGHT-OF-WAY OF COOPER ROAD, A DISTANCE OF 82.43 FEET TO THE EAST RIGHT-OF-WAY LINE INTERSECTION WITH THE SOUTH LINE OF SAID UNION PACIFIC RAILROAD, POINT OF BEGINNING (#2);

THENCE N 00°21'56" W, ALONG SAID EAST RIGHT-OF-WAY LINE BEING 33.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 82.43 FEET TO THE EAST RIGHT-OF-WAY LINE INTERSECTION WITH THE NORTH LINE OF SAID UNION PACIFIC RAILROAD;

THENCE S 53°33'54" E, ALONG SAID NORTH LINE, A DISTANCE OF 77.43 FEET;

THENCE S 00°21'56" E, ACROSS SAID UNION PACIFIC RAILROAD BEING 95.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 82.43 FEET TO THE SOUTH LINE THEREOF;

THENCE N 53°33'54" W, ALONG SAID SOUTH LINE, A DISTANCE OF 77.43 FEET TO POINT OF BEGINNING (#2).

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Ritoch-Powell & Associates, Inc.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR RAILROAD CROSSING LICENSE AREA



DATE: 3/27/14
DSN: TAR
DRN: MRS
CHK: TAR

PROJECT NUMBER
ST094

SHEET 4 OF 5

COOPER ROAD UNION PACIFIC RAILROAD CROSSING LICENSE AREA

EXHIBIT A LEGAL DESCRIPTION

THE ABOVE DESCRIBED LICENSE CONTAINS (AREA #1) 0.0889 ACRE OF LAND (3,873.99 S.F.) + (AREA #2) 0.1173 ACRE OF LAND (5,110.37 S.F.) = 0.2062 ACRE OF LAND (8,984.36 S.F.), MORE OR LESS, INCLUDING ANY EASEMENTS OF RECORD.

THE BASIS OF BEARING FOR THE ABOVE DESCRIPTION IS S 00°21'56" E FOR THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA AS SHOWN ON THE PLSS SUBDIVISION RECORD OF SURVEY—MARICOPA COUNTY GEODETIC DENSIFICATION AND CADASTRAL SURVEY RECORDED IN BOOK 669, PAGE 47, MARICOPA COUNTY RECORDS.

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(Expires 6/30/14)
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Ritoch-Powell & Associates, Inc.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR RAILROAD CROSSING LICENSE AREA



DATE: 3/27/14
DSN: TAR
DRN: MRS
CHK: TAR

PROJECT NUMBER
ST094

SHEET 5 OF 5

UPRR LICENSE AREA #1

NORTH: 860040.9384' EAST: 733540.9607'

SEGMENT #1 : LINE

COURSE: S00° 21' 56"E LENGTH: 82.43'
NORTH: 859958.5101' EAST: 733541.4866'

SEGMENT #2 : LINE

COURSE: N53° 33' 54"W LENGTH: 58.70'
NORTH: 859993.3726' EAST: 733494.2607'

SEGMENT #3 : LINE

COURSE: N00° 21' 56"W LENGTH: 82.43'
NORTH: 860075.8010' EAST: 733493.7348'

SEGMENT #4 : LINE

COURSE: S53° 33' 54"E LENGTH: 58.70'
NORTH: 860040.9384' EAST: 733540.9607'

PERIMETER: 282.24' AREA: 3,873.99 SQ. FT. (0.0889 ACRE)
ERROR CLOSURE: 0.0000' COURSE: N00° 00' 00"E
ERROR NORTH: 0.00000' EAST: 0.00000'

PRECISION 1: 282,260,000.00

*Professional Land
Surveyor AZ No. 33868*

*(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>*

UPRR LICENSE AREA #2

NORTH: 859909.5615' EAST: 733607.8004'

SEGMENT #1 : LINE

COURSE: N00° 21' 56"W LENGTH: 82.43'
NORTH: 859991.9899' EAST: 733607.2745'

SEGMENT #2 : LINE

COURSE: S53° 33' 54"E LENGTH: 77.43'
NORTH: 859946.0034' EAST: 733669.5693'

SEGMENT #3 : LINE

COURSE: S00° 21' 56"E LENGTH: 82.43'
NORTH: 859863.5751' EAST: 733670.0952'

SEGMENT #4 : LINE

COURSE: N53° 33' 54"W LENGTH: 77.43'
NORTH: 859909.5615' EAST: 733607.8004'

PERIMETER: 319.71' AREA: 5,110.37 SQ. FT. (0.1173 ACRE)

ERROR CLOSURE: 0.0000' COURSE: N00° 00' 00"E

ERROR NORTH: 0.00000' EAST: 0.00000'

PRECISION 1: 319,720,000.00

*Professional Land
Surveyor AZ No. 33868*

(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

EXHIBIT B

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
General Terms and Conditions

EXHIBIT B

TO PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT

GENERAL TERMS AND CONDITIONS

SECTION 1. CONDITIONS AND COVENANTS

- A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The City shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the City shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the City for the purpose of conveying electric power or communications incidental to the City's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the City to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.
- B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the City shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.
- C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The City shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the City at its own expense settles with and obtains releases from such nonparties.
- D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; and the right to cross the Crossing Area with all kinds of equipment.
- E. So far as it lawfully may do so, the City will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.
- F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Roadway and its appurtenances, or for the performance of any work in connection with the Project, the City will acquire all such other property and rights at its own expense and without expense to the Railroad.

SECTION 2. CONSTRUCTION OF ROADWAY

- A. The City, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.
- B. Except as may be otherwise specifically provided herein, the City, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Roadway and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right of way) and all necessary drainage facilities, guard rails or barriers, and right of way fences between the Roadway and the railroad tracks. Upon completion of the Project, the City shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.
- C. All construction work of the City upon the Railroad's property (including, but not limited to, construction of the Roadway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in compliance with the Plans, and other guidelines furnished by the Railroad.
- D. All construction work of the City shall be performed diligently and completed within a reasonable time. No part of the

Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the City. The City hereby assumes the risk of any such delays and agrees that no claims for damages on account of any delay shall be made against the Railroad by the State and/or the Contractor.

SECTION 3. INJURY AND DAMAGE TO PROPERTY

If the City, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the City is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the City at the City's own expense, or by the Railroad at the expense of the City, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

SECTION 4. RAILROAD MAY USE CONTRACTORS TO PERFORM WORK

The Railroad may contract for the performance of any of its work by other than the Railroad forces. The Railroad shall notify the City of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the City shall reimburse the Railroad for the amount of the contract.

SECTION 5. MAINTENANCE AND REPAIRS

- A. The City shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by and at the expense of the Railroad.
- B. If, in the future, the City elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, replaced with paving or some surfacing material other than timber planking, the Railroad, at the City's expense, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks through the Crossing Area, the City shall bear the expense of such repairs or replacement.

SECTION 6. CHANGES IN GRADE

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track(s) located within the Crossing Area, the City shall, at its own expense, conform the Roadway to conform with the change of grade of the trackage.

SECTION 7. REARRANGEMENT OF WARNING DEVICES

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either the Railroad, highway or both, the parties will apportion the expense incidental thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the City that the work will be performed in a safe manner and in conformity with the following standards:

- A. **Definitions.** All references in this Agreement to the City shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the City shall include work both within and outside of the Railroad's property.
- B. **Entry on to Railroad's Property by City.** If the City's employees need to enter Railroad's property in order to perform an inspection of the Roadway, minor maintenance or other activities, the City shall first provide at least ten (10) working days

advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the City, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the City's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of City's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.

C. Flagging.

- i. If the City's employees need to enter Railroad's property as provided in Paragraph B above, the City agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by City in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform City whether a flagman need be present and whether City needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill City for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, City agrees that City is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
- ii. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, City shall pay on the basis of the new rates and charges.
- iii. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though City may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, City must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, City will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

D. Compliance With Laws. The City shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The City shall use only such methods as are consistent with safety, both as concerns the City, the City's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The City (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the City to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the City shall reimburse, and to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The City further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

E. No Interference or Delays. The City shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or

signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

- F. **Supervision.** The City, at its own expense, shall adequately police and supervise all work to be performed by the City, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the City for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the City with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the City will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.
- G. **Suspension of Work.** If at any time the City's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the City is being or is about to be done or prosecuted without due regard and precaution for safety and security, the City shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.
- H. **Removal of Debris.** The City shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the City at the City's own expense or by the Railroad at the expense of the City. The City shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.
- I. **Explosives.** The City shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.
- J. **Excavation.** The City shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The City shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The City, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the City in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.
- K. **Drainage.** The City, at the City's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The City, at the City's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the City, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The City shall not obstruct or interfere with existing ditches or drainage facilities.
- L. **Notice.** Before commencing any work, the City shall provide the advance notice to the Railroad that is required under the Contractor's Right of Entry Agreement.
- M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. City shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency

calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the City. If it is, City will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

SECTION 9. INTERIM WARNING DEVICES

If at anytime it is determined by a competent authority, by the City, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the City shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed.

SECTION 10. OTHER RAILROADS

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

SECTION 11. BOOKS AND RECORDS

The books, papers, records and accounts of Railroad, so far as they relate to the items of expense for the materials to be provided by Railroad under this Project, or are associated with the work to be performed by Railroad under this Project, shall be open to inspection and audit at Railroad's offices in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of City for a period of three (3) years following the date of Railroad's last billing sent to City.

SECTION 12. REMEDIES FOR BREACH OR NONUSE

- A. If the City shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Roadway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the City will reimburse the Railroad for the expenses thereof.
- B. Nonuse by the City of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the City hereunder.
- C. The City will surrender peaceable possession of the Crossing Area and Roadway upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

SECTION 13. MODIFICATION - ENTIRE AGREEMENT

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the City and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the City shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the City and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

EXHIBIT C

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Railroad's Material & Force Account Estimate

DATE: 2014-11-03

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2015-05-02

DESCRIPTION OF WORK:
2014 RECOLLECT PROGRAM
PHOENIX SUBDIVISION
MP 925.73 DOT #741816D COOPER ROAD
INSTALL 200 TF OF CROSSING SURFACE INCLUDING TIES, RAIL, OTM
PROJECT TO BE FUNDED 100% BY CITY OF GILBERT AZ

PID: 75527 AWO: 11766 MP, SUBDIV: 925.73, PHOENIX
SERVICE UNIT: 16 CITY: GILBERT STATE: AZ

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
ENGINEERING WORK							
ENGINEERING			8500		8500		8500
LABOR ADDITIVE 211%			17936		17936		17936
TOTAL ENGINEERING			26436		26436		26436
SIGNAL WORK							
LABOR ADDITIVE 211%			2660		2660		2660
SIGNAL			1260	5	1265		1265
TOTAL SIGNAL			3920	5	3925		3925
TRACK & SURFACE WORK							
BALAST	5.00	CL	2952	4545	7497		7497
BILL PREP FEE				900	900		900
ENVIRONMENTAL - PERMITS				10	10		10
EQUIPMENT RENTAL				10000	10000		10000
FIELD WELD			4		4		4
FOREIGN LINE FREIGHT				1252	1252		1252
HOMELINE FREIGHT				900	900		900
LABOR ADDITIVE 211%			43959		43959		43959
MATL STORE EXPENSE				994	994		994
OTHER MATERIALS				25000	25000		25000
OTM			2475	6355	8830		8830
RAIL	480.00	LF	8254	10104	18358		18358
RDXING	200.00	TF	2787	45718	48505		48505
ROADWAY APPROACH WORK				25000	25000		25000
SALES TAX				3373	3373		3373
TRAFFIC CONTROL				25000	25000		25000
TRK-SURF, LIN			5562		5562		5562
WELD			2834	748	3582		3582
XTIE	156.00	EA	10214	16903	27117		27117
TOTAL TRACK & SURFACE			79041	176802	255843		255843
LABOR/MATERIAL EXPENSE			109397	176807			
RECOLLECTIBLE/UPRR EXPENSE					286204	0	
ESTIMATED PROJECT COST							286204
EXISTING REUSEABLE MATERIAL CREDIT					0		
SALVAGE NONUSEABLE MATERIAL CREDIT					0		
RECOLLECTIBLE LESS CREDITS							

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

EXHIBIT D

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Contractor's Right of Entry Agreement

Folder No.: 2870-47
UPRR Audit No.:

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 2014, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and

_____ (*Name of Contractor*)

a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by the City of Gilbert ("City's ") to install safety upgrades, including lights, gates, and cantilevers, and to conduct surface improvements to existing Cooper Rd., and Guadalupe Rd., at-grade public road crossings with all or a portion of such work to be performed on property of Railroad in the vicinity of the Railroad's Mile Post on Cooper Rd., at 925.73 (DOT 741816D) and Guadalupe Rd., at Mile Post 925.65 (DOT 741815W) on its Phoenix Subdivision in or near Gilbert, Maricopa County, Arizona, as such location is in the general location shown on the Railroad Location Print marked **Exhibit A** attached hereto and hereby made a part hereof, which work is the subject of a contract dated June 2, 2014, between the Railroad and City.

The Railroad is willing to permit the Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is

limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C & D.

The General Terms and Conditions contained in **Exhibit B**, the Insurance Requirements contained in **Exhibit C**, and the Minimum Safety Requirements contained in **Exhibit D**, each attached hereto, are hereby made a part of this Agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.

- A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.
- B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

ALEXANDER POPOVICI
MGR IND & PUBLIC PRO
631 S 7TH STREET
PHOENIX, AZ 85034
(602) 322-2510

ADRIAN S. DOMINGUEZ
MGR TRACK MNTCE
631 S 7TH STREET
PHOENIX, AZ 85034
(402) 216-2366

- C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this Agreement and continue until this Agreement is terminated as provided in this Agreement or until the Contractor has completed all work on Railroad's property.

ARTICLE 6 - TERM; TERMINATION.

- A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until _____, unless sooner terminated as herein
(Expiration Date)

provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

- B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 7 - CERTIFICATE OF INSURANCE.

- A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.
- B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

*Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, MS 1690
Omaha, NE 68179-1690
UPRR Folder No.: 2870-47*

ARTICLE 8 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 9 - CROSSINGS.

No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

ARTICLE 10 - CROSSINGS; COMPLIANCE WITH MUTCD AND FRA GUIDELINES.

- A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.
- B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such

noncompliance.

ARTICLE 11 - EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored or used on Railroad's property without the prior written approval of Railroad.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID #94-6001323)

By: _____
DAVID C. LAPLANTE
Senior Manager-Contracts

(Name of Contractor)

By _____
Printed Name: _____
Title: _____

EXHIBIT B

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

GENERAL TERMS & CONDITIONS

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

- A. Contractor agrees to notify the Railroad Representative at least thirty (30) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
- B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.

- A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.
- B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.
- B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

- A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in

- Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.
- B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.
- C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

- A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.
- B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.
- C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.
- D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.
- E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

EXHIBIT C

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

INSURANCE REQUIREMENTS

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

A. COMMERCIAL GENERAL LIABILITY INSURANCE. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

B. BUSINESS AUTOMOBILE COVERAGE INSURANCE. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided.

Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

D. RAILROAD PROTECTIVE LIABILITY INSURANCE. Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

E. UMBRELLA OR EXCESS INSURANCE. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

F. POLLUTION LIABILITY INSURANCE. Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least

\$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

OTHER REQUIREMENTS

- G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

I. CLOTHING

- A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- i. Waist-length shirts with sleeves.
- ii. Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
- iii. Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. PERSONAL PROTECTIVE EQUIPMENT

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- i. Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- ii. Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- iii. Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers
 - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- iv. Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. ON TRACK SAFETY

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- i. Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.

- ii. Wear an orange, reflectorized workwear approved by the Railroad Representative.
- iii. Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. EQUIPMENT

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - i. Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - ii. Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - iii. Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. GENERAL SAFETY REQUIREMENTS

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
 - i. Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - ii. Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - iii. In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - iv. Avoid walking or standing on a track unless so authorized by the employee in charge.
 - v. Before stepping over or crossing tracks, look in both directions first.
 - vi. Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

UPRR Folder No.: 2870-47

UPRR Audit No.: _____

PUBLIC HIGHWAY AT-GRADE CROSSING IMPROVEMENT AGREEMENT

Cooper Rd., – DOT No. 741816D
Mile Post 925.73 - Phoenix Subdivision
Gilbert, Maricopa County, Arizona

THIS AGREEMENT ("Agreement") is made and entered into as of the ____ day of _____, 2014 ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 ("Railroad") and **CITY OF GILBERT**, a municipal corporation or political subdivision of the State of ~~California~~ **Arizona** to be addressed at 90 E. Civic Center Dr., Gilbert, Arizona 85269 ("Political Body").

RECITALS:

Presently, the Political Body utilizes the Railroad's property for the existing the existing Cooper Rd., at-grade public road crossing, DOT No. 741816D, at Railroad's Mile Post 925.73 (the "Roadway") on its Phoenix Subdivision in or near Gilbert, Maricopa County, Arizona.

The Political Body now desires to use and maintain additional Railroad property at the Roadway by widening the existing Cooper Rd., at-grade public road crossing. The existing aforementioned Cooper Rd., at-grade public road crossing, as improved to include the maintenance and use of additional Railroad property, is hereinafter the "Roadway," and where the Roadway crosses the Railroad's property is the "Crossing Area" in the location shown on the Railroad Location Print marked **Exhibit A**, attached hereto and hereby made a part hereof.

Under this Agreement, the Railroad will be granting the Political Body right to use and maintain the additional right of way to facilitate the reconstruction and widening of the existing Cooper Rd., at-grade public road crossing as described in the Survey Print and Legal Description marked **Exhibit A-1** attached hereto and hereby made a part hereof.

The Railroad and the City are entering into this Agreement to cover the above.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

ARTICLE 1.

The exhibits below are attached hereto and hereby made a part hereof.

Exhibit A	Railroad Location Print
Exhibit A-1	Survey print and Legal Description
Exhibit B	General Terms and Conditions
Exhibit C	Material and Force Estimate
Exhibit D	Railroad's Form of Contractor's Right of Entry Agreement

ARTICLE 2. EXHIBIT B

The General Terms and Conditions marked **Exhibit B**, are attached hereto and hereby made a part hereof.

ARTICLE 3. RAILROAD GRANTS RIGHT

For and in consideration **FORTY EIGHT THOUSAND ONE HUNDRED DOLLARS (\$48,100.00)** to be paid by the Political Body to the Railroad upon the execution and delivery of this Agreement and in further consideration of the Political Body's agreement to perform and abide by the terms of this Agreement including all exhibits, the Railroad hereby grants to the Political Body the right to establish or construct or reconstruct, maintain, and repair the road crossing over and across the Crossing Area as described in the Survey Print and Legal Description marked **Exhibit A-1**. Please see Article 12 for future work and/or repair requirements.

ARTICLE 4. DEFINITION OF CONTRACTOR

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the City to perform any Project work on any portion of the Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

ARTICLE 5. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE

- A. Prior to Contractor performing any work within the Crossing Area and any subsequent maintenance and repair work, the City shall require the Contractor to:
- i. execute the Railroad's then current Contractor's Right of Entry Agreement
 - ii. obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
 - iii. provide such insurance policies, certificates, binders and/or endorsements to the Railroad.
- B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit D**, attached hereto and hereby made a part hereof. The City confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.
- C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

*Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, Mail Stop 1690*

*Omaha, NE 68179-1690
UPRR Folder No. 2870-47*

- D. If the City's own employees will be performing any of the Project work, the City may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

ARTICLE 6. FEDERAL AID POLICY GUIDE

If the City will be receiving any federal funding for the Project, the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference.

ARTICLE 7. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD

The City agrees that no Project costs and expenses are to be borne by the Railroad. In addition, the Railroad is not required to contribute any funding for the Project.

ARTICLE 8. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO CITY; CITY'S PAYMENT OF BILLS

- A. The work to be performed by the Railroad, at the City's sole cost and expense, is described in the Railroad's Material and Force Account Estimate dated April 7, 2014, marked **Exhibit C**, attached hereto and hereby made a part hereof (the "Estimate"). As set forth in the Estimate, the Railroad's estimated cost for the Railroad's work associated with the Project is **\$286,204.00**.
- B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the City in the event the City does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate.
- C. The City acknowledges that the Estimate does not include any estimate of flagging or other protective service costs that are to be paid by the City or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the City or the Contractor as determined by the Railroad and the City. If it is determined that the Railroad will be billing the Contractor directly for such costs, the City agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.
- D. The Railroad shall send progressive billing to the City during the Project and final billing to the City within one hundred eighty (180) days after receiving written notice from the City that all Project work affecting the Railroad's property has been completed.
- D. The City agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, all actual costs of engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date of this Agreement), construction, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

ARTICLE 9. PLANS

- A. The City, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include all Roadway layout specifications, cross sections and elevations, associated drainage, and other appurtenances.
- B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.
- C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.
- D. The Railroad's review and approval of the Plans will in no way relieve the City or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the City or Contractor on the Plans is at the risk of the City and Contractor.

ARTICLE 10. NON-RAILROAD IMPROVEMENTS

- A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 8. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on Railroad's property.
- B. Upon Railroad's approval of submitted Non Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and City mutually agree in writing to:
 - i. deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Section 8B,
 - ii. deem the Non Railroad Facilities part of the Structure, and

iii. supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

iv.

ARTICLE 11. EFFECTIVE DATE; TERM; TERMINATION

A. This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Roadway remains on the Railroad's property.

B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the City in the event the City does not commence construction on the portion of the Project located on the Railroad's property within twelve (12) months from the Effective Date.

C. If the Agreement is terminated as provided above, or for any other reason, the City shall pay to the Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final Project Plans.

ARTICLE 12. CONDITIONS TO BE MET BEFORE CITY CAN COMMENCE WORK

Neither the City nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- i. The Railroad and City have executed this Agreement.
- ii. The Railroad has provided to the City the Railroad's written approval of the Plans.
- iii. Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
- iv. Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad Representative named in the Contractor's Right of Entry Agreement.

ARTICLE 13. FUTURE PROJECTS

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Roadway shall not commence until Railroad and City agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

ARTICLE 14. ASSIGNMENT; SUCCESSORS AND ASSIGNS

A. City shall not assign this Agreement without the prior written consent of Railroad.

B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and City.

ARTICLE 15. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

If the City will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the City agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The City confirms and acknowledges that Section 1512 of the

ARRA provisions applies only to a "recipient" receiving ARRA funding directing from the federal government and, therefore,

- (i) the ARRA reporting requirements are the responsibility of the City and not of the Railroad, and
- (ii) the City shall not delegate any ARRA reporting responsibilities to the Railroad.

The City also confirms and acknowledges that

- (i) the Railroad shall provide to the City the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing, and
- (ii) such standard and customary billing and documentation from the Railroad provides the information needed by the City to perform and complete the ARRA reporting documents.

The Railroad confirms that the City and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in Section 11 of **Exhibit B** of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date first herein written.

UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID #94-6001323)

By: _____
DANIEL A. LEIS
General Director – Real Estate

ATTEST:

CITY OF GILBERT

By _____

By _____

Printed Name: _____

Title: _____

(SEAL)

Pursuant to Resolution/Order No. _____
dated: _____, 20____
hereto attached.

EXHIBIT A

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Railroad Location Print

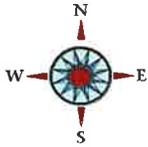
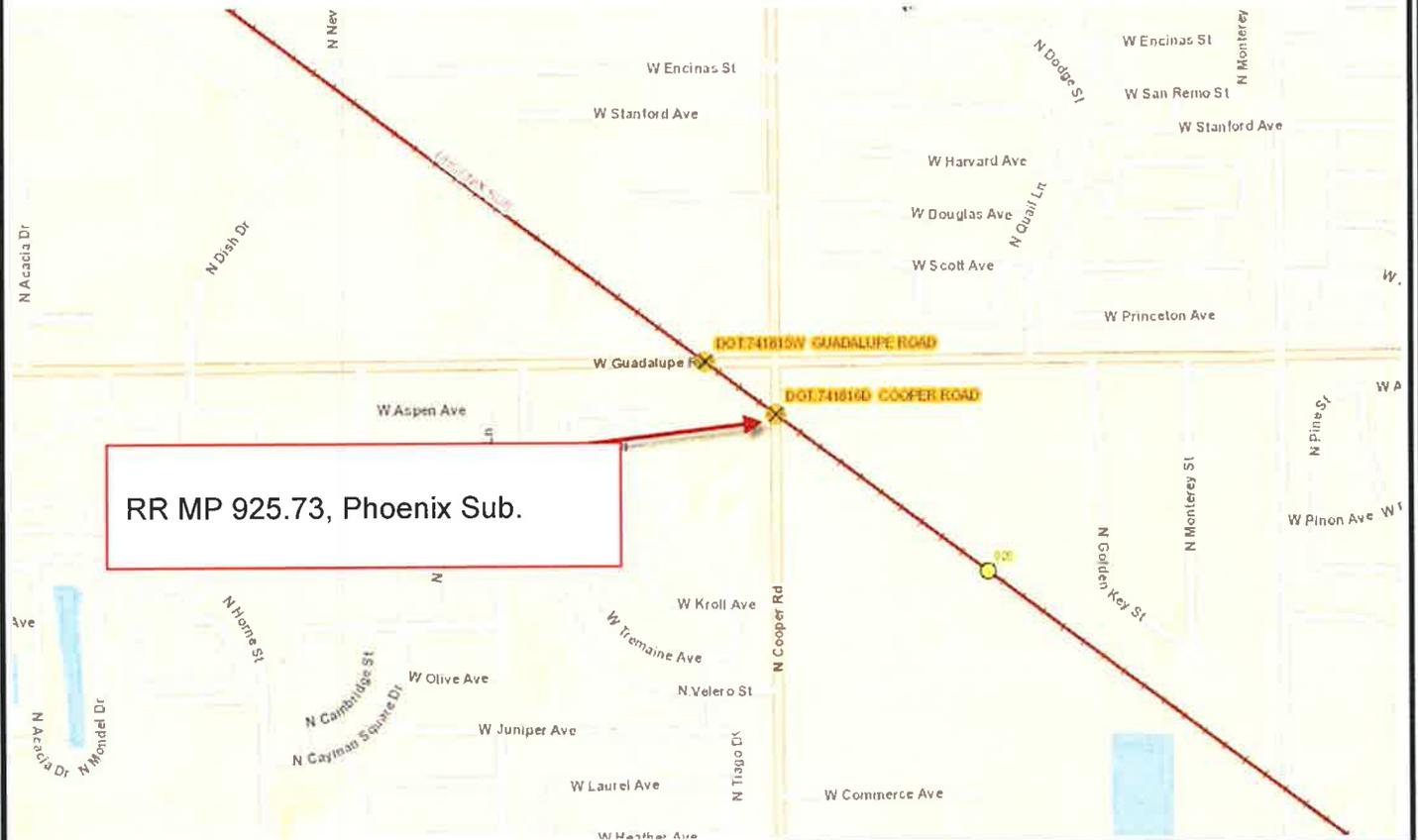


EXHIBIT "A"
RAILROAD LOCATION PRINT
ACCOMPANYING A
CROSSING IMPROVEMENT & SIGNAL PREEMPTION
AGREEMENT/CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT



UNION PACIFIC RAILROAD COMPANY

PHOENIX SUBDIVISION
RAILROAD MILE POST 925.73
GILBERT, MARICOPA COUNTY, AZ

To accompany a C&M and Contractor's Right of Entry with
CITY OF GILBERT and its CONTRACTORS
DOT No. 741816D (Cooper Rd)

UPRR Folder No. 2870-47 Date: July 9, 2014

WARNING

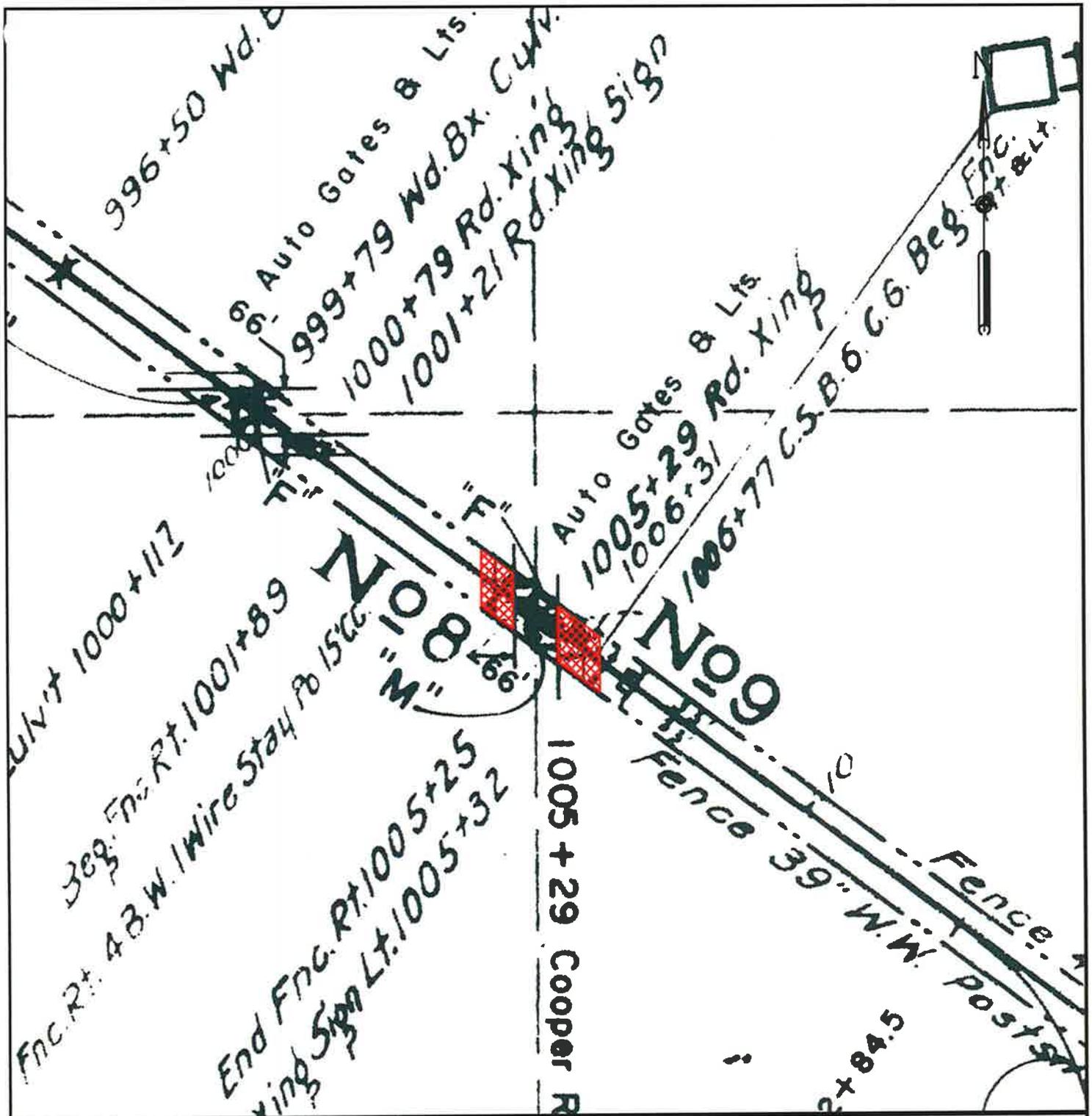
IN ALL OCCASIONS, U P COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF
ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE

PHONE: 1-(800) 336-9193

EXHIBIT A-1

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Survey Print & Legal Description



SCALE: 1" = 200'

LEGEND:

UPRRCO. R/W SHOWN



CROSSING AREA SHOWN
AREA: 8984 sqft+-



NOTE: BEFORE YOU BEGIN ANY WORK, SEE
AGREEMENT FOR FIBER OPTIC PROVISIONS.

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

TO ACCOMPANY AGREEMENT WITH
CITY OF GILBERT

GILBERT, MARICOPA COUNTY, AZ

M.P. 925.73 PHOENIX SUB.

SP AZ V 37 / 1

OFFICE OF REAL ESTATE, OMAHA, NEBRASKA

FILE: 2870-47 DATE: 5-8-2014

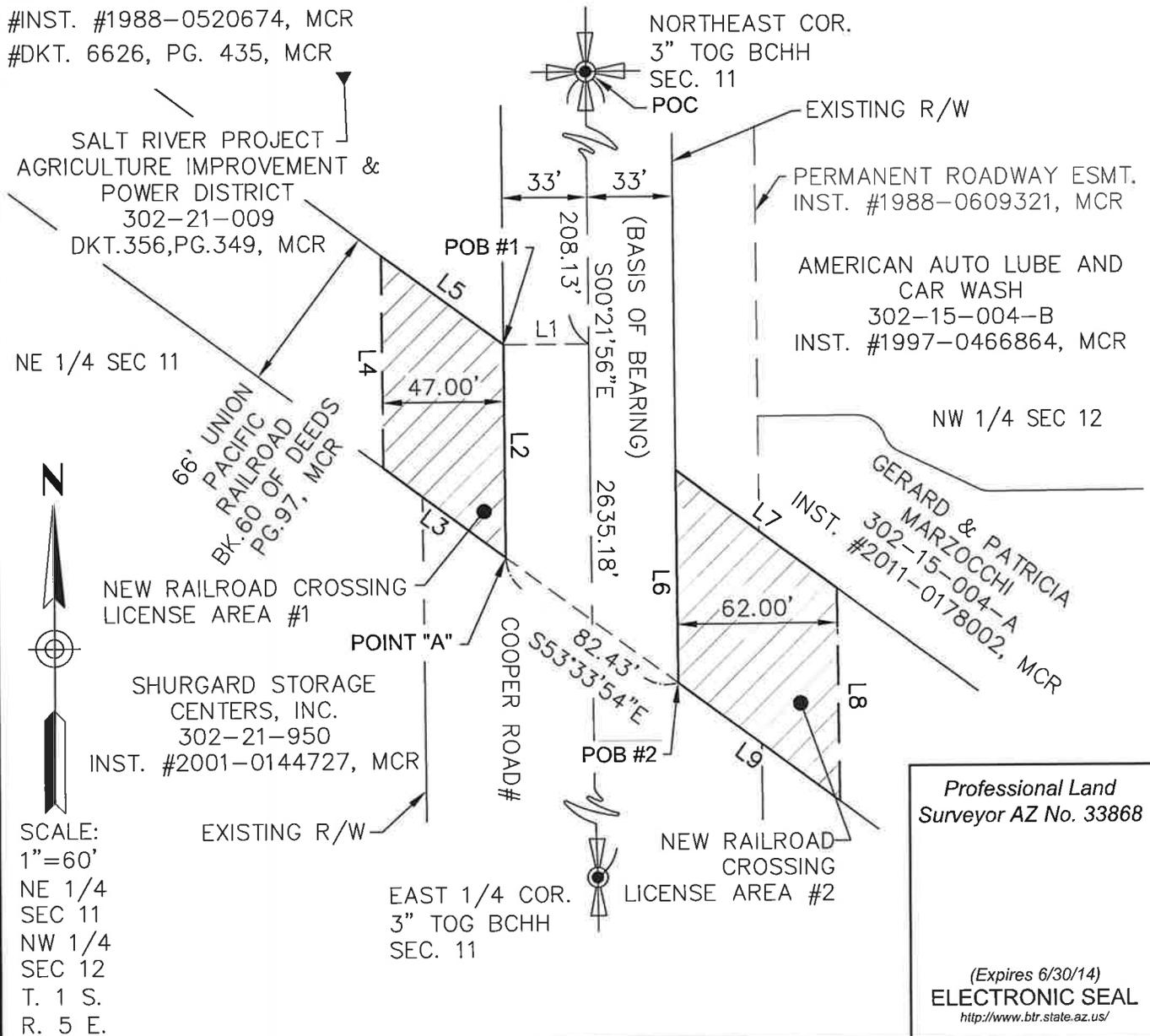
COOPER ROAD UNION PACIFIC RAILROAD CROSSING LICENSE AREA EXHIBIT A

#=RIGHT-OF-WAY REFERENCE

#BK. 2 OF ROAD MAPS, PG. 15, MCR **SKETCH**

#INST. #1988-0520674, MCR

#DKT. 6626, PG. 435, MCR



Professional Land
Surveyor AZ No. 33868

(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

Ritoch-Powell & Associates, Inc.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR RAILROAD CROSSING LICENSE AREA



DATE: 3/27/14
DSN: TAR
DRN: MRS
CHK: TAR

PROJECT NUMBER
ST094

SHEET 1 OF 5

COOPER ROAD UNION PACIFIC RAILROAD CROSSING LICENSE AREA EXHIBIT A SKETCH

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S89°38'04"W	33.00'
L2	S00°21'56"E	82.43'
L3	N53°33'54"W	58.70'
L4	N00°21'56"W	82.43'
L5	S53°33'54"E	58.70'
L6	N00°21'56"W	82.43'
L7	S53°33'54"E	77.43'
L8	S00°21'56"E	82.43'
L9	N53°33'54"W	77.43'

NEW LICENSE AREA #1
= 3,873.99 S.F. (0.0889 AC)

NEW LICENSE AREA #2
= 5,110.37 S.F. (0.1173 AC)

TOTAL NEW LICENSE AREA
= 8,984.36 S.F. (0.2062 AC)

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EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR RAILROAD CROSSING LICENSE AREA



DATE: 3/27/14
DSN: TAR
DRN: MRS
CHK: TAR

PROJECT NUMBER
ST094

SHEET 2 OF 5

COOPER ROAD UNION PACIFIC RAILROAD CROSSING LICENSE AREA

EXHIBIT A LEGAL DESCRIPTION

RAILROAD CROSSING LICENSE AREA OVER THAT TRACT OF LAND AS CONVEYED TO UNION PACIFIC RAILROAD BY BOOK 60 OF DEEDS, PAGE 97, MARICOPA COUNTY RECORDS (MCR) LYING WITHIN THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 11 (3" TOWN OF GILBERT BRASS CAP IN HAND HOLE) FROM WHICH POINT THE EAST QUARTER CORNER THEREOF (3" TOWN OF GILBERT BRASS CAP IN HAND HOLE) BEARS S 00°21'56" E A DISTANCE OF 2635.18 FEET;

THENCE S 00°21'56" E, ALONG THE EAST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 208.13 FEET;

THENCE S 89°38'04" W, ACROSS THE RIGHT-OF-WAY OF COOPER ROAD, A DISTANCE OF 33.00 FEET TO THE WEST RIGHT-OF-WAY LINE INTERSECTION WITH THE NORTH LINE OF SAID UNION PACIFIC RAILROAD, POINT OF BEGINNING (#1);

THENCE S 00°21'56" E, ALONG SAID WEST RIGHT-OF-WAY LINE BEING 33.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 82.43 FEET TO THE WEST RIGHT-OF-WAY LINE INTERSECTION WITH THE SOUTH LINE OF SAID UNION PACIFIC RAILROAD, SAID INTERSECTION TO BE KNOWN AS POINT "A";

THENCE N 53°33'54" W, ALONG SAID SOUTH LINE, A DISTANCE OF 58.70 FEET;

THENCE N 00°21'56" W, ACROSS SAID UNION PACIFIC RAILROAD BEING 80.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 82.43 FEET TO A POINT ON THE NORTH LINE THEREOF;

THENCE S 53°33'54" E, ALONG SAID NORTH LINE, A DISTANCE OF 58.70 FEET TO POINT OF BEGINNING (#1);

AND,

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(Expires 6/30/14)
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Ritoch-Powell & Associates, Inc. 5727 N. 7th Street, Suite 120 Phoenix, AZ 85014 Ph: 602-263-1177 Fax: 602-277-6286	EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION FOR RAILROAD CROSSING LICENSE AREA								
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; padding: 2px;">DATE: 3/27/14</td> <td style="width: 70%; padding: 2px; text-align: center;">PROJECT NUMBER</td> </tr> <tr> <td style="padding: 2px;">DSN: TAR</td> <td style="padding: 2px; text-align: center;">ST094</td> </tr> <tr> <td style="padding: 2px;">DRN: MRS</td> <td style="padding: 2px;"></td> </tr> <tr> <td style="padding: 2px;">CHK: TAR</td> <td style="padding: 2px; text-align: center;">SHEET 3 OF 5</td> </tr> </table>	DATE: 3/27/14	PROJECT NUMBER	DSN: TAR	ST094	DRN: MRS		CHK: TAR	SHEET 3 OF 5
DATE: 3/27/14	PROJECT NUMBER								
DSN: TAR	ST094								
DRN: MRS									
CHK: TAR	SHEET 3 OF 5								

COOPER ROAD UNION PACIFIC RAILROAD CROSSING LICENSE AREA

EXHIBIT A LEGAL DESCRIPTION

RAILROAD CROSSING LICENSE AREA OVER THAT TRACT OF LAND AS CONVEYED TO UNION PACIFIC RAILROAD BY BOOK 60 OF DEEDS, PAGE 97, MARICOPA COUNTY RECORDS (MCR) LYING WITHIN THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT SAID POINT "A";

THENCE S 53°33'54" E, ACROSS THE RIGHT-OF-WAY OF COOPER ROAD, A DISTANCE OF 82.43 FEET TO THE EAST RIGHT-OF-WAY LINE INTERSECTION WITH THE SOUTH LINE OF SAID UNION PACIFIC RAILROAD, POINT OF BEGINNING (#2);

THENCE N 00°21'56" W, ALONG SAID EAST RIGHT-OF-WAY LINE BEING 33.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 82.43 FEET TO THE EAST RIGHT-OF-WAY LINE INTERSECTION WITH THE NORTH LINE OF SAID UNION PACIFIC RAILROAD;

THENCE S 53°33'54" E, ALONG SAID NORTH LINE, A DISTANCE OF 77.43 FEET;

THENCE S 00°21'56" E, ACROSS SAID UNION PACIFIC RAILROAD BEING 95.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 82.43 FEET TO THE SOUTH LINE THEREOF;

THENCE N 53°33'54" W, ALONG SAID SOUTH LINE, A DISTANCE OF 77.43 FEET TO POINT OF BEGINNING (#2).

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Surveyor AZ No. 33868*

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Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR RAILROAD CROSSING LICENSE AREA



DATE: 3/27/14
DSN: TAR
DRN: MRS
CHK: TAR

PROJECT NUMBER
ST094

SHEET 4 OF 5

COOPER ROAD UNION PACIFIC RAILROAD CROSSING LICENSE AREA

EXHIBIT A LEGAL DESCRIPTION

THE ABOVE DESCRIBED LICENSE CONTAINS (AREA #1) 0.0889 ACRE OF LAND (3,873.99 S.F.) + (AREA #2) 0.1173 ACRE OF LAND (5,110.37 S.F.) = 0.2062 ACRE OF LAND (8,984.36 S.F.), MORE OR LESS, INCLUDING ANY EASEMENTS OF RECORD.

THE BASIS OF BEARING FOR THE ABOVE DESCRIPTION IS S 00°21'56" E FOR THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA AS SHOWN ON THE PLSS SUBDIVISION RECORD OF SURVEY—MARICOPA COUNTY GEODETIC DENSIFICATION AND CADASTRAL SURVEY RECORDED IN BOOK 669, PAGE 47, MARICOPA COUNTY RECORDS.

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(Expires 6/30/14)
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EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR RAILROAD CROSSING LICENSE AREA



DATE: 3/27/14
DSN: TAR
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PROJECT NUMBER
ST094

SHEET 5 OF 5

UPRR LICENSE AREA #1

NORTH: 860040.9384' EAST: 733540.9607'

SEGMENT #1 : LINE

COURSE: S00° 21' 56"E LENGTH: 82.43'
NORTH: 859958.5101' EAST: 733541.4866'

SEGMENT #2 : LINE

COURSE: N53° 33' 54"W LENGTH: 58.70'
NORTH: 859993.3726' EAST: 733494.2607'

SEGMENT #3 : LINE

COURSE: N00° 21' 56"W LENGTH: 82.43'
NORTH: 860075.8010' EAST: 733493.7348'

SEGMENT #4 : LINE

COURSE: S53° 33' 54"E LENGTH: 58.70'
NORTH: 860040.9384' EAST: 733540.9607'

PERIMETER: 282.24' AREA: 3,873.99 SQ. FT. (0.0889 ACRE)
ERROR CLOSURE: 0.0000' COURSE: N00° 00' 00"E
ERROR NORTH: 0.00000' EAST: 0.00000'

PRECISION 1: 282,260,000.00

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Surveyor AZ No. 33868*

*(Expires 6/30/14)
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UPRR LICENSE AREA #2

NORTH: 859909.5615' EAST: 733607.8004'

SEGMENT #1 : LINE

COURSE: N00° 21' 56"W LENGTH: 82.43'
NORTH: 859991.9899' EAST: 733607.2745'

SEGMENT #2 : LINE

COURSE: S53° 33' 54"E LENGTH: 77.43'
NORTH: 859946.0034' EAST: 733669.5693'

SEGMENT #3 : LINE

COURSE: S00° 21' 56"E LENGTH: 82.43'
NORTH: 859863.5751' EAST: 733670.0952'

SEGMENT #4 : LINE

COURSE: N53° 33' 54"W LENGTH: 77.43'
NORTH: 859909.5615' EAST: 733607.8004'

PERIMETER: 319.71' AREA: 5,110.37 SQ. FT. (0.1173 ACRE)

ERROR CLOSURE: 0.0000' COURSE: N00° 00' 00"E

ERROR NORTH: 0.00000' EAST: 0.00000'

PRECISION 1: 319,720,000.00

*Professional Land
Surveyor AZ No. 33868*

(Expires 6/30/14)
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EXHIBIT B

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
General Terms and Conditions

EXHIBIT B

TO PUBLIC HIGHWAY AT GRADE CROSSING AGREEMENT

GENERAL TERMS AND CONDITIONS

SECTION 1. CONDITIONS AND COVENANTS

- A. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The City shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the City shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipe lines. Any lines constructed on the Railroad's property by or under authority of the City for the purpose of conveying electric power or communications incidental to the City's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the City to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.
- B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes. In the event the Railroad shall place additional tracks upon the Crossing Area, the City shall, at its sole cost and expense, modify the Roadway to conform with all tracks within the Crossing Area.
- C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The City shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the City at its own expense settles with and obtains releases from such nonparties.
- D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property; and the right to cross the Crossing Area with all kinds of equipment.
- E. So far as it lawfully may do so, the City will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or assessed upon or against the Crossing Area, excepting taxes levied upon and against the property as a component part of the Railroad's operating property.
- F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Roadway and its appurtenances, or for the performance of any work in connection with the Project, the City will acquire all such other property and rights at its own expense and without expense to the Railroad.

SECTION 2. CONSTRUCTION OF ROADWAY

- A. The City, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.
- B. Except as may be otherwise specifically provided herein, the City, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Roadway and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper highway warning devices (except those installed by the Railroad within its right of way) and all necessary drainage facilities, guard rails or barriers, and right of way fences between the Roadway and the railroad tracks. Upon completion of the Project, the City shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.
- C. All construction work of the City upon the Railroad's property (including, but not limited to, construction of the Roadway and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in compliance with the Plans, and other guidelines furnished by the Railroad.
- D. All construction work of the City shall be performed diligently and completed within a reasonable time. No part of the

Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the City. The City hereby assumes the risk of any such delays and agrees that no claims for damages on account of any delay shall be made against the Railroad by the State and/or the Contractor.

SECTION 3. INJURY AND DAMAGE TO PROPERTY

If the City, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the City is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the City at the City's own expense, or by the Railroad at the expense of the City, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

SECTION 4. RAILROAD MAY USE CONTRACTORS TO PERFORM WORK

The Railroad may contract for the performance of any of its work by other than the Railroad forces. The Railroad shall notify the City of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the City shall reimburse the Railroad for the amount of the contract.

SECTION 5. MAINTENANCE AND REPAIRS

- A. The City shall, at its own sole expense, maintain, repair, and renew, or cause to be maintained, repaired and renewed, the entire Crossing Area and Roadway, except the portions between the track tie ends, which shall be maintained by and at the expense of the Railroad.
- B. If, in the future, the City elects to have the surfacing material between the track tie ends, or between tracks if there is more than one railroad track across the Crossing Area, replaced with paving or some surfacing material other than timber planking, the Railroad, at the City's expense, shall install such replacement surfacing, and in the future, to the extent repair or replacement of the surfacing is necessitated by repair or rehabilitation of the Railroad's tracks through the Crossing Area, the City shall bear the expense of such repairs or replacement.

SECTION 6. CHANGES IN GRADE

If at any time the Railroad shall elect, or be required by competent authority to, raise or lower the grade of all or any portion of the track(s) located within the Crossing Area, the City shall, at its own expense, conform the Roadway to conform with the change of grade of the trackage.

SECTION 7. REARRANGEMENT OF WARNING DEVICES

If the change or rearrangement of any warning device installed hereunder is necessitated for public or Railroad convenience or on account of improvements for either the Railroad, highway or both, the parties will apportion the expense incidental thereto between themselves by negotiation, agreement or by the order of a competent authority before the change or rearrangement is undertaken.

SECTION 8. SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the City that the work will be performed in a safe manner and in conformity with the following standards:

- A. **Definitions.** All references in this Agreement to the City shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the City shall include work both within and outside of the Railroad's property.
- B. **Entry on to Railroad's Property by City.** If the City's employees need to enter Railroad's property in order to perform an inspection of the Roadway, minor maintenance or other activities, the City shall first provide at least ten (10) working days

advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the City, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the City's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of City's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.

C. Flagging.

- i. If the City's employees need to enter Railroad's property as provided in Paragraph B above, the City agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by City in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform City whether a flagman need be present and whether City needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill City for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, City agrees that City is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
- ii. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, City shall pay on the basis of the new rates and charges.
- iii. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though City may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, City must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, City will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

D. Compliance With Laws. The City shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The City shall use only such methods as are consistent with safety, both as concerns the City, the City's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The City (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the City to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the City shall reimburse, and to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The City further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

E. No Interference or Delays. The City shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or

signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

- F. **Supervision.** The City, at its own expense, shall adequately police and supervise all work to be performed by the City, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the City for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the City with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the City will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.
- G. **Suspension of Work.** If at any time the City's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the City is being or is about to be done or prosecuted without due regard and precaution for safety and security, the City shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.
- H. **Removal of Debris.** The City shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the City at the City's own expense or by the Railroad at the expense of the City. The City shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.
- I. **Explosives.** The City shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.
- J. **Excavation.** The City shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The City shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The City, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the City in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering - Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.
- K. **Drainage.** The City, at the City's own expense, shall provide and maintain suitable facilities for draining the Roadway and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The City, at the City's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the City, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The City shall not obstruct or interfere with existing ditches or drainage facilities.
- L. **Notice.** Before commencing any work, the City shall provide the advance notice to the Railroad that is required under the Contractor's Right of Entry Agreement.
- M. **Fiber Optic Cables.** Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. City shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency

calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the City. If it is, City will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

SECTION 9. INTERIM WARNING DEVICES

If at anytime it is determined by a competent authority, by the City, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the City shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the new or improved devices have been installed.

SECTION 10. OTHER RAILROADS

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

SECTION 11. BOOKS AND RECORDS

The books, papers, records and accounts of Railroad, so far as they relate to the items of expense for the materials to be provided by Railroad under this Project, or are associated with the work to be performed by Railroad under this Project, shall be open to inspection and audit at Railroad's offices in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of City for a period of three (3) years following the date of Railroad's last billing sent to City.

SECTION 12. REMEDIES FOR BREACH OR NONUSE

- A. If the City shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Roadway and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the City will reimburse the Railroad for the expenses thereof.
- B. Nonuse by the City of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the City hereunder.
- C. The City will surrender peaceable possession of the Crossing Area and Roadway upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

SECTION 13. MODIFICATION - ENTIRE AGREEMENT

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the City and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the City shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the City and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.

EXHIBIT C

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Railroad's Material & Force Account Estimate

DATE: 2014-11-03

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK
BY THE
UNION PACIFIC RAILROAD

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2015-05-02

DESCRIPTION OF WORK:
2014 RECOLLECT PROGRAM
PHOENIX SUBDIVISION
MP 925.73 DOT #741816D COOPER ROAD
INSTALL 200 TF OF CROSSING SURFACE INCLUDING TIES, RAIL, OTM
PROJECT TO BE FUNDED 100% BY CITY OF GILBERT AZ

PID: 75527 AWO: 11766 MP, SUBDIV: 925.73, PHOENIX
SERVICE UNIT: 16 CITY: GILBERT STATE: AZ

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
ENGINEERING WORK							
ENGINEERING			8500		8500		8500
LABOR ADDITIVE 211%			17936		17936		17936
TOTAL ENGINEERING			26436		26436		26436
SIGNAL WORK							
LABOR ADDITIVE 211%			2660		2660		2660
SIGNAL			1260	5	1265		1265
TOTAL SIGNAL			3920	5	3925		3925
TRACK & SURFACE WORK							
BALAST	5.00	CL	2952	4545	7497		7497
BILL PREP FEE				900	900		900
ENVIRONMENTAL - PERMITS				10	10		10
EQUIPMENT RENTAL				10000	10000		10000
FIELD WELD		4			4		4
FOREIGN LINE FREIGHT				1252	1252		1252
HOMELINE FREIGHT				900	900		900
LABOR ADDITIVE 211%			43959		43959		43959
MATL STORE EXPENSE				994	994		994
OTHER MATERIALS				25000	25000		25000
OTM			2475	6355	8830		8830
RAIL	480.00	LF	8254	10104	18358		18358
RDXING	200.00	TF	2787	45718	48505		48505
ROADWAY APPROACH WORK				25000	25000		25000
SALES TAX				3373	3373		3373
TRAFFIC CONTROL				25000	25000		25000
TRK-SURF, LIN			5562		5562		5562
WELD			2834	748	3582		3582
XTIE	156.00	EA	10214	16903	27117		27117
TOTAL TRACK & SURFACE			79041	176802	255843		255843
LABOR/MATERIAL EXPENSE			109397	176807			
RECOLLECTIBLE/UPRR EXPENSE					286204	0	
ESTIMATED PROJECT COST							286204
EXISTING REUSEABLE MATERIAL CREDIT					0		
SALVAGE NONUSEABLE MATERIAL CREDIT					0		
RECOLLECTIBLE LESS CREDITS							

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

EXHIBIT D

To Public Highway At-Grade Crossing
Agreement

Cover Sheet for the
Contractor's Right of Entry Agreement

Folder No.: 2870-47
UPRR Audit No.:

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 2014, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and

_____ (*Name of Contractor*)

a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by the City of Gilbert ("City's ") to install safety upgrades, including lights, gates, and cantilevers, and to conduct surface improvements to existing Cooper Rd., and Guadalupe Rd., at-grade public road crossings with all or a portion of such work to be performed on property of Railroad in the vicinity of the Railroad's Mile Post on Cooper Rd., at 925.73 (DOT 741816D) and Guadalupe Rd., at Mile Post 925.65 (DOT 741815W) on its Phoenix Subdivision in or near Gilbert, Maricopa County, Arizona, as such location is in the general location shown on the Railroad Location Print marked **Exhibit A** attached hereto and hereby made a part hereof, which work is the subject of a contract dated June 2, 2014, between the Railroad and City.

The Railroad is willing to permit the Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is

limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C & D.

The General Terms and Conditions contained in **Exhibit B**, the Insurance Requirements contained in **Exhibit C**, and the Minimum Safety Requirements contained in **Exhibit D**, each attached hereto, are hereby made a part of this Agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.

- A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.
- B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

ALEXANDER POPOVICI
MGR IND & PUBLIC PRO
631 S 7TH STREET
PHOENIX, AZ 85034
(602) 322-2510

ADRIAN S. DOMINGUEZ
MGR TRACK MNTCE
631 S 7TH STREET
PHOENIX, AZ 85034
(402) 216-2366

- C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this Agreement and continue until this Agreement is terminated as provided in this Agreement or until the Contractor has completed all work on Railroad's property.

ARTICLE 6 - TERM; TERMINATION.

- A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until _____, unless sooner terminated as herein
(Expiration Date)

provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

- B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 7 - CERTIFICATE OF INSURANCE.

- A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.
- B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

*Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, MS 1690
Omaha, NE 68179-1690
UPRR Folder No.: 2870-47*

ARTICLE 8 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 9 - CROSSINGS.

No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

ARTICLE 10 - CROSSINGS; COMPLIANCE WITH MUTCD AND FRA GUIDELINES.

- A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.
- B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such

noncompliance.

ARTICLE 11 - EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored or used on Railroad's property without the prior written approval of Railroad.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID #94-6001323)

By: _____
DAVID C. LAPLANTE
Senior Manager-Contracts

(Name of Contractor)

By _____
Printed Name: _____
Title: _____

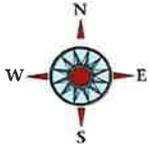


EXHIBIT "A"
RAILROAD LOCATION PRINT
ACCOMPANYING A
CROSSING IMPROVEMENT & SIGNAL PREEMPTION
AGREEMENT/CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT



UNION PACIFIC RAILROAD COMPANY

PHOENIX SUBDIVISION
RAILROAD MILE POST 925.73
GILBERT, MARICOPA COUNTY, AZ

To accompany a C&M and Contractor's Right of Entry with
CITY OF GILBERT and its CONTRACTORS
DOT No. 741816D (Cooper Rd)

UPRR Folder No. 2870-47 Date: July 9, 2014

WARNING

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE

PHONE: 1-(800) 336-9193

EXHIBIT B

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

GENERAL TERMS & CONDITIONS

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

- A. Contractor agrees to notify the Railroad Representative at least thirty (30) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
- B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.

- A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.
- B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.
- B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

- A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in

- Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.
- B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.
- C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

- A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.
- B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.
- C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.
- D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.
- E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

EXHIBIT C

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

INSURANCE REQUIREMENTS

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

A. COMMERCIAL GENERAL LIABILITY INSURANCE. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

B. BUSINESS AUTOMOBILE COVERAGE INSURANCE. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided.

Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

D. RAILROAD PROTECTIVE LIABILITY INSURANCE. Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

E. UMBRELLA OR EXCESS INSURANCE. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

F. POLLUTION LIABILITY INSURANCE. Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least

\$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

OTHER REQUIREMENTS

- G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

I. CLOTHING

- A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- i. Waist-length shirts with sleeves.
- ii. Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
- iii. Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. PERSONAL PROTECTIVE EQUIPMENT

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- i. Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- ii. Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- iii. Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers
 - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- iv. Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. ON TRACK SAFETY

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- i. Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.

- ii. Wear an orange, reflectorized workwear approved by the Railroad Representative.
- iii. Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. EQUIPMENT

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
- i. Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - ii. Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - iii. Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. GENERAL SAFETY REQUIREMENTS

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
- i. Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - ii. Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - iii. In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - iv. Avoid walking or standing on a track unless so authorized by the employee in charge.
 - v. Before stepping over or crossing tracks, look in both directions first.
 - vi. Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.

UPRR Folder No.: 2870-47
UPRR Audit No.: _____

SIGNAL INTERCONNECT AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2014, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at 1400 Douglas Street, MS1690, Omaha, Nebraska 68179-1690 (hereinafter "Railroad"), and the **CITY OF GILBERT**, a municipal corporation of Arizona to be addressed at 90 E. Civic Center Dr., Gilbert, AZ 85269 (hereinafter "Licensee"),

WITNESSETH:

WHEREAS, Licensee desires to undertake as its project the installation of highway traffic control signals at the intersection of a Cooper Road and Guadalupe Road on the Phoenix Subdivision Mile Post 925.73 in Gilbert, Maricopa County, Arizona, as shown on the Railroad Location Print, marked **Exhibit A**, hereto attached and hereby made a part hereof; and

WHEREAS, Railroad has grade crossing protection devices at the intersection of its track and the Cooper Rd., public road crossing at Mile Post 925.73, Phoenix Subdivision; and

WHEREAS, if necessary, Railroad agrees to install the necessary relays and other materials required to interconnect and coordinate the operation of said railroad grade crossing protection devices with the operation of said highway traffic control signals. If necessary, the Licensee will also install an underground traffic signal upon the Railroad's right of way from the aforesaid traffic signal to the railroad grade crossing protection device. Said work is to be performed at the sole expense of Licensee; and

WHEREAS, Licensee and Railroad, severally and collectively, desire to interconnect and coordinate the operation of said signals.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereunder set forth, it is agreed as follows:

ARTICLE 1 – LIST OF EXHIBITS

Exhibit A	Railroad Location Print
Exhibit B	Material & Force Estimate
Exhibit C	Form of Contractor's Right of Entry Agreement

ARTICLE 2 - SCOPE OF WORK

- a). Licensee and Railroad, severally and collectively, agree to interconnect and coordinate the operation of the railroad grade crossing protection devices with the operation of the highway traffic control signals at Mile Post 925.73, on the Phoenix Subdivision.
- b). Railroad agrees to install the necessary relays and other materials required for interconnect at Licensee's expense, as set forth in Article 2(d) below.
- c). Railroad hereby grants permission and authority to Licensee and/or its contractor to install the conduit with the necessary wiring on Railroad right of way on the condition that Licensee requires any of its contractors performing work on Railroad's property to enter into a Right of Entry Agreement with Railroad. Licensee acknowledges receipt of a copy of the Right of Entry Agreement and understanding of its terms, provisions, and requirements, and will inform its contractor of the need to execute the agreement. Under no circumstances will Licensee's contractor be allowed onto Railroad's premises without first executing the Right of Entry Agreement.
- d). The Political Body agrees to reimburse the Railroad for one hundred percent (100%) of Railroad's actual labor and material costs associated with the work and materials described herein. The Railroad estimates such cost to be ~~(\$624,438.00) SIX HUNDRED TWENTY FOUR THOUSAND FOUR HUNDRED THIRTY EIGHT DOLLARS~~ **\$816,163**, as set forth in Railroad's Material and Force Account Estimate dated ~~July 3, 2014~~ **October 10, 2014**, marked **Exhibit B**, hereto attached and hereby made a part hereof. Within one hundred twenty (120) days after Railroad has completed its work, the Railroad will submit a final billing to Political Body for any balance owed. Political Body shall pay the Railroad within Thirty (30) days of its receipt of all bills submitted by the Railroad.

ARTICLE 3 - CONSTRUCTION AND MAINTENANCE

The Licensee, at its expense, shall furnish all labor, material, equipment and supervision for the installation and maintenance of highway traffic control signals at the intersection described above at DOT 752156A.

ARTICLE 4 - PAYMENT

In addition to the payment set forth in Article 1D above, in consideration of Licensee's agreement to perform and abide by the terms of this Agreement and the work to be performed by Railroad, Licensee agrees to pay Railroad an administrative fee of **ONE THOUSAND DOLLARS (\$1,000.00)** upon the execution of this Agreement.

ARTICLE 5 - CONDITIONS

- a). Except as set forth in Article 5, Licensee shall not be liable to Railroad on account of any failure of Railroad's flasher lights to operate properly nor shall Railroad have or be entitled to maintain any action against Licensee arising from any failure from Railroad's flasher lights to operate properly. Similarly, Railroad shall not be liable to Licensee on account of any failure of Licensee's traffic signal to operate properly nor shall Licensee have or be entitled to maintain any action against Railroad arising from any failure of Licensee's traffic signal to operate properly.
- b). Licensee reserves the right to cancel this agreement for any reason and at any time prior to

Railroad proceeding with any part of the work outlined herein.

- c). Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee or its contractor(s) shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour number, 7 day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's premises to be used by Licensee or its contractor(s). If it is, Licensee or its contractor(s) will telephone the telecommunication company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on Railroad's premises.

ARTICLE 6 - INTERFERENCE

Each party shall take all suitable precautions to prevent any interference (by induction, leakage of electricity or otherwise) with the operation of the other party's signals or communications lines, or those of its tenants; and if, at any time, the operation or maintenance of its signals results in any electrostatic effects, the party whose signals are causing the interference shall, at its expense, immediately take such action as may be necessary to eliminate such interference.

ARTICLE 7 - CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE

- a). If the Licensee will be hiring a contractor or contractors to perform any work involving the Project (including initial construction and any subsequent relocation or maintenance and repair work), the Licensee shall require its contractor(s) to (i) execute the Railroad's then current Contractor's Right of Entry Agreement; (ii) obtain the insurance coverage described in Exhibit C of the current Contractor's Right of Entry Agreement; and (iii) provide the insurance policies, certificates, binders and/or endorsements to Railroad that are required in Exhibit C of the current Contractor's Right of Entry Agreement before allowing any of its contractor(s) and their respective subcontractors to commence any work in the Crossing Area or on any other Railroad property.
- b). The Licensee acknowledges receipt of a copy of Railroad's current Contractor's Right of Entry Agreement, attached hereto as **Exhibit C** and hereby made a part hereof, and confirms that it will inform its contractor(s) that it/they and their subcontractors are required to execute such form of agreement before commencing any work on any Railroad property. Under no circumstances will Licensee's contractor(s) or any subcontractors be allowed on to Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to Railroad the insurance policies, binders, certificates and/or endorsements described therein.
- c). All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

*Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, MS1690
Omaha, NE 68179-1690
UPRR Folder No. 2870-47*

d). If the Licensee's own employees will be performing any of the Project work, the Licensee may self-insure all or a portion of the insurance coverage subject to Railroad's prior review and approval.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate on the day and year first herein written.

UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID #94-6001323)

By _____
DANIEL A. LEIS
General Director-Real Estate

ATTEST:

CITY OF GILBERT

By _____

Printed Name: _____

Title: _____

EXHIBIT A

To Advanced Signal Agreement

Cover Sheet for the
Railroad Location Print

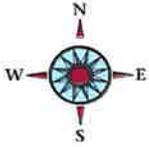


EXHIBIT "A"
RAILROAD LOCATION PRINT
ACCOMPANYING A
CROSSING IMPROVEMENT & SIGNAL PREEMPTION
AGREEMENT/CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT



RR MP 925.73, Phoenix Sub.

UNION PACIFIC RAILROAD COMPANY

PHOENIX SUBDIVISION
RAILROAD MILE POST 925.73
GILBERT, MARICOPA COUNTY, AZ

To accompany a C&M and Contractor's Right of Entry with
CITY OF GILBERT and its CONTRACTORS
DOT No.741816D (Cooper Rd)

UPRR Folder No. 2870-47 Date: July 9, 2014

WARNING

IN ALL OCCASIONS, U.P. COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE

PHONE: 1-(800) 336-9193

EXHIBIT B

To Advanced Signal Pre-Emption Agreement

Cover Sheet for the Form of
Material & Force Estimate

DATE: 2014-10-10

ESTIMATE OF MATERIAL AND FORCE ACCOUNT WORK

BY THE

UNION PACIFIC RAILROAD

THIS ESTIMATE GOOD FOR 6 MONTHS EXPIRATION DATE IS :2015-04-10

DESCRIPTION OF WORK:

INSTALL AUTOMATIC FLASHING LIGHT CROSSING SIGNALS
WITH GATES AND CANTILEVERS AT GILBERT, AZ. COOPER RD.

M.P. 925.73 ON THE PHOENIX SUB. DOT #741816D

WORK TO BE PERFORMED BY RAILROAD WITH EXPENSE AS BELOW:

SIGNAL - CITY OF GILBERT - 100%

ESTIMATED USING FEDERAL LABOR ADDITIVES WITH INDIRECT AND

OVERHEAD CONSTRUCTION COST'S - SIGNAL 176.51% & TRACK 211.70%

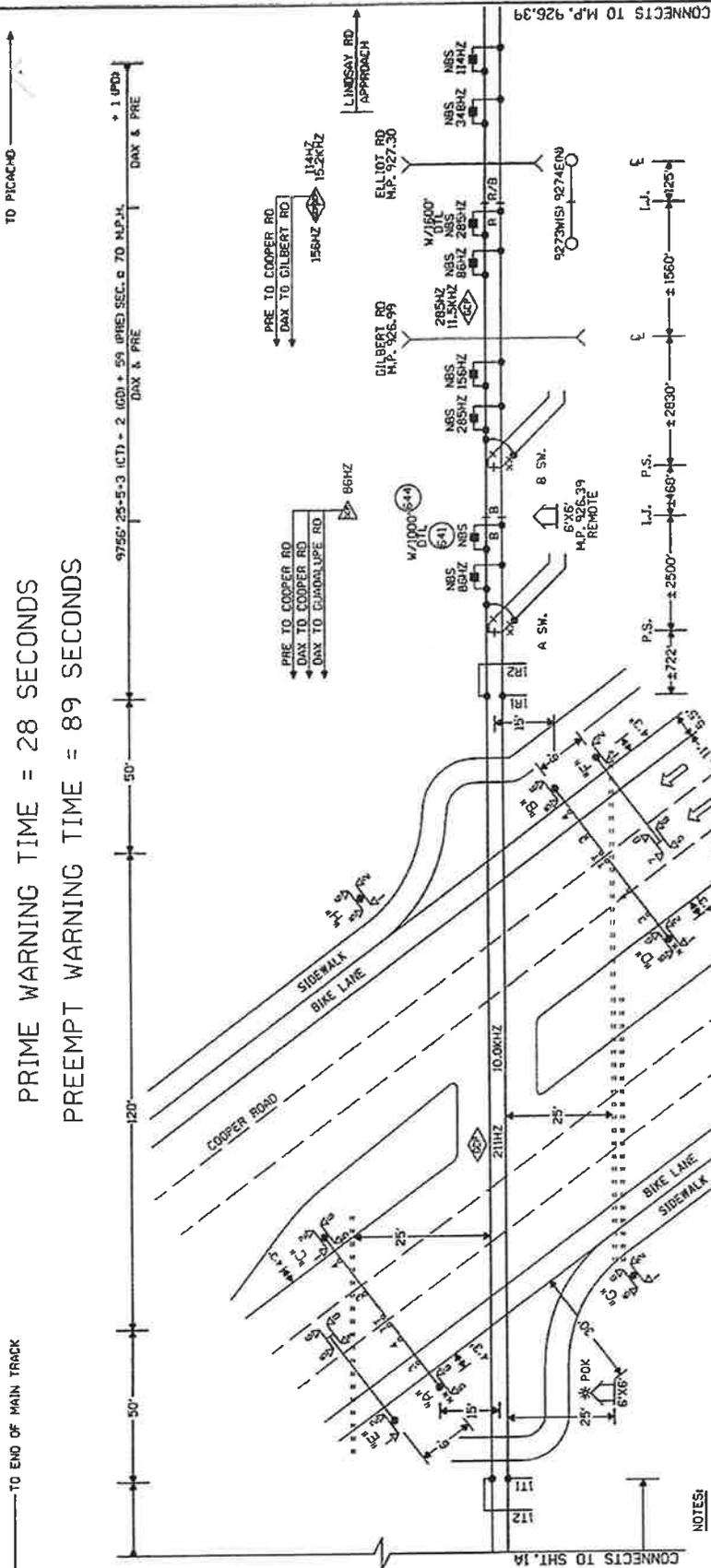
PID: 75530 AWO: 11769 WP,SUBDIV: 925.73, PHOENIX

SERVICE UNIT: 16 CITY: GILBERT STATE: AZ

DESCRIPTION	QTY	UNIT	LABOR	MATERIAL	RECOLL	UPRR	TOTAL
ENGINEERING WORK							
ENGINEERING			10028		10028		10028
LABOR ADDITIVE 176.51%			26134		26134		26134
SIG-HWY XNG			4821		4821		4821
TOTAL ENGINEERING			40983		40983		40983
SIGNAL WORK							
BILL PREP			900		900		900
CANTILEVERS				39884	39884		39884
CONTRACT				15008	15008		15008
FOUNDATION REMOVAL				5000	5000		5000
LABOR ADDITIVE 176.51%			278151		278151		278151
MATL STORE EXPENSE				25	25		25
METER SERVICE				15000	15000		15000
PERSONAL EXPENSES				70872	70872		70872
ROCK/GRAVEL/FILL				5000	5000		5000
SALES TAX				6003	6003		6003
SIGNAL			156683	150086	306769		306769
TRANSP/IB/OB/RCLW CONTR				22803	22803		22803
TOTAL SIGNAL			435734	329681	765415		765415
TRACK & SURFACE WORK							
ENVIRONMENTAL - PERMITS				10	10		10
FIELD WELD			132		132		132
LABOR ADDITIVE 211.70%			3430		3430		3430
MATL STORE EXPENSE				160	160		160
OTM			2675	2966	5641		5641
SALES TAX				128	128		128
WELD			11	253	264		264
TOTAL TRACK & SURFACE			6248	3517	9765		9765
LABOR/MATERIAL EXPENSE			482965	333198			
RECOLLECTIBLE/UPRR EXPENSE					816163	0	
ESTIMATED PROJECT COST							816163

THE ABOVE FIGURES ARE ESTIMATES ONLY AND SUBJECT TO FLUCTUATION. IN THE EVENT OF AN INCREASE OR DECREASE IN THE COST OR QUANTITY OF MATERIAL OR LABOR REQUIRED, UPRR WILL BILL FOR ACTUAL CONSTRUCTION COSTS AT THE CURRENT EFFECTIVE RATE.

PRIME WARNING TIME = 28 SECONDS
 PREEMPT WARNING TIME = 89 SECONDS



NOTES:

- ⊗ TWISTED WIRES INSULATED 1 TWIST PER FT. ALL TRACK WIRES 2C-#6
- TRANSMITTER AND RECEIVER LEADS TO BE SEPARATED BY AT LEAST 12" IN TRENCH. LENGTHS SHOULD NOT EXCEED MANUFACTURER'S RECOMMENDATION.
- TOP OF FOUNDATION TO BE AT SAME ELEVATION AS THE SURFACE OF THE TRAVELED WAY & NO MORE THAN 4" ABOVE THE SURFACE OF THE GROUND.
- ALL BUNGALOW WIRING TO BE 1/8" AND FLEX WIRE TO BE #6 AND FLEX OR LARGER.
- ALL WIRING IN GATE MECHANISM TO BE #10 AWG FLEX.
- REFER TO UP STANDARD DWG FOR BUNGALOW GROUNDING.
- PORTABLE GENERATOR EXTENSION CORD FOR TABLE WIRING IS PROVIDED AS WELL AS A 120V TO 240V ADAPTER.
- ALL LIGHTS TO BE 12" ROUNDELS.
- ***** 4" X 26" CONDUIT
- LIGHTS: LED LIGHTS
- GATE A: 20'
- GATE B: 20'
- GATE C: 26'
- GATE D: 26'
- CANT: 58 FT 28'
- xx = BELL

CONSTRUCTION NOTES:

1. FIELD VERIFY PLACEMENT OF FLASHERS "E" & "F".
2. DUE TO JOINT PREEMPTION OPERATION OF GUADALUPE RD AND COOPER RD, COOPER APPROACH TO BE EXTENDED 62' TO COMPENSATE FOR GUADALUPE TRACK WIRE OFFSET BETWEEN GUADALUPE RD AND COOPER RD.

CABLE TABULATION

PROTECTION LEVEL	DU	DU	DU	DU	DU
CABLE #11 12C#14 U.C.B.T. HOUSE TO M.P. 925.65					
CABLE #12 25#14 U.C.B.T. HOUSE TO M.P. 925.39					
CABLE #14 U.C.B.T. HOUSE TO TRAFFIC CONTROLLER					
CABLE #15 U.C.B.T. HOUSE TO TRAFFIC CONTROLLER					

DESCRIPTION	DATE	BY	REVISION
D.A. LAST LEVEL CHECKED	10/22/13		
LAST LEVEL MOD THIS TYPICAL			
LAST LEVEL BY DESIGNER			
LAST LEVEL BY FIELD			
CHANGED FROM TYPICAL?			

DESCRIPTION	DATE	BY	REVISION
NOTALOG W/OUTER PLUGGING	10/22/13		
LAST LEVEL BY DESIGNER			
LAST LEVEL BY FIELD			
CHANGED FROM TYPICAL?			

DATE	DESCRIPTION	BY	REVISION
10/22/13	ISSUE FOR CONSTRUCTION		
10/22/13	ISSUE FOR CONSTRUCTION		

"FOR ESTIMATING"
 -PRELIMINARY-
 NOT FOR CONSTRUCTION

NEW SHEET
 UNION PACIFIC RAILROAD
 GILBERT ARIZONA
 COOPER ROAD
 PHOENIX SUBDIVISION

DATE	10/22/13
DATE EAM CHG	
PIB	75000
AFE	11769

UNION PACIFIC RAILROAD
 GILBERT ARIZONA
 COOPER ROAD
 PHOENIX SUBDIVISION

DATE	10/22/13
DATE EAM CHG	
PIB	75000
AFE	11769

DATE	10/22/13
DATE EAM CHG	
PIB	75000
AFE	11769

DATE	10/22/13
DATE EAM CHG	
PIB	75000
AFE	11769

EXHIBIT C

Cover Sheet to Contractor's Right of Entry

Folder No.: 2870-47
UPRR Audit No.:

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 2014, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and

_____ (*Name of Contractor*)

a _____ corporation ("Contractor").

RECITALS:

Contractor has been hired by the City of Gilbert ("City's ") to install safety upgrades, including lights, gates, and cantilevers, and to conduct surface improvements to existing Cooper Rd., and Guadalupe Rd., at-grade public road crossings with all or a portion of such work to be performed on property of Railroad in the vicinity of the Railroad's Mile Post on Cooper Rd., at 925.73 (DOT 741816D) and Guadalupe Rd., at Mile Post 925.65 (DOT 741815W) on its Phoenix Subdivision in or near Gilbert, Maricopa County, Arizona, as such location is in the general location shown on the Railroad Location Print marked **Exhibit A** attached hereto and hereby made a part hereof, which work is the subject of a contract dated June 2, 2014, between the Railroad and City.

The Railroad is willing to permit the Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is

limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C & D.

The General Terms and Conditions contained in **Exhibit B**, the Insurance Requirements contained in **Exhibit C**, and the Minimum Safety Requirements contained in **Exhibit D**, each attached hereto, are hereby made a part of this Agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.

- A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.
- B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

ALEXANDER POPOVICI
MGR IND & PUBLIC PRO
631 S 7TH STREET
PHOENIX, AZ 85034
(602) 322-2510

ADRIAN S. DOMINGUEZ
MGR TRACK MNTCE
631 S 7TH STREET
PHOENIX, AZ 85034
(402) 216-2366

- C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5 - SCHEDULE OF WORK ON A MONTHLY BASIS.

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this Agreement and continue until this Agreement is terminated as provided in this Agreement or until the Contractor has completed all work on Railroad's property.

ARTICLE 6 - TERM; TERMINATION.

- A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until _____, unless sooner terminated as herein
(Expiration Date)

provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

- B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 7 - CERTIFICATE OF INSURANCE.

A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.

- B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

*Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street, MS 1690
Omaha, NE 68179-1690
UPRR Folder No.: 2870-47*

ARTICLE 8 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 9 - CROSSINGS.

No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

ARTICLE 10 - CROSSINGS; COMPLIANCE WITH MUTCD AND FRA GUIDELINES.

A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such

noncompliance.

ARTICLE 11 - EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored or used on Railroad's property without the prior written approval of Railroad.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID #94-6001323)

By: _____
DAVID C. LAPLANTE
Senior Manager-Contracts

(Name of Contractor)

By _____

Printed Name: _____

Title: _____

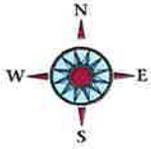


EXHIBIT "A"
RAILROAD LOCATION PRINT
ACCOMPANYING A
CROSSING IMPROVEMENT & SIGNAL PREEMPTION
AGREEMENT/CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT



UNION PACIFIC RAILROAD COMPANY

PHOENIX SUBDIVISION
RAILROAD MILE POST 925.73
GILBERT, MARICOPA COUNTY, AZ

To accompany a C&M and Contractor's Right of Entry with
CITY OF GILBERT and its CONTRACTORS
DOT No. 741816D (Cooper Rd)

UPRR Folder No. 2870-47 Date: July 9, 2014

WARNING

IN ALL OCCASIONS, U P COMMUNICATIONS DEPARTMENT MUST BE CONTACTED IN ADVANCE OF
ANY WORK TO DETERMINE EXISTENCE AND LOCATION OF FIBER OPTIC CABLE

PHONE: 1-(800) 336-9193

EXHIBIT B

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

GENERAL TERMS & CONDITIONS

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

- A. Contractor agrees to notify the Railroad Representative at least thirty (30) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.
- B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.
- C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

- A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

- B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.

- A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.
- B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

- A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.
- B. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

- A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in

Exhibit D, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

- B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.
- C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.
- D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

- A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.
- B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.
- C. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.
- D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert liability against any Indemnified Party.
- E. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

EXHIBIT C

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

INSURANCE REQUIREMENTS

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

A. COMMERCIAL GENERAL LIABILITY INSURANCE. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

B. BUSINESS AUTOMOBILE COVERAGE INSURANCE. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE. Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the state where the work is being performed.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided.

Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

D. RAILROAD PROTECTIVE LIABILITY INSURANCE. Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

E. UMBRELLA OR EXCESS INSURANCE. If Contractor utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

F. POLLUTION LIABILITY INSURANCE. Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least

\$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

OTHER REQUIREMENTS

- G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.
- I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.
- J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D

TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

I. CLOTHING

A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- i. Waist-length shirts with sleeves.
- ii. Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
- iii. Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.

B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.

C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. PERSONAL PROTECTIVE EQUIPMENT

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- i. Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- ii. Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- iii. Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers
 - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
- iv. Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. ON TRACK SAFETY

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- i. Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.

- ii. Wear an orange, reflectorized workwear approved by the Railroad Representative.
- iii. Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. EQUIPMENT

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
- i. Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - ii. Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - iii. Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. GENERAL SAFETY REQUIREMENTS

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:
- i. Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - ii. Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - iii. In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - iv. Avoid walking or standing on a track unless so authorized by the employee in charge.
 - v. Before stepping over or crossing tracks, look in both directions first.
 - vi. Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Bill Kohn, Fleet Business Manager, 503-6526

MEETING DATE: December 2, 2014

SUBJECT: Purchase of Six (6) Vehicles

<p>STRATEGIC INITIATIVE: N/A</p>

RECOMMENDED MOTION

Motion to authorize the purchase of six (6) vehicles pursuant to cooperative purchase agreement 2012-1103-0222 with San Tan Ford not to exceed \$162,115 including taxes.

BACKGROUND/DISCUSSION

Council approved the purchase of new and replacement vehicles to the Town's fleet through the FY15 budget process. Each vehicle being replaced has been thoroughly inspected and evaluated for replacement in accordance with the adopted replacement procedure. The attachment includes a complete listing of all vehicles and pricing information.

Quotes for $\frac{3}{4}$ ton pickups authorized in the FY15 budget process for the Wastewater Replacement, Water and Water Replacement Funds fund are higher than originally budgeted due to the following: 1) price increases on the vehicles from the manufacturer. 2) Fleet, working with Water and Wastewater, has determined that 'like for like' replacements do not meet the business need of these areas and the requested replacements require upgrading from $\frac{1}{2}$ ton pickups to $\frac{3}{4}$ ton pickups with service bodies to improve efficiencies. Accordingly, a water fund contingency transfer in the amount of \$3,246; water replacement fund contingency transfer in the amount of \$12,418; and a wastewater replacement fund contingency transfer in the amount of \$31,760 were approved internally and will be included on the second quarter contingency report.

Cooperative purchases are exempt from the requirement of bid by Gilbert because these contracts have been previously bid by another entity. Cooperative purchase contracts may only be used when the Gilbert Purchasing Officer has made a written determination that re-bidding

the contract is unlikely to result in a lower price. Gilbert Municipal Code § 2-357(b)(2). The Purchasing Officer has made this determination in this case.

Although bidding was not required for this purchase, as additional due diligence staff obtained written quotes from Courtesy Chevrolet as well as AutoNation Chevrolet. San Tan Ford, a local vendor and State contract holder, was identified as having the best price for the purchase of the 3/4 ton pickups.

The contract was reviewed by Doug Boyer, Purchasing Administrator.

FINANCIAL IMPACT

The purchase of six (6) vehicles (excluding upfitting costs) will not exceed \$162,115.

Vehicles approved for purchase in the FY15 budget:

- General Replacement Fund (1), \$22,779 (excluding upfit) or \$29,600 (with upfit)
- Wastewater Replacement Fund (3), \$81,057 (excluding upfit) or \$88,082 (with upfit)
- Water Fund Addition (1), \$29,139 (excluding upfit) or \$33,168 (with upfit)
- Water Replacement Fund (1), \$29,139 (excluding upfit) or \$31,739 (with upfit)

The anticipated upfitting equipment costs included in the vehicle listing will be purchased through various vendors and will include items such as tool boxes and lighting.

As mentioned in the background discussion, contingency transfers for the wastewater and water replacement, and water funds were approved internally for the change to a ¾ ton truck with upfit expenses. These will be included in the second quarter contingency report for Council.

The attached listing of vehicles details the vehicles, vehicle numbers if replacement vehicles, total budgeted in the FY15 capital outlay listing and the total cost including upfit.

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

STAFF RECOMMENDATION

Staff recommends approval for the purchase of six (6) vehicles pursuant to cooperative purchase agreement 2012-1103-0222 with San Tan Ford not to exceed \$162,115 including taxes.

Respectfully submitted,

Bill Kohn
Fleet Business Manager

Attachments:
Listing of Vehicles
Quotes

Approved By

Cindi Mattheisen
Mary Vinzant
Douglas Boyer

Approval Date

11/18/2014 3:45 PM
11/19/2014 10:45 AM
11/18/2014 3:49 PM



Lloyd Covault
 Government Sales Manager
 Cell: 602-684-5500
 Fax: 480-621-3796
 Office: 480-621-3741
 Email: lloydcovault@santanford.com

Attn: Bill Kohn
 City of Gilbert
 480-503-6526

bill.kohn@gilbertaz.gov
 Quote: STF15007

Date: 12-Nov-14

Customer: City of Gilbert

Item/State Contract #: ADSP012-016671

Vehicle Description: 2015 F-250 Reg Cab XL 4X2 LWB

Qty: 1

	<u>Each</u>	<u>Extended</u>
Base Bid Price:	\$20,981.00	\$20,981.00

<u>Item:</u>	<u>Option #:</u>	<u>Description:</u>		
1	F2A	2015 Ford F-250 Reg Cab 4X2 XL LWB	\$0.00	\$0.00
2	Z1	White	\$0.00	\$0.00
3	1S	Steel cloth	\$0.00	\$0.00
4	DIO	window tint	\$150.00	\$150.00
5	996	6.2 V-8 FFV	\$0.00	\$0.00
6	44P	6 speed auto	\$0.00	\$0.00
7	600A	XI Pkg	\$0.00	\$0.00
8			\$0.00	\$0.00
9			\$0.00	\$0.00
10			\$0.00	\$0.00
11			\$0.00	\$0.00
12			\$0.00	\$0.00
13			\$0.00	\$0.00
14			\$0.00	\$0.00
15			\$0.00	\$0.00
16	ASH	Service body 8 FT.	\$5,895.00	\$5,895.00
17			\$0.00	\$0.00
18			\$0.00	\$0.00
19			\$0.00	\$0.00
20			<u>\$0.00</u>	<u>\$0.00</u>

Bid Price (with options):	\$27,026.00	\$27,026.00
Sales Tax 7.8%	\$2,108.03	\$2,108.03
SubTotal:	\$29,134.03	\$29,134.03
Tire Tax (each):	\$5.00	\$5.00
	\$0.00	\$0.00
Total Delivered Price:	\$29,139.03	\$29,139.03

Notes:

*=optional. Without ExtraCare total delivered price is : **\$29,139.03**

Vehicle pricing chart

Vehicle	Model Year	Ford MSRP Base	San Tan Ford			
			State Contract	Chevrolet MSRP Base	Midway Chevrolet	Auto Nation Chevrolet
1/2 ton Pickup Std Cab	2015	\$ 27,466.31	\$ 22,981.00	\$ 28,206.45	\$ 21,060.18	\$ 21,168.48
1/2 ton Pickup Std Cab	2014	\$ 25,025.00	\$ 17,450.00	\$ 27,633.78	\$ 20,865.00	NA
1/2 ton Pickup Ext/ Super Cab	2015	\$ 28,177.00	\$ 22,981.49	\$ 35,725.00	\$ 26,427.51	\$ 26,526.40
3/4 ton Pickup Std Cab	2015	\$ 31,528.68	\$ 24,001.00	\$ 33,799.14	\$ 25,725.00	\$ 24,706.62
3/4 Ton Crew Cab W/ service body	2015	\$ 38,227.10	\$ 34,309.12	\$ 40,495.56	\$ 34,809.38	\$ 29,218.38
Small Sedan	2015	\$ 23,673.75	\$ 19,078.05	\$ 24,273.43	\$ 21,060.20	\$ 20,451.39

all pricing quotes include sales tax

Earnhart Dodge	Chapman Ford
No interest	\$ 27,525.00
Requested	\$ 23,992.00
No interest	\$ 36,733.00
multiple requests	\$ 32,505.10
no response.	\$ 41,251.00
n/r	\$ 23,678.00

ATTACHMENT - Listing of Vehicles

Fund Description	Department	Vehicle	Replacing with:	Dealer	Vehicle Cost	Vehicle Upfit Cost	Total Cost	FY15 Budget	Amount Over (under)
General Replacement	Parks & Open Space	557	2015 Chevrolet Silverado 2500	San Tan Ford	\$ 22,779.22	\$ 6,820.78	\$ 29,600.00	\$ 29,600.00	\$ -
					\$ 22,779.22	\$ 6,820.78	\$ 29,600.00	\$ 29,600.00	\$ -
Wastewater Replacement	Effluent Re-use	637	2015 Chevrolet Silverado 2500 with Service Body	San Tan Ford	\$ 29,139.03	\$ 2,600.00	\$ 31,739.03	\$ 19,400.00	\$ 12,339.03
Wastewater Replacement	Effluent Recharge	670	2015 Chevrolet Silverado 2500	San Tan Ford	\$ 22,779.22	\$ 1,825.00	\$ 24,604.22	\$ 19,400.00	\$ 5,204.22
Wastewater Replacement	Wastewater Collection	534	2015 Chevrolet Silverado 2500 with Service Body	San Tan Ford	\$ 29,139.03	\$ 2,600.00	\$ 31,739.03	\$ 19,400.00	\$ 12,339.03
					\$ 81,057.28	\$ 7,025.00	\$ 88,082.28	\$ 58,200.00	\$ 29,882.28
Water	Water Metering	Addition	2015 Chevrolet Silverado 2500 with Service Body	San Tan Ford	\$ 29,139.03	\$ 4,028.70	\$ 33,167.73	\$ 30,000.00	\$ 3,167.73
					\$ 29,139.03	\$ 4,028.70	\$ 33,167.73	\$ 30,000.00	\$ 3,167.73
Water Replacement	Water Well Production	462	2015 Chevrolet Silverado 2500 with Service Body	San Tan Ford	\$ 29,139.03	\$ 2,600.00	\$ 31,739.03	\$ 19,400.00	\$ 12,339.03
					\$ 29,139.03	\$ 2,600.00	\$ 31,739.03	\$ 19,400.00	\$ 12,339.03

\$ 162,114.56 \$ 20,474.48 \$ 182,589.04 \$ 137,200.00 \$ 45,389.04



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Gregory B Smith, PE/PS, Town Engineer, 503-6844

MEETING DATE: December 2, 2014

SUBJECT: Elliot District Park Facility Repairs

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's strategic initiative for Infrastructure by maintaining the park quality to meet the needs of Gilbert's citizens.

RECOMMENDED MOTION

A motion to approved Change Order No. 1 in the amount of \$391,529.47 with Haydon Building Corp and approve a contingency transfer in the amount of \$391,530 to pay for unexpected costs associated with the ongoing safety repairs at the Elliot District Park complex, PR114.

BACKGROUND/DISCUSSION

On July 31, 2014 Council approved a contract with Haydon Building Corp for the Elliot District Park Safety Repairs Project in the amount of \$1,281,503.00. A change order in the amount of \$391,530 is requested for additional safety items that were identified once the project began, in addition to a no cost time extension of 10 days.

The change order was reviewed for form by Town Attorney Michael Hamblin.

FINANCIAL IMPACT

Insufficient budget exists in the Elliot District Park Repairs project pr114 for this change order. General fund contingency in the amount of \$391,530 is requested in order to have sufficient appropriation for this change order.

Summary of Contract Activity

CMAR Pre-Con Services Contract	\$69,700	Approved June 5, 2014
CMAR Construction Services Contract	\$1,281,503	Approved July 31, 2014
CMAR Construction Services Contract	\$391,530	Approval Pending

Project Accounting Code: pr114-7520-8010

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

STAFF RECOMMENDATION

Staff has reviewed the fees associated with this work and finds that they meet Gilbert's expectations for the services, and recommends approval of the change orders and necessary contingency transfer for pr114.

Respectfully submitted,

Gregory B Smith, PE/PS
Town Engineer

Approved By

Approval Date

Michael Hamblin
Laura Lorenzen

11/20/2014 4:45 PM
11/20/2014 3:31 PM

**CHANGE ORDER NO. 001
(Construction Manager at Risk)**

PROJECT: Big League Dreams, Safety Repairs Phase 1
DATE: 11/12/14
OWNER: Town of Gilbert
PROJECT NO: PR114
CONTRACT NO: 2014-7012-0397
CM@R: Haydon Building Corp (AZ)
CONTRACT DATED: 08/18/14
PM/CM: Stanley Consultants, Inc.

CHANGES: The CONTRACT is changed as follows:

COR-002 (time only)- 10 day time extension (without cost) associated to adjust for actual time estimates identified by contractor bids received after GMP development. Work includes excavation and lean backfill at 11 stadium stair aisles (3 side aisles and 8 center aisles).

COR-006- Remove and replace 13 side aisles and 8 center aisles. Excavation, scarify and lean slurry backfill per RFI 001. Handrail installation at center aisles, floor drain plumbing repairs and modifications, miscellaneous electrical repairs, caulking at new concrete joints (supporting documents- ITC 01, ITC 09, RFI 11, RFI 14, RFI 19, RFI 20). Credit for "bathtubs" and switchback ramps. Time extension of 42 days (without cost)

COR- 012- Revise elevation of 18 existing floor drains within walkways to eliminate safety hazards. Existing concrete walkway slopes greater than max allowable by ADA standards (Supporting documents- ITC 012). Time extension of 8 days (burdened).

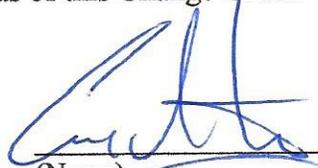
<u>COST/TIME: Original CONTRACT SUM:</u>	<u>\$1,281,503.00</u>
<u>Previously Authorized CHANGE ORDERS:</u>	<u>\$0</u>
<u>CONTRACT Price prior to this CHANGE ORDER:</u>	<u>\$1,281,503.00</u>
<u>CHANGE ORDER # 001 Amount:</u>	<u>\$391,529.47</u>
<u>New Contract Price:</u>	<u>\$1,673,032.47</u>

CONTRACT TIME will be increased by: 60 Days

SUBSTANTIAL COMPLETION as of this Change Order: 03/25/15

Approved/Accepted by:

PM/CM:



(Name) 11/12/14

(Date)

CM@R:



(Name) 11/12/14

(Date)

GILBERT:

(Name) _____
(Date)

Not valid until signed by both GILBERT and PM/CM. Signature of CM@R indicates acceptance, including CONTRACT PRICE and CONTRACT TIME.



4640 E. Cotton Gin Loop
 Phoenix, AZ 85040
 Ph : (602)296-1496

Change Request

To: Lee Brush
 Town of Gilbert
 50 E Civic Center Drive
 Gilbert, AZ 85234

Number: COR-002
 Date: 9/3/14
 Job: 1009-1724-00 Big League Dreams

Description: Lean fill slurry and overex budget to actual bid prices

Reason: Field Condition

Source:

Change Order Request to amend previous lean fill slurry and overex budget to actual bid prices per the attached sub proposals, correspondence and reconciliation of costs. Cost reconciliation is based on 8 Center Aisles, 3 End Aisles and 16 Dugouts. Original budget pricing was produced on short notice at client's request with the understanding that bid pricing had not yet been received. The attached 3 bids and reconciliation table illustrate the actual cost of work. Haydon Building Corp is requesting access to contingency funds to cover the delta between budget figures and actual cost of the work

Description	Price
OverEx - Budget	\$-28,945.00
OverEx - Bids	\$98,629.00
Lean Fill Slurry - Budget	\$-87,344.00
Lean Fill Slurry - Bids	\$50,128.00
Bond	\$393.33
Builders Risk	\$95.58
Liability Insurance	\$255.64
Fee	\$1,932.63
Indirects	\$426.79
Sales Tax	\$1,752.70
Owner Contingency	\$-38,322.67
	Subtotal: 0.00
	Bond 0.00
	Builders Risk 0.00
	Liability Insurance 0.00
	Contractor Fee 0.00
	Indirects 0.00
	Sales Tax 0.00
	Total: 0.00

Please note that HAYDON BUILDING CORP (AZ) will require an extra 10 days.
 If you have any questions, please contact me at 602.980.1818.

Submitted by: Arthur Oldham
 Haydon Building Corp

Approved by: _____
 Date: _____

Cc: Colby Northern



4640 E. Cotton Gin Loop
 Phoenix, AZ 85040
 Ph : (602)296-1496

Change Request

To: Lee Brush
 Town of Gilbert
 50 E Civic Center Drive
 Gilbert, AZ 85234

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Fee	\$1,932.63
Indirects	\$426.79
Sales Tax	\$1,752.70
Owner Contingency	\$-38,322.67
	Subtotal: 0.00
	Bond 0.00
	Builders Risk 0.00
	Liability Insurance 0.00
	Contractor Fee 0.00
	Indirects 0.00
	Sales Tax 0.00
	Total: 0.00

Please note that HAYDON BUILDING CORP (AZ) will require an extra 10 days.
 If you have any questions, please contact me at 602.980.1818.

Submitted by: Arthur Oldham
 Haydon Building Corp

Approved by: _____
 Date: _____

Cc: Colby Northern



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Greogory B. Smith, PE/PS, Town Engineer, 503-6844

MEETING DATE: December 2, 2014

SUBJECT: Approval of a change to the CM/PM contract with Stanley Consultants for additional CM/PM services and approve a contingency transfer in the amount of \$23,950. Contract No. 2014-7102-0325

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's strategic initiative for Infrastructure by maintaining the park quality to meet the needs of Gilbert's citizens.

RECOMMENDED MOTION

A motion to approve Change Order No. 1 with Stanley Consultants' in the amount of \$23,950 and authorize the contingency transfer in the amount of \$23,950 to pay for additional CM/PM costs associated with the ongoing safety repairs at the Elliot District Park complex.

BACKGROUND/DISCUSSION

On July 31, 2014 Council approved a contract Stanley Consultants for CM/PM services related with the safety repairs at the Elliot District Park complex. Due to internal staffing changes, Stanley Consultants will be required to provide additional CM/PM efforts in order to help complete the last of the safety repairs. The additional efforts will result in additional fees of \$23,950.

The change order was reviewed for form by Town Attorney Michael Hamblin.

FINANCIAL IMPACT

During the FY2015 budget process, it was not anticipated that the additional CM/PM services would be needed for project pr114 Elliot District Park Repairs.

Approval of this change order requires authorization of a FY2015 General Fund contingency transfer in the amount of \$23,950.

Summary of Contract Activity

Original Contract	\$183,041
Change Order No. 1	\$ 23,950

Project Accounting Code: pr114-7510-8002

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

STAFF RECOMMENDATION

Staff has reviewed the fees associated with this work and finds that they meet Gilbert's expectations for the services, and recommends approval of the change order and necessary contingency transfer for pr114.

Respectfully submitted,

Gregory B. Smith, PE/PS
Town Engineer

Approved By

Approval Date

Michael Hamblin
Laura Lorenzen

11/20/2014 5:45 PM
11/20/2014 3:31 PM

EXHIBIT D
CHANGE ORDER NO. 1
(PM/CM)

PROJECT: Elliot District Park (BLD) – Phase 1 Safety Repairs
DATE: 20 November 2014
OWNER: Town of Gilbert
PROJECT NO: PR114
CONTRACT NO: 2014-7102-0325
CONTRACT DATED: 16 June 2014
PM/CM: Stanley Consultants, Inc.

CHANGES: The CONTRACT is changed as follows:
The contract duration is extended to January 30th, 2014 to accommodate the scheduled completion of the Phase 1 Safety Repairs. 24 Hours of PM/CM time are included in this Change Order at \$150 per hour. David S. Fabiano, P.E. of Stanley Consultants will assume the role of the Town’s Project Manager commencing on the Week of November 17th, 2014. He will be taking over the role that had been filled by Lee Brush of the Town. A budget of 110 hours at \$185 per hour is included.

<u>COST/TIME:</u> Original CONTRACT SUM:	\$183,041
Previously Authorized CHANGE ORDERS:	\$0
CONTRACT sum prior to this CHANGE ORDER:	\$183,041
CHANGE ORDER # Amount:	\$23,950
New CONTRACT SUM:	\$206,991

CONTRACT TIME will be increased by: 34 Working Days

SUBSTANTIAL COMPLETION as of this Change Order: 30 January 2014

Approved/Accepted by:

PM/CM _____
(Name) (Date)

GILBERT: _____
(Name) (Date)

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



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Michael Hamblin, Town Attorney, 503-6027

MEETING DATE: December 2, 2014

SUBJECT: Authorize Payment and Real Property Transfer to Acquire Right-of-Way and Public Utility Easement for the Williams Field and Higley Road Intersection Project to Settle all Claims in *Gilbert v. LMT Investments, LLC; Torres*, Case No. CV2012-007163

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's strategic initiative for Infrastructure as it expands and improves the transportation system to meet the needs of Gilbert's citizens.

RECOMMENDED MOTION

(A) A motion to authorize payment in the amount of \$322,950.00, plus statutory interest, and real property transfer for the acquisition of right-of-way and public utility easement for the Williams Field and Higley Road Intersection Project to settle all claims in *Gilbert v. LMT Investments, LLC; Torres*, Maricopa County Superior Court Case No. CV2012-007163, and direct staff to prepare necessary documents.

(B) Authorize a CIP contingency transfer, in the amount of \$402,933.76, and the use of Streets funds as the designated revenue source.

BACKGROUND/DISCUSSION

This project is identified in the 2015-19 Capital Improvement Program (CIP) and provided for the design and construction of the Higley and Williams Field Intersection Improvements. This project improved the intersection to a full major arterial, with three travel lanes, a bicycle lane in each direction, a raised landscaped median, street lights and related utility improvements and adjustments.

August 2012, Council approved the Construction Services Contract with Hunter Contracting with the construction completed in December 2013.

For the parcels associated with this council item, an eminent domain action was filed on April 24, 2014, to acquire necessary 5,045 square feet right-of-way, 3,650 square feet right-of-way, 1,948 square feet of public utility easement, 9,556 square feet drainage and retention basin, and 5,830 square feet of temporary construction easement at the southwest corner of Williams Field and Higley Roads. After negotiation, the parties reached tentative agreement in the amount of \$650,000.00, inclusive of the \$327,050.00 disbursed to the Torres when Gilbert took immediate possession. The remaining settlement amount owed is \$322,950.00, plus statutory interest.

Also, as part of the settlement, Gilbert will transfer to the Torres parcel APN 304-47-002J, which abuts their northernmost parcel to the west. This parcel is approximately 9,750 square feet and was acquired by Gilbert in its entirety from the owner in the context of the street widening. The street improvements required the removal of all the structures of the property and the owner requested Gilbert simply acquire the entire parcel in lieu of condemning solely the necessary right-of-way. The parcel is burdened by a 20 foot easement for a driveway in favor of the parcel further west, which reduces its street frontage on Williams Field to approximately 60 feet and its usable area to 7,150 square feet. For these reasons, it is not independently developable and is of little use or value to anyone other than the two adjoining property owners.

Staff and legal counsel are in support of this proposed settlement with LMT Investments, LLC; Torres.

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

FINANCIAL IMPACT

Project ST062 is included in the FY 2015-19 CIP. There is no further litigation pending regarding this project. The CIP contingency transfer, using the Streets Fund as the designated revenue source, will allow for the following payments:

Parcel	Principal	Interest %	Interest	Total	Other	Comment	Total
LMT Investment (Torres)	\$322,950.00	3.25%	\$24,758.76	\$347,708.76	\$15,000.00	Accruing Interest/Fee legal Costs	\$362,708.76
SRP						Existing Encumbrances	\$20,225.00
Other Encumbrances						Other Close Out Costs and fees	\$20,000.00
						Total	\$402,933.76

Project Accounting: ST062-7530-8011 \$322,950.00

Project Accounting: ST062-7540-8101 \$64,983.76

Project Accounting: ST062-7520-8010 \$15,000.00

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

STAFF RECOMMENDATION

Staff recommends authorizing payment in the amount of \$322,950.00, plus statutory interest, and real property transfer of parcel APN 304-47-002J for the acquisition of right-of-way and public utility easement for the Williams Field and Higley Road Intersection Project to settle all claims in *Gilbert v. LMT Investments, LLC; Torres*, Maricopa County Superior Court Case No. CV2012-007163.

Staff also recommends a CIP contingency transfer, using the Streets Fund as the designated revenue source, in the amount of \$402,933.76

Respectfully submitted,

Michael Hamblin
Town Attorney

Attachments and Enclosures:

Final Judgment in Condemnation

Special Warranty Deed

Approved By

Approval Date

Michael Hamblin
Michael Hamblin
Cris Parisot

11/19/2014 10:02 AM
11/19/2014 10:02 AM
11/19/2014 10:14 AM

1 Charles K. Ayers, Bar No. 003756
Stephanie Heizer, Bar. No. 023261
2 AYERS & BROWN, P.C.
4227 North 32nd Street
3 First Floor
Phoenix, Arizona 85018
4 Phone # 602/468-5700
E-Mail: receptionist@ayersbrownpc.com
5
6 Attorney for Plaintiff Town of Gilbert

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MARICOPA**

9 TOWN OF GILBERT, a political
subdivision of the State of Arizona,

10 Plaintiff,

11 vs.

12 LMT INVESTMENTS, L.L.C. an
Arizona limited liability company;
13 AMERICAN OUTDOOR
ADVERTISING, L.L.C., a Nevada
14 limited liability company; MARICOPA
COUNTY; UNKNOWN OWNERS
15 AND CLAIMANTS and UNKNOWN
HEIRS OF THE ABOVE NAMED
16 DEFENDANTS, IF DECEASED,

17 Defendants.

No. CV2012-007163

FINAL JUDGMENT IN
CONDEMNATION

(Higley & Williams Field Road
Improvements; Project No. ST062; APNs
304-47-001R, 002E and 002F)

18
19 This Court, having read the Stipulation between Plaintiff, TOWN OF
20 GILBERT (“Town”) and Defendant LMT INVESTMENTS, L.L.C. an Arizona
21 limited liability company (“LMT”) and good cause appearing,

22 **THE COURT FINDS AND ORDERS AS FOLLOWS:**

- 23 1. All defendants have been properly served.
24 2. Defendant Maricopa County has disclaimed any interest in the proceeds
25 of this action through a Disclaimer of Interest filed on or about June 8, 2012.
26 Defendant AMERICAN OUTDOOR ADVERTISING, L.L.C., a Nevada limited
27

1 liability company, has no interest in the proceeds of this action by reason of a Default
2 Judgment against said Defendant entered on or about February 15, 2014.

3 3. The Order for Immediate Possession (“Order”) entered by this Court
4 on or about May 23, 2012, set forth probable damages in the amount of THREE
5 HUNDRED TWENTY-SEVEN THOUSAND FIFTY and 00/100 Dollars
6 (\$327,050.00).

7 4. Pursuant to the Order, the Town paid to Maricopa County as and for
8 real property taxes the sum of \$7,265.72 and deposited the sum of \$319,784.28 with
9 the Arizona State Treasurer on or about May 31, 2012. LMT subsequently withdrew
10 all funds placed on deposit with the Arizona State Treasurer and has further received
11 any all statutory interest due and payable with regard to that deposit.

12 5. The parties have stipulated and agreed that, in addition to the funds
13 previously withdrawn, LMT shall have judgment against Plaintiff in the sum of
14 THREE HUNDRED TWENTY-TWO THOUSAND NINE HUNDRED FIFTY and
15 No/100 Dollars (\$322,950.00) plus applicable statutory interest on such amount in
16 full and complete settlement of any and all damage claims it may have or claim to
17 have arising out of this action. The remaining Defendants shall take nothing by way
18 of this judgment. The parties stipulate and agree that this Final Judgment in
19 Condemnation represents a compromise entered into in settlement of disputed claims.

20 6. Plaintiff shall have judgment for the interests sought in its Complaint
21 for the Higley & Williams Field Road Improvements; Project No. ST062 (“the
22 Project”), which include fee simple absolute interest in that parcel of real property
23 legally described in **Exhibit “A”**, a public utility easement in that parcel of real
24 property legally described in **Exhibit “B”**, a temporary retention easement in that
25 parcel of real property legally described in **Exhibit “C”**, a temporary construction
26 easement in that parcel of real property legally described in **Exhibit “D”**, and any
27 and all easement interests of Defendant in that parcel of real property legally
28

1 described in **Exhibit “E”** (all attached hereto). The Town took possession of the
2 Temporary Construction Easement legally described in **Exhibit “D”** and made use
3 thereof pursuant to the terms of the Order of Immediate Possession. The Town no
4 longer requires the temporary construction easement and the payment to Defendants
5 made pursuant to this judgment fully compensates Defendants for the period of time
6 the temporary construction easement was in use.

7 7. The Town shall issue a check or warrant in the total amount of THREE
8 HUNDRED TWENTY-TWO THOUSAND NINE HUNDRED FIFTY and No/100
9 Dollars (\$322,950.00), plus applicable statutory interest, made payable to:

10 _____
11 8. Defendant LMT shall execute and file a Receipt and Satisfaction of
12 Judgment with the Court within ten (10) business days after receipt of the payment
13 of this Judgment. Upon filing of the Receipt and Satisfaction of Judgment this Court
14 shall enter its Final Order of Condemnation without further notice, which will vest in
15 the Town the fee simple and easement interests described in **Exhibits “A” “B”, “C”**
16 **and “E”**.

17 9. This Judgment shall not be construed to be evidence of or to be an
18 admission by any party of the fair market value of the property or of any other
19 evidentiary fact.

20 10. Upon entry by the Court of its Final Order in Condemnation, all
21 interests and claims of all Defendants, in or relating to the property described on
22 **Exhibit “A”** shall be fully terminated, and title to and possession of said property
23 shall not be subject to or encumbered by any existing or future rights, liens, claims or
24 other encumbrances, including, but not limited to, taxes, and assessments upon or
25 against the property while owned or possessed by Defendants or by any persons,
26 firms or corporations claiming any interest in the property under or by virtue of said
27 Defendants.
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11. No other person, firm, or corporation has any right, title or interest in and to the property described on **Exhibit “A”**, or any part thereof, and any person, firm or corporation claiming any interest in or to the property described therein, or any part thereof, subsequent to the recording of the Notice of the *Lis Pendens* in the office of the Maricopa County Recorder at Document No. 2012-0346816 is hereby adjudged and decreed to be without any right, title or interest in or to the property or any part thereof.

12. Each party to this action shall bear its own costs and fees.

13. No further matters remain pending and this judgment is entered pursuant to Arizona Rules of Civil Procedure 54(c).

DONE IN OPEN COURT this ____ day of _____, 2014.

Judge of the Superior Court

When Recorded Return to:

Dale S. Zeitlin
5050 North 40th Street, Suite 330
Phoenix, Arizona 85018

SPECIAL WARRANTY DEED

*Exempt pursuant to
A.R.S. §§ 11-1134(A)(3)*

For the consideration of Ten Dollars, and other valuable considerations, the **TOWN OF GILBERT, ARIZONA**, does hereby convey to the **LMT INVESTMENTS, L.L.C.**, an Arizona limited liability company, the following real property situated in the County of Maricopa, State of Arizona.

That portion of the Higley Townsite according to Book 18 of Maps, Page 49 records of Maricopa County, Arizona lying within the Northeast quarter of the Northeast quarter of Section 34, Township 1 South, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona described as follows:

COMMENCING at the Southeast corner of Lot 12, Block 1, of said Higley Townsite;
THENCE Westerly along the Southerly lot lines of Lots 12, 13 and 14, of Block 1, of said Higley Townsite;

THENCE Southerly, a distance of 15 feet along the prolongation of the Westerly lot line of Lot 14, Block 1, of said Higley Townsite;

THENCE Easterly parallel to the Southerly lot lines of said Lots 14, 13 and 12 to the prolongation of the East lot line of Lot 12, Block 1, of said Higley Townsite;

THENCE North along said Easterly prolongation to the Southeast corner of Lot 12, Block 1, of said Higley Townsite.

SUBJECT TO: Current taxes, assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions and restrictions as may appear of record.

And I or we do warrant the title against all persons claiming by or through the Grantor undersigned and none others, subject to the matters above set forth.

Dated this _____ day of _____, 2014.

GRANTOR:

By: _____
Its: _____

ACKNOWLEDGEMENT

STATE OF ARIZONA)
) ss.
County of Maricopa)

On this ____ day of _____, 20__ before me, a notary public in and for said state, personally appeared _____, personally known to me (or 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, or the entity upon behalf of which the person acted, executed the instrument.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary public

My Commission Expires:

Description Of Document This Notarial Certificate Is Being Attached To:	
TYPE/TITLE	Special warranty Deed
DATE OF DOCUMENT	
NUMBER OF PAGES	2
ADDITIONAL SIGNORS (other than those named in the notarial certificate)	N/A



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Michael Hamblin, Town Attorney, 503-6027

MEETING DATE: December 2, 2014

SUBJECT: CIP Contingency Transfer for Payment of the Settlement Agreement in *Town of Gilbert v. DBNCH, Circle K Corporation*, Case No. CV2012-007164 and Legal Expenses.

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's strategic initiative for Infrastructure as it expands and improves the transportation system to meet the needs of Gilbert's citizens.

RECOMMENDED MOTION

A motion to approve a CIP Contingency transfer, using the Streets Fund as the designated revenue source, in the amount of \$237,690.37 for payment of the settlement agreement and legal expenses in *Town of Gilbert v. DBNCH, Circle K Corporation, et al.*, Maricopa County Case No. CV2012-007164.

BACKGROUND/DISCUSSION

This project is identified in the 2015-19 Capital Improvement Plan (CIP) and provided for the design and construction of the Higley and Williams Field Intersection Improvements. This project improved the intersection to a full major arterial, with three travel lanes, a bicycle lane in each direction, a raised landscaped median, street lights and related utility improvements and adjustments.

August 2012, Council approved the Construction Services Contract with Hunter Contracting with the construction completed in December 2013.

For the parcel associated with this council item, an eminent domain action was filed on April 24, 2012 to acquire necessary 5,321 square feet right of way and 2,920 square feet of public utility easement, 976 square feet for a Salt River Project easement, and 7,430 square feet for a temporary construction easement at the northeast corner of the intersection of Williams

Field and Higley Roads. After appraisal, some litigation, and negotiation the parties reached agreement in the amount of \$160,000 for the land value, and \$44,972.78 for reimbursement of the property owner's sign and lighting relocation expenses, totaling \$204,972.78 plus statutory interest, and judgment will be entered accordingly.

September, 24, 2014, Gilbert Town Council authorized payment of the settlement in the amount of \$204,972.78 plus statutory interest. The calculations below set forth the interest and outstanding legal and related fees.

Staff and legal counsel are in support of the transfer of contingency in the amount of \$237,690.37.

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

FINANCIAL IMPACT

Project ST062 is included in the FY 2015-19 CIP. The authorization of the CIP Contingency transfer, using the Streets Fund as the designated revenue source, allows for the following payments:

Parcel	Principal	Interest %	Interest	Total	Other	Comment	Total
DBNCH	\$160,000.00	3.25%	\$13,049.86	\$173,049.86	\$8,000.00	OUTSTANDING LEGAL BILLS	\$181,049.86
CIRCLE K	\$44,972.48	3.25%	\$3,668.03	\$48,640.51	\$8,000.00	CLOSING FEES	\$56,640.51
						Total	\$237,690.37

Project Accounting: ST062-7530-8011 \$160,000.00

Project Accounting: ST062-7540-8101 \$69,690.37

Project Accounting: ST062-7520-8010 \$8,000.00

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

STAFF RECOMMENDATION

Staff recommends approving a CIP contingency transfer, using the Streets Fund as the designated revenue source, in the amount of \$237,690.37 for payment of the settlement agreement and legal expenses in *Town of Gilbert v. DBNCH, Circle K Corporation, et al.*, Maricopa County Case No. CV2012-007164.

Respectfully submitted,

Michael Hamblin
Town Attorney

Approved By

Michael Hamblin
Cris Parisot

Approval Date

11/19/2014 8:10 AM
11/19/2014 10:08 AM



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Lee Brush, Sr. Project Manager, 503-6175

MEETING DATE: December 2, 2014

SUBJECT: Approval of the Construction Services Contract with MGC Contractors, Inc., for the Arsenic Treatment Facility Relocation.

<p>STRATEGIC INITIATIVE: Infrastructure</p>
--

RECOMMENDED MOTION

A motion to approve Construction Services Contract with MGC Contractors, Inc., for the Arsenic Treatment Facility Relocation, CIP Project No. WA097, Contract No. 2014-7009-0333, in an amount not to exceed \$481,200 and authorize the Mayor to execute the required documents.

BACKGROUND/DISCUSSION

This project is identified in the 2015-19 Capital Improvement Plan (CIP) which provides for the design and construction for the relocation of the arsenic treatment facility from Well site 26 located at 5539 E. Baseline Rd. to Well Site 28 located at 2820 E. Riggs Rd.

In December 2011, CH2M Hill Engineers, Inc was selected to be on Gilbert's on-call prequalified engineering firms and assigned this project accordingly. The design was completed in June 2014 and advertised for bids on July 8, 2014.

August 7, 2014, Staff opened bids for this project. Upon review of the bid documents, Staff deemed MGC Contractors the apparent lowest responsible bidder with a contract sum of \$481,200.

The Contract was reviewed for form by Susan Goodwin, Special Counsel.

FINANCIAL IMPACT

This project is identified in the 2015-19 CIP as Project No. WA097 and is funded through the Water Fund. The proposed contract amount of \$481,200 for Construction Services is within the total budget of \$695,000.

Summary of Contract Activity

Construction Contract	\$ 481,200	Approval Pending
Proposed Total Contract Amount	\$ 481,200	

Project Accounting Code: WA097-7540-8302

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

STAFF RECOMMENDATION

Staff has reviewed the bid associated with this work and finds that they meet Gilbert’s expectations for the services, and recommends approval of the Construction Services Contract.

Respectfully submitted,

Lee Brush
Sr. Project Manager

Approved By

Approval Date

Gregory Smith

11/10/2014 2:21 PM

Gregory Smith

11/10/2014 2:22 PM

Kenneth Morgan

11/12/2014 5:05 PM

Jack Vincent

11/19/2014 9:14 AM

Cris Parisot

11/18/2014 10:50 AM

**CONSTRUCTION SERVICES CONTRACT
FOR DESIGN-BID-BUILD (DBB) PROJECT**

Project: Arsenic Treatment Facility Relocation
CIP No.: WA097
Contract No.: 2014-7009-0333
Date: September 17, 2014

CONSTRUCTION SERVICES CONTRACT FOR DESIGN-BID-BUILD (DBB) PROJECT

THIS CONTRACT, made and entered into this 17th day of September, 2014, 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 the "GILBERT" and MGC CONTRACTORS, INC, an Arizona 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 **WA097 Arsenic Treatment Facility Relocation** Project and is generally described as follows: Complete construction of the **WA097 Arsenic Treatment Facility Relocation** Project 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 **70** 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 **90** 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 **One Thousand** dollars and no cents (**\$1,000.00**) 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 **One Thousand** dollars and no cents (**\$1,000.00**) 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 **\$95.00** per hour. The rate for the work by the Project Engineer for this Contract is \$

175.00 per hour. The rate for work by GILBERT PM/CM, if applicable, is **\$155.00** 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 **four hundred eighty one thousand two hundred** dollars and no cents (**\$481,200.00**) 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

- 5.1 This Contract (pages 1 to 7, inclusive).
- 5.2 Addenda consisting of Number 1.
- 5.3 The project Specifications dated **May 2014** entitled **ARSENIC TREATMENT FACILITY RELOCATION WA097** Project.
- 5.4 The project Drawings comprised of a set entitled **TOWN OF GILBERT MARICOPA COUNTY, ARIZONA CONSTRUCTION DOCUMENTS FOR ARSENIC TREATMENT FACILITY RELOCATION RIGGS ROAD AND 164TH ST WELL 28 PROJECT NO. WA097** and dated **MAY 2014 (Sheets 1 to 21, inclusive)**
- 5.5 Performance Bond (page 8) and Payment Bond (page 9).
- 5.6 The approved CPM Construction Schedule dated (N/A).
- 5.7 The project General Conditions (pages 1 to 67, inclusive).
- 5.8 The project Supplementary Conditions (N/A)
- 5.9 Notice to Proceed
- 5.10 CONTRACTOR'S List of Subcontractors
- 5.11 CONTRACTOR'S Schedule of Manufacturers and Suppliers of Major Equipment and Material Items (N/A)

5.12 The following which may be delivered or issued after the Effective Date of this Contract and are not attached hereto:

- A. Notice to Proceed
- B. The approved CPM Construction Schedule.
- C. Written Attachments
- D. Work Change Directives
- E. 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:

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

CONTRACTOR:

Randy L. Gates
President
MGC Contractors, Inc.
P.O. Box 61748
Phoenix, AZ 85082-1748

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 Immigration Law Compliance Warranty:

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 from 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

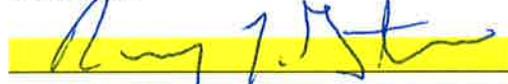
By: _____
John Lewis, Mayor

ATTEST:

Catherine A. Templeton, CMC
Town Clerk

APPROVED AS TO FORM:

CONTRACTOR



By: Randy L. Gates

Title: President



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Leslie Bubke, Assistant Town Traffic Engineer, 503-6923

MEETING DATE: December 2, 2014

SUBJECT: Approval of the Engineering Services Contract with Y.S. Mantri & Associates for the Advanced Traffic Management System Phase IV Project, CIP No. TS132, Contract No. 2013-4106-0241

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's strategic initiative for Infrastructure as it expands and improves the fiber optic communication system to meet the needs of Gilbert's citizens.

RECOMMENDED MOTION

A motion to approve the Engineering Services contract with Y.S. Mantri & Associates for the Advanced Traffic Management System Phase IV Project, CIP No. TS132, Contract No. 2013-4106-0241 in an amount not to exceed \$254,051.88 and authorize the Mayor to execute the required documents.

BACKGROUND/DISCUSSION

This project is included in the 2015-2019 Capital Improvement Program (CIP) and provides for design and installation of the Northwest Fiber Ring: approximately 7 miles of conduit and fiber optic cable and related infrastructure. The system supports robust digital communication among Town facilities and traffic signals, as well as multi-jurisdictional communications.

Total project cost is \$1,477,000 of which \$1,096,000 will be funded through Federal Congestion Mitigation/ Air Quality (CMAQ) grant. Arizona Department of Transportation (ADOT) will administer the construction, including bid advertisement and award. The Town's cost share for design and construction will be \$381,000. The Council approved the CMAQ grant on April 18, 2013. The Intergovernmental Agreement with ADOT, JPA 14-0004608, was approved by Council on October 30, 2014.

Y.S. Mantri & Associates (YSMA) was recommended for the design services contract based on the Selection Team's evaluation of Statements of Qualifications (SOQ's) received from eight firms in response to a Request for Qualifications published on July 30, 2014. Staff has negotiated with YSMA to ensure that the scope of services includes all necessary tasks for a successful and cost-effective design, with limited post-design services, and satisfying the requirements of the Town and ADOT.

The contract was reviewed for form by Attorneys Susan Goodwin and Jack Vincent.

The contract was reviewed by Cris Parisot, Management and Budget Analyst

FINANCIAL IMPACT

The project is included in the 2015-19 CIP as Project No. TS132 and the Town's share is funded through Signal System Development Fee (SDF). The agreement falls within the FY2015 budget.

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

STAFF RECOMMENDATION

Staff recommends approval of the engineering services contract with Y.S. Mantri & Associates for the Advanced Traffic Management System IV Project, CIP No. TS132.

Respectfully submitted,

Leslie Bubke
Assistant Town Traffic Engineer

Approved By

Approval Date

Erik Guderian
Gregory Smith
Kenneth Morgan
Jack Vincent
Cris Parisot

10/21/2014 10:14 AM
11/10/2014 2:11 PM
11/12/2014 4:51 PM
11/19/2014 2:37 PM
11/18/2014 10:14 AM

ARCHITECTURAL/ENGINEERING (A/E) SERVICES CONTRACT FOR DESIGN-BID-BUILD (DBB) PROJECT

THIS CONTRACT is entered into as of this 2nd day of December, 2014, by and between the Town of Gilbert, Arizona, a municipal corporation, hereinafter referred to as the “GILBERT” and Y.S. Mantri & Associates, LLC, hereinafter referred to as the “A/E.”

FOR THE PURPOSE of providing professional architectural or engineering services for the Town of Gilbert on the TS132 Advance Traffic Management System Phase IV 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 \$1,145,000. 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 Yogesh Mantri 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 Leslie Bubke 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 One hundred ninety-two thousand two hundred thirty-one dollars (\$192,231.00). The labor hours and fee breakdown is indicated in Exhibit D. This breakdown outlines the various positions, billing rates for each position and the estimated hours for each project task for each position during the contract duration.
 - 2.2.2 A fee for all approved project expenses not to exceed sixty-one thousand eight hundred twenty dollars and eighty-eight cents (\$61,820.88). Allowable reimbursable expenses are indicated in Exhibit D. A/E will not exceed the reimbursable expenses allowance of each line item without prior written authorization.
 - 2.2.3 The total cost to GILBERT for the Services described in this Agreement shall not exceed two hundred fifty-four thousand fifty-one dollars and eighty-eight cents (\$254,051.88) (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. Reimbursable expenses incurred during the billing period and during previous billing periods and not yet invoiced will be submitted for payment on the monthly invoice along with expense receipts and other acceptable back-up. All payment requests shall be certified by the 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. Professional Liability coverage specifically for Architects, Engineers and Surveyors shall contain contractual liability insurance covering the contractual obligations of this Agreement. 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 from 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:

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

A/E:

Yogesh Mantri, P.E., PTOE
President
Y.S. Mantri & Associates, LLC
124 W Orion St, Suite F-10
Tempe, AZ 85283

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

By: Yogesh Mantri, P.E., PTOE
Title: President

EXHIBIT A
ENGINEER SCOPE OF WORK
FOR DESIGN-BID-BUILD PROJECT

A. GENERAL

1. The Project is generally described as an expansion of the Advanced Traffic Management System (ATMS) in the Northwest part of the Town by installing approximately seven miles of fiber optic cable and associated ITS equipment to provide centralized communication to fifteen traffic signals and one future beacon. The fiber optic cable will be placed in existing conduit where available and in new conduit otherwise. All construction will be within the existing Town right-of-way.

The construction phase of the project will be funded with federal Congestion Mitigation Air Quality grant funds, therefore the final construction documents must adhere to Federal Highway Administration (FHWA) requirements and are subject to the Arizona Department of Transportation (ADOT) review process. The construction funds must be obligated in federal FY 2016.

2. ENGINEER shall be responsible for the professional quality, technical accuracy and the coordination of all studies, reports, projections, master plans, designs, drawings, specifications and other Services furnished by ENGINEER under this Contract. ENGINEER shall, without additional compensation, correct or revise any errors or omissions in its studies, reports, projections, master plans, design, drawings, specifications and other Services.
3. The Contract sets forth the construction budget for the Project. ENGINEER shall complete the Design and Construction Documents, such that construction cost of the Project designed by ENGINEER will not exceed the construction budget and shall not proceed from one phase to another unless the budget for the phase is in 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, ENGINEER shall immediately notify GILBERT. If the construction budget is exceeded, ENGINEER shall value ENGINEER the Project at no additional cost to GILBERT.
4. ENGINEER shall maintain a log of all meetings, site visits or discussions held in conjunction with the Services, with documentation of major discussion points, observations, decisions, question or comments. These shall be furnished to GILBERT or PM/CM if applicable, for inclusion in the overall Project documentation.
5. All Services performed under this Contract shall be performed by or under the direct supervision of persons then licensed in the State of Arizona to perform these Services. The name of each such licensed individual shall be listed on the title sheet of the Plans and Specifications.
6. All designs and specifications prepared by ENGINEER shall comply with applicable engineering and design standards to include, but not be limited to, MAG Standard Details and Specifications (current edition), Town of Gilbert Supplement to MAG Standard Details and

Specifications (current edition), ADOT Standard Specifications for Roads and Bridges 2008, ADOT Standard Drawings, and the Americans with Disabilities Act.

7. If ENGINEER provides defective, incomplete, unclear, or uncoordinated documents in preparing the specifications and Contract Documents, all costs of responding to any protest or appeal or of any necessary rebidding will be borne by ENGINEER.
8. Time is of the essence in this contract.

B. PRE-DESIGN PHASE

1. PROJECT INITIATION

1.1 Upon final execution of the Contract with GILBERT, the ENGINEER shall:

- 1.1.1 Perform a field reconnaissance survey for the entire seven-mile project corridor. The intention is to get a thorough understanding of the project area by identifying the locations of existing conduit, presence of visible utilities, the condition of existing equipment such as pull boxes, and make a preliminary assessment of layout of the new conduit including boring and trenching areas.
- 1.1.2 Meet with GILBERT and its representatives to prepare a detailed design schedule. The ENGINEER shall produce the final design schedule in MS Project software, and shall forward the schedule to the PM.
- 1.1.3 This design schedule shall identify specific tasks including, but not limited to data collection, GILBERT filing standards, analysis, report preparation, planning, engineering programming, concepts and schematic design preparation, ADOT and FHWA requirements, coordination and estimating that are part of the work of the Project. Also identified will be milestone activities or dates, specific task responsibilities, required times for completion and additional definition of deliverables including plan submittals to all utilities and permitting agencies.
- 1.1.4 Review the developed work plan with GILBERT and its representatives to familiarize them with the proposed tasks and design schedule and develop necessary modifications.
- 1.1.5 Participate in a general Project kick-off meeting to include the ENGINEER'S appropriate Sub-consultants, GILBERT staff Project Manager, and other stakeholders such as representatives from ADOT Utility, ROW and Environmental Departments.
 - 1.1.5.1 The project kick-off meeting will introduce key team members from GILBERT and the ENGINEER to each other defining roles and responsibilities relative to the Project.
 - 1.1.5.2 Identify and review pertinent information and documentation necessary from GILBERT for the completion of the Project.
 - 1.1.5.3 Review and explain the overall project goals, general approach, tasks, work plan and procedures and deliverable products of the Project.

1.1.5.4 Review and explain the task analysis and project work plan for all parties present; determine any adjustments or fine tuning that needs to be made to the work plan.

1.1.5.5 Prepare and distribute minutes of the project kick-off meeting.

2. DEVELOPMENT OF ENGINEERING PROGRAM

ENGINEER shall identify design issues relating to functional need, directives and constraints imposed by regulatory codes, requirements and review times needed by the ADOT Urban Project Management (UPM) office. The design of the Project shall take into consideration impacts on neighboring land uses.

2.1 Complete GILBERT'S design information check list below:

2.1.1 Identify critical issues affecting project completion.

2.1.2 Identify significant site considerations.

2.1.3 Identify applicable permit requirements, code requirements, and GILBERT, County, State and Federal requirements.

2.1.4 Identify utility locations for all GILBERT and outside agency utilities impacting the project and develop a plan to address the conflicts.

2.1.5 Identify Railroad crossings that impact the project.

2.1.6 Review GILBERT "As Built" plans that impact the project.

2.1.7 Obtain a list of Special Issues and concerns from the GILBERT Project Manager for the project.

2.1.8 Determine if an Intergovernmental Agreement will be needed with the County, SRP or neighboring community for condemnation, cost sharing, or coordination.

2.1.9 Identify the preferred route and alternate route of the fiber optic conduit. The intent will be to maximize the use of existing conduit and to tie in all existing and proposed traffic signal installations and minimize utility conflicts.

2.1.10 Prepare 15% concept plans and present those at the project kick-off meeting.

2.2 Manage the design schedule and budget to meet GILBERT requirements.

2.3 Conduct engineering program meeting with the GILBERT selected project committee.

3. MEETINGS

During the Pre-Design Phase it is anticipated that approximately one (1) meeting every three weeks will be convened between GILBERT and ENGINEER. Such meetings will normally be held at the Municipal Complex in the Town of Gilbert. Documented decisions made at such meetings and subsequently approved by GILBERT shall be binding. These meeting notes shall be distributed within 3 business days of the meeting.

4. DELIVERABLES

ENGINEER shall present and review with GILBERT the summary and detail of the Pre-Design Phase Services work.

5. PROJECT CESSATION PROVISIONS

Upon completion of review and comments on the Functional and engineering Program Report, no further work shall be done unless and until GILBERT has approved the Pre-design Services Phase as complete and has given a written Notice to Proceed to ENGINEER for the Design Services Phase.

C. DESIGN PHASE

1. General

1.1 The proposed improvements are more specifically described as follows:

1.1.1 This project will be delivered using a Design-Bid-Build method of procurement.

1.1.2 The ENGINEER shall be responsible for coordinating and consulting with GILBERT'S PM during the design and construction of the project.

1.1.3 During the Design Phase it is anticipated that progress meetings will be convened monthly between the ENGINEER, GILBERT PM and other project stakeholders. Such meetings will normally be held at the Municipal Complex at the Town of Gilbert. Documented decisions made at such meetings and subsequently approved by GILBERT shall be binding. These meeting notes shall be distributed within 3 business days of the meeting. Any revisions or reconsiderations of such decisions shall constitute a change in the scope of services of the ENGINEER.

1.2 The proposed improvements are more specifically described in the following paragraphs.

2. Surveys and Mapping

2.1 Topographic Survey

2.1.1 The ENGINEER shall provide topographic survey services for this project to prepare electronic CADD base files depicting existing topographic features.

2.1.2 The ENGINEER shall survey for horizontal and vertical control for topographic surveys and supplemental ground surveys.

2.2 Ground Survey

The ENGINEER shall provide ground survey services for this project. The work shall include providing horizontal and vertical control points for the topographic survey, providing cross sections of existing pavement, curb and concrete-lined canal ditches. The project includes meandering sidewalks along many stretches. Meandering sidewalk will be surveyed at 100'

intervals and the intermediate portions will be drawn using aerial imagery as a base. The detailed survey scope is attached as SCHEDULE D-3.

2.3 Utility Location Survey

2.3.1 The ENGINEER shall provide locations of existing utilities for this project. The work shall include locating overhead lines and poles, manholes, valves, meter boxes, risers, and underground utilities.

2.4 Completed surveys and maps shall be recorded in an acceptable format and, upon approval, the books, maps, drawing files and other diskettes shall be submitted to the Town of Gilbert for archiving.

3. MATERIALS INVESTIGATION AND DESIGN

Materials Investigation is not anticipated for this project.

4. PUBLIC INFORMATION MEETINGS

Public Meetings are not required for this project since the project does not change any aboveground roadway features. Temporary lane restrictions during construction will be informed to the public during Construction phase by the CONTRACTOR.

5. RAILROAD COORDINATION

The coordination with Union Pacific Railroad is not anticipated as the current Gilbert CIP project ST094 – Cooper and Guadalupe Intersection improvement will construct conduit across the railroad right-of-way.

6. UTILITY COORDINATION AND CLEARANCE

6.1 The ENGINEER shall obtain as-built information, shall indicate existing utilities and planned relocations on construction plans, and shall assist the PM with communication and coordination with the utility companies. Any relevant utility information shall be shown on the plans prior to submittal to utility companies for review. All work shall be performed in accordance with applicable utility company and GILBERT standards.

6.2 The ENGINEER shall organize and lead the meetings with utility companies and shall prepare and distribute meeting minutes to all attendees. These meeting shall be held at the Gilbert Municipal Complex. GILBERT will arrange for the meeting venue.

6.3 Existing Information

6.3.1 The ENGINEER shall use all available utility location information. This information shall be shown on the plans prior to submittal to the utility companies.

6.3.2 Identification of Utilities:

- 6.3.2.1 The ENGINEER shall contact Blue Stake to obtain the most current information about utilities having facilities within the project area. ENGINEER shall use this information to obtain utility as-built information from all the utility companies serving the project area, including from the Town of Gilbert. Some utilities may not be shown on Blue Stake records and may require a set of plans to determine potential conflicts.
- 6.3.2.2 The ENGINEER shall prepare an electronic CADD file depicting the horizontal locations of existing utilities both overhead and underground. The horizontal locations of the existing utilities shall be determined by the ENGINEER based on utility as-built information supplemented by utility location survey and horizontal designating.
- 6.3.2.3 Where elevations are necessary for the determination of conflicts, the ENGINEER shall provide a list of the possible conflict locations and conflicting utilities. This list shall be used for identification of potholing locations to provide accurate horizontal and vertical location of the utility following completion of 60% plans. The ENGINEER will perform potholing if specifically authorized by the PM. A separate allowance shall be established for the utility potholes.

6.4 Utilities Conflicts and Adjustments

- 6.4.1 The ENGINEER shall avoid utility conflicts, however if the conflicts are unavoidable, the ENGINEER shall determine utility conflicts that require utility relocation or adjustment and shall advise GILBERT.
- 6.4.2 The ENGINEER shall advise GILBERT of relocations, replacements, or new facilities requested by the utility companies.
- 6.4.3 The ENGINEER shall be responsible for reviewing relocation plans produced by utility companies to assure that utility conflicts are mitigated or eliminated and that proposed utility installations conform to GILBERT'S requirements.
- 6.4.4 At the request of GILBERT, the ENGINEER shall verify that prior rights documentation submitted by the utility companies represent the correct relocation area.
- 6.4.5 Only GILBERT will authorize utility companies to start design on relocation of their facilities where they have prior rights and want reimbursement for their design.

6.5 Utility Special Provisions

- 6.5.1 The ENGINEER shall prepare utility special provisions. The utility special provisions shall include the following:
 - 6.5.1.1 List of utility companies in the area, and contact person's name and telephone number.
 - 6.5.1.2 A statement that there are no utility conflicts.
 - 6.5.1.3 Work to be performed by utility companies during project construction.

- 6.5.1.4 Completion date or schedule for each utility conflict to be removed by utility company.
- 6.5.1.5 Work to be performed for the utility company by the CONTRACTOR.
- 6.5.1.6 Utility license, permit, insurance or right of entry requirements.
- 6.5.1.7 Utility company requirements related to protection of or construction adjacent to their facilities.

6.6 The ENGINEER shall work with the utility companies to facilitate clearing of utilities. The ENGINEER shall be responsible for preparing and obtaining actual clearance letters. The compiled clearance letters shall be submitted to ADOT via GILBERT for the final utility clearance of the project.

7. RIGHT-OF-WAY

7.1 No new right-of-way (ROW) will be required for this project.

7.1.1 ENGINEER shall place the ROW gathered from Maricopa County Assessor's maps on the base plans.

7.1.2 ENGINEER shall identify ROW parcel information and shall place it on the plans.

7.2 Right-of-way clearance:

7.2.1 Engineer shall meet with the ADOT right-of-way liaison and shall identify method to record the existing right-of-way acquired by the Town using the information provided by the GIS portal of Maricopa County Assessor website in order to secure the right-of-way clearance for the project. ENGINEER shall compile this information and complete the Certification of Right-of-Way form and submit it to ADOT for ROW clearance.

8. ROADWAY DESIGN

Roadway design will not be required for this project.

9. WATER MAIN DESIGN

Water main design will not be required for this project.

10. SANITARY SEWER DESIGN

Sanitary sewer design will not be required with this project.

11. RECLAIMED WATER MAIN/SEWER FORCE MAIN DESIGN

Reclaimed water main/sewer force main design will not be required for this project.

12. DRAINAGE DESIGN

Drainage design will not be required for this project.

13. IRRIGATION DESIGN

Irrigation design will not be required for this project.

13.1 Roosevelt Water Conservation District (RWCD) & Salt River Project (SRP) Irrigation Design

ENGINEER shall notify RWCD and SRP Irrigation of the project during the standard utility coordination process.

14. STRUCTURES DESIGN

Structures design will not be required for this project.

15. LANDSCAPE AND LANDSCAPE IRRIGATION DESIGN

Landscape and landscape irrigation design will not be required for this project. Landscape restoration due to construction activities will be covered in special provisions.

16. SIGNING DESIGN

Signing design will not be required for this project

17. PAVEMENT MARKING DESIGN

Pavement marking design will not be required for this project.

18. STREET LIGHTING AND TRAFFIC SIGNALIZATION DESIGN

Street lighting and traffic signalization design will not be required for this project.

19. COORDINATION OF ENVIRONMENTAL APPROVALS

The ENGINEER, via a sub-consultant (AZTEC), will begin the environmental coordination process using conceptual layout plans in order to expedite the environment approval process. An ADOT-formatted condensed clearance memo is the appropriate NEPA document. If ADOT indicates that a Checklist Categorical Exclusion is required, AZTEC would prepare that document without a change in the estimate. The attached environmental scope of work has been designed to meet ADOT and FHWA environmental clearance requirements. All deliverables anticipated for environmental clearance, based on the current project description, are included in the scope of work.

20. PROJECT ASSESSMENT REPORT

20.1 The ENGINEER shall prepare the Project Assessment Report (PA) per the requirements of ADOT's Urban Project Management Section and shall include the following sections.

- 20.1.1 Introduction: Key points of the project will be summarized including Project Number, Project Area, and Project Funding details.
- 20.1.2 Background: This section shall include the benefits of installing fiber optic cable and shall identify any future projects in the area, record drawings that will be used for as-built information and right-of-way information, and utilities identified by Arizona Blue Stake.
- 20.1.3 Project Scope: All pertinent items related to the project scope shall be included, such as size of conduit, types of junction boxes, cabinet equipment, etc.
- 20.1.4 Development and Considerations: This section shall describe any impact on environmental, right-of-way, and utilities and critical outside agencies that may be involved in this project.
- 20.1.5 Concept Plans with Cost Estimate: The PA shall be accompanied by the 15% concept schematic plans and a preliminary cost estimate.
- 20.1.6 Concept of Operation: ENGINEER shall prepare a Concept of Operation for the ATMS by discussing the project functionality with GILBERT. ENGINEER shall complete and attach ADOT System Engineering checklist to the PA.

21. ATMS DESIGN

- 21.1 The ENGINEER shall prepare 15% Schematic Design (SD), 60% Design Development (DD), 95% Construction Documents (CD), and 100% Final Plans on Town of Gilbert standard sheets using Microstation format for the project. Design shall comply with GILBERT and ADOT standards and guidelines and shall be developed, at a minimum, in accordance with the requirements of the respective sections of this scope of work.
- 21.2 15% Schematic Design (SD) Submittal. The ENGINEER shall prepare not-to-scale concept schematics which will identify the location of existing and proposed conduit, junction boxes, vaults, cabinets, CCTV cameras, DMS signs, count stations, and radio equipment. Potential conflicts to trenching (such as landscape, monument signs, utility lines, etc.) shall be identified. The ENGINEER shall meet with the Town Staff at each intersection to verify cabinet information shown on as-built plans and to determine the conduit path to the cabinet. The 15% concept plans shall show following items:
 - 21.2.1 Existing Conduit.
 - 21.2.2 Alignment of proposed conduit including areas of trenching and boring.
 - 21.2.3 Location of signal cabinets at all intersections along route.
 - 21.2.4 Location of all ITS equipment such as CCTV camera, DMS, Count stations along the route.
 - 21.2.5 Existing ROW and easements.

21.2.6 Preliminary summary of quantities.

21.3 60% Design Development (DD) Submittal. ENGINEER shall prepare the necessary details showing the equipment and the connections. ENGINEER shall prepare base plans for the project area in English units at 1:40 scale. Wherever necessary, the ENGINEER shall include enlarged details of intersection and controller cabinet foundation areas. The following items shall be developed and submitted for review:

21.3.1 All roadway features captured during survey.

21.3.2 All aboveground utilities and underground utility location as provided by survey and Blue Stake, respectively.

21.3.3 Design sheet with index and general notes, summary sheets and special details.

21.3.2 Location of new pull boxes and of those to be replaced.

21.3.3 The existing and proposed conduit system.

21.3.4 Trunk fiber optic communication runs.

21.3.5 Branch fiber optic cable connections to main communication runs. GILBERT will direct the ENGINEER to use communication equipment to connect the traffic signal controller and the video detection equipment to the fiber optic cable.

21.3.6 Details showing modifications to existing cabinet foundations, or pull boxes.

21.3.7 Base plan information.

21.3.8 Special provisions.

21.3.9 60% ENGINEER'S construction cost estimate.

21.4 95% Construction Documents (CD) Submittal. The following items shall be completed, checked and submitted for review.

21.4.1 Design sheet(s) with index and general notes as listed under 60% submittal.

21.4.2 Summary sheets.

21.4.3 Special details.

21.4.4 Completed conductor schedules.

21.4.5 Special details as required.

21.4.6 Splice tables will be provided by the Town. ENGINEER shall incorporate them into the plans.

21.4.7 Technical special provisions per requirements of GILBERT and ADOT C&S.

21.4.8 Final summary of quantities.

21.4.9 Final specifications.

21.4.10 Final Bid Schedule.

21.4.11 The 95% ENGINEER'S construction cost estimate.

21.5 Final Submittal (100%).The following items shall be submitted to ADOT via GILBERT to bid the project.

21.5.1 A complete reproducible set of sealed and signed contract plans necessary to bid and construct the improvements identified in this contract.

21.5.2 A complete reproducible set of sealed and signed specifications and special provisions necessary to bid and construct the improvements identified in this contract.

- 21.5.3 A complete reproducible bid schedule necessary to bid and construct the improvements identified in this contract.
- 21.5.4 Electronic versions of all plan sheets in fully Microstation compatible format on compact disk (CD) in CD-R format.
- 21.5.5 Final and complete quantity summaries.
- 21.5.6 Final survey computations and original field books.
- 21.5.7 100% ENGINEER'S construction cost estimate.

21.6 The plans will be prepared in Microstation™ V8i Version. The plans will be prepared in 22"x34" sheet format.

22. COST ESTIMATES

- 22.1 The ENGINEER will prepare detailed quantity summaries and construction cost estimates in the format provided by GILBERT at the 15%, 60%, 95% and 100% design submittals.
- 22.2 The ENGINEER will support GILBERT during value evaluation and value engineering processes. The ENGINEER shall incorporate GILBERT'S comments and suggestions unless the ENGINEER believes the comments do not conform to good engineering practice.
- 22.3 Allowances for design, bidding or construction, if included in the estimate, are to be shown as individual line items, with the percentage and base of calculation clearly identified.

23. SPECIFICATIONS

- 23.1 The Town will provide the latest approved technical specifications as a guide. The ENGINEER shall develop technical specifications for the project in a format that follows the ADOT Construction and Specifications Division (C&S) requirements. Specifications shall be developed as follows.
 - 23.1.1 Design Development (60%) – Include a paragraph summary of all technical Specification sections.
 - 23.1.2 Construction Documents (95-100%) – Provide the complete technical Specification package suitable for constructing the project.

24. SPECIAL PROVISIONS

- 24.1 The ENGINEER shall prepare the Special Provisions for items, details, and procedures not adequately covered by Maricopa Association of Governments (MAG) Uniform Standard Specifications for Public Works Construction, Town of Gilbert Supplements, Maricopa County Department of Transportation Supplements, Arizona Department of Transportation Standard Specifications for Road and Bridge Construction and other specifications identified by GILBERT. Special provisions will be provided at the 60%, 95% and FINAL Submittals.

24.2 The ENGINEER shall identify critical elements of construction, including but not limited to, construction limits, access requirements, potential night construction, coordination with affected local agencies (police, fire, etc.), traffic lanes, utility trench close ups, and critical materials requiring advance purchase.

25. BID SCHEDULE

The ENGINEER shall prepare the Bid Schedule for all items determined to be pay items for the project. Bid Schedules will be prepared in ADOT standard format and will be provided at the 60%, 95% and FINAL Submittals.

26. REVIEWS AND SUBMITTALS

26.1 Review and coordination of the ENGINEER'S work by GILBERT and ADOT will continue through the project development process.

26.2 Submittals for review shall be made when the studies and/or plans have been developed to the following levels of completion:

26.2.1 Preliminary Layout (15% design)

26.2.2 Project Assessment report

26.2.3 60% design

26.2.4 95% design

26.3 The ENGINEER shall distribute copies of the review submittals and finalized documents per GILBERT'S instructions. For each review submittal, the ENGINEER shall coordinate the method of distribution and review comment return deadline with GILBERT in advance so as to ensure thorough and timely reviews of deliverables.

26.4 GILBERT'S review of submittals will include technical content, incorporation of previous comments and completion of design and details, as well as:

26.4.1 Conformance with GILBERT requirements.

26.4.2 Completeness of the contract documents.

26.4.3 Compatibility of plans, specifications, and Special provisions.

26.4.4 Coordination between disciplines, phases and outside parties.

26.4.5 Clarity of the contract documents.

26.4.6 Consistency of presentation.

26.4.7 Return any documents and other materials provided for use on this project.

27. DELIVERABLES

27.1 All reproduction is to be provided by the ENGINEER and included as a reimbursable cost. The number of copies of each deliverable shall be confirmed with GILBERT prior to delivery for reproduction, and shall be sufficient for the required full and half size sets for all GILBERT and outside agency and utility company reviewers. Deliverables for each submittal are as follows:

27.1.1 Fifteen percent (15%) submittal – Concept drawings.

27.1.2 Project Assessment Report.

27.1.3 Sixty percent (60%) submittal – sixty percent (60%) working drawings, specifications, Special provisions, and required reports.

27.1.4 Ninety Five percent (95%) submittal – ninety five percent (95%) working drawings, specifications, engineering calculations, Special provisions and bid schedule.

27.1.5 Final (100%) Submittal – sealed drawings, specifications, engineering calculations, Special provisions and bid schedule.

27.1.6 Environmental Clearance for the project from ADOT (Condensed clearance memo)

27.1.7 Utility Clearance from ADOT

27.1.8 ROW Clearance from ADOT

27.2. At each submittal ENGINEER shall provide the following:

27.2.1 A statement indicating any authorized changes made to the program from the last submittal.

27.2.2 A statement certifying that the deliverables were reviewed using the ENGINEER'S QA/QC program prior to submittal.

27.2.3 Project Design File including all correspondence, meeting, back check comments, checklists, calculations, etc. to date.

27.3 Statement of requirements for testing and inspection of service for compliance with construction documents and applicable codes.

D. BIDDING PHASE

1. PROJECT MANAGEMENT

1.1 ENGINEER shall assist GILBERT to coordinate with ADOT to solicit bids for the Project.

1.2 In conjunction with GILBERT and ADOT, ENGINEER shall attend, and assist as needed, Pre-bid Conferences.

1.3 Engineer shall respond to written inquiries related to the Contract Documents. Engineer shall review addenda for clarity, consistency and coordination among bidders.

- 1.4 In conjunction with GILBERT and ADOT, ENGINEER shall attend, and assist as needed, a Pre-Construction Conference.

2. TIME MANAGEMENT

ADOT will lead this Task.

3. MANAGEMENT INFORMATION SYSTEM (MIS)

Not anticipated for this project.

E. CONSTRUCTION PHASE

1. PROJECT MANAGEMENT

- 1.1 It is anticipated that the Construction Phase will be will be administered by ADOT. Day to day Construction observation for the Project will be performed by ADOT Inspectors to determine whether the construction is proceeding in accordance with the Construction Contract Documents.

- 1.2 ENGINEER shall attend bi-weekly coordination meetings at the Project site with CONTRACTOR, ADOT and Gilbert Inspector, if needed.

- 1.3 GILBERT Inspector shall coordinate technical inspection and testing. ENGINEER shall be provided with an electronic and hard copy of OTDR inspection and testing reports. Engineer will use an independent software tool and verify the test results for compliance with the specifications.

2. TIME MANAGEMENT

- 2.1 This will be the responsibility of ADOT.

3. COST MANAGEMENT

- 3.1 ENGINEER shall assist and coordinate with ADOT and Gilbert, as needed, as to engineering soundness of the any changes proposed by the contractor and whether ENGINEER believes the change in the work is in the best interest of the Project, prior to execution of change orders.

4. MANAGEMENT INFORMATION SYSTEM (MIS)

Not Applicable since ADOT will administer the Construction phase.

F. POST-CONSTRUCTION PHASE

1. SUBSTANTIAL COMPLETION INSPECTION

Task will be completed by ADOT and GILBERT

2. FINAL COMPLETION INSPECTION

Task will be completed by ADOT and GILBERT

3. RECORD DRAWINGS

As required by the Contract Documents, ENGINEER shall receive from the CONTRACTOR **certified** red-line construction record drawings. Upon receipt of the red-line construction record drawings, ENGINEER shall prepare the as-built drawings on original vellums using information provided on the **certified** CONTRACTOR red-line drawings. Upon completion of the as-built drawings, ENGINEER shall certify the as-built drawings and provide a complete CD of the record as built drawings in PDF format. Certification means that the as-built drawings will be signed, sealed and dated by ENGINEER(s) registered in the State of Arizona in their field of competence. In addition, if the project requires certification by the Maricopa County Environmental Service Department or the Arizona Department of Environmental Quality, ENGINEER shall provide such certification.

4. WARRANTY INSPECTION

Not Applicable for this project

EXHIBIT B
ENGINEER’S KEY PERSONNEL AND SUBCONTRACTORS

ENGINEER’S KEY PERSONNEL:

- Yogesh S. Mantri P.E. PTOE – Principal/Project Manager
- Tino Kehagias, P.E. – Assistant Project Manager/Project Engineer
- Manoj Pavithran, P.E – Project Engineer
- Don Wiltshire, PE – QA/QC Manager
- Ryan Campbell – Utility Coordinator/CADD
- Rumpa Dey, EIT (PE – Pending) – Designer/CADD

SUBCONTRACTORS:

- Al Reece, AZTEC – Survey Work, Utility Potholes
- Justin Hoppmann, AZTEC – Environmental Work

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 out 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 7 calendar weeks after written authorization from GILBERT to proceed.
2. ENGINEER shall complete all work and services required under the Design Services within 30 calendar weeks after receipt of a written authorization from GILBERT to proceed.
3. ENGINEER shall complete all work and services required under Bidding Phase as needed for coordination with ADOT.
4. ENGINEER shall complete all work and services required under Construction Phase upon the commencement of construction, and shall continue as needed through completion and acceptance of the Project by ADOT and GILBERT. It is expected that the Construction Phase will last for 1 calendar year
5. ENGINEER shall complete work and services required under the Post-Construction Phase, within 6 calendar weeks after receipt of a written authorization from GILBERT to proceed and the record drawings from the CONTRACTOR. Excluded from this duration is the time associated with the construction document back-check stage.

The durations stated above exclude the review periods required by ADOT, 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, and shall not exceed, the FEE 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.

C. REIMBURSABLE COSTS

ENGINEER will be reimbursed for expenses up to a maximum amount of \$47,820.88 (includes cost for survey and environmental evaluation). All reimbursable costs must be submitted with monthly bill. The items allowable for reimbursement are as follows:

1. Cost of transportation. (Mileage associated with Project at **\$0.56** cents per mile. Any out of state travel must receive prior approval of GILBERT.)
2. Costs of outside printing services, as required by the contract.
3. Cost of postage, courier, UPS, Federal Express, etc. to the extent such item is specifically quantified and estimated for this project.
4. Cost of other items as required, with prior approval from GILBERT.

D. ALLOWANCE COSTS

Upon the request of GILBERT, ENGINEER will perform unforeseen A/E services such as potholes, tasks resulting from ADOT requirements, and will be reimbursed for expenses up to a maximum amount of \$14,000. Allowance items must be submitted with monthly bill at the time of use.

SCHEDULE D - 1
 Derivation of Hours

Task No.	TASKS	Total Hrs/Task	Principal	PM	Sr. Transp Engr (QA/QC)	Engineer II	EIT	Admin	Comments
B	PRE-DESIGN PHASE								
1.0	Project Initiation	73							
1.1.1	Field Reconnaissance Survey (7 mile corridor)			8		20	24		Average of 3.5 miles a day. 8 hours per day for PE and EIT each. One day for EIT to organize pictures and field notes and 4 hours for PE to review notes. 8 hrs for PM to review notes and visit areas as needed.
1.1.2	Prepare and Manage Project Schedule		4	7					4 hrs to prepare schedule and over a period of 6 months 0.5 hrs per month to update schedule. 4 hrs for principal to review and assign resources over course of project.
1.1.5	Kick-Off Meeting (task includes preparation of minutes and agenda)			4		6			2 hours for PM/Principal and PE to attend meeting, 2 hr. for PM and 4 hrs for PE to prepare agenda and minutes
2.0	Development of Engineering Program	83							
2.1	Complete Design Information Checklist		2	4					Meet with ADOT to discuss project development, review and approval process and times.
2.1.6	Obtain and Review As-built Maps from Town					4	12		12 hrs for EIT to research and synthesize as-builts, 4 hrs for PE to review and incorporate data
2.1.4	Open Blue Stake and obtain Utility Maps						4		
2.1.9	Search Parcel information and obtain Right-of-Way Information								Covered under ROW task
2.1.10	Prepare 15% concept plans (7 miles)			8	7	14	28		4 hrs for EIT, 2 hr. for PE, 1 hr. for QA/QC per mile of concept plan, 8 hrs for PM overall coordination
2.6	Engineering program meeting								Covered under Kick-off
3.0	Meetings	14							
3.1	Pre-Design Progress Meetings, meetings will be every 3 weeks. (2 anticipated) (includes meeting minutes and agenda)			4		8		2	2 hr. for PM and 3 hrs PE per meeting 1 Admin hr. for minutes
3.2	Project Co-ordination with ADOT			0		0		0	ADOT will be invited to the progress meetings.
C	DESIGN PHASE								
1.1.3	Coordinate with Gilbert PM/ meeting every month for 5 months (Subtract two review meetings)	20	3	12				5	4 hr. for meeting including preparation, minutes, travel. 1 hr. for minutes for admin. 3 hrs Principal time for overall coordination.
2.0	Survey and Mapping	200							
2.1.1	Coordinate with Survey Sub & review survey			4		3			
2.3	Place Utilities on plans (approx. 11 different utility types are anticipated per mile)					38.5	154		2 hrs per utility per mile for EIT. 0.5 hrs for PE to QA/QC each utility per mile, assumed 11 utilities
6.0	Utility Coordination	105							
6.1	Obtain Asbuilt Information								Hours captured above
6.2	Utility Meeting (including minutes and agenda)			3		5			2 hours for PM and PE to attend meeting, 1 hr. for PM and 3 hrs for PE to prepare agenda and minutes
6.3.2.1	Contact Blue Stake								Hours Captured Above
6.3.2.2	Place utilities on plans								Hours captured above
6.4	Utility Conflicts and Adjustments			4		4	8		Prepare list of potholes & discuss with Town, Review relocation plans & prior rights as needed,
6.5	Utility Special Provision								Covered in Special Provisions
6.6.1	Prepare 60% conflict review letters					5.5	11	8	EIT: 1 hours for each letter, PE: 0.5 hours to finalize each letter Admin: 0.5 hrs to package and mail 2
6.6.2	Prepare 95% clearance letters					5.5	11	16	hours to follow up w/ responses for each utility
6.6.3	Compile and prepare clearance letter report for ADOT review and approval			4	4		8		
6.6.4	Coordination with ADOT for Utility Clearance			8					

SCHEDULE D - 1
Derivation of Hours

Task No.	TASKS	Total Hrs/Task	Principal	PM	Sr. Transp Engr (QA/QC)	Engineer II	EIT	Admin	Comments
7.0	Right-of-Way Coordination	120							
7.1.1	Place R/W lines on plans with respect to section line					7	14		1 hr. for PE and 2 hr. for EIT to place R/W per mile
7.1.2	Place Parcel Info on plans					3.5	21		0.5 hrs for PE to check and 3 hrs for EIT to place parcel info per mile.
7.2.1	Gather R/W prcls numbers, details etc from Assesor's map and summarize in tabulated format for 7 miles					7	56		EIT: 8 hours per mile PE: 1 hour per mile QA/QC
	Complete ADOT Application			1		2			
	Meeting with ADOT R/W department					2	2		
	Follow up coordination			4					
19.0	Coordination of Environmental Approvals	20							
19.1	Environmental review and coordination			20					Provide project scope, boring and trenching locations, ROW information, 15% concept plans etc. to Environmental sub and meet every month to coordinate the project elements.
20.0	Project Assessment Report	124							
20.1	Prepare Draft PA		2	16	12	40			
20.2	Prepare concept of operation		4	8		12			
20.3	Prepare Final PA		1	8	2	16			incorporate comments from I own and ADOT
20.4	Prepare Systems Engineering Checklist			1		2			
21	ATMS Design	541							
21.1	Prepare Misc. Sheets (face sheet, general notes, legend, key map, etc.)					8	16		
21.2	15% Concept Plans								Covered under development of Engineering Program EIT: 3 hrs per sheet PE: 3 hrs per sheet QA/QC: 1 hr. per sheet PM: 10 hrs to coordinate tasks
21.3	60% plans (approx. 30 plan sheets)		2	8	30	90	90		
21.3.1	Site visit with Town, review each traffic signal cabinet and method to connect to controller					8	8		Visit all of the 14 signals.
21.4	95% plans, (update 60% plans per comments, add conduit and cable schedule to plans, show detail of conduit entering cabinet, etc.), approx. 30 plan sheets			8	30	45	60		EIT: 2 hrs per sheet PE: 1.5 hrs per sheet QA/QC: 1 hrs per sheet PM: 8 hrs to coordinate tasks
21.4.5	Prepare project details (pothole details, special trenching and boring details, S/W replacement detail, integration to TOC, innerduct detail, etc.), approx. 5 sheets			5	5	10	20		EIT: 4 hrs per sheet PE: 2 hrs per sheet QA/QC: 1 hrs per sheet PM: 5 hrs to coordinate tasks
21.4.3	Review and integrate splice tables into plans, (approx. 15 splice tables), TOC and Muni equipment details		4	8		8	4		PE and PM: 8 hrs for equipment details. Principal 4 hrs for equipment details. EIT 4 hrs to draw Splicing tables and integrate them into the plans
21.5	Final (100%) Plans and Details (approx. 40 sheets including conduit layout, details, and splices diagrams)		4		10	40	20		EIT: 0.5 hrs per sheet PE: 1 hr. per sheet QA/QC: 0.25 hrs per sheet
22.0	Cost Estimate/Quantities/Bid Schedule	44							
22.1	60% Quantities and Cost Estimate			2	1	10	20		EIT: 0.5 hours per sheet PE: 0.25 hours per sheet
22.2	95% Quantities and Cost Estimate		1	2	1	4			
22.3	Final (100%) Quantities and Cost Estimate			1		2			
23/24	Specifications and Special Provisions	136							
23.1	60% Specs (per ADOT's template)		4	4	6	16			Task includes preparing the specifications and two review cycles with ADOT C& S. Based on our experience on similar projects ADOT C&S reviews and requires a sperate meeting with C&S atleast twice.
23.2	95% Specs		4	20	16	40			
23.3	Final (100%) Specs		2	8	4	12			
25.0	Bid Scheule	20							
25.1	Prepare Bid Schedule per ADOT C & S requirements			8		12			

SCHEDULE D - 1
Derivation of Hours

Task No.	TASKS	Total Hrs/Task	Principal	PM	Sr. Transp Engr (QA/QC)	Engineer II	EIT	Admin	Comments
26.0	Review and Comment Resolution	96							
26.2.1	15% Review Meeting			3		3			
26.2.1.1	Revise 15% per comments		2	4		8	12		
26.2.3	Gather and Address 60% Comments		2	6		8	12		
26.2.3.1	Attend 60% Comment Resolution Meeting (including minutes and agenda)			3		3			
26.2.4	Gather and Address 95% Comments		2	4		6	12		
26.2.4.1	Attended 95% Comment Resolution Meeting			3		3			
D	BIDDING PHASE								
1.0	Project Management	20							
1.1	Assist in coordinating with ADOT to solicit Bids		2	4					
1.2	Attend Pre-Bid Conference			2					
1.3	Respond to Written Inquiries and Review Addenda		2	2		4			
1.4	Attend Pre-Construction Conference			2		2			
2.0	Time Management (ADOT will lead this task)	0							
3.0	Management Information System (N/A)	0							
E	CONSTRUCTION PHASE								
1.0	Project Management	124							
1.2	Attend bi-weekly meetings (6 month project duration, i.e. 12 meetings)			24					PM: 2 hrs per meeting
1.3	Technical inspection and review tests			8		20	40		4 site visits of 2 hrs each, review OTDR report twice -16hrs
2.0	Time Management (ADOT)	0							
3.0	Cost Management - assist ADOT/TOWN to discuss engineering soundness of proposed changes by Contractor.			16		16			Over the course of project 16 hrs to review changes proposed by contractor for PE and PM
4.0	Management information system	0							
F	POST CONSTRUCTION PHASE	102							
3.0	Prepare As built Plans (approx. 40 sheets)		2			40	60		EIT: 1.5hrs per sheet PE: 1 hr per sheet for review
	TOTAL HOURS	1841	49	283	128	623	727	31	



SCHEDULE D - 2
Derivation of Fee

DIRECT LABOR

<u>Classification</u>	<u>Hours</u>	<u>Rate/Hr</u>	<u>Extension</u>
Principal	49	\$ 167.00	\$ 8,183.00
Project Manager	283	\$ 151.00	\$ 42,733.00
Senior Transportation Engineer	128	\$ 120.00	\$ 15,360.00
Engineer/Designer	623	\$ 100.00	\$ 62,300.00
Planner/Engineer In Training	727	\$ 85.00	\$ 61,795.00
Administrative Assistant	31	\$ 60.00	\$ 1,860.00
Total Hours	1841		
Sub-Total Labor			\$ 192,231.00

REIMBURSIBLE EXPENSES

	<u>Qty</u>	<u>Unit</u>	<u>Cost</u>	<u>Extension</u>
B/W Plots, 24" x 36" sheet	400	\$2.50	/copy	\$ 1,000.00
Plots: Vellums/Mylars, 24" x 36" sheet	40	\$15.00	/plot	\$ 600.00
Extra Copies of B/W Reports	0	\$15.00	/copy	\$ -
Deliveries of reports or plans	5	\$20.00	/delivery	\$ 100.00
Mileage	1200	\$0.560	/mile	\$ 672.00
Sub-Total Direct Expense				\$ 2,372.00

SUB-CONTRACTOR (AZTEC)

Environmental				\$ 18,646.88
Survey				\$ 26,802.00
Sub-Consultant Fee				\$ 45,448.88
Direct Expenses (including subconsultant)				\$ 47,820.88
Allowance (For incidental items such as potholes, environmental, or unplanned activities and meetings)				\$ 14,000.00
CONTRACT TOTAL				\$ 254,051.88

Y. S. Mantri & Associates, LLC

124 West Orion Street • Suite F-10 • Tempe • AZ • 85283

Phone: 480 • 247 • 3702 Fax: 480 • 961 • 8667

Website: www.mantrieng.com



4561 E McDowell Road
 Phoenix, AZ, 85008
 [602] 454-0402
 [602] 458-9359 fax

Y.S. Mantri & Associates, L.L.C.
Town of Gilbert ITS Project
Topographic Survey

COST PROPOSAL ASSUMPTIONS

This is AZTEC's proposal to provide Surveying and Mapping services to support the design of new fiber-optic cable and conduit along Warner Road, Cooper Road, Elliott Road, McQueen Road, and Guadalupe located in Gilbert, Arizona.

AZTEC will perform the following tasks:

1. AZTEC will establish control for the project based on the Town of Gilbert horizontal datum, which is NAD 83/92.
2. AZTEC will perform a topographic survey of Houston Ave. from Gilbert Road to Cooper Road, Cooper Road from Houston to Guadalupe Road, Guadalupe Road from Cooper to McQueen Road, McQueen Road from Guadalupe to Elliott Road, Elliott Road from McQueen to Cooper, Cooper Road from Elliott Road to Warner Road, Warner Road from Cooper Road to Gilbert Road and Gilbert Road from Warner to Civic Center Drive and will extend to the existing Right-of-Way on each side of the centerline where possible. At the intersections at both ends of the limits, the survey will extend to 10 feet behind the sidewalk on all 4 corners. The survey will include all above ground features, to include utility boxes, valves, and manholes, all curbing and sidewalks. Trees above 4" in diameter will be included. Small trees and shrubs, striping and signs will not be included. Shots will be taken at an interval to define the linework. Center median curbs will be obtained for this survey, however no landscaping in the medians will be included. The meandering sidewalk on both sides of the roadways will be surveyed at 100-foot intervals and the areas of the sidewalk between the survey shots will be drawn using aerial imagery.
3. AZTEC will survey the existing street monuments and establish the centerline of Houston Avenue, Cooper Road, Guadalupe Road, Elliott Road, Warner Road and Gilbert Road within the project limits. AZTEC will provide stationing along each roadway.
4. AZTEC will prepare a base map of the survey in Microstation V8I Format. Final deliverables will include electronic CADD and ASCII files and a copy of the field notes.
5. AZTEC will perform potholes at up to fifteen (15) locations throughout the project limits.



4561 E McDowell Road
Phoenix, AZ, 85008
[602] 454-0402
[602] 458-9359 fax

The cost for task 1 through 4 listed above will be a fixed fee of \$26,802 based on the attached Derivation of Cost Proposal. The cost for task 5 will be \$600.00 per pothole location for a maximum amount of \$11,000 based on the attached Subsurface Utility Engineering Proposal. We appreciate the opportunity to submit this proposal and look forward to working with you on the project.

AZTEC,

A handwritten signature in black ink, appearing to read "Chad W. Huber". The signature is written in a cursive style and is positioned above a horizontal line.

Chad W. Huber, RLS
Survey Crew Manager

AZTEC ENGINEERING
YS Mantri
Gilbert ITS
September 16, 2014

Contract No.: _____
 Project No.: _____
 TRACS No.: _____
 Task No.: _____

DERIVATION OF COST PROPOSAL
SUMMARY

(Round Figures to the nearest \$1)

ESTIMATED DIRECT LABOR	Estimated	Average	Labor
<u>Classification</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Costs</u>
Project Principal	0	\$62.04	0.00
Project Manager	8	\$43.14	345.12
Registered Land Surveyor	0	\$37.46	0.00
Engineer / Designer	0	\$31.60	0.00
Survey Crew - 3 Person	0	\$78.40	0.00
Survey Crew - 2 Person	170	\$54.32	9,234.40
Technican / CADD	16	\$27.54	440.64
Secretary / Clerical	0	\$17.00	0.00
Total Hours:	194		10,020.16
Total Estimated Labor:			10,020.16
Negotiated OVERHEAD @ 143.16%			14,344.86
Sub-Total:			\$24,365.02

OTHER DIRECT COSTS

(Listed by Item at Estimated Actual Cost - NO MARKUP)

Mileage	0 miles @	\$0.445 per mile =	0.00
Subsistence	0 days @	\$34.00 per day =	0.00
Lodging	0 days @	\$67.00 per day =	0.00
Auto Rental	0 days @	\$45.00 per day =	0.00
Outside Printing		@ cost =	0.00
Survey Supplies	Lath, Stakes, etc.	@ cost =	0.00
GPS	days @	\$500.00 per day =	0.00
Total Estimated Other Direct Costs:			0.00

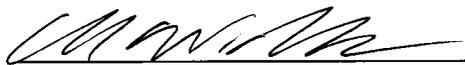
ESTIMATED OUTSIDE SERVICES AND CONSULTANTS

(Listed by Firm or Name at Estimated Cost to you - NO MARKUP)

<u>Firm</u>	<u>Hours</u>	<u>Cost</u>	<u>Method of Compensation</u> <small>(Aztec = LS)</small>
None	0	\$0.00	
Total Estimated Outside Services:			\$0.00

Total Estimated Cost to Consultant:	\$24,365.02
Fixed Fee (Direct Labor + Overhead	\$2,436.50
x Multiplier) @ 10.0%	
TOTAL ESTIMATED COST:	\$26,802

ADDITIONAL CONTRACT TIME 0 CALENDAR DAYS


 Chad W. Huber
 Survey Crew Manager

9/16/14
 Date

AZTEC ENGINEERING
YS Mantri
Gilbert ITS
September 16, 2014

Contract No.: 0
 Project No.: 0
 TRACS No.: 0
 Task No.: 0

ESTIMATED HOURS

TASK DESCRIPTION		Project Principal	Project Manager	Registered Land Surveyor	Engineer / Designer	Survey Crew - 3 Person	Survey Crew - 2 Person	Technician / CADD	Secretary / Clerical	TOTAL
1	Information Collection/Permits	\$62.04	\$43.14	\$37.46	\$31.60	\$78.40	\$54.32	\$27.54	\$17.00	-
2	Establish Control		8							8
3	Topographic Survey						170			170
4	Base Map & Report							16		16
5										-
6										-
7										-
TOTAL		-	8	-	-	-	170	16	-	194



TYPSA Group www.aztec.us
 4561 E. McDowell Road
 Phoenix, AZ 85008
 Tel: (602) 454-0402
 Fax: (602) 458-9359

Aztec Engineering Group, Inc.

Subsurface Utility Engineering Proposal

Proposal Prepared For:

Company Name:	Y. S. Mantri & Accosiates, LLC	Date of Proposal:	9/15/2014
Company Address:	124 W. Orion St #F-10 Tempe, AZ 85283	Project Name:	Town of Gilbert ITS
Point of Contact:	Tino Kehagias	Project Address:	Gilbert AZ
Contact Number:	480-247-3702	Project Start Date:	
		E-mail:	tino@mantrieng.com

Subsurface Utility Exploration

Description	Qty	Unit Pricing	Amount
Unpaved Surface (depth 7 feet and under)	15	\$600.00 per hole	\$9,000.00
Paved Surface (depth 7 feet and under)	0	\$0.00 per hole	\$0.00
Concrete Surface (depth 7 feet and under)	0	\$0.00 per hole	\$0.00
In any surface over 7 feet in depth	0	\$0.00 per foot	\$0.00
Total:	Holes: 15	Footage Over 7 feet: 0	\$9,000.00

Services Offered: (only checked services are included)

- Contact One Call Center (Aztec uses electronic locating equipment to verify utility locations)
- Verify vertical elevation measurements from top of utility to an Aztec installed hub marker on the surface
- Provided surveyed X, Y, Z coordinates from the hub marker
- Roadway restoration; compacted ABC material with UPM coldpatch unless otherwise specified
- Provide client with compiled "Testhole Data Summary" and "Testhole Data Reports"

- Permit fees \$0.00
- Special restoration requirements (See Remarks) \$0.00
- Traffic management - lane closures, traffic control plans, and rental \$2,000.00
- Utility data collection and designating 0.00 @ \$0.00 per \$0.00
- Pothole truck and crew per hour 0.00 @ \$0.00 per hour \$0.00
- Additional Survey 0.00 @ \$0.00 per hour \$0.00
- Other: \$0.00
- Other: \$0.00

We appreciate the opportunity to submit this proposal to you and look forward to working with you on this project. This is only a "Quote" and is contingent upon review of plans.

TOTAL: \$11,000.00

* These prices are valid for 90 days from the proposal date, and are contingent upon agency and review of plans.

Remarks:

This proposal assumes excavating 15 locations for ITS vaults of 64 cubic feet each. A small amount is included for potential traffic control that may be required.

Respectfully,

Art Mehler
 Aztec Engineering Group, Inc.
 SUE Project Manager

Approved and Accepted

Signed _____

Printed Name _____



4561 East McDowell Road
Phoenix, Arizona 85008
602.454.0402

October 7, 2014

Tino Kehagias, P.E.
Y.S. Mantri & Associates, LLC
124 W Orion Street, Ste F-10
Tempe, AZ 85283

RE: Cost Proposal for Advanced Traffic Management System - Phase IV
Town Project Number: TS132
AZTEC Project Number: AZG1409

Dear Mr. Kehagias

AZTEC is pleased to submit this scope of services and cost proposal to obtain ADOT/FHWA National Environmental Policy Act clearance for the above referenced project. This proposal has been prepared based on our understanding of the project requirements as described in the Request for Statement of Qualifications.

The total cost estimate is \$18,646.88.

We appreciate the opportunity to work with you on this task. Should you have any questions, please call me at (602) 458-9261.

Sincerely,

Justin S. Hoppmann
Project Manager
AZTEC Engineering Group, Inc.

AZTEC SCOPE OF SERVICES

Town of Gilbert

Advanced Traffic Management System - Phase IV

Town Project Number: TS132

I. Task Understanding

The Town of Gilbert (Town) requested this scope of services and cost proposal to obtain Arizona Department of Transportation (ADOT)/Federal Highway Administration (FHWA) National Environmental Policy Act (NEPA) clearance for a federally-funded Congestion Mitigation Air Quality (CMAQ) project that would involve the installation of fiber optic cabling, conduit, and ITS equipment along approximately seven miles of roadways within the northwest section of the Town.

AZTEC will prepare the NEPA document and complete all reasonably anticipated technical studies to support the NEPA document in accordance with the ADOT environmental process guidelines and FHWA requirements.

II. Assumptions

- An ADOT-formatted condensed clearance memo is the appropriate NEPA document. If ADOT indicates that a Checklist Categorical Exclusion is required, AZTEC would prepare that document without a change in the estimate.
- No new right-of-way, easement, or temporary construction easements will be necessary
- No geotechnical or potholing investigation is required
- An ADOT local government Project Data Sheet (PDS) will be required
- Due to the lack of waters of the US, no Section 404 permitting is required
- Area requiring a cultural resources survey does not exceed 100 ft in width and 2 miles in length
- No known cultural resources sites are present
- No sites will be found during fieldwork
- No detailed separate analyses for floodplains, land use/ownership, farmland, socioeconomic and Title VI/Environmental Justice, Section 4(f) or 6(f) resources, or secondary or cumulative impacts will be required
- AZTEC will not be responsible for any Arizona Pollutant Discharge Elimination System (AZPDES) permit application (including Notice of Intent [NOI] or Notice of Termination [NOT]) or Storm Water Pollution Prevention Plan (SWPPP) that may be required
- No Hazardous Materials sampling/testing would be necessary

III. Scope of Work

Section 401/404 Permitting

- Prepare a Section 404/401 Permitting determination memo for the project file

Cultural Resources

- Examine records from ADOT Portal, AZSITE Online Database, and Bureau of Land Management General Land Office Plat Maps
- Complete paperwork for permitting, registration, and curation with Arizona State Museum
- Perform fieldwork
- Prepare report
- Draft Section 106 consultation letters and maps for ADOT use
- Coordinate with Town and ADOT staff

Biological Resources

- Complete a USFWS IPAC website query and Arizona Game and Fish Department on-line environmental review tool request
- Conduct a burrowing owl survey of suitable habitat within the project area (near vacant lots and agricultural fields)
- Prepare an ADOT Urban Project Biological Evaluation (UPBE)
- Coordinate with Town and ADOT staff

Hazardous Materials

- Perform an Arizona Department of Environmental Quality and Environmental Protection Agency database search
- Prepare an ADOT hazardous materials records check
- Prepare an ADOT preliminary initial site assessment
- Coordinate with Town and ADOT staff

Public/Agency Scoping

- Prepare agency/public scoping coordination letters, maps, and distribution list
- Public scoping letter distribution will be limited to adjacent property owners and no public meetings are anticipated
- Review any scoping responses and coordinate with the Town and ADOT staff regarding appropriate responses
- Coordinate with Town and ADOT staff

Other Resources

- Identify floodplain, land use, and farmland presence and identify impacts
- Identify socioeconomic and Title VI/Environmental Justice impacts
- Identify Section 4(f) and 6(f) resource presence and identify impacts
- Identify construction-related impacts and coordinate with project team to minimize impacts
- Complete qualitative air quality and noise analyses
- Coordinate with Town and ADOT staff

Environmental Clearance

- Prepare an ADOT local government condensed clearance memorandum, or other Categorical Exclusion NEPA document as directed by ADOT.
- Develop mitigation measures in coordination with the Town and ADOT staff to ensure all parties agree with the measures
- Coordinate with Town and ADOT staff

Task Management and Meetings

- Complete an ADOT local government PDS
- Provide the Town, ADOT PM, and EPG monthly status reports throughout the project duration
- Review and comment on the Project Assessment, construction plans, and specifications
- Internal coordination with AZTEC staff regarding project schedule, budget, and scope of work
- One AZTEC staff will attend up to two meetings at Town or ADOT offices, with associated prep and follow up
- Compile project information for closeout

Deliverables

All deliverables are anticipated to consist of a preliminary draft submitted to the Town for initial review, a draft submitted to ADOT Environmental Planning Group (EPG) once the Town's comments have been incorporated, and a final version submitted to the Town and ADOT EPG for concurrent approval. Deliverables include:

- ADOT local government PDS
- Public/agency scoping letters, maps, and distribution list
- Biological review
- Cultural Section 106 consultation letters and maps
- Hazardous materials records check
- Hazardous materials preliminary initial site assessment
- NEPA Document
- One hard copy and one electronic copy (CD of PDFs) of the AZTEC project file

Project Name: Advanced Traffic Management System - Phase IV
Project Number: TS132
Project Description: Obtain ADOT/FHWA Environmental Clearance

	Project Principal	Project Manager	Sr Env Planner/Scientist	Env Planner/Scientist	Assoc Env Planner/Scientist	Cultural Principal Investigator	Arch Historian/Historian	Archaeologist	Associate Archaeologist	Sr Biologist	Biologist	Hazmat Specialist	Air & Noise Specialist	Admin/Clerical	Subtotal Hours	Subtotal Labor Cost
Hourly Rate	\$201.60	\$172.27	\$155.67	\$101.56	\$56.76	\$123.30	\$118.42	\$80.84	\$53.57	\$136.04	\$73.67	\$126.54	\$122.20	\$61.69		
Section 404/401 Permitting																
Permit Determination Memo				1											1	\$ 101.56
Subtotal	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1	\$ 101.56
Cultural Resources																
Consultation Letters						2		6							8	\$ 731.64
Background Research								2	6						8	\$ 483.10
Fieldwork								6	6						12	\$ 806.46
Report Prep						2		14	14						30	\$ 2,128.34
Coordination						4		2							6	\$ 654.88
ASM Permitting/Registration/Curation								2	6						8	\$ 483.10
Subtotal	0	0	0	0	0	8	0	32	32	0	0	0	0	0	72	\$ 5,287.52
Biological Resources																
Data Collection											1				1	\$ 73.67
Burrowing Owl Survey											6				6	\$ 442.02
Urban Biological Evaluation											6				6	\$ 442.02
Coordination										1					1	\$ 136.04
Subtotal	0	0	0	0	0	0	0	0	0	1	13	0	0	0	14	\$ 1,093.75
Hazardous Materials																
Database Search			1												1	\$ 155.67
Records Check			2												2	\$ 311.34
Preliminary Initial Site Assessment			12												12	\$ 1,868.04
Coordination			1												1	\$ 155.67
Subtotal	0	0	16	0	0	0	0	0	0	0	0	0	0	0	16	\$ 2,490.72
Public/Agency Scoping																
Scoping Letters, Maps, and List			1	2	4										7	\$ 585.83
Review Scoping Responses			1	2											3	\$ 358.79
Coordination			1	1											2	\$ 257.23
Subtotal	0	0	3	5	4	0	0	0	0	0	0	0	0	0	12	\$ 1,201.85
Other Resources																
Floodplains, Land Use, Farmlands			1												1	\$ 155.67
Socioeconomic and Title VI			1												1	\$ 155.67
Section 4(f) and 6(f)			1												1	\$ 155.67
Construction-Related Impacts			1												1	\$ 155.67
Qualitative Air & Noise Analyses			1												1	\$ 155.67
Coordination			1												1	\$ 155.67
Subtotal	0	0	6	0	0	0	0	0	0	0	0	0	0	0	6	\$ 934.02
Environmental Clearance																
Condensed Clearance Memo or CE NEPA document		1	2	11		1					1				16	\$ 1,797.74
Mitigation Measures			2	2											4	\$ 514.46
Coordination			4												4	\$ 622.68
Subtotal	0	1	8	13	0	1	0	0	0	0	1	0	0	0	24	\$ 2,934.88
Task Management and Meetings																
ADOT Local Government PDS			1	1		1					1				4	\$ 454.20
Monthly Status Reports			3												3	\$ 467.01
Review & Provide PA Text, Plans, and Specs			4												4	\$ 622.68
Internal Coordination		1	7												8	\$ 1,261.96
Meetings (1 staff at 2 meetings)			6												6	\$ 934.02
Compile project closeout			1		4										5	\$ 382.71
Subtotal	0	1	22	1	4	1	0	0	0	0	1	0	0	0	30	\$ 4,122.58
TOTAL LABOR	0	2	55	20	8	10	0	32	32	1	15	0	0	0	175	\$ 18,166.88



Justin S. Hoppmann
Project Manager

10/07/2014
Date

DIRECT EXPENSES	Units	Unit Cost	Cost
EDR Records Review	4	\$120.00	\$480.00
Item Description	0	\$0.00	\$0.00
Item Description	0	\$0.00	\$0.00
Item Description	0	\$0.00	\$0.00
TOTAL DIRECT EXPENSES			\$480.00

TOTAL COST ESTIMATE (LABOR + EXPENSES) \$ 18,646.88



Council Communication

TO: Honorable Mayor and Councilmembers
FROM: Michael Hamblin, Town Attorney, 503-6027
MEETING DATE: December 2, 2014
SUBJECT: Contracts with Law Firms to Provide Outside Counsel Services

STRATEGIC INITIATIVE: N/A

RECOMMENDED MOTION

A motion to authorize the Mayor to enter into legal services contracts with various selected law firms to provide outside counsel services to Gilbert on an as-needed basis as determined by the Town Attorney.

BACKGROUND/DISCUSSION

In September, 2014, the Town Attorney issued a request for qualifications to the legal community, requesting responses from lawyers and law firms to provide outside counsel services to Gilbert in numerous selected legal areas. The responses were evaluated by Michael Hamblin, Town Attorney and Jack A. Vincent, Assistant Town Attorney.

All respondents submitted appropriate documents and insurance information. Upon approval, three year contracts will be entered into with firms presently and regularly performing services for Gilbert. Additional contracts with other approved lawyers or firms may be entered into by the Town Attorney from time to time on an as-needed basis. As legal needs arise, an approved firm will be engaged to handle a specific matter. On rare occasions, it may become necessary to retain the services of a firm not on the approved list. Such exceptions and the reasons therefore, will be documented.

The following sixteen firms responded to the request for qualification. All were found to be qualified and eligible.

Ayers & Brown	Holm Wright Hyde & Hays PLC
Ballard Spahr	Kutak Rock LLP
Curtis Goodwin Sullivan Udall & Schwab PLC	Leonard & Felker, PLC
Dickinson Wright PLLC	Littler Mendelson
Grasso Law Firm, P.C.	Peskin & Kotalik
Greenberg Traurig	Ryley Carlock & Applewhite
Gust Rosenfeld	Struck Wieneke & Love
Hinshaw & Culbertson LLP	Wallin Hester PLC

The contract was reviewed for form by Michael Hamblin, Town Attorney.

FINANCIAL IMPACT

Legal Services are budgeted annually from every needed fund. It is the responsibility of the Town Attorney, and other affected Town Departments to stay within budgeted amounts, and to request contingencies as needed.

Financial Impact section reviewed by Laura Lorenzen, Management and Budget Analyst.

STAFF RECOMMENDATION

Staff recommends authorizing the Mayor to enter into legal services contracts with various selected law firms to provide outside counsel services to Gilbert on an as-needed basis as determined by the Town Attorney.

Respectfully submitted,

Michael Hamblin
Town Attorney

Attachment:

Sample Contract

Approved By

Approval Date

Michael Hamblin

11/19/2014 9:15 AM

Michael Hamblin

11/19/2014 9:15 AM

Laura Lorenzen

11/19/2014 9:38 AM

Douglas Boyer

11/19/2014 2:35 PM

ATTACHMENT A

**AGREEMENT FOR LEGAL SERVICES
BETWEEN
THE TOWN OF GILBERT
FOR ITS OWN ACCOUNT AND
ON BEHALF OF CERTAIN AFFILIATED OR SUPPORTED ENTITIES
AND
FIRM NAME HERE**

AGREEMENT NO. _____

THIS Agreement (hereinafter "AGREEMENT"), is made and entered into on this _____ day of _____, 2014, by and between the Town of Gilbert (hereinafter "TOWN"), acting by and through the Town Attorney, for and on behalf of the TOWN and on behalf of certain separate legal entities affiliated with or financially supported by the TOWN (individually referred to as "CLIENT" and collectively referred to as "CLIENT ENTITIES"; and ***FIRM NAME HERE*** (hereinafter "COUNSEL"),

RECITALS

WHEREAS, the Town Manager and Town Attorney issued a Request for Qualifications seeking outside legal counsel to represent the TOWN and certain CLIENT ENTITIES for which the TOWN has acted as a procurement agent; and

WHEREAS, after issuing a Request for Qualifications, the Town Manager and Town Attorney have determined that it is in the best interests of the TOWN and the CLIENT ENTITIES to employ COUNSEL to furnish legal services to the TOWN and/or to one or more CLIENT ENTITIES on terms and conditions specifically set forth below and subject to the additional requirements set forth in a Letter of Engagement ("LOE") issued at the time a matter is referred to COUNSEL;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, terms, covenants and conditions set forth herein, the parties agree as follows:

1. **SCOPE:** COUNSEL shall, upon referral of a lawsuit or other legal matter by the Town Attorney, provide any necessary legal representation to the TOWN and/or to the CLIENT and any of its officers, employees or agents as directed by the TOWN. COUNSEL agrees to perform all necessary legal services, including but not limited to investigation, legal research, preparation of legal memoranda, pleadings and briefs, drafting and review of legal documents, providing legal advice and opinions, and making appearances before administrative tribunals and courts, in representing CLIENT. The legal services shall be carried out in cooperation with and under the supervision of the Town Attorney's Office of the Town of Gilbert, in a manner consistent with COUNSEL'S ethical obligations to the TOWN and/or to the CLIENT.

COUNSEL shall not undertake any representation of the TOWN and/or CLIENT or perform any legal services for the TOWN and/or CLIENT at the request of any TOWN and/or CLIENT official or employee without first obtaining specific written authorization to do so from the Town Attorney or his designee.

COUNSEL shall not file any action or enter any litigation on behalf of the TOWN and/or CLIENT without first obtaining permission to do so from the Town Attorney or his designee.

Before releasing any written legal opinion or statement affecting the CLIENT or TOWN or any of their officers or employees, COUNSEL shall obtain the Town Attorney's concurrence.

2. REFERRAL OF WORK TO COUNSEL: Referral of legal matters to COUNSEL under this AGREEMENT will only be through the Gilbert Town Attorney or his designee.

Work performed by COUNSEL on matters that are not referred to COUNSEL as set forth in this AGREEMENT will be considered unauthorized and noncompensable. COUNSEL is to provide legal services to the TOWN and/or CLIENT only through the Gilbert Town Attorney's Office, and not independently of the Gilbert Town Attorney's Office. COUNSEL shall report to the Gilbert Town Attorney any effort made to engage the services of COUNSEL independently of the Town Attorney's Office.

Referral of legal matters to COUNSEL will be through a Letter of Engagement ("LOE") signed by the Gilbert Town Attorney or his designee. The LOE will contain: (1) the name and a description of the matter for which legal services are sought, (2) an explanation of the scope of work, (3) the compensation the TOWN and/or CLIENT will pay COUNSEL for the services sought, and if CLIENT or another entity, but not the TOWN, will be responsible for payment of COUNSEL'S fees, describing the payment arrangements and responsibilities (4) a designated Town Attorney in the Gilbert Town Attorney's Office, and (5) as appropriate, the identification of the specific Client Representative(s) with whom COUNSEL will communicate and from whom COUNSEL may receive direction. The Letter of Engagement is not effective unless it is signed by the Gilbert Town Attorney.

The LOE is effective upon receipt. Each LOE will identify a specific Town Attorney from the Office of the Town Attorney with whom COUNSEL will be working and to whom COUNSEL will be reporting.

3. CLIENT CONTACT: All decisions requiring the consent of CLIENT shall be brought by COUNSEL to the attention of the Client Representative and/or the Town Attorney, as appropriate and as referenced in the above paragraph.

4. STAFFING: TOWN and CLIENT reserve the right to designate a specific attorney(s) in COUNSEL'S firm to work on specific matters. COUNSEL shall employ suitably trained and skilled professional personnel to perform the legal services. Prior to changing any key personnel, especially those key personnel who the TOWN relied upon in making this AGREEMENT,

COUNSEL shall obtain the approval of the Town Attorney. All staffing decisions shall be discussed and agreed upon with the TOWN and, if applicable, with CLIENT in advance.

5. MATERIALS AND INVESTIGATIVE SERVICES: TOWN and/or CLIENT will furnish COUNSEL all investigative and other materials the TOWN and/or CLIENT has relative to the legal services to be provided by COUNSEL and will conduct such additional investigation as COUNSEL shall request.

6. COMPENSATION: COUNSEL will be paid for services under this AGREEMENT as set forth in Exhibit A, entitled "Compensation." COUNSEL shall be paid at an hourly rate that includes all costs and expenses except for those specific reimbursable expenses listed in Exhibit B, entitled "Reimbursable Expenses".

7. REIMBURSEMENT FOR EXPENSES: COUNSEL will be reimbursed for approved expenditures where the expense is itemized in the invoice. Upon request COUNSEL will provide the documentation supporting the invoiced amount.

All expenses shall be billed at COUNSEL'S actual out-of-pocket cost without any mark-up.

8. ACCOUNTING AND AUDITING: COUNSEL agrees that the TOWN and/or CLIENT or their duly authorized representatives shall have access to and the right to examine any books, documents, papers, records and other evidence reflecting all time charges, compensation and costs billed under this AGREEMENT. The materials described herein shall be made available at the office of COUNSEL at any reasonable time for inspection, audit or reproduction until the expiration of three (3) years from the date of final payment under this AGREEMENT.

COUNSEL is prohibited from transmitting, or assisting in the transmission of, any billing information generated by COUNSEL under this AGREEMENT to any person or organization other than the TOWN and/or CLIENT without the express written consent of the Town Attorney.

9. HOURLY BILLING – PAPER INVOICES: COUNSEL shall prepare invoices for services rendered and expenses incurred during the prior month on each matter handled. The TOWN tracks fees and expenditures by matter, and expects to receive a separate invoice for each matter billed. All billing will be in accordance with ABA Opinion No. 93-379. If mailed, the monthly invoices should be addressed to:

ATTN: Michael Hamblin
Gilbert Town Attorney's Office
50 E. Civic Center Drive
Gilbert, Arizona 85296
480-503-6107

Each matter should be covered in a separate invoice in an easily understandable format. Each invoice should contain the following information: (1) this AGREEMENT No. and for other matters, the department project number, if any, and project name; (2) the bill and/or invoice date; (3) the Matter Identification Number assigned to the matter; (4) the date and time of each activity billed; (5) the initials of the individual performing the activity; (6) the corresponding ABA task codes; (7) for each activity, a specific description of the work done sufficient to ascertain the work involved being mindful of the potential limitations under E.R. 1.8 in situations where CLIENT is not the TOWN; and (8) a separate itemization of reimbursable disbursements and expenditures.

Along with each paper invoice COUNSEL shall also provide a separate Invoice Summary Page in the form and containing the information exhibited by Exhibit C, "Sample Invoice Summary Page".

10. HOURLY BILLING RESTRICTIONS: Unless otherwise agreed to by the Town Attorney:

- Only one billing professional may bill to attend meetings, depositions, and arguments without prior approval of the Town Attorney or his designee.
- COUNSEL is not to bill for more than ten hours of research on any one matter without the prior approval of the Town Attorney or his designee.
- COUNSEL shall not bill for more than two hours of travel time without Town Attorney's prior approval.
- COUNSEL is not to bill the TOWN in increments of less than 6 minutes (.1 hour).
- COUNSEL will be paid only for productive time that advances the interest of CLIENT.
- COUNSEL is not to bill for clerical time or other overhead expenses.

11. RESTRICTIONS ON REIMBURSEMENTS: Unless otherwise agreed to by the Town Attorney:

- Reimbursement for expenses is limited to those specific reimbursable expenses listed in Exhibit B and entitled "Reimbursable Expenses".
- COUNSEL will not be reimbursed for any single expense greater than ONE THOUSAND DOLLARS (\$1,000) without the prior approval of the Town Attorney or designee.
- Travel expenditures of COUNSEL within Maricopa County will not be reimbursed. Mileage and parking will not be reimbursed.
- Airfare will be reimbursed at coach fare rates. Hotel accommodations will be reimbursed at commercial rates for non-resort facilities.
- Experts or consultants will be retained by COUNSEL on behalf of the TOWN or CLIENT only after consultation with, and the approval of the Town Attorney. COUNSEL is expected to pay the consultant for services provided and then submit an invoice for reimbursement.

- All experts and consultants will be required to submit a bill similar to the format for outside counsel prior to payment, including the need to itemize expenses and attach the supporting documentation.
- No contract or subcontract shall be made by COUNSEL with any other person to furnish any work or services under this AGREEMENT without advance approval of the Town Attorney.

12. FISCAL YEAR: TOWN'S fiscal year begins July 1 and ends June 30 of each calendar year. TOWN may only make payment for services rendered or costs encumbered during a fiscal year and for a period of 60 days immediately following the close of the fiscal year. Billings for services performed or costs incurred prior to the close of a fiscal year must be submitted within ample time to allow payment within this 60 day period.

13. CONFLICT OF INTEREST: COUNSEL is retained by THE TOWN to represent THE TOWN and/or CLIENT only for the purposes and to the extent set forth in this AGREEMENT. COUNSEL shall be free to dispose of such portion of COUNSEL'S entire time, energy, and skill as are not required to be devoted to THE TOWN and/or CLIENT in such a manner as COUNSEL sees fit and to such persons, firms or corporations as COUNSEL deems advisable, but shall not engage in any representation of any nature, including legislative or administrative lobbying, which could be adverse to CLIENT or THE TOWN at the same time COUNSEL is representing the CLIENT or THE TOWN pursuant to this AGREEMENT. If such representation presents an ethical conflict of interest, and if a waiver is permitted, a waiver of such conflict must first be obtained prior to undertaking such representation. COUNSEL agrees to have established policies and procedures to avoid conflicts of interest and to protect the attorney-client privilege. COUNSEL will immediately bring all situations involving adverse representation, and all conflicts and potential conflicts to the attention of CLIENT and THE TOWN or Town Attorney. These would include situations that may be subject to the Rules of Professional Conduct as well as those situations where COUNSEL would otherwise be expected to identify CLIENT or THE TOWN as a party, a potential party, or as a non-party at fault. COUNSEL hereby represents and affirms that there is no known conflict of interest existing between a client or potential client of COUNSEL and CLIENT or THE TOWN as a result of this AGREEMENT. Before COUNSEL may undertake to represent parties in matters that may arise after execution of this AGREEMENT, which may present issues adverse to CLIENT or TOWN, COUNSEL will present the facts and circumstances of the matter to the CLIENT or THE TOWN and request a waiver of any ethical conflict of interest. It is further understood that any conflict of interest which may arise as a result of COUNSEL'S representation of parties adverse to the CLIENT or THE TOWN is not waivable unless expressly so stated in writing by CLIENT and THE TOWN after full disclosure of the nature and extent of the conflict.

14. COPIES OF DOCUMENTS: Throughout the course of the representation COUNSEL shall seasonally furnish the Town Attorney copies of all significant pleadings. All significant depositions and answers to interrogatories and investigative and expert witness reports shall be summarized promptly and the summary furnished to the Town Attorney. COUNSEL may also be asked to furnish such copies to CLIENT and/or the involved Town Department(s) and insurance carrier(s). At the conclusion of COUNSEL'S representation on any matter, COUNSEL will scan the

file and save the electronic copy of the file to a CD that is forwarded to the Town Attorney's Office, as set forth in Paragraph 24, but may retain copies at COUNSEL'S expense.

15. BUDGETING: COUNSEL may be asked by THE TOWN and/or CLIENT to submit a budget and strategic plan. The plan should include a description of the available options for handling the matter, the major steps likely to be involved, the timing and sequence of the major steps, the projected costs (within a narrow range) associated with each step and the likelihood of prevailing in percentages.

16. STATUS REPORTS AND ASSESSMENT OF EXPOSURE: COUNSEL shall keep CLIENT and THE TOWN and the Town's Insurance Carrier, if applicable, fully and currently informed about the status of all matters and the import of that status. As soon as practical after receipt of any referral, and in civil cases governed by Rule 26.1, Arizona Rules of Civil Procedure, as soon as disclosure statements are exchanged, COUNSEL shall furnish CLIENT and THE TOWN an evaluation of the merits of the disputed matter and COUNSEL'S assessment of the monetary exposure or potential recovery, if any, to CLIENT and/or THE TOWN, along with appropriate recommendations. Thereafter, status reports shall be furnished by COUNSEL on a bi-monthly basis as directed by the Town Attorney. Status reports should be addressed to the Client Representative and Town Attorney and should briefly outline the status of the case or matter, emphasizing significant developments, depositions and discovery, and settlement proposals. COUNSEL shall promptly notify CLIENT and THE TOWN of events significantly affecting exposure and recovery.

COUNSEL is encouraged to periodically e-mail status reports. COUNSEL is encouraged to format all native documents in Microsoft Word© and to scan significant third-party documents into a *.pdf Adobe Acrobat© format and e-mail them as an attachment to a status report. A status report should precede any scheduled meeting where a comprehensive analysis of the case or matter may be expected.

17. OFFERS OF COMPROMISE: COUNSEL must consider the possibility of resolving disputes through both traditional and nontraditional methods of alternative dispute resolution.

All offers of compromise shall be promptly transmitted to CLIENT and THE TOWN through the Client Representative and Town Attorney together with COUNSEL'S recommendations. TOWN and/or CLIENT will be responsible for obtaining proper authority to accept a compromise or for obtaining authority to make a counter offer. COUNSEL may be required to attend meetings to adequately explain the status of a matter before a regulatory body or in litigation.

18. NOTICE: Any notice, consent, or other communication ("Notice") required or permitted under this Agreement will be in writing and either delivered in person, sent by e-mail or facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or express service addressed to the Client Representative or Town Attorney as appropriate.

19. WITHDRAWAL OF COUNSEL: COUNSEL must request to withdraw from representation of CLIENT or THE TOWN, or any department, officer, agent or employee thereof,

when it would be ethically improper to continue the representation. In the event COUNSEL requests to withdraw, the request must be in writing to the Town Attorney setting forth in detail the reasons COUNSEL must withdraw.

20. SPECIAL COUNSEL DESIGNATION: It is expressly understood and agreed that COUNSEL is appointed as SPECIAL COUNSEL to the Town Attorney for the purposes of carrying out the provisions of this AGREEMENT. However, COUNSEL agrees to act as co-counsel with the Town Attorney in those matters where the Town Attorney determines that it is advisable to do so.

21. APPEALS: No appeals or special actions will be filed without prior written approval of THE TOWN or CLIENT, acting through the Town Attorney.

22. CONFIDENTIALITY AND DATA SECURITY: All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to COUNSEL in connection with this Agreement is confidential proprietary information owned by THE TOWN or CLIENT. Except as specifically provided in this Agreement, COUNSEL shall not disclose data generated in the performance of the service to any third person without the prior written consent of the Town Attorney.

Personal identifying information, financial account information, or restricted TOWN information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, COUNSEL must encrypt and/or password protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

When personal identifying information, financial account information, or restricted TOWN information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.

In the event that data collected or obtained by COUNSEL in connection with this Agreement is believed to have been compromised, COUNSEL shall notify the Town Attorney immediately. COUNSEL agrees to reimburse THE TOWN for any costs incurred by the Town to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.

COUNSEL agrees that the requirements of this Section shall be incorporated into all subcontractor/subconsultant agreements entered into by COUNSEL. It is further agreed that a violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.

The obligations of COUNSEL under this Section shall survive the termination of this Agreement.

23. MEDIA RELATIONS: COUNSEL is not authorized by THE TOWN or CLIENT to comment publicly on CLIENT or TOWN matters without the permission of the Town Attorney or the Town Chief Digital Officer. All media inquiries should be directed to the Town Attorney and Chief Digital Officer for the Town of Gilbert.

24. RECORDS RETENTION/RETURN: At the conclusion of the matter, COUNSEL will notify the Town Attorney that the matter is closed. Within 60 days of the conclusion of the matter for which services were retained, and to further the purposes of A.R.S. § 41-1346, COUNSEL will scan the file and save the electronic copy of the file to a CD that is forwarded to the Town Attorney's Office.

25. OTHER CONTRACTS: TOWN and/or CLIENT shall have the right to let other contracts in connection with work under this AGREEMENT and COUNSEL shall cooperate with any other contractor.

26. COMPLIANCE WITH LAWS AND REGULATIONS: COUNSEL shall comply with all applicable federal and State statutes, Town ordinances, executive orders, and regulations. In particular COUNSEL agrees to comply with all legal requirements relating to civil rights and non-discrimination in employment.

COUNSEL understands and acknowledges the applicability to COUNSEL of the Immigration Reform and Control Act of 1986 (IRCA). COUNSEL agrees to comply with the IRCA in performing under this AGREEMENT and to permit TOWN inspection of personnel records to verify such compliance.

27. LEGAL WORKER REQUIREMENTS: TOWN is prohibited by A.R.S. § 41-4401 from awarding an agreement to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, COUNSEL agrees that:

COUNSEL and each subcontractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A.

A breach of warranty under paragraph 1 shall be deemed a material breach of the Agreement and is subject to penalties up to and including termination of the Agreement.

TOWN retains the legal right to inspect the papers of COUNSEL or subcontractor employee(s) who work(s) under this Agreement to ensure that COUNSEL or subcontractor is complying with the warranty under paragraph 1.

28. WAIVER: The failure of the TOWN and/or CLIENT at any time to require performance of any provision of this AGREEMENT shall in no way affect the right of TOWN and/or CLIENT thereafter to enforce such provision. Nor shall the waiver of any succeeding breach of such provision act as a waiver of the provision itself.

29. TERMINATION: TOWN and/or CLIENT shall have the right to terminate this AGREEMENT in whole or in part at any time and without penalty or further obligation. COUNSEL shall be paid at a rate equal to the agreed compensation for requested legal services rendered and reimbursed for authorized expenses actually incurred in rendering such services, as of the date of such termination and if payment is made by the TOWN, after approval of payment is obtained from the Town Council. Such payment for Services already completed shall be the total compensation due to COUNSEL for Termination. COUNSEL shall deliver to the Town Attorney a complete set of all materials, information and data required or prepared by COUNSEL as of the date of termination. All such materials, information, and data shall be the property of the TOWN and shall be delivered to the Town Attorney at the termination or completion of services.

30. SPECIFIC PERFORMANCE: COUNSEL agrees in the event of a breach by COUNSEL of any material provision of this AGREEMENT, TOWN shall, in addition to any other remedy provided by law and upon proper action instituted by it, be entitled to a decree of specific performance thereof according to the terms of this AGREEMENT. In the event TOWN and/or CLIENT shall elect to treat any such breach on the part of COUNSEL as a discharge of the AGREEMENT, TOWN and/or CLIENT may nevertheless maintain an action to recover damages arising out of such breach.

31. INSURANCE REQUIREMENTS: COUNSEL shall procure and maintain until all of its 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 COUNSEL, its agents, representatives, or employees.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The TOWN in no way warrants that the minimum limits contained herein are sufficient to protect COUNSEL from liabilities that might arise out of the performance of the work under this contract by the COUNSEL, its agents, representatives, or employees and COUNSEL is free to purchase additional insurance as may be determined necessary.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: COUNSEL shall provide coverage with limits of liability not less than those stated below.

1.	Worker's Compensation and Employers' Liability	
	Workers' Compensation	Statutory
	Employers' Liability	
	Each Accident	\$100,000
	Disease – Each Employee	\$100,000
	Disease – Policy Limit	\$500,000

1a. Policy shall contain a waiver of subrogation against the Town of Gilbert and, if applicable, CLIENT.

2.	Professional Liability (Errors and Omissions Liability)	
	Each Claim	\$1,000,000
	Annual Aggregate	\$2,000,000

2a In the event that the professional liability insurance required by this Contract is written on a claims-made basis, COUNSEL 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. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the Town of Gilbert and/or CLIENT is named as an additional insured, the Town of Gilbert and/or CLIENT shall be an additional insured to the full limits of liability purchased by COUNSEL even if those limits of liability are in excess of those required by this Contract.
2. COUNSEL'S insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
3. Coverage provided by COUNSEL shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. 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, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the TOWN and, if applicable, to CLIENT. Such notice shall be sent directly to Michael Hamblin, Town Attorney, Town of Gilbert, 50 E. Civic Center Drive, Gilbert, Arizona 85296 and to the designated CLIENT Representative and shall be sent by certified mail, return receipt requested.

D. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The TOWN in no way warrants that the above-required minimum insurer rating is sufficient to protect COUNSEL from potential insurer insolvency.

E. VERIFICATION OF COVERAGE: COUNSEL shall furnish the TOWN and, if applicable, the CLIENT with certificates of insurance (ACORD form or equivalent approved by the TOWN) 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 TOWN and, if applicable, by the CLIENT 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 Michael Hamblin, Town Attorney, Town of Gilbert, 50 E. Civic Center Drive, Gilbert, Arizona 85296 and to the designated CLIENT Representative. The TOWN or CLIENT project/contract number and project description shall be noted on the certificate of insurance. The TOWN 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 TOWN'S RISK MANAGEMENT DIVISION.**

F. APPROVAL: Any modification or variation from the insurance requirements in this Contract shall be made by the Town Attorney's Office, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

32. INDEMNIFICATION: COUNSEL shall indemnify, defend, save and hold harmless the TOWN and, if applicable, the CLIENT and their respective 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 willful acts or omissions of COUNSEL or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of COUNSEL to conform to any federal, state or local law, statute, ordinance, rule, regulation or court 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 COUNSEL from and against any and all claims. It is agreed that COUNSEL will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, COUNSEL agrees to waive all rights of subrogation against TOWN and, if applicable, the CLIENT, their officers, officials, agents and employees for losses arising from the work performed by COUNSEL for THE TOWN or CLIENT.

33. ADVERTISING AND PROMOTION: The name of the Town of Gilbert and, if applicable, of CLIENT shall not be used in any advertising or other promotional context by COUNSEL without prior written approval of the Town Attorney.

34. NON-ASSIGNABILITY: This Agreement is in the nature of a personal services agreement and COUNSEL shall have no power to assign its rights and obligations under this AGREEMENT without the prior written consent of the TOWN and, if applicable, of CLIENT. Any attempt to assign without such prior written consent shall be void.

An essential consideration provided to the TOWN and/or CLIENT by COUNSEL to induce the TOWN and/or CLIENT to enter into the AGREEMENT is the ability of the TOWN and/or CLIENT to control the actual assignment of work to COUNSEL'S principal attorneys. Therefore, should such a principal attorney sever their relationship with COUNSEL, or otherwise be unavailable to carry out COUNSEL'S duties under this AGREEMENT for an extended period of time, which period shall be determined at the sole discretion of the TOWN and/or CLIENT, then the TOWN and/or CLIENT may, without notice, immediately terminate this AGREEMENT for cause.

35. ENTIRE AGREEMENT: It is expressly agreed that this written AGREEMENT embodies the entire AGREEMENT of the parties in relation to the subject matter, and that no understanding or agreements, verbal or otherwise, in relation thereto, exist between the parties, except as herein expressly set forth. To the extent there is any conflict between the terms of this AGREEMENT and any LOE entered into between COUNSEL and the TOWN and/or CLIENT, the LOE shall be controlling.

36. GOVERNING LAWS: It is the expressed intention of the parties thereto that this AGREEMENT and all terms hereof shall be in conformity with and governed by the laws of the Town of Gilbert and the State of Arizona, both as to interpretation and performance. Any action to enforce or interpret this AGREEMENT shall be brought only in a court located in Maricopa County, Arizona.

37. INDEPENDENT CONTRACTOR: The parties agree that Counsel is providing the Services under this Agreement on a part-time and/or temporary basis and that the relationship created by this Agreement is that of independent contractors. Neither Counsel nor any of Counsel's agents, employees or helpers shall be deemed to be the employee, agent, or servant of the Town. The Town is only interested in the results obtained under this Agreement; the manner, means and mode of completing the same are under the sole control of Counsel.

This Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture, partnership or formal business association or organization of any kind, and the rights and obligations of the parties shall be only those expressly set forth in this Agreement. The parties agree that no individual performing under this Agreement on behalf of Counsel will be considered a Town employee, and that no rights of Town Civil Service or Town personnel rules shall accrue to such individual. Counsel shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, other employee benefits, and all taxes and premiums

appurtenant thereto concerning such individuals and shall save and hold harmless the Town with respect thereto.

38. CANCELLATION: This AGREEMENT is subject to cancellation by the TOWN pursuant to Arizona Revised Statutes Annotated § 38-511.

39. ELECTRONIC COMMUNICATION: TOWN expects COUNSEL to provide a specific electronic mail address, accessible from or through the Internet that will allow direct communication between TOWN and/or CLIENT and the attorney assigned to provide legal services for a particular matter.

40. THIRD-PARTY BENEFICIARIES: This AGREEMENT and all services provided by COUNSEL are intended to benefit the corporate and municipal interests of the TOWN and/or CLIENT alone, and no other person shall claim any implied right, benefit or interest in such services.

41. TERM: This AGREEMENT is effective beginning November 17, 2014, and expires on November 17, 2017, unless mutually extended by COUNSEL and the Town Attorney, in writing, for no more than one additional year. In the event of such an extension, COUNSEL will be permitted to renegotiate the terms of this Agreement.

Upon expiration of this AGREEMENT, COUNSEL will cease all work under this AGREEMENT in a fashion consistent with COUNSEL'S ethical obligations to protect the interests of the TOWN and/or CLIENT; COUNSEL will submit a final bill and status report on each matter then being handled by COUNSEL; and, COUNSEL will return the matter and all related files to the TOWN and/or CLIENT.

42. AMENDMENTS: Whenever an addition, deletion or alteration to the Services described in **Exhibit A** substantially changes the Scope of Work thereby materially increasing or decreasing the cost of performance, a supplemental agreement must first be approved in writing by the TOWN and COUNSEL before such addition, deletion or alteration shall be performed. Changes to the Services may be made and the compensation to be paid to COUNSEL may be adjusted by mutual agreement, but in no event may the compensation exceed the amount authorized without further written authorization. It is specifically understood and agreed that no claim for extra work done or materials furnished by COUNSEL will be allowed except as provided herein, nor shall COUNSEL do any work or furnish any materials not covered by this Agreement unless first authorized in writing. Any work or materials furnished by COUNSEL without prior written authorization shall be at COUNSEL'S risk, cost and expense, and COUNSEL agrees to submit no claim for compensation or reimbursement for additional work done or materials furnished without prior written authorization.

43. NO ORAL ALTERATIONS: No alteration or variation of the terms of this Agreement shall be binding on the parties herein unless such alteration or variation is in writing and signed by each of the parties to this Agreement. No oral understanding or agreement not incorporated in this Agreement shall be binding on any of the parties herein.

IN WITNESS WHEREOF, the parties or their authorized representatives have made and executed this AGREEMENT the day and year first above written.

[FIRM NAME]

TOWN OF GILBERT, a municipal corporation

By _____
Its _____

By _____
John Lewis, Mayor

ATTEST:

Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

Town Attorney

SAMPLE

EXHIBIT A -- COMPENSATION

The “AREAS OF PRACTICE AND RATE SCHEDULE” as set forth in Attachment D of the RFQ are incorporated into this contract by this reference.

SAMPLE

EXHIBIT B -- REIMBURSABLE EXPENSES

Expense Code Set

E100 Expenses:

- E101 Copying @ \$0.15/page
- E102 Outside printing
- E107 Delivery services/messengers
- E109 Local travel (outside of Maricopa County)
- E110 Out-of-town travel
- E112 Court fees
- E113 Subpoena fees
- E114 Witness fees
- E115 Deposition transcripts
- E116 Trial transcripts
- E117 Trial exhibits
- E118 Litigation support vendors
- E119 Experts
- E120 Private Investigators
- E121 Arbitrators/mediators
- E122 Local counsel
- E123 Other professionals
- E124 Other

American Bar Association, Expense Codes,
http://www.abanet.org/litigation/utbms/utbms_counseling_expensecode.html

EXHIBIT C – SAMPLE INVOICE SUMMARY PAGE

LAW FIRM NAME
LAW FIRM ADDRESS

Gilbert Town Attorney's Office
Attn: Michael Hamblin
50 E. Civic Center Drive
Gilbert, Arizona 85296

Invoice Date:
Invoice No:
Client No:

Professional Services Period: November 1, 2014 through November 31, 2014

RE: *Case Name/Subject Matter:*
Letter of Engagement No:
Contract No:
Project No:
Risk Management No:

TOTAL FEES	\$5,000.00
TOTAL DISBURSEMENTS	<u>\$200.00</u>
TOTAL THIS BILL	\$5,200.00
PREVIOUS BALANCE	\$1,000.00
TOTAL PAYMENTS & ADJUSTMENT	<u>(\$1,000.00)</u>
TOTAL DUE UPON RECEIPT	<u><u>\$5,200.00</u></u>



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Jack Gierak, Sr. Project Manager, 503-6176

MEETING DATE: December 2, 2014

SUBJECT: Change Order No.1 to the contract with Tri-Com Corporation for non-compensable time extension for fabrication and installation of custom built bus shelters in Heritage District for the Downtown Transit Stops Project, CIP No. RD114, Contract No. 2014-7012-0279

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's strategic initiative for Infrastructure as it expands the transportation system to meet the needs of Gilbert's citizens.

RECOMMENDED MOTION

Approval of the Change Order No. 1 to the contract with Tri-Com Corporation for non-compensable time extension for fabrication and installation of custom built bus shelters in Heritage District for the Downtown Transit Stops Project, CIP No. RD114.

BACKGROUND/DISCUSSION

This project is included in the 2015-19 Capital Improvement Program (CIP) and provides for the design and construction of the three new bus shelters at existing locations within Heritage District Area along Gilbert Road. The intent of the proposed design is to refer to the history and culture of the Gilbert's Heritage District.

In July 2014 Town Council approved the construction contract with Tri-Com Corporation in the amount of \$237,251.60 for constructing three bus shelters in the Heritage District at the following locations: northeast corner of Gilbert Road and Hearne Way, the northeast corner of Gilbert Road and Elliot, and southwest corner of Gilbert Road and Elliot (Historical Museum).

The Notice to Proceed was issued as of August 18, 2014 with substantial and final completions scheduled for October 29, 2014 and November 10, 2014 respectively.

As of October 5, the contractor reported the failure of the rolled tubing machine necessary to roll steel elements for custom made roof structure. It appears that required machine is intricate and unique and only three fabricators in the Valley have ability to fabricate steel members per required specifications and only one out of three responded to the bid. The machine failure caused approximately two weeks delay which would put the construction during Gilbert Days and November/December holidays. In recent year the Heritage District experienced significant amount of various construction projects which brought various traffic restrictions to motorist and pedestrians. Since this project has purely aesthetic objectives, the staff decided to defer the bus shelters installation further, till after November/December holiday season and start the on-site construction activities on January 5, 2015. The bus shelters shall be fully operational and completed by 2/9/14. All project deliverables and close out documentation shall be provided by 2/16/15.

FINANCIAL IMPACT

This project is included in the 2015-2019 CIP as Project No. RD114 and is funded through State Grant LTAF II. This Change Order has no impact on the budget in the amount of \$517,100. Project Accounting Codes: rd114-7540-8105 (120100.71020114.6402).

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

The contract has been reviewed for form by Special Counsel Susan Goodwin.

STAFF RECOMMENDATION

Staff has reviewed this change order is recommending the approval.

Respectfully submitted,

Jack Gierak
Sr. Project Manager

Attachments and Enclosures: Change Order 1
Request Letter from Tri-Com (October 8, 2014)
Letter from CookDZ with recommendation (October 9, 2014)

Approved By

Approval Date

Gregory Smith

11/11/2014 4:59 PM

Gregory Smith

11/11/2014 4:59 PM

Kenneth Morgan

11/12/2014 5:11 PM

Jack Vincent

11/19/2014 8:49 AM

Laura Lorenzen

11/19/2014 12:15 PM



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Jack Gierak, Sr. Project Manager, 503-6176

MEETING DATE: December 2, 2014

SUBJECT: THE CHANGE ORDER NO.1 TO THE CONTRACT WITH TRI-COM CORPORATION FOR NON COMPENSABLE TIME EXTENSION FOR FABRICATION AND INSTALLATION OF CUSTOM BUILT BUS SHELTERS IN HERITAGE DISTRICT FOR THE DOWNTOWN TRANSIT STOPS PROJECT, CIP NO. RD114.

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's strategic initiative for Infrastructure as it expands the transportation system to meet the needs of Gilbert's citizens.

RECOMMENDED MOTION

Approval of the Change Order No. 1 to the contract with Tri-Com Corporation for non-compensable time extension for fabrication and installation of custom built bus shelters in Heritage District for the Downtown Transit Stops Project, CIP No. RD114.

BACKGROUND/DISCUSSION

This project is included in the 2015-19 Capital Improvement Program (CIP) and provides for the design and construction of the three new bus shelters in existing locations within Heritage District Area along Gilbert Road. The intent of the proposed design is to refer to the history and culture of the Gilbert's Heritage District.

In July 2014 Town Council approved the construction contract with Tri-Com Corporation in the amount of \$237,251.60 for constructing three bus shelters in the Heritage District at the following locations: northeast corner of Gilbert Road and Hearne Way, the northeast corner of Gilbert Road and Elliot, and southwest corner of Gilbert Road and Elliot (Historical Museum).

The Notice to Proceed was issued as of August 18, 2014 with substantial and final completions scheduled for October 29, 2014 and November 10, 2014 respectively.

As of October 5, the contractor reported the failure of the rolled tubing machine necessary to roll steel elements for custom made roof structure. It appears that required machine is intricate and unique and only three fabricators in the Valley have ability to fabricate steel members per required specifications and only one out of three responded to the bid. The machine failure caused approximately two weeks delay which would put the construction during Gilbert Days and November/December holidays. In recent year the Heritage District experienced significant amount of various construction projects which brought various traffic restrictions to motorist and pedestrians. Since this project has purely aesthetic objectives, the staff decided to defer the bus shelters installation further, till after November/December holiday season and start the on-site construction activities on January 5, 2015. The bus shelters shall be fully operational and completed by 2/9/14. All project deliverables and close out documentation shall be provided by 2/16/15.

FINANCIAL IMPACT

This project is included in the 2015-2019 CIP as Project No. RD114 and is funded through State Grant LTAF II. This Change Order has no impact on the budget in the amount of \$350,000. Project Accounting Codes: rd114-7540-8105 (120100.71020114.6402).

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

STAFF RECOMMENDATION

Staff has reviewed this change order is a recommending the approval.

Respectfully submitted,

Jack Gierak
Sr. Project Manager

Attachments and Enclosures: Change Order 1
Request Letter from Tri-Com (October 8, 2014)
Letter from CookDZ with recommendation (October 9, 2014)

**CHANGE ORDER NO.1
(Contractor)**

PROJECT: Downtown Transit Stops
DATE: December 2, 2014
OWNER: Town of Gilbert
PROJECT NO: RD114
CONTRACT NO: 2014-7012-0279
CONTRACTOR: TriCom Corporation
CONTRACT DATED: July 31, 2014
CM: CookDZ

CHANGES: The CONTRACT is changed as follows:

The non-compensable and no cost time extension shall be granted for the Substantial and Final Completion in amount of 68 and 64 working days respectively. This time extension is granted as a result of unexpected rolled tubing machine failure. This Machine is required to perform custom made roof elements for custom made bus shelter. The Sunland Welding is the only qualified fabricator which responded to provide those intricate and unique elements. The machine failure caused around two weeks delay which would put the construction during Gilbert Days and December holidays. The staff decided to defer the bus shelters installation till after December holiday season and start the on-site construction activities on January 5, 2015.

Bus shelters shall be fully operational and completed by 2/9/14. All project deliverables and close out documentation shall be provided by 2/16/15.

<u>COST/TIME:</u> Original CONTRACT SUM:	\$237,251.60
Previously Authorized CHANGE ORDERS:	\$ 0.00
CONTRACT Price prior to this CHANGE ORDER:	\$237,251.60
CHANGE ORDER # 1 Amount:	\$0
New Contract Price:	\$237,251.60

CONTRACT TIME will be increased by: 68 and 64 working days respectively for:

Original Substantial Completion date:	10/29/14
Revised Substantial Completion:	02/9/15*
Original Final Completion date:	11/10/14
Revised Final Completion:	02/16/15

*Bus shelters shall be fully operational and completed by 2/9/14. All project deliverables and close out documentation shall be provided by 2/16/15.

Approved/Accepted by:

CM: _____
(Name) (Date)

CONTRACTOR: _____
(Name) (Date)

GILBERT: _____

CHANGE ORDER NO.1

(Contractor)

(Name)

(Date)

Not valid until signed by both GILBERT and 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.



October 9, 2014

Mr. Jack Gierak, Sr. Project Manager
Town of Gilbert
90 East Civic Center Drive
Gilbert, Arizona 85296

Re: Delay Letter from Tri-Com Corporation
RD114 - Downtown Transit Stops
Contract No: 2014-7012-0279
P.O. Number: g-07004

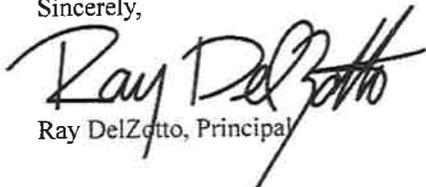
Dear Mr. Gierak:

Due to the circumstances detailed in Tri-Com Corporations letter dated October 8, 2014 CookDZ recommends issuing a non-compensable contract extension from November 10, 2014 until February 12, 2015. In addition it is our recommendation to not allow on-site construction to begin until January 5, 2015. The basis for our recommendation is as follows:

- The sidewalks at the three new transit stop structure locations will be closed for the duration of the on-site construction;
- On-site construction will require intermittent lane closures throughout the construction duration;
- Tri-Com's delay is only two to three weeks but construction will not be complete until after the Gilbert Days events which then flow into the holiday season;
- On-site work was not allowed to begin on October 6, 2014 upon learning of this issue on October 2, 2014;
- It was determined at the mockup review meeting that there are eight constructability issues that the design team needs to address to allow progress to completion;
- The Tri-Com team's performance has been exemplary from the beginning of the project;
- Quality and budget take precedence over schedule as the overarching goals of the project.

CookDZ recommends it is appropriate issue a non-compensable time extension in accordance with construction contract section 4.23.1. We would welcome the opportunity to discuss all possible resolutions to this issue with you. Thank you for your consideration of the issue. We will take the appropriate action upon notification of you direction.

Sincerely,


Ray DelZotto, Principal



Quality General Contracting for Building, Civil Construction, and Telecommunications

Tri Com Corporation
2129 E. Cedar St. Suite 6
Tempe, AZ 85281

October 8th, 2014

Jack Gierak
Town of Gilbert
90 E. Civic Center Drive
Gilbert, AZ 85296

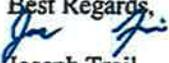
Dear Mr. Gierak,

Tri Com Corporation along with its bus stop fabricator, Sunland Welding, have ran into a situation that will bring a delay to the RD114 project as a whole. In the beginning phase of the project, Sunland Welding approached several rolled tubing shops for pricing on rolling steel tube in connection with the RD114 project. After Sunland Welding's initial outreach to three rolled tubing vendors, one of the three vendors said they did not have enough time to meet the schedule with their current workload, while another vendor did not return calls period after looking at the plans, leaving one remaining vendor as an option for the rolled steel tubing. The vendor that Sunland Welding had selected during the beginning phase of the project after its initial outreach is a vendor that Sunland Welding has been working with for over 20 years and there was no worries regarding the vendor's ability to perform and meet the requirements of the project and schedule.

With this being said, the vendor ran into a breakdown of the rolled tubing machine that is used to actually roll the steel. This machine is a very intricate machine that has special order parts required to get the repair done. Although the machine is now back up and running, the delay caused by the machine breakdown has put a kink in our overall schedule. Although the overall delay is only a couple weeks, the delay has been compounded by the fact that Gilbert Days is approaching, leaving no ability for Tri Com Corporation to perform any civil work to prepare for the bus shelters placement until after Gilbert Days as both Tri Com Corporation and The Town of Gilbert would not want exposed rebar and anchor bolts extending above grade on sidewalk around the Gilbert Rd and Elliot Rd area, causing a hazard for the general public.

Tri Com Corporation and Sunland Welding understand the overall goal of this project is to deliver some of the best looking bus stops in the state to bring attention to the Downtown Gilbert area. Our focus is dedicated to quality and a top notch final product being delivered to the Town of Gilbert. With quality being a big part of this project, Tri Com Corporation and Sunland Welding do not want to rush the fabrication of the bus shelters at this point due to the delay caused by the broken machine. We would ask the Town of Gilbert to give us a contract schedule extension with no liquidated damages. Tri Com Corporation will not be looking for any additional compensation from the Town of Gilbert for any general condition cost increases in connection with the schedule extension. We appreciate the Town of Gilberts understanding regarding this matter and we look forward to continuing and finishing what will be a great final product for the Town of Gilbert upon project completion. Feel free to contact Joseph Trail with Tri Com Corporation with any questions or concerns in regards to this project delay and request for contract schedule extension.

Best Regards,



Joseph Trail

Cell: 480-734-9088

2129 East Cedar Street Suite 4, Tempe, Arizona 85281 • 480.443.0751 • FAX: 480.661.7536

AZ - 800186257

CA - 892183

NV - 0068590A

TX - 13714688143



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Tom Condit, PE, Development Engineer, 503-6815

MEETING DATE: December 2, 2014

SUBJECT: SP1363: Approval of the Final Plat for "Crossroads at San Tan Village Apartments", located at the southeast corner of Ray Road and Coronado Road.

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's Infrastructure Strategic Initiative as it allows for the logical extension of infrastructure to the subject site and surrounding area.

RECOMMENDED MOTION

A motion to approve the Final Plat for "Crossroads at San Tan Village Apartments", located at the southeast corner of Ray Road and Coronado Road.

BACKGROUND/DISCUSSION

The *Final Plat for Crossroads at San Tan Village Apartments* dedicates public right-of-way and easements for multiple use and public utilities. Prior to approval of this Final Plat, the developers of the Crossroads at San Tan Village Apartments received approval from the Design Review Board on their final site plan, to be constructed on Lot 1 (Case DR12-14).

The following is an abbreviated history of Town actions associated with this property:

January 5, 1999	Town Council approved Z98-27, Crossroads Center, by adopting Ordinance #1142, rezoning approximately 523 acres from Maricopa County R-43 to General Commercial (C-2) with PAD (Planned Area Development) under the, now expired, Unified Land Development Code (ULDC).
March 3, 2005	Town Council adopted the Land Development Code by approving Ordinance # 1625. With the adoption of the LDC the site was zoned

Regional Commercial (RC) with Planned Area Development Overlay (PAD).

- December 2, 2008 Town Council approved the rezoning of Parcel D, which includes the Crossroads at San Tan Apartments parcel, removing it from the Crossroad PAD and changing it to conventional Regional Commercial (RC) zoning in Ordinance #2209.
- August 3, 2011 Planning Commission Granted a Conditional Use Permit for Multi-Family Residential in a Regional Commercial Zoning district located south of Ray Road between Santan Village Parkway and Ray Road zoned Regional Commercial (RC).
- January 24, 2013 The Town Council approved Resolution 3149, a Planning/Development Agreement between the Town of Gilbert and the property owners of Parcels A, E (of the Crossroads PAD) and D (previously within the Crossroads PAD and removed).
- March 6, 2013 Planning Commission approved Use Permit for Crossroads at Santan Village allowing multi-family in Regional Commercial as part of a mixed use development.
- April 11, 2013 Design Review Board approved site plan, landscape, grading and drainage, elevations, lighting, colors and materials for the 366 unit Crossroads at Santan Village Apartments located at the southwest corner of Santan Village Parkway and Ray Road zoned Regional Commercial.

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 construction of a 366 unit apartment complex. 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

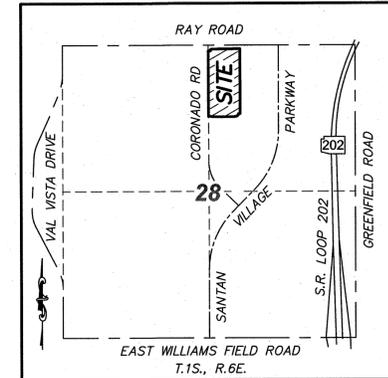
Approval Date

Gregory Smith
Kenneth Morgan

11/10/2014 6:14 AM
11/12/2014 5:12 PM

FINAL PLAT for "CROSSROADS at SAN TAN VILLAGE APARTMENTS"

BEING A PORTION OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 1 SOUTH, RANGE 6 EAST OF
THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA



VICINITY MAP
N.T.S.

DEDICATION

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS

KNOW ALL MEN BY THESE PRESENTS: THAT BT CISTERRA INVESTORS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS OWNER, DO HEREBY PUBLISH THIS PLAT AS THE PLAT OF "CROSSROADS AT SAN TAN VILLAGE APARTMENTS", BEING A PORTION OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 1 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA. OWNER DECLARES THAT SAID PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF EACH LOT AND STREET, AND THAT EACH LOT AND STREET SHALL BE KNOWN BY THE NUMBER, NAME, AND / OR LETTER GIVEN TO EACH RESPECTIVELY. OWNER HEREBY DEDICATES TO THE TOWN OF GILBERT THE STREETS AS SHOWN ON THE PLAT AND THOSE OTHER AREAS DESIGNATED ON THE PLAT FOR PUBLIC USE TO INSTALL AND MAINTAIN PUBLIC UTILITIES. EASEMENTS ARE HEREBY 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 RESPONSIBLE FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE AND REPAIR OF THEIR UTILITY FACILITIES.

THE MULTIPLE USE EASEMENTS (M.U.E.) AS SHOWN HEREON, ARE HEREBY GRANTED TO THE TOWN OF GILBERT, AND ARE DEDICATED FOR THE BENEFIT OF CERTAIN PUBLIC IMPROVEMENTS AND INFRASTRUCTURE FACILITIES, INCLUDING WITHOUT LIMITATION, PUBLIC UTILITIES, CONDUIT SLEEVES, STUBS, METERS, SIDEWALKS, PULL BOXES, CABINETS, TRANSFORMERS, PEDESTALS, EQUIPMENT, TRAFFIC CONTROL DEVICES, TRAFFIC CONTROL SIGNAGE AND CUT AND/OR FILL SLOPES OVER, UNDER THROUGH AND UPON EASEMENT AREAS AS SHOWN HEREON. THE RIGHTS GRANTED HEREIN ALSO SHALL INCLUDE THE RIGHT OF INGRESS AND EGRESS TO CONSTRUCT, INSTALL, REPAIR AND/OR REPLACE SAID IMPROVEMENTS.

GRANTOR AND GRANTEE HEREBY ACKNOWLEDGE THEIR MUTUAL DESIRE AND INTENT TO MAXIMIZE THE AREA WITHIN THE M.U.E. AREA WITHIN WHICH GRANTOR, ITS SUCCESSORS AND ASSIGNS, CAN FEASIBLY INSTALL TREES, LANDSCAPING AND IRRIGATION.

THE MULTIPLE USE EASEMENTS SHALL NOT IMPAIR GRANTOR'S RIGHT TO USE THE M.U.E. AREA OR TO GRANT TO OTHERS THE RIGHT TO USE THE M.U.E. AREA, PROVIDED THAT ANY SUCH USE DOES NOT UNREASONABLY INTERFERE WITH GRANTEE'S ENJOYMENT OF THE EASEMENT. USE OF THE M.U.E. AREA BY GRANTOR AND OTHERS MAY INCLUDE, BUT IS NOT LIMITED TO DRAINAGE, RETENTION, CUT AND/OR FILL SLOPES, DRIVEWAYS, LANDSCAPE, HARDSCAPE, IRRIGATION, ENTRY FEATURES, MONUMENT SIGNS AND PRIVATE UTILITIES.

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, OR WHICH OWNER WILL RECORD NOT LATER THAN THE DATE ON WHICH THIS PLAT IS RECORDED.

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.

IN WITNESS WHEREOF: BT CISTERRA INVESTORS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS OWNER, HAS HERETO CAUSED ITS NAME TO BE AFFIXED AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF THE UNDERSIGNED OFFICER THEREUNTO DULY AUTHORIZED REPRESENTATIVE

THIS 4th DAY OF November, 2014
BY: LUEDTKE PARTNERS, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, MANAGER

BY: [Signature] NAME John W Luedtke TITLE Manager

ACKNOWLEDGMENT

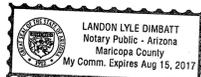
STATE OF Arizona }
COUNTY OF Maricopa } SS
ON November 4th 2014 BEFORE ME, Landon Lyle Dimbatt

PERSONALLY APPEARED John W Luedtke 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, OR THE ENTITY UPON BEHALF OF WHICH THE PERSON 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 [Signature]



LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 1 SOUTH, RANGE 6 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP IN HANDHOLE MARKING THE NORTH QUARTER CORNER OF SAID SECTION 28, FROM WHICH, A BRASS CAP IN HANDHOLE ON THE NORTH LINE OF SAID NORTHEAST QUARTER, AT THE INTERSECTION OF RAY ROAD AND SANTAN VILLAGE PARKWAY BEARS NORTH 89 DEGREES 40 MINUTES 28 SECONDS EAST, A DISTANCE OF 1252.06 FEET;

THENCE SOUTH 00 DEGREES 11 MINUTES 50 SECONDS EAST, ALONG THE WEST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 100.00 FEET TO THE SOUTHERLY RIGHT OF LINE OF RAY ROAD AS SHOWN IN THE MAP OF DEDICATION FOR 'SAN TAN VILLAGE PARKWAY' AS RECORDED IN BOOK 682, PAGE 46, RECORDS OF MARICOPA COUNTY, ARIZONA, BEING THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED;

THENCE FOLLOWING ALONG SAID SOUTHERLY RIGHT OF WAY LINE, NORTH 89 DEGREES 40 MINUTES 28 SECONDS EAST, A DISTANCE OF 40.00 FEET;

THENCE NORTH 00 DEGREES 11 MINUTES 50 SECONDS WEST, A DISTANCE OF 20.00 FEET;

THENCE NORTH 46 DEGREES 05 MINUTES 54 SECONDS EAST, A DISTANCE OF 21.76 FEET;

THENCE NORTH 89 DEGREES 40 MINUTES 28 SECONDS EAST, A DISTANCE OF 514.38 FEET;

THENCE SOUTH 00 DEGREES 12 MINUTES 21 SECONDS EAST, DEPARTING SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 1,169.03 FEET TO THE NORTHERLY LINE OF TRACT 'A' ACCORDING TO THE FINAL PLAT FOR "SANTAN VILLAGE APARTMENTS" AS RECORDED IN BOOK 1113, PAGE 30, RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE SOUTH 89 DEGREES 48 MINUTES 07 SECONDS WEST, ALONG SAID NORTHERLY LINE OF TRACT 'A', A DISTANCE OF 31.00 FEET TO THE POINT OF CURVE OF A NON TANGENT CURVE CONCAVE NORTHWESTERLY, OF WHICH THE RADIUS POINT LIES SOUTH 89 DEGREES 45 MINUTES 48 SECONDS WEST, A RADIAL DISTANCE OF 44.00 FEET;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 63 DEGREES 01 MINUTES 47 SECONDS, A DISTANCE OF 48.40 FEET TO A POINT OF COMPOUND CURVE TO THE RIGHT HAVING A RADIUS OF 113.01 FEET;

THENCE WESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 27 DEGREES 00 MINUTES 34 SECONDS, A DISTANCE OF 53.27 FEET;

THENCE SOUTH 89 DEGREES 48 MINUTES 10 SECONDS WEST, A DISTANCE OF 405.44 FEET;

THENCE NORTH 68 DEGREES 14 MINUTES 01 SECONDS WEST, A DISTANCE OF 19.95 FEET;

THENCE SOUTH 89 DEGREES 48 MINUTES 10 SECONDS WEST, LEAVING SAID TRACT 'A', A DISTANCE OF 40.00 FEET;

THENCE NORTH 00 DEGREES 11 MINUTES 50 SECONDS WEST, ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 28, A DISTANCE OF 1,176.85 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED.

NOTES

- CONSTRUCTION WITHIN PUBLIC EASEMENTS, EXCEPT BY PUBLIC AGENCIES AND UTILITY COMPANIES, SHALL BE LIMITED TO UTILITIES AND WOOD, WIRE OR REMOVABLE SECTION TYPE FENCING, UNLESS APPROVED BY THE TOWN OF GILBERT.
- ALL UTILITIES SHALL BE CONSTRUCTED UNDERGROUND.
- ELECTRIC LINES TO BE CONSTRUCTED UNDERGROUND AS REQUIRED BY ARIZONA CORPORATION COMMISSION.
- ALL COMMUNICATION LINES TO BE CONSTRUCTED UNDERGROUND AS REQUIRED BY ARIZONA CORPORATION COMMISSION.
- A PROPERTY OWNERS ASSOCIATION SHALL MAINTAIN THE PRIVATE UTILITIES, PRIVATE FACILITIES, COMMON AREA LANDSCAPING AND LANDSCAPING IN THE RIGHT-OF-WAY ADJACENT TO THE PROJECT. THE TOWN OF GILBERT IS NOT RESPONSIBLE FOR AND WILL NOT ACCEPT MAINTENANCE OF SUCH AREAS.
- NO STRUCTURES SHALL BE CONSTRUCTED IN OR ACROSS NOR SHALL OTHER IMPROVEMENTS OR ALTERATIONS BE MADE TO THE DRAINAGE FACILITIES THAT ARE A PART OF THIS DEVELOPMENT WITHOUT WRITTEN AUTHORIZATION OF THE TOWN OF GILBERT.
- ALL RETENTION BASINS MUST DRAIN ANY STORM EVENT UP TO AND INCLUDING THE 50-YEAR STORM WITHIN 36 HOURS. OWNER(S) OF ANY EXISTING BASIN FAILING TO MEET THIS REQUIREMENT MUST TAKE CORRECTIVE ACTION TO BRING THE BASIN INTO COMPLIANCE.
- ALL DRYWELLS SHOWN ON THIS PROJECT SHALL BE MAINTAINED BY THE OWNER(S) AND ARE TO BE REPLACED BY THE OWNER(S) WHEN THEY CEASE TO DRAIN THE SURFACE WATER IN A 36 HOUR PERIOD. REGULAR MAINTENANCE OF THE DRYWELL SILTING CHAMBER IS REQUIRED TO ACHIEVE THE BEST OPERATION OF THE DRYWELL.
- DUE TO THE PROXIMITY TO THE SANTAN FREEWAY, IT IS LIKELY TO EXPERIENCE TRAFFIC NOISE, WHICH COULD BE OF CONCERN TO SOME INDIVIDUALS.
- THIS AREA PLATTED HEREON IS APPROVED AND LIES WITHIN THE DOMESTIC WATER SERVICES OF THE TOWN OF GILBERT WHICH IS DESIGNATED AS HAVING AN ASSURED WATER SUPPLY IN ACCORDANCE WITH ARS 45-576.
- FOR ADDITIONAL INFORMATION REGARDING THE MULTIPLE USE EASEMENT, REFER TO THE MAP OF DEDICATION RECORDED UNDER BOOK 682, PAGE 20, AND BOOK 682, PAGE 46, RECORDS OF MARICOPA COUNTY, ARIZONA.
- ALL BUILDING SETBACKS SHALL COMPLY WITH COUNCIL ORDINANCE NO. 2209, AND ANY FUTURE SUBDIVISIONS THEREOF.
- ALL OF THE LANDSCAPING LOCATED WITHIN THE MULTIPLE USE EASEMENT SHALL BE MAINTAINED BY THE MAINTENANCE ASSOCIATION.
- MAINTENANCE FOR PRIVATE UTILITIES, PRIVATE FACILITIES AND LANDSCAPING IS THE RESPONSIBILITY OF THE UNDERLYING PRIVATE PROPERTY OWNERS.
- A PROPERTY OWNERS ASSOCIATION SHALL MAINTAIN COLUMBUS DRIVE (A PRIVATE ACCESS) FOR INGRESS/EGRESS, EMERGENCY ACCESS AND DRAINAGE EASEMENT.

BASIS OF BEARING

THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 1 SOUTH, RANGE 6 EAST. SAID LINE BEARS S8939'49"W.

OWNER

BT CISTERRA INVESTORS, LLC,
A DELAWARE LIMITED LIABILITY COMPANY
3580 CARMEL MOUNTAIN ROAD, SUITE #460
SAN DIEGO, CA 92130
PHONE 619-615-1248

ENGINEER

KLAND ENGINEERING
7227 NORTH 16TH STREET, SUITE #217
PHOENIX, ARIZONA 85020
PHONE 480-344-0480
FAX 480-393-8825

FLOOD ZONE

ACCORDING TO THE FLOOD INSURANCE RATE MAP #04013C2755L, DATED OCTOBER 16, 2013, THIS PROPERTY IS LOCATED IN FLOOD ZONE "X" (SHADED).

LOT AREA TABLE

LOT 1 644,279 SQ.FT., OR 14.791 ACRES

CERTIFICATION

THIS IS TO CERTIFY THAT THIS PLAT CORRECTLY AND ACCURATELY REPRESENTS A SURVEY MADE UNDER MY SUPERVISION DURING THE MONTH OF OCTOBER, 2014 AND THAT ALL MONUMENTS ACTUALLY EXIST OR WILL BE SET AS SHOWN; THAT SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

[Signature] 10/21/2014
ERIC SOSTROM DATE

APPROVALS

APPROVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF GILBERT, ARIZONA THIS DAY OF _____, 2014

BY: _____ ATTEST: _____
MAYOR TOWN CLERK

BY: _____ DATE _____
PLANNING MANAGER

BY: _____ DATE _____
TOWN ENGINEER

COUNTY RECORDER

**FINAL PLAT
CROSSROADS at
SAN TAN VILLAGE APARTMENTS
GILBERT, ARIZONA**



REVISIONS:

- △
- △
- △

DRAWING NAME:
11021 PLAT2
JOB NO. 11021.2
DRAWN: ELS
CHECKED: RMH
DATE: 10/21/2014
SCALE: N.T.S.
SHEET: 1 OF 3

SIG
SURVEY INNOVATION
GROUP, INC
Land Surveying Services
7301 EAST EVANS ROAD
SCOTTSDALE, ARIZONA 85260
PHONE (480) 922-0780
FAX (480) 922-0781

APPROVAL

LESUEUR INVESTMENTS III, L.L.C., AN ARIZONA LIMITED LIABILITY COMPANY

BY: DEL HOLDINGS, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, ITS MANAGER

BY: [Signature]
NAME: Tyler Lesueur
TITLE: Manager

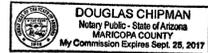
ACKNOWLEDGMENT

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS

ON THIS 3rd DAY OF November 2014, BEFORE ME THE UNDERSIGNED

PERSONALLY APPEARED Tyler Lesueur, WHO ACKNOWLEDGED SELF TO BE Manager OF LESUEUR INVESTMENTS III, L.L.C., AN ARIZONA LIMITED LIABILITY COMPANY, AND ACKNOWLEDGED THAT BEING AUTHORIZED TO DO SO, EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES THEREIN CONTAINED. IN WITNESS THEREOF, I HERETO SET MY HAND AND OFFICIAL SEAL.

BY: [Signature] 11/3/14
NOTARY PUBLIC DATE
MY COMMISSION EXPIRES: Sep. 26, 2017



APPROVAL

WASTV, LLC, AN ARIZONA LIMITED LIABILITY COMPANY

BY: WA HOLDINGS, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, ITS MANAGER

BY: [Signature]
NAME: Nathan Andersen
TITLE: Manager

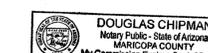
ACKNOWLEDGMENT

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS

ON THIS 3rd DAY OF November 2014, BEFORE ME THE UNDERSIGNED

PERSONALLY APPEARED Nathan Andersen, WHO ACKNOWLEDGED SELF TO BE manager OF WASTV, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, AND ACKNOWLEDGED THAT BEING AUTHORIZED TO DO SO, EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES THEREIN CONTAINED. IN WITNESS THEREOF, I HERETO SET MY HAND AND OFFICIAL SEAL.

BY: [Signature] 11/3/14
NOTARY PUBLIC DATE
MY COMMISSION EXPIRES: Sep. 26, 2017



APPROVAL

LOS GUAPOS, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP

BY: FAMCOR MANAGEMENT, INC., AN ARIZONA CORPORATION, IT GENERAL PARTNER

BY: [Signature]
NAME: JAY D. ANDERSEN
TITLE: VICE PRESIDENT

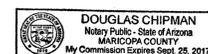
ACKNOWLEDGMENT

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS

ON THIS 3rd DAY OF November 2014, BEFORE ME THE UNDERSIGNED

PERSONALLY APPEARED Jay D. Andersen, WHO ACKNOWLEDGED SELF TO BE Vice President OF LOS GUAPOS, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP, AND ACKNOWLEDGED THAT BEING AUTHORIZED TO DO SO, EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES THEREIN CONTAINED. IN WITNESS THEREOF, I HERETO SET MY HAND AND OFFICIAL SEAL.

BY: [Signature] 11/3/14
NOTARY PUBLIC DATE
MY COMMISSION EXPIRES: Sep. 26, 2017



APPROVAL

LANDMARK PROPERTY HOLDINGS, LLC, AN ARIZONA LIMITED LIABILITY COMPANY

BY: [Signature]
NAME: Dennis Barney
TITLE: Manager

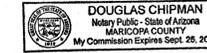
ACKNOWLEDGMENT

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS

ON THIS 3rd DAY OF November 2014, BEFORE ME THE UNDERSIGNED

PERSONALLY APPEARED Dennis Barney, WHO ACKNOWLEDGED SELF TO BE manager OF LANDMARK PROPERTY HOLDINGS, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, AND ACKNOWLEDGED THAT BEING AUTHORIZED TO DO SO, EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES THEREIN CONTAINED. IN WITNESS THEREOF, I HERETO SET MY HAND AND OFFICIAL SEAL.

BY: [Signature] 11/3/14
NOTARY PUBLIC DATE
MY COMMISSION EXPIRES: Sep. 26, 2017



APPROVAL

WACG 520, LLC, AN ARIZONA LIMITED LIABILITY COMPANY

BY: WA HOLDINGS, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, ITS MANAGER

BY: [Signature]
NAME: Nathan Andersen
TITLE: Manager

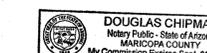
ACKNOWLEDGMENT

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS

ON THIS 3rd DAY OF November 2014, BEFORE ME THE UNDERSIGNED

PERSONALLY APPEARED Nathan Andersen, WHO ACKNOWLEDGED SELF TO BE manager OF WACG 520, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, AND ACKNOWLEDGED THAT BEING AUTHORIZED TO DO SO, EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES THEREIN CONTAINED. IN WITNESS THEREOF, I HERETO SET MY HAND AND OFFICIAL SEAL.

BY: [Signature] 11/3/14
NOTARY PUBLIC DATE
MY COMMISSION EXPIRES: Sep. 26, 2017



APPROVAL

TMJ HOLDINGS, LLC, AN ARIZONA LIMITED LIABILITY COMPANY

BY: [Signature]
NAME: Todd Jorgensen
TITLE: Manager

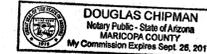
ACKNOWLEDGMENT

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS

ON THIS 3rd DAY OF November 2014, BEFORE ME THE UNDERSIGNED

PERSONALLY APPEARED Todd Jorgensen, WHO ACKNOWLEDGED SELF TO BE Manager OF TMJ HOLDINGS, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, AND ACKNOWLEDGED THAT BEING AUTHORIZED TO DO SO, EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES THEREIN CONTAINED. IN WITNESS THEREOF, I HERETO SET MY HAND AND OFFICIAL SEAL.

BY: [Signature] 11/3/14
NOTARY PUBLIC DATE
MY COMMISSION EXPIRES: SS September 26, 2017



COUNTY RECORDER

7301 EAST EVANS ROAD
SCOTTSDALE, ARIZONA 85260
PHONE (480) 922-0780
FAX (480) 922-0781

SIG

SURVEY INNOVATION GROUP, INC
Land Surveying Services

FINAL PLAT

CROSSROADS at

SAN TAN VILLAGE APARTMENTS

GILBERT, ARIZONA



REVISIONS:

△

△

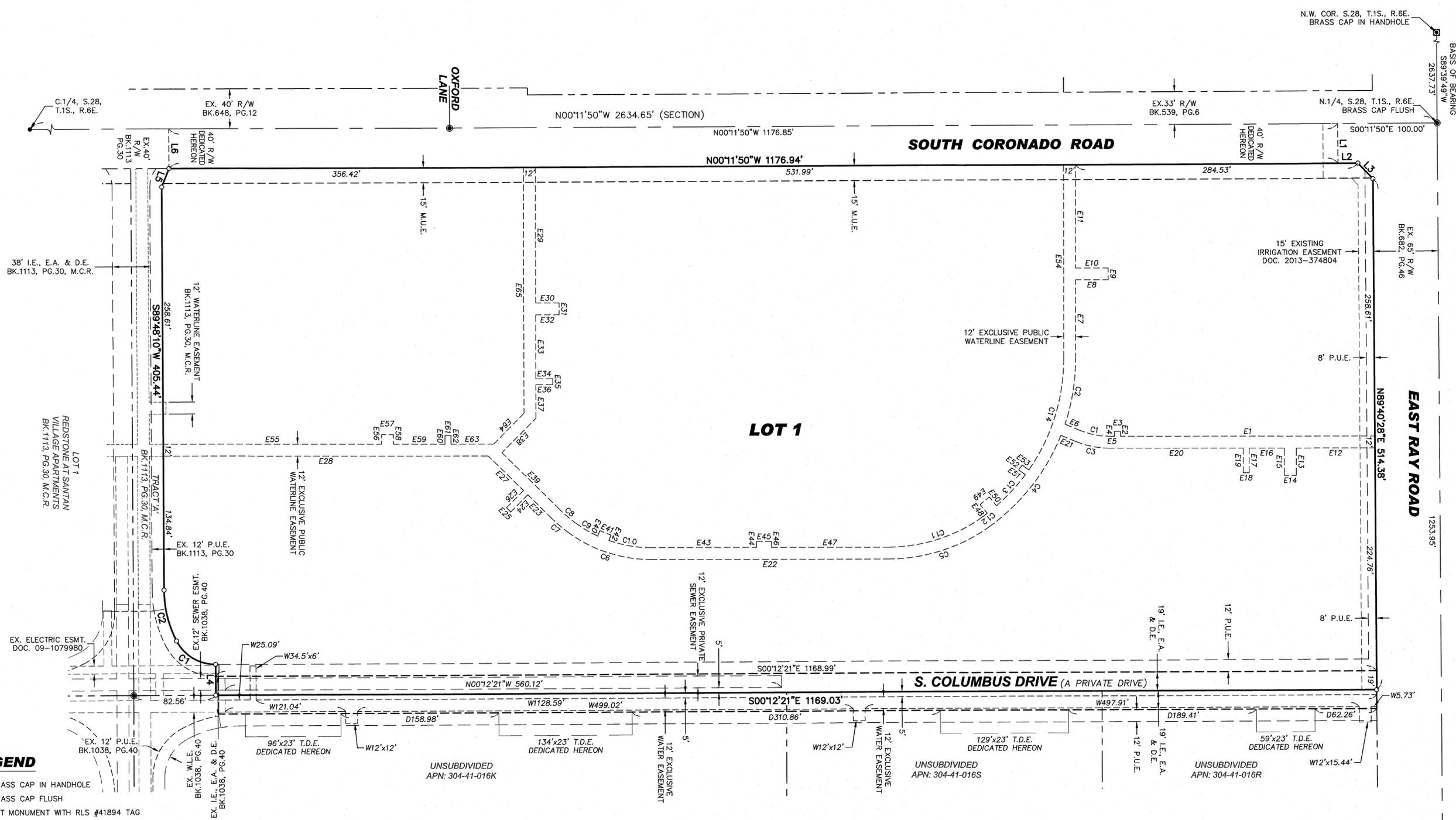
△

DRAWING NAME: 11021 PLAT2
JOB NO. 11021.2
DRAWN: ELS
CHECKED: RMH
DATE: 10/21/2014
SCALE: N.T.S.
SHEET: 2 OF 3

FINAL PLAT
CROSSROADS at
SAN TAN VILLAGE APARTMENTS
GILBERT, ARIZONA



REVISIONS:
 △
 △
 △
 DRAWING NAME:
 11021 PLAT2
 JOB NO. 11021.2
 DRAWN: ELS
 CHECKED: RMH
 DATE: 10/21/2014
 SCALE: 1" = 50'
 SHEET: 3 OF 3



LEGEND

- BRASS CAP IN HANDHOLE
- BRASS CAP FLUSH
- SET MONUMENT WITH RLS #41894 TAG
- R/W RIGHT OF WAY
- DOC. DOCUMENT
- BK., PG. BOOK, PAGE
- P.U.E. PUBLIC UTILITY EASEMENT
- M.U.E. MULTI-USE EASEMENT
- I.E., E.A.&D.E. INGRESS/EGRESS, EMERGENCY ACCESS, & DRAINAGE EASEMENT
- EX. EXISTING
- T.D.E. TEMPORARY DRAINAGE EASEMENT
- BCF BRASS CAP, FLUSH
- (M) MEASURED DIMENSIONS
- (R) RECORDED DIMENSIONS
- D189.41' DRAINAGE EASEMENT DIMENSION
- W121.04' WATER EASEMENT DIMENSION

PROPERTY LINE TABLE

LINE	BEARING	LENGTH
L1	N89°40'28"E	40.00
L2	N00°11'50"W	20.00
L3	N46°05'54"E	21.76
L4	S89°48'07"W	31.00
L5	N68°14'01"W	19.95
L6	S89°48'10"W	40.00

PROPERTY CURVE TABLE

CURVE	DELTA	RADIUS	ARC	CHORD
C1	63°01'47"	44.00	48.40	N31°16'42"E 46.00
C2	27°00'34"	113.01	53.27	N76°17'52"E 52.78

EASEMENT LINE TABLE

LINE	BEARING	LENGTH
E1	S00°01'06"W	256.38
E2	N89°58'54"W	5.00
E3	S00°01'06"W	6.00
E4	S89°58'54"E	5.00
E5	S00°01'06"W	4.64
E6	S22°08'51"W	16.93
E7	N89°58'09"W	78.70
E8	N00°01'51"E	32.98
E9	N89°58'09"W	12.00
E10	S00°01'51"W	32.98
E11	N89°58'09"W	103.90
E12	S00°01'06"W	79.25
E13	S89°58'54"E	27.66
E14	S00°01'06"W	12.00
E15	N89°58'54"W	27.66
E16	S00°01'06"W	35.45

EASEMENT LINE TABLE

LINE	BEARING	LENGTH
E17	S89°58'54"E	25.00
E18	S00°01'06"W	6.00
E19	N89°58'54"W	25.00
E20	S00°01'06"W	134.40
E21	S22°08'51"W	16.53
E22	S00°00'16"W	239.62
E23	S44°44'06"W	32.55
E24	S45°15'54"E	24.40
E25	S44°44'06"W	6.00
E26	N45°15'54"W	24.40
E27	S44°44'06"W	49.72
E28	S00°00'00"W	326.97
E29	S90°00'00"E	136.64
E30	N00°00'00"E	23.62
E31	S89°58'17"E	12.00
E32	S00°00'00"W	23.61

EASEMENT LINE TABLE

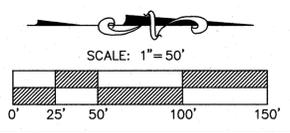
LINE	BEARING	LENGTH
E33	S90°00'00"E	64.04
E34	N00°00'00"E	17.11
E35	N89°59'50"E	6.00
E36	S00°00'00"W	17.11
E37	N89°58'49"E	33.72
E38	S45°15'54"E	48.72
E39	N44°44'06"E	80.97
E40	N67°48'04"W	5.86
E41	N22°11'56"E	12.00
E42	S67°48'04"E	5.86
E43	N00°00'16"E	106.28
E44	N89°59'45"W	6.00
E45	N00°00'15"E	15.01
E46	N89°56'45"E	6.00
E47	N00°00'16"E	118.33
E48	S50°52'14"W	11.38

EASEMENT LINE TABLE

LINE	BEARING	LENGTH
E49	N39°07'46"W	12.00
E50	N50°52'14"E	11.38
E51	S35°46'48"W	8.32
E52	N54°13'12"W	6.00
E53	N35°46'48"E	8.32
E54	N89°58'09"W	194.55
E55	N00°00'00"W	219.44
E56	N90°00'00"W	9.76
E57	N00°00'00"E	12.00
E58	N90°00'00"E	9.76
E59	N00°00'00"E	51.94
E60	N90°00'00"W	9.00
E61	N00°00'00"E	9.00
E62	S90°00'00"E	6.00
E63	N00°00'00"E	42.91
E64	N45°16'49"W	43.54
E65	N90°00'00"W	247.42

EASEMENT CURVE TABLE

CURVE	DELTA	RADIUS	ARC	CHORD
C1	22°07'45"	78.00	30.13	N11°04'59"E 29.94
C2	18°33'02"	209.00	67.67	N80°41'38"W 67.37
C3	22°07'45"	90.00	34.76	N11°04'59"E 34.54
C4	32°31'09"	209.00	118.62	N51°52'01"W 117.04
C5	35°36'43"	174.00	108.15	N17°48'05"W 106.42
C6	36°26'24"	140.00	89.04	N18°13'28"E 87.55
C7	8°17'26"	161.00	23.30	N40°35'23"E 23.28
C8	8°17'26"	149.00	21.56	N40°35'23"E 21.54
C9	11°33'32"	128.00	25.82	N30°39'54"E 25.78
C10	19°30'27"	128.00	43.58	N09°45'30"E 43.37
C11	35°36'43"	162.00	100.69	N17°48'05"W 99.08
C12	1°46'36"	197.00	6.11	N36°29'45"W 6.11
C13	12°28'22"	197.00	42.89	N47°06'40"W 42.80
C14	34°52'36"	197.00	119.92	N72°31'51"W 118.07



COUNTY RECORDER



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Tom Condit, PE, Development Engineer, 503-6815

MEETING DATE: December 2, 2014

SUBJECT: S14-03: Approval of the Final Plat for "Paradise Cove at the Islands", located south and east of the southeast corner of Warner and McQueen Roads.

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 "Paradise Cove at the Islands", located south and east of the southeast corner of Warner and McQueen Roads.

BACKGROUND/DISCUSSION

The "*Paradise Cove at the Islands*" development is a proposed 13.3-acre residential subdivision south and east of the southeast corner of Warner and McQueen Roads. This final plat establishes 44 single family residential lots and 8 tracts that encompass common facilities such as landscape, pedestrian access, storm water retention basins, and private streets. This final plat also provides dedications for public utility easements. The tract and easement dedications support the infrastructure that is needed for the development.

The following is an abbreviated history of Town actions associated with this property:

May 29, 1984	Town Council approved Ordinance No. 373 under case no. A84-3, annexing approximately 220 acres, including the 13.3-acre Paradise Cove at the Islands parcel.
--------------	--

May 28, 1985 The Town Council approved Ordinance No. 429 under case no. Z84-58, rezoning approximately 798 acres from AG to Planned Area Development (PAD) zoning.

November 7, 2013 Town Council approved GP13-13 (Resolution no. 3216) and Z13-23 (Ordinance no. 2456) amending the land use designation and rezoning the 13.3 acre property to Residential >2-3.5 DU/ Acre and SF-6 PAD.

June 4, 2014 Planning Commission approved a Preliminary Plat under case no. S14-03 for the 13.3-acre Paradise Cove at the Islands subdivision.

June 12, 2014 Design Review Board approved the Open Space Plan under case no. S14-03 for the 13.3-acre Paradise Cove at the Islands subdivision.

FINANCIAL IMPACT

There is no direct financial impact on the Town associated with this final plat approval. Approval of the plat will allow the Paradise Cove at the Islands developer to move forward with their plans to improve the property, which will include 44 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 final plat for Paradise Cove at the Islands. 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

Kenneth Morgan

Approval Date

11/12/2014 5:01 PM

DEDICATION

STATE OF ARIZONA } SS

COUNTY OF MARICOPA }

KNOW ALL MEN BY THESE PRESENTS:

THAT GENICA ARIZONA LLC, AN ARIZONA LIMITED LIABILITY COMPANY, AS OWNER, HEREBY PUBLISHES THIS PLAT OF "PARADISE COVE AT THE ISLANDS" OWNER DECLARES THAT SAID PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF THE LOTS, TRACTS AND EASEMENTS CONSTITUTING SAME...

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.

TRACTS A, B, C, D, E, F, G AND H ARE HEREBY DEDICATED FOR THE PURPOSES SHOWN HEREON AND ARE TO BE OWNED BY THE PARADISE COVE AT THE ISLANDS HOMEOWNERS' ASSOCIATION (THE "SUB-ASSOCIATION").

TRACT "A" IS HEREBY DEDICATED AS PRIVATE ACCESS WAY TO BE OWNED AND MAINTAINED BY THE PARADISE COVE AT THE ISLANDS HOMEOWNERS ASSOCIATION, AN EASEMENT FOR REFUSE COLLECTION, DRAINAGE, EMERGENCY AND SERVICE TYPE VEHICLE ACCESS IS HEREBY DEDICATED TO THE PUBLIC OVER TRACT "A".

A PERPETUAL WATER & SEWER EASEMENT AS SHOWN ON SAID PLAT OVER TRACT "A" IS GRANTED TO TOWN OF GILBERT, AND ITS SUCCESSORS AND ASSIGNS COLLECTIVELY, "GRANTEE", TO CONSTRUCT, OPERATE, AND MAINTAIN WATER AND SEWER LINES AND APPURTENANT FACILITIES UPON, ACROSS, OVER AND UNDER THE SURFACE OF THE EASEMENTS, TOGETHER WITH THE RIGHT TO OPERATE, REPAIR, REPLACE, MAINTAIN, AND REMOVE THE FACILITIES FROM THE PREMISES; TO ADD OR TO ALTER THE FACILITIES, AND TO PROVIDE GRANTEE WITH REASONABLE INGRESS AND EGRESS TO THE FACILITIES.

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 OF 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 RECORDERS OFFICE, OR WHICH OWNER WILL RECORD NOT LATER THAN THE DATE ON WHICH THIS PLAT IS RECORDED.

IN WITNESS WHEREOF:

GENICA ARIZONA LLC, AN ARIZONA LIMITED LIABILITY COMPANY, AS OWNER OF THE LAND DESCRIBED HEREIN, HAS CAUSED ITS NAME TO BE AFFIXED AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF THE UNDERSIGNED DULY AUTHORIZED OFFICER.

GENICA ARIZONA LLC, AN ARIZONA LIMITED LIABILITY COMPANY

BY: [Signature] DATE: Nov. 17, 2014

ITS: AUTHORIZED SIGNATORY

ACKNOWLEDGEMENT

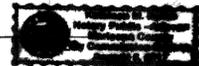
STATE OF ARIZONA } SS

COUNTY OF MARICOPA }

ON THIS 17th DAY OF November, 2014 BEFORE ME THE UNDERSIGNED PERSONALLY APPEARED [Signature] ACKNOWLEDGED HIMSELF TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE INSTRUMENT WITHIN, AND WHO EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES THEREIN CONTAINED.

IN WITNESS WHEREOF, I HEREUNTO SET MY HAND AND OFFICIAL SEAL.

SIGNATURE: [Signature] NOTARY PUBLIC



RATIFICATION

THE ISLANDS COMMUNITY ASSOCIATION, AN ARIZONA NON-PROFIT CORPORATION HEREBY RATIFIES, APPROVES, AND ACQUIRES IN THE DEDICATIONS AS STATED IN THIS DEDICATION AND NOTES.

BY: [Signature] DATE: 11/19/2014

ITS: PRESIDENT

ACKNOWLEDGEMENT

STATE OF ARIZONA } SS

COUNTY OF MARICOPA }

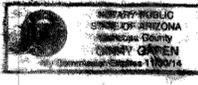
ON THIS 19th DAY OF November, 2014 BEFORE ME

PERSONALLY APPEARED [Signature] AND ACKNOWLEDGED HIMSELF TO BE THE PRESIDENT OF THE ISLANDS COMMUNITY ASSOCIATION, AN ARIZONA NON-PROFIT CORPORATION, AND ACKNOWLEDGED THAT AS THE AUTHORIZED AGENT, BEING DULY AUTHORIZED TO DO SO, EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSE CONTAINED THEREIN.

IN WITNESS WHEREOF:

I HEREBY SET MY HAND AND OFFICIAL SEAL

BY: [Signature] MY COMMISSION EXPIRES: DATE



FINAL PLAT FOR PARADISE COVE AT THE ISLANDS

A PRIVATE STREET DEVELOPMENT

PART OF THE SOUTHWEST QUARTER OF SECTION 14, AND THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA

RATIFICATION

PARADISE COVE AT THE ISLANDS HOMEOWNERS' ASSOCIATION, AN ARIZONA NON-PROFIT CORPORATION HEREBY RATIFIES, APPROVES, AND ACQUIRES IN THE DEDICATIONS AS STATED IN THIS DEDICATION AND NOTES.

BY: [Signature] DATE: Nov. 17, 2014

ITS: PRESIDENT

ACKNOWLEDGEMENT

STATE OF ARIZONA } SS

COUNTY OF MARICOPA }

ON THIS 17th DAY OF November, 2014 BEFORE ME

PERSONALLY APPEARED [Signature] AND ACKNOWLEDGED HIMSELF TO BE THE PRESIDENT OF THE PARADISE COVE AT THE ISLANDS HOMEOWNERS' ASSOCIATION, AN ARIZONA NON-PROFIT CORPORATION, AND ACKNOWLEDGED THAT AS THE AUTHORIZED AGENT, BEING DULY AUTHORIZED TO DO SO, EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSE CONTAINED THEREIN.

IN WITNESS WHEREOF:

I HEREBY SET MY HAND AND OFFICIAL SEAL

BY: [Signature] MY COMMISSION EXPIRES: DATE



LEGAL DESCRIPTION

THAT PART OF THE SOUTHWEST QUARTER OF SECTION 14, AND THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 23;

THENCE NORTH 89 DEGREES 48 MINUTES 06 SECONDS EAST, ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 23, A DISTANCE OF 373.00 FEET;

THENCE SOUTH 00 DEGREES 08 MINUTES 02 SECONDS EAST, 55.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 89 DEGREES 48 MINUTES 06 SECONDS EAST, 213.14 FEET TO THE BEGINNING OF A TANGENT CURVE OF 910.33 FOOT RADIUS CONCAVE NORTHWESTERLY;

THENCE NORTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 30 DEGREES 35 MINUTES 29 SECONDS, A DISTANCE OF 488.04 FEET;

THENCE NORTH 59 DEGREES 12 MINUTES 37 SECONDS EAST, 38.00 FEET TO THE BEGINNING OF A TANGENT CURVE OF 12.00 FOOT RADIUS CONCAVE SOUTHERLY;

THENCE EASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 90 DEGREES 00 MINUTES 00 SECONDS, A DISTANCE OF 18.85 FEET;

THENCE SOUTH 30 DEGREES 47 MINUTES 23 SECONDS EAST, 45.51 FEET TO THE BEGINNING OF A TANGENT CURVE OF 492.00 FOOT RADIUS CONCAVE WESTERLY;

THENCE SOUTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 48 DEGREES 40 MINUTES 49 SECONDS, A DISTANCE OF 418.02 FEET;

THENCE SOUTH 17 DEGREES 53 MINUTES 26 SECONDS WEST, 199.90 FEET;

THENCE SOUTH 89 DEGREES 48 MINUTES 06 SECONDS WEST, 1039.37 FEET TO A POINT ON A LINE WHICH IS PARALLEL TO AND 65.00 FEET EASTERLY, AS MEASURED AT RIGHT ANGLES, FROM THE WEST LINE OF SAID SECTION 23;

THENCE NORTH 00 DEGREES 08 MINUTES 02 SECONDS WEST, ALONG SAID PARALLEL LINE, 250.63 FEET;

THENCE NORTH 89 DEGREES 48 MINUTES 06 SECONDS EAST, 308.00 FEET;

THENCE NORTH 00 DEGREES 08 MINUTES 02 SECONDS WEST, 240.00 FEET TO THE TRUE POINT OF BEGINNING;

EXCLUDING ROADWAY RIGHTS-OF-WAY AS SHOWN ON THE "ISLANDS" MAP OF DEDICATION AS RECORDED IN BOOK 275, OF MAPS, PAGE 42, MARICOPA COUNTY RECORDS AND IN BOOK 290 OF MAPS, PAGE 16.

TRACT USE TABLE with columns: TRACT, USE, OWNER, S.F., ACRES. Rows A-H detailing various easements and open spaces.

RATIFICATION

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.

GENICA ARIZONA LLC, AN ARIZONA LIMITED LIABILITY COMPANY

BY: [Signature] DATE: Nov. 17, 2014

ITS: AUTHORIZED SIGNATORY

ACKNOWLEDGEMENT

STATE OF ARIZONA } SS

COUNTY OF MARICOPA }

ON THIS 17th DAY OF November, 2014 BEFORE ME THE UNDERSIGNED PERSONALLY APPEARED [Signature] ACKNOWLEDGED HIMSELF TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE INSTRUMENT WITHIN, AND WHO EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES THEREIN CONTAINED.

IN WITNESS WHEREOF, I HEREUNTO SET MY HAND AND OFFICIAL SEAL.

SIGNATURE: [Signature] NOTARY PUBLIC



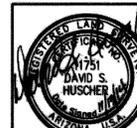
GENERAL NOTES

- 1. THIS SUBDIVISION IS LOCATED WITHIN THE TOWN OF GILBERT WATER SERVICE AREA AND HAS BEEN DESIGNATED AS HAVING AN ASSURED WATER SUPPLY.
2. NO STRUCTURE OF ANY KIND SHALL BE CONSTRUCTED ON, OVER, OR PLACED WITHIN A PUBLIC UTILITY EASEMENT, DRAINAGE EASEMENT, SANITARY SEWER EASEMENT, OR WATER EASEMENT EXCEPT AS NOTED BELOW.
3. PUBLIC SANITARY SEWER OR WATER MAINS SHALL BE PLACED IN THE APPROPRIATE WATER AND SEWER EASEMENT.
4. ALL RELOCATED UTILITIES SHALL BE PLACED UNDERGROUND.
5. 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.
6. ALL UTILITIES SHALL BE CONSTRUCTED UNDERGROUND.
7. ELECTRIC LINES TO BE CONSTRUCTED UNDERGROUND AS REQUIRED BY THE ARIZONA CORPORATION COMMISSION.
8. ALL COMMUNICATION LINES TO BE CONSTRUCTED UNDERGROUND AS REQUIRED BY THE ARIZONA CORPORATION COMMISSION.
9. NO STRUCTURES SHALL BE CONSTRUCTED IN OR ACROSS NOR SHALL OTHER IMPROVEMENTS OR ALTERATIONS BE MADE TO THE DRAINAGE FACILITIES THAT ARE A PART OF THIS DEVELOPMENT WITHOUT WRITTEN AUTHORIZATION OF THE TOWN OF GILBERT.
10. ALL DRYWELLS SHOWN ON THIS PROJECT SHALL BE MAINTAINED BY THE HOMEOWNER'S ASSOCIATION AND ARE TO BE REPLACED BY THE HOMEOWNER'S ASSOCIATION WHEN THE CEASE TO DRAIN THE SURFACE WATER IN A 36 HOUR PERIOD.
11. A HOMEOWNERS ASSOCIATION SHALL MAINTAIN PRIVATE UTILITIES, PRIVATE FACILITIES, COMMON AREA LANDSCAPING AND LANDSCAPING THE RIGHT-OF-WAY ADJACENT TO THE PROJECT.
12. STRUCTURES AND LANDSCAPING AT THE INTERSECTION OF PUBLIC STREETS AND PRIVATE ACCESSWAYS, WITHIN A TRIANGLE MEASURING 3' ALONG THE PUBLIC STREET AND ALONG THE PRIVATE ACCESSWAY RIGHT-OF-WAY LINES, WILL BE MAINTAINED AT A MAXIMUM HEIGHT OF 3'.
13. NO ALTERATION SHALL BE MADE TO THE STORM WATER RETENTION AREAS THAT ARE A PART OF THESE PREMISES WITHOUT THE PRIOR WRITTEN APPROVAL OF THE TOWN OF GILBERT.
14. ALL RETENTION BASINS MUST DRAIN ANY STORM EVENT UP TO AND INCLUDING THE FIFTY-YEAR, TWENTY-FOUR (24) HOUR STORM WITHIN THIRTY-SIX (36) HOURS.
15. THERE IS A REQUIRED 35 FEET WIDE "NO BUILD EASEMENT" FOR THE RESIDENTIAL DWELLING UNITS ALONG THE NORTH AND WEST PROPERTY LINES.

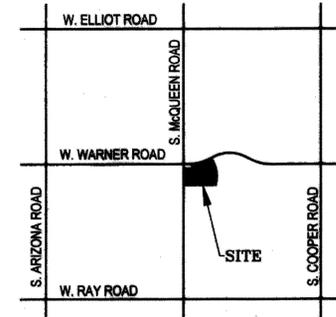
CERTIFICATION

I, DAVID S. HUSCHER, 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 BOUNDARY SURVEY MADE UNDER MY SUPERVISION DURING THE MONTH OF FEBRUARY, 2014, THAT THE SURVEY IS TRUE AND COMPLETE AS SHOWN, THAT ALL MONUMENTS SHOWN ACTUALLY EXIST OR WILL BE SET AS SHOWN, THAT THEIR POSITIONS ARE CORRECTLY SHOWN AND THAT SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

BY: [Signature] DATE: Nov. 13, 2014
DAVID S. HUSCHER, RLS #11751
O'NEILL ENGINEERING, L.L.C.
2001 W. CAMELBACK ROAD SUITE 200
PHOENIX, ARIZONA 85015
(602)-242-0020



Project information and contact details for O'NEILL ENGINEERING, L.L.C. including project name, location, and company address.



LOT AREA TABLE with columns: LOT NO., AREA (SF), AREA (AC). Lists 22 lots with their respective areas.

TOTAL LOT AREA: 327,502.45 SF = 7.52 ACRES

APPROVALS

APPROVED BY THE TOWN COUNCIL OF THE TOWN OF GILBERT, ARIZONA
THIS ___ DAY OF ___, 2014.
MAYOR DATE
ATTEST: CITY CLERK DATE
APPROVED BY: PLANNING MANAGER DATE
APPROVED BY: TOWN ENGINEER DATE

CURVE DATA TABLE				
CURVE	RADIUS	LENGTH	TANGENT	Δ DELTA
C1	1990.70'	433.02'	217.37'	12° 27' 47"
C2	25.00'	28.97'	16.35'	66° 23' 03"
C3	25.00'	48.44'	36.38'	111° 00' 43"
C4	15.02'	18.40'	10.56'	70° 13' 11"
C5	25.00'	42.90'	28.92'	98° 18' 59"
C6	55.00'	110.96'	87.32'	115° 35' 25"
C7	25.00'	17.40'	9.07'	39° 52' 45"
C8	4532.56'	730.24'	365.91'	9° 13' 51"
C9	50.00'	16.02'	8.08'	18° 21' 18"

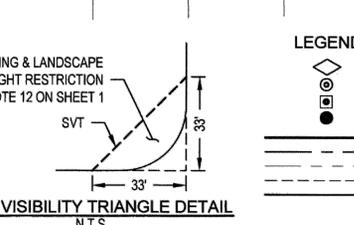
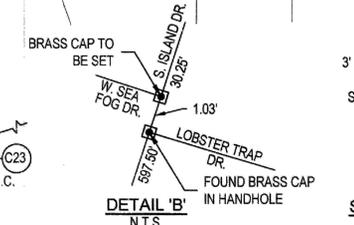
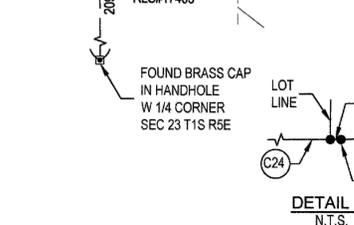
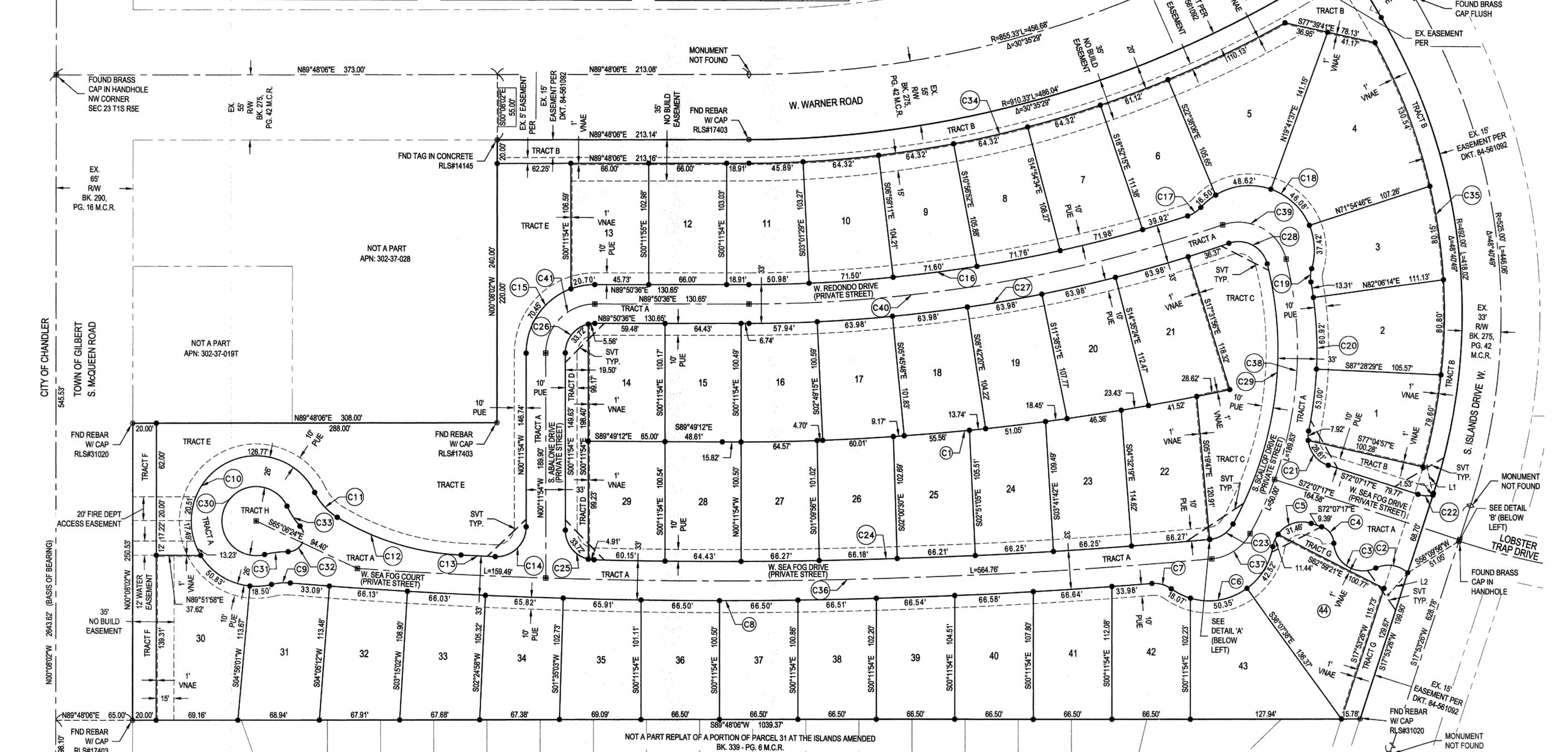
CURVE DATA TABLE				
CURVE	RADIUS	LENGTH	TANGENT	Δ DELTA
C10	55.00'	247.32'	---	257° 38' 42"
C11	50.00'	28.76'	14.79'	32° 57' 40"
C12	225.00'	110.49'	56.38'	28° 08' 11"
C13	4499.55'	29.01'	14.50'	0° 22' 10"
C14	25.00'	40.37'	26.13'	92° 31' 35"
C15	58.00'	91.15'	58.04'	90° 02' 30"
C16	1212.91'	377.75'	190.41'	17° 50' 39"
C17	25.00'	13.36'	6.85'	30° 37' 42"
C18	55.00'	148.61'	246.24'	154° 49' 06"

CURVE DATA TABLE				
CURVE	RADIUS	LENGTH	TANGENT	Δ DELTA
C19	25.00'	11.50'	5.85'	26° 21' 42"
C20	334.93'	127.22'	64.39'	21° 45' 49"
C21	25.00'	36.53'	22.40'	83° 43' 07"
C22	25.00'	12.85'	6.57'	29° 26' 38"
C23	25.00'	24.32'	13.22'	55° 44' 40"
C24	4499.56'	522.39'	261.49'	6° 39' 07"
C25	25.00'	38.63'	24.37'	88° 32' 13"
C26	25.00'	39.29'	25.02'	90° 02' 30"
C27	1245.91'	414.20'	209.03'	19° 02' 53"

CURVE DATA TABLE				
CURVE	RADIUS	LENGTH	TANGENT	Δ DELTA
C28	25.00'	41.42'	27.24'	94° 55' 13"
C29	301.93'	227.40'	119.40'	43° 09' 10"
C30	29.00'	131.01'	---	258° 50' 48"
C31	77.00'	20.03'	10.07'	14° 54' 06"
C32	13.00'	29.71'	28.50'	130° 57' 23"
C33	77.00'	20.03'	10.07'	14° 54' 06"
C34	930.33'	474.44'	242.50'	29° 13' 10"
C35	477.00'	371.10'	195.51'	44° 34' 31"
C36	4516.06'	724.25'	362.91'	9° 11' 19"

CURVE DATA TABLE				
CURVE	RADIUS	LENGTH	TANGENT	Δ DELTA
C37	41.50'	40.38'	21.95'	55° 44' 40"
C38	318.43'	239.83'	125.92'	43° 09' 10"
C39	41.50'	68.75'	45.23'	94° 55' 13"
C40	1229.41'	408.72'	206.26'	19° 02' 53"
C41	41.50'	65.22'	41.53'	90° 02' 30"

LINE DATA TABLE		
LINE	BEARING	LENGTH
L1	S11°33'55"E	25.00'
L2	N41°29'32"E	25.00'



LEGEND

- MONUMENT NOT FOUND OR SET
- FOUND REBAR W/ CAP
- BRASS CAP FOUND OR TO BE SET
- 1/2" REBAR W/ CAP TO BE SET
- SUBDIVISION BOUNDARY
- EXISTING ROAD CENTERLINE / MONUMENT LINE
- ADJACENT PROPERTY LINE / EXISTING RIGHT OF WAY
- EXISTING OR PROPOSED EASEMENT LINE (TYPE AS NOTED)
- PROPOSED LOT LINE / TRACT BOUNDARY

ABBREVIATIONS

- BK BOOK
- PG PAGE
- R/W RIGHT OF WAY
- AC ACRES
- SF SQUARE FEET
- M.C.R. MARICOPA COUNTY RECORDER
- PUE PUBLIC UTILITY EASEMENT
- VNAE VEHICULAR NON-ACCESS EASEMENT
- EX EXISTING
- DKT. DOCKET
- SVT SITE VISIBILITY TRIANGLE (SEE DETAIL THIS SHEET)

PARADISE COVE AT THE ISLANDS
GILBERT, ARIZONA
MARICOPA COUNTY, ARIZONA

FINAL PLAT

Proj No: 2013.388.001
Date: 11/12/14
Designed By: JRM/JML
Drawn By: M.J.L.
Scale: 1"=40'
Sheet: 2 of 2

Engineering Answers

O'NEILL ENGINEERING, L.L.C.
Engineering • Planning • Surveying • SUE

2001 West Camelback Road, Suite 200 Phoenix, AZ 85015
Phone: 602.242.0020 Fax: 602.242.5722
www.oneilleng.com



Council Communication

TO: Honorable Mayor and Councilmembers
FROM: Tom Condit, PE, Development Engineer, 503-6815
MEETING DATE: December 2, 2014
SUBJECT: SP1404: Approval of "A Final Plat of Hampton Inn and Suites", located at the southeast corner of Higley Road and Inverness Avenue.

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's Infrastructure Strategic Initiative as it allows for the logical extension of infrastructure to serve the subject site, as well as the surrounding area.

RECOMMENDED MOTION

A motion to approve "*A Final Plat of Hampton Inn and Suites*", located at the southeast corner of Higley Road and Inverness Avenue.

BACKGROUND/DISCUSSION

A Final Plat of Hampton Inn and Suites includes Maricopa County Parcels 140-69-001G and 141-53-512A, which are being combined into a single lot (Lot 1, approximately 3.6 acres). In addition, the Final Plat dedicates easements for public utilities, including exclusive water and sewer easements. On July 10 2014, the developers of the Hampton Inn and Suites received approval from the Design Review Board (with stipulations) on their proposed project, to be constructed on Lot 1 (Case DR14-16).

The following is an abbreviated history of Town actions associated with this property:

September 1, 1998	The Town Council approved Z98-15 (Ordinance 1117), rezoning the site to C-2 PAD.
January 8, 2008	The Town Council approved Z07-57 (Ordinance 2111), rezoning a portion of the site to Regional Commercial (RC).

July 10, 2014

The Design Review Board approved Case No. DR14-16, final site plan, landscape, grading and drainage, elevations, floor plans, lighting, colors and materials for Hampton Inn & Suites project; and preliminary site plan for a future retail / office pad, subject to conditions.

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 construction of a proposed 5-story (66' high), 101 room hotel building with pool and outdoor amenities, and a future 5,620 square foot retail / office building to be located on the northwestern portion of the 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 for this final plat 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

Gregory Smith
Kenneth Morgan

Approval Date

11/17/2014 3:05 PM
11/18/2014 5:19 PM

A FINAL PLAT OF HAMPTON INN AND SUITES

A REPLAT OF LOT G4 OF THE FINAL PLAT OF INVERNESS COMMONS UNIT 1, AS RECORDED IN BOOK 504 OF MAPS, PAGE 48 AND PARCEL 2 AND 2A FROM BOOK 1169 PAGE 35 RECORDED IN MARICOPA COUNTY, ARIZONA AND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 35 AND THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA

CONSENT TO EASEMENT

THE UNDERSIGNED CONSENTS TO THE UTILITY EASEMENTS DESCRIBED ON THIS PLAT. IN WITNESS WHEREOF, THIS CONSENT TO EASEMENT HAS BEEN EXECUTED AND DELIVERED THIS 5 DAY OF November 2014.

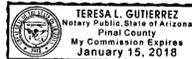
[Signature]
BENEFICIARY OF DEED OF TRUST
BY: Todd Whisler
ITS: vice president

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS

ON THIS 5 DAY OF November, 2014 BEFORE ME PERSONALLY APPEARED THE UNDERSIGNED Todd Whisler AND AUTHORIZED REPRESENTATIVE OF Great Western Bank, A BENEFICIARY TO A RECORDED 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.

[Signature]
NOTARY PUBLIC

MY COMMISSION EXPIRES: _____



DEDICATION

KNOW ALL MEN BY THESE PRESENTS: Nirou Patel OF MILAN ENTERPRISES, LLC. AS OWNER HAS COMBINED LOT G4 OF THE FINAL PLAT OF INVERNESS COMMONS, AS RECORDED IN BOOK 504 OF MAPS, PAGE 48, MARICOPA COUNTY RECORDS WITH ASSESSORS PARCEL NUMBER 140-69-001G LOCATED IN THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 1 NORTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AND DOES HEREBY PUBLISH THIS PLAT AS AND FOR THE PLAT OF SAID LOTS G4 INVERNESS COMMONS UNIT 1 & 140-69-001G, AND HEREBY DECLARES THAT SAID PLAT SETS FORTH THE LOCATIONS AND GIVES DIMENSIONS OF THE LOT, AND THAT IT SHALL BE KNOWN BY THE NUMBER GIVE TO THE LOT ON SAID PLAT.

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, Nirou Patel OF MILAN ENTERPRISES, LLC., AS OWNER, HAS HEREUNTO CAUSED ITS NAME TO BE SIGNED THIS 5 DAY OF November.

[Signature]
BY President / Manager

ACKNOWLEDGEMENT

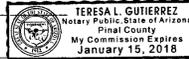
ACKNOWLEDGEMENT:
STATE OF ARIZONA
COUNTY OF MARICOPA

ON THIS 5 DAY OF November, BEFORE ME THE UNDERSIGNED NOTARY REPUBLIC PERSONALLY APPEARED Nirou Patel WHO ACKNOWLEDGED HIMSELF TO BE THE Manager OF MILAN ENTERPRISES, LLC., AND EXECUTED THIS INSTRUMENT FOR THE PURPOSE HEREIN CONTAINED.

IN WITNESS WHEREOF: I HEREUNTO SET MY HAND AND OFFICIAL SEAL.

MY COMMISSION EXPIRES: _____

[Signature]
NOTARY PUBLIC: *[Signature]*



APPROVALS

APPROVED BY THE MAYOR AND CITY COUNCIL OF THE TOWN OF GILBERT, ARIZONA ON THE _____ DAY OF _____

BY _____ ATTEST: _____
MAYOR TOWN OF GILBERT CLERK

THIS IS TO CERTIFY THAT THE AREA PLOTTED HEREON IS APPROVED AND LIES WITHIN THE DOMESTIC WATER SERVICES AREA OF THE TOWN OF GILBERT WHICH IS DESIGNATED AS HAVING AN ASSURED WATER SUPPLY IN ACCORDANCE WITH ARS 45-576.

BY _____ DATE _____
TOWN OF GILBERT ENGINEER

BY _____ DATE _____
TOWN OF GILBERT ENGINEER

LEGAL DESCRIPTION OF ADDED PARCELS

PARCEL 2
THE NORTH HALF OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

EXCEPT THAT PORTION LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE POINT ON THE EAST LINE OF SAID SECTION 34, WHICH BEARS SOUTH 00 DEGREES 31 MINUTES 17 SECONDS WEST, 650.00 FEET FROM THE EAST QUARTER THEREOF;

THENCE NORTH 89 DEGREES 28 MINUTES 43 SECONDS WEST, 55.00 FEET;

THENCE NORTH 06 DEGREES 37 MINUTES 52 SECONDS WEST, 361.41 FEET;

THENCE NORTH 86 DEGREES 25 MINUTES 08 SECONDS WEST, 447.41 FEET;

THENCE SOUTH 89 DEGREES 44 MINUTES 11 SECONDS WEST 1980.16 FEET;

THENCE SOUTH 08 DEGREES 05 MINUTES 10 SECONDS WEST 344.59 FEET;

THENCE NORTH 89 DEGREES 25 MINUTES 19 SECONDS WEST 55.00 FEET TO THE POINT OF ENDING ON THE NORTH-SOUTH LINE OF SAID SECTION 34; AND

EXCEPT THE FOLLOWING DESCRIBED PARCEL:

THE SOUTH 11.00 FEET OF SAID NORTH HALF OF THE SOUTHEAST QUARTER OF SECTION 14;

EXCEPT THE WEST 247.50 FEET;

EXCEPT THEREFROM THE FOLLOWING DESCRIBED PARCEL:

A PORTION OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 6 EAST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 34;

THENCE NORTH 00 DEGREES 31 MINUTES 24 SECONDS EAST (AN ASSUMED BEARING) ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 34, A DISTANCE OF 1,335.47 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 11 FEET OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 34;

THENCE SOUTH 89 DEGREES 46 MINUTES 53 SECONDS WEST ALONG SAID NORTH LINE, A DISTANCE OF 228.54 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 89 DEGREES 46 MINUTES 53 SECONDS WEST ALONG SAID NORTH LINE, A DISTANCE OF 2,164.18 FEET TO A POINT ON THE EAST LINE OF THE WEST 247.50 FEET OF THE SOUTHEAST QUARTER OF SAID SECTION 34;

THENCE SOUTH 00 DEGREES 45 MINUTES 16 SECONDS WEST ALONG SAID WEST LINE, AS DISTANCE OF 11.00 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 34;

THENCE SOUTH 89 DEGREES 46 MINUTES 53 SECONDS WEST ALONG SAID SOUTH LINE, A DISTANCE OF 247.54 FEET TO THE SOUTHWEST CORNER OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 34, FROM WHICH THE CENTER OF SAID SECTION 34 BEARS NORTH 00 DEGREES 45 MINUTES 16 SECONDS EAST, A DISTANCE OF 1,322.47 FEET;

THENCE NORTH 00 DEGREES 45 MINUTES 16 SECONDS EAST ALONG SAID WEST LINE, A DISTANCE OF 722.62 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF THE SUPERSTITION FREEWAY;

GENERAL NOTES

- CONSTRUCTION WITHIN PUBLIC EASEMENTS, EXCEPT BY PUBLIC AGENCIES AND UTILITY COMPANIES, SHALL BE LIMITED TO UTILITIES AND WOOD, WIRE OR REMOVABLE SECTION TYPE FENCING, UNLESS APPROVED BY THE TOWN OF GILBERT.
- ALL UTILITIES SHALL BE CONSTRUCTED UNDERGROUND.
- ELECTRIC LINES TO BE CONSTRUCTED UNDERGROUND AS REQUIRED BY ARIZONA CORPORATION COMMISSION.
- ALL COMMUNICATION LINES TO BE CONSTRUCTED UNDERGROUND AS REQUIRED BY ARIZONA CORPORATION COMMISSION.
- A PROPERTY OWNERS ASSOCIATION SHALL MAINTAIN PRIVATE UTILITIES, PRIVATE FACILITIES, COMMON AREA LANDSCAPE AND LANDSCAPING IN THE RIGHT-OF-WAY ADJACENT TO THE PROJECT. THE TOWN OF GILBERT IS NOT RESPONSIBLE FOR AND WILL NOT ACCEPT MAINTENANCE OF SUCH AREAS.
- NO STRUCTURES SHALL BE CONSTRUCTED IN OR ACROSS NOR SHALL OTHER IMPROVEMENTS OR ALTERATIONS BE MADE TO THE DRAINAGE FACILITIES THAT ARE A PART OF THIS DEVELOPMENT WITHOUT WRITTEN AUTHORIZATION OF THE TOWN OF GILBERT.

THENCE SOUTH 89 DEGREES 29 MINUTES 24 SECONDS EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 64.81 FEET (SOUTH 89 DEGREES 25 MINUTES 19 SECONDS EAST, 55.00 FEET RECORD);

THENCE NORTH 08 DEGREES 05 MINUTES 49 SECONDS EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 344.35 FEET (NORTH 08 DEGREES 05 MINUTES 10 SECONDS, 344.39 FEET RECORD);

THENCE NORTH 89 DEGREES 44 MINUTES 25 SECONDS EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 1980.28 FEET (NORTH 89 DEGREES 44 MINUTES 11 SECONDS EAST, 1980.16 FEET RECORD);

THENCE SOUTH 86 DEGREES 25 MINUTES 46 SECONDS EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 446.84 FEET (SOUTH 86 DEGREES 25 MINUTES 08 SECONDS, 447.81 FEET RECORD);

THENCE SOUTH 06 DEGREES 42 MINUTES 34 SECONDS EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 361.61 FEET (SOUTH 06 DEGREES 37 MINUTES 52 SECONDS EAST, 361.41 FEET RECORD);

THENCE SOUTH 89 DEGREES 28 MINUTES 36 SECONDS EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 55.14 FEET (SOUTH 89 DEGREES 28 MINUTES 43 SECONDS EAST, 55.00 FEET RECORD) TO A POINT OF THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 34, FROM WHICH THE EAST QUARTER CORNER OF SAID SECTION 34 BEARS NORTH 00 DEGREES 31 MINUTES 24 SECONDS EAST, A DISTANCE OF 650.00 FEET (NORTH 00 DEGREES 31 MINUTES 17 SECONDS EAST, 650.00 FEET RECORD);

THENCE SOUTH 00 DEGREES 31 MINUTES 24 SECONDS WEST ALONG SAID EAST LINE, A DISTANCE OF 8.79 FEET, TO A POINT ON A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST, THE CENTER OF WHICH BEARS SOUTH 89 DEGREES 49 MINUTES 52 SECONDS EAST, A DISTANCE OF 1,041.74 FEET;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 39 DEGREES 02 MINUTES 14 SECONDS, A DISTANCE OF 709.76 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION CONVEYED TO THE TOWN OF GILBERT, A MUNICIPAL CORPORATION, BY DEED INSTRUMENT RECORDED IN DOCUMENT NO. 2007-0429269.

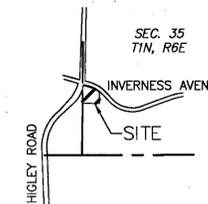
CONTAINING 0.1793 ACRES [7,809 SQUARE FEET] MORE OR LESS.

PARCEL NO. 2A:

THAT PORTION OF THE EAST 33 FEET OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF SECTION 34, RANGE 6 EAST, TOWNSHIP 1 NORTH OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, LYING NORTH OF THE NORTH RIGHT-OF-WAY LINE OF BASELINE ROAD AND SOUTH OF THE NEW HIGLEY ROAD ALIGNMENT AS ABANDONED BY RESOLUTION NO. 1207 RECORDED FEBRUARY 23, 2006 IN DOCUMENT NOR. 2006-0248670;

EXCEPT THE SOUTH 11 FEET THEREOF.

CONTAINING 0.1395 ACRES [6,079 SQUARE FEET] MORE OR LESS.



VICINITY MAP

SCALE: NOT TO SCALE

OWNER INFORMATION

MILAN ENTERPRISES, LLC.
808 N. SCOTTSDALE ROAD
TEMPE, AZ 85281

FLOOD ZONE

ZONE X PER FEMA MAP 04013C2290L, DATED OCTOBER 16, 2013

LOT 1 DATA

157,092 SQUARE FEET
3.6063 ACRES

BASIS OF BEARING

THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 1 NORTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA BEARING N00°29'55"E. (ASSUMED BEARING)

SURVEYOR NOTES

- FIELDWORK WAS COMPLETED IN THE MONTH OF JANUARY 2014.
- ALL BEARINGS AND DISTANCES ARE MEASURED UNLESS OTHERWISE NOTED.
- THIS SURVEYOR HAS MADE NO IMPENDENT SEARCH FOR TAXES, ASSESSMENTS, RESERVATIONS IN PATENT, EASEMENTS, RIGHTS OF WAY, ENCUMBRANCES, LIENS, COVENANTS, CONDITIONS OF RESTRICTIONS OR ANY OTHER RECORD INFORMATION THAT MAY BE DISCLOSED BY A CURRENT TITLE REPORT OR OTHER RESEARCH.
- THE PURPOSE OF THIS SURVEY IS TO COMBINE THE ASSESSORS PARCEL, 140-69-001G, WITH LOT G4 OF THE FINAL PLAT OF INVERNESS COMMONS, BOOK 504 OF MAPS, PAGE 48, MCR.

SURVEYOR CERTIFICATE

I, COLIN D. HARVEY, A DULY LICENSED LAND SURVEYOR IN THE STATE OF ARIZONA DO HEREBY CERTIFY THAT THIS DRAWING IS BASED ON A SURVEY PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION DURING THE MONTH OF JANUARY, 2014 AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.



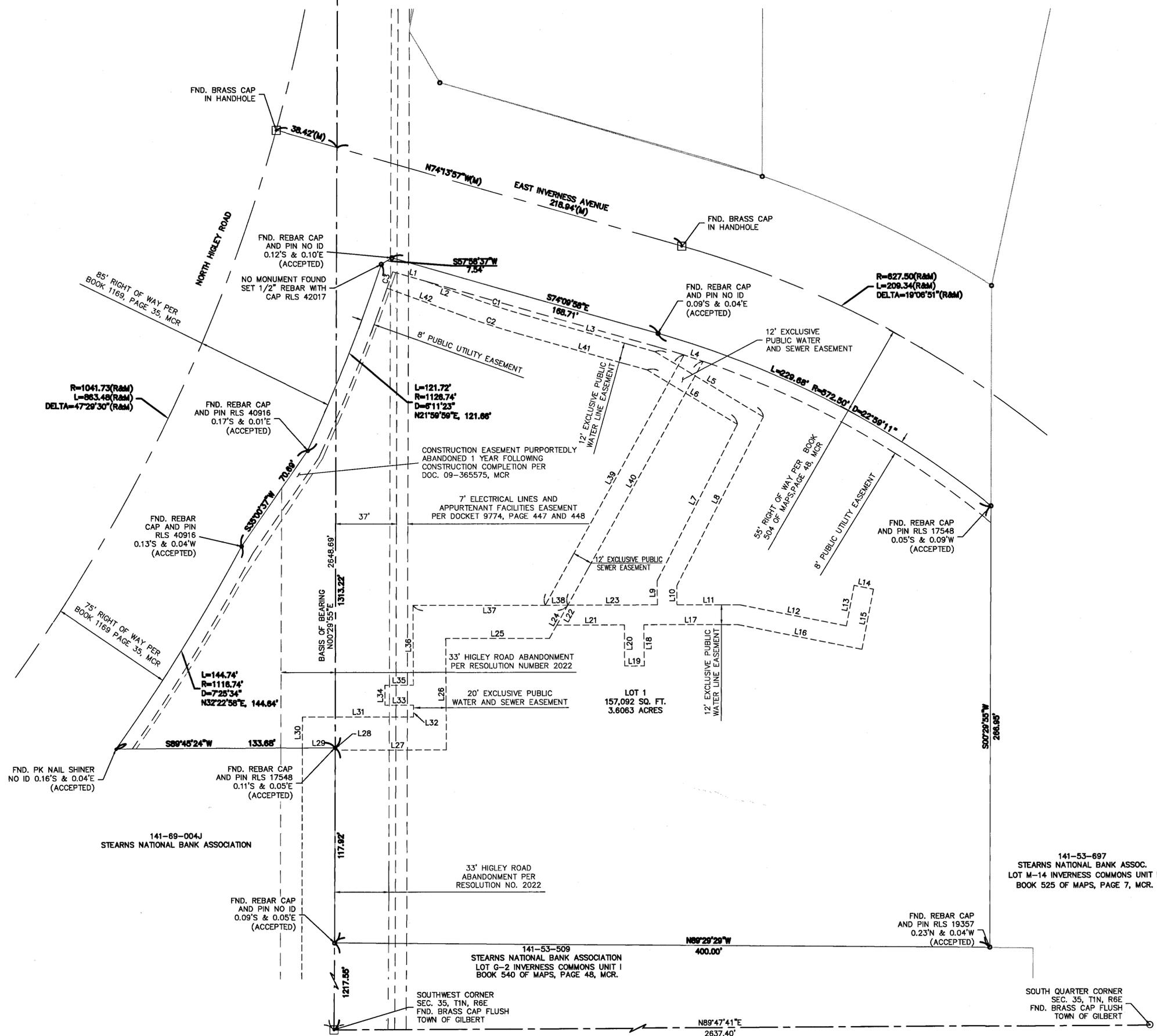
[Signature]
COLIN D. HARVEY
ARIZONA R.L.S. 42017

HARVEY LAND SURVEYING, INC. 461 EAST DARTMOUTH DRIVE CASA GRANDE, ARIZONA 85122 PHONE: (520) 876-4786 E-MAIL: COLEHARVEY@COX.NET		DRAWN BY: CGR	CHECKED BY: CDH
SCALE: 1" = 30'		DATE: 10/02/2014	
JOB NUMBER	SHEET	2014-005	
		1 OF 2	

A FINAL PLAT OF HAMPTON INN AND SUITES

A REPLAT OF LOT G4 OF THE FINAL PLAT OF INVERNESS COMMONS UNIT 1, AS RECORDED IN BOOK 504 OF MAPS, PAGE 48 AND PARCEL 2 AND 2A FROM BOOK 1169 PAGE 35 RECORDED IN MARICOPA COUNTY, ARIZONA AND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 35 AND THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 6 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA

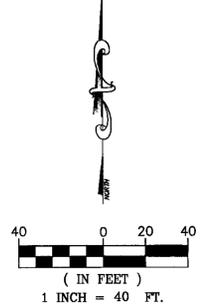
WEST QUARTER CORNER
SEC. 35, T1N, R6E
FND. BRASS CAP FLUSH
A.D.O.T. HIGHWAY
DEPARTMENT



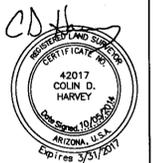
CURVE TABLE			
CURVE	LEN	RADIUS	DELTA
C1	35.21'	494.00'	4°05'01"
C2	36.06'	506.00'	4°05'01"
C3	10.50'	1173.98'	0°30'45"

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N74°09'58"W	21.03'
L2	S70°04'57"E	27.78'
L3	S74°09'58"E	83.20'
L4	S71°27'36"E	12.22'
L5	S58°59'32"E	76.84'
L6	S58°59'32"E	63.93'
L7	S27°36'00"W	106.82'
L8	S27°36'00"W	115.18'
L9	S00°00'00"W	14.63'
L10	S00°00'00"E	11.68'
L11	N90°00'00"E	38.23'
L12	S78°45'00"E	66.40'
L13	S11°15'00"W	25.00'
L14	N78°45'00"W	12.00'
L15	S11°15'00"W	37.00'
L16	S78°45'00"E	77.22'
L17	N90°00'00"E	57.28'
L18	N00°04'39"W	24.82'
L19	N89°48'51"W	12.00'
L20	N00°04'35"W	24.79'
L21	N90°00'00"E	41.22'
L22	N29°31'24"E	13.79'
L23	N90°00'00"E	54.65'
L24	S29°31'24"W	22.98'
L25	S90°00'00"W	63.32'
L26	N00°00'00"E	67.13'
L27	N90°00'00"W	67.96'
L28	S00°29'53"W	1.35'
L29	N89°45'22"E	20.00'
L30	N00°26'43"E	18.73'
L31	S89°59'47"W	67.81'
L32	N00°00'00"W	6.94'
L33	S90°00'00"E	17.33'
L34	S00°00'00"W	12.00'
L35	S90°00'00"E	17.33'
L36	N00°00'00"E	48.19'
L37	N90°00'00"E	94.64'
L38	S90°00'00"W	13.79'
L39	N29°31'24"E	173.91'
L40	N29°31'24"E	169.44'
L41	S74°09'58"E	81.60'
L42	S70°04'57"E	48.65'

- LEGEND**
- SECTION LINE
 - MONUMENT LINE
 - PROPERTY LINE
 - OTHERS PROPERTY
 - EXISTING EASEMENT
 - REBAR (AS NOTED)
 - WATER VALVE
 - WATER METER
 - FIRE HYDRANT
 - LIGHT POLE
 - SEWER MANHOLE
 - SIGN
 - ELECTRICAL BOX
 - STORM MANHOLE
 - BRASS CAP IN HANDHOLE
 - BRASS CAP (OR AS NOTED)
 - FOUND MONUMENT (AS NOTED)
 - IRRIGATION CONTROL VALVE
 - CATV PEDESTAL
 - CATCH BASIN
 - TRAFFIC SIGNAL
 - SPOT ELEVATION
- FND. FOUND
MCR. MARICOPA COUNTY RECORDER
(M) MEASURED BEARINGS/DISTANCES
(R#) RECORDED BEARINGS/DISTANCES



HARVEY LAND SURVEYING, INC. 461 EAST DARTMOUTH DRIVE CASA GRANDE, ARIZONA 85122 PHONE: (520) 876-4786 E-MAIL: COLEHARVEY@COX.NET		DRAWN BY: CGR SCALE: 1" = 30' DATE: 10/02/2014 JOB NUMBER: 2014-005	CHECKED BY: CDH SHEET: 2 OF 2
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Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Tom Condit, PE, Development Engineer, 503-6815

MEETING DATE: December 2, 2014

SUBJECT: SP1354, SP1408 & SP1416: Approval of a "Map of Dedication - Rivulon Boulevard, Allen Avenue & Pecos Road", located south and east of the intersection of Pecos Road and Gilbert Road.

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's Infrastructure Strategic Initiative as it allows for the logical extension of infrastructure to the Rivulon development, as well as the surrounding area.

RECOMMENDED MOTION

A motion to approve a "*Map of Dedication - Rivulon Boulevard, Allen Avenue & Pecos Road*", located south and east of the intersection of Pecos Road and Gilbert Road.

BACKGROUND/DISCUSSION

The *Map of Dedication - Rivulon Boulevard, Allen Avenue & Pecos Road* provides right-of-way dedications for streets, and easements for public utilities and sidewalks. These right-of-way and easement dedications support the infrastructure that is needed for the southwestern portion of the Rivulon development, which consists of two multi-story office buildings, as well as future retail and office development in this area.

The following is an abbreviated history of Town actions associated with this property:

January 8, 1975 Town Council approved the annexation of property abutting Gilbert Road (including portions of Lot 1 at Rivulon) by adopting Ordinance No. 174.

February 28, 2006 Town Council approved the annexation of 118 acres (including portions of Lot 1 at Rivulon) by adopting Ordinance No. 1700 under case no. A05-20.

February 28, 2006 Town Council approved Ordinance No. 1706 under case no. Z05-22, rezoning the site from Maricopa County Rural-43 and Town of Gilbert Business Park zoning to Town of Gilbert Regional Commercial zoning classification.

July 11, 2013 Design Review Board approved Case No. DR13-09: the final site plan, landscape plan, grading and drainage, elevations, floor plans, lighting, colors and materials for L.A. Fitness.

December 12, 2013 Town Council approved the “Final Plat for Lot 1 at Rivulon”, otherwise known as the L.A. Fitness parcel.

September 11, 2014 Design Review Board approved Case No. DR14-24: the site plan, landscape, grading and drainage, elevations, lighting, colors and material for the Rivulon Office Building, Phase 1B1.

FINANCIAL IMPACT

There is no direct financial impact on the Town associated with this Map of Dedication. Approval of this Map of Dedication will allow the owner of the land to move forward with the development of the southwestern portion of their property, including construction of two multi-story office buildings, as well as future retail and office development in this area. 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 Map of Dedication. All Town requirements have been addressed by the applicant. Staff therefore recommends approval of this Map of Dedication by the Town Council.

Respectfully submitted,

Tom Condit, PE
Development Engineer

Approved By

Gregory Smith
Kenneth Morgan

Approval Date

11/17/2014 3:04 PM
11/18/2014 5:20 PM

LEGAL DESCRIPTION

A PORTION OF THE WEST HALF OF SECTION 6, TOWNSHIP 2 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP IN HAND HOLE AT THE WEST QUARTER CORNER OF SAID SECTION 6, FROM WHICH A CITY OF CHANDLER BRASS CAP IN HAND HOLE AT THE NORTHWEST CORNER OF SAID SECTION 6 BEARS N00°01'37"W (AN ASSUMED BEARING) AT A DISTANCE OF 2,843.00 FEET; THENCE N00°01'37"W ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 6, FOR A DISTANCE OF 514.34 FEET; THENCE N89°35'58"E FOR A DISTANCE OF 98.39 FEET TO A POINT ON THE EAST LINE OF THE GILBERT ROAD RIGHT-OF-WAY, SAID POINT BEING THE POINT OF BEGINNING;

THENCE N89°35'58"E, ALONG SAID EAST LINE, FOR A DISTANCE OF 48.05 FEET; THENCE N49°37'06"W FOR A DISTANCE OF 4.18 FEET; THENCE N89°35'58"E FOR A DISTANCE OF 130.92 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTHWEST, THE CENTER OF WHICH BEARS N00°24'02"W AT A DISTANCE OF 655.00 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 54°35'58", FOR A DISTANCE OF 624.18 FEET; THENCE N35°00'00"E FOR A DISTANCE OF 145.61 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHWEST, THE CENTER OF WHICH BEARS S55°00'00"E AT A DISTANCE OF 1,045.00 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 12°52'35", FOR A DISTANCE OF 234.85 FEET; THENCE N47°52'35"E TANGENT TO SAID CURVE, FOR A DISTANCE OF 156.87 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTHWEST, THE CENTER OF WHICH BEARS N42°07'25"W AT A DISTANCE OF 317.86 FEET; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 39°19'58", FOR A DISTANCE OF 218.21 FEET; THENCE N78°02'07"E, NOT TANGENT TO SAID CURVE, FOR A DISTANCE OF 155.03 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST, THE CENTER OF WHICH BEARS N41°35'24"E AT A DISTANCE OF 260.50 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 29°12'09", FOR A DISTANCE OF 132.77 FEET; THENCE S15°57'52"E, NOT TANGENT TO SAID CURVE, FOR A DISTANCE OF 120.52 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE TO THE EAST, THE CENTER OF WHICH BEARS S40°30'15"E AT A DISTANCE OF 123.22 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 79°56'19", FOR A DISTANCE OF 171.91 FEET; THENCE S30°28'48"E, TANGENT TO SAID CURVE, FOR A DISTANCE OF 27.04 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHWEST, THE CENTER OF WHICH BEARS S59°33'28"W AT A DISTANCE OF 242.00 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 21°57'46", FOR A DISTANCE OF 92.76 FEET; THENCE S08°28'48"E, TANGENT TO SAID CURVE, FOR A DISTANCE OF 158.84 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE WEST, THE CENTER OF WHICH BEARS S81°31'12"W AT A DISTANCE OF 747.00 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 12°55'48", FOR A DISTANCE OF 156.86 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE TO THE EAST, THE CENTER OF WHICH BEARS S85°33'00"E AT A DISTANCE OF 2,943.00 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 8°54'29", FOR A DISTANCE OF 457.56 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE TO THE WEST, THE CENTER OF WHICH BEARS S85°33'31"W AT A DISTANCE OF 2,955.00 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 8°05'41", FOR A DISTANCE OF 417.49 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE TO THE EAST, THE CENTER OF WHICH BEARS S86°21'48"E AT A DISTANCE OF 1,700.00 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 2°30'16", FOR A DISTANCE OF 74.26 FEET; THENCE N88°51'58"W, RADIAL TO SAID CURVE, FOR A DISTANCE OF 54.00 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE TO THE EAST, THE CENTER OF WHICH BEARS S88°51'58"E AT A DISTANCE OF 1,754.00 FEET; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 2°30'16", FOR A DISTANCE OF 76.82 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE TO THE WEST, THE CENTER OF WHICH BEARS N86°21'48"W AT A DISTANCE OF 2,901.00 FEET; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 8°05'41", FOR A DISTANCE OF 409.86 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE TO THE EAST, THE CENTER OF WHICH BEARS N85°32'31"E AT A DISTANCE OF 2,897.00 FEET; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 8°54'29", FOR A DISTANCE OF 465.96 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE TO THE WEST, THE CENTER OF WHICH BEARS N85°33'00"W AT A DISTANCE OF 693.00 FEET; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 13°11'18", FOR A DISTANCE OF 159.51 FEET; THENCE N08°44'18"W, TANGENT TO SAID CURVE, FOR A DISTANCE OF 83.48 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHWEST, THE CENTER OF WHICH BEARS S81°45'42"W AT A DISTANCE OF 314.00 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 27°51'54", FOR A DISTANCE OF 151.00 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE SOUTH, THE CENTER OF WHICH BEARS S53°23'48"W AT A DISTANCE OF 245.00 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 83°27'07", FOR A DISTANCE OF 399.61 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE TO THE SOUTHWEST, THE CENTER OF WHICH BEARS S40°33'18"E AT A DISTANCE OF 955.00 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 14°56'42", FOR A DISTANCE OF 249.10 FEET; THENCE S35°00'00"W, TANGENT TO SAID CURVE, FOR A DISTANCE OF 145.61 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTHWEST, THE CENTER OF WHICH BEARS N55°00'00"W AT A DISTANCE OF 745.00 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 54°35'58", FOR A DISTANCE OF 708.94 FEET; THENCE S89°35'58"W, TANGENT TO SAID CURVE, FOR A DISTANCE OF 115.54 FEET; THENCE S47°21'12"W FOR A DISTANCE OF 9.60 FEET TO A POINT ON THE EAST LINE OF SAID GILBERT ROAD RIGHT-OF-WAY; THENCE N08°58'58"E, ALONG SAID EAST LINE, FOR A DISTANCE OF 51.80 FEET TO THE POINT OF BEGINNING;

TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL:

A PORTION OF THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 2 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

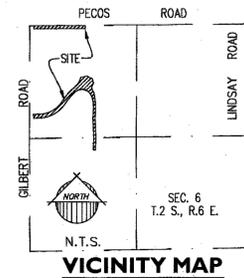
COMMENCING AT A CITY OF CHANDLER BRASS CAP IN HAND HOLE AT THE NORTHWEST CORNER OF SAID SECTION 6, FROM WHICH A BRASS CAP IN HAND HOLE AT THE WEST QUARTER CORNER OF SAID SECTION 6 BEARS S00°01'37"E (AN ASSUMED BEARING) AT A DISTANCE OF 2,843.00 FEET; THENCE N89°25'38"E ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 6, FOR A DISTANCE OF 97.92 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING N89°25'38"E ALONG SAID NORTH LINE, FOR A DISTANCE OF 1,216.15 FEET; THENCE S00°34'22"E FOR A DISTANCE OF 70.00 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 70 FEET OF THE NORTHWEST QUARTER OF SAID SECTION 6; THENCE S89°25'38"W, ALONG SAID SOUTH LINE, FOR A DISTANCE OF 1,216.15 FEET; THENCE N00°34'22"W FOR A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING;

MAP OF DEDICATION

RIVULON BOULEVARD, ALLEN AVENUE & PECOS ROAD

A PORTION OF THE WEST HALF OF SECTION 6, TOWNSHIP 2 SOUTH, RANGE 6 EAST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA



DEDICATION

KNOW ALL MEN BY THESE PRESENTS: THAT NATIONWIDE REALTY INVESTORS, LTD., AN OHIO LIMITED LIABILITY COMPANY, AS OWNER HEREBY PUBLISHES THIS PLAT OF "RIVULON" LYING WITHIN SECTION 6, TOWNSHIP 2 SOUTH, RANGE 6 EAST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, AND HEREBY DECLARES THAT SAID PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF THE LOT AND EASEMENTS AND THAT THE LOT SHALL BE KNOWN BY THE NUMBER GIVEN. THE PURPOSES OF THE EASEMENTS ARE 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 RESPONSIBLE FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE AND REPAIR OF THEIR UTILITY FACILITIES.

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, OR WHICH OWNER WILL RECORD NOT LATER THAN DATE ON WHICH THIS PLAT IS RECORDED.

IN WITNESS WHEREOF: NATIONWIDE REALTY INVESTORS, LTD., AN OHIO LIMITED LIABILITY COMPANY, AS OWNER HAS HERETO CAUSED ITS NAME TO BE AFFIXED AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF THE UNDERSIGNED OFFICER THEREUNTO DULY AUTHORIZED THIS 18 DAY OF NOVEMBER, 2014.

BY: NATIONWIDE REALTY INVESTORS, LTD., AN OHIO LIMITED LIABILITY COMPANY, AS OWNER.

BY: *James Rost*
 JAMES ROST
 VICE PRESIDENT

ACKNOWLEDGMENT

STATE OF OHIO)
) S.S.
 COUNTY OF FRANKLIN)

ON THIS 18 DAY OF NOVEMBER, 2014 BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, PERSONALLY APPEARED JAMES ROST, WHO ACKNOWLEDGED HIMSELF TO BE THE VICE PRESIDENT OF NATIONWIDE REALTY INVESTORS, LTD., AN OHIO LIMITED LIABILITY COMPANY, AND BEING DULY AUTHORIZED SO TO DO, EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF, I HERETO SET MY HAND AND OFFICIAL SEAL.

BY: *Shelley L. Stevens*
 SHELLEY L. STEVENS
 NOTARY PUBLIC DATE
 MY COMMISSION EXPIRES 10.31.2017



NO LENDER LIEN

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 18 DAY OF NOVEMBER, 2014.

BY: NATIONWIDE REALTY INVESTORS, LTD., AN OHIO LIMITED LIABILITY COMPANY, AS OWNER.

BY: *James Rost*
 JAMES ROST
 VICE PRESIDENT

DEVELOPER/OWNER

NATIONWIDE REALTY INVESTORS, LTD., AN OHIO LIMITED LIABILITY COMPANY
 375 N. FRONT STREET, SUITE 200
 COLUMBUS, OHIO 43215
 PHONE: 614.857.2330
 FAX: 614.857.2346

ENGINEER

EPS GROUP, INC.
 2045 S. VINEYARD, SUITE 101
 MESA, AZ 85210
 TEL: (480)-503-2250
 FAX: (480)-503-2258

BASIS OF BEARINGS

THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 6, T.2S, R.6E, ASSUMED BEARING = N00°01'37"W

AREA

GROSS: 382,419 SQUARE FEET OR 8,779.1 ACRES
 NET: 382,419 SQUARE FEET OR 8,779.1 ACRES

AREA TABLE

R/W Rivulon Blvd & Allen Avenue	297,288 s.f.	6,8248 acres
R/W Pecos Road	85,131 s.f.	1,9543 acres
Total	382,419 s.f.	8,7791 acres
Bdry	382,419 s.f.	8,7791 acres

GENERAL NOTES

- CONSTRUCTION WITHIN PUBLIC EASEMENTS, EXCEPT BY PUBLIC AGENCIES AND UTILITY COMPANIES, SHALL BE LIMITED TO UTILITIES AND WOOD, WIRE OR REMOVABLE SECTION TYPE FENCING UNLESS APPROVED OTHERWISE BY THE TOWN OF GILBERT.
- ALL UTILITIES SHALL BE CONSTRUCTED UNDERGROUND.
- ALL ELECTRIC LINES TO BE CONSTRUCTED UNDERGROUND AS REQUIRED BY THE ARIZONA CORPORATION COMMISSION.
- ALL COMMUNICATION LINES TO BE CONSTRUCTED UNDERGROUND AS REQUIRED BY THE ARIZONA CORPORATION COMMISSION.
- A PROPERTY OWNERS ASSOCIATION SHALL MAINTAIN PRIVATE UTILITIES, PRIVATE FACILITIES, COMMON AREA LANDSCAPING AND LANDSCAPING IN THE RIGHT-OF-WAY ADJACENT TO THE PROJECT. THE TOWN OF GILBERT IS NOT RESPONSIBLE FOR AND WILL NOT ACCEPT MAINTENANCE OF SUCH AREAS.
- NO STRUCTURES SHALL BE CONSTRUCTED IN OR ACROSS NOR SHALL OTHER IMPROVEMENTS OR ALTERATIONS BE MADE TO THE DRAINAGE FACILITIES THAT ARE A PART OF THIS DEVELOPMENT WITHOUT WRITTEN AUTHORIZATION OF THE TOWN OF GILBERT.
- ALL RETENTION BASINS MUST DRAIN ANY STORM EVENT UP TO AND INCLUDING THE 50-YEAR, WITHIN 36 HOURS, OWNER(S) OF ANY EXISTING BASIN FAILING TO MEET THIS REQUIREMENT MUST TAKE CORRECTIVE ACTION TO BRING THE BASIN INTO COMPLIANCE.
- ALL DRYWELLS SHOWN ON THIS PROJECT SHALL BE MAINTAINED BY THE OWNER AND ARE TO BE REPLACED BY THE OWNER(S) WHEN THEY CEASE TO DRAIN THE SURFACE WATER IN A 36 HOUR PERIOD. REGULAR MAINTENANCE OF THE DRYWELL SILTING CHAMBER IS REQUIRED TO ACHIEVE THE BEST OPERATION OF THE DRYWELL.

FEMA FLOOD NOTE

THIS SITE IS LOCATED WITHIN FEMA FLOOD ZONE X-SHADED AS SHOWN ON FEMA FLOOD INSURANCE RATE MAP NUMBER 0401322745L, DATED OCTOBER 16, 2013. FLOOD ZONE X IS DEFINED AS: AREAS OF THE 0.2% ANNUAL CHANCE FLOOD; AREAS OF 1% ANNUAL CHANCE FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE; AND AREAS PROTECTED BY LEVEES FROM 1% ANNUAL CHANCE FLOOD.

TOWN APPROVALS

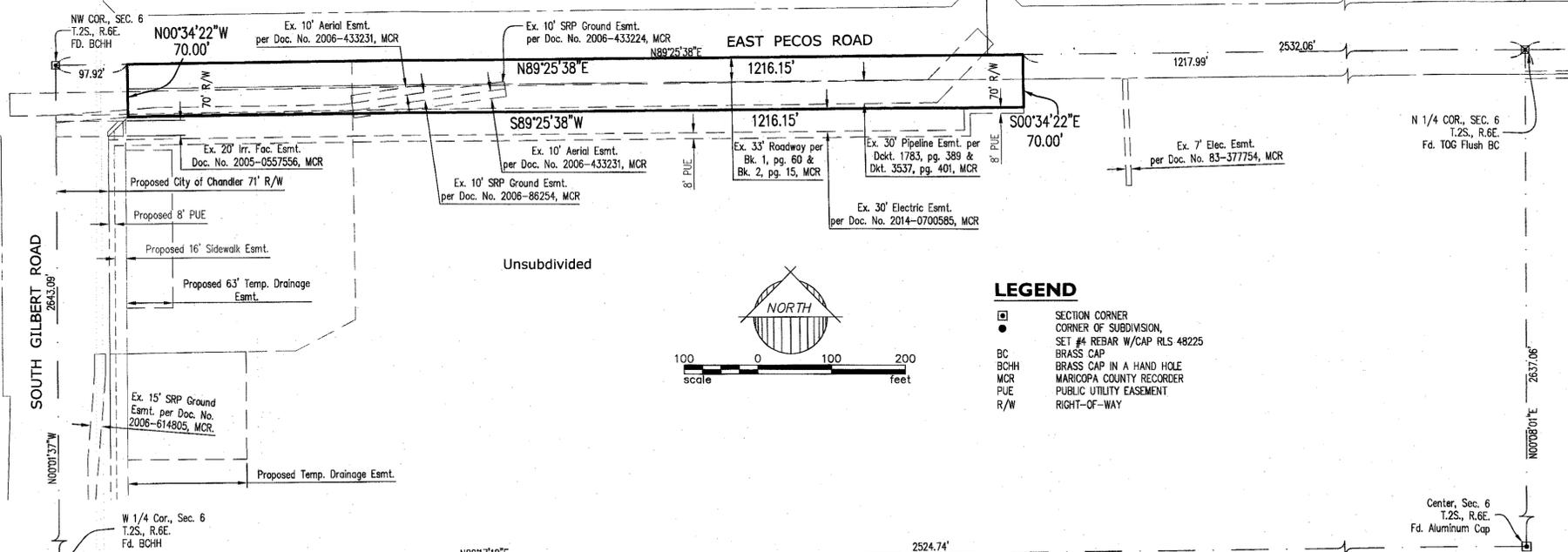
APPROVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF GILBERT, ARIZONA

THIS DAY OF _____ 201__

- TOWN ENGINEER _____
- TOWN PLANNING MANAGER _____
- TOWN MAYOR _____
- TOWN CLERK _____

CERTIFICATION

I, JOE KRAFT 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 OCTOBER, 2013; THAT THE SURVEY IS TRUE AND CORRECT AS SHOWN; THAT ALL MONUMENTS ACTUALLY EXIST OR WILL BE SET AS SHOWN; THAT SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.



LEGEND

- SECTION CORNER
- CORNER OF SUBDIVISION
- SET #4 REBAR W/CAP RLS 48225
- BC BRASS CAP
- BCHH BRASS CAP IN A HAND HOLE
- MCR MARICOPA COUNTY RECORDER
- PUE PUBLIC UTILITY EASEMENT
- R/W RIGHT-OF-WAY

COUNTY RECORDER

2045 S. Vineyard Ave, Suite 101
 Mesa, AZ 85210
 T: 480.503.2250 | F: 480.503.2258
 www.epsgroupinc.com

EPS GROUP

Rivulon Boulevard, Allen Avenue & Pecos Road
 Map of Dedication

Project: _____

Revisions: _____

Designer: JK
 Drawn by: JK

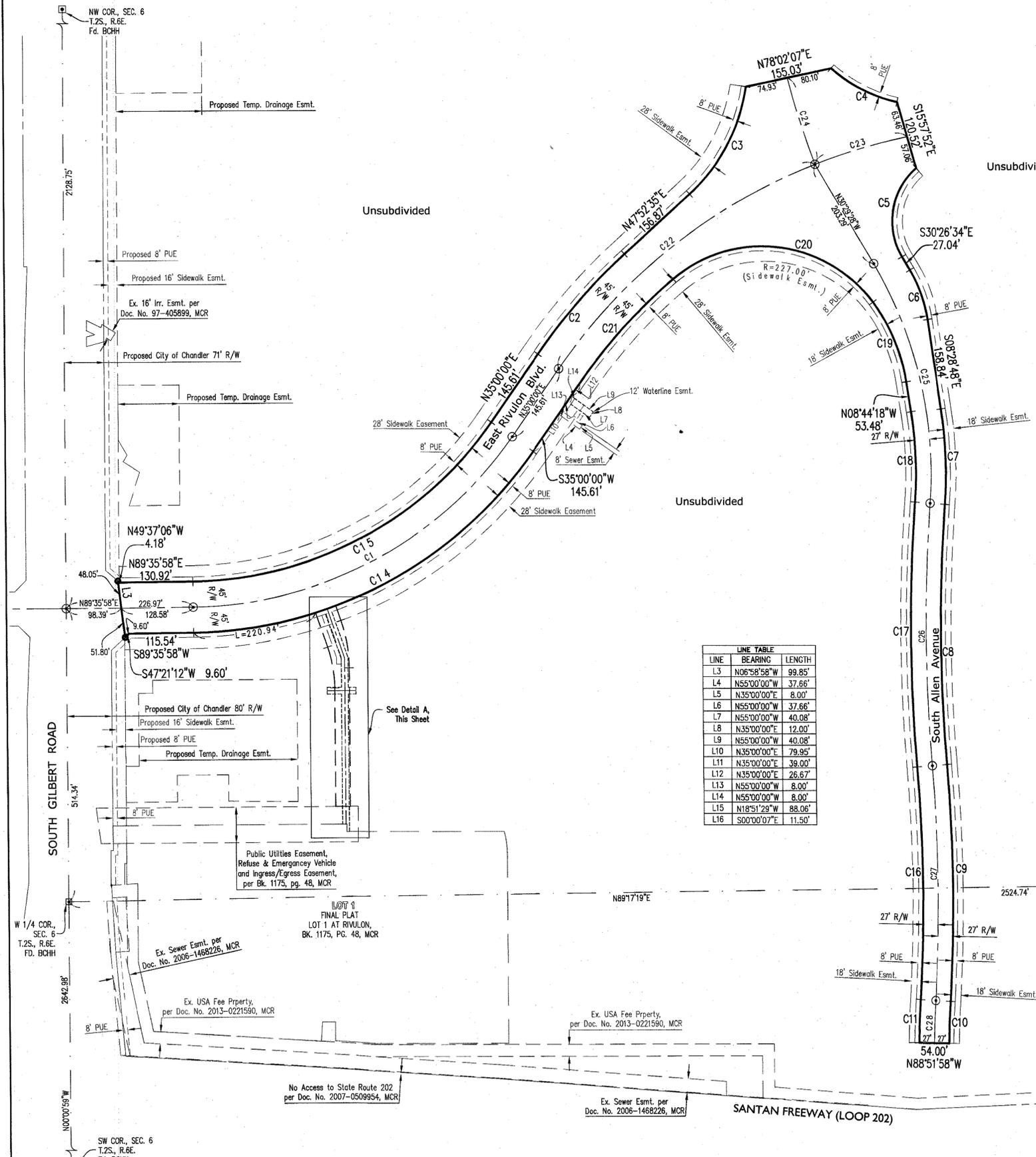
48225 JOE KRAFT
 REGISTERED LAND SURVEYOR
 ARIZONA U.S.A.
 EXPIRES: 9.30.2014

Job No. 07-087

Sheet No. 1 of 2

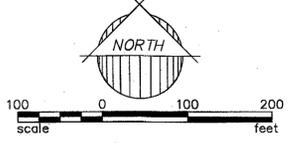
07-087

07-087

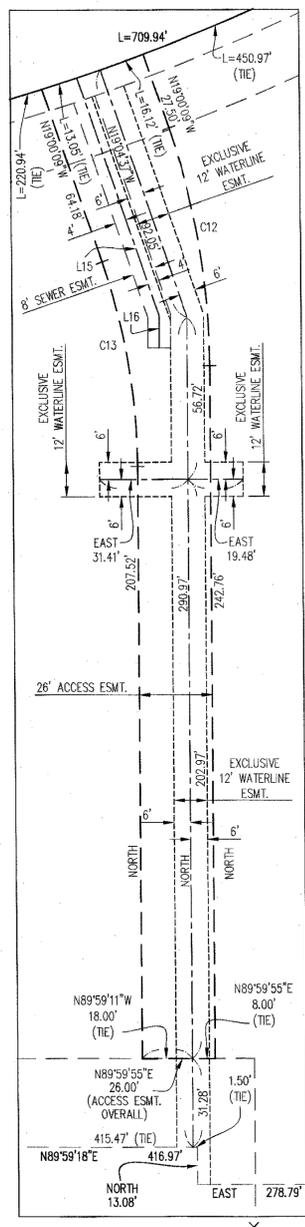


CURVE	RADIUS	LENGTH	TANGENT	DELTA	CHORD	CHD BRG
C1	700.00'	667.06'	361.29'	54°35'58"	642.10'	N62°17'59"E
C2	1045.00'	234.85'	117.92'	12°52'35"	234.35'	S41°28'17"W
C3	317.86'	218.21'	113.60'	39°19'58"	213.95'	N28°12'36"E
C4	260.50'	132.77'	67.86'	29°12'09"	131.34'	S63°00'40"E
C5	123.22'	171.91'	103.28'	79°56'19"	158.30'	S09°31'35"W
C6	242.00'	92.76'	46.96'	21°57'46"	92.20'	N19°27'41"W
C7	747.00'	168.58'	84.65'	12°55'48"	168.22'	N02°00'54"W
C8	2943.00'	457.56'	229.24'	8°54'29"	457.10'	S00°00'15"E
C9	2955.00'	417.48'	209.09'	8°05'41"	417.14'	N00°24'39"W
C10	1700.00'	74.26'	37.14'	2°30'10"	74.26'	S02°23'07"W
C11	1754.00'	76.62'	38.32'	2°30'10"	76.62'	S02°23'07"W
C12	256.02'	84.91'	42.85'	19°00'09"	84.52'	N09°30'04"W
C13	220.02'	72.97'	36.82'	19°00'09"	72.64'	N09°30'04"W
C14	745.00'	709.94'	384.52'	54°35'58"	683.38'	N62°17'59"E
C15	655.00'	624.18'	338.07'	54°35'58"	600.83'	N62°17'59"E
C16	2901.00'	409.86'	205.27'	8°05'41"	409.52'	N00°24'39"W
C17	2997.00'	465.96'	233.45'	8°54'29"	465.49'	S00°00'15"E
C18	893.00'	159.51'	80.11'	1°11'18"	159.16'	N02°08'39"W
C19	314.00'	152.71'	77.90'	27°51'54"	151.21'	N22°40'15"W
C20	245.00'	399.61'	260.22'	93°27'07"	356.76'	N83°19'45"W
C21	955.00'	249.10'	125.26'	14°56'42"	248.39'	S42°28'21"W
C22	1000.00'	590.07'	303.30'	33°48'30"	581.54'	S51°54'15"W
C23	1000.00'	171.29'	85.85'	9°48'51"	171.08'	S73°42'55"W
C24	1500.00'	159.66'	79.90'	6°05'54"	159.58'	S17°44'46"E
C25	720.00'	439.08'	226.61'	34°56'28"	432.31'	N13°01'14"W
C26	2970.00'	461.76'	231.35'	8°54'29"	461.29'	N00°00'15"W
C27	2928.00'	413.67'	207.18'	8°05'41"	413.33'	N00°24'39"W
C28	1727.00'	75.44'	37.73'	2°30'10"	75.44'	N02°23'07"E

LINE	BEARING	LENGTH
L3	N06°58'58"W	99.85'
L4	N55°00'00"W	37.66'
L5	N35°00'00"E	8.00'
L6	N55°00'00"W	37.66'
L7	N55°00'00"W	40.08'
L8	N35°00'00"E	12.00'
L9	N55°00'00"W	40.08'
L10	N35°00'00"E	79.95'
L11	N35°00'00"E	39.00'
L12	N35°00'00"E	26.67'
L13	N55°00'00"W	8.00'
L14	N55°00'00"W	8.00'
L15	N18°51'29"W	88.06'
L16	S00°00'07"E	11.50'



- LEGEND**
- SECTION CORNER
 - CORNER OF SUBDIVISION
 - SET #4 REBAR W/CAP RLS 48225
 - BRASS CAP
 - BRASS CAP IN A HAND HOLE
 - MARICOPA COUNTY RECORDER
 - PUE PUBLIC UTILITY EASEMENT
 - R/W RIGHT-OF-WAY



DETAIL A
1"=30'

COUNTY RECORDER

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www.epsgrp.com



**Rivulon Boulevard, Allen Avenue
& Pecos Road**
Map of Dedication

Revisions:

Designer: JK
Drawn by: JK



Job No.
07-087
Sheet No.
2 of 2



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Tom Condit, PE, Development Engineer, 503-6815

MEETING DATE: December 2, 2014

SUBJECT: SP1408 & SP1416: Approval of the Final Plat for "Rivulon - Phase 1", located at the northeast and northwest corners of Allen Avenue and the Santan Freeway (Loop 202).

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 "*Rivulon - Phase I*", located at the northeast and northwest corners of Allen Avenue and the Santan Freeway (Loop 202).

BACKGROUND/DISCUSSION

The "*Rivulon - Phase I*" development is a proposed 21.7-acre non-residential development located at the northeast and northwest corners of Allen Avenue and the Santan Freeway (Loop 202). This final plat establishes 3 lots (Lots 2, 3, and 4) and 5 tracts that encompass common facilities such as landscape, access easements, utility easements, and drainage easements. The plat also provides dedications for exclusive water easements and public utility 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 final plat:

January 8, 1975	Town Council approved the annexation of property abutting Gilbert Road by adopting Ordinance No. 174.
February 28, 2006	Town Council approved the annexation of 118 acres by adopting Ordinance No. 1700 under case no. A05-20.

February 28, 2006 Town Council approved Ordinance No. 1706 under case no. Z05-22, rezoning the site from Maricopa County Rural-43 and Town of Gilbert Business Park zoning to Town of Gilbert Regional Commercial zoning classification.

July 11, 2013 Design Review Board approved Case No. DR13-09: the final site plan, landscape plan, grading and drainage, elevations, floor plans, lighting, colors and materials for L.A. Fitness.

December 12, 2013 Town Council approved the “Final Plat for Lot 1 at Rivulon”, otherwise known as the L.A. Fitness parcel.

September 11, 2014 Design Review Board approved Case No. DR14-24: the site plan, landscape, grading and drainage, elevations, lighting, colors and material for the Rivulon Office Building, Phase 1B1.

FINANCIAL IMPACT

There is no direct financial impact on the Town associated with this final plat. Approval of this plat will allow the owner of the land to move forward with the development of the multi-story office building approved under Case No. DR14-24, and future development of the adjoining lot. 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

Gregory Smith
Kenneth Morgan

Approval Date

11/17/2014 3:02 PM
11/18/2014 5:22 PM

07-087

LEGAL DESCRIPTION

A PORTION OF THE WEST HALF OF SECTION 6, TOWNSHIP 2 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP IN HAND HOLE AT THE WEST QUARTER CORNER OF SAID SECTION 6, FROM WHICH A CITY OF CHANDLER BRASS CAP IN HAND HOLE AT THE NORTHWEST CORNER OF SAID SECTION 6, BEARS N00°01'37"W (AN ASSUMED BEARING) AT A DISTANCE OF 2,643.09 FEET; THENCE N89°17'19"E, ALONG THE EAST-WEST MID-SECTION LINE OF SAID SECTION 6, FOR A DISTANCE OF 780.77 FEET TO A POINT ON THE EAST LINE OF LOT 1, AS SHOWN ON THE FINAL PLAT - LOT 1 AT RIVULON, RECORDED IN BOOK 1175 OF MAPS, PAGE 48, OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA, SAID POINT BEING THE POINT OF BEGINNING;

THENCE N00°00'07"E, ALONG SAID EAST LINE, FOR A DISTANCE OF 72.12 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE WEST, THE CENTER OF WHICH BEARS N89°59'53"W AT A DISTANCE OF 153.85 FEET; THENCE NORTHERLY, ALONG SAID EAST LINE AND THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 85°23'51" FOR A DISTANCE OF 175.61 FEET; THENCE N24°36'16"E, RADIAL TO SAID CURVE, FOR A DISTANCE OF 59.21 FEET; THENCE EAST FOR A DISTANCE OF 227.01 FEET; THENCE N72°17'46"E, FOR A DISTANCE OF 80.28 FEET; THENCE S89°47'58"E, FOR A DISTANCE OF 40.18 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE TO THE SOUTHEAST, THE CENTER OF WHICH BEARS S43°38'23"E AT A DISTANCE OF 188.07 FEET; THENCE NORTHEASTERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 20°27'59" FOR A DISTANCE OF 67.18 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE TO THE SOUTHEAST, THE CENTER OF WHICH BEARS S85°07'28"E AT A DISTANCE OF 400.00 FEET; THENCE NORTHEASTERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 2°54'37" FOR A DISTANCE OF 20.32 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE TO THE NORTHWEST, THE CENTER OF WHICH BEARS N62°12'50"W AT A DISTANCE OF 319.00 FEET; THENCE NORTHERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 20°44'09" FOR A DISTANCE OF 114.82 FEET; THENCE EAST, NOT TANGENT TO SAID CURVE, FOR A DISTANCE OF 342.61 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE TO THE EAST, THE CENTER OF WHICH BEARS N89°58'30"E AT A DISTANCE OF 2,997.00 FEET; THENCE SOUTHERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 4°25'59" FOR A DISTANCE OF 231.89 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE TO THE WEST, THE CENTER OF WHICH BEARS S85°32'31"W AT A DISTANCE OF 2,901.00 FEET; THENCE SOUTHERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 8°05'41" FOR A DISTANCE OF 409.86 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE TO THE EAST, THE CENTER OF WHICH BEARS S86°21'49"E AT A DISTANCE OF 1,754.00 FEET; THENCE SOUTHERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 2°30'10" FOR A DISTANCE OF 76.62 FEET; THENCE S88°51'58"E, FOR A DISTANCE OF 54.00 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE TO THE EAST, THE CENTER OF WHICH BEARS S88°51'58"E AT A DISTANCE OF 1,700.00 FEET; THENCE NORTHERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 2°30'10" FOR A DISTANCE OF 74.26 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE TO THE WEST, THE CENTER OF WHICH BEARS N86°21'48"W AT A DISTANCE OF 2,955.00 FEET; THENCE NORTHERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 8°05'41" FOR A DISTANCE OF 417.45 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE TO THE EAST, THE CENTER OF WHICH BEARS N85°32'31"E AT A DISTANCE OF 2,943.00 FEET; THENCE NORTHERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 4°01'56" FOR A DISTANCE OF 207.12 FEET; THENCE EAST, NOT TANGENT TO SAID CURVE, FOR A DISTANCE OF 315.85 FEET; THENCE SOUTH, TANGENT TO SAID CURVE, FOR A DISTANCE OF 0.50 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHEAST, THE CENTER OF WHICH BEARS SOUTH AT A DISTANCE OF 1.00 FEET; THENCE SOUTHWESTERLY, ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 1°57' FEET; THENCE SOUTH, TANGENT TO SAID CURVE, FOR A DISTANCE OF 14.72 FEET TO A POINT ON THE NORTH LINE OF THE USA FEE PROPERTY AS DESCRIBED IN DOCUMENT NUMBER 2013-0221590, OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA; THENCE S87°29'58"W, ALONG SAID NORTH LINE, FOR A DISTANCE OF 581.85 FEET; THENCE N85°32'31"W, FOR A DISTANCE OF 254.63 FEET; THENCE N00°02'22"E, ALONG SAID NORTH LINE, FOR A DISTANCE OF 76.51 FEET; THENCE WEST, ALONG SAID NORTH LINE, FOR A DISTANCE OF 707.17 FEET; THENCE N86°16'41"W, ALONG SAID NORTH LINE, FOR A DISTANCE OF 96.89 FEET TO A POINT ON THE SOUTH LINE OF LOT 1, OF SAID FINAL PLAT - LOT 1 AT RIVULON; THENCE N03°43'19"E, ALONG SAID SOUTH LINE, FOR A DISTANCE OF 34.04 FEET; THENCE WEST, ALONG SAID SOUTH LINE, FOR A DISTANCE OF 22.93 FEET; THENCE S86°16'41"W, ALONG SAID SOUTH LINE, FOR A DISTANCE OF 299.27 FEET; THENCE N86°16'41"W, ALONG SAID SOUTH LINE, FOR A DISTANCE OF 412.74 FEET; THENCE EAST, ALONG SAID SOUTH LINE, FOR A DISTANCE OF 686.84 FEET TO A POINT ON THE WEST LINE OF SAID USA FEE PROPERTY; THENCE S00°02'22"W, ALONG SAID WEST LINE, FOR A DISTANCE OF 74.45 FEET TO A POINT ON THE NORTH LINE OF THE NORTHERLY LINE OF THE SANTAN FREEWAY RIGHT-OF-WAY, AS SHOWN ON ARIZONA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY PLANS RAM-600-7-803, ON FILE WITH THE STATE ENGINEER, ARIZONA DEPARTMENT OF TRANSPORTATION; THENCE N85°38'32"W, ALONG SAID NORTHERLY LINE, FOR A DISTANCE OF 471.16 FEET; THENCE N86°16'41"W, ALONG SAID NORTHERLY LINE, FOR A DISTANCE OF 663.75 FEET TO A POINT ON THE EAST LINE OF THE GILBERT ROAD RIGHT-OF-WAY; THENCE N05°03'06"W, ALONG SAID EAST LINE, FOR A DISTANCE OF 183.98 FEET; THENCE N03°12'28"W, ALONG SAID EAST LINE, FOR A DISTANCE OF 89.57 FEET TO THE POINT OF BEGINNING;

TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL:

A PORTION OF THE WEST HALF OF SECTION 6, TOWNSHIP 2 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP IN HAND HOLE AT THE WEST QUARTER CORNER OF SAID SECTION 6, FROM WHICH A CITY OF CHANDLER BRASS CAP IN HAND HOLE AT THE NORTHWEST CORNER OF SAID SECTION 6, BEARS N00°01'37"W (AN ASSUMED BEARING) AT A DISTANCE OF 2,643.09 FEET; THENCE N89°17'19"E, ALONG THE EAST-WEST MID-SECTION LINE OF SAID SECTION 6, FOR A DISTANCE OF 778.77 FEET TO A POINT ON THE EAST LINE OF THE GILBERT ROAD RIGHT-OF-WAY, SAID POINT BEING THE POINT OF BEGINNING;

THENCE N03°12'28"W, ALONG SAID EAST LINE, FOR A DISTANCE OF 6.00 FEET TO A POINT ON THE SOUTH LINE OF THE USA FEE PROPERTY AS DESCRIBED IN DOCUMENT NUMBER 2013-0221590, OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA; THENCE N89°17'19"E, ALONG SAID SOUTH LINE, FOR A DISTANCE OF 26.17 FEET; THENCE SOUTH, ALONG THE WEST LINE OF SAID USA FEE PROPERTY, FOR A DISTANCE OF 121.38 FEET; THENCE S12°00'28"E, ALONG SAID WEST LINE, FOR A DISTANCE OF 136.94 FEET TO A POINT ON THE SOUTH LINE OF SAID USA FEE PROPERTY; THENCE S89°16'41"E, ALONG SAID SOUTH LINE, FOR A DISTANCE OF 412.74 FEET; THENCE EAST, ALONG SAID SOUTH LINE, FOR A DISTANCE OF 686.84 FEET TO A POINT ON THE WEST LINE OF SAID USA FEE PROPERTY; THENCE S00°02'22"W, ALONG SAID WEST LINE, FOR A DISTANCE OF 74.45 FEET TO A POINT ON THE NORTH LINE OF THE NORTHERLY LINE OF THE SANTAN FREEWAY RIGHT-OF-WAY, AS SHOWN ON ARIZONA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY PLANS RAM-600-7-803, ON FILE WITH THE STATE ENGINEER, ARIZONA DEPARTMENT OF TRANSPORTATION; THENCE N85°38'32"W, ALONG SAID NORTHERLY LINE, FOR A DISTANCE OF 471.16 FEET; THENCE N86°16'41"W, ALONG SAID NORTHERLY LINE, FOR A DISTANCE OF 663.75 FEET TO A POINT ON THE EAST LINE OF THE GILBERT ROAD RIGHT-OF-WAY; THENCE N05°03'06"W, ALONG SAID EAST LINE, FOR A DISTANCE OF 183.98 FEET; THENCE N03°12'28"W, ALONG SAID EAST LINE, FOR A DISTANCE OF 89.57 FEET TO THE POINT OF BEGINNING;

TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL:

A PORTION OF THE WEST HALF OF SECTION 6, TOWNSHIP 2 SOUTH, RANGE 6 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL:

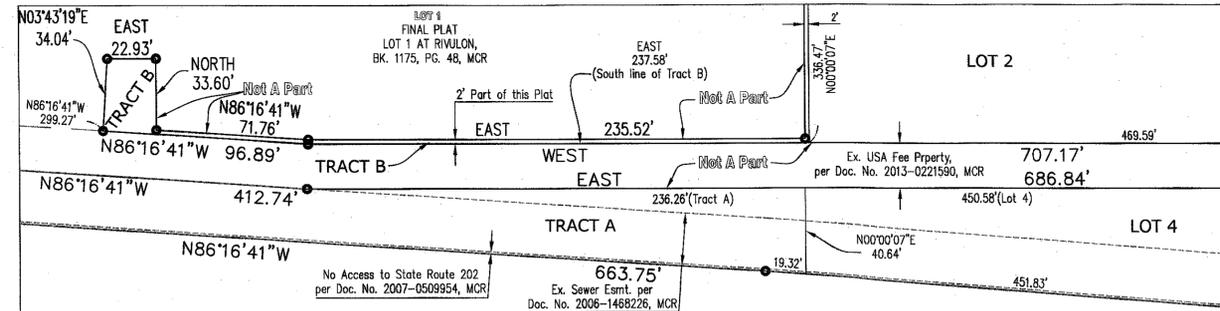
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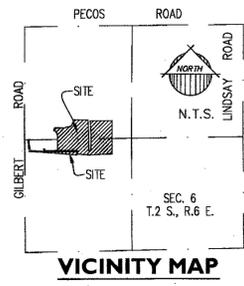
TRACT USAGE TABLE

Table with 3 columns: TRACT, USAGE, AREA. Rows include Tract A (Landscape, Access Easement, Public Utilities Easement & Sewer Easement), Tract B (Vehicular and Pedestrian Cross Access Easement, Landscape, Sign Maintenance & Exclusive Water Easement), Tract C (Landscape and Pedestrian Access Easement), D & E (Drainage, Landscape, Pedestrian Access Easement, Public Utilities Easement and Sidewalk Easement), and TOTAL.



FINAL PLAT RIVULON - PHASE 1

A PORTION OF THE WEST HALF OF SECTION 6, TOWNSHIP 2 SOUTH, RANGE 6 EAST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA



DEDICATION

KNOW ALL MEN BY THESE PRESENTS: THAT NATIONWIDE REALTY INVESTORS, LTD., AN OHIO LIMITED LIABILITY COMPANY, AS OWNER HEREBY PUBLISHES THIS PLAT OF "RIVULON PHASE 1" LYING WITHIN SECTION 6, TOWNSHIP 2 SOUTH, RANGE 6 EAST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, AND HEREBY DECLARES THAT SAID PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF THE LOT AND EASEMENTS AND THAT THE LOT SHALL BE KNOWN BY THE NUMBER GIVEN. THE PURPOSES OF THE EASEMENTS ARE 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 RESPONSIBLE FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE AND REPAIR OF THEIR UTILITY FACILITIES.

OWNER WARRANTS AND REPRESENTS TO THE TOWN OF GILBERT TO BE THE SOLE OWNER OF THE PROPERTY COVERED HEREBY AND THAT EITHER 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 DATE ON WHICH THIS PLAT IS RECORDED.

IN WITNESS WHEREOF: NATIONWIDE REALTY INVESTORS, LTD., AN OHIO LIMITED LIABILITY COMPANY, AS OWNER HAS HERETO CAUSED ITS NAME TO BE AFFIXED AND THE SAME TO BE ATTESTED BY THE SIGNATURE OF THE UNDERSIGNED OFFICER THEREUNTO DULY AUTHORIZED THIS 18th DAY OF NOVEMBER, 2014.

BY: NATIONWIDE REALTY INVESTORS, LTD., AN OHIO LIMITED LIABILITY COMPANY, AS OWNER

Signature of James Rost, Vice President, dated 18th day of November, 2014.

ACKNOWLEDGMENT

STATE OF OHIO } S.S. COUNTY OF FRANKLIN }

ON THIS 18th DAY OF NOVEMBER, 2014, BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, PERSONALLY APPEARED JAMES ROST, WHO ACKNOWLEDGED HIMSELF TO BE THE VICE PRESIDENT OF NATIONWIDE REALTY INVESTORS, LTD., AN OHIO LIMITED LIABILITY COMPANY, AND BEING DULY AUTHORIZED SO TO DO, EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF, I HERETO SET MY HAND AND OFFICIAL SEAL.

Signature of Shelley L. Stevens, Notary Public, State of Ohio, My Commission Expires 10.31.2017.



NO LENDER LIEN

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 18th DAY OF NOVEMBER, 2014.

BY: NATIONWIDE REALTY INVESTORS, LTD., AN OHIO LIMITED LIABILITY COMPANY, AS OWNER.

Signature of James Rost, Vice President, dated 18th day of November, 2014.

DEVELOPER/OWNER

NATIONWIDE REALTY INVESTORS, LTD., AN OHIO LIMITED LIABILITY COMPANY 375 N. FRONT STREET, SUITE 200 COLUMBUS, OHIO 43215 PHONE: 614.857.2330 FAX: 614.857.2346

ENGINEER

EPS GROUP, INC. 2045 S. VINEYARD, SUITE 101 MESA, AZ 85210 TEL: (480)-503-2250 FAX: (480)-503-2258

BASIS OF BEARINGS

THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 6, T.2S, R.6E. ASSUMED BEARING = N00°01'37"W

AREA

Table with columns: AREA TABLE, Lot 2, Lot 3, Lot 4, Tract A, Tract B, Tract C, Tract D, Tract E, Lot Total, Tract Total, Total, Bdry. Includes gross and net acreage.

GENERAL NOTES

- 1. CONSTRUCTION WITHIN PUBLIC EASEMENTS, EXCEPT BY PUBLIC AGENCIES AND UTILITY COMPANIES, SHALL BE LIMITED TO UTILITIES AND WOOD, WIRE OR REMOVABLE SECTION TYPE FENCING UNLESS APPROVED OTHERWISE BY THE TOWN OF GILBERT.
2. ALL UTILITIES SHALL BE CONSTRUCTED UNDERGROUND.
3. ALL 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 OTHER IMPROVEMENTS OR ALTERATIONS BE MADE TO THE DRAINAGE FACILITIES THAT ARE A PART OF THIS DEVELOPMENT WITHOUT WRITTEN AUTHORIZATION OF THE TOWN OF GILBERT.
7. ALL RETENTION BASINS MUST DRAIN ANY STORM EVENT UP TO AND INCLUDING THE 50-YEAR WITHIN 36 HOURS, OWNER(S) OF ANY EXISTING BASIN FAILING TO MEET THIS REQUIREMENT MUST TAKE CORRECTIVE ACTION TO BRING THE BASIN INTO COMPLIANCE.
8. ALL DRYWELLS SHOWN ON THIS PROJECT SHALL BE MAINTAINED BY THE OWNER AND ARE TO BE REPLACED BY THE OWNER(S) WHEN THEY CEASE TO DRAIN THE SURFACE WATER IN A 36 HOUR PERIOD. REGULAR MAINTENANCE OF THE DRYWELL SILTING CHAMBER IS REQUIRED TO ACHIEVE THE BEST OPERATION OF THE DRYWELL.
9. A VEHICULAR AND PEDESTRIAN CROSS ACCESS EASEMENT IS HEREBY CREATED BETWEEN LOT 2 TO TRACT B AND FROM LOT 3 TO THE UNSUBDIVIDED PARCEL TO THE EAST, AND ANY FUTURE SUBDIVISIONS THEREOF.
10. THE PROPERTY BEING SUBDIVIDED BY THIS PLAT AND ANY FUTURE SUBDIVISIONS THEREOF, IS SUBJECT TO THE RECIPROCAL EASEMENT AND OPERATION AGREEMENT RECORDED IN INSTRUMENT NUMBER 2014-0436331, FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS AND MAINTENANCE OF THE EASEMENT AREA.

FEMA FLOOD NOTE

THIS SITE IS LOCATED WITHIN FEMA FLOOD ZONE X-SHADED AS SHOWN ON FEMA FLOOD INSURANCE RATE MAP NUMBER 04013C2745L DATED OCTOBER 16, 2013. FLOOD ZONE X SHADED IS DEFINED AS: AREAS OF THE 0.2% ANNUAL CHANCE FLOOD; AREAS OF 1% ANNUAL CHANCE FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE; AND AREAS PROTECTED BY LEVEES FROM 1% ANNUAL CHANCE FLOOD.

TOWN APPROVALS

APPROVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF GILBERT, ARIZONA THIS DAY OF 07-087, 2014. TOWN ENGINEER, TOWN PLANNING MANAGER, TOWN MAYOR, TOWN CLERK.

CERTIFICATION

I, JOE KRAFT 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 OCTOBER, 2013; THAT THE SURVEY IS TRUE AND CORRECT AS SHOWN; THAT ALL MONUMENTS ACTUALLY EXIST OR WILL BE SET AS SHOWN; THAT SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

COUNTY RECORDER

Job No. 07-087

2045 S. Vineyard Ave, Suite 101 Mesa, AZ 85210 T:480.503.2250 F:480.503.2258 www.epsgroupinc.com



Rivulon - Phase 1 Final Plat

Revisions:

Designer: JK Drawn by: JK



Job No. 07-087

Sheet No. 1 of 2



Council Communication

TO: Honorable Mayor and Councilmembers
FROM: Tom Condit, PE, Development Engineer, 503-6815
MEETING DATE: December 2, 2014
SUBJECT: S09-02: Request approval of a Resolution changing a street name as shown on the Final Plat of the Adora Trails - Parcel 13 subdivision.

STRATEGIC INITIATIVE: Community Livability

Renaming this street will ensure continuity between street names across parcel boundaries, consistent with Town-adopted street naming policies.

RECOMMENDED MOTION

A motion to approve a Resolution changing a street name as shown on the Final Plat of the Adora Trails - Parcel 13 subdivision, and authorize the Town Engineer to execute a Certificate of Correction.

BACKGROUND/DISCUSSION

Adora Trails - Parcel 13, recorded as a final plat on April 2, 2014, is located South of Riggs Road between Higley Road and the RWCD Canal. A street name of "South Stuart Avenue" was approved adjacent to lot 18, from South Parkcrest Street to the edge of the plat. After review of an overall street plan for the Adora Trails development, the street name of "South Stuart Avenue" does not fit with the overall alignment of streets in the area. Staff is recommending that this street segment be changed to South Reseda Street, which will continue to the south on the adjacent Final Plat for Adora Trails.

The owner of the development has been contacted and is in agreement with the name change.

The Resolution was reviewed for form by Attorney Jack Vincent.

FINANCIAL IMPACT

Costs associated with the name change will be related to new signage and will be paid out of the Streets operating budget.

The financial impact was reviewed by Cris Parisot in the Office of Management and Budget.

STAFF RECOMMENDATION

Staff recommends that South Stuart Avenue, adjacent to lot 18 from South Parkcrest Street to the edge of the Adora Trails – Parcel 13 subdivision, be changed to South Reseda Street.

Respectfully submitted,

Tom Condit, PE
Development Engineer

Approved By

Gregory Smith
Kenneth Morgan
Cris Parisot

Approval Date

11/10/2014 2:20 PM
11/12/2014 5:06 PM
11/18/2014 12:46 PM

RESOLUTION NO. _____

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, DECLARING THAT A CERTAIN STREET NAME CHANGE IN ADORA TRAILS – PARCEL 13 SUBDIVISION LOCATED IN A PORTION OF THE WEST HALF OF SECTION 34, TOWNSHIP 2 SOUTH, RANGE 6 EAST, GILA RIVER AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA LOCATED IN THE TOWN OF GILBERT IS IN THE PUBLIC INTEREST.

WHEREAS, said street name change is in the Public interest; and

WHEREAS, after reviewing all of the facts and testimony given, the Council has found that the subject street name change does not impact the public welfare, use and convenience,

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the Town of Gilbert, Arizona:

1. That the name of South Stuart Avenue, adjacent to lot 18, from South Parkcrest Street to the edge of the plat in Adora Trails - Parcel 13 subdivision recorded in book 1181, page 42 of the Maricopa County Recorder's office, is hereby changed to South Reseda Street.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA THIS 2nd DAY OF DECEMBER, 2014.

John W. Lewis, Mayor

ATTEST:

Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

L. Michael Hamblin, Town Attorney

Resolution No. _____
Page ___ of ___

I hereby certify the above foregoing Resolution No. _____ was duly passed by the Council of the Town of Gilbert, Arizona, at a regular meeting held on December 2nd, 2014, and that quorum was present thereat and that the vote thereon was _____ ayes and _____ nays and _____ abstentions. _____ Council members were absent or excused.

Catherine Templeton, Town Clerk, CMC
Town of Gilbert

When Recorded Return to:
Town of Gilbert
Office of the Town Clerk
50 E Civic Center Drive
Gilbert, AZ 85296

CERTIFICATE OF CORRECTION

1. Gregory B. Smith, PE/PS, is the duly appointed and qualified Town Engineer of the Town of Gilbert, Arizona and issues this certificate in his capacity as Town Engineer of the Town of Gilbert, Arizona.
2. On the 27th day of March, 2014, a final plat for the subdivision of Adora Trails – Parcel 13 was approved by the Town Council.
3. The final plat was recorded on the 2nd day of April, 2014 in Book 1181 of Maps, page 42, Maricopa County Recorder’s Office.
4. The Town Engineering Division has determined that a minor correction is required to a certain street shown on the final plat of Adora Trails – Parcel 13 as set forth below.

Recorded as: S. Stuart Ave. along lot 18 from S. Parkcrest St. to the edge of the plat.

Change to: S. Reseda St. along lot 18 from S. Parkcrest St. to the edge of the plat.

5. The Town Engineer issues this certificate for the purpose of correcting the final plat of Adora Trails – Parcel 13.

Dated: _____

Gregory B. Smith, PE/PS
Town Engineer
Town of Gilbert, Arizona

State of Arizona }
 } ss:
County of Maricopa }

The foregoing certificate was subscribed before me by Gregory B. Smith, the duly appointed and qualified Town Engineer for the Town of Gilbert, Arizona this _____ day of _____, 2014.

Notary Public

My commission expires:



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Kyle Mieras, AICP, Development Services Director, 503-6705

MEETING DATE: December 2, 2014

SUBJECT: Approval of a credit card merchant surcharge/check out fee for Development Services up to 2.75%.

STRATEGIC INITIATIVE: Financial Plan

Authorization to charge a credit card merchant surcharge/check out fee in Development Services up to 2.75%.

RECOMMENDED MOTION

A motion to adopt a Resolution to approve a credit card merchant surcharge/check out fee for Development Services up to 2.75%.

BACKGROUND/DISCUSSION

In July, the Council approved a 2.75% credit card merchant surcharge/check out fee for Development Services. At roughly the same time, the Town was in the process of choosing a merchant service provider through a competitive process. Challenges have occurred with the chosen provider and the Town is in the process of reevaluating the options. The Town's existing provider has helped with the installation of the surcharge.

The provider has data that indicates the approved 2.75% charge should be 2.68%. The Town may not charge more than the lowest fees being charged to the Town.

Since the fee is set by Resolution, any changes must be approved by the Town Council. Instead of approaching the Council each time the fee changes, Staff is providing a Resolution that provides for a surcharge up to the originally approved 2.75%. This would allow Staff the flexibility to adjust the fee as needed without exceeding the previous approval. If it were determined that the fee should be greater than 2.75%, Staff would post the fee, as required, and approach the Council with the increase.

The Resolution was reviewed for form by Attorney Vincent.

FINANCIAL IMPACT

Adoption of the credit card merchant surcharge/check out fee will provide a level of cost recovery for the Town. The level of cost recovery will be dependent on the amount and type of customer card usages.

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

STAFF RECOMMENDATION

Staff recommends approval of a credit card merchant surcharge/check out fee for Development Services up to 2.75%.

Respectfully submitted,

Kyle Mieras, AICP
Development Services Director

Approved By

Kyle Mieras
Cris Parisot

Approval Date

11/18/2014 8:32 AM
11/18/2014 12:32 PM

RESOLUTION NO. _____

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, ADJUSTING THE FEE FOR CREDIT CARD MERCHANT SURCHARGES/CHECK OUT FEES; PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS; AND PROVIDING FOR SEVERABILITY

WHEREAS, the Town of Gilbert desires to establish a credit card merchant surcharge/check out fee to cover the costs of credit card fees in Development Services,

NOW THEREFORE, BE IT RESOLVED by the Common Council of the Town of Gilbert, Arizona, that a credit card merchant surcharge/check out fee of up to 2.75% shall be applied to Planning, Building Safety & Code Compliance, Engineering and Fire Permit, Plan Review and Inspection Fees as listed in the Development Services Fee Schedule.

BE IT FURTHER RESOLVED that all parts of any resolution in conflict with the provisions of this Resolution are hereby repealed.

BE IT FURTHER RESOLVED that if any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this ____ day of December, 2014.

John W. Lewis, Mayor

ATTEST:

Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

L. Michael Hamblin, Town Attorney

Resolution No. _____
Page ___ of 3

I hereby certify the above foregoing Resolution No. _____ was duly passed by the Council of the Town of Gilbert, Arizona, at a regular meeting held on ___ day of _____, 2014, and that quorum was present thereat and that the vote thereon was _____ ayes and _____ nays and _____ abstentions. _____ Council members were absent or excused.

Catherine Templeton, Town Clerk, CMC
Town of Gilbert

Resolution No. _____
Page ___ of 3

I, CATHERINE A. TEMPLETON, TOWN CLERK, DO HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF RESOLUTION NO. _____, ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT ON THE ___ DAY OF _____, 2014, WAS POSTED IN FOUR PLACES ON THE ___ DAY OF _____, 2014.

Catherine A. Templeton, Town Clerk



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Robin Stoneman, Management Support Specialist, 503-6866

MEETING DATE: December 2, 2014

SUBJECT: Boards and Commissions - Human Relations Commission

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 Karen Udall from the Human Relations Commission.

BACKGROUND/DISCUSSION

Karen Udall has submitted her resignation from the Human Relations Commission. Recruitment will begin for this position after acceptance of her resignation.

FINANCIAL IMPACT

None.

STAFF RECOMMENDATION

Accept the resignation of Karen Udall.

Respectfully submitted,

Robin Stoneman
Management Support Specialist

Approved By

Cathy Templeton

Approval Date

11/13/2014 4:16 PM

MINUTES OF THE GILBERT TOWN COUNCIL IN SPECIAL MEETING, OCTOBER 30, 2014 AT 4:00 P.M., 50 EAST CIVIC CENTER DRIVE, GILBERT, ARIZONA

COUNCIL PRESENT: Mayor Lewis, Vice Mayor Cook, Councilmembers Cooper, Daniels, Petersen, Ray and Taylor

COUNCIL ABSENT: none

STAFF PRESENT: Manager Banger, Deputy Manager Skocypec, Deputy Clerk Maxwell, and Attorney Hamblin

CALL TO ORDER OF REGULAR MEETING

Mayor Lewis called the meeting to order at 4:12 p.m.

ROLL CALL

Deputy Clerk Maxwell called roll and declared a quorum present.

APPEAL HEARING

Item 1 is an Appeal Hearing pursuant to Section 18-87 of the Gilbert Town Code.

1. CABLE - conduct administrative hearing and consider appeal to the Gilbert Town Council from the March 27, 2014 determination of Town Manager Patrick Banger upholding the March 18, 2014 findings of fact and conclusions of law of Hearing Officer Christopher M. Skelly that Cox Communication Arizona LLC (“Cox”) breached its License Agreement with Gilbert and violated Code § 18-26 by failing to include all gross revenues attributable to its cable services and allocating the bundled services discount disproportionately among the services provided and Cox pay Gilbert \$365,066, the full deficiency in its License Fee Payment for 2009-2011 and pay Gilbert interest in the amount of 1.5% per month for each month payment is overdue.

Pursuant to A.R.S. §38-431.03(A)(3) the Council may go into Executive Session for discussion or consultation for legal advice with the Town Attorney.

This item was revised to move the agenda item from Public Hearing to Appeal Hearing.

See attached transcription for discussion of this item.

A MOTION was made by Councilmember Petersen, seconded by Councilmember Daniels, to adopt the March 27th ruling and order of the Town Manager and findings of fact and conclusion of law and recommendations and ruling of Hearing Officer Skelly. *Motion carried 6-1 with Councilmember Taylor casting the dissenting vote.*

ADJOURN

A MOTION was made by Councilmember Petersen, seconded by Councilmember Taylor, to adjourn. *Motion carried 7-0.*

Mayor Lewis adjourned the meeting at 5:57 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 special meeting of the Town Council of the Town of Gilbert held on the 30th day of October 2014. 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

SPECIAL MEETING OF THE GILBERT TOWN COUNCIL

Cox Communications Arizona, LLC,)	
)	
Movant,)	
)	
vs.)	APPEAL HEARING
)	
Town of Gilbert,)	
)	
Respondent.)	
_____)	

SPECIAL MEETING OF THE GILBERT TOWN COUNCIL TO CONSIDER THE APPEAL OF THE MARCH 27, 2014 DETERMINATION OF TOWN MANAGER PATRICK BANGER UPHOLDING THE MARCH 18, 2014 FINDINGS OF FACT AND CONCLUSIONS OF LAW OF HEARING OFFICER CHRISTOPHER M. SKELLY

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Gilbert, Arizona

October 30, 2014

Prepared by:
Meri Coash, RMR, CRR
Certified Realtime Reporter
Certified Reporter #50327

1 BE IT REMEMBERED that the above-entitled matter
2 came on to be heard as an Appeal before the Gilbert Town
3 Council in the Council Chambers of the Town of Gilbert
4 Administrative Complex, 50 East Civic Center Drive,
5 Gilbert, Arizona, commencing at 4:13 p.m. on the 30th of
6 October, 2014.

7

8

 BEFORE THE GILBERT TOWN COUNCIL
 MAYOR JOHN LEWIS
9 VICE MAYOR EDDIE COOK
 COUNCILMEMBER BEN COOPER
10 COUNCILMEMBER JENN DANIELS
 COUNCILMEMBER VICTOR PETERSEN
11 COUNCILMEMBER JORDAN RAY
 COUNCILMEMBER JARED TAYLOR

12

13

14 APPEARANCES:

15 For the Movant:

16

 OSBORN MALEDON
 By Messrs. David B. Rosenbaum and Joshua Ernst
17 2929 North Central Avenue, 21st Floor
 Phoenix, Arizona 85012

18

19 For the Respondent:

20

 CURTIS, GOODWIN, SULLIVAN, UDALL & SCHWAB, PLC
 By Ms. Kelly Y. Schwab and Ms. Patricia E. Ronan
21 501 East Thomas Road
 Phoenix, Arizona 85012

22

23

 TOWN ATTORNEY, TOWN OF GILBERT
 Mr. Michael Hamblin
 55 East Civic Center Drive
24 Suite 205
 Gilbert, Arizona 85296

25

1 REPORTER'S TRANSCRIPT OF PROCEEDINGS

2

3 MAYOR LEWIS: Welcome to the October 30th,
4 2014, special meeting of the Gilbert Town Council. I call
16:13:17 5 the meeting to order.

6 I'll ask our deputy clerk to conduct the
7 roll call.

8 DEPUTY CLERK: Mayor Lewis?

9 MAYOR LEWIS: Here.

10 DEPUTY CLERK: Vice Mayor Cook?

11 VICE MAYOR COOK: Here.

12 DEPUTY CLERK: Councilmember Cooper?

13 COUNCILMEMBER COOPER: Here.

14 DEPUTY CLERK: Councilmember Daniels?

16:13:29 15 COUNCILMEMBER DANIELS: Here.

16 DEPUTY CLERK: Councilmember Petersen?

17 COUNCILMEMBER PETERSEN: Here.

18 DEPUTY CLERK: Councilmember Ray?

19 COUNCILMEMBER RAY: Here.

16:13:34 20 DEPUTY CLERK: Councilmember Taylor?

21 COUNCILMEMBER TAYLOR: Here.

22 DEPUTY CLERK: A quorum is present.

23 MAYOR LEWIS: Thank you.

24 This, as the agenda notes, is an appeal
16:13:43 25 hearing, and the Council -- we have not had a chance to do

1 this before.

2 And so I'm going to ask our Town Attorney,
3 Mike Hamblin, if you could give us just a high level --
4 and for the public too -- to understand what this appeal
16:13:57 5 hearing is, and then we will proceed, please.

6 MR. HAMBLIN: Thank you, Mayor, Members of
7 the Council.

8 This is an administrative appeal hearing to
9 consider the appeal to the Gilbert Town Council on the
16:14:11 10 March 27, 2014, determination of the Town Manager Patrick
11 Banger upholding the March 18, 2014, findings of fact and
12 conclusions of law of Hearing Officer Chris- -- Retired
13 Judge Christopher M. Skelly that Cox Communication
14 Arizona, LLC, breached its license agreement with Gilbert
16:14:27 15 and violated Gilbert Town Code 1826 by failing to include
16 all gross revenues attributable to cable -- to its cable
17 services in allocating the bundled services discount
18 disproportionately among the services provided, and Cox --
19 and ultimately, the recommendation of the Hearing Officer,
16:14:47 20 and the ruling of the Hearing Officer, and subsequently
21 adopted by the Town Manager, that Cox pay Gilbert \$365,066
22 plus interest until the -- until the amount is -- until
23 the amount is paid.

24 This is a quasi-judicial proceeding more
16:15:09 25 akin to a court or judicial process and not a legislative

1 process, and as such there is no public comment.

2 The parties have stipulated to 30 minutes
3 per side for oral argument. Briefs have been submitted.
4 A copy of the record below has been available to you,
16:15:27 5 and -- as well as the transcript of the testimony on
6 February 12th, as well as all the exhibits presented to
7 the Hearing Officer. We do -- This is being recorded
8 tonight by a court reporter, Meri Coash, to my right.

9 As to the speakers, you'll each have 30
16:15:49 10 minutes. Cox will proceed first. If they wish to reserve
11 time, they will indicate so and we will set the clock
12 accordingly. The light on the podium will turn yellow
13 when there are three minutes remaining, and when the time
14 has expired, there will be a beep.

16:16:07 15 Thank you, Mayor.

16 MAYOR LEWIS: Then after the Cox team is
17 done, there will be a second team, and they will be
18 referred to as the --

19 MR. HAMBLIN: Town of Gilbert, represented
16:16:20 20 by Kelly Schwab and Patricia Ronan. They will have 30
21 minutes.

22 MAYOR LEWIS: They will have 30 minutes.

23 MR. HAMBLIN: They cannot reserve any
24 portion of their time.

16:16:29 25 And then after that, if Cox has reserved

1 time, represented by David Rosenbaum and Josh Ernst, they
2 can rebut any arguments made by the Town representatives,
3 and then that's the conclusion of the argument. And then
4 the Council -- and a city is a quasi-judicial body -- can
16:16:52 5 either adopt or modify or reverse the findings of the Town
6 Attorney [sic] and the Hearing Officer.

7 MAYOR LEWIS: Thank you.

8 The Council, before we proceed, any
9 questions or comments about the process we'll follow?

16:17:05 10 Thank you for that overview.

11 We will begin with Cox, if you please.

12 MR. ROSENBAUM: Okay. We're set up.

13 MAYOR LEWIS: Dave, did you wish to reserve
14 some time?

16:17:54 15 MR. ROSENBAUM: Yes. I would like to
16 reserve five minutes for rebuttal. I see the clock is
17 already set at 25 minutes, so -- I think I passed that
18 message along earlier, so we're good to go.

19 Thank you, Mayor Lewis, Vice Mayor Cook,
16:18:04 20 Councilmembers. As you have heard, I'm David Rosenbaum.
21 I'm counsel with Cox Communications. With me is Susan
22 Anable sitting right there, who's the vice president for
23 public affairs at Cox. She may take some of the
24 five-minute rebuttal time if there's room. I know she's
16:18:21 25 eager to talk with you as well.

1 It's a pleasure to appear before you in this
2 rather unusual setting. As you've heard, this is an
3 appeal from a Town Manager ruling upholding an audit of a
4 cable license. My guess is it's not just a first-time
16:18:38 5 experience for this Council but probably for any Council
6 in the Town of Gilbert.

7 Let me start by expressing how much Cox
8 values its close and longstanding relationship with the
9 Town of Gilbert. Cox has been a strong supporter of the
16:19:00 10 community, like it is in all the communities where it
11 conducts business in Arizona. It shows that support not
12 just by collecting license fees from customers and passing
13 it on, but by payment of its own taxes, by its charitable
14 giving -- generous charitable giving in the community and
16:19:20 15 its support for its employees and their services through
16 their church activities and their community activities.

17 Regardless of how the Town Council votes
18 today, win or lose, you can be assured that that strong
19 support of the community by Cox and its employees will
16:19:41 20 continue.

21 The audit that Cox challenges looked at
22 Gilbert customers who received a discount for bundled
23 services. So what are bundled services? As I think you
24 all know from the briefing, the 5 percent license fee
16:20:01 25 assessed on cable companies under the code, under the Cox

1 license, is assessed just on revenues from cable
2 television services. Cox also provides Internet services,
3 telephone services. Those are not subject to the 5
4 percent license fee. Everybody agrees on that.

16:20:23 5 Cox periodically runs specials to help
6 preserve and build its customer base where it offers a
7 discount, so it's cheaper to buy two or three services
8 than to buy them separately, cheaper in a bundle. There's
9 talk in the briefs about how Cox discounted a large
16:20:44 10 percentage of the bundle discount -- attributed a large
11 percentage to cable, but understand, that discount overall
12 is a small percentage of the license fees collected. In
13 fact, the assessment would be about 8 percent on top of
14 the license fees collected and paid to the Town. So it's
16:21:01 15 a relatively small amount. But the principle to Cox is
16 important.

17 One more point by way of background, there
18 are other items assessed in the audit that Cox did not
19 contest, about \$85,000 worth. It paid those amounts. But
16:21:24 20 this pricing, this marketing issue for Cox -- that is, how
21 it gets to decide how to allocate a bundle discount -- was
22 too important an issue for Cox to concede. And that's why
23 it asked you, the Council, to reverse the Town Manager's
24 decision.

16:21:43 25 The Town Manager's decision is wrong because

1 it interjects the Town of Gilbert into the business
2 decisions, the pricing decisions, the marketing decisions
3 of Cox. It's wrong because it misreads the license
4 agreement. It misreads the code. And we submit it's the
16:22:05 5 unfortunate conclusion to a misconceived effort by some
6 Town officials, well-intentioned I'm sure, to try and
7 increase revenues, but a misconceived effort to increase
8 Town revenues on the backs of Gilbert taxpayers. The
9 Town's brief says, well, it's only \$11 per customer, but a
16:22:30 10 tax increase is a tax increase. Cox subscribers --

11 MAYOR LEWIS: I need to interrupt you.
12 Let's get this very clear. Cox determines the rates. For
13 you to say this is a tax increase is causing great turmoil
14 in this community, and I would like you to clarify why you
16:22:49 15 think it is a tax increase.

16 MR. ROSENBAUM: Because it's an effort by
17 the auditor to, in effect, change the pricing.

18 MAYOR LEWIS: Is it a license fee or not?

19 MR. ROSENBAUM: Yes, it's a license fee.

16:23:02 20 MAYOR LEWIS: Is a license fee a tax?

21 MR. ROSENBAUM: I think they're analogous.
22 They certainly are.

23 MAYOR LEWIS: We'll continue this
24 discussion, but let me be very clear this tax increase
16:23:10 25 message has gone out, has confused citizens. I've had

1 many phone calls the last few hours of very upset -- And
2 I think this term "tax increase" will be very detrimental
3 to today's discussion.

4 But continue.

16:23:23 5 MR. ROSENBAUM: Well, I think that leads
6 into the next part of my presentation, because it's an
7 effort to increase revenues at the expense of Gilbert
8 residents. Whether you call it a tax, whether you call it
9 a license fee, I don't think it matters. It's a
16:23:38 10 pass-through. Just like a transaction privilege tax,
11 called a sales tax in other jurisdictions, it's a tax
12 imposed on the gross receipts of the retailer, but it's
13 passed through to the customer. And this license fee --

14 COUNCILMEMBER RAY: Mr. Mayor?

16:23:53 15 MR. ROSENBAUM: -- is identical to that.
16 It's a tax --

17 MAYOR LEWIS: Councilmember Ray?

18 COUNCILMEMBER RAY: You say it's a
19 pass-through to the residents of Gilbert. Does it have to
16:24:01 20 be a pass-through as a separate line item, or do you
21 choose as a company to make it a separate line item
22 instead of just having it be a cost of doing business and
23 being part of the bundle fee?

24 MR. ROSENBAUM: It's the uniform practice of
16:24:13 25 cable companies around the country. It's their right

1 under federal law. It is the standard that has been in
2 place in this state and all the communities here since
3 cable television began subject to license fees.

4 COUNCILMEMBER RAY: So I'm not arguing that
16:24:27 5 what you're doing is wrong. I don't mean that. But it
6 sounds a little disingenuous to me to say that Gilbert is
7 making you pass through something to the customers as a
8 separate tax increase when, really, you're able to use the
9 streets, the right-of-ways, and if we didn't have a
16:24:41 10 percentage cost on there, it's a cost of doing business.
11 It's not simply a Gilbert is searching for as much money
12 as possible and is passing on as much taxes to residents
13 as they can.

14 MR. ROSENBAUM: Again, let me make the
16:24:55 15 analogy to the transaction privilege tax. Under the tax
16 code, that is a tax on the retailer, on the gross receipts
17 of the retailer. The retailer has the right, and
18 uniformly does, pass that on to the consumer at the cash
19 register. So when there's an increase in transaction
16:25:14 20 privilege tax, just like when there's an increase in the
21 license fee, we all know what that means. Yes, the
22 retailer could absorb it, but it's the consumers who are
23 going to pay for it, and the auditors knew that.

24 COUNCILMEMBER PETERSEN: Mayor?

16:25:29 25 MAYOR LEWIS: Please.

1 COUNCILMEMBER PETERSEN: Just real quick.
2 Would it be fair to say that if the result of an audit on
3 a sales tax was to find that someone had underpaid their
4 sales tax revenues, the correction of that underpayment,
16:25:42 5 would that be fair to call that a tax increase?

6 MR. ROSENBAUM: Well, that gets to the heart
7 of the matter, which is was the auditor correct in the
8 assessment? And then I hope I have a little chance to
9 explain to you why the auditor was wrong. So it would be
16:25:59 10 like the tax assessor going into a retail establishment
11 and saying you had a million dollars more in retail sales,
12 you didn't pay us. Well, the fact is, the retailer didn't
13 have the million dollars in additional sales. That's the
14 point here. That's really the only issue for you, which
16:26:15 15 is the definition of gross receipts under the code, does
16 it import this GAAP reallocation proportional treatment of
17 bundled discounts? And so if I could, let me address
18 that, because if you disagree with that, whether you call
19 it a tax or not, we lose. If you agree with us, whether
16:26:36 20 you call it a tax or not, we win. And it's the -- it's
21 the auditor's reallocation of the discount which Cox
22 advertised to its customers that interferes with Cox's
23 marketing decisions and that we think is improper price
24 regulation, in effect, by the auditor.

16:26:58 25 So let's go back to the -- I call it

1 misconceived, and let me try and show you why it was
2 misconceived at the start. So what did Gilbert do? It
3 went to Florida and hired an outside auditor. This is his
4 marketing brochure that he sent to Gilbert. And he talks
16:27:18 5 about his company having performed 250 cable television
6 franchise audits, collected \$30 million. That's fine and
7 dandy. Maybe those \$30 million were due and owing. But
8 let's look about how he does it, how he promoted this
9 idea, and then what he did in this Gilbert audit.

16:27:38 10 He says, in his brochure, gross revenue,
11 subject to franchise fee application, is often not clearly
12 defined in the franchise agreement or related ordinance.
13 Because the cable television industry is facing
14 significant competition from satellite providers and
16:27:56 15 regional Bell operating companies, i.e., CenturyLink -- it
16 was called Qwest at the time -- there's tremendous
17 pressure and incentive to keep prices competitive and at
18 the same time maintain steady cash-flow growth. That's
19 what Cox reacted to. There's -- and I'll get to the
16:28:14 20 definition in the code. It was pricing to react to
21 competition by satellite providers to preserve its
22 customer base, which is good for Cox and is good for
23 Gilbert. That's why it was offering these discounts.

24 So let's go to the Gilbert code definition
16:28:31 25 of gross revenue. It's a long definition. I think we

1 highlighted the pertinent portion for this discussion.
2 Gross revenues shall mean all cash, credits, property,
3 other consideration of any kind or nature in any way
4 derived or received from the operation of a licensee's
16:28:50 5 cable system. It doesn't say derived, received, and then
6 reallocated according to GAAP as one might report on a
7 financial statement submitted to investors. Derived and
8 received is the code definition.

9 So what does Mr. Lewis do? He says, "Well,
16:29:09 10 I think that's ambiguous. I'm going to use that to my
11 advantage to try and raise revenues to counteract the
12 price competition that Cox was facing from satellite
13 providers." That's what he did.

14 MAYOR LEWIS: Councilmember Daniels?

16:29:26 15 COUNCILMEMBER DANIELS: I think we might be
16 making some assumptions about an auditor who isn't here to
17 defend himself or his processes and practices. And so the
18 audit's been done. He's a reputable auditor across the
19 country, has proven that with his record, and he's
16:29:41 20 credentialed.

21 And so I actually have a very specific
22 question about Cox and the financial practices with which
23 you operate. Do you conform with the generally accepted
24 accounting principles?

16:29:54 25 MR. ROSENBAUM: When Cox prepares at the

1 parent level its consolidated financial statements to
2 present to lenders or investors, yes, it prepares them in
3 accordance with Cox -- with GAAP.

4 COUNCILMEMBER DANIELS: I don't necessarily
16:30:12 5 want to know what your parent company does. But I would
6 like to know what Cox Communication --

7 MR. ROSENBAUM: Cox Arizona does not prepare
8 GAAP financial statements, never has, is not required to.
9 I know there are three M.B.A.s on the Council. I think
16:30:25 10 the M.B.A.s certainly understand and that this auditor
11 didn't or at least took advantage of, which is tax
12 accounting and GAAP accounting are apples and oranges.
13 GAAP financial reports are intended to show investors
14 trends in a business between quarters, between years on a
16:30:44 15 consistent basis. And so they require things like
16 reporting on accrual basis. And in this instance, with
17 respect to bundled services, they require this
18 reallocation so that an investor could know, okay, how's
19 the business really doing on telephone? How's the
16:31:00 20 business really doing on cable? It's a reallocation of
21 those amounts in order -- so investors can get that
22 picture of the business snap- -- a snapshot in time how
23 does that compare with to prior quarters and years. Tax
24 accounting is the opposite of that.

16:31:19 25 COUNCILMEMBER DANIELS: Does the parent

1 company, when they represent that they are complying with
2 GAAP -- do they indicate in any way, shape, or form that
3 any of their subsidiaries do not comply with GAAP?

4 MR. ROSENBAUM: Their financial statements
16:31:39 5 are audited and approved by independent auditors, and any
6 representations that -- Let me put it this way. Those
7 representations are not required because they're -- it's
8 common understanding by investors and by -- and by
9 accountants that the components of an entity whose
16:32:03 10 financial reports are consolidated at the parent level,
11 those components are not GAAP components. What happens is
12 there's a general ledger prepared at the subsidiary level,
13 subsidiaries around the country. Those are not GAAP
14 financial statements. A financial statement is the end
16:32:23 15 result when you take the input and it's reviewed and
16 prepared. That doesn't happen at the subsidiary level,
17 and nobody reading a parent's consolidated GAAP financial
18 statement would think otherwise. It's just not done.

19 COUNCILMEMBER DANIELS: To what standard
16:32:42 20 does Cox hold their own actual accounting practices? If
21 there is a different standard that you are using, what is
22 that standard, and where does it indicate how it is both
23 possible and how -- what is the recommended way to
24 distribute a discount under those types of codes that you
16:33:03 25 might use?

1 MR. ROSENBAUM: That's not a concept that is
2 even relevant at the subsidiary level. What Cox is
3 required to do is report accurately for taxes and license
4 fees its receipts, and that's what it did. There is no
16:33:20 5 requirement to prepare GAAP financial statements. It just
6 doesn't exist at the subsidiary level. And so with all
7 due respect, the question assumes that subsidiaries of a
8 parent who prepares GAAP financial statements also are
9 required to prepare GAAP financial statements. They
16:33:40 10 aren't because they don't have investors looking at that.

11 MAYOR LEWIS: There's a couple of questions
12 I'll ask. Is GAAP the accounting standard in the cable
13 industry?

14 MR. ROSENBAUM: I think the answer to that
16:33:52 15 is it depends on the company, because GAAP is required --

16 MAYOR LEWIS: How many states is Cox doing
17 business?

18 MR. ROSENBAUM: I don't know off the top of
19 my head. Ms. Anable would know.

16:34:05 20 About 15.

21 MAYOR LEWIS: About 15.

22 Is it true -- and I ask this question and
23 you can confirm -- that in 14 of the 15 states they're
24 using GAAP, and Arizona is the only state not doing GAAP?

16:34:18 25 MR. ROSENBAUM: That is incorrect. That is

1 incorrect. The only GAAP financial statements are
2 prepared at the parent level, first of all. But in terms
3 of reporting license fees, that is -- that is incorrect.
4 In fact, if you look at the hearing exhibits -- I think it
16:34:36 5 was Exhibits 20 and 21 submitted at the hearing by the
6 Town, those are the cable ordinances in Richmond,
7 Virginia -- or, Fairfax, Virginia, and New Orleans, where
8 those license agreements explicitly allow Cox to report
9 taxes in accordance with how the pricing was advertised to
16:34:59 10 the customer. So I know of at least two other
11 jurisdictions where there's no proportional allocation.

12 I think the proper question, with all due
13 respect, is, does Cox proportionately reallocate its cable
14 prices at the local level in other jurisdictions? I know
16:35:18 15 it doesn't do that anywhere in Arizona. I know it doesn't
16 do that in New Orleans and Virginia. And there was no
17 evidence at the hearing about other jurisdictions, so I
18 think you're limited to the record here.

19 And, Councilwoman Daniels, the complete
16:35:36 20 testimony of Mr. Lewis is in that record, and so --

21 MAYOR LEWIS: Who does the audit for Cox
22 Arizona?

23 MR. ROSENBAUM: There is no audit for Cox
24 Arizona. It's not required. They have never prepared
16:35:48 25 audited financial statements. The audited financial

1 statements are prepared at the parent level, taking the
2 general ledgers, the raw materials, information about
3 receipts, and created in that fashion.

4 MAYOR LEWIS: Who does the audit at the
16:36:02 5 parent, at the headquarters?

6 MR. ROSENBAUM: I understand it's Deloitte.

7 MAYOR LEWIS: Councilmember Petersen, I'll
8 just make a point.

9 To me, this was -- and I was diving deep
16:36:15 10 into everything I could read. I'm still -- you may have
11 answered it, why you're not using GAAP. All I'm hearing
12 is you don't feel it's appropriate. But I did work for a
13 public accounting firm. Day one, week one, month one,
14 year one, all nine years, GAAP was just ingrained inside
16:36:33 15 of me that we follow it, and I guess I'm really surprised
16 that at the local level, you don't have to follow GAAP. I
17 don't understand why. But --

18 MR. ROSENBAUM: If I may answer that, GAAP
19 is followed in the sense that all receipts and all
16:36:49 20 expenses are recorded in the general ledger and they're
21 used by the parent to create the GAAP financial
22 statements. So I think it would be incorrect to say that
23 the local company is somehow not following GAAP. But it
24 is reporting taxes and license fees accurately, according
16:37:04 25 to the relevant ordinances, in this case the code's

1 definition of gross revenue, and at the parent level the
2 underlying financial data is used to create GAAP-compliant
3 consolidated financial statements. So --

4 COUNCILMEMBER PETERSEN: Real quick, just
16:37:21 5 because I want to jump right to the core of the issue
6 because I can see what the debate has been about in our
7 briefs here between the two parties. You mentioned that
8 GAAP is used for investors to know how one part of a
9 business within a larger business is really doing. I
16:37:39 10 think that's a term you said. How is the business really
11 doing.

12 MR. ROSENBAUM: It is to smooth out trends
13 from quarter to quarter and year to year.

14 COUNCILMEMBER PETERSEN: I appreciate that.
16:37:49 15 So how is the business really doing. So I
16 want to go back to your definition. I think you hit the
17 nail on the head talking about "shall mean any and all
18 cash" -- I won't ramble on that, but the keywords are
19 derived and received from the operation of the licensee's
16:38:07 20 cable system and provided cable services. And I noticed,
21 as I read through your brief, in particular on page 8, you
22 make a statement in lines 11 and 12 that Cox does not
23 charge and receive undiscounted cable revenues and
24 discount them before paying the license fee, and then you
16:38:31 25 add emphasis to the words "charge and receive." You also

1 quote what you did here, adding emphasis to "derive and
2 receive." But later on, it looks like over and over I'm
3 seeing the word "charged." That's later on argued --
4 later on in your argument, that it's charged and received.
16:38:50 5 Why would you change the word from "derived" to "charged"?
6 Is there some significance?

7 MR. ROSENBAUM: No, I don't think there was
8 a change in the word. There we were describing how
9 customers are informed about the product through
16:39:05 10 advertisements and what they're charged on the bills, so I
11 don't --

12 COUNCILMEMBER PETERSEN: I think that --
13 I've looked in the dictionary. These two words have very
14 different definitions, so I'm just surprised that you
16:39:18 15 don't think there's a difference. I guess what I'm
16 asking, as we go back to this question of how is the
17 business really doing --

18 Let me ask you another question related to
19 that. Why don't you offer cable -- discounted cable on
16:39:31 20 its own? You're putting the discount completely on cable.
21 Let's just offer the discounted cable all on its own. Why
22 don't we do that?

23 MR. ROSENBAUM: I think Cox could do that.
24 But we're talking about -- understand --

16:39:44 25 COUNCILMEMBER PETERSEN: I'm sorry. You

1 didn't answer my question. Why doesn't it do that?

2 MR. ROSENBAUM: I don't know that it
3 doesn't. It's not in this record. It wasn't a point at
4 the hearing.

16:39:53 5 But the point is that for marketing reasons,
6 to keep these customers, to attract new customers, it made
7 sense to offer package discounts.

8 COUNCILMEMBER PETERSEN: I read the
9 testimony of Ms. Anable here, and she said a very good way
16:40:09 10 to get customers to maximize the number of services they
11 would buy. So would it be fair to say that Cox offers
12 bundled services in order to maintain and increase total
13 sales? Is that a fair statement?

14 MR. ROSENBAUM: Of course. Of course.

16:40:24 15 COUNCILMEMBER PETERSEN: Okay. So would it
16 be fair to say that offering a discounted cable service as
17 part of that package increases revenues that could be
18 charged for other services?

19 MR. ROSENBAUM: It is a method to keep and
16:40:36 20 retain customers who hopefully will be long-term
21 customers, which gets -- I know I only have two minutes
22 left, but it's an important point. So the marketing
23 decision during the audit period was to discount the cable
24 portion of the bills heavily. Cox was facing fierce
16:40:51 25 competition from satellite providers. That's what it

1 showed on the advertisements. The customers knew where
2 they were getting the discount.

3 That's no longer Cox's marketing strategy.
4 The current bundled discounts allocate all of the discount
16:41:07 5 to Internet. And to the extent you're concerned about
6 raising revenues, in fact, this proportionate GAAP in
7 position on top of the gross revenues definition will
8 reduce Town revenues because under the current bundled
9 packages, the cable portion is unreduced. The 5 percent
16:41:30 10 fees that are being charged, you used that word, and
11 passed on to the Town are unreduced. Going forward, if
12 this ruling is upheld, license fee collections will go
13 down for the Town of Gilbert. So the auditor may have
14 found a vehicle for a short-term, one-time infusion of
16:41:54 15 \$365,000, but long-term, it's bad for revenues because it
16 will force Cox to, in effect, artificially lower --
17 artificially, in our view, lower the cable revenues that
18 it is receiving and, therefore, lower the transmission of
19 license fees that it provides to the Town.

16:42:16 20 COUNCILMEMBER RAY: Mayor, quick question.

21 MAYOR LEWIS: Please.

22 COUNCILMEMBER RAY: So the bundle services
23 are telephone, cable, and Internet. If during this audit
24 period, if I were -- if you had a customer who had cable
16:42:27 25 only or cable and telephone and you wanted to help entice

1 them to get two more packages -- or one more part of the
2 bundle, would you still discount the cable even though
3 they already own it?

4 MR. ROSENBAUM: If there was an existing
16:42:42 5 cable customer who wanted to sign up for one of these
6 advertised packages -- Remember, these are just specials
7 being run at various points in time. You see the ad, you
8 get the flyer, you make the phone call and say, "I want to
9 get that package," yes, you'll get that package.

16:42:56 10 COUNCILMEMBER RAY: So how does that help
11 you guys when you reference multiple times that the reason
12 why you did this type of accounting was to get into the --
13 or, to better -- have a better position in the very tight
14 market with the satellite companies? If they were already
16:43:12 15 a customer, why would you then give them a \$40 discount on
16 that very product when they had it and seemed happy with
17 it?

18 MR. ROSENBAUM: Because it makes the package
19 more attractive and it keeps that customer from using
16:43:24 20 DIRECTV or DISH and getting their telephone services from
21 somewhere else. And of course competitors such as Qwest,
22 and now CenturyLink, were also offering combined services.
23 So the marketplace wasn't just for individual components;
24 the marketplace was competing for packages as well.

16:43:40 25 I would like to make one point -- I know I'm

1 over, but it's I think important to recognize that even --

2 MAYOR LEWIS: That has really bothered me.

3 It doesn't say it in the license agreement, but from an
4 accounting perspective, are you supposed to follow GAAP?

16:43:59 5 Yes. So that's irrelevant to me. You can make the point
6 if you want, but it's irrelevant to me.

7 COUNCILMEMBER PETERSEN: Can I ask a

8 question about that in the license agreement? Because it
9 might actually -- I think it might be written in there,

16:44:10 10 maybe I'm misunderstanding it, under Section 18-80(a)(3),

11 and so this -- maybe this will provide some clarity, but I
12 am really genuinely confused here. So talking about the

13 full financial statements for the previous year, including

14 income statement and so on and so forth, for the licensee

16:44:29 15 or any parent company is something that is part of the

16 annual reporting requirement there under that section.

17 And then there's a following statement that

18 says, "Financial statements for the licensee or any parent

19 company shall be audited by an independent CPA." How is

16:44:47 20 that not saying that the licensee's -- not just the parent

21 company, but the licensee's statements need to be audited

22 too? Because I've seen an argument in here that you're

23 saying no, one or the other has to be, but not both. Is

24 that the argument I'm hearing?

16:45:02 25 MR. ROSENBAUM: I don't think there was any

1 contest at the hearing that -- in fact, the testimony from
2 the Deputy Town Manager was that Cox complied with the
3 reporting requirements by providing the parent's audited
4 financial statement, so there was no argument.

16:45:15 5 COUNCILMEMBER PETERSEN: I'll have to
6 interrupt there, because you even point out he contradicts
7 himself on this point, so it's going to be hard to resolve
8 the fact of that through testimony that seems to testify
9 two different ways.

16:45:27 10 I'm looking directly at the -- I need you
11 to help me understand what's written here, according to
12 your perspective. What does this mean? If not just the
13 plain language of either way you submit your reports, they
14 should be audited. That's what I'm seeing here.

16:45:38 15 MR. ROSENBAUM: The reports -- Understand,
16 these are financial reports required. These are not the
17 transmission reports for the receipts on licenses. This
18 is a completely separate requirement which Cox complied
19 with by providing audited financial statements for the
16:45:55 20 parent company, which is all that's required. And, again,
21 there was no disagreement on that point. There was no
22 finding to the contrary on that point by the Hearing
23 Officer or the Town Manager, so I think it's --

24 COUNCILMEMBER PETERSEN: In your brief on
16:46:08 25 page 10, you do make the contention that it's either/or,

1 so that's why I'm confused. You're referring to that
2 specific section of the code saying it's not in dispute.
3 It confuses me a little because you say the code requires
4 Cox to submit audited financial statements for itself or
16:46:25 5 for its parent company. So is your argument that the
6 local Cox Arizona statements didn't have to be audited --
7 is it hung on this board here that I'm seeing emphasis
8 added to in your brief?

9 MR. ROSENBAUM: There were no submission of
16:46:43 10 overall Cox Arizona financial statements, period. They
11 weren't requested, they weren't submitted, they weren't
12 required. This is a separate financial reporting
13 requirement, which Cox complied with by submitting the
14 audited financials of the parent. So again, I think the
16:47:02 15 confusion remains -- which is the Hearing Officer answered
16 here, which is tax accounting, license fee accounting --

17 COUNCILMEMBER PETERSEN: I'm sorry to
18 interrupt again.

19 MR. ROSENBAUM: -- is different than --

16:47:15 20 COUNCILMEMBER PETERSEN: Because you did
21 submit to us the Cox financials as well, correct? I see
22 that in the record. Am I misunderstanding that?

23 MR. ROSENBAUM: For the parent, yes.

24 COUNCILMEMBER PETERSEN: No, the local Cox
16:47:27 25 Arizona financials were also submitted, correct?

1 MR. ROSENBAUM: They were certainly
2 submitted as part of the audit, no question.

3 COUNCILMEMBER PETERSEN: They weren't a part
4 of the annual reporting that's here in the code and
16:47:39 5 required?

6 MR. ROSENBAUM: I don't recall that there's
7 anything in the record about that aspect. The issue was
8 did Cox comply with that requirement, and then I think the
9 record's clear on this point, yes, it did. The
16:47:53 10 contradiction with the Deputy Town Manager is he said we
11 complied but then said they should have been -- the
12 revenue should have been allocated under GAAP.

13 But on the transmission of the license fee,
14 those reports are different than the submission of annual
16:48:15 15 companywide financial statements.

16 Again, apples and oranges. So if you take a
17 look at how the Hearing Officer ruled -- I know I'm over
18 time -- how did he get around this finding? And his other
19 finding, which I'll get to here, which is that Cox acted
16:48:35 20 in good faith. So Cox accurately reported. There's no
21 requirement of GAAP in the definition of gross revenues.
22 Cox acted in good faith. What he ultimately concluded was
23 yet there's no proportionality requirement under GAAP, but
24 a hundred percent, 90 percent, 80 percent allocation seems
16:48:57 25 too high. That, in the essence, is his ruling. So it's

1 wrong because it doesn't comport with the definition of
2 gross revenues. It's also wrong because that wasn't the
3 basis for the audit. The audit finding was based on a
4 requirement that you impose -- you superimpose a GAAP
16:49:18 5 proportionality requirement on the definition of gross
6 revenue. That was the only finding, that's the only basis
7 for affirming it. The Hearing Officer disagreed. And he
8 came up with some looser measure that that's sort of what
9 feels right, that it shouldn't be as much of an allocation
16:49:37 10 to cable as it was, but there is no GAAP requirement. And
11 that gets to the heart of Cox's right to make its own
12 pricing and marketing decisions. That's what it did when
13 it allocated heavily those discounts to cable. That's
14 what it's doing now when it allocates those discounts to
16:49:58 15 Internet. That's Cox's decision to make, particularly if
16 there's no GAAP requirement.

17 Final point on this, and then I'll sit down
18 unless you have any more questions, why did the Town
19 Council amend the code to add a GAAP requirement? Because
16:50:16 20 under the new code, post audit, there's now the GAAP
21 requirement. Basic precepts of statutory construction
22 means, well, it wasn't there before and that's why it
23 needed to add it. Maybe there was some advice from
24 Mr. Lewis. But maybe he's respected, maybe he's not.
16:50:44 25 This is what he does.

1 MAYOR LEWIS: With respect to the Hearing
2 Officer, you mentioned him a couple times, how did you
3 feel he did? Did he do a good job? Was he fair? Was he
4 biased?

16:50:53 5 MR. ROSENBAUM: I have great respect for
6 Chris Skelly. He's a fine jurist. He was when he was on
7 the bench and he is now in his private practice as a
8 mediator and an arbitrator. I disagree with his -- with
9 his conclusion, and particularly this last point that I
16:51:12 10 made, because --

11 MAYOR LEWIS: Why in the marketing
12 literature were you trying to discredit Gilbert when you
13 say "You've got an out-of-state consultant"? Why didn't
14 you include him too? Because you are trying to say an
16:51:26 15 out-of-state consultant -- you're marketing to Gilbert
16 residents, you're saying an out-of-state consultant did
17 this, but there's also an unbiased judge that you brought
18 in that you jointly decided on. Why aren't you trying to
19 discredit him too?

16:51:42 20 MR. ROSENBAUM: Because I don't think he had
21 an agenda. And I don't think --

22 MAYOR LEWIS: Did he not come to a
23 conclusion -- you know, from a legal background, if
24 there's even some questions -- you know, maybe it's
16:51:51 25 80 percent here, 20 percent, 50, 60, it was a hundred

1 percent, so did that not have any bearing on possibly,
2 from a Cox perspective, saying maybe there's something
3 here?

4 MR. ROSENBAUM: Well, it was never a hundred
16:52:03 5 percent. He found that Cox acted in good faith. He found
6 there was no GAAP requirement. He just felt -- I don't
7 think he understood and appreciated, despite the fine
8 testimony of Ms. Anable, that there was a valid marketing
9 decision in the audit period to proceed that way.

16:52:23 10 And understand, get some perspective on this
11 discount. Again, the total revenue reduction when you
12 apply a GAAP reallocation was 8 percent. So you may
13 disagree with some of these promotions, that had you been
14 running the marketing department, you would have
16:52:40 15 advertised them differently, but as the Hearing Officer
16 concluded, this wasn't bad faith. This was not an effort
17 by Cox to try and diminish revenues to the Town. This was
18 a good-faith effort by Cox to try and preserve and build
19 the business, which, again, is in Cox's long-term interest
16:53:00 20 and is in Gilbert's long-term interest. But it's on that
21 marketing decision where apparently Hearing Officer Skelly
22 disagreed.

23 But with all due respect to Hearing Officer
24 Skelly, that wasn't the basis of the audit. The audit was
16:53:20 25 based on GAAP.

1 MAYOR LEWIS: End result was exactly what
2 the original concern was, he was a hundred percent
3 dollarwise there. Is that correct?

4 MR. ROSENBAUM: Well, that's another flaw in
16:53:30 5 his ruling. So if it's not GAAP but it's something other
6 than 80, 70 percent in these years, how do you come up
7 with \$365,000? He doesn't do that analysis. Maybe it
8 should have been 50-50. So he never comes up with an
9 alternative. So he affirms the audit finding, which is
16:53:49 10 based on this strict GAAP measure, and yet that's
11 inconsistent with his legal conclusions.

12 MAYOR LEWIS: Councilmember Daniels?

13 COUNCILMEMBER DANIELS: One quick point.
14 The 5 percent that legally you pay -- or Cox pays to
16:54:04 15 utilize our right-of-way, have you ever passed that on to
16 the customer? Has that ever been a line-item charge for
17 the customer?

18 MR. ROSENBAUM: In every bill -- every
19 customer bill, just like a tax receipt at a cash register
16:54:20 20 at a retail store, that fee is listed as a line item. All
21 customers have received those bills from the beginning of
22 the imposition of the license agreement.

23 COUNCILMEMBER PETERSEN: Can we go back to
24 the marketing piece? I'm sorry.

16:54:37 25 COUNCILMEMBER DANIELS: So if you're

1 charging 5 percent to the customer, which is your legal
2 right to charge in order to pay for your user fee -- if
3 the 5 percent is on less of a dollar amount, does Cox not
4 stand to gain additional revenues?

16:54:54 5 MR. ROSENBAUM: No. There's no -- there's
6 no change in the pricing. So if the cable charge is \$20,
7 you tack on 5 percent -- Actually, because of the way
8 Gilbert calculates the fee, it's a little more than
9 5 percent. It's grossed up, so it's some number north of
16:55:10 10 5 percent. You say 5 percent on the 5 percent in the
11 gross-up. But that's an element of the Gilbert code. So
12 it doesn't --

13 COUNCILMEMBER DANIELS: It can't be more
14 than 5 percent, I mean . . .

16:55:21 15 MR. ROSENBAUM: It has to be --

16 COUNCILMEMBER DANIELS: No, it's not.

17 MR. ROSENBAUM: It has to be to comply with
18 the Gilbert code. It's in the record below. There's no
19 dispute about that, because there's a --

16:55:30 20 COUNCILMEMBER DANIELS: There is some
21 dispute, but --

22 MR. ROSENBAUM: It's a tax on the gross
23 receipts. The 5 percent is considered part of the gross
24 revenues, and so the calculation of the tax includes that.
16:55:40 25 It's a gross-up. There was no audit finding about that,

1 there was no dispute in the audit about that.

2 COUNCILMEMBER DANIELS: So you are okay with
3 audits, but just not okay with the auditor that Gilbert
4 used? I just want to make sure I'm clear, because you've
16:55:54 5 actually referenced him in, I think, maybe -- you said
6 that -- you said whether he is or isn't ethical. We have
7 every reason to believe that he is ethical. However,
8 you're okay with audits, but not with who we chose to use?
9 Just wanted to clarify.

16:56:11 10 MR. ROSENBAUM: It is the Town's right to
11 conduct audits. We have no problems with audits. I don't
12 want to make this personal about Mr. Lewis. We have
13 problems with his reasoning. It has its roots in its
14 advertisements, which really gets right to the core of
16:56:29 15 what he did. I mean, there's no -- You can take that ad
16 and see how he translated that into imposing this GAAP
17 requirement and using Cox's effort marketingwise to
18 address competition, how he did that. I could go into the
19 transcript and point to some questionable testimony, but
16:56:50 20 this really isn't about Mr. Lewis.

21 MAYOR LEWIS: Let's go to Councilmember
22 Petersen, please.

23 COUNCILMEMBER PETERSEN: Well, the marketing
24 thing -- real quick, I just wanted to ask a quick question
16:56:59 25 about it, if you go back to your marketing piece there.

1 So I guess what I'm confused about here is in big print,
2 it says save over \$32 every month, save on Cox digital
3 cable, high-speed Internet, and digital telephone. The
4 way it's marketed in big print seems to say you're saving
16:57:28 5 on all three. I see the fine print there. But why would
6 you market it in big print that way but then have the fine
7 print the other way? How does that help your marketing?

8 MR. ROSENBAUM: Well, there was no testimony
9 on that, but it seems obvious, to me, that the big -- the
16:57:39 10 big hook is I'm going to save \$32 and the smaller hook is
11 and here's where it's going to be allocated.

12 COUNCILMEMBER PETERSEN: Okay. One
13 follow-up. The brief -- in your brief, there's your --
14 you have five challenges here in your brief, and the fifth
16:57:56 15 one I need to get more information on. I'm genuinely just
16 confused. In your brief, on page 13 of it, you reference
17 the Town Manager's authority, that he exceeded his
18 authority under Section 18-80(d)(3). I looked for that
19 section of the code. There is no such section. So I'm
16:58:15 20 trying to figure out which section of the code you're
21 trying to refer to that he's supposed to limit himself to.
22 If you can help me with that, I would appreciate it.

23 MR. ROSENBAUM: I don't have that page of
24 the brief handy. I can pull it out and answer the
16:58:32 25 question, or perhaps we can answer that on follow-up.

1 MAYOR LEWIS: We'll move on and then come
2 back to it.

3 So let me just ask a last question, then
4 we'll transition. You mentioned the term "fierce
16:58:45 5 competitors" with the satellite companies. Is CenturyLink
6 considered a fierce competitor?

7 MR. ROSENBAUM: Oh, yes. Oh, yes.

8 MAYOR LEWIS: Thank you. Let's go to our
9 next group.

16:58:59 10 MR. HAMBLIN: Mayor and Members of the
11 Council, Mr. Rosenbaum has now spoken for 40 minutes --
12 actually, 41 minutes. If you wish to, you could give the
13 Town's representatives 40 minutes. If you wish to still
14 give Mr. Rosenbaum or the Cox side an additional 5 minutes
16:59:19 15 for rebuttal to hear from Ms. Anable, you may wish to add
16 additional time to that.

17 MAYOR LEWIS: Thank you. Please.

18 MR. HAMBLIN: Mayor, did you wish to
19 indicate how much time you and Council would like to
16:59:34 20 give --

21 MAYOR LEWIS: At this point, I would like to
22 stick with the 30.

23 Counsel okay with that?

24 And if we deem that unfair, in a few
16:59:41 25 minutes, we'll make adjustments.

1 MR. HAMBLIN: Thank you.

2 MS. SCHWAB: Thank you, Mayor Lewis, Members
3 of the Council.

4 It is an honor and a privilege to be here
16:59:56 5 today representing the interests of the Town of Gilbert in
6 this matter.

7 And let's talk about what is this case
8 about? What this case is about is truth, but verify --
9 trust, I'm sorry, let me -- trust, but verify. Cox wants
17:00:15 10 you to trust them. We've had a 15-year relationship with
11 Cox and they want you to trust them. But when you verify,
12 that's where they get concerned. And you've heard a lot
13 of talk and you all have asked some very, very significant
14 and important questions regarding the GAAP principles, the
17:00:33 15 GAAP rules.

16 And you're right, and Cox is absolutely
17 correct, GAAP is not required by the Town code. GAAP is
18 not required by the license agreement that Cox entered
19 into with Gilbert in 1999. Where the Town and the auditor
17:00:49 20 and the -- Judge Skelly, the Hearing Officer, and Town
21 Manager Banger got the GAAP requirement was from Cox's own
22 financial records that it provided to the Town. In those
23 audited financial statements, Cox represented that it
24 followed GAAP principles. The auditors who audited those
17:01:09 25 financial statements said Cox followed GAAP principles.

1 And nowhere in those audited financial statements do you
2 find an exception. That's where the requirement came into
3 play. It is not in the definition of gross revenues, nor
4 does it need to be. It came into play from Cox's own
17:01:26 5 representations. And the Town had a right -- in fact, it
6 had a right to rely on those representations. And
7 that's -- Mr. Lewis was called upon to review the billing
8 records, the financial records of Cox, which he did, and
9 he found that Cox did not follow the GAAP rules as they
17:01:46 10 represented they did. And that's why we're here today.
11 That's why we're here talking about bundled services
12 discount.

13 COUNCILMEMBER RAY: Mayor?

14 MAYOR LEWIS: Please.

17:01:57 15 COUNCILMEMBER RAY: Kelly, Mr. Rosenbaum
16 made lots of good arguments. One of the things that he
17 talked about was Mr. Lewis, who did the audit. And as a
18 generalization, Mr. Rosenbaum seemed to put it as, say, an
19 auditor who was -- who's in the business of making
17:02:19 20 municipalities money, doing all that he can to go out and
21 find ways to make them money. When Gilbert decided to do
22 this audit, however many years ago, what was the reason
23 behind it? Did Gilbert just think, "You know what? We're
24 low on money. We need to go find more money. Let's go
17:02:38 25 find an auditor. Let's look online for who can bring us

1 the most money"? What's the background for wanting to do
2 an audit?

3 MS. SCHWAB: And that's a very good
4 question. This case is not about increasing revenues for
17:02:48 5 the Town. The Town had heard from other municipalities
6 that there were some audits being done and some
7 discrepancies noted in those audits of Cox records, so
8 being good public stewards of the public monies, they went
9 out and they retained an independent auditor. They did
17:03:04 10 not find someone that worked for the Town before, worked
11 for Cox before. They went out to find someone independent
12 and they had found Mr. Lewis, who had done over 300 of
13 these license fee compliance reviews. And that's what was
14 done in this case. And that was conducted.

17:03:19 15 COUNCILMEMBER RAY: So the fact that we
16 continue to talk about being an out-of-town auditor, does
17 that have any significance here, or is that just who the
18 Town chose to use? Whether he's from Florida, or from
19 Yuma, or from Gilbert, if he's qualified or she's
17:03:33 20 qualified, they would use that person. Is that a fair
21 statement?

22 MS. SCHWAB: That is a very fair statement.
23 They wanted someone independent -- the Town wanted someone
24 independent and qualified. That's plain and simply what
17:03:45 25 we did.

1 MAYOR LEWIS: Councilmember Taylor?

2 COUNCILMEMBER TAYLOR: Kelly, can you show
3 me in GAAP specifically what prevents Cox from applying
4 the discounts however they want to?

17:03:54 5 MAYOR LEWIS: Mr. Mayor, Councilmember
6 Taylor, there is nothing that addresses discounts and how
7 they are applied either in the agreement or in the code.
8 Again, we go back to it is based on --

9 COUNCILMEMBER TAYLOR: In GAAP. You've
17:04:09 10 addressed that in terms of the agreement and in code. But
11 because I think you're saying it's GAAP that requires them
12 to evenly distribute the discounts. I've been looking all
13 over for where that specifically is. Maybe you can help
14 me on what that is. I saw topic 605. I tried to dig into
17:04:26 15 that. I couldn't find the word. Help me understand why
16 GAAP and then -- Well, I'll have a follow-up on that as
17 well, but that would be great. If you want to put some
18 wording up on the screen, that would be helpful.

19 MS. SCHWAB: Unfortunately, I don't think
17:04:42 20 I'm going to be able to put wording on the screen. But I
21 will tell you in October 2009, the financial group -- and
22 I am not a finance major, so this is very difficult for me
23 to explain finance to you, I'm a lawyer. But the group
24 that oversees and explains GAAP and makes rules in the
17:05:01 25 application of GAAP issued ruling 2009-13, which provided

1 guidance on how to allocate discounts when discounts are
2 given on bundling of services where you bundle the
3 services and then you give a discount on the overall,
4 which is what happened here, that those discounts are to
17:05:20 5 be applied proportionately to the services charged.

6 COUNCILMEMBER TAYLOR: So that was issued in
7 October of 2009?

8 MS. SCHWAB: That's correct.

9 And if you look at Town of Gilbert
17:05:33 10 Exhibit 10 in all your exhibits, you'll have the
11 accounting standards update that was provided that
12 explains that rule.

13 COUNCILMEMBER TAYLOR: Thank you, Kelly.
14 Exhibit 10, does it have that wording in
17:05:47 15 there?

16 MS. SCHWAB: It does.

17 COUNCILMEMBER PETERSEN: I have a quick
18 question about audits.

19 MS. SCHWAB: And if I may just expand on
17:05:55 20 that, that specific rule was referenced in Cox's own
21 audited financial statements.

22 COUNCILMEMBER PETERSEN: When Cox has said
23 we had a right to perform an audit, as a normal auditing
24 process, is it always reviewed for compliance with GAAP?
17:06:14 25 If you're going to audit some financial statements or

1 records, does the audit always include a review for
2 compliance with GAAP?

3 MS. SCHWAB: And, again, if I may,
4 Mr. Mayor, Councilmember Petersen, I am not a finance
17:06:29 5 expert. The reason -- And it was not a true audit.
6 That's almost a misnomer. It really was a review of
7 compliance with payment of the license fee. And the
8 reason GAAP was applied was because that's what Cox's
9 statements referenced, and that's what they told us was
17:06:44 10 applied, and that's what they told us what was followed.

11 So GAAP is the norm, especially in this
12 industry, and is applied -- used by most of the cable
13 industry in its records. And, again, there's a good
14 reason for it. It's so -- And Mr. Rosenbaum eloquently
17:07:01 15 said it's so investors can compare how the business is
16 doing. It's so regulatory bodies know how to review the
17 records, and it's so Gilbert had a road map for reviewing
18 the financial records. And that's what Gilbert did.
19 That's what they did through Mr. Lewis.

17:07:25 20 MAYOR LEWIS: Vice Mayor Cook?

21 VICE MAYOR COOK: Kelly, in the Cox brief on
22 page 12, I guess we'll call it E, this says the Town
23 Manager exceeded his authority under the code because he
24 made findings and conclusions regarding issues beyond
17:07:42 25 those presented in the audit. Cox did say that the Town

1 has the right to inspect and audit Cox Cable services, but
2 then it came back and said something about Cox, I guess,
3 may feel that they have the opportunity to challenge the
4 audit. I guess I'm a little bit -- Maybe I don't
17:08:04 5 understand the process. If we audit and the Town Manager
6 feels that the data is correct, that Cox feels like it's
7 incorrect, is there a process here that I'm missing?

8 MS. SCHWAB: Mayor Lewis, Vice Mayor Cook,
9 there is a process and this has been the process. And, in
17:08:24 10 fact, the Town staff worked with Cox representatives on
11 agreeing to the process that would be followed in this
12 case for challenging the findings of the auditor relating
13 to the application of the bundled services discount. We
14 agreed to hire an independent hearing officer --

17:08:42 15 Actually, the normal process in the code during the
16 relevant times -- and, again, this is just for years 2009,
17 2010, and 2011 -- the process was we would have the
18 hearing before the Town Manager where Cox representatives
19 could explain to him why they disagreed with the findings
17:08:59 20 of the compliance review, and the Town Manager would make
21 the determination. In order to provide an overabundance
22 maybe -- if that's the correct way to term it --
23 terminol- -- to say it, we agreed to bring in an
24 independent hearing officer in retired Judge Skelly, and
17:09:19 25 Cox and our office readily agreed to have Judge Skelly

1 hear this. And we spent an entire day hearing -- where
2 Judge Skelly heard witnesses for both sides, reviewed
3 exhibits, and made findings based on the evidence
4 presented to him. So we do not agree with the statement
17:09:36 5 by Cox that Judge Skelly or the Town Manager exceeded
6 their authority. Cox has gotten due process.

7 And if I may, I would ask you to carefully
8 scrutinize those findings, because what I think you will
9 find is not only are they well reasoned, they're supported
17:09:55 10 by the evidence. They are supported by the law and they
11 are correct.

12 MAYOR LEWIS: Thank you.

13 Councilmember Taylor?

14 COUNCILMEMBER TAYLOR: So, Kelly, I guess
17:10:07 15 two points. I'm still not seeing it in 10.

16 I see tables in Exhibit 10, so I don't know
17 if, Ms. Ronan, you can approach the dais or get a copy of
18 that to me. But I'm just seeing more tables in terms
19 of --

17:10:22 20 MS. RONAN: Show me what you're looking at.

21 COUNCILMEMBER TAYLOR: I'm looking in the
22 packet.

23 MS. SCHWAB: I thought all the exhibits were
24 provided, so I'm going to apologize if they weren't.

17:10:33 25 COUNCILMEMBER TAYLOR: We can come back to

1 that. I'm looking at Exhibit 10 that --

2 So -- and then, Kelly, another -- another
3 question is --

4 UNIDENTIFIED SPEAKER: Should I turn on the
17:10:56 5 overhead?

6 COUNCILMEMBER TAYLOR: Sure, yeah. That
7 would be great.

8 MS. SCHWAB: I'm going to show the first
9 page because I think this shows -- This is the exhibit we
17:11:10 10 are referring to. And, again, that is referenced in Cox
11 audited financial statements provided to the Town.

12 With my lovely assistant, this is the
13 provision we're talking about. It talks about the
14 arrangement of proportionality on the basis of each
17:11:33 15 deliverable selling price.

16 COUNCILMEMBER TAYLOR: I appreciate that.
17 It's definitely not Exhibit 10 in this packet, but I know
18 we have a lot -- I'm juggling a lot of different packets.

19 MAYOR LEWIS: We've only got 2,000 pages to
17:11:52 20 work with. Come on here.

21 COUNCILMEMBER TAYLOR: That helps. Thank
22 you.

23 MS. SCHWAB: I think I can simplify it if I
24 can jump ahead and --

17:11:58 25 COUNCILMEMBER TAYLOR: You know, let me ask

1 another follow-up question here, then I would love to hear
2 some additional thoughts.

3 So as I'm trying to put the story together
4 here, the auditor was brought in to audit the relationship
17:12:09 5 that we have here in terms of how Cox is paying their
6 license fee. And then it seems to take a turn to how
7 Cox's financial accounting system is following general
8 accepted accounting principles. So why -- why does --
9 You know, I know there's been consistent rulings on this,
17:12:30 10 but for me, the inconsistency here is why is an auditor
11 not sticking to what is in a contract which both parties
12 signed? Of course that can change in the future, no
13 problem. But why is it changing to an audit of their
14 financial accounting processes and finding
17:12:50 15 inconsistencies? You'll find that in any company.
16 They're big, they're complex. But can you speak to that
17 in terms of auditing? What was in the actual agreements
18 and what people are -- you know, are we performing to the
19 contract that we agreed to?

17:13:04 20 MS. SCHWAB: Yes, I may -- I believe I can
21 address that, Mayor Lewis, Councilmember Taylor. What
22 Mr. Lewis was brought in was to review the gross revenues
23 that Cox was reporting to the Town, because the license
24 fee is 5 percent of the gross revenues on cable services.
17:13:22 25 So that is what Mr. Lewis was reviewing, the gross

1 revenues. And in doing that, he reviewed all of the
2 billing statements, financial documents of Cox. And where
3 that becomes relevant is that because Cox's audited
4 financial statement said they complied with the GAAP
17:13:41 5 rules -- which include when you apply a discount on
6 multiple services, you proportion that discount across all
7 the services, and in the case that Cox was presenting for
8 2009, 2010, and 2011, they were proportioning the discount
9 100 percent in 2009 to cable services, none to the other
17:14:05 10 two services; in 2010, approximately 98 percent to cable
11 services, 2 percent to phone and Internet; and in 2011,
12 approximately 80 percent to cable services and only
13 20 percent to phone and Internet. That's where it was not
14 a -- this was not a review to determine if they were
17:14:24 15 complying with GAAP. It was a review that determined that
16 they were bringing in and reporting gross revenues
17 appropriately. And because Cox represented that they
18 complied with GAAP, Mr. Lewis applied the discount in
19 compliance with GAAP proportionately. Cox was not
17:14:44 20 applying the discount proportionately. And what's
21 significant about that is nowhere in Cox's audited
22 financial statements or any other reporting it did to the
23 Town did it note that it was doing anything other than
24 complying GAAP -- with GAAP for that discount. That's why
17:15:00 25 the Town had the right to rely on that representation.

1 And Mr. Lewis appropriately applied GAAP
2 rules to the discount. And that was just a determination
3 of gross revenues. Because how much of that discount is
4 applied to cable is relevant to gross revenues, and if
17:15:18 5 it's applied the way Cox says it's supposed -- they are
6 doing it in accordance with GAAP, it would have applied
7 more than a hundred -- it would have been applied less
8 than a hundred percent to cable.

9 Does that answer your question, I hope?

17:15:30 10 COUNCILMEMBER TAYLOR: Yeah. Thank you,
11 Kelly.

12 MAYOR LEWIS: Councilmember Cooper, then
13 Councilmember Daniels.

14 COUNCILMEMBER COOPER: Sorry. Just want to
17:15:41 15 make sure -- so what I think I heard you say earlier is if
16 we were looking at the parent's financial statements and
17 they are in compliance with GAAP, we would expect to find
18 a note somewhere that says that the subsidiaries are not
19 complying with GAAP or at least they're not using GAAP
17:16:02 20 standards in areas like this. Is that what I'm hearing
21 you say?

22 MS. SCHWAB: And if you read the rules
23 specifically on GAAP, where something deviates from the
24 GAAP principles, it is supposed to be noted in the
17:16:15 25 financial statements. There was no note to that effect.

1 And Cox chose to provide its parented -- its parent's
2 audited financial statements rather than its own, and
3 that's the representation they gave the Town. And, again,
4 the Town had a right to rely on it.

17:16:31 5 MAYOR LEWIS: Councilmember Ray?

6 COUNCILMEMBER RAY: Do you know if other
7 companies -- Qwest, for example, they have been
8 mentioned -- do they use GAAP principles at a local level
9 or state level?

17:16:46 10 MS. SCHWAB: I -- Mayor Lewis, Councilmember
11 Ray, I'm a little uncomfortable answering that. I will
12 say I've heard that they do from Mr. Lewis, but I have not
13 verified that independently.

14 COUNCILMEMBER RAY: Fair enough.

17:16:59 15 MS. SCHWAB: And I have pulled up one of the
16 Cox bills, and it is in your -- the revised PowerPoint we
17 put in front of you. And I want you to look at this,
18 because Cox has told you that they allocated the discount
19 in accordance with their marketing materials -- the fine
17:17:15 20 print of their marketing materials, but you'll note on the
21 bill, and this is a sample of the bill, where they lay out
22 what they charge, the discount that they give, 29.99,
23 license fees, taxes, all of that, but it doesn't say where
24 they're allocating that discount on the bill. So if it
17:17:34 25 was significant to the customer, you would think that Cox

1 would allocate it -- highlight it on the bill. Let's go
2 back to one of their marketing materials which
3 Mr. Rosenbaum showed you earlier. It says that if you
4 purchase all three services, cable, telephone, and
17:17:51 5 high-speed Internet, it comes at a cost of \$80 a month.
6 Then there's fine print, which includes something about
7 allocating that discount. Chris Skelly found that that
8 fine print was not significant. Town Manager Banger, in
9 adopting Chris Skelly's findings, found that that was not
17:18:14 10 significant.

11 And let's look at it from a rational person
12 test. If I'm going out and I'm buying Cox services, I'm
13 going to look at my bottom line. And if I can get these
14 three services for \$80 when I know it's 120 if I buy them
17:18:28 15 at a regular price, that's what I'm going to be concerned
16 about. So not only did the Town have the right to rely on
17 Cox's representations that it complied with GAAP
18 principles, it was a logical -- it was logical for the
19 Town to assume that what the customer was concerned about
17:18:48 20 was the bottom line, not how those discounts are applied.

21 Cox, they're brilliant business people and
22 we applaud them. They came up with the bundled services
23 system to compete. We're not here telling them not to do
24 that. We're not here telling them how much discount to
17:19:05 25 give, how much they should charge for rates. We're asking

1 them to adhere to the representations they made to the
2 Town. And during 2009, 2010, 2011, their representation
3 was they complied with GAAP. And so in the gross revenues
4 that they reported, they should have had the discount
17:19:27 5 proportionally among the three services, not allocated all
6 to one, cable -- or not all to cable services.

7 And what they do in the future is to them
8 because this is not about generating revenue for the Town.
9 This is the Town being good stewards of the Town's money,
17:19:45 10 collecting the rent that is due for Cox using its
11 facilities. Because that's the whole basis of this
12 agreement, is they're paying the Town rent for use of our
13 facilities. Because as a business, if you need to have a
14 place to operate out of, you have to either pay rent or
17:20:02 15 own the place. We pay rent for our law firm. We pay it
16 to our partners. It works out well, but we pay rent.
17 That's simply what we're asking Cox to do. They got the
18 benefit of their bargain with their agreement with the
19 Town. They are able to use the Town's right-of-way for
17:20:18 20 their services -- for their facilities to get the cable
21 services out to their customers. They did not have to go
22 out and purchase property separate and apart from the
23 Town. It makes sense. The Town has the right to collect
24 the rent due and owing to it in full. That's quite simply
17:20:36 25 what this case is about.

1 MAYOR LEWIS: Let me jump to prior
2 discussion that its competition, satellite vendors, do not
3 have to pay a fee for using land because they're satellite
4 vendors. But CenturyLink was determined a fierce
17:20:51 5 competitor. Does CenturyLink do likewise and pay a fee
6 for the use of the land?

7 MS. SCHWAB: That is an excellent question,
8 Mayor Lewis. And the Town's code requires that the Town
9 treat all cable service providers the same, so every cable
17:21:06 10 service provider in the Town that wants to use the Town
11 facilities -- the Town right-of-way has to pay that
12 service.

13 MAYOR LEWIS: And I understand the
14 service -- there's a standard across the country and the
17:21:20 15 fee the Town is asking for seems to be a standard. Is
16 that correct?

17 MS. SCHWAB: That is correct.

18 MAYOR LEWIS: Have we had any problems with
19 CenturyLink with this issue?

17:21:29 20 MS. SCHWAB: Mayor Lewis, none, that I am
21 aware of. None, that I am aware of. It's our
22 understanding they do not allocate discounts. They
23 allocate their discounts proportionately.

24 MAYOR LEWIS: Thank you.

17:21:43 25 Continue? Unless there's a question, please

1 continue.

2 MS. SCHWAB: So, Mayor -- and I'm not going
3 to belabor the point. Why it is important that we hold
4 Cox to following the principles they tell us they're
17:21:58 5 following is so that we can make an actual
6 determination -- we can verify, we can trust Cox, but we
7 can verify that they are paying the full 5 percent due and
8 owing for the rent for the Town's right-of-way, so we can
9 compare apples to apples.

17:22:15 10 And that's why I just want to give you a
11 quick example of what that means for the GAAP rule, how it
12 applies. I think we talked about it sufficiently. But
13 under the scenario that Cox is telling us they should be
14 able to do, they could basically say, "We're not going to
17:22:30 15 charge anything for cable if you buy telephone and
16 Internet, but we're not going to pay anything to the
17 Town."

18 There's another very important principle
19 here besides GAAP and it's called the covenant of good
17:22:42 20 faith and fair dealing, and that is an implied covenant in
21 every contract entered into in the United States, and that
22 is an implied contract in our agreement with Cox. And
23 that's what we're asking Cox to do, deal fairly with us,
24 tell us the rules that you're following for accounting,
17:22:57 25 and then follow those rules. Because the way they want to

1 be able to allocate the discount is going to change every
2 year and it's going to cause us -- instead of being able
3 to compare apples to apples and make sure as good stewards
4 of public monies that we're getting the rent due, we're
17:23:14 5 going to be comparing pumpkins, pineapples, and puppies.
6 And so, Cox, simply follow the rules you tell us you are
7 following.

8 And so just in sum --

9 MAYOR LEWIS: Go back, that slide, the top
17:23:29 10 one. That's -- that first bullet is a direct statement
11 from our Hearing Officer.

12 MS. SCHWAB: That is correct.

13 MAYOR LEWIS: Continue.

14 MS. SCHWAB: My understanding from the
17:23:42 15 experts relied upon, GAAP is the norm in the cable
16 industry. And that's why Cox's audited financial
17 statements say they follow it. That's why their auditors
18 verify they followed it.

19 So let's just quickly go through Cox's
17:23:58 20 allegations. They have said this is illegal rate
21 regulation. The Town's not here setting Cox's rates.
22 It's not telling them what discounts they can apply. It's
23 simply saying follow the rules -- follow the rules so we
24 can determine the right amount, that we can verify we're
17:24:14 25 getting our rent. And license fees are not a tax. Quite

1 honestly, the email and the mailers Cox sent out were
2 flamboyant and wrong. License fees are not a tax. Courts
3 across the country have said this. Hearing Officer Skelly
4 found that to be the case. Your Town Manager adopted
17:24:35 5 that. It is merely rent.

6 And, again, GAAP is not required. Cox chose
7 to use GAAP. The gross revenue definition does not deal
8 with bundled services discount. It doesn't need to,
9 because how gross revenues is defined -- it's clearly
17:24:53 10 defined. It's a very comprehensive definition in the
11 agreement and in the code. What matters is the accounting
12 and how the discount was allocated. That's what we're
13 here for.

14 And, again, Cox can't compete. Every cable
17:25:08 15 service provider in the Town is treated the same. They
16 all have to pay the same rent for use of the Town's
17 right-of-way. And, again, who pays that license fee?
18 What is important is if Cox had actually assessed the
19 license fee and been charging the customers -- it's chosen
17:25:27 20 to do a pass-through for the license fee, which it is
21 legally able to do, there's no problem with that -- had
22 they been collecting the license fee as they should have,
23 it would have amounted to approximately 30 cents a month
24 over the three years for this audit period per customer.
17:25:44 25 So we're not talking a significant amount of money. They

1 can't pass the interest on to the customers. And from
2 here on out, Cox could pay the amounts. They can pass it
3 through as a one-time fee, or they can pass it through
4 spread over time. That is a business decision of Cox.
17:26:00 5 But had they been collecting it as they were required to
6 do, it would have amounted to approximately 30 cents a
7 customer a month.

8 So what should the Council do? Again, I'm
9 going to ask that you closely scrutinize the Hearing
17:26:13 10 Officer's decision that was adopted by the Town Manager,
11 because I think you will find the findings made in that
12 decision are rational, are based in law, are based on the
13 evidence presented by Cox and the Town after an all-day
14 hearing, and make sense.

17:26:31 15 It merely requires Cox to honor its
16 agreement with Gilbert in full and pay the license fee
17 deficiency for the three years of \$365,066. And the
18 agreement and the code require -- or obligate -- I
19 shouldn't say "obligate" -- allow for the assessment and
17:26:49 20 interest on the deficiency, and that amount would be, as
21 of today, \$285,099. And with that, I'll end with two
22 minutes to spare -- almost three minutes to spare.

23 MAYOR LEWIS: Councilmember Taylor, we'll
24 take the two minutes.

17:27:03 25 COUNCILMEMBER TAYLOR: I'm sorry. I have

1 one more question here.

2 MS. SCHWAB: Absolutely.

3 COUNCILMEMBER TAYLOR: So it was cited that
4 the FASB ruling -- I guess that's who issued -- you know,
17:27:10 5 they're the governing body --

6 MS. SCHWAB: Yes.

7 COUNCILMEMBER TAYLOR: -- October 2009. So
8 why should this apply retroactively?

9 MS. SCHWAB: Because, quite honestly, if you
17:27:21 10 read that ruling, it was a clarification of the way things
11 should have been done. And so --

12 COUNCILMEMBER TAYLOR: Because, you know,
13 when FASB issues guidance and updates the GAAP book, then
14 the accountants take it and the lawyers take it -- you
17:27:38 15 know, the application of that could take a year or two,
16 realistically, depending upon the magnitude of it. So I'm
17 kind of interested to know, number one, why retroactively
18 should we be considering this? And then, you know, we
19 have fiscal '10 and '11 in play, and I can see that, but
17:27:58 20 just understanding how business works and how their
21 accounting systems pick it up. Any additional comments
22 there?

23 MS. SCHWAB: The reason it is relevant in
24 this case is because in Cox's own financial statements,
17:28:18 25 they note that ruling in 2010 and they note that it does

1 not have any material guidance.

2 My understanding is that that -- the
3 proportionality requirement for bundled services discounts
4 was a requirement. It was merely clarified in this ruling
17:28:35 5 and should be applied.

6 MAYOR LEWIS: Vice Mayor Cook?

7 VICE MAYOR COOK: Kelly, outside of the
8 ruling and moving forward as relates to best practice in
9 your trust and verify, is there a recommendation or
17:28:56 10 something that may have been agreed between the two
11 parties as it relates to moving forward how that might
12 happen, or has that not even been discussed, or is that
13 that a recommendation from the Council that we give
14 direction to staff? Can you explain a little bit about
17:29:12 15 that?

16 MS. SCHWAB: Mayor Lewis, Councilmember
17 Cook, there are ongoing negotiations and they're really
18 not a part of this. This really is an appeal of the
19 license fee compliance findings, and I would ask that we
17:29:25 20 limit that. There will be another forum. There are
21 discussions. And of course now that we know there's
22 confusion, we're going to ask that those confusions be
23 addressed in a new agreement and new ordinances. But that
24 will be another matter for you to address.

17:29:39 25 MAYOR LEWIS: Any other comments? Okay.

1 Thank you.

2 David, please.

3 MR. HAMBLIN: Mayor, Members of the Council,
4 the ordinance is in place. It was amended last fall, I
17:30:00 5 believe, or earlier this year governing from that passage
6 forward.

7 MAYOR LEWIS: Thank you.

8 MR. ROSENBAUM: On that point, I agree with
9 counsel's comment. I don't think that's part of the
17:30:17 10 appeal. The other thing that's going on behind the
11 scenes, license renewal negotiations, so I think all those
12 issues going forward hopefully will be resolved.

13 If I can make one final point -- and I
14 understand that perhaps this is a hostile appellate panel
17:30:39 15 here to my position -- I understand not to Cox but to my
16 position and Cox's position -- all the arguments that
17 Gilbert's counsel made about representations by Cox and
18 that because Cox's financial statements are prepared in
19 accordance with GAAP, that somehow a representation about
17:31:02 20 how it would treat revenues from customers under the code
21 is based on the fundamental premise that GAAP financial
22 statement accounting rules -- the FASB that Councilman
23 Taylor mentioned -- has anything to do with how to report
24 for taxes or license fees. And it's a fundamental premise
17:31:22 25 and we cited the cases in our briefs -- and those of you

1 who have the financial background understand that what I'm
2 saying is absolutely right. GAAP financial reporting
3 rules do not apply to your obligations to pay license fees
4 or taxes under an ordinance or a statute. They are
17:31:42 5 separate sets of books required by law to be separate sets
6 of books. Because what you're required to pay on a tax or
7 a license has nothing to do with how GAAP will require you
8 to report trends over time in a financial statement. And
9 that's all the FASB is saying. And yes, in Cox's
17:32:05 10 consolidated financial statements at the parent level, it
11 does, in fact, do exactly what the FASB requires. It
12 takes all of these general ledger entries and it
13 proportionally allocates so that a financial investor will
14 know, based upon GAAP -- they're assuming GAAP applies --
17:32:24 15 what are the revenues from these different services. That
16 has nothing to do with what the local company is supposed
17 to report when complying with the language of the code.
18 And the language of the code says gross
19 revenues -- the language of the code, the Hearing Officer
17:32:40 20 said, doesn't require GAAP. So that's why Cox complied
21 both with GAAP reporting requirements and with local
22 license fee reporting requirements and why there's no
23 misrepresentation. And that term was used repeatedly and
24 very strongly, but let's make clear what counsel is
17:33:01 25 saying. There is no evidence whatsoever in this record

1 that anybody from Cox said to anybody at Gilbert, "By the
2 way, when we're transmitting our receipts on collections,
3 we are reallocating." No. What they're saying is because
4 when Cox presented its audited parent financial
17:33:21 5 statements, consolidated financial statements, in there it
6 said GAAP. There's no evidence anybody at Gilbert
7 actually read that, but somehow that's a representation
8 that that's how GAAP -- how Cox is also reporting its
9 receipts for the license fees. It's not a representation.
17:33:38 10 That's a misconstruction and misunderstanding of what GAAP
11 requires, if anyone looked at that, at Gilbert. Because a
12 GAAP financial statement doesn't tell you anything about
13 tax payments, license fee payments under contracts or
14 ordinances, so there was no misrepresentation.

17:33:58 15 And this new theme is nowhere in the
16 auditor's report. He says GAAP applies, period. He
17 doesn't say GAAP applies because somebody at Cox led
18 somebody at Gilbert to believe that GAAP applies. If you
19 read the Town's briefs to the Hearing Officer at the
17:34:21 20 beginning of the hearing, there's no mention of this fraud
21 or misrepresentation theory, and of course he rejected
22 that. He said Cox acted in good faith. And he rejected
23 the basis on which the auditor made his assessment, which
24 is that GAAP applies. So instead, he had this other
17:34:40 25 explanation that he, I think, disagreed with the marketing

1 campaign in the audit period, that "You just went too far,
2 Cox. You didn't have to allocate proportionately, because
3 GAAP doesn't apply, but you're marketing your discounts
4 too heavily." That was wrong because it's not rooted in
17:34:59 5 our code and that's wrong because it wasn't the basis of
6 the audit.

7 COUNCILMEMBER COOPER: I'm just looking at
8 the Hearing Officer's comment on page 10, item 2 at the
9 top of the page, where he says in addition to GAAP
17:35:12 10 requiring that kind of allocation, it seems to be the only
11 logical, reasonable way to do it. And I just would love
12 to hear what other logical, reasonable way to do it Cox
13 would put out there.

14 MR. ROSENBAUM: Exactly what Ms. Anable
17:35:31 15 testified to at the hearing, and if she has a moment,
16 maybe she will tell you directly, which is this was how
17 Cox was facing the competition.

18 By the way, during the audit period, Qwest,
19 CenturyLink, was offering a bundle with DIRECTV, so there
17:35:47 20 were no license fee payments. It wasn't offering a cable
21 service during the audit period, so yes, they were a
22 fierce competitor and a competitor that when they want to
23 lay, television customers were hurting, not just Cox, but
24 hurting the Town of Gilbert.

17:36:07 25 So that was the logical and reasonable

1 explanation and a new marketing decision, again, that had
2 nothing to do with this audit, which is they're not
3 discounting the cable portion at all.

4 By the way, the bill you saw was from 2014,
17:36:18 5 and it has nothing to do with any of the discounts that
6 were shown during the audit period. That's irrelevant.

7 So I think that's a fundamental --

8 COUNCILMEMBER PETERSEN: Can I ask you a
9 question about the bills from the audit, though? Am I
17:36:33 10 incorrect in stating that the bills from the audit are the
11 same way, that the bundled discount was a separate line
12 and not specifically directed to any other service on the
13 bill? Is that a fair characterization of those previous
14 bills?

17:36:45 15 MR. ROSENBAUM: The bills varied from time
16 to time through the audit period. Many of the bills did
17 reflect that, so -- but you can -- The way to determine
18 where the discount is being applied -- some were above the
19 line, some were below the line is what I'm saying. But
17:37:03 20 there's no question -- in fact, that's why we're here --
21 when the discount was applied for purposes of assessing
22 the license fee, the discount was taken -- where that was
23 the advertisement, the discount was taken --

24 COUNCILMEMBER PETERSEN: I'm just simply
17:37:19 25 asking if those previous bills were basically shown the

1 same way as far as calling it a bundled discount separate
2 line item and not categorized to any other service in
3 particular.

4 MR. ROSENBAUM: I think the answer is some
17:37:30 5 of them looked like that, some of them didn't. They
6 varied. Some of the bills are among the exhibits.

7 COUNCILMEMBER PETERSEN: Can you show me any
8 that didn't look like that? I'm sorry. I looked at a lot
9 of them, and they all seemed to, so I'm just curious.

10 MR. ROSENBAUM: I'll see if we can't find
11 some.

12 By the way, in answer to the question, I
13 think that was a typo. On the same page, we cited Title
14 18 Section 86(a)(3). I think that citation should have
17:37:56 15 been to 86(a)(3) the second time on the page.

16 COUNCILMEMBER PETERSEN: That's good.
17 Because I have a question, then.

18 MR. ROSENBAUM: All right.

19 COUNCILMEMBER PETERSEN: Because you seem to
17:38:05 20 indicate that the Town Manager's authority is limited to
21 responding -- in essence, responding to the audit
22 findings. But in 86-8- -- let's see. Where is that?
23 Sorry. The section you just referenced, it seems to say
24 that he has the right to do four different things, and all
17:38:29 25 of them are related to finding whether or not the licensee

1 has kept the terms of the license. Am I missing
2 something? That seems a little broader than just
3 responding to an audit.

4 MR. ROSENBAUM: In the context of this
17:38:45 5 particular dispute, that was the issue. So we have
6 protested the audit, and he delegated the fact-finding to
7 the Hearing Officer to deal with the audit protest, so
8 there was no finding outside of the audit finding. That
9 was what was contested. I think that was the point we
17:39:04 10 were making.

11 COUNCILMEMBER PETERSEN: I guess I still
12 don't follow. I see he has a right to determine whether
13 or not the licensee is in violation of the license. It
14 seems that he's made that determination. I don't know how
17:39:15 15 that's out of the scope of the code.

16 MR. ROSENBAUM: No question to the extent
17 the finding has to do with whether or not the audit was
18 valid or not. For example, the good faith and fair
19 dealing argument that we just -- we just heard had nothing
17:39:28 20 to do with the audit finding. It was not part of the
21 Hearing Officer's decision.

22 COUNCILMEMBER PETERSEN: I agree, but the
23 Town Manager, all he did was reaffirm the Hearing
24 Officer's decision. So you are right, the Hearing Officer
17:39:42 25 didn't address the good faith -- in fact, he threw out any

1 evidence of, you know, foul play, if you will, or intent
2 to deceive or whatnot.

3 MR. ROSENBAUM: That's right.

4 COUNCILMEMBER PETERSEN: I guess I'm still
17:39:55 5 confused as to why you say the Town Manager somehow did
6 something different than the Hearing Officer, when all the
7 Town Manager did was reaffirm the Hearing Officer's
8 findings.

9 MR. ROSENBAUM: I think our point is that to
17:40:06 10 the extent the Town Manager strayed from the issue that
11 was on appeal from the audit, which is does GAAP apply or
12 doesn't apply -- to the extent he interjected a new theory
13 that the auditor didn't adopt, that there's some excessive
14 marketing limit that's not constrained by GAAP
17:40:23 15 proportionality rules but by something else, that that
16 exceeds the Hearing Officer's/Town Manager's authority.

17 COUNCILMEMBER PETERSEN: So his ruling and
18 order is one paragraph and it doesn't say anything about
19 anything other than to reaffirm the Hearing Officer -- I
17:40:38 20 don't know -- when you say to whatever extent he
21 exceeded -- the Hearing Officer, he was beyond his
22 authority, even if that's true -- and I don't know that it
23 is -- he didn't. All he did was reaffirm the hearing --
24 I'm still trying to understand that allegation that
17:40:53 25 authority was exceeded under that code.

1 MR. ROSENBAUM: Substitute Hearing Officer
2 for Town Manager, I think it's the same argument. The
3 issues to be decided at the hearing and ultimately
4 affirmed or not affirmed by the Town Manager were those
17:41:05 5 that were presented in the audit and appeal. So this --
6 any -- In other words, it had to be an up or down on the
7 GAAP issue, and it's too late at the hearing to interject
8 some new argument whether it's good faith and fair
9 dealing, whether it's excessive marketing campaign. That
17:41:23 10 wasn't the basis of the audit, and there's no authority to
11 stray outside of those -- That's the only point that
12 we've been making.

13 COUNCILMEMBER PETERSEN: Mayor, may I ask
14 one last question? Then I'll be quiet.

17:41:34 15 MAYOR LEWIS: Please.

16 COUNCILMEMBER PETERSEN: What is wrong with
17 Officer Skelly's reasoning under his recommendation and
18 ruling number 1 when he says, When a customer signs up and
19 pays the one discounted price, he is signing up for all
17:41:44 20 three services, else why purchase that bundle? Cox is
21 providing that discount to entice them to sign up for all
22 three services, not just cable. Some of the discount,
23 therefore, has to be fairly attributed or derived from
24 Internet and telephone in addition to cable, and our code
17:42:01 25 says derived from. He goes into the being derived from

1 and the broadness of that. What's wrong with his
2 reasoning there? I've read it many times.

3 MR. ROSENBAUM: Because Cox advertises to
4 the customer, albeit in a footnote, if you buy this
17:42:16 5 bundled service, this is how we are pricing your cable.
6 That is Cox's decision to make. That is, the only
7 revenues derived and received from cable are what are
8 advertised to the customer. That's the agreement with the
9 customer. And so I agreed with everything you read from
17:42:37 10 Hearing Officer Skelly until that conclusion, that
11 certainly the customer is expecting the bundle, but the
12 customer is also expecting the pricing that is promised in
13 the advertisement, and nothing else.

14 And, again, getting back to the definition
17:42:54 15 of "gross revenue," as Hearing Officer Skelly agreed,
16 there is no GAAP reallocation. He just seemed to think
17 that this was too much, that maybe 75 percent or
18 60 percent would have been fine. And that's not rooted in
19 the language of gross revenue. And we're here on --
17:43:14 20 appealing an assessment that comes from application of the
21 definition of "gross revenue."

22 COUNCILMEMBER PETERSEN: Well, I guess I'm
23 just -- I'm confused, then, again, because the definition
24 talks about being derived, received, directly or
17:43:26 25 indirectly. It's very broad. And I guess my question --

1 core question is, how can you -- if you can't get a
2 customer to sign up for all these services without
3 providing discounted savings in cable service, how can you
4 not attribute some of that other revenue for those other
17:43:45 5 services to the fact that you offered that discount on
6 cable? How is it a useful tool otherwise?

7 MR. ROSENBAUM: Depends what ad you're
8 running and what you are offering as the discount. So
9 every contract is different, every ad is different. But,
17:43:59 10 again, it's Cox's prerogative to make those marketing
11 decisions. Again, to help preserve and build the
12 business, that's good for Cox and good for the Town of
13 Gilbert.

14 MAYOR LEWIS: Councilmember Ray?

17:44:15 15 COUNCILMEMBER RAY: Changing subjects,
16 Mayor. Someone else had a question on this very subject.
17 One of the arguments that you guys have made both in the
18 materials, in the briefs in the case, and that you also
19 sent out the email via different social media channels,
17:44:37 20 that if the Town of Gilbert were to uphold this, that
21 there would be a tax increase on the residents, which,
22 quite frankly, seems completely dishonest on Cox's behalf.
23 That was one argument you made.

24 You then made another argument in here
17:44:53 25 saying that if we pass this, the Town's going to lose

1 revenue because the way you guys price now -- Why didn't
2 you advertise publicly that if the Town approves this or
3 votes in favor of this, that the residents are going to
4 get a tax break because they're going to start paying
17:45:10 5 less, because the 5 percent -- or, excuse me, start
6 paying -- yeah, correct, start paying less. Do you see
7 what I'm saying? You have an argument that there's a tax
8 increase, but you're also saying that the Town's going to
9 lose revenue. So it seems like you're trying to play both
17:45:26 10 sides of it, and it comes across, to me, as very dishonest
11 and disingenuous.

12 MR. ROSENBAUM: Well, I'm sorry you feel
13 that way. It's not my marketing or education materials.
14 But with respect to customers, there's no question that if
17:45:41 15 the audit is affirmed, there will be an assessment that's
16 charged back to the customers, and that's an increase
17 called a tax or a license fee increase. I don't think the
18 customers view it any differently than a tax. It's a
19 surcharge, line item on the bill. And here it is and it
17:45:59 20 goes to the Town of Gilbert.

21 COUNCILMEMBER RAY: Is it fair to say, then,
22 at the same time they're going to get a tax break because
23 you'll have to start allocating via GAAP going forward?

24 MR. ROSENBAUM: For certain customers going
17:46:11 25 forward, if they are in one of those bundled packages,

1 they would see a reduction in their license fees, yes.

2 COUNCILMEMBER RAY: Would you let them know
3 that, or would that not be something that you would
4 advertise in email and things like that?

17:46:25 5 MR. ROSENBAUM: Well, I don't know that
6 anybody's hiding it. All of our briefs, all of our
7 arguments are public; they're on the website. So I
8 disagree with the premise that somehow folks at Cox who
9 sent out some educational materials were incomplete or
10 misleading. We've been -- we've made these arguments at
11 the hearing, we made the arguments in our briefs here,
12 they're all public, that if this GAAP structure is imposed
13 on top of the definition of gross revenues, there will be
14 a retroactive hit on customers and going forward will be a
15 reduction in revenues for the Town.

16 COUNCILMEMBER RAY: My point is you and I
17 both work in the legal industry. You and I both know the
18 general resident does not read legal briefs, does not read
19 the evidence in the case and go back thousands of pages,
17:47:16 20 but they will read that one-page flyer that they get via
21 email, via social media. My point is, the reason why I
22 say it feels dishonest is you don't talk about potential
23 tax breaks in that one page. Yeah, they can go back and
24 read thousands of pages of hearing testimony, of
17:47:32 25 depositions, et cetera. That's the point I'm trying to

1 make. It does exist out there. I don't -- I'm not saying
2 it doesn't. But you and I and Cox all know that you
3 wouldn't send out a one-page brief, having just read all
4 this and understood it already.

17:47:48 5 MR. ROSENBAUM: Well, again, I'm sorry you
6 feel that way. I've read -- I've read the one-page piece
7 that I think you're talking about. I think it's fair. I
8 think it's accurate. And yeah, it's not done in legalese.

9 This alternative point we're making about
17:48:05 10 the GAAP allocation requirement and the negative impact it
11 will have on Town finances going forward is not buried in
12 our pages. I mean, it's been a key point we made in --
13 before the Hearing Officer and that we made in our briefs
14 here. We're not hiding from it. It's reality. So, you
17:48:23 15 know, you're not making a political decision here. You're
16 making a decision on an appellate basis deciding what does
17 the definition of gross revenue require.

18 But to the extent you're thinking about
19 those issues, whether you're -- you know, I think it does
17:48:41 20 work both ways. On the one hand, there will be a
21 temporary bump in assessments, and in the long-term, it
22 will be a decline and a decline in the finances. So I
23 think you need to divorce that, both of those sides, from
24 your thinking, but I think both pieces of the financial
17:49:02 25 puzzle --

1 COUNCILMEMBER PETERSEN: In fairness, those
2 were points two and three in your arguments on why we
3 should reject it, so if we're supposed to divorce it -- I
4 guess it's a little confusing that in the brief, it's one
17:49:14 5 of the -- two of the five major points were related to
6 those.

7 But thank you.

8 MAYOR LEWIS: What I would like to do --
9 Counsel, we may have more questions. And this is time for
17:49:22 10 me to assess where you're at. I'm going to start with
11 Councilmember Cooper.

12 30 seconds or less, just give a summary of
13 you're feeling and if we need to be asking more questions,
14 please.

17:49:28 15 COUNCILMEMBER COOPER: Mayor, I don't have
16 any further questions, and I'm ready to proceed.

17 MAYOR LEWIS: Give me a little bit of
18 indication how you're feeling.

19 COUNCILMEMBER COOPER: Upholding the
17:49:39 20 decision.

21 MAYOR LEWIS: Councilmember Daniels?

22 COUNCILMEMBER DANIELS: I feel the same way.
23 No additional comments, questions. And I am in favor of
24 upholding.

17:49:48 25 MAYOR LEWIS: Councilmember Taylor?

1 COUNCILMEMBER TAYLOR: Thank you, Mayor. I
2 don't know if I have any additional questions. I'm still
3 struggling to see the applicability of GAAP in here, I can
4 go a little bit more on that, when the contract has
17:50:07 5 excluded it. You know, knowing that FASB is an
6 independent body, so GAAP is not law. The judge, in his
7 recommendations, is asserting it -- the GAAP principles as
8 law, you know. And I -- in the business world, we want to
9 follow -- and the purpose of GAAP is transparency. It's a
17:50:29 10 communication tool to our stakeholders. So I just think
11 that the fair purpose of the audit is to make sure that
12 parties were treated fairly and the contract was executed
13 appropriately. And so the word GAAP is pulled in here on,
14 you know, a very specific area. I'm kind of struggling on
17:51:01 15 that one here.

16 MAYOR LEWIS: Vice Mayor Cook?

17 VICE MAYOR COOK: Well, when I think about,
18 you know, a number of years where maybe those best
19 practices as it related to the trust and verify may not
17:51:14 20 have come into play, you know, that bothers me that in
21 collaboration and partnership with Cox and with the Town,
22 that, you know, I'm not sure why this wasn't addressed
23 years ago, that some agreement between the two parties
24 didn't apply.

17:51:29 25 But I will look at it from the big picture,

1 you know, 15 years ago when the Town was approached in
2 allowing this franchise agreement, there was a huge
3 benefit for any of the cable providers not to necessarily
4 buy property and that they could provide services, and
17:51:47 5 then all we're looking for is really a fair return on that
6 rent. I see the value of that partnership in there with
7 that. And what I've heard today and reading through the
8 briefs through the week, now I'm very much in favor of
9 upholding what the Hearing Officer said.

17:52:02 10 MAYOR LEWIS: Councilmember Ray?

11 COUNCILMEMBER RAY: Sir, I appreciate the
12 work and effort that Cox has put into this.

13 Mr. Rosenbaum, it's never easy to go to a
14 second group and appeal something.

17:52:16 15 And they've had a lot of great answers and I
16 appreciate their effort, and I appreciate their
17 willingness when they started by saying they are willing
18 to commit and they are willing to continue to do what
19 they've done for the Town regardless of the outcome today,
17:52:27 20 and that's very helpful.

21 With that being said, I haven't seen
22 anything or heard anything today that would make me think
23 that the reasoning and the justification and the final
24 decision should be changed from both Manager Banger and
17:52:47 25 also the initial fact-finder.

1 MAYOR LEWIS: Councilmember Petersen?

2 COUNCILMEMBER PETERSEN: Thanks, Mayor.

3 Sorry, I know I talk too much, chronic problem. So I do
4 think this is a matter of public record in previous
17:53:02 5 hearings when we talked about adjusting our license
6 agreement and the code, I think we do charge too much
7 rent. And I don't think it's tax; it's a rent. I think
8 we do. But that's irrelevant. So are points two and
9 three that you included in your brief. Those are
17:53:18 10 irrelevant points. The question is whether or not Cox
11 paid the 4 percentage of gross revenues as defined by the
12 code and the agreement. And I think Officer Skelly's
13 reasoning is solid. I think it's very solid, well thought
14 through. And so I'm totally in favor of upholding it.

17:53:37 15 I just want Cox to know we think they're
16 great partners. We want to keep working with them. We
17 have a job to do today and that is to simply rule
18 according to the facts and according to the ordinance as
19 it reads. And, again, I think Officer Skelly got it
17:53:52 20 right.

21 MAYOR LEWIS: So can I keep my comments to
22 30 seconds? No.

23 Councilmember Petersen, I like that we want
24 to be fair. We want Cox to succeed, they are a partner.
17:54:08 25 If our rates aren't appropriate, I hope we'll be open,

1 from a policy perspective, to take a look at that. But
2 you're right; that's not the discussion today.

3 The partnership -- I've been mayor six
4 years --

17:54:19 5 And, David, you can sit down. By the way,
6 we have no more questions.

7 I've been mayor six years and every year
8 there's a survey that I'm asked to talk about our
9 community partners, and every single time Cox has been in
17:54:32 10 one of my top three as a great community partner. And
11 I've appreciated that partnership. I am a Cox customer,
12 and I advertise to neighbors about how we appreciate Cox.
13 The marketing -- just so you'll know and this is just one
14 person speaking as a Cox customer and on Council seven --
17:54:53 15 the marketing literature came out and a 1 p.m. phone call
16 that came today, where a resident was upset at the Council
17 for a tax increase that we were about to approve, that's
18 not partnership. That was very disappointing to me and
19 very frustrating, because now we've got other emails,
17:55:09 20 phone calls are going to be coming. We're going to have
21 to defend the Town. That's not a partnership, and that's
22 very frustrating to me, and I hope you take that feedback
23 in the spirit of we need to, as partners, do better.

24 GAAP matters. And maybe it's just me
17:55:24 25 speaking. And when you don't use GAAP, you put footnotes

1 and it's very clear why you don't do GAAP. And it's one
2 thing to belittle an out-of-state consultant. I can live
3 with that. But that's an audit. And so we look at the
4 audit, and if it's not right, we've got procedures, and
17:55:42 5 that's why we brought in a hearing officer. And in many
6 of your comments, you said you appreciated him. You
7 jointly decided who it was. You felt he was an
8 appropriate person. You didn't agree with all that he
9 said, but at the same time he came to a conclusion that
17:55:57 10 would have led me to believe that he was -- and yes,
11 they're slightly different than the audit, but at the same
12 time his end result was a hundred percent. And yet there
13 seems to be no agreement that maybe some of the things he
14 said could be valid as an unbiased, skilled judge. And
17:56:20 15 that's something I pass on as feedback to you.

16 Several times you said it's Cox's decision
17 to make. I'll just go back to that phrase "tax increase."
18 That is your decision to make. And if we're charging too
19 much, let's talk. It is not a tax increase. And I'm
17:56:40 20 sorry that you decided to use that expression and that we
21 now have to deal with it in our community that where we're
22 partners. It is the type of thing that we'll get over,
23 we're partners, this is a great service, it's something
24 that we appreciate, but at the same time I hope you, in
17:56:59 25 deciding how to proceed, don't now do a marketing blitz

1 saying, "Well, now we have to charge our customers back,"
2 because it's your decision. It's not a policy decision we
3 make here. It's a free market.

4 Councilmember Petersen, that's a term that
17:57:13 5 you've engrained in the seven of us.

6 And you'll have to make that decision, but
7 at the same time, it is -- your reputation is on the line
8 as you choose what to do. If you continue to say, "We did
9 no wrong and these are all the reasons," I understand
17:57:29 10 that. I do not want to say I'm correct in -- because I've
11 not confirmed this, but you may want to follow up because
12 when I asked the question -- I wasn't sure how many
13 states, but I was told that Arizona is the only state that
14 doesn't do it this way. And I know you said no, but
17:57:45 15 that's something that would be interesting for me just to
16 have you confirm.

17 The -- Deloitte, I'm surprised they have not
18 questioned your approach. That is a very large accounting
19 firm, and it just seems like at some point they would have
17:58:01 20 asked some questions that would have caused this not to
21 even have occurred. We are in competition. We want you
22 to be successful. We will do our part. Let's continue to
23 keep the partnership.

24 And I think we're ready to vote. I'll
17:58:15 25 entertain a motion.

1 COUNCILMEMBER PETERSEN: Mayor, having
2 considered the briefs and arguments of counsel, reviewed
3 the record and the report and recommendation of the
4 Hearing Officer, I vote that we adopt the March 27th
17:58:29 5 ruling and order of the Town Manager and findings of fact
6 and conclusions of law and recommendations and ruling of
7 Hearing Officer Skelly.

8 MAYOR LEWIS: Is there a second?

9 COUNCILMEMBER DANIELS: Second.

17:58:40 10 MAYOR LEWIS: With that motion and second,
11 please vote.

12 That's approved with a 6-1 vote.

13 As this is the first time this Council has
14 done an appeal hearing, let me go back to the Town
15 attorney at this point.

16 Is the Mayor correct in saying adjourned?

17 MR. HAMBLIN: That's correct.

18 MAYOR LEWIS: Do I need a motion or second
19 on that, or is it simply adjourned?

17:59:12 20 MR. HAMBLIN: A motion and second will be
21 fine.

22 MAYOR LEWIS: Is there a motion to adjourn?

23 COUNCILMEMBER PETERSEN: (Raised Hand)

24 MAYOR LEWIS: So moved.

25 Is there a second?

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COUNCILMEMBER TAYLOR: Second.

MAYOR LEWIS: All in favor say aye.

VICE MAYOR COOK: Aye.

COUNCILMEMBER COOPER: Aye.

COUNCILMEMBER DANIELS: Aye.

COUNCILMEMBER PETERSEN: Aye.

COUNCILMEMBER RAY: Aye.

COUNCILMEMBER TAYLOR: Aye.

MAYOR LEWIS: Opposed?

(No response.)

MAYOR LEWIS: Thank you.

(The hearing was concluded at 5:59 p.m.)

1 STATE OF ARIZONA)

2 COUNTY OF MARICOPA)

3 I, Meri Coash, hereby certify that the
4 foregoing pages numbered from 1 to 81, inclusive,
5 constitute a full, true, and accurate record of the
6 proceedings had in the above matter, all done to the best
7 of my skill and ability.

8 DATED this 9th day of November,
9 2014.

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12 Meri Coash, CRR #50327

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**MINUTES OF THE GILBERT TOWN COUNCIL IN REGULAR MEETING,
NOVEMBER 13, 2014 AT 6:30 P.M., 50 EAST CIVIC CENTER DRIVE, GILBERT,
ARIZONA**

COUNCIL PRESENT: Mayor Lewis, Vice Mayor Cook, Councilmembers Cooper, Daniels, Petersen, Ray and Taylor

COUNCIL ABSENT: none

STAFF PRESENT: Manager Banger, Deputy Manager Skocypec, Deputy Clerk Maxwell, Attorney Hamblin, Chief Digital Officer Berchman, Planner Williams, Development Services Director Mieras, Assistant to the Manager Engeland, and Neighborhood Services and Outreach Supervisor Fierro

AGENDA ITEM

CALL TO ORDER

Mayor Lewis called the meeting to order at 6:37 p.m.

1. PRESENTATION OF STUDENT CITIZEN OF THE MONTH AWARD

Mayor Lewis and the Council presented Student Citizen of the Month Awards for October to:

Wyatt Thompson, Jocelyn Sansone, Isaiah Qaradaghy, Brynlee Rust, Daniel Wellock, Nhi Pham, Cort Cayrol, Zoe Jones, Mariah Preston, Keith Spletter, Jadin Castle, Aliana Chiquette, Isabelle Taft, Lola Warren, Javon Roberts, Amin Skafi Jr., Gabriela A. Rodriguez, Leland Pettyjohn, Zachary Russell, Joseph Laliberty, Wesley Rademacher, Trever Tenney, Sydney Kinsinger, Nicole Mink, Victoria Burget, Brady Campbell, Madeline Kartes, Carly DeRouen, Jamie Zembrodt, Mya Russell, Elizabeth Curtis, Maxwell Plummer, Ashlyn Hastings, Hayden S. Moore, Kali Clementi-Casey, Brianna Hicks, Celeste Art Pane, Karlie Kronwitter, Aaron Tellez, Farah Attia, Mohin Patel, Clayton Trammell, and Kyle Gustafson.

INVOCATION AND PLEDGE OF ALLEGIANCE

Reverend William Jefferson, The Benevolent and Protective Order of Elks, Gilbert Lodge #2848, delivered the invocation. Scouts led the Pledge of Allegiance and introduced themselves.

ROLL CALL

Deputy Clerk Maxwell called roll and declared a quorum present.

PRESENTATIONS; PROCLAMATIONS

1. Proclamation declaring November 29, 2014 as Small Business Saturday.

Councilmember Taylor read a proclamation declaring November 29, 2014 as Small Business Saturday. He thanked small businesses for their contributions to the Town and he encouraged everyone to think about shopping at small local businesses this holiday season. Councilmember Ray, Council Liaison to the Gilbert Small Business Alliance, expressed gratitude to the organizations in Gilbert that promote businesses in the Town.

2. Recognition of past and current Gilbert residents inducted into the Arizona Veterans Hall of Fame.

Vice Mayor Cook recognized past and current Gilbert residents inducted into the Arizona Veterans Hall of Fame. Lieutenant Colonel Lowell Fox, United State Air Force, inducted in 2005; Tech Sergeant Paul Swietek, United States Air Force, inducted in 2008; Captain John Sentz, United States Navy, inducted in 2009; Colonel Karl Kohlhoff, United States Army, inducted in 2011; Specialist FIVE Oscar Urrea, United States Army, inducted in 2013; and Third Class Petty Officer James Monroe, United States Navy, inducted in 2014 were recognized. Mayor Lewis said that Gilbert was named the Second Best Place for Veterans to live in the United States.

3. Recognition of the Gilbert Digital Team for receiving the 2014 PRSA Phoenix Award of Merit for the “Digital State of the Town”, 3CMA Silver Circle Award for TV & Video One-Time Special Programming for “Digital State of the Town” and 3CMA Silver Circle Award for Most Innovative for “Digital State of the Town”.

Councilmember Cooper recognized the Gilbert Digital Team for receiving the 2014 Public Relations Society of America (PRSA) Phoenix Award of Merit for the “Digital State of the Town”, 3CMA Silver Circle Award for TV & Video One-Time Special Programming for “Digital State of the Town” and 3CMA Silver Circle Award for Most Innovative for “Digital State of the Town”. Chief Digital Officer Berchman said the Communications Department worked to change the Mayor’s State of the Town speech into a digital production that can be viewed by anyone at any time on-line. The production has won local and national awards. She introduced the team members and expressed appreciation for the work done creating the “Digital State of the Town.”

4. Presentation of the "Growing Up Gilbert" commercial spots by the Gilbert Digital Team.

Gilbert Digital Team presented "Growing Up Gilbert" commercial spots created to promote the 2015 “Digital State of the Town” which premieres February 2015. The theme is “Growing Up Gilbert.”

COMMUNICATIONS FROM CITIZENS

Jerry McBee, Gilbert resident, announced his retirement from activities in Gilbert. After over thirty years he is considering becoming the spokesman for the Gold Prospectors Association of America. Mr. McBee asked Council why the road he lives on is not repaired when requested.

CONSENT CALENDAR

A MOTION was made by Vice Mayor Cook, seconded by Councilmember Taylor, to approve Consent Items 5, 7, 8, 9, 10, 11, 12, 12A, 13, 14, and 15; remove Consent Items 6. *Motion carried 7-0.*

5. AGREEMENT - consider:

a) authorization of payment to Subterranean Construction Co. in the amount of \$57,000 to settle all claims in Subterranean Construction Co. v. Town of Gilbert, Maricopa County Superior Court Case No. CV2012-008664; and

b) use of Wastewater Contingency in the amount of \$57,000 and direct staff to prepare all necessary documents for execution.

This item was approved with the Consent Calendar vote.

6. HOME FUNDS - consider approval of:

a) use of FY2012-13 HOME Investment Partnership Funds in the amount of \$175,038;

b) Contract No. 2015-2105-0505 with Maricopa County HOME Consortium to utilize FY2014-15 HOME Investment Partnership Funds in the amount of \$200,596 and authorize the Mayor or designee to execute the required contract documents; and

c) Contingency request in the amount of \$375,634 to cover expenditures until funds are reimbursed from Maricopa County HOME Consortium.

Mayor Lewis, Vice Mayor Cook and Councilmember Ray met with staff to follow-up on the Human Service Needs Assessment discussions at the Council Retreat. There are deadlines associated with HOME funds so this item is being presented to Council for consideration.

Assistant to the Manager Engeland gave some background on HOME funds and the Human Service Needs Assessment. Neighborhood Services and Outreach Supervisor Fierro described the role of the Maricopa County HOME Consortium of which the Town of Gilbert is a member. One program option for consideration is the Permanent Affordable Rental Homes program. This program assists six of the seven populations identified in the Human Service Needs Assessment. The Town has participated in this program in the past. The Town would go out for a Request for Proposal (RFP) to find a quality partner to administer the program.

The second option is the Substantial Rehabilitation program. Up to \$50,000 HOME funds are loaned to owners of owner-occupied, single family homes. If a partner to administer the program is not identified than a half-time FTE may be needed. This program would assist four of the seven identified populations identified in Human Service Needs Assessment. An agreement must be submitted to Maricopa County Board of Supervisors by Monday, November 17.

Vice Mayor Cook went back to the Human Service Needs Assessment and the highest priority there is families in crisis. Time is not available to work with the Consortium to develop a strategy to address the greatest needs. He would like staff to bring a plan to Council to address the most critical needs in the community. He is fine with this proposal even though it is not the most critical need.

Councilmember Ray looks forward to future discussions on how to fulfill the critical needs identified. He is leaning more towards the Permanent Affordable Rental Homes program. He does not want the Town to administer the program and instead would have a company experienced in running that program.

Mayor Lewis clarified that the proposal before Council is for both programs.

Councilmember Cooper is supportive of this.

Councilmember Daniels said this is not most ideal solution but there are needs in the community. In a discussion with Congressman Salmon concerning these funds he said if Gilbert refuses appropriated money it does not go back to federal government and Gilbert residents are being punished. She would like to see more tracking of the progress made through the program in order to show value to the residents.

Councilmember Taylor would like the Town to stay focused on a long-time support network in the community so the Town can transition off of federal program funds. There are faith groups, service groups and families that are willing to help.

Councilmember Petersen said his views on this topic are clear.

Town Manager Banger suggested that if no suitable responses are received when the Town goes out for RFP then staff should have the discretion to use all the funds for the Permanent Affordable Homes Rental program and bring that back to Council for approval

A MOTION was made by Councilmember Ray, seconded by Councilmember Cooper, to approve item 6 with the condition that all the funds be used for the Permanent Affordable Rental Homes program if no suitable responses are received for the RFP. *Motion carried 5-2 with Councilmembers Petersen and Taylor casting the dissenting votes.*

7. AGREEMENT – consider authorizing Agreement No. 2012-1103-0222 with San Tan Ford for the purchase of seven vehicles in an amount not to exceed \$166,500 including taxes and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

8. AGREEMENT - consider approval and authorize the Mayor to execute the required documents:

- a) Agreement No. 2015-1103-0426 with Rush Truck Center, Phoenix for purchase of three automated side loader and one front end loader Peterbilt 320 cab and chassis in an amount not to exceed \$630,870 including taxes;
- b) Agreement No. 2015-1103-0489 with Arizona Refuse Sales, LLC for purchase of three Scorpion automated side loader bodies in an amount not to exceed \$443,742 including taxes;
- c) Agreement No. 2015-1103-0425 with McNeilus Truck and Manufacturing Co. for purchase of one Contender 40 yard front end loader body in an amount not to exceed \$151,383 including taxes; and
- d) Environmental Services – Residential Fund Contingency Transfer in the amount of \$11,900.

This item was approved with the Consent Calendar vote.

- 9. CONTRACT – consider approval of renewal of Contract No. 2013-1003-0108 with Arizona Republic for Legal Advertisement Services for the period January 1, 2015 through December 31, 2015 and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

- 10. CONTRACT – consider approval of Construction Services Contract No. 2014-7010-0392 with Yellow Jacket Drilling Services, LLC in an amount not to exceed \$294,147 for the Monitoring Well Replacement Project, Project No. WW093, and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

- 11. CONTRACT – consider approval to authorize expenditures utilizing Contract No. 2012-1105-0117 with SHI International Corp for Microsoft, CommVault, and NetMotion in an amount not to exceed \$263,660 for software licenses and services for FY2015 and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

- 12. CONTRACT - consider approval of Job Order Contract (JOC) - Task Order No. 7 with Talis Corporation for the ADA Transition Project, Project No. ST155, Contract No. 2014-4106-0291, in an amount not to exceed \$263,964.95 and authorize the Mayor to execute the required documents.

This item was approved with the Consent Calendar vote.

- 12A. EASEMENT - consider approval of an easement agreement with Brundrett Properties, Inc. for an easement across the alleyway immediately behind 216 North Gilbert Road.

This item was approved with the Consent Calendar vote.

13. PERMANENT EXTENSION OF PREMISES – consider approval of a permanent extension of premises for SoCal Fish Taco Company located at 219 North Gilbert Road.

This item was approved with the Consent Calendar vote.

14. PERMANENT EXTENSION OF PREMISES – consider approval of a permanent extension of premises for High Tide Seafood Bar & Grill located at 2540 South Val Vista Drive #101.

This item was approved with the Consent Calendar vote.

15. MINUTES – consider approval of the minutes of Regular Meetings October 16 and October 30, 2014, Study Session October 28, 2014 and Special Meeting October 28, 2014.

This item was approved with the Consent Calendar vote.

PUBLIC HEARING

Mayor Lewis opened the public hearing for items 16, 17 and 18. No one wished to speak and Mayor Lewis closed the public hearing.

A MOTION was made by Vice Mayor Cook, seconded by Councilmember Petersen, to approve public hearing items 16, 17, and 18. *Motion carried 7-0.*

16. LIQUOR LICENSE – conduct hearing and consider approval of an acquisition of control for the Series 09 Liquor Store License for Bashas #172 located at 99 South Higley Road.

This item was approved with the Public Hearing Vote.

17. LIQUOR LICENSE – conduct hearing and consider approval of a Series 12 Restaurant Liquor License for LoLo's Chicken & Waffles located at 366 North Gilbert Road, Suite 101.

This item was approved with the Public Hearing Vote.

18. LIQUOR LICENSE – conduct hearing and consider approval of a Series 12 Restaurant Liquor License for Generations at Agritopia located at 2811 East Agritopia Loop South.

This item was approved with the Public Hearing Vote.

19. ZONING Z13-08 - conduct hearing and consider approval of the findings and adoption of an Ordinance amending Ordinances Nos. 427, 617, 725, 1287, and 1689 pertaining to the Settler's Point Planned Area Development (PAD) and the Gilbert Town Square PAD by removing from the Settler's Point PAD and Gilbert Town Square PAD approximately 25.3 acres of real property consisting of approximately 25.3 acres of Town of Gilbert Regional Commercial (RC) zoning

district, all with a Planned Area Development overlay zoning district, generally located at the southeast corner of Gilbert Road and Warner Road; approving the Development Plan for the Gilbert Town Center Planned Area Development; and changing the zoning classification of said real property from 25.3 acres of Town of Gilbert Regional Commercial (RC) with a Planned Area Development overlay zoning district to 25.3 acres of Town of Gilbert Regional Commercial (RC), 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 of the southeast parcel (Parcel 2) as follows: eliminate building step-back requirements, decrease front and side building setbacks, increase rear building setbacks, and decrease landscape setbacks adjacent to proposed buildings. The effect of the rezoning will be to allow the real property to be developed for an integrated mixed use development to allow for multi-family housing subject to the development standards for the Regional Commercial (RC) zoning district with modified step-back and setback requirements.

Mayor Lewis opened the Public Hearing for Items 19 and 20.

Planner Williams gave an overview of the parcels. In 2005 a development plan was approved for 37 acres at Gilbert Town Center. This mixed use development included commercial uses, residences and condo buildings with office space. A use permit was approved for this site in 2005 as well. Banner Health Center later built in the middle of this property. The current request for rezoning includes deviations for setbacks. The requested use permit for the 13.37 acres is for apartment buildings on the southeast portion of the property. These apartments would bring the total of proposed and approved apartment units in the vicinity of the Gilbert and Warner Roads intersection to over 800 multi-family units. The Planning Commission approved the rezoning and use permit requests. Staff recommends denial because they do not believe this development would fit in the Town's goals and policies as set forth in the General Plan nor did it mean the expanded Findings of Fact for this development.

Paul Gilbert, representing the property owner and the proposed developer, said Ordinance 1689 which applies to this parcel is still in effect. The property is currently zoned for multi-family development and the applicant has an approved site plan. The original approved use permit expired and the applicant had to re-apply. The Planning Commission vote approving this use permit was 4-3, but all seven members of the Planning Commission did say an appropriate use of the parcel is multi-family. Apartments are not being put on a piece of commercial property and in fact there will be relatively the same amount of commercial and retail space as in the original plan. When Banner Health Center bought a portion of the property it divided the property into two sections, making it difficult to integrate the site. The applicant is agreeing to a deed restriction which would restrict the western side of the property to only retail development. Residents in the immediate neighborhood were asked and only two letters in opposition were sent to Council. This plan would result in less density and produce less traffic than what is approved for this site. Alliance Residential Company, an upscale developer, has filed a Design Review Board application and is ready to begin work on this site. The Peterson group is ready to purchase the western portion of the parcel where they plan to construct retail units. Staff objections to this project deal with lack of integration and connectivity and not with multi-family use. Gilbert has the lowest inventory of multifamily of any municipality in the Phoenix area.

This project is filling an important need. This project will generate \$4.7 million in construction sales tax. Office space on that property would generate \$725,500. Once completed, this project will generate \$625,000 per year in on-going revenue. There are three possible uses for this property: office, retail, or multi-family. This is not a good location for office space since it is off a main street. It cannot be used for medical business because of the deed restriction imposed by Banner Health Center. The office market is already depressed in this area. It has been difficult to develop retail in this area and this site is hidden off a main street. There is a market for multi-family use and that would be the best use for this site.

Jason Barney, Gilbert resident, in favor of item 19 did not wish to speak.

Trey Eakin, representing the Peterson Group, a retail and mixed used development company, stated the company is waiting for approval of this case so they can purchase the western portion of the property and move forward.

Jerry McBee, Gilbert resident, said developers came to the Town and wanted to put apartment buildings in the vicinity of Baseline and Cooper/Stapley Roads. Instead there are commercial and retail businesses. On this parcel there are 800 proposed apartments. The corner property should be used for the community of Gilbert and events such as the rodeo, Gilbert Days parade, and Constitution Fair.

Mr. Eakin responded to questions on the Peterson Group's plans for the property. They are considering a small grocery store, restaurants and fast-casual eateries. They would like to get national tenants but have not scheduled meetings yet. The company is not interested in the eastern portion of the property as there is not enough exposure or density for retail in that location.

Councilmember Ray asked Mr. Gilbert about the concerns over interconnectivity and the Regional Commercial Zoning requirement. With Banner Health Center located in the middle of the property connectivity is more challenging. Banner Health Center did not want to be connected to the other two parcels, but they did agree to help with vehicular and pedestrian connectivity, allowing a pathway connecting the retail and multi-family site. Palm Lane will be extended through to Gilbert Road. The building styles and landscaping would be common across all three parcels, tying them all together.

Mr. Gilbert responded to questions about the deed restriction. It makes it clear only retail commercial uses that would not compete with Banner Health Center can be located on this site. Medical offices could not locate there now since this was part of the agreement with Banner Health Center when they located on this property. Town Attorney Hamblin said the agreement prohibiting residential uses on the western portion of the property can be enforced.

Vice Mayor Cook asked staff for an update on the development of multi-family residences at Gilbert Town Square. Development Services Director Mieras talked to applicant and should be seeing something in the first quarter of 2015.

Mayor Lewis asked about the strategy of the Town's Master Plan. There are several proposals coming for more multi-family development on land designated for that purpose. Development Services Director Mieras gave an overview of what Council discussed at earlier retreats and the plans for multi-family development.

Ian Swiergol, Managing Director of Alliance Residential Company, Southwest Division, said company has been focusing on developing upscale property near entertainment and shopping centers. There is a strong demand for apartments in those locations.

There was discussion on the conditional use permit and rezoning processes. The conditional use permit process is administrative and if the uses meet the findings of fact then the permit should be approved. There is a condition in the zoning classification that multi-family developments must meet. The granting of the change in zoning is legislative and Council may or may not change the zoning classification. Councilmember Petersen asked how the property could ever be used when there is an active PAD that is impossible to follow. There is approved site plan that is no longer possible. Town Attorney Hamblin said another site plan could be approved that meets the intent of the PAD. That is the applicant's request, they want to change the PAD.

Councilmember Petersen said he is not related to the Peterson Group. He said the use permit is administrative and he believes Council needs to honor their rights. The most challenging part of this case is to decide if it meets the mixed use integration requirement. There is integration with neighboring parcels and he believes it is enough to meet the requirements.

Councilmember Ray appreciates the time Mr. Gilbert spent explaining the applicant's request. He is concerned the Peterson Group does not yet have tenants that are certain. If the apartments are not built then the Peterson Group might leave. He realizes it is difficult with Banner Health Center in the center but he does not think there is enough integrated use.

Vice Mayor Cook would like the entire property be non-residential and would like it all to be retail. He had a difficult time approving apartments across Gilbert Road and he would like to see what happens when that project is completed. He believes apartments should be located near freeways and large shopping centers. There is the potential for three times the number of apartment units in the area with no idea of what the impact might be. He would like to consider this project at a future date.

Councilmember Taylor believes property along roads should be used for commercial uses. Approving apartments off Warner Road would leave the road for retail. For that reason he is in favor of this project. There are not many options for integration and given the limitations he is satisfied with the proposal. Having Palm Lane extended to Gilbert Road would be good.

Councilmember Daniels' biggest concern is the lack of integration and granting deviations. It would be exciting to have retail located on the corner of Gilbert and Warner Roads but she will not support this case because of her concerns.

Councilmember Cooper said Council voted for the Banner Health Center project and that eliminated the opportunities for future integration. That did not seem to be a concern when the property was divided. If this property is not used for multi-family purposes then what use does make sense? It cannot be medical, retail, nor offices. There are offices across from Western Skies on Warner Road that are struggling. Retailers in the Heritage District are struggling because of lack of residents there. He is supportive of this project and he would not add another deed restriction limiting use even more.

Mayor Lewis was swayed by new owners in Town Square that are trying to bring excitement to the area by having a twilight farmers' market. They need residents in the area. He is not excited about apartments but does want to support business owners that are here.

Councilmember Ray would like Mr. Gilbert to give an assurance that Alliance Residential Company will build here. Town Attorney Hamblin said the vote could not be contingent on Alliance building here.

Vice Mayor Cook asked if there would be a road to connect the eastern portion of the property to the western portion of the property between the apartment complex and Banner Health Center. Development Services Director Mieras said Banner Health Center was to build the first half of a roadway but if an apartment complex locates on the site a road between Civic Center Drive and Palm Lane is not as important.

Mayor Lewis closed the public hearing on items 19 and 20.

A MOTION was made by Councilmember Petersen, seconded by Councilmember Cooper, to approve items 19 and 20 with the stipulation of the deed restriction eliminating residential development as presented to the Town. *Motion carried 4-3 with Vice Mayor Cook and Councilmembers Daniels and Ray casting dissenting votes.*

20. AP14-05 (UP13-04) - conduct hearing on appeal to the Gilbert Town Council from the Town of Gilbert Planning Commission's approval of a Conditional Use Permit to allow a multi-family residential use in a mixed use center on approximately 13 acres of real property located south and east of the southeast corner of Gilbert Road and Warner Road. The property is zoned Regional Commercial (RC) with a Planned Area Development overlay zoning district. The Town Council may uphold the approval by the Planning Commission or may grant the Use Permit and, if granted, may impose conditions on the Use Permit.

This item was approved with the Item 19 vote.

ADMINISTRATIVE ITEMS

21. COUNCIL ADMINISTRATION - consider acceptance of the Budget Report for the 1st Quarter for FY2015.

A MOTION was made by Vice Mayor Cook, seconded by Councilmember Cooper, to accept the Budget Report for the 1st Quarter for FY2015. *Motion carried 7-0.*

22. 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) Congress of Neighborhoods Committee
 - d) Design Review Board
 - e) Environmental and Energy Conservation Advisory Board
 - f) Gilbert Educational Cable Access Governing Board
 - g) Arts, Culture and Tourism Board
 - h) Human Relations Commission
 - i) Industrial Development Authority
 - j) Mayor's Youth Advisory Committee
 - k) Parks, Recreation and Library Services Advisory Board
 - l) Planning Commission
 - m) Redevelopment Commission
 - n) Special Events Commission
 - o) Gilbert Public Facilities MPC
 - p) Gilbert Water Resources MPC
 - q) Gilbert Self-Insured Trust Fund
 - r) Regional Meetings
 - s) Utility Board

Councilmember Cooper reminded everyone of the Lighting of the Water Tower event. He thanked the merchants in the area and the Parks and Recreation Department staff for their efforts in getting sponsorship for the event.

POLICY ITEMS

None.

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.

None.

Report from members of the COUNCIL on current events.

Vice Mayor Cook participated in the Gilbert Pony Express which is the kick-off to the Gilbert Days festivities. He received a shirt which he presented to Mayor Lewis.

Report from the MAYOR on current events.

Residents have through Friday, November 14 to vote for the name of Gilbert citizens. There are five options from which to choose.

Mayor Lewis went over the calendar of upcoming events in the Town of Gilbert in the month of November.

ADJOURN

Mayor Lewis adjourned the meeting at 9:39 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 13th day of November 2014. 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

**MINUTES OF THE GILBERT TOWN COUNCIL IN SPECIAL MEETING OF
NOVEMBER 18, 2014 AT 5:00 PM, MUNICIPAL CENTER, CONFERENCE ROOM 233,
50 EAST CIVIC CENTER DRIVE, GILBERT, ARIZONA**

COUNCIL PRESENT: Mayor Lewis, Vice Mayor Cook, Councilmembers Cooper, Daniels, Petersen, Ray and Taylor

COUNCIL ABSENT: none

STAFF PRESENT: Manager Banger, Deputy Manager Skocypec, Clerk Templeton, Attorney Hamblin

AGENDA ITEM

CALL TO ORDER

RECESS SPECIAL MEETING AND RECONVENE IN EXECUTIVE SESSION

A MOTION was made by Councilmember Petersen, seconded by Councilmember Daniels, to recess to Executive Session pursuant to:

a) A.R.S. Sec. 38-431.03(A)(3)(4) for discussion and consultation for legal advice with the Town Attorney and Special Counsel regarding Town of Gilbert v. M. A. Mortensen Co. (Maricopa Superior Court case No. CV2013-092379), and Elliot District Park;

b) A.R.S. Sec. 38-431.03(A)(3)(4) for discussion and consultation for legal advice with the Town Attorney regarding Phoenix-Mesa Gateway Airport's efforts to restructure debt owed to member institutions to equity;

c) A.R.S. Sec. 38-431.03(A)(3)(4) for discussion and consultation for legal advice with the Town Attorney regarding proposed amendment of Development and Disposition Agreement between Town of Gilbert and LGE Corporation for Heritage Marketplace, at the northwest corner of Gilbert Road and Vaughn; and

d) A.R.S. Sec. 38-431.03(A)(3)(4) for discussion and consultation for legal advice with the Town Attorney regarding proposed short term lease agreement with Saint Xavier University for a portion of the Heritage Annex Building at 119 North Gilbert Road.

Motion carried 7-0.

Mayor Lewis reconvened the meeting at 6:20 p.m.

ADJOURN EXECUTIVE SESSION AND RECONVENE SPECIAL MEETING

Mayor Lewis adjourned the meeting at 6:20 p.m.

ADJOURN

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 special meeting of the Town Council of the Town of Gilbert held on the 18th day of November 2014. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____.

Catherine A. Templeton, CMC, Town Clerk



Council Communication

TO: Honorable Mayor and Councilmembers
FROM: Cathy Templeton, Town Clerk, 503-6861
MEETING DATE: December 2, 2014
SUBJECT: Liquor License -Jimmy's of Chicago

STRATEGIC INITIATIVE: N/A

RECOMMENDED MOTION

A motion to issue an order to recommend approval of a Series 12 Restaurant Liquor License for Jimmy's of Chicago located at 884 East Willams Field Road #102.

or

A motion to issue an order to recommend denial of a Series 12 Restaurant Liquor License for Jimmy's of Chicago located at 884 East Willams Field Road #102 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 Jimmy's of Chicago located at 884 East Willams Field Road #102 (*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

Zalena M. Kersting is requesting approval of a Series 12 Restaurant Liquor License for Jimmy's of Chicago located at 884 East Willams Field Road #102. *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

Cathy Templeton

Approval Date

11/19/2014 8:28 AM

HOC

RECEIVED

OCT 23 2014

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

14 OCT 16 1497. LIC. PM 1 56

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):

1207A068

1. Type of License(s): 12- RESTAURANT

Department Use Only

2. Total fees attached: \$ 220.

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

1. Owner/Agent's Name: Mr. KERSTING ZALENA M
(Insert one name ONLY to appear on license) Last First Middle

2. Corp./Partnership L.L.C. S.M.J INNOVATIONS, LLC
(Exactly as it appears on Articles of Inc. or Articles of Org.)

3. Business Name: JIMMY'S OF CHICAGO
(Exactly as it appears on the exterior of premises)

4. Principal Street Location 884 E. WILLIAMSFIELD ROAD, #102, GILBERT, AZ, MARICOPA, 85295
(Do not use PO Box Number) City County Zip

5. Business Phone: 480-963-6363 Daytime Phone: 480-963-6363 Email: email@jimmysofchicago.com

6. Is the business located within the incorporated limits of the above city or town? YES NO

7. Mailing Address: 877 E. CARLA VISTA DR., GILBERT, AZ 85295
City State Zip

8. Price paid for license only bar, beer and wine, or liquor store: Type _____ \$ _____ Type _____ \$ _____

DEPARTMENT USE ONLY

Fees: <u>100</u>	<u>50</u>	<u>44</u>	<u>220</u>
Application	Interim Permit	Site Inspection	Finger Prints \$
			TOTAL OF ALL FEES

Is Arizona Statement of Citizenship & Alien Status For State Benefits complete? YES NO

Accepted by: MB Date: 10/16/2014 Lic. # 1207A068

48935

416942

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? _____

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ATTACH THE LICENSE CURRENTLY ISSUED AT THE LOCATION TO THIS APPLICATION.

I, _____, declare that I am the CURRENT OWNER, AGENT, CLUB MEMBER, PARTNER, MEMBER, STOCKHOLDER, OR LICENSEE (circle the title which applies) of the stated license and location.

(Print full name)

State of _____ County of _____

X _____
(Signature)

The foregoing instrument was acknowledged before me this

My commission expires on: _____

_____ 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
<input type="checkbox"/> <input type="checkbox"/>								
<input type="checkbox"/> <input type="checkbox"/>								
<input type="checkbox"/> <input type="checkbox"/>								
<input type="checkbox"/> <input type="checkbox"/>								

) Y R A S S E C E N F I

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.: SMS INNOVATIONS, LLC
(Exactly as it appears on Articles of Incorporation or Articles of Organization)
2. Date Incorporated/Organized: 3-4-08 State where Incorporated/Organized: AZ
3. AZ Corporation Commission File No.: _____ Date authorized to do business in AZ: _____
4. AZ L.L.C. File No: L-1433795-3 Date authorized to do business in AZ: 3-10-08
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
Kerry P.	Kersting		Member	[REDACTED]			
Zalena M.	Kersting			[REDACTED]			
Revocable Living Trust							

(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
Kersting	Kerry	P.	50	[REDACTED]			
Kersting	Zalena	M.	50	[REDACTED]			
Kerry P. Kersting & Zalena M. Kersting			100%	[REDACTED]			
Revocable Living Trust							

(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)

Kerry P. Kersting
And
Zalena M. Kersting
Revocable Living Trust

Member
100%

Kerry P. Kersting

Trustee

~~50% Stockholder~~ ZK

Zalena M. Kersting

Trustee

~~50% Stockholder~~ ZK

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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

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- 1. Current Business: Name _____
(Exactly as it appears on license) Address _____
- 2. New Business: Name _____
(Physical Street Location) 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) horizontal 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: _____ ft. Name of school _____
Address _____
City, State, Zip _____

2. Distance to nearest church: _____ ft. Name of church _____
Address _____
City, State, Zip _____

3. I am the: Lessee Sublessee Owner Purchaser (of premises)

4. If the premises is leased give lessors: Name Peter Conrah, JAH Realty
Address 941 W Elliot Road #10 Chandler AZ 85225
City, State, Zip _____

4a. Monthly rental/lease rate \$ 3850.00 What is the remaining length of the lease 5 yrs. _____ mos.

4b. What is the penalty if the lease is not fulfilled? \$ _____ or other still owe term
(give details - attach additional sheet if necessary)

5. What is the total business indebtedness for this license/location excluding the lease? \$ 0
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)? ITALIAN RESTAURANT

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 _____

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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.

Zalena M. Kersting
 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.

ZMK
 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? 1-1-15
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 spirituous 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.

ZMK
 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.

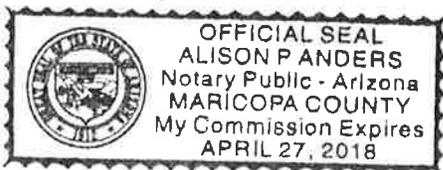
Diagram Attached

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SECTION 16 Signature Block

I, Zalena M. Kersting, hereby declare that I am the OWNER/AGENT filing this application as stated in Section 4, Question 1. I have read this application and verify all statements to be true, correct and complete.

X Zalena M. Kersting
(signature of applicant listed in Section 4, Question 1)



State of Arizona County of Maricopa

The foregoing instrument was acknowledged before me this 15th of October, 2014
Day Month Year

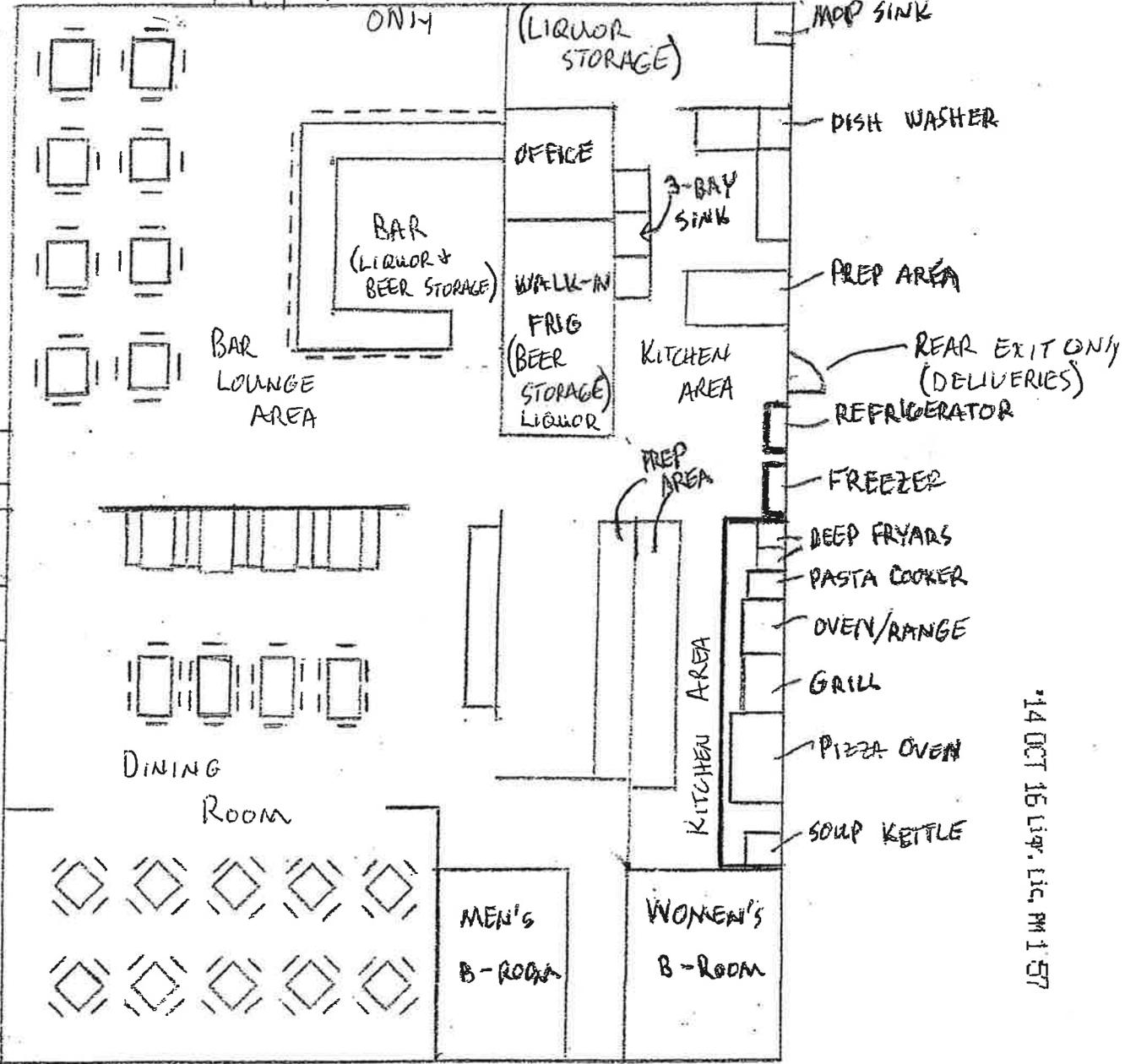
My commission expires on: 27 / 4 / 2018
Day Month Year

[Signature]
signature of NOTARY PUBLIC



PATIO
1500 Sqft

SIDE EXIT
(FIRE EXIT)
ONLY



INTERIOR Sq. ft = 3300

14 OCT 16 1997, LIC. PM 157



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Cindi Mattheisen, Finance & Management Services Director, 503-6856

MEETING DATE: December 2, 2014

SUBJECT: Bonds - Resolution authorizing the sale of Town of Gilbert, Arizona, Public Facilities Municipal Property Corporation Revenue Refunding Bonds, Series 2014

<p>STRATEGIC INITIATIVE: Financial Plan</p>
--

RECOMMENDED MOTION

Consideration and possible adoption of a Resolution authorizing the execution and delivery of a First Amendment to Series 2006 Ground Lease, a Series 2014 Town Lease, a Bond Purchase Agreement and a Series 2014 Continuing Disclosure Agreement; approving the execution and delivery by Town of Gilbert, Arizona, Public Facilities Municipal Property Corporation of such First Amendment, such Town Lease, such Bond Purchase Agreement, a Fourth Supplement to Trust Indenture, an Escrow Trust Agreement and a financial guaranty or related agreement necessary for credit enhancement; approving an Official Statement and the execution and circulation thereof; approving the issuance of not to exceed \$32,000,000 aggregate principal amount of Town of Gilbert, Arizona, Public Facilities Municipal Property Corporation revenue refunding bonds; delegating to the Manager or Director of Finance and Management Services of the Town the authority to determine various terms with respect to the bonds and the sale thereof and declaring an emergency.

BACKGROUND/DISCUSSION

Town staff regularly review outstanding bonds issued on behalf of Gilbert to identify opportunities to reduce debt service costs. A current favorable bond market would allow for a refinancing of approximately \$30.2 million of the Public Facilities Municipal Property Corporation, Series 2006 excise tax backed bonds.

The preliminary analysis suggests a net present value savings of \$1.8 million or approximately 6% of the principal amount of the bonds to be refinanced if a negotiated sale achieves the forecast bond yield of less than 2%.

The recommended parameters for the consummation of the bond sale are:

- I. A minimum present value savings of 5% of the principal amount refinanced (net of costs of issuance);
- II. A forecast bond yield of less than 2%;
- III. The proposed refunding bonds do not extend the life of the existing debt being refinanced, which is a final maturity of July 1, 2021; and
- IV. This Authorizing Resolution has an expiration date of July 31, 2015.

If these parameters are not met the bond sale will not be executed. If the bond market has not proven favorable for this refinancing by the expiration date of the Resolution, additional Council authorization is required for any further action.

The sources for debt service payments of the PFMPC Series 2006 bonds are:

- Police SDF – 17.814%
- Parks SDF – 26.717%
- General Government SDF – 25.419%
- General Fund – 30.050%

Timetable

Assuming Council approves the necessary Resolution on December 2, 2014, staff will proceed immediately with electronic distribution of the Preliminary Official Statement. At that time the bonds will be rated. The proposed bond pricing is as early as the week of December 8th. If the negotiated sale meets the anticipated parameters, a Bond Purchase Agreement will be executed. Final closing is anticipated by the end of December.

This timetable is developed to take advantage of the currently favorable bond market. If there is a radical change in the market, the Town is not required to proceed with the sale. This timetable also is the reason for the Emergency Clause, to allow for immediate execution of the documents upon completion of the transaction.

Ratings

Staff is scheduled for a ratings call with Moody's on November 20th, and Standard and Poor's and Fitch Ratings on November 24th. Our current ratings are Aa2/AA/AA+.

Documents

The financing team which includes the Town's financial advisor, bond counsel, underwriter's counsel and the bond underwriting team, along with staff has developed the draft documents which are attached for Council review and approval with the Resolution. The Council is expected to understand the purpose and form of these documents, but is relying heavily upon

professional staff and bond counsel to develop documents which conform to law, and implement the desired financing outcome. Particular attention should be paid to the Preliminary Official Statement because it will be used to sell bonds in the public securities market.

Given the negotiated sale, the Resolution authorizes the Town Manager or Finance & Management Services Director to make determinations regarding the sale within the established parameters.

The Resolution and Preliminary Official Statement were reviewed for form by Greenberg Traurig, LLP, bond counsel for the Town.

The Resolution was reviewed for form by Town Attorney Michael Hamblin.

FINANCIAL IMPACT

Repayment of the Public Facility Municipal Property Corporation bonds is through system development fees and General Fund contributions. The structure of this transaction allows for targeted savings of approximately \$900,000 in 2019 and 2020. This refinancing will save a total of approximately \$1.9 million over the life of the bonds.

The savings will be applied to the Police, Parks and General Government SDF Funds and the General fund proportionately to the percentage allocations listed on the previous page of this Communication.

Upon refinancing, the Series 2014 Bonds will not be subject to redemption prior to maturity.

The financial impact was reviewed by Dawn Buckland, Office of Management and Budget Director.

STAFF RECOMMENDATION

Staff recommends approval of the Authorizing Resolution.

Respectfully submitted,

Cindi Mattheisen
Finance & Management Services Director

Attachments and Enclosures:

- Authorizing Resolution
- Fourth Supplement to Trust Indenture
- First Amendment to Series 2006 Ground Lease
- Series 2014 Town Lease
- Escrow Trust Agreement
- Bond Purchase Agreement
- Preliminary Official Statement (POS)

Approved By

Approval Date

Cindi Mattheisen
Laura Lorenzen

11/19/2014 11:35 AM
11/20/2014 8:19 AM

RESOLUTION NO.

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO SERIES 2006 GROUND LEASE, A SERIES 2014 TOWN LEASE, A BOND PURCHASE AGREEMENT AND A SERIES 2014 CONTINUING DISCLOSURE AGREEMENT; APPROVING THE EXECUTION AND DELIVERY BY TOWN OF GILBERT, ARIZONA PUBLIC FACILITIES MUNICIPAL PROPERTY CORPORATION OF SUCH FIRST AMENDMENT, SUCH TOWN LEASE, SUCH BOND PURCHASE AGREEMENT, A FOURTH SUPPLEMENT TO TRUST INDENTURE, AN ESCROW TRUST AGREEMENT AND A FINANCIAL GUARANTY OR RELATED AGREEMENT NECESSARY FOR CREDIT ENHANCEMENT; APPROVING AN OFFICIAL STATEMENT AND THE EXECUTION AND CIRCULATION THEREOF; APPROVING THE ISSUANCE OF NOT TO EXCEED \$32,000,000 AGGREGATE PRINCIPAL AMOUNT OF TOWN OF GILBERT, ARIZONA PUBLIC FACILITIES MUNICIPAL PROPERTY CORPORATION REVENUE REFUNDING BONDS; DELEGATING TO THE MANAGER OR DIRECTOR OF FINANCE AND MANAGEMENT SERVICES OF THE TOWN THE AUTHORITY TO DETERMINE VARIOUS TERMS WITH RESPECT TO THE BONDS AND THE SALE THEREOF; PROVIDING FOR THE TRANSFER OF CERTAIN MONEYS FOR THE PAYMENT THEREOF AND MAKING CERTAIN COVENANTS AND AGREEMENTS WITH RESPECT THERETO; AUTHORIZING THE TAKING OF ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION AND DECLARING AN EMERGENCY

WHEREAS, Town of Gilbert, Arizona Public Facilities Municipal Property Corporation, a nonprofit corporation incorporated and existing pursuant to the laws of the State of Arizona (the "Corporation"), was formed to transact any or all lawful business for which nonprofit corporations may be incorporated under the laws of the State of Arizona (the "State"), including, without limiting the generality of the foregoing, any civic or charitable purpose such as financing or refinancing the cost of acquiring, constructing, reconstructing or improving buildings, equipment or other real and personal properties suitable for use by and for leasing to the Town of Gilbert, Arizona (the "Town"); and

WHEREAS, the Mayor and Common Council of the Town heretofore determined that it would be beneficial to the Town to finance the costs of facilities for the police department, fire department, prosecutor and municipal court judges of the Town and for the justice court judges of Maricopa County, Arizona, and a drivers' license station for the Arizona Department of Motor Vehicles and related parking facilities for all of the foregoing (collectively the "First Projects"); and

WHEREAS, in order to finance the First Projects, the Corporation issued its Revenue Bonds, Series 2001 (the "Series 2001 Bonds"), all of which have since been paid; and

WHEREAS, in connection with the issuance of the Series 2001 Bonds, the Corporation and the Town entered into, among other agreements, a Series 2001 Town Lease, dated as of October 1, 2001, pursuant to which, among other things, the Town, as agent of the Corporation, designed, acquired and equipped, as the case was, the First Projects; and

WHEREAS, the Mayor and Common Council of the Town then determined that it would be beneficial to the Town to finance the costs of design, construction and outfitting of (i) an approximately 90,000 square foot facility on a 30-acre site to include amenities for public works field operations, vehicle maintenance, household hazardous waste storage, parks maintenance, full service police substation and storage for vehicles, equipment, and materials as well as related parking, landscaping, fueling station, and adjacent arterial roadway improvements to be known as the "South Area Service Center Facility"; (ii) a 50,000 square foot facility to include offices, warehouse, secured storage yard, employee and public parking, and storage equipment as well as site improvements and security common to secured property storage facilities to be known as the "Police Property Facility" and (iii) a multi-use athletic complex on approximately 44 acres including: eight replica stadiums with artificial turf, field houses, stadium club, sports-themed concession buildings, and other activity areas as well as administrative office building, corporate events area, associated parking, trail improvements, and the widening of the adjacent arterial street and associated site work to be known as the "Sports Complex" (collectively, the "Second Projects"); and

WHEREAS, in order to finance the Second Projects, the Corporation issued its Revenue Bonds, Series 2006 (the "Series 2006 Bonds"); and

WHEREAS, in connection with the issuance of the Series 2006 Bonds, the Corporation and the Town entered into a Series 2006 Ground Lease, dated as of January 1, 2006 (the "Series 2006 Ground Lease"), pursuant to which the Town leased the real property described on Exhibit A attached thereto to the Corporation and a Series 2006 Town Lease, dated as of January 1, 2006, which has since been amended by a First Amendment to Series 2006 Town Lease, dated March 25, 2009, pursuant to which the Corporation leased such real property and the improvements to be included thereon to the Town, and the Town, as agent of the Corporation, designed, constructed and outfitted, as the case was, the Second Projects; and

WHEREAS, the Mayor and Common Council of the Town then determined that it would be beneficial to the Town to finance the costs of acquisition of certain interests in real property to locate a public safety facility, a park, a special events center and an irrigation basin and the costs of design, construction and outfitting, as applicable, of a park, a parking facility and other facilities as determined pursuant to the hereinafter defined Town Lease (the "Third Projects"); and

WHEREAS, in order to finance the Third Projects, the Corporation issued its Revenue Bonds, Series 2009 (the "Series 2009 Bonds"); and

WHEREAS, in connection with the issuance of the Series 2009 Bonds, the Corporation and the Town entered into, among other agreements, a Series 2009 Town Lease, dated as of March 1, 2009, pursuant to which, among other things, the Town, as agent of the Corporation, designed, constructed and outfitted, as the case was, the Third Projects; and

WHEREAS, the Mayor and Common Council of the Town then determined that it would be beneficial to the Town to refinance a portion of the Series 2001 Bonds; and

WHEREAS, for such purpose, the Corporation issued its Revenue Refunding Bonds, Series 2011 (the "Series 2011 Bonds"); and

WHEREAS, the Mayor and Common Council of the Town have now determined that it will be beneficial to the Town to refinance a portion of the Series 2006 Bonds (the "Bonds Being Refunded"); and

WHEREAS, for such purpose, it is necessary and desirable that the Corporation issue its Revenue Refunding Bonds (the "Bonds"); and

WHEREAS, the Series 2006 Bonds, the Series 2009 Bonds and the Series 2011 Bonds (and certain parity obligations including the Bonds) are and will be secured by a Trust Indenture, dated as of October 1, 2001 (the "Indenture"), supplemented by a First Supplement to Trust Indenture, dated as of January 1, 2006, a Second Supplement to Trust Indenture, dated as of March 1, 2009, and a Third Supplement to Trust Indenture, dated as of July 1, 2011, from the Corporation to The Bank of New York Mellon Trust Company, N.A. (successor in interest to J.P. Morgan Trust Company, National Association and Bank One Trust Company, N.A.), as trustee (the "Trustee"); and

WHEREAS, in connection with the issuance of the Bonds, the Corporation and the Town will enter into a First Amendment to Series 2006 Ground Lease, to be dated as of the first day of the month of the date established as the dated date of the Bonds as provided herein (the "Ground Lease"), pursuant to which the Town will extend the lease of the real property which was the subject of the Series 2006 Ground Lease (the "Real Property") to the Corporation and a Series 2014 Town Lease, to be dated as of the first day of the month of the date established as the dated date of the Bonds as provided herein (the "Town Lease"), pursuant to which the Corporation will extend the lease of the Real Property and the improvements to be included thereon to the Town; and

WHEREAS, the Bonds will be secured by the Indenture to be supplemented by a Fourth Supplement to Trust Indenture, to be dated as of the first day of the month of the date established as the dated date of the Bonds as provided herein (the "Indenture Supplement"), from the Corporation to the Trustee; and

WHEREAS, the Bonds will be secured by the Town Lease pursuant to which the Town will pledge (i) revenues from the unrestricted transaction privilege (sales) tax, business license and franchise fees, parks and recreation fees and permits and fines and forfeitures which the Town imposes; provided that the Mayor and Common Council of the Town may impose other transaction privilege taxes in the future, the uses of revenues from which will be restricted, at the discretion of such Mayor and Common Council, and (ii) any excise taxes, transaction privilege (sales) taxes and income taxes imposed by the State of Arizona or any agency thereof and returned, allocated or apportioned to the Town, except the Town's share of any such taxes which by State law, rule or regulation must be expended for other purposes, such as motor vehicle fuel taxes; and

WHEREAS, the Corporation has not made and does not intend to make any profit by reason of any business or venture in which it may engage or by reason of the assistance it renders the Town in refinancing the Second Projects, and no part of the Corporation's net earnings, if any, will ever inure to the benefit of any person, firm or corporation except the Town; and

WHEREAS, there has been placed on file with the Clerk of the Town and presented at the meeting at which this Resolution was adopted (1) the proposed form of the Ground Lease; (2) the proposed form of the Town Lease; (3) the proposed form of the Indenture Supplement; (4) the proposed form of a Series 2014 Continuing Disclosure Agreement, to be dated the date of delivery of the Bonds (the "Undertaking"), by and between the Town and the Trustee necessary for purposes of Securities and Exchange Commission Rule 15c2-12; (5) the proposed form of the Escrow Trust Agreement, to be dated as of the first day of the month of the date established as the dated date of the Bonds as provided herein (the "Escrow Trust Agreement"), by and between the Corporation and The Bank of New York Mellon Trust Company, N.A., as escrow trustee, to provide for the disposition of amounts to be applied to refinance the Bonds Being Refunded; (6) the proposed form of the Bond Purchase Agreement, to be dated the date of the sale of the Bonds (the "Purchase Contract"), by and among the Corporation, the Town and RBC Capital Markets, LLC and Wells Fargo Bank, National Association (collectively, the "Purchaser") for the purchase of the Bonds and (7) the proposed form of the Preliminary Official Statement, to be dated the date of dissemination thereof (the "Preliminary Official Statement"), relating to the Bonds, which, as to be revised after the sale of the Bonds, shall constitute the Official Statement, to be dated the date of sale of the Bonds (the "Official Statement"), relating to the Bonds; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, THAT:

Section 1. The forms, terms and provisions of the Ground Lease, the Town Lease, the Undertaking and the Purchase Contract, in the form of such documents (including the exhibits thereto) presented at the meeting at which this Resolution was adopted, are hereby approved, with such insertions, omissions and changes as shall be approved by the Mayor or, in the absence thereof, Vice Mayor of the Town and reflecting the determinations made as hereinbelow described, the execution of such documents being conclusive evidence of such approval, and the Mayor or, in the absence thereof, Vice Mayor and Clerk of the Town are hereby authorized and directed, for and on behalf of the Town, to execute and deliver and attest, respectively, the Ground Lease, the Town Lease, the Undertaking and the Purchase Contract as well as any other documents necessary in connection therewith to provide for the issuance of the Bonds including contracts with necessary consultants and attorneys.

Section 2. The forms, terms and provisions of the Indenture Supplement and the Escrow Trust Agreement, in the form of such documents (including exhibits thereto) presented at the meeting at which this Resolution was adopted, are hereby approved, with such insertions, omissions and changes as shall be approved by the President or, in the absence thereof, Vice President of the Corporation and reflecting the determinations made as hereinbelow described, the execution of such document (as well as of the Ground Lease, the Town Lease and the Purchase Contract and contracts with necessary consultants and attorneys) being conclusive evidence of such approval, and the President, or in the absence thereof, Vice President and Secretary-Treasurer or, in the absence thereof, any other officer of the Corporation are hereby authorized and directed, for and on behalf of the Corporation, to execute and deliver and attest, respectively, the Ground Lease, the Town Lease, the Indenture Supplement, the Escrow Trust Agreement and the Purchase Contract as well as any other documents necessary in connection therewith to provide for the issuance of the Bonds including any financial guaranty or related agreement necessary with respect to credit enhancement for the Bonds.

Section 3. (A) The form and use of the Preliminary Official Statement are hereby approved, and the use of the Official Statement in connection with the sale of the Bonds is hereby approved. The President of the Corporation is hereby authorized and directed, for and on behalf of the Corporation, to cause the preparation of and to sign and deliver the Official

Statement. The Mayor of the Town is also hereby authorized and directed, for and on behalf of the Town, to sign and deliver the Official Statement.

(B) (i) The Town shall comply with and carry out all the provisions of the Undertaking.

(ii) This Subsection shall constitute a contract between the Town and certain owners of the Bonds as described in the Undertaking.

(iii) In the event of a failure of the Town to comply with the provisions of this Subsection, such owners of the Bonds may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the Town to comply with its obligations under this Subsection. A default under this Subsection shall not be deemed an event of default for other purposes of this Resolution or the Town Lease, and the sole remedy under this Subsection in the event of any failure of the Town to comply with this Subsection shall be an action to compel performance.

Section 4. The Town hereby requests the Corporation to take any and all action necessary in connection with the sale and issuance of the Bonds and covenants that it shall do all things necessary to assist the Corporation and the Trustee therein.

Section 5. (A) The Town hereby specifically approves the issuance and delivery by the Corporation of the Bonds, in the aggregate principal amount of not to exceed \$32,000,000 as hereinafter described. The Bonds shall be in the denomination of \$5,000 of principal amount or any integral multiple thereof and shall be fully registered bonds without coupons as provided in the Indenture Supplement.

(B) The Manager or Director of Finance and Management Services of the Town is hereby authorized to determine on behalf of the Town and the Corporation the date the Bonds are to be offered for sale and sold to the Purchaser but only if on such date the same shall result in a present value debt service savings, net of all costs associated with the issuance of the Bonds, of not less than five percent of the principal amount of the Bonds Being Refunded, as well as the sale price and other sales terms of the Bonds (including determinations of original issue discount and premium and underwriting compensation); the series designation for the Bonds (and corresponding changes to documents relating to the issuance of the Bonds); the total aggregate principal amount of the Bonds which are to be issued but not to exceed the principal amount indicated hereinabove; the date the Bonds are to be dated but not later than July 31, 2015; the dates on which interest on the Bonds is to be payable and the interest rates per annum the Bonds are to bear; the dates the Bonds are to mature but not later than July 1, 2021, the principal amounts to mature on such dates and the provisions for redemption of the Bonds in advance of such dates; the maturity dates and principal amounts for the Bonds Being Refunded and the determinations of exercise of redemption provisions with respect to the Bonds Being Refunded; and the provisions pursuant to which the Bonds are to be credit enhanced (including determinations with respect to bond insurance for the Bonds); provided, however, that the foregoing determinations shall not result in the yield on the Bonds, calculated for federal income tax purposes, exceeding two percent.

(C) The form and other terms and provisions of the Bonds, including for signatures, authentication, payment, registration, transfer, exchange, redemption and number, shall be as set forth in the Indenture Supplement and are hereby approved.

Section 6. The Town hereby requests the Corporation to sell the Bonds to the Purchaser in accordance with the terms of the Purchase Contract as such terms are to be determined as provided hereinabove.

Section 7. (A) For the payment of the principal of and premium, if any, and interest on the Bonds, the Town shall pay and transfer to the Trustee the rent payments provided for in Article I of the Town Lease.

(B) To secure the payment of the rent payments provided for in Sections 1.3 and 1.4 of the Town Lease, the Town hereby pledges for the payment of such payments thereunder revenues from the Excise Taxes and the State Shared Revenues (as such terms are hereinafter defined). The Town intends that this pledge shall be a first lien upon such amounts of revenues from the Excise Taxes and the State Shared Revenues as will be sufficient to make such payments pursuant thereto. To the extent permitted by applicable law, revenues from the Excise Taxes shall be retained and maintained so that the amount received from revenues from the Excise Taxes and the State Shared Revenues, all within and for the next preceding fiscal year of the Town, shall have been equal to at least two (2) times the total of such rent payments payable thereunder for debt service for the Bonds in any current fiscal year of the Town. If revenues from the Excise Taxes and the State Shared Revenues for any such preceding fiscal year of the Town shall not have been equal at least two (2) times such rent requirements in any current fiscal year of the Town or if at any time it appears that revenues from the Excise Taxes and the State Shared Revenues will not be sufficient to meet such rent requirements, the Town shall, to the extent permitted by applicable law, impose new exactions of the type of the Excise Taxes which shall be part of the Excise Taxes or increase the rates for the Excise Taxes currently imposed in order that (i) revenues from the Excise Taxes and the State Shared Revenues will be sufficient to pay all such current payments and (ii) revenues from the Excise Taxes and the State Shared Revenues will be reasonably calculated to attain the level required as described hereinabove.

(C) So long as any of the Bonds remain outstanding and the principal and interest thereon shall be unpaid or unprovided for, the Town shall not further encumber revenues from the Excise Taxes and the State Shared Revenues pledged pursuant to Article III of the Town Lease on a basis equal to the pledge described hereinabove unless revenues from the Excise Taxes plus the State Shared Revenues in the next preceding fiscal year of the Town shall have amounted to at least three (3) times the highest combined interest and principal requirements for any succeeding fiscal year of the Town for all of the Bonds then outstanding and any obligations proposed to be secured by such pledge of revenues from the Excise Taxes and the State Shared Revenues on a parity of lien therewith which may include any Additional Obligations (as such term is defined in the Town Lease).

For purposes of this Resolution and the Town Lease, "Excise Taxes" means the unrestricted transaction privilege (sales) tax, business license and franchise fees, parks and recreation fees and permits and fines and forfeitures which the Town imposes; provided that the Mayor and Council of the Town may impose other transaction privilege taxes in the future, the uses of revenues from which will be restricted, at the discretion of such Council, and "State Shared Revenues" means any excise taxes, transaction privilege (sales) taxes and income taxes imposed by the State of Arizona or any agency thereof and returned, allocated or apportioned to the Town, except the Town's share of any such taxes which by State law, rule or regulation must be expended for other purposes, such as motor vehicle fuel taxes.

(D) The obligation of the Town to make the rent payments provided for in Sections 1.3 and 1.4 of the Town Lease is limited to payment from the Excise Taxes and the State Shared Revenues, and the obligations of the Town under the Town Lease shall not

constitute nor give rise to a general obligation of the Town or any claim against its ad valorem taxing powers, or constitute an indebtedness within the meaning of any statutory or constitutional debt limitation applicable to the Town.

Section 8. After any of the Bonds are delivered by the Trustee to the Purchaser upon receipt of payment therefor, this Resolution shall be and remain irrevocable until the Bonds and the interest thereon shall have been fully paid, cancelled and discharged. The officers of the Town shall take all action necessary or reasonably required to carry out, give effect to and consummate the transactions contemplated hereby, including without limitation, the execution and delivery of the closing and other documents required to be delivered in connection with the sale and delivery of the Bonds.

Section 9. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 10. All orders and resolutions or parts thereof, inconsistent herewith, are hereby waived to the extent only of such inconsistency. This waiver shall not be construed as reviving any order or resolution or any part thereof.

Section 11. The immediate operation of this Resolution is necessary to accomplish the refinancing of the Bonds Being Refunded on the most attractive terms available to the Town and the preservation of the public health and welfare; an emergency is hereby declared to exist; this Resolution shall be in full force and effect from and after its passage and approval by the Mayor and Council of the Town as required by law and this Resolution is hereby exempt from the referendum provisions of the constitution and laws of the State of Arizona.

PASSED AND ADOPTED this day of, 2014, by the Mayor and Council of the Town of Gilbert, Arizona.

.....
John Lewis, Mayor, Town of Gilbert,
Arizona

ATTEST:

.....
Catherine A. Templeton, Clerk,
Town of Gilbert, Arizona

DRAFT
11/11/14
11/17/14

FOURTH SUPPLEMENT,
Dated as of December 1, 2014,

TO

TRUST INDENTURE,
Dated as of October 1, 2001,

FROM

TOWN OF GILBERT, ARIZONA PUBLIC FACILITIES
MUNICIPAL PROPERTY CORPORATION

TO

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.
(SUCCESSOR IN INTEREST TO J.P. MORGAN TRUST COMPANY,
NATIONAL ASSOCIATION),
as Trustee

\$ _____,000

TOWN OF GILBERT, ARIZONA PUBLIC FACILITIES
MUNICIPAL PROPERTY CORPORATION
REFUNDING REVENUE BONDS,
SERIES 2014

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FOURTH SUPPLEMENT
TO
TRUST INDENTURE

THIS FOURTH SUPPLEMENT, dated as of December 1, 2014 (this "Supplement"), TO TRUST INDENTURE, dated as of October 1, 2001 (the "Original Indenture" and as supplemented from time to time including by the hereinafter described First Supplement, Second Supplement, Third Supplement and this Supplement, the "Indenture" or "Trust Indenture"), from TOWN OF GILBERT, ARIZONA PUBLIC FACILITIES MUNICIPAL PROPERTY CORPORATION (the "Corporation"), a nonprofit corporation organized and existing under the laws of the State of Arizona, to THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. (successor in interest to J.P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION), a national banking association organized and existing under the laws of the United States of America and authorized to exercise corporate trust powers in the State of Arizona, as trustee (the "Trustee") or any successor thereto pursuant to the applicable provisions of the Indenture;

W I T N E S S E T H:

WHEREAS, the Corporation was formed to transact any or all lawful business for which nonprofit corporations may be incorporated under the laws of the State of Arizona (the "State"), including, without limiting the generality of the foregoing, any civic or charitable purpose such as financing or refinancing the cost of acquiring, constructing, reconstructing or improving buildings, equipment or other real and personal properties suitable for use by and for leasing to the Town of Gilbert, Arizona, a municipal corporation of the State of Arizona (the "Town"); and

WHEREAS, the Town determined that it would be beneficial to the Town to finance the costs of design, construction and outfitting of (i) an approximately 90,000 square foot facility on a 30-acre site to include amenities for public works field operations, vehicle maintenance, household hazardous waste storage, parks maintenance, full service police substation and storage for vehicles, equipment, and materials as well as related parking, landscaping, fueling station, and adjacent arterial roadway improvements to be known as the "South Area Service Center Facility"; (ii) a 50,000 square foot facility to include offices, warehouse, secured storage yard, employee and public parking, and storage equipment as well as site improvements and security common to secured property storage facilities to be known as the "Police Property Facility" and (iii) a multi-use athletic complex on approximately 44 acres including: eight replica stadiums with artificial turf, field houses, stadium club, sports-themed concession buildings, and other activity areas as well as administrative office building, corporate events area, associated parking, trail improvements, and the widening of the adjacent arterial street and associated site work to be known as the "Sports Complex" (collectively the "Second Projects"); and

WHEREAS, in order to finance the Second Projects, the Corporation and the Town deemed it necessary and desirable for the Corporation to issue its Revenue Bonds, Series 2006 (the "Series 2006 Bonds"); and

WHEREAS, in connection with the issuance of the Series 2006 Bonds, the Corporation and the Town entered into a Series 2006 Ground Lease, dated as of January 1, 2006, pursuant to which the Town leased the real property described on the Exhibit attached hereto (the "Real Property") to the Corporation and a Series 2006 Town Lease, dated as of January 1, 2006, as amended by a First Amendment to Series 2006 Town Lease, dated March 25, 2009, pursuant to which the Corporation leased such real property and the improvements to be included thereon to the Town, and the Town, as agent of the Corporation, agreed to design, construct and outfit, as the case may be, the Second Projects; and

WHEREAS, it was determined that it would be beneficial to the Town to refinance a portion of the Series 2006 Bonds as follows:

<u>Maturity Dates Being Refunded (July 1)</u>	<u>Principal Amounts Outstanding</u>	<u>Principal Amounts Being Refunded</u>	<u>Redemption Dates (July 1)</u>
2017	\$5,465,000	\$5,465,000	2016
2018	5,470,000	5,470,000	2016
2019	6,025,000	6,025,000	2016
2020	6,330,000	6,330,000	2016
2021	6,645,000	6,645,000	2016

; and

WHEREAS, for such purpose, the Corporation issued its Revenue Refunding Bonds, Series 2014 (the "Series 2014 Bonds");

WHEREAS, in connection with the issuance of the Series 2014 Bonds, the Corporation and the Town entered into a First Amendment to Series 2006 Ground Lease, dated as of December 1, 2014 (the "Series 2014 Ground Lease"), pursuant to which the Town extended the lease of the Real Property to the Corporation and a Series 2014 Town Lease, dated as of December 1, 2014 (the "Series 2014 Town Lease"), pursuant to which the Corporation extended the lease of the Real Property and the improvements included and to be included thereon (collectively, the "Leased Property") to the City; and

WHEREAS, the Series 2014 Bonds shall be secured by the Original Indenture, as supplemented by this Supplemental Indenture (as so supplemented, the "Indenture"); and

WHEREAS, the Series 2006 Bonds, the Series 2009 Bonds, the Series 2011 Bonds, the Series 2014 Bonds and any Additional Bonds (as such term and all other capitalized terms hereinafter used are defined in Section 1.01 of the Original Indenture as heretofore supplemented

by the First Supplement to Trust Indenture, dated as of January 1, 2006 (the "First Supplement"), the Second Supplement to Trust Indenture, dated as of March 1, 2009 (the "Second Supplement"), and the Third Supplement to Trust Indenture, dated as of July 1, 2011 (the "Third Supplement"), from the Corporation to the Trustee, and this Supplement and as hereinafter supplemented) are secured by the Trust Indenture, and the Corporation is authorized to execute and deliver this Supplement and to do, or cause to be done, all acts provided or required herein to be performed on its part; and

WHEREAS, the Corporation has not made and does not intend to make any profit by reason of any business or venture in which it may engage or by reason of the assistance it renders the Town in financing the First Projects, and no part of the Corporation's net earnings, if any, will ever inure to the benefit of any person, firm or corporation except the Town; and

WHEREAS, all acts and conditions required to happen, exist and be performed precedent to and in the issuance of the Series 2014 Bonds and the execution and delivery of this Supplement have happened, exist and have been performed, or at the delivery of the Series 2014 Bonds will exist, will have happened and will have been performed (i) to make the Series 2014 Bonds, when issued, delivered and authenticated, valid obligations of the Corporation in accordance with the terms thereof and hereof and (ii) to make this Indenture a valid, binding and legal trust agreement for the security of the Series 2014 Bonds in accordance with its terms;

NOW, THEREFORE, THIS SUPPLEMENT WITNESSETH:

That to further secure, *first*, the payment of Debt Service Charges on all of the Bonds issued and outstanding under the Indenture including the Series 2006 Bonds, the Series 2009 Bonds, the Series 2011 Bonds and the Series 2014 Bonds, and, *second*, payments with respect to any Qualified Reserve Fund Instrument hereinafter provided pursuant to the terms of the Indenture according to their true intent and meaning, to secure the performance and observance of all of the covenants, agreements, obligations and conditions contained in the Indenture and therein, and to supplement the terms and conditions upon and subject to which the Bonds are and are intended to be issued, held, secured and enforced, and in consideration of the premises and the acceptance by the Trustee of the trusts created in the Indenture and of the purchase and acceptance of the Bonds by the Owners thereof and the provision of any Qualified Reserve Fund Instrument by the provider thereof, and for other good and valuable consideration, the receipt of which is acknowledged, the Corporation absolutely assigns hereby to the Trustee, and to its successors in trust, and its and their assigns, all right, title and interest of the Corporation in and to

(i) the right, title and interest of the Corporation in and to the Series 2014 Ground Lease, the Corporation, however, to remain liable to observe and per-

form all of the conditions and covenants in the Series 2014 Ground Lease provided to be observed and performed by it;

(ii) the right, title and interest of the Corporation in and to the Series 2014 Town Lease, the Corporation, however, to remain liable to observe and perform all of the conditions and covenants in the Series 2014 Town Lease provided to be observed and performed by it;

(iii) all of the rents, issues and profits payable to or received by the Corporation from the property described in paragraph (ii) above, including without limitation, all of the rents and the amounts to be paid to the Corporation or the Trustee under the terms of the Series 2014 Town Lease, except the Unassigned Corporation's Rights; and

(iv) all property which is by the express provisions of the Indenture required to be subjected to the lien of the Indenture and any additional property that may, from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien of the Indenture, by the Corporation or by anyone in its behalf, and the Trustee is hereby authorized to receive the same at any time as additional security under the Indenture,

SUBJECT, HOWEVER, to the rights of access and control in the Town as reserved and granted in Section 9.2 of the Series 2014 Town Lease,

TO HAVE AND TO HOLD unto the Trustee and its successors in that trust and its and their assigns forever;

BUT IN TRUST, NEVERTHELESS, and subject to the provisions of the Indenture,

(a) except as otherwise provided in the Indenture, *first*, for the benefit, security and protection of all present and future Owners of the Bonds issued or to be issued under and secured by the Indenture and, *second*, for the benefit of the provider of any Qualified Reserve Fund Instrument,

(b) for the enforcement of the payment of the principal of and interest and any premium on the Bonds, when payable, according to the true intent and meaning thereof and of the Indenture and for the enforcement of payments to any provider of a Qualified Reserve Fund Instrument, and

(c) to secure the performance and observance of and compliance with the covenants, agreements, obligations, terms and conditions of the Indenture, and

in each case, except as otherwise provided in the Indenture, without preference, priority or distinction, as to lien or otherwise, of any one Bond of a series over any other Bond of the same series by reason of designation, number, date of the Bonds or of authorization, issuance, sale, execution, authentication, delivery or maturity thereof, or otherwise, so that each Bond of a series and all Bonds of a series shall have the same right, lien and privilege under the Indenture, and shall be secured equally and ratably by the Indenture, it being intended that the lien and security of the Indenture shall take effect from the date thereof, without regard to the date of actual issue, sale or disposition of the Bonds, as though upon that date all of the Bonds were actually issued, sold and delivered to purchasers for value; provided, however, that if

(i) the principal of the Bonds and the interest due or to become due thereon together with any premium required by redemption of any of the Bonds prior to maturity, shall be well and truly paid, at all times and in the manner to which reference is made in the Bonds, according to the true intent and meaning thereof, or the outstanding Bonds shall have been paid and discharged in accordance with Article X of the Indenture, and

(ii) all of the covenants, agreements, obligations, terms and conditions of the Corporation under the Indenture shall have been kept, performed and observed, and there shall have been paid to the Trustee, the Registrar, and the Paying Agents as well as the provider of any Qualified Reserve Fund Instrument all sums of money due or to become due to them in accordance with the terms and provisions of the Indenture,

then, the Indenture and the rights assigned thereby shall cease, determine and be void, except as provided in Section 10.03 thereof with respect to the survival of certain provisions thereof; otherwise, the Indenture shall be and remain in full force and effect.

The Corporation has agreed and covenanted, and agrees and covenants with the Trustee and with each and all Owners as well as the provider of any Qualified Reserve Fund Instrument, further as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1 Definitions. All words and terms used herein shall have the same meanings as set forth in Section 1.01 of the Indenture and the Recitals hereto, except as provided hereinafter:

"Bond Resolution" means (a) when used with reference to the Series 2006 Bonds, the resolution providing for their issuance and the approving of the Series 2006 Ground Lease, the Series 2006 Town Lease,

the First Supplement and related matters, to the Series 2009 Bonds, the resolution providing for their issuance and the approving of the Series 2009 Ground Lease, the Series 2009 Town Lease, the Second Supplement and related matters, to the Series 2011 Bonds, the resolution providing for their issuance and the approving of the Series 2011 Ground Lease, the Series 2011 Town Lease, the Third Supplement and related matters, and to the Series 2014 Bonds, the resolution providing for their issuance and the approving of the Series 2014 Ground Lease, the Series 2014 Town Lease, this Supplement and related matters; (b) when used with reference to an issue of Additional Bonds, the resolution providing for the issuance of the Additional Bonds, to the extent applicable, and the resolution providing for the issuance of the Additional Bonds and the approving of any amendment or supplement to the Series 2006 Ground Lease, the Series 2009 Ground Lease, the Series 2011 Ground Lease or the Series 2014 Ground Lease or the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease or the Series 2014 Town Lease, any new agreements in lieu thereof, any Supplemental Indenture and related matters; and (c) when used with reference to Bonds when Additional Bonds are outstanding, the resolution providing for the issuance of the refunding bonds and the resolution providing for the issuance of the then outstanding and the then to be issued Additional Bonds, in each case as amended or supplemented from time to time.

"Bonds" means the Series 2006 Bonds, the Series 2009 Bonds, the Series 2011 Bonds, the Series 2014 Bonds and any Additional Bonds.

"Debt Service Coverage" means the amount of revenues from the Excise Taxes (as such term is defined in the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease) plus the State Shared Revenues (as such term is defined in the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease) for the then-current Fiscal Year divided by the Maximum Annual Debt Service for the Bonds.

"Defeasance Obligations" means, if applicable to the Series 2014 Bonds, cash, direct non-callable obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, to which direct obligation or guarantee the full faith and credit of the United States of America has been pledged, Refcorp interest strips, CATS, TIGRS, STRPS, or defeased municipal bonds rated AAA by S&P or Aaa by Moody's (or any combination of the foregoing).

"Eligible Investments" means, to the extent permitted by law, as it relates to amounts allocable to the Series 2014 Bonds:

- (1) Direct obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America ("U.S. Government Securities").

- (2) Direct obligations* of the following federal agencies which are fully guaranteed by the full faith and credit of the United States of America:
- (a) Export-Import Bank of the United States - Direct obligations and fully guaranteed certificates of beneficial interest,
 - (b) Federal Housing Administration - debentures,
 - (c) General Services Administration - participation certificates,
 - (d) Government National Mortgage Association ("GNMAs") - guaranteed mortgage-backed securities and guaranteed participation certificates,
 - (e) Small Business Administration - guaranteed participation certificates and guaranteed pool certificates,
 - (f) U.S. Department of Housing & Urban Development - local authority bonds,
 - (g) U.S. Maritime Administration - guaranteed Title XI financings, and
 - (h) Washington Metropolitan Area Transit Authority - guaranteed transit bonds.
- (3) Direct obligations* of the following federal agencies which are not fully guaranteed by the faith and credit of the United States of America:
- (a) Federal National Mortgage Association ("FNMMAs") - senior debt obligations rated Aaa by Moody's and AAA by S&P,

* The following are explicitly excluded from the securities enumerated in 2 and 3:

- (i) All derivative obligations, including without limitation inverse floaters, residuals, interest-only, principal-only and range notes;
- (ii) Obligations that have a possibility of returning a zero or negative yield if held to maturity;
- (iii) Obligations that do not have a fixed par value or those whose terms do not promise a fixed dollar amount at maturity or call date; and
- (iv) Collateralized Mortgage-Backed Obligations ("CMOs").

- (b) Federal Home Loan Mortgage Corporation ("FHLMCs") - participation certificates and senior debt obligations rated Aaa by Moody's and AAA by S&P,
 - (c) Federal Home Loan Banks - consolidated debt obligations,
 - (d) Student Loan Marketing Association - debt obligations, and
 - (e) Resolution Funding Corporation - debt obligations.
- (4) Direct, general obligations of any state of the United States of America or any subdivision or agency thereof whose uninsured and unguaranteed general obligation debt is rated, at the time of purchase, A2 or better by Moody's and A or better by S&P, or any obligation fully and unconditionally guaranteed by any state, subdivision or agency whose uninsured and unguaranteed general obligation debt is rated, at the time of purchase, A2 or better by Moody's and A or better by S&P.
 - (5) Commercial paper (having original maturities of not more than 270 days) rated, at the time of purchase, P-1 by Moody's and A-1 or better by S&P.
 - (6) Certificates of deposit, savings accounts, deposit accounts or money market deposits in amounts that are continuously and fully insured by the Federal Deposit Insurance Corporation ("FDIC"), including the Bank Insurance Fund and the Savings Association Insurance Fund.
 - (7) Certificates of deposit, deposit accounts, federal funds, trust funds, overnight bank deposits, trust accounts, interest-bearing deposits, interest-bearing money market accounts, time deposits or bankers' acceptances (including those of the Trustee or any of its affiliates) (in each case having maturities of not more than 365 days following the date of purchase) of any domestic commercial bank or United States branch office of a foreign bank, provided that such bank's short-term certificates of deposit are rated P-1 by Moody's and A-1 or better by S&P (not considering holding company ratings).
 - (8) Investment in money market mutual funds having a rating in the highest investment category granted thereby from S&P and Moody's, including, without limitation any mutual fund for which the Trustee or an affiliate of the Trustee serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian, notwithstanding that (i) the Trustee or an affiliate of the Trustee receives fees from funds for services rendered, (ii) the Trustee collects fees for services rendered pursuant to

this Indenture, which fees are separate from the fees received from such funds, and (iii) services performed for such funds and pursuant to this Indenture may at times duplicate those provided to such funds by the Trustee or an affiliate of the Trustee.

- (9) State-sponsored investment pools rated AA- or better by S&P.
- (10) Repurchase or reverse repurchase agreements (including those of the Trustee or any of its affiliates) that meet the following criteria:
 - (a) A master repurchase agreement or specific written repurchase agreement, substantially similar in form and substance to the Public Securities Association or Bond Market Association master repurchase agreement, governs the transaction.
 - (b) Acceptable providers shall consist of (i) registered broker/dealers subject to Securities Investors' Protection Corporation ("SIPC") jurisdiction or commercial banks insured by the FDIC, if such broker/dealer or bank has an uninsured, unsecured and unguaranteed rating of A3/P-1 or better by Moody's and A-/A-1 or better by S&P, or (ii) domestic structured investment companies rated Aaa by Moody's and AAA by S&P.
 - (c) The repurchase agreement shall require termination thereof if the counterparty's ratings are suspended, withdrawn or fall below A3 or P 1 from Moody's, or A- or A-1 from S&P. Within ten (10) days, the counterparty shall repay the principal amount plus any accrued and unpaid interest on the investments.
 - (d) The repurchase agreement shall limit acceptable securities to U.S. Government Securities and to the obligations of GNMA, FNMA or FHLMC described in 2(d), 3(a) and 3(b) above. The fair market value of the securities in relation to the amount of the repurchase obligation, including principal and accrued interest, is equal to a collateral level of at least 104% for U.S. Government Securities and 105% for GNMA's, FNMA's or FHLMC's. The repurchase agreement shall require (i) the Agent (as such term is defined in (e) below) to value the collateral securities no less frequently than weekly, (ii) the delivery of additional securities if the fair market value of the securities is below the required level on any valuation date, and (iii) liquidation of the repurchase securities if any deficiency in the required percentage is not restored within two (2) business days of such valuation.

- (e) The repurchase securities shall be delivered free and clear of any lien to the Trustee or to an independent third party acting solely as agent ("Agent") for the Trustee, and such Agent is (i) a Federal Reserve Bank, or (ii) a bank which is a member of the FDIC and which has combined capital, surplus and undivided profits or, if appropriate, a net worth, of not less than \$50 million, and the Trustee shall have received written confirmation from such third party that such third party holds such securities, free and clear of any lien, as agent for the Trustee.
 - (f) A perfected first security interest in the repurchase securities shall be created for the benefit of the Trustee, and the issuer and the Trustee shall receive an opinion of counsel as to the perfection of the security interest in such repurchase securities and any proceeds thereof.
 - (g) The repurchase agreement shall have a term of one year or less, or shall be due on demand.
 - (h) The repurchase agreement shall establish the following as events of default, the occurrence of any of which shall require immediate liquidation of the repurchase securities:
 - (i) insolvency of the broker/dealer or commercial bank serving as the counterparty under the repurchase agreement;
 - (ii) failure by the counterparty to remedy any deficiency in the required collateral level or to satisfy the margin maintenance call under item 10(d) above; or
 - (iii) failure by the counterparty to repurchase the repurchase securities on the specified date for repurchase.
- (11) Investment agreements (also referred to as guaranteed investment contracts) that meet the following criteria:
- (a) A master agreement or specific written investment agreement governs the transaction.
 - (b) Acceptable providers of uncollateralized investment consist of (i) domestic FDIC-insured commercial banks, or U.S. branches of foreign banks, rated at least Aa2 by Moody's and AAA by S&P; (ii) domestic insurance companies rated Aaa by Moody's and AAA by S&P; and (iii) domestic structured investment companies rated Aaa by Moody's and AAA by S&P.

- (c) Acceptable providers of collateralized investment agreements shall consist of (i) registered broker/dealers subject to SIPC jurisdiction, if such broker/dealer has an uninsured, unsecured and unguaranteed rating of A1 or better by Moody's and A+ or better by S&P; (ii) domestic FDIC-insured commercial banks, or U.S. branches of foreign banks, rated at least A1 by Moody's and A+ by S&P; (iii) domestic insurance companies rated at least A1 by Moody's and A+ by S&P; and (iv) domestic structured investment companies rated Aaa by Moody's and AAA by S&P. Required collateral levels shall be as set forth in 11(f) below.
- (d) The investment agreement shall provide that if the provider's ratings fall below Aa3 by Moody's or AA- by S&P, the provider shall within ten (10) days either (i) repay the principal amount plus any accrued and interest on the investment; or (ii) deliver Permitted Collateral as provided below.
- (e) The investment agreement must provide for termination thereof if the provider's ratings are suspended, withdrawn or fall below A3 from Moody's or A- from S&P. Within ten (10) days, the provider shall repay the principal amount plus any accrued interest on the agreement, without penalty to the Corporation.
- (f) The investment agreement shall provide for the delivery of collateral described in (i) or (ii) below ("Permitted Collateral") which shall be maintained at the following collateralization levels at each valuation date:
- (i) U.S. Government Securities at 104% of principal plus accrued interest; or
 - (ii) Obligations of GNMA, FNMA or FHLMC (described in 2(d), 3(a) and 3(b) above) at 105% of principal and accrued interest.
- (g) The investment agreement shall require the Agent to determine the market value of the Permitted Collateral not less than weekly and notify the investment agreement provider on the valuation day of any deficiency. Permitted Collateral may be released by the Trustee to the provider only to the extent that there are excess amounts over the required levels. Market value, with respect to collateral, may be determined by any of the following methods:
- (i) the last quoted "bid" price as shown in Bloomberg, Interactive Data Systems, Inc., *The Wall Street Journal* or Reuters;

(ii) valuation as performed by a nationally recognized pricing service, whereby the valuation method is based on a composite average of various bid prices; or

(iii) the lower of two bid prices by nationally recognized dealers. Such dealers or their parent holding companies shall be rated investment grade and shall be market makers in the securities being valued.

- (h) Securities held as Permitted Collateral shall be free and clear of all liens and claims of third parties, held in a separate custodial account and registered in the name of the Trustee or the Agent.
- (i) The provider shall grant the Trustee or the Agent a perfected first security interest in any collateral delivered under an investment agreement. For investment agreements collateralized initially and in connection with the delivery of Permitted Collateral under 11(f) above, the Trustee shall receive an opinion of counsel as to the perfection of the security interest in collateral.
- (j) The investment agreement shall provide that moneys invested under the agreement must be payable and puttable at par to the Trustee without condition, breakage fee or other penalty, upon not more than two (2) business days' notice, or immediately on demand for any reason for which, the funds invested may be withdrawn from the applicable fund or account established under the authorizing document, as well as the following:
- (i) In the event of a deficiency in the debt service account;
 - (ii) Upon acceleration after an event of default;
 - (iii) Upon refunding of the bonds in whole or in part;
 - (iv) Reduction of the debt service reserve requirement for the bonds; or
 - (v) If a determination is later made by a nationally recognized bond counsel that investments must be yield-restricted.

Notwithstanding the forgoing, the agreement may provide for a breakage fee or other penalty that is payable in arrears and not as a condition of a draw by the Trustee if the

obligation of the Corporation to pay such fee or penalty is subordinate to its obligation debt service on the Series 2014 Bonds and to make deposits to the Reserve Fund.

(k) The investment agreement shall establish the following as events of default, the occurrence of any of which shall require the immediate liquidation of the investment securities:

(i) Failure of the provider or the guarantor (if any) to make a payment when due or to deliver Permitted Collateral of the character, at the times or in the amounts described above;

(ii) Insolvency of the provider or the guarantor (if any) under the investment agreement;

(iii) Failure by the provider to remedy any deficiency with respect to required Permitted Collateral;

(iv) Failure by the provider to make a payment or observe any covenant under the agreement;

(v) The guaranty (if any) is terminated, repudiated or challenged; or

(vi) Any representation of warranty furnished to the Trustee or the Corporation connection with the agreement is false or misleading.

(l) The investment agreement must incorporate the following general criteria:

(i) "Cure periods" for payment default shall not exceed two (2) business days;

(ii) The agreement shall provide that the provider shall remain liable for any deficiency after application of the proceeds of the sale of any collateral, including costs and expenses incurred by the Trustee;

(iii) If the investment agreement is for the Reserve Fund reinvestments of funds shall be required to bear interest at a rate at least equal to the original contract rate;

(iv) The provider shall be required to immediately notify the Trustee of any event of default or any suspension, withdrawal or downgrade of the provider's ratings; and

(v) The agreement shall be unconditional and shall expressly disclaim any right of set-off or counterclaim.

(12) Forward delivery agreements in which the securities delivered mature on or before each interest payment date (for debt service or debt service reserve funds) or draw down date (construction funds) that meet the following criteria:

- (a) A specific written investment agreement governs the transaction.
- (b) Acceptable providers shall be limited to (i) any registered broker/dealer subject to the Securities Investors' Protection Corporation jurisdiction, if such broker/dealer or bank has an uninsured, unsecured and unguaranteed obligation rated A3/P better by S&P; (ii) any commercial bank insured by the FDIC, if such bank has an uninsured, unsecured and unguaranteed/obligation rated A3/P 1 or better by Moody's and A-/A-1 or better by S&P; and (iii) domestic structured companies rated Aaa by Moody's and AAA by S&P.
- (c) The forward delivery agreement shall provide for termination or assignment (to a qualified provider hereunder) of the agreement if the provider's ratings are suspended, withdrawn or fall below A3 or P-1 from Moody's or A- or A-1 from S&P. Within ten (10) days, the provider shall fulfill any obligations it may have with respect to shortfalls in market value. There shall be no breakage fee payable to the provider in such event.
- (d) Permitted securities shall include the investments listed in 1, 2 and 3 above.
- (e) The forward delivery agreement shall include the following provisions:
 - (i) The permitted securities must mature at least one (1) business day before a debt service payment date or scheduled draw. The maturity amount of the permitted securities must equal or exceed the amount required to be in the applicable fund on the applicable valuation date;
 - (ii) The agreement shall include market standard termination provisions, including the right to terminate the provider's failure to deliver qualifying securities or otherwise to perform under the agreement. There shall be no breakage fee or penalty payable to the provider in such event;

(iii) Any breakage fees shall payable only on debt service payment dates and shall be subordinated to the payment of debt service and debt service reserve fund replenishments; and

(iv) The provider must submit at closing a bankruptcy opinion to the effect that upon any bankruptcy, solvency or receivership of the provider, the securities will not be considered to be a part of the provider's estate.

- (13) Forward delivery agreements in which the securities delivered mature after the funds may be required but provide for the right of the issuer or the Trustee to put the securities back to the provider under a put, guaranty or other hedging arrangement.

Maturity of investments shall be governed by the following:

- (a) Investments of monies (other than reserve funds) shall be in securities and obligations maturing not later than the dates on which such monies will be needed to make payments.
- (b) Investments shall be considered as maturing on the first date on which they are redeemable without penalty at the option of the holder or the date on which the Trustee may require their repurchase pursuant to repurchase agreements.
- (c) Investments of monies in reserve funds not payable upon demand shall be restricted to maturities of five years or less.

Such investments shall be valued by the Trustee, not less often than annually, at the market value thereof, exclusive of accrued interest. Deficiencies in the amount on deposit in any fund or account resulting from a decline in market value shall be restored no later than the succeeding valuation date. In determining market value of Eligible Investments, the Trustee may use and rely conclusively and without liability upon any generally recognized pricing information service (including brokers and dealers in securities) available to it.

If any of the foregoing for which a rating level is required is on "credit watch," "negative outlook" or similar status indicating possible reduction in rating (including sign thereof), the same shall be treated as not having the rating required.

"Escrow Trust Agreement" means the Escrow Trust Agreement, dated as of December 1, 2014, from the Corporation to the Escrow Trustee, as amended or supplemented from time to time.

"Escrow Trustee" means The Bank of New York Mellon Trust Company, N.A., a banking entity organized and existing under the laws of the United States of America and authorized to exercise trust powers under the laws of the State, as escrow trustee, and its successors and assigns.

"Interest Payment Date" or "Interest Payment Dates" means, as to the Series 2014 Bonds, the date or dates set forth as such in the form of bond attached hereto as the Exhibit.

"Original Purchaser" means, as to the Series 2014 Bonds, RBC Capital Markets, LLC and Wells Fargo Bank, National Association.

"Principal Payment Date" means, as to the Series 2014 Bonds, December 1 in the years specified in Section 2.2 hereof for the stated amount of principal to be retired at maturity, or any other date on which the principal of the Series 2014 Bonds is payable as a result of redemption, optional or mandatory.

"Registrar" means, as to the Series 2014 Bonds, the Trustee.

"Revenues" means (a) the rent payments due under the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease, (b) all other moneys received or to be received by the Corporation or the Trustee in respect of the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease, including without limitation, moneys and investments in the Bond Retirement Fund, and (c) all income and profit from the investment of the foregoing moneys.

"Series 2006 Town Lease" means the Series 2006 Town Lease, dated as of January 1, 2006, as amended by the First Amendment to Series 2006 Town Lease, dated March 25, 2009, by and between the Town and the Corporation.

"Series 2014 Bond Retirement Account" means the Series 2014 Bond Retirement Account of the Bond Retirement Fund created in Section 5.1 hereof.

"Series 2014 Interest Account" means the Series 2014 Interest Account of the Interest Fund created in Section 5.1 hereof.

"Series 2014 Revenue Account" means the Series 2014 Revenue Account of the Revenue Fund created in Section 5.1 hereof.

"Unassigned Corporation's Rights" means all of the rights of the Corporation to receive or be the beneficiary of additional payments under Section 1.4(b), (c), (e), (f) and (g) of the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease, to be held harmless and indemnified under Article VIII thereof, to be reimbursed for attorneys' fees and expenses under Article VII thereof, to receive notice thereunder

and to give or withhold consent to amendments, changes, modifications and alterations of the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease and its right to enforce such rights.

ARTICLE II

AUTHORIZATION AND TERMS OF
SERIES 2014 BONDS

SECTION 2.1 Authorized Amount of the Series 2014 Bonds.

No Bonds may be issued under the provisions of this Supplement except in accordance with this Section. The total authorized principal amount of Series 2014 Bonds which shall be issued under the provisions of the Indenture is \$_____,000

SECTION 2.2 Issuance of Series 2014 Bonds.

(a) It is determined to be necessary to, and the Corporation shall, issue, sell and deliver \$_____,000 aggregate principal amount of "Revenue Refunding Bonds, Series 2014."

(b) The Series 2014 Bonds shall be issuable only in fully registered form, substantially as set forth in the Exhibit to this Supplement, shall be numbered in such manner as determined by the Trustee in order to distinguish each Series 2014 Bond from any other Bond, shall be in the denominations of \$5,000 of principal amount and any integral multiple thereof, shall be dated the date of original issuance and delivery thereof and shall bear interest from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from their date, payable semiannually on January 1 and July 1 of each year, commencing on _____ 1, 20___. The Series 2014 Bonds shall bear interest at the rates and mature in the principal amounts on July 1 of the years as follows:

<u>Years</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2016	\$_____,000	%
2017	_____,000	
2018	_____,000	
2019	_____,000	
2020	_____,000	
2021	_____,000	

SECTION 2.3 Delivery of Series 2014 Bonds.

(a) Upon the execution and delivery of this Supplement and satisfaction of the conditions established by the Corporation for delivery of the Series 2014 Bonds, the Corporation shall execute the Series 2014 Bonds and deliver them to the Trustee. Thereupon, the Trustee shall authenticate the Series 2014 Bonds and deliver them to,

or on the order of, the Original Purchaser thereof, as directed by the Corporation in accordance with this Section.

(b) Prior to delivery by the Trustee of any Series 2014 Bonds, there shall have been received by the Trustee a request and authorization to the Trustee on behalf of the Corporation, signed by the President, Vice President or Secretary-Treasurer, to authenticate and deliver the Series 2014 Bonds to, or on the order of, the Original Purchaser upon payment to the Trustee of the amounts specified therein (including without limitation, any accrued interest), which amounts shall be deposited as provided in Article V hereof.

ARTICLE III

[RESERVED TO PRESERVE SECTION NUMBERING]

ARTICLE IV

REDEMPTION OR PURCHASE OF BONDS

SECTION 4.1 Terms of Redemption of Series 2014 Bonds - No Redemption. The Series 2014 Bonds are not subject to redemption.

SECTION 4.2 Purchase of Bonds. Notwithstanding the other provisions of Article IV of the Indenture, if at any time there is money in the Series 2014 Bond Retirement Account of the Bond Retirement Fund and any of the outstanding Bonds payable from such account may be purchased in the open market at a net cost to the Corporation which would be less than the cost of redeeming such Bonds under the provisions of this Article (or, prior to the time such Bonds may be redeemed, at a price equal to or below par), the Corporation, from time to time, at the request of the Town, may cause the Trustee to purchase so many of such Bonds as the Corporation shall designate and to pay therefor from the Series 2014 Bond Retirement Account of the Bond Retirement Fund, to the extent of the funds in such fund.

ARTICLE V

PROVISIONS AS TO FUNDS AND PAYMENTS

SECTION 5.1 Establishment of Funds. There are hereby ordered created by the Corporation and maintained as separate deposit accounts (except when invested as set forth in the Indenture) in the custody of the Trustee, the following trust accounts in addition to those created by the Indenture: (i) as part of the Revenue Fund, a Series 2014 Revenue Account; (ii) as part of the Interest Fund, a Series 2014 Interest Account and (iii) as part of the Bond Retirement Fund, a Series 2014 Bond Retirement Account.

SECTION 5.2 Application of Series 2014 Bond Proceeds.

The Corporation shall deposit with the Trustee all of the proceeds of the sale of the Series 2014 Bonds and upon receipt of such proceeds the Trustee shall deposit them with the Escrow Trustee for the credit of the "Trust Fund" established pursuant to the Escrow Trust Agreement.

SECTION 5.3 [RESERVED TO PRESERVE SECTION NUMBERING.]

SECTION 5.4 Receipt of Revenues.

The installments of rents to be paid by the Town pursuant to the terms of the Series 2014 Town Lease have been assigned by the Corporation to the Trustee so that such moneys shall be paid by the Town directly to the Trustee, and the Trustee shall credit such moneys to the Revenue Fund, the Reserve Fund and the Reimbursement Fund, as set forth herein.

The installments of rents to be paid by the Town pursuant to the terms of Section 1.3(a)(i) of the Series 2014 Town Lease shall be deposited in the Series 2014 Revenue Account of the Revenue Fund and of Section 1.3(a)(ii) of the Series 2014 Town Lease shall be deposited in the Reserve Fund and the Reimbursement Fund. If at any time the money in the Revenue Fund exceeds, in the sole opinion of the Trustee, the amount necessary for the current debt service on all of the Bonds then outstanding, including administration costs and expenses, and the Town is not then in default under the Series 2014 Town Lease, such excess shall constitute a credit to the Town on the next succeeding installments of rent due or to become due under the Series 2014 Town Lease, in such manner as the Town may direct; provided, however, that the Town may exercise its rights under Section 7.3 of the Series 2014 Town Lease, in which event such excess funds shall be transferred to and paid over into the Series 2014 Bond Retirement Account, in such manner as the Town may direct in writing. Notwithstanding the foregoing, if the Town is required to make rent payments pursuant to the provisions of Section 1.3(a)(ii) of the Series 2014 Town Lease, then in that event, until such time as the amount in the Reserve Fund shall equal the Reserve Requirement any excess moneys in the Revenue Fund shall, at least annually, so long as the Town is not in default under the Series 2014 Town Lease, be deposited in the Reserve Fund and any earnings in the Reserve Fund shall be retained in the Reserve Fund. The aforesaid credit or transfer shall be made by the Trustee no less frequently than annually.

SECTION 5.5 Flow of Funds - Interest Fund/Bond Retirement Fund. The Trustee shall transfer from the Series 2014 Revenue Account of the Revenue Fund the following amounts at the time and in the manner hereinafter provided for, to-wit:

(a) Series 2014 Interest Account of the Interest Fund: One (1) business day prior to each Interest Payment Date, the Trustee shall deposit in the Series 2014 Interest Account of the Interest Fund an amount equal to the amount of the interest becoming due and payable on the outstanding Series 2014 Bonds on the next

Interest Payment Date, and each such deposit shall be made so that adequate moneys for the payment of interest will be available in such fund on each date that interest payments are to be made hereunder. Amounts in the Series 2014 Interest Account of the Interest Fund shall be used and withdrawn by the Trustee solely for the purpose of paying the interest on the Series 2014 Bonds as it shall become due and payable.

(b) Series 2014 Bond Retirement Account of the Bond Retirement Fund: One (1) business day prior to each Principal Payment Date, the Trustee shall deposit in the Series 2014 Bond Retirement Account of the Bond Retirement Fund solely for the purpose of paying the principal of the Series 2014 Bonds as each amount shall become due and payable, on or before the following dates, the amounts specified opposite each such date:

<u>Amount</u>	<u>Maturity Date</u>
\$,000	July 1, 2016
,000	July 1, 2017
,000	July 1, 2018
,000	July 1, 2019
,000	July 1, 2020
,000	July 1, 2021

ARTICLE VI

ENFORCEMENT OF REVENUE PLEDGE; EXCLUSIVE PLEDGE

SECTION 6.1 Enforcement of Revenue Pledge. As provided in Section 3.5 of the Series 2014 Town Lease, the Trustee shall have the right of specific performance of the covenants of the Town as to Revenues provided by such Section 3.5 by appropriate court action in the name of the Trustee on behalf of the Owners of the Bonds and the provider of any Qualified Reserve Fund Instrument, in the name of the Corporation or in the names of both. Nothing contained in this Section or in Section 3.5 of the Series 2014 Town Lease shall be deemed to create a lien of any kind upon the Leased Property or upon any other assets or facilities of the Town.

SECTION 6.2 Exclusive Pledge. As further provided in Section 3.5 of the Series 2014 Town Lease, the pledge of Revenues referred to in this Article shall be for the benefit of the Owners of the Series 2014 Bonds and the Owners of any Additional Bonds as well as the provider of any Qualified Reserve Fund Instrument, and no other creditor of the Corporation shall have any claim thereto.

ARTICLE VII

[RESERVED TO PRESERVE SECTION NUMBERING]

ARTICLE VIII

MISCELLANEOUS

SECTION 8.1 Certain References /Amendments /Additional Provisions.

(a) References in Sections 2.04, 5.07, 5.09, 7.02, 7.06, 8.01, 8.03, 8.05, 9.02, 10.01, 11.04, 11.06, 11.08, 11.09, 11.11, 11.13 and 13.08 of the Indenture to "Series 2001 Town Lease" shall be deemed to also be to "Series 2014 Town Lease."

(b) References in Sections 5.07, 8.06, 10.02, 11.06, 11.08 and 11.12 of the Indenture to "Series 2001 Bonds" shall be deemed to also be to "Series 2014 Bonds."

(c) References in Sections 7.02, 8.03, 8.05, 9.02, 11.08, 11.09, 11.11 and 11.13 of the Indenture to "Series 2001 Ground Lease" shall be deemed to also be to "Series 2014 Ground Lease."

SECTION 8.2 Severability.

(a) In case any section or provision of this Supplement, or any covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Supplement, or any application thereof, is held to be illegal or invalid for any reason, or is inoperable at any time, that illegality, invalidity or inoperability shall not affect the remainder thereof or any other section or provision of this Supplement or any other covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Supplement, all of which shall be construed and enforced at the time as if the illegal, invalid or inoperable portion were not contained therein.

(b) Any illegality, invalidity or inoperability shall not affect any legal, valid and operable section, action, covenant, agreement, stipulation, obligation, act, provision, part or application, all of which shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law from time to time.

SECTION 8.3 Notices. Except as provided in Section 8.02 of the Indenture, it shall be sufficient service or giving of any notice, request, complaint, demand or other instrument or document, if it is duly mailed by first class mail notices to the Corporation, the Town and the Trustee shall be addressed as follows:

(i) If to the Corporation:

Town of Gilbert, Arizona Public
Facilities Municipal Property
Corporation
c/o Town of Gilbert, Arizona
50 East Civic Center Drive
Gilbert, Arizona 85296-3401
Attention: President

(ii) If to the Town:

Town of Gilbert, Arizona
50 East Civic Center Drive
Gilbert, Arizona 85296-3401
Attention: Manager

(iii) If to the Trustee:

The Bank of New York Mellon
Trust Company, N.A.
333 South Grand Avenue, Suite 5A
Los Angeles, California 90071
Attention: Corporate Trust Service

Duplicate copies of each notice, request, complaint, demand or other instrument or document given hereunder by the Corporation, the Town or the Trustee to one or either of the others also shall be given to the others. The foregoing parties may designate, by notice given hereunder, any further or different addresses to which any subsequent notice, request, complaint, demand or other instrument or document shall be sent. The Trustee shall designate, by notice to the Corporation and the Town, the addresses to which notices or copies thereof shall be sent to the Registrar and the Paying Agents.

SECTION 8.4 Counterparts. This Supplement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

SECTION 8.5 Certain State Law Provisions.

(a) To the extent applicable by provision of law, the Trustee acknowledges that this Escrow Trust Agreement is subject to cancellation pursuant to Section 38-511, Arizona Revised Statutes, as amended, the provisions of which are incorporated herein and which provides that the Corporation may within three years after its execution cancel any contract (including this Agreement) without penalty or

further obligation made by the Corporation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Corporation is at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

(b) To the extent applicable under Section 41-4401, Arizona Revised Statutes, as amended, the Trustee shall comply with all federal immigration laws and regulations that relate to its employees and its compliance with the "e-verify" requirements under Section 23-214(A), Arizona Revised Statutes, as amended. The breach by the Trustee of the foregoing shall be deemed a material breach of this Escrow Trust Agreement and may result in the termination of the services of the Trustee by the Corporation. The Corporation retains the legal right to randomly inspect the papers and records of the Trustee to ensure that the Trustee is complying with the foregoing. The Trustee shall keep such papers and records open for random inspection during normal business hours by the Corporation. The Trustee shall cooperate with the random inspections by the Corporation including granting the Corporation entry rights onto its property to perform such random inspections and waiving its respective rights to keep such papers and records confidential.

ARTICLE IX

INTEGRATION OF DOCUMENTS

SECTION 9.1 The Indenture and this Supplemental Indenture. The Indenture and this Supplement shall be deemed and considered as a single document, and the covenants, agreements, terms, conditions, rights, privileges, duties and liabilities contained in the Indenture and this Supplement and arising thereunder and hereunder shall apply concurrently, except as specifically set forth herein, and except when the context or circumstances otherwise require.

SECTION 9.2 Indenture to Remain in Effect, Except as Modified. Except as otherwise modified, amended or supplemented by this Supplement, the Indenture shall remain in full force and effect for and until the defeasance clause of the preamble of this Supplement is satisfied.

IN WITNESS WHEREOF, the Corporation has caused this Supplement to be executed and delivered for it and in its name and on its behalf by its duly authorized officers; in token of its acceptance of the trusts created hereunder and under the Indenture, the Trustee has caused this Supplement to be executed and delivered for it and in its name and on its behalf by its duly authorized officer; and in token of its acceptance of the duties and obligations of the Registrar hereunder and under the Indenture, the Registrar has caused this Supplement to be executed and delivered for it and in its name and on its behalf by its duly authorized officer, all as of the day and year first above written.

TOWN OF GILBERT, ARIZONA PUBLIC
FACILITIES MUNICIPAL PROPERTY
CORPORATION

By.....
President

ATTEST:

.....
Secretary-Treasurer

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., as Trustee and
Registrar

By.....
Authorized Representative

EXHIBIT

[Form of Series 2014 Bond]

REGISTERED
NO. R -...

REGISTERED
\$.....

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY ("DTC") TO THE CORPORATION OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.*

UNITED STATES OF AMERICA
STATE OF ARIZONA
TOWN OF GILBERT, ARIZONA PUBLIC FACILITIES
MUNICIPAL PROPERTY CORPORATION
REVENUE REFUNDING BOND,
SERIES 2014

Interest Rate: Maturity Date: Dated Date: CUSIP:
.....% per annum July 1, 20.. , 2014 375290

REGISTERED OWNER: CEDE & CO.*

PRINCIPAL AMOUNT: DOLLARS

TOWN OF GILBERT, ARIZONA PUBLIC FACILITIES MUNICIPAL PROPERTY CORPORATION, a nonprofit corporation organized and existing under and by virtue of the laws of the State of Arizona (hereinafter referred to as the "Corporation"), for value received, hereby promises to pay to the Registered Owner (named above), or registered assigns, the Principal Amount (stated above) on the Maturity Date (stated above), and to pay interest on the principal amount at the Interest Rate (stated above) on January 1 and July 1 of each year, commencing on 1, 20.. (each an "interest payment date"), from the Dated Date (stated above) to the Maturity Date. The principal of this Series 2014 Bond is payable upon presentation and surrender hereof at the designated corporate trust office of, as trustee (the "Trustee"). Interest on this Series 2014 Bond is payable by check mailed to the registered owner hereof, as shown on

* Insert if The Depository Trust Company, New York, New York, is the Securities Depository.

the registration books for this series maintained by the Trustee, at the address appearing therein at the close of business on the 15th day of the calendar month next preceding interest payment date (the "regular record date"). Any interest which is not timely paid or duly provided for shall cease to be payable to the registered owner hereof (or of one or more predecessor Series 2014 Bonds) as of the regular record date, but shall be payable to the registered owner hereof (or of one or more predecessor Series 2014 Bonds) at the close of business on a special record date to be fixed by the Trustee for the payment of that overdue interest. The special record date shall be fixed by the Trustee whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to registered owners of the Series 2014 Bonds not less than 10 days prior thereto. The principal of and premium, if any, and interest on this Series 2014 Bond are payable in lawful money of the United States of America, without deduction for the services of the Trustee.

This bond is one of a duly authorized issue of bonds of the Corporation known as its Revenue Refunding Bonds, Series 2014 (the "Series 2014 Bonds"), issued for the purpose of assisting the Town of Gilbert, Arizona (the "Town"), in financing certain projects for the Town. The Series 2014 Bonds are special obligations of the Corporation issued under and secured, both as to principal and interest, by a Trust Indenture, dated as of October 1, 2001, as supplemented by a First Supplement to Trust Indenture, dated as of January 1, 2006, a Second Supplement to Trust Indenture, dated as of March 1, 2009, a Third Supplement to Trust Indenture, dated as of July 1, 2011 and a Fourth Supplement to Trust Indenture, dated as of December 1, 2014 (as so supplemented, hereinafter referred to as the "Indenture"), from the Corporation to the Trustee. Reference is hereby made to the Indenture for the nature and extent of the security, a statement of the terms and conditions upon which the Series 2014 Bonds are issued and secured, the rights of the registered owners hereof and the terms under which bonds with a parity of lien with the Series 2014 Bonds have been and may be issued.

The Corporation is the lessee of real property owned by the Town. Pursuant to a Series 2014 Town Lease, dated as of December 1, 2014 (the "Town Lease"), by and between the Corporation and the Town, the Corporation has leased such real property (the "Leased Property") back to the Town. The rent payments to be paid by the Town to the Corporation pursuant to the Series 2014 Town Lease have been assigned to the Trustee as security for the payment of the Series 2014 Bonds.

Under the terms of the Series 2014 Town Lease, the Town has agreed to pay as rent payments sums sufficient to pay, among other things, the principal of and interest on the Series 2014 Bonds as the same come due, and all charges and expenses of the Trustee. In order to secure the payment of the rent payments, the Town has pledged (i) revenues from the unrestricted transaction privilege (sales) tax, business license and franchise fees, parks and recreation fees and permits and fines and forfeitures which the Town imposes; provided that the Mayor and Council of the Town may impose other transaction

privilege taxes in the future, the uses of revenues from which will be restricted, at the discretion of such Council and (ii) any excise taxes, transaction privilege (sales) taxes and income taxes imposed by the State of Arizona or any agency thereof and returned, allocated or apportioned to the Town, except the Town's share of any such taxes which by State law, rule or regulation must be expended for other purposes, such as motor vehicle fuel taxes.

The Series 2014 Town Lease does not constitute a general obligation of the Town nor any indebtedness of the Town within the meaning of the Constitution or laws of the State of Arizona. This Bond and all the Series 2014 Bonds are payable solely from amounts received by the Corporation under the Series 2014 Town Lease and all supplements thereto. This Bond is not a general obligation of the Corporation, and no incorporator, member, director, officer or agent, as such, past, present or future, of the Corporation shall be personally liable for the payment hereof.

As provided in, and to the extent permitted by the Indenture, or any indenture supplemental thereto, the rights and obligations of the Corporation and the registered owners of the Series 2014 Bonds may be modified by the Corporation with the written consent of the registered owners of a majority of the principal amount of the Series 2014 Bonds outstanding, provided, however, that no such modification shall effect the reduction of, or the extension of the stated time of payment of the principal hereof, or of the interest hereon, or permit the creation of any lien on the trust estate established by the Indenture prior to or on a parity with the lien of the Indenture (except parity bonds or other obligations under the conditions set forth in the Indenture) or deprive the registered owner hereof of the lien created by the Indenture.

The Town has covenanted and agreed with the registered owners of the Series 2014 Bonds that, so long as any of the Series 2014 Bonds remain outstanding and any of the principal and interest thereon shall be unpaid or unprovided for, the Town will not further encumber the amounts pledged under the Series 2014 Town Lease on a basis equal to its pledge thereunder unless the amounts collected in the next preceding fiscal year of the Town shall have amounted to at least three (3.0) times the highest combined interest and principal requirements for any succeeding 12 months' period for all Series 2014 Bonds then outstanding and all other parity obligations secured and so proposed to be secured by a pledge of those amounts.

The Series 2014 Bonds are not subject to redemption prior to maturity.

The Registrar, initially the Trustee, will maintain the books of the Corporation for the registration of ownership of each Series 2014 Bond as provided in the Indenture.

This Series 2014 Bond may be transferred on the registration books upon delivery hereof to the Registrar, accompanied by a

written instrument of transfer in form and with guaranty of signature satisfactory to the Registrar, duly executed by the registered owner of this Series 2014 Bond, or his or her attorney-in-fact or legal representative, containing written instructions as to the details of the transfer. No transfer of this Series 2014 Bond shall be effective until entered on the registration books.

In all cases upon the transfer of a Series 2014 Bond, the Registrar will enter the transfer of ownership in the registration books and will authenticate and deliver, in the name of the transferee or transferees, a new fully registered Series 2014 Bond or Bonds of the same series, of the denominations of \$5,000 or any whole multiple thereof (except that no Series 2014 Bond shall be issued which relates to more than a single principal maturity) for the aggregate principal amount which the registered owner is entitled to receive at the earliest practicable time in accordance with the provisions of the Indenture.

The registered owner of one or more Series 2014 Bonds may, upon request, and upon the surrender to the Registrar of such Series 2014 Bonds, exchange such Series 2014 Bonds for Series 2014 Bonds of other authorized denomination of the same maturity, series, and interest rate together aggregating the same principal amount as the Series 2014 Bonds so surrendered.

The Corporation or the Registrar will charge the registered owner of such Series 2014 Bond, for every such transfer or exchange of a Series 2014 Bond, an amount sufficient to reimburse it for any tax, fee or other charge required to be paid with respect to such transfer and may require that such charge be paid before any such new Series 2014 Bond shall be delivered. The registered owner of any Series 2014 Bond will be required to pay any expenses incurred in connection with the replacement of a mutilated, lost, stolen or destroyed Series 2014 Bond.

The Corporation and the Registrar will not be required (a) to issue or transfer any Series 2014 Bonds during a period beginning with the opening of business on the 15th business day next preceding the date of mailing of notice of Series 2014 Bonds to be redeemed and ending with the close of business on the day on which the applicable notice of redemption is mailed or (b) to transfer any Series 2014 Bonds which have been selected or called for redemption in whole or in part.

This Series 2014 Bond shall not be entitled to any security or benefit under the Indenture or be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Registrar.

It is hereby certified and recited that all conditions, acts and things required by the Constitution and laws of the State of Arizona to exist, to occur and to be performed precedent to and in the issuance of this Series 2014 Bond exist, have occurred and have been performed. Neither this Series 2014 Bond nor the series of bonds of which this is one, is a general obligation of the Corporation or the Town but is payable solely from the sources and in the manner set forth herein.

IN WITNESS WHEREOF, the President and Secretary-Treasurer of the Corporation have caused this Series 2014 Bond to be executed in the name of the Corporation by the facsimile signature of said President and by the facsimile signature of said Secretary-Treasurer, all as of the date written above.

TOWN OF GILBERT, ARIZONA PUBLIC
FACILITIES MUNICIPAL PROPERTY
CORPORATION

.....
President

ATTEST:

.....
Secretary-Treasurer

CERTIFICATE OF AUTHENTICATION

This Bond is one of Town of Gilbert, Arizona Public Facilities Municipal Property Corporation Revenue Refunding Bonds, Series 2014.

Date of Authentication:, 2014

.....
as Registrar

By.....
Authorized Representative

ASSIGNMENT

For value received, the undersigned sells, assigns and transfers unto the within bond and irrevocably constitutes and appoints attorney to transfer that bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated:.....

Signature Guaranteed:

.....
Signature guarantee should be made by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other program acceptable to the Bond Registrar.

.....
Notice: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within bond in every particular, without alteration or any change whatsoever.

[Insert appropriate abbreviations]

DRAFT
11/11/14
11/17/14

When recorded mail to:

Michael Cafiso, Esq.
Suite 700
2375 East Camelback Road
Phoenix, Arizona 85016

FIRST AMENDMENT

TO

SERIES 2006

GROUND LEASE

TOWN OF GILBERT, ARIZONA, as
Lessor

TO

TOWN OF GILBERT, ARIZONA PUBLIC FACILITIES
MUNICIPAL PROPERTY CORPORATION, as
Lessee

DATED AS OF DECEMBER 1, 2014

FIRST AMENDMENT
TO
SERIES 2006 GROUND LEASE

TOWN OF GILBERT, ARIZONA,
as Lessor

TO

TOWN OF GILBERT, ARIZONA PUBLIC FACILITIES
MUNICIPAL PROPERTY CORPORATION,
as Lessee

THIS FIRST AMENDMENT TO SERIES 2006 GROUND LEASE, dated as of December 1, 2014 (this "Ground Lease"), by and between the TOWN OF GILBERT, ARIZONA, a municipal corporation of the State of Arizona (the "Town"), and TOWN OF GILBERT, ARIZONA PUBLIC FACILITIES MUNICIPAL PROPERTY CORPORATION, a nonprofit corporation organized and existing under the laws of the State of Arizona (the "Corporation");

W I T N E S S E T H:

WHEREAS, the Town owns the real property situated in the Town of Gilbert, Maricopa County, Arizona, described on the Exhibit attached hereto and by this reference made a part hereof (the "Real Property") and has leased the Real Property to the Corporation pursuant to a Series 2006 Ground Lease, dated as of January 1, 2006 (the "Series 2006 Ground Lease"); and

WHEREAS, the Town desires to encumber the Real Property in connection with the issuance by the Corporation of its \$_____,000 aggregate principal amount of Revenue Refunding Bonds, Series 2014 (the "Series 2014 Bonds");

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter contained, IT IS HEREBY AGREED AS FOLLOWS:

Section 1. The Town hereby continues to lease to the Corporation, and the Corporation hereby continues to lease from the Town, for the period commencing with the date hereof and continuing until July 2, 2021, or such later date as of which the Town Lease described in Section 2 hereof shall be terminated, the Real Property. This Ground Lease shall be subject to earlier termination in accordance with Section 6 hereof. (The foregoing is in addition to, and not in lieu of, the corresponding provision of the Series 2006 Ground Lease.)

Section 2. Simultaneously with the execution of this Ground Lease, the Town and the Corporation shall execute a Series 2014 Town Lease, dated as of December 1, 2014 (the "Town Lease"), pursuant to the terms of which the Corporation will extend the lease of the Real Property to the Town.

Section 3. The Corporation shall pay to the Town, as rental for the Real Property pursuant to this Ground Lease, \$10 for the entire term, together with other good and valuable consideration as provided herein, upon the execution and delivery of this Ground Lease.

Section 4. The Corporation, as of the date hereof, shall assign all rights and benefits hereunder to The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee") pursuant to the Trust Indenture, dated as of October 1, 2001, as supplemented by the First Supplement to Trust Indenture, dated as of January 1, 2006, the Second Supplement to Trust Indenture, dated as of March 1, 2009, the Third Supplement to Trust Indenture, dated as of July 1, 2011, and the Fourth Supplement to Trust Indenture, dated as of December 1, 2014 (as so supplemented, the "Indenture"), and shall grant the Trustee a lien on its interest in this Ground Lease for the benefit of the holders of the Series 2014 Bonds to be issued pursuant to the Indenture. The Town hereby consents to such assignment and grant of lien. The Trustee shall have no obligations hereunder except as otherwise provided in the Indenture.

Section 5. Notwithstanding the Series 2006 Ground Lease or this Ground Lease, the Town, so long as no event of default by the Town under the Series 2006 Town Lease, dated as of July 1, 2006, as amended by a First Amendment to Series 2006 Town Lease, dated March 25, 2009 (as so amended, the "Series 2006 Town Lease"), from the Corporation to the Town or the Town Lease shall have occurred and be continuing, shall at all times have and retain such rights of access and control of the Real Property.

Section 6. The Town shall have the right to terminate this Ground Lease upon written notice to the Corporation given concurrently with or subsequent to the date the lien granted to the Trustee pursuant to the Indenture is released of record as a result of the payment of or provision for the payment of the entire indebtedness secured by such lien as provided in the Indenture. The Corporation shall not at any time increase the amount of its indebtedness secured by such lien except (a) to the extent it may be necessary in connection with any refinancing or refunding which, by reason of a default by the Town in the payment of rentals due under the Series 2006 Town Lease or the Town Lease, may then be required for the Corporation to meet its obligations to the then holders of indebtedness secured by such lien or (b) in accordance with Sections 7.5 of the Series 2006 Town Lease or the Town Lease, relating to additional financing or for refunding bonds issued for such purposes. So long as the Town and the Corporation have entered into the Town Lease and the Town Lease has not been terminated, the Town shall have no right to terminate this Ground Lease for any reason except the nonpayment of the rent required to be paid under the provisions of Section 3 hereof.

Section 7. Upon the expiration or termination of this Ground Lease, the Corporation shall surrender the Real Property to the Town, together with any improvements thereon. At the time of such surrender, the Real Property shall be free and clear of all liens and

encumbrances other than (a) conditions, reservations, exceptions, rights of way and easements of record on the date of the commencement of the term of the Town Lease or (b) liens or encumbrances imposed as a result of an act or failure to act by the Town.

Section 8. If any term or provision of this Ground Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Ground Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Ground Lease shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the Town and the Corporation have caused their respective names to be signed hereto by their respective officers thereunto duly authorized, all as of the day and year first above written.

TOWN OF GILBERT, ARIZONA, a municipal corporation

By.....
Mayor

ATTEST:

By.....
Town Clerk

TOWN OF GILBERT, ARIZONA PUBLIC FACILITIES MUNICIPAL PROPERTY CORPORATION, an Arizona nonprofit corporation

By.....
President

ATTEST:

.....
Secretary-Treasurer

STATE OF ARIZONA)
)ss.
COUNTY OF MARICOPA)

On this, the day of July, 2014, before me, the undersigned Notary Public, personally appeared John Lewis and Catherine A. Templeton, who acknowledged themselves to be the Mayor and Town Clerk, respectively, of the TOWN OF GILBERT, ARIZONA, a municipal corporation, and that they, as such officers, being duly authorized so to do, executed the foregoing First Amendment To Series 2001 Ground Lease for the purposes therein contained by signing the name of the municipal corporation by themselves as such officers.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

.....
Notary Public

My Commission Expires:

.....

STATE OF ARIZONA)
)ss.
COUNTY OF MARICOPA)

On this, the day of July, 2014, before me, the undersigned Notary Public, personally appeared James Flanagan and Leonard Katz, who acknowledged themselves to be the President and Secretary-Treasurer, respectively, of TOWN OF GILBERT, ARIZONA PUBLIC FACILITIES MUNICIPAL PROPERTY CORPORATION, an Arizona nonprofit corporation, and that they, as such officers, being duly authorized so to do, executed the foregoing First Amendment To Series 2001 Ground Lease for the purposes therein contained by signing the name of the corporation by themselves as such officers.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

.....
Notary Public

My Commission Expires:

.....

Notice required by A.R.S. Section 41-313: The foregoing notarial certificate(s) relate(s) to the First Amendment To Series 2001 Ground Lease, dated December 1, 2014, executed by the Town of Gilbert, Arizona, a municipal corporation, and the Town of Gilbert, Arizona Public Facilities Municipal Property Corporation, an Arizona nonprofit corporation (the "Notarized Document"). The Notarized Document contains a total of pages.

EXHIBIT

DESCRIPTION OF REAL PROPERTY

South Area Service Center Facility Site:

The South half of the North half of the Southeast quarter of the Southeast quarter and the South half of the Southeast quarter of the Southeast quarter of Section 9, Township 2 South, Range 6 East of the Gila and Salt River Base and Meridian; except the following:

The Southeast corner of said Section 9, is a found iron bar in a handhole, and from which a line defines the South line of said Section to the South quarter corner, of said Section 9, a found brass disc, stamped "Town of Gilbert" is flush with pavement, bears North 90 degrees 00 minutes 00 seconds West, an assumed bearing, which is the Basis of Bearing for this description, at a distance of 2667.00 feet;

From the Southeast Section corner, as a Point of Commencement (P.O.C.), then, coincident with the South line of the Section, along the bearing of North 90 degrees 00 minutes 00 seconds, West, a distance of 675.00 feet, to a point, monumented with a set Parker Kalon (PK) nail, with an attached washer which is stamped SRP "LS 15925";

Thence departing the South line of the Section, along a bearing North 00 degrees 00 minutes 00 seconds East, a distance of 105.50 feet, to a point monumented bar, topped with a bronze cap which is stamped SRP "LS15925," said point is on the North line of a transmission line easement, as described in Docket 97-249353 Maricopa County Records, this point is the Point of Beginning (P.O.B.) of the description of the proposed substation site;

Thence coincident with the North line, of said transmission line easement, along a bearing of North 90 degrees 00 minutes 00 seconds West, for a distance of 300.00 feet, to a point monumented by a set iron bar, topped with a bronze cap which is stamped SRP "LS 15925";

Thence departing the North line of the transmission line easement, along a bearing of North 00 degrees 00 minutes 00 seconds East, for a distance of 300.00 feet to a point monumented by a set iron bar, topped with a bronze cap which is stamped SRP "LS 15925";

Thence along a bearing of North 90 degrees 00 minutes 00 seconds East, a distance of 300.00 feet to a point monumented by a set iron bar, topped with a bronze cap which is stamped SRP "LS 15925";

Thence along a bearing of South 90 degrees 00 minutes 00 seconds East, a distance of 300.00 feet, ending back at the Point of Beginning (P.O.B.), monumented by a set iron bar, topped with a bronze cap which is stamped SRP "LS 15925."

Police Property Facility Site:

The East half of the Southeast quarter of the Southwest quarter of Section 27, Township 1 South, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona,

EXCEPT the following described property:

Beginning at a point 33 feet North of the South quarter corner of said Section 27, Township 1 South, Range 6 East;

Thence North along the midsection line 100 feet to a point;

Thence West and parallel to the South line of said Section, 100 feet to a point;

Thence South 100 feet to a point 100 feet West of the Point of Beginning;

Thence East 100 feet to the Point of Beginning,

EXCEPT the South 55 feet thereof for roadway.

Sports Complex Site:

The East half of the West half of the Southeast quarter of Section 12, Township 1 South, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, and the West half of the West half of the Southeast quarter of Section 12, Township 1 South, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, Except the South 1040.53 feet.

6DRAFT
11/11/14
11/17/14

When recorded mail to:

Michael Cafiso, Esq.
Suite 700
2375 East Camelback Road
Phoenix, Arizona 85016

EXEMPT FROM AFFIDAVIT AND FEE
PURSUANT TO SECTION
11-1134(A)(3), ARIZONA REVISED
STATUTES, AS AMENDED

SERIES 2014 TOWN LEASE

TOWN OF GILBERT, ARIZONA
PUBLIC FACILITIES MUNICIPAL PROPERTY CORPORATION,
as Lessor

TO

TOWN OF GILBERT, ARIZONA,
as Lessee

DATED AS OF DECEMBER 1, 2014

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SERIES 2014 TOWN LEASE

TOWN OF GILBERT, ARIZONA
PUBLIC FACILITIES MUNICIPAL PROPERTY CORPORATION,
as Lessor

TO

TOWN OF GILBERT, ARIZONA,
as Lessee

THIS SERIES 2014 TOWN LEASE, dated as of December 1, 2014 (this "Town Lease"), by and between TOWN OF GILBERT, ARIZONA PUBLIC FACILITIES MUNICIPAL PROPERTY CORPORATION, a nonprofit corporation organized and existing under the laws of the State of Arizona (the "Corporation"), and the TOWN OF GILBERT, ARIZONA, a municipal corporation of the State of Arizona (the "Town");

W I T N E S S E T H:

WHEREAS, the Corporation was formed to transact any or all lawful business for which nonprofit corporations may be incorporated under the laws of the State of Arizona (the "State"), including, without limiting the generality of the foregoing, any civic or charitable purpose such as financing or refinancing the cost of acquiring, constructing, reconstructing or improving buildings, equipment or other real and personal properties suitable for use by and for leasing to the Town; and

WHEREAS, the Town determined that it would be beneficial to the Town to finance the costs of design, construction and outfitting of (i) an approximately 90,000 square foot facility on a 30-acre site to include amenities for public works field operations, vehicle maintenance, household hazardous waste storage, parks maintenance, full service police substation and storage for vehicles, equipment, and materials as well as related parking, landscaping, fueling station, and adjacent arterial roadway improvements to be known as the "South Area Service Center Facility"; (ii) a 50,000 square foot facility to include offices, warehouse, secured storage yard, employee and public parking, and storage equipment as well as site improvements and security common to secured property storage facilities to be known as the "Police Property Facility" and (iii) a multi-use athletic complex on approximately 44 acres including: eight replica stadiums with artificial turf, field houses, stadium club, sports-themed concession buildings, and other activity areas as well as administrative office building, corporate events area, associated parking, trail improvements, and the widening of the adjacent arterial street and associated site work to be known as the "Sports Complex" (collectively the "Second Projects"); and

WHEREAS, in order to finance the Second Projects, the Corporation and the Town deemed it necessary and desirable for the Corporation to issue its Revenue Bonds, Series 2006 (the "Series 2006 Bonds"); and

WHEREAS, in connection with the issuance of the Series 2006 Bonds, the Corporation and the Town entered into a Series 2006 Ground Lease, dated as of January 1, 2006, pursuant to which the Town leased the real property described on the Exhibit attached hereto (the "Real Property") to the Corporation and a Series 2006 Town Lease, dated as of January 1, 2006, as amended by a First Amendment to Series 2006 Town Lease, dated March 25, 2009, pursuant to which the Corporation leased the Real Property and the improvements to be included thereon to the Town, and the Town, as agent of the Corporation, agreed to design, construct and outfit, as the case may be, the Second Projects; and

WHEREAS, it was determined that it would be beneficial to the Town to refinance a portion of the Series 2006 Bonds as follows:

<u>Maturity Dates Being Refunded (July 1)</u>	<u>Principal Amounts Outstanding</u>	<u>Principal Amounts Being Refunded</u>	<u>Redemption Dates (July 1)</u>
2017	\$5,465,000	\$5,465,000	2016
2018	5,470,000	5,470,000	2016
2019	6,025,000	6,025,000	2016
2020	6,330,000	6,330,000	2016
2021	6,645,000	6,645,000	2016

; and

WHEREAS, for such purpose, the Corporation issued its Revenue Refunding Bonds, Series 2014 (the "Series 2014 Bonds"); and

WHEREAS, in connection with the issuance of the Series 2014 Bonds, the Corporation and the Town entered into a First Amendment to Series 2006 Ground Lease, dated as of December 1, 2014 (the "Series 2014 Ground Lease"), pursuant to which the Town extended the lease of the Real Property to the Corporation and this Town Lease pursuant to which the Corporation extended the lease of the Real Property and the improvements to be included thereon (the "Leased Property") to the Town; and

WHEREAS, the Series 2014 Bonds (and certain parity obligations heretofore and which may hereafter be issued) are secured by a Trust Indenture, dated as of October 1, 2001, as supplemented by a First Supplement to Trust Indenture, dated as of January 1, 2006, a Second Supplement to Trust Indenture, dated as of March 1, 2009, a Third Supplement to Trust Indenture, dated as of July 1, 2011, and a Fourth Supplement to Trust Indenture, dated as of December 1, 2014 (as so supplemented, the "Indenture"), from the Corporation to The Bank of New York Mellon Trust Company, N.A. (successor in interest to J.P.

Morgan Trust Company, National Association), as trustee (the "Trustee"); and

WHEREAS, the Corporation has not made and does not intend to make any profit by reason of any business or venture in which it may engage or by reason of the assistance it renders the Town in refinancing the Second Projects, and no part of the Corporation's net earnings, if any, will ever inure to the benefit of any person, firm or corporation except the Town;

NOW THEREFORE, for and in consideration of the mutual covenants hereinafter contained, IT IS HEREBY AGREED AS FOLLOWS:

ARTICLE I

LEASE, TERMS, RENT

Section 1.1. The Corporation hereby extends the lease to the Town, and the Town hereby extends the lease from the Corporation, for the term commencing with the date hereof and continuing until July 2, 2021, or such later date as of which the Series 2014 Bonds are deemed paid and discharged under the Indenture, the Leased Property. (No merger of title or estate is intended by the reletting of the Leased Property as leased pursuant to the Series 2014 Ground Lease to the City pursuant hereto.)

Section 1.2. The Town shall have the right to terminate this Town Lease on written notice to the Corporation and to the Series 2014 Insurer[??] (as such term is defined in the Indenture) given concurrently with, or subsequent to, the date the Indenture is released of record as a result of the payment or provision for payment of the entire indebtedness secured hereby, as provided in the Indenture and any supplements thereto.

Section 1.3. (a) (i) The Town shall pay, as rent payments to the Corporation, its successors or assigns, (1) on each June 15 and December 15, commencing on June 15, 20__, an amount which, when added to the amount then on deposit in the Series 2014 Interest Account (as such term is defined in the Indenture) of the Interest Fund (as such term is defined in the Indenture), shall be equal to the interest due on the Series 2014 Bonds on the next interest payment date and (2) on each June 15, commencing on June 15, 20__, an amount which, when added to the amount then on such deposit in the Series 2014 Bond Retirement Account (as such term is defined in the Indenture) of the Bond Retirement Fund (as such term is defined in the Indenture), shall be equal to the principal due on the Series 2014 Bonds on the next principal payment date.

(ii) The Town shall also pay, as rent payments to the Corporation, its successors and assigns, (1) on the June 15 following the Fiscal Year in which the Debt Service Coverage (as such term is defined in the Indenture) is three (3) times or less and each

December 15 and June 15 thereafter, an amount equal to one tenth (1/10th) of the amount required to fund and maintain the Reserve Fund (as such term is defined in the Indenture) in an amount equal to the Reserve Requirement (as such term is defined in the Indenture) for the Bonds until such time as the amount on deposit in the Reserve Fund shall equal the Reserve Requirement for the Bonds and (2) on the first (1st) day of each month, commencing on the first (1st) day of the month following a payment made on the Bonds from the Reserve Fund, an amount equal to one-twelfth (1/12th) of the amount which, when added to the balance then in the Reserve Fund, shall be equal to the amount which should have then been on deposit in the Reserve Fund for the Bonds.

(iii) The Debt Service Coverage for each Fiscal Year shall be calculated by the Town Representative (as such term is defined in the Indenture) and certified to the Trustee by the Town Representative on or prior to the December 15 following such Fiscal Year.

(b) The rent payments payable hereunder shall be paid for and in consideration of the use and occupancy of the Leased Property which the Town receives and in consideration of the continued quiet use and enjoyment thereof as provided in Section 4.1 hereof. The obligation of the Town for rent payments shall be coextensive with the debt service with respect to the Series 2014 Bonds and, when the Series 2014 Bonds and the other obligations secured under the Indenture have been fully paid or payment provided for, the Town shall, except for the obligation of the Town to make payments to the Trustee pursuant to the provision of Section 5.06 of the Indenture and the payments to be made to the United States of America pursuant to Section 1.4(g) hereof, have no further obligation to make payments hereunder.

Section 1.4. The Town shall pay as additional rent payments (a) all other amounts required to be paid by the Town or the Corporation to the Trustee under the Indenture including indemnification owed under Article VIII thereof, (b) all fees and expenses of the Trustee as well as the "Registrars" and the "Paying Agents" under the Indenture to the extent, if any, that such fees, expenses and payments are not met by the regular rent payments, (c) the reasonable expenses of the Corporation approved by the Town and not otherwise required to be paid by the Town under the terms hereof, (d) losses on investments made by the Trustee at the direction of the Town under the terms of the Indenture, but only to the extent necessary to meet the debt service on the Series 2014 Bonds, (e) fees for maintaining the Corporation's corporate existence, and all costs, expenses, losses or damages, including reasonable attorneys' fees, pertaining to any claim or legal action brought against the Trustee or the Corporation with respect to the legality of any defect in the Series 2014 Ground Lease, this Town Lease, the Indenture or the Series 2014 Bonds, or questioning the legality of any action taken or to be taken pursuant thereto, (f) all other expenses of the Corporation incurred at the written request of the Town or the Trustee in accordance with the provisions

of this Town Lease or the Indenture, (g) all amounts required to be paid to the United States of America pursuant to Section 148(f) of the Internal Revenue Code of 1986, as amended (the "Code") with respect to the Series 2014 Bonds and the investment of the proceeds thereof, as provided in Section 10.2 hereof and (h) all amounts required as provided in Section 10.3 hereof. The Town shall pay the amounts specified in (a) above directly to the Trustee as they become due and within twenty (20) days after receipt by the Town of invoice therefor, except as otherwise provided in the Indenture, in (b) above to the Trustee, in (c) above to either the Corporation or its creditors, upon evidence that the expenses or fees have been incurred by it, and within twenty (20) days after receipt by the Town of invoice therefor, in (d) above to the Trustee, in (e) and (f) above to the Corporation, upon evidence that such expenses have been incurred, in (g) above as required by Section 10.2 hereof and in (h) above as required by Section 10.3 hereof.

Section 1.5. The foregoing rent payments shall be payable solely from sources referred to in Article III hereof and shall under no circumstances constitute a general obligation of the Town or be payable from the proceeds of ad valorem taxes.

Section 1.6. Amounts payable hereunder shall be paid in lawful money of the United States of America to or upon the order of the Corporation and at such place as the Corporation may designate in writing. Any rent payment accruing hereunder which shall not be paid within five (5) days after its due date shall bear interest at the highest rate permitted by law, but not exceeding ten percent (10%) per annum, from the date when the same is due hereunder until the same shall be paid.

Section 1.7. All rent payments for debt service on the Series 2014 Bonds and other items required to be paid by the Indenture, as well as additional rent payments payable to the Trustee under Section 1.4 hereof, shall be paid directly to the Trustee at the designated corporate trust office of the Trustee for and on behalf of the Corporation. The Corporation shall cause the Trustee to apply the rent payments made by the Town in the manner and for the purposes expressed in the Indenture.

Section 1.8. Unless otherwise requested by the Town pursuant to Section 7.3 hereof, any money in the Series 2014 Revenue Account (as that term is defined in the Indenture) of the Revenue Fund (as that term is defined in the Indenture) which, in the opinion of the Trustee, exceeds the amounts necessary for the current debt service on the Series 2014 Bonds then outstanding (including administrative costs and expenses) shall, at least annually, so long as the Town is not in default hereunder, constitute a credit to the Town on the next succeeding rent payment or payments due or coming due hereunder. Likewise, subject to Section 5.06(a)(v) of the Indenture, earnings on the Reserve Fund, if any, shall, at least annually, so long as the Town is not in default hereunder, constitute a credit to the Town on the next succeeding rent payment or payments due or coming due pursu-

ant to the Series 2006 Town Lease, the Series 2009 Town Lease and the Series 2011 Town Lease (as such terms are defined in the Indenture) and hereunder, *pro-rata*. Notwithstanding the foregoing, if the Town is required to make rent payments pursuant to the provisions of Section 1.3(a)(ii) hereof, then in that event, until such time as the amount in the Reserve Fund shall equal the Reserve Requirement, any excess moneys in the Revenue Fund shall, at least annually, so long as the Town is not in default hereunder, be deposited in the Reserve Fund and any earnings on the Reserve Fund shall be retained in the Reserve Fund.

ARTICLE II

TAXES, LIENS, UTILITIES, INSURANCE AND OTHER CHARGES

Section 2.1. The rent payments payable pursuant to this Town Lease shall be an absolute net return to the Corporation, free from any expenses and charges with respect to the Leased Property or the income therefrom.

Section 2.2. The Town shall further pay or cause to be paid, punctually when due and payable, all property taxes, income taxes, gross receipts taxes, business and occupation taxes, occupational license taxes, water charges, sewer charges, assessments (including, but not limited to, assessments for public improvements or benefits) and all other governmental exactions of every kind and nature which at any time prior to the expiration or termination of this Town Lease shall be or become due and payable by the Corporation or the Town, and which shall be levied, charged, assessed or imposed:

(a) upon or with respect to the Corporation or which shall be or become liens upon the Leased Property or any interest of the Corporation or the Town therein or under this Town Lease;

(b) upon or with respect to the possession, operation, management, maintenance, alteration, repair, rebuilding, use or occupancy of or by the Town of the Leased Property or any portion thereof or

(c) upon this transaction or any document to which the Town is a party creating or transferring an interest or estate in or to the Leased Property.

The Town shall furnish to the Corporation promptly, upon request, proof of the payment of any such tax, charge assessment or other governmental exaction which is payable by the Town under this Section. It shall not be a breach of this Section if the Town fails to pay any such tax, charge, assessment or exaction during any period or periods in which the Town, in good faith, or the Corporation, shall be contesting the amount or validity of such tax, charge, assessment or exaction. The Corporation will, if requested by the Town, contest the

amount or validity of any such tax, charge, assessment or exaction, and the Town agrees to pay the Corporation's costs therefor.

Section 2.3. The Town shall also pay, when due, all sums of money that may become due for or purporting to be for, any labor, services, materials, supplies or equipment alleged to have been furnished or to be furnished to or for the Town in, upon or about the Leased Property and which may be secured by any mechanics', materialmen's or other lien against the Leased Property or the Corporation's interest therein and shall cause each such lien to be fully discharged and released at the time of performance of any obligation secured by any such lien matures or becomes due, provided, however, that if the Town desires to contest any such lien it may do so, but notwithstanding any such contest, if any such lien shall be reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and said stay thereafter expires, then and in any such event the Town shall forthwith pay and discharge said judgment.

Section 2.4. The Town shall further also pay or cause to be paid, all charges for gas, water, steam, electricity, light, heat, power, telephone or other utility service furnished to or used in connection with the Leased Property. The Corporation shall not be required to furnish to the Town or any other occupant of the Leased Property any gas, water, sewer, electricity, light, heat, power, telephone or other utility service of any kind, nor shall the Corporation be required to pay for any such charges or services.

Section 2.5. The Town shall, at its own cost and expense, keep the Leased Property in good repair and condition, ordinary wear and tear excepted and shall repair, renew or replace any portion of such improvements that shall have lost its usefulness due to damage, destruction, deterioration, or obsolescence. In exchange for the rent payments herein provided, the Corporation shall provide nothing more than the Leased Property. Failure of the Town to faithfully observe this covenant shall constitute a breach of this Town Lease, and the Corporation shall have reasonable rights of inspection for the purpose of determining the Town's performance of its obligations under this Section.

Section 2.6. The Town shall cause the Leased Property to be insured against loss or damage by fire, explosion and other hazards customarily insured under extended coverage in an amount not less than the full insurable value of such property and shall maintain other insurance on its properties with respect to loss, damage, liability and other claims of the kind customarily insured against by similarly situated municipal corporations. All such insurance to be of such types and in such amounts and with such deductible provisions as are customarily carried under similar circumstances by such other municipal corporations. All such insurance shall be carried with financially sound and reputable insurance companies authorized to issue such policy or insure such risk in the State of Arizona (the "State"). Each policy shall contain provisions, if available, that written

notice of cancellation or substantial modification thereof shall be given to the Corporation and the Trustee at least thirty (30) days or the greatest available period shorter than thirty (30) days prior to such cancellation or modification. The Town may obtain blanket policies covering one or more risks if the minimum coverages required herein are met and all buildings located on the Leased Property are covered to their full insurable value.

Section 2.7. All amounts payable pursuant to or with respect to the purposes of this Article are payable from the same source from which rent payments hereunder are payable.

ARTICLE III

SOURCES OF PAYMENT AND PLEDGE

Section 3.1. All rent and other payments made in accordance herewith shall be made from revenues from the Excise Taxes and the State Shared Revenues (as those terms are hereinafter defined). The Town shall first make all rent payments accruing under Sections 1.3 and 1.4 of this Town Lease and then any other payments accruing pursuant to this Town Lease out of revenues from the Excise Taxes and the State Shared Revenues and thereafter may use the remaining revenues from the Excise Taxes and the remaining State Shared Revenues for any other lawful purpose, but only to the extent that, taking into account the reasonably anticipated receipts of revenues from the Excise Taxes and the State Shared Revenues during the coming six months, revenues from the Excise Taxes and the State Shared Revenues will not be reduced to such a level that the Town will be unable to make the next rent payment hereunder.

Section 3.2. The Town may, at the sole option of the Town, make rent and other payments required hereunder from its other funds as permitted by law and as the Town shall determine from time to time, but the Corporation acknowledges that it has no claim hereunder to such other funds. No part of such payments shall be payable out of any ad valorem taxes imposed by the Town, from bonds or other obligations, the payment of which the general taxing authority of the Town is liable or pledged, or from the general funds of the Town unless (i) the same shall have been duly budgeted by the Town according to law, (ii) such rent payment or payments shall be within the budget or expenditure limitations of the Constitution and laws of the State and (iii) such rent payment is not in conflict with the Constitution and laws of the State.

Section 3.3. (a) The Town hereby pledges for the payment of the rent payments under Sections 1.3 and 1.4 hereof revenues from the Excise Taxes and the State Shared Revenues. The Town intends that this pledge shall be a first lien upon such amounts of revenues from the Excise Taxes and the State Shared Revenues as will be sufficient to make such rent payments. The Town shall make such rent payments from revenues from the Excise Taxes and the State Shared Revenues,

except to the extent that it chooses to make such payments from other funds pursuant to Section 3.2 above.

(b) For purposes of this Town Lease, "Excise Taxes" means the unrestricted transaction privilege (sales) tax, business license and franchise fees, parks and recreation fees and permits and fines and forfeitures which the Town imposes; provided that the Mayor and Council of the Town may impose other transaction privilege taxes in the future, the uses of revenue from which will be restricted, at the discretion of such Council, and "State Shared Revenues" means any excise taxes, transaction privilege (sales) taxes and income taxes imposed by the State of Arizona or any agency thereof and returned, allocated or apportioned to the Town, except the Town's share of any such taxes which by State law, rule or regulation must be expended for other purposes, such as motor vehicle fuel taxes.

Section 3.4. To the extent permitted by applicable law, revenues from the Excise Taxes shall be retained and maintained so that the amounts received from revenues from the Excise Taxes and the State Shared Revenues, all within and for the next preceding fiscal year of the Town, shall have been equal to at least two (2) times the total of such rent payments payable hereunder for debt service for the Series 2014 Bonds in any current fiscal year of the Town. If revenues from the Excise Taxes and the State Shared Revenues for any such preceding fiscal year of the Town shall not have been equal to at least two (2) times such rent requirements hereunder in any current Fiscal Year or if at any time it appears that revenues from the Excise Taxes and the State Shared Revenues will not be sufficient to meet such rent requirements hereunder, the Town shall, to the extent permitted by applicable law, impose new exactions of the type of the Excise Taxes which will be part of the Excise Taxes or increase the rates for the Excise Taxes currently imposed in order that (a) revenues from the Excise Taxes and the State Shared Revenues will be sufficient to meet all current rent requirements hereunder and (b) revenues from the Excise Taxes and the State Shared Revenues will be reasonably calculated to attain the level as required by the first sentence of this Section.

Section 3.5. So long as any of the Series 2014 Bonds remain outstanding and the principal and interest thereon shall be unpaid or unprovided for, the Town shall not further encumber revenues from the Excise Taxes and the State Shared Revenues on a basis equal to the pledge provided for in Section 3.3(a) hereof unless revenues from the Excise Taxes plus the State Shared Revenues in the next preceding Fiscal Year shall have amounted to at least three (3) times the highest combined interest and principal requirements for any succeeding Fiscal Year for all of the Series 2014 Bonds then outstanding and any obligations proposed to be secured by such pledge of revenues from the Excise Taxes and the State Shared Revenues on a parity of lien therewith (hereinafter referred to as the "Additional Obligations") including Additional Bonds (as that term is defined in the Indenture). For purposes of this Section, any variable rate indebted-

ness shall be assumed to bear interest at the maximum permissible rate.

Section 3.6. In the event of any default by the Town under this Town Lease, the remedies of the Corporation with respect to the enforcement of the liens and pledges set forth in this Article III shall be as provided in Article V of this Town Lease. The Trustee, on behalf of the owners of the Series 2014 Bonds may enforce such liens and pledges as well as the aforesaid covenants and agreements in place of the Corporation in accordance with the terms and conditions of the Indenture.

Section 3.7. The condition set forth in Section 3.5 above is, at the time of the execution hereof, and shall be, at the time of the issuance of the Series 2014 Bonds, satisfied.

ARTICLE IV

QUIET ENJOYMENT; EXPIRATION OR TERMINATION OF LEASE; SURRENDER OF PREMISES

Section 4.1. The Town, by keeping and performing the covenants and agreements herein contained, shall at all times during the term hereof, peaceably and quietly, have, hold and enjoy the Leased Property, without suit, trouble or hindrance from the Corporation.

Section 4.2. In consideration of the timely payment of all rent payments provided herein and provided that (a) the Town has performed all the covenants and agreements required of it to be performed and (b) the Series 2014 Bonds, as to principal, interest and any premium, together with any remaining fees or expenses of the Trustee and the "Registrars" and the "Paying Agents" under the Indenture, have been paid or provided for, the Corporation shall cause the Trustee to release the Leased Property from the lien of the Indenture under Section 1.2 hereof. Upon such termination, all rights of the Corporation or any other person or entity, except the Town, in and to the Leased Property shall cease and the Corporation shall, by appropriate instruments of conveyance and without further consideration, convey the Leased Property to the Town.

ARTICLE V

REMEDIES UPON DEFAULT, NO ABATEMENT OF RENTALS

Section 5.1. Upon the nonpayment of the whole or any part of the rent payments when the same are to be paid as herein provided or violation by the Town of any other covenant or provision of this Town Lease and if such default has not been cured (a) in the case of nonpayment of rent payments, within five (5) days and (b) in the case of the breach of any other covenant or provision hereof, within thirty (30) days after notice in writing from the Corporation specifying such

default, the Corporation may bring an action for the recovery of any of the rent payments due (but not for rent payments accruing) or for damages for breach of this Town Lease, and the Corporation may pursue any other remedy which the law affords, except that the remedy of specific performance shall also be available.

Section 5.2. The Corporation, upon the bringing of a suit to collect the rent payments in default, may request enforcement of the pledges and foreclosure of the liens set forth in Article III of this Town Lease, in which event the Corporation, as a matter of right, without notice and without giving any bond or surety to the Town or anyone claiming under the Town, may have a receiver appointed of all of the Excise Taxes and the State Shared Revenues with such powers as the court making such appointment shall confer and the Town does hereby irrevocably consent to such appointment.

Section 5.3. In any suit to enforce the terms of this Town Lease, the Corporation shall recover its costs therein, as well as reasonable attorneys' fees, as the court shall approve.

Section 5.4. The Corporation shall in no event be in default in the performance of any of its obligations under this Town Lease unless the Corporation shall have failed to perform such obligations within thirty (30) days or such additional time as is reasonably required to correct any such default after notice by the Town to the Corporation and to the Trustee properly specifying wherein the Corporation has failed to perform any such obligation. So long as any of the Series 2014 Bonds are outstanding, the Town shall have no right to abate or offset the payments of rent payments to be made by the Town hereunder as a result of a default by the Corporation. In the event of default by the Corporation, the Corporation agrees that specific performance may be had and that the Town shall not be limited to a remedy for damages.

Section 5.5. Except as in this Town Lease expressly provided, this Town Lease shall not terminate or be affected in any manner by reason of the condemnation, destruction or damage, in whole or in part, or by reason of the unusability of, the Leased Property or the First Projects or the failure to complete provision of the First Projects, and, except as in this Town Lease expressly provided, the rent payments, as well as the other amounts payable hereunder, shall be paid by the Town in accordance with the terms, covenants and conditions of this Town Lease without abatement, diminution or reduction.

Section 5.6. Each right, power and remedy of the Corporation or the Town provided for in this Town Lease shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for herein or, unless prohibited by the terms hereof, now or hereafter existing at law or in equity or by statute or otherwise, in any jurisdiction where such rights, powers and remedies are sought to be enforced, and the exercise or beginning of the exercise by the Corporation or the Town of any one or more of the rights, powers or remedies provided for herein or now or hereafter

existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by either party of any or all of such other rights, powers or remedies.

Section 5.7. The failure to insist upon strict performance of any of the covenants or agreements herein set forth shall not be considered or taken as a waiver or relinquishment for the future of the Corporation's or the Town's rights to insist upon a strict compliance by the Town or the Corporation with all the covenants and conditions hereof.

ARTICLE VI

ESTOPPEL CERTIFICATE

Section 6.1. At any time and from time-to-time, upon not less than ten (10) days' prior request by the Corporation or the Trustee, the Town shall execute, acknowledge and deliver to the Corporation and the Trustee a statement in writing certifying that this Town Lease and the Series 2014 Ground Lease are unmodified and in full force and effect (or, if this Town Lease or the Series 2014 Ground Lease have been modified, that they are in full force and effect except as modified, and stating the modification), the dates to which the rent payments and other amounts payable hereunder have been paid in advance, if any, and that the Town is in compliance with all requirements of this Town Lease.

ARTICLE VII

REFINANCING; REFUNDING; REDEMPTIONS; PURCHASE OF SERIES 2014 BONDS; ADDITIONAL BONDS

Section 7.1. Upon notice to the Corporation, the Town may request the Corporation refinance by refunding or redeeming, as the case may be, the Series 2014 Bonds then outstanding, subject to the provisions of the Indenture. The Corporation shall use its best efforts to so refinance the Series 2014 Bonds.

Section 7.2. Prior to the issuance of obligations for the purpose of refinancing the Series 2014 Bonds, the Corporation and the Town shall enter into a written supplement to this Town Lease or a new lease increasing or decreasing, as the case may be, the rent payments to be paid hereunder by an amount at least sufficient to enable the Corporation to fully pay the principal and interest, when due, on such new obligations and all other usual and ordinary costs and expenses relating thereto, and such supplement to this Town Lease or such separate lease shall be recorded in the Office of the County Recorder of Maricopa, Arizona.

Section 7.3. The Town shall have the right to pay, from any legally available funds, installment rent payments in advance and

may specify that they be placed in the Bond Retirement Fund established pursuant to the Indenture. Except as provided in Section 1.8 hereof, in addition, if at any time the money in the Series 2014 Revenue Account of the Revenue Fund exceeds, in the opinion of the Trustee, the amounts necessary for the current debt service on the Series 2014 Bonds then outstanding and the fees, charges, expenses and other amounts due the Trustee and the Registrars and the Paying Agents which are unpaid, such excess shall, at the request of the Town, be transferred to and paid over into the Bond Retirement Fund. At the request of the Town, the Corporation shall cause the amount of money contained in the Series 2014 Bond Retirement Account of the Bond Retirement Fund from time to time to be used on any redemption date authorized in the Indenture to retire all or any portion of the outstanding Series 2014 Bonds pursuant to the provisions of the Indenture, or if, before the Series 2014 Bonds are subject to redemption, the Series 2014 Bonds may be obtained in the open market at a cost equal to or below par, or, after the Series 2014 Bonds are subject to redemption, the Series 2014 Bonds may be so obtained at a price below the cost of redemption, then, upon the request of the Town, the Corporation shall cause money contained in the Series 2014 Bond Retirement Account of the Bond Retirement Fund to be used to purchase Series 2014 Bonds in the open market for the purpose of cancellation. At such time or times as Series 2014 Bonds are redeemed or purchased pursuant hereto, the rent payments to be paid by the Town hereunder shall be adjusted in such manner as to provide for the debt service on the remaining Series 2014 Bonds. There shall be no accumulation of funds in the Bond Retirement Fund, or earnings thereon, as would cause the Series 2014 Bonds to be deemed "arbitrage bonds" under the Code.

Section 7.4. Upon retirement of all the Series 2014 Bonds by means of redemption or purchase pursuant to Section 7.3 hereof and upon payment of any remaining administrative costs and expenses or other amounts due hereunder or under the Indenture, the Corporation shall cause the Trustee to release the Leased Property from the lien of the Indenture, and the Town may then exercise its right to terminate this Town Lease, except for the Town's obligation to make arbitrage rebate payments to the United States of America pursuant to Section 1.4(g) hereof.

Section 7.5. One or more issues of Additional Obligations on a parity with the Series 2014 Bonds may be established and may be issued and delivered, in such principal amounts as may be determined by the Corporation, subject to the following specific conditions which are hereby made conditions precedent to the issuance of such Additional Obligations:

(a) such Additional Obligations shall have been authorized to finance or refinance the cost of acquiring, constructing, reconstructing or improving buildings, equipment and other real and personal properties suitable for use by and for leasing to the Town or its agencies or instrumentalities, or to refinance or refund any bonds or other obligations which have been issued for such purposes,

and the issuance thereof shall have been determined and declared by the Corporation, by appropriate resolution, to be necessary for that purpose;

(b) the Corporation shall be in compliance with all covenants and undertakings set forth in this Town Lease and the Indenture, as either of them or both of them may have been supplemented or amended;

(c) the resolution authorizing issuance of such Additional Obligations shall require that the proceeds of the sale of such Additional Obligations shall be applied solely for one or more of the purposes set forth in (a) above and expenses and costs incidental thereto, including costs and expenses incident to the issuance and sale of such Additional Obligations and the costs of any premium relating to insurance on such Additional Obligations and interest on such Additional Obligations during the actual period of any acquisition and construction of such facilities and for a reasonable period of time thereafter;

(d) such Additional Obligations shall be equally and ratably secured with the Series 2014 Bonds, without preference or priority of any of the Series 2014 Bonds or Additional Obligations over any other Series 2014 Bonds or Additional Obligations, except as expressly provided in the Indenture, as supplemented;

(e) the Corporation shall have entered into an agreement with the Town, or shall have amended this Town Lease, in and by which the Town obligates itself in the manner therein provided to increase the rent payments or to make such payments to the Corporation at the times and in amounts sufficient to provide for the payment of principal and interest on such Additional Obligations as such principal and interest become due and

(f) the conditions set forth in Section 3.5 hereof shall then be satisfied.

ARTICLE VIII

OFFICIAL STATEMENT DISCLOSURES; INDEMNIFICATION

Section 8.1. The Town hereby recognizes that in the sale of the Series 2014 Bonds the Corporation will have issued an Official Statement describing the Series 2014 Bonds and the security for the payment thereof and containing certain information about the Town which has been furnished to the Corporation by the Town (the "Official Statement"). Recognizing that the Corporation and its officers, directors, agents and employees have no practicable independent means of verifying such information, the Town hereby represents and warrants

to the Corporation that all material contained in the Official Statement, insofar as it relates to the Town and the sources of funds or as it otherwise describes the security of this Town Lease and the rights of the owners of the Series 2014 Bonds with respect thereto, is accurate, contains no material misrepresentation of fact and does not omit any statement of fact which, in the light of the circumstances under which the Official Statement is issued, would be misleading.

Section 8.2. To the extent permitted by applicable law, the Town shall indemnify and save the Corporation and the Trustee and its officers, directors, agents and employees harmless, from the same sources from which the rent payments hereunder are payable, for, from and against any and all claims by or on behalf of any person, firm, corporation or governmental authority arising from the occupation, use, or possession of the Leased Property, including any liability for any violation of conditions, restrictions, laws, ordinances or regulations affecting the said property or the occupancy or use thereof. The Indemnified Parties shall be third party beneficiaries of this covenant. The obligations of the Town under this Section shall survive the resignation or removal of the Trustee under the Indenture, the payment of the Series 2014 Bonds and discharge of the Indenture and the termination of this Town Lease.

Section 8.3. Neither the Corporation nor the Trustee, their incorporators, members, directors, officers, agents and employees (each an "Indemnified Party") shall be liable to the Town or to any other person whomsoever for any death, injury or damage that may result to any person or property by or from any cause whatsoever in or on the Leased Property or any part thereof, unless caused by the negligence of the Indemnified Party. To the extent permitted by applicable law, the Town shall indemnify and hold such persons harmless, from the same sources from which the rent payments hereunder are payable, for, from and against, and defend them and each of them against any and all claims, losses or judgments for, death of, injury to, any person or for damage to any property whatsoever incurred in or on the adjoining streets, roads, sidewalks and passageways, unless caused by the negligence of the Indemnified Party. In the event any action or proceeding is brought against any of the persons referred to in this Section by reason of any such claim, the Town, upon notice from the Indemnified Party, shall resist or defend such action or proceeding. The Indemnified Parties shall be third party beneficiaries of this covenant. The obligations of the Town under this Section shall survive the resignation or removal of the Trustee under the Indenture, the payment of the Series 2014 Bonds and discharge of the Indenture and the termination of this Town Lease.

Section 8.4. To the extent permitted by applicable law, the Town shall indemnify each Indemnified Party, from the same sources from which the rent payments hereunder are payable, for, from and against all lawful and reasonable costs and charges, including reasonable fees of attorneys, consultants, and other experts incurred in good faith and arising out of or in connection with the transactions contemplated hereby. The Trustee, its officers, directors,

agents and employees shall be third party beneficiaries of this covenant. The obligations of the Town under this Section shall survive the resignation or removal of the Trustee under the Indenture, the payment of the Series 2014 Bonds and discharge of the Indenture and the termination of this Town Lease.

Section 8.5. In clarification and extension of the provisions of the other sections of this Article VIII and not in substitution therefor and to the extent permitted by applicable law, the Town, subject to the provisions of Section 1.4 hereof, shall indemnify and hold each Indemnified Party harmless, from the same sources from which the rent payments hereunder are payable, for, from and against any and all claims, expenses, liens, judgments, liability or loss whatever, including reasonable legal fees and expenses relating to or in any way, directly or indirectly, arising out of (a) the Series 2014 Ground Lease, this Town Lease and the Indenture, and security agreements, financing statements, supplements, amendments or additions thereto or the enforcement of any of the terms thereof; (b) the Series 2014 Bonds; (c) any offering statement or official statement, either preliminary or final, pertaining to the Series 2014 Bonds including the Official Statement; (d) the issuance and sale of the Series 2014 Bonds or the transactions contemplated in any of the aforementioned acts, agreements or documents and (e) malfeasance or nonfeasance in office of any officer, director, agent or employee of the Indemnified Party not otherwise included within any of the foregoing; provided, however, that such indemnity shall not extend to claims, suits and actions successfully brought against the Indemnified Party for failure to perform and carry out the duties specifically imposed upon and to be performed by it pursuant to the Series 2014 Ground Lease, this Town Lease or the Indenture. The Indemnified Party shall give notice to the Town of any event or condition which requires indemnification by the Town hereunder, or any allegation of such event or condition, promptly upon obtaining knowledge thereof, and, to the extent that the Town makes or provides for payment to the satisfaction of the Indemnified Party under the indemnity provisions hereof, the Town shall be subrogated to the rights of the Indemnified Party with respect to such event or condition and shall have the right to determine the settlement of claims thereon, it being agreed that except to the foregoing extent, the Indemnified Party shall have the right to determine such settlement. The Town shall pay all amounts due hereunder promptly upon notice thereof from the Indemnified Party. In case any action, suit or proceeding is brought against the Indemnified Party by reason of any act or condition which requires indemnification by the Town hereunder, the Indemnified Party shall notify the Town promptly of such action, suit or proceeding provided, however, that failure to give any such notice shall not affect the right of the Trustee to receive the indemnification provided herein, and the Town may (and shall upon the request of the Indemnified Party), at the Town's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended, by counsel for the insurer of the liability or by counsel designated by the Town and approved by the Indemnified Party. If the Indemnified Party desires to participate in the defense of such action, suit or proceeding through its own coun-

sel, it may do so at its own expense; provided, however, the Town shall, to the extent not otherwise prohibited by applicable law, pay the fees and expenses of such counsel if (i) the employment of such counsel has been authorized by the Town or, (ii) the Town shall have failed promptly after receiving notice of such action from the Trustee to assume the defense of such action and employ counsel reasonably satisfactory to the Trustee or (iii) the named parties to any such action (including any impleaded parties) include the Trustee and the Town, and the Trustee shall have been advised by counsel that there may be one or more legal defenses available to such party which are different from or in addition to those available to the Town or (iv) the Trustee shall have been advised by counsel that there is a conflict on any issue between the Trustee and the Town. No party's right to indemnification hereunder shall be affected by the acts or omissions of any other party entitled to such indemnification. The Indemnified Parties shall be third party beneficiaries of this covenant. The obligations of the Town under this Section shall survive the resignation or removal of the Trustee under the Indenture, the payment of the Series 2014 Bonds and discharge of the Indenture and the termination of this Town Lease.

ARTICLE IX

ACCESS AND CONTROL OF TOWN

Section 9.1. The Corporation, incident to the issuance and sale of the Series 2014 Bonds, shall assign [except for the Unassigned Corporation's Rights (as such term is defined in the Indenture)] all rights and benefits hereunder to the Trustee and shall grant the Trustee a lien on its interest in this Town Lease for the benefit of the owners of the Series 2014 Bonds. The Town hereby consents to such assignment and grant of lien.

Section 9.2. The Town, so long as no event of default by the Town under this Town Lease shall have occurred and be continuing, shall at all times have and retain such rights of access and control of the Leased Property. The rights and interests of the Corporation assigned, granted and set over to the Trustee under the Indenture shall, so long as no event of default by the Town under this Town Lease shall have occurred and be continuing, be subject and subordinate to the rights of the Town under this Section.

ARTICLE X

FEDERAL LAW PROVISIONS

Section 10.1. (A) No direction for the making of any investment or other use of the proceeds of any Series 2014 Bonds shall be made which would cause such Series 2014 Bonds to be "arbitrage bonds" as that term is defined in Section 148 (or any successor provision thereto) of the Code or "private activity bonds" as that

term is defined in Section 141 (or any successor provision thereto) of the Code, and the Town and the Corporation shall comply with the requirements of such Code sections and related regulations throughout the term of the Series 2014 Bonds. (Particularly, the Town shall be the owner of the First Projects for federal income tax purposes and shall not enter into (i) any management or service contract with any entity other than a governmental entity for the operation of any portion of the First Projects unless the management or service contract complies with the requirements of Revenue Procedure 97-13 or such other authority as may control at the time, or (ii) any lease or other arrangement with any entity other than a governmental entity that gives such entity special legal entitlements with respect to any portion of the First Projects.) Also, the payment of principal and interest with respect to the Series 2014 Bonds shall not be guaranteed (in whole or in part) by the United States or any agency or instrumentality of the United States. The proceeds of the Series 2014 Bonds, or amounts treated as proceeds of the Series 2014 Bonds, shall not be invested (directly or indirectly) in federally insured deposits or accounts, except to the extent such proceeds (i) may be so invested for an initial temporary period until needed for the purpose for which the Series 2014 Bonds are being issued, (ii) may be so used in making investments of a bona fide debt service fund, or (iii) may be invested in obligations issued by the United States Treasury. The Town and the Corporation hereby further covenant and agree to comply with the procedures and covenants contained in any arbitrage rebate provision or separate agreement executed in connection with the issuance of the Series 2014 Bonds (initially those in Section 10.2 hereof) for so long as compliance is necessary in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Series 2014 Bonds. In consideration of the purchase and acceptance of the Series 2014 Bonds by such owner from time to time and of retaining such exclusion and as authorized by Title 35, Chapter 3, Article 7, Arizona Revised Statutes, as amended, the Town and the Corporation covenant, and the appropriate officials of the Town and the Corporation are hereby directed, to take all action required with respect to maintaining such exclusion or to refrain from taking any action prohibited by such Code which would adversely affect in any respect such exclusion.

(B) (1) The Town shall take all necessary and desirable steps, as determined by the Mayor and Common Council of the Town, to comply with the requirements hereunder in order to ensure that interest on the Series 2014 Bonds is excluded from gross income for federal income tax purposes under the Code; provided, however, compliance with any such requirement shall not be required in the event the Town receives a Bond Counsel's Opinion that either (i) compliance with such requirement is not required to maintain the exclusion from gross income of interest on the Series 2014 Bonds, or (ii) compliance with some other requirement will meet the requirements of the Code. In the event the Town receives such a Bond Counsel's Opinion, this Town Lease shall be amended to conform to the requirements set forth in such opinion.

(2) If for any reason any requirement hereunder is not complied with, the Town shall take all necessary and desirable steps, as determined by the Mayor and Common Council of the Town, to correct such noncompliance within a reasonable period of time after such noncompliance is discovered or should have been discovered with the exercise of reasonable diligence and the Town shall pay any required interest or penalty under Treasury Regulations section 1.148-3(h).

(C) Written procedures for post issuance compliance with the requirements of the Code have been adopted by the City and will be complied with.

Section 10.2. (A) Terms not otherwise defined in Subsection (B) hereof shall have the meanings given to them in the arbitrage certificate of the Town delivered in connection with the issuance of the Series 2014 Bonds.

(B) The following terms shall have the following meanings:

Bond Counsel's Opinion shall mean an opinion signed by an attorney or firm of attorneys of nationally recognized standing in the field of law relating to municipal bonds selected by the Town.

Bond Year shall mean each one-year period beginning on the day after the expiration of the preceding Bond Year. The first Bond Year shall begin on the date of issue of the Series 2014 Bonds and shall end on the date selected by the Town, provided that the first Bond Year shall not exceed one calendar year. The last Bond Year shall end on the date of retirement of the last Series 2014 Bond.

Bond Yield is as indicated in such arbitrage certificate. Bond Yield shall be recomputed if required by Regulations section 1.148-4(b)(4) or 4(h)(3). Bond Yield shall mean the discount rate that produces a present value equal to the Issue Price of all unconditionally payable payments of principal, interest and fees for qualified guarantees within the meaning of Regulations section 1.148-4(f) and amounts reasonably expected to be paid as fees for qualified guarantees in connection with the Series 2014 Bonds as determined under Regulations section 1.148-4(b). The present value of all such payments shall be computed as of the date of issue of the Series 2014 Bonds and using semiannual compounding on the basis of a 360-day year.

Code shall mean the Internal Revenue Code of 1986, as amended, and any successor provisions thereto.

Gross Proceeds shall mean:

(i) any amounts actually or constructively received by the Town or the Corporation from the sale of the Series 2014 Bonds but excluding amounts used to pay accrued interest on the

Series 2014 Bonds within one year of the date of issuance of the Series 2014 Bonds;

(ii) transferred proceeds of the Series 2014 Bonds under Regulations section 1.148-9;

(iii) any amounts actually or constructively received from investing amounts described in (i), (ii) or this (iii); and

(iv) replacement proceeds of the Series 2014 Bonds within the meaning of Regulations section 1.148-1(c). Replacement proceeds include amounts reasonably expected to be used directly or indirectly to pay debt service on the Series 2014 Bonds, pledged amounts where there is reasonable assurance that such amounts will be available to pay principal or interest on the Series 2014 Bonds in the event the Town or the Corporation encounters financial difficulties and other replacement proceeds within the meaning of Regulations section 1.148-1(c)(4). Whether an amount is Gross Proceeds is determined without regard to whether the amount is held in any fund or account established under the Indenture.

Investment Property shall mean any security, obligation (other than a tax-exempt bond within the meaning of Code section 148(b)(3)(A)), annuity contract or investment-type property within the meaning of Regulations section 1.148-1(b).

Issue Price is as indicated in such arbitrage certificate, which is the initial offering price to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters of wholesalers) at which price a substantial amount of the Series 2014 Bonds was sold, less any bond insurance premium and reserve surety bond premium. Issue price shall be determined as provided in Regulations section 1.148-1(b).

Nonpurpose Investment shall mean any Investment Property acquired with Gross Proceeds, and which is not acquired to carry out the governmental purposes of the Series 2014 Bonds.

Payment shall mean any payment within the meaning of Regulations section 1.148-3(d)(1) with respect to a Nonpurpose Investment.

Rebate Requirement shall mean at any time the excess of the future value of all Receipts over the future value of all Payments. For purposes of calculating the Rebate Requirement the Bond Yield shall be used to determine the future value of Receipts and Payments in accordance with Regulations section 1.148-3(c). The Rebate Requirement is zero for any Nonpurpose Investment meeting the requirements of a rebate exception under section 148(f)(4) of the Code or Regulations section 1.148-7.

Receipt shall mean any receipt within the meaning of Regulations section 1.148-3(d)(2) with respect to a Nonpurpose Investment.

Regulations shall mean the sections 1.148-1 through 1.148-11 and section 1.150-1 of the regulations of the United States Department of the Treasury promulgated under the Code, including and any amendments thereto or successor regulations.

(C) Within 60 days after the end of each Bond Year, unless an exception to the requirement to do so is available pursuant to the Code, the Town shall cause the Rebate Requirement to be calculated and shall pay to the United States of America:

(1) not later than 60 days after the end of the fifth Bond Year and every fifth Bond Year thereafter, an amount which, when added to the future value of all previous rebate payments with respect to the Series 2014 Bonds (determined as of such Computation Date), is equal to at least 90% of the sum of the Rebate Requirement (determined as of the last day of such Bond Year) plus the future value of all previous rebate payments with respect to the Series 2014 Bonds (determined as of the last day of such Bond Year); and

(2) not later than 60 days after the retirement of the last Series 2014 Bond, an amount equal to 100% of the Rebate Requirement (determined as of the date of retirement of the last Series 2014 Bond).

Each payment required to be made under this Section shall be filed with the Internal Revenue Service Center, Ogden, Utah 84201, on or before the date such payment is due, and shall be accompanied by IRS Form 8038-T.

(D) No Nonpurpose Investment shall be acquired for an amount in excess of its fair market value. No Nonpurpose Investment shall be sold or otherwise disposed of for an amount less than its fair market value.

(E) For purposes of Subsection (D), whether a Nonpurpose Investment has been purchased or sold or disposed of for its fair market value shall be determined as follows:

(1) The fair market value of a Nonpurpose Investment generally shall be the price at which a willing buyer would purchase the Nonpurpose Investment from a willing seller in a bona fide arm's length transaction. Fair market value shall be determined on the date on which a contract to purchase or sell the Nonpurpose Investment becomes binding.

(2) Except as provided in Subsection (F) or (G), a Nonpurpose Investment that is not of a type traded on an established securities market, within the meaning of Code section 1273, is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value.

(3) If a United States Treasury obligation is acquired directly from or sold or disposed of directly to the United States Treasury, such acquisition or sale or disposition shall be treated as establishing the fair market value of the obligation.

(F) The purchase price of a certificate of deposit that has a fixed interest rate, a fixed payment schedule and a substantial penalty for early withdrawal is considered to be its fair market value if the yield on the certificate of deposit is not less than:

(1) the yield on reasonably comparable direct obligations of the United States; and

(2) the highest yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

(G) A guaranteed investment contract or an investment in a yield-restricted defeasance escrow shall be considered acquired and disposed of for an amount equal to its fair market value if:

(1) A bona fide solicitation in writing for a specified guaranteed investment contract, including all material terms, is timely forwarded to all potential providers. The solicitation must include a statement that the submission of a bid is a representation that the potential provider did not consult with any other potential provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the Issuer or any other person (whether or not in connection with the Series 2014 Bonds), and that the bid is not being submitted solely as a courtesy to the Town or the Corporation or any other person for purposes of satisfying the requirements in the Regulations that the Town or the Corporation receive bids from at least one reasonably competitive provider and at least three providers that do not have a material financial interest in the Series 2014 Bonds.

(2) All potential providers have an equal opportunity to bid, with no potential provider having the opportunity to review other bids before providing a bid.

(3) At least three reasonably competitive providers (i.e. having an established industry reputation as a competitive provider of the type of investments being purchased) are solicited for bids. At least three bids must be received from providers that have no material financial interest in the Series 2014 Bonds (e.g., a lead underwriter within 15 days of the issue date of the Series 2014 Bonds or a financial advisor with respect to the investment) and at least one of such three bids must be from a reasonably competitive provider. If the Town or the Corporation uses an agent to conduct the bidding, the agent may not bid.

(4) (A) In the case of a guaranteed investment contract, the highest-yielding guaranteed investment contract for which a qualifying bid is made (determined net of broker's fees) is purchased.

(B) In the case of an investment in a yield-restricted defeasance escrow:

(i) The winning bid is the lowest cost bona fide bid (including any broker's fees). The lowest cost bid is either the lowest cost bid for the portfolio or, if the issuer compares the bids on an investment-by-investment basis, the aggregate cost of a portfolio comprised of the lowest cost bid for each investment. Any payment received by the issuer from a provider at the time a guaranteed investment contract is purchased (e.g., an escrow float contract) for a yield restricted defeasance escrow under a bidding procedure meeting the requirements described herein is taken into account in determining the lowest cost bid.

(ii) The lowest cost bona fide bid (including any broker's fees) is not greater than the cost of the most efficient portfolio comprised exclusively of State and Local Government Series Securities from the United States Department of the Treasury, Bureau of Public Debt. The cost of the most efficient portfolio of State and Local Government Series Securities is to be determined at the time that bids are required to be submitted pursuant to the terms of the bid specifications.

(iii) If State and Local Government Series Securities from the United States Department of the Treasury, Bureau of Public Debt are not available for purchase on the day that bids are required to be submitted pursuant to terms of the bid specifications because sales of those securities have been suspended, the cost comparison of paragraph (ii) above is not required.

(5) The determination of the terms of the guaranteed investment contract takes into account as a significant factor the reasonably expected deposit and drawdown schedule for the amounts to be invested.

(6) The terms for the guaranteed investment contract are commercially reasonable (i.e. have a legitimate business purpose other than to increase the purchase price or reduce the yield of the guaranteed investment contract).

(7) The provider of the investment contract certifies the administrative costs (as defined in Regulations section 1.148-5(e)) that it pays (or expects to pay) to third parties in connection with the guaranteed investment contract.

(8) The Town retains until three years after the last outstanding Series 2014 Bond is retired, (i) a copy of the guaranteed investment contract, (ii) a receipt or other record of the amount actually paid for the guaranteed investment contract, including any administrative costs paid by the Town or the Corporation and a copy of the provider's certification described in (7) above, (iii) the name of the person and entity submitting each bid, the time and date of the bid, and the bid results, (iv) the bid solicitation form and, if the terms of the guaranteed investment contract deviates from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose of the deviation and (v) in the case of an investment in a yield-restricted defeasance escrow, the cost of the most efficient portfolio of State and Local Government Series Securities, determined at the time at that the bids were required to be submitted pursuant to the terms of the bid specifications.

(H) Such experts and consultants shall be employed by the Town to make, as necessary, any calculations in respect of rebates to be made to the United States of America in accordance with Section 148(f) of the Code with respect to the Series 2014 Bonds.

Section 10.3. The Town hereby covenants and agrees that it will comply with and carry out all of the provisions of the Series 2014 Continuing Disclosure Agreement, dated even date with the date of original issuance and delivery of the Series 2014 Bonds (the "Continuing Disclosure Agreement"). Notwithstanding any other provision of this Town Lease, failure of the Town to comply with the Continuing Disclosure Agreement shall not be considered an event of default; however, the Trustee may (and, at the request of any Participating Underwriter (as such term is defined in the Continuing Disclosure Agreement) or the owners of at least 25% aggregate principal amount in outstanding Series 2014 Bonds and receipt of indemnity to its satisfaction, shall) or any Beneficial Owner (as such term is defined

in the Continuing Disclosure Agreement) may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the Town to comply with its obligations under this Section.

ARTICLE XI

GENERAL PROVISIONS

Section 11.1. The Town may not sell or assign its interest in this Town Lease while any of the Series 2014 Bonds are outstanding, but may sell, lease or otherwise dispose of all or any part of the Leased Property with the consent of the Corporation; provided, however, that prior to any such sale, lease or other disposition, the Town shall provide to the Corporation and the Trustee an opinion of nationally recognized bond counsel to the effect that such sale, lease or other disposition shall not cause the interest on the Series 2014 Bonds to be includable in the gross income of the owners thereof for federal income tax purposes. Notwithstanding any such sale, lease or other disposition, the Town shall nevertheless remain liable for the rent payments provided herein and for the performance of the other obligations of the Town hereunder.

Section 11.2. All rights of the Corporation hereunder (except for the Corporation Unassigned Rights) are to be assigned, pledged, mortgaged and transferred to the Trustee as security for the Series 2014 Bonds, but subject to the rights of the Town under this Town Lease. The rights of the Trustee or any party or parties on behalf of whom the Trustee is acting (including, specifically, but without limitation, the right to receive the rent payments to be paid hereunder) shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever, whether arising out of any breach of any obligation of the Corporation hereunder or by reason of any other indebtedness or liability at any time owing by the Corporation to the Town.

Section 11.3. All notices, consents or other communications required or permitted hereunder shall be deemed sufficient if given in writing addressed and mailed by registered or certified mail, or delivered to the party for whom the same is intended, as follows:

To the Corporation: Town of Gilbert, Arizona Public
Facilities Municipal Property
Corporation
c/o Town of Gilbert, Arizona
50 East Civic Center Drive
Gilbert, Arizona 85296-3401
Attention: President

To the Town: Town of Gilbert, Arizona
50 East Civic Center Drive
Gilbert, Arizona 85296-3401
Attention: Town Manager

To Trustee: The Bank of New York Mellon
Trust Company, N.A.
333 South Grand Avenue, Suite 5A
Los Angeles, California 90071
Attention: Corporate Trust Service

or to such other address as such party may hereafter designate by notice in writing addressed and mailed or delivered to the other party hereto.

Section 11.4. This Town Lease shall be governed exclusively by the provisions hereof and by the applicable laws of the State.

Section 11.5. If any term or provision of this Town Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Town Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby and each term and provision of this Town Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 11.6. The Town shall comply with all requirements of it included in the Indenture

Section 11.7. This Town Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute but one instrument.

IN WITNESS WHEREOF, the Corporation and the Town have caused their respective names to be signed hereto by their respective officers thereunto duly authorized, all as of the day and year first above written.

TOWN OF GILBERT, ARIZONA PUBLIC FACILITIES MUNICIPAL PROPERTY CORPORATION, an Arizona nonprofit corporation

By.....
President

ATTEST:

.....
Secretary-Treasurer

TOWN OF GILBERT, ARIZONA, a municipal corporation

By.....
Mayor

ATTEST:

.....
Town Clerk

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this, the day of July, 2014, before me, the undersigned Notary Public, personally appeared James Flanagan and Leonard Katz, who acknowledged themselves to be the President and Secretary-Treasurer, respectively, of TOWN OF GILBERT, ARIZONA PUBLIC FACILITIES MUNICIPAL PROPERTY CORPORATION, an Arizona nonprofit corporation, and that they, as such officers, being duly authorized so to do, executed the foregoing Series 2014 Town Lease for the purposes therein contained by signing the name of the corporation by themselves as such officers.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

.....
Notary Public

My Commission Expires:
.....

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this, the day of July, 2014, before me, the undersigned Notary Public, personally appeared John Lewis and Catherine A. Templeton, who acknowledged themselves to be the Mayor and Town Clerk, respectively, of the TOWN OF GILBERT, ARIZONA, a municipal corporation, and that they, as such officers, being duly authorized so to do, executed the foregoing Series 2014 Town Lease for the purposes therein contained by signing the name of the municipal corporation by themselves as such officers.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

.....
Notary Public

My Commission Expires:
.....

Notice required by A.R.S. Section 41-313: The foregoing notarial certificate(s) relate(s) to the Series 2014 Town Lease, dated December 1, 2014, executed by the Town of Gilbert, Arizona Public Facilities Municipal Property Corporation, an Arizona nonprofit corporation, and the Town of Gilbert, Arizona, a municipal corporation (the "Notarized Document"). The Notarized Document contains a total of pages.

EXHIBIT

DESCRIPTION OF REAL PROPERTY

South Area Service Center Facility Site:

The South half of the North half of the Southeast quarter of the Southeast quarter and the South half of the Southeast quarter of the Southeast quarter of Section 9, Township 2 South, Range 6 East of the Gila and Salt River Base and Meridian; except the following:

The Southeast corner of said Section 9, is a found iron bar in a handhole, and from which a line defines the South line of said Section to the South quarter corner, of said Section 9, a found brass disc, stamped "Town of Gilbert" is flush with pavement, bears North 90 degrees 00 minutes 00 seconds West, an assumed bearing, which is the Basis of Bearing for this description, at a distance of 2667.00 feet;

From the Southeast Section corner, as a Point of Commencement (P.O.C.), then, coincident with the South line of the Section, along the bearing of North 90 degrees 00 minutes 00 seconds, West, a distance of 675.00 feet, to a point, monumented with a set Parker Kalon (PK) nail, with an attached washer which is stamped SRP "LS 15925";

Thence departing the South line of the Section, along a bearing North 00 degrees 00 minutes 00 seconds East, a distance of 105.50 feet, to a point monumented bar, topped with a bronze cap which is stamped SRP "LS15925," said point is on the North line of a transmission line easement, as described in Docket 97-249353 Maricopa County Records, this point is the Point of Beginning (P.O.B.) of the description of the proposed substation site;

Thence coincident with the North line, of said transmission line easement, along a bearing of North 90 degrees 00 minutes 00 seconds West, for a distance of 300.00 feet, to a point monumented by a set iron bar, topped with a bronze cap which is stamped SRP "LS 15925";

Thence departing the North line of the transmission line easement, along a bearing of North 00 degrees 00 minutes 00 seconds East, for a distance of 300.00 feet to a point monumented by a set iron bar, topped with a bronze cap which is stamped SRP "LS 15925";

Thence along a bearing of North 90 degrees 00 minutes 00 seconds East, a distance of 300.00 feet to a point monumented by a set iron bar, topped with a bronze cap which is stamped SRP "LS 15925";

Thence along a bearing of South 90 degrees 00 minutes 00 seconds East, a distance of 300.00 feet, ending back at the Point of Beginning (P.O.B.), monumented by a set iron bar, topped with a bronze cap which is stamped SRP "LS 15925."

Police Property Facility Site:

The East half of the Southeast quarter of the Southwest quarter of Section 27, Township 1 South, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona,

EXCEPT the following described property:

Beginning at a point 33 feet North of the South quarter corner of said Section 27, Township 1 South, Range 6 East;

Thence North along the midsection line 100 feet to a point;

Thence West and parallel to the South line of said Section, 100 feet to a point;

Thence South 100 feet to a point 100 feet West of the Point of Beginning;

Thence East 100 feet to the Point of Beginning,

EXCEPT the South 55 feet thereof for roadway.

Sports Complex Site:

The East half of the West half of the Southeast quarter of Section 12, Township 1 South, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, and the West half of the West half of the Southeast quarter of Section 12, Township 1 South, Range 6 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, Except the South 1040.53 feet.

DRAFT
11/11/14
11/17/14

ESCROW TRUST AGREEMENT

BETWEEN

TOWN OF GILBERT, ARIZONA
PUBLIC FACILITIES MUNICIPAL PROPERTY CORPORATION

AND

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,
as Escrow Trustee

DATED AS OF DECEMBER 1, 2014

ESCROW TRUST AGREEMENT

THIS ESCROW TRUST AGREEMENT, dated as of December 1, 2014, by and between TOWN OF GILBERT, ARIZONA PUBLIC FACILITIES MUNICIPAL PROPERTY CORPORATION, a nonprofit corporation incorporated and existing pursuant to the laws of the State of Arizona (the "Corporation"), and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a banking entity organized and existing under the laws of the United States of America and authorized to exercise trust powers under the laws of the State of Arizona, as escrow trustee (the "Trustee"),

W I T N E S S E T H:

WHEREAS, the following Revenue Bonds, Series 2006 of the Corporation have been issued and are outstanding and being refunded on the dates and in the amounts indicated (the "Bonds Being Refunded" or the "Refunded Bonds") as further described in Exhibit "A" hereto:

<u>Maturity Dates Being Refunded (July 1)</u>	<u>Principal Amounts Outstanding</u>	<u>Principal Amounts Being Refunded</u>	<u>Redemption Dates (July 1)</u>
2017	\$5,465,000	\$5,465,000	2016
2018	5,470,000	5,470,000	2016
2019	6,025,000	6,025,000	2016
2020	6,330,000	6,330,000	2016
2021	6,645,000	6,645,000	2016

; and WHEREAS, the Board of Directors of the Corporation, by resolution adopted on November 20, 2014 (the "Bond Resolution"), and Fourth Supplement to Trust Indenture, dated as of December 1, 2014 (the "Supplemental Indenture"), from the Corporation to The Bank of New York Mellon Trust Company, N.A., as trustee (the "Indenture Trustee"), authorized the issuance of Revenue Refunding Bonds, Series 2014 (the "Refunding Bonds"), of the Corporation, a portion of the proceeds of which were used to refund the Bonds Being Refunded; and

WHEREAS, the Bond Resolution authorized and directed the Corporation to enter into this Escrow Trust Agreement with the Trustee with respect to the safekeeping and handling of the moneys and securities to be held in trust for the payment of the Bonds Being Refunded; and

WHEREAS, the Trustee agreed to accept and administer the trust created hereby;

NOW, THEREFORE, PURSUANT TO LAW AND FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS HEREINAFTER CONTAINED, IT IS HEREBY AGREED AS FOLLOWS:

Section 1. On _____, 2014 (the "Delivery Date"), the Corporation deposited, or cause to be deposited, (i) cash in the

amount of \$ _____ (the "Initial Cash Deposit"), (ii) cash in the amount of \$ _____ (the "Costs of Issuance Deposit") and (iii) the securities described in Exhibit "B" attached hereto (or additional funds sufficient to permit the Trustee to purchase such securities on the Delivery Date), all of which are and shall be direct obligations of the United States (the "Securities"), to be held by the Trustee in a special and separate trust fund, designated as the "Town of Gilbert, Arizona Public Facilities Municipal Property Corporation Revenue Refunding Bonds (2014) Trust Fund" (the "Trust Fund") as follows.

(1) There is hereby created in the Trust Fund a separate account to be known and referred to herein as the "Refunded Bonds Account." The Securities and the Initial Cash Deposit shall be deposited in the Refunded Bonds Account immediately upon receipt thereof by the Trustee from the Corporation. As determined in the Verification Report of Grant Thornton LLP regarding the Refunding Bonds (the "Report"), the principal amount of the Securities, together with the scheduled interest thereon and the Initial Cash Deposit, are sufficient to assure that the funds available in the Trust Fund shall be sufficient to pay promptly the principal of and redemption premiums, if any, and interest on the Bonds Being Refunded as the same mature and become due or on the dates the Bonds Being Refunded are to be redeemed.

(2) There is hereby created in the Trust Fund a separate account to be known and referred to herein as the "Bond Expenses Account." The Costs of Issuance Deposit shall be deposited immediately in the Bond Expenses Account upon receipt thereof by the Trustee from the Corporation. The Trustee shall use the amounts in the Bond Expenses Account to pay the expenses as set forth in Exhibit "F" hereto. The amount in the Bond Expenses Account not disbursed by the Trustee before or on _____ 1, 2015, shall be paid to the Corporation for deposit with the Indenture Trustee to the "Revenue Fund" established by the Supplemental Indenture.

Section 2. (A) The Trustee shall, at all times, hold the Securities and the Initial Cash Deposit in the Refunded Bonds Account for the account of the Corporation and for the benefit of the registered owners of the Bonds Being Refunded and shall maintain the Refunded Bonds Account wholly segregated from other funds and securities on deposit with the Trustee, shall never commingle the Securities and other moneys with other funds or securities of the Refunded Bonds Account and shall never at any time use, loan or borrow the same in any way, so that sufficient funds always shall be available to pay the interest, premium and principal requirements of the Refunded Bonds as the same accrue and become due and payable from time to time as set forth in Exhibits "A" and "C" hereto (collectively, the "Payment Schedules") which conform with similar schedules included in the Report.

(B) The Trustee shall reinvest cash balances held in the Refunded Bonds Account on each January 1 and December 1, to the extent not required for the payment of the principal of and redemption premium and interest on the Refunded Bonds on such date, in United States Treasury Certificates of Indebtedness, State and Local Government Series ("SLGs"), at a zero percent (0.0%) interest rate, maturing on the semiannual debt service payment date for the Refunded Bonds (the "Restricted Reinvestment Obligations"), provided that amounts which may not be so invested shall be held in cash and shall not be invested. (The Initial Cash Deposit shall be held in the Trust Fund in cash and shall not be invested.) Such investments shall be made only to the extent permitted by, and shall be made in accordance with, the applicable statutes, rules and regulations governing such investments issued by the Bureau of Public Debt. Such rules and regulations currently require that a subscription for purchase of the investment be submitted at least fifteen (15) (or, for subscriptions of less than \$10,000,000 five (5)) but no more than sixty (60) days prior to the date of investment. If the Department of the Treasury (or the Bureau of Public Debt) of the United States suspends the sale of SLGs causing the Trustee to be unable to purchase SLGs, then the Trustee will take the following actions: On the date the Trustee would have purchased SLGs had the Trustee been able to do so, the Trustee shall purchase non-callable and non-prepayable obligations issued or guaranteed as to full and timely payment by the United States of America ("Government Obligations") maturing no more than ninety (90) days after the date of purchase ("Alternate Investments"). The purchase price of the Alternate Investment shall be as close as possible to the principal amount of the SLGs that would have been purchased on such date if they had been available for purchase and shall in no event be more than the amount payable at such maturity on such investment. The Trustee shall purchase each Alternate Investment at a price no higher than the fair market value of the Alternate Investment and shall maintain records demonstrating compliance with this requirement. On the maturity of each Alternate Investment, the Trustee shall pay the difference between the total of the receipts on the Alternate Investment and the purchase price of the Alternate Investment to the Corporation with a notice to the Corporation that such amount must be paid to the Internal Revenue Service pursuant to Internal Revenue Service Revenue Procedure 95-47. If the Alternate Investment matures more than twenty-nine (29) days prior to the next succeeding interest payment date on the Refunded Bonds on which such proceeds will be needed to pay principal of and premium, if any, and interest on the Refunded Bonds, the Trustee shall treat such amounts as an invested balance available for reinvestment and shall take all reasonable steps to invest such amounts in SLGs (or additional Alternate Investments as provided in this Section). The Trustee shall hold balances not so invested in accordance with Section 4 hereof.

(C) The Trustee may sell or redeem the Securities in advance of their maturity dates and invest the proceeds of such sale or redemption or other moneys credited to the Trust Fund in connection with such sale or redemption in other non-callable obligations issued or guaranteed by the United States of America (the "Substitute

Securities") only upon receipt of written instructions from the Corporation to do so and receipt by the parties hereto and the Corporation of (1) an opinion in form and substance satisfactory to them from a nationally recognized bond counsel to the effect that such action will not affect adversely the status of the interest on the Bonds Being Refunded or the Refunding Bonds for federal income tax purposes and will not affect adversely the right of the Corporation to issue obligations the interest on which is excludable from gross income for federal income tax purposes and (2) a report from a nationally recognized accountant or firm of accountants verifying the accuracy of the arithmetic computations of the adequacy of the proceeds from the liquidation together with any other moneys and the maturing principal of and interest on the Substitute Securities to be credited to the Trust Fund, to pay when due the interest on the Bonds Being Refunded and the principal and premiums on the Bonds Being Refunded as they become due at maturity or upon prior redemption. Upon any such sale or redemption of investments and reinvestment, any amounts not needed in the Trust Fund to provide for payments on the Bonds Being Refunded, as shown by such accountant's report, may be withdrawn from the Trust Fund at the direction of the Corporation, returned to the Treasurer and applied for the benefit of the Corporation in accordance with applicable law.

Section 3. The debt service on the Bonds Being Refunded shall be paid from the Trust Fund from the following sources in the order listed below:

(A) The Initial Cash Deposit.

(B) Cash receipts from the Securities, Restricted Reinvestment Obligations, Alternate Investments or Substitute Securities.

Moneys shall be applied consistently with the Payment Schedules.

Section 4. Any moneys credited to the Trust Fund which are not invested in the Securities, Restricted Reinvestment Obligations, Alternate Investments or Substitute Securities as provided herein shall be held as a demand deposit and shall be secured in the same manner as deposits of public moneys.

Section 5. (A) The Trustee shall make timely payments from the Trust Fund to the Indenture Trustee, as the trustee and paying agent for the Bonds Being Refunded, in the amounts and on the dates necessary to permit the payment when due of the principal of and redemption premiums, if any, and interest on the Bonds Being Refunded as the same become due and payable or are redeemed, as the case may be, as set forth in the Payment Schedules.

(B) The Corporation hereby irrevocably instructs the Trustee to, and the Trustee shall, as soon as possible, cause notice of the defeasance and refunding of the Bonds Being Refunded, in the form as shown substantially in the form in Exhibit "D" attached here-

to, to be mailed, by first class mail, postage prepaid, to the registered owners of the Bonds Being Refunded, at the address shown on the register maintained by the Indenture Trustee.

(C) The Corporation also hereby irrevocably instructs the Trustee, in its capacity as the Indenture Trustee, to, and the Trustee shall, not more than forty-five (45) nor less than thirty (30) days prior to the date set for redemption of the Bonds Being Refunded, cause notice of the redemption of the Bonds Being Refunded, in form as shown substantially in the form in Exhibit "E" attached hereto, to be mailed, by first class mail, postage prepaid, to each registered owner of the Bonds Being Refunded at the address shown on the register maintained by the Trustee, as trustee and paying agent for the Bonds Being Refunded, and to be provided to the Electronic Municipal Market Access system maintained by the Municipal Securities Rulemaking Board.

Section 6. If at any time or times there are insufficient funds on hand in the Trust Fund for the payment of the principal of and premium, if any, and interest on the Bonds Being Refunded as the same become due or are to be redeemed, the Trustee shall promptly notify the Corporation of such deficiency by telephone and by registered or overnight mail, postage prepaid.

Section 7. On or before January 15 and December 15, the Trustee shall submit to the Corporation and the City a report covering all moneys the Trustee has received and all payments the Trustee has made under the provisions hereof during the six-month period ending on the preceding December 1 or January 1. Each such report also shall list all investments and moneys on deposit with the Trustee as of the date of the report.

Section 8. (A) The Trustee, as consideration for its services hereunder, shall be entitled to a fee of \$_____ due upon the date of the initial deposit of moneys into the Trust Fund from the Costs of Issuance of Deposit.

(B) The Trustee hereby waives and releases any claim which it otherwise would have, as a lien or otherwise, against the Trust Fund for any payment and shall seek such amounts from the Corporation only for the payment of fees of the Trustee for all other services in connection with services of the Trustee hereunder and in connection with the Refunding Bonds.

(C) If the Trustee is requested to render any service hereunder not provided for in this Escrow Trust Agreement, or the Trustee is made a party to or intervenes in any litigation pertaining to this Escrow Trust Agreement, the Trustee shall be compensated reasonably by the Corporation for such extraordinary services and reimbursed for any and all claims, liabilities, losses, damages, fines, penalties, and expenses, including "out-of-pocket" and incidental expenses and legal fees occasioned thereby.

Section 9. When all amounts payable on the Bonds Being Refunded have become due and the Trustee has on deposit all moneys necessary for the payment of such amounts, and in any event on the business day succeeding the date the last of the Bonds Being Refunded is redeemed, the Trustee shall transfer to the Corporation all moneys and investments credited to the Trust Fund in excess of the amounts payable on the Bonds Being Refunded.

Section 10. The registered owners of the Bonds Being Refunded have a beneficial interest in the moneys and investments held in trust hereunder. This Escrow Trust Agreement shall not be revoked and shall not be amended in any manner which may adversely affect the rights herein sought to be protected until the provisions of this Escrow Trust Agreement have been fully carried out.

Section 11. The Trustee shall be under no obligation to inquire into or be otherwise responsible for the performance or nonperformance by the Corporation of any of its obligations or to protect any of the rights of the Corporation under any of the proceedings with respect to the Bonds Being Refunded or the Refunding Bonds. The Trustee shall not be liable for any act done or step taken or omitted by it or for any mistake of fact or law or for anything which it may do or refrain from doing except for its gross negligence or its default in the performance of any obligation imposed upon it under the terms of this Escrow Trust Agreement. The Trustee shall not be liable or responsible for any loss resulting from any investment made pursuant to this Escrow Trust Agreement in compliance with the provisions hereof.

Section 12. The Corporation and the City shall have the right to audit the records and accounts of the Trustee insofar as they pertain to the trust created hereunder.

Section 13. (A) Except as provided elsewhere herein, neither this Escrow Trust Agreement nor the Trust Fund may be assigned by the Trustee without the prior written consent of the Corporation, which consent, however, shall not be unreasonably withheld. If the Trustee is required by law to divest itself of its interest in its trust department or if the Trustee sells or otherwise assigns all or substantially all of its trust or corporate trust business, then the trust established by this Escrow Trust Agreement shall be continued by the Trustee's successor in interest without further consent of the Corporation being required.

(B) Notwithstanding the foregoing subsection, any trust company or national banking association into which the Trustee or its successor may be converted, merged or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business as a whole shall be the successor of the Trustee with the same rights, powers, duties and obligations and subject to the same restrictions, limitations and liabilities as its predecessor, all without the execution or filing of any paper or

any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 14. If any section, paragraph, subdivision, sentence, clause or phrase hereof shall for any reason be held illegal or unenforceable, such decision shall not affect the validity of the remaining portions hereof. The parties hereby declare that they would have executed this Escrow Trust Agreement and each and every other section, paragraph, subdivision, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases hereof may be held to be illegal, invalid or unenforceable. If any provision hereof contains any ambiguity which may be construed as either valid or invalid, the valid construction shall be adopted. In construing this Escrow Trust Agreement, it should be noted that the parties intend that the Refunding Bonds, the Bonds Being Refunded are to be obligations the interest on which is excludable from gross income under Section 103(a) of the Internal Revenue Code of 1986, as amended, and the provisions hereof should be construed to permit that result.

Section 15. (A) To the extent applicable by provision of law, the Trustee acknowledges that this Escrow Trust Agreement is subject to cancellation pursuant to Section 38-511, Arizona Revised Statutes, as amended, the provisions of which are incorporated herein and which provides that the Corporation may within three years after its execution cancel any contract (including this Agreement) without penalty or further obligation made by the Corporation if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the Corporation is at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

(B) To the extent applicable under Section 41-4401, Arizona Revised Statutes, as amended, the Trustee shall comply with all federal immigration laws and regulations that relate to its employees and its compliance with the "e-verify" requirements under Section 23-214(A), Arizona Revised Statutes, as amended. The breach by the Trustee of the foregoing shall be deemed a material breach of this Escrow Trust Agreement and may result in the termination of the services of the Trustee by the Corporation. The Corporation retains the legal right to randomly inspect the papers and records of the Trustee to ensure that the Trustee is complying with the foregoing. The Trustee shall keep such papers and records open for random inspection during normal business hours by the Corporation. The Trustee shall cooperate with the random inspections by the Corporation including granting the Corporation entry rights onto its property to perform such random inspections and waiving its respective rights to keep such papers and records confidential.

Section 16. This Escrow Trust Agreement shall be governed exclusively by the provisions hereof and by the applicable laws of the

State of Arizona. This Escrow Trust Agreement expresses the entire understanding and all agreements of the parties hereto with each other with respect to the subject matter hereof and no party hereto has made or shall be bound by any agreement or any representation to any other party which is not expressly set forth in this Escrow Trust Agreement.

Section 17. Notice shall be sufficient hereunder, if it is contained in a writing sent to the Corporation at c/o Town of Gilbert, Arizona, 50 East Civic Center Drive, Gilbert, Arizona 85296, Attention: President, to the City at 50 East Civic Center Drive, Gilbert, Arizona 85296, Attention: City Manager and to the Trustee at 1225 West Washington Street, Suite 126, Tempe, Arizona 85281, Attention: Corporate Trust Services, or any other address which may be designated from time to time by any party in writing delivered to the Corporation or the Trustee, as applicable.

Section 18. This Escrow Trust Agreement may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute but one instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Trust Agreement to be executed as of the day and year first above written.

TOWN OF GILBERT, ARIZONA PUBLIC FACILITIES MUNICIPAL PROPERTY CORPORATION, an Arizona nonprofit Corporation

By.....
President

ATTEST

.....
Secretary

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By.....
Authorized Officer

ACKNOWLEDGED BY

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., AS INDENTURE TRUSTEE

By.....
Authorized Representative

EXHIBIT A

Bonds Being Refunded

<u>Date*</u>	<u>Principal</u>	<u>Interest</u>	<u>Debt Service</u>
01/01/15		\$	\$
07/01/15			
01/01/16			
07/01/16	\$ _____	_____	_____
	\$ _____	\$ _____	\$ _____

* Bonds Being Refunded will be redeemed on July 1, 2016, at par plus accrued interest without premium.

EXHIBIT B

TRUST FUND SECURITIES

<u>Type</u>	<u>Maturity Date</u>	<u>Par Amount/Cost</u>	<u>Coupon</u>
		\$	%

EXHIBIT C

SCHEDULE OF TOTAL ESCROW RECEIPTS AND PAYMENTS

<u>Date</u>	<u>Receipt</u>	<u>Trust Fund Requirement</u>	<u>Cash Balance</u>
___/___/2014	\$	\$	\$
	_____	_____	
	<u>\$</u>	<u>\$</u>	

EXHIBIT D

NOTICE OF REFUNDING

of

TOWN OF GILBERT, ARIZONA PUBLIC FACILITIES
MUNICIPAL PROPERTY CORPORATION
REVENUE BONDS, SERIES 2006
DATED AS OF JANUARY 1, 2006
ALL MATURING ON
JULY 1, 2017, THROUGH AND INCLUDING JULY 1, 2021

Notice is hereby given to the registered owners of the above-referenced Bonds (the "Bonds") that the Bonds have been refunded in advance of their stated maturity dates by the establishment of an irrevocable trust with The Bank of New York Mellon Trust Company, N.A., as trustee. According to a report by Grant Thornton LLP, certified public accountants, the moneys and obligations issued or guaranteed by the United States of America, which have been deposited in the irrevocable trust, are scheduled to provide funds in amounts sufficient to pay all principal of and interest and premium, if any, on the Bonds as the same become due or are redeemed prior to maturity. The Bonds shall be redeemed prior to their stated maturity date on July 1, 2016, by the payment of the principal amount thereof plus accrued interest to the date of redemption without premium.

DATED: December ..., 2014

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., as Trustee

EXHIBIT E

NOTICE OF REDEMPTION
of

TOWN OF GILBERT, ARIZONA PUBLIC FACILITIES
MUNICIPAL PROPERTY CORPORATION
REVENUE BONDS, SERIES 2006
DATED AS OF JANUARY 1, 2006
MATURING ON
JULY 1, 2017, THROUGH AND INCLUDING JULY 1, 2021

Notice is hereby given that the above-referenced Bonds (the "Bonds") shall be redeemed prior to their stated maturity dates on July 1, 2016. Registered owners of the Bonds are notified to present the same at the office of The Bank of New York Mellon Trust Company, N.A., as trustee on July 1, 2016, the date set for redemption, where redemption will be made by payment of the principal amount of each of the Bonds plus accrued interest to the date of redemption without premium. From and after July 1, 2016, no interest will be paid on the Bonds.

DATED:, 2014

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A., as Trustee

EXHIBIT F

COSTS AND EXPENSES OF THE ISSUANCE
OF THE REFUNDING BONDS
AND THE CREATION AND IMPLEMENTATION
OF THE TRUST ESTABLISHED TO
SECURE THE PAYMENT OF THE REFUNDED BONDS

The following expenses are to be paid by the Trustee from
\$ _____ deposited with the Trustee for that purpose:

Bond Counsel.....	\$
Bond Ratings.....	
Underwriter's Counsel.....	
Official Statement Printing/Posting.....	
Trustee/Registrar/Paying Agent/Escrow Trustee....	
Verification Agent Fees.....	
Miscellaneous.....	_____
Total Expenses	\$ _____

§ _____
**TOWN OF GILBERT, ARIZONA
PUBLIC FACILITIES MUNICIPAL PROPERTY CORPORATION
REVENUE REFUNDING BONDS, SERIES 2014**

BOND PURCHASE AGREEMENT

_____, 2014

Town of Gilbert, Arizona Public Facilities Municipal Property Corporation
c/o Town of Gilbert, Arizona
50 East Civic Center Dr.
Gilbert, Arizona 85296

Town of Gilbert, Arizona
50 East Civic Center Dr.
Gilbert, Arizona 85296

Ladies and Gentlemen:

On the basis of the representations, warranties and covenants contained in this Bond Purchase Agreement and upon the terms and conditions contained herein, the undersigned, RBC Capital Markets, LLC (the “Representative”), acting on its own behalf, and on behalf of Wells Fargo Bank, National Association (collectively, the “Underwriters”), hereby offers to enter into the following agreement with the Town of Gilbert, Arizona, Public Facilities Municipal Property Corporation (the “Corporation”) and the Town of Gilbert, Arizona (the “Town”). Upon written acceptance of this offer by the Corporation and the Town, this Bond Purchase Agreement will be binding upon the Corporation and the Town and upon the Underwriters. This offer is made subject to the Corporation’s and the Town’s written acceptance hereof on or before 11:59 p.m., MST, on _____, 2014, and, if not so accepted, this offer will be subject to withdrawal by the Representative upon notice delivered to the Corporation and the Town at any time prior to the acceptance hereof by the Corporation and the Town. The offer of the Underwriters is made by signing the signature line provided and delivering the signed page to the Town and the Corporation. The acceptance is made by the Town and the Corporation by each signing the signature line provided and delivering the signed page to the Representative. Delivery includes sending in the form of a facsimile or telecopy or via the internet as a portable document format (PDF) file or other replicating image attached to an electronic message. Terms not otherwise defined in this Bond Purchase Agreement shall have the same meanings as set forth in the Indenture (as defined herein) or in the Official Statement (as defined herein).

The captioned Revenue Refunding Bonds, Series 2014 (the “Bonds”) shall be as described in, and shall be issued and secured under and pursuant to the provisions of a Trust Indenture, dated as of October 1, 2001 (the “Original Indenture”), as supplemented to date, including as supplemented by a Fourth Supplement to Trust Indenture, to be dated as of

December 1, 2014 (the “Fourth Supplement” and, together with the Original Indenture as previously supplemented, the “Indenture”), between the Corporation and The Bank of New York Mellon Trust Company, N.A., as successor trustee (together with its successors, if any, as trustee under the Indenture, the “Trustee”).

Concurrently, with the execution of the Fourth Supplement, the Corporation and the Town will enter into (a) a First Amendment to Series 2006 Ground Lease, to be dated as of December 1, 2014 (the “First Amendment to Series 2006 Ground Lease”), amending a Series 2006 Ground Lease, dated as of January 1, 2006 (as amended, the “Ground Lease”), each between the Town, as lessor, and the Corporation, as lessee, and relating to the lease of certain “Real Property” as defined in the Ground Lease, and (b) a Series 2014 Town Lease, to be dated as of December 1, 2014 (the “2014 Town Lease”) between the Corporation and the Town relating to the lease of the “Leased Property” as defined in the 2014 Town Lease. The rental payments made by the Town pursuant to the 2014 Town Lease will be used to pay the principal of and premium, if any, and interest requirements on the Bonds.

Net proceeds of the Bonds will be used to (i) refund the Bonds Being Refunded (as defined in the below-described Official Statement), and (ii) pay costs associated with the issuance of the Bonds. In connection with the issuance of the Bonds and the refunding of the Bonds Being Refunded, the Corporation will execute and deliver an Escrow Trust Agreement, to be dated as of December 1, 2014 (the “Escrow Trust Agreement”) with The Bank of New York Mellon Trust Company, N.A., as escrow trustee thereunder (the “Escrow Trustee”).

The Bonds will be offered by means of the Preliminary Official Statement of the Corporation, dated December __, 2014, relating to the Bonds (including the cover page and all appendices, the “Preliminary Official Statement”) and the final Official Statement of the Corporation, dated the date of this Bond Purchase Agreement, relating to the Bonds (including the cover page and all appendices, the “Official Statement”). The Town will enter into and deliver a written Continuing Disclosure Undertaking (the “Continuing Disclosure Undertaking”) to provide, or cause to be provided, ongoing disclosure for the benefit of the owners of the Bonds as described in the Continuing Disclosure Undertaking for purposes of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 (the “Disclosure Rule”). The Corporation and the Town will execute and deliver a tax certificate regarding federal tax matters (the “Tax Agreement”) regarding exclusion of interest on the Bonds from gross income for income tax purposes.

This Bond Purchase Agreement, the Fourth Supplement, the First Amendment to Series 2006 Ground Lease, the 2014 Town Lease, the Escrow Trust Agreement and the Tax Agreement are referred to as the “Corporation Documents.”

This Bond Purchase Agreement, the First Amendment to Series 2006 Ground Lease, the 2014 Town Lease, the attachment to the Tax Agreement executed by a representative of the Town and the Continuing Disclosure Undertaking are referred to as the “Town Documents.”

1. Purchase and Sale of the Bonds.

(a) Subject to the terms and conditions and in reliance upon the representations, warranties and agreements set forth herein, the Underwriters hereby agree to purchase, and the Corporation and the Town hereby agree to cause to be sold and delivered to the Underwriters, all, but not less than all, of the Bonds. Inasmuch as this purchase and sale represents a negotiated transaction, the Corporation and the Town each acknowledges and agrees that: (i) the transaction contemplated by this Bond Purchase Agreement is an arm's length, commercial transaction among the Corporation, the Town and the Underwriters in which the Underwriters are acting solely as a principal and is not acting as municipal advisor, financial advisor, or fiduciary to the Corporation or the Town; (ii) the Underwriters have not assumed any advisory or fiduciary responsibility to the Corporation or the Town with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriters have provided other services or are currently providing other services to the Corporation or the Town on other matters); (iii) the Underwriters are acting solely in their capacity as underwriters for their own respective accounts; (iv) the only obligations the Underwriters have to the Corporation or the Town with respect to the transaction contemplated hereby expressly are set forth in this Bond Purchase Agreement; and (v) the Corporation and the Town have consulted their own legal, accounting, tax and other advisors, as applicable, to the extent it has become appropriate.

(b) The principal amount of the Bonds to be issued, the dated date therefor, the maturities, redemption provisions and interest rates per annum are set forth in Schedule 1 hereto.

(c) The purchase price for the Bonds shall be \$_____ (the "Purchase Price"). The Purchase Price represents:

Par Amount of Bonds	\$
Plus Reoffering Premium	_____
Less Underwriters' Discount	(_____)
Purchase Price	\$_____

2. Public Offering. The Underwriters intend to make a bona fide public offering of the Bonds at the offering prices or yields set forth in Schedule 1, and based upon those initial offering prices or yields, the Underwriters would receive compensation of \$_____; however the Underwriters may offer a portion of the Bonds for sale to selected dealers who are members of the Financial Industry Regulatory Authority and who agree to resell the Bonds to the public on terms consistent with this Bond Purchase Agreement and the Underwriters reserve the right to change such offering prices or yields as the Underwriters deem necessary in connection with the marketing of the Bonds and to offer and sell the Bonds to certain dealers (including dealers depositing the Bonds into investment trusts) and others at prices lower than the initial offering prices or at yields higher than the initial yields set forth in Schedule 1 and in the Official Statement. The Underwriters also reserve the right to over-allot or effect transactions that stabilize or maintain the market price of the Bonds at a level above that which might otherwise

prevail in the open market and to discontinue such stabilizing, if commenced, at any time. None of such activities shall affect the principal amounts, maturity dates, interest rates, redemption or other provision of the Bonds or the amount to be paid by the Underwriters to the Corporation for the Bonds.

3. The Official Statement.

(a) The Preliminary Official Statement has been prepared for use by the Underwriters in connection with the public offering, sale and distribution of the Bonds. The Corporation and the Town hereby deem the Preliminary Official Statement final as of its date, except for the omission of such information which is dependent upon the final pricing of the Bonds for completion, all as permitted to be excluded by Section (b)(1) of the Disclosure Rule.

(b) The Corporation and the Town hereby authorize the Official Statement and the information therein contained to be used by the Underwriters in connection with the public offering and the sale of the Bonds. The Corporation and the Town consent to the use by the Underwriters prior to the date hereof of the Preliminary Official Statement in connection with the public offering of the Bonds. The Corporation shall provide, or cause to be provided, to the Underwriters as soon as practicable after the date of the Corporation's and the Town's acceptance of this Bond Purchase Agreement (but, in any event, not later than within seven (7) business days after the Corporation's and the Town's acceptance of this Bond Purchase Agreement and in sufficient time to accompany any confirmation that requests payment from any customer) copies of the Official Statement which are complete as of the date of delivery to the Underwriters in such quantity as the Underwriters shall request in order for the Underwriters to comply with Section (b)(4) of the Disclosure Rule and the rules of the Municipal Securities Rulemaking Board ("MSRB"). The Corporation and the Town hereby confirm that they do not object to the distribution of the Official Statement in electronic form.

(c) If, after the date of this Bond Purchase Agreement to and including the date the Underwriters are no longer required to provide an Official Statement to potential customers who request the same pursuant to the Disclosure Rule (the earlier of (i) 90 days from the "end of the underwriting period" (as defined in Rule) and (ii) the time when the Official Statement is available to any person from the MSRB, but in no case less than 25 days after the "end of the underwriting period" for the Bonds), the Corporation or the Town becomes aware of any fact or event which might or would cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements therein, not misleading, or if it is necessary to amend or supplement the Official Statement to comply with law, the Corporation or the Town will notify the Representative (and for the purposes of this clause provide the Representative with such information as it may from time to time request), and if, in the opinion of the Representative or the Corporation or the Town, such fact or event requires preparation and publication of a supplement or amendment to the Official Statement, the Corporation will forthwith prepare and furnish, at the Corporation's own expense (in a form and manner approved by the Representative), a reasonable number of copies of either amendments or supplements to the Official Statement so that the statements in the Official Statement as so amended and supplemented will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or so

that the Official Statement will comply with law. If such notification shall be subsequent to the Closing, the Corporation shall furnish such legal opinions, certificates, instruments and other documents as the Representative may deem necessary to evidence the truth and accuracy of such supplement or amendment to the Official Statement.

(d) The Underwriters hereby agree to file the Official Statement with the Electronic Municipal Market Access system of the MSRB. Unless otherwise notified in writing by the Representative, the Corporation can assume that the “end of the underwriting period” for purposes of the Disclosure Rule is the date of the Closing.

4. Representations, Warranties, and Covenants of the Corporation. The undersigned on behalf of the Corporation, but not individually, hereby represents and warrants to and covenants with the Underwriters that:

(a) The Corporation is a nonprofit corporation duly created, organized and existing pursuant to the laws of the State of Arizona (the “State”) and has full legal right, power and authority, and at the date of the Closing will have full legal right, power and authority (i) to enter into, execute and deliver the Corporation Documents, (ii) to cause the sale, issuance and delivery by the Trustee of the Bonds to the Underwriters as provided herein, and (iii) to carry out and consummate the transactions contemplated by the Corporation Documents and the Official Statement, and the Corporation has complied, and will at the Closing be in compliance in all material respects, with the terms of the Corporation Documents as they pertain to such transactions;

(b) By all necessary official action of the Corporation prior to or concurrently with the acceptance hereof, the Corporation has duly authorized all necessary action to be taken by it for (i) the execution and delivery of the Corporation Documents and the execution, delivery and sale of the Bonds, (ii) the approval, execution and delivery of, and the performance by the Corporation of the obligations on its part contained in, the Bonds and the Corporation Documents and (iii) the consummation by it of all other transactions contemplated by the Official Statement, the Corporation Documents, and any and all such other agreements and documents as may be required to be executed, delivered and/or received by the Corporation in order to carry out, give effect to, and consummate the transactions contemplated herein and in the Official Statement;

(c) The Corporation Documents constitute legal, valid and binding obligations of the Corporation, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting the enforcement of creditors’ rights; the Bonds, when issued, delivered and paid for in accordance with the Indenture and this Bond Purchase Agreement, will constitute legal, valid and binding obligations entitled to the benefits of the Indenture and enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting the enforcement of creditors’ rights; upon the execution and delivery of the Bonds as aforesaid, the Indenture will provide, for the benefit of the holders, from time to time, of the Bonds, the legally valid and binding pledge of and lien it purports to create as set forth in the Indenture;

(d) The Corporation is not in breach of or default in any material respect under any applicable constitutional provision, law or administrative regulation of the State or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Corporation is a party or to which the Corporation is or any of its property or assets are otherwise subject, and no event has occurred and is continuing which constitutes or with the passage of time or the giving of notice, or both, would constitute a material default or event of default by the Corporation under any of the foregoing; and the execution and delivery of the Bonds and the Corporation Documents and compliance with the provisions on the Corporation's part contained therein will not conflict with or constitute a material breach of or material default under any constitutional provision, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Corporation is a party or to which the Corporation is or to which any of its property or assets are otherwise subject nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Corporation to be pledged to secure the Bonds or under the terms of any such law, regulation or instrument, except as provided by the Bonds, the Corporation Documents and the Indenture;

(e) All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction of the matter which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the Corporation of its obligations under the Corporation Documents and the Bonds have been duly obtained, except for such approvals, consents and orders as may be required under the Blue Sky or securities laws of any jurisdiction in connection with the offering and sale of the Bonds;

(f) The Bonds conform to the descriptions thereof contained in the Official Statement under the captions "THE SERIES 2014 BONDS;" the Indenture conforms to the descriptions thereof contained in the Official Statement under the captions "THE SERIES 2014 BONDS" and Appendix D - "SUMMARY OF CERTAIN PROVISIONS OF LEGAL DOCUMENTS;" and the proceeds of the sale of the Bonds will be applied generally as described in the Official Statement under the caption "THE SERIES 2014 BONDS."

(g) There is no litigation, action, suit, proceeding, referendum, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or overtly threatened against the Corporation, affecting the existence of the Corporation or the titles of its officers to their respective offices, or affecting or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the Bonds or the collection of lease payments promised for the payment of principal of and interest on the Bonds pursuant to the Indenture or in any way contesting or affecting the validity or enforceability of the Bonds or the Corporation Documents, or contesting the exclusion from gross income of interest on the Bonds for federal income tax purposes or State income tax purposes, or contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto, or contesting the powers of the Corporation or any authority for the issuance of the Bonds, the execution and delivery of the Indenture or the execution and delivery of the other Corporation Documents, nor, to the best knowledge of the Corporation, is

there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Bonds or the Corporation Documents;

(h) As of the date thereof, the Preliminary Official Statement as it relates to the Corporation did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(i) At the time of the Corporation's acceptance hereof and (unless the Official Statement is amended or supplemented pursuant to paragraph (c) of Section 3 of this Bond Purchase Agreement) at all times subsequent thereto during the period up to and including the date of Closing, the Official Statement as it relates to the Corporation does not and will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(j) If the Official Statement is supplemented or amended pursuant to paragraph (c) of Section 3 of this Bond Purchase Agreement, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such paragraph) at all times subsequent thereto during the period up to and including the date of Closing the Official Statement as so supplemented or amended as it relates to the Corporation will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which made, not misleading;

(k) The Corporation will apply, or cause to be applied, the proceeds from the sale of the Bonds as provided in and subject to all of the terms and provisions of the Indenture and will not to take or omit to take any action which action or omission will adversely affect the exclusion from gross income for federal income tax purposes or State income tax purposes of the interest on the Bonds;

(l) The Corporation will furnish such information and execute such instruments and take such action in cooperation with the Underwriter as the Underwriters may reasonably request (A) to (y) qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions in the United States as the Underwriters may designate and (z) determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions and (B) to continue such qualifications in effect so long as required for the distribution of the Bonds (provided, however, that the Corporation will not be required to qualify as a foreign corporation or to file any general or special consents to service of process under the laws of any jurisdiction) and will advise the Representative immediately of receipt by the Corporation of any notification with respect to the suspension of the qualification of the Bonds for sale in any jurisdiction or the initiation or threat of any proceeding for that purpose;

(m) The Corporation has not incurred any material liabilities, direct or contingent, nor has there been any material adverse change in the financial position, results of operations or condition, financial or otherwise, of the Corporation that are not described in the

Official Statement, whether or not arising from transactions in the ordinary course of business, and prior to the Closing there will be no adverse change of a material nature in such financial position, results of operations or condition, financial or otherwise, of the Corporation, and the Corporation is not a party to any litigation or other proceeding pending or threatened which, if decided adversely to the Corporation, would have a materially adverse effect on the financial condition of the Corporation;

(n) The Corporation has fully submitted to the Arizona Department of Revenue the information required with respect to previous issuances of bonds, securities and lease-purchase agreements of the Corporation pursuant to Section 35-501(B), Arizona Revised Statutes and will file the information relating to the Bonds required to be submitted to the Arizona Department of Revenue pursuant thereto within sixty (60) days of the date of Closing;

(o) The Corporation shall execute and deliver prior to the Closing, and in time for the Closing to occur at the specified time, the documents required to cause the Bonds to be eligible for deposit with DTC (as defined herein) or other securities depositories;

(p) The Corporation has no continuing disclosure undertakings pursuant to the Disclosure Rule;

(q) Prior to the Closing, the Corporation will not offer or issue any Bonds, notes or other obligations for borrowed money or incur any material liabilities, direct or contingent, payable from or secured by any of the revenues or assets which will secure the Bonds without the prior approval of the Representative, which approval will not be withheld unreasonably; and

(r) Any certificate signed by any official of the Corporation authorized to do so in connection with the transactions contemplated by this Bond Purchase Agreement shall be deemed a representation and warranty by the Corporation to the Underwriters as to the statements made therein.

5. Representations, Warranties and Covenants of the Town. The undersigned on behalf of the Town, but not individually, hereby represents and warrants to and covenants with the Underwriters that:

(a) The Town is validly existing as a municipal corporation duly created, organized and existing under the laws of the State, and has full legal right, power and authority, and at the date of the Closing will have full legal right, power and authority (i) to enter into, execute and deliver the Town Documents, (ii) to carry out and consummate the transactions contemplated by the Town Documents and the Official Statement, and (iii) to impose, levy, collect and pledge the Excise Taxes and State-Shared Revenues as contemplated in the Town Documents and the Official Statement, and the Town has complied, and will at the Closing be in compliance in all respects, with the terms of the Town Documents as they pertain to such transactions;

(b) By all necessary official action of the Town prior to or concurrently with the acceptance hereof, the Town has duly authorized all necessary action to be taken by it for (i) the approval, execution and delivery of, and the performance by the Town of the obligations

on its part, contained in the Town Documents and (ii) the consummation by it of all other transactions contemplated by the Official Statement, the Town Documents, and any and all such other agreements and documents as may be required to be executed, delivered and/or received by the Town in order to carry out, give effect to, and consummate the transactions contemplated herein and in the Official Statement;

(c) The Town Documents constitute legal, valid and binding obligations of the Town, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting the enforcement of creditors' rights and subject to annual appropriation;

(d) The Town is not in breach of or default in any material respect under any applicable constitutional provision, law or administrative regulation of the State or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Town is a party or to which the Town is or any of its property or assets are otherwise subject, and no event has occurred and is continuing which constitutes or with the passage of time or the giving of notice, or both, would constitute a default or event of default by the Town under any of the foregoing; and the execution and delivery of the Town Documents and compliance with the provisions on the Town's part contained therein, will not conflict with or constitute a material breach of or default under any constitutional provision, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Town is a party or to which the Town is or to which any of its property or assets are otherwise subject nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Town securing the Bonds or under the terms of any such law, regulation or instrument;

(e) All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction of the matter which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the Town of its obligations under the Town Documents have been duly obtained;

(f) Except as disclosed in the Preliminary Official Statement and the Official Statement, there is no litigation, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best knowledge of the Town after due inquiry, threatened against the Town, affecting the existence of the Town or the titles of its officers to their respective offices, or affecting or seeking to prohibit, restrain or enjoin the collection of Excise Taxes and State-Shared Revenues securing the payment of principal of and interest on the Bonds pursuant to the Indenture or in any way contesting or affecting the validity or enforceability of the Town Documents, or contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto, or contesting the powers of the Town or any authority for the execution and delivery of the Town Documents, nor, to the best knowledge of the Town, is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Town Documents;

(g) As of the date thereof, the Preliminary Official Statement did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(h) At the time of the Town's acceptance hereof and (unless the Official Statement is amended or supplemented pursuant to paragraph (c) of Section 3 of the Bond Purchase Agreement) at all times subsequent thereto during the period up to and including the date of Closing, the Official Statement as it relates to the Town does not and will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(i) If the Official Statement is supplemented or amended pursuant to paragraph (c) of Section 3 of this Bond Purchase Agreement, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such paragraph) at all times subsequent thereto during the period up to and including the date of Closing the Official Statement as so supplemented or amended will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which made, not misleading;

(j) The financial statements of, and other financial information regarding the Town, in the Official Statement fairly present the financial position and results of the Town as of the dates and for the periods therein set forth in accordance with generally accepted accounting principles consistently applied throughout the periods concerned (except as otherwise disclosed in the Official Statement or financial statements); Since June 30, 2013, the Town has not incurred any material liabilities, direct or contingent, nor has there been any material change in the financial position, results of operations or condition, financial or otherwise, of the Town that are not disclosed in the Official Statement, whether or not arising from transactions in the ordinary course of business and prior to the Closing, there will be no adverse change of a material nature in such financial position, results of operations or condition, financial or otherwise, of the Town, and the Town is not a party to any litigation or other proceeding pending or threatened which, if decided adversely to the Town, would have a materially adverse effect on the financial condition of the Town, or on the imposition, levy, collection or pledge of Excise Taxes or State-Shared Revenues for the payment of the Bonds;

(k) Except as otherwise indicated in the Official Statement, the Town has not failed during the previous five years to comply in all material respects with any previous undertaking in a written continuing disclosure contract or agreement under the Disclosure Rule;

(l) Prior to the Closing the Town will not offer or issue any bonds, notes or other obligations for borrowed money or incur any material liabilities, direct or contingent, payable from or secured by any of the revenues or assets which secure the Bonds without prior approval of the Representative, which approval will not be withheld unreasonably; and

(m) Any certificate signed by any official of the Town authorized to do so in connection with the transactions contemplated by this Bond Purchase Agreement shall be deemed a representation and warranty by the Town to the Underwriters as to the statements made therein.

6. Closing.

(a) At 8:00 a.m. MST, on _____, 2014, or at such other time and date as shall have been mutually agreed upon by the Corporation, the Town and the Representative (the "Closing"), the Corporation will, subject to the terms and conditions hereof, cause the Bonds to be delivered to the Underwriters in the aggregate principal amount of each such maturity duly executed and authenticated, together with the other documents hereinafter mentioned, and the Underwriters will, subject to the terms and conditions hereof, accept such delivery and pay the purchase price of the Bonds as set forth in Section 1 of this Bond Purchase Agreement by a certified or bank cashier's check or checks or wire transfer payable in immediately available funds to the order of the Corporation. Payment for the Bonds as aforesaid shall be made at the offices of Bond Counsel, or such other place as shall have been mutually agreed upon by the Corporation, the Town and the Representative.

(b) Delivery of the Bonds shall be made by means of a F.A.S.T. closing through the facilities of The Depository Trust Company ("DTC"), New York, New York. The Bonds shall be delivered in definitive fully registered form, bearing CUSIP numbers without coupons, with one certificate for each maturity of the Bonds, registered in the name of Cede & Co., all as provided in the Fourth Supplement, and shall be made available to the Underwriters at least one business day before the Closing for purposes of inspection.

7. Closing Conditions. The Underwriters have entered into this Bond Purchase Agreement in reliance upon the representations, warranties and agreements of the Corporation and the Town contained herein, and in reliance upon the representations, warranties and agreements to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the Corporation and the Town of its respective obligations hereunder, both as of the date hereof and as of the date of the Closing. Accordingly, the Underwriters' obligations under this Bond Purchase Agreement to purchase, to accept delivery of and to pay for the Bonds shall be conditioned upon the performance by the Corporation of its obligations to be performed hereunder and under such documents and instruments, and the performance of the Town of its obligations to be performed hereunder and under such documents and instruments at or prior to the Closing, and shall also be subject to the following additional conditions, including the delivery by the Corporation and the Town of such documents as are enumerated herein, in form and substance reasonably satisfactory to the Representative:

(a) The representations and warranties of the Corporation and the Town contained herein shall be true, complete and correct on the date hereof and on and as of the date of the Closing, as if made on the date of the Closing;

(b) The Corporation and the Town each shall have performed and complied with all agreements and conditions required by this Bond Purchase Agreement to be performed or complied with by it prior to or at the Closing;

(c) At the time of the Closing, (i) the Corporation Documents, the Town Documents and the Bonds shall be in full force and effect in the form heretofore approved by the Representative and shall not have been amended, modified or supplemented, and the Official Statement shall not have been supplemented or amended, except in any such case as may have been agreed to by the Representative; and (ii) all actions of the Corporation and the Town required to be taken by the Corporation and the Town shall be performed in order for Bond Counsel and Counsel to the Underwriters to deliver their respective opinions referred to hereafter;

(d) At the time of Closing, all official action of the Corporation relating to the Bonds and the Corporation Documents and all official action of the Town relating to the Bonds and the Town Documents shall be in full force and effect and shall not have been amended, modified or supplemented;

(e) At or prior to the Closing, the Fourth Supplement and the other Corporation Documents shall have been duly executed and delivered by the Corporation, the Town Documents shall have been duly executed and delivered by the Town and the Trustee shall have duly executed and delivered the Bonds;

(f) At the time of the Closing, there shall not have occurred any change or any development involving a prospective change in the condition, financial or otherwise, or in the revenues or operations of the Corporation or the Town, from that set forth in the Official Statement that in the judgment of the Representative, is material and adverse and that makes it, in the judgment of the Representative, impracticable to market the Bonds on the terms and in the manner contemplated in the Official Statement;

(g) Neither the Corporation nor the Town shall not have failed to pay principal or interest when due on any of its outstanding obligations for borrowed money;

(h) All steps to be taken and all instruments and other documents to be executed, and all other legal matters in connection with the transactions contemplated by this Bond Purchase Agreement shall be reasonably satisfactory in legal form and effect to the Representative;

(i) At or prior to the Closing, the Underwriters shall have received copies of each of the following documents:

(1) The Official Statement, and each supplement or amendment thereto, if any, executed on behalf of the Corporation by its President and on behalf of the Town by its Mayor, or such other officials as may have been agreed to by the Representative, and the reports and audits referred to or appearing in the Official Statement;

(2) the Corporation Documents and the Town Documents with such supplements or amendments as may have been agreed to by the Representative;

(3) the approving opinion of Bond Counsel with respect to the Bonds, in substantially the form attached to the Official Statement;

(4) The supplemental opinion of Bond Counsel and/or an opinion of the Town Attorney, in each case addressed to the Underwriters, substantially to the effect that:

(i) The Corporation is a nonprofit corporation, duly incorporated and existing under the laws of the State and has full legal right, power and authority (A) to enter into, execute and deliver the Corporation Documents, (B) to sell, issue and deliver the Bonds to the Underwriters as provided herein, and (C) to carry out and consummate the transactions contemplated by the Corporation Documents and the Official Statement and, to the best of their knowledge, the Corporation has complied, and will at the Closing be in compliance in all respects, with the terms of the Corporation Documents as they pertain to such transactions;

(ii) The Town is a municipal corporation, duly incorporated and validly existing under the laws of the State, and has full legal right, power and authority (A) to enter into, execute and deliver the Town Documents, (B) to cause the Bonds to be executed, delivered and sold by the Trustee to the Underwriters as provided herein, and (C) to carry out and consummate the transactions contemplated by the Town Documents and the Official Statement, and (D) to impose, levy, collect and pledge the Excise Taxes and State-Shared Revenues as provided in this Bond Purchase Agreement and the Town Documents, and the Town has complied, and will at the Closing be in compliance in all material respects, with the terms of the Town Documents as they pertain to such transactions;

(iii) By all necessary official action of the Corporation and the Town, as applicable, prior to or concurrently with the acceptance hereof, the Corporation and the Town have duly authorized all necessary action to be taken by each of them for (A) the execution and delivery of the Fourth Supplement and the execution, delivery and sale of the Bonds by the Corporation, (B) the approval, execution and delivery of, and the performance by the Corporation and the Town of the respective obligations on its part, contained in the Bonds and the respective Corporation Documents and Town Documents, and (C) the consummation by it of all other transactions contemplated by the Official Statement and the respective Corporation Documents and Town Documents;

(iv) All proceedings pertinent to the validity and enforceability of the Bonds have been duly and validly adopted or undertaken in compliance with all applicable procedural requirements of the Town;

(v) The Corporation Documents have been duly authorized, executed and delivered by the Corporation, and, to the extent applicable, constitute legal, valid and binding obligations of the Corporation enforceable against the Corporation in accordance with their respective terms and the Town Documents have been duly authorized, executed and delivered by the Town, and, to the extent applicable, constitute legal, valid and binding obligations of the

Town enforceable against the Town in accordance with their respective terms, except to the extent limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws and equitable principles of general application relating to or affecting the enforcement of creditors rights, and the Bonds, when executed, delivered and paid for in accordance with the Fourth Supplement and this Bond Purchase Agreement, will constitute legal, valid and binding obligations entitled to the benefits of the Fourth Supplement and enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting the enforcement of creditors' rights; upon the issuance, authentication and delivery of the Bonds as aforesaid, the Fourth Supplement will provide, for the benefit of the holders, from time to time, of the Bonds, the legally valid and binding pledge of and lien it purports to create as set forth in the Fourth Supplement;

(vi) The distribution of the Preliminary Official Statement and the Official Statement has been duly authorized by the Corporation and the Town;

(vii) All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction of the matter which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the Corporation or the Town of its obligations under the Corporation Documents and the Town Documents and the Bonds or by the Corporation and the Town of its obligations under the Corporation Documents and the Town Documents have been obtained;

(viii) The execution and delivery of the Corporation Documents and the Town Documents and compliance by the Corporation and the Town with the provisions hereof and thereof, under the circumstances contemplated herein and therein, will not conflict with or constitute on the part of the Corporation or the Town a material breach of or violate any existing law to which the Corporation or the Town is subject;

(ix) The Bonds are exempted securities under the Securities Act of 1933, as amended (the "1933 Act"), and the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act") and it is not necessary, in connection with the offering and sale of the Bonds, to register the Bonds under the 1933 Act or to qualify the Fourth Supplement under the Trust Indenture Act; and

(x) The statements and information contained in the Official Statement under the captions "THE SERIES 2014 BONDS," ["SECURITY AND SOURCE OF PAYMENT,"] "TAX MATTERS," and "CONTINUING DISCLOSURE" (except with respect to compliance by the Town with prior undertakings as to which no opinion need be expressed) therein and in Appendices D, E and F thereto fairly and accurately summarized the matters purported to be summarized therein;

(5) An opinion, dated the date of the Closing and addressed to the Underwriters, of counsel for the Underwriters, to the effect that:

(i) The Bonds are exempt securities under the 1933 Act and the Trust Indenture Act and it is not necessary, in connection with the offering and sale of the Bonds, to register the Bonds under the 1933 Act and the Fourth Supplement need not be qualified under the Trust Indenture Act; and

(ii) Based upon their participation in the preparation of the Official Statement as counsel for the Underwriters and their participation at conferences at which the Official Statement was discussed, but without having undertaken to determine independently the accuracy, completeness or fairness of the statements contained in the Official Statement, such counsel has no reason to believe that the Official Statement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (except for any financial, forecast, technical and statistical statements and data included in the Official Statement and the information regarding DTC and its book-entry system, in each case as to which no view need be expressed);

(6) An opinion of Counsel to the Corporation, addressed to the Underwriters, to the effect that:

(i) There is no litigation, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best knowledge of the signer after due inquiry, threatened against the Corporation, affecting the corporate existence of the Corporation or the titles of its officers to their respective offices or affecting the titles of its officers to their respective offices, or affecting or seeking to prohibit, restrain or enjoin the sale, execution or delivery of the Bonds or the collection of taxes securing the payment of principal of and interest with respect to the Bonds pursuant to the Fourth Supplement or in any way contesting or affecting the validity or enforceability of the Bonds, the Corporation Documents, or contesting the exclusion from gross income of the interest on the Bonds for federal income tax purposes or State income tax purposes, or contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto, or contesting the powers of the Corporation or any authority for the issuance of the Bonds, or the execution and delivery of the Corporation Documents or contesting the power of the Corporation to execute and deliver the Corporation Documents, nor, to the best knowledge of the Corporation, is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Bonds or the Corporation Documents; and

(ii) The execution and delivery of the Corporation Documents and compliance by the Corporation with the provisions hereof and thereof, under the circumstances contemplated herein and therein, will not conflict with or

constitute on the part of the Corporation a material breach of or a default under any agreement or instrument to which the Corporation is a party, or violate any existing law, administrative regulation, court order, or consent decree to which the Corporation is subject;

(7) An opinion of Counsel to the Town, addressed to the Underwriters, to the effect that:

(i) Except as disclosed in the Preliminary Official Statement or Official Statement, there is no litigation, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best knowledge of the signer after due inquiry, threatened against the Town, affecting the corporate existence of the Town or the titles of its officers to their respective offices or affecting the titles of its officers to their respective offices, or affecting or seeking to prohibit, restrain or enjoin the sale, execution or delivery of the Bonds or the collection of taxes securing the payment of principal of and interest with respect to the Bonds pursuant to the Fourth Supplement or in any way contesting or affecting the validity or enforceability of the Bonds, the Town Documents, or contesting the exclusion from gross income of the interest on the Bonds for federal income tax purposes or State income tax purposes, or contesting in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto, or contesting the powers of the Town or any authority for the issuance of the Bonds, or the execution and delivery of the Town Documents or contesting the power of the Town to execute and deliver the Town Documents, nor, to the best knowledge of the Town, is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Bonds, or the Town Documents; and

(ii) The execution and delivery of the Town Documents and compliance by the Town with the provisions hereof and thereof, under the circumstances contemplated herein and therein, will not conflict with or constitute on the part of the Town a material breach of or a default under any agreement or instrument to which the Town is a party, or violate any existing law, administrative regulation, court order, or consent decree to which the Town is subject;

(8) A certificate, dated the date of Closing, of the Corporation to the effect that to the best knowledge of the signer (i) the representations and warranties of the Corporation contained herein are true and correct in all material respects on and as of the date of Closing as if made on the date of Closing; (ii) no litigation or proceeding or tax challenge against it is pending or, to its knowledge, threatened in any court or administrative body nor is there a basis for litigation which would (a) contest the right of the members or officials of the Corporation to hold and exercise their respective positions, (b) contest the due organization and valid existence of the Corporation, (c) contest the validity, due authorization and execution of the Bonds or the Corporation Documents or (d) attempt to limit, enjoin or otherwise restrict or prevent the Corporation

from functioning and collecting payments under the 2014 Town Lease; (iii) the resolutions of the Corporation authorizing the execution, delivery and/or performance of the Official Statement, the Bonds and Corporation Documents have been duly adopted by the Corporation, are in full force and effect and have not been modified, amended or repealed, and (iv) to the best of its knowledge, no event affecting the Corporation has occurred since the date of the Official Statement which should be disclosed in the Official Statement for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information therein, in light of the circumstances under which made, not misleading in any material respect as of the date of the Closing, the Official Statement as of the Closing does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(9) A certificate, dated the date of Closing, of the Town to the effect that to the best knowledge of the signer (i) except as disclosed in the Preliminary Official Statement and the Official Statement, no litigation or proceeding against it is pending or, to its knowledge, threatened in any court or administrative body nor is there a basis for litigation which would (a) contest the right of the officials of the Town to hold and exercise their respective positions, (b) contest the due organization and valid existence of the Town, (c) contest the validity, due authorization and execution of the Town Documents, or (d) attempt to limit, enjoin or otherwise restrict or prevent the Town from functioning and collecting revenues, including the collection of the Excise Taxes and State-Shared Revenues securing the payment of the principal of and interest on the Bonds; (ii) the resolutions of the Town authorizing the execution, delivery and/or performance of the Town Documents have been duly adopted by the Town, are in full force and effect and have not been modified, amended or repealed, and (iii) to the best of its knowledge, no event affecting the Town has occurred since the date of the Official Statement which should be disclosed in the Official Statement for the purposes for which it is to be used or which is necessary to disclose therein in order to make the statements and information therein, in light of the circumstances under which made, not misleading in any respect as of the time of Closing, and the information contained in the Official Statement is correct in all material respects and, as of the date of the Official Statement did not, and as of the date of the Closing does not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(10) The Tax Agreement in form and substance satisfactory to Bond Counsel and counsel to the Underwriters (a) setting forth the facts, estimates and circumstances in existence on the date of the Closing, which establish that it is not expected that the proceeds of the Bonds will be used in a manner that would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”), and any applicable regulations (whether final, temporary or proposed), issued pursuant to the Code, and (b) certifying that to the best of the knowledge and belief of the Corporation and the Town there are no other facts,

estimates or circumstances that would materially change the conclusions, representations and expectations contained in such certificate;

(11) A certificate of the Trustee to the effect that (i) the Bonds have been duly executed and delivered by an authorized officer of the Trustee; (ii) the Fourth Supplement has been duly executed and delivered by an authorized officer of the Trustee; and (iii) the resolutions of the Trustee authorizing the execution and delivery and/or performance of the Fourth Supplement by the Trustee have been duly adopted by the Trustee, are in full force and effect and have not been modified, amended or repealed;

(12) Any other certificates and opinions required by the Indenture for the issuance thereunder of the Bonds;

(13) Evidence satisfactory to the Representative that the Bonds have been assigned ratings of “__,” “__” and “__” by Standard & Poor’s Financial Services LLC, Moody’s Investor Service, Inc. and Fitch Ratings, Inc., respectively, and that such ratings are in effect as of the date of the Closing;

(14) A certificate of the Escrow Trustee under the Escrow Trust Agreement, to the effect that moneys or obligations sufficient to effectuate the refunding of the Bonds Being Refunded have been received and that such moneys or obligations have been deposited under the Escrow Trust Agreement;

(15) Such other opinions of counsel as are required in connection with the refunding of the Bonds Being Refunded, including an opinion of Bond Counsel to the effect that such refunding will not have an adverse impact on the federal tax-exempt status of interest on the Bonds Being Refunded;

(16) Such additional legal opinions, certificates, instruments and other documents as the Representative or counsel to the Underwriters may reasonably request to evidence the truth and accuracy, as of the date hereof and as of the date of the Closing, of the Corporation’s and the Town’s representations and warranties contained herein and of the statements and information contained in the Official Statement and the due performance or satisfaction by the Corporation and the Town on or prior to the date of the Closing of all the respective agreements then to be performed and conditions then to be satisfied by the Corporation and the Town, respectively;

(17) The filing copy of the Information Return Form 8038-G (IRS) for the Bonds; and

(18) The filing copy of the Report of Bond and Security Issuance for the Arizona Department of Revenue pursuant to Section 35-501(B), Arizona Revised Statutes.

All of the opinions, letters, certificates, instruments and other documents mentioned above or elsewhere in this Bond Purchase Agreement shall be deemed to be in compliance with the provisions hereof if, but only if, they are in form and substance satisfactory to the Representative.

If the Corporation shall be unable to satisfy the conditions to the obligations of the Underwriters to purchase, to accept delivery of and to pay for the Bonds contained in this Bond Purchase Agreement, or if the obligations of the Underwriters to purchase, to accept delivery of and to pay for the Bonds shall be terminated for any reason permitted by this Bond Purchase Agreement, this Bond Purchase Agreement shall terminate and none of the Underwriters, the Corporation or the Town shall be under any further obligation hereunder, except that the respective obligations of the Corporation, the Town and the Underwriters set forth in Section 9 hereof shall continue in full force and effect.

8. Termination. The Underwriters shall have the right to cancel its obligation to purchase the Bonds if, between the date of this Bond Purchase Agreement and the Closing, the market price or marketability of the Bonds shall be materially adversely affected, in the sole judgment of the Representative, by the occurrence of any of the following:

(a) legislation shall be enacted by or introduced in the Congress of the United States or recommended to the Congress for passage by the President of the United States, or the Treasury Department of the United States or the Internal Revenue Service or any member of the Congress or the Arizona Legislature or favorably reported for passage to either House of the Congress by any committee of such House to which such legislation has been referred for consideration, a decision by a court of the United States or of the State or the United States Tax Court shall be rendered, or an order, ruling, regulation (final, temporary or proposed), press release, statement or other form of notice by or on behalf of the Treasury Department of the United States, the Internal Revenue Service or other governmental agency shall be made or proposed, the effect of any or all of which would be to impose, directly or indirectly, federal income taxation or State income taxation upon interest received on obligations of the general character of the Bonds or, with respect to State taxation, of the interest on the Bonds as described in the Official Statement, or other action or events shall have transpired which may have the purpose or effect, directly or indirectly, of changing the federal income tax consequences or State income tax consequences of any of the transactions contemplated herein;

(b) legislation introduced in or enacted (or resolution passed) by the Congress or an order, decree, or injunction issued by any court of competent jurisdiction, or an order, ruling, regulation (final, temporary, or proposed), press release or other form of notice issued or made by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, to the effect that obligations of the general character of the Bonds, including any or all underlying arrangements, are not exempt from registration under or other requirements of the 1933 Act, or that the Indenture are not exempt from qualification under or other requirements of the Trust Indenture Act, or that the issuance, offering, or sale of obligations of the general character of the Bonds, including any or all underlying arrangements, as contemplated hereby or by the Official Statement or otherwise, is or would be in violation of the federal securities law as amended and then in effect;

(c) any state blue sky or securities commission or other governmental agency or body shall have withheld registration, exemption or clearance of the offering of the Bonds as described herein, or issued a stop order or similar ruling relating thereto;

(d) a general suspension of trading in securities on the New York Stock Exchange or the American Stock Exchange, the establishment of minimum prices on either such exchange, the establishment of material restriction (not in force as of the date hereof) upon trading securities generally by any governmental authority or any national securities exchange, a general banking moratorium declared by federal, State of New York, or State officials authorized to do so;

(e) the New York Stock Exchange or other national securities exchange or any governmental authority, shall impose, as to the Bonds or as to obligations of the general character of the Bonds, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, underwriters;

(f) any amendment to the federal or state Constitution or action by any federal or state court, legislative body, regulatory body, or other authority materially adversely affecting the tax status of the Corporation, its property, income securities (or interest thereon), or the validity or enforceability of the assessments or the levy of taxes to pay principal of and interest on the Bonds;

(g) any event occurring, or information becoming known which, in the judgment of the Representative, makes untrue in any material respect any statement or information contained in the Official Statement, or has the effect that the Official Statement contains any untrue statement of material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(h) there shall have occurred since the date of this Bond Purchase Agreement any materially adverse change in the affairs or financial condition of the Corporation or the Town;

(i) the United States shall have become engaged in hostilities which have resulted in a declaration of war or an escalation of existing hostilities or a national emergency or there shall have occurred any other outbreak or escalation of hostilities or a national or international calamity or crisis, financial or otherwise; or

(j) any fact or event shall exist or have existed that, in the Representative's judgment, requires or has required an amendment of or supplement to the Official Statement,

(k) there shall have occurred any downgrading, or any notice shall have been given of (A) any intended or potential downgrading or (B) any review or possible change that does not indicate a possible upgrade, in the rating accorded any of the Corporation's or the Town's obligations (including the rating to be accorded the Bonds); or

(l) the purchase of and payment for the Bonds by the Underwriters, or the resale of the Bonds by the Underwriters, on the terms and conditions herein provided shall be prohibited by any applicable law, governmental authority, board, agency or commission.

9. Expenses.

(a) The Underwriters shall be under no obligation to pay, and the Corporation shall pay, but only from proceeds of the sale of the Bonds, any expenses incident to the performance of the Corporation's obligations hereunder, including, but not limited to (i) the cost of preparation and printing of the Bonds, (ii) the fees and disbursements of Bond Counsel and counsel to the Underwriters, the Corporation and the Town, (iii) the fees and disbursements of any other engineers, accountants, and other experts, consultants or advisers retained by the Town; and (iv) the fees for bond ratings and credit enhancement fees or premiums.

(b) The Underwriters shall pay (i) the cost of preparation and printing of this Bond Purchase Agreement; (ii) all advertising expenses in connection with the public offering of the Bonds; and (iii) all other expenses incurred by it in connection with the public offering of the Bonds.

(c) If this Bond Purchase Agreement shall be terminated by the Underwriters because of any failure or refusal on the part of the Corporation or the Town to comply with the terms or to fulfill any of the conditions of this Bond Purchase Agreement, the Corporation or the Town will reimburse the Underwriters for all out-of-pocket expenses (including, but not limited to, meals, transportation and lodging, if any, and the fees and disbursements of counsel to the Underwriters) reasonably incurred by the Underwriters in connection with this Bond Purchase Agreement or the offering contemplated hereunder from any sources legally available to it for such purposes.

(d) The Corporation and the Town hereby acknowledge that they have had an opportunity, in consultation with such advisors as they may deem appropriate, if any, to evaluate and consider the fees and expenses being incurred as part of the issuance of the Bonds.

10. Notices. Any notice or other communication to be given to the Corporation under this Bond Purchase Agreement may be given by delivering the same in writing to the Town of Gilbert, Arizona Public Facilities Municipal Property Corporation, c/o Town of Gilbert, Arizona, 50 East Civic Center Dr., Gilbert, Arizona 85296, Attention: Town Manager, and any notice or other communication to be given to the Underwriters under this Bond Purchase Agreement may be given by delivering the same in writing to the Representative, RBC Capital Markets, LLC, 2398 East Camelback Road, Suite 700, Phoenix, AZ 85016, Attention: Nicholas J. Dodd.

11. Parties in Interest. This Bond Purchase Agreement as heretofore specified shall constitute the entire agreement between us and is made solely for the benefit of the Corporation, the Town, and the Underwriters (including successors or assigns of the Underwriters) and no other person shall acquire or have any right hereunder or by virtue hereof. This Bond Purchase Agreement may not be assigned by the Corporation or the Town. All of the Corporation's and the Town's representations, warranties and agreements contained in this Bond Purchase Agreement shall remain operative and in full force and effect, regardless of (i) any investigations made by or on behalf of the Underwriters; (ii) delivery of and payment for the Bonds pursuant to this Bond Purchase Agreement; and (iii) any termination of this Bond Purchase Agreement.

12. Effectiveness. This Bond Purchase Agreement shall become effective upon the acceptance hereof by the Corporation and the Town and shall be valid and enforceable at the time of such acceptance.

13. Choice of Law. This Bond Purchase Agreement shall be governed by and construed in accordance with the law of the State.

14. Severability. If any provision of this Bond Purchase Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any Constitution, statute, rule of public policy, or any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Bond Purchase Agreement invalid, inoperative or unenforceable to any extent whatever.

15. Business Day. For purposes of this Bond Purchase Agreement, “business day” means any day on which the New York Stock Exchange is open for trading.

16. Section Headings. Section headings have been inserted in this Bond Purchase Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Bond Purchase Agreement and will not be used in the interpretation of any provisions of this Bond Purchase Agreement.

17. Counterparts. This Bond Purchase Agreement may be executed in several counterparts each of which shall be regarded as an original (with the same effect as if the signatures thereto and hereto were upon the same document) and all of which shall constitute one and the same document.

18. Notice Concerning Cancellation of Contracts. To the extent applicable by provision of law, the parties hereto acknowledge that this Bond Purchase Agreement is subject to cancellation pursuant to Section 38-511, Arizona Revised Statutes.

[Remainder of page left blank intentionally]

If you agree with the foregoing, please sign the enclosed counterpart of this Bond Purchase Agreement and return it to the Representative. This Bond Purchase Agreement shall become a binding agreement between you and the Underwriters when at least one counterpart of this Bond Purchase Agreement shall have been signed by or on behalf of each of the parties hereto.

Very truly yours,

RBC CAPITAL MARKETS, LLC

By: _____
Nick Dodd, Director

Accepted at _____ o'clock __.m. MST this _____ day of _____, 2014.

TOWN OF GILBERT, ARIZONA PUBLIC FACILITIES
MUNICIPAL PROPERTY CORPORATION

By: _____
Title: _____

TOWN OF GILBERT, ARIZONA

By: _____
Mayor, Town of Gilbert, Arizona

ATTEST:

By: _____
Town Clerk, Town of Gilbert, Arizona

SCHEDULE 1

\$ _____
Town of Gilbert, Arizona
Public Facilities Municipal Property Corporation
Revenue Refunding Bonds, Series 2014

Bonds Dated: Date of Initial Delivery

MATURITY SCHEDULE

Date (July 1)	Amount	Interest Rate	Yield
	\$	%	%

No Prior Redemption

The Bonds will not be subject to redemption prior to maturity.

PRELIMINARY OFFICIAL STATEMENT DATED DECEMBER __, 2014

NEW ISSUE – BOOK-ENTRY-ONLY FORM

RATINGS: See “RATINGS” herein.

In the opinion of Greenberg Traurig, LLP, Bond Counsel, under existing statutes, regulations, rulings and court decisions, and assuming compliance with certain tax covenants, interest income on the Bonds will be excludable from gross income for federal income tax purposes, will not be an item of tax preference for purposes of the alternative minimum tax for individuals and corporations (but will be taken into account in determining adjusted current earnings for purposes of computing such tax imposed on certain corporations) and will be exempt from income taxation under the laws of the State of Arizona. See “TAX MATTERS” herein for a description of certain federal tax consequences of ownership of the Series 2014 Bonds. See also “ORIGINAL ISSUE DISCOUNT” and “BOND PREMIUM” herein.

**DRAFT
11-18-14**

\$28,355,000*
TOWN OF GILBERT, ARIZONA
PUBLIC FACILITIES MUNICIPAL PROPERTY CORPORATION
REVENUE REFUNDING BONDS, SERIES 2014

Dated: Date of Delivery

Due: July 1, as shown on the inside front cover

The principal of and interest on the Town of Gilbert, Arizona Public Facilities Municipal Property Corporation Revenue Refunding Bonds, Series 2014 (the “Series 2014 Bonds”) will be payable from rent payments to be paid by the Town of Gilbert, Arizona (“Gilbert”) to The Bank of New York Mellon Trust Company, N.A., as successor trustee (the “Trustee”) under the Indenture (defined herein) as assignee of the Town of Gilbert, Arizona Public Facilities Municipal Property Corporation (the “Corporation”), pursuant to a Series 2014 Town Lease dated as of December 1, 2014 (the “Series 2014 Town Lease”) between Gilbert and the Corporation. The payment of such rent payments under the Series 2014 Town Lease will be secured by a first lien pledge of revenues from the Excise Taxes and the State Shared Revenues (as such terms are herein defined). See “THE SERIES 2014 BONDS – Source of Payment of the Bonds and Pledge” herein.

Interest on the Series 2014 Bonds will be payable on January 1 and July 1 of each year, commencing on July 1, 2015*. The Series 2014 Bonds will be issued only as fully registered bonds without coupons in the denomination of \$5,000 of principal amount or any integral multiple thereof, will initially be registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York (“DTC”), and will be available to ultimate purchasers in amounts of \$5,000 of principal due on specified maturity dates or any integral multiple thereof under the book-entry-only system maintained by DTC. Payments of principal and interest with respect to the Series 2014 Bonds will be paid by the Trustee to DTC for subsequent disbursements to DTC participants which will remit such payments to the beneficial owners of the Series 2014 Bonds. See APPENDIX G - “Book-Entry-Only System.”

The Series 2014 Bonds will be issued by the Corporation for the purpose of refunding certain maturities of outstanding revenue bonds of the Corporation as described herein and paying all costs and expenses of the issuance of the Series 2014 Bonds. See “PLAN OF REFUNDING” herein.

See Maturity Schedule on Inside Front Cover

The Series 2014 Bonds will not be subject to optional redemption prior to maturity.

THE SERIES 2014 BONDS WILL BE SPECIAL, LIMITED OBLIGATIONS OF THE CORPORATION, PAYABLE SOLELY FROM THE SOURCES HEREIN DESCRIBED. THE SERIES 2014 BONDS WILL NOT BE GENERAL OBLIGATIONS OF THE CORPORATION, GILBERT, THE STATE OF ARIZONA OR ANY POLITICAL SUBDIVISION THEREOF, AND THE FULL FAITH AND CREDIT OF THE CORPORATION, GILBERT, THE STATE OF ARIZONA, OR ANY POLITICAL SUBDIVISION THEREOF WILL NOT BE PLEDGED FOR THE PAYMENT OF THE SERIES 2014 BONDS.

The Series 2014 Bonds are offered when, as and if issued by the Corporation and received by the Underwriters and subject to the approving opinion of Greenberg Traurig, LLP, Bond Counsel, as to validity and tax exemption. Certain legal matters will be passed upon solely for the benefit of the Underwriters by Squire Patton Boggs, (US) LLP. It is expected that the Series 2014 Bonds will be available for delivery through the facilities of DTC on or about December __, 2014.*

This cover page contains certain information for convenience of reference only. It is not a summary of this issue. Investors must read this entire Official Statement to obtain information essential to the making of an informed investment decision with respect to the Series 2014 Bonds.

RBC CAPITAL MARKETS

WELLS FARGO SECURITIES

* Subject to change.

This Preliminary Official Statement and the information contained herein are subject to completion or amendment. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

\$28,355,000*
TOWN OF GILBERT, ARIZONA
PUBLIC FACILITIES MUNICIPAL PROPERTY CORPORATION
REVENUE REFUNDING BONDS, SERIES 2014

MATURITY SCHEDULE*

<u>Maturity (July 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Price or Yield</u>	<u>CUSIP® (a) (Base No. 375290)</u>
2016	\$ 40,000			
2017	5,510,000			
2018	5,785,000			
2019	5,110,000			
2020	5,315,000			
2021	6,595,000			

* Subject to change.

(a) Copyright 2014, American Bankers Association. CUSIP® is a registered trademark of the American Bankers Association. CUSIP data herein is provided by the CUSIP Service Bureau, operated by Standard & Poor's Financial Services LLC. This data is not intended to create a database and does not serve in any way as a substitute for the CUSIP Services Bureau. CUSIP numbers have been assigned by an independent company not affiliated with Gilbert, the Financial Advisor (as defined herein) or the Underwriters (as defined herein) and are included solely for convenience of the holders. None of Gilbert, the Financial Advisor or the Underwriters are responsible for the selection or uses of these CUSIP numbers, and no representation is made as to their correctness. The CUSIP number for a specific maturity is subject to being changed as a result of various subsequent actions including, but not limited to, a refunding in whole or in part or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of certain maturities.

TOWN OF GILBERT, ARIZONA

Incorporated July 6, 1920

TOWN COMMON COUNCIL

John Lewis, *Mayor*
Eddie Cook, *Vice Mayor*
Ben Cooper, *Councilmember*
Jenn Daniels, *Councilmember*
Victor Petersen, *Councilmember*
Jordan Ray, *Councilmember*
Jared Taylor, *Councilmember*

ADMINISTRATIVE OFFICERS

Patrick Banger, *Town Manager*
Marc Skocypec, *Deputy Town Manager*
Cindi Mattheisen, *Finance & Management Services Director*
Dawn Marie Buckland, *Management and Budget Director*
Daniel Henderson, *Economic Development Director*

PUBLIC FACILITIES MUNICIPAL PROPERTY CORPORATION

Leonard Katz, *President*
Patrick Moir, *Vice-President*
Patricia Krueger, *Secretary-Treasurer*
Scott Andreen, *Director*
Paula Hatch, *Director*

BOND COUNSEL

Greenberg Traurig, LLP
Phoenix, Arizona

FINANCIAL ADVISOR

Wedbush Securities Inc.
Phoenix, Arizona

VERIFICATION AGENT

Grant Thornton LLP
Minneapolis, Minnesota

TRUSTEE AND ESCROW TRUSTEE

The Bank of New York Mellon Trust Company, N.A.
Los Angeles, California

REGARDING THIS OFFICIAL STATEMENT

This Official Statement does not constitute an offering of any security other than the Town of Gilbert, Arizona Public Facilities Municipal Property Corporation Revenue Refunding Bonds, Series 2014 (the "Series 2014 Bonds"), identified on the cover page hereof. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, and there shall be no sale of the Series 2014 Bonds by any person in any jurisdiction in which it is unlawful to make such offer, solicitation or sale.

The information set forth herein has been provided by the Town of Gilbert Arizona ("Gilbert"), the Maricopa County Assessor's, Finance and Treasurer's offices, the State of Arizona Department of Revenue, and other sources which are considered to be reliable and customarily relied upon in the preparation of similar official statements, but such information is not guaranteed as to accuracy or completeness and is not to be construed as the promise or guarantee of Gilbert or Wedbush Securities Inc. (the "Financial Advisor"), or of RBC Capital Markets, LLC or Wells Fargo Bank, National Association (collectively, the "Underwriters"). The presentation of information, including tables of receipts from taxes and other revenue sources, is intended to show recent historical information and is not intended to indicate future or continuing trends in the financial position or other affairs of Gilbert. No person, including any broker, dealer or salesman has been authorized to give any information or to make any representations other than those contained in this Official Statement, and, if given or made, such other information or representations must not be relied upon as having been authorized by Gilbert. All estimates and assumptions contained herein have been based on the latest information available and are believed to be reliable, but no representations are made that such estimates and assumptions are correct or will be realized. All beliefs, assumptions, estimates, projections, forecasts and matters of opinion contained herein are "forward-looking statements" which must be read with an abundance of caution and which may not be realized or may not occur in the future. The information and any expressions of opinion contained herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of Gilbert or any of the other parties or matters described herein since the date hereof.

The Series 2014 Bonds will not be registered under the Securities Act of 1933 or the Securities Exchange Act of 1934, both as amended, in reliance upon the exemptions provided thereunder by Sections 3(a)(2) and 3(a)(12), respectively, pertaining to the issuance and sale of municipal securities, nor will the Series 2014 Bonds be qualified under the Securities Act of Arizona in reliance upon various exemptions contained in such Act. Neither the Securities and Exchange Commission nor any other federal, state or other governmental entity or agency will have passed upon the accuracy or adequacy of the Official Statement or approved the Series 2014 Bonds for sale.

The Underwriters have provided the following sentence for inclusion in this Official Statement: The Underwriters have reviewed the information in this Official Statement pursuant to their responsibilities to investors under the federal securities laws, but the Underwriters do not guarantee the accuracy or completeness of such information.

Gilbert, the Financial Advisor, the Underwriters, counsel to the Underwriters, and Bond Counsel (as defined herein) are not actuaries, nor have any of them performed any actuarial or other analysis of the Town's unfunded liabilities under the Arizona State Retirement System, the Arizona Public Safety Personnel Retirement System or the Elected Officials Retirement Plan.

Gilbert will covenant to provide continuing disclosure, as described in this Official Statement under "Continuing Disclosure" and in APPENDIX F – "Form of Continuing Disclosure Agreement," pursuant to Rule 15c2-12 promulgated by the Securities and Exchange Commission.

IN CONNECTION WITH THE OFFERING, THE UNDERWRITERS MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2014 BONDS OFFERED HEREBY AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME. THE UNDERWRITERS MAY OFFER AND SELL THE SERIES 2014 BONDS TO CERTAIN DEALERS, INSTITUTIONAL INVESTORS AND OTHERS AT PRICES LOWER THAN THE PUBLIC OFFERING PRICES STATED ON THE INSIDE FRONT COVER HEREOF AND SUCH PUBLIC OFFERING PRICES MAY BE CHANGED FROM TIME TO TIME BY THE UNDERWRITERS.

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OFFICIAL STATEMENT

\$28,355,000*

TOWN OF GILBERT, ARIZONA PUBLIC FACILITIES MUNICIPAL PROPERTY CORPORATION REVENUE REFUNDING BONDS, SERIES 2014

INTRODUCTORY STATEMENT

This Official Statement, which includes the cover page, inside front cover and appendices attached hereto, sets forth certain information concerning the Town of Gilbert, Arizona Public Facilities Municipal Property Corporation (the "Corporation") and its \$28,355,000* principal amount of Revenue Refunding Bonds, Series 2014 (the "Series 2014 Bonds"). The offering of the Series 2014 Bonds is made only by way of this Official Statement, which supersedes any other information or materials used in connection with the offer or sale of the Series 2014 Bonds. Accordingly, purchasers of the Series 2014 Bonds should read this entire Official Statement before making their investment decision.

For definitions of certain words not otherwise defined but used in this Official Statement, see APPENDIX D – "Summary of Certain Provisions of Legal Documents – Definition of Certain Terms" herein.

THE CORPORATION

The Corporation is a nonprofit corporation incorporated and existing pursuant to the laws of the State of Arizona (the "State" or "Arizona"), incorporated on June 13, 2001. The Corporation is permitted, pursuant to its Articles of Incorporation, to conduct all lawful affairs for which nonprofit corporations may be incorporated pursuant to the laws of the State, subject to the express limitation and condition that the Corporation will always be operated solely and exclusively in the interest of the general public. The Corporation exists and acts as a separate entity. The Board of Directors of the Corporation presently consists of three members appointed by the Mayor and Common Council of the Town of Gilbert, Arizona ("Gilbert").

The Corporation has the power to incur indebtedness and issue bonds, to own real property, to provide for the acquisition and construction of a municipal facility, to lease such facility to Gilbert and to exercise any and all rights and powers which a nonprofit corporation organized under the laws of the State may now or hereafter exercise. Upon the dissolution of the Corporation, all of its assets remaining after payment of or provision for payment of all debts and liabilities, will be distributed to Gilbert.

The Corporation has no stockholders or members. Vacancies occurring on the Board of Directors of the Corporation are filled by appointment of the Mayor and Common Council of Gilbert. Members of the Board of Directors may be removed, with or without cause, by the Mayor and Common Council of Gilbert. All amendments to the Articles of Incorporation or Bylaws of the Corporation require approval by the Mayor and Common Council of Gilbert. No compensation is paid to any officer or director of the Corporation.

THE SERIES 2014 BONDS

Authorization and Purpose

The Series 2014 Bonds will be issued by the Corporation under the terms of a Trust Indenture, dated as of October 1, 2001, as supplemented by a First Supplement to Trust Indenture, dated as of January 1, 2006 (the "First Supplement"), a Second Supplement to Trust Indenture, dated as of March 1, 2009 (the "Second Supplement"), a Third Supplement to Trust Indenture, dated as of July 1, 2011 (the "Third Supplement"), and a Fourth Supplement to Trust Indenture, to be dated as of December 1, 2014 (the "Fourth Supplement"), and together with such Trust Indenture, First Supplement to Trust Indenture, Second Supplement to Trust Indenture and Third Supplement to Trust Indenture (the "Indenture"), from the Corporation to The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), for the purpose of refunding certain maturities of outstanding revenue bonds of the Corporation as described herein (the "Bonds Being Refunded") and paying all costs and expenses of the issuance of the Series 2014 Bonds. See "PLAN OF REFUNDING" herein.

* Subject to change.

General Terms

The Series 2014 Bonds will be dated their date of delivery and mature on the dates and in the amounts set forth on the inside front cover of this Official Statement. Interest on the Series 2014 Bonds will be payable semiannually on January 1 and July 1 of each year, commencing on July 1, 2015*, until maturity. The Series 2014 Bonds will be issued only as fully registered bonds in the denomination of \$5,000 of principal amount or any integral multiple thereof and will be registered initially in the name of Cede & Co., as the nominee of The Depository Trust Company, New York, New York (“DTC”) for purposes of the book-entry-only system described herein. Beneficial ownership interests with respect to the Series 2014 Bonds may be purchased in amounts of \$5,000 of principal amount due on a specified maturity date or integral multiples thereof under the book-entry-only system maintained by DTC. Payments of principal and interest with respect to the Series 2014 Bonds will be paid by the Trustee to DTC for subsequent disbursements to DTC participants who will remit such payments to the beneficial owners of the Series 2014 Bonds. See APPENDIX G - “Book-Entry-Only System.”

If and to the extent that the Corporation fails to make payment or provision for payment of interest on any of the Series 2014 Bonds on any interest payment date, that interest will cease to be payable as of the applicable Regular Record Date, and, when moneys become available for payment of that interest, the Trustee will, pursuant to the Indenture, establish a Special Record Date for the payment of that interest which will not be not more than fifteen (15) nor fewer than ten (10) days prior to the date of the proposed payment and will cause notice of the proposed payment and of the special record date to be provided to DTC not fewer than ten (10) days prior to the special record date and, thereafter, the interest will be payable to DTC at the close of business on the special record date.

No Prior Redemption

The Series 2014 Bonds will not be subject to redemption prior to maturity.

Source of Payment of the Series 2014 Bonds and Pledge

Prior to the delivery of the Series 2014 Bonds, Gilbert and the Corporation will enter into a First Amendment to Series 2006 Ground Lease, to be dated as of December 1, 2014 (the “First Amendment to Series 2006 Ground Lease”), pursuant to which Gilbert will continue to lease to the Corporation certain real property owned by Gilbert (the “Real Property”) originally leased by Gilbert to the Corporation pursuant to a Series 2006 Ground Lease, dated as of January 1, 2006. The Real Property leased to the Corporation pursuant to the First Amendment to Series 2006 Ground Lease and the improvements to be included thereon (the “Leased Property”) will then continue to be leased to Gilbert by the Corporation pursuant to a Series 2014 Town Lease, to be dated as of December 1, 2014 (the “Series 2014 Town Lease”), which will also be entered into prior to the delivery of the Series 2014 Bonds. Under the terms of the Series 2014 Town Lease, the rent payments required to be paid by Gilbert in renting the Leased Property will be paid semiannually to the Trustee, as assignee of the Corporation, during the term of the Series 2014 Bonds.

All payments made in accordance with the provisions of the Series 2014 Town Lease relating to the Series 2014 Bonds will be made from revenues from the Excise Taxes and the State Shared Revenues (each as defined herein). On each June 15 and December 15, commencing on June 15, 2015*, Gilbert will be required to make all rent payments to the Trustee relating to the Series 2014 Bonds accruing under the Series 2014 Town Lease and, on a parity therewith, rent payments to the Trustee relating to (i) the Corporation’s Revenue Bonds, Series 2006 (the “Series 2006 Bonds”), which, after issuance of the Series 2014 Bonds and application of the proceeds thereof, will be outstanding in the principal amount of \$10,165,000, accruing under the Series 2006 Town Lease, dated as of January 1, 2006 (the “Series 2006 Town Lease”), (ii) the Corporation’s Revenue Bonds, Series 2009 (the “Series 2009 Bonds”), currently outstanding in the principal amount of \$64,795,000, accruing under the Series 2009 Town Lease, dated as of March 1, 2009 (the “Series 2009 Town Lease”), and (iii) the Corporation’s Revenue Refunding Bonds, Series 2011 (the “Series 2011 Bonds”), currently outstanding in the principal amount of \$17,050,000, accruing under the Series 2011 Town Lease, (the “Series 2011 Town Lease”), out of revenues from the Excise Taxes and the State Shared Revenues, and thereafter Gilbert may use the remaining revenues from the Excise Taxes and the State Shared Revenues for any lawful purpose, but only to the extent that, taking into account the reasonably anticipated receipts of revenues from the Excise Taxes and the State Shared Revenues during the coming six months, the revenues from the Excise Taxes and the State Shared Revenues will not be reduced to such a level that Gilbert will be unable to make the next rent payment under the provisions of the Series 2014 Town Lease, the Series 2011 Town Lease, the Series 2009 Town Lease, or the Series 2006 Town Lease.

* Subject to change

For purposes of the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease, “Excise Taxes” means the unrestricted transaction privilege (sales) tax, business license and franchise fees, parks and recreation fees and permits and fines and forfeitures which Gilbert imposes; provided that the Common Council of Gilbert may impose other transaction privilege taxes in the future, the uses of the revenue from which will be restricted, at the discretion of such Mayor and Common Council, and “State Shared Revenues” means any excise taxes, transaction privilege (sales) taxes and income taxes imposed by the State or any agency thereof and returned, allocated or apportioned to Gilbert, except for Gilbert’s share of any such taxes which by State law, rule or regulation must be expended for other purposes, such as motor vehicle fuel taxes.

Gilbert may, at Gilbert’s sole option, make rent payments from its other funds as permitted by law and as Gilbert shall determine from time to time, but the Corporation acknowledges that it has no claim under the provisions of the Series 2014 Town Lease to such other funds. No part of such payments payable pursuant to the Series 2014 Town Lease will be payable out of any *ad valorem* property taxes imposed by Gilbert, from bonds or other obligations, the payment of which the Gilbert’s general taxing authority is liable or pledged, or from general funds of Gilbert unless (i) the same shall have been duly budgeted by Gilbert according to law, (ii) such rent payment or payments shall be within the budget or expenditure limitations of the Constitution and laws of the State, and (iii) such rent payment is not in conflict with the Constitution or laws of the State.

Gilbert has, pursuant to the Series 2006 Town Lease, the Series 2009 Town Lease and the Series 2011 Town Lease, agreed, and will, pursuant to the Series 2014 Town Lease, agree, to pledge revenues from the Excise Taxes and the State Shared Revenues for the payment of the rent payments under the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease which includes amounts for principal and interest with respect to the Series 2006 Bonds, the Series 2009 Bonds, the Series 2011 Bonds and the Series 2014 Bonds. See “Summary of Certain Provisions of Legal Documents – Summary of Certain Provisions of Series 2014 Town Lease – Rent” and – “Rental Payments” in APPENDIX D hereto. Gilbert intends that this pledge will be a first lien upon such amounts from revenues from the Excise Taxes and the State Shared Revenues as will be sufficient to make the rent payments pursuant to the provisions of the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease, and Gilbert will make such rent payments from revenues from the Excise Taxes and the State Shared Revenues, except to the extent that it chooses to make such payments from other funds pursuant to the provisions of the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease.

To the extent permitted by applicable law, Gilbert has agreed pursuant to the Series 2006 Town Lease, the Series 2009 Town Lease and the Series 2011 Town Lease, and will agree pursuant to the Series 2014 Town Lease, that revenues from the Excise Taxes will be retained and maintained so that the amounts received from revenues from the Excise Taxes and the State Shared Revenues, all within and for the next preceding fiscal year of Gilbert, will be equal to at least two (2.0) times the total of rent payments payable under the provisions of the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease for debt service for the Series 2006 Bonds, the Series 2009 Bonds, the Series 2011 Bonds and the Series 2014 Bonds in any current fiscal year of Gilbert. Gilbert will further agree that if revenues from Excise Taxes and the State Shared Revenues for any such preceding fiscal year of Gilbert shall not have been equal to at least two (2.0) times such rent payment requirements in any current fiscal year of Gilbert or if at any time it appears that revenues from the Excise Taxes and the State Shared Revenues will not be sufficient to meet such rent payment requirements under the provisions of the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease relating to the Series 2006 Bonds, the Series 2009 Bonds, the Series 2011 Bonds and the Series 2014 Bonds, respectively, it will, to the extent permitted by applicable law, impose new exactions of the type of the Excise Taxes which will be part of revenues from the Excise Taxes or will increase the rates for the Excise Taxes currently imposed in order that (i) revenues from the Excise Taxes and the State Shared Revenues will be sufficient to meet all current rent payment requirements under the provisions of the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease relating to the Series 2006 Bonds, the Series 2009 Bonds, the Series 2011 Bonds and the Series 2014 Bonds, respectively; and (ii) revenues from the Excise Taxes and the State Shared Revenues will be reasonably calculated to attain the level as required by the first sentence of this paragraph.

The Arizona Legislature may from time to time eliminate the State Shared Revenues or may change the amount and timing of the State Shared Revenues and is under no legal obligation to maintain the amount of the State Shared Revenues distributed to Gilbert at any amount or level. Accordingly, Gilbert is unable to covenant to maintain the State Shared Revenues at any particular level of coverage.

The Series 2014 Bonds and the rent payments pursuant to the Series 2014 Town Lease will not constitute an indebtedness or general obligation of Gilbert nor shall Gilbert be liable for the payment from ad valorem property taxes of principal of and interest on the Series 2014 Bonds or such rent payments. Pursuant to the Indenture, the Series 2014 Bonds will be special, limited obligations of the Corporation, and debt service charges thereon will be payable solely from the rent payments made pursuant to the Series 2014 Town Lease and not from any other revenues of the Corporation or Gilbert. The Series 2014 Bonds will not represent or constitute a debt or a direct or indirect pledge of the full faith and credit of the Corporation, Gilbert or of the State or of any political subdivision, municipality or other agency thereof. The Corporation has no taxing power.

See APPENDICES A, B and C hereto for certain information about Gilbert.

Contingent Reserve Fund

The Indenture establishes a Reserve Fund for the payment of principal and interest related to the Series 2014 Bonds, but the Reserve Fund will not be funded at time of delivery of the Series 2014 Bonds. No deposit need be made to the Reserve Fund so long as the Debt Service Coverage is greater than three (3.0) times. Gilbert will agree to pay for deposit to the Reserve Fund on each June 15 and December 15, commencing on the June 15 following the fiscal year of Gilbert in which the Debt Service Coverage is three (3.0) times or less, an amount equal to 1/10th of the amount required to fund and maintain the Reserve Fund in an amount equal to the Reserve Requirement until such time as the amount on deposit in the Reserve Fund equals the Reserve Requirement. No deposit need be made to the Reserve Fund if the amount of money contained therein is at least equal to the Reserve Requirement, which may be satisfied by cash, a Qualified Surety Bond, or a combination of cash and a Qualified Surety Bond. If on July 21 of any year the amount in the Reserve Fund exceeds an amount equal to the Reserve Requirement and if the Corporation is not then in default under the Indenture, the Trustee will withdraw the amount of any such excess from such fund and apply such amount as described in APPENDIX D – “Summary of Certain Provisions of Legal Documents – Summary of Certain Provisions of the Indenture – Provisions as to Funds and Payments – Flow of Funds – Reserve Fund/Reimbursement Fund.”

Issuance and Delivery of Additional Bonds By the Corporation; Gilbert’s Right to Further Encumber the Excise Taxes and the State Shared Revenues

The Corporation may issue Additional Bonds which will be secured by a pledge of revenues from the Excise Taxes and the State Shared Revenues on a parity of lien with the Series 2006 Bonds, the Series 2009 Bonds, the Series 2011 Bonds and the Series 2014 Bonds, including Additional Bonds. Additional Bonds will be on a parity with the Series 2006 Bonds, the Series 2009 Bonds, the Series 2011 Bonds and the Series 2014 Bonds and any Additional Bonds hereafter issued and outstanding as to the assignment to the Trustee of the Corporation’s right, title and interest in the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease and moneys in the accounts and the funds created by the Indenture; provided that, nothing in the Indenture will prevent payment of Debt Service Charges on any series of Additional Bonds from being otherwise secured and protected from sources or by property or instruments not applicable to the Series 2006 Bonds, the Series 2009 Bonds, the Series 2011 Bonds and the Series 2014 Bonds and any one or more series of Additional Bonds or not being secured or protected from sources or by property or instruments applicable to the Series 2006 Bonds, the Series 2009 Bonds, the Series 2011 Bonds and the Series 2014 Bonds or one or more series of Additional Bonds.

The issuance of such Additional Bonds will be subject to certain other specific conditions which are set forth in the Indenture. For further information relating to the issuance of Additional Bonds, see APPENDIX D – “Summary of Certain Provisions of Legal Documents – Summary of Certain Provisions of the Series 2014 Town Lease - Additional Bonds and Other Obligations” and APPENDIX D – “Summary of Certain Provisions of Legal Documents – Summary of Certain Provisions of the Indenture – Issuance and Delivery of Additional Bonds.”

So long as any of the Series 2014 Bonds remain outstanding and the principal and interest thereon shall be unpaid or unprovided for, Gilbert will agree pursuant to the Series 2014 Town Lease to not further encumber revenues from the Excise Taxes and the State Shared Revenues on a basis equal to the pledge described above unless revenues from the Excise Taxes plus the State Shared Revenues in the preceding fiscal year of Gilbert shall have amounted to at least three (3.0) times the highest combined interest and principal requirements for any succeeding fiscal year of Gilbert for all of the Series 2006 Bonds, the Series 2009 Bonds, the Series 2011 Bonds and the Series 2014 Bonds and any Additional Bonds, then outstanding and any obligations proposed to be secured by such pledge of revenues from the Excise Taxes and the State Shared Revenues on a parity therewith (referred to in the Series 2014 Town

Lease as “Additional Obligations”). See APPENDIX D – “Summary of Certain Provisions of Legal Documents – Summary of Certain Provisions of the Series 2014 Town Lease – Additional Bonds and Other Obligations.”

PLAN OF REFUNDING

Proceeds from the sale of the Series 2014 Bonds, after payment of the costs relating to the issuance of the Series 2014 Bonds, will be placed in an irrevocable trust (the “Trust”) with The Bank of New York Mellon Trust Company, N.A. as escrow trustee (the “Escrow Trustee”), to be applied to the payment of the Bonds Being Refunded identified below. Pursuant to the terms of an Escrow Trust Agreement (the “Trust Agreement”), between the Corporation and the Escrow Trustee, such proceeds will be used to acquire obligations issued or guaranteed by the United States (the “Government Obligations”), the principal of and interest on which, together with the other moneys in the Trust, will be calculated to be sufficient to provide moneys to pay the principal of and interest on the Bonds Being Refunded at, or upon redemption prior to, maturity. See “MATHEMATICAL VERIFICATION.”

Bonds Being Refunded*

<u>Refunded Issue</u>	<u>Maturity Date (July 1)</u>	<u>Principal Amount Outstanding</u>	<u>Principal Amount to be Refunded</u>	<u>Prior Redemption Date</u>	<u>Redemption Price</u>	<u>CUSIP® (b) (Base No. 375290)</u>
Series 2006 Bonds	2017	\$5,465,000	\$ 5,465,000	7/1/2016	100.00%	BG7
	2018	5,740,000	5,740,000	7/1/2016	100.00	BH5
	2019	6,025,000	6,025,000	7/1/2016	100.00	BJ1
	2020	6,330,000	6,330,000	7/1/2016	100.00	BK8
	2021	6,645,000	6,645,000	7/1/2016	100.00	BL6
		Total	<u>\$30,205,000</u> *			

* Subject to change.

(b) See footnote (a) on inside front cover page hereof.

Upon the issuance of the Series 2014 Bonds and the application of the proceeds therefrom, the Bonds Being Refunded will be paid and discharged, and no longer be considered outstanding under the Indenture or secured by revenues from Excise Taxes or State Shared Revenues.

MATHEMATICAL VERIFICATION

Grant Thornton LLP, a firm of independent public accountants, will deliver to Gilbert, on or before the settlement date of the Series 2014 Bonds, its verification report indicating that it has verified, in accordance with attestation standards established by the American Institute of Certified Public Accountants, the mathematical accuracy of (i) the mathematical computation of the adequacy of the cash and the maturing principal of and interest on the Government Obligations, to pay, upon early redemption, the principal of and interest on the Bonds Being Refunded, and (ii) the mathematical computations of yield used by Bond Counsel to support its opinion that interest on the Bonds will be excluded from gross income for federal income tax purposes.

The verification performed by Grant Thornton LLP will be solely based upon data, information and documents provided to Grant Thornton LLP by Gilbert and its representatives. Grant Thornton LLP has restricted its procedures to recalculating the computations provided by the Financial Advisor and the Underwriters and has not evaluated or examined the assumptions or information used in the computations.

SOURCES AND USES OF FUNDS

TABLE 1

Sources

Principal Amount of the Series 2014 Bonds	_____
Net Original Issue Premium on the Series 2014 Bonds	_____
Total Sources of Funds	<u>\$ -</u>

Uses

Deposit to the Trust including amounts to pay Costs of Issuance	_____
Deposit to the Debt Service Fund	_____
Total Uses of Funds	<u>\$ -</u>

* Amounts associated with costs of issuing the Series 2014 Bonds, net of the compensation of the Underwriters will be deposited in the Trust per the terms of the Trust Agreement.

EXCISE TAXES

The Excise Taxes will be pledged to payment of rent payments due pursuant to the Series 2014 Town Lease which are used to pay debt service on the Series 2014 Bonds. The major categories of such revenues are discussed more fully hereinafter.

Gilbert Transaction Privilege (Sales) Taxes. Gilbert's unrestricted transaction privilege (sales) tax is levied by Gilbert upon persons and entities on account of their business activities within Gilbert. The amount of taxes due is calculated by applying the tax rate against the gross proceeds of sales less applicable deductions and exemptions or gross income derived from the business activities shown in the table below.

TABLE 2

TRANSACTION PRIVILEGE (SALES) TAX RATES BY CATEGORY

<u>Category</u>	<u>Rate</u>
Advertising	1.50%
Amusements	1.50
Contracting	1.50
Speculative Builders	1.50
Printing	1.50
Publishing	1.50
Hotel	4.50
Residential Rentals	1.50
Commercial Rent	1.50
Personal Property Rent	1.50
Restaurants and Bars	1.50
Retail	1.50
Retail - Grocery	1.50
Telecommunications	1.50
Transporting for Hire	1.50
Utilities	1.50

Source: Arizona Department of Revenue *Transaction and Privilege and Other Tax Rate Tables* effective November 1, 2014.

The following table shows the amounts of Gilbert’s unrestricted transaction privilege (sales) tax collections by industry classification with audited figures for fiscal years 2009/10 through 2012/13, unaudited figures for fiscal year 2013/14 and budgeted figures for fiscal year 2014/15:

TABLE 3
TRANSACTION PRIVILEGE (SALES) TAX COLLECTIONS
BY INDUSTRY CLASSIFICATION

Industry Classification	Budgeted	Unaudited	Audited			
	2014/15 (c)	2013/14	2012/13	2011/12	2010/11	2009/10
Mining	\$	\$	\$	\$	\$	\$
Communications/Utilities	6,334,000	6,120,225	5,931,935	5,774,403	5,562,364	5,724,639
Transportation/Warehousing	23,500	22,721	25,667	25,830	21,161	16,464
Construction	9,062,000	8,837,079	7,867,067	5,718,727	4,389,279	5,193,872
Manufacturing	975,000	939,861	763,152	727,755	706,514	635,188
Wholesale Trade	1,250,000	1,207,006	1,100,749	965,523	854,466	610,065
Retail Trade	34,234,000	33,078,748	30,784,509	28,390,526	25,540,515	23,775,975
Finance/Insurance	413,000	398,169	154,772	112,496	89,990	100,293
Property Rent	7,727,000	7,952,365	7,944,973	6,078,364	5,874,288	5,249,645
Restaurants and Bars	5,023,500	4,867,638	4,402,299	4,072,187	3,820,368	3,566,427
Hotels and Other Lodgings	512,000	487,680	377,228	299,270	252,974	0
Public Administration	4,500	4,311	2,271	4,586	0	9,503
Services	1,735,500	1,676,438	1,369,608	1,211,864	1,069,661	1,002,691
Arts/Entertainment	691,000	674,274	594,043	600,794	481,592	506,855
Other	515,000	505,146	487,279	520,302	652,042	481,122
Audit Program						
	<u>\$68,500,000</u>	<u>\$66,771,661</u>	<u>\$61,805,552</u>	<u>\$54,502,627</u>	<u>\$49,315,214</u>	<u>\$46,872,739</u>

Source: Finance Department of Gilbert. Total amounts appear in the monthly reports provided to Gilbert by the Arizona Department of Revenue. The total transaction privilege tax collections are subject to annual audit, however, individual categories detail is not specifically audited. This table has not been subject to any separate audit procedures.

(c) These amounts involve “forward-looking statements” which may not be realized and must be considered with an abundance of caution. Actual results may vary significantly from projected amounts.

Initiative measures are circulated from time to time seeking to place on the ballot changes in legislative actions of the Mayor and Common Council of Gilbert which would repeal or modify Gilbert’s transaction privilege (sales) taxes. It cannot be predicted if any such initiative measures will ever actually be submitted to the electors, what form the measures might take or the outcome of any such election.

Business License and Franchise Fees. Gilbert requires a business license of all business transacted within Gilbert limits. Those entities transacting more than one type of business are required to have a separate business license for each activity they engage in. Gilbert has the authority and ability to set the charge for the business license at whatever rate it desires.

Cities and towns in the State have exclusive control over public rights-of-way dedicated to the municipality and may grant franchise agreements to and impose franchise taxes on utilities using those rights-of-way. A franchise may be granted only with voter approval and the term of franchises is limited to 25 years. Gilbert has granted franchises to and imposed franchise taxes on utility and cable television providers.

Parks and Recreation Fees and Permits. Gilbert operates a parks and recreation department which charges for certain programs and services. These include five municipal swimming pools and related concession stands, as well

as four ball field complexes with concessions. The largest portion of the revenue is generated by charges for “leisure learning classes” which are offered at several facilities. Other charges for services include outdoor hiking and classes, swim classes, adult sports leagues, youth sports leagues and reservation fees for Gilbert facilities and parks.

Fines and Forfeitures. Fines and forfeitures are Gilbert revenues generated by Gilbert Court in relation to court judgments. These revenues are based solely on the number of judgments and the fine assessed.

Historical and Budgeted Excise Tax Collections. The following table sets forth Gilbert’s actual Excise Tax collections with audited figures for fiscal years 2009/10 through 2012/13, unaudited figures for fiscal year 2013/14 and budgeted figures for fiscal year 2014/15.

TABLE 4
EXCISE TAX COLLECTIONS

Revenue Source	Budgeted	Unaudited	Audited			
	2014/15 (d)	2013/14	2012/13	2011/12	2010/11	2009/10
Town Privilege (Sales) Tax	\$68,849,000	\$66,771,661	\$61,889,627	\$54,502,627	\$49,315,215	\$46,872,739
Business License	88,000	104,280	98,419	82,106	71,862	18,823
Franchise Fees	2,365,000	2,699,926	2,373,913	2,462,726	2,401,013	2,448,514
Parks & Recreation Fees & Permits	2,615,000	2,894,128	2,826,688	2,457,579	2,494,015	2,355,952
Fines and Forfeitures	3,361,000	3,861,905	4,123,082	3,987,115	3,896,508	3,961,355
Total	\$77,278,000	\$76,331,900	\$71,311,729	\$63,492,153	\$58,178,613	\$55,657,383

Source: Finance Department of Gilbert.

(d) These amounts involve “forward-looking statements” which may not be realized and must be considered with an abundance of caution. Actual results may vary significantly from projected amounts.

STATE SHARED REVENUES

The State Shared Revenues will also be pledged to payment of rent payments due pursuant to the Series 2014 Town Lease which are used to pay debt service on the Series 2014 Bonds. The major categories of such revenues are discussed more fully hereinafter.

State Shared Transaction Privilege (Sales) Taxes. Pursuant to statutory formula, cities and towns in Arizona, including Gilbert, receive a portion of revenues from the State-levied transaction privilege (sales) tax. As the table below indicates, the rate of taxation on the portion of such tax varies among the different types of business activities taxed, with the most common rate being 5% of the amount or volume of business transacted.

Under current State law, the aggregate amount distributed to all Arizona cities and towns is equal to 25% of the “distribution share” of revenues attributable to each category of taxable activity. The allocation to each city and town of the revenues available to all cities and towns is based on their population relative to the aggregate population of all cities and towns as shown by the latest census. Revenues from State-levied transaction privilege (sales) taxes are collected by the State and are distributed monthly to cities and towns. **In addressing State budgetary deficiencies, the Governor and State Legislature have occasionally enacted certain adjustments that reduce the distribution of State-levied transaction privilege (sales) tax to cities and towns. Gilbert cannot determine whether similar measures will be enacted or, if enacted, how they might affect Gilbert’s receipt of revenues from State-levied transaction privilege (sales) tax.**

TABLE 5
STATE TRANSACTION PRIVILEGE (SALES) TAXES
Taxable Activities, Tax Rates and Distribution Share

Taxable Activities	State Transaction Privilege (Sales) Tax Rates			
	State Tax Rate	Distribution Share	Education Tax Rate (e)	Combined Tax Rate
Transportation	5.000%	20.000%	0.600%	6.600%
Utilities	5.000%	20.000%	0.600%	6.600%
Telecommunications	5.000%	20.000%	0.600%	6.600%
Pipeline	5.000%	20.000%	0.600%	6.600%
Private Car Line	5.000%	20.000%	0.600%	6.600%
Publication	5.000%	20.000%	0.600%	6.600%
Job Printing	5.000%	20.000%	0.600%	6.600%
Prime Contracting	5.000%	20.000%	0.600%	6.600%
Owner Builder Sales	5.000%	20.000%	0.600%	6.600%
Amusement	5.000%	40.000%	0.600%	6.600%
Restaurant	5.000%	40.000%	0.600%	6.600%
Personal Property - Rental	5.000%	40.000%	0.600%	6.600%
Retail (Excluding Food Sales)	5.000%	40.000%	0.600%	6.600%
Transient Lodging	5.000%	50.000%	N/A	6.500%
Mining - Non-Metal, Oil/Gas	3.125%	32.000%	N/A	3.125%
Commercial Lease	0.000%	53.330%	N/A	0.000%
Severance - Metalliferous Mining	2.500%	80.000%	N/A	2.500%
Use Tax Utilieis	5.000%	20.000%	0.600%	5.000%
Jet Fuel Tax	(f)	40.000%	N/A	(g)

(e) Represents the State transaction privilege (sales) tax rate approved by the voters of the State in November 2000 (the “Education Tax”) on certain of the categories of business activity at six-tenths of one percent (0.600%). The Education Tax collections are dedicated exclusively to education expenditures of the State and are not distributed to cities in the State, including Gilbert. The effective dates for the Education Tax are June 1, 2001 through June 30, 2021.

(f), (g) Does not include the \$0.0305 per gallon State tax on the retail sale of jet fuel, which tax is only levied on the first ten million gallons sold to each purchaser in each calendar year.

Source: State of Arizona Department of Revenue.

State Shared Income Tax. Under current State law, Arizona cities and towns are preempted by the State from imposing a local income tax. Cities and towns are, however, entitled by statutory formula to typically receive 15% of State personal and corporate income tax collections. Distribution of such funds is made monthly based on the proportion of the population of each city and town to the total population of all incorporated cities and towns in the State as determined by the latest census. **In addressing State budgetary deficiencies, the Governor and State legislature have occasionally enacted certain adjustments that reduce the distribution of State-shared income taxes to cities and towns. Gilbert cannot determine whether similar measures will be enacted by the State in its efforts to balance the State’s budget and, if enacted, how they might affect Gilbert’s receipt of revenues from State Shared income taxes.**

Possible Initiative Measures. From time to time, bills are introduced in the Arizona Legislature to change the formula used to allot various revenues, including State shared sales tax or State shared income taxes. Gilbert cannot determine whether any such measures will become law or how they might affect Gilbert’s revenues from the sources which comprise Excise Taxes or State Shared Revenues. In addition, initiative measures are circulated from time to time seeking to place on the ballot changes in Arizona law which repeal or modify various revenue sources, some of which could include Excise Taxes or State Shared Revenues. Gilbert cannot predict if any such initiative measures will ever actually be submitted to the electors, what form the measures might take or the outcome of any such election

Historical and Budgeted State Shared Revenue Collections. The following table sets forth Gilbert’s State Shared Revenue collections with audited figures for fiscal years 2009/10 through 2012/13, unaudited figures for fiscal year 2013/14 and budgeted figures for fiscal year for 2014/15.

TABLE 6

STATE SHARED REVENUE COLLECTIONS

Revenue Source	Budgeted	Unaudited	Audited			
	2014/15 (h)	2013/14	2012/13	2011/12	2010/11	2009/10
State-Shared Income Taxes	\$ 25,220,000	\$ 23,204,633	\$ 21,293,026	\$ 17,593,587	\$ 17,280,849	\$ 22,922,794
State-Shared Transaction Privilege (Sales) Tax	18,664,000	18,118,706	17,062,262	16,288,580	13,787,266	13,029,141
Total	\$43,884,000	\$41,323,339	\$38,355,288	\$33,882,167	\$31,068,115	\$35,951,935

Source: Finance Department of Gilbert and Arizona Department of Revenue.

(h) These amounts involve “forward-looking statements” which may not be realized and must be considered with an abundance of caution. Actual results may vary significantly from projected amounts.

GILBERT GENERAL FUND

Set forth on the following page is a record of Gilbert general fund revenues, expenditures and changes in fund balance with audited figures for fiscal years 2009/10 through 2012/13, unaudited figures for fiscal year 2013/14, and budgeted figures for fiscal year 2014/15. Information for fiscal years 2009/10 through 2012/13 has been taken from audited financial statements of Gilbert. Information for the fiscal year 2013/14 has been taken from unaudited financial statements of Gilbert. Information for the Fiscal Year 2014/15 as provided by Gilbert is budgeted only and may differ from actual results when produced and therefore must be viewed with an abundance of caution. SEE “THE SERIES 2014 BONDS – SOURCE OF PAYMENTS OF THE SERIES 2014 BONDS” FOR A DESCRIPTION OF THE SOURCE OF PAYMENT OF THE BONDS. THIS INFORMATION IS NOT INTENDED TO INDICATE THAT THE SERIES 2014 BONDS WILL BE PAYABLE FROM ANY SOURCE OTHER THAN DESCRIBED UNDER SUCH HEADING OR TO INDICATE FUTURE OR CONTINUING TRENDS OF THE FINANCIAL AFFAIRS OF GILBERT.

TABLE 7
GENERAL FUND
SCHEDULE OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCE

	Budgeted	Unaudited	Audited			
	2014/15 (i)	2013/14	2012/13	2011/12	2010/11	2009/10
REVENUES						
Taxes and Special Fees	\$ 68,849,000	\$ 66,771,661	\$ 61,889,627	\$ 54,502,627	\$ 49,315,215	\$ 46,872,739
Franchise	2,365,000	2,699,926	2,373,913	2,462,726	2,401,013	2,448,514
Licenses and Permits	4,388,000	4,748,310	5,433,766	3,995,370	2,364,910	2,614,273
Intergovernmental	46,639,691	44,039,441	41,347,579	36,784,416	34,173,723	38,857,007
Charges for Services	8,635,590	8,657,665	8,186,206	6,714,370	6,191,856	7,159,578
Other entities' participation	-	24,200	-	4,297	-	-
Gifts and Donations	20,000	32,919	14,376	19,518	11,251	14,725
Fines and Forfeitures	3,361,000	3,861,905	4,123,082	3,987,115	3,896,508	3,961,355
Investment Income	430,000	772,153	124,866	708,826	537,762	305,938
Other	745,000	574,649	611,686	1,259,502	274,090	435,610
TOTAL REVENUES	\$ 135,433,281	\$ 132,182,829	\$ 124,105,101	\$ 110,438,767	\$ 99,166,328	\$ 102,669,739
EXPENDITURES						
Current						
General Government	35,520,655	30,542,223	27,038,720	25,452,548	24,738,939	27,660,242
Public Safety	68,066,246	65,055,322	59,697,421	55,925,136	53,497,008	56,100,496
Parks and Recreation	16,705,405	13,555,026	11,879,902	11,590,089	11,163,541	10,852,954
Transportation	350,000	350,000	451,408	1,247,091	979,860	1,154,759
Non Departmental	4,767,760	4,054,405	3,063,821	2,776,188	2,144,249	-
Capital Outlay	16,755,507	8,951,361	1,230,498	567,666	423,769	191,974
TOTAL EXPENDITURES	\$ 142,165,573	\$ 122,508,337	\$ 103,361,770	\$ 97,558,718	\$ 92,947,366	\$ 95,960,425
Excess of Revenues Over (Under) Expenditures	(6,732,292)	9,674,492	20,743,331	12,880,049	6,218,962	6,709,314
OTHER FINANCING SOURCES						
Operating Transfers In	1,236,830	1,492,272	1,411,239	4,688,928	2,020,937	2,103,009
Operating Transfers Out	(5,845,340)	(5,706,272)	(7,240,729)	(5,876,144)	(6,980,314)	(8,136,129)
Sale of capital assets	-	590,185	-	-	-	-
TOTAL OTHER FINANCING SOURCES (USES)	(4,608,510)	(3,623,815)	(5,829,490)	(1,187,216)	(4,959,377)	(6,033,120)
Excess (Deficiency) of Revenues Over Expenditures and Other Financing Sources (Uses)	(11,340,802)	6,050,677	14,913,841	11,692,833	1,259,585	676,194
Beginning Fund Balance	99,224,900	93,174,223	78,260,382	66,567,549	65,307,964	53,874,615
Residual Equity Transfer						
ENDING FUND BALANCE	\$ 87,884,098	\$ 99,224,900	\$ 93,174,223	\$ 78,260,382	\$ 66,567,549	\$ 54,550,809

Source: Taken from the audited financial statements for the fiscal years indicated, except the unaudited 2013/14 and budgeted 2014/15 which is prepared by the Finance Department of Gilbert. This table has not been the subject of any separate audit procedure.

- (i) These amounts involve “forward-looking statements” which may not be realized and must be considered with an abundance of caution. Actual results may vary significantly from projected amounts.

TABLE 8

**SCHEDULE OF EXCISE TAX AND STATE SHARED REVENUE COLLECTIONS,
ESTIMATED RENT PAYMENT REQUIREMENTS AND ESTIMATED COVERAGE (j)**

Fiscal Year	Pledged Revenues (k)	Debt Service Outstanding	Series 2014 Bonds*		Combined Annual Rent Payment Requirements*	Projec Projected Coverage (m)*
			Principal*	Interest (l)		
2013/14	\$ 117,655,239					
2014/15		\$ 12,083,375		\$ 740,381	\$ 12,823,756	
2015/16		12,189,725	\$ 40,000	1,417,750	13,647,475	
2016/17		7,354,675	5,510,000	1,415,750	14,280,425	
2017/18		8,463,725	5,785,000	1,140,250	15,388,975	
2018/19		9,580,200	5,110,000	851,000	15,541,200	
2019/20		9,630,725	5,315,000	595,500	15,541,225	—x
2020/21		8,059,200	6,595,000	329,750	14,983,950	
2021/22		7,679,575			7,679,575	
2022/23		5,279,575			5,279,575	
2023/24		7,362,075			7,362,075	
2024/25		11,058,325			11,058,325	
2025/26		8,157,075			8,157,075	
2026/27		12,210,450			12,210,450	
2027/28		11,816,000			11,816,000	
			<u>\$ 28,355,000</u>		<u>\$ 165,770,081</u>	

* Subject to change.

(j) Prepared by Wedbush Securities Inc. (the “Financial Advisor”). This table has not been subject to any separate audit procedures.

(k) Represents combined Excise Tax and State Shared Revenue collections. The 2013/14 figures are derived from the unaudited figures. The figure for 2013/14 combines revenues from the Excise Taxes in the amount of \$76,331,900 with State Shared Revenues in the amount of \$41,323,339. A breakdown by source of the revenues from the Excise Tax and State Shared Revenue collections may be found in Tables 4 and 6. Budgeted amounts involve “forward-looking statements” which may not be realized and must be considered with an abundance of caution. Actual results may vary significantly from projected amounts.

It is expected that a portion of the debt service will be paid from other lawfully available sources, but such sources are not pledged for debt service on the Series 2014 Bonds. See “THE SERIES 2014 BONDS – Sources of Payments of the Series 2014 Bonds and Pledge.”

(l) Interest is estimated at current market rates. The first interest payment is due July 1, 2015*, and represents interest from the dated date of the Series 2014 Bonds.

(m) See “THE SERIES 2014 BONDS – Source of Payment of the Series 2014 Bonds and Pledge” for a description of coverage requirements. For purposes of this calculation, the unaudited Pledged Revenues for 2013/14 were divided by the estimated maximum annual debt service, which is expected to occur in fiscal year 20__/__. These amounts involve “forward-looking statements” which may not be realized and must be considered with an abundance of caution. Projected amounts involve “forward-looking statements” which may not be realized and must be considered with an abundance of caution. Actual results may vary significantly from projected amounts.

* Subject to change.

LITIGATION

Appropriate representatives of the Corporation and Gilbert will certify that no litigation or administrative action or proceeding is pending or, to their knowledge, threatened, restraining or enjoining, or seeking to restrain or enjoin, the issuance and delivery of the Series 2014 Bonds or the delivery of the Series 2014 Town Lease or contesting or questioning the proceedings and authority under which the Series 2014 Bonds or the Series 2014 Town Lease have been authorized and are to be issued, secured, executed or delivered, or the validity of the Series 2014 Bonds or the Series 2014 Town Lease.

Gilbert is party to various lawsuits and other claims incidental to the ordinary course of its operations. Gilbert's management believes, based on the advice of the Town Attorney, that the resolution of such matters will not have a materially adverse effect on Gilbert's financial position. Certificates of appropriate representatives of Gilbert to that effect will be delivered at the time of the delivery of the Series 2014 Bonds.

LEGAL MATTERS

The Series 2014 Bonds are sold with the understanding that the Corporation will furnish the Underwriters with the approving opinion of Greenberg Traurig, LLP, Bond Counsel. The proposed form of such opinion is included in this Official Statement as APPENDIX E. Bond Counsel is to render such opinion upon the validity and enforceability of the Series 2014 Bonds under Arizona law and on the exclusion of the interest income on the Series 2014 Bonds from gross income for purposes of calculating federal income taxes and on the exemption of the interest income on the Series 2014 Bonds from State income taxes. (See "TAX MATTERS" herein.) Fees of Bond Counsel will be paid from proceeds of the sale of the Series 2014 Bonds.

Bond Counsel will opine to the Underwriters upon the information in the tax caption on the cover page, in APPENDICES D, E and F and under the headings entitled "THE SERIES 2014 BONDS," "PLAN OF REFUNDING," "TAX MATTERS," "ORIGINAL ISSUE DISCOUNT," "BOND PREMIUM," "CONTINUING DISCLOSURE" (except with respect to the status of Gilbert's compliance with existing undertakings) and "RELATIONSHIPS AMONG PARTIES" (insofar as it relates to Bond Counsel) in this Official Statement, but otherwise has not participated in the preparation of this Official Statement and will not opine upon its accuracy, completeness or sufficiency. Bond Counsel has not examined nor attempted to examine or verify any of the financial or statistical statements or data contained in this Official Statement and will also express no opinion with respect thereto.

Certain legal matters will be passed upon solely for the benefit of the Underwriters by Squire Patton Boggs (US) LLP, Counsel to the Underwriters.

The legal opinions to be delivered concurrently with the delivery of the Series 2014 Bonds express the professional judgment of the attorneys rendering the opinions as to the legal issues explicitly addressed therein. By rendering a legal opinion, the opinion giver does not become an insurer or guarantor of that expression of professional judgment, of the transaction opined upon, or of the future performance of parties to the transaction. Nor does the rendering of an opinion guarantee the outcome of any legal dispute that may arise out of the transaction.

TAX MATTERS

The Internal Revenue Code of 1986, as amended (the "Code") includes requirements which Gilbert and the Corporation must continue to meet with respect to the Series 2014 Bonds after the issuance thereof in order that interest on the Series 2014 Bonds not be included in gross income for federal income tax purposes. The failure by Gilbert and the Corporation to meet these requirements may cause interest on the Series 2014 Bonds to be included in gross income for federal income tax purposes retroactive to their date of issuance. The Corporation and Gilbert have covenanted in the Series 2014 Town Lease to take the actions required by the Code in order to maintain the exclusion from federal gross income of interest on the Series 2014 Bonds.

In the opinion of Bond Counsel, rendered with respect to the Series 2014 Bonds on the date of issuance of the Series 2014 Bonds, assuming continuing compliance by Gilbert and the Corporation with the tax covenants referred to above, under existing statutes, regulations, rulings and court decisions, interest on the Series 2014 Bonds will be excluded from gross income for federal income tax purposes. Interest on the Series 2014 Bonds will not be an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations and will not be taken into account in determining adjusted current earnings for purposes of computing the alternative

minimum tax imposed on corporations. Bond Counsel is further of the opinion upon the date of issuance of the Series 2014 Bonds that, assuming such interest is excludable for federal income tax purposes, the interest thereon will be exempt from income taxation under the laws of the State of Arizona.

Except as described above, Bond Counsel will express no opinion regarding the federal income tax consequences resulting from the ownership of, receipt or accrual of interest on or disposition of the Bonds. Prospective purchasers of the Bonds should be aware that the ownership of the Bonds may result in other collateral federal tax consequences, including (i) the denial of a deduction for interest on indebtedness incurred or continued to purchase or carry the Bonds or, in the case of a financial institution, that portion of an owner's interest expense allocable to interest on a Bond; (ii) the reduction of the loss reserve deduction for property and casualty insurance companies by fifteen percent (15%) of certain items, including the interest on the Bonds; (iii) the inclusion of interest on the Bonds in the earnings of certain foreign corporations doing business in the United States for purposes of the branch profits tax; (iv) the inclusion of interest on the Bonds in passive investment income subject to federal income taxation of certain Subchapter S corporations with Subchapter C earnings and profits at the close of the taxable year; and (v) the inclusion in gross income of interest on the Bonds by recipients of certain Social Security and Railroad Retirement benefits.

Bond Counsel's opinions are based on existing law, which is subject to change. Such opinions are further based on factual representations made to Bond Counsel as of the date thereof. Bond Counsel assumes no duty to update or supplement its opinions to reflect any facts or circumstances that may thereafter come to Bond Counsel's attention, or to reflect any changes in law that may thereafter occur or become effective. Moreover, Bond Counsel's opinions are not a guarantee of a particular result, and are not binding on the Internal Revenue Service or the courts; rather, such opinions represent Bond Counsel's professional judgment based on its review of existing law, and in reliance on the representations and covenants that it deems relevant to such opinion.

ORIGINAL ISSUE DISCOUNT

The initial offering prices of the Series 2014 Bonds maturing on July 1, 20__ and July 1, 20__ (referred to in this section as the "Discount Bonds") are less than the stated principal or payment amounts, respectively, thereof. Under the Code, the difference between the principal or payment amount, as applicable, of the Discount Bonds and the initial offering price to the public, excluding obligation houses and brokers, at which price a substantial amount of the Discount Bonds of the same maturity was sold, is "original issue discount." Original issue discount represents interest which is excluded from gross income; however, such interest is taken into account for purposes of determining the alternative minimum tax imposed on corporations and may result in the collateral federal tax consequences described above under "TAX MATTERS." Original issue discount will accrue actuarially over the term of a Discount Bond at a constant interest rate. A purchaser who acquires a Discount Bond in the initial offering at a price equal to the initial offering price thereof as set forth on the inside cover page of this Official Statement will be treated as receiving an amount of interest excludable from gross income for federal income tax purposes equal to the original issue discount accruing during the period such purchaser holds such Discount Bond and will increase its adjusted basis in such Discount Bond by the amount of such accruing discount for purposes of determining taxable gain or loss on the sale or other disposition of such Discount Bond. The federal income tax consequences of the purchase, ownership and redemption, sale or other disposition of the Discount Bonds which are not purchased in the initial offering at the initial offering price may be determined according to rules which differ from those described above. Prospective purchasers of the Discount Bonds should consult their own tax advisors with respect to the precise determination for federal income tax purposes of interest accrued upon sale, redemption or other disposition of the Discount Bonds and with respect to the state and local tax consequences of owning and disposing of the Discount Bonds.

BOND PREMIUM

The difference between the principal amount of the Series 2014 Bonds maturing on July 1, 20__ and July 1, 20__ (referred to in this section as the "Premium Bonds"), and the initial offering prices to the public (excluding bond houses, brokers or similar persons or organizations acting in the capacity of underwriters or wholesalers), at which price a substantial amount of the Premium Bonds of the same maturity will be sold, constitutes to an initial purchaser amortizable "bond premium" which will not be deductible from gross income for federal income tax purposes. The amount of amortizable bond premium for a taxable year will be determined actuarially on a constant interest rate basis over the term of each Premium Bond. For purposes of determining gain or loss on the sale or other disposition of a Premium Bond, an initial purchaser who acquires such obligation in the initial offering to the

public at the initial offering price is required to decrease such purchaser's adjusted basis in such Premium Bond annually by the amount of amortizable bond premium for the taxable year. The amortization of bond premium may be taken into account as a reduction in the amount of tax-exempt income for purposes of determining various other tax consequences of owning the Premium Bonds. Prospective purchasers of the Premium Bonds should consult their own advisors with respect to the tax consequences of owning and disposing of the Premium Bonds.

RATINGS

Moody's Investors Service, Inc. ("Moody's"), Standard & Poor's Ratings Services ("S&P") and Fitch Ratings ("Fitch") have assigned the ratings of "___", "___" and "___" and respectively, for the Series 2014 Bonds. Such ratings will reflect only the views of Moody's, S&P and Fitch. An explanation of the significance of a rating assigned by Moody's may be obtained at 99 Church Street, New York, New York 10007. An explanation of the significance of a rating assigned by S&P may be obtained at 55 Water Street, 38th Floor, New York, New York 10041-0003. An explanation of the significance of a rating assigned by Fitch may be obtained at 33 Whitehall Street, New York, New York 10004. Such ratings may be revised downward or withdrawn entirely by Moody's or S&P, if, in their respective judgment, circumstances so warrant. Any downward revision or withdrawal of such ratings may have an adverse effect on the market price of the Series 2014 Bonds. Gilbert has covenanted in its continuing disclosure undertaking with respect to the Series 2014 Bonds that it will file, among other things, notice of any formal change in any such rating relating to the Series 2014 Bonds. See "CONTINUING DISCLOSURE".

UNDERWRITING

The Series 2014 Bonds will be purchased by RBC Capital Markets, LLC and Wells Fargo Bank, National Association (collectively, the "Underwriters") at an aggregate purchase price of \$_____, pursuant to a bond purchase agreement (the "Purchase Agreement") entered into by and among Gilbert, the Corporation and the Underwriters. If the Series 2014 Bonds are sold to produce the yields on the inside front cover hereof, the Underwriters' compensation will be \$_____. The Purchase Agreement provides that the Underwriters will purchase all of the Series 2014 Bonds so offered if any are purchased. The Underwriters may offer and sell the Series 2009 Bonds to certain dealers (including dealers depositing the Series 2014 Bonds into unit investment trusts) and others at yields lower than the public offering prices stated on the inside cover page hereof. The initial offering yields set forth on the inside cover page may be changed, from time to time, by the Underwriters.

Wells Fargo Securities is the trade name for certain securities-related capital markets and investment banking services of Wells Fargo & Company and its subsidiaries, including Wells Fargo Bank, National Association ("WFBNA"). WFBNA, one of the underwriters of the Bonds, has entered into an agreement (the "Distribution Agreement") with its affiliate, Wells Fargo Advisors, LLC ("WFA"), for the distribution of certain municipal securities offerings, including the Bonds. Pursuant to the Distribution Agreement, WFBNA will share a portion of its underwriting or remarketing agent compensation, as applicable, with respect to the Bonds with WFA.

WFBNA also utilizes the distribution capabilities of its affiliates, Wells Fargo Securities, LLC ("WFSLLC") and Wells Fargo Institutional Securities, LLC ("WFIS"), for the distribution of municipal securities offerings, including the Bonds. In connection with utilizing the distribution capabilities of WFSLLC, WFBNA pays a portion of WFSLLC's expenses based on its municipal securities transactions. WFBNA, WFSLLC, WFIS, and WFA are each wholly-owned subsidiaries of Wells Fargo & Company.

POLITICAL CONTRIBUTIONS

Neither the Underwriters nor their respective employees are known to have made political contributions to any person who sought a seat on the Mayor and Common Council of Gilbert at its last election or, to the best of their knowledge, the election prior to the last election.

RELATIONSHIP AMONG PARTIES

Bond Counsel has previously represented the Financial Advisor and the Underwriters with respect to their other financings and has acted or is acting as bond counsel in other transactions involving the Financial Advisor and the Underwriters and will continue to do so in the future if requested. Bond Counsel also serves as bond counsel for political jurisdictions whose boundaries include all or part of Gilbert. Counsel to the Underwriters is currently representing the Financial Advisor and the Underwriters with respect to other financings and will continue to do so

in the future if requested. Counsel to the Underwriters also acts as bond counsel for other financings underwritten by the Underwriters and the Financial Advisor. Additionally, Bond Counsel serves as special counsel to Gilbert on various legal matters.

CONTINUING DISCLOSURE

As the “obligated person” with respect to the Series 2014 Bonds for purposes of the hereinafter defined Rule, Gilbert will enter into a Series 2014 Continuing Disclosure Agreement, dated the date of delivery of the Series 2014 Bonds (the “Continuing Disclosure Agreement”), the form of which is included in APPENDIX F. Pursuant to the Continuing Disclosure Agreement, Gilbert will covenant for the benefit of owners of the Series 2014 Bonds to provide certain financial information and operating data relating to Gilbert and the Series 2014 Bonds in each year (the “Annual Reports”), and to provide notices of the occurrence of certain enumerated events (the “Notices”). Such covenant by Gilbert shall only apply so long as the Series 2014 Bonds remain outstanding under the Indenture. The foregoing covenant shall terminate upon the termination of the continuing disclosure requirements of S.E.C. Rule 15c2-12(b)(5) (the “Rule”) by legislative, judicial or administrative action. The Annual Reports and the Notices will each be filed by Gilbert through the Electronic Municipal Market Access system (“EMMA”), as described in the form of the Continuing Disclosure Agreement attached hereto as APPENDIX F. In accordance with the Rule and pursuant to the Continuing Disclosure Agreement, Gilbert has been appointed as the dissemination agent for all of the foregoing disclosure materials but may assign this role to a third party. The specific nature of the information to be contained in the Annual Reports and the Notices is described in the form of the Continuing Disclosure Agreement, which will be executed by Gilbert at the time of issuance of the Series 2014 Bonds. The foregoing covenants have been made in order to assist the Underwriters in complying with the Rule.

[Gilbert has been and is currently in material compliance with its existing continuing disclosure undertakings.]

Pursuant to Arizona law, the ability of Gilbert to comply with such covenants is subject to annual appropriation of funds sufficient to provide for the costs of compliance with such covenants. Should Gilbert not comply with such covenants due to a failure to appropriate for such purpose, Gilbert has covenanted to provide notice of such fact through EMMA.

FINANCIAL ADVISOR

The Financial Advisor’s fee for services rendered with respect to the sale of the Bonds is contingent upon the issuance and delivery of the Bonds. Wedbush Securities Inc., in its capacity as Financial Advisor, has not verified and does not assume any responsibility for the information, covenants and representations contained in any of the legal documents with respect to the federal income tax status of the Bonds, or the possible impact of any present, pending or future actions taken by any legislative or judicial bodies.

FINANCIAL STATEMENTS AND ACCOUNTING POLICIES

The financial statements of Gilbert as of June 30, 2013 and for its fiscal year then ended, excerpts of which are included as APPENDIX C of this Official Statement, have been audited by Heinfield, Meech & Co., P.C. The accounting policies of Gilbert conform to generally accepted accounting principles as applicable to governmental units. For a more detailed summary of significant accounting policies see APPENDIX C – “Town of Gilbert, Arizona, Excerpts From the Audited General Purpose Financial Statements for the Fiscal Year Ended June 30, 2013.”

CERTIFICATION CONCERNING OFFICIAL STATEMENT

To the extent that any statements made in this Official Statement involve matters of opinion or estimates, whether or not expressly stated to be such, they are made as such and not as representations of fact of certainty and no representation is made that any of these statements have been or will be realized. Information set forth in this Official Statement has been derived from the records of Gilbert and from certain other sources, as referenced, and is believed by Gilbert to be accurate and reliable. Information other than that obtained from official records of the Town has not been independently confirmed or verified by Gilbert and its accuracy is not guaranteed.

Neither this Official Statement nor any statements that may have been or that may be made orally or in writing are to be construed as a part of a contract with the original Underwriters or subsequent owners of the Bonds.

TOWN OF GILBERT, ARIZONA
PUBLIC FACILITIES MUNICIPAL
PROPERTY CORPORATION

TOWN OF GILBERT, ARIZONA

By: _____
Its President

By: _____
Its Mayor

**TOWN OF GILBERT, ARIZONA
GENERAL ECONOMIC AND DEMOGRAPHIC INFORMATION**

General

The Town of Gilbert, Arizona (the “Town” or “Gilbert”) is located in the southeastern portion of Maricopa County, Arizona (the “County”), bounded on the north and east by the City of Mesa, Arizona, on the west by the City of Chandler, Arizona, on the southeast by the Town of Queen Creek, Arizona, and on the south by the Gila River Indian Community.

Founded in 1902 and incorporated on July 6, 1920, today Gilbert has a planning area of 76 square miles. The Town had an estimated population of 233,028 as of June 30, 2014. The following table illustrates respective population statistics for Gilbert, the County, and the State:

**POPULATION STATISTICS
Town of Gilbert, Arizona**

Year	Gilbert	Maricopa County	State of Arizona
2014*	233,028	N/A	N/A
2013 Census Estimate	227,598	3,944,859	6,581,054
2010 Census	208,453	3,817,117	6,392,017
2000 Census	109,697	3,072,149	5,130,632
1990 Census	29,122	2,122,101	3,665,339
1980 Census	5,717	1,509,175	2,716,546

* As of June 30, 2014.

Source: Arizona Department of Commerce, Population Statistical Unit, the Maricopa Association of Governments and US Census Bureau, American FactFinder.

Municipal Government and Organization

The Town operates under a Council-Manager form of government. Six council members are elected at large for staggered four-year terms. The Mayor is directly elected by the Town electorate to a four-year term and is the Chief Executive Officer of the Town and Chair of the Town Common Council (the “Town Council”). The Town Council appoints a Town Manager who has full responsibility for carrying out Council policies and administering the Town operations. The Town Manager administers the Town’s functions through department directors. The Town’s employees are hired under personnel rules adopted by the Town Council. Functions of government and operation are provided by a staff of 1,237. The Town provides or administers a variety of services including public safety (police and fire protection), development services (planning, building and code enforcement, economic development, and engineering), parks and recreation services (parks, recreation, libraries, culture and arts and social services), enterprise operations (water, wastewater, and environmental), support services (fleet, technology services, human resources and building maintenance), financial services (accounting, budget, purchasing, tax compliance, and utility billing and customer service), streets and public works, municipal court, and management and administrative services.

The Arizona State Constitution was amended by the voters in June of 1980 to establish a system of local government expenditure limitations. That system establishes a base expenditure limit for all communities in Arizona based upon their 1979/80 actual expenditures. The base limit is indexed annually for inflation and population growth for the community. Expenditures for voter approved debt service are exempted from the expenditure limit. The amendment also allows communities to establish their own expenditure limit, or adjust their base limit through voter approval. In 1997 the voters of the Town approved a permanent base expenditure adjustment to allow for current

and planned future expenditures for local government. The adoption of the permanent base adjustment eliminates the need to hold elections every four years seeking approval of the home rule expenditure limitation.

The Town is served by two electric utilities, Arizona Public Service Company and Salt River Project, each serving separate areas of the Town. Natural gas service is provided by Southwest Gas Corporation, phone service by Qwest Communications International, Inc. and Cox Communications, and water and wastewater services are provided by the Town. Residential solid waste services are provided by the Town; commercial solid waste services are provided by both the Town and private providers.

Economy

Although still a contributor to the economic base, agriculture no longer dominates the Town's economy due to the industrial, commercial and residential development which has occurred in the past 30 years. The Town's historic agricultural economy of cotton, sorghum, grains, alfalfa, citrus, vegetables, and livestock production has transitioned into a modern metropolitan suburban economy. The Town is home to 22 existing industrial/business parks totaling over 4.8 million square feet with 3 future planned business parks totaling over 2.6 million square feet. The Town added 1,084 industrial/office related jobs and 680 retail/service related jobs in fiscal year 2013/14. The growth of industrial development is evidenced by the business/industrial parks described in the following table:

BUSINESS/INDUSTRIAL PARKS Town of Gilbert, Arizona

Business/Industrial Parks	Square Feet
El Dorado Tech Center	1,133,654
Fiesta Ranch Business Park	696,495
Fiesta Tech Center	677,355
East Valley Commerce Park	575,158
Sunrise Business Park	539,281
Elliot Corporate Park	441,480
202 Business Park	323,000
The Reserve at San Tan	290,000
Fuller Industrial Park	242,250
Golden Key/Monterrey Industrial Area	224,020
Houston Industrial Park	125,448
Fortune Center	124,200
Sares Center Fiesta	116,428
Keywest Industrial Park	100,966
Copper Point Business Park	92,000
Crossroads Center	78,013
Tremaine Industrial Park	74,570
Neely Industrial Park	62,368
Stonehenge Industrial Park	52,500
Ridgewood Industrial Park	18,254
Hudson Industrial Park	17,430

Source: The Town of Gilbert.

The following table illustrates unemployment averages for Gilbert, the County, the State, and the United States:

UNEMPLOYMENT AVERAGES
Town of Gilbert, Arizona

Year	United States	State of Arizona (a)	Maricopa County (a)	Town of Gilbert (a)
2014 (b)	6.1%	7.0%	6.2%	5.2%
2013	6.7	7.6	6.1	5.7
2012	7.9	8.1	6.8	5.4
2011	8.5	8.7	7.6	5.1
2010	9.4	10.0	8.9	5.1

(a) On February 29, 2012, the Local Area Unemployment Statistics (“LAUS”) program released 2011 annual average labor force estimates for census regions and divisions for all States. Data was revised back to January 2007 to incorporate new population controls, updated inputs, re-estimation of models, and adjustment to new census division and national control totals. On April 20, 2012, routine revisions were made to data from 2007 through 2011 for geographic areas below the State level. For all areas, estimation inputs were revised back to 2010, while the revisions for 2007–09 consisted of controlling to the new State totals described above.

(b) Data is not seasonally adjusted and is a preliminary average through August 1, 2014 for LAUS data.

Source: U.S. Department of Labor, Bureau of Labor Statistics.

Employers

The following table is a partial list of major employers within Gilbert and the surrounding area:

MAJOR EMPLOYERS
Town of Gilbert, Arizona (c)

Employer	Business Type	Approximate Employment
Gilbert Unified School District No. 41	Education	3,649
Banner Health	Healthcare	2,219
Dignity Health	Healthcare	1,500
Town of Gilbert	Government	1,297
BH Drywall/Stucco/Painting	Construction	997
Fry's Food and Drug	Supermarkets	952
Go Daddy Software, Inc.	High Technology	858
Hunter Contracting	Construction	848
Chandler Unified School District	Education	565
Sam's Club	Retail Distribution/Warehousing	548
Higley Unified School District	Education	518
Costco	Retail Distribution/Warehousing	400
Orbital Sciences Corporation	Aerospace	300
American Furniture Warehouse	Retail Distribution/Warehousing	300

(c) Some of such taxpayers or their parent companies are subject to the informational requirements of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and in accordance therewith file reports, proxy statements and other information with the Securities and Exchange Commission (the “Commission”). Such reports, proxy statements and other information (collectively, the “Filings”) may be inspected and copied at the public reference facilities maintained by the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549 and Northwestern Atrium Center, 400 West Madison Street, Suite 1400, Chicago, Illinois. Copies of the Filings can be obtained from the public reference section of the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549 at prescribed rates. In addition, the Filings may also be inspected at the offices of the NYSE at 20

Broad Street, New York, NY 10005. The Filings may also be obtained through the Internet on the Commission's EDGAR database at <http://www.sec.gov>. None of Gilbert, the Underwriters or their respective agents or consultants has examined the information set forth in the Filings for accuracy or completeness, nor do they assume responsibility for the same.

Source: The Town of Gilbert

Construction

The following tables illustrate a building permit summary for residential and non-residential construction and new housing starts in Gilbert:

VALUE OF BUILDING PERMITS Town of Gilbert, Arizona

Fiscal Year	Residential	Commercial And Industrial	Other	Total
2014	\$ 315,632,904	\$ 99,959,286	\$ 56,890,360	\$ 472,482,550
2013	385,185,885	102,447,825	46,773,456	534,407,166
2012	408,322,951	31,550,416	35,017,191	474,890,558
2011	182,201,825	25,831,880	30,710,863	238,744,568
2010	213,032,031	67,488,230	43,754,466	324,274,727

Source: The Town of Gilbert.

SINGLE FAMILY HOME PERMITS ISSUED Town of Gilbert, Arizona

Fiscal Year	Total
2014/15 (d)	2,028
2013/14	1,971
2012/13	2,394
2011/12	1,541
2010/11	1,130
2009/10	1,426

Source: The Town Development Services Department. The date on which the permit is issued is not to be construed as the date of construction.

(d) Data through October 31, 2014.

Commerce

The Town's connectivity to major markets is provided through a comprehensive transportation network which includes the San Tan Loop 202 and Superstition Freeways, Sky Harbor International Airport, and Phoenix-Mesa Gateway Airport. This robust transportation network provides access to Gilbert-based enterprises while providing reliable and accessible modes of transportation to local, national and international markets.

In tandem with an educated workforce, the Town's concentration of Science, Technology, Engineering and Math (STEM) companies are essential components to the community's economic development foundation. The Town's job-based economic development strategy specifically identifies life sciences, aerospace, high technology, clean and

renewable energy and advanced business services. The Town's knowledge assets include Arizona State University (ASU) Polytechnic Campus, Chandler-Gilbert Community College and over six colleges, universities and technical schools within a 30-minute commute.

Nationwide Realty Investors has completed the acquisition of approximately 265 acres on the northeast corner of the San Tan Loop 202 and Gilbert Road. This development is projected to contain roughly 4.2 million square feet of office, retail and hospitality uses. Build-out is expected in the next 15 to 20 years. Two completed business and industrial parks located just south of the San Tan Loop 202 and east of Gilbert Road include the Reserve at San Tan with 150,000 square feet of office and flex-office space and the 202 Business Center with 290,000 square feet of industrial space. Slated to be the next substantial employment corridor in the southeast valley, this trade area also hosts other office and industrial parks such as the Gilbert 202 Commerce Center and the Rockefeller Group Crossroads.

Just to the east of this location is the San Tan Loop 202 and Val Vista corridor. Many life science and healthcare related businesses occupy this trade area with the 416,000 square feet anchored by the Catholic Healthcare West Mercy Gilbert Medical Campus as the main driver for development in the area. Most notable projects include the Celebration Center for Integrated Healing, Celebration Stem Cell Centre, Hospice of the Valley, Ironwood Cancer Treatment Centers and many smaller medical office condos. Adjacent from Mercy Gilbert is Copper Point Business Park with 90,000 square feet of space and the planned El Dorado Corporate Center with another 112,000 square feet of office space.

To the north of the San Tan Loop 202 along Val Vista includes the Hyatt Place and newly constructed Hampton Inn and the corporate headquarters for Mountainside Fitness. The former Main Street Commons development with mixed-use residential, retail and office uses remains on hold with a 100,000 square foot grocery store approved by Mayor and Council.

Also on the San Tan Loop 202 at Williams Field Road is the San Tan Village Mall, a regional shopping center that opened in October 2007. Still in the process of build-out, this mall has been touted as the lifestyle center for future retail developments to imitate. This open-air, mixed-use project provides retail, dining and entertainment opportunities within an urban district. Both the San Tan Village Mall and the Power Center to its south will account for nearly 3 million square feet of retail, office and entertainment uses at build-out making it the largest commercial development in the Town.

Additional growth in the life science and healthcare services field includes a 70,000 square foot expansion to Gilbert Hospital's medical campus located just south of Warner Road along Power Road. The Banner MD Anderson Cancer Center's state-of-the-art facility opened on September, 26, 2011 on the campus of Banner Gateway Medical Center located at the Superstition Freeway and Higley Road.

Phoenix-Mesa Gateway is recognized as the reliever airport for Sky Harbor International and is one of the fastest growing commercial airports in the United States. Phoenix-Mesa Gateway Airport served over ___ million passengers in 2013 with an estimated ___ million expected for 2014. According to a 2012 economic impact study by Arizona State University, the total economic benefit (including all multiplier effects) totaled \$1.3 billion, supporting 10,470 jobs in the area, including direct benefit to the Town's community.

The Town is currently home to numerous retail establishments that also accommodate the needs of the Town's growing population. Total Town privilege (sales) tax collections are an indicator of overall economic growth within the Town and reflect the flow of cash in businesses in the Town. The table on the following page illustrates the recent histories of privilege (sales) tax collections for the Town.

GILBERT PRIVILEGE (SALES) TAX COLLECTIONS
Town of Gilbert, Arizona

Fiscal Year	Gilbert Privilege (Sales) Tax Collections
2014/15*	\$22,386,219
2013/14	66,771,661
2012/13	61,889,627
2011/12	54,502,627
2010/11	49,315,215
2009/10	46,872,739

* Data through October 31, 2014.

Transportation

Industry, business, and residents benefit from the transportation network available in and near the Town. Rail, air, and highway facilities are developed throughout the area.

The Town is centrally located to several highway and freeway systems. Twelve miles to the west is Interstate Highway I-10, which joins the cities of Phoenix and Tucson. In addition to direct access to over eight miles of San Tan Loop 202, the Town has access to U.S. Route 60, one-half mile north, and State Highway 87 on the west. The Union Pacific Railroad, as well as numerous interstate and intrastate motor freight carriers, facilitates the transport of area products and supplies. Transcontinental bus service is available through Phoenix, Arizona.

Chandler Municipal Airport is located four miles southwest of the Town’s central business district and has two runways, one 4,400-foot runway and the other, a 4,850-foot runway. Falcon Field is located in the City of Mesa, eight miles from the Town, and currently has two runways, one 5,100 feet in length and the other 3,800 feet in length. Phoenix Sky Harbor International Airport, located 12 miles from the Town, provides local, regional, and transcontinental air service.

Phoenix/Mesa Gateway Airport

Phoenix/Mesa Gateway Airport (formerly known as Williams Gateway Airport) is immediately adjacent to the Town’s eastern border, has three runways (10,401 feet; 10,201 feet; and 9,301 feet) and a remodeled passenger terminal. Phoenix/Mesa Gateway Airport is positioned to be a reliever airport to Phoenix’s Sky Harbor International Airport.

Phoenix/Mesa Gateway Airport is also developing as an international aerospace center with aircraft maintenance, modification, testing and pilot training. Currently, more than 35 aviation companies operate at the airport, generating over \$___ million in annual economic activity.

Construction on the first phase of the planned State Route 24, a one-mile freeway segment extending access from the existing San Tan Loop 202 freeway eastward, was completed in fall 2013. This freeway segment lies immediately north of Phoenix-Mesa Gateway Airport, and will provide freeway access to the east side of the airport property.

Phoenix/Mesa Gateway Airport is owned and operated by the Williams Gateway Airport Authority which includes the City of Mesa, City of Phoenix, the Town, Town of Queen Creek, and the Gila River Indian Community.

Education

Adjacent to Phoenix/Mesa Gateway Airport, the Airport/Campus District serves approximately _____ students. The campus includes five higher education partners - Arizona State University (“ASU”) Polytechnic campus, Chandler-Gilbert Community College, Embry-Riddle Aeronautical University, Mesa Community College and UND Aerospace. The ASU Polytechnic campus has expanded and added new academic buildings that doubled the instructional lab and classroom space, and added faculty offices and a 500-seat auditorium.

ASU, located in the neighboring City of Tempe, is one of the major universities in the southwest. ASU's total enrollment exceeds 76,000 students and it employs over 2,900 faculty members.

Mesa Community College, one of the 10 campuses that comprise the Maricopa County Community College District, is located three miles from the Town and offers comprehensive educational programs to a student enrollment of approximately 22,711 as of the fall of 2014. Chandler-Gilbert Community College, also part of the Maricopa County Community College District, occupies a campus adjacent to the Town. The college offers a wide range of credit and non-credit courses. Chandler-Gilbert Community College and the University of North Dakota have partnered a Joint Flight Training Program at the Phoenix/Mesa Gateway Airport.

The Gilbert Unified School District served more than 39,000 students for the 2014/15 school year in 26 elementary schools, six junior high schools, five high schools, two academies, one global academy and one alternative education. The Higley Unified School District covers a portion of the eastern area of the Town and presently has eight elementary schools (K-8), and two high schools. The Chandler Unified School District also serves more than 39,600 students and covers the southern area of the Town and the schools within the district include 29 elementary, seven junior high, seven high schools and one alternative school.

**TOWN OF GILBERT, ARIZONA
FINANCIAL DATA**

Current Year Statistics (For Fiscal Year 2014/15)

Total General Obligation Bonded Debt Outstanding	\$ 135,310,000	(a)
Total Public Facilities Municipal Property Corporation Bonded Debt to be Outstanding	122,410,000 *	(b)
Total Water Resources Municipal Property Corporation Bonded Debt Outstanding	98,225,000	(c)
Total Street and Highway User Revenue Bonded Debt Outstanding	14,915,000	(d)
Total Improvement District Bonded Debt Outstanding	9,410,000	(e)
Primary Assessed Valuation	1,734,283,157	(f)
Secondary Assessed Valuation	1,829,471,839	(f)
Estimated Full Cash Value	15,180,125,813	(g)

* Subject to change.

Source: *State and County Abstract of the Assessment Roll*, Arizona Department of Revenue and Gilbert.

- (a) See “Direct General Obligation Bonded Debt Outstanding” in this APPENDIX.
- (b) Includes the Series 2014 Bonds and is net of the Bonds Being Refunded. See “Public Facilities Municipal Property Corporation Bonded Debt to be Outstanding” in this APPENDIX.
- (c) See “Water Resources Municipal Property Corporation Bonded Debt Outstanding” in this APPENDIX.
- (d) See “Street and Highway User Revenue Bonded Debt Outstanding” in this APPENDIX.
- (e) See “Improvement District Bonded Debt Outstanding” in this APPENDIX.
- (f) Arizona legislation divides property taxes into two categories, primary and secondary. Secondary property taxes are those taxes and assessments imposed to pay principal and interest on voter approved bonded indebtedness and certain other obligations, those imposed for special districts other than school districts and those imposed to exceed a budget, expenditure or tax limitation pursuant to voter approval. Primary property taxes are all ad valorem taxes other than secondary property taxes. The Town does not have a primary property tax. Annual increases in the valuation of certain types of property for primary property tax purposes and the amount of primary property taxes which may be levied in any year are subject to certain limitations. Pursuant to a State Constitutional amendment in 2012 and enacting legislation, beginning in Fiscal Year 2015/16, annual increases in the valuation of property for both primary and secondary tax purposes will become subject to limitations.
- (g) The Town’s net estimated full cash value is the total market value of the property less unsecured personal property, less estimated exempt property within Gilbert, as estimated by the State of Arizona Department of Revenue, Division of Property and Special Taxes.

STATEMENTS OF BONDED INDEBTEDNESS

**Direct General Obligation Bonded Debt Outstanding
Town of Gilbert, Arizona**

<u>Issue Series</u>	<u>Purpose</u>	<u>Original Amount</u>	<u>Maturity Dates</u>	<u>Balance Outstanding</u>
2002	Refunding	\$ 20,960,000	07-01-03/15	\$ 245,000
2005	Refunding	14,115,000	07-01-06/16	9,715,000
2008	Various Purpose	187,990,000	07-01-09/23	125,350,000
Total General Obligation Bonded Debt Outstanding				<u><u>\$ 135,310,000</u></u>

**Public Facilities Municipal Property Corporation (Excise Tax Revenue)
Bonded Debt to be Outstanding
Town of Gilbert, Arizona**

<u>Issue Series</u>	<u>Purpose</u>	<u>Original Amount</u>	<u>Maturity Dates</u>	<u>Balance Outstanding</u>
2006 (h)	Municipal Facilities	\$73,420,000	07-01-07/21	\$ 10,165,000
2009	Municipal Facilities	80,585,000	07-01-09/28	64,795,000
2011	Refunding	20,980,000	07-01/13/21	17,050,000
Public Facilities Municipal Property Corporation Bonds Outstanding				\$ 92,010,000
Plus the Series 2014 Bonds				30,400,000 *
Total Public Facilities Municipal Property Corporation Bonds to be Outstanding				<u><u>\$122,410,000 *</u></u>

* Subject to change.

(h) Amounts shown outstanding are net of the Bonds Being Refunded.

**Water Resources Municipal Property Corporation (System Development Fee)
Bonded Debt Outstanding
Town of Gilbert, Arizona**

Water System Development Fee and Subordinate
Lien Water Utility Revenue Bonds

<u>Issue Series</u>	<u>Purpose</u>	<u>Original Amount</u>	<u>Maturity Dates</u>	<u>Balance Outstanding</u>
2007	Water Treatment Capacity	\$146,175,000	10-01-08/32	<u><u>\$98,225,000</u></u>

**Street and Highway User Revenue Bonded Debt Outstanding
Town of Gilbert, Arizona**

<u>Issue Series</u>	<u>Purpose</u>	<u>Original Amount</u>	<u>Maturity Dates</u>	<u>Balance Outstanding</u>
2012	Refunding	\$16,945,000	07-01-14/19	<u><u>\$14,915,000</u></u>

**Improvement District Bonded Debt Outstanding
Town of Gilbert, Arizona**

Issue Series	Purpose	Original Amount	Maturity Dates	Balance Outstanding
2009	No. 20 - Various Purpose	\$8,675,000	01-01-12/29	\$7,700,000
2002	No. 19 - Water and Wastewater Improvements	6,510,000	01-01-05/27	1,710,000
				<u>\$9,410,000</u>

**Direct Bonded Debt, Legal Limitation and Unused Borrowing Capacity of Gilbert (i)
Town of Gilbert, Arizona**

The Arizona Constitution provides that the general obligation bonded indebtedness for a community or municipality for general municipal purposes may not exceed six percent of the secondary assessed valuation of the taxable property in that city. In addition, an incorporated city may become indebted in an amount not exceeding an additional twenty per cent of the of the secondary assessed valuation of the city for supplying such city with water, artificial light, or sewers, when the works for supplying such water, light, or sewers are or shall be owned and controlled by the municipality, and for the acquisition and development by the city of land or interests therein for open space preserves, parks, playgrounds and recreational facilities, public safety, law enforcement, fire and emergency services facilities and streets and transportation facilities.

General Purpose Municipal Bonds		Storm Water, Light, Sewer, Open Space, Streets, Parks, Transportation and Public Safety Bonds	
6% Limitation	\$109,768,310	20% Limitation	\$365,894,368
Less Direct Bonded Debt Outstanding	<u>0</u>	Less Direct Bonded Debt Outstanding	<u>135,310,000</u>
Unused 6% Borrowing Capacity	<u>\$109,768,310</u>	Unused 20% Borrowing Capacity	<u>\$230,584,368</u>

(i) General obligation bonding capacity is calculated using Gilbert’s fiscal year 2014/15 secondary assessed valuation of \$1,829,471,839.

**Direct and Overlapping General Obligation Bonded Debt
Town of Gilbert, Arizona**

Overlapping Jurisdiction	General Obligation Bonded Debt (k)	Proportion Applicable to Town of Gilbert (j)	
		Approximate Percent	Debt Amount
State of Arizona	None	7.94%	None
Maricopa County (l)	None	7.94	None
Maricopa County Community College District (l)	\$659,385,000	7.94	\$52,355,169
Gilbert Unified School District No. 41	116,680,000	73.39	85,855,292
Higley Unified School District No. 60	84,650,000	92.95	78,682,175
Chandler Unified School District No. 80	197,985,000	12.06	23,876,991
Mesa Unified School District No. 4	246,950,000	0.39	963,105
East Valley Institute of Technology No. 401	None	18.33	None
Town of Gilbert (m)	135,310,000	100.00	<u>135,310,000</u>
Totals			<u>\$377,042,732</u>

Source: The various jurisdictions.

- (j) Proportion applicable to Gilbert is computed on the ratio of secondary assessed valuation for the overlapping entity to the amount of such valuation which is within Gilbert in 2014/15.
- (k) Includes total general obligation bonds outstanding. Does not include presently authorized but unissued general obligation bonds of such jurisdictions which may be issued in the future as follows:

<u>Overlapping Jurisdiction</u>	<u>General Obligation Bonds Authorized but Unissued*</u>
State of Arizona	None
Maricopa County	None
Maricopa County Community College District	\$ 3,000
Gilbert Unified School District No. 41	12,000,000
Higley Unified School District No. 60	44,785,000
Chandler Unified School District No. 80	None
Mesa Unified School District No. 4	134,000,000
East Valley Institute of Technology District No. 401	None
Town of Gilbert	71,010,000

* Additional bonds may be authorized in future elections by some or all of the overlapping jurisdictions.

Also does not include the obligation of the Central Arizona Water Conservation District (“CAWCD”) to the United States of America, Department of the Interior, for repayment of certain capital costs for construction of the Central Arizona Project (“CAP”), a major reclamation project that has been substantially completed by the Department of the Interior. The obligation is evidenced by a master contract between CAWCD and the Department of the Interior. In April of 2003, the United States and CAWCD agreed to settle litigation over the amount of the construction cost repayment obligation, the amount of the respective obligations for payment of the operation, maintenance and replacement costs and the application of certain revenues and credits against such obligations and costs. Under the agreement, CAWCD’s obligation for substantially all of the CAP features that have been constructed so far will be set at \$1.646 billion, which amount assumes (but does not mandate) that the United States will acquire a total of 667,724 acre feet of CAP water for federal purposes. The United States will complete unfinished CAP construction work related to the water supply system and regulatory storage stages of CAP at no additional cost to CAWCD. Of the \$1.646 billion repayment obligation, 73% will be interest bearing and the remaining 27% will be non-interest bearing. These percentages will be fixed for the entire 50-year repayment period, which commenced October 1, 1993. Effectiveness of the agreement is subject to a number of conditions including certain State of Arizona legislation. If the conditions are not met by May 9, 2012, and the parties do not amend the agreement, the agreement will terminate and litigation will resume. If it appears prior to May 9, 2012, that the conditions will not be met by the deadline, the parties can amend the agreement or either party may petition the U.S. District Court to terminate the agreement and resume litigation. It is not possible to predict whether the agreement will become finally effective, be amended, or terminate, or whether litigation will resume. If litigation resumes, it is not possible to predict the outcome of such litigation. CAWCD is a water conservation district having boundaries coterminous with the exterior boundaries of Maricopa, Pima and Pinal Counties. It was formed for the express purpose of paying administrative costs and expenses of the CAP and to assist in the repayment to the United States of the CAP capital costs. Repayment will be made from a combination of power revenues, subcontract revenues (i.e., agreements with municipal, industrial and agricultural water users for delivery of CAP water) and a tax levy against all taxable property within CAWCD’s boundaries. At the date of this Official Statement, the tax levy is limited to fourteen cents per \$100 of secondary assessed valuation, of which fourteen cents is being currently levied. (See Arizona Revised Statutes, Sections 48-3715 and 48-3715.02.) There can be no assurance that such levy limit will not be increased or removed at any time during the life of the contract.

- (l) Does not include Maricopa County, Arizona certificates of participation outstanding in the aggregate principal amount of \$3,850,000 or lease revenue bonds issued by the Maricopa County Public Finance Corporation in the aggregate principal amount of \$163,900,000 or Maricopa County Stadium District Revenue Bonds outstanding in the aggregate principal amount of \$44,270,000.

- (m) Does not include the Town of Gilbert, Arizona water and wastewater revenue bonds, improvement district bonds and street and highway user revenue bonds outstanding.

**Direct and Overlapping General Obligation Bonded Debt Ratios
Town of Gilbert, Arizona**

	Per Capita Bonded Debt Population Estimated at 233,098 (n)	As % of Gilbert's Secondary Assessed Valuation	As % of Gilbert's Estimated Full Cash Value
Direct General Obligation Bonded Debt	\$ 580.49	7.40%	0.89%
Direct and Overlapping General Obligation Bonded Debt	1,617.53	20.60%	2.48%

- (n) Maricopa Association of Governments.

PENSION BENEFITS

Retirement Benefits

The Town contributes to the three plans described below. Benefits are established by state statute and generally provide retirement, death, long-term disability, survivor and health insurance premium benefits.

The Arizona State Retirement System (“ASRS”), a cost-sharing, multiple employee defined benefit plan in which the Town participates, has reported increases in its unfunded liabilities. The most recent annual reports for the ASRS may be accessed at: <https://www.azasrs.gov/web/FinancialReports.do>. The board for the ASRS has adopted contribution rates for fiscal year 2013/14 and 2014/15. For the year ended June 30, 2014, active plan members were required by statute to contribute at the actuarially determined rate of 11.54% (11.30% retirement and 0.24% long-term disability) of the members’ annual covered payroll. Pursuant to recent State legislation, for fiscal year 2010/11 (starting July 1, 2010), the ASRS contribution rate, including retirement and long-term disability, retroactively is 10.75% for the City and employees, with additional increases currently scheduled through fiscal year 2017/18. These contribution rates reflect recently enacted legislation that becomes effective July 1, 2011, whereby, employees will be required to pay 53% of the contributions to the ASRS and employers will be required to pay 47% of the contributions to the ASRS. This is a change from the prior system that required equal contributions from the employee and the employer. The increase in the ASRS’s unfunded liabilities is expected to result in significantly increased contributions by the Town and its employees; however the specific effects cannot be determined at this time. The Town’s contributions to the ASRS for fiscal years 2013/14 and 2012/13 were \$4,876,961 and \$4,265,778, respectively, both of which were equal to the required contributions for the year.

Additionally, recently enacted State legislation makes changes to how the ASRS operates, which changes included, effective July 1, 2011, requiring employers to pay an alternative contribution rate for retired ASRS employees that return to work, changing the age at which an employee can retire without penalty based upon years of service, limiting permanent increases in retirement benefits and establishing a Defined Contribution and Retirement Study Committee (as defined in the legislation) that will review the feasibility and cost to changing the current defined benefit plan to a defined contribution plan.

The Arizona Public Safety Personnel Retirement System (“PSPRS”) has also reported increases in its unfunded liabilities. The most recent annual reports for the PSPRS may be assessed at http://www.psprs.com/sys_psprs/Annual Reports/cato_annual_rpts_psprs.htm. The effect of the increase in the PSPRS’s unfunded liabilities is expected to result in significantly increased contributions by the Town and its employees; however the specific impact on the Town, or on the Town and its employees’ future annual contributions to the PSPRS, cannot be determined at this time.

The Elected Officials Retirement Plan (“EORP”) has reported increases in its unfunded liabilities. The most recent annual reports for the EORP may be accessed at: [http://www.psprs.com/sys_eorp/Annual reports/cato_Annual_rpts_EoRP.htm](http://www.psprs.com/sys_eorp/Annual_reports/cato_Annual_rpts_EoRP.htm). The effect of the increase in the EORP’s unfunded liabilities is expected to result in significantly increased contributions by the Town and its employees; however the specific impact on the Town, or on the Town and its employees’ future annual contributions to the EORP, cannot be determined at this time.

Other Post Employment Benefits

Other post-employment healthcare benefits, like the costs of pension benefits, constitute an exchange of compensation for employee services rendered. Similar to pension benefits, the cost of OPEB generally should be associated with the periods in which the exchange occurs rather than in future periods in which the benefits are provided. GASB Statement No. 45 required Gilbert to measure and recognize the OPEB cost while employee services are rendered and provide information about the future demands on Gilbert’s future cash flows.

Gilbert provides post-employment medical care, prescription drug and dental care for retired employees through a single-employer defined benefit medical and dental plan. The plan provides medical and dental benefits for eligible retirees, their spouses and dependents through Gilbert’s group health and dental insurance plans, which cover active and retired members. To be eligible for benefits, the retired employee must retire under one of the state retirement plans for public employees, must have a minimum of ten years of service with Gilbert and be covered under Gilbert’s medical plan during their active status. Plan benefits and coverage levels are reviewed annually by Town staff and the Board of Trustees for recommendations to the Town Council based on revenues needed to cover the projected cost to operate the plan which are subject to approval by the Town Council. The Board of Trustees makes premium recommendations to the Town Council based on revenues needed to cover the projected cost to operate the plan which are subject to approval by the Town Council. As of June 30, 2014, there are 31 retirees that are currently receiving medical and/or dental benefits.

Gilbert requires retirees to pay 100% of the full blended contribution rate. Gilbert makes no contributions for retirees other than allowing them to participate through Gilbert’s pooled benefits. By providing retirees access to Gilbert’s healthcare plans, Gilbert is in effect providing a subsidy to retirees. This implied subsidy exists because on average, retiree healthcare costs are higher than active employee healthcare costs. Gilbert pays for and reports retiree benefits on a pay-as-you-go basis, which is the practice of paying for these benefits as they become due each year. As of June 30, 2014, retirees contributed \$257,371 and Gilbert contributed \$70,896 (implied subsidy).

Gilbert’s annual OPEB cost is calculated based on the Annual Required Contribution (“ARC”) of the employer, an amount actuarially determined in accordance with the parameters of GASB Statement No. 45. The ARC represents a level of funding that, if paid on an ongoing basis, is projected to cover normal cost each year to amortize any unfunded actuarial liabilities over a period not to exceed thirty years. Gilbert’s annual OPEB costs for the current year and related information for the plan are as follows at June 30, 2014:

Annual Required Contribution (ARC)	\$ 525,797
ARC Adjustment	(17,587)
Interest on the Net OPEB Obligation	15,063
Annual OPEB Cost	<u>\$ 523,273</u>
Contributions Made	<u>(70,896)</u>
Increase in Net OPEB Obligation	\$ 452,377
Net OPEB Obligation - Beginning of year	430,360
Net OPEB Obligation - End of year	<u><u>\$ 882,737</u></u>

Gilbert’s net OPEB obligation for the Fiscal Year 2013/14 was \$882,737. Contributions for Fiscal Year 2013/14 were \$70,896.

PROPERTY TAXES

At the general election held November 6, 2012, the voters of the State ratified Senate Concurrent Resolution 1025, which amends a provision of the Arizona Constitution relating to the State's property tax system. Beginning in tax year 2015 (for operations during the Town's fiscal year 2015/16) and, for tax years thereafter, the constitutional amendment will limit the value of real property and improvements, including mobile homes, used for all ad valorem tax purposes (both primary and secondary) to the lesser of the full cash value of the property or an amount five percent greater than the taxable value of property determined for the prior year. The foregoing limitation does not apply to (1) equalization orders that the Arizona Legislature exempts from such limitation; (2) property used in the business of patented or unpatented producing mines, mills and smelters; (3) producing oil, gas and geothermal interests; (4) real property and improvements used for operation of telephone, telegraph, gas, water and electric utilities; (5) aircraft- regularly scheduled and operated by an airline company; (6) standing timber; (7) pipelines; and (8) personal property, except mobile homes. Statutory amendments to implement this constitutional amendment were enacted in the 2013 legislative session.

Prior to the Constitutional change, only the value of locally assessed property for primary property tax purposes was subject to a previous limitation. Because of the timing of the property valuation process in Arizona, the first step to implementing this Constitutional change has already begun. Arizona statutes required owners of property to be notified by March 1, 2014 of their property value for tax year 2015. As such, the information which follows under the heading "PROPERTY TAXES" summarizes the assessment, levy and collection process in accordance with the November 2012 Constitutional amendment and 2013 statutory amendments.

Tax Years

The Arizona tax year has been defined as the calendar year notwithstanding the fact that tax procedures, as explained below, begin prior to January 1 of the tax year and continue through May of the succeeding calendar year. The tax lien attaches to the real property as of January 1 of the tax year in question.

Taxable Property

For tax purposes in Arizona, real property is either valued by the Assessor of the County or the Arizona Department of Revenue. Property valued by the Department of Revenue is referred to as "centrally valued" property and is generally large mine and utility entities. Property valued by the Assessor of the County is referred to as "locally assessed" property and generally encompasses residential, agricultural and traditional commercial and industrial property. While locally assessed property in the State has two different values, "limited (or taxable) property value" and "full cash value," only the limited property value is used as the basis for taxation. The full cash value is maintained and used as the benchmark for determining the taxable value. Beginning in tax year 2015 for locally assessed property, the limited value of real property and improvements, including mobile homes, used for all ad valorem tax purposes is the lesser of the full cash value of the property or an amount five percent greater than the taxable value of property determined for the prior year. For centrally valued property and personal property (except mobile homes), the full cash value of the property is also the taxable value.

Property Classification and Bond Assessment Ratios

All property, both real and personal, is assigned a classification to determine its assessed valuation for tax purposes. Each legal classification is defined by property use and has an assessment ratio (a percentage factor) which is multiplied by the limited or full cash values of the property to obtain the primary or secondary assessed valuations, respectively.

The assessment ratios utilized over the last five-year period, 2007 through 2014, for each class of property are set forth below:

Property Tax Assessment Ratios by Tax Year

Property Classification (o)	2014	2013	2012	2011	2010
Mining, Utility, Commercial and Industrial (p)	19.0%	19.5%	20.0%	20.0%	21.0%
Agricultural and Vacant Land (p)	16.0	16.0	16.0	16.0	16.0
Owner Occupied Residential	10.0	10.0	10.0	10.0	10.0
Leased or Rented Residential	10.0	10.0	10.0	10.0	10.0
Railroad Private Car Company and Airline Flight Property (p)	16.0	15.0	15.0	15.0	17.0

Source: *State and County Abstract of the Assessment Roll*, State of Arizona Department of Revenue.

- (o) Additional classes of property exist, but seldom amount to a significant portion of a municipality’s total valuation.
- (p) For tax year 2014, full cash values up to \$_____ on commercial, industrial and agricultural personal property are exempt from taxation. This exemption is indexed annually for inflation. Any portion of the full cash value in excess of that amount will be assessed at the applicable rate. The assessment ratio for mines, utilities, and commercial and industrial property will be reduced to 19.5% for tax year 2013 and further reduced one-half of one percent for each year to 18% for 2016 and thereafter. The assessment ratio for agricultural and vacant property will be reduced to 15% for tax year 2016 and thereafter. From time to time, there are legislative proposals in the State, which, if enacted could alter or amend the matters referred to above or adversely affect the market value of the Bonds. It cannot be predicted whether or in what form any such proposal might be enacted or whether, if enacted, it would apply to the obligations issued prior to enactment.

This percentage is calculated annually based on the ratio of (i) the total assessed valuation of all mining, utility, commercial, industrial and military reuse zone properties, agricultural personal property and certain leasehold personal property to (ii) the total full cash (market) value of such properties.

Determination of Full Cash Value

The first step in the tax process is the determination of the full cash value of each parcel of real property within the State. Full cash value is statutorily defined to mean “that value determined as prescribed by statute” or if no statutory method is prescribed it is “synonymous with market value.” “Market value” means that estimate of value that is derived annually by use of standard appraisal methods and techniques, which generally include the market approach, the cost approach and the income approach. As a general matter, the Assessor of the County uses a cost approach for commercial/industrial property and a sales data approach for residential property. State law allows taxpayers to appeal such valuations by providing evidence of a lower value, which may be based upon another valuation approach.

The Assessor of the County, upon meeting certain conditions, may value residential, agricultural and vacant land at the same full cash valuation for up to three years. The Assessor of the County currently values existing properties on a two year cycle.

Certain residential property owners 65 years of age and older may obtain a property valuation “freeze” against valuation increases (the “Property Valuation Protection Option”) if the owner’s total income from all sources does not exceed 400% (500% for two or more owners of the same property) of the “Social Security Income Benefit Rate.” The Property Valuation Protection Option must be renewed every three years. If the property is sold to a person who does not qualify, the valuation reverts to its current full cash value. Any freeze on increases in property value will, as a result, freeze the assessed value of the affected property for both primary and secondary tax purposes, as hereinafter described.

Tax Years

The State tax year has been defined as the calendar year, notwithstanding the fact that tax procedures, as explained below, begin prior to January 1 of the tax year and continue through May of the succeeding calendar year. The tax lien attaches to the real property as of January 1 of the tax year in question.

Primary Taxes

Taxes levied for the maintenance and operation of counties, cities, towns, school districts, community college districts and the State are primary taxes. These taxes are levied against the assessed valuation of the property (taxable property value multiplied by the appropriate property classification assessment ratio).

The primary taxes levied by each county, city, town and community college district are constitutionally limited to a maximum increase of 2% over the prior year's levy limit plus any taxes on property not subject to tax in the preceding year (e.g., new construction and property brought into the jurisdiction because of annexation). In November 2006, the maximum allowable primary property tax levy limit was rebased to the amount of actual 2005 primary property taxes levied (plus amounts levied against property not subject to taxation in prior years). The 2% limitation does not apply to primary taxes levied on behalf of school districts.

Primary taxes on residential property only are constitutionally limited to 1% of the limited value of such property.

Secondary Taxes

Taxes levied for debt retirement (i.e., debt service on the Bonds), voter-approved budget overrides and the maintenance and operation of special service districts such as sanitary, fire and road improvement districts are secondary taxes. These taxes are levied against the assessed valuation of the property (taxable property value multiplied by the appropriation property classification assessment ratio.) There is no constitutional or statutory limitation on annual levies for voter-approved bond indebtedness and special district assessments.

Tax Procedures

On or before the third Monday in August each year the Board of Supervisors of the County prepares the tax roll setting forth the valuation by taxing district of all property in the County subject to taxation. The Assessor of the County is required to complete the assessment roll by December 15th of the year prior to the levy. This tax roll also shows the valuation and classification of each parcel of land located within the County for the tax year. The tax roll is then forwarded to the Treasurer of the County.

With the various budgetary procedures having been completed by the governmental entities, the appropriate tax rate for each jurisdiction is then applied to the parcel of property in order to determine the total tax owed by each property owner. Any subsequent decrease in the value of the tax roll as it existed on the date of the tax levy due to appeals or other reasons would reduce the amount of taxes received by each jurisdiction.

The property tax lien on real property attaches on January 1 of the year the tax is levied. Such lien is prior and superior to all other liens and encumbrances on the property subject to such tax except liens or encumbrances held by the State or liens for taxes accruing in any other years.

Delinquent Tax Procedures

The property taxes due the Town are billed, along with State, County and other taxes, each September and are due and payable in two installments on October 1 and March 1 and become delinquent on November 1 and May 1, respectively. Delinquent taxes are subject to an interest penalty of 16% per annum prorated monthly as of the first day of the month. (Delinquent interest is waived if a taxpayer, delinquent as to the November 1 payment, pays the entire year's tax bill by December 31.) After the close of the tax collection period, the Treasurer of the County prepares a delinquent property tax list and the property so listed is subject to a tax lien sale in February of the succeeding year. In the event that there is no purchaser for the tax lien at the sale, the tax lien is assigned to the State, and the property is reoffered for sale from time to time until such time as it is sold, subject to redemption, for an amount sufficient to cover all delinquent taxes.

After three years from the sale of the tax lien, the tax lien certificate holder may bring an action in a court of competent jurisdiction to foreclose the right of redemption and, if the delinquent taxes plus accrued interest are not paid by the owner of record or any entity having a right to redeem, a judgment is entered ordering the Treasurer of the County to deliver a treasurer's deed to the certificate holder as prescribed by law.

In the event of bankruptcy of a taxpayer pursuant to the United States Bankruptcy Code (the “Bankruptcy Code”), the law is currently unsettled as to whether a lien can attach against the taxpayer’s property for property taxes levied during the pendency of bankruptcy. Such taxes might constitute an unsecured and possibly non-interest bearing administrative expense payable only to the extent that the secured creditors of a taxpayer are oversecured, and then possibly only on the prorated basis with other allowed administrative claims. It cannot be determined, therefore, what adverse impact bankruptcy might have on the ability to collect ad valorem taxes on property of a taxpayer within the Town. Proceeds to pay such taxes come only from the taxpayer or from a sale of the tax lien on delinquent property.

When a debtor files or is forced into bankruptcy, any act to obtain possession of the debtor’s estate, any act to create or perfect any lien against the property of the debtor or any act to collect, assess or recover a claim against the debtor that arose before the commencement of the bankruptcy is stayed pursuant to the Bankruptcy Code. While the automatic stay of a bankruptcy court may not prevent the sale of tax liens against the real property of a bankrupt taxpayer, the judicial or administrative foreclosure of a tax lien against the real property of a debtor would be subject to the stay of bankruptcy court. It is reasonable to conclude that “tax sale investors” may be reluctant to purchase tax liens under such circumstances, and, therefore, the timeliness of the payment of post bankruptcy petition tax collections becomes uncertain.

It cannot be determined what impact any deterioration of the financial conditions of any taxpayer, whether or not protection under the Bankruptcy Code is sought, may have on payment of or the secondary market for the Bonds. None of the Town, the Financial Advisor, the Underwriters nor their respective attorneys, agents or consultants has undertaken any independent investigation of the operations and financial condition of any taxpayer, nor have they assumed responsibility for the same.

In the event the County is expressly enjoined or prohibited by law from collecting taxes due from any taxpayer, such as may result from the bankruptcy of a taxpayer, any resulting deficiency could be collected in subsequent tax years by adjusting the Town’s tax rate charged to non-bankrupt taxpayers during such subsequent tax years.

**Real and Secured Property Taxes Levied and Collected (q)
Town of Gilbert, Arizona**

Fiscal Year	Town Tax Rate	Town Tax Levy	Collected to June 30 of Initial Fiscal Year		Cumulative Collection to 06-07-2014	
			Amount	% of Levy	Amount	% of Levy
2014/15	(r) 1.15%	\$19,487,085				
2013/14	1.15	19,253,745	\$18,855,977	98.41%	\$18,855,977	98.41%
2012/13	1.15	21,380,254	20,772,494	97.6	21,195,378	99.92
2011/12	1.15	26,198,053	25,253,466	96.79	25,933,516	99.94
2010/11	1.15	30,389,882	28,984,405	95.86	29,898,414	99.65

Source: Treasurer of the County.

- (q) Taxes are certified and collected by the Treasurer of the County. Taxes in support of debt service are levied by the Board of Supervisors of the County as required by Arizona Revised Statutes. Delinquent taxes are subject to an interest and penalty charge of 16% per annum, which is prorated at a monthly rate of 1.33%. Interest and penalty collections for delinquent taxes are not included in the collection figures above, but are deposited in the County General Fund.
- (r) 2014 taxes in course of collection: First installment due 10-1-14; delinquent 11-1-14; second installment due 3-1-15; delinquent 5-1-15.

ASSESSED VALUATIONS AND TAX RATES

**Direct and Overlapping Assessed Valuations and Total Tax Rates
Per \$100 Assessed Valuation**

Overlapping Jurisdiction	2014/15 Secondary Assessed Valuation	2014/15 Primary Assessed Valuation	2014/15 Total Tax Rates Per \$100 Assessed Valuation
State of Arizona	\$55,349,948,120	\$ 53,545,537,108	\$0.5089 (s)
Maricopa County	35,079,646,593	33,519,795,354	1.3209
Maricopa County Community College District	35,079,646,593	33,519,795,354	1.5187
Maricopa County Fire District (t)	35,079,646,593	N/A	0.0113
Maricopa County Flood Control District (t)	31,365,181,149	N/A	0.1856
Maricopa County Library District (t)	35,079,646,593	N/A	0.0556
Central Arizona Water Conservation District (t)	32,240,159,338	N/A	0.1400
Maricopa County Special Health Care District	35,079,646,593	N/A	0.1856
Gilbert Unified School District No. 41	1,596,222,809		
Higley Unified School District No. 60	504,488,212		
Chandler Unified School District No. 80	2,238,429,059		
Mesa Unified School District No. 4	2,671,537,348		
East Valley Institute of Technology No. 401 (t)	15,353,630,627	N/A	0.0500
Town of Gilbert	1,829,471,839	1,734,348,001	1.0700

Source: *State and County Abstract of the Assessment Roll*, State of Arizona Department of Revenue.

- (s) Includes the State Equalization Assistance Property tax. This rate has been set at \$0.5089 for Fiscal Year 2014/15 and is adjusted annually pursuant to Arizona Revised Statutes, Section 41-1276.
- (t) The assessed valuation of the Flood Control District does not include the personal property assessed valuation within the County. The secondary assessed valuation for the Central Arizona Water Conservation District reflects the assessed valuation located within Maricopa County only. The County is mandated to levy a tax annually in support of County fire districts. All levies for library districts, hospital districts, fire districts, technology districts, water conservation districts and flood control districts are levied on the secondary assessed

**Total Tax Rates per \$100 Assessed Valuation:
Town of Gilbert, Arizona**

Overlapping Jurisdiction	2014/15 Total Tax Rates Per \$100 Assessed Valuation
Inside Gilbert Unified School District No. 41	\$0.8321
Inside Mmesa Unified School District No. 4	0.8042
Inside Higley Unified School District No. 60	0.8274
Inside Chandler Unified School District No. 80	0.8007

Source: Maricopa County Finance Department.

**Secondary Assessed Valuation by Property Classification
Town of Gilbert, Arizona (u)**

For the last five years, a breakdown of the secondary assessed valuation by property classification for Gilbert is shown below:

	2014/15	2013/14	2012/13	2011/12	2010/11
	Secondary	Secondary	Secondary	Secondary	Secondary
	Assessed	Assessed	Assessed	Assessed	Assessed
	Valuation	Valuation	Valuation	Valuation	Valuation
Commercial, Industrial, Timber and Utilites	\$ 406,275,094	\$ 405,185,289	\$ 458,141,496	\$ 520,355,694	\$ 677,460,654
Agricultural and Vacant	73,736,856	72,773,509	84,805,734	105,926,105	193,168,060
Residential (owner occupied)	1,053,528,943	898,607,953	980,974,338	1,080,218,094	1,256,019,583
Residential (rental)	293,779,734	216,322,170	149,643,459	152,963,921	169,282,351
Railroad	2,151,212	1,917,816	1,795,394	1,730,147	1,297,669
Total	\$1,829,471,839	\$1,594,806,737	\$1,675,360,421	\$1,861,193,961	\$2,297,228,317

(u) See footnote (p) concerning future reductions in assessed value ratios.

Source: *State and County Abstract of the Assessment Roll*, State of Arizona Department of Revenue and the Maricopa County Finance Department.

**Assessed Valuation of Major Taxpayers (v)
Town of Gilbert, Arizona**

Principal Taxpayer (w)	Type of Business	Secondary Assessed Valuation	As % of Town's Total Secondary Assessed Valuation
Westcor Santan Village LLC	Shopping Center	\$20,784,019	1.14%
Verizon Wireless	Communications	8,610,189	0.47
American Furniture Warehouse Co.	Retail	6,454,538	0.35
Southwest Gas Corporation (T&D)	Utility	6,216,099	0.34
Target Corporation	Retail	5,814,163	0.32
Cole MT Gilbert San Tan AZ LLC	Real Estate Development / Holdings	5,263,703	0.29
Power & Ray LLC	Commercial	5,198,326	0.28
Vestar CTC Phase 1 LLC	Real Estate Development / Holdings	4,943,632	0.27
ATPD LLC	Commercial	3,392,601	0.19
Qwest Corporation	Communications	3,383,537	0.18
CTC Gilbert LLC	Retail	3,374,476	0.18
Lowe's HIW Inc.	Retail	3,329,250	0.18
SY Gilbert Commons I LLC	Shopping Center	3,219,835	0.18
Arizona Public Service Company	Utility	3,156,936	0.17
Branch Brook Gardens	Real Estate Development / Holdings	3,101,330	0.17
		\$86,242,634	4.71%

(v) Based upon data obtained from the Treasurer of the County. Gilbert, the Underwriters or their respective agents or consultants have not undertaken any independent investigation of the financial condition of any of the major taxpayers or their ability to pay taxes, nor have they assumed responsibility for the same.

- (w) Some of such taxpayers or their parent companies are subject to the informational requirements of the Exchange Act and in accordance therewith file the Filings with the Commission. The Filings may be inspected and copied at the public reference facilities maintained by the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549 and at the Commission’s regional office and Northwestern Atrium Center, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661. Copies of the Filings can be obtained from the public reference section of the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549 at prescribed rates. In addition, the Filings may also be inspected at the offices of the NYSE at 20 Broad Street, New York, New York 10005. The Filings may also be obtained through the Internet on the Commission’s EDGAR database at <http://www.sec.gov>. None of Gilbert, the Financial Advisor, the Underwriters nor their respective agents or consultants have examined the information set forth in the Filings for accuracy or completeness, nor do they assume responsibility for the same.

SPECIAL NOTE: *The assessed valuation of property owned by the Salt River Project Agricultural Improvement and Power District (“SRP”) is not included in the assessed valuation of the Town in the prior table or in any other valuation information set forth in this Official Statement. Because of SRP’s quasi-governmental nature, property owned by SRP is exempt from property taxation.*

However, SRP may elect each year to make voluntary contributions in lieu of property taxes with respect to certain of its electrical facilities (the “SRP Electric Plant”). If SRP elects to make the in lieu contribution for the year, the full cash value of the SRP Electric Plan and the in lieu contribution amount is determined in the same manner as the full cash value and property taxes owed is determined for similar non-governmental public utility property, with certain special deductions. If SRP elected not to make such contributions, the town would be required to contribute funds from other sources or levy an increased tax rate on all other taxable property to provide sufficient amounts to pay debt service on the Bonds. If after electing to make the in lieu contribution, SRP then failed to make the in lieu contribution when due, the Treasurer of the County and the Town have no recourse against the property of SRP and there may be a delay in the payment of that portion of the debt service on the Bonds that would have been paid by SRP’s in lieu contribution.

Since 1964, when the in lieu contribution was originally authorized by the Arizona Revised Statutes, SRP has always made that election. The fiscal year 2014/15 in lieu assessed valuation of SRP within the Town is \$112,637,628, which represents approximately 6.16% of the combined secondary assessed value in the Town. SRP’s total estimated contribution in lieu of property tax payments was approximately \$1,200,604 for fiscal year 2014/15.

**Comparative Secondary Assessed Valuation Histories
Town of Gilbert, Arizona**

<u>Year</u>	<u>Gilbert</u>	<u>County</u>	<u>Arizona</u>
2014/15	\$ 1,829,471,839	\$ 35,079,646,593	\$55,349,948,120
2013/14	1,594,806,737	32,229,006,810	52,598,341,678
2012/13	1,675,360,421	34,400,455,712	56,283,023,907
2011/12	1,861,193,961	38,760,296,714	61,784,402,437
2010/11	2,297,228,317	49,662,543,618	75,643,290,656

Source: *State and County Abstract of the Assessment Roll*, State of Arizona Department of Revenue, the Maricopa County Finance Department and the Maricopa County Assessor’s Office.

**Comparison of Secondary Assessed Valuation to Estimated Full Cash Valuation
Town of Gilbert, Arizona**

<u>Fiscal Year</u>	<u>Estimated Full Cash Valuation</u>	<u>Percent of Secondary Assessed Valuation to Estimated Full Cash Valuation</u>
2014/15	\$15,180,125,813	12.05%
2013/14	12,860,623,079	14.23
2012/13	13,291,883,859	13.76
2011/12	14,742,908,893	12.41
2010/11	17,777,687,241	10.29

Source: *State and County Abstract of the Assessment Roll*, State of Arizona Department of Revenue, the Maricopa County Finance Department and the Maricopa County Assessor's Office.

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TOWN OF GILBERT, ARIZONA

EXCERPTS FROM THE
AUDITED GENERAL PURPOSE FINANCIAL STATEMENTS

FOR THE FISCAL YEAR ENDED JUNE 30, 2013

The audited general purpose financial statements for Gilbert included in this APPENDIX C are the Fiscal Year ended June 30, 2013, and are the most recent audited financial statement available for Gilbert. Such financial statements speak only of that date and do not report any changes that might have occurred since June 30, 2013. However, Gilbert is not aware of any material change in its financial conditions as of the date of this Official Statement.

Heinfeld, Meech & Co., P.C. has performed no procedures subsequent to rendering its opinion on the financial statements and has not been consulted in any manner pertaining to the issuance of the Series 2014 Bonds. They have, however, advised Gilbert that auditing professional standards permit Gilbert to include their report as set forth in this APPENDIX C.

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**SUMMARY OF
CERTAIN PROVISIONS OF LEGAL DOCUMENTS**

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SUMMARY OF CERTAIN PROVISIONS OF LEGAL DOCUMENTS

DEFINITIONS OF CERTAIN TERMS

The following are certain terms used in this Official Statement and in the Indenture and not otherwise defined herein.

“*Act*” means Title 10, Chapter 24, Arizona Revised Statutes, as enacted and amended from time to time.

“*Additional Bonds*” means bonds in addition to the Series 2006 Bonds, the Series 2009 Bonds, the Series 2011 Bonds and the Series 2014 Bonds which may be issued under the provisions of the Indenture.

“*Annual Debt Service Requirement*” means for any Fiscal Year the amount to be paid in such year with respect to the Bonds (or portion thereof in question) for payment of principal and interest on the Bonds (or portion thereof in question) during such year.

“*Board of Directors*” means the Board of Directors of the Corporation.

“*Bond Insurers*” means, as to the Series 2006 Bonds, the Series 2006 Insurer, [as to the Series 2014 Bonds, the Series 2014 Insurer], and as to any Additional Bonds, the Person or Persons identified as the insurer of the Additional Bonds in the applicable Supplemental Indenture.

“*Bond Payment Date*” means any Principal Payment Date or Interest Payment Date.

“*Bond Resolution*” (a) when used with reference to the Series 2006 Bonds, the resolution providing for their issuance and the approving of the Series 2006 Ground Lease, the Series 2006 Town Lease, the First Supplement and related matters; (b) when used with reference to the Series 2009 Bonds, the Resolution providing for their issuance and approving the Series 2009 Ground Lease, the Series 2009 Town Lease, the Second Supplement and related matters; (c) when used with reference to the Series 2011 Bonds, the resolution providing for their issuance and approving the First Amendment to Series 2001 Ground Lease, the Series 2011 Town Lease, the Third Supplement and related matters; (d) when used with reference to the Series 2014 Bonds, the resolution providing for their issuance and approving the First Amendment to Series 2006 Ground Lease, the Series 2014 Town Lease, the Fourth Supplement and related matters (e) when used with reference to an issue of Additional Bonds, the resolution providing for the issuance of the Additional Bonds, to the extent applicable, and the resolution providing for the issuance of the Additional Bonds and the approving of any amendment or supplement to the Series 2006 Ground Lease, the Series 2009 Ground Lease or the First Amendment to Series 2001 Ground Lease, or the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease or the Series 2014 Town Lease, any agreements in lieu thereof, any Supplemental Indenture and related matters; and (e) when used with reference to Bonds when Additional Bonds are outstanding, the resolution providing for the issuance of the refunding bonds and the resolution providing for the issuance of the then outstanding and the then to be issued Additional Bonds, in each case as amended or supplemented from time to time.

“*Bond Retirement Fund*” means the Bond Retirement Fund created in the Indenture.

“*Bonds*” means the Series 2006 Bonds, the Series 2009 Bonds, the Series 2011 Bonds, the Series 2014 Bonds and any Additional Bonds.

“*Code*” means the Internal Revenue Code of 1986, as amended. References to the Code and Sections thereof include relevant applicable regulations and proposed regulations thereunder and any successor provisions to those sections, regulations or proposed regulations.

“*Debt Service Charges*” means, for any period of time, the principal of and interest and any premium due on the Bonds for that period or payable at that time, as the case may be.

“Debt Service Coverage” means the amount of revenues of Excise Taxes plus the State-Shared Revenues for the then-current Fiscal Year divided by the Maximum Annual Debt Service for the Bonds.

“Debt Service Payments” means those payments required to be made by or on behalf of the Corporation which will be applied to payment of principal of and interest on the Bonds.

“Defeasance Obligations” means, if applicable to the Series 2014 Bonds, cash, direct non-callable obligations of the United States of America and securities fully and unconditionally guaranteed as to the timely payment of principal and interest by the United States of America, to which direct obligation or guarantee the full faith and credit of the United States of America has been pledged, Refcorp interest strips, CATS, TIGRS, STRPS, or defeased municipal bonds rated “AAA” by S&P or “Aaa” by Moody’s (or any combination of the foregoing).

“Eligible Investments” has the meaning provided in the Fourth Supplement.

“Event of Bankruptcy” means the filing of a petition in bankruptcy by or against the specified Person under the United States Bankruptcy Code.

“Extraordinary Services” and *“Extraordinary Expenses”* mean all services rendered, and all reasonable expenses properly incurred, by the Trustee under the Indenture, other than Ordinary Services and Ordinary Expenses.

“Fiscal Year” means the twelve (12) month period beginning July 1 of each year and ending on June 30 of the next succeeding year.

“Gilbert Representative” means the Town Manager, Assistant Town Manager or the Finance Director of Gilbert, or such other persons designated by the Town Manager of Gilbert to act on behalf of Gilbert by a certificate filed with the Trustee containing the specimen signature of such person signed by the Town Manager of Gilbert.

“Interest Fund” means the Interest Fund created in the Indenture.

“Interest Payment Date” or *“Interest Payment Dates”* means, as to the Series 2014 Bonds, each January 1 and July 1, commencing on July 1, 2015, and as to Additional Bonds, each date or dates designated as an Interest Payment Date or Dates in the form of bond for which provision is made in the applicable Supplemental Indenture or Bond Resolution.

“Maximum Annual Debt Service” means, at the time of computation, the greatest Annual Debt Service Requirement for the then-current or any succeeding Fiscal Year.

“Moody’s” means Moody’s Investors Service or any successor thereto.

“Ordinary Services” and *“Ordinary Expenses”* mean those services normally rendered, and those expenses normally incurred, by a trustee under instruments similar to the Indenture.

“Outstanding Bonds,” “Bonds outstanding” or *“outstanding”* as applied to the Bonds, mean, as of the applicable date, all Bonds which have been authenticated and delivered, or which are being delivered by the Trustee under the Indenture, except: (a) Bonds cancelled upon surrender, exchange or transfer, or cancelled because of payment or redemption on or prior to that date; (b) Bonds, or the portion thereof, for the payment, redemption or purchase for cancellation of which sufficient moneys have been deposited and credited with the Trustee or any Paying Agents on or prior to that date for that purpose (whether upon or prior to the maturity or redemption date of those Bonds); provided, that if any of those Bonds are to be redeemed prior to their maturity, notice of that redemption shall have been given or arrangements satisfactory to the Trustee shall have been made for giving notice of that redemption, or waiver by the affected Owners of that notice satisfactory in form to the Trustee shall have been filed with the Trustee; (c) Bonds, or the portion thereof, which are deemed to have been paid and discharged or caused to have been paid and discharged pursuant to the provisions of the Indenture; and (d) Bonds in lieu of which others have been authenticated under the provisions of the Indenture.

“Owner” or “Bondowner” or “Owner of a Bond” means the Person in whose name a bond is registered on the Register.

“Paying Agent” means any bank or trust company designated as a Paying Agent by or in accordance with the provisions of the Indenture.

“Person” or words importing persons means firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, corporations, public or governmental bodies, other legal entities and natural persons.

“Predecessor Bond” of any particular Bond means every previous Bond evidencing all or a portion of the same debt as that evidenced by the particular Bond. For the purposes of this definition, any Bond authenticated and delivered under the provisions of the Indenture in lieu of a lost, stolen or destroyed Bond shall, except as otherwise provided in the Indenture, be deemed to evidence the same debt as the lost, stolen or destroyed Bond.

“President” means the President of the Corporation.

“Principal Payment Date” means, as to the Series 2014 Bonds, July 1 in the years specified in on the inside cover page hereof, for the stated amount of principal to be retired at maturity, or any other date on which the principal of the Series 2014 Bonds is payable as a result of redemption, optional or mandatory.

“Qualified Reserve Fund Instrument” means a surety bond, insurance policy or letter of credit meeting the requirements set forth below.

1. A surety bond or insurance policy issued to the entity serving as Trustee (the “Fiduciary”), as agent of the Bondholders, by a company licensed to issue an insurance policy guaranteeing the timely payment of debt service on the Bonds (a “municipal bond insurer”) may be deposited in the Reserve Fund to meet the Reserve Requirement if the claims paying ability of the issuer thereof shall be rated “AAA” or “Aaa” by S&P or Moody’s, respectively.
2. A surety bond or insurance policy issued to the Fiduciary, as agent of the Bondholders, by an entity other than a municipal bond insurer may be deposited in the Reserve Fund to meet the Reserve Requirement if the form and substance of such instrument and the issuer thereof shall be approved by the providers of any Qualified Reserve Fund Instrument then in effect if the applicable Qualified Reserve Fund Instrument is then in effect and the applicable provider thereof is not in default thereunder.
3. An unconditional irrevocable letter of credit issued to the Fiduciary, as agent of the Bondholders, by a bank may be deposited in the Reserve Fund to meet the Reserve Requirement if the issuer thereof is rated at least “AA” by S&P. The letter of credit shall be payable in one or more draws upon presentation by the beneficiary of a sight draft accompanied by its certificate that it then holds insufficient funds to make a required payment of principal or interest on the Bonds. The draws shall be payable within two days of presentation of the sight draft. The letter of credit shall be for a term of not less than three years. The issuer of the letter of credit shall be required to notify the Corporation and the Fiduciary, not later than 30 months prior to the stated expiration date of the letter of credit, as to whether such expiration date shall be extended, and if so, shall indicate the new expiration date.

If such notice indicates that the expiration date shall not be extended, the Corporation shall deposit in the Reserve Fund an amount sufficient to cause the cash or permitted investments on deposit in the Reserve Fund together with any other qualifying Qualified Reserve Fund Instruments, to equal the Reserve Requirement on all Outstanding Bonds, such deposit to be paid in equal installments on at least a semiannual basis over the remaining term of the letter of credit, unless the Reserve Fund Surety is replaced by a Qualified Reserve Fund Instrument meeting the requirements in any of 1-3 above. The letter of credit shall permit a draw in full not less than 14 days prior to the expiration or termination of such letter of credit if the letter of credit has not been replaced or renewed. The Fiduciary is hereby authorized and directed to draw upon the letter of credit prior to its expiration or termination unless an acceptable replacement is in place or the Reserve Fund is fully funded in its required amount.

The use of any Qualified Reserve Fund Instrument pursuant to this paragraph 3 shall be subject to receipt of an opinion of counsel acceptable to the providers of any Qualified Reserve Fund Instruments then in effect if the applicable Qualified Reserve Fund Instrument is then in good standing and the applicable provider thereof is not in default thereunder and in form and substance satisfactory to the providers of any Qualified Reserve Fund Instruments then in effect if the applicable Qualified Reserve Fund Instrument is then in good standing and the applicable provider thereof is not in default thereunder as to the due authorization, execution, delivery and enforceability of such instrument in accordance with its terms, subject to applicable laws affecting creditors' rights generally, and, in the event the issuer of such instrument is not a domestic entity, an opinion of foreign counsel in form and substance satisfactory to the providers of any Qualified Reserve Fund Instruments then in effect if the applicable Qualified Reserve Fund Instrument is then in good standing and the applicable provider thereof is not in default thereunder. In addition, the use of an irrevocable letter of credit shall be subject to receipt of an opinion of counsel acceptable to the providers of any Qualified Reserve Fund Instruments then in effect if the applicable Qualified Reserve Fund Instrument is then in good standing and applicable provider thereof is not in default thereunder and in form and substance satisfactory to the providers of any Qualified Reserve Fund Instruments then in effect if the applicable Qualified Reserve Fund Instrument is then in good standing and the applicable provider thereof is not in default thereunder to the effect that payments under such letter of credit would not constitute avoidable preferences under Section 547 of the U.S. Bankruptcy Code or similar state laws with avoidable preference provisions in the event of the filing of a petition for relief under the U.S. Bankruptcy Code or similar state laws by or against the issuer of the bonds (or any other account party under the letter of credit).

4. The obligation to reimburse the issuer of a Qualified Reserve Fund Instrument for any fees, expenses, claims or draws upon such Qualified Reserve Fund Instrument shall be subordinate to the payment of debt service on the Bonds. The right of the issuer of a Qualified Reserve Fund Instrument to payment or reimbursement of its fees and expenses shall be subordinated to cash replenishment of the Reserve Fund, and subject to the second succeeding sentence, its right to reimbursement for claims or draws shall be on a parity with the cash replenishment of the Reserve Fund. The Qualified Reserve Fund Instrument shall provide for a revolving feature under which the amount available thereunder will be reinstated to the extent of any reimbursement of draws or claims paid. If the revolving feature is suspended or terminated for any reason, the right of the issuer of the Qualified Reserve Fund Instrument to reimbursement will be further subordinated to cash replenishment of the Reserve Fund to an amount equal to the difference between the full original amount available under the Qualified Reserve Fund Instrument and the amount then available for further draws or claims. If (a) the issuer of a Qualified Reserve Fund Instrument becomes insolvent or (b) the issuer of a Qualified Reserve Fund Instrument defaults in its payment obligations thereunder or (c) the claims-paying ability of the issuer of the insurance policy or surety bond falls below a S&P "AAA" or a Moody's "Aaa" or (d) the rating of the issuer of the letter of credit falls below a S&P "AA", the obligation to reimburse the issuer of the Qualified Reserve Fund Instrument shall be subordinate to the cash replenishment of the Reserve Fund.
5. If (a) the revolving reinstatement feature described in the preceding paragraph is suspended or terminated or (b) the rating of the claims paying ability of the issuer of the surety bond or insurance policy falls below a S&P "AAA" or a Moody's "Aaa" or (c) the rating of the issuer of the letter of credit falls below a S&P "AA", the Corporation or Gilbert shall either (i) deposit into the Reserve Fund an amount sufficient to cause the cash or permitted investments on deposit in the Reserve Fund to equal the Reserve Requirement on all Outstanding Bonds, such amount to be paid over the ensuing five years in equal installments deposited at least semiannually or (ii) replace such instrument with a surety bond, insurance policy or letter of credit meeting the requirements in any of 1-3 above within six months of such occurrence. In the event (a) the rating of the claims-paying ability of the issuer of the surety bond or insurance policy falls below "A" or (b) the rating of the issuer of the letter of credit falls below "A" or (c) the issuer of the Qualified Reserve Fund Instrument defaults in its payment obligations or (d) the issuer of the Qualified Reserve Fund Instrument becomes insolvent, the Corporation shall either (i) deposit into the Reserve Fund an amount sufficient to cause the cash or permitted investments on deposit in the Reserve Fund to equal to Reserve Requirement on all Outstanding Bonds, such amount to be paid over the ensuing year in equal installments on at least a

monthly basis or (ii) replace such instrument with a surety bond, insurance policy or letter of credit meeting the requirements in any of 1-3 above within six months of such occurrence.

6. Where applicable, the amount available for draws or claims under the Qualified Reserve Fund Instrument may be reduced by the amount of cash or permitted investments deposited in the Reserve Fund pursuant to clause (i) of the preceding subparagraph 5.
7. If the Corporation or Gilbert choose the above described alternatives to a cash-funded Reserve Fund, any amounts owed by the Corporation or Gilbert to the issuer of such credit instrument as a result of a draw thereon or a claim thereunder, as appropriate, shall be included in any calculation of debt service requirements required to be made pursuant to this Indenture for any purpose. *e.g.*, rate covenant or Additional Bonds test.
8. The Fiduciary shall ascertain the necessity for a claim or draw upon the Qualified Reserve Fund Instrument and provide notice to the issuer of the Qualified Reserve Fund Instrument in accordance with its terms not later than three days (or such longer period as may be necessary depending on the permitted time period for honoring a draw under the Qualified Reserve Fund Instrument) prior to each interest payment date.
9. Cash on deposit in the Reserve Fund shall be used (or investments purchased with such cash shall be liquidated and the proceeds applied as required) prior to any drawing on any Qualified Reserve Fund Instrument. If and to the extent that more than one Qualified Reserve Fund Instrument is deposited in the Reserve Fund, drawings thereunder and repayments of costs associated therewith shall be made on a pro rata basis, calculated by reference to the maximum amounts available thereunder.

“*Register*” means the registration books for the Bonds maintained by the Registrar.

“*Registrar*” means, as to the Series 2014 Bonds, the Trustee, until a successor Registrar shall have become such pursuant to applicable provisions of the Indenture and as to any series of Additional Bonds, the bank, trust company or other Person designated as such by or pursuant to the applicable Bond Resolution or Supplemental Indenture.

“*Regular Record Date*” means, with respect to any Bond, the 15th day of the calendar month next preceding an Interest Payment Date applicable to that Bond.

“*Reimbursement Fund*” means the Reimbursement Fund created in the Indenture. “*Reserve Fund*” means the Reserve Fund created in the Indenture.

“*Reserve Requirement*” means an amount equal to the Maximum Annual Debt Service for the Bonds Outstanding at the time of the deposit to the Reserve Fund then required; provided, however, that such amount shall not exceed the least of (a) an amount equal to the sum of 10% of the net proceeds of each series of the Bonds at the time of original issuance of each such series, (b) the sum of the Maximum Annual Debt Service for any Fiscal Year on each series of the Bonds at the time of original issuance of each such series, or (c) the sum of 125% of the average annual debt service on each series of the Bonds at the time of original issuance of each such series. The Reserve Requirement may be satisfied by cash, a Qualified Reserve Fund Instrument, or a combination of these two. For purposes of calculating the Reserve Requirement, variable rate indebtedness shall be assumed to bear interest at (a) if interest on the indebtedness is excludable from gross income under the applicable provisions of the Code, the most recently published Bond Buyer “Revenue Bond Index” (or comparable index if no longer published) plus 50 basis points, or (b) if interest is not excludable, the interest rate on direct U.S. Treasury Obligations with comparable maturities plus 50 basis points.

“*Revenue Fund*” means the Revenue Fund created in the Indenture.

“*Revenues*” means (a) the rental payments due under the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease, (b) all other moneys received or to be received by the Corporation or the Trustee in respect of the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease, including without limitation, moneys and investments in the Bond Retirement Fund, and (c) all income and profit from the investment of the foregoing moneys.

“*S&P*” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies or any successor thereto.

“*Secretary-Treasurer*” means the Secretary-Treasurer of the Corporation.

“*Series 2006 Bond Retirement Account*” means the Series 2006 Bond Retirement Account of the Bond Retirement Fund created in the Indenture.

“*Series 2006 Ground Lease*” means the Series 2006 Ground Lease, dated as of October 1, 2006, from Gilbert, as Lessor, to the Corporation, as Lessee.

“*Series 2006 Interest Account*” means the Series 2006 Interest Account of the Interest Fund created in the Indenture.

“*Series 2006 Insurer*” means Financial Guaranty Insurance Company.

“*Series 2006 Revenue Account*” means the Series 2006 Revenue Account of the Revenue Fund created in the Indenture.

“*Series 2009 Bond Retirement Account*” means the Series 2009 Bond Retirement Account of the Bond Retirement Fund created in the Indenture.

“*Series 2009 Ground Lease*” means the Series 2009 Ground Lease, dated as of March 1, 2009, from Gilbert, as lessor, to the Corporation, as lessee.

“*Series 2009 Interest Account*” means the Series 2009 Interest Account of the Interest Fund created in the Indenture.

“*Series 2009 Revenue Account*” means the Series 2009 Revenue Account of the Revenue Fund created in the Indenture.

“*Series 2011 Bond Retirement Account*” means the Series 2011 Bond Retirement Account of the Bond Retirement Fund created in the Indenture.

“*Series 2011 Interest Account*” means the Series 2011 Interest Account of the Interest Fund created in the Indenture.

“*Series 2011 Revenue Account*” means the Series 2011 Revenue Account of the Revenue Fund created in the Indenture.

“*Series 2014 Bond Retirement Account*” means the Series 2014 Bond Retirement Account of the Bond Retirement Fund created in the Indenture.

“*Series 2014 Interest Account*” means the Series 2014 Interest Account of the Interest Fund created in the Indenture.

[“*Series 2014 Insurer*” means _____.]

“*Series 2014 Revenue Account*” means the Series 2014 Revenue Account of the Revenue Fund created in the Indenture.

“*Special Record Date*” means, with respect to any Bond, the date established by the Trustee in connection with the payment of overdue interest on that Bond pursuant to the provisions of the Indenture.

“*Supplemental Indenture*” means any indenture supplemental to the Indenture entered into between the Corporation and the Trustee in accordance with the provisions of the Indenture.

“Unassigned Corporation’s Rights” means all of the rights of the Corporation to receive or to benefit from additional payments under the provisions of the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease to be held harmless and indemnified under the provisions thereof, to be reimbursed for attorneys’ fees and expenses under the provisions of the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease to receive notice thereunder and to give or withhold consent to amendments, changes, modifications and alterations of the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease and its right to enforce such rights.

SUMMARY OF CERTAIN PROVISIONS OF THE FIRST AMENDMENT TO SERIES 2006 GROUND LEASE

The following is a summary of certain provisions of the First Amendment to Series 2006 Ground Lease, to which reference is hereby made for a more complete description of its terms.

General

The First Amendment to Series 2006 Ground Lease is between Gilbert, as lessor, and the Corporation, as lessee, and provides for the continuation of the lease of the Real Property. The term of the First Amendment to Series 2006 Ground Lease commences as of December 1, 2014, and continues until July 2, 2021, or such later date as of which all of the Series 2014 Bonds are deemed paid and discharged under the Indenture. Gilbert has the right to terminate the First Amendment to Series 2006 Ground Lease only after payment of, or provision for payment of, all of the Series 2014 Bonds is made.

Assignment

The Corporation, in connection with the issuance of the Series 2014 Bonds, will assign to the Trustee all of its rights and benefits under the First Amendment to Series 2006 Ground Lease and will grant to the Trustee a lien on its leasehold interest under the First Amendment to Series 2006 Ground Lease.

SUMMARY OF CERTAIN PROVISIONS OF THE SERIES 2014 TOWN LEASE

The following is a summary of certain provisions of the Series 2014 Town Lease, to which reference is hereby made for a more complete description of its terms. See also “THE SERIES 2014 BONDS – Source of Payment of the Series 2014 Bonds and Pledge” herein.

General

The Series 2014 Town Lease is between the Corporation, as lessor, and Gilbert, as lessee, and provides for the continuation of the lease to Gilbert of the Leased Property for a term commencing December 1, 2014, and continuing until July 2, 2021, or such later date as of which the Series 2014 Bonds are deemed paid and

discharged under the Indenture. Gilbert has the right to terminate the Series 2014 Town Lease when payment of, or provision for payment and discharge of, all of the Series 2014 Bonds is made.

Rent

Gilbert agrees to pay, as rent payments to the Corporation, its successors or assigns, on each June 15 and December 15, commencing on June 15, 20__, an amount which, when added to the amount then on deposit in the Series 2014 Interest Account of the Interest Fund, shall be equal to the interest due on the Series 2014 Bonds on the next Interest Payment Date, and on each June 15, commencing on June 15, 20__, an amount which, when added to the amount then on deposit in the Series 2014 Bond Retirement Account of the Bond Retirement Fund, shall be equal to the principal due on the Series 2014 Bonds on the next Principal Payment Date. Gilbert further agrees to pay, as rent payments to the Corporation, its successors and assigns, on the June 15 following the Fiscal Year in which the Debt Service Coverage is three (3) times or less on each June 15 and December 15, thereafter, an amount equal to one tenth (1/10th) of the amount required to fund and maintain the Reserve Fund in an amount equal to the Reserve Requirement for the Series 2014 Bonds until such time as the amount on deposit in the Reserve

Fund shall equal the Reserve Requirement for the Series 2014 Bonds and on the first day of each month, commencing on the first day of the month following a payment made on the Series 2014 Bonds from the Reserve Fund, an amount equal to one-twelfth (1/12th) of the amount which, when added to the balance then in the Reserve Fund, shall be equal to the amount which should have then been on deposit in the Reserve Fund for the Series 2014 Bonds.

The rental payments payable under the Series 2014 Town Lease are to be paid for and in consideration of the use and occupancy of the Leased Property which Gilbert receives and in consideration of the continued quiet use and enjoyment thereof as provided in the Series 2014 Town Lease. Gilbert's rent payments under the provisions of the Series 2014 Town Lease will be paid directly to the Trustee for and on behalf of the Corporation. Gilbert's obligation for rent payments under the Series 2014 Town Lease are coextensive with the Corporation's debt service and other payment obligations under the Indenture, and when the Series 2014 Bonds and other obligations under the Indenture have been fully paid or payment provided for, Gilbert will, except for Gilbert's obligation to make payments to the Trustee pursuant to the provision of the Indenture and the arbitrage rebate payments to be made pursuant to the Code, have no further obligation to make rental payments thereunder.

Additional Rental Payments

Gilbert shall pay as additional rental payments (a) all other amounts required to be paid by Gilbert or the Corporation to the Trustee under Indenture, (b) all fees and expenses of the Trustee, the Registrar and the Paying Agents under the Indenture to the extent, if any, that such fees, expenses and payments are not met by the regular rental payments, (c) the reasonable expenses of the Corporation approved by Gilbert and not otherwise required to be paid by Gilbert under the terms of the Town Lease, (d) losses on investments made by the Trustee at the direction of Gilbert under the terms of the Indenture, but only to the extent necessary to meet the debt service on the Series 2014 Bonds, (e) fees for maintaining the Corporation's corporate existence, and all costs, expenses, losses or damages, including reasonable attorneys' fees, pertaining to any claim or legal action brought against the Trustee or the Corporation with respect to the legality of any defect in the First Amendment to Series 2006 Ground Lease, the Series 2014 Town Lease, the Indenture or the Series 2014 Bonds, or questioning the legality of any action taken or to be taken pursuant thereto, (f) all other expenses of the Corporation incurred at the written request of Gilbert or the Trustee in accordance with the provisions of the Series 2014 Town Lease or the Indenture, and (g) all amounts required to pay any arbitrage rebate payments pursuant to the provisions of the Code.

Any rent payment accruing under the Series 2014 Town Lease which shall not be paid within five days after its due date shall bear interest at the highest rate permitted by law, but not exceeding 10% per annum, from the date when the same is due under the Series 2014 Town Lease until the same shall be paid. All rental payments for debt service on the Series 2014 Bonds and other items required to be paid by the Indenture, as well as additional rental payments payable to the Trustee under the provisions of the Series 2014 Town Lease, shall be paid at the designated corporate trust office of the Trustee. The Corporation shall cause the Trustee to apply the rental payments made by Gilbert in the manner and for the purposes expressed in the Indenture.

Unless otherwise requested by Gilbert pursuant to the provisions of the Series 2014 Town Lease, any money in the Series 2014 Revenue Account of the Revenue Fund which, in the opinion of the Trustee, exceeds the amounts necessary for the current debt service on the Series 2014 Bonds then outstanding (including administrative costs and expenses) shall, at least annually, so long as Gilbert is not in default under the Series 2014 Town Lease, constitute a credit to Gilbert on the next succeeding rent payment or payments due or coming due under the Series 2014 Town Lease. Likewise, earnings on the Reserve Fund, if any, shall, at least annually, so long as Gilbert is not in default under the Series 2014 Town Lease, constitute a credit to Gilbert on the next succeeding rent payment or payments due or coming due under the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease pro-rata. Notwithstanding the foregoing, if Gilbert is required to make rental payments pursuant to the provisions of the Series 2014 Town Lease for deposit into the Reserve Fund, then in that event, until such time as the amount in the Reserve Fund shall equal the Reserve Requirement, any excess moneys in the Revenue Fund shall, at least annually, so long as Gilbert is not in default under the Series 2014 Town Lease, be deposited in the Reserve Fund and any earnings on the Reserve Fund shall be retained in the Reserve Fund.

Taxes, Liens, Utilities, Insurance and Other Charges

Gilbert agrees that the rent payments payable under the Series 2014 Town Lease shall be an absolute net return to the Corporation, free from any expenses and charges with respect to the Leased Property or the income therefrom.

Gilbert shall pay or cause to be paid, punctually when due and payable, all property taxes, income taxes, gross receipts taxes, business and occupation taxes, occupational license taxes, water charges, sewer charges, assessments (including, but not limited to, assessments for public improvements or benefits), and all other governmental exactions of every kind and nature which at any time prior to the expiration or termination of the Series 2014 Town Lease shall be or become due and payable by the Corporation or Gilbert, and which shall be levied, charged, assessed or imposed: (a) upon or with respect to the Corporation, or which shall be or become liens upon the Leased Property or any interest of the Corporation or Gilbert therein or under the Series 2014 Town Lease; (b) upon or with respect to the possession, operation, management, maintenance, alteration, repair, rebuilding, use or occupancy of by Gilbert of the Leased Property, or any portion thereof; or (c) upon this transaction or any document to which Gilbert is a party creating or transferring an interest or an estate in or to the Leased Property. Gilbert shall furnish to the Corporation promptly, upon request, proof of the payment of any such tax, assessment or other governmental exaction which is payable by Gilbert as described above. It shall not be a breach of the Series 2014 Town Lease if Gilbert fails to pay any such tax, charge, assessment or exaction during any period or periods in which Gilbert, in good faith, or the Corporation, shall be contesting the amount or validity of such tax, charge, assessment or exaction. The Corporation will, if requested by Gilbert, contest the amount or validity of any such tax, charge, assessment or exaction, and Gilbert agrees to pay the Corporation's costs therefore.

Gilbert also agrees to pay, when due, all sums of money that may become due for or purporting to be for, any labor, services, materials, supplies or equipment alleged to have been furnished or to be furnished to or for Gilbert in, upon or about the Leased Property and which may be secured by any mechanics', materialmen's or other lien against the Leased Property or the Corporation's interest therein and will cause each such lien to be fully discharged and released at the time of performance of any obligation secured by any such lien matures or becomes due, provided, however, that if Gilbert desires to contest any such lien it may do so, but notwithstanding any such contest, if any such lien shall be reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and said stay thereafter expires, then and in any such event Gilbert shall forthwith pay and discharge said judgment.

Gilbert shall further pay or cause to be paid, all charges for gas, water, steam, electricity, light, heat, power, telephone or other utility service furnished to or used in connection with the Leased Property. The Corporation shall not be required to furnish to Gilbert or any other occupant of the Leased Property any gas, water, sewer, electricity, light, heat, power, telephone or other utility service of any kind, nor shall the Corporation be required to pay for any such charges or services.

Gilbert shall, at its own cost and expense, during the term of the Series 2014 Town Lease, keep the Leased Property in good repair and condition, ordinary wear and tear excepted, and shall repair, renew or replace any portion of such improvements that shall have lost its usefulness due to damage, destruction, deterioration, or obsolescence. In exchange for the rent payments in the Series 2014 Town Lease provided, the Corporation agrees to provide nothing more than the Leased Property. Failure of Gilbert to faithfully observe this covenant shall constitute a breach of the Series 2014 Town Lease, and the Corporation shall have reasonable rights of inspection for the purpose of determining Gilbert's performance of its obligations under the Series 2014 Town Lease.

Gilbert shall cause the Leased Property to be insured against loss or damage by fire, explosion and other hazards customarily insured under extended coverage, in an amount not less than the full insurable value of such property, and shall maintain other insurance on its properties with respect to loss, damage, liability and other claims of the kind customarily insured against by similarly situated municipal corporations. All such insurance to be of such types and in such amounts and with such deductible provisions as are customarily carried under similar circumstances by such other municipal corporations. All such insurance shall be carried with financially sound and reputable insurance companies authorized to issue such policy or insure such risk in the State. Each policy shall contain provisions, if available, that written notice of cancellation or substantial modification thereof shall be given to the Corporation and the Trustee at least 30 days, or the greatest available period shorter than 30 days prior to such cancellation or modification. Gilbert may obtain blanket policies covering one or more risks if the minimum

coverages required herein are met and all buildings located on the Leased Property are covered to their full insurable value.

Quiet Enjoyment; Expiration or Termination of Lease; Surrender of Premises

Gilbert, by keeping and performing the covenants and agreements contained in the Series 2014 Town Lease, shall at all times during the term thereof, peaceably and quietly, have, hold and enjoy the Leased Property, without suit, trouble or hindrance from the Corporation.

In consideration of the timely payment of all rent payments provided in the Series 2014 Town Lease, and provided that (a) Gilbert has performed all the covenants and agreements required of it to be performed and (b) the Series 2014 Bonds as to principal, interest and any premium, together with any remaining administrative expenses have been paid or provided for, the Corporation shall cause the Trustee to release the Leased Property from the lien of the Indenture. Gilbert may then exercise its rights of termination under the provisions of the Series 2014 Town Lease. Upon such termination, all rights of the Corporation or any other person or entity, except Gilbert, in and to the demised premises shall cease and the Corporation shall, by appropriate instruments of conveyance, and without further consideration, convey the Leased Property to Gilbert.

Remedies Upon Default, No Abatement of Rentals

Upon the nonpayment of the whole or any part of the rent payments when the same are to be paid as provided in the Series 2014 Town Lease or violation by Gilbert of any other covenant or provision of the Series 2014 Town Lease and if such default has not been cured (a) in the case of nonpayment of rental payments, within five days, and (b) in the case of the breach of any other covenant or provision thereof, within 30 days after notice in writing from the Corporation specifying such default, the Corporation may bring an action for the recovery of any of the rent payments due (but not for rent payments accruing), or for damages for breach of the Series 2014 Town Lease, and the Corporation may pursue any other remedy which the law affords, except that the remedy of specific performance shall also be available.

The Corporation, upon the bringing of a suit to collect the rent payments in default, may request enforcement of the pledges and foreclosure of the liens set forth in the Series 2014 Town Lease, in which event the Corporation, as a matter of right, without notice and without giving any bond or surety to Gilbert or anyone claiming under Gilbert, may have a receiver appointed of all the Excise Taxes with such powers as the court making such appointment shall confer. In any suit to enforce the terms of the Series 2014 Town Lease, the Corporation shall recover its costs therein, as well as reasonable attorneys' fees, as such court shall approve.

The Corporation shall in no event be in default in the performance of any of its obligations under the Series 2014 Town Lease unless the Corporation shall have failed to perform such obligations within 30 days or such additional time as is reasonably required to correct any such default after notice by Gilbert to the Corporation and to the Trustee properly specifying wherein the Corporation has failed to perform any such obligation. So long as any of the Series 2014 Bonds are outstanding, Gilbert shall have no right to abate or offset the payments of rent payments to be made by Gilbert under the provisions of the Series 2014 Town Lease as a result of a default by the Corporation. In the event of default by the Corporation, the Corporation agrees that specific performance may be had and that Gilbert shall not be limited to a remedy for damages.

Except as in the Series 2014 Town Lease expressly provided, the Series 2014 Town Lease shall not terminate or be affected in any manner by reason of the condemnation, destruction or damage, in whole or in part, or by reason of the unusability of, the Leased Property, and, except as in the Series 2014 Town Lease expressly provided, the rent payments, as well as all other amounts payable under the provisions of the Series 2014 Town Lease, shall be paid by Gilbert in accordance with the terms, covenants and conditions of the Series 2014 Town Lease without abatement, diminution or reduction.

Each right, power and remedy of the Corporation or Gilbert provided for in the Series 2014 Town Lease shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for therein, or, unless prohibited by the terms thereof, now or hereafter existing at law or in equity or by statute or otherwise, in any jurisdiction where such rights, powers and remedies are sought to be enforced, and the exercise or beginning of the exercise by the Corporation or Gilbert of any one or more of the rights, powers or remedies

provided for therein or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by either party of any or all of such other rights, powers or remedies.

The failure to insist upon strict performance of any of the covenants or agreements in the Series 2014 Town Lease set forth shall not be considered or taken as a waiver or relinquishment for the future of the Corporation's or Gilbert's rights to insist upon a strict compliance by Gilbert or the Corporation with all the covenants and conditions thereof.

Refinancing; Refunding; Redemptions; Purchase of Series 2014 Bonds

Upon notice to the Corporation, Gilbert may request the Corporation to refinance its bonded indebtedness and other obligations by refunding or redeeming, as the case may be, all or any portion of the Series 2014 Bonds then outstanding, subject to the provisions of the Indenture. The Corporation agrees to use its best efforts to so refinance the Series 2014 Bonds. Prior to the issuance of obligations for the purpose of refinancing the Series 2014 Bonds, the Corporation and Gilbert shall enter into a written supplement to the Series 2014 Town Lease increasing or decreasing, as the case may be, the rental payments to be paid under the provisions of the Series 2014 Town Lease by an amount at least sufficient to enable the Corporation to fully pay the principal and interest, when due, on such new obligations and all other usual and ordinary costs and expenses relating thereto, and such supplement to the Series 2014 Town Lease or such separate lease shall be recorded in the Office of the County Recorder of Maricopa County, Arizona.

Gilbert shall have the right to pay installment rent payments in advance and may specify that they be placed in the Bond Retirement Fund. Except as provided in the Series 2014 Town Lease, in addition, if at any time the money in the Series 2014 Revenue Account of the Revenue Fund exceeds, in the opinion of the Trustee, the amounts necessary for the current debt service on the Series 2014 Bonds then outstanding and the fees, charges and expenses of the Trustee and the Registrars and the Paying Agents which are unpaid, such excess shall, at the request of Gilbert, be transferred to and paid over into the Series 2014 Bond Retirement Account of the Bond Retirement Fund. At Gilbert's request, the Corporation shall cause the amount of money contained in the Series 2014 Bond Retirement Account of the Bond Retirement Fund from time to time to be used on any redemption date authorized in the Indenture to retire all or any portion of the outstanding Series 2014 Bonds pursuant to the provisions of the Indenture, or if, before Series 2014 Bonds are callable, they may be obtained in the open market at a cost equal to or below par, or, after the Series 2014 Bonds are callable, they may be so obtained at a price below the cost of redemption, then, upon Gilbert's request, the Corporation shall cause money contained in the Series 2009 Bond Retirement Account of the Bond Retirement Fund to be used to purchase Series 2014 Bonds in the open market for the purpose of cancellation. At such time or times as Series 2014 Bonds are redeemed or purchased pursuant hereto, the rental payments to be paid by Gilbert under the provisions of the Series 2014 Town Lease shall be adjusted in such manner as to provide for the debt service on the remaining Series 2014 Bonds.

Upon retirement of all the Series 2014 Bonds by means of redemption or purchase pursuant to the provisions of the Series 2014 Town Lease, and upon payment of any remaining administrative costs and expenses, the Corporation shall cause the Trustee to release the Leased Property from the lien of the Indenture, and Gilbert may then exercise its right to terminate the Series 2014 Town Lease, except for Gilbert's obligation to make arbitrage rebate payments pursuant to the Code.

Additional Bonds and Other Obligations

One or more issues of Additional Bonds or other obligations (collectively "Additional Obligations") on a parity with the Series 2014 Bonds may be established, and such Additional Obligations, in such principal amount as may be determined by the Corporation, may be issued and delivered subject to the following specific conditions which are hereby made conditions precedent to the issuance of such Additional Obligations: (i) such Additional Obligations shall have been authorized to finance or refinance the cost of acquiring, constructing, reconstructing or improving buildings, equipment and other real and personal properties suitable for use by and for leasing to Gilbert or its agencies or instrumentalities, or to refinance or refund any bonds or other obligations which have been issued for such purposes, and the issuance thereof shall have been determined and declared by the Corporation, by appropriate resolution, to be necessary for that purpose; (ii) the Corporation shall be in compliance with all covenants and undertakings set forth in the Series 2014 Town Lease and the Indenture, as either or both of them may have been supplemented or amended; (iii) the resolution authorizing issuance of such Additional Obligations shall require that the proceeds of the sale of such Additional Obligations shall be applied solely for one

or more of the purposes set forth in (i) above and expenses and costs incidental thereto, including costs and expenses incident to the issuance and sale of such Additional Obligations and the costs of any premium relating to insurance on the Additional Obligations and interest on said Additional Obligations during the actual period of any acquisition and construction of such facilities, and for a reasonable period of time thereafter; (iv) such Additional Obligations shall be equally and ratably secured with the Series 2014 Bonds, without preference or priority of any of the Series 2014 Bonds or Additional Obligations over any Series 2014 Bonds or Additional Obligations, except as expressly provided in the Indenture, as supplemented; (v) the Corporation shall have entered into a revised agreement with Gilbert, or shall have amended the Series 2014 Town Lease, in and by which Gilbert obligates itself in the manner therein provided to increase the rental payments or to make such payments to the Corporation at the times and in amounts sufficient to provide for the payment of principal and interest on such Additional Obligations as such principal and interest become due; and (vi) the conditions set forth in the Series 2014 Town Lease described under the heading “THE SERIES 2014 BONDS – Issuance and Delivery of Additional Bonds By the Corporation; Gilbert’s Right to Further Encumber the Excise Taxes and the State-Shared Revenues” herein for the issuance of such Additional Obligations shall then be satisfied.

Access and Control of Town

The Corporation, incident to the issuance and sale of the Series 2014 Bonds, will assign all rights and benefits under the Series 2014 Town Lease to the Trustee and will grant the Trustee a lien on its interest in the Series 2014 Town Lease for the benefit of the Owners of the Series 2014 Bonds. Gilbert consents to such assignment and grant of lien.

The Corporation agrees that Gilbert, so long as no event of default by Gilbert under the Series 2014 Town Lease shall have occurred and be continuing, shall at all times have and retain such rights of access and control of the Leased Property. The rights and interests of the Corporation assigned, granted and set over to the Trustee under the Indenture shall, so long as no event of default by Gilbert under the Series 2014 Town Lease shall have occurred and be continuing, be subject and subordinate to the rights of Gilbert under the provisions of the Series 2014 Town Lease.

SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE

The following is a summary of certain provisions in the Indenture to which reference is hereby made for a more complete description of its terms. See also “THE SERIES 2014 BONDS” herein.

Pledge and Assignment

Under the Indenture, the Corporation pledges and assigns to the Trustee all its right, title and interest in and to the Series 2006 Ground Lease, the Series 2009 Ground Lease, the First Amendment to Series 2001 Ground Lease, the First Amendment to Series 2006 Ground Lease, the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease and all payments to be made thereunder except for the Unassigned Corporation’s Rights. Such rights of the Corporation are and will be assigned to the Trustee to secure the payment of the debt service on the Series 2006 Bonds, the Series 2009 Bonds, the Series 2011 Bonds and the Series 2014 Bonds.

Provisions as to Funds and Payments

The following are established under the Indenture as separate deposit accounts (except when invested as hereinafter set forth) in the custody of the Trustee: (i) Revenue Fund, including a Series 2006 Revenue Account, a Series 2009 Revenue Account, a Series 2011 Revenue Account and a Series 2014 Revenue Account; (ii) Interest Fund, including a Series 2006 Interest Account, a Series 2009 Interest Account, a Series 2011 Interest Account and a Series 2014 Interest Account; (iii) Bond Retirement Fund, including a Series 2006 Bond Retirement Account, a Series 2009 Bond Retirement Account, a Series 2011 Bond Retirement Account and a Series 2014 Bond Retirement Account; (iv) Reserve Fund; and (v) Reimbursement Fund.

Receipt of Revenues. The installments of rents to be paid by Gilbert pursuant to the terms of the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease have been assigned by the Corporation to the Trustee so that such amounts shall be paid by Gilbert directly to the Trustee, and the Trustee shall credit such amounts to the Revenue Fund, the Reserve Fund and the Reimbursement

Fund as appropriate. Certain of the installments of rents to be paid by Gilbert pursuant to the terms of the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease shall be deposited in the Series 2006 Revenue Account, the Series 2009 Revenue Account, the Series 2011 Revenue Account and the Series 2014 Revenue Account, respectively, of the Revenue Fund, as provided in the Indenture, and other installments shall be deposited in the Reserve Fund and the Reimbursement Fund. If at any time the amount in the Revenue Fund exceeds, in the sole opinion of the Trustee, the amount necessary for the current debt service on all Bonds then outstanding, including administration costs and expenses, and Gilbert is not then in default under the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease or the Series 2014 Town Lease, such excess shall constitute a credit to Gilbert on the next succeeding installments of rent due or to become due under the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease in such manner as Gilbert may direct; provided, however, that Gilbert may exercise its rights under the provisions of the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease relating to the redemption or purchase of Bonds, in which event such excess funds shall be transferred to and paid over into the appropriate Bond Retirement Account of the Bond Retirement Fund. Notwithstanding the foregoing, if Gilbert is required to make rent payments pursuant to the provisions of the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease relating to the funding of the Reserve Fund, then in that event, until such time as the amount in the Reserve Fund shall equal the Reserve Requirement, any excess moneys in the Revenue Fund shall, at least annually, so long as Gilbert is not in default under the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease or the Series 2014 Town Lease, be deposited in the Reserve Fund and any earnings in the Reserve Fund shall be retained in the Reserve Fund. The aforesaid credit or transfer shall be made by the Trustee no less frequently than annually.

Flow of Funds – Interest Fund/Bond Retirement Fund. The Trustee shall transfer from the Series 2014 Revenue Account of the Revenue Fund the following amounts at the time and in the manner hereinafter provided for, to wit:

(1) *Series 2014 Interest Account of the Interest Fund:* One business day prior to each Interest Payment Date, the Trustee shall deposit in the Series 2014 Interest Account of the Interest Fund an amount equal to the amount of the interest becoming due and payable on the outstanding Series 2014 Bonds on the next Interest Payment Date, and each such deposit shall be made so that adequate amounts for the payment of interest will be available in such fund on each date that interest payments are to be made hereunder. Amounts in the Series 2014 Interest Account of the Interest Fund shall be used and withdrawn by the Trustee solely for the purpose of paying the interest on the Series 2014 Bonds as it shall become due and payable.

(2) *Series 2014 Bond Retirement Account of the Bond Retirement Fund:* One business day prior to each Principal Payment Date, the Trustee shall deposit in the Series 2014 Bond Retirement Account of the Bond Retirement Fund solely for the purpose of paying the principal of the Series 2014 Bonds as each amount shall become due and payable on or before the applicable dates, the applicable principal amounts.

Flow of Funds – Reserve Fund/Reimbursement Fund:

(1)(a) No deposit need be made into the Reserve Fund if the Debt Service Coverage is greater than three (3) times. The Trustee shall deposit into the Reserve Fund from amounts paid pursuant to the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease and any agreement with respect to any Additional Bonds, on each June 15 and December 15, commencing on the June 15 following the Fiscal Year in which the Debt Service Coverage is three (3) times or less an amount equal to one tenth (1/10th) of the amount required to fund and maintain the Reserve Requirement until such time as the amount on deposit in the Reserve Fund equals the Reserve Requirement.

(b) Monthly, commencing on the first day of the month following a payment made from the Reserve Fund, the Trustee shall deposit into the Reserve Fund from certain amounts paid pursuant to the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease and the similar requirements with respect to any Additional Bonds an amount equal to one-twelfth (1/12th) of the amount required to restore the Reserve Fund to an amount equal to the amount which should have then been on deposit in the Reserve Fund until such time as the amount on deposit in the Reserve Fund shall equal the amount which should have been so deposited.

(c) No deposit need be made into the Reserve Fund if the amount on deposit therein plus the maximum amount of the Qualified Reserve Fund Instruments contained therein is at least equal to an amount equal to the Reserve Requirement. (If and to the extent that money has also been deposited in the Reserve Fund, all such money shall be used (or investments purchased with such money shall be liquidated and the proceeds applied as required) prior to any drawing under a Qualified Reserve Fund Instrument on a *pro rata* basis. If and to the extent that more than one Qualified Reserve Fund Instrument is credited to the Reserve Fund *in lieu* of money, drawings under such Qualified Reserve Fund Instruments (and repayment or reimbursement of amounts with respect to such Qualified Reserve Fund Instruments as hereinafter described) shall be made on a *pro rata* basis (calculated by reference to the policy limits or maximum amounts available thereunder) after applying all available money in the Reserve Fund.)

(d) Except for the hereinafter described withdrawals, amounts in the Reserve Fund shall be used and withdrawn solely for the purpose of paying the interest on or principal of the Bonds in the event that no other money of the Corporation is available therefore or for the retirement of all of the Bonds then outstanding or all or any portion of any series of the Bonds then Outstanding. (In the case of the last clause of the preceding sentence, the amount to be withdrawn for such purpose shall be calculated *pro rata* based on the Maximum Annual Debt Service for such series or portion thereof to the Maximum Annual Debt Service for the Bonds Outstanding at the time of calculation.)

(e) If on July 21 of any year the amount in the Reserve Fund exceeds an amount equal to the Reserve Requirement and if the Corporation is not then in default under this Indenture, the Trustee shall withdraw the amount of any such excess from such fund and shall apply such amount, *first* and on a *pro rata* basis, to pay amounts due with respect to any Qualified Reserve Fund Instrument, including by depositing the applicable *pro rata* amounts in the appropriate "Reimbursement Account" of the Reimbursement Fund hereafter established to reimburse the providers of any Qualified Surety Bond Instruments for any payments made by the providers thereof until the corresponding costs are paid, and *second*, as a deposit to the Revenue Fund.

(2) Monthly, commencing on the first (1st) day of the month following a payment made from any Qualified Surety Bond Instrument, the Trustee shall deposit in the corresponding Reimbursement Account of the Reimbursement Fund an amount of money equal to the amount paid for that purpose pursuant to the agreement with respect thereto to reimburse the provider thereof for the costs with respect thereto.

Investment of Funds. Substantially all amounts in any of the funds and accounts to be established by the Trustee pursuant to the provisions of the Indenture shall, at the direction of Gilbert, so long as Gilbert is not in default under the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease or the Series 2014 Town Lease, be invested and reinvested by the Trustee in Eligible Investments, or if Gilbert fails to so direct or instruct the Trustee, the Trustee may invest and reinvest such amounts in Eligible Investments described in the Indenture. Such investments shall mature or be redeemable at the option of the Trustee at the times and in the amounts necessary to provide moneys to pay Debt Service Charges as they become due at stated maturity, by

redemption or pursuant to any mandatory redemption requirements. Except as otherwise provided in the Indenture, any interest, profit or loss on investments made pursuant to the provisions of the Indenture shall be credited or charged to the fund or account to which such interest, profit or loss relates. It is understood, pursuant to the provisions of the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease, that any losses on such investments are to be made up by Gilbert to the extent necessary to meet the Debt Service Charges, and to pay the Trustee's, the Registrar's and Paying Agents' fees and expenses under the Indenture as well as payments to any provider of Qualified Reserve Fund Instrument, and any money paid to the Trustee by Gilbert for such purpose shall be deposited in the fund or account with respect to which, and to the extent that, such losses were incurred. At any time that Gilbert is in default under the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease or the Series 2014 Town Lease, substantially all amounts in any of the funds and accounts to be established by the Trustee pursuant to the provisions of the Indenture shall be invested and reinvested by the Trustee at the direction of the Corporation in Eligible Investments. An investment shall be valued by the Trustee as frequently as deemed necessary by the Bond Insurers not then in default, but not less often than annually, at the market value thereof, exclusive of accrued interest. Deficiencies in the amount on deposit in any fund or account resulting from a decline in market value shall be restored no later than the succeeding valuation date. Investments purchased with funds on deposit in the Reserve Fund shall have a term to maturity of not greater than five years. Any investment of amounts in any fund or account established under the Indenture may be purchased from or through, or sold to, the Trustee or any affiliate of the Trustee, and any such investment made through the purchase of shares in a fund described in clause (6) of the definition of Eligible Investments may be in a fund which is advised or administered by the trustee or any affiliate of the Trustee (for which services the Trustee or such affiliate, as the case may be, may receive a fee).

Moneys to be Held in Trust. Except where amounts have been deposited with or paid to the Trustee pursuant to an instrument restricting their application to particular Bonds, all amounts required or permitted to be deposited with or paid to the Trustee or any Paying Agent under any provision of the Indenture, the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease or the Series 2014 Town Lease and any investments thereof, shall be held by the Trustee or that Paying Agent in trust. Except for (i) amounts deposited with or paid to that Trustee or any Paying Agent for the redemption of Bonds, notice of the redemption of which shall have been duly given, and (ii) amounts held by the Trustee pursuant to the provisions of the Indenture relating to nonpresentment of Bonds, all amounts described in the preceding sentence held by the Trustee or any Paying Agent shall be subject to the lien of the Indenture while so held.

Nonpresentment of Bonds. In the event that any Bond shall not be presented for payment when the principal thereof becomes due in whole or in part, either at stated maturity, by redemption or pursuant to any mandatory redemption requirements, or a check or draft for interest is uncashed, if moneys sufficient to pay the principal then due of that Bond or of such check or draft shall have been made available to the Trustee for the benefit of its Owner, all liability of the Corporation to that Owner for such payment of the principal then due of the Bond or of such check or draft thereupon shall cease and be discharged completely. Thereupon, it shall be the duty of the Trustee to hold those amounts, without liability for interest thereon, in a separate account in the Bond Retirement Fund for the exclusive benefit of the Owner, who shall be restricted thereafter exclusively to those amounts for any claim of whatever nature on its part under the Indenture or on, or with respect to, the principal then due of that Bond or of such check or draft. Any of those amounts which shall be so held by the Trustee, and which remain unclaimed by the Owner of a Bond not presented for payment or check or draft not cashed for a period of four years after the due date thereof, shall be paid to the Corporation free of any trust or lien, upon a request in writing by the Corporation. Thereafter, the Owner of that Bond shall look only to the Corporation for payment and then only the amounts so received by the Corporation without any interest thereon, and the Trustee shall not have any responsibility with respect to those moneys.

Issuance and Delivery of Additional Bonds

The Corporation may issue Additional Bonds from time to time for any purpose permitted in (a) below. Additional Bonds shall be on a parity with the Series 2006 Bonds, the Series 2009 Bonds, the Series 2011 Bonds and the Series 2014 Bonds, and any Additional Bonds hereafter issued and outstanding as to the assignment to the Trustee of the Corporation's right, title and interest in the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease and amounts in the accounts and the funds created by the Indenture; provided, that nothing in the Indenture shall prevent payment of Debt Service Charges on any series of Additional Bonds from (i) being otherwise secured and protected from sources or by property or instruments not applicable to the Bonds and any one or more series of Additional Bonds or (ii) not being secured or

protected from sources or by property or instruments applicable to the Bonds or one or more series of Additional Bonds.

The issuance of such Additional Bonds is subject to the following specific conditions which are made conditions precedent to the issuance of such Additional Bonds:

(a) such Additional Bonds shall have been authorized to finance or refinance the cost of acquiring, constructing, reconstructing or improving buildings, equipment and other real and personal properties suitable for use by and for leasing to Gilbert or its agencies or instrumentalities, or for refinancing or advance refunding of Bonds and the issuance thereof as shall have been determined and declared by the Corporation, by appropriate resolution, to be necessary for that purpose;

(b) the Corporation shall be in compliance with all covenants and undertakings set forth in the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease and in the Indenture, as either or both may have been supplemented;

(c) the Bond Resolution shall require that the proceeds of the sale thereof shall be applied solely for one or more of the purposes set forth in (a) above and expenses and costs incidental thereto, including, but not limited to, the costs and expenses incident to the issuance and sale of such Additional Bonds, the costs of any insurance premium relating to insurance on such Additional Bonds and interest on such Additional Bonds during the actual period of any acquisition and construction of such facilities, and for a reasonable period of time not thereafter;

(d) the conditions set forth in the Series 2006 Town Lease, the 2009 Town Lease, the Series 2011 Town Lease and the Series 2014 Town Lease with respect to the issuance of such Additional Bonds shall then be satisfied; and

(e) before the Trustee shall authenticate and deliver any Additional Bonds, the following items shall have been received by the Trustee: (1) original executed counterparts of any amendments or supplements to the Series 2006 Town Lease, the Series 2009 Town Lease, the Series 2011 Town Lease or the Series 2014 Town Lease or any agreement in lieu thereof and the Indenture entered into in connection with the issuance of the Additional Bonds, which are necessary or advisable, in the opinion of nationally recognized bond counsel, to provide that the Additional Bonds will be issued in compliance with the provisions of the Indenture and which shall include provisions to provide for deposits to the Reserve Fund as described under the subheading "Provisions as to Funds and Payments – Flow of Funds – Reserve Fund / Reimbursement Funds" above; (2) a copy of the Bond Resolution, certified by the President or the Secretary-Treasurer; (3) a request and authorization to the Trustee on behalf of the Corporation, signed by the President, Vice President or Secretary-Treasurer, to authenticate and deliver the Additional Bonds to, or on the order of, the original purchaser thereof upon payment to the Trustee of the amount specified therein, including without limitation, any accrued interest and any Reserve Requirement, which amount shall be deposited as provided in the applicable Bond Resolution or Supplemental Indenture; (4) the written opinion of counsel, who may be counsel for the Corporation, reasonably satisfactory to the Trustee, to the effect that: (i) the documents submitted to the Trustee in connection with the request then being made comply with the requirements of the Indenture; (ii) the issuance of the Additional Bonds has been duly authorized; and (iii) all conditions precedent to the delivery of the Additional Bonds have been fulfilled; and (5) a written opinion of nationally recognized bond counsel (who also may be the counsel to which reference is made in paragraph 4 above), to the effect that: (i) when executed for and in the name and on behalf of the Corporation and when authenticated and delivered by the

Trustee, such Additional Bonds will be valid and legal special obligations of the Corporation in accordance with their terms and will be secured under the Indenture equally and, except as otherwise provided in the Indenture and in the Supplemental Indenture authorizing such Additional Bonds, on a parity with all other Bonds of any series at the time outstanding under the Indenture as to the assignment to the Trustee of the Corporation's right, title and interest in the Town Lease and amounts in the accounts and the funds created by the Indenture (except as otherwise provided in the Indenture) and the amounts therein to provide for payment of Debt Service Charges on the Bonds and (ii) the issuance of such Additional Bonds will not result in the interest on the Bonds outstanding immediately prior to that issuance becoming subject to federal income taxation.

Enforcement of Revenue Pledge and Exclusive Pledge

Enforcement of Revenue Pledge. As provided in the Series 2014 Town Lease, the parties agree that the Trustee shall have the right of specific performance of Gilbert's covenants as to Revenues provided by the Series 2014 Town Lease by appropriate court action in the name of the Trustee on behalf of the Owners of the Bonds and the provider of any Qualified Reserve Fund Instrument, in the name of the Corporation or in the names of both. Nothing contained in the Indenture or in the Series 2014 Town Lease shall be deemed to create a lien of any kind upon the Leased Property or upon any other assets or facilities of Gilbert.

Exclusive Pledge. As further provided in the Series 2014 Town Lease, the pledge of Revenues referred to in the Indenture shall be for the benefit of the Owners of the Bonds as well as the proceeds of any Qualified Reserve Fund Instrument, and no other creditor of the Corporation shall have any claim thereto.

The Trustee, Registrar and Paying Agents

Trustee's Acceptance and Responsibilities. The Trustee, by execution of the Indenture, accepts the trusts imposed upon it by the Indenture and agrees to observe and perform those trusts, but only upon and subject to the terms and conditions set forth in the Indenture, to all of which the parties to the Indenture and the Owners agree.

(a) Prior to the occurrence of a default or an "Event of Default" of which the Trustee has been notified, as provided in paragraph (f) of "Certain Rights and Obligations of the Trustee" below, or of which by that paragraph the Trustee is deemed to have notice, and after the cure or waiver of all defaults or Events of Default which may have occurred, (i) the Trustee undertakes to perform only those duties and obligations which are set forth specifically in the Indenture, and no duties or obligations shall be implied to the Trustee and (ii) in the absence of bad faith on its part, the Trustee may rely conclusively, as to the truth of the statements and the correctness of the opinions expressed in the Indenture, upon certificates or opinions furnished to the Trustee and conforming to the requirements of the Indenture; but in the case of any such certificates or opinions which by any provision of the Indenture are required specifically to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of the Indenture.

(b) In case a default or an Event of Default has occurred and is continuing under the Indenture (of which the Trustee has been notified, or is deemed to have notice), the Trustee shall exercise those rights and powers vested in it by the Indenture and shall use the same degree of care and skill in its exercise as a corporate trustee would exercise or use under the circumstances in the conduct of its trust business.

(c) No provision of the Indenture shall be construed to relieve the Trustee from liability for its own gross negligent action, its own gross negligent failure to act, or its own willful misconduct, except that, (i) this paragraph (c) shall not be construed to affect the limitation of the Trustee's duties and obligations provided in subparagraph (a)(i) above or the Trustee's right to rely on the truth of statements and the correctness of opinions as provided in subparagraph (a)(ii) above; (ii) the Trustee shall not be liable for any error of judgment made in good faith by any one of its officers, unless it shall be established that the Trustee was negligent in ascertaining the pertinent facts; (iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than a majority in principal amount of a series of the Bonds then outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under the Indenture; and (iv)

no provision of the Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties under the Indenture or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

Whether or not in the Indenture expressly so provided, every provision of the Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions set forth above.

Certain Rights and Obligations of the Trustee. Except as otherwise provided in “Trustee’s Acceptance and Responsibilities” above:

(a) The Trustee (i) may execute any of the trusts or powers contained in the Indenture and perform any of its duties by or through attorneys, agents, receivers or employees (but shall be answerable Therefore only in accordance with the standard specified above), (ii) shall be entitled to the advice of counsel concerning all matters of trusts contained in the Indenture and duties under the Indenture, and (iii) may pay reasonable compensation in all cases to all of those attorneys, agents, receivers and employees reasonably employed by it in connection with the trusts contained in the Indenture. The Trustee may act upon the opinion or advice of an attorney (who may be the attorney or attorneys for the Corporation or Gilbert) approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action taken or omitted to be taken in good faith in reliance upon that opinion or advice.

(b) Except for its certificate of authentication on the Bonds, the Trustee shall not be responsible for: (i) any recital in the Indenture or in the Bonds, (ii) the validity, priority, recording, rerecording, filing or therefore of the Indenture or any Supplemental Indenture, the First Amendment to Series 2006 Ground Lease or the Series 2014 Town Lease, (iii) any instrument or document of further assurance or collateral assignment, (iv) any financing statements, amendments thereto or continuation statements, (v) insurance of the property subject to the First Amendment to Series 2006 Ground Lease or the Series 2014 Town Lease or collection of insurance moneys, (vi) the validity of the execution by the Corporation of the Indenture, any Supplemental Indenture or instruments or documents of further assurance, (vii) the sufficiency of the security for the Bonds issued under the provisions of the Indenture or intended to be secured by the Indenture, (viii) the value of or title to the interest in the First Amendment to Series 2006 Ground Lease or the Series 2014 Town Lease, or (xi) the maintenance of the security under the provisions of the Indenture, except that, in the event that the Trustee enters into possession of a part or all of the property subject to the First Amendment to Series 2006 Ground Lease or the Series 2014 Town Lease (pursuant to any provision of the First Amendment to Series 2006 Ground Lease or the Series 2014 Town Lease or any other instrument or document collateral thereto), the Trustee shall use due diligence in preserving that property. The Trustee shall not be bound to ascertain or inquire as to the observance or performance of any covenants, agreements or obligations on the part of the Corporation under the First Amendment to Series 2006 Ground Lease or the Series 2014 Town Lease except as set forth hereinafter, but the Trustee may require of the Corporation full information and advice as to the observance or performance of those covenants, agreements and obligations. Except as otherwise provided in the Indenture, the Trustee shall have no obligation to observe or perform any of the duties of the Corporation under the First Amendment to Series 2006 Ground Lease or the Series 2014 Town Lease.

(c) The Trustee shall not be accountable for the application by the Corporation or any other Person of the proceeds of any Bonds authenticated or delivered under the provisions of the Indenture.

(d) The Trustee shall be protected, in the absence of bad faith on its part, in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document reasonably believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons. Any action taken by the Trustee pursuant to the Indenture upon the request or authority or consent of any Person who is the Owner of any Bonds at the time of making the request or giving the authority or consent, shall be conclusive and binding upon all future Owners of the same Bond and of Bonds issued in exchange therefore or in place thereof.

(e) As to the existence or nonexistence of any fact for which the Corporation may be responsible or as to the sufficiency or validity of any instrument, document, report, paper or proceeding, the Trustee, in the absence of bad faith on its part, shall be entitled to rely upon a certificate signed on behalf of the Corporation by the President or the Secretary as sufficient evidence of the facts recited therein. Prior to the occurrence of a

default or Event of Default under the Indenture of which the Trustee has been notified, as provided in paragraph (f) below, or of which by that paragraph the Trustee is deemed to have notice, the Trustee may accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient; provided, that the Trustee in its discretion may require and obtain any further evidence which it deems to be necessary or advisable; and, provided further, that the Trustee shall not be bound to secure any further evidence. The Trustee may accept a certificate of the officer, or an assistant thereto, having charge of the appropriate records, to the effect that legislation has been enacted by the Corporation in the form recited in that certificate, as conclusive evidence that the legislation has been duly adopted and is in full force and effect.

(f) The Trustee shall not be required to take notice, and shall not be deemed to have notice, of any default or Event of Default under the Indenture, except Events of Default described in paragraphs (a) and (b) of “Default Provisions and Remedies of Trustee and Owners Defaults – event of Default” below, unless the Trustee shall be notified specifically of the default or Event of Default in a written instrument or document delivered to it by the Corporation or by the Owners of at least 10% of the aggregate principal amount of Bonds then outstanding. In the absence of delivery of a notice satisfying those requirements, the Trustee may assume conclusively that there is no default or Event of Default, except as noted above.

(g) At any reasonable time, the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives (i) may inspect and copy fully all books, papers and records of the Corporation pertaining to the property subject to the First Amendment to Series 2006 Ground Lease or the Series 2014 Town Lease and the Bonds and (ii) may make any memoranda from and in regard thereto as the Trustee may desire.

(h) The Trustee shall not be required to give any bond or surety with respect to the execution of these trusts and powers or otherwise in respect of the premises.

(i) Notwithstanding anything contained elsewhere in the Indenture, the Trustee may demand any showings, certificates, reports, opinions, appraisals and other information, and any corporate action and evidence thereof, in addition to that required by the terms of the Indenture, as a condition to the authentication of any Bonds or the taking of any action whatsoever within the purview of the Indenture, if the Trustee deems it to be desirable for the purpose of establishing the right of the Corporation to the authentication of any Bonds or the right of any Person to the taking of any other action by the Trustee; provided, that the Trustee shall not be required to make that demand.

(j) Before taking action under the provisions of the Indenture, the Trustee may require that a satisfactory indemnity bond be furnished to it for the reimbursement of all expenses which it may incur and to protect it against all liability by reason of any action so taken, except liability which is adjudicated to have resulted from its negligence or willful misconduct. The Trustee may take action without that indemnity, and in that case, the Corporation shall reimburse the Trustee for all of the Trustee’s expenses pursuant to the provisions of the Indenture.

(k) Unless otherwise provided in the Indenture, all moneys received by the Trustee under the Indenture shall be held in trust for the purposes for which those moneys were received, until those moneys are used, applied or invested as provided in the Indenture; provided, that those moneys need not be segregated from other moneys, except to the extent required by the Indenture or by law. The Trustee shall not have any liability for interest on any moneys received under the provisions of the Indenture, except to the extent expressly provided therein.

(l) Any resolution by the Corporation, and any opinions, certificates and other instruments and documents for which provision is made in the Indenture, may be accepted by the Trustee, in the absence of bad faith on its part, as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for its actions taken under the provisions of the Indenture.

Fees, Charges and Expenses of Trustee, Registrar and Paying Agents. The Trustee, the Registrar and any Paying Agents shall be entitled to payment or reimbursement by the Corporation, for reasonable fees for its Ordinary Services rendered under the provisions of the Indenture and for all advances, counsel fees and other Ordinary Expenses reasonably and necessarily paid or incurred by them in connection with the provision of Ordinary Services. For purposes of the Indenture, fees for Ordinary Services provided for by their respective standard fee schedule shall be considered reasonable. In the event that it should become necessary for any of them

to perform Extraordinary Services, they shall be entitled to reasonable extra compensation Therefore and to reimbursement for reasonable and necessary Extraordinary Expenses incurred in connection therewith. Without creating a default or an Event of Default under the Indenture, however, the Corporation may contest in good faith the necessity for any Extraordinary Service and Extraordinary Expense and the reasonableness of any fee, charge or expense.

The Trustee, the Registrar and any Paying Agents shall not be entitled to compensation or reimbursement for Extraordinary Services or Extraordinary Expenses occasioned by their gross negligence or willful misconduct. The reasonable fees for their respective Ordinary Services and charges of the foregoing shall be entitled to payment and reimbursement only from (i) the Revenue Fund or (ii) from other moneys available Therefore. Any amounts payable to the Trustee, the Registrar or any Paying Agent pursuant to the provisions of the Indenture shall be payable upon demand and shall bear interest beginning 20 days from the date of receipt of the invoice Therefore at a rate not to exceed 10% per annum. The initial or acceptance fees of the Trustee and the fees, charges and expenses of the Trustee, the Registrar or any Paying Agents to which reference is made above, may be paid by the Trustee from the Revenue Fund as and when those fees, charges and expenses become due to the extent that those fees, charges and expenses become due.

Intervention by Trustee. The Trustee may intervene on behalf of the Owners, and shall intervene if requested to do so in writing by the Owners of at least 25% of the aggregate principal amount of the Bonds then outstanding, in any judicial proceeding to which the Corporation or Gilbert is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of Owners of the Bonds. The rights and obligations of the Trustee under the Indenture are subject to the approval of that intervention by a court of competent jurisdiction. The Trustee may require that a satisfactory indemnity bond be provided to it in accordance with the provisions of the Indenture before it takes action thereunder.

Successor Trustee. Anything in the Indenture to the contrary notwithstanding, (a) any corporation or association (i) into which the Trustee may be converted or merged, (ii) with which the Trustee or any successor to it may be consolidated, or (iii) to which it may sell or transfer its assets and trust business as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, merger, consolidation, sale or transfer, ipso facto, shall be and become successor Trustee under the provisions of the Indenture and shall be vested with all of the title to the whole property or trust estate under the Indenture and (b) that corporation or association shall be vested further, as was its predecessor, with each and every trust, property, remedy, power, right, duty, obligation, discretion, privilege, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by the Indenture to be exercised by, vested in or conveyed to the Trustee, without the execution or filing of any instrument or document or any further act on the part of any of the parties hereto.

Any successor Trustee, however, (i) shall be a trust company or a bank having the powers of a trust company, (ii) shall be in good standing within the State, (iii) shall be duly authorized to exercise trust powers within the State and subject to examination by federal or State authority, (iv) shall have a reported capital and surplus of not less than \$75,000,000 and (v) shall be acceptable to any Bond Insurers not then in default of each series of the Bonds then outstanding, if any.

Resignation by the Trustee. The Trustee may resign at any time from the trusts created by the Indenture by giving written notice of the resignation to the Corporation, Gilbert, the Registrar, any Bond Insurers not then in default of each series of the Bonds then outstanding, if any, any Paying Agents and the original purchaser of each series of Bonds then outstanding, by mailing written notice of the resignation to such parties and to the Owners as their names and addresses appear on the Register at the close of business 15 days prior to the mailing. The resignation shall take effect upon the appointment of a successor Trustee.

Removal of the Trustee. The Trustee may be removed at any time by an instrument or document or concurrent instruments or documents in writing delivered to the Trustee, with copies thereof mailed to the Corporation (except when the Corporation is removing the Trustee), Gilbert, the Registrar, any Paying Agents and any Bond Insurers not then in default for each series of the Bonds then outstanding, if any, and signed by or on behalf of the Corporation or by the Owners of not less than a majority in aggregate principal amount of the Bonds then outstanding. The Trustee also may be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provision of the Indenture with respect to the duties and obligations of the Trustee by any Bond Insurer not in default of any series of the Bonds then outstanding, if any, the court of competent jurisdiction upon the application of the Corporation or the Owners of not less than

20% in aggregate principal amount of the Bonds then outstanding under the Indenture. The Trustee also may be removed at any time, at the request of any of the Bond Insurers not then in default for each series of the Bonds then outstanding may, if any, for any breach of trust set forth in the Indenture.

Appointment of Successor Trustee. If (i) the Trustee shall resign, shall be removed, shall be dissolved, or shall become otherwise incapable of acting under the Indenture, (ii) the Trustee shall be taken under control of any public officer or officers, or (iii) a receiver shall be appointed for the Trustee by a court, then a successor Trustee shall be appointed by the Corporation; provided, that if a successor Trustee is not so appointed within 10 days after (a) a notice of resignation or an instrument or document of removal is received by the Corporation, as provided in the Indenture, or (b) the Trustee is dissolved, taken under control, becomes otherwise incapable of acting or a receiver is appointed, in each case, as provided above, then, so long as the Corporation shall not have appointed a successor Trustee, the Owners of a majority in aggregate principal amount of each series of Bonds then outstanding may designate a successor Trustee by an instrument or document or concurrent instruments or documents in writing signed by or on behalf of those Owners. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions, the Owner of any Bond outstanding under the Indenture or any retiring Trustee may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

Every successor Trustee appointed pursuant to the provisions of the Indenture (i) shall be a trust company or a bank having the powers of a trust company (ii) shall be in good standing within the State (iii) shall be duly authorized to exercise trust powers within the State and subject to examination by federal or State authority, (iv) shall have a reported capital and surplus of not less than \$75,000,000, and (v) shall be willing to accept the trusteeship under the terms and conditions of the Indenture and (vi) shall be acceptable to any Bond Insurers not then in default for each series of the Bonds then outstanding, if any.

Every successor Trustee appointed under the Indenture shall execute and acknowledge, and shall deliver to its predecessor and the Corporation, an instrument in writing accepting the appointment. Thereupon, without any further act, the successor shall become vested with all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens of its predecessor. Upon the written request of its successor or the Corporation, the predecessor Trustee (i) shall execute and deliver an instrument or document transferring to its successor all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, cause of action, immunities, estates, titles, interests and liens of the predecessor Trustee under the Indenture, and (ii) shall take any other action necessary to duly assign, transfer and deliver to its successor all property (including without limitation, all securities and moneys) held by it as Trustee. Notwithstanding the foregoing, the predecessor Trustee shall not be required to transfer to its successor any rights of indemnity to the predecessor Trustee for acts during the time the predecessor Trustee was acting as Trustee under the Indenture. Should any instrument or document in writing from the Corporation be requested by any successor Trustee for vesting and conveying more fully and certainly in and to that successor the trusts, properties, remedies, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens vested or conveyed or intended to be vested or conveyed by the Indenture in or to the predecessor Trustee, the Corporation shall execute, acknowledge and deliver that instrument or document.

In the event of a change in the Trustee, the predecessor Trustee shall cease to be custodian of any moneys which it may hold pursuant to the Indenture and shall cease to be Registrar and Paying Agent for any of the Bonds, to the extent it served in any of those capacities, the successor Trustee shall become custodian and, if applicable, Registrar and Paying Agent.

Dealing in Bonds. The Trustee, a Registrar and a Paying Agent, their affiliates, and any directors, officers, employees or agents thereof may become the owners of Bonds secured by the Indenture with the same rights which it or they would have under the Indenture if the Trustee, the Registrar or Paying Agents did not serve in those capacities.

Default Provisions and Remedies of Trustee and Owners

Defaults; Events of Default. The occurrence of any of the following events is defined as and declared to be and to constitute an Event of Default under the Indenture:

(a) Payment of any interest on any Bond shall not be made when and as that interest shall become due and payable;

(b) Payment of the principal of or any premium on any Bond shall not be made when and as that principal or premium shall become due and payable, whether at stated maturity, by redemption, or otherwise;

(c) Failure by the Corporation to observe or perform any other covenant, agreement or obligation on its part to be observed or performed contained in the Indenture or in the Bonds, which failure shall have continued for a period of 30 days after written notice of such failure, by registered or certified mail, shall have been given to the Corporation and Gilbert, requiring that it be remedied, which notice may be given by the Trustee in its discretion and shall be given by the Trustee at the written request of any Bond Insurers not then in default of each Series of the Bonds then outstanding, if any or the Owners of not less than 25% in aggregate principal amount of any series of Bonds then outstanding;

(d) The occurrence and continuance of any default as defined in the Series 2014 Town Lease or any agreement with respect to any Qualified Reserve Fund Instrument;

(e) The occurrence of an Event of Bankruptcy as to Gilbert or the Corporation or Gilbert or the Corporation shall: (i) commence a proceeding under any federal or state insolvency, reorganization or similar law, or have such a proceeding commenced against them and either have an order of insolvency or reorganization entered against them or have the proceeding remain undismissed and unstayed for 90 days; or (ii) have a receiver, conservator, liquidator or trustee appointed for them or for the whole or any substantial part of their property. The declaration of an Event of Default under this subsection and the exercise of remedies upon any such declaration shall be subject to any applicable limitations of federal or State law affecting or precluding such declaration or exercise during the pendency of or immediately following any liquidation or reorganization proceedings.

The term “default” or “failure” as used in the Indenture means a default or failure by the Corporation in the observance or performance of any of the covenants, agreements or obligations on its part to be observed or performed contained in the Indenture or in the Bonds, exclusive of any period of grace or notice required to constitute a default or failure an Event of Default, as provided above.

Notice of Default. If an Event of Default shall occur, the Trustee shall give written notice of the Event of Default, by registered or certified mail, to the Corporation, Gilbert, the Registrar or any Paying Agent, any Bond Insurers if not then in default for each series of the Bonds then outstanding, if any, affected thereby and the original purchaser of each series of Bonds the outstanding, within five days after the Trustee has notice of the Event of Default. If an Event of Default occurs of which the Trustee has notice pursuant to the Indenture the Trustee shall give written notice thereof, promptly after the Trustee’s receipt of notice of its occurrence, to the Owners of all Bonds then outstanding as shown by the Register at the close of business 15 days prior to the mailing of that notice; provided that, except in the case of a default in the payment of the principal of or any premium or interest on any Bond or the occurrence of an Event of Bankruptcy as to the Corporation, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of

directors or responsible officers of the Trustee in good faith determine that the withholding of notice to the Owners is in the interests of the Owners.

Remedies; Rights of Owners. Upon the occurrence and continuance of an Event of Default, the Trustee may pursue any available remedy to enforce the payment of Debt Service Charges or the observance and performance of any other covenant, agreement or obligation under the Indenture, the Series 2014 Town Lease or any other instrument providing security, directly or indirectly, for the Bonds. If, upon the occurrence and continuance of an Event of Default, the Trustee is requested so to do by any Bond Insurers if not then in default for each series of the Bonds then outstanding, if any, affected thereby or the Owners of at least 25% in aggregate principal amount of each series of Bonds outstanding, the Trustee (subject to the provisions of the Indenture), shall exercise any rights and powers conferred by the provisions of the Indenture

No remedy conferred upon or reserved to the Trustee (or to any Bond Insurer or the Owners) by the Indenture is intended to be exclusive of any other remedy. Each remedy shall be cumulative and shall be in addition to every other remedy given under the provisions of the Indenture or otherwise to the Trustee, any Bond Insurer or to the Owners or now or hereafter existing. No delay in exercising or omission to exercise any remedy, right or power accruing upon any default or Event of Default shall impair that remedy, right or power or shall be construed to be a waiver of any default or Event of Default or acquiescence therein. Every remedy, right and power may be exercised from time to time and as often as may be deemed to be expedient. No waiver of any default or Event of Default under the Indenture, whether by the Trustee, any Bond Insurer or by the Owners, shall extend to or shall affect any subsequent default or Event of Default or shall impair any remedy, right or power consequent thereon.

As the assignee of all right, title and interest of the Corporation in and to the First Amendment to Series 2006 Ground Lease and the Series 2014 Town Lease (except for the Unassigned Corporation's Rights), the Trustee is empowered to enforce each remedy, right and power granted to the Corporation under the First Amendment to Series 2006 Ground Lease and the Series 2014 Town Lease. In exercising any remedy, right or power thereunder or under the provisions of the Indenture, the Trustee shall take any action which would best serve the interests of the Owners in the judgment of the Trustee, applying the standards described in the Indenture.

Right of Owners to Direct Proceedings. Subject to the provisions of the Indenture, the Owners of a majority in aggregate principal amount of each series of Bonds then outstanding shall have the right at any time to direct, by an instrument or document or instruments or documents in writing executed and delivered to the Trustee, the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of the Indenture or any other proceedings under the provisions of the Indenture; provided, that (i) any direction shall not be other than in accordance with the provisions of law and of the Indenture, (ii) the Trustee shall be indemnified as provided in the Indenture, and (iii) the Trustee may take any other action which it deems to be proper and which is not inconsistent with the direction.

Application of Moneys. After payment of any costs, expenses, liabilities and advances paid, incurred or made by the Trustee in the collection of moneys pursuant to any right given or action taken under the provisions of the Indenture or the provisions of the First Amendment to Series 2006 Ground Lease or the Series 2014 Town Lease (including without limitation, reasonable attorneys' fees and expenses, except as limited by law or judicial order or decision entered in any action taken under the provisions of the Indenture), all moneys received by the Trustee for deposit into the Revenue Fund and the Reserve Fund shall be applied as follows, subject to the provisions of the Indenture:

First – to the payment to the Owners entitled thereto of all installments of interest then due on the Bonds, in the order of the dates of maturity of the installments of that interest, beginning with the earliest date of maturity and, if the amount available is not sufficient to pay in full any particular installment, then to the payment thereof ratably, according to the amounts due on that installment, to the Owners entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds;

Second – To the payment to the Owners entitled thereto of the unpaid principal of any of the Bonds which shall have become due (other than Bonds

previously called for redemption for the payment of which moneys are held pursuant to the provisions of the Indenture), whether at stated maturity, by redemption or pursuant to any mandatory redemption requirements, in the order of their due dates, beginning with the earliest due date, with interest on those Bonds from the respective dates upon which they became due at the rates specified in those Bonds, and if the amount available is not sufficient to pay in full all Bonds due on any particular date, together with that interest, then to the payment thereof ratably, according to the amounts of principal due on that date, to the Owners entitled thereto, without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds; and

Third – To the payment to the provider of any Qualified Reserve Fund Instrument under any agreement with respect thereto.

Whenever moneys are to be applied pursuant to the provisions of the Indenture, those moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of moneys available for application and the likelihood of additional moneys becoming available for application in the future. Whenever the Trustee shall direct the application of those moneys, it shall fix the date upon which the application is to be made, and upon that date, interest shall cease to accrue on the amounts of principal, if any, to be paid on that date, provided the moneys are available therefore. The Trustee shall give notice of the deposit with it of any moneys and of the fixing of that date, all consistent with the requirements of the Indenture for the establishment of, and for giving notice with respect to, a Special Record Date for the payment of overdue interest. The Trustee shall not be required to make payment of principal of and any premium on a Bond to the Owner thereof, until the Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if it is paid fully.

Remedies Vested in Trustee. All rights of action (including without limitation, the right to file proof of claims) under the Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto. Any suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining any Owners as plaintiffs or defendants. Any recovery of judgment shall be for the benefit of the Owners of the outstanding Bonds, subject to the provisions of the Indenture.

Rights and Remedies of Owners. An Owner shall not have any right to institute any suit, action or proceeding for the enforcement of the Indenture, for the execution of any trust under the Indenture, or for the exercise of any other remedy under the provisions of the Indenture, unless:

(a) there has occurred and is continuing an Event of Default of which the Trustee has been notified, as provided in paragraph (f) of “The Trustee, Registrar and Paying Agents – Trustee’s Acceptance and Responsibilities” above, or of which it is deemed to have notice under that paragraph;

(b) the Owners of at least 25% in aggregate principal amount of a series of Bonds then outstanding shall have made written request to the Trustee and shall have afforded the Trustee reasonable opportunity to proceed to exercise the remedies, rights and powers granted in the Indenture or to institute the suit, action or proceeding in its own name, and shall have offered indemnity to the Trustee as provided in “The Trustee, Registrar and Paying Agents – Trustee’s Acceptance and Responsibilities – Certain Rights and Obligations of the Trustee” above, and

(c) the Trustee thereafter shall have failed or refused to exercise the remedies, rights and powers granted in the Indenture or to institute the suit, action or proceeding in its own name.

At the option of the Trustee, that notification (or notice), request, opportunity and offer of indemnity are conditions precedent in every case, to the institution of any suit, action or proceeding described above.

No one or more Owners of the Bonds shall have any right to affect, disturb or prejudice in any manner whatsoever the security or benefit of the Indenture by its or their action, or to enforce, except in the manner provided in the Indenture, any remedy, right or power under the provisions of the Indenture. Any suit, action or proceedings shall be instituted, had and maintained in the manner provided in the Indenture for the benefit of the Owners of all Bonds then outstanding. Nothing in the Indenture shall affect or impair, however, the right of any Owner to enforce the payment of the Debt Service Charges on any Bond owned by that Owner at and after the maturity thereof, at the place, from the sources and in the manner expressed in that Bond.

Termination of Proceedings. In case the Trustee shall have proceeded to enforce any remedy, right or power under the Indenture in any suit, action or proceedings, and the suit, action or proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, the Corporation, the Trustee and the Owners shall be restored to their former positions and rights under the provisions of the Indenture, respectively, and all rights, remedies and powers of the Trustee shall continue as if no suit, action or proceedings had been taken.

Waivers of Events of Default. Except as hereinafter provided, at any time, in its discretion, the Trustee may waive any Event of Default under the provisions of the Indenture and its consequences and the Trustee shall do so upon the written request of the Owners of: (a) at least a majority in aggregate principal amount of all Bonds then outstanding in respect of which an Event of Default in the payment of Debt Service Charges exists; or (b) at least 25% in aggregate principal amount of each series of Bonds then outstanding, in the case of any other Event of Default.

There shall not be so waived, however, any Event of Default described in (a), (b) or (e) of “Default Provisions and Remedies of Trustee and Owners Defaults; Events of Default” above. In the case of the waiver or in case any suit, action or proceedings taken by the Trustee on account of any Event of Default shall have been discontinued, abandoned or determined adversely to it, the Corporation, the Trustee and the Owners shall be restored to their former positions and rights under the Indenture, respectively. No waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

Supplemental Indentures

Supplemental Indentures Generally. The Corporation and the Trustee may enter into indentures supplemental to the Indenture, as provided in the Indenture and pursuant to the other provisions therefore in the Indenture.

Supplemental Indentures Not Requiring Consent of Owners. Without the consent of, or notice to, any of the Owners, the Corporation and the Trustee may enter into indentures supplemental to the Indenture which shall not, in the opinion of the Corporation and the Trustee, be inconsistent with the terms and provisions of the Indenture for any one or more of the following purposes: (a) to cure any ambiguity, inconsistency or formal defect or omission in the Indenture; (b) to grant to or confer upon the Trustee for the benefit of the Owners any additional rights, remedies, powers or authority that lawfully may be granted to or conferred upon the Owners or the Trustee; (c) to assign additional revenues under the Indenture; (d) to accept additional security and instruments and documents of further assurance with respect to the Bonds and to release all or any portion of the Leased Property and the lien of the Indenture in accordance with the provisions of the Series 2014 Town Lease; (e) to add to the covenants, agreements and obligations of the Corporation under the Indenture, other covenants, agreements and obligations to be observed for the protection of the Owners, or to surrender or limit any right, power or authority reserved to or conferred upon the Corporation in the Indenture, including without limitation, the limitation of rights of redemption so that in certain instances Bonds of different series will be redeemed in some prescribed relationship to one another for the protection of the Owners of a particular series of Bonds; (f) to evidence any succession to the Corporation and the assumption by its successor of the covenants, agreements and obligations of the Corporation under the Indenture, the First Amendment to Series 2006 Ground Lease, the Series 2014 Town Lease and the Bonds; (g) to make necessary or advisable amendments or additions in connection with the issuance of Additional Bonds in accordance with the provisions of the Indenture or to provide for any Qualified Reserve Fund Instrument necessary pursuant to the Indenture or because of the issuance of Additional Bonds as do not adversely affect the interests of Owners of outstanding Bonds; (h) to permit the use of a book entry system to identify the owner of an interest in an

obligation issued by the Corporation under the Indenture, whether that obligation was formerly, or could be, evidenced by a tangible security; (i) to permit the Trustee to comply with any obligations imposed upon it by law; (j) to specify further the duties and responsibilities of, and to define further the relationship among, the Trustee, the Registrar and any Paying Agents; (k) to achieve compliance of the Indenture with any applicable federal securities or tax law; and (l) to permit any other amendment which, in the judgment of the Trustee, is not to the prejudice of the Trustee or the Owners. The provisions of subsections (i) and (k) above shall not be deemed to constitute a waiver by the Trustee, the Registrar, the Corporation or any Owner of any right which it may have in the absence of those provisions to contest the application of any change in law to the Indenture or the Bonds.

Supplemental Indentures Requiring Consent of Owners. Exclusive of Supplemental Indentures to which reference is made in “Supplemental Indentures Not Requiring Consent of Owners” above and subject to the terms, provisions and limitations contained in the Indenture, and not otherwise, with the consent of any Bond Insurer not then in default affected thereby and the Owners of not less than a majority in aggregate principal amount of each series of Bonds at the time outstanding, evidenced as provided in the Indenture, the Corporation and the Trustee may execute and deliver Supplemental Indentures adding any provisions to, changing in any manner or eliminating any of the provisions of the Indenture or any Supplemental Indenture or restricting in any manner the rights of the Owners. Nothing in the Indenture shall permit, however, or be construed as permitting: (a) without the consent of any Bond Insurers not then in default affected thereby and the Owner of each Bond so affected, (i) an extension of the maturity of the principal of or the interest on any Bond, (ii) a reduction in the principal amount of any Bond or the rate of interest or premium thereon, or (iii) a reduction in the amount or extension of the time of payment of any mandatory redemption requirements, or (b) without the consent of any Bond Insurers not then in default affected thereby and the Owners of all Bonds then outstanding, (i) the creation of a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (ii) a reduction in the aggregate principal amount of the Bonds required for consent to a Supplemental Indenture.

If the Corporation shall request that the Trustee execute and deliver any Supplemental Indenture for any of the purposes of the Indenture, upon being satisfactorily indemnified with respect to its expenses in connection therewith, the Trustee shall cause notice of the proposed execution and delivery of the Supplemental Indenture to be mailed by first class mail, postage prepaid, to any Bond Insurers not then in default affected thereby and to all Owners of Bonds then outstanding at their addresses as they appear on the Register at the close of business on the 15th day preceding that mailing.

The Trustee shall not be subject to any liability to any Owner by reason of the Trustee’s failure to mail, or the failure of any Owner to receive, the notice required by the provisions of the Indenture. Any failure of that nature shall not affect the validity of the Supplemental Indenture when there has been consent thereto as provided in the Indenture. The notice shall set forth briefly the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the designated corporate trust office of the Trustee for inspection by all Owners.

If the Trustee shall receive, within a period prescribed by the Corporation, of not less than 60 days, but not exceeding one year, following the mailing of the notice, an instrument or document or instruments or documents, in form to which the Trustee does not reasonably object, purporting to be executed by the Owners of not less than a majority in aggregate principal amount of each series of Bonds then outstanding (which instrument or document or instruments or documents shall refer to the proposed Supplemental Indenture in the form described in the notice and specifically shall consent to the Supplemental Indenture in substantially that form), the Trustee shall, but shall not otherwise, execute and deliver the Supplemental Indenture in substantially the form to which reference is made in the notice as being on file with the Trustee, without liability or responsibility to any Owner, regardless of whether that Owner shall have consented thereto.

Any consent shall be binding upon the Owner of the Bond giving the consent and, anything in the Indenture to the contrary notwithstanding, upon any subsequent Owner of that Bond and of any Bond issued in exchange therefore (regardless of whether the subsequent Owner has notice of the consent to the Supplemental Indenture). A consent may be revoked in writing, however, by the Owner who gave the consent or by a subsequent Owner of the Bond by a revocation of such consent received by the Trustee prior to the execution and delivery by the Trustee of the Supplemental Indenture. At any time after the Owners of the required percentage of Bonds shall have filed their consents to the Supplemental Indenture, the Trustee shall make and file with the Corporation a written statement that the Owners of the required percentage of Bonds have filed those consents. That written statement shall be conclusive evidence that the consents have been so filed.

If the required Bond Insurers and the Owners of the required percentage in aggregate principal amount of Bonds outstanding shall have consented to the Supplemental Indenture, as provided in the Indenture, no Owner shall have any right (a) to object to (i) the execution or delivery of the Supplemental Indenture, (ii) any of the terms and provisions contained therein, or (iii) the operation thereof, (b) to question the propriety of the execution and delivery thereof, or (c) to enjoin or restrain the Trustee or the Corporation from that execution or delivery or from taking any action pursuant to the provisions thereof.

Authorization to Trustee; Effect of Supplement. The Trustee is authorized to join with the Corporation in the execution and delivery of any Supplemental Indenture in accordance with the provisions of the Indenture and to make the further agreements and stipulations which may be contained therein. Thereafter, (a) that Supplemental Indenture shall form a part of the Indenture; (b) all terms and conditions contained in that Supplemental Indenture as to any provision authorized to be contained therein shall be deemed to be a part of the terms and conditions of the Indenture for any and all purposes; (c) the Indenture shall be deemed to be modified and amended in accordance with the Supplemental Indenture; and (d) the respective rights, duties and obligations under the Indenture of the Corporation, the Trustee, the Registrar, the Paying Agents, any Bond Insurers not then in default for each series of the Bonds then outstanding, if any, and all Owners of Bonds then outstanding shall be determined, exercised and enforced under the provisions of the Indenture in a manner which is subject in all respects to those modifications and amendments made by the Supplemental Indenture.

Express reference to any executed and delivered Supplemental Indenture may be made in the text of any Bonds issued thereafter, if that reference is deemed necessary or desirable by the Trustee or the Corporation. A copy of any Supplemental Indenture for which provision is made pursuant to the provisions of the Indenture, except a Supplemental Indenture described in clause (g) of “Supplemental Indentures Not Requiring Consent of Owners” above, shall be mailed by the Trustee to the Registrar, each Paying Agent, any Bond Insurers not then in default affected thereby, the original purchaser of each series of Bonds affected thereby. The Trustee shall not be required to execute any supplemental indenture containing provisions adverse to the Trustee.

Opinion of Counsel. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, the opinion of any counsel approved by it as conclusive evidence that (i) any proposed Supplemental Indenture complies with the provisions of the Indenture, and (ii) it is proper for the Trustee to join in the execution of that Supplemental Indenture under the provisions of the Indenture. That counsel may be counsel for the Corporation or Gilbert.

Modification by Unanimous Consent. Notwithstanding anything contained elsewhere in the Indenture, the rights and obligations of the Corporation and of the Owners, and the terms and provisions of the Bonds and the Indenture or any Supplemental Indenture, may be modified or altered in any respect with the written consent of (i) the Corporation, (ii) any Bond Insurers not then in default affected thereby, (iii) the Owners of all of the Bonds then outstanding and (iv) the Trustee.

Defeasance

Release of Indenture. If (i) the Corporation shall pay all of the outstanding Bonds and all payments to the provider of any Qualified Reserve Fund Instrument, or shall cause them to be paid and discharged, or if there otherwise shall be paid to the Owners of the outstanding Bonds, all Debt Service Charges due or to become due thereon, and (ii) provision also shall be made for the payment of all other sums payable under the Indenture or under the Series 2014 Town Lease, then the Indenture shall cease, determine and become null and void (except for those provisions surviving as described under “Survival of Certain Provisions” below in the event the Bonds are deemed paid and discharged as described under “Payment and Discharge Bonds” below), and the covenants, agreements and obligations of the Corporation under the Indenture shall be released, discharged and satisfied.

Payment and Discharge of Bonds. All or any part of the Bonds shall be deemed to have been paid and discharged within the meaning of the Indenture, if: (a) the Trustee as paying agent and any Paying Agents shall have received, in trust for and irrevocably committed thereto, sufficient moneys, or (b) the Trustee shall have received, in trust for and irrevocably committed thereto, Defeasance Obligations which are certified by an independent public accounting firm of national reputation to be of such maturities or redemption dates and interest payment dates, and to bear such interest, as will be sufficient together with any moneys to which reference is made in subparagraph (a) above, without further investment or reinvestment of either the principal amount thereof or the

interest earnings therefrom (which earnings are to be held likewise in trust and so committed, except as provided in the Indenture), for the payment of all Debt Service Charges on those Bonds, at their maturity or redemption rates, as the case may be, or if a default in payment shall have occurred on any maturity or redemption date, then for the payment of all Debt Service Charges thereon to the date of the tender of payment; provided, that if any of those Bonds are to be redeemed prior to the maturity thereof, notice of that redemption shall have been duly given or irrevocable provision satisfactory to the Trustee shall have been duly made for the giving of that notice. If a forward supply contract is employed in connection with the refunding of the Series 2014 Bonds, (i) the certification referred to above shall expressly state that the adequacy of the escrow to accomplish the refunding relies solely on the initial escrow investments and the maturing principal thereof in interest income thereon and does not assume performance under or compliance with the forward supply contract and (ii) such escrow agreement shall provide that in the event of any discrepancy or difference between the terms of the forward supply contract and the escrow agreement, the terms of the escrow agreement shall be controlling.

Any moneys held by the Trustee in accordance with the foregoing provisions may be invested by the Trustee only in Defeasance Obligations having maturity dates, or having redemption dates which, at the option of the owner of those obligations, shall be not later than the date or dates at which moneys will be required for the purposes described above. To the extent that any income or interest earned by, or increment to, the investments held under the provisions of the Indenture is determined from time to time by the Trustee to be in excess of the amount required to be held by the Trustee for the purposes of the Indenture, that income, interest or increment shall be transferred at the time of that determination in the manner described in "Provisions as to Funds and Accounts Receipt of Revenues" above for transfers of amounts remaining in the Revenue Fund.

If any Bonds shall be deemed paid and discharged pursuant to foregoing provisions, then within 15 days after such Bonds are so deemed paid and discharged the Trustee shall cause a written notice to be given to each Owner as shown on the Register on the date on which such Bonds are deemed paid and discharged. Such notice shall state the numbers of the Bonds deemed paid and discharged or state that all Bonds of a particular series are deemed paid and discharged, set forth a description of the obligations held pursuant to subparagraph (b) of the first paragraph "Payment and Discharge of Bonds" above and specify any date or dates on which any of the Bonds are to be called for redemption pursuant to notice of redemption given or irrevocable provisions made for such notice pursuant to the first paragraph of "Payment and Discharge of Bonds" above.

Survival of Certain Provisions. Notwithstanding the foregoing, any provisions of the Bond Resolution and the Indenture which relate to the maturity of Bonds, interest payments and dates thereof, optional and mandatory redemption provisions, exchange, transfer and registration of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds, nonpresentment of Bonds, the holding of moneys in trust and the duties of the Trustee, the Registrar and the Paying Agents, the payment or reimbursement for fees, charges and advances owed to, Trustee, the Registrar and the Paying Agents in connection with all the foregoing, and indemnities to the Trustee, the Registrar and the Paying Agents shall remain in effect and be binding upon the Trustee, the Registrar, the Paying Agents and the Owners notwithstanding the release and discharge of the Indenture. The foregoing provisions shall survive the release, discharge and satisfaction of the Indenture.

Covenants of the Corporation

Prompt Payment. The Corporation covenants that it will promptly pay or cause to be paid the principal of and the interest on every Bond issued under the provisions of the Indenture at the place, on the dates and in the manner provided in the Indenture and in said Bonds.

No Extension of Time for Interest Payment. In order to prevent any accumulation of interest payments after maturity, the Corporation covenants that it will not, directly or indirectly, extend or assent to the extension of the time for the payment of any claim for interest in any of the Bonds, and will not, directly or indirectly, be a party to or approve of any such arrangement.

Maintenance of Offices for Payment. The Corporation covenants that so long as the Bonds or any of them shall be outstanding it will cause offices or agencies where the Bonds may be presented for payment to be maintained in the Town of Gilbert, Arizona or at the office of the Trustee as provided in the form of the Bond.

Sufficient Revenues. The Corporation covenants that, while any Bonds are outstanding under the provisions of the Indenture, money received by it as rents under the Series 2014 Town Lease will, in the aggregate,

produce revenues which will be sufficient to make all payments which the Trustee is obligated to set aside in the various funds established under the provisions of the Indenture.

Records and Accounts. The Corporation covenants and agrees to keep or cause to be kept proper books of record and account in which complete and correct entries shall be made of all transactions relating to the receipts, disbursements, allocation and application of the revenues accruing to the trust and the amounts thereof forwarded to the Trustee, and such books shall be available for inspection by the Owner of any of the Bonds at reasonable hours and under reasonable conditions.

Financial Statements. Not later than three months after the close of each fiscal year of the Corporation, the Corporation agrees to furnish to each Owner of any of the Bonds, who may so request, a complete financial statement covering receipts, disbursements, allocation and application of revenues for such fiscal year accruing to the trust and the dates and amounts thereof forwarded to the Trustee for such fiscal year, certified by an officer of the Corporation, or, if so requested in writing by the Owners of not less than 40% of a series of the Bonds then outstanding, certified by an independent public or municipal accountant of their selection. Such financial statement shall be filed with the Trustee. Notwithstanding the foregoing, as long as the Series 2014 Town Lease is in effect, the Trustee (a) shall keep the financial records of the Corporation pertaining to the Series 2014 Town Lease and the Series 2014 Bonds; (b) shall make such records available for inspection by the Owners of any of the Series 2014 Bonds at reasonable hours and under reasonable conditions; (c) shall prepare an annual financial statement covering receipts, disbursements, allocations and application of revenues for such fiscal year accruing to the trust; and (d) shall furnish a copy of each such statement to each Owner of any of the Series 2014 Bonds who may so request at the expense of the Corporation.

Payments of Trustee, Registrar, Paying Agent Fees. The Corporation covenants that, except as otherwise provided for in the Indenture, all charges made by the Trustee, the Registrar and any Paying Agents for services rendered and for payment of principal of and interest on the Bonds (not paid by Gilbert), will be paid by the Corporation from revenues of the trust estate and will not be required to be paid by the Owners of the Bonds.

Authority of Corporation. The Corporation covenants that it is, at the date of the execution and delivery of the Indenture, or will be, possessed of the trust estate, that the Series 2014 Town Lease is, at the date of the delivery of the Indenture, a valid and subsisting agreement for the leasing to Gilbert of the property which it purports to lease, that the Series 2014 Town Lease was lawfully made by Gilbert and the Corporation, that the covenants contained in the Series 2014 Town Lease are binding, that the Corporation has good right, full power and lawful authority to grant, bargain and assign, and to transfer in trust, convey and pledge the trust estate in the manner and form in the Indenture provided, and that the Corporation forever will warrant and defend the title to the same to the Trustee against the claims of all persons whomsoever, subject to rights of Gilbert referred to hereinabove.

The Corporation further covenants that it will not, without the written consent of the Trustee and, if a municipal bond insurance policy with respect to any of the Bonds remains in effect and the corresponding Bond Insurer is not in default, as applicable thereunder, of each such Bond Insurer, alter, modify or cancel, or agree or consent to alter, modify or cancel the First Amendment to Series 2006 Ground Lease or the Series 2014 Town Lease or any other agreements heretofore or hereafter entered into by the Corporation which relate to or affect the security of the Bonds issued under the Indenture. With the written consent of the Trustee, the Corporation may consent to alterations and modifications thereof, provided that no such alterations or modifications will decrease the amounts available for payment of the Bonds or will render the income of the Corporation or the interest on the Bonds taxable to the recipient, and provided further that prior to giving its consent with respect to an alteration or modification of the First Amendment to Series 2006 Ground Lease or the Series 2014 Town Lease or any other agreements heretofore or hereafter entered into the Trustee shall obtain an opinion of counsel or financial consultant selected by the Trustee that the proposed alteration or modification will not be materially adverse to the interests of the owners of the Bonds, will not decrease the amounts available for payment of the Bonds and will not render the income of the Corporation or the interest on the Bonds taxable under the income tax laws of the United States of America. Additional Bonds or other obligations secured by Revenues within the limitations of the Series 2014 Town Lease shall not be deemed to have decreased the amounts available for payment of the Series 2014 Bonds, nor shall agreements supplemental to or independent of the First Amendment to Series 2006 Ground Lease or the Series 2014 Town Lease, under which such Additional Bonds or obligations are to be issued, be deemed alterations or modifications of the First Amendment to Series 2006 Ground Lease or the Series 2014 Town Lease so as to require consent of the Trustee. The Corporation further covenants that it will comply with all the terms and provisions of said documents, and that it will not engage in any activities or take any action which might result in the income of

the Corporation becoming taxable to it, or any interest payment on the Bonds becoming taxable to the recipient thereof, under the income tax laws of the United States.

Good Faith Compliance. The Corporation covenants that it will in all respects promptly and faithfully keep, perform and comply with all the terms, provisions, covenants, conditions and agreements of the First Amendment to Series 2006 Ground Lease and the Series 2014 Town Lease to be kept, performed and complied with by it. The Corporation further covenants that it will not do or permit anything to be done, or omit or refrain from doing anything, in any case where any such act done or permitted to be done, or any such omission of or refraining from action, would or might be a ground for declaring such leases in default; that upon request of the Trustee, the Corporation will promptly deposit with the Trustee (to be held by the Trustee until title and rights of the Trustee under the Indenture shall be released and/or reconveyed) any and all documentary evidence received by it showing compliance with the provisions of such leases to be performed by it; that the Corporation, immediately upon its receiving or giving any notice, communication, or other document in any way relating to or affecting such leases, thereby created, will deliver the same, or a copy thereof, to the Trustee; that the Corporation will pay (or cause Gilbert to pay) all taxes, assessments and other charges, if any, that may be levied, assessed or charged upon the trust estate, or any part thereof, promptly as and when the same shall become due and payable, but it shall not be a breach of this covenant if the Corporation fails to pay any such tax, assessment or charge during any period in which the Corporation or Gilbert, in good faith, shall be contesting the amount or validity of such tax, assessment or charge; that the Corporation will, upon request of the Trustee, from time to time, keep the Trustee advised of such payments, and deliver such evidence thereof as the Trustee may reasonably require; and that the Corporation will not suffer said trust estate hereby conveyed and transferred in trust, or any part thereof, to be sold for any taxes, assessments or other charges whatsoever, or to be forfeited therefore, nor do or permit to be done, in, upon or about said trust estate, or any part thereof, anything that might in any way weaken, diminish, or impair the security intended to be given by or under the Indenture, nor suffer any portion of the trust estate to be sold under any mechanics' or materialmen's lien or other proceedings.

Maintenance of Leased Property, Good Title and Corporate Existence. The Corporation further covenants and agrees as follows:

First: To cause the Leased Property to be maintained in good repair and condition, ordinary wear and tear excepted, and not to commit or allow any waste.

Second: Whenever and so often as requested so to do by the Trustee or any Bondowner, to promptly execute and deliver or cause to be executed and delivered all such other and further instruments, documents or assurances, and to promptly do or cause to be done all such other and further things, as may be necessary or reasonably required in order to further and more fully vest in the Trustee and the Bondowners all rights, interest, powers, benefits, privileges and advantages conferred or intended to be conferred upon them by the Indenture.

Third: To promptly, upon the request of the Trustee or any Bond owner, from time to time take such actions as may be necessary or proper to remedy or cure any defect in or cloud upon the title to the trust estate or any part thereof, whether now existing or hereafter developing, and to prosecute all such suits, actions and other proceedings as may be appropriate for such purpose and to indemnify and save the Trustee and every such Bond owner harmless from all loss, cost, damage and expense, including attorneys' fees, which they or either of them may incur by reason of any such defect, cloud, suit, action or proceedings.

Fourth: To maintain its existence as a nonprofit corporation organized and existing under the laws of the State.

Fifth: That it will not be or become a party to any merger or consolidation.

Rights and Enforcement of the Series 2014 Town Lease. The Trustee may enforce, in its name or in the name of the Corporation, all rights of the Corporation for and on behalf of the Owners, except for Unassigned Corporation's Rights, and may enforce all covenants, agreements and obligations of the Corporation under and pursuant to the First Amendment to Series 2006 Ground Lease and the Series 2014 Town Lease, regardless of whether the Corporation is in default in the pursuit or enforcement of those rights, covenants, agreements or obligations. The Corporation, however, will do all things and take all actions on its part necessary to comply with covenants, agreements, obligations, duties and responsibilities on its part to be observed or performed under the First Amendment to Series 2006 Ground Lease and the Series 2014 Town Lease, and will take all actions within its authority to keep the First Amendment to Series 2006 Ground Lease and the Series 2014 Town Lease in effect in accordance with the terms thereof.

Good Title. The Corporation covenants that it has or will acquire and, so long as any Series 2006 Bonds are outstanding under the Indenture, will retain good title to the trust estate.

Possession. The Corporation covenants that there shall be no default under the Indenture, but until default shall be made by the Corporation, as provided for in the Indenture the Corporation shall, subject to the First Amendment to Series 2006 Ground Lease and the Series 2014 Town Lease, be entitled to possess, manage, operate, use and enjoy the property in the Indenture encumbered.

Suspension of Mail. If because of the suspension of delivery of first class mail or, for any other reason, the Trustee shall be unable to mail by the required class of mail any notice required to be mailed by the provisions of the Indenture, the Trustee shall give such notice in such other manner as in the judgment of the Trustee shall most effectively approximate mailing thereof, and the giving of that notice in that manner for all purposes of the Indenture shall be deemed to be in compliance with the requirement for the mailing thereof. Except as otherwise provided in the Indenture, the mailing of any notice shall be deemed complete upon deposit of that notice in the mail and the giving of any notice by any other means of delivery shall be deemed complete upon receipt of the notice by the delivery service.

Payments Due on Saturdays, Sundays and Holidays. If any Interest Payment Date, date of maturity of the principal of any Bonds, or date fixed for redemption of any Bonds is a Saturday, Sunday or a day on which (i) the Trustee is required, or authorized or not prohibited, by law (including without limitation, executive orders) to close and is closed, then payment of interest, principal and any redemption premium need not be made by the Trustee or any Paying Agent on that date, but that payment may be made on the next succeeding business day on which the Trustee and the Paying Agent are open for business with the same force and effect as if that payment were made on the Interest Payment Date, date of maturity or date fixed for redemption, and no interest shall accrue for the period after that date, or (ii) a Paying Agent is required, or authorized or not prohibited, by law (including without limitation, executive orders) to close and is closed, then payment of interest, principal and any redemption premium need not be made by that Paying Agent on that date, but that payment may be made on the next succeeding business day on which that Paying Agent is open for business with the same force and effect as if that payment were made on the Interest Payment Date, date of maturity or date fixed for redemption and no interest shall accrue for the period after that date; provided, that if the Trustee is open for business on the applicable Interest Payment Date, date of maturity or date fixed for redemption, it shall make any payment required under the provisions of the Indenture with respect to payment of interest on outstanding Bonds and payment of principal of and premium on Bonds presented to it for payment, regardless of whether any Paying Agent shall be open for business or closed on the applicable Interest Payment Date, date of maturity or date fixed for redemption.

Instruments of Owners. Any writing, including without limitation, any consent, request, direction, approval, objection or other instrument or document, required under the Indenture to be executed by any Owner may be in any number of concurrent writings of similar tenor and may be executed by that Owner in person or by an agent or attorney appointed in writing. Proof of (i) the execution of any writing, including without limitation, any consent, request, direction, approval, objection or other instrument or document, (ii) the execution of any writing appointing any agent or attorney, and (iii) the ownership of Bonds, shall be sufficient for any of the purposes of the Indenture, if made in the following manner, and if so made, shall be conclusive in favor of the Trustee with regard to any action taken thereunder, namely: (a) The fact and date of the execution by any person of any writing may be proved by the certificate of any officer in any jurisdiction, who has power by law to take acknowledgments within that jurisdiction, that the person signing the writing acknowledged that execution before that officer, or by affidavit of any witness to that execution; and (b) The fact of ownership of Bonds shall be proved by the Register maintained by the Registrar.

Nothing contained in the Indenture shall be construed to limit the Trustee to the foregoing proof, and the Trustee may accept any other evidence of the matters stated therein which it deems to be sufficient. Any writing, including without limitation, any consent, request, direction, approval, objection or other instrument or document, of the Owner of any Bond shall bind every future Owner of the same Bond, with respect to anything done or suffered to be done by the Corporation, the Trustee, the Registrar or any Paying Agent pursuant to that writing.

Priority of The Indenture. The Indenture shall be superior to any liens which may be placed upon the Revenues or any other funds created pursuant to the Indenture.

Extent of Covenants; No Personal Liability. All covenants, stipulations, obligations and agreements of the Corporation contained in the Indenture are and shall be deemed to be covenants, stipulations, obligations and agreements of the Corporation to the full extent authorized by the Act and permitted by the Constitution and laws of the State. No covenant, stipulation, obligation or agreement of the Corporation contained in the Indenture shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, officer, agent or employee of the Corporation or the Board of Directors in other than that person's official capacity. Neither the members of the Board of Directors nor any official executing the Bonds, the Indenture, the Series 2014 Town Lease or any amendment or supplement hereto or thereto shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance or execution thereof.

**FORM OF
APPROVING LEGAL OPINION**

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[Closing Date]

Town of Gilbert, Arizona
Public Facilities Municipal
Property Corporation
c/o Town of Gilbert, Arizona
50 East Civic Center Drive
Gilbert, Arizona 85296-3401

Re: Town of Gilbert, Arizona Public Facilities Municipal Property Corporation Revenue
Refunding Bonds, Series 2014

We have examined the transcript of proceedings (the "Transcript") relating to the issuance of \$28,355,000* aggregate principal amount of Revenue Refunding Bonds, Series 2014 (the "Series 2014 Bonds") of Town of Gilbert, Arizona Public Facilities Municipal Property Corporation (the "Corporation"), dated the date hereof. The Series 2014 Bonds are issued for the purpose of refinancing certain projects for the Town of Gilbert, Arizona ("Gilbert"). The documents examined included an executed counterpart of each of the following: (i) the Series 2006 Ground Lease, dated as of January 1, 2006, by and between Gilbert, as lessor, and the Corporation, as lessee; (ii) the Series 2009 Ground Lease, dated as of March 1, 2009, by and between Gilbert, as lessor, and the Corporation, as lessee; (iii) the First Amendment to Series 2001 Ground Lease, dated as of July 1, 2011, by and between Gilbert, as lessor, and the Corporation, as lessee; (iv) the First Amendment to Series 2006 Ground Lease, dated as of December 1, 2014 (the "Ground Lease"), by and between Gilbert, as lessor, and the Corporation, as lessee; (v) the Series 2006 Town Lease, dated as of January 1, 2006, as amended by the First Amendment to Series 2006 Town Lease, dated March 25, 2009 (as so amended, the "Series 2006 Town Lease"), by and between the Corporation, as lessor, and Gilbert, as lessee; (vi) the Series 2009 Town Lease, dated as of March 1, 2009 (the "Series 2009 Town Lease"), by and between the Corporation, as lessor, and Gilbert, as lessee; (vii) the Series 2011 Town Lease, dated as of July 1, 2011 (the "Series 2011 Town Lease"), by and between Gilbert, as lessor, and the Corporation, as lessee, (viii) the Series 2014 Town Lease, dated as of December 1, 2014 (the "Series 2014 Town Lease"), by and between the Corporation, as lessor, and Gilbert, as lessee; (ix) the Trust Indenture, dated as of October 1, 2001, from the Corporation to The Bank of New York Mellon Trust Company, N.A. (successor in interest to J.P. Morgan Trust Company, National Association), as trustee (the "Trustee"); (x) the First Supplement to Trust Indenture, dated as of January 1, 2006, by and between the Corporation and the Trustee; (xi) the Second Supplement to Trust Indenture, dated as of March 1, 2009, by and between the Corporation and the Trustee; (xii) the Third Supplement to Trust Indenture, dated as of July 1, 2011, by and between the Corporation and the Trustee and (xiii) the Fourth Supplement to Trust Indenture, dated as of December 1, 2014* (the "Fourth Supplement"), by and between the Corporation and the Trustee. In addition, we have examined such other proceedings, proofs, instruments, certificates and other documents as well as such other materials and such matters of law as we have deemed necessary or appropriate for the purposes of the opinions rendered herein below.

In such an examination, we have examined originals (or copies certified or otherwise identified to our satisfaction) of the foregoing and have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to the original documents of all documents submitted to us as copies and the accuracy of the statements contained in such documents. As to any facts material to our opinion, we have, when relevant facts were not independently established, relied upon the aforesaid documents contained in the Transcript. We have also relied upon opinions of the Town Attorney of Gilbert and of the Counsel to the Corporation delivered even date herewith as to the matters provided therein.

Based on this examination, we are of the opinion that, under the law existing on the date of this opinion:

1. The Series 2014 Bonds, the Ground Lease, the Series 2014 Town Lease and the Fourth Supplement are legal, valid, binding and enforceable in accordance with their respective terms, except that the

* Subject to change.

binding effect and enforceability thereof and the rights thereunder are subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws in effect from time to time affecting the rights of creditors generally, except to the extent that the enforceability thereof and the rights thereunder may be subject to the exercise of judicial discretion in accordance with general principles of equity and, as to the Series 2014 Town Lease, except to the extent that the enforceability of the indemnification provisions thereof may be affected by applicable securities laws.

2. The Series 2014 Bonds constitute special, limited obligations of the Corporation, and the principal of and interest and any premium on the Series 2014 Bonds (collectively, "debt service"), unless paid from other sources, are payable solely from the revenues and other moneys pledged and assigned pursuant to the Indenture to secure that payment. Those revenues and other moneys include payments required to be made by Gilbert under the Series 2014 Town Lease, and the obligation of Gilbert to make those payments is secured by a pledge of revenues from the unrestricted transaction privilege (sales) tax, business license and franchise fees, parks and recreation permits and fees and fines and forfeitures which Gilbert imposes; provided that the Common Council of Gilbert may impose other transaction privilege taxes in the future, the uses of which will be restricted, at the discretion of such Mayor and Common Council, and any excise taxes, transaction privilege (sales) taxes and income taxes imposed by the State of Arizona or any agency thereof and returned, allocated or apportioned to Gilbert, except Gilbert's share of any such taxes which by State law, rule or regulation must be expended for other purposes, such as motor vehicle fuel taxes, on a parity of lien on such pledged sources with the obligation of Gilbert pursuant to the Series 2006 Town Lease, the Series 2009 Town Lease and the Series 2011 Town Lease. The Series 2014 Bonds and the payment of debt service are not secured by an obligation or pledge of any moneys raised by taxation other than the specified taxes; the Series 2014 Bonds do not represent or constitute a debt or pledge of the general credit of the Corporation or Gilbert and the Series 2014 Town Lease, including the obligation of Gilbert to make the payments required thereunder, does not represent or constitute a debt or pledge of the general credit of Gilbert.

3. (a) Subject to the assumption stated in the last sentence of this paragraph, interest on the Series 2014 Bonds is excludable from the gross income of the owners thereof for federal income tax purposes. Furthermore, interest on the Series 2014 Bonds is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, such interest is taken into account in determining adjusted current earnings for purposes of computing the alternative minimum tax imposed on certain corporations. (We express no opinion regarding other federal tax consequences resulting from the ownership, receipt or accrual of interest on, or disposition of, the Series 2014 Bonds.) The Internal Revenue Code of 1986, as amended (the "Code"), includes requirements which Gilbert and the Corporation must continue to meet after the issuance of the Series 2014 Bonds in order that interest on the Series 2014 Bonds not be included in gross income for federal income tax purposes. The failure of Gilbert or the Corporation to meet these requirements may cause interest on the Series 2014 Bonds to be included in gross income for federal income tax purposes retroactive to their date of issuance. Gilbert and the Corporation have covenanted in the Series 2014 Town Lease to take the actions required by the Code in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Series 2014 Bonds. In rendering the opinion expressed above, we have assumed continuing compliance with the tax covenants referred to above that must be met after the issuance of the Series 2014 Bonds in order that interest on the Series 2014 Bonds not be included in gross income for federal tax purposes.

(b) Assuming such interest is so excludable for federal income tax purposes, interest on the Series 2014 Bonds is exempt from income taxation under the laws of the State of Arizona. (We express no opinion regarding other State tax consequences resulting from the ownership of, receipt or accrual of interest on or the disposition of the Series 2014 Bonds.)

This opinion represents our legal judgment based upon our review of the law and the facts we deem relevant to render such opinion and is not a guarantee of a result. This opinion is given as of the date hereof, and we assume no obligation to review or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

Respectfully submitted,

**FORM OF
CONTINUING DISCLOSURE AGREEMENT**

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\$28,355,000*
TOWN OF GILBERT, ARIZONA PUBLIC FACILITIES
MUNICIPAL PROPERTY CORPORATION
REVENUE REFUNDING BONDS, SERIES 2014

(CUSIP BASE NUMBER 375290)

This Series 2014 Continuing Disclosure Agreement (this “Disclosure Agreement”) is executed and delivered by the Town of Gilbert, Arizona (the “Obligor”), and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), in connection with the issuance of the Town of Gilbert, Arizona Public Facilities Municipal Property Corporation Revenue Refunding Bonds, Series 2014 (the “Bonds”). The Bonds are issued pursuant to a Trust Indenture, dated as of October 1, 2001, as supplemented by a Fourth Supplement to Trust Indenture, dated as of December 1, 2014 (as so supplemented, the “Indenture”), from the Town of Gilbert, Arizona Public Facilities Municipal Property Corporation (the “Issuer”) to the Trustee. The Obligor and the Trustee covenant and agree as follows:

SECTION 1. Definitions. In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean any Annual Report provided by the Obligor or other Obligated Person pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Beneficial Owner” shall mean any person who (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

“Disclosure Representative” shall mean the Assistant Town Manager of the Obligor or his or her designee, or such other officer or employee as the Obligor shall designate in writing to the Trustee from time to time.

“Dissemination Agent” shall mean the Obligor, acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Obligor and which has filed with the Obligor and the Trustee a written acceptance of such designation.

“EMMA” shall mean the Electronic Municipal Market Access system of the MSRB. As of the date of this Disclosure Undertaking, information regarding submissions to EMMA is available at <http://emma.msrb.org/submission>.

“Fiscal Year” shall mean the period commencing on July 1 and ending on June 30 of the next succeeding year, or such other period of time provided by applicable law.

“Lease” shall mean the Series 2014 Town Lease, dated as of December 1, 2014, by and between the Issuer, as lessor, and the Obligor, as lessee.

“Listed Events” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“MSRB” shall mean Municipal Securities Rulemaking Board.

“Obligated Person(s)” shall mean, with respect to the Bonds, those person(s) who either generally or through an enterprise fund or account of such persons are committed by contract or other arrangement

* Subject to change.

to support payment of all or a part of the obligations of the Bonds, which person(s) shall include the Obligor, and who are identified as such herein.

“Official Statement” shall mean the final Official Statement, dated _____, 2014, relating to the Bonds, and any amendments or supplements thereto, as filed with the MSRB.

“Participating Underwriters” shall mean any of the original Underwriters of the Bonds required to comply with the Rule in connection with the offering of the Bonds.

“Rule” shall mean Rule 15c2-12(b)(5) promulgated under the Securities Exchange Act of 1934, as amended.

“SEC” shall mean the Securities and Exchange Commission.

SECTION 2. Purpose of the Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the Obligor and the Trustee to provide information required in Section 10.3 of the Lease in order to comply with the requirements of the Rule and is for the benefit of the Beneficial Owners.

SECTION 3. Provision of Obligor's Annual Reports.

(a) The Obligor shall, or shall cause the Dissemination Agent to, not later than February 1 of each year commencing February 1, 2015, disseminate through EMMA, an Annual Report which satisfies the requirements of Section 4 of this Disclosure Agreement. The Obligor shall provide the Annual Report to the Dissemination Agent and the Trustee (if the Trustee is not the Dissemination Agent) no later than each February 1 commencing with the Fiscal Year ending June 30, 2014. In each case, the Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Agreement; provided that the audited financial statements of the Obligor may be submitted separately from the balance of the Annual Report.

(b) If by such February the Trustee has not received a copy of the Annual Report, the Trustee shall notify the Obligor and the Dissemination Agent in writing that the Obligor has not complied with its obligations under subsection (a) above.

(c) If the Trustee is unable to verify in writing from the Obligor that the Obligor has filed or caused the Dissemination Agent to file an Annual Report by the date required in subsection (a) above, the Trustee shall cause the Obligor to disseminate a notice through EMMA in the form provided through EMMA.

(d) The Dissemination Agent shall, promptly upon fulfilling its obligations under subsection (a) above, file a report with the Disclosure Representative and (if the Dissemination Agent is not the Trustee) the Trustee certifying that the Annual Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided.

SECTION 4. Contents of Annual Reports. The Obligor's Annual Report shall contain or incorporate by reference the following:

(i) the audited financial statements of the Obligor for the immediately preceding Fiscal Year, prepared in accordance with generally accepted accounting principles applicable to operations of the Obligor, as same may be modified from time to time by statutory requirements of the State of Arizona and the governmental accounting standards promulgated by the Government Accounting Standards Board; and

(ii) an update, as of the end of the immediately preceding Fiscal Year for which audited financial statements are available or, to the extent applicable, as reflected in the Obligor's then-current budget, of the financial information and operating data contained in the Official Statement in TABLES 4 and 6.

The Obligor is not committing to update any other information in the Official Statement. The Obligor reserves the right to modify from time to time the specific types of information provided or the format of the presentation of such information, to the extent necessary or appropriate in the judgment of the Obligor; provided, however, that the Obligor agrees that any such modification will be accomplished in a manner consistent with the Rule. Any or all of the foregoing items may be incorporated by specific reference to other documents, including offering statements of debt issues or audited financial statements of the Obligor or related public entities, which have previously been submitted to the SEC. If the document incorporated by reference is a final official statement, it must be available from the MSRB. The Obligor shall clearly identify each such other document so incorporated by reference.

SECTION 5. The Obligor's Obligation to Report Listed Events.

(a) This Section 5 shall govern the dissemination of notices of the occurrence of any of the following events ("Listed Event"):

1. Principal and interest payment delinquencies.
2. Non-payment related defaults, if material.
3. Unscheduled draws on debt service reserves reflecting financial difficulties.
4. Unscheduled draws on credit enhancements reflecting financial difficulties.
5. Substitution of credit or liquidity providers, or their failure to perform.
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other notices or determinations, in each case, with respect to the tax status of the security, or other material events affecting the tax status of the security.
7. Modifications to the rights of security holders, if material.
8. Bond calls, if material, or tender offers.
9. Defeasances.
10. Release, substitution or sale of property securing repayment of the securities, if material.
11. Rating changes.
12. Bankruptcy, insolvency, receivership or similar events of the Obligor, being if any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Obligor in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under State or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Obligor, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having

supervision or jurisdiction over substantially all of the assets or business of the Obligor.

13. The consummation of a merger, consolidation or acquisition involving the Obligor or the sale of all or substantially all of the assets of the Obligor, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

(b) The Obligor shall disseminate in a timely manner, but in not more than ten (10) business days, any Listed Events through EMMA. Whether events subject to the standard "material" would be material shall be determined under applicable federal securities laws.

(c) Notwithstanding the foregoing, notice of the occurrence of a Listed Event described in clauses (4.) or (5.) of subsection (a) above need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to Owners of affected Bonds pursuant to the Indenture.

SECTION 6. Termination of Reporting Obligations. The obligations of the Obligor and the Trustee hereunder shall terminate upon the legal defeasance, prior prepayment or payment in full of all Outstanding Bonds or upon the termination of the continuing disclosure requirements of the Rule by legislative, judicial or administrative action. If such termination occurs prior to the final maturity of the Bonds, the Obligor shall give notice of such termination in the same manner as for a Listed Event under Section 5(b) above.

SECTION 7. Identity of Obligated Persons. The Obligor represents and warrants that no person (other than the Obligor), whether generally or through an enterprise fund or account of such person, is committed by contract or other arrangement to support payment of all or part of the obligations on the Bonds.

SECTION 8. Dissemination Agent. The Obligor may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. If at any time there is not any other designated Dissemination Agent, the Obligor shall be the Dissemination Agent. The initial Dissemination Agent shall be the Obligor.

SECTION 9. Amendment; Waiver. Notwithstanding any other provision hereof, the Obligor and the Trustee may amend the provisions of this Disclosure Agreement without consent of the Owners of the Bonds, and any provision of this Disclosure Agreement may be waived provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4, or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted; and

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the Obligor shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or, in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Obligor. In addition, if the

amendment relates to the accounting principles to be followed in preparing financial statements: (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(d), and (ii) the Annual Report for the year in which the change is made shall present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

SECTION 10. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Obligor from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Obligor chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the Obligor shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 11. Default. In the event of a failure of the Obligor or the Dissemination Agent to comply with any provision of this Disclosure Agreement, the Trustee may (and, at the request of any Participating Underwriters or the Owners of at least 25% aggregate principal amount of Outstanding Bonds, shall), or any holder or beneficial owner of a Bond, may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Obligor or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an event of default under the Indenture or the Lease, and the sole remedy under this Disclosure Agreement in the event of any failure of the Obligor or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance.

SECTION 12. Duties, Immunities and Liabilities of Trustee and Dissemination Agent. Article VII of the Indenture is hereby made applicable to this Disclosure Agreement as if this Disclosure Agreement were (solely for this purpose) contained in the Indenture. The Dissemination Agent (if other than the Trustee) and the Trustee shall have only such duties as are specifically set forth in this Disclosure Agreement.

SECTION 13. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Obligor, the Trustee, the Dissemination Agent, the Participating Underwriters and Beneficial Owners of the Bonds, and shall create no rights in any other person or entity.

SECTION 14. Counterparts. This Disclosure 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.

SECTION 15. Cancellation. For all purposes of Section 38-511, Arizona Revised Statutes, as amended, the provisions of which are hereby incorporated by this reference, the Obligor may, within three (3) years after its execution, cancel this Disclosure Agreement, without penalty(s) or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Disclosure Agreement on behalf of the Obligor is, at any time while this Disclosure Agreement is in effect, an employee or agent of the Trustee in any capacity or a consultant to any other party of this Disclosure Agreement with respect to the subject matter of this Disclosure Agreement and may recoup any fee or commission paid or due any person significantly involved in initiating, negotiating, securing, drafting or creating this Disclosure Agreement on behalf of the Obligor arising as the result of this Disclosure Agreement. The Trustee has not taken and shall not knowingly take any action which would cause any person described in the preceding sentence to be an employee or agent of the Trustee in any capacity or a consultant to any party to this Disclosure Agreement and within the time period described in the preceding sentence with respect to the subject matter of this Disclosure Agreement.

Date: [Closing Date]

TOWN OF GILBERT, ARIZONA

By.....
John Lewis, Mayor

ATTEST:

.....
Catherine A. Templeton, Town
Clerk

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.

By.....
Authorized Representative

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WEDBUSH



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Jack Gierak, Sr. Project Manager, 503-6176

MEETING DATE: December 2, 2014

SUBJECT: Acquisition of required easements for the Cooper and Guadalupe Intersection Project, CIP Project No. St094.

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's strategic initiative for Infrastructure as it expands the transportation system to meet the needs of Gilbert's citizens.

RECOMMENDED MOTION

Approve a Resolution authorizing the acquisition of required temporary construction and drainage easement on parcel no.: 302-15-001E for the Cooper and Guadalupe intersection project, CIP No. ST094, and authorize the Mayor to execute the required documents.

BACKGROUND/DISCUSSION

This project is included in the 2015-19 Capital Improvement Plan (CIP) and provides for the design and construction of the Cooper and Guadalupe intersection in accordance with the MAG Regional Transportation Plan approved by the voters as Proposition 400 in 2004, including additional through lanes in each direction, as justified by traffic studies. Additional improvements include new curb, sidewalks, utility relocations, street lights, landscaping, bike lanes in all directions, one bus bay, and upgrades to two existing Union Pacific Railroad (UPRR) crossings. Improvements also will include replacement of the water line network within intersection limits.

This resolution is the last right-of-way resolution needed for this project and it will authorize Staff to finalize the purchase of the required Temporary Construction Easement (TCE) and Drainage Easement located on parcel: 302-15-001E.

In order to save costs the appraisal was not prepared for this parcel and the appraised value from comparable neighboring parcel has been used. The approximate cost of appraisal report would be around \$3000-\$4000. The appraisal report is available for Town Council review.

\$ 4,000

Project Accounting Codes: st094-7530-8022

The financial impact has been reviewed by Cris Parisot, Management and Budget Analyst.

STAFF RECOMMENDATION

Staff has reviewed the subject acquisitions and recommends approval of the Resolution.

Respectfully submitted,

JACK GIERAK
SR. PROJECT MANAGER

Approved By

Kenneth Morgan
Cris Parisot

Approval Date

11/12/2014 5:02 PM
11/19/2014 7:01 AM

RESOLUTION NO. _____

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AUTHORIZING THE ACQUISITION OF CERTAIN REAL PROPERTY IN THE TOWN FOR RIGHT-OF-WAY AND EASEMENT PURPOSES FOR **CIP PROJECT NO.ST094 – COOPER AND GUADALUPE INTERSECTION**, AUTHORIZING AND DIRECTING THE MAYOR, TOWN MANAGER AND TOWN ATTORNEY TO ACQUIRE TITLE TO SUCH REAL PROPERTY ON BEHALF OF THE TOWN BY DONATION, EMINENT DOMAIN OR PURCHASE FOR AN AMOUNT NOT TO EXCEED FAIR MARKET VALUE OF THE PROPERTY, PLUS ACQUISITION AND CLOSING COSTS.

WHEREAS, the continued growth and development of the Town of Gilbert requires the acquisition of certain real property for Capital Improvements Project No. CIP PROJECT NO.ST094 – COOPER AND GUADALUPE INTERSECTION described in the Capital Improvements Plan approved by the Town Council (“Project”), which real property is generally described in *Exhibits A (parcel number: 302-15-001E)*, attached hereto and made a part hereof; and

WHEREAS, the Common Council of the Town of Gilbert finds that acquisition of the property described is necessary for public right-of-way and easement purposes for the Project, and it is in the public interest to acquire such property; and

WHEREAS, the Common Council of the Town of Gilbert has considered alternatives available to it, has balanced the public good and the private injury resulting from the acquisition of the property, and has determined that locating the public improvements on the property results in the greatest public good and the least private injury.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA:

That the Mayor, Town Manager and Town Attorney are hereby authorized and directed to acquire title to and possession of the real property generally described in Exhibits A, plus any additional real property required for completion of the Project as determined by the final engineering plans, by donation, eminent domain or purchase for an amount not to exceed fair market value, plus acquisition and closing costs; and

BE IT FURTHER RESOLVED, that the Mayor, Town Manager and Town Attorney are authorized to perform all acts necessary to acquire said property for the purposes described in this resolution on behalf of the Town.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF
GILBERT, ARIZONA THIS ____ DAY OF _____, 20__.

AYES: _____

NAYES: _____ ABSENT: _____

EXCUSED: _____ ABSTAINED: _____

_____, Mayor

ATTEST:

Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:

L. Michael Hamblin
Town Attorney

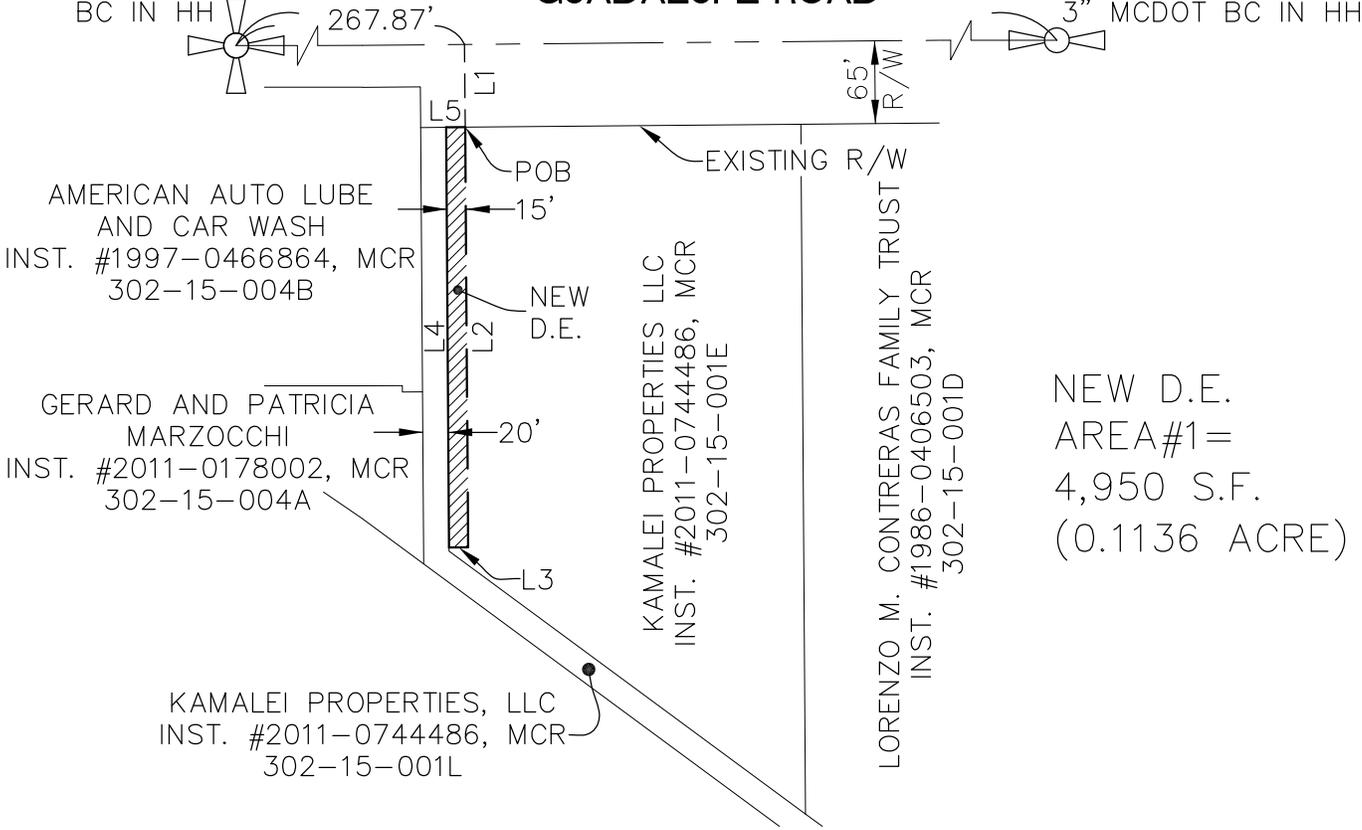
EXHIBIT A

POC
NW COR
SEC 12
3" TOG
BC IN HH

EXHIBIT A

N89°29'36"E 2628.90'
(BASIS OF BEARING)
GUADALUPE ROAD

N 1/4 COR SEC 12
3" MCDOT BC IN HH



NEW D.E.
AREA#1=
4,950 S.F.
(0.1136 ACRE)

LINE TABLE		
LINE	BEARING	LENGTH
L1	S00°30'24"E	65.00'
L2	S00°23'24"E	330.00'
L3	S89°29'36"W	15.00'
L4	N00°23'24"W	330.00'
L5	N89°29'36"E	15.00'



SCALE:
1"=150'
NW 1/4
SEC 12
T 1 S
R 5 E

*Professional Land
Surveyor AZ No. 33868*

(Expires 6/30/17)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

RITTOCH-POWELL & ASSOCIATES, INC.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR DRAINAGE EASEMENT
ASSESSOR PARCEL 302-15-001E



DATE: 7/18/14
DSN: MRS
DRN: PHK
CHK: TAR

PROJECT NUMBER
ST094

SHEET 1 OF 2

EXHIBIT A

A DRAINAGE EASEMENT OVER ONE OF THOSE TRACTS AS CONVEYED TO KAMALEI PROPERTIES, LLC BY DEED OF RECORD IN INSTRUMENT #2011-0744486, MARICOPA COUNTY RECORDS (MCR) AND LOCATED IN THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER (3" TOG BRASS CAP IN HANDHOLE) OF SAID SECTION 12 FROM WHICH POINT THE NORTH QUARTER CORNER (3" MCDOT BRASS CAP IN HANDHOLE) THEREOF BEARS N89°29'36"E A DISTANCE OF 2628.90 FEET;

THENCE N89°29'36"E, ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 267.87 FEET;

THENCE S00°30'24"E, ACROSS THE RIGHT-OF-WAY OF GUADALUPE ROAD, A DISTANCE OF 65.00 FEET TO A POINT ON THE SOUTH LINE THEREOF, SAID POINT BEING THE POINT OF BEGINNING;

THENCE S00°23'24"E, ACROSS SAID KAMALEI PROPERTIES, LLC TRACT ALONG A LINE 15.00 FEET EAST OF THE WEST LINE OF THEREOF, A DISTANCE OF 330.00 FEET;

THENCE S89°29'36"W, CONTINUING ACROSS SAID KAMALEI PROPERTIES, LLC TRACT, A DISTANCE OF 15.00 FEET TO A POINT ON SAID WEST LINE;

THENCE N00°23'24"W, ALONG SAID WEST LINE, A DISTANCE OF 330.00 FEET TO A POINT ON SAID SOUTH RIGHT-OF-WAY LINE OF GUADALUPE ROAD;

THENCE N89°29'36"E, ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 15.00 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED EASEMENT CONTAINS 4,950 SQUARE FEET (0.1136 ACRE) OF LAND, MORE OR LESS, INCLUDING ANY EASEMENTS OF RECORD.

THE BASIS OF BEARING FOR THE ABOVE DESCRIPTION IS N89°29'36"E FOR THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA AS SHOWN ON THE PLSS SUBDIVISION RECORD OF SURVEY-MARICOPA COUNTY GEODETIC DENSIFICATION AND CADASTRAL SURVEY (GDACS) RECORDED IN BOOK 669, PAGE 47, MARICOPA COUNTY RECORDS.

*Professional Land
Surveyor AZ No. 33868*

*(Expires 6/30/17)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>*

RITTOCH-POWELL & ASSOCIATES, INC.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

**EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR DRAINAGE EASEMENT
ASSESSOR PARCEL 302-15-001E**



DATE: 7/18/14
DSN: MRS
DRN: PHK
CHK: TAR

PROJECT NUMBER
ST094

SHEET 2 OF 2

302-15-001E KAMALEI PROPERTIES LLC
DRAINAGE EASEMENT

NORTH: 860186.6443' EAST: 733841.0640'

SEGMENT #1 : LINE

COURSE: S00°23'24"E LENGTH: 330.00'
NORTH: 859856.6519' EAST: 733843.3102'

SEGMENT #2 : LINE

COURSE: S89°29'36"W LENGTH: 15.00'
NORTH: 859856.5193' EAST: 733828.3108'

SEGMENT #3 : LINE

COURSE: N00°23'24"W LENGTH: 330.00'
NORTH: 860186.5116' EAST: 733826.0646'

SEGMENT #4 : LINE

COURSE: N89°29'36"E LENGTH: 15.00'
NORTH: 860186.6443' EAST: 733841.0640'

PERIMETER: 690.00' AREA: 4950.01 SQ. FT. (0.1136 ACRE)

ERROR CLOSURE: 0.0000' COURSE: N00°00'00"E

ERROR NORTH: 0.00000' EAST: 0.00000'

PRECISION 1: 690,000,000.00

Professional Land
Surveyor AZ No. 33868

(Expires 6/30/17)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

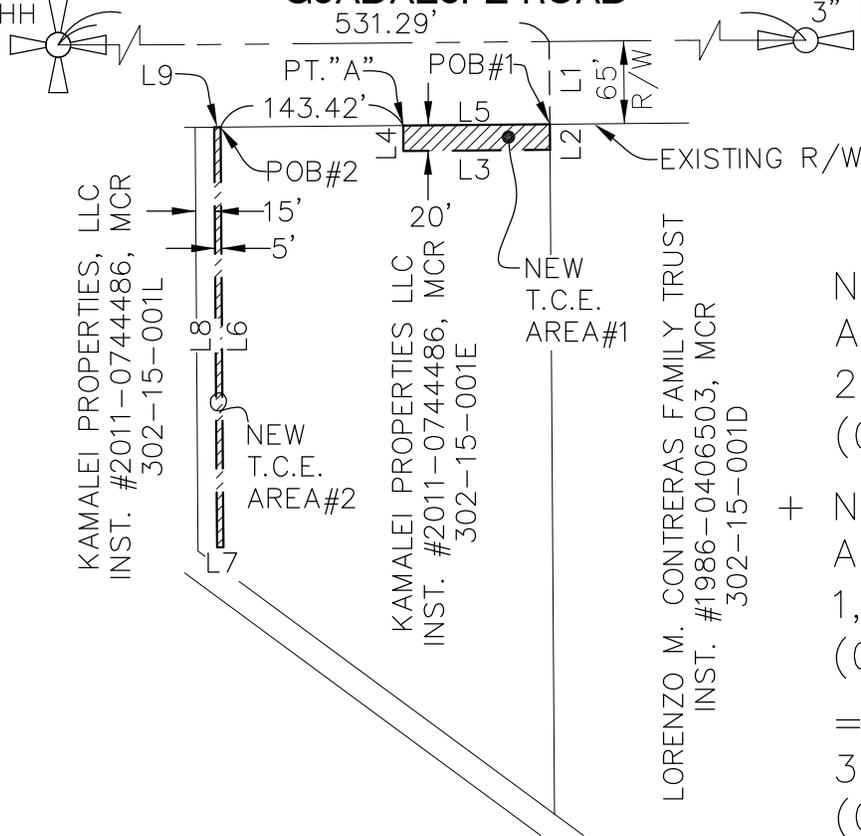
EXHIBIT A

N89°29'36"E 2628.90'
(BASIS OF BEARING)

GUADALUPE ROAD

N 1/4 COR SEC 12
3" MCDOT BC IN HH

POC
NW COR SEC 12
3" TOG BC IN HH



KAMALEI PROPERTIES, LLC
INST. #2011-0744486, MCR
302-15-001L

KAMALEI PROPERTIES LLC
INST. #2011-0744486, MCR
302-15-001E

LORENZO M. CONTRERAS FAMILY TRUST
INST. #1986-0406503, MCR
302-15-001D

NEW T.C.E.
AREA#1 =
2,300 S.F.
(0.0528 ACRE)
+ NEW T.C.E.
AREA#2 =
1,650 S.F.
(0.0379 ACRE)
= TOTAL
3,950 S.F.
(0.0907 ACRE)

LINE TABLE

LINE	BEARING	LENGTH	LINE	BEARING	LENGTH
L1	S00°30'24"E	65.00'	L6	S00°23'24"E	330.00'
L2	S00°23'24"E	20.00'	L7	S89°29'36"W	5.00'
L3	S89°29'36"W	115.00'	L8	N00°23'24"W	330.00'
L4	N00°23'24"W	20.00'	L9	N89°29'36"E	5.00'
L5	N89°29'36"E	115.00'			



SCALE:
1"=150'
NW 1/4
SEC 12
T 1 S
R 5 E

*Professional Land
Surveyor AZ No. 33868*

(Expires 6/30/17)
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EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR TEMPORARY CONSTRUCTION EASEMENT
ASSESSOR PARCEL 302-15-001E



DATE: 7/18/14
DSN: MRS
DRN: PHK
CHK: TAR

PROJECT NUMBER
ST094

SHEET 1 OF 3

EXHIBIT A

A TEMPORARY CONSTRUCTION EASEMENT OVER ONE OF THOSE TRACTS AS CONVEYED TO KAMALEI PROPERTIES, LLC BY DEED OF RECORD IN INSTRUMENT #2011-0744486, MARICOPA COUNTY RECORDS (MCR) AND LOCATED IN THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER (3" TOG BRASS CAP IN HANDHOLE) OF SAID SECTION 12 FROM WHICH POINT THE NORTH QUARTER CORNER (3" MCDOT BRASS CAP IN HANDHOLE) THEREOF BEARS N89°29'36"E A DISTANCE OF 2628.90 FEET;

THENCE N89°29'36"E, ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 531.29 FEET;

THENCE S00°30'24"E, ACROSS THE RIGHT-OF-WAY OF GUADALUPE ROAD, A DISTANCE OF 65.00 FEET TO A POINT ON THE SOUTH LINE THEREOF AT A NORTHEAST CORNER OF ONE OF THOSE KAMALEI PROPERTIES, LLC TRACTS, SAID POINT BEING POINT OF BEGINNING#1;

THENCE S00°23'24"E, ALONG AN EAST LINE OF SAID KAMALEI PROPERTIES, LLC TRACT, A DISTANCE OF 20.00 FEET;

THENCE S89°29'36"W, ACROSS SAID KAMALEI PROPERTIES, LLC TRACT ALONG A LINE 85.00 FEET SOUTH OF AND PARALLEL TO SAID NORTH LINE OF THE NORTHWEST QUARTER, A DISTANCE OF 115.00 FEET;

THENCE N00°23'24"W, CONTINUING ACROSS SAID KAMALEI PROPERTIES, LLC TRACT, A DISTANCE OF 20.00 FEET TO A POINT ON SAID SOUTH RIGHT-OF-WAY LINE OF GUADALUPE ROAD, SAID POINT TO BE KNOWN AS POINT "A";

THENCE N89°29'36"E, ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 115.00 FEET TO POINT OF BEGINNING#1.

AND;

COMMENCING AT SAID POINT "A";

THENCE S89°29'36"W, ALONG THE SOUTH RIGHT-OF-WAY LINE OF GUADALUPE ROAD, A DISTANCE OF 143.42 FEET TO POINT OF BEGINNING#2;

THENCE ACROSS SAID KAMALEI PROPERTIES, LLC TRACT THE FOLLOWING THREE (3) COURSES AND DISTANCES;

*Professional Land
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**EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR TEMPORARY CONSTRUCTION EASEMENT
ASSESSOR PARCEL 302-15-001E**



DATE: 7/18/14
DSN: MRS
DRN: PHK
CHK: TAR

**PROJECT NUMBER
ST094**

SHEET 2 OF 3

EXHIBIT A

1.) S00°23'24"E, ALONG A LINE 20.00 FEET EAST OF AND PARALLEL TO THE WEST LINE OF SAID KAMALEI PROPERTIES, LLC TRACT, A DISTANCE OF 330.00 FEET;

2.) S89°29'36"W A DISTANCE OF 5.00 FEET;

3.) N00°23'24"W, ALONG A LINE 15.00 FEET EAST OF AND PARALLEL TO SAID WEST LINE OF SAID KAMALEI PROPERTIES, LLC TRACT, A DISTANCE OF 330.00 FEET TO A POINT ON SAID SOUTH RIGHT-OF-WAY LINE;

THENCE N89°29'36"E, ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 5.00 FEET TO POINT OF BEGINNING#2.

THE ABOVE DESCRIBED EASEMENT CONTAINS: AREA#1 – 2,300 SQUARE FEET (0.0528 ACRE) + AREA#2 – 1,650 SQUARE FEET (0.0379 ACRE) = TOTAL 3,950 SQUARE FEET (0.0907 ACRE) OF LAND, MORE OR LESS, INCLUDING ANY EASEMENTS OF RECORD.

THE BASIS OF BEARING FOR THE ABOVE DESCRIPTION IS N89°29'36"E FOR THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA AS SHOWN ON THE PLSS SUBDIVISION RECORD OF SURVEY–MARICOPA COUNTY GEODETIC DENSIFICATION AND CADASTRAL SURVEY (GDACS) RECORDED IN BOOK 669, PAGE 47, MARICOPA COUNTY RECORDS.

*Professional Land
Surveyor AZ No. 33868*

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EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR TEMPORARY CONSTRUCTION EASEMENT
ASSESSOR PARCEL 302-15-001E



DATE: 7/18/14
DSN: MRS
DRN: PHK
CHK: TAR

PROJECT NUMBER
ST094

SHEET 3 OF 3

302-15-001E KAMALEI PROPERTIES LLC
TEMPORARY CONSTRUCTION ESMT AREA#1

NORTH: 860188.9736' EAST: 734104.4737'

SEGMENT #1 : LINE

COURSE: S00°23'24"E LENGTH: 20.00'
NORTH: 860168.9741' EAST: 734104.6098'

SEGMENT #2 : LINE

COURSE: S89°29'36"W LENGTH: 115.00'
NORTH: 860167.9572' EAST: 733989.6143'

SEGMENT #3 : LINE

COURSE: N00°23'24"W LENGTH: 20.00'
NORTH: 860187.9567' EAST: 733989.4782'

SEGMENT #4 : LINE

COURSE: N89°29'36"E LENGTH: 115.00'
NORTH: 860188.9736' EAST: 734104.4737'

PERIMETER: 270.00' AREA: 2300.00 SQ. FT. (0.0528 ACRE)
ERROR CLOSURE: 0.0000' COURSE: N00°00'00"E
ERROR NORTH: 0.00000' EAST: 0.00000'

PRECISION 1: 270,000,000.00

Professional Land
Surveyor AZ No. 33868

(Expires 6/30/17)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

302-15-001E KAMALEI PROPERTIES LLC
TEMPORARY CONSTRUCTION ESMT AREA#2

NORTH: 860186.6885' EAST: 733846.0638'

SEGMENT #1 : LINE

COURSE: S00°23'24"E LENGTH: 330.00'
NORTH: 859856.6961' EAST: 733848.3100'

SEGMENT #2 : LINE

COURSE: S89°29'36"W LENGTH: 5.00'
NORTH: 859856.6519' EAST: 733843.3102'

SEGMENT #3 : LINE

COURSE: N00°23'24"W LENGTH: 330.00'
NORTH: 860186.6443' EAST: 733841.0640'

SEGMENT #4 : LINE

COURSE: N89°29'36"E LENGTH: 5.00'
NORTH: 860186.6885' EAST: 733846.0638'

PERIMETER: 670.00' AREA: 1650.00 SQ. FT. (0.0379 ACRE)
ERROR CLOSURE: 0.0000' COURSE: N00°00'00"E
ERROR NORTH: 0.00000' EAST: 0.00000'

PRECISION 1: 670,000,000.00

Professional Land
Surveyor AZ No. 33868

(Expires 6/30/17)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Jack Gierak, Sr. Project Manager, 503-6176

MEETING DATE: December 2,, 2014

SUBJECT: Acquisition of required easement for the Cooper and Guadalupe Intersection Project, CIP Project No. ST094.

STRATEGIC INITIATIVE: Infrastructure

This project supports Gilbert's strategic initiative for Infrastructure as it expands the transportation system to meet the needs of Gilbert's citizens.

RECOMMENDED MOTION

Approve the settlement to the acquisition of the easement located within parcel No. 310-10-088 for the Cooper and Guadalupe Intersection Project, CIP No. ST094, in the amount not to exceed \$40,040, and authorize the Mayor to execute required documents.

BACKGROUND/DISCUSSION

This project is included in the 2015-19 Capital Improvement Plan (CIP) and provides for the design and construction of the Cooper and Guadalupe intersection in accordance with the MAG Regional Transportation Plan approved by the voters as Proposition 400 in 2004, including additional through lanes in each direction, as justified by traffic studies. Additional improvements include new curb, sidewalks, retaining walls, utility relocations, street lights, landscaping, bike lanes in all directions, one bus bay, and upgrades to two existing Union Pacific Railroad (UPRR) crossings.

For the subject parcels, an appraisal was completed and an offer was presented to the owner. The initial offer presented was for the appraised amount of \$30,800. The offer covered the necessary drainage easement to handle run off water associated with proposed roadway improvements. The offer was not accepted by the property owner due to the fact that a significant percentage of overall property is being impacted by the basin which limits the property development feasibility. The appraised cost per square foot is \$7. The property owner agreed to sell the rights

for the drainage basin if Gilbert agrees to \$9.1 per square foot. The basin is required to handle half roadway run off water identified in the proposed design of roadway improvements.

1.	<u>Drainage Easement</u>	\$ 30,800.
	Total Appraised value of offer (\$7sf)	\$ 30,800

Settlement Offer presented by Gilbert and the Property Owner:

1.	Drainage Easement	\$ 30,800.
	<u>Proposed Settlement</u>	\$ 9,240.
	Total Appraised value of offer (\$9.1sf)	\$ 40,040

Acquisition Process Milestones:

1.	Council Adoption of Resolution (#3251):	6/5/14
2.	Preliminary Title Report:	2'13
3.	Preparation of ALTA Survey:	N/A
4.	Preparation of Appraisal:	04/19/14
5.	Preparation and Presentation of Offer to Purchase:	06/19/14
7.	Preparation of Real Estate Purchase Contract:	06/19/14
8.	Negotiated settlement reached with Owner:	09/10/14
9.	Escrow:	To Be Determined
10.	Receipt of Title Policy/Preparation of Town File:	To Be Determined

Staff is in support of the settlement offers as it represents fair market value of the acquisition plus a settlement. The alternative to this is to not approve the offer and request to proceed with condemnation. Legal and Town Staff estimates that the condemnation for this parcel will cost approximately a minimum \$15,000 in process and court costs, plus the cost of the property being acquired and to obtain final order possession.

Contract reviewed for form by special council, Susan Goodwin.

FINANCIAL IMPACT

This roadway project is included in the 2015-19 CIP as Project No. ST094 and is funded through MAG RTP Arterial Fund, 2006 GO Bond 08, 2007 GO Bonds 08 and Water Fund. The proposed acquisition value in the amount of \$40,040 is within the total project land budget of \$1,000,000.

Project Accounting Codes: ST094-7530-8022

The financial impact has been reviewed by Cris Parisot, Management and Budget Analyst.

STAFF RECOMMENDATION

Staff has reviewed the costs associated with this acquisition and has determined that the cost is appropriate and recommends approval of the motion.

Respectfully submitted,

Jack Gierak
Sr. Project Manager

Approved By

Approval Date

Gregory Smith

11/4/2014 10:16 AM

Gregory Smith

11/4/2014 10:16 AM

Kenneth Morgan

11/18/2014 5:13 PM

Jack Vincent

11/19/2014 8:56 AM

Cris Parisot

11/19/2014 8:30 AM

RESOLUTION NO. 3251

A RESOLUTION OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AUTHORIZING THE ACQUISITION OF CERTAIN REAL PROPERTY IN THE TOWN FOR RIGHT-OF-WAY AND EASEMENT PURPOSES FOR **CIP PROJECT NO.ST094 – COOPER AND GUADALUPE INTERSECTION**, AUTHORIZING AND DIRECTING THE MAYOR, TOWN MANAGER AND TOWN ATTORNEY TO ACQUIRE TITLE TO SUCH REAL PROPERTY ON BEHALF OF THE TOWN BY DONATION, EMINENT DOMAIN OR PURCHASE FOR AN AMOUNT NOT TO EXCEED FAIR MARKET VALUE OF THE PROPERTY, PLUS ACQUISITION AND CLOSING COSTS.

WHEREAS, the continued growth and development of the Town of Gilbert requires the acquisition of certain real property for Capital Improvements Project No. CIP PROJECT NO.ST094 – COOPER AND GUADALUPE INTERSECTION described in the Capital Improvements Plan approved by the Town Council (“Project”), which real property is generally described in *Exhibits A (parcels number: 310-10-088, 310-05-220, 310-05-224, 302-21-950 AND 302-21-977)*, attached hereto and made a part hereof; and

WHEREAS, the Common Council of the Town of Gilbert finds that acquisition of the property described is necessary for public right-of-way and easement purposes for the Project, and it is in the public interest to acquire such property; and

WHEREAS, the Common Council of the Town of Gilbert has considered alternatives available to it, has balanced the public good and the private injury resulting from the acquisition of the property, and has determined that locating the public improvements on the property results in the greatest public good and the least private injury.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA:

That the Mayor, Town Manager and Town Attorney are hereby authorized and directed to acquire title to and possession of the real property generally described in Exhibits A, plus any additional real property required for completion of the Project as determined by the final engineering plans, by donation, eminent domain or purchase for an amount not to exceed fair market value, plus acquisition and closing costs; and

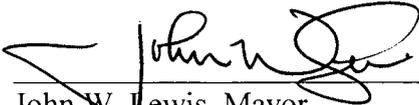
BE IT FURTHER RESOLVED, that the Mayor, Town Manager and Town Attorney are authorized to perform all acts necessary to acquire said property for the purposes described in this resolution on behalf of the Town.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA THIS 5TH DAY OF JUNE, 2014.

AYES: COOK, COOPER, DANIELS, LEWIS, PETERSEN, RAY, TAYLOR

NAYES: NONE ABSENT: NONE

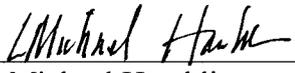
EXCUSED: NONE ABSTAINED: NONE



John W. Lewis, Mayor

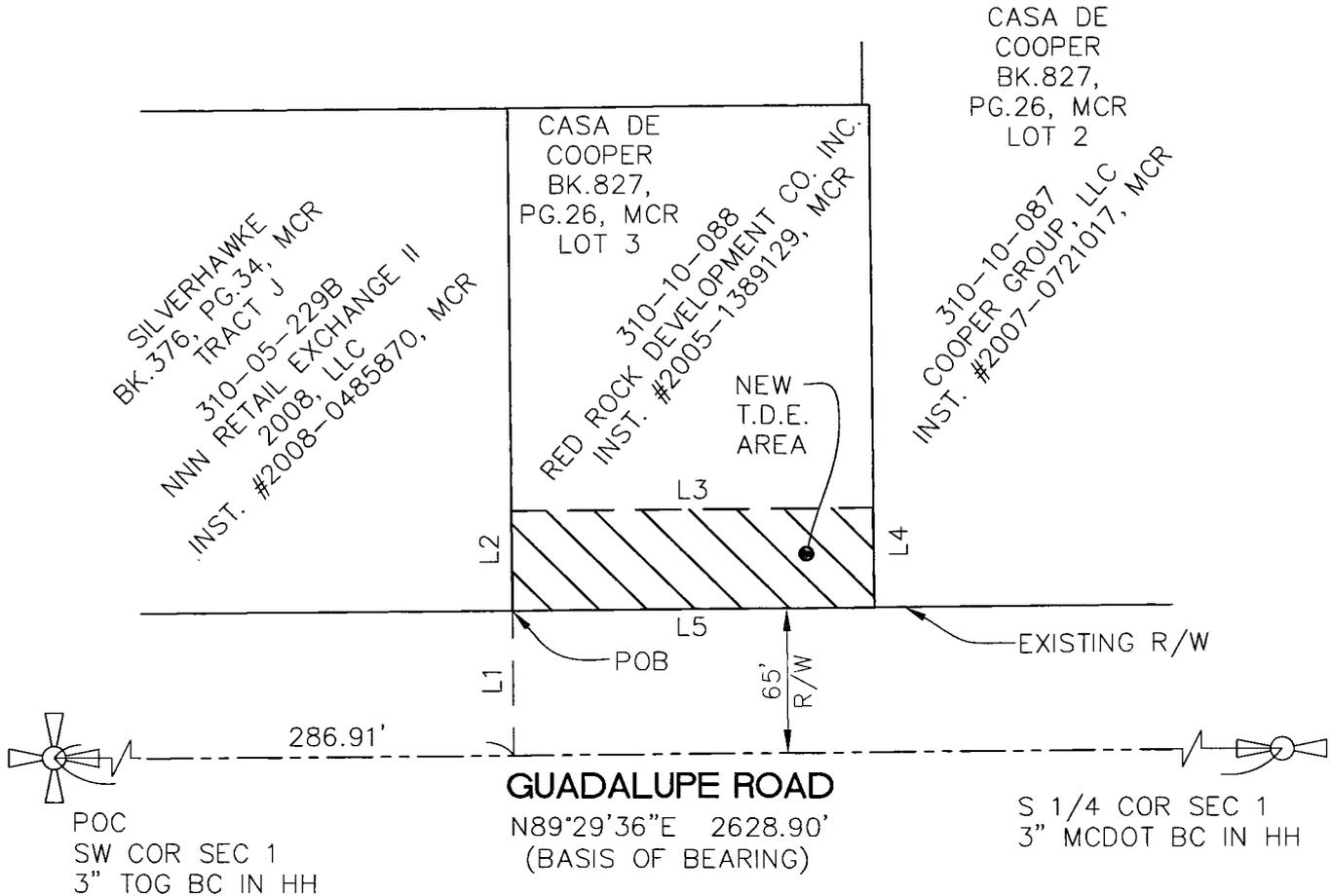
ATTEST:


Catherine A. Templeton, Town Clerk

APPROVED AS TO FORM:


L. Michael Hamblin
Town Attorney

EXHIBIT A



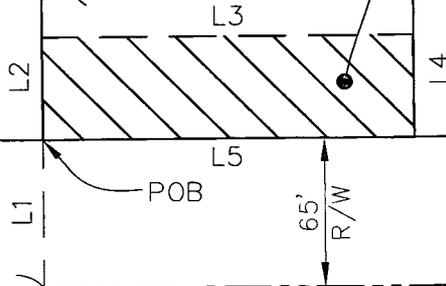
CASA DE COOPER
BK. 827,
PG. 26, MCR
LOT 2

SILVERHAWKE
BK. 376, PG. 34, MCR
TRACT J
310-05-229B
NNW RETAIL EXCHANGE II
2008, LLC
INST. #2008-0485870, MCR

CASA DE COOPER
BK. 827,
PG. 26, MCR
LOT 3
RED ROCK DEVELOPMENT CO. INC.
310-10-088
INST. #2005-1389129, MCR

310-10-087
COOPER GROUP, LLC
INST. #2007-0721017, MCR

NEW
T.D.E.
AREA



EXISTING R/W

286.91'

GUADALUPE ROAD
N89°29'36"E 2628.90'
(BASIS OF BEARING)

S 1/4 COR SEC 1
3" MCDOT BC IN HH

POC
SW COR SEC 1
3" TOG BC IN HH

NEW T.D.E. AREA
7,200 S.F.
(0.1653 ACRE)

LINE TABLE

LINE	BEARING	LENGTH	LINE	BEARING	LENGTH
L1	N00°30'24"W	65.00'	L4	S00°34'13"E	45.00'
L2	N00°34'13"W	45.00'	L5	S89°29'36"W	160.00'
L3	N89°29'36"E	160.00'			

SCALE:
1"=80'
SW 1/4
SEC 1
T 1 S
R 5 E

Professional Land
Surveyor AZ No. 33868

**Troy A.
Ray RLS**

Digitally signed by Troy A.
Ray RLS
DN: cn=Troy A. Ray RLS,
o=Ritoch-Powell &
Associates, ou,
email=tray@ritochpowell.
com, c=US
Date: 2014.04.15 18:15:08
-0700

(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

RITICH-POWELL & ASSOCIATES, INC.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR TEMPORARY DRAINAGE EASEMENT
ASSESSOR PARCEL 310-10-088

 **GILBERT**
ARIZONA

DATE: 4/15/14
DSN: MRS
DRN: PHK
CHK: TAR

PROJECT NUMBER
ST094

SHEET 1 OF 3

EXHIBIT A

A TEMPORARY DRAINAGE EASEMENT OVER LOT 3 AS SHOWN ON THE FINAL PLAT OF CASA DE COOPER, RECORDED IN BOOK 827, PAGE 26, MARICOPA COUNTY RECORDS (MCR) AS CONVEYED TO RED ROCK DEVELOPMENT CO. INC. BY DEED OF RECORD IN INSTRUMENT #2005-1389129, (MCR) AND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER (3" TOG BRASS CAP IN HANDHOLE) OF SAID SECTION 1 FROM WHICH POINT THE SOUTH QUARTER CORNER (3" MCDOT BRASS CAP IN HANDHOLE) THEREOF BEARS N89°29'36"E A DISTANCE OF 2628.90 FEET;

THENCE N89°29'36"E, ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 286.91 FEET;

THENCE N00°30'24"W, ACROSS THE RIGHT-OF-WAY OF GUADALUPE ROAD, A DISTANCE OF 65.00 FEET TO A POINT ON THE NORTH LINE THEREOF, SAID POINT BEING THE SOUTHWEST CORNER OF SAID LOT 3 AND THE POINT OF BEGINNING;

THENCE N00°34'13"W, ALONG THE WEST LINE OF SAID LOT 3, A DISTANCE OF 45.00 FEET;

THENCE N89°29'36"E, ACROSS SAID LOT 3 AND ALONG A LINE 110.00 FEET NORTH OF AND PARALLEL TO SAID SOUTH LINE OF THE SOUTHWEST QUARTER, A DISTANCE OF 160.00 FEET TO A POINT ON THE EAST LINE OF SAID LOT 3;

THENCE S00°34'13"E, ALONG SAID EAST LINE, A DISTANCE OF 45.00 FEET TO A POINT ON SAID NORTH RIGHT-OF-WAY LINE OF GUADALUPE ROAD BEING THE SOUTHEAST CORNER OF SAID LOT 3;

THENCE S89°29'36"W, ALONG SAID NORTH RIGHT-OF-WAY LINE BEING 65.00 FEET NORTH OF AND PARALLEL TO SAID SOUTH LINE OF THE SOUTHWEST QUARTER, A DISTANCE OF 160.00 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED EASEMENT CONTAINS 7,200.00 SQUARE FEET (0.1653 ACRE) OF LAND, MORE OR LESS, INCLUDING ANY EASEMENTS OF RECORD.

*Professional Land
Surveyor AZ No. 33868*

**Troy A.
Ray RLS**

Digitally signed by Troy A. Ray RLS
DN: cn=Troy A. Ray RLS, o=Ritoch-Powell & Associates, ou, email=troy@ritochpowell.com, c=US
Date: 2014.04.15 18:15:24 -0700

(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

RITOCH-POWELL & ASSOCIATES, INC.
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Phoenix, AZ 85014
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EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR TEMPORARY DRAINAGE EASEMENT
ASSESSOR PARCEL 310-10-088



DATE: 4/15/14
DSN: MRS
DRN: PHK
CHK: TAR

PROJECT NUMBER
ST094

SHEET 2 OF 3

EXHIBIT A

THE BASIS OF BEARING FOR THE ABOVE DESCRIPTION IS N89°29'36"E FOR THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA AS SHOWN ON THE PLSS SUBDIVISION RECORD OF SURVEY—MARICOPA COUNTY GEODETIC DENSIFICATION AND CADASTRAL SURVEY (GDACS) RECORDED IN BOOK 669, PAGE 47, MARICOPA COUNTY RECORDS.

*Professional Land
Surveyor AZ No. 33868*

Digitally signed by Troy
A. Ray RLS
DN: cn=Troy A. Ray
RLS, o=Ritoch-Powell &
Associates, ou,
email=tray@ritochpow
ell.com; c=US
Date: 2014.04.15
18:15:39 -07'00'

**Troy A.
Ray RLS**

(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

RIToch-POWELL & ASSOCIATES, INC.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR TEMPORARY DRAINAGE EASEMENT
ASSESSOR PARCEL 310-10-088



DATE: 4/15/14
DSN: MRS
DRN: PHK
CHK: TAR

PROJECT NUMBER
ST094

SHEET 3 OF 3

310-10-088 RED ROCK DEVELOPMENT TEMPORARY DRAINAGE ESMT

NORTH: 860316.8075' EAST: 733858.9541'

SEGMENT #1 : LINE
COURSE: N00°34'13"W LENGTH: 45.00'
NORTH: 860361.8053' EAST: 733858.5062'

SEGMENT #2 : LINE
COURSE: N89°29'36"E LENGTH: 160.00'
NORTH: 860363.2202' EAST: 734018.5000'

SEGMENT #3 : LINE
COURSE: S00°34'13"E LENGTH: 45.00'
NORTH: 860318.2224' EAST: 734018.9479'

SEGMENT #4 : LINE
COURSE: S89°29'36"W LENGTH: 160.00'
NORTH: 860316.8075' EAST: 733858.9541'

PERIMETER: 410.00' AREA: 7,200.00 SQ. FT. (0.1653 ACRE)
ERROR CLOSURE: 0.0000 COURSE: N00°00'00"E
ERROR NORTH: 0.00000 EAST: 0.00000

PRECISION 1: 410,000,000.00

*Professional Land
Surveyor AZ No. 33868*

Digitally signed by Troy A.
Ray RLS
DN: cn=Troy A. Ray RLS,
o=Ritoch-Powell &
Associates, ou,
email=tray@ritochpowell.
com, c=US
Date: 2014.04.15 18:15:56
-07'00'

**Troy A.
Ray RLS**

(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

*TRACT A
310-05-220
SILVERHAWKE HOMEOWNERS
ASSOCIATION, INC.
INST. #1995-0237663, MCR

EXHIBIT A

FINAL PLAT
OF SILVERHAWKE
BK.376, PG.34, MCR

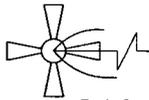
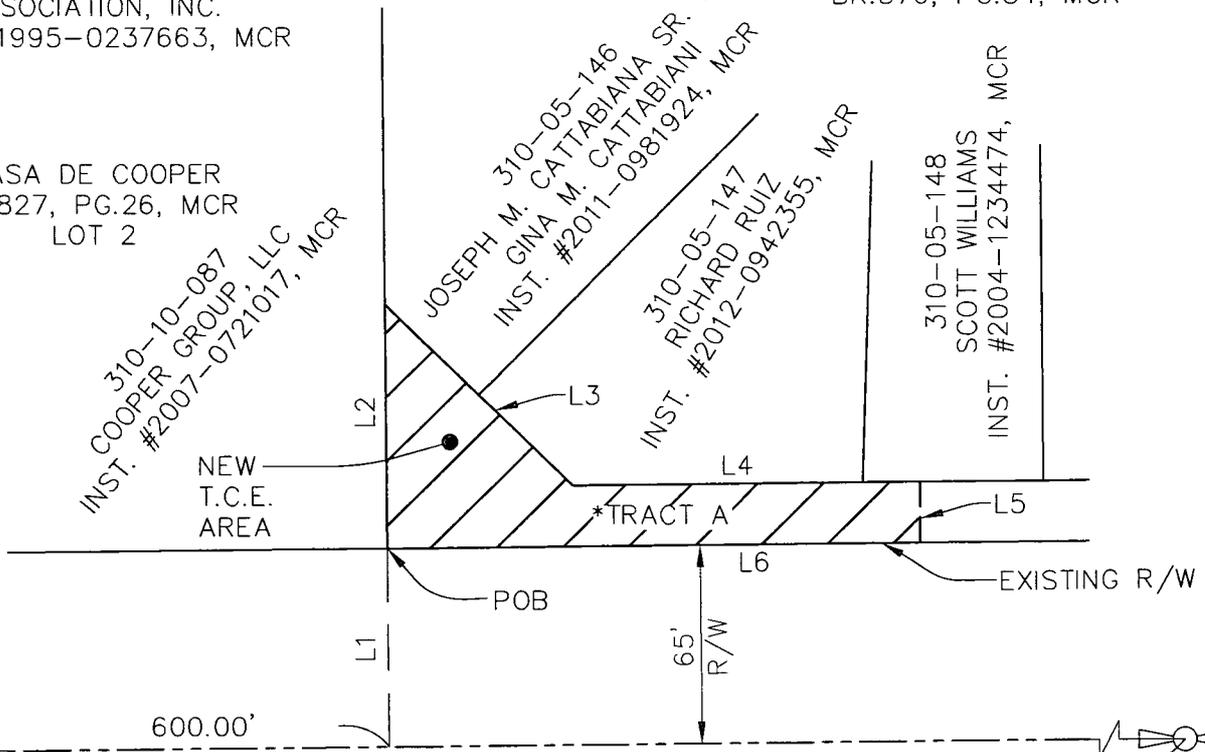
CASA DE COOPER
BK.827, PG.26, MCR
LOT 2

310-10-087
COOPER GROUP, LLC
INST. #2007-0721017, MCR

310-05-146
JOSEPH M. CATTABIANA SR. AND
GINA M. CATTABIANA
INST. #2011-0981924, MCR

310-05-147
RICHARD RUIZ
INST. #2012-0942355, MCR

310-05-148
SCOTT WILLIAMS
INST. #2004-1234474, MCR



POC
SW COR SEC 1
3" TOG BC IN HH

GUADALUPE ROAD
N89°29'36"E 2628.90'
(BASIS OF BEARING)

S 1/4 COR SEC 1
3" MCDOT BC IN HH

NEW T.C.E. AREA
5,249 S.F.
(0.1205 ACRE)

LINE TABLE					
LINE	BEARING	LENGTH	LINE	BEARING	LENGTH
L1	N00°30'24"W	65.00'	L4	N89°29'36"E	112.55'
L2	N00°30'24"W	80.00'	L5	S00°00'00"E	20.00'
L3	S45°30'24"E	84.85'	L6	S89°29'36"W	172.38'



SCALE:
1"=60'
SW 1/4
SEC 1
T 1 S
R 5 E

*Professional Land
Surveyor AZ No. 33868*
Digitally signed by
Troy A. Ray RLS
Date: 2013.11.20
07:33:48 -07'00'
(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

RITICH-POWELL & ASSOCIATES, INC.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR TEMPORARY CONSTRUCTION EASEMENT
ASSESSOR PARCEL 310-05-220



DATE: 11/19/13
DSN: MRS
DRN: PHK
CHK: TAR

PROJECT NUMBER
ST094

SHEET 1 OF 3

EXHIBIT A

A TEMPORARY CONSTRUCTION EASEMENT OVER TRACT A AS SHOWN ON THE FINAL PLAT OF SILVERHAWKE, RECORDED IN BOOK 376, PAGE 34, MARICOPA COUNTY RECORDS (MCR), AS CONVEYED TO SILVERHAWKE HOMEOWNERS ASSOCIATION, INC. BY DEED OF RECORD IN INSTRUMENT #1995-0237663, MCR AND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER (3" TOG BRASS CAP IN HANDHOLE) OF SAID SECTION 1 FROM WHICH POINT THE SOUTH QUARTER CORNER (3" MCDOT BRASS CAP IN HANDHOLE) THEREOF BEARS N89°29'36"E A DISTANCE OF 2628.90 FEET;

THENCE N89°29'36"E, ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 600.00 FEET;

THENCE N00°30'24"W, ACROSS THE RIGHT-OF-WAY OF GUADALUPE ROAD, A DISTANCE OF 65.00 FEET TO A POINT ON THE NORTH LINE THEREOF BEING THE SOUTHWEST CORNER OF SAID TRACT A, THE POINT OF BEGINNING;

THENCE ALONG THE PERIMETER OF SAID TRACT "A" THE FOLLOWING (3) THREE COURSES AND DISTANCES:

THENCE N00°30'24"W A DISTANCE OF 80.00 FEET;

THENCE S45°30'24"E A DISTANCE OF 84.85 FEET;

THENCE N89°29'36"E, ALONG A LINE 85.00 FEET NORTH OF AND PARALLEL TO SAID SOUTH LINE OF THE SOUTHWEST QUARTER, A DISTANCE OF 112.55 FEET;

THENCE S00°00'00"E, ACROSS SAID TRACT A, A DISTANCE OF 20.00 FEET TO A POINT ON THE SOUTH LINE THEREOF BEING COINCIDENT WITH THE NORTH RIGHT-OF-WAY LINE OF GUADALUPE ROAD;

THENCE S89°29'36"W, ALONG SAID NORTH RIGHT-OF-WAY LINE BEING 65.00 FEET NORTH OF AND PARALLEL TO SAID SOUTH LINE OF THE SOUTHWEST QUARTER, A DISTANCE OF 172.38 FEET TO THE POINT OF BEGINNING.

*Professional Land
Surveyor AZ No. 33868*
Digitally signed by
Troy A. Ray RLS
Date: 2013.11.20
07:34:00 -07'00'

(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

RITTOCH-POWELL & ASSOCIATES, INC.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR TEMPORARY CONSTRUCTION EASEMENT
ASSESSOR PARCEL 310-05-220



DATE:	11/19/13
DSN:	MRS
DRN:	PHK
CHK:	TAR

PROJECT NUMBER
ST094

SHEET 2 OF 3

EXHIBIT A

THE ABOVE DESCRIBED EASEMENT CONTAINS 5,249 SQUARE FEET (0.1205 ACRE), MORE OR LESS, INCLUDING ANY EASEMENTS OF RECORD.

THE BASIS OF BEARING FOR THE ABOVE DESCRIPTION IS N89°29'36"E FOR THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA AS SHOWN ON THE PLSS SUBDIVISION RECORD OF SURVEY—MARICOPA COUNTY GEODETIC DENSIFICATION AND CADASTRAL SURVEY (GDACS) RECORDED IN BOOK 669, PAGE 47, MARICOPA COUNTY RECORDS

*Professional Land
Surveyor AZ No. 33868*
Digitally signed by
Troy A. Ray RLS
Date: 2013.11.20
07:34:13 -07'00'
(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

RITICH-POWELL & ASSOCIATES, INC.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR TEMPORARY CONSTRUCTION EASEMENT
ASSESSOR PARCEL 310-05-220

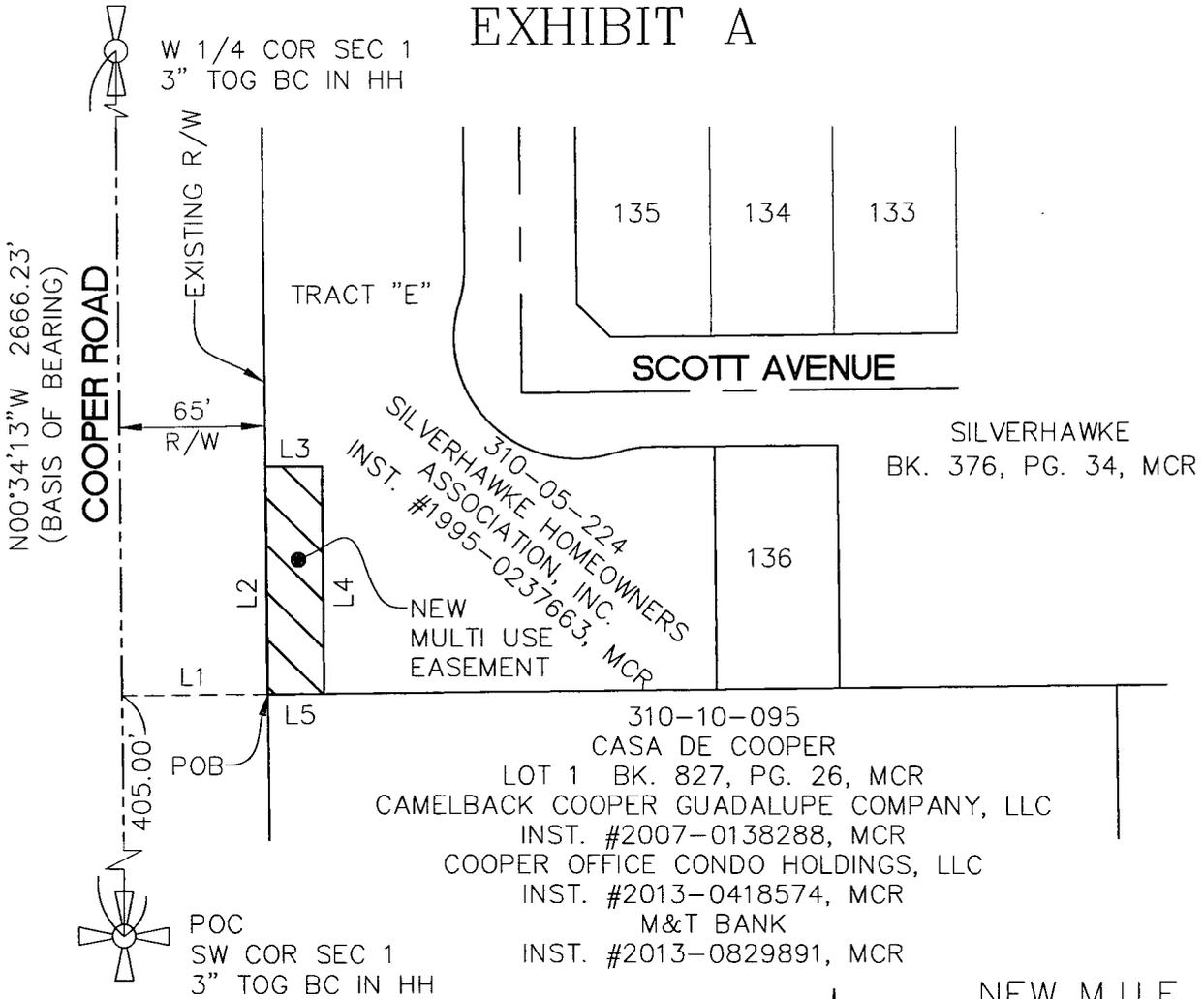


DATE: 11/19/13
DSN: MRS
DRN: PHK
CHK: TAR

PROJECT NUMBER
ST094

SHEET 3 OF 3

EXHIBIT A



NEW M.U.E.
2,572 S.F.
(0.0591 ACRE)

LINE TABLE					
LINE	BEARING	LENGTH	LINE	BEARING	LENGTH
L1	N89°25'47"E	65.00'	L4	S00°34'13"E	102.79'
L2	N00°34'13"W	103.01'	L5	S89°29'36"W	25.00'
L3	N90°00'00"E	25.00'			

SCALE:
1"=80'
SW 1/4
SEC 1
T 1 S
R 5 E

Professional Land
Surveyor AZ No. 33868
Digitally signed by Troy A. Ray RLS
DN: cn=Troy A. Ray RLS, o=Ritoch-Powell & Associates, ou, email=tray@ritochpowell.com, c=US
Date: 2014.04.21 09:42:16 -0700
Troy A. Ray RLS
(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

RITICH-POWELL & ASSOCIATES, INC.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR MULTI USE EASEMENT
ASSESSOR PARCEL 310-05-224



DATE: 4/21/14
DSN: MRS
DRN: PHK
CHK: TAR

PROJECT NUMBER
ST094

SHEET 1 OF 3

EXHIBIT A

A MULTI USE EASEMENT OVER TRACT "E" AS SHOWN ON THE FINAL PLAT OF SILVERHAWKE, RECORDED IN BOOK 376, PAGE 34, MARICOPA COUNTY RECORDS (MCR), AND CONVEYED TO SILVERHAWKE HOMEOWNERS ASSOCIATION, INC BY DEED OF RECORD IN INSTRUMENT #1995-0237663, MCR AND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER (3" TOG BRASS CAP IN HANDHOLE) OF SAID SECTION 1 FROM WHICH POINT THE WEST QUARTER CORNER (3" TOG BRASS CAP IN HANDHOLE) THEREOF BEARS N00°34'13"W A DISTANCE OF 2666.23 FEET;

THENCE N00°34'13"W, ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 405.00 FEET;

THENCE N89°25'47"E, ACROSS THE RIGHT-OF-WAY OF COOPER ROAD, A DISTANCE OF 65.00 FEET TO A POINT ON THE EAST LINE THEREOF SAID POINT ALSO BEING THE SOUTHWEST CORNER OF SAID TRACT "E", AND THE POINT OF BEGINNING;

THENCE N00°34'13"W, ALONG SAID EAST RIGHT-OF-WAY, A DISTANCE OF 103.01 FEET;

THENCE N90°00'00"E, ACROSS SAID TRACT "E", A DISTANCE OF 25.00 FEET;

THENCE S00°34'13"E CONTINUING ACROSS TRACT "E" ALONG A LINE 90.00 FEET EAST OF AND PARALLEL TO SAID WEST LINE OF THE SOUTHWEST QUARTER, A DISTANCE OF 102.79 FEET TO A POINT ON THE SOUTH LINE OF SAID TRACT "E";

THENCE S89°29'36"W, ALONG SAID SOUTH LINE, A DISTANCE OF 25.00 FEET TO A POINT ON SAID EAST RIGHT-OF-WAY LINE, SAID POINT ALSO BEING SAID SOUTHWEST CORNER OF TRACT "E" AND THE POINT OF BEGINNING;

THE ABOVE DESCRIBED EASEMENT CONTAINS 2,572 SQUARE FEET (0.0591 ACRE) OF LAND, MORE OR LESS, INCLUDING ANY EASEMENTS OF RECORD.

*Professional Land
Surveyor AZ No. 33868*

**Troy A.
Ray RLS**

Digitally signed by Troy A. Ray RLS
DN: cn=Troy A. Ray RLS,
o=Ritoch-Powell & Associates, ou,
email=tray@ritochpowel
l.com, c=US
Date: 2014.04.21
09:42:31 -0700

(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

RIToch-POWELL & ASSOCIATES, INC. 5727 N. 7th Street, Suite 120 Phoenix, AZ 85014 Ph: 602-263-1177 Fax: 602-277-6286	EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION FOR MULTI USE EASEMENT ASSESSOR PARCEL 310-05-224
--	---

	DATE: 4/21/14	PROJECT NUMBER ST094 SHEET 2 OF 3
	DSN: MRS	
	DRN: PHK	
	CHK: TAR	

EXHIBIT A

THE BASIS OF BEARING FOR THE ABOVE DESCRIPTION IS N00°34'13"W FOR THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA AS SHOWN ON THE PLSS SUBDIVISION RECORD OF SURVEY—MARICOPA COUNTY GEODETIC DENSIFICATION AND CADASTRAL SURVEY (GDACS) RECORDED IN BOOK 669, PAGE 47, MARICOPA COUNTY RECORDS.

*Professional Land
Surveyor AZ No. 33868*

**Troy A.
Ray RLS**

Digitally signed by Troy A. Ray RLS
DN: cn=Troy A. Ray RLS,
o=Ritoch-Powell & Associates, ou,
email=tray@ritochpowel
l.com, c=US
Date: 2014.04.21
09:42:45 -0700

(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

RIToch-POWELL & ASSOCIATES, INC.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR MULTI USE EASEMENT
ASSESSOR PARCEL 310-05-224



DATE: 4/21/14
DSN: MRS
DRN: PHK
CHK: TAR

PROJECT NUMBER
ST094

SHEET 3 OF 3

310-05-224 SILVERHAWKE HOMEOWNERS ASSOCIATION, INC. MULTI USE EASEMENT

NORTH: 860654.9043' EAST: 733633.5979'

SEGMENT #1 : LINE

COURSE: N00°34'13"W LENGTH: 103.01'
NORTH: 860757.9092' EAST: 733632.5727'

SEGMENT #2 : LINE

COURSE: N90°00'00"E LENGTH: 25.00'
NORTH: 860757.9092' EAST: 733657.5727'

SEGMENT #3 : LINE

COURSE: S00°34'13"E LENGTH: 102.79'
NORTH: 860655.1243' EAST: 733658.5957'

SEGMENT #4 : LINE

COURSE: S89°29'36"W LENGTH: 25.00'
NORTH: 860654.9032' EAST: 733633.5967'

PERIMETER: 255.80' AREA: 2,572.49 SQ. FT. (0.0591 ACRE)
ERROR CLOSURE: 0.0016 COURSE: S48°15'01"W
ERROR NORTH: -0.00108 EAST: -0.00121

PRECISION 1: 159,875.00

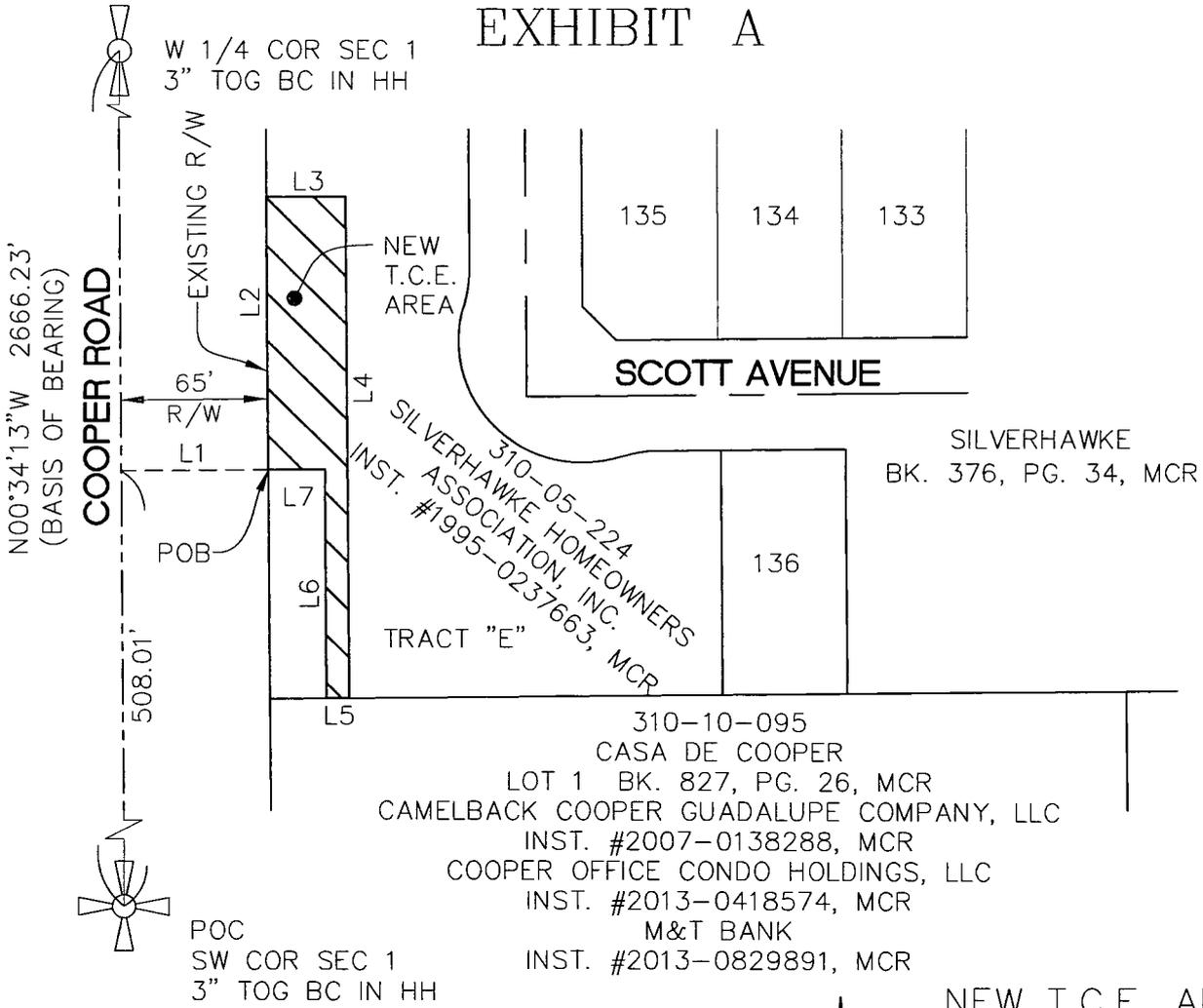
*Professional Land
Surveyor AZ No. 33868*

Troy A.
Ray RLS

Digitally signed by Troy A.
Ray RLS
DN: cn=Troy A. Ray RLS,
o=Ritoch-Powell &
Associates, ou,
email=tray@ritochpowell.
com, c=US
Date: 2014.04.21 09:43:02
-07'00'

(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

EXHIBIT A



NEW T.C.E. AREA
5,320 S.F.
(0.1221 ACRE)

LINE TABLE					
LINE	BEARING	LENGTH	LINE	BEARING	LENGTH
L1	N89°25'47"E	65.00'	L5	S89°29'36"W	10.00'
L2	N00°34'13"W	122.63'	L6	N00°34'13"W	102.79'
L3	N90°00'00"E	35.00'	L7	N90°00'00"W	25.00'
L4	S00°34'13"E	225.33'			



SCALE:
1"=80'
SW 1/4
SEC 1
T 1 S
R 5 E

Professional Land
Surveyor AZ No. 33868

Digitally signed by
Troy A. Ray RLS
DN: cn=Troy A. Ray
RLS, o=Ritoch-Powell
& Associates, ou,
email=tray@ritochpo
well.com, c=US
Date: 2014.04.21
09:48:43 -07'00'

Troy A. Ray RLS

(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

RITICH-POWELL & ASSOCIATES, INC.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR TEMPORARY CONSTRUCTION EASEMENT
ASSESSOR PARCEL 310-05-224



DATE: 4/21/14
DSN: MRS
DRN: PHK
CHK: TAR

PROJECT NUMBER
ST094

SHEET 1 OF 3

EXHIBIT A

A TEMPORARY CONSTRUCTION EASEMENT OVER TRACT "E" AS SHOWN ON THE FINAL PLAT OF SILVERHAWKE, RECORDED IN BOOK 376, PAGE 34, MARICOPA COUNTY RECORDS (MCR), AND CONVEYED TO SILVERHAWKE HOMEOWNERS ASSOCIATION, INC BY DEED OF RECORD IN INSTRUMENT #1995-0237663, MCR AND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER (3" TOG BRASS CAP IN HANDHOLE) OF SAID SECTION 1 FROM WHICH POINT THE WEST QUARTER CORNER (3" TOG BRASS CAP IN HANDHOLE) THEREOF BEARS N00°34'13"W A DISTANCE OF 2666.23 FEET;

THENCE N00°34'13"W, ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 508.01 FEET;

THENCE N89°25'47"E, ACROSS THE RIGHT-OF-WAY OF COOPER ROAD, A DISTANCE OF 65.00 FEET TO A POINT ON THE EAST LINE THEREOF, SAID POINT BEING THE POINT OF BEGINNING;

THENCE N00°34'13"W, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 122.63 FEET;

THENCE N90°00'00"E, ACROSS SAID TRACT "E", A DISTANCE OF 35.00 FEET;

THENCE S00°34'13"E, CONTINUING ACROSS SAID TRACT "E" ALONG A LINE 100.00 FEET EAST OF AND PARALLEL TO SAID WEST LINE OF THE SOUTHWEST QUARTER, A DISTANCE OF 225.33 FEET TO A POINT ON THE SOUTH LINE OF SAID TRACT "E";

THENCE S89°29'36"W, ALONG SAID SOUTH LINE, A DISTANCE OF 10.00 FEET;

THENCE ACROSS SAID TRACT "E" THE REMAINING COURSES AND DISTANCES:

THENCE N00°34'13"W ALONG A LINE 90.00 FEET EAST OF AND PARALLEL TO SAID WEST LINE OF THE SOUTHWEST QUARTER, A DISTANCE OF 102.79 FEET;

THENCE N90°00'00"W A DISTANCE OF 25.00 FEET TO A POINT ON SAID EAST RIGHT-OF-WAY LINE OF COOPER ROAD, SAID POINT BEING THE POINT OF BEGINNING;

THE ABOVE DESCRIBED EASEMENT CONTAINS 5,320 SQUARE FEET (0.1221 ACRE) OF LAND, MORE OR LESS, INCLUDING ANY EASEMENTS OF RECORD.

*Professional Land
Surveyor AZ No. 33868*

**Troy A.
Ray RLS**

Digitally signed by Troy A. Ray RLS
DN: cn=Troy A. Ray RLS, o=Ritoch-Powell & Associates, ou,
email=tray@ritochpowell.com, c=US
Date: 2014.04.21 09:48:55 -0700

(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

RITOCHE-POWELL & ASSOCIATES, INC.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR TEMPORARY CONSTRUCTION EASEMENT
ASSESSOR PARCEL 310-05-224



DATE:	4/21/14
DSN:	MRS
DRN:	PHK
CHK:	TAR

PROJECT NUMBER
ST094

SHEET 2 OF 3

EXHIBIT A

THE BASIS OF BEARING FOR THE ABOVE DESCRIPTION IS N00°34'13"W FOR THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA AS SHOWN ON THE PLSS SUBDIVISION RECORD OF SURVEY—MARICOPA COUNTY GEODETIC DENSIFICATION AND CADASTRAL SURVEY (GDACS) RECORDED IN BOOK 669, PAGE 47, MARICOPA COUNTY RECORDS.

*Professional Land
Surveyor AZ No. 33868*

**Troy A.
Ray RLS**

Digitally signed by Troy A.
Ray RLS
DN: cn=Troy A. Ray RLS,
o=Ritoch-Powell &
Associates, ou,
email=tray@ritochpowell.
com, c=US,
Date: 2014.04.21 09:49:10
-0700'

(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

RITICH-POWELL & ASSOCIATES, INC.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR TEMPORARY CONSTRUCTION EASEMENT
ASSESSOR PARCEL 310-05-224



DATE: 4/21/14
DSN: MRS
DRN: PHK
CHK: TAR

PROJECT NUMBER
ST094

SHEET 3 OF 3

310-05-224 SILVERHAWKE HOMEOWNERS ASSOCIATION, INC. NEW TCE

NORTH: 860757.9092' EAST: 733632.5727'

SEGMENT #1 : LINE

COURSE: N00°34'13"W LENGTH: 122.63'
NORTH: 860880.5331' EAST: 733631.3522'

SEGMENT #2 : LINE

COURSE: N90°00'00"E LENGTH: 35.00'
NORTH: 860880.5331' EAST: 733666.3522'

SEGMENT #3 : LINE

COURSE: S00°34'13"E LENGTH: 225.33'
NORTH: 860655.2143' EAST: 733668.5948'

SEGMENT #4 : LINE

COURSE: S89°29'36"W LENGTH: 10.00'
NORTH: 860655.1258' EAST: 733658.5952'

SEGMENT #5 : LINE

COURSE: N00°34'13"W LENGTH: 102.79'
NORTH: 860757.9107' EAST: 733657.5722'

SEGMENT #6 : LINE

COURSE: N90°00'00"W LENGTH: 25.00'
NORTH: 860757.9107' EAST: 733632.5722'

PERIMETER: 520.76' AREA: 5,319.62 SQ. FT. (0.1221 ACRE)
ERROR CLOSURE: 0.0016 COURSE: N17°51'09"W
ERROR NORTH: 0.00157 EAST: -0.00050

PRECISION 1: 325,468.75

*Professional Land
Surveyor AZ No. 33868*

**Troy A.
Ray RLS**

Digitally signed by Troy A.
Ray RLS
DN: cn=Troy A. Ray RLS,
o=Ritoch-Powell &
Associates, ou,
email=troy@ritochpowell.
com, c=US
Date: 2014.04.21 09:49:24
-07'00

(Expires 6/30/14)

ELECTRONIC SEAL

<http://www.btr.state.az.us/>

EXHIBIT A

W 1/4 COR SEC 1
3" TOG BC IN HH



N00°34'13"W 2666.23'
(BASIS OF BEARING)

COOPER ROAD

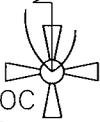
EXISTING
R/W

65'
R/W

POB

1343.12'

POC
SW COR SEC 1
3" TOG BC IN HH



ENCINAS STREET

310-05-224
SILVERHAWKE HOMEOWNERS
ASSOCIATION, INC.
INST. #1995-0237663, MCR

46

47

48

STANFORD AVENUE

SADDLE
STREET

SILVERHAWKE
BK. 376, PG. 34, MCR

TRACT "E"

NEW
T.C.E.
AREA

LINE TABLE		
LINE	BEARING	LENGTH
L1	N89°25'47"E	65.00'
L2	N00°34'13"W	25.00'
L3	N89°25'47"E	36.00'
L4	S00°34'13"E	25.00'
L5	S89°25'47"W	36.00'

NEW T.C.E. AREA
900 S.F.
(0.0207 ACRE)



SCALE:
1"=80'
SW 1/4
SEC 1
T 1 S
R 5 E

Professional Land
Surveyor AZ No. 33868

Troy A.
Ray RLS

Digitally signed by
Troy A. Ray RLS
DN: cn=Troy A. Ray
RLS, o=Ritoch-Powell
& Associates, ou,
email=tray@ritochpow
@ll.com, c=US
Date: 2014.04.29
12:27:18 -07'00'

(Expires 6/30/14)

ELECTRONIC SEAL

<http://www.btr.state.az.us/>

RITICH-POWELL & ASSOCIATES, INC.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR TEMPORARY CONSTRUCTION EASEMENT
ASSESSOR PARCEL 310-05-224

 **GILBERT**
ARIZONA

DATE: 4/29/14
DSN: MRS
DRN: PHK
CHK: TAR

PROJECT NUMBER
ST094

SHEET 1 OF 2

EXHIBIT A

A TEMPORARY CONSTRUCTION EASEMENT OVER TRACT "E" AS SHOWN ON THE FINAL PLAT OF SILVERHAWKE, RECORDED IN BOOK 376, PAGE 34, MARICOPA COUNTY RECORDS (MCR), AND CONVEYED TO SILVERHAWKE HOMEOWNERS ASSOCIATION, INC BY DEED OF RECORD IN INSTRUMENT #1995-0237663, MCR AND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER (3" TOG BRASS CAP IN HANDHOLE) OF SAID SECTION 1 FROM WHICH POINT THE WEST QUARTER CORNER (3" TOG BRASS CAP IN HANDHOLE) THEREOF BEARS N00°34'13"W A DISTANCE OF 2666.23 FEET;

THENCE N00°34'13"W, ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 1343.12 FEET;

THENCE N89°25'47"E, ACROSS THE RIGHT-OF-WAY OF COOPER ROAD, A DISTANCE OF 65.00 FEET TO A POINT ON THE EAST LINE THEREOF, SAID POINT BEING THE POINT OF BEGINNING;

THENCE N00°34'13"W, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 25.00 FEET;

THENCE ACROSS SAID TRACT "E" THE FOLLOWING THREE (3) COURSES AND DISTANCES:

THENCE N89°25'47"E A DISTANCE OF 36.00 FEET;

THENCE S00°34'13"E, ALONG A LINE 101.00 FEET EAST OF AND PARALLEL TO SAID WEST LINE OF THE SOUTHWEST QUARTER, A DISTANCE OF 25.00 FEET;

THENCE S89°25'47"W A DISTANCE OF 36.00 FEET TO THE POINT OF BEGINNING;

THE ABOVE DESCRIBED EASEMENT CONTAINS 900 SQUARE FEET (0.0207 ACRE) OF LAND, MORE OR LESS, INCLUDING ANY EASEMENTS OF RECORD.

THE BASIS OF BEARING FOR THE ABOVE DESCRIPTION IS N00°34'13"W FOR THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA AS SHOWN ON THE PLSS SUBDIVISION RECORD OF SURVEY-MARICOPA COUNTY GEODETIC DENSIFICATION AND CADASTRAL SURVEY (GDACS) RECORDED IN BOOK 669, PAGE 47, MARICOPA COUNTY RECORDS.

**Professional Land
Surveyor AZ No. 33868**

**Troy A.
Ray RLS**

Digitally signed by Troy A. Ray RLS
DN: cn=Troy A. Ray RLS, o=Ritoch-Powell & Associates, ou, email=tray@ritochpowel
l.com, c=US
Date: 2014.04.29 12:27:31 -07'00'

(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

RIToch-POWELL & ASSOCIATES, INC. 5727 N. 7th Street, Suite 120 Phoenix, AZ 85014 Ph: 602-263-1177 Fax: 602-277-6286	EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION FOR TEMPORARY CONSTRUCTION EASEMENT ASSESSOR PARCEL 310-05-224	
	DATE: 4/29/14	PROJECT NUMBER ST094
	DSN: MRS	SHEET 2 OF 2
	DRN: PHK	
	CHK: TAR	

310-05-224 SILVERHAWKE HOMEOWNERS ASSOCIATION, INC. NEW TCE#2

NORTH: 861592.9748' EAST: 733624.2612'

SEGMENT #1 : LINE

COURSE: N00°34'13"W LENGTH: 25.00'
NORTH: 861617.9736' EAST: 733624.0124'

SEGMENT #2 : LINE

COURSE: N89°25'47"E LENGTH: 36.00'
NORTH: 861618.3319' EAST: 733660.0106'

SEGMENT #3 : LINE

COURSE: S00°34'13"E LENGTH: 25.00'
NORTH: 861593.3332' EAST: 733660.2594'

SEGMENT #4 : LINE

COURSE: S89°25'47"W LENGTH: 36.00'
NORTH: 861592.9748' EAST: 733624.2612'

PERIMETER: 122.00' AREA: 899.96 SQ. FT. (0.0207 ACRE)
ERROR CLOSURE: 0.0000' COURSE: N00°00'00"E
ERROR NORTH: 0.00000' EAST: 0.00000'

PRECISION 1: 122,000,000.00

*Professional Land
Surveyor AZ No. 33868*

**Troy A.
Ray RLS**

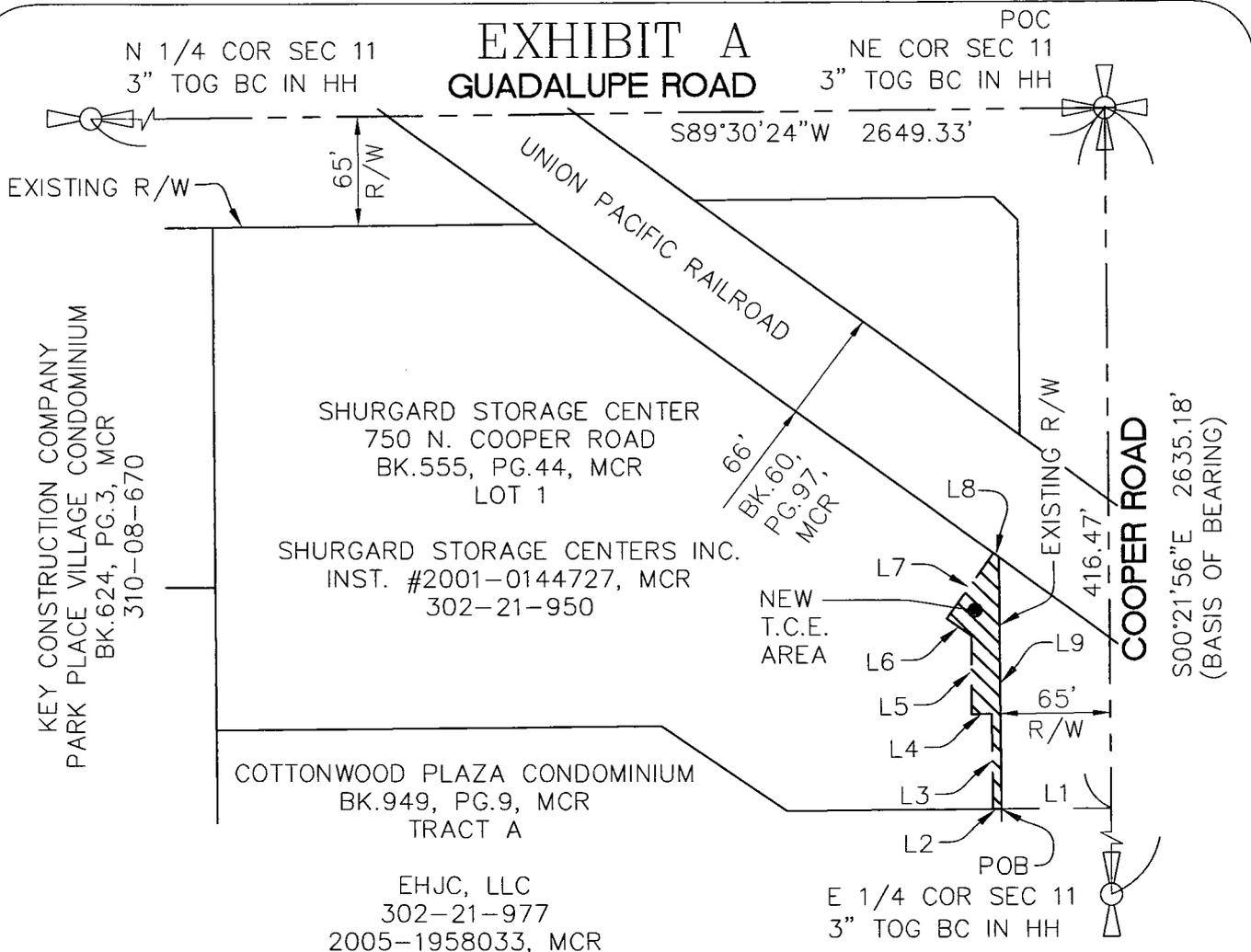
Digitally signed by Troy A.
Ray RLS
DN: cn=Troy A. Ray RLS,
o=Ritoch-Powell &
Associates, ou,
email=tray@ritochpowell.
com, c=US
Date: 2014.04.29 12:27:44
-07'00'

(Expires 6/30/14)

ELECTRONIC SEAL

<http://www.btr.state.az.us/>

EXHIBIT A GUADALUPE ROAD



NEW T.C.E. AREA
1,954 S.F.
(0.0448 ACRE)

LINE TABLE					
LINE	BEARING	LENGTH	LINE	BEARING	LENGTH
L1	S89°38'04"W	65.00'	L6	N54°44'19"W	17.58'
L2	S89°37'58"W	5.00'	L7	N35°12'26"E	47.66'
L3	N00°21'56"W	56.53'	L8	S53°33'54"E	3.83'
L4	S89°38'04"W	11.80'	L9	S00°21'56"E	149.86'
L5	N00°00'00"E	46.62'			



SCALE:
1"=100'
NE 1/4
SEC 11
T 1 S
R 5 E

*Professional Land
Surveyor AZ No. 33868*
Digitally signed by
Troy A. Ray RLS
Date: 2013.11.21
09:37:51 -07'00'
(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

RITICH-POWELL & ASSOCIATES, INC.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR TEMPORARY CONSTRUCTION EASEMENT
ASSESSOR PARCEL 302-21-950



DATE: 11/21/13
DSN: MRS
DRN: PHK
CHK: TAR

PROJECT NUMBER
ST094

SHEET 1 OF 3

EXHIBIT A

A TEMPORARY CONSTRUCTION EASEMENT OVER LOT 1 AS SHOWN ON THE FINAL PLAT FOR SHURGUARD STORAGE CENTER 750 N. COOPER ROAD RECORDED IN BOOK 555, PAGE 44, MARICOPA COUNTY RECORDS (MCR) AS CONVEYED TO SHURGUARD STORAGE CENTERS, INC BY DEED OF RECORD IN INSTRUMENT #2001-0144727, MCR AND LOCATED WITHIN THE NORTHEAST QUARTER OF SECTION 11 TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER (3" TOG BRASS CAP IN HANDHOLE) OF SAID SECTION 11 FROM WHICH POINT THE EAST QUARTER CORNER (3" TOG BRASS CAP IN HANDHOLE) THEREOF BEARS S00°21'56"E A DISTANCE OF 2635.18 FEET;

THENCE S00°21'56"E, ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 11, A DISTANCE OF 416.47 FEET;

THENCE S89°38'04"W, ACROSS THE RIGHT-OF-WAY OF COOPER ROAD, A DISTANCE OF 65.00 FEET TO A POINT ON THE WEST LINE THEREOF BEING THE SOUTHEAST CORNER OF SAID LOT 1 AND THE POINT OF BEGINNING;

THENCE S89°37'58"W, ALONG THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 5.00 FEET;

THENCE ACROSS SAID LOT 1 THE FOLLOWING FIVE (5) COURSES AND DISTANCES

1. N00°21'56"W, ALONG A LINE 70.00 FEET WEST OF AND PARALLEL TO SAID EAST LINE OF THE NORTHEAST QUARTER, A DISTANCE OF 56.53 FEET;

2. S89°38'04"W A DISTANCE OF 11.80 FEET;

3. N00°00'00"E A DISTANCE OF 46.62 FEET;

4. N54°44'19"W A DISTANCE OF 17.58 FEET;

5. N35°12'26"E A DISTANCE OF 47.66 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD;

THENCE S53°33'54"E, ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 3.83 FEET TO A POINT ON SAID WEST RIGHT-OF-WAY LINE OF COOPER ROAD;

THENCE S0°21'56"E, ALONG SAID WEST RIGHT-OF-WAY LINE BEING 65.00 FEET WEST OF AND PARALLEL TO SAID EAST LINE OF THE NORTHEAST QUARTER, A DISTANCE OF 149.86 FEET TO THE POINT OF BEGINNING.

*Professional Land
Surveyor AZ No. 33868*

Digitally signed by
Troy A. Ray RLS
Date: 2013.11.21
09:38:04 -07'00'

(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

RITCOCH-POWELL & ASSOCIATES, INC.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR TEMPORARY CONSTRUCTION EASEMENT
ASSESSOR PARCEL 302-21-950



DATE: 11/21/13
DSN: MRS
DRN: PHK
CHK: TAR

PROJECT NUMBER
ST094

SHEET 2 OF 3

EXHIBIT A

THE ABOVE DESCRIBED EASEMENT CONTAINS 1,954 SQUARE FEET (0.0448 ACRE), OF LAND, MORE OR LESS, INCLUDING ANY EASEMENTS OF RECORD.

THE BASIS OF BEARING FOR THE ABOVE DESCRIPTION IS S00°21'56"E FOR THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA AS SHOWN ON THE PLSS SUBDIVISION RECORD OF SURVEY-MARICOPA COUNTY GEODETIC DENSIFICATION AND CADASTRAL SURVEY (GDACS) RECORDED IN BOOK 669, PAGE 47, MARICOPA COUNTY RECORDS.

*Professional Land
Surveyor AZ No. 33868*
Digitally signed by
Troy A. Ray RLS
Date: 2013.11.21
09:38:17 -07'00'
(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

RITICH-POWELL & ASSOCIATES, INC.
5727 N. 7th Street, Suite 120
Phoenix, AZ 84012
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR TEMPORARY CONSTRUCTION EASEMENT
ASSESSOR PARCEL 302-21-950

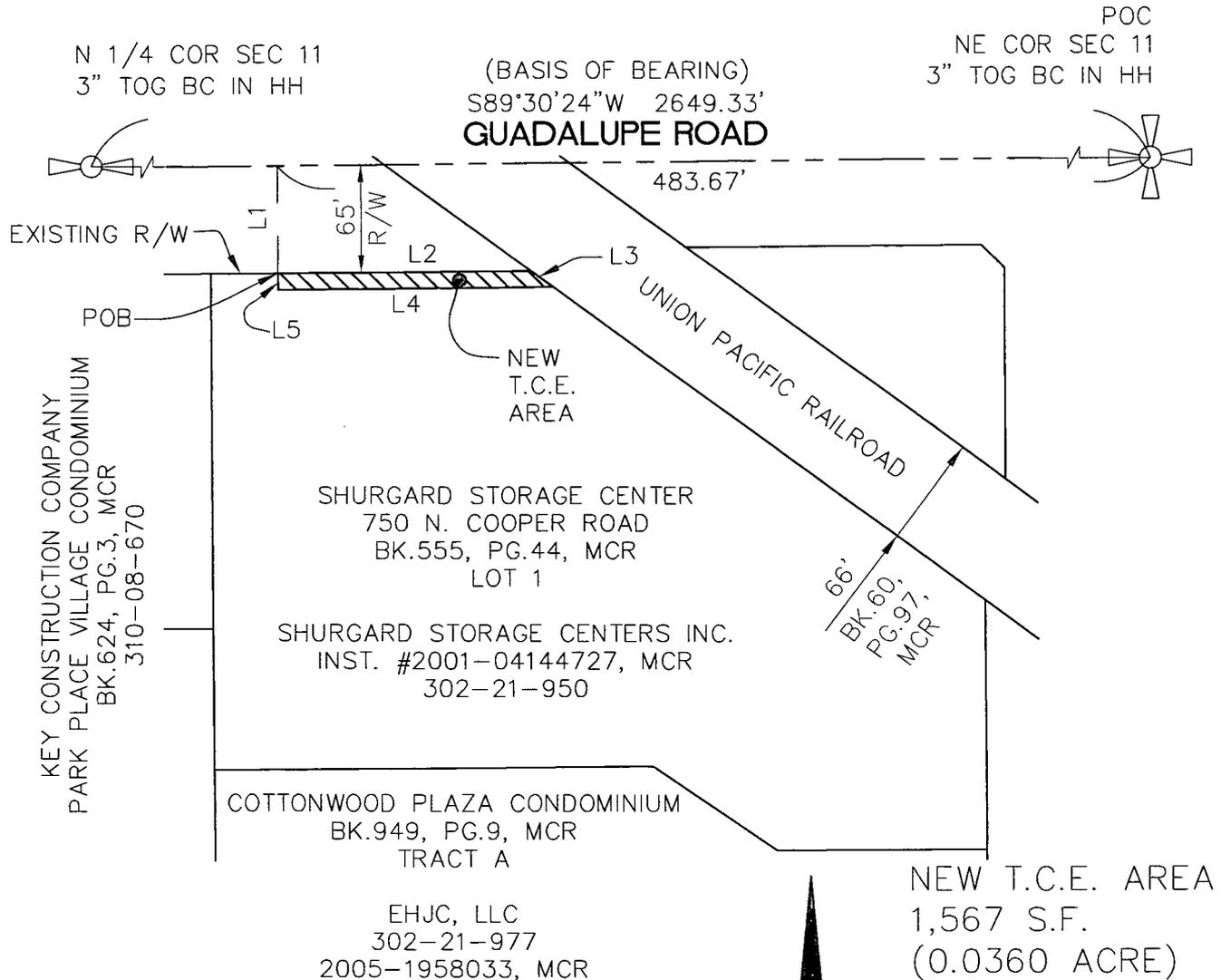


DATE: 11/21/13
DSN: MRS
DRN: PHK
CHK: TAR

PROJECT NUMBER
ST094

SHEET 3 OF 3

EXHIBIT A



LINE TABLE					
LINE	BEARING	LENGTH	LINE	BEARING	LENGTH
L1	S00°29'36"E	65.00'	L4	S89°30'24"W	163.33'
L2	N89°30'24"E	150.02'	L5	N00°29'36"W	10.00'
L3	S53°33'54"E	16.64'			



SCALE:
1"=100'
NE 1/4
SEC 11
T 1 S
R 5 E

*Professional Land
Surveyor AZ No. 33868*
Digitally signed by
Troy A. Ray RLS
Date: 2014.01.22
07:41:39 -07'00'
(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

RITICH-POWELL & ASSOCIATES, INC.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR TEMPORARY CONSTRUCTION EASEMENT
ASSESSOR PARCEL 302-21-950



DATE: 1/22/14
DSN: MRS
DRN: TAR
CHK: TAR

PROJECT NUMBER
ST094

SHEET 1 OF 2

EXHIBIT A

A TEMPORARY CONSTRUCTION EASEMENT OVER LOT 1 AS SHOWN ON THE FINAL PLAT FOR SHURGARD STORAGE CENTER 750 N. COOPER ROAD, RECORDED IN BOOK 555, PAGE 44, MARICOPA COUNTY RECORDS (MCR) AS CONVEYED TO SHURGUARD STORAGE CENTERS, INC BY DEED OF RECORD IN INSTRUMENT #2001-0144727, MCR AND LOCATED WITHIN THE NORTHEAST QUARTER OF SECTION 11 TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER (3" TOG BRASS CAP IN HANDHOLE) OF SAID SECTION 11 FROM WHICH POINT THE NORTH QUARTER CORNER (3" TOG BRASS CAP IN HANDHOLE) THEREOF BEARS S89°30'24"W A DISTANCE OF 2649.33 FEET;

THENCE S89°30'24"W, ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 483.67 FEET;

THENCE S00°29'36"E, ACROSS THE RIGHT-OF-WAY OF GUADALUPE ROAD, A DISTANCE OF 65.00 FEET TO A POINT ON THE SOUTH LINE THEREOF, THE POINT OF BEGINNING;

THENCE N89°30'24"E, ALONG SAID SOUTH RIGHT-OF-WAY LINE BEING 65.00 FEET SOUTH OF AND PARALLEL TO SAID NORTH LINE OF THE NORTHEAST QUARTER, A DISTANCE OF 150.02 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD;

THENCE S53°33'54"E, ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 16.64 FEET;

THENCE S89°30'24"W, ACROSS SAID LOT 1 AND ALONG A LINE 75.00 FEET SOUTH OF AND PARALLEL TO SAID NORTH LINE OF THE NORTHEAST QUARTER, A DISTANCE OF 163.33 FEET;

THENCE N00°29'36"W, CONTINUING ACROSS SAID LOT 1, A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED EASEMENT CONTAINS 1,567 SQUARE FEET (0.0360 ACRE), OF LAND, MORE OR LESS, INCLUDING ANY EASEMENTS OF RECORD.

THE BASIS OF BEARING FOR THE ABOVE DESCRIPTION IS S89°30'24"W FOR THE NORTH LINE OF THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA AS SHOWN ON THE PLSS SUBDIVISION RECORD OF SURVEY-MARICOPA COUNTY GEODETIC DENSIFICATION AND CADASTRAL SURVEY (GDACS) RECORDED IN BOOK 669, PAGE 47, MARICOPA COUNTY RECORDS.

*Professional Land
Surveyor AZ No. 33868*

Digitally signed by
Troy A. Ray RLS
Date: 2014.01.22
07:41:54 -07'00'
(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

RITTOCH-POWELL & ASSOCIATES, INC.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR TEMPORARY CONSTRUCTION EASEMENT
ASSESSOR PARCEL 302-21-950



DATE: 1/22/14
DSN: MRS
DRN: TAR
CHK: TAR

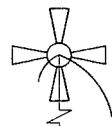
PROJECT NUMBER
ST094

SHEET 2 OF 2

EXHIBIT A

KEY CONSTRUCTION COMPANY
PARK PLACE VILLAGE CONDOMINIUM
BK.624, PG.3, MCR
310-08-670

SHURGARD STORAGE CENTERS INC.
BK. 555 OF MAPS, PG. 44, MCR
LOT 1
302-21-950



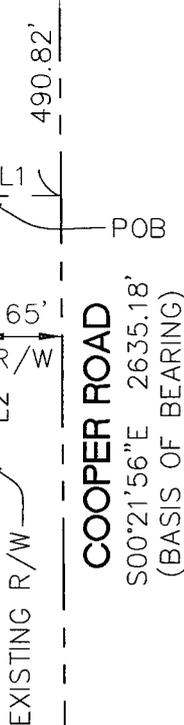
POC
NE COR SEC 11
3" TOG BC IN HH

FINAL PLAT
OF
SONESTA ESTATES
UNIT 1
BK.403, PG.23, MCR

COTTONWOOD TRACT A
CONDOMINIUM
BK.949, PG.9, MCR
302-21-977
EHJC, LLC
INST. #2005-1958033, MCR
&
720 N. COOPER, LLC
INST. #2008-1025626, MCR

NEW
T.C.E.
AREA

E 1/4 COR SEC 11
3" TOG BC IN HH



COOPER ROAD
S00°21'56"E 2635.18'
(BASIS OF BEARING)

NEW T.C.E. AREA
13,604 S.F.
(0.3123 ACRE)

LINE TABLE					
LINE	BEARING	LENGTH	LINE	BEARING	LENGTH
L1	S89°38'04"W	65.00'	L5	N90°00'00"E	10.00'
L2	S00°21'56"E	355.78'	L6	N00°21'56"W	62.72'
L3	N90°00'00"W	40.00'	L7	N90°00'00"E	30.00'
L4	N00°21'56"W	293.05'			

SCALE:
1"=150'
NE 1/4
SEC 11
T 1 S
R 5 E

*Professional Land
Surveyor AZ No. 33868*
Digitally signed by
Troy A. Ray RLS
Date: 2013.11.20
07:30:40 -07'00'
(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

RITICH-POWELL & ASSOCIATES, INC.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR TEMPORARY CONSTRUCTION EASEMENT
ASSESSOR PARCEL 302-21-977



DATE: 11/20/13
DSN: MRS
DRN: PHK
CHK: TAR

PROJECT NUMBER
ST094

SHEET 1 OF 3

EXHIBIT A

A TEMPORARY CONSTRUCTION EASEMENT OVER TRACT A AS SHOWN ON THE COTTONWOOD PLAZA CONDOMINIUM PLAT RECORDED IN BOOK 949, PAGE 9, MARICOPA COUNTY RECORDS (MCR) AS CONVEYED TO EHJC, L.L.C. BY DEED OF RECORD IN INSTRUMENT #2005-1958033, MCR AND 720 N. COOPER, L.L.C. BY DEED OF RECORD IN INSTRUMENT #2008-1025626, MCR AND LOCATED WITHIN THE NORTHEAST QUARTER OF SECTION 11 TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER (3" TOG BRASS CAP IN HANDHOLE) OF SAID SECTION 11 FROM WHICH POINT THE EAST QUARTER CORNER (3" TOG BRASS CAP HANDHOLE) THEREOF BEARS S00°21'56"E A DISTANCE OF 2635.18 FEET;

THENCE S00°21'56"E, ALONG THE EAST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 490.82 FEET;

THENCE S89°38'04"W, ACROSS THE RIGHT-OF-WAY OF COOPER ROAD, A DISTANCE OF 65.00 FEET TO A POINT ON THE WEST LINE THEREOF, THE POINT OF BEGINNING;

THENCE S00°21'56"E, ALONG SAID WEST RIGHT-OF-WAY LINE OF COOPER ROAD BEING 65.00 FEET WEST OF AND PARALLEL TO SAID EAST LINE OF THE NORTHEAST QUARTER, A DISTANCE OF 355.78 FEET;

THENCE ACROSS SAID TRACT A THE REMAINING COURSES AND DISTANCES

N90°00'00"W A DISTANCE OF 40.00 FEET;

N00°21'56"W, ALONG A LINE 105.00 FEET WEST OF AND PARALLEL TO SAID EAST LINE OF THE NORTHEAST QUARTER, A DISTANCE OF 293.05 FEET;

N90°00'00"E A DISTANCE OF 10.00 FEET;

N00°21'56"W, ALONG A LINE 95.00 FEET WEST OF AND PARALLEL TO SAID EAST LINE OF THE NORTHEAST QUARTER, A DISTANCE OF 62.72 FEET;

N90°00'00"E A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED EASEMENT CONTAINS 13,604 SQUARE FEET (0.3123 ACRE) OF LAND, MORE OR LESS, INCLUDING ANY EASEMENTS OF RECORD.

*Professional Land
Surveyor AZ No. 33868*
Digitally signed by
Troy A. Ray RLS
Date: 2013.11.20
07:30:57 -07'00'
(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

RITICH-POWELL & ASSOCIATES, INC.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR TEMPORARY CONSTRUCTION EASEMENT
ASSESSOR PARCEL 302-21-977



DATE: 11/20/13
DSN: MRS
DRN: PHK
CHK: TAR

PROJECT NUMBER
ST094

SHEET 2 OF 3

EXHIBIT A

THE BASIS OF BEARING FOR THE ABOVE DESCRIPTION IS S00°21'56"E FOR THE EAST LINE OF THE NORTHEAST QUARTER OF SECTION 11, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA AS SHOWN ON THE PLSS SUBDIVISION RECORD OF SURVEY—MARICOPA COUNTY GEODETIC DENSIFICATION AND CADASTRAL SURVEY (GDACS) RECORDED IN BOOK 669, PAGE 47, MARICOPA COUNTY RECORDS.

*Professional Land
Surveyor AZ No. 33868*
Digitally signed by
Troy A. Ray RLS
Date: 2013.11.20
07:31:13 -07'00'
(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

RITTOCH-POWELL & ASSOCIATES, INC.
5727 N. 7th Street, Suite 120
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EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR TEMPORARY CONSTRUCTION EASEMENT
ASSESSOR PARCEL 302-21-977



DATE: 11/20/13
DSN: MRS
DRN: PHK
CHK: TAR

PROJECT NUMBER
ST094

SHEET 3 OF 3

302-21-977 EHJC LLC TEMPORARY CONSTRUCTION

NORTH: 859758.0440' EAST: 733510.7653'

SEGMENT #1 : LINE

COURSE: S00°21'56"E LENGTH: 355.78'
NORTH: 859402.2712' EAST: 733513.0355'

SEGMENT #2 : LINE

COURSE: N90°00'00"W LENGTH: 40.00'
NORTH: 859402.2712' EAST: 733473.0355'

SEGMENT #3 : LINE

COURSE: N00°21'56"W LENGTH: 293.05'
NORTH: 859695.3153' EAST: 733471.1655'

SEGMENT #4 : LINE

COURSE: N90°00'00"E LENGTH: 10.00'
NORTH: 859695.3153' EAST: 733481.1655'

SEGMENT #5 : LINE

COURSE: N00°21'56"W LENGTH: 62.72'
NORTH: 859758.0340' EAST: 733480.7653'

SEGMENT #6 : LINE

COURSE: N90°00'00"E LENGTH: 30.00'
NORTH: 859758.0340' EAST: 733510.7653'

PERIMETER: 791.56' AREA: 13,603.87 SQ. FT. (0.3123 ACRE)

ERROR CLOSURE: 0.0100' COURSE: S00°21'56"E
ERROR NORTH: -0.01000' EAST: 0.00006'

PRECISION 1: 79,155.00

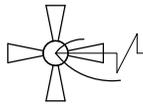
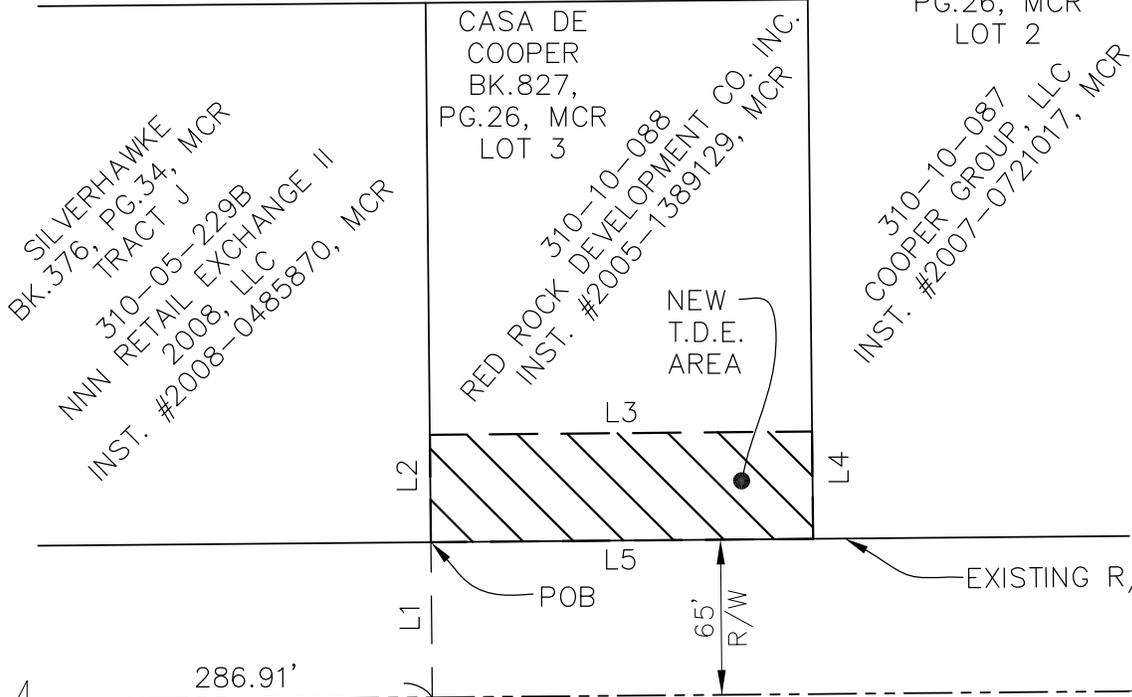
*Professional Land
Surveyor AZ No. 33868*

Digitally signed by Troy
A. Ray RLS
Date: 2013.11.20
07:31:33 -07'00'

(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

EXHIBIT A

CASA DE COOPER
BK.827,
PG.26, MCR
LOT 2



POC
SW COR SEC 1
3" TOG BC IN HH

286.91'

GUADALUPE ROAD

N89°29'36"E 2628.90'
(BASIS OF BEARING)

S 1/4 COR SEC 1
3" MCDOT BC IN HH

NEW T.D.E. AREA
7,200 S.F.
(0.1653 ACRE)

LINE TABLE					
LINE	BEARING	LENGTH	LINE	BEARING	LENGTH
L1	N00°30'24"W	65.00'	L4	S00°34'13"E	45.00'
L2	N00°34'13"W	45.00'	L5	S89°29'36"W	160.00'
L3	N89°29'36"E	160.00'			



SCALE:
1"=80'
SW 1/4
SEC 1
T 1 S
R 5 E

*Professional Land
Surveyor AZ No. 33868*

(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>

RITICH-POWELL & ASSOCIATES, INC.
5727 N. 7th Street, Suite 120
Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR TEMPORARY DRAINAGE EASEMENT
ASSESSOR PARCEL 310-10-088



DATE: 4/15/14
DSN: MRS
DRN: PHK
CHK: TAR

PROJECT NUMBER
ST094

SHEET 1 OF 3

EXHIBIT A

A TEMPORARY DRAINAGE EASEMENT OVER LOT 3 AS SHOWN ON THE FINAL PLAT OF CASA DE COOPER, RECORDED IN BOOK 827, PAGE 26, MARICOPA COUNTY RECORDS (MCR) AS CONVEYED TO RED ROCK DEVELOPMENT CO. INC. BY DEED OF RECORD IN INSTRUMENT #2005-1389129, (MCR) AND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER (3" TOG BRASS CAP IN HANDHOLE) OF SAID SECTION 1 FROM WHICH POINT THE SOUTH QUARTER CORNER (3" MCDOT BRASS CAP IN HANDHOLE) THEREOF BEARS N89°29'36"E A DISTANCE OF 2628.90 FEET;

THENCE N89°29'36"E, ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER, A DISTANCE OF 286.91 FEET;

THENCE N00°30'24"W, ACROSS THE RIGHT-OF-WAY OF GUADALUPE ROAD, A DISTANCE OF 65.00 FEET TO A POINT ON THE NORTH LINE THEREOF, SAID POINT BEING THE SOUTHWEST CORNER OF SAID LOT 3 AND THE POINT OF BEGINNING;

THENCE N00°34'13"W, ALONG THE WEST LINE OF SAID LOT 3, A DISTANCE OF 45.00 FEET;

THENCE N89°29'36"E, ACROSS SAID LOT 3 AND ALONG A LINE 110.00 FEET NORTH OF AND PARALLEL TO SAID SOUTH LINE OF THE SOUTHWEST QUARTER, A DISTANCE OF 160.00 FEET TO A POINT ON THE EAST LINE OF SAID LOT 3;

THENCE S00°34'13"E, ALONG SAID EAST LINE, A DISTANCE OF 45.00 FEET TO A POINT ON SAID NORTH RIGHT-OF-WAY LINE OF GUADALUPE ROAD BEING THE SOUTHEAST CORNER OF SAID LOT 3;

THENCE S89°29'36"W, ALONG SAID NORTH RIGHT-OF-WAY LINE BEING 65.00 FEET NORTH OF AND PARALLEL TO SAID SOUTH LINE OF THE SOUTHWEST QUARTER, A DISTANCE OF 160.00 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED EASEMENT CONTAINS 7,200.00 SQUARE FEET (0.1653 ACRE) OF LAND, MORE OR LESS, INCLUDING ANY EASEMENTS OF RECORD.

*Professional Land
Surveyor AZ No. 33868*

*(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>*

RITTOCH-POWELL & ASSOCIATES, INC.
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Phoenix, AZ 85014
Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR TEMPORARY DRAINAGE EASEMENT
ASSESSOR PARCEL 310-10-088



DATE: 4/15/14
DSN: MRS
DRN: PHK
CHK: TAR

PROJECT NUMBER
ST094

SHEET 2 OF 3

EXHIBIT A

THE BASIS OF BEARING FOR THE ABOVE DESCRIPTION IS N89°29'36"E FOR THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 5 EAST OF THE GILA & SALT RIVER MERIDIAN, TOWN OF GILBERT, MARICOPA COUNTY, ARIZONA AS SHOWN ON THE PLSS SUBDIVISION RECORD OF SURVEY—MARICOPA COUNTY GEODETIC DENSIFICATION AND CADASTRAL SURVEY (GDACS) RECORDED IN BOOK 669, PAGE 47, MARICOPA COUNTY RECORDS.

*Professional Land
Surveyor AZ No. 33868*

*(Expires 6/30/14)
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<http://www.btr.state.az.us/>*

RITTOCH-POWELL & ASSOCIATES, INC.
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Ph: 602-263-1177
Fax: 602-277-6286

EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION
FOR TEMPORARY DRAINAGE EASEMENT
ASSESSOR PARCEL 310-10-088



DATE: 4/15/14

DSN: MRS

DRN: PHK

CHK: TAR

PROJECT NUMBER
ST094

SHEET 3 OF 3

310-10-088 RED ROCK DEVELOPMENT TEMPORARY DRAINAGE ESMT

NORTH: 860316.8075' EAST: 733858.9541'

SEGMENT #1 : LINE
COURSE: N00°34'13"W LENGTH: 45.00'
NORTH: 860361.8053' EAST: 733858.5062'

SEGMENT #2 : LINE
COURSE: N89°29'36"E LENGTH: 160.00'
NORTH: 860363.2202' EAST: 734018.5000'

SEGMENT #3 : LINE
COURSE: S00°34'13"E LENGTH: 45.00'
NORTH: 860318.2224' EAST: 734018.9479'

SEGMENT #4 : LINE
COURSE: S89°29'36"W LENGTH: 160.00'
NORTH: 860316.8075' EAST: 733858.9541'

PERIMETER: 410.00' AREA: 7,200.00 SQ. FT. (0.1653 ACRE)
ERROR CLOSURE: 0.0000 COURSE: N00°00'00"E
ERROR NORTH: 0.00000 EAST: 0.00000

PRECISION 1: 410,000,000.00

*Professional Land
Surveyor AZ No. 33868*

(Expires 6/30/14)
ELECTRONIC SEAL
<http://www.btr.state.az.us/>



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: Michael Hamblin, Town Attorney, 503-6027

MEETING DATE: December 2, 2014

SUBJECT: An Ordinance Repealing Gilbert Town Code Chapter 42, Article IV, Section 42-114 regarding Carrying and Storing Deadly Weapons in Town Buildings and Approving Policy Statement No. 2014-09, Weapons in Gilbert Public Buildings.

STRATEGIC INITIATIVE: High Performing Government

This ordinance will amend the Code of Gilbert, Arizona, Chapter 42 Offenses and Abatement of Public Nuisances, Article IV Offenses Involving Public Safety, to repeal Section 42-114 Carrying Deadly Weapons in Town Buildings; Storage of Deadly Weapons so that the code will conform with State law. Town Policy Statement No. 2014-09, Weapons in Gilbert Public Buildings will assist statute implementation.

RECOMMENDED MOTION

- (a) A motion adopting an ordinance to amend the Code of Gilbert, Arizona, Chapter 42 Offenses and Abatement of Public Nuisances, Article IV Offenses Involving Public Safety, to repeal Section 42-114 Carrying Deadly Weapons in Town Buildings; Storage of Deadly Weapons so that the code will conform with State law.
- (b) A motion to approve Policy Statement No. 2014-09, Weapons in Gilbert Public Buildings.

BACKGROUND/DISCUSSION

At the June 6, August 1, and September 5, 2013 Council Meetings, proposed changes to Municipal Code Section 42-114 were reviewed but no final action was taken. Though Option 1 (as set forth below) was approved on August 1, a motion to reconsider was granted on September 5, 2013. Pursuant to Robert's Rules of Order, this had the effect of reversing the August 1 decision. Though reconsidered, no substitute proposal could secure four votes. With the beginning of the 2nd Regular Session of the 51st Legislature, bills were introduced that would

have made necessary further amendments to the Code. Though passed by the Legislature, they were vetoed by the Governor.

The Town Code is contrary to State law and should be amended.

When last considered the Council had before it three options:

Option 1: Amending the Town Code to be consistent with and reflect State law.

Option 2: Providing that deadly weapons must be placed in a locker, if metal detectors are in place.

Option 3: Repealing Section 42-114, so that only the State law would govern.

As mentioned, in past meetings no option could secure four votes. Subsequently, the Town Attorney surveyed neighboring municipalities, with regards to the use of metal detectors, and whether weapons policy for employees was council generated or manager generated. Compliance with State law without additional security measures was typical though not universal as both Mesa and Tempe have metal detectors for their Council Chambers.

This proposal amends the Town Code to be consistent with State law, and does so by repealing the contrary provisions of the Town Code. This is consistent with Option 3 considered earlier. Persons may only be required to remove a deadly weapon, if a storage locker is provided.

Additionally, approval is sought for the Town Policy (attached) which would permit any employee to direct a member of the public to secure their weapon in an available locker, and to contact the Gilbert Police Department if they refuse, or there are no available lockers. The Police Department provided advice on the drafting of the policy.

The Ordinance and Policy were reviewed for form by L. Michael Hamblin, Town Attorney.

FINANCIAL IMPACT

There will be no financial impact.

Financial Impact section reviewed by Laura Lorenzen, Management and Budget Analyst.

STAFF RECOMMENDATION

Amend the Municipal Code to be consistent with State Law and approve Town Policy Statement No. 2014-09, Weapons in Gilbert Public Buildings, which will assist statute implementation.

Respectfully submitted,

Michael Hamblin
Town Attorney

Attachments and Enclosures:

An ordinance amending the Code of Gilbert, Arizona, Chapter 42 Offenses and Abatement of Public Nuisances, Article IV Offenses Involving Public Safety, to repeal Section 42-114 Carrying Deadly Weapons in Town Buildings; Storage of Deadly Weapons

Policy Statement No. 2014-19, Weapons in Gilbert Public Buildings

Approved By

Michael Hamblin
Michael Hamblin
Laura Lorenzen

Approval Date

11/19/2014 9:25 AM
11/19/2014 9:25 AM
11/19/2014 11:32 AM

ORDINANCE NO. _____

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AMENDING THE CODE OF GILBERT, ARIZONA, CHAPTER 42 OFFENSES AND ABATEMENT OF PUBLIC NUISANCES, ARTICLE IV OFFENSES INVOLVING PUBLIC SAFETY, BY REPEALING SECTION 42-114 CARRYING DEADLY WEAPONS IN TOWN BUILDINGS; STORAGE OF DEADLY WEAPONS, RELATED TO CARRYING DEADLY WEAPONS IN TOWN BUILDINGS

NOW THEREFORE, BE IT ORDAINED by the Common Council of the Town of Gilbert, Arizona, as follows:

Section I. In General.

The Code of Gilbert, Arizona, Chapter 42 Offenses and Abatement of Public Nuisances, Article IV Offenses Involving Public Safety, is hereby amended to repeal Section 42-114 Carrying Deadly Weapons in Town Buildings; Storage of Deadly Weapons, as follows showing deletions in ~~strikeout~~:

~~Sec. 42-114. Carrying deadly weapons in town buildings; storage of deadly weapons.~~

~~(a) — Except as provided in subsection (b) of this section, any person carrying a deadly weapon into a town building shall remove the weapon and place it in the temporary and secure storage provided for such storage. As used in this section, the words "deadly weapon" mean anything designed for lethal use, including any firearm, ammunition, fire bomb, dagger, or other knife except a pocket knife not manufactured for use for the purpose of offense and defense.~~

~~(b) — This section shall not apply to:~~

~~(1) — A peace officer or any person summoned by any peace officer to assist in the performance of his official duties.~~

~~(2) — A member of the military forces of the United States or of any state of the United States in the performance of official duty.~~

~~(c) — Any weapon by which dangerous and explosive substances may be discharged which is knowingly possessed by a person in violation of this section shall be subject to forfeiture in the same manner as authorized by A.R.S. tit. 13, ch. 39 (A.R.S. § 13-4301 et seq.).~~

~~(d) — The manager shall cause to be posted at the entrance of each building owned, leased or occupied by the town a notice that the possession of weapons inside the building is prohibited if there is a readily accessible locker at the building.~~

PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this _____ day of _____, 201_, by the following vote:

AYES: _____

NAYES: _____ ABSENT: _____

EXCUSED: _____ ABSTAINED: _____

APPROVED this _____ day of _____, 201_.

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 _____, 201_, WAS POSTED IN FOUR PLACES ON THE _____ DAY OF _____, 201_.

Catherine A. Templeton, Town Clerk

POLICY STATEMENT NO. 2014-09

SUBJECT: Weapons in Gilbert Public Buildings

DATE: December 2, 2014

P O L I C Y S T A T E M E N T

SUBJECT: Weapons in Gilbert Public Buildings

WHEREAS, it is the policy of the Gilbert Town Council to provide for a safe environment for Gilbert residents and others when they visit within the constraints of State law.

NOW, THEREFORE, the following policy is hereby established:

1. Consistent with State law (A.R.S. § 13-3102.01), the Town will post signage near the entrance of Gilbert government buildings, requiring the storage of deadly weapons in available lockers.
2. Any Town employee can direct visitor to weapon storage lockers and ask them to store their deadly weapon. If visitor refuses to store deadly weapon, or if the employee perceives a threat, or is uncomfortable making the request, Gilbert Police Department should be contacted.
3. If locker storage space is unavailable or firearm is larger than size of available locker, Gilbert Police Department should be contacted.
4. Armed visitors are not allowed in secure areas of municipal buildings.
5. Town of Gilbert Personnel Rules prohibit employees or volunteers (except police officers and military personnel acting in an official capacity) from possessing weapons at any Gilbert building, workplace, or worksite. A weapon may be kept locked, out of sight, in a personnel vehicle on Town property.

John W. Lewis, Mayor

ATTEST:

Catherine A. Templeton, Town Clerk



Council Communication

TO: Honorable Mayor and Councilmembers

FROM: L. Michael Hamblin, Town Attorney, 503-6107

MEETING DATE: December 2, 2014

SUBJECT: Amendment to the Code of Gilbert to allow for the prohibition of the riding of bicycles and the use of other non-motorized, rolling devices on Town-owned property

STRATEGIC INITIATIVE: Community Livability

This ordinance will amend the Gilbert Municipal Code to provide for the prohibition of the riding of bicycles and the use of skateboards, roller blades, roller skates, scooters, and other non-motorized, rolling devices on those areas of Town-owned property where such activity poses a risk to health, safety, or property.

RECOMMENDED MOTION

A motion to adopt an ordinance amending the Gilbert Municipal Code, Chapter 54 Streets, Sidewalks and Other Public Places, Section 54-4 Reserved, so as to regulate the riding of bicycles and the use of roller skates, skateboards, roller blades, scooters, and other non-motorized, rolling devices, on Town-owned properties where posted signage prohibits the same; and declaring an emergency.

BACKGROUND/DISCUSSION

Staff proposes that the Council approve an amendment to the Code of Gilbert to allow for the prohibition of the riding of bicycles and the use of skateboards, rollerblades, scooters, and other similar non-motorized, rolling devices on Town-owned property where such activity would pose a risk to safety or property.

The urgent need for an amended regulation came to the attention of Town Staff following the opening of the Town-owned parking garage in the Heritage District. In the weeks since the garage became operational, Staff (including members of the Gilbert Police Department) have

witnessed youth on skateboards and bicycles using the garage for recreation on a daily basis. On Veterans' Day, for example, a Town employee saw a near-miss between a vehicle and a skateboarder moving at a high rate of speed through the garage.

This recreational use of the garage encourages the congregation of groups who are not using the structure for its intended purposes. This activity spikes in the evenings and on weekends. Town Staff has also witnessed these groups, whose ranks are made up primarily of youth, engage in other illegal and/or inappropriate behavior in the garage. On a recent weekend, two separate groups of youth on bicycles threw shopping carts from the top floor of the structure.

So long as the witnessed behavior is allowed to continue, the Town faces an increased risk for liability for injuries and property damage occurring on Town property.

Officers from the Gilbert Police Department have issued trespass warnings to some of the youth, but trespassing charges may be levied only if the Town is able to identify the person involved and document his or her repeated violations. That being the case, the most efficient tool available to Police at this location and others deemed appropriate, would be enforcement of a prohibition of the riding of bicycles and the use of skateboards, roller blades, roller skates, scooters, and other similar devices on Town property where signage puts the public on notice of the ban.

A provision in a separate chapter of the Code allows for such a prohibition "in a town park or riparian preserve." The proposed amendment would expand that prohibition to any Town-owned property where Staff concludes such regulation to be necessary to protect health, safety, or property. Given the behavior witnessed to this point, Staff also believes that the danger posed to the public warrants the passage of this ordinance under the emergency provisions of the Code of Gilbert, Section 1-117, allowing it to take effect immediately. There is a high probability that an accident causing bodily injury could occur during the 30-day waiting period required for new ordinances to take effect. Approving this amendment with an emergency clause will allow for immediate enforcement and risk mitigation.

This ordinance was reviewed for form by Attorney Michael Hamblin.

FINANCIAL IMPACT

One-time costs related to the posting of the signs are expected to be minimal. The ongoing financial impact due to the enforcement of the ordinance would be offset by the levying of civil sanctions.

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

STAFF RECOMMENDATION

Staff recommends adoption of the amendment to the Gilbert Municipal Code.

Respectfully submitted,

L. Michael Hamblin
Town Attorney

Approved By

Approval Date

Michael Hamblin
Michael Hamblin
Laura Lorenzen

11/19/2014 8:15 AM
11/19/2014 8:15 AM
11/19/2014 11:45 AM

ORDINANCE NO. _____

AN ORDINANCE OF THE COMMON COUNCIL OF THE TOWN OF GILBERT, ARIZONA, AMENDING THE CODE OF GILBERT, ARIZONA, CHAPTER 54 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, BY AMENDING SECTION 54-4 RESERVED; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

WHEREAS, Gilbert encourages the public's safe and reasonable use of Town-owned property; and

WHEREAS, the use of bicycles, skateboards, roller skates, roller blades, scooters, and other similar devices can be a wholesome activity, beneficial to one's health and the environment, so long as such use occurs in appropriate areas and in a safe manner; and

WHEREAS, Gilbert wishes to allow for the prohibition of such use on those Town-owned properties deemed unfit or unsafe for such activities;

NOW THEREFORE, BE IT ORDAINED by the Common Council of the Town of Gilbert, Arizona, as follows:

Section I. In General.

The Code of Gilbert, Arizona, Chapter 46 Streets, Sidewalks and Other Public Places, Section 54-4 Reserved, is hereby amended to read as follows (additions in ALL CAPS; deletions in ~~strikeout~~):

Sec. 54-4. ~~Reserved~~ NONMOTORIZED VEHICLES; ROLLER SKATES; BICYCLES; SKATEBOARDS; ROLLER BLADES; SCOOTERS.

NO PERSON SHALL OPERATE ROLLER SKATES, BICYCLES, SKATEBOARDS, ROLLER BLADES, SCOOTERS OR ANY ROLLING VEHICLES ON TOWN-OWNED PROPERTY WHERE SUCH ACTIVITY IS SPECIFICALLY PROHIBITED BY APPROPRIATE POSTING, OR IN AN UNSAFE MANNER SO AS TO INFRINGE UPON THE SAFETY OF THEMSELVES OR OTHERS. ALL BICYCLE OPERATIONS ARE SUBJECT TO THE PROVISIONS OF CHAPTER 62, ARTICLE IV OR THIS CODE.

Section II. Providing for Repeal of Conflicting Ordinances.

All ordinances and parts of ordinances in conflict with the provisions of this Ordinance or any part of the Code adopted herein by reference, are hereby repealed.

Section III. Providing for Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section IV. Providing for Civil Sanctions.

Any person found responsible for violating this Ordinance shall be subject to the civil sanctions and habitual offender provisions set forth in Section 1-5 of the Gilbert Municipal Code. Each day a violation continues, or the failure to perform any act or duty required by the Municipal Code or by the Town of Gilbert Municipal Court continues, shall constitute a separate civil offense.

Section V. Declaring an Emergency.

The immediate operation of the provisions of this Ordinance is necessary for the preservation of the public peace, health and safety of the Town of Gilbert, and an emergency is hereby declared to exist. This Ordinance shall be in full force and effect from and after its passage, adoption and approval by the Common Council of the Town of Gilbert.

PASSED AND ADOPTED by the Common Council of the Town of Gilbert, Arizona, this _____ day of _____, 2014, by the following vote:

AYES: _____

NAYES: _____ ABSENT: _____

EXCUSED: _____ ABSTAINED: _____

APPROVED this ____ day of _____, 201__.

John W. Lewis, Mayor

ATTEST:

Catherine A. Templeton, Town Clerk

Ordinance No. _____
Page ___ of _____

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 _____, 201_, WAS POSTED IN FOUR PLACES ON THE ____ DAY OF _____, 201_.

Catherine A. Templeton, Town Clerk